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Civil Practice – Litigant & Counsel – Conduct – Held – This Court in certain cases has concluded that the litigant even after engaging the Counsel cannot be permitted to sleep over his duty – He should be vigilant and contact his counsel in order to gather knowledge regarding progress

of litigation – However this principle cannot be applied in present case as no fresh notice was issued by Court on applications filed by plaintiff. [Chairman M.S. Banga Hindustan Lever Ltd. Bekway, Reclamation, Bombay Vs. M/s. Heera Agencies] ...3015

सिविल पद्धति – मुकदमेबाज व अधिवक्ता – आचरण – अभिनिर्धारित – इस न्यायालय ने कतिपय प्रकरणों में निष्कर्षित किया है कि मुकदमेबाज को अधिवक्ता नियोजित करने के बाद भी, उसे उसके कर्तव्य में लापरवाह होने की अनुमति नहीं दी जा सकती – उसे जागरूक होना चाहिए तथा मुकदमेबाजी के आगे बढ़ने के संबंध में ज्ञान एकत्रित करने हेतु अपने अधिवक्ता से संपर्क करना चाहिए – तथापि यह सिद्धांत वर्तमान प्रकरण में लागू नहीं किया जा सकता क्योंकि वादी द्वारा प्रस्तुत आवेदनों पर न्यायालय द्वारा कोई नया नोटिस जारी नहीं किया गया था। (चेयरमैन एम.एस. बंगा हिन्दुस्तान लीवर लि. बेकवे रेक्लेमेशन, बॉम्बे वि. मे. हीरा एजेंसी) ...3015

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सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – देखें – वक्फ अधिनियम, 1995, धारा 54 व 85 (रामभरोसे राठौर वि. एम.पी. वक्फ बोर्ड) ...*160

Civil Procedure Code (5 of 1908), Section 100 – Second Appeal – Concurrent Findings of Fact – Jurisdiction – Held – Concurrent findings of Courts below are based on appreciation of evidence which cannot be interfered by this Court u/S 100 CPC – Court u/S 100 CPC cannot re-appreciate the evidence even if another view is possible – Jurisdiction of this Court u/S 100 CPC is limited – Concurrent findings of fact cannot be interfered until and unless the same is perverse or based on no evidence or contrary to material on record. [Ummed Baghel Vs. Mohd. Anees Khan] ...2428

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील – तथ्य के समवर्ती निष्कर्ष – अधिकारिता – अभिनिर्धारित – निचले न्यायालयों के समवर्ती निष्कर्ष साक्ष्य के मूल्यांकन पर आधारित हैं जिसमें इस न्यायालय द्वारा सिविल प्रक्रिया संहिता की धारा 100 के अंतर्गत हस्तक्षेप नहीं किया जा सकता – न्यायालय सिविल प्रक्रिया संहिता की धारा 100 के अंतर्गत साक्ष्य को पुनर्मूल्यांकित नहीं कर सकता, भले ही अन्य दृष्टिकोण संभव हो – सिविल प्रक्रिया संहिता की धारा 100 के अंतर्गत इस न्यायालय की अधिकारिता सीमित है – तथ्य के समवर्ती निष्कर्ष में तब तक हस्तक्षेप नहीं किया जा सकता जब तक कि उक्त विपर्यस्त न हो या बिना किसी साक्ष्य पर आधारित न हो या अभिलेख पर मौजूद सामग्री के विपरीत न हो।

(उम्मेद बघेल वि. मोहम्मद अनीस खान) ...2428

Civil Procedure Code (5 of 1908), Section 100 – Second Appeal – Held – The Court in exercise of power u/S 100 CPC cannot re-appreciate the evidence even if another view is possible. [Babu Lal Vs. Sunil Baree] ...2692

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील – अभिनिर्धारित – न्यायालय सि.प्र.सं. की धारा 100 के अंतर्गत शक्ति के प्रयोग में अन्य दृष्टिकोण के संभव होने पर भी साक्ष्य का पुनर्मूल्यांकन नहीं कर सकता। (बाबूलाल वि. सुनील बारी) ...2692

Civil Procedure Code (5 of 1908), Section 100 – See – Accommodation Control Act, M.P., 1961, Section 12(1)(f) [Tarunveer Singh Vs. Mahesh Prasad Bhargava] ...3028

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – देखें – स्थान नियंत्रण अधिनियम, म.प्र., 1961, धारा 12(1)(एफ) (तरुणवीर सिंह वि. महेश प्रसाद भार्गव) ...3028

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Amendment in Written Statement/Plaint – Principle – Held – Apex Court concluded that amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle – Courts should be more liberal in case of an amendment of written statement, than that of a plaint – Application for amendment in written statement filed by petitioner/defendant allowed. [Ajit Singh Vs. Devesh Pratap Singh] ...*131

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – लिखित कथन/वादपत्र में संशोधन – सिद्धांत – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि एक वादपत्र का संशोधन एवं एक लिखित कथन का संशोधन, यथार्थतः समान सिद्धांत द्वारा, आवश्यक रूप से शासित नहीं होता – न्यायालयों को एक वाद पत्र की तुलना में एक लिखित कथन के संशोधन के प्रकरण में अधिक उदार होना चाहिए – याची/प्रतिवादी द्वारा प्रस्तुत लिखित कथन में संशोधन हेतु आवेदन मंजूर। (अजीत सिंह वि. देवेश प्रताप सिंह) ...*131

Civil Procedure Code (5 of 1908), Order 6 Rule 17, Proviso – Amendment in Written Statement – Amendment in Code – Effect – Held – Proviso to Order 6 Rule 17 was added vide CPC (Amendment) Act, 2002 and thus would not be applicable to civil suits which are filed prior to coming into force of the amendment Act of 2002 – In present

case, suit was filed in 1981 thus proviso will not apply to the suit –
Petition allowed. [Ajit Singh Vs. Devesh Pratap Singh] ...*131

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17, परंतुक – लिखित कथन में संशोधन – संहिता में संशोधन – प्रभाव – अभिनिर्धारित – आदेश 6, नियम 17 के परंतुक को सि.प्र.सं. (संशोधन) अधिनियम, 2002 द्वारा जोड़ा गया था और इसलिए उन सिविल वादों के लिए लागू नहीं होगा जिन्हें 2002 के संशोधन अधिनियम प्रभावी होने से पूर्व प्रस्तुत किया गया है – वर्तमान प्रकरण में, 1981 में वाद प्रस्तुत किया गया था अतः वाद के लिए परंतुक लागू नहीं होगा – याचिका मंजूर। (अजीत सिंह वि. देवेश प्रताप सिंह) ...*131*

Civil Procedure Code (5 of 1908), Order 6 Rule 17, Order 7 Rule 14(3) & Order 9 Rule 13 – Ex-Parte Proceedings – Fresh Notice – Trial Court proceeded ex-parte against appellants/defendants – Subsequently, plaintiff filed application under Order 6 Rule 17 and Order 7 Rule 14(3) C.P.C. which was allowed and thereafter ex-parte judgment and decree was passed – Held – Appellants were not put to notice before allowing such applications – In cases where after ex-parte proceedings, amendment applications etc. are filed, Court is required to issue fresh notice to the other side – Application under Order 9 Rule 13 allowed with cost – Appeals allowed. [Chairman M.S. Banga Hindustan Lever Ltd. Bekway, Reclamation, Bombay Vs. M/s. Heera Agencies] ...3015

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17, आदेश 7 नियम 14(3) एवं आदेश 9 नियम 13 – एक-पक्षीय कार्यवाहियां – नया नोटिस – विचारण न्यायालय ने अपीलार्थीगण/प्रतिवादीगण के विरुद्ध एक-पक्षीय कार्यवाही की – तत्पश्चात्, वादी ने सि.प्र.सं. के आदेश 6 नियम 17 तथा आदेश 7 नियम 14(3) के अंतर्गत आवेदन प्रस्तुत किया जिसे मंजूर किया गया था तथा उसके बाद एक-पक्षीय निर्णय एवं डिक्री पारित की गई थी – अभिनिर्धारित – ऐसे आवेदन मंजूर करने से पूर्व अपीलार्थीगण को नोटिस नहीं दिया गया था – उन प्रकरणों में जहां एक-पक्षीय कार्यवाहियों के पश्चात्, संशोधन आवेदन इत्यादि प्रस्तुत किये गये हैं, न्यायालय द्वारा दूसरे पक्ष को नया नोटिस जारी किया जाना अपेक्षित है – आदेश 9 नियम 13 के अंतर्गत आवेदन सव्यय मंजूर – अपीलें मंजूर। (चेयरमैन एम.एस. बंगा हिन्दुस्तान लीवर लि. बेकवे रेक्लेमेशन, बॉम्बे वि. मे. हीरा एजेंसी) ...3015

*Civil Procedure Code (5 of 1908), Order 7 Rule 11 – See – Partnership Act, 1932, Section 69(2) [Nirmala Devi (Smt.) Vs. Smt. Bharti Devi] ...*129*

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 — देखें — मागीदारी अधिनियम, 1932, धारा 69(2) (निर्मला देवी (श्रीमती) वि. श्रीमती भारती देवी) ...*129

Civil Procedure Code (5 of 1908), Order 9 Rule 13 — Maintainability of Application — Suit decreed against respondent No.2/defendant No.1 — He filed an appeal where applicant/defendant No.2 was not made a party — Appeal was also dismissed — Applicant filed an application under Order 9 Rule 13 CPC which was dismissed — Challenge to — Held — Trial Court passed a decree against respondent No.2/defendant No. 1 and not against the applicant — As per the provision, a defendant against whom an *ex-parte* decree is passed may apply to Court for setting it aside — Present application not maintainable — Revision dismissed. [Sangam Sahakari Grih Nirman Samiti Mydt. Vs. Smt. Jethibai Purushwani] ...2548

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 — आवेदन की पोषणीयता — वाद, प्रत्यर्थी क्र. 2/प्रतिवादी क्र. 1 के विरुद्ध डिक्रीत — उसने अपील प्रस्तुत की जिसमें आवेदक/प्रतिवादी क्र. 2 को पक्षकार नहीं बनाया गया था — अपील भी खारिज की गई — आवेदक ने आदेश 9 नियम 13 सि.प्र.सं. के अंतर्गत एक आवेदन प्रस्तुत किया जिसे खारिज किया गया — को चुनौती — अभिनिर्धारित — विचारण न्यायालय ने प्रत्यर्थी क्र. 2/प्रतिवादी क्र. 1 के विरुद्ध डिक्री पारित की और न कि आवेदक के विरुद्ध — उपबंध के अनुसार, एक प्रतिवादी, जिसके विरुद्ध एकपक्षीय डिक्री पारित की गई है, वह उसे अपास्त करने हेतु न्यायालय को आवेदन कर सकता है — वर्तमान आवेदन पोषणीय नहीं — पुनरीक्षण खारिज। (संगम सहकारी गृह निर्माण समिति मर्या. वि. श्रीमती जेठी बाई पुरुसवानी) ...2548

Civil Procedure Code (5 of 1908), Order 9 Rule 13 Second Proviso — Setting Aside of Ex-parte Decree — Ground — Held — Ex-parte decree cannot be set aside on mere allegation of irregularity of service of summons — In present case, record shows that summons were duly served on correct address of the applicant society. [Sangam Sahakari Grih Nirman Samiti Mydt. Vs. Smt. Jethibai Purushwani] ...2548

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 द्वितीय परंतुक — एक पक्षीय डिक्री को अपास्त किया जाना — आधार — अभिनिर्धारित — एकपक्षीय डिक्री को मात्र समन की तामील की अनियमितता के अभिकथन पर अपास्त नहीं किया जा सकता — वर्तमान प्रकरण में, अभिलेख दर्शाता है कि समन आवेदक सोसाईटी के सही पते पर सम्यक् रूप से तामील किये गये थे। (संगम सहकारी गृह निर्माण समिति मर्या. वि. श्रीमती जेठी बाई पुरुसवानी) ...2548

Civil Procedure Code (5 of 1908), Order 11 Rule 12 & 13 – Nomenclature of Document – Applicant's contention that affidavit is captioned as one under Order 11 Rule 13 CPC which cannot be given colour of one under Order 11 Rule 12 CPC – Held – Nomenclature of document is of no significance and contents of the document are to be considered to ascertain the nature of the same. [Durgesh Singh Vs. Narendra Kante] ...2541

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 11 नियम 12 व 13 – दस्तावेज की नामावली – आवेदक का तर्क है कि शपथ पत्र को, सि.प्र.सं. के आदेश 11 नियम 13 के अंतर्गत होने का शीर्षक दिया गया है जिसे सि.प्र.सं. के आदेश 11 नियम 12 के अंतर्गत होने का रंग नहीं दिया जा सकता – अभिनिर्धारित – दस्तावेज की नामावली का कोई महत्व नहीं है तथा उक्त की प्रकृति सुनिश्चित करने के लिए दस्तावेज की अंतर्वस्तु को विचार में लिया जाना चाहिए। (दुर्गेश सिंह वि. नरेन्द्र कान्ते) ...2541

Civil Procedure Code (5 of 1908), Order 11 Rule 12 & 21 – Eviction Suit – Declaration regarding Possession of Documents – Held – The party concerned, which is confronted with an application under Order 11 Rule 12 CPC is required to give declaration as to the status of possession of documents – In present case, respondent/plaintiff has accordingly declared the status regarding possession of document – Provision under Order 11 Rule 21 is not attracted for non-production of documents – Revision dismissed. [Durgesh Singh Vs. Narendra Kante] ...2541

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 11 नियम 12 व 21 – बेदखली वाद – दस्तावेजों के कब्जे के संबंध में घोषणा – अभिनिर्धारित – संबंधित पक्षकार, जो कि सिविल प्रक्रिया संहिता के आदेश 11 नियम 12 के अंतर्गत आवेदन का सामना करता है उसके द्वारा दस्तावेजों के कब्जे की स्थिति के बारे में घोषणा की जाना अपेक्षित है – वर्तमान प्रकरण में, प्रत्यर्थी/वादी ने तदनुसार, दस्तावेज के कब्जे के संबंध में स्थिति घोषित की है – दस्तावेज प्रस्तुत नहीं किये जाने के लिए आदेश 11 नियम 21 के अंतर्गत आवेदन/उपबंध आकर्षित नहीं होते – पुनरीक्षण खारिज। (दुर्गेश सिंह वि. नरेन्द्र कान्ते) ...2541

Civil Procedure Code (5 of 1908), Order 21 Rule 32 – Permanent Injunction – Execution of – Suit for declaration and permanent injunction decreed in favour of petitioner which has attained finality till second appellate stage – Warrant of possession issued against respondent whereby possession was restored to petitioner and he is

still enjoying the possession – Merely on ground of apprehension that respondents are trying to interfere with possession, provision of Order 21 Rule 32 CPC cannot be invoked – Petition dismissed. [Toran Singh Vs. Imrat Singh (Dead) Through L.R. Naval Singh] ...*164

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 32 – स्थायी व्यादेश – का निष्पादन – घोषणा एवं स्थायी व्यादेश हेतु वाद याची के पक्ष में डिक्रीत किया गया जिसने द्वितीय अपील प्रक्रम तक अंतिमता प्राप्त कर ली – प्रत्यर्थी के विरुद्ध कब्जे का वारंट जारी किया गया जिससे याची को कब्जा पुनः स्थापित किया गया था तथा वह अभी भी कब्जे का उपभोग कर रहा है – मात्र आशंका के आधार पर कि प्रत्यर्थीगण कब्जे में हस्तक्षेप करने की कोशिश कर रहे हैं, सि.प्र.सं. के आदेश 21 नियम 32 का अवलंब नहीं लिया जा सकता – याचिका खारिज। (तोरण सिंह वि. इमरत सिंह (मृतक) द्वारा विधिक प्रतिनिधि नवल सिंह) ...*164*

Civil Procedure Code (5 of 1908), Order 22 Rule 4 – Abatement of Appeal – Substitution of Legal Representatives – Held – When name of deceased party is deleted without any substitution, then it would mean that said party is no more in the suit/appeal – If person is not a party to suit/appeal then his LR's cannot be brought on record under Order 22 Rule 4 – Further held – Subsequent purchaser cannot be held to be a legal representative of original vendor – Appeal dismissed as abated. [Kishorilal (Dead) Through L.Rs. Vs. Gopal] 2988

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 4 – अपील का उपशमन – विधिक प्रतिनिधियों का प्रतिस्थापन – अभिनिर्धारित – जब बिना किसी प्रतिस्थापन के मृतक पक्षकार का नाम हटा दिया जाता है, तब इसका अर्थ यह होगा कि कथित पक्षकार वाद/अपील में अब नहीं है – यदि व्यक्ति वाद/अपील का पक्षकार नहीं है तब आदेश 22 नियम 4 के अंतर्गत उसके प्रतिनिधियों को अभिलेख पर नहीं लाया जा सकता – आगे अभिनिर्धारित – पश्चात्कर्ता क्रेता को मूल विक्रेता का विधिक प्रतिनिधि अभिनिर्धारित नहीं किया जा सकता – अपील उपशमित होने के कारण खारिज। (किशोरीलाल (मृतक) द्वारा विधिक प्रतिनिधि) वि. गोपाल) 2988

Civil Procedure Code (5 of 1908), Order 22 Rule 4 – Substitution of Legal Representatives – Practice – Held – Appellants themselves by filing an application for deletion of name, has committed the mistake of law, which cannot be corrected by modifying or recalling the order, even by adopting the most lenient view. [Kishorilal (Dead) Through L.Rs. Vs. Gopal] ...2988

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 4 – विधिक प्रतिनिधियों

का प्रतिस्थापन — पद्धति — अभिनिर्धारित — अपीलार्थीगण ने नाम हटाने हेतु आवेदन प्रस्तुत करके स्वयं विधि की मूल कारित की है, जिसे सबसे उदार दृष्टिकोण अपनाते हुए भी आदेश उपांतरित कर अथवा वापस लेकर सुधारा नहीं जा सकता। (किशोरीलाल (मृतक) द्वारा विधिक प्रतिनिधि) वि. गोपाल) ...2988

*Civil Procedure Code (5 of 1908), Order 39 and Constitution — Article 227 — Jurisdiction & Scope — Suit for Permanent Injunction — Valuation of Suit — Held — Where the relief of permanent injunction is not independent and is ancillary to the main relief, the plaintiff has to value the injunction suit as valued for purpose of declaration of title and pay ad-valorem court fee on such valuation — Trial Court rightly held, that in present case permanent injunction cannot be granted without adjudicating the main relief of declaration of title — Jurisdiction under Article 227 cannot be exercised to correct all errors of subordinate Court acting within its jurisdiction— Petition dismissed. [Samudri Bai (Smt.) Vs. Mohit Kumar Jain] ...*162*

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 एवं संविधान — अनुच्छेद 227 — अधिकारिता व व्याप्ति — स्थायी व्यादेश हेतु वाद — वाद का मूल्यांकन — अभिनिर्धारित — जहां स्थायी व्यादेश का अनुतोष स्वतंत्र नहीं है तथा मुख्य अनुतोष के आनुशंगिक है, वादी को स्वत्व की घोषणा के प्रयोजन हेतु किये गये मूल्यांकन अनुसार व्यादेश वाद का मूल्यांकन तथा ऐसे मूल्यांकन पर मूल्यानुसार न्यायालय फीस का भुगतान करना चाहिए — विचारण न्यायालय ने उचित रूप से अभिनिर्धारित किया, कि वर्तमान प्रकरण में, स्वत्व की घोषणा के मुख्य अनुतोष को न्यायनिर्णीत किये बिना स्थायी व्यादेश प्रदान नहीं किया जा सकता — अनुच्छेद 227 के अंतर्गत अधिकारिता का प्रयोग, अपनी अधिकारिता के भीतर कार्य कर रही अधीनस्थ न्यायालय की समस्त त्रुटियों को सुधारने हेतु नहीं किया जा सकता— याचिका खारिज। (समुद्री बाई (श्रीमती) वि. मोहित कुमार जैन) ...*162

Civil Procedure Code (5 of 1908), Order 41 Rule 27 — Additional Evidence — Application for — Held — At appellate stage, if party wants to file any additional evidence, same can only be done by filing a proper application under Order 41 Rule 27 CPC — A printed list of document cannot be treated as an application — Additional evidence cannot be filed at an appellate stage by way of right, but leave has to be obtained explaining the reason for not filing the said evidence at the earliest. [Tarunveer Singh Vs. Mahesh Prasad Bhargava] ...3028

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 — अतिरिक्त साक्ष्य — के लिए आवेदन — अभिनिर्धारित — अपीली प्रक्रम पर, यदि पक्षकार कोई

अतिरिक्त साक्ष्य प्रस्तुत करना चाहता है, तो उक्त केवल सि.प्र.सं. के आदेश 41 नियम 27 के अंतर्गत उचित आवेदन प्रस्तुत करके ही किया जा सकता है — दस्तावेज की मुद्रित सूची को एक आवेदन के रूप में नहीं माना जा सकता — अपीली प्रक्रम पर अधिकार के रूप में अतिरिक्त साक्ष्य प्रस्तुत नहीं किया जा सकता परंतु उक्त साक्ष्य को प्रस्तुत न किये जाने हेतु कारण स्पष्ट करते हुए यथाशीघ्र अनुमति अभिप्राप्त करनी होगी। (तरुणवीर सिंह वि. महेश प्रसाद मार्गव) ...3028

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – See – Civil Services (Conduct) Rules, M.P. 1965, Rule 3 [Nahid Jahan (Smt.) Vs. State of M.P.] ...2947

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – देखें – सिविल सेवा (आचरण) नियम, म.प्र. 1965, नियम 3 (नाहिद जहाँ (श्रीमती) वि. म.प्र. राज्य) ...2947

*Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9(2)(a) – See – Service Law [Municipal Corporation, Jabalpur Vs. State of M.P.] (DB)...*127*

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9(2)(ए) – देखें – सेवा विधि (म्यूनिसिपल कारपोरेशन, जबलपुर वि. म.प्र. राज्य) (DB)...*127

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10 & 15(3) – Disciplinary Authority & Inquiring Authority – Held – If disciplinary authority is not an inquiring authority, it is incumbent on him to apply his own mind while recording findings prior to proposing penalty – In subsequent notice, nothing is referred why the earlier findings were inappropriate which required to be changed proposing penalty of dismissal – Provision of Rule 15(3) not complied by Disciplinary Authority. [K.K. Sharma Vs. M.P. Power Management Co. Ltd.] ...2657

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10 व 15(3) – अनुशासनिक प्राधिकारी व जांचकर्ता प्राधिकारी – अभिनिर्धारित – यदि अनुशासनिक प्राधिकारी एक जांचकर्ता प्राधिकारी नहीं है, उसे शास्ति प्रस्तावित करने से पूर्व निष्कर्षों को अभिलिखित करते समय स्वयं अपने मस्तिष्क का प्रयोग करना अनिवार्य है – पश्चात्तर्वर्ती नोटिस में, इसका कोई संदर्भ नहीं कि पूर्वतर निष्कर्ष क्यों अनुचित थे जिन्हें पदच्युति की शास्ति प्रस्तावित करते हुए बदलना आवश्यक था – अनुशासनिक प्राधिकारी द्वारा नियम 15(3) के उपबंध का अनुपालन

नहीं किया गया। (के.के. शर्मा वि. एम.पी. पॉवर मैनेजमेन्ट कं. लि.) ...2657

*Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14(18), 14(23)(i) & 15 – Enquiry Report – Procedure – Natural Justice – Non-supply of enquiry report to petitioner is breach of natural justice – Advice of the UPSC should also be supplied in advance before imposing the punishment – Further, Enquiry report is non-speaking and is cryptic – Enquiry Officer failed to record its findings on the charges leveled against petitioner – No marshalling of Evidence – Entire enquiry is in violation of natural justice – Impugned orders quashed – Petition allowed. [Harish Kumar Tiwari Vs. State of M.P.] ...*156*

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14(18), 14(23)(i) व 15 – जांच प्रतिवेदन – प्रक्रिया – नैसर्गिक न्याय – याची को जांच प्रतिवेदन प्रदाय न किया जाना, नैसर्गिक न्याय का मंग है – शास्ति अधिरोपित किये जाने से पूर्व यू.पी.एस.सी. की राय भी अग्रिम रूप से प्रदाय की जानी चाहिए – इसके अतिरिक्त, जांच प्रतिवेदन सकारण नहीं है तथा अस्पष्ट है – जांचकर्ता अधिकारी, याची के विरुद्ध लगाये गये आरोपों पर उसके निष्कर्ष अभिलिखित करने में विफल रहा – साक्ष्य का क्रमबद्धन नहीं किया गया – संपूर्ण जांच, नैसर्गिक न्याय के उल्लंघन में है – आक्षेपित आदेश अभिखंडित किये गये – याचिका मंजूर। (हरीश कुमार तिवारी वि. म.प्र. राज्य) ...*156

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14(23) – See – Service Law [Rudrapal Singh Chandel Vs. State of M.P.] ...2333

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 (23) – देखें – सेवा विधि (रुद्रपाल सिंह चंदेल वि. म.प्र. राज्य) ...2333

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 15(3) – Competent Authority – Held – The power of the disciplinary authority conferred under statute to the officer ought not be exercised by other officer, holding the current charge. [K.K. Sharma Vs. M.P. Power Management Co. Ltd.] ...2657

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 15(3) – सक्षम प्राधिकारी – अभिनिर्धारित – कानून के अंतर्गत अनुशासनिक प्राधिकारी को प्रदत्त शक्ति का प्रयोग वर्तमान पदधारक अन्य अधिकारी द्वारा नहीं किया जाना चाहिए था। (के.के. शर्मा वि. एम.पी. पॉवर मैनेजमेन्ट कं. लि.) ...2657

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 15(3) & 29 – Dismissal – Procedure – Departmental enquiry – Penalty of withholding three increments inflicted – Later, again a notice issued for dismissal – Writ petition filed whereby stay was granted – Department withdrew the notice for dismissal and maintained previous penalty – Petition dismissed as infructuous – Again a notice issued and petitioner was dismissed – Held – Such order of dismissal would be in defiance to order of Court – Such dismissal is arbitrary and illegal – Provisions of Rule 15 and 29 not complied with – Impugned orders quashed – Petitioner directed to be re-instated if not attained age of superannuation, but will have to suffer the earlier penalty imposed – Petition partly allowed. [K.K. Sharma Vs. M.P. Power Management Co. Ltd.] ...2657

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 15(3) व 29 – पदच्युति – प्रक्रिया – विभागीय जांच – तीन वेतनवृद्धियां रोकने की शास्ति अधिरोपित की गई – बाद में, पुनः पदच्युति हेतु एक नोटिस जारी किया गया – रिट याचिका प्रस्तुत की गई जिसमें रोक प्रदान की गई थी – विभाग ने पदच्युति का नोटिस वापस लिया और पूर्वतर शास्ति को बनाए रखा – याचिका को निष्फल हो जाने से खारिज किया गया – पुनः एक नोटिस जारी किया गया और याची को पदच्युत किया गया – अभिनिर्धारित – पदच्युति का उक्त आदेश, न्यायालय के आदेश की अवज्ञा में होगा – उक्त पदच्युति, मनमानी एवं अवैध है – नियम 15 व 29 के उपबंधों का अनुपालन नहीं किया गया – आक्षेपित आदेश अभिखंडित – याची को बहाल करने के लिए निदेशित किया गया, यदि उसने अधिवार्षिकी आयु प्राप्त न की हो परंतु उसे पूर्वतर अधिरोपित शास्ति भुगतनी पड़ेगी – याचिका अंशतः मंजूर। (के.के. शर्मा वि. एम.पी. पावर मेनेजमेन्ट कं. लि.) ...2657

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 29 – Power of Review – Procedure – Held – If earlier order of penalty is required to be changed to enhance penalty, it would amount to review of earlier order and such power can be exercised by appellate authority – In present case, subsequent notice or order of penalty has not been passed by appellate authority reviewing previous order. [K.K. Sharma Vs. M.P. Power Management Co. Ltd.] ...2657

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 29 – पुनर्विलोकन की शक्ति – प्रक्रिया – अभिनिर्धारित – यदि शास्ति में वृद्धि हेतु शास्ति के पूर्वतर आदेश को बदलना अपेक्षित है, यह पूर्वतर आदेश के पुनर्विलोकन की कोटि में आएगा और उक्त शक्ति का प्रयोग केवल अपीली प्राधिकारी द्वारा किया

जा सकता है - वर्तमान प्रकरण में, अपीली प्राधिकारी द्वारा पूर्वतर आदेश का पुनर्विलोकन करते हुए शास्ति का पश्चात्वर्ती नोटिस या आदेश पारित नहीं किया गया है। (के.के. शर्मा वि. एम.पी. पॉवर मेनेजमेन्ट कं. लि.) ...2657

Civil Services (Conduct) Rules, M.P. 1965, Rule 3 and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 - Misconduct - Suspension - Grounds - Held - Commissioner exercised the power to place petitioner under suspension without there being any justification - Wordings of suspension order shows that allegation relates to a clerical error of including a dead person in portal - No irreparable loss or damage caused to department which necessitated issuance of suspension order - Suspension order issued mechanically and in a routine manner - Exercise of power is arbitrary and is set aside - Petition allowed. [Nahid Jahan (Smt.) Vs. State of M.P.] ...2947

सिविल सेवा (आचरण) नियम, म.प्र. 1965, नियम 3 एवं सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 - अवचार - निलंबन - आधार - अभिनिर्धारित - आयुक्त ने याची को बिना किसी न्यायोचित्य के निलंबित करने के लिए शक्ति का प्रयोग किया - निलंबन आदेश की शब्दावली दर्शाती है कि अभिकथन, पोर्टल में मृत व्यक्ति को शामिल करने की लिपिकीय त्रुटि से संबंधित है - विभाग को कोई अपूर्ण्य हानि या क्षति कारित नहीं हुई जिससे निलंबन आदेश जारी करने की आवश्यकता थी - निलंबन आदेश यंत्रवत् रूप से एवं नैतिक ढंग से जारी किया गया - शक्ति का प्रयोग मनमाना है एवं अपास्त किया गया - याचिका मंजूर। (नाहिद जहाँ (श्रीमती) वि. म.प्र. राज्य) ...2947

*Civil Services (Pension) Rules, M.P. 1976, Rule 9(2)(b)(i) - Disciplinary Proceedings - Sanction of Governor - Jurisdiction - Held - It is not necessary to obtain personal sanction of Governor of M.P. for taking decision to initiate disciplinary proceedings and if Council of Ministers have taken such decision, it will serve the purpose and meet the requirement of Rule 9 of the Rules of 1976 - Charge sheet served to petitioner in the name of Governor of M.P. cannot be said to be without jurisdiction - Apex Court concluded that such an order authenticated in name of Governor cannot be questioned in any Court on ground that it is made or executed by the Governor and thus is outside the scope of judicial review - No interference required - Appeal dismissed. [Shanti Bavaria (Smt.) Vs. State of M.P.] (DB)...*148*

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9(2)(बी)(i) - अनुशासनिक कार्यवाहियां - राज्यपाल की मंजूरी - अधिकारिता - अभिनिर्धारित - अनुशासनिक

कार्यवाहियों को आरंभ करने का निर्णय लेने के लिए म.प्र. के राज्यपाल की व्यक्तिगत मंजूरी लेना आवश्यक नहीं है और यदि मंत्री परिषद् ने ऐसा निर्णय लिया है, यह, 1976 के नियमों के नियम 9 के प्रयोजन की पूर्ति एवं अपेक्षा को पूरा करेगा - याची को म. प्र. के राज्यपाल के नाम से तामील आरोप पत्र बिना अधिकारिता का नहीं कहा जा सकता - सर्वोच्च न्यायालय ने निष्कर्षित किया है कि राज्यपाल के नाम से अधिप्रमाणित ऐसे किसी आदेश पर किसी न्यायालय में इस आधार पर प्रश्न नहीं उठाया जा सकता कि उसे राज्यपाल द्वारा बनाया या निष्पादित किया गया है और इसलिए न्यायिक पुनर्विलोकन की परिधि से बाहर है - किसी हस्तक्षेप की आवश्यकता नहीं - अपील खारिज। (शांती बावरिया (श्रीमती) वि. म.प्र. राज्य) (DB)...*148

Class III (Non-Ministerial and Ministerial) Jail Service Recruitment Rules, M.P., 1974, Schedule Sr. No. 7 & 8 - See - Service Law [State of M.P. through Secretary Department of Jail/Home, Bhopal Vs. Rajesh Kumar Shukla] (DB)...*149

तृतीय वर्ग (अलिपिक वर्गीय तथा लिपिक वर्गीय) जेल सेवा मर्ती नियम, म. प्र., 1974, अनुसूची क्र. 7 व 8 - देखें - सेवा विधि (म.प्र. राज्य द्वारा सेक्रेटरी डिपार्टमेंट ऑफ जेल/होम, भोपाल वि. राजेश कुमार शुक्ला) (DB)...*149

Commercial Tax Act, M.P. 1994 (5 of 1995), Schedule II, Part III, Entry No. 9 - Lubricants - Brake Fluid - Held - Brake fluid is a different kind of liquid altogether which is never used for purpose of lubricating either the brake or any part which is under the braking system - Brake fluid and Lubricants are different and cannot be treated under one entry for the purpose of taxation - Impugned orders quashed - Petitions allowed. [Castrol India Ltd. (M/s.) Vs. Commissioner of Commercial Tax, M.P.] (DB)...*133

वाणिज्यिक कर अधिनियम, म.प्र. 1994 (1995 का 5), अनुसूची II, भाग III, प्रविष्टि क्र. 9 - स्नेहक तेल - ब्रेक तरल - अभिनिर्धारित - ब्रेक तरल एक पूर्णतया भिन्न प्रकार का द्रव है जिसका उपयोग कभी भी या तो ब्रेक अथवा ब्रेकींग प्रणाली के अंतर्गत किसी हिस्से का स्नेहन करने के प्रयोजन हेतु नहीं किया जाता - ब्रेक तरल एवं स्नेहक तेल भिन्न हैं तथा कर के प्रयोजन हेतु एक प्रविष्टि के अंतर्गत नहीं माने जा सकते - आक्षेपित आदेश अभिखंडित - याचिकाएँ मंजूर। (केस्ट्रॉल इंडिया लि. (मे.) वि. कमिश्नर ऑफ कमर्शियल टैक्स, एम.पी.) (DB)...*133

Companies Act (1 of 1956), Section 22 - See - Companies Act, 2013, Section 16 [Satpuda Infracon Pvt. Ltd. (M/s.) Vs. M/s. Satpura Infracon Pvt. Ltd.] ...2645

कम्पनी अधिनियम (1956 का 1), धारा 22 - देखें - कम्पनी अधिनियम, 2013,

धारा 16 (सतपुड़ा इन्फ्राकॉन प्रा.लि. (मे.) वि. मे. सतपुरा इन्फ्राकॉन प्रा.लि.) ...2645

Companies Act (18 of 2013), Section 16 and Companies Act (1 of 1956), Section 22 – Rectification of Name of Company – Held – Central Government can form an opinion for purpose of rectification, suo motu or on an application filed by aggrieved person – Respondent rightly held that prior registration of a company is a relevant factor – No jurisdictional error, procedural impropriety or perversity in impugned order and hence upheld – Petition dismissed. [Satpuda Infracon Pvt. Ltd. (M/s.) Vs. M/s. Satpura Infracon Pvt. Ltd.] ...2645

कम्पनी अधिनियम (2013 का 18), धारा 16 एवं कम्पनी अधिनियम (1956 का 1), धारा 22 – कंपनी के नाम में सुधार – अभिनिर्धारित – केंद्र सरकार स्वप्रेरणा से या व्यथित व्यक्ति द्वारा आवेदन प्रस्तुत करने पर, सुधार के प्रयोजन हेतु राय बना सकती है – प्रत्यर्थी ने उचित रूप से अभिनिर्धारित किया कि कंपनी का पूर्व रजिस्ट्रीकरण एक सुसंगत कारक है – आक्षेपित आदेश में कोई अधिकारिता की त्रुटि, प्रक्रियात्मक अनौचित्य या विपर्यस्तता नहीं है और इसलिए कायम रखा गया – याचिका खारिज। (सतपुड़ा इन्फ्राकॉन प्रा.लि. (मे.) वि. मे. सतपुरा इन्फ्राकॉन प्रा.लि.) ...2645

*Constitution – Article 14 – See – Post Graduate Medical Education Regulations, 2000, Regulations 9(iv) & 9(vii) [Brijesh Yadav (Dr.) Vs. State of M.P.] (DB)...*124*

संविधान – अनुच्छेद 14 – देखें – स्नातकोत्तर चिकित्सा शिक्षा विनियम, 2000, विनियमन 9(iv) व 9(vii) (ब्रजेश यादव (डॉ.) वि. म.प्र. राज्य) (DB)...*124

Constitution – Article 14 & 226 – Jurisdiction and Scope – Alternate Remedy – Held – Despite availability of alternative statutory remedy, writ petition can be entertained if order under challenge hits Article 14 – Availability of alternative remedy of appeal under the CCA Rules is not a bar to exercise jurisdiction by this Court in a case of this nature. [Nahid Jahan (Smt.) Vs. State of M.P.] ...2947

संविधान – अनुच्छेद 14 व 226 – अधिकारिता एवं व्याप्ति – वैकल्पिक उपचार – अभिनिर्धारित – वैकल्पिक कानूनी उपचार की उपलब्धता के बावजूद, रिट याचिका को ग्रहण किया जा सकता है यदि चुनौती दिया गया आदेश अनुच्छेद 14 को प्रभावित करता है – सी.सी.ए. नियम के अंतर्गत अपील की वैकल्पिक उपचार की उपलब्धता, इस स्वरूप के किसी प्रकरण में इस न्यायालय द्वारा अधिकारिता के प्रयोग के लिए वर्जन नहीं है। (नाहिद जहाँ (श्रीमती) वि. म.प्र. राज्य) ...2947

Constitution – Article 20 & 20(3) – See – Prevention of Corruption Act, 1988, Sections 7, 13(1)(d) & 13(2) [Buddha Sen Kumhar Vs. State of M.P.] (DB)...*132

संविधान – अनुच्छेद 20 व. 20(3) – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धाराएँ 7, 13(1)(डी) व 13(2) (बुद्ध सेन कुम्हार वि. म.प्र. राज्य)(DB)...*132

Constitution – Article 21 – See – Criminal Procedure Code, 1973, Section 482 [Prabal Dogra Vs. Superintendent of Police, Gwalior & State of M.P.] ...2881

संविधान – अनुच्छेद 21 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (प्रबल डोगरा वि. सुपरिटेण्डेंट ऑफ पुलिस, ग्वालियर एण्ड म.प्र. राज्य) ...2881

Constitution – Article 136 – Discretionary Jurisdiction – Held – In exercise of discretionary jurisdiction under Article 136, this Court may not interfere with an order of acquittal; reversing a conviction, yet if it finds that High Court has completely erred in appreciation of evidence, has applied wrong principles to negate common intention and has based its conclusions on speculative reasoning beyond the defence of accused himself, justice will demand that acquittal is reversed. [Rajkishore Purohit Vs. State of M.P.] (SC)...2299

संविधान – अनुच्छेद 136 – वैवेकिक अधिकारिता – अभिनिर्धारित – अनुच्छेद 136 के अंतर्गत वैवेकिक अधिकारिता के प्रयोग में यह न्यायालय दोषसिद्धि के आदेश को उलटते हुये, दोषमुक्ति के आदेश में हस्तक्षेप नहीं कर सकता, फिर भी यदि वह यह पाता है कि उच्च न्यायालय ने साक्ष्य के मूल्यांकन में पूर्ण रूप से त्रुटि की है, सामान्य आशय को नकारने हेतु गलत सिद्धांतों का प्रयोग किया है तथा स्वयं अभियुक्तगण के बचाव से परे काल्पनिक तर्क पर उसके निष्कर्ष आधारित हैं, न्याय की मांग होगी कि दोषमुक्ति को उलटा जाये। (राजकिशोर पुरोहित वि. म.प्र. राज्य) (SC)...2299

Constitution – Article 226 – Cancellation of Appointment – Opportunity of Hearing – Principle of Natural Justice – Held – Principle of natural justice are not required to be followed where large number of candidates have been selected on basis of forged and tampered mark sheet. – Admittedly, original interview marks of candidates are not available, therefore tainted and untainted candidates cannot be segregated – Decision of the Samiti to re-advertise the post is not justified as it will put the earlier candidates to a disadvantageous position – Samiti directed to conduct interview of all candidates and on

the basis of marks assigned, make appointment – Petition disposed of.
[Raghvendra Singh Yadav Vs. Union of India] (DB)...2421

संविधान – अनुच्छेद 226 – नियुक्ति का रद्दकरण – सुनवाई का अवसर
 – नैसर्गिक न्याय का सिद्धांत – अभिनिर्धारित – जहां कूटरचित एवं छेड़छाड़ की गई अंकसूची के आधार पर बड़ी संख्या में अम्यर्थीगण का चयन किया गया है, नैसर्गिक न्याय के सिद्धांतों का पालन अपेक्षित नहीं – स्वीकृति रूप से, अम्यर्थीगण के मूल साक्षात्कार के अंक उपलब्ध नहीं हैं, इसलिए दागी और बेदाग अम्यर्थीगण को अलग नहीं किया जा सकता – पद का पुनः विज्ञापन देने का समिति का निर्णय न्यायोचित नहीं है क्योंकि यह पूर्वतर अम्यर्थीगण को प्रतिकूल स्थिति में लायेगा – समिति को सभी अम्यर्थीगण का साक्षात्कार संचालित करने तथा नियत अंको के आधार पर नियुक्ति करने के लिए निदेशित किया गया – याचिका निराकृत की गई।
 (राघवचन्द्र सिंह यादव वि. यूनियन ऑफ इंडिया) (DB)...2421

Constitution – Article 226 – Expert Opinion – Judicial Review
 – **Jurisdiction – Held – This Court should not act as a Court of Appeal in matter of opinion of experts in academic matters – Power of judicial review is concerned not with the decision but with decision making process – Court should not under the guise of preventing abuse of power be itself guilty of usurping power. [Nitin Pathak Vs. State of M.P.] (FB)...2314**

संविधान – अनुच्छेद 226 – विशेषज्ञ की राय – न्यायिक पुनर्विलोकन – अधिकारिता – अभिनिर्धारित – इस न्यायालय को शैक्षणिक मामलों में विशेषज्ञों की राय के मामले में अपीली न्यायालय के रूप में कार्य नहीं करना चाहिए – न्यायिक पुनर्विलोकन की शक्ति विनिश्चय से संबंधित नहीं बल्कि विनिश्चय करने की प्रक्रिया से संबंधित है – न्यायालय को शक्ति के दुरुपयोग को रोकने की आड़ में स्वयं शक्ति हड़पने का दोषी नहीं होना चाहिए। (नितिन पाठक वि. म.प्र. राज्य) (FB)...2314

Constitution – Article 226 – Jurisdiction of Court – Held – It is trite law that Courts are not to act as an appellate authority and scope of interference in matter of departmental enquiry is limited, unless it is established that there is violation of statutory provisions or principles of natural justice, or the findings are manifestly perverse. [Rudrapal Singh Chandel Vs. State of M.P.] ...2333

संविधान – अनुच्छेद 226 – न्यायालय की अधिकारिता – अभिनिर्धारित – यह जीर्ण विधि है कि न्यायालयों को अपीली प्राधिकारी के रूप में कार्य नहीं करना है तथा विभागीय जांच के मामले में हस्तक्षेप का विस्तार सीमित है, जब तक कि यह स्थापित नहीं किया जाता है कि कानूनी उपबंधों या नैसर्गिक न्याय के सिद्धांतों का

उल्लंघन हुआ है या निष्कर्ष प्रकट रूप से अनुचित है। (रुद्रपाल सिंह चंदेल वि. म. प्र. राज्य) ...2333

Constitution – Article 226 – Prescribed Rules for Process of Appointment – Jurisdiction – Held – By judicial order, the Central Administrative Tribunal cannot issues direction to conduct interview in a manner otherwise than prescribed by Recruitment Rules – Direction of Tribunal to conduct interview in a particular manner is set aside. [Raghvendra Singh Yadav Vs. Union of India] (DB)...2421

संविधान – अनुच्छेद 226 – नियुक्ति की प्रक्रिया हेतु विहित नियम – अधिकारिता – अभिनिर्धारित – केन्द्रीय प्रशासनिक अधिकरण, भर्ती नियमों द्वारा विहित रीति से अन्यथा साक्षात्कार संचालित करने के लिए निदेश जारी नहीं कर सकता – एक विशिष्ट रीति से साक्षात्कार संचालित करने का अधिकरण का निदेश अपास्त किया गया। (राघवेन्द्र सिंह यादव वि. यूनियन ऑफ इंडिया) (DB)...2421

Constitution – Article 226 – Private Educational Institution – Post Matric Scholarship – Scheduled Caste and Scheduled Tribe Students – Held – Students belonging to Scheduled Caste and Scheduled Tribes category are entitled to scholarship only to extent decided by State which in the instant case is the fee charged for a similar course in government colleges and nothing more – Fee charged by an educational institution and grant of post matric scholarship by State are two separate and distinct issues and have no co-relation between them – Petition dismissed. [Adharsh Girls College Vs. State of M.P.] (DB)...*151

संविधान – अनुच्छेद 226 – निजी शैक्षणिक संस्था – मैट्रिक पश्चात् छात्रवृत्ति – अनुसूचित जाति एवं अनुसूचित जनजाति के छात्र – अभिनिर्धारित – अनुसूचित जाति एवं अनुसूचित जनजाति से संबंधित छात्र, केवल राज्य द्वारा विनिश्चित की गई सीमा तक ही छात्रवृत्ति के हकदार हैं जो कि वर्तमान प्रकरण में शासकीय महाविद्यालयों में समान पाठ्यक्रम के लिए ली जाने वाली फीस है तथा इससे अधिक कुछ नहीं – शैक्षणिक संस्था द्वारा ली जाने वाली फीस एवं राज्य द्वारा मैट्रिक पश्चात् छात्रवृत्ति प्रदान की जाना, दो पृथक एवं भिन्न विषयक हैं तथा इनके मध्य कोई सहसंबंध नहीं है – याचिका खारिज। (आदर्श गर्ल्स कॉलेज वि. म. प्र. राज्य) (DB)...*151

Constitution – Article 226 – Recruitment Examination – Answer Key – Judicial Review – Held – In exercise of judicial review, Court should not refer the matter to Court appointed expert as Courts have a very limited role particularly when no *malafides* have been

alleged against the experts constituted to finalize answer key – It would normally be prudent, wholesome and safe for Courts to leave the decisions to the academicians and experts. [Nitin Pathak Vs. State of M.P.] (FB)...2314

संविधान – अनुच्छेद 226 – मर्ती परीक्षा – उत्तर कुंजी – न्यायिक पुनर्विलोकन – अभिनिर्धारित – न्यायिक पुनर्विलोकन के प्रयोग में, न्यायालय को मामला, न्यायालय द्वारा नियुक्त विशेषज्ञ को निर्दिष्ट नहीं करना चाहिए क्योंकि न्यायालय की बहुत ही सीमित भूमिका होती है विशिष्ट रूप से तब जब उत्तर कुंजी को अंतिम रूप देने के लिए गठित विशेषज्ञों के विरुद्ध असदभावना के कोई अभिकथन नहीं किये गये हैं – शिक्षाविदों और विशेषज्ञों पर विनिश्चयों को छोड़ना, सामान्य रूप से न्यायालय के लिए प्रज्ञायुक्त, लाभप्रद एवं सुरक्षित होगा। (नितिन पाठक वि. म.प्र. राज्य) (FB)...2314

Constitution – Article 226 – See – Criminal Procedure Code, 1973, Section 24(8) [Dev Raj Kataria Vs. State of M.P.] ...*153

संविधान – अनुच्छेद 226 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 24(8) (देव राज कटारिया वि. म.प्र. राज्य) ...*153

Constitution – Article 226 – Selection – Counselling – Selection of Junior Supply Officer (JSO) & Weights and Measures Inspectors (WMI) – VYAPAM – Held – Simultaneous counseling cannot be conducted for both the post by respondents though the select list and verification of documents were done commonly, because both the post are different and the department is also different – Procedure adopted by respondents in selecting candidates is just and proper – Petition dismissed. [Poornendra Prakash Shukla Vs. State of M.P.] ...*143

संविधान – अनुच्छेद 226 – चयन – काउंसलिंग – कनिष्ठ पूर्ति अधिकारी (जे एस ओ) व बाट और माप निरीक्षकों (डब्लू एम आई) का चयन – व्यापम – अभिनिर्धारित – यद्यपि प्रत्यर्थीगण द्वारा चयन सूची एवं दस्तावेजों का सत्यापन सम्मिलित रूप से किया गया था, दोनों पदों हेतु एक साथ काउंसलिंग संचालित नहीं की जा सकती क्योंकि दोनों पद भिन्न हैं तथा विभाग भी भिन्न हैं – प्रत्यर्थीगण द्वारा अभ्यर्थियों का चयन करने में अपनायी गई प्रक्रिया न्यायसंगत एवं उचित है – याचिका खारिज। (पूर्णन्द प्रकाश शुक्ला वि. म.प्र. राज्य) ...*143

Constitution – Article 226 – Selection – Vacant Post – Circular of State Government – Applicability – Held – As per the circular dated 07.03.2012, if during validity of wait list, any candidate does not join on the post or died or resigned, then the said post will be declared as

fallen vacant and same shall not be filled up from candidate of waiting list – Further, Circular does not refer that it would be applicable only in case of Class II employees. [Poornendra Prakash Shukla Vs. State of M.P.] ...*143

संविधान – अनुच्छेद 226 – चयन – रिक्त पद – राज्य सरकार का परिपत्र – प्रयोज्यता – अभिनिर्धारित – परिपत्र दि. 7.3.2012 के अनुसार, यदि प्रतीक्षा सूची की विधिमान्यता के दौरान किसी अभ्यर्थी ने पद ग्रहण नहीं किया है या मृत्यु हो गई है या त्यागपत्र दे दिया है, तब उक्त पद को रिक्त हो जाना घोषित किया जाएगा और उसे प्रतीक्षा सूची के अभ्यर्थी से नहीं भरा जाएगा – इसके अतिरिक्त, परिपत्र यह निर्देशित नहीं करता कि वह केवल श्रेणी-II कर्मचारियों के प्रकरणों में लागू होगा। (पूर्णन्द प्रकाश शुक्ला वि. म.प्र. राज्य) ...*143

Constitution – Article 226 – Suppression of Material Facts – Effect – Petitioner suppressed the fact that a civil suit in respect of the same issue is pending before the trial Court – Conjoint reading of writ petition and civil suit shows direct nexus between both the matter – Factual background of both matters are similar – Action of petitioner is deprecated – Serious disputed question of facts are involved in relation to formation of partnership firm, which cannot be decided in this writ petition – Petitioner free to establish his rights in pending civil suit. [Satpuda Infracon Pvt. Ltd. (M/s.) Vs. M/s. Satpura Infracon Pvt. Ltd.] ...2645

संविधान – अनुच्छेद 226 – तात्त्विक तथ्यों को छिपाना – प्रभाव – याची ने इस तथ्य को छिपाया कि उसी विवादक के संबंध में एक सिविल वाद विचारण न्यायालय के समक्ष लंबित है – रिट याचिका एवं सिविल वाद का एक साथ पढ़े जाने पर दोनों मामलों के मध्य प्रत्यक्ष संबंध दर्शित होता है – दोनों मामलों की तथ्यात्मक पृष्ठभूमि समान हैं – याची की कार्रवाई की निंदा की गई – मागीदारी फर्म के बनाये जाने के संबंध में तथ्यों के गंभीर विवादित प्रश्न अंतर्गुप्त हैं, जो इस रिट याचिका में विनिश्चित नहीं किये जा सकते – याची लंबित सिविल वाद में अपने अधिकारों को स्थापित करने हेतु स्वतंत्र है। (सतपुड़ा इन्फ्राकॉन प्रा.लि. (मे.) वि. मे. सतपुरा इन्फ्राकॉन प्रा.लि.) ...2645

Constitution – Article 226 – Tender – Cancellation – Grounds – Promissory Estoppel – Under a tender by Municipal Corporation, Road Sweeping Machine/Vehicle was supplied by petitioner which was not found as per technical specifications – Tender was cancelled and bank guarantee was invoked by Corporation – Challenge to – Held – It is contractual obligation of petitioner to supply machines as per specification and standard

enumerated in tender conditions – 47 defects were pointed out by corporation – If machine is not as per tender conditions, Corporation was well within its jurisdiction to reject the machine – There is no question of Promissory Estoppel – Corporation has paid Rs. 1 Crore of public money to petitioner whereby he failed to perform his part of contract – Decision to invoke bank guarantee and to cancel the contract is based upon the economic interest of corporation so as not to purchase something which is not likely to serve public purpose – Such decision cannot be held to be arbitrary, unreasonable or invalid which warrants interference – Petition dismissed. [Kam-Avida Enviro Engineering Pvt. Ltd., Pune Vs. Municipal Corporation, Rewa] (DB)...2349

संविधान – अनुच्छेद 226 – निविदा – रद्दकरण – आधार – वचन-विबंध – नगरपालिका निगम द्वारा निविदा के अधीन याची द्वारा रोड स्वीपिंग मशीन/वाहन प्रदाय किया गया जो तकनीकी विनिर्देशों के अनुसार नहीं पाया गया था – निविदा रद्द की गई एवं निगम द्वारा बैंक गारंटी को भुनाया गया – को चुनौती – अभिनिर्धारित – यह याची का संविदात्मक दायित्व था कि निविदा शर्तों में प्रगणित विनिर्देश व मानक के अनुसार मशीनें प्रदाय करें – निगम द्वारा 47 त्रुटियां इंगित की गई थी – यदि मशीनें निविदा शर्तों के अनुसार नहीं हैं, मशीन अस्वीकार करना भली-भाँति निगम की अधिकारिता के भीतर था – वचन-विबंध का कोई प्रश्न नहीं – निगम ने याची को रु. 1 करोड़ लोक धन अदा किया है जिससे वह संविदा के उसके भाग का पालन करने में विफल रहा है – बैंक गारंटी भुनाने एवं संविदा को रद्द करने का निर्णय, निगम के आर्थिक हित पर आधारित है जिससे कि कुछ ऐसा क्रय न किया जाए जिससे लोक प्रयोजन की पूर्ति होने की संभावना नहीं है – उक्त निर्णय को मनमाना, अयुक्तियुक्त या अविधिमान्य नहीं ठहराया जा सकता जिसमें हस्तक्षेप की आवश्यकता हो – याचिका खारिज। (केम-एविडा एन्वायरॉ इंजीनियरिंग प्रा. लि., पुणे वि. म्यूनिसिपल कारपोरेशन, रीवा) (DB)...2349

Constitution – Article 226 – Writ Petition – Suppression of Material Facts – Practice – Held – Apex Court concluded that a litigant must approach the Court with clean hands, clean mind, clean heart and clean objective – In cases of suppression of material facts, litigant is not entitled to be heard on merits. [Satpuda Infracon Pvt. Ltd. (M/s.) Vs. M/s. Satpura Infracon Pvt. Ltd.] ...2645

संविधान – अनुच्छेद 226 – रिट याचिका – तात्त्विक तथ्यों को छिपाना – पद्धति – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि मुकदमेबाज को न्यायालय के समक्ष स्वच्छ अंतःकरण, साफ मन, स्वच्छ हृदय एवं स्पष्ट उद्देश्य के साथ जाना चाहिए – ऐसे प्रकरणों में जहाँ तात्त्विक तथ्यों को छिपाया गया हो,

मुकदमेबाज गुणदोष पर सुनवाई किये जाने का हकदार नहीं है। (सतपुड़ा इन्फ्राकॉन प्रा.लि. (मे.) वि. मे. सतपुरा इन्फ्राकॉन प्रा.लि.) ...2645

Constitution – Article 226/227 – Writ Jurisdiction – Contractual Matters – Alternate Remedy – Held – Availability of alternate remedy is a rule of discretion – It does not bar exercise of writ jurisdiction of this Court in appropriate cases, moreso when there is no dispute about the question of fact, this Court can interfere in exercise of writ jurisdiction even in contractual matters. [Renew Clean Energy Pvt. Ltd. Vs. M.P. Power Management Company Ltd.] (DB)...2384

संविधान – अनुच्छेद 226/227 – रिट अधिकारिता – संविदात्मक मामले – वैकल्पिक उपचार – अभिनिर्धारित – वैकल्पिक उपचार की उपलब्धता विवेक का एक नियम है – यह समुचित प्रकरणों में इस न्यायालय के रिट अधिकारिता के प्रयोग को वर्जित नहीं करता है, बल्कि जब तथ्य के प्रश्न के बारे में कोई विवाद नहीं है, यह न्यायालय संविदात्मक मामलों में भी रिट अधिकारिता के प्रयोग से हस्तक्षेप कर सकता है। (रिन्यू क्लीन एनर्जी प्रा. लि. वि. एम.पी. पॉवर मेनेजमेन्ट कंपनी लि.) (DB)...2384

Constitution – Article 226/227 – Writ Jurisdiction – Termination of Contract – Ground – Held – There is a delay of only 16 days in completing the first part of the agreement, for which there is a provision of penalty but action of termination of contract is not sustainable – Order of termination is set aside and action of invocation of bank guarantee as per agreement is maintained. [Renew Clean Energy Pvt. Ltd. Vs. M.P. Power Management Company Ltd.] (DB)...2384

संविधान – अनुच्छेद 226/227 – रिट अधिकारिता – संविदा का पर्यवसान – आधार – अभिनिर्धारित – करार के प्रथम भाग को पूरा करने में केवल 16 दिनों का विलंब है, जिसके लिए शास्ति का प्रावधान है परन्तु संविदा के पर्यवसान की कार्रवाई कायम रखे जाने योग्य नहीं हैं – पर्यवसान का आदेश अपास्त किया गया तथा करार अनुसार बैंक गारंटी के अवलंबन की कार्रवाई कायम रखी गई। (रिन्यू क्लीन एनर्जी प्रा. लि. वि. एम.पी. पॉवर मेनेजमेन्ट कंपनी लि.) (DB)...2384

Constitution – Article 226 & 243-ZG – See – Municipalities Act, M.P., 1961, Sections 20, 21, 22 & 47 [Geeta Suresh Chaudhary (Smt.) Vs. State of M.P.] ...2929

संविधान – अनुच्छेद 226 व 243-जेड जी – देखें – नगरपालिका अधिनियम, म.प्र., 1961, धाराएँ 20, 21, 22 व 47 (गीता सुरेश चौधरी (श्रीमती) वि. म.प्र. राज्य) ...2929

*Constitution – Article 227 – See – Civil Procedure Code, 1908, Order 39 [Samudri Bai (Smt.) Vs. Mohit Kumar Jain] ...*162*

*संविधान – अनुच्छेद 227 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 39 (समुद्री बाई (श्रीमती) वि. मोहित कुमार जैन) ...*162*

*Criminal Practice – Evidence – Two Views – Held – If two views are possible on the evidence adduced, the view which is favourable to accused should be adopted. [Sukhdev Vs. State of M.P.] (DB)...*163*

*दाण्डिक पद्धति – साक्ष्य – दो दृष्टिकोण – अभिनिर्धारित – यदि प्रस्तुत किये गये साक्ष्य में दो दृष्टिकोण संभव हैं, तो जो दृष्टिकोण अभियुक्त के अनुकूल हो उसे अपनाया जाना चाहिए। (सुखदेव वि. म.प्र. राज्य) (DB)...*163*

Criminal Practice – Eye Witnesses – Interested Witnesses – Held – Although evidence of interested witness is to be considered with care and caution but merely because eye witnesses are closely related/interested to deceased, their testimonies cannot be doubted and their evidence does not necessarily require corroboration before acting upon. [Ramanda @ Yashvant Gond Vs. State of M.P.] (DB)...2489

दाण्डिक पद्धति – चक्षुदर्शी साक्षीगण – हितबद्ध साक्षीगण – अभिनिर्धारित – यद्यपि हितबद्ध साक्षी के साक्ष्य को सावधानी और सतर्कता के साथ विचार में लिया जाना चाहिए परंतु मात्र इसलिए कि चक्षुदर्शी साक्षीगण मृतक से निकट रूप से संबंधी/हितबद्ध हैं, उनके परिसाक्ष्यों पर संदेह नहीं किया जा सकता तथा उनके साक्ष्य पर आगे कार्रवाई करने से पूर्व उनकी संपुष्टि आवश्यक रूप से अपेक्षित नहीं है। (रामन्दा उर्फ यशवंत गोंड वि. म.प्र. राज्य) (DB)...2489

*Criminal Practice – Identification of Accused – False implication – Held – As per FIR, 200 persons attacked the complainant party – Injured eye witnesses have not identified each accused persons including appellants – Against some appellants, nothing has been mentioned and their involvement is denied – False implication of any accused cannot be ruled out in such circumstances. [Rai Singh Vs. State of M.P.] (DB)...*159*

दाण्डिक पद्धति – अभियुक्त की पहचान – मिथ्या आलिप्त किया जाना – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन के अनुसार, 200 व्यक्तियों ने परिवादी पक्ष पर हमला किया – आहत चक्षुदर्शी साक्षीगण ने प्रत्येक अभियुक्त व्यक्तियों की पहचान नहीं की है जिसमें अपीलार्थीगण भी शामिल हैं – कुछ अपीलार्थीगण के विरुद्ध कुछ भी उल्लिखित नहीं किया गया तथा उनकी संलिप्तता से इन्कार किया

गया है — उक्त परिस्थितियों में, किसी अभियुक्त को मिथ्या आलिप्त किये जाने से इंकार नहीं किया जा सकता। (राय सिंह वि. म.प्र. राज्य) (DB)...*159

Criminal Practice – Medical Insanity & Legal Insanity – Held – To prove insanity or unsoundness of mind of accused, his previous as well as post mental status may be considered – Every insanity is not legal insanity – Person may be suffering from medical insanity but it may not be sufficient to treat the same as legal insanity. [Pratap Vs. State of M.P.] (DB)...2502

दाण्डिक पद्धति – चिकित्सीय उन्मत्तता व विधिक उन्मत्तता – अभिनिर्धारित – अभियुक्त की उन्मत्तता या चित्त विकृति को साबित करने के लिए, उसकी पूर्ववर्ती और साथ ही उत्तरवर्ती मानसिक स्थिति को विचार में लिया जा सकता है – प्रत्येक उन्मत्तता विधिक उन्मत्तता नहीं है – व्यक्ति चिकित्सीय उन्मत्तता से ग्रसित हो सकता है परंतु यह पर्याप्त नहीं हो सकता कि उक्त को विधिक उन्मत्तता के रूप में माना जाए। (प्रताप वि. म.प्र. राज्य) (DB)...2502

Criminal Practice – Motive – Held – Case is based on direct evidence and not on circumstantial evidence and hence it is not compulsory for prosecution to prove motive of accused – Only for absence of motive, direct evidence cannot be ignored. [State of M.P. Vs. Keshovrao] (DB)...2480

दाण्डिक पद्धति – हेतु – अभिनिर्धारित – प्रकरण प्रत्यक्ष साक्ष्य पर आधारित है तथा न कि परिस्थितिजन्य साक्ष्य पर एवं इसलिए अभियोजन के लिए अभियुक्त का हेतु साबित करना अनिवार्य नहीं है – केवल हेतु की अनुपस्थिति के लिए, प्रत्यक्ष साक्ष्य को अनदेखा नहीं किया जा सकता। (म.प्र. राज्य वि. केशवराव) (DB)...2480

Criminal Practice – Weapon of Crime – Held – Apex Court has concluded that non explanation of human blood on weapon of crime is a circumstance against the accused – In present case, non-explanation of blood group on the seized weapon of crime would not be fatal for prosecution. [Asghar Ali Vs. State of M.P.] (DB)...3080

दाण्डिक पद्धति – अपराध का शस्त्र – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया है कि अपराध के शस्त्र पर मानव रक्त होने का अस्पष्टीकरण, अभियुक्त के विरुद्ध एक परिस्थिति है – वर्तमान प्रकरण में, अपराध के जब्त शस्त्र पर रक्त समूह का अस्पष्टीकरण अभियोजन के लिए घातक नहीं होगा। (असगर अली वि. म.प्र. राज्य) (DB)...3080

Criminal Procedure Code, 1973 (2 of 1974), Section 24(8) and

*Constitution – Article 226 – Scope & Jurisdiction – Appointment of Special Public Prosecutor – Locus to Challenge – Held – Petitioner is one of the accused and have no locus standi to challenge/question the appointment made by State Government under statutory provisions – Such exercise of statutory power by State is impeccable and does not make the appointment by itself vulnerable in absence of any malice either on facts or in law – Further Held – Jurisdiction under Article 226 is subjected to self restricted limitations – This Court does not sit in appeal over a decision of a State or an authority to address on merits of the decision – It only ensures that decision making authority was competent as per law and the decision making process was free from arbitrariness, unreasonableness, bias, malice or perversity – Petition dismissed. [Dev Raj Kataria Vs. State of M.P.] ...*153*

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 24(8) एवं संविधान – अनुच्छेद 226 – व्याप्ति व अधिकारिता – विशेष लोक अभियोजक की नियुक्ति – चुनौती देने का अधिकार – अभिनिर्धारित – याची अभियुक्तों में से एक है तथा उसे राज्य सरकार द्वारा कानूनी उपबंधों के अंतर्गत की गई नियुक्ति को चुनौती देने/पर सवाल उठाने का अधिकार नहीं है – राज्य द्वारा कानूनी शक्ति का ऐसा प्रयोग त्रुटिहीन है तथा तथ्यों अथवा विधि में किसी दुर्भाव की अनुपस्थिति में नियुक्ति को स्वयं भेद्य नहीं बनाता है – आगे अभिनिर्धारित – अनुच्छेद 226 के अंतर्गत अधिकारिता स्व निर्बंधित परिसीमाओं के अधीन है – राज्य अथवा प्राधिकारी के विनिश्चय के गुणदोषों पर विचार करने हेतु, यह न्यायालय अपील में उस विनिश्चय की सुनवाई नहीं करता – यह केवल यह सुनिश्चित करता है कि विनिश्चय करने वाला प्राधिकारी विधि के अनुस्मर सक्षम था तथा विनिश्चय करने की प्रक्रिया मनमानेपन, अयुक्तियुक्तता पक्षपात, विद्वेष अथवा विपर्यस्तता से मुक्त थी – याचिका खारिज। (देव राज कटारिया वि. म.प्र. राज्य) ...*153*

Criminal Procedure Code, 1973 (2 of 1974), Section 53-A – See – Penal Code, 1860, Section 376 [Ramnath Vs. State of M.P.] (DB)...2706

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 53-ए – देखें – दण्ड संहिता, 1860, धारा 376 (रामनाथ वि. म.प्र. राज्य) (DB)...2706

Criminal Procedure Code, 1973 (2 of 1974), Section 91 and 227/228 – Production of Document – Held – At the stage of framing of charge, accused cannot invoke Section 91 to seek production of any document or submit any document in his possession to prove his defence/innocence – Section 91 do not confer any such right on the accused – Revision dismissed. [T.R. Taunk Vs. State of M.P.] (DB)...3110

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 91 एवं 227/228 -
दस्तावेज को प्रस्तुत किया जाना - अभिनिर्धारित - आरोप विरचित किये जाने के
प्रक्रम पर अभियुक्त, अपना बचाव/निर्दोषता साबित करने के लिए किसी दस्तावेज
का प्रस्तुतीकरण या उसके कब्जे का कोई दस्तावेज प्रस्तुत करने के लिए धारा 91
का अवलंब नहीं ले सकता - धारा 91, अभियुक्त को ऐसा कोई अधिकार प्रदत्त नहीं
करती - पुनरीक्षण खारिज। (टी.आर. टांक वि. म.प्र. राज्य) (DB)...3110

Criminal Procedure Code, 1973 (2 of 1974), Section 118 - Child
Witness - Held - A child witness is competent witness u/S 118 Cr.P.C.
[Vinay Vs. State of M.P.] (DB)...2752

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 118 - बालक साक्षी -
अभिनिर्धारित - धारा 118 दं.प्र.सं. के अंतर्गत, बालक साक्षी एक सक्षम साक्षी है।
(विनय वि. म.प्र. राज्य) (DB)...2752

Criminal Procedure Code, 1973 (2 of 1974), Section 125 -
Maintenance - Entitlement - Term "wife" - Application u/S 125 filed
by applicant was dismissed by Courts below - Challenge to - Held -
Concurrent findings of Courts below that applicant/wife was divorced
by respondent as per the prevailing customs and thereafter wife was
remarried to another person - She does not comes within the purview
of definition "wife" and is not entitled to receive maintenance u/S 125
Cr.P.C. from respondent No.2/earlier husband. [Naththi Bai (Smt.) Vs.
State of M.P.] ...*128

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 - मरणपोषण - हकदारी
- शब्द "पत्नी" - आवेदक द्वारा धारा 125 के अंतर्गत प्रस्तुत आवेदन निचले न्यायालयों
द्वारा खारिज किया गया था - को चुनौती - अभिनिर्धारित - निचले न्यायालयों के
समवर्ती निष्कर्ष हैं कि आवेदिका/पत्नी का प्रचलित रूढ़ियों के अनुसार प्रतिवादी से
विवाह विच्छेद हुआ था तथा तत्पश्चात् पत्नी का किसी अन्य व्यक्ति से पुनर्विवाह हुआ
था - वह "पत्नी" की परिभाषा की परिधि में नहीं आती तथा प्रत्यर्थी क्र. 2/पूर्व पति
से दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत मरणपोषण प्राप्त करने की हकदार नहीं
है। (नत्थी बाई (श्रीमती) वि. म.प्र. राज्य) ...*128

Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 125(3)
- Recovery of Arrears of Maintenance - Limitation - On 14.05.13, Family
Court directed husband to pay Rs. 15,000 p.m. to wife as maintenance -
Amount not paid by husband - On 14.11.15, wife filed application u/S 125(3)
Cr.P.C. whereby family Court held the wife entitled to receive maintenance
amount for a period of preceding one year only - Challenge to - Held -

Apex Court concluded that it is unreasonable to insist on filing successive applications when liability to pay maintenance as per order passed is a continuing liability – Respondent directed to pay entire unpaid amount of maintenance from date of order i.e. 14.05.13. [Preeti Jain (Smt.) Vs. Manish Jain]
...2378

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 125(3) – भरणपोषण के बकाया की वसूली – परिसीमा – दिनांक 14.05.2013 को, कुटुम्ब न्यायालय ने पत्नी को 15,000/- रु. प्रतिमाह भरणपोषण के रूप में भुगतान करने हेतु पति को निदेशित किया – पति द्वारा राशि का संदाय नहीं किया गया – दिनांक 14.11.2015 को, पत्नी ने दण्ड प्रक्रिया संहिता की धारा 125(3) के अंतर्गत आवेदन प्रस्तुत किया जिसमें कुटुम्ब न्यायालय ने यह अभिनिर्धारित किया कि पत्नी केवल एक वर्ष पूर्व की अवधि की भरणपोषण राशि प्राप्त करने की हकदार है – को चुनौती – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि क्रमशः आवेदन प्रस्तुत करने पर जोर देना अयुक्तियुक्त है जब पारित आदेश के अनुसार भरणपोषण के भुगतान का दायित्व एक निरंतर दायित्व है – प्रत्यर्थी को आदेश दिनांक अर्थात् 14.05.2013 से भरणपोषण की संपूर्ण असंदत्त राशि का भुगतान करने हेतु निदेशित किया गया। (प्रीति जैन (श्रीमती) वि. मनीष जैन)
...2378

Criminal Procedure Code, 1973 (2 of 1974), Section 125(3) – Arrears of Maintenance – Mode of Recovery – Limitation – Held – U/S 125 Cr.P.C. two methods/alternatives are available to Magistrate in case of non-compliance of order, one is to issue warrant for levying the amount due and second is to sentence such person for whole or any part of each month's default – Even second alternative can be used by Court after execution of warrant – Since limitation of one year is prescribed as per proviso for issuance of warrant, second alternative can also be exercised only within time frame prescribed in the proviso. [Preeti Jain (Smt.) Vs. Manish Jain]
...2378

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125(3) – भरणपोषण का बकाया – वसूली का ढंग – परिसीमा – अभिनिर्धारित – दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत आदेश के अननुपालन के प्रकरण में मजिस्ट्रेट के पास दो तरीके/विकल्प उपलब्ध हैं, प्रथम, देय राशि का उद्ग्रहण करने हेतु वारंट जारी करना एवं द्वितीय, ऐसे व्यक्ति को प्रत्येक माह के व्यतिक्रम के संपूर्ण या किसी भी भाग के लिए दण्डादिष्ट करना – वारंट के निष्पादन के पश्चात् न्यायालय द्वारा द्वितीय विकल्प का भी प्रयोग किया जा सकता है – चूंकि वारंट जारी करने हेतु परंतुक के अनुसार एक वर्ष की परिसीमा विहित की गई है, द्वितीय विकल्प का भी प्रयोग केवल परंतुक में विहित समय सीमा के भीतर किया जा सकता है। (प्रीति जैन (श्रीमती) वि. मनीष जैन)
...2378

Criminal Procedure Code, 1973 (2 of 1974), Section 154 & 161
- See - *Evidence Act, 1872, Section 145 [Pratap Vs. State of M.P.]*
(DB)...2502

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 व 161 - देखें - साक्ष्य अधिनियम, 1872, धारा 145 (प्रताप वि. म.प्र. राज्य)
(DB)...2502

Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) - Application by Accused - Maintainability - Held - Applicant who is an accused has no authority to file an application u/S 156(3) Cr.P.C. - Concept of bilateral participation of both rival parties i.e. prosecution and accused during process of investigation is foreign to the very concept and object of Cr.P.C. - Trial Court rightly rejected the prayer - Revision dismissed. [Rajesh Sharma Vs. State of M.P.](DB)...3114

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) - अभियुक्त द्वारा आवेदन - पोषणीयता - अभिनिर्धारित - आवेदक जो कि एक अभियुक्त है, को द. प्र.सं. की धारा 156(3) के अंतर्गत आवेदन प्रस्तुत करने का कोई प्राधिकार नहीं है - अन्वेषण की प्रक्रिया के दौरान दोनों विरोधी पक्षकारों अर्थात् अभियोजन एवं अभियुक्त की द्विपक्षीय सहभागिता की संकल्पना, द.प्र.सं. के मूल सिद्धांत एवं उद्देश्य से भिन्न है - विचारण न्यायालय ने उचित रूप से प्रार्थना अस्वीकार की - पुनरीक्षण खारिज। (राजेश शर्मा वि. म.प्र. राज्य)
(DB)...3114

Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) - Stage of Investigation - Maintainability - Held - Apex Court concluded that invocation of Section 156(3) Cr.P.C. by Magistrate is permissible only during pre-cognizance stage - Once Magistrate takes cognizance of offence whether before or after filing of charge sheet, then Section 156(3) Cr.P.C. cannot be employed to direct investigation - In instant case, application u/S 156(3) was filed when process of investigation was on and charge sheet was not filed i.e. at the pre-cognizance stage and therefore could have been entertained. [Rajesh Sharma Vs. State of M.P.]
(DB)...3114

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) - अन्वेषण का प्रक्रम - पोषणीयता - अभिनिर्धारित - सर्वोच्च न्यायालय ने निष्कर्षित किया है कि मजिस्ट्रेट द्वारा द.प्र.सं. की धारा 156(3) का अवलंब केवल संज्ञान-पूर्व प्रक्रम के दौरान ही अनुज्ञेय है - एक बार मजिस्ट्रेट द्वारा संज्ञान लिये जाने पर, चाहे आरोप पत्र प्रस्तुत करने के पूर्व अथवा पश्चात्, तब अन्वेषण निदेशित करने हेतु द.प्र.सं. की धारा 156(3) का प्रयोग नहीं किया जा सकता - वर्तमान प्रकरण में, धारा 156(3)

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के अंतर्गत आवेदन तब प्रस्तुत किया गया था जब अन्वेषण की प्रक्रिया चल रही थी एवं आरोप पत्र प्रस्तुत नहीं किया गया था अर्थात् संज्ञान-पूर्व प्रक्रम पर और इसलिए ग्रहण किया जा सकता था। (राजेश शर्मा वि. म.प्र. राज्य) (DB)...3114

Criminal Procedure Code, 1973 (2 of 1974), Section 157 – See – Penal Code, 1860, Section 302 [Bhagchandra Vs. State of M.P.]
(DB)...3094

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – देखें – दण्ड संहिता, 1860, धारा 302 (भागचन्द्र वि. म.प्र. राज्य)
(DB)...3094

Criminal Procedure Code, 1973 (2 of 1974), Section 161 and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Certification of Doctor – Reliability – Held – Statement of a injured victim recorded u/S 161 Cr.P.C., after his death, can be treated as dying declaration being previous statement – Further, dying declaration cannot be disbelieved merely for want of doctor's certification regarding fit state of mind. [Asghar Ali Vs. State of M.P.]
(DB)...3080

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृत्युकालिक कथन – चिकित्सक का प्रमाणन – विश्वसनीयता – अभिनिर्धारित – द.प्र.सं. की धारा 161 के अंतर्गत अभिलिखित किये गये पीड़ित के कथन को उसकी मृत्यु के पश्चात्, पूर्व कथन होने के कारण मृत्युकालिक कथन माना जा सकता है – इसके अतिरिक्त, उचित मनः स्थिति के संबंध में चिकित्सक के प्रमाणन मात्र के अभाव में मृत्युकालिक कथन पर अविश्वास नहीं किया जा सकता। (असगर अली वि. म.प्र. राज्य)
(DB)...3080

Criminal Procedure Code, 1973 (2 of 1974), Section 164 – Recording of Statements – Eye Witnesses – Held – Eye witness must be examined and statement be recorded as soon as possible during investigation itself u/S 164 Cr.P.C. – As per amendment of 2009 in Section 164 Cr.P.C., statement of witnesses should be got recorded by audio-video electronic means. [Doongar Singh Vs. State of Rajasthan] (SC)...2922

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 164 – कथनों का अभिलिखित किया जाना – चक्षुदर्शी साक्षीगण – अभिनिर्धारित – चक्षुदर्शी साक्षी का परीक्षण अवश्य किया जाना चाहिए तथा द.प्र.सं. की धारा 164 के अंतर्गत अन्वेषण के दौरान ही जितना शीघ्र संभव हो सके कथन अभिलिखित किये जाने चाहिए – द.प्र.सं. की धारा 164 में 2009 के संशोधन अनुसार, साक्षीगण के कथन ऑडियो-वीडियो इलेक्ट्रॉनिक माध्यम से अभिलिखित किये जाने चाहिए। (डूंगर सिंह वि. राजस्थान राज्य)
(SC)...2922

Criminal Procedure Code, 1973 (2 of 1974), Section 167 & 173(2)
– *Final Police Report – Completion of Investigation – Default Bail – Held* – Merely because the report u/S 173(2) states that further investigation is in progress, does not bar the Magistrate from taking cognizance – If material on record of incomplete investigation is sufficient to take cognizance, Magistrate can do so – Police report must not be filed in such a manner that it's contents reveal that investigation is incomplete and report has been filed only to defeat the right of accused to a default bail u/S 167(2) Cr.P.C. – In the present case, investigation related to petitioner was incomplete and police report was filed at the fag end of ninety days period which makes it apparent that charge sheet was filed only with intent of frustrating the right of petitioner to apply for default bail – Petitioner directed to be released on bail – Petition allowed. [Manish Gandhi Vs. State of M.P.] ...*157

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167 व 173(2) – अंतिम पुलिस प्रतिवेदन – अन्वेषण का समापन – व्यतिक्रम से जमानत – अभिनिर्धारित – मात्र इसलिए कि धारा 173(2) के अंतर्गत प्रतिवेदन कहता है कि आगे अन्वेषण जारी है, मजिस्ट्रेट को संज्ञान लेने से वर्जित नहीं करता – यदि अपूर्ण अन्वेषण के अभिलेख की सामग्री, संज्ञान लेने के लिए पर्याप्त है, मजिस्ट्रेट ऐसा कर सकता है – पुलिस प्रतिवेदन इस ढंग से प्रस्तुत नहीं किया जाना चाहिए कि उसकी अंतर्वस्तु प्रकट करती हो कि अन्वेषण अपूर्ण है और प्रतिवेदन को धारा 167(2) द.प्र.सं. के अंतर्गत अभियुक्त के व्यतिक्रम से जमानत के अधिकार को विफल करने के लिए प्रस्तुत किया गया है – वर्तमान प्रकरण में, आवेदक के संबंध में अन्वेषण अपूर्ण था और पुलिस प्रतिवेदन को नब्बे दिनों की अवधि के अंतिम छोर पर प्रस्तुत किया गया था जिससे यह स्पष्ट है कि आरोप पत्र को केवल व्यतिक्रम से जमानत हेतु आवेदन करने के याची के अधिकार को विफल करने के आशय से प्रस्तुत किया गया था – याची को जमानत पर छोड़े जाने के लिए निदेशित किया गया – याचिका मंजूर। (मनीष गोंधी वि. म.प्र. राज्य) ...*157

Criminal Procedure Code, 1973 (2 of 1974), Section 177 & 178
– *See – Penal Code, 1860, Section 498-A* [Dushyant Singh Gaharwar Vs. State of M.P.] ...*135

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 177 व 178 – देखें – दण्ड संहिता, 1860, धारा 498-ए (दुष्यंत सिंह गहरवार वि. म.प्र. राज्य) ...*135

Criminal Procedure Code, 1973 (2 of 1974), Sections 177, 178 & 179 – Territorial Jurisdiction – Held – Combine/joint search operation undertaken by Income Tax department simultaneously at

Bhopal and Aurangabad – Offence can be tried by Courts otherwise competent at both aforementioned places – Further held – The locker eventually located, though at Aurangabad, has perceptible co-relation/nexus with subject of assessment and appellants filed their return at Bhopal – Complaint lodged at Bhopal is maintainable – Objection rejected. [Babita Lila Vs. Union of India] (SC)...2587

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 177, 178 व 179 – क्षेत्रीय अधिकारिता – अभिनिर्धारित – आय कर विभाग द्वारा एक साथ भोपाल एवं औरंगाबाद में संयोजित/संयुक्त तलाशी कार्यवाही की गई – उपरोक्त दोनों स्थानों पर अन्यथा सक्षम न्यायालयों द्वारा अपराध का विचारण किया जा सकता है – आगे अभिनिर्धारित – अंततः लॉकर का पता लगाया गया, यद्यपि औरंगाबाद में, निर्धारण के विषय के साथ उसका प्रत्यक्ष सह-संबंध/अंतर्सम्बन्ध है तथा अपीलार्थीगण ने भोपाल में अपनी विवरणी प्रस्तुत की – भोपाल में दर्ज परिवाद पोषणीय है – आक्षेप अस्वीकार किया गया। (बबिता लीला वि. यूनियन ऑफ इंडिया) (SC)...2587

Criminal Procedure Code, 1973 (2 of 1974), Section 195 – See – Income Tax Act, 1961, Section 132 & 246 [Babita Lila Vs. Union of India] (SC)...2587

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 195 – देखें – आयकर अधिनियम, 1961, धारा 132 व 246 (बबिता लीला वि. यूनियन ऑफ इंडिया) (SC)...2587

Criminal Procedure Code, 1973 (2 of 1974), Section 202(1) & 482 – Quashment – Amendment of 2005 – Mandatory Requirement – Complaint case filed against petitioners whereby summons issued to accused/petitioner – Held – Petitioners residing outside territorial jurisdiction of Magistrate – Before summoning accused, it was obligatory upon Magistrate to inquire into the case himself or direct investigation to police as he thinks fit – Mandatory requirements of Section 202 not followed – Impugned order set aside – Matter remanded back to Magistrate – Petition allowed. [Habibulla Vs. State of M.P.] ...*155

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 202(1) व 482 – अभिखंडित किया जाना – 2005 का संशोधन – आज्ञापक अपेक्षा – याचीगण के विरुद्ध परिवाद प्रकरण प्रस्तुत किया गया जिसमें अभियुक्त/याची को समन जारी किये गये – अभिनिर्धारित – याचीगण, मजिस्ट्रेट की क्षेत्रीय अधिकारिता से बाहर निवासरत है – अभियुक्त को समन किये जाने के पूर्व, मजिस्ट्रेट के लिए बाध्यकारी था कि वह स्वयं प्रकरण में जांच करे या पुलिस को अन्वेषण हेतु निदेशित करे, जैसा कि वह

उचित समझे - धारा 202 की आज्ञापक अपेक्षाओं का पालन नहीं किया गया - आक्षेपित आदेश अपास्त - मामला, मजिस्ट्रेट को प्रतिप्रेषित किया गया - याचिका मंजूर। (हबीबुल्ला वि. म.प्र. राज्य) ...*155

*Criminal Procedure Code, 1973 (2 of 1974), Section 218 - Framing of Charge - Held - Charge is the parameter set by the Court within which the trial is to be conducted - Framing of Charge thus gives a clear understanding and an opportunity to accused to know the exact offence for which he is tried. [Krishan Mohan Agrawal Vs. State of M.P.] ...*140*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 218 - आरोप विरचित किया जाना - अभिनिर्धारित - आरोप, न्यायालय द्वारा निर्धारित वह मापदण्ड है जिसके भीतर विचारण संचालित किया जाना होता है - अतः आरोप विरचित किया जाना, अभियुक्त को सटीक अपराध, जिसके लिए उसका विचारण किया जा रहा है, का ज्ञान होने के लिए एक स्पष्ट समझ एवं एक अवसर देता है। (कृष्ण मोहन अग्रवाल वि. म.प्र. राज्य) ...*140

Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 - Framing of Charge - Conflicting Views - Held - The principle that where two views are possible, one favouring accused should be adopted, would have no application at the stage of framing of charge - If two conflicting material available, one favouring accused and other implicating him, the case will have to be put to trial. [Kattu Bai Vs. State of M.P.] ...3122

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 - आरोप विरचित किया जाना - विरोधाभासी दृष्टिकोण - अभिनिर्धारित - यह सिद्धांत कि जहाँ दो दृष्टिकोण संभव हो, अभियुक्त के पक्ष वाले दृष्टिकोण को अपनाया जाना चाहिए, इसका आरोप विरचना किये जाने के प्रक्रम पर कोई प्रयोजन नहीं होगा - यदि दो विरोधाभासी सामग्री उपलब्ध है, एक अभियुक्त का पक्ष लेती है तथा दूसरी उसे आलिप्त करती है, प्रकरण को विचारण के लिए रखा जाना होगा। (कट्टू बाई वि. म.प्र. राज्य) ...3122

*Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 - Framing of Charge - Considerations - At the stage of framing of charge, Court has to see whether from material produced on record it could be said *prima facie* that accused might have committed offence - Probative values of the material submitted with charge sheet is not required to be examined or evaluated under a microscope. [T.R. Taunk Vs. State of M.P.] (DB)...3110*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 एवं 228 – आरोप विरचित किया जाना – विचार में लिया जाना – आरोप विरचित करने के प्रक्रम पर, न्यायालय को देखना होता है कि क्या अभिलेख पर प्रस्तुत सामग्री से प्रथम दृष्ट्या यह कहा जा सकता है कि अभियुक्त अपराध कारित कर सकता था -- आरोप पत्र के साथ प्रस्तुत सामग्री के प्रमाणन-मूल्य का सूक्ष्मता से परीक्षण अथवा मूल्यांकन किया जाना अपेक्षित नहीं। (टी.आर. टांक वि. म.प्र. राज्य) (DB)...3110

Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Framing of Charge – Quashing of criminal proceedings – Held – Framing of charge is not a stage at which final test of guilt is to be applied – Apex Court has held that at the stage of framing of charge, Court is not concerned with proof of allegation rather it has to focus on the material in hand and form an opinion whether there is strong suspicion that accused committed an offence, which if put to trial, could prove his guilt – Power of quashing criminal proceedings particularly at such stage u/S 228 should be exercised very sparingly and with circumspection and that too in rarest of rare cases – In instant case, once the order of this Court was upheld by the Supreme Court, Trial Court acted illegally with material irregularity in discharging respondents – Impugned order set aside – Revision allowed. [Rakesh Vs. Subodh] ...*130

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 – आरोप विरचित किया जाना – दाण्डिक कार्यवाहियों को अभिखंडित किया जाना – अभिनिर्धारित – आरोप विरचित करना ऐसा प्रक्रम नहीं जहां दोषिता का अंतिम परीक्षण लागू किया जाए – सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि आरोप विरचित करने के प्रक्रम पर, न्यायालय, अभिकथनों के सबूत पर विचार नहीं करता बल्कि उसे उपलब्ध सामग्री पर ध्यान केन्द्रित करना होता है और राय निर्मित करनी होती है कि क्या प्रबल संदेह है कि अभियुक्त ने अपराध कारित किया, जिसका यदि विचारण किया जाए तो उसकी दोषिता सिद्ध हो सकती है – विशेष रूप से ऐसे प्रक्रम पर धारा 228 के अंतर्गत दाण्डिक कार्यवाहियां अभिखंडित करने की शक्ति का प्रयोग अति संयम से एवं सावधानी से और वह भी विरल से विरलतम प्रकरणों में किया जाना चाहिए – वर्तमान प्रकरण में एक बार उच्चतम न्यायालय द्वारा इस न्यायालय के आदेश की संपुष्टि की गई थी, विचारण न्यायालय ने प्रत्यर्थांगण को आरोपमुक्त करने में तात्त्विक अनियमितता के साथ अवैध रूप से कार्रवाई की – आक्षेपित आदेश अपास्त – पुनरीक्षण मंजूर। (राकेश वि. सुबोध) ...*130

Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228, Penal Code (45 of 1860), Sections 302, 304-B & 498-A r/w 34 and

Evidence Act (1 of 1872), Section 32 – Framing of Charge – Dying Declaration – Charge framed against husband, mother-in-law, father-in-law, brother-in-law and sister-in-law – Held – Two dying declaration in the case, one written and one oral – If during trial, written dying declaration is discredited and the witnesses testifying about oral dying declaration withstands cross examination, oral dying declaration can form sole basis of conviction – Oral dying declaration is also admissible piece of evidence – Sufficient material to frame charge against husband – No material available on record against other applicants, hence discharged – Trial Court to proceed trial against husband – Revision partly allowed. [Kattu Bai Vs. State of M.P.] ...3122

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दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – आरोप विरचित किया जाना – साक्ष्य का मूल्यांकन – अभिनिर्धारित – आरोप विरचित किये जाने के प्रक्रम पर, न्यायालय को प्रथम दृष्टया यह विचार करना चाहिए कि क्या अभियुक्त के विरुद्ध कार्यवाही के लिये पर्याप्त आधार है – न्यायालय द्वारा साक्ष्य का मूल्यांकन

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दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397 व 401 - दोषमुक्ति के विरुद्ध पुनरीक्षण - उच्च न्यायालय की अधिकारिता - सीमित शक्तियाँ - अभिनिर्धारित - दोषमुक्ति के विरुद्ध पुनरीक्षण की अधिकारिता में, उच्च न्यायालय द्वारा प्रकरण के गुणदोषों पर विचार करना एवं साक्ष्य का पुनर्मूल्यांकन करना तथा एक संभाव्य दृष्टिकोण को अन्य दृष्टिकोण से प्रतिस्थापित करना अपेक्षित नहीं है - उच्च न्यायालय प्राइवेट पक्षकारों के अनुरोध पर भी दोषमुक्ति का आदेश अपास्त कर सकता है, परन्तु इस अधिकारिता का प्रयोग अपवादिक प्रकरणों में किया जाना चाहिए - ऐसी परिस्थितियों की सूची, प्रगणित एवं विवेचित। (देशपाल वि. म.प्र. राज्य) (DB)...2717

Criminal Procedure Code, 1973 (2 of 1974), Section 438 - Anticipatory Bail - Entitlement - Held - If petitioners/accused persons not arrested during investigation, it does not mean that they are entitled to anticipatory bail as allegations against petitioners of exploiting the admission process are quite serious. [Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation] (DB)...3138

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 - अग्रिम जमानत - हकदारी - अभिनिर्धारित - यदि अन्वेषण के दौरान याचीगण/अभियुक्तगण को गिरफ्तार नहीं किया गया है, इसका अर्थ यह नहीं कि वे अग्रिम जमानत के हकदार हैं क्योंकि याचीगण के विरुद्ध प्रवेश प्रक्रिया का अनुचित लाभ उठाने के अभिकथन काफी गंभीर हैं। (दिव्य किशोर सत्पथी (डॉ.) वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...3138

Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Factors and parameters enumerated by Apex Court discussed. [Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation] (DB)...3138

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – सर्वोच्च न्यायालय द्वारा प्रगणित कारक एवं मापदण्ड विवेचित। (दिव्य किशोर सत्पथी (डॉ.) वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...3138

Criminal Procedure Code, 1973 (2 of 1974), Section 438; Penal Code (45 of 1860), Sections 420, 467, 468, 471, 201 r/w 120-B, Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2), Information Technology Act (21 of 2000), Section 43 r/w 66 and Recognised Examination Act, M.P. (10 of 1937), Section 3-D(1) & (2) – Anticipatory Bail – Grounds – Nature and Gravity of Accusation – Allegation of manipulations to block State Government quota seats in Private Medical Colleges – Grave and serious allegations of wrongful admission of large number of students otherwise than on merit for monetary consideration – Gravity of accusation is glaring and in view of the seriousness of allegations which have wide ramifications on cause of professional education in State, petitioners not entitled to concession of pre-arrest bail – Applications dismissed. [Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation] (DB)...3138

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438, दण्ड संहिता (1860 का 45), धाराएँ 420, 467, 468, 471, 201 सहपठित 120-बी, भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) व 13(2), सूचना प्रौद्योगिकी अधिनियम (2000 का 21), धारा 43 सहपठित 66 एवं मान्यताप्राप्त परीक्षा अधिनियम, म.प्र. (1937 का 10), धारा 3-डी(1) व (2) – अग्रिम जमानत – आधार – आरोप की प्रकृति एवं गंभीरता – निजी चिकित्सा महाविद्यालयों में राज्य सरकार के कोटे की सीटों को अवरुद्ध करने के लिए छल/साधन का अभिकथन – आर्थिक प्रतिफल हेतु, योग्यता के अन्यथा विद्यार्थियों को बड़ी संख्या में सद्रोष प्रवेश के गंभीर एवं संगीन अभिकथन – आरोप की गंभीरता सुस्पष्ट है और अभिकथनों की संगीनता, जिनसे राज्य में व्यावसायिक शिक्षा के ध्येय पर व्यापक असर पड़ता है, को दृष्टिगत रखते हुए, याचीगण गिरफ्तारी पूर्व जमानत की रियायत के हकदार नहीं – आवेदनों को खारिज किया गया। (दिव्य किशोर सत्पथी (डॉ.) वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...3138

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Circumstances where jurisdiction u/S 482 Cr.P.C. can be invoked, discussed and explained, specifying the guidelines of the Apex Court.

