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Criminal Practice - Statements of Hostile Witnesses - Held -
It is well settled legal position that evidence of hostile declared prosecution witnesses could not be discarded totally, but that part of their depositions could be taken into consideration which is supported by other evidence available on record. [Madhav Prasad Vs. State of M.P.] (DB)...1934

दाण्डिक पद्धति - पक्षविरोधी साक्षियों के कथन - अभिनिर्धारित - यह सुस्थापित विधिक स्थिति है कि पक्ष विरोधी घोषित अभियोजन साक्षियों के साक्ष्य को पूर्ण रूप से अस्वीकार नहीं किया जा सकता, बल्कि उनके अभिसाक्ष्य के उस भाग को विचार में लिया जा सकता है जो अभिलेख पर उपलब्ध अन्य साक्ष्य द्वारा समर्थित है। (माधव प्रसाद वि. म.प्र. राज्य) (DB)...1934

Criminal Procedure Code, 1973 (2 of 1974), Section 125 - Cruelty - Delayed Police Report - Held - Regarding misbehaviour and cruelty, generally wife does not lodge a report so that situation should not aggravate thinking that some day behaviour would change and she will tend to live in her matrimonial home, but when things go out of control and become intolerable, wife takes the drastic step of lodging report against husband finding no chance of any reconciliation. [Nirmala Dhurve (Smt.) Vs. Ramgopal] ...1972

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 - क्रूरता - विलंबित पुलिस रिपोर्ट - अभिनिर्धारित - दुर्व्यवहार एवं क्रूरता के संबंध में सामान्यतः पत्नी रिपोर्ट दर्ज नहीं करती ताकि स्थिति और गुरुतरकारी ना हो जाए, यह सोचते हुए कि किसी दिन व्यवहार बदल जाएगा और वह अपने दाम्पत्य निवास में रह सकेगी, परंतु जब स्थितियां नियंत्रण से बाहर चली जाती है और असहनीय हो जाती है, पत्नी किसी सुलह की उम्मीद न पाते हुए पति के विरुद्ध रिपोर्ट दर्ज करने का आत्यंतिक कदम उठाती है। (निर्मला धुर्वे (श्रीमती) वि. रामगोपाल) ...1972

Criminal Procedure Code, 1973 (2 of 1974), Section 125, Dissolution of Muslim Marriages Act, (8 of 1939), Section 2 and Hindu

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*Marriage Act (25 of 1955), Section 5 – Maintenance – Second Marriage by Wife – Validity of Marriage – Entitlement – Family Court dismissed wife's application for maintenance – Challenge to – Held – Applicant was earlier married to one Hanif Khan and later she divorced her husband by pronouncing triple "Talak" and was married to present respondent – Held – Applicant has not validly dissolved her first marriage – Dissolution of marriage by Muslim wife can only be in terms of Section 2 of the Act of 1939 – Muslim wife cannot dissolve marriage by pronouncing triple "Talak" – As per Hindu marriage, with regard to validity of marriage, consummation of marriage is a relevant factor but not the only criteria for determination – Subsequent marriage with respondent is contrary to Section 5 of the Act of 1955 and is a nullity – Maintenance application not maintainable – Revision petition dismissed. [Munni Devi (Smt.) Vs. Pritam Singh Goyal] ...*106*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125, मुस्लिम विवाह-विघटन अधिनियम (1939 का 8), धारा 2 एवं हिन्दू विवाह अधिनियम (1955 का 25), धारा 5 – भरणपोषण – पत्नी द्वारा दूसरा विवाह – विवाह की विधिमान्यता – हकदारी – कुटुंब न्यायालय ने भरण-पोषण हेतु पत्नी के आवेदन को खारिज किया – को चुनौती – अभिनिर्धारित – आवेदिका का पूर्व में विवाह हनीफ खान से हुआ था तथा बाद में उसने तीन बार "तलाक" कहकर अपने पति को तलाक दे दिया एवं वर्तमान प्रत्यर्थी से विवाह कर लिया था – अभिनिर्धारित – आवेदिका ने अपना पहला विवाह विधिमान्य रूप से विघटित नहीं किया था – मुस्लिम पत्नी द्वारा विवाह का विघटन केवल 1939 के अधिनियम की धारा 2 के निबंधनों के अनुसार हो सकता है – मुस्लिम पत्नी तीन बार "तलाक" कहकर विवाह का विघटन नहीं कर सकती – हिन्दू विवाह के अनुसार, विवाह की विधिमान्यता के संबंध में विवाहोत्तर संभोग एक सुसंगत कारक है परंतु अवधारण के लिए एकमात्र मापदंड नहीं है – प्रत्यर्थी के साथ बाद में किया गया विवाह, 1955 के अधिनियम की धारा 5 के प्रतिकूल है तथा अकृतता है – भरणपोषण का आवेदन पोषणीय नहीं – पुनरीक्षण याचिका खारिज। (मुन्नीदेवी (श्रीमती) वि. प्रीतम सिंह गोयल) ...*106

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Fundamental Principle – Held – The inherent and fundamental principle behind Section 125 Cr.P.C. is for amelioration of the financial state of affairs as well as mental agony and anguish which a woman suffers when she is compelled to leave her matrimonial home. [Nirmala Dhurve (Smt.) Vs. Ramgopal] ...1972

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – मूलभूत सिद्धांत –

अभिनिर्धारित - धारा 125 दं.प्र.सं. के पीछे अंतर्निहित एवं मूलभूत सिद्धांत, वित्तीय दशा को सुधारने के साथ साथ मानसिक पीड़ा एवं मनःस्ताप दूर करने हेतु है जिसे एक महिला सहन करती है जब उसे उसके दाम्पत्य निवास छोड़ने के लिए विवश किया जाता है। (निर्मला धुर्वे (श्रीमती) वि. रामगोपाल) ...1972

Criminal Procedure Code, 1973 (2 of 1974), Section 125 - Maintenance - Cruelty - Desertion - Entitlement - Family Court dismissed wife's application for maintenance - Challenge to - Held - Wife filed a complaint under Domestic Violence Act which was later compromised - Subsequently, she filed a complaint u/S 498-A IPC, hence it is incorrect to say that in last 6 years wife did not lodge any report or complaint against husband - Wife suffering from disease of fits and husband is not providing any maintenance when she need it the most - Wife entitled for maintenance - Husband directed to pay Rs. 2000 p.m. to wife as maintenance from date of impugned order of family Court alongwith Rs. 3000 as cost of present revision - Revision allowed. [Nirmala Dhurve (Smt.) Vs. Ramgopal] ...1972

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 - भरणपोषण - क्रूरता - अभित्यजन - हकदारी- कुटुम्ब न्यायालय ने भरणपोषण हेतु पत्नी का आवेदन खारिज किया - को चुनौती - अभिनिर्धारित - पत्नी ने घरेलू हिंसा अधिनियम के अंतर्गत परिवाद प्रस्तुत किया जिसमें बाद में समझौता हुआ - तत्पश्चात् उसने धारा 498-ए भा.दं.सं. के अंतर्गत परिवाद प्रस्तुत किया अतः यह कहना गलत है कि पिछले 6 वर्षों में पत्नी ने पति के विरुद्ध कोई रिपोर्ट या शिकायत दर्ज नहीं की - पत्नी फिट की बीमारी से ग्रस्त एवं पति कोई भरणपोषण प्रदान नहीं कर रहा है जब उसे सर्वाधिक आवश्यकता है - पत्नी भरणपोषण हेतु हकदार - पत्नी को वर्तमान पुनरीक्षण के खर्च के रूप में रु. 3000/- के साथ, कुटुम्ब न्यायालय के आक्षेपित आदेश की तिथि से भरणपोषण के रूप में रु. 2000/- प्रति माह अदा करने के लिए पति को निदेशित किया गया - पुनरीक्षण मंजूर। (निर्मला धुर्वे (श्रीमती) वि. रामगोपाल) ...1972

Criminal Procedure Code, 1973 (2 of 1974), Section 125 - Maintenance - Second Marriage by Wife - Validity of Marriage - Entitlement - Family Court dismissed wife's application for maintenance - Challenge to - Held - Respondent entered into marriage with applicant vide a notarized document having complete knowledge of existence of applicant's previous marriage and started residing with her as husband and wife for a considerable long period - Husband cannot be permitted to take advantage of his own wrong - Husband

admitted his signature on the instrument hence it is obvious that he also admits the contents of the same – Parties have admitted the existence of marriage – It is husband's legal obligation to maintain his wife – Matter remanded to Family Court for decision afresh keeping in mind that wife is entitled for maintenance and regarding quantum of maintenance, it is to be examined whether applicant has her own means to maintain herself – Impugned order set aside. [Laxmi Yadav (Smt.) Vs. Barelal Yadav] ...2006

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरणपोषण – पत्नी द्वारा दूसरा विवाह – विवाह की विधिमान्यता – हकदारी- परिवार न्यायालय ने भरणपोषण के लिए पत्नी का आवेदन खारिज किया – को चुनौती – अभिनिर्धारित – प्रत्यर्थी ने, आवेदिका के पूर्व विवाह के अस्तित्व में होने की पूर्ण जानकारी होते हुए नोटरीकृत दस्तावेज के माध्यम से उसके साथ विवाह किया तथा पर्याप्त लंबी अवधि के लिए उसके साथ पति और पत्नी के रूप में निवास करना प्रारंभ कर दिया – पति को उसके स्वयं के दोष का लाम उठाने की अनुमति नहीं दी जा सकती – पति ने लिखत पर अपने हस्ताक्षर स्वीकार किये अतः यह स्पष्ट है कि वह उक्त की अंतर्वस्तु भी स्वीकार करता है – पक्षकारों ने विवाह के अस्तित्व को स्वीकार किया है – यह पति की विधिक बाध्यता है कि वह अपनी पत्नी का भरण-पोषण करे – मामला नये सिरे से विनिश्चय किये जाने हेतु परिवार न्यायालय को प्रतिप्रेषित किया गया, यह ध्यान में रखते हुए कि पत्नी भरणपोषण के लिए हकदार है तथा भरणपोषण की मात्रा के संबंध में, यह परीक्षण किया जाना है कि क्या आवेदिका के पास अपना भरणपोषण करने के लिए स्वयं का कोई साधन है – आक्षेपित आदेश अपास्त। (लक्ष्मी यादव (श्रीमती) वि. बरेलाल यादव) ... 2006

Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 127 – Maintenance – Enhancement from Date of Application – Discretion of Magistrate – On application by wife u/S 127 Cr.P.C., maintenance of Rs. 4000 pm was enhanced to Rs. 15,000 pm from date of application – Challenge to – Held – Section 127 Cr.P.C. has been provided for alteration in order passed u/S 125 Cr.P.C., therefore it cannot be treated as an independent provision, it has to be read along with Section 125 Cr.P.C. and Section 125(2) empowers the Magistrate to pass order of maintenance from date of application – Legislature has left the discretion to Magistrate and Family Court with regard to date from which enhanced/altered allowance shall be payable – Revision dismissed. [Jaikumar Meena Vs. Smt. Radha Meena] ...1994

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 127 – भरण-पोषण

— आवेदन की तिथि से वृद्धि — मजिस्ट्रेट का विवेकाधिकार — दण्ड प्रक्रिया संहिता की धारा 127 के अंतर्गत पत्नी द्वारा आवेदन पर, आवेदन की तिथि से भरण-पोषण 4000 रु. प्रतिमाह से बढ़ाकर 15000 रु. प्रतिमाह किया गया था — को चुनौती — अभिनिर्धारित — दण्ड प्रक्रिया संहिता की धारा 127 को, दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत पारित आदेश में परिवर्तन करने हेतु उपबंधित किया गया है, इसलिए इसे स्वतंत्र उपबंध के रूप में नहीं माना जा सकता, इसे दण्ड प्रक्रिया संहिता की धारा 125 के साथ पढ़ना होगा तथा धारा 125(2) मजिस्ट्रेट को, आवेदन की तिथि से भरण-पोषण का आदेश पारित करने हेतु सशक्त करती है — विधान मंडल ने उस तिथि जिससे बढ़ाया हुआ/परिवर्तित भत्ता देय होगा, के संबंध में विवेकाधिकार मजिस्ट्रेट एवं परिवार न्यायालय पर छोड़ा है — पुनरीक्षण खारिज। (जयकुमार मीणा वि. श्रीमती राधा मीणा) ...1994

Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 127
 — Maintenance — Income of Husband — Plea of Responsibility of Parents — Held — Husband working as S.D.O and his take home salary is Rs. 50,000 pm.— He also admitted that his brothers are posted as an ADPO and Drug Inspector — It is clear that financial condition of family is good and it cannot be said that applicant had sole responsibility to maintain his parents — Payment of insurance premium cannot be said to be compulsory deduction, further those policies are not in name of wife — Deserted wife should not live a life of destitute lady, she is also entitled for same status which she could have otherwise enjoyed in matrimonial house — Considering the status of parties, amount enhanced is not excess — Revision dismissed. [Jaikumar Meena Vs. Smt. Radha Meena]. ...1994

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 127 — भरण-पोषण — पति की आय — माता-पिता के उत्तरदायित्व का अभिवाक — अभिनिर्धारित — पति उपखंड अधिकारी के रूप में कार्यरत है एवं उसका शुद्ध वेतन 50,000 रु. प्रतिमाह है — उसने यह भी स्वीकार किया है कि उसके भाई सहा.जिला अभियोजन अधिकारी एवं औषधि निरीक्षक के रूप में पदस्थ हैं — यह स्पष्ट है कि परिवार की आर्थिक स्थिति अच्छी है तथा यह नहीं कहा जा सकता कि आवेदक पर उसके माता-पिता का भरण-पोषण करने का पूर्ण उत्तरदायित्व था — बीमा प्रीमियम के भुगतान को अनिवार्य कटौती नहीं कहा जा सकता, इसके अतिरिक्त वे पॉलिसी पत्नी के नाम पर नहीं हैं — अभित्यक्त पत्नी को निराश्रित महिला का जीवन नहीं जीना चाहिए, वह भी उसी प्रास्थिति की हकदार है जिसका वह अपने दाम्पत्य निवास में अन्यथा उपभोग कर सकती थी — पक्षकारों की प्रास्थिति पर विचार करते हुए, बढ़ायी गई राशि अधिक नहीं है — पुनरीक्षण खारिज। (जयकुमार मीणा वि. श्रीमती राधा मीणा) ...1994

Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 482 – Maintenance – Second Wife – Entitlement – Validity of Marriage – Respondent filed application u/S 125 Cr.P.C. whereby Magistrate directed applicant/husband to pay Rs. 3000 pm as maintenance – Revision filed by husband was also dismissed – Challenge to – Held – Applicant earlier married with one Premkunwarbai then again married respondent during lifetime of first wife – It is not a case where respondent married applicant knowingly the subsistence of his first marriage or that his first wife is alive – Respondent entitled for maintenance – Further held – Applicant in his cross examination stated that he did not want to keep the respondent with him which shows that applicant deserted respondent without sufficient cause and thus respondent had sufficient reason to live separately and claim maintenance – Amount awarded cannot be said to be excess – Application dismissed. [Sardarsingh Vs. Smt. Chainkunwar] ...*112

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 482 – भरण-पोषण – दूसरी पत्नी – हकदारी – विवाह की विधिमान्यता – प्रत्यर्थी ने दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत आवेदन प्रस्तुत किया जिस पर मजिस्ट्रेट ने भरण-पोषण के रूप में 3000/- रु. प्रतिमाह का भुगतान करने हेतु, आवेदक/पति को निदेशित किया – पति द्वारा प्रस्तुत किये गये पुनरीक्षण को भी खारिज किया गया था – को चुनौती – अभिनिर्धारित – आवेदक ने पूर्व में प्रेमकुंवरबाई के साथ विवाह किया था फिर पहली पत्नी के जीवनकाल के दौरान ही प्रत्यर्थी से पुनः विवाह किया – यह वैसा प्रकरण नहीं है जहाँ प्रत्यर्थी ने आवेदक के पहले विवाह का विद्यमान होना या उसकी पहली पत्नी का जीवित होना जानते हुए, उसके साथ विवाह किया – प्रत्यर्थी, भरण-पोषण हेतु हकदार है – आगे अभिनिर्धारित – आवेदक ने अपने प्रतिपरीक्षण में कथन किया कि वह प्रत्यर्थी को अपने साथ नहीं रखना चाहता था जो यह दर्शाता है कि आवेदक ने बिना किसी युक्तियुक्त कारण के प्रत्यर्थी का अभित्यजन किया एवं इस प्रकार प्रत्यर्थी के पास पृथक निवास करने का तथा भरण-पोषण हेतु दावा करने का पर्याप्त कारण है – अधिनिर्णीत राशि अधिक नहीं कही जा सकती – आवेदन खारिज। (सरदार सिंह वि. श्रीमती चैनकुंवर) ...*112

Criminal Procedure Code, 1973 (2 of 1974), Section 177 & 178, Penal Code (45 of 1860), Section 498-A/34 & 406 and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Cognizance – Territorial Jurisdiction – Complaint lodged by wife at Bhopal – Husband's native place is Jaipur and he is working in Agartala – Marriage performed at Jaipur – Court at Bhopal took cognizance of the offences – Challan

was filed and charges framed – Husband filed application u/S 239 for discharge on the ground of territorial jurisdiction which was dismissed – Held – As per the FIR and case diary statement of wife and her father and brother, petitioner No.1/husband came to Bhopal and committed dowry related offences – Provisions of Section 178(b) Cr.P.C. is wholly attracted in the present case irrespective of the fact that an isolated part/portion of whole crime occurred in Bhopal – Court at Bhopal has the territorial jurisdiction to hold trial against all petitioners – Application dismissed. [Anurag Mathur Vs. State of M.P.] ...2031

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 177 व 178, दण्ड संहिता (1860 का 45), धारा 498-ए/34 व 406 एवं दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3 व 4 – संज्ञान – क्षेत्रीय अधिकारिता – पत्नी द्वारा भोपाल में शिकायत दर्ज की गई – पति का मूल निवास स्थान जयपुर है और वह अगरतला में कार्यरत है – विवाह जयपुर में संपन्न हुआ – भोपाल के न्यायालय ने अपराधों का संज्ञान लिया – चालान प्रस्तुत किया गया तथा आरोप विरचित किये गये – पति ने क्षेत्रीय अधिकारिता के आधार पर आरोपमुक्त किये जाने हेतु धारा 239 के अंतर्गत आवेदन प्रस्तुत किया जिसे खारिज किया गया – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन एवं पत्नी तथा उसके पिता एवं भाई के केस डायरी कथन के अनुसार याची क्र. 1/पति भोपाल आया था और दहेज संबंधी अपराध कारित किये – वर्तमान प्रकरण में, धारा 178(बी) द.प्र.सं. के उपबंध पूर्ण रूप से आकर्षित होते हैं इस तथ्य से प्रभावित हुए बिना कि संपूर्ण अपराध का एकाकी भाग/हिस्सा भोपाल में घटित हुआ – भोपाल के न्यायालय को सभी याचीगण के विरुद्ध विचारण करने का क्षेत्रीय अधिकार है – आवेदन खारिज। (अनुराग माथुर वि. म.प्र. राज्य) ...2031

Criminal Procedure Code, 1973 (2 of 1974), Section 313 – See – Prevention of Food Adulteration Act, 1954, Sections 13(2), 16(1)(A)(i) & 20(1) [Manohar Vs. State of M.P.] ...2000

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 – देखें – खाद्य अपमिश्रण निवारण अधिनियम, 1954, धाराएँ 13(2), 16(1)(ए)(i) व 20 (1) (मनोहर वि. म.प्र. राज्य) ...2000

*Criminal Procedure Code, 1973 (2 of 1974), Section 313 – See – Penal Code, 1860, Section 84 & 302 [Ramsujan Kol @ Munda Vs. State of M.P.] (DB)...*110*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 – देखें – दण्ड संहिता, 1860, धारा 84 व 302 (रामसुजान कोल उर्फ मुण्डा वि. म.प्र. राज्य) (DB)...*110

Criminal Procedure Code, 1973 (2 of 1974), Section 468 – See – Criminal Practice [Ramesh Tiwari Vs. State of M.P.] ...*109

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 468 – देखें – दण्डिक पद्धति (रमेश तिवारी वि. म.प्र. राज्य) ...*109

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Jurisdiction of High Court – Held – The High Court has no jurisdiction to examine the truthfulness of allegations made in FIR and case dairy statements. [Anurag Mathur Vs. State of M.P.] ...2031

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – उच्च न्यायालय की अधिकारिता- अभिनिर्धारित – उच्च न्यायालय को प्रथम सूचना प्रतिवेदन तथा केस डायरी कथनों में किये गये अभिकथनों की सत्यता का परीक्षण करने की अधिकारिता नहीं है। (अनुराग माथुर वि. म.प्र. राज्य) ...2031

Dissolution of Muslim Marriages Act, (8 of 1939), Section 2 – See – Criminal Procedure Code, 1973, Section 125 [Munni Devi (Smt.) Vs. Pritam Singh Goyal] ...*106

मुस्लिम विवाह-विघटन अधिनियम (1939 का 8), धारा 2 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 125 (मुन्नीदेवी (श्रीमती) वि. प्रीतम सिंह गोयल) ...*106

Dowry Prohibition Act (28 of 1961), Section 3 & 4 – See – Criminal Procedure Code, 1973, Section 177 & 178 [Anurag Mathur Vs. State of M.P.] ...2031

दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3 व 4 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 177 व 178 (अनुराग माथुर वि. म.प्र. राज्य) ...2031

Electricity Act (36 of 2003), Section 62(3) and Gas Cylinder Rules, 1981, Rule 2(xv) – Tariff – Manufacture of Gas – Commercial Activity or Industrial Activity – Held – Petitioner engaged in LPG bottling and filling of petromax and activities carried out in such plants cannot come within the purview of an industrial activity but fall under commercial category – Respondents justified in charging the tariff at commercial rate – Further held – The prayer of petitioner to direct respondents to raise bill for actual electricity consumed and not at minimum tariff cannot be accepted in view of the Apex Court judgment in AIR 2001 SC 238 – Petition dismissed. [Shivco L.P.G. Bottling Co. Vs. M.P. Electricity Board] ...*113

विद्युत अधिनियम (2003 का 36), धारा 62(3) एवं गैस सिलिंडर नियम, 1981, नियम 2(xxv) – टैरिफ – गैस का विनिर्माण – वाणिज्यिक क्रियाकलाप या औद्योगिक क्रियाकलाप- अभिनिर्धारित – याची, एलपीजी बॉटलिंग एवं पेट्रोमेक्स की फिलिंग में लगा हुआ था और ऐसे संयंत्रों में किये जा रहे क्रियाकलाप औद्योगिक क्रियाकलाप की परिधि के भीतर नहीं आ सकते किंतु वाणिज्यिक क्रियाकलाप की श्रेणी के अंतर्गत आते हैं – प्रत्यर्थीगण द्वारा वाणिज्यिक दर पर टैरिफ प्रभारित किया जाना न्यायोचित – आगे अभिनिर्धारित – याची की प्रत्यर्थीगण को वास्तविक विद्युत उपभोग हेतु बिल जारी करने और न्यूनतम टैरिफ पर नहीं करने के लिए निर्देशित किये जाने की प्रार्थना, AIR 2001 SC 238 में रिपोर्टेड सर्वोच्च न्यायालय के निर्णय को दृष्टिगत रखते हुए स्वीकार नहीं की जा सकती – याचिका खारिज। (शिवको एल.पी.जी. बॉटलिंग कं. वि. एम.पी. इलेक्ट्रिसिटी बोर्ड)...*113

Evidence Act (1 of 1872), Section 10 & 27 – See – Penal Code, 1860, Section 420 & 120-B [Anupam Chouksey Vs. State of M.P.] ...2016

साक्ष्य अधिनियम (1872 का 1), धारा 10 व 27 – देखें – दण्ड संहिता, 1860, धारा 420 व 120-बी (अनुपम चौकसे वि. म.प्र. राज्य) ...2016

Evidence Act (1 of 1872), Section 32 – See – Penal Code, 1860, Section 300 Exception 4, 302/34 & 294 [Ram Sevak Vs. State of M.P.] (DB)...1960

साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड संहिता, 1860, धारा 300 अपवाद 4, 302/34 व 294 (रामसेवक वि. म.प्र. राज्य) (DB)...1960

Evidence Act (1 of 1872), Section 65-B – Electronic Evidence – Admissibility – In the present case, call statements of mobile and the landline data produced were duly certified by the office of concerned Telecom department – There is a compliance of Section 65-B of the Evidence Act – Athar Ali failed to discharge the burden which was shifted on him in the form of electronics and documentary evidence, which established that call for ransom was made by Athar Ali. [Laxmi Verma (Smt.) Vs. Sharik Khan] (DB)...1978

साक्ष्य अधिनियम (1872 का 1), धारा 65-बी – इलेक्ट्रॉनिक साक्ष्य – ग्राह्यता – वर्तमान प्रकरण में, प्रस्तुत किये गये मोबाईल के कॉल विवरण एवं लेन्डलाइन डाटा को दूरसंचार विभाग के संबंधित कार्यालय द्वारा सम्यक् रूप से प्रमाणित किया गया – साक्ष्य अधिनियम की धारा 65-बी का अनुपालन हुआ है – अतः अली, इलेक्ट्रॉनिक एवं दस्तावेजी साक्ष्य के रूप में उस पर आए भार को उन्मोचित करने में विफल रहा जो स्थापित करता है कि फिरौती हेतु कॉल, अतः

अली द्वारा किया गया था। (लक्ष्मी वर्मा (श्रीमती) वि. शरीक खान) (DB)...1978

Evidence Act (1 of 1872), Sections 68, 69 & 90, Transfer of Property Act (4 of 1882), Section 54 and Land Revenue Code, M.P. (20 of 1959), Section 117 – 30 years Old Document – Presumption – Sale Deed is more than 30 years old and executants of the same and its attesting witnesses are not alive – Principle of section 90 Evidence Act is that if a document, 30 years old or more is produced from proper custody and is on its face free from suspicion, Court may presume that it has been duly executed and attested but at the same time it is not mandatory to draw such presumption, discretion is left with the Court to raise presumption – Further held – Section 54 of the Act of 1954 does not contemplate the requirement of attestation of sale deed, therefore in the present case, compliance of section 68 and 69 Evidence Act is not mandatory – Revenue records (Mutation and Khasra Panchsala) also proves that defendants after purchasing the property was in continuous possession of the same – Presumption of possession u/S 117 of the Code of 1959 can also raised in favour of defendants – Appellant/plaintiff failed to prove his title over the disputed property – No illegality in the impugned judgment – Appeal dismissed. [Ramcharan Vs. Damodar] ...1882

साक्ष्य अधिनियम (1872 का 1), धाराएं 68, 69 व 90, सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 54 एवं भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 117 – 30 वर्ष पुराना दस्तावेज – उपधारणा – विक्रय विलेख 30 वर्ष पुराना है तथा उक्त के निष्पादक एवं उसके अनुप्रमाणक साक्षीगण जीवित नहीं हैं – साक्ष्य अधिनियम की धारा 90 का सिद्धांत यह है कि यदि कोई दस्तावेज, जो कि 30 वर्ष या उससे अधिक पुराना है उचित अभिरक्षा से प्रस्तुत किया जाता है तथा प्रत्यक्षतः संदेह से मुक्त है, न्यायालय उपधारित कर सकती है कि इसे सभ्य रूप से निष्पादित एवं अनुप्रमाणित किया गया है परन्तु उसी समय में ऐसी उपधारणा की जाना आज्ञापक नहीं है, उपधारणा करने का विवेकाधिकार न्यायालय के पास है – आगे अभिनिर्धारित – 1954 के अधिनियम की धारा 54 विक्रय विलेख के अनुप्रमाणन की अपेक्षा अनुध्यात नहीं करती, इसलिए वर्तमान प्रकरण में, साक्ष्य अधिनियम की धारा 68 एवं 69 का अनुपालन आज्ञापक नहीं है – राजस्व अभिलेख (नामांतरण एवं खसरा पंचशाला) भी यह साबित करते हैं कि संपत्ति क्रय करने के पश्चात् प्रतिवादीगण का निरंतर उक्त पर कब्जा था – 1959 की संहिता की धारा 117 के अंतर्गत, प्रतिवादी के पक्ष में कब्जे की उपधारणा भी की जा सकती है – अपीलार्थी/वादी विवादित संपत्ति पर अपना स्वत्व साबित करने में विफल रहे – आक्षेपित निर्णय में कोई अवैधता नहीं – अपील खारिज। (रामचरण वि. दामोदर)...1882

Evidence Act (1 of 1872), Section 105 – See – Penal Code, 1860, Section 302 & 84 [Ramcharan Yadav Vs. State of M.P.] (DB)...*108

साक्ष्य अधिनियम (1872 का 1), धारा 105 – देखें – दण्ड संहिता, 1860, धारा 302 व 84 (रामचरण यादव वि. म.प्र. राज्य) (DB)...*108

Evidence Act (1 of 1872), Section 112 & 114 – See – Constitution – Article 227 [Badri Prasad Jharia Vs. Smt. Seeta Jharia] ...1824

साक्ष्य अधिनियम (1872 का 1), धारा 112 व 114 – देखें – संविधान – अनुच्छेद 227 (बद्री प्रसाद झारिया वि. श्रीमती सीता झारिया) ...1824

Evidence Act (1 of 1872), Section 134 – See – Prevention of Food Adulteration Act, 1954, Sections 13(2), 16(1)(A)(i) & 20(1) [Manohar Vs. State of M.P.] ...2000

साक्ष्य अधिनियम (1872 का 1), धारा 134 – देखें – खाद्य अपमिश्रण निवारण अधिनियम, 1954, धाराएँ 13(2), 16(1)(ए)(i) व 20 (1) (मनोहर वि. म.प्र. राज्य) ...2000

Excise Act, M.P. (2 of 1915), Sections 34(1), 61(1) & (2) – Limitation for Prosecution – Special Sanction – Quashment – On 18.10.2011, offence registered against petitioners u/S 34(1) of the Act of 1915 and on 11.10.2012 challan was filed and accordingly Court took cognizance – Petitioner filed preliminary objection u/S 61(2) of the Act which was dismissed – Challenge to – Held – As per Section 61(1) and (2) of the Act of 1915, prosecution must be instituted within a period of six months from the date on which offence is alleged to have been committed or after the said period with the special sanction of State Government otherwise no Judicial Magistrate shall take cognizance as the same is not permissible under the Act – Such compliance is mandatory – Criminal Case pending against petitioners is quashed – Application allowed. [Ramesh Tiwari Vs. State of M.P.] ...*109

आबकारी अधिनियम, म.प्र. (1915 का 2), धाराएँ 34(1), 61(1) व (2) – अभियोजन हेतु परिसीमा – विशेष मंजूरी – अभिखंडन – दिनांक 18.10.2011 को याचीगण के विरुद्ध 1915 के अधिनियम की धारा 34(1) के अंतर्गत अपराध पंजीबद्ध किया गया तथा दिनांक 11.10.2012 को चालान प्रस्तुत किया गया था एवं तदनुसार न्यायालय ने संज्ञान लिया – याची ने अधिनियम की धारा 61(2) के अंतर्गत प्रारंभिक आक्षेप प्रस्तुत किया जिसे खारिज किया गया था – को चुनौती – अभिनिर्धारित – अधिनियम, 1915 की धारा 61(1) एवं (2) के अनुसार अभियोजन उस तिथि जब

अपराध कारित किया जाना अभिकथित है, से 6 माह की अवधि के भीतर या राज्य शासन की विशेष मंजूरी से कथित अवधि के पश्चात् संस्थित किया जाना चाहिए अन्यथा कोई न्यायिक मजिस्ट्रेट संज्ञान नहीं लेगा क्योंकि अधिनियम के अंतर्गत उक्त अनुज्ञेय नहीं है - ऐसा अनुपालन आज्ञापक है - याचीगण के विरुद्ध लंबित दाण्डिक प्रकरण अभिखंडित किया गया - आवेदन मंजूर। (रमेश तिवारी वि. म.प्र. राज्य) ...*109

Excise Act, M.P. (2 of 1915), Section 61(1) & (2) - See - Criminal Practice [Ramesh Tiwari Vs. State of M.P.] ...*109

आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 61(1) व (2) - देखें - दाण्डिक पद्धति (रमेश तिवारी वि. म.प्र. राज्य) ...*109

Food Safety and Standard Act, (34 of 2006), Sections 3(ZF)(A)(i), 26(1)(2)(ii), 36(3)(e), 52 & 58, Food Safety and Standards Rules, 2011, Rule 1(3), 2 & 4 and Packaging and Labelling Regulations, 2011, Regulation 2.3(1)(5) - Sanction for Prosecution - Grounds - Samples of "Sunfeast Yippee Noodles" sent for testing - Report declared the samples to be misbranded on the ground that mentioning of "No MSG Added" in packaging is misleading as per Regulations - Sanction was granted and complaint was got registered before Court - Challenge to - Held - Report reveals that no MSG content was detected in samples - Declaration of "No MSG Added" was rightly made which cannot be held to be misleading, false or deceptive - Circular of FSSAI also states that prosecution could be launched when label states "No MSG Added" and MSG is found in impugned food stuff - Petitioner has not prima facie violated any provisions of the Act or the Regulations - Further held - While granting sanction, authority is required to apply mind while reaching to conclusion - Impugned order of sanction and prosecution launched against petitioner quashed - Petition allowed. [ITC Ltd. Vs. State of M.P.] ...1814

खाद्य सुरक्षा और मानक अधिनियम, (2006 का 34), धाराएँ 3(जेड एफ)(ए)(i), 26(1)(2)(ii), 36(3)(ई), 52 व 58, खाद्य सुरक्षा और मानक नियम, 2011, नियम 1(3), 2 व 4 एवं पैकेजिंग एवं लेबलिंग विनियम, 2011, विनियमन 2.3(1)(5) - अभियोजन हेतु मंजूरी - आधार - "सन्फीस्ट यिप्पी नूडल्स" के नमूने परीक्षण हेतु भेजे गये - प्रतिवेदन ने नमूनों को इस आधार पर मिथ्या छापवाला घोषित किया है कि पैकेजिंग में "कोई एम.एस.जी. नहीं" का उल्लेख करना विनियमनों के

अनुसार भ्रामक है - मंजूरी प्रदान की गई तथा न्यायालय के समक्ष परिवाद प्रस्तुत किया गया था - को चुनौती - अभिनिर्धारित - प्रतिवेदन यह प्रकट करता है कि नमूनों में कोई एम.एस.जी. पदार्थ नहीं पाया गया था - "कोई एम.एस.जी. नहीं" की घोषणा उचित रूप से की गई थी जिसे कि भ्रामक, मिथ्या या प्रवंचक अभिनिर्धारित नहीं किया जा सकता - एफ.एस.एस.ए.आई. का परिपत्र यह भी वर्णित करता है कि अभियोजन आरम्भ किया जा सकता है जब लेबल यह वर्णित करता है कि "कोई एम.एस.जी. नहीं" तथा आक्षेपित खाद्य पदार्थ में एम.एस.जी. पाया जाता है - याची ने प्रथम दृष्ट्या अधिनियम या विनियमनों के उपबंधों का कोई उल्लंघन नहीं किया है - आगे अभिनिर्धारित - मंजूरी प्रदान करते समय, प्राधिकारी द्वारा निष्कर्ष पर पहुँचने से पहले मस्तिष्क का प्रयोग किया जाना अपेक्षित है - मंजूरी का आक्षेपित आदेश एवं याची के विरुद्ध आरंभ किया गया अभियोजन अभिखंडित - याचिका मंजूर। (आई.टी.सी. लि. वि. म.प्र. राज्य) ...1814

Food Safety and Standards Rules, 2011, Rule 1(3), 2 & 4 - See - Food Safety and Standard Act, 2006, Sections 3(ZF)(A)(i), 26(1)(2)(ii), 36(3)(e), 52 & 58 [ITC Ltd. Vs. State of M.P.] ...1814

खाद्य सुरक्षा और मानक नियम, 2011, नियम 1(3), 2 व 4 - देखें - खाद्य सुरक्षा और मानक अधिनियम, 2006, धाराएँ 3(जेड एफ)(ए)(i), 26(1)(2)(ii), 36(3)(ई), 52 व 58 (आई.टी.सी. लि. वि. म.प्र. राज्य) ...1814

Foreign Liquor Rules, M.P., 1996, Rule 19(2) - Amendment - Prospective or Retrospective - Held - Amendment in Statute or Rules is prospective unless it is specifically made retrospective, however amendment in respect of procedure is retrospective - In the instant case, license granted to petitioner in 2009-10 and Rule 19(2) was amended on 29.03.2011 - Rule of penalty is not a matter of procedure, it deals with substantive rights of parties therefore Rules applicable during the relevant license year would determine the rights and liabilities of such licensee - Amendment will apply to license granted thereafter and not in respect of license granted earlier - Amendment carried out on 29.03.2011 liberalizing the amount of penalty will operate prospective only. [State of M.P. Vs. M/s. Pernod Ricard India (P) Ltd.] (DB)...1805

विदेशी मदिरा नियम, म.प्र., 1996, नियम 19(2) - संशोधन - भविष्यलक्षी या भूतलक्षी - अभिनिर्धारित - कानून अथवा नियमों में संशोधन भविष्यलक्षी है, जब तक कि यह विनिर्दिष्ट रूप से भूतलक्षी नहीं बनाया गया हो, यद्यपि प्रक्रिया के संबंध में संशोधन भूतलक्षी है - वर्तमान प्रकरण में, याची को 2009-10 में अनुज्ञप्ति प्रदान की गई एवं नियम 19(2) दिनांक 29.03.2011 को संशोधित हुआ था - शास्ति

का नियम प्रक्रिया का मामला नहीं है, यह पक्षकारों के मूल अधिकारों से संबंधित है इसलिए सुसंगत अनुज्ञप्ति वर्ष के दौरान लागू नियम, ऐसे अनुज्ञप्तिधारी के अधिकारों एवं दायित्वों का अवधारण करेंगे – संशोधन तत्पश्चात् प्रदान की गई अनुज्ञप्ति पर लागू होगा तथा न कि पूर्व में प्रदान की गई अनुज्ञप्ति के संबंध में – शास्ति की राशि का उदारीकरण करते हुए. दिनांक 29.03.2011 को किया गया संशोधन केवल भविष्यलक्षी रूप से प्रभावी होगा। (म.प्र. राज्य वि. मे. परनोंड रिकार्ड इंडिया (प्रा.) लि.) (DB)...1805

*Gas Cylinder Rules, 1981, Rule 2(xxv) – See – Electricity Act, 2003, Section 62(3) [Shivco L.P.G. Bottling Co. Vs. M.P. Electricity Board] ...*113*

*गैस सिलिंडर नियम, 1981, नियम 2(xxv) – देखें – विद्युत अधिनियम, 2003, धारा 62(3) (शिवको एल.पी.जी. बॉटलिंग कं. वि. एम.पी. इलेक्ट्रिसिटी बोर्ड) ...*113*

*Hindu Marriage Act (25 of 1955), Section 5 – See – Criminal Procedure Code, 1973, Section 125 [Munni Devi (Smt.) Vs. Pritam Singh Goyal] ...*106*

*हिन्दू विवाह अधिनियम (1955 का 25), धारा 5 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 125 (मुन्नीदेवी (श्रीमती) वि. प्रीतम सिंह गोयल) ...*106*

Income Tax Act (43 of 1961), Section 263 – Suo Motu Power of Revision of Assessment – Appellant filed return whereby he was assessed to tax – Later respondent issued notice proposing to invoke suo motu power of revision of assessment on the ground that order of assessment was erroneous and prejudicial to interest of revenue – Appellant filed appeal before Tribunal whereby the same was dismissed – Challenge to – Held – Assessing Officer though recorded in note sheet that reply of appellant is not satisfactory and did not explain all facts, even then, no enquiry was conducted by him and he accepted the claim of assessee – Tribunal rightly concluded that there was no enquiry conducted nor there was any application of mind by the Assessing Officer – No substantial question of law arising for adjudication in view of the fact of lack of proper enquiry by Assessing Officer – Appeal dismissed. [Nagal Garment Industries Pvt. Ltd. (M/s.) Vs. Commissioner of Income Tax-I] (DB)...2011

आयकर अधिनियम (1961 का 43), धारा 263 – निर्धारण के पुनरीक्षण की स्वप्रेरणा शक्ति – अपीलार्थी ने विवरणी प्रस्तुत की जिससे उसका कर हेतु निर्धारण

किया गया — बाद में, प्रत्यर्थी ने इस आधार पर स्वप्रेरणा से निर्धारण के पुनरीक्षण की शक्ति का अवलंब प्रस्तावित करते हुए नोटिस जारी किया कि निर्धारण आदेश त्रुटिपूर्ण तथा राजस्व के हित के प्रतिकूल था — अपीलार्थी ने अधिकरण के समक्ष अपील प्रस्तुत की जिसे खारिज किया गया था — को चुनौती — अभिनिर्धारित — यद्यपि निर्धारण अधिकारी ने टिप्पणी-पत्र में अभिलिखित किया कि अपीलार्थी का जवाब संतोषजनक नहीं है और सभी तथ्यों को स्पष्ट नहीं करता, तब भी उसके द्वारा कोई जांच संचालित नहीं की गई तथा उसने निर्धारिती का दावा स्वीकार किया — अधिकरण ने उचित रूप से निष्कर्षित किया कि निर्धारण अधिकारी द्वारा कोई जांच संचालित नहीं की गई न ही मस्तिष्क का कोई प्रयोग किया गया था — निर्धारण अधिकारी द्वारा उचित जांच के अभाव के तथ्य को दृष्टिगत रखते हुए न्यायनिर्णयन हेतु विधि का कोई सारवान् प्रश्न उत्पन्न नहीं होता — अपील खारिज। (नागल गारमेन्ट इंडस्ट्रीज प्रा.लि. (मे.) वि. कमिशनर ऑफ इनकम टैक्स-I) (DB)...2011

Income Tax Act (43 of 1961), Section 264 – Revision – Maintainability – Deposit of Rs. 16,31,700 in petitioner's saving account – Notice issued – Ex-parte assessment done and recovery proceeding initiated – Petitioner filed revision u/S 264 of the Act of 1961 which was dismissed – Challenge to – Held – Despite several opportunities, petitioner did not avail any opportunity to account for the said deposit – Notice to pay penalty was also issued which was also not availed by him – It is only when penalty order was passed and recovery proceeding started, revision was filed – Authority has passed a reasoned order considering the law laid down by the Apex Court, cannot be said to be a cryptic order – Revision rightly dismissed – Petitioner himself invited such troubles by not responding to the notices issued to him by the Assessing Officer – No merit in petition and is dismissed. [Rohit Agrawal Vs. The Principal Commissioner of Income Tax-II] (DB)...1857

आयकर अधिनियम (1961 का 43), धारा 264 – पुनरीक्षण – पोषणीयता – याची के बचत खाते में रु. 16,31,700 की जमा राशि – नोटिस जारी किया गया – एक पक्षीय निर्धारण किया गया और वसूली की कार्यवाही आरंभ की गई – याची ने 1961 के अधिनियम की धारा 264 के अंतर्गत पुनरीक्षण प्रस्तुत किया जो खारिज किया गया – को चुनौती – अभिनिर्धारित – कई अवसरों के बावजूद, याची ने उक्त जमा राशि हेतु कारण देने के किसी अवसर का लाभ नहीं लिया – शास्ति के भुगतान का नोटिस भी जारी किया गया था, इसका भी उसके द्वारा लाभ नहीं लिया गया – पुनरीक्षण को केवल तब प्रस्तुत किया गया जब शास्ति आदेश पारित किया गया था और वसूली की कार्यवाही आरंभ की गई थी – प्राधिकारी ने सर्वोच्च न्यायालय द्वारा

सुस्थापित विधि को विचार में लेते हुए एक सकारण आदेश पारित किया है, अस्पष्ट आदेश नहीं कहा जा सकता – पुनरीक्षण उचित रूप से खारिज – याची ने निर्धारण अधिकारी द्वारा उसे जारी किये गये नोटिस का जवाब न देकर स्वयं ऐसी परेशानी आमंत्रित की है – याचिका गुणदोष विहीन एवं खारिज की गई। (रोहित अग्रवाल वि. द प्रिन्सिपल कमिशनर ऑफ इनकम टैक्स.II) (DB)...1857

Industrial Disputes Act (14 of 1947), Section 2-A & 10 – Limitation – Employee retired on 06.07.12 – After 4 years, in 2016, he filed application u/S.10 of the Act of 1947 challenging his superannuation – Additional Labour Commissioner referred the dispute to Labour Court – Challenge to – Held – Workman in case of discharge, dismissal, retrenchment or otherwise termination of service can directly approach the Labour Court/Tribunal without affecting his rights u/S 10 of the Act – Further held – Section 2-A(3) provides period of limitation only for application u/S 2-A(2) and not for Section 2-A(1) – Present case falls u/S 2-A(1) and is deemed to be an Industrial dispute – Workman can seek reference without any period of limitation – Even otherwise, appropriate government while exercising powers u/S 10 of the Act is not required to adjudicate the dispute, it is for the Labour Court and tribunal to decide the same – Petition dismissed. [Mahindra Two Wheelers Vs. State of M.P.] ...1865

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 2-ए व 10 –परिसीमा – कर्मचारी 06.07.12 को सेवानिवृत्त हुआ – 4 वर्ष पश्चात्, 2016 में उसने अपने अधिवर्षिता को चुनौती देते हुए 1947 के अधिनियम की धारा 10 के अंतर्गत आवेदन प्रस्तुत किया – अतिरिक्त श्रम आयुक्त ने श्रम न्यायालय को विवाद निर्देशित किया – को चुनौती – अभिनिर्धारित – कर्मकार, सेवामुक्ति, पदच्युति, छंटनी या अन्यथा सेवा समाप्ति के प्रकरण में अधिनियम की धारा 10 के अंतर्गत अपने अधिकारों को प्रभावित किये बिना सीधे श्रम न्यायालय/अधिकरण के समक्ष जा सकता है – आगे अभिनिर्धारित – धारा 2-ए(3), केवल धारा 2-ए(2) के अंतर्गत आवेदन हेतु परिसीमा की अवधि उपबंधित करती है और न कि धारा 2-ए(1) हेतु – वर्तमान प्रकरण धारा 2-ए(1) के अंतर्गत आता है और औद्योगिक विवाद माना जाता है – कर्मकार, परिसीमा की किसी अवधि के बिना निर्देश चाह सकता है – अन्यथा भी, अधिनियम की धारा 10 के अंतर्गत शक्तियों का प्रयोग करते समय, समुचित सरकार को विवाद का न्यायनिर्णयन करना अपेक्षित नहीं है, उक्त का विनिश्चय श्रम न्यायालय एवं अधिकरण को करना है – याचिका खारिज। (महिन्द्रा टू व्हीलर्स वि. म.प्र. राज्य) ...1865

Land Acquisition Act (1 of 1894), Section 18 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and

Resettlement Act, (30 of 2013), Section 24(2) – Compensation – Enhancement – Applicability of Act of 2013 – Ground – Vide notification dated 02.12.2011, land of appellants were acquired – On 30.09.2013, Land Acquisition Officer passed an award – During this period Act of 2013 was introduced which came into force on 01.01.2014 – Appellants filed reference application before the District Judge for enhancement of compensation as per the provisions of Act of 2013 – Reference was dismissed – Challenge to – Held – Till 01.01.2014, when Act of 2013 came into force, compensation was neither paid to the account of beneficiaries nor was deposited in Court and in such circumstances, appellants are entitled to receive compensation as per the provisions of the Act of 2013 – Matters remanded back to District Judge to pass fresh award calculating quantum of compensation as per provisions of Act of 2013 – Appeals allowed. [Mayaram Vs. State of M.P.] ...*105

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 एवं भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – प्रतिकर – वृद्धि – 2013 के अधिनियम की प्रयोज्यता – आधार – अधिसूचना दिनांक 02.12.2011 के माध्यम से अपीलार्थीगण की भूमि अर्जित की गई थी – दिनांक 30.09.2013 को, भूमि अर्जन अधिकारी ने एक अधिनिर्णय पारित किया – इस अवधि के दौरान 2013 का अधिनियम पुरःस्थापित किया गया था जो कि दिनांक 01.01.2014 को प्रभाव में आया – अपीलार्थीगण ने 2013 के अधिनियम के उपबंधों के अनुसार प्रतिकर में वृद्धि हेतु जिला न्यायाधीश के समक्ष निर्देश आवेदन प्रस्तुत किया – निर्देश खारिज किया गया था – को चुनौती – अभिनिर्धारित – दिनांक 01.01.2014 तक, जब 2013 का अधिनियम प्रभाव में आया, प्रतिकर का न तो हिताधिकारियों के खाते में भुगतान किया गया था और न ही न्यायालय में जमा किया गया था तथा ऐसी परिस्थितियों में, अपीलार्थीगण 2013 के अधिनियम के उपबंधों के अनुसार प्रतिकर प्राप्त करने के हकदार हैं – मामला, 2013 के अधिनियम के उपबंधों के अनुसार प्रतिकर की मात्रा की गणना करते हुए नया अधिनिर्णय पारित करने हेतु जिला न्यायाधीश को प्रतिप्रेषित किया गया – अपीलें मंजूर। (मायाराम वि. म.प्र. राज्य) ...*105

Land Acquisition Act (1 of 1894), Section 41 and Rehabilitation Policy 2002, Clause 29(1) – Land acquired by the company – Displaced persons, R-2 to R-6 are deaf and dumb – Held – As per Section 41 of the Act, it is mandatory to provide pension to those persons who attained age of 60 years or above, employment to oustees looking to their eligibility criteria, plots to oustees in rehabilitation colony etc – In the instant case,

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Collector allotted plot, ordered to pay lumpsum amount of 1.5 lac as well as pension also, but no order for employment was made as per Section 41 of the Act of 1894 and Clause 29(1) of the Policy of 2002 – Respondent directed to provide employment in appellant company to any one of Respondents 4 to 6 as per their eligibility – Further held – If posts are not available, appellant should create post looking to their eligibility – Order passed by Collector and Commissioner is set aside – Matter remanded back to Collector – Appeal allowed. [Hindalco Industries Ltd. (M/s.) Vs. State of M.P.] (DB)...1799

भूमि अर्जन अधिनियम (1894 का 1), धारा 41 एवं पुनर्वास नीति 2002, खण्ड 29(1) – कम्पनी द्वारा भूमि अर्जित की गई – स्थान से हटाये गये व्यक्ति, प्रत्यर्थी क्र. 2 से प्रत्यर्थी क्र. 6 मूक और बधिर हैं – अभिनिर्धारित – अधिनियम की धारा 41 के अनुसार, उन व्यक्तियों को जिन्होंने 60 वर्ष या उससे अधिक आयु प्राप्त कर ली है उन्हें पेंशन, विस्थापितों को उनकी पात्रता मापदंड को देखते हुये रोजगार, पुनर्वास कॉलोनी में विस्थापितों को भूखंड इत्यादि प्रदान करना आज्ञापक है – वर्तमान प्रकरण में, कलेक्टर ने भूखंड आवंटित किये, 1.5 लाख रु. की एकमुक्त राशि के साथ-साथ पेंशन के भी भुगतान का आदेश किया, परन्तु 1894 के अधिनियम की धारा 41 एवं 2002 की नीति के खण्ड 29(1) के अनुसार रोजगार के लिये कोई आदेश नहीं किया गया था – प्रत्यर्थी को निदेशित किया गया कि वह प्रत्यर्थीगण 4 से 6 में से किसी एक को उनकी पात्रता के अनुसार अपीलार्थी कम्पनी में रोजगार प्रदान करे – आगे अभिनिर्धारित – यदि पद उपलब्ध नहीं है तो अपीलार्थी को उनकी पात्रता को देखते हुये पद सृजित करना चाहिए – कलेक्टर तथा आयुक्त द्वारा पारित आदेश अपास्त – मामला कलेक्टर को प्रतिप्रेषित – अपील मंजूर। (हिंदाल्को इंडस्ट्रीज लि. (मे.) वि. म.प्र. राज्य) (DB)...1799

Land Revenue Code, M.P. (20 of 1959), Section 117 – See – Evidence Act, 1872, Sections 68, 69 & 90 [Ramcharan Vs. Damodar]...1882

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 117 – देखें – साक्ष्य अधिनियम, 1872, धाराएं 68, 69 व 90 (रामचरण वि. दामोदर) ...1882

Limitation Act (36 of 1963), Section 5 & 14 – Condonation of Delay – Suit for arrears of rent and eviction decreed in favour of respondents/plaintiffs – Appellant/defendant filed appeal whereby appellate Court dismissed the same as time barred – Second Appeal – Held – There is delay of three days – Judgment and decree passed on 28.04.16, appellant got information from lawyer on 25.05.16, he made application for certified copy on 30.05.16 just after 5 days from date of

knowledge and received the copy on 21.06.16 – No inordinate and deliberate undue delay in making application by the appellant – Application for certified copy and delivery of the same was done through counsel and not by him personally – Appellant living in a remote area and certainly it was not possible to get day to day information from his counsel – Appeal allowed – Matter remitted back to lower Appellate Court for deciding the first appeal on merits, treating the same to be within limitation. [Ram Sewak Prajapati Vs. Shiv Kumar Yadav] ...1875

परिसीमा अधिनियम (1963 का 36), धारा 5 व 14 – विलंब के लिए माफी – भाड़े का बकाया तथा बेदखली हेतु वाद, प्रत्यर्थीगण/वादीगण के पक्ष में डिक्रीत किया गया – अपीलार्थी/प्रतिवादी ने अपील प्रस्तुत की जिसे समय वर्जित होने के कारण अपीली न्यायालय द्वारा खारिज किया गया – द्वितीय अपील – अभिनिर्धारित – तीन दिनों का विलंब है – दिनांक 28.04.2016 को निर्णय एवं डिक्री पारित की गई, दिनांक 25.05.2016 को अपीलार्थी को अधिवक्ता से सूचना प्राप्त हुई, उसने जानकारी मिलने की तिथि से ठीक पांच दिनों के पश्चात् दिनांक 30.05.2016 को प्रमाणित प्रतिलिपि के लिए आवेदन प्रस्तुत किया तथा दिनांक 21.06.2016 को प्रतिलिपि प्राप्त की – अपीलार्थी द्वारा आवेदन प्रस्तुत करने में कोई असाधारण तथा जानबूझकर अनुचित विलंब नहीं – प्रमाणित प्रतिलिपि के लिए आवेदन तथा उक्त का परिदान अधिवक्ता के माध्यम से किया गया था तथा न कि व्यक्तिगत रूप से उसके द्वारा – अपीलार्थी दूरस्थ क्षेत्र में रह रहा है तथा निश्चित रूप से उसके लिए अपने अधिवक्ता से रोजाना जानकारी प्राप्त करना संभव नहीं था – अपील मंजूर – मामला निचले अपीली न्यायालय को, उक्त को परिसीमा के भीतर मानते हुए, प्रथम अपील को गुण-दोषों के आधार पर विनिश्चय करने हेतु प्रतिप्रेषित किया गया। (राम सेवक प्रजापति वि. शिवकुमार यादव) ...1875

Limitation Act (36 of 1963), Section 5 & 14 – Non-Diligence – Sufficient Cause – Held – Non-diligence during the period of time taken regarding making application for obtaining certified copy and not receiving the same on the date when he was asked to receive the certified copy cannot be grounds to reject application u/S 5 of the Act of 1963 – Apex Court held that if such persons residing in remote areas, it constitutes 'sufficient cause' for condoning delay and a lenient view ought to have been taken. [Ram Sewak Prajapati Vs. Shiv Kumar Yadav] ...1875

परिसीमा अधिनियम (1963 का 36), धारा 5 व 14 – अतत्परता – पर्याप्त कारण – अभिनिर्धारित – प्रमाणित प्रतिलिपि प्राप्त करने हेतु आवेदन प्रस्तुत करने के संबंध में ली गई समय की अवधि के दौरान अतत्परता तथा उक्त को उस तिथि पर प्राप्त नहीं किया जाना जब उसे वह प्रमाणित प्रतिलिपि प्राप्त करने को कहा गया

था, 1963 के अधिनियम की धारा 5 के अंतर्गत आवेदन अस्वीकार करने हेतु आधार नहीं हो सकते — सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि यदि ऐसे व्यक्ति दूरस्थ क्षेत्र में निवास कर रहे हैं, तो यह विलंब माफ करने के लिए 'पर्याप्त कारण' निर्मित करता है तथा एक उदार दृष्टिकोण अपनाया जाना चाहिए था। (राम सेवक प्रजापति वि. शिवकुमार यादव) ...1875

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/15(C) – Testimony of Police Officer – Credibility – Held – Law is well settled that testimony of a police officer cannot be thrown overboard only on the ground that he is a police officer – If testimony of a police officer on due appreciation is found to be trustworthy and free from material contradictions and anomalies, conviction can be recorded on the basis of such evidence. [Badri Singh Vs. State of M.P.] (DB)...1952

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8/15(सी) – पुलिस अधिकारी का परिसाक्ष्य – विश्वसनीयता – अभिनिर्धारित – यह सुस्थापित विधि है कि पुलिस अधिकारी के परिसाक्ष्य का परित्याग केवल इस आधार पर नहीं किया जा सकता कि वह एक पुलिस अधिकारी है – यदि उचित मूल्यांकन किये जाने पर पुलिस का परिसाक्ष्य भरोसेमंद तथा तात्विक विरोधाभासों एवं विसंगतियों से मुक्त पाया जाता है, तो ऐसे साक्ष्य के आधार पर दोषसिद्धि अभिलिखित की जा सकती है। (बद्री सिंह वि. म.प्र. राज्य) (DB)...1952

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/15(C), 42, 50 & 57 – Conviction and Quantum of Sentence – Testimony of Witnesses – Exclusive and Conscious Possession – 450 Kgs of poppy straw was seized from corridor/verranda of the house of appellant – Held – As per land records, house is recorded in the name of appellant – Secretary of Gram Panchayat stated on oath that the house alongwith verranda from where contraband was recovered belongs to and is in possession of appellant – It is proved that contraband was recovered from exclusive and conscious possession of appellant – Compliance u/S 42 and 57 is duly established – Despite elaborate cross-examination, no material infirmity in prosecution witnesses – Further held – Sentence imposed is on higher side, hence sentence of 15 years RI is reduced to 12 years RI – Revision partly allowed. [Badri Singh Vs. State of M.P.] (DB)...1952

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएं 8/15(सी), 42, 50 व 57 – दोषसिद्धि तथा दण्डादेश की मात्रा – साक्षीगण

का परिसाक्ष्य - अनन्य एवं मानपूर्वक कब्जा- अपीलार्थी के मकान के गलियारे/बरामदे से 450 किलोग्राम अफीम भूसा जब्त किया गया था - अभिनिर्धारित - भू-अभिलेखों के अनुसार, मकान अपीलार्थी के नाम पर अभिलिखित है - ग्राम पंचायत के सचिव ने शपथपूर्वक यह कथन किया कि बरामदे के साथ वह मकान जहाँ से विनिषिद्ध बरामद हुआ था, अपीलार्थी का है तथा उसके कब्जे में है - यह साबित होता है कि विनिषिद्ध, अपीलार्थी के अनन्य एवं मानपूर्वक कब्जे से बरामद हुआ था - धारा 42 तथा 57 के अंतर्गत अनुपालन सम्यक् रूप से स्थापित किया गया है - विस्तृत प्रतिपरीक्षण के बावजूद, अभियोजन साक्षीगण में कोई तात्त्विक दुर्बलता नहीं - आगे अभिनिर्धारित - अधिरोपित दण्डादेश अधिक है, अतः 15 वर्ष के कठोर कारावास को 12 वर्ष के कठोर कारावास तक कम किया गया है - पुनरीक्षण अंशतः मंजूर। (बद्री सिंह वि. म.प्र. राज्य) (DB)...1952

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 50 - Compliance - Contraband was recovered from the veranda of the house of appellant and did not involve personal search of appellant hence, compliance u/S 50 of the Act of 1985 was not required. [Badri Singh Vs. State of M.P.] (DB)...1952

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 50 - अनुपालन - विनिषिद्ध, अपीलार्थी के मकान के बरामदे से बरामद हुआ था तथा अपीलार्थी की व्यक्तिगत तलाशी अंतर्ग्रस्त नहीं थी अतः, 1985 के अधिनियम की धारा 50 के अंतर्गत अनुपालन अपेक्षित नहीं था। (बद्री सिंह वि. म.प्र. राज्य) (DB)...1952

Packaging and Labelling Regulations, 2011, Regulation 2.3(1)(5) - See - Food Safety and Standard Act, 2006, Sections 3(ZF)(A)(i), 26(1)(2)(ii), 36(3)(e), 52 & 58 [ITC Ltd. Vs. State of M.P.] ...1814

पैकेजिंग एवं लेबलिंग विनियम, 2011, विनियमन 2.3(1)(5) - देखें - खाद्य सुरक्षा और मानक अधिनियम, 2006, धाराएँ 3(जेड एफ)(ए)(i), 26(1)(2)(ii), 36(3)(ई), 52 व 58 (आई.टी.सी. लि. वि. म.प्र. राज्य) ...1814

Panchayat Nirvachan Niyam, M.P. 1995, Rules 72, 77 & 81 - See - Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122 [Sandhaya Mihilal Rai (Smt.) Vs. State of M.P.] ...1832

पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 72, 77 व 81 - देखें - पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993, धारा 122 (संध्या मिहीलाल राय (श्रीमती) वि. म.प्र. राज्य) ...1832

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 - Election Petition - Recounting of Votes -

Petitioner elected as a Sarpanch by margin of one votes – Election petition filed by respondent No.1 whereby prescribed authority issued direction for recounting of votes – Challenge to – Held – Prescribed authority instead of dwelling upon the allegations made in election petition, without formulating issues directed for recounting – No material evidence nor any findings that 20 votes were wrongly rejected – Prescribed authority not justified in directing recounting of votes merely because respondent No.1 lost by a margin of one vote – Petition allowed. [Manvati Pandey (Smt.) Vs. Smt. Indira Chaturvedi] ...*104

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 – निर्वाचन अर्जी – मतों की पुनर्गणना – याची, एक मत के अंतर से सरपंच के रूप में निर्वाचित हुआ – प्रत्यर्थी क्र. 1 द्वारा निर्वाचन अर्जी प्रस्तुत की गई जिसमें विहित प्राधिकारी ने मतों की पुनर्गणना का निदेश जारी किया गया – को चुनौती – अभिनिर्धारित – विहित प्राधिकारी ने निर्वाचन अर्जी में किये गये अभिकथनों पर विचार करने की बजाए, विवादकों को विरचित किये बिना पुनर्गणना हेतु निदेशित किया – कोई तात्त्विक साक्ष्य नहीं, न ही कोई निष्कर्ष कि 20 मतों को गलत रूप से अस्वीकार किया गया था – मात्र इसलिए कि प्रत्यर्थी क्र. 1 एक मत के अंतर से हारा था, विहित प्राधिकारी का मतों की पुनर्गणना निदेशित करना न्यायोचित नहीं – याचिका मंजूर। (मानवती पाण्डे (श्रीमती) वि. श्रीमती इंदिरा चतुर्वेदी) ...*104

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 and Panchayat Nirvachan Niyam, M.P. 1995, Rules 72, 77 & 81 – Election Petition – Alternate Remedy – Petitioner declared elected as Sarpanch by four votes – After declaration of result, ransacking of ballot boxes – Returning officer reported to State Election Commission whereby order directing re-poll was issued – After re-polling, respondent no.6 was declared elected – Challenge to – Held – As per Rule 72 of the Rules of 1995, re-polling can only be directed when ballot boxes are destroyed before the declaration of result under Rule 81 is made – In the present case, returning Officer has not declared the result under Rule 81, therefore it cannot be said that petitioner was declared as elected – Petitioner having alternate remedy of election petition u/S 122 of the Act of 1993 – Petition dismissed. [Sandhaya Mihilal Rai (Smt.) Vs. State of M.P.] ...1832

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 एवं पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 72, 77 व 81 – निर्वाचन याचिका – वैकल्पिक उपचार – याची चार मतों से सरपंच के रूप में निर्वाचित घोषित हुआ –

परिणाम की घोषणा होने के पश्चात् मतपेटियों की लूट — निर्वाचन अधिकारी ने राज्य निर्वाचन आयोग को सूचना दी जिस पर पुनर्मतदान निर्देशित करते हुए आदेश जारी किया गया था — पुनर्मतदान के पश्चात्, प्रत्यर्थी क्र. 6 निर्वाचित घोषित किया गया था — को चुनौती — अभिनिर्धारित — 1995 के नियमों के नियम 72 के अनुसार, पुनर्मतदान केवल तब निर्देशित किया जा सकता है जब नियम 81 के अंतर्गत घोषणा होने से पूर्व मतपेटियाँ नष्ट हो गई हों — वर्तमान प्रकरण में, निर्वाचन अधिकारी द्वारा नियम 81 के अंतर्गत परिणाम घोषित नहीं किया गया है, इसलिए यह नहीं कहा जा सकता कि याची को निर्वाचित घोषित किया गया था — याची के पास 1993 के अधिनियम की धारा 122 के अंतर्गत निर्वाचन याचिका का वैकल्पिक उपचार है — याचिका खारिज। (संघ्या मिहीलाल राय (श्रीमती) वि. म.प्र. राज्य) ...1832

Payment of Gratuity Act (39 of 1972), Section 2(f) & 2(i) — See — Constitution — Article 226 [Ramjilal Kushwah Vs. State of M.P.] ...1850

उपदान संदाय अधिनियम (1972 का 39), धारा 2(एफ) व 2(आई) — देखें — संविधान — अनुच्छेद 226 (रामजीलाल कुशवाह वि. म.प्र. राज्य) ...1850

*Penal Code (45 of 1860), Section 84 & 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 313 — Murder — Plea of Unsoundness of Mind — Proof — Examination of Accused — Held — After assaulting deceased, appellant ran away from spot, not only crossed the hill but also jumped in the reservoir to evade arrest — He also tried to wash his blood stained clothes, trying to obliterate the evidence of crime — Cannot be said to be a person of unsound mind at the time of incident — Plea of unsoundness of mind needs to be specifically taken and proved — Appellant has not examined any witness in this regard nor even made a mention in his examination u/S 313 Cr.P.C. about such illness — Not eligible for protection u/S 84 IPC. [Ramsujan Kol @ Munda Vs. State of M.P.] (DB)...*110*

दण्ड संहिता (1860 का 45), धारा 84 व 302 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 — हत्या — चित्तविकृति का अभिवाक् — सबूत — अभियुक्त का परीक्षण— अभिनिर्धारित — मृतक पर हमला करने के पश्चात्, अपीलार्थी घटनास्थल से भाग गया, गिरफ्तारी से बचने के लिए न केवल पहाड़ी पार की बल्कि जलाशय में छलांग भी लगा दी — उसने अपराध के साक्ष्य को मिटाने की कोशिश करते हुए, अपने रक्त रंजित कपड़ों को धोने का प्रयत्न भी किया — घटना के समय, एक विकृतचित्त वाला व्यक्ति नहीं कहा जा सकता — चित्तविकृति के अभिवाक् को विनिर्दिष्ट रूप से लिये जाने तथा साबित करने की आवश्यकता है — अपीलार्थी ने इस संबंध में किसी साक्षीगण का परीक्षण नहीं किया है और न ही ऐसी अस्वस्थता

के बारे में दण्ड प्रक्रिया संहिता की धारा 313 के अंतर्गत अपने परीक्षण में कोई उल्लेख किया है - भारतीय दण्ड संहिता की धारा 84 के अंतर्गत संरक्षण के योग्य नहीं। (रामसुजान कोल उर्फ मुण्डा वि. म.प्र. राज्य) (DB)...*110

Penal Code (45 of 1860), Section 300 Exception 4, 302/34 & 294 and Evidence Act (1 of 1872), Section 32 - Conviction - Dying Declaration - Held - Testimony of eye witnesses duly corroborated by the dying declaration and medical evidences - Prosecution established beyond reasonable doubt that appellant caused fatal injuries to deceased resulting in his death - Further held - Incident occurred at spur of moment in the midst of hot talks - No previous enmity between accused and deceased nor the assailants have pre-planned the murder - Deceased succumbed to injuries after 11 days from date of incident - Accused entitled for benefit of Exception 4 to Section 300 IPC - Case would fall u/S 304 Part II IPC - Conviction modified accordingly - Appeal partly allowed. [Ram Sevak Vs. State of M.P.] (DB)...1960

दण्ड संहिता (1860 का 45), धारा 300 अपवाद 4, 302/34 व 294 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 - दोषसिद्धि - मृत्युकालिक कथन - अभिनिर्धारित - चक्षुदर्शी साक्षीगण के परिसाक्ष्य की मृत्युकालिक कथन एवं चिकित्सीय साक्ष्यों द्वारा सम्यक् रूप से संपुष्टि की गई - अभियोजन ने युक्तियुक्त संदेह से परे यह स्थापित किया कि अपीलार्थी ने मृतक को घातक चोटें कारित की जिसके परिणामस्वरूप उसकी मृत्यु हुई - आगे अभिनिर्धारित - घटना, कहासुनी के मध्य क्षणिक आवेग में घटित हुई - अभियुक्त एवं मृतक के बीच कोई पुरानी शत्रुता नहीं, न ही हमलावरों ने हत्या पूर्वनियोजित की थी - घटना से 11 दिनों के पश्चात्, मृतक की चोटों के कारण मृत्यु हो गई - अभियुक्त भारतीय दंड संहिता की धारा 300 के अपवाद 4 का लाभ पाने का हकदार है - प्रकरण भारतीय दण्ड संहिता की धारा 304 भाग II के अन्तर्गत आयेगा - दोषसिद्धि तदनुसार उपांतस्थित - अपील अंशतः मंजूर। (रामसेवक वि. म.प्र. राज्य) (DB)...1960

Penal Code (45 of 1860), Section 302 - Conviction - Life Imprisonment - Appreciation of Evidence - Appellant was tenant of deceased - Regarding demand of payment of rent, dispute occurred and appellant assaulted the deceased with a wood which resulted in his death - Held - No defence witness was examined - Prosecution witness Banti clearly deposed that he had witnessed the beating given by appellant to deceased and his statement was materially corroborated by two other prosecution witnesses which inspires confidence in prosecution story - Appellant rightly convicted - Appeal dismissed.

[Madhav Prasad Vs. State of M.P.]

