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(Note : An asterisk (*) denotes Note number)

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) & 12(1)(f) and Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Arrears of Rent – Bonafide Requirement – Amendment in Appeal – Permissibility – Respondent/Plaintiff filed a suit for eviction against the Appellant/Defendant seeking a decree u/S 12(1)(a) and 12(1)(f) – Trial Court decreed the suit in favour of plaintiff u/S 12(1)(a) of the Act of 1961 – Both the parties filed separate appeals, Plaintiff's appeal was registered as C.A. No. 145-A/2014 whereas Defendant's appeal was registered as C.A. No. 144-A/2014 – Appellate court allowed the appeal filed by respondent/plaintiff and decree was passed in his favour u/S 12(1)(a) & 12(1)(f) of the Act of 1961 whereas appeal filed by the Appellant/Defendant was dismissed – Appellant/Defendant filed this present second appeal only challenging dismissal of his appeal No. 144-A/2014 – Later, an application under Order 6 Rule 17 CPC was filed by the appellant seeking amendment in the second appeal – Held – If application for amendment is allowed, that would mean that appellant is permitted to challenge the judgment and decree passed in C.A. No. 145-A/2014 after a period of one and half years and also by-passing the provisions of Limitation Act – Application for amendment rejected – Further held – Record shows that Trial Court has considered the documents produced and have recorded a finding after evaluation of evidence that documents do not prove that rent was deposited in accordance with law – Decree of eviction rightly passed – Appeal dismissed. [Madhav Gogia Vs. Smt. K. Fatima Khursheed] ...1147

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए) व 12(1)(एफ) एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – भाड़े का बकाया – वास्तविक आवश्यकता – अपील में संशोधन – अनुज्ञेयता – प्रत्यर्थी/वादी ने अपीलार्थी/प्रतिवादी के विरुद्ध धारा 12(1)(ए) व 12(1)(एफ) के अंतर्गत डिक्री चाहते हुए बेदखली हेतु वाद प्रस्तुत किया – विचारण न्यायालय ने 1961 के अधिनियम की धारा 12(1)(ए) के अंतर्गत वादी के पक्ष में वाद डिक्रित किया – दोनों पक्षकारों ने पृथक अपीलें प्रस्तुत की, वादी की अपील सिविल अपील क्र. 145-ए/2014 के रूप में पंजीबद्ध की गई थी जबकि प्रतिवादी की अपील सिविल अपील क्र. 144-ए/2014 के रूप में पंजीबद्ध की गई थी – अपीली न्यायालय ने प्रत्यर्थी/वादी द्वारा प्रस्तुत अपील मंजूर की और 1961 के अधिनियम की धारा 12(1)(ए) व 12(1)(एफ) के अंतर्गत उसके पक्ष में डिक्री पारित की गई थी जबकि अपीलार्थी/प्रतिवादी द्वारा

प्रस्तुत अपील खारिज की गई थी - अपीलार्थी/प्रतिवादी ने वर्तमान द्वितीय अपील केवल उसकी अपील क्र. 144-ए/2014 की खारिजी को चुनौती देते हुए प्रस्तुत की - बाद में, अपीलार्थी द्वारा सि.प्र.सं. के आदेश 6 नियम 17 के अंतर्गत एक आवेदन, द्वितीय अपील में संशोधन चाहते हुए प्रस्तुत किया - अभिनिर्धारित - यदि संशोधन हेतु आवेदन को मंजूर किया गया तो इसका अर्थ यह होगा कि एक वर्ष छह माह की अवधि पश्चात् एवं परिसीमा अधिनियम के उपबंधों को विचार में लिए बिना अपीलार्थी को सिविल अपील क्र. 145-ए/2014 में पारित निर्णय और डिक्री को चुनौती देने की अनुमति दी गई है - संशोधन हेतु आवेदन अस्वीकार किया गया - आगे अभिनिर्धारित - अभिलेख दर्शाता है कि विचारण न्यायालय ने प्रस्तुत किये गये दस्तावेजों को विचार में लिया और साक्ष्य के मूल्यांकन के पश्चात् निष्कर्ष अभिलिखित किया कि दस्तावेज साबित नहीं करते कि माझा विधि अनुसार जमा किया गया था - बेदखली की डिक्री उचित रूप से पारित की गई - अपील खारिज। (माधव गोगिया वि. श्रीमती के. फातिमा खुर्शीद) ...1147