[Amita Shrivastava (Smt.) Vs. State of M.P.] ...2868

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - परिस्थितियाँ, जहाँ धारा 482 दं.प्र.सं. के अंतर्गत अधिकारिता का अवलंब लिया जा सकता है, सर्वोच्च न्यायालय के दिशानिर्देशों को विनिर्दिष्ट करते हुए विवेचित एवं स्पष्ट की गई। (अमिता श्रीवास्तव (श्रीमती) वि. म.प्र. राज्य) ...2868

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Police Investigation - Scope & Jurisdiction - Held - Court in exercise of powers u/S 482 Cr.P.C. cannot direct the police to investigate the case from a particular point of view and cannot supervise investigation by issuing directions as to in what manner it is to be done, as the investigation is the domain of police - Court can interfere with investigation where investigating officer acted in violation of any statutory provisions of law putting personal liberty of person in jeopardy or investigation is not bonafide or investigation is tainted being biased or malafide - No allegation against any investigating officer - Application dismissed. [Prabal Dogra Vs. Superintendent of Police, Gwalior & State of M.P.] ...2881

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - पुलिस अन्वेषण - व्याप्ति व अधिकारिता - अभिनिर्धारित - न्यायालय दण्ड प्रक्रिया संहिता की धारा 482 के अंतर्गत शक्तियों के प्रयोग में प्रकरण का अन्वेषण किसी विशिष्ट दृष्टिकोण से करने हेतु पुलिस को निदेशित नहीं कर सकता तथा निदेश जारी करके अन्वेषण का पर्यवेक्षण नहीं कर सकता कि यह किस रीति से किया जाना है, क्योंकि अन्वेषण पुलिस का अधिकार क्षेत्र है - न्यायालय अन्वेषण में हस्तक्षेप कर सकता है जहाँ अन्वेषण अधिकारी ने व्यक्ति की दैहिक स्वतंत्रता को संकट में डालते हुए विधि के किसी भी कानूनी उपबंधों का उल्लंघन किया हो या अन्वेषण सद्भावपूर्ण न हो या अन्वेषण पक्षपातपूर्ण अथवा असद्भावपूर्वक होने के कारण दूषित हो - किसी अन्वेषण अधिकारी के विरुद्ध कोई अभिकथन नहीं - आवेदन खारिज। (प्रबल डोगरा वि. सुपरिंटेंडेंट ऑफ पुलिस, ग्वालियर एण्ड म.प्र. राज्य) ...2881

*Criminal Procedure Code, 1973 (2 of 1974), Section 482 - See - Negotiable Instruments Act, 1881, Section 138 & 141 [Ganesh Vs. Chhidamilal] ...*136*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - देखें - परक्राम्य लिखत अधिनियम, 1881, धारा 138 व 141 (गणेश वि. छिदामीलाल) ...*136

Criminal Procedure Code, 1973 (2 of 1974), Section 482 - See - Penal Code, 1860, Section 379 & 498-A [Saiyad Asfaq Ali Vs. Kaisar

Begum Owaisi] ...2567

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें – दण्ड संहिता, 1860, धारा 379 व 498-ए (सैय्यद अशफाक अली वि. केसर बेगम ओवेसी) ...2567

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – See – Penal Code, 1860, Section 415 & 420 [Amita Shrivastava (Smt.) Vs. State of M.P.] ...2868

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें – दण्ड संहिता, 1860, धारा 415 व 420 (अमिता श्रीवास्तव (श्रीमती) वि. म.प्र. राज्य) ...2868

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Constitution – Article 21 – Police Investigation – Documents – Held – Where material produced by accused is such to conclude that his defence is based on sound, reasonable and indubitable facts and same rules out the assertions made in complaint, High Court can always look into those documents, even at an early stage of trial – Free and fair investigation is the fundamental right of accused as guaranteed under Article 21 of Constitution. [Prabal Dogra Vs. Superintendent of Police, Gwalior & State of M.P.] ...2881

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं संविधान – अनुच्छेद 21 – पुलिस अन्वेषण – दस्तावेज – अभिनिर्धारित – जहाँ अभियुक्त द्वारा प्रस्तुत सामग्री ऐसा निष्कर्षित करने हेतु है कि उसका बचाव ठोस, युक्तियुक्त एवं निःशंक तथ्यों पर आधारित है तथा वे परिवार में किये गये प्राख्यान को खारिज करते हैं, उच्च न्यायालय विचारण के शुरुआती प्रक्रम पर भी सदैव उन दस्तावेजों पर विचार कर सकता है – स्वतंत्र और निष्पक्ष अन्वेषण अभियुक्त का मूलभूत अधिकार है जैसा कि संविधान के अनुच्छेद 21 के अंतर्गत प्रत्याभूत है। (प्रबल डोगरा वि. सुपरिंटेंडेंट ऑफ पुलिस, ग्वालियर एण्ड म.प्र. राज्य) ...2881

Criminal Trial – Practice and Procedure – Exhibiting Certified Copy of Memorandum of Another Crime – Accused persons were convicted on the basis of their disclosure memo given in another crime and according to which ornaments looted in the present case was recovered – Certified copy of disclosure memo was exhibited – Held – Original documents prepared by police, therefore no prejudice was caused to appellants, if certified copies of memorandum was accepted by the trial Court – Exhibiting the certified copy has no bearing on merits of the case. [Padamnath Vs. State of M.P.] (DB)...3068

दांडिक विचारण - पद्धति एवं प्रक्रिया - अन्य अपराध के ज्ञापन की प्रमाणित प्रति प्रदर्शित की जाना - अभियुक्तगण, अन्य अपराध में दिये गये प्रकटीकरण ज्ञापन के आधार पर दोषसिद्ध किये गये तथा जिसके अनुसार वर्तमान प्रकरण में लूटे गये आभूषण बरामद कर लिये गये थे - प्रकटीकरण ज्ञापन की प्रमाणित प्रति प्रदर्शित की गई थी - अभिनिर्धारित - मूल दस्तावेज पुलिस द्वारा तैयार किये गये, इसलिए अपीलार्थीगण पर कोई प्रतिकूल प्रभाव कारित नहीं किया गया था, यदि ज्ञापन की प्रमाणित प्रतियाँ विचारण न्यायालय द्वारा स्वीकार की गई थी - प्रमाणित प्रति के प्रदर्शित किये जाने का प्रकरण के गुणदोषों पर कोई प्रभाव नहीं है। (पदमनाथ वि. म.प्र. राज्य) (DB)...3068

Departmental Enquiry - Degree of Proof - Doctrine of Preponderance of Probabilities - Past Conduct & Service Record - Held - It is established law that in departmental enquiry, degree of proof as required in a criminal case where prosecution has to prove the charge beyond doubt is not required to prove misconduct - In the instant case, inebriation of petitioner was proved by Doctor - Doctrine of preponderance of probabilities is applied in such cases - Apex Court held that in case of misconduct of grave nature or indiscipline, authority may consider the past conduct and service record of the delinquent employee. [Rudrapal Singh Chandel Vs. State of M.P.] ...2333

विभागीय जांच - सबूत का परिमाण - अधिसंभाव्यताओं की प्रबलता का सिद्धांत - पूर्व आचरण एवं सेवा अभिलेख - अभिनिर्धारित - यह स्थापित विधि है कि विभागीय जांच में, सबूत का परिमाण जैसा कि आपराधिक प्रकरण में अपेक्षित है जहाँ अभियोजन का कदाचरण साबित करने के लिए आरोप को युक्तियुक्त संदेह से परे साबित करना अपेक्षित नहीं है - वर्तमान प्रकरण में, याची का मद्यपान करना चिकित्सक द्वारा साबित - अधिसंभाव्यताओं की प्रबलता का सिद्धांत ऐसे प्रकरणों में लागू होता है - सर्वोच्च न्यायालय ने अभिनिर्धारित किया कि गंभीर प्रकृति के कदाचरण या अनुशासनहीनता के प्रकरण में, प्राधिकारी, अपचारी कर्मचारी के पूर्व आचरण एवं सेवा अभिलेख को विचार में ले सकता है। (रुद्रपाल सिंह चंदेल वि. म. प्र. राज्य) ...2333

Electricity Act (36 of 2003), Sections 126(4) & (5), 135 & 154(5) - Electricity Theft Case - Civil Liability - Petitioner held guilty for offence u/S 135 of the Act of 2003 and civil liability was calculated applying Section 126 (5) & (6) of the Act - Challenge to - Held - Trial Court wrongly applied provisions for calculating the loss cost - It was obligatory upon trial Court to determine civil liability applying Section 154(5) of the Act of 2003 which prescribes procedure for determination

of civil liability for theft of electrical energy in terms of money – Impugned order relating to determination of civil liability is set aside – Revision allowed. [M.P. Rajya Vidyut Mandal (M.P.P.K.V.V. Co. Ltd.) Vs. Indrajeet Sahu] ...*141

विद्युत अधिनियम (2003 का 36), धाराएँ 126(4) व 5, 135 व 154(5) – विद्युत चोरी का प्रकरण – सिविल दायित्व – याची को 2003 के अधिनियम की धारा 135 के अंतर्गत अपराध का दोषी ठहराया गया तथा अधिनियम की धारा 126(5) व (6) को लागू करते हुए सिविल दायित्व की संगणना की गई थी – को चुनौती – अभिनिर्धारित – विचारण न्यायालय ने हानि की कीमत की संगणना करने हेतु उपबंधों को गलत रूप से लागू किया – विचारण न्यायालय 2003 के अधिनियम की धारा 154(5), जो विद्युत उर्जा की चोरी हेतु, रकम के रूप में, सिविल दायित्व के अवधारण हेतु प्रक्रिया विहित करती है को लागू करते हुए सिविल दायित्व का अवधारण करने के लिए बाध्यताधीन था – सिविल दायित्व के अवधारण से संबंधित आक्षेपित आदेश अपास्त किया गया – पुनरीक्षण मंजूर। (एम.पी. राज्य विद्युत मंडल (एम.पी.पी.के.व्ही.व्ही. कं. लि.) वि. इन्द्रजीत साहु) ...*141

Electricity Act (36 of 2003), Sections 138, 151 & 153 and Criminal Procedure Code, 1973 (2 of 1974), Section 251 – Jurisdiction – Case registered and summons issued against respondent for offence punishable u/S 138 of the Act of 2003 – Case was dropped by Magistrate exercising power u/S 251 Cr.P.C. – Challenge to – Held – Once the summons have been issued to accused, the Special Court constituted u/S 153 of the Act of 2003 does not have jurisdiction to drop legal proceedings by exercising powers u/S 251 Cr.P.C. thereby discharging the accused – Impugned order set aside – Application allowed. [M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. Vs. Deependra Bhatte] ...*126

विद्युत अधिनियम (2003 का 36), धाराएँ 138, 151 व 153 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 251 – अधिकारिता – प्रत्यर्थी के विरुद्ध अधिनियम 2003 की धारा 138 के अंतर्गत दण्डनीय अपराध के लिए प्रकरण पंजीबद्ध किया गया तथा समन जारी किये गये – दण्ड प्रक्रिया संहिता की धारा 251 के अंतर्गत शक्ति का प्रयोग करते हुए मजिस्ट्रेट द्वारा प्रकरण समाप्त किया गया था – को चुनौती – अभिनिर्धारित – एक बार अभियुक्त को समन जारी किये जाने के बाद, 2003 के अधिनियम की धारा 153 के अंतर्गत गठित विशेष न्यायालय के पास अधिकारिता नहीं है कि वह दण्ड प्रक्रिया संहिता की धारा 251 के अंतर्गत शक्तियों के प्रयोग द्वारा अभियुक्त को आरोपमुक्त करते हुए विधिक कार्यवाहियों को समाप्त कर सके – आक्षेपित आदेश अपास्त – आवेदन मंजूर। (एम.पी. मध्य क्षेत्र विद्युत

वितरण कं. लि. वि. दीपेन्द्र भाटे उर्फ दीपेन्द्र घाटे) ...*126

Evidence Act (1 of 1872), Section 6 – See – Penal Code, 1860, Section 376 [Ramnath Vs. State of M.P.] (DB)...2706

साक्ष्य अधिनियम (1872 का 1), धारा 6 – देखें – दण्ड संहिता, 1860, धारा 376 (रामनाथ वि. म.प्र. राज्य) (DB)...2706

Evidence Act (1 of 1872), Section 32 – See – Criminal Procedure Code, 1973, Section 161 [Asghar Ali Vs. State of M.P.] (DB)...3080

साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 161 (असगर अली वि. म.प्र. राज्य) (DB)...3080

Evidence Act (1 of 1872), Section 32 – See – Criminal Procedure Code, 1973, Section 227 & 228 [Kattu Bai Vs. State of M.P.] ...3122

साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 227 व 228 (कट्टू बाई वि. म.प्र. राज्य) ...3122

Evidence Act (1 of 1872), Section 32 – See – Penal Code, 1860, Section 302 [Ramanda @ Yashvant Gond Vs. State of M.P.] (DB)...2489

साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड संहिता, 1860, धारा 302 (रामन्दा उर्फ यशवंत गोंड वि. म.प्र. राज्य) (DB)...2489

*Evidence Act (1 of 1872), Section 32 – See – Penal Code, 1860, Section 302 [Sukhdev Vs. State of M.P.] (DB)...*163*

साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड संहिता, 1860, धारा 302 (सुखदेव वि. म.प्र. राज्य) (DB)...*163

Evidence Act (1 of 1872), Section 106 – See – Penal Code, 1860, Sections 302, 364-A, 201 & 120-B [In Reference Vs. Rajesh @ Rakesh] (DB)...2826

साक्ष्य अधिनियम (1872 का 1), धारा 106 – देखें – दण्ड संहिता, 1860, धाराएँ 302, 364-ए, 201 व 120-बी (इन रेफरेन्स वि. राजेश उर्फ राकेश) (DB)...2826

*Evidence Act (1 of 1872), Section 114-A – See – Penal Code, 1860, Section 376(2)(g) [Dhanraj Singh Vs. State of M.P.] ...*134*

साक्ष्य अधिनियम (1872 का 1), धारा 114-ए – देखें – दण्ड संहिता, 1860, धारा 376(2)(जी) (धनराज सिंह वि. म.प्र. राज्य) ...*134

Evidence Act (1 of 1872), Section 114(e) – See – Motor Vehicles Rules, M.P. 1994, Rule 8-A [Rajesh Kumar Miglani Vs. State of M.P.] (DB)...2671

साक्ष्य अधिनियम (1872 का 1), धारा 114(ई) – देखें – मोटर यान नियम, म.प्र. 1994, नियम 8-ए (राजेश कुमार मिगलानी वि. म.प्र. राज्य) (DB)...2671

Evidence Act (1 of 1872), Section 145 and Criminal Procedure Code, 1973 (2 of 1974), Section 154 & 161 – Held – Fact of insanity not mentioned in FIR and case diary statements but witnesses were not confronted with their previous statements u/S 145 of the Act of 1872 and even they were not declared hostile on the question of insanity – Ground taken by prosecution cannot be considered. [Pratap Vs. State of M.P.] (DB)...2502

साक्ष्य अधिनियम (1872 का 1), धारा 145 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 व 161 – अभिनिर्धारित – उन्मत्तता के तथ्य का प्रथम सूचना प्रतिवेदन तथा केस डायरी कथनों में उल्लेख नहीं किया गया परंतु अधिनियम 1872 की धारा 145 के अंतर्गत साक्षीगण का उनके पूर्वतर कथनों से सामना नहीं कराया गया और उन्हें उन्मत्तता के प्रश्न पर पक्षद्वोही घोषित भी नहीं किया गया – अभियोजन द्वारा लिया गया आधार विचार में नहीं लिया जा सकता। (प्रताप वि. म.प्र. राज्य) (DB)...2502

Family Courts Act (66 of 1984), Section 19 – See – Hindu Marriage Act, 1955, Section 24 [Reeta Bais (Smt.) Vs. Vishwapratap Singh Bais] (DB)...2441

कुटुम्ब न्यायालय अधिनियम (1984 का 66), धारा 19 – देखें – हिन्दू विवाह अधिनियम, 1955, धारा 24 (रीता बैस (श्रीमती) वि. विश्वप्रताप सिंह बैस) (DB)...2441

Hindu Law – Joint Hindu Family – Coparcenership – Held – Apex Court concluded that under Hindu Law, Coparcenership is a necessary qualification for the managership of Joint Hindu Family – A widow is not a coparcener, she has no legal qualification to become the manager (karta) of a joint hindu family. [Ramgopal Through L.Rs. Vs. Smt. Jashoda Bai Through L.Rs.] ...2978

हिन्दू विधि – संयुक्त हिन्दू कुटुम्ब – सहदायिकी – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि हिन्दू विधि के अंतर्गत सहदायिकी

संयुक्त हिन्दू कुटुम्ब के प्रबंधकर्ता हेतु एक आवश्यक अर्हता है - एक विधवा, सहदायिक नहीं है, एक संयुक्त हिन्दू कुटुम्ब का कर्ता बनने के लिए उसके पास कोई विधिक अर्हता नहीं है। (रामगोपाल द्वारा विधिक प्रतिनिधि वि. श्रीमती जशोदा बाई द्वारा विधिक प्रतिनिधि) ...2978

Hindu Marriage Act (25 of 1955), Section 24 – Maintenance Pendente lite – Grounds – Quantum – Family Court vide interim order granted Rs. 2500 pm and Rs. 1500 pm as pendente lite maintenance to wife and infant child respectively – Quantum challenged by wife – Husband submitting that he is unemployed and totally dependent upon his father and elder brother – Held – Notification of 2017 issued under Minimum Wages Act, 1948 prescribed Rs. 350 per day as minimum rate of wages for unskilled labour – Husband, an able bodied man is legally responsible to maintain his wife who has no source of income – Rs. 200 per day for wife and Rs. 100 per day for infant child would suffice to enable them to sustain a life of dignity – Amount of Rs. 6000 pm to wife and Rs. 3000 for child granted – Impugned order modified. [Reeta Bais (Smt.) Vs. Vishwapratap Singh Bais] (DB)...2441

हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 – वादकालीन भरणपोषण – आधार – मात्रा – कुटुम्ब न्यायालय ने अंतरिम आदेश के माध्यम से वादकालीन भरणपोषण के रूप में 2500/- रु. प्रतिमाह एवं 1500/- रु. प्रतिमाह क्रमशः पत्नी और नवजात शिशु को प्रदान किये – पत्नी द्वारा मात्रा को चुनौती – पति ने यह निवेदित किया कि वह बेरोजगार है तथा पूरी तरह से अपने पिता और बड़े भाई पर आश्रित है – अभिनिर्धारित – न्यूनतम मजदूरी अधिनियम, 1948 के अंतर्गत जारी 2017 की अधिसूचना अकुशल श्रमिक के लिए 350/- रु. प्रतिदिन मजदूरी की न्यूनतम दर के रूप में विहित करती है – पति एक शारीरिक रूप से समर्थ व्यक्ति अपनी पत्नी जिसकी आय का कोई स्रोत नहीं है, का भरणपोषण करने के लिए विधिक रूप से दायी है – पत्नी के लिए 200/- रु. प्रतिदिन और नवजात शिशु के लिए 100/- रु. प्रतिदिन, उनके गरिमापूर्ण जीवन जीने के लिए पर्याप्त होगा – पत्नी को 6000/- रु. प्रतिमाह तथा बच्चे को 3000/- रु. प्रतिमाह की राशि प्रदान की गई – आक्षेपित आदेश उपांतरित। (रीता बैस (श्रीमती) वि. विश्वप्रताप सिंह बैस) (DB)...2441

Hindu Marriage Act (25 of 1955), Section 24 and Family Courts Act (66 of 1984), Section 19 – Maintenance Pendente lite – Appeal – Maintainability – Held – Full Bench of Allahabad High Court concluded that the nature, character and colour of an order u/S 24 of the Act of 1955 is of a final order as it decides rights and liabilities of wife in a

substantial manner therefore can be treated akin to “judgment” – Appeal maintainable – Objection raised by husband rejected. [Reeta Bais (Smt.) Vs. Vishwapratap Singh Bais] (DB)...2441

हिन्दू विवाह अधिनियम (1955 का 25), धारा 24 एवं कुटुम्ब न्यायालय अधिनियम (1984 का 66), धारा 19 – वादकालीन भरणपोषण – अपील – पोषणीयता – अभिनिर्धारित – इलाहाबाद उच्च न्यायालय की पूर्ण न्यायपीठ ने निष्कर्षित किया कि 1955 के अधिनियम की धारा 24 के अंतर्गत एक आदेश की प्रकृति, विशेषता और उसका स्वरूप एक अंतिम आदेश का है, क्योंकि यह सारमूल दंग से पत्नी के अधिकारों और दायित्वों का विनिश्चय करता है इसलिए इसे “निर्णय” के समान माना जा सकता है – अपील पोषणीय है – पति द्वारा उठाया गया आक्षेप अस्वीकार। (रीता बैस (श्रीमती) वि. विश्वप्रताप सिंह बैस) (DB)...2441

Income Tax Act (43 of 1961), Section 132 & 246, Criminal Procedure Code, 1973 (2 of 1974), Section 195 and Penal Code (45 of 1860), Sections 191, 193 & 200 – Complaint Against Assessee – Competent Authority to File Complaint – Deputy Director of Income Tax (Investigation) Bhopal lodged complaint before CJM Bhopal – Held – Deputy Director cannot be construed to be an authority to whom appeal would ordinarily lie from decisions/orders of the Income Tax Officers involved in search proceedings, thus not empowered to lodge complaint against assessee – Complaint unsustainable in law having been filed by authority, incompetent in terms of Section 195 of Cr.P.C. and hence quashed – Appeal allowed. [Babita Lila Vs. Union of India] (SC)...2587

आयकर अधिनियम (1961 का 43), धारा 132 व 246, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 195 एवं दण्ड संहिता (1860 का 45), धाराएँ 191, 193 व 200 – निर्धारिती के विरुद्ध परिवाद – परिवाद प्रस्तुत करने के लिए सक्षम प्राधिकारी – उपनिदेशक, आय कर (अन्वेषण), भोपाल ने सी.जे.एम., भोपाल के समक्ष परिवाद दर्ज किया – अभिनिर्धारित – उपनिदेशक को एक ऐसा प्राधिकारी होने का अर्थान्वयन नहीं किया जा सकता जिसे तलाशी कार्यवाहियों में शामिल आयकर अधिकारियों के निर्णयों/आदेशों की अपील सामान्यतः प्रस्तुत होगी, अतः निर्धारिती के विरुद्ध परिवाद दर्ज करने के लिए सशक्त नहीं – परिवाद, दं.प्र.सं. की धारा 195 के निबंधनों में एक अक्षम प्राधिकारी द्वारा प्रस्तुत किये जाने से कायम रखने योग्य नहीं और अतः अभिखंडित – अपील मंजूर। (बबिता लीला वि. यूनियन ऑफ इंडिया) (SC)...2587

Income Tax Act (43 of 1961), Section 254(2) – Appeal – Limitation – Amendment – Appeal preferred by petitioner dismissed in 2015 for want of prosecution – Application u/S 254(2) was also dismissed for want of limitation – Held – Before amendment of 2016,

limitation prescribed u/S 254(2) was four years, which was later reduced to six months vide amendment – New law of limitation providing a shorter period cannot certainly extinguish a vested right of action and cannot be operated retrospectively as was done in present case – Impugned order quashed – Petition allowed. [District Central Co-op. Bank Ltd., Raisen Vs. Union of India] (DB)...*154

आयकर अधिनियम (1961 का 43), धारा 254(2) – अपील – परिसीमा – संशोधन – याची द्वारा प्रस्तुत अपील अभियोजन के अभाव में, 2015 में खारिज की गई – परिसीमा के अभाव में आवेदन अंतर्गत धारा 254(2) भी खारिज किया गया था – अभिनिर्धारित – 2016 के संशोधन पूर्व, धारा 254(2) के अंतर्गत विहित परिसीमा चार वर्ष थी, जो कि बाद में संशोधन के माध्यम से घटाकर 6 माह कर दी गई थी – लघु अवधि उपबंधित करने वाली परिसीमा की नई विधि निश्चित रूप से कार्यवाही के निहित अधिकार को निर्वापित नहीं कर सकती तथा भूतलक्षी रूप से प्रवर्तित नहीं की जा सकती जैसा कि वर्तमान प्रकरण में किया गया था – आक्षेपित आदेश अभिखंडित – याचिका मंजूर। (डिस्ट्रिक्ट सेंट्रल को.ऑप. बैंक लि., रायसेन वि. यूनियन ऑफ इंडिया) (DB)...*154

Information Technology Act (21 of 2000), Section 43 r/w 66 – See – Criminal Procedure Code, 1973, Section 438 [Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation] (DB)...3138

सूचना प्रौद्योगिकी अधिनियम (2000 का 21), धारा 43 सहपठित 66 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएँ 438 (दिव्य किशोर सत्पथी (डॉ.) वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...3138

Juvenile Justice (Care and Protection of Children) Rules, 2007, Rule 12 – Proof of Age – Applicability of Rules – Held – Apex Court has concluded that Rule 12 of the Rules of 2007 though strictly applicable to a child in conflict with law, would be applicable to determine the age of a child who is a victim of crime – Rule 12(3) is applicable for determining the age of prosecutrix. [Rabiya Bano Vs. Rashid Khan] (DB)...2579

किशोर न्याय (बालकों की देखरेख और संरक्षण) नियम, 2007, नियम 12 – आयु का सबूत – नियमों की प्रयोज्यता – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह निष्कर्षित किया है कि 2007 के नियम का नियम 12 यद्यपि विधि के विरुद्ध एक बालक पर कठोरता से लागू होता है, उस बालक की आयु अवधारित करने के लिए प्रयोज्य होगा जो अपराध का पीड़ित है – नियम 12(3) अभियोक्त्री की आयु का अवधारण करने के लिए प्रयोज्य है। (राबिया बानो वि. राशिद खान) (DB)...2579

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Section 55(1) & 55(2) – Applicability – Removal of Chairman – Irregularity in auction proceedings – Held – Both sections deal with different class of persons, Members u/S 55(1) and Chairman/Vice Chairman u/S 55(2) with different nature of punishments – Allegations against petitioner are of period when he was Chairman and show cause notice also issued when he is a Chairman, thus Section 55(1) is not applicable – Impugned order to the extent, it debars petitioner u/S 55(1) is in excess of jurisdiction and is hereby quashed – However as per records/evidence, allegations of irregularities proved and hence order u/S 55(2) of removing him from post of Chairman for remainder of his term is affirmed – Petition partly allowed. [Someshwar Patel Vs. State of M.P.] ...2397

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धारा 55(1) व 55(2) – प्रयोज्यता – अध्यक्ष को हटाया जाना – नीलामी कार्यवाहियों में अनियमितता – अभिनिर्धारित – दोनों धाराएँ भिन्न श्रेणी के व्यक्तियों से संबंधित हैं, धारा 55(1) के अंतर्गत सदस्य एवं धारा 55(2) के अंतर्गत अध्यक्ष/उपाध्यक्ष से संबंधित है, भिन्न प्रकृति के दंड के साथ – याची के विरुद्ध अभिकथन उस अवधि के हैं जब वह अध्यक्ष था तथा कारण बताओ नोटिस भी तब जारी किया गया है जब वह अध्यक्ष है, अतः धारा 55(1) प्रयोज्य नहीं है – आक्षेपित आदेश उस सीमा तक जहां तक यह धारा 55(1) के अंतर्गत याची को विवर्जित करता है, अधिकारिता से अधिक है तथा एतद्वारा अभिखंडित किया गया – तथापि अभिलेख/साक्ष्य के अनुसार, अनियमितताओं के अभिकथन साबित हुए और इसलिए धारा 55(2) के अंतर्गत उनके कार्यकाल की शेष अवधि के लिए उन्हें अध्यक्ष के पद से हटाने के आदेश की अभिपुष्टि की गई – याचिका अंशतः मंजूर। (सोमेश्वर पटेल वि. म.प्र. राज्य) ...2397

Krishi Upaj Mandi Adhiniyam, M.P. 1972 (24 of 1973), Section 55(1) & 55(2) – Removal of Chairman – Proceedings and Procedure – Principle of Natural Justice – Held – Adhiniyam of 1972 does not provide any express rules or procedure for proceeding u/S 55(1) and (2) thereof – Section 55 itself contemplates that before action is taken against delinquent, show cause notice and reasonable opportunity of hearing shall be afforded to him – In present case, show cause notice was issued, documents were supplied as well as opportunity for personal hearing was granted to petitioner – No violation of principle of natural justice – Aims and objects of the Act of 1972 discussed. [Someshwar Patel Vs. State of M.P.] ...2397

कृषि उपज मण्डी अधिनियम, म.प्र. 1972 (1973 का 24), धारा 55(1) व 55(2)

— अध्यक्ष को हटाया जाना — कार्यवाहियां एवं पद्धति — नैसर्गिक न्याय का सिद्धांत — अभिनिर्धारित — 1972 का अधिनियम धारा 55(1) एवं (2) के अंतर्गत कार्यवाही करने हेतु कोई अभिव्यक्त नियम या प्रक्रिया उपबधित नहीं करता है — धारा 55 स्वयं यह अनुध्यात करती है कि अपचारी के विरुद्ध कार्यवाई किये जाने के पूर्व, उसे कारण बताओ नोटिस एवं सुनवाई का उचित अवसर प्रदान किया जाएगा — वर्तमान प्रकरण में, कारण बताओ नोटिस जारी किया गया था, याची को दस्तावेजों को प्रदाय किये जाने के साथ-साथ व्यक्तिगत सुनवाई का अवसर भी प्रदान किया गया था — नैसर्गिक न्याय के सिद्धांत का उल्लंघन नहीं — 1972 के अधिनियम के लक्ष्य और उद्देश्य विवेचित। (सोमेश्वर पटेल वि. म.प्र. राज्य), ...2397

Land Acquisition Act (1 of 1894), Sections 4, 6, 11 & 18 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Section 24(2) — Non Payment of Amount of Compensation — Effect — Award of compensation was passed in 1999 in respect of acquisition of land of petitioners — Amount not deposited in accounts of petitioners — Held — As per Section 24(2) of the Act of 2013, on the date of commencement of the Act of 2013, if award is passed five years prior from the said date and compensation has not been paid, land acquisition proceedings shall be deemed to have lapsed — Proviso to Section 24(2) of the Act of 2013 makes it clear that in case where an award has been made and compensation to majority of the land owners has not been deposited in the account of beneficiaries then all beneficiaries specified in notification of old Act are entitled for compensation under the new Act of 2013 — In the present case, proviso cannot be invoked as petitioners does not come within the purview of majority of land owners to whom amount have not been deposited in their account — Proceedings with respect to the land in question belonging to petitioners shall stand lapsed — Petition partly allowed. [Shushila Bai Vs. State of M.P.]

...2954

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4, 6, 11 व 18 एवं भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम (2013 का 30), धारा 24(2) — प्रतिकर की राशि का असंदाय — प्रभाव — याचीगण की भूमि के अर्जन के संबंध में 1999 में प्रतिकर का अवार्ड पारित किया गया था — याचीगण के खातों में राशि जमा नहीं की गई — अभिनिर्धारित — 2013 के अधिनियम की धारा 24(2) के अनुसार, 2013 के अधिनियम के प्रारंभ की तिथि पर, यदि अधिनिर्णय कथित तिथि से पांच वर्ष पूर्व पारित किया गया है तथा प्रतिकर संदत्त नहीं किया गया है, भूमि अर्जन की कार्यवाहियों का व्यपगत होना समझा

जाएगा - 2013 के अधिनियम की धारा 24(2) का परन्तुक यह सुस्पष्ट करता है कि ऐसे प्रकरण में जहां अवार्ड दिया गया है एवं बहुसंख्या में भूमि स्वामियों का प्रतिकर हिताधिकारियों के खाते में जमा नहीं किया गया है तो पुराने अधिनियम की अधिसूचना में विनिर्दिष्ट सभी हिताधिकारी 2013 के नये अधिनियम के अंतर्गत प्रतिकर के हकदार हैं - वर्तमान प्रकरण में, परन्तुक का अवलंब नहीं लिया जा सकता है क्योंकि याचीगण भूमि स्वामियों की बहुसंख्या की परिधि के भीतर नहीं आते जिनके खाते में राशि जमा नहीं की गई है - याचीगण से संबंधित प्रश्नगत भूमि के संबंध में कार्यवाहियां व्यपगत हो जाएगी - याचिका अंशतः मंजूर। (सुशीला बाई वि. म.प्र. राज्य) ...2954

Land Acquisition Act (1 of 1894), Section 31 - Deposit of Compensation Amount in Reference Court - Held - If award was passed and land owner refused to accept the amount of compensation awarded then in such cases, amount ought to have been deposited in the reference Court as per the provisions of Section 31 of the Act of 1894 - Mere deposit of said amount with Land Acquisition Officer or the Collector is not sufficient. [Shushila Bai Vs. State of M.P.] ...2954

भूमि अर्जन अधिनियम (1894 का 1), धारा 31 - निर्देश न्यायालय में प्रतिकर राशि का जमा किया जाना - अभिनिर्धारित - यदि अवार्ड पारित किया गया था तथा भूमि स्वामी ने अवार्ड की गई प्रतिकर की राशि स्वीकार करने से इंकार कर दिया, तब ऐसे प्रकरणों में, 1894 के अधिनियम की धारा 31 के उपबंधों के अनुसार राशि निर्देश न्यायालय में जमा की जानी चाहिए - भूमि अर्जन अधिकारी या कलेक्टर के पास कथित राशि का मात्र जमा किया जाना पर्याप्त नहीं है। (सुशीला बाई वि. म.प्र. राज्य) ...2954

Land Revenue Code, M.P. (20 of 1959), Section 50 & 240 - See - Adim Jan Jatiyon Ka Sanrakshan (Vrakshon Me Hit) Adhiniyam, M.P., 1999, Section 9 [Samlu Gond Vs. State of M.P.] ...2684

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 50 व 240 - देखें - आदिम जन जातियों का संरक्षण (वृक्षों में हित) अधिनियम, म.प्र., 1999, धारा 9 (समलू गोंड वि. म.प्र. राज्य) ...2684

Land Revenue Code, M.P. (20 of 1959), Section 117 - Adverse Possession - Presumption - Held - Adverse possession is a question of fact - Plaintiff has not filed any document in support of purchase of land - No sale deed or any witness to sale have been examined - Sale is not proved - Revenue records does not establish continuous possession over 30 years on disputed land - No presumption can be

drawn u/S 117 of the Code of 1959. [Ramakant Pathak Vs. State of M.P.] ...2699

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 117 – प्रतिकूल कब्जा – उपधारणा – अभिनिर्धारित – प्रतिकूल कब्जा, एक तथ्य का प्रश्न है – वादी ने भूमि के क्रय के समर्थन में कोई दस्तावेज प्रस्तुत नहीं किया है – किसी विक्रय विलेख का या विक्रय के किसी साक्षी का परीक्षण नहीं किया गया – विक्रय सिद्ध नहीं है – राजस्व अभिलेख, विवादित भूमि पर 30 वर्षों से अधिक का निरंतर कब्जा स्थापित नहीं करते – 1959 के संहिता की धारा 117 के अंतर्गत कोई उपधारणा नहीं निकाली जा सकती। (रमाकांत पाठक वि. म.प्र. राज्य) ...2699

Land Revenue Code, M.P. (20 of 1959), Section 158(d)(ii) – Bhumiswami Rights – Held – In revenue records, disputed lands are recorded as “Tank” since 1958 and even before – Plaintiff’s witnesses also establishes that disputed land is a “Tank” used for nistar purposes by villagers – Plaintiff’s father or Plaintiff not entitled the conferral of Bhumiswami rights – Courts below rightly recorded the findings and dismissed the suit – Appeal dismissed. [Ramakant Pathak Vs. State of M.P.] ...2699

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 158(डी)(ii) – भूमिस्वामी अधिकार – अभिनिर्धारित – राजस्व अभिलेखों में, विवादित भूमियाँ 1958 से एवं उससे पूर्व भी “जलाशय” के रूप में अभिलिखित – वादी के साक्षीगण भी स्थापित करते हैं कि विवादित भूमि एक “जलाशय” है जिसका ग्रामीणों द्वारा निस्तार के प्रयोजन हेतु उपयोग होता है – वादी का पिता या वादी, भूमिस्वामी अधिकारों का प्रदान किये जाने के लिए हकदार नहीं – निचले न्यायालयों ने उचित रूप से निष्कर्ष अभिलिखित किये तथा वाद खारिज किया – अपील खारिज। (रमाकांत पाठक वि. म. प्र. राज्य) ...2699

Land Revenue Code, M.P. (20 of 1959), Section 253 – See – Adim Jan Jatiyon Ka Sanrakshan (Vrakshon Me Hit) Adhiniyam, M.P., 1999, Section 4 & 9(2) [Samu Gond Vs. State of M.P.] ...2684

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 253 – देखें – आदिम जन जातियों का संरक्षण (वृक्षां में हित) अधिनियम, म.प्र., 1999, धारा 4 व 9(2) (समलू गोंड वि. म.प्र. राज्य) ...2684

Limitation Act (36 of 1963), Section 5 – Condonation of Delay – Liberal Approach by Court – Held – As per Apex Court, approach of Courts in condoning delay should be liberal and litigant cannot be expected to explain each and every day’s delay – In present case, from

date of knowledge of judgment, delay in filing applications is less than one month which is not inordinate – Cause shown for delay cannot be said to be untrustworthy – Court below has taken a rigid view of the matter rejecting the application filed alongwith affidavits – Application allowed. [Chairman M.S. Banga Hindustan Lever Ltd. Bekway, Reclamation, Bombay Vs. M/s. Heera Agencies] ...3015

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – न्यायालय द्वारा उदार दृष्टिकोण – अभिनिर्धारित – सर्वोच्च न्यायालय के अनुसार, विलंब माफ करने के लिए न्यायालयों का दृष्टिकोण उदार होना चाहिए तथा मुकदमेबाज से प्रत्येक दिन के विलम्ब को स्पष्ट करने की अपेक्षा नहीं की जा सकती – वर्तमान प्रकरण में, निर्णय का ज्ञान होने की तिथि से, आवेदनों को प्रस्तुत करने में हुआ विलंब एक माह से कम है जो कि असाधारण नहीं है – विलंब के लिए दर्शाया गया कारण, अविश्वसनीय नहीं कहा जा सकता – निचले न्यायालय ने, शपथ-पत्रों के साथ प्रस्तुत आवेदन को अस्वीकार करते हुए, मामले पर कठोर दृष्टिकोण अपनाया है – आवेदन मंजूर। (चेयरमेन एम.एस. बंगा हिन्दुस्तान लीवर लि. बेकवे रेक्लेमेशन, बॉम्बे वि. मे. हीरा एजेंसी) ...3015

Limitation Act (36 of 1963), Article 59 – Limitation to File Suit – Plaintiff/respondent challenging the sale deeds dated 26.04.82 and 24.09.82 in a civil suit filed on 27.03.92 is barred by limitation. [Ramgopal Through L.Rs. Vs. Smt. Jashoda Bai Through L.Rs.] ...2978

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 59 – वाद प्रस्तुत करने हेतु परिसीमा – दिनांक 27.03.92 को प्रस्तुत सिविल वाद जिसमें वादी/प्रत्यर्थी द्वारा विक्रय विलेख दिनांक 26.04.82 एवं 24.09.82 को चुनौती दी गई है, परिसीमा द्वारा वर्जित है। (रामगोपाल द्वारा विधिक प्रतिनिधि वि. श्रीमती जशोदा बाई द्वारा विधिक प्रतिनिधि) ...2978

Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 2(1)(g) – Chapter 36 – Public Undertaking – Any Government Company including a Corporation & Statutory authority satisfying the conditions of definition is a public undertaking – Municipal Corporation is substantially controlled by the State Government therefore it is a public undertaking – No separate notification for public undertaking required. [Indian Construction Co. (Guj.) Ltd. Vs. Indore Municipal Corporation] ...2533

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 2(1)(जी) – अध्याय 36 – लोक उपक्रम – कोई सरकारी कम्पनी जिसमें निगम एवं कानूनी

प्राधिकरण शामिल हैं, जो कि परिभाषा की शर्तों को संतुष्ट करता है. एक लोक उपक्रम है - नगर निगम सारभूत रूप से राज्य सरकार द्वारा नियंत्रित है इसलिए यह एक लोक उपक्रम है - लोक उपक्रम के लिए कोई पृथक अधिसूचना अपेक्षित नहीं। (इंडियन कंस्ट्रक्शन कं. (गुज.) लि. वि. इंदौर म्यूनिसिपल कारपोरेशन) ...2533

Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 2 (1)(i) - Agreement for execution of works contract - Applicant having remedy to approach Arbitration Tribunal under section 7(1) of the Madhyastham Act - Application under section 11(6) of the Arbitration and Conciliation Act, 1996 not maintainable - Application rejected. [Indian Construction Co. (Guj.) Ltd. Vs. Indore Municipal Corporation] ...2533

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 2(1)(आई) - कार्य सविदा के निष्पादन के लिए करार - आवेदक के पास माध्यस्थम् अधिनियम की धारा 7(1) के अंतर्गत माध्यस्थम् अधिकरण के पास जाने का उपचार है - माध्यस्थम् और सुलह अधिनियम, 1996 की धारा 11(6) के अंतर्गत आवेदन पोषणीय नहीं है - आवेदन अस्वीकार। (इंडियन कंस्ट्रक्शन कं. (गुज.) लि. वि. इंदौर म्यूनिसिपल कारपोरेशन) ...2533

Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7-B - Appeal & Reference - Limitation - Computation - Held - Under clause 29 of agreement which is an arbitration clause, Superintending Engineer is not rendered functus officio merely because a dispute is not decided within 60 days, a decision even after 60 days is a decision under said clause and is appealable thereunder - Reference filed in terms of Section 7-B read with appended proviso within stipulated time is maintainable - Revision allowed. [Viva Construction Co. (M/s.) Vs. State of M.P.] (DB)...2774

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 7-बी - अपील व निर्देश - परिसीमा - संगणना - अभिनिर्धारित - करार के खंड 29, जो कि एक माध्यस्थम् खंड है, के अंतर्गत, मात्र इसलिए कि एक विवाद को 60 दिन के भीतर विनिश्चित नहीं किया गया है, अधीक्षण यंत्री पदकार्य निवृत्त नहीं हो जाता, यहां तक कि 60 दिन पश्चात् का विनिश्चय भी उक्त खंड के अंतर्गत एक विनिश्चय है तथा उसके अंतर्गत अपीलीय है - धारा 7-बी सहपठित संलग्न परंतुक के निबंधनों में, नियत समय के भीतर प्रस्तुत निर्देश पोषणीय है - पुनरीक्षण मंजूर। (वीवा कंस्ट्रक्शन कं. (मे.) वि. म.प्र. राज्य) (DB)...2774

Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section

7-B – Term “Decision” – Held – An indecisiveness or an indecision on the part of Superintending Engineer can never be construed to be a “decision” giving rise to avail remedy of appeal, because unless the forum of final authority is exhausted, aggrieved person cannot avail the remedy u/S 7-B of the Adhiniyam of 1983. [Viva Construction Co. (M/s.) Vs. State of M.P.] (DB)...2774

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 7-बी – शब्द “विनिश्चय” – अभिनिर्धारित – अधीक्षण यंत्री की ओर से अनिश्चयपूर्वकता या अनिश्चय का अर्थान्वयन कभी भी एक “विनिश्चय” नहीं किया जा सकता जिससे अपील के उपचार का अवलंब उत्पन्न होता है, क्योंकि जब तक अंतिम प्राधिकारी के फोरम को निःशेष न किया गया हो, व्यथित व्यक्ति, 1983 के अधिनियम की धारा 7-बी के अंतर्गत उपचार का अवलंब नहीं ले सकता। (वीवा कंस्ट्रक्शन कं. (मे.) वि. म.प्र. राज्य) (DB)...2774

Medical Jurisprudence – Rigor Mortis – Held – Incident took place at 1:00 pm and as per the FIR, postmortem was conducted about 3 hrs 15 minutes after the incident – In India, rigor mortis sets after 3-6 hours – In the present case, there was no rigor mortis in the body of deceased, there appears to be no reason to doubt the time of incident. [Bhanwarlal Vs. State of M.P.] (DB)...2495

चिकित्सीय विधि शास्त्र – शव में अकड़न – अभिनिर्धारित – दोपहर 1:00 बजे घटना घटित हुई एवं प्रथम सूचना प्रतिवेदन के अनुसार, घटना के लगभग 3 घंटे 15 मिनट के पश्चात् शव परीक्षण संचालित किया गया – भारत में, 3-6 घंटे के पश्चात् शव में अकड़न आना शुरू हो जाती है – वर्तमान प्रकरण में, मृतक के शरीर पर कोई अकड़न नहीं थी, घटना के समय पर संदेह करने का कोई कारण प्रतीत नहीं होता। (भंवरलाल वि. म.प्र. राज्य) (DB)...2495

Mental Health Act, (14 of 1987), Sections 50, 51 & 76 – Inquisition – Suit for ejectment and mesne profit against Mohd. Yunus Munshi and Mohd. Kamar Hussain – An application u/S 50 of the Act of 1987 was filed by Mohd. Kamar Hussain seeking declaration that Mohd. Yunus Munshi is mentally ill person and is unable to manage his property – Trial Court held that Mohd. Yunus Munshi is mentally ill person but dismissed the application on the ground that details of properties had not been disclosed – Review application filed by applicant which was also dismissed – Challenge to – Held – Only one application is required to be made u/S 50 of the Act, where District Judge is required to conduct inquisition and give a declaration u/S 51 of the Act

– In the present case, trial Court wrongly dismissed the application on technical ground and without giving any declaration – Application filed by appellant was maintainable u/S 50 and Section 51 of the Act – Impugned order set aside – Matter remitted back to District Court – Appeal allowed. [Mohd. Yunus Munshi Vs. Public in General] ...2434

मानसिक स्वास्थ्य अधिनियम (1987 का 14), धाराएँ 50, 51 व 76 – समीक्षा – मो. युनुस मुन्शी एवं मो. कमर हुसैन के विरुद्ध बेदखली एवं अंतःकालीन लाम हेतु बाद – मो. कमर हुसैन द्वारा 1987 के अधिनियम की धारा 50 के अंतर्गत यह घोषणा चाहते हुये कि मो. युनुस मुन्शी मानसिक रूप से अस्वस्थ व्यक्ति है तथा अपनी संपत्ति की देखभाल करने में असमर्थ हैं, एक आवेदन प्रस्तुत किया गया था – विचारण न्यायालय ने यह अभिनिर्धारित किया कि मो. युनुस मुन्शी मानसिक रूप से अस्वस्थ व्यक्ति है परन्तु इस आधार पर आवेदन खारिज कर दिया कि संपत्तियों का विवरण प्रकट नहीं किया गया है – आवेदक द्वारा पुनर्विलोकन आवेदन प्रस्तुत किया गया जिसे भी खारिज किया गया था – को चुनौती – अभिनिर्धारित – अधिनियम की धारा 50 के अंतर्गत केवल एक आवेदन किया जाना अपेक्षित है, जहां अधिनियम की धारा 51 के अंतर्गत जिला न्यायाधीश द्वारा समीक्षा संचालित किया जाना एवं घोषणा की जाना अपेक्षित है – वर्तमान प्रकरण में, विचारण न्यायालय ने तकनीकी आधार पर एवं बिना कोई घोषणा किये आवेदन को दोषपूर्ण रूप से खारिज किया – अपीलार्थी द्वारा प्रस्तुत आवेदन अधिनियम की धारा 50 एवं 51 के अंतर्गत पोषणीय था – आक्षेपित आदेश अपास्त – मामला जिला न्यायालय को प्रतिप्रेषित – अपील मंजूर। (मोहम्मद यूनुस मुंशी वि. पब्लिक इन जनरल) ...2434

Mental Health Act, (14 of 1987), Sections 52, 53 & 54 – Procedure for appointment of Guardian/Manager – Section 51 mandates that District Court shall record its findings regarding mental illness of the person and if person is declared mentally ill, another inquiry is to be conducted u/S 52 of the Act for whether such person is capable of taking care of himself and managing his property – If he is incapable of taking care of himself, then guardian will be appointed and if he is incapable to manage his properties, a manager will be appointed u/S 54 of the Act – In the present case, if appellant wants declaration that said person is incapable of managing his property, District Court ought to have directed him to give a declaration about details of his properties instead of rejecting the application – Further held – Entire enquiry can be conducted in one application u/S 50 of the Act, no separate application is required to be filed. [Mohd. Yunus Munshi Vs. Public in General] ...2434

मानसिक स्वास्थ्य अधिनियम (1987 का 14), धाराएँ 52, 53 व 54 – संरक्षक/प्रबंधक की नियुक्ति हेतु प्रक्रिया – धारा 51 आदेशित करती है कि जिला न्यायालय व्यक्ति की मानसिक अस्वस्थता के संबंध में अपने निष्कर्ष अभिलिखित करेगा एवं यदि व्यक्ति मानसिक रूप से अस्वस्थ घोषित किया जाता है, तब अधिनियम की धारा 52 के अंतर्गत एक अन्य जांच संचालित की जानी चाहिए कि क्या ऐसा व्यक्ति स्वयं का ध्यान रखने एवं अपनी संपत्ति की देखभाल करने में समर्थ है – यदि वह अपना ध्यान रखने में असमर्थ है, तो संरक्षक नियुक्त किया जाएगा एवं यदि वह अपनी संपत्ति की देखभाल करने में असमर्थ है, तो अधिनियम की धारा 54 के अंतर्गत एक प्रबंधक नियुक्त किया जाएगा – वर्तमान प्रकरण में, यदि अपीलार्थी घोषणा चाहता है कि कथित व्यक्ति उसकी संपत्ति की देखभाल करने में असमर्थ है, तो जिला न्यायालय को चाहिए था कि वह आवेदन नामंजूर करने के बजाय, उसे संपत्तियों के विवरणों के बारे में घोषणा देने हेतु निदेशित करे – आगे अभिनिर्धारित – संपूर्ण जांच अधिनियम की धारा 50 के अंतर्गत एक आवेदन में संचालित की जा सकती है, कोई पृथक आवेदन प्रस्तुत किया जाना अपेक्षित नहीं। (मोहम्मद यूनुस मुंशी वि. पब्लिक इन जनरल) ...2434

Minor Mineral Rules, M.P. 1996, Rule 2(xvi-b) & 68(1) Third Proviso – Term “Contractor” – Held – Contractor as defined in Rule 2(xvi-b) is a contractor who is granted trade quarry – Petitioners have not been granted trade quarry, they are the contractors engaged in Government contract – Expression contractor in third proviso to Rule 68(1) is clarified by words “engaged in construction work” – It has to be read together and not disjunctively. [Pankaj Kumar Rai (M/s.) Vs. State of M.P.] (FB)...2620

गौण खनिज नियम, म.प्र. 1996, नियम 2(xvi-बी) व 68(1) तृतीय परंतुक – शब्द “ठेकेदार” – अभिनिर्धारित – नियम 2(xvi-बी) में यथा परिभाषित ठेकेदार एक ऐसा ठेकेदार है जिसे व्यापारिक खदान प्रदान की गई है – याचीगण को व्यापारिक खदान प्रदान नहीं की गई है, वे सरकारी संविदा में लगे हुए ठेकेदार हैं – नियम 68(1) के तृतीय परंतुक में अभिव्यक्ति ठेकेदार को “निर्माण कार्य में लगे हुए” शब्दों द्वारा स्पष्ट किया गया है – इसे एक साथ पढ़ा जाना चाहिए एवं न कि वियोजित रूप से। (पंकज कुमार राय (मे.) वि. म.प्र. राज्य) (FB)...2620

Minor Mineral Rules, M.P. 1996, Rule 4 & 68(1) Third Proviso – Statutory Interpretation – Principle of Harmonious Construction – Held – No word in statute is superfluous and each word has its meaning – A proviso to statute has to be read as a whole by giving harmonious construction to all provisions of law so that none of the provisions is rendered redundant – In view of such principle, third proviso is additional

relaxation to Rule 4 and Rule 68(1) and is not illegal nor enlarges the scope of Rule 68(1) of the Rules of 1996. [Pankaj Kumar Rai (M/s.) Vs. State of M.P.] (FB)...2620

गौण खनिज नियम, म.प्र. 1996, नियम 4 व 68(1) तृतीय परंतुक – कानूनी निर्वचन – समन्वयपूर्ण अर्थान्वयन का सिद्धांत – अभिनिर्धारित – कानून का कोई शब्द निरर्थक नहीं है एवं प्रत्येक शब्द का अपना अर्थ है – कानून के किसी परंतुक को विधि के समी उपबंधों के साथ समन्वयपूर्ण अर्थान्वयन देते हुए, संपूर्णता से पढ़ा जाना चाहिए जिससे कि कोई भी उपबंध व्यर्थ न हो जाए – उक्त सिद्धांत को दृष्टिगत रखते हुए, तृतीय परंतुक, नियम 4 एवं नियम 68(1) के लिए अतिरिक्त रियायत है तथा न तो अवैध है न ही नियम 1996 के नियम 68(1) के विस्तार को बढ़ाता है। (पंकज कुमार राय (मे.) वि. म.प्र. राज्य) (FB)...2620

Minor Mineral Rules, M.P. 1996, Rule 68(1) Third Proviso – “No Mining Dues” Certificate – Held – Since minor mineral vests in State and there is absolute prohibition in extraction of mineral other than by quarry lease or a trade quarry or permit quarry, therefore contractor who is engaged in construction work is required to prove that such mineral is royalty paid – If State Government insist on “No Mining Dues” Certificate, the same cannot be said to be illegal – Further, State Government advised to develop and adopt alternate mechanism of issuance of online “No Mining Dues” certificate. [Pankaj Kumar Rai (M/s.) Vs. State of M.P.] (FB)...2620

गौण खनिज नियम, म.प्र. 1996, नियम 68(1) तृतीय परंतुक – “खनन अदेयता” प्रमाण पत्र – अभिनिर्धारित – चूंकि गौण खनिज राज्य में निहित होते हैं एवं खदान पट्टा या एक व्यापारिक खदान या खदान अनुज्ञा के अलावा खनिज के निष्कर्षण का पूर्ण प्रतिषेध है इसलिए निर्माण कार्य में लगे हुए टेकेदार द्वारा यह साबित किया जाना अपेक्षित है कि ऐसा खनिज रायल्टी भुगतान किया हुआ खनिज है – यदि राज्य सरकार “खनन अदेयता” प्रमाण पत्र का आग्रह करती है उसे अवध नहीं कहा जा सकता – इसके अतिरिक्त, राज्य सरकार को ऑनलाईन “खनन अदेयता” प्रमाण पत्र जारी करने की वैकल्पिक क्रियाविधि विकसित करने एवं अपनाने के लिए सलाह दी गई। (पंकज कुमार राय (मे.) वि. म.प्र. राज्य) (FB)...2620

Minor Mineral Rules, M.P. 1996, Rule 68(1) Third Proviso – “No Mining Dues” Certificate – Periodical Certificates – Held – Condition of issuance of “No Mining Dues” certificate on furnishing of copy of work completion certificate is not reasonable – Running bills require periodical payments – Mining officer shall give “No Mining Dues” certificate at least quarterly on basis of running bills submitted

by contractor engaged in construction work. [Pankaj Kumar Rai (M/s.) Vs. State of M.P.] (FB)...2620

गौण खनिज नियम, म.प्र. 1996, नियम 68(1) तृतीय परंतुक - "खनन अदेयता" प्रमाण पत्र - सामयिक प्रमाण पत्र - अभिनिर्धारित - कार्य संपादन प्रमाण पत्र की प्रति प्रस्तुत करने पर "खनन अदेयता" प्रमाण पत्र को जारी करने की शर्त, युक्तियुक्त नहीं है - चालू बिलों पर सामयिक भुगतान अपेक्षित है - खनन अधिकारी निर्माण कार्य में लगे ठेकेदार द्वारा प्रस्तुत किये गये चालू बिलों के आधार पर कम-से कम त्रैमासिक रूप से "खनन अदेयता प्रमाण पत्र" देगा। (पंकज कुमार राय (मे.) वि. म.प्र. राज्य) (FB)...2620

Motor Vehicles Act (59 of 1988), Section 65(2)(d) and Motor Vehicles Rules, M.P. 1994, Rule 48(2) - Inconsistency - Held - The condition that an application for issue or renewal of fitness certificate shall be accompanied with tax clearance certificate is not inconsistent with any provision of Central Legislation (Act of 1988). [Rajesh Kumar Miglani Vs. State of M.P.] (DB)...2671

मोटर यान अधिनियम (1988 का 59), धारा 65(2)(डी) एवं मोटर यान नियम, म.प्र. 1994, नियम 48(2) - असंगति - अभिनिर्धारित - शर्त कि उपयुक्तता प्रमाणपत्र के नवीकरण या जारी किये जाने हेतु आवेदन के साथ कर समाशोधन प्रमाणपत्र होना चाहिए, केन्द्रीय विधान (1988 का अधिनियम) के किसी उपबंध के साथ असंगत नहीं है। (राजेश कुमार मिगलानी वि. म.प्र. राज्य) (DB)...2671

Motor Vehicles Act (59 of 1988), Section 65(2)(d), Motoryan Karadhan Adhiniyam, M.P., (25 of 1991), Section 3 and Motor Vehicles Rules, M.P. 1994, Rule 48(2) - Application for Fitness Certificate - Requirement of 'No Dues Certificate' - Competence of State Legislature - Held - Act of 1988 being Central Legislation does not contemplate grant of fitness certificate and it is left to be framed by State Government, therefore, issuance of fitness certificate and payment of tax falls within legislative competence of State in terms of Section 65(2)(d) of the Act of 1988 and u/S 3 of the Adhiniyam of 1991 - Rule 48(2) of the Rules of 1994 contemplating requirement of no dues certificate for grant of fitness certificate cannot be said to be illegal - Petition dismissed. [Rajesh Kumar Miglani Vs. State of M.P.] (DB)...2671

मोटर यान अधिनियम (1988 का 59), धारा 65(2)(डी), मोटरयान कराधान अधिनियम, म.प्र. (1991 का 25), धारा 3 एवं मोटर यान नियम, म.प्र. 1994, नियम 48(2)

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विनिर्दिष्ट रूप से कथन किया कि अपीलार्थी विकृत चित्त था तथा उसने उन्मत्तता के कारण अपराध कारित किया एवं इन साक्षीगण को पक्षद्रोही घोषित नहीं किया गया — घटना से पूर्व अपीलार्थी के चिकित्सा उपचार के दस्तावेजों को प्रस्तुत नहीं किया जाना, पश्चात्पूर्वी मानसिक स्थिति के आलोक में घातक नहीं है — दण्ड प्रक्रिया संहिता की धारा 329 के अंतर्गत विचारण 10 वर्षों तक रुका रहा क्योंकि चित्त विकृति के कारण अपीलार्थी अपना बचाव प्रस्तुत करने में समर्थ नहीं था — अपीलार्थी अपना बचाव साबित करने में सफल रहा तथा भारतीय दण्ड संहिता की धारा 84 के अंतर्गत लाभ का हकदार है — अपीलार्थी को धारा 302 व 307 के अंतर्गत आरोप से दोषमुक्त किया गया — अपील मंजूर। (प्रताप वि. म.प्र. राज्य) (DB)...2502

*Penal Code (45 of 1860), Sections 148, 302/149, 323/149 & 325/149 – Murder – Unlawful Assembly – Common Intention – Hostile Witnesses – Held – Prosecution failed to prove beyond reasonable doubt, involvement of other appellants except Mahipal and Bhaiyalal who assembled alongwith 4-5 persons with common object of forming unlawful assembly for committing murder of deceased – Testimonies of hostile injured eye witnesses can be used to the extent corroborated by other independent witnesses – On basis of statements and evidence of prosecution witnesses, charges against Mahipal and Bhaiyalal u/S 302/149 and 323/149 found proved – Other appellants acquitted of the charges – Appeal no. 1114/04 allowed and appeal no. 1122/04 partly allowed. [Rai Singh Vs. State of M.P.] (DB)...*159*

*दण्ड संहिता (1860 का 45), धाराएँ 148, 302/149, 323/149 व 325/149 – हत्या – विधिविरुद्ध जमाव – सामान्य आशय – पक्ष विरोधी साक्षीगण – अभिनिर्धारित – अभियोजन युक्तियुक्त संदेह से परे यह साबित करने में असफल रहा कि मृतक की हत्या कारित करने हेतु विधि विरुद्ध जमाव निर्मित करने के सामान्य उद्देश्य के साथ, महिपाल एवं भैयालाल जिन्होंने 4-5 व्यक्तियों के साथ जमाव किया था, को छोड़कर अन्य अपीलार्थीगण संलिप्त थे – पक्ष विरोधी आहत चक्षुदर्शी साक्षीगण के परिसाक्ष्य का उपयोग, अन्य स्वतंत्र साक्षियों द्वारा संपुष्टि की सीमा तक किया जा सकता है – अभियोजन साक्षीगण के कथन एवं साक्ष्य के आधार पर महिपाल एवं भैयालाल के विरुद्ध धारा 302/149 व 323/149 के अंतर्गत आरोप साबित पाये गये – अन्य अपीलार्थीगण आरोपों से दोषमुक्त किये गये – अपील क्र. 1114/04 मंजूर तथा अपील क्र. 1122/04 अंशतः मंजूर। (राय सिंह वि. म.प्र. राज्य) (DB)...*159*

Penal Code (45 of 1860), Sections 191, 193 & 200 – See – Income Tax Act, 1961, Section 132 & 246 [Babita Lila Vs. Union of India] (SC)...2587

दण्ड संहिता (1860 का 45), धाराएँ 191, 193 व 200 – देखें – आयकर

अधिनियम, 1961, धारा 132 व 246 (बबिता लीला वि. यूनियन ऑफ इंडिया)
(SC)...2587

Penal Code (45 of 1860), Sections 201, 302 & 376(2)(g) r/w 34 – Gang Rape and Murder – Circumstantial Evidence – Motive – Held – In case of murder based on circumstantial evidence, motive gains significance – It is established that soon after rape of prosecutrix, she and her companion was murdered so that they would not come forward to depose against appellants. [In Reference Vs. Ashok] (DB)...2783

दण्ड संहिता (1860 का 45), धाराएँ 201, 302 व 376(2)(जी) सहपठित 34 – सामूहिक बलात्संग एवं हत्या – परिस्थितिजन्य साक्ष्य – हेतु – अभिनिर्धारित – परिस्थितिजन्य साक्ष्य पर आधारित हत्या के प्रकरण में, हेतु महत्व प्राप्त करता है – यह स्थापित किया गया है कि अभियोक्त्री के बलात्संग के तुरंत पश्चात्, उसकी तथा उसके साथी की हत्या की गई थी ताकि अपीलार्थीगण के विरुद्ध अभिसाक्ष्य देने के लिए सामने न आ पायें। (इन रेफ्रेन्स वि. अशोक) (DB)...2783

Penal Code (45 of 1860), Sections 201, 302 & 376(2)(g) r/w 34 – Gang Rape and Murder – Death Sentence – Appreciation of Evidence – Circumstantial Evidence & DNA Report – Prosecutrix was raped and she alongwith her companion were murdered by appellants – Held – As per DNA report, appellant's DNA was matched and was found on underwear and vaginal swab of prosecutrix – Evidence of seizure of mobile phone & silver payal of prosecutrix and shoes of her companion duly established and proved beyond reasonable doubt – Call details also establishes commission of offence by appellants – Evidence shows that chain of circumstantial evidence is complete – Case do not fall in category of "Rarest of Rare" case – Death sentence modified to life imprisonment – Criminal reference rejected – Appeals allowed to such extent. [In Reference Vs. Ashok]. (DB)...2783

दण्ड संहिता (1860 का 45), धाराएँ 201, 302 व 376(2)(जी) सहपठित 34 – सामूहिक बलात्संग एवं हत्या – मृत्युदण्ड – साक्ष्य का मूल्यांकन – परिस्थितिजन्य साक्ष्य व डी.एन.ए. रिपोर्ट – अपीलार्थीगण द्वारा अभियोक्त्री का बलात्संग किया गया था तथा उसके साथ उसके साथी की हत्या की गई थी – अभिनिर्धारित – डी.एन.ए. रिपोर्ट के अनुसार, अपीलार्थी के डी.एन.ए. का मिलान किया गया था तथा वह अभियोक्त्री की अंडरवियर और वैजाइनल स्वेब पर पाया गया था – अभियोक्त्री के मोबाईल फोन व चांदी की पायल तथा उसके साथी के जूते की जब्ती का साक्ष्य सम्यक् रूप से स्थापित हुआ है तथा युक्तियुक्त संदेह से परे साबित हुआ है – कॉल विवरण भी, अपीलार्थीगण द्वारा अपराध कारित किया जाना स्थापित करता है –

साक्ष्य दर्शाता है कि परिस्थितिजन्य साक्ष्य की शृंखला पूर्ण है - प्रकरण, "विरलतम से विरल" प्रकरण की श्रेणी में नहीं आता है - मृत्युदण्ड को आजीवन कारावास में उपांतरित किया गया - दाण्डिक निर्देश अस्वीकार किया गया - उक्त सीमा तक अपीलें मंजूर। (इन रेफ्रेन्स वि. अशोक) (DB)...2783

Penal Code (45 of 1860), Sections 201, 302 & 376(2)(g) r/w 34 - Gang Rape and Murder - Death Sentence - Rarest of Rare Case - Aggravating and Mitigating Circumstances - Held - Upon comparison of aggravating and mitigating circumstances, the mitigating circumstances have far away outweighed the aggravating circumstances - Further, it is not possible to identify which accused case falls in category of rarest of rare case - Capital punishment imposed is altered to life imprisonment. [In Reference Vs. Ashok] (DB)...2783

दण्ड संहिता (1860 का 45), धाराएँ 201, 302 व 376(2)(जी) सहपठित 34 - सामूहिक बलात्संग एवं हत्या - मृत्युदण्ड - विरलतम से विरल प्रकरण - गुरुतरकारी तथा कम करने वाली परिस्थितियाँ - अभिनिर्धारित - गुरुतरकारी एवं कम करने वाली परिस्थितियों की तुलना करने पर, कम करने वाली परिस्थितियाँ गुरुतरकारी परिस्थितियों से अधिक महत्वपूर्ण हैं - इसके अतिरिक्त, यह पहचानना संभव नहीं है कि किस अभियुक्त का प्रकरण विरलतम से विरल प्रकरण की श्रेणी में आता है - अधिरोपित मृत्युदण्ड को आजीवन कारावास में परिवर्तित किया गया। (इन रेफ्रेन्स वि. अशोक) (DB)...2783

Penal Code (45 of 1860), Section 302 - Death Sentence - Considerations - "Rarest of Rare" Case - Held - Now-a-days reformatory ideas are totally ineffective - Justice demands that Court should impose punishment befitting the crime so that it reflects public abhorrence of crime - Instant case falls in category of "rarest of rare" case - Considering all aggravating and mitigating circumstances in the case, death sentence confirmed. [Bhagchandra Vs. State of M.P.] (DB)...3094

दण्ड संहिता (1860 का 45), धारा 302 - मृत्युदण्ड - विचार में लिया जाना - "विरल से विरलतम" प्रकरण - अभिनिर्धारित - आजकल सुधारात्मक विचार पूर्ण रूप से अप्रभावी हैं - न्याय की मांग है कि न्यायालय को अपराध के लिए उचित दंड अधिरोपित करना चाहिए, ताकि यह अपराध के प्रति सार्वजनिक घृणा को प्रतिबिंबित करे - वर्तमान प्रकरण "विरल से विरलतम" प्रकरण की श्रेणी में आता है - प्रकरण की सभी गुरुतरकारी तथा गंभीरता कम करने वाली परिस्थितियों पर विचार करते हुए, मृत्यु दण्ड की पुष्टि। (मागचन्द्र वि. म.प्र. राज्य) (DB)...3094

Penal Code (45 of 1860), Section 302 – Eye Witnesses and DNA Profile – Held – Due to less quantity of blood on incriminating articles, DNA profile not detected and was not sufficient to match, merely on this ground, testimony of eye witnesses cannot be discarded. [Bhagchandra Vs. State of M.P.] (DB)...3094

दण्ड संहिता (1860 का 45), धारा 302 – चक्षुदर्शी साक्षीगण एवं डी.एन.ए. प्रोफाइल – अभिनिर्धारित – अपराध में फँसाने वाली वस्तुओं पर रक्त की कम मात्रा के कारण, डी.एन.ए. प्रोफाइल का पता नहीं लगा तथा मेल करने के लिए पर्याप्त नहीं था, मात्र इस आधार पर, चक्षुदर्शी साक्षीगण का परिसाक्ष्य अस्वीकार नहीं किया जा सकता। (भागचन्द्र वि. म.प्र. राज्य) (DB)...3094

Penal Code (45 of 1860), Section 302 – Murder – Conviction – Circumstantial Evidence – Plea of Alibi – Burden of Proof – Appellant convicted for murder of his wife – Held – Wife was killed by throttling during night hours in bed room of their house when she was sleeping alongwith her husband (appellant) and minor children – Appellant found missing in morning – Crime committed within four corners of house – Burden of explaining the circumstances wherein deceased was throttled to death was on appellant but he utterly failed to discharge the same – No evidence in defence to establish plea of *alibi* – Deposition of appellant's son that appellant was at home at the night of incident, was not challenged in cross-examination – Trial Court rightly convicted the appellant – Appeal dismissed. [Mahesh Soni Vs. State of M.P.] (DB)...2463

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – दोषसिद्धि – परिस्थितिजन्य साक्ष्य – अन्यत्र उपस्थित होने का अभिवाक् – सबूत का भार – अपीलार्थी को उसकी पत्नी की हत्या के लिए दोषसिद्ध किया गया – अभिनिर्धारित – पत्नी जब अपने पति (अपीलार्थी) और अवयस्क बच्चों के साथ सो रही थी तब उनके घर के शयनकक्ष में रात्रि के समय गला घोटकर उसकी हत्या कर दी गई थी – अपीलार्थी सुबह लापता पाया गया – अपराध, घर की चार दीवारी के भीतर कारित किया गया – उन परिस्थितियों को स्पष्ट करने का भार जिनमें मृतिका को गला घोटकर मार दिया गया था अपीलार्थी पर था परंतु वह उक्त का निर्वहन करने में संपूर्ण रूप से विफल रहा – अन्यत्र उपस्थित होने के अभिवाक् को स्थापित करने हेतु बचाव में कोई साक्ष्य नहीं – अपीलार्थी के पुत्र का अभिसाक्ष्य कि अपीलार्थी घटना की रात घर पर ही था, को प्रतिपरीक्षण में चुनौती नहीं दी गई थी – विचारण न्यायालय ने अपीलार्थी को उचित रूप से दोषसिद्ध किया – अपील खारिज। (महेश सोनी वि. म. प्र. राज्य) (DB)...2463

*Penal Code (45 of 1860), Section 302 – Murder – Conviction – Life Imprisonment – Appreciation of Evidence – Appellant administered poison (Sulphas) to child of complainant – Complainant saw appellant giving water from nand (pot) whereafter child cried loud and died – Held – Despite evidence that appellant took water from nand (pot), the same was neither recovered/seized nor water of the pot was taken for examination – No evidence led by prosecution directly or indirectly that appellant had poison in her possession or from where she procured and in which place same was stored – Prosecution failed to prove necessary ingredients – Appellant discharged – Appeal allowed. [Shanti Bai (Smt.) Vs. State of M.P.] (DB)...*147*

दण्ड संहिता (1860 का 45), धारा 302 – हत्या – दोषसिद्धि – आजीवन कारावास – साक्ष्य का मूल्यांकन – अपीलार्थी ने परिवादी के बालक को विष (सल्फास) खिलाया – परिवादी ने अपीलार्थी को नांद (पात्र) से पानी देते देखा था जिसके पश्चात् बालक जोर से चिल्लाया और उसकी मृत्यु हो गई – अभिनिर्धारित – बावजूद इस साक्ष्य के कि अपीलार्थी ने नांद (पात्र) से पानी लिया, उक्त को न तो बरामद/जब्त किया गया, न ही पात्र के पानी को परीक्षण हेतु लिया गया – अभियोजन द्वारा प्रत्यक्ष या अप्रत्यक्ष रूप से कोई साक्ष्य प्रस्तुत नहीं किया गया कि अपीलार्थी के कब्जे में विष था या उसने कहाँ से उपान्त किया एवं किस स्थान पर उसका भंडारण किया गया था – अभियोजन आवश्यक घटकों को साबित करने में असफल रहा – अपीलार्थी को आरोपमुक्त किया गया – अपील मंजूर। (शांती बाई (श्रीमती) वि. म.प्र. राज्य) (DB)...*147

Penal Code (45 of 1860), Section 302 – Murder – Conviction – Testimony of witnesses – Close Relative – Ocular & Medical Evidence – Absence of FSL Report – Effect – Held – Witnesses are close relatives of deceased, however their statements cannot be doubted only because of this reason – When statement of two prosecution witnesses were found reliable, there appears to be no effect if some independent witnesses were not examined by prosecution and on this ground no benefit can be given to appellants – Many injuries were found on body of deceased, statement of witnesses that they did not observe as to which side of axe was used, there appears to be no discrepancies between ocular evidence and medical evidence – In the present case, when ocular evidence is available, non-receipt of FSL report does not affect the case adversely – Trial Court rightly convicted and sentenced the appellants – Appeal dismissed. [Bhanwarlal Vs. State of M.P.] (DB)...2495

दण्ड संहिता (1860 का 45), धारा 302 - हत्या - दोषसिद्धि - साक्षीगण के परिसाक्ष्य - करीबी रिश्तेदार - चाक्षुष एवं चिकित्सीय साक्ष्य - एफ.एस.एल. प्रतिवेदन की अनुपस्थिति - प्रभाव - अभिनिर्धारित - साक्षीगण, मृतक के करीबी रिश्तेदार हैं, तथापि केवल इस कारण से उनके कथनों पर संदेह नहीं किया जा सकता - जब दो अभियोजन साक्षीगण के कथन विश्वसनीय पाये गये थे, कोई प्रभाव प्रतीत नहीं होता यदि कुछ स्वतंत्र साक्षीगण का अभियोजन द्वारा परीक्षण नहीं किया गया था एवं इस आधार पर अपीलार्थीगण को कोई लाभ नहीं दिया जा सकता - मृतक के शरीर पर कई चोटें पाई गई, साक्षीगण के कथन कि उन्होंने ध्यान से नहीं देखा कि कुल्हाड़ी का किस तरफ से उपयोग किया गया था, चाक्षुष साक्ष्य एवं चिकित्सीय साक्ष्य में कोई विसंगतियाँ प्रतीत नहीं होती - वर्तमान प्रकरण में, जब चाक्षुष साक्ष्य उपलब्ध है, एफ.एस.एल. प्रतिवेदन का प्राप्त न होना प्रकरण को प्रतिकूल रूप से प्रभावित नहीं करता - विचारण न्यायालय ने अपीलार्थीगण को उचित रूप से दोषसिद्ध एवं दण्डादिष्ट किया - अपील खारिज। (शंवरलाल वि. म.प्र. राज्य) (DB)...2495

*Penal Code (45 of 1860), Section 302 - Murder - Conviction - Testimony of witnesses - Ocular & Medical Evidence - Discrepancy - Effect - Held - The only eye witness of the case stated that only one blow was given on the head of deceased whereas the doctor who examined the deceased stated that he found four injuries on his head and further the doctor who performed autopsy stated that he found nine injuries, all on head and face of deceased - A slight discrepancy in medical and oral evidence is not material as the time of incident was 3-3:30 am and there was not much light and all the persons were under the influence of liquor. [Hari Vs. State of M.P.] (DB)...*138*

दण्ड संहिता (1860 का 45), धारा 302 - हत्या - दोषसिद्धि - साक्षियों का परिसाक्ष्य - चाक्षुष एवं चिकित्सीय साक्ष्य - विसंगति - प्रभाव - अभिनिर्धारित - प्रकरण के एकमात्र चक्षुदर्शी साक्षी का कथन है कि मृतक के सिर पर केवल एक वार किया गया था जबकि चिकित्सक, जिसने मृतक का परीक्षण किया था, का कथन है कि उसने उसके सिर पर चार क्षतियाँ पायी और आगे, चिकित्सक जिसने शव परीक्षण किया था, का कथन है कि उसने नौ क्षतियाँ पायी, सभी मृतक के सिर एवं चेहरे पर - चिकित्सीय एवं मौखिक साक्ष्य में थोड़ी विसंगति तात्त्विक नहीं क्योंकि घटना का समय प्रातः 3-3.30 बजे था और वहाँ ज्यादा रोशनी नहीं थी तथा सभी व्यक्ति मदिरा के प्रभाव में थे। (हरि वि. म.प्र. राज्य) (DB)...*138

Penal Code (45 of 1860), Section 302 - Triple Murder - Death Sentence - Appreciation of Evidence - Testimony of Related Eye-Witnesses - Held - Brutal murder of three persons by cutting their

neck by axe in preplanned manner – No substantial contradiction and omission in testimonies of related eye witnesses and thus reliable – Ocular evidence duly corroborated by medical evidence – Conviction and death sentence upheld – Appeal dismissed. [Bhagchandra Vs. State of M.P.] (DB)...3094

दण्ड संहिता (1860 का 45), धारा 302 – तीन हत्या – मृत्युदण्ड – साक्ष्य का मूल्यांकन – संबंधी चक्षुदर्शी साक्षीगण का परिसाक्ष्य – अभिनिर्धारित – तीन व्यक्तियों की पूर्वनियोजित ढंग से कुल्हाड़ी द्वारा उनकी गर्दन काटकर पाश्विक हत्या – संबंधी चक्षुदर्शी साक्षीगण के परिसाक्ष्य में कोई सारभूत विरोधाभास एवं लोप नहीं एवं इसलिए विश्वसनीय – चाक्षुष साक्ष्य, चिकित्सीय साक्ष्य द्वारा सम्यक् रूप से संपुष्ट – दोषसिद्धि एवं मृत्युदण्ड कायम रखा गया – अपील खारिज। (भागचन्द्र वि. म.प्र. राज्य) (DB)...3094

Penal Code (45 of 1860), Section 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Information to Magistrate – Held – Non-compliance of Section 157 Cr.P.C. is not sufficient to ignore the whole prosecution evidence. [Bhagchandra Vs. State of M.P.] (DB)...3094

दण्ड संहिता (1860 का 45), धारा 302 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – मजिस्ट्रेट को सूचना – अभिनिर्धारित – द.प्र.सं. की धारा 157 का अनुपालन संपूर्ण अभियोजन साक्ष्य को अनदेखा करने हेतु पर्याप्त नहीं है। (भागचन्द्र वि. म.प्र. राज्य) (DB)...3094

Penal Code (45 of 1860), Section 302 and Evidence Act (1 of 1872), Section 32 – Conviction – Life Imprisonment – Dying Declaration – Reliability – Allegation that appellant poured kerosene on deceased and set her ablaze – Held – All witnesses turned hostile and case solely based on dying declaration – Three dying declaration by deceased carrying material contradictions, omissions, discrepancies and exaggerations – As per medical evidence, deceased was 98% burnt, both her palm were burnt and in such condition, victim cannot be in a coherent state of mind to make dying declaration nor could have signed the same – Dying declaration is an important piece of evidence which if found reliable and voluntary could be the sole basis of conviction – Evidence on record and dying declaration do not inspire confidence for basing conviction – Conviction set aside – Appeal allowed. [Sukhdev Vs. State of M.P.] (DB)...*163

दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – दोषसिद्धि – आजीवन कारावास – मृत्युकालिक कथन – विश्वसनीयता – अभिकथन है कि अपीलार्थी ने मृतिका पर मिट्टी का तेल डाला तथा उसे आग लगा दी – अभिनिर्धारित – सभी साक्षीगण पक्षद्रोही हो गये तथा प्रकरण पूर्ण रूप से मृत्युकालिक कथन पर आधारित है – मृतिका द्वारा तीन मृत्युकालिक कथन जिसमें तात्त्विक विरोधाभास, लोप, विसंगतियाँ तथा अतिशयोक्तियाँ हैं – चिकित्सीय साक्ष्य के अनुसार, मृतिका 98% जली हुई थी, उसकी दोनों हथेलियाँ जल गई थीं तथा ऐसी स्थिति में, पीड़िता मृत्युकालिक कथन करने के लिए अनुकूल मनःस्थिति में नहीं हो सकती, न ही उक्त पर हस्ताक्षर कर सकती थी – मृत्युकालिक कथन, साक्ष्य का एक महत्वपूर्ण भाग है जो यदि विश्वसनीय एवं स्वैच्छिक पाया जाता है तो दोषसिद्धि का एकमात्र आधार हो सकता है – अभिलेख पर उपस्थित साक्ष्य तथा मृत्युकालिक कथन दोषसिद्धि आधारित करने हेतु विश्वास उत्पन्न नहीं करता – दोषसिद्धि अपास्त – अपील मंजूर। (सुखदेव वि. म.प्र. राज्य) (DB)...*163

Penal Code (45 of 1860), Section 302 and Evidence Act (1 of 1872), Section 32 – Murder – Conviction – Dying Declaration – Appreciation of Evidence – Deceased was set ablaze on denial of giving money to appellant for liquor – Dying declaration recorded by Naib Tehsildar – Held – Deceased was alive for 18 hours after recording dying declaration and doctor also deposed that he was fully conscious and was fit/capable of making statement – Dying declaration against appellant is reliable and is fully corroborated by statements of eye witnesses – Appellant rightly convicted – Appeal dismissed. [Ramanda @ Yashvant Gond Vs. State of M.P.] (DB)...2489

दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – हत्या – दोषसिद्धि – मृत्युकालिक कथन – साक्ष्य का मूल्यांकन – अपीलार्थी को मदिरा के लिए पैसे देने से इंकार करने पर मृतक को आग लगा दी गई थी – नायब तहसीलदार द्वारा मृत्युकालिक कथन अभिलिखित किया गया – अभिनिर्धारित – मृत्युकालिक कथन अभिलिखित किये जाने के पश्चात् 18 घंटे तक मृतक जीवित रहा तथा चिकित्सक ने भी कथन किया कि वह पूरी तरह सचेत था और कथन देने हेतु स्वस्थ/सक्षम था – अपीलार्थी के विरुद्ध मृत्युकालिक कथन विश्वसनीय है तथा चक्षुदर्शी साक्षीगण के कथनों द्वारा पूर्णतः संपुष्ट है – अपीलार्थी उचित रूप से दोषसिद्ध किया गया – अपील खारिज। (रामन्दा उर्फ यशवंत गोंड वि. म.प्र. राज्य) (DB)...2489

Penal Code (45 of 1860), Section 302/34 – Appreciation of Evidence – Eye Witnesses – Ocular & Medical Evidence – Held – Previous enmity existed between parties regarding property –

Eyewitnesses deposed that they saw the accused giving beatings to deceased with *lathi* while medical evidence suggests that cause of death was due to fatal injury by a sharp edged weapon – Contradictions in deposition of eye witnesses – Further, police Officer who conducted seizure proceedings and prepared seizure memo was not examined – Evidence creates serious doubt on prosecution case – Conviction and sentence set aside – Appeal allowed. [Baliraj Singh Vs. State of M.P.] (SC)...2614

दण्ड संहिता (1860 का 45), धारा 302/34 – साक्ष्य का मूल्यांकन – चक्षुदर्शी साक्षीगण – चाक्षुष एवं चिकित्सीय साक्ष्य – अभिनिर्धारित – सम्पत्ति के संबंध में पक्षकारों के बीच पूर्व वैमनस्य विद्यमान – चक्षुदर्शी साक्षीगण ने अभिसाक्ष्य दिया कि उन्होंने अभियुक्त को लाठी से मृतक की पिटाई करते देखा था जबकि चिकित्सीय साक्ष्य सुझाता है कि मृत्यु एक धारदार शस्त्र द्वारा घातक चोट के कारण हुई थी – चक्षुदर्शी साक्षीगण के अभिसाक्ष्य में विरोधाभास – इसके अतिरिक्त पुलिस अधिकारी जिसने जब्ती कार्यवाहियां संचालित की एवं जब्ती-पत्र तैयार किया था, का परीक्षण नहीं किया गया था – साक्ष्य, अभियोजन प्रकरण पर गंभीर संदेह निर्मित करता है – दोषसिद्धि एवं दण्डादेश अपास्त – अपील मंजूर। (बलीराज सिंह वि. म. प्र. राज्य) (SC)...2614

Penal Code (45 of 1860), Section 302/34 – Appreciation of Evidence – Interested/Related Witnesses – Held – Courts below failed to scrutinize the prosecution evidence with utmost care when eye witnesses are closely related *inter-se* and to the deceased. [Baliraj Singh Vs. State of M.P.] (SC)...2614

दण्ड संहिता (1860 का 45), धारा 302/34 – साक्ष्य का मूल्यांकन – हितवद्ध/नातेदार साक्षीगण – अभिनिर्धारित – निचले न्यायालय अभियोजन साक्ष्य की अत्यंत सावधानी से संवीक्षा करने में विफल रहे, जब चक्षुदर्शी साक्षीगण आपस में एवं मृतक के निकट संबंधी हैं। (बलीराज सिंह वि. म.प्र. राज्य) (SC)...2614

Penal Code (45 of 1860), Section 302 r/w 34 – Murder – Common Intention – Held – Common intention is the question of fact – It is subjective but can be inferred from facts and circumstances of the case. [Sheru @ Mahendra Singh Vs. State of M.P.] (DB)...3073

दण्ड संहिता (1860 का 45), धारा 302 सहपठित धारा 34 – हत्या – सामान्य आशय – अभिनिर्धारित – सामान्य आशय तथ्य का प्रश्न है – यह व्यक्तिपरक है परन्तु प्रकरण के तथ्यों एवं परिस्थितियों से अनुमानित किया जा सकता है। (शेरू उर्फ महेन्द्र सिंह वि. म.प्र. राज्य) (DB)...3073

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Penal Code (45 of 1860), Section 302 r/w 34 – Murder – Conviction – Appreciation of Evidence – Held – Appellants came on the spot together, appellant no.2 caught hold of deceased from his back and appellant no.1 inflicted knife blows on his chest and abdomen – Statement of prosecution witnesses duly corroborated by FIR – No material discrepancies in statement of witnesses – Multiple injuries on vital parts of body – Lungs, ribs, liver and spleen of the deceased were cut – Intention was to commit murder – Appellants rightly convicted – Appeal dismissed. [Sheru @ Mahendra Singh Vs. State of M.P.] (DB)...3073

दण्ड संहिता (1860 का 45), धारा 302 सहपठित धारा 34 – हत्या – दोषसिद्धि – साक्ष्य का मूल्यांकन – अभिनिर्धारित – अपीलार्थीगण घटनास्थल पर एक साथ पहुँचे, अपीलार्थी क्र. 2 ने मृतक को पीछे की ओर से पकड़ लिया तथा अपीलार्थी क्र. 1 ने उसकी छाती, एवं पेट पर चाकू से वार किये – अभियोजन साक्षीगण के कथन प्रथम सूचना प्रतिवेदन द्वारा सम्यक् रूप से संपुष्ट हैं – साक्षीगण के कथन में कोई तात्त्विक विसंगतियाँ नहीं – शरीर के महत्वपूर्ण अंगों पर अनेक चोटें – मृतक के फेफड़े, पसलियाँ, यकृत एवं प्लीहा कट गये थे – आशय हत्या कारित करने का था – अपीलार्थीगण उचित रूप से दोषसिद्ध – अपील खारिज। (शेरू उर्फ महेन्द्र सिंह वि. म.प्र. राज्य) (DB)...3073

Penal Code (45 of 1860), Sections 302, 120-B & 201 – Murder – Circumstantial Evidence – Held – In case of circumstantial evidence, not only various links in chain of evidence should be clearly established but complete chain must be such as to rule out the likelihood of innocence of accused – In present case, only circumstances of last seen together cannot by itself be made basis for conviction. [Kishan Singh @ Krishnapal Singh Vs. State of M.P.] (DB)...2739

दण्ड संहिता (1860 का 45), धाराएँ 302, 120-बी व 201 – हत्या – परिस्थितिजन्य साक्ष्य – अभिनिर्धारित – परिस्थितिजन्य साक्ष्य के प्रकरण में, न केवल साक्ष्य की श्रृंखला में विभिन्न कड़ियाँ स्पष्ट रूप से स्थापित की जानी चाहिए बल्कि संपूर्ण श्रृंखला ऐसी होनी चाहिए जिससे अभियुक्त की निर्दोषिता की संभावना को खारिज किया जा सके – वर्तमान प्रकरण में, केवल अंतिम बार साथ देखे जाने की परिस्थितियों को अपने आप में दोषसिद्धि का आधार नहीं बनाया जा सकता। (किशन सिंह उर्फ कृष्णपाल सिंह वि. म.प्र. राज्य) (DB)...2739

Penal Code (45 of 1860), Sections 302, 120-B & 201 – Murder – Conviction – Circumstantial Evidence – Evidence of Last Seen Together – Held – As per medical evidence, homicidal death not proved

and in absence of such, appellants cannot be convicted merely on last seen theory – Unexplained delay in recording statement of prosecution witnesses and on their part in disclosing the fact of last seen together to police – No conclusive proof to establish link connecting appellants with the offence – Appellants entitled to benefit of doubt – Conviction set aside – Appeals allowed. [Kishan Singh @ Krishnapal Singh Vs. State of M.P.] (DB)...2739

दण्ड संहिता (1860 का 45), धाराएँ 302, 120-बी व 201 – हत्या – दोषसिद्धि – परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखे जाने का साक्ष्य – अभिनिर्धारित – चिकित्सीय साक्ष्य अनुसार, मानववध स्वरूप मृत्यु साबित नहीं हुई तथा उक्त की अनुपस्थिति में, अपीलार्थीगण को अंतिम बार देखे जाने के सिद्धांत मात्र पर दोषसिद्ध नहीं किया जा सकता – अभियोजन साक्षीगण के कथन अमिलिखित करने में तथा उनकी ओर से अंतिम बार साथ देखे जाने का तथ्य पुलिस को प्रकट करने में अस्पष्टीकृत विलंब – अपीलार्थीगण को अपराध के साथ जोड़ने वाली कड़ी स्थापित करने हेतु कोई निश्चायक सबूत नहीं – अपीलार्थीगण संदेह का लाभ पाने के हकदार हैं – दोषसिद्धि अपास्त – अपीलें मंजूर। (किशन सिंह उर्फ कृष्णपाल सिंह वि. म.प्र. राज्य) (DB)...2739

Penal Code (45 of 1860), Sections 302, 120-B & 201 – Murder – Memorandum and Seizure Documents – Authenticity – Held – Major discrepancies, vital contradictions and embellishment in evidence of prosecution witnesses makes prosecution story doubtful and gives strength to claim of appellants that memorandum and seizure documents were made up and fabricated. [Kishan Singh @ Krishnapal Singh Vs. State of M.P.] (DB)...2739

दण्ड संहिता (1860 का 45), धाराएँ 302, 120-बी व 201 – हत्या – ज्ञापन एवं जब्ती दस्तावेज – प्रमाणिकता – अभिनिर्धारित – अभियोजन साक्षीगण के साक्ष्य में भारी विसंगतियाँ, महत्वपूर्ण विरोधाभास तथा अलंकरण अभियोजन कहानी को संदेहास्पद बनाते हैं और अपीलार्थीगण के इस दावे को बल देते हैं कि ज्ञापन तथा जब्ती दस्तावेज बनाये गये थे एवं कूटरचित हैं। (किशन सिंह उर्फ कृष्णपाल सिंह वि. म.प्र. राज्य) (DB)...2739

Penal Code (45 of 1860), Sections 302/149, 147 & 148 – Common Intention – Held – Accused persons gathered on spot and incident took place because of continuation of construction of a wall despite being stopped by accused persons – It is not established that there was any common object formed by all appellants to murder the deceased persons with any prior planning. [Asghar Ali Vs. State of M.P.] (DB)...3080

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दण्ड संहिता (1860 का 45), धाराएँ 302/149, 147 व 148 – सामान्य आशय – अभिनिर्धारित – अभियुक्तगण घटनास्थल पर एकत्रित हुए तथा घटना अभियुक्तगण द्वारा रोके जाने के बावजूद एक दीवार का निर्माण जारी रखने के कारण हुई – यह स्थापित नहीं हुआ है कि किसी पूर्व योजना के साथ मृतक व्यक्तियों की हत्या करने हेतु सभी अपीलार्थीगण द्वारा कोई सामान्य उद्देश्य बनाया गया था। (असगर अली वि. म.प्र. राज्य) (DB)...3080