(DB)...1934

दण्ड संहिता (1860 का 45), धारा 302 - दोषसिद्धि - आजीवन कारावास - साक्ष्य का मूल्यांकन-अपीलार्थी, मृतक का किराएदार था - भाड़े के भुगतान की मांग के संबंध में विवाद हुआ और अपीलार्थी ने मृतक पर एक लकड़ी से हमला किया जिसके परिणामस्वरूप उसकी मृत्यु हुई - अभिनिर्धारित - किसी बचाव साक्षी का परीक्षण नहीं किया गया - अभियोजन साक्षी बंटी ने स्पष्ट रूप से अभिसाक्ष्य दिया कि वह, अपीलार्थी द्वारा मृतक को मारपीट किये जाने का साक्षी है और उसके कथन की तात्त्विक रूप से संपुष्टि दो अन्य अभियोजन साक्षियों द्वारा की गई जो अभियोजन कहानी में विश्वास उत्पन्न करता है - अपीलार्थी को उचित रूप से दोषसिद्धि किया गया - अपील खारिज। (माधव प्रसाद वि. म.प्र. राज्य) (DB)...1934

*Penal Code (45 of 1860), Section 302 - Murder - Conviction - Appreciation of Evidence - Eye Witnesses - Related Witnesses - Motive - Recovery of Weapon - Dispute arose on account of failure of accused to pay price of eggs purchased from deceased - Accused assaulted deceased with axe and inflicted 8 injuries on her head, neck and back - Held - There are 4 eye witnesses who deposed the incident and there is nothing to disbelieve their testimony - They cannot be disbelieved simply because they were related to deceased because it was natural for the family members to go together to collect firewoods - Mere failure of investigating agency to recover the weapon of offence would not discredit the entire prosecution case - Further held - Where a case is based on direct evidence, correctness of conviction cannot be tested on touchstone of motive - Accused rightly convicted - Appeal dismissed. [Ramsujan Kol @ Munda Vs. State of M.P.] (DB)...*110*

दण्ड संहिता (1860 का 45), धारा 302 - हत्या - दोषसिद्धि - साक्ष्य का मूल्यांकन - चक्षुदर्शी साक्षीगण - संबंधित साक्षीगण - हेतु - शस्त्र की बरामदगी-मृतक से क्रय किये गये अंडों के मूल्य का भुगतान करने में अभियुक्त की विफलता के कारण विवाद उत्पन्न हुआ - अभियुक्त ने मृतक पर कुल्हाड़ी से हमला किया तथा उसके सिर, गर्दन एवं पीठ पर आठ चोटें पहुंचाई - अभिनिर्धारित - चार चक्षुदर्शी साक्षीगण हैं जिन्होंने घटना के बारे में कथन किया है एवं उनके परिसाक्ष्य पर अविश्वास करने हेतु कुछ नहीं है - मात्र इस कारण से उन पर अविश्वास नहीं किया जा सकता कि वे मृतक से संबंधित थे क्योंकि जलाऊ लकड़ियाँ एकत्रित करने के लिए एक साथ जाना, परिवार के सदस्यों के लिए स्वाभाविक था - मात्र अपराध के शस्त्र की बरामदगी में अन्वेषण एजेन्सी की विफलता, संपूर्ण अभियोजन प्रकरण को अविश्वसनीय नहीं बनाती - आगे अभिनिर्धारित - जहां एक प्रकरण प्रत्यक्ष साक्ष्य पर आधारित है, दोषसिद्धि की सत्यता को हेतु की कसौटी पर नहीं परखा

जा सकता - अभियुक्त उचित रूप से दोषसिद्ध किया गया - अपील खारिज।
(रामसुजान कोल उर्फ मुण्डा वि. म.प्र. राज्य) (DB)...*110

*Penal Code (45 of 1860), Section 302 - Murder - Conviction - Life Imprisonment - Testimony of Child Witness - Credibility - Appreciation of Evidence - Accused assaulted the deceased by axe - Child witness aged about 11 years - Held - It is settled law that evidence of child witness is not required to be rejected per se, but Court, as a rule of prudence considers such evidence with close scrutiny and only on being convinced about quality of such evidence and its reliability, bases the conviction by accepting the deposition of child witness - In the present case, child witness has not made any contradictory statement and there is no material discrepancy found in her deposition - Statement of other witnesses not challenged in cross examination and are trustworthy - Statement of child witness corroborated by other witnesses - Extra judicial confession by accused and last seen circumstances is also proved - Trial Court rightly convicted the accused - Appeal dismissed. [Ratia Bai Vs. State of M.P.] (DB)...*111*

*दण्ड संहिता (1860 का 45), धारा 302 - हत्या - दोषसिद्धि - आजीवन कारावास - बाल साक्षी का परिसाक्ष्य - विश्वसनीयता - साक्ष्य का मूल्यांकन - अभियुक्त ने मृतक पर कुल्हाड़ी से हमला किया - बाल साक्षी की आयु लगभग 11 वर्ष - अभिनिर्धारित - यह सुस्थापित विधि है कि बाल साक्षी के साक्ष्य को अपने आप में अस्वीकार किया जाना अपेक्षित नहीं है, परंतु न्यायालय, प्रज्ञा के नियम के अनुसार सूक्ष्म संवीक्षा के साथ ऐसे साक्ष्य पर विचार करता है तथा ऐसे साक्ष्य की गुणवत्ता तथा उसकी विश्वसनीयता के बारे में विश्वास हो जाने पर, बाल साक्षी के अभिसाक्ष्य को स्वीकार करते हुए, दोषसिद्धि आधारित करता है - वर्तमान प्रकरण में, बाल साक्षी ने कोई विरोधाभासी कथन नहीं किये हैं तथा उसके अभिसाक्ष्य में कोई तात्त्विक विसंगति नहीं पाई गई है - अन्य साक्षीगण के कथन को प्रतिपरीक्षण में चुनौती नहीं दी गई एवं मरोसेमंद हैं - बाल साक्षी के कथन की अन्य साक्षीगण द्वारा संपुष्टि की गई - अभियुक्त द्वारा न्यायिकोत्तर संस्वीकृति तथा अंतिम बार साथ देखे जाने की परिस्थितियां भी साबित हुई हैं - विचारण न्यायालय ने अभियुक्त को उचित रूप से दोषसिद्ध किया - अपील खारिज। (रतिया बाई वि. म.प्र. राज्य) (DB)...*111*

Penal Code (45 of 1860), Section 302 & 84 and Evidence Act (1 of 1872), Section 105 - Murder - Conviction - Life Imprisonment - Insanity/Unsoundness of Mind - Proof of - Burden - Appellant killed his wife hitting her by a 'musal' - Plea of unsoundness of mind - Held - When a person pleads for defence u/S 84 IPC, burden of proof in its

strictest sense, is upon accused to establish the exception – In the instant case, there is no specific documents regarding unsoundness of mind of appellant but the evidence establishes that appellant has been a mental patient since last 8-9 years and he was being treated at different places for his mental illness – At the time of incident, due to unsoundness of mind, he was incapable of knowing the nature of the act and that is why he was doing acts which were contrary to law which constitute insanity – Entitled for benefit u/S 84. IPC – Appellant acquitted of the charge – Appeal allowed. [Ramcharan Yadav Vs. State of M.P.] (DB)...*108

दण्ड. संहिता (1860 का 45), धारा 302 व 84 एवं साक्ष्य अधिनियम (1872 का 1), धारा 105 – हत्या – दोषसिद्धि – आजीवन कारावास – उन्मत्तता/चित्त-विकृति – का सबूत – भार – अपीलार्थी ने अपनी पत्नी पर एक 'मूसल' द्वारा आघात कर, उसे जान से मार दिया – चित्त-विकृति का अभिवाक् – अभिनिर्धारित – जब कोई व्यक्ति धारा 84 भा.द.सं. के अंतर्गत प्रतिरक्षा हेतु अभिवाक् करता है, सबूत का भार उसके कठोरतम अर्थ में, अपवाद स्थापित करने के लिए अभियुक्त पर है – वर्तमान प्रकरण में, अपीलार्थी के चित्त-विकृति संबंधी कोई विनिर्दिष्ट दस्तावेज नहीं किंतु साक्ष्य स्थापित करता है कि अपीलार्थी पिछले 8-9 वर्षों से मानसिक रोगी रहा है और उसकी मानसिक रूग्णता हेतु विभिन्न स्थानों पर उसका उपचार किया जा रहा था – घटना के समय, चित्त-विकृति के कारण वह कृत्य के स्वरूप का ज्ञान होने में असमर्थ था और इसलिए वह ऐसे कृत्य कर रहा था जो विधि के विपरीत थे, जो उन्मत्तता गठित करते हैं – धारा 84 भा. द.सं. के अंतर्गत लाम हेतु हकदार – अपीलार्थी को आरोप से दोषमुक्त किया गया – अपील मंजूर! (रामचरण यादव वि. म.प्र. राज्य) (DB)...*108

Penal Code (45 of 1860), Section 302 & 304-A – Murder – Conviction – Life Imprisonment – Solitary Blow – Intention & Motive – Appreciation of Evidence – Held – Existence of previous enmity between accused and deceased regarding partition of agricultural land – When deceased was sitting quietly near his field for grazing of his cattle, accused arrived there and attacked him with axe and gave a single blow in neck which caused his death – Circumstances in which blow was delivered clearly betrayed the intention to cause death – No provocation offered by deceased – No quarrel or fight – It was a cold blooded and premeditated murder – No discrepancy between statement of eye witness and medical evidence with regard to fatal injury – Act would not fall u/S 304-A IPC under the garb of solitary blow – Apex

Court held that there is no fixed rule that whenever a single blow is inflicted, Section 302 IPC would not be attracted – Trial Court rightly convicted the appellant – Appeal dismissed. [Pooranlal Vs. State of M.P.] (DB)...1944

दण्ड संहिता (1860 का 45), धारा 302 व 304-ए – हत्या – दोषसिद्धि – आजीवन कारावास – एक मात्र वार – आशय एवं हेतु – साक्ष्य का मूल्यांकन – अभिनिर्धारित – कृषि भूमि के विभाजन के संबंध में अभियुक्त एवं मृतक के मध्य पूर्व वैमनस्यता का अस्तित्व – जब मृतक अपने पशु चराने के लिए अपने खेत के समीप शांति से बैठा हुआ था, अभियुक्त वहाँ पहुँचा तथा उसने मृतक पर कुल्हाड़ी से हमला किया एवं गर्दन पर एकल वार किया जिससे उसकी मृत्यु हो गई – परिस्थितियाँ जिनमें वार किया गया था, स्पष्ट रूप से मृत्यु कारित करने का आशय प्रकट करती हैं – मृतक द्वारा कोई प्रकोपन नहीं दिया गया – कोई झगड़ा या लड़ाई नहीं – यह एक निर्दयतापूर्वक एवं जान-बूझकर की गई हत्या थी – घातक चोट के संबंध में, चक्षुदर्शी साक्षी के कथन एवं चिकित्सीय साक्ष्य के मध्य कोई विसंगति नहीं – एकमात्र वार की आड़ में, कृत्य भारतीय दण्ड संहिता की धारा 304-ए के अंतर्गत नहीं आयेगा – सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि यह कोई निश्चित नियम नहीं है कि जब कभी एकल वार किया गया है, भारतीय दण्ड संहिता की धारा 302 आकर्षित नहीं होगी – विचारण न्यायालय ने अपीलार्थी को उचित रूप से दोषसिद्ध किया – अपील खारिज। (पूरनलाल वि. म.प्र. राज्य) (DB)...1944

Penal Code (45 of 1860), Section 302 & 304 Part I – Murder – Intention – Evidence on record shows that after receiving first blow on head, unarmed deceased fall down and thereafter appellant again gave three blows while deceased was lying down – Cause of death was injuries to vital organs like right kidney and liver leading to heavy internal hemorrhage – Mode of death was shock – Appellant had intention to cause death – Case would not fall into any category u/S 304 IPC. [Madhav Prasad Vs. State of M.P.] (DB)...1934

दण्ड संहिता (1860 का 45), धारा 302 व 304 भाग I – हत्या – आशय-अभिलेख का साक्ष्य दर्शाता है कि सिर पर प्रथम वार सहन करने के पश्चात् निःशस्त्र मृतक नीचे गिर गया और तत्पश्चात् अपीलार्थी ने पुनः तीन वार किये जब मृतक नीचे गिरा पड़ा था – मृत्यु का कारण, दाहिने गुरदे एवं यकृत जैसे महत्वपूर्ण अंगों को चोटें थी जिससे अत्याधिक आंतरिक रक्तस्राव हुआ था – मृत्यु का प्रकार आघात था – अपीलार्थी का आशय मृत्यु कारित करने का था – प्रकरण, धारा 304 भा.दं.सं. के अंतर्गत किसी श्रेणी में नहीं आयेगा। (माधव प्रसाद वि. म.प्र. राज्य) (DB)...1934

Penal Code (45 of 1860), Section 302 & 304 Part II – Sentence

– Conviction modified from Section 302 IPC to one u/S 304 Part II IPC – Appellant was in custody since 12.06.1998 and remained in jail custody till 12.03.2004 – Appellant sentenced to the period already undergone. [Ram Sevak Vs. State of M.P.] (DB)...1960

दण्ड संहिता (1860 का 45), धारा 302 व 304 भाग II – दण्डादेश– दोषसिद्धि को भारतीय दण्ड संहिता की धारा 302 से भारतीय दण्ड संहिता की धारा 304 भाग II के अंतर्गत उपांतरित किया गया – अपीलार्थी दिनांक 12.06.1998 से अभिरक्षा में था तथा दिनांक 12.03.2004 तक जेल अभिरक्षा में रहा – अपीलार्थी को पूर्व में भुगती गई अवधि से दण्डादिष्ट किया गया। (रामसेवक वि. म.प्र. राज्य) (DB)...1960

Penal Code (45 of 1860), Section 302 & 364-A – Abduction & Murder – Circumstantial Evidence – Appreciation of Evidence – Deceased, a 14 years old boy was abducted and subsequently murdered – Offence registered against Sharik, Athar Ali and Salman – Acquittal from trial Court – Appeal against acquittal – Held – So far as evidence of last seen together, eye witness Pankaj (cousin of deceased) deposed that he saw accused persons in motor cycle alongwith deceased but he never disclose the same knowing that his brother is missing till dead body was found – His testimony is not reliable – Similarly, recovery of body at the instance of Sharik is also doubtful – Hence appeal against Sharik and Salman dismissed – Further held – Call for ransom made to parents of deceased and through IMEI number it was traced that it was mobile set of Athar Ali and it was also established that he used the mobile set with a fake sim to make the calls – There is clinching evidence against Athar Ali and his involvement in crime cannot be brushed aside – Appeal against Athar Ali is allowed – Sentence of life imprisonment imposed. [Laxmi Verma (Smt.) Vs. Sharik Khan] (DB)...1978

दण्ड संहिता (1860 का 45), धारा 302 व 364-ए – अपहरण एवं हत्या – परिस्थितिजन्य साक्ष्य – साक्ष्य का मूल्यांकन– मृतक एक 14 वर्षीय बालक, का अपहरण किया गया और तत्पश्चात् हत्या की गई थी – शरीक, अतहर अली एवं सलमान के विरुद्ध अपराध पंजीबद्ध किया गया – विचारण न्यायालय से दोषमुक्ति – दोषमुक्ति के विरुद्ध अपील – अभिनिर्धारित – जहाँ तक अंतिम बार एक साथ देखे जाने का साक्ष्य है, चक्षुदर्शी साक्षी पंकज (मृतक का रिश्ते का भाई) ने अभिसाक्ष्य दिया है कि उसने अभियुक्तगण को मोटरसाईकिल पर मृतक के साथ देखा था परंतु उसने यह जानते हुए भी कि उसका भाई लापता है, उक्त का प्रकटन कभी नहीं किया जब तक शव नहीं मिला था – उसका परिसाक्ष्य विश्वसनीय नहीं – इसी प्रकार, शरीक की निशानदेही पर शव की बरामदगी भी संदेहास्पद है –

अतः, शरीक एवं सलमान के विरुद्ध अपील खारिज — आगे अभिनिर्धारित — फिरौती के लिए मृतक के माता-पिता को किये गये कॉल एवं आई.एम.ई.आई. नंबर के जरिए यह पता लगाया गया कि वह अतहर अली का मोबाईल सेट था और यह भी स्थापित किया गया था कि उसने नकली सिम के साथ मोबाईल सेट का उपयोग कॉल करने के लिए किया था — अतहर अली के विरुद्ध निश्चित साक्ष्य है और अपराध में उसकी संलिप्तता को नकारा नहीं जा सकता — अतहर अली के विरुद्ध अपील मंजूर की गई — आजीवन कारावास का दण्डादेश अधिरोपित किया गया। (लक्ष्मी वर्मा (श्रीमती) वि. शरीक खान) (DB)...1978

*Penal Code (45 of 1860), Section 304-A – Contributory Negligence – Doctrine of Reasonable Care – Held – It is not expected from children that they may take care of themselves while playing nearby road – Principle of contributory negligence would not apply in such offence – Doctrine of reasonable care imposes an obligation or a duty upon driver to care for the pedestrian on the road and this duty attains a higher degree where the pedestrian happens to be a child of tender years. [Durga Das Nawit Vs. State of M.P.] ...*103*

दण्ड संहिता (1860 का 45), धारा 304-ए — योगदायी उपेक्षा — युक्तियुक्त सतर्कता का सिद्धांत — अभिनिर्धारित — बालकों से यह अपेक्षित नहीं है कि सड़क के समीप खेलते समय वे स्वयं का ध्यान रख सकें — ऐसे अपराध में योगदायी उपेक्षा का सिद्धांत लागू नहीं होगा — युक्तियुक्त सतर्कता का सिद्धांत, चालक पर सड़क पर पैदल चलने वालों के लिए सतर्कता रखने की बाध्यता या कर्तव्य अधिरोपित करता है एवं यह कर्तव्य उच्चतर स्तर प्राप्त कर लेता है जहां पैदल चलने वाला, कोमल आयु का बालक होता है। (दुर्गा दास नावित वि. म.प्र. राज्य) ...*103

*Penal Code (45 of 1860), Section 304-A – Conviction – Benefit of Probation – Held – The Apex Court has held that in cases of rash and negligent driving resulting in death or grievous injury, deterrence ought to be the main consideration while sentencing the offender – Every driver should have fear in his psyche that upon conviction Court will not treat him leniently – Benefit of Probation could not be accorded to accused guilty u/S 304-A IPC. [Durga Das Nawit Vs. State of M.P.] ...*103*

दण्ड संहिता (1860 का 45), धारा 304-ए — दोषसिद्धि — परीक्षा का लाम — अभिनिर्धारित — सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया है कि उतावलेपन एवं उपेक्षापूर्ण चालन के परिणामस्वरूप मृत्यु या गंभीर चोट वाले प्रकरणों में, अपराधी को दण्डादिष्ट करते समय निवारण मुख्य विचार होना चाहिए — प्रत्येक चालक के मन में यह भय होना चाहिए कि दोषसिद्धि होने पर, न्यायालय उसके साथ

उदारतापूर्वक व्यवहार नहीं करेगा — भारतीय दण्ड संहिता की धारा 304-ए के अंतर्गत दोषी अभियुक्त को परीक्षा का लाभ प्रदान नहीं किया जा सकता। (दुर्गा दास नावित वि. म.प्र. राज्य) ...*103

*Penal Code (45 of 1860), Section 304-A — Conviction — Deceased child aged about 3 years died in accident by bullock cart driven by applicant — Held — Applicant admitted the seizure of bullock cart from his possession and he never denied the statement of prosecution witnesses that he was driving the offending bullock cart at the time of incident — Deceased died because of crush under the wheel — Trial Court rightly convicted the accused — Applicant is 58 years old and faced trial, appeal and revision for 18 years and was in custody for more than 84 days, sentence of RI reduced from one year to six months — Revision partly allowed. [Durga Das Nawit Vs. State of M.P.] ...*103*

दण्ड संहिता (1860 का 45), धारा 304-ए — दोषसिद्धि — मृतक बालक, जिसकी आयु लगभग 3 वर्ष थी, की आवेदक द्वारा चलाई जा रही बैलगाड़ी से दुर्घटना में मृत्यु हो गई — अभिनिर्धारित — आवेदक ने अपने कब्जे से बैलगाड़ी का जब्त होना स्वीकार किया तथा उसने अभियोजन साक्षीगण के इस कथन से कभी इंकार नहीं किया कि वह घटना के समय आक्षेपित बैलगाड़ी चला रहा था — पहिये के नीचे कुचलने से मृतक की मृत्यु हुई — विचारण न्यायालय ने अभियुक्त को उचित रूप से दोषसिद्ध किया — आवेदक 58 वर्ष का है तथा 18 वर्षों तक विचारण, अपील एवं पुनरीक्षण का सामना करना पड़ा तथा 84 दिनों से अधिक अभिरक्षा में था, कठोर कारावास के दण्डादेश को एक वर्ष से घटाकर 6 माह किया गया — पुनरीक्षण अंशतः मंजूर। (दुर्गा दास नावित वि. म.प्र. राज्य) ...*103

Penal Code (45 of 1860), Section 307 r/w Section 34 — Appreciation of Evidence — Conviction and Sentence — Appellant and four others were accused — Two bombs were thrown on complainant whereby complainant suffered simple injuries — High Court confirmed the conviction and sentence — Challenge to — Held — Present appellant specifically shouted “kill him, he should not be spared, he habitually reports” — It is not essential that bodily injury capable of causing death should have been inflicted in order to make out a charge u/S 307 IPC — It is enough, if there is an intention coupled with some common act in execution thereof — In the instant case, nature of weapon used predominates as two bombs were hurled, which are lethal weapons by which it can be inferred that intention was to cause death — Further held — It is true that injuries were simple but this is only because of fortuitous

circumstances that bombs exploded at a distance far from the injured/ complainant – Accused/ appellant coming along with four other persons, committed the offence and going back together with them and appellant shouting the words “kill him” certainly attract the charge u/S 307 r/w Section 34 IPC – Intention was to kill the complainant as he was an informer – Crime committed is heinous in nature and it appears that appellant has got away lightly – No interference required – Appeal dismissed. [Chhanga @ Manoj Vs. State of M.P.] (SC)...1795

दण्ड संहिता (1860 कां 45), धारा 307 सहपठित धारा 34 – साक्ष्य का अधिमूल्यन – दोषसिद्धि एवं दण्डादेश – अपीलार्थी एवं चार अन्य अभियुक्त थे – परिवादी पर दो बम फेंके गये जिससे परिवादी ने साधारण क्षतियां सहन की – उच्च न्यायालय ने दोषसिद्धि एवं दण्डादेश की पुष्टि की – को चुनौती – अभिनिर्धारित – वर्तमान अपीलार्थी विनिर्दिष्ट रूप से चिल्लाया था “मार डालो उसे, उसे छोड़ना नहीं चाहिए, वह आदतन रिपोर्ट करता है” – धारा 307 भा.दं.सं. के अंतर्गत आरोप निर्मित करने हेतु यह आवश्यक नहीं कि मृत्यु कारित कर सकने वाली शारीरिक क्षति पहुंचाई गई हो – यह पर्याप्त है, यदि उसके निष्पादन में आशय के साथ-साथ कोई सामान्य कृत्य है – वर्तमान प्रकरण में, प्रयुक्त शस्त्र का स्वरूप प्रधानता रखता है क्योंकि दो बम फेंके गये थे, जो कि घातक शस्त्र हैं जिसके द्वारा यह निष्कर्ष निकाला जा सकता है कि मृत्यु कारित करने का आशय था – आगे अभिनिर्धारित – यह सत्य है कि क्षतियां साधारण थीं परंतु ऐसा केवल भाग्यशाली परिस्थितियों के कारण है कि बम, आहत/परिवादी से काफी दूरी पर फटे थे – अभियुक्त/अपीलार्थी का चार अन्य व्यक्तियों के साथ आना, अपराध कारित करना और उनके साथ वापस जाना तथा अपीलार्थी का यह शब्द “मार डालो उसे” चिल्लाना, निश्चित रूप से धारा 307 सहपठित धारा 34 भा.दं.सं. का आरोप आकर्षित करता है – परिवादी को जान से मारने का आशय था क्योंकि वह खबरी था – कारित किया गया अपराध जघन्य स्वरूप का है और यह प्रतीत होता है कि अपीलार्थी थोड़े में बच गया – किसी हस्तक्षेप की आवश्यकता नहीं – अपील खारिज। (छंगा उर्फ मनोज वि. म.प्र. राज्य) (SC)...1795

Penal Code (45 of 1860), Section 420 & 120-B and Evidence Act (1 of 1872), Section 10 & 27 – Confessional Statement of Co-accused – Admissibility – It was alleged that accused persons took money from parents for admission in Medical College against management quota – Application against framing of charge against applicant – Held – Name of applicant not in FIR – No direct allegations against him – Confessional statement of co-accused persons recorded u/S 27 of the Evidence Act cannot be read against the applicant nor such memorandum statement can be admissible u/S 10 of the Evidence

Act – For prosecution and framing of charge, mere suspicion is not sufficient, it requires grave suspicion to prosecute or put on trial a person in a criminal case – *Prima facie* no material on record where inference can be drawn regarding involvement of applicant in alleged crime with other co-accused persons so as to prosecute him, hence continuation of proceedings against him is not justifiable and it would amount to misuse of process of law – Applicant stands exonerated from criminal proceedings – Application allowed. [Anupam Chouksey Vs. State of M.P.] ...2016

दण्ड संहिता (1860 का 45), धारा 420 व 120-बी एवं साक्ष्य अधिनियम (1872 का 1), धारा 10 व 27 –सह-अभियुक्त का संस्वीकृति कथन – ग्राह्यता – यह अभिकथन किया गया था कि अभियुक्तगण ने प्रबंधन के कोटे से चिकित्सा महाविद्यालय में प्रवेश हेतु माता-पिता से रूपये लिये थे – आवेदक के विरुद्ध आरोप विरचित किये जाने के विरुद्ध आवेदन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन में आवेदक का नाम नहीं – उसके विरुद्ध कोई प्रत्यक्ष अभिकथन नहीं – साक्ष्य अधिनियम की धारा 27 के अंतर्गत अभिलिखित सह-अभियुक्तगण का संस्वीकृति कथन आवेदक के विरुद्ध नहीं पढ़ा जा सकता न ही उक्त मेमोरेन्डम कथन, साक्ष्य अधिनियम की धारा 10 के अंतर्गत ग्राह्य हो सकता है – अभियोजन एवं आरोप विरचित किये जाने हेतु मात्र संदेह पर्याप्त नहीं, दाण्डिक प्रकरण में, एक व्यक्ति का अभियोजन या विचारण करने हेतु घोर संदेह अपेक्षित होता है – प्रथम दृष्ट्या अभिलेख पर कोई सामग्री नहीं जिससे कि आवेदक को अभियोजित करने के लिए अभिकथित अपराध में अन्य सह-अभियुक्तों के साथ आवेदक की संलिप्तता के संबंध में निष्कर्ष निकाला जा सकता हो, अतः उसके विरुद्ध कार्यवाहियों को जारी रखना न्यायोचित नहीं है और यह विधि की प्रक्रिया के दुरुपयोग की कोटि में आयेगा – आवेदक को दाण्डिक कार्यवाहियों से विमुक्त किया गया – आवेदन मंजूर। (अनुपम चौकसे वि. म.प्र. राज्य) ...2016

Penal Code (45 of 1860), Section 498-A/34 & 406 – See – Criminal Procedure Code, 1973, Section 177 & 178 [Anurag Mathur Vs. State of M.P.] ...2031

दण्ड संहिता (1860 का 45), धारा 498-ए/34 व 406 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 177 व 178 (अनुराग माथुर वि. म.प्र. राज्य) ...2031

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), Section 61 – Power of Commissioner – Under the Act, Commissioner is empowered to take up the matter for implementation of law, with regard to welfare

and protection of rights of persons with disabilities under the Land Acquisition Act and Rehabilitation Policy – He is not empowered to direct for employment of anyone of the respondents, thus the order passed by Commissioner is without jurisdiction. [Hindalco Industries Ltd. (M/s.) Vs. State of M.P.] (DB)...1799

निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी) अधिनियम, 1995 (1996 का 1), धारा 61 – आयुक्त की शक्ति – अधिनियम के अंतर्गत, आयुक्त, मूमि अर्जन अधिनियम तथा पुनर्वास नीति के अन्तर्गत निःशक्त व्यक्तियों के कल्याण एवं अधिकारों की सुरक्षा के संबंध में, विधि के क्रियान्वयन के लिए मामले को ग्रहण करने हेतु सशक्त है – वह प्रत्यर्थागण में से किसी को भी रोजगार दिये जाने हेतु निदेशित करने के लिए सशक्त नहीं है, इसलिए आयुक्त द्वारा पारित आदेश बिना अधिकारिता के है। (हिंडाल्को इंडस्ट्रीज लि. (मे.) वि. म.प्र. राज्य) (DB)...1799

Practice – Apex Court has held that pendency of a reference before larger bench does not mean that all other proceedings involving same issue would remain stayed till a decision is rendered in reference by larger bench. [Anurag Mathur Vs. State of M.P.] ...2031

पद्धति – सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि वृहद न्यायपीठ के समक्ष निर्देश लंबित रहने का अर्थ यह नहीं होता कि वृहद न्यायपीठ द्वारा निर्देश में निर्णय दिये जाने तक सभी अन्य कार्यवाहियां जिसमें समान मुद्दा अंतर्गस्त है, पर रोक बनी रहेगी। (अनुराग माथुर वि. म.प्र. राज्य) ...2031

Practice and Procedure – Criminal Trial – Reducing to the sentence already undergone – Effect – Held – Undue sympathy leading to imposition of inadequate sentence would do more harm to justice system and would undermine public confidence in efficacy of law. [Chhanga @ Manoj Vs. State of M.P.] (SC)...1795

पद्धति एवं प्रक्रिया – दण्डिक विचारण – मुगताए जा चुके दण्डादेश तक घटाया जाना – प्रभाव – अभिनिर्धारित – अपर्याप्त दण्डादेश की ओर ले जाने वाली असम्यक् सहानुभूति से न्याय प्रणाली की अधिक हानि होगी और विधि की प्रभावकारिता में जनता के विश्वास को कमजोर करेगी। (छंगा उर्फ मनोज वि. म.प्र. राज्य) (SC)...1795

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, (57 of 1994), Sections 17(2), 17(3)(b) & 28(1)(a) – Cognizance of Offence – Complainant – Appropriate Authority – Cognizance was taken by the trial Court against petitioner

on the complaint made by Chief Medical and Health Officer (CMHO) – Challenge to – Held – Until the complaint is signed and presented before competent Court by officer authorized or appropriate authority as notified by the State Government, Court cannot take cognizance on such complaint – The CMHO Bhopal has not been notified as officer authorized by appropriate authority to act as per Section 17(3) of the Act and no notification in this respect has been produced before this Court – It can safely be concluded that CMHO Bhopal has not been authorized by District Magistrate Bhopal as appropriate authority to make the complaint as required u/S 28(1) of the Act – Complaint has not been made by ‘appropriate authority’ or any officer authorized by the State government under the provisions of the Act of 1994 – Order of trial Court taking cognizance is not in accordance with law – Complaint made by CMHO Bhopal is quashed – Petition allowed. [Das Motwani (Dr.) Vs. State of M.P.] ...*102

गर्भधारण पूर्व और प्रसव पूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम, (1994 का 57), धाराएँ 17(2), 17(3)(बी) व 28(1)(ए) – अपराध का संज्ञान – परिवादी – समुचित प्राधिकारी – मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी (सी.एम.एच.ओ.) द्वारा प्रस्तुत परिवाद पर विचारण न्यायालय द्वारा याची के विरुद्ध संज्ञान लिया गया था – को चुनौती – अभिनिर्धारित – जब तक कि परिवाद को सक्षम न्यायालय के समक्ष राज्य शासन द्वारा यथा अधिसूचित प्राधिकृत अधिकारी या समुचित प्राधिकारी द्वारा हस्ताक्षरित एवं प्रस्तुत नहीं किया जाता, उक्त परिवाद पर न्यायालय संज्ञान नहीं ले सकता – सी.एम.एच.ओ., भोपाल को अधिनियम की धारा 17(3) के अनुसार, कार्रवाई करने के लिए समुचित प्राधिकारी द्वारा प्राधिकृत अधिकारी अधिसूचित नहीं किया गया है और इस संबंध में इस न्यायालय के समक्ष कोई अधिसूचना प्रस्तुत नहीं की गई है – यह सुरक्षित रूप से निष्कर्षित किया जा सकता है कि परिवाद करने के लिए समुचित प्राधिकारी के रूप में सी.एम.एच.ओ. भोपाल को जिला मजिस्ट्रेट भोपाल द्वारा प्राधिकृत नहीं किया गया है, जैसा कि अधिनियम की धारा 28(1) के अंतर्गत अपेक्षित है – परिवाद, 1994 के अधिनियम के उपबंधों के अंतर्गत ‘समुचित प्राधिकारी’ अथवा राज्य शासन द्वारा प्राधिकृत किसी अधिकारी द्वारा प्रस्तुत नहीं किया गया है – विचारण न्यायालय का संज्ञान लेने का आदेश विधि के अनुसरण में नहीं – सी.एम.एच.ओ., भोपाल द्वारा किया गया परिवाद अभिखंडित – याचिका मंजूर। (दास मोटवानी (डॉ.) वि. म.प्र. राज्य) ...*102

Prevention of Food Adulteration Act (37 of 1954), Sections 13(2), 16(1)(A)(i) & 20(1), Criminal Procedure Code, 1973 (2 of 1974), Section 313 and Evidence Act (1 of 1872), Section 134 – Adulteration – Sole

Witness – Effect – Sample of ground nut oil was found adulterated and below standard – Conviction based on sole testimony of Food Inspector – Applicant was minor at the relevant time and was sitting at his father's shop – Held – In Statement u/S 313 Cr.P.C., applicant explained his occupation as 'Oil Shop' which establishes that he was incharge of shop – No possibility of changing sample taken by Food Inspector – Further held – U/S 134 of Evidence Act, conviction can be based on testimony of sole witness, number of witnesses not required to prove any fact, quality of evidence has to be considered – Such solitary evidence of Food Inspector can be accepted without corroboration and is rightly relied on by Court below – No illegality in impugned order – Revision dismissed. [Manohar Vs. State of M.P.] ...2000

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धाराएँ 13(2), 16(1)(ए)&(i) व 20 (1), दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 एवं साक्ष्य अधिनियम (1872 का 1), धारा 134 – अपमिश्रण – एकमात्र साक्षी – प्रभाव- मूंगफली के तेल का नमूना अपमिश्रित एवं मानक से नीचे का पाया गया था – खाद्य निरीक्षक के एकमात्र परिसाक्ष्य पर दोषसिद्धि आधारित – सुसंगत समय पर, आवेदक अवयस्क था और अपने पिता की दुकान पर बैठा था – अभिनिर्धारित – धारा 313 दं.प्र.सं. के अंतर्गत कथन में, आवेदक ने उसका व्यवसाय 'तेल दुकान' के रूप में स्पष्ट किया, जो स्थापित करता है कि वह दुकान का प्रभारी था – खाद्य निरीक्षक द्वारा लिये गये नमूने को बदले जाने की कोई संभावना नहीं – आगे अभिनिर्धारित – धारा 134, साक्ष्य अधिनियम के अंतर्गत एकमात्र साक्षी के परिसाक्ष्य पर दोषसिद्धि आधारित की जा सकती है, किसी तथ्य को साबित करने के लिए साक्षियों की संख्या अपेक्षित नहीं, साक्ष्य की गुणवत्ता को विचार में लिया जाना चाहिए – खाद्य निरीक्षक के उक्त एकमात्र साक्ष्य को बिना संपुष्टि स्वीकार किया जा सकता है और निचले न्यायालय द्वारा उचित रूप से विश्वास किया गया है – आक्षेपित आदेश में कोई अवैधता नहीं – पुनरीक्षण खारिज। (मनोहर वि. म.प्र. राज्य) ...2000

Railway Claims Tribunal Act, (54 of 1987), Section 23 and Civil Procedure Code (5 of 1908), Section 5 – Limitation in Appeal – Applicability of provisions of Limitation Act – Contradictory view of two single benches of High Court – Matter referred to Division Bench – Held – Claims Tribunal Act is a beneficial welfare legislation and is not a complete code in itself in respect of prescribing and providing the entire procedure for filing an appeal before High Court nor there is any specific provision in the Act which expressly excludes the provisions of Limitation Act – Provisions of Section 5 of Limitation Act

would apply to filing of appeal u/S 23 of the Act of 1987 beyond the period of limitation prescribed, by virtue of provisions of Section 29(2) of Limitation Act – High Court has power to condone the delay in filing such appeal on sufficient cause being shown by appellant – AIR 2016 MP 37 Overruled – Reference answered accordingly. [Kapil Vs. Union of India] (DB)...1891

रेल दावा अधिकरण अधिनियम (1987 का 54), धारा 23 एवं सिविल प्रक्रिया संहिता (1908 का 5), धारा 5 –अपील में परिसीमा- परिसीमा अधिनियम के उपबंधों की प्रयोज्यता – उच्च न्यायालय की दो एकल न्यायपीठों के परस्पर विरोधी दृष्टिकोण – मामला खंड न्यायपीठ को निर्दिष्ट – अभिनिर्धारित – दावा अधिकरण अधिनियम एक हितकारी कल्याणकारी विधान है और उच्च न्यायालय के समक्ष अपील प्रस्तुत करने हेतु संपूर्ण प्रक्रिया विहित एवं उपबंधित किये जाने के संबंध में अपने आप में एक पूर्ण संहिता नहीं है, न ही अधिनियम में कोई विनिर्दिष्ट उपबंध है जो अभिव्यक्त रूप से परिसीमा अधिनियम के उपबंधों को अपवर्जित करता हो – परिसीमा अधिनियम की धारा 29(2) के उपबंधों के आधार पर, विहित परिसीमा की अवधि से परे, 1987 के अधिनियम की धारा 23 के अंतर्गत अपील प्रस्तुत करने के लिए परिसीमा अधिनियम की धारा 5 के उपबंध लागू होंगे – उच्च न्यायालय को अपीलार्थी द्वारा पर्याप्त कारण दर्शाये जाने पर उक्त अपील प्रस्तुत करने में विलंब को माफ करने की शक्ति है –AIR 2016 MP 37 उलट दिया गया – निर्देश तदनुसार उत्तरित। (कपिल वि. यूनियन ऑफ इंडिया) (DB)...1891

*Registration and Stamp Class III (Ministerial) Service Recruitment Rules, M.P., 2007 – See – Service Law [Nanhe Singh Maravi Vs. State of M.P.] ...*107*

पंजीयन एवं मुद्रांक, तृतीय श्रेणी (लिपिक वर्गीय) सेवा भर्ती नियम, म.प्र., 2007 – देखें – सेवा विधि (नन्हे सिंह मरावी वि. म.प्र. राज्य) ...*107

*Registration and Stamp Class III (Non-Ministerial) Service Recruitment Rules, M.P., 2007 – See – Service Law [Nanhe Singh Maravi Vs. State of M.P.] ...*107*

पंजीयन एवं मुद्रांक, तृतीय श्रेणी (अलिपिक वर्गीय) सेवा भर्ती नियम, म.प्र. 2007 – देखें – सेवा विधि (नन्हे सिंह मरावी वि. म.प्र. राज्य) ...*107

Rehabilitation Policy 2002, Clause 29(1) – See – Land Acquisition Act, 1894, Section 41 [Hindalco Industries Ltd. (M/s.) Vs. State of M.P.] (DB)...1799

पुनर्वास नीति 2002, खण्ड 29(1) – देखें – भूमि अर्जन अधिनियम, 1894,

धारा 41 (हिंडाल्को इंडस्ट्रीज लि. (मे.) वि. म.प्र. राज्य) (DB)...1799

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) – See – Land Acquisition Act, 1894, Section 18 [Mayaram Vs. State of M.P.] ...*105

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – देखें – भूमि अर्जन अधिनियम, 1894, धारा 18 (मायाराम वि. म.प्र. राज्य) ...*105

Service Law – Constitution – Article 320(3) and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 27(2) – Power of Appellate Authority – Advice from P.S.C. – Disciplinary Authority imposed major penalty to petitioner – In appeal, Appellate Authority opined to reduce the penalty to a minor one – Matter forwarded to P.S.C. for consultation and advice – P.S.C. opined not to reduce the penalty imposed, resultantly Appellate Authority dismissed the appeal – Challenge to – Held – Requirement to consult the M.P.P.S.C and its report/advice is not binding on the disciplinary authority or appellate authority while exercising quasi judicial powers – As per Article 320(3) and Rule 27(2) of the Rules of 1966, authorities may seek advice of P.S.C. – Mere consultation would not mean to affect the proposed punishment – It would amount to abdication of statutory powers of authorities which is not sustainable in eyes of law – Impugned order is quashed and matter remitted to appellate authority to reconsider the matter on point of punishment, uninfluenced with advice of the Commission (P.S.C.) – Petition allowed. [S.K. Agarwal Vs. State of M.P.] ...1840

सेवा विधि – संविधान – अनुच्छेद 320(3) एवं सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 27(2) – अपीली प्राधिकारी की शक्ति – लोक सेवा आयोग से सलाह – अनुशासनिक प्राधिकारी ने याची पर गुरुतर शास्ति अधिरोपित की – अपील में, अपीली प्राधिकारी ने शास्ति को कम कर लघु करने की राय दी – मामला परामर्श तथा सलाह हेतु पी.एस.सी. को अग्रेषित किया गया – पी.एस.सी. ने अधिरोपित की गई शास्ति को कम न करने की राय दी, परिणामस्वरूप अपीली प्राधिकारी ने अपील खारिज की – को चुनौती – अभिनिर्धारित – एम.पी.पी.एस.सी. से परामर्श करने की आवश्यकता तथा उसका प्रतिवेदन/सलाह न्यायिककल्प शक्तियों का प्रयोग करते समय अनुशासनिक प्राधिकारी या अपीली

प्राधिकारी पर बाध्यकारी नहीं है - अनुच्छेद 320(3) एवं 1966 के नियमों के नियम 27(2) के अनुसार, प्राधिकारीगण पी.एस.सी. की सलाह ले सकते हैं - मात्र परामर्श का अर्थ प्रस्तावित दण्ड को प्रभावित करना नहीं होगा - यह प्राधिकारियों की कानूनी शक्तियों के त्याग के समान नहीं होगा जो कि विधि की दृष्टि में कायम रखने योग्य नहीं है - आक्षेपित आदेश अभिखंडित तथा मामला आयोग (पी.एस.सी.) की सलाह से अप्रभावित होकर दण्ड के बिंदु पर पुनर्विचार करने हेतु अपीली प्राधिकारी को प्रतिप्रेषित किया गया - याचिका मंजूर। (एस.के. अग्रवाल वि. म.प्र. राज्य) ...1840

Service Law - Registration and Stamp Class III (Non-Ministerial) Service Recruitment Rules, M.P., 2007 and Registration and Stamp Class III Ministerial Service Recruitment Rules, M.P., 2007 - Appointment - Amalgamation of Post - Amendment in Rules - Petitioners applied for and got selected for post of Registration Clerk - Respondents took consent of petitioners for the post of Assistant Grade III on the ground that post of Registration Clerk and Assistant Grade III were amalgamated by decision of State Government - Later, after joining as Assistant Grade III, petitioners came to know that plea of amalgamation was incorrect and no such amendment in Rules has been made - Challenge to - Held - Post of Registration Clerk is governed by Non Ministerial Rules and post of Assistant Grade III is governed by Ministerial Rules of department - Amalgamation of these two posts merely on basis of a communication without amendment in Rules is not permissible - Cabinet has also not taken such decision of amalgamation - Till date, no amendment made in Rules - Petitioners applied for post of registration clerk and was duly selected on the said post - Stand taken by Government is fallacious and contrary to Rules - Petitioners be allowed to work on post of Registration clerk - Petitions allowed. [Nanhe Singh Maravi Vs. State of M.P.] ...*107

सेवा विधि - पंजीयन एवं मुद्रांक, तृतीय श्रेणी (अलिपिक वर्गीय) सेवा मर्ती नियम, म.प्र., 2007 - पंजीयन एवं मुद्रांक, तृतीय श्रेणी (लिपिक वर्गीय) सेवा मर्ती नियम, म.प्र., 2007 - नियुक्ति - पद का समामेलन - नियमों में संशोधन- याचीगण ने पंजीयन लिपिक के पद के लिए आवेदन किये तथा चयनित हुए - प्रत्यर्थागण ने इस आधार पर सहायक ग्रेड-III के पद हेतु याचीगण की सहमति ली कि पंजीयन लिपिक तथा सहायक ग्रेड-III के पद, राज्य सरकार के विनिश्चय द्वारा समामेलित किये गये थे - बाद में, सहायक ग्रेड-III के रूप में पदग्रहण करने के पश्चात् याचीगण को यह ज्ञात हुआ कि समामेलन का अभिवाक् गलत था तथा नियमों में

ऐसा कोई संशोधन नहीं किया गया है — को चुनौती — अभिनिर्धारित — पंजीयन लिपिक का पद अलिपिक वर्गीय नियमों द्वारा शासित है तथा सहायक ग्रेड—III का पद विभाग के लिपिक वर्गीय नियमों द्वारा शासित है — नियमों में संशोधन किये बिना मात्र संसूचना के आधार पर इन दो पदों का समामेलन अनुज्ञेय नहीं है — मंत्रीमंडल ने भी समामेलन का उक्त विनिश्चय नहीं लिया है — आज दिनांक तक, नियमों में कोई संशोधन नहीं किया गया है — याचीगण ने पंजीयन लिपिक के पद हेतु आवेदन किये तथा कथित पद पर सम्यक् रूप से चयनित हुये थे — राज्य सरकार द्वारा उठाया गया कदम ग्रामक तथा नियमों के विपरीत है — याचीगण को पंजीयन लिपिक के पद पर कार्य करने की मंजूरी दी जाए — याचिकाएँ मंजूर। (नन्हे सिंह मरावी वि. म.प्र. राज्य) ...*107

Transfer of Property Act (4 of 1882), Section 54 — See — Evidence Act, 1872, Sections 68, 69 & 90 [Ramcharan Vs. Damodar] ...1882

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 54 — देखें — साक्ष्य अधिनियम, 1872, धाराएँ 68, 69 व 90 (रामचरण वि. दामोदर) ...1882

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THE INDIAN LAW REPORTS M.P. SERIES, 2017
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JOURNAL SECTION

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

**MADHYA PRADESH STREET VENDORS (PROTECTION OF
LIVELIHOOD AND REGULATION OF STREET VENDING)
RULES, 2017**

[Published in Madhya Pradesh Gazette (Extraordinary), dated 24th April, 2017, page Nos. 352 (28) to 352 (50)].

Not. No. 11/F 1-4-2017-XVIII-3.- In exercise of the powers conferred by Section 36 of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (No. 7 of 2014), the State Government, hereby, makes the following rules relating to street vending in the State of Madhya Pradesh, namely :-

RULES

1. Short title and commencement -

- (1) These rules may be called the Madhya Pradesh Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2017.
- (2) They shall come into force from the date of their publication in the official Gazette.

2. Definitions-

- (1) In these rules, unless the context otherwise requires,-
 - (a) "Act" means the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (No. 7 of 2014);
 - (b) "Chief Executive Officer" means Municipal

Commissioner in case of a Municipal Corporation as defined in sub-section (11) of section 5 of the Municipal Corporation Act, 1956 (No. 23 of 1956) and Chief Municipal Officer in case of a Municipality or Nagar Parishad, as the case may be, as defined in sub-section (5) of section 3 of the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961);

- (c) **"Collector"** means Collector of the district appointed by the State Government and prescribed as Collector in section 11 of the Madhya Pradesh Land Revenue Code, 1959; (No. 20 of 1959);
- (d) **"Commissioner"** means Commissioner of a Urban Administration and Development Department of Madhya Pradesh;
- (e) **"Divisional Revenue Commissioner"** means Divisional Revenue Commissioner appointed by the State Government and as prescribed as Commissioner in section 11 of the Madhya Pradesh Land Revenue Code, 1959; (No. 20 of 1959);
- (f) **"Form"** means the form appended to these rules;
- (g) **"Government"** means the Government of Madhya Pradesh acting through the Commissioner, Urban Administration and Development Department of Madhya Pradesh;
- (h) **"Grievance Redressal Committee"** means a Committee constituted by the Commissioner, Urban Administration and Development Department of Madhya Pradesh under sub section (1) of section 20 of the Act for redressal of grievances or resolution of disputes;
- (i) **"Mayor"** means Mayor as defined in section 6 of the Madhya Pradesh Municipal Corporation Act 1956; (No. 23 of 1956);
- (j) **"President"** means President as defined in section 19 of the Madhya Pradesh Municipalities Act, 1961;

(k) **“Urban local authority”** means the Municipal Corporation constituted under section 7 of the Madhya Pradesh Municipal Corporation Act 1956 (No. 23 of 1956) and the Municipalities and Nagar Parishad constituted under section 5 of the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961).

- (2) All other words and expressions used but not defined in these rules herein shall have the same meanings respectively as assigned to them in the Act.

3. Minimum Age for Street Vending.-

The minimum age for street vending shall be 18 years.

4. Constitution of Grievance Redressal Committee.-

- (1) The Commissioner shall constitute one grievance redressal committee at each revenue divisional level for redressal of grievances or resolution of the disputes of the street vendors. Commissioner may constitute a committee for more than one revenue commissionaires, if needed.
- (2) The Commissioner shall decide the area of jurisdiction and the headquarters of the grievance redressal committee.
- (3) The Commissioner shall nominate the members of the grievance redressal committee, in a suitable manner keeping expertise for the purpose of redressal of grievances or resolution of disputes of street vendors.
- (4) The Committee shall be constituted, consisting of minimum three members prescribed as below :-

(i) A person who has been a Civil Judge or Judicial Magistrate	- Chairperson
(ii) A person who has been a Municipal Commissioner or Chief Municipal Officer	- Member
(iii) A person is a social worker of repute working for the cause of urban poor	- Member:

Provided that no employee of the government or the urban local authority shall be appointed as members of the committee.

- (5) The tenure of the grievance redressal committee shall be three years.
- (6) The Chairperson and the members of the grievance redressal committee shall be paid such remuneration as may be decided by the Commissioner from time to time.

5. Form and manner of making application to Grievance Redressal Committee.-

- (1) Any street vendor who has any grievance or dispute in respect of anything done or any action taken under the provisions of the Act (except section 11 of the Act) or the rules made thereunder, may make an application in writing in Form-I, either himself/herself or through his/her representative, to the grievance redressal committee.
- (2) Such application shall be filed by the street vendor within a period of thirty days from the date of occurrence of any incident causing the grievance or dispute.
- (3) The Grievance Redressal Committee shall not entertain any application where, -
 - (a) The application is anonymous or it contains general and vague allegations;
 - (b) The matter is sub-judice in any court of law, tribunal or a judicial or a quasi-judicial authority;
 - (c) The matter is beyond the purview of the Act;
 - (d) The applicant has no locus standi to file an application; and
 - (e) Time barred application.

6. Manner of hearing by Grievance Redressal Committee.-

- (1) On receipt of an application under rule 5, the grievance redressal committee shall hold a preliminary hearing with the applicant to

determine as to whether there is a prima facie case and whether the balance of convenience is in favour of applicant. The street vendor may also pray for the interim relief during the pendency of such application.

- (2) The result of the preliminary hearing shall be pronounced at the conclusion of the hearing and shall be recorded in writing and communicated to the applicant. The grievance redressal committee may grant or refuse the interim relief, if any, prayed by the street vendor, with the reasons recorded in writing.
- (3) Where it has been held by the grievance redressal committee that there is a prima facie case, a notice shall be issued to the urban local authority containing the details of the grievance or dispute.
- (4) The Urban local authority, on receipt of such notice, shall file a reply within a period stipulated in the notice, and a copy of the reply shall also be furnished to the street vendor, free of cost.
- (5) The street vendor may file a counter reply within a period of two weeks from the date of receipt of written reply filed by the urban local authority.
- (6) The grievance redressal committee may order for a field enquiry by deputing one of its members or an official of the urban local authority in connection with the contentions made by the applicant or non-applicant and also with reference to the records placed before it.
- (7) The grievance redressal committee, after hearing both the parties, shall pass an order in writing, with the reasons for taking the decision, within a period of one month from the date on which hearing of both the parties concluded.
- (8) The decision of the grievance redressal committee shall be binding on the parties unless it is stayed by the Appellate Authority as prescribed in Rule 16 to which the appeal lies.

7. Constitution of Town Vending Committee.-

- (1) Every urban local authority shall constitute the town vending committee, provided that the Chief Executive Officer may if

considered necessary, can constitute more than one town vending committee or a town vending committee for each zone in their urban local authority.

(2) The Chief Executive Officer shall constitute the Town Vending Committee as follows:

- (a) The Chief Executive Officer shall be the ex-officio Chairperson of the Town Vending Committee;
- (b) Two Counselors nominated by the Chief Executive Officer;
- (c) Two officials namely:-
Officer-in-charge dealing with task related to Street vendors/Market and Health Officer, to be nominated by the concerned Chief Executive Officer;
- (d) Two members not below the rank of Deputy Superintendent of Police from traffic police and police in case of a Municipal Corporation and one member not below the rank of town inspector/station officer in case of a Municipality and Nagar Parishad, to be nominated by Superintendent of Police of the area;
- (e) One member of the Market Association/Traders Association or other such Association, nominated by the Chief Executive Officer on recommendation of such association;
- (f) One official not below the rank of Assistant Director in case of a Municipal Corporation and any other Town Planning Official for a Municipality and Nagar Parishad, to be nominated by the Joint Director, Town and Country Planning Department under whose jurisdiction the concerned urban local authority lies;
- (g) 10 or 40% of the total member of the town vending committee, whichever is more shall be elected by street vendor themselves conducted in the manner provided in the Schedule appended to these rules:

Provided that one third of members representing of street vendors shall be amongst women vendors:

Provided further that due representation shall be given to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and persons with disabilities, as per reservation roster prevalent in the district. Due representation shall also be given to minorities;

- (h) One member from the Resident Welfare Associations to be nominated by the concerned Chief Executive Officer;
 - (i) One member from the Non-Governmental Organization working in the areas to be nominated by the Chief Executive Officer;
 - (j) One member from the banking sector to be nominated by the Lead Bank Manager of the district;
 - (k) Chairperson of Town Vending Committee may invite any Expert/Any Person/Organization/ Association / Company as a special member to seek advice/assistance from them. The Officer in charge dealing with Street vendors/Market or any other official shall be nominated as Member Secretary by the Chairperson.
- (3) The term of the town vending committee shall be co-terminus with that of the term of the urban local authority.
 - (4) The Chairperson and Members shall not be eligible for any allowance for serving in the town vending committee. Expert/special members who have been associated for seeking assistance/advice shall be entitled to such allowances as may be decided by the Commissioner.
 - (5) The election process of the representatives of street vendors shall be completed within 6 months from the date of publication of this notification. During the intervening period town vending committee shall function provisionally following all the rules related to conduct of its business and activities.

8. Removal of a member of Town Vending Committee.-

If in the opinion of the town vending committee, any member of town vending committee persistently makes default in the performance

of his/her duties imposed on him/her by/or under the Act and these rules or exceeds or abuses its powers the town vending committee by simple majority can take decision to remove such member from committee:

Provided that such member shall be given reasonable opportunity of being heard before his/her removal.

9. Method of Filling Vacancy.-

Where any vacancy occurs in the existing town vending committee due to resignation, death, removal of any member or for any other reasons, same procedure as laid down in these rules shall be followed for filling up such vacancy.

10. Dissolution of Town Vending Committee.-

If in the opinion of the Commissioner, town vending committee persistently makes difficult in the performance of duties imposed on it by/or under the Act and these rules or exceeds or abuses its powers, the Commissioner may, by order, dissolve such town vending committee and order to constitute a fresh town vending committee.

11. Procedure for meeting of Town Vending Committee.-

- (1) The town vending committee shall decide in its first meeting, the various procedural aspects relating to conduct of its business.
- (2) The meetings of the town vending committee shall be held at least once in six months, but whenever it is necessary special meeting may be called by the Chairperson at any time:

Provided that the time between two consecutive meetings shall not be more than nine months.

- (3) The quorum for the meeting of the town vending committee shall be one third of its total members.
- (4) The time and venue of the meeting shall be decided by the Chairperson.
- (5) The Member-Secretary shall issue a notice at least seven days before of a scheduled meeting along with agenda notes:

Provided that if necessary the meeting can be called within short notice after taking due approval from the Chairperson

- (6) The agenda of the items to be discussed in the meeting shall be circulated to the members and uploaded on the official website. Each agenda item shall be accompanied by a detailed note bringing out the issues involved with the clear recommendation, if any, made by the administration.
- (7) The decision shall be taken on the basis of the majority of members present at the meeting.
- (8) No meeting shall be carried on in the absence of the quorum and where there is no quorum, the meeting shall be adjourned.
- (9) The minutes of the meeting shall be signed by the Chairperson and shall be placed in the subsequent meeting of the committee for confirmation.
- (10) The minutes of the meeting shall be uploaded on the website of urban local authority.
- (11) The first meeting of the newly constituted town vending committee shall be fixed within forty five days from the date of its constitution.

12. Status paper and street vending scenario shall be put up by the Urban Local Authority.-

After the procedural details are finalized by the Town Vending Committee, and before it takes up the regular business, the urban local authority shall circulate a status paper of the street vending scenario in the city or town amongst the members of the committee containing the following details, namely:-

- (1) The areas of street vending in the city or town indicated in the maps;
 - (2) The number of street vendors in the city or town where a survey has already been conducted, otherwise indication can be given about the approximate numbers;
 - (3) Information about the high footfall areas,, lean footfall areas and midrange areas from the street vending angle;
- 

- (4) The areas of seasonal vending, areas of niche market, areas of night bazars, the likely high footfall places in the areas under development;
- (5) A broad category of articles sold;
- (6) The problem areas from the traffic angle;
- (7) Enumeration of the relevant provisions of the Food Safety and Standards Act, 2006 (No. 34 of 2006).
- (8) Enumeration of health and hygiene aspect needs to be taken care of by the street vendors.

Explanation: Caution should be taken to ensure that the data presented are authentic to the extent possible and up-to-date. This will virtually be from the baseline data to facilitate the committee to take decision. These databases can be presented in the digital form if so desired by the committee; and

- (9) Any other relevant issue pertaining to street vending scenario etc.

13. Functions of Town Vending Committee.-

Without prejudice to any other provisions of the Act, a Town Vending Committee shall perform the following functions and duties, namely:-

- (1) To conduct surveys within the area of its jurisdiction to identify the street vendors in the area and ensure their accommodation in accordance with the norms, plan and the holding capacity within the area of its jurisdiction.
- (2) Where the committee considers it necessary to change zoning or the area to be allotted to individual vendor, it may draw attention of the urban local authority to suitably modify the plan. After obtaining opinion of the urban local authority, the committee shall take final decision thereon.
- (3) While making recommendations and suggesting any changes in the vending zones, the committee shall take into consideration the road width, traffic flow and the pedestrian movement in the area concerned.

- (4) To issue and renew certificate of vending to an eligible street vendor after obtaining an undertaking from him/her to comply with the terms and conditions subject to which the certificate of vending is issued as specified in rules/schemes.
- (5) To withhold, cancel or suspend certificate of vending of street vendors who commit breach of any of the conditions thereof or any other terms and conditions specified for regulating street vending under the Act or these rules or scheme made under the Act or where the town vending committee is satisfied that such certificate of vending has been secured by the vendor through misrepresentation or fraud.
- (6) To recommend to the urban local authority an area in its jurisdiction for declaration of the same to be a non vending area.
- (7) To identify sites and spaces for vending and hawking.
- (8) To regulate timings for vending to ensure non congestion of public spaces.
- (9) To ensure enforcement of corrective mechanism against defiance by street vendors.
- (10) To follow up cases of dispute pending before the dispute redressal committee and the urban local authority.
- (11) To furnish recommendations to the urban local authority in relation to the preparation of plan to promote the vocation of street vendors.
- (12) To publish the street vendor's charter specifying therein the time within which the certificate of vending shall be issued to the street vendors and time within which such certificate of vending shall be renewed and other activities to be performed within the time limit specified therein.
- (13) To maintain up to date records of registered street vendors and street vendors to whom certificate of vending has been issued in accordance with the provisions of the Act and the rules as prescribed in the Scheme.
- (14) To carry out social audit of its activities under the Act or these

rules or the scheme made there under.

- (15) To furnish from time to time to the Commissioner and the urban local authority such returns as may be prescribed under the Act, these rules and scheme.
- (16) To furnish comments to the Commissioner for undertaking promotional measures of making, available credit, insurance and other welfare schemes of social security for the street vendors.
- (17) To raise awareness among the people, the role of street vendors in the economy.
- (18) To declare, on the recommendations of the urban local authority, the natural market, weekly market, heritage market, festive market, seasonal market, night bazar and niche market with their exact location and the specific period in case of seasonal market or festive market. Where such markets are evolving a new, the committee shall get the necessary survey carried on of the area and such other aspects as it deems necessary and declare the place a market of any of the aforesaid mentioned categories, depending on the situation.
- (19) To perform such other functions as assigned by the urban local authority or the Commissioner for effective implementation of the provisions of the Act and rules made thereunder.

14. Office and Employees of the Committee.-

- (1) The town vending committee shall have its permanent office at such place as may be decided by the Chief Executive Officer.
- (2) The Chief Executive Officer shall provide adequate staff at their cost as requested by the town vending committee but no permanent burden shall be created by the committee on account of the establishment cost.

15. Appeal against decision or order of Town Vending Committee.-

- (1) Any person, aggrieved by the decision or order of the town vending committee, with respect to issue of certificate of vending or cancellation or suspension of certificate of vending may prefer an appeal to the Collector of the district under whose jurisdiction

urban local authority lies, within a period of thirty days from the date of communication of order/decision of town vending committee, in Form-II either himself/herself or through his/her representative.

- (2) A copy of order of the town vending committee against which appeal is filed shall be enclosed.
- (3) Any appeal filed after the expiry of the stipulated period specified in sub-rule (1) shall not be entertained by the Collector.

Provided that the Collector may condone the delay if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the stipulated period.

- (4) No appeal shall be entertained unless a copy thereof has been served upon town vending committee which has made the order appealed against prior to filing of such appeal and proof of such service has been filed along with the appeal.
- (5) The Collector shall dispose of such appeal within a period of thirty days from the date of filing of the appeal.
- (6) The Collector, after hearing both parties shall pass an order in writing with reasons for taking such decision.

16. Appeal against decision or order of Grievance Redressal Committee-

- (1) Any person, aggrieved by the decision of the grievance redressal committee may prefer an appeal in writing to the Divisional Revenue Commissioner, who has been authorized as a Appellate Authority for this purpose by the Commissioner, within a period of thirty days from the date of communication of order/decision of the grievance redressal committee in Form III either himself/herself or through his/her representative.
- (2) Any appeal filed after the expiry of the stipulated period specified in sub-rule (1) shall not be entertained by the Divisional Revenue Commissioner:

Provided that the Divisional Revenue Commissioner may condone the delay if it is satisfied that the appellant was prevented

by sufficient cause from preferring an appeal within the stipulated period.

- (3) No appeal shall be entertained unless a copy thereof has been served upon grievance redressal committee which has made the order appealed against, prior to filing of such appeal and proof of such service has been filed along with the appeal.
- (4) The Divisional Revenue Commissioner, on receipt of appeal, shall issue a notice to the parties concerned intimating the date and time of hearing. The hearing date shall be fixed within thirty days from the date of filing of appeal.
- (5) The Divisional Revenue Commissioner, after hearing both parties, shall pass an order in writing within a period of thirty days from the date on which hearing of both the parties concluded.

17. Manner of maintaining upto-date record of street vendors.-

- (1) The paper records of the town vending committee shall be maintained by its secretariat in the place allotted by the local authority and the soft copy should also be maintained suitably. All decisions taken by the town vending committee shall be placed on a website.
- (2) The records relating to the allotment of the space to the street vendors shall be kept for ten years. Other records may be preserved for a period of five years unless those are needed for any legal proceedings.
- (3) The street or road plan with the existing site of the street vending shall be a permanent record with the town vending committee.

18. Manner of publishing summary of Scheme-

The summary of the Scheme notified by the State Government under section 38 of the Act shall be published by the urban local authority/Urban Administration and Development Department in two local newspapers and shall also be uploaded on the website. Such publication of scheme by the urban local authority/Urban Administration and Development Department shall be made within 15 days from the date of scheme notified by the State Government.

19. Furnishing of returns to the State Government-

Every town vending committee shall furnish from time to time, return as required under the Act, these rules and as prescribed by the Commissioner, along with the details specified in Form VII and VIII, to the Commissioner.

20. Removal of difficulties-

In case of any doubt or difficulty arises in giving effect to the provisions of these rules, the same shall be referred to the State Government, on which the decision of State Government shall be final.

21. Repeal and Saving-

All rules, bylaws and orders if any, on this subject in force immediately before the commencement of these rules are hereby repealed and ceased to have effect.

Provided that, in respect of any order issued or any action taken under the so repealed rules, bylaws and orders it shall be deemed to have been issued or action taken under the corresponding provisions of these rules.

By order and in the name of the Governor of Madhya Pradesh,

GOPAL CHANDRADAD. Dy. Secy.

SCHEDULE

[See Rule 7(2)(g)]

Manner of election of the members of the Town Vending Committee from amongst the street vendors:-

- (1) The Chief Executive Officer shall by a notification express its intention to conduct elections for the members of a Town Vending Committee representing the street vendors of the area under the jurisdiction of the urban local authority.
- (2) The notification shall give the number of members which are to be elected. Such number shall not be less than 10 or 40% of total members of Town Vending Committee. Out of total members to be elected at

least one-third of members shall be amongst the women members and due representation shall be given to the Schedule Castes, Scheduled Tribes, Other Backward Classes and persons with disability amongst the members representing street vendors as per district reservation roster of the Government. Due representation shall also be given to the minority.

- (3) The Chief Executive Officer shall appoint a returning officer for the purpose of conducting election of members of the Town Vending Committee representing the street vendors of the area under the jurisdiction of the urban local authority.
- (4) The returning officer appointed under clause 3 shall conduct the elections for the members of the Town Vending Committee from amongst the street vendors in the manner provided hereinafter.
- (5) A mobile vendor, stationary vendor or street vendor shall be disqualified to be elected as member of Town Vending Committee if he/she is convicted of an offence involving moral turpitude or he/she is physically or mentally incapable of discharging duties as a member of a Town Vending Committee.
- (6) The Chief Executive Officer shall supervise, direct and control the conduct of elections of the members of a Town Vending Committee representing the street vendors in the area of its jurisdiction.
- (7) As soon as the notification expressing the intention of the Chief Executive Officer to conduct elections of the members of the Town Vending Committee representing the street vendors has been issued and appointment of a returning officer for conducting the election, the Urban local authority shall by a resolution determine the date, time and place for conduct of the election.
- (8) The notice of the resolution or decision of the Urban local authority shall be circulated among the street vendors engaged in the vocation of street vending in the area of Jurisdiction of the Town Vending Committee, by any of the following modes, namely:-
 - (a) by public notice to be published in two prominent daily Hindi newspapers;
 - (b) by local delivery;

- (c) by post under certificate of posting;
 - (d) by speed post or courier services, duly registered with competent authority as well as by affixing it on the notice board of the returning officer. The notice shall contain information regarding -
 - (i) the number of members to be elected including seats reserved for representation of Scheduled Tribes, Scheduled Castes, Other Backward Classes, women, persons with disabilities, minorities or any other specified categories;
 - (ii) The date, place and the hours between which nomination papers shall be filed, such date being not less than seven clear days before the date fixed for election or if that day happens to be public holiday, the next succeeding day which is not a public holiday;
 - (iii) The date and the hour for scrutinisation of the nomination papers;
 - (iv) The date, place and the hours of the polling.
- (9) The Chief Executive Officer shall prepare a list of street vendors engaged in the vocation of street vending in the area of jurisdiction of the Town Vending Committee as it stood on thirty days before the date fixed for inviting the nominations and publish copies of the said list by affixing it on the notice board of the Town Vending Committee, not less than ten days prior to the date fixed for inviting nominations. The list shall specify the registration number of certificate of street vending and name of the street vendor, name of father or husband, as the case may be, and his address. It shall be the duty of the Town Vending Committee or the Urban local authority, as the case may be, to prepare up-to-date register of street vendors and such other registers as the returning officer may require and handover such records or registers to the returning officer thirty days prior to the date fixed for the purpose of election. A copy of the list shall be supplied by the Town Vending Committee or the Chief Executive Officer or the returning officer, as the case may be, to any street vendor on payment of such fee as specified by the Urban local authority.

- (10) The nominations of the candidates for election shall be made in Form-IV which shall be supplied by the returning officer to any street vendor free of cost.
- (11) The candidate shall make a security deposit decided by Town Vending Committee (not less than Rs. 500) in cash or bank draft or pay order alongwith the nomination papers. If a candidate fails to get one sixth of the votes polled, the security deposit shall be forfeited to the Urban local authority.
- (12) Every nomination paper shall be presented in person by the candidate himself/herself or by his/her proposer or seconder to the returning officer. The returning officer shall enter on the nomination paper its serial number and certify the date and hour at which the nomination is received by him and shall immediately give a written acknowledgement for the receipt of nomination paper which shall bear the seal of the Town Vending Committee or returning officer. Any nomination paper which is not received on or before the date and time fixed for its receipt shall be rejected.
- (13) After nomination process is over, the returning officer shall proceed as under:-
 - (a) on the day following the date fixed for the receipt of nomination papers, shall take up the scrutiny of the nomination papers;
 - (b) shall examine the nomination papers and decide objections in respect of any nomination and may either on such objection or on his/her own motion and after such summary inquiry, if any, as the returning officer thinks necessary, reject any nomination:

Provided that the nomination of a candidate shall not be rejected merely on the ground of an incorrect description of his/her name or the name of his/her proposer or seconder or any other particulars relating to the candidate or his/her proposer or seconder, as entered in the list of street vendors referred to in clause 9 if the identity of the candidate, the proposer or seconder, as the case may be, is established beyond

reasonable doubt.

- (c) The returning officer shall give all reasonable facilities to the contesting candidates or the proposer or seconder as the case may be, to examine all the nomination papers and to satisfy themselves that the inclusion of the name of the contesting candidate is valid;
 - (d) The returning officer shall endorse on each nomination paper his/her decision accepting or rejecting the same and if the nomination paper is rejected she/he shall record in writing a brief statement of his reasons for such rejection; and
 - (e) The returning officer shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riots or affray or by causes beyond his/her control.
- (14) The list of valid nominations as decided by the returning officer with names in English alphabetical order and addresses of the candidates as given in the nomination papers shall be displayed or published on the same day on which the scrutiny of the nomination papers is completed.
- (15) Any candidate may withdraw his/her candidature by notice in writing signed by him/her and submitted in person, at any time after the presentation of his nomination paper but before 5:00 PM on the day following the day on which the valid nominations are published, to the returning officer of the Town Vending Committee. A notice of withdrawal of candidature once given shall be irrevocable.
- (16) Where the number of candidates whose nomination papers have been declared valid, does not exceed, the number of candidates to be elected, the returning officer shall announce the names of all such candidates and declare them to have been duly elected to the Town Vending Committee after closing hour of the day of withdrawal of candidatures fixed under clause (15) above. Where the number of candidates whose nominations are valid exceeds the number to be elected, the returning officer shall arrange for conducting a poll on the date fixed for the purpose. The returning officer may appoint one or

more polling officers as may be necessary for conducting the poll. The ballot paper to be used for the election shall be in Form-V.

- (17) The Urban local authority shall provide the returning officer with ballot boxes, ballot papers, copy of list of street vendors or voters and such other articles as may be necessary for the conduct of elections. The ballot box shall be designed in such a way that ballot papers can be inserted therein but cannot be taken out there from without the boxes being unlocked. A candidate contesting the election may, by a letter to the returning officer, appoint an agent to represent him/her for both the places where polling is held to identify the voters and to watch the recording of votes. Such letter shall contain consent in writing of the agent concerned in Form-VI.
- (18) The canvassing for votes by any person at any place where election is to be conducted shall be prohibited.
- (19) Immediately before the commencement of the poll, the returning officer shall show the empty ballot box to such persons as may be present at the time and shall then lock it up and fix his/her seal. The candidate or his/her agent may also affix his/her own seal, if he/she so desires.
- (20) Every street vendor or voter who desires to exercise his/her right to vote shall be supplied with a ballot paper containing the names of the contesting candidates arranged in English alphabetical order either printed, type written or cyclostyled, according to convenience, on the ballot paper. The ballot paper shall also bear the seal of the Town Vending Committee and also the initials of the returning officer, and further contain a column, for the voter to inscribe a mark [x] against the names of the persons to whom he/she wants to vote.
- (21) Each polling station and where there is more than one polling booth at a station, each such booth shall contain a separate compartment in which the street vendor or voters can record their votes in secrecy.
- (22) No ballot paper shall be issued to a street vendor or voter unless the polling officer is satisfied that the street vendor or the voter concerned is the same person as noted in the list furnished to him/her. On receipt of such ballot paper the street vendor or voter shall proceed to the polling compartment set up for the purpose and indicate the person or persons in whose favour he/she exercises his/her vote by inscribing

a mark [x] against the names of the candidate or candidates, as the case may be, and drop the ballot paper in the ballot box kept for the purpose with utmost secrecy. If owing to blindness or other physical infirmity or illiteracy, the street vendor or voter is unable to inscribe the mark on the ballot paper, the polling officer and where no such polling officer is appointed, the returning officer shall ascertain from him the candidate or candidates in whose favour he/she desired to vote, inscribe the mark [x] on his/her behalf and drop the ballot paper in the ballot box.

- (23) If at any stage of the polling, the proceedings are interrupted or obstructed by any riot or affray at such elections and it is not possible to take the poll for any sufficient cause, the returning officer may stop the polling recording his/her reason for such action in the minute book of the Town Vending Committee.
- (24) No street vendor or voter shall be admitted after the hours fixed for the poll but a voter who enters the premises where ballot papers are being issued before the close of the polling hour shall be issued the ballot paper and allowed him/her to vote.
- (25) The counting of votes shall take place immediately after closure of the poll. If this is not possible, the ballot box shall be sealed with the seal of the returning officer and the contesting candidates or their agents, if they so desire, and deposit such ballot box with the Urban local authority for custody. The returning officer shall then announce the next day of counting. The votes shall be counted by or under the supervision of the returning officer. Each candidate and his/her authorized agent shall have a right to be present at the time of counting. But absence of any candidate or his/her agent at the time of counting shall not vitiate the counting and the announcements of results by the returning officer. The number of votes secured by each candidate and the result of election shall be announced by the returning officer as soon as the counting is over.
- (26) The result of the elections shall also be recorded in the minute book of the Town Vending Committee and attested by the returning officer and shall also be notified immediately on the notice board of the Town Vending Committee.

- (27) In case of equal number of votes, the returning officer shall declare the election result by tossing coin.
- (28) The ballot paper shall be rejected by the returning officer if,-
- (a) It bears any mark by which the street vendor's vote can be identified;
 - (b) It does not bear the seal of the Town Vending Committee or the initials of the returning officer;
 - (c) The mark indicating the vote thereon is placed in such a manner as to make it doubtful to which the candidate vote has been casted; and
 - (d) Is so damaged or mutilated that its identity as a genuine ballot paper cannot be established.
- (29) After the declaration of the result of election, the same alongwith a report thereon shall be communicated to the Urban local authority as well as to the Commissioner by the returning officer, within three days from the date of declaration of the election result.
- (30) After the declaration of the result of the election, the returning officer shall handover the ballot paper and records relating to the elections of the members of the Town Vending Committee to the Chief Executive Officer in a sealed cover. These shall safely be preserved by the Urban local authority for a period of six months from the date of elections or till such time a dispute regarding elections, if any, filed is disposed of, whichever is later and shall thereafter be destroyed by the Urban local authority. A copy of the handing over and taking over record of election shall be sent to the Commissioner as well as to the Chief Executive Officer by the returning officer along with his/her report.
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FORM-I
(See rule 5)

**APPLICATION BY THE AGGRIEVED STREET VENDOR TO
THE GRIEVANCE REDRESSAL COMMITTEE**

Application No. of 20...

.....Applicant

Vs

.....Respondent (s)

1. Name of Applicant:
2. Address for correspondence:
3. ID Number given by local authority (if issued):
4. Number and the date of issue of certificate for vending:
5. Place or location of vending:
6. Zone or ward of vending:
7. Nature of vending:
 - (1) Mobile
 - (2) Stationary
 - (3) Any other (specify)
8. Grievance against which authority:
9. Details of grievance or dispute (give full details):
10. Documents supporting grievance or dispute:
 - 1.
 - 2.
 - 3.
11. Declaration:

I, ...the applicant,
do hereby solemnly declare that what is stated above is true to
the best of my knowledge and information and files this application
within the time limit prescribed in the rules.

Place:

Date:

Signature of applicant

FORM-II
(See rule 15)

**APPEAL BY THE AGGRIEVED STREET VENDOR TO THE
APPELLATE AUTHORITY AGAINST DECISION OF THE TOWN
VENDING COMMITTEE**

Application No. of 20....

.....Applicant

Vs

.....Respondent(s)

1. Name of Applicant:
2. Address for correspondence:
3. ID Number given by local authority (if issued):
4. Number and the date of issue of certificate for vending:
5. Place or location of vending:
6. Zone or ward of vending:
7. Nature of vending:
 - (1) Mobile
 - (2) Stationary
 - (3) Any other (specify)
8. Order of Town Vending Committee against which this appeal is preferred (Copy enclosed):
 - (1) Rejection of certificate of vending
 - (2) Suspension of certificate of vending
 - (3) Cancellation of certificate of vending
9. Details of grounds of Appeal (give full details):
10. Documents supporting appeal:
 - 1.
 - 2.
 - 3.

11. Declaration:

I, ..., the applicant, do hereby solemnly declare that what is stated above is true to the best of my knowledge and information and files this application within the time limit prescribed in the rules.

Place:

Date:

Enclosed:

Signature of applicant

FORM-III

(See rule 16)

**APPEAL BY THE AGGRIEVED STREET VENDOR TO THE
APPELLATE AUTHORITY AGAINST DECISION OF THE
GRIEVANCE REDRESSAL COMMITTEE**

Application No. of 20....

..... Applicant

Vs

..... Respondent(s)

1. Name of Applicant:
2. Address for correspondence:
3. ID Number given by local authority (if issued):
4. Number and the date of issue of certificate for vending:
5. Place or location of vending:
6. Zone or ward of vending:
7. Nature of vending:
 - (1) Mobile
 - (2) Stationary
 - (3) Any other (specify)
8. Decision of Grievance Redressal Committee against which appeal is

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preferred:

9. Details of grounds of appeal (give full details):

10. Documents supporting appeal:

1.

2.

3.

11. Declaration:

I, ...the applicant, do hereby solemnly declare that what is stated above is true to the best of my knowledge and information and files this application within the time limit prescribed in the rules.

Place:

Date:

Signature of applicant

FORM-IV

[See Rule 7(g) and clause 10 of Schedule]

NOMINATION FORM FOR ELECTION OF MEMBERS OF TOWN VENDING COMMITTEE

To,

The Returning Officer,

.....

Town Vending Committee,

.....

Sir,

I, ...wife/son/daughter of Shri.....,
street vendor, vending in the area of jurisdiction of the Town Vending
Committee, (Registration/certificate of Vending No.....)
hereby, propose the name of Shri/Smt./Ms.....wife/son/daughter

of Shri..... and a street vendor of the said Town Vending Committee (Registration/Certificate of Vending No.....) as a candidate for the post of member of the said committee for the election to be held on.....

Name and signature of the proposer.....

Registration/certificate of Vending No.....

**I, ... wife/son/daughter of Shri.....
Registration/certificate of vending No of Town
Vending Committee, hereby second the above proposal.**

Name and signature of the Seconder.....

Registration/certificate of Vending No.....

DECLARATION BY THE CANDIDATE

I, ... wife/son/daughter of Shri Caste
Scheduled Castes/Schedule Tribes/Other Backward Classes/Minority/
Physically Handicapped) street vendor, vending in the area of jurisdiction of
the Town Vending Committee (Registration/certificate of Vending
No.....) hereby agrees to my nomination for the election as
member of the Town Vending Committee.

I further declare that -

- (i) I am not employee of the said Town Vending Committee;
- (ii) I am eligible to vote; and
- (iii) I do not incur any disqualification for election as member of the said Town Vending Committee under the provisions of the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 (Central Act No. 7 of 2014) and the Madhya Pradesh Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2017 made thereunder.

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Name and signature of the Candidate.....

Registration/certificate of Vending No.....

(FOR OFFICE USE ONLY)

Received the nomination format.....(time and date)

Signature of Returning Officer.....

ACKNOWLEDGEMENT

Received the nomination form of.....presented by Shri/
Smt./Ms.....candidate/proposer/seconder for the election
at.....am/pm. On.....

Signature of the Returning Officer.....

Seal

FORM-V

[See Rule 7(2)(g) and clause 16 of Schedule]

**BALLOT PAPER FOR ELECTION OF MEMBER OF A TOWN
VENDING COMMITTEE**

Ballot paper of election of members of a Town Vending Committee whose elections are to be conducted under Schedule appended to the Madhya Pradesh Street Vendors (Protection of Livelihoods and Regulation of Street Vending) Rules, 2017.

The.....Street Vending Committee

.....
(address)

(Counterfoil)

Ballot paper for the post of.....

Date of election.....

Sr. No.....Registration/Certificate of vending no.....

Ballot Paper No.....

Please mark [x] against one of the candidates

S.No.	Name of the candidate	Registration/certificate of Vending No.	Mark for casting Vote

FORM-VI

[See Rule 7(2)(g) and clause 17 of Schedule]

Letter for Appointment of Election Agent/Counting Agent

I,.....wife/son/daughter of Shri
 Registration/certificate of vending
 No.....of.....Town Vending Committee contesting for election of
 member of the said committee, hereby nominate the following person as my
 election agent/counting agent in the election of Members of the said Town

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Vending Committee to be held on.....(specify date):-

Name and Signature of the Candidate.....

Registration/certificate of Vending No.

I, ...son/wife/daughter of Shri
address am willing to be the
election agent/counting agent.

Signature of the Agent

FORM - VII

(See rule 19)

**DETAILS OF THE PERIODICAL RETURNS TO BE FURNISHED
TO THE COMMISSIONER**

.....Municipal Corporation or Municipal
Council or Nagar Parishad at hereby submits the following details of
the periodical return for quarter ending.....[March
or June or September or December], 20.....

1. Details of certificate issued, rejected, suspended and cancelled during the quarter.

Details	Applications	Accepted or issued	Rejected	Renewed	Suspended	Cancelled
Pending at the beginning of the quarter						
Newly received						
Total						
Cleared during the quarter						
Pending at the end of the quarter						

2. Number of newly surveyed street vendors and their complete details including name of street vendor, address, place of vending, type of vending, etc.
3. Number of the meetings of the Town Vending Committee held.
4. Details of newly vending areas earmarked, if any, with its holding capacity.
5. Details of social audit done, if any.
6. Details of promotional measures taken for availability of credit, insurance and other welfare schemes of social security for street vendors.
7. Any other information, as directed by the State Government from time to time.

Signature

**Commissioner of Municipal Corporation/
Chief Municipal Officer of Municipal Council or Nagar Parishad**

FORM - VIII

(See rule 19)

ANNUAL RETURN OF THE TOWN VENDING COMMITTEE

1. Return for the financial year ended
2. Name of the Town Vending Committee filing the return.....
3. Name of the ULB.....
4. Total number of members of the Town Vending Committee.....
5. Total number of vendor-members in Town Vending Committee
6. Number of Town Vending Committee meetings held during the year...
7. Is proper record of meetings maintained? Yes/No
8. Has survey of vendors in the town been done? Yes/No
If yes, when was last survey done?.....
9. Is a Register of Vendors maintained? Yes/No
10. Was the register of vendors updated during the year? Yes/No
11. Number of registered vendors at the start of the year.....
12. Number of vendors de-registered during the year.....
13. Number of new vendors registered during the year.....
14. Number of registered vendors at the end of the year.....
15. Number of vendor markets in the town.....
16. Number of new vendor markets created during the year.....
17. Number of vendors linked to banking.....
18. Number of vendors who were provided housing.....
19. Number of vendor against whom cases were registered during the year....
20. Does the Town Vending Committee have a dedicated fund? Yes/No
If yes, balance in the fund at the end of the year.....
21. Good practices, if any, which the Town Vending Committee would like to share with other Town Vending Committees.....
(Attach separate sheet if needed)
22. Date of meeting in which the Annual Return was approved by the Town Vending Committee.....

Signature and Seal of the Authorized Person

NOTES OF CASES SECTION

Short Note

***(101)**

Before Mr. Justice Subodh Abhyankar

W.P. No. 11676/2012 (Jabalpur) decided on 27 April, 2017.

AMRAT SINGH DHAKAD

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10(6) & 14 – Delayed Charge Sheet and Show Cause Notice – Explanation – Held – Charges leveled for alleged misconduct of 21 years ago – Explanation for such inordinate delay is totally insufficient and vague – Delay not properly explained – No point to continue with such delayed charge sheet – Charge sheet and show cause notice are quashed – Petition allowed.

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10(6) व 14 – विलंबित आरोप-पत्र एवं कारण बताओ नोटिस – स्पष्टीकरण- अभिनिर्धारित – 21 वर्ष पूर्व के अभिकथित अवचार हेतु आरोप लगाये गये – ऐसे अत्याधिक विलंब के लिए स्पष्टीकरण पूर्णतः अपर्याप्त एवं अस्पष्ट है – विलंब उचित रूप से स्पष्ट नहीं किया गया – उक्त विलंबित आरोप पत्र बनाये रखने का कोई औचित्य नहीं – आरोप पत्र एवं कारण बताओ नोटिस अभिखंडित किये गये – याचिका मंजूर।

Cases referred:

(2005) 6 SCC 636, 2001 (2) MPLJ 54.

Atul Choudhary, for the petitioner.

Anubhav Jain, P.L. for the respondent No. 1/State.

Deepak Raghuwanshi, for the respondents No. 2 & 3.

Short Note

***(102)**

Before Mr. Justice J.K. Maheshwari

M.Cr.C. No. 10264/2016 (Jabalpur) decided on 30 January, 2017.

DAS MOTWANI (DR.)

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, (57 of 1994), Sections 17(2), 17(3)(b) & 28(1)(a) –

NOTES OF CASES SECTION

Cognizance of Offence – Complainant – Appropriate Authority – Cognizance was taken by the trial Court against petitioner on the complaint made by Chief Medical and Health Officer (CMHO) – Challenge to – Held – Until the complaint is signed and presented before competent Court by officer authorized or appropriate authority as notified by the State Government, Court cannot take cognizance on such complaint – The CMHO Bhopal has not been notified as officer authorized by appropriate authority to act as per Section 17(3) of the Act and no notification in this respect has been produced before this Court – It can safely be concluded that CMHO Bhopal has not been authorized by District Magistrate Bhopal as appropriate authority to make the complaint as required u/S 28(1) of the Act – Complaint has not been made by ‘appropriate authority’ or any officer authorized by the State government under the provisions of the Act of 1994 – Order of trial Court taking cognizance is not in accordance with law – Complaint made by CMHO Bhopal is quashed – Petition allowed.

गर्मधारण पूर्व और प्रसव पूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम, (1994 का 57), धाराएँ 17(2), 17(3)(बी) व 28(1)(ए) – अपराध का संज्ञान – परिवादी – समुचित प्राधिकारी – मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी (सी.एम.एच.ओ.) द्वारा प्रस्तुत परिवाद पर विचारण न्यायालय द्वारा याची के विरुद्ध संज्ञान लिया गया था – को चुनौती – अभिनिर्धारित – जब तक कि परिवाद को सक्षम न्यायालय के समक्ष राज्य शासन द्वारा यथा अधिसूचित प्राधिकृत अधिकारी या समुचित प्राधिकारी द्वारा हस्ताक्षरित एवं प्रस्तुत नहीं किया जाता, उक्त परिवाद पर न्यायालय संज्ञान नहीं ले सकता – सी.एम.एच.ओ., भोपाल को अधिनियम की धारा 17(3) के अनुसार, कार्रवाई करने के लिए समुचित प्राधिकारी द्वारा प्राधिकृत अधिकारी अधिसूचित नहीं किया गया है और इस संबंध में इस न्यायालय के समक्ष कोई अधिसूचना प्रस्तुत नहीं की गई है – यह सुरक्षित रूप से निष्कर्षित किया जा सकता है कि परिवाद करने के लिए समुचित प्राधिकारी के रूप में सी.एम.एच.ओ. भोपाल को जिला मजिस्ट्रेट भोपाल द्वारा प्राधिकृत नहीं किया गया है, जैसा कि अधिनियम की धारा 28(1) के अंतर्गत अपेक्षित है – परिवाद, 1994 के अधिनियम के उपबंधों के अंतर्गत ‘समुचित प्राधिकारी’ अथवा राज्य शासन द्वारा प्राधिकृत किसी अधिकारी द्वारा प्रस्तुत नहीं किया गया है – विचारण न्यायालय का संज्ञान लेने का आदेश विधि के अनुसरण में नहीं – सी.एम.एच.ओ., भोपाल द्वारा किया गया परिवाद अभिखंडित – याचिका मंजूर।

Cases referred:

ILR (2014) MP 1176, M.Cr.C Nos. 6408/2013, 6407/2013 & Cr.R. No. 1175/2012 decided on 21.01.2016, 2016 Cri.L.J. 4995, AIR 1954 SC 194, AIR 1966 All 221, SLP (Cri) No. 2226/2014 decided on 03.08.2015.

NOTES OF CASES SECTION

Anurag Gohil, for the applicant.

Sanjay Dwivedi, Dy. A.G. with Girish Kekre, G.A. and R.N. Yadav,
P.L. for the non-applicant/State.

Short Note

*(103)

Before Smt. Justice Anjali Palo

Cr.R. No. 1193/2002 (Jabalpur) decided on 22 May, 2017

DURGADAS NAWIT

...Applicant

Vs.

STATE OF M.P. & ors.

...Non-applicants

A. Penal Code (45 of 1860), Section 304-A – Conviction –
Deceased child aged about 3 years died in accident by bullock cart driven by applicant – Held – Applicant admitted the seizure of bullock cart from his possession and he never denied the statement of prosecution witnesses that he was driving the offending bullock cart at the time of incident – Deceased died because of crush under the wheel – Trial Court rightly convicted the accused – Applicant is 58 years old and faced trial, appeal and revision for 18 years and was in custody for more than 84 days, sentence of RI reduced from one year to six months – Revision partly allowed.

क. दण्ड संहिता (1860 का 45), धारा 304-ए – दोषसिद्धि – मृतक बालक, जिसकी आयु लगभग 3 वर्ष थी, की आवेदक द्वारा चलाई जा रही बैलगाड़ी से दुर्घटना में मृत्यु हो गई – अभিনিर्धारित – आवेदक ने अपने कब्जे से बैलगाड़ी का जब्त होना स्वीकार किया तथा उसने अभियोजन साक्षीगण के इस कथन से कभी इंकार नहीं किया कि वह घटना के समय आक्षेपित बैलगाड़ी चला रहा था – पहिये के नीचे कुचलने से मृतक की मृत्यु हुई – विचारण न्यायालय ने अभियुक्त को उचित रूप से दोषसिद्ध किया – आवेदक 58 वर्ष का है तथा 18 वर्षों तक विचारण, अपील एवं पुनरीक्षण का सामना करना पड़ा तथा 84 दिनों से अधिक अमिरक्षा में था, कठोर कारावास के दण्डादेश को एक वर्ष से घटाकर 6 माह किया गया – पुनरीक्षण अंशतः मंजूर।

B. Penal Code (45 of 1860), Section 304-A – Contributory Negligence – Doctrine of Reasonable Care – Held – It is not expected from children that they may take care of themselves while playing nearby road – Principle of contributory negligence would not apply in such offence – Doctrine of reasonable care imposes an obligation or a duty upon driver to care for the pedestrian on the road and this duty attains a higher degree where the pedestrian happens to be a child of tender years.

NOTES OF CASES SECTION

ख. दण्ड संहिता (1860 का 45), धारा 304-ए – योगदायी उपेक्षा – युक्तियुक्त सतर्कता का सिद्धांत – अभिनिर्धारित – बालकों से यह अपेक्षित नहीं है कि सड़क के समीप खेलते समय वे स्वयं का ध्यान रख सकें – ऐसे अपराध में योगदायी उपेक्षा का सिद्धांत लागू नहीं होगा – युक्तियुक्त सतर्कता का सिद्धांत, चालक पर सड़क पर पैदल चलने वालों के लिए सतर्कता रखने की बाध्यता या कर्तव्य अधिरोपित करता है – एवं यह कर्तव्य उच्चतर स्तर प्राप्त कर लेता है जहां पैदल चलने वाला, कोमल आयु का बालक होता है।

C. *Penal Code (45 of 1860), Section 304-A – Conviction – Benefit of Probation – Held –* The Apex Court has held that in cases of rash and negligent driving resulting in death or grievous injury, deterrence ought to be the main consideration while sentencing the offender – Every driver should have fear in his psyche that upon conviction Court will not treat him leniently – Benefit of Probation could not be accorded to accused guilty u/S 304-A IPC.