*Accommodation Control Act, M.P. (41 of 1961), Sections 12(1)(a), 12(1)(e) & 12(1)(f) - Arrears of Rent - Owner of suit property Birdi Bai during her lifetime through a registered document endowed the property to a Charitable Trust but later she revoked the document by another document dated 03.11.79 - Appellant/plaintiff (daughter-in-law of Birdi Bai) filed a eviction suit against the tenants on the ground that in respect of the suit property, her mother-in-law executed a will in her favour on 24.10.79 and because of *bonafide* requirement and on the ground that tenants have not paid arrears of rent within stipulated period despite service of notice u/S 12(1)(a) of the Act of 1961 - Trial Court held plaintiff to be the owner of suit property and landlord of respondent and decreed the suit in her favour - Respondents filed appeal whereby the same was allowed holding that once public trust is created, it cannot be dissolved by the creator of trust and thus plaintiff was not the landlord of respondents - Challenge to - Held - Issue relating to revocation of trust cannot be again considered in this appeal as the same has been decided between the trust and appellant in F.A. No. 22/1997 and has attained finality in favour of appellant and accordingly by way of the will, appellant is owner of the property and also the landlord of respondents - Further held - Both the Courts below recorded a finding of alternate accommodation of respondents and the fact that they are living there - Appellant entitled to a decree of eviction on this ground - Respondents directed to hand over vacant possession*

of suit property to appellant – Appeal allowed. [Manjula Bai Vs. Premchand] ...1119

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 12(1)(ए), 12(1)(इ) व 12(1)(एफ) – भाड़े का बकाया – वाद संपत्ति की स्वामी बिरडी बाई ने अपने जीवन काल के दौरान एक रजिस्ट्रीकृत दस्तावेज के माध्यम से संपत्ति एक पूर्व न्यास को दान की परंतु बाद में अन्य दस्तावेज दिनांकित 03.11.79 के द्वारा इस दस्तावेज को प्रतिसंहृत किया – अपीलार्थी/वादी (बिरडी बाई की बहू) ने इस आधार पर किरायेदारों के विरुद्ध बेदखली का वाद प्रस्तुत किया कि वाद संपत्ति के संबंध में, उसकी सास ने उसके पक्ष में दिनांक 24.10.79 को एक वसीयत निष्पादित की थी एवं वास्तविक आवश्यकता के कारण एवं इस आधार पर कि अधिनियम 1961 की धारा 12(1)(ए) के अंतर्गत नोटिस की तामीली होने के बावजूद किरायेदारों ने नियत अवधि के भीतर भाड़े के बकाया का भुगतान नहीं किया है – विचारण न्यायालय ने वादी को वाद संपत्ति की स्वामी एवं प्रत्यर्थीगण की भू-स्वामी अभिनिर्धारित किया एवं उसके पक्ष में वाद डिक्रीत किया – प्रत्यर्थीगण ने अपील प्रस्तुत की जिस पर यह अभिनिर्धारित करते हुए उक्त को मंजूर किया गया था कि एक बार लोक न्यास सृजित किया जाता है, वह न्यास के सृजनकर्ता द्वारा विघटित नहीं किया जा सकता एवं इस प्रकार वादी प्रत्यर्थीगण की भू-स्वामी नहीं थी – को चुनौती – अभिनिर्धारित – न्यास के प्रतिसंहरण से संबंधित विवाद को इस अपील में पुनः विचार में नहीं लिया जा सकता क्योंकि उक्त को, न्यास एवं अपीलार्थी के मध्य एफ.ए.क्र. 22/1997 में विनिश्चित किया जा चुका है एवं अपीलार्थी के पक्ष में अंतिमता प्राप्त कर ली है एवं तदनुसार वसीयत के माध्यम से, अपीलार्थी संपत्ति की स्वामी है और प्रत्यर्थीगण की भू-स्वामी भी है – आगे अभिनिर्धारित – दोनों निचले न्यायालयों ने प्रत्यर्थीगण के वैकल्पिक स्थान का निष्कर्ष एवं यह तथ्य कि वे वहां निवास कर रहे हैं अभिलिखित किया – अपीलार्थी इस आधार पर बेदखली की डिक्री का हकदार है – प्रत्यर्थीगण को वाद संपत्ति का रिक्त कब्जा अपीलार्थी को अंतरित करने हेतु निदेशित किया गया – अपील मंजूर। (मंजुला बाई वि. प्रेमचन्द्र) ...1119