Penal Code (45 of 1860), Sections 302/149, 147 & 148 – Direct Evidence – Seizure of Weapon – Held – It is a case of direct evidence where testimonies of two eye witnesses gets corroborated with medical evidence – Seizure of weapon on the disclosure statement of accused has also been proved by Investigating Officer – After scanning the entire evidence, it is established that among all appellants, three of them in furtherance of common intention murdered the deceased, hence are hereby convicted u/S 302/34 IPC – Other appellants acquitted of the charge – Appeals disposed of. [Asghar Ali Vs. State of M.P.] (DB)...3080

दण्ड संहिता (1860 का 45), धाराएँ 302/149, 147 व 148 – प्रत्यक्ष साक्ष्य – शस्त्र की जब्ती – अभिनिर्धारित – यह प्रत्यक्ष साक्ष्य का एक प्रकरण है जहाँ दो वक्षुदर्शी साक्षीगण के परिसाक्ष्य की चिकित्सीय साक्ष्य के साथ संपुष्टि हुई है – अन्वेषण अधिकारी द्वारा, अभियुक्त के प्रकटन कथन पर शस्त्र की जब्ती भी साबित की गई है – संपूर्ण साक्ष्य का अवलोकन करने के पश्चात्, यह स्थापित है कि सभी अपीलार्थीगण में से तीन ने सामान्य आशय के अग्रसरण में मृतक की हत्या की, अतः एतद्वारा भा.दं.सं. की धारा 302/34 के अंतर्गत दोषसिद्ध किये गये – अन्य अपीलार्थीगण आरोप से दोषमुक्त किये गये – अपीलें निराकृत। (असगर अली वि. म.प्र. राज्य) (DB)...3080

Penal Code (45 of 1860), Section 302/149 & 148 – Murder – Conviction – Child Witness – Credibility – Appreciation of Evidence – Held – Solitary statement of child witness does not inspire confidence because of material contradictions, exaggeration, inconsistencies, omissions and improvements in the Court statements in comparison to dehati nalishi and police statement – Such evidence is wholly unsafe unless corroborated by independent witnesses – Absence of corroboration even of departmental prosecution witness – Evidence not reliable and trustworthy – Appellants acquitted of charge – Appeal allowed. [Sakharam @ Bagad Vs. State of M.P.] (DB)...2445

दण्ड संहिता (1860 का 45), धारा 302/149 व 148 – हत्या – दोषसिद्धि

— बाल साक्षी — विश्वसनीयता — साक्ष्य का मूल्यांकन — अभिनिर्धारित — बाल साक्षी का एकल कथन, देहाती नालिशी और पुलिस कथन की तुलना में तात्त्विक विरोधान्नास, अतिशयोक्ति, असंगतियां, लोप तथा न्यायालय कथनों में सुधार होने के कारण विश्वास उत्पन्न नहीं करता — ऐसा साक्ष्य पूर्णतः असुरक्षित है जब तक कि स्वतंत्र साक्षीगण द्वारा संपुष्टि नहीं की जाती है — विभागीय अभियोजन साक्षी की संपुष्टि भी अनुपस्थित — साक्ष्य विश्वसनीय और मरोसेमंद नहीं — अपीलार्थीगण आरोप से दोषमुक्त किये गये — अपील मंजूर। (सखाराम उर्फ बागड़ वि. म.प्र. राज्य) (DB)...2445

Penal Code (45 of 1860), Section 302/149 & 148 – Murder – Seizure of Weapons – Circumstantial Evidence – Proof – Held – Seizure of weapons from appellants not supported by witnesses – As per FSL report, no blood found on any seized weapon – Circumstantial evidence regarding seizure is inconclusive, immaterial and is unable to establish any link between appellants and the incident of murder. [Sakharam @ Bagad Vs. State of M.P.] (DB)...2445

दण्ड संहिता (1860 का 45), धारा 302/149 व 148 – हत्या – शस्त्रों की जब्ती – परिस्थितिजन्य साक्ष्य – सबूत – अभिनिर्धारित – अपीलार्थीगण से शस्त्रों की जब्ती साक्षीगण द्वारा समर्थित नहीं – एफ.एस.एल. प्रतिवेदन के अनुसार, किसी जब्तशुदा शस्त्र पर कोई रक्त नहीं पाया गया – जब्ती के संबंध में परिस्थितिजन्य साक्ष्य अनिर्णायक, तत्त्वहीन है तथा अपीलार्थीगण और हत्या की घटना के मध्य कोई कड़ी स्थापित करने में असमर्थ है। (सखाराम उर्फ बागड़ वि. म.प्र. राज्य) (DB)...2445

*Penal Code (45 of 1860), Section 302 & 201 – Murder – Conviction – Last Seen Together – Held – At 7 pm, deceased went with appellant to consume liquor and subsequently dead body of deceased was found in the next morning – As per postmortem report, death occurred around 4 to 5 am and at this time, appellant was seen coming from scene of occurrence – Proximity between time when deceased was last seen with accused and time of death of deceased is duly established by prosecution evidence – Appellant rightly convicted – Appeal dismissed. [Arun Shankar Vs. State of M.P.] (DB)...*152*

दण्ड संहिता (1860 का 45), धारा 302 व 201 – हत्या – दोषसिद्धि – अंतिम बार साथ देखा जाना – अभिनिर्धारित – शाम 7 बजे, मृतक, मदिरा का सेवन करने अपीलार्थी के साथ गया तथा तत्पश्चात् अगली सुबह मृतक का शव पाया गया – शव परीक्षण प्रतिवेदन के अनुसार, मृत्यु प्रातः 4 से 5 बजे के आस-पास हुई तथा इस समय, अपीलार्थी को घटना स्थल से आते हुये देखा गया था – अभियोजन साक्ष्य द्वारा मृतक को अभियुक्त के साथ अंतिम बार साथ देखे जाने के समय तथा मृतक की हत्या के समय

के बीच की निकटता सम्यक् रूप से स्थापित की गई है — अपीलार्थी उचित रूप से दोषसिद्ध — अपील खारिज। (अरुण शंकर वि. म.प्र. राज्य) (DB)...*152

Penal Code (45 of 1860), Section 302 & 302/34 and Arms Act (54 of 1959), Section 25(1)(a) – Murder – Conviction – Common Intention – Acquittal of an accused Rajendra by High Court – Appeal against – Held – Conduct of the accused reveals nothing to draw inference that he was taken by surprise when co-accused opened fired the deceased – He immediately escaped from place of occurrence, indicative of his awareness of common intention – Sequence of events shows pre-concerted plan and prior meeting of minds – If common intention is established in the facts and circumstances, no overt act or possession of weapon is required – Order of acquittal passed by High Court is set aside – Order of conviction restored. [Rajkishore Purohit Vs. State of M.P.] (SC)...2299

दण्ड संहिता (1860 का 45), धारा 302 व 302/34 एवं आयुध अधिनियम (1959 का 54), धारा 25(1)(ए) – हत्या – दोषसिद्धि – सामान्य आशय – उच्च न्यायालय द्वारा एक अभियुक्त राजेन्द्र की दोषमुक्ति – के विरुद्ध अपील – अभिनिर्धारित – अभियुक्त के आचरण से ऐसा कुछ प्रकट नहीं होता जिससे यह निष्कर्ष निकाला जा सके कि वह आश्चर्यचकित था जब सह-अभियुक्त ने मृतक पर गोली चलाई – वह घटनास्थल से तत्काल भाग निकला, जो उसके सामान्य आशय के ज्ञान को उपदर्शित करता है – घटनाक्रम पूर्व चिंतित योजना एवं पूर्व में मस्तिष्कों के मेल को दर्शाता है – यदि सामान्य आशय तथ्यों एवं परिस्थितियों में स्थापित होता है, कोई प्रत्यक्ष कार्य या आयुध का कब्जा अपेक्षित नहीं – उच्च न्यायालय द्वारा पारित दोषमुक्ति का आदेश अपास्त – दोषसिद्धि का आदेश पुनः स्थापित। (राजकिशोर पुरोहित वि. म.प्र. राज्य) (SC)...2299

Penal Code (45 of 1860), Sections 302, 302/34, 325 & 325/34 – Common Intention & Pre-meditation – Held – It is a case of free fight – Appellants did not come on spot together – Every accused liable for his individual act – No evidence of pre-concert of mind and that appellants Sanju and Mukesh had common intention or has instigated or exhorted the main accused Gopi to kill the deceased – They have not assaulted the deceased – Sanju only grappled with deceased and Mukesh has assaulted the complainant whereas Gopi gave knife blows to deceased – Conviction of Gopi u/S 325/34 IPC is set aside and is convicted u/S 302 IPC, Mukesh is acquitted u/S 302/34 and is convicted u/S 325 IPC and Sanju is acquitted for charges u/S 302/34 and 325/34 –

Appeal of Sanju allowed – Appeals of Gopi and Mukesh partly allowed.
[Sanju @ Sanjay Vs. State of M.P.] (DB)...2470

दण्ड संहिता (1860 का 45), धाराएँ 302, 302/34, 325 व 325/34 – सामान्य आशय व पूर्व चिंतन – अभिनिर्धारित – यह एक स्वतंत्र झगड़े का प्रकरण है – अपीलार्थी घटनास्थल पर एक साथ नहीं आए – प्रत्येक अभियुक्त अपने व्यक्तिगत कृत्य के लिए दायी है – मस्तिष्क का पूर्व मेल था तथा अपीलार्थीगण संजू और मुकेश का सामान्य आशय था या उन्होंने मृतक की हत्या करने के लिए मुख्य अभियुक्त गोपी को उकसाया या प्रेरित किया, इसका कोई साक्ष्य नहीं – उन्होंने मृतक पर हमला नहीं किया – संजू ने मृतक के साथ केवल हाथापाई की और मुकेश ने परिवादी पर हमला किया जबकि गोपी ने मृतक पर चाकू से वार किये – भा.द.सं. की धारा 325/34 के अंतर्गत गोपी की दोषसिद्धि अपास्त की गई तथा उसे भा.द.सं. की धारा 302 के अंतर्गत दोषसिद्ध किया गया, मुकेश को धारा 302/34 के अंतर्गत दोषमुक्त किया गया तथा भारतीय दण्ड संहिता की धारा 325 के अंतर्गत दोषसिद्ध किया गया एवं संजू को धारा 302/34 और 325/34 के अंतर्गत आरोपों से दोषमुक्त किया गया – संजू की अपील मंजूर – गोपी एवं मुकेश की अपीलें अंशतः मंजूर। (संजू उर्फ संजय वि. म.प्र. राज्य) (DB)...2470

Penal Code (45 of 1860), Section 302 & 304 Part II – Murder – Motive/Intention to Kill – Held – It is true that appellant was not armed with any weapon when he met the deceased, suddenly appellant picked up a piece of wood and gave blows to deceased – Appellant gave repeated blows, he might not have any intention for causing death, but intention arose immediately before the incident – Case does not fall under any exceptions of Section 300 IPC – Offence u/S 302 IPC made out – Appellant rightly convicted and sentenced u/S 302 IPC – Appeal dismissed. [Hari Vs. State of M.P.] (DB)...*138

दण्ड संहिता (1860 का 45), धारा 302 व 304 भाग II – हत्या – मृत्यु कारित करने का हेतु/आशय – अभिनिर्धारित – यह सत्य है कि अपीलार्थी किसी शस्त्र से सुसज्जित नहीं था जब वह मृतक से मिला था, अचानक अपीलार्थी ने लकड़ी का एक टुकड़ा उठाया और मृतक पर वार किये – अपीलार्थी ने बारंबार वार किये, मृत्यु कारित करने का उसका कोई आशय नहीं भी हो सकता था परंतु घटना के तुरंत पहले आशय उत्पन्न हुआ – प्रकरण धारा 300 भा.द.सं. के किसी अपवाद के अंतर्गत नहीं आता – धारा 302 भा.द.सं. का अपराध बनता है – अपीलार्थी को उचित रूप से धारा 302 भा.द.सं. के अंतर्गत दोषसिद्ध एवं दण्डादिष्ट किया गया – अपील खारिज। (हरि वि. म.प्र. राज्य) (DB)...*138

Penal Code (45 of 1860), Section 302, 304 Part II r/w 34 – Appeal Against Acquittal – Appreciation of Evidence – Intention –

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Acquittal from trial Court – In State appeal, High Court convicted appellants u/S 304 Part II r/w 34 IPC – Challenge to – Held – No motive to kill the deceased – Intention was to teach a lesson to deceased due to previous enmity – Evidence of Doctor does not say that injuries were sufficient in ordinary course of nature to cause death – Deceased survived for 14 days from date of incident – Proper appreciation of evidence by High Court – Conviction affirmed - Appeal dismissed. [Pooranlal Vs. State of M.P.] (SC)...2915

दण्ड संहिता (1860 का 45), धारा 302, 304 भाग II सहपठित 34 – दोषमुक्ति के विरुद्ध अपील – साक्ष्य का मूल्यांकन – आशय – विचारण न्यायालय से दोषमुक्ति – राज्य द्वारा अपील में, उच्च न्यायालय ने अपीलार्थीगण को भा.द.सं. की धारा 304 भाग II सहपठित 34 के अंतर्गत दोषसिद्ध किया – को चुनौती – अभिनिर्धारित – मृतक को जान से मारने का कोई हेतु नहीं – पूर्व वैमनस्यता के कारण मृतक को सबक सिखाने का आशय था – चिकित्सक का साक्ष्य यह नहीं दर्शाता कि चोटें प्रकृति के सामान्य अनुक्रम में मृत्यु कारित करने हेतु पर्याप्त थीं – मृतक घटना की तिथि से 14 दिनों तक जीवित रहा – उच्च न्यायालय द्वारा साक्ष्य का उचित मूल्यांकन – दोषसिद्धि अभिपुष्ट – अपील खारिज। (पूरनलाल वि. म.प्र. राज्य) (SC)...2915

Penal Code (45 of 1860), Sections 302, 304-B & 498-A r/w 34 – See – Criminal Procedure Code, 1973, Section 227 & 228 [Kattu Bai Vs. State of M.P.] ...3122

दण्ड संहिता (1860 का 45), धाराएँ 302, 304-बी व 498-ए सहपठित 34 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 227 व 228 (कट्टू बाई वि. म.प्र. राज्य) ...3122

Penal Code (45 of 1860), Section 302 & 307 – Presumption – Last Seen Together – Murder – Conviction – Circumstantial Evidence – Held – Deceased and injured are the driver and conductor of Truck – From statement of witnesses, it is clear that deceased and the injured were last seen in company with the present appellant and soon thereafter dead body of deceased was found – It was admitted that truck broke down, which was repaired by the appellant and thereafter, deceased remained in company of appellant – Appellant was also identified before the Court by the injured witness – Looking to the evidence against appellant, it is established that deceased was last seen alive with appellant and it was them and no other person who must have caused his death, it can be presumed on basis of the oral

and circumstantial evidence – Appellant rightly convicted – Appeal dismissed. [Phool Singh Vs. State of M.P.] (DB)...3064

दण्ड संहिता (1860 का 45), धारा 302 व 307 – उपधारणा – अंतिम बार साथ देखा जाना – हत्या – दोषसिद्धि – परिस्थितिजन्य साक्ष्य – अभिनिर्धारित – मृतक और आहत, ट्रक के चालक एवं परिचालक थे – साक्षीगण के कथनों से, यह स्पष्ट है कि मृतक एवं आहत को अंतिम बार वर्तमान अपीलार्थी के साथ देखा गया था एवं उसके तुरंत बाद मृतक का शव पाया गया था – यह स्वीकृत किया गया था कि ट्रक खराब हुआ था जिसे अपीलार्थी द्वारा सुधारा गया था एवं तत्पश्चात्, मृतक अपीलार्थी के साथ रहा – अपीलार्थी को, आहत साक्षी द्वारा न्यायालय के समक्ष पहचाना भी गया था – अपीलार्थी के विरुद्ध साक्ष्य को देखते हुये, यह स्थापित है कि मृतक को अंतिम बार अपीलार्थी के साथ जीवित देखा गया एवं वह ही था तथा न कि कोई अन्य व्यक्ति जिसने उसकी मृत्यु कारित की होगी, मौखिक एवं परिस्थितिजन्य साक्ष्य के आधार पर यह उपधारित किया जा सकता है – अपीलार्थी उचित रूप से दोषसिद्ध किया गया – अपील खारिज। (फूल सिंह वि. म.प्र. राज्य) (DB)...3064

Penal Code (45 of 1860), Section 302 & 323 – Murder – Conviction – Testimony of witnesses – Identity of Accused – Ocular & Medical Evidence – Effect – Held – It is undisputed that appellant/accused was not known to prosecution witnesses prior to the incident and it appears that for the first time accused entered into the said village – Complainant and prosecution witnesses identified the accused before the trial Court – No such fact came in cross-examination of prosecution witnesses which would indicate that they were not in a position to identify the accused before the Court – No doubt created regarding identity of accused – Further held – Oral evidence were supported by medical evidence – It was proved that present appellant caused injuries due to which deceased died. [Santosh Vs. State of M.P.] (DB)...2735

दण्ड संहिता (1860 का 45), धारा 302 व 323 – हत्या – दोषसिद्धि – साक्षीगण के परिसाक्ष्य – अभियुक्त की पहचान – चाक्षुष एवं चिकित्सीय साक्ष्य – प्रभाव – अभिनिर्धारित – यह अविवादित है कि अपीलार्थी/अभियुक्त घटना के पूर्व से अभियोजन साक्षीगण से परिचित नहीं था एवं यह प्रतीत होता है कि अभियुक्त ने प्रथम बार कथित गांव में प्रवेश किया था – परिवादी एवं अभियोजन साक्षीगण ने विचारण न्यायालय के समक्ष अभियुक्त की पहचान की – अभियोजन साक्षीगण के प्रतिपरीक्षण में ऐसा कोई तथ्य नहीं आया है जो यह दर्शाता हो कि वे न्यायालय के समक्ष अभियुक्त की पहचान करने की स्थिति में नहीं थे – अभियुक्त की पहचान के संबंध में कोई संदेह उत्पन्न नहीं होता – आगे अभिनिर्धारित – मौखिक साक्ष्य, चिकित्सीय साक्ष्य द्वारा समर्थित थे – यह

साबित हुआ था कि वर्तमान अपीलार्थी ने चोटें कारित की जिसके कारण मृतक की मृत्यु हुई। (संतोष वि. म.प्र. राज्य) (DB)...2735

Penal Code (45 of 1860), Section 302 & 323 and Arms Act (54 of 1959), Section 25(1-B)(a) & 27 – Murder – Conviction – Private Defence – Deceased who was unarmed, was chasing the appellant alongwith police personnels, when appellant turned around and fired upon him – Held – Relations between parties were inimical – Prosecution case based on direct evidence, where five eye witnesses were examined – Appellant has no right of private defence against an unarmed person, that too in presence of four armed policemen – Defence also failed to prove that any person from victim's party was armed even with a stick – Appellants rightly convicted – Appeal dismissed. [Deshpal Vs. State of M.P.] (DB)...2717

दण्ड संहिता (1860 का 45), धारा 302 व 323 एवं आयुध अधिनियम (1959 का 54), धारा 25(1-बी)(ए) व 27 – हत्या – दोषसिद्धि – प्राइवेट प्रतिरक्षा – मृतक, जो निःशस्त्र था, पुलिस कर्मियों के साथ अपीलार्थी का पीछा कर रहा था, जब अपीलार्थी मुड़ा और उस पर गोली चलाई – अभिनिर्धारित – पक्षकारों के मध्य वैमनस्यतापूर्ण संबंध थे – अभियोजन प्रकरण प्रत्यक्ष साक्ष्य पर आधारित, जहां पांच चक्षुदर्शी साक्षीगण का परीक्षण किया गया था – अपीलार्थी को एक निःशस्त्र व्यक्ति के विरुद्ध प्राइवेट प्रतिरक्षा का कोई अधिकार नहीं है, वह भी चार सशस्त्र पुलिसकर्मियों की उपस्थिति में – बचाव पक्ष, पीड़ित पक्ष के किसी व्यक्ति का एक छड़ी तक से सुसज्जित होना भी साबित करने में विफल रहा – अपीलार्थीगण उचित रूप से दोषसिद्ध किये गये – अपील खारिज। (देशपाल वि. म.प्र. राज्य) (DB)...2717

Penal Code (45 of 1860), Sections 302, 323 & 304 Part II – Murder – Motive/Intention to kill – Previous Enmity – Held – There was no previous enmity between deceased and appellant – Two injuries were caused on his head due to which deceased died – As per the facts of the present case, the appellant has no motive to kill the deceased, there appears to be no intention as well – Case falls under provisions of Section 304 Part II IPC – Conviction converted into one u/S 304 part II IPC – Conviction u/S 323 upheld – Appeal partly allowed. [Santosh Vs. State of M.P.] (DB)...2735

दण्ड संहिता (1860 का 45), धाराएँ 302, 323 व 304 भाग II – हत्या – हेतु/हत्या करने का आशय – पूर्व वैमनस्यता – अभिनिर्धारित – मृतक एवं अपीलार्थी में कोई पूर्व वैमनस्यता नहीं थी – उसके सिर पर दो चोटें कारित की गई जिसके कारण मृतक की मृत्यु हुई – वर्तमान प्रकरण के तथ्यों के अनुसार,

अपीलार्थी का मृतक की हत्या करने का कोई हेतु नहीं था, साथ ही ऐसा कोई आशय भी प्रतीत नहीं होता है – प्रकरण भारतीय दंड संहिता की धारा 304 भाग II के उपबंधों के अंतर्गत आता है – दोषसिद्धि भारतीय दंड संहिता की धारा 304 भाग II के अंतर्गत परिवर्तित हुई – धारा 323 के अंतर्गत दोषसिद्धि की पुष्टि की गई – अपील अंशतः मंजूर। (संतोष वि. म.प्र. राज्य) (DB)...2735

Penal Code (45 of 1860), Sections 302, 364-A, 201 & 120-B – Kidnapping & Murder of Minor Boy – Conviction – Death Sentence – Circumstantial Evidence – Presumption – Held – Case based on circumstantial evidence – No eye witness – As per postmortem report, cause of death due to cut of neck by sharp cutting object – As per DNA report, DNA of hairs found in fingers of deceased was similar to DNA profile of appellant – Having proved the factum of kidnapping for ransom, inference of consequential murder of kidnapped person is liable to be presumed – Substantive evidence on record to establish kidnapping of deceased followed by his murder at the hands of appellants – Conviction upheld – Appeals dismissed. [In Reference Vs. Rajesh @ Rakesh] (DB)...2826

दण्ड संहिता (1860 का 45), धाराएँ 302, 364-ए, 201 व 120-बी – अप्राप्तवय बालक का व्यपहरण व हत्या – दोषसिद्धि – मृत्युदण्ड – परिस्थितिजन्य साक्ष्य – उपधारणा – अभिनिर्धारित – प्रकरण परिस्थितिजन्य साक्ष्य पर आधारित है – कोई चक्षुदर्शी साक्षी नहीं – शव परीक्षण प्रतिवेदन के अनुसार, मृत्यु का कारण धारदार काटने की वस्तु से गर्दन का काटा जाना है – डी.एन.ए. प्रतिवेदन के अनुसार, मृतक की उंगलियों में पाये गये बालों का डी.एन.ए. अपीलार्थी के डी.एन.ए. के समान था – फिरौती के लिए व्यपहरण का तथ्य साबित हो जाने पर, व्यपहृत व्यक्ति की परिणामिक हत्या के निष्कर्ष की उपधारणा की जाना संभाव्य है – यह स्थापित करने हेतु अभिलेख पर सारभूत साक्ष्य है कि अपीलार्थीगण द्वारा मृतक का व्यपहरण कर उसके बाद उसकी हत्या की गई – दोषसिद्धि कायम रखी गई – अपीलें खारिज। (इन रेफ्रेन्स वि. राजेश उर्फ राकेश) (DB)...2826

Penal Code (45 of 1860), Sections 302, 364-A, 201 & 120-B – Kidnapping & Murder of Minor Boy – Sentence – Held – Looking to nature and way of committing offence, no possibility of any reform and rehabilitation of appellants – Appellants having no value for human life, carrying extreme mental perversion not worthy of human condonation – Approach of accused reveals a brutal mindset of highest order – Death sentence confirmed – Aggravating and Mitigating circumstances enumerated and discussed on facts of the case. [In

Reference Vs. Rajesh @ Rakesh]**(DB)...2826**

दण्ड संहिता (1860 का 45), धाराएँ 302, 364-ए, 201 व 120-बी - अप्राप्तवय बालक का व्यपहरण एवं हत्या - दण्डादेश - अभिनिर्धारित - अपराध कारित करने की प्रकृति और ढंग को देखते हुए, अपीलार्थीगण के सुधार एवं पुनर्वास की कोई संभावना नहीं - अपीलार्थीगण को मानव जीवन का मूल्य नहीं, उनकी अत्याधिक मानसिक विकृति मानवीय संवेदना के अयोग्य है - अभियुक्त का दृष्टिकोण उच्चतर कोटि की क्रूर मानसिकता प्रकट करती है - मृत्यु दण्डादेश की पुष्टि की गई - प्रकरण के तथ्यों पर गुरुतरकारी एवं गंभीरता कम करने वाली परिस्थितियाँ प्रगणित एवं विवेचित की गई। (इन रेफ्रेन्स वि. राजेश उर्फ राकेश)

(DB)...2826

Penal Code (45 of 1860), Sections 302, 364-A, 201 & 120-B and Evidence Act (1 of 1872), Section 106 - Burden of Proof - Held - When it is duly established that deceased was kidnapped by appellants, section 106 of the Act of 1872 places onus on them to produce material to show the release of deceased from their custody - In absence thereof, it has to be accepted that custody remained with them till deceased was murdered. [In Reference Vs. Rajesh @ Rakesh]

(DB)...2826

दण्ड संहिता (1860 का 45), धाराएँ 302, 364-ए, 201 व 120-बी एवं साक्ष्य अधिनियम (1872 का 1), धारा 106 - सबूत का भार - अभिनिर्धारित - जब यह सम्यक् रूप से स्थापित किया गया है कि मृतक का व्यपहरण अपीलार्थीगण द्वारा किया गया था, 1872 के अधिनियम की धारा 106 उन पर, उनकी अभिरक्षा में से मृतक को छोड़ा जाना दर्शाने हेतु सामग्री प्रस्तुत करने का भार डालती है - इसकी अनुपस्थिति में, यह स्वीकार किया जाना होगा कि मृतक की हत्या हो जाने तक वह उनकी अभिरक्षा में था। (इन रेफ्रेन्स वि. राजेश उर्फ राकेश)

(DB)...2826

Penal Code (45 of 1860), Section 302, 376(A), (D) - Rape - Evidence - Minor Contradictions - Held - Courts while trying an accused on charge of rape must deal with utmost sensitivity, examine the broader probability of case and not get swayed by minor contradictions or insignificant discrepancies in the evidence which are not of a substantial character. [Vinay Vs. State of M.P.]

(DB)...2752

दण्ड संहिता (1860 का 45), धारा 302, 376 (ए), (डी) - बलात्संग - साक्ष्य - गौण विरोधाभास - अभिनिर्धारित - न्यायालयों को बलात्संग के आरोप पर एक अभियुक्त का विचारण करते समय अत्यंत संवेदनशीलता के साथ निपटना चाहिए, प्रकरण की विस्तृत संभावना का परीक्षण करना चाहिए तथा साक्ष्य, जो सारवान प्रकृति के नहीं हैं, में महत्वहीन विसंगतियों या गौण विरोधाभासों द्वारा प्रभावित

नहीं होना चाहिए। (विनय वि. म.प्र. राज्य)

(DB)...2752

Penal Code (45 of 1860), Sections 302, 376(A), (D) & 449 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 6 – Rape & Murder – Minor Girl – Conviction – Death Sentence – Circumstantial Evidence – DNA Test – Held – Appellant is uncle of the victim – Medical evidence proves that victim was sexually assaulted before murder – As per DNA report, which is a scientific evidence, appellant's sperm and semens found in vaginal swab and clothes of victim and there is no explanation by appellant in this regard – DNA report is reliable to sustain conviction – Conviction can be based on circumstantial evidence – Conviction upheld – Death sentence set aside and life imprisonment imposed – Appeal partly allowed – Reference discharged. [Vinay Vs. State of M.P.]

(DB)...2752

दण्ड संहिता (1860 का 45), धाराएँ 302, 376 (ए), (डी) व 449 एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 6 – बलात्संग एवं हत्या – अप्राप्तवय बालिका – दोषसिद्धि – मृत्यु दण्डादेश – परिस्थितिजन्य साक्ष्य – डी एन ए परीक्षण – अभिनिर्धारित – अपीलार्थी, पीड़िता का अंकल है – चिकित्सीय साक्ष्य साबित करता है कि पीड़िता पर हत्या से पूर्व लैंगिक रूप से हमला किया गया था – डी एन ए प्रतिवेदन जो कि एक वैज्ञानिक साक्ष्य है, के अनुसार; पीड़िता के वैजाईनल स्वेब एवं कपड़ों से अपीलार्थी के शुक्राणु एवं वीर्य पाये गए और इस संबंध में अपीलार्थी द्वारा कोई स्पष्टीकरण नहीं है – डी एन ए प्रतिवेदन, दोषसिद्धि कायम रखने के लिए विश्वसनीय है – दोषसिद्धि; परिस्थितिजन्य साक्ष्य पर आधारित की जा सकती है – दोषसिद्धि कायम रखी गई – मृत्यु दण्डादेश अपास्त एवं आजीवन कारावास अधिरोपित किया गया – अपील अंशतः मंजूर – निर्देश प्रमुक्त किया गया। (विनय वि. म.प्र. राज्य)

(DB)...2752

Penal Code (45 of 1860), Section 309 – Medical Evidence – Appreciation of Evidence – Held – Although one incised wound found on neck of appellant but there is no evidence on record that appellant tried to commit suicide by causing injury to himself by cutting his neck – Appellant acquitted of charge u/S 309 IPC. [Pratap Vs. State of M.P.] (DB)...2502

दण्ड संहिता (1860 का 45), धारा 309 – चिकित्सीय साक्ष्य – साक्ष्य का मूल्यांकन – अभिनिर्धारित – यद्यपि अपीलार्थी की गर्दन पर एक कटा घाव पाया गया परंतु अमिलेख पर ऐसा कोई साक्ष्य नहीं है कि अपीलार्थी ने अपनी गर्दन काटकर स्वयं को चोट कारित करते हुए आत्महत्या करने का प्रयत्न किया – अपीलार्थी को भारतीय दण्ड संहिता की धारा 309 के अंतर्गत आरोप से दोषमुक्त किया गया। (प्रताप वि. म.प्र. राज्य)

(DB)...2502

Penal Code (45 of 1860), Section 326, Criminal Procedure Code, 1973 (2 of 1974), Section 378 (3) – Acquittal Converted to Conviction – Held – Supreme Court has concluded that if order of acquittal has been made on improper and erroneous appreciation of evidence, the same can be set aside by Appellate Court. [State of M.P. Vs. Keshovrao] (DB)...2480

दण्ड संहिता (1860 का 45), धारा 326, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 378(3) – दोषमुक्ति दोषसिद्धि में परिवर्तित – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यदि दोषमुक्ति का आदेश साक्ष्य के अनुचित एवं त्रुटिपूर्ण मूल्यांकन पर किया गया है, तो अपीली न्यायालय द्वारा उक्त को अपास्त किया जा सकता है। (म.प्र. राज्य वि. केशवराव) (DB)...2480

Penal Code (45 of 1860), Section 326 & 324 – Acquittal – Appreciation of Evidence – Testimony of Eye Witnesses – Minor Contradictions – Held – Although prosecution failed to prove that complainant sustained grievous injury but there are sufficient direct evidence of complainant and eye witnesses available against accused which were duly corroborated by medical evidence that simple injuries were voluntarily caused by accused using sharp cutting object – No material contradiction between ocular and medical evidence – Thus offence u/S 326 IPC not made out but offence u/S 324 is made out and proved beyond reasonable doubt – Finding of acquittal is hereby set aside – Accused guilty of and is convicted for offence u/S 324 IPC. [State of M.P. Vs. Keshovrao] (DB)...2480

दण्ड संहिता (1860 का 45), धारा 326 व 324 – दोषमुक्ति – साक्ष्य का मूल्यांकन – चक्षुदर्शी साक्षीगण के परिसाक्ष्य – मामूली विरोधाभास – अभिनिर्धारित – यद्यपि अभियोजन, साबित करने में विफल रहा कि परिवादी ने गंभीर चोट सहन की परन्तु अभियुक्त के विरुद्ध परिवादी एवं चक्षुदर्शी साक्षीगण के पर्याप्त प्रत्यक्ष साक्ष्य उपलब्ध हैं जो कि चिकित्सीय साक्ष्य द्वारा सम्यक् रूप से संपुष्ट थे कि साधारण चोटें अभियुक्त द्वारा धारदार काटने वाली वस्तु का उपयोग करते हुये स्वेच्छापूर्वक कारित की गई थी – चाक्षुष एवं चिकित्सीय साक्ष्य के मध्य कोई तात्त्विक विरोधाभास नहीं – इसलिए भारतीय दंड संहिता की धारा 326 के अंतर्गत अपराध नहीं बनता परन्तु धारा 324 के अंतर्गत अपराध बनता है तथा युक्तियुक्त संदेह से परे साबित हुआ है – दोषमुक्ति का निष्कर्ष एतद् द्वारा अपास्त – अभियुक्त भारतीय दंड संहिता की धारा 324 के अंतर्गत अपराध हेतु दोषी तथा दोषसिद्ध किया गया। (म.प्र. राज्य वि. केशवराव) (DB)...2480

Penal Code (45 of 1860), Sections 363, 366, 376(2)(I) and

Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/4 – Held – Prosecutrix and her parents have not deposed the exact date of birth – Documentary evidence do not establish that age of prosecutrix was less than 18 yrs – No ossification test conducted – Date of birth recorded by mother in school record based on presumption and is not reliable – No conclusive evidence regarding age of prosecutrix – Story told by prosecutrix is unnatural and doubtful – Delayed FIR – As per medical opinion, prosecutrix habitual to intercourse – No external or internal injury found on prosecutrix – Accused deserves benefit of doubt – Application dismissed. [Rabiya Bano Vs. Rashid Khan] (DB)...2579

दण्ड संहिता (1860 का 45), धाराएँ 363, 366, 376(2)(I) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 3/4 – अभिनिर्धारित – अभियोक्त्री एवं उसके माता-पिता ने निश्चित जन्मतिथि का अभिसाक्ष नहीं किया – दस्तावेजी साक्ष्य स्थापित नहीं करता है कि अभियोक्त्री की आयु 18 वर्ष से कम थी – कोई अस्थि विकास परीक्षण संचालित नहीं किया गया – माता द्वारा शाला अभिलेख में अभिलिखित की गई जन्मतिथि, उपधारणा पर आधारित है तथा विश्वसनीय नहीं है – अभियोक्त्री की आयु के संबंध में कोई निश्चायक साक्ष्य नहीं है – अभियोक्त्री द्वारा बताई गई कहानी अस्वाभाविक और संदेहास्पद है – प्रथम सूचना प्रतिवेदन में विलंब – चिकित्सीय मतानुसार, अभियोक्त्री संभोग की आदी है – अभियोक्त्री पर कोई बाहरी या अंदरूनी चोट नहीं पाई गई – अभियुक्त संदेह का लाभ दिये जाने योग्य है – आवेदन खारिज। (राबिया बानो वि. राशिद खान) (DB)...2579

Penal Code (45 of 1860), Section 376 – Conviction – Life Imprisonment – Appreciation of Evidence – Testimony of Prosecutrix – Minor contradictions – Effect – Held – Rape committed by father on his minor daughter aged about 14 yrs. – Victim carrying fetus of 14-16 weeks – Prosecutrix giving evidence in detail regarding instances of rape does not amount to improvement with regard to FIR and case diary statements – Mere extracting out minor contradictions and inconsistencies in cross examination of the prosecutrix is not sufficient to discredit the veracity of her evidence – Trial Court rightly awarded life sentence – Appeal dismissed. [Ramnath Vs. State of M.P.] (DB)...2706

दण्ड संहिता (1860 का 45), धारा 376 – दोषसिद्धि – आजीवन कारावास – साक्ष्य का मूल्यांकन – अभियोक्त्री का साक्ष्य – गौण विरोधाभास – प्रभाव – अभिनिर्धारित – पिता द्वारा उसकी करीब 14 वर्षीय अप्राप्तवय पुत्री के साथ बलात्संग कारित किया गया – पीड़िता 14-16 सप्ताह का भ्रूण धारण कर रही है –

अभियोक्त्री द्वारा बलात्संग के संबंध में विस्तृत साक्ष्य दी जाना, प्रथम सूचना प्रतिवेदन तथा केस डायरी कथनों में सुधार की कोटि में नहीं आता — अभियोक्त्री के प्रतिपरीक्षण में मात्र गौण विरोधाभास एवं असंगतियां निकलवाना, उसके साक्ष्य की सत्यता पर अविश्वास करने के लिए पर्याप्त नहीं है — विचारण न्यायालय ने उचित रूप से आजीवन दण्डादेश प्रदान किया — अपील खारिज। (रामनाथ वि. म. प्र. राज्य) (DB)...2706

Penal Code (45 of 1860), Section 376 and Criminal Procedure Code, 1973 (2 of 1974), Section 53-A — DNA Profiling — Held — Provision of Section 53-A Cr.P.C. was inserted w.e.f. 23.06.06 whereas the incident is of 2005, thus it was not mandatory for prosecution to get DNA profiling of prosecutrix, her fetus and appellant to ascertain that appellant was the father of fetus — Non holding of DNA test will not affect the prosecution case adversely. [Ramnath Vs. State of M.P.] (DB)...2706

दण्ड संहिता (1860 का 45), धारा 376 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 53-ए — डीएनए प्रोफाइलिंग — अभिनिर्धारित — धारा 53-ए द.प्र.स. का उपबंध, 23.06.2006 से प्रभावी रूप से अंतःस्थापित किया गया था जबकि घटना 2005 की है अतः, यह सुनिश्चित करने के लिए कि अपीलार्थी भ्रूण का पिता था, अभियोजन के लिए अभियोक्त्री, उसके भ्रूण एवं अपीलार्थी के डीएनए प्रोफाइलिंग करवाना आज्ञापक नहीं था — डीएनए परीक्षण न कराया जाना, अभियोजन के प्रकरण को प्रतिकूल रूप से प्रभावित नहीं करेगा। (रामनाथ वि. म.प्र. राज्य) (DB)...2706

Penal Code (45 of 1860), Section 376 and Evidence Act (1 of 1872), Section 6 — Hearsay Evidence — Admissibility — Held — As both prosecution witnesses are close relatives (mausi and mami) of prosecutrix and that she lost her mother long back before incident, she confided in them as to the person who was behind her pregnancy — It does not fall under hearsay evidence — In fact and situation, evidence reliable and admissible u/S 6 of the Act of 1872. [Ramnath Vs. State of M.P.] (DB)...2706

दण्ड संहिता (1860 का 45), धारा 376 एवं साक्ष्य अधिनियम (1872 का 1), धारा 6 — अनुश्रुत साक्ष्य — ग्राह्यता — अभिनिर्धारित — चूंकि दोनों अभियोजन साक्षीगण, अभियोक्त्री के निकट संबंधी (मौसी व मामी) हैं और यह कि घटना से काफी समय पहले उसने अपनी माता को खोया था, उसने विश्वास से उन्हें उस व्यक्ति के बारे में बताया जो उसके गर्भधारण का कारण था — यह अनुश्रुत साक्ष्य के अंतर्गत नहीं आता — इस तथ्य एवं स्थिति में, 1872 के अधिनियम की धारा 6 के अंतर्गत, साक्ष्य, विश्वसनीय एवं ग्राह्य है। (रामनाथ वि. म.प्र. राज्य) (DB)...2706

Penal Code (45 of 1860), Section 376(2)(g) – Rape – Conviction – Medical Evidence – Injury – Held – If sexual intercourse committed forcibly by two persons, prosecutrix would certainly receive injuries – Absence of any injury on person of prosecutrix including private parts leads to conclusion that either appellants did not resort to offence of forcible sexual intercourse or it was with her tacit consent – Statement of prosecutrix is contrary to medical evidence and thus do not inspire confidence – Conviction set aside – Appeal allowed. [Dhanraj Singh Vs. State of M.P.] ...*134

दण्ड संहिता (1860 का 45), धारा 376(2)(जी) – बलात्संग – दोषसिद्धि – चिकित्सीय साक्ष्य – चोट – अभिनिर्धारित – यदि दो व्यक्तियों द्वारा बलपूर्वक लैंगिक संभोग किया गया है, अभियोक्त्री को निश्चित रूप से चोटें कारित होंगी – अभियोक्त्री के शरीर पर, जिसमें गुप्तांग शामिल है, किसी चोट की अनुपस्थिति इस निष्कर्ष की ओर ले जाती है कि या तो अपीलार्थीगण ने बलपूर्वक लैंगिक संभोग के अपराध का सहारा नहीं लिया या वह उसकी मौन सम्मति के साथ हुआ था – अभियोक्त्री का कथन चिकित्सीय साक्ष्य के विरुद्ध है और इसलिए विश्वास उत्पन्न नहीं करता – दोषसिद्धि अपास्त – अपील मंजूर। (धनराज सिंह वि. म.प्र. राज्य) ...*134

Penal Code (45 of 1860), Section 376(2)(g) & Evidence Act (1 of 1872), Section 114-A – Presumption – Onus of Proof – Medical Evidence – Held – In a rape case, the onus is always on prosecutrix to prove affirmatively each ingredients of offence, it seeks to establish and such onus never shifts – Trial Court erred in raising presumption u/S 114-A of the Act of 1872 in absence of any medical evidence regarding resistance/injury. [Dhanraj Singh Vs. State of M.P.]...*134

दण्ड संहिता (1860 का 45), धारा 376(2)(जी) एवं साक्ष्य अधिनियम (1872 का 1), धारा 114-ए – उपधारणा – सबूत का भार – चिकित्सीय साक्ष्य – अभिनिर्धारित – बलात्संग के प्रकरण में, अपराध जिसे स्थापित करना चाहा गया है, के प्रत्येक घटक को सकारात्मक रूप से साबित करने का भार सदैव अभियोक्त्री पर होता है, तथा उक्त भार कभी भी अन्य पर परिवर्तित नहीं होता – विचारण न्यायालय ने प्रतिरोध/चोट के संबंध में किसी चिकित्सीय साक्ष्य की अनुपस्थिति में 1872 के अधिनियम की धारा 114-ए के अंतर्गत उपधारणा बनाने में त्रुटि की। (धनराज सिंह वि. म.प्र. राज्य) ...*134

Penal Code (45 of 1860), Section 379 & 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Criminal Proceedings – Wife left matrimonial house alleging dowry demands and cruelty by husband and mother-in-law – She lodged FIR

u/S 498-A, filed complaint case under Domestic Violence Act and also filed a case seeking maintenance – Subsequently, in-laws also filed a complaint case u/S 379 IPC against wife, her father and her cousin alleging that while leaving matrimonial house, wife took all ornaments with her – Cognizance taken and summons issued – Challenge to – Held – It is a matrimonial/civil dispute, daughter-in-law taking her belongings /ornaments is not an act of theft – No evidence that ornaments were not stridhan – No FIR was lodged by respondent – Criminal case u/S 379 IPC filed as a counter blast – Proceedings against applicants is abuse of process of Court/law – Proceedings quashed – Application allowed. [Saiyad Asfaq Ali Vs. Kaisar Begum Owaisi]

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दण्ड संहिता (1860 का 45), धारा 379 व 498-ए एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – दाण्डिक कार्यवाहियों को अभिखंडित किया जाना – पत्नी ने पति एवं सास द्वारा दहेज की मांग और क्रूरता का अभिकथन करते हुए दाम्पत्य निवास छोड़ा – उसने धारा 498-ए के अंतर्गत प्रथम सूचना प्रतिवेदन दर्ज किया, घरेलू हिंसा अधिनियम के अंतर्गत परिवाद प्रकरण प्रस्तुत किया एवं भरणपोषण चाहते हुए एक प्रकरण भी प्रस्तुत किया – तत्पश्चात्, ससुराल वालों ने भी पत्नी, उसके पिता और रिश्ते का भाई के विरुद्ध भारतीय दण्ड संहिता की धारा 379 के अंतर्गत परिवाद प्रकरण प्रस्तुत किया, जिसमें अभिकथन किया गया कि दाम्पत्य निवास छोड़ते समय, पत्नी अपने साथ समस्त आभूषण ले गई – संज्ञान लिया गया तथा समन जारी किया गया – को चुनौती – अभिनिर्धारित – यह एक वैवाहिक/सिविल विवाद है, बहू द्वारा अपनी वस्तुएं/आभूषण ले जाना चोरी का कृत्य नहीं है – आभूषण स्त्रीधन नहीं थे इसका कोई साक्ष्य नहीं – प्रत्यर्थी द्वारा कोई प्रथम सूचना प्रतिवेदन दर्ज नहीं किया गया – भारतीय दण्ड संहिता की धारा 379 के अंतर्गत दाण्डिक प्रकरण एक प्रत्याक्रमण के रूप में प्रस्तुत किया गया – आवेदकगण के विरुद्ध कार्यवाहियां न्यायालय/विधि की प्रक्रिया का दुरुपयोग है – कार्यवाहियां अभिखंडित – आवेदन मंजूर। (सैय्यद अशफाक अली वि. केसर बेगम ओवेसी)

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Penal Code (45 of 1860), Sections 395, 397, 398 & 459 – Conviction – Identification of Accused and Recovered Articles – Delay – Effect – Test identification parade was conducted after 11 months of incident – Held – Prosecution witnesses identified the accused persons during the test identification parade as well as before the trial Court – Nothing came in cross examination of the prosecution witnesses who identified the accused persons, to make the identification during investigation to be doubtful – Witness did not admit in cross examination

that accused persons were shown to them prior to test identification parade – Accused rightly identified by the witnesses during test identification parade – Further held – So far as articles are concerned, they belonged to the complainant and other injured persons and therefore their identification cannot be doubted – Involvement of accused persons in the crime was properly proved – Appeal dismissed. [Padamnath Vs. State of M.P.] (DB)...3068

दण्ड संहिता (1860 का 45), धाराएँ 395, 397, 398 व 459 – दोषसिद्धि – अभियुक्त एवं बरामद वस्तुओं की पहचान – विलंब – प्रभाव – घटना के 11 माह पश्चात् पहचान परेड संचालित की गई थी – अभिनिर्धारित – अभियोजन साक्षीगण ने पहचान परेड के साथ-साथ विचारण न्यायालय के समक्ष भी अभियुक्तगण की पहचान की – अभियोजन साक्षीगण जिन्होंने अभियुक्तगण की पहचान की, के प्रतिपरीक्षण में ऐसा कुछ नहीं आया जो कि अन्वेषण के दौरान पहचान को संदेहास्पद बना दे – साक्षी ने प्रतिपरीक्षण में यह स्वीकार नहीं किया कि पहचान परेड से पूर्व अभियुक्तगण उन्हें दिखाये गये थे – पहचान परेड के दौरान साक्षीगण द्वारा अभियुक्त की उचित रूप से पहचान की गई – आगे अभिनिर्धारित – जहां तक कि वस्तुओं का संबंध है, वे परिवादी एवं अन्य आहत व्यक्तियों की हैं तथा इसलिए उनकी पहचान पर संदेह नहीं किया जा सकता – अपराध में अभियुक्तगण की सहभागिता उचित रूप से साबित हुई थी – अपील खारिज। (पदमनाथ वि. म.प्र. राज्य) (DB)...3068

Penal Code (45 of 1860), Sections 407, 409 & 420 – Framing of Charge – Ingredients – Applicant, the owner of warehouse from where foodgrains of farmers were found missing – Charge framed u/S 409 & 420 IPC – Held – Principal offence of criminal breach of trust is *prima facie* made out but charge framed u/S 409 do not relate to warehouse keeper – Alleged offence specifically falls within purview of Section 407 IPC – Trial Court directed to frame charge u/S 407 IPC alongwith Section 420 IPC – Revision allowed. [Krishan Mohan Agrawal Vs. State of M.P.] ...*140

दण्ड संहिता (1860 का 45), धाराएँ 407, 409 व 420 – आरोप विरचित किया जाना – घटक – आवेदक उस मांडागार का स्वामी जहां से किसानों का खाद्यान्न लापता पाया गया था – धारा 409 व 420 भा.दं.सं. के अंतर्गत आरोप विरचित किया गया – अभिनिर्धारित – प्रथम दृष्ट्या आपराधिक न्यास भंग का प्रमुख अपराध बनता है किन्तु धारा 409 के अंतर्गत विरचित आरोप मांडागारपाल के संबंध में नहीं – अभिकथित अपराध विनिर्दिष्ट रूप से धारा 407 भा.दं.सं. की परिधि के भीतर आता है – विचारण न्यायालय को धारा 407 भा.दं.सं. के साथ-साथ धारा 420

मा.द.सं. के अंतर्गत आरोप विरचित करने के लिए निदेशित किया गया - पुनरीक्षण मंजूर। (कृष्ण मोहन अग्रवाल वि. म.प्र. राज्य) ...*140

Penal Code (45 of 1860), Section 415 & 420 - Cheating - Ingredients of - Discussed and explained. [Amita Shrivastava (Smt.) Vs. State of M.P.] ...2868

दण्ड संहिता (1860 का 45), धारा 415 व 420 - छल - के घटक - विवेचित एवं स्पष्ट किये गये। (अमिता श्रीवास्तव (श्रीमती) वि. म.प्र. राज्य) ...2868

*Penal Code (45 of 1860), Section 415 & 420 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Cheating and Forgery - Ingredients - Applicants/land owners entered into agreement to sale with "A" whereby a cheque of Rs. 1 lakh was paid as advance which was later dishonoured - Vide notice, agreement was cancelled and applicants entered into fresh agreement with "B" whereby a cheque of Rs. 10 lakh was paid as advance - Due to objection raised by "A", subsequent agreement was not finally executed and "B" also failed to pay the remaining amount - Applicants cancelled subsequent agreement and returned the advance amount to "B", who filed private complaint whereby cognizance taken by Court - Held - Petitioners were *bonafide*, there is no deception with fraudulent or dishonest intention - Complaint and order taking cognizance quashed - Application allowed. [Amita Shrivastava (Smt.) Vs. State of M.P.]* ...2868

दण्ड संहिता (1860 का 45), धारा 415 व 420 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - छल एवं कूटरचना - घटक - आवेदकगण/भूमि स्वामीगण ने "ए" के साथ विक्रय का करार किया जिसके द्वारा रु. 1 लाख का एक चेक अग्रिम के रूप में अदा किया गया था जो कि बाद में अनादृत हुआ था - नोटिस द्वारा करार निरस्त किया गया था तथा आवेदकगण ने "बी" के साथ नया करार किया जिसके द्वारा अग्रिम के रूप में रु. 10 लाख का एक चेक अदा किया गया - "ए" द्वारा उठाये गये आक्षेप के कारण, पश्चात्पूर्ति करार को अंतिम रूप से निष्पादित नहीं किया गया था एवं "बी" भी शेष रकम का भुगतान करने में विफल रहा - आवेदकगण ने पश्चात्पूर्ति करार निरस्त किया और "बी" को अग्रिम की रकम लौटा दी, जिसने प्राईवेट परिवाद प्रस्तुत किया जिसका संज्ञान न्यायालय द्वारा लिया गया - अभिनिर्धारित - याचीगण सद्भाविक थे, कपट या बेईमान आशय के साथ कोई प्रवचना नहीं है - परिवाद तथा संज्ञान लेने का आदेश अभिखंडित - आवेदन मंजूर। (अमिता श्रीवास्तव (श्रीमती) वि. म.प्र. राज्य) ...2868

Penal Code (45 of 1860), Sections 420, 467, 468, 471, 201 r/w 120-B – See – Criminal Procedure Code, 1973, Section 438 [Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation] (DB)...3138

दण्ड संहिता (1860 का 45), धारा 420, 467, 468, 471, 201 सहपठित 120-बी – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएँ 438 (दिव्य किशोर सत्पथी (डॉ.) वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...3138

Penal Code (45 of 1860), Section 498-A – See – Criminal Procedure Code, 1973, Section 320 & 482 [Ramakant Vs. State of M.P.] ...3130

दण्ड संहिता (1860 का 45), धारा 498-ए – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 320 व 482 (रमाकान्त वि. म.प्र. राज्य) ...3130

Penal Code (45 of 1860), Section 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 177 & 178 – Continuing Offence in relation to territorial jurisdiction and in relation to limitation to taking cognizance – Discussed and explained. [Dushyant Singh Gaharwar Vs. State of M.P.] ...*135

दण्ड संहिता (1860 का 45), धारा 498-ए एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 177 व 178 – संज्ञान लेने के लिए क्षेत्रीय अधिकारिता के संबंध में तथा परिसीमा के संबंध में जारी रहने वाला अपराध – विवेचित एवं स्पष्ट किया गया। (दुष्यंत सिंह गहरवार वि. म.प्र. राज्य) ...*135

Penal Code (45 of 1860), Section 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 177 & 178 – Territorial Jurisdiction – Held – As per the FIR and statements of complainant's witnesses u/S 161 Cr.P.C., all the instances of alleged cruelty regarding dowry demands were committed in district Shahdol in matrimonial home – None stated that any instance took place at wife's parental home at district Satna – Case triable at Shahdol and not in district Satna – Impugned order set aside – Revision allowed. [Dushyant Singh Gaharwar Vs. State of M.P.] ...*135

दण्ड संहिता (1860 का 45), धारा 498-ए एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 177 व 178 – क्षेत्रीय अधिकारिता – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन तथा धारा 161 दं.प्र.सं. के अंतर्गत परिवादी के साक्षीगण के कथनों के अनुसार दहेज की मांग से संबंधित अभिकथित क्रूरता की सभी घटनाएँ दाम्पत्य गृह में जिला शहडोल में कारित की गई थी – किसी ने कथन नहीं किया कि कोई

भी घटना पत्नी के पैतृक गृह, जिला सतना में घटी – प्रकरण, शहडोल में विचारणीय है और न कि जिला सतना में – आक्षेपित आदेश अपास्त – पुनरीक्षण मंजूर। (दुष्यंत सिंह गहरवार वि. म.प्र. राज्य) ...*135

Police Regulations, M.P., Regulation 226 & 228 – See – Service Law [Rudrapal Singh Chandel Vs. State of M.P.] ...2333

पुलिस विनियम, म.प्र., विनियमन 226 व 228 – देखें – सेवा विधि (रुद्रपाल सिंह चंदेल वि. म.प्र. राज्य) ...2333

*Post Graduate Medical Education Regulations, 2000, Regulations 9(iv) & 9(vii), M.P. Government Autonomous Medical and Dental Post Graduate Course (Degree/Diploma) Admission Rules, 2017, Rule 2(vii) and Constitution – Article 14 – Definition – Amendment – Constitutional Validity – In-service Doctors – Reservation and additional/incentive marks for serving in rural and notified areas – Held – Vide amendment government deleted provision for granting benefit to rural services alone and have restricted the same to services rendered in difficult and/or remote areas – Such amended definition is declared *ultra vires*, unconstitutional and is violative of Article 14 of Constitution – Rule 2(vii) of Rules of 2017 quashed – Writ petition allowed to such extent. [Brijesh Yadav (Dr.) Vs. State of M.P.]* (DB)...*124

स्नातकोत्तर चिकित्सा शिक्षा विनियम, 2000, विनियमन 9(iv) व 9(vii), म. प्र. शासन स्वशासी चिकित्सा एवं दंत चिकित्सा स्नातकोत्तर पाठ्यक्रम (डिग्री/डिप्लोमा) प्रवेश नियम, 2017, नियम 2(vii), एवं संविधान – अनुच्छेद 14 – परिभाषा – संशोधन – संवैधानिक विधिमान्यता – सेवारत चिकित्सक – ग्रामीण एवं अधिसूचित क्षेत्रों में सेवा प्रदान करने हेतु आरक्षण एवं अतिरिक्त/प्रोत्साहन अंक – अभिनिर्धारित – संशोधन के माध्यम से सरकार ने केवल ग्रामीण सेवाओं का लाभ प्रदान करने के लिए उपबंध को हटा दिया तथा कठिन और/या दूरस्थ क्षेत्रों में प्रदान की गई सेवाओं तक के लिए उक्त को सीमित कर दिया – ऐसी संशोधित परिभाषा अधिकारातीत, असंवैधानिक घोषित की गई तथा संविधान के अनुच्छेद 14 का उल्लंघन है – 2017 के नियमों का नियम 2(vii) अभिखंडित – रिट याचिका उक्त सीमा तक मंजूर। (ब्रजेश यादव (डॉ.) वि. म.प्र. राज्य) (DB)...*124

Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d) & 13(2) and Constitution – Article 20 & 20(3) – Admissibility of Voice Recording – Application by prosecution for providing voice sample of accused persons was allowed – Challenge to – Held – Trial has not vet

commenced – Charges have not been framed by trial Court – Providing voice sample would not prejudice to the applicant – Voice recorder conversation is admissible in evidence and there is no violation of Article 20 or 20(3) of Constitution – Application dismissed. [Buddha Sen Kumhar Vs. State of M.P.] (DB)...*132

अष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(डी) व 13(2) एवं संविधान – अनुच्छेद 20 व 20(3) – आवाज की रिकॉर्डिंग की ग्राह्यता – अभियोजन द्वारा अभियुक्तगण की आवाज का नमूना उपलब्ध कराये जाने हेतु आवेदन मंजूर किया गया – को चुनौती – अभिनिर्धारित – विचारण अभी आरंभ नहीं हुआ है – विचारण न्यायालय द्वारा आरोप विरचित नहीं किये गये हैं – आवाज का नमूना उपलब्ध कराने से आवेदक को प्रतिकूल प्रभाव कारित नहीं होगा – आवाज रिकॉर्डर की बातचीत साक्ष्य में ग्राह्य है तथा संविधान के अनुच्छेद 20 या 20(3) का कोई उल्लंघन नहीं हुआ है – आवेदन खारिज। (बुद्ध सेन कुम्हार वि. म.प्र. राज्य) (DB)...*132

Prevention of Corruption Act (49 of 1988), Section 8 & 12 – Revision Against framing of Charge – Ingredients – After receiving the bribe amount, the main accused handed over the amount to his wife (applicant) on the spot and thereafter they were trapped and bribe amount was recovered from applicant – Held – It cannot be presumed that wife merely acts as a channel between bribe giver and the receiver public servant (husband) without any gain of herself – She accepted the bribe through her husband – She is liable for trial u/S 8 and 12 of the Act of 1988. [Shobha Jain (Smt.) Vs. State of M.P.] (DB)...2555

अष्टाचार निवारण अधिनियम (1988 का 49), धारा 8 व 12 – आरोप विरचित किये जाने के विरुद्ध पुनरीक्षण – घटक – रिश्वत राशि प्राप्त होने के पश्चात्, मुख्य अभियुक्त ने घटना स्थल पर अपनी पत्नी (आवेदिका) को राशि सौंप दी तथा तत्पश्चात् वे पकड़े गये थे तथा आवेदिका से रिश्वत राशि बरामद की गई थी – अभिनिर्धारित – यह उपधारणा नहीं की जा सकती कि पत्नी ने, स्वयं के किसी लाभ के बिना रिश्वतदाता तथा प्राप्तकर्ता लोकसेवक (पति) के बीच मात्र एक माध्यम के रूप में कार्य किया – उसने अपने पति के माध्यम से रिश्वत स्वीकार की – वह 1988 के अधिनियम की धारा 8 एवं 12 के अन्तर्गत विचारण हेतु दायी है। (शोभा जैन (श्रीमती) वि. म.प्र. राज्य) (DB)...2555

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2) – See – Criminal Procedure Code, 1973, Section 438 [Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation] (DB)...3138

अष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) व 13(2) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 438 (दिव्य किशोर सत्पथी (डॉ.) वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...3138

Prevention of Corruption Act (49 of 1988), Section 13(1)(e) & 13(2) – Conviction – Criminal Trial – Grounds and Principle – Held – To succeed in criminal trial, prosecution has to pitch its case beyond reasonable doubt and lodge it in the realm of “must be true” category and not leaving it in domain of “may be true” – In present case, prosecution failed to prove beyond reasonable doubt the charge of criminal misconduct u/S 13(1)(e) and punishable u/S 13(2) of the Act of 1988. [Vasant Rao Guhe Vs. State of M.P.] (SC)...2304

अष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) व 13(2) – दोषसिद्धि – दण्डिक विचारण – आधार एवं सिद्धांत – अभिनिर्धारित – दण्डिक विचारण में सफल होने के लिए, अभियोजन को अपना प्रकरण युक्तियुक्त संदेह से परे स्थापित करना होगा तथा “सत्य हो सकता है” के अधिकार क्षेत्र में न छोड़ते हुए “सत्य होना चाहिए” श्रेणी के दायरे में दर्ज करना होगा – वर्तमान प्रकरण में, अभियोजन 1988 के अधिनियम की धारा 13(1)(ई) के अंतर्गत आपराधिक अवचार तथा धारा 13(2) के अंतर्गत दण्डनीय आरोप को युक्तियुक्त संदेह से परे साबित करने में विफल रहा है। (बसंत राव गुहे वि. म.प्र. राज्य) (SC)...2304

Prevention of Corruption Act (49 of 1988), Section 13(1)(e) & 13(2) – Disproportionate Assets – Hypothetical Quantification – Presumptions – Public servant convicted for possessing disproportionate assets – Held – Prosecution admitted that appellant’s agricultural income and pay for certain months were omitted while calculating total income – Courts below indulged in voluntary exercise to quantify/compute the same premised on presumptions – Any adverse inference prejudicial to appellant cannot be drawn when he was not confronted with altered imputation – Appellant subjected to a trial and was convicted for a charge different from one originally framed against him and that too on basis of calculations by applying guess work – Entitled for benefit of doubt – Conviction set aside – Appeal allowed. [Vasant Rao Guhe Vs. State of M.P.] (SC)...2304

अष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) व 13(2) – अनुपातित आस्तियाँ – काल्पनिक परिमाणन – उपधारणाएँ – लोक सेवक को अनुपातित आस्तियों का कब्जा रखने हेतु दोषसिद्धि किया गया – अभिनिर्धारित – अभियोजन ने स्वीकार किया कि कुल आय की गणना करते समय अपीलार्थी की कृषि

आय और कतिपय माह के भुगतान का लोप हुआ था — उपधारणाओं के आधार पर उक्त को परिमाणित/गणना करने हेतु निचले न्यायालय स्वैच्छिक प्रयोग में लिप्त हुये — अपीलार्थी के लिए प्रतिकूल कोई विपरीत निष्कर्ष नहीं निकाला जा सकता जब उसका परिवर्तित अभ्यारोपण से सामना नहीं कराया गया था — अपीलार्थी को विचारण के अधीन किया गया तथा उसे उसके विरुद्ध मूल रूप से विरचित किये गये आरोप से भिन्न किसी अन्य आरोप हेतु दोषसिद्ध किया गया और वह भी अनुमान लगाते हुए गणना के आधार पर — संदेह के लाभ का हकदार — दोषसिद्धि अपास्त — अपील मंजूर। (बसंत राव गुहे वि. म.प्र. राज्य) (SC)...2304

Prevention of Food Adulteration Act (37 of 1954), Sections 2(ia), 7(i), 13(2), 16(1)(a)(i) & 20-A – Adulteration and Misbranding – Quashment of Charge – Petition against framing of charges against the shop owner and manufacturer (present applicant) – Food inspector carried out inspection of a shop purchased three packets of *haldi* and sent for public analyst whereby it was revealed that same was adulterated and misbranded – Held – U/S 13(2) of the Act of 1954, applicant can request for Re-examination of the sample from the Central Food Laboratory but in the present case, shelf life of sample of *haldi* has lapsed prior to filing of complaint before the Court, thus defence of applicant would be severely prejudiced if right available u/S 13(2) of the Act of 1954 is taken away – Cognizance taken against the applicant so far it relates to adulteration is hereby set aside – Further held – Perusal of complaint shows that on the cover of the seized article (*haldi* packets), complete name and address of the manufacturing or packaging unit has not been provided, hence for the charge of misbranding, *prima facie* case is made out against the applicant – For the charge of misbranding, trial may proceed – Application partly allowed. [Sai Enterprises (M/s.) Vs. State of M.P.] ...*144

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धाराएँ 2(ia), 7(i), 13(2), 16(1)(ए)(i) व 20-ए – अपमिश्रण एवं मिथ्या छाप – आरोप अभिखंडित किया जाना – दुकान के मालिक एवं विनिर्माता (वर्तमान आवेदक) के विरुद्ध आरोप विरचित किये जाने के विरुद्ध याचिका – खाद्य निरीक्षक ने दुकान का निरीक्षण किया, तीन पैकेट हल्दी खरीदी और लोक विश्लेषक को भेजी, जिससे यह प्रकट हुआ था कि वह अपमिश्रित एवं मिथ्या छाप वाली है – अभिनिर्धारित – 1954 के अधिनियम की धारा 13(2) के अंतर्गत, आवेदक, नमूने का पुनः परीक्षण, केंद्रीय खाद्य प्रयोगशाला से किये जाने हेतु निवेदन कर सकता है, परंतु वर्तमान प्रकरण में, न्यायालय के समक्ष परिवाद प्रस्तुत किये जाने के पूर्व हल्दी के नमूने की मंडारण व उपयोग होने की अवधि व्यपगत हो चुकी है अतः, आवेदक के बचाव पर गंभीर

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रूप से प्रतिकूल प्रभाव पड़ेगा यदि 1954 के अधिनियम की धारा 13(2) के अंतर्गत उपलब्ध अधिकार छीन लिया गया – आवेदक के विरुद्ध लिया गया संज्ञान, जहां तक अपमिश्रण से संबंधित है, एतद द्वारा अपास्त किया गया – आगे अभिनिर्धारित – परिवाद का परिशीलन दर्शाता है कि जब्तशुदा वस्तु (हल्दी पैकेट्स) के आवरण/कवर पर विनिर्माण या पैकेजिंग करने वाली ईकाई का पूर्ण नाम व पता उपलब्ध नहीं कराया गया है, अतः मिथ्या छाप के आरोप हेतु आवेदक के विरुद्ध प्रथम दृष्ट्या प्रकरण बनता है – मिथ्या छाप के आरोप हेतु विचारण की कार्यवाही की जा सकती है – आवेदन अंशतः मंजूर। (साई इंटरप्राइजेस (मे.) वि. म.प्र. राज्य) ...*144

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Protection of Children from Sexual Offences Act, (32 of 2012), Section 6 – See – Penal Code, 1860, Sections 302, 376(A), (D) & 449 [Vinay Vs. State of M.P.] (DB)...2752

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Protection of Women from Domestic Violence Act (43 of 2005), Sections 2(o), 12, 18, 28(1) & 31 and Protection of Women from Domestic Violence Rules, 2006, Rule 6(5) – Maintenance Order & Protection Order – Enforcement – Wife filed application u/S 31 of the Act of 2005 for recovery of arrears of maintenance amount from applicant – Bailable warrant issued – Challenge to – Held – As per Section 18 r/w Section 2(o) of the Act of 2005, order of granting maintenance is not a Protection Order and non-payment of same would not attract Section 31 of the Act – Impugned order quashed – Further held – Rule 6(5) of Rules of 2006 provides enforcement of order of Magistrate as provided in Section 125 Cr.P.C., hence Magistrate directed to treat the application filed u/S 31 as if filed under Rule 6(5) of the Rules of 2006 and proceed giving opportunity of hearing to applicant – Application partly allowed. [Rakesh Sahu Vs. Smt. Mamta Sahu] ...2575

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धाराएँ 2(ओ), 12, 18, 28(1) व 31 एवं घरेलू हिंसा से महिलाओं का संरक्षण नियम, 2006, नियम 6(5) – भरणपोषण आदेश व संरक्षण आदेश – प्रवर्तन – पत्नी ने आवेदक से भरणपोषण की राशि के बकाया की वसूली हेतु 2005 के अधिनियम की धारा 31 के अंतर्गत आवेदन प्रस्तुत किया – जमानतीय वारंट जारी किया गया – को चुनौती – अभिनिर्धारित – 2005 के अधिनियम की धारा 18 सहपठित धारा 2(ओ) के अनुसार भरणपोषण प्रदान करने का आदेश एक संरक्षण आदेश नहीं है तथा उक्त का असंदाय अधिनियम की धारा 31 को आकर्षित नहीं करेगा – आक्षेपित आदेश अपास्त – आगे अभिनिर्धारित – नियम 2006 का नियम 6(5) दंड प्रक्रिया संहिता की धारा 125 में दिये गये उपबंध अनुसार मजिस्ट्रेट के आदेश का प्रवर्तन उपबंधित करता है, इसलिए मजिस्ट्रेट को धारा 31 के अंतर्गत प्रस्तुत आवेदन को ऐसा माने जाने हेतु जैसे कि वह नियम 2006 के नियम 6(5) के अंतर्गत प्रस्तुत किया गया हो तथा आवेदक को सुनवाई का अवसर देते हुए कार्यवाही करने के लिए निदेशित किया गया – आवेदन अंशतः मंजूर। (राकेश साहू वि. श्रीमती ममता साहू) ...2575

*Protection of Women from Domestic Violence Act (43 of 2005), Sections 3, 18 & 31 – Economic Abuse – Protection Order – Breach of Maintenance Order – Held – If there is any instance of domestic violence for which an affirmative or prohibitory order is passed u/S 18 of the Act of 2005, provisions of Section 31 of the Act can be invoked for breach of such order – Non – payment of maintenance allowance is also a breach of ‘protection order’ or ‘interim protection order’ – Application u/S 31 is maintainable. [Surya Prakash Vs. Smt. Rachna] (DB)...*150*

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धाराएँ 3, 18 व 31 – आर्थिक दुरुपयोग – संरक्षण आदेश – भरणपोषण आदेश का भंग – अभिनिर्धारित – यदि घरेलू हिंसा की कोई घटना है, जिसके लिए 2005 के अधिनियम की धारा 18 के अंतर्गत एक सकारात्मक या प्रतिषेधात्मक आदेश पारित किया गया है, ऐसे आदेश के भंग हेतु अधिनियम की धारा 31 के उपबंधों का अवलंब लिया जा सकता है – भरणपोषण भत्ते का असंदाय भी ‘संरक्षण आदेश’ अथवा ‘अंतरिम संरक्षण आदेश’ का भंग है – धारा 31 के अंतर्गत आवेदन पोषणीय है। (सूर्य प्रकाश वि. श्रीमती रचना) (DB)...*150

Protection of Women from Domestic Violence Act (43 of 2005), Section 12 – Live-in-relationship – Presumption – Rebuttal – Held – Continuous cohabitation of man and woman as husband and wife may raise presumption of marriage but the presumption drawn from long cohabitation is a rebuttable one and if there are circumstances which weaken and destroy the presumption, Court cannot ignore them – In

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घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 12 – लिव-इन-रिलेशनशिप – उपधारणा – खंडन – अभिनिर्धारित – पुरुष और स्त्री का पति एवं पत्नी के रूप में निरंतर सहवास, विवाह की उपधारणा निर्मित कर सकता है परंतु लंबे सहवास से निकाली गई उपधारणा खंडनीय है और यदि ऐसी परिस्थितियाँ हैं जो उपधारणा को कमजोर एवं नष्ट करती हैं, न्यायालय उन्हें अनदेखा नहीं कर सकता – वर्तमान प्रकरण में, उपधारणा का खंडन होता है। (सोमा देवी वि. रामकृपाल मिश्रा) ...2561

Protection of Women from Domestic Violence Act (43 of 2005), Section 12 & 2(f) – Maintenance – Eligibility – Relationship in Nature of Marriage – Held – Petitioner was aware that respondent was married man with wife and children, before commencement of their relationship – Status of petitioner is that of concubine or mistress who entered into relationship not in the nature of marriage – Concubine cannot maintain relationship in the nature of marriage because such relationship will not have exclusivity and will not be monogamous in character – “Domestic Relationship” discussed and explained – Domestic Violence Act 2005 does not take care of such relationship – Petitioner not entitled for any relief under the Act of 2005 – Petition dismissed. [Sooma Devi Vs. Ramkripal Mishra] ...2561

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 12 व 2(एफ) – भरणपोषण – पात्रता – विवाह के स्वरूप का संबंध – अभिनिर्धारित – याची को प्रत्यर्थी के साथ उसका संबंध आरंभ होने के पूर्व से जानकारी थी कि प्रत्यर्थी विवाहित पुरुष था जिसकी पत्नी एवं संतानें थी – याची की हैसियत उपपत्नी या रखेल की है जिसने ऐसा संबंध बनाया जो विवाह के स्वरूप का नहीं – उपपत्नी, विवाह के स्वरूप का संबंध नहीं रख सकती क्योंकि ऐसे संबंध में अनन्यता नहीं होगी और एक पत्नीक प्रकृति का नहीं होगा – “घरेलू संबंध” विवेचित एवं स्पष्ट किया गया – घरेलू हिंसा अधिनियम, 2005 ऐसे संबंध का निपटान नहीं करता – याची 2005 के अधिनियम के अंतर्गत किसी अनुतोष की हकदार नहीं – याचिका खारिज। (सोमा देवी वि. रामकृपाल मिश्रा) ...2561

Protection of Women from Domestic Violence Rules, 2006, Rule 6(5) – See – Protection of Women from Domestic Violence Act, 2005, Sections 2(o), 12, 18, 28(1) & 31 [Rakesh Sahu Vs. Smt. Mamta Sahu] ...2575

घरेलू हिंसा से महिलाओं का संरक्षण नियम, 2006, नियम 6(5) – देखें –
घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005, धाराएँ 2(ओ), 12, 18,
28(1) व 31 (राकेश साहू वि. श्रीमती ममता साहू) ...2575

Public Health and Family Welfare (Gazetted) Service Recruitment Rules, M.P., 1988 and Public Health and Family Welfare (Gazetted) Service Recruitment Rules, M.P., 2007 – Petitioners are Association of Doctors, Medical Officers, Dental Surgeons, Specialists and Dental Specialists – Vide order dated 26.08.2008 held entitled for Four Tier grade pay scale on completion of tenure of 6 years – Subsequently, said order was withdrawn and recovery order was issued alongwith adjustment – Challenge to – Held – Benefit of four tier grade scale of pay would be available to petitioners as per substituted Schedule 1 of the new Rules on completion of 6 yrs of service from date of initial appointment on recommendation of Screening Committee – Further held – Before passing the impugned order, neither any show cause notice was issued nor any opportunity of hearing was given – Benefit cannot be withdrawn behind their back – Order withdrawing the benefit is an unreasoned order and is contrary to Rules of 2007 and is hereby quashed – Arrears directed to be paid within two months and if recovery already made then it be reimbursed – Petition allowed. [Ravindra Tathodi (Dr.) Vs. State of M.P.] ...*161

लोक स्वास्थ्य एवं परिवार कल्याण (राजपत्रित) सेवा भर्ती नियम, म.प्र., 1988 एवं लोक स्वास्थ्य एवं परिवार कल्याण (राजपत्रित) सेवा भर्ती नियम, म.प्र., 2007 – याचीगण, चिकित्सकों, चिकित्सा अधिकारियों, दंत चिकित्सकों, विशेषज्ञों एवं दंत विशेषज्ञों का संघ है – आदेश दिनांक 26.08.2008 के माध्यम से, 6 वर्ष की अवधि पूर्ण होने पर फोर टियर श्रेणी वेतनमान के लिये हकदार अभिनिर्धारित किये गये – तत्पश्चात्, कथित आदेश वापस लिया गया था तथा समायोजन के साथ वसूली आदेश जारी किया गया था – को चुनौती – अभिनिर्धारित – अनुवीक्षण समिति की सिफारिश पर प्रारंभिक नियुक्ति की तिथि से 6 वर्ष की सेवा पूर्ण होने पर, नये नियमों की प्रतिस्थापित अनुसूची 1 के अनुसार याचीगण को फोर टियर श्रेणी वेतनमान का लाभ उपलब्ध होगा – आगे अभिनिर्धारित – आक्षेपित आदेश पारित करने से पूर्व, न हि कोई कारण बताओ नोटिस जारी किया गया था तथा न हि सुनवाई का कोई अवसर प्रदान किया गया था – उनके पीठ पीछे लाभ वापस नहीं लिया जा सकता – लाभ वापस लिये जाने का आदेश एक अकारण आदेश है एवं 2007 के नियमों के प्रतिकूल है तथा एतद्द्वारा अभिखंडित – बकाये का भुगतान दो माह के भीतर किये जाने हेतु निदेशित किया गया और यदि वसूली पहले ही

की जा चुकी है तो इसकी प्रतिपूर्ति की जाएगी - याचिका मंजूर। (रवीन्द्र ताथोडी (डॉ.) वि. म.प्र. राज्य) ...*161

Public Health and Family Welfare (Gazetted) Service Recruitment Rules, M.P., 2007 - See - Public Health and Family Welfare (Gazetted) Service Recruitment Rules, M.P., 1988 [Ravindra Tathodi (Dr.) Vs. State of M.P.] ...*161

लोक स्वास्थ्य एवं परिवार कल्याण (राजपत्रित) सेवा भर्ती नियम, म.प्र., 2007 - देखें - लोक स्वास्थ्य एवं परिवार कल्याण (राजपत्रित) सेवा भर्ती नियम, म.प्र., 1988 (रवीन्द्र ताथोडी (डॉ.) वि. म.प्र. राज्य) ...*161

Rajya Suraksha Adhiniyam, M.P. 1990 (4 of 1991), Section 5(a) & (b) - Externment Orders - Grounds - S.P. submitted its report dated 18.12.2012 referring number of cases against petitioner - Collector passed externment order of petitioner in 2017 - Appeal was also dismissed by Commissioner - Challenge to - Held - Nothing is brought on record to show that petitioner "is engaged or is about to engaged" in commission of offences in proximity to earlier cases - Other offences committed by him years or months back cannot be a ground to pass externment order - No material on record to believe that witnesses amongst public are not turning up to depose against petitioner before the Court out of fear or on account of danger to person and property - No such finding is recorded by competent authority - Relying on the report of S.P. of 2012, after 4 ½ yrs, passing an externment order is without application of mind - Requirements of Section 5 (b) are not fulfilled - Impugned orders are set aside - Petition allowed. [Anek @ Anil Nageshwar Vs. State of M.P.] ...2368

राज्य सुरक्षा अधिनियम, म.प्र., 1990 (1991 का 4), धारा 5(ए) व (बी) - निष्कासन आदेश - आधार - याची के विरुद्ध प्रकरणों की संख्या निर्दिष्ट करते हुये दिनांक 18.12.2012 को एस. पी. ने अपना प्रतिवेदन प्रस्तुत किया - कलेक्टर ने 2017 में याची का निष्कासन आदेश पारित किया - आयुक्त द्वारा अपील भी खारिज की गई थी - को चुनौती - अभिनिर्धारित - यह दर्शाने हेतु अभिलेख पर कुछ प्रस्तुत नहीं किया गया कि याची पूर्व प्रकरणों से निकटता वाले अपराधों को कारित करने में "शामिल है या शामिल होने वाला है" - वर्षों या महीनों पहले उसके द्वारा कारित किये गये अन्य अपराध निष्कासन आदेश पारित करने के लिए आधार नहीं हो सकते - यह विश्वास करने हेतु अभिलेख पर कोई सामग्री नहीं है कि आम

जनता में से कोई साक्षीगण, न्यायालय के समक्ष याची के विरुद्ध कथन करने के लिये, भय से या व्यक्ति और संपत्ति को खतरे के कारण सामने नहीं आ रहे — सक्षम प्राधिकारी द्वारा ऐसा कोई निष्कर्ष अभिलिखित नहीं किया गया है — एस. पी. के 2012 के प्रतिवेदन पर 4 ½ वर्ष पश्चात्, विश्वास कर, निष्कासन आदेश पारित किया जाना मस्तिष्क के प्रयोग बिना है — धारा 5(बी) की अपेक्षाएं पूर्ण नहीं होती — आक्षेपित आदेश अपास्त किये गये — याचिका मंजूर। (अनेक उर्फ अनिल नागेश्वर वि. म.प्र. राज्य)

...2368

Recognised Examination Act, M.P. (10 of 1937), Section 3-D(1) & (2) – See – Criminal Procedure Code, 1973, Section 438 [Divya Kishore Satpathi (Dr.) Vs. Central Bureau of Investigation] (DB)...3138

मान्यताप्राप्त परीक्षा अधिनियम, म.प्र. (1937 का 10), धारा 3-डी(1) व (2) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 438 (दिव्य किशोर सत्पथी (डॉ.) वि. सेंट्रल ब्यूरो ऑफ इन्वेस्टिगेशन) (DB)...3138

Rewa State Land Revenue and Tenancy Code, 1935, Section 57(4) and Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (3 of 1955), Section 149, 151(2) & (3) – Gairhaqdar Tenant – Patta – Held – A gairhaqdar tenant cannot get patta of “Tank” u/S 57(4) of the Code of 1935 – Similarly, right of pattedar tenant shall not accrue or deemed to have accrued in respect of a Tank – Patta of this land cannot be granted u/S 151 of Act of 1953. [Ramakant Pathak Vs. State of M.P.] ...2699

रीवा राज्य भू-राजस्व तथा काश्तकारी संहिता, 1935, धारा 57(4) एवं विंध्य प्रदेश भू-राजस्व तथा काश्तकारी अधिनियम, 1953 (1955 का 3), धारा 149, 151(2) व (3) – गैरहकदार काश्तकार – पट्टा – अभिनिर्धारित – एक गैरहकदार काश्तकार को 1935 की संहिता की धारा 57(4) के अंतर्गत “जलाशय” का पट्टा नहीं मिल सकता – समान रूप से, एक “जलाशय” के संबंध में पट्टेदार काश्तकार का अधिकार प्रोद्भूत नहीं होगा या प्रोद्भूत होना समझा नहीं जाएगा – इस भूमि का पट्टा, 1953 के अधिनियम की धारा 151 के अंतर्गत प्रदान नहीं किया जा सकता। (रमाकांत पाठक वि. म.प्र. राज्य)

...2699

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Section 24(2) – See – Land Acquisition Act, 1894, Sections 4, 6, 11 & 18 [Shushila Bai Vs. State of M.P.] ...2954

भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम (2013 का 30), धारा 24(2) - देखें - भूमि अर्जन अधिनियम, 1894, धाराएँ 4, 6, 11 व 18 (मुशीला बाई वि. म.प्र. राज्य) ...2954

Service Law – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9(2)(a) – Suspension – Charge Sheet – Issuance & Service of – Limitation – Suspension order of Respondent No. 2 was quashed in writ petition on the ground that charge sheet was issued beyond the period of 45 days – Challenge in appeal – Held – As per records available and the Register of Dispatch produced by appellant, charge sheet was issued on 45th day from date of issuance of suspension order – Apex Court concluded that issuance of charge sheet means its dispatch to government servant and further fact of its service is not a necessary required part – “Issue” of charge sheet does not mean service of the same – Charge sheet timely issued – Impugned order set aside – Appeal allowed. [Municipal Corporation, Jabalpur Vs. State of M.P.] (DB)...*127

*सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9(2)(ए) – निलंबन – आरोप पत्र – जारी किया जाना व तामील – परिसीमा – प्रत्यर्थी क्र. 2 के निलंबन आदेश को इस आधार पर रिट याचिका में अभिखंडित किया गया कि आरोप पत्र 45 दिनों की अवधि से परे जारी किया गया था – अपील में चुनौती – अभिनिर्धारित – उपलब्ध अभिलेखों तथा अपीलार्थी द्वारा प्रस्तुत जावक पंजी के अनुसार, निलंबन आदेश जारी किये जाने की तिथि से 45 वें दिन पर आरोप पत्र जारी किया गया था – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि आरोप पत्र जारी करने का अर्थ शासकीय सेवक को इसके प्रेषण से है तथा इसकी तामील का आगे का तथ्य, आवश्यक अपेक्षित भाग नहीं है – आरोप पत्र “जारी” किये जाने का अर्थ उक्त की तामील से नहीं है – आरोप-पत्र समय पर जारी किया गया – आक्षेपित आदेश अपास्त – अपील मंजूर। (म्यूनिसिपल कारपोरेशन, जबलपुर वि. म.प्र. राज्य) (DB)...*127*

Service Law – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14(23) and Police Regulations, M.P., Regulation 226 & 228 – Dismissal from Service – Opportunity of Hearing – Natural Justice. – Petitioner, a police constable was dismissed from service under a departmental enquiry – Appeal by petitioner was also dismissed – Challenge to – Held – Although the victim girl turned hostile, conduct of petitioner who was a member of

disciplinary force, uttering obscene and indecent words, causing physical and mental harassment to the victim girl in a drunken condition in public domain has certainly damaged the image of Police Department – In the instant case, there was proper consideration of statement of prosecution witnesses and medical evidence – Punishment of dismissal is not shockingly disproportionate – No interference warranted under Writ Jurisdiction – Petition dismissed. [Rudrapal Singh Chandel Vs. State of M.P.] ...2333

सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 (23) एवं पुलिस विनियम, म.प्र., विनियमन 226 व 228 – सेवा से बर्खास्तगी – सुनवाई का अवसर – नैसर्गिक न्याय – याची, एक पुलिस आरक्षक को विभागीय जांच के अंतर्गत सेवा से बर्खास्त किया गया था – याची द्वारा की गई अपील भी खारिज की गई थी – को चुनौती – अभिनिर्धारित – यद्यपि पीड़ित बालिका पक्षद्रोही हो गई, याची, जो कि अनुशासित बल का सदस्य था के आचरण, सार्वजनिक स्थान पर शराब के नशे की हालत में पीड़ित लड़की को अश्लील एवं अशिष्ट शब्द कहना शारीरिक एवं मानसिक उत्पीड़न कारित करना, ने निश्चित रूप से पुलिस विभाग की छवि घूमिल की है – वर्तमान प्रकरण में, अभियोजन साक्षीगण एवं चिकित्सीय साक्ष्य को उचित रूप से विचार में लिया गया था – बर्खास्तगी का दंड आश्चर्यजनक रूप से अननुपातिक नहीं है – रिट अधिकारिता में किसी हस्तक्षेप की आवश्यकता नहीं – याचिका खारिज। (रुद्रपाल सिंह चंदेल वि. म.प्र. राज्य) ...2333

*Service Law – Class III (Non-Ministerial and Ministerial) Jail Service Recruitment Rules, M.P., 1974, Schedule Sr. No. 7 & 8 – Music Teacher – Principle of Equal Pay for Equal Work – Pay Scale – Held – Qualifications and duties of a Music Teacher of educational department and that of Jail department are different – Duties in educational department is full time whereas in jail, it is of temporary nature and require only for those prisoners who opt for music – Respondent, a music teacher in jail department not entitled for same pay scale as of the one in educational department – Principle of equal pay for equal work not applicable in the present case – Impugned order set aside – Appeal allowed. [State of M.P. through Secretary Department of Jail/Home, Bhopal Vs. Rajesh Kumar Shukla] (DB)...*149*

सेवा विधि – तृतीय वर्ग (अलिपिक वर्गीय तथा लिपिक वर्गीय) जेल सेवा भर्ती नियम, म.प्र., 1974, अनुसूची क्र. 7 व 8 – संगीत शिक्षक – समान कार्य के लिए समान वेतन का सिद्धांत – वेतन मान – अभिनिर्धारित – शैक्षणिक विभाग तथा

जेल विभाग के संगीत शिक्षक की अर्हताएं एवं कर्तव्य भिन्न हैं – शैक्षणिक विभाग में कर्तव्य पूर्णकालिक हैं जबकि जेल में, यह अस्थायी प्रकृति के हैं तथा केवल उन बंदियों के लिए अपेक्षित हैं जो संगीत का विकल्प चुनते हैं – प्रत्यर्थी, जेल विभाग में एक संगीत शिक्षक, शैक्षणिक विभाग के समान वेतनमान के लिए हकदार नहीं है – समान कार्य के लिए समान वेतन का सिद्धांत वर्तमान प्रकरण में लागू नहीं होता – आक्षेपित आदेश अपास्त – अपील मंजूर। (म.प्र. राज्य द्वारा सेक्रेटरी डिपार्टमेन्ट ऑफ जेल/होम, मोपाल वि. राजेश कुमार शुक्ला) (DB)...*149

Service Law – Compassionate Appointment – Grounds & Criteria – Held – Application for compassionate appointment has to be considered as per policy prevailing at the time of consideration of the application – Full Bench of this Hon'ble Court has held that compassionate appointment is neither a vested right which can be considered at any time even after the crisis created by death of the earning member is over nor it is a hereditary right which can be bequeathed – Impugned order set aside – Writ Appeal allowed. [M.P. Electricity Board, Now-M.P.P.K.V.V. Co. Ltd., Jabalpur Vs. Chandrabosh Tripathi] (DB)...*125

सेवा विधि – अनुकंपा नियुक्ति – आधार व मानदंड – अभिनिर्धारित – आवेदन को विचार में लेते समय विद्यमान नीति के अनुसार अनुकंपा नियुक्ति के लिए आवेदन पर विचार किया जाना चाहिए – इस माननीय न्यायालय की पूर्ण न्यायपीठ ने अभिनिर्धारित किया है कि अनुकंपा नियुक्ति न तो एक निहित अधिकार है जिस पर उपाार्जन करने वाले सदस्य की मृत्यु द्वारा उत्पन्न संकट समाप्त होने के पश्चात् भी किसी भी समय विचार किया जा सकता है, न ही आनुवंशिक अधिकार है जिसे वसीयत किया जा सकता है – आक्षेपित आदेश अपास्त – रिट अपील मंजूर। (एम.पी. इलेक्ट्रिसिटी बोर्ड, अब-एम.पी.पी.के.व्ही.व्ही. कं. लि., जबलपुर वि. चन्द्रबोस त्रिपाठी) (DB)...*125

Service Law – Contract Appointment – Termination – Held – Petitioners are contract appointees and they carry limited rights – Contract can always be terminated as per the terms of Contract – Contract appointment was made in 2016 for a period of one year which has already expired – Notices were issued by the competent Authority – As per the terms of contract, one month notice of termination of contract appointment was issued – No illegality in such termination – No ground for interference – Petitions dismissed. [Maya Kataria Vs. State of M.P.] ...*142

सेवा विधि - संविदा नियुक्ति - समाप्ति - अभिनिर्धारित - याचीगण
संविदा पर नियुक्त व्यक्ति हैं तथा वे सीमित अधिकार रखते हैं - संविदा हमेशा संविदा की शर्तों के अनुसार समाप्त की जा सकती है - संविदा नियुक्ति 2016 में एक वर्ष की अवधि के लिए की गई थी जो कि पहले ही समाप्त हो चुकी है - सक्षम प्राधिकारी द्वारा नोटिस जारी किये गये थे - संविदा की शर्तों के अनुसार, संविदा नियुक्ति की समाप्ति हेतु एक माह का नोटिस जारी किया गया था - ऐसी समाप्ति में कोई अवैधता नहीं - हस्तक्षेप के लिए कोई आधार नहीं - याचिकाएँ खारिज। (माया कटारिया वि. म.प्र. राज्य) ...*142

Service Law - Increments - Recovery - Permissibility - Held -
Once the benefit has already been extended to petitioner on account of judgments delivered by Single Bench as well as by Division Bench of this Court, only because subsequently Full Bench has delivered a judgment regarding grant of increments, the benefit which has already accrued in favour of petitioner cannot be withdrawn - Recovery order passed by respondents is quashed - Petition allowed. [Raghav Singh Chouhan Vs. State of M.P.] ...*158

सेवा विधि - वेतन वृद्धि - वसूली - अनुज्ञेयता - अभिनिर्धारित - एक बार
जब याची को पहले ही इस न्यायालय की एकल न्यायपीठ और साथ ही खंड न्यायपीठ द्वारा घोषित निर्णयों के आधार पर लाभ दिया गया है तब मात्र इसलिए कि पश्चात्वर्ती रूप से पूर्ण न्यायपीठ द्वारा, वेतनवृद्धि प्रदान किये जाने से संबंधित निर्णय घोषित किया है, याची के पक्ष में पहले से प्रोद्भूत लाभ वापस नहीं लिया जा सकता - प्रत्यर्थीगण द्वारा पारित वसूली का आदेश अभिखंडित किया गया - याचिका मंजूर। (राघव सिंह चौहान वि. म.प्र. राज्य) ...*158

Service Law - Principle of Equal Pay for Equal Work - Interpretation - Held -
The Apex Court has concluded that principle/doctrine of equal pay for equal work can only apply if employees are similarly situated and there is complete and wholesale identity between two groups - Principle/Doctrine cannot be applied only because nature of work is same, unless there is parity in mode of appointment, experience and educational qualifications between them. [State of M.P. through Secretary Department of Jail/Home, Bhopal Vs. Rajesh Kumar Shukla] (DB)...*149

सेवा विधि - समान कार्य के लिए समान वेतन का सिद्धांत - निर्वचन -
अभिनिर्धारित - सर्वोच्च न्यायालय ने यह निष्कर्षित किया है कि समान कार्य के लिए

समान वेतन का सिद्धांत केवल तब लागू हो सकता है यदि कर्मचारीगण एक समान परिस्थिति में हैं तथा दो समूहों के मध्य पूर्ण एवं बड़े पैमाने पर समानता है – सिद्धांत केवल इस कारण से लागू किया नहीं जा सकता कि कार्य की प्रकृति समान है, जब तक कि उनके मध्य नियुक्ति के ढंग, अनुभव तथा शैक्षणिक अर्हताओं में समानता न हो। (म.प्र. राज्य द्वारा सेक्रेटरी डिपार्टमेंट ऑफ जेल/होम, भोपाल वि. राजेश कुमार शुक्ला) (DB)...*149

Service Law – Promotion – Consequential Benefits – Held – Respondents are directed to issue order of promotion to petitioner/ other petitioners with all consequential benefits w.e.f. date on which her/their juniors stood promoted. [Sangeeta Soni (Smt.) Vs. State of M.P.] ...*145

सेवा विधि – पदोन्नति – परिणामिक लाभ – अभिनिर्धारित – याची/अन्य याचीगण को, जिस तिथि से उसके/उनके कनिष्ठों की पदोन्नति हुई है, उस तिथि से सभी परिणामिक लाभों के साथ पदोन्नति का आदेश जारी करने के लिए प्रत्यर्थागण को निदेशित किया गया। (संगीता सोनी (श्रीमती) वि. म.प्र. राज्य) ...*145

Service Law – Promotion – Staff Nurses are entitled to be promoted on the post of Sister Tutor after obtaining degree in B.Sc. (Nursing) from M.P. Bhoj Open University – Government had itself allowed the University to conduct aforesaid course – Action of State Government as well as Indian Nursing Council and the assigned reasons for denying such promotion is arbitrary, unjust and without application of mind – Impugned order and letter quashed – Petitions allowed. [Sangeeta Soni (Smt.) Vs. State of M.P.] ...*145

सेवा विधि – पदोन्नति – म.प्र. भोज मुक्त विश्वविद्यालय से बी.एस.सी. (उपचर्या) में उपाधि अभिप्राप्त करने के पश्चात् स्टाफ परिवारिकाएँ, शिक्षिका सिस्टर के पद पर पदोन्नति की हकदार हैं – सरकार ने स्वयं उपरोक्त पाठ्यक्रम संचालित करने हेतु विश्वविद्यालय को मंजूरी दी थी – राज्य सरकार साथ ही भारतीय उपचर्या परिषद् की कार्रवाई एवं उक्त पदोन्नति से इन्कार हेतु दिये गये कारण मनमाने, अन्यायपूर्ण व मस्तिष्क का प्रयोग किये बिना हैं – आक्षेपित आदेश व पत्र अभिखंडित – याचिकाएँ मंजूर। (संगीता सोनी (श्रीमती) वि. म.प्र. राज्य) ...*145

Service Law – Retired Employee – Recovery of Excess Payment – Ground – Excess amount paid to petitioner (a retired employee) was deducted from his pension payment order – Challenge to – Held – In

view of the ratio laid down by Apex Court in case of Jagdev Singh and the undertaking given by petitioner regarding recovery of excess payment made, same may be recovered from his pensionary benefits – Recovery made is proper – Petition dismissed. [Ashraf Khan Vs. State of M.P.] ...*123

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स्वतंत्रता संग्राम सैनिक सम्मान निधि नियम, म.प्र., 1972, नियम 3(6) –

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THE INDIAN LAW REPORTS M.P. SERIES, 2017
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IMPORTANT ACTS, AMENDMENTS, CIRCULARS,
NOTIFICATIONS AND STANDING ORDERS.