ग. दण्ड संहिता (1860 का 45), धारा 304-ए – दोषसिद्धि – परिवीक्षा का लाभ – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया है कि उतावलेपन एवं उपेक्षापूर्ण चालन के परिणामस्वरूप मृत्यु या गंभीर चोट वाले प्रकरणों में, अपराधी को दण्डादिष्ट करते समय निवारण मुख्य विचार होना चाहिए – प्रत्येक चालक के मन में यह भय होना चाहिए कि दोषसिद्धि होने पर, न्यायालय उसके साथ उदारतापूर्वक व्यवहार नहीं करेगा – भारतीय दण्ड संहिता की धारा 304-ए के अंतर्गत दोषी अभियुक्त को परिवीक्षा का लाभ प्रदान नहीं किया जा सकता।

Cases referred:

1992 Cr.L.J. 72, (2000) 5 SCC 82, AIR 2002 SC 1529.

Santosh Rai, for the applicant.

Amit Pandey, P.L. for the non-applicant/State.

Short Note

*(104)

Before Mr. Justice Sanjay Yadav

W.P. No. 5903/2016 (Jabalpur) decided on 7 March, 2017

MANVATI PANDEY (SMT.)

...Petitioner

Vs.

SMT. INDIRA CHATURVEDI

...Respondent

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 – Election Petition – Recounting of Votes – Petitioner elected as a Sarpanch by margin of one votes – Election petition filed by

NOTES OF CASES SECTION

respondent No.1 whereby prescribed authority issued direction for recounting of votes – Challenge to – Held – Prescribed authority instead of dwelling upon the allegations made in election petition, without formulating issues directed for recounting – No material evidence nor any findings that 20 votes were wrongly rejected – Prescribed authority not justified in directing recounting of votes merely because respondent No.1 lost by a margin of one vote – Petition allowed.

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 – निर्वाचन अर्जी – मतों की पुनर्गणना – याची, एक मत के अंतर से सरपंच के रूप में निर्वाचित हुआ – प्रत्यर्थी क्र. 1 द्वारा निर्वाचन अर्जी प्रस्तुत की गई जिसमें विहित प्राधिकारी ने मतों की पुनर्गणना का निदेश जारी किया गया – को चुनौती – अभिनिर्धारित – विहित प्राधिकारी ने निर्वाचन अर्जी में किये गये अभिकथनों पर विचार करने की बजाए, विवादकों को विरचित किये बिना पुनर्गणना हेतु निदेशित किया – कोई तात्त्विक साक्ष्य नहीं, न ही कोई निष्कर्ष कि 20 मतों को गलत रूप से अस्वीकार किया गया था – मात्र इसलिए कि प्रत्यर्थी क्र. 1 एक मत के अंतर से हारा था, विहित प्राधिकारी का मतों की पुनर्गणना निदेशित करना न्यायोचित नहीं – याचिका मंजूर।

Cases referred :

AIR 1996 M.P. 43, (2004) 6 SCC 331, ILR 2014 MP 113, (2016) 2 MPLJ 457, (2016) 3 MPLJ 437, (2005) 3 MPLJ 101, (2000) 8 SCC 355, (2004) 6 SCC 341, 2010 (1) MPLJ 115.

S.D. Mishra, for the petitioner.

S.P. Mishra, for the respondent No. 1.

Vikram Johri, for the respondent-State and its functionaries.

Short Note

*(105)

Before Mr. Justice S.C. Sharma

F.A. No. 998/2016 (Indore) decided on 20 July, 2017

MAYARAM.

...Appellant

Vs.

STATE OF M.P.

...Respondent

(Alongwith F.A. Nos. 1000/2016, 1001/2016, 1002/2016, 1003/2016, 1004/2016, 1005/2016, 1006/2016, 1007/2016, 1008/2016 & 1009/2016)

Land Acquisition Act (1 of 1894), Section 18 and Right to Fair

NOTES OF CASES SECTION

Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) – Compensation – Enhancement – Applicability of Act of 2013 – Ground – Vide notification dated 02.12.2011, land of appellants were acquired – On 30.09.2013, Land Acquisition Officer passed an award – During this period Act of 2013 was introduced which came into force on 01.01.2014 – Appellants filed reference application before the District Judge for enhancement of compensation as per the provisions of Act of 2013 – Reference was dismissed – Challenge to – Held – Till 01.01.2014, when Act of 2013 came into force, compensation was neither paid to the account of beneficiaries nor was deposited in Court and in such circumstances, appellants are entitled to receive compensation as per the provisions of the Act of 2013 – Matters remanded back to District Judge to pass fresh award calculating quantum of compensation as per provisions of Act of 2013 – Appeals allowed.

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 एवं भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – प्रतिकर – वृद्धि – 2013 के अधिनियम की प्रयोज्यता – आधार-अधिसूचना दिनांक 02.12.2011 के माध्यम से अपीलार्थीगण की भूमि अर्जित की गई थी – दिनांक 30.09.2013 को, भूमि अर्जन अधिकारी ने एक अधिनिर्णय पारित किया – इस अवधि के दौरान 2013 का अधिनियम पुरःस्थापित किया गया था जो कि दिनांक 01.01.2014 को प्रभाव में आया – अपीलार्थीगण ने 2013 के अधिनियम के उपबंधों के अनुसार प्रतिकर में वृद्धि हेतु जिला न्यायाधीश के समक्ष निर्देश आवेदन प्रस्तुत किया – निर्देश खारिज किया गया था – को चुनौती – अभिनिर्धारित – दिनांक 01.01.2014 तक, जब 2013 का अधिनियम प्रभाव में आया, प्रतिकर का न तो हिताधिकारियों के खाते में भुगतान किया गया था और न ही न्यायालय में जमा किया गया था तथा ऐसी परिस्थितियों में, अपीलार्थीगण 2013 के अधिनियम के उपबंधों के अनुसार प्रतिकर प्राप्त करने के हकदार हैं – मामला, 2013 के अधिनियम के उपबंधों के अनुसार प्रतिकर की मात्रा की गणना करते हुए नया अधिनिर्णय पारित करने हेतु जिला न्यायाधीश को प्रतिप्रेषित किया गया – अपीलें मंजूर।

Cases referred :

2015 SCC OnLine Del. 9789, (2014) 3 SCC 183, AIR 2017 BOMBAY 52.

Arjun Agrawal, for the appellant(s).

Reyush Jain, for the respondent-State.

NOTES OF CASES SECTION

Short Note

*(106)

Before Mr. Justice S.K. Awasthi

Cr.R.No. 728/2014 (Gwalior) decided on 12 April, 2017

MUNNI DEVI (SMT.) & anr.

...Applicants

Vs.

PRITAM SINGH GOYAL

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 125, Dissolution of Muslim Marriages Act, (8 of 1939), Section 2 and Hindu Marriage Act (25 of 1955), Section 5 – Maintenance – Second Marriage by Wife – Validity of Marriage – Entitlement – Family Court dismissed wife's application for maintenance – Challenge to – Held – Applicant was earlier married to one Hanif Khan and later she divorced her husband by pronouncing triple "Talak" and was married to present respondent – Held – Applicant has not validly dissolved her first marriage – Dissolution of marriage by Muslim wife can only be in terms of Section 2 of the Act of 1939 – Muslim wife cannot dissolve marriage by pronouncing triple "Talak" – As per Hindu marriage, with regard to validity of marriage, consummation of marriage is a relevant factor but not the only criteria for determination – Subsequent marriage with respondent is contrary to Section 5 of the Act of 1955 and is a nullity – Maintenance application not maintainable – Revision petition dismissed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125, मुस्लिम विवाह-विघटन अधिनियम (1939 का 8), धारा 2 एवं हिन्दू विवाह अधिनियम (1955 का 25), धारा 5 – भरणपोषण – पत्नी द्वारा दूसरा विवाह – विवाह की विधिमान्यता – हकदारी – कुटुंब न्यायालय ने भरण-पोषण हेतु पत्नी के आवेदन को खारिज किया – को चुनौती – अभिनिर्धारित – आवेदिका का पूर्व में विवाह हनीफ खान से हुआ था तथा बाद में उसने तीन बार "तलाक" कहकर अपने पति को तलाक दे दिया एवं वर्तमान प्रत्यर्थी से विवाह कर लिया था – अभिनिर्धारित – आवेदिका ने अपना पहला विवाह विधिमान्य रूप से विघटित नहीं किया था – मुस्लिम पत्नी द्वारा विवाह का विघटन केवल 1939 के अधिनियम की धारा 2 के निबंधनों के अनुसार हो सकता है – मुस्लिम पत्नी तीन बार "तलाक" कहकर विवाह का विघटन नहीं कर सकती – हिन्दू विवाह के अनुसार, विवाह की विधिमान्यता के संबंध में विवाहोत्तर संभोग एक सुसंगत कारक है परंतु अवधारण के लिए एकमात्र मापदंड नहीं है – प्रत्यर्थी के साथ बाद में किया गया विवाह, 1955 के अधिनियम की धारा 5 के प्रतिकूल है तथा अकृतता है – भरणपोषण का आवेदन पोषणीय नहीं – पुनरीक्षण याचिका खारिज।

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Cases referred :

1981 (2) SCC 509, 1982 (2) SCC 474, 2002 (2) SCC 73.

P.S. Bhadoriya, for the applicants.

Neha Malaliya, for the non-applicant.

Short Note

*(107)

Before Mr. Justice J.K. Maheshwari

W.P. No. 3158/2013 (Jabalpur) decided on 19 June, 2017

NANHE SINGH MARAVI

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

(Alongwith W.P. Nos. 10850/2013, 18999/2014, 10828/2014 & 15738/2016)

Service Law – Registration and Stamp Class III (Non-Ministerial) Service Recruitment Rules, M.P., 2007 and Registration and Stamp Class III Ministerial Service Recruitment Rules, M.P., 2007 – Appointment – Amalgamation of Post – Amendment in Rules – Petitioners applied for and got selected for post of Registration Clerk – Respondents took consent of petitioners for the post of Assistant Grade III on the ground that post of Registration Clerk and Assistant Grade III were amalgamated by decision of State Government – Later, after joining as Assistant Grade III, petitioners came to know that plea of amalgamation was incorrect and no such amendment in Rules has been made – Challenge to – Held – Post of Registration Clerk is governed by Non Ministerial Rules and post of Assistant Grade III is governed by Ministerial Rules of department – Amalgamation of these two posts merely on basis of a communication without amendment in Rules is not permissible – Cabinet has also not taken such decision of amalgamation – Till date, no amendment made in Rules – Petitioners applied for post of registration clerk and was duly selected on the said post – Stand taken by Government is fallacious and contrary to Rules – Petitioners be allowed to work on post of Registration clerk – Petitions allowed.

सेवा विधि – पंजीयन एवं मुद्रांक, तृतीय श्रेणी (अलिपिक वर्गीय) सेवा भर्ती नियम, म.प्र., 2007 – पंजीयन एवं मुद्रांक, तृतीय श्रेणी (लिपिक वर्गीय) सेवा भर्ती नियम, म.प्र., 2007 – नियुक्ति – पद का समामेलन – नियमों में संशोधन – याचिका ने पंजीयन लिपिक के पद के लिए आवेदन किये तथा चयनित हुए – प्रत्यर्थागण ने इस आधार पर सहायक

NOTES OF CASES SECTION

ग्रेड-III के पद हेतु याचीगण की सहमति ली कि पंजीयन लिपिक तथा सहायक ग्रेड-III के पद, राज्य सरकार के विनिश्चय द्वारा समामेलित किये गये थे – बाद में, सहायक ग्रेड-III के रूप में पदग्रहण करने के पश्चात् याचीगण को यह ज्ञात हुआ कि समामेलन का अभिवाक् गलत था तथा नियमों में ऐसा कोई संशोधन नहीं किया गया है – को चुनौती – अभिनिर्धारित – पंजीयन लिपिक का पद अलिपिक वर्गीय नियमों द्वारा शासित है तथा सहायक ग्रेड-III का पद विभाग के लिपिक वर्गीय नियमों द्वारा शासित है – नियमों में संशोधन किये बिना मात्र संसूचना के आधार पर इन दो पदों का समामेलन अनुज्ञेय नहीं है – मंत्रीमंडल ने भी समामेलन का उक्त विनिश्चय नहीं लिया है – आज दिनांक तक, नियमों में कोई संशोधन नहीं किया गया है – याचीगण ने पंजीयन लिपिक के पद हेतु आवेदन किये तथा कथित पद पर सम्यक् रूप से चयनित हुये थे – राज्य सरकार द्वारा उठाया गया कदम भ्रामक तथा नियमों के विपरीत है – याचीगण को पंजीयन लिपिक के पद पर कार्य करने की मंजूरी दी जाए – याचिकाएँ मंजूर।

Cases referred:

W.P. No. 4217/2013 decided on 31.10.2014, AIR 1990 SC 405, 1998 SCC (L&S) 532, 2008 AIR SCW 1850, (2013) 12 SCC 171.

L.C. Patne with Abhay Pandey and Sanjay Kumar Agrawal, for the petitioners.

Girish Kekre, G.A. for the respondents/State.

Short Note

*(108)(DB)

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

Cr.A. No. 987/2007 (Jabalpur) decided on 23 May, 2017

RAM CHARAN YADAV

...Appellant

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Section 302 & 84 and Evidence Act (1 of 1872), Section 105 – Murder – Conviction – Life Imprisonment – Insanity/Unsoundness of Mind – Proof of – Burden – Appellant killed his wife hitting her by a 'musal' – Plea of unsoundness of mind – Held – When a person pleads for defence u/S 84 IPC, burden of proof in its strictest sense, is upon accused to establish the exception – In the instant case, there is no specific documents regarding unsoundness of mind of appellant but the evidence establishes that appellant has been a mental patient since last 8-9 years and he was being treated at different places for his mental

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illness – At the time of incident, due to unsoundness of mind, he was incapable of knowing the nature of the act and that is why he was doing acts which were contrary to law which constitute insanity – Entitled for benefit u/S 84 IPC – Appellant acquitted of the charge – Appeal allowed.

दण्ड संहिता (1860 का 45), धारा 302 व 84 एवं साक्ष्य अधिनियम (1872 का 1), धारा 105 – हत्या – दोषसिद्धि – आजीवन कारावास – उन्मत्तता/चित्त-विकृति – का सबूत – भार – अपीलार्थी ने अपनी पत्नी पर एक 'मूसल' द्वारा आघात कर, उसे जान से मार दिया – चित्त-विकृति का अभिवाक् – अभिनिर्धारित – जब कोई व्यक्ति धारा 84 भा.दं.सं. के अंतर्गत प्रतिरक्षा हेतु अभिवाक् करता है, सबूत का भार उसके कठोरतम अर्थ में, अपवाद स्थापित करने के लिए अभियुक्त पर है – वर्तमान प्रकरण में, अपीलार्थी के चित्त-विकृति संबंधी कोई विनिर्दिष्ट दस्तावेज नहीं किंतु साक्ष्य स्थापित करता है कि अपीलार्थी पिछले 8-9 वर्षों से मानसिक रोगी रहा है और उसकी मानसिक रूग्णता हेतु विभिन्न स्थानों पर उसका उपचार किया जा रहा था – घटना के समय, चित्त-विकृति के कारण वह कृत्य के स्वरूप का ज्ञान होने में असमर्थ था और इसलिए वह ऐसे कृत्य कर रहा था जो विधि के विपरीत थे, जो उन्मत्तता गठित करते हैं – धारा 84 भा.दं.सं. के अंतर्गत लाम हेतु हकदार – अपीलार्थी को आरोप से दोषमुक्त किया गया – अपील मंजूर।

The judgment of the Court was delivered by : S.K. PALO, J.

Case referred:

AIR 1964 Supreme Court 1563.

Subodh Kathar, for the appellant.

R.K. Kesharwani, P.L. for the respondent.

Short Note

*(109)

Before Mr. Justice J.K. Maheshwari

M.Cr.C. No. 12638/2013 (Jabalpur) decided on 20 March, 2017

RAMESH TIWARI & ors.

...Applicants

Vs.

STATE OF M.P.

...Non-applicant

A. *Excise Act, M.P. (2 of 1915), Sections 34(1), 61(1) & (2) – Limitation for Prosecution – Special Sanction – Quashment – On 18.10.2011, offence registered against petitioners u/S 34(1) of the Act of 1915 and on 11.10.2012 challan was filed and accordingly Court took cognizance – Petitioner filed preliminary objection u/S 61(2) of the Act which was dismissed – Challenge to – Held – As per Section 61(1) and (2)*

NOTES OF CASES SECTION

of the Act of 1915, prosecution must be instituted within a period of six months from the date on which offence is alleged to have been committed or after the said period with the special sanction of State Government otherwise no Judicial Magistrate shall take cognizance as the same is not permissible under the Act – Such compliance is mandatory – Criminal Case pending against petitioners is quashed – Application allowed.

क. *आबकारी अधिनियम, म.प्र. (1915 का 2), धाराएँ 34(1), 61(1) व (2) – अभियोजन हेतु परिसीमा – विशेष मंजूरी – अभिखंडन* – दिनांक 18.10.2011 को याचीगण के विरुद्ध 1915 के अधिनियम की धारा 34(1) के अंतर्गत अपराध पंजीबद्ध किया गया तथा दिनांक 11.10.2012 को चालान प्रस्तुत किया गया था एवं तदनुसार न्यायालय ने संज्ञान लिया – याची ने अधिनियम की धारा 61(2) के अंतर्गत प्रारंभिक आक्षेप प्रस्तुत किया जिसे खारिज किया गया था – को चुनौती – अभिनिर्धारित – अधिनियम, 1915 की धारा 61(1) एवं (2) के अनुसार अभियोजन उस तिथि जब अपराध कारित किया जाना अभिकथित है, से 6 माह की अवधि के भीतर या राज्य शासन की विशेष मंजूरी से कथित अवधि के पश्चात् संस्थित किया जाना चाहिए अन्यथा कोई न्यायिक मजिस्ट्रेट संज्ञान नहीं लेगा क्योंकि अधिनियम के अंतर्गत उक्त अनुज्ञेय नहीं है – ऐसा अनुपालन आज्ञापक है – याचीगण के विरुद्ध लंबित दण्डिक प्रकरण अभिखंडित किया गया – आवेदन मंजूर।

B. *Criminal Practice – Excise Act, M.P. (2 of 1915), Section 61(1) & (2) and Criminal Procedure Code, 1973 (2 of 1974), Section 468 – Limitation for Prosecution – Held – M.P. Excise Act is a special enactment and its provisions shall prevail over the provisions of Cr.P.C. in so far as it relates to limitation of prosecution is concerned – Provisions of general statute would apply only to the effect to which nothing is specified in special enactment.*

ख. *दण्डिक पद्धति – आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 61(1) व (2) एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 468 – अभियोजन के लिए परिसीमा – अभिनिर्धारित – म.प्र. आबकारी अधिनियम एक विशेष अधिनियमिती है तथा जहाँ तक यह अभियोजन की परिसीमा से संबंधित है, इसके उपबंध दण्ड प्रक्रिया संहिता के उपबंधों पर अभिमावी होंगे – साधारण कानून के उपबंध केवल उस प्रभाव के लिए लागू होंगे जिसके लिए विशेष अधिनियमिती में कुछ भी विनिर्दिष्ट नहीं किया गया है।*

Cases referred :

AIR 2007 SC 2762, 1992 MPLJ 454, 1991 MPLJ 445.

Ashok Agrawal, for the applicants.

Manjeet Chuckal, P.L. for the State.

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Short Note

**(110)(DB)*

*Before Mr. Justice Hemant Gupta, Chief Justice &
Mr. Justice C.V. Sirpurkar*

Cr.A. No. 805/2006 (Jabalpur) decided on 20 June, 2017

RAMSUJAN KOL @ MUNDA

...Appellant

Vs.

STATE OF M.P. & ors.

...Respondent

A. Penal Code (45 of 1860), Section 302 – Murder – Conviction – Appreciation of Evidence – Eye Witnesses – Related Witnesses – Motive – Recovery of Weapon – Dispute arose on account of failure of accused to pay price of eggs purchased from deceased – Accused assaulted deceased with axe and inflicted 8 injuries on her head, neck and back – Held – There are 4 eye witnesses who deposed the incident and there is nothing to disbelieve their testimony – They cannot be disbelieved simply because they were related to deceased because it was natural for the family members to go together to collect firewoods – Mere failure of investigating agency to recover the weapon of offence would not discredit the entire prosecution case – Further held – Where a case is based on direct evidence, correctness of conviction cannot be tested on touchstone of motive – Accused rightly convicted – Appeal dismissed.

क. दण्ड संहिता (1860 का 45), धारा 302 – हत्या – दोषसिद्धि – साक्ष्य का मूल्यांकन – चक्षुदर्शी साक्षीगण – संबंधित साक्षीगण – हेतु – शस्त्र की बरामदगी – मृतक से क्रय किये गये अंडों के मूल्य का मुग्तान करने में अभियुक्त की विफलता के कारण विवाद उत्पन्न हुआ – अभियुक्त ने मृतक पर कुल्हाड़ी से हमला किया तथा उसके सिर, गर्दन एवं पीठ पर आठ चोटें पहुंचाई – अभिनिर्धारित – चार चक्षुदर्शी साक्षीगण हैं जिन्होंने घटना के बारे में कथन किया है एवं उनके परिसाक्ष्य पर अविश्वास करने हेतु कुछ नहीं है – मात्र इस कारण से उन पर अविश्वास नहीं किया जा सकता कि वे मृतक से संबंधित थे क्योंकि जलाऊ लकड़ियां एकत्रित करने के लिए एक साथ जाना, परिवार के सदस्यों के लिए स्वाभाविक था – मात्र अपराध के शस्त्र की बरामदगी में अन्वेषण एजेन्सी की विफलता, संपूर्ण अभियोजन प्रकरण को अविश्वसनीय नहीं बनाती – आगे अभिनिर्धारित – जहां एक प्रकरण प्रत्यक्ष साक्ष्य पर आधारित है, दोषसिद्धि की सत्यता को हेतु की कसौटी पर नहीं परखा जा सकता – अभियुक्त उचित रूप से दोषसिद्ध किया गया – अपील खारिज।

B. Penal Code (45 of 1860), Section 84 & 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Murder – Plea of

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Unsoundness of Mind – Proof – Examination of Accused – Held – After assaulting deceased, appellant ran away from spot, not only crossed the hill but also jumped in the reservoir to evade arrest – He also tried to wash his blood stained clothes, trying to obliterate the evidence of crime – Cannot be said to be a person of unsound mind at the time of incident – Plea of unsoundness of mind needs to be specifically taken and proved – Appellant has not examined any witness in this regard nor even made a mention in his examination u/S 313 Cr.P.C. about such illness – Not eligible for protection u/S 84 IPC.

ख. दण्ड संहिता (1860 का 45), धारा 84 व 302 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 – हत्या – चित्तविकृति का अभिवाक् – सबूत – अभियुक्त का परीक्षण- अभिनिर्धारित – मृतक पर हमला करने के पश्चात्, अपीलार्थी घटनास्थल से भाग गया, गिरफ्तारी से बचने के लिए न केवल पहाड़ी पार की बल्कि जलाशय में छलांग भी लगा दी – उसने अपराध के साक्ष्य को मिटाने की कोशिश करते हुए, अपने रक्त रंजित कपड़ों को धोने का प्रयत्न भी किया – घटना के समय, एक विकृतचित्त वाला व्यक्ति नहीं कहा जा सकता – चित्तविकृति के अभिवाक् को विनिर्दिष्ट रूप से लिये जाने तथा साबित करने की आवश्यकता है – अपीलार्थी ने इस संबंध में किसी साक्षीगण का परीक्षण नहीं किया है और न ही ऐसी अस्वस्थता के बारे में दण्ड प्रक्रिया संहिता की धारा 313 के अंतर्गत अपने परीक्षण में कोई उल्लेख किया है – भारतीय दण्ड संहिता की धारा 84 के अंतर्गत संरक्षण के योग्य नहीं।

The judgment of the Court was delivered by : C.V. SIRPURKAR, J.

Cases referred :

AIR 2008 SC 12, 2003 (1) Crimes 180 (SC), AIR 1972 SC 2443.

H.S. Rajput, for the appellant.

Bramdatt Singh, G.A. for the respondent/State.

Short Note

*(111)(DB)

Before Mr. Justice S.K. Gangele & Mr. Justice Anurag Shrivastava

Cr.A. No. 1123/1994 (Jabalpur) decided on 15 May, 2017

RATIA BAI

...Appellant

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Section 302 – Murder – Conviction – Life Imprisonment – Testimony of Child Witness – Credibility –

NOTES OF CASES SECTION

Appreciation of Evidence – Accused assaulted the deceased by axe – Child witness aged about 11 years – Held – It is settled law that evidence of child witness is not required to be rejected *per se*, but Court, as a rule of prudence considers such evidence with close scrutiny and only on being convinced about quality of such evidence and its reliability, bases the conviction by accepting the deposition of child witness – In the present case, child witness has not made any contradictory statement and there is no material discrepancy found in her deposition – Statement of other witnesses not challenged in cross examination and are trustworthy – Statement of child witness corroborated by other witnesses – Extra judicial confession by accused and last seen circumstances is also proved – Trial Court rightly convicted the accused – Appeal dismissed.

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – दोषसिद्धि – आजीवन कारावास – बाल साक्षी का परिसाक्ष्य – विश्वसनीयता – साक्ष्य का मूल्यांकन – अभियुक्त ने मृतक पर कुल्हाड़ी से हमला किया – बाल साक्षी की आयु लगभग 11 वर्ष – अभिनिर्धारित – यह सुस्थापित विधि है कि बाल साक्षी के साक्ष्य को अपने आप में अस्वीकार किया जाना अपेक्षित नहीं है, परंतु न्यायालय, प्रज्ञा के नियम के अनुसार सूक्ष्म संवीक्षा के साथ ऐसे साक्ष्य पर विचार करता है तथा ऐसे साक्ष्य की गुणवत्ता तथा उसकी विश्वसनीयता के बारे में विश्वास हो जाने पर, बाल साक्षी के अभिसाक्ष्य का स्वीकार करते हुए, दोषसिद्धि आधारित करता है – वर्तमान प्रकरण में, बाल साक्षी ने कोई विरोधाभासी कथन नहीं किये हैं तथा उसके अभिसाक्ष्य में कोई तात्त्विक विसंगति नहीं पाई गई है – अन्य साक्षीगण के कथन को प्रतिपरीक्षण में चुनौती नहीं दी गई एवं भरोसेमंद हैं – बाल साक्षी के कथन की अन्य साक्षीगण द्वारा संपुष्टि की गई – अभियुक्त द्वारा न्यायिकेत्तर संस्वीकृति तथा अंतिम बार साथ देखे जाने की परिस्थितियां भी साबित हुई हैं – विचारण न्यायालय ने अभियुक्त को उचित रूप से दोषसिद्ध किया – अपील खारिज।

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

Case referred:

(2009) 12 SCC 731=AIR 2009 SC 2144.

None present for the appellant.

Prakash Gupta, P.L. in Legal Aid assisted the Court for the appellant.

B.P. Pandey, G.A. for the respondent/State.

NOTES OF CASES SECTION

Short Note

*(112)

Before Mr. Justice Rajeev Kumar Dubey

M.Cr.C. No. 8488/2016 (Indore) decided on 1 March, 2017

SARDARSINGH

...Applicant

Vs.

SMT. CHAINKUNWAR

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 482 – Maintenance – Second Wife – Entitlement – Validity of Marriage – Respondent filed application u/S 125 Cr.P.C. whereby Magistrate directed applicant/husband to pay Rs. 3000 pm as maintenance – Revision filed by husband was also dismissed – Challenge to – Held – Applicant earlier married with one Premkunwarbai then again married respondent during lifetime of first wife – It is not a case where respondent married applicant knowingly the subsistence of his first marriage or that his first wife is alive – Respondent entitled for maintenance – Further held – Applicant in his cross examination stated that he did not want to keep the respondent with him which shows that applicant deserted respondent without sufficient cause and thus respondent had sufficient reason to live separately and claim maintenance – Amount awarded cannot be said to be excess – Application dismissed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 482 – भरण-पोषण – दूसरी पत्नी – हकदारी – विवाह की विधिमान्यता – प्रत्यर्थी ने दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत आवेदन प्रस्तुत किया जिस पर मजिस्ट्रेट ने भरण-पोषण के रूप में 3000/- रु. प्रतिमाह का भुगतान करने हेतु, आवेदक/पति को निदेशित किया – पति द्वारा प्रस्तुत किये गये पुनरीक्षण को भी खारिज किया गया था – को चुनौती – अभिनिर्धारित – आवेदक ने पूर्व में प्रेमकुंवरबाई के साथ विवाह किया था फिर पहली पत्नी के जीवनकाल के दौरान ही प्रत्यर्थी से पुनः विवाह किया – यह वैसा प्रकरण नहीं है जहां प्रत्यर्थी ने आवेदक के पहले विवाह का विद्यमान होना या उसकी पहली पत्नी का जीवित होना जानते हुए, उसके साथ विवाह किया – प्रत्यर्थी, भरण-पोषण हेतु हकदार है – आगे अभिनिर्धारित – आवेदक ने अपने प्रतिपरीक्षण में कथन किया कि वह प्रत्यर्थी को अपने साथ नहीं रखना चाहता था जो यह दर्शाता है कि आवेदक ने बिना किसी युक्तियुक्त कारण के प्रत्यर्थी का अभित्यजन किया एवं इस प्रकार प्रत्यर्थी के पास पृथक निवास करने का तथा भरण-पोषण हेतु दावा करने का पर्याप्त कारण है – अधिनिर्णीत राशि अधिक नहीं कही जा सकती – आवेदन खारिज।

Cases referred :

NOTES OF CASES SECTION

(2014) 1 SCC 188, (1988) 1 SCC 530, (2005) 3 SCC 636.

Sunil Kumar Yadav, for the applicant.

Saeed Khan, for the non-applicant.

Short Note

*(113)

Before Mr. Justice Sanjay Yadav

W.P. No. 4564/1999 (Jabalpur) decided on 7 March, 2017

SHIVCO L.P.G. BOTTLING CO. & anr.

...Petitioners

Vs.

M.P. ELECTRICITY BOARD & ors.

...Respondents

Electricity Act (36 of 2003), Section 62(3) and Gas Cylinder Rules, 1981, Rule 2(xxv) – Tariff – Manufacture of Gas – Commercial Activity or Industrial Activity – Held – Petitioner engaged in LPG bottling and filling of petromax and activities carried out in such plants cannot come within the purview of an industrial activity but fall under commercial category – Respondents justified in charging the tariff at commercial rate – Further held – The prayer of petitioner to direct respondents to raise bill for actual electricity consumed and not at minimum tariff cannot be accepted in view of the Apex Court judgment in AIR 2001 SC 238 – Petition dismissed.

विद्युत अधिनियम (2003 का 36), धारा 62(3) एवं गैस सिलिंडर नियम, 1981, नियम 2(xxv) – टैरिफ – गैस का विनिर्माण – वाणिज्यिक क्रियाकलाप या औद्योगिक क्रियाकलाप – अभिनिर्धारित – याची, एलपीजी बॉटलिंग एवं पेट्रोमेक्स की फिलिंग में लगा हुआ था और ऐसे संयंत्रों में किये जा रहे क्रियाकलाप औद्योगिक क्रियाकलाप की परिधि के भीतर नहीं आ सकते किंतु वाणिज्यिक क्रियाकलाप की श्रेणी के अंतर्गत आते हैं – प्रत्यर्थीगण द्वारा वाणिज्यिक दर पर टैरिफ प्रभारित किया जाना न्यायोचित – आगे अभिनिर्धारित – याची की प्रत्यर्थीगण को वास्तविक विद्युत उपभोग हेतु बिल जारी करने और न्यूनतम टैरिफ पर नहीं करने के लिए निदेशित किये जाने की प्रार्थना, AIR 2001 SC 238 में रिपोर्टेड सर्वोच्च न्यायालय के निर्णय को दृष्टिगत रखते हुए स्वीकार नहीं की जा सकती – याचिका खारिज।

Cases referred:

AIR 2001 SC 238, Special Civil Application Nos. 373 and 6220 of 2001 decided on 06.05.2010 : Manupatra : Manu/GJ/0203/2010, 2016 ELR (APTEL) 1191, (2002) 8 SCC 715.

Ramsuphal Verma, for the petitioners.

M.L. Jaiswal with Pradeep Banerjee, for the respondents.

I.L.R.[2017]M.P. Chhanga @ Manoj Vs. State of M.P. (SC) 1795

I.L.R. [2017] M.P., 1795

SUPREME COURT OF INDIA

Before Mr. Justice Rohinton Fali Nariman & Mr. Justice Mohan M. Shantanagoudar

Cr.A. No. 898/2005 decided on 28 February, 2017

CHHANGA @ MANOJ

...Appellant

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 307 r/w Section 34 – Appreciation of Evidence – Conviction and Sentence – Appellant and four others were accused – Two bombs were thrown on complainant whereby complainant suffered simple injuries – High Court confirmed the conviction and sentence – Challenge to – Held – Present appellant specifically shouted “kill him, he should not be spared, he habitually reports” – It is not essential that bodily injury capable of causing death should have been inflicted in order to make out a charge u/S 307 IPC – It is enough, if there is an intention coupled with some common act in execution thereof – In the instant case, nature of weapon used pre-dominates as two bombs were hurled, which are lethal weapons by which it can be inferred that intention was to cause death – Further held – It is true that injuries were simple but this is only because of fortuitous circumstances that bombs exploded at a distance far from the injured/complainant – Accused/ appellant coming alongwith four other persons, committed the offence and going back together with them and appellant shouting the words “kill him” certainly attract the charge u/S 307 r/w Section 34 IPC – Intention was to kill the complainant as he was an informer – Crime committed is heinous in nature and it appears that appellant has got away lightly – No interference required – Appeal dismissed. (Paras 7, 8 & 10)

क. दण्ड संहिता (1860 का 45), धारा 307 सहपठित धारा 34 – साक्ष्य का अधिमूल्यन – दोषसिद्धि एवं दण्डादेश – अपीलार्थी एवं चार अन्य अभियुक्त थे – परिवादी पर दो बम फेंके गये जिससे परिवादी ने साधारण क्षतियां सहन की – उच्च न्यायालय ने दोषसिद्धि एवं दण्डादेश की पुष्टि की – को चुनौती – अभिनिर्धारित – वर्तमान अपीलार्थी विनिर्दिष्ट रूप से चिल्लाया था “मार डालो उसे, उसे छोड़ना नहीं चाहिए, वह आदतन रिपोर्ट करता है” – धारा 307 भा.द.सं. के अंतर्गत आरोप निर्मित करने हेतु यह आवश्यक नहीं कि मृत्यु कारित कर सकने वाली शारीरिक क्षति पहुंचाई गई हो – यह पर्याप्त है, यदि उसके निष्पादन में आशय के साथ-साथ कोई सामान्य कृत्य है –

वर्तमान प्रकरण में, प्रयुक्त शस्त्र का स्वरूप प्रधानता रखता है क्योंकि दो बम फेंके गये थे, जो कि घातक शस्त्र हैं जिसके द्वारा यह निष्कर्ष निकाला जा सकता है कि मृत्यु कारित करने का आशय था – आगे अभिनिर्धारित – यह सत्य है कि क्षतियां साधारण थी परंतु ऐसा केवल भाग्यशाली परिस्थितियों के कारण है कि बम, आहत/परिवादी से काफी दूरी पर फटे थे – अभियुक्त/अपीलार्थी का चार अन्य व्यक्तियों के साथ आना, अपराध कारित करना और उनके साथ वापस जाना तथा अपीलार्थी का यह शब्द “मार डालो उसे” चिल्लाना, निश्चित रूप से धारा 307 सहपठित धारा 34 भा.दं.सं. का आरोप आकर्षित करता है – परिवादी को जान से मारने का आशय था क्योंकि वह खबरी था – कारित किया गया अपराध जघन्य स्वरूप का है और यह प्रतीत होता है कि अपीलार्थी थोड़े में बच गया – किसी हस्तक्षेप की आवश्यकता नहीं – अपील खारिज।

B. Practice and Procedure – Criminal Trial – Reducing to the sentence already undergone – Effect – Held – Undue sympathy leading to imposition of inadequate sentence would do more harm to justice system and would undermine public confidence in efficacy of law. (Para 11)

ख. पद्धति एवं प्रक्रिया – दण्डिक विचारण – भुगताए जा चुके दण्डादेश तक घटाया जाना – प्रभाव – अभिनिर्धारित – अपर्याप्त दण्डादेश की ओर ले जाने वाली असम्यक् सहानुभूति से न्याय प्रणाली की अधिक हानि होगी और विधि की प्रभावकारिता में जनता के विश्वास को कमजोर करेगी।

Cases referred:

(2009) 4 SCC 26, (2015) 11 SCC 366, (1991) 3 SCC 471.

JUDGMENT

The Judgment of the Court was delivered by :
ROHINTON FALI NARIMAN, J. :- This is an appeal filed by Accused No.4 – appellant herein who was convicted under Section 307 read with Section 34 of the Indian Penal Code along with the other accused and sentenced to imprisonment for a period of three years by the learned Additional Sessions Judge vide Judgment dated 8th January, 1990. In an appeal preferred to the High Court of Madhya Pradesh at Jabalpur, the said Court concurred with the findings of the learned Additional Sessions Judge and dismissed the appeal of the appellant - herein.

2. Apparently, the accused were inimical to one Gyan Singh, who was the younger brother of the informant. PW 1, the informant, Man Singh was sitting in a Bettle Shop, and the appellant came there with three other persons,

one of whom, Rakesh, threw a bomb at him with intent to kill him. The bomb exploded dashing the back portion of the bettle shop, which caused injury to PW 1's left thigh, after which the said Rakesh also threw another bomb which dashed against the window of the said shop and exploded. The role of the present appellant before us is succinctly stated by the learned Additional Sessions Judge, who said that the accused – Chhanga @ Manoj – the present appellant specifically stated “kill him, he should not be spared, he habitually reports”. All four accused persons came together and ran away together from the spot of the incident.

3. The deposition of injured eye-witness PW 1 was believed by both the Courts below. He was fully corroborated by PW 6, who was the father of the injured eye-witness, and PW 7, who was a third independent eye-witness. PWs 4, 5 and 9 were declared hostile, and in paragraph 11 of the Judgment of the learned Additional Sessions Judge, the statements of these witnesses were taken into account and were condemned.

4. The learned Additional Sessions Judge held that the common intention under Section 34 was proved not only by the fact that the four accused came together and left together but that the present accused shouted the words that have been stated hereinbefore. From this, it was held that the charge under Section 307 read with Section 34 of the I.P.C. was made out against all the accused, and they were sentenced to three years imprisonment.

5. Shri Dinesh Kumar Garg, learned counsel appearing for the appellant, has raised two points in appeal before us. First of all, according to him, the injuries were simple in nature and, therefore, it should be inferred that the idea was not to kill, and the charge therefor of Section 307 has not been made out on facts. Further, since the role of the present accused was not an active one, inasmuch as he only shouted what he has supposed to have said, he should in any case, even if conviction be sustained, be sentenced to the period already undergone, which we are informed is roughly almost two years in jail.

6. Ms. Bansuri Swaraj, learned counsel appearing on behalf of the respondent – State of M.P. has, on the other hand, stated that the concurrent findings on common intention as well as the evidence, particularly of the injured eye-witness, as corroborated by the other witnesses, has made it clear that both the Judgments are correct. Indeed, the appellant appears to have got away lightly.

7. Neither of the points raised by Shri Garg appeal to us. First and foremost, it is not essential that bodily injury capable of causing death should have been inflicted in order that the charge under Section 307 be made out. It is enough if there is an intention coupled with some common act in execution thereof. This position has been repeatedly laid down by this Court in "*State of M.P. vs. Kashiram and Others*" (2009) 4 SCC 26 at paragraphs 12 to 16. In addition, in a recent Judgment in "*Jage Ram and Others vs. State of Haryana*" (2015) 11 SCC 366, the law has been laid down as follows :-

"For the purpose of conviction under Section 307 IPC, the prosecution has to establish (i) the intention to commit murder; and (ii) the act done by the accused. The burden is on the prosecution that the accused had attempted to commit the murder of the prosecution witness. Whether the accused person intended to commit murder of another person would depend upon the facts and circumstances of each case. To justify a conviction under Section 307 IPC, it is not essential that fatal injury capable of causing death should have been caused. Although the nature of injury actually caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be adduced from other circumstances. The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, parts of the body where the injury was caused and the nature of injury and severity of the blows given, etc."

8. On the facts, in the present case, the nature of the weapon used predominates. Two bombs were hurled, which are lethal weapons, from which it can safely be inferred that the intention was to cause death. Also, the words uttered by Accused No.4, namely, that the complainant ought to be killed, also lend further credence to this view. The motive of the accused has also been made out, namely, that the intention was to kill the person in the shop as he was an informer. True, the nature of the injuries in the present case was stated to be simple, but this is only because of the fortuitous circumstance that the bomb exploded at a distance far from PW 1. In our opinion, therefore, it is clear that Accused No.4 in coming together with the other three accused and going together with them, and in shouting the words "kill him" certainly attracted the charge under Section 307 read with Section 34 of the Code.

The concurrent Judgments of the Courts below do not need to be disturbed.

9. Shri Garg also exhorted us to allow the present appeal to conclude with the sentence already undergone. According to him, the appellant is on bail since 2006, and at this distance of time, there is no point in sending him back for incarceration for a period of one year and a little over.

10. We are unable to agree with this argument. The crime committed is heinous in nature, and we agree with the learned counsel for the respondent – State that the appellant – herein appears to have got away lightly.

11. We also advert to a Judgment in *Sevaka Perumal and Anr. vs. State of Tamil Nadu* (1991) 3 SCC 471, in paragraph 10 of which it has been highlighted that undue sympathy leading to imposition of inadequate sentence would do more harm to the justice system and would undermine public confidence in the efficacy of law.

12. Having regard to the above, and further taking into consideration the fact that the appellant appears to have got off lightly, we see no reason to interfere in the concurrent Judgments under Article 136 of the Constitution of India.

13. The appeal stands dismissed.

14. Needless to say the appellant who was granted bail pursuant to Order dated 20-3-2006 of this Court, stands cancelled and he is directed to surrender within a period of two weeks from today to serve out the remaining period of sentence.

Appeal dismissed.

I.L.R. [2017] M.P., 1799

WRIT APPEAL

***Before Mr. Justice Rajendra Menon, Acting Chief Justice &
Mr. Justice H.P. Singh***

W.A. No. 468/2014 (Jabalpur) decided on 16 February, 2017.

HINDALCO INDUSTRIES LIMITED (M/S)

...Appellant

Vs.

STATE OF M.P. & ors.

...Respondents

***A. Land Acquisition Act (1 of 1894), Section 41 and
Rehabilitation Policy 2002, Clause 29(1) – Land acquired by the***

company – Displaced persons, R-2 to R-6 are deaf and dumb – Held – As per Section 41 of the Act, it is mandatory to provide pension to those persons who attained age of 60 years or above, employment to oustees looking to their eligibility criteria, plots to oustees in rehabilitation colony etc – In the instant case, Collector allotted plot, ordered to pay lumpsum amount of 1.5 lac as well as pension also, but no order for employment was made as per Section 41 of the Act of 1894 and Clause 29(1) of the Policy of 2002 – Respondent directed to provide employment in appellant company to any one of Respondents 4 to 6 as per their eligibility – Further held – If posts are not available, appellant should create post looking to their eligibility – Order passed by Collector and Commissioner is set aside – Matter remanded back to Collector – Appeal allowed. (Para 11 & 12)

क. भूमि अर्जन अधिनियम (1894 का 1), धारा 41 एवं पुनर्वास नीति 2002, खण्ड 29(1) – कम्पनी द्वारा भूमि अर्जित की गई – स्थान से हटाये गये व्यक्ति, प्रत्यर्थी क्र. 2 से प्रत्यर्थी क्र. 6 मूक और बधिर हैं – अभिनिर्धारित – अधिनियम की धारा 41 के अनुसार, उन व्यक्तियों को जिन्होंने 60 वर्ष या उससे अधिक आयु प्राप्त कर ली है उन्हें पेंशन, विस्थापितों को उनकी पात्रता मापदंड को देखते हुये रोजगार, पुनर्वास कॉलोनी में विस्थापितों को भूखंड इत्यादि प्रदान करना आज्ञापक है – वर्तमान प्रकरण में, कलेक्टर ने भूखंड आबंटित किये, 1.5 लाख रु. की एकमुक्त राशि के साथ-साथ पेंशन के भी भुगतान का आदेश किया, परन्तु 1894 के अधिनियम की धारा 41 एवं 2002 की नीति के खण्ड 29(1) के अनुसार रोजगार के लिये कोई आदेश नहीं किया गया था – प्रत्यर्थी को निदेशित किया गया कि वह प्रत्यर्थीगण 4 से 6 में से किसी एक को उनकी पात्रता के अनुसार अपीलार्थी कम्पनी में रोजगार प्रदान करे – आगे अभिनिर्धारित – यदि पद उपलब्ध नहीं है तो अपीलार्थी को उनकी पात्रता को देखते हुये पद सृजित करना चाहिए – कलेक्टर तथा आयुक्त द्वारा पारित आदेश अपास्त – मामला कलेक्टर को प्रतिप्रेषित – अपील मंजूर।

B. *Persons with Disabilities. (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), Section 61 – Power of Commissioner* – Under the Act, Commissioner is empowered to take up the matter for implementation of law, with regard to welfare and protection of rights of persons with disabilities under the Land Acquisition Act and Rehabilitation Policy – He is not empowered to direct for employment of anyone of the respondents, thus the order passed by Commissioner is without jurisdiction. (Para 9)

ख. निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी)

अधिनियम, 1995 (1996 का 1), धारा 61 – आयुक्त की शक्ति – अधिनियम के अंतर्गत, आयुक्त, भूमि अर्जन अधिनियम तथा पुनर्वास नीति के अन्तर्गत निःशक्त व्यक्तियों के कल्याण एवं अधिकारों की सुरक्षा के संबंध में, विधि के क्रियान्वयन के लिए मामले को ग्रहण करने हेतु सशक्त है – वह प्रत्यर्थांगन में से किसी को भी रोजगार दिये जाने हेतु निदेशित करने के लिए सशक्त नहीं है, इसलिए आयुक्त द्वारा पारित आदेश बिना अधिकारिता के है।

Aditya Adhikari assisted by Satish Chaturvedi, for the appellants.

S. Ganguly, G.A. for the respondents No.1 to 3.

Anurag Sahu and Neeraj Dubey, for the respondents No.4 to 6.

J U D G M E N T

The Judgment of the Court was delivered by :
H.P. SINGH, J. :- This *intra-court* appeal under Section 2(1) of the M.P. Uchcha Nyayalay (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, has been preferred by the appellant-Company against the order of the learned Single Judge dated 09.04.2014, thereby Writ Petition No.4326/2014, has been dismissed finally.

2. Facts giving rise to filing of the present writ appeal in brief are that the appellant M/s Hindalco Industries Limited (hereinafter referred to as the Company for short) being a Company incorporated and registered under the provisions of Companies Act, 1956, is engaged in the business of manufacturing and dealing in aluminum and its semis. The appellant-Company owns and operates an aluminum plant at Renukoot in District Sonbhadra. As the appellant wants to establish a new aluminum plant by the name of Mohan Aluminum Project in District Singrauli, it entered into an agreement with the State of Madhya Pradesh under the provisions of Section 41 of the Land Acquisition Act, 1894. The appellant- Company acquired various lands after giving compensation to land oustees in pursuance of the aforesaid agreement. As per agreement, the appellant-Company was also liable to construct the rehabilitation colony along with other benefits which were to be given to the oustees. The respondents No. 4 to 6, who are deaf and dumb persons, made an application on 7.7.2012 before the Collector Singrauli for providing them employment. The Collector Singrauli, vide order dated 27.9.2012 directed the authority concerned to allot plots to them in the rehabilitation colony and to pay them amount of Rs.1,50,000/- each in lump sum as well as pension of Rs.1,000/- per month. But, the respondents No.4 to 6 did not proceed to avail the benefits given to them by the order of Collector dated 27.9.2012.

The appellant- Company also informed this fact to SDO Devsar, District Singrauli mentioning all these facts, but the respondents No. 4 to 6 have not taken any step. Even they have not challenged the order of Collector dated 27.9.2012, but later on, they made an application before the Commissioner, respondent No.2, under the provisions of Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the Act for short), reiterating the same prayer seeking employment in the appellant-Company, which was decided vide order dated 1.11.2013, whereby direction was given by the Commissioner to provide employment in the appellant-Company to one of the respondents No. 4 to 6 under Clause 8 of the aforesaid agreement.

3. The appellant-Company assailed the order dated 1.11.2013 passed by the Commissioner in the Writ Petition No.4326/2014 on the ground that the same is passed without jurisdiction, against the policy and against the provisions of Section 59 of the "Act". Another ground was taken by the appellant that under Section 41 of the Land Acquisition Act, 1894, only the Collector is vested with the powers to decide the claim of displaced persons like respondents No. 4 to 6. The learned writ Court has failed to consider the fact that since the respondents No.4 to 6, being deaf and dumb and appellant-Company is functioning with new advanced machine, they are not entitled for employment.

4. Learned Writ Court has finally dismissed the W.P.No.4326/2014 at admission stage and observed that the Commissioner is appointed under Section 60(1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and it is within the power of the Commissioner to take steps to safeguard the rights and facilities made available to persons with disabilities. Since Clauses 4 and 8 of Agreement under Section 41 of 1894 Act, are not optional to each other, being complimentary, the appellant cannot wriggle out from discharging its duty under Clause 8 of the aforesaid agreement and stipulations contained under Clause 29.1 of Rehabilitation Policy, 2002, and non-compliance thereof with regard to acquisition of land belonging to effected persons would be voidable". Therefore, this *intra-court* appeal challenging the above order dated 9.4.2014.

5. Learned counsel appearing for the appellant has contended that appellant Company was always ready and willing to comply with the order dated 27.9.2012 passed by the Collector, but deliberately the respondents

No. 4 to 6 did not avail the benefits provided to them. The respondents No. 4 to 6 kept silence and did not challenge the order passed by the Collector. The approach of the respondents No. 4 to 6 to the Commissioner for Disabled Persons, Madhya Pradesh, is patently unjust and illegal. Thus, learned Writ Court has committed an error in dismissing the writ petition without going through the legal provisions and documentary evidence produced by the appellant, the agreement entered into between the appellant and respondents No. 4 to 6. He prays for setting aside the order passed by the writ Court.

6. Learned counsel appearing on behalf of respondents No. 4 to 6, has contended that these respondents are deaf, dumb, and handicapped persons. As per the Rehabilitation Policy, 2002, with regard to the acquisition of land, the appellant- Company is duty bound to provide job to one of respondents No. 4 to 6, looking to their eligibility criteria. In the policy, nowhere it is mentioned that persons like respondents No. 4 to 6 can be deprived from providing employment. It is further contended that appellant-Company itself has violated the terms of agreement with regard to acquiring the land and acted against the provisions of M.P. Adarsh Punarvas Neeti, 2002..

7. We have heard rival submissions made by learned counsel for the parties and perused the records.

8. Now the questions for consideration arise are :-

- (i) Whether the Commissioner under the Act has no jurisdiction to pass order of above nature ?
- (ii) Whether Collector has acted fully in accordance with the terms and conditions of agreement ?

9. To answer the first question, we have to elaborate the powers of the Commissioner under the Act, which reads as under:-

“61. Powers of the Commissioner.- The Commissioner within the State shall -

- (a) coordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;
- (b) monitor the utilisation of funds disbursed by the State Government;

- (c) take step to safeguard the rights and facilities made available to persons with disabilities;
- (d) submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.”

Thus, looking to the aforesaid, since the Commissioner, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955, is only empowered to take up the matter for implementation of law, with regard to welfare and protection of rights of persons with disabilities under the Land Acquisition Act and Rehabilitation Policy, and is not empowered to direct for employment of one of respondents No. 4 to 6, therefore, the order passed by the Commissioner is without jurisdiction.

10 Now, the second question which remains to be answered for fruitful purpose of this appeal, we have to consider the manner in which the Collector has dealt with Rehabilitation Policy, 2002. The Collector while passing the order dated 27.9.2012 has not properly considered Clause 29.1 of the Rehabilitation Policy, 2002, which specifically stipulates for employment to the land oustees, as agreed to vide Agreement under Section 41 of 1894 Act. The respondents No. 4 to 6 cannot be debarred of their rights of employment in such a manner. Thus, the action of the Collector is erroneous and fallacious to the agreement as aforesaid.

11 After perusal of meticulous evidence available on record, and aforesaid legal aspects, it reveals that on the application so made by respondents No. 4 to 6 themselves, the Collector has passed the order dated 27.9.2012, directing to provide them plots under the aforesaid clauses of Rehabilitation Policy, 2002 and to pay Rs.1,50,000/- each, but the Collector has not passed any order in respect of providing the employment to any oustees like respondents No. 4 to 6 as per provisions of Section 41 of Land Acquisition Act and Clause 29(1) of the Rehabilitation Policy, 2002. The appellant-Company has not taken any step with regard to providing permanent employment to respondents No. 4 to 6 looking to their eligibility.

12 Under the provisions of Section 41 of the Land Acquisition Act, it is mandatory to provide pension to those persons who attained the age of 60 years or above, employment to the oustees looking to their eligibility criteria,

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to provide plots to the oustees in the rehabilitation colony, etc. The Collector Singrauli allotted plot in the rehabilitation colony and ordered to pay the amount of Rs.1,50,000/- in lump sum as well pension of Rs.1,000/- per month, but no order for employment of anyone of respondents No. 4 to 6. Under these circumstances, it would be appropriate to direct that one of the respondents No. 4 to 6, as per his eligibility be provided employment in the appellant-Company, in view of aforesaid Section 41 of the Land Acquisition Act.

13 Accordingly, this writ appeal is allowed and it is directed that the order dated 9.4.2014 passed in W.P.No.4326/2014, the order of the Collector dated 27.9.2012 and order of Commissioner dated 1.11.2013 are hereby set aside. It is further directed that the respondents No. 4 to 6 may approach the Collector, competent authority, having jurisdiction, raising his all grievances, within a period of 30 days from the date of receipt of certified copy of this order, who may consider and decide their grievance as per their entitlement and looking to their eligibility. It is further directed that if the posts are not available with the appellant, the appellant should have created the posts looking to their eligibility as per the agreement, within a period of 60 days thereof, in the light of the observations made herein above. The matter is remanded back to the Collector Singrauli, who shall decide it afresh by passing a reasoned and speaking order, in accordance with the provisions of Section 41 of Land Acquisition Act, as observed above.

14 With the aforesaid directions and observations, writ appeal stands disposed of. However, in view of the peculiar circumstances of the case, there shall be no order as to costs.

Appeal allowed.

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WRIT APPEAL

***Before Mr. Justice Hemant Gupta, Chief Justice &
Mr. Justice Sanjay Yadav***

W.A. No. 425/2016 (Gwalior) decided on 29 June, 2017

STATE OF M.P. & ors.

...Appellants

Vs.

M/S PERNOD RICARD INDIA (P) LTD.

...Respondent

Foreign Liquor Rules, M.P., 1996, Rule 19(2) – Amendment –

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Prospective or Retrospective – Held – Amendment in Statute or Rules is prospective unless it is specifically made retrospective, however amendment in respect of procedure is retrospective – In the instant case, license granted to petitioner in 2009-10 and Rule 19(2) was amended on 29.03.2011 – Rule of penalty is not a matter of procedure, it deals with substantive rights of parties therefore Rules applicable during the relevant license year would determine the rights and liabilities of such licensee – Amendment will apply to license granted thereafter and not in respect of license granted earlier – Amendment carried out on 29.03.2011 liberalizing the amount of penalty will operate prospective only. (Para 11 & 13)

विदेशी मदिरा नियम, म.प्र., 1996, नियम 19(2) – संशोधन – मविष्यलक्षी या भूतलक्षी – अभिनिर्धारित – कानून अथवा नियमों में संशोधन मविष्यलक्षी है, जब तक कि यह विनिर्दिष्ट रूप से भूतलक्षी नहीं बनाया गया हो, यद्यपि प्रक्रिया के संबंध में संशोधन भूतलक्षी है – वर्तमान प्रकरण में, याची को 2009-10 में अनुज्ञप्ति प्रदान की गई एवं नियम 19(2) दिनांक 29.03.2011 को संशोधित हुआ था – शास्ति का नियम प्रक्रिया का मामला नहीं है, यह पक्षकारों के मूल अधिकारों से संबंधित है इसलिए सुसंगत अनुज्ञप्ति वर्ष के दौरान लागू नियम, ऐसे अनुज्ञप्तिधारी के अधिकारों एवं दायित्वों का अवधारण करेंगे – संशोधन तत्पश्चात् प्रदान की गई अनुज्ञप्ति पर लागू होगा तथा न कि पूर्व में प्रदान की गई अनुज्ञप्ति के संबंध में – शास्ति की राशि का उदारीकरण करते हुए, दिनांक 29.03.2011 को किया गया संशोधन केवल मविष्यलक्षी रूप से प्रभावी होगा।

Cases referred:

AIR 1996 SC 2181, AIR 2002 SC 948, (2005) 7 SCC 396, (2005) 5 SCC 598, (2016) 4 SCC 763.

Ajay Kumar Sharma, Assistant Commissioner, Excise, Gwalior, Officer-in-Charge in person, for the appellants.

None, for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by : **HEMANT GUPTA, C.J.** :- This order shall dispose of bunch of appeals bearing Writ Appeal Nos.425/2016, 6/2017, 7/2017, 8/2017, 9/2017, 10/2017, 11/2017, 12/2017, 13/2017, 14/2017, 15/2017, 16/2017, 17/2017, 19/2017, 20/2017, 21/2017, 22/2017, 23/2017, 24/2017, 25/2017, 26/2017, 27/2017,

28/2017, 29/2017, 30/2017, 31/2017, 32/2017, 33/2017, 34/2017, 35/2017, 36/2017, 37/2017, 38/2017, 39/2017, 40/2017, 41/2017, 42/2017, 43/2017, 87/2017 and Writ Appeal No.100/2017 arising out of a common order dated 01.12.2015 whereby the writ petitions were allowed and the orders dated 22.11.2011, 02.05.2013 and 10.05.2013 passed by the Deputy Commissioner, Excise, Gwalior; Commissioner, Excise and the Board of Revenue respectively were set aside. The question of fact and law is common in all these appeals.

2. The issue is short. The writ-petitioner is a sub-licensee as per the provisions of the M.P. Excise Act, 1915 (for short "the Act"). The writ-petitioner is a manufacturer of Indian-made foreign liquor. The sale of foreign made liquor is governed by M.P. Foreign Liquor Rules, 1996 (for short "the Rules"). Rule 16 of the said Rules deals with the permissible limits of losses sustained during transportation of the foreign liquor whereas Rule 19 of the Rules deals with imposition of penalty if liquor is found short at the destination point as compared to the quantity, which was sent.

3. The relevant year of sub-licence is the year 2009-10. The relevant provisions of the Rules, as were existing in 2009-10, read as under:-

"16. Permissible Limits of Losses.- (1) An allowance shall be made for the actual loss of spirit by leakage, evaporation etc., and of bottled foreign liquor by breakage caused by loading, unloading, handling etc. in transit, at the rate mentioned hereinafter. The total quantity of bottled foreign liquor transported or exported shall be the basis for computation of permissible losses.

(2) Wastage allowances on the spirit transported to the premises of F.L. 9 or F.L. 9A licensee shall be the same as given in sub-rule (4) of rule 6 of the Distillery Rules, 1995.

(3) Maximum wastage allowance for all exports of bottled foreign liquor shall be 0.25% irrespective of distance.

(4) Maximum wastage allowance for all transports of bottled foreign liquor shall be 0.1% if the selling licensee and the purchasing licensee belong to the same district. It shall be 0.25% if they belong to different districts."

19. Penalties. - (1) Without prejudice to the provisions of the Act, or condition No.4 of licence in form F.L. 1, condition No.7 of licence in Form F.L. 2, condition No.4 of licence in form F.L. 3, the Excise Commissioner or the Collector may impose a penalty not exceeding Rs.50,000 for contravention of any of these rules or the provisions of the Act or any other rules made under the Act or the order issued by the Excise Commissioner.

(2) On all deficiencies in excess of the limits allowed under Rule 16 and Rule 17, the F.L. 9 or F.L. 9A, F.L. 10-A or F.L. 10-B licensee shall be liable to pay penalty at a rate exceeding three times but not exceeding four times the maximum duty payable on foreign liquor at that time, as may be imposed by the Excise Commissioner or any officer authorised by him:

Provided that if it be proved to the satisfaction of the Excise Commissioner or the authorised officer that such excess deficiency or loss was due to some unavoidable cause like fire or accident and its first information report was lodged in Police Station, he may waive the penalty imposable under this sub-rule.

(3) The Excise Commissioner or the Collector may suspend or cancel the licence under Section 31 of the Act upon a contravention of any of these rules or provisions of the Act, or any other rules made under the Act, or the orders issued by the Excise Commissioner."

4. The explanation of the writ-petitioner for shortage in the consignment was that if on account of any accident there is any loss, the sub-licensee cannot be burdened with the penalty. Considering the said plea, the departmental Authorities have returned concurrent finding that the explanation of the writ-petitioner is not acceptable. The learned Single Judge allowed the writ petition against the said orders on the ground that sub-clause (2) of Rule 19 has been amended on 29th March, 2011, which provides for a penalty not exceeding the amount of duty, therefore, the three times of the penalty amount cannot be imposed.

5. The learned Single Bench was of the opinion that the provisions

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applicable on the date of the order would be applicable. The reliance was placed upon the Supreme Court judgments reported as *State of Rajasthan v. Mangilal Pindwal*, AIR 1996 SC 2181, *West U.P. Sugar Mills Association v. State of U.P.*, AIR 2002 SC 948 and *Government of India v. India Tobacco Association*, (2005) 7 SCC 396.

6. None has put in appearance on behalf of the respondents/writ-petitioner - presumably in view of the call given by the Bar Association to abstain from this Court. The Resolution dated 28.06.2017 of the Bar Association reads as under:-

“उच्च न्यायालय अभिभाषक संघ, ग्वालियर

दिनांक 28.06.2017

प्रति,

माननीय प्रिंसिपल रजिस्ट्रार महोदय जी,
मध्यप्रदेश उच्च न्यायालय
खण्डपीठ ग्वालियर

विषय:- न्यायमूर्ति श्री संजय यादव जी की एकल एवं युगल पीठ से कार्य से विरत रहने के सम्बंध में सूचना प्रदान करने बावत्।

उपरोक्त विषय में निवेदन है कि उच्च न्यायालय अभिभाषक संघ, ग्वालियर के सभी सदस्यगण दिनांक 23 जून को अभिभाषकों के साथ ली गई साधारण बैठक में लिये गये निर्णय के अनुसार न्यायमूर्ति श्री संजय यादव जी की पीठ के समक्ष कार्य से विरत रहेंगे।

चूंकि दिनांक 30 जून 2017 तक श्री संजय यादव जी मुख्य न्यायाधिपति श्री हेमंत गुप्ता जी के साथ युगल पीठ में है इसलिए उक्त युगल पीठ से दिनांक 30 जून 2017 तक सभी अभिभाषकगण कार्य से विरत रहेंगे।

हस्ता/-

वीरेन्द्र पाल

सचिव

उच्च न्यायालय अभिभाषक संघ, ग्वालियर”

7. Since, it is a voluntary act of the members of the Bar to abstain from work, but, such abstaining from work by the members of the Bar cannot be a ground for deferring the hearing when the matter is pending before this Court for some time and that too relating to the revenue of the State. Therefore, we

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have no option but to go through the record and proceed with the decision of the present appeals.

8. We have heard the Officer-in-Charge present on behalf of the appellants-State and perused the record and find that the order passed by the learned Single Bench cannot be sustained in law.

9. In the present appeal, the Officer-in-Charge of the case argued that 2009-10 is the licence period. If there is any shortage in the consignment at the destination station, the Rule which is applicable on the date of shortage would be applicable and not the Rule which was subsequently amended. Each licence year is relevant for determining the rights and liabilities of the sub-licensee such as the petitioner, therefore, the order passed by the learned Single Bench cannot be sustained in the eye of law. Amended Rule 19 (2) of the Rules reads as under:-

19. Penalties. - (1) xxxxxx

(2) On all deficiencies in excess of the limits allowed under Rule 16 and Rule 17, the F.L. 9, F.L. 9-A, F.L. 10-A or F.L. 10-B Licensee shall be liable to pay penalty at a rate not exceeding the duty payable on foreign liquor at that time, as may be imposed by the Excise Commissioner or any officer authorised by him:

Provided that if it be proved to the satisfaction of the Excise Commissioner or the authorised officer that such excess deficiency or loss was due to some unavoidable causes like fire or accident and its first information report was lodged in concerned Police Station, he may waive the penalty imposable under this sub-rule. ”

10. The writ-petitioner is a bottling licensee in terms of Rule 8(1)(i) of the Rules. The period of licence is prescribed in Sub-Rule (2) of Rule 8. The relevant Rules read as under:-

“8. Sale of Foreign Liquor.-(1)Categories of licences. -
Licences for the sale of foreign liquor shall be of the following categories and the mode of grant of these licences shall be as indicated hereunder:-

(i) F.L. 9- (Bottling Licence). - Holder of an F.L. 9 licence which may be granted for bottling of foreign liquor, may manufacture and bottle foreign liquor by blending, compounding and reducing spirit. The licensee may sell or transfer foreign liquor to F.L. 6, F.L. 10 and F.L. 11 licensees including the licensees of other States. He shall pay bottling fee at the prescribed rate.

(2) **Period of licences and their renewal.** - Licences in Forms F.L.-1, AAAA F.L. 1B, F.L. 2, F.L. 3, F.L. 4, F.L. 5, F.L.6, F.L.7, F.L. 8, F.L. 9, F.L. 9A and F.L. 11 may be granted for one year and in Form F.L. 5 for a particular occasion on prepayment of licence fee fixed by the State Government which may be revised from time to time. All these licences including licence in forms F.L. 9, F.L.9A and F.L. 11 but excluding licence in Form F.L. 5 will be subject to renewal every year on payment of the prescribed licence fee, subject to good conduct and clean records of the licensee and due observance of licence conditions. Provisions of Act and rules made thereunder. The licences in Forms F.L. 1, F.L. 1AAA, F.L. 1AAAA, F.L. 1B, F.L.1D and F.L. 10A (F.L. 10-B) shall be granted for a period of one year or a shorter period unless directed otherwise by the State Government)."

11. A perusal of the said provision would show that the licence granted to the petitioner was for one year, which was subject to renewal every year on payment of prescribed fee. Once the licence is granted for a year, therefore, the Rule as is applicable during the relevant licence year alone would be applicable to determine the rights and liabilities of such licensee. The relevant licence year is 2009-10, therefore, the Rule which is applicable in that licence year alone would be applicable. Rule 19(2) was amended on 29th March, 2011, which is subsequent to the licence year, therefore, the penalty is imposable in terms of Rule 19(2) applicable for the licence year 2009-10.

12. The Supreme Court in a judgment reported as *Ashok Lanka and Another v. Rishi Dixit and Others*, (2005) 5 SCC 598 was examining

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Chhattisgarh Excise Settlement of Licences for Retail Sale of Country/ Foreign Liquor Rules, 2002. The eligibility condition was changed after notice inviting applications was published. The notice inviting applications for grant of licence was issued on 14.02.2005 but the Rules were amended vide Notification dated 22.03.2005. The amended Rules were sought to be made applicable in respect of advertisement which was already issued. The Court was considering the reverse proposition as in the present case and held as under:-

“62. A statute must be read reasonably. A statute should not read in such a manner which results in absurdity. A statute, on its plain language, although postulates a prospective operation, it cannot be held to be retrospective only because it would apply for the excise year for which applications were invited despite the fact that the selection process made thereunder is over. The State is bound by the terms of the advertisement and the Rules existing at that time. The statutory authorities and the applicants are expected to follow the law as it stood thence. No step could be taken on the presupposition that the rule would be amended. It is also not a case where draft rules were already in existence and such draft rules had been applied, which could otherwise be permissible in law. But a situation of this nature is not contemplated in law.”

13. It is well settled that the amendment in the Statute or the Rules is prospective unless it is specifically made retrospective. However, the amendment in respect of procedure is retrospective. As to whether penalty should be three times of the duty or not, is not a matter of procedure. It deals with substantive rights of the party. Therefore, amendment carried out on 29th March, 2011 will operate prospectively only. It is the settled principle which was reiterated by the Supreme Court in a judgment reported as *District Collector, Vellore District v. K. Govindaraj*, (2016) 4 SCC 763. The Court held as under:-

“13 As mentioned above, though the legislature has plenary powers of legislation within the fields assigned to it and can legislate prospectively or retrospectively, the general rule is that in the absence of the enactment specifically mentioning that the legislation or legislative amendment concerned is retrospectively made, the same is to be treated as prospective

in nature. It would be more so when the statute is dealing with substantive rights. No doubt, in contrast to statute dealing with substantive rights, wherever a statute deals with merely a matter of procedure, such a statute/amendment in the statute is presumed to be retrospective unless such a construction is textually inadmissible. At the same time, it is to be borne in mind that a particular provision in a procedural statute may be substantive in nature and such a provision cannot be given retrospective effect. To put it otherwise, the classification of a statute, either substantive or procedural, does not necessarily determine whether it may have a retrospective operation. In *Maxwell v. Murphy*, (1957) 96 CLR 261 (Aust), Dixon, C.J. formulated the aforesaid procedure in the following words:

“The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events. But given rights and liabilities fixed by reference to the past facts, matters or events, the law appointing or regulating the manner in which they are to be enforced or their enjoyment is to be secured by judicial remedy is not within the application of such a presumption.”

14. Since the levy of penalty is not a matter of procedure, therefore, the amendment carried on 29th March, 2011 will apply only to the licences granted thereafter and not in respect of licences granted earlier, which will be governed by the Rules applicable at the time of grant of licence.

15. In view thereof, we find that the order passed by the learned Single Bench is not sustainable in law. Accordingly, the same is set aside. The writ appeals are **allowed**.

Appeal allowed.

I.L.R. [2017] M.P., 1814

WRIT PETITION

Before Mr. Justice Prakash Shrivastava

W.P. No. 5427/2016 (Indore) decided on 17 April, 2017

ITC LIMITED

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

*Food Safety and Standard Act, (34 of 2006), Sections 3(ZF)(A)(i), 26(1)(2)(ii), 36(3)(e), 52 & 58, Food Safety and Standards Rules, 2011, Rule 1(3), 2 & 4 and Packaging and Labelling Regulations, 2011, Regulation 2.3(1)(5) – Sanction for Prosecution – Grounds – Samples of “Sunfeast Yippee Noodles” sent for testing – Report declared the samples to be misbranded on the ground that mentioning of “No MSG Added” in packaging is misleading as per Regulations – Sanction was granted and complaint was got registered before Court – Challenge to – Held – Report reveals that no MSG content was detected in samples – Declaration of “No MSG Added” was rightly made which cannot be held to be misleading, false or deceptive – Circular of FSSAI also states that prosecution could be launched when label states “No MSG Added” and MSG is found in impugned food stuff – Petitioner has not *prima facie* violated any provisions of the Act or the Regulations – Further held – While granting sanction, authority is required to apply mind while reaching to conclusion – Impugned order of sanction and prosecution launched against petitioner quashed – Petition allowed.*

(Paras 6, 13 to 15, 19 & 21)

खाद्य सुरक्षा और मानक अधिनियम, (2006 का 34), धाराएँ 3(जेड एफ)(ए)(i), 26(1)(2)(ii), 36(3)(ई), 52 व 58, खाद्य सुरक्षा और मानक नियम, 2011, नियम 1(3), 2 व 4 एवं पैकेजिंग एवं लेबलिंग विनियम, 2011, विनियमन 2.3(1)(5) – अभियोजन हेतु मंजूरी – आधार – “सन्फीस्ट यिप्पी नूडल्स” के नमूने परीक्षण हेतु भेजे गये – प्रतिवेदन ने नमूनों को इस आधार पर मिथ्या छापवाला घोषित किया है कि पैकेजिंग में “कोई एम.एस.जी. नहीं” का उल्लेख करना विनियमनों के अनुसार भ्रामक है – मंजूरी प्रदान की गई तथा न्यायालय के समक्ष परिव्राट प्रस्तुत किया गया था – को चुनौती – अभिनिर्धारित – प्रतिवेदन यह प्रकट करता है कि नमूनों में कोई एम.एस.जी. पदार्थ नहीं पाया गया था – “कोई एम.एस.जी. नहीं” की घोषणा उचित रूप से की गई थी जिसे कि भ्रामक, मिथ्या या प्रवंचक

अभिनिर्धारित नहीं किया जा सकता – एफ.एस.एस.ए.आई. का परिपत्र यह भी वर्णित करता है कि अभियोजन आरम्भ किया जा सकता है जब लेबल यह वर्णित करता है कि “कोई एम.एस.जी. नहीं” तथा आक्षेपित खाद्य पदार्थ में एम.एस.जी. पाया जाता है – याची ने प्रथम दृष्ट्या अधिनियम या विनियमनों के उपबंधों का कोई उल्लंघन नहीं किया है – आगे अभिनिर्धारित – मंजूरी प्रदान करते समय, प्राधिकारी द्वारा निष्कर्ष पर पहुँचने से पहले मस्तिष्क का प्रयोग किया जाना अपेक्षित है – मंजूरी का आक्षेपित आदेश एवं याची के विरुद्ध आरंभ किया गया अभियोजन अभिखंडित – याचिका मंजूर।

Cases referred :

1992 Supp(1) SCC 335, (1996) 9 SCC 766, (1998) 5 SCC 749, AIR 1997 SC 3400, AIR 1958 SC 124, AIR 2014 SC 2369, AIR 2014 SC 827.

*Kishore Shrivastava with Kunal Thakre, for the petitioner.
Rohit Mangal, for the respondent/State.*

ORDER

PRAKASH SHRIVASTAVA; J. :- This writ petition has been filed by the petitioner challenging the sanction order dated 28.5.2016 and also challenging the order dated 26.7.2016 passed by the Judicial Adjudicating Authority rejecting the objection of the petitioner that no charge is made out under the Act and also praying for quashing the proceedings pending before the Additional District Magistrate-cum-Adjudicating Officer, Dewas in Case No.23/FSSAI/2015-16 (State of M.P. Vs. Sudhir Soni and others).

2. In brief, the petitioner's case is that it is engaged in the business of manufacturing and marketing of various packaged products including 'noodles' and 'pasta' under the brand name 'Sunfeast'. The Food Safety Officer, Dewas had taken sample of 'Sunfeast Yippee Noodles Magic Masala' from retail premises of M/s Neelkamal Multi Trade Pvt. Ltd. on 1.6.2015 and had issued notice in Form VA under Rule 2.4.1 (3) of Food Safety and Standard Rules, 2011 to the retailer only. The sample was submitted for analysis to the Food Analyst, State Food Testing Laboratory, Bhopal and the report dated 4.7.2015 was obtained, in which no Monosodium Glutamate (MSG) was detected yet the Food Analyst in the report (sic:report) dated 22.12.2015 declared the samples to be misbranded on the ground that mentioning of 'No MSG Added' is misleading under Regulation 2.3(1)(5) of the Packaging and Labelling

Regulation. The further case of the petitioner is that sanction for prosecution was wrongly granted by order dated 28.5.2016 by the designated officer and in pursuance to the said sanction the Food Safety Officer, Dewas had preferred a complaint before the Court of Additional District Magistrate-cum-Adjudicating Officer, Dewas alleging violation of Section 26(1);(2)(ii)(v), 3(zf)(A)(i), of the Food Safety and Standards Act, 2006 and Regulation 2.3(1)(5) of the Packaging and Labelling Regulation and being liable under Section 27(1) of the Act and punishable under Section 52 and Section 58 of Food Safety and Standard Act, 2006. The petitioner was issued notice by the Adjudicating Authority and the petitioner by appearing before the Adjudicating Authority had filed objection with respect to the maintainability of the complaint and prayed for dropping the proceedings on the ground that charge was not made out. By the order dated 26.7.2016 the Adjudicating Officer has rejected the objection and has held the complaint to be maintainable.

3. Learned counsel for the petitioner submits that since no MSG was detected in the laboratory test of the sample, therefore, it is not a case of misbranding. He further submits that the petitioner had neither added MSG nor its natural presence was found, therefore, prosecution cannot be sustained. He has also submitted that the sanction was granted by the concerned authority mechanically without application of mind.

4. As against this, learned counsel for the respondents has supported the impugned action submitting that the petitioner had mentioned in the label that "No MSG Added" which was misleading since no negative declaration could be given and the petitioner could only mention the contents which were present on the label and could not have mentioned the contents which were not present.

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

6. On the perusal of the record, it is noticed that the petitioner is sought to be prosecuted under the provisions of the Food, Safety and Standard Act, 2006 (for short "the Act") and the F.S. & S. (Packaging and Labelling) Regulations, 2011 (for short "the Regulations") on the ground of misbranding the product namely 'Sunfeast Yippee Noodles Magic Masala'. The sample collected by the Food Safety Officer and analyzed by the Food Analyst was sent to the notified laboratory and its report was obtained vide Annexure P/2. The report reveals that 'No MSG' was detected in the sample. In the reply also the respondents have admitted that as per the report of the Food Analyst

MSG content was not found in the sample. The petitioner is being prosecuted only on the ground that printing of declaration 'No MSG Added' in the sample label was misleading under Regulation 2.3(1)(5) of the Regulations and it was misbranding under Section 3(ZF)(A)(i) of the Act.

7. The order sanctioning prosecution reveals that the petitioner is being prosecuted for violating Section 3(zf)(A)(i), Section 26(1)(2)(ii), (v) of the Act and regulation 2.3(1)(5), 27(3) (c), 27(2)(c) of the Regulations and is said to have committed offence punishable under Section 52 & 58 of the Act.

8. The entire prosecution is based upon the report of the Food Analyst, hence the issue is if mere mentioning of 'No MSG Added' in the label coupled with the fact that actually No MSG was found in the sample, can be held to be misbranding.

9. Section 3(zf) of the Act defines misbranded food and Section 3(zf)(A)(i) relevant for the present purpose reads as under:-

Section 3(zf) "misbranded food" means an article of food-

(A) if it is purported, or is presented to be, or is being-

(i) offered or promoted for sale with false, misleading or deceptive claims either-

(a) upon the label of the package, or

(b) through advertisement; or

10. For attracting this provision the label of the package of an article of food offered (sic: offered) for sale should have false, misleading or deceptive claim. In a case of the present nature where no variance is found on the declaration made on the label of package and the contents thereof and 'no MSG added' is mentioned in label to enable the consumer to make an informed choice, it cannot be held that the declaration was false, misleading or deceptive. Section 26(1)(2)(ii)(v) of the Act and the Regulation 2.3(1), (5) and Section 27(3)(c) and Section 27(2)(c) provides for the prosecution for misbranding of the product or substandard product or product containing extraneous matter or unsafe product but the only allegation against the petitioner is of misbranding of product. Relevant part of these provisions read as under:-

Section 26. Responsibilities of the food business operator

(1) Every food business operator shall ensure that the articles of food satisfy the requirement of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the business under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food-

(i) *****

(ii) which is misbranded or sub-standard or contains extraneous matter; or

(iii) *****

(iv) *****

(v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.

Section 27. Liability of manufacturers, packers, wholesalers, distributors and sellers

(1) *****

(2) The wholesaler or distributor shall be liable under this Act for any article of food which is-

(a) *****

(b) *****

(c) unsafe or misbranded; or

(d) *****

(e) *****

(f) *****

(3) The seller shall be liable under this Act for any article of food which is -

(a) *****

- (b) *****
- (c) misbranded; or
- (d) *****
- (e) *****

Regulation 2.3 - Manner of declaration

(1) Any information or pictorial device written, printed, or graphic matter may be displayed in the label provided that it is not in conflict with the requirements of these Regulations.

- (2) *****
- (3) *****
- (4) *****

(5) Labels not to contain false or misleading statements: A label shall not contain any statement, claim, design, device, fancy name or abbreviation which is false or misleading in any particular concerning the food contained in the package, or concerning the quantity or the nutritive value or in relation to the place of origin of the said food:

Provided that this regulation shall not apply in respect of established trade or fancy names of confectionery, biscuits and sweets, such as, barley, sugar, bull's eye, cream cracker or in respect of aerated waters, such as, Ginger Beer or Gold-Spot or any other name in existence in international trade practice.

11. Under Section 52 the penalty has been prescribed for misbranded product and Section 58 deals with penalty for contravention, for which no specific penalty is provided.

12. In view of the above provisions if there is no prima facie proof of misbranding, then the petitioner cannot be prosecuted for the above offences.

13. The Director (Enforcement) Food, Safety and Standards Authority of India in the Circular dated 31.3.2016 has taken note of the fact that the food

business operators are unnecessarily harassed and prosecuted on the issue of MSG flavour enhancer and has made it clear that the prosecution should be launched against FBOs only when the label states "No MSG" or "No Added MSG" and MSG is actually found in the impugned food stuff. The said Circular in clear terms provides as under:-

File No.: 1 (105) Maggi Noodles/2015/FSSAI (Part I)
Food Safety and Standards Authority of India
(A Statutory Authority established under Food Safety and
Standards Act, 2006)
(Enforcement Division)
FDA Bhawan, Kotla Road, New Delhi – 110002

Dated, the 31st March, 2016

Order

Subject: Clarification on use of Monosodium Glutamate as flavour enhancer in seasoning for Noodles and Pastas.

Under Regulation 3.1.11 of the Food Safety and Standards (Food Product Standards and Food Additives), Regulations, 2011, Monosodium Glutamate (MSG), a flavour enhancer bearing INS number 621, may be added to specified foods as per the provisions of Appendix A, subject to Good Manufacturing Practice (GMP) level and under proper declaration as provided in 2.4.5 (18) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

2. It is widely known that Glutamate is naturally found in several common foods such as milk, spices, wheat, vegetables, etc. MSG is the sodium salt of Glutamic acid and one of the many forms of glutamate. Presently, there is no analytical method to determine whether MSG was added to the product during its manufacture or was naturally present in the product. This can however be checked through inspection of the manufacturing premises.