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) & 13(1) – Arrears of Rent – Service of Notice – Eviction suit filed by the Respondent/Plaintiff u/S 12(1)(a) was dismissed – Appeal filed by plaintiff was allowed and decree was passed u/S 12(1)(a) – Second appeal by the Appellant/tenant on the ground that no notice for demand of arrears of rent was ever served thus no compliance u/S 13(1) was made – Held – The closed envelope (Article-'A') proves that notice was properly addressed to the appellant/tenant, sent through registered post with acknowledgment – Endorsement in the envelope "refused to accept, hence returned" – Appellant has not stated that postman had recorded a wrong endorsement

– Provisions of Section 13(1) complied with – No error, illegality or irregularity by the court below while decreeing suit for eviction – Appeal dismissed. [Bhaiya Lal Rajak Vs. Moh. Shamim] ...*77

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए) एवं 13(1) – माड़े का बकाया – नोटिस की तामीली – प्रत्यर्थी/वादी द्वारा धारा 12(1)(ए) के अन्तर्गत प्रस्तुत किया गया बेदखली का वाद खारिज किया गया था – वादी द्वारा प्रस्तुत अपील मंजूर की गई थी एवं धारा 12(1)(ए) के अन्तर्गत डिक्री पारित की गई थी – अपीलार्थी/किरायेदार द्वारा इस आधार पर द्वितीय अपील कि माड़े के बकाये की मांग के लिए कमी किसी नोटिस की तामीली नहीं की गई इस प्रकार धारा 13(1) के अन्तर्गत कोई अनुपालन नहीं किया गया था – अभिनिर्धारित – बंद लिफाफा (वस्तु-‘ए’) यह साबित करता है कि रजिस्ट्रीकृत डाक के माध्यम से अभिस्वीकृति के साथ भेजा गया नोटिस उचित रूप से अपीलार्थी/किरायेदार को संबोधित किया गया था – लिफाफे में पृष्ठांकन “स्वीकार करने से इंकार, इसलिए वापिस” – अपीलार्थी ने यह कथन नहीं किया है कि डाकिये ने गलत पृष्ठांकन अभिलिखित किया था – धारा 13(1) के उपबंधों का अनुपालन किया गया – बेदखली हेतु वाद को डिक्रीत करते समय निचले न्यायालय द्वारा कोई त्रुटि, अवैधता या अनियमितता नहीं की गई – अपील खारिज। (भैया लाल रजक वि. मोहम्मद शमीम) ...*77

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) and 12(1)(f) – See – Civil Procedure Code, 1908, Order 6 Rule 17 [Ashok Kumar Dureja Vs. Shri Rajendra Kumar Jain Through L.Rs.] ...1457

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) व 12(1)(एफ) – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 6 नियम 17 (अशोक कुमार दुरेजा वि. श्री राजेन्द्र कुमार जैन द्वारा विधिक प्रतिनिधि) ...1457

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) – Bonafide Requirement – Existence of – Held – An appeal is a continuation of first suit – Landlord’s need must be shown to continue to exist at appellate stage – If tenant is in a position to show that need or requirement no more exist because of subsequent events, it would be open to him to point out such events and the Court including appellate Court has to be examine, evaluate and adjudicate the same. [Ashok Kumar Dureja Vs. Shri Rajendra Kumar Jain Through L.Rs.] ...1457