MADHYA PRADESH ACT

No. 30 OF 2017

THE INDIAN STAMP (MADHYA PRADESH AMENDMENT)
ACT, 2016

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MADHYA PRADESH ACT

No. 30 OF 2017

**THE INDIAN STAMP (MADHYA PRADESH AMENDMENT)
ACT, 2016**

[Received the assent of the President on the 21st September, 2017; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 23rd October, 2017, page Nos. 1152(6) to 1152(11)].

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

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

1. Short title and commencement. (1) This Act may be called the Indian Stamp (Madhya Pradesh Amendment) Act, 2016.

(2) It shall come into force from the date of its publication in the Madhya Pradesh Gazette.

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

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

(i) for clause (11), the following clause shall be substituted, namely:—

“(11) “Duly Stamped” as applied to an instrument means that the instrument bears a stamp of not less than the proper amount chargeable as per the Schedule I and Schedule-1-A to this Act and that such stamp has been affixed or used in accordance with the law for the time being in force in India;”;

(ii) after clause (11), the following clause shall be inserted, namely :—

“(11-A) “e-stamp or electronic stamp” means an electronic record or its impression on paper, created to denote the payment of stamp duty;”;

(iii) after clause (12), the following clause shall be inserted, namely :—

“(12-A) “Impound” means to take an instrument into custody of the Public Officer with an endorsement made thereon in

this regard;”;

- (iv) after clause (16-A), the following clauses shall be inserted, namely :—

“(16-B) “Market value” in relation to any property which is the subject matter of an instrument, means the price which such property would fetch or would have fetched if sold in the open market on the date of execution of such instrument determined by the Authority empowered to do so in the manner laid down under this Act or rules made thereunder, or the consideration stated in the instrument, whichever applicable;

(16-C) “Market value Guidelines” means the set of market values of immovable property in different villages, planning areas, municipalities, corporations and other areas in the State notified by the designated Authority under rules made under this Act for the purpose of determining chargeability of an instrument related to the property, with stamp duty;”;

- (v) for clause (24), the following clause shall be substituted, namely:—

“(24-) Settlement means any non-testamentary disposition, in writing, of movable or immovable property made—

- (a) in consideration of marriage,
- (b) for the purpose of distributing property of the settler amongst his family, or
- (c) for any religious or charitable purpose,

and includes an agreement in writing to make such a disposition and, where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition;”;

- (vi) for clause (26), the following clause shall be substituted, namely:—

“(26) “Stamp” means any mark, seal or endorsement by any agency or person duly authorized by the State Government, and includes an adhesive or impressed stamp, or e-stamp, for the purpose of duty chargeable under this Act,”.

4. Amendment of Section 35. In Section 35 of the principal Act, in

the proviso,—

- (i) for clause (a), the following clause shall be substituted, namely:—
 - “(a) any such instrument shall be admitted in evidence, registered or authenticated on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with a penalty of two percent of the deficient portion of stamp duty for every month or part thereof, from the date of execution of the instrument, but in no case the amount of penalty so calculated shall exceed the principal amount of deficit stamp duty to be recovered;”;
- (ii) for clause (d), the following clause shall be substituted, namely:—
 - “(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter IX or part D of chapter X of the Code of Criminal Procedure, 1973 (No. 2 of 1974);”;
- (iii) clause (f) shall be deleted.

5. Substitution of Section 40. For Section 40 of the principal Act, the following Section shall be substituted, namely:—

“40. Collector’s power to stamp instruments impounded.

- (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under sub-section (2) of Section 38, not being a receipt or a bill of exchange or promissory note, he shall adopt the following procedure—
 - (a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;
 - (b) if, after holding an enquiry, he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of two percent of the deficient portion of stamp duty for every month or part thereof

from the date of execution of the instrument and shall certify by endorsement thereon that it is duly stamped. The amount shall be payable by the person liable to pay the duty:

Provided that in no case the amount of penalty so calculated shall exceed the principal amount of deficit stamp duty to be recovered:

Provided further that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this Section;

(c) for the purpose of enquiry under this chapter, the Collector shall have the power to summon and enforce the attendance of witnesses, including the parties to the instrument or any of them and to compel the production of documents by the same means and so far as may be in the same manner as is provided in the case of Civil Court under the Code of Civil Procedure, 1908 (5 of 1908);

(d) any person aggrieved by an order of the Collector under sub-section (1) may, in the prescribed manner, appeal against such order to the officer notified by the State Government in this regard:

Provided that no appeal shall be admitted unless such person has deposited at least 25 percent of the amount of deficit stamp duty as ordered by the Collector. Such amount shall be adjustable against the amount payable as per final order of the appellate authority, or refundable together with an interest of one percent for every month or part thereof from the date of deposit;

(e) any person aggrieved by an order passed in appeal under clause (d) may appeal against such order to the Chief Controlling Revenue Authority in the prescribed manner;

(f) every first and second appeal shall be filed within thirty days from the date of communication of the order against which the appeal is filed, along with a certified copy of the order to which the objection is made and shall be presented and verified in such manner as may be prescribed;

Provided that in computing the period aforesaid, the time requisite for obtaining a copy of the order appealed against shall be excluded;

(g) the appellate authority, in deciding the appeal, shall follow such procedure as may be prescribed:

Provided that no order shall be passed without affording opportunity of being heard to the appellant.

(h) subject to orders passed in first or second appeal, as the case may be, the order passed by the Collector under sub-section (1) shall be final and shall not be called into question in any Civil Court or before any other authority whatsoever.

(2) Every certificate under clause (a) and (b) of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under sub-section (2) of Section 38, the Collector shall, when he has dealt with it as provided by this Section, return it to the impounding officer.”.

6. Substitution of Section 41. For Section 41 of the Principal Act, the following Section shall be substituted, namely:

“41. **Instruments unduly stamped by accident.** If any instrument chargeable with duty and not duly stamped, not being a receipt or a bill of exchange or promissory note, is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, together with an interest of two percent of the deficient portion of stamp duty for every month or part thereof, from the date of execution of the instrument, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, receive such amount and proceed as next hereinafter prescribed:

Provided that in no case the amount of interest so calculated shall exceed the principal; amount of deficit stamp duty to be recovered.”.

7. Amendment of Section 45. In Section 45 of the principal Act,—

- (i) sub-section (1), shall be deleted;
- (ii) for sub-section (2), the following sub-section shall be substituted, namely;—

“(2) Where, in the opinion of the Cheif Controlling Revenue Authority, stamp duty in excess of that which is legally chargeable has been charged and paid, such Authority may, upon application in writing made within six months of the payment, refund the excess, following procedure as prescribed.”.

8. Deletion of Section 47-A. Section 47-A of the principal Act shall be deleted.

9. Substitution of Section 48-B. For Section 48-B of the principal Act, the following Section shall be substituted, namely;—

48-B. “Where the deficiency of stamp duty is noticed from a copy of any instrument. Where the deficiency of stamp duty is noticed from a copy of any instrument, the Collector may, by order, require the production of the original instrument from a person in possession or in custody of the original instrument for the purpose of satisfying himself as to the adequacy of amount of duty paid thereon. If the original instrument is not produced before him within the period specified in the order it shall be presumed that the original document is not duly stamped and the Collector may proceed in the manner provided in Section 40 for the recovery of deficit stamp duty and penalty:

Provided that the certificate of the Collrctor that the document is duly stamped, shall be endorsed on the original document:

Provided further that no action under this Section shall be taken after a period of five years from the date of execution of such instrument.”.

10. Amendment of Section 53. In Section 53 of the principal Act, for clause (c), the following clause shall be substituted, namely;—

“(c) at his discretion, the Same value in money, deducting two naye paise for each rupee or fraction of a rupee.”.

11. Substitution of Section 73. For Section 73 of the principal Act, the following Section shall be substituted, namely:—

“73. Books etc., to be open to inspection. Every Public Officer or any authority or body incorporated by or under any law for the time being in force having in his custody any registers, books, records, papers, documents, proceedings or electronic records, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall, at all reasonable times, permit any officer, not below the rank of sub-registrar as defined in the Registration Act, 1908 (No. 16 of 1908), authorised in writing by the Collector, to inspect for such purpose the registers, books, records, papers, documents, proceedings and electronic records and to take such copies, notes and extracts as he may deem necessary, without fee or charge. If necessary, such authorised officer shall direct the public officer or the person to impound the document under Section 33. failing which he shall proceed himself to impound the same.

Explanation—For the purpose of this Section Collector means the Collector of the district.”.

12. Substitution of Section 76-A. For Section 76-A of the principal Act, the following Section shall be substituted, namely:—

“76-A. Delegation of certain powers. The State Government may, by Notification in the official Gazette. delegate—

- (a) all or any of the powers conferred on it to the Chief Controlling Revenue Authority, and
- (b) all or any of the powers conferred on the Chief Controlling Revenue Authority under the Act to such subordinate officers of the State Government as may be specified in the notification.”.

13. Amendment of Schedule 1-A. In Schedule 1-A to the principal Act, in Explanation to article 36 (Gift), Explanation-1 to article 48 (Partition), Explanation-1 to article 50 (Power of Attorney), Explanation to article 54 (Release) and Explanation-II to article 57 (Settlement), for the word “sister”, the words “sister, daughter-in-law” shall be substituted.

NOTES OF CASES SECTION

Short Note

***(151)(DB)**

Before Mr. Justice R.S. Jha & Mr. Justice A.K. Joshi

W.P. No. 5976/2016 (Jabalpur) decided on 3 May, 2017

ADHARSH GIRLS COLLEGE

...Petitioner

Vs.

STATE OF M.P.

...Respondent

(Alongwith W.P. Nos. 5979/2016, 5982/2016, 7189/2016)

Constitution – Article 226 – Private Educational Institution – Post Matric Scholarship – Scheduled Caste and Scheduled Tribe Students – Held – Students belonging to Scheduled Caste and Scheduled Tribes category are entitled to scholarship only to extent decided by State which in the instant case is the fee charged for a similar course in government colleges and nothing more – Fee charged by an educational institution and grant of post matric scholarship by State are two separate and distinct issues and have no co-relation between them – Petition dismissed.

संविधान – अनुच्छेद 226 – निजी शैक्षणिक संस्था – मैट्रिक पश्चात् छात्रवृत्ति – अनुसूचित जाति एवं अनुसूचित जनजाति के छात्र – अभिनिर्धारित – अनुसूचित जाति एवं अनुसूचित जनजाति से संबंधित छात्र, केवल राज्य द्वारा विनिश्चित की गई सीमा तक ही छात्रवृत्ति के हकदार हैं जो कि वर्तमान प्रकरण में शासकीय महाविद्यालयों में समान पाठ्यक्रम के लिए ली जाने वाली फीस है तथा इससे अधिक कुछ नहीं – शैक्षणिक संस्था द्वारा ली जाने वाली फीस एवं राज्य द्वारा मैट्रिक पश्चात् छात्रवृत्ति प्रदान की जाना, दो पृथक एवं भिन्न विवादक हैं तथा इनके मध्य कोई सहसंबंध नहीं है – याचिका खारिज।

The order of the Court was passed by : R.S. JHA, J.

Case referred :

W.P. No. 14870/2008 order dated 11.8.2016.

J.K. Pillai, for the petitioners.

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

NOTES OF CASES SECTION

Short Note

*(152)(DB)

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

Cr.A. No. 441/1995 (Jabalpur) decided on 5 December, 2017

ARUN SHANKAR

...Appellant

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Section 302 & 201 – Murder – Conviction – Last Seen Together – Held – At 7 pm, deceased went with appellant to consume liquor and subsequently dead body of deceased was found in the next morning – As per postmortem report, death occurred around 4 to 5 am and at this time, appellant was seen coming from scene of occurrence – Proximity between time when deceased was last seen with accused and time of death of deceased is duly established by prosecution evidence – Appellant rightly convicted – Appeal dismissed.

दण्ड संहिता (1860 का 45), धारा 302 व 201 – हत्या – दोषसिद्धि – अंतिम बार साथ देखा जाना – अभिनिर्धारित – शाम 7 बजे, मृतक, मदिरा का सेवन करने अपीलार्थी के साथ गया तथा तत्पश्चात् अगली सुबह मृतक का शव पाया गया – शव परीक्षण प्रतिवेदन के अनुसार, मृत्यु प्रातः 4 से 5 बजे के आस-पास हुई तथा इस समय, अपीलार्थी को घटना स्थल से आते हुये देखा गया था – अभियोजन साक्ष्य द्वारा मृतक को अभियुक्त के साथ अंतिम बार साथ देखे जाने के समय तथा मृतक की हत्या के समय के बीच की निकटता सम्यक् रूप से स्थापित की गई है – अपीलार्थी उचित रूप से दोषसिद्ध – अपील खारिज।

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

Cases referred :

AIR 2005 SC 1912, (2006) 13 SCC 65, 2012 Cr.L.J. 745, AIR 2011 SC 2256.

Sharad Singh Baghle, Amicus Curiae for the appellant.

Ajay Tamrakar, P.L. for the respondent /State.

NOTES OF CASES SECTION

Short Note

*(153)

Before Mr. Justice Rohit Arya

W.P. No. 2835/2017 (Indore) decided on 19 December, 2017

DEV RAJ KATARIA

...Petitioner

Vs.

STATE OF M. P. & ors.

...Respondents

Criminal Procedure Code, 1973 (2 of 1974), Section 24(8) and Constitution – Article 226 – Scope & Jurisdiction – Appointment of Special Public Prosecutor – Locus to Challenge – Held – Petitioner is one of the accused and have no *locus standi* to challenge/question the appointment made by State Government under statutory provisions – Such exercise of statutory power by State is impeccable and does not make the appointment by itself vulnerable in absence of any malice either on facts or in law – ***Further Held –*** Jurisdiction under Article 226 is subjected to self restricted limitations – This Court does not sit in appeal over a decision of a State or an authority to address on merits of the decision – It only ensures that decision making authority was competent as per law and the decision making process was free from arbitrariness, unreasonableness, bias, malice or perversity – Petition dismissed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 24(8) एवं संविधान – अनुच्छेद 226 – व्याप्ति व अधिकारिता – विशेष लोक अभियोजक की नियुक्ति – चुनौती देने का अधिकार – अमिनिघारित – याची अभियुक्तों में से एक है तथा उसे राज्य सरकार द्वारा कानूनी उपबंधों के अंतर्गत की गई नियुक्ति को चुनौती देने/पर सवाल उठाने का अधिकार नहीं है – राज्य द्वारा कानूनी शक्ति का ऐसा प्रयोग त्रुटिहीन है तथा तथ्यों अथवा विधि में किसी दुर्भाव की अनुपस्थिति में नियुक्ति को स्वयं भेद्य नहीं बनाता है – आगे अमिनिघारित – अनुच्छेद 226 के अंतर्गत अधिकारिता स्व निर्बंधित परिसीमाओं के अधीन है – राज्य अथवा प्राधिकारी के विनिश्चय के गुणदोषों पर विचार करने हेतु, यह न्यायालय अपील में उस विनिश्चय की सुनवाई नहीं करता – यह केवल यह सुनिश्चित करता है कि विनिश्चय करने वाला प्राधिकारी विधि के अनुसार सक्षम था तथा विनिश्चय करने की प्रक्रिया मनमानेपन, अयुक्तियुक्तता पक्षपात, विद्वेष अथवा विपर्यस्तता से मुक्त थी – याचिका खारिज।

NOTES OF CASES SECTION

Cases referred :

(1988) 3 SCC 144, 2012 (3) MPLJ 223, (2009) 12 SCC 159, W.A. No. 158/2015 order dated 15.04.2015 (DB), 2016 (3) MPLJ 392, W.P. No. 5811/2014 order dated 08.05.2015.

Rajendra Singhvi, for the petitioner.

Piyush Shrivastava, G.A. for the respondent Nos.1 & 2/State.

Vijay Kumar Assudani, for the respondent Nos. 4 & 5.

Short Note

**(154)(DB)*

Before Mr. Justice S.C. Sharma & Mr. Justice Alok Verma

W.P. No. 4144/2017 (Indore) decided on 9 October, 2017

DISTRICT CENTRAL CO-OP. BANK LTD., RAISEN ...Petitioner
Vs.
UNION OF INDIA ...Respondent

Income Tax Act (43 of 1961), Section 254(2) – Appeal – Limitation – Amendment – Appeal preferred by petitioner dismissed in 2015 for want of prosecution – Application u/S 254(2) was also dismissed for want of limitation – Held – Before amendment of 2016, limitation prescribed u/S 254(2) was four years, which was later reduced to six months vide amendment – New law of limitation providing a shorter period cannot certainly extinguish a vested right of action and cannot be operated retrospectively as was done in present case – Impugned order quashed – Petition allowed.

आयकर अधिनियम (1961 का 43), धारा 254(2) – अपील – परिसीमा – संशोधन – याची द्वारा प्रस्तुत अपील अभियोजन के अभाव में, 2015 में खारिज की गई – परिसीमा के अभाव में आवेदन अंतर्गत धारा 254(2) भी खारिज किया गया था – अभिनिर्धारित – 2016 के संशोधन पूर्व, धारा 254(2) के अंतर्गत विहित परिसीमा चार वर्ष थी, जो कि बाद में संशोधन के माध्यम से घटाकर 6 माह कर दी गई थी – लघु अवधि उपबंधित करने वाली परिसीमा की नई विधि निश्चित रूप से कार्यवाही के निहित अधिकार को निर्वापित नहीं कर सकती तथा भूतलक्षी रूप से प्रवर्तित नहीं की जा सकती जैसा कि वर्तमान प्रकरण में किया गया था – आक्षेपित आदेश अभिखंडित – याचिका मंजूर।

The order of the Court was passed by : S.C. SHARMA, J.

NOTES OF CASES SECTION

Case referred :

(2015) 7 SCC 58.

Ashish Goyal, for the petitioner.

Veena Mandlik, for the respondent.

Short Note

*(155)

Before Mr. Justice Sushil Kumar Palo

M.Cr.C. No. 8662/2017 (Jabalpur) decided on 21 November, 2017

HABIBULLA & ors.

...Applicants

Vs.

STATE OF M.P. & ors.

...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 202(1) & 482 – Quashment – Amendment of 2005 – Mandatory Requirement – Complaint case filed against petitioners whereby summons issued to accused/petitioner – Held – Petitioners residing outside territorial jurisdiction of Magistrate – Before summoning accused, it was obligatory upon Magistrate to inquire into the case himself or direct investigation to police as he thinks fit – Mandatory requirements of Section 202 not followed – Impugned order set aside – Matter remanded back to Magistrate – Petition allowed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 202(1) व 482 – अभिखंडित किया जाना – 2005 का संशोधन – आज्ञापक अपेक्षा – याचीगण के विरुद्ध परिवाद प्रकरण प्रस्तुत किया गया जिसमें अभियुक्त/याची को समन जारी किये गये – अभिनिर्धारित – याचीगण, मजिस्ट्रेट की क्षेत्रीय अधिकारिता से बाहर निवासरत है – अभियुक्त को समन किये जाने के पूर्व, मजिस्ट्रेट के लिए बाध्यकारी था कि वह स्वयं प्रकरण में जांच करे या पुलिस को अन्वेषण हेतु निदेशित करे, जैसा कि वह उचित समझे – धारा 202 की आज्ञापक अपेक्षाओं का पालन नहीं किया गया – आक्षेपित आदेश अपास्त – मामला, मजिस्ट्रेट को प्रतिप्रेषित किया गया – याचिका मंजूर।

Cases referred :

AIR 1972 SC 2609, 2017 CRL.L.J. 1553, AIR 2010 SC 2261, 2013 (2) SCC 488, 2013 Legal Eagle (SC) 29.

S.S. Thakur, for the applicants.

Vivek Lakhera, G.A. for the non-applicant No.1/State.

None, for the non-applicant No.2.

NOTES OF CASES SECTION

Short Note

***(156)**

Before Ms. Justice Vandana Kasrekar

W.P. No. 17870/2014 (Jabalpur) decided on 25 September, 2017

HARISH KUMAR TIWARI

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14(18), 14(23)(i) & 15 – Enquiry Report – Procedure – Natural Justice – Non-supply of enquiry report to petitioner is breach of natural justice – Advice of the UPSC should also be supplied in advance before imposing the punishment – Further, Enquiry report is non-speaking and is cryptic – Enquiry Officer failed to record its findings on the charges leveled against petitioner – No marshalling of Evidence – Entire enquiry is in violation of natural justice – Impugned orders quashed – Petition allowed.

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14(18), 14(23)(i) व 15 – जांच प्रतिवेदन – प्रक्रिया – नैसर्गिक न्याय – याची को जांच प्रतिवेदन प्रदाय न किया जाना, नैसर्गिक न्याय का मंग है – शास्ति अधिरोपित किये जाने से पूर्व यू.पी.एस.सी. की राय भी अग्रिम रूप से प्रदाय की जानी चाहिए – इसके अतिरिक्त, जांच प्रतिवेदन सकारण नहीं है तथा अस्पष्ट है – जांचकर्ता अधिकारी, याची के विरुद्ध लगाये गये आरोपों पर उसके निष्कर्ष अभिलिखित करने में विफल रहा – साक्ष्य का क्रमबद्धन नहीं किया गया – संपूर्ण जांच, नैसर्गिक न्याय के उल्लंघन में है – आक्षेपित आदेश अभिखंडित किये गये – याचिका मंजूर।

Cases referred :

(1998) 3 SCC 227, (2008) 3 SCC 484, (2014) 7 SCC 340, (1998) 8 SCC 1, (2007) 8 SCC 338, (2011) 4 SCC 591, (1984) 3 SCC 316, (1985) 3 SCC 378.

Manoj Sharma, for the petitioner.

Manoj Kushwaha, P.L. for the respondent Nos.1 & 2.

A. Tiwari, for the respondent No.4.

NOTES OF CASES SECTION

Short Note

*(157)

Before Mr. Justice Atul Sreedharan

M.Cr.C. No. 15397/2017 (Jabalpur) decided on 21 December, 2017

MANISH GANDHI

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 167 & 173(2) – Final Police Report – Completion of Investigation – Default Bail – Held – Merely because the report u/S 173(2) states that further investigation is in progress, does not bar the Magistrate from taking cognizance – If material on record of incomplete investigation is sufficient to take cognizance, Magistrate can do so – Police report must not be filed in such a manner that it's contents reveal that investigation is incomplete and report has been filed only to defeat the right of accused to a default bail u/S 167(2) Cr.P.C. – In the present case, investigation related to petitioner was incomplete and police report was filed at the fag end of ninety days period which makes it apparent that charge sheet was filed only with intent of frustrating the right of petitioner to apply for default bail – Petitioner directed to be released on bail – Petition allowed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167 व 173(2) – अंतिम पुलिस प्रतिवेदन – अन्वेषण का समापन – व्यतिक्रम से जमानत – अभिनिर्धारित – मात्र इसलिए कि धारा 173(2) के अंतर्गत प्रतिवेदन कहता है कि आगे अन्वेषण जारी है, मजिस्ट्रेट को संज्ञान लेने से वर्जित नहीं करता – यदि अपूर्ण अन्वेषण के अभिलेख की सामग्री, संज्ञान लेने के लिए पर्याप्त है, मजिस्ट्रेट ऐसा कर सकता है – पुलिस प्रतिवेदन इस ढंग से प्रस्तुत नहीं किया जाना चाहिए कि उसकी अंतर्वस्तु प्रकट करती हो कि अन्वेषण अपूर्ण है और प्रतिवेदन को धारा 167(2) दं.प्र.सं. के अंतर्गत अभियुक्त के व्यतिक्रम से जमानत के अधिकार को विफल करने के लिए प्रस्तुत किया गया है – वर्तमान प्रकरण में, आवेदक के संबंध में अन्वेषण अपूर्ण था और पुलिस प्रतिवेदन को नब्बे दिनों की अवधि के अंतिम छोर पर प्रस्तुत किया गया था जिससे यह स्पष्ट है कि आरोप पत्र को केवल व्यतिक्रम से जमानत हेतु आवेदन करने के याची के अधिकार को विफल करने के आशय से प्रस्तुत किया गया था – याची को जमानत पर छोड़े जाने के लिए निदेशित किया गया – याचिका मंजूर।

Cases referred:

1975 (2) APLJ 28, ILR (1977) II Delhi 367, 2016 (II) MPJR 118,

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(2012) All LJ 212, 1991 Mh.L.J 656, 2016 SCC Online Del 3730, (2014) 9 SCC 457, (1991) 3 SCC 655, (2007) 8 SCC 770, (1995) 6 SCC 142, (2006) 7 SCC 296, (2004) 7 SCC 338, (2004) 13 SCC 324, (1992) 1 SCC 217, (1992) 3 SCC 141, (1995) Supp. (3) SCC 221, (2002) 5 SCC 82, (1995) 1 SCC 42, (2014) 16 SCC 543, (1994) 4 SCC 260.

Ajay Gupta, for the applicant.

Sanjay Dwivedi, Deputy A.G. and *Manjeet Chuckkal*, P.L. for the non-applicant.

Short Note

*(158)

Before Mr. Justice S.C. Sharma

W.P. No. 8084/2016 (Indore) decided on 5 December, 2017

RAGHAV SINGH CHOUHAN

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Service Law – Increments – Recovery – Permissibility – Held –
Once the benefit has already been extended to petitioner on account of judgments delivered by Single Bench as well as by Division Bench of this Court, only because subsequently Full Bench has delivered a judgment regarding grant of increments, the benefit which has already accrued in favour of petitioner cannot be withdrawn – Recovery order passed by respondents is quashed – Petition allowed.

सेवा विधि – वेतन वृद्धि – वसूली – अनुज्ञेयता – अभिनिर्धारित – एक बार जब याची को पहले ही इस न्यायालय की एकल न्यायपीठ और साथ ही खंड न्यायपीठ द्वारा घोषित निर्णयों के आधार पर लाभ दिया गया है तब मात्र इसलिए कि पश्चात्तवर्ती रूप से पूर्ण न्यायपीठ द्वारा, वेतनवृद्धि प्रदान किये जाने से संबंधित निर्णय घोषित किया है, याची के पक्ष में पहले से प्रोद्भूत लाभ वापस नहीं लिया जा सकता – प्रत्यर्थीगण द्वारा पारित वसूली का आदेश अभिखंडित किया गया – याचिका मंजूर।

Case referred :

2015 SC Online M.P. 7358.

L.C. Patne, for the petitioner.

Swati Ukhale, G.A. for the respondent/State.

NOTES OF CASES SECTION

Short Note

*(159)(DB)

Before Mr. Justice J.K. Maheshwari & Mr. Justice J.P. Gupta

Cr.A. No. 1114/2004 (Jabalpur) decided on 24 November, 2017

RAI SINGH

...Appellant

Vs.

STATE OF M.P.

...Respondent

(Alongwith Cr.A. No. 1122/2004)

A. Penal Code (45 of 1860), Sections 148, 302/149, 323/149 & 325/149 – Murder – Unlawful Assembly – Common Intention – Hostile Witnesses – Held – Prosecution failed to prove beyond reasonable doubt, involvement of other appellants except Mahipal and Bhaiyalal who assembled alongwith 4-5 persons with common object of forming unlawful assembly for committing murder of deceased – Testimonies of hostile injured eye witnesses can be used to the extent corroborated by other independent witnesses – On basis of statements and evidence of prosecution witnesses, charges against Mahipal and Bhaiyalal u/S 302/149 and 323/149 found proved – Other appellants acquitted of the charges – Appeal no. 1114/04 allowed and appeal no. 1122/04 partly allowed.

क. दण्ड संहिता (1860 का 45), धाराएँ 148, 302/149, 323/149 व 325/149 – हत्या – विधिविरुद्ध जमाव – सामान्य आशय – पक्ष विरोधी साक्षीगण – अभिनिर्धारित – अभियोजन युक्तियुक्त संदेह से परे यह साबित करने में असफल रहा कि मृतक की हत्या कारित करने हेतु विधि विरुद्ध जमाव निर्मित करने के सामान्य उद्देश्य के साथ, महिपाल एवं भैयालाल जिन्होंने 4-5 व्यक्तियों के साथ जमाव किया था, को छोड़कर अन्य अपीलार्थीगण संलिप्त थे – पक्ष विरोधी आहत चक्षुदर्शी साक्षीगण के परिसाक्ष्य का उपयोग, अन्य स्वतंत्र साक्षियों द्वारा संपुष्टि की सीमा तक किया जा सकता है – अभियोजन साक्षीगण के कथन एवं साक्ष्य के आधार पर महिपाल एवं भैयालाल के विरुद्ध धारा 302/149 व 323/149 के अंतर्गत आरोप साबित पाये गये – अन्य अपीलार्थीगण आरोपों से दोषमुक्त किये गये – अपील क्र. 1114/04 मंजूर तथा अपील क्र. 1122/04 अंशतः मंजूर।

B. Criminal Practice – Identification of Accused – False implication – Held – As per FIR, 200 persons attacked the complainant party – Injured eye witnesses have not identified each accused persons including appellants – Against some appellants, nothing has been

NOTES OF CASES SECTION

mentioned and their involvement is denied – False implication of any accused cannot be ruled out in such circumstances.

ख. दाण्डिक पद्धति – अभियुक्त की पहचान – मिथ्या आलिप्त किया जाना – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन के अनुसार, 200 व्यक्तियों ने परिवादी पक्ष पर हमला किया – आहत चक्षुदर्शी साक्षीगण ने प्रत्येक अभियुक्त व्यक्तियों की पहचान नहीं की है जिसमें अपीलार्थीगण भी शामिल हैं – कुछ अपीलार्थीगण के विरुद्ध कुछ भी उल्लिखित नहीं किया गया तथा उनकी संलिप्तता से इन्कार किया गया है – उक्त परिस्थितियों में, किसी अभियुक्त को मिथ्या आलिप्त किये जाने से इन्कार नहीं किया जा सकता।

The judgment of the Court was delivered by : J.P. GUPTA, J.

Cases referred :

(2010) 1 SCC (Cri) 413, (1976) 1 SCC 31.

A.K. Jain, for the appellants-accused.

Sudeep Deb, G.A. for the respondent-State.

Short Note

*(160)

Before Mr. Justice S.K. Awasthi

C.R. No. 113/2011 (Gwalior) decided on 5 June, 2017

RAMBHAROSE RATHOR

...Applicant

Vs.

MADHYA PRADESH WAQF BOARD & ors.

...Non-applicants

Wakf Act (43 of 1995), Section 54 & 85 and Civil Procedure Code (5 of 1908), Section 11 – Wakf Property – Jurisdiction of Civil Court – Res-Judicata – Civil Court held the applicant to be a tenant whereas subsequently, in a proceedings before Wakf Tribunal, he was held to be an encroacher – Held – In order to attract bar u/S 11 C.P.C., former judgment must have been passed by competent Court – In instant case, judgment of civil Court has been passed ignoring bar u/S 85 of the Act of 1995 is nullity and will not operate as res-judicata in the proceedings before Wakf Tribunal – Even on merits, applicant failed to prove that he was a tenant – Revision dismissed.

वक्फ अधिनियम (1995 का 43), धारा 54 व 85 एवं सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 – वक्फ संपत्ति – सिविल न्यायालय की अधिकारिता – पूर्व न्याय –

NOTES OF CASES SECTION

सिविल न्यायालय ने आवेदक को एक किरायेदार होना अभिनिर्धारित किया जबकि तत्पश्चात् वक्फ अधिकरण के समक्ष एक कार्यवाही में, उसे एक अधिक्रमी ठहराया गया था – अभिनिर्धारित – सि.प्र.सं. की धारा 11 के अंतर्गत वर्जन को आकर्षित करने हेतु पूर्वतर निर्णय को सक्षम न्यायालय द्वारा पारित किया जाना चाहिए – वर्तमान प्रकरण में, सिविल न्यायालय का निर्णय, 1995 के अधिनियम की धारा 85 के अंतर्गत वर्जन की अनदेखी कर पारित किया गया है, शून्य है तथा वक्फ अधिकरण के समक्ष कार्यवाहियों में पूर्व न्याय के रूप में प्रवर्तित नहीं होगा – गुणदोषो पर भी आवेदक यह साबित करने में विफल रहा कि वह एक किरायेदार था – पुनरीक्षण खारिज।

Cases referred :

(2005) 10 SCC 51, (2005) 12 SCC 1, (2005) 3 SCC 232.

J.P. Sharma and M.K. Gupta, for the applicant.

R.S. Sharma, P.L. for the non-applicant/State.

Prakash Bararu, for the non-applicant No.1.

H.K. Agarwal, for the non-applicant No.4.

F.A. Shah, for the non-applicant No.5.

Short Note

*(161)

Before Mr. Justice J.K. Maheshwari

W.P. No. 17846/2012 (s) (Jabalpur) decided on 20 December, 2017

RAVINDRA TATHODI (DR.)

...Petitioner

Vs.

STATE OF M.P.

...Respondent

(Alongwith W.P. Nos. (s) 524/2013, 2564/2013, 6102/2013, 7204/2013, 9850/2013, 10047/2013, 10123/2013, 10126/2013, 10747/2013, 12298/2013, 13313/2013, 21656/2013, 2765/2014, 6236/2014, 8497/2014, 18425/2014, 21943/2015, 3283/2016, 3301/2016, 3372/2016, 3767/2016, 4264/2016, 7952/2016, 9301/2016, 9520/2016, 10927/2016, 11507/2016, 18715/2016, 2421/2017, 3684/2017, 5258/2017, 5764/2017, 14531/2015, 3043/2016, Conc. No. 2065/2013, W.P. No. 6803/2016)

Public Health and Family Welfare (Gazetted) Service Recruitment Rules, M.P., 1988 and Public Health and Family Welfare (Gazetted) Service Recruitment Rules, M.P., 2007 – Petitioners are Association of Doctors, Medical Officers, Dental Surgeons, Specialists and Dental Specialists – Vide order dated 26.08.2008 held entitled for

NOTES OF CASES SECTION

Four Tier grade pay scale on completion of tenure of 6 years – Subsequently, said order was withdrawn and recovery order was issued alongwith adjustment – Challenge to – Held – Benefit of four tier grade scale of pay would be available to petitioners as per substituted Schedule 1 of the new Rules on completion of 6 yrs of service from date of initial appointment on recommendation of Screening Committee – Further held – Before passing the impugned order, neither any show cause notice was issued nor any opportunity of hearing was given – Benefit cannot be withdrawn behind their back – Order withdrawing the benefit is an unreasoned order and is contrary to Rules of 2007 and is hereby quashed – Arrears directed to be paid within two months and if recovery already made then it be reimbursed – Petition allowed.

लोक स्वास्थ्य एवं परिवार कल्याण (राजपत्रित) सेवा भर्ती नियम, म.प्र., 1988 एवं लोक स्वास्थ्य एवं परिवार कल्याण (राजपत्रित) सेवा भर्ती नियम, म.प्र., 2007 – याचीगण, चिकित्सकों, चिकित्सा अधिकारियों, दंत चिकित्सकों, विशेषज्ञों एवं दंत विशेषज्ञों का संघ है – आदेश दिनांक 26.08.2008 के माध्यम से, 6 वर्ष की अवधि पूर्ण होने पर फोर टियर श्रेणी वेतनमान के लिये हकदार अभिनिर्धारित किये गये – तत्पश्चात्, कथित आदेश वापस लिया गया था तथा समायोजन के साथ वसूली आदेश जारी किया गया था – को चुनौती – अभिनिर्धारित – अनुवीक्षण समिति की सिफारिश पर प्रारंभिक नियुक्ति की तिथि से 6 वर्ष की सेवा पूर्ण होने पर, नये नियमों की प्रतिस्थापित अनुसूची 1 के अनुसार याचीगण को फोर टियर श्रेणी वेतनमान का लाभ उपलब्ध होगा – आगे अभिनिर्धारित – आक्षेपित आदेश पारित करने से पूर्व, न हि कोई कारण बताओ नोटिस जारी किया गया था तथा न हि सुनवाई का कोई अवसर प्रदान किया गया था – उनके पीठ पीछे लाभ वापस नहीं लिया जा सकता – लाभ वापस लिये जाने का आदेश एक अकारण आदेश है एवं 2007 के नियमों के प्रतिकूल है तथा एतद्वारा अभिखंडित – बकाये का भुगतान दो माह के भीतर किये जाने हेतु निदेशित किया गया और यदि वसूली पहले ही की जा चुकी है तो इसकी प्रतिपूर्ति की जाएगी – याचिका मंजूर।

Cases referred :

(2012) 7 SCC 412, (2005) 7 SCC 396, 1999 (8) SCC 378.

Shobha Menon assisted by *Rahul Choubey, P.N. Dubey, V.D.S. Chouhan, Sanjay Singh, M.P. Shukla, A.K. Singh, Ashish Shroti, Arpan Pawar & S.S. Baghel* for the petitioners.

Samdarshi Tiwari, Addl. A.G., Sanjay Dwivedi, Dy. A.G., Deepak Awasthi, Dy. A.G., Amit Seth, G.A., Pankaj Dubey, A.P. Singh & S.S. Bisen, for the respondent/State.

NOTES OF CASES SECTION

Short Note

*(162)

Before Mr. Justice Vijay Kumar Shukla

W.P. No. 6754/2013 (Jabalpur) decided on 5 December, 2017

SAMUDRI BAI (SMT.) & ors.

...Petitioners

Vs.

MOHIT KUMAR JAIN & ors.

...Respondents

Civil Procedure Code (5 of 1908), Order 39 and Constitution—Article 227 – Jurisdiction & Scope – Suit for Permanent Injunction – Valuation of Suit – Held – Where the relief of permanent injunction is not independent and is ancillary to the main relief, the plaintiff has to value the injunction suit as valued for purpose of declaration of title and pay ad-valorem court fee on such valuation – Trial Court rightly held, that in present case permanent injunction cannot be granted without adjudicating the main relief of declaration of title – Jurisdiction under Article 227 cannot be exercised to correct all errors of subordinate Court acting within its jurisdiction– Petition dismissed.

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 एवं संविधान – अनुच्छेद 227 – अधिकारिता व व्याप्ति – स्थायी व्यादेश हेतु वाद – वाद का मूल्यांकन – अभिनिर्धारित – जहां स्थायी व्यादेश का अनुतोष स्वतंत्र नहीं है तथा मुख्य अनुतोष के आनुषंगिक है, वादी को स्वत्व की घोषणा के प्रयोजन हेतु किये गये मूल्यांकन अनुसार व्यादेश वाद का मूल्यांकन तथा ऐसे मूल्यांकन पर मूल्यानुसार न्यायालय फीस का भुगतान करना चाहिए – विचारण न्यायालय ने उचित रूप से अभिनिर्धारित किया, कि वर्तमान प्रकरण में, स्वत्व की घोषणा के मुख्य अनुतोष को न्यायनिर्णीत किये बिना स्थायी व्यादेश प्रदान नहीं किया जा सकता – अनुच्छेद 227 के अंतर्गत अधिकारिता का प्रयोग, अपनी अधिकारिता के भीतर कार्य कर रही अधीनस्थ न्यायालय की समस्त त्रुटियों को सुधारने हेतु नहीं किया जा सकता – याचिका खारिज।

Cases referred :

AIR 2008 SC 2033, (2010) 9 SCC 385, (2010) 8 SCC 329, 2004 (2) MPHT 14.

R.P. Khare, for the petitioner.

R.K. Kesharwani, for the respondent No.1.

NOTES OF CASES SECTION

Short Note

*(163)(DB)

Before Mr. Justice R.S. Jha & Smt. Justice Nandita Dubey

Cr.A. No. 1708/2006 (Jabalpur) decided on 7 December, 2017

SUKHDEV

...Appellant

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 302 and Evidence Act (1 of 1872), Section 32 – Conviction – Life Imprisonment – Dying Declaration – Reliability – Allegation that appellant poured kerosene on deceased and set her ablaze – Held – All witnesses turned hostile and case solely based on dying declaration – Three dying declaration by deceased carrying material contradictions, omissions, discrepancies and exaggerations – As per medical evidence, deceased was 98% burnt, both her palm were burnt and in such condition, victim cannot be in a coherent state of mind to make dying declaration nor could have signed the same – Dying declaration is an important piece of evidence which if found reliable and voluntary could be the sole basis of conviction – Evidence on record and dying declaration do not inspire confidence for basing conviction – Conviction set aside – Appeal allowed.

क. दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – दोषसिद्धि – आजीवन कारावास – मृत्युकालिक कथन – विश्वसनीयता – अभिकथन है कि अपीलार्थी ने मृत्तिका पर मिट्टी का तेल डाला तथा उसे आग लगा दी – अभिनिर्धारित – सभी साक्षीगण पक्षद्रोही हो गये तथा प्रकरण पूर्ण रूप से मृत्युकालिक कथन पर आधारित है – मृत्तिका द्वारा तीन मृत्युकालिक कथन जिसमें तात्त्विक विरोधाभास, लोप, विसंगतियाँ तथा अतिशयोक्तियाँ हैं – चिकित्सीय साक्ष्य के अनुसार, मृत्तिका 98% जली हुई थी, उसकी दोनों हथेलियाँ जल गई थीं तथा ऐसी स्थिति में, पीड़िता मृत्युकालिक कथन करने के लिए अनुकूल मनःस्थिति में नहीं हो सकती, न ही उक्त पर हस्ताक्षर कर सकती थी – मृत्युकालिक कथन, साक्ष्य का एक महत्वपूर्ण भाग है जो यदि विश्वसनीय एवं स्वैच्छिक पाया जाता है तो दोषसिद्धि का एकमात्र आधार हो सकता है – अभिलेख पर उपस्थित साक्ष्य तथा मृत्युकालिक कथन

NOTES OF CASES SECTION

दोषसिद्धि आधारित करने हेतु विश्वास उत्पन्न नहीं करता – दोषसिद्धि अपास्त – अपील मंजूर।

B. Criminal Practice – Evidence – Two Views – Held –
If two views are possible on the evidence adduced, the view which is favourable to accused should be adopted.

ख. दण्डिक पद्धति – साक्ष्य – दो दृष्टिकोण – अभिनिर्धारित – यदि प्रस्तुत किये गये साक्ष्य में दो दृष्टिकोण संभव हैं, तो जो दृष्टिकोण अभियुक्त के अनुकूल हो उसे अपनाया जाना चाहिए।

The judgment of the Court was delivered by : **NANDITA DUBEY, J.**

Cases referred :

(2014) 7 SCC 405, (2010) 9 SCC 1.

Devendra Gangrade, as amicus curiae for the appellant.

A.P. Singh, G.A. for the respondent.

Short Note

***(164)**

Before Mr. Justice S.A. Dharmadhikari

W.P. No. 5213/2013 (Gwalior) decided on 4 August, 2017

TORAN SINGH

...Petitioner

Vs.

IMRAT SINGH (DEAD) THROUGH L.R. NAVAL SINGH ...Respondent

Civil Procedure Code (5 of 1908), Order 21 Rule 32 –
Permanent Injunction – Execution of – Suit for declaration and permanent injunction decreed in favour of petitioner which has attained finality till second appellate stage – Warrant of possession issued against respondent whereby possession was restored to petitioner and he is still enjoying the possession – Merely on ground of apprehension that respondents are trying to interfere with possession, provision of Order 21 Rule 32 CPC cannot be invoked – Petition dismissed.

NOTES OF CASES SECTION

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 32 – स्थायी व्यादेश – का निष्पादन – घोषणा एवं स्थायी व्यादेश हेतु वाद याची के पक्ष में डिक्रीत किया गया जिसने द्वितीय अपील प्रक्रम तक अंतिमता प्राप्त कर ली – प्रत्यर्थी के विरुद्ध कब्जे का वारंट जारी किया गया जिससे याची को कब्जा पुनः स्थापित किया गया था तथा वह अभी भी कब्जे का उपभोग कर रहा है – मात्र आशंका के आधार पर कि प्रत्यर्थीगण कब्जे में हस्तक्षेप करने की कोशिश कर रहे हैं, सि.प्र.सं. के आदेश 21 नियम 32 का अवलंब नहीं लिया जा सकता – याचिका खारिज।

Cases referred :

AIR 2009 Kerala 189, AIR 1959 Kerala 395.

Amit Lahoti, for the petitioner.

K.B. Chaturvedi with G.P. Chourasia, for the respondent.

**I.L.R. [2017] M.P., 2915
SUPREME COURT OF INDIA**

**Before Mr. Justice R.K. Agrawal &
Mr. Justice Abhay Manohar Sapre**

Cr.A. No. 1008/2008 decided on 25 October, 2017

POORANLAL & anr.

...Appellants

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 302, 304 Part II r/w 34 – Appeal Against Acquittal – Appreciation of Evidence – Intention – Acquittal from trial Court – In State appeal, High Court convicted appellants u/S 304 Part II r/w 34 IPC – Challenge to – Held – No motive to kill the deceased – Intention was to teach a lesson to deceased due to previous enmity – Evidence of Doctor does not say that injuries were sufficient in ordinary course of nature to cause death – Deceased survived for 14 days from date of incident – Proper appreciation of evidence by High Court – Conviction affirmed – Appeal dismissed.

(Paras 17, 22, 23 & 26)

क. दण्ड संहिता (1860 का 45), धारा 302, 304 भाग II सहपठित 34 – दोषमुक्ति के विरुद्ध अपील – साक्ष्य का मूल्यांकन – आशय – विचारण न्यायालय से दोषमुक्ति – राज्य द्वारा अपील में, उच्च न्यायालय ने अपीलार्थीगण को मा.द.सं. की धारा 304 भाग II सहपठित 34 के अंतर्गत दोषसिद्ध किया – को चुनौती – अभिनिर्धारित – मृतक को जान से मारने का कोई हेतु नहीं – पूर्व वैमनस्यता के कारण मृतक को सबक सिखाने का आशय था – चिकित्सक का साक्ष्य यह नहीं दर्शाता कि चोटें प्रकृति के सामान्य अनुक्रम में मृत्यु कारित करने हेतु पर्याप्त थीं – मृतक घटना की तिथि से 14 दिनों तक जीवित रहा – उच्च न्यायालय द्वारा साक्ष्य का उचित मूल्यांकन – दोषसिद्धि अभिपुष्ट – अपील खारिज।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 378 – Appeal against Acquittal – Held – Once leave granted by High Court challenging order of acquittal, High Court entitled to appreciate the evidence to record its own finding of either affirmance or reversal.

(Para 19 & 20)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 378 – दोषमुक्ति के विरुद्ध अपील – अभिनिर्धारित – एक बार दोषमुक्ति के आदेश को चुनौती देने हेतु उच्च न्यायालय द्वारा अनुमति प्रदान कर दी गई, उच्च न्यायालय, अभिपुष्टिकरण

या चलटाव के अपने निष्कर्ष अभिलिखित करने हेतु साक्ष्य का मूल्यांकन करने का हकदार है।

J U D G M E N T

The Judgment of the Court was delivered by :
ABHAY MANOHAR SAPRE, J. :- This appeal is filed by the two accused persons against the Judgment/order of the High Court of Madhya Pradesh at Jabalpur dated 08.12.2006 in Criminal Appeal No.934 of 1991 whereby the High Court partly allowed the appeal filed by the State against the acquittal order dated 07.05.1991 of the Additional Sessions Judge, Khurai, Dist. Sagar in Sessions Trial No.340 of 1990. The High Court while upholding the acquittal of other three accused set aside the acquittal of the appellants herein and convicted them for an offence punishable under Section 304 Part II read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and awarded each of them to undergo rigorous imprisonment for a term of five years and to pay a fine of Rs.2000/- each and, in default of payment of fine, to further undergo simple imprisonment for a period of three months.

2. In order to appreciate the issues arising in the appeal, relevant facts need mention *infra*.

3. In short, the case of the prosecution on which the trial against the appellants and other three accused proceeded was as follows:

4. One Hariya (deceased) was the resident of Village Kublai. He was a railway employee. On 30.08.1990, at around 5.00 a.m., he left for nearby Village-Khurai on a cycle to catch a Train to join his duty at a nearby place. At that time, it was heavily raining. When Hariya was passing through a Mahua tree in village - Nirtala, one person suddenly got down from the tree and hit him with the Lathi (stick). Thereafter four more persons armed with Lathies came there and took him away from the road. All the five persons then assaulted him with Lathies saying in Hindi "*maro sale ko, bada panch bana firta hai*" (beat him bastard -what does he think of him by becoming Panch-Head).

5. At that time, two sons of Hariya, namely, Ramesh (PW-1) and Banshi (PW-2) were also reached there on their cycle as they were also going to earn their livelihood in nearby village. One Daryao Singh (PW-3)-a villager, who was going on his tractor to fill diesel in his tractor, also reached there.

6. These persons witnessed the incident of beating and, therefore, ran

towards Hariya to save him from the assailants. The assailants, on noticing that a group of persons is fastly approaching at the scene of occurrence, ran away from there leaving injured Hariya lying on the roadside.

7. Ramesh (PW-1), Banshi (PW-2), Daryao Singh (PW-3) and some other persons took Hariya to Police Station, Khurai in a tractor where he lodged the FIR (Ex. P-33). Hariya was then taken to the Civil Hospital, Khurai for medical treatment. Dr. Rakesh Saxena (PW-11) found 11 injuries on the body of Hariya. In the meantime, the SHO Police Station, Khurai brought Naib Tahsildar, B.P. Shukla (PW-9) in the Hospital for recording dying declaration of Hariya. It was accordingly recorded (Ex.P-20).

8. Hariya struggled for survival but eventually succumbed to the injuries on 13.09.1990 almost after 14 days of the incident. Dr. Prabhat Bharadwaj (PW-14) performed the *post mortem* of his dead body.

9. According to the prosecution, the assailants and Hariya belonged to the same caste. There was previous enmity between one assailant-Gaya Prasad and Hariya due to some verbal utterances, which were exchanged between both of them in a marriage wherein the Samaj Panchayat of which Hariya was the head, had imposed some fine on Gaya Prasad. It is due to this reason, this incident took place.

10. The Police Authorities then undertook the investigation, which included collecting of material evidence, preparation of site map, blood stained earth from the place of occurrence, apprehending five accused persons, namely, (1) Pooranlal (2) Gaya Prasad (3) Mahendra (4) Shyamlal and (5) Ramlal, their custodial interrogation, recording of statement of several witnesses, recovery of sticks etc..

11. The five accused persons were accordingly charged with the offences punishable under Sections 148, 302/149 and 342 IPC. All the accused persons abjured their guilt and took a stand that they have been falsely implicated in the case. So far as Pooranlal, Shyamlal and Ramlal are concerned, they took a plea that they never had any enmity with the deceased because they reside in some other village.

12. To prove its case, the prosecution examined 17 witnesses. The learned Trial Judge, in his order dated 07.05.1991, recorded a finding that the prosecution has failed to prove the charges against all the accused persons

beyond the shadow of doubt and accordingly proceeded to record the finding of "not guilty" against all of them. In other words, the Trial Court acquitted all the five accused persons from the charges.

13. Challenging the order of acquittal, the State filed appeal before the High Court. By impugned judgment, the High Court partly allowed the appeal filed by the State. The High Court upheld the acquittal of three accused, namely, Mahindra, Shaymalal and Ramlal but reversed the order of acquittal against two accused persons, namely, Pooranlal and Gaya Prasad and convicted both the accused under Section 304 Part II read with Section 34 IPC and sentenced each of them to undergo rigorous imprisonment for five years' and a fine of Rs.2000/- each and, in default of payment of fine, to further undergo three months' simple imprisonment.

14. Felt aggrieved, accused Pooranlal and Gaya Prasad have filed this appeal by way of special leave against the judgment of the High Court challenging their conviction. So far as the State is concerned, they accepted the order of the High Court by which three accused, namely, Mahendra, Shyamal and Ramlal were acquitted. In this view of the matter, the order of acquittal of three accused named above has become final.

15. Therefore, the only question, which arises for consideration in this appeal, is whether the High Court was justified in setting aside the order of acquittal of Pooranlal and Gaya Prasad (appellants herein) and was also justified in convicting both of them for an offence punishable under Section 304 Part II read with Section 34 IPC?

16. Heard Mr. Vijay Pratap Singh, learned counsel for the appellants and Mr. Sunny Choudhary, learned counsel for the respondent.

17: Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in this appeal. In other words, in our opinion, the High Court was justified in setting aside the acquittal order in respect of the appellants and convicting them under Section 304 Part II read with Section 34 IPC.

18. This is how the High Court dealt with the case of the appellants while separating their case from other three accused in Paras 22 to 26 and found them guilty for commission of offence in question:

"22. Thus, even after ignoring the eye-witness account

available on record, the conviction of R-1 Pooran and R-2 Gayaprasad could be founded on the First Information Report (Ex.P-33), lodged by the deceased, and his dying-declaration (Ex.P-20). In the aforesaid two documents, there is consistency with regard to the motive prevailing in their minds and overt act of accused Pooranlal, who had caused injury on the head of the deceased even though no bony fracture was found and subsequent assault by other including Gayaprasad. However, it is also to be noticed that no opinion has been expressed by Autopsy Surgeon PW-14 Dr. Prabhat Bharadwaj that injury was sufficient in the ordinary course of nature to have caused death. Further, admittedly, the deceased had survived for 14 days after the incident.

23. Keeping all these factors in mind, we are of the opinion that as far as finding of 'not guilty' recorded against Mahendra, Shyamlal and Ramlal is concerned, it calls for no interference, as the same is based on proper appreciation of evidence. Nothing could be pointed out to us that finding against them is also perverse, but as regards the finding in favour of R-1 Pooranlal and R-2 Gayaprasad, it is not only contrary to the evidence on record, but is also perverse and unreasonable.

24. However, as noted already, R-2 Gayaprasad only intended to settle score with Hariya for insulting him by requiring to pay the amount of fine for participating in the marriage of Hariya's son. In other words, while striking the lathi blows, none of them had any intention to kill Hariya. In this view of the matter, R-1 Pooranlal and R-2 Gayaprasad deserved to be convicted for commission of offence of culpable homicide not amounting to murder and punishable under Section 304 Part II of the IPC: See AIR 1987 SC 1265 (State of Orissa vs. Bhagwan Barik) and AIR 2000 SC 1374 (Camila Vaz vs. State of Goa.)

25. The incident had occurred nearly 16 years before and the R-1 Pooranlal and R-2 Gayaprasad were released on bail during pendency of this appeal. In these circumstances, sentence of rigorous imprisonment for a term of 5 years with fine of Rs.2000/- would be sufficient to meet the ends of justice.

26. Accordingly, the appeal against acquittal of Mahendra, Shyamlal and Ramlal is hereby dismissed, but stands allowed in part against Pooranlal and Gayaprasad. While affirming their acquittal in respect of the offences punishable under Sections 148, 302, 302 read with 149 and 342 of the IPC, we convict R-1 Pooranlal and R-2 Gayaprasad for having committed an offence punishable under Section 304 Part II read with Section 34 of the IPC. Each one of them is sentenced to undergo rigorous imprisonment for a term of 5 years and to pay a fine of Rs.2000/- and in default of payment of fine, to further undergo simple imprisonment for a period of 3 months."

19. We find no good ground to interfere with the aforementioned findings of the High Court. In our opinion, the findings of the High Court are based on proper appreciation of evidence which the High Court was entitled to record in an appeal arising out of the order of acquittal once the leave to file the appeal to challenge the order of acquittal was granted to the State by the High Court.

20. In other words, the High Court was entitled to appreciate the evidence with a view to find out as to whether the finding of acquittal recorded by the Trial Court was legal or/and proper and was, therefore, entitled to record its own finding of either affirmance or reversal.

21. The evidence available on record, in our opinion, did establish beyond reasonable doubt that the appellants' case was capable of being separated from other three accused with a view to find out their role in the incident as against the other three accused.

22. This we say for the reasons that, first, there was no motive on the part of the accused persons (appellants) to kill Hariya. Second, the intention was to teach a lesson to Hariya because he had insulted Gaya Prasad in Panchayat

on an incident which had occurred in marriage in their community in recent past. Third, Dr. Bharadwaj (PW-14) who performed *post mortem* did not say in his evidence that injuries caused to Hariya were sufficient in the ordinary course of nature to have caused death, and lastly, Hariya survived for 14 days from the date of incident.

23. In the facts and circumstances of the case as taken note of supra, we are of the considered opinion that these factors were rightly taken into consideration for holding the appellants guilty for committing offence falling under Section 304 Part II of IPC.

24. Learned counsel for the appellants, no doubt, vehemently argued that the appellants should also have been acquitted like the other three accused named above. It was also his submission that there was no evidence much less sufficient evidence against the appellants for holding them guilty for an offence falling under Section 304 Part II IPC.

25. However, in the light of what we have discussed above wherein we have given our reasoning, it is not possible to accept the submission of learned counsel for the appellants. Moreover, we cannot again *de novo* re-appreciate the evidence. It is not permissible unless the findings of the High Court are wholly perverse or against the evidence. Such is not the case here.

26. In the light of foregoing discussion, we find no merit in the appeal. The appeal thus fails and is accordingly dismissed resulting in upholding of the order of the High Court.

27. As a result thereof, the bail granted to Gaya Prasad (appellant No.2) by this Court's order dated 13.04.2009 stands cancelled. He is directed to surrender and undergo the remaining jail sentence awarded by the High Court in case, he has not so far undergone awarded sentence.

28. So far as Pooranlal (appellant No.1) is concerned, since he had not applied for bail, it may be that during this period he may have completed his full period of jail sentence. Since learned counsel for the appellants is unable to make any statement on this issue, we are of the view that the Trial Court will verify this fact from jail records and other relevant material and after ascertaining as to how much jail sentence Pooranlal had already undergone out of five years, will accordingly pass necessary orders.

Appeal dismissed.

I.L.R. [2017] M.P., 2922

SUPREME COURT OF INDIA

Before Mr. Justice Adarsh Kumar Goel &

Mr. Justice Uday Umesh Lalit

Cr.A. No. 2045-2046/2017 decided on 28 November, 2017

DOONGAR SINGH & ors.

...Appellants

Vs.

STATE OF RAJASTHAN

...Respondent

(Alongwith Cr.A. No. 2047/2017)

A. Criminal Procedure Code, 1973 (2 of 1974), Section 309

– Held – In criminal case of heinous nature, trial Court has to be mindful that for protection of witness and also in interest of justice, the mandate of Section 309 Cr.P.C. has to be complied with and evidence should be recorded in continuous basis – In absence thereof, there is every chance of witnesses succumbing to pressure or threat of accused – Courts should be mindful of not giving long adjournments after commencement of evidence in serious criminal cases. (Para 5 & 10)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 309 – अभिनिर्धारित – जघन्य प्रकृति के दण्डिक प्रकरण में, विचारण न्यायालय को यह ध्यान रखना होगा कि साक्षी की सुरक्षा हेतु तथा न्यायहित में भी, दं.प्र.सं. की धारा 309 के आदेश का अनुपालन किया जाना है तथा निरन्तरता के आधार पर साक्ष्य अभिलिखित किया जाना चाहिए – इसके अभाव में साक्षीगण के अभियुक्त के दबाव अथवा धमकी के सामने झुक जाने के प्रत्येक अवसर हैं – न्यायालयों को गंभीर दण्डिक प्रकरणों में साक्ष्य आरंभ होने के पश्चात् लंबे स्थगन न देने का ध्यान रखना चाहिए।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 164

– Recording of Statements – Eye Witnesses – Held – Eye witness must be examined and statement be recorded as soon as possible during investigation itself u/S 164 Cr.P.C. – As per amendment of 2009 in Section 164 Cr.P.C., statement of witnesses should be got recorded by audio-video electronic means. (Paras 11, 12 & 13-ii)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 164 – कथनों का अभिलिखित किया जाना – चक्षुदर्शी साक्षीगण – अभिनिर्धारित – चक्षुदर्शी साक्षी का परीक्षण अवश्य किया जाना चाहिए तथा दं.प्र.सं. की धारा 164 के अंतर्गत अन्वेषण के दौरान ही जितना शीघ्र संभव हो सके कथन अभिलिखित किये जाने चाहिए –

द.प्र.सं. की धारा 164 में 2009 के संशोधन अनुसार, साक्षीगण के कथन ऑडियो-वीडियो इलेक्ट्रॉनिक माध्यम से अभिलिखित किये जाने चाहिए।

Cases referred :

(2001) 4 SCC 667, (2002) 7 SCC 334, (2015) 3 SCC 220.

ORDER

Delay condoned. Leave granted.

2. For the murder of one Bhagwan Singh at Sikar, Rajasthan, on 27th May, 2005, 20 persons were tried. Nine have been convicted concurrently by the trial court and the High Court. They are the appellants. Others have either been acquitted or have died.

3. We have heard learned counsel for the parties at great length and also perused the record. We do not find any infirmity in the orders of the court below calling for our interference under Article 136 of the Constitution of India. The appeals are, accordingly, dismissed.

4. Before parting with this matter, we must record a disturbing feature in the conduct of the trial of the present case. After recording examination-in-chief of the star witness, PW-14 Prabhu Singh, on 13th April, 2010, the matter was adjourned on the request of defence counsel to 25th August, 2010 i.e. for about more than four months. After that, part evidence of the witnesses was recorded on 24th September, 2010 and the matter was again adjourned to 11th October, 2010. Before that, four witnesses of the same family in their statements recorded on 10th April, 2010 had become hostile.

5. In a criminal case of this nature, the trial court has to be mindful that for the protection of witness and also in the interest of justice the mandate of Section 309 of the Cr.P.C. has to be complied with and evidence should be recorded on continuous basis. If this is not done, there is every chance of witnesses succumbing to the pressure or threat of the accused.

6. This aspect of the matter has received the attention of this Court on number of occasions earlier. In *State of U.P. versus Shambhu Nath Singh and Others*¹ this Court observed it was a pity that the sessions court adjourned the matter for a long interval after commencement of evidence, contrary to

1. (2001) 4 SCC 667

the mandate of Section 309 of the Cr.P.C. Once examination of witnesses begins, the same has to be continued from day-to-day unless evidence of the available witnesses is recorded, except when adjournment beyond the following day has to be granted for reasons recorded. This Court observed:

"12. Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court.

13. Now, we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a "special reason" for bypassing the mandate of Section 309 of the Code.

14. If any court finds that the day-to-day examination of witnesses mandated by the legislature cannot be complied with due to the non-cooperation of the accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to

attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case).

15. *The time-frame suggested by a three-Judge Bench of this Court in Raj Deo Sharma v. State of Bihar² is partly in consideration of the legislative mandate contained in Section 309(1) of the Code. This is what the Bench said on that score: (SCC p. 516, para 16)*

"16. The Code of Criminal Procedure is comprehensive enough to enable the Magistrate to close the prosecution if the prosecution is unable to produce its witnesses in spite of repeated opportunities. Section 309(1) CrPC supports the above view as it enjoins expeditious holding of the proceedings and continuous examination of witnesses from day to day. The section also provides for recording reasons for adjourning the case beyond the following day."

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17. *We believe, hopefully, that the High Courts would have issued the circular desired by the Apex Court as per the said judgment. If the insistence made by Parliament through Section 309 of the Code can be adhered to by the trial courts there is every chance of the parties cooperating with the courts for achieving the desired objects and it would relieve the agony which witnesses summoned are now suffering on account of their non-examination for*

days.

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19. *In some States a system is evolved for framing a schedule of consecutive working days for examination of witnesses in each sessions trial to be followed. Such schedule is fixed by the court well in advance after ascertaining the convenience of the counsel on both sides. Summons or process would then be handed over to the Public Prosecutor in charge of the case to cause them to be served on the witnesses. Once the schedule is so fixed and witnesses are summoned the trial invariably proceeds from day to day. This is one method of complying with the mandates of the law. It is for the presiding officer of each court to chalk out any other methods, if any, found better for complying with the legal provisions contained in Section 309 of the Code. Of course, the High Court can monitor, supervise and give directions, on the administration side, regarding measures to conform to the legislative insistence contained in the above section."*

7. The above decision has been repeatedly followed. In *Mohd. Khalid versus State of W.B.*³, this Court noted how adjournment can result in witnesses being won over. It was observed:

"54. Before parting with the case, we may point out that the Designated Court deferred the cross-examination of the witnesses for a long time. That is a feature which is being noticed in many cases. Unnecessary adjournments give a scope for a grievance that the accused persons get a time to get over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournments lack the spirit of Section 309 of the Code. When a witness is available and his examination-in-chief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking. These aspects were

highlighted by this Court in State of U.P. versus Shambhu Nath Singh⁴ and N.G. Dastane versus Shrikant S. Shivde⁵

.....”

8. Again in *Vinod Kumar versus State of Punjab*⁶ this Court noted how unwarranted adjournments during the trial jeopardise the administration of Justice. It was observed:

“3. The narration of the sad chronology shocks the judicial conscience and gravitates the mind to pose a question: Is it justified for any conscientious trial Judge to ignore the statutory command, not recognise “the felt necessities of time” and remain impervious to the cry of the collective asking for justice or give an indecent and uncalled for burial to the conception of trial, totally ostracising the concept that a civilised and orderly society thrives on the rule of law which includes “fair trial” for the accused as well as the prosecution?

4. In the aforesaid context, we may recapitulate a passage from *Gurnaib Singh v. State of Punjab*⁷: (SCC p. 121, para 26)

“26. ... we are compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial was conducted as it depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on a mere asking. The cross-examination of the witnesses were deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracised from his memory

4. (2001) 4 SCC 667

5. (2001) 6 SCC 135

6. (2015) 3 SCC 220

7. (2013) 7 SCC 108

that a criminal trial has its own gravity and sanctity. In this regard, we may refer with profit to the pronouncement in Talab Haji Hussain v. Madhukar Purshottam Mondkar⁸ wherein it has been stated that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of the criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction."

9. In spite of repeated directions of this Court, the situation appears to have remained unremedied.

10. We hope that the Presiding Officers of the trial courts conducting criminal trials will be mindful of not giving such adjournments after commencement of the evidence in serious criminal cases.

11. We are also of the view that it is necessary in the interest of justice that the eye-witnesses are examined by the prosecution at the earliest.

12. It is also necessary that the statements of eye-witnesses are got recorded during investigation itself under Section 164 of the Cr.P.C. In view of amendment to Section 164 Cr.P.C. by the Act No. 5 of 2009, such statement of witnesses should be got recorded by audio-video electronic means.

13. To conclude:

- (i) The trial courts must carry out the mandate of Section 309 of the Cr.P.C. as reiterated in judgments of this Court, inter alia, in State of U.P. versus Shambhu Nath Singh and Others⁹, Mohd. Khalid versus State of W.B.¹⁰ and Vinod Kumar versus State of Punjab¹¹.
- (ii) The eye-witnesses must be examined by the prosecution as soon as possible.
- (iii) Statements of eye-witnesses should invariably be recorded under Section 164 of the Cr.P.C. as per procedure prescribed thereunder.

8. AIR 1958 SC 376

10. (2002)7 SCC 334

9. (2001)4 SCC 667

11. (2015)3 SCC 220

14. The High Courts may issue appropriate directions to the trial courts for compliance of the above.

15. A copy of this order be sent by the Secretary General to the Registrars of all the High Courts for being forwarded to all the presiding officers in their respective jurisdiction.

order accordingly.

I.L.R. [2017] M.P., 2929

WRIT PETITION

Before Mr. Justice Anand Pathak

W.P. No. 2575/2017 (Gwalior) decided on 3 August, 2017

GEETA SURESH CHAUDHARY (SMT.)

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

A. Municipalities Act, M.P. (37 of 1961), Section 41 & 47 – Recall of President – Requirement – Held – Section 47 mandates the Collector to satisfy himself and verify that 3/4th Councillors submitted the proposal – Requirement of Section 47(1) have to be complied, it is only then, proposal can be forwarded to State Government – In present case, Collector on receiving the proposal, on the same date has drawn proceedings, statements were recorded and on the same date matter was referred to Government – Undue haste shown by Collector itself smacks malafide – Hurried pace of authority amounts to malafide – Proceedings set aside – Petition allowed. (Paras 15 to 18 & 37)

क. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 41 व 47 – अध्यक्ष को वापस बुलाया जाना – अपेक्षा – अभिनिर्धारित – धारा 47 कलेक्टर को स्वयं की संतुष्टि करने तथा यह सत्यापित करने की आज्ञा करता है कि 3/4th पार्षदों ने प्रस्ताव प्रस्तुत किया – धारा 47(1) की अपेक्षा का अनुपालन करना होगा, केवल तभी राज्य सरकार को प्रस्ताव अग्रेषित किया जा सकता है – वर्तमान प्रकरण में, कलेक्टर ने प्रस्ताव प्राप्त करने पर उसी तिथि को कार्यवाही की है, कथन अभिलिखित किये तथा उसी तिथि को मामला सरकार को निर्दिष्ट किया था – कलेक्टर द्वारा दर्शायी गई अनावश्यक जल्दबाजी से ही असदभावना की गंध आती है – प्राधिकार की जलद गति असदभावना की कोटि में आती है – कार्यवाहियां अपास्त – याचिका मंजूर।

B. Municipalities Act, M.P. (37 of 1961), Sections 20, 21, 22 & 47 and Constitution – Article 226 & 243-ZG – Maintainability of

Petition – Remedy of Election Petition – Held – Petitioner may have opportunity to challenge the process of recall after notification of Election Commission but he has no remedy in the statute to challenge the circumstances which led to recall – Election petition not an effective remedy for challenging proceedings of Recall – Petitioner challenged the arbitrary exercise of powers by respondents and he cannot be rendered remediless – Writ petition maintainable. (Para 30 & 37)

ख. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धाराएँ 20, 21, 22 व 47 एवं संविधान – अनुच्छेद 226 व 243-जेड जी – याचिका की पोषणीयता – निर्वाचन याचिका का उपचार – अभिनिर्धारित – याची को निर्वाचन आयोग की अधिसूचना के पश्चात् वापस बुलाये जाने की प्रक्रिया को चुनौती देने का अवसर हो सकता है परंतु वापस बुलाये जाने की ओर ले जाने वाली परिस्थितियों को चुनौती देने के लिए कानून में उसके पास कोई उपचार नहीं है – वापस बुलाये जाने की कार्यवाहियों को चुनौती देने हेतु निर्वाचन याचिका प्रभावकारी उपचार नहीं – याची ने प्रत्यर्थागण द्वारा शक्तियों के मनमाने प्रयोग को चुनौती दी है और उसे उपचार विहीन नहीं किया जा सकता – रिट याचिका पोषणीय है।

Cases referred :

2005 (4) MPHT 185, 2005 (2) MPHT 119, 2008 (2) MPLJ 372, AIR 1993 (SC) 2042, (2016) 4 SCC 429, ILR (2007) MP 1203, 2004 (1) MPLJ 341, (2004) 2 SCC 65, (2006) 11 SCC 356, (2006) 6 SCC 430, W.A. No. 61/2017 delivered on 22 February 2017 (DB), (2016) 9 SCC 749, (2009) 14 SCC 132, (2000) 8 SCC 216.

Pawan Dwivedi, for the petitioner.

Raghvendra Dixit, G.A. for the respondent Nos.1 to 4/State.

M.P.S. Raghuvanshi, for the respondent No.5.

ORDER

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

2. The present writ petition under Article 226 of the Constitution of India has been preferred by the petitioner, who is the elected president of the Municipal Council, Sabalgarh District- Morena and is being crestfallen by the action of the respondents in as much as, respondent No.2 has referred the matter to the State Government on 28/03/2017 under Section 47 of the Municipalities Act, 1961 (hereinafter referred as the “Act of 1961”) for Recall of the petitioner on the ground that more than 3/4 of the total councillors have

moved a motion of Recall against the present petitioner.

3. Precisely stated facts of the case are that petitioner contested the election on the post of president of Municipal Council, Sabalgarh (hereinafter referred as "Council") and got elected and her election was notified vide notification dated 31/12/2014. Municipal Council consist of 18 councillors in total. It appears that some of the councillors of municipalities were engaged in some alleged illegal activities and therefore, proceedings under Section 41 of the Act of 1961 has been initiated. Copy of proceedings under Section 41 of the Act of 1961 are placed as Annexure P/12 with the petition. Since 14/12/2015, matter was pending before the Collector, District- Morena for consideration and to take consequential follow up steps under the provisions of Section 41 of the Act of 1961. Proceedings were pending at the time of filing of this petition on 18/04/2017. Now at the time of arguments, it was informed that on 24/07/2017 arguments in the said proceedings have been advanced and case has been kept reserved for orders. The fate of 7 councillors is to be decided by the said proceedings pending before the Collector under Section 41 of the Act of 1961. During pendency of the said proceedings, it appears that 16 councillors moved a proposal against the present petitioner under Section 47 of the Act of 1961 for Recalling the petitioner from the post of president of the Municipal Council. The said proposal is placed as Annexure P/14 with the petition. The said proposal was signed by 16 councillors (out of total 18 councillors) on 28/03/2017. The Collector on the same date 28/03/2017 itself considered the proposal so passed and forwarded the case to the State Government on the same date for initiating the proceedings for Recall against the present petitioner. The said process of Recall as forwarded by the Collector is the bone of contention and has been put to challenge by the petitioner through this writ petition under Article 226 of the Constitution of India.

4. Learned counsel for the petitioner raised the point on the basis of Section 47 of the Act of 1961 and submits that as per the sub-section 2 of Section 47 of the Act of 1961, the Collector has to consider the proposal made by the councillors objectively and after considering the same, Collector has to refer the matter to the State Government. Here, the Collector has not considered the matter objectively and shown undue haste in initiating the process. During course of event, petitioner submits that respondent No.3/ Collector has proceeded with undue haste. His further grievance is that case of 7 councillors who were signatories in the proposal was pending consideration before the same authority for last 20 months and without deciding the case of those councillors regarding disqualification, the said process

has been initiated which is arbitrary and illegal. Unless the proceedings under Section 41 of the Act of 1961 against 7 councillors concludes, no steps could have been taken on the basis of inclusion of those 7 councillors in the proposal because their own election was under doubt. It is further submitted that the Collector has deliberately kept the proceedings under Section 41 of the Act of 1961 for almost 2 years against those councillors and once the minimum bar for initiating a proposal (2 years) under Section 47 of the Act of 1961 completed in January, 2017 then immediately those councillors proceeded with the proposal in March, 2017 for Recall of the petitioner and that amounts to arbitrary exercise of power.

5. Learned counsel for the petitioner further submits that there is no bar for this Court to entertain this writ petition under Article 226 of the Constitution of India because the case in hand is of arbitrary and illegal exercise of power and proceedings smacks malafide. He further refers Section 22 of the Municipalities Act, 1961 (regarding Election Petition) and submits that petitioner has no ground available to challenge in the election petition because the ground mentioned in Section 22 of the Act of 1961 are those grounds which are meant to challenge the election and not the proceedings for Recall. He referred the judgment of Full Bench of this Court in the matter of *State of M.P. and Others Vs. Mahendra Kumar Saraf*, 2005 (4) MPHT 185 as well as *Smt. Naravadi Bai Choudhary and Others Vs. State of M.P. and Others*, 2005 (2) MPHT 119 and submits that the Collector had to record the satisfaction and not recording any satisfaction as per Section 47(2) of the Act of 1961 vitiates the proceedings and rendered them *void ab initio*. He also referred the decision of this Court in the matter of *Satya Prakash Parsadiya Vs. State of M.P. and Others*, 2008 (2) MPLJ 372 and submits that the petition under Article 226 of the Constitution of India is maintainable challenging the proceedings of Recall initiated by the District-Collector.

6. Counsel for the petitioner has filed an application vide I.A. No.3222/2017, for urgent relief and alongwith that placed three affidavits of 3 councillors; namely- Ramswaroopi Tagore, Lakhan Singh Barai and Prem Chand Gupta and submits that the said councillors have specifically made a statement on oath that they were misrepresented and they made signatures over the proposal for Recall under the mistaken belief that they are making signatures over application for pending developmental work in the area. They pleaded conspiracy in their respective affidavits.

7. Per contra, learned counsel for respondents No.1 to 4/ State submits that the petition is not maintainable in view of the provisions incorporated under Article 243-ZG of the Constitution of India wherein once the election process is started then appropriate remedy is only election petition and not writ petition under Article 227 of the Constitution of India.

8. Similarly respondents/State raised the ground of non-impleadment of necessary parties, as according to counsel for the respondents, 7 councillors who were facing proceedings under Section 41 of the Act of 1961 are necessary parties in the petition and no relief can be sought against them unless they are impleaded. He supported the proceedings undertaken by the Collector by submitting that the Collector has recorded his satisfaction in the matter and thereafter referred it to the State Government for proceedings for Recall. He also referred that notification has been issued by the Election Commission (sic:Commission) on 07/07/2017 and therefore, petitioner has no ground left to adjudicate under jurisdiction of Article 226 of the Constitution of India and petitioner has the remedy of election petition.

9. Learned counsel for respondent No.5 also vehemently opposed the prayer made by the petitioner and submits that petitioner could not establish the plea of malafide. Councillors are still working as councillors and unless they are declared otherwise in the proceedings under Section 41 of the Act of 1961 they are to be treated as councillors and no doubt about their position can be raised. He also reiterated the prayer of alternative remedy and submits that the petition is not maintainable in view of the Chapter VIII-A of the M.P. Nagar Palika Nirvachan Niyam, 1994 and the definition of election as substituted by the amendment Act, 2000 wherein the election includes the "election in relation to Recall" and therefore, the statute (sic:statute) provides procedure for election/ Recall then present petition is not maintainable. He also referred the judgment of the Hon'ble Apex Court in the matter of *Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and Others*, AIR 1993 (SC) 2042 as well as *Shaji K. Joseph Vs. Viswanath and Others*, (2016) 4 SCC 429 and submits that the election dispute can only be resolved through election petition. He supported the case on merits and submits that the Collector has reached to the subjective satisfaction on the proposal given by the councillors and no arbitrariness and illegality has been caused. Learned counsel for respondent No.5 also referred the affidavits sworn in by 3 councillors (as referred by counsel for the petitioner) and submits that the Collector had to only ascertain whether the signatures have been made by the councillors over the proposal or not and here the said councillors who have given the affidavits have

themselves admitted the fact that they made their signatures over the proposal albeit through misrepresentation, therefore, subsequent affidavits of 3 councillors have no meaning.

10. Heard the learned counsel for the parties at length and perused the documents appended thereto.

11. Before advertent to decide the controversy in question, it would be apposite to take note of the provisions of Section 41 and 47 of the Municipalities Act, 1961. The said provisions reads as under:-

"41:- Removal of Councillor.-(1) The Collector may, at any time remove an elected Councillor- (a) if his continuance as a Councillor, is not, in the opinion of the Collector, desirable in the interest of the Public or of the Council; or (a-1) if it is found that he does not belong to the reserved category for which the seat was reserved; or -(b) if the Council has, by a resolution supported by atleast two-third of the total number of Councillors, recommended that the Councillor is not fit to continue as a Councillor on account of misconduct in the discharge of his duties or disgraceful conduct. (2) The Collector may at any time, remove any elected Councillor if he, being a legal practitioner, acts or appears on behalf of any other person against the Council in any legal proceedings or against the State Government in any such proceedings relating to any matter in which the Council or has been concerned, or acts or appears on behalf of any person in any criminal proceedings instituted by or on behalf of the Council against such person. (3) The Collector may, while ordering the removal under this section, also order that such Councillor shall not be eligible to become a Councillor of a Municipal Council or Nagar Panchayat, as the case may be, for its next term: Provided, that no resolution recommending the removal of any Councillor shall be passed by the Municipal Council or Nagar Panchayat, as the case may be, nor any such order of removal shall be passed by the Collector unless such Councillor has been given a reasonable opportunity of showing cause. (4) An appeal against the order passed

under sub-section (1), (2); or (3) of this section 40 shall lie to the State Government within thirty days of the date on which the order is conveyed to the aggrieved party. The State Government may after giving a reasonable opportunity of being heard, pass such order on the appeal as it may think fit."

12. Similarly Section 47 of the Act of 1961 reads as under:-

"47- (1) Every President of a Council shall forthwith be deemed to have vacated his office if he is Recalled through a secret ballot by a majority of more than half of the total number of voters of the municipal are casting the vote in accordance with the procedure as may be prescribed:

Provided that no such process of Recall shall be initiated unless a proposal is signed by not less than three fourth of the total number of the elected councillors and presented to the Collector:

Provided further that no such process shall be initiated:-(i) *within a period of two years from the date on which such President is elected and enters his office;*

(ii) If half of the period of tenure of the President elected in a by-election has not expired:

Provided also that process for Recall of the President shall be initiated once in his whole term.

(2) The Collector, after satisfying himself and verifying that the three fourth of the councillors specified in sub-section (1) have the proposal of Recall, shall sent the proposal to the State Government and the State Government shall make a reference to the State Election Commission.

(3) On receipt of the reference, the State Election Commission shall arrange for voting on the proposal of Recall in such manner as may be prescribed."

13. For the purpose of arriving to a decision in this petition sub-section 2

of Section 47 of the Act of 1961 is important. Perusal of sub-section 2 of the Act of 1961 indicates that it provides for an action to be taken by the Collector on the proposal of the president.

14. For the purpose of deciding this petition, sub-section (2) of the aforesaid provision is important. A perusal of sub-section (2) indicates that it provides for action to be taken by the Collector on the proposal received by him for Recalling of the President. The section mandates the Collector to satisfy himself and verify that 3/4 of the councillors have submitted the proposal. The requirement of sub-section (1) have to be complied with, it is only then that the proposal can be forwarded to the State Government for further action. The word "the Collector after satisfying himself and verifying" in sub-section (2) are the important words and the main thrust of the argument advanced by counsel for the petitioner was that in the present case Collector himself has not arrived at the satisfaction but the satisfaction has been arrived at by a delegated authority, satisfaction and recommendation of the said authority is accepted by the Collector. At this stage, it would be appropriate to refer to some of the judgments which are applicable, even though no judgment directly on the question is brought to notice of this Court but certain observations are available in the case of *Anubha Munjare Vs. State Election Commission and Ors.*, ILR (2007) MP, 1203. In the said case, Division Bench of this Court in para 14 has observed as under:-

"14.....On a reading of Section 47 in entirety and especially sub-section (2) of Section 47 there can be no scintilla of doubt that the Collector has to satisfy himself with regard to the conditions precedent engrafted under Section 47(1), namely, that the proposal has been signed by not less than 3/4 of total number of elected councillors, the proposal has not been initiated within a period of two years from the date on which such President is elected and enters his/ her office; that half of the period of tenure of the President elected in by-election has expired; and that the process for Recall is the first proposal in the whole term of the elected candidate and he must verify the proposal that 3/4 of the total number of elected councillors have signed the proposal for Recall....." (Emphasis supplied)"

15. It is clear that the Division Bench in the aforesaid case has clearly emphasized that it is the Collector who is to satisfy himself with regard to compliance with the condition prescribed in section 47(1) for proceedings under sub-section(2). Similarly, another Division Bench of this Court while considering the true meaning of section 47 in the case of *Narayan Nagina Vs. State of M.P. and Others*, 2004 (1) MPLJ 341 = 2004 (1) MPHT 312, in para 10 has observed that proceedings for Recall are initiated when the Collector himself is satisfied that the proposal is signed by 3/4 of the councillors after verification. It is therefore, clear that emphasis in the sub-section(2) and requirement of law is that, it is the Collector who is required to arrive at the satisfaction and the subjective satisfaction is that of the Collector concerned.

16. The Division Bench of this Court in the matter *Anubha Munjare* (supra) has considered the import of Section 47 of the Act of 1961 and emphasis that it is the Collector who has to satisfy himself first with the condition of Section 47(1) for proceedings further under sub-section 2 of Section 47 of the Act of 1961. Similarly, another Division Bench of this Court while considering the true meaning of Section 47 of the Act of 1961 in the case of *Narayan Nagina Vs. State of M.P. and Others*, 2004 (1) MPLJ 341 has observed that it is the Collector who is required to arrive at a subjective satisfaction while initiating the proceedings under Section 47 of the Act of 1961.

17. The question arises, as to whether in the present case, subjective satisfaction arrived at, is of the Collector or not. The Collector in the present case received the proposal on 28/03/2017. On 28/03/2017 itself, the Collector drew the proceedings on note-sheet in which reference of recording of statements of councillors finds place and on the same date, the Collector has referred the matter to the State Government for initiation of proceedings for Recall. The undue haste shown by the Collector itself smacks malafide specially when the case of 7 councillors under Section 41 of the Act is placed in juxtaposition to this proceedings. At the one hand, same authority kept pending, the case of disqualification of 7 councillors under Section 41 of the Act of 1961 for almost 20 months and on the other hand, same authority (i.e. the Collector) proceeded at such brisk pace in proceedings under Section 47 of the Act of 1961, which shows extraneous considerations. The Hon'ble Apex Court in the matter of *Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others*, (2004) 2 SCC 65, *Indarpreet Singh Kahlon and Ors. Vs. State of Punjab and Ors.*, (2006) 11 SCC 356 as well as *R.S.*

Garg Vs. State of U.P. And Others, (2006) 6 SCC 430 has held that undue haste shown by the authority amounts to malafide.

18. The arrival of subjective satisfaction of the Collector is not procedural. He has to satisfy himself with regard to compliance with the conditions prescribed in Section 47 of the Act of 1961. Here, the pace of the proceedings and contradictions crept into the proceedings *vis a vis* proceedings under Section 41 of the Act of 1961 constitutes the malafide and even if the Collector would have satisfied himself even then hurried pace of the authority amounts to malafide.

19. The Elections are the Festivals of Democracy and with the growing trend, the process of Recall is to be treated in that spirit, therefore, revelry of the festival should not be diluted by any mischief or an action that appears to be mischief. Fountain of democracy should be so pristine that camaraderie (or nexus) of executives with public representatives may not impure it.

20. Here, it appears that the Collector ignored the pending proceedings against 7 councillors under Section 41 of the Act 1961. Although those proceedings are not under challenge in this writ petition but final result of the said proceedings would have affected the fate of this case because if the authority ultimately comes to the conclusion that those 7 councillors are liable to be disqualified then this may create anomalous situation in a way that arguments of the petitioner would stand vindicated, that proceedings under Section 41 of the Act of 1961 was kept on lingering till completion of tenure of 2 years of petitioner so that proposal for Recall may be initiated after January, 2017 when petitioner completed tenure of 2 years as president of the council and which is a *sine qua non* for initiation of proposal for removal of president through Recall. Similarly, in case of their disqualification, requirement of 3/4 councillors would have come under scanner and question of quorum for initiation of proposal would have come for consideration.

21. Another aspect although pleaded subsequently by the petitioner by way of filing application but assumes importance in the factual matrix of the case, wherein 3 councillors have categorically denied their involvement in the proposal for Recall although signed by them. If the Collector would have satisfied himself objectively without undue haste then perhaps this fact would have surfaced then and there only. These 3 councillors have categorically admitted the fact that they became the victim of misrepresentation wherein

they went with other councillors under the mistaken belief that they are signing the application for raising the developmental issues of the area. They also alleged conspiracy in categorical terms, therefore, the whole gamut of facts denotes that proposal has been sent at such a pace where it appears that respondents were hell bent upon to dislodge the petitioner. If these 3 councillors are removed from the list of 16 councillors then total numbers comes to 13, which is not 3/4 of its total strength (total number of councillors are 18). This aspect also assumes importance in view of manner in which whole proceedings were managed.

22. Petitioner has been elected for 5 years to work as president of Council. From prevailing circumstances and rising democratic aspirations of public at large, concept of Recall has been introduced in the electoral functioning of different democratic bodies of the country. Recall gives dis-satisfied electorate the right to propose between two elections that their representative be removed by another one in accordance with law.

23. *"Popular will"*, in ancient times, partially in *Lichhavi Republic* and Athenian Democracy and partially in modern times inspired from the Swiss experiment, the concept of Recall has been borrowed in Indian Political Architecture and it is here to stay because of rising democratic aspirations of the electorate but with a caveat that the elected candidate should not lie at the mercy of nexus between political and administrative executives because in that condition *"Popular Will"* will always be sacrificed at the altar of political maneuvering.

24. Now the objection in respect of maintainability of the writ petition is to be dealt with. Learned counsel for the respondents have raised the question as regards maintainability of this petition as according to them Article 243-ZG of the Constitution of India puts an embargo to entertain the petition under Article 226 of the Constitution of India. For ready reference, Article 243-ZG is reproduced as under:-

"243 Z G:- Bar to interference by Courts in electoral matters- Notwithstanding anything in this Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243 Z A shall not be called in question in any Court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State."

25. The relevant statute (sic:statute) i.e. Act of 1961 also gives a mechanism of election petition under Section 20 of the Act of 1961 which reads as under:-

20. Election petitions:- *(1) No election or nomination under this Act shall be called into question except by a petition presented in accordance with the provisions of this section.*

(2) Such petition may be presented on one or more of the grounds specified in section 22-

(a) by any candidate at such election or nomination;

or

(b) (i) in the case of an election of a councilor, by any voter of the ward concerned;

(ii) in the case of a nomination of Councillor, by any Councillor;

(iii) in the case of election of President by any voter of the Municipal area; to the District Judge, where such election or nomination is held within the revenue district in which the Court of the District Judge is situate, and in any other case, to the Additional District Judge having the permanent seat of his Court within the revenue district in which such election or nomination is held and if there be more than one such Additional District Judge within the said revenue district, to such one of them as the District Judge may specify for the purpose (herein after such district Judge or Additional District Judge referred to as judge.

(3) No petition presented under sub-section (2), shall be admitted unless-

(i) it is presented within thirty days from the date on which the result of such election or nomination was

notified in the Gazette; and

(ii) it is accompanied by a Government Treasury receipt showing a deposit of two hundred rupees, in the case of election or nomination to Municipal Council and one hundred rupees, in the case of election or nomination to Nagar Panchayat.

(4) A petitioner shall join as respondents to his petition-

(a) where the petitioner, in addition to claiming a declaration that the election or nomination, as the case may be, of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected or nominated, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

(5) an election petition shall-

(a) contain a concise statement of the material facts on which the petitioner relies;

(b) set forth with sufficient particulars, the ground or grounds on which the election or nomination is called in question;

(c) be signed by the petitioner and verified in the manner prescribed in the Code of Civil procedure, 1908 (V of 1908), for the verification of pleadings."