3. To prevent, both, avoidable harassment/prosecution of Food Business Operators (FBOs) as well as to ensure that consumers are facilitated to exercise informed choices in

respect of what they eat, proceedings may be launched against FBOs only when the labels state "No MSG" or "No added MSG" and MSG is actually found in the impugned foodstuff. Commissioners of Food Safety are advised that specific enforcement/prosecution may not be launched against the manufacturers of Noodles/Pasta on account of presence of MSG/Glutamic Acid unless it is ascertained by the department that Monosodium Glutamate flavour enhancer (INS E-621) was deliberately added during the course of manufacture without required declaration on the label as indicated in Para 1 above.

4. This issues with the approval of the Competent Authority.

(Rakesh Chandra Sharma)
Director (Enforcement)
011-23220994

14. Though the case of the petitioner is prior to the issuance of this circular but the circular is only clarificatory in nature and has been issued with a view to avoid the harassment, therefore, in view of this circular also the petitioner could not have been prosecuted because 'No MSG' was actually found in the sample.

15. In the present case record reveals that there was no basis to prosecute the petitioner for the alleged offence as no MSG was found in the sample, therefore, there was no misbranding by the petitioner. The petitioner could have been said to have committed offence if after mentioning 'No Added MSG' in the sample it was found that MSG was added but that is not so. This issue was specifically raised by the petitioner before the adjudicating authority but the same has not been properly considered while passing the impugned order dated 26.7.2016, therefore, the impugned order cannot be sustained. Since there is no prima facie material to show that the petitioner has done misbranding or given any false or misleading statement in the label(sic:label), therefore, he cannot be accused of violating Section 26(1),(2)(ii)(v) of the Act or Regulation 2.3(1) (5) or Section 27(3)(c) and 27(2)(c) of the Act.

16. It is the settled position in law that the prosecution can be quashed in exercise of the extraordinary power under Article 226 or the inherent power

under Section 482 of the Cr.P.C. when the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same, do not disclose commission of any offence and make out a case against the accused. (See: 1992 Supp(1) SCC 335, *State of Haryana and others Vs. Bhajanlal and others*). When it is certain that there is no prospects of the case ending in conviction, the valuable time of the court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date and that when the trial is going to be nothing but a farce, such a course of action should not be allowed to take place. [See: (1996) 9 SCC 766, *Satish Mehra Vs. Delhi Administration and Another*].

17. In the matter of *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and others* reported in (1998) 5 SCC 749 wherein the petitioner was sought to be prosecuted on the complaint of selling adulterated beverages under the brand name of 'Lehar Pepsi' and had approached the court after receiving the summons, the Hon'ble Supreme Court has held that:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

29. No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to

be groundless; but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial.”

The same analogy applies in the present case also.

18. Hence, in view of the aforesaid analysis, I am of the opinion that the petitioner is being prosecuted for the alleged violation of the provisions of the Act and the Regulations whereas there is no prima facie material to show that there was any misbranding by the petitioner. Hence the prosecution of the petitioner cannot be sustained.

19. That apart it is also noticed that the designated officer has granted sanction for prosecution exercising the power under Section 36(3)(e) of the Act vide order Annexure P/7. It is a cryptic order which shows that the designated officer has not applied its mind to the fact if on the basis of the available material any offence or violation of provisions of the Act or Regulations is made out. The law in this regard is well settled that while granting sanction the authority concerned is required to apply mind on the facts of the case as also the relevant material while reaching to the conclusion as to whether prosecution has to be sanctioned or not. [See: AIR 1997 SC 3400, *Mansukhlal Vithaldas Chauhan Vs. State of Gujarat*]. It should be clear from the Form of sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case, sanctioned the prosecution. [See: AIR 1958 SC 124 *Jaswant Singh Vs. State of Punjab*]. The grant of sanction is a serious exercise of power by the competent authority and it has to be apprised of all the relevant material, and on such materials, the authority has to take a conscious decision as to whether the facts would reveal the commission of offence under the relevant provisions. [See: AIR 2014 SC 2369, *P.L. Tatwal Vs. State of M.P.*]. It is an obligation of the sanctioning authority to discharge his duty to give or withhold sanction only after having full knowledge of the material facts of the case. Sanction is a weapon to discourage vexatious prosecution and it is a safeguard for the innocent, though not a shield for the guilty. Consideration of the material implies application of mind, therefore, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material

placed before it. [See: AIR 2014 SC 827, *CBI Vs. Ashok Kumar Aggarwal*].

20. Having regard to the aforesaid, the impugned order of sanction dated 28.5.2016 (Annexure P/7) also cannot be sustained.

21. In view of the above analysis, the writ petition is allowed. The impugned order dated 28.5.2016 granting sanction and order dated 26.7.2016 rejecting the petitioner's objection and denying the prayer for discharging from prosecution, are hereby set aside and the prosecution launched against the petitioner is quashed.

Petition allowed.

I.L.R. [2017] M.P., 1824

WRIT PETITION

Before Mr. Justice Vijay Kumar Shukla

W.P. No. 15345/2016 (Jabalpur) decided on 21 April, 2017.

BADRI PRASAD JHARIA

...Petitioner

Vs.

SMT. SEETA JHARIA

...Respondent

Constitution – Article 227 and Evidence Act (1 of 1872), Section 112 & 114 – DNA Test in Matrimonial Cases – Husband filed a divorce case on the ground that wife is living an adulterous life and questioned the paternity of daughter – Before starting of evidence, husband filed application for DNA test whereas wife refused for the same and accordingly application was dismissed – Challenge to – Held – Apex Court has concluded that though DNA test is most legitimate and scientifically perfect to ascertain the paternity and infidelity, but for preservation of individual privacy, a person cannot be compelled for DNA test – On such refusal by wife, Court can draw presumption u/S 114 of the Evidence Act without disturbing the presumption envisaged u/S 112 of Evidence Act – No illegality in impugned order – Petitioner will be at liberty to file application for DNA test after recording of evidence or may request the Court to draw adverse inference in terms of Section 114 of the Act of 1872 for refusing the DNA test. (Para 17 & 18)

संविधान – अनुच्छेद 227 एवं साक्ष्य अधिनियम (1872 का 1), धारा 112 व 114 – वैवाहिक प्रकरणों में डी.एन.ए. जांच – पति ने इस आधार पर विवाह-विच्छेद का

प्रकरण प्रस्तुत किया कि पत्नी जारता का जीवन जी रही है तथा पुत्री के पितृत्व पर सवाल उठाया – साक्ष्य प्रारंभ होने से पूर्व, पति ने डी.एन.ए. जांच हेतु आवेदन प्रस्तुत किया जिस पर पत्नी ने उक्त के लिए इंकार किया एवं तदनुसार आवेदन खारिज किया गया था – को चुनौती – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यद्यपि डी.एन.ए. जांच पितृत्व तथा व्यभिचार सुनिश्चित करने हेतु अत्यन्त विधिसम्मत एवं वैज्ञानिक रूप से उत्तम है, परंतु व्यक्तिगत निजता के परिरक्षण के लिए, एक व्यक्ति को डी.एन.ए. जांच के लिए विवश नहीं किया जा सकता – पत्नी द्वारा ऐसे इंकार पर, न्यायालय साक्ष्य अधिनियम की धारा 112 के अंतर्गत परिकल्पित उपधारणा को छुए बिना साक्ष्य अधिनियम की धारा 114 के अंतर्गत उपधारणा कर सकता है – आक्षेपित आदेश में कोई अवैधता नहीं – याची, साक्ष्य अभिलिखित होने के पश्चात् डी.एन.ए. जांच हेतु आवेदन प्रस्तुत करने के लिए स्वतंत्र होगा या डी.एन.ए. जांच से इंकार करने के लिए 1872 के अधिनियम की धारा 114 के अनुसार प्रतिकूल निष्कर्ष निकालने हेतु न्यायालय से निवेदन कर सकता है।

Cases referred:

(2014) 2 SCC 576, (2003) 4 SCC 493, (2015) 1 SCC 365, AIR 1934 PC 49, AIR 1954 SC 176, (1993) 3 SCC 418, (2001) 5 SCC 311, (2009) 12 SCC 454, (2010) 7 SCC 263.

Ashok Lalwani, for the petitioner.

Swapnil Ganguly, for the respondent.

ORDER

V. K. SHUKLA, J. :- In this writ petition preferred under Article 227 of the Constitution of India, challenge has been made to the order dated 24-8-2016 passed in HMA Case No.33/2015 by the learned Principal Judge, Family Court, Mandla whereby an application submitted by the petitioner for DNA test of the respondent has been rejected.

2. The factual expose, succinctly adumbrated in a nutshell is that the petitioner got married with the respondent in the year 1999. He is a government servant posted as a clerk in the I.T.I., Chhindwara, whereas the respondent is posted as a teacher in District Mandla. The parties are living at their respective places of posting ever since after solemnisation of their marriage in the year 1999.

A petition for dissolution of marriage under Section 13(1) of the Hindu Marriage Act, 1955 is filed by the petitioner against the respondent on the ground of adulterous behaviour alleging that she is having extra-marital

relationship.

3. The respondent-wife has also lodged a report against the petitioner for commission of offence punishable under Section 494 of the Indian Penal Code. A child - Vatsla Jharia was born during the wedlock of the petitioner and the respondent, but the petitioner has alleged that she is not his daughter, as there was no cohabitation with the respondent since the year 2006. It is submitted that the petitioner is posted at Chhindwara since 26-4-2006, whereas the said child has born in the year 2012.

4. The petitioner preferred an application before the Family Court for DNA test of the child in order to ascertain paternity of the child – Vatsla Jharia. In reply to the said application the respondent has refused for the DNA test of the child and herself. In addition to the denial in reply to the said application, she also made a statement for refusal of the DNA test of herself and the daughter. In this regard she had also made a specific note in the order-sheet in her own writing, refusing for DNA test.

5. By the impugned order the said application has been rejected by the Family Court on the ground that the respondent cannot be compelled for the DNA test, when she had specifically denied and refused for the said test. It is also mentioned in the order-sheet that the application has been filed prior to adducing of evidence before the Court below as the evidence is yet to commence on behalf of the parties. The Court has also mentioned in the order-sheet that adverse inference of refusal of DNA test by the respondent shall be taken into consideration at the time of passing final judgment and the case has been fixed for evidence.

6. Counsel for the petitioner submitted that the order impugned is perverse and illegal, as request for DNA test has been rejected by the Court without taking into consideration the pleadings advanced in the plaint and in the application, which *prima facie* establish that the respondent was leading an adulterous life and was having illicit relations with another person, whose name is also mentioned in the divorce petition, the Court ought to have allowed request for DNA test. It is contended that it would be impossible for him to establish the alleged infidelity of wife and the DNA test is the most legitimate scientifically perfect. He further submitted that the Apex Court in the case of *Nandlal Wasudeo Badwaik vs. Lata Nandlal Badwaik and another*, (2014) 2 SCC 576 held that the DNA test is only a scientific method, by which the

paternity of a child can be ascertained.

7. To buttress his submissions he also relied on the judgment of the Supreme Court rendered in the case of *Sharda vs. Dharampal*, (2003) 4 SCC 493. He submitted that the right to individual privacy of the respondent would have been considered only after passing the order for DNA test and then only adverse inference and presumption as mentioned in Section 114 of the Indian Evidence Act, can be drawn. Thus, in sums and substance counsel for the petitioner has urged the Court below has erred while rejecting the application for DNA test merely on the ground of refusal of the respondent for conducting the DNA test.

8. Combating the aforesaid submissions, counsel for the respondent submitted that the application for the purpose of the DNA test has been filed by the petitioner at an early stage of the proceedings of the suit. He has strenuously urged that the evidence of the parties have yet to be recorded and the petitioner would have an opportunity to make request for DNA test after recording evidence or can request the Court to draw adverse inference against respondent for refusing the DNA test in terms of Section 114 of the Evidence Act. To substantiate his submission, he referred to paras 15, 18 and 19 of the judgement of the Apex Court passed in *Nandlal Wasudeo Badwaik* (supra). Besides, he has placed reliance on paras 10 and 18 of the judgment the Apex Court rendered in the case of *Dipanwita Roy vs. Ronobroto Roy*, (2015) 1 SCC 365 and submitted that the Apex Court has laid down that the courts have to strike the balance in the cases of seeking direction for conducting DNA test *vis-a-vis* right of an individual privacy. He supported the impugned order in the light of the aforesaid judgments and submitted that there is no illegality in the impugned order, as the Court below has also held that the consequence of refusal of the respondent in regard to DNA test, would be taken into consideration at the time of passing final judgment in the matter.

9. To appreciate the rival contentions raised at the Bar, it is apt to reproduce the order impugned in the present petition:

“आवेदिका सहित श्री जी.के. अग्रवाल अधिवक्ता उपस्थित।
अनावेदक द्वारा श्री इम्तियाज अख्तर अधिवक्ता उपस्थित।

प्रकरण आवेदक की ओर से प्रस्तुत आवेदन पत्र अंतर्गत धारा-26 नियम 10 (अ) सहपठित धारा-151 व्य.प्र.स. पर तर्क हेतु नियत है। आवेदन पर तर्क श्रवण किये गये। अनावेदिका की ओर से नाबालिग पुत्री वत्सला झारिया का जन्म प्रमाण पत्र पेश किया गया। इसकी एक प्रति आवेदक को दी

जावे।

(सुभाष सोलंकी)

प्रधान न्यायाधीश, कुटुम्ब न्यायालय
मण्डला।

पुनश्च—

आवेदिका सहित श्री जी.के. अग्रवाल अधिवक्ता उपस्थित।

अनावेदक द्वारा श्री इम्तियाज अख्तर अधिवक्ता उपस्थित।

प्रकरण आवेदक की ओर से प्रस्तुत आवेदक पत्र अंतर्गत धारा-26 नियम 10 (अ) सहपठित धारा-151 व्य.प्र.स. पर आदेश हेतु नियत है।

आवेदक द्वारा प्रस्तुत आवेदन पत्र संक्षेप में इस प्रकार है कि आवेदक ने अनावेदिका के विरुद्ध विवाह विच्छेद हेतु याचिका यह बताते हुए पेश किया है कि अनावेदिका के अन्य पुरुषों के साथ संबंध है तथा वह व्याभिचारी जीवन यापन कर रही है, अनावेदिका की जो पुत्री वत्सला झारिया है वह आवेदक के संसर्ग से नहीं हुई है। उक्त बातें मौखिक साक्ष्य से प्रमाणित नहीं की जा सकती हैं, यह सिर्फ डी.एन.ए. टेस्ट से प्रमाणित की जा सकता है। अतः डी.एन.ए. टेस्ट कराया जावे कि अनावेदिका की पुत्री वत्सला झारिया आवेदक के संसर्ग से हुई है या नहीं। आवेदक इस पर लगने वाले व्यय को देने को तत्पर है।

अनावेदिका की ओर से उक्त आवेदन के लिखित जवाब में व्यक्त किया गया है कि आवेदक द्वारा न्यायालय की सहानुभूति अर्जित करने के आशय से तथा प्रकरण को अनावश्यक रूप से विलंबित करने के आशय से उक्त आवेदन पेश किया गया है जो अनावेदिका के चरित्र को लांछित करने वाला है। अतः उक्त आवेदन निरस्त किया जावे।

उभय पक्ष के तर्क श्रवण किये गये।

प्रकरण का अवलोकन किया गया।

आवेदक ने यह प्रकरण अनावेदिका के विरुद्ध धारा-13 हि0वि0अधि0 के तहत शारीरिक एवं मानसिक प्रताड़ना व अन्य दूसरे से अवैध संबंध के आधार पर विवाह-विच्छेद हेतु पेश किया गया है। प्रकरण में उभयपक्ष साक्ष्य होना है। आवेदक ने साक्ष्य के दूसरे अवसर यह आवेदन पत्र प्रस्तुत किया है। अनावेदिका ने डी.एन.ए. टेस्ट के आवेदन के जवाब में तथा न्यायालय में मौखिक रूप से डी.एन.ए. टेस्ट कराने से स्पष्ट इंकार किया है। इस बाबत आदेश पत्रिका में इस आशय की अनावेदिका सीता की स्वयं की हस्तलिपि में उसने टीप भी लेख की है। ऐसी स्थिति में अनावेदिका की इच्छा के विरुद्ध उसका व उसकी पुत्री वत्सला झारिया का डी.एन.ए. टेस्ट कराया जाना उचित नहीं है। अनावेदिका द्वारा डी.एन.ए. टेस्ट से किये गये इंकार को न्यायालय

द्वारा निर्णय के समय विचार में लिया जावेगा।

तदनुसार इस आवेदन पत्र पर आदेश किया जाता है।

आगामी तिथि पर आवेदक अपने संपूर्ण साक्षियों को स्वयं उपस्थित रखे।

प्रकरण आवेदक साक्ष्य हेतु दिनांक 19.09.2016

(सुभाष सोलंकी)

प्रधान न्यायाधीश, कुदुम्ब न्यायालय
मण्डला।"

10. Upon perusal of the impugned order it is manifest, that the application seeking direction for DNA test has been filed prior to recording of evidence of the parties. The respondent has refused for the DNA test of herself and also of the child in the written reply and also in her oral statement made before the Court. In addition to that, she had also made a handwritten note in the order-sheet that she is not willing for the DNA test. The Court has also observed in the impugned order that the adverse inference of refusal for the DNA test would be taken into consideration at the time of passing of the final judgment.

11. It is condign to survey the proposition of law in respect of prayer for DNA test in order to ascertain the paternity and legitimacy of the child and infidelity of wife. At this juncture it is useful to refer the provisions of Section 112 of the Evidence Act. It reads thus:

"112. Birth during marriage, conclusive proof of legitimacy- The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

The word 'access' used in Section 112 of the Act was considered by the Privy Council in the case of *Karapaya Servai vs. Mayandi*, AIR 1934 PC 49 and it was held that it connotes only the existence of an opportunity for marital intercourse, and in case such an opportunity was shown to have existed

during the subsistence of a valid marriage the provision explained the same as a conclusive proof of the fact that the child born during the subsistence of the valid marriage, was a legitimate child.

12. The said judgment was followed by the Apex Court in *Chilukuri Venkateswarlu vs. Chilukuri Venkatanarayana*, AIR 1954 SC 176. In the case of *Goutam Kundu vs. State of W.B.*, (1993) 3 SCC 418 it was held by the Apex Court that the order for blood test cannot be passed as a matter of course. There must be a strong *prima facie* case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act. It was further held that no one can be compelled to give sample of blood for analysis. In the case of *Kamti Devi vs. Poshi Ram*, (2001) 5 SCC 311 in which it was held that the result of a genuine DNA test is said to be scientifically accurate, but even that it is not enough to escape from the conclusiveness of Section 112 of the Evidence Act.

13. In the case of *Sham Lal vs. Sanjeev Kumar*, (2009)12 SCC 454 it was held that the presumption under Section 112 of the Evidence Act cannot be displaced by mere balance of probabilities.. or any circumstance creating doubt.

14. In the case of *Sharda vs. Dharmapal* (supra) the Apex Court explained that the ratio of *Goutam Kudus'* case (supra) was not an authority for the proposition that under no circumstances the Court can direct for blood test to be conducted.

15. In *Selvi vs. State of Karnataka*, (2010) 7 SCC 263 the Apex Court held that no individual should be forcibly subjected to any of the techniques whether investigation in criminal cases or otherwise as it would amount an unwarranted intrusion into personal liberty.

16. The Apex Court in the case of *Dipānwita Roy vs. Ronobroto Roy*, (supra) where the High Court had already directed for the DNA test, held in para 18 of the order while upholding the order passed by the High Court by putting a caveat before passing of the order regarding paternity test by DNA, observed thus :

“18. We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant-wife liberty to comply with or disregard the order passed by the High

Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the respondent-husband, against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in Section 114 of the Indian Evidence Act, especially, in terms of illustration (h) thereof. Section 114 as also illustration (h), referred to above, are being extracted hereunder:

"114. Court may presume existence of certain facts – The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration (h) - That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him."

This course has been adopted to preserve the right of individual privacy to the extent possible. Of course, without sacrificing the cause of justice. By adopting the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated under Section 112 of the Indian Evidence Act. Even though, as already stated above, undoubtedly the issue of legitimacy would also be incidentally involved."

17. In the light of para 18 of the judgment passed by the Apex Court in *Dipanwita Roy vs. Ronobroto Roy*, (supra), the impugned order cannot be held to be illegal. It has been held by the Apex Court that a person cannot be compelled for the DNA test, though, the DNA test is most legitimate and scientifically perfect means which the husband can use to establish and ascertain the paternity and infidelity, but at the same time the Court has evolved the principle of balance by directing for preservation and the right of individual

privacy to the extent possible and, therefore, the Court itself has held that in case, the wife declines for the DNA test, the Court can draw presumption as contemplated in Section 114 of the Evidence Act, without disturbing the presumption envisaged in Section 112 of the Evidence Act.

18. However, as discussed above in the light of facts and the law in respect of directions for DNA test and also taking into consideration the submission of respondent that the petitioner can file an application for DNA test after recording of evidence, the petitioner will have an opportunity to make a request for DNA test after recording of evidence or, to request the Court to draw adverse inference against the respondent for refusing the DNA test in terms of Section 114 of the Indian Evidence Act.

19. Thus, in view of the aforesaid enunciation of law discussed in preceding paragraphs, I do not find any illegality and perversity of approach in the impugned order warranting interference of this Court in exercise of jurisdiction under Article 227 of the Constitution of India and the arguments advanced by the counsel for the petitioner cannot be countenanced at this stage.

20. *Ex-consequenti*, the writ petition being devoid of merit, is **dismissed** with the aforesaid liberty. In the facts and circumstances of the case, there shall be no order as to costs.

Petition dismissed.

I.L.R. [2017] M.P., 1832

WRIT PETITION

Before Ms. Justice Vandana Kasrekar

W.P. No. 900/2015 (Jabalpur) decided on 3 May, 2017

SANDHAYA MIHILAL RAI (SMT.)

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 and Panchayat Nirvachan Niyam, M.P. 1995, Rules 72, 77 & 81 – Election Petition – Alternate Remedy – Petitioner declared elected as Sarpanch by four votes – After declaration of result, ransacking of ballot boxes – Returning officer reported to State Election Commission whereby order directing re-poll was issued – After re-polling, respondent

no.6 was declared elected – Challenge to – Held – As per Rule 72 of the Rules of 1995, re-polling can only be directed when ballot boxes are destroyed before the declaration of result under Rule 81 is made – In the present case, returning Officer has not declared the result under Rule 81, therefore it cannot be said that petitioner was declared as elected – Petitioner having alternate remedy of election petition u/S 122 of the Act of 1993 – Petition dismissed. (Paras 7, 9 & 10)

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 एवं पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 72, 77 व 81 – निर्वाचन याचिका – वैकल्पिक उपचार – याची चार मतों से सरपंच के रूप में निर्वाचित घोषित हुआ – परिणाम की घोषणा होने के पश्चात् मतपेटियों की लूट – निर्वाचन अधिकारी ने राज्य निर्वाचन आयोग को सूचना दी जिस पर पुनर्मतदान निर्देशित करते हुए आदेश जारी किया गया था – पुनर्मतदान के पश्चात्, प्रत्यर्थी क्र. 6 निर्वाचित घोषित किया गया था – को चुनौती – अभिनिर्धारित – 1995 के नियमों के नियम 72 के अनुसार, पुनर्मतदान केवल तब निर्देशित किया जा सकता है जब नियम 81 के अंतर्गत घोषणा होने से पूर्व मतपेटियां नष्ट हो गई हों – वर्तमान प्रकरण में, निर्वाचन अधिकारी द्वारा नियम 81 के अंतर्गत परिणाम घोषित नहीं किया गया है, इसलिए यह नहीं कहा जा सकता कि याची को निर्वाचित घोषित किया गया था – याची के पास 1993 के अधिनियम की धारा 122 के अंतर्गत निर्वाचन याचिका का वैकल्पिक उपचार है – याचिका खारिज।

Cases referred:

AIR 1991 SC 1106, AIR 1978 SC 851.

A.M. Trivedi with Parag S. Chaturvedi and Ashish Trivedi, for the petitioner.

Siddharth Seth, for the respondents No. 3, 4 & 5.

Anurag Shivhare, for the respondent No. 6.

ORDER

VANDANA KASREKAR, J. :- The petitioner has filed the present writ petition praying for the following reliefs :

(i). That, the petitioner prays that the Hon'ble Court may kindly issue a writ of certiorari to declare null and void the fresh poll of booth no.74 of Gram Panchayat, Chhatarpur (sic:Chhatarpur) in the interest of justice.

ii). That, the petitioner prays that the Hon'ble Court may

kindly issue a writ of mandamus to direct respondents to declare elected to petitioner as Sarpanch, in the interest of justice.

iii) That, the Hon'ble Court may kindly issue any other writ or direction in the interest of justice as the Court deems fit”

2. The petitioner is a candidate for the post of Sarpanch of Gram Panchayat, Chhatarpur. There were total nine candidates who had contested the election. The polling was to be held on 13th January and the counting was started from 8.00 p.m. on the same day and the result was declared at about 9.00 p.m. Accordingly, the election was held and result was declared in which the petitioner was declared elected by four votes. After declaration of the result, supporter and agents of defeated candidate Lalita Yadav started disruption and with support of respondent No.5 ransacked the ballot box of Booth No.74. Respondent No.5 has also lodged FIR of the said incident in Police Station Panagar. Returning Officer thereafter made a report regarding said incident to the State Election Commission. The State Election Commission vide order dated 14/01/2015 has directed to conduct repoll on 15/01/2015. The said order was communicated to the petitioner on 14/01/2015 through Panchayat Secretary at 9.00 pm so that the petitioner could not prepare for re-polling. Subsequently, on 15/01/2015, re-polling was held and in the said re-polling, the petitioner got 165 votes and respondent No.6 got 307 votes. On the basis of the said polling (sic:polling), respondent No.6 declared elected. Being aggrieved by this, the petitioner has filed the present writ petition.

3. Learned senior counsel for the petitioner argued that the State Election Commission (respondent No.3) has erred in issuing direction for re-polling for the post of Sarpanch only when the ballots of the post of Panchas were also ransacked. He further submitted that as per Rule 72 of M.P. Panchayat Nirvachan Niyam, 1995 re-polling can be ordered only where ballot papers accidentally or intentionally destroyed or lost or is damaged or tampered with to such an extent that the result of the poll at that polling station cannot be ascertained. But, in the present case, result was already ascertained and the true copy of the result sheet has already been provided to the candidates. In such circumstances, the present case does not fall within the provisions of Rule 72 of the Panchayat Nirvachan Niyam. He further submitted that if the provisions of Rule 77 of the Panchayat Nirvachan Niyam has already been complied with, then the provisions of Rule 72 would not be applicable. He

relied upon the judgment passed by the Apex Court in the case of *Ambika Prasad Dubey Vs. Distt. Magistrate, Allahabad & others*, reported in AIR 1991 SC 1106, in which the Apex Court has held that fresh poll held after declaration of result is liable to be set aside.

4. Respondent No.3 has filed reply and raised preliminary objection that in the present case, the election of Gram Panchayat, Chhatarpur, Janpad Panchayat, Panagar, Distt. Jabalpur has already been concluded and the result has already been declared. In such circumstances, it is submitted that any dispute with regard to the election of the Gram Panchayat will now be categorized as an election dispute as it tantamount to challenging the election of returned candidate or candidates, therefore, the present writ petition is not maintainable and the petitioner has a remedy of filing an election petition under Section 122 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. So far as merit of the case is concerned, respondent No.3 has submitted that the election for the post of Panch and Sarpanch of Gram Panchayat and Members of the Janpad Panchayat and Jila Panchayat were conducted on 13/01/2015 and counting for the post of Panch and Sarpanch was conducted on the same date i.e. 13/01/2015. When the counting was being conducted for the post of Panch and Sarpanch, a rowdy mob of 80 to 100 antisocial elements entered into the counting centre and ransacked ballot boxes. The officers and employees on election duty were also attacked and there was an atmosphere of fear and uncertainty in the polling booth. Presiding Officer immediately reported the incident to the returning officer and the police authorities. Thereafter reported the mater (sic:matter) to respondent No.3. District Election Officer after seeking instructions from the State Election Officer, ordered for conducting re-polling for the post of Sarpanch in Polling booth No.74 in exercise of powers conferred under Rule 72(2)(a) of Panchayat Nirvachan Niyam. Thereafter re-polling was held and the result was declared on 17/01/2015. Thus, respondent No.3 has acted in accordance with law and no illegality has been caused by the respndent (sic:respondent) No.3 in ordering re-polling.

5. The petitioner has filed rejoinder and in the rejoinder the petitioner has denied that the petitioner is having an alternate remedy of filing of election petition. He submitted that in the present case the petitioner has challenged the action of respondent No.2 for issuing the order of re-polling on the ground that once result has been declared, the election officer could not exercise the

powers under Section 72 of the Nirvachan Niyam and cannot order for re-polling. In such circumstances, the petitioner has no remedy of filing election petition.

6. I have heard learned counsel for the parties and perused the record. The petitioner and respondent No.6 contested election for the post of Sarpanch, Gram Panchayat, Chhatarpur, Janpad Panchayat, Panagar, Distt. Jabalpur. Polling was held on 13th January, 2015 and on the same date result sheet was supplied to the petitioner. After counting the petitioner was declared elected, however, defeated candidate Lalita Yadav started disruption and with support of respondent No.5 ransacked ballot boxes of Booth No.74. Subsequently, FIR was lodged by respondent No.5. Returning Officer has submitted a report of the said incident to the State Election Commission. State Election Commission vide order dated 14/01/2015 has issued direction for conducting re-polling for the said booth. Subsequently, on 15/01/2015 re-polling was held and in the said re-polling the petitioner got 165 votes and respondent No.6 got 307 votes. Being aggrieved by that order, the petitioner has filed the present writ petition. From perusal of the record, it reveals that respondent No.3 had issued direction for re-polling on the basis of the report submitted by the Presiding Officer and the present incident is covered under Rule 72(1) (a) which reads as under :

“72. Fresh poll in case of destruction, tempering etc of ballot boxes or due to procedural irregularity-(1)- If at any election-

(a) any ballot box used at a polling station is unlawfully taken out of the custody of the Presiding Officer or the Returning Officer, or is accidentally or intentionally destroyed or lost or is damaged or tampered with to such an extent, that the result of the poll at that polling station cannot be ascertained, or

(b)

7. It has further been found that after declaration of the result on 13/01/2015 the election officer has issued the result under format No.17 of Rule 77(2) of M.P. Panchayat Nirvachan Niyam, 1995. Rule 77 of M.P. Panchayat Nirvachan Niyam, 1995 reads as under :

"77. Counting of Votes:- (1) xxx

(2) After the counting of votes in respect of a polling station has been completed, the Returning Officer or such other officer authorized by him, shall make the entries in results sheet in form 16 for Panchas and in part one of the result sheets in form 17, 18 and 19 for Sarpanch, members of Janpad Panchayat and Zila Panchayat respectively and announce the total number of votes polled by each candidates.

(3) xxx

(4) The Returning Officer or the officer authorized by him shall furnish to every candidate or his counting agent, present at the close of the counting, a true copy of the relevant result sheet prepared under sub-rule- (2) after obtaining a receipt there for and shall also attest it as a true copy."

As per said rule, after counting of votes, the returning officer shall make entry of the result sheet in form 17, 18 and 19 for Sarpanch, members of Janpad Panchayat and Jila Panchayat respectively. After result as per Rule 77, the returning officer has power as per Rule 80 of the Nirvachan Niyam, to issue direction for recounting on the application submitted by any of the party. After recounting of the votes, returning officer has to declare the result as per Rule 81 of the Nirvachan Niyam. In the present case, the returning officer has not declared the result as per Rule 81 of the Nirvachan Niyam, therefore, it cannot be said that returning officer has declared the petitioner as elected candidate.

8. The Apex Court in the case of *Ambika Prasad Dubey* (supra) in para-7 has held as under :

"7. It will be seen from these Rules that the fresh poll could be ordered only when there is irregularities in the polling as provided under Rules 21-G and H. The present case is not concerned with the circumstances provided under Rr.21-G and H. But it is concerned with the irregularities at the time of counting of ballot papers. The case, in other words, is covered by R. 21-F. It has been found at the counting that 41 ballot papers were mixed up in the bundle of respondent-4 when the

electricity went off and those 41 ballot papers upon scrutiny were found to have been not issued by the Polling officers. In other words, they have not been used at the polling. They ought to have been, therefore, discarded. They ought not to have been included in favour of respondent-4. If those 41 ballot papers are excluded from the total number of votes held by respondent-4, he would get only 443 votes as against 456 votes polled by the petitioner. The petitioner is entitled to be declared as duly elected Pradhan. The Returning Officer instead of declaring the petitioner as duly elected Pradhan has reported for fresh poll. This is a clear case of failure to exercise jurisdiction by the Returning Officer and repoll ordered by the District Magistrate on this basis is no better. It is equally contrary to law and beyond jurisdiction. The High Court seems to have overlooked this material aspect of the case and dismissed the writ petition on erroneous view of the law.”

9. Other ground regarding availability of the alternate remedy is concerned, Section 122 (i) of the M.P. Panchayat Evam Gram Swaraj Adhiniyam, 1993 reads as under :

“122 – Election Petition- (1) An election under this Act shall be called in question only by a petition presented in prescribed manner :-

- (i) in case of (Gram Panchayat or Gram Sabha) to Sub Divisional Officer (Revenue);
- (ii) in case of Janpad Panchayat to the Collector; and
- (iii) in case of Jila Panchayat to the Divisional Commissioner and not otherwise.”

As per Section 122 of the Adhiniyam, 1993, the petitioner can question the election. The contention of learned counsel for the petitioner that is in the present case, remedy of election petition is not available to the petitioner on the ground that once the result has been declared, then election officer could not exercise the power under Rule 72 of the Nirvachan Niyam, 1995 and cannot order for re-polling. Thus, it is submitted by him that in the present case, the petitioner has challenged the order of re-polling and not the election

of respondent No.6, therefore, the writ petition is maintainable. This contention of learned counsel for the petitioner is not acceptable in view of the decision passed by the Apex Court in the case of *Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others*, reported in AIR 1978 SC 851. Para-31 and 32 of the said judgment reads as under :

“31. If 'election' bears the larger connotation, if 'calling in question' possesses a semantic sweep in plain English, if policy and principle are tools for interpretation of statutes, language permitting the conclusion is irresistible' even though the argument contra may have emotional impact and ingenious appeal, that the catch-all jurisdiction under Art. 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll. For, the prima facie purpose of such a re-poll was to restore a detailed Poll process and to, complete it through the salvatory effort of a repoll. Whether in fact or law, the order is validly made within his powers or violative of natural justice can be examined later by the appointed instrumentality, viz., the Election Tribunal. That aspect will be explained presently. We proceed on the footing that re-poll in one polling station or in many polling stations for good reasons, is lawful. This shows that re-poll in many or all segments, all- pervasive or isolated, can be lawful. We are not considering whether the act was bad for other reasons. We are concerned only to say that if the regular poll, for some reasons, has failed to reach the goal of choosing by plurality the returned candidate and to achieve this object a fresh poll (not a new election) is needed, it may still be a step in the election. The deliverance of Dunkirk is part of the strategy of counter-attack. Wise or valid, is another matter.

32. On the assumption, but leaving the question of the validity of the direction for re-poll soon for determination by the Election Tribunal, we hold that a writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in 'election' and is there, fore barred by Art. 329(b). If no re-poll had been directed the legal perspective would have been very different. The mere cancellation would

have then thwarted the course of the election and different considerations would have come into play. We need not chase a hypothetical case.”

10. Thus, in the present case, after re-polling the election was already held and respondent No.6 is declared elected and as there is no interim order passed by this Court in favour of the petitioner now, therefore, remedy lies to the petitioner only to file election petition.

11. Thus, in view of the aforesaid discussion, this writ petition is dismissed on the ground of availability of alternate remedy.

Petition dismissed.

I.L.R. [2017] M.P., 1840

WRIT PETITION

Before Mr. Justice J.K. Maheshwari

W.P. No. 7694/2009 (S) (Jabalpur) decided on 19 June, 2017

S.K. AGARWAL

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Service Law – Constitution – Article 320(3) and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 27(2) – Power of Appellate Authority – Advice from P.S.C. – Disciplinary Authority imposed major penalty to petitioner – In appeal, Appellate Authority opined to reduce the penalty to a minor one – Matter forwarded to P.S.C. for consultation and advice – P.S.C. opined not to reduce the penalty imposed, resultantly Appellate Authority dismissed the appeal – Challenge to – Held – Requirement to consult the M.P.P.S.C and its report/advice is not binding on the disciplinary authority or appellate authority while exercising quasi judicial powers – As per Article 320(3) and Rule 27(2) of the Rules of 1966, authorities may seek advice of P.S.C. – Mere consultation would not mean to affect the proposed punishment – It would amount to abdication of statutory powers of authorities which is not sustainable in eyes of law – Impugned order is quashed and matter remitted to appellate authority to reconsider the matter on point of punishment, uninfluenced with advice of the Commission (P.S.C.) – Petition allowed. (Paras 15, 19 & 21)

सेवा विधि - संविधान - अनुच्छेद 320(3) एवं सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 27(2) - अपीली प्राधिकारी की शक्ति - लोक सेवा आयोग से सलाह - अनुशासनिक प्राधिकारी ने याची पर गुरुतर शास्ति अधिरोपित की - अपील में, अपीली प्राधिकारी ने शास्ति को कम कर लघु करने की राय दी - मामला परामर्श तथा सलाह हेतु पी.एस.सी. को अग्रेषित किया गया - पी.एस.सी. ने अधिरोपित की गई शास्ति को कम न करने की राय दी, परिणामस्वरूप अपीली प्राधिकारी ने अपील खारिज की - को चुनौती - अभिनिर्धारित - एम.पी.पी.एस.सी. से परामर्श करने की आवश्यकता तथा उसका प्रतिवेदन/सलाह न्यायिककल्प शक्तियों का प्रयोग करते समय अनुशासनिक प्राधिकारी या अपीली प्राधिकारी पर बाध्यकारी नहीं है - अनुच्छेद 320(3) एवं 1966 के नियमों के नियम 27(2) के अनुसार, प्राधिकारीगण पी.एस.सी. की सलाह ले सकते हैं - मात्र परामर्श का अर्थ प्रस्तावित दण्ड को प्रभावित करना नहीं होगा - यह प्राधिकारियों की कानूनी शक्तियों के त्याग के समान नहीं होगा जो कि विधि की दृष्टि में कायम रखने योग्य नहीं है - आक्षेपित आदेश अभिखंडित तथा मामला आयोग (पी.एस.सी.) की सलाह से अप्रभावित होकर दण्ड के बिंदु पर पुनर्विचार करने हेतु अपीली प्राधिकारी को प्रतिप्रेषित किया गया - याचिका मंजूर।

Cases referred:

AIR 1962 SC 1130, (1991) 3 SCC 219, 1995 Supplementary (2) SCC 655, 1997 (11) SCC 444, (2014) 5 SCC 172.

Ashish Shroti, for the petitioner.

Anubhav Jain, P.L. for the respondent Nos. 1 to 3.

ORDER

J.K. MAHESHWARI, J. :- Assailing the order Annexure P/6 dated 23.6.2008 passed by the disciplinary authority and the order Annexure P/11 dated 2.7.2009 passed by the appellate authority with a further prayer to fix his pay at the stage as if no punishment is imposed on the petitioner and also to pay arrears of salary, the petitioner has filed this petition under Article 226/227 of the Constitution of India.

2. The facts leading to filing of the present petition are that the petitioner was working as Assistant Professor and posted at Government Kusum Mahavidyalaya Banapura, District Hoshangabad. He was given the charge of the Principal of the College from the period with effect from 6.5.2004 to 12.7.2006. A charge sheet was served on him on 20.6.2006 wherein three charges were levelled against him. Charge No.1 relates to dereliction of the duty in execution of the government work. Charge No.2 relates to financial

irregularities and misutilization of the Government fund and charge No.3 relates to non-staying at the head quarter by the petitioner.

3. The petitioner filed the reply after going through the imputation of the allegations with respect to those charges. An inquiry was conducted and as per the inquiry report dated 27.7.2007, charge Nos. 1 and 2 were partially found prove and charge No.3 found prove. The disciplinary authority proposed the penalty vide order Annexure P/6 dated 23.6.2008 in exercise of the power of Rule 10(6) of Madhya Pradesh Civil Services (Classification Control and Appeal) Rules 1966 (hereinafter shall be referred to as "the Rules of 1966") to the lower stage of pay imposing the major penalty. On filing an appeal, the appellate authority was not agreeing with the punishment as offered by the disciplinary authority, however, assigning the reason to charge the penalty of imposing two increments with non-cumulative effect, the consultation was sought from the Public Service Commission. The Public Service Commission vide letter Annexure P/10 has not agreed with the proposal of the appellate authority of reducing the penalty proposed by the disciplinary authority, however, reaffirming the opinion as given at the time of consultation made by the disciplinary authority sent the advise note vide Annexure P/10. However, relying upon the said advice note without applying the discretion, the appellate authority has passed the order Annexure P/11 dated 2.7.2009 maintaining the order of the disciplinary authority dismissing the appeal of the petitioner. Being aggrieved by both these orders and assailing the finding as recorded by the inquiry officer on charge Nos.1,2,3, the petitioner has preferred this petition.

4. The respondent Nos.1 to 3/State has filed their return inter alia contending that the order of reverting the petitioner to the minimum scale of pay was found excessive by the appellate authority, however, modifying the same to the extent of imposing minor penalty to withhold two increments with non-cumulative effect was proposed. However, the argument with respect to disproportionate punishment made by the petitioner against the State Government is devoid of any merit. After giving detail of the charges as to how the opinion was formulated by the appellate authority, it is contended that on being asking the concurrence from the Madhya Pradesh Public Service Commission, it was not agreed to the proposal made by the appellate authority, however, modifying the penalty proposed by the appellate authority and reaffirming the penalty of the disciplinary authority, the order Annexure P/11 dated 2.7.2009 was passed. It is also contended that in the mater (sic:matter)

of departmental enquiry, the scope of judicial review is narrow, however, in the facts and circumstances of the case, interference in this petition is not warranted.

5. After hearing learned counsel for the parties and on perusal of the facts of the present case, the question cropped up for consideration is whether by way of consultation, the recommendation made by the Public Service Commission is binding on the disciplinary authority or on the appellate authority while exercising the quasi judicial power. However, influencing with such consultation of the Public Service Commission, the appellate authority is bound to change its opinion from the proposal of penalty as made by him.

6. To advert the aforesaid argument, first of all the provisions as contained under the Rules of 1966 are required to be noticed. As per Rule 17, it is apparent that the order passed by the disciplinary authority ought to be communicated to the Government servant supplying a copy of the report of inquiry, if any, held by the disciplinary authority and a copy of its finding on each article of charges; or, whether the disciplinary authority is not inquiring authority, a copy of the report of the inquiring authority and a statement of findings of the disciplinary authority together with brief reasons for its disagreement, if any, with the finding of the inquiry officer and also a copy of the advice if any given by the Commission and, whether the disciplinary authority has not accepted the advice of Commission, a brief statement of reasons of such non-acceptance. Against an order passed under Rule 17, as per Rule 23 it is appealable and as per Rule 24, the appellate authorities have been specified. Rule 26 deals with the contents of the appeal which may be possibly pleaded by the delinquent employee in the appeal and Rule 27 deals with consideration of appeal. As per Rule 27(2), it is clear that the appellate authority shall consider the deficiency of the procedure laid down has been complied or not and such non-compliance results in violation of any provision of the Constitution of India or results in failure of justice. The appellate authority is also vested with the power that the findings of the disciplinary authority are warranted by the evidence brought on record and also to look into the facts of the case regarding adequate, inadequate or severe punishment confirming, enhancing, reducing or setting aside the penalty or to remit back the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as may deem fit in the circumstances of the case. The first proviso makes it clear that the Public Service Commission shall be consulted

in all cases where such consultation is necessary.

7. In the facts of the present case, it reveals that the appellate authority after considering the evidence was of the opinion that the penalty as imposed by the disciplinary authority is severe, however, imposed minor penalty of withholding two increments with non-cumulative effect and the consultation was sought from the Public Service Commission. The Public Service Commission by sending a consultation/recommendation Annexure P/10 contends that there is no reason to review the consultation given by the Public Service Commission at the time of imposing the penalty by the disciplinary authority, however, reaffirming the earlier consultation, the matter was sent back. The appellate authority though was of the view that in the facts of the case, the minor penalty is sufficient but relying upon, the consultation of the Public Service Commission maintained the order of the disciplinary authority dismissing the appeal filed by the petitioner.

8. As per Article 320(3) of the Constitution of India, the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all the disciplinary matters affecting a person serving under the Government of India or the State Government in a civil capacity including the memorials or the petitions relating to such matters, However, looking to the spirit of Article 320(3) of the Constitution of India as well as the procedure prescribed under Rule 26 to the first proviso, it is apparent that the consultation by the appellate authority is obligatory. The aforesaid proviso makes it clear that the consultation in all cases may be made where such consultation is necessary. In any case looking to the provisions of Article 320(3) of the Constitution of India as well as Rule 26 of the Rules of 1966, it can be said that it is obligatory on the appellate authority to make such consultation but it is not mandatory and the appellate authority is having discretion that on feeling necessity, such consultation may be made.

9. As in the present case, the appellate authority has sought consultation from the Public Service Commission, however, this Court is not in a position to record any finding that such consultation sought in the facts of the present case by the appellate authority was not justifiable, However, it is to be examined that in case the appellate authority sought consultation from Public Service Commission then what would be the impact of such consultation and discretion and power as exercised by the appellate authority who is discharging the function of the quasi judicial authority on the facts brought before this Court

may be impaired with the consultation given by the Public Service Commission and whether it is having binding effect on the appellate authority to not to modify, reverse the punishment as given by the appellate authority relying upon such consultation.

10. In the context of the aforesaid issue, the question came up for consideration before Hon'ble the Supreme Court in the case of *A.N.D'Silva Versus Union of India* reported in AIR 1962 SC 1130. The Apex Court in the said case has held that the consultation of the Public Service Commission does not act as the appellate authority over the inquiry officer and to answer the question whether Public Service Commission can express the conclusion on merits different from the conclusion of the inquiry officer and its binding effect, it has been observed that the appellate authority or the disciplinary authority is not bound by the advice of the Public Service Commission. In later part of Paragraph 4 the Apex Court has observed as under :-

"In the view of the Enquiry Officer the motive for granting irregular connections was also established, but the Union Public Service Commission expressed a different view. By Art. 320 (3) of the Constitution, it is provided that the Union Public Service Commission shall be consulted in all disciplinary matters affecting a person serving under the Government of India in a civil capacity, but the Union Public Service Commission is not an appellate authority over the Enquiry Officer. It is unnecessary for the purpose of this case to consider whether in making their recommendations or tendering their advice the Union Public Service Commission may express a conclusion on the merits of the case as to the misdemeanor alleged to have been committed by a public servant different from the conclusion of the Enquiry Officer".

11. The judgment of *A.N.D'Silva* (supra) has been relied upon by the Apex Court in another case *Nagraj Shivarao Karjagi Versus Syndicate Bank, Head Office, Manipal and other* reported in (1991) 3 SCC 219. In the said case, the Apex Court in Paragraph Nos. 16, 17, 20 has held as under:-

"16. The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not

provide specific punishments for different misdemeanours except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulation, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to Article 320(3) of the Constitution. The Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Commission, as the case may be, shall be consulted-on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in *A.N.D'Silva v. Union of India* has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice

tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission.

20. For the foregoing reasons, we allow the appeal and the writ petition quashing the directive issued by the Finance Ministry, Department of Economic Affairs, (Banking Division) dated 21 July 1984. We also issue a direction to the Chairman of the Syndicate Bank to withdraw the circular letters dated 27 July 1984 and 8 September 1986. We further set aside the impugned orders of the disciplinary authority and appellate authority with a direction to the former to dispose of the petitioner's case in accordance with law and in the light of the observation made".

12. In the case of *U.P.State Agro Industrial Corporation Limited Versus Padam Chand Jain* reported in 1995 Supplementary (2) SCC 655, the report of the inquiry officer was in favour of the employee exonerating him of all charges. The disciplinary authority invited the comment and relying on the basis of the adverse comment made by the said officer with consultation held the employee guilty and terminated him from service. The Apex Court restated the view taken by the High Court holding that the decision of the disciplinary authority was vitiated on account of the same being influenced by the extraneous material in the form of the adverse comment of the account officer and remitted back the matter to the Managing Director.

13. The Apex Court in the case of *Satendra Chand Jain Versus PNB and others* reported in 1997 (11) SSC 444 held that the recommendation of the Chief Vigilance Officer regarding quantum of the penalty is not binding on the disciplinary authority. The Apex Court has directed to reconsider the penalty to be imposed in the light of the misconduct established against the delinquent employee giving liberty to the disciplinary authority to impose a lesser punishment than the punishment of removal from service.

14. Recently, the Apex Court has followed these judgments in the case of *Oriental Bank of Commerce and others Versus S.S.Sheokand and another*

reported in (2014) 5 SCC 172 and held that if the Management had arrived at its decision to impose a major penalty by its own and not because the recommendation of Chief Vigilance Commission but it cannot be ignored that the report of Chief Vigilance Commission report was sought by the Management and thereafter the punishment was imposed. Thus, additional material i.e. the report of the Chief Vigilance Commission was a part of the decision making process, which has not been supplied, therefore, it would amounting to the procedural irregularities affecting the decision on the basis of the report of Chief Vigilance Commission, which cannot be ignored.

15. Looking to the foregoing precedents, it is apparent that the requirement to consult the Madhya Pradesh Public Service Commission and its report/ advice is not binding on the disciplinary authority or appellate authority abdicating the quasi judicial functions entrusted on him. It is further clear that the employee and employer is having master-servant relationship in between and the third party like Public Service Commission could not dictate the disciplinary authority or the appellate authority as to how they should have exercised their power and what punishment ought to be inflicted to the employee. It has further been made clear that the recommendations of the Public Service Commission regarding quantum of punishment is not binding and if the disciplinary authority or the appellate authority relying upon the advice passes an order treating it to be binding on him, it would amounting to abdication of their power, which is given under the statute. The appellate authority while accepting the said advice and giving weightage to the quantum of punishment changes the penalty as proposed by him only for this reason while exercising the quasi judicial power to hear the appeal prescribed under the statute is not permissible.

16. In the context of the provisions of Article 320(3) of the Constitution of India and Rule 17 of the Rules of 1966 and as per the law laid down by various judgments of the Supreme Court, now the analytical discussion of the facts of the case in hand is required to be made.

17. The petitioner was working as Assistant Professor and posted at Government Kusum Mahavidyalaya Banapura, District Hoshangabad was assigned the charge of the Principal during the period 6.5.2004 to 12.7.2006 and on finding some irregularities, the charge sheet levelling three charges were issued against the petitioner. The inquiry officer found the charge Nos.1 and 2 partially proved and the charge No.3 fully proved. However, the

disciplinary authority after consultation with the Madhya Pradesh Public Service Commission has offered the punishment to the lower stage of pay, which is major penalty. On filing an appeal, the appellate authority after analyzing the facts of the case was of the view that the punishment as offered by the disciplinary authority is severe. However, the appellate authority proposed the minor penalty of withholding two increments with non-cumulative effect. The appellate authority as per proviso to Rule 27 of the Rules of 1966 sought consultation from the Madhya Pradesh Public Service Commission, which sent the advice note vide Annexure P/10 interalia stating that there is no reason to give a different advice as given by the Public Service Commission while sought by the disciplinary authority on being asked by the appellate authority at appellate stage. However, it was observed in the advice that Commissioner is not agreeing with the modified minor penalty proposed by the appellate authority justifying to reduce the major penalty earlier offered. In the order impugned passed by the appellate authority Annexure P/11 dated 2.7.2009 it is stated that the penalty to fix the petitioner at lower stage is severe and after examination of the record and the facts of the case withholding of two increments with non-cumulative effect would be sufficient because the said proposed penalty by the appellate authority has not been agreed upon by the Public Service Commission, therefore, the appeal filed by the appellant was dismissed.

18. Looking to the factual and legal aspects of the case and after considering the rival contentions of learned counsel for the parties and looking to the provisions as contained under Article 320(3) of the Constitution of India as well as the Rule 27 of the Rules of 1966, it is to hold that if the disciplinary authority or the appellate authority felt it necessary in the facts and circumstances of the case, they may have sought the advice in the shape of a consultation from Union Public Service Commission or the Public Service Commission, but the said advice is not binding on them and they may pass orders in discharge of their statutory function uninfluenced by the advice.

19. In the present case, on filing an appeal the appellate authority has exercised the power as conferred under Rule 27 of the Rules of 1966. However, the appellate authority is exercising the quasi judicial power and he is not supposed to influence by the advice of the Public Service Commission if the appellate authority was of the opinion that in the facts and circumstances of the case the penalty as proposed by the disciplinary authority is severe.

Thus, relying upon the advice, dismissal of the appeal not imposing minor penalty as proposed by him cannot be sustained in law because the advice of the Public Service Commission do not have binding effect on the decision of the appellate authority. It is to hold that mere consultation would not mean to affect the proposed punishment as offered by the appellate authority appreciating the facts otherwise, it would amounting to abdication of the statutory powers conferred either to the disciplinary authority or to the appellate authority, which cannot be sustained in the eyes of law.

20. In view of the foregoing discussion, the order passed by the appellate authority Annexure P/11 dated 2.7.2009 is hereby set aside. The appellate authority is directed to restore the appeal filed by the appellant and pass appropriate order of penalty looking to the facts and circumstances of the case uninfluenced with the advice given by the Madhya Pradesh Public Service Commission vide Annexure P/10.

21. Accordingly, this petition succeeds and is hereby **allowed** to the extent indicated hereinabove. The order passed by the appellate authority Annexure P/11 dated 2.7.2009 is hereby quashed with a direction to the appellate authority to reconsider the appeal filed by the appellant on the point of punishment and to pass appropriate order without influencing with the advice of the Madhya Pradesh Public Service Commission in view of the foregoing discussion. In the facts and circumstances of the case, the parties are directed to bear their own costs.

Petition allowed.

I.L.R. [2017] M.P., 1850

WRIT PETITION

Before Mr. Justice Anand Pathak

W.P. No. 8283/2015 (Gwalior) decided on 21 June, 2017

RAMJILAL KUSHWAH & ors.

...Petitioners

Vs.

STATE OF M.P. & ors.

...Respondents

(Alongwith W.P. Nos. 6492/11, 428/16 & 5393/16).

Constitution – Article 226 – Payment of Gratuity Act (39 of 1972), Section 2(f) & 2(i) and Ashaskiya Shikshan Sanstha

(Adhyapakon Tatha Anya Karmchariyon Ke Vetano Ka Sanday) Adhiniyam, M.P. (20 of 1978) – Benefit of Gratuity – Entitlement – Held – Teachers/employees working in grant-in-aided institutions are under the control of State Government – Looking to the definition of “Employer” u/S 2(f) of the Act of 1972, State of M.P. is the employer of the petitioners for the purpose of gratuity and State being the employer is liable to make payment of amount of gratuity to the employees/teachers working at such institutions – Further held – Persons who are being appointed prior to Amendment Act of 2000 which came into force on 01.04.2000 shall be continue to be covered by the Act of 1978 – Claim of the petitioner to receive gratuity from State of M.P. is established – Petitions allowed. (Paras 13, 14, 16, 17 & 18)

संविधान – अनुच्छेद 226 – उपदान संदाय अधिनियम (1972 का 39), धारा 2(एफ) व 2(आई) एवं अशासकीय शिक्षण संस्था (अध्यापकों तथा अन्य कर्मचारियों के वेतनों का संदाय) अधिनियम, म.प्र. (1978 का 20) – उपदान का लाभ – हकदारी – अभिनिर्धारित – सहायता अनुदान प्राप्त संस्थाओं में कार्यरत शिक्षक/कर्मचारी राज्य शासन के नियंत्रण के अधीन हैं – 1972 के अधिनियम की धारा 2(एफ) के अंतर्गत “नियोक्ता” की परिभाषा को देखते हुये, उपदान के प्रयोजन हेतु म.प्र. राज्य याचिका का नियोक्ता है तथा राज्य नियोक्ता होने के नाते ऐसी संस्थाओं में कार्यरत कर्मचारीगण/शिक्षकों को उपदान की राशि का भुगतान करने हेतु दायी है – आगे अभिनिर्धारित – संशोधन अधिनियम 2000, जो कि 01.04.2000 से प्रभाव में आया के पूर्व नियुक्त किये गये व्यक्ति 1978 के अधिनियम के द्वारा आच्छादित होना जारी रहेंगे – याचिका म.प्र. राज्य से उपदान प्राप्त करने का दावा स्थापित – याचिकाएँ मंजूर।

Cases referred :

W.A. No. 417/2009 decided on 30.07.2012; (2007) 1 SCC 268, W.P. No. 4806/2011(s) decided on 29.11.2011 (DB); Civil Appeal No. 636/2004 order passed on 07.01.2014.

Vivek Jain, for the petitioner in W.P. Nos. 8283/15 & 428/2016.

B.D. Jain, for the petitioner in W.P. No. 6492/2011.

D.K. Agrawal, for the petitioners in W.P. No. 5393/2016.

Vijay Sundaram, G.A. for the respondents/State.

ORDER

ANAND PATHAK, J. :- With consent, heard finally.

2. Regard being had to the similitude of the facts and controversy in question, this petition is heard analogously alongwith W.P. Nos. 5393/2016, 6492/2011 and 428/2016 and a common order is passed which covers the fate of all the petitions as referred above. For convenience's sake, facts of the case narrated in W.P. No.6492/2011 are taken into consideration.

3. The present writ petition under Article 226 of the Constitution of India has been preferred by the petitioner seeking mandamus to command the respondents to extend the benefit of gratuity to the petitioners.

4. According to learned counsel for the petitioners, all the petitioners (petitioners of all the petitions as referred above, hereinafter referred as "petitioners") are either retired or in service working as teacher/employees of grant-in-aid Educational Institutions and their service conditions and payment of salary are governed by Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, (20 of 1978). The burden to make payment of entire salary of added employees is always been over the shoulder of the State Government. Despite being similarly situated *vis-a-vis* teachers/employees working in the government schools, petitioners have not been given the benefit of gratuity in their service benefits.

5. According to counsel for the petitioners, responsibility to provide gratuity as per the payment of Gratuity Act, 1972 (for short "Act of 1972") lies over the State Government and denial of same constitute an actionable claim and violation of fundamental rights and other legal rights of the petitioners.

6. Further submission of the counsel for the petitioners is that petitioners are employees under Section 2(i) of the Act of 1972 and respondent No.1/ State Government is employer under Section 2 (f) of the Act of 1972, because service conditions of the petitioners are governed by the State Government and over all supervision and control lies with the State Government. He referred the order dated 30/07/2012 passed by the Division Bench of this Court in W.A. No.417/2009 (*J.C. Mills Educational Institution and Another Vs. Smt. Ashindra Tiwari and others*) and submits that in the said case the benefit to the employees of grant-in-aid institutions have been extended regarding

payment of gratuity. The said judgment has attained finality in SLP vide SLP No.16820/2014 preferred by the State of M.P. against the order dated 30/07/2012 passed in W.A. No.417/2009 and the said SLP has been dismissed. He further submits that present petitioners are similarly situated persons as they are also teachers/employees of grant-in-aid institutions and therefore, in the fact situation of the case they are also entitled to receive the same benefit of payment of gratuity as awarded by the Division Bench of this Court in the matter of *J.C. Mills* (supra). He also referred the judgment rendered by the Hon'ble Apex Court in the matter of *Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School and others*, (2007) 1 SCC 268 wherein grant-in-aid educational institutions have been treated to be under control of State Government for the purpose of employees provident fund while interpreting Section 16(1)(b) of the Employees' Provident Fund and Miscellaneous Provisions Funds Act, 1952. He also referred the order dated 29/11/2011 passed by the Division Bench of this Court in W.P. No.4806/2011(s) (*VTP Higher Secondary School Vs. State of M.P. and others*).

7. According to counsel for the petitioners, denial of benefits of payment of gratuity by the respondents is arbitrary, illegal and contrary to the judgment delivered by the Division Bench of this Court in the case of *J.C. Mills* (supra).

8. Respondents have filed reply in the case and contested the claim made by the petitioners on the ground of status of the petitioners as according to the respondents, petitioners are not government employees and gratuity is only payable to the government employees. Learned counsel for the respondents referred the Act of 1972 and submits that petitioners are not employees of state government and therefore, their services are not governed by the state government and the gratuity is not payable to the employees of the grant-in-aid institutions.

9. Heard the learned counsel for the parties and perused the record.

10. As far as grant of gratuity for teachers/employees of the grant-in-aid institutions is concerned, the same is no longer *res integra* in view of the order dated 30/07/2012 passed in *J.C. Mills* (supra) case by the Division Bench of this Court wherein J.C. Mill was a 100% grant-in-aid institution and in case of its employees, it has been directed to the respondents/State to pay the gratuity to the teacher/employees of the grant-in-aid institutions. Once, the Division Bench of this Court has granted the benefit of gratuity to the

employee/teacher of the grant-in-aided institution and the same has attained finality at the Apex level wherein special leave to appeal preferred by the State of M.P. has been dismissed therefore, now no occasion arises for this Court to take a different view.

11. Respondents could not make out a case wherein factual differentiation could persuade this Court to take a different view. From the record, it appears that petitioners are similarly situated employees vis a vis teachers/employees of J.C. Mills Educational Institution and similarly the status of the institution of J.C. Mills is also of grant-in-aided institution just like the case in hand therefore, considering the fact situation of the case the writ petition preferred by the petitioners is hereby allowed and petitioners are entitled to get the benefit of payment of gratuity as per provisions of Payment of Gratuity Act, 1972 just like their counter part in the government schools/institutions.

12. Besides that, if the controversy is seen from the provisions contained in Payment of Gratuity Act, 1972 (hereinafter referred as "Act of 1972"), then also conclusion would not be different one. Section 2(e) of the Act of 1972 defines employee. Same is reproduced as below :-

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

13. Teachers/employees working in the grant-in-aided educational institutions are neither holding any post under the Central Government or under the State Government nor covered by any other Act or any Rules providing for payment of gratuity but they are under the control of State Government which is further clarified from perusal of the definition of "Employer" as provided in Section 2(f) of the Act of 1972. Definition of the same is reproduced as under :-

"employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop-

(I) belonging to, or under the control of Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no persons has been appointed, the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person,"

14. Clause (II) in the above definition reflects that teachers/employees working in the establishment which is belonging to, or under the control of State Government, and therefore, the State of M.P. is in effect, the employer of the petitioners for the purpose of payment of gratuity.

15. The said aspect has been considered by the Hon'ble Apex Court in the case of *Regional Provident Fund Commissioner Vs. Sanatan Dharam Girls Secondary School* (supra) although in a matter relating to exemption available to the grant-in-aided educational institutions under Section 16(1)(b) of the Employees Provident Funds and Miscellaneous Provisions Funds Act, 1952, While considering the true import of "belonging to" and "under the control of", the Apex Court has clarified that the words "belonging to" signify ownership i.e. Government owned institutions would be covered under the said part and the words "under the control of" signify control other than ownership, since ownership has already been covered under the word "belonging to". Both the words are separated by "OR" and therefore, these two words refers to two mutually exclusive categories of institutions. While

the institutions "belonging to" to the Central or State Government would imply the control of the State but the privately-owned institutions can be "under the control of" the Government in various ways. The word "control" is synonym with superintendence, management or authority to direct, restrict or regulate. The said judgment has been referred by the Apex Court recently in the matter of *M/s Yeshwant Gramin Shikshan Sanstha vs. Assistant Provident Fund Commissioner and others*, 2017 (3) SC 515, wherein it has been held that the grant-in-aided non governmental institutions are working under the control of the State government and thus would fulfill even the first condition of Section 16(1) (b) of the Act of 1972.

16. Although the said discussion is in the realm of employees provident fund but the said discussion can be profitably drawn to conclude that the State of M.P., being employer under Section 2(f) of the Act of 1972 is liable to make payment of amount of gratuity to the employees/teachers working in such type of institutions.

17. The question of payment of, continuation of, grant-in-aid to non-governmental educational institutions is not in tenebrosity because the Hon'ble Apex Court in Civil Appeal No.636/2004 (State of M.P. and Another Vs. Sharique A. Ali and others) has decided the controversy while passing the order dated 07/01/2014 wherein those teachers/employees who were appointed prior to 01/04/2000 are treated under the umbrella of M.P. Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sandaya) Adhiniyam, (20 of 1978) and the amendment made by the State Government through amendment Act, 2000 will not come in the way of teachers appointed before 01/04/2000. Consequently, the State of M.P. issued a notification/order dated 28/02/2015 in this regard and clarified the status of persons like present petitioners. Now the persons who are being appointed prior to 01/04/2000 shall be continue to be covered by the Act of 1978 as well as M.P. Ashaskiya Shikshan Sansthan (Adhyapako Thatha Anya Karmcharyo Ke Vetno Ka Sandhaya) (Institutional Fund) Rules, 1983 and the benefits flowing out of the said provisions. The Act of 1978 and the Rules of 1983 are exhaustive code regarding governance of grant-in-aided institutions and the provisions of Act of 1978 and Rules of 1983 as well as provisions of Act of 1972 if are seen in juxtaposition to the pronouncement of the Hon'ble Apex Court in the matter of *Sharique A. Ali* (supra) and *Sanatan Dharam* (supra) and *M/s Yeshwant Gramin* (supra) as

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well as order dated 30/07/2012 passed by the Division Bench of this Court in the matter of *J.C. Mills Educational Institution* (supra), then the claim of the petitioners to receive the gratuity from the State of M.P. is established.

18. Even otherwise, by the effect of Act of 1978 and Rules of 1983, grant-in-aided institutions are working as the extended arms of the State Government to impart higher education. A noble cause with a novel idea devised by the State Government in the field of higher education but off late, somehow given a decent burial by the compelling circumstances, still the employees/ teachers who were appointed prior to 01/04/2000 cannot be left at the mercy of management of the grant-in-aided institutions. State of M.P. has to pay the gratuity to the teachers/employees of grant-in-aided institutions like the present petitioners/ employees/ teachers who are appointed prior to 01/04/2000 under the Act of 1972. Resultantly, the petition preferred by the petitioners stands allowed and disposed of accordingly.

19. Necessary benefits be accorded to the petitioners as expeditiously as possible.

20. No costs.

Petition allowed.

I.L.R. [2017] M.P., 1857

WRIT PETITION

Before Mr. Justice S.K. Seth & Smt. Justice Anjali Palo

W.P. No. 9126/2017 (Jabalpur) decided on 4 July, 2017

ROHIT AGRAWAL

...Petitioner

Vs.

**THE PRINCIPAL COMMISSIONER
OF INCOME TAX-II & anr.**

...Respondents

Income Tax Act (43 of 1961), Section 264 – Revision – Maintainability – Deposit of Rs. 16,31,700 in petitioner's saving account – Notice issued – Ex-parte assessment done and recovery proceeding initiated – Petitioner filed revision u/S 264 of the Act of 1961 which was dismissed – Challenge to – Held – Despite several opportunities, petitioner did not avail any opportunity to account for the said deposit – Notice to pay penalty was also issued which was

also not availed by him – It is only when penalty order was passed and recovery proceeding started, revision was filed – Authority has passed a reasoned order considering the law laid down by the Apex Court, cannot be said to be a cryptic order – Revision rightly dismissed – Petitioner himself invited such troubles by not responding to the notices issued to him by the Assessing Officer – No merit in petition and is dismissed. (Paras 6 to 8)

आयकर अधिनियम (1961 का 43), धारा 264 – पुनरीक्षण – पोषणीयता – याची के बचत खाते में रु. 16,31,700 की जमा राशि – नोटिस जारी किया गया – एक पक्षीय निर्धारण किया गया और वसूली की कार्यवाही आरंभ की गई – याची ने 1961 के अधिनियम की धारा 264 के अंतर्गत पुनरीक्षण प्रस्तुत किया जो खारिज किया गया – को चुनौती – अभिनिर्धारित – कई अवसरों के बावजूद, याची ने उक्त जमाराशि हेतु कारण देने के किसी अवसर का लाभ नहीं लिया – शास्ति के मुगतान का नोटिस भी जारी किया गया था, इसका भी उसके द्वारा लाभ नहीं लिया गया – पुनरीक्षण को केवल तब प्रस्तुत किया गया जब शास्ति आदेश पारित किया गया था और वसूली की कार्यवाही आरंभ की गई थी – प्राधिकारी ने सर्वोच्च न्यायालय द्वारा सुस्थापित विधि को विचार में लेते हुए एक सकारण आदेश पारित किया है, अस्पष्ट आदेश नहीं कहा जा सकता – पुनरीक्षण उचित रूप से खारिज – याची ने निर्धारण अधिकारी द्वारा उसे जारी किये गये नोटिस का जवाब न देकर स्वयं ऐसी परेशानी आमंत्रित की है – याचिका गुणदोष विहीन एवं खारिज की गई।

Cases referred:

(1999) 236 ITR 0038, (1980) 122 ITR 0610, (2005) 276 ITR 165.

G. N. Purohit with Abhishek Oswal, for the petitioner.

ORDER

The Order of the Court was delivered by :
S.K. SETH, J. :- This petition is basically under Article 227 of the Constitution of India to assail the validity of the order dated 04.03.2016 passed by the Principal Commissioner of Income Tax-II, Jabalpur under Section 264 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. Petitioner is an individual. From an AIR information submitted by the Bank, it came to the knowledge of Income-Tax Department that the total deposit of Rs.16,31,700/- was credited in his saving account during the Financial Year 2009-10, therefore, after notice under Sections 148 and 142(1) of the Act, an *ex-parte* assessment order was framed, not only holding that

the petitioner is liable to pay tax but also penalty under Sections 271F and 271(1)(c) of the Act. This order was not challenged in appeal. According to petitioner, it is only when the demand notice was served on him, he became aware of this assessment order, therefore, he challenged it in revision under Section 264 of the Act before the Principal Commissioner of Income Tax-II, Jabalpur. By the order impugned, revision petition has been dismissed, hence this petition.

3. We have heard Shri G.N. Purohit, Senior counsel at length (sic:length) and perused the material available on the record.

4. Shri Purohit submits that while exercising the revisional powers, the Principal Commissioner of Income Tax-II, Jabalpur has a vast jurisdiction to do justice between the parties (sic:parties) and when necessary material was placed before the revisional authority, it was his duty to pass an appropriate order or in the alternative matter ought to have been remanded back for the fresh assessment.

5. Shri Purohit has relied upon the decision of the Supreme Court in the case of *Sajan Kumar Bhawsinka Vs. Commissioner of Income Tax & another* reported in (1999) 236 ITR 0038. He has further placed reliance on two decisions of Gujarat High Court in the case of *C. Parikh & Co. V. Commissioner of Income Tax, Baroda* reported in (1980) 122 ITR 0610 and *S.R. Koshti V. Commissioner of Income-tax* reported in (2005) 276 ITR 165.

6. After having heard arguments, considering the material available on record and the well reasoned order passed by the Principal Commissioner of Income Tax-II, Jabalpur, we do not find any infirmity or illegality in the order impugned. Learned Principal Commissioner of Income Tax-II, Jabalpur has analysed (sic:analysed) the facts in detail and thereafter has dismissed the revision. The reliance placed on the decision of the Supreme Court is clearly distinguishable on the facts because of the cryptic order passed by the revisional authority under Section 264 of the Act and equally cryptic order passed by the High Court.

7. The order passed under Section 264 of the Act is a detailed order with reasons and after considering the law laid down by the Supreme Court in the various decisions as mentioned in the order itself, it cannot be said by any stretch of imagination that it is a cryptic order. From perusal of the order

impugned, it is clear that despite several opportunities, the petitioner did not avail any opportunity to account for the deposit of Rs.16,31,700/- in his saving account. As result, ex-parte assessment order was framed. Petitioner was also given notice to pay the penalty, this too was not also availed of by the petitioner and it is only when the penalty order was passed and recovery proceedings started, the petitioner filed a revision under Section 264 of the Act. If we accede to submissions of Shri Purohit, then in each case assessee will allow to proceed *ex-parte* and after limitation for filing appeal is over ask for quashing of *ex-parte* assessment order by invoking Section 264 of the Act. This cannot be the legislature (sic:legislature) in providing remedy Under Section 264 of the Act.

8. From the material available on record, it is clear that petitioner is to thank himself for inviting all these troubles by not responding to the various notices issued to him by the Assessing Officer. We, therefore, find no merit and substance in the petition. Same is, therefore; dismissed.

9. Ordered accordingly.

Petition dismissed.

I.L.R. [2017] M.P., 1860

WRIT PETITION

Before Mr. Justice S.A. Dharmadhikari

W.P. No. 5707/2014 (Gwalior) decided on 20 July, 2017

NITIN SIRBHAIIYA

...Petitioner

Vs.

DIVYA BADHWANI & ors.

...Respondents

Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Proper Party & Necessary Party – Eviction Suit – Petitioner’s application under Order 1 Rule 10 CPC for impleading him in suit on the ground that he is in possession of suit property since last 40-50 years and same was gifted to his father by the owner and thus he is a necessary party, was rejected – Challenge to – Held – Petitioner has not purchased the suit property from plaintiffs nor is a tenant of plaintiff’s house – For effective adjudication of controversy involved in suit, presence of petitioner is not necessary – Effective decree could be passed in his absence – If he is added, the scope of suit will be enlarged and suit for eviction will convert into suit for title –

Further held – Plaintiffs being *dominus litis*, cannot be compelled to add a stranger to the suit against whom they have not prayed any relief, unless it is a rule of law – A stranger to suit making his claim independently and adverse to title of plaintiff, is neither necessary party nor proper party –
Petition dismissed. (Paras 7 to 11)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – उचित पक्षकार एवं आवश्यक पक्षकार – बेदखली का वाद- याची का उसे वाद में पक्षकार बनाए जाने हेतु आदेश 1 नियम 10 सि.प्र.सं. के अंतर्गत इस आधार पर आवेदन कि पिछले 40-50 वर्षों से वाद संपत्ति उसके कब्जे में है तथा वह उसके पिता को, स्वामी द्वारा दान की गई थी और इसलिए वह आवश्यक पक्षकार है, अस्वीकार किया गया – को चुनौती – अभिनिर्धारित – याची ने वाद संपत्ति वादीगण से क्रय नहीं की है न ही वादी के मकान का किराएदार है – वाद में अंतर्ग्रस्त विवाद के प्रभावकारी न्यायनिर्णयन हेतु, याची की उपस्थिति आवश्यक नहीं – उसकी अनुपस्थिति में प्रभावकारी डिक्री पारित की जा सकती है – यदि उसे जोड़ा गया, वाद की व्याप्ति बढ़ जाएगी और बेदखली हेतु वाद, हक हेतु वाद में परिवर्तित हो जाएगा – आगे अभिनिर्धारित – वादी, वाद के नियंत्रणकर्ता होने के नाते उन्हें वाद में एक अपरिचित को जोड़ने के लिए बाध्य नहीं किया जा सकता जिसके विरुद्ध उन्होंने किसी अनुतोष की प्रार्थना नहीं की है, जब तक कि यह विधि का नियम न हो – वाद में स्वतंत्र रूप से एवं वादी के हक के विपरीत दावा करने वाला अपरिचित न तो आवश्यक पक्षकार है न ही उचित पक्षकार – याचिका खारिज।

Case referred:

2010 (7) SCC 417.

D.D. Bansal, for the petitioner.

Raghvendra Dixit, for the respondents.

ORDER

S.A. DHARMADHIKARI, J. :- With the consent of learned counsel for the rival parties, the matter is heard finally.

2. In this petition under Article 227 of Constitution of India, the petitioner is aggrieved by impugned order dated 09/09/2014, whereby, the application under Order 1 Rule 10 of the Code of Civil Procedure (herein after referred to as 'CPC') for impleading him in the suit for eviction from portion of house which has been rented out, recovery of arrears of rent and damages has been rejected by 3rd Civil Judge, Class-II, Vidisha.

3. The brief facts leading to filing of this petition are that the respondents

No. 1 & 2/ plaintiffs have filed a suit against the respondent No. 3 for eviction from portion of house which has been rented out, recovery of arrears of rent and damages. The petitioner herein is admittedly not a party in the suit. He filed an application under Order 1 Rule 10 of CPC to get himself added in the suit as defendant on the ground that he is in possession of the suit premises for more than 40-50 years. Considering the long possession of Dinesh Sirbhaiya father of the present petitioner, the owner of the house namely Heera S/o Shri Mishrilal gifted the house to Dinesh Sirbhaiya. This fact was acknowledged by executing Panchnama in the year 1995 by Mohanlal S/o Shri Sorumal Chhugani. In spite of having knowledge of the said fact, the plaintiffs purchased the house without taking possession and deliberately did not implead the petitioner as party to the present suit who is necessary party. No reply was filed by the plaintiffs/respondents No. 1 & 2 in rebuttal of the said application.

4. Learned counsel for the petitioner contended that even though the petitioner is a stranger to the suit, but looking to the fact that he is in possession of the suit premises for a period of 40-50 years, he is a necessary party in the suit. It is further submitted that in the event the suit is decreed then he would have to suffer irreparable loss. The trial court has heavily erred in rejecting the application under Order 1 Rule 10 of CPC without considering the merit of the case and without passing a speaking order, therefore, the instant petition deserves to be allowed.

5. On the other hand, learned counsel for the respondents submitted that the petitioner has no right to claim any relief in respect of controversy involved in the proceedings and no effective decree can be passed against or in favour of the petitioner. The plaintiffs being *dominus litus* cannot be forced to add party against whom no relief has been claimed. The trial court is absolutely right in rejecting the application under Order 1 Rule 10 of CPC as such the petition deserves to be dismissed.

6. In order to decide the question as to whether in a suit for eviction, arrears of rent and damages, a stranger or a third party claiming to be in possession over the suit property is entitled to be added as a party/defendant in the said suit, it is necessary to consider the relevant provisions of Code of Civil Procedure under which the Court is empowered to add a party in the suit. So far as addition of the party under CPC is concerned, the power to add a party emanates under Order 1 Rule 10 of CPC. It would be appropriate to refer to the aforesaid provision, which reads as under :-

"10. Suit in the name of wrong plaintiff --- (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2). Court may strike out or add parties :-- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose presence before the Court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended :-- Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) Subject to the provisions of this Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

7. The present case does not relate to striking out the name of plaintiff or

defendant who have been properly joined in the suit. It would be apposite to consider the sub section 2 of Order 1 Rule 10 of CPC, which empowers the Court to add a person who ought to have been joined or whose presence before the court may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit. There are two tests which are to be satisfied for determining who is a necessary party. (1) There must be a right to some relief against such party in respect of controversy involved in the proceedings. (2) No effective decree can be passed in absence of such party. Thus two tests are required to be satisfied to determine the question who is a necessary party. If the person seeking addition is added in such suit, the scope of the suit cannot be enlarged and it would be practically converted into a suit for title, therefore, for effective adjudication of the controversy involved in the suit presence of such party cannot be said to be necessary. From the above discussion, it is clear as a day light that "necessary party" are those person in whose absence no decree can be passed by the Court and there must be a right to some relief against such party in respect of controversy involved in the proceedings and "proper party" are those whose presence is necessary before the court effectively and completely to adjudicate upon and settle all the questions involved in the suit against such person. Keeping the above principle in mind, it is to be considered on the basis of admitted facts of this case whether the petitioner herein who is a stranger to the suit is "necessary party" or a "proper party". Thus, the petitioner is not a necessary party since an effective decree could be passed in his absence as he has not purchased the suit property from the plaintiffs nor is a tenant of the plaintiffs' house.

8. The Apex Court in the case of *Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and Ors.* reported in 2010 (7) SCC 417 has observed as follows :-

A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made."

9. That apart, there is another principle which cannot be forgotten. The respondents No. 1 & 2/plaintiffs who have filed the suit are *dominus litus*, cannot be forced to add party against whom they do not want to get any relief, unless it is a rule of law, as already discussed above.

10. The trial court has rightly held that a person can be impleaded as a party where it is necessary to determine the dispute and to pass effective decree, but such requirement is not necessary where their presence is not required to be necessary. Moreover, the plaintiffs being *dominus litus*, they cannot be compelled to add a stranger to the suit as a party defendant. The trial court has not committed any jurisdictional error so as to warrant interference by this Court under Article 227 of the Constitution of India.

11. In view of the aforesaid, in the considered opinion of this Court, a stranger to the suit making his claim independently and adverse to the title of the plaintiff, is neither "necessary party" nor is "proper party", therefore, the petitioner is not entitled to join as party defendant in the suit.

12. Accordingly, the writ petition being bereft of merit and substance, deserves to be and is hereby dismissed. However, it is made clear that this Court has not decided in this writ petition, the title and possession of the petitioner herein with regard to the suit property and all such questions are kept open in the event either of the parties approach before the competent court in this regard.

There shall be no order as to costs.

Petition dismissed.

I.L.R. [2017] M.P., 1865

WRIT PETITION

Before Mr. Justice Vivek Rusia

W.P. No. 2668/2017 (Indore) decided on 28 July, 2017

MAHINDRA TWO WHEELERS & anr.

...Petitioners

Vs.

STATE OF M.P. & anr.

...Respondents

***Industrial Disputes Act (14 of 1947), Section 2-A & 10 –
Limitation – Employee retired on 06.07.12 – After 4 years, in 2016, he
filed application u/S 10 of the Act of 1947 challenging his superannuation***

– Additional Labour Commissioner referred the dispute to Labour Court – Challenge to – Held – Workman in case of discharge, dismissal, retrenchment or otherwise termination of service can directly approach the Labour Court/Tribunal without affecting his rights u/S 10 of the Act – Further held – Section 2-A(3) provides period of limitation only for application u/S 2-A(2) and not for Section 2-A(1) – Present case falls u/S 2-A(1) and is deemed to be an Industrial dispute – Workman can seek reference without any period of limitation – Even otherwise, appropriate government while exercising powers u/S 10 of the Act is not required to adjudicate the dispute, it is for the Labour Court and tribunal to decide the same – Petition dismissed.