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वास्तविक आवश्यकता – की विद्यमानता – अभिनिर्धारित – अपील, प्रथम वाद की निरंतरता है – मूगिस्वामी की आवश्यकता की विद्यमानता अपीली प्रक्रम पर जारी रहना दर्शाया जाना चाहिए – यदि किराएदार यह दर्शाने की स्थिति में है कि पश्चात्वर्ती घटनाओं के कारण

अब जरूरत या आवश्यकता विद्यमान नहीं रही, ऐसी घटनाओं को वह इंगित करने के लिए स्वतंत्र होगा तथा न्यायालय, जिसमें अपीली न्यायालय भी समाविष्ट है, को उक्त का परीक्षण, मूल्यांकन एवं न्यायनिर्णयन करना चाहिए। (अशोक कुमार दुरेजा वि. श्री राजेन्द्र कुमार जैन द्वारा विधिक प्रतिनिधि) ...1457

Adhyapak Samvarg (Employment & Conditions of Services) Rules, M.P., 2008, Education Guarantee Scheme, M.P., 1997, Panchayat Samvida Shala Shikshak (Appointment and Conditions of Service) Rules, M.P. 2001 and Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Niyam, M.P., 2005 – Representation of the petitioner has been rejected and recovery ordered against him – Petitioner was appointed as Guruji in the year 2007 – He was appointed as Samvida Shala Shikshak Grade-III in year 2012 by an order dated 11.10.2012 and he was absorbed as Adhyapak on 25.06.2015 – Certainly he is not at all entitled for a regular pay scale right from the year 2007 – At the best he is entitled for a pay scale of Samvida Shala Shikshak Grade-III only w.e.f. 11.10.2012 and pay scale to the post of Adhyapak only w.e.f. 25.06.2015 – Order of recovery passed by the respondents does not warrant any interference – Petition dismissed. [Vinod Rathore Vs. State of M.P.] ...823

अध्यापक संवर्ग (रोजगार और सेवा की शर्तें) नियम, म.प्र., 2008, शिक्षा गारंटी योजना, म.प्र., 1997, पंचायत संविदा शाला शिक्षक (नियुक्ति और सेवा की शर्तें) नियम, म.प्र. 2001 एवं पंचायत संविदा शाला शिक्षक (रोजगार और संविदा की शर्तें) नियम, म.प्र. 2005 – याची का अम्यावेदन अस्वीकार किया गया और उसके विरुद्ध वसूली आदेशित की गई – याची को वर्ष 2007 में गुरुजी नियुक्त किया गया था – उसे आदेश दिनांक 11.10.2012 द्वारा वर्ष 2012 में संविदा शाला शिक्षक श्रेणी-III के पद पर नियुक्त किया गया तथा 25.06.2015 को अध्यापक के रूप में आमेहित किया गया – निश्चित रूप से, वह सीधे वर्ष 2007 से नियमित वेतनमान का बिल्कुल भी हकदार नहीं – ज्यादा से ज्यादा वह मात्र 11.10.2012 से प्रभावी रूप से संविदा शाला शिक्षक श्रेणी-III के वेतनमान का और मात्र 25.06.2015 से प्रभावी रूप से अध्यापक के पद के वेतनमान का हकदार है – प्रत्यर्थागण द्वारा पारित वसूली के आदेश में किसी हस्तक्षेप की आवश्यकता नहीं – याचिका खारिज। (विनोद राठौर वि. म.प्र. राज्य) ...823

Admission in B.D.S. Course – Petitioner association filed the present M.C.C. for extension of time to comply with orders of this Court in original writ petition, in which association was a respondent – Held – Present case has been filed for extension of time for affording

time to Central Government, so that a decision on second recommendation forwarded by D.C.I. for regularizing the illegal admissions can be taken, whereas such issue has already been examined in detail by the High Court in earlier petitions and also by the Supreme Court and even Central Government has already previously dismissed such a recommendation – Further held – Petitioner has never challenged the original order passed by Dental Council of India nor it has opposed the same before any Court of law – Present application amount to abuse and misuse of process of law and is absolutely misconceived, mischievous and vexatious – M.C.C. dismissed with cost of Rs. 20,000. [Association of Private Dental and Medical Colleges Vs. Union of India] (DB)...1508