26. Similarly, relief that may be claimed by the petitioner is provided in Section 21 of the Act of 1961 which is reproduced as under:-

21- Relief that may be claimed by petitioner- (1) A petitioner may claim-

(a) a declaration that the election or [nomination] of all any of the returned candidates is void; and

(b) *in addition thereto a further declaration that he himself or any other candidate has been duly elected.*

(c) *The expression "returned candidate" means a candidate whose name is notified in the Gazette under section 45.*

27. Similarly Section 22 provides the **Grounds** for declaring the election or (nomination) to be void.

"22:- Grounds for declaring election or Nomination to be void.- (1) *Subject to the provisions of sub-section (2) if the Judge is of the opinion-*

(a) that on the date of his election or nomination a returned candidate was not qualified or was disqualified, to be chosen as a President or a Councillor, or

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election, or nomination in so far as it concerns a returned candidate has been materially affected-

(i) by the improper acceptance of any nomination; or

(ii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or

(iii) by the non-compliance with the provisions of this Act or of any rules or orders-made there under save the rules framed under section 14 in so far as they relate to preparation and revision of list of voters; he shall declare the election or nomination of the returned candidate to be void.

(2) If in the opinion of the Judge a returned candidate has been guilty by an agent of any corrupt practice, but the

Court is satisfied-

(a) that no such corrupt practice was committed at the election or nomination by the candidate, and every such corrupt practice was committed contrary to the instructions, and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practices at the election or nomination; and

(c) that in all other respect the election or nomination was free from any corrupt practice on the part of the candidate or any of his agents; then, the Judge may decide that the election or nomination of the returned candidate is not void."

28. Learned counsel for the respondents has also referred the definition of election as provided in Section 2(d) of the M.P. Nagar Palika Nirvachan Niyam, 1994 which includes election in relation to Recall the president of a Municipality also. Same is further reproduced for ready reference:-

2 (d):- "Election" means an election to fill a seat or seats in a Municipality and includes the election in relation to Recall the Mayor of a Municipal Corporation or the President of a Municipality or Nagar Panchayat from his office as the case may be."

29. Chapter VIII-A as interpreted by the amendment Act of 2000 deals in respect of polling in relation to Recall of the Mayor/president from his office.

30. If the contention of the respondents are accepted then it is established that the election process involves Recall also because definition of election as incorporated in the year 2000 includes the process of Recall into its ambit. It means the election includes process for Recall also, therefore, on this aspect, contention of the petitioner cannot be accepted that election does not include Recall, but here in the present case, it has to be seen that whether; petitioner has any remedy in respect of election petition or not and whether the same is effective and efficacious in view of the facts and circumstances of the case. Perusal of Section 20, 21 and 22 of the Act of 1961 reflects that the ground for declaring the election or nomination to be void are grounds which may be available to a person who is challenging the fresh election and not the process

which led to the situation of Recall. Petitioner may have opportunity to challenge the process of Recall after the notification of Election Commission but petitioner has no remedy in the statute (sic:statute) to challenge the circumstances which led to Recall. Grounds as enumerated in Section 22 of the Act of 1961 do not include grounds for Recall in expressed terms and if grounds are not available to the petitioner in expressed terms to agitate, then Election Petition does not offer effective and efficacious remedy to the petitioner and therefore, petitioner cannot be rendered remedy less and on this count also, the writ petition under Article 226 of the Constitution of India is maintainable. Malafide and arbitrary exercise of power of authorities led to the situation wherein the Collector forwarded the proposal to the State Government and State Government referred the matter to the Election Commission and Election Commission notified the same to conduct the process of Recall. Here, petitioner is challenging the arbitrary exercise of power exercised by the respondents which led to the process of Recall, therefore, petitioner has no alternative remedy which is effective and efficacious in nature by way of election petition. Sections 20, 21 and 22 of the Act of 1961 nowhere contemplate such exigencies which are faced by the petitioner.

31. Normally, in a matter pertaining to Recall of an elected representative and passing of no confidence motion when the statutory remedies are available, interference is not made by this Court exercising jurisdiction under Article 226 of the Constitution of India, but at the same time, it is well settled in law that if the breach of statutory provisions, violation of fundamental rights and action taken to be contrary to law are pointed out, interference in a petition under Article 226 of the Constitution of India can be made.

32. The Full Bench of this Court in the matter of *Naravadi Bai* (supra) has held that the bar put by the Article 243-O and 243-ZG of the Constitution of India cannot be read in the manner so as to curtail the constitutional power conferred on the High Court under Article 226 of the Constitution of India. The plenary nature of power as contained in Article 226 of the Constitution of India, can be invoked to prevent any illegality notwithstanding any constitutional (Article 243-ZG) or statutory (Election Petition) bar from coming in way of exercise of power of judicial review.

33. Recently, the Division Bench of this Court in the matter of *Pradhuman Verma Vs. State of M.P. and Others* (delivered on 22 February, 2017 in W.A. No.61/2017) has affirmed this view and held the writ petition under Article 226 of

the Constitution of India in almost similar fact situation (sic:situation) as maintainable. In similar fact situation, the writ Court in the matter of *Satya Prakash Parsadiya* (supra) has interfered in the matter and ruled out the objection raised by then respondents regarding maintainability of the writ petition. Similar is the case here, where the whole election process leading to Recall appears to have been perpetrated by the undue haste shown by respondent No.2/ Collector. Although, the proceedings under Section 41 of the Act of 1961 are not the subject matter of this writ petition but the pendency of the said proceedings for almost 20 months and disposal of the proceedings under Section 47 of the Act of 1961 instantly, speaks for themselves.

34. One more fact is worth consideration that petition was filed on 18/04/2017 and before that, petitioner has sent representation also (on 03/04/2017), immediately after 28/03/2017 to the Principal Secretary, Urban Administration and Environment Department/ respondent No.1 and thereafter she immediately rushed to this Court whereas Election Commission has issued notification for election on 07/07/2017 and till then respondents sought adjournment time and again for filing reply, therefore, it was the fault of the respondents wherein they lingered on the matter and avoided the hearing, therefore, the ground of issuance of notification by Election Commission cannot be given much credence in given fact situation. Respondents cannot be given premium for their own default and delay. This Court has sufficient power under Article 226 of the Constitution of India regarding moulding of reliefs (See:-(2016) 9 SCC 749 *State of Uttar Pradesh and Others Vs. Dinesh Singh Chauhan*, (2009) 14 SCC 132 *State of West Bengal and Another Vs. West Bengal Registration Copywriters Association and Another*). Even otherwise petitioner has challenged the initiation of process under Section 47 of the Act of 1961 and once petitioner has established the malafide on the part of the respondents while processing the proposal then, subsequent action of issuance of notification has no material bearing in the controversy and petitioner cannot be thrown out on the ground of issuance of notification by the Election Commission.

35. The Hon'ble Apex Court in the matter of *Election Commission of India Vs. Ashok Kumar and Others*, (2000) 8 SCC 216 has clarified the position in this regard that although Writ Court may be circumspect while entertaining the petition but in exceptional circumstances, interference can be made and scope of judicial review exists on well settled parameters. Fact of the case demands interference under extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The present case pertains to

Recall wherein petitioner has to face the electorate with allegations as contained in the proposal therefore, her position becomes vulnerable and circumstances prevailing at the time of voting for Recall are bit different than the circumstances existing at the time of voting for election of the candidate. In a way, candidate is not on a level playing field because he has to justify his/her position *vis a vis* the allegations levelled. In this aspect, it is imperative that process of Recall should be such which evokes credibility, transparency and fairness so that the concept devised as a progressive tool of democracy is not utilized by vested interests to achieve electoral gains from back doors.

36. The judgments as referred by the respondents also carve out exceptional circumstances, wherein indulgence can be shown under the writ petition under Article 226 of the Constitution of India to secure the ends of justice. This is one such instance, where arbitrariness and illegality coupled with malice needs course-correction. Election Commission and other councillors are not necessary party because no relief is sought against them. As such, at the time of filing of petition, Election Commission was not in picture and Commission could not have stood for the action of other respondents. Here, the challenge was mainly against the action of respondent No.2. Notification dated 07/07/2017 is consequential only.

37. In the attending facts and circumstances of the case as well as on the basis of cumulative analysis, petition is maintainable under Article 226 of the Constitution of India and election petition is not an effective remedy for challenging the proceedings of Recall to the petitioner and therefore, in the facts and circumstances and law discussed above, the petition is hereby allowed. The process initiated for proposal for Recall against the petitioner is hereby set aside and resultantly, all consequential proceedings including the issuance of notification dated 07/07/2017 pales into insignificance and are hereby set aside. It is held that the State Government and the Chairman Election Commission shall not proceed with the recommendations made by the Collector under Section 47(2) of the Act of 1961. However, the said findings does not give immunity to the petitioner for the next 3 years till her tenure completes. The councillors may initiate their proposal as and when situation arises in accordance with law, in future if any proposal comes in this regard.

38. Petition stands allowed as per above terms and disposed of.

39. No costs.

Petition allowed.

I.L.R. [2017] M.P., 2947

WRIT PETITION

Before Mr. Justice Sujoy Paul

W.P. No. 14176/2017 (Jabalpur) decided on 24 October, 2017

NAHID JAHAN (SMT.)

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

A. Civil Services (Conduct) Rules, M.P. 1965, Rule 3 and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Misconduct – Suspension – Grounds – Held – Commissioner exercised the power to place petitioner under suspension without there being any justification – Wordings of suspension order shows that allegation relates to a clerical error of including a dead person in portal – No irreparable loss or damage caused to department which necessitated issuance of suspension order – Suspension order issued mechanically and in a routine manner – Exercise of power is arbitrary and is set aside – Petition allowed. (Paras 14 to 16 & 20)

क. सिविल सेवा (आचरण) नियम, म.प्र. 1965, नियम 3 एवं सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – अवचार – निलंबन – आधार – अभिनिर्धारित – आयुक्त ने याची को बिना किसी न्यायोचित्य के निलंबित करने के लिए शक्ति का प्रयोग किया – निलंबन आदेश की शब्दावली दर्शाती है कि अभिकथन, पोर्टल में मृत व्यक्ति को शामिल करने की लिपिकीय त्रुटि से संबंधित है – विभाग को कोई अपूर्णीय हानि या क्षति कारित नहीं हुई जिससे निलंबन आदेश जारी करने की आवश्यकता थी – निलंबन आदेश यंत्रवत् रूप से एवं नैतिक ढंग से जारी किया गया – शक्ति का प्रयोग मनमाना है एवं अपास्त किया गया – याचिका मंजूर।

B. Service Law – Suspension Order – Exercise of Power – Held – Existence of power and exercise of power are two different things – Merely because an authority is competent to pass an order of suspension, it cannot be said that the order is justifiable. (Para 8)

ख. सेवा विधि – निलंबन आदेश – शक्ति का प्रयोग – अभिनिर्धारित – शक्ति का अस्तित्व एवं शक्ति का प्रयोग दो भिन्न विषय हैं – मात्र इसलिए कि एक प्राधिकारी निलंबन का आदेश पारित करने के लिए सक्षम है, यह नहीं कहा जा सकता कि वह आदेश न्यायोचित है।

C. Constitution – Article 14 & 226 – Jurisdiction and Scope

–Alternate Remedy– Held – Despite availability of alternative statutory remedy, writ petition can be entertained if order under challenge hits Article 14 – Availability of alternative remedy of appeal under the CCA Rules is not a bar to exercise jurisdiction by this Court in a case of this nature.
(Para 20)

ग. संविधान – अनुच्छेद 14 व 226 – अधिकारिता एवं व्याप्ति – वैकल्पिक उपचार – अभिनिर्धारित – वैकल्पिक कानूनी उपचार की उपलब्धता के बावजूद, रिट याचिका को ग्रहण किया जा सकता है यदि चुनौती दिया गया आदेश अनुच्छेद 14 को प्रभावित करता है। – सी.सी.ए. नियम के अंतर्गत अपील की वैकल्पिक उपचार की उपलब्धता, इस स्वरूप के किसी प्रकरण में इस न्यायालय द्वारा अधिकारिता के प्रयोग के लिए वर्जन नहीं है।

Cases referred :

2013 (16) SCC 147, 1994 (4) SCC 126, 2006 (8) SCC 200, 1999 (3) SCC 679, 1979 (2) SCC 286, AIR 1954 SC 207, 1958 SCR 598, AIR 1961 SC 1506, AIR 1961 SC 372, 1998 (8) SCC 1.

A.D. Mishra, for the petitioner.

D.K. Gangrade, P.L. for the respondent.

ORDER

SUJOY PAUL, J. :- The subject matter of scrutiny in this case is the order dated 26.08.2017 (Annexure-P/7) whereby the petitioner, Principal Nutan Subash Higher Secondary School, T.T. Nagar, Bhopal, is placed under suspension by order of Commissioner, Public Instructions, Bhopal.

2. Draped in brevity, the relevant facts are that the petitioner before being placed under suspension was working as Principal in the said School. As per the department order dated 01.03.2017, directions were issued to update the service books of teachers/employees working in the Education Department. The said instructions were time bound and initially the directions were issued to complete the said exercise before 15.04.2017. Thereafter a provisional list of Primary and Middle School Teachers was issued for the purpose of rationalization of surplus teachers. The department was required to invite objections, decide objections and declare a flawless list. It is alleged that in the list of surplus employees, the name of late Smt. Chandrakanta Pandey, Assistant Teacher was reflected/published because of which the Government had to face unpleasant situation. Since name of Late Smt. Chandrakanta

Pandey was not deleted from the list, her name appeared in the list which tarnished the image of the Government. Thus, it is alleged that the petitioner's negligent conduct amounts to misconduct under Rule 3 of the M.P. Civil Services (Conduct) Rules, 1965 (hereinafter referred to as "the Conduct Rules"). The Commissioner, Public Instructions by order dated 26.08.2017 placed the petitioner under suspension by invoking Rule 9 of M.P. Civil Services (Classification, Control & Appeal) Rules, 1966 (hereinafter referred to as "the Rules of 1966").

3. The main ground of attack to the suspension order is that the suspension order is passed without due application of mind and in a mechanical manner. For trivial mistake, the petitioner is placed under suspension. There is no justification in placing the petitioner under suspension.

4. Shri A.D. Mishra, learned counsel for the petitioner contended that during online updation work, names of more than 66 teachers were uploaded up to 29.04.2017, which is evident from the letter dated 30.04.2017 (Annexure-P/4). Late Smt. Chandrakanta Pandey was working in the said school and was transferred by order dated 21.01.2013. She was relieved on 30.01.2013 (Annexure-P/2) from the present school. Thereafter the petitioner was posted in the said school and started functioning as a Principal. The remaining updation work of teachers could not be completed due to technical fault in education portal which can be gathered from circular dated 24.05.2017 (Annexure-P/9). The last date for the purpose of updation was extended up to 26.05.2017 and before that the uploading of names of all 70 teachers were completed by petitioner, which is clear from the letter dated 23.06.2017 (Annexure-R/1). It is averred that the petitioner has been made victim for a minor mistake which has not caused any prejudice/loss to the department. It is further pleaded that the allegation on which the petitioner is placed under suspension does not constitute "misconduct" under the Conduct Rules.

5. *Per contra*, the respondents contended that the suspension order is appellable and, therefore, this petition is not maintainable. It is averred that the name of a dead employee was reflected in the education portal and this news was published by the media. This caused embarrassment to the department and, therefore, the petitioner was placed under suspension. By placing preliminary inquiry report (Annexure-R/1), it is averred that *prima facie* the petitioner is found to be responsible for the negligence and, therefore, she was rightly placed under suspension.

6. No other point is pressed by learned counsel for the parties.

7. I have heard learned counsel for the parties at length and perused the record.

8. The singular allegation against the petitioner is that because of her mistake, the name of dead employee was shown in the education portal. As per preliminary inquiry report dated 23.06.2017 (Annexure-R/1), it is clear that Smt. Chandrakanta Pandey expired on 13.02.2013 while working in Government Chandra Shekhar Primary School, Bhopal. Her dues were paid to her legal representatives on 28.04.2014. Because of a wrong entry, her name has been wrongly reflected in the education portal for which the petitioner is *prima facie* held responsible.

As per Rule 9 of the Rules of 1966, ordinarily, an employee can be placed under suspension (a) where a disciplinary proceedings relating to a misconduct is contemplated or pending, or (b) where a case against her in respect of any criminal offence is under investigation, inquiry or trial. The competence of learned Commissioner in issuing the impugned order is not subject matter of challenge in the present case. However, the existence of power is one thing and the exercise of such power is another. Merely because an authority is competent to pass an order of suspension, it cannot be said that his order is justifiable.

9. This is trite law that the purpose of placing an employee under suspension is mainly to keep her away from the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of her position. [See: (*Union of India Vs. Ashok Kumar Agrawal*), 2013 (16) SCC 147].

10. In the the present case, the petitioner will not be in a position to tamper or influence any evidence. The suspension although is not a punishment, an employee cannot be placed under suspension without application of mind. In 1994 (4) SCC 126 (*State of Orissa Vs. Bimal Kumar Mohanty*), the Apex Court poignantly held that the Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one forbidding or disabling an employee to discharge the duties of office or post held by him. It would be another thing if the action is actuated by mala fides, *arbitrary* or for ulterior

purpose. Thus, suspension order can be tested on the anvil of arbitrariness/reasonableness.

11. In the case of *Jayrajbhai Jayantibhai Patel Vs. Anilbhai Nathubhai Patel*, 2006 (8) SCC 200, the Apex Court held that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from the procedural impropriety or it shocks the conscience of the Court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society.

12. In the case of *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another*, 1999 (3) SCC 679, it was held that an exercise of right to suspend an employee may be justified on a facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted (sic:afflicted) by "*suspension syndrome*" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than an employee's trivial lapse which has often resulted in suspension.

13. The Supreme Court emphasized the need of applying mind before placing an employee under suspension. Author M.S. Nila in the Book "Law of Suspension" (Eastern Book Co., Lucknow) expressed the view that "*suspension on technical irregularities and lapses is unreasonable*" (Page 20). Another Author Shri S.K.P. Shrinivas in "Law of Suspension and Reinstatement" (Orient Publishing Co.) opined that authority passing suspension order must not be afflicted with suspension syndrome. An order of suspension must not be passed whimsically, capriciously, unduly, fancifully and unreasonably. Contrary to these, such an order must be a reasoned one.

14. Wording of suspension order clearly shows that the allegations against the petitioner are relating to a clerical error of including the name of a dead person in the portal. For this alleged "misconduct", the respondents placed her under suspension. It is profitable to refer to the judgment of Supreme Court in this regard. In 1979 (2) SCC 286 (*Union of India and others Vs. J. Ahmed*), Desai J. held that "it is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would *ipso facto* constitute misconduct. There may be negligence

in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability is very high.”

15. If the reasons mentioned in the suspension order are tested on the anvil of the judgment of *J. Ahmed* (supra), it will be clear that there is no allegation against the petitioner that because of her negligence, any irreparable loss or damage has been caused to the department. The negligence or its result, in the present case, was not irreparable or so heavy necessitating the issuance of order of suspension.

16. In the peculiar facts and circumstances of this case, in the opinion of this Court, the respondents have placed the petitioner under suspension in a routine manner. Such exercise of power is arbitrary and cannot be countenanced. Needless to mention that an arbitrary order hits Article 14 of the Constitution. In such rare cases, it is not necessary to relegate the employee to avail alternative remedy of appeal.

17. This is trite law that despite availability of statutory alternative remedy, writ petition can be entertained if order under challenge hits Article 14 of the Constitution.

18. It is apt to remember that in AIR 1954 SC 207 (*K.S. Rashid & Son vs. Income Tax Investigation Commissioner*), the court held that availability of alternative remedy can be a ground to exercise discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, “unless there are good grounds therefor”, which indicated that alternative remedy would not operate as an absolute bar and writ petition under Article 226 could still be entertained in exceptional circumstances. Specific and clear rule was laid down in (*State of U.P. vs. Mohd. Nooh*), 1958 SCR 598, as under:

“But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.”

This proposition was considered by a Constitution Bench of this Court in *A.V. Venkateswaran, Collector of Customs, Bombay vs. Ramchand Sobhraj Wadhvani & Another*, AIR 1961 SC 1506 and was affirmed and followed in the following words:

“The passages in the judgments of this court we have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and that in a matter which is thus pre eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court.”

Another Constitution Bench decision in *Calcutta Discount Co. Ltd. vs. Income Tax Officer Companies Distt. I* AIR 1961 SC 372 laid down:

“Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or a likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction under 8.34 I.T. Act.”

[Emphasis Supplied]

19. After considering the aforesaid judgment, in 1998 (8) SCC

(*Whirlpool Corporation vs. Registrar of Trademarks*), the Apex Court again held that where action of an executive authority acting without jurisdiction subjects or is likely to subjects a person to lengthy proceedings and unnecessary harassment, the High Court will issue appropriate orders or direction to prevent such consequences. In no uncertain terms, it was laid down that a writ remedy under Article 226 of the Constitution, inspite of alternative remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to *usurp jurisdiction without any legal foundation*.

20. In the light of this legal position, the availability of alternative remedy of appeal under the CCA Rules is not a bar to exercise jurisdiction by this Court in a case of this nature. As noticed, the learned Commissioner although had power to place the petitioner under suspension, exercised the said power without there being any justification. Thus, in the peculiar factual matrix of this case, I am not inclined to relegate the petitioner to avail alternative remedy.

21. In view of the aforementioned discussion, the impugned order cannot sustain judicial scrutiny. Resultantly, the order dated 26.08.2017 (Annexure-P/7) is set aside. Hence, the petitioner shall reap all consequential benefits. The petition is allowed. No cost.

Petition allowed.

I.L.R. [2017] M.P., 2954

WRIT PETITION

Before Mr. Justice J.K. Maheshwari

W.P. No. 6117/2015 (Gwalior) decided on 5 December, 2017

SHUSHILA BAI & ors.

...Petitioners

Vs.

STATE OF M.P. & ors.

...Respondents

A. *Land Acquisition Act (1 of 1894), Sections 4, 6, 11 & 18 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Section 24(2) – Non Payment of Amount of Compensation – Effect – Award of compensation was passed in 1999 in respect of acquisition of land of petitioners – Amount not deposited in accounts of petitioners – Held – As per Section 24(2) of the Act of 2013, on the date of commencement*

of the Act of 2013, if award is passed five years prior from the said date and compensation has not been paid, land acquisition proceedings shall be deemed to have lapsed – Proviso to Section 24(2) of the Act of 2013 makes it clear that in case where an award has been made and compensation to majority of the land owners has not been deposited in the account of beneficiaries then all beneficiaries specified in notification of old Act are entitled for compensation under the new Act of 2013 – In the present case, proviso cannot be invoked as petitioners does not come within the purview of majority of land owners to whom amount have not been deposited in their account – Proceedings with respect to the land in question belonging to petitioners shall stand lapsed – Petition partly allowed. (Paras 12, 19, 29 & 30)

क. भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 4, 6, 11 व 18 एवं भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम (2013 का 30), धारा 24(2) – प्रतिकर की राशि का असंदाय – प्रभाव – याचीगण की भूमि के अर्जन के संबंध में 1999 में प्रतिकर का अवार्ड पारित किया गया था – याचीगण के खातों में राशि जमा नहीं की गई – अभिनिर्धारित – 2013 के अधिनियम की धारा 24(2) के अनुसार, 2013 के अधिनियम के प्रारंभ की तिथि पर, यदि अधिनिर्णय कथित तिथि से पांच वर्ष पूर्व पारित किया गया है तथा प्रतिकर संदत्त नहीं किया गया है, भूमि अर्जन की कार्यवाहियों का व्यपगत होना समझा जाएगा – 2013 के अधिनियम की धारा 24(2) का परन्तुक यह सुस्पष्ट करता है कि ऐसे प्रकरण में जहां अवार्ड दिया गया है एवं बहुसंख्या में भूमि स्वामियों का प्रतिकर हिताधिकारियों के खाते में जमा नहीं किया गया है तो पुराने अधिनियम की अधिसूचना में विनिर्दिष्ट सभी हिताधिकारी 2013 के नये अधिनियम के अंतर्गत प्रतिकर के हकदार हैं – वर्तमान प्रकरण में, परन्तुक का अवलंब नहीं लिया जा सकता है क्योंकि याचीगण भूमि स्वामियों की बहुसंख्या की परिधि के भीतर नहीं आते जिनके खाते में राशि जमा नहीं की गई है – याचीगण से संबंधित प्रश्नगत भूमि के संबंध में कार्यवाहियां व्यपगत हो जाएंगी – याचिका अंशतः मंजूर।

B. *Land Acquisition Act (1 of 1894), Section 31 – Deposit of Compensation Amount in Reference Court* – Held – If award was passed and land owner refused to accept the amount of compensation awarded then in such cases, amount ought to have been deposited in the reference Court as per the provisions of Section 31 of the Act of 1894 – Mere deposit of said amount with Land Acquisition Officer or the Collector is not sufficient. (Para 28)

ख. भूमि अर्जन अधिनियम (1894 का 1), धारा 31 – निर्देश न्यायालय

में प्रतिकर राशि का जमा किया जाना – अभिनिर्धारित – यदि अवार्ड पारित किया गया था तथा भूमि स्वामी ने अवार्ड की गई प्रतिकर की राशि स्वीकार करने से इंकार कर दिया, तब ऐसे प्रकरणों में, 1894 के अधिनियम की धारा 31 के उपबंधों के अनुसार राशि निर्देश न्यायालय में जमा की जानी चाहिए – भूमि अर्जन अधिकारी या कलेक्टर के पास कथित राशि का मात्र जमा किया जाना पर्याप्त नहीं है।

Cases referred :

(2014) 3 SCC 183, (2016) 16 SCC 258, AIR 2017 SC 2450, 2016 (1) M.P.L.J. 32, (2017) 4 AIR Bom R 152, (2016) 6 SCC 387, W.A. No. 939/2016 order dated 10.08.17, S.L.P.C No. 25857/2016 decided on 08.08.2017, (2014) 6 SCC 586, 2015 (1) MPHT 288, (2015) 4 SCC 347, (2015) 8 SCC 544, 2015 (9) Scale 1, (2015) 16 SCC 342, 2016 (1) MPLJ 649, (2016) 16 SCC 254.

D.D. Bansal and Rajiv Jain, for the petitioners.

Nidhi Patankar, G.A. for the respondent Nos. 1, 2, 3 & 5.

S.P. Jain, for the respondent No. 4.

J U D G M E N T

J.K. MAHESHWARI, J. :- The petitioners have filed this petition under Article 226 of the Constitution of India seeking the following reliefs:-

"(i) to call entire record pertaining to the land acquisition of the petitioners land situated at Mirjapur, Tahsil and District Vidisha.

(ii) to hold the land acquisition proceedings of land acquired for Krishi Upaj Mandi, Vidisha be lapsed in the light of Section 24(2) and in the light of law laid down by the Hon'ble Supreme Court.

(iii) to consequently quash the land acquisition proceedings, acquiring the land of petitioners for establishment of Krishi Upaj Mandi Vidisha; and or

(iv) in the alternative direct the respondent authorities to pay the compensation in accordance with the new Act of 2013.

(v) to grant any other relief deemed fit or the petitioners be found entitled to in the interest of justice, equity and good

conscience along with costs of litigation."

2. The facts of the case are that the petitioners were the owners of the land of different Khasra bearing Nos.22,23,24,25,30,31/1,31/2 situated at Village Mirjapur of Tahsil and District Vidisha and it would reveal from the following chart:-

Sr. No.	Name of Petitioner	Survey No.	Land Admeasuring
1	Shushila Bai	30	0.249
2	Dev Kunwar Ben Shah	30	2.530
3	Asharani	31/1	0.958
4	Pratiksha Chawla	22	0.314
5	Vasu Dev	30	0.497
6	Sushil Kumar/Sanjeev Kumar	22	0.313
7	Vaibhav Kumar	31/2	0.627

3. The notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter shall be referred to as the "Old Land Acquisition Act") was issued on 15.12.1995 and the final notification under Section 6 of the Act was published in the gazette on 10.1.1996 by which the total land of the petitioners pertaining to the chart of the said Khasra numbers of the total area 20.210 hectare situated at Village Mirjapur, Tahsil and District Vidisha was acquisitioned. The final award was passed by the Land Acquisition Officer, Vidisha on 16.8.1999 vide Annexure R/1 determining the compensation to the land holders. It is also not in dispute that Civil Suit No.7A/1999 was filed by the land owner Dev Kunwar Ben Shah (petitioner No.2 herein) seeking the declaration that the notification under Sections 4 and 6 of the old Land Acquisition Act are not valid and the same may be set aside and she be declared the owner of the said land. The said civil suit was dismissed by the 2nd Additional District Judge, Vidisha vide judgment dated 28.4.2000 Annexure P/4 against which First Appeal No.143/2000 was preferred that too was dismissed by this Court vide judgment dated 6.5.2005 holding that the Civil Court do not have the jurisdiction to entertain such suit. Being aggrieved by the same, the petitioner No.2 has preferred S.L.P. No.18763/2005 before

the Hon'ble Supreme Court, which was dismissed as withdrawn. Thereafter, the petitioner No.2 filed a Writ Petition No.1523/2006 challenging the land acquisition made by the respondents on various grounds. The said writ petition was dismissed vide order dated 31.7.2007 against which Writ Appeal No.628/2007 preferred was dismissed vide order dated 10.1.2008. The Special Leave Petition preferred against the order dated 10.1.2008 was also dismissed on 11.7.2008. Thereafter, Writ Petition No.6389/2011 was filed by petitioner No.2 contending inter alia that the forcible possession may not be taken from her. The said writ petition was disposed of by this Court vide order dated 23.9.2011 with a direction to decide the question of possession by the competent authority. However, after passing the order by the Collector, District Vidisha on 23.11.2011, Writ Petition No.8060/2011 was filed by the petitioner No.2 challenging the same and also restraining the defendants to not to take forcible possession from her, which was decided by this Court vide order dated 4.4.2012. Against the said order, S.L.P No.18633/2012 was preferred and the same was also dismissed vide order dated 13.7.2012. Thereafter, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter shall be referred to as "Right to Fair Compensation Act") has come into force with effect from 1.1.2014. However, taking the pretext of the provisions of Section 24(2) of the Right to Fair Compensation Act seeking appropriate directions of lapsing of the proceedings of the land acquisition to which the compensation was not paid, this petition has been preferred alongwith other reliefs.

4. Learned counsel for the petitioners have fairly contended that the possession of the land has been taken on 6.12.2000 and he is pressing upon this petition with respect to the second limb of Section 24(2) of the Right to Fair Compensation Act that in case the compensation has not been paid then such proceedings shall be deemed to have lapsed. In support of the said contention, learned counsel has placed reliance on the judgments of the Hon'ble Supreme Court rendered in the case of *Pune Municipal Corporation Versus Harakchand Mishrimlal Solanki & Others* reported in (2014) 3 SCC 183, *Delhi Development Authority Versus Sukhbir Singh & Others* reported in (2016) 16 SCC 258, *Government of NCT of Delhi Versus Manav Dharam Trust & Another* reported in AIR 2017 SC 2450 and the Division Bench Judgment of this Court rendered in the case of *Purushottam Lal & Others Versus State of M.P. & Others* reported in 2016 (1) M.P.L.J 32. Reliance has also been placed on the judgment of the Bombay High Court rendered in

the case of *Shri Murlidhar Raghu Jagtap Versus Special Land Acquisition Officer* reported in (2017) 4 AIR Bom R 152 to contend that if the compensation has not been paid to the land owners then the proceedings under the Right to Fair Compensation Act shall stand lapse. Learned counsel for the petitioners has not pressed the relief of challenging the land acquisition proceedings and confined the arguments to declare the lapsing of the proceedings on account of non-payment of amount of compensation.

5. On the other hand, learned Government Advocate for respondent Nos.1,2,3,5 contends that it is a case wherein the compensation has been determined to the land acquired and their owners were duly informed to receive such amount of compensation. Except the petitioners, most of the persons have received the amount of compensation. Except the petitioner Nos.1 and 2, none of the petitioner has raised any objection with respect to acquisition of their land in question. It is also contended that inspite of receiving the information and notice, they have not collected the amount of compensation though tendered to them. The petitioner No.1 has not challenged the land acquisition proceeding with respect to her land and submitted an application under Section 18 of the Act before the Court of Collector seeking prayer to make the reference to the competent Civil Court. Despite it, no amount of compensation has been received. It is further contended that after making challenge before the Civil Court and thereafter before this Court in the writ petitions in two rounds of litigation when she remained unsuccessful and now filed this petition. The respondents questioning the conduct of the petitioner NO.2 in the matter of filing the litigation and not receiving the amount of compensation said, despite information and its deposit in the Court of Collector in terms of Section 18 of the old Land Acquisition Act no case seeking the benefit of Section 24(2) of the Right to Fair Compensation Act is made out. It is contended that as per the letters Annexures R/1/1 to R/1/7 various informations were sent to receive the compensation but it was not responded so also the cheques were also tendered but not accepted by them, though its non-deposit in the Reference Court is not disputed thus said, after completing all the formalities, the petitioner is not entitled to claim any benefit. By filing the additional return, it is stated by learned Government Advocate for the respondent Nos.1,2,3,5 that out of 22 persons, only the seven petitioners have not received the amount of compensation, therefore, they would not be covered within the word majority of the land holdings, who have not received the amount of compensation. Hence, this petition does not have any merit and

it is liable to be dismissed.

6. Learned counsel for respondent No.4 has reiterated all the facts and grounds as stated by learned Government Advocate for respondent Nos.1,2,3,5 and submitted that in the earlier round of litigation either before the Civil Court or before this Court, the petitioner No.2 remained unsuccessful and thereafter filing of this writ petition would not make her entitle to get the declaration of lapsing of the land acquisition proceeding in view of the guideline introduced by the Central Government, however, prayer is made to dismiss the petition.

7. Learned counsel for the respondents contends that Hon'ble the Supreme Court in the case of *Yogesh Neema & Others Versus State of Madhya Pradesh & Others* reported in (2016) 6 SCC 387 referred two issues for determination before the Larger Bench and considering the same, the Division Bench of this Court in Writ Appeal No.939/2016 (*M.P.Housing board Versus State of M.P & Others*) vide order dated 10.8.2017 has admitted the appeal on account of the reference so also review pending before the Larger Bench, therefore, hearing of this case may be deferred till decision by Hon'ble the Supreme Court in the review and the reference.

8. After having heard learned counsel for the parties at length, first of all, the issue with respect to deferment of hearing raised by learned counsel for the respondents deserves consideration. In this regard, the questions posed for reference in the case of *Yogesh Neema* (supra) to the Larger Bench are relevant, however, reproduced as under:-

"6.1(i) Whether the conscious omission referred to in para 11 of the judgment in *Sree Balaji Nagar Residential Association vs. State of TN*, (2015) 3 SCC 353 makes any substantial difference to the legal position with regard to the exclusion or inclusion of the period covered by an interim order of the Court for the purpose of determination of the applicability of Section 24(2) of the 2013 Act ?

6.2(ii) Whether the principle of "actus curiae neminem gravabit", namely act of the court should not prejudice any party would be applicable in the present case to exclude the period covered by an interim order for the purpose of determining the question with regard to taking of possession

as contemplated in Section 24(2) of the 2013 Act?"

9. In the present case, the respondents in their return have not raised the said contentions. Insofar the order dated 10.8.2017 passed by the Division Bench of this Court in *M.P.Housing Board's* case (supra) is concerned, in the said case, this Court has deferred the hearing of writ appeal and admitted the same because of the said reference and review of the judgment of *Pune Municipal Corporation* (supra). In the said context, it is to be noted here that the review in the case of *Pune Municipal Corporation* (supra) though filed, which has been attached with other cases as per order dated 21.11.2014 of the Apex Court. Thereafter, the Apex Court relying upon the judgment of *Pune Municipal Corporation* (supra) decided not less than fifty cases reiterating the principle as laid down in the case of *Pune Municipal Corporation* (supra). The Apex Court in the case of *Sukhbir Singh* (supra) has started the judgment in the following words:-

"These two appeals revisit the question of the correct construction of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "the 2013 Act"). We are constrained to observe that we are hearing these matters despite the fact that the law has been settled in **Pune Municipal Corporation Versus Harakchand Misirimal Solanki**, which is now *stare decisis* in that it has been followed in a large number of judgments: **Bimla Devi Versus State of Haryana** (2014) 6 SCC 583 at Para 3: **Union of India Versus Shiv Raj** (2014) 6 SCC 564 at Para 22: **Sree Balaji Nagar Residential Association Versus State of T.N.** (2015) 3 SCC 353 at Para 1: **State of Haryana Versus Vinod Oil and General Mills** (2014) 15 SCC 410 at Para 21: **Sita Ram Versus State of Haryana** (2015) 3 SCC 597 at Paras 19, 21: **Ram Kishan Versus State of Haryana** (2015) 4 SCC 347 at Paras 8, 9, 12: **Velaxan Kumar Versus Union of India** (2015) 4 SCC 325 at Paras 15, 17: **Karnail Kaur Versus State of Punjab** (2015) 3 SCC 206 at Paras 17, 18, 23: **Rajiv Choudhrie HUF Versus Union of India** (2015) 8 SCC 544, 551 (Para 1): **Competent Automobiles**

Company Limited Versus Union of India (2015) 8 SCC 544, 552 (Para 14): Govt. (NCT of Delhi) Versus Jagjit Singh (2015) 8 SCC 544, 554: Karan Singh Versus State of Haryana (2015) 16 SCC 625 at Para 4: DDA Versus Sukhbir Singh (2016) 16 SCC 285: Shashi Gupta Versus State of Haryana (2016) 13 SCC 380."

10. Thus, the Apex Court with respect to the judgment of *Pune Municipal Corporation* (supra) has held that the said judgment is now *stare decisis* followed in large number of the judgments by them. Meaning thereby, as per the judgment of *Sukhbir Singh* (supra) for the case of *Pune Municipal Corporation* (supra), principle of *stare decisis* applies, therefore, there is no reason to defer hearing of this petition. It is relevant to note here that recently also the Apex Court in S.L.P.C No.25857/2016 (*Radha Soami Satsang Beas Versus State of M.P. and others*) decided on 8.8.2017 has relied upon the judgment of *Pune Municipal Corporation* (supra) and reiterated the same principles. More so, the order of the Division Bench is merely an interim order and it is not having an effect of binding precedent, therefore, merely because the reference is pending in the case of *Yogesh Neema* (supra) on the issue not raised in return, would not apply to the facts of the present case and due to attaching the review petition of *Pune Municipal Corporation* (supra) for the Larger Bench, in my considered opinion, the prayer made to defer hearing of the petition is hereby repelled. The said view fortifies from the view taken by the Bombay High Court in the case of *Murlidhar Raghu Jagtap* (supra).

11. Now it is to be examined that in view of the provisions as contained in Section 24(2) of the Right to Fair Compensation Act, what recourse is permissible in the cases where the land acquisition proceedings have been initiated under the old Land Acquisition Act. In this regard, the provision of Section 24 is relevant, which is reproduced as under:-

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases.- (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),-

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act

relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section 91), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894) where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

12. On perusal of the aforesaid, it is apparent that in case the land acquisition proceedings under the old Land Acquisition Act were initiated and the award has been made, it would be covered under Section 24(1)(a) of the Right to Fair Compensation Act. In case an award has been passed under Section 11 then such proceedings would continue as per the old Land Acquisition Act as if the said Act has not been repealed. Sub-section (2) specifies that if an award has been made five years or more prior to the commencement of the Right to Fair Compensation Act but in case the twin conditions have not been satisfied i.e. of taking over of the physical possession of the land in question, or the compensation has not been paid then such proceedings shall be deemed to have lapsed and the liberty is granted to the State Government that if it so chooses shall initiate the land acquisition proceedings afresh in accordance with the provisions of the Right to Fair Compensation Act. Proviso to Section 24 makes it clear that if the award has

been made and compensation in respect of a majority of the land holdings has not been deposited in the account of the beneficiaries then all beneficiaries in the notification for acquisition under Section 4 of the old Land Acquisition Act shall be entitled to the compensation in accordance with the provisions of the Right to Fair Compensation Act.

13. Considering the provision of Section 24(2) of the Right to Fair Compensation Act, the Apex Court in the case of *Pune Municipal Corporation* (supra) observed that the acquisition under the old Land Acquisition Act be deemed to be lapsed if the compensation has not been paid to the land owners or the amount has not been deposited in the Court as specified in Section 31(2) of the Act. The relevant paragraphs of the said judgment are reproduced as under:-

13. There is amendment in Maharashtra Nagpur (City) in Section 31 whereby in sub-section (1), after the words "compensation" and in sub-section (2), after the words, "the amount of compensation" the words "and costs if any" have been inserted.

14. Section 31 (1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31 (2) are: (i) the persons interested entitled to compensation do not consent to receive it, (ii) there is no person competent to alienate the land, and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made.

15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the

Court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court which reference can be made under section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Section 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such Government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word paid, Parliament intended receipt of compensation by the landowners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this sub-section [sub-section (2) of Section 24]. If a literal construction were to be given, then it would amount to ignoring the procedure, mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as "paid" if the compensation has been offered to the person

interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31 (2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

18. The 1894 Act being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner as provided. It is settled proposition of law (classic statement of Lord Roche in Nazir Ahmad) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

19. Now, this is admitted position that award was made on 31.01.2008. Notices were issued to the landowners to receive the compensation and since they did not receive the compensation, the amount (Rs 27 crores) was deposited in the Government treasury. Can it be said that deposit of the amount of compensation in the Government treasury is equivalent to the amount of compensation paid to the landowners/persons interested We do not think so. In a comparatively recent decision, this Court in Agnelo Santimano Fernandes, relying upon the earlier decision in Prem Nath Kapur, has held that the deposit of the amount of the compensation in the sates revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in court. (Emphasis Supplied)"

14. In the case of *Bharat Kumar Versus State of Haryana & Another* reported in (2014) 6 SCC 586, the Apex Court has reiterated the same principle of law holding that if physical possession of the land has not been taken and

the award has been passed five year prior to the commencement of the Right to Fair Compensation Act, such case would fall within the purview of Section 24(2) of the said Act and the proceeding of the land acquisition was directed to be lapsed setting aside the order of the High Court refusing to grant such relief.

15. In the case of *Bimla Devi Versus State of Haryana* reported in 2015 (1) MPHT 288, the Apex Court has again relied upon the judgment of *Pune Municipal Corporation* (supra) and explained the meaning of the word "paid", the Apex Court in Paragraph No.17 has observed as under:-

"17. While enacting Section 24(2), Parliament definitely had in its view Section 31 of the 1894 Act. From that one thing is clear that it did not intend to equate the word "paid" to "offered" or "tendered". But at the same time, we do not think that by use of the word "paid", Parliament intended receipt of compensation by the land owners/persons interested. In our view, it is not appropriate to give a literal construction to the expression "paid" used in this Sub-section (Sub-section (2) of Section 24). If a literal construction was to be given, then it would amount to ignoring procedure mode and manner of deposit provided in Section 31(2) of the 1894 Act in the event of happening of any of the contingencies contemplated therein which may prevent the Collector from making actual payment of compensation. We are of the view therefore, that for the purposes of Section 24(2) the compensation shall be regarded as "paid" if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been "paid" within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33."

16. In the said case, the Apex Court has held that either the amount must

be paid or it ought to be deposited in the Reference Court as specified in Section 31(2) of the old Land Acquisition Act.

17. The Apex Court further relying upon the judgment of *Pune Municipal Corporation* (supra) decided number of cases reiterating same principle and some of them are *Ram Kishan and others Versus State of Haryana and others* reported in (2015) 4 SCC 347; *Radianc Fincap Private Limited and others Versus Union of India and others* reported in (2015) 8 SCC 544; *Soorajmull Nagarmull Versus State of Bihar and others* reported in 2015 (9) Scale 1; *Working Friends Cooperative House Building Society Limited Versus State of Punjab and others* decided on 12.10.2015; *Rattan Singh and others Versus Union of India (UOI) and others* reported in (2015) 16 SCC 342.

18. In the case of *Sukhbir Singh* (supra), the Apex Court is having an occasion to consider the scope of Section 24(2) of the Right to Fair Compensation Act in the light of the judgment of *Pune Municipal Corporation* (supra). In the context of the land acquisition proceeding, the Apex Court has considered the scheme of the old Land Acquisition Act and in Paragraph No.9, and observed that the Collector after an inquiry has to make an award specifying the necessary ingredients of Section 11 of the Act. As soon as the award is made, under Section 12(2) of the Act, the Collector has to give immediate notice of the award to such of the persons interested as are not present personally; if the said provision is read with Section 31 of the Act, it would make clear that under the statutory scheme, the Collector is to tender payment of compensation awarded by him to the persons who are interested and entitled thereto, according to the award, on the date of making the award itself. Meaning thereby, the Collector must be armed with the amount of compensation payable to persons interested as soon as the award is made. Such persons have to be paid the sum mentioned in the award. It is well settled that the award is an offer, which may be accepted or rejected by the claimants on tendering the amount. Thus, it is incumbent on the Collector to make the payment as soon as possible after the award. In case a person interested refuses or does not consent to receive the money payable or there be no person competent to alienate the land or if there is any dispute as to title to receive compensation or its apportionment, **the Collector ought to deposit the amount of compensation in the Reference Court.** It is only after these steps have been taken then the Collector may take possession of the land, which shall

vest the land absolutely in the Government free from all encumbrances. In case the said procedure has not been followed, the interest is payable @ 10% for one year and 15% thereafter. In the said case, the Apex Court has further referred various judgments wherein the said scheme has been adverted to by the Apex Court. Thereafter, reference of Section 24 of the Right to Fair Compensation Act has been considered and in Paragraph No.13, the Apex Court has emphasized the instinct of Section 24(2) and thereafter in Paragraph Nos.14 & 15 referring various paragraphs of the judgment of *Pune Municipal Corporation* (supra) reiterated the same principle as laid down in the said case.

19. This Court is also having an occasion to consider the said issue in the case of *Parasram Pal & another Versus Union of India and others* reported in 2016 (1) MPLJ 649 wherein after understanding the meaning of “offer” “tendered” “paid” in the context of Section 24 of the Right to Fair Compensation Act, held that if the possession has not been taken or the compensation has not been paid even after five year from the date of award passed prior to commencement of the Right to Fair Compensation Act, the land acquisition proceeding shall be deemed to have lapsed. In this view of the matter, the legal position reiterated by various judgments with respect to Section 24(2) of the Right to Fair Compensation Act is crystallized holding that on the date of commencement of the Right to Fair Compensation Act if the award is passed five year prior from the said date and the compensation has not been paid, the land acquisition proceeding shall be deemed to have lapsed. In addition, as per *Sukhbir Singh* (supra), for the judgment of *Pune Municipal Corporation* (supra), the principle of *stare decisis* applies.

20. In the present case, the notification under Section 4 of the old Land Acquisition Act was issued on 15.12.1995 and the final notification under Section 6 of the Act was published in the gazette on 10.1.1996 and the final award was passed by the Land Acquisition Officer, Vidisha on 16.8.1999 vide Annexure R/1 determining the total compensation to the land holders. As per the return filed by the respondent Nos.1,2,3,5/State, it is apparent that except the petitioners, the remaining land owners have received the amount of compensation, however, it is not disputed that the petitioners have not received the amount of compensation. Section 24(2) of the Right to Fair Compensation Act deals with the lapsing of the proceedings and it is having nothing to do with respect to the challenge made earlier and it would not have

any impediment in case in the earlier round of litigation, the petitioners have challenged the notification under Sections 4 and 6 of the old Land Acquisition Act on very many grounds while infact lapsing of the proceedings is different than the challenge made to the land acquisition proceedings. In this regard, the guidance can be taken from the judgment of *Government of NCT of Delhi Versus Manav Dharam Trust* (supra).

21. The Apex in Paragraph Nos.20,21,22,23 of *Manav Dharam Trust* (supra) has held thus:-

"20.It is also to be specifically noted that the challenge made by the writ petitioners in the miscellaneous application filed by them is not to the acquisition or to the regularity of the process of acquisition including the taking of possession. Their only prayer is for a declaration that the proceedings qua the land referred to in the application have lapsed by virtue of the operation of Section 24(2) of the 2013 Act.

21.All the decisions cited by the learned Senior Counsel appearing for the appellants, no doubt, have categorically held that the subsequent purchasers do not have locus standi to challenge the acquisition proceedings. But in the present case, the challenge is not to the acquisition proceedings; it is only for a declaration that the acquisition proceedings have lapsed in view of the operation of Section 24(2) of the 2013 Act, and therefore, the ratio in those cases has no application to these cases.

22.It is one thing to say that there is a challenge to the legality or propriety or validity of the acquisition proceedings and yet another thing to say that by virtue of operation of a subsequent legislation, the acquisition proceedings have lapsed.

23.In all the decisions cited by the learned Senior Counsel for the appellants, which we have referred to above, this Court has protected the rights of the subsequent purchaser to claim compensation, being a person interested in the compensation, despite holding that they have no locus standi to challenge the acquisition proceedings."

22. Now reverting to the arguments of learned counsel for the respondents that after acquisition of the land, the construction of Krishi Upaj Mandi Samiti has already been raised, however, in case of lapsing, the said construction is required to be demolished and it will cause serious prejudice to them.

23. Similar issue has been raised and dealt with by the Apex Court in the case of *Delhi Development Authority Versus Kusham Jain and others* reported in (2016) 16 SCC 254 in the context of Section 24(2) of the Right to Fair Compensation Act wherein in Paragraph Nos.6,7,8,9,10, the Apex Court has answered the said issue, however, it is reproduced thus:-

"6. The question of deposit in Court arises only in the vent of a contingency as provided under Section 31(2) of the Land Acquisition Act, 1894. Section 31(2) of the Act reads as under:

31. Payment of compensation or deposit of same in Court.-

xxx xxx xxx xxx

(2). If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation in the Court to which a reference under Section 18 would be submitted.

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

7. There is no case for the appellant that any of such

contingencies had arisen compelling the Land Acquisition Collector for depositing the amount of compensation in Court. Quite strangely, what is deposited in Court in the year 2013 is the amount in terms of the Award passed in the year 1986, without any interest as provided under the Act for the intervening period. Had there been a deposit in 1986, the land owner could have sought for an investment of the money in interest bearing deposits or other approved securities, as per Section 33 of the 1894 Act. In any case, such deposit in Court which is not contemplated or permitted under Land Acquisition Act, 1894 cannot be treated as a payment of compensation to land owners for the purpose of Section 24(2) of the 2013 Act. "The payment of compensation/deposit in court has to be made as per the provisions under the 1894 Act, and, in no other way, as held by this Court in *Pune Municipal Corporation and Anr. Versus Harakchand Misirimal Solanki and Ors.* Reported in (2014) 3 SCC 183. The payment or deposit having not admittedly been done in terms of the 1894 Act, the deeming provision on lapse under Section 24(2) of the 2013 Act has to operate.

8. Shri Sharan submits that the possession having been taken long back and in some cases, since various developments have also taken place, the appellant— Delhi Development Authority and third parties will be visited with very serious consequences.

9. We do not find any substance in the above submission as well. Section 24(2) itself has given sufficient protection in such cases. In the event of any lapsing of the acquisition proceedings under Section 24(2), it is open to the appropriate Government, if they choose so, to initiate proceedings for acquisition of such land afresh but the only rider is that the acquisition should be in accordance with the provisions under 2013 Act.

10. Therefore, without prejudice to the liberty available to the appellant to initiate steps afresh for acquisition of the subject land under the provisions of the 2013 Act, this appeal is dismissed."

24. In the present case, the relief is pressed upon for declaration of lapsing of the land on account of non-payment of the amount of compensation, which was considered in the case of *Rattan Singh* (supra) wherein the Apex Court has held as under:-

"1. In the current appeals, compensation was neither paid to the appellants nor deposited in the appropriate Court. The retention of it by the Land Acquisition Collector till such time as the appellants made applications for it would not amount to compensation being paid to them. The contention of the respondent is thus entirely erroneous. Since the award predated the commencement of the 2013 Act by well over five years and compensation has not paid to the appellants, Section 24(2) comes into operation in favour of the appellants. Whether possession was taken by the respondent need not be dilated upon nor need it detain this Court any further. The acquisition is deemed to have lapsed in these circumstances. The respondent may initiate fresh acquisition proceedings in accordance with the provisions of the 2013 Act, if it so wishes.

2. In view of the foregoing, it is not necessary to consider the correctness of the impugned judgment on merits. These appeals are allowed with no orders as to costs."

25. At this stage, it is also relevant to deal the argument of the respondents regarding tender of the amount by way of cheque though not received by the petitioners and the amount remained in the account of the Land Acquisition Officer. The said issue has been considered by a Division Bench of this Court in *Purushottam Lal* (surpa) and the Court has held thus:-

"21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals 1894 Act. Subsection (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land

acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation."

It has been clearly laid down by the Supreme Court in the aforesaid case, that if compensation is not paid or if possession of the land is not taken over and if five years period or more is over, prior to commencement of the Act of 2013, the land acquisition proceedings lapse. Section 31(1) of the Act is also taken note of and it has been clearly held that if compensation is neither paid to the beneficiaries nor deposited in the Court where reference would be met under Section 18, land acquisition proceedings would lapse. It is also held that deposit of the amount as per the award with the treasury of the Government of State Revenue Department is not sufficient compliance. This judgment of the Supreme Court in the case of *Pune Municipal Corporation (supra)* has been subsequently considered in the case of *Shiv Raj and others (supra)* and after taking note of the said judgment certain other judgments in the case of *Bharat Kumar (supra)* and *Bimla Devi and others (supra)* have been taken note of and in para 26 and 27 the matter has been crystallized in the following manner:-

"26. The objects and Reasons of the 2013 Act and particularly Clause 18 thereof fortify the view taken by this Court in the judgments referred to hereinabove. Clause 18 thereof reads as under:-

"18. The benefits under the new law would be available in all the cases of the land acquisition under the Land Acquisition Act 1894 where award has not been made or possession of land has not been taken." (Emphasis added)."

26. In the case of *Purushottam Lal* (supra), the similar defence was taken as revealed from Paragraph No.4 and thereafter from Paragraph No.8, the Division Bench of this Court has answered thus:-

"4. Shri Swapnil Ganguly, learned Govt. Advocate refuted the aforesaid contention and argued that as the Housing Board has paid the compensation, no relief can be granted. The Housing Board has filed a detailed reply to I.A. No. 15129/2014 and from the said reply filed and the documents annexed thereto as Annexure R/1 to R/6, respondents only say that after the award was passed on 30th March, 1999 the Housing Board deposited the amount with the Collector, Bhopal vide various cheques as is indicated in para 2 of the reply and as the compensation has been deposited with the Collector, the petitioners and the appellants should have collected the amount from the Collector. It is indicated in para 4 of this reply that after passing of the award, no efforts were made by the petitioners or the appellants to receive the compensation and the amount remained with the competent authority and it is said that as no reference was also made under Section 18 of the Old Act by the appellants, they cannot make any complaint. It is tried to be indicate by Ku. Anjali Banerjee, learned counsel for the Housing Board, that the provisions of Section 24(2) will not apply in the present case as M.P. Housing Board has already complied with the award passed on 21.3.1999 and deposited the compensation with the Collector.

8. Similar is the view taken by the Supreme Court in the case of **Sharma Agro Industries (supra)** wherein also the principles laid down in the case of **Pune Municipal Corporation (supra)** etc, has been considered and principle reiterated. It is therefore, clear from these judgments and interpretation of **Section 24** of the Act of 2013 and implication of **Section 31** of the Act of 1894 that if after passing of the award and five years prior to coming into force of Act of 2013, amount is not paid in accordance to the requirement of law, the entire proceedings lapsed. If aforesaid principle is applied in the present case, we find that award in question was passed on 15.4.1999 and from the averments made by the M.P. State Housing Board in their counter affidavit filed, it is only indicated

that the amount of compensation has been deposited with the competent authority namely the Collector, Bhopal. Thereafter, in the additional affidavit filed on 5.10.2015, they only indicate about taking over of possession. However, nothing is said with regard to payment of the compensation to the beneficiaries in accordance to the requirement of **Section 24(2)**. The Supreme Court has clearly laid down the principle that if either of the eventualities contemplated under sub section 2 of Section 24 are in existence, the land acquisition proceedings lapsed. The two eventualities are that possession is not taken over or compensation in accordance to law is not given to the beneficiaries. In this case even though the affidavit filed by the Housing Board indicates that possession is taken over by them and they have entered into some agreement with the contractor for development of the area and have also paid some amount in furtherance thereto but the amount of compensation has not been paid to the beneficiaries in accordance to the requirement of **Section 31** of the Land Acquisition Act of 1894. On the contrary, the note sheet of the Collector dated 17.1.2003 available in the record of W.P. No.2633/2002 filed along with an interlocutory application I.A. No.9867/2015 which was heard by us along with this appeal, goes to show that after the amount of compensation was deposited by the Housing Board with the Revenue Department, namely the Collector on 17.1.2003. It was indicated that the amount has not been paid to the beneficiaries and therefore, in accordance to the provisions of **Section 31** of the Act of 1894, the amount should be deposited in the Court where the proceeding under **Section 18** are normally held. However, there is no material to show as to when, how and in what manner the amount has been deposited in the Court where the proceeding under **Section 18** is maintainable. In spite of granting repeated opportunities respondents have failed to demonstrate before this Court that the amount of compensation as required under law was paid. As held by the Supreme Court mere deposit of the amount in the Government Treasury or with the Revenue Department is not sufficient, it has to be paid to the beneficiaries or deposit in the Court where a reference under **Section 18** is

normally filed. That being so, we are satisfied that documents overwhelming available on record do demonstrates that inspite of award having been passed more than five years prior to coming into force of the Act of 2013 i.e. w.e.f. 1.1.2014, the award of compensation has not been paid to the beneficiaries as required under law and therefore, in the light of legal principles laid down by the Supreme Court as referred to herein above, entire proceedings lapsed."

27. In view of the aforesaid, the argument as advanced by learned counsel for the respondents with respect to filing of the civil suit and challenging the notification under Sections 4 and 6 of the old Land Acquisition Act by filing the various writ petitions and tendering the amount of cheque are having nothing to do with the relief claimed in this petition regarding lapsing of the proceedings after commencement of the Right to Fair Compensation Act, in case the amount of compensation has not been paid as per Section 24(2) of the Right to Fair Compensation Act.

28. As discussed in the above referred various precedents, this Court relying upon the judgments of the Apex Court has clarified that the deposit of the amount must be in the Reference Court and mere deposit of the said amount with the Land Acquisition Officer is not sufficient, therefore, the stand taken in the return in this regard is hereby rejected. Under such circumstances, it is apparent that the compensation has not been paid to the petitioners as per the undisputed facts of this case and the plea of deposit of the amount with the Land Acquisition Officer or the Collector has not been found in conformity to the provisions of the Old Land Acquisition Act and various judgments of the Apex Court, therefore, it is to be held that the proceedings with respect to the land in question belonging to the petitioners pertaining to Khasra Nos.22,23,24,25,30,31/1,31/2 situated at Village Mirjapur of Tahsil and District Vidisha acquisitioned by the State Government vide notification issued under Section 4 of the old Land Acquisition Act on 15.12.1995 and the final notification issued under Section 6 of the Act published in the Gazette on 10.1.1996 shall stand lapsed.

29. At this stage, to advert the argument advanced by learned counsel for respondent Nos.1,2,3,5 relying upon the proviso to Section 24(2) of the Right to Fair Compensation Act; it is seen, the proviso makes it clear that in case where an award has been made and the compensation in respect of majority

of the land holding has not been deposited in the account of the beneficiaries then all the beneficiaries specified in the notification for acquisition under Section 4 of the Old Land Acquisition Act would be entitled to the compensation as per the provisions of the Right to Fair Compensation Act. As per the stand taken in the additional return filed by the respondent/State, it is clear that the petitioners do not come within the purview of the majority of the land holders to whom the amount have not been deposited in their accounts. Thus, looking to the defence taken in the additional return, the proviso cannot be invoked on the basis of the arguments as advanced by learned counsel for the respondent Nos.1,2,3,5 contrary to their own stand.

30. As the petitioners have not pressed the relief of quashing the land acquisition proceedings and merely pressed upon the relief of lapsing as per Section 24(2) of the Right to Fair Compensation Act, therefore, in view of the foregoing discussion, this petition succeeds and is hereby allowed in part to the extent indicated hereinabove. Therefore, it is declared that the proceedings with respect to the land in question belonging to the petitioners pertaining to Khasra Nos.22,23,24,25,30,31/1,31/2 admeasuring 0.249, 2.530, 0.958, 0.314, 0.497, 0.313, 0.627 hectare respectively situated at Village Mirjapur of Tahsil and District Vidisha acquired by the State Government vide notification issued under Section 4 of the old Land Acquisition Act on 15.12.1995 and the final notification issued under Section 6 of the Act published in the Gazette on 10.1.1996 shall stand lapsed.

31. Consequently, this petition succeeds and is hereby allowed in part in view of the foregoing. In the facts and circumstances of this case, the parties are directed to bear their cost.

Petition partly allowed.

I.L.R. [2017] M.P., 2978

APPELLATE CIVIL

Before Mr. Justice Sushil Kumar Palo

S.A. No. 55/1995 (Jabalpur) decided on 11 July, 2017

RAMGOPAL THROUGH LRs.

...Appellants

Vs.

SMT. JASHODA BAI THROUGH LRs.

...Respondents

A. *Transfer of Property Act (4 of 1882), Section 43 – Reliefs*

– **Maintainability of Suit** – Possession of suit land was given to purchaser appellant/defendant and as per evidence on record, he was in possession after execution of sale deeds – Suit by respondent/plaintiff for declaration of sale deed as void, without seeking relief of possession is not maintainable – Further, no specific plea as to want of necessity raised in civil suit – Judgment and decree passed by Courts below are set aside – Appeal allowed. (Para 28 & 29)

क. सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 43 – अनुतोष – वाद की पोषणीयता – वाद भूमि का कब्जा क्रेता अपीलार्थी/प्रतिवादी को दिया गया था तथा अभिलेख पर उपस्थित साक्ष्य के अनुसार, वह विक्रय विलेखों के निष्पादन के पश्चात् कब्जे में था – कब्जे का अनुतोष चाहे बिना, प्रत्यर्थी/वादी द्वारा विक्रय विलेख को शून्य घोषित करने हेतु वाद पोषणीय नहीं है – इसके अतिरिक्त, सिविल वाद में उठाई गई आवश्यकता के अभाव के संबंध में कोई विनिर्दिष्ट अभिवाक् नहीं – निचले न्यायालयों द्वारा पारित निर्णय एवं डिक्री अपास्त – अपील मंजूर।

B. **Limitation Act (36 of 1963), Article 59 – Limitation to File Suit** – Plaintiff/respondent challenging the sale deeds dated 26.04.82 and 24.09.82 in a civil suit filed on 27.03.92 is barred by limitation. (Para 27)

ख. परिसीमा अधिनियम (1963 का 36), अनुच्छेद 59 – वाद प्रस्तुत करने हेतु परिसीमा – दिनांक 27.03.92 को प्रस्तुत सिविल वाद जिसमें वादी/प्रत्यर्थी द्वारा विक्रय विलेख दिनांक 26.04.82 एवं 24.09.82 को चुनौती दी गई है, परिसीमा द्वारा वर्जित है।

C. **Hindu Law – Joint Hindu Family – Coparcenership – Held** – Apex Court concluded that under Hindu Law, Coparcenership is a necessary qualification for the managership of Joint Hindu Family – A widow is not a coparcener, she has no legal qualification to become the manager (karta) of a joint hindu family. (Para 19)

ग. हिन्दू विधि – संयुक्त हिन्दू कुटुम्ब – सहदायिकी – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि हिन्दू विधि के अंतर्गत, सहदायिकी संयुक्त हिन्दू कुटुम्ब के प्रबंधकर्ता हेतु एक आवश्यक अर्हता है – एक विधवा, सहदायिक नहीं है, एक संयुक्त हिन्दू कुटुम्ब का कर्ता बनने के लिए उसके पास कोई विधिक अर्हता नहीं है।

Cases referred :

AIR 1955 SC 346, AIR 1966 SC 24, AIR 1971 SC 2228, W.P. No.

6464/2008 decided on 22.01.2010 (DB)(Calcutta High Court), 1985 (3) SCC 350.

R.K. Samaiya, for the appellant.

Jaideep Sirpurkar, for the respondents No. 1 & 2.

Ramji Pandey, P.L. for the respondent No. 3.

J U D G M E N T

SUSHIL KUMAR PALO, J. :- This second appeal has been filed under Section 100 of the Code of Civil Procedure against the common judgment dated 23.12.1994 passed by the learned second ADJ, Sihore Camp, Nasrullahganj, in Civil Appeals No. 9A/93 and 6-A/93 arising out of the judgment dated 30.07.1993 passed by learned Civil Judge, Class-II, Budhni in Civil Suit No. 35-A/1992.

2. It is not disputed that the respondent No.1 Raju is the son of respondent No.2 and the deceased Jashoda Bai was the mother of respondent No.2 Onkar. The deceased plaintiff-Jashoda Bai had filed Civil Suit No.35-A/1992 against the defendant/respondent No.2 Omkar and appellant/defendant Ramgopal and proforma party the State of MP, seeking the relief of declaration of title and injunction with regard to suit property bearing khasra Survey Numbers 62/1, 62/2, 112/61 admeasuring 8.17 acres situated at village- Jamuniya, Tahsil- Budhni, district Sihore. The plaintiff sought the relief of declaring the sale deeds dated 26.04.1982 and 14.09.1992 to be null and void. Learned trial court allowed the suit, declared the sale deed dated 14.09.1982 null and void and out of 4 acres of the suit land declared the plaintiff/respondent No.1 Yashoda Bai as the owner and title holder of two acres of land.

3. It is also not disputed that the suit land originally belonged to Bhurelal. Burelal was owner of the land admeasuring 11.99 acres. He had three sons, namely, Jhandulal, Chhotelal and Lalsingh. These three brothers were jointly in possession of the land. Subsequently, Jhandulal got his share of 4 acres of land out of 8.17 acres bearing khasra numbers 62/1, 62/2 and 112/62. Jhandulal died in the month of "*Falgun*" in the year 1975. The plaintiff Jashoda Bai is the widow of Jhandulal and the defendant No.1 Omkar is the son of late Jhandulal.

4. Respondent/plaintiff's case before the learned Civil Judge is that the defendant No.1 vide registered sale deed dated 26.04.1982 sold part of the suit

land area 2 acres out of the whole 8.17 acres to defendant No.2 - Ramgopal. Subsequently he again sold the remaining two acres to defendant No.2 Ramgopal vide registered sale deed dated 14.09.1982. It is claimed that the defendant No.1 Omkar had no right to sell 4 acres of land during the life time of his mother plaintiff Jashoda Bai. After the death of Jhandulal, there was no partition. Before the trial Court, defendant No.1 Omkar and the State remained ex parte. The trial Court held that the plaintiff Jashoda Bai has share in the land. Therefore, her share in the property is two acres. Defendant No.1 Omkar had no right, title and interest to transfer the second part of rest two acres. Thus, the sale deed dated 14.09.1982 has been declared as null and void.

5. Being aggrieved by this judgment, plaintiff Jashoda Bai filed civil appeal No.9-A/1993, whereas the appellant/defendant Ramgopal filed CA No.6-A/93 to challenge the judgment. Wherein the sale deed dated 14.09.1982 has been declared as null and void.

6. The First Appellate Court allowed the appeal of the plaintiff Jashoda Bai and declared both the sale deeds as null and void stating that as the partition was not effected after the death of ancestor Jhandulal, the land which was sold to defendant No.2/ Ramgopal could not be indentified without partition. After the first sale deed, no mutation took place. The property could not be identified by meets and bounds. Therefore, the second sale deed is also improper as there was no demarcation of the land. Learned first appellate court allowed Civil Appeal No.9-A/1993 and held that plaintiff Jashoda Bai entitled to 1/4th share in the property and the defendant No.1- Omkar entitled to 3/4th share in the property. Injunction was granted in favour of the plaintiff/ Jashoda Bai against the defendant No.1- Omkar and the defendant No.2- purchaser Ramgopal not to disturb the peaceful possession of Jashoda Bai.

7. The present second appeal has been filed by defendant No.2 purchaser- Ramgopal purchaser challenging the judgments and decree of the courts-below on the ground that, no suit for partition was filed. The appellate court gravely erred in holding that the plaintiff was in peaceful possession of the property. The suit of the plaintiff was not maintainable without seeking the relief of possession. Without direction of refund of consideration paid by the defendant/Ramgopal with interest, declaring the sale deed as null and void is bad in the eye of law.

8. On the above premises, this Court admitted the appeal on 13.08.1996, on the following substantial questions of law:

"1) Whether on the facts and in the circumstances of the case the first appellate court was justified in declaring the sale deeds to be void despite holding that 3/4th share belongs to respondent Omkar and whether the appellate Court should have directed the present appellant to file suit for partition in view of 1977 MP 222 ? [correct citation is 1973 JLJ 764]

2) Whether on the facts and in the circumstances of the case the suit was within limitation?

3) Whether the first appellate court was justified in granting permanent prohibitory injunction in favour of the respondent No.1 and 2 contrary to the evidence on record?"

9. Thereafter vide order dated 13.11.2003 the following substantial questions of law have been framed:

"4. Whether as per fact found the suit of the plaintiff for declaration of the sale deed as void is not maintainable without seeking the relief for possession?

5. Whether as per fact and circumstances of the case plaintiff having not pleaded in regard to lack of legal necessity is not entitled to get the sale deed declared void?"

10. It would be interesting to note that deceased Yashoda Bai died during the pendency of the appeal, therefore, she has been substituted by Raju (the son of respondent Omkar Yadav) the defendant/respondent as her LR. It means Raju is not only the successor of defendant Omkar but also the successor of plaintiff Yashoda. Raju claimed to be the LR of plaintiff Yashoda on the ground that respondent No. 2 (Yashoda) is not taking interest in the appeal. It would be appropriate to mention here that during the pendency of the appeal, appellant Ramgopal (the purchaser) has also passed away. Therefore, the present appellants, his widow and children have been impleaded as the Lrs of deceased Ramgopal.

11. On perusal of the record, it found that learned Civil Judge while deciding the civil suit elucidating the evidence held that the first sale deed dated 26.04.1982 executed in favour of Ramgopal by Omkar to be valid. But Omkar after the death of his father Jhandu Lal has become the successor of the property to the extent of 50% share. The Court held that Yashoda (the widow

of Jhandu Lal) is the successor of the property of 50% of Jhandu Lal, therefore, the second sale deed executed on 14.09.1982 by Omkar was not valid, for Omkar had no right to alienate that part of the property is the share of Yashoda (the widow of Jhandu Lal). Hence, the share fall in favour of Yashoda could not be transferred or sold without the consent of plaintiff Yashoda.

12. Jhandu Lal died in the year 1978 is an admitted fact. It is also admitted that after the death of Jhandu Lal, Omkar (defendant), his son was in possession of the suit land and was cultivating the four acres of land. In the cross-examination of plaintiff/witness No. 2 (Balmukund), he admits that after the death of Jhandu Lal, his son (defendant) Omkar become the Karta of the family. Balmukund (PW 2) is the neighbour farmer. He also admits that the suit land was being cultivated by Omkar (defendant) after the death of Jhandu Lal.

13. It would be pertinent to mention here that the purchaser defendant Ramgopal has asserted that plaintiff Yashoda was also present at the time of execution of the second sale deeds. However, because her name was not mutated in the revenue records, she did not sign in the sale deed as it was not felt necessary. After the execution of the sale deed in the year 1987, the name of defendant, Ramgopal was mutated in the revenue record Ex. D/1. No objection has been raised in this regard. Therefore, name of defendant, Ramgopal (the purchaser) has been entered in the revenue records. Ramcharan (DW/2) the Patel of the village has also supported the case of defendant Ramgopal and has said that since last 10 to 11 years [his deposition was recorded on 24.07.1993] Ramgopal is cultivating the suit land which is indication of possession of Ramgopal. Keshar Bai (DW 3) is the Chaukidar of the village and according to her Ramgopal has been cultivating the land since last 11 years (her deposition was recorded on 24.07.1993).

14. Learned first appellate Court held that the plaintiff Yashoda Bai had only 1/4th share in the property and Omkar had 3/4th share in the property. Therefore, Omkar could have sold 3/4th of the total property. The learned first appellate Court set aside the judgement dated 29.7.1993 passed by the second Civil Judge, Class II, holding that as both the sale deeds dated 26.04.1992 and 14.09.1992 (Ex. P/1 and Ex.P/2) are null and void and injunction was also granted against Ramgopal (defendant) the purchaser and it was directed to deposit the rest Court fees as is required for valuation of the sale deeds i.e Rs. 18,000/-. It would be pertinent to mention here that the

respondent/plaintiff Yashoda not has deposited the Court fees as per the directions reflected from the record.

15. On behalf of the respondent, it is contended that the deceased Yashoda Bai was the successor of the 50% of the property of Jhandu Lal, After his death it devolved with Yashoda, his widow according to Hindu Succession Act, 1956, because Jhandu Lal died intestated. It is also claimed that Yashoda as the widow of deceased, Jhandu Lal, she is the class-I heir of Jhandulal.

16. Learned counsel for the respondent further contended that because of the property was not partitioned, therefore, Omkar could not have been sold the share of the land without having shown the meets and bounds. The property sold by Omkar was not in the interest of the family as there was no legal necessity. Therefore, the sale deed executed by Omkar was not valid.

17. Replying to this argument, learned counsel for the petitioner submits that plaintiff Yashoda did not deposit the Court fees, therefore, the judgment of the first appellate Court is not executable as against the appellant/defendant/Ramgopal. It is further claimed that the common vakalatnama filed on behalf of Omkar and Yashoda shows that they have been jointly making the pleas. Omkar did not oppose at the time of estopped mutation. Therefore, he is estopped from raising such a plea.

18. The "will" executed by plaintiff Yashoda in favour of Raju (the son of defendant Omkar) on 05.08.2003, has not been properly proved. In order to prove the due attestation of the "will" the propounder of "will" has to prove that two witnesses saw the testator sign the "will" and they themselves signed the same in the presence of the testator. In this regard reliance has been placed on *Girja Datt Singh Vs. Gangotri Datt Singh* AIR 1955 SC 346.

19. It would be appropriate to mention here that in Hindu Law, the widow cannot be the Karta of the family, neither she can be coparcener. In *Commissioner of Income-tax, Madhya Pradesh Vs. Seth Govindram Sugar Mills*, AIR 1966 SC 24, the Hon'ble Apex Court has held that under Hindu Law Coparcenership is a necessary qualification for the managership of a joint hindu family. A widow is not a coparcener. She has no legal qualification to become the manager of a joint hindu family. A widow of a coparcener cannot, therefore, be a Karta of hindu joint family.

20. It is also vehemently contended by the learned counsel for the

respondent that Omkar, after the death of Jhandu Lal, became the Karta of the family and there was no plea of want of necessity raised by the plaintiff/Yashoda. Therefore, alienation by the Karta Omkar was proper. In this regard reference has been made to *Pandurang Mahadeo Kavade Vs. Annaji Balwant Bokil & others* AIR 1971 SC 2228 in which the Apex Court has held that :-

"(A) Hindu Law- Alienation by Karta- Proof of legal necessity by alienee is not necessary when specific plea as to want of necessity is not raised".

21. Learned counsel for the appellant has also raised the issue of the sale deeds stating that the sale deeds are the documents which have been executed by Omkar, the Karta of the Hindu Joint Family in favour of the defendant/appellant Ramgopal are documents duly registered and after registration it has become a deed giving full and complete account on transaction by which the title to the property has been transferred. After the registration of the sale deed, it gives publicity and public exposure to the document. The sale deeds were executed in the year 1982, whereas Yashoda filed the civil suit in the year 1992 after elapse of about ten years. Whereas the limitation period for filing of civil suit is only three years. The finding of the learned trial Court that the suit was within the time limit is not correct in the eyes of law.

22. The plea by the plaintiff/Yashoda that she came to know about the sale deed in the year 1992 through the village Patel has not been established. Plaintiff witness 2- Balmukund states that Omkar became the Karta of the family after the death of Jhandu Lal and the suit property was being cultivated by Omkar, after the death of his father Jhandu Lal. Whereas the defendant/witnesses Ramcharan (DW/2), the neighbor farmer of the suit land, Keshar Bai (DW 3), the Chaukidar of the village have clearly stated that defendant Ramgopal has been cultivating the land since 10-11 years, which shows that the plaintiff/Kesharbai has utterly failed to establish that she came to the knowledge of the sale deeds in the year 1992.

23. As regarding the possession of the suit land, it would be appropriate to hold that the recital of the documents (sale deeds) that possession has been delivered to the purchaser cannot be disbelieved until otherwise established. In the case of *Mansigh (Deceased) Through L.Rs. Smt. Sumranbai & Others Vs. Rameshwar*, (decided on 22.01.2010 by Division

Bench of Calcutta High Court in W.P.No. 6464/2008 it has been held that :-

"Agreement to sell immovable property with a recital in the document that possession has been delivered to the purchaser-Seller has raised a plea that possession is not delivered to purchaser-Held-Seller's plea will not affect the character of document- Document would be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly."

24. It is contended that defendant/Omkar sold out the suit property to the appellant Ramgopal and Ramgopal the purchaser claimed to be in possession of the suit land. After the sale, his name is also mutated in the revenue records. It would be appropriate to mention here that there was no impediment as regarding first sale deed (Ex.P/1) i.e. dated 26.04.1982, which has been decided by the learned Civil Judge in the Civil Suit No. 35 A/1992. As regarding the second sale deed (Ex. P/2) dated 24.09.1982, it would be appropriate to mention here that after the death of Yashoda this property has been reverted back to Omkar. In such circumstances, it can be safely said that, if at all, the second sale deed was executed erroneously by Omkar in favour of the appellant Ramgopal but, subsequently, the property by virtue of inheritance has been devolved to Omkar, therefore, Section 43 of the Transfer of Property Act, 1882 comes into play.

25. Section 43 of the Transfer of Property Act, 1882 provides that :-

"43. Transfer by unauthorized person who subsequently acquires interest in property transferred.- Where a person [fraudulently or] erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Nothing in this Section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option."

26. The principle embodied in Section 43 of the Transfer of Property Act had been variously described as the Common Law doctrine of "feeding the

grant by estoppel" or as the doctrine of equity that "equity treats that as done which ought to be done" or as a combination of both, but, a statutory shape having been given to the principle, it is the section itself which must ultimately determine its scope and the conditions of its application. The rule enunciated in the Section, and to be presently discussed, assumes that the transferor had no title over at least a portion of the property he had engaged to transfer, but which he has since acquired, in which case, upon the principles of elementary equity, he is bound to make good his representations to the transferee. In this regard reference can be made to *Brahmavart Sanathan Dharam Mahamandal Kanpur Vs. Prem Kumar*, 1985 (3) S.C.C 350.

27. Thus, the first appellate Court is not justified in declaring the sale deed dated 14.09.1982 to be void despite holding that Omkar had 3/4th share in the property. The first appellate Court should have directed the appellant to file a suit for partition. Otherwise also on the facts and circumstances of the case, the suit filed by Yashoda Bai challenging the sale deeds dated 26.04.1982 and 14.09.1982 in the Civil Suit No. 35A/1992 on 27.03.1992 is barred by limitation. The first appellate Court granting permanent prohibitory injunction in favour of the plaintiff Yashoda Bai and defendant Omkar is contrary to the evidence on record.

28. It would also be appropriate to mention here that the possession of the suit land was given to Ramgopal (the purchaser) in the year 1982 and he was in possession of the suit land after the execution of the sale deeds (Ex. P/1 and Ex. P/2). Therefore, without seeking a relief for possession, suit for declaration of the sale deed as void, was not maintainable. As has been held in the case of *Pandurang Mahadeo Kavade* (supra).

29. Omkar as Karta of the family, alienated the suit land to the purchaser appellant Ramgopal. There was no specific plea as to want of necessity raised in the civil suit. Therefore, in the absence of specific plea regarding legal necessity, the sale deed executed in favour of Ramgopal could not have been challenged. Hence, it is held that the plaintiff Yashoda Bai failed to plead regarding the legal necessity, therefore, is not entitled to get the sale deed declared void.

30. On the above discussion and the analysis of legal aspect, answer to the substantial question Nos. 1 and 4,5 are given in affirmative and answer to substantial question Nos. 2 and 3 are answered in negative.

31. So far as the merit of the second appeal is concerned, this Court in the above premises, is unable to hold that the learned Courts below are not justified in partly decreeing the suit and allowing the first appeal. Therefore, this appeal is allowed. The judgment dated 23.12.1994 passed by the learned second ADJ, Sihore (Camp-Nasurullaganj) in Civil Appeals No. 9-A/1993 and No. 6A/1993 and judgment dated 30.07.1993 passed by learned Civil Judge, Class II, Budhni and decrees passed by the Courts below are set aside. Appeal is allowed. Under the circumstances, no order as to cost. Decree be drawn accordingly.

Appeal allowed.

I.L.R. [2017] M.P., 2988

APPELLATE CIVIL

Before Mr. Justice G.S. Ahluwalia

F.A. No. 213/2000 (Gwalior) decided on 12 September, 2017

KISHORILAL (DEAD) THROUGH LRs. & ors.

...Appellants

Vs.

GOPAL & ors.

...Respondents

A. Civil Procedure Code (5 of 1908), Order 22 Rule 4 – Abatement of Appeal – Substitution of Legal Representatives – Held – When name of deceased party is deleted without any substitution, then it would mean that said party is no more in the suit/appeal – If person is not a party to suit/ appeal then his LR's cannot be brought on record under Order 22 Rule 4 – Further held – Subsequent purchaser cannot be held to be a legal representative of original vendor – Appeal dismissed as abated. (Para 38 & 43)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 4 – अपील का उपशमन – विधिक प्रतिनिधियों का प्रतिस्थापन – अभिनिर्धारित – जब बिना किसी प्रतिस्थापन के मृतक पक्षकार का नाम हटा दिया जाता है, तब इसका अर्थ यह होगा कि कथित पक्षकार वाद/अपील में अब नहीं है – यदि व्यक्ति वाद/अपील का पक्षकार नहीं है तब आदेश 22 नियम 4 के अंतर्गत उसके प्रतिनिधियों को अभिलेख पर नहीं लाया जा सकता – आगे अभिनिर्धारित – पश्चात्पूर्ती क्रेता को मूल विक्रेता का विधिक प्रतिनिधि अभिनिर्धारित नहीं किया जा सकता – अपील उपशमित होने के कारण खारिज।

B. Civil Procedure Code (5 of 1908), Order 22 Rule 4 – Substitution of Legal Representatives – Practice – Held – Appellants

themselves by filing an application for deletion of name, has committed the mistake of law, which cannot be corrected by modifying or recalling the order, even by adopting the most lenient view. (Para 42)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 4 – विधिक प्रतिनिधियों का प्रतिस्थापन – पद्धति – अभिनिर्धारित – अपीलार्थीगण ने नाम हटाने हेतु आवेदन प्रस्तुत करके स्वयं विधि की भूल कारित की है, जिसे सबसे उदार दृष्टिकोण अपनाते हुए भी आदेश उपांतरित कर अथवा वापस लेकर सुधारा नहीं जा सकता।

C. *Civil Practice – Abatement – Held – Abatement is automatically by operation of law but the Court has to take note of abatement and record the closure of the case as having abated.*

(Para 36)

ग. सिविल पद्धति – उपशमन – अभिनिर्धारित – उपशमन स्वतः विधि के प्रवर्तन द्वारा होता है परन्तु न्यायालय को उपशमन को ध्यान में लेना चाहिए तथा प्रकरण उपशमित हो जाने के कारण उसकी समाप्ति अभिलिखित करना चाहिए।

Cases referred :

(2010) 7 SCC 417, AIR 1954 SC 75, AIR 1971 SC 1238, AIR 1976 Cal 337, AIR 1985 Pat 35, (2005) 6 SCC 733, C.A. No. 5576-5577/2017 order passed on 25.04.2017, AIR 1973 SC 655, F.A. No. 325/1992 judgment passed on 19.12.2007 (Bombay High Court), AIR 1966 Assam 41, (2008) 8 SCC 321, (2003) 10 SCC 691.

Santosh Agrawal, for the appellants.

K.N. Gupta with *Pawan Vijaywargiya*, for the respondent No.1.

J U D G M E N T

G.S. AHLUWALIA, J. :- This First Appeal under Section 96 of Civil Procedure Code has been filed against the judgment and decree dated 18-10-2000 passed by District Judge, Sheopurkalani, in Civil Suit No. 5-A/1992.

2. A preliminary objection has been raised by the Counsel for the respondent no.1 to the effect that this appeal has abated and it was prayed that instead of considering the appeal on merits, the question with regard to abatement of appeal may be decided first. Accordingly, by this order, the preliminary objection of abatement of appeal is being decided.

3. The necessary facts for the disposal of the preliminary objection in short are that the respondent no. 1 initially filed a suit for declaration and injunction against Kishorilal and others. However, during the pendency of the Civil Suit, Kishorilal, executed a sale deed in favour of the appellants no.2 and 3 and accordingly, the plaint was amended and not only the appellants no.2 and 3 were impleaded as defendants, but a relief of specific performance of contract was also incorporated.

4. It is the case of the plaintiff/respondent no.1 that Kishorilal had executed an agreement to sell the house in dispute (in short "disputed property") by agreement dated 15-3-1988 for a consideration of Rs.1,80,000, out of which an amount of Rs. 25,000 was received by Kishorilal by way of advance. The plaintiff/respondent no.1, was already a tenant of the disputed property. Thereafter, the plaintiff/respondent no.1, filed a suit for declaration of title and permanent injunction against Kishorilal and others, however, during the pendency of the civil suit, Kishorilal sold the disputed property to appellants no. 2 and 3. Accordingly, the suit was amended, the appellants no. 2 and 3 were also impleaded as defendants, and a prayer for specific performance of contract was also incorporated.

5. The Trial Court after recording evidence of the parties, and hearing all the necessary parties, decreed the suit and passed a decree of specific performance of Contract against the vendor Kishorilal and the sale deed executed in favour of the appellants no. 2 and 3 was declared as null and void against the plaintiff/respondent no.1.

6. Being aggrieved by the judgment and decree passed by the Trial Court, the original vendor Kishorilal, as well as the subsequent purchasers, appellants no. 2 and 3 filed a joint First Appeal.

7. During the pendency of the appeal, the original vendor, Kishorilal expired on 17-12-2005. An application for substitution of his legal heirs was filed which was allowed by order dated 7-7-2006 and the Legal Representatives of the original vendor Kishorilal, namely Suresh, Murari, Omprakash and Sitabai were brought on record as appellants. The necessary amendment was also carried out.

8. It appears that thereafter, appellant no. 1(2) Murarilal also expired on 22-7-2007. Instead of bringing the legal representatives of appellant no. 1(2) Murarilal on record, an application (I.A. No. 17118/2010) was filed by the

appellants, praying for deleting the name of appellant no. 1(2) Murarilal on the ground that the appellants no.2 and 3, being the subsequent purchasers are the legal representatives of original Vendor and they are already on record. The said application was allowed by this Court by order dated 9-5-2011, which reads as under :

" 9-5-2011

Parties through their Counsel.

Heard on I.A. No. 17118/2010, which is an application under Order XII rule 2, 4(4) and under Section 11 of CPC for deleting the name of appellant no.1 who has died and sold the suit property to appellant no. 2 and 3 who are his legal representatives.

Considering the averments made in the application, the same is allowed at the risk and cost of the appellants. The name of appellant no.1 be deleted from the array of cause title within one week."

The appellants, accordingly, deleted the name of the appellant no. 1(2) Murarilal from the array of cause title.

9. It appears that thereafter, the respondent no. 1 filed an application for dismissing the appeal on the ground that as the appellants has not brought the legal representatives of the appellant no. 1(2) Murarilal on record. The said application was registered as I.A. No. 2667/2011. I.A. No. 2667/2011 was dismissed by this Court by order dated 4-3-2013 reads as under :

"4-3-2013

Parties through their Counsel.

Heard on I.A. No. 2667/2011, which is an application filed on behalf of respondents for treating the appeal as abated as the legal representatives of appellant Kishorilal have not been brought on record. .

Learned Counsel for the appellants submitted that appellants no. 2 and 3 have already been brought on record as Legal Representatives of appellant Kishorilal vide order dated 9-5-

2011 on the ground that the disputed property has been sold by Kishorilal to appellants no. 2 and 3 therefore, appellants no. 2 and 3 who are purchasers *lis pendense* are legal representatives of appellant Kishorilal as the property has been purchased by them and legal heirs of appellant Kishorilal have no right, title or interest in the disputed property.

Since the Legal Representatives of appellant Kishorilal who are having the right, title and interest over the disputed property are already on record being appellants No. 2 and 3, therefore, it cannot be said that the appeal has abated.

Appellants may implead other legal heirs of appellant Kishorilal as Legal Representatives if they are necessary party in the appeal.

List the case for final hearing in due course."

10. It appears that thereafter sensing some Legal difficulty, the appellants filed an application under Order XXII Rule 4 C.P.C. read with Order 1 Rule 10 C.P.C. for bringing the Legal Heirs of Murarilal on record as proforma respondents. I.A. No. 1438/2013 was allowed by this Court by order dated 3-5-2013 which reads as under :

"03-05-2013

Parties through their counsel.

Heard on I.A. NO. 1438/2013 which is an application under Order XXII Rule 4 C.P.C. and 11 and under Order 1 Rule 10 of CPC for deleting the name of original appellant no.1 as he has sold the property to appellant no.2 and 3 and to bring the L.R.s of appellant no. 1(2) on record. Other L.R.s of appellant no. 1(2) are on record, therefore, there is no abatement of appeal. Let the necessary amendment be carried out within 7 days of appeal. Let the necessary amendment be carried out within 7 days from today.

List the case for final hearing in Second Week of July, 2013."

11. It is submitted by the Counsel for the respondent no.1 that the abatement of a suit/appeal is automatic and takes place by operation of law and no formal order is required. The subsequent purchaser cannot be treated as Legal

Representative of the original vendor in the light of peculiar fact that the present case is that of specific performance of Contract and a decree is required to be drawn against the original vendor for executing a sale deed in favour of decree holder with a direction to the subsequent purchaser to join the sale deed. Therefore, it cannot be said that the subsequent purchaser is the legal representative. The legal representatives of the original vendors are to be brought on record, which has not been done, and accordingly, the appeal as filed by the appellants has stood abated as whole on the ground of non-bringing the legal representatives of appellant no.1(2) Murarilal on record. It is further submitted that on earlier occasion, this Court while allowing the prayer for deleting the name of the appellant no. 1(2) Murarilal, had observed that the name of appellant 1(2) be deleted at the risk and cost of the appellants. On subsequent dates, the effect of death of appellant no.1 (2) Murarilal was not taken into consideration, and the application for dismissal of appeal as having abated was rejected under the impression that original vendor has expired. As the legal representatives of Original Vendor Kishorilal were already brought on record, therefore, there was no question of abatement of appeal. It is further submitted that after the name of appellant no.1(2) Murarilal was already deleted from the array of cause title, then his Legal Representatives cannot be brought on record under Order XXII Rule 4 C.P.C. and the only remedy available with the appellants was to implead the legal representatives of appellant no.1(2) Murarilal under Order 1 Rule 10 C.P.C. and therefore, the question of limitation would also arise. It is submitted that as the effect of death and deletion of name of appellant no.1(2) Murarilal was never considered and as the appeal had already stood abated, therefore, any order passed on earlier occasion would not apply as *res judicata*. The effect of death of appellant no.1(2) Murarilal and the consequence of deletion of his name has not been considered so far, therefore, the same may be considered fresh.

12. It is submitted by the Counsel for the appellants that after the execution of the sale deed in favour of the subsequent purchaser, the subsequent purchaser steps into the shoes of the original vendor and therefore, in its true sense, the subsequent purchaser is the legal representative of the original vendor and the legal heirs of the original vendor are not required to be impleaded in the appeal. It is further submitted that as the question of abatement has already been decided by this Court on earlier occasion, therefore, the same cannot be reopened as the same was not challenged before the Superior Court.

13. Heard the learned Counsel for the parties.

14. The moot question for determination is that whether the legal representative of the original vendor is a "necessary party" or merely a "proper party" as the subsequent purchaser who claims himself to be a *bona fide* purchaser was already on record.

15. "Necessary party" means a party in whose absence, an effective decree cannot be passed by a Court, and if the necessary party is not impleaded then the suit itself is liable to be dismissed. Whereas 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 disputes in the suit, though he need not be a person in favour or against whom the decree is to be made.

16. The Supreme Court in the case of *Mumbai International Airport (P) Ltd., Vs. Regency Convention Centre & Hotels (P) Ltd.* reported in (2010) 7 SCC 417 has held as under -

"15. 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. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

17. Thus, the question for determination is that whether the Legal Representatives of the original vendor are "Necessary Party" or "Proper Party".

18. In a case of Specific Performance of Contract, a decree is to be drawn between the vendor and the plaintiff and by making the subsequent transferee to join in the conveyance so as to pass on the title to the plaintiff. The subsequent purchaser cannot claim himself to be a legal representative within

the meaning of Order 22 Rule 4 of Cr.P.C. My view is fortified by the judgments passed in *Durga Prasad Vs. Deep Chand*, AIR 1954 SC 75, *Ramesh Chandra Chandiok and others Vs. Chunnilal Sabharwal (Dead)* through his Legal heirs, AIR 1971 SC 1238, *Chhotamal Hariram Vs. Dilip Kumar Chatterjee*, AIR 1976 Cal 337, *Manni Devi Vs. Ramayan Singh* AIR 1985 Pat 35 *Kasturi Vs. Iyyamperumal* (2005) 6 SCC 733, *Srinivasaiah Vs. H.R. Channabasappa* passed in C.A. No. 5576-5577 of 2017 on 25-4-2017.