(Paras 14, 15, 16 & 18)

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 2-ए व 10 – परिसीमा – कर्मचारी 06.07.12 को सेवानिवृत्त हुआ – 4 वर्ष पश्चात्, 2016 में उसने अपने अधिवर्षिता को चुनौती देते हुए 1947 के अधिनियम की धारा 10 के अंतर्गत आवेदन प्रस्तुत किया – अतिरिक्त श्रम आयुक्त ने श्रम न्यायालय को विवाद निर्देशित किया – को चुनौती – अभिनिर्धारित – कर्मकार, सेवामुक्ति, पदच्युति, छंटनी या अन्यथा सेवा समाप्ति के प्रकरण में अधिनियम की धारा 10 के अंतर्गत अपने अधिकारों को प्रभावित किये बिना सीधे श्रम न्यायालय/अधिकरण के समक्ष जा सकता है – आगे अभिनिर्धारित – धारा 2-ए(3), केवल धारा 2-ए(2) के अंतर्गत आवेदन हेतु परिसीमा की अवधि उपबंधित करती है और न कि धारा 2-ए(1) हेतु – वर्तमान प्रकरण धारा 2-ए(1) के अंतर्गत आता है और औद्योगिक विवाद माना जाता है – कर्मकार, परिसीमा की किसी अवधि के बिना निर्देश चाह सकता है – अन्यथा नही, अधिनियम की धारा 10 के अंतर्गत शक्तियों का प्रयोग करते समय, समुचित सरकार को विवाद का न्यायनिर्णयन करना अपेक्षित नहीं है, उक्त का विनिश्चय श्रम न्यायालय एवं अधिकरण को करना है – याचिका खारिज।

Cases referred:

(2015) 15 SCC 1, 2016 LLR 477, 1984 (Supp.) SCC 196: AIR 1984 SC 1022.

Girish Patwardhan and Prateek Patwardhan, for the petitioners.
Shashank Sharma, for the respondent No. 2.

ORDER

VIVEK RUSIA, J. :- The petitioners have filed the present petition being aggrieved by order dated 29.08.2016 by which the Additional Labour

Commissioner, Indore has referred the dispute to the Labour Court under Section 10 (1) of the Industrial Disputes Act, 1947 in brief "the Act of 1947"].

2. The petitioner No.1 is a Company duly incorporated under the provisions of Companies Act and engages in the business of manufacturing of Two Wheelers I their plant at Pithampur, District Dhar. The vide appointment letter dated 29.01.1985 Respondent No.2 was appointed as Assistant Grade-III. By letter dated 5th April, 2012 he was informed that as per the Companies Record he will be retiring from service w.e.f. 06.07.2012.

3. Being dissatisfied by the aforesaid action of the petitioners, the Respondent No.2 submitted an application before the Appropriate authority under Section 10 of the Act of 1947 on 11.04.2016 i.e. after four years from the date of superannuation. The Additional Labour Commissioner conducted the conciliation proceedings and when it rendered into failure, he has referred the dispute to the Labour Court under Section 10 (1) of the Act of 1947 for adjudication. The terms of the reference is reproduced below :-

“क्या श्री अशोक पिता श्री अंबाप्रसाद परदेशी कर्मकार की श्रेणी में आते हैं? यदि हां तो क्या उन्हें सेवानियोजक द्वारा विधि अनुसार निर्धारित अधिवार्षिकी आयु पूर्ण करने के पूर्व सेवानिवृत्त किया गया है? यदि हां तो क्या यह सेवानिवृत्ति अनुचित एवं अवैधानिक है? यदि हां तो सेवानियुक्त किस सहायता के पात्र है तथा इस संबंध में सेवानियोजक को क्या निर्देश दिये जाना चाहिये।”

4. As per the above terms of reference the labour Court is mainly required to decide whether the retirement of respondent no.2 by the employer is unjustified?

5. Being aggrieved by the aforesaid order, the petitioners have filed the present petition on the ground that sub-section (3) of Section 2-A of the Act of 1947 provides period of the limitation to approach the Labour Court or Tribunal or Conciliation Officer and under which the employee is required to approach before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1). The Respondent No.2 has been retired from service w.e.f. 06.07.2012 and he filed an application before the Additional Labour Commissioner on 11.04.2016 i.e. admittedly after the period of three years. Therefore, the Additional Labour Commissioner ought not have referred the dispute to the Labour Court.

6. By order dated 09.05.2017, notices were issued to the Respondent No.2 has filed the reply by submitting that there is no period of limitation under Section 10 of the Act of 1947. The provisions of M.P. Industrial Employment (Standing Orders) Act, 1961 are applicable to the employer and under which the age of superannuation is 60 years w.e.f. 28.06.2014, therefore the Respondent No.2 was entitled to be in employment till 06.07.2017. Therefore, the Additional Labour Commissioner has not committed any error while referred the dispute to the Labour Court.

7. Shri Prateek Patwardhan, learned counsel appearing on behalf of the petitioners submitted that by way of Amendment Act 24 of 2010 w.e.f. 15.09.2010 sub-sections (2) and (3) have been inserted in Section 2-A of the Act of 1947 and according to which the employee can approach directly to the Conciliation Officer, Labour Court and Industrial Court in case of discharge, dismissal and retrenchment. By way of amendment in the year 2015, the State Government has inserted the work "Conciliation Officer" in sub-section (3) of Section 2-A of the Act of 1947. Therefore, the Respondent No.2 cannot approach the Conciliation Officer also beyond the period of three years. In support of his contention, he has placed reliance over the judgment of Apex Court in the case of *Prabhakar v/s Joint Director, Sericulture Department* [(2015) 15 SCC 1] in which the Apex Court has held that though there is no limitation in approaching the Labour Court under Section 10 of the Act of 1947 but the employee must approach within the reasonable period. He has also placed reliance over the judgment of High Court of Karnataka at Bengaluru in the case of *ITC Infotech India Ltd. v/s Venkataramana Uppada* reported in 2016 LLR 477, in which the High Court of Karnataka has set-aside the order of reference by holding that the Labour Court cannot entertain claim petition filed under Sec 2-A (2)&(3) of Industrial Disputes Act after three years from the date of discharge, dismissal or retrenchment.

8. Shri Shashank Sharma, learned counsel appearing on behalf of the Respondent No.2 submitted that the Respondent No.2 sought the reference under Section 10 of the Act of 1947 in which there is no limitation. The provisions of sub-section (2) and (3) of Section 2-A of the Act of 1947 would not apply as it is a discretion of employees/workmen to approach the Labour Court or Tribunal directly in case of discharge, dismissal or retrenchment.

9. I have heard learned counsel for the parties.

10. According to the petitioners, the Respondent No.2 was superannuated from service after attaining the age of superannuation. According to sub-section (oo) of sec 2 of the Act of 1947, the "retrenchment" means the termination by the employer of the service of a workman for any reason otherwise punishment inflicted by way of disciplinary action, but does not include voluntary retirement, retrenchment and termination on the ground of ill-health. Sub-section (oo) of Section 2 of the Act of 1947 is reproduced below :-

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

- (a) Voluntary retirement of the workman; or**
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or**
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or**
- (c) termination of the service of a workman on the ground of continued ill-health;"**

11. Therefore, the case of the Respondent No.2 would fall in the category of "otherwise terminates the service of an individual workman". That under section 2-A (1), it is deemed to be an 'industrial dispute' notwithstanding no other workman or Union of workman is a party to the dispute. The "appropriate Government" is empowered under Section 10 of the Act of 1947 in referring of refusing to refer the dispute for adjudication. That under section 10 (1) of I.D. Act an aggrieved workman cannot approach the Labour Court or Industrial Tribunal directly for adjudication of 'industrial dispute', he has to seek reference of dispute to Labour Court /Industrial Tribunal..

12. In a series of judgments of Supreme Court as well as by this Court it has been held that while performing the administrative function under Section 10 of the Act of 1947 the Government would not decide the dispute between the parties which may be termed as a judicial function and such function is to be discharged by Labour Court and Industrial Court only. While making the reference, the appropriate Government is an administrative act and before making such a reference it has to form an opinion as to whether the industrial dispute exists or is apprehended.

13. Prior to the incorporation of Section 2-A of the Act of 1947, all workman had to be a member of trade Union to spouse his cause for seeking reference under Section 10 (1) (c) of the Act of 1947. After insertion of Section 2-A of the Act of 1947 w.e.f. 01.12.1965, where any employer discharges, dismisses, retrenches or otherwise terminates the service of an individual workman, it shall be deemed to be an 'Industrial Dispute' meaning thereby in one the aforesaid eventuality, the workman is not required to depend on the Trade Union to spouse his cause. He can directly seek reference individually before the appropriate forum.

14. That Section 2-A of the Act of 1947 has been further amended by the Central Government w.e.f. 15.09.2010 by giving an additional opportunity to a workman to approach the Labour Court and Tribunal directly after expiry of forty-five days from the date he has made application to the Conciliation Officer of the appropriate Government for conciliation of the dispute. It means the workman can direly (sic:directly) file an application before the Labour Court and Tribunal after forty-five days from the date when he filed an application before the Conciliation Officer under Section 10 (1) of the Act of 1947. Sub-section (2) of Section 2-A of the Act of 1947 is a **non-obstante** clause which starts "Notwithstanding anything contained in Section 10 "Therefore, without affecting his rights given under Section 10 the workman can directly approach to the Labour Court after expiry of forty-five days. This is a discretion given to the workman to approach Labour Court directly in only case of discharge, dismissal and retrenchment. A **non obstante** clause beginning with "notwithstanding anything contained in the Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force", is sometimes appended to a Section in the beginning with a view to give the rest part of the section, in case of conflict, an overriding effect. This question has been considered by the apex Court in *Union of*

India v. G.M.Kokil, 1984 (Supp.) SCC 196: AIR 1984 SC 1022. It is identical to say that if a provision recites a **non obstante clause**, the text following it will have its full operation or that the provisions referred to in the non obstante clause will not be an impediment for the operation of the provisions, suffixed thereto. Therefore workman in case of discharge, dismissal, retrenchment or otherwise termination of service can directly approach the Labour Court/ Tribunal without affecting his rights under section 10 of the ID Act. By virtue of Sec 2-A (1) it would be deemed to be an Industrial Dispute.

15. That sub-section (3) of Section 2-A of the Act of 1947 provides the limitation of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service to approach the Labour Court or Tribunal. That sub-section (3) of Sec 2-A provides period of limitation only for the application referred to in sub-section (2) where the workman directly approaches the Labour Court/ Tribunal only in case of discharge, dismissal, retrenchment or otherwise termination of service. That Sub-section (3) does not provide limitation for application filed under Section 2-A, sub-section (1) read with application under Section 10 of the Act of 1947.

16. As held by Apex Court in the case of *Prabhakar* (supra), Section 2-A is a deeming clause by which fiction has been created in case of discharge, dismissal, retrenchment or otherwise termination of service of workman, it would be an Industrial Dispute. Therefore, harmonious consideration is required to be made between Section 2-A and with Section 10 of the Act of 1947 and the workman can seek a reference without any period of limitation. Therefore, the objection taken by the petitioners is misconceived and not tenable.

17. In the case of *Prabhakar* (supra), the workman sought the reference after 14 years from his termination. Therefore, the Apex Court has held that the appropriate Government can refuse to make reference and the Labour Court/Industrial Court can also held that there is no industrial dispute within the meaning of 2 (k). Para 42 of the judgment is reproduced below :-

"42. On the basis of the aforesaid discussion, we summaries the legal position as under:

42.1. An industrial dispute has to be referred by the appropriate Government for adjudication and the workman cannot approach the Labour Court or Industrial

Tribunal directly, except in those cases which are covered by Section 2-A of the Act. Reference is made under Section 10 of the Act in those cases where the appropriate Government forms an opinion that "any industrial dispute exists or is apprehended". The words "industrial dispute exists" are of paramount importance, unless there is an existence of an industrial dispute (or the dispute is apprehended or it is apprehended such a dispute may arise in near future), no reference is to be made. Thus, existence or apprehension of an industrial dispute is a sine qua non for making the reference. No doubt, at the time of taking a decision whether a reference is to be made or not, the appropriate Government is not to go into the merits of the dispute. Making of reference is only an administrative function. At the same time, on the basis of material on record, satisfaction of the existence of the industrial dispute or the apprehension of an industrial dispute is necessary. Such existence/apprehension of industrial dispute, thus becomes a condition precedent, though it will be only subjective satisfaction based on material on record. Since, we are not concerned with the satisfaction dealing with cases where there is apprehended industrial dispute, discussion that follows would confine to existence of an industrial dispute.

42.2. Dispute or difference arises when one party makes a demand and the other party rejects the same. It is held by this Court in a number of cases that before raising the industrial dispute making of demand is a necessary precondition. In such a scenario, if the services of a workman are terminated and he does not make the demand and/or raise the issue alleging wrongful termination immediately thereafter or within reasonable time and raises the same after considerable lapse of period, whether it can be said that industrial dispute still exists.

42.3. Since there is no period of limitation, it gives right to the workman to raise the dispute even

belatedly. However, if the dispute is raised after a long period, it has to be seen as to whether such a dispute still exists? Thus, notwithstanding the fact that law of limitation does not apply, it is to be shown by the workman that there is a dispute in praesenti. For this purpose, he has to demonstrate that even if considerable period has lapsed and there are laches and delays, such delay has not resulted into making the industrial dispute cease to exist. Therefore, if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because of the reason that law of limitation has no application. On the other hand, if because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

42.4. Take, for example, a case where the workman issues notice after his termination, questioning the termination and demanding reinstatement. He is able to show that there were discussions from time to time and the parties were trying to sort out the matter amicably. Or he is able to show that there were assurances by the Management to the effect that he would be taken back in service and because of these reasons, he did not immediately raise the dispute by approaching the Labour Authorities seeking reference or did not invoke the remedy under Section 2-A of the Act. In such a scenario, it can be treated that the dispute was live and existing as the workman never abandoned his right. However, in this very example, even if the notice of demand was sent but it did not evoke any positive response or there was specific rejection by the Management of his demand contained in the notice and thereafter he sleeps over the matter for a number of years, it can be treated that he accepted the factum of his termination and rejection thereof by the Management and acquiesced into the said rejection.

42.5. Take another example. A workman approaches the civil court by filing a suit against his termination which was pending for a number of years and was ultimately dismissed on the ground that the civil court did not have jurisdiction to enforce the contract of personal service and does not grant any reinstatement. At that stage, when the suit is dismissed or he withdraws that suit and then involves the machinery under the Act, it can lead to the conclusion that the dispute is still alive as the workman had not accepted the termination but was agitating the same; albeit in a wrong forum.

42.6. In contrast, in those cases where there was no agitation by the workman against his termination and the dispute is raised belatedly and the delay or laches remain unexplained, it would be presumed that he had waived his right or acquiesced into the act of termination and, therefore, at the time when the dispute is raised it had become stale and was not an "existing dispute". In such circumstances, the appropriate Government can refuse to make reference. In the alternative, the Labour Court/Industrial Court can also hold that there is no "industrial dispute" within the meaning of Section 2(k) of the Act and, therefore, no relief can be granted".

18. But in the present case the Respondent No.2 retired from service in the year 2012 and sought the reference in the year 2016 which cannot be said be time barred and delay or laches are unreasonable and for which the appropriate Government ought to have refused to make reference. The Apex Court has held that if the workman has given satisfactory explanation for these laches and delay then the Labour Court or Industrial Court cannot deny adjudication of his dispute. Even otherwise appropriate Government while exercising power under Section 10 of the Act of 1947 is not required to adjudicate the dispute between the parties. It is for the Labour Court and Tribunal to decide the same.

19. In view of the above, the present petition fails and is hereby dismissed.

Petition dismissed.

I.L.R. [2017] M.P., 1875

APPELLATE CIVIL

Before Mr. Justice Vijay Kumar Shukla

S.A. No. 1130/2016 (Jabalpur) decided on 20 April, 2017

RAM SEWAK PRAJAPATI

...Appellant

Vs.

SHIV KUMAR YADAV & ors.

...Respondents

A. Limitation Act (36 of 1963), Section 5 & 14. –
Condonation of Delay – Suit for arrears of rent and eviction decreed in favour of respondents/plaintiffs – Appellant/defendant filed appeal whereby appellate Court dismissed the same as time barred – Second Appeal – Held – There is delay of three days – Judgment and decree passed on 28.04.16, appellant got information from lawyer on 25.05.16, he made application for certified copy on 30.05.16 just after 5 days from date of knowledge and received the copy on 21.06.16 – No inordinate and deliberate undue delay in making application by the appellant – Application for certified copy and delivery of the same was done through counsel and not by him personally – Appellant living in a remote area and certainly it was not possible to get day to day information from his counsel – Appeal allowed – Matter remitted back to lower Appellate Court for deciding the first appeal on merits, treating the same to be within limitation. (Para 13 & 14)

क. परिसीमा अधिनियम (1963 का 36), धारा 5 व 14 – विलंब के लिए माफी – भाड़े का बकाया तथा बेदखली हेतु वाद, प्रत्यर्थीगण/वादीगण के पक्ष में डिक्रीत किया गया – अपीलार्थी/प्रतिवादी ने अपील प्रस्तुत की जिसे समय वर्जित होने के कारण अपीली न्यायालय द्वारा खारिज किया गया – द्वितीय अपील – अभिनिर्धारित – तीन दिनों का विलंब है – दिनांक 28.04.2016 को निर्णय एवं डिक्री पारित की गई, दिनांक 25.05.2016 को अपीलार्थी को अधिवक्ता से सूचना प्राप्त हुई, उसने जानकारी मिलने की तिथि से ठीक पांच दिनों के पश्चात् दिनांक 30.05.2016 को प्रमाणित प्रतिलिपि के लिए आवेदन प्रस्तुत किया तथा दिनांक 21.06.2016 को प्रतिलिपि प्राप्त की – अपीलार्थी द्वारा आवेदन प्रस्तुत करने में कोई असाधारण तथा जानबूझकर अनुचित विलंब नहीं – प्रमाणित प्रतिलिपि के लिए आवेदन तथा उक्त का परिदान अधिवक्ता के माध्यम से किया गया था तथा न कि व्यक्तिगत रूप से उसके द्वारा – अपीलार्थी दूरस्थ क्षेत्र में रह रहा है तथा निश्चित रूप से उसके लिए अपने अधिवक्ता से रोजाना जानकारी प्राप्त करना संभव नहीं था

— अपील मंजूर — मामला निचले अपीली न्यायालय को, उक्त को परिसीमा के भीतर मानते हुए, प्रथम अपील को गुण-दोषों के आधार पर विनिश्चय करने हेतु प्रतिप्रेषित किया गया।

B. Limitation Act (36 of 1963), Section 5 & 14 – Non-Diligence Sufficient Cause – Held – Non-diligence during the period of time taken regarding making application for obtaining certified copy and not receiving the same on the date when he was asked to receive the certified copy cannot be grounds to reject application u/S 5 of the Act of 1963 – Apex Court held that if such persons residing in remote areas, it constitutes ‘sufficient cause’ for condoning delay and a lenient view ought to have been taken. (Para 13)

ख. परिसीमा अधिनियम (1963 का 36), धारा 5 व 14 – अतत्परता – पर्याप्त कारण – अभिनिर्धारित – प्रमाणित प्रतिलिपि प्राप्त करने हेतु आवेदन प्रस्तुत करने के संबंध में ली गई समय की अवधि के दौरान अतत्परता तथा उक्त को उस तिथि पर प्राप्त नहीं किया जाना जब उसे वह प्रमाणित प्रतिलिपि प्राप्त करने को कहा गया था, 1963 के अधिनियम की धारा 5 के अंतर्गत आवेदन अस्वीकार करने हेतु आधार नहीं हो सकते – सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि यदि ऐसे व्यक्ति दूरस्थ क्षेत्र में निवास कर रहे हैं, तो यह विलंब माफ करने के लिए ‘पर्याप्त कारण’ निर्मित करता है तथा एक उदार दृष्टिकोण अपनाया जाना चाहिए था।

Cases referred :

AIR 1988 SC 897, (1987) 2 SCC 107, (2009) 9 SCC 94, 2012 (1) MPHT 409, AIR 1962 Supreme Court 361.

D.K. Dixit, for the appellant.

Mukhtar Ahmed, for the respondents.

J U D G M E N T

V.K. SHUKLA, J. :- Heard on admission.

The appeal is admitted for hearing on the following substantial question of law:

“Whether the Lower Appellate Court has erred while dismissing the appeal is barred by limitation.”

With the consent of the parties, the appeal is also heard finally.

In the instant appeal filed under Section 100 of the Code of Civil

Procedure(hereinafter referred to as CPC), the appellant has challenged the order/decreed dated 30-07-2016, passed by First Additional Judge to the court of 2nd Additional District Judge, Jabalpur, against the judgment and decree dated 28-04-2016, passed by 14th Civil Judge Class-I, Jabalpur, in Civil Suit No.105-A/2013, whereby the appeal filed by the appellant has been dismissed as 'time barred' by rejecting the application filed under Section 5 of the Indian Limitation Act, by the Lower Appellate Court and the judgment and decree passed by the trial court regarding eviction under provisions of Section 12(1)(a) of M.P. Accommodation Control Act(hereinafter referred to as the Act) has been affirmed.

2. Brief facts of the present case are that the respondents filed a suit for recovery of rent and eviction of the appellant from the suit house, alleging therein that they are the owners and landlords of the suit house. It was pleaded that the appellant has been irregular in payment of rent. He was in arrears of rent amounting to Rs.8,000/- upto September 2011 from November,2009. The rent is said to be Rs.350/- per month.

3. Combating the aforesaid allegations, it was pleaded in the written statement by the appellant/defendant that he is not in arrears of rent. He has paid all the rents and according to him, the rent is Rs.75/- per month. It was also alleged by the respondents that they are not the owners and landlords of the suit house but they are illegally recovering the rent by using muscle powers. It was further alleged that they had tried to dismantle the house and therefore an FIR was also lodged. It was pleaded that he had already spent huge amount for repairing of the suit house.

4. However, after evaluation of oral and documentary evidence, suit for eviction and payment of arrears of rent was decreed by the judgment and decree dated 28-04-2016.

5. Being aggrieved by the aforesaid judgment and decree, appeal was filed but there was delay, therefore, an application under Section 5 of the Indian Limitation Act was filed. However, the Lower Appellate Court rejected the application under Section 5 of the Limitation Act and consequently the appeal filed under Section 96 of CPC was dismissed as time barred, hence the present appeal.

6. Learned counsel for the appellant submitted that the dismissal of appeal as barred by limitation is erroneous and is contrary to the provisions of the

Indian Limitation Act, and also the law laid down by the Apex Court and this Court and therefore, the substantial question of law as mentioned above arises for consideration as under :

“Whether the Lower Appellate Court has erred while dismissing the appeal is barred by limitation.”

7. Learned counsel for the appellant submitted that there was hardly delay of 3 days in filing the appeal and therefore, instead of adopting such hyper technical and strict view in the matter of condonation of delay, the Appellate Court ought to have taken liberal view in the matter.

8. Per contra, learned counsel for the respondents stated that the appellant had information about the judgment and decree of the case on 28-04-2016 itself when the same was passed. Despite having the information about the decree, the respondents applied copy of the judgment and decree after expiration of the period of limitation and further the appellant could not explain the period for not filing the appeal immediately after getting the certified copy. Thus, the appellant has failed to make out any case for “sufficient cause” as required under the provisions of Section 5 of the Indian Limitation Act and he could not explain each day delay as required under law. Hence there is no illegality in the impugned judgment and decree .

9. Before adverting to the legal provision of law in the field of condonation of delay, it is apposite to refer the provisions of Section 5 of the Indian Limitation Act, which is reproduced as under :

“5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

The Apex Court in the case of *G.Ramagowda Vs. Special Land Acquisition*

Officer, AIR 1988 SC 897 held as under :

“The expression 'sufficient cause' in section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of *bona fides* is imputable to the party seeking condonation of the delay.”

Prior to this, the Apex Court in the case of *Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others*, (1987)2 SCC 107, held that to determine the word 'sufficient cause', courts should adopt a liberal and justice-oriented approach.

10. In the case of *State of Bihar Vs. Kameshwar Prasad Singh*, (2009)9 SCC 94, the same view has been reiterated that a lenient view should have been taken by the Lower Appellate Court. Relying on the same judgment, a Coordinate Bench of this court in the case of *Salikram and others Vs. Keshav and others*, 2012(1) MPHT 409, held that the appeal should not have been dismissed merely on technical ground of delay and a liberal view should have been taken.

11. In the case of *Ramlal and others Vs. Rewa Coalfields Ltd.* AIR 1962 Supreme Court 361, the Apex Court held that question of diligence during the period of limitation is not relevant in considering the application under Section 5 of the Indian Limitation Act. It becomes relevant only when the question of exercising discretion to condone the delay under section 14 arises. Relevant para-8 is quoted as under:

“8. Now, what do the words "within such period" denote? It is possible that the expression, "within such period" may sometimes mean during such period. But the question is: Does the context in which the expression occurs in S.5 justify the said interpretation? If the limitation Act or any other appropriate statute prescribes different periods of limitation either for appeals or applications to which S.5 applies that normally means that liberty is given to the party intending to make the appeal or to file an application to act within the period prescribed in that behalf. It would not be reasonable to require a party to take 'the necessary action on the very first day after

the cause of action accrues. In view of the period of limitation prescribed the party would be entitled to take its time and to file the appeal on any day during the said period and so prime facie it appears unreasonable that when delay has been made by the party in filing the appeal it should be called upon to explain its conduct during the whole of the period of limitation prescribed. In our opinion, it would be immaterial and even irrelevant to invoke general considerations of diligence of parties in construing the words of S. 5. The context seems to suggest that "within such period" means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under S.5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed. To hold that the expression "within such period" means during such period would in our opinion be repugnant in the context. We would accordingly hold that the learned Judicial Commissioner was in error taking the view that the failure of the appellant to account for its non-diligence during the whole of the period of limitation prescribed for the appeal necessarily disqualified it from praying for the condonation of delay, even though the delay in question was only for one day; and that too was caused by the party's illness."

12. In the present case, the Lower Appellate Court has dismissed the application for condonation of delay mainly on the ground that the appellant has not given any reason for not submitting the application for obtaining the certified copy within the limitation and why the certified copy was received on 21-06-2016, when it was already ready on 14-06-2016. The court has further taken into consideration that the appellant has not mentioned any reason why the appeal was filed on 23-06-2016 when the certified copy was received on 21-06-2016. The appellant has made the following averments in the application

under Section 5 of the Indian Limitation Act, which are reproduced as under:

“1. यह कि अपीलार्थी ने माननीय श्री आर. के. शर्मा 14 वां व्यवहार न्यायाधीश प्रथम श्रेणी, जबलपुर के निर्णय एवं डिक्री दिनांक 28.04.2016 से दुखित होकर जिला न्यायालय महोदय जबलपुर के समक्ष अपील अंतर्गत धारा 96 प्रस्तुत किया है।

2. यह कि मेरे उक्त प्रकरण में 28.04.2016 को निर्णय एवं डिक्री पारित की गई है। जिसकी मुझे अपने अधिवक्ता महोदय के द्वारा 25.05.2016 को जानकारी प्राप्त हुई थी कि मेरे विरुद्ध निर्णय एवं डिक्री पारित की गई है।

3. यह कि मेरे उपरोक्त निर्णय एवं डिक्री की नकल प्राप्त करने हेतु मैंने अपने अधिवक्ता के माध्यम से 30.05.16 को आवेदन पत्र पेश करवाया था। तथा मुझे सत्य प्रतिलिपि की नकल 21.06.2016 को प्राप्त हुई।

4. यह कि मेरे द्वारा तीन दिन के विलंब से समयावधि पश्चात् आवेदन पत्र पेश करवाया था। और इसी कारण से मेरे द्वारा तीन दिन के विलंब से अपील पेश की गई है जिसे विलंब से पेश हुई अपील को क्षमा किया जाना आवश्यक है।

5. यह कि आवेदन के समर्थन में शपथ पत्र संलग्न है।”

13. Upon a perusal of the application, it is noted that the judgment and decree was passed on 28-04-2016, the appellant got the information from his Advocate on 25-05-2016. He made an application for obtaining certified copy on 30-05-2016 just after 5 days from the date of getting knowledge of the judgment and decree. Certified copy was received by him on 21-06-2016 through his counsel. In the impugned order, it is stated that the appellant was told to appear on 06-06-2016 but he appeared on 21-06-2016. It is also mentioned that the copy was ready on 14-06-2016. From the sequence of the dates and the facts of the present case, it cannot be said that there was any inordinate and deliberate undue delay in making the application for certified copy of the order and receiving the said copy by the counsel. The affidavit of the appellant shows that he is residing in a remote area of Jabalpur town and certainly it was not possible for him to get information day to day from his counsel. The application for obtaining certified copy and the delivery of the copy was done through the counsel and not by him personally. The view of this court is fortified by the judgment of this court in the case of *Salikram*(supra), where it has been held that in the cases of persons residing in remote rural areas and who were not informed by their counsel about

obtaining of certified copy of the impugned judgment and decree and the same was made after coming to know through their counsel constitute 'sufficient cause' for condoning the delay and a lenient view ought to have been taken by the court below. Further non-diligence during the period of time taken regarding making application for obtaining certified copy and not receiving the same on the date when he was asked to receive the certified copy can not be grounds to reject the application under Section 5 of Indian Limitation Act as held in the case of *Ramlal and others Vs. Rewa Coalfields Ltd.* (Supra).

14. In view of the aforesaid, this appeal is allowed as it is found that the impugned judgment and decree is contrary to the law laid down by the Apex Court and this court in respect of Section 5 of the Indian Limitation Act. The impugned judgment and decree passed by the Lower Appellate Court is set aside. The case is remitted back to the Lower Appellate Court with a request to treat the first appeal of the appellant as within limitation and to hear and decide the same expeditiously preferably within a period of 6 months from the date of production of the certified copy of the judgment and decree passed today. Parties are since represented before this court, they are directed to remain present before the Lower Appellate Court on 11-05-2017 along with a certified copy of the order passed today.

15. The Registry is directed to send back the records of the courts below immediately to the Lower Appellate Court for the purpose of hearing of the first appeal.

16. With the aforesaid, the appeal is allowed and finally disposed of.

Appeal allowed.

I.L.R. [2017] M.P., 1882

APPELLATE CIVIL

Before Mr. Justice Anurag Shrivastava

S.A. No. 566/2016 (Jabalpur) decided on 21 April, 2017

RAMCHARAN

...Appellant

Vs.

DAMODAR & ors.

...Respondents

Evidence Act (1 of 1872), Sections 68, 69 & 90, Transfer of Property Act (4 of 1882), Section 54 and Land Revenue Code, M.P. (20 of 1959), Section 117 – 30 years Old Document – Presumption – Sale Deed is more

than 30 years old and executants of the same and its attesting witnesses are not alive – Principle of section 90 Evidence Act is that if a document, 30 years old or more is produced from proper custody and is on its face free from suspicion, Court may presume that it has been duly executed and attested but at the same time it is not mandatory to draw such presumption, discretion is left with the Court to raise presumption – Further held – Section 54 of the Act of 1954 does not contemplate the requirement of attestation of sale deed, therefore in the present case, compliance of section 68 and 69 Evidence Act is not mandatory – Revenue records (Mutation and Khasra Panchsala) also proves that defendants after purchasing the property was in continuous possession of the same – Presumption of possession u/S 117 of the Code of 1959 can also raised in favour of defendants – Appellant/plaintiff failed to prove his title over the disputed property – No illegality in the impugned judgment – Appeal dismissed. (Paras 7 to 9, 12, 16 & 18)

साक्ष्य अधिनियम (1872 का 1), धाराएं 68, 69 व 90, सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 54 एवं भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 117 – 30 वर्ष पुराना दस्तावेज – उपधारणा – विक्रय विलेख 30 वर्ष पुराना है तथा उक्त के निष्पादक एवं उसके अनुप्रमाणक साक्षीगण जीवित नहीं हैं – साक्ष्य अधिनियम की धारा 90 का सिद्धांत यह है कि यदि कोई दस्तावेज, जो कि 30 वर्ष या उससे अधिक पुराना है उचित अभिरक्षा से प्रस्तुत किया जाता है तथा प्रत्यक्षतः संदेह से मुक्त है, न्यायालय उपधारित कर सकती है कि इसे संम्यक् रूप से निष्पादित एवं अनुप्रमाणित किया गया है परन्तु उसी समय में ऐसी उपधारणा की जाना आज्ञापक नहीं है, उपधारणा करने का विवेकाधिकार न्यायालय के पास है – आगे अभिनिर्धारित – 1954 के अधिनियम की धारा 54 विक्रय विलेख के अनुप्रमाणन की अपेक्षा अनुध्यात नहीं करती, इसलिए वर्तमान प्रकरण में, साक्ष्य अधिनियम की धारा 68 एवं 69 का अनुपालन आज्ञापक नहीं है – राजस्व अभिलेख (नामांतरण एवं खसरा पंचशाला) भी यह साबित करते हैं कि संपत्ति क्रय करने के पश्चात् प्रतिवादीगण का निरंतर उक्त पर कब्जा था – 1959 की संहिता की धारा 117 के अंतर्गत, प्रतिवादी के पक्ष में कब्जे की उपधारणा भी की जा सकती है – अपीलार्थी/वादी विवादित संपत्ति पर अपना स्वत्व साबित करने में विफल रहे – आक्षेपित निर्णय में कोई अवैधता नहीं – अपील खारिज।

Cases referred :

(1993) 3 SCC 573 : AIR 1999 SC 1441, 2016 (4) MPLJ 57.

Vinod Kumar Dubey, for the appellant.

Devendra Shukla, P.L. for the respondent No.4/State.

J U D G M E N T

ANURAG SHIVASTAVA, J. :- The appellant/plaintiff has filed this second appeal under Section 100 of Civil Procedure Code, being aggrieved by the judgment and decree dated 03.02.2016 passed by First Additional District Judge, Satna in regular Civil Appeal No.31-A/2015, whereby the judgment and decree dated 08.07.2014 passed by Civil Judge, Class-I Satna, (hereinafter referred to as 'trial Court') in Civil Suit No.45-A/2010 has been affirmed and confirmed and the suit filed by the appellant for declaration of title, possession and permanent injunction has been dismissed.

2. The facts giving rising to filing of this appeal briefly stated are that the plaintiff instituted a suit before trial Court, stating that the father of the plaintiff/appellant, Sahdev was the owner of the disputed land Khasra No.23 1/2 area 0.031 hect. situated in village Kherbasani, Tahsil Maihar, District Satna. In his life time he remained in possession of the land and after his death plaintiff RamCharan became owner and is in continuous possession of the land. This land has never been sold by Sahdev to Purushottam. The sale deed dated 05.04.1962 alleged to have been executed by Sahdev in favour of Purushottam is null and void as forged document. It is further pleaded that in the month of December, 2008 plaintiff came to know that defendants No.1 to 3 are trying to sell the disputed land. He obtained the copies of Khasra Panchashalla on 16.12.2008 wherein the name of defendants No.1 to 3 were recorded as Bhumiswami (owner) of the land. On perusal of the revenue record, it is revealed that Purushottam, who was the father of defendant No.1 and 3, had got his name recorded as Bhumiswami on the disputed land on the basis of forged sale deed dated 05.04.1965, in collusion with revenue authorities. After death of Purushottam the names of his wife and children (defendant Nos. 1 to 3) was mutated in revenue records on the disputed land. The defendant No.1 had sold this land to defendant No.5 vide sale deed dated 20.07.2009 without any right and authority. As the plaintiff is owner and in possession of the disputed land, therefore, plaintiff filed the suit for seeking relief of declaration of his title and possession on the disputed land and also declaration that the sale deed dated 05.04.1965 and 20.07.2009 as null and void and permanent injunction to restrain defendants to interfere with the possession of the plaintiff.

3. The defendants/respondents No.1 to 4 remained ex-parte and they did not file written statement.

4. Defendant/respondent No.5 in her written statement averred that Late Sahdev was the owner of the land. He had sold this land to late Purushottam by executing sale deed dated 05.04.1962 and delivered the possession of the land. The land was mutated thereafter on the name of Purushottam. After his death, his wife Smt. Mohani (D-2) and son Damodar (D-1) and daughter Siya Bai (D-3) became owner of the land. The land was always remained in possession of them as owner. Plaintiff's father Sahdev had never raised any objection against the aforesaid sale deed and mutation in his life time. Now the disputed land was purchased by defendant No.5 Smt. RamBai from Damodar, defendant no.1 vide registered sale deed dated 20.07.2009. RamBai is owner of disputed land. The plaintiff has not raised any objection against the mutation in revenue records. The defendants have also perfected their title on the basis of adverse possession. Therefore, the suit is time barred and liable to be dismissed.

5. The trial Court after completion of pleadings framed the issues and recorded the evidence adduced by both the parties. After hearing the parties the trial Court passed the impugned judgment dated 03.02.2016 and dismissed the suit on the ground that Sahdev had sold the disputed land to Purushottam vide sale deed dated 05.04.1962 (Ex.D/7) and thereafter Purushottam became owner of the land. After his death the land devolved to defendants No.1 to 3. The sale deed dated 20.07.2009 executed by defendant No.1 in favor of defendant No.5 is valid and lawful. The possession and title of plaintiff is not found proved. The suit is time barred. Against this judgment and decree the plaintiff preferred First Appeal before First Additional District Judge, Maihar, District Satna (M.P) which is also dismissed by recording concurrent findings.

6. In Second Appeal, it is submitted by learned counsel for the appellant/plaintiff that Courts' below have failed to appreciate the evidence on record in its correct perspective, which has resulted in erroneous findings and consequent decree. The defendants have not examined any witness to prove execution of the disputed sale deed dated 05.04.1962, the trial Court wrongly drawn a presumption under Section 90 of Evidence Act and held the sale deed valid. There was no evidence to show that the disputed sale deed had been executed by Sahdev in favor of Purushottam, therefore it is not proved according to secs. 68 and 69 of Evidence Act. The mutation proceedings had been carried out without notice to Late Sahdev or his son plaintiff RamCharan. The Courts below have ignored the evidence regarding possession of the

plaintiff on the disputed property. The right and title of the plaintiff is duly proved by evidence, therefore, the appeal may be allowed.

7. Considering the rival contentions of the learned counsel for the parties, and on perusal of record, the first question arises for consideration is that whether the Courts below have rightly drawn the presumption of execution of sale deed Ex.D-7 dated 05.04.1962 under Section 90 of Evidence Act. Section 90 of Evidence Act reads as under:-

“Section 90. Presumption as to documents thirty-years old- Where any document, purporting or proved to be thirty-years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person’s handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.”

Explanation-Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This Explanation applies also to Section 81.”

The principle underline Section 90 is that if a document, thirty-years old or more, is produced from proper custody and is on its face free from suspicion, the Court may presume that it has been duly executed and attested. The section empowers that Court to presume the signature and every other part of a document thirty-years old, which purports to be in handwriting of any particular person as in that person’s handwriting, and in the case of a document executed or attested that it was duly executed and attested by the persons by whom it purports to be executed and attested. To attract the presumption under Section 90 of Evidence Act it should be proved that (a) the document is more than thirty years old (b) it is produced from proper custody and (c) on its face free from suspicion. To draw the presumption is

not mandatory and it is left with discretion of the Court to raise presumption.

8. In the present case, it is not disputed that Sahdev was the owner of the disputed property. It is claimed by defendant that Sahdev had sold the disputed property to Purushottam by executing registered sale deed dated 05.04.1962. Defendant No.1 Damodar is son of Purushottam. Damodar (DW-3) in his evidence produced the sale deed dated 05.04.1962 Ex.D-7. This is a registered sale deed which shows that the disputed property was sold by Sahdev to Purushottam for consideration of Rs.100/-. The sale deed was attested by Lal Mohammad and Jwala Prasad and there was thumb impression of Sahdev affixed on it. This document is undisputedly more than thirty-years old.

9. Damodar (DW-3) in his statement deposed that Sahdev had executed the sale deed Ex.D-7 and sold disputed property to his father Purushottam. There is signature of Purushottam at place A to A on sale deed, the attesting witnesses Lal Mohammad and Jwala Prasad have expired some 14-15 years back. It is also not disputed that Sahdev and Purushottam are also no more. Defendant Rambai (DW-1) and witness Rammitra (DW-2) have also deposed in the same way and stated that both the parties and attesting witnesses to sale have expired now. In rebuttal the plaintiff's witnesses do not say that anyone of the attesting witnesses are still alive. Therefore, from aforesaid evidence, the findings of Courts below are correct that executants of the disputed sale deed and its attesting witnesses are not alive. Therefore no adverse inference can be drawn against defendant for not examining attesting witnesses. As far as Section 68 of Evidence Act is concerned, the provisions of Section 68 is applicable only in cases where the disputed document is required by law to be attested, then one attesting witness at least has to be called for the purpose of proving its execution. Here the disputed document is sale deed. Section 54 of Transfer of Property Act, does not contemplate the requirement of attestation of sale deed. Therefore, compliance of Section 68 and 69 of Evidence Act are not mandatory in present dispute.

10. The plaintiff has filed revenue records Khasra Panchsala Ex.P-1 to Ex.P-7 continuously of the years 1963-64 to 1997-98, which shows that Sahdev was recorded as Bhumiswami of the disputed land in the year 1962. Thereafter, in the year 1964, the land was mutated and recorded on the name of Purushottam on the basis of sale deed. This fact is also corroborated by certified copy of mutation (Namantaran-Panji) Ex.P-8, wherein it is mentioned

that Sahdev had sold the disputed land to Purushottam for Rs.100/- vide sale deed dated 05.04.1962 and thereafter, the name of Purushottam as Bhumiswami was recorded. The Khasra- Panchsalas Ex.P1 to Ex.P-7 show that after purchasing of property, Purushottam was in possession of disputed land as Bhumiswami continuously from 1964 till 1997- 98. Khasra Panchsala Ex.P-9 of the years 2008-10 shows that after the death of Purushottam the disputed land was recorded on the names of his son Damodar Prasad, daughter Siyabai and widow Smt. Mohini Bai. Thus, from revenue records the presumption of possession of Purushottam since 1962 to 1997-98 and thereafter, his legal representatives till the years 2008 and 2009 as Bhumiswami of the disputed land can be raised.

11. The defendant Rambai (DW-1) and her witnesses Damodar (DW-3) and Rammitra (DW-2) also deposed about the possession of Purushottam in his lifetime and thereafter, his legal representatives on the disputed land. In the rebuttal, the plaintiff Ramcharan (PW-1) deposed that he did not know whether his father Sahdev had executed the disputed sale deed in favour of Purushottam. In the year 1962, he was aged about 13-14 years. He also admits that there was no dispute over the disputed land in the lifetime of Sahdev. Sahdev did not raise any objection against the mutation and recording of the disputed land in revenue records on the name of Purushottam in his lifetime. Even plaintiff did not raise any objection in this regard before Revenue Authorities. Plaintiff Ramcharan (PW-1) has admitted that after the death of his father, his other lands were mutated on the name of his brother and himself. In cross-examination para 23, this witness deposed that after the death of his father, he had got mutation of the disputed land on his name alongwith other lands of his father. In cross-examination para 26, he deposed that in the year 1974-75 when he found the disputed land was not mentioned in *Rinpustika* then he had made an application for its correction. But neither that application for correction of *Rinpustika* is produced nor any revenue record is produced which shows that the disputed land was ever recorded on the name of plaintiff. Therefore, it appears that neither Sahdev nor plaintiff had ever tried to get the disputed land mutated on their names, nor they had raised any objection against recording of name of Purushottam in revenue records as Bhumiswami. It is not believable that the since more than 50 years plaintiff had no knowledge of the fact that the land was recorded on the name of Purushottam.

12. As far as the possession is concerned, plaintiff Ramcharan (PW-1) in

para 16 admits that he has never cultivated the disputed land. At present the land is used by Rambai (D-5) for storing his crops. He also admits that the disputed land is an open land which is not used for cultivation. Other plaintiff witness Baliram (PW-2) in cross para 11 admits that he cannot say who is in possession of the disputed land. At present Rambai has stored his crops on it. Dwarka Prasad (PW-3) also admits that he is a labourer and he has no land around or nearby the disputed land. Therefore, from plaintiff's evidence, which is vague and very weak, it cannot be believed that on the disputed land, plaintiff's father Sahdev and thereafter, plaintiff were continuously remained in possession. The presumption of possession under Section 117 of M.P. Land Revenue Code, on the basis of Khasra Panchsala Ex.P-1 to Ex.P-7 and Ex.P-9 can be raised in favour of defendant.

13. Thus, from the evidence of both the parties, it appears that Sahdev had sold the disputed land to Purushottam vide sale deed Ex.D-7 dated 05.04.1962. After the sale, Purushottam got the land mutated on his name in the year 1964 vide mutation record Ex.P-8 in the year 1964 and thereafter, this land is continuously recorded on the name and possession of Purushottam as Bhumiswami and after his death, his legal representatives defendants D-1 to D-3. It is also proved that the land is in possession of the defendants since 1962. No reason has been given by the plaintiff, as to why they have not taken any objection against the entries of revenue records made in favour of Purushottam and defendants. Thus, the above facts clearly establishes that the disputed land was sold by Sahdev to Purushottam.

14. The disputed sale deed Ex.D-7 is a registered document more than thirty years old. All the witnesses of this document have been died. The document is produced from proper custody. From other evidence adduced by the parties, it appears that the disputed land was sold by Sahdev to Purushottam. There is no evidence which shows that Sahdev used to make signature. There is endorsement of the register also to show that Sahdev had executed the sale deed and got it registered after verifying the same before Registrar. The endorsement of Registrar is a factor, which can be taken into account for considering whether presumption under Section 90 should be raised. The Late Purushottam and after his death defendants no.1 to 3 were possessing the land as owner since more than 50 years. Thus, the document is free from suspicion. Therefore, the Courts below have rightly drawn the presumption of its execution. Where the discretion has been exercised with

due care and the presumption under law has been made, an appellate Court should be slow to interfere with such discretion.

15. Hon'ble Apex Court in case law *Vidhyadhar Vs. Manikrao* (1993) 3 SCC 573: AIR 1999 SC 1441 held as under:-

"Concurrent findings of fact recorded by trial Court and first appellate Court could not have been legally upset by High Court in second appeal unless such findings are shown to be perverse being based on no evidence or on evidence on record no reasonable person could have come to such conclusion."

Hon'ble Supreme Court in *Damodar Lal Vs. Sohan Devi*, reported in 2016(4) MPLJ 57 had held as under:-

"Concurrent findings of trial Court and first Appellate Court on a pure question of fact. Even if finding of fact is wrong, that by itself will not constitute a question of law. Wrong finding should stem out of a complete misreading of evidence or it should be based only on conjectures and surmises."

16. It is argued by the learned counsel for the appellant that earlier the plaintiff's suit was decreed by the trial Court vide judgment dated 12.09.2012 holding that the possession of plaintiff over the disputed land and declaring that the mutation order dated 17.03.1964 in favor of Purushottam is null and void. Against this judgment the defendant preferred Civil Appeal No.54- A/ 2012, wherein the appellate Court allowed the application under Order 41 Rule 27 of CPC of defendant/appellant and remanded the case for hearing to trial Court after setting aside the decree. Thereafter, the trial Court has wrongly passed the present decree dated 08.07.2014 ignoring the findings of Court passed in earlier decision dated 12.09.2012. Therefore, finding of trial Court is erroneous.

17. This argument cannot be accepted. The earlier judgment and decree dated 12.09.2012 passed by trial Court was set aside by the Appellate Court and case was remanded to trial Court for hearing. Therefore, the present appellant/plaintiff cannot take support of findings of earlier judgment and decree which has been set aside by the Appellate Court. The plaintiff has not preferred

any appeal against the earlier judgment dated 16.08.2013 of Appellate Court passed in Civil Appeal No.54-A/2012. Therefore, in present appeal, the legality and propriety of earlier order of Appellate Court dated 16.08.2013 cannot be considered.

18. The findings recorded by Courts below is correct and no illegality or perversity is found in it. The plaintiff/appellant has failed to prove his rights and title on the disputed land. Therefore, no substantial question of law arises for consideration in this second appeal. Thus, the appeal is devoid of substance and is hereby **dismissed**. The appellant has to bear the cost of appeal of respondent No.5.

Appeal dismissed.

I.L.R. [2017] M.P., 1891

APPELLATE CIVIL

Before Mr. Justice R.S. Jha & Mr. Justice A.K. Joshi

M.A. No. 4555/2010 (Jabalpur) order passed on 18 May, 2017

KAPIL & ors.

...Appellants

Vs.

UNION OF INDIA & ors.

...Respondents

Railway Claims Tribunal Act, (54 of 1987), Section 23 and Civil Procedure Code (5 of 1908), Section 5 – Limitation in Appeal – Applicability of provisions of Limitation Act – Contradictory view of two single benches of High Court – Matter referred to Division Bench – Held – Claims Tribunal Act is a beneficial welfare legislation and is not a complete code in itself in respect of prescribing and providing the entire procedure for filing an appeal before High Court nor there is any specific provision in the Act which expressly excludes the provisions of Limitation Act – Provisions of Section 5 of Limitation Act would apply to filing of appeal u/S 23 of the Act of 1987 beyond the period of limitation prescribed, by virtue of provisions of Section 29(2) of Limitation Act – High Court has power to condone the delay in filing such appeal on sufficient cause being shown by appellant – AIR 2016 MP 37 Overruled – Reference answered accordingly. (Paras 65 to 68)

रेल दावा अधिकरण अधिनियम (1987 का 54), धारा 23 एवं सिविल प्रक्रिया संहिता (1908 का 5), धारा 5 – अपील में परिसीमा – परिसीमा अधिनियम के उपबंधों की प्रयोज्यता – उच्च न्यायालय की दो एकल न्यायपीठों के परस्पर विरोधी

दृष्टिकोण – मामला खंड न्यायपीठ को निर्दिष्ट – अभिनिर्धारित – दावा अधिकरण अधिनियम एक हितकारी कल्याणकारी विधान है और उच्च न्यायालय के समक्ष अपील प्रस्तुत करने हेतु संपूर्ण प्रक्रिया विहित एवं उपबंधित किये जाने के संबंध में अपने आप में एक पूर्ण संहिता नहीं है, न ही अधिनियम में कोई विनिर्दिष्ट उपबंध है जो अभिव्यक्त रूप से परिसीमा अधिनियम के उपबंधों को अपवर्जित करता हो – परिसीमा अधिनियम की धारा 29(2) के उपबंधों के आधार पर, विहित परिसीमा की अवधि से परे, 1987 के अधिनियम की धारा 23 के अंतर्गत अपील प्रस्तुत करने के लिए परिसीमा अधिनियम की धारा 5 के उपबंध लागू होंगे – उच्च न्यायालय को अपीलार्थी द्वारा पर्याप्त कारण दर्शाये जाने पर उक्त अपील प्रस्तुत करने में विलंब को माफ करने की शक्ति है –AIR 2016 MP 37 उलट दिया गया – निर्देश तदनुसार उत्तरित।

Cases referred :

AIR 2016 MP 37, 2011 (3) MPHT 68, AIR 2014 Orissa 46, 1974 (2) SCC 133, 1976 (1) SCC 392, 1991 (4) SCC 333, 1991 SUPP (2) SCC 631, 1995 (2) SCC 493, 1996 (5) SCC 342, 2001 (8) SCC 470, 2001 (7) SCC 549, 2003 (8) SCC 431, 2004 (4) SCC 252, 2004 (2) MPLJ 359, 2006 (3) ALJ 170, 2008 (3) SCC 70, 2008 (7) SCC 169, 2009 (15) SCC 183, 2009 (5) SCC 791, 2010 (5) SCC 23, 2014 (10) SCC 814, 2015 (7) SCC 58, 2016 SCC Online SC 1063, 2016 (1) SCC 444, 2017 SCC Online SC 223, 2017 (2) SCC 350, 1995 Supp. (4) SCC 578, 1977 MPLJ 614, 1987 MPLJ 562, (1995) 5 SCC 5, (2008) 9 SCC 527, AIR 1992 SC 1264, AIR 1969 SC 872.

Aditya Adhikari, Jagat Singh, M. Shafiquallah, J.L. Soni, Arpan Shrivastava, Rajesh K. Soni, Rohil Jain, Chandrabas Dubey, P. Pareekh, Pushpendra Dubey and Hemant Kumar Chouhan, for the appellants.

Amrit Ruprah, Govind Patel and Atul Choudhari, for the respondents.

ORDER

The Order of the Court was delivered by :
R.S. JHA, J. :- By order dated 20.2.2017 the following question has been referred for being answered by this Bench.

“Whether the provision of Section 5 of the Limitation Act is attracted to the appeal preferred under Section 23 of the Indian Railway Claims Tribunal Act, 1987 beyond the period of limitation?”

2. As is evident from a perusal of order dated 20.2.2017, the matter has been referred to a Division Bench on account of the fact that the learned Single Judge taking note of the decision of this Court rendered in the case of *Smt. Kunjmati Vs. Union of India*, AIR 2016 MP 37 (M.A No.3108/2009 decided on 6.11.2015) wherein a Single Bench of this Court has held that the provisions contained in Section 5 of the Limitation Act, providing for extending the period of limitation on showing sufficient cause would not be attracted to the provisions of an appeal filed under Section 23 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as 'the Claims Tribunal Act'), and, therefore, the appellate Court has no power to condone the delay in filing such appeals and the contrary view taken in the case of *Smt. Veena Rao Phalke Vs. Union of India* 2011 (3) MPHT 68, wherein the appeal filed after the lapse of the period of limitation prescribed under section 23 of the Claims Tribunal Act, was entertained by condoning the delay on an application filed under section 5 of the Limitation Act, 1963, was of the opinion that there is a conflict of opinion on the issue and has, therefore, referred the aforesaid question for adjudication before the Larger Bench.

3. The learned Single Judge, while referring the matter, has also taken note of the fact that in the decision of the Orissa High Court rendered in the case of *Union of India Vs. Ashok Kumar Saboo*, AIR 2014 Orissa 46, it has been held that Section 5 of the Limitation Act would apply and that the Supreme Court in the case of *Khussad and another vs. Union of India*, SLP (C) No.10024- 10025/2011 has condoned the delay while granting leave. The learned Single Judge, taking note of the aforesaid conflicting views, has referred the question for being answered by a Larger Bench.

4. Before we consider and decide the question referred to us, it is necessary to take note of the fact that this Court, in the case of *Smt. Veena Rao Phalke* (supra), did not deal with or decide the issue relating to applicability of Section 5 of the Limitation Act to an appeal filed under section 23 of the Claims Tribunal Act whereas this issue was directly considered and decided by the Single Bench of this Court in the case of *Kunjmati* (supra) and the learned Single Judge, after taking into consideration the difference between Sections 17 and 23 of the Claims Tribunal Act and the omission under section 23(2) of the Act, to provide for a provision for condoning delay, has quoted para-17 of the judgment of the Supreme Court rendered in the case of *Hukumdev Narain Yadav* (supra) and para-35 of the judgment of

the Supreme Court rendered in the case of *Hongo India Pvt. Ltd.* (supra), and after considering the provisions of the Claims Tribunal Act, 1987 has recorded a conclusion against the applicability of Section 5 of the Limitation Act, in the following terms in paras 10 to 14:-

10. If in the backdrop of aforesaid authoritative pronouncement, the scheme of the special law in question namely the Railway Claims Tribunal Act, 1987, is examined, it may be seen that the preamble reads as hereunder:

Preamble. — An Act to provide for the establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration on non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents or untoward incidents and for matters connected therewith or incidental thereto.

11. Section 2 contains definitions. Chapter II provides for establishment of Railway Claims Tribunals and benches thereof. Chapter III relates to jurisdiction, power and authority of the Claims Tribunals. Section 15 engrafts a bar to the exercise of jurisdiction by any Court or authority in any matter covered by the Act. Chapter IV lays down the procedure to be adopted by the Claims Tribunals established under the Act, including provision with regard to limitation. Section 22 relates to execution of the orders of the Claims Tribunal.

12. Thus, there can be no manner of doubt that the Railway Claims Tribunals Act, 1987 is a complete code in itself. It was enacted in view of the fact that the litigation in Courts of law and before Claims Commissioners was very protracted; and with the avowed object to set up a specialized Tribunal for speedy adjudication of railway claims.

13. As such, regardless of the fact that no express reference has been made in The Railway Claims Tribunal Act, 1987, excluding the application of specific provisions of the Limitation Act; such application shall be deemed to have been impliedly excluded in view of the fact that the Railway Claims Tribunal Act is a complete code in itself and makes specific provisions to cover every aspect of the accident claims against railways.

14. In aforesaid view of the matter, section 5 of the Limitation Act would have no application to an appeal under sub-section (1) of section 23 of the Railway Claims Tribunal Act, 1987 and the High Court would have no jurisdiction to entertain such appeal beyond the stipulated period of limitation of 90 days regardless of the fact that the appellant had sufficient cause for such delay.”

5. The learned Senior Counsel appearing for the appellant submits that Section 29(2) of the Limitation Act is of general applicability and lays down that in all cases where a special or local law provides for a different period of limitation than the period prescribed under the Limitation Act, such different period of limitation, as prescribed under the special or local law shall be deemed to be the limitation prescribed under section 3 of the Limitation Act and consequently the provisions of Section 4 to 24 of the Limitation Act shall apply to the special or local law in so far as and to the extent that they are not expressly excluded. The learned Senior Counsel for the appellant submits that as there is no express exclusion of the provisions of Sections 4 to 24 of the Limitation Act and as there is nothing in the Claims Tribunal Act that can be construed to exclude the applicability of Section 29(2) of the Act even by inference, the provision of Section 5 of the Act would apply and the appellate Court namely, the High Court would have the powers under section 23 of the Claims Tribunal Act to condone the delay in filing an appeal and to extend the period of limitation prescribed thereunder by exercising powers under section 5 of the Limitation Act.

6. The learned Counsel for the respondents, per contra, submits that the Claims Tribunal Act, is a complete code in itself dealing with the manner of considering and deciding claims arising out of Railway accidents and untoward incidents as well as disputes as mentioned in Section 13 of the Claims Tribunal

Act. It is submitted that Section 17(2) of the Claims Tribunal Act, specifically empowers the Claims Tribunal to entertain a claim even after the period of limitation prescribed under sub-section (1) thereof has expired in case the applicant is able to satisfy the Claims Tribunal that he had sufficient cause for not making an application within limitation.

7. It is submitted that while the Claims Tribunal Act confers specific powers to condone such a delay in respect of filing of claims under section 17 of the Act on the Claims Tribunal, such a power to condone the delay in filing an appeal under section 23 of the Claims Tribunal Act, is conspicuously absent and has been omitted. It is submitted that as the Claims Tribunal Act is a complete code dealing with the filing and adjudication of claims against the railway in respect of specified issues and as the Act consciously provides for the power to condone the delay in filing claims and at the same time has consciously omitted to confer any such power on the appellate court in respect of an appeal filed under section 23 of the Claims Tribunal Act, therefore, the Single Bench of this Court in the case of *Kunjmati* (supra) has rightly held that the provisions of Section 5 of the Limitation Act, cannot be invoked by the High Court in an appeal filed under section 23 of the Act and is bound to dismiss the same if it is filed beyond the period of limitation mentioned and specified under section 23(3) of the Claims Tribunal Act.

8. The learned counsel for the parties, in support of their rival contentions, have taken this Court through the decisions of the Supreme Court rendered in the cases of *Hukumdev Narain Yadav Vs Lalit Narain Mishra*, 1974(2) SCC 133; *Mangu Ram Vs. Municipal Corporation of Delhi*, 1976(1) SCC 392; *Vinod Gurudas Raikar Vs. National Insurance Co Ltd. and others*, 1991(4) SCC 333; *Competent Authority Tarana District Ujjain Vs. Vijay Gupta*, 1991 SUPP (2) SCC 631; *Birla Cement Works Vs. G.M Western Railway And Others*, 1995(2) SCC 493; *State of W.B and others Vs. Kartick Chandra Das and others*, 1996(5) SCC 342; *Union of India Vs. Popular Construction Co.*, 2001(8) SCC 470; *Pallav Sheth Vs. Custodian And Others*, 2001(7) SCC 549; *Prakash Jain Vs. Marie Fernandes*, 2003(8) SCC 431; *Gopal Sardar Vs. Karuna Sardar*, 2004(4) SCC 252; *Mohd. Sagir Vs. Bhel*, 2004(2) MPLJ 359; *Branch Manager Sbi Vs. Presiding Officer Central Govt. Industrial Trubunal, Kanpur*, 2006(3) ALJ 170; *Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*, 2008(3) SCC 70; *Consolidated Engineering Enterprise Vs.*

Principal Secretary Irrigation Department, 2008(7) SCC 169; *Chaudarana Steels Private Ltd. Vs. Commissioner of Central Excise, Allahabad*, 2009(15) SCC 183; *Commissioner of Custom And Central Excise Vs. Hongo India Pvt. Ltd*, 2009(5) SCC 791; *Chhatishgarh State Electricity Board Vs. Central Excise Regulatory Commission*, 2010(5) SCC 23; *State of MP Vs. Anshuman Shukla*, 2014 (10) SCC 814; *Ram Singh Jain V. Union of India*, MA NO 1756/2015; *Union of India Vs. Gujrat State Electricity Corporation Ltd.*, CA NO 12844/2015; CA NO 12864/2015; FA NO 2284/2015 decided on 21/10/2016; *M.P Steel Corporation Vs Commisioner Of Central Excise*, 2015(7) SCC 58; *M/S Suryachakra Power Corporation Ltd Vs Electricity Departmemnt, Rep. By Its Superintending Engineer, Port Blair*, 2016 SCC Online SC 1063; *Baleshwar Dayal Jaiswal Vs Bank of India and others*, 2016 (1) SCC 444; *Maihar Cement Vs. Union of India*, MA NO 1800 OF 2016; *ONGC Vs Gujrat Energy Transmission Corporation Ltd*, 2017 SCC Online SC 223; *Patel Brothers Vs. State of Assam And Others*, 2017(2) SCC 350 and *Shantilal M. Bhayani vs. Shanti Bai*, 1995 Supp. (4) SCC 578, as well as the Three Full Bench Decisions of this Court rendered in the case of *Vijay Singh and another Vs. Competent Authority SDO Tarana*, 1977 MPLJ 614, *Nihalkaran Vs. Commissioner of Wealth Tax*, 1987 MPLJ 562 and *Mohammad Sagir Vs. BHEL* 2004 (2) MPLJ 359.

9. Having heard the learned counsel for the parties at length who have extensively taken this Court through the decisions, the broad principles of law laid down in the aforementioned decisions of the Supreme Court may be enumerated as under:-

1. That the law of limitation is applicable only to Courts and therefore before considering applicability of the provisions of section 29(2) of the Limitation Act this aspect is necessary to be considered.
2. That in case a special or local law provides for a different period of limitation than the one prescribed in the Limitation Act, the provisions of section 3 and consequently Sections 4 to 24 of the Limitation Act get automatically attracted and are included as part of the special or local law.
3. The inclusion of the provision of Sections 4 to 24 of

the Limitation Act by virtue of Section 29(2) of the Limitation Act in a special or local law is subject to their express exclusion in so far as and to the extent as provided under special or local law.

4. That the question as to whether the provisions of the Limitation Act have been expressly excluded and if so, the extent thereof can be decided either on the basis of any specific provision in the special or local law providing for such an express exclusion or in the absence thereof by necessary intendment or inference. In other words, there is no necessity for making a specific provision excluding the applicability of the Limitation Act and the fact that its applicability is necessarily excluded can also be inferred by examining the provisions of the special or local law.

5. For the purposes of determining whether the provisions of the Limitation Act have been expressly excluded by inference the Court is required to consider the scheme, purpose and object of the special and local law and not the Limitation Act and while doing so it is to be examined as to whether the special and local law is a complete code dealing with the subject matter in issue to the express exclusion of the provisions contained in section 4 to 24 of the Limitation Act.

10. As far as the first issue is concerned, in the instant case it is an undisputed fact that the appeal under section 23 of the Claims Tribunal Act is to be filed before the High Court which undisputedly and admittedly is a Court and, therefore, the provisions of the Limitation Act would apply.

11. We find support for the view taken by us from the decision of the Supreme Court rendered in the case of *Mukri Gopalan vs. C. P. Aboobacker*, (1995) 5 SCC 5, wherein the Supreme Court has held that in case the designated appellate authority was a District Judge, the appellate authority is a Court. This view has been reiterated in the recent decision of the Supreme Court rendered in the case of *M. P. Steel Corporation* (supra) wherein the Supreme Court while holding that the observation made by the Supreme Court in the case of *Mukri Gopalan* (supra) relating to the applicability of the Limitation Act to Tribunals was not in conformity with the Larger Bench

decisions of the Supreme Court, has nevertheless affirmed the view taken therein that in case an appeal is to be filed before a District Judge, it would be a Court in para-28 as under:-

“The fact that the District Judge himself also happens to be the appellate authority under the Rent Act would have been sufficient on the facts of the case in the Limitation Act to apply without going into the proposition that the Limitation Act would apply to the Tribunal.”

12. In the instant case as the appellate authority under Section 23 of the Claims Tribunal Act is the High Court, we have no hesitation in holding that it is a Court and, therefore, the provisions of the Limitation Act would apply. We are also of the considered opinion that the reliance placed by the learned counsel for the respondents on decision of the Supreme Court rendered in the case of *Birla Cement Works* (supra) has no relevance or applicability to the issue involved in the present case as in that case in reference to the provisions of Section 78-B of the Railways Act, 1989, the Supreme Court held that the Railway Claims Tribunal was a Tribunal and, therefore, the provisions of the Limitation Act, specifically Section 17(1) (c) of the Limitation Act, would not apply, whereas in the instant case we are concerned with the appellate forum which is the High Court under Section 23 of the Claims Tribunal Act and is undoubtedly and undisputedly a Court.

13. As we have decided issue No-1, in the affirmative and have held that an appeal under Claims Tribunal Act, is to be filed before the High Court, which undoubtedly is a Court and as a separate period of Limitation is prescribed under Section 23(3) of the Claims Tribunal Act, for filing appeals thereunder, therefore, there can also be no cavil or dispute about the fact that *prima facie* the provisions of Section 29(2) of the Limitation Act, would be attracted as undisputedly, there is no separate provision in the Claims Tribunal Act, expressly excluding the applicability of the provisions of Sections 4 to 24 of the Limitation Act.

14. In the backdrop of the aforesaid, we proceed to decide issue Nos. 3 to 5, which are germane and relevant for the purposes of answering the reference made to this Court, namely, as to whether the applicability of Section 5 of the Limitation Act to appeals filed under Section 23 of the Claims Tribunal Act is expressly excluded by inference or necessary intendment, in view of

the scheme of the Claims Tribunal Act and its object and purpose and on account of the fact that the Claims Tribunal Act is a complete Code in itself.

15. For the purpose of determining the aforesaid aspect it is necessary to first advert to the provisions of the Limitation Act, namely section 29(2) of the Limitation Act. The provision of section 29(2) of the Limitation Act, as it exists today was introduced in the statute book in the year 1963. The Section and its object and reasons published in the Gazette of India dated 19.6.1962 Part-II pg.466 are as under:-

“29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in section 4 to 24 (inclusive) shall apply only in so far, as and to the extent to which, they are not expressly excluded by such special or local law.”

OBJECTS AND REASONS

Clause 28.-- Sub-clause (2) amends section 29(2) of the existing Act to provide that the principles contained in clauses 4 to 23 apply uniformly to all special or local laws in the absence of any local law excluding the application of any or all of those provisions in any given case.

Sub-clause (3) amplifies section 29(3) of the existing Act so as to exclude the application of this law to suits under any law dealing with marriage or divorce.”

16. A bare perusal of the object and reason makes it clear that the legislature while amending Section 29 (2) thought it necessary to generally prescribe and include the provisions of section 4 to 24 including Section 5 of the Limitation Act in all legislations, special and local, so that no specific and separate provisions for the same needed to be made or are required to be made in the concerned special or local law.

17. The object and purpose of section 5 of the Limitation Act, published

in the Gazette of India dated 19.6.1962 Part-II pg. 462 to 463, is also of relevance and is, therefore, reproduced as under:-

OBJECTS AND REASONS

Clause 5.- Instead of leaving it to the different States or High Court to extend the application of section 5 to applications other than those enumerated in that section as now in force, this clause provides for the automatic application of this section to all applications, other than those arising under Order XXI of Code of Civil Procedure, 1908, relating to execution of decrees. In the case of special or local laws, it will be open to such laws to provide that section 5 will not apply.”

18. A perusal of the object and reason of introducing section 5 also makes it apparent that the legislature wanted to prescribe and provide for a provision for condonation of delay on furnishing sufficient grounds not just in respect of the Limitation Act but also in respect of suits appeals or applications filed under special and local laws and, therefore, has specifically stated in the statement of objects and reasons that *“in the case of special or local laws, it will be open to such laws to provide that Section 5 will not apply”*.

19. It is pertinent to note that the words used under section 29(2) of the Limitation Act are “express exclusion”, as opposed to “express inclusion”. In other words it is apparent that the moment section 29(2) is attracted the provisions of section 4 to 24 are automatically included in the provisions of the special or local law unless and until they are expressly excluded. In other words, the very use of the word exclusion implies automatic pre-inclusion of the provisions of section 4 to 24 of the Limitation act, in the special and local law.

20. We are also of the considered opinion that the word “express” used in section 29(2) has to be given due importance. The Supreme Court has held that the word express exclusion does not mean exclusion only by making an express provision in the special or local law and that express exclusion can also be inferred by analysing the provisions of the special law or local law concerned, however at the same time it is also apparent that express exclusion by inference in relation to Section 29(2) of the Limitation Act requires something more to be provided and established and is apparently not the same as a normal or mere exclusion by inference as commonly understood. In

other words, in our considered opinion the word express exclusion when considered for the purposes of determining as to whether the provisions of the Limitation Act are "expressly excluded" by necessary intendment would mean and can be inferred and established only when the provisions of the Limitation act, if read into the special or local law, would either be in direct conflict with the provisions of the special or local law or would render some of its provisions otiose or redundant thereby making it impossible for the provisions of the Limitation Act and the special or local law to exist or to be read together as a part of the special or local law.

21. In order to decide as to whether the provisions of section 29(2) of the Limitation Act are expressly excluded by inference by the provisions of the Railway Tribunal's Act it is necessary to consider the legislative history of the Railway Tribunal's Act as well as its provisions.

22. Prior to the enactment of the Railway Tribunal's Act in the year 1987 a series of sections were incorporated in the Railways Act, 1890, namely section 82-A to 82-J between 1943 and 1949. The aforesaid provisions of the Railways Act, as they then existed, provided for the entire machinery for considering and deciding claims relating to compensation and damages arising out of railway accidents and untoward incidents. The aforesaid provisions conferred powers of deciding claims upon the Commissioner claims and thereafter also provided for filing of an appeal before the High Court. Significantly both the provision for filing a claim before the Commissioner Claims as contained in section 82-B and the provision for filing an appeal under Section 82-F, provided for condoning delay in filing the claim or the appeal as the case may be, on showing sufficient cause.

23. It is pertinent to note that the aforesaid provisions relating to raising of claims and filing appeals were incorporated in the Railways Act in the year 1949 prior to the amendment in the Limitation Act in the year 1963 when the amended Section 29(2) of the Limitation Act did not include in its scope Section 5 of the Limitation Act. Subsequently after Section 29(2) of the Limitation Act was amended in 1963 and Sections 4 to 24 of the Limitation Act were included therein, thereafter when the Railway Claims Tribunal Act 1987 was enacted providing for filing of claims before the Railway Claims Tribunal and of filing an appeal before the High Court, while the provision relating to condonation of delay in filing claim petitions before the Claims Tribunal contained in Section 82-B of the Railways Act was retained under section 17 of the Claims Tribunal

Act, such a provision for condonation of delay which existed under the old Section 82-F of the Railways Act was deleted while incorporating the provision for filing of appeals before the High Court under section 23 of the Claims Tribunal Act and therefore, as on date, while there is a specific provision contained in Section 17 of the Claims Tribunal Act conferring powers on the Railways Claims Tribunal to condone the delay in filing claim applications, there is no corresponding provision contained in Section 23 of the Claims Tribunal Act, conferring powers on the High Court to condone the delay in filing the appeal.

24. A perusal of the statement of aims and objects of the Claims Tribunal Act, makes it clear that it was enacted with a view to provide for the adjudication of claims by a specialized Tribunal to do away with the protracted proceedings before the Claims Commissioner and for ensuring speedy and expeditious adjudication and payment of compensation to victims of rail accidents and to those whose goods are lost or damaged in rail transit as well as for adjudication of disputes regarding refund of fares and freight charges. The object of the Claims Tribunal Act was to provide for jurisdiction, power and authority to be exercised by the Claims Tribunal, the procedure to be followed by the Claims Tribunal including provisions as to limitation and the exclusion of jurisdiction of all Courts in respect of matters falling within the jurisdiction of the Claims Tribunal. From the object and scheme of the Act it is also apparent that it is a beneficial and welfare legislation.

25. It is in such circumstances that we are required to decide to as whether the High Court can exercise powers under Section 5 of the Limitation Act to condone the delay in filing an appeal under Section 23 of the Claims Tribunal Act, in view of the provisions of Section 29(2) of the Limitation Act inspite of the deletion of the provision for condoning delay in filing appeals.

26. As stated earlier while there is no provision for condoning the delay in filing an appeal under Section 23 of the Claims Tribunal Act, at the same time there is also no provision in the Claims Tribunal Act, expressly excluding the applicability of the provisions of Section 4 to 24 of the Limitation Act.

27. In normal circumstances, while construing and interpreting the impact of deletion of any provision, it is possible to construe that the intention of the legislature is to exclude the applicability of that provision as it has been deleted while amending it subsequently. However, the aforesaid general interpretation,

in our considered opinion, would not be applicable while interpreting the special or local law in view of the provisions of Section 29(2) of the Limitation Act.

28. We say so as the Legislature in its wisdom has incorporated the provisions of section 29 (2) in the Limitation Act with the object and purpose of expressly incorporating and including all these provisions relating to limitation contained in section 4 to 24 to the Limitation Act into all special and local laws so that the Legislature is not required to make specific provisions in that respect while enacting each and every special and local Act or law and has clearly specified that even in the absence of such provisions in the special or local law the provisions of sections 4 to 24 will be deemed to be expressly included and incorporated therein. In other words, in view of the provisions of section 29(2) of the Limitation Act these general provisions relating to limitation are to be read as expressly included and telescoped into all special and local laws even in the absence of any specific stipulation contained therein. Apparently, in view of the provisions of section 29(2) of the Limitation Act, the express inclusion of the provisions of section 4 to 24 of the Limitation Act in the special and local law is the rule and their express exclusion is an exception which can be inferred only in case there is a specific provision in the special or local law providing for their inapplicability or the provisions of the special or local law already contain similar or other provisions relating to the issues covered by section 4 to 24 of the Limitation Act thereby leading to the only conclusion and inference that they are expressly excluded by necessary intentment.

29. That apart, as express inclusion is the rule while express exclusion is an exception, the presumption of express inclusion cannot be displaced by mere deletion or omission of a provision for condonation of delay in the special or local law in view of the statutory mandate of Section 29(2) of the Limitation Act which could have been otherwise presumed in the absence of such a provision as Section 29(2) of the Limitation Act.

30. In fact, the presumption is and has to be to the contrary, namely, that the Legislature, being fully aware of the existence of the provisions of section 29 (2) of the Limitation Act while enacting the special or local law has knowingly and consciously deleted the provision relating to condonation of delay being fully conscious of the fact that the provisions of sections 4 to 24 of the Limitation Act including section 5 contained therein would be expressly included in the special and local law. Presuming otherwise would impute ignorance

upon the legislature which is not permissible.

31. As express inclusion is the rule and express exclusion is an exception therefore express exclusion can be inferred only in cases where the Legislature while framing the special or local law and being fully aware of the existence of section 29 (2) of the Limitation Act, has enacted clear and specific provisions relating to or providing for any or all of the issues contained in sections 4 to 24 of the Limitation Act which are different and in conflict with them, thereby expressly excluding their applicability by necessary indendment even without clearly specifying or making a provision regarding their express exclusion in the special or local law.

32. In other words, the provisions of Section 29(2) of the Limitation Act creates a statutory presumption of express inclusion of the provisions of Sections 4 to 24 of the Limitation Act into the provisions of the special or local law. Such a statutory presumption cannot be displaced or rebutted by a mere assumption. In view of the law laid down by the Supreme Court such a statutory presumption can be displaced, rebutted or refuted by an inference of express exclusion, in the absence of a clear and specific statutory provision, only in case it is evident or is established that the provisions of Sections 4 to 24 of the Limitation Act when read into or as part of the special or local law cannot exist or stand together in the same statute on account of apparent conflict and contradictions. This leads us to the inevitable conclusion that mere deletion of a provision for condonation of delay with nothing more, as in the present case relating to the Claims Tribunal Act, would not and cannot displace the presumption of express inclusion and, therefore, cannot amount to or lead to an inference or assumption of express exclusion.

33. When the provisions of the Claims Tribunal Act is examined keeping the aforesaid principles in mind it is observed that the Claims Tribunal Act is totally silent in respect of any of the matters covered by section 4 to 24 of the Limitation Act as far as the provision of filing of an appeal before the High Court under section 23 of the Claims Tribunal Act is concerned. As stated earlier the mere act of deleting the provision for condoning delay from the provision relating to filing of an appeal while enacting the Claims Tribunal Act in the year 1987 would not and cannot amount to an express exclusion as the Legislature was well aware of the existence of the statutory presumption of express inclusion contained in section 29 (2) of the Limitation Act on the date when the Railway Claims Tribunal Act was enacted in 1987. The rule of

interpretation applied normally and the inference drawn in a normal circumstances on deletion of a provision in a special or local law would in our considered opinion, not apply for arriving at such a conclusion of express exclusion in respect of section 29 (2) of the Limitation Act in view of the discussion in the preceding paragraphs regarding the presumption of express inclusion in the absence of express exclusion as opposed to the principle of normal or general exclusion.

34. For the same reasons we are also of the considered opinion that as the Legislature was fully aware of the provisions of the Limitation Act it consciously retained the provisions relating to condonation of delay in respect of filing claims before the Claims Tribunal on account of the fact that it was a tribunal to which the Limitation Act would not apply while it consciously deleted the provisions relating to condonation of delay in filing appeals as the appeals were required to be filed and decided by the High Court which is a court to which the provisions of the Limitation Act would automatically apply in view of the provisions of section 29(2).

35. As stated by us in the previous paragraphs, inference of express exclusion can be drawn only in a case where reading the provisions of sections 4 to 24 of the Limitation Act into the special or local laws would result in rendering, some provisions of the special or local law, redundant or otiose or in a case where any of the provisions of Sections 4 to 24 of the Limitation Act are in direct conflict with the provisions of the special or local law. Mere absence of a provision for condonation of delay in Section 23 of the Claims Tribunal Act, or deletion of such a provision would not amount to "express exclusion" of the provisions of Section 4 to 24 of the Limitation Act, by inference as there is no direct conflict between the provisions of the Limitation Act and the Claims Tribunal Act nor are any of its provisions rendered redundant or otiose on account of the inclusion of the provisions of the Limitation Act.

36. We have also rendered our anxious consideration to the question as to whether the Claims Tribunal Act, can be said to be a complete code in itself dealing with all aspects relating to Limitation or relating to filing and deciding claims including the provisions of limitation in relation to filing of appeals thereby expressly excluding the applicability of the Limitation Act by necessary inference and intendment. An act can be said to be a complete code in respect of all issues relating to limitation or in respect of filing and deciding claims in case it deals with all aspects relating thereto. For instance the Limitation Act,

1963 is a complete code in respect of limitation as it deals with all aspects related thereto; namely, expiry of prescribed period when court is closed (section-4), extension of prescribed period in certain cases (section-5), legal disability (section-6), disability of one of several persons (section-7), special exceptions (section-8), continuous running of time (section-9), exclusion of time in legal proceedings (section-12), exclusion of time in cases where leave to sue or appeal as a pauper is applied for (section-13), exclusion of time of proceedings bonafide in court without jurisdiction (section-14), exclusion of time in certain other cases (section-15) effect of death on or before the accrual of the right to sue (section-16), effect of fraud or mistake (section-17) effect of acknowledgment in writing (section-18), effect of payment on account of debt or of interest on legacy (section-19), effect of acknowledgment or payment by another person (section-20), effect of substituting or adding new plaintiff or defendant (section-21), continuing breaches and torts (section-22), suits for compensation for acts not actionable without special damage (section-23) and computation of time mentioned in instruments (section-24) etc.

37. Section 29(2) of the Limitation Act has been enacted with an object and purpose of incorporating and including all these provisions relating to various aspects of limitation in special or local laws with a condition that these sections would be incorporated and read into a special or local law only to the extent and so far as all or any of them are expressly excluded either statutorily or by necessary intendment and, therefore, the provisions of sections 4 to 24 of the Limitation Act can be deemed to be expressly excluded by inference only in cases where the special or local law is a complete code in itself dealing with all these issues contained in sections 4 to 24 of the Limitation Act or the provisions contained therein specifically exclude their applicability either statutorily or by express intendment on account of the fact that the provisions contrary to and in conflict with the provisions of sections 4 to 24 of the Limitation Act or any of them are contained and incorporated therein.

38. As there is total absence of any provision akin to section 4 to 24 of the Limitation Act in the Railway Claims Tribunal Act 1987 dealing with the procedure and manner of filing appeals before the High Court under section 23 of the Claims Tribunal Act, we are of the considered opinion that the Claims Tribunal Act cannot be held to be a complete code in itself as far as the procedure for filing of and decisions of claims and appeals arising thereunder

as there is no provision similar to Sections 4 to 24 of the Limitation Act relating to filing of appeals under Section 23 of the Claims Tribunal Act nor is there any provision contained therein which could lead to an express or other inference of exclusion of the provisions of the Limitation Act. The conclusion to the contrary arrived at by the learned single Judge in the case of *Kunjmati* (supra), in our considered opinion is not in accordance with law and is accordingly overruled.