बी.डी.एस. पाठ्यक्रम में प्रवेश – याची एसोसिएशन ने मूल रिट याचिका में, जिसमें एसोसिएशन प्रत्यर्थी था, इस न्यायालय के आदेशों का अनुपालन करने के लिए समय बढ़ाने हेतु एम.सी.सी. प्रस्तुत की – अभिनिर्धारित – वर्तमान प्रकरण केन्द्र सरकार को समय प्रदान करने के लिए समय बढ़ाने हेतु प्रस्तुत किया गया है, ताकि अवैध प्रवेशों को नियमित करने के लिए भारतीय दन्त चिकित्सा परिषद् द्वारा भेजी गई दूसरी सिफारिश पर विनिश्चय किया जा सके, जबकि ऐसे विवादक का पूर्व याचिकाओं में उच्च न्यायालय द्वारा एवं उच्चतम न्यायालय द्वारा भी विस्तृत रूप से परीक्षण किया जा चुका है एवं यहाँ तक कि केन्द्र सरकार ने पहले ही ऐसी सिफारिश को पूर्व में खारिज किया है – आगे अभिनिर्धारित – याची ने कभी भी भारतीय दन्त चिकित्सा परिषद् द्वारा पारित मूल आदेश को चुनौती नहीं दी है और न ही किसी न्यायालय के समक्ष उक्त का विरोध किया है – वर्तमान आवेदन विधि की प्रक्रिया का दुरुपयोग और अनुचित उपयोग है एवं पूर्ण रूप से गलत, हानिप्रद एवं कष्टप्रद है – 20,000 रु. के व्यय के साथ एम.सी.सी. खारिज। (एसोसिएशन ऑफ प्राइवेट डेंटल एण्ड मेडिकल कॉलेजेस वि. यूनियन ऑफ इंडिया) (DB)...1508

Arbitration and Conciliation Act (26 of 1996), Section 11 – Appointment of Arbitrator – Termination of contract by the respondent – Applicant seeking appointment of arbitrator for deciding the dispute – Held – As per Clause 24 and 25 of the agreement, there is a prescribed procedure for settling the dispute and appointment of arbitrator – Applicant was required to approach the competent authority i.e. Chief Executive Officer before filing the present application – Applicant has directly approached this Court without exhausting the procedure laid down in the agreement – Mandatory condition for approaching this Court as provided u/S 11 of the Act has not been complied with –

Arbitration cases dismissed. [Agrawal Construction Co. (M/s.) Vs. M.P. Rural Development Authority] ...*45

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11 - मध्यस्थ की नियुक्ति - प्रत्यर्थी द्वारा संविदा का पर्यवसान - आवेदक ने विवाद का विनिश्चय किये जाने हेतु मध्यस्थ की नियुक्ति चाही - अभिनिर्धारित - करार के खंड 24 एवं 25 के अनुसार, विवाद के निपटारे तथा मध्यस्थ की नियुक्ति करने हेतु एक विहित प्रक्रिया है - आवेदक का वर्तमान आवेदन प्रस्तुत करने से पूर्व सक्षम प्राधिकारी अर्थात् मुख्य कार्यपालन अधिकारी के समक्ष जाना अपेक्षित था - आवेदक करार में अधिकथित/ दी गई प्रक्रिया को निःशेष किये बिना सीधे न्यायालय के समक्ष आया है - न्यायालय के समक्ष जाने की आज्ञापक शर्त जैसा कि इस अधिनियम की धारा 11 के अंतर्गत उपबंधित है का अनुपालन नहीं किया गया है - माध्यस्थम् प्रकरण खारिज। (अग्रवाल कंस्ट्रक्शन कं. (मे.) वि. एम.पी. रूरल डेवेलपमेन्ट अथॉरिटी) ...*45

Army Act (45 of 1950), Section 125 - See - Criminal Procedure Code, 1973, Section 475 [Station Commander, Mhow Cantt. Major General R.S. Shekhawat, SM, VSM Vs. State of M.P.] ...1275

सेना अधिनियम (1950 का 45), धारा 125 - देखें - दण्ड प्रक्रिया संहिता, 1973, धारा 475 (स्टेशन कमांडर, महू केन्ट, मेजर जनरल आर.एस. शेखावत, एसएम, व्हीएसएम वि. म.प्र. राज्य) ...1275