In the case of *Durga Prasad* (Supra), it has been held by the Supreme Court as under :

"36. Now arises a question which touches the Custodian U. P. The contract was for Rs. 62,000. The plaintiff paid Rs. 10,000 as earnest money but this was later returned, so Rs. 62,000 is still due. But there is a conveyance outstanding in favour of the appellants for which they have paid, according to their case. Rs. 58,000. If the Rs. 62,000 due to the Nawab is paid to him, or to the Custodian U. P. who represents his estate, it is evident that the Nawab, who is at fault, will be paid twice over for the same property and his estate will benefit accordingly while the appellants will be left of pursue their remedies against the Nawab or his estate. The question is whether we have power to direct that the Rs. 58,000 be paid to the appellants instead of to the Nawab and thus obviate further, and possibly fruitless, litigation. But before we decide that, we will consider another question which is bound up with it, namely the proper form of decree in such cases.

37. The practice of the courts in India has not been uniform and three distinct lines of thought emerge. (We are of course confining our attention to a 'purchaser's suit for specific performance.) According to one point of view, the proper form of decree is to declare the subsequent purchase void as against the plaintiff and direct conveyance by the vendor alone. A second considers that both vendor and vendee should join, while a third would limit execution of the conveyance to the subsequent purchase alone.

38. The only statutory provisions which bear on this point are section 91 of the Indian 'Trusts Act. 1882, section 3 of the Specific Relief Act, 1877 illustration (g) and section 27 of that Act, and section 40 of the Transfer of Property Act.

39. Section 91 of the Trusts Act does not make subsequent purchaser with notice a trustee properly so called but saddles him with an obligation in the nature of a trust (because of section 80) and directs that he must hold the property for the benefit of the prior "contractor", if we may so describe the plaintiff, "to the extent necessary to give effect to the contract". Section 3 illustration (g) of the Specific Relief Act makes him a trustee for the plaintiff but only for the purpose of that Act. Section 40 of the Transfer of Property Act enacts that this obligation can be enforced against a subsequent transferee with notice but not against one who holds for consideration and without notice. Section 27 of the Specific Relief Act does not carry the matter any further.

All it says is that specific performance may be enforced against "(a) either party thereto;(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract." None of this helps because none of these provisions directly relate to the form of the decree. It will, therefore, be necessary to analyse each form in the light of other provisions of law.

40. First, we reach the position that the title to the property has validly passed from the vendor and resides in the subsequent transferee. The sale to him is not void but only voidable at the option of the earlier "contractor". As the title no longer rests in the vendor it would be illogical from a conveyancing point of view to compel him to convey to the plaintiff unless steps are taken to re-vest the title in him either by cancellation of the subsequent sale or by reconveyance from the subsequent purchaser to him. We do not know of any case in which a reconveyance to the vendor was ordered but Sulaiman C. J. adopted the other course in -'Kali Charan v. Janak Deo, A. I. R. 1932 All 694: (B). He directed cancellation of the

subsequent sale and conveyance to the plaintiff by the vendor in accordance with the contract of sale of which the plaintiff sought specific performance. But though this sounds logical the objection to it is that it might bring in its train complications between the vendor and the subsequent purchaser. There may be covenants in the deed between them which it would be inequitable to disturb by cancellation of their deed. Accordingly, we do not think that is a desirable solution.

41. We are not enamoured of the next alternative either, namely conveyance by the subsequent purchaser alone to the plaintiff. It is true that would have the effect of the vesting the title to the property in the plaintiff but it might be inequitable to compel the subsequent transferee to enter into terms and covenants in the vendor's agreement with the plaintiff to which he would never have agreed had he been a free agent; and if the original contract is varied by altering or omitting such terms the court will be remaking the contract, a thing it has no power to do; and in any case it will no longer be specifically enforcing the original contract but another and different one.

42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in - *Kafiladdin v. Samiraddin*, A. I. R. 1931 Cal 67 (C), and appears to be the English practice. See *Fry on specific Performance*, 6th Edn. page 90, paragraph 207; also - *Poter v. Sanders*, (1846) 67 ER 1057 (D). We direct accordingly."

The Supreme Court in the case of *Srinivasaiah* (Supra) by relying on the judgment passed in the case of *Durga Prasad* (Supra) has held as under:-

"38. The question arose before this Court in the case of *Durga Prasad & Anr. vs Deep Chand & Ors.*, AIR 1954 SC 75 as

to what form of decree should be passed in the case of specific performance of contract where the suit property is sold by the defendant, i.e., the owner of the suit property to another person and later he suffers a decree for specific performance of contract directing him to transfer the suit property to the plaintiff in term of contract.

39. The learned Judge-Vivian Bose, J. examined this issue and speaking for the Bench in his inimitable style of writing, held as under: "Where there is a sale of the same property in favour of a prior and subsequent transferee and the subsequent transferee has, under the conveyance outstanding in his favour, paid the purchase-money to the vendor, then in a suit for specific performance brought by the prior transferee, in case he succeeds, the question arises as to the proper form of decree in such a case.

The practice of the Courts in India has not been uniform and three distinct lines of thought emerge. According to one point of view, the proper form of decree is to declare the subsequent purchase void as against the prior transferee and direct conveyance by the vendor alone. A second considers that both vendor and vendee should join, while a third would limit execution of the conveyance to the subsequent purchaser alone.

According to the Supreme Court, the proper form of decree is to direct specific performance of the contract between the vendor and the prior transferee and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the prior transferee. He does not join in any special covenants made between the prior transferee and his vendor; all he does is to pass on his title to the prior transferee."

19. . Thus, it is clear that the proper form of decree is to direct execution of sale deed by the vendor in favour of the plaintiff with a direction to subsequent transferee to join in the conveyance so as to pass on the title to the plaintiff. Therefore, it is held that the Legal representatives of Vendor are "Necessary

Party” because in their absence, no effective decree can be passed in the case of Specific Performance of Contract.

20. It is submitted by the Counsel for the appellants that assignees of a property in certain circumstances would be the legal representatives of the assignor, not generally but in respect of the property assigned. It is submitted that generally the legal heirs of the vendor generally do not retain any interest, because either the decree would be passed in favour of the subsequent purchaser or in favour of the plaintiff, but in any case, the vendor or his legal heirs are not going to gain anything out of the litigation.

21. In a suit for specific performance of contract, a peculiar situation arises. The primary obligation in a contract for sale of property by executing a sale deed is always on the vendor and accordingly is passed on to its legal representatives. Earlier there were divergent views that what should be the nature of decree of specific performance of Contract in such a situation. One view was to declare the subsequent sale void and to direct the original vendor to execute the sale deed in favour of the original contractor. Second view was to direct both the vendor and the subsequent purchaser to join in the document of conveyance as directed by a decree and the third view was to direct the subsequent purchaser to execute the sale deed in favour of the original contractor.

22. In the case of *Durga Prasad* (Supra), the Supreme Court held that the proper form of decree would be to direct the subsequent purchaser to join in the conveyance so as to pass on the title which resides in him to the successful plaintiff. Thus, it is clear that the primary duty is of the vendor to execute the sale deed in favour of the successful plaintiff with a direction to the subsequent purchaser to join the covenant. The subsequent purchaser is joined simply to pass on title to the successful plaintiff. After considering the nature of decree which is to be passed in a case of Specific Performance of Contract, the question is that in the eventuality of death of vendor, whether his legal heir would be legal representative or not? There is difference between legal heir and legal representative.

Order 22 Rule 4 C.P.C. reads as under :-

"4. Procedure in case of death of one of several defendants or of sole defendant.— (1) Where one of two or more defendants dies and the right to sue does not survive

against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

(5) Where—

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and

(b) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under Section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said Section 5, have due regard to the fact of such ignorance, if

proved.]"

Order 22 Rule 10 C.P.C. reads as under :-

"10. Procedure in case of assignment before final order in suit.— (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)."

Section 2(11) of C.P.C. which defines Legal Representatives read as under :-

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

Thus, the question is that whether the subsequent purchasers can be termed as Legal Representatives of the estate of the deceased defendant/vendor.

23. In the case of *Chhotalal Hariram* (Supra), it was held by Calcutta High Court that person primarily bound to complete the contract was the vendor and upon his death, his legal heirs and representatives. Therefore, in absence of primary party, the suit could no longer proceed. It was held that on the death of the defendant vendor, it was necessary that his legal representatives are brought in his place and the right to sue could not have survived only against the subsequent transferees. The Calcutta High Court in the case of *Chhotalal Hariram* (Supra) held as under :

"13. Let us first consider whether on the death of the principal defendant, the right to sue survives as against the transferee defendants alone or not. The privity of contract sought to be enforced was between the plaintiff vendee and the principal defendant vendor. The obligation to fulfil and complete the

contract on the vendor and on his death such obligation vests in the legal representatives of the vendor under Section 37 of the Contract Act - the contract in question not being entirely personal. The law no doubt enjoins that under certain circumstances, such a contract is also enforceable against subsequent transferees from the vendor vide Section 40 of the T. P. Act and Section 19 the Specific Relief Act. But such transferee is not the person to complete the contract since he was not the person who had entered into the contract. His position is of the nature of a trustee holding the property in trust for the benefit of the vendee who had earlier entered into the contract to the extent necessary to give effect to the contract vide Section 91 of the Trusts Act. The position that follows from Section 40 of the T. P. Act and Section 19 of the Specific Relief Act is that such a contract is enforceable against such transferees in the sense that when the vendor is made to perform the contract in favour of the vendee, title to the property passes on to the latter overriding the transfer thereof to the subsequent transferees are in law bound to acknowledge this position and convey the title. The primary obligation to perform the contract therefore, always remains on the vendor and on his death on his legal representatives. As has been pointed out by the Supreme Court in the case of *Durga Prosad v. Deepchand*, AIR 1954 SC 75 (reaffirmed in AIR 1967 SC 978) the correct frame of the relief to be claimed and given in a suit for specific performance of a contract of sale is to direct specific performance against the vendor - the subsequent transferees from him being only called upon to join in the conveyance to ensure passing of full title to the vendee. The balance consideration is also normally payable to the vendor but subject to equities which may arise from the facts of each case. We have already pointed out that the relief so admissible against the vendor shifts on his death on his legal representatives under Section 37 of the Contract Act and not on the transferees, their obligation remaining what it was even when the vendor was alive.

14. In the case of *Kafilladdin V. Samiraddin*, 34 Cal WN 698

: (AIR 1931 Cal 67) (approved by the Supreme Court in AIR 1954 SC 75) it was laid down by this court that in enforcing specific performance of a contract of sale, both the contracting party and the subsequent purchaser must join in the conveyance. The reason assigned is instructive. It was pointed out that in case the vendor, i.e., the contracting party is not made to execute the conveyance then he "may subsequently raise the objection that his title had not passed for want of consideration or otherwise to the subsequent purchaser and therefore the conveyance executed by the subsequent purchaser in favour of the plaintiff did not pass good title". Therefore, to convey perfect title to the vendee in all such cases both the vendor and the subsequent transferee from him are required to be made parties to convey the title to the vendee. This requirement is not altered in any way by the death of the vendor - his position being taken by his legal representatives. Hence, there is no escape from the position that on the death of the principal defendant vendor it was necessary that his legal representatives must be brought on the record in his place and the right to sue could not have survived against the subsequent transferees, Patels alone. That not having been done, the suit must be taken to have abated against the said principal defendant."

24. In the case of *Manni Devi* (Supra), it was held by Patna High Court as under :

"9. For the purpose of consideration of the second question the first thing required to be looked into is whether upon the death of the vendor the substitution of his legal representative is at all required. The other concerned question would be if a legal representative is required to be substituted and such a legal representative is not substituted whether the case can proceed against the purchaser if he is a party to the suit. It appears that specific performance of contract is not wholly personal. The obligation vests in the legal representatives of the vendor under S.37 of the Contract Act; the contract in question not being entirely personal. Therefore, I am of the opinion that the legal representative of the vendor is required

to be substituted in a suit for specific performance of contract. So far as the question whether the suit can proceed against the purchaser if such a substitution has not been made or disallowed, even though S.40 of the Transfer of Property Act read with S.19 of the Specific Relief Act permits the enforceability of the contract against the transferee but the said transferee is not the person to complete the contract since he was not the person, who had entered into contract. He is in the nature of a trustee of a thing and, therefore only a necessary party to the suit as held by the Supreme Court in the case of Dwarka Prasad Singh v. Harikant Prasad Singh AIR 1973 SC 655. This matter came to be considered by a Division Bench of the Calcutta High Court in the case of Chhotalal Hariram v. Dilip Kumar Chatterjee, AIR 1976 Cal 337 and their Lordships observed.

"The primary obligation to perform the contract, therefore, always remains on the vendor and on his death on his legal representatives. Hence, there is no escape from the position that on the death of the principal-defendant vendor, it was necessary that his legal representatives must be brought on the record in his place and the right to sue could not have survived against the subsequent transferees alone. That not having been done the suit must be taken to have abated against the said principal defendant."

Their Lordships further considered the question that the suit cannot proceed against the transferee alone, because the interest is not severable and the transferee has to join in the conveyance to be executed by the vendor on specific performance of contract and the transferees are not to perform the contract on their own nor are they to execute any conveyance independently of the original vendor. I am in complete agreement with the law laid down in Chhotalal's case (AIR 1976 Cal 337) (supra). I hold that a suit for specific performance of contract is not maintainable in absence of the vendor or his legal representative being party to the suit. The

suit is not saved by transferee along being a party even though he is also a necessary party to the suit."

25. In the case of *Nirav Deepak Modi Vs. Nijoo Bhiwandiwalla*, the Bombay High Court by order dated 27-8-2014 held as under :

"14. In the light of the law down as above, there is no escape from the proposition that in the case of death of the original vendor defending a specific performance suit, his legal representatives have to be joined as party defendants upon his death and it is they alone, who represent the estate of the deceased vendor and not the subsequent transferee of the original vendor."

26. The Supreme Court while considering the situation where the subsequent purchaser was on record, but the Legal Representatives of the original vendor were not brought on record, held in the case of *Dwarka Prasad Singh and others Vs. Harikant Prasad Singh and others*, reported in AIR 1973 SC 655 has held that non-bringing the Legal Representatives of the original vendor on record will prove fatal to the entire appeal as either inconsistent and contradictory decrees will have to be passed or proper (sic: proper) reliefs cannot be granted in absence of a necessary against that party or his legal representatives.

27. It has been held by the Supreme Court in the case of *Dwarka Prasad Singh* (Supra) as under :

"7. The second limb of argument of the appellants is based on Order 41, Rule 5, (4?), Civil Procedure Code. According to that rule where there are more plaintiffs or more defendants than one in a suit and the decree appealed from proceeds on any ground common to all the plaintiffs or all the defendants any one of the plaintiffs or the defendants may appeal from the whole decree and thereupon the appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be. As the appeal had been filed by defendants second party, it has been contended, that it remained complete and competent in spite of the death of Guha, defendant first party, for the reason that the decree proceeded on a ground common to all the defendants. It appears that

there was conflict of judicial opinion on the question whether the said rule could be invoked when one of the several appellants had died and his legal representatives had not been brought on the record with the result that the appeal had abated against him. But this matter stood concluded by the decision of this Court in Rameshwar Prasad v. Shyam Beharilal Jagannath, (1964) 3 SCR 549 = (AIR 1963 SC 1901). In that case the appeal had been filed in the High Court not by any one or some of the plaintiffs against the whole decree but had been filed by all the plaintiffs jointly. One of the appellants died and his legal representatives were not impleaded. It was laid down by this Court that Order 41, Rule 4 could not be invoked because the appellate Court had no power to proceed with the appeal and to reverse and vary the decree in favour of all the plaintiffs or defendants under that rule because if all the plaintiffs or defendants had appealed from the decree and any one of them had died the appeal had abated so far as he was concerned under Order 22, Rule 3. The appeal of the surviving appellant could also not be heard because of the rule laid down in the State of Punjab v. Nathu Ram, (1962) 2 SCR 636 = (AIR 1962 SC 89). According to that rule the abatement of an appeal means not only that the decree between the appellant and the deceased respondent becomes final but also, as a necessary corollary, the appellate Court cannot in any way modify that decree directly or indirectly. The decision in Nathu Ram's case, (1962) 2 SCR 636 = (AIR 1962 SC 89) (supra) was referred to in Pandit Siri Chand v. M/s. Jagdish Parshad Kishin Chand, (1966) 3 SCR 451 = (AIR 1966 SC 1427) where the decision was somewhat similar to Rameshwar Prasad's case, (1964) 3 SCR 549 = (AIR 1963 SC 1901) (supra). It was also emphasised that in a situation where two inconsistent orders or decrees would result the rule in Nathu Ram's case would be applicable. It may be mentioned that in that case an award had been made for payment of compensation in favour of two brothers L. and N. The State appealed against the award to the High Court. During the pendency of the appeal respondent L died and no application was made for bringing on record his legal representatives within

the requisite period of limitation. The question was that since the appeal had abated against L what was its effect in appeal against N. It was observed that the consideration which would weigh with the Court in deciding whether the entire appeal had abated or not would be whether the appeal between the appellants and the respondents other than the deceased respondent could be said to be properly constituted or could be said to have all the necessary parties for the decision of the controversy before the Court. Another main test was whether the success of the appeal would lead to a decision which would be in conflict with the decision between the appellant and the deceased respondent. Thus the Court will have to pass a decree contradictory to the one which had already become final with respect to the same subject matter between the appellant and the deceased respondent. It is arguable that the present case is distinguishable from the decisions in Rameshwar Prasad, (1964) 3 SCR 549 = (AIR 1963 SC 1901) and Pt. Siri Chand, (1966) 3 SCR 451 = (AIR 1966 SC 1427) (supra). Here the appellate Court could, under Order 41, Rule 4 of the Civil Procedure Code reverse the decree for specific performance since the defendants second party filed the appeal and Guha, the vendor, who died had not joined in the appeal. The decree for specific performance proceeded on a ground common to both sets of defendants. It could, therefore, be set aside in terms of the above provision. But there is a joint decree in favour of both sets of defendants for the receipt of Rupees 77,000/-. If the decree for specific performance is set aside that part of the decree will also have to go. It is not possible to understand how that can be done in the absence of the legal representatives of the deceased Guha. Moreover, the plaintiffs had claimed against Guha, in the alternative, a decree for substantial amount consisting of the part consideration paid and certain other amounts. If Guha had been alive or if his legal representatives had been impleaded in time the Court could, while setting aside the decree for specific performance, grant the alternative prayer which was only made against Guha. This cannot be done now. In these circumstances we are of

the view that Order 41, Rule 4 of the Code of Civil Procedure cannot be of any avail to the appellants. The abatement of the appeal, so far as Guha was concerned, will prove fatal to the entire appeal as either inconsistent and contradictory decrees will have to be passed or proper reliefs cannot be granted in the absence of a necessary party against that party or his legal representatives."

28. The Counsel for the appellants have relied upon a judgment passed by the Bombay High Court in the case of *Shyamabai Shriram Sharma (Since deceased) and others Vs. Ramkisan Prabhatilal Mittal* passed on 19-12-2007 in F.A. No. 325 of 1992 and submitted that even if the Legal representatives of the original vendor are not brought on record, it would not make any difference and the appeal would not abate. The counsel for the appellants relied upon the following observations made by the Bombay High Court which reads as under :-

"23.....This Position in law therefore, leaves no manner of doubt that the appellant Nos. 2 and 3 are in fact inter meddlers with the suit property being its purchasers and in its possession. They could have therefore, maintained an Appeal under Section 96 independently in case death of appellant would have occurred during pendency of suit or immediately after its decision. Had respondent/original plaintiff not joined them as party defendants before trial Court, they were also entitled to move appropriate application for coming on record. In fact they represent the estate of deceased in this matter and even if it is presumed that deceased had any legal heir, in view of decree passed against them by Trial Court asking them to join in execution of sale deed with deceased and awarding them balance sale consideration, such legal heir cannot be and could not have been treated as Legal Representative in present facts. Fact that appellant Nos. 2 and 3 are co-appellants at the time of institution of this Appeal itself along with appellant no.1/ original defendant no.1 (now deceased cannot be overlooked. I therefore, find no substance in contention of advocate C.P. Sen that appeal had abated. Accordingly contentions in Civil Application No. 5369/2004 moved by respondent seeking

dismissal of Appeal on that account are found to be without any substance."

29. I have gone through the judgment passed by Bombay High Court in the case of *Shyamabai Shriram Sharma* (Supra), however, the High Court has not considered the judgments passed by the Supreme Court in the case of *Durga Prasad* (Supra), *Ramesh Chandra Chandiok* (Supra) and *Dwarka Prasad Singh* (Supra) and therefore, in the considered opinion of this Court, the judgment passed by the Bombay High Court in the case of *Shyamabai Shriram Sharma* (Supra) is per incuriam and does not lay down good law.

30. It is next contended by the Counsel for the appellants that as this Court has already held on previous occasions, that the appeal does not abate, therefore, any contrary opinion would be contrary to the principles of res-judicata as the principle of res-judicata applies even to interlocutory orders and if the respondent no.1 was aggrieved by any of the orders dated 4-3-2013 and 3-5-2013, then he should have challenged the same before the Appellate Court and having allowed the said orders to attain finality, the respondent at this stage cannot reopen the issue of abatement. To buttress his contentions, the Counsel for the appellants has relied upon the judgment of Assam High Court passed in the case of *Bholanath Thakur and another Vs. Sarvananda Kotoky and others*, reported in AIR 1966 Assam 41.

31. The High Court in the case of *Bholanath Thakur* (Supra) has held as under :-

"5. The judgment of the court below has been assailed on two grounds. Firstly it is urged that the order of the 13th July, 1959 by which the court below had held that the suit abates only in so far as the interest of defendant No. 1 is concerned, constitutes res judicata and it was not open to him at the after stage of the same suit to hold a contrary view. It cannot be doubted that if an order is passed at any stage of the proceedings by the court, it cannot at a later stage, be ignored and the order subsists unless it is set aside by a superior court, and will be binding on that court, in the case of *Satyadhyan Ghosal v. Smt. Deorajin Debi* AIR 1960 SC 941 the following observation is apposite :

"The principle of res judicata applies also as between

two stages in the same litigation to fills extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings.

If the court at the earlier stage of the proceedings was of the opinion that the proceedings could go on against defendants Nos.2 and 3, even though defendant No.1 was not impleaded as a party he cannot now at a later stage of the same proceeding turn down the earlier order and hold that the suit cannot proceed without defendant No. 1 or his heirs on the record."

32. Thus, it is submitted by the Counsel for the appellants that even if this Court has erroneously held that the appeal has not abated, then the said question cannot be re-opened.

33. *Per contra*, it is submitted by the Counsel for the respondent no.1, that this Court on the earlier occasion had not considered the effect of death of appellant no. 1(2) Murarilal, and every time, the effect of appellant Kishorilal was considered and admittedly, the appeal had not abated on the death of Kishorilal as his legal representatives were already brought on record.

34. Heard the learned Counsel for the parties.

35. The abatement is automatic and by operation of law. The Supreme Court in the case of *Perumon Bhagvathy Devaswom Vs. Bhargavi Amma* reported in (2008) 8 SCC 321 has held as under :

"5. Having regard to the wording of Rule 4, it is clear that when a respondent dies and an application to bring his legal representative on record is not made, abatement takes place on the expiry of the prescribed period of 90 days, by operation of law. Abatement is not dependent upon any judicial adjudication or declaration of such abatement by a judicial order. It occurs by operation of law. But nevertheless "abatement" requires judicial cognizance to put an end to a case as having abated. To borrow a phrase from Administrative Law (used with reference to void orders), an appeal bears no brand on its forehead that it has "abated", nor does it close

itself automatically on abatement. At some stage, the court has to take note of the abatement and record the closure of the case as having abated (where the deceased was a sole respondent) or record that the appeal had abated as against a particular respondent (if there are more than one and the cause of action survives against the others)."

36. Thus, it is clear that although the abatement is automatically by operation of law, but the Court has to take note of abatement and record the closure of the case as having abated. Thus, the moot question for consideration is that whether this Court, at any point of time, had ever taken note of abatement on account of death of Appellant no. 1(2) Murarilal or not and if not then whether the orders dated 4-3-2013 and 3-5-2013 would operate as res-judicata?

37. The appellants had earlier filed an application for deleting the name of the appellant no. 1(2) of Murarilal on the ground that since, the subsequent purchasers (Appellant no. 2 and 3) are already on record, therefore, the name of the appellant no. 1(2) Murarilal may be deleted. The said application was allowed by this Court by order dated 9-5-2011, at the risk and cost of the appellants no. 2 and 3. Thus, it is clear that while deciding the application for deleting the name of the appellant no. 1(2) Murarilal, the Court had clarified that the deletion of the name of the appellant no. 1(2) Murarilal would be at the risk and cost of the appellants. Subsequently, the application filed by the respondent no. 1 to dismiss the appeal having abated because of non-substitution of L.R.s of appellant no. 1(2) Murarilal was dismissed. However, while deciding the question of abatement on the application of the respondent no. 1, this Court had taken note of death of Kishorilal only and had not taken note of effect of death of appellant no. 1(2) Murarilal. At the cost of repetition, it is once again mentioned that the appeal had abated automatically by operation of law on the death of appellant no. 1(2) Murarilal and only a formal order was required considering the effect of death of appellant no. 1(2) Murarilal, but the effect of death of appellant no. 1(2) Murarilal was never considered by this Court while deciding the application filed by the respondent for dismissal of the appeal as having abated on the death of appellant no. 1(2) Murarilal. As while passing order dated 4-3-2013, this Court had not considered the effect of death of appellant no. 1(2) Murarilal as well as the effect of deletion of name of appellant no. 1(2) Murarilal, therefore, the order

dated 4-3-2013 cannot be treated as binding because of principle of res-judicata. It is undisputed fact that appellant no.1(2) Murarilal had not died without leaving legal representatives. Undisputedly, the appellant no. 1(2) Murarilal was survived by his legal representatives, who were not brought on record. Later on, sensing some legal problems, the appellants by way of abundant caution, filed an application under Order XXII Rule 4 read with Order I Rule 10 C.P.C. for bringing the Legal Representatives of the deceased appellant no. 1(2) Murarilal on record as formal respondents. The said application was allowed by order dated 3-5-2013 and the appellants substituted the Legal Representatives of appellant No. 1(2) Murarilal as formal respondents. Appellant no.1(2) Murarilal had died on 22-7-2007 and his legal representatives were brought on record, although in the form of formal respondents in the year 2013. It is submitted that in case of abatement, strict view should not be adopted and once, the application for substitution of Legal Representatives under XXII Rule 4 C.P.C. is allowed, then it should be presumed that the abatement has also been set aside. To buttress his contentions, the Counsel for the appellants relied upon the judgment passed by the Supreme Court in the case of *Mithailal Dalsangar Singh Vs. Annabai Devram Kini* reported in (2003) 10 SCC 691 has held as under :-

"8. In as much as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other

applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for."

38. Unfortunately, this case has a peculiar circumstance. The name of the appellant no. 1(2) Murarilal was deleted from the array of cause title by order dated 9-5-2011 at the risk and cost of the appellants. The provisions of Order XXII Rule 4 C.P.C. would apply only when the name of the deceased party has not been deleted and he is substituted by his Legal Representatives. Therefore, when an application under Order XXII Rule 4 of C.P.C. is filed, then even in absence of any specific prayer for setting aside abatement, it can be said that the Court by allowing the application for bringing the L.R.s of the deceased party has also set aside the abatement. However, when the name of the deceased party is deleted without any substitution, then it would mean, that the said deceased party is no more in the suit/appeal. If a person is not a party to the suit or appeal, then his Legal Representatives cannot be brought on record under Order XXII Rule 4 C.P.C. and therefore, the question of setting abatement by allowing application for substitution of the Legal Representatives of deceased party would also not arise. After the name of appellant no. 1(2) Murarilal was deleted from the array of cause title, it would mean that his Legal Representatives could be impleaded only under Order I Rule 10 C.P.C. and if they are allowed to be impleaded under Order I Rule 10 C.P.C., then it can be said that there was no implied or explicit setting aside of abatement. Thus, it cannot be said that this Court by allowing the Legal Representatives of appellant no.1(2) Murarilal to be brought on record, had directly set aside the abatement. Further, it is clear that the Legal Representatives of appellant no.1(2) Murarilal were never brought on record prior to 3-5-2013 whereas appellant no. 1(2) Murarilal had already expired on 22-7-2007. Thus, in the considered opinion of this Court, that the orders dated 4-3-2013 and 3-5-2013 passed by this Court at the interlocutory stage would not apply as res-judicata and therefore, in the light of the order dated 9-5-2011, this Court can still consider the effect of deletion of name of appellant no.1(2) Murarilal as the application for deleting the name of the appellant

no.1 (2) Murarilal was allowed at the risk and cost of the appellants.

39. As already held that non-substitution of the Legal Representatives of Appellant no. 1(2) Murarilal has resulted in abatement of appeal to the extent of appellant no.1(2) Murarilal. As two contradictory decrees cannot be passed, therefore, in the considered opinion of this Court, the entire appeal would abate because of non-substitution of the L.R.s as well as on the deletion of the name of appellant no.1(2) of Murarilal.

40. It is next contended by the Counsel for the appellants, that they have filed an application (I.A. No. 3581/2017) under Section 151 of C.P.C. with the following prayer :

"Hence, in the facts and circumstances of the case, it is humbly prayed that the application may kindly be allowed and by exercising power under Section 151 C.P.C., heirs of Murarilal who are already on record, be considered to be taken on record in place of Murarilal as proforma respondents by recalling/modifying the order dated 9-5-2011, so also by setting aside abatement and condoning delay if any finds by this Hon'ble Court and if this Hon'ble Court thinks necessary notices to the heirs of Murarilal may be issued to end of justice."

Paragraph 13 of the application is reproduced as under :

"13. That, it is in practice that after sale of property in dispute, the purchasers in possession is treated to be legal representative in such circumstances the appellants were mislead because of orders in the instant appeal whereby it has been held between the parties that there is no abatement as appellant no.2 and 3 who purchased the property in question area already on record....."

41. In I.A. No. 17118/2010, which was filed by the appellants for deleting the name of the appellant no.1 (2) Murarilal, it was claimed by the subsequent purchasers that they are the Legal Representatives of appellant no.1 (2) Murarilal as having been purchased the property in dispute. Even in this application, it is claimed that it is the practice to consider the subsequent purchasers as legal representatives of original vendor. The Court has already held that subsequent purchaser cannot be held to be a legal representative of original vendor.

42. Here, the mistake of law has been committed by the appellants themselves by filing an application for deleting the name of the appellant no. 1(2) Murarilal and therefore, the mistake of law cannot be corrected by modifying or recalling the order dated 09-05-2011 even by adopting the most lenient view in the matter. Further more, the application for deleting the name of Appellant no. 1(2) Murarilal was allowed with a rider that the deletion of the name of appellant no.1(2) Murarilal shall be at the risk and cost of the appellants. Therefore, under these circumstances, the prayer of the appellants for modifying/recalling the order dated 9-5-2011 cannot be accepted. Even otherwise, I.A. No. 17118/2010 was considered on 9-5-2011 and in I.A. No. 17118/2010, the appellants had merely prayed for deleting the name of the appellant no.1(2) Murarilal and therefore, even by recalling the order dated 9-5-2011, the legal representatives of appellant no. 1(2) Murarilal cannot be brought on record.

Accordingly, I.A. No. 3581/2017 filed by the appellants under Section 151 of C.P.C. is rejected.

43. Hence, this Court is of the considered opinion that due to non-bringing the legal representatives of appellant no.1 (2) Murarilal on record who died on 22-07-2007, the appeal as a whole has abated and is accordingly dismissed as having abated. No orders as to costs.

Appeal dismissed.

I.L.R. [2017] M.P., 3015

APPELLATE CIVIL

Before Mr. Justice Sujoy Paul

M.A. No. 1829/2009 (Jabalpur) decided on 10 October, 2017

CHAIRMAN M.S. BANGA HINDUSTAN LEVER LIMITED

BEKWAY, RECLAMATION, BOMBAY & ors.

...Appellants

Vs.

M/S HEERA AGENCIES

...Respondent

(Alongwith M.A. No.1831/2009, 1832/2009)

A. Civil Procedure Code (5 of 1908), Order 6 Rule 17, Order 7 Rule 14(3) & Order 9 Rule 13 – Ex-Parte Proceedings – Fresh Notice – Trial Court proceeded *ex-parte* against appellants/defendants – Subsequently, plaintiff filed application under Order 6 Rule 17 and

Order 7 Rule 14(3) C.P.C. which was allowed and thereafter *ex-parte* judgment and decree was passed – Held – Appellants were not put to notice before allowing such applications – In cases where after *ex-parte* proceedings, amendment applications etc. are filed, Court is required to issue fresh notice to the other side – Application under Order 9 Rule 13 allowed with cost – Appeals allowed. (Paras 29, 30 & 32)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17, आदेश 7 नियम 14(3) एवं आदेश 9 नियम 13 – एक-पक्षीय कार्यवाहियां – नया नोटिस – विचारण न्यायालय ने अपीलार्थीगण/प्रतिवादीगण के विरुद्ध एक-पक्षीय कार्यवाही की – तत्पश्चात्, वादी ने सि.प्र.सं. के आदेश 6 नियम 17 तथा आदेश 7 नियम 14(3) के अंतर्गत आवेदन प्रस्तुत किया जिसे मंजूर किया गया था तथा उसके बाद एक-पक्षीय निर्णय एवं डिक्री पारित की गई थी – अभिनिर्धारित – ऐसे आवेदन मंजूर करने से पूर्व अपीलार्थीगण को नोटिस नहीं दिया गया था – उन प्रकरणों में जहां एक-पक्षीय कार्यवाहियों के पश्चात्, संशोधन आवेदन इत्यादि प्रस्तुत किये गये हैं, न्यायालय द्वारा दूसरे पक्ष को नया नोटिस जारी किया जाना अपेक्षित है – आदेश 9 नियम 13 के अंतर्गत आवेदन सव्यय मंजूर – अपीलें मंजूर।

B. Limitation Act (36 of 1963), Section 5 – Condonation of Delay – Liberal Approach by Court – Held – As per Apex Court, approach of Courts in condoning delay should be liberal and litigant cannot be expected to explain each and every day's delay – In present case, from date of knowledge of judgment, delay in filing applications is less than one month which is not inordinate – Cause shown for delay cannot be said to be untrustworthy – Court below has taken a rigid view of the matter rejecting the application filed alongwith affidavits – Application allowed. (Paras 18, 20 & 21)

ख. परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – न्यायालय द्वारा उदार दृष्टिकोण – अभिनिर्धारित – सर्वोच्च न्यायालय के अनुसार, विलंब माफ करने के लिए न्यायालयों का दृष्टिकोण उदार होना चाहिए तथा मुकदमेबाज से प्रत्येक दिन के विलम्ब को स्पष्ट करने की अपेक्षा नहीं की जा सकती – वर्तमान प्रकरण में, निर्णय का ज्ञान होने की तिथि से, आवेदनों को प्रस्तुत करने में हुआ विलंब एक माह से कम है जो कि असाधारण नहीं है – विलंब के लिए दर्शाया गया कारण, अविश्वसनीय नहीं कहा जा सकता – निचले न्यायालय ने, शपथ-पत्रों के साथ प्रस्तुत आवेदन को अस्वीकार करते हुए, मामले पर कठोर दृष्टिकोण अपनाया है – आवेदन मंजूर।

C. Civil Practice – Litigant & Counsel – Conduct – Held –

This Court in certain cases has concluded that the litigant even after engaging the Counsel cannot be permitted to sleep over his duty – He should be vigilant and contact his counsel in order to gather knowledge regarding progress of litigation – However this principle cannot be applied in present case as no fresh notice was issued by Court on applications filed by plaintiff. (Para 30)

ग. सिविल पद्धति – मुकदमेबाज व अधिवक्ता – आवरण – अभिनिर्धारित – इस न्यायालय ने कतिपय प्रकरणों में निष्कर्षित किया है कि मुकदमेबाज को अधिवक्ता नियोजित करने के बाद भी, उसे उसके कर्तव्य में लापरवाह होने की अनुमति नहीं दी जा सकती – उसे जागरूक होना चाहिए तथा मुकदमेबाजी के आगे बढ़ने के संबंध में ज्ञान एकत्रित करने हेतु अपने अधिवक्ता से संपर्क करना चाहिए – तथापि यह सिद्धांत वर्तमान प्रकरण में लागू नहीं किया जा सकता क्योंकि वादी द्वारा प्रस्तुत आवेदनों पर न्यायालय द्वारा कोई नया नोटिस जारी नहीं किया गया था।

Cases referred :

AIR 1946 Nagpur 60, AIR 1969 Patna 228, 2001 MPLJ 407, AIR 2004 SC 1084, 2006 (2) MPLJ NOC 1, 2008 (2) Weekly Notes 56, AIR 1992 SC 1264, AIR 87 SC 1726, AIR 2004 SC 267, (2003) 1 MPHT 33, (2003) 3 MPHT 367, (2003) 4 MPHT 268, (2009) 2 MPLJ 96, (2004) 4 MPLJ 537, AIR 2008 SC 276, AIR 2011 SC 489, (2015) ILR MP 2155, (2013) 3 MPLJ 178, 2014 (3) MPLJ 265, 2014 (3) MPLJ 476, AIR 2012 SC 1506, AIR 2013 SC 1732, 2014 (1) MPLJ 665, AIR 2010 SC 3043, 2014 (4) MPLJ 1, 2014 (4) MPLJ 7, 2015 (1) MPLJ 286, 2015 (1) MPLJ 296, 2017 (2) MPLJ 232, 2017 (2) MPLJ 235, AIR 1993 SC 1182, 2011 (3) SCC 545, 2003 (2) SCC 111.

R.P. Agrawal with A.M. Lal, for the appellants.

Khalid.Fakhruddin, for the respondents in M.A. Nos. 1829/2009 & 1831/2009.

Umang Goyal, for the respondents in M.A. No. 1832/2009.

J U D G M E N T

SUJOY PAUL, J. :- These appeals filed under Order 41 Rule 1(r) of Code of Civil Procedure are directed against the similar orders passed by the Court below whereby the application preferred by present appellants under Order 9, Rule 13 CPC were disallowed by the Court below.

2. Regard being had to the similitude of the questions involved in these

cases, on the joint request of the parties, the matters were analogously heard and decided by this common order.

3. Shri R.P. Agrawal, learned Senior Counsel for the appellants submits that civil suit for rendition of account were instituted by respondents/plaintiff on 09.10.2001. One Shri Vinod Rai, Advocate appeared on behalf of present appellants before the Trial Court in the said civil suits on 08.07.2004 and prayed for time to file his vakalatnama and written statement. Shri Vinod Rai, for the reasons best known to him, did not appear before the Court below on 15.09.2004 and, therefore, in all the civil suits, the Court below proceeded *ex parte* against the present appellants. On 24.12.2005, the preliminary judgment and decree was passed by the Court below.

4. Learned Senior Counsel for the appellant submits that the official representative of the present appellants was on tour to Seoni and there he gathered knowledge about passing of aforesaid judgments and decrees. The said knowledge was gathered by him sometimes in last week of June, 2006. Thereafter, the certified copies of the judgments and decrees were obtained and necessary legal advice and sanction etc. from headquarter (Mumbai) were also obtained. The applications under Order 9 Rule 13 CPC alongwith applications under Section 5 of the Limitation Act were filed on 14.08.2006. The similar applications aforesaid were rejected by similar orders dated 22.01.2009. These order are called in question in present batch of appeals.

5. The learned Senior Counsel assailed these orders on procedural aspect and on merits. It is contended that the Court below in aforesaid three civil suits proceeded *ex parte* on 15.09.2004. Thereafter, on 09.09.2015, applications under Order 7 Rule 14(3) CPC for taking documents on record were filed by the plaintiffs in all civil suits. Yet another set of applications under Order 6 Rule 17 CPC were filed in the civil suits on 25.11.2005. These amendment applications were allowed by the Civil Court on 01.12.2005. The first point raised by learned Senior Counsel is that the amendment application and application for taking documents on record were allowed after proceeding *ex parte* against the present appellants on 15.09.2004. Before allowing amendment application and applications for taking documents on record, the Trial Court was obliged to issue fresh notices to the present appellants. Reliance is placed on a Special Bench judgment reported in AIR 1946 Nagpur 60 [*Ganesh Prasad Ramprasad Vs. Damayanti w/o Ganesh Prasad*]. For same preposition, reliance is placed on AIR 1969 Patna 228 [*Messrs.*

Jharkhand Mines & Industries Ltd. & another vs. Nand Kishore Prasad & others], 2001 MPLJ 407 [*Mahesh Singh and others Vs. Sewaram and others*] and AIR 2004 SC 1084 [*Ramnik Vallabhdas Madvani and Ors. Vs. Taraben Pravinlal MKadhvani*]. In nutshell, the contention of learned Senior Counsel is that the preliminary judgment and decree based on an *exparte* order cannot sustain judicial scrutiny and should have been set aside while considering the application under Order 9 Rule 13 CPC for the simple reason that the aforesaid applications were allowed after proceeding *exparte* against the present appellants.

6. The next contention of learned Senior Counsel is that the Court below proceeded *exparte* against the appellants because Shri Vinod Rai after appearing for few dates, stopped appearing in the matter. In that event, for the negligence of the counsel, the litigant should not be made to suffer. Moreso, when litigant is stationed at Bombay and trusted his counsel for the purpose of contesting the matter. If counsel has shown lethargy or negligence, the appellants cannot be made to suffer. Moreso, when the counsel did not appear only on one particular date and on that date alone, the Court below proceeded *exparte*. The learned Senior Counsel contended that the earlier dates prior to 15.09.2004 were irrelevant and any absence of counsel on those dates could not have been a reason to proceed *exparte* against the appellants. He relied on 2006 (2) MPLJ NOC 1 [*Pankaj Agarwal & another vs. Shakuntala Devi & others*], 2008 (2) Weekly Notes 56 [*Vaianti Bai (Smt.) vs. Jairam*], in which the certain Supreme Court judgments were considered by this Court.

7. Shri Agrawal, learned Senior Counsel further submits that the appellants came to know about the *exparte* judgment in last week of June, 2006. After obtaining legal opinion and administrative sanction etc., the application under Order 9 Rule 13 was promptly filed on 14.08.2006. The delay was only of about one month which should have been leniently dealt with by the Court below by adopting a justice oriented approach. In support of this contention, learned Senior Counsel relied on AIR 1992 SC 1264 [*Sarojini Tea Co. (P) Ltd. vs. Collector of Dibrugarh Assam & anr.*], AIR 87 SC 1726 [*Shankarrao vs. Chandrasenkumwar*], AIR 2004 SC 267 [*Apang Shu Mohanlodh vs. State of Tripura*] and judgments of this Court reported in (2003) 1 MPHT 33 [*Sobhraj Sindhi vs. Mohd. Jahoor*], (2003) 3 MPHT 367 [*State of M.P. vs. Ramesh Prasad Verma*] and (2003)

4 MPHT 268 [*Dr. Kunal Kantimajee vs. The Chancellor, Rani Durgawati*].

It is further urged that at best, Court below could have imposed cost on the appellants for the inconvenience caused to the other side. The proper course was to permit the present appellants to participate in the proceedings by setting aside the preliminary judgment and decree. Shri Agrawal, learned Senior Counsel further contended that in addition to allowing amendment application and application to take documents on record, the plaintiffs were re-examined by the Trial Court. For these cumulative reasons, in the fitness of things and in order to do complete justice between the parties, the Court below should have allowed the application preferred under Order 9 Rule 13 CPC.

8. *Per contra*, Shri Khalid Fakhruddin, learned counsel for the respondents/plaintiff submits that appellant Company is not a rustic and ordinarily litigant. It has global business and having legal assistance at every level. They have their law department, law officers and counsel at every place. By taking this Court to the language used in Order 9 Rule 13 CPC (the Madhya Pradesh amendment), Shri Fakhruddin contends that the necessary ingredients for setting aside an *ex parte* decree are not available in the case of the appellants. The appellants assigned singular reason in their application filed under Order 9 Rule 13 CPC i.e. the non appearance of the counsel which was beyond the control of appellants. Learned counsel submits that when summons are duly served, vakalatnama was filed for defendant No.1, it is clear that the appellants had received the summons and had knowledge about the dates of hearing of aforesaid civil suits. Shri Fakhruddin had taken pains to take this Court to various order sheets right from (sic:from) 17.10.2003 to 15.09.2004 to canvas his submission that Shri Vinod Rai, Advocate appeared for the appellants and prayed for time. On 09.08.2004, time was granted with imposition of cost of Rs.500/-. On 15.09.2004, Shri Rai filed vakalatnama for defendant No.1. Date mentioned in the vakalatnama is 15.09.2004 which, as per Shri Fakhruddin shows that the appellants themselves were present at Seoni then alone they can engage an advocate by putting the same date.

9. Learned counsel for the other side further submits that in support of application under Order 9 Rule 13 CPC and Section 5 of the Limitation Act, nobody led evidence on behalf of the appellants before the Court below. The application under Section 5 of CPC is vague in nature. The name of person, who had allegedly gathered knowledge about preliminary decree is not mentioned. It is also not mentioned as to what was the mode of getting

knowledge about such judgment. It is further argued that in addition to the summons issued by the Trial Court, the plaintiffs served the present appellants by 'dasti' service. Affidavit of service were also placed on record. Shri Fakhruddin made an attempt to distinguish the judgments cited by learned Senior Counsel by contending that in the cases cited by Shri Agrawal, learned Senior Counsel, the amendment application which was allowed by the concerned Courts after proceeded *ex parte* were pregnant with substantial pleadings whereas in the present case, the amendment applications were formal in nature. Same is the case with the application filed under Order 7 Rule 14 (3) CPC.

10. During the course of the arguments, Shri Fakhruddin relied upon an order passed in M.Cr.C. No. 9043/2004 wherein a finding is given that Civil Suit No.9-B/2005 was decided *ex parte* and preliminary decree was passed on 24.12.2005. The attempt of Shri Fakhruddin is to show that the said M.Cr.C. was filed in the year 2004 and, therefore, the present appellants who were petitioners in the said M.Cr.C. had knowledge about *ex parte* order dated 24.12.2005 in the year 2004 itself.

11. The next contention of Shri Fakhruddin is that as a straight jacket formula this contention cannot be accepted that for mistake of counsel or non appearance of counsel in all the cases, the judgment and decree should be set aside. In support of said contention, he relied on (2009) 2 MPLJ 96, [*Anita @ Anis Kasve and another Vs. Dharmendra and others*], (2004) 4 MPLJ 537 [*Shri Sharda Prabandhak Samiti, Maihar and another Vs. Indrasen Jali*], AIR 2008 SC 276 [*Mahabir Singh Vs. Subhash and ors.*], AIR 2011 SC 489 [*Ramji Pandey and others Vs. Swaran Kali*], M.Cr.C. No. 7232/2015 [*Narmada Motors Vs. Sunil Kumar Lauvanshi*], (2015) ILR MP 2155 [*Rajendra Kumar Adhwaryu Vs. Parmanand*] and (2013) 3 MPLJ 178 [*Ramesh Chandra Jain Vs. State of M.P.*].

12. Learned counsel for the other side also relied on, 2014 (3) MPLJ 265 [*State of M.P. and another Vs. Abdul Gani s/o Kasam Kunjda (since deceased) through L.H. Jebunisha wd/o Abdul Gani and others*], 2014(3) MPLJ 476 [*State of U.P. And another Vs. Amar Nath Yadav*], AIR 2012 SC 1506 [*Office of the Chief Post Master General and ors. Vs. Living Media India Ltd. And anr.*], AIR 2013 SC 1732 [*Sushil K. Chakravarty (D) Thr. Lrs. Vs. M/s Tej Properties Pvt. Ltd.*], 2014 (1) MPLJ 665 [*Brijesh Kumar Gupta Vs. Mahendra Kumar Jain (deceased) through Lrs.*], AIR 2010 SC 3043 [*Balwant*

Singh (Dead) Vs. Jagdish Singh and ors.], 2014 (4) MPLJ 1 [*State of MP Vs. Ranjana Yogi*], 2014 (4) MPLJ 7 [*Nana Chudhaman Bhamkar Vs. Betul Nagrik Sahkari Bank Maryadit*], 2015 (1) MPLJ 286 [*State of MP Vs. Ramkalibai w/o Rambharosa Nai*], 2015 (1) MPLJ 296 [*Surendra Kaur Vs. Satinder Singh Chhabra*], 2017 (2) MPLJ 232 [*Mst. Shabana Anjum and others Vs. Mohd. Sulman and others*] and 2017 (2) MPLJ 235 [*Indian Overseas Bank Vs. Hari Shankar Sharma and another*] and contended that Section 5 application of the appellants was rightly rejected by the Court below. Lastly, it is argued that the grounds taken in the appeal memo are factually incorrect and legally unsustainable. By taking this Court to each of the grounds, Shri Fakhruddin contended that the grounds are incorrect which is evident from the record itself.

13. No other point is pressed by learned counsel for the parties.

14. I have heard the parties at length and perused the record.

15. First of all, I deem it apposite to deal with the aspect whether the Court below was justified in disallowing the application filed under Section 5 of the Limitation Act. The Court below rejected it by assigning following reasons: (i) the record of civil suit shows that present appellants did not file Vakalatnama and written statement and, therefore, the Court below proceeded *ex-parte*; (ii) the application under Section 5 of the Limitation Act is filed after eight months' from the date of judgment i.e. 04.12.2005; (iii) if appellants had gathered knowledge about *ex-parte* judgment in the month of June, 2006 the application under Order 9 Rule 13 CPC should have been filed till July, 2006; (iv) on the basis of affidavit alone in support of application under Section 5 of the Limitation Act, the contention of applicants cannot be accepted.

16. It is noteworthy that Mr. Fakhruddin, learned counsel for the respondents, during the course of arguments placed heavy reliance on the order passed in M.Cr.C. No.9043/2004 [*MS Banga & others vs. Bisham Singh & another*], wherein a finding has been recorded that civil suit was decided *ex-parte* by judgment and decree dated 24.12.2005. It is canvassed that since the said MCrC was filed in the year 2004, the present appellants were well aware about the judgment and decree dated 24.12.2005 at the time of presentation of said MCrC. During the course of hearing, Mr. Fakhruddin provided the photocopy of M.Cr.C. No.9044/2004 for perusal of this Court. In para 4 of this petition, it is pleaded that the said civil suit is still

pending. Since MCrC was filed in 2004 itself and *ex-parte* judgment and decree was passed on 24.12.2005, the argument that the appellants were aware about the judgment and decree in 2004 is devoid of substance. The attempt of the other side is to establish that the stand of the appellants regarding date of knowledge of *ex-parte* judgment and decree is based on incorrect and falsified grounds. The judgment in the case of *Sushil K Chakravarty, Brijesh K Gupta & Balwant Singh* (supra) were relied upon in this regard. As notices, the respondents could not establish that the present appellants had knowledge of *ex-parte* judgment and decree dated 24.12.2005 before filing of application under Order 9 Rule 13 CPC.

17. The word “sufficient cause” used in Section 5 of the Limitation Act were considered by Supreme Court and it was held that these words give discretion to the Court to advance “substantial justice”. The courts should adopt a pragmatic approach. In the case of *Sobhraj Sindhi* (supra) this Court opined that even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigating as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property.

18. Justice AM Sapre (as his Lordship then was) in 2003 (4) MPHT 268, [*Chhogalal vs. Smt. Husain Bai*], opined that it cannot be lost sight of the fact that condoning the delay advances a cause of justice whereas not condoning the delay takes away the valuable right of the appellant to prosecute a first appeal under Section 96 of the CPC. A right of the appeal conferred under Section 96 of the CPC is one of the most valuable rights given to a litigant. It should not be lightly taken away from his hands unless the delay in filing the appeal is found to be grossly inadequate and/or unexplained. The recent view of the Supreme Court in the cases arising out of Section 5 of Limitation Act indicates that the approach of the Courts in condoning the delay should be liberal and the litigant can not be expected to explain each and every day's delay as was the view earlier.

19. In the case of *Ram Prasad Verma* (supra) this Court opined that length of delay is not material, acceptability of explanation is the only criteria. The words “sufficient cause” used in Section 5 of Limitation Act must receive liberal construction so as to advance substantial justice.

20. If the finding of Court below is examined on the anvil of aforesaid principles, it will be clear that the Courts have taken a very rigid view of the matter. Since the application under Section 5 of the Limitation Act was supported by an affidavit mentioning that the present appellants gathered knowledge about passing of *ex-parte* judgment and decree in June, 2006 there was no justification in not believing the same. Merely because the appellants did not mention as to when they preferred the application for obtaining copy of judgment and decree, their version that they came to know about the judgment and decree in June, 2006 cannot be disbelieved. From the date of knowledge of judgment i.e., last week of June, 2006 the applications for setting aside the *ex-parte* judgment were promptly filed on 14.08.2006. From the date of knowledge, the delay in filing the said applications is less than one month. From the date of original judgment i.e., 24.12.2005 also the delay is not inordinate. Thus, I find substance in the argument of learned Senior Counsel for the appellants that the Court below as (sic:has) erroneously rejected the applications filed under Section 5 of the Limitation Act.

21. So far the judgment cited by Mr. Fakhruddin, in the cases of *Abdul Gani*, *Amar Nath Yadav*, *Office of Chief Post Master General*, *Ranjana Yogi*, *Ramkali Bai & Mohd. Sulman* (supra) are concerned, it is noteworthy that in those cases, the amount of delay was huge and no plausible explanation was given for such delay. In *Abdul Gani's* case the delay was of 516 days, in *Amar Nath Yadav's* case the delay was 481 days, in *Office of Chief Post Master General's* case the delay was 427 days, in *Ranjana Yogi's* case the delay was 695 days, in *Ramkali Bai's* case the delay was of 952 days and in *Mohd. Sulman's* case the delay was of 1579 days. At the cost of repetition, in my view, the cause shown for delay cannot be said to be untrustworthy and, therefore, the Court below has rejected the application for condonation of delay on erroneous grounds.

22. The parties are also at loggerheads on the decision taken on applications filed under Order 9 Rule 13 CPC. The learned counsel for the appellants placed reliance on certain judgments to bolster his submission that if amendment applications and application to take documents on record are filed and allowed subsequently, the decision to proceed *ex-parte* i.e. 15.09.2004, the Court below should have issued fresh notices to the appellants. This point requires serious consideration.

23. Justice Vivian Bose speaking for three Judges Special Bench in *Ganesh*

Prasad Ràmprasad (supra) opined as under:

"That apart. Even if this had been an ordinary civil case resting on a plaint, no relief could have been given on averments essential to the claim which were not included in the plaint unless amendment were allowed; and it is patent that no amendment would be allowed without fresh notices to the other side. Parties are entitled to assume that matters will be litigated on the strength of the averments contained in the petition of plaint and that fresh statements of fact material to the issue not be introduced without affording the other side an opportunity of meeting, and if need be contesting the new face."

[Emphasis Supplied]

24. The Division Bench of Patna High Court in the case of *Messrs. Jharkhand Mines & Industries Ltd.* (Supra) held as under:

"The Code of Civil Procedure, in my opinion, casts a duty on the court to see that the defendants are made aware of any amendment in the plaint, whether the amendment be in regard to the addition of parties or in regard to the contents thereof. Unfortunately, the learned Subordinate Judge, who passed the ex parte decree, did not direct any notices to be issued to the defendants with a view to make them aware about the amendment of the plaint. He should have issued such notices and awaited the service report, and, if the defendants so desired, granted them an opportunity to file a written statement before putting up the suit for hearing and disposal, whether ex parte or otherwise. On this ground alone, I am of the opinion that the ex parte decree is vitiated and must be set aside."

[Emphasis Supplied]

25. The Apex Court in AIR 2004 SC 1084, [*Ramnik Vallabhdas Madhvani & others vs. Taraben Pravinlal Madhvani*], poignantly held as under:

"On amendment of pleadings being allowed, the opposite

party has to be given a chance to respond to the amended pleading and if the plea is contested the Court has to give its decision thereon. Not affording an opportunity to the contesting party to contest a plea, which has been allowed to be amended, is negation of justice."

26. Similarly, in AIR 1993 SC 1182, [*Tahil Ram Issardas Sadarangani & others vs. Ramchand Issardas Sadarangani & another*], the Apex Court held that in cases of withdrawal of power of Advocate when client is present and not aware of the date of hearing, dismissal of petition for want of prosecution is improper.

27. Justice Fakhruddin in the case of *Maresh Singh* (supra) followed the principles laid down in the case of *Ganesh Prasad Ramprasad* (supra) and opined as under:

*"9. Having considered the rival contentions advanced by the parties and having gone through the record, it is borne out from the record that though the counsel pleaded no instructions on 10-11-1986, but the notices were not issued to the parties. In view of the decisions reported in 1993 Supp (3) SCC 256 : AIR 1993 SC 1182 Tahil Ram Issardas Sadarangani v. Ramchand Issardas Sadarangani and (1998) 2 SCC 206, Malkiat Singh v. Joginder Singh and in view of the facts and circumstances of the case discussed elaborately in earlier paras especially that of 3 to 6, in the opinion of this Court, the appellants deserve opportunity to contest the suit, on merits in the ends of justice. It is specifically so as the respondents/plaintiffs filed the application on 24-11-1990 changing cause of action from 28-8-1984 to 28-8-1974, which was allowed without notice to the other side. It is pertinent to mention here that where defendant is absent, no amendment should be allowed as has been done in this case. In view of the decision reported in 1946 NLJ 81 : AIR (33) 1946 Nagpur 60, *Ganesh Prasad Ram Prasad v. Damayanti w/o Ganesh Prasad*, the Court ought to have issued notice, before allowing amendment. In view of the discussion aforesaid, the first substantial question of law is answered in favour of the appellants*

and the *ex parte* judgment and decree passed are set aside.”

[Emphasis Supplied]

28. To counter, the said argument of learned counsel for the appellants that the stand of Mr. Fakhruddin was that although amendment application and application to take documents on record were allowed subsequently to the date of proceedings *ex-parte*, the said applications were formal in nature.

29. Suffice it to say, that the Division Bench of Patna High Court in no uncertain terms held that a duty is cast on the Court to ensure that the defendants are made aware of *any amendment in the plaint*. In the considered opinion of this Court, only after receiving the copy of amendment application and application to take documents on record, the other party can examine and decide whether they need to contest the suit in view of amendment proposed and documents proposed to be filed. Thus, I find substance in the argument of appellants that common string/principles in the said judgments is that the Court below should put the other side to notice before putting the suit for hearing and disposal. For this reason alone, in my judgment, the impugned orders dated 09.04.2009 & 22.01.2009 cannot sustain judicial scrutiny.

30. This Court will be failing in its duty if the other judgments cited by Mr. Fakhruddin are not considered. Mr. Fakhruddin, relied on the cases of *Indresen Jali*; *Swaran Kali*, *Narmada Motors*, *Parmanand & Ramesh Chandra Jain* (Supra). In these cases, the Courts considered the meaning of words “liberal approach”. The Courts also held that the litigant even after engaging the counsel cannot be permitted to sleep over his duty. Litigant should be vigilant and contact his counsel in order to gather knowledge regarding progress of litigation. The said principle cannot be applied in the facts and circumstances of the present cases because (sic:because) in the present cases, admittedly, no fresh notices were issued to the present appellants/defendants after filing of applications under Order 6 Rule 17 and Order 7 Rule 14(3) of CPC. As analyzed in catena of judgments, it was held that it is the duty of the trial Court to put the parties to a fresh notice when such amendments were filed. Pertinently, in the said judgments cited by Mr. Fakhruddin this point was absent and, therefore, the said judgments cannot be mechanically pressed into service in the present case. It is apposite to remember the judgment of Apex Court reported in 2011 (3) SCC 545, [*Parimal vs. Veena alias Bharti*], wherein it was held as under:

"To determine the applicant under Order 9 Rule 13 CPC, the test that has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Sufficient cause is a question of fact and the court has to exercise its direction in the varied and special circumstances in the case at hand. There cannot be a straijacket formula of universal application. "

31. This is equally settled that precedent is what is actually decided by the Courts and not what is logically flowing from it. The single different fact may change the precedential value of the judgment (See: 2003(2) SCC 111, [Bhavnagar University vs. Palitana Sugar Mill (P) Ltd.]).

32. As discussed above, the Court below has erred in disallowing the applications filed under Section 5 of the Limitation Act and applications filed under Order 9 Rule 13 CPC. The rejection orders dated 22.01.2009 cannot sustain judicial scrutiny. However, it is noteworthy that plaintiffs were put to serious inconvenience by the present appellants. The delay is also caused for no fault on the part of the plaintiffs. Thus, this Court deems it proper to **allow the present appeals subject to payment of Rs.50,000/- as cost in each of the cases** which shall be payable to the plaintiffs by the present appellants. The applications under Section 5 of the Limitation Act and applications under Order 9 Rule 13 CPC are allowed. Subject to aforesaid, civil suits are restored to their original numbers: Appeals are allowed.

Appeal allowed.

I.L.R. [2017] M.P., 3028

APPELLATE CIVIL

Before Mr. Justice G.S. Ahluwalia

S.A. No. 350/2003 (Gwalior) decided on 21 December, 2017

TARUNVEER SINGH

...Appellant

Vs.

MAHESH PRASAD BHARGAVA

...Respondent.

A. Accommodation Control Act, M.P. (41 of 1961), Section 13(1) & 12(1)(a) – Eviction Suit – Arrears of Rent – Application for

Extension of Time – Decree u/S 12(1)(a) against Appellant/defendant (tenant) – Held – Appellant failed to deposit the arrears of rent within the stipulated period of one month from date of service of summons – No application seeking extension of time – No explanation for delay – Appellant can't seek protection from decree of eviction – For the first time, application for extension of time filed before this Court at second appellate stage – Application rejected – Judgment and decree rightly passed u/S 12(1)(a) – Appeal dismissed. (Paras 44 to 46, 48 & 67)

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 13(1) व 12(1)(ए) – बेदखली का वाद – भाड़े का बकाया – समय बढ़ाये जाने के लिए आवेदन – अपीलार्थी/प्रतिवादी (किरायेदार) के विरुद्ध धारा 12(1)(ए) के अंतर्गत डिक्री – अभिनिर्धारित – अपीलार्थी, समन की तामील की तिथि से एक माह की निर्धारित अवधि के भीतर भाड़े का बकाया जमा करने में विफल रहा – समय बढ़ाये जाने की मांग हेतु कोई आवेदन नहीं – विलंब के लिए कोई स्पष्टीकरण नहीं – अपीलार्थी बेदखली की डिक्री द्वारा संरक्षण नहीं चाह सकता – प्रथम बार, द्वितीय अपीली प्रक्रम पर इस न्यायालय के समक्ष समय बढ़ाये जाने के लिए आवेदन प्रस्तुत किया गया – आवेदन अस्वीकृत – धारा 12(1)(ए) के अंतर्गत निर्णय एवं डिक्री उचित रूप से पारित – अपील खारिज।

B. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) and Civil Procedure Code (5 of 1908), Section 100 – Bonafide Requirement – Findings of Fact – Re-appreciation – Held – Bonafide requirement for non-residential purpose is a finding of fact – Plaintiff failed to produce any document which establishes that he has started a business in rented accommodation – Concurrent findings against the respondent/ plaintiff – Re-appreciation of fact not permissible in Second Appeal – No substantial question arises – Cross objection regarding bonafide requirement dismissed. (Paras 55, 65, 66 & 67)

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) एवं सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – वास्तविक आवश्यकता – तथ्य के निष्कर्ष – पुनर्मूल्यांकन – अभिनिर्धारित – गैर आवासीय प्रयोजन हेतु वास्तविक आवश्यकता तथ्य का निष्कर्ष है – वादी ऐसा कोई दस्तावेज प्रस्तुत करने में विफल रहा जो यह स्थापित करता हो कि उसने किराये के स्थान पर कारबार आरंभ कर दिया है – प्रत्यर्थी/वादी के विरुद्ध समवर्ती निष्कर्ष – द्वितीय अपील में तथ्य का पुनर्मूल्यांकन अनुज्ञेय नहीं है – कोई सारवान् प्रश्न उत्पन्न नहीं होता – वास्तविक आवश्यकता के संबंध में प्रत्याक्षेप खारिज।

C. Civil Procedure Code (5 of 1908), Order 41 Rule 27 – Additional Evidence – Application for – Held – At appellate stage, if party wants to file any additional evidence, same can only be done by filing a proper application under Order 41 Rule 27 CPC – A printed list of document cannot be treated as an application – Additional evidence cannot be filed at an appellate stage by way of right, but leave has to be obtained explaining the reason for not filing the said evidence at the earliest. (Para 35)

ग. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 – अतिरिक्त साक्ष्य – के लिए आवेदन – अभिनिर्धारित – अपीली प्रक्रम पर, यदि पक्षकार कोई अतिरिक्त साक्ष्य प्रस्तुत करना चाहता है, तो उक्त केवल सि.प्र.सं. के आदेश 41 नियम 27 के अंतर्गत उचित आवेदन प्रस्तुत करके ही किया जा सकता है – दस्तावेज की मुद्रित सूची को एक आवेदन के रूप में नहीं माना जा सकता – अपीली प्रक्रम पर अधिकार के रूप में अतिरिक्त साक्ष्य प्रस्तुत नहीं किया जा सकता परंतु उक्त साक्ष्य को प्रस्तुत न किये जाने हेतु कारण स्पष्ट करते हुए यथाशीघ्र अनुमति अभिप्राप्त करनी होगी।

Cases referred :

AIR 1978 Gujarat 149, 1973 J LJ 469, 1979 MPRCJ 131, (2003) 7 SCC 52, 2002 (2) J LJ 69, ILR 2009 MP 1067, (2016) 3 SCC 78, (2001) 9 SCC 521, (2007) 1 SCC 546, (2010) 13 SCC 216, 1965 J LJ 973, 1996 J LJ 509.

K.S. Tomar with D.D. Bansal, for the appellant.

V.K. Bhardwaj with Anand Bhardwaj and Rohit Batham, for the respondent.

J U D G M E N T

G.S. AHLUWALIA, J. :- This Second Appeal under Section 100 of Civil Procedure Code, has been filed against the judgment and decree dated 11-7-2003 passed by VIIth A.D.J., Gwalior in Civil Appeal No. 29A/2002 reversing the judgment and decree dated 2-8-2002 passed by IVth Civil Judge, Class II, Gwalior in Civil Suit No. 126A/1998.

2. This appeal has been filed by the tenant. The appeal was admitted on the following Substantial Questions of Law:-

“(i) Whether the deposit of the arrears of rent by the

defendant (served with the summons on 27-2-97) on 1-4-97 will be deemed to be in compliance of Section 13(1) of the M.P. Accommodation Control Act on account of non-acceptance of rent by the C.C.D. Section on 29th, 30th, and 31st March, 97 due to closure?

(ii) Whether the discretion exercised by the learned trial judge in condoning the delay has been illegally interfered with by the learned Lower Appellate Judge?

(iii) Whether the accompanying application under Section 13(1) of the M.P. Accommodation Control Act deserves to be allowed in the peculiar facts and circumstances of the case and consequently the delay caused in the initial deposit is liable to be condoned?

3. The respondent also filed a cross-objection which has been admitted on the following Substantial Question of Law :

Whether the learned Courts below erred in not decreeing the suit on the ground under Sections 12(1)(c) and 12(1)(f) of the M.P. Accommodation Control Act?

4. The necessary facts for the disposal of the present appeal in short are that the respondent filed a suit for eviction on the ground of arrears of rent and bonafide requirement for non-residential purposes. The appellants are the Legal Representatives of the deceased Original Defendant Harbhajan Singh.

5. A suit was filed on the ground that plaintiff is the owner of the shop situated in front of the Hospital, Mall Road, Morar, Gwalior (Shall be referred as "suit shop" in short). The appellant/defendant is the tenant in the suit shop at monthly rent of Rs. 700/- per month. The tenancy is oral and starts from 1st day of every calendar month and ends on the last day of the month. The appellant/defendant is the tenant from July 1986 and is running a business in the name and style Sachdeva Medical Hall. The son of the plaintiff/respondent is major and is aged about 20 years and is unemployed. The plaintiff/respondent was working in Jiyaji Rao Mills Limited, however, due to closure of the Mill in the year 1992, he too has become unemployed. In order to earn livelihood, the plaintiff/respondent has become agent of Life Insurance Corporation Limited and Unit Trust of India. The plaintiff/respondent, bonafidely require

the suit shop for running his own business as well as for the business of his son for starting S.T.D., P.C.O., Fax and Electro-stat, and the plaintiff/respondent does not have any alternative non-residential accommodation within the limits of Municipal Corporation, Gwalior and therefore, he is entitled to get vacant possession of the suit shop. It was further pleaded that the appellants/defendant is habitual of committing default in payment of rent. The appellants/defendant is in arrears of rent from May 1996 and the plaintiff/respondent had issued a notice through his Counsel on 14-10-1996, but the same was received back due to non-availability of the defendant. Therefore, another notice was sent through his Counsel on 8-11-1996 by registered post, which has been received by the defendant on 12-11-1996 and by this notice, the plaintiff/respondent has demanded the arrears of rent as well as for handing over the vacant possession of the shop. The defendant sent his reply on 28-11-1996 which was based on incorrect facts. After receiving the notice, the defendant had sent Rs. 1,400/- by money order towards rent of two months, which was received by the plaintiff/respondent under protest, without prejudice to his rights. It was also pleaded that the defendant was in arrears of rent from May 1996, but it was falsely mentioned in reply, that no rent is outstanding and he is sending the rent for the month of December 1996 and January 1997. Even if the rent of two months is adjusted towards the rent for the month of May and June 1996, then it is clear that the defendant is in arrears of rent from July 1996 and the defendant has not paid the same, even after receiving the notice, thus, the plaintiff/respondent is entitled for decree of eviction on the ground of arrears of rent and also on the ground of bonafide requirement for non-residential purposes.

6. The defendant filed his written statement and except denying the boundaries of the shop, did not dispute that he is the tenant in the suit shop. It was pleaded that the defendant is in possession of the suit shop as a tenant from the year 1966. The suit shop was let out by Late Leelavati, the mother of the plaintiff on monthly rent of Rs. 60/-. The mother of the plaintiff/respondent had taken Rs. 20,000/- by way of security. After the death of Late Leelavati, the plaintiff/respondent is collecting the rent and gradually the rent has been enhanced to Rs. 700/- per month. It was denied that the son of the plaintiff is major and is unemployed. The fact of closure of Mill in the year 1992 was denied and it was also denied that the plaintiff had become unemployed after the closure of Mill. The plaintiff is already running the business of Life Insurance Corporation Limited and U.T.I. in a shop, which is adjoining to the suit shop,

and is also running the business of S.T.D., P.C.O. It was further pleaded that two more shops of the plaintiff are lying vacant and therefore, the bonafide requirement of the son of the plaintiff as well as that of the plaintiff was denied. It was further denied that the plaintiff does not have any other alternative accommodation for non-residential purposes within the limits of Municipal Corporation, Gwalior. It was further pleaded that the defendant is not in arrears of any rent. The plaintiff is in habit of issuing receipts as per his sweet will. The contents of notice dated 8-11-1996 were denied and it was pleaded that suitable reply to notice dated 8-11-1996 was sent on 28-11-1996. It was denied that no rent has been paid even after the receipt of the notice. In additional statement, it was pleaded that on the first floor of the suit accommodation, a big shop is situated in which the clinic of Dr. Rajni Jain was situated which was vacated by her in the year 1996 and has been again let out by the plaintiff to Mahakaushal Finance Company Limited in the year 1997 after enhancing the rent. The advance amount of Rs. 20,000 which was taken by late Leelawati has not been adjusted towards the rent. The plaintiff is still having two vacant shops. The plaintiff was interested in enhancing the rent from Rs. 700/- per month to Rs. 900/- month and the suit has been filed in order to pressurize the defendant for enhancing the rent.

7. The issues were framed and the evidence of the plaintiff was recorded. The plaintiff thereafter amended the plaint and further pleaded that, under compulsion, the son of the plaintiff has started business of S.T.D., P.C.O. after taking a shop on rent in Balwant Nagar in the house of one Ramadhar at monthly rent of Rs. 1000/-. It was further pleaded that after the closure of the Mill, the plaintiff became unemployed and has become the agent of Life Insurance Corporation Limited and U.T.I. Since, the plaintiff was not able to earn sufficiently to meet the household expenses, therefore, after the first floor was vacated by Dr. Ashok Jain, the same was let out to meet household expenses. Even otherwise, the said accommodation is not suitable for running the business of L.I.C., U.T.I. Or S.T.D., P.C.O.

8. The defendant denied the amended pleadings but did not file reply to the amended pleadings that the son of the plaintiff has started doing business of S.T.D., P.C.O in a rented premises situated in Balwant Nagar in the house of one Ramadhar.

9. The plaintiff witnesses were recalled and they were further examined and cross examined on the amended pleadings.

10. The evidence of the defence witnesses was recorded and the Trial Court after hearing both the parties, came to conclusion that the plaintiff has failed to prove bonafide need for non-residential purposes either for himself or for his son. It was further held by the Trial Court, that as per the provisions of Section 13(1) of M.P. Accommodation Control Act, if the defendant deposits the entire arrears of rent within a period of one month from the date of receipt of summons of the suit, then no decree of eviction on arrears of rent, can be passed as provided under Section 12(3)/13(5) of the M.P. Accommodation Control Act. In the present case, although there is delay of few days in depositing the entire arrears of rent, but looking to the short period of delay, the same is liable to be condoned. Accordingly, the suit was dismissed.

11. Being aggrieved by the judgment and decree passed by the Trial Court, the plaintiff/respondent, filed a Civil Appeal, which has been partly allowed and decree under Section 12(1) (a) of M.P. Accommodation Control Act has been granted, however, the decree on the ground of 12(1)(f) of M.P. Accommodation Control Act was denied.

12. The defendant/appellant being aggrieved by the decree of eviction under Section 12(1)(a) of M.P. Accommodation Control Act has filed the present appeal. The plaintiff/respondent has also filed cross objection against the dismissal of his suit under Section 12(1)(f) of M.P. Accommodation Control Act.

Substantial Questions of Law

(i) Whether the deposit of the arrears of rent by the defendant (served with the summons on 27-2-97) on 1-4-97 will be deemed to be in compliance of Section 13(1) of the M.P. Accommodation Control Act on account of non-acceptance of rent by the C.C.D. Section on 29th, 30th, and 31st March, 97 due to closure?

(iii) Whether the accompanying application under Section 13(1) of the M.P. Accommodation Control Act deserves to be allowed in the peculiar facts and circumstances of the case and consequently the delay caused in the initial deposit is liable to be condoned?

For the sake of convenience, the Substantial Questions of Law No. (i) and (iii) shall be considered jointly.

13. Section 13(1) of M.P. Accommodation Control Act reads as under :

“13 : When tenant can get benefit of protection against

eviction : (1) On a suit or any other proceeding being instituted by a landlord on any of the grounds referred to in section 12 or in any appeal or any other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice or appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant, as the case may be, or within such further time as the Court may on an application made to it allow in this behalf, deposit in the Court or pay to the landlord, an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made; and shall thereafter continue to deposit or pay, month by month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding, as the case may be.”

14. Section 13(5) of M.P. Accommodation Control Act reads as under :

“(5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the Court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the Court may allow such cost as it may deem fit to the landlord.”

15. Section 12(3) of M.P. Accommodation Control Act reads as under :

“12(3) No order for the eviction of a tenant shall be made on the ground specified in clause (a) of sub-section (1), if the tenant makes payment or deposit as required by section 13:

Provided that no tenant shall be entitled to the benefit under this sub-section, if, having obtained such benefit once in respect of any accommodation, he again makes a default in the payment of rent of that accommodation for three consecutive months.”

16. The factual dispute lies in a very narrow compass. There is no dispute

that the appellants/defendant were in arrears of rent at the time of institution of suit. The undisputed facts are that the defendant was served with the summons of the suit on 27-2-1997 and he deposited the entire arrears of rent on 1st of April 1997.

17. The moot question for determination is that whether the appellants are entitled for protection from decree of eviction under Section 12(1)(a) of M.P. Accommodation Control Act, as provided under Section 12(3) and 13(5) of M.P. Accommodation Control Act or not?

18. Along with the memo of appeal, an application under Section 13(1) of M.P. Accommodation Control Act (I.A. No.1202/2003) has been filed by the appellant for extension of time/condonation of delay in deposit of rent vide receipt No. 62/1976 dated 1-4-1996. This application reads as under :

“1. That the appeal is being duly submitted which deserves to be allowed on the facts and grounds mentioned therein.

2. That, the defendant/appellant was served with the summons in the trial Court on 27-2-1997 and was required to deposit whole of the arrears of rent within 30 days thereafter. Thus, he was required to deposit the rent upto 29th March 1997 which was a holiday followed by Sunday on 30th March 1997. The next day i.e., 31st March 1997 was the last day of the financial year and amount of rent offered by the Counsel for the defendant was not accepted by the C.C.D. Section of the District Courts, Gwalior on the ground of closure of money transactions. Although the counsel for the defendant had obtained the permission on 31-03-1997 from the trial court to deposit the rent, the same was not accepted by the C.C.D. Section. Consequently, the amount of rent was deposited vide receipt NO. 62/1076 on 1-4-1997 which was the first day after reopening of the C.C.D. Section for money deposits after three days closure (29th,30th,31st March 1997). Thus, the defendant/appellant did not commit any default in the matter of deposit of rent in compliance of Section 13(1) of the M.P. Accommodation Control Act. In view of this, the plaintiff was not entitled and is not entitled to a decree under Section 12(1)(a) of the said Act. However, the learned trial judge

ignoring it, gave a benefit of Section 12(3) and 13(5) of the Act to the defendant/appellant and dismissed the suit on ground under Section 12(1)(a) after condoning the delay in the initial deposit of rent after service of summons.

3. That an advance of 3 months was already deposited at the time of dismissal of the suit by the learned trial judge and an advance rent of 4 months was also deposited at the time of judgment by the lower appellate court. Thus, the defendant/appellant has been sincere in depositing the rent timely and without any default.

4. That the learned lower appellate court again overlooking the closure of C.C.D. Section on the aforesaid days reversed the decision of the trial court on the ground under Section 12(1)(a) and has granted a decree for eviction on this ground.

5. That the appellant has got inspected through his counsel Miss Gurusharan Kaur, the record of the C.C.D. Section pertaining to the year 1997 and it is found that the C.C.D. Section did not allow the deposits to be made on the last working day of every calendar month during the year 1997 as a practice in the courts on account of monthly audit and balancing.

6. That, the appellant has deposited the rent regularly during the pendency of the suit as well as the civil appeal and has committed no default. However, if the delay is found in the initial deposit of rent on 1-4-1997, the same is bonafide in the facts and circumstances stated hereinabove and deserves to be condoned.

7. That there was neither malafide nor contumacy in the deposit of rent on 1-4-1997 especially in the peculiar facts and circumstances stated hereinabove. Since, the suit was dismissed by learned trial judge also on ground under Section 12(1)(a) of the Act there was no earlier occasion to submit the application for condonation of delay. However, the suit having been now decreed incorrectly and illegally by the lower

appellate court, the present application is being submitted with the memo of appeal in the alternative by way of abundant precaution.

It is, therefore, prayed that this Hon'ble Court may kindly be pleased to allow the application and treat the deposit of rent vide receipt No. 62/1076 dated 1-4-1997 in compliance of Section 13(1) of the M.P. Accommodation Control Act, after condoning the delay and/or by extending the time upto 1-4-1997.

The application is supported by an affidavit of Miss Gurusharan Kaur, who claims herself to be the Counsel of Original defendant who is her brother also. The affidavit reads as under :

"AFFIDAVIT

Name	:	Miss Gurusharan Kaur
Father's Name	:	Shri G.S. Sachdeva
Age	:	39 years
Occupation	:	Advocate
Residence	:	Azad Nagar, Morar, Gwalior (M.P.)

I state on oath that :-

1. That I was one of the Counsels of defendant/appellant in the courts below who is my brother.
2. That, I am also acquainted to the facts of the case. The summons of the civil suit was served upon my brother on 27-2-1997. On 29th and 30th March 1997, the Courts were closed on account of Saturday and Sunday. I on behalf of the defendant obtained permission from the trial Court to deposit the whole of the arrears of rent for a period of 11 months. However, the C.C.D. Section refused to accept the amount of rent on the ground that it was the last day of financial year and the money transactions were not allowed due to the work of audit and balancing. Accordingly, I deposited the amount of rent on 1-4-1997 vide receipt No. 62/1076.

3. That, I have inspected record of C.C.D. Section pertaining to the year 1997 and found that money deposits were not allowed on last working day of every calendar month as usual practice on account of the work of monthly audit and balancing.

4. That, during the pendency of the litigation all the deposits of rent were made by me. The chart containing the particulars of deposits is being submitted herewith which reveals that no default was committed and the rent was deposited in total compliance of Section 13(1) of the Act in a regular manner.

5. That the deposit made on 1-4-1997 was bonafide and there was neither malafide nor contumacy in the initial deposit of whole of the arrears of rent on 1-4-1997.

Deponent"

19. Thus, the case of the appellants is that the last date for depositing the arrears of rent under Section 13(1) of M.P. Accommodation Control Act was 29th of March 1997 and since, it was a holiday and 30th of March 1997 was also holiday being Sunday, therefore, the next opening day was 31st of March 1996. Since, it was closing day of the financial year, therefore, the C.C.D. did not accept the rent and accordingly the arrears of rent were deposited on 1st of April 1997 and thus, there was no delay on the part of the appellant in depositing the entire arrears of rent and it was prayed that the deposit of rent vide receipt No. 62/1076 dated 1-4-1997 in compliance of Section 13(1) of M.P. Accommodation Control Act, may be either treated within a period of one month or the time may be extended till 1-4-1997, after condoning the delay.

20. In reply, the contentions were denied. It was denied that 29th of March 1997 was the last date for depositing the arrears of rent. It was prayed that in fact 27th of March 1997 was the last date for deposit of arrears of rent and on the said date, the Courts as well as the C.C.D. Section were functioning. Secondly, the ground of non-acceptance of arrears of rent by C.C.D. Section of the District Court on 31st of March 1997 has been raised for the first time in the Second Appeal, therefore, the same cannot be allowed to be raised belatedly.

21. This Court by order dated 25-7-2008 observed as under :

“M.C.P. No. 1202/2003, an application for condonation of delay in depositing of rent shall be consider at the time of final hearing of the appeal.”

22. Therefore, I.A. No. 1202/2003 shall be considered before proceeding further with the appeal.

23. It is the claim of the appellant that 29th of March 1997 was the last date for depositing the arrears of rent as the defendant had received the notice of suit on 27-2-1997 and under Section 13(1) of M.P. Accommodation Control Act, the arrears of rent can be deposited within a period of 30 days from the date of receipt of summons of suit.

24. The words “30 days” are no where mentioned in Section 13(1) of M.P. Accommodation Control Act and only if the tenant deposits the arrears of rent within “one month” from the service of summons or notice, then as provided under Section 13(5) of the Act, 1961, he is entitled for protection against eviction.

25. Thus, it is clear that the arrears of rent are required to be deposited within a “period of one month” and not “30 days” as suggested by the appellant.

26. The word “Month” has been defined under Section 2(23) of M.P. General Clauses Act which reads as under :

“2(23) “month” means a month reckoned according to the British calendar.”

27. In the case of *Mistry Bhikhalal Bhovan Vs. Sunni Vora Noormamad Abdul Karim and others* reported in AIR 1978 Gujarat 149, it has been held as under :

“4. In common parlance, the term 'month' is hardly understood as a calendar month according to the Gregorian calendar, but it by and large means "space of time from a day in one month to the corresponding day in the next". This is the meaning of the term 'month' given in the Concise Oxford Dictionary, 1964 Edition. The term 'month' has been explained also in the Bombay General Clauses Act, 1904. The term 'month' as defined in S. 2 (30) of the Bombay General Clauses Act, means

"a month reckoned according to the British Calendar." The term "reckoned" is equivalent of the term "calculated" or "counted". If the legislature wanted the month to mean only a compact unit of a calendar month, the normal definition would have been as a British Calendar month or a calendar month. The elaborate explanation given in the definition of the term 'month' and particularly the reference to calculation clearly and pointedly suggest that what is intended to be referred to by the term is a space of time between the two dates of the two contiguous months."

28. Therefore, if one month from the date of service of summons is calculated, then according to the appellant themselves, the summons were served on 27-2-1997, therefore, 27th of March would be the last date for depositing the entire arrears of rent. It is not the case of the appellant that 27th of March 1997, was a holiday or closed, therefore, there was no impediment for the appellant/defendant to deposit the entire arrears of rent on 27th of March 1997, in order to claim protection from eviction on the ground of arrears of rent. However, the arrears of rent were not deposited on 27th of March.

29. Further more, it is the case of the appellant that 29th March 1997 was the last date and since, it was a holiday therefore, the next opening day was 31st of March 1997 as 30th of March 1997 was also a holiday. It is pertinent to mention here that no application whatsoever, was filed by the defendant before the Trial Court for extension of time in depositing the arrears of rent under Section 13(1) of M.P. Accommodation Control Act. No such application was filed before the Lower Appeal Court also, and the application under Section 13(1) of M.P. Accommodation Control Act has been filed for the first time, before the High Court in this appeal. It is mentioned in the application that on 31st of March 1997 the amount of rent offered by the Counsel for the defendant was not accepted by the C.C.D. Section inspite of the permission given by the Trial Court. An affidavit of Ms. Gurusharan Kaur has also been filed in this regard. The application (I.A. No. 1202/2003) is not supported by an affidavit of the appellant, but it is supported by an affidavit of Ms. Gurusharan Kaur who claims herself to be the Counsel for the defendant before the Trial Court as well as the sister of the defendant.

30. Before considering the application (I.A. 1202/2003) at such a belated

stage, it would be proper to consider that whether the defendant had laid down any foundation before the Trial Court pointing out that the arrears of rent were sought to be deposited on 31st of March 1997, but the same were not accepted by the C.C.D. Section.

31. In the entire written statement, there is not a single whisper with regard to the attempt of depositing arrears of rent on 31st of March 1997. It is submitted by the Counsel for the appellant that Harbhajan Singh (D.W.1) in his evidence has stated that he has deposited the rent subsequently in the Court, which should be construed that an attempt was made on 31st of March 1997 and thereafter it was deposited on 1st of April 1997. The submission made by the Counsel for the appellant cannot be accepted. Harbhajan Singh (D.W.1) has stated in para 2 of his examination in chief as under :

“2..... मेरे द्वारा 31 अक्टूबर 2001 तक का किराया अदा किया जा चुका है। मेरे द्वारा जो किराया मनीआर्डर से भेजा गया उसके बाद से कोर्ट में जमा किया गया है।”

32. Thus, the interpretation of the above mentioned evidence, as suggested by the Counsel for the appellant cannot be accepted. Further more, the burden to prove that the arrears of rent were deposited within “a period of one month” from the date of service of summons is on the tenant. Sections 102 and 106 of Evidence Act reads as under :

“102. On whom burden of proof lies.—The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

33. Thus, it was obligatory on the part of the defendant to laid down a foundation to the effect that the amount of entire arrears of rent were given to his Counsel and an attempt was made to deposit the same on 31st of March 1997 and later on it was deposited on 1st of April 1997. There is no evidence, even to the effect that the defendant had ever instructed his counsel or had given any money to his counsel to deposit the arrears of rent. In view of Section 106 of Evidence Act, it was well within the knowledge of the defendant that whether he had given any amount to his Counsel or not, therefore, the

burden to prove this fact was on the defendant. It is not out of place to mention here that even the I.A. No. 1202/2003 which is an application seeking extension of time under Section 13(1) of M.P. Accommodation Control Act, is not supported by an affidavit of the appellant/defendant. Thus, it is clear that the defendant never came forward to submit that any attempt was ever made by him through his Counsel to deposit the arrears of rent. The affidavit filed by Ms. Gurusharan Kaur cannot be accepted, because She herself has stated in the affidavit that the defendant is her brother. Therefore, Ms. Gurusharan Kaur is personally interested in the matter and in absence of any foundation at any point of time, this Court is of the considered opinion that the reasons mentioned in the application for extension of time under Section 13(1) of M.P. Accommodation Control Act (I.A. No. 1202/2003) is an after thought and in fact the appellant/defendant did not try to deposit the arrears of rent on 31st of March 1997.

34. After the hearing of the appeal was concluded, the Counsel for the appellant has filed a letter dated 14-10-2017 issued by the Office of Nazrat, District Court, Gwalior under the Right of (sic:to) Information Act, informing the Public Information Officer, District Court, Gwalior that on 31-3-1997, as per the C.C.D. Income Register, no amount was deposited

35. By filing this letter, the appellants want to establish that no cash amount was accepted by the C.C.D. Section of District Gwalior on 31-3-1997, therefore, the appellants are right in submitting that their deposit of the entire arrears of rent on 1-4-1997 should be treated as within the period of one month. The document so filed by the appellants cannot be accepted, for the simple reason, that the said document has not been filed along with an application under Order 41 Rule 27 of C.P.C. but has been filed along with a printed list of document. At the appellate stage, if any party wants to file any additional evidence, then the same can be done only along with an application under Order 41 Rule 27 of C.P.C. and any document cannot be filed without there being any proper application. A printed list of document, cannot be treated as an application under Order 41 Rule 27 of C.P.C. An additional evidence cannot be filed at the appellate stage by way of right, but leave has to be obtained explaining the reason for not filing the said evidence at the earliest. Order 41 Rule 27 of C.P.C. reads as under:

“27. Production of additional evidence in Appellate Court.— (1) The parties to an appeal shall not be entitled to

produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission. MADHYA PRADESH STATE AMENDMENT.—After sub-rule (1)(a), *insert* the following as clause (b) and *renumber* the existing clause (b) as clause (c):

“(b) the party seeking to adduce additional evidence satisfies the appellate court that such evidence, notwithstanding the exercise of due diligence, was not within his knowledge or could not be produced by him at or before the time when the decree or order under appeal was passed or made; or”

36. Thus, it is also obligatory on the part of the party intending to file additional evidence at appellate stage, to satisfy the Court that notwithstanding the due diligence, such evidence was not within his knowledge or could not be produced by him at or before the time, when the decree under appeal was passed. In the present case, not even an application under Order 41 Rule 27 of C.P.C. has been filed. No explanation has been given as to why such a document was not produced at the initial stage. Even no such defence was taken by the appellant at the initial stage. Further more, the question is that

whether any attempt was made by the appellant/defendant to deposit the arrears of rent on 31st of March 1997 or not? It is submitted by the Counsel for the respondent, that no money can be deposited in the C.C.D. Section without obtaining permission from the Court and an application is necessary for obtaining permission. Had the appellant approached the Court for seeking permission to deposit the rent, then the defendant could have produced the copy of the application which was made to the Court seeking permission to deposit the arrears of rent.

37. Rule 466(2) under Chapter XXII of Rules under M.P. Civil Court Act, 1958 reads as under :

“466(2) When an application for leave to deposit money is received, the Court will pass an order that the sum be accepted as a deposit. The reader or the clerk concerned should thereupon endorse on the application an order to the Nazir to receive the money. The application should then be given to the applicant to be presented with the money to the Nazir. The Nazir will receive the money, take it into his account and endorse a report of having done so on the application which will be immediately returned through his peon to the Court.”

38. In the case of *Bhagwandas Tiwari Vs. Gayaprasad and others* reported in 1973 J.L.J. 469, it has been held by the High Court, as under :-

“2..... According to the Rules and Orders, Chapter XXII paragraph 466, a person intending to make a deposit in Court has to make an application on which the presiding officer has to pass an order before a deposit can be accepted by the cashier. An order of the presiding officer is, therefore, necessary for making a deposit in Court.....”

39. As no document has been filed by the appellant to show that permission was sought by the appellant from the Court, therefore, it is clear that the claim of non-acceptance of the arrears of rent by the C.C.D. Section on 31st of March 1997 is nothing but an afterthought. A co-ordinate bench of this Court in the case of *Shri Bhagwan Gupta and another Vs. Dilip Kumar Gupta*, passed in S.A.No. 260/1999 has held as under :

“10. In the said facts of the case, it is held that rent has not

been deposited within time and the provisions of Section 13(1) of M.P. Accommodation Control Act were not complied with. As such Courts have committed error in not passing decree under Section 12(1)9a) of M.P. Accommodation Control Act. Question of law No.3 is answered accordingly. Since, rent was not deposited within time and defendant can not take advantage of depositing rent at his pleasure or at his sweet will. He is bound to deposit rent according to law. On his failure to deposit the rent in time and without seeking leave of the Court for condoning the delay in payment of rent, he is entitled to suffer decree for eviction. Question of law No.3 is answered in affirmative

40. The Counsel for the appellant has relied upon the judgment passed by a Co-ordinate bench of this Court in the case of *Ram Kishan Vs. Baburam Jain* reported in 1979 MPRCJ 131 and submitted that where the Nazir has refused to deposit the arrears of rent, then decree of eviction cannot be passed. The facts of the said case are distinguishable and hence not applicable. In the case of *Ramkishan* (Supra), the tenant approached the Nazir with the amount, but the Nazir expressed his inability to get the amount deposited in the treasury or the State Bank of India on that date for the reason that 31st March was the account-closing-day and financial transactions on the aforesaid date were not being effected according to the rules and practice adopted by the treasury and the Bank. The Nazir accordingly made a note that under these circumstances, the amount will be actually deposited on 2nd April, the next working day. Considering the factual matrix of the case, it was held by the Court, that the defendant had substantially done all efforts on his part and has complied with the requirements and it can safely be held that he had deposited the amount on 31st March irrespective of the fact that due to certain rules and practice of the treasury and the Bank, the actual deposit could take place on 2nd April. However, in the present case, neither any application seeking permission to deposit the arrears of rent on 31st of March 1997 is on record, nor there is any factual foundation in this regard. It is only in the second appeal, the appellant has come up with a plea that since, 31st of March was closing day of the financial year, therefore, the amount could not be deposited. As already mentioned that such an application is neither supported by an affidavit of the appellant, nor there is any whisper in this regard in the evidence of Harbhajan Singh (D.W.1).