39. We may at this stage also take into consideration the decision of the Supreme Court rendered in the case of *Union of India vs. Prabhakaran Vijaya Kumar and others*, (2008) 9 SCC 527, wherein the provisions of Section 124-A of the Railways Act, 1989 dealing with untoward incident in respect of which claims are required to be filed before the Railway Claims Tribunal constituted under the Claims Tribunal Act for claiming compensation was under consideration. The Supreme Court has held that the provisions are in the nature of Beneficial and Welfare legislation and, therefore, the words used in such a beneficial or welfare statute, even in case they are capable of two constructions, have to be interpreted liberally and have to be accorded a meaning which is more beneficial for the person for whom the Act was made. The manner in which the provisions of untoward incident contained in the Railway Act has to be interpreted has been elaborately laid down by the Supreme Court in paras-12 to 14 in the following terms:-

“12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide *Alembic Chemical Works Co. Ltd. vs. The Workmen* AIR 1961 SC 647 (para 7), *Jeewanlal Ltd. vs. Appellate Authority* AIR 1984 SC 1842 (para 11), *Lalappa Lingappa and others vs. Laxmi Vishnu Textile Mills Ltd.* AIR 1981 SC 852 (para 13), *S. M. Nilajkar vs. Telecom Distt. Manager* (2003) 4 SCC 27 (para 12) etc.

13. In *Hindustan Lever Ltd. vs. Ashok Vishnu Kate and others*, 1995(6) SCC 326 this Court observed:

"41. In this connection, we may usefully turn to the decision of this Court in *Workmen vs. American Express International Banking Corporation* wherein Chinnappa Reddy, J. in para 4 of the Report has made the following observations:

'4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognized and reduced. Judges ought to be more concerned with the 'colour', the 'content' and the 'context' of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, Surender Kumar Verma v. Central Govt. Industrial Tribunal-cum- Labour Court we had occasion to say:

"6. ...Semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

42. Francis Bennion in his *Statutory Interpretation* Second Edn., has dealt with the Functional Construction Rule in Part XV of his book. The nature of purposive construction is dealt with in Part XX at p. 659 thus:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

- (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or
- (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)."

At p. 661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction - Although the term 'purposive construction' is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: 'If one looks back to the actual decisions of the [House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way -

...I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it." (emphasis supplied)

14. In our opinion, if we adopt a restrictive meaning to the expression 'accidental falling of a passenger from a train carrying passengers' in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known

that in our country there are crores of people who travel by railway trains since everybody cannot afford traveling by air or in a private car. By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle class people) from getting compensation under the Railways Act. Hence, in our opinion, the expression 'accidental falling of a passenger from a train carrying passengers' includes accidents when a bona fide passenger i.e. a passenger traveling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal, interpretation should be given to the expression."

40. When the aforesaid law laid down by the Supreme Court is applied for interpreting the provisions of the Claims Tribunal Act which undisputedly is a benevolent, beneficial social welfare legislation and has been enacted for the benefit of claimants it is not permissible or possible to interpret such a beneficial and benevolent legislation restrictively. On the contrary, by adopting the principle of purposive construction, the provisions have to be interpreted in a manner that would not exclude or non suit genuine claimants specially in cases where they have been prevented by bonafide and sufficient reasons to file an appeal before the High Court within limitation.

41. Any interpretation to the contrary would defeat the object and purpose of the beneficial and welfare legislation, moreso, when this court on the basis of the settled principals of statutory interpretation is required to presume that the legislature while enacting the law was well aware of the fact that the appeal under section 23 to the Claims Tribunal Act had been provided before the High Court for which no specific or separate provisions similar to sections 4 to 24 of the Limitation Act were required to be incorporated as such provisions were deemed to be included in the Claims Tribunal Act by virtue of section 29(2) of the Limitation Act.

42. Before we proceed any further we think it appropriate to take into consideration the law laid down by the Supreme Court in the various decisions placed before us by the learned counsel for the appellants.

43. In the preceding paragraphs we have analyzed the provision of the Claims Tribunal Act and have held that there is no statutory provision in the

aforesaid act expressly excluding the applicability of Sections 4 to 24 of the Limitation Act. We have also held that the Claims Tribunal Act is not a complete code in itself as far as the procedure for filing appeals is concerned and is absolutely silent in respect of the issues covered by Sections 4 to 24 of the Limitation Act and that there is no provision contained in the Claims Tribunal Act which is in conflict with the provisions of Sections 4 to 24 of the Limitation Act.

44. In view of the aforesaid finding recorded by us, the decisions of the Supreme Court rendered in the cases of *Hukumdev Narain Yadav* (supra), *Singh Enterprises* (supra), *Consolidated Engineering Enterprise* (supra), *Chhatishgarh State Electricity Board* (supra), *M/S Suryachakra Power Corporation Ltd* (supra), *Baleshwar Dayal Jaiswal* (supra), *Patel Brothers* (supra), would have no applicability to the facts of the present case inasmuch as in all the aforesaid decisions, the Supreme Court has held that the provisions of Section 29(2) would have no applicability on account of specific statutory provisions contained in the special or local Act which was under consideration before the Supreme Court which excluded the application of Section 29(2) either by express inference or by a specific exclusion on account of existence of conflicting statutory provisions.

45. In the case of *Prakash Jain* (supra) and *M.P Steel Corporation* (supra) the Supreme Court has held that the provision of Section 29(2) are not attracted as the authority which was required to decide the proceedings was not a Court and even otherwise in the case of *M.P Steel Corporation* (supra) the Supreme Court was dealing with the applicability of Section 14 of the Limitation Act and not with Section 5 of the Limitation Act and, therefore, these judgments also have no applicability to the facts of the present case.

46. In the case of *Gopal Sardar* (supra) the Supreme Court has held that the provisions of Section 29(2) would not be attracted on account of the fact that the application that was to be filed under the West Bengal Land Reforms Act, 1955 was in the nature of a suit to which the provisions of Section 5 of the Limitation Act would not apply and that the provisions of the West Bengal Land Reforms Act, 1955 contained specific provisions excluding the applicability of Section 5 of the Limitation Act and was, therefore, a complete code in itself. Similar view has been taken by the Supreme Court in the case of *Hongo India Pvt. Ltd.* (supra) where the Supreme Court, after extensively analyzing the provisions of the Central Excise Act, has held that the Central

Excise Act was a complete code in itself dealing with the necessary provisions of limitation as well and, therefore, the provisions of the Limitation Act stood expressly excluded by inference and necessary intendment. The statutory provisions of the Claims Tribunal Act are totally different and, therefore, the aforesaid judgments have no applicability to the present case.

47. As held by us in the preceding paragraphs, the provision of the Claims Tribunal Act are totally different from the ones under consideration before the Supreme Court in the above mentioned cases and, therefore, the law laid down by the Supreme Court in the aforesaid decisions and the observations made therein have no applicability to the issue involved in the present case namely; whether the provisions of Section 29(2) would not be attracted to the Claims Tribunal Act inspite of the fact that there is total absence of any provision expressly or implied excluding the applicability of Sections 2 to 24 of the Limitation Act nor is the Claims Tribunal a complete code in itself as far as dealing with the procedure for filing of appeal is concerned and is in fact a benevolent, beneficial and welfare legislation which has to be construed liberally.

48. On the other hand it is evident that the view taken by us to the effect that the provision of sections 4 to 24 of the Limitation Act would be applicable to the provisions of the Claims Tribunal Act in view of the provision of Section 29(2) of the Limitation Act is in line with and is in accordance with the law laid down by the Supreme Court rendered in the cases of *Mangu Ram* (supra), *Competent Authority Tarana District Ujjain* (supra), *Mukri Gopalan* (supra), *Shantilal M. Bhayani* (supra), *Pallav Sheth* (supra) and *Anshuman Shukla* (supra) and the Full Bench decisions in the cases of *Vijay Singh and another* (supra), *Nihalkaran* (supra) and *Mohammad Sagir* (supra). We, therefore, proceed to examine each one of the aforesaid decisions separately.

49. The decision of the Supreme Court rendered in the case of *Mangu Ram* (supra) is of great relevance for the purposes of the issue involved for adjudication in the present petition. In the aforesaid case, the Supreme Court has held that the provisions of Section 5 of the Limitation Act would apply for condoning delay in filing an application for special leave against acquittal under Section 417(4) of the Criminal Procedure Code, 1898, even in a case where the law prescribes that no such application, filed after lapse of sixty days from the date of the order of acquittal shall be entertained, as such a stipulation would not lead to the inference or amount to the express exclusion of the

provisions of the Limitation Act thereby creating a bar for entertaining any application beyond that period and consequently would not exclude the applicability of Section 5 of the Limitation Act as a mere provision for limitation in howsoever, peremptory or imperative terms is not sufficient to exclude the same. The law laid down by the Supreme Court in paragraph 7 of this judgment is in the following terms.

“7. There is an important departure made by the Limitation Act, 1963 insofar as the provision contained in Section 29, sub-section (2), is concerned. Whereas, under the Indian Limitation Act, 1908, Section 29, sub-section (2), clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded, Section 29, sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply insofar as and to the extent to which they are not expressly excluded by such special or local law. Section 29, sub-section (2), clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, sub-section (2) of the Limitation Act, 1963, in clear and unambiguous terms, provides for the applicability of Section 5 and the ratio of the decision in Kaushalya Rani case can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law, if the applicant can show that he had sufficient cause for not presenting the application

within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced. Here, as pointed out by this Court in Kaushalya Rani case the time limit of sixty days laid down in sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power to entertain it. The High Court, in the present case, did not, therefore, act without jurisdiction in holding that the application preferred by the Municipal Corporation of Delhi was not barred by the time limit of sixty days laid down in sub-section (4) of Section 417 since the Municipal Corporation of Delhi had sufficient cause for not preferring the application within such time limit. The order granting special leave was in the circumstances not an order outside the power of the High Court."

(underlined by us)

49. In the case of *Competent Authority Tarana District Ujjain* (supra) in similar circumstances, the Supreme Court held that the provisions of Section 5 of the Limitation Act would apply to the provisions of the M.P. Ceiling on Agricultural Holding Act, 1960, in view of the provisions of Section 29(2) of the Limitation Act, upholding the view taken by a Full Bench of this Court in similar terms, in the case of *Vijay Singh* (supra).

50. The decision of the Supreme Court rendered in the case of *Mukri Gopalan* (supra) involved the interpretation of the provisions of the Kerala Buildings (Lease and Rent Control) Act, which contained Section 18 relating to the filing of an appeal before the District Judge. The legal situation before the Supreme Court in the case of *Mukri Gopalan* (supra) was quite similar to the one existing in the present case inasmuch as the unamended provision of Section 18 of the Kerala Act, contained the provision of condoning the delay in filing appeals, however, subsequently when the Act was amended after coming into existence of the amended provisions of Section 29(2) of the Limitation Act in the year 1963, the provision under section 18 of the Kerala Act giving power to the District Judge to condone delay in filing the appeal was deleted, as is the situation in respect of the Claims Tribunal Act. The Supreme Court has held that the provisions of section 4 to 24 of the Limitation Act stood expressly included and telescoped into the provision of the Kerala Act in view of the provisions of Section 29(2) of the Limitation Act inspite of the deletion of the provisions relating to condoning delay in filing appeals in the following terms:-

“9. If the aforesaid two requirements are satisfied the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under:

(i) In such a case Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed by the Schedule.

(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing Sections 4 to 24 (inclusive) would

apply insofar as and to the extent to which they are not expressly excluded by such special or local law.

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14. In view of the aforesaid provision of Section 29(2) as found in Indian Limitation Act, 1908, Section 5 would not have applied to appellate authorities constituted under Section 18 as Section 5 would not get attracted as per the then existing Section 29(2) of Indian Limitation Act, 1908 which did not include Section 5 as one of the provisions to be applied to such special or local laws. That appears to be the reason why during the time when the Limitation Act, 1908 was in force, the Rent Act of 1959 which is the forerunner of present Rent Act of 1965 contained a provision in Section 31 of that Act which read as under:

“31. Application of the Limitation Act.—

The provisions of Section 5 of the Indian Limitation Act, 1908 (9 of 1908), shall apply to all proceedings under this Act;”

15. After repealing of Indian Limitation Act, 1908 and its replacement by the present Limitation Act of 1963 a fundamental change was made in Section 29(2). The present Section 29(2) as already extracted earlier clearly indicates that once the requisite conditions for its applicability to given proceedings under special or local law are attracted, the provisions contained in Sections 4 to 24 both inclusive would get attracted which obviously would bring in Section 5 which also shall apply to such proceedings unless applicability of any of the aforesaid sections of the Limitation Act is expressly excluded by such special or local law. By this change it is not necessary to expressly state in a special law that the provisions contained in Section 5 of the Limitation Act shall apply to the determination of the periods under it. By the general provision contained in Section 29(2) this provision is made applicable to the periods prescribed under the special laws. An express

mention in the special law is necessary only for any exclusion.

It is on this basis that when the new Rent Act was passed in 1965 the provision contained in old Section 31 was omitted. It becomes therefore apparent that on a conjoint reading of Section 29(2) of Limitation Act of 1963 and Section 18 of the Rent Act of 1965, provisions of Section 5 would automatically get attracted to those proceedings, as there is nothing in the Rent Act of 1965 expressly excluding the applicability of Section 5 of the Limitation Act to appeals under Section 18 of the Rent Act.” (underlined by us)

51. We may hasten to add that we have already taken note of the fact that the decision in the case of *Mukri Gopalan* (supra) as far as it held that the provisions of the Limitation Act would also apply to Tribunal's has not been held to be in conformity with the other Larger Bench decisions of the Supreme Court in the case of *M.P Steel Corporation* (supra) wherein it has been held that the provisions of the Limitation Act only apply to courts. However, as far as the view taken by the Supreme Court in the case of *Mukri Gopalan* (supra) relating to applicability of section 29(2) of the Act in concerned, the same has not been deferred with.

52. In the case of *Shantilal M. Bhayani* (supra) the Supreme Court has held that the provisions of Section 5 of the Limitation Act would apply to appeals filed before the appellate authority under the provisions of the T. N. Buildings (Lease and Rent Control) Act, 1960, in view of the provisions of Section 29(2) of the Limitation Act as the provision of Section 5 of the Limitation Act was not expressly excluded thereunder.

53. A Three Judge Bench of the Supreme Court, in the case of *Anshuman Shukla* (supra), while dealing with the provisions of the M.P. Madhyastam Adhikaran Adhimniyam, 1983, was required to answer the following question referred to it which is identical to the one referred to us:-

“Whether the provisions of Section 5 of the Limitation Act is applicable to revision filed under section 19 in the High Court ?”

54. The Three Judges Bench of the Supreme Court, while answering the reference in the affirmative, took into consideration the fact that the unamended provision of Section 19 of the Madhya Pradesh Madhyastham Adhikaran

Adhiniyam, 1983, with which the Court was dealing, has opposed to the subsequently amended provision, did not contain any provision for condonation of delay, and therefore, in view of the provisions of Section 29(2) of the Limitation Act, Sections 4 to 24 of the Limitation Act and consequently Section 5 would be applicable. The relevant discussion in this regard in the aforesaid judgment wherein several previous judgments were considered and discussed, is in the following terms:-

“21. The Limitation Act, 1963 is the general legislation on the law of limitation. Section 5 of the Limitation Act provides that an appeal may be admitted after the limitation period has expired, if the appellant satisfies the court that there was sufficient cause for delay.

22. Section 29 of the Limitation Act is the saving section. Sub-section (2) reads as follows:

“29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.”

Sub-section (2) thus, provides that Sections 4 to 24 of the Limitation Act shall be applicable to any Act which prescribes a special period of limitation, unless they are expressly excluded by that special law.

23. This Court in *Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker* [(1995) 5 SCC 5] examined the

question of whether the Limitation Act will apply to the Kerala Buildings (Lease and Rent) Control Act, 1965. While holding that the appellate authority under the Kerala Act acts as a court, it was held that since the Act prescribes a period of limitation, which is different from the period of limitation prescribed under the Limitation Act, and there is no express exclusion of Sections 4 to 24 of the Limitation Act, in the above Lease and Rent Control Act, thus, those sections shall be applicable to the Kerala Act.

24. While examining the provisions of Section 29(2) of the Limitation Act, it was observed: (Mukri Gopalan case [(1995) 5 SCC 5] , SCC p. 15, para 8)

“8. ... A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Sections 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision:

- (i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.
- (ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act.”

It was further held that if the above two conditions are satisfied, then the following implications would follow: (Mukri Gopalan case [(1995) 5 SCC 5] , SCC pp. 15-16, para 9)

“9. If the aforesaid two requirements are satisfied the consequences contemplated by Section 29(2) would automatically follow. These consequences are as under:

- (i) In such a case Section 3 of the Limitation

Act would apply as if the period prescribed by the special or local law was the period prescribed by the Schedule.

(ii) For determining any period of limitation prescribed by such special or local law for a suit, appeal or application all the provisions containing Sections 4 to 24 (inclusive) would apply insofar as and to the extent to which they are not expressly excluded by such special or local law.”(emphasis supplied)

25. Further, in *Hukumdev Narain Yadav v. Lalit Narain Mishra* [(1974) 2 SCC 133] , a three-Judge Bench of this Court, while examining whether the Limitation Act would be applicable to the provisions of the Representation of the People Act, observed as under: (SCC p. 146, para 17)

“17. ... but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.”

26. According to *Hukumdev Narain Yadav* [(1974) 2 SCC

133] , even if there exists no express exclusion in the special law, the Court reserves the right to examine the provisions of the special law, and arrive at a conclusion as to whether the legislative intent was to exclude the operation of the Limitation Act. Section 19 of the 1983 Act prescribes a period of limitation of three months. This limitation period finds no mention in the Schedule to the Limitation Act. Further, Section 19 does not expressly exclude the application of Sections 4 to 24 of the Limitation Act, 1963.

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29. We now direct our attention to the second case i.e. Union of India v. Popular Construction [Union of India v. Popular Construction Co, (2001) 8 SCC 470] on which reliance was placed by this Court while dismissing the special leave petition in Nagar Palika Parishad, Morena [Nagar Palika Parishad, Morena v. Agrawal Construction Co., SLP (C) No. 21349 of 2003, order dated 27-8-2004 (SC) : (2004) 2 MPJR (SN) 374] . The issue therein was whether Sections 4 to 24 of the Limitation Act would be applicable to Section 34 of the Arbitration Act, 1996. The wording of Section 34(3) of the Arbitration Act, 1996, reads thus:

“34. (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

(emphasis supplied)

30. While examining the provision of Section 34, the Court in Popular Construction case [Union of India v. Popular Construction Co, (2001) 8 SCC 470] observed as under: (SCC pp. 473-74, para 8)

“8. Had the proviso to Section 34 merely provided for a period within which the court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because ‘mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5’ [Ed.: As observed in Mangu Ram v. MCD, (1976) 1 SCC 392 at p. 397, para 7 : 1976 SCC (Cri) 10.]” (emphasis supplied)

31. While holding that Section 5 is not applicable to Section 34(3) of the Arbitration Act, it was held that the presence of the words “but not thereafter” operate as an express exclusion to Section 5 of the Limitation Act: (Popular Construction case [Union of India v. Popular Construction Co, (2001) 8 SCC 470] , SCC pp. 474-75, para 12)

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are ‘but not thereafter’ used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase ‘but not thereafter’ wholly otiose. No principle of interpretation would justify such a result.” (emphasis supplied)

32. Section 19 of the 1983 Act does not contain any express rider on the power of the High Court to entertain an application for revision after the expiry of the prescribed period of three months. On the contrary, the High Court is conferred with suo motu power, to call for the record of an award at any time. It cannot, therefore, be said that the legislative intent was to exclude the applicability of Section 5 of the Limitation Act to Section 19 of the 1983 Act.

33. In our opinion, it is unnecessary to delve into the question whether the Arbitral Tribunal constituted under the Act is a court or not for answering the issue in the present case as the delay in filing the revision has occurred before the High Court, and not the Arbitral Tribunal.”

55. In the case of *Kartick Chandra Das* (supra) in a similar situation as exists in the present case, the Supreme Court has held that the provisions of the Limitation Act, shall apply to the provisions of the Contempt of Court's Act in view of the provisions of Section 29(2) of that Act and while doing so has held as under in paras 6 and 7:-

“6. Section 29 of the Limitation Act envisages ‘Savings’. Sub-section (2) thereof reads thus:

“29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.”

7. In consequence, by operation of Section 29(2) read with Section 3 of the Limitation Act, limitation stands prescribed as

a special law under Section 19 of the Contempt of Courts Act and limitation in filing Letters Patent appeal stands attracted. In consequence, Sections 4 to 24 of the Limitation Act stands attracted to Letters Patent appeal insofar as and to the extent to which they are not expressly excluded either by special or local law. Since the rules made on the appellate side, either for entertaining the appeals under clause 15 of the Letters Patent or appeals arising under the contempt of courts, had not expressly excluded, Section 5 of the Limitation Act becomes applicable. We hold that Section 5 of the Limitation Act does apply to the appeals filed against the order of the learned Single Judge for the enforcement by way of a contempt. The High Court, therefore, was not right in holding that Section 5 of the Limitation Act does not apply. The delay stands condoned. Since the High Court had not dealt with the matter on merits, we decline to express any opinion on merits. The case stands remitted to the Division Bench for decision on merits."

56. Similar view in similar circumstances as of the present case has been taken by the Supreme Court in the case of *Pallav Sheth* (supra) in respect of the provisions of the Contempt of Courts Act, after relying on the decision in the case of *Kartick Chandra Das* (supra).

57. We are also fortified and find support from the three Full Bench decisions of this Court rendered in the case of *Vijay Singh and another* (supra), *Nihalkaran* (supra) and *Mohammad Sagir* (supra).

58. As referred to earlier, the Full Bench decision of this Court in the case *Ram Singh* (supra), applying the provisions of the Limitation Act to ceiling proceedings has been affirmed and confirmed by the Supreme Court in the case of *Competent Authority Tarana District Ujjain* (supra).

59. In the case of *Nihalkaran* (supra), a question similar to the present one, as to whether Section 5 of the Limitation Act applied to an application filed under Section 27(3) of the Wealth Tax Act, 1957 when there is no express provision contained in the Wealth Tax Act excluding the operation of Section 5 of the Limitation Act, was referred to the Larger Bench for decision and the Full Bench, after considering the provisions of Section 29(2) of the Limitation

Act as well as the Wealth Tax Act and after taking into consideration the decision of the Supreme Court rendered in the case of *Hukumdev Narain Yadav* (supra), answered the question in the affirmative and held that the provisions of Section 5 of the Limitation Act would apply to an application filed under Section 27(3) of the Wealth Tax Act in the following terms:-

"5. Having heard the learned counsel for the parties and considered the case on which reliance was placed by them, we are of the opinion that there is intrinsic evidence in the Legislative history of Section 27 of the Act itself to indicate that Section 5 of the Limitation Act would apply to an application under Section 27(3) of the Act. In this connection we may point out that Section 27 of the Act, as it stood prior to its amendment by the Amendment Act No. 46 of 1964, which came into effect from 1-4-1965, had nine sub-sections. By the said Amendment Act No. 46 of 1964, sub-section (8) and (9) were deleted. Sub-section (9) so deleted read as hereunder:

"Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court under this section."

The term "application to the High Court under this section" contained in sub-section (9) aforesaid obviously referred to the application contemplated by Section 27(3) of the Act. The reasons for deletion of sub-section (9) of Section 27 are to be found in the Statement of Objects and Reasons and the Notes on clauses of Wealth-tax (Amendment) Act, 1964. The relevant clause indicating reasons for deleting Section 27(9) of the Wealth-tax Act runs as follows:

"sub-section (9) having become redundant has been deleted."

It is thus clear that the reason for deleting sub-section (9) was not that the Parliament was of the view that Section 5 of the Limitation Act should not be applied to an application under Section 27(3) of the Act but the reason was that the said sub-section (9) had become redundant. We have, therefore, to find out as to why sub-section (9) had become redundant. The Indian Limitation Act, 1908, was substituted by the Indian

Limitation Act, 1963 which came into force from January 1, 1964. Section 29(2) of the Limitation Act is the relevant section with the aid of which Section 5 of the Limitation Act is now sought to be applied to an application under Section 27(3) of the Act. This Section 29(2) as it stood in the Indian Limitation Act, 1908 contemplated that Sections 4, 9 to 18 and 22 would apply to a special or local law only in so far as and to the extent to which they were not expressly excluded by the said special or local law and the remaining provisions of the Limitation Act, 1908 would not apply. In view of Section 29(2) of the Indian Limitation Act, 1908, Section 5 of that Act did not apply to a special or local law and whenever it was considered necessary to apply the provisions of Section 5 of the Limitation Act to a special or local law, specific provision used to be made under the relevant special or local law. The Wealth Tax Act was enacted in the year 1957 and the Indian Limitation Act, 1908 was then in force. Consequently, unless Section 5 of the Limitation Act was made specifically applicable to an application under Section 27(3) of the Act, it would not have been applicable with the aid of Section 29(2) of the Limitation Act as it stood in the 1908 Act. It is apparent that Parliament intended to apply Section 5 of the Limitation Act to an application under Section 27(3) of the Act and it was to give effect to this intention that sub-section (9) was incorporated in Section 27 of the Act making Section 5 of the Indian Limitation Act, 1908 applicable to an application to the High Court under Section 27(3) of the Act.”

60. In the case of *Mohd. Sagir* (supra) a Full Bench of this Court while considering a similar issue relating to the provisions of the M.P. Industrial Relations Act, 1960 and considering the fact that it was a beneficial legislation, held that the provisions of Section 5 of the Limitation Act were applicable for condoning the delay in filing an application before the Labour Court under Section 62 of the M.P. Industrial Relations Act, in view of Section 29(2) of the Act. In the aforesaid decision, the Full Bench, by relying on the decision of the Supreme Court rendered in the case of *Mangu Ram* (supra), the Full Bench decision of this Court in case of *Mukri Gopalan* (supra), *Nihalkaran* (supra), *Sarojini Tea Corporation Pvt. Ltd. Vs. Collector of Dibrugarh*,

Assam and another AIR 1992 SC 1264 and *Kartick Chandra Das* (supra), held that the provisions of Section 5 of the Limitation Act would be applicable as the MP Industrial Relations Act is a benevolent and beneficial statute and did not expressly exclude the provisions of the Limitation Act, therefore, in the absence of a categorical unequivocal mandate by the legislature, it would not be appropriate to render an employee remediless, in case he was prevented from approaching the Labour Court within limitation on account of bonafide sufficient reasons, in the following terms:-

“25. From the aforesaid decisions, it is clear as day that if a different period of limitation is provided under the special law and there is no express exclusion the provisions of Limitation Act sections 4 to 24 (both inclusive) would apply. Keeping the aforesaid guidance in view, section 62 of the MPIR Act has to be scanned. The aforesaid provision stipulates that the proceedings before a Labour Court shall be commenced within certain period depending upon the nature of dispute. The said provision definitely provides a different period of limitation. There can be no scintilla of doubt that it is a special law inasmuch as the Act has been brought into existence to regulate the matters relating to employees and employers in certain matters to make provisions of settlement of industrial disputes and to provide for certain other matters connected therewith. The hub of the matter is whether the language in which section 62 has been couched would admit of a construction that there is exclusion of the provisions of Limitation Act. In the case of *Mangu Ram* (supra), Their Lordships have stated the mere provision of a period of limitation howsoever peremptory or imperative is not sufficient to displace the applicability of section 5. The word “shall be commenced”, in our considered view, cannot be allowed to be construed that there is an exclusion of the applicability of the Limitation Act. In the case of *Mohd. Ashfaq* (supra) an interesting facet is notable. In the said case Their Lordships were dealing with sub-section (3) of section 58 of the special statute which provided that the Regional Transport Authority could condone delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days. In that context, the Apex

Court held that if an application for renewal is beyond more than 15 days, the Regional Transport Authority would not be entitled to entertain it, meaning thereby, it would have no power to condone it. Similarly, we may refer to section 166 of the Motor Vehicles Act, 1988. Initially, the said provision stipulated that an application before the Tribunal could be filed within a period of six months from the date of the accident and the Tribunal would have power to entertain not later than twelve months if sufficient cause is shown. When a statute uses language which is absolutely and unequivocally express and clear the Courts are to interpret that section 5 of the Limitation Act is not attracted. It is because the special legislation becomes a complete Code qua limitation. Nothing beyond it is perceivable. The provisions with which we are concerned do not state so. We say so as the applicability of section 17 of the Limitation Act does not by necessary incorporation or by couching of the provision as has been done in the case of *Mangu Ram* (supra) would totally obliterate the applicability of section 5 of the Limitation Act. This being a special law, section 17 has been incorporated. The Legislature has not stated with regard to the exclusion of sections 4 to 24. The language used in the provision is that the provisions of section 17 of the Limitation Act, 1963 would apply for computing limitation under this section. It is not couched in the negative. There has to be a conceptual shift when the language is couched in a negative manner. It would not be proper to state that because section 17 has been made applicable, the legislature intended to exclude all other provisions. Section 29(2) on the contrary only postulates twin requirements. Those twin ingredients are satisfied in this case. Therefore, the said provision gets attracted, more so, in the absence of any kind of exclusionary clause or negative encapsulation in a different manner. That apart, the use of the word "shall not" under section 5 of the Adhiniyam would not ostracize the applicability of the Limitation Act.

26. to 28. xxx xxx xxx

29. We have quoted the aforesaid judgment because in the aforesaid statute the fate of a workman is decided. The MPIR Act is a benevolent and beneficial statute. In the absence of a categorical and unequivocal mandate by the Legislature it would not be appropriate to state that a claim of an employee would be thrown over board as he had not approached the Labour Court within the time frame. True, it is the doctrine of delay and laches would be attracted but that is in a different compartment and that does not necessarily mean, in the absence of such language used in the provision, the application preferred by the employee is not entertainable beyond the stipulated period as provisions of Limitation Act including section 5 are not attracted. We may hasten to state that the inference with regard to limitation, in our view, is not permissible. A provision relating to limitation is a technical one and has to be technically construed and there cannot be a liberal interpretation. We are conscious of the same but simultaneously when technically the provision has not excluded the applicability of the Limitation Act or not put the provisions in such a way constricting or restricting the power of the Labour Court to condone the delay as has been done in the case of Mohd. Ashfaq (supra), we have no hesitation in holding that the Act applies.”

61. From a perusal of the decision of the Supreme Court rendered in the cases of *Mangu Ram* (supra), *Competent Authority Tarana District Ujjain* (supra), *Mukri Gopalan* (supra), *Shantilal M. Bhayani* (supra), *Pallav Sheth* (supra) and *Anshuman Shukla* (supra) and the Full Bench decisions in the cases of *Vijay Singh and another* (supra), *Nihalkaran* (supra) and *Mohammad Sagir* (supra) which we have extensively considered in the preceding paragraphs, it is apparent that in cases where the special or local law like the Claims Tribunal Act, after providing a period of limitation for filing appeals is silent in all other aspects, is not a complete code in itself, contains no provision which is in direct conflict with any of the provisions of Sections 4 to 24 of the Limitation Act and is a beneficial legislation, the provisions of Section 4 to 24 of the Limitation Act are attracted in view of the provision of Section 29(2) of the Limitation Act and therefore, the view taken by us and the opinion expressed by us in the preceding paragraphs is in accordance with

the law laid down by the Supreme Court and the Full Bench of this Court in this regard.

62. Before we record our opinion, we think it appropriate to take into consideration the decision of the Supreme Court rendered in the case of *Hukum Dev Singh* (supra) and *Hongo India Pvt. Ltd.* (supra) as the aforesaid two decisions were considered, reproduced and relied upon by the learned Single Judge in the case of *Smt. Kunjmati* (supra) to arrive at a conclusion that the provisions of the Limitation Act would apply.

63. In the case of *Hukumdev Narain Yadav* (supra) the Supreme Court, after examining the scheme of the Representation of the People Act, which mandatorily provided for filing of an Election Petition within a specified time and also provided for a Penal Clause for dismissal of the Election Petition in case of not filing the same within the specified time and quoting paragraph 14 of the judgment in the case of *K. Venkateswara Rao and another vs. Bekkam Narasimha Reddi and others*, AIR 1969 SC 872, held that under the scheme of the Representation of the People Act, delay in filing an Election Petition could not be condoned on account of the mandatory provisions contained therein moreso as the Representation of the People Act was a complete code in itself by following the decision in the case of *K. Venkateswara Rao* (supra), is in the following terms:-

“19. The observations that the provisions of the Act are a self-contained code were also made in the case of *Venkateswara Rao* referred to earlier. In that case, in a trial of an election petition after the issues were framed the appellants made an application to the Court for impleading one 'R' but it was dismissed. The first respondent then filed an application under Section 86(1) praying for the dismissal of the election petition on the ground that there had been non-compliance with Section 82(b) of the Act inasmuch as 'R' against whom corrupt practice had been alleged had not been made a party. The appellants filed an application seeking to withdraw the allegation against 'R' and in the alternative to implead him as a respondent. It was also prayed that delay in making the application may be condoned. The learned Judge of the High Court trying the election petition dismissed the aforesaid applications and refused to condone the delay. One

of the contentions urged in the appeal was that Section 5 and Section 29(2) of the Limitation Act, 1963, were applicable to the case and the High Court and this Court had power to condone the delay made by the election petitioner in impleading a necessary party. This plea was rejected. *Mitter, J.*, delivering the judgment of this Court for himself and *Hidayatullah, C.J.*, after examining the relevant provisions of the Act in detail at pp. 682-686 observed at pp. 686-687 :

"It is well settled that amendments to a petition is a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the court in respect thereof are all circumscribed by the Act. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a court of law unless the application thereof has been excluded by any enactment: the extent of such application is governed by Section 29(2) of the Limitation Act. In our opinion however the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act."

64. In the case of *Hongo India Pvt. Ltd.* (supra) the Supreme Court after analyzing the provisions of the Central Excise Act, 1944 including Section 35-H (unamended), has held that the provisions of the Central Excise Act is a complete code in itself as the provisions contained therein clearly and specifically incorporate all the necessary provisions relating to limitation as and where required and exclude the same when they are not required to be incorporated.

On analyzing the provisions of the Central Excise Act, which is a taxing statute and has to be construed and interpreted differently than a beneficial and welfare legislation, has held that in view of the provisions contained in the Excise Act applicability of the Limitation Act specifically Section 5 of the Limitation Act stood expressly excluded by necessary intendment and inference as the Central Excise Act was a complete code in itself.

65. We are of the considered opinion that the decision of the Supreme Court rendered in the case of *Hukum Dev Singh* (supra) and *Hongo India Pvt. Ltd.* (supra), which has been subsequently applied and affirmed in *Chaudarana Steels Private Ltd.* (supra), do not apply and in fact could not have been applied for the purposes of interpreting the provisions of the Claims Tribunal Act, on account of the fact that the Claims Tribunal's Act is a beneficial welfare legislation and is not a complete code in itself in respect of prescribing and providing the entire procedure for filing an appeal before the High Court nor is there any provision contained in the Claims Tribunal Act which would compel us to arrive at a conclusion that the provisions of the Limitation Act are expressly excluded by inference or necessary intendment as was the case in the case of *Hukum Dev Singh* (supra) and *Hongo India Pvt. Ltd.* (supra) and, therefore, we have no hesitation in stating that the learned Single Judge in the case of *Smt. Kunjmati* (supra) has wrongly relied upon the aforesaid decisions to interpret the provisions of the Claims Tribunal Act and arrive at a contrary conclusion.

66. To summarize, it is stated that in the absence of any specific exclusion of the provisions of Sections 4 to 24 of the Limitation Act, either in the form of a specific provision or by necessary intendment or inference in the Claims Tribunal Act which is not a complete code in itself, specifically in view of the fact that the provisions of sections 4 to 24 are not directly or indirectly in conflict with any provisions relating to filing of an appeal before the High Court contained in the Claims Tribunal Act nor do the provisions of sections 4 to 24 of the Limitation Act render any provision relating to the filing of an appeal contained in the Claims Tribunal Act otiose or redundant, the provisions of section 5 of the Limitation Act would apply to the filing of an appeal under section 23 of the Claims Tribunal Act by virtue of the provisions of section 29(2) of the Act.

67. We are also of the considered opinion that reading the provisions of section 4 to 24 of the Limitation Act in terms of section 29 (2) of the Limitation

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Act into the provisions of the Claims Tribunal Act, which we have held is not a complete code in itself, would in fact further the object and purpose for enacting the Claims Tribunal Act which is a benevolent beneficial and welfare legislation and is enacted with the avowed purpose of providing adequate and speedy remedy for decision in respect of claims arising out of untoward incidents and railway accidents and other disputes.

68. In the light of the above discussion we hold that the decision of the learned single Bench in the case of *Kunjmati* (supra) does not lay down the correct proposition of law and is accordingly overruled and in answer to the question referred to us we state that in view of Section 29(2) of the Limitation Act, the provisions of section 5 of the Limitation Act is included in and has to be read into the provisions of the Claims Tribunals Act as it has not been expressly excluded therefrom either by a specific statutory provision or by necessary intendment or inference and, therefore, the High Court has the power to condone the delay in filing an appeal filed under Section 23 of the Claims Tribunal Act in exercise of powers under Section 5 of the Limitation Act, on sufficient cause being shown by an appellant.

69. The reference made to this court is answered accordingly.

70. The matter may now be placed before the Regular Bench for adjudication in terms of and in accordance with the answer to the reference given by us.

Order accordingly.

**I.L.R. [2017] M.P., 1934
APPELLATE CRIMINAL**

Before Mr. Justice Ravi Shankar Jha & Mr. Justice Ashok Kumar Joshi
Cr.A. No. 2020/2002 (Jabalpur) decided on 13 April, 2017

MADHAV PRASAD

...Appellant

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 302 – Conviction – Life Imprisonment – Appreciation of Evidence – Appellant was tenant of deceased – Regarding demand of payment of rent, dispute occurred and appellant assaulted the deceased with a wood which resulted in his death – Held – No defence witness was examined – Prosecution witness Banti clearly deposed that he had witnessed the beating given by appellant to

deceased and his statement was materially corroborated by two other prosecution witnesses which inspires confidence in prosecution story – Appellant rightly convicted – Appeal dismissed. (Para 14)

क. दण्ड संहिता (1860 का 45), धारा 302 – दोषसिद्धि – आजीवन कारावास – साक्ष्य का मूल्यांकन – अपीलार्थी, मृतक का किराएदार था – भाड़े के मुग़तान की मांग के संबंध में विवाद हुआ और अपीलार्थी ने मृतक पर एक लकड़ी से हमला किया जिसके परिणामस्वरूप उसकी मृत्यु हुई – अभिनिर्धारित – किसी बचाव साक्षी का परीक्षण नहीं किया गया – अभियोजन साक्षी बंटी ने स्पष्ट रूप से अभिसाक्ष्य दिया कि वह, अपीलार्थी द्वारा मृतक को मारपीट किये जाने का साक्षी है और उसके कथन की तात्विक रूप से संपुष्टि दो अन्य अभियोजन साक्षियों द्वारा की गई जो अभियोजन कहानी में विश्वास उत्पन्न करता है – अपीलार्थी को उचित रूप से दोषसिद्धि किया गया – अपील खारिज।

B. Penal Code (45 of 1860), Section 302 & 304 Part I – Murder – Intention – Evidence on record shows that after receiving first blow on head, unarmed deceased fall down and thereafter appellant again gave three blows while deceased was lying down – Cause of death was injuries to vital organs like right kidney and liver leading to heavy internal hemorrhage – Mode of death was shock – Appellant had intention to cause death – Case would not fall into any category u/S 304 IPC. (Para 17 & 20)

ख. दण्ड संहिता (1860 का 45), धारा 302 व 304 भाग I – हत्या – आशय – अभिलेख का साक्ष्य दर्शाता है कि सिर पर प्रथम वार सहन करने के पश्चात् निःशस्त्र मृतक नीचे गिर गया और तत्पश्चात् अपीलार्थी ने पुनः तीन वार किये जब मृतक नीचे गिरा पड़ा था – मृत्यु का कारण, दाहिने गुरदे एवं यकृत जैसे महत्वपूर्ण अंगों को चोटें थी जिससे अत्याधिक आंतरिक रक्तस्राव हुआ था – मृत्यु का प्रकार आघात था – अपीलार्थी का आशय मृत्यु कारित करने का था – प्रकरण, धारा 304 मा.दं.सं. के अंतर्गत किसी श्रेणी में नहीं आयेगा।

C. Criminal Practice – Statements of Hostile Witnesses – Held – It is well settled legal position that evidence of hostile declared prosecution witnesses could not be discarded totally, but that part of their depositions could be taken into consideration which is supported by other evidence available on record. (Para 16)

ग. दायिदक पद्धति – पक्षविरोधी साक्षियों के कथन – अभिनिर्धारित – यह सुस्थापित विधिक स्थिति है कि पक्ष विरोधी घोषित अभियोजन साक्षियों के साक्ष्य को पूर्ण रूप से अस्वीकार नहीं किया जा सकता, बल्कि उनके अभिसाक्ष्य के उस भाग को विचार में लिया जा सकता है जो अभिलेख पर उपलब्ध अन्य साक्ष्य द्वारा समर्थित है।

Cases referred :

AIR 1993 SC 2426, AIR 2009 SC 1923.

Ajay Kumar Jain and A.K. Gupta, for the appellant.

G.P. Kekre, G.A. for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by : **ASHOK KUMAR JOSHI, J. :-** By this appeal under Section 374(2) of the Code of Criminal Procedure, the appellant has challenged his conviction for the offence punishable under Section 302 of the I.P.C. and sentence of life imprisonment with a fine of Rs.5,000/-, in case of default, he is directed to further undergo the sentence of three years' rigorous imprisonment vide judgment dated 19.12.2002 passed by the Additional Sessions Judge, Lakhnadon, District Seoni in Sessions Trial No.73/2002.

2. Briefly stated, the prosecution's case is that appellant Madhav Prasad was a tenant on rent in the house of deceased Dumman alias Bhawani Prasad. On the date of incident 13.6.2002 at 4:30 p.m. in front of betel leaves' shop of Banti alias Bhupendra Trivedi (P.W.5) in town Dhuma, deceased Dumman alias Bhawani Prasad demanded rent of his house from the appellant, then the appellant denied from giving rent and started abusing. When the deceased objected to the appellant from giving abuses, then appellant Madhav Prasad took out a wood which was kept below the shop of betel leaves and thereafter the appellant assaulted with that wood on deceased's head, neck and body. After receiving injury on the head, Dumman alias Bhawani Prasad fell down on the ground. At the time of incident, Raju alias Rajkumar (P.W.2), Banti alias Bhupendra Trivedi (P.W.5), Pramod Kumar (P.W.1), Shambhu Prasad (P.W.6) and Bhakku alias Bheekam (P.W.3) came on the spot, then the appellant fled away leaving the wood on the spot. The incident was promptly reported by Suresh Kumar Soni (P.W.4) at Police Station Dhuma, on which F.I.R. (Ex.P.4) was recorded by Sub- Inspector R.C.Barti (P.W.15).

3. From the spot injured Dumman alias Bhawani Prasad was immediately taken to government hospital, Dhuma but the doctor was not available there, thus he was immediately taken to the Community Health Centre, Lakhnadon, where Dr.J.Prasad (P.W.9) recorded M.L.C. report (Ex.P.13). Dumman alias Bhawani Prasad shortly died in Lakhnadon hospital, then Dr.J.Prasad (P.W.9) sent a written intimation to Police Station Dhuma through a ward boy about death of Dumman alias Bhawani Prasad at 5-50 p.m. in the hospital on which marg report (Ex.P.19) was registered. Head Constable Omprakash Sanodia (P.W.16) in presence of panch witnesses prepared the memo of inquest

(Ex.P.9). Dr. Ku.Snehata Kaushle (P.W.12) conducted the autopsy of the dead-body of Dumman alias Bhawani Prasad in Lakhnadon hospital and recorded post-mortem report (Ex.P.15). Marg diary bearing no.zero was sent from Police Station Lakhnadon to Police Station Dhuma, where registration report (Ex.P.20) relating to marg was recorded. Sub-Inspector R.C.Barti (P.W.15) reached to the spot on the date of incident itself and on inspection, he found the weapon of offence, wood lying on the spot and also found blood stained soil in front of shop of betel leaves. In presence of panch witnesses, the wood (Article 'A') was seized by seizure memo (Ex.P.5). Seizure memo (Ex.P.6) relating to seizure of blood stained soil and simple soil was prepared. A sealed packet of deceased's clothes received from the hospital was seized through seizure memo (Ex.P.12). During investigation, the seized wood was sent with a query letter (Ex.P.16) of I.O. to Dr.Ku.Snehata Kaushle (P.W.12) who after seeing the wood sent her report (Ex.P.16A). Thereafter, seized material were sent to F.S.L., Sagar, whose report (Ex.P.25) was received later on. After completing the investigation, a charge-sheet was filed in the concerned Magistrate's Court, who committed the case to the Sessions Court, from where sessions trial was sent for trial to the Additional Sessions Judge, Lakhnadon.

4. The trial Court framed charge under Section 302 of the I.P.C. against the appellant. The appellant abjured the guilt. He did not take any specific plea, but has stated that he was falsely implicated. No any defence witness was examined. The trial Court after considering the evidence adduced by the prosecution convicted and sentenced the appellant as mentioned above.

5. Counsel for the appellant vehemently urged the fact that there was no intention of the appellant to cause death of deceased Dumman alias Bhawani Prasad. It was also argued that the alleged eye witnesses Pramod Kumar alias Ghanshyam Prasad (P.W.1), Rajkumar (P.W.2), Bhakku alias Bheekam (P.W.3), Suresh Kumar Soni (P.W.4), Shambhu Prasad (P.W.6) and Rajendra Kumar Burman (P.W.7) deposed that they had not seen the beating of the deceased and they were also declared hostile by the prosecution and only Banti alias Bhupendra Trivedi (P.W.5) deposed that he had seen the appellant taking the wood, which was fixed below his shop and assaulting the deceased by that wood. It has been submitted that at the most, the case would fall under the purview of Section 304 (Part-I) of the I.P.C.

6. On the other hand, learned government advocate has supported the

recorded conviction under Section 302 of the I.P.C. and contended that according to medical evidence, three fractures of different bones were found, thus the intention of the appellant to cause death of the deceased was proved from the produced evidence.

7. According to evidence and MLC report (Ex.P.13) of Dr.J.Prasad (P.W.9), on 13.6.2002 in Lakhnadon hospital, he has found following six injuries on the body of unconscious Dumman alias Bhawani Prasad:-

1. Contusion of size 1 x 1 Inch in middle of forehead.
2. Contusion of size 2 x 2 Inches on left eyebrow.
3. Contusion of size 3 x 3 Inches on right cheek.
4. Contusion of size 3 x 3 Inches on left mandible .
5. Contusion of size 4 x 4 Inches on left side of neck
6. Contusion of size 2 x 2 Inches on right side of the chest.

8. In the opinion of Dr.J.Prasad (P.W.9), all the six injuries to Dumman alias Bhawani Prasad were caused by hard and blunt object within 24 hours from his examination and he had referred for x-ray examination in reference to injuries no.2,3,4 and 6 and he had advised that the injured be sent to the Medical College, Jabalpur.

9. Dr.Ku.Snehlata Kaushle (P.W.12) deposed that on 14.6.2002 on her emergency duty in Community Health Centre, Lakhnadon at 10.45 a.m., she started the post-mortem of the dead body of deceased Dumman alias Bhawani Prasad and found that rigor mortis was present and blood was oozing from his mouth and nose. According to her post-mortem report (Ex.P.15), she found following external and relating internal injuries on the body of deceased:-

1. Contusion of the size 1 x 1 Inch on forehead.
2. Contusion on left eyebrow of size 2 x 2 inches, under which there was fracture of bone, which has extended upto external cranial fossa.
3. Contusion of size 3 x 3 inches on right cheek, beneath which mandible bone was fractured.
4. Contusion of size 3 x 3 inches on left jaw, beneath which

left mandible bone was fractured.

5. Contusion of size 4 x 4 inches on left side of neck, which was having no any internal injury

6. Contusion of size 2 x 2 inches on right side of chest, where the chest and abdomen meets, beneath which tenth rib was fractured.

10: Dr.Snehlata Kaushle (P.W.12) also deposed that on dissection of the body, superior surface of liver was found lacerated and right kidney was also lacerated and about 1000 ml blood was collected there. In her opinion, all the external injuries of the deceased were caused by hard and blunt object within twelve hours from her starting the post-mortem and injuries no.1 and 5 were simple, but injuries no.2,3 and 4 were of grievous nature and injury no.6 was fatal. She deposed that in her opinion, the deceased had died within 6-36 hours from postmortem due to shock, which had arisen due to heamorrhage from right kidney and liver. She has proved her post-mortem report (Ex.P.15) and her written answer (Ex.P.16-A) to the query letter (Ex.P.16) sent by the investigator alongwith seized wood. She had deposed that after seeing the seized wood, she opined that the seized wood could cause the death. She recorded the length of the lathi to be 35 inches and circumference of lathi as 6 inches and also recorded that the lathi was solid in consistency. Thus, the homicidal death of Dumman alias Bhawani Prasad on the date of incident is proved beyond reasonable doubt.

11. According to the F.I.R. (Ex.P.4), reporter Suresh Kumar Soni (P.W.4) was not an eye witness to the incident, but just after the incident, when reporter Suresh Kumar Soni (P.W.4) reached to the spot of incident, he found prosecution witnesses Raju alias Rajkumar (P.W.2), Banti alias Bhupendra Trivedi (P.W.5), Pramod Kumar (P.W.1), Shambhu Soni (P.W.6) and Bhakku (P.W.3) present at the scene of occurrence. Among these prosecution witnesses, only Banti alias Bhupendra Trivedi (P.W.5) has deposed as an eye witness seeing the beating given by appellant Madhav Prasad to Dumman alias Bhawani Prasad. Except Banti alias Bhupendra Trivedi (P.W.5), all other above mentioned prosecution witnesses including reporter Suresh Kumar Soni (P.W.4) were declared hostile by the prosecution, as they did not give evidence in accordance with their police statements recorded under Section 161 of the Cr.P.C. But Rajkumar (P.W.2) though did not state about witnessing the

incident, but he supported the evidence given by Banti alias Bhupendra Trivedi (P.W.5) in relation to circumstances, which were existing just before and just after the incident on the scene of occurrence.

12. According to evidence of all these prosecution witnesses, the date of incident 13.6.2002 was the day of weekly haat of town Dhuma and the incident had occurred in front of betel leaves' shop of Banti alias Bhupendra Trivedi (P.W.5) and nearer to shop of Banti alias Bhupendra Trivedi (P.W.5), there was a shop of shoes of Rajkumar (P.W.2). Rajkumar (P.W.2) deposed that on the date of incident at about 5:00 p.m., when he was at his shoes' shop, appellant Madhav Prasad was sitting on a stool which was kept in front of his shop and at that time, Dumman came there and demanded money from the appellant and altercation and abuses started between the appellant and Dumman, then he asked both of them to leave his shop as he was working, then the appellant and Dumman shifted themselves in front of adjacent betel leaves' shop of Banti. According to evidence of all these prosecution witnesses, Banti's betel leaves' shop was situated on a trolley (thela or thiliya). Banti alias Bhupendra Trivedi (P.W.5) deposed that at about 4:00 p.m. when he was at his shop, appellant Madhav Prasad, who was previously sitting in front of the shop of Raju and Dumman came in front of his shop and at that time Dumman demanded rent from the appellant, then a dispute occurred between them, during which appellant Madhav Prasad took out a wood, which was fixed beneath his shop and the appellant gave the first blow by that wood on right side of head of Dumman above his ear, then Dumman fell down, thereafter appellant also struck Dumman by the same stick three times again. Banti alias Bhupendra Trivedi (P.W.5) deposed that he tried to stop the appellant, but the appellant did not pay heed to him and due to the day of weekly haat, there was a crowd on the spot and after assaulting Dumman, the appellant fled away and thereafter Dumman was taken to government hospital through a thiliya (handcart).

13. Rajkumar (P.W.2) deposed that within few seconds after the appellant and Dumman shifted themselves from his shop to adjacent Banti's leaves' shop, after hearing noise when he came out of his shop, then he saw that Dumman was lying on the road in injured condition in front of shop of Banti and blood was oozing from his mouth and appellant Madhav Prasad was standing nearby, but at that time, he did not see any weapon in appellant's hands and the people were saying that appellant Madhav Prasad has killed Dumman by a stick and

within few minutes, injured Dumman was taken from the spot to the hospital and later on he heard that Dumman had died.

14. It appears that Banti alias Bhupendra Trivedi (P.W.5) tried to deviate from his evidence given in examination-in-chief in para no.7 of his cross-examination, but thereafter in reply to Court's question, Banti alias Bhupendra Trivedi (P.W.5) had clearly answered that he had witnessed the beating given by appellant Madhav Prasad to Dumman by the wood. Thus, it is clear that the total evidence of Banti alias Bhupendra Trivedi (P.W.5) is stable in relation to role of the appellant in the incident, which is materially corroborated by deposition of Rajkumar (P.W.2).

15. The hostile declared prosecution witnesses Suresh Kumar Soni (P.W.4), Bhakku alias Bheekam (P.W.3), Rajendra Kumar Burman (P.W.7) and Pramod Kumar alias Ghanshyam Prasad (P.W.1) though deposed that they had not seen the beating and Bhakku alias Bheekam (P.W.3), Suresh Kumar Soni (P.W.4) and Pramod Kumar alias Ghanshyam Prasad (P.W.1) have stated that they had not seen the appellant on the spot, but all these witnesses clearly deposed that just after the incident, they had reached on the spot. Shambhu Prasad (P.W.6) has clearly deposed that on the date of incident at about 4:00 p.m., when he was returning from haat, then he had seen on the spot that injured Dumman Soni was lying on the earth and near to him, appellant Madhav Prasad was standing having a stick in his hand and within few seconds, the appellant fled away from the spot. Rajkumar (P.W.2) had also deposed that just after the incident, he had seen injured Dumman lying on earth and nearby him, the appellant was standing, who fled away.

16. The hostile declared prosecution witnesses Suresh Kumar Soni (P.W.4), Bhakku alias Bheekam (P.W.3), Rajendra Kumar Burman (P.W.7) and Pramod Kumar alias Ghanshyam Prasad (P.W.1) have clearly deposed that just after the incident, the people gathered on spot were saying that appellant Madhav Prasad has beaten injured Dumman alias Bhawani Prasad. All these witnesses were residents of Dhuma and each has clearly deposed that he knew the appellant and deceased, who were also residents of the same village. It is well established legal position that the evidence of hostile declared prosecution witnesses could not be discarded totally, but that part of their depositions could be taken into consideration, which is supported by other evidence available on record. Deceased Dumman was maternal uncle of Pramod Kumar alias Ghanshyam Prasad (P.W.1), but Banti alias Bhupendra

Trivedi (P.W.5), Rajkumar (P.W.2), Shambhu Prasad (P.W.6), Bhakku alias Bheekam (P.W.3) and Suresh Kumar Soni (P.W.4) appear to be independent witnesses. Nothing could be brought in their cross-examination, which could establish their intimacy with the deceased or enmity with the appellant. Reporter Suresh Kumar Soni (P.W.4) was having his shop of repairing punctured tyres at about 100 feet distance from Banti's betel leaves' shop. Reporter Suresh Kumar Soni (P.W.4) lodged prompt F.I.R. (Ex.P.4) at 17:30 (5:30 p.m.) on the date of incident at Police Station Dhuma. According to marg report (Ex.P.19), the deceased had died at 5.50 p.m. on the date of incident 13.6.2002 in Lakhnadon hospital. The wood (stick) was seized by investigator R.C.Barti (P.W.15) from the spot on the date of incident by seizure memo (Ex.P-5). Investigator R.C.Barti (P.W.15) has also identified the seized wood (article 'A') at the time of recording of his deposition before the trial Court. The seized wood was also sent to the lady doctor, who conducted the post-mortem with a query letter (Ex.P.16). Even hostile declared prosecution witnesses have clearly deposed that they have seen heavily injured Dumman lying on the scene of occurrence. In all these established facts and circumstances, the eye witness account given by Banti alias Bhupendra Trivedi (P.W.5), materially supported by Rajkumar (P.W.2) and Shambhu Prasad (P.W.6) inspires confidence.

17. It is clear from the evidence of Banti alias Bhupendra Trivedi (P.W.5) and Rajkumar (P.W.2) that the incident had occurred because after reaching to the spot, Dumman alias Bhawani Prasad demanded rent from the tenant-appellant. It could not be inferred that only by demanding due rent from the tenant-appellant, Dumman alias Bhawani Prasad had given any sudden or grave provocation to the appellant. From medical evidence, it is clear that mandible bone of the deceased was fractured at two places and tenth rib of the deceased was also fractured and there was laceration over liver and right kidney just beneath its fractured rib. In the opinion of the relating doctor, this sixth injury found on the body of the deceased was fatal and three other injuries were also of grievous nature. Deceased's skull bone beneath the forehead was also fractured. According to the evidence of Banti alias Bhupendra Trivedi (P.W.5), after receiving first assault on head, Dumman alias Bhawani Prasad had fallen down on the ground and thereafter the appellant also gave three blows on lying and fallen Dumman alias Bhawani Prasad.

18. In the case of *Kikar Singh Vs. State of Rajasthan* (AIR 1993 SC

2426), the Apex Court in para 9 of its judgment has observed as follows:-

1. "Where the deceased was unarmed and did not cause any injury to the accused even following a sudden quarrel if the accused has inflicted fatal blows on the deceased, exception 4 is not attracted and commission must be one of murder punishable under S. 302. Equally for attracting exception 4 it is necessary that blows should be exchanged even if they do not all find their target. Even if the fight is unpremeditated and sudden, yet if the instrument or manner of retaliation be greatly disproportionate to the offence given, and cruel and dangerous in its nature, the accused cannot be protected under Exception 4 to Section 300 of the I.P.C."

19. In reference to the words "undue advantage" used in above mentioned Exception 4 of Section 300 of the I.P.C., it has been observed by the Apex Court in the case of *Santokh Singh Vs. State of Punjab* (AIR 2009 SC 1923) as under:-

"15. Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken. In *Kikar Singh Vs. State of Rajasthan* (AIR 1993 SC 2426), it was held that if the accused used deadly weapons against the unarmed man and struck a blow on the head, it must be held that using the blows with the knowledge that they were likely to cause death, he had taken undue advantage."

20. In above mentioned facts and circumstances, it is clear that the appellant after altercation with unarmed Duman alias Bhawani Prasad was having an intention to cause death of Duman alias Bhawani Prasad by used wood. The cause of death given by the doctor was due to injuries to vital organs like right kidney and liver, thus leading to a heavy internal haemorrhage and mode of death was shock. Looking to these peculiar facts with other grievous injuries of the case in hand, the argument of the learned counsel for the appellant could not be accepted that the offence would fall into any category under

Section 304 of the I.P.C.

21. In light of the above mentioned citations, among which the case of *Kikar Singh Vs. State of Rajasthan* (AIR 1993 SC 2426) has some factual resemblance to the present case, the above mentioned contention of the appellant's learned counsel appears to be totally unacceptable and liable to be rejected. We are of the considered opinion that the learned trial Court has not committed any error in convicting the appellant under Section 302 of the IPC.

22. On careful scrutiny of the total evidence available on record, we are of the considered opinion that conviction and sentence as recorded by the trial Court are totally justified and legal. The appeal filed by the appellant is devoid of any substance.

23. Consequently, the appeal filed by the appellant is dismissed and the conviction and sentence recorded under Section 302 of the I.P.C. by the trial Court are affirmed. The detained appellant be intimated about result of his appeal through the concerned Jail Superintendent. Record of the trial Court be returned with copy of the judgment.

Appeal dismissed.

I.L.R. [2017] M.P., 1944

APPELLATE CRIMINAL

Before Mr. Justice Hemant Gupta, Chief Justice &

Mr. Justice C.V. Sirpurkar

Cr.A. No. 1732/2005 (Jabalpur) decided on 20 June, 2017

POORANLAL

...Appellant

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Section 302 & 304-A – Murder – Conviction – Life Imprisonment – Solitary Blow – Intention & Motive – Appreciation of Evidence – Held – Existence of previous enmity between accused and deceased regarding partition of agricultural land – When deceased was sitting quietly near his field for grazing of his cattle, accused arrived there and attacked him with axe and gave a single blow in neck which caused his death – Circumstances in which

blow was delivered clearly betrayed the intention to cause death – No provocation offered by deceased – No quarrel or fight – It was a cold blooded and premeditated murder – No discrepancy between statement of eye witness and medical evidence with regard to fatal injury – Act would not fall u/S 304-A IPC under the garb of solitary blow – Apex Court held that there is no fixed rule that whenever a single blow is inflicted, Section 302 IPC would not be attracted – Trial Court rightly convicted the appellant – Appeal dismissed. (Paras 10, 12 & 13)

दण्ड संहिता (1860 का 45), धारा 302 व 304-ए – हत्या – दोषसिद्धि – आजीवन कारावास – एक मात्र वार – आशय एवं हेतु – साक्ष्य का मूल्यांकन – अभिनिर्धारित – कृषि भूमि के विभाजन के संबंध में अभियुक्त एवं मृतक के मध्य पूर्व वैमनस्यता का अस्तित्व – जब मृतक अपने पशु चराने के लिए अपने खेत के समीप शांति से बैठा हुआ था, अभियुक्त वहाँ पहुँचा तथा उसने मृतक पर कुल्हाड़ी से हमला किया एवं गर्दन पर एकल वार किया जिससे उसकी मृत्यु हो गई – परिस्थितियाँ जिनमें वार किया गया था, स्पष्ट रूप से मृत्यु कारित करने का आशय प्रकट करती हैं – मृतक द्वारा कोई प्रकोपन नहीं दिया गया – कोई झगड़ा या लड़ाई नहीं – यह एक निर्दयतापूर्वक एवं जान-बूझकर की गई हत्या थी – घातक चोट के संबंध में, चक्षुदर्शी साक्षी के कथन एवं चिकित्सीय साक्ष्य के मध्य कोई विसंगति नहीं – एकमात्र वार की आड़ में, कृत्य भारतीय दण्ड संहिता की धारा 304-ए के अंतर्गत नहीं आयेगा – सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि यह कोई निश्चित नियम नहीं है कि जब कभी एकल वार किया गया है, भारतीय दण्ड संहिता की धारा 302 आकर्षित नहीं होगी – विचारण न्यायालय ने अपीलार्थी को उचित रूप से दोषसिद्ध किया – अपील खारिज।

Cases referred:

AIR 1994 SC 1487, 2009 C.R.I.L.J. 315, AIR 1994 SC 1060, AIR 1989 SC 1094, 2005 SCC (Cri) 1284, AIR 1958 SC 465, (2006) 7 SCC 391, AIR 2002 SUPREME COURT 2834, Cr.A. No. 55/1994 decided on 18.07.2003, Cr.A. No. 929/1995 decided on 06.12.2005.

Durgesh Gupta with Hemlata Rai, for the appellant.

Manjeet Chukkal, P.L. for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :
C.V. SIRPURKAR, J. :- This criminal appeal under Section 374 (2) of the Cr.P.C. filed on behalf of the appellant/accused Pooranlal is directed against

the judgment dated 17.8.2005 passed by the Court of Sessions Judge, District Balghat (sic:Balaghat) in Sessions Trial No. 28/2005, whereby the accused/appellant Pooranlal was convicted of the offence punishable under Section 302 of the I.P.C. for having committed murder of deceased Saligram and was sentenced to imprisonment for life and to pay a fine in the sum of Rs.1000/-. In default of payment of fine, he was directed to undergo further rigorous imprisonment for a period of 6 months.

2. The prosecution case before the trial Court may be summarized as hereunder: Accused Pooranlal had inimical relations with deceased Saligram on account of partition of agricultural land. At about 4:00 p.m. on 30.10.2004, deceased Saligram was sitting on the embankment of his field grazing his cattle. At that time, accused Pooranlal arrived on the spot armed with an axe. He assaulted the deceased with the axe on the neck. As a result, deceased Saligram died on the spot. At that time, witnesses Samal Singh (PW-3), his wife Kaushalya and Shobhelal (PW-2) were present in the adjacent fields. They witnessed the incident. Samal Singh asked the accused as to why he had killed deceased Saligram; however, accused Pooranlal ran away. Thereafter, Samal Singh returned to the village and informed the villagers including Saligram's son-in-law Mohan Lal, who lodged the FIR (Ex.P-2) at about 8:00 p.m. the same evening in Police Station Malajkhand, District Balaghat. During the investigation, accused was arrested and the axe allegedly used in commission of the offence was seized from his possession on the basis of the disclosure statement (Ex.P-10) made by him under Section 27 of the Evidence Act. In serological examination conducted in Forensic Science Laboratory, Sagar, human blood was found on the axe and the clothes seized from the possession of accused Pooranlal.

3. The trial Court framed a charge under Section 302 of the I.P.C. against the accused Pooranlal. However, he abjured the guilt and claimed to be tried. In his examination under Section 313 of the Cr.P.C., he stated that eye witnesses Samal Singh @ Guhdad, Shobhelal and Budh Singh are companions and on account of previous enmity, they have conspired and ganged up against him and falsely implicated him in the case.

4. After the trial, the trial Court held that prosecution has succeeded in proving beyond reasonable doubt that deceased Saligram had died a homicidal death on account of an incised wounds sustained by him in the neck and cause of his death was shock due to hemorrhage caused by cutting of vital vessels of

neck. It was further held that aforesaid fatal wound in the neck of the deceased was inflicted by the accused Pooranlal with intent to cause death of the deceased. Consequently, accused Pooranlal was convicted and sentenced as herein above stated:

5. The conviction of the accused Pooranlal has been challenged before this Court by learned counsel for the appellant mainly on the ground that even if it is assumed for the sake of argument that appellant Pooranlal had assaulted deceased Saligram, resulting in his death, it may be noted that he is said to have inflicted a solitary blow. Unfortunately, that blow landed on the neck of the deceased resulting in his death. In these circumstances, it cannot be said that the appellant had intention of causing death of the deceased or had intention of causing such bodily injury as was sufficient in ordinary course of nature to cause death. Therefore, inviting attention to numerous judicial precedents, it has been contended that the act of the appellant, at worst, would fall within the ambit of Section 304 (Part-II) of the I.P.C.

6. On perusal of the record and due consideration of rival contentions, we are of the view that this criminal appeal against conviction must fail for the reasons hereinafter stated:

7. It may be noted that the prosecution case is based mainly upon eye witnesses accounts of Shobhelal (PW-2) and Samal Singh (PW-3). First informant Mohan Lal (PW-1) is son-in-law of deceased Saligram. He had lodged first information report (Ex. P-1) about 4 hours after the incident, after having been informed about the same by Samal Singh (PW-3). Shobhelal (PW-2) has stated that appellant Pooranlal and deceased Saligram were cousins. Mohan Lal (PW-1) has provided motive for the crime. He has stated that there was a dispute between Pooranlal and Saligram with regard to agricultural land. They were not on talking terms. Appellant Pooranlal used to warn deceased Saligram that water from Saligram's field must not enter the field of Pooranlal. 8. The gist of testimony of eye witnesses Shobhelal (PW-2) and Samal Singh (PW-3) is that at about 4:30-5:00 p.m. on 29.10.2004 they were in their respective fields. Shobhe Lal (PW-2) has stated that his wife Paran Bai, daughter Leela Bai and granddaughter were also present along with him. They witnessed the incident from a distance of about 35 feet. As per Samal Singh (PW-3) his wife Kaushalya was also present with him. Aforesaid two witnesses have also stated that Saligram was sitting in his field and grazing his cattle. At that time, appellant Pooranlal came from behind

carrying an axe and first he assaulted the deceased twice or thrice with blunt side of the axe on the back. As a result, the deceased fell down. Thereafter, he struck a blow upon the neck of the deceased, cutting the same. Consequently, the deceased died on the spot. When Samal Singh asked the appellant as to why he had killed Saligram, the appellant replied that he would also kill Samal Singh. Appellant Pooranlal escaped from the spot. Thereafter, Samal Singh returned to the village and informed villagers including Mohan Lal, about the incident.

8. Dr. Anil Shukla (PW-6) who had conducted post-mortem examination upon the dead body of the deceased Saligram has stated that he had found only one wound on the body. It was a chopped wound admeasuring 2"x1"x2" upon the left side of neck, 1.5" below the chin and 2" above the collarbone. The muscles of the neck were visible and thyroid cartilage was broken. The blood vessels were cut. Aforesaid injury were caused by a hard and sharp object. The deceased had died as a result of hemorrhage due to cutting of main blood vessels. The hemorrhage had resulted in shock and death of the deceased. Aforesaid injury was sufficient in the ordinary course of nature to cause death. The witness has further stated that aforesaid wounds could have been caused by the axe seized pursuant to the disclosure statement made by the appellant. However, during his cross-examination Dr. Anil Shukla (PW-6) has categorically stated that he did not find any contusion or swelling in the back of the deceased. He has further stated that if a blow is delivered the blunt side of an axe to the back of a person, it would result in contusion.

9. It is true that both eye witnesses namely Shobhelal (PW-2) and Samal Singh (PW-3) have clearly stated that before delivering the fatal blow upon the neck of the deceased, the appellant had struck two or three blows to the back of the deceased by blunt side of the axe. However, in the post-mortem examination Dr. Anil Shukla (PW-6) had found no injury upon the back of the deceased. On the basis of aforesaid discrepancy, it was contended before the trial Court that medical evidence does not corroborate the eye witness account. In these circumstances the testimony of eye witnesses was unreliable; therefore, the appellant deserves the benefit of doubt.

10. We may note in this regard that the fact that the appellant had struck 2-3 blows from the blunt side of the axe upon the back of the deceased may not have been corroborated by the medical evidence; however, there is no discrepancy between the statement of eye witnesses and the medical evidence

with regard to the fatal injury caused by the appellant upon the neck of the deceased with sharp side of the axe. Thus, learned trial Court had rightly ignored aforesaid discrepancy. Apart from aforesaid discrepancy, there are no material contradictions and omissions between the statements of the eye witnesses *inter se* or between their Court statements and police statements. There is nothing on record to suggest that Shobhe Lal (PW-2) and Samal Singh (PW-3) were partisan witnesses, interested witnesses or even related witnesses. Thus, there is no reason to discard their testimony in respect of the fatal blow delivered by the appellant. Thus, the trial Court committed no error in placing reliance upon the testimony of the eye witnesses. We may also take note of the fact that this part of the judgment has not been seriously challenged on behalf of the appellant during the course of arguments.

11. Learned counsel for the appellant have mainly laid emphasis upon the fact that this is the case of a solitary blow; therefore, inviting attention to various authorities it has been contended that the intention to cause death of the deceased is not discernible in the facts and circumstances of the case. Therefore, the act of the appellant would come under the purview of Section 304 (Part-II) of the I.P.C. Since the appellant has already undergone 13 years of rigorous imprisonment, the conviction should be converted into one under Section 304(Part-II) and the sentence should be reduced to the period already undergone. In support of aforesaid contention, learned counsel for the appellant has placed reliance upon the judgments rendered by the Supreme Court in the case of *Abdul Mazid Vs. State of Assam*, AIR 1994 S.C. 1487, *Maharaja Vs. State of Tamil Nadu*, 2009 CRI.L.J. 315, *Ranjit Singh Chandrasingh Atodaria Vs. State of Gujarat*, AIR 1994 SC 1060 and *Surinder Kumar Vs. Union Territory, Chandigarh*, AIR 1989 SC 1094.

12. However, in the case of *Thangaiya Vs. State of Tamil Nadu*, 2005 SCC (Cri) 1284 it has been held that there is no fixed rule that whenever a single blow is inflicted, Section 302 of the I.P.C. would not be attracted. Referring to the leading case of *Virsa Singh Vs. State of Punjab*, AIR 1958 SC 465, the Supreme Court held that even if intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (C) appended to Section 300 clearly brings out this point. In para 22 of the judgment, Supreme Court further observes that:

It cannot be said as a rule of universal application that whenever one blow is given, Section 302 of the I.P.C. is ruled out. It would depend upon the facts of each case. The weapon used, size of the weapon, place where the assault took place, background facts leading to the assault, part of the body where the blow was given are some of the factors to be considered.

On the same point the principles laid down by the Supreme Court in the cases of *Pappu Vs State of M.P.*, (2006) 7 SCC 391 and *Dhupa Chamar v. State of Bihar*, AIR 2002 SUPREME COURT 2834 may also be profitably referred to:

13. When we examine the facts of the present case in the backdrop of aforesaid legal position, we may note that in the instant case, there was previous enmity between the appellant and the deceased. At the time of the incident, the deceased was sitting quietly on the embankment of his field, grazing his cattle. The appellant suddenly arrived armed with an axe. He inflicted a solitary chopped wound upon the neck of the deceased breaking thyroid cartilage and cutting muscles and main blood vessels. As a result, the deceased died instantaneously. There was no exchange of words before the assault between the appellant on one hand and the deceased on the other. There was no provocation, much less grave and sudden provocation, offered on the spot by the deceased. There was no quarrel or fight. The appellant came determined to kill the deceased and without uttering a word, struck a blow with a dangerous weapon like axe, from the sharp side upon a vital part of the body like neck. The blow was delivered with sufficient force so as to cut the main blood vessels of the neck. Thus, the offence was not committed following a sudden fight or quarrel and in the heat of passion. In these circumstances the appellant cannot be attributed merely with the knowledge that his act may cause death. The circumstances in which the blow was delivered clearly betrayed the intention to cause death on the part of the appellant. It was a cold blooded, premeditated murder. As such, the act of the appellant would not fall under the ambit of Section 304 (Part-II) simply because a solitary blow was delivered.

14. It may be noted here that all of aforesaid authorities cited on behalf of the appellant are distinguishable on facts. In the case of *Surinder Kumar* (supra), *Maharaja* (supra) and *Ranjit Singh* (supra) there was a sudden quarrel. In the case of *Abdul Majit* (supra) the murder was not premeditated

and the appellant was given dagger by co-accused during quarrel. The injury was also not sufficient in ordinary course of death; whereas, in the case at hand, there is no evidence of any quarrel or fight much less sudden quarrel or fight between the appellant on one hand and the deceased on the other. As such, the appellant derives no benefit from aforesaid authorities.

15. Learned counsel for the appellant has also placed reliance upon the two authorities of our own High Court. The first one is *Siya Ram Vs. State of M.P.* (Judgment dated 18.7.2003) passed in Criminal Appeal No. 55/1994 and second one is *Kadhori and another Vs. State of M.P.* (judgment dated 6.12.2005) passed in Criminal Appeal No.929/1995. The facts and circumstances of the aforesaid two cases are also different from the present one. In the case of *Siya Ram* (supra) the conviction was altered from one Section 302 of the I.P.C. to Section 304 (Part-II) because there was a quarrel on account of use of ox by appellant which belonged to the deceased. The intention to cause death was also not discernible. In the case of *Kadhori* (supra) there was a sudden quarrel and there was no intention to cause a particular injury which could be sufficient in ordinary course of nature to cause death. As such, these authorities also do not come to the aid of the appellant either.

16. In these circumstances, it is absolutely clear that the appellant could not be attributed merely with the knowledge that his act was likely to cause death but it is obvious that he had intention of causing death of the deceased. In these circumstances, the trial Court has rightly held that the offence would be punishable under Section 302 of the I.P.C. and not under Section 304 (Part-I or Part-II) thereof, notwithstanding the fact that a solitary blow was delivered.

17. In aforesaid circumstances, the Court is of the view that no interference is warranted in the impugned judgment. This appeal has no substance and deserves to be dismissed.

18. Consequently, this criminal appeal is **dismissed**. The conviction of the appellant Pooranlal under Section 302 of the I.P.C. and sentence of life imprisonment and fine in the sum of Rs.1000/- imposed upon him by the trial Court is affirmed.

Appeal dismissed.

I.L.R. [2017] M.P., 1952

APPELLATE CRIMINAL

Before Mr. Justice Prakash Shrivastava &

Mr. Justice Ved Prakash Sharma

Cr.A. No. 24/2008 (Indore) decided on 23 June, 2017

BADRISINGH

...Appellant

Vs.

STATE OF M.P.

...Respondent

A. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/15(C), 42, 50 & 57 – Conviction and Quantum of Sentence – Testimony of Witnesses – Exclusive and Conscious Possession – 450 Kgs of poppy straw was seized from corridor/verranda of the house of appellant – Held – As per land records, house is recorded in the name of appellant – Secretary of Gram Panchayat stated on oath that the house alongwith verranda from where contraband was recovered belongs to and is in possession of appellant – It is proved that contraband was recovered from exclusive and conscious possession of appellant – Compliance u/S 42 and 57 is duly established – Despite elaborate cross-examination, no material infirmity in prosecution witnesses – Further held – Sentence imposed is on higher side, hence sentence of 15 years RI is reduced to 12 years RI – Revision partly allowed. (Para 17 & 18).

क. स्वापक औषधि और मनःप्रमावी पदार्थ अधिनियम (1985 का 61), धाराएं 8/15(सी), 42, 50 व 57 – दोषसिद्धि तथा दण्डादेश की मात्रा – साक्षीगण का परिसाक्ष्य – अनन्य एवं भानपूर्वक कब्जा – अपीलार्थी के मकान के गलियारे/बरामदे से 450 किलोग्राम अफीम भूसा जब्त किया गया था – अभिनिर्धारित – मू-अभिलेखों के अनुसार, मकान अपीलार्थी के नाम पर अभिलिखित है – ग्राम पंचायत के सचिव ने शपथपूर्वक यह कथन किया कि बरामदे के साथ वह मकान जहाँ से विनिषिद्ध बरामद हुआ था, अपीलार्थी का है तथा उसके कब्जे में है – यह साबित होता है कि विनिषिद्ध, अपीलार्थी के अनन्य एवं भानपूर्वक कब्जे से बरामद हुआ था – धारा 42 तथा 57 के अंतर्गत अनुपालन सम्यक् रूप से स्थापित किया गया है – विस्तृत प्रतिपरीक्षण के बावजूद, अभियोजन साक्षीगण में कोई तात्त्विक दुर्बलता नहीं – आगे अभिनिर्धारित – अधिरोपित दण्डादेश अधिक है, अतः 15 वर्ष के कठोर कारावास को 12 वर्ष के कठोर कारावास तक कम किया गया है – पुनरीक्षण अंशतः मंजूर।

B. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 50 – Compliance – Contraband was recovered from the

verranda of the house of appellant and did not involve personal search of appellant hence, compliance u/S 50 of the Act of 1985 was not required. (Para 11)

ख. स्वापक औषधि और मनःप्रमावी पदार्थ अधिनियम (1985 का 61), धारा 50 – अनुपालन – विनिषिद्ध, अपीलार्थी के मकान के बरामदे से बरामद हुआ था तथा अपीलार्थी की व्यक्तिगत तलाशी अंतर्ग्रस्त नहीं थी अतः, 1985 के अधिनियम की धारा 50 के अंतर्गत अनुपालन अपेक्षित नहीं था।

C. *Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/15(C) – Testimony of Police Officer – Credibility – Held – Law is well settled that testimony of a police officer cannot be thrown overboard only on the ground that he is a police officer – If testimony of a police officer on due appreciation is found to be trustworthy and free from material contradictions and anomalies, conviction can be recorded on the basis of such evidence. (Para 15)*

ग. स्वापक औषधि और मनःप्रमावी पदार्थ अधिनियम (1985 का 61), धारा 8/15(सी) – पुलिस अधिकारी का परिसाक्ष्य – विश्वसनीयता – अभिनिर्धारित – यह सुस्थापित विधि है कि पुलिस अधिकारी के परिसाक्ष्य का परित्याग केवल इस आधार पर नहीं किया जा सकता कि वह एक पुलिस अधिकारी है – यदि उचित मूल्यांकन किये जाने पर पुलिस का परिसाक्ष्य मरोसेमंद तथा तात्त्विक विरोधाभासों एवं विसंगतियों से मुक्त पाया जाता है, तो ऐसे साक्ष्य के आधार पर दोषसिद्धि अभिलिखित की जा सकती है।

Cases referred :

(2013) 7 SCC 465, 2004 (I) EFR 26 SC, 1996 SCC (2) 589, AIR 2001 SC 2420.

V. Sumanlata, for the appellant.

Mukesh Kumawat, P.P. for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :
VED PRAKASH SHARMA, J. :- This Criminal Appeal is directed against judgment and order dated 24.11.2007, whereby and whereunder appellant Badri singh has been found guilty under Section 8/15(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and has been sentenced to undergo RI for 15 years and to pay a fine of Rs.1,50,000/- with

a further stipulation of two years RI in case of default in payment of fine.