Army Act, (45 of 1950), Section 125 & 126 and Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1952, Rule 3 & 4 - Nature of - Held - Are mandatory and the effect of non-compliance thereof is that the entire exercise would be vitiated and held to be null and void. [Karamjeet Singh Vs. State of M.P.] ...946

सेना अधिनियम (1950 का 45), धारा 125 व 126 एवं दण्ड न्यायालय और सेना न्यायालय (अधिकारिता का समायोजन) नियम, 1952, नियम 3 व 4 - का स्वरूप - अभिनिर्धारित - आज्ञापक है तथा उसके अननुपालन का प्रभाव यह है कि संपूर्ण कार्यवाही दूषित हो जाएगी तथा अकृत एवं शून्य ठहरायी जाएगी। (करमजीत सिंह वि. म.प्र. राज्य) ...946

Army Act, (45 of 1950), Section 125 & 126 and Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1952, Rule 3 & 4 - Trial of offence - Accused army man - Criminal Court and Court-martial both have concurrent jurisdiction - If the criminal Court is of the opinion that proceedings be instituted before itself, the procedure before proceeding with the trial is that notice as provided u/S 125 &

126 of the Army Act to Commanding Officer is required to be issued – It is a mandatory requirement – Non-compliance of which vitiates the entire exercise and proceedings will be held to be *null and void*. [Karamjeet Singh Vs. State of M.P.] ...946

सेना अधिनियम (1950 का 45), धारा 125 व 126 एवं दण्ड न्यायालय और सेना न्यायालय (अधिकारिता का समायोजन) नियम, 1952, नियम 3 व 4 – अपराध का विचारण – अभियुक्त सैनिक – दण्ड न्यायालय एवं सेना न्यायालय दोनों के पास समवर्ती अधिकारिता है – यदि दण्ड न्यायालय इस मत का है कि कार्यवाहियाँ उसके समक्ष संस्थित हो, विचारण पर आगे बढ़ने के पूर्व प्रक्रिया यह है कि कमान अधिकारी को नोटिस जैसा कि सेना अधिनियम की धारा 125 एवं 126 के अंतर्गत उपबंधित है, जारी किया जाना अपेक्षित है – यह एक आज्ञापक अपेक्षा है – जिसका अननुपालन संपूर्ण कार्यवाही को दूषित करेगा तथा कार्यवाहियाँ अकूत एवं शून्य ठहरायी जाएगी। (करमजीत सिंह वि. म.प्र. राज्य) ...946

Army Rules, 1954 – See – Criminal Procedure Code, 1973, Section 475 [Station Commander, Mhow Cantt. Major General R.S. Shekhawat, SM, VSM Vs. State of M.P.] ...1275

सेना नियम, 1954 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 475 (स्टेशन कमांडर, महू केन्ट, मेजर जनरल आर.एस. शेखावत, एसएम, व्हीएसएम वि. म.प्र. राज्य) ...1275

Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act (27 of 1996), Section 2(1)(d) and Factories Act (63 of 1948), Section 2(k) & (m) – Appellant challenging the dismissal of writ petition in which the show cause notice was challenged on the ground that Section 2(1)(d) is not applicable in respect of building or other construction work to which the Factories Act would apply – Held – Since the construction under taken by appellant was not undertaken by the employees of the appellant but by an independent contractor, therefore, the workers engaged in the construction work were not covered under the Factories Act and would be covered under Section 2(1)(d) of the Act – Appeal dismissed. [Vippy Industries Ltd. Vs. Assessing Officer, Under Building and Other Construction Workers' Welfare Cess Act, 1996] (DB)...789

भवन एवं अन्य संनिर्माण कर्मकार (नियोजन विनियमन एवं सेवा शर्त) अधिनियम (1996 का 27), धारा 2(1)(डी) एवं कारखाना अधिनियम (1948 का 63), धारा 2(के) व (एम) – अपीलार्थी द्वारा रिट याचिका की खारिजी को चुनौती दी गई