41. The Supreme Court in the case of *Sayed Akhtar Vs. Abdul Ahad* reported in (2003) 7 SCC 52 has held as under :

“5. Section 13 of the M.P. Accommodation Control Act, 1961 reads as under:

“13. (1) On a suit or proceeding being instituted by the landlord on any of the grounds referred to in Section 12, the tenant shall, within one month of the service of the writ of summons on him or within such further time as the court may, on an application made to it, allow in this behalf, deposit in the court to pay to the landlord an amount calculated at the rate of rent at which it was paid, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made and shall thereafter continue to deposit or pay, month by month, by the 15th of each succeeding month a sum equivalent to the rent at that rate.

* * *

(6) If a tenant fails to deposit or pay any amount as required by this section, the court may order the defence against eviction to be struck out and shall proceed with the hearing of the suit.”

6. A bare perusal of the aforementioned provision would clearly go to show that although the court has the jurisdiction to extend the time for depositing the rent both for the period during which the tenant had defaulted as well as the period subsequent thereto but an application is to be made therefor. The provision requiring an application to be made is indisputably necessary for the purpose of showing sufficient cause as to why such deposit could not be made within the time granted by the court. The court does not extend time or condone the delay on mere sympathy. It will exercise its discretion judicially and on a finding of existence of sufficient cause.”

42. The Supreme Court in the case of *R. C. Tamrakar and another Vs. Nidi Lekha* reported in 2002 (2) J.L.J. 69 has held as under :

“8..... In the first appellate Court, rent was deposited and it

was not clear whether he continued to deposit the rent as per sub-section (1) of Section 13. The first appellate Court set aside the findings of defaulter on the ground that the rent was deposited in the appellate Court. The High Court was of opinion that after the trial Court passed the decree holding that the tenant was in arrears of rent, mere depositing the amount without filing an application for extension of time for payment of all the arrears of rent due, the finding of the appellate Court that tenant was not a defaulter is not sustainable. The High Court further recorded that the first appellate Court did not give any finding that entire amount of arrears of rent was paid. This finding of the High Court cannot be faulted in view of clear provision of sub-section (1) of section 13 and therefore, tenant is not entitled to get protection under sub-section (5)."

43. A co-ordinate Bench of this Court in the case of *Rajendra Kumar Vs. Smt. Kasturibai* reported in ILR 2009 MP 1067 has held that application for condonation of delay cannot be entertained after a lapse of a long period of time of committing the default.

44. As the defendant did not file an application before the Trial Court for extension of time, nor laid down any foundation in this regard, therefore, the application for extension of time, filed for the first time before this Court cannot be accepted. The reason for not filing the application before the Trial Court, cannot be accepted. Thus, the application for extension of time filed under Section 13(1) of C.P.C. (I.A.No.1202/2003) is hereby rejected.

45. Even otherwise, as already held by this Court that the last date for depositing the arrears of rent under Section 13(1) of M.P. Accommodation Control Act was 27th of March 1997 and on the said date, the Court as well as the C.C.D. Section of the District Gwalior were working. No explanation has been given as to why the rent was not deposited on 27th and 28th of March 1997.

46. The necessary consequence of dismissal of application for extension of time (I.A. No. 1202/2003) would be that the provision of Section 13(1) of M.P. Accommodation Control Act was not complied with and the arrears of rent were not deposited within "a period of month" from the date of service of summons, therefore, the appellant cannot seek protection from the decree of

eviction under Section 12(1)(a) of M.P. Accommodation Control Act, 1961.

47. Thus, the Substantial Questions of Law No. (i) and (iii) are answered in **Negative**.

(ii) Substantial Question of Law

(ii) Whether the discretion exercised by the learned trial judge in condoning the delay has been illegally interfered with by the learned Lower Appellate Judge?

48. The Trial Court has condoned the delay of few days in depositing the arrears of rent by the defendant and had extended the protection from the eviction decree under Section 12(1)(a) of M.P. Accommodation Control Act. As already pointed out, no application was made by the defendant seeking extension of time in depositing the arrears of rent. No foundation was laid down by the defendant before the Trial Court to point out that whether 31st of March of 1997 was the last date for depositing the arrears of rent, and whether any attempt was made by the defendant to deposit the arrears on a day which according to him was the last date of month. Section 13(1) of M.P. Accommodation Control Act provides, that the Court on an application may extend the time. Thus, it is clear that an application seeking extension of time is must. Once, the arrears of rent are not deposited within "a period of one month" from the date of service of summons, then the tenant is not entitled for protection which means, that the plaintiff becomes entitled for a decree of eviction under Section 12(1)(a) of M.P. Accommodation Control Act, thus, the Trial Court without issuing notice and hearing the plaintiff, and without there being any application for extension of time, should not have condoned the delay of few days in depositing the arrears of rent. The valuable right of a decree of eviction under Section 12(1)(a) of M.P. Accommodation Control Act, which had accrued in favor of the plaintiff cannot be taken away without following the procedure as provided under the law. It appears that the Trial Court got impressed by the fact that there was a delay of few days and there after the tenant did not commit any default in depositing the rent, therefore, suo moto (sic: motu) condoned the delay in depositing the rent under Section 13(1) of M.P. Accommodation Control Act.

49. The Supreme Court in the case of *Sayed Akhtar* (Supra) has held

as under:

“7. In *Nasiruddin v. Sita Ram Agarwal* [(2003) 2 SCC 577] this Court noticed the said provision as well as the decision in *Shyamcharan Sharma v. Dharamdas* [(1980) 2 SCC 151] and observed that the court has been conferred the power to extend the time for deposit of rent but on an application made to it.”

As the Trial Court did not have suo moto (sic: motu) power to extend the time in depositing the rent, therefore, the Trial Court did not have any discretion to condone the delay without there being any application for the said purpose. Therefore, this Court is of the considered opinion that in absence of any application seeking extension of time, the Trial Court did not have the power to condone the delay in depositing the arrears of rent and thus, the appellate Court did not commit any mistake in setting aside the condonation of delay by the Trial Court. Accordingly, the second Substantial Question of law is also answered in **Negative**.

50. Whether the learned Courts below erred in not decreeing the suit on the ground under Sections 12(1) (c) and 12(1)(f) of the M.P. Accommodation Control Act?

51. The Trial Court as well as the Appellate Court did not grant decree under Section 12(1)(f) of M.P. Accommodation Control Act. Although in the Substantial Question of Law, 12(1) (c) is also mentioned, but the suit was never filed, seeking eviction on the ground of Section 12(1)(c) of M.P. Accommodation Control Act. It is contended by the Counsel for both the parties, the in fact the Substantial Question of Law, in respect of ground under Section 12(1)(c) of M.P. Accommodation Control Act, has been incorrectly framed.

52. So far as the eviction on the ground of bonafide requirement for non-residential purposes is concerned, it is submitted by the Counsel for the respondent, that during the pendency of the suit, the plaintiff/ respondent, had amended the pleadings, and the appellants/defendant did not file reply to Para 4A of the plaint, therefore, it should be presumed, that the said pleadings are admitted by the appellants/defendant and therefore, the Courts below committed manifest error in not granting decree under Section 12(1)(f) of M.P. Accommodation Control Act.

53. *Per contra*, it is submitted by the Counsel for the appellants/ defendant that the plaintiff/respondent has failed to prove his bonafide requirement for non-residential purposes. Further, both the Courts below have given a concurrent findings of fact, and since, the same are not perverse therefore, cannot be interfered with, merely on the ground that another view was possible.

54. Heard the learned Counsel for the parties.

55. *Bona fide* requirement for non-residential purpose, is a findings of fact and both the Courts below have given a concurrent findings of fact.

56. The Supreme Court in the case of *Damodar Lal Vs. Sohan Devi and others* reported in (2016) 3 SCC 78 has held as under :

“8. “Perversity” has been the subject-matter of umpteen number of decisions of this Court. It has also been settled by several decisions of this Court that the first appellate court, under Section 96 of the Civil Procedure Code, 1908, is the last court of facts unless the findings are based on evidence or are perverse.

9. In *Krishnan v. Backiam*, it has been held at para 11 that: (SCC pp. 192-93)

“11. It may be mentioned that the first appellate court under Section 96 CPC is the last court of facts. The High Court in second appeal under Section 100 CPC cannot interfere with the findings of fact recorded by the first appellate court under Section 96 CPC. No doubt the findings of fact of the first appellate court can be challenged in second appeal on the ground that the said findings are based on no evidence or are perverse, but even in that case a question of law has to be formulated and framed by the High Court to that effect.”

10. In *Gurvachan Kaur v. Salikram*, at para 10, this principle has been reiterated: (SCC p. 532)

“10. It is settled law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court was not justified in reversing the finding of fact recorded by the first appellate court on the issues of existence of landlord-tenant relationship between the plaintiff and the defendant and default committed by the latter in payment of rent.”

57. The Supreme Court in the case of *Pakeerappa Rai Vs. Seethamma Hengsu Dead by L.R.s and others* reported in (2001) 9 SCC 521 has held as under :

“2..... But the High Court in exercise of power under Section 100 CPC cannot interfere with the erroneous finding of fact howsoever gross the error seems to be.....”

58. The Supreme Court in the case of *Gurdev Kaur Vs. Kaki* reported in (2007) 1 SCC 546 has held as under :

“46. In *Bholaram v. Ameerchand* a three- Judge Bench of this Court reiterated the statement of law. The High Court, however, seems to have justified its interference in second appeal mainly on the ground that the judgments of the courts below were perverse and were given in utter disregard of the important materials on the record particularly misconstruction of the rent note. Even if we accept the main reason given by the High Court the utmost that could be said was that the findings of fact by the courts below were wrong or grossly inexcusable but that by itself would not entitle the High Court to interfere in the absence of a clear error of law.

47. In *Kshitish Chandra Purkait v. Santosh Kumar Purkait* a three-Judge Bench of this Court held: (a) that

the High Court should be satisfied that the case involved a substantial question of law and not mere question of law; (b) reasons for permitting the plea to be raised should also be recorded; (c) it has the duty to formulate the substantial questions of law and to put the opposite party on notice and give fair and proper opportunity to meet the point. The Court also held that it is the duty cast upon the High Court to formulate substantial question of law involved in the case even at the initial stage.

48. This Court had occasion to determine the same issue in *Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor*. The Court stated that the High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law.

49. A mere look at the said provision shows that the High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. The impugned judgment shows that no such procedure was followed by the learned Single Judge. It is held by a catena of judgments by this Court, some of them being, *Kshitish Chandra Purkait v. Santosh Kumar Purkait* and *Sheel Chand v. Prakash Chand* that the judgment rendered by the High Court under Section 100 CPC without following the aforesaid procedure cannot be sustained. On this short ground alone, this appeal is required to be allowed.

50. In *Kanai Lal Garari v. Murari Ganguly* this Court has observed that it is mandatory to formulate the substantial question of law while entertaining the appeal in absence of which the judgment is to be set aside. In *Panchugopal Barua v. Umesh Chandra Goswami* and *Santosh Hazari v.*

Purushottam Tiwari the Court reiterated the statement of law that the High Court cannot proceed to hear a second appeal without formulating the substantial question of law. These judgments have been referred to in the later judgment of *K. Raj v. Muthamma*. A statement of law has been reiterated regarding the scope and interference of the Court in second appeal under Section 100 of the Code of Civil Procedure.

51. Again in *Santosh Hazari v. Purushottam Tiwari* another three-Judge Bench of this Court correctly delineated the scope of Section 100 CPC. The Court observed that an obligation is cast on the appellant to precisely state in the memorandum of appeal the substantial question of law involved in the appeal and which the appellant proposes to urge before the Court. In the said judgment, it was further mentioned that the High Court must be satisfied that a substantial question of law is involved in the case and such question has then to be formulated by the High Court. According to the Court the word substantial, as qualifying “question of law”, means—of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with—technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance” as has been done in many other provisions such as Section 109 of the Code and Article 133(1)(a) of the Constitution.

52. In *Kamti Devi v. Poshi Ram* the Court came to the conclusion that the finding thus reached by the first appellate court cannot be interfered with in a second appeal as no substantial question of law would have flowed out of such a finding.

53. In *Thiagarajan v. Sri Venugopalaswamy B. Koil* this Court has held that the High Court in its jurisdiction under Section 100 CPC was not justified in interfering with the findings of fact. The Court observed that to say the least the approach of the High Court was not proper. It is the obligation of the

courts of law to further the clear intendment of the legislature and not frustrate it by excluding the same. This Court in a catena of decisions held that where findings of fact by the lower appellate court are based on evidence, the High Court in second appeal cannot substitute its own findings on reappraisal of evidence merely on the ground that another view was possible.

54. In the same case, this Court observed that in a case where special leave petition was filed against a judgment of the High Court interfering with findings of fact of the lower appellate court. This Court observed that to say the least the approach of the High Court was not proper. It is the obligation of the courts of law to further the clear intendment of the legislature and not frustrate it by excluding the same. This Court further observed that the High Court in second appeal cannot substitute its own findings on reappraisal of evidence merely on the ground that another view was possible.

55. This Court again reminded the High Court in *Commr., HRCE v. P. Shanmugama* that the High Court has no jurisdiction in second appeal to interfere with the finding of facts.

56. Again, this Court in *State of Kerala v. Mohd. Kunhi* has reiterated the same principle that the High Court is not justified in interfering with the concurrent findings of fact. This Court observed that, in doing so, the High Court has gone beyond the scope of Section 100 of the Code of Civil Procedure.

57. Again, in *Madhavan Nair v. Bhaskar Pillai* this Court observed that the High Court was not justified in interfering with the concurrent findings of fact. This Court observed that it is well settled that even if the first appellate court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.

58. Again, in *Harjeet Singh v. Amrik Singh* this Court with anguish has mentioned that the High Court has no jurisdiction

to interfere with the findings of fact arrived at by the first appellate court. In this case, the findings of the trial court and the lower appellate court regarding readiness and willingness to perform their part of contract was set aside by the High Court in its jurisdiction under Section 100 CPC. This Court, while setting aside the judgment of the High Court, observed that the High Court was not justified in interfering with the concurrent findings of fact arrived at by the courts below.

59. In *H.P. Pyarejan v. Dasappa* delivered on 6-2-2006, this Court found serious infirmity in the judgment of the High Court. This Court observed that it suffers from the vice of exercise of jurisdiction which did not vest in the High Court. Under Section 100 of the Code (as amended in 1976) the jurisdiction of the Court to interfere with the judgments of the courts below is confined to hearing of substantial questions of law. Interference with the finding of fact by the High Court is not warranted if it invokes reappreciation of evidence. This Court found that the impugned judgment of the High Court was vulnerable and needed to be set aside.”

59. The Supreme Court in the case of *Municipal Committee, Hoshiarpur Vs. Punjab SEB*, reported in (2010) 13 SCC 216 has held as under:-

“16. Thus, it is evident from the above that the right to appeal is a creation of statute and it cannot be created by acquiescence of the parties or by the order of the court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a court or authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance with the conditions mentioned in the provision that creates it. Therefore, the court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a

substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same. (Vide *Santosh Hazari v. Purshottam Tiwari*; *Sarjas Rai v. Bakshi Inderjit Singh*; *Manicka Poosali v. Anjalai Ammal*; *Sugani v. Rameshwar Das*; *Hero Vinoth v. Seshammal*; *P. Chandrasekharan v. S. Kanakarajan*; *Kashmir Singh v. Harnam Singh*; *V. Ramaswamy v. Ramachandran* and *Bhag Singh v. Jaskirat Singh*.)

17. In *Mahindra & Mahindra Ltd. v. Union of India* this Court observed*:-

“12. ... it is not every question of law that could be permitted to be raised in the second appeal. The parameters within which a new legal plea could be permitted to be raised, are specifically stated in sub-section (5) of Section 100 CPC. Under the proviso, the Court should be ‘satisfied’ that the case involves a ‘substantial question of law’ and not a mere ‘question of law’. The reason for permitting the substantial question of law to be raised, should be ‘recorded’ by the Court. It is implicit therefrom that on compliance of the above, the opposite party should be afforded a fair or proper opportunity to meet the same. It is not any legal plea that would be alleged at the stage of second appeal. It should be a substantial question of law. The reasons for permitting the plea to be raised should also be recorded.” [*Kshitish Chandra Purkait v. Santosh Kumar Purkait*, (1997) 5 SCC 438, pp. 445-46, para 10]

18. In *Madamanchi Ramappa v. Muthaluru Bojjappa* this Court observed: (AIR pp. 1637- 38, para 12)

“12. ... Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by Section 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of Section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid.”

19. In *Jai Singh v. Shakuntala* this Court held as under: (SCC pp. 637-38, para 6)

“6. ... it is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible — it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection.”

20. While dealing with the issue, this Court in *Leela Soni v. Rajesh Goyal* observed as under: (SCC p. 502, paras 20-22)

“20. There can be no doubt that the jurisdiction of the High Court under Section 100 of the Code of Civil Procedure (CPC) is confined to the framing of substantial questions of law involved in the second appeal and to decide the same. Section 101 CPC provides that no second appeal shall lie except on the grounds mentioned in Section 100 CPC. Thus it is clear that no second appeal can be entertained by the High Court on questions of fact, much less can it interfere in the findings of fact recorded by the lower appellate court. This is so, not only when it is possible for the High Court to take a different view of the matter but also when the High Court finds that conclusions on questions of fact recorded by the first appellate court are erroneous.

21. It will be apt to refer to Section 103 CPC which enables the High Court to determine the issues of fact:

* * *

22. The section, noted above, authorises the High Court to determine any issue which is necessary for the disposal of the second appeal provided the evidence on record is sufficient, in any of the following two situations: (1) when that issue has not been determined both by the trial court as well as the lower appellate court or by the lower appellate court; or (2) when both the trial court as well as the appellate court or the lower appellate court have wrongly determined any issue on a substantial question of law which can properly be the subject-matter of second appeal under Section 100 CPC.”

21. In *Jadu Gopal Chakravarty v. Pannalal Bhowmick* the question arose as to whether the compromise decree had been obtained by fraud. This Court held that though it is a question of fact, but because none of the courts below had pointedly

addressed the question of whether the compromise in the case was obtained by perpetrating fraud on the court, the High Court was justified in exercising its powers under Section 103 CPC to go into the question. (See also *Achintya Kumar Saha v. Nanee Printers.*)

22. In *Bhagwan Sharma v. Bani Ghosh* this Court held that in case the High Court exercises its jurisdiction under Section 103 CPC, in view of the fact that the findings of fact recorded by the courts below stood vitiated on account of non-consideration of additional evidence of a vital nature, the Court may itself finally decide the case in accordance with Section 103 (b) CPC and the Court must hear the parties fully with reference to the entire evidence on record with relevance to the question after giving notice to all the parties. The Court further held as under: (*Bhagwan Sharma case*, SCC p. 499, para 5)

“5. ... The grounds which may be available in support of a plea that the finding of fact by the court below is vitiated in law, does not by itself lead to the further conclusion that a contrary finding has to be finally arrived at on the disputed issue. On a reappraisal of the entire evidence the ultimate conclusion may go in favour of either party and it cannot be prejudged, as has been done in the impugned judgment.”

23. In *Kulwant Kaur v. Gurdial Singh Mann* this Court observed as under: (SCC pp. 278-79, para 34)

“34. Admittedly, Section 100 has introduced a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High Court is concerned. Needless to record that the Code of Civil Procedure (Amendment) Act, 1976 introduced such an embargo for such definite objectives and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it

is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This is, however, only in the event such a fact is brought to light by the High Court explicitly and the judgment should also be categorical as to the *issue of perversity vis-à-vis the concept of justice*. Needless to say however, that perversity itself is *a substantial question* worth adjudication—what is required is a categorical finding on the part of the High Court as to *perversity*. ...

The requirements stand specified in Section 103 and nothing short of it will bring it within the ambit of Section 100 *since the issue of perversity will also come within the ambit of substantial question of law as noticed above*. The legality of finding of fact cannot but be termed to be a question of law. We reiterate however, that there must be a definite finding to *that effect in the judgment of the High Court so as to make it evident that Section 100 of the Code stands complied with*. "

60. The Supreme Court in the case of *Sarvate T.B. Vs. Nemichand* reported in 1965 J LJ 973 has held as under :

"6..... The burden of proving that he genuinely requires non-residential accommodation within the meaning of Section 4(h) therefore, lies upon the landlord. Whether in a given case, that burden is discharged by the evidence on the record is a question of fact."

61. In Second Appeal, the reappraisal of evidence and interference with the findings of fact is not permissible. This Court can interfere with the concurrent findings of fact, only when a Substantial Question of law arises. If the Courts below have neither ignored any material fact, nor has considered any inadmissible evidence, then this Court cannot interfere with the concurrent findings of fact.

62. In the present case, the plaintiff/respondent, amended the plaint, even after recording of his evidence and inserted the following paragraph :

“4(अ) यह कि वादी ने अपने बेरोजगार पुत्र को मजबूरीवश बलवंत नगर मे रामाधार के मकान मे एक दुकान 1000 रुपये माहवार से किराये पर ले ली है और उसे व्यवसाय करा रहा है। उपरोक्त परिस्थिती से स्पष्ट है कि वादी का अपने पुत्र के व्यवसाय हेतु विवादित दुकान की सद्भावना पूर्वक अति आवश्यक है।”

63. It is submitted by the Counsel for the respondent/plaintiff that since, the amended pleadings were not denied by the appellants/defendant, therefore, the Trial Court should have granted decree on the ground of bona fide requirement for non-residential purposes.

64. In para 4A, the plaintiff/respondent, did not mention that from what date, the son of the plaintiff had taken a shop on rent at Balwant Nagar, belonging to Ramadhar. Even the Landlord of the said shop was not examined. The son of the plaintiff was re-examined after the amendment was allowed. Prashant (P.W.2) is the son of the plaintiff. He had produced a rent receipt, Ex. P8-A. The said rent receipt was challenged by the appellants/defendant and Prashant (P.W.2) was cross examined in detail in this regard. Prashant (P.W.2) has admitted that the similar receipt books are available in the market. The number of the receipt is also not mentioned. He also admitted that Ramadhar is hale and hearty and is resident of Gwalior itself. Thereafter, certain questions were put to Prashant (P.W.2) with regard to his business. This witness has stated that he has taken a connection of Airtel Company, but admitted that he has not filed any document in this regard. Even Mahesh Prasad (P.W.1)/ plaintiff has admitted in his evidence, that no document was filed by him in order to show that his son has taken a connection of Airtel Company, so as to run his business of S.T.D. and P.C.O. However, certain receipts, which were of period subsequent to the date of cross-examination of the plaintiff Mahesh (P.W.1) and Prashant (P.W.2), allegedly issued by Airtel Company, were shown to Harbhajan Singh (D.W.1) and he denied the same for want of knowledge. Although the defendant had denied the documents, but still the receipts were marked as Ex. P.9 to P.18. In the considered opinion of this Court, the documents were wrongly marked as Ex. P.9 to P.18. When a specific question was put to the Counsel for the respondent/plaintiff, that when the defendant had not admitted the receipts, then whether the receipts marked as Ex. P.9 to Ex P.18 can be treated as proved or not? Then it was rightly replied, that in such a situation, the receipts were to be proved in accordance with law. This

Court in the case of *Narain and others Vs. State of M.P. And others* reported in 1996 J.L.J 509 has held as under :

“3. I take this opportunity to mention another fact which has come to the notice of this Court. When the document is sought to be proved, it is not proved generally in accordance with law. Provisions of Section 47/67 of the Indian Evidence Act are completely ignored. What the Courts do is that documents sought to be proved are shown to the witness and exhibits are put without any evidence is laid, without pointing out about the person who executed it and whether document was in his hand is signed before him or executed before him or without asserting that the witness is acquainted with his writing or signatures, as case may be. The Courts can mark exhibit immediately it is proved in accordance with law. Documents are to be exhibited when they are proved in accordance with law. They cannot be exhibited merely because, y are shown to the witness. If the law is not followed in this connection, it creates problems to the parties as well as to Higher Courts with respect to proof or disproof of the document.”

65. Thus, this Court is of the considered opinion that the Trial Court committed manifest error in marking the receipts Ex. P.9 to P.18, even when the same were denied by the defendant. The plaintiff had not examined any body to prove the said receipts which were marked as Ex. P.9 to P.18. In fact the receipts were shown to the defendant and were thereafter marked as Ex. P.9 to P.18, even when the same were not admitted by the defendant. Thus, it is clear that the plaintiff has failed to produce any documentary evidence in support of his pleading that he had taken a shop on rent in Balwant Nagar and has started his business in the rented accommodation.

66. Thus, it is clear that the arguments advanced by the Counsel for the respondent/plaintiff with regard to the bonafide requirement for non-residential purposes, requires re-appreciation of fact and the same is not permissible while considering Second Appeal under Section 100 of Civil Procedure Code. The bonafide requirement for non-residential purposes is a finding of fact and since, no substantial question of law arises, therefore, the Substantial Question of Law with regard to the bonafide requirement of the plaintiff for non-residential purposes is answered in **Negative**.

67. Hence, the appeal filed by the appellant against the judgment and decree dated 11-7-2003 passed by VIIth A.D.J., Gwalior in Civil Appeal No. 29A/2002, by which a decree of eviction on the ground of arrears of rent under Section 12(1) (a) of M.P. Accommodation Control Act, has been passed, is hereby **Dismissed**. Similarly the cross objection filed by the respondent/ plaintiff against the dismissal of his claim for a decree of eviction under Section 12(1)(f) of M.P. Accommodation Control Act is also **Dismissed** and consequently, the judgment and decree dated 11-7-2003 by VIIth A.D.J., Gwalior in Civil Appeal No. 29A/2002 is hereby affirmed.

68. The appeal as well as the cross objection fail and are hereby **Dismissed**.

69. A decree be drawn in accordance with law.

Appeal dismissed.

I.L.R. [2017] M.P., 3064

APPELLATE CRIMINAL

Before Mr. Justice S.C. Sharma & Mr. Justice Alok Verma

Cr.A. No. 963/2007 (Indore) decided on 14 November, 2017

PHOOLSINGH

...Appellant

Vs.

STATE OF M.P.

...Respondent

Penal Code (45 of 1860), Section 302 & 307 – Presumption – Last Seen Together – Murder – Conviction – Circumstantial Evidence – Held – Deceased and injured are the driver and conductor of Truck – From statement of witnesses, it is clear that deceased and the injured were last seen in company with the present appellant and soon thereafter dead body of deceased was found – It was admitted that truck broke down, which was repaired by the appellant and thereafter, deceased remained in company of appellant – Appellant was also identified before the Court by the injured witness – Looking to the evidence against appellant, it is established that deceased was last seen alive with appellant and it was them and no other person who must have caused his death, it can be presumed on basis of the oral and circumstantial evidence – Appellant rightly convicted – Appeal dismissed.

(Para 9 & 10)

दण्ड संहिता (1860 का 45), धारा 302 व 307 – उपधारणा – अंतिम बार

साथ देखा जाना – हत्या – दोषसिद्धि – परिस्थितिजन्य साक्ष्य – अभिनिर्धारित – मृतक और आहत, ट्रक के चालक एवं परिचालक थे – साक्षीगण के कथनों से, यह स्पष्ट है कि मृतक एवं आहत को अंतिम बार वर्तमान अपीलार्थी के साथ देखा गया था एवं उसके तुरंत बाद मृतक का शव पाया गया था – यह स्वीकृत किया गया था कि ट्रक खराब हुआ था जिसे अपीलार्थी द्वारा सुधारा गया था एवं तत्पश्चात्, मृतक अपीलार्थी के साथ रहा – अपीलार्थी को, आहत साक्षी द्वारा न्यायालय के समक्ष पहचाना भी गया था – अपीलार्थी के विरुद्ध साक्ष्य को देखते हुये, यह स्थापित है कि मृतक को अंतिम बार अपीलार्थी के साथ जीवित देखा गया एवं वह ही था तथा न कि कोई अन्य व्यक्ति जिसने उसकी मृत्यु कारित की होगी, मौखिक एवं परिस्थितिजन्य साक्ष्य के आधार पर यह उपधारित किया जा सकता है – अपीलार्थी उचित रूप से दोषसिद्ध किया गया – अपील खारिज।

Seema Sharma, for the appellant.

Mukesh Kumawat, for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :
ALOK VERMA, J. :- This Criminal Appeal arises out of the judgment of conviction and sentence passed by the learned Additional Sessions Judge, Badwah District West Nimar in Session Trial No. 151/2006, dated 17.07.2007, wherein the Trial Court found the sole appellant guilty under Section 302 of IPC for causing death of deceased Pawan and under Section 307 for attempt to murder of injured Rajesh and sentenced him to life imprisonment under Section 302 of IPC and 7 years rigorous imprisonment under Section 307 of IPC. He was also sentenced to fine of Rs. 1,000/- each under Sections 302 and 307 of IPC by way of default stipulation.

2. The prosecution story in brief is that deceased Pawan and the injured Rajesh were driver and cleaner on a truck bearing registration No. HR 39 LP 7864. They left for Ludhiyana in the truck on 02.11.2003, and they reached Dhar on 04.11.2003. The truck was loaded with provisions. In the night at about 10 PM on 04.11.2003, the truck developed some technical defect, and therefore, they went to the shop of Gulabsingh to get the truck repaired. However, in the night, the defect could not be removed and next day the appellant Phoolsingh and co-accused Jagdish.(absconding) was called to repair the truck. They repaired the truck and as appellant was also a driver they all sat inside the truck and moved further and reached at Jamun Ghati, and there at Dhabha of Magan, they got food prepared. They also consumed liquor.

When they again started driving, the accused Phoolsingh and Jagdish sat in the truck. After sometime, the appellant Phoolsingh asked him to get away from the driving seat and he started driving the truck as both the deceased Pawan and injured Rajesh were under the influence of liquor, and soon, they went into the deep sleep. Suddenly, the accused persons started beating them and they were thrown outside the truck. The total cost of provisions loaded in the truck was Rupees six lakhs. After they were thrown out of the truck, the appellant took away the truck. The dead body of the deceased Pawan was found and injured Rajesh was also found nearby in severely injured stage. The matter was reported to the police, and the investigation began. After due investigation, the present appellant was arrested and the another co-accused Jagdish remained absconded through out. After due investigation, the charge-sheet was filed.

3. The Trial Court recorded the statement of both the sides and also statement of the accused, and thereafter, passed the impugned judgment convicting the appellant as aforesaid.

4. Aggrieved by the said judgment of conviction and sentence, the present appeal is filed on the grounds *inter-alia* (i) that in the statement of Rajesh (P.W-19), he stated that he did not see the appellant inflicting any injury on the deceased, and therefore, it was not proved that it was the appellant, who caused injury on the deceased. (ii) Ashubai (P.W-6) also did not recognize the appellant in her statement before the Trial Court and no test identification parade was conducted, in which, this witness was asked to identify the appellant.

5. From the arguments put forth before us, it appears that main thrust of the counsel for the appellant is the fact that the prosecution witness Rajesh (P.W-19) did not see the present appellant inflicting fatal injuries on the deceased and on this ground, according to him no charge under Section 302 is made out.

6. To begin with statement of Rajesh (P.W-19), which should be examined minutely. This witness stated that when their truck developed some defect, they went to the garage of Gulabsingh. He told them that he would call some mechanic to repair the vehicle. He called the appellant Phoolsingh and co-accused Jagdish, who repaired the vehicle. After the vehicle was repaired, the present appellant and the deceased Pawan went to bring chicken on

motorcycle. They placed it in the truck. Both of them were under the influence of liquor, then they resumed their journey and stopped at a hotel where the appellant Phoolsingh prepared the Chicken. They also consumed liquor. After having their food, Phoolsingh was driving the vehicle. Both the deceased Pawan and he were sleeping as they were under the influence of liquor and the appellant and other co-accused Jagdish tried to push them outside the vehicle, and as he was sleeping, he did not remember how he fell out of the vehicle. This witness was asked to identify the appellant and he identified him. From his examination-in-chief, it was apparent that he did not see the appellant inflicting injury to the deceased, however, it was stated by him clearly that he was in the vehicle after they had food at Dhaba of Magan. When they started the journey, the appellant was driving the vehicle. He also stated that they were also in the same vehicle.

7. Witness Magan (P.W-7) was also examined, he is the owner of the Dhabha of Magan, where they had food. He said that total four people came to his shop. He said that he did not have Chicken, on which, they said that they already brought Chicken with them. They also asked him to bring a bottle of liquor, which he brought and then they prepared the Chicken. According to him, the person, who was killed i.e. deceased Pawan, was under the influence of liquor. He could not walk properly so the appellant caught hold his hand and helped him to seat inside the truck. He identified the appellant before the Court.

8. Ashubai (PW-6) is the wife of witness Magan (PW-7) was also present in the hotel and she identified the appellant and she also said that the deceased and the appellant came to their hotel along with two other persons and they had food in their hotel.

9. From their statement, it was clear that the deceased and the injured were last seen in company with the present appellant, soon thereafter, dead body of deceased was found. It is also apparent that the truck was in the possession of the deceased and injured Rajesh (P.W-19). They were admittedly driver and conductor of the vehicle. It was also admitted that the truck broke down and was repaired by the present appellant, and thereafter, the deceased remained in company of the present appellant.

10. In this view of the matter, looking to the evidence against him, though, in the FSL report, group of blood could not be ascertain, it is apparent that

the deceased was last seen alive with them and as such, it was them and no other person who must have caused his death. This can be presumed on the basis of the oral as well as circumstantial evidence.

11. In this view of the matter, this court is of the opinion that no interference is called for. The inferences drawn by the Trial Court are based on cogent reasons, and therefore, this appeal deserves to be dismissed and dismissed accordingly.

The conviction and sentence imposed on the appellant are hereby affirmed.

The order for disposal of the seized property is also hereby affirmed.

Certified copy as per rules.

Appeal dismissed.

**I.L.R. [2017] M.P., 3068
APPELLATE CRIMINAL**

Before Mr. Justice Alok Verma & Mr. Justice Virender Singh

Cr.A. No. 51/2006 (Indore) decided on 27 November, 2017

PADAMNATH & ors.

....Appellants

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Sections 395, 397, 398 & 459 – Conviction – Identification of Accused and Recovered Articles – Delay – Effect – Test identification parade was conducted after 11 months of incident – Held – Prosecution witnesses identified the accused persons during the test identification parade as well as before the trial Court – Nothing came in cross examination of the prosecution witnesses who identified the accused persons, to make the identification during investigation to be doubtful – Witness did not admit in cross examination that accused persons were shown to them prior to test identification parade – Accused rightly identified by the witnesses during test identification parade – Further held – So far as articles are concerned, they belonged to the complainant and other injured persons and therefore their identification cannot be doubted – Involvement of accused persons in the crime was

properly proved – Appeal dismissed. (Paras 9, 10, 11 & 14)

क. दण्ड संहिता (1860 का 45), धाराएँ 395, 397, 398 व 459 – दोषसिद्धि – अभियुक्त एवं बरामद वस्तुओं की पहचान – विलंब – प्रभाव – घटना के 11 माह पश्चात् पहचान परेड संचालित की गई थी – अभिनिर्धारित – अभियोजन साक्षीगण ने पहचान परेड के साथ-साथ विचारण न्यायालय के समक्ष भी अभियुक्तगण की पहचान की – अभियोजन साक्षीगण जिन्होंने अभियुक्तगण की पहचान की, के प्रतिपरीक्षण में ऐसा कुछ नहीं आया जो कि अन्वेषण के दौरान पहचान को संदेहास्पद बना दे – साक्षी ने प्रतिपरीक्षण में यह स्वीकार नहीं किया कि पहचान परेड से पूर्व अभियुक्तगण उन्हें दिखाये गये थे – पहचान परेड के दौरान साक्षीगण द्वारा अभियुक्त की उचित रूप से पहचान की गई – आगे अभिनिर्धारित – जहां तक कि वस्तुओं का संबंध है, वे परिवादी एवं अन्य आहत व्यक्तियों की हैं तथा इसलिए उनकी पहचान पर संदेह नहीं किया जा सकता – अपराध में अभियुक्तगण की सहभागिता उचित रूप से साबित हुई थी – अपील खारिज।

B. Criminal Trial – Practice and Procedure – Exhibiting Certified Copy of Memorandum of Another Crime – Accused persons were convicted on the basis of their disclosure memo given in another crime and according to which ornaments looted in the present case was recovered – Certified copy of disclosure memo was exhibited – Held – Original documents prepared by police, therefore no prejudice was caused to appellants, if certified copies of memorandum was accepted by the trial Court – Exhibiting the certified copy has no bearing on merits of the case. (Para 13)

ख. दंडिक विचारण – पद्धति एवं प्रक्रिया – अन्य अपराध के ज्ञापन की प्रमाणित प्रति प्रदर्शित की जाना – अभियुक्तगण, अन्य अपराध में दिये गये प्रकटीकरण ज्ञापन के आधार पर दोषसिद्ध किये गये तथा जिसके अनुसार वर्तमान प्रकरण में लूटे गये आभूषण बरामद कर लिये गये थे – प्रकटीकरण ज्ञापन की प्रमाणित प्रति प्रदर्शित की गई थी – अभिनिर्धारित – मूल दस्तावेज पुलिस द्वारा तैयार किये गये, इसलिए अपीलार्थीगण पर कोई प्रतिकूल प्रभाव कारित नहीं किया गया था, यदि ज्ञापन की प्रमाणित प्रतियाँ विचारण न्यायालय द्वारा स्वीकार की गई थी – प्रमाणित प्रति के प्रदर्शित किये जाने का प्रकरण के गुणदोषों पर कोई प्रभाव नहीं है।

Purnima Kanoongo, for the appellants.

Hemant Sharma, for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :
ALOK VERMA, J. :- This Criminal Appeal is directed against the judgment of conviction and sentence passed by learned Second Additional Sessions Judge, Ujjain in Sessions Trial No317/2004 dated 27.10.2005, whereby the learned Additional Sessions Judge held the present appellants guilty under Section 395 r/w sections 397, 398 of IPC and Section 459 of IPC and sentenced them to 14 years rigorous imprisonment each and fine of Rs.1,000/- each under Section 395 f/w sections 397 and 398 of IPC & 10 years of rigorous imprisonment and fine of Rs.1,000/- under Section 459 of IPC with default stipulation.

2. In all, thirteen accused persons faced the trial. Vikram S/o Mohan Nath was a juvenile at the time of incident, and therefore, he faced trial before Juvenile Justice Board. The trial Court acquitted Fundanath S/o Amarnath, Paras Bai W/o Fundanath, Asha Bai W/o Peerunath and Rajunath S/o Mohannath from all the charges while convicted the 8 accused persons, who are before this Court as appellants.

3. According to prosecution story, on 17.10.2003 at about 11:30 pm in village Sanwarakhedi, when the complainant and his family members Bherulal, Omprakash, Dhapu Bai etc. were sleeping in a house constructed on a field, about 12 to 15 persons came there armed with lathi, farsi and axe. They inflicted injuries on Bherulal and committed loot of silver ornament and cash. They also beaten Deepak, Raju, Pannalal, Basanti Bai etc and committed loot. The matter was reported to Police Station-Neelganga, where Crime No.712/2003 was registered. Subsequently, the accused persons were arrested in another crime registered at Police Station-Narbar, and there, they gave their disclosure memos and also ornaments looted from the complainant were seized from their possession, on the basis of which, they were made accused in the present case. Test identification parade was also held during the investigation of articles as well as of all accused persons.

4. The learned trial Court framed charges under Section 395 r/w sections 397 and 398 of IPC & Section 459 of IPC, recorded statements of both the sides, recorded statements of the accused persons and passed the impugned judgment convicting and sentencing them as aforesaid, against which, this appeal is filed on the ground inter alia (i) that the appellants were not present at the

time of incident, and therefore, the trial Court has erred while convicting them (ii) the independent witnesses did not support the prosecution case in spite of that, the trial Court convicted the accused persons, which was not proper (iii) there were lot of contradictions in the statement of the prosecution witnesses. (iv) the appellants were not properly identified investigation.

5. On the basis of aforesaid grounds, learned counsel for the appellants prayed that the appeal may be allowed and the appellants be acquitted from the offence.

6. Learned counsel for the State support the impugned judgment and submits that it must be affirmed.

7. So far as the facts that the incident took place on 17.10.2003 at about 11:30 pm to 12:00 am in the night that ten to twelve miscreants entered into the house of the complainant armed with lathi, farsi and axe and they inflicted various injuries on the injured persons are established. Medical evidence corroborated these facts and there is not much dispute regarding these facts, and therefore, no further consideration of these facts is necessary.

8. The main thrust of defence counsel's arguments is identity of the accused persons. The accused persons were arrested in another crime by Police Station-Narbar, District-Ujjain in the month of July, 2004 about seven months after the incident. There they gave their disclosure memo and some ornaments, belonging to the complainant recovered on their disclosure memo. Subsequently they were formally arrested by Police Station-Neelganga. In this case, their formal disclosure memo were also prepared. After they were arrested in the month of September 2004, their test identification parade was held and only four accused persons were identified.

9. Bherulal (P.W-2) in his statement, identified Padamnath S/o Dhannanath, Soorajnath S/o Ratanlal, Sakkunath S/o Heeranath and Peernath S/o Naharnath was identified by Padambai (P.W-3). Accused Soorajnath was also identified by Deepak (P.W-7) while accused Padamnath was also identified by Padam Bai (P.W-3). Similarly, Omprakash (P.W-9) also identified the accused Padamnath during their Court statement. In this situation, these four persons were identified by the prosecution witnesses before the trial Court. This apart, they were rightly identified during the test identification parade. Unfortunately, the Executive Magistrate conducted the test identification parade, could not be produced as she was on long maternity

leave in her office. In her place, Priti Gwali (P.W-23) was examined, who could only prove the test identification memo Ex-P/2 and Ex-P/3.

10. The prosecution witness identifying these accused persons were examined in detail and they did not admit in their cross-examination that they were shown the accused persons prior to test identification parade, and therefore, their identification during the investigation cannot be doubtful.

11. The contentions of defence counsel was that the test identification parade was conducted after 11 months of the incident, however, nothing came in the cross-examination of the prosecution witnesses to make the identification parade during the investigation doubtful and as such, so far as these four accused persons are concerned, there appears to be no doubt regarding their involvement in the crime.

12. So far as the four remaining accused persons are concerned, they are Guddunath S/o Baijnath, Ganesh @ Guria S/o Naharnath, Bhanwarnath S/o Pannanath and Dharmendra S/o Heeranath, these four persons were convicted on the basis of their disclosure memo given at Police Station-Narvar in another crime, and subsequently, recovered ornaments were also identified during the investigation and also from the cross-examination of prosecution witnesses, no fact had come to doubt the correctness of identification of the prosecution witnesses.

13. To prove their disclosure memo, Anil Kumar Chouhan (P.W- 21) was examined. He was posted at Police Station-Narvar and he prepared the disclosure memo Ex-P/15 to Ex-P/21. The disclosure memo in respect of Dharmendra is Ex-P/17, the disclosure memo of Garunath is Ex-P/18, the disclosure of Guddunath is Ex-P/20 and disclosure memo of Bhanwarnath is Ex-P/21. Though, certified copy of these documents were exhibited and an objection was raised at the time of recording of statement of Anil Singh Chouhan (P.W-21), it appears that there is no disposal of this objection, which reserved for consideration at the time of final judgment, however, at this stage, there appears to be no doubt about the original documents prepared by the Police Station-Narvar, and therefore, no prejudice was caused to the appellants, if certified copies of the memorandum were accepted. As such, exhibiting the certified copy has no bearing on merits of the case.

14. Learned counsel for the defence argues that the identification of articles was also made at an interval of 11 months, however, so far as the articles are

concerned, they belonged to the complainant and other injured persons, and therefore, their identification cannot be doubted..

Accordingly, in considered opinion of this Court, the involvement of eight accused persons were properly made. Their involvement in the crime was also proved. In these situations, there is no force in this appeal, liable to be dismissed and dismissed accordingly. The judgment of conviction and sentence passed by the trial Court is hereby affirmed.

Certified copy as per rules.

Appeal dismissed.

**I.L.R. [2017] M.P., 3073
APPELLATE CRIMINAL**

Before Mr. Justice S.K. Gangele & Mr. Justice Anurag Shrivastava
Cr.A. No.1360/1994 (Jabalpur) decided on 7 December, 2017

SHERU @ MAHENDRA SINGH & anr.

...Appellants

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 302 r/w 34 – Murder – Conviction – Appreciation of Evidence – Held – Appellants came on the spot together, appellant no.2 caught hold of deceased from his back and appellant no.1 inflicted knife blows on his chest and abdomen – Statement of prosecution witnesses duly corroborated by FIR – No material discrepancies in statement of witnesses – Multiple injuries on vital parts of body – Lungs, ribs, liver and spleen of the deceased were cut – Intention was to commit murder – Appellants rightly convicted – Appeal dismissed. (Paras 13, 14, 16 & 17)

क. दण्ड संहिता (1860 का 45), धारा 302 सहपठित धारा 34 – हत्या – दोषसिद्धि – साक्ष्य का मूल्यांकन – अभिनिर्धारित – अपीलार्थीगण घटनास्थल पर एक साथ पहुँचे, अपीलार्थी क्र. 2 ने मृतक को पीछे की ओर से पकड़ लिया तथा अपीलार्थी क्र. 1 ने उसकी छाती एवं पेट पर चाकू से वार किये – अभियोजन साक्षीगण के कथन प्रथम सूचना प्रतिवेदन द्वारा सम्यक् रूप से संपुष्ट है – साक्षीगण के कथन में कोई तात्त्विक विसंगतियाँ नहीं – शरीर के महत्वपूर्ण अंगों पर अनेक चोटें – मृतक के फेफड़े, पसलियाँ, यकृत एवं प्लीहा कट गये थे – आशय हत्या कारित करने का था – अपीलार्थीगण उचित रूप से दोषसिद्ध – अपील खारिज।

B. Penal Code (45 of 1860), Section 302 r/w 34 – Murder – Common Intention – Held – Common intention is the question of fact – It is subjective but can be inferred from facts and circumstances of the case. (Para 15)

ख. दण्ड संहिता (1860 का 45), धारा 302 सहपठित धारा 34 – हत्या – सामान्य आशय – अभिनिर्धारित – सामान्य आशय तथ्य का प्रश्न है – यह व्यक्तिपरक है परन्तु प्रकरण के तथ्यों एवं परिस्थितियों से अनुमानित किया जा सकता है।

Case referred :

(2005) 9 SCC 616.

Durgesh Gupta, for the appellants.

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

J U D G M E N T

The Judgment of the Court was delivered by :
ANURAG SHRIVASTAVA, J. :- The present appeal has been preferred by the accused/appellants under Section 374(2) of Cr.P.C., being aggrieved by the judgment and sentence dated 1.8.1994 passed by Sessions Judge, Khandwa in S.T. No.223/1993, whereby the accused/appellants have been found guilty for commission of offence punishable under Section 302 read with section 34 of IPC and sentenced to undergo rigorous imprisonment for life.

2. The case of the prosecution in brief is that on 22.9.1993 at around 6 o'clock in the morning near Ganesh Talai Mazjid at Khandwa deceased Poonam was going to supply milk, meanwhile appellant Dashrath and Sheru @ Mahendra Singh came there. Dashrath caught hold of hands of the deceased and Sheru @ Mahendra Singh had inflicted the blows of knife on his abdomen. The deceased shouted for help. After assaulting him the appellants ran away. The incident is witnessed by complainant Nirmala Bai and other witnesses. The deceased Poonam was taken to District Hospital Khandwa but he succumbed to his injuries on the way. The report of incident Ex.P-1 has been lodged by Nirmala Bai. The police registered the offence and conducted the inquest. The spot map Ex.P-2 and Panchnama of dead body of deceased were prepared and body was sent for postmortem. A knife has been seized on the basis of memorandum statement of appellant Sheru @ Mahendra Singh. The statement of witnesses were recorded and after usual investigation charge

sheet has been filed before the Court.

3. The appellants have been charged under section 302 read with section 34 of IPC. They abjured guilt and pleaded innocence. The prosecution has examined 8 witnesses, whereas appellants have not given any evidence in their defence.

4. The trial Court on appreciation of evidence held the appellant guilty under Section 302 read with section 34 of IPC and sentenced them as mentioned hereinabove.

5. It is argued by the learned counsel for appellants that relying upon the sole testimony of Nirmala Bai the trial Court has wrongly convicted the appellants for commission of alleged offence. There are material omission and contradiction occurred in the statement of Nirmala Bai, her presence at the scene of occurrence is not established beyond reasonable doubt. Though she had lodged the FIR, but name of appellant Sheru @ Mahendra Singh has not been mentioned in it. Therefore, the case of prosecution becomes suspicious against the appellant no.1. The appellant no.2 has not caused any injury to the deceased, he has no enmity with deceased, he has been falsely implicated in the offence. The trial Court on erroneous appreciation of evidence has held the appellants guilty.

6. Heard arguments, perused the record.

7. It is not disputed that at the time of incident the deceased Poonam had sustained injuries caused by hard and sharp object and he had been died due to injuries. The police has conducted the inquest and sent the dead body for postmortem.

8. Dr.Rajesh Verma (P.W.8) deposed that on 22.9.1993 at District Hospital Khandwa he had performed the postmortem of deceased Poonam and found following injuries :-

“(1) Incised wound 1½ inch long with clear edges present at the level of 6th left rib, deep enough to cut 6th rib piercing into thoracic cavity. Blood is oozing from wound.

(2) Incised wound present over left lower axilla. Clean cut margin 1½ inch long x ½ inch wide, deep enough to pierce abdomen. Fresh blood is coming from the wound.

(3) Incised wound 1 ½ inch long x ½ inch wide between two edges obliquely placed downward over right renal region 3 inches lateral to umbilicus deep enough to pierce abdomen cavity. Blood is oozing from the wound.”

On internal examination it is found that 6th left rib is sharply cut below injury no.1 piercing pleura & pituitary left lower lobe of lung. The spleen and kidney were also found cut. The cause of death is the hemorrhage and shock result of injuries caused to deceased. On the basis of statement of doctor and pm report it is proved that the death of deceased was homicidal.

9. Nirmala Bai (P.W.1) deposed that on the date of incident at around 6 o'clock in the morning she was standing outside at the door of her house. She heard the cry of deceased Poonam. She saw that appellant Dashrath had caught hold of Poonam and appellant Sheru @ Mahendra Singh was inflicting blows of knife at his abdomen. Nirmala Bai shouted for help. Hearing her cry appellants ran away from the spot. It is further deposed by Nirmala Bai that the appellant Sheru @ Mahendra Singh had inflicted three blows of knife at the chest and abdomen of Poonam. Later on Poonam was taken to the hospital by an auto rickshaw, but he had been died on the way. Nirmala Bai lodged the report of the incident Ex.P-1 at Police Station Kotwali, Khandwa. In cross-examination Nirmala Bai has not made any contradictory statement. She had explained that the incident occurred hardly 8 to 10 steps away from her house and she had clearly witnessed the incident. No question has been asked from this witness in respect of identity of appellant Sheru by the defence.

10. Another witness Rajjan (P.W.3) deposed that at the time of incident he was present in the house . His father woke up him, he saw his younger brother Poonam in injured condition. He had sustained injuries on his abdomen. Nirmala Bai told him that the appellant Dashrath had caught hold of Poonam and appellant Sheru @ Mahendra Singh had inflicted blows of knife and caused injuries to him.

11. Munnalal (P.W.4) deposed that one day prior to the incident, in the night of 21.9.1993 appellants were wandering in front of his house. Seeing them Munnalal and Poonam had asked them as to why they are wandering in front of their house. At that time appellants had abused Poonam and Munnalal.

12. Similar statement has been given by Rajjan (P.W.3) also. This shows that one day prior to the incident the appellants had a quarrel with the deceased

when deceased had objected about their wandering at late hours of the night in front of his house.

13. The statement of Nirmala Bai (P.W.1) is duly corroborated by FIR Ex.P-1, which has been lodged soon after the incident. Nirmala Bai had informed about the incident to Rajjan (P.W.3) also. There is no material discrepancy found in the statement of Nirmala Bai and Rajjan. She had no enmity with the appellants and she cannot be treated as interested witness. Her testimony appears to be cogent, reliable and trustworthy.

14. It is argued by the learned counsel for appellant that appellant Dashrath had not inflicted any injury to the deceased. Therefore, he cannot be convicted for offence committed by main accused Sheru with the aid of Section 34 of IPC. There is no evidence to show that he has shared common intention with the main accused.

15. This argument cannot be accepted. Common intention is the question of fact. It is subjective but it can be inferred from the facts and circumstances of the case. The Hon'ble Apex Court in the case of *Israr Vs. State of U.P.* [(2005) 9 SCC 616] held in paras 21 to 28 as under :-

“21. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of

the crime. The true contents of the section are that if two or more persons intentionally do an act jointly, the position of law is just the same as if each of them has done it individually by himself. As observed in *Ashok Kumar v. State of Punjab*, AIR 1977 Supreme Court 109, the existence of common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

As it originally stood the Section 34 was in the following terms :

"When a criminal act is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone."

22. In 1870, it was amended by the insertion of the words "in furtherance of the common intention of all" after the word "persons" and before the word "each", so as to make the object of Section 34 clear. This position was noted in *Mahbub Shah v. Emperor*, AIR 1945 Privy Council 118.

23. The section does not say "the common intention of all", nor does it say "and intention common to all". Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. As was observed

in Ch. Pulla Reddy and others v. State of Andhra Pradesh, 1993(3) RCR(Crl.) 319 (SC), Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused.

24. The above position was highlighted recently in Anil Sharma and others v. State of Jharkhand, 2004(3) RCR(Crl.) 774 (SC) : 2004(5) SCC 679.

25. In Abraham Sheikh and others v. State of West Bengal, AIR 1964 Supreme Court 1263 this Court stated that no doubt a person is only responsible ordinarily for what he does and Section 38 Indian Penal Code ensures that. But Section 34 as well as Section 35 provide that if the criminal act is the result of the common intention, then every person who did the criminal act with such intention would be responsible for the total offence irrespective of the share which he had in its perpetration. The logic, highlighted illuminatingly by the Judicial Committee in the illustrious case of Barendra Kumar Ghosh v. Emperor, AIR 1925 PC 1, is that in crimes as in other things "they also serve who only stand and wait".

16. In the aforesaid case law, the appellant caught hold of the deceased from the back and main accused had assaulted him by knife and thereby committed his murder. Hon'ble Apex Court held the appellant guilty for commission of offence with the aid of Section 34 of IPC. The facts are similar to present case. Relying upon the testimony of Nirmala Bai, it is rightly found proved by the trial Court that at the time of incident appellant Dashrath had caught hold of deceased from his back and appellant Sheru had assaulted him by inflicting blows of knife on his chest and abdomen. It appears that the incident occurred when the deceased was going to supply milk. There was no quarrel or any sort of provocation given by the deceased. The appellants came on the spot, together caught hold of the deceased and inflicted blows of knife. There are multiple injuries caused on the vital parts of body of deceased. His lung, ribs, liver and spleen were cut. Causing multiple injuries on vital part of the body by a weapon like knife clearly shows the intention of appellant to commit murder.

17. Thus, the trial Court has not committed any error in recording the guilt of appellants for commission of offence punishable under Section 302 read with Section 34 of IPC. The findings recorded by the trial Court are neither perverse nor illegal.

18. Consequently, we do not find any merits in the present appeal and it is hereby dismissed. The appellants be taken into custody and be sent to jail in order to suffer remaining part of the sentence. Their bail bonds stand cancelled.

Appeal dismissed.

I.L.R. [2017] M.P., 3080

APPELLATE CRIMINAL

Before Mr. Justice Hemant Gupta, Chief Justice &

Mr. Justice Vijay Kumar Shukla

Cr.A. No. 120/2006 (Jabalpur) decided on 19 December, 2017

ASGHAR ALI & ors.

...Appellants

Vs.

STATE OF M.P.

...Respondent

(Alongwith Cr.A. Nos. 193/2006 & 129/2008)

A. Penal Code (45 of 1860), Sections 302/149, 147 & 148 – Direct Evidence – Seizure of Weapon – Held – It is a case of direct evidence where testimonies of two eye witnesses gets corroborated with medical evidence – Seizure of weapon on the disclosure statement of accused has also been proved by Investigating Officer – After scanning the entire evidence, it is established that among all appellants, three of them in furtherance of common intention murdered the deceased, hence are hereby convicted u/S 302/34 IPC – Other appellants acquitted of the charge – Appeals disposed of. (Paras 20, 21, 23, 25 & 26)

क. दण्ड संहिता (1860 का 45), धाराएँ 302/149, 147 व 148 – प्रत्यक्ष साक्ष्य – शस्त्र की जब्ती – अभिनिर्धारित – यह प्रत्यक्ष साक्ष्य का एक प्रकरण है जहां दो चक्षुदर्शी साक्षीगण के परिसाक्ष्य की चिकित्सीय साक्ष्य के साथ संपुष्टि हुई है – अन्वेषण अधिकारी द्वारा, अभियुक्त के प्रकटन कथन पर शस्त्र की जब्ती भी साबित की गई है – संपूर्ण साक्ष्य का अवलोकन करने के पश्चात्, यह स्थापित है कि सभी अपीलार्थीगण में से तीन ने सामान्य आशय के अग्रसरण में मृतक की हत्या की, अतः एतद्वारा भा.दं.सं. की धारा 302/34 के अंतर्गत दोषसिद्ध किये गये – अन्य अपीलार्थीगण आरोप से दोषमुक्त किये गये – अपीलें निराकृत।

B. Penal Code (45 of 1860), Sections 302/149, 147 & 148 – Common Intention – Held – Accused persons gathered on spot and incident took place because of continuation of construction of a wall despite being stopped by accused persons – It is not established that there was any common object formed by all appellants to murder the deceased persons with any prior planning. (Para 22)

ख. दण्ड संहिता (1860 का 45), धाराएँ 302/149, 147 व 148 – सामान्य आशय – अभिनिर्धारित – अभियुक्तगण घटनास्थल पर एकत्रित हुए तथा घटना अभियुक्तगण द्वारा रोके जाने के बावजूद एक दीवार का निर्माण जारी रखने के कारण हुई – यह स्थापित नहीं हुआ है कि किसी पूर्व योजना के साथ मृतक व्यक्तियों की हत्या करने हेतु सभी अपीलार्थीगण द्वारा कोई सामान्य उद्देश्य बनाया गया था।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 161 and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Certification of Doctor – Reliability – Held – Statement of a injured victim recorded u/S 161 Cr.P.C., after his death, can be treated as dying declaration being previous statement – Further, dying declaration cannot be disbelieved merely for want of doctor's certification regarding fit state of mind. (Para 19)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृत्युकालिक कथन – चिकित्सक का प्रमाणन – विश्वसनीयता – अभिनिर्धारित – द.प्र.सं. की धारा 161 के अंतर्गत अभिलिखित किये गये पीड़ित के कथन को उसकी मृत्यु के पश्चात्, पूर्व कथन होने के कारण मृत्युकालिक कथन माना जा सकता है – इसके अतिरिक्त, उचित मनः स्थिति के संबंध में चिकित्सक के प्रमाणन मात्र के अभाव में मृत्युकालिक कथन पर अविश्वास नहीं किया जा सकता।

D. Criminal Practice – Weapon of Crime – Held – Apex Court has concluded that non explanation of human blood on weapon of crime is a circumstance against the accused – In present case, non-explanation of blood group on the seized weapon of crime would not be fatal for prosecution. (Para 21)

घ. दाण्डिक पद्धति – अपराध का शस्त्र – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया है कि अपराध के शस्त्र पर मानव रक्त होने का अस्पष्टीकरण, अभियुक्त के विरुद्ध एक परिस्थिति है – वर्तमान प्रकरण में, अपराध के जब्त शस्त्र पर रक्त समूह का अस्पष्टीकरण अभियोजन के लिए घातक नहीं होगा।

E. Criminal Procedure Code, 1973 (2 of 1974), Section 374

– Criminal Practice – Non Appealing Co-Convicts – Benefit of Acquittal – Held – In appeal, after consideration of entire evidence, if Court comes to the conclusion that there is no evidence against the non appealing co-convicts, benefit of acquittal can also be extended to them. (Para 24 & 25)

३. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 374 – दण्डिक पद्धति – अपील न करने वाले सह-सिद्धदोष – दोषमुक्ति का लाभ – अभिनिर्धारित – अपील में, संपूर्ण साक्ष्य पर विचार करने के पश्चात्, यदि न्यायालय इस निष्कर्ष पर आता है कि अपील न करने वाले सह-सिद्धदोष के विरुद्ध कोई साक्ष्य नहीं है, उन्हें भी दोषमुक्ति का लाभ दिया जा सकता है।

Cases referred :

2002 (6) SCC 710, 2006 (1) Crimes 233, 2011 (2) SCC 715, (2011) 3 SCC 715, (1996) 8 SCC 523, 1978 (4) SCC 435, 2004 (10) SCC 657, (2003) 1 SCC 398, 2015 (11) SCC 43, (1992) 1 SCC 49, (2003) 10 SCC 108, (2012) 6 SCC 403, (1994) 2 SCC 568, (2002) 9 SCC 147, (2003) 11 SCC 241, (2012) 2 SCC 399, (2003) 2 SCC 698.

Chanchal Sharma, for the appellants in Cr.A. No. 120/2006.

Pranay Gupta, for the appellant in Cr.A. No. 193/2006.

Jitendra Shrivastava, Amicus Curiae, for the appellant in Cr.A. No. 129/2008.

Namrata Agrawal, G.A. for the State.

J U D G M E N T

The Judgment of the Court was delivered by :
V.K. SHUKLA, J. :- Criminal Appeal No.120/2006 (Asghar Ali and others Vs. State of M.P.) and Criminal Appeal No.193/2006 (Dharmendra Kumar @ Dhamma) are arising out of the common judgment of conviction and sentence, dated 10-11-2015, passed by the First Additional Sessions Judge, Bhopal in S.T. No.113/2005. Appellant Vijay Singh was tried separately and has been convicted and sentenced by the judgment of conviction dated 22-11-2007, passed by 9th Additional Sessions Judge, Bhopal in S.T.No.113/05. All appeals are arising out of the same incident, therefore, they are being decided by a common order

2. The accused persons have been convicted in S.T.No.113/2005. One

accused Ramswaroop was a juvenile and he was tried by the Juvenile Court. Another accused Vijay Singh was tried separately and was convicted by a separate order of conviction which is subject matter of challenge in Cri. Appeal No.129/2008.

3. Out of these accused persons, 3 are appellants in Cri.Appeal No.120/2006, Asghar Ali, Ahmad Ali and Kaneeja Bi. Convict Dharmendra Kumar @ Dhamma has challenged his conviction and sentence in a separate Cri. Appeal No.193/2006 and other convict person Vijay Singh, who was tried separately and convicted in a separate trial has filed Cr.Appeal No.129/2008.

4. This is a case of double murder and all the accused persons were tried for commission of murder of Tillu alias Devi Singh and Tularam who are father and son.

5. The descriptions of conviction and sentence as against the accused-appellants in Criminal Appeal No.120/2006, Criminal Appeal No.193/2006 and Criminal Appeal No.129/2008, are as follows:

Criminal Appeal No.120/2006

Conviction	Sentence
Under Section 147/148 IPC.	R.I. for 2 years, each
Under Section 302/149 IPC.	R.I. for life and fine of Rs.5000/-, in default to suffer further R.I. for 1 year, each.

(Substantive sentence to run concurrently)

Criminal Appeal No.193/2006

Conviction	Sentence
Under Section 147/148 IPC.	R.I. for 2 years
Under Section 302/149 IPC.	R.I. for life and fine of Rs.5000/-, in default to suffer further R.I. for 1 year.

(Substantive sentence to run concurrently)

Criminal Appeal No.129/2008

Conviction	Sentence
Under Sections 147,148 IPC.	R.I. for 2 years.
Under Section 302/149 IPC.	R.I. for life and fine of Rs. 5000/-, in default to suffer further R.I. for 1 year.

(Substantive sentence to run concurrently)

6. Criminal Case was set in motion by Usha Bai (PW-10), who lodged the report at Police Station Kamla Nagar, Bhopal (Ex.P-7), alleging that when she was getting her hut repaired with the help of deceased Tillu alias Devi Singh and Tularam on 20-06-2004, in the night at about 9.30 PM, accused/appellants Ahmad, Asgar, Kaneeja Bi, Ravi, Dhamma alias Dharmendra, Kachchu alias Ramswaroop, Vijay and Baloo Kumar came there armed with lathi, stick and knife and they had beaten deceased Tularam and Tillu alias Devi Singh with the help of those weapons. Investigation was carried out by PW-14 Girish Bohre, who had prepared the spot map (Ex.P-2) and has also seized the blood stained piece of stone (Ex.P-31). According to the prosecution witnesses, Tularam was alive whereas Tillu alias Devi Singh had died immediately after the incident. Deceased Tularam was examined by Dr.R.S.Vijayvargiya (PW-4) vide MLC vide Ex.P-6. The statement of Tularam was also recorded by Investigating Officer Girish Bohre (PW-14) vide Ex.P-40. He died during the treatment after 3-4 days of the incident. The weapons were seized by PW-14 Girish Bohre on the disclosure statement of Dharmendra vide Ex.P-14 and the knife was seized on the disclosure statement of Ashgar Ali vide Ex.P-16. The seizure of knife from appellant Dharmendra is Ex.P-20. It is alleged that stick was recovered on the disclosure statement of appellant Kaneeja Bi vide Ex.P-36. The articles were sent for FSL. In the said report, in the knife which has been alleged to be recovered from appellant Dharmendra, human blood was found to be present.

7. The prosecution has examined eye witnesses PW-10 Usha Bai, PW-11 Lallu Vishwakarma, PW-12 Sevak Ram, PW-1 Azruddin, PW-2 Sukhram and PW-3 Smt. Resham Bai. Prosecution witnesses PW-1 Azruddin, PW-2

Sukhram and PW-3 Smt. Resham Bai have turned hostile and they did not support the prosecution case. The prosecution case is based on the testimony of two eye witnesses PW-10 Usha Bai and PW-11 Lallu Vishwakarma and other corroborative evidence.

8.- Learned counsel for the appellant in Cri.Appeal No.120/2006 submitted that the prosecution has failed to examine one Lallaram, who is also said to be present at the time of the incident. It is also submitted that the seizure has not been proved by the prosecution and the statement of Tularam has been wrongly treated to be dying declaration, which is Ex.P-40, as the same was recorded by the Investigating Officer (PW-14) and there is no authentication by the Medical Officer that he was in a fit state of mind to make statement. It is also contended that from the evidence, the prosecution could only establish case at the most against accused Asghar Ali, Ahmad Ali and Dharmendra and not against the others, as the allegations against the others are neither corroborated with ocular and medical evidence.

9. In Cri. Appeal No.193/2006, learned counsel for the appellant submitted that the statement of the deceased has been wrongly relied by the trial court as dying declaration (Ex.P-40). He also submitted that the seizure has not been proved by the prosecution and the same is contrary to the provisions of the Code of Criminal Procedure. It is contended by him also that Ex.P-40 could not have been considered to be a dying declaration in absence of recording any authentication by the medical officer about the state of mind of the deceased. He relied on the judgment passed by the Supreme Court in the cases of *Laxman Vs. State of Maharashtra*, 2002 (6) SCC, 710, *Anup Singh alias Appu and others Vs. State of Uttaranchal*, 2006(1) Crimes 233 and *Subhash Vs. State of Haryana*, 2011(2) SCC 715 in support of his contention that the dying declaration even recorded by the Magistrate has not been relied by the Supreme Court as there was no certification or authentication by the Doctor about the state of mind of the deceased. He also contended that the seizure of the weapons has not been proved as the seizure witnesses have been declared hostile. He has further contended that in the knife recovered from appellant Dharmendra, the presence of human blood has been proved but the prosecution has not specified the blood group, therefore, the prosecution has failed to establish its case.

10. In Cri. Appeal No. 129/2008 filed by appellant Vijay Singh, learned counsel for the appellant submitted that the appellant was not absconding but

he was in custody in other case and there is no evidence at all against Vijay Singh.

11. Per contra, learned counsel for the State submits that there is no illegality in the order of conviction and sentence. The prosecution case is based on the testimony of eye witnesses PW-10 Usha Bai and PW-11 Lallu Vishwakarma. Their testimony cannot be disbelieved because of only minor contradictions. It is further contended that the statement of the deceased recorded by the Police Officer before his death has rightly treated to be dying declaration after his death. It is also submitted that the seizure of the weapons used in the commission of offence has been proved by the Investigating Officer. It has been further contended that the non- explanation of human blood on weapon is a circumstance against the accused and in a case of direct evidence based on eye witnesses, on the said ground, the prosecution case would not fail.

12. After having heard the learned counsel for the parties, before adverting to the contentions raised by the counsel for the appellants, it is condign to first scan the testimony of eye witnesses PW-10 Usha Bai and PW-11 Lallu Vishwakarma.

13. PW-10 Usha Bai stated that she knows accused Ahmad, Asghar Ali, Ravi and Kaneeja Bi and not the others but she has said that she also knows other accused persons by names. She has deposed that when she was getting wall constructed with the help of deceased Devi Singh alias Tillu, appellants Ahmad and Kaneeja Bi came at the spot and said that wall would not be allowed to be constructed. Accused Ahmad hit Tularam with the help of lathi and thereafter her son Asghar shouted to kill him and on his shouting, all the accused persons came at the spot with lathi, rod and pipe and they started beating the deceased persons. She has also stated that when she tried to stop Ahmad from hitting the deceased, she was also abused and was asked to run away from the spot and thereafter she had seen the incident from some distance. She has stated that all the accused persons thereafter continued to beat the deceased persons and were thrown on the field. According to her Tillu died at the spot itself but Tularam was alive. She has stated that with Lalaram, she had gone to Police Station Kamla Nagar, Bhopal from where they were sent for treatment to the Hamidiya Hospital, Bhopal. But, Tillu could not reach hospital and he died on the way itself. She has admitted her thump (sic:thumb) impression on police report Ex.P-7. Tularam also died during his treatment in the hospital after about 2 days.

14. Another eye witness PW-11 Lallu Vishwakarma has supported the prosecution case. He has stated that he was in Bhero Baba temple and heard the shoutings and reached at the spot. He also stated that Amhad (sic:Ahmad) came with lathi and hit deceased Tillu. He said that wall would not be allowed to be constructed. He made statement that all the accused persons came at the spot and started beating Tillu and one another person. Though he could not see that who had beaten whom but he said that they were armed with lathi, knife, Rod, pipe and all were beating the deceased persons. Thereafter he has gone to the police station alongwith PW- 10 Usha Bai and both the victims were taken on Auto . He has stated that Tillu was badly wounded and Tularam had head injury. The victims were taken to the hospital. He admitted his signature on seizure memo by which knife was recovered on the discovery statement of accused Dharmendra. He made statement that he did not remember which weapon was seized from which accused person. Further he admitted his signatures on the arrest memo and the seizure memo Ex.P-22 to Ex.P-24.

15. Learned counsel for appellant Dharmendra submitted that PW-10 Usha Bai has not stated about her presence at the spot. But, in para-5 of her deposition, she had admitted her thump (sic:thumb) impression on Ex.P-7 and stated that the police had recorded the names of those persons, whose names she had narrated to the police. However, the presence of appellant Dharmendra with knife has been proved by the testimony of PW-11 Lallu Vishwakarma and from his cross examination, no reason for falsely implicating accused Dharmendra has been suggested. Further the testimony of these eye witnesses gets corroborated with the medical evidence of PW-4 Dr. R.S.Vijayvargiya. He has stated that he was posted on duty as Medical Officer and deceased Devi Singh alias Tillu was brought for examination and he had found that stab injury on his chest and the blood was oozing out from the same. He has also stated that there were 3 stab wounds on his abdomen and since the treatment was not possible in the said hospital, therefore, he was referred to Hamidiya Hospital for treatment. MLC report prepared by him is Ex.P-5, which bears his signature. He had also examined other deceased Tularam and he had found lacerated wound of 1x1 cm. On the back side of the head and another wound 1x1 cm. on the upper portion of the left ear. Both injuries were of serious nature and could have been caused by hard and blunt object. His MLC report is Ex.P-6. PW-13 Dr.C.S.Jain had carried out the postmortem of deceased Devi Singh alias Tillu. He found 4 incised wounds

on the abdomen and two lacerated wounds on the head. There was lacerated wound 3.8x0.6 cm. on the left side of the head and below the said wound, the skull was broken to the extent of 6 cm. which was in parietal portion. On the head in parietal area, he has also found on the right side 6x0.6 cm lacerated wound and below the same skull was broken to the extent of 7 cm.. In the abdomen also, he had found one incised wound 4x0.5/5 cm. The other wounds were also found on the right side of the abdomen and the left side there were as many as 3 incised wounds on the abdomen area. The cause of death was because of the excessive bleeding and shock on account of the cumulative effect of all the injuries. Other deceased Tularam was examined by Dr. Neelam Shrivastava, (PW-15), who was posted as Medical Officer in Medico Legal Institute, Bhopal. He has found injuries on left temporal parietal region 5.5 cm. above the ear. There was also blood clotting and there was diamond shaped fracture of 12x4.5 cm. There were multiple fractures and there was blood clotting also. He also opined that the cause of death was of the head injury and the multiple injuries received by the deceased. Thus, the testimony of eye witnesses PW-10 Usha Bai and PW-11 Lallu Vishwakarma is corroborated with the medical evidence of Dr.C.S.Jain and PW-15 Dr. Neelam Shrivastava.

16. During the course of treatment, statement of Tularam was recorded by Investigating Officer Girish Bohre (PW-14). He stated that Ahmad Ali along with his wife Kaneeja Bi came at the spot and said that they would not allow to construct the wall. On being objected by deceased Tillu, other accused persons, Vijay Singh, Ravi Kumar Asghar Ali, Dharmendra, Kachchu alias Ramswaroop and Ballu came at the spot and they shouted to kill him. According to him Tillu ran from the spot in order to save himself in one hut belonging to one Bhero but all the accused persons had entered into the said hut and Tillu was surrounded by all of them. He made specific allegation that Dharmendra was having knife in his hand and had given knife blow on the stomach of deceased Tillu and convict Ashgar Ali had also caused injury to deceased Tillu with the help of knife. Asghar Ali had repeated the knife blows and thereafter other accused persons Ahmad, Kaneeja Bi, Baloo, Vijay, Ravi and Kachchu had also beaten the accused persons with the help of fist and lathi. The Investigating Officer (PW-14) in regard to the recording of the statement of Tularam stated in para-16 that while recording the statement of the deceased, he had not taken any permission/opinion of the Doctor. He has denied that he had any knowledge that the injury of Tularam on the head was

serious and may prove to be fatal. He recorded the statement because he did not consider the injuries and the condition of deceased Tularam as critical and therefore, the dying declaration was not got recorded after taking opinion about the fitness of the state of mind of the deceased.

17. Thus, in the present case in addition to the ocular and medical evidence, there is also statement of one of deceased Tularam on record. In addition to that, the seizure of the weapons have been proved by the Investigating Officer PW-14, though seizure witnesses have not supported the prosecution case. In the knife recovered on the statement of Dharmendra, human blood has also been found to be present, though in other seized weapons, the human blood has not been confirmed in the FSL report.

18. On the scanning of the testimony of eye witnesses PW-10 Usha Bai and PW-11 Lallu Vishwakarma, we find that there are specific allegations against 3 accused persons namely Dharmendra, Asghar Ali and Ahmad Ali. One of the accused person Ramswaroop has been tried as a juvenile. Against appellant Kaneeja Bi, there is no allegation that she was present armed with any weapon and any overt act has been done by her.

19. Learned counsel for these 3 appellants submitted that their conviction is not sustainable because the statement of Tularam is not admissible as dying declaration in absence of certification of Doctor regarding his state of mind. Learned counsel for the appellants relied on the judgment passed by the Apex Court in the case of *Laxman Vs. State of Maharashtra* (2002) 6 SCC 710. In that case, the Court has held that the dying declaration recorded by the Magistrate cannot be disbelieved merely because of the absence of Doctor's certification as to the fitness of the declarant's state of mind. The evidentiary value of such a declaration would always depend on the facts and circumstances of the particular case. Learned counsel for the appellants further relied on the judgment passed by the Apex Court in the case of *Subhash Vs. State of Haryana* (2011) 3 SCC 715, where the conviction was set aside in a case of offence under Sections 306 and 498-A. The dying declaration recorded by the Sub Divisional Magistrate was not found to be reliable in the facts of the said case. The said case was of death by burning and on earlier occasion, despite repeated efforts by the Investigating Officer, the statement of the victim could not be recorded because of her incapability to make statement. The dying declaration was not found to be trust worthy. In the case of *State of U.P. Vs. Ameer Ali* (1996) 8 SCC 523, the court held that the statement

recorded by the Investigating Officer under 161 CrPC was found to be trustworthy because the said statement of the deceased recorded by the Police Officer was well corroborated with the testimony of other witnesses and the dying declaration made earlier. The Apex Court also held that it is not necessary that the dying declaration should be in form of question and answer. In the facts and circumstances of the case, the statement of the deceased recorded by the Police Officer corroborated with the other evidence was relied for the purpose of conviction.

20. Thus, we do not find any merit in the contentions of the learned counsel for the appellants that the statement of the deceased recorded by PW-14 could not have been referred and relied by the trial court. Even otherwise in the present case, the conviction is not based only on that evidence but there is direct evidence of PW-10 Usha Bai and PW-11 Lallu Vishwakarma corroborated with the medical evidence as well. The other contention of the counsel for appellant Dharmendra that the seizure has not been proved, though he referred to the certain provisions of the Criminal Procedure Code but however, in the present case, the weapon was seized on the disclosure statement of accused Dharmendra and therefore, the recovery of the fact is admissible under Section 27 of the Indian Evidence Act. The seizure of the weapon has been proved by the Investigating Officer, PW-14. The Apex Court in the case of *Madan Singh Vs. State of Rajasthan* 1978(4) SCC 435 and in the case of *Anter Singh Vs. State of Rajasthan*, 2004(10) SCC 657 has held that the recovery can be proved by the evidence of the Investigating Officer.

21. The other contention of the learned counsel for the appellant appearing for Dharmendra that though human blood has been found on the weapon of the appellant, but blood group has not been specified by the prosecution, therefore, the entire prosecution case fails also has no merit. He has relied the judgment passed in the case of *Raghunath Vs. State of Haryana and another* (2003)1 SCC 398. The present case is of direct evidence, where two eye witnesses have been examined by the prosecution. The presence of appellant Dharmendra has been established by PW-11 Lallu Vishwakarma with weapon and thereafter the seizure of weapon on the disclosure statement has also been proved by the Investigating Officer. Thus, in the facts of the present case, the judgment passed by the Apex Court in the case of *Raghunath*(supra) would not of any assistance. However, the Apex Court in

the case of *Raja alias Rajinder Vs. State of Haryana*, 2015(11) SCC 43 held that non-explanation of human blood on weapon of crime is a circumstance against the accused. In the facts of the present case, non-explanation of blood group on the weapon seized from Dharmendra would not be fatal.

22. On close scrutiny of the entire evidence, we find that the prosecution has successfully proved its case against appellants Dharmendra Kumar, Asghar Ali and Ahmad. Against appellant Kaneeja Bi, except her presence at the spot, no allegation has been made. Against appellant Vijay Singh, no evidence has been found alleging any kind of overt act against him. In the facts of the present case, it is not established that there was any common object formed to murder the deceased persons with any planning. The accused persons gathered at the spot and the incident took place because of the continuation of the construction of a wall despite being stopped by the accused persons.

23. On scanning of the entire evidence available on record, we find that appellants Asghar, Ahmad and Dharmendra have committed murder of Tillu alias Devi Singh and Tularam in furtherance of common intention and therefore, they are convicted under section 302 r/w 34 of IPC instead of 302/149 of IPC and they are sentenced to imprisonment for life and fine of Rs.5000/-, in default of fine, further R.I. for one year. Our view is fortified by the judgments passed by the Apex Court in the case of *Nethalal Pothuraju and others Vs. State of Andhra Pradesh* (1992) 1 SCC 49, *Hamlet alias Sasi and others Vs. State of Kerala* (2003) 10 SCC 108 and *Dhari and others Vs. State of Uttar Pradesh* (2012) 10 SCC 256. These appellants are acquitted u/s 147 and 148 IPC. The other appellants are acquitted of charges u/s 147, 148 and 302/149 IPC.

24. There is no appeal filed on behalf of some of the accused persons Ravi Kumar Boddh and Ballu Kumar Nagvanshi. However, since we have considered the entire evidence and we have found that there is no evidence against these two convicts also, we extend the benefits of these two persons. We have considered the entire evidence available on record while examining the criminal appeals filed on behalf of these appellants/convicts. The question arises whether benefits can be extended to non-appealing co-convicts, if the court has come to the conclusion that there is no evidence against them. This question has been considered by the Apex Court in the case of *Sahadevan and another Vs. State of Tamil Nadu* (2012) 6 SCC 403, and held as under:

"41. Under the Indian criminal jurisprudence, an accused is presumed to be innocent until proven guilty and his liberty can be curtailed by putting him under imprisonment by due process of law only. If the entire case of the prosecution has been found to be unreliable and the prosecution as a whole, has not been able to prove its case beyond reasonable doubt, then the benefit should accrue to all the accused persons and not merely to the accused who have preferred an appeal against the judgment of conviction."

Relying on the previous judgments passed in the case of *Raja Ram Vs. State of M.P.* (1994) 2 SCC 568, *Bijoy Singh Vs. State of Bihar*, (2002) 9 SCC 147, *Pawan Kumar Vs. State of Haryana* (2003) 11 SCC 241, *Madhu Vs. State of Kerala* (2012) 2 SCC 399 and *Gurucharan Kumar Vs. State of Rajasthan* (2003) 2 SCC 698 held as under:-

"46. It is very difficult to set any universal principle which could be applied to all cases irrespective of the facts, circumstances and the findings returned by the Court of competent jurisdiction. It will always depend upon the facts and circumstances of a given case. Where the Court finds that the prosecution evidence suffers from serious contradictions is unreliable, is ex facie neither cogent nor true and the prosecution has failed to discharge the established onus of proving the guilt of the accused beyond reasonable doubt, the Court will be well within its jurisdiction to return the finding of acquittal and even suo moto extend the benefit to a non-appealing accused as well, more so, where the Court even disbelieves the very occurrence of the crime itself. Of course, the role attributed to each of the accused and other attendant circumstances would be relevant considerations for the Court to apply its discretion judiciously.

47. There can be varied reasons for a non-appealing accused in not approaching the appellate Court. If, for compelling and inevitable reasons, like lack of finances, absence of any person to pursue his remedy and lack of

proper assistance in the jail, an accused is unable to file appeal, then it would amount to denial of access to justice to such accused. The concept of fair trial would take within its ambit the right to be heard by the appellate Court. It is hardly possible to believe that an accused would, out of choice, give up his right to appeal, especially in a crime where a sentence of imprisonment for life is prescribed and awarded. Fairness in the administration of justice system and access to justice would be the relevant considerations for this Court to examine whether a non-appeal. appealing could or could not be extended the benefit of the judgment of acquittal.

48. *The access to justice is an essential feature of administration of justice. This is applicable with enhanced rigour to the criminal jurisprudence. Where the court disbelieves the entire incident of the occurrence or where the role of the accused who has not appealed is identical to that of the other appealing accused or where the ends of justice demand, the Court would not hesitate and, in fact, is duty bound, to dispense justice in accordance with law. The powers of this Court, in terms of Articles 136 and 142 on the one hand and the rights of an accused under Article 21 of the Constitution on the other, are wide enough to deliver complete justice to the parties. These powers are incapable of being curtailed by such technical aspects which would not help in attainment of justice in the opinion of the Court. In light of the above principles, this Court is required to consider the effect of these judgments on the case of the non-appealing accused in the present case."*

25. In view of the facts, circumstances and the analysis of the entire evidence non-appealing co-convicts Ravi Kumar Boddh, S/o Bhagwan Singh and Ballu Kumar Nagvanshi, S/o Omkar Prasad, in S.T.No. 113/2005 are also entitled to the benefit of acquittal. Accordingly, appellants Asghar Ali, S/o Ahmad Ali and Ahmad Ali, S/o Ikram Ali of Cri.Appeal No.120/2006 and appellant Dharmendra Kumar alias Dhammu in Cri. Appeal No. 193/

2006 are convicted under Section 302/34 of IPC and sentenced to RI for life and fine of Rs.5000/-, in default to fine amount, further RI for one year. Other appellants are acquitted for commission of offence under sections 147, 148 and 302/149 of IPC namely appellant No.3 Kaneeja Bi in Cri.A.No.120/2006, appellant Vijay Singh in Cri.Appeal No.129/08 and non-appellants Ravi Kumar Boddh, S/o Bhagwan Singh and Ballu Kumar Nagvanshi, S/o Onkar Prasad tried as accused Nos. 5 and 6 in ST No.113/2005 are acquitted of all the charges. The appellants, who have been acquitted be set at liberty forthwith, if not warranted in any other case.

26. Before parting, we must put on record our unreserved appreciation for the valuable assistance rendered by the learned *amicus curiae*. The High Court Legal Services Authority shall remit fee of Rs.4000/- (Rs. Four thousand) to the learned counsel assisted this court.

27. Accordingly, all the appeals are disposed of.

Order accordingly.

**I.L.R. [2017] M.P., 3094
APPELLATE CRIMINAL**

Before Mr. Justice S.K. Seth & Smt. Justice Anjuli Palo
Cr.A. No. 1684/2017 (Jabalpur) decided on 19 December, 2017

BHAGCHANDRA

...Appellant

Vs.

STATE OF M.P.

...Respondent

(Alongwith Cr.Ref. No. 03/2017)

A. Penal Code (45 of 1860), Section 302 – Triple Murder – Death Sentence – Appreciation of Evidence – Testimony of Related Eye-Witnesses – Held – Brutal murder of three persons by cutting their neck by axe in preplanned manner – No substantial contradiction and omission in testimonies of related eye witnesses and thus reliable – Ocular evidence duly corroborated by medical evidence – Conviction and death sentence upheld – Appeal dismissed. (Paras 32, 35, 36 & 47)

क. दण्ड संहिता (1860 का 45), धारा 302 – तीन हत्या – मृत्युदण्ड – साक्ष्य का मूल्यांकन – संबंधी चक्षुदर्शी साक्षीगण का परिसाक्ष्य – अभिनिर्धारित – तीन व्यक्तियों की, पूर्वनियोजित ढंग से कुल्हाड़ी द्वारा उनकी गर्दन काटकर

पारिविक हत्या – संबंधी चक्षुदर्शी साक्षीगण के परिसाक्ष्य में कोई सारभूत विरोधाभास एवं लोप नहीं एवं इसलिए विश्वसनीय – चाक्षुष साक्ष्य, चिकित्सीय साक्ष्य द्वारा सम्यक् रूप से संपुष्ट – दोषसिद्धि एवं मृत्युदण्ड कायम रखा गया – अपील खारिज।

B. Penal Code (45 of 1860), Section 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Information to Magistrate – Held – Non-compliance of Section 157 Cr.P.C. is not sufficient to ignore the whole prosecution evidence. (Para 29).

ख. दण्ड संहिता (1860 का 45), धारा 302 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – मजिस्ट्रेट को सूचना – अभिनिर्धारित – द.प्र.सं. की धारा 157 का अननुपालन संपूर्ण अभियोजन साक्ष्य को अनदेखा करने हेतु पर्याप्त नहीं है।

C. Penal Code (45 of 1860), Section 302 – Eye Witnesses and DNA Profile – Held – Due to less quantity of blood on incriminating articles, DNA profile not detected and was not sufficient to match, merely on this ground, testimony of eye witnesses cannot be discarded. (Para 31).

ग. दण्ड संहिता (1860 का 45), धारा 302 – चक्षुदर्शी साक्षीगण एवं डी.एन.ए. प्रोफाइल – अभिनिर्धारित – अपराध में फँसाने वाली वस्तुओं पर रक्त की कम मात्रा के कारण, डी.एन.ए. प्रोफाइल का पता नहीं लगा तथा मेल करने के लिए पर्याप्त नहीं था, मात्र इस आधार पर, चक्षुदर्शी साक्षीगण का परिसाक्ष्य अस्वीकार नहीं किया जा सकता।

D. Penal Code (45 of 1860), Section 302 – Death Sentence – Considerations – “Rarest of Rare” Case – Held – Now-a-days reformatory ideas are totally ineffective – Justice demands that Court should impose punishment befitting the crime so that it reflects public abhorrence of crime – Instant case falls in category of “rarest of rare” case – Considering all aggravating and mitigating circumstances in the case, death sentence confirmed. (Paras 44 to 47)

घ. दण्ड संहिता (1860 का 45), धारा 302 – मृत्युदण्ड – विचार में लिया जाना – “विरल से विरलतम” प्रकरण – अभिनिर्धारित – आजकल सुधारात्मक विचार पूर्ण रूप से अप्रभावी हैं – न्याय की मांग है कि न्यायालय को अपराध के लिए उचित दंड अधिरोपित करना चाहिए, ताकि यह अपराध के प्रति सार्वजनिक घृणा को प्रतिबिंबित करे – वर्तमान प्रकरण “विरल से विरलतम” प्रकरण की श्रेणी में आता है – प्रकरण की सभी गुरुतरकारी तथा गंभीरता कम करने वाली परिस्थितियों पर विचार करते हुए, मृत्यु दण्ड की पुष्टि।

Cases referred :

2017 (2) MPLJ (Cri.) SC 344, (2003) 6 SCC 380, (2003) 7 SCC 56, 2017 Cri.L.J. 1487, 2017 (2) MPLJ (Cri.) 305, AIR 1999 SC 3544, 2016 (2) SCC 607, (1999) SCC (Cri.) 334, AIR 1980 SC 898, AIR 1983 SC 957, (2015) 3 SCC (Cri.) 326, (2017) 6 SCC 1.

Anoop Kumar Saxena, for the appellant in Cr.A. No. 1684/2017 and for the respondent in Cr.Ref. No. 03/2017.

S.K. Rai, G.A. for the respondent/State in Cr.A. No. 1684/2017.

S.K. Rai, G.A. for the State in Cr.Ref. No. 03/2017.

J U D G M E N T

The Judgment of the Court was delivered by :
SMT. ANJULI PALO, J. :- The criminal appeal (CRA 1684/2017) has been preferred by the accused being aggrieved by the judgment and findings dated 04.04.2017 passed by the Second Addl. Session Judge, District Chhattarpur in Session Trial No. 05/2016 whereby the appellant has been convicted and sentenced as below :

Section	Act	Imprisonment	Fine	In default of fine
302	Indian Penal Code	Death Sentence	-	-
302	Indian Penal Code	Death Sentence	-	-
302	Indian Penal Code	Death Sentence	-	-
201	Indian Penal Code	RI for 7 years	2000/-	S.I. for 3 months
506-B	Indian Penal Code	RI for 7 years	-	-

2. The Second Addl. Sessions Judge, Chhattarpur also made reference to this Court under Section 366(1) of Cr.P.C. for confirmation of order of capital punishment of death awarded to the appellant. Thus, by this common order we propose to decide the aforesaid criminal appeal and criminal reference.

3. It is not in dispute that appellant Bhagchandra is the real brother of deceased Thakur Das and Devki Prasad and deceased Akhilesh was the son of Devki Prasad i.e. nephew of the appellant. Kiran Patel (PW-1) is the wife of deceased Devki Prasad. Urmila (PW-2) and Kamlesh (PW-3) are the daughter and son of deceased Devki Prasad and Kiran Patel (PW-1).

4. The prosecution case in nutshell is that, the deceased Thakur Das, deceased Devki Prasad and his son deceased Akhilesh resided together at village Pur under the Police Station Maharajpur, District Chhatarpur. The appellant resided in their neighborhood. On 11.10.2015 at about 5:00-5:30 am, complainant Kiran the wife of deceased Devki Prasad (PW-1) had gone to attend call of nature. While she was returning, she saw the appellant armed with axe getting out of her house. The appellant had enmity with them, therefore, she suspected of some unpleasant incident. She immediately went inside the house and saw Thakur Das (her elder brother-in-law) lying dead, covered with blood and his neck was detached from the body. She also found her son dead. She immediately went looking for her husband Devki Prasad who was sleeping in the field behind the house. She rushed to the field and saw the appellant assaulting her husband Devki with the axe. She tried to stop him but the appellant threatened to kill her. She somehow succeeded to escape. In the meanwhile, family members and neighbours gathered at the spot and found that the appellant had cut the neck of Thakur Das, Devki Prasad and Akhilesh. All of them had died on the spot. Immediately FIR was lodged by Kiran (PW-1) at Police Station, Maharajpur. Merg was registered. After inquest report Crime No. 187/2015 was registered by the police against the appellant. After investigation, chargesheet has been filed before the concerned Court and case was committed to the Session Court.

5. The Court of Second Additional Session Judge framed charges against the appellant under Sections 302 (three counts), 201 and 506 Part-II of the Indian Penal Code. The appellant abjured his guilt and pleaded that he was falsely implicated by Kiran (PW-1) to grab the property.

6. After considering the entire prosecution evidence, the learned trial Court found the appellant guilty of committing the offences. Hence, awarded sentence as mentioned at paragraph one. The learned trial Court made reference to this Court for confirmation of order of capital punishment awarded by the trial Court.