2. Prosecution story as having emerged during trial, briefly stated, is that on 14.04.2016 Doulatram Jogawat (P.W.5), the then Assistant Sub-Inspector, Police Station – Badod, District – Shajapur received a secret information from the informer that one Badri Singh S/o Uday Singh Rajput, r/o Village Dhodar, is having in his possession 32-40 plastic bags of poppy husk, which is likely to be delivered to some person. Doulatram Jogawat (P.W.5) entered this information at 10.40 a.m. in the daily diary at Sl. No.489. He further prepared a memorandum (Ex.P/19) and in compliance of Section 42 of ‘the Act’ forwarded a copy thereof through Constable Ramchandra (P.W.6) to S.D.O.P., Agar. Apprehending that if immediate action is not taken, the concerned person may escape with the contraband. Doulatram Jogawat (P.W.5) summoned two “*Panch*” witnesses namely, Vikram Singh (P.W.1) and Rodulal (P.W.2) and proceeded along with police force to lay a trap at village Dhodar. On reaching the spot, Doulatram Jogawat (P.W.5) found a person of given description covering some plastic bags lying in front of a house with a polythene cover. On interrogation, appellant Badri Singh disclosed his name. Thereafter, Doulatram Jogawat (P.W.5) informed the appellant that he has received secret information with regard to contraband poppy husk being kept in the plastic bags, therefore, he would like to go for a search. He further apprised appellant Badri Singh that if he wants he can get himself searched before a gazetted officer or a Magistrate. On a consent being given by the appellant, Doulatram Jogawat (P.W.5) after complying with usual formalities searched the plastic bags. He found leaves, buds and fruit tops etc. of opium poppy lying inside the bags. On physical examination, it was revealed that the same is poppy straw. The contraband kept in 35 plastic bags was put to weighment which came to 450 kilograms. Two samples of 250 grams each were drawn from the contraband after mixing the same. The samples were marked as B/1 & B/2, while 35 bags were marked as A/1 to A/35. The contraband was seized, vide seizure memo Ex.P/11. The appellant after being apprised about the grounds of arrest, was arrested, vide arrest memo Ex.P/12. The contraband was brought to Police Station Bhador in a tractor trolley belonging to one Badri Singh (P.W.11) and was handed over to the “*Malkhana*” clerk. A First Information Report in this regard was registered against the appellant. Investigation ensued. During investigation, Devendra Singh Rathor, the then SHO, Police Station Bhador prepared spot map (Ex.P/23). One of the samples was sent, vide Ex.P/2-A to Regional Forensic

Laboratory, Indore. The Assistant Chemical Examiner of the Laboratory, vide report Ex.P/26, opined that the material lying in the packet is poppy straw. The witnesses were interrogated. Necessary evidence with regard to ownership of place of recovery was collected from village Patwari Shankarlal (P.W.9) as well as Panchayat Secretary Anil Chouhan (P.W.10). Appellant Badrilal on interrogation allegedly, revealed that he had purchased the contraband for Rs.4,000/- from one Raju Singh. On the basis of the information supplied by the appellant, vide memo Ex.P/19. A pair of bullocks and bullock cart said to have been used for transporting contraband was recovered from his possession, vide seizure memo Ex.P/14. A detailed report (Ex.P/17) with regard to arrest, search and seizure were sent to S.D.O.P., Agar. After usual investigation, the charge-sheet was laid against the appellant before the competent Court.

3. The appellant on being charged for offence under Section 8/15(C) of 'the Act' abjured the guilt and pleading innocence claimed to be tried. The prosecution in order to bring home the charge examined as many as 12 witnesses including Doulatram Jogawat (P.W.5), who, allegedly, laid the trap. Rodulal (P.W.2) and Vikram Singh (P.W.1) are said to be the "**Panch**" witnesses while Devendra Singh Rathore (P.W.8) has conducted the investigation. Apart this, documents Ex.P/1 to P/54 were also marked in evidence.

4. The incriminating circumstances appearing in the prosecution evidence were brought to the notice of the appellant during his examination under Section 313 of 'the Code'. The appellant either denied or pleaded innocence with regard of such circumstances and claimed that the place from where poppy straw was recovered is not in his exclusive possession, rather he resides there with his father and two brothers. The learned Special Judge on appreciation of evidence on record, vide the impugned judgment, convicted and sentenced the appellant as stated herein-above.

5. In this appeal, the conviction and sentence is challenged on the ground that Sections 42, 50 & 57 of 'the Act' were not duly complied with and that the learned trial Court has committed serious error in recording a finding of guilt without properly advertng to the aspects pertaining to non-compliance of Sections 42, 50 & 57 of 'the Act. It is further submitted that the prosecution failed to establish that the place from where the contraband was allegedly, recovered was in exclusive possession of the appellant, hence, finding of conviction suffers from serious error and, therefore, the same cannot be

sustained. Lastly, it is submitted that "**Panch**" witnesses Vikram Singh (P.W.1) and Rodulal (P.W.2) have not supported the prosecution case, therefore, in absence of independent evidence, the learned trial Court has committed a grave error in recording conviction against the appellant.

6. Per contra, learned Public Prosecutor supporting the impugned judgment has submitted that Sections 42 & 57 of 'the Act' have been duly complied with and that as the contraband was recovered from a place and did not involve search of the person, therefore, Section 50 of 'the Act' was not applicable in the instant case. Lastly, it is submitted that testimony of the police officials on due appreciation has been found to be reliable by the learned trial Court, therefore, it cannot be said that the conviction suffers from any illegality. The contention is that sufficient evidence was laid before the trial Court to establish conscious possession of the contraband with the appellant, therefore, it cannot be said that the learned trial Court committed any error in recording conviction against the appellant, hence, the appeal is liable to be dismissed.

7. We have given our thoughtful consideration to the pleas raised before us and have also carefully perused the record. Considering the rival submissions made by the learned counsel for the parties, it is required to be seen whether alleged contraband was recovered from exclusive and conscious possession of the appellant and whether procedural safeguards stipulated in 'the Act' in this regard were duly complied with ?

COMPLIANCE OF SECTION 42

8. Section 41, 42 & 43 of 'the Act' stipulate safeguards with regard to search of premises, conveyance or enclosed place etc. As regards applicability of Section 42 of 'the Act', the apex Court in *Sukhdev Singh Vs. State of Haryana*, (2013) 7 SCC 465, has held as under:

"18. The provisions of Section 42 are intended to provide protection as well as lay down a procedure which is mandatory and should be followed positively by the Investigating Officer. He is obliged to furnish the information to his superior officer forthwith. That obviously means without any delay. But there could be cases where the Investigating Officer instantaneously, for special reasons to be explained in writing, is not able to reduce the information into writing and send the said information to his superior officers but could do it later and preferably

prior to recovery. Compliance of Section 42 is mandatory and there cannot be an escape from its strict compliance.

19. This question is no more *res integra* and stands fully answered by the Constitution Bench judgment of this Court in *Karnail Singh v. State of Haryana* [(2009) 8 SCC 539].”

9. As per prosecution Doulatram Jogawat (P.W.5), the then A.S.I., Police Station – Badod on receipt of the secret information recorded the same at Sl. No.489 in the Daily Diary of the Police Station, a copy of which has been placed on record as Ex.P/18. Doulatram Jogawat (P.W.5) in this regard has testified that apart this, memo Ex.P/19 was also prepared with regard to receipt of information and copy thereof was immediately forwarded to SDOP, Agar through Constable Ramchandra (P.W.6). Ramchandra (P.W.6) in this regard has supported the testimony of Doulatram Jogawat (P.W.5), which stands further corroborated by the testimony of Mohanlal (P.W.4), who at the relevant time was deputed as Reader of S.D.O.P., Agar and on 14.04.2006 had received the written information, vide acknowledgement (Ex.P/16). The testimony of these three witnesses despite grilling cross-examination has remained undented, therefore, the same deserves to be accepted. Therefore, from the evidence on record, it is well established that Section 42 of ‘the Act’ was complied with in letter and spirit.

10. As regards compliance of Section 50 of ‘the Act’ in *Megh Singh vs. State of Punjab*, 2004(I) EFR 26 SC, the apex Court has summed up the legal position as under:

“A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag, or premises. (See *Kalema Tumba vs. State of Maharashtra and Anr.* (JT 1999 (8) SC 293), the *State of Punjab vs. Baldev Singh* (JT 1999 (4) SC 595), *Gurbax Singh vs. State of Haryana*, 2001 (3) SCC 28.) The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh’s* case (*supra*). Above being the position, the contention regarding non-compliance of Section 50 of ‘the Act’ is also without any substance.”

11. Considering that the contraband allegedly, was recovered from 35 polythene bags lying in the "**Dhalia**" (verandah) of the house of the appellant and did not involve personal search of the appellant, it can well be said that Section 50 of 'the Act' was squarely not applicable in the present case, therefore, grievance with regard to non-compliance thereof cannot be entertained.

12. With regard to compliance of Section 57 of 'the Act', we can again refer to the testimony of Doulatram Jogawat (P.W.5), which stands corroborated with the testimony of Ramchandra (P.W.6) and Mohanlal (P.W.5). Ramchandra (P.W.6) has clearly stated that on 15.04.2006 he delivered a detailed report under Section 57 of 'the Act' to Mohanlal (P.W.4), who at the relevant time was posted as Reader of S.D.O.P., Agar. Mohanlal (P.W.4) has substantially supported Ramachandra (P.W.6) in this regard, therefore, it is well established that Section 57 of 'the Act' which provides for submission of detailed report with regard to arrest, search and seizure to the superior officer was complied with as per legal mandate.

13. Doulatram Jogawat (P.W.5) has testified that on the basis of secret information he laid a trap at the house of the appellant and found 35 plastic bags lying in the "**Dhalia**" (verandah) of the appellant's house. This witness has further testified that on physical examination he found that the substance lying inside the bags as opium poppy straw. He has further testified that the substance kept in 35 bags was seized by him on the spot and the material lying inside the bags was mixed up and two samples of 250 grams each were drawn and the remaining contraband was put in 35 bags and all the bags including the sample packets were seized after being duly sealed on the spot. Despite elaborate cross-examination no material infirmity or anomaly could be elicited in the testimony of this witness. Apart this, there is nothing to indicate that this witness has any personal ill-will or enmity against the appellant and, therefore, interested in falsely implicating him.

14. Though, it is contended by learned counsel for the appellant that Rodulal (P.W.2) and Vikram Singh (P.W.1) said to be "**Panch**" witnesses of search and seizure have not supported the same, hence, the testimony of Doulatram Jogawat (P.W.5) cannot be accepted. As regards testimony of police officer in the matter of *Anil alias Andya Sadashiv Nandoskar v. State of Maharashtra*, 1996 SCC (2) 589, the apex Court has held that "there is no rule of law that the evidence of police officials has to be discarded unless it

suffers from some inherent infirmity. Prudence, however, requires that the evidence of the police officials, who are interested in the outcome of the result of the case, needs to be carefully scrutinized and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness."

15. Thus the law is well settled that the testimony of a police officer cannot be thrown overboard only on the ground that he is a police officer. If the testimony of a police officer, on due appreciation, is found to be trustworthy and free from material contradictions and anomalies, nothing prevents in law in recording conviction on the basis of such evidence. In *P.P. Beeran v. State of Kerala*, AIR 2001 SC 2420, a case under the NDPS Act, the apex Court has held as under:

"Indeed all the 5 prosecution witnesses who have been examined in support of search and seizure were members of the raiding party. They are all police officials. There is, however, no rule of law that the evidence of police officials has to be discarded or that it suffers from some inherent infirmity. Prudence, however, requires that the evidence of the police officials, who are interested in the outcome of the result of the case, needs to be carefully scrutinized and independently appreciated. The police officials do not suffer from any disability to give evidence and the mere fact that they are police officials does not by itself give rise to any doubt about their credit worthiness placed reliance on the uncorroborated testimony of the Police Inspector in the case of possession of drug of small quantity. "

16. Therefore, from the testimony of Doulatram Jogawat (P.W.5), who stands corroborated by the testimony of Ramchandra (P.W.3), a member of the trap party, it is well established that 450 kg. of opium poppy straw kept in 35 plastic bags was recovered from "*Dhalia*" (corridor) of the house where the appellant was residing.

17. As regards exclusive and conscious possession, the testimony of Shankarlal (P.W.9) and Anil Chouhan (P.W.10) is pertinent. Shankarlal (P.W.9) has clearly testified that the house of the appellant is situated in survey No.857

which is recorded in his name as per B/1 – “*Khatoni*” (Ex.P/35). Apart this, Anil Chouhan (P.W.10), who is the Secretary of Gram Panchayat, Dhodar has further stated on oath that House No.8 from where the contraband was recovered belongs to appellant and that he personally knows about the fact that the house in question including “*Dhalia*” (corridor) is in possession of the appellant. The testimony of this witness has remained intact, despite searching cross-examination, therefore, we do not have the slightest hesitation in holding that the contraband was recovered from the exclusive and conscious possession of the appellant.

18. In view of the aforesaid analysis, it cannot be said that the learned trial Court has committed any factual or legal error in recording conviction against the appellant for offence under Section 8/15(C) of ‘the Act’. As regards sentence looking to the quantity of the contraband and other attending circumstances, in our opinion the sentence of 15 years R.I. is on higher side and hence, deserves to be appropriately reduced. In the facts and circumstances of the case, in our considered view, RI for a term of 12 years instead of 15 years will serve the ends of justice. Accordingly, we reduce the sentence from 15 years R.I. to 12 years R.I. Apart this, the appellant will also pay a fine Rs.1,50,000/- and in default of payment will further suffer one year’s R.I.

19. Resultantly, the appeal is partly allowed. The conviction recorded against the appellant for offence under Section 8/15-C of ‘the Act’ is hereby maintained, however, the custodial sentence imposed against the appellant is reduced as stated hereinabove.

Appeal partly allowed.

**I.L.R. [2017] M.P., 1960
APPELLATE CRIMINAL**

Before Mr. Justice Sanjay Yadav & Mr. Justice Sheel Nagu

Cr.A. No. 371/2000 (Gwalior) decided on 4 July, 2017

RAM SEVAK

... Appellant

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 300 Exception 4, 302/34 & 294 and Evidence Act (1 of 1872), Section 32 – Conviction – Dying Declaration – Held – Testimony of eye witnesses duly corroborated by

the dying declaration and medical evidences – Prosecution established beyond reasonable doubt that appellant caused fatal injuries to deceased resulting in his death – Further held – Incident occurred at spur of moment in the midst of hot talks – No previous enmity between accused and deceased nor the assailants have pre-planned the murder – Deceased succumbed to injuries after 11 days from date of incident – Accused entitled for benefit of Exception 4 to Section 300 IPC – Case would fall u/S 304 Part II IPC – Conviction modified accordingly – Appeal partly allowed. (Paras 12, 14 & 18)

क. दण्ड संहिता (1860 का 45), धारा 300 अपवाद 4, 302/34 व 294 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – दोषसिद्धि – मृत्युकालिक कथन – अभिनिर्धारित – चक्षुदर्शी साक्षीगण के परिसाक्ष्य की मृत्युकालिक कथन एवं चिकित्सीय साक्ष्यों द्वारा सम्यक् रूप से संपुष्टि की गई – अभियोजन ने युक्तियुक्त संदेह से परे यह स्थापित किया कि अपीलार्थी ने मृतक को घातक चोटें कारित की जिसके परिणामस्वरूप उसकी मृत्यु हुई – आगे अभिनिर्धारित – घटना, कहासुनी के मध्य क्षणिक आवेग में घटित हुई – अभियुक्त एवं मृतक के बीच कोई पुरानी शत्रुता नहीं, न ही हमलावरों ने हत्या पूर्वनियोजित की थी – घटना से 11 दिनों के पश्चात्, मृतक की चोटों के कारण मृत्यु हो गई – अभियुक्त भारतीय दंड संहिता की धारा 300 के अपवाद 4 का लाभ पाने का हकदार है – प्रकरण भारतीय दण्ड संहिता की धारा 304 भाग II के अन्तर्गत आयेगा – दोषसिद्धि तदनुसार उपांतरित – अपील अंशतः मंजूर।

B. Penal Code (45 of 1860), Section 302 & 304 Part II – Sentence – Conviction modified from Section 302 IPC to one u/S 304 Part II IPC – Appellant was in custody since 12.06.1998 and remained in jail custody till 12.03.2004 – Appellant sentenced to the period already undergone. (Para 20)

ख. दण्ड संहिता (1860 का 45), धारा 302 व 304 भाग II – दण्डादेश – दोषसिद्धि को भारतीय दण्ड संहिता की धारा 302 से भारतीय दण्ड संहिता की धारा 304 भाग II के अंतर्गत उपांतरित किया गया – अपीलार्थी दिनांक 12.06.1998 से अभिरक्षा में था तथा दिनांक 12.03.2004 तक जेल अभिरक्षा में रहा – अपीलार्थी को पूर्व में भुगती गई अवधि से दण्डादिष्ट किया गया।

Cases referred :

(2017) 3 SCC 247, (1989) 2 SCC 217, (2008) 15 SCC 590.

J U D G M E N T

The Judgment of the Court was delivered by :
SANJAY YADAV, J. :- Karan Singh, Narayan Singh, Nahar Singh and the present appellant-Ramsevak were tried for an offence under section 302/34 and 294 IPC for causing murder of one Ramavtar on 11.4.1998 Whereas Karan Singh, Narayan Singh and Nahar Singh have been acquitted of the charges under section 302/34 and 294 IPC, the appellant has been held guilty of causing murder of Ramavtar convicted and sentenced to life and fine of Rs. 1000/- with default clause vide judgment dated 24.3.2000.

2. The prosecution was set in motion on the information received from Lachhiram (PW.1) on 11.4.1998 at 21 hours of P.S.Mau, District Bind that at 7:00 PM while moving in his field on thresher he heard Karan Singh, Narayan Singh, Ramsevak (appellant) and Nahar Singh playing objectionable song on the DJ, when they were asked by his brother Hukum Singh not to play such song there was heated arguments and the accused person started abusing Hukum Singh, at that moment Ramavtar came running who also objected to the foul language being used. At that moment, Karan Singh, Narayan Singh and Nahar Singh caught hold of Ramavtar and Ramsevak (appellant) struck a blow over his head with "*Pharsa*" as a result whereof Ramavtar fell down and the assailant ran away from the scene of crime. The injured Ramavtar was brought to police station where from he was referred to hospital and a complaint was registered vide FIR (Ex.P.1). In hospital the injuries were examined by Dr. B. Argal (PW.6) which were noted in MLC (Ex.P.7). The statement of the injured was recorded on 12.7.1999 at 12:00 Noon. As the victim succumbed to the injuries, the dead body was sent for postmortem which was performed by Dr. Madhup Kumar (PW.8). Appellant was arrested on 19.4.1998. At his instance "*Pharsa*" used for commission of crime was recovered and seized on 12.6.1998. Naksha Panchayatnama, Ex.P.3 was prepared. After further investigation charge-sheet was filed. Charges of murder of Ramavtar and unlawful assembly were framed. Accused abjured the guilt and claimed trial.

3. Prosecution to bring home the charges examined 16 witnesses. Of these, Lachhiram (PW.1), Hukum Singh (PW.2), Janak Singh (PW.3) are eye-witnesses. Dr. B. Argal, who initially examined the deceased was examined as PW.6 and the statement of the injured was also recorded vide Ex.P.8. Whereas Dr. Madhup Kumar, who performed autopsy was examined as PW.8. The appellant in defence examined Shyamlal (DW.1), Rajendra Singh (DW.2),

Kokila Bai (DW.3) and Bebi Bai (DW.4) as defence witnesses. The Trial Court on the basis of testimony of eye-witnesses and the dying declaration corroborated with the medical evidence on record, recorded the finding against the appellant. The Trial Court discarded the defence of the appellant.

4. None appeared for the appellant on 4.7.2017 in view of the boycott call given by the Members of the Bar vide resolution dated 4.7.2017. Even the legal aid counsel was not available for appointment as *amicus curiae* nor the State Counsel came to assist the Court. In absence of any representation on the part of the members of the Bar, production warrant was issued to provide an opportunity to the appellant to explain the facts. Such recourse has been taken in view of the fact that the offence is of 1998 and the appellant is in custody for about 16 years. Therefore, there was no other option to hear the accused.

5. The appellant appearing is person pointed out that the prosecution story is false and therefore, conviction is not sustainable.

6. Ex.P.8 is a statement of the deceased recorded on 12.4.1998 at 12:00 Noon, wherein he stated as under:

“मरणासन्न कथन

तुम्हारा नाम क्या है	—	राम अवतार सिंह
तुम्हारे पिता का नाम क्या है	—	लक्ष्मीराम
तुम्हारी उम्र कितनी है	—	18-19 वर्ष
तुम कहाँ रहते हो	—	भूरा बदेरा
तुम्हारी जाति क्या है	—	जाटव
झगड़ा कैसे हुआ	—	करीब 6-8 बजे शाम
खलियान से घर आ रहा था रास्ते में मेरे चाचा हुकमसिंह से रामसेवक मेहतार गांव के के साथ मुहवाद हो रहा था मैंने उनसे गाली क्यों दे रहे हो। इस पर वह मुझसे भी गाली देने लगा इसके बाद वहाँ मौजूद उसके लड़का नाहर सिंह ने, करनसिंह पुत्र पक्षी जाटव ने मुझे पकड़ लिया तथा रामसेवक ने मेरे सिर में फर्सा मारा मैं वहाँ गिर गया मुझे नहीं मालूम फिर क्या हुआ।		
तुम्हारी पहले से कोई रंजिस थी	—	नहीं
तुम्हें और कुछ कहना है	—	नहीं”

7. The statement was recorded after the authorization by the competent authority, by Dr.B.Argal (PW.6), who in his statement affirmed the same and

further averred that the injured was fully conscious and was mentally fit to record the statement. Lachhiram (PW.1), Hukum Singh (PW.2), Janak Singh (PW.3), who witnessed the incident clearly stated that appellant caused injury over the head of the deceased with "Pharsa". Dr. B. Argal (PW.6) also examined the injured and recorded the injuries vide MLC, Ex.P/7 which reads thus:

"(1) Incised wound, 2"x1/2" x skin muscle deep clotted blood present on wound margins are clean cut. Frontol region of head at mid line placed vertical, by Hard and Sharp object. Nature of Injury; Simple, may be changed after X-ray report and treatment. Report of Neurosurgeon. Duration: within 24 hours".

8. Dr. Madhup Kumar (PW.8), who performed autopsy in his testimony stated that, the deceased was having following injuries over the body:

"(1) Scalp ecchymosed. Underneath and around the external Hurt No. (1) on vertex parieto-frontal and parieto-occipital region in an area of 19 cms x 12 cms antero-posteriorly located 6 cms above glabella +++.

(b) Scalp also ecchymosed on left ++ temporo-parietofrontol region in 7cms x 5cms area.

(2) Cranial vault is fractured underneath ext. hurt no.(1) around regina of which anterior triangular portion shows depressed fracture right lateral part also depressed but posterior is fissured fractured.

(b) Sutural separation of left coronal for 11 Cms. Margins are abraded underneath the depressed fracture of cranial vault but not lacerated or torn.

(4) Both cerebral hemispheres are contused and partially lacerated with subarachnoid haemorrhage underneath ext. Hurt No.(1) 1 x 7 ½ cms x 5 cms antero-posteriorly situated area, ++

(b) subarachnoid hameorrhage is also + present on base of the brain (c/c of a)

(c) Subdural and subarachnoid haemorrhage on right

parietotemporooccipital region (C/c of (1) (b))

Note; All the hurts appear to be antemortem caused within one to two weeks.

The craniocerebral hurts are sufficient to cause death in ordinary course and appear to be inflicted by hard and blunt object.

Opinion: The death was due to cardio-respiratory failure as a result of craniocerebral hurts and their complications.

- The death appears to be homicidal.
- The duration of death is within 24 hours since postmortem examination.
- Clothings are preserved and handed over to the person concerned under sealed cover".

9. When the dying declaration and the testimony of eye-witnesses i.e. Lachhiram (PW.1), Hukum Singh (PW.2), Janak Singh (PW.3) corroborated with the medical evidence are collectively read and considered leaves no iota of doubt as to the appellant causing fatal injury to the deceased resulting in his death. Though it can be said that the eye-witnesses were the close relative of the deceased, however, the sequence of events establishes that the incident having occurred near the house of Lachhiram (PW.1), Hukum Singh (PW.2), Janak Singh (PW.3) in the vicinity whereof the appellant along with three others were playing objectionable song on the DJ, the presence of Lachhiram (PW.1), Hukum Singh (PW.2), Janak Singh (PW.3) at the scene of incident cannot be ruled out.

10. Trite it is that in the matter where the prosecution case rests upon the evidence of related witnesses the Court shall scrutinize the evidence with care as a rule of prudence and not as a rule of law.

11. In *Arjun vs State of Chhattisgarh* (2017) 3 SCC 247, it is held :

"11. ... Where the prosecution case rests upon the evidence of a related witness, it is well-settled that the court shall scrutinize the evidence with care as a rule of prudence and not as as rule of law. The fact of the witness being related to the victim or deceased does not by itself discredit the evidence.

12. In *Mano Dutt vs State of Uttar Pradesh* (2012) 4 SCC 79, this Court held as under:-

"33. The court can convict an accused on the statement of a sole witness, even if he was a relative of the deceased and thus, an interested party. The condition precedent to such an order is that the statement of such witness should satisfy the legal parameters stated by this Court in a catena of judgments. Once those parameters are satisfied and the statement of the witness is trustworthy, cogent and corroborated by other evidence produced by the prosecution, oral or documentary, then the court would not fall in error of law in relying upon the statement of such witness. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure its defect. Reference in this regard can be made to the judgment of this Court, in *Anil Phukan v. State of Assam* (1993)3 SCC 282".

12. In view whereof the evidence of Lachhiram (PW.1), Hukum Singh (PW.2), Janak Singh (PW.3) cannot be ignored. When the testimony of these eye-witnesses are considered in the context of the injuries sustained and the dying declaration as also the medical evidence, we are of the considered opinion that the prosecution succeeds in establishing the offence committed by the appellant beyond reasonable doubt as would leave any scope of interference.

13. In view whereof, there is no discrepancy in the conclusion arrived at by the trial Court. We are therefore, not inclined to interfere with the said conviction.

14. The question, however, is whether in the given facts when the incident had occurred in, at spur of moment in the midst of hot-talks and the findings by the trial Court that there was no previous enmity nor the assailants have pre-planned the murder, whether conviction of the appellant under Section 302 IPC is sustainable or the appellant would be benefited by Exception 4 to Section 300 IPC which provides-

"Exception 4. Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.- It is immaterial in such cases which party offers the provocation or commits the first assault."

15. In *Surinder Kumar vs Union Territory, Chandigarh* (1989) 2 SCC 217, it is held :

"7- To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant nor is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly. In the present case, the deceased and PW 2 had entered the room occupied by Sikander Lal and his family members and had demanded vacant possession of the kitchen. When they found that the appellant was disinclined to handover possession of the kitchen, PW 2 quarreled and uttered filthy abuses in the presence of the appellant's sister. On the appellant asking him to desist he threatened to lock up the kitchen by removing the utensils, etc., and that led to a heated argument between the appellant on the one side and PW 2 and his deceased brother on the other. In the course of this heated argument it is the appellant's case that PW 2 took out a knife from his pant pocket. This part of the appellant's case seems to be probable having regard

to the antecedents of PW 2. It is on record that PW 2 was convicted at Narnaul on two occasions under Section 411, IPC and his name was registered as a bad character at the local police station. It was presumably because of this reason that he had shifted from Narnaul to Chandigarh a couple of years back and had started to live in the premises rented by PW 4. When the appellant found that PW 2 had taken out a pen knife from his pocket he went into the adjoining kitchen and returned with a knife. From the simple injury caused to PW 2 it would appear that PW 2 was not an easy target. That is why the learned Sessions Judge rejected the case that Amrit Lal had held PW 2 to facilitate an attack on him by the appellant. It further seems that thereafter a scuffle must have ensued on Nitya Nand intervening to help his brother PW 2 in which two minor injuries were suffered by the deceased on the left arm before the fatal blow was inflicted on the left flank at the level of the 5th rib about 2" below the nipple- It may incidentally be mentioned that the Trial Court came to the conclusion that the injury found on the neck of PW 2 was a self inflicted wound and had therefore acquitted the appellant of the charge under Section 307, IPC, against which no appeal was carried. We have, however, proceeded to examine this matter on the premise that PW 2 sustained the injury in the course of the incident. From the above facts, it clearly emerges that after PW2 and his deceased brother entered the room of the appellant and uttered filthy abuses in the presence of the latter's sister, tempers ran high and on PW 2 taking out a pen knife the appellant picked up the knife from the kitchen, ran towards PW 2 and inflicted a simple injury on his neck. It would be reasonable to inter that the deceased must have intervened on the side of his brother PW 2 and in the course of the scuffle he received injuries, one of which proved fatal. Taking an overall view of the incident we are inclined to think that the appellant was entitled to the benefit of the exception relied upon. The High Court refused to grant him that benefit on the ground that he had acted in a cruel manner but we do not think that merely because three injuries were caused to the

deceased it could be said that he had acted in a cruel and unusual manner. Under these circumstances, we think it proper to convict the accused under Section 304, Part I, IPC and direct him to suffer rigorous imprisonment for 7 years".

16. In *Arumugam vs State Represented by Inspector of Police Tamilnadu* (2008) 15 SCC 590, it is held :

"9. The substantive plea relates to the applicability of Exception 4 of Section 300 IPC. For bringing in its operation it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

"17. The Fourth Exception of Section 300 IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1".

There is no previous deliberation or determination to fight. A

fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter.

18. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300 IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provisions means 'unfair advantage'.

19. Where the offender takes undue advantage or has acted in a cruel or unusual manner, the benefit of Exception 4 cannot be given to him. If the weapon used or the manner of attack by the assailant is out of all proportion, that circumstance must be taken into consideration to decide whether undue advantage has been taken. In *Kikar Singh v. State of Rajasthan* (AIR 1993 SC 2426) it was held that if the accused used deadly weapons against the unarmed man and struck a blow on the

head it must be held that using the blows with the knowledge that they were likely to cause death, he had taken undue advantage."

17. In *Arjun vs State of Chhattisgarh* (2017) 3 SCC 247, it is held :

"22- The accused, as per the version of PW-6 and eye witness account of other witnesses, had weapons in their hands, but the sequence of events that have been narrated by the witnesses only show that the weapons were used during altercation in a sudden fight and there was no pre-meditation. Injuries as reflected in the post-mortem report also suggest that appellants have not taken "undue advantage" or acted in a cruel manner. Therefore, in the fact situation, exception (4) under Section 300 IPC is attracted. The incident took place in sudden fight as such the appellants are entitled to the benefit under Section 300 exception (4) IPC.

23. When and if there is intent and knowledge, then the same would be a case of Section 304 Part I IPC and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II IPC. Injuries/incised would caused on the head i.e. right parietal region and right temporal region and also occipital region, the injuries indicate that the appellants had intention and knowledge to cause the injuries and thus it would be a case falling under Section 304 Part I IPC. The conviction of the appellants under Section 302 read with Section 34 IPC is modified under Section 304 Part I IPC. As per the Jail Custody Certificates on record, the appellants have served 9 years 3 months and 13 days as on 2nd March, 2016, which means as on date the appellants have served 9 years 11 months. Taking into account the facts and circumstances in which the offence has been committed, for the modified conviction under Section 304 Part I IPC, the sentence is modified to that of the period already undergone".

18. In the case at hand in dying declaration the victim has clearly stated that there were hot-talks between the accused and his uncle Hukum Singh. In

reply to as to whether there was any previous enmity, he categorically gives an answer in negative. The said fact also gets confirmed from the testimony of eye-witnesses Lachhiram (PW.1), Hukum Singh (PW.2), Janak Singh (PW.3) that the incident had occurred in spur of moment and there was no premeditation. Even the injured succumbed to the injuries on 21.4.1998 after 11 days and as per the opinion by Dr. B. Argal (PW.6), who initially examined the injured, the injuries were simple.

19. In view whereof, we are of the considered opinion that the present matter would fall under Part II of Section 304 IPC.

20. Accordingly, the conviction is modified from Section 302 IPC to conviction under Section 304 Part II IPC. It is observed that the appellant was taken to custody on 12.6.1998 and remained in jail custody till 12.3.2004. We therefore, sentence the appellant to the period already undergone.

21. Appeal partly allowed.

Appeal partly allowed.

I.L.R. [2017] M.P., 1972

CRIMINAL REVISION

Before Mr. Justice S.K. Palo

Cr.R. No. 687/2015 (Jabalpur) decided on 15 March, 2017

NIRMALADHURVE (SMT.)

...Applicant

Vs.

RAMGOPAL

...Non-applicant

A. *Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Cruelty – Desertion – Entitlement – Family Court dismissed wife's application for maintenance – Challenge to – Held – Wife filed a complaint under Domestic Violence Act which was later compromised – Subsequently, she filed a complaint u/S 498-A IPC, hence it is incorrect to say that in last 6 years wife did not lodge any report or complaint against husband – Wife suffering from disease of fits and husband is not providing any maintenance when she need it the most – Wife entitled for maintenance – Husband directed to pay Rs. 2000 p.m. to wife as maintenance from date of impugned order of family Court alongwith Rs. 3000 as cost of present revision – Revision allowed.*

(Para 17)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 -भरणपोषण - क्रूरता - अभित्यजन - हकदारी- कुटुम्ब न्यायालय ने भरणपोषण हेतु पत्नी का आवेदन खारिज किया - को चुनौती - अभिनिर्धारित - पत्नी ने घरेलू हिंसा अधिनियम के अंतर्गत परिवाद प्रस्तुत किया जिसमें बाद में समझौता हुआ - तत्पश्चात् उसने धारा 498-ए भा.दं.सं. के अंतर्गत परिवाद प्रस्तुत किया अतः यह कहना गलत है कि पिछले 6 वर्षों में पत्नी ने पति के विरुद्ध कोई रिपोर्ट या शिकायत दर्ज नहीं की - पत्नी फिट की बीमारी से ग्रस्त एवं पति कोई भरणपोषण प्रदान नहीं कर रहा है जब उसे सर्वाधिक आवश्यकता है - पत्नी भरणपोषण हेतु हकदार - पत्नी को वर्तमान पुनरीक्षण के खर्चों के रूप में रु. 3000/- के साथ, कुटुम्ब न्यायालय के आक्षेपित आदेश की तिथि से भरणपोषण के रूप में रु. 2000/- प्रति माह अदा करने के लिए पति को निदेशित किया गया - पुनरीक्षण मंजूर।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 125 - Cruelty - Delayed Police Report - Held - Regarding misbehaviour and cruelty, generally wife does not lodge a report so that situation should not aggravate thinking that some day behaviour would change and she will tend to live in her matrimonial home, but when things go out of control and become intolerable, wife takes the drastic step of lodging report against husband finding no chance of any reconciliation.
(Para 6)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 -क्रूरता - विलंबित पुलिस रिपोर्ट- अभिनिर्धारित - दुर्यवहार एवं क्रूरता के संबंध में सामान्यतः पत्नी रिपोर्ट दर्ज नहीं करती ताकि स्थिति और गुरुतरकारी ना हो जाए, यह सोचते हुए कि किसी दिन व्यवहार बदल जाएगा और वह अपने दाम्पत्य निवास में रह सकेगी, परंतु जब स्थितियां नियंत्रण से बाहर चली जाती हैं और असहनीय हो जाती हैं, पत्नी किसी सुलह की उम्मीद न पाते हुए पति के विरुद्ध रिपोर्ट दर्ज करने का आत्यंतिक कदम उठाती है।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 125 - Fundamental Principle - Held - The inherent and fundamental principle behind Section 125 Cr.P.C. is for amelioration of the financial state of affairs as well as mental agony and anguish which a woman suffers when she is compelled to leave her matrimonial home.
(Para 9)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 -मूलभूत सिद्धांत - अभिनिर्धारित - धारा 125 दं.प्र.सं. के पीछे अंतर्निहित एवं मूलभूत सिद्धांत, वित्तीय दशा को सुधारने के साथ साथ मानसिक पीड़ा एवं मनःस्ताप दूर करने हेतु है जिसे एक महिला सहन करती है जब उसे उसके दाम्पत्य निवास छोड़ने

1974 Nirmala Dhurve (Smt.) Vs. Ramgopal

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के लिए विवश किया जाता है।

Cases referred:

(2015) 5 SCC 705, 1990 MPLJ 332 (MP), 2005 (3) MPLJ 124 (MP), 1998 Cr.L.J. 2403 Orissa, 1998 Cr.L.J. 2672 Calcutta, 1996 Part-II MPWN 142 MP.

Alok Nayak, for the applicant.

R.P. Mishra, for the non-applicant.

J U D G M E N T

S.K. PALO, J. :- This revision under section 397 read with section 401 of the Code of Criminal Procedure and under section 19(4) of the Family Courts Act has been filed assailing the order dated 24.12.2014 passed by Family Court, Chhindwara in Misc. Criminal Case No.357/2014 whereby the application for maintenance under section 125 of the Code of Criminal Procedure filed by the petitioner/wife has been disallowed.

2. It is not disputed that the applicant-Smt.Nirmala Dhurve is the legally wedded wife of the respondent/husband. Her marriage was performed with the respondent on 08.3.2007 at Shivnagar, Chhindwara. The applicant-wife has been suffering from fits and is residing separately from the respondent-husband. The respondent/husband is not providing any maintenance to the applicant/wife.

3. The applicant-wife filed an application under section 125 of the Code of Criminal Procedure for maintenance before the Family Court, Chhindwara claiming that she has been suffering from fits before marriage and after marriage she was under treatment. She claimed that the respondent/husband treated her with cruelty. She was being abused by obscene words and she was being asked to perform the domestic work and asked to do work in the agricultural field. Her husband used to come in intoxicated state and beat her. She was not being treated properly for her ailment. She was being treated by local quacks. Therefore, she left her matrimonial home. She claimed the the respondent/husband is having agricultural land, tractor, etc. and earning Rs. 5,00,000/- per year through agriculture. He also gets Rs. 10,000/- per month by renting out the tractor for transportation of building material, etc. Therefore, she claimed Rs. 10,000/- per month as maintenance.

4. The respondent/husband denied all the averments and pleaded that it was not communicated to him before marriage that the applicant was suffering from fits. However, she was provided treatment. She wanted to live with the applicant/wife. Whereas, she did not want to live at her matrimonial home. She was never asked to do any agricultural or domestic work. He further submits that he has liability of his parents to lookafter. The applicant by stitching clothes earns Rs. 300/- per day. The respondent/husband claimed that for six long years he live together, but a single complaint has not been filed alleging ill-treatment of mal-treatment with the applicant.

5. Learned Family Court after due consideration of the evidence adduced held that the applicant/wife has agreed in her statement that she has no emotional attachment, love and affection with her husband, has drawn inference that the applicant/wife has no intention to live with her husband. But, the trial Court failed to consider that in addition to this statement made by the applicant, she added *suo motu* that because the respondent/husband is not keeping her properly.

6. As regarding misbehaviour or cruelty caused to the petitioner-wife, it would not be exaggerate to state that, in such a situation generally the wife does not lodge a report so that the situation should not aggravate thinking that some day the behaviour would change and she tend to live in her matrimonial home. But, when things go out of control and became intolerable, the wife takes the drastic step of lodging the report, against her husband, finding no chance of any re-conciliation.

7. In the present case also the petitioner/wife lodged the report before Mahila Thana under the provision of Protection of Woman from Domestic Violence Act, which was later dropped, because of the successful reconciliation. Hence, it would not be correct to say that in the last 6 years, the petitioner-wife did not lodge any report or complaint against the respondent/husband. Hence, it would be presumed that no such ill-treatment was caused. There can be no other reason to leave the husband's house. It can also be inferred that because she was suffering from fits, she was being ill-treated and mal-treated. In this regard, including the statement of the applicant, statement of Rajkumar Uikey (AW.2) can also be referred profitably. AW-2/Rajkumar is the brother of the petitioner-wife. He accompanied the petitioner to lodge the report.

8. Ramgopal/respondent-husband in his testimony has submitted that it was not informed to him that Nirmala is a patient of fits. After her marriage, he was intimated about this ill-ness. He accepted that in the case of domestic violence, he entered into compromise and brought the petitioner/wife with him. But, after sometime, she lodged the report under section 498-A of the Indian Penal Code.

9. The inherent and fundamental principle behind section 125 of the Code of Criminal Procedure is for amelioration of the financial state of affairs as well as mental agony and anguish which a woman suffers when she is compelled to leave her matrimonial home.

10. In *Shamima Farooqui vs. Shahid Khan*, (2015) 5 SCC 705 the Hon'ble Apex Court observed that the statute commands that there has to be some acceptable arrangements (sic:arrangements) so that she can sustain herself. As long as the applicant is alive, she is entitled to grant maintenance within the parameters of section 125 of the Code of Criminal Procedure. It has to be adequate so that she can live with dignity, as she would have lived in her matrimonial home. She cannot be compelled to become destitute or beggar. The principle of sustenance gets more heightened when she needs treatment. The sustenance does not mean and can never be allowed to mean mere survival. The Hon'ble Apex Court in the case of *Shamima Farooqui* (supra) has observed that the woman who is constrained (sic:constrained) to leave marital home should not be allowed to feel that she has fallen from the grace and move hither and thither arranging for sustenance. She is entitled to lead life in the similar manner as she would have lived in the house of her husband.

11. In the present case, learned trial Court erred in assessing the evidence. The applicant-wife, when she was ill-treated and mal-treated, has the right to live separately and this cannot be termed as desertion (sic:desertion).

12. In the case of *Durga Singh Lodhi vs. Prembai and others*, 1990 MPLJ 332 (MP) and *Hari Mangal @/Hari Singh vs. Phool Kunwar*, 2005 (3) MPLJ 124 (MP), this Court has held that if the husband is a able bodied and is capable of earning, then he is responsible for maintenance of his wife and he cannot eschew from his responsibility on the ground that he has no property or source of income.

13. In the present case, the respondent has stated that he has agricultural land and is earning by doing labour work. It is not his stand that he is not able

bodied and not healthy person. Therefore, he is bound to pay maintenance to the petitioner-wife.

14. In the case of *Gopinath vs. Smt. Renu Nayak*, 1998 Cr.L.J. 2403 Orissa and *Ali Hussai vs. Baby Farida Khatun*, 1998 Cr.L.J. 2672 Calcutta it is held that burden lies on the husband to let the court know about his income from all the sources so that the court may decide maintenance allowance by taking into consideration his entire income. In the present case, the petitioner has to disclose his income from all sources. However, he admitted that he earns his livelihood by doing manual works. He claimed that the petitioner-wife is earning by stitching clothes. But, he has not substantiated by any evidence. Even though, if it is considered that she earns something for filling her stomach, it cannot be held that she is not entitled to maintenance from her husband.

15. As it has been held earlier that petitioner/wife is living separately because she was subjected to cruelty and was not being provided proper medical treatment. She has the right to live separately from her husband. Hence, she is entitled to claim maintenance from her husband. In the case of *Lajja Bai vs. Ram Singh*, 1996 Part-II MPWN 142 MP it is held that if a woman is living separately from her husband to avoid dowry-related harassment and torture, then she is entitled to live separately and she can claim maintenance from her husband.

16. Keeping in view the above circumstances and the fact that husband is not providing any maintenance to her, whereas she is having ailment, therefore, she needed the most. Rejection of the application under section 125 Cr.P.C., neither proper nor good in the eye of law. The learned trial Court failed to appreciate the evidence.

17. This revision is allowed and this Court record the consequential conclusion that the petitioner is entitled for maintenance from the respondent/husband. The respondent/husband is, therefore, directed to pay maintenance to the tune of Rs. 2,000/- per month to the petitioner/wife from the date of order (i.e. 24.12.2014). Besides this, the petitioner is also entitled to receive an amount of Rs. 3,000/- as cost of this revision from the respondent/husband.

18. Accordingly, the revision is disposed of.

Revision allowed.

1978 Laxmi Verma (Smt.) Vs. Sharik Khan (DB)

I.L.R.[2017]M.P.

I.L.R. [2017] M.P., 1978

CRIMINAL REVISION

Before Mr. Justice S.K. Gangele & Mr. Justice Subodh Abhyankar

Cr.R. No. 958/2008 (Jabalpur) decided on 4 May, 2017

LAXMI VERMA (SMT.)

...Applicant

Vs.

SHARIK KHAN & ors.

...Non-applicants

(Alongwith Cr.A. No. 548/2009)

A. Penal Code (45 of 1860), Section 302 & 364-A – Abduction & Murder – Circumstantial Evidence – Appreciation of Evidence – Deceased, a 14 years old boy was abducted and subsequently murdered – Offence registered against Sharik, Athar Ali and Salman – Acquittal from trial Court – Appeal against acquittal – Held – So far as evidence of last seen together, eye witness Pankaj (cousin of deceased) deposed that he saw accused persons in motor cycle alongwith deceased but he never disclose the same knowing that his brother is missing till dead body was found – His testimony is not reliable – Similarly, recovery of body at the instance of Sharik is also doubtful – Hence appeal against Sharik and Salman dismissed – Further held – Call for ransom made to parents of deceased and through IMEI number it was traced that it was mobile set of Athar Ali and it was also established that he used the mobile set with a fake sim to make the calls – There is clinching evidence against Athar Ali and his involvement in crime cannot be brushed aside – Appeal against Athar Ali is allowed – Sentence of life imprisonment imposed. (Paras 20 to 24)

क. दण्ड संहिता (1860 का 45), धारा 302 व 364-ए – अपहरण एवं हत्या – परिस्थितिजन्य साक्ष्य – साक्ष्य का मूल्यांकन – मृतक एक 14 वर्षीय बालक, का अपहरण किया गया और तत्पश्चात् हत्या की गई थी – शरीक, अतहर अली एवं सलमान के विरुद्ध अपराध पंजीबद्ध किया गया – विचारण न्यायालय से दोषमुक्ति – दोषमुक्ति के विरुद्ध अपील – अभिनिर्धारित – जहां तक अंतिम बार एक साथ देखे जाने का साक्ष्य है, चक्षुदर्शी साक्षी पंकज (मृतक का रिश्ते का भाई) ने अभिसाक्ष्य दिया है कि उसने अभियुक्तगण को मोटरसाईकिल पर मृतक के साथ देखा था परंतु उसने यह जानते हुए भी कि उसका भाई लापता है, उक्त का प्रकटन कभी नहीं किया जब तक शव नहीं मिला था – उसका परिसाक्ष्य विश्वसनीय नहीं – इसी प्रकार, शरीक की निशानदेही पर शव की बरामदगी भी संदेहास्पद है – अतः, शरीक एवं सलमान के विरुद्ध अपील खारिज – आगे अभिनिर्धारित – फिरोती के लिए मृतक के

माता-पिता को किये गये कॉल एवं आई.एम.ई.आई. नंबर के जरिए यह पता लगाया गया कि वह अतहर अली का मोबाईल सेट था और यह भी स्थापित किया गया था कि उसने नकली सिम के साथ मोबाईल सेट का उपयोग कॉल करने के लिए किया था - अतहर अली के विरुद्ध निश्चित साक्ष्य है और अपराध में उसकी संलिप्तता को नकारा नहीं जा सकता - अतहर अली के विरुद्ध अपील मंजूर की गई - आजीवन कारावास का दण्डादेश अधिरोपित किया गया।

B. Evidence Act (1 of 1872), Section 65-B – Electronic Evidence – Admissibility – In the present case, call statements of mobile and the landline data produced were duly certified by the office of concerned Telecom department – There is a compliance of Section 65-B of the Evidence Act – Athar Ali failed to discharge the burden which was shifted on him in the form of electronics and documentary evidence, which established that call for ransom was made by Athar Ali. (Para 14 & 15)

ख. साक्ष्य अधिनियम (1872 का 1), धारा 65-बी – इलेक्ट्रॉनिक साक्ष्य – ग्राह्यता – वर्तमान प्रकरण में, प्रस्तुत किये गये मोबाईल के कॉल विवरण एवं लेन्डलाइन डाटा को दूरसंचार विभाग के संबंधित कार्यालय द्वारा सम्यक् रूप से प्रमाणित किया गया – साक्ष्य अधिनियम की धारा 65-बी का अनुपालन हुआ है – अतहर अली, इलेक्ट्रॉनिक एवं दस्तावेजी साक्ष्य के रूप में उस पर आए भार को उन्मोचित करने में विफल रहा जो स्थापित करता है कि फिरौती हेतु कॉल, अतहर अली द्वारा किया गया था।

C. Criminal Practice – Related witness – Credibility – Held – Discarding the evidence of the prosecution witness at the outset only on the ground of his being a relative of deceased, was uncalled for – Findings recorded by Trial Court regarding evidentiary value of such deposition of witness is *ex-facie* wrong and cannot be sustained – Recovery of mobile hand set with suspected IMEI number from Athar Ali stands proved. (Para 13)

ग. दण्डिक पद्धति – संबंधी साक्षी – विश्वसनीयता – अभिनिर्धारित – अभियोजन साक्षी का साक्ष्य केवल वह मृतक का रिश्तेदार होने के नाते आरंभ में ही अस्वीकार करना आवश्यक नहीं था – साक्षी के उक्त अभिसाक्ष्य के साक्ष्यिक मूल्य के संबंध में विचारण न्यायालय द्वारा अभिलिखित निष्कर्ष प्रत्यक्षतः गलत हैं और कायम नहीं रखे जा सकते – अतहर अली से संदिग्ध आई.एम.ई.आई. के साथ मोबाईल हैंड सेट की बरामदगी साबित होती है।

Cases referred:

(2016) 4 SCC 96, (2015) 4 SCC 393, (2014) 10 SCC 264, (2014)

1980 Laxmi Verma (Smt.) Vs. Sharik Khan (DB) I.L.R.[2017]M.P.
12 SCC 279, 2007 LT (SC) 66, (2016) 10 SCC 537, (2011) 13 SCC 621,
(2011) 10 SCC 675.

Sanjay Agrawal and Darshan Soni, for the applicant in Cr.R. No. 958/2008.

Pradeep Singh, G.A. for the State.

Ahadulla Usmani with Amanulla Usmani, for the respondents No. 1 & 3 in Cr.A. No. 548/2009.

Manish Mishra, for the respondent No. 3 in Cr.A. No. 548/2009.

J U D G M E N T

The Judgment of the Court was delivered by :
SUBODH ABHYANKAR, J. :- Both these cases are being disposed by a common order as they arise out of the judgment of acquittal dated 18.2.2008 passed in ST No.68/2006 by the Sessions Judge, Bhopal, whereby the learned Judge has acquitted the respondents/accused viz. respondent No.1 Sharik Khan, respondent no.2 Athar Ali and respondent no.3 Salman alias Raja from the offences punishable under Sections 364-A, 302 read with Section 34 of IPC relating to abduction and subsequent murder of master Gaurav Verma aged 14 years.

2. Criminal Revision No.958/2008 has been preferred by the mother of the deceased-child Gaurav whereas the Cr.A.No.548/2009 has been preferred by the State.

3. In brief the facts of the case are that the charge sheet was filed by the police against the respondents No.1 to 3/accused for commission of offence punishable under Sections 364-A, 302, 201/34 of IPC on the allegation that on 22.11.2005 at around 12 O'clock in the noon the respondents/accused abducted Gaurav Verma aged 14 years and subsequently demanded a ransom of Rs.5 lakhs using a mobile No. 9827532060 on the land line No.2538836 belonging to Gaurav's mother/father and also committed the murder of Gaurav by throttling/beheading as the head was found separately. In support of the prosecution, as many as 23 witnesses have been examined.

4. In defence under Section 313 of Cr.P.C. the accused persons have denied all the charges leveled against them and have not led any evidence or examined any witness in their defence.

5. The learned Sessions Judge, Bhopal after appreciating the evidence

on record has acquitted the accused persons of the charges leveled against them by deprecating the conduct of the Investigation Officer/ Prosecution Agency and by giving benefit of doubt to all the three accused persons.

6. Learned counsel for the appellant State has criticized the judgement on the ground that the same is based on conjecture and surmises and undue benefit of doubt has been extended to the accused persons.

7. On the other hand, the learned counsel for the respondents has supported the finding recorded by the trial court and has further submitted that there is limited scope for interference in case of an appeal against acquittal and since the order impugned is reasoned one, no interference is called for.

8. Learned counsel for the respondents has also submitted that the respondents have been given clean chit by the learned Judge of the Trial Court after appreciating the evidence on merit and as such no interference is called for in the order of acquittal. In respect of appreciation of circumstantial evidence in the case of last seen together, learned counsel for the respondents has also relied upon the following judgments of the Hon'ble Apex Court :-

- i) (2016) 4 SCC 96 (Shahid Khan Vs. State of Rajasthan)
- ii) (2015) 4 SCC 393 (Ashok Vs. State of Maharashtra)
- iii) (2014) 10 SCC 264 (Sangili alias Sanganathan Vs. State of Tamil Nadu represented by Inspector of Police.
- iv) (2014) 12 SCC 279 (Krishnan @ Ramasamy & others Vs. State of Tamilnadu) which relates to evidence of abduction and murder and the evidence of last seen together.
- v) 2007 LT (SC) 66 (Harishchandra Ladaku Thangu Vs. State of Maharashtra).

Placing reliance on the aforesaid judgments, learned counsel for the respondents has submitted that in a case of circumstantial evidence, the circumstances from which inference as to the guilt of the accused is drawn, have to be proved beyond reasonable doubt and there should be a complete chain of evidence consistent only with the hypothesis of guilt of the accused and totally inconsistent with his innocence and in such a case if the evidence relied upon is capable of

two inferences then the one which is in favour of the accused must be accepted.

9. Heard the learned counsel for the parties and perused the record.

10. Before we proceed to deal with the evidence, it would be apt to be guided by a recent ruling of the Hon'ble Apex court in case of appreciation of evidence in an appeal against acquittal. The Apex court in the case of *Bhagwan Jagannath Markad v. State of Maharashtra*, (2016) 10 SCC 537 has held as under:-

"29. The learned counsel for the appellants also criticised the judgment of the High Court by submitting that the principles laid down by this Court in *Padam Singh*, *Devatha Venkataswamy*, *Narendra Singh*, *Prasanna Das*, *Majjal*, *Lalita Kumari* and *Baby* for exercise of appellate jurisdiction have not been followed. The appellate court should deal with reasons for acquittal and interfere only if acquittal is perverse. There is no doubt about the proposition that the appellate court has to arrive at an independent conclusion about the credibility of the evidence and to reappraise the evidence to arrive at a just conclusion. If the appellate court is to reverse the judgment of the trial court, the reasoning of the trial court has to be adverted to and reversal of acquittal is permissible only if the view of the trial court is not only erroneous but also unreasonable and perverse. At the same time, the appellate court has full power to review the evidence and to reach at its own conclusion. The appellate court can set aside the acquittal if the acquittal is not justified. Of course, the appellate court has to consider the fact that the trial court has the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the acquittal. If two reasonable conclusions can be reached, the appellate court should not disturb the finding of the trial court. In the present case, the High Court has followed the above principles.

30. In *Bava Hajee Hamsa* while approving the reversal of acquittal by the High Court, it was held that erroneous approach of the trial court led to misdirection in appraising the evidence and the High Court was justified in rejecting the approach of

the trial court and in analysing the evidence in its own way.

This Court observed: (SCC pp. 487-88, para 30)

"30. We agree with the High Court that the very "scheme of approach" adopted by the trial Judge was faulty and misleading. It led to aberration and misdirection in appraising evidence, and vitiated his conclusions. The learned trial Judge started correctly when on a broad look of the evidence, he found the evidence of PWs 1, 8 and 9 prima facie acceptable. But after the second lap of discussion, he became sceptical; and reversed his mind at the end of the third round of circumgyratory discussion. In such cases where large number of persons are involved and in the commotion some persons cause injuries to others and the evidence is of a partisan character, it is often safer for the Judge of fact to be guided by the compass of probabilities along the rock-ribbed contours of the case converging on the heart of the matter. Once the court goes astray from the basic features of the case, it is apt to lose itself in the labyrinths of immaterial details, desultory discussion and vacillation arising from unfounded suspicions. This is exactly what has happened in the instant case. Despite the pains taken and the conscientious effort put in to write an elaborate judgment, the trial Judge had, as it were, missed the wood for the trees. The learned Judges of the High Court were, therefore, right in discarding altogether the basically wrong "scheme of approach" adopted by the trial court, and in analysing the evidence in their own way."

(emphasis supplied)

Now, on the touchstone of the aforesaid principles as laid down by the Apex Court, we proceed to record our finding.

11. So far as the death of master Gaurav is concerned, it was indeed a

headless body of a boy around 14 years of age as recorded by PW/6 Dr. Athwal and has been identified by his father PW/12 Vinod Verma. Postmortem report dated 02.12.2005 has been exhibited as Ex.P/10 in which the cause of death is shown to be unknown. Dr.C.S.Jain PW/9 has examined the head which was recovered subsequently 04.12.2006 and he has stated that the possibilities of strangulation cannot be ruled out. Apparently, the body was of Gaurav Verma who was kidnapped on 22.11.2005, ransom calls were received by his parents as discussed in the subsequent paragraphs and his body was recovered on 01.12.2005, thus, it is a clear case of homicidal death of Gaurav. This Court has also no reason to disbelieve the finding recorded by the learned judge of the trial court in this behalf.

12. Coming to the kidnapping of master Gaurav, the missing person's report No.41/2005 is proved as Ex.P/28. It was lodged by PW/11 Laxmi Devi, the mother of the deceased on 24.11.2005 stating that Gaurav who was studying in class 9th was missing since 22.11.2005 from around 12 o'clock. In her statement she has also stated that on 27.11.2005 she received a call for ransom of Rs.5 lakhs and she was threatened that if the demand is not met, they would kill Gaurav soon thereafter, a caller ID was installed in her house and on 29.11.2005 at around 9 pm she received a call on her land line phone no.2538836 from the mobile no.9827532060 with the same demand and threat. Subsequently, FIR Ex.P/23 was lodged on 01.12.2005 by Sub-Inspector Umashankar Tiwari PW/16 at police station Tallaiya, Bhopal which set the investigation of the crime into motion.

13. So far as the involvement of accused Athar Ali is concerned, during the investigation the mobile no.9827532060 of Reliance Company from which ransom calls were made was traced back to one Sangram Singh which was obtained on the basis of a fake identity papers as Sangram Singh could never be traced but as the handset bearing IMEI (**International Manufacture Equipment Identity**) No.351478600620556 was seized from Athar Ali vide Ex.P/1 who was earlier using the same mobile set of Nokia company on the SIM No.9827082747. The recovery of handset from Athar Ali has been done by PW/17 Atik Ahmad Khan, I.O. and proved by Naresh Malviya PW/1. PW/1 Naresh has not been declared hostile and has supported the case of the prosecution. Thereafter, arrests were made of the accused persons Sharik, Athar Ali, and Salman on 01.12.2005 and around 9 days after 22.11.2005 body was got recovered by Sharik vide Ex.P/2 u/s.27 of the Evidence Act and

the body recovery memo is Ex.P/4 at around 5 pm in the evening in the presence of Vinod Verma PW/12, the father of Gaurav and one Gudaji Lal. PW/1 Naresh Malviya has been disbelieved by the learned judge of the trial court in para 41 of the judgement on the ground that he happens to be the maternal uncle of the deceased Gaurav. The aforesaid reasoning is based on a question put to this witness in his cross examination that he is the maternal uncle of Gaurav to which he has denied. In fact he has categorically stated that he is not related to the deceased Gaurav in any manner but PW/3 Pankaj Malviya has admitted in para 14 of his deposition that his mother's name is Sushila Bai who has two other sisters viz. Laxmibai who is Gaurav's mother and Kamlabai. He has stated that Naresh Malviya is his cousin brother as Naresh's mother Kamlabai is the sister of his mother Sushilabai. Otherwise also no suggestion has been made to PW/11 Laxmi Devi that Naresh Malviya is her relative. Similarly, the question put to PW/12 Vinod Verma in his cross examination is that Naresh Malviya is the son of Laxmidevi's sister which has also been denied by him, thus, to discard the evidence of Naresh at the outset only on the ground of his being a relative of deceased Gaurav was uncalled for. Hence the finding recorded by the learned judge regarding the evidentiary value of deposition of PW/1 Naresh Malviya is *ex-facie* wrong and cannot be sustained. **Thus, the recovery of mobile handset with IMEI No.351478600620556 from Athar Ali stands proved.**

14. Kapil Soni has been examined as PW/5. He happens to be Branch Manager of Reliance mobile company. He has exhibited P/7 and 8 which are covering letter and call statement of mobile no.9827532060 and mobile no.9827082747. Vide covering letter Ex.P/7 he has proved that mobile no.9827532060 belongs to Sangram Singh, 1100 Quarters, Arera Colony, Bhopal and also that mobile no.9827082747 belongs to Athar Ali, 7, Hawa Mahal Road, Bhopal and the call details of the aforesaid cell no. have been provided in Annexure-1 and 2 of the said covering letter. Annexure-2 has also been proved as Ex.P/6 In Annexure-1 it is clearly mentioned that from mobile no. 9827532060 bearing IMEI no.351478600620556 two calls were made on phone no.0755 2538836 (i.e. the phone no. of Vinod Verma and Laxmi Verma) on 27 and 29.11.2005 respectively. In Ex.P/8 it can be discerned that IMEI No.351478600620556 of both the mobile SIMs was the same. Meaning thereby that both these nos. were dialed from the same mobile handset which was earlier with Athar Ali and from which he had also called from his SIM no.9827082747. It is apparent from the testimony of this

witness that no challenge has been made to Annexure-1 and 2 filed as the part and parcel of covering memo Ex.P/7 and thus the aforesaid call details stands proved. No challenge to the Ex.P/6, P/7 and Annexure-1 or Ex.P/8 has been made by the defence and no question has been put to this witness that mobile no.9827082747 does not belong to Athar Ali. The only question put to this witness is that no documents of Athar Ali have been seized from this witness, which in the considered opinion of this court cannot be said to discredit documents Ex.P/6, P/7 and P/8. Otherwise also Covering letter Ex.P/7 containing the names and details of Sangram Singh and Athar Ali are based on actual hard copy record. Surprisingly, only a passing reference of this witness has been made by learned judge of the trial court in her judgement in which the prosecution has been lamented for faulty investigation. The documents so produced by Kapil Soni (PW-5) have been duly certified by the Reliance Telecom Limited, although no objection regarding compliance of provisions of Section 65-B of the Evidence Act has been raised by the parties, but this Court is of the opinion that the provisions of Section 65-B of the Evidence Act have been complied with.

15. The aforesaid facts are further substantiated by PW/22 W.M.Kumhare, Divisional Manager, BSNL who has produced the record of the landline phone no.2538836 and has admitted in his cross examination that on 29.11.2005 a call was made from mobile no.9827532060. So far as compliance of s.65-B of Evidence Act is concerned, similar is the situation in this case also as the landline data of Gaurav's parents landline phone is also certified by the office of the Divisional Engineer, Telecom Department, Bhopal.

16. When the question relating to 9827082747 was put to Athar Ali in his statement u/s.313 of Cr.P.C. that whether this SIM belongs to him or not, his only answer was, 'maloom nahi' (i.e. 'I do not know') and thus, he has failed to discharge the burden which was shifted on him in the form of electronics and documentary evidence. In the circumstances, in the considered opinion of this Court the call for ransom was made by Athar Ali only using his mobile hand set using the fake SIM in the name of Sangram Singh. In the circumstances, even assuming, for the sake of argument the recovery of mobile handset to be suspicious, the other clinching evidence in the form of electronics and other record cannot be brushed aside.

17. In this connection Rakesh Mohan Shukla, Sub-Inspector has been examined as PW/23. His job was to look after the electronic tracking and he

has also verified the IMEI No. of Nokia mobile seized from Athar Ali and the SIM Nos. 9827532060 and 9827082747 which were used on the said handset. He has also stated that SIM no.9827082747 was inserted in the said handset till 22.11.2005 and also that on 27.11.2005 and 29.11.2005 from the same hand set two calls were made on the landline number using the SIM no.9827532060.

18. At this juncture it would be apt to refer to the Apex Court's deliberations on the evidentiary value of IMEI No. In the case of *Mohd. Arif v. State (NCT of Delhi)*, (2011) 13 SCC 621 the relevant paras read as under:-

"58. However, even before that the investigating agency started investigation about the cell number which was found written in the slip which was found in the morning at about 5-6 a.m. This cell number was to provide a ray of light to the investigating agency which had no clue whatsoever till then about the perpetrators of the crime. Ultimately, the investigating agency on the basis of that number being 9811278510 not only unearthed the conspiracy but also reached the main players including the present appellant.

59. The investigation suggests that the said mobile number slip was assigned to Inspector Mohan Chand Sharma (PW 229). This was a mobile number on the basis of the cash card. At the relevant point of time, the cash card implied a SIM card, a SIM card loaded with prepaid value and such SIM cards were readily available in the open market. There was no necessity of registering with the service provider for obtaining a mobile connection through cash card. All that was required was activation by the service provider without which the cash card or the SIM card as the case may be could not be used.

60. It has come in the evidence that the active mobile phone has two components i.e. the mobile instrument and the SIM card. Every mobile instrument has a unique identification number, namely, instrument manufactured equipment identity (for short "IMEI number"). Such SIM

card could be provided by the service providers either with cash card or post-paid card to the subscriber and once this SIM card is activated the number is generated which is commonly known as mobile number. The mobile service is operated through a main server computer called mobile switching centre which handles and records each and every movement of an active mobile phone like day and time of the call, duration of the call, calling and the called number, location of the subscriber during active call and the unique IMEI number of the instrument used by the subscriber during an active call. This mobile switching centre manages all this through various sub-systems or sub-stations and finally with the help of telephone towers. These towers are actually base transceiver stations also known as BTS. Such BTS covers a set of cells each of them identified by a unique cell ID. A mobile continuously selects a cell and exchanges data and signalling traffic with the corresponding BTC. Therefore, through a cell ID the location of the active mobile instrument can be approximated.

61. As per the evidence of Inspector Mohan Chand Sharma (PW 229) he collected the call details of the said mobile number which was received in a computer installed in his office at Lodhi Road. He found that Mobile Phone No. 9811278510 was constantly used from Zakir Nagar and at that time the IMEI number of the cellphone instrument used was 445199440940240. It was found that the said number was also used for making calls to Pakistan. However, from 11-12-2000, the IMEI number of Mobile Phone No. 9811278510 was changed to IMEI No. 449173405451240. It transpired from the evidence that this IMEI number, that the Mobile Phone No. 9811278510 with the changed IMEI number had also made calls to landlines which were discovered to be belonging to BBC, Srinagar and BBC, Delhi. These calls were made almost immediately after the incident of shoot-out. This number was also used for making calls to Pakistan and pager

numbers at Srinagar, 01949696 and 0116315904. The latter number was found to be in the name of Mohd. Danish Khan at 18-C, Gaffur Nagar i.e. the computer centre run by the appellant-accused. It was also found that from this number calls were made to 0113969561 which was found to have been installed at the shop of one Sher Zaman who was allegedly an absconding accused and the hawala operator.

62. The analysis of call details of Mobile No. 9811278510 suggested that the said mobile number was used in two mobile instruments having the aforementioned IMEI numbers. This was done in case of Cell No. 9811278510 with IMEI No. 445199440940240 only between 26-10-2000 to 14-11-2000 and recovered instrument having IMEI No. 449173405451240 between 11-12-2000 to 23-12-2000. While scanning earlier IMEI No. 445199440940240, it was found that one other Mobile No. 9811242154 was found to have been used in the said instrument. This instrument used Mobile No. 9811242154 between 22-7-2000 to 8-11-2000. From this, Shri Subramaniam, learned Solicitor General urged that there were two mobile numbers, namely, 9811278510 and 9811242154 which were used and the two IMEI numbers, namely, 445199440940240 and 449173405451240. A pattern showed the use of the third number which was 0116315904, the number of the computer centre.

.....

66. The other witness who had produced the whole record was Rajiv Pandit (PW 98) who proved the call record and the report to the queries made to him by the investigating officer. Exhibit PW-98/A is the information in respect of Mobile No. 9811278510 which was active from 26-10-2000 to 23-12-2000. While Exhibit PW-198/D is the information stating that IMEI No. 449173405451240 was used by Mobile No. 9811278510 and that IMEI No. 445199440940240 was used by both mobile numbers, namely, 9811278510 and 9811242154. There is hardly any cross-examination of this witness Rajiv Pandit (PW 198) to disbelieve his

version. All this goes to suggest the definite connection between the two IMEI numbers and the two mobile numbers named above. It is needless to mention that this analysis painstakingly made by Inspector Mohan Chand Sharma (PW 229) led the investigating team to zero in on the appellant-accused on the night of 25-12-2000."

(emphasis supplied)

19. The validity of IMEI No. also came under scrutiny of the hon'ble Apex Court in the case of *Gajraj v. State (NCT of Delhi)*, (2011) 10 SCC 675 the relevant paras of the same read as under:

"17. The first step in the process of investigation was the receipt of information from Minakshi (the wife of deceased Harish Kumar), that the deceased was using mobile phone, SIM No. 9871879824. Evidence on record indicates, that the aforesaid SIM number became dead on 23-7-2005 i.e. the date on which deceased Harish Kumar came to be murdered. In the process of investigation it then emerged, that the mobile handset bearing IMEI No. 35136304044030 was used with mobile phone, SIM No. 9818480558. This happened soon after the murder of Harish Kumar, on 23-7-2005 itself. The same SIM was used to make calls from the same handset up to 2-8-2005.

18. Through the statement of R.K. Singh, PW 22, Nodal Officer, Bharati Airtel Ltd., it came to be established, that mobile phone, SIM No. 9818480558 was registered in the name of appellant-accused Gajraj Singh. It is from the use of the mobile handset bearing IMEI No. 35136304044030, that the police came to trace the appellant-accused Gajraj Singh. It is only this aspect of the matter which is relevant for the purpose of present controversy. The use of mobile handset bearing IMEI No. 35136304044030 from which the appellant-accused made calls from his own registered mobile phone, SIM No. 9818480558, immediately after the occurrence of the murder of deceased Harish Kumar, was a legitimate basis for the identification of the appellant-accused. The appellant-accused was arrested on 6-8-2005. The nexus of the appellant-accused

with the deceased at the time of occurrence stands fully substantiated from the aforesaid SIM/IMEI details.

19. In the aforesaid sense of the matter, the discrepancy in the statement of Minakshi, PW 23, pointed out by the learned counsel for the appellant-accused, as also, the reasoning rendered by the High Court in the impugned judgment becomes insignificant. We are satisfied, that the process by which the appellant-accused came to be identified during the course of investigation, was legitimate and unassailable. The IMEI number of the handset, from which the appellant-accused was making calls by using a mobile phone (SIM) registered in his name, being evidence of a conclusive nature, cannot be overlooked on the basis of such like minor discrepancies. In fact even a serious discrepancy in oral evidence, would have had to yield to the aforesaid scientific evidence. For the reasons recorded hereinabove, we find no merit in the first contention advanced at the hands of the learned counsel for the appellant-accused."

(emphasis supplied)

Thus, from the aforesaid observation, it can be reasonably held that the validity of an IMEI number can never be doubted unless of course the same is challenged by producing cogent and clinching evidence. In the present case, as already stated above, there is no challenge by the accused Athar on this point and the validity of mobile no.9827082747 which according to the company record, belongs to Athar. Hence the role played by Athar in calling from his mobile to Laxmi Verma on 27th and 29th of November is positively established. In the circumstances, the finding recorded by the trial court regarding the non-culpability of the accused Athar cannot be sustained as the same is based on erroneous reasoning and is in fact perverse and it is held that it was Athar Ali who had called from his mobile handset to the parents of the deceased Gaurav and thereafter the headless body of Gaurav was found giving rise to the only hypothesis consistent with the guilt of Athar Ali. Consequently the charges against Athar Ali under Sections 364-A and 302 of IPC stands proved.

20. So far as the role of Sharik is concerned, on the basis of his memorandum u/s.27 of the Evidence Act Ex.P/2 was prepared and vide Ex.P/4, the body of master Gaurav was recovered. PW/1 Naresh is a witness of Ex.P/2. PW/4 Munshilal Gour is the witness to Ex.P/4 & 5 but he has been declared as hostile and so far as the testimony of Vinod Verma PW/12 is concerned, the same appears to be doubtful as according to him neither the witness PW/4 Munshilal nor accused Sharik accompanied him when the recovery of body was made as they were already on spot when he reached there. In the circumstance, the recovery of body at the instance of Sharik appears doubtful as has been rightly held by the trial Court.

21. Now coming to the role assigned to the respondent No. 3 Salman, he has been connected with the crime on the basis of the statement made by PW/3 Pankaj, who claims to have seen the said respondent on motorcycle along with Sharik and master Gaurav. Pankaj Malviya PW/3 is the most important witness who claims to have witnessed the accused persons taking the deceased on a motorcycle on 22.05.2005, where Raja @ Salman was driving the Passion motorcycle and Gaurav was sitting between him and Sharik. He also claims to be the son of Laxmidevi the PW/10's real sister's son. In his cross examination he has admitted that prior to 01.12.2005 he has never disclosed this fact to anybody although this witness's statement u/s.161 has not been proved and confronted by the accused persons in the cross examination but PW/11 Laxmidevi, the mother of the deceased Gaurav has totally denounced this witness's claim that he happens to be the son of her real sister. Thus in the circumstances, the testimony of this eye witness cannot be relied upon for two reasons firstly that it appears unnatural that after knowing that Gaurav who happens to be his cousin brother was missing since 22.11.2005, he would not disclose this fact to anybody in the family until the body was found and secondly, his statement is not duly corroborated by Laxmi Verma PW/11 who has refused to acknowledge Pankaj in any capacity. The hero Honda Passion motorcycle and the SIM No.9827532060 alleged to be recovered from Salman are also not beyond doubt for the reason that Ex.P/19 the memo u/s.27 of the Evidence Act was prepared on 20.07.2006 whereas the motorcycle was seized on 21.07.2006 and the mobile SIM was seized on 24.07.2006 in the presence of witnesses PW/13 Mahohar Pawar whose testimony only give rise to more doubt as according to him the motorcycle was seized after four days. The IO PW/16 Uma Shankar Tiwari's deposition in this regard is also not satisfactory and does not inspire confidence. He has

stated that he did not send the seized SIM No.9827532060 to the Reliance company for its verification hence it was the same SIM or not cannot be said with any certainty and remains highly doubtful.

22. The FIR Ex.P/23 u/s.364-A was lodged on 01.12.2005 by Laxmi Verma and recorded by Uma Shankar PW/16 during the enquiry of missing person's report no.41/2005 also lodged by Laxmi Devi on 23.11.2005. Thus there is a delay of around 7 days in lodging the FIR from the date of missing person report and the reason assigned for the same is on account of enquiry on the basis of missing person's report No.41/2005. It is true that, the FIR should have been lodged immediately after the incident was reported, but the delay is attributable only to the utter apathy of the Sub-Inspector Umashankar Tiwari PW/23. Despite it being lodged after a delay of around 7 days, its benefit cannot be extended to the accused persons as it does not bear the names of any of the accused persons and in fact in spite of the delay, it is lodged against the unknown accused persons u/s.364 of IPC, thus it cannot be said that it was an afterthought. On scrutiny, this court finds that in cross examination, Laxmi Devi PW/11 has not been asked even a single question regarding the delay caused in lodging the FIR. Thus no benefit of delayed FIR can be extended to the accused persons.

23. We have given anxious consideration to the judgments as cited by the learned counsel for the respondent but unable to hold that the present case squarely falls within the parameters as set out by the Hon'ble Apex Court in the aforesaid decisions regarding appreciation of evidence in the case of circumstantial evidence since we have already held that so far as the evidence of last seen together is concerned, the evidence of P.W.3 Pankaj who had last seen the accused persons on motorcycle with deceased Gaurav, the same is not reliable. Since the evidence in the present case is also in the form of electronic record and consideration of the same would certainly over-ride any oral testimony regarding the role assigned to Athar Ali as we have already held that the mobile hand-set bearing IMEI No. 351478600620550 was seized from Athar Ali and in the aforesaid mobile hand-set SIM bearing No. 9827082747 was used till 22.11.2005 and, thereafter, from the same mobile hand-set of aforesaid IMEI No., another SIM No. 9827532060 was used on 22nd & 29th November, 2005 to demand ransom on the land-line No. 07552538836. Thus, there is clinching evidence so far as the involvement of Athar Ali is concerned and his involvement in the crime cannot be brushed

aside lightly.

24. In the final analysis, this Court finds that the prosecution has been able to prove its case so far as the respondent no.2/accused Athar Ali is concerned, looking to the fact that the incident took place in the year 2005, he was acquitted in the year 2008 and has joined the mainstream of life, it is not a fit case to impose capital punishment, instead he is liable to be convicted for the offences u/s 364-A and u/s 302 of IPC and is hereby sentenced to life imprisonment on both the counts with a fine of Rs.10,000/- each on both the counts, in default he is further sentenced to 3 months simple imprisonment on both the counts. Both the sentences to run concurrently. Whereas, the appeal preferred by the State against the respondent no.1 Sharik and respondent no.3 Salman is hereby dismissed. Athar Ali is on bail, therefore, he is directed to surrender before the CJM Bhopal within 30 days from today for undergoing the sentences as imposed above.

25. Accordingly, with the aforesaid observations, the Criminal Revision No.958/2008 and the Criminal Appeal No.548/2009 are hereby disposed of.

Order accordingly.

I.L.R. [2017] M.P., 1994

CRIMINAL REVISION

Before Mr. Justice G.S. Ahluwalia

Cr.R. No. 465/2017 (Gwalior) decided on 16 May, 2017

JAIKUMAR MEENA

...Applicant

Vs.

SMT. RADHA MEENA & anr.

...Non-applicants

A. Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 127 – Maintenance – Enhancement from Date of Application – Discretion of Magistrate – On application by wife u/S 127 Cr.P.C., maintenance of Rs. 4000 pm was enhanced to Rs. 15,000 pm from date of application – Challenge to – Held – Section 127 Cr.P.C. has been provided for alteration in order passed u/S 125 Cr.P.C., therefore it cannot be treated as an independent provision, it has to be read along with Section 125 Cr.P.C. and Section 125(2) empowers the Magistrate to pass order of maintenance from date of application – Legislature has left the discretion to Magistrate and Family Court with regard to

date from which enhanced/altered allowance shall be payable –
Revision dismissed. (Paras 10 to 12)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 127 – भरण-पोषण – आवेदन की तिथि से वृद्धि – मजिस्ट्रेट का विवेकाधिकार – दण्ड प्रक्रिया संहिता की धारा 127 के अंतर्गत पत्नी द्वारा आवेदन पर, आवेदन की तिथि से भरण-पोषण 4000 रु. प्रतिमाह से बढ़ाकर 15000 रु. प्रतिमाह किया गया था – को चुनौती – अभिनिर्धारित – दण्ड प्रक्रिया संहिता की धारा 127 को, दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत पारित आदेश में परिवर्तन करने हेतु उपबधित किया गया है, इसलिए इसे स्वतंत्र उपबंध के रूप में नहीं माना जा सकता, इसे दण्ड प्रक्रिया संहिता की धारा 125 के साथ पढ़ना होगा तथा धारा 125(2) मजिस्ट्रेट को, आवेदन की तिथि से भरण-पोषण का आदेश पारित करने हेतु सशक्त करती है – विधान मंडल ने उस तिथि जिससे बढ़ाया हुआ/परिवर्तित मत्ता देय होगा, के संबंध में विवेकाधिकार मजिस्ट्रेट एवं परिवार न्यायालय पर छोड़ा है – पुनरीक्षण खारिज।

B. *Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 127 – Maintenance – Income of Husband – Plea of Responsibility of Parents – Held – Husband working as S.D.O and his take home salary is Rs. 50,000 pm – He also admitted that his brothers are posted as an ADPO and Drug Inspector – It is clear that financial condition of family is good and it cannot be said that applicant had sole responsibility to maintain his parents – Payment of insurance premium cannot be said to be compulsory deduction, further those policies are not in name of wife – Deserted wife should not live a life of destitute lady, she is also entitled for same status which she could have otherwise enjoyed in matrimonial house – Considering the status of parties, amount enhanced is not excess – Revision dismissed.* (Para 4 & 5)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 127 – भरण-पोषण – पति की आय – माता-पिता के उत्तरदायित्व का अभिवाक् – अभिनिर्धारित – पति उपखंड अधिकारी के रूप में कार्यरत है एवं उसका शुद्ध वेतन 50,000 रु. प्रतिमाह है – उसने यह भी स्वीकार किया है कि उसके भाई सहा.जिला अभियोजन अधिकारी एवं औषधि निरीक्षक के रूप में पदस्थ हैं – यह स्पष्ट है कि परिवार की आर्थिक स्थिति अच्छी है तथा यह नहीं कहा जा सकता कि आवेदक पर उसके माता-पिता का भरण-पोषण करने का पूर्ण उत्तरदायित्व था – बीमा प्रीमियम के भुगतान को अनिवार्य कटौती नहीं कहा जा सकता, इसके अतिरिक्त वे पॉलिसी पत्नी के नाम पर नहीं हैं – अभित्यक्त पत्नी को निराश्रित महिला का जीवन नहीं जीना चाहिए; वह भी उसी प्रास्थिति की हकदार है जिसका वह अपने दाम्पत्य निवास में अन्यथा उपभोग कर सकती थी – पक्षकारों की प्रास्थिति पर विचार करते हुए.

बढ़ायी गई राशि अधिक नहीं है - पुनरीक्षण खारिज।

Case referred:

1998 Cri.L.J. 1922.

Rishikesh Bohre, for the applicant.

(Supplied: Paragraph numbers)

ORDER

G.S. AHLUWALIA, J. :- This Criminal Revision under Section 397, 401 of Cr.P.C. has been filed against the order dated 13.4.2017 passed by Principal Judge, Family Court, Guna in Case no. 54/2016 by which the application filed by the respondent No.1 under Section 127 of Cr.P.C. has been allowed and the monthly maintenance of Rs. 4,000/- has been enhanced to Rs. 15000/- per month.

2. The necessary facts for the disposal of the present revision in short are that the respondents had filed an application under Section 125 of Cr.P.C. against the applicant which was registered as MJC No. 45/2009 and the applicant was directed to pay Rs. 4000/- each of the respondent No.1 and 2 by order dated 22.02.2010. Thereafter the respondents filed an application under Section 127 of Cr.P.C. on the allegation that because of the inflation and hike in price, the maintenance amount of Rs. 4000/- per month awarded to each of the respondent is liable to be enhanced to Rs. 15,000/- per month. As by order dated 22.2.2010, the Magistrate had directed that the respondent No.2 shall be entitled for maintenance amount till she attains the majority, therefore, the application filed by the respondent No.2 was rejected by the Trial Court and the maintenance amount of Rs. 4000/- awarded in favour of the respondent No.1 has been enhanced to Rs. 15000/- per month from the date of the application.

3. It is submitted by the counsel for the applicant that cost of articles of the daily needs have not increased so much so as to enhance the maintenance of Rs. 4000/- to Rs. 15000/- per month. It is further submitted that the applicant has other responsibilities to look after and he has to look after his parents and, therefore, his financial condition is not such so as to pay Rs. 15,000/- per month to the respondent No.1.