जिसमें कि कारण बताओ नोटिस को इस आधार पर चुनौती दी गई थी कि भवन एवं अन्य संनिर्माण कार्य जिनमें कारखाना अधिनियम लागू होगा उसके संबंध में धारा 2(1)(डी) प्रयोज्य नहीं है – अभिनिर्धारित – चूंकि अपीलार्थी द्वारा लिये गये संनिर्माण के उपक्रम को अपीलार्थी के कर्मचारियों द्वारा नहीं बल्कि एक स्वतंत्र ठेकेदार द्वारा चलाया जा रहा था, इसलिए, संनिर्माण कार्य में लगे हुए कर्मकार कारखाना अधिनियम के अंतर्गत आच्छादित नहीं होते तथा अधिनियम की धारा 2(1)(डी) के अंतर्गत आच्छादित होंगे – अपील खारिज। (विप्पी इंडस्ट्रीज लि. वि. असेसिंग ऑफिसर, अंडर बिल्डिंग एण्ड अदर कंस्ट्रक्शन वर्कर्स वेलफेयर सेस एक्ट, 1996) (DB)...789

Cantonments Act (41 of 2006), Sections 20(2), 20(3) & 45 – Withdrawal of Resignation – Procedure – Petitioner, Vice-President of the Board submitted his resignation on 04.03.2016 which was later withdrawn on 06.04.2016 but even after such withdrawal, in a special meeting held on 07.04.2016, resignation was accepted taking resort to Section 20(3) of the Act of 2006 by conducting voting u/S 45 of the Act – Held – There is no provision in the Act of 2006 which provides a separate procedure for withdrawing the resignation and therefore general principles of withdrawing a notice of resignation are applicable, by simply giving an intimation in writing to that effect – In the instant case, there is no requisition as envisaged u/S 20(3) of the Act of 2006 moved by the members for removal of vice-president – It is clear that before the resignation of the petitioner was accepted by the board, the same was withdrawn by him and this fact was taken note of in the resolution of the special meeting of the Board itself – Thus, at the time of passing of the resolution, notice of resignation stood withdrawn and did not remain in existence – Impugned resolution, accepting the resignation of petitioner is quashed – Petition allowed. [Shekhar Choudhary Vs. Union of India] ...*73

छावनी अधिनियम (2006 का 41), धाराएँ 20(2), 20(3) व 45 – त्यागपत्र वापस लिया जाना – प्रक्रिया – याची, बोर्ड के उपाध्यक्ष, ने 04.03.2016 को त्यागपत्र प्रस्तुत किया जिसे बाद में 06.04.2016 को वापस लिया गया, परंतु उक्त वापसी के पश्चात् मी, 07.04.2016 को की गई विशेष बैठक में, अधिनियम 2006 की धारा 45 के अंतर्गत मतदान संचालित कर, अधिनियम की धारा 20(3) का अवलंब लेते हुए त्यागपत्र स्वीकार किया गया था – अभिनिर्धारित – 2006 के अधिनियम में कोई उपबंध नहीं जो त्यागपत्र वापस लेने का कोई पृथक उपबंध करता हो और इसलिए इस आशय की साधारण रूप से लिखित में सूचना देकर त्यागपत्र का नोटिस वापस

लेने के सामान्य सिद्धांत लागू होते हैं — वर्तमान प्रकरण में, ऐसी कोई अपेक्षा नहीं जैसा कि 2006 के अधिनियम की धारा 20(3) के अंतर्गत, उपाध्यक्ष को सदस्यों द्वारा हटाये जाने हेतु अनुध्यात है — यह स्पष्ट है कि बोर्ड द्वारा याची का त्यागपत्र स्वीकार किये जाने से पूर्व, उसे उसके द्वारा वापस लिया गया था और इस तथ्य को स्वयं बोर्ड की विशेष बैठक के संकल्प में ध्यान में लिया गया था — अतः, संकल्प पारित करते समय, त्यागपत्र का नोटिस वापस हो गया और अस्तित्व में नहीं रहा — याची का त्यागपत्र स्वीकार करने का आक्षेपित संकल्प अभिखंडित — याचिका मंजूर। (शेखर चौधरी वि. यूनियन ऑफ इंडिया) ...*73