7. The appellant challenged the impugned judgment and sentence on the grounds that there is no direct evidence against him. The testimony of eye-witness is contradictory with the medical evidence. The appellant had no motive to kill the deceased persons. The conclusions of trial Court are contrary to law, facts and circumstances. Hence, the appellant is liable to be acquitted. The appellant also submits that this case is not covered under the category of

“the rarest of rare”. The learned trial Court erred in law and facts in convicting the appellant. It is not just and proper, therefore, unsustainable in the eyes of law.

8. We have heard rival submissions at length. Perused the record.

9. Learned Government Advocate appearing on behalf of the State vehemently opposed the contentions raised by the counsel for the appellant.

10. The questions for consideration before us are as follows :

- (i) Whether the evidence on record is sufficient to convict the appellant in the aforesaid offences?
- (ii) Whether the case is covered under the category of “the rarest of rare”?

11. After perusal of the entire record, we come to the conclusion that the case is not based only on circumstantial evidence but on direct evidence of eye witnesses Kiran Patel (PW-1), Urmila (PW-2), Kamlesh (PW-3) and Rakesh Vishwakarma (PW-7).

12. Urmila Patel (PW-2) is the daughter and Kamlesh (PW-3) is the son of deceased Devki Prasad, and brother & sister of deceased Akhilesh. The deceased Thakur Das was the elder brother of deceased Devki Prasad. It is not disputed that they all resided together at the time of incident. The incident took place between 5:00 am to 5:30 am. At that time, their presence on the spot is natural. Urmila (PW-2) is 11 years old and Kamlesh (PW-3) is 12 years old. Although, they are child witnesses but they are old enough to understand the incidents happening in their surroundings. It is not challenged by the appellant that all the victims died on the spot, as a result of fatal injuries on their vital parts by axe.

13. Urmila (PW-2) has stated that at the time of incident, she was plastering the *chulah* (hearth) when she heard noises she came out. She saw the appellant brutally assaulting (cutting) Thakur Das with an axe. Her elder brother Akhilesh was sleeping nearby. Urmila (PW-2) and Kamlesh (PW-3) tried to awake him but he did not wake up. Then the appellant also hit Akhilesh on his neck with the axe and repeatedly inflicted blows on his body.

14. Urmila (PW-2) and Kamlesh (PW-3) further stated that, the appellant also tried to caught hold of Kamlesh (PW-3) but he and his sister Urmila ran

towards their neighbour Kamlesh Patel (PW-6) s/o Gulabchandra Patel. They went inside the house of Kamlesh Patel. Kamlesh Patel (PW-6) came to know about the incident from Urmila (PW-2) and Kamlesh (PW-3). But due to fear they did not come out to help. The testimony of Urmila (PW-2) and Kamlesh (PW-3) and Kamlesh (PW-6) have corroborated with each other.

15. In case of *Baleshwar Mehto Vs. State of Bihar* [2017 (2) MPLJ (Cri.) SC 344], the High Court of Patna has held as under -

“Eyewitnesses’ account would require a careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility.”

16. In case of *Thaman Kumar vs. State of Union Territory of Chandigarh* [(2003) 6 SCC 380] and *Krishnan Vs. State* [(2003) 7 SCC 56], the Hon'ble Supreme has held as under :

“The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts the 'credit' of the witnesses; their performance in the witnessbox; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”

17. In the light of the above principles, we find the testimony of all these three witnesses trustworthy.

18. Appellant has not challenged the fact that, at the time of incident Devki Prasad was sleeping in the field. As per Kiran (PW-1), wife of deceased Devki Prasad while she was returning from outside, she saw the appellant coming out of her house armed with an axe. In apprehension, she ran inside the house and saw Thakur Das and her son Akhilesh lying dead. The head of Thakur Das was detached from his body and Akhilesh also sustained neck and head injury. Kiran (PW-1) corroborated the testimony of Urmila (PW-2) and Kamlesh (PW-3) and Kamlesh s/o Gulabchandra Patel (PW-6) that Urmila (PW-2) and Kamlesh (PW-3) escaped from the incident and ran towards

their neighbour house. When Kiran Patel (PW-1) saw the appellant going towards the field, she went after him and saw the appellant assaulting her husband Devki Prasad with an axe. She tried to stop the appellant but, he threatened to kill her. Thereafter, she started shouting and ran away. On the way, Kiran Patel (PW-1) met Rakesh Vishwakarma ((PW-7). Later, Rammilan (PW-4), Khillu Patel (PW-5), Kamlesh Patel (PW-6) and other villagers came to her house. Rakesh (PW-7) duly corroborated the testimony of Kiran Patel (PW-1). We find that Rakesh witnessed the incident from about 10-15 feet distance. His presence is found reliable.

19. Learned counsel for the appellant contended as to why the witnesses did not try to rescue the victims. At the time of incident, the appellant was in a fit of rage, armed with axe who had slit the throats of three persons. In such a situation, no one would dare to face him or rescue the victims.

20. Learned counsel for the appellant submitted that the appellant has been falsely implicated by Kiran, the wife of deceased Devki Prasad to get his property. Kiran Patel (PW-1) stated that few years ago, deceased Thakur Das was residing with the appellant. The appellant wanted to hold possession of the land and tractor belonging to Thakur Das. Thakur Das refused to give away the property. Thereafter, appellant sent Thakur Das out of his house. On the other hand, Kiran (PW-1) deposed that six months prior to the incident, Thakur Das started residing with his brother Devki Prasad and Kiran Patel. Appellant thought that Thakur Das would give his property to Devki Prasad, therefore, he killed Thakur Das, Devki Prasad and Akhilesh. This contention of Kiran Patel (PW-1) is supported by Rammilan (PW-4) and Khillu Patel (PW-5), both neighbours of the deceased persons as well as the appellant. They were residing in the same village hence, were in knowledge of these facts. An alternate plea has been taken by the appellant that deceased Thakur Das had illicit relation with his wife. But in this regard no suggestion has been given by the learned counsel for the appellant to any witness nor any evidence is adduced by him, hence the evidence of witnesses cannot be discarded.

21. It is also important to note that the testimony of Kiran Patel (PW-1), Rammilan (PW-4) and Khillu Patel (PW-5) with regard to the land dispute between the appellant and his brothers is unchallenged. In their cross-examination which establishes the motive of the appellant to commit such crime. Learned counsel for the appellant alleged that in this case, all the witnesses are close relatives of the deceased. But, it is also important to note that they

are also relatives of the appellant. Infact, the relatives are more interested to implicate the real culprit of the crime. They will not spare the real culprit and falsely implicate their own relatives or other innocent persons.

22. In case of *Roop Narain Mishra Vs. State of UP* [2017 Cri.LJ 1487] has held as under :

“On the point of 'interested witnesses', the Hon'ble Supreme Court in *State of U.P. v. Jagdeo*, reported in 2003 Cri LJ 844 (SC) observed that only on the ground of interested or related witnesses, their evidence cannot be discarded. Most of the times eye witnesses happen to be family members or close associates because unless a crime is committed near a public place, strangers are not likely to be present at the time of occurrence.

In *Mst. Dalbir Kaur v. State of Punjab*, 1976 Cr LJ 418 (SC), following observations were made:

The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused is somehow or the other is convicted either because he had some animus with the accused or for some other reason. In the reported case the incident took place at midnight inside the house, the only natural witnesses who could be present to see the assault were the persons present in the house at that time. No outsider can be expected to have come at that time because the attack was sudden. Moreover a close relative who is a very natural witness cannot be regarded as an interested witness.

Witness who gives details with absolute accuracy is trustworthy.”

[See also *Waman and others v. State of Maharashtra*, 2011 Cri. LJ 4827].

23. In case of *Arjun vs. State of C.G* [2017 (2) MPLJ (Cri.) 305], the Hon'ble Supreme Court has held as under :

“Evidence of related witness is of evidentiary value. Court has

to scrutinize evidence with case as a rule of prudence and not as a rule of law. Fact of witness being related to victim or deceased does not by itself discredit evidence.”

24. Hence, in the light of the above legal proposition, the testimony of near relatives of the deceased persons is rightly relied by the trial Court. We are not inclined to discard the same.

25. Learned counsel for the appellant also stated that there are many contradictions and omissions in the testimony of those witnesses. But, on consideration of the entire evidence and the facts & circumstances of the case, we do not find any substantial contradiction or omission in their statements, but we find that the testimony of eye-witnesses is fully reliable. We rely upon the case of *Rammi Vs. State of MP* (AIR 1999 SC 3544), wherein the Hon'ble Supreme Court has held as under :

“When eye-witness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.”

26. The FIR was lodged promptly by Kiran (PW-1), wife of deceased Devki Prasad which is established by Sub-Inspector Shahjad (PW-18). The FIR (Exh. P/22) has been lodged on 11.10.2015 at about 7:40 am i.e. within two hours of the incident which took place between 5:00 am to 5:30 am. The distance from the scene crime to the police station is about 6 kms. The FIR was lodged against the appellant. Facts of the FIR are fully corroborated by the eye-witnesses, hence the prosecution case is duly proved and found reliable.

27. Learned counsel for the appellant urged that compliance of Section 157 of Cr.P.C. is not proved in the case. Copy of FIR was sent to the concerned magistrate after 24 hours of the incident. The FIR was lodged as an afterthought

against the appellant. Therefore, the prosecution case cannot be relied upon.

28. The Hon'ble Supreme Court in case of *State of Rajasthan vs. Daud Khan* [2016 (2) SCC 607] has held as under:

The interpretation of Section 157 of the CrPC is no longer res integra. The purpose of the “forthwith” communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, the prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the investigating officer concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important for a decision in this regard.”

29. Thus, we are not inclined to accept the aforesaid contention of learned counsel for the appellant that because non-compliance of Section 157 of Cr.P.C. is not sufficient to ignore the whole prosecution evidence. The prosecution evidence duly establishes the case against the appellant.

30. On the same date of incident, statements under Section 161 of Cr.P.C. of Kiran Patel (PW-1), Kamlesh (PW-3), Urmila (PW-2), Rammilan (PW-4), Khillu (PW-5), Matadeen (PW-9), Kamlesh S/o Gulabchandra Patel (PW-6), Gulabchandra (PW-8), Rakesh Vishwakarma (PW-7), Kisia Bai were recorded by Investigating Officer Shahjad Singh (PW-18). No suggestion has been given to him that, the statements have been recorded belatedly. This fact wash away any doubt with regard to the contention that the FIR was lodged as an afterthought and not on 11.10.2015.

31. Investigating Officer Shahjad Singh (PW-18) recorded memorandum statement of the appellant Exh. P/10 before Lachhi Ram (PW-12) and Gulabchand (PW-8). Thereafter, a bloodstained axe (Article A) was recovered

from the field of the appellant vide seizure memo (Exh. P/12). The police also recovered bloodstained clothes (Article B & C) of the appellant vide seizure memo (Exh. P/11). This fact was corroborated by panch witness Lachhiram (PW-12) and Gulabchand (PW-8). In the FSL report, low DNA mixed profile was detected on the source of Article R (axe). Similarly, they found non-amplifiable very low DNA detected from the source of Article B, D, F & Q. We are of the considered view that due to less quantity of blood present over the incriminating articles or otherwise, the DNA profile was not detected in the source of articles, not sufficient enough to match. Hence, merely on this ground, the testimony of eyewitnesses cannot be brushed aside or discarded.

32. The ocular evidence is duly corroborated by the medical evidence. Dr. Mahesh Dixit (PW-14), Dr. Sunil Chourasia (PW-15) and Dr. N.K. Gupta (PW-16) conducted the autopsy of all the three deceased persons on the same day of incident i.e. on 11.10.2015. Dr. Mahesh Dixit (PW-14) who conducted post-mortem of the body of Devki Prasad found the following injuries :

- (i) Neck is detached from trunk except thin tag of skin attached on posterior side of neck
- (ii) Cervical vertebra fractured and cutted.
- (iii) All major blood vessel and cervical nerves, trachea, esophagus are cutted and separated from trunk.
- (iv) Cut margin are sharp and chop type wound caused by hard and sharp object.
- (v) Incised wound is present in abdomen on left side of size 10 cm x 2.5 cm exposing peritonium.

33. Dr. Sunil Chourasia (PW-15) who conducted post-mortem of the body of deceased Thakur Das, found the following injuries :

- (i) Incised wound of size 11 cm x 4 cm present over left cervical region, margin sharp, underlying muscles, vessels and spinal cord are cut. Tissue taken from the wound.
- (ii) Incised wound of size 6 cm x 2 cm present over left shoulder underlying muscle cut.
- (iii) Incised wound of size 6 cm x 3 cm present over right cervical

region, margins sharp, underlying great vessels & muscles cut.

- (iv) Incised wound of size 10 cm x 2 cm present over left parietal occipital region of scalp, skull chopped, brain matter exposed, anteroposterior in direction.
- (v) Incised wound of 7 cm x 3 cm present over posterolateral aspect of left lumbar region. Transverse in direction.
- (vi) Incised wound of size 7 cm x 2 cm present over right paraspinal region of back – obliquely transverse in direction.
- (vii) Incised wound of size 7 cm x 2 cm present over left iliac crest, muscle exposed.
- (viii) Incised wound of size 10 cm x 0.5 cm present over left gluteal region – obliquely transverse in direction.

34. Dr. N.K.Gupta (PW-16) who conducted post-mortem of the body of deceased Akhilesh Kumar found the following injuries :

- (i) Incised wound 15 cm x 10 cm x muscle deep in right side shoulder region near neck.
- (ii) Right side clavicle muscles exposed and right carotid cut.
- (iii) Lungs exposed incised wound 13 cm x 3 cm on left side fronto parietal region.
- (iv) Incised wound of size 9 x 3 cm x bone deep on right side of occipital parietal region.
- (v) Incised wound of size 10 cm x 2.5 cm x 2.5 cm postero lateral aspect of left cervical region.
- (vi) Incised wound 12 cm x 4 cm x bone deep and 11 cm x 3 cm x bone deep at right scapular region on the backside.
- (vii) Incised wound of 5 cm x 4 cm x 3 cm on the left side shoulder region. Injuries are antemortem and homicidal in nature.
- (viii) Amputated three finger : middle, ring and index finger left side and attached by thin layer skin.

35. After perusal of all the post-mortem reports, it appear that the appellant inflicted about 7-8 fatal injuries to each of the deceased on the vital parts of their bodies. He committed murder of three persons in somewhat similar manner by cutting their neck. He repeatedly inflicted blows by the axe over the vital body parts. All the injuries and wounds were sufficient to cause immediate death of a person in ordinary course of nature. The appellant came premeditated to the spot armed with an axe to commit murder, at early morning hours i.e. 5:00-5:30 am when people are usually asleep. Thus, the act of the appellant comes under the definition of murder as prescribed under Section 300(4) of Indian Penal Code.

36. With regard to the opinion of doctor and version given by the eye-witnesses and other-witnesses, we do not find any substantial contradiction and omission which adversely affect the prosecution case. The learned trial Court has properly appreciated all the prosecution evidence in its right perspective and rightly held the appellant guilty of committing brutal murder of Thakur Das, Devki Prasad and Akhilesh Kumar.

37. We do not find any evidence with regard to offence punishable under Section 201 of IPC against the appellant. No witness stated about it therefore, in our considered view, the appellant is liable to be acquitted under Section 201 of IPC.

38. In the circumstances of the case, we find the testimony of Kiran (PW-1) is wholly reliable that during the incident when the appellant inflicted axe blow on her husband Devki Prasad, she tried to save him from the appellant. But the appellant threatened to kill her. After considering the above facts and evidence that has come on record, we find that, at that time, he had already committed murder of two person and was armed with axe. He was in anger and also wanted to kill Kamlesh, the younger son of Kiran who had a narrow escape. Thus, the act of the appellant against Kiran properly falls under the purview of offence punishable under Section 506-B of the Indian Penal Code.

39. On the above reasons, we do not see any cogent reason to interfere with judgment of trial Court regarding conviction of the appellant-Bhagchandra under Section 302 (three counts) and 506 Part-II of the Indian Penal Code. The impugned judgment is well reasoned judgment regarding conviction and sentence of the appellant in aforesaid crime. The prosecution failed to prove/establish the charge of offence punishable under Section 201 of the Indian Penal Code, hence, the appellant is hereby acquitted from the same.

40. Now the question would be whether the instant case could be one of the “rarest of rare” case warranting death penalty.

41. In case of *Omprakash Vs. State of Haryana* [(1999) SCC (Cri.) 334], the Hon'ble Supreme Court has held that:

“The Court must respond to the cry of the society and to settle what would be a deterrent punishment for what was an apparently abominable crime.”

42. The Hon'ble Supreme Court speaking through a Constitution Bench in *Bachan Singh v. State of Punjab and other* connected cases [AIR 1980 SC 898] considered the constitutional validity of death penalty for murder provided under Section 302 of IPC. After elaborate discussions, it was found that provision of death penalty as an alternative punishment for murder is not unreasonable and it is in the public interest. Therefore, it was held that the provision in Section 302 of IPC violates neither the letter nor the ethos of the Constitution. Following this decision, three Judge Bench of the Supreme Court in *Machhi Singh v. State of Punjab* [AIR 1983 SC 957] held as follows:

“In this background the guidelines indicated in *Bachan Singh's* case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from *Bachan Singh's* case:

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the ‘offender’ also require to be taken into consideration along with the circumstances of the ‘crime’;

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.”

[Also see *Muniappan Vs. State of Tamil Nadu* : (2010) 9 SCC 567, *Dara Singh Vs. Republic of India* : (2011) 2 SCC 490, *Surendra Koli Vs. State of UP* : (2011) 4 SCC 80, *Sudam Vs. State of Maharashtra* : (2011) 7 SCC 125.]

43. The accused/appellant may not be a hardened criminal, but he committed brutal murder of three persons by cutting their neck and causing several fatal injuries together in a preplanned manner, who were unarmed and sleeping. Due to which they failed to escape from the sudden and unexpected attack.

44. At the time of incident, the conduct and behaviour of the appellant clearly indicates that if Kiran (PW-1), Urmila (PW-2) and Kamlesh (PW-3) have not saved themselves, the appellant could have killed them too. We have considered all the aggravating and mitigating circumstances in the instant case.

45. In case of *Purushottam Dashrath Borate Vs. State of Maharashtra* [(2015) 3 SCC (Cri.) 326], the Hon'ble Supreme Court has held that, the age of the accused persons, their family background and lack of criminal antecedents cannot be said to be the mitigating circumstance, the nature of heinous offence and cold and calculated manner in which it was committed by the accused person. The agony suffered by the family of the victims cannot be ignored. Having regard to the nature and manner of crime, we strongly feel that, a sentence of life imprisonment would be grossly disproportionate and inadequate. It would amount to no punishment at all.

46. In case of *Mukesh Vs. State (NCT) of Delhi* [(2017) 6 SCC 1], the Hon'ble Supreme Court has held that -

“Where a crime is committed with extreme brutality and the collective conscience of the society is shocked, courts must award death penalty, irrespective of their personal opinion as regards desirability of death penalty. By not imposing a death sentence in such cases, the courts may do injustice to the society at large.”

“Question of awarding sentence is a matter of discretion and has to be exercised on consideration of circumstances aggravating or mitigating in the individual cases. The courts are consistently faced with the situation where they are required to answer the new challenges and mould the sentence to meet those challenges. Protection of society and deterring the criminal is the avowed object of law. It is expected of the courts to operate the sentencing system as to impose such sentence which reflects the social conscience of the society. While determining sentence in heinous crimes, Judges ought to weigh its impact on the society and impose adequate sentence considering the collective conscience or society’s cry for justice. **While considering the imposition of appropriate punishment, courts should not only keep in view the rights of the criminal but also the rights of the victim and the society at large.**

In *State of M.P. v. Munna Choubey and Anr.* (2005) 2 SCC 710, it was observed as under:

Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of Tamil Nadu* (1991) 3 SCC 471.

Another significant development in the sentencing policy of India is the ‘victimcentric’ approach, clearly recognised in *Machhi Singh* (Supra) and re-emphasized in a plethora of cases. It has been consistently held that the courts have a duty towards society and that the punishment should be corresponding to the crime and should act as a soothing balm to the suffering of the victim and their family. [Ref: *Gurvail Singh @ Gala and Anr. v. State of Punjab* (2013) 2 SCC 713; *Mohfil Khan and Anr. v. State of Jharkhand* (2015) 1 SCC

67; Purushottam Dashrath Borate and Anr. v. State of Maharashtra (2015) 6 SCC 652]. The Courts while considering the issue of sentencing are bound to acknowledge the rights of the victims and their family, apart from the rights of the society and the accused. The agony suffered by the family of the victims cannot be ignored in any case. In Mohfil Khan (supra), this Court specifically observed that ‘it would be the paramount duty of the Court to provide justice to the incidental victims of the crime – the family members of the deceased persons.’

47. Now-a-days reformatory ideas are totally ineffective. Justice demands that the Court should impose punishment befitting the crime so that it reflects public abhorrence of the crime. The instant case clearly comes within the category of the “rarest of rare” case. Any other punishment is absolutely inadequate. Therefore, relying upon the above observations made by the Hon'ble Supreme Court in various cases, we are not inclined to convert the capital punishment awarded to the appellant into life imprisonment. Taking into account the overall facts and circumstances of the case and the principles laid down by the Hon'ble Supreme Court in the above referred cases, death sentence awarded to the appellant should be maintained.

48. In view of the aforesaid conclusion, the appeal preferred by the appellant-Bhagchandra is hereby dismissed. The death sentence awarded by the learned Trial Court is hereby confirmed under Section 366(1) of Criminal Procedure Code.

Appeal dismissed.

I.L.R. [2017] M.P., 3110

CRIMINAL REVISION

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

Cr.R. No. 3052/2016 (Jabalpur) decided on 7 September, 2017

T.R. TAUNK

...Applicant

Vs.

STATE OF M.P. & anr.

...Non-applicants

A. Criminal Procedure Code, 1973 (2 of 1974), Section 91 and 227/228 – Production of Document – Held – At the stage of framing of charge, accused cannot invoke Section 91 to seek production of any document or submit any document in his possession to prove his defence/

innocence – Section 91 do not confer any such right on the accused – Revision dismissed. (Para 6)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 91 एवं 227/228 – दस्तावेज को प्रस्तुत किया जाना – अभिनिर्धारित – आरोप विरचित किये जाने के प्रक्रम पर अभियुक्त, अपना बचाव/निर्दोषता साबित करने के लिए किसी दस्तावेज का प्रस्तुतीकरण या उसके कब्जे का कोई दस्तावेज प्रस्तुत करने के लिए धारा 91 का अवलंब नहीं ले सकता – धारा 91, अभियुक्त को ऐसा कोई अधिकार प्रदत्त नहीं करती – पुनरीक्षण खारिज।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Framing of Charge – Considerations – At the stage of framing of charge, Court has to see whether from material produced on record it could be said *prima facie* that accused might have committed offence – Probative values of the material submitted with charge sheet is not required to be examined or evaluated under a microscope. (Para 8)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 एवं 228 – आरोप विरचित किया जाना – विचार में लिया जाना – आरोप विरचित करने के प्रक्रम पर, न्यायालय को देखना होता है कि क्या अभिलेख पर प्रस्तुत सामग्री से प्रथम दृष्ट्या यह कहा जा सकता है कि अभियुक्त अपराध कारित कर सकता था – आरोप पत्र के साथ प्रस्तुत सामग्री के प्रमाणन-मूल्य का सूक्ष्मता से परीक्षण अथवा मूल्यांकन किया जाना अपेक्षित नहीं।

Case referred :

(2005) 1 SCC 568.

Aditya Adhikari with Seema Pushkar, for the applicant.

Pankaj Dubey, for the non-applicants/Lokayukt.

ORDER

The Order of the Court was delivered by :
S.K. Sethi, J. :- In this Criminal Revision, applicant is assailing the order dated 03.09.2016 passed by the Special Judge (Prevention of Corruption Act), Bhopal whereby applications filed by the applicant under Sections 91 and 227/228 of the Code of Criminal Procedure were rejected.

Few facts which are relevant are as under:-

2. Applicant started his carrier as LDC in the establishment of District

and Sessions Judge, Bhind in the year 1964. Later on, in the year 1977 or so, he got selected in the M.P. Secretarial (Class-III) Service. Last post held by him was Under Secretary. After retirement from service, he was appointed as Enquiry Officer in a departmental Enquiry initiated against one Praveen Dubey, Front Office Assistant, Hotel Ashok Lake View Palace Bhopal. A complaint in writing was made by Praveen Dubey that applicant demanded illegal gratification through Presenting Officer in the D.E. to give a report favourable to the delinquent employee.

3. After the FIR was registered, investigation followed and upon completion thereof, charge sheet was filed against the applicant and co-accused for the alleged offences punishable under the Prevention of Corruption Act, 1988.

4. At the time of framing of charges, applicant moved applications, which were rejected by the Special Judge (Prevention of Corruption Act), Bhopal as stated above. Hence this Criminal Revision.

5. In a well considered order, the trial Judge rejected the applications holding that at the stage of framing charges, Court is required to consider only the material placed by the prosecution, and there is no provision in the Code of Criminal Procedure, 1973 giving right to the accused to place material in defence at the stage of framing of charge. That stage would come later in the trial at the time of defence. We find no fault with the view taken by the trial Court.

6. Under scheme of Code of Criminal Procedure, 1973 there is no provision like Sections 207 and 207A of the Code of 1898. Section 227 of the Code 1973 envisaged hearing submissions of the accused on the record of the case and documents submitted therewith. Expression record of the case and documents postulated in Section 227 relate to the case and documents referred in Section 209. At the stage of framing charge accused cannot invoke Section 91 to seek production of any document to prove his innocence. At the stage of framing charge, the defence of the accused cannot be put forth. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. We are fortified in taking this stand in view of the decision of the Supreme Court in the case of *State of Orissa Vs. Debendra Nath Padhi* reported in (2005) 1 SCC 568, wherein it was held as under:-

"Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If Under Section 227, what is necessary and relevant is only the material produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence."

7. In view of this, the legal position is clear that the accused cannot at the stage of framing of charge invoke Section 91 of the Code to seek production of any document or submit document in his possession to prove his defence. No such right is conferred by the Code to the accused person to prove his innocence at the stage of framing of charge. We, therefore, find no flaw with the impugned order on this count. This takes us to the next submission that

there was no evidence against the applicant.

8. We find no force in this contention of counsel for the applicant for the simple reason that Court has to see whether from material produced on record it could be said that accused might have committed offence. In this connection, Court framing charge is not record to hold a mini trial and come to the conclusion that material produced warrants conviction. At this stage the probative values of the material submitted along with charge sheet is not required to be examined or evaluated under a microscope. That stage would come later on at the time of trial. Prior to it the Court has only to see that material does make out a *prima facie* case.

9. In view of the aforesaid, we find no merit and substance in the Criminal Revision, same is accordingly dismissed.

10. Ordered accordingly.

Revision dismissed.

I.L.R. [2017] M.P., 3114

CRIMINAL REVISION

Before Mr. Justice Sheel Nagu & Mr. Justice Ashok Kumar Joshi

Cr.R. No. 880/2017 (Gwalior) decided on 18 September, 2017

RAJESH SHARMA

Vs.

STATE OF M.P. & anr.

प्र
॥ ...Applicant

॥ ...Non-applicants

A. Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) – Application by Accused – Maintainability – Held – Applicant who is an accused has no authority to file an application u/S 156(3) Cr.P.C. – Concept of bilateral participation of both rival parties i.e. prosecution and accused during process of investigation is foreign to the very concept and object of Cr.P.C. – Trial Court rightly rejected the prayer – Revision dismissed. (Para 3.11 & 3.13)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) – अभियुक्त द्वारा आवेदन – पोषणीयता – अभिनिर्धारित – आवेदक जो कि एक अभियुक्त है, को द.प्र.सं. की धारा 156(3) के अंतर्गत आवेदन प्रस्तुत करने का कोई प्राधिकार नहीं है – अन्वेषण की प्रक्रिया के दौरान दोनों विरोधी पक्षकारों अर्थात् अभियोजन एवं अभियुक्त की द्विपक्षीय सहभागिता की संकल्पना, द.प्र.सं. के मूल सिद्धांत एवं

उद्देश्य से भिन्न है – विचारण न्यायालय ने उचित रूप से प्रार्थना अस्वीकार की – पुनरीक्षण खारिज।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) – Stage of Investigation – Maintainability – Held – Apex Court concluded that invocation of Section 156(3) Cr.P.C. by Magistrate is permissible only during pre-cognizance stage – Once Magistrate takes cognizance of offence whether before or after filing of charge sheet, then Section 156(3) Cr.P.C. cannot be employed to direct investigation – In instant case, application u/S 156(3) was filed when process of investigation was on and charge sheet was not filed i.e. at the pre-cognizance stage and therefore could have been entertained. (Para 3.6 & 3.7)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) – अन्वेषण का प्रक्रम – पोषणीयता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि मजिस्ट्रेट द्वारा दं.प्र.सं. की धारा 156(3) का अवलंब केवल संज्ञान-पूर्व प्रक्रम के दौरान ही अनुज्ञेय है – एक बार मजिस्ट्रेट द्वारा संज्ञान लिये जाने पर, चाहे आरोप पत्र प्रस्तुत करने के पूर्व अथवा पश्चात्, तब अन्वेषण निदेशित करने हेतु दं.प्र.सं. की धारा 156(3) का प्रयोग नहीं किया जा सकता – वर्तमान प्रकरण में, धारा 156(3) के अंतर्गत आवेदन तब प्रस्तुत किया गया था जब अन्वेषण की प्रक्रिया चल रही थी एवं आरोप पत्र प्रस्तुत नहीं किया गया था अर्थात् संज्ञान-पूर्व प्रक्रम पर और इसलिए ग्रहण किया जा सकता था।

Cases referred :

(2015) 6 SCC 287, (2016) 3 SCC 135, W.P.No. 5746/2016 decided on 1/9/2017, 2008 AIR (SC) 907, 2017 (4) SCC 177.

Anil Mishra, for the applicant.

K.L. Gupta, Special P.P. for the non-applicants - Lokayukta Establishments.

ORDER

The Order of the Court was delivered by :
SHEEL NAGU, J. :- Revisional jurisdiction of this court u/S. 397/401 Cr.P.C. is invoked to assails the interlocutory order dated 24/7/2017 whereby the application u/S. 156(3) Cr.P.C., preferred by the petitioner who is an accused in the offence punishable u/S. 7 of the Prevention of Corruption Act 1988 (for brevity the PC Act) bearing Crime No. 244/16 has been rejected on the following two grounds:-

- (i) The application u/S. 156(3) Cr.P.C. is not maintainable on behalf of an accused (the petitioner).
- (ii) The application u/S. 156(3) Cr.P.C., vide P/2 filed by the petitioner being unsupported by an affidavit as per the verdict of the Apex court in *Priyanka Srivastava Vs. State of U.P.*, is not maintainable.

2. Brief facts giving rise to the present case are that FIR was lodged on 28/7/2016 alleging offence punishable u/S. 7 of the PC Act bearing Crime No. 244/16 against the petitioner. During pendency of the investigation in the said crime number, an application u/S. 156(3) Cr.P.C. was filed on 20/7/2017 vide P/2 alleging faulty and partial investigation causing prejudice to the petitioner-accused requesting the concerned JMFC to direct the police authority to consider exculpatory document and audio CD while investigating the crime so that the process of investigation is free from partiality. Said application u/S. 156(3) Cr.P.C. has been rejected by the trial court on the grounds enumerated above.

3. Learned counsel for the petitioner has relied upon decisions in the case of *Priyanka Shrivastav Vs. State of Uttar Pradesh & others* (2015) 6 SCC 287 (para 28) and *Pooja Pal Vs. Union of India*, (2016) 3 SCC 135 to primarily contend that the provisions of Sec. 156(3) Cr.P.C. do not bar the accused to invoke jurisdiction of the Judicial Magistrate. The sole object sought to be achieved by the said provision is to ensure free and impartial investigation and therefore the Judicial Magistrate is bound to accept any evidence related to the offence alleged irrespective of its source (prosecution or defence). It is also submitted by the learned counsel for the petitioner that true it is that the application u/S. 156(3) Cr.P.C. was not supported by an affidavit but the Trial Court on noticing the said default of the application which was merely technical in nature ought to have afforded opportunity to the petitioner to cure the defect. Not having done so, the learned Trial Court has prejudiced the petitioner/accused.

3.1 Pertinently, it is undisputed that charge-sheet has been filed and the case awaits framing of charge.

3.2 Learned counsel for the prosecution on the other hand drawing attention of this court to the application dated 19/9/2016 vide P/4 states that the prosecution had requested the petitioner to get his voice recorded so that the

original recording can be verified to instill transparency and impartiality in the process of investigation. It is submitted by the prosecution that in response the petitioner vide P/5 on 19/9/2016 declined the said request by stating that he cannot be compelled to give sample of his voice. In this background, it is submitted by the prosecution that the petitioner cannot blow hot and cold by first declining to allow recording of sample of his voice and later submitting audio CD to be considered during investigation in support of his defence.

3.3 It is further submitted that the Trial Court has rightly rejected the application u/S. 156(3) Cr.P.C., as it was not supported by any affidavit and also that the same was made on behalf of the accused for whom the provision is not available to be invoked. Reliance is placed by the learned counsel for the prosecution on the decision of the coordinate bench of this court dated 1/9/2017 in W.P.No.5746/16 (*V.K.Sharma Vs. State of M.P. & others*) declining interference in a petition u/Art. 226 of the Constitution against FIR lodged in connection with offence punishable u/S. 13(1)(d) and 13(2) of the PC Act read with sec. 120-B I.P.C.

3.4 Taking up the first contention of the petitioner that Sec. 156(3) Cr.P.C. can be invoked by the accused, this court deems it appropriate to reproduce the entire Sec. 156 Cr.P.C., as follows:-

“156. Police officer’s power to investigate cognizable case.—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as abovementioned.

3.5 Section 156 primarily deals with the power of police officer to investigate into cognizable offence, but sub-section (3) of this very section is added as an alternative remedy against inaction or improper action on the

part of the police officer to investigate into cognizable offence. Supervisory powers are vested with the Judicial Magistrate of the area concerned to ensure that where proper investigation in cognizable offence is not conducted then the Magistrate can step in and direct for investigation and order accordingly. The power of the Judicial Magistrate u/S. 156(3) Cr.P.C. is circumscribed by the provision of section 190 Cr.P.C., which for ready reference and convenience is reproduced below:-

“190.Cognizance of offences by Magistrates.-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

3.6 Section 190 Cr.P.C. enumerates 3 contingencies provided in clauses (a) (b) and (c) of Sec. 190 (1) Cr.P.C., on individual or joint existence of which cognizance of any offence can be taken by the Magistrate. Thus, on receiving of information about cognizable offence by way of complaint, police report or information from any person other than police officer or upon information based upon his own knowledge, the concerned Magistrate can take cognizance. The scope and ambit of Section 156 (3) Cr.P.C. has been discussed and analyzed by the Apex Court in extenso in the case of *Sakiri Vasu Vs. State of U.P. and Ors.* reported in 2008 AIR (SC) 907 and the recent verdict of the Apex court in the case of *Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel* reported in 2017(4) SCC 177, which has categorically laid down that the invocation of Sec. 156(3) Cr.P.C. by the

Magistrate is permissible only during pre-cognizance stage. Once the Magistrate takes cognizance of the offence whether it is before or after filing of the charge-sheet, then Sec. 156(3) Cr.P.C. cannot be employed to direct for investigation. This object is evident from the extracts of para 51 of the said decision of *Amrutbhai Shambhubhai Patel* (supra) :-

“In contradistinction, Sections 156, 190, 200, 202 and 204 of the Cr.P.C clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by the Cr.P.C to order further investigation even after the cognizance is taken, accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of the Cr.P.C. adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) of the Cr.P.C would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in *Bhagwant Singh* (supra), the Magistrate, in both the contingencies, namely;

when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 Cr.P.C., whereunder any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.”

3.7 In the instant case, the application u/S. 156(3) Cr.P.C. was filed when the process of investigation was on and the charge-sheet had not been filed. The exact date of filing of the charge-sheet has neither been disclosed by the petitioner nor by the prosecution. However, the fact remains that the application u/S. 156(3) Cr.P.C., vide P/2 in the instant case was filed at the pre-cognizance stage and therefore could have been entertained.

3.8 However, the other question that remains is as to whether the application u/S. 156(3) Cr.P.C. could have been moved by the accused ? .

3.9 The process of investigation is provided, governed and controlled by Chapter XII of the Cr.P.C., where after lodging of FIR and till conclusion of investigation by filing of final report u/S. 173(2) Cr.P.C., apart from the police which is the investigating agency and the limited supervisory role played by the Magistrate concerned, there is no third person or authority which is vested with any power or right to participate in the process of investigation. The

investigation is unilaterally conducted by the police which alone has power to collect evidence, oral & documentary or otherwise under the supervisory gaze of the Magistrate concerned. Investigation culminates in filing of chargesheet u/S. 173(2) Cr.P.C., after the evidence collected *prima facie* demonstrates commission of cognizable offence. If no such evidence is collected then closure report is submitted. Right from Sec. 154 to Sec. 176 Cr.P.C. in Chapter XII of Cr.P.C., the Magistrate concerned has very limited role to play. The power and authority in these sections is predominately exercised by the investigating agency. This process of investigation thus does not recognize the concept of participation of the accused. The reason for the same is obvious. If the accused is permitted to participate in the process of investigation by producing evidence in support of his defence/innocence, then the very nature, purport and intent of investigation shall change into that of a trial, which is not contemplated by the Criminal Procedure Code.

3.10 The trial admittedly is a bilateral procedure conducted by the trial court where both the rival parties participate. The prosecution is first required to establish the charge beyond all reasonable doubts whereafter the defence cross-examines the prosecution evidence to test its veracity followed by producing of defence evidence if required. Final arguments are also held bilaterally where the questions of guilt/innocence and sentence if necessary are canvassed and decided.

3.11 This concept of bilateral participation of both the rival parties i.e. prosecution and the accused during the process of investigation is foreign to the very concept and object of the Cr.P.C.

3.12 The purpose of restricting the process of investigation to be unilateral in nature is not far to see. On commission of a cognizable offence and lodging of FIR u/S 154 Cr.P.C., the process of investigation is triggered into motion. The onerous task of investigation is entrusted to the Station House Officer of the police station concerned. Police is a governmental body which is vested with sufficient statutory and executive powers to render it impartial enough to conduct investigation in a free, transparent and truthful manner to discover the truth behind every crime. While doing so the police adheres to the statutory procedures laid down in the police Regulations. These Regulations bestow enough powers upon the superior police authorities to ensure the process of crime investigation to remain unpolluted by exercising their supervisory and penal powers. Thus the victim and the accused can be rest assured that the

process of crime investigation would remain free, fair and transparent failing which the aggrieved person (whether victim or accused) can very well avail the statutory or the constitutional remedies available. Therefore, with enough safeguards prescribed by law to keep the investigative machinery from going astray, the unilateral nature of crime investigative process should not be a cause of concern.

3.13 In view of the above, this court has no hesitation to uphold the findings rendered by the trial court that the petitioner who is the accused has no authority to file an application u/S. 156(3) Cr.P.C.

4. The other question regarding failure of the petitioner to support his application u/S. 156(3) Cr.P.C., with an affidavit fades into insignificance in view of the discussion holding that an accused has no lawful right to file an application u/S. 156 (3) Cr.P.C. Thus, the said question need not be answered.

5. In the conspectus of the discussions as above, this court finds no reason to interfere in the order of the trial court, which accordingly is maintained by dismissing the present criminal revision.

No cost.

Revision dismissed

I.L.R. [2017] M.P., 3122

CRIMINAL REVISION

Before Mr. Justice C.V. Sirpurkar

Cr.R. No. 2574/2017 (Jabalpur) decided on 21 November, 2017

-KATTU BAI & ors.

...Applicants

Vs.

STATE OF M.P.

...Non-applicant

A. Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228, Penal Code (45 of 1860), Sections 302, 304-B & 498-A r/w 34 and Evidence Act (1 of 1872), Section 32 – Framing of Charge – Dying Declaration – Charge framed against husband, mother-in-law, father-in-law, brother-in-law and sister-in-law – Held – Two dying declaration in the case, one written and one oral – If during trial, written dying declaration is discredited and the witnesses testifying about oral dying declaration withstands cross examination, oral dying declaration can form sole basis of conviction – Oral dying declaration is also admissible

piece of evidence – Sufficient material to frame charge against husband
 – No material available on record against other applicants, hence
 discharged – Trial Court to proceed trial against husband – Revision
 partly allowed. (Paras 9 & 16 to 19)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228, दण्ड संहिता (1860 का 45), धाराएँ 302, 304-बी व 498-ए सहपठित 34 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – आरोप विरचित किया जाना – मृत्युकालिक कथन – पति, सास, ससुर, पति के छोटे भाई तथा भाम्मी के विरुद्ध आरोप विरचित किये गये – अभिनिर्धारित – प्रकरण में दो मृत्युकालिक कथन हैं, एक लिखित एवं एक मौखिक – यदि विचारण के दौरान, लिखित मृत्युकालिक कथन पर अविश्वास किया जाता है तथा मौखिक मृत्युकालिक कथन के बारे में साक्ष्य देने वाले साक्षीगण प्रतिपरीक्षण में अडिग रहते हैं, मौखिक मृत्युकालिक कथन दोषसिद्धि का एकमात्र आधार बन सकता है – मौखिक मृत्युकालिक कथन भी साक्ष्य का ग्राह्य भाग है – पति के विरुद्ध आरोप विरचित करने हेतु पर्याप्त सामग्री है – अन्य आवेदकगण के विरुद्ध अभिलेख पर कोई सामग्री उपलब्ध नहीं, अतः आरोपमुक्त किये गये – विचारण न्यायालय पति के विरुद्ध विचारण की कार्यवाही करे – पुनरीक्षण अंशतः मंजूर।

B. *Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Framing of Charge – Conflicting Views – Held – The principle that where two views are possible, one favouring accused should be adopted, would have no application at the stage of framing of charge – If two conflicting material available, one favouring accused and other implicating him, the case will have to be put to trial.* (Para 9)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 – आरोप विरचित किया जाना – विरोधाभासी दृष्टिकोण – अभिनिर्धारित – यह सिद्धांत कि जहां दो दृष्टिकोण संभव हो, अभियुक्त के पक्ष वाले दृष्टिकोण को अपनाया जाना चाहिए, इसका आरोप विरचना किये जाने के प्रक्रम पर कोई प्रयोजन नहीं होगा – यदि दो विरोधाभासी सामग्री उपलब्ध है, एक अभियुक्त का पक्ष लेती है तथा दूसरी उसे आलिप्त करती है, प्रकरण को विचारण के लिए रखा जाना होगा।

Cases referred :

AIR 1990 SC 1962, AIR 1979 SUPREME COURT 366, AIR 2000 SC 665, 2014 (8) SCC 273, AIR 2010 SC 3363, AIR 2009 SC (Supp) 2950, AIR 2000 SC 2324.

Anoop Saxena, for the applicants.

Manish Kumar Soni, G.A. for the non-applicant/State.

ORDER

C.V. SĪRPURKAR, J. :- This criminal revision is directed against the order dated 15.09.2017 passed by the Court of Shri D. K. Nagle, Additional Sessions Judge, Bijawar, District Chhatarpur in Sessions Trial No.200/2017; whereby a charge under Sections 302, 304-B and 498-A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961 was framed against petitioners/accused persons Kattu Bai, Kishorilal, Vimla, Rakesh and Rajesh.

2. The prosecution case before the trial Court may briefly be stated thus: Deceased Roshni had married petitioner Rajesh on 26.04.2016. Petitioner Kattu Bai is mother of Rajesh, petitioner Vimla is his sister-in-law (Bhabi), Kishorilal is father and Rakesh is younger brother. At the time of marriage, petitioners did not make any demand for dowry; however, Kamla, father of the deceased had given dowry as per his capacity. After the marriage, the deceased used to tell her parents that her husband Rajesh was telling her that her father had not given anything in dowry; therefore, she should bring a motorcycle, a gold chain and Rs.50,000/- from her father. He threatened that if she failed to bring aforesaid items, he would kill her. After that, Devendra, brother of the deceased had gone to her matrimonial home to pacify her in-laws. On 08.02.2017, father-in-law Kishori had gone to the maternal home of the deceased to take her to her matrimonial home; whereon, Kamla had given a gold ring and gold dangles to him. At about 06:00 p.m. on 11.02.2017, the deceased caught fire in front of hearth. She was taken to Bijawar hospital by her in-laws. From Bijawar hospital, she was taken to Chhatarpur. At 10:45 p.m. she made a dying declaration to the Executive Magistrate, wherein she stated that she was sitting in front of the hearth cooking meals and somehow caught fire. Her in-laws ran to her rescue and took her to the hospital. There was no dispute with anyone. However, Kamla, father of the deceased and Devendra, brother of the deceased stated under section 161 and in their marg statements that in Chhatarpur hospital that Roshni had told them that at about 06:00 p.m. she was cooking meals. At that time, Rajesh came from behind, picked up a bucket filled with kerosene, poured it upon the deceased, pulled out a burning log from the hearth and set her afire. She ran outside; however, Rajesh had bolted the door. At that time, father-in-law Kishori, mother-in-law Kattu, brother-in-law Rakesh and sister-in-law Vimla were sitting outside the room. Devendra and Kamla also stated that all of them had conspired and got the deceased burnt by petitioner Rajesh. Thereafter, the deceased was taken to Gwalior; however, since her condition did not improve she was brought back to Chhatarpur, where she breathed her last on 19.02.2017.

3. Learned counsel for the petitioners has challenged the order of framing charge mainly on the ground that the deceased had admittedly given a dying declaration at 10:45 p.m. on 11.02.2017 to Executive Magistrate, wherein she categorically stated that she caught fire while she was sitting in front of hearth cooking meals and her in-laws took her to the hospital. She has also clearly stated that there was no dispute in the house. It has also been contended that statements of her father Kamla and brother Devendra were recorded on 11.03.2017, i.e., about a month after the date of the incident. They claimed that the deceased had made an oral dying declaration on 11.02.2017 in Chhatarpur hospital wherein she had blamed her husband Rajesh of pouring kerosene upon her and setting her afire. Such oral dying declaration has no credibility in the face of the written dying declaration made in the presence of Executive Magistrate. It has also been submitted that a careful reading of the statements of Devendra and Kamla reveals that even in the oral dying declaration she did not level any allegation against Kattu Bai, Rakesh, Vimla or Kishori. That they had conspired with Rajesh to set the deceased afire is imagination of these two witnesses. It has also been urged that there is no allegation that Kishori, Kattu Bai, Rakesh and Vimla also made any demand for dowry and had in any manner inflicted cruelty upon the deceased due to non-fulfillment of aforesaid demand. In these circumstances, the trial Court grievously erred in framing charge against the petitioners. Therefore, it has been prayed that the petitioners be discharged.

4. Learned Government Advocate for the respondent/State on the other hand has opposed the revision petition and supported the impugned order.

5. After perusal of the record and due consideration of rival contentions, the Court is of the view that this criminal revision must succeed in part and petitioners Kishori, Kattu Bai, Rakesh and Vimla deserve to be discharged for the reasons hereinafter stated:

6. The Supreme Court has held in the case of *Niranjan Singh Karam Singh vs Jitendra Bhimaraj Bijje and others*, AIR 1990 SC 1962 that it is well settled that at the stage of Sections 227 and 228 of the Code of Criminal Procedure, that is the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face-value, discloses the existence of all the ingredients constituting the alleged offence. The Court may 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.

7. In the case of *Union of India vs. Prafulla Kumar Samal*, AIR 1979 SUPREME COURT 366 the Supreme Court held that in exercising his jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge, which under the present Code is a senior and experienced 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, and any basic infirmities appearing in the case and so on. The Supreme Court; however, cautioned that this does not mean that the Judge should make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

8. In the case of *State of Madhya Pradesh vs S.B. Johari and others*, AIR 2000 SC 665, the Supreme Court held that the Court would not be justified in appreciating material produced by the prosecution at the stage of framing of the charge. At the stage of framing of charge, the trial Court is not required to marshal the material on record but only has to *prima facie* consider whether there is sufficient material against the accused.

9. In the light of aforesaid legal position, when we examine the material available on record i.e. the charge-sheet and the documents filed therewith by the prosecution, we may take note that so far as petitioner husband Rajesh is concerned, on one hand there is a written dying declaration recorded by the Executive Magistrate after certification by doctor, which was recorded first in point of time and on the othre (sic:other), we have oral dying declaration allegedly made to the brother and father of the deceased. The written dying declaration entirely exonerates all petitioners and discloses that the deceased had died an accidental death; whereas the oral dying declaration explicitly implicates petitioner Rajesh in the murder. Thus, so far as petitioner Rajesh is concerned, we have two conflicting sets of material, one in his favour and other against him. The principles that where two views are possible, the one favouring the accused should be adopted, would have no application at the stage of framing of the charge. Here, if we have conflicting materials, one favouring the accused and other implicating him, the case will have to be put to trial. At this stage, the Court cannot, on the basis of arguments, decide which of the two conflicting sets of material may be relied upon. The oral dying declaration is also admissible piece of evidence. If during the trial, the

written dying declaration is discredited and the witnesses testifying about oral dying declaration withstand cross-examination, the oral dying declaration would have potential to form sole basis of conviction of petitioner Rajesh not only under section 498-A or 304-B of the Indian Penal Code but also under section 302 of the Indian Penal Code. Thus, regardless of the written dying declaration, there is sufficient material available on record to frame a charge against husband Rajesh under section 302 and in the alternative under section 304-B and 498-A of the Indian Penal Code. Thus, the charge, as framed against petitioner Rajesh, warrants no interference.

10. However, the situation is different so far as other petitioners namely Kattu Bai, Kishorilal, Rakesh and Vimla are concerned.

11. It may be noted in this regard that the Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar*, 2014(8) SCC 273, observed that:

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested.

12. It has been observed by the Supreme Court in *Preeti Gupta v. State of Jharkhand*, AIR 2010 SC 3363 that:

"The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never

visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful."

"When the facts and circumstances of the case are considered in the background of legal principles set out in preceding paragraphs, then it would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants."

13. Likewise, in the case of *Neelu Chopra & anr. v. Bharti*, AIR 2009 SC(Supp) 2950, Supreme Court held as follows:

"It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein on the basis of vague and general complaint which is silent about the precise acts of the appellants."

14. A three judge bench of Supreme Court in the case of *Kans Raj vs. State of Punjab*, AIR 2000 SC 2324 observed that:

"For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusation are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt."

By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

15. It may be seen from the aforesaid judgments that the Supreme Court has expressed its concern with regard to false implication of husband and his relatives in the cases under section 498-A of the Indian Penal Code by disgruntled wives. It has also been held that the tendency of falsely implicating even those relatives of husband, who lived separately and in different cities is also growing. It has been held that if there are no specific and credible allegations, with necessary particulars against the relatives of the husband, they should not be made to suffer the ignominy of a criminal trial.

16. A perusal of the statements made by Devendra and Kamla reveals that there is no allegation that any of aforesaid four petitioners have made any demand for dowry. There is also no allegation that deceased Roshni ever told her father or brother that any of the aforesaid four petitioners ever inflicted any cruelty upon her. The only allegation against petitioner Kishori is that when he had gone to bring Roshni back to her matrimonial home, Roshni's father Kamla had purchased and given him one gold ring and one pair of gold dangles; however, without any demand, it would not constitute offence under section 498-A of the Indian Penal Code.

17. So far as offence under section 302 and in the alternative 304-B of the Indian Penal Code are concerned, both of aforesaid witnesses have leveled allegations against Rajesh. They have stated that Roshni had told them that Rajesh had poured kerosene upon her and had set her afire. She had run out but Rajesh had bolted the door from outside. Then they stated that Roshni had given the statement to Tehsildar in Chhatarpur hospital and after that they have stated that other members of the household namely Kishorilal, Kattu, Rakesh and Vimla were sitting outside in the veranda. All of them had conspired and got Rajesh pour

kerosene upon her and set her afire. They further stated that Rajesh had killed Roshni by pouring kerosene upon her and set her ablaze and Kishorilal, Kattu Bai, Rakesh and Vimla were also complicit in the affair. It appears from the aforesaid statements that firstly deceased Roshni had not told Devendra and Kamla that other family members were also complicit in the matter. She had merely stated that other family members were sitting outside in the veranda. Even if it is assumed for the sake of arguments that Roshni had told them that others had also conspired with Rajesh to kill her, it is clear that it was merely her assumption. She did not disclose any basis for such assumption. Thus, there is no material available on record against petitioners Kishorilal, Kattu Bai, Rakesh and Vimla, which is capable of being converted into admissible evidence to sustain conviction of any of the aforesaid petitioners for any offence.

18. In aforesaid circumstances, petitioners Kattu Bai, Kishorilal, Rakesh and Vimla deserve to be discharged. The charge against aforesaid petitioners framed by the trial Court under sections 302 read with section 34, 304-B read with section 34 and 498-A read with section 34 is not sustainable in the eyes of law and deserves to be quashed.

19. Consequently, this criminal revision **partly succeeds**. The charge framed against the aforesaid petitioners by the trial Court by order dated 15.09.2017 is quashed. The aforesaid four petitioners namely, Kattu Bai, Kishorilal, Rakesh and Vimla are discharged.

20. The trial Court shall proceed with the trial against petitioner Rajesh as per law for the charge as framed by impugned order dated 15.09.2017.

Revision partly allowed.

I.L.R. [2017] M.P., 3130

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Sushil Kumar Palo

M.Cr.C. No. 16079/2017 (Jabalpur) decided on 4 December, 2017

RAMAKANT & ors.

...Applicants

Vs.

STATE OF M.P. & anr.

...Non-applicants

A. *Criminal Procedure Code, 1973 (2 of 1974), Section 320 & 482 and Penal Code (45 of 1860), Section 498-A – Compounding of Offence – Compoundable and Non-compoundable Offences – Held – In compoundable offences, parties can enter into compromise at any*

stage of trial or appeal but in non-compoundable offences, if trial is pending, compounding can be permitted u/S 482 Cr.P.C. under guidelines issued by the Apex Court – Further held – If accused is convicted and sentenced for a non-compoundable offence by trial Court or appellate Court, then there is no question of sparing the convict – In such case, compromise can be considered in the interest of peace and amity by taking a liberal view with regard to sentence imposed – Application dismissed. (Paras 9 to 12)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 एवं दण्ड संहिता (1860 का 45), धारा 498-ए – अपराध का शमन – शमनीय एवं अशमनीय अपराध – अभिनिर्धारित – शमनीय अपराधों में, पक्षकार विचारण या अपील के किसी भी प्रक्रम पर समझौता कर सकते हैं परंतु अशमनीय अपराधों में, यदि विचारण लंबित है, सर्वोच्च न्यायालय द्वारा जारी दिशानिदेशों के अंतर्गत, शमन की अनुमति, धारा 482 दं.प्र.स. के अंतर्गत दी जा सकती है – आगे अभिनिर्धारित – यदि अभियुक्त को विचारण न्यायालय या अपीली न्यायालय द्वारा अशमनीय अपराध हेतु दोषसिद्ध एवं दण्डादिष्ट किया गया है, तब दोषी को बचाने का प्रश्न ही नहीं है – ऐसे प्रकरण में, अधिरोपित किये गये दण्डादेश के संबंध में उदार दृष्टिकोण लेकर शांति एवं मैत्री के हित में समझौते को विचार में लिया जा सकता है – आवेदन खारिज।

B. *Criminal Procedure Code, 1973 (2 of 1974), Section 320 and Penal Code (45 of 1860), Section 498-A – Matrimonial Disputes – Criminal Complaints – Held – Criminal complaints arising out of matrimonial discord can be quashed on compromise, even if offences alleged are non-compoundable as such offences are personal in nature and do not have repercussions on society unlike heinous offences like murder, rape etc. – In present case, applicant convicted by trial Court – Appellate Court may consider compromise at time of passing the order of sentence.* (Para 5 & 12)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 320 एवं दण्ड संहिता (1860 का 45), धारा 498-ए – वैवाहिक विवाद – दण्डिक परिवाद – अभिनिर्धारित – वैवाहिक कलह से उत्पन्न दण्डिक परिवादों को समझौते पर अभिखंडित किया जा सकता है यहां तक कि अभिकथित अपराध अशमनीय हो तब भी क्योंकि ऐसे अपराध व्यक्तिगत स्वरूप के हैं और हत्या, बलात्कार इत्यादि जैसे जघन्य अपराधों की तरह समाज को दुष्प्रभावित नहीं करते – वर्तमान प्रकरण में, आवेदक को विचारण न्यायालय द्वारा दोषसिद्ध किया गया – अपीली न्यायालय, दण्डादेश का आदेश पारित करते समय समझौते को विचार में ले सकता है।

Cases referred :

(2012) 10 SCC 303, (2011) 10 SCC 705, (2014) 13 SCC 75.

Sourabh Bhushan Shrivastava, for the applicants.

Pramod Choubey, G.A. for the non-applicant No.1.

Alok Agnihotri, for the non-applicant No.2.

O R D E R

SUSHIL KUMAR PALO, J. :- Considered IA No.18242/2017, an application under section 320(2) of the Cr.P.C.

2. On the report of the respondent, FIR was lodged and subsequently Criminal Case No.501/2017 was instituted before JMFC, Gadawada. The same was decided on 20.01.2010 and the petitioners have been convicted for offence under Section 498-A of IPC r/w Section 3/4 of Dowry Prohibition Act. The petitioners have preferred Criminal Appeal No.175/2010, which is pending before Third A.S.J. Gadawada, wherein the application under Section 320 of the Cr.P.C. filed by the parties was dismissed on 28.07.2017. The petitioners preferred this application challenging the order dated 28.07.2017. As the offences charged are non-compoundable the learned Appellate Court disallowed the application for compromise.

3. The parties have preferred this application under Section 482 Cr.P.C. and expressed that parties have compromised the matter. The application was sent before the Registrar Judicial for verification of compromise. Report dated 24.11.2017 has been received, wherein it has been found that the complainant Manorama @ Rama has voluntarily entered into compromise with the petitioners/accused persons and have settled the dispute amicably.

4. In the case of *Gian Singh Vs. State of Panjab* 2012 (10) SCC 303 the Supreme Court it has been clearly held that the High Court in quashing the criminal proceeding for FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power of a criminal court for compounding offence under Section 320 of the Cr.P.C. The Supreme Court has opined in paragraph 51 that where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the Court to which he has been committed or with the leave of the appeal Court is the case may be. The Revisional Court is also competent to allow any person to compound any offence, who is competent to compound.

The consequence of the composition of an offence is acquittal of the accused. Section 320(9) of the Cr.P.C. mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accordance with Section 320 Cr.P.C. and in no other manner.

5. In the case of *Gian Singh* (Supra), the petitioner was convicted for offence under Section 420 of the IPC r/w Section 120-B of IPC by the Magistrate. In the appeal challenging the conviction before this Sessions Court was pending when the parties entered into compromise. An application was filed under Section 482 of the Cr.P.C, for quashing the FIR on the ground of compounding of the offence. The same was dismissed by the High Court, therefore, the petitioner preferred the petition before the Supreme Court. The Supreme Court analyzing the circumstances has come to the conclusion that compounding of offence is permissible under certain conditions and in paragraph 61 given the guideline:-

"61. The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline en-grafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have

serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

6. In the case of *Shiji @ Pappu Vs. Radhika and another* 2011 (10) SCC 705, the Supreme Court has held that simply because an offence is not compoundable under Section 320 of the Cr.P.C. is by itself no reason for the High Court to refuse exercise its power under Section 482 of Cr.P.C. The

Apex Court has added, the power can be exercised as per the settled principle, in cases where there is no chance of recording conviction against accused and entire exercise of trial is destined to be exercised in futility.

7. In the case *Shiji* (supra) also during the pendency of the criminal proceeding, the parties amicably settled their dispute before the Judicial Magistrate First Class and filed an application under Section 482 of the Cr.P.C. for quashing the complaint.

8. In the case of *Manohar Singh Vs. State of MP and another* reported as 2014 (13) SCC 75, the Hon'ble Apex Court has propounded that the offence under Section 498-A of the IPC read with Section 4 of the Dowry Prohibition Act cannot be compounded by Court as both are non-compoundable offences. But if there is a genuine compromise between the husband and wife, criminal complaints arising out of matrimonial discord can be quashed, even if offences alleged are non-compoundable, because such offences are personal in nature and do not have repercussions on the society unlike heinous offences like murder, rape, etc. The Apex Court in paragraph 6-7 has held that:-

*"6. Section 498-A IPC is non-compoundable. Section 4 of the Dowry Act is also non-compoundable. It is not necessary to state that non-compoundable offences cannot be compounded by a court. While considering the request for compounding of offences the court has to strictly follow the mandate of Section 320 of the Code. It is, therefore, not possible to permit compounding of offences under Section 498-A IPC and Section 4 of the Dowry Act. However, if there is a genuine compromise between husband and wife, criminal complaints arising out of matrimonial discord can be quashed, even if the offences alleged therein are non-compoundable, because such offences are personal in nature and do not have repercussions on the society unlike heinous offences like murder, rape, etc. (see *Gian Singh V. State of Punjab*). If the High Court forms an opinion that it is necessary to quash the proceedings to prevent abuse of the process of any court or to secure ends of justice, the High Court can do so. The inherent power of the High Court under Section 482 of the Code is not inhibited by Section 320 of the Code.*

Needless to say that this Court can also follow such a course.

7. In Narinder Singh v. State of Punjab this Court was dealing with a situation where the accused was charged for the offence punishable under Section 307 IPC, which is a non-compoundable offence. The parties arrived at a compromise at the stage of recording of evidence. A petition was filed under Section 482 of the Code for quashing of the proceedings in view of the compromise. The High Court refused to quash the proceedings. This Court set aside the High Court's order and quashed the proceedings in view of the compromise. While doing so, this Court laid down certain guidelines. In Guideline (VII), this Court considered a situation where a conviction is recorded by the trial court for the offence punishable under Section 307 IPC and the matter is at appellate stage. This Court observed that in such cases, a mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. This Court observed that in such cases where charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime, there was no question of sparing a convict found guilty of such a crime. The observation of this Court must be read obviously in the context of a non-compoundable offence under Section 307 IPC. It is trite that a non-compoundable offence cannot be compounded at any stage (see Gian Singh v. State of Punjab). However, a compoundable offence can be compounded in view of a compromise, if the court finds it proper to do so even after conviction if the appeal is pending".

9. Where a charge is proved under a non-compoundable offence and conviction is already recorded by the trial Court of a heinous crime and matter is at appellate stage, a mere compromise between parties would not be a ground to accept the same resulting in acquittal of offender who has already been convicted by Trial Court that in such cases, there is no question of sparing a convict found guilty of a non-compoundable offence-clarified, a

compoundable offence can be compounded in view of a compromise, if court finds it proper to do so even after conviction if appeal is pending.

10. In the case of *Manohar Singh Vs. State of M.P. and another* reported as 2014 (13) SCC 75 the Apex Court has at paragraph 10-11 held as under:-

"10. We must also note that the trial court had acquitted the appellant. Though the Sessions Court reversed the order and convicted the appellant for two years, the High Court reduced the sentence to six months. The appellant and Respondent 2 were married in 2007. About seven years have gone by. Considering all these circumstances, in the interest of peace and amity, we are of the opinion that the appellant's sentence must be reduced to the sentence already undergone by him.

11. In the circumstances, the appeal is partly allowed. The conviction of the appellant under Section 498-A IPC and under Section 4 of the Dowry Act is maintained but the sentence awarded to the appellant is reduced to the sentence already undergone by him, subject to the condition that the appellant pays a sum of Rs. 2,50,000 (Rupees two lakh fifty thousand only) to Respondent 2 wife as compensation. The impugned order stands modified to the above extent. We must note that a demand draft in the sum of Rs. 2,50,000/- drawn in the name of Respondent 2 Reena has been handed over to her counsel by the learned counsel for the appellant on 18.07.2014. In view of this, bail bond of the appellant, if any, stands discharged.

11. On the above analysis it is very clear that if judgment has been pronounced then the Court should consider the compromise in the interest of peace and amity and take a liberal view with regard to the sentence.

12. The present petition is therefore, disposed with the note that the compounding of offence cannot be allowed. The order impugned passed by the learned Trial Court is correct and maintained. However, considering the ratio in the case of "*Manhohar Singh*" (Supra), the learned appellate Court may consider the compromise at the time of passing the order of sentence.

Order accordingly.

I.L.R. [2017] M.P., 3138

MISCELLANEOUS CRIMINAL CASE*Before Mr. Justice Hemant Gupta, Chief Justice &**Mr. Justice Vijay Kumar Shukla*

M.Cr.C. No. 24600/2017 (Jabalpur) decided on 14 December, 2017

DIVYA KISHORE SATPATHI (DR.)

...Applicant

Vs.

CENTRAL BUREAU OF INVESTIGATION

...Non-applicant

(Alongwith M.Cr.C. Nos. 24605/2017, 24983/2017)

A. Criminal Procedure Code, 1973 (2 of 1974), Section 438, Penal Code (45 of 1860), Sections 420, 467, 468, 471, 201 r/w 120-B, Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2), Information Technology Act (21 of 2000), Section 43 r/w 66 and Recognised Examination Act, M.P. (10 of 1937), Section 3-D(1) & (2) – Anticipatory Bail – Grounds – Nature and Gravity of Accusation – Allegation of manipulations to block State Government quota seats in Private Medical Colleges – Grave and serious allegations of wrongful admission of large number of students otherwise than on merit for monetary consideration – Gravity of accusation is glaring and in view of the seriousness of allegations which have wide ramifications on cause of professional education in State, petitioners not entitled to concession of pre-arrest bail – Applications dismissed. (Para 24 & 25)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438, दण्ड संहिता (1860 का 45), धारा 420, 467, 468, 471, 201 सहपठित 120-बी, घृष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(डी) व 13(2), सूचना प्रौद्योगिकी अधिनियम (2000 का 21), धारा 43 सहपठित 66 एवं मान्यताप्राप्त परीक्षा अधिनियम, म.प्र. (1937 का 10), धारा 3-डी(1) व (2) – अग्रिम जमानत – आधार – आरोप की प्रकृति एवं गंभीरता – निजी चिकित्सा महाविद्यालयों में राज्य सरकार के कोटे की सीटों को अवरुद्ध करने के लिए छलसाधन का अभिकथन – आर्थिक प्रतिफल हेतु, योग्यता के अन्यथा विद्यार्थियों को बड़ी संख्या में सदोष प्रवेश के गंभीर एवं संगीन अभिकथन – आरोप की गंभीरता सुस्पष्ट है और अभिकथनों की संगीनता, जिनसे राज्य में व्यावसायिक शिक्षा के ध्येय पर व्यापक असर पड़ता है, को दृष्टिगत रखते हुए, याचीगण गिरफ्तारी पूर्व जमानत की रियायत के हकदार नहीं – आवेदनों को खारिज किया गया।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Entitlement – Held – If petitioners/accused

persons not arrested during investigation, it does not mean that they are entitled to anticipatory bail as allegations against petitioners of exploiting the admission process are quite serious. (Para 27)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 - अग्रिम जमानत - हकदारी - अभिनिर्धारित - यदि अन्वेषण के दौरान याचीगण/अभियुक्तगण को गिरफ्तार नहीं किया गया है, इसका अर्थ यह नहीं कि वे अग्रिम जमानत के हकदार हैं क्योंकि याचीगण के विरुद्ध प्रवेश प्रक्रिया का अनुचित लाभ उठाने के अभिकथन काफी गंभीर हैं।

C. *Criminal Procedure Code, 1973 (2 of 1974), Section 438 - Anticipatory Bail - Factors and parameters enumerated by Apex Court discussed.* (Para 13)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 - अग्रिम जमानत - सर्वोच्च न्यायालय द्वारा प्रगणित कारक एवं मापदण्ड विवेचित।

Cases referred :

2017 SCC OnLine SC 1355, 2010 (1) SCC 679, 2010 (1) SCC 684, (2011) 13 SCC 706, 1995 MPLJ 296 (FB), 2007 (12) SCC 1, CrI.M(M) No. 3875/2003 decided on 28.01.2004 (Delhi High Court), 2014 SCC OnLine Del 4560, (1994) 3 SCC 569, (2005) 5 SCC 294, 1980 (2) SCC 565, (2011) 1 SCC 694, (1994) 4 SCC 260, 2012 (1) SCC 40.

Surendra Singh with Siddharth Gupta, for the applicant in M.Cr.C. No. 24600/2017.

Pravin H. Parekh with Siddharth Gupta, Vishal Prasad & Amit Garg, for the applicant in M.Cr.C. No. 24605/2017.

K.T.S. Tulsi with Ajay Gupta, Rajesh Ranjan, Sumesh Bajaj & Raj Kamal, for the applicant in M.Cr.C. No. 24983/2017.

J.K. Jain, Asstt.S.G. for the non-applicant/CBI in all the cases.

ORDER

The Order of the Court was passed by :
HEMANT GUPTA, C.J. :- This order shall dispose of all three petitions for grant of anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") being MCRC No.24600/2017, MCRC No.24605/2017 and MCRC No.24983/2017 filed on behalf of the petitioners - Dr. Divya Kishore Satpathi, Jai Narayan Chouksey and Dr. Ajay

Goenka respectively, who apprehend their arrest in connection with Crime No. RC2172015A0025 (formerly STF Crime No.12/2013) registered with Police Station - Central Bureau of Investigation, Bhopal (M.P.) for the offence punishable under Sections 420, 467, 468, 471, 201 read with 120-B of IPC; Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988; Sections 43 read with 66 of the Information Technology Act, 2000; and Sections 3-D (1) and (2) and 4 of the M.P. Recognised Examination Act, 1937 as enumerated in the charge-sheet though in the bail applications the offence mentioned is that under Sections 409, 419, 420, 467, 468, 471, 120-B of IPC; Sections 65 and 66 of the Information Technology Act, 2000; Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and Sections 3-D (1) and (2) and 4 of the M.P. Recognised Examination Act, 1937.

2. Petitioner - Dr. Ajay Goenka is the Chairman of Chirayu Medical College, Bhopal whereas petitioner - Jai Narayan Chouksey is the Chairman of L.N. Medical College, Bhopal and petitioner - Dr. Divya Kishore Satpathi is said to be the In-charge of Admission Committee of L.N. Medical College, Bhopal. All three petitions arise out of the same crime number and almost on similar allegations.

3. As per the prosecution, the allegations are that the petitioners and other middleman encouraged bright students of the States other than State of Madhya Pradesh to appear in Pre-Medical Test 2012 (in short as "the PMT 2012") even though some of these students were already admitted in MBBS course in some other colleges. The allegation is that the officials of M.P. Professional Examination Board (in short as "the VYAPAM"), in furtherance of criminal conspiracy between them and three racketeers, namely, Jagdish Sagar, Sanjeev Shilpkar and Santosh Gupta generated and allocated the roll numbers of bogie candidates in a manner so as to pair them with the roll numbers of engine candidates/solvers engaged by middleman and racketeers. These engine candidates had filled the application forms so as to get paired with the bogie candidates and to facilitate their selection by cheating/copying of the answers. The VYAPAM officials arranged seating pattern in the examination hall so as to enable the candidates to copy the answers from the scorers, who due to pairing of the roll numbers, used to sit next to the candidates. This pairing was termed as "engine-bogie pairing" whereas the scorer (engine) sitting ahead of the candidate (bogie) assisted the candidate for cheating through copying of the answers. This fraud has taken place in Indore, Bhopal and Shahdol in PMT-2012. The Central Bureau of Investigation

has sent 181 (38+123+20) engine candidates; 308 (153+138+17) bogie candidates; 25 (14+11) middleman/ racketeers, 46 invigilators; four VYAPAM officials and two officials of Directorate of Medical Education, to stand trial.

4. The allegation against the four private medical colleges i.e. Index Medical College, People's Medical College, Chirayu Medical College and L.N. Medical College, is that engine candidates, who had obtained higher marks in examination were allotted private medical colleges during counselling but these students did not take actual admission and the colleges gave false information to the Director, Medical Education that these students have taken admission in their colleges. This was done to block the State quota seats by these fudged admissions. These students never reported to the college but they were given monetary benefits by the middleman for blocking the seats. Actual information/status was not disclosed to the Director, Medical Education else these seats would have been filled during second round of counselling. The seats made vacant by these engine candidates were filled by the bogie candidates before the last date for admission i.e. 30.09.2012. It may be stated that seats in private medical colleges are filled in two ways; half of the seats are filled on the basis of examination conducted by Association of Private Medical Colleges whereas half of the other seats are filled from amongst the successful candidates of Pre-Medical Test examination, called Government quota seats. The entire allegations are in respect of Government quota seats.

5. After completion of investigation, a charge-sheet has been filed under Section 173(8) of the Code detailing the allegations against each of the accused including the present petitioners. The specific role of each of the petitioner shall be referred to at a later stage.

6. Shri K.T.S. Tulsi, learned senior counsel appearing for the petitioner - Dr. Ajay Goenka referred to a recent judgment of the Supreme Court rendered in the case of *Nikesh Tarachand Shah vs. Union of India and another* - Writ Petition (Criminal) No. 67/2017 decided on 23.11.2017 also reported as 2017 SCC OnLine SC 1355 wherein constitutional validity of Section 45 of the Prevention of Money Laundering Act, 2002 (in short "the Act of 2002") was under challenge. Section 45(1) of the said Act imposes two conditions for grant of bail that the Public Prosecutor must be given an opportunity to oppose any application for release on bail and that the Court must be satisfied, where the Public Prosecutor opposes the application, that there are reasonable grounds for believing that the accused is not guilty of

such offence and that he is not likely to commit any offence while on bail and only then the accused can be admitted to bail. The Court struck down the two conditions for release on bail in Sub-section (1) of Section 45 of the Act of 2002. The argument of the learned senior counsel for the petitioners is that the rule is bail and not jail and that no person can be deprived of his life and personal liberty except in accordance with fair, just and reasonable procedure established by valid law. It is also argued that Article 21 of the Constitution of India affords protection not only against the executive action but also against the legislative action which deprives a person of his life and personal liberty unless the law for deprivation is reasonable, just and fair.

7. Shri Tulsi, learned senior counsel also relied upon the Supreme Court judgments reported as 2010(1) SCC 679 (*HDFC Bank Limited vs. J.J. Mannan alias J.M. John Paul and another*), 2010(1) SCC 684 (*Ravindra Saxena vs. State of Rajasthan*), (2011) 13 SCC 706 (*Rajesh Kumar vs. State Through Government of NCT of Delhi*) and on a Full Bench judgment of this Court reported as 1995 MPLJ 296 (*Nirbhay Singh and another vs. State of Madhya Pradesh*) in respect of the argument that the personal liberty of the petitioners cannot be taken away by the criminal process initiated against them.

8. Another argument of learned senior counsel for the petitioner is that the learned Special Judge has issued non-bailable warrants in the first instance, which could not have been done, therefore, the entire process is vitiated. The reliance is placed upon judgment of the Supreme Court reported as 2007 (12) SCC 1 (*Inder Mohan Goswami and another vs. State of Uttaranchal and others*) and two Single Bench judgments of Delhi High Court passed in CrI.M(M) No.3875/2003 (*Court on its Own Motion vs. Central Bureau of Investigation*) decided on 28.01.2004 and Bail Application No.1946/2014 (*Lt. Gen. Tejinder Singh vs. CBI*) which is also reported as 2014 SCC OnLine Del 4560.

9. We find that the reliance placed by Shri Tulsi, learned senior counsel on the judgment of the Supreme Court in *Nikesh Tarachand Shah* (supra) is not tenable. Firstly, it was a case where the accused were arrested and sought bail under Section 45 of the Act of 2002 read with Section 439 of the Code and not for anticipatory bail under Section 438 of Code. Secondly, the maximum punishment for the offence under the Act of 2002 is three years whereas the punishment of the offence for which the petitioners have been

charged, ranges from three years to life imprisonment; such as for an offence under Sections 467 and 471 of IPC, the punishment is imprisonment for life whereas punishment for an offence under Sections 3-D (1) and (2) of the M.P. Recognised Examination Act, 1937 and Section 4 of the said Act, may extend to three years and thirdly, the offences to which the petitioners have been charged are triable by the Sessions Court as well. In *Nikesh Tarachand Shah* (supra), the Court has struck down the provision of Section 45(1) of the Act of 2002 whereas in the present case, there is no challenge to any of the provision of the Code or the provisions of any other Statute (sic:Statute) under which the petitioners are to face trial. In the said decision, the Supreme Court has distinguished its earlier judgments reported as (1994) 3 SCC 569 (*Kartar Singh vs. State of Punjab*) and (2005) 5 SCC 294 (*Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and another*) dealing with the provisions of the Terrorist and Disruptive Activities (Prevention) Act of 1985 and 1987 (in short as "TADA Act") and Maharashtra Control of Organised Crime Act, 1999. Similar conditions for concession of bail under Section 439 of Code were upheld in the aforesaid judgments. The Supreme Court in *Nikesh Tarachand Shah* (supra) held, which we quote, as under:-

"47. The judgment in *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 at 707 is an instance of a similar provision that was upheld only because it was necessary for the State to deal with terrorist activities which are a greater menace to modern society than any other. It needs only to be mentioned that, unlike Section 45 of the present Act, Section 20(8) of TADA, which speaks of the same twin conditions to be applied to offences under TADA, would pass constitutional muster for the reasons stated in the aforesaid judgment. Ultimately, in paragraph 349 of the judgment, this Court upheld Section 20(8) of TADA in the following terms:

"349. The conditions imposed under Section 20(8)(b), as rightly pointed out by the Additional Solicitor General, are in consonance with the conditions prescribed under clauses (i) and (ii) of sub-section (1) of Section 437 and clause (b) of sub-section (3) of that section. Similar to the conditions in clause (b) of sub-section (8), there are provisions in various other enactments - such as Section 35(1) of Foreign

Exchange Regulation Act and Section 104(1) of the Customs Act to the effect that any authorised or empowered officer under the respective Acts, if, has got reason to believe that any person in India or within the Indian customs waters has been guilty of an offence punishable under the respective Acts, may arrest such person. Therefore, the condition that "there are grounds for believing that he is not guilty of an offence", which condition in different form is incorporated in other Acts such as clause (i) of Section 437(1) of the Code and Section 35(1) of FERA and 104(1) of the Customs Act, cannot be said to be an unreasonable condition infringing the principle of Article 21 of the Constitution.

48. It is clear that this Court upheld such a condition only because the offence under TADA was a most heinous offence in which the vice of terrorism is sought to be tackled. Given the heinous nature of the offence which is punishable by death or life imprisonment, and given the fact that the Special Court in that case was a Magistrate and not a Sessions Court, unlike the present case, Section 20(8) of TADA was upheld as being in consonance with conditions prescribed under Section 437 of the Code of Criminal Procedure. In the present case, it is Section 439 and not Section 437 of the Code of Criminal Procedure that applies. Also, the offence that is spoken of in Section 20(8) is an offence under TADA itself and not an offence under some other Act. For all these reasons, the judgment in *Kartar Singh* (supra) cannot apply to Section 45 of the present Act.

49. A similar provision in the Maharashtra Control of Organised Crime Act, 1999, also dealing with the great menace of organized crime to society, was upheld somewhat grudgingly by this Court in *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra and Another*, (2005) 5 SCC 294 at 317, 318-319 as follows:

38. We are furthermore of the opinion that the restrictions on the power of the court to grant bail

should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision."

10. A perusal of the above-mentioned extract would show that the Court found that the TADA Act deals with heinous offence, which is punishable by death or life imprisonment, therefore, the said judgment in relation to an offence under the Act of 2002 cannot be considered to be applicable to the facts of this case.

11. We find that the judgment in *Nikesh Tarachand Shah* (supra) has no applicability to the facts of the present case where the petitioners seek pre-arrest bail. The conditions on which the pre-arrest bail can be granted have

been enumerated in Section 438 of Code as well as in some of the judgments, to which reference would be made here-in-after. One of the fact which is required to be considered is nature and gravity of the accusation in terms of Section 438 of the Code itself. The relevant extract from the Code read as under:-

"438. Direction for grant of bail to person apprehending arrest-
(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, *inter-alia*, the following factors, namely-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,

either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this Sub-Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

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12. Considering the aforesaid provisions, a Constitution Bench in a judgment reported as 1980 (2) SCC 565 (*Shri Gurbaksh Singh Sibbia and others vs. State of Punjab*) held as under:-

"31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *The State v. Captain Jagjit Singh*, (1962) 3 SCR 622: AIR 1962 SC 253, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

32. A word of caution may perhaps be necessary in the evaluation

of the consideration whether the applicant is likely to abscond. There can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it"

13. In another judgment reported as (2011) 1 SCC 694 (*Siddharam Satlingappa Mhetre vs. State of Maharashtra and others*), the Supreme Court delineated the factors and parameters which can be taken into consideration while dealing with an application for grant of anticipatory bail. The relevant excerpts from the said decision are reproduced as under:-

"109. A good deal of misunderstanding with regard to the ambit and scope of section 438 Cr.P.C. could have been avoided in case the Constitution Bench decision of this court in *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 was correctly understood, appreciated and applied. This Court in the Sibbia's case (supra) laid down the following principles with regard to anticipatory bail:

- a) Section 438(1) is to be interpreted in light of Article 21 of the Constitution of India.
- b) Filing of FIR is not a condition precedent to exercise of power under section 438.
- c) Order under section 438 would not affect the right of police to conduct investigation.
- d) Conditions mentioned in section 437 cannot be read into section 438.
- e) Although the power to release on anticipatory bail can be described as of an "extraordinary" character this would "not justify the conclusion that the power must be exercised in exceptional cases only." Powers are discretionary to be exercised in light of the circumstances of each case.
- f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re-examined after hearing. Such ad interim

order must conform to requirements of the section and suitable conditions should be imposed on the applicant.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or the other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of the entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the Judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the Court of Session or the High Court is always available."

14. The judgment in *Rajesh Kumar* (supra) relied upon by Shri Tulsi was a case where the Supreme Court was examining the conviction of the appellant for an offence punishable under Section 302 of IPC. The Court also considered the constitutionality of Section 302 of IPC and Section 354(3) of the Code. That was a case where the Court was examining whether a death penalty should have been imposed upon the appellant. The said judgment does not deal with the factors to be considered at the time of grant of pre-arrest bail. The discussion is on the scope of Article 21 of the Constitution of India. The petitioners in the present

cases are under threat of arrest on the basis of their role unearthed in the process of investigation. It is not the case of the petitioners that threat of arrest is unconstitutional. What is argued is that the personal liberty of the petitioners cannot be curtailed only on filing of charge-sheet against the petitioners.

15. A Full Bench of this Court in *Nirbhay Singh's* case (supra) held that under Section 438 of the Code a person having reason to believe that he may be arrested on an accusation is competent to invoke the jurisdiction of the Court of Sessions or High Court under Section 438 of the Code. It held that even there can be accusation before a case is registered by the police. After registration of the case, filing of the charge-sheet or filing of a complaint or taking cognizance or issuance of warrant, the accusation will not cease to be an accusation. It is, thus, held that jurisdiction under Section 438 of the Code does not warrant a restricted interpretation.

16. In *Ravindra Saxena's* case (supra) decided on December 15, 2009, the Supreme Court set aside the order of the High Court, which denied the benefit of pre-arrest bail only for the reason that challan has now been presented. The court held as under:-

"9. In our opinion, the High Court ought not to have left the matter to the Magistrate only on the ground that the challan has now been presented. There is also no reason to deny anticipatory bail merely because the allegation in this case pertains to cheating or forgery of a valuable security. The merits of these issues shall have to be assessed at the time of the trial of the accused persons and denial of anticipatory bail only on the ground that the challan has been presented would not satisfy the requirements of Sections 437 and 438 of Cr.P.C.

10. In our opinion, the High Court committed a serious error of law in not applying its mind to the facts and circumstances of this case. The High Court is required to exercise its discretion upon examination of the facts and circumstances and to grant anticipatory bail "if it thinks fit". The aforesaid expression has been explained by this Court in *Gurbaksh Singh Sibbia v. State of Punjab*, (1980) 2 SCC 565 (SCC p. 583, para 18), as follows:

11. The salutary provision contained in Section 438 CrPC

was introduced to enable the court to prevent the deprivation of personal liberty. It cannot be permitted to be jettisoned on technicalities such as "the challan having been presented, anticipatory bail cannot be granted". We may notice here some more observations made by this Court in Gurbaksh Singh (supra) (SCC p.586, para 26):

***"

17. In another judgment by a Bench of coordinate strength rendered in *HDFC Bank Limited* (supra) on December 16, 2009 i.e. the next date of the order in *Ravindra Saxena's* case, the Supreme Court held that Section 438 of the Code contemplates arrest at the stage of investigation but once the investigation makes out a case against him and he is included as an accused in the charge-sheet, the accused has to surrender to the custody of the Court and pray for regular bail. The relevant extract from the said judgment is quoted as under:-

"19. The object of Section 438 CrPC has been repeatedly explained by this Court and the High Courts to mean that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. But at the same time the provisions of Section 438 CrPC cannot also be invoked to exempt the accused from surrendering to the court after the investigation is complete and if charge-sheet is filed against him. Such an interpretation would amount to violence to the provisions of Section 438 CrPC, since even though a charge-sheet may be filed against an accused and charge is framed against him, he may still not appear before the court at all even during the trial.

20. Section 438 CrPC contemplates arrest at the stage of investigation and provides a mechanism for an accused to be released on bail should he be arrested during the period of investigation. Once the investigation makes out a case against him and he is included as an accused in the charge-sheet, the accused has to surrender to the custody of the court and pray for regular bail. On the strength of an order granting anticipatory bail, an accused against whom charge has been framed, cannot avoid appearing before the trial court."

Thus, there is a conflict between the two Coordinate Bench judgments of the Supreme Court. The judgment of Full Bench of this Court rendered in *Nirbhay Singh* (supra) is, in fact, contrary to the judgment of the Supreme Court in *HDFC Bank Limited* (supra), but even though there is a conflict with the judgments of the Supreme Court, we find that such conflict is not required to be resolved in the present petitions and we proceed to decide the right of the petitioners to apply for anticipatory bail even if a report under Section 173(8) of the Code has been filed before the Court.

18. In *Inder Mohan Goswami's* case (supra), an appeal was directed against an order passed by the High Court refusing to set aside non-bailable warrants issued against the appellant on the basis of first information report for the offence under Sections 420 and 467 of IPC. While considering the issue of personal liberty of citizen and interest of the State, the Court held as under:-

"Personal liberty and the interest of the State

50. Civilized countries have recognized that liberty is the most precious of all the human rights. The American Declaration of Independence, 1776, French Declaration of the Rights of Men and the Citizen, 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights, 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilized society. Sometimes in the larger interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable

warrants should be issued.

When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided."

19. The Single Bench of Delhi High Court in *Court on its Own Motion* (supra) has taken *suo moto* (*sic: motu*) notice of a newspaper report when a Special Judge has refused to accept charge-sheet in a fake visa racket and for not arresting the accused during the investigation. The Court issued directions to the Criminal Courts to accept the charge-sheet even if the investigation agency has not arrested the accused during the investigation and that if the Court exercises the discretion of warrant of arrest at any stage including the stage while taking cognizance of the charge-sheet, it has to record reasons as contemplated under Section 87 of the Code that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. It is the said order dated 28.01.2004 which was reiterated by another Single Bench of Delhi High Court in *Lt. Gen. Tejinder Singh* (supra).

20. We find that in the order passed by Delhi High Court in *Court on its*

Own Motion (supra), the learned Single Bench referred to a judgment passed by the Supreme Court in *Joginder Kumar vs. State of U.P. and others*, (1994) 4 SCC 260 wherein it has been held that it would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen that no arrest shall be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even as to the need to effect arrest. It was further held that the arrest may be necessary if the offence alleged is of a grave nature and prescribes a severe punishment and that there is a likelihood of offender either absconding or not appearing on being summoned or his fleeing away from justice or judgment. The said judgment was rendered prior to the Supreme Court judgment in *Siddharam Satlingappa Mhetre* (supra) wherein the Court has culled out the parameters, which are required to be taken into consideration while enlarging an accused on pre-arrest bail. Still further, that was not a case of pre-arrest bail but a case where the learned Special Court returned the charge-sheet. Similarly, in *Lt. Gen. Tejinder Singh* (supra), the petitioner was an accused for an offence under the Prevention of Corruption Act, 1988. He sought bail under Section 437 of the Code after filing of the charge-sheet, therefore, such judgment is again not helpful to the argument raised by the learned senior counsel, as it was not a case of pre-arrest bail under Section 438 of the Code.

21. Shri Pravin H. Parekh, learned senior counsel for the petitioner in MCRC No.24605/2017 has referred to another judgment of the Supreme Court reported as 2012(1) SCC 40 (*Sanjay Chandra vs. Central Bureau of Investigation*) wherein the Court has observed as under:-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment; unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of

great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required."

22. Section 438 of the Code itself has delineated some factors for consideration of grant of pre-arrest bail and the first and foremost is the nature and gravity of the accusation. The allegation against petitioner Dr. Ajay Goenka is that the Management of Chirayu Medical College has given dishonest and false information to the Director, Medical Education, Bhopal that 12 students have been admitted whereas none of those 12 students were admitted. Such 12 candidates were the engine candidates, explained to us as the candidates who do not intend to take admission but pair with a bogie candidate for admission before the last date of admission. The further allegation is that when charts in respect of vacant seats were prepared and forwarded to Director, Medical Education, Bhopal on 25.09.2012, information was sent that only nine seats are vacant whereas more than 50 seats were vacant. It is further alleged that 19 candidates were admitted on 28th September, who were not from the allotment list at all; 32 new students

were admitted on 29th September and 4 candidates on 30th September without any merit and criteria and without following the due process.

23. The allegation against petitioners - Jai Narayan Chouksey and Dr. Divya Kishore Satpathi, who were Chairman and In-charge, Admission Committee respectively of L.N. Medical College, Bhopal is that one Mithilesh Kumar, a co-accused, was an engine candidate, who was already admitted in Patna Medical College in the year 2011 but the Director, Medical Education, falsely with a dishonest intention was informed that he stands admitted in L.N. Medical College. The Director, Medical Education was informed on 25.09.2012 that only five seats are vacant, but, in fact, 40 seats were vacant, which were filled on 30.09.2012 after the process of counselling was over, after publishing an advertisement in an evening tabloid of very limited circulation.

24. Thus, there are grave and serious allegations of wrongful admission of students in the Medical Colleges being run and managed by the petitioners. As per the charge-sheet, in Chirayu Medical College, out of quota of 63 students, 55 students were granted wrongful admission. In L.N. Medical College, out of 63 seats, 41 students have been granted wrongful admission. Meaning thereby, that such large number of students have been admitted otherwise than on merit for financial considerations. Such action of the petitioners, if proved, during trial would show the deep-rooted malice in the admission process whereby the merit is given a go-bye and the students, who are not meritorious, were admitted at the cost of more meritorious candidates for monetary consideration. Thus, the action or inaction of the petitioners, who were running the medical colleges has denied admission to the large number of more meritorious candidates, who were, in fact, entitled to admission and thus, leading to their frustration. The entire process would be antithesis of the rule that the students should be admitted only on merit. Thus, the gravity of the accusation against the petitioners is glaring. In fact, the petitioners may not be an accused of taking life of a person but if the allegations are proved, the petitioners cannot commit more heinous crime than of playing with the life of young students. It would be a case of mass killing of the career of numerous students.

25. The learned Special Judge has found that the allegation against the petitioners does not fall within the case of "no evidence" or that the petitioners are being arrested without any basis or in a *mala fide* manner. The role of the petitioners vis-a-vis the nature and gravity of the accusation has been properly appreciated in terms of the direction (i) contained in para 112 of the judgment of the Supreme

Court in *Siddharam Satlingappa Mhetre* (supra). In the present case, direction (vi) contained in the said decision is also relevant that impact of grant of anticipatory bail in cases of large magnitude affecting a very large number of people is also a parameter for consideration for grant of anticipatory bail. The action of the petitioners has led to admission of large number of candidates at the cost of more meritorious candidates in a professional course. The impact of the action of the petitioners, if proved, would show that how the professional courses are being conducted by the private medical colleges, therefore, in view of the seriousness of the allegations, which have wide ramifications on the cause of professional education in the State, we do not find that the petitioners are entitled to concession of pre-arrest bail.

26. In respect of the argument that the learned Special Judge has issued non-bailable warrants without seeking presence by summons, is again not tenable. Our attention has been drawn in M.Cr.C. No. 25107/2017 (*Dr. Vijay Kumar Pandya vs. Union of India*) wherein the Central Bureau of Investigation has directed the petitioner therein on 21.11.2017 to appear before the learned 15th Additional Sessions Judge, VYAPAM notified cases, Bhopal on 23.11.2017. Similar notice is believed to have been issued to the petitioners as well. It is, thereafter, on 23.11.2017, the Special Judge has passed an order that the petitioners have not appeared even though called upon by the Central Bureau of Investigation, Bhopal to appear before the Court, therefore, the presence of the petitioners was sought by issuance of non-bailable warrants. Thus, it is not a case where non-bailable warrants have been issued in the first instance. The petitioners were given opportunity to appear before the notified Court but on account of non-appearance, non-bailable warrants have been issued.

27. Further argument of the learned counsel for the petitioners is that the petitioners were not arrested during investigation and have cooperated with the Investigating Officer, therefore, at this stage the arrest of the petitioners will deprive them of personal liberty. The argument looks attractive but the fact is that the investigation process was long drawn. There are more than 500 accused. If the accused were not arrested during investigation, it does not mean that the petitioners are entitled to anticipatory bail as the allegations against the petitioners of exploiting the admission process are quite serious.

28. Consequently, the present petitions for grant of anticipatory bail under Section 438 of the Code are hereby **dismissed**.

Application dismissed.