4. The applicant in his cross-examination has accepted that his take home

salary is Rs. 50,000/- per month. Although the applicant did not produce his pay slip but it is undisputed that the applicant is working on the post of S.D.O. In view of the admission made by the applicant himself that his take home salary is Rs. 50,000/- per month, therefore, there is no difficulty in accepting that the take home salary of applicant is Rs. 50,000/- per month. The contention of the applicant that he has to look after his parents cannot be accepted because the applicant himself has admitted that one of his brother is posted on the post of ADPO whereas his another brother is working on the post of Drug Inspector. Thus, it is clear that the financial condition of the family of the applicant is good. The applicant has also claimed that he has a personal house at Indore for which he had taken a loan and is making payment of monthly installment of Rs. 24960/- but at the same time the applicant has also admitted that the said house is in the name of his father. When the house situated in Indore is in the name of the father of the applicant then the question of making payment of loan installment by the applicant does not arise. Further, the applicant has admitted that at present he is working on the post of SDO, Kannod, District Dewas. The applicant has also claimed that he is required to spend Rs. 3,000/- to 4,000/- on the treatment of his parents. As the brothers of the applicant are also well established, therefore, it cannot be said that it is the sole responsibility of the applicant to maintain his parents. The applicant has also admitted that his monthly expenses comes to Rs. 20,000/-. The applicant has also admitted that the respondent No.1 had lodged a report against him alleging that his second wife Ramabai had beaten her.

5. So far as the question of payment of premium of insurance policies are concerned, the same cannot be said to be a compulsory deduction. Further, those policies are not in the name of the respondents. Under these circumstances, if the Trial Court has awarded an amount of Rs. 15,000/- per month to the respondent No.1 then it cannot be said that the said amount by considering the status of the parties is on a higher side. It is a well established principle of law that the wife is entitled for the same status which she would have otherwise enjoyed in her matrimonial house. The applicant cannot say that although he may be working on the post of SDO but his deserted wife should live the life of a destitute lady.

6. It is next contended by the counsel for the applicant that the Trial Court committed a glaring mistake in enhancing the maintenance amount from the date of the application.

7. It is further submitted that under Section 127 of Cr.P.C. no discretion has been given to the Magistrate to alter the allowances from the date of the application. In support of his contention, the counsel for the applicant has relied upon the judgment of the High Court in the case of *Pilli Venkanna vs. Pilli Nookalamma & Anr.* reported in 1998 CRI.L.J. 1922.

8. So far as the submission made by the counsel for the applicant that there is no provision in Section 127 of Cr.P.C. vesting any discretion in the Magistrate to alter the maintenance amount from the date of the application is concerned, the submission does not appear to be very convincing. The basic provision is Section 125 of Cr.P.C. specifically provides that the Magistrate may award maintenance from the date of the application also.

9. - Section 127 merely deals with the alteration in allowance so awarded by the Court under Section 125 of Cr.P.C. If the submission made by the counsel for the applicant is accepted then it would mean that whenever an application under Section 127 for alteration of maintenance amount is filed then the husband even if he adopts different tactic to delay the proceedings but he would not be liable to pay the enhanced amount from the date of the application. The main provision is Section 125 of Cr.P.C. and Section 127 of Cr.P.C. merely deals with a provision giving an authority to the wife/husband to file an application for alteration of allowance. The alteration of allowance by itself does not mean that the maintenance amount awarded under Section 125 of Cr.P.C. has to be enhanced. There may be various circumstances where the husband may also file an application for alteration of allowance seeking reduction of maintenance amount awarded under Section 125 of Cr.P.C. For example, if the wife gets an employment after the order under Section 125 of Cr.P.C. is passed and if her salary is sufficient to maintain her then the husband will be well within his right to seek reduction in maintenance amount by bringing the subsequent event on record. To consider that whether the Magistrate can alter the allowance from the date of the application or not then the provision of Section 125 (2) of Cr.P.C. would be relevant.

Section 125 (2) of Cr.P.C. reads as under:-

“125(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or if so ordered, from the date of the application for maintenance or

interim maintenance and expenses of proceeding, as the case may be.”

10. From the plain reading of Section 125(2) of Cr.P.C. it is clear that it is specifically mentioned in this Section that the order of maintenance shall be effective from the date of the order but the maintenance amount can be awarded from the date of the application also. However, there is no such provision under Section 127 of Cr.P.C. providing that the alteration of allowance would be operative from the date of the order only. Once the legislature has chosen not to make any provision for making the order under Section 127 of Cr.P.C. effective from any specific date then it is clear that the discretion has been left to the Magistrate or the Family Court to pass necessary orders with regard to the date from which the enhanced/altered allowance shall be payable. Even otherwise, the provision of Section 127 of Cr.P.C. is beneficial in nature and, therefore, liberal interpretation has to be given and accordingly in absence of any provision making the applicability of the enhanced allowance from the date of the order, this Court is of the view that there was no need for the legislature to confer a discretion on the Magistrate/Family Court to award allowance from the date of the application also. Section 127 of Cr.P.C. has to be read along with Section 125 of Cr.P.C. As there is no provision for review in Cr.P.C. therefore a specific provision under Section 127 of Cr.P.C. has been made to alter the allowance if subsequent events so warrant.

11. Under these circumstances, if there is no provision under Section 127 of Cr.P.C. giving discretion to the Magistrate to award enhanced allowance from the date of the application, then it cannot be said that the Magistrate has no power to direct for alteration of allowance from the date of the application. It is nowhere mentioned in the memo of application that the applicant was not responsible for the delay in disposal of the application under Section 127 of Cr.P.C.. Even otherwise, it appears that the application under Section 127 of Cr.P.C. was filed on 20.6.2016 and the order under challenge has been passed on 13.4.2017. Under the facts and circumstances of the case, this Court is of the view that as Section 127 of Cr.P.C. has been provided for the alteration in the order passed under Section 125 of Cr.P.C., therefore, Section 127 of Cr.P.C. cannot be treated as an independent provision and it has to be read along with Section 125 of Cr.P.C. and Section 125(2) of Cr.P.C. empowers the Magistrate to pass order of maintenance from the date of application.

12. Under these circumstances, the submission made by the counsel for

the applicant that in absence of any provision granting discretion to the Magistrate to pass an order under Section 127 of Cr.P.C. from the date of the application, therefore the direction given by court below is bad and without jurisdiction cannot be accepted and it is hereby rejected. Accordingly, the order dated 13.4.2017 passed by the Principal Judge, Family Court, Guna is hereby affirmed.

13. The revision fails and is hereby dismissed.

Revision dismissed.

I.L.R. [2017] M.P., 2000

CRIMINAL REVISION

Before Smt. Justice Anjuli Palo

Cr.R. No. 246/2002 (Jabalpur) decided on 27 June, 2017

MANOHAR

...Applicant

Vs.

STATE OF M.P. & anr.

...Non-applicants

Prevention of Food Adulteration Act (37 of 1954), Sections 13(2), 16(1)(A)(i) & 20(1), Criminal Procedure Code, 1973 (2 of 1974), Section 313 and Evidence Act (1 of 1872), Section 134 – Adulteration – Sole Witness – Effect – Sample of ground nut oil was found adulterated and below standard – Conviction based on sole testimony of Food Inspector – Applicant was minor at the relevant time and was sitting at his father's shop – Held – In Statement u/S 313 Cr.P.C., applicant explained his occupation as 'Oil Shop' which establishes that he was incharge of shop – No possibility of changing sample taken by Food Inspector – Further held – U/S 134 of Evidence Act, conviction can be based on testimony of sole witness, number of witnesses not required to prove any fact, quality of evidence has to be considered – Such solitary evidence of Food Inspector can be accepted without corroboration and is rightly relied on by Court below – No illegality in impugned order – Revision dismissed.

(Paras 14 to 16 & 20)

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धाराएँ 13(2), 16(1)(ए)(i) व 20 (1), दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 एवं साक्ष्य अधिनियम (1872 का 1), धारा 134 – अपमिश्रण – एकमात्र साक्षी – प्रभाव – मूंगफली के तेल का नमूना अपमिश्रित एवं मानक से नीचे का पाया गया था – खाद्य निरीक्षक के

एकमात्र परिसाक्ष्य पर दोषसिद्धि आधारित – सुसंगत समय पर, आवेदक अवयस्क था और अपने पिता की दुकान पर बैठा था – अभिनिर्धारित – धारा 313 दं.प्र.सं. के अंतर्गत कथन में, आवेदक ने उसका व्यवसाय 'तेल दुकान' के रूप में स्पष्ट किया, जो स्थापित करता है कि वह दुकान का प्रभारी था – खाद्य निरीक्षक द्वारा लिये गये नमूने को बदले जाने की कोई संभावना नहीं – आगे अभिनिर्धारित – धारा 134, साक्ष्य अधिनियम के अंतर्गत एकमात्र साक्षी के परिसाक्ष्य पर दोषसिद्धि आधारित की जा सकती है, किसी तथ्य को साबित करने के लिए साक्षियों की संख्या अपेक्षित नहीं, साक्ष्य की गुणवत्ता को विचार में लिया जाना चाहिए – खाद्य निरीक्षक के उक्त एकमात्र साक्ष्य को बिना संपुष्टि स्वीकार किया जा सकता है और निचले न्यायालय द्वारा उचित रूप से विश्वास किया गया है – आक्षेपित आदेश में कोई अवैधता नहीं – पुनरीक्षण खारिज।

Cases referred:

1991 (1) C.Cr.J. at P 70, 1988 FAJ 194, 1965 (15) ILR 820, AIR 1971 SC 1277, 1988 (1) (FAC) 256 (Madras), 1988 (1) (FAC) 365, 1990 (2) FAC 227 (MP), 2008 FAJ 144 at page 14, 1997 CrLJ 2702, 1998 (28) Corp. L.A. 4 at page 15, 16.

Prakhar Trivedi, for the applicant.

Ramesh Kushwaha, P.L. for the non-applicant-State.

ORDER

ANJULI PALO, J. :- This revision under Section 397 r/w 401 of Code of Criminal Procedure, 1973 has been filed by the applicant/accused against the judgment dated 25.02.2002 passed by learned Additional Sessions Judge, Burhanpur in Criminal Appeal No.27/2002 affirming the judgment dated 24.12.2001 passed by J.M.F.C., Burhanpur in Criminal Case No.373/87, whereby the applicant/accused has been convicted under Section 16(1)(A-1) of the Food Adulteration Act and sentenced to undergo rigorous imprisonment for six months with fine of Rs.1000/-.

2. Brief facts of the case are that on 24.12.86 Food Inspector, Shri S.I. Meer took a sample of groundnut oil from the shop named Jaibhawani Trading Company, which belongs to the father of appellant's Bhagchand, following the rules. The sample obtained from the appellant sealed, packed and seized accordingly and sent for examination to FSL. As per FSL report, seized sample of oil was found below standard and adulterated. Thereafter, notice was given to the applicant and complaint was filed against the applicant under Section

16(1)(A-1) of the Food Adulteration Act.

3. Learned trial Court found that the Food Inspector is the competent authority to take sample. After following the rules, sample has been purchased by him from the applicant's shop Jaibhawani Trading Company. The applicant signed Exhibit P/2 Form No.6, receipt Exhibit P/3 and slips affixed on 3 samples of cooking groundnut oil and Panchnama. Therefore, on the basis of testimony of S.I. Meer, the applicant was found guilty and convicted under Section 16(1)(A-1) of Food Adulteration Act. He was sentenced to undergo R.I. For six months along with fine of Rs.1000/-.

4. Appeal was filed by the applicant before the learned Second A.S.J., Burhanpur. The learned First Appellate Court has appreciated the evidence and after considering the judgment of trial Court, affirmed the conviction and sentence.

5. This revision has been filed mainly on the grounds that on the date of incident the applicant was a minor, not the owner of the shop or aforesaid Company. This important fact has been overlooked by the Courts below. The shop from where the alleged oil was seized does not belong to him.

6. Learned counsel for the applicant further claim that the respondent no.2/Food Inspector was not competent to take samples from the applicant and his entire action is against law. Learned Courts below committed error of law in convicting the applicant only on the basis of evidence of the Food Inspector. Hence, it is prayed to set aside the judgment of Courts below and request for acquittal from charges under Section 16(1)(A-1) of Food Adulteration Act.

7. Heard learned counsel for the parties.

8. Perused the record.

9. In case of *State of M.P. vs. Narayan* 1991 (1) C.Cr.J. at P 70, it was held that in a revision, reference to the evidence is not to be freely made, but only when it becomes necessary for appreciation of the question raised.

10. Regarding the competency of Food Inspector I.S. Meer (PW/1), he has deposed that as per the Government Notification (Exhibit P/1) dated 01.08.1983, he was authorized to take sample. Exhibit P/1 shows the name of S.I. Meer (PW/1) as a Member of District Flying Squad, District Khandwa.

His appointment letter (Exh. P/11). His training diploma (Exh. P/12) and P/13 and original authority letter (Exh. P/14). These documents have not been challenged during his cross-examination except for the procedure.

11. In the light of aforesaid documents, it is proved that Food Inspector S.I. Meer (PW/1) was competent to take sample from the applicant under Section 20(1) of Food Adulteration Act, 1954.

12. With regard to the age of the applicant. Admittedly, the applicant was about 18 years on the date of commission of the offence i.e. (24.12.86). The trial Court dealt this question in para 9 of impugned judgment on the basis of his date of birth certificate, he was held 17 years 1 month 17 days old. At the relevant time the age of minor was less than 18 years. In the case of *Ramalingam vs. State* 1988 FAJ 194, it is held that the man who directly sells under provision of Food Adulteration Act is primarily responsible, unless the circumstances so warranted that he was not and could not have been responsible and aware of the adulteration.

13. S.I. Meer (PW/1) has specifically deposed that when he came at shop of Jaibhawani Oil Trading Company, the applicant was present there and was selling the groundnut oil, he purchased 375 ml. of groundnut oil from the applicant and paid the price to the applicant. For the corroboration of his testimonies Exhibit P/2 to P/5 have been filed by the prosecution, all those documents have been signed by the applicant.

14. In examination of accused at question no.7, the applicant has stated that he was present at his father's Jaibhawani shop, at the time of the incident. In question No.28, he again answered that his father went to purchase vegetables and he was sitting at his place to look after the shop. He explained his occupation as oil shop, in his examination/statement under Section 313 of Cr.P.C. which establish that the applicant was incharge of the shop.

15. It is not necessary that only the shop owners are entitled to sell their products, sometimes their servants look after their business. In case of *Badri Vs. State* 1965 (15) ILR 820, it is held that, it is not necessary under the law the person who sells adulterated article should himself be the owner thereof the gravamen of the charge under Section 16 of the Act. The Sale of adulterated article and the ownership of the article is wholly immaterial for the consideration of the question about the sale.

16. It is true that no independent witness has been examined in support of the testimony S.I. Meer (PW/1). Now a general practice that the public witnesses do not cooperate with Food Inspector while taking sample and preparing documents. As per Section 134 of Indian Evidence Act conviction can be based on testimony of a sole witness. Number of witnesses are not required to prove any fact. Only the quality of evidence has to be taken for consideration. S.I. Meer (PW/1) had no enmity with the applicant, he followed the procedure and rules in obtaining the sample oil. After public analyst examination the aforesaid sample of oil was found adulterated in report (Exh. P/9). In which it is also found that the seals on sample container were intact. The seals on cover of sample container as well as on the outer cover of sample parcel were also intact and tallied with the specimen impression of seal given on copy of memorandum forwarded separately.

17. In case of *Babulal Vs. State of Gujrat* AIR 1971 SC 1277, the Apex Court held that it is not a rule of law that the evidence of Food Inspector cannot be accepted without corroboration. The evidence of the Food Inspector alone if believable can be relied on for proving that the samples were later on required by law. Procedure for sample taken is elaborately deposed by Food Inspector (PW/1) S.I. Meer which has not been challenged by the learned counsel for the applicant. [See also *Ramalingam Vs. State* 1988(1) (FAC) 256 (Madras), *K.A. Muhammed Kunhi & another Vs. Food Inspector Kasaragod Circle* 1988(1) (FAC) 365 and *State vs. Sajjan Singh*, 1990 (2) FAC 227 (MP)].

18. In para 12 of the impugned judgment, it is properly held that the aforesaid sample of oil is not found as per the standard of purity prescribed in Prevention of Food Adulteration Rules Clause 17.23. Under the sanction order Exh. P/10 and after being given the notice to the applicant under Section 13(2) of Food Adulteration Act along with copy of Exh.P/9, the complaint was filed by S.I. Meer (PW/1) against the applicant. Aforesaid complaint has not been denied by the applicant in his statement under Section 313 of Cr.P.C.

19. It is now settled that when the appellate forum is in agreement with the reasons assigned by the lower Courts, then it is not necessary to rewrite those reasons. There is no scope of re-appreciation of the evidence unless this Court finds perversity in the finding as well as gross error in appreciation of the evidence. (See *State of Gujrat Vs. Manojbhai Basarmal* 2008 FAJ 144 at page 14)

20. In this case sample found below standard. Solitary evidence of Food Inspector rightly relied on. Provision of Section 13(2) of 1954 Act also complied with. No possibility of changing sample taken by the Food Inspector. The evidence of Food Inspector can be accepted without corroboration.

21. On the above discussion and in the light of principle laid down by the above cases, this Court does not find any illegality or perversity in the findings of the Courts below. With the testimony of S.I. Meer (PW/1) and the documents, the prosecution successfully proves the fact that the alleged adulterated oil was purchased from the applicant at his father's shop which was found below standard. Hence, the applicant is properly held guilty for committing the offence punishable under Section 16(1)(A-1) of Food Adulteration Act.

22. With regard to sentence, the mandatory provisions of Section 16(1) clearly say that the seller of an adulterated food article injurious to human health should in no case, get sentenced for less than six months of imprisonment and fined Rs.1000/- which has rightly been imposed by the Courts below in the case. When the statute specifically provide for imposition of minimum sentence for an offence, the Courts must impose the minimum sentence for that offence which is grave socio-economic crime for his personal ill-gotten benefit with the backing of the country's health. Whereas the criminals like the applicant continuously without any hesitation go on selling sub-standard goods with the sole purpose of gaining unlawfully at the cost of the nation. Therefore, such crime should not be lightly taken up. [See the cases of *Radhey Shyam vs. State of U.P.* 1997 CrLJ 2702 at page 2704 and *Pepsi Foods vs. Special Judicial Magistrate* 1998 (28) Corp. L.A. 4 at page 15, 16].

23. At present, the applicant is on bail. He is directed to surrender immediately before the concerned trial Court to undergo the remaining sentence, failing which the trial court shall take appropriate action.

24. Accordingly, this revision is dismissed.

25. Copy of this order be sent to both the Courts below for information and compliance along with its record..

Revision dismissed.

2006

Laxmi Yadav (Smt.) Vs. Barelal Yadav

I.L.R.[2017]M.P.

I.L.R. [2017] M.P., 2006

CRIMINAL REVISION

Before Mr. Justice S.K. Awasthi

Cr.R. No. 888/2015 (Gwalior) decided on 28 June, 2017.

LAXMI YADAV (SMT.)

...Applicant

Vs.

BARELAL YADAV

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Second Marriage by Wife – Validity of Marriage – Entitlement – Family Court dismissed wife's application for maintenance – Challenge to – Held – Respondent entered into marriage with applicant vide a notarized document having complete knowledge of existence of applicant's previous marriage and started residing with her as husband and wife for a considerable long period – Husband cannot be permitted to take advantage of his own wrong – Husband admitted his signature on the instrument hence it is obvious that he also admits the contents of the same – Parties have admitted the existence of marriage – It is husband's legal obligation to maintain his wife – Matter remanded to Family Court for decision afresh keeping in mind that wife is entitled for maintenance and regarding quantum of maintenance, it is to be examined whether applicant has her own means to maintain herself – Impugned order set aside. (Paras 7 to 11 & 14)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – मरणपोषण – पत्नी द्वारा दूसरा विवाह – विवाह की विधिमान्यता – हकदारी – परिवार न्यायालय ने मरणपोषण के लिए पत्नी का आवेदन खारिज किया – को चुनौती – अभिनिर्धारित – प्रत्यर्थी ने, आवेदिका के पूर्व विवाह के अस्तित्व में होने की पूर्ण जानकारी होते हुए नोटरीकृत दस्तावेज के माध्यम से उसके साथ विवाह किया तथा पर्याप्त लंबी अवधि के लिए उसके साथ पति और पत्नी के रूप में निवास करना प्रारंभ कर दिया – पति को उसके स्वयं के दोष का लाम उठाने की अनुमति नहीं दी जा सकती – पति ने लिखत पर अपने हस्ताक्षर स्वीकार किये अतः यह स्पष्ट है कि वह उक्त की अंतर्वस्तु भी स्वीकार करता है – पक्षकारों ने विवाह के अस्तित्व को स्वीकार किया है – यह पति की विधिक बाध्यता है कि वह अपनी पत्नी का मरण-पोषण करे – मामला नये सिरे से विनिश्चय किये जाने हेतु परिवार न्यायालय को प्रतिप्रेषित किया गया, यह ध्यान में रखते हुए कि पत्नी मरणपोषण के लिए हकदार है तथा मरणपोषण की मात्रा के संबंध में, यह परीक्षण किया जाना है कि क्या आवेदिका के पास अपना मरणपोषण करने के लिए स्वयं का कोई साधन है – आक्षेपित आदेश अपास्त।

Cases referred :

(2016) 12 SCC 288, (2014) 1 SCC 188.

H.K. Shukla, for the applicant.

O.P. Mathur, for the non-applicant.

ORDER

S.K. AWASTHI, J. :- The applicant is before this Court for challenging the order dated 3.6.2015 passed in Misc. Cri. Case No.43/2015 by Principal Judge, Family Court, Shivpuri, whereby the Family Court has rejected the application under Section 125 of Criminal Procedure Code, 1973 (for short, the 'CrPC') on the ground that the applicant has failed to establish the matrimonial relations between the applicant and respondent.

2. The facts necessary for adjudication of the present revision application are that the applicant claims to be married with the respondent before the Public Notary on 14.3.2011. According to the applicant, the marriage is as per the tradition followed by the parties and the respondent, at the time of entering into the marriage with the applicant, assured her and her mother that he would keep the applicant as lawfully wedded wife and will take care of all her necessities but the respondent turned back on his promise and started harassing the applicant and also took away the cattle (60 cows) worth Rs.6.00 lacs belonging to her mother without her consent. According to the applicant, after such misappropriation of property belonging to her mother, the respondent became more aggressive and started abusing her physically. Consequently, the applicant was expelled from the house of the respondent on the pretext that the applicant was not fulfilling the demand of money made by the respondent which, according to her, can only be fulfilled after selling the agricultural land belonging to her mother (sic:mother), thereafter the applicant has started residing with her mother (sic:mother) and since the applicant was known as the wife of the respondent and they were residing for a considerable period of time as husband-wife, she moved an application under Section 125 of CrPC for grant of maintenance to enable the applicant to meet her expenses, as she cannot remain dependent on her mother.

3. The respondent was invited by Family Court to file his reply in which it was categorically stated that the applicant is not legally wedded wife of the respondent; in fact, the story of marriage which has been narrated by her, is false as the applicant has already married to one Mukesh and, therefore,

without divorce with Mukesh she cannot enter into the second marriage. He further submitted that the applicant gained access to the house of the respondent on account of some common relative and started living there for some period but later on she claimed to be wife of the respondent. According to him, the document which is notarised and has been placed on record was signed by the respondent under pressure of the applicant and common relative. He also submitted that the fact of the first marriage is clearly mentioned in the document produced by the applicant. Although it is indicated that the parties have served their matrimonial ties and that she is residing with her mother.

4. Based on the document filed by both the parties the Family Court pronounced the impugned order dated 3.6.2015 and rejected the application of the applicant under Section 125 of CrPC primarily on two grounds, firstly, the applicant has failed to establish the existence of marriage with the respondent and secondly she has sufficient source of income to maintain herself.

5. Learned counsel for the applicant has invited attention of this Court to the pleadings made by the respondent before the Court below which are at page 18 of the document. Learned counsel for the applicant submits that in paragraphs 2 and 3 the respondent has admitted the fact that he had executed the instrument dated 14.3.2011 before the Notary; however, the same was done because he got swayed away by the interaction with the applicant. Therefore, the applicant submitted that the existence of marriage is proved and that the applicant and respondent were residing together as husband-wife. It has been further pointed out that the Family Court lost sight of the fact that instrument which refers to the marriage by following Hindu rituals on 7.3.2011 and the document was only for the purpose of reducing in writing the act of marriage. According to the learned counsel for the applicant, the Family Court erred in rejecting the application on the ground that the applicant is the only child of the mother, who has sufficient source of income from agricultural land. Therefore, she does not require any maintenance amount from the respondent.

6. Per Contra, learned counsel appearing on behalf of the respondent has submitted that the Family Court has rightly appreciated the crucial facts of the case and it is admitted by the applicant that she was married to Mukesh and, therefore, the second marriage is clearly illegal. Further, the document dated 14.3.2011 was executed in duress, therefore, the same cannot be held to be binding.

7. Having considered the rival contentions put forth on behalf of the parties and perused the record, this Court is of the opinion that the Family Court has erred in rejecting the application moved by the applicant under Section 125 of CrPC on the ground that the applicant has failed to establish her marriage with the respondent. In order to arrive at this conclusion, this Court has taken note of the fact that in the reply filed by the respondent in response to the application under Section 125 of CrPC, he has categorically admitted execution of document dated 14.3.2011 before the Public Notary. However, the reason which is assigned to disown such document is that he got swayed away by the interaction with the applicant and, therefore, signed such document. In the considered opinion of this Court, such justification cannot be taken as sufficient for holding that the document is not binding on the respondent, as the same could have been brushed aside if the respondent could have proved before the Family Court that the document was executed in coercion or by misrepresentation. Once the respondent has admitted his signature on the instrument then it obviously means that he also admits the contents mentioned therein. Perusal of the contents shows that the applicant fairly declared about the existence of earlier marriage with Mukesh and had categorically stated that such marriage is no longer in existence on account of divorce. Further, both the parties have declared that they have entered into the marriage by following the Hindu rituals.

8. The Supreme Court in the case of *Muddasani Venkata Narsaiah vs. Muddasani Sarojana* (2016) 12 SCC 288, has held that once the fact of execution of document is admitted by both the parties then there is no legal necessity for the plaintiff or the applicant to establish such document by leading evidence.

9. Taking into consideration the law laid down in *Muddasani Venkata Narsaiah* (supra), it is safe to conclude that the parties have admitted the existence of marriage; however, the respondent may have taken a plea that execution of such document was on account of the fact that he got swayed away by the interaction with the applicant but this justification cannot be taken as an act done in furtherance to coercion or by misrepresentation. Rather, the applicant has candidly declared her antecedent and the respondent after knowing fully well about the marriage status of the applicant has agreed to affix his signature on the said document, which also categorically improves the fact of marriage on 7.3.2011 by following Hindu rituals.

10. While taking this view of the matter this Court feels it necessary to deal with the instant case from another view point which proposes that the applicant and respondent did not enter into a valid marriage. In this regard, the basis of discussion is the law laid down in the case of *Badshah vs. Urmila Badshah Godse* (2014) 1 SCC 188, in which the Supreme Court has categorically observed that once the party started residing together for a considerable period of time as husband-wife whereas, the husband did not inform the wife about the existence of earlier marriage and later on resisted the claim of the wife under Section 125 of CrPC on the ground that there is absence of valid marriage, proceeded to hold that such defence by the husband cannot be permitted because the same would amount to taking advantage of your own wrong.

11. In the light of such observation, if the facts of the present case are examined then it is clear that the respondent entered into the marriage with the applicant and started residing with her for a considerable period of time in the capacity of husband after having complete knowledge of the existence of previous marriage of the applicant and when she made an application under Section 125 of CrPC, the respondent has taken a plea that there is no valid marriage existed between the parties which cannot be allowed as the same would amount to taking advantage of his own wrong and as they have resided as husband-wife for a considerable period of time, it is his legal obligation to maintain her. Therefore, the finding of the Family Court in this regard is set aside and it is held that the applicant is entitled to receive the maintenance from the respondent under Section 125 of CrPC.

12. While making such observation, this Court is not concluding that the parties have entered into the valid marriage but is only adjudicating on the issue that the applicant is entitled to maintenance under Section 125 of CrPC from the respondent which is clearly available to the applicant from the examination of the facts of the case by both the view points discussed above.

13. Upon cumulative consideration of the circumstances indicated above, the question which remains to be decided is in respect of quantum of maintenance. In this regard, the Family Court has recorded a finding in paragraphs 12 and 13 of the impugned order that mother of the applicant has sufficient income from which the mother is able to maintain the applicant also. This finding by the Family Court is perverse in the opinion of this Court, because what is to be examined is, whether the applicant has her own means

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to maintain herself. Therefore, the Family Court has decided this issue incorrectly.

14. Thus, the present application is disposed of with the observation that the Family Court shall decide the application afresh in the light of the fact that this Court has held that the applicant is entitled to receive the maintenance from the respondent under Section 125 of CrPC and the Family Court shall proceed to decide the application on merits after duly considering the earning capacity of the respondent and the inability of the applicant to maintain herself.

15. It is further observed that this Court has not expressed any opinion with respect to the financial status of the applicant or as to her necessity for maintenance. The Family Court shall be at liberty to decide the application on merits in accordance with law regarding payment of maintenance to the applicant.

16. The parties are directed to appear before the Family Court on 17th July, 2017.

A copy of this order be sent to the concerned Family Court for information and compliance.

Order accordingly.

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INCOME TAX APPEAL

Before Mr. Justice R.S. Jha & Mr. Justice A.K. Joshi

I.T.A. No. 35/2017 (Jabalpur) decided on 3 April, 2017

NAGAL GARMENT INDUSTRIES PVT. LTD. (M/S) ...Appellant
Vs.

COMMISSIONER OF INCOME TAX-I & anr. ...Respondents

Income Tax Act (43 of 1961), Section 263 – Suo Motu Power of Revision of Assessment – Appellant filed return whereby he was assessed to tax – Later respondent issued notice proposing to invoke *suo motu* power of revision of assessment on the ground that order of assessment was erroneous and prejudicial to interest of revenue – Appellant filed appeal before Tribunal whereby the same was dismissed – Challenge to – Held – Assessing Officer though recorded in note sheet that reply of appellant is not satisfactory and did not explain all

facts, even then, no enquiry was conducted by him and he accepted the claim of assessee – Tribunal rightly concluded that there was no enquiry conducted nor there was any application of mind by the Assessing Officer – No substantial question of law arising for adjudication in view of the fact of lack of proper enquiry by Assessing Officer – Appeal dismissed. (Paras 8, 9 & 12)

आयकर अधिनियम (1961 का 43), धारा 263 – निर्धारण के पुनरीक्षण की स्वप्रेरणा शक्ति – अपीलार्थी ने विवरणी प्रस्तुत की जिससे उसका कर हेतु निर्धारण किया गया – बाद में, प्रत्यर्थी ने इस आधार पर स्वप्रेरणा से निर्धारण के पुनरीक्षण की शक्ति का अवलंब प्रस्तावित करते हुए नोटिस जारी किया कि निर्धारण आदेश त्रुटिपूर्ण तथा राजस्व के हित के प्रतिकूल था – अपीलार्थी ने अधिकरण के संमक्ष अपील प्रस्तुत की जिसे खारिज किया गया था – को चुनौती – अभिनिर्धारित – यद्यपि निर्धारण अधिकारी ने टिप्पणी-पत्र में अभिलिखित किया कि अपीलार्थी का जवाब संतोषजनक नहीं है और सभी तथ्यों को स्पष्ट नहीं करता, तब भी उसके द्वारा कोई जांच संचालित नहीं की गई तथा उसने निर्धारिती का दावा स्वीकार किया – अधिकरण ने उचित रूप से निष्कर्षित किया कि निर्धारण अधिकारी द्वारा कोई जांच संचालित नहीं की गई न ही भस्तिष्क का कोई प्रयोग किया गया था – निर्धारण अधिकारी द्वारा उचित जांच के अभाव के तथ्य को दृष्टिगत रखते हुए न्यायनिर्णयन हेतु विधि का कोई सारवान् प्रश्न उत्पन्न नहीं होता – अपील खारिज।

Cases referred:

(2000) 243 ITR 83 (SC), (1968) 67 ITR 84 (SC), AIR 2016 SC 2257.

G.N. Purohit with Abhishek Oswal, for the appellant.

Sanjay Lal, for the respondents.

ORDER

The Order of the Court was delivered by :
R.S. JHA, J. :- This appeal has been filed by the Assessee under the provisions of Section 260-A of the Income Tax Act, 1961 against the order passed by the Income Tax Appellate Tribunal in I.T.A. No.78/Jab/2015 dated 18.1.2017 for the assessment year 2010-11.

2. The learned Senior Counsel appearing for the appellant submits that the appellant had filed a return in respect of the aforesaid assessment year before the Assessing Authority and the Assessing Authority by order dated 30.3.2013

assessed the appellant to tax. It is stated that the Commissioner of Income Tax, Jabalpur issued a notice under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") to the appellant proposing to invoke the powers of suo moto (sic: motu) revision in respect of the order of assessment dated 30.3.2013 on the ground that it was erroneous and prejudicial to the interest of revenue. It is stated that the appellant had filed a detailed reply to the same, however, the Commissioner of Income Tax, without considering the documents on record or the reply of the appellant, passed an order on 27.3.2015 invoking the powers under Section 263 of the Act and remitting the matter back to the Assessing Officer for conducting a proper assessment.

3. The appellant being aggrieved filed an appeal against the order dated 27.3.2015 before the Income Tax Appellate Tribunal, Jabalpur Bench, which has been dismissed by the impugned order dated 18.1.2017. Hence the appellant has filed this appeal on the following substantial questions of law.

"(i) Whether the Tribunal is correct in law in upholding the order of the Commissioner of Income Tax-1, Jabalpur without any sound basis and that the finding of the Tribunal is perverse?

(ii) Whether the Tribunal was correct in law in upholding that the order passed by the CIT-1, Jabalpur which has been passed without considering the documents on record and without providing reason as to how the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue?"

4. The learned Senior Counsel appearing for the appellant, taking us through the substantial questions of law framed by him as aforesaid, submits that the power exercised by the authority under Section 263 of the Act, is unsustainable in view of the fact that there is no finding recorded by the Tribunal to the effect that the order is prejudicial to the interest of revenue. The learned Senior Counsel appearing for the appellants submits that it is settled law that merely because an order of assessment is erroneous, it does not mean that it is also prejudicial to the interest of revenue and, therefore, the power under Section 263 of the Act, can be imposed only in case where the authority concerned records a specific finding to the effect that the impugned order is erroneous and is also prejudicial to the interest of revenue. It is submitted that in the absence of recording a finding in respect of both the aforesaid issues,

the powers under Section 263 of the Act, cannot be invoked and therefore, the impugned orders be set aside.

5. Having heard the learned senior counsel appearing for the appellant, we find that the substantial questions of law framed in this appeal only relate to the correctness of the view taken by the Commissioner of Income Tax in the proceedings under Section 263 of the Act, and as to whether the finding recorded by him has been arrived at without considering the documents on record and without recording any reason for arriving at the conclusion that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of revenue.

6. However, in view of the extensive arguments extended by the learned Senior Counsel appearing for the appellant, we proceed to examine as to whether there is a finding recorded by the authority concerned in respect of the issue that the order passed by the Assessing Officer in the present case is erroneous as well as prejudicial to the interest of revenue.

7. From a perusal of the impugned order passed by the Income Tax Appellate Tribunal, specifically paragraphs 4 to 4.8, it is apparent that the Income Tax Appellate Tribunal has examined the record and has arrived at a finding that the present case is one where the Assessing Officer has not conducted any enquiry or applied his mind to the voluminous return and documents filed by the appellant while passing the order of assessment.

8. The Income Tax Appellate Tribunal, by relying on the decision of the Supreme Court rendered in the case of *Malabar Industrial Co. Ltd. Vs. CIT*, (2000) 243 ITR 83 (SC), the order passed by the Supreme Court in the case of *Rampyari Devi Saraogi Vs. Commissioner of Income Tax*, (1968) 67 ITR 84 (SC) and *Commissioner of Income Tax, Mumbai Vs. Amitabh Bachchan*, AIR 2016 SC 2257 relevant extracts of which have been quoted by the Income Tax Appellate Tribunal in paragraphs 4.2 and 4.3 of its order, has arrived at a conclusion that as the Assessing Officer has passed the order of assessment without making a proper enquiry and without applying his mind to the return and the documents filed by the assessee, as such the order is erroneous as well as prejudicial to the interest of revenue. The Tribunal has also recorded a finding of fact, on the basis of the record available, that in the instant case, though the Assessee has submitted records before the Assessing Officer, he has simply accepted the claim of the assessee without examining

the same and therefore, the present case is one where the impugned order of assessment is erroneous as well as prejudicial to the interest of revenue on account of lack of enquiry and application of mind to the facts of the case by the Assessing Officer.

9. The learned Senior Counsel appearing for the appellant has vehemently submitted that as the assessee had produced the records before the Assessing Officer and had placed all material before him, he cannot be punished for lack of application of mind or enquiry by the Assessing Officer. Be that as it may, in the present case this Court is only required to examine the correctness of the exercise of power under Section 263 of the Act. On a careful perusal of the record, it is apparent that the Commissioner of Income Tax as well as the Income Tax Appellate Tribunal both have recorded a finding to the effect that though the records were filed before the Assessing Officer and a detailed questionnaire was also issued to the appellant by the Assessing Officer to which a reply was filed by the appellant in that regard, the Assessing Officer did not apply his mind nor did he conduct an enquiry into the matter although he has recorded in the note-sheet that the reply filed by the appellant was not satisfactory and did not explain all the facts.

10. The Income Tax Appellate Tribunal on the basis of this finding of fact recorded by it has held that the present case is one of total lack of enquiry and by placing reliance on the decisions rendered by the Supreme Court in the cases of *Malabar Industrial Co. Ltd.* (supra) and *Ram Pyari Devi Saraogi* (supra) as well as the decision of Special Bench of the Income Tax Appellate Tribunal, has recorded a conclusion that such an order is erroneous and prejudicial to the interest of revenue in view of the law laid down by the Supreme Court.

11. The Supreme Court in the case of *M/s. Malabar Industrial* (supra) extensively interpreting and explaining the powers of revision conferred under section 263 of the Act upheld the order invoking the powers of revision on the ground that the Income Tax Officer passed an order of assessment without application of mind and by blindly accepting the entry in the statement of the account filed by the appellant without making any inquiry in the following terms:-

“(11) In the instant case, the Commissioner noted that the Income-tax Officer passed the order of nil assessment without application

of mind. Indeed, the High Court recorded the finding that the Income-tax Officer failed to apply his mind to the case in all perspective and the order passed by him was erroneous. It appears that the resolution passed by the board of the appellant- company was not placed before the Assessing Officer. Thus, there was no material to support the claim of the appellant that the said amount represented compensation for loss of agricultural income. He accepted the entry in the statement of the account filed by the appellant in the absence of any supporting material and without making any inquiry. On these facts the conclusion that the order of the Income-tax Officer was erroneous is irresistible. We are, therefore, of the opinion that the High Court has rightly held that the exercise of the jurisdiction by the Commissioner under Section 263(1) was justified.”

The same view in similar circumstances, has again been taken by the Supreme Court in the case of *Commissioner of Income Tax, Mumbai Vs. Amitabh Bachchan*, AIR 2016 SC 2257 by placing reliance on its previous decision rendered in the case of *M/s. Malabar Industrial* (supra).

12. In the facts and circumstances of the present case, we do not find any substantial question of law arising for adjudication in the present appeal, in view of the peculiar facts prevailing in the present case, namely, total lack of enquiry by the Assessing Officer leading to rendering the impugned order erroneous and prejudicial to the interest of revenue, in the light of decisions of the Supreme Court in the cases of *Malabar Industrial Co. Ltd.* (supra), *Ram Pyari Devi Saraogi* (supra) and *Amitabh Bachchan* (supra) and, therefore, the appeal filed by the appellant being meritless is accordingly dismissed.

Appeal dismissed.

I.L.R. [2017] M.P., 2016

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice J.P. Gupta

M.Cr.C. No. 21718/2015 (Jabalpur) decided on 31 March, 2017

ANUPAM CHOUKSEY

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Penal Code (45 of 1860), Section 420 & 120-B and Evidence

Act (1 of 1872), Section 10 & 27 – Confessional Statement of Co-accused – Admissibility – It was alleged that accused persons took money from parents for admission in Medical College against management quota – Application against framing of charge against applicant – Held – Name of applicant not in FIR – No direct allegations against him – Confessional statement of co-accused persons recorded u/S 27 of the Evidence Act cannot be read against the applicant nor such memorandum statement can be admissible u/S 10 of the Evidence Act – For prosecution and framing of charge, mere suspicion is not sufficient, it requires grave suspicion to prosecute or put on trial a person in a criminal case – *Primā facie* no material on record where inference can be drawn regarding involvement of applicant in alleged crime with other co-accused persons so as to prosecute him, hence continuation of proceedings against him is not justifiable and it would amount to misuse of process of law – Applicant stands exonerated from criminal proceedings – Application allowed. (Paras 8, 11, 14 & 20)

दण्ड संहिता (1860 का 45), धारा 420 व 120-बी एवं साक्ष्य अधिनियम (1872 का 1), धारा 10 व 27 – सह-अभियुक्त का संस्वीकृति कथन – ग्राह्यता – यह अभिकथन किया गया था कि अभियुक्तगण ने प्रबंधन के कोटे से चिकित्सा महाविद्यालय में प्रवेश हेतु माता-पिता से रुपये लिये थे – आवेदक के विरुद्ध आरोप विरचित किये जाने के विरुद्ध आवेदन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन में आवेदक का नाम नहीं – उसके विरुद्ध कोई प्रत्यक्ष अभिकथन नहीं – साक्ष्य अधिनियम की धारा 27 के अंतर्गत अभिलिखित सह-अभियुक्तगण का संस्वीकृति कथन आवेदक के विरुद्ध नहीं पढ़ा जा सकता न ही उक्त मेमोरेन्डम कथन, साक्ष्य अधिनियम की धारा 10 के अंतर्गत ग्राह्य हो सकता है – अभियोजन एवं आरोप विरचित किये जाने हेतु मात्र संदेह पर्याप्त नहीं, दाण्डिक प्रकरण में, एक व्यक्ति का अभियोजन या विचारण करने हेतु घोर संदेह अपेक्षित होता है – प्रथम दृष्ट्या अभिलेख पर कोई सामग्री नहीं जिससे कि आवेदक को अभियोजित करने के लिए अभिकथित अपराध में अन्य सह-अभियुक्तों के साथ आवेदक की संलिप्तता के संबंध में निष्कर्ष निकाला जा सकता हो, अतः उसके विरुद्ध कार्यवाहियों को जारी रखना न्यायोचित नहीं है और यह विधि की प्रक्रिया के दुरुपयोग की कोटि में आयेगा – आवेदक को दाण्डिक कार्यवाहियों से विमुक्त किया गया – आवेदन मंजूर।

Cases referred :

(2004) 10 SCC 657, (2011) 11 SCC 724, AIR 1957 SC 747, (1998) 4 SCC 351, (1988) 3 SCC 609, (2003) 3 SCC 641, (2005) 12 SCC 631, (2008) 13 SCC 678, (2011) 1 SCC 74, (2010) 9 SCC 368.

2018

Anupam Chouksey Vs. State of M.P.

I.L.R.[2017]M.P.

Siddharth Gupta, for the applicant.

Amit Pandey, P.L. for the non-applicant/State.

ORDER

J.P. GUPTA, J. :- This petition under section 482 of the Cr.P.C. has been preferred for quashment of the impugned order dated 4.12.2015 passed by 8th Additional District Judge, Bhopal, in Sessions Trial No.304/2015, whereby charges for the offence punishable under sections 420 and 120-B of the I.P.C. have been framed against the applicant.

2. As per the prosecution story, co-accused persons B.Kartik and Nagarjun Reddy, who were residents of Andhra Pradesh, gave assurance to complainant/informant Dr.Sarvapalli Jaichand and three of his friends, who were also residents of Andhra Pradesh, that they would get the admissions of their children done against the management quota in L.N.Medical College, Bhopal. Accordingly, they all came to Bhopal on 26.6.2013 and met co-accused Ranvir Anand, who came to L.N.Medical College and introduced them to accused Surendra Singh @Ajay Singh as a P.A. of the applicant. On 29.6.2013 co-accused Nagarjun, Kartik, Ranvir Anand and Surendra @Ajay Singh got the forms purchased for two students, viz. Manoj and Chalapalli from L.N.Medical College and deposited the same at the office of DMAT/APDMC on the same day and the students were issued hall tickets on the same day and they appeared in the Dental Medical Entrance Text (sic:test) (hereinafter referred to as 'the DMAT examination') on 30.6.2013 at the examination center NRI Institute, Raisen Road, Bhopal. On 1.7.2013 accused Ranvir Anand called the parents of the four students to the L.N. Medical College and took Rs.17 lacs from each of the student, totaling to Rs.68 Lacs. On the same day, accsued Ranvir Anand also issued receipts of tuition fees to all the four students on the letter head of L.N.Medical College and also issued a letter mentioning reservation of one seat each in favour of the students. Thereafter, on 2.7.2013 the parents and students returned to their native place. Thereafter, when they did not get any information from the accused persons, they came back to Bhopal on 3.9.2013 and met B.N.Singh, an Administrative Officer of L.N.Medical College, Bhopal. B.N.Singh informed them that the receipts of tuition fees and the letters with regard to reservation of seats are forged documents. Thereafter, they tried to contact with the aforesaid accused persons, but remained unsuccessful. Thereafter, on the advice of B.N.Singh, they informed the matter to the Police Station Kolar, Bhopal, where Crime

No.385/2013 was registered against the accused persons for the offences under sections 420, 467, 468, 471 and 34 of the I.P.C.

3. During investigation Rs.19 Lacs were seized from the possession of the aforesaid accused persons Ranvir Anand and Surendra @Ajay Singh. It was also revealed that the applicant was the Secretary of the Association of Private Dental and Medical Colleges conducting DMAT examination as well as a Director of the L.N.Medical College, Bhopal, and on the direction of the applicant forms for entrance examination conducted on 30.6.2013 were received by the Administrative Officer of the DMAT examination Vedraj Pehlajani on 29.6.2013, i.e. after the expiry of the last date for receiving the forms, i.e. 26.6.2013. The co-accused Surendra @Ajay Singh and Ranvir Anand have also disclosed that they have shared Rs.20 Lacs with the applicant and the applicant is also involved in the aforesaid criminal conspiracy. Thereafter, after completion of investigation, charge-sheet was filed before the court of Judicial Magistrate, and thereafter the case was committed to the Court of Sessions, who thereafter passed the aforesaid order of framing of charges against the applicant.

4. The impugned order has been challenged on the ground that the documents accompanying the charge-sheet filed by the prosecution failed to show even the iota of commission of offence by the present applicant on whose names other accused persons acting as a borrower took the entire amount of money from the parents and guardian of some students for getting them admission and defrauded them. No offence on the face of it against the present applicant is made out; hence the impugned order is liable to be set aside. It is further submitted that at the relevant point of time, the applicant was working as the Secretary of the Association of Private Dental and Medical Colleges of M.P. This Association consists of private unaided six Medical Colleges, imparting M.B.B.S. and other P.G. and Super Specialty courses and that of 14 dental colleges imparting education in B.D.S. and allied courses. The said Association is a registered society. A copy of the registration certificate along with byelaws is filed as Annexure A/3. This Association was conducting entrance examination for admission in private medical colleges of M.P. At that time the applicant was also a Secretary of the L.N.C.T. Group of Institution and was also a Secretary of the L.N.Medical College, which is one of the private unaided Medical College and a part of the L.N.C.T.Group of Institution, which is run by a private trust. As per the allegation of the

complainant, some agents or Middlemen have taken some money in the name of the applicant. In the FIR name of the present applicant is not mentioned. Other co-accused persons have promised the complainant that they would provide admission to their sons in the L.N.Medical College on payment of Rs.17 Lacs by each of the students and on receiving of the aforesaid amount by the Middlemen, i.e. other co-accused persons, they have issued forged receipts and letters of reservation of seats in favour of the students. That the aforesaid act of allegation nowhere disclosed the role of the applicant. B.N.Singh, Administrative Officer of the L.N.Medical College himself have advised the complainant to lodge the FIR against the persons who cheated the complainant. This fact has been mentioned in the FIR by the complainant. It is further submitted that the allegation that the forms of Manoj and Chillapalli for appearance in the entrance examination were taken on the instructions of the applicant after expiry of the last date of receiving the same, is not correct as by the resolution of the APDMC, the last date for receiving the forms was extended from 26.6.2013 to 29.6.2013 and the forms were received till 29.6.2013 not only in the office of DMAT Bhopal but also across the country on different centers and more than 100 candidates were allowed to submit their forms till 29.6.2013. Therefore, on the basis of the aforesaid allegations, it cannot be inferred that the applicant has hatched conspiracy with other co-accused persons for committing the aforesaid alleged offences.

5. It is further submitted that in this regard a copy of the minutes of meeting of the resolution of APDMC dated 22.6.2013 has been filed, which is an unimpeachable document and can be considered in the proceedings of this case. It is also contended that as per the charge-sheet only admissible evidence against the applicant is the statement of witness Vedraj Pehlajani, who stated as under :-

.....

दिनांक 29.6.13 को एल.एन. मेडीकल कालेज के डायरेक्टर श्री अनुपम चौकसे ने फोन पर बताया था कि दो फार्म सुरेन्द्र सिंह व रणवीर नाम के लड़के लेकर आयेगें उन्हें जमा कर सिस्टम में अपलोड कराना है। उसी दिन दो छात्र एस. मनोज व सी. अक्षित कुमार के फार्म लेकर डी.मेट कार्यालय आये थे। जो संबंधित रजिस्टर में एंट्री कर जमा कर लिये गये थे। दोनों फार्म अन्तिम तिथी 26.03.13 पार होने के बाद श्री अनुपम चौकसे सर के कहने पर डी.मेट परीक्षा के लिये जमा करा दिये गये थे। श्री अनुपम चौकसे एल.एन. मेडिकल कालेज के डायरेक्टर व ए.पी.सी.एम.सी. के सेक्रेटरी है। इसलिये उनके कहने पर हमने

फार्म जमा कर लिये हैं।

6. It is submitted that the said Vedraj Pehlajani expired recently on 20.2.2017 and till his death his statements were not recorded before the trial court. Therefore, his statement under section 161 of the Cr.P.C. cannot be considered for any purpose as the said statement does not come within the purview of section 32 of the Evidence Act. In such situation, in the charge-sheet nothing remained against the applicant to prove any relevant fact to connect the applicant with the aforesaid alleged crime as the memo of co-accused persons recorded under section 27 of the Evidence Act, namely Ranvir Anand and Surendra @ Ajay Singh, are not admissible against the applicant.

7. On the other hand, learned Panel Lawyer opposed the contentions advanced by learned counsel for the applicant and stated that *prima facie* applicant's involvement in the conspiracy of the offence of cheating is established from the material available in the charge-sheet and hence the instant petition under section 482 of the Cr.P.C. be dismissed.

8. Having considered the rival contentions advanced by learned counsel for the parties and on perusal of the case diary, it is found that with regard to implication of the applicant in the aforesaid alleged offence, so far as the confessional statements of co-accused Ranvir Anand and Surendra Singh are concerned, they have been recorded under section 27 of the Evidence Act, which is not admissible in evidence, even against the maker of the statements, i.e. co-accused Ranvir Anand and Surendra Singh, except the fact that they have been found in possession of the alleged money taken from the complainant party.

9. With regard to admissibility of the confessional statement or memo, Hon'ble the Apex Court in the case of *Anter Singh Vs. State of Rajasthan*, (2004)10 SCC 657, has observed in paras 13, 14 and 16 as under :-

13. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases in the background events proved therein is not always free from difficulty. It will, therefore, be worthwhile at the outset, to have a short and swift glance at Section 27 and be reminded of its requirements. The section says:

“27. Provided that, when any fact is deposed to as discovered in

consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

14. The expression “provided that” together with the phrase “whether it amounts to a confession or not” shows that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only “so much of the information” as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word “distinctly” means “directly”, “indubitably”, “strictly”, “unmistakably”. The word has been advisedly used to limit and define the scope of the provable information. The phrase “distinctly” relates “to the fact thereby discovered” and is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. (See Mohd. Inayatullah v. State of Maharashtra [(1976) 1 SCC 828 : 1976 SCC (Cri) 199 : AIR 1976 SC 483] .)

16. The various requirements of the section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to

do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

10. Further, the Apex court in the case of *Mustkeem Vs. State of Rajasthan*, (2011) 11 SCC 724, has interpreted the provision and observed in para 25 as under :-

25. With regard to Section 27 of the Act, what is important is discovery of the material object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution.

11. Thus, only the statement with regard to having possession of the money taken from the complainant party is admissible against the makers of the statements, i.e. co-accused Ranvir and Surendra, the applicant is a third person. A statement given by co-accused at the time of recording of a memo under section 27 of the Evidence Act is not admissible against other co-accused persons even under section 10 of the Evidence Act, as has been held by the Three Judge Bench of the Apex court in the case of *Sardul Singh Caveeshar*

Vs. State of Bombay, AIR 1957 SC 747. Further relying on the aforesaid judgment in the case of *State of Gujarat Vs. Mohammed Atik*, reported in (1998)4 SCC 351, it has been laid down that "thus, the principle is no longer *res integra* that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act". Therefore, it is not admissible against other co-accused persons even in the case of charge of criminal conspiracy. Apart from it, in the case of *Kehar Singh Vs. State (Delhi Administration)* reported in (1988) 3 SCC 609, the Apex Court has held as under :-

"From an analysis of the section, it will be seen that Section 10 will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence. There should be, in other words, a *prima facie* evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. Once such *prima facie* evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it".

12. In the present case, there is also no material to get satisfaction that there is a reasonable ground to believe that the applicant and other co-accused persons have conspired together to commit the offence of cheating. In other words, there is no *prima facie* evidence that the applicant was a party to the conspiracy before the acts of other co-accused can be used against the applicant as a co-conspirator. Therefore, the aforesaid confessional statements of the co-accused persons cannot be read against the applicant.

13. So far as the allegation that the forms were accepted by the Administrative Officer of the Admission and Fee Regulatory Committee of DMAT, Vedraj Pehlajani, after the deadline of receiving of the forms, i.e. 26.6.2013 on the instruction or direction of the applicant is concerned, in this regard at present the prosecution has no evidence as the only sole witness Vedraj Pehlajani died on 20.2.2017 without giving statement before the trial court and his statement under section 161 of the Cr.P.C. is not a piece of evidence. So far as the statement of other witness Ashish Shukla is concerned, he has stated that the aforesaid witness Vedraj Pehlajani, who has expired,

told him that the applicant found him to deposit the aforesaid forms, therefore, he received the form after the deadline of receiving of the form. This statement also cannot be admitted in absence of the statement of Vedraj Pehlajani. In such circumstances, in the charge-sheet there is no other material to prove the aforesaid allegation against the applicant. Further, it also appeared from the record that not only the forms of complainants' sons Manoj and Chillapalli were received at the DMAT Center of Bhopal, but also at various other centers more than 100 forms were received after the deadline of receiving of the forms. In such circumstances, the copy of minutes of meeting of the APDMC held on 22.6.2013 appears to be genuine as on record there is no contrary material to disprove the fact that the date was not extended till 29.6.2013. In such circumstances, deeming the aforesaid allegation correct, it cannot be inferred that the applicant by allowing or directing Vedraj Pehlajani to receive the forms of Manoj and Chillapalli on 29.6.2013 was a part of dealing with the act of cheating by other co-accused persons or the applicant have a connivance with other co-accused persons or hatches conspiracy with the other co-accused persons to commit the aforesaid offence of cheating.

14. Against the applicant, there is no direct allegation. Only on the basis of aforesaid circumstances, the prosecution has arrayed him as an accused in the offence. The prosecution has no material in the charge-sheet to prove the aforesaid allegations against the applicant and only on the aforesaid allegation *prima facie* no inference can be drawn that the applicant was involved in the alleged crime with other co-accused persons. The prosecution has filed the charge-sheet only on the basis of suspicion; but, for the prosecution and for framing of charge mere suspicion is not sufficient. It requires grave suspicion to prosecute or put on trial a person in a criminal case.

15. Apex court in the case of *Ramnarayan Popli Vs. CBI and others*, (2003) 3 SCC 641 has held as under :-

342. The elements of a criminal conspiracy have been stated to be:

(a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in

the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act.

343. No doubt, in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

346..... This Court in *V.C. Shukla v. State (Delhi Admn.)* [(1980) 2 SCC 665 : 1980 SCC (Cri) 561] held that to prove criminal conspiracy, there must be evidence, direct or circumstantial, to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and

illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

354. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence, whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B of the I.P.C.

16. In the case of *K.R.Purshottam Vs. State of Kerela*, reported in (2005) 12 SCC 631, the Hon'ble Apex Court has held in paras 13 and 14 as under :-

"13.....Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is *sine qua non* for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express and partly implied. Mere knowledge, even discussion, of the plan would not *per se* constitute conspiracy.

14. Suspicion cannot take the place of legal proof and prosecution would be required to prove each and every circumstance in the chain of circumstances so as to complete the chain. It is true that in most of the cases, it is not possible to prove the agreement between the conspirators giving rise to conclusive or irresistible inference of an agreement between

two or more persons to commit an offence.

17. Further, the Apex Court in the case of *Suryalaxmi Cotton Mills Ltd. Vs. Rajveer Industries Ltd. and others*, (2008) 13 SCC 678, has held as under :-

25. Ingredients of cheating are:

(i) deception of a person either by making a false or misleading representation or by other action or omission; and

(ii) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person 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.

26. A bare perusal of Section 415 read with Section 420 of the Penal Code would clearly lead to the conclusion that fraudulent or dishonest inducement on the part of the accused must be at the inception and not at a subsequent stage.

18. Further, Hon'ble the Apex Court in the case of *Iridium India Telecom Limited Vs. Motorola Incorporated and others*, reported in (2011) 1 SCC 74, has held as under :-

67. The next important question which needs to be examined is as to whether the averments made in the complaint if taken on their face value would not prima facie disclose the ingredients for the offence of cheating as defined under Section 415 IPC. The aforesaid section is as under:

“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'.

Explanation.—A dishonest concealment of facts is a deception within the meaning of the section."

68. A bare perusal of the aforesaid section would show that it can be conveniently divided into two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person deceived to either: (a) deliver property to any person; or (b) consent that any person shall retain any property. The second part also requires that the accused must by deception intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Furthermore, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, it is evident that deception is a necessary ingredient for the offences of cheating under both parts of this section. The complainant, therefore, necessarily needs to prove that the inducement had been caused by the deception exercised by the accused. Such deception must necessarily produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from deception. The Explanation to the section would clearly indicate that there must be no dishonest concealment of facts. In other words, non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.

19. Hon'ble the Apex Court in the case of *Sajjan Kumar Vs. CBI and others*, reported in (2010) 9 SCC 368, has explained the scope of sections 227 and 228 of the Code with regard to framing of charges and observed in para 21 thus :-

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the

charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

20. In view of the aforesaid discussion and considering the exposition of law stated aforesaid, in view of this Court, *prima facie* there is no material against the applicant to prosecute him for the alleged offences punishable under sections 420 and 120-B of the I.P.C. No fruitful purpose will be served to try the applicant as the chance of his conviction is very bleak. In such circumstances, continuation of proceedings against the applicant cannot be said to be justifiable and it would amount to misuse of the process of law. In view of the aforesaid discussion, this petition is allowed and the impugned order dated 4.12.2015 is quashed. As the result, the applicant stands exonerated from the criminal proceedings pending against him in S.T.No.304/2015 in the court of 8th Additional Sessions Judge, Bhopal.

Application allowed.

I.L.R. [2017] M.P., 2031

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Rajendra Mahajan

M.Cr.C. No.2744/2016 (Jabalpur) decided on 11 April, 2017

ANURAG MATHUR & ors.

...Applicants

Vs.

STATE OF M.P. & anr.

...Non-applicants

A. Criminal Procedure Code, 1973 (2 of 1974), Section 177 & 178, Penal Code (45 of 1860), Section 498-A/34 & 406 and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Cognizance – Territorial Jurisdiction – Complaint lodged by wife at Bhopal – Husband's native place is Jaipur and he is working in Agartala – Marriage performed at Jaipur – Court at Bhopal took cognizance of the offences – Challan was filed and charges framed – Husband filed application u/s 239 for discharge on the ground of territorial jurisdiction which was dismissed – Held – As per the FIR and case diary statement of wife and her father and brother, petitioner No.1/husband came to Bhopal and committed dowry related offences – Provisions of Section 178(b) Cr.P.C.

is wholly attracted in the present case irrespective of the fact that an isolated part/portion of whole crime occurred in Bhopal – Court at Bhopal has the territorial jurisdiction to hold trial against all petitioners – Application dismissed. (Para 11 & 14)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 177 व 178, दण्ड संहिता (1860 का 45), धारा 498-ए/34 व 406 एवं दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3 व 4 – संज्ञान – क्षेत्रीय अधिकारिता – पत्नी द्वारा भोपाल में शिकायत दर्ज की गई – पति का मूल निवास स्थान जयपुर है और वह अगरतला में कार्यरत है – विवाह जयपुर में संपन्न हुआ – भोपाल के न्यायालय ने अपराधों का संज्ञान लिया – चालान प्रस्तुत किया गया तथा आरोप विरचित किये गये – पति ने क्षेत्रीय अधिकारिता के आधार पर आरोपमुक्त किये जाने हेतु धारा 239 के अंतर्गत आवेदन प्रस्तुत किया जिसे खारिज किया गया – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन एवं पत्नी तथा उसके पिता एवं भाई के केस डायरी कथन के अनुसार याची क्र. 1/पति भोपाल आया था और दहेज संबंधी अपराध कारित किये – वर्तमान प्रकरण में, धारा 178(बी) द.प्र.सं. के उपबंध पूर्ण रूप से आकर्षित होते हैं इस तथ्य से प्रभावित हुए बिना कि संपूर्ण अपराध का एकाकी भाग/हिस्सा भोपाल में घटित हुआ – भोपाल के न्यायालय को सभी याचीगण के विरुद्ध विचारण करने का क्षेत्रीय अधिकार है – आवेदन खारिज।

B. *Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Jurisdiction of High Court – Held – The High Court has no jurisdiction to examine the truthfulness of allegations made in FIR and case dairy statements.* (Para 16)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – उच्च न्यायालय की अधिकारिता – अभिनिर्धारित – उच्च न्यायालय को प्रथम सूचना प्रतिवेदन तथा केस डायरी कथनों में किये गये अभिकथनों की सत्यता का परीक्षण करने की अधिकारिता नहीं है।

C. *Practice – Apex Court has held that pendency of a reference before larger bench does not mean that all other proceedings involving same issue would remain stayed till a decision is rendered in reference by larger bench.* (Para 19)

ग. पद्धति – सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि वृहद न्यायपीठ के समक्ष निर्देश लंबित रहने का अर्थ यह नहीं होता कि वृहद न्यायपीठ द्वारा निर्देश में निर्णय दिये जाने तक सभी अन्य कार्यवाहियां जिसमें समान मुद्दा अंतर्गस्त है, पर रोक बनी रहेगी।

Cases referred :

AIR 2011 SC 1674, (2014) 12 SCC 362, Cr.A.No. 71/2012 order passed on 16.01.2014 (Supreme Court)(DB), (1997) 5 SCC 30, AIR 1991 SC 1260, 2012 (4) Crimes 432, (2009) 13 SCC 608.

Amitabh Gupta, for the applicants.

Y.D. Yadav, P.L. for the non-applicant No. 1/State.

Pradeep Sahu, for the non-applicant No. 2.

ORDER

RAJENDRA MAHAJAN, J. :- The petitioners have invoked the extraordinary jurisdiction and powers of this court under Section 482 of the Cr.P.C. for setting aside the order dated 14.10.2015 passed by the Sixth Additional Sessions Judge and Special Judge, Bhopal, in Criminal Revision No.439/2015 affirming the order dated 29.06.2015 passed by the Judicial Magistrate First Class, Bhopal, in RT No.8335/2013 taking cognizance against the petitioners for the offences punishable under Sections 498-A and 406 of the IPC and 3 and 4 of the Dowry Prohibition Act 1961 (for short 'the DP Act') rejecting the pleas raised by the petitioners that the court at Bhopal has no territorial jurisdiction to try the case and for their discharge under Section 239 Cr.P.C.

2. The brief facts necessary for the adjudication of this petition are infra:-

(2.1) On 12.06.2013, complainant Anjali, who is respondent No.2 herein, handed over a typed complaint to the SHO, Mahila Police Station, Bhopal, with a prayer to take actions upon her complaint against the petitioners. The gist of her complaint is that she got married to petitioner No.1 Anurag on 16.01.2012 as per Hindu rites and customs at Jaipur, the native place of the petitioners. Petitioner No.2 Suresh and petitioner No.3 Kusum are her in-laws. In the marriage, her parents gave 22 tolas of gold ornaments, other valuable articles and five lakhs rupees in cash. In addition to that, her parents gave two lakhs rupees in cash for the purchase of household articles at Agartala, where petitioner No.1 was posted at the time of marriage. Some days into the marriage, the petitioners started forcing her to bring five lakhs rupees in cash and one luxury

car from her parents in dowry. She would tell them that her parents had recently married her and their financial position is not such as to fulfill their said demands. Consequently, petitioner Nos. 2 and 3 started maltreating and misbehaving with her. Upon their instigation, petitioner No.1 often beat her. They summoned her only brother Amit to Jaipur. On 27.01.2012, they sent her with him to Bhopal giving a threat that so long as she does not bring five lakhs rupees in cash and one luxury car in dowry, she has to stay put with her parents at Bhopal. When she was coming to Bhopal with her brother, petitioner No.3 snatched her all gold ornaments. On 04.02.2012, petitioner No.1 came over to Bhopal. At that time, petitioner No.3 instigated him from Jaipur on mobile-phone to bring respondent No.2 with him only when her parents give him five lakhs rupees in cash and one car in dowry. Her parents and she refused to meet his said demand. Thereupon, petitioner No.1 committed marpeet with her before her parents and others. Her parents, brother and sister came to her rescue. However, petitioner No.1 took her Jaipur from Bhopal. There, he left her and went to Agartala. She stayed with petitioner Nos. 2 and 3 at Jaipur for a period between January 2012 and April 2012. During that period, they often told her to take divorce from petitioner No.1 so that they could marry him second time to get a car and rupees ten lakhs in cash in dowry. They kept her in confinement. They gave her only bread and namkeen to eat. They did not allow her to talk with her parents and close relatives on phone. In that period, her father and brother came over to Jaipur 2 to 3 times and persuaded them to send her with petitioner No.1 to Agartala. Thereupon, he took her to Agartala along with his parents. There, he and his parents used to demand five lakhs rupees in cash and a car in dowry. Besides that, he would not talk to her and tortured her mentally by sending SMSes. In the circumstances, she apprised her parents of her miserable living condition. Thereupon, on 11.06.2012, her brother came over to Agartala by a flight and took her back. If her brother had not come in time, then she would have been killed by the petitioners. At Agartala, the

petitioners misbehaved with her brother, too. They sent her with him to Bhopal with a threat of giving divorce by petitioner No.1.

- (2.2) Respondent No.2 has also stated in the complaint that upon the persuasion of her parents and her close relatives the petitioners asked them to come over Jaipur for talks. Thereupon, on 30.09.2012 she, her parents and others reached Jaipur. In the presence of petitioner No.1's sister and her husband, they agreed to keep her with them giving up their old demands of dowry. Thereupon, she started residing with them since 29.10.2012 at Jaipur. However, there was no change in the behaviour of petitioner Nos. 2 and 3 towards her and some days later they revived their old demand of dowry. On 21.12.2012, petitioner No.1 came over to Jaipur from Agartala and committed marpeet with her raising old demand of dowry or in the alternative to take divorce from him. On account of their physical and mental torture and harassment, she fell ill. Thereupon, she apprised of her illness to her parents. On 25.12.2012, her father, brother, maternal uncle and brother-in-law (husband of her sister) came over to Jaipur and they took her back to Bhopal. On 11.02.2013, she gave an application to Mahila Paramarsh Kendra, Bhopal for amicable settlement of matrimonial disputes. On 11.06.2013, petitioners refused to come over Bhopal for counselling.
- (2.3) On 12.06.2013, the police of Mahila Police Station, Bhopal registered the complaint at FIR Number 0/2013 under Sections 498-A and 34 of the IPC and 3 and 4 of the DP Act and made the petitioners accused of the case. Thereafter, the FIR and other documents had been sent to the Police Commissioner, Jaipur through the Superintendent of Police, South Bhopal with a prayer to direct the jurisdictional police station of Jaipur to register the case against the petitioners. The Police Commissioner sent back the FIR with a communication vide letter No.864/13 dated 27.06.2013 with a direction to the SHO, Mahila Police Station Bhopal, that as per the law laid down by the Supreme Court in the case of *Sunita Kumari*

Kashyap Vs. State of Bihar and another , (AIR 2011 SC 1674), the Mahila Police Station, Bhopal has jurisdiction to register a case against the petitioners as the complainant, who is respondent No.2 herein, is presently residing in Bhopal with her parents. Thereupon, on 19.07.2013, the police of Mahila Police Station, Bhopal registered the case at Crime No.138/2013 against the petitioners.

(2.4) Upon the conclusion of investigation, the Mahila Police, filed the charge-sheet against the petitioners for their prosecution in the aforesaid Sections of law in the jurisdictional court of the Judicial Magistrate First Class, Bhopal (for short 'the Court'). Thereupon, a criminal case is registered at RT No.8335/2013. The petitioners filed an application under Section 239 Cr.P.C. in the case for their discharge on the ground that the court has no territorial jurisdiction to try the case. Vide order dated 29.06.2015, the learned JMFC rejected the said application and took cognizance against them for the offences punishable under Sections 498-A and 406 of the IPC and 3 and 4 of the DP Act. It be noted that on 20.10.2015, the learned JMFC has framed the aforesaid charges against the petitioners.

3. Feeling aggrieved by the order dated 29.06.2015, the petitioners filed Criminal Revision No.439/2015, which was disposed of vide the impugned order dated 14.10.2015 passed by the Sixth Additional Sessions Judge and Special Judge, Bhopal, affirming the said order.

4. Feeling again grieved by the rejection of the criminal revision, the petitioners have approached this court by filing this petition.

5. It is submitted before this court on behalf of the petitioners by learned counsel Shri Amitabh Gupta that in order to usurp the territorial jurisdiction of the Court at Bhopal it is falsely stated in the complaint that petitioner No.1 came over to Bhopal on 04.02.2012 and demanded five lakhs rupees in cash and a car from respondent No.2 and her parents in dowry. Upon their refusal, he committed marpeet with respondent No.2. It is submitted that no investigation was done by the Investigating Officer of the case on the point whether petitioner No.1 came over to Bhopal on the said date and he was provoked by petitioner No.3 on mobile-phone as alleged by respondent No.2

in the complaint. It is submitted that in the absence of any independent investigation on the said points, the Court has no territorial jurisdiction to try the case. It is submitted that if it is assumed that petitioner No.1 came over to Bhopal on the said date, he had talks with petitioner No.2 on mobile-phone and he committed offences as alleged, despite that the Court has no territorial jurisdiction to try the case because the alleged crime occurred mainly either at Jaipur or Agartala except an alleged isolated incident of 04.02.2012. It is submitted that the Court has no jurisdiction to try the case against petitioner Nos.2 and 3 because it is not the case of respondent No.2 that they had ever come over to Bhopal during the period of the crime. Hence, the Court has erred in taking cognizance against petitioner Nos. 2 and 3. It is contended upon these submissions by him that the learned JMFC has wrongly held vide the order dated 29.06.2015 that he has jurisdiction to try the case and that the learned revisional Judge has erred in upholding the said order vide the impugned order. In support of these submissions, reliance is placed upon a decision rendered by the Supreme Court in the case of *Amarendu Jyoti and others Vs. State of Chhattisgarh and others*, [(2014) 12 SCC 362].

6. In alternative, learned counsel for the petitioners has submitted that vide order dated 16.01.2014 passed in Criminal Appeal No.71/2012 titled *Rupali Devi Vs. State of U.P. and others*, a two-Judge Bench of Hon'ble the Supreme Court has referred the matter to a larger Bench to decide the point whether a case of cruelty on account of dowry harassment punishable under Section 498-A of the IPC can be registered, investigated and punished in a jurisdiction different from the one from which the aggrieved wife has been forced out on account of such harassment. It is submitted that the larger Bench of the Supreme Court is yet to adjudicate the point. Therefore, until the decision of the larger Bench, this petition be put on hold.

7. Per contra, it is submitted on behalf of respondent No.2 by learned counsel Shri Pradeep Sahu that it is clearly stated in the FIR that petitioner No.1 came over to Bhopal on 04.02.2012. At that time, he made a demand of five lakhs rupees in cash and a car in dowry at the provocation of petitioner No.3 on mobile-phone from Jaipur and also committed beating with respondent No.2 in connection with demand of dowry. Thus, the Court has territorial jurisdiction to try the case in view of the provisions of Section 178(b) Cr.P.C. In this regard reliance is placed by him upon the *ratio decidendi* in *Sunita Kumari Kashyap's* case (supra). It is submitted that in view of dowry

related offences committed by petitioner No.1 at Bhopal, the Court has territorial jurisdiction to try the case not only against petitioner No.1 but also against petitioner Nos. 2 and 3. In support of the said contention, reliance is placed upon a decision rendered by the Supreme Court in the case of *Sujata Mukherjee (Smt.) Vs. Prashant Kumar Mukherjee*, [(1997) 5 SCC 30]. It is submitted that this court has no power under Section 482 Cr.P.C. to examine the prosecution case from the angle whether it was necessary on the part of the Investigating Officer of the case to collect the independent evidence regarding the visit of petitioner No.1 to Bhopal on 04.02.2012 and commission of alleged offences by him as stated by respondent No.2 in the FIR as also reiterated by her, her father and brother in their case dairy statements. It is submitted that until and unless they are subjected to cross-examine on behalf of the petitioners in the course of trial of the case, their said statements will remain true. It is submitted that in the course of trial, if it is proved by the petitioners that on 04.02.2012 petitioner No.1 had not come over to Bhopal, then the territorial jurisdiction of the Court at Bhopal would be ousted and as a consequence the trial would be vitiated. Until that stage is arrived in the case, the court has territorial jurisdiction to try the case.

8. Learned counsel for respondent No.2 has strongly urged that the facts of the present case and those of *Rupali Devi's* case are entirely different. Therefore, there is no need of keeping the present case in abeyance until the decision of larger Bench of the Supreme Court in that case as urged by learned counsel for the petitioners. Upon these submissions, it is prayed by him that this petition has no merits, therefore, it be dismissed upholding the orders passed by the courts below.

9. Learned Panel Lawyer has adopted the arguments raised by learned counsel for respondent No.2.

10. I have anxiously considered the rival submissions made at the Bar and perused the entire material on record.

11. To resolve the controversy over the territorial jurisdiction of the court at Bhopal, Sections 177 and 178 Cr.P.C., are relevant which provide for place of inquiry and trial of a case. The said Sections are reproduced below:-

“177. Ordinary place of inquiry and trial.— Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial. — (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.”

A bare reading of the aforesaid Sections makes it clear that Section 177 Cr.P.C. states the ordinary place of inquiry or trial; whereas Section 178 Cr.P.C. provides for place of inquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in another and where it is consisted of several acts done in different local areas, it could be inquired into or tried by a court having jurisdiction over or any such local areas. In the present case, as per the contents of the FIR and the case diary statements of respondent No.2, her father and brother, petitioner No.1 came over to Bhopal on 04.02.2012 and there he committed dowry related offences in furtherance of demand of dowry as made by him and his parents. In the light of aforesaid factual matrix, it is held that the provisions of clause(b) of Section 178 Cr.P.C. is wholly attracted in the present case irrespective of the facts that an isolated part/portion of the whole crime occurred in Bhopal, whereas the major parts of it occurred in Jaipur and Agartala because the dictionary meaning of “partly”, which is appearing in Section 178(b) Cr.P.C., is to some extent or in some degree i.e. an unspecified amount or extent or number of degree. Therefore, it is held that the Court at Bhopal has territorial jurisdiction to hold trial of the case.

12. In *Sujata Mukherjee's* case (supra), the parents of complainant-wife were residents of Raipur, whereas her husband, an accused, and other accused persons of the case were the residents of Raigarh. The complainant-wife had to come to Raipur to save herself from the maltreatment and humiliation being meted out to her at the hands of all the accused persons. The complainant-

wife has stated in the FIR, *inter alia*, that her husband had also come to the house of her parents at Raipur and there he had also assaulted her. On the basis of the said facts, the Supreme Court has held that even though only one isolated incident of dowry related offence was committed at the complainant-wife's parental house at Raipur, the court at Raipur has territorial jurisdiction to try the case. The Supreme court has also held that the FIR reveals that on some occasions all the accused persons had taken part in the commission of dowry related offences, on other occasion one of the accused persons had taken part in commission of the alleged offences, therefore, the Court at Raipur will have jurisdiction to try the case against all the accused persons though only the husband committed the offence at Raipur.

13. In *Sunita Kumari Kashyap's* case (supra), the complainant-wife's parents were residents of Gaya and her husband, an accused, and other accused persons of the case were residents of Ranchi. The accused persons harassed and tortured her for bringing less dowry. The complainant-wife has stated in the FIR that her husband brought her to Gaya from Ranchi and gave her a threat of dire consequences for not fulfilling their demand of dowry at Gaya. The Supreme Court, having placed reliance upon the decision rendered in *Sujata Mukherjee's* case (supra), has held that the court at Gaya will have territorial jurisdiction to try the case not only against the husband but also other accused persons of the case.

14. In the case in hand, respondent No.2 has specifically asserted in the FIR that petitioner No.1 came over to Bhopal on 04.02.2012 and insisted upon her and her parents to fulfill the old demand of dowry and upon their outright refusal, he committed marpeet with her. This incident is also reiterated among other incidents by respondent No.2, her father and brother in their case diary statements. In the light of these facts, the law laid down by the Supreme Court in *Sujata Mukherjee's* case (supra) and *Sunita Kumari Kashyap's* case (supra) are squarely applicable in the present case. It is, therefore, held that the Court at Bhopal has territorial jurisdiction to try the case against all the petitioners.

15. In the case of *State of Bihar Vs. P.P. Sharma* (AIR 1991 SC 1260), the Supreme Court has held that while deciding the petition under Section 482 Cr.P.C., the High Court cannot examine the case concerned whether the investigating officer has investigated the case with malafide intention or committed certain lapses. In view of the ratio of said case-law, this court

refrains itself from saying whether it is a lapse on the part of the Investigating Officer of the case that he had not verified from independent source the visit of petitioner No.1 to Bhopal on 04.02.2012. The issue is left open to decide by the trial court.

16. I am of the considered opinion that the High Court has no jurisdiction under Section 482 Cr.P.C. to examine the truthfulness of the allegations made by respondent No.2 in the FIR and she, her father and brother have retold the allegations in their case dairy statements that on 04.02.2012 petitioner No.1 came over to Bhopal and committed offences relatable to the demand of dowry. However, the petitioners have right to debunk them in the course of trial. This view of mine gets strength by the view taken by the Andhra Pradesh High Court in a decision rendered in the case of *Ramesh Babu Vs. State of A.P. and another* (2012 (4) Crimes 432).

17. The law laid down by the Supreme Court in *Amarendu's case* (supra) is not applicable in the present case because distinguishable facts are highly visible.

18. In the case of *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Asharful Haque and another*, [(2005) 1 SC 122], the Supreme Court has held that the High Court could exercise extra-ordinary power conferred under Section 482 Cr.P.C., in the following three circumstances; namely first -to give effect to an order under the code of criminal procedure, second -to prevent abuse of the process of the court and third -to secure the ends of justice. In view of the above propositions of law, I have examined the entire material available before me and find that none of the above circumstance exists in the case in hand. Therefore, this court cannot exercise the power under Section 482 Cr.P.C. for setting aside the impugned order and in consequence the quashment of entire proceedings in RT No.8335/2013.

19. In *Rupali Devi's case* (supra), the complainant-wife has stated in the FIR that she had suffered cruelties in connection with demand of dowry at the hands of her husband and relations-in-law at place Mau where they reside, whereas she has lodged the FIR against them at the Police Station Deoria, the place where the complainant-wife was living with her parents after she being driven out from her matrimonial home at Mau. The police launched the prosecution against them in the court at Deoria. Though the court at Deoria took the cognizance of offences against the complainant's husband and her

relations-in-law despite their opposition on the ground that the court has no territorial jurisdiction in the matter as all the alleged acts of cruelties were committed at Mau over which the court has no territorial jurisdiction. Feeling aggrieved thereby, the accused persons approached the Allahabad High Court which has, in turn, held that no part of the offences had held in Deoria as per the FIR of the case, therefore, the court at Deoria has no territorial jurisdiction to try the case. Thereupon, the complainant-wife approached the Supreme Court. Under the circumstances, the Supreme Court has referred the matter to a larger Bench on the point mentioned in para-6 of this order. In the present case, it has been held by this court that a part of the whole crime was committed at Bhopal, therefore, the Court at Bhopal has territorial jurisdiction to try the case. Thus, the facts of *Rupali Devi's* case (supra) are diametrically opposite from the facts of the present case. Consequently, the prayer made by learned counsel for the petitioners with regard to putting the matter on hold till the decision of the larger Bench of the Supreme Court in *Rupali Devi's* case, is outright rejected. Moreover, in the case of *Harbans Singh Vs. State of Punjab* [(2009) 13 SCC 608], the apex Court has held that the pendency of a reference before a larger Bench of it does not mean that all other proceedings involving the same issue would remain stayed till a decision is rendered in reference by its larger Bench. Even it is assumed just for academic discussion that the said reference has bearings upon the case even remotely despite that the proceedings of the present case cannot be held in abeyance in view of the said ratio.

20. For the preceded discussions and conclusions, it is held that both the courts below have rightly held on facts and in law that the Court at Bhopal has territorial jurisdiction to try the case. Thus, this petition must fail and is dismissed.

21. It is made clear that this court has not expressed anything on the merits and claims of both parties and the above conclusion is confined to the territorial jurisdiction of the Court at Bhopal.

22. Accordingly, this petition is finally disposed of.

Application dismissed.