Civil Law – Adverse Possession – Appellants/plaintiffs filed suit for declaration of title on the basis of adverse possession and for permanent injunction – Concurrent findings of fact – Second Appeal – Held – No declaration can be sought on the basis of adverse possession inasmuch as adverse possession can be used as a shield and not as a sword as per the dictum of Apex Court laid down in Gurudwara Sahib's case reported in (2014) 1 SCC 669 – No Substantial question of law involved – Appeal dismissed. [Ramsanehi Vs. MST. Rajjuwa] ...899

सिविल विधि – प्रतिकूल कब्जा – अपीलार्थीगण/वादीगण ने प्रतिकूल कब्जा के आधार पर स्वत्व की घोषणा एवं स्थायी व्यादेश हेतु वाद प्रस्तुत किया – तथ्य के समवर्ती निष्कर्ष – द्वितीय अपील – अभिनिर्धारित – प्रतिकूल कब्जे के आधार पर कोई घोषणा नहीं चाही जा सकती, जहाँ तक कि (2014) 1 SCC 669 में प्रकाशित गुरुद्वारा साहेब के प्रकरण में सर्वोच्च न्यायालय के आदेश के अनुसार प्रतिकूल कब्जे का प्रयोग ढाल के रूप में किया जा सकता है, तलवार के रूप में नहीं – विधि का कोई सारमृत प्रश्न अंतर्ग्रस्त नहीं – अपील खारिज। (रामसनेही वि. मुस. रजौआ) ...899

Civil Procedure Code (5 of 1908), Section 10 – Eviction suit against the petitioner/defendant – Stay application which was filed by the defendant on the ground that in respect of the same property, there is an agreement of sale between the parties and for which defendant has instituted a civil suit which is pending, was dismissed – Held – Suit of specific performance was filed prior to filing of the suit for eviction – Defendant is in possession by way of part performance and no more as tenant – Fate of the subsequent eviction suit is depended on the fate of the suit of specific performance – If defendant succeed in his suit and decree is executed then he would become the owner of the property and in such event, respondent/plaintiff would not be entitled for a decree in his suit for eviction – Proceeding of eviction suit is

liable to be stayed – Application filed by the defendant u/S 10 CPC is allowed – Petition allowed. [Sarita Rathore (Smt.) Vs. Smt. Jaya Kunwar] ...1058

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 – याची/प्रतिवादी के विरुद्ध बेदखली का वाद – रोक हेतु आवेदन, जिसे प्रतिवादी द्वारा इस आधार पर प्रस्तुत किया गया था कि उसी संपत्ति के संबंध में, पक्षकारों के मध्य विक्रय का करार है और जिसके लिए प्रतिवादी ने सिविल वाद संस्थित किया है जो लंबित है, खारिज किया गया – अभिनिर्धारित – विनिर्दिष्ट पालन हेतु वाद को बेदखली का वाद प्रस्तुत करने के पूर्व प्रस्तुत किया गया था – प्रतिवादी भागिक पालन के जरिए कब्जाधारक है और न कि किराएदार के रूप में – पश्चात्पूर्ति बेदखली के वाद की नियति, विनिर्दिष्ट पालन के वाद के भाग्य पर निर्भर है – यदि प्रतिवादी अपने वाद में सफल होता है और डिक्री निष्पादित की जाती है तब वह संपत्ति का स्वामी बन जाएगा और ऐसी स्थिति में, प्रत्यर्थी/वादी बेदखली के अपने वाद में डिक्री का हकदार नहीं होगा – बेदखली के वाद की कार्यवाही रोके जाने योग्य है – प्रतिवादी द्वारा सि.प्र.सं. की धारा 10 के अंतर्गत प्रस्तुत आवेदन मंजूर – याचिका मंजूर। (सरिता राठौर (श्रीमती) वि. श्रीमती जया कुंवर) ...1058

Civil Procedure Code (5 of 1908), Section 10 – Stay of Proceeding – Held – Provisions of Section 10 CPC can only be attracted where parties to the suit are same, the entire subject matter of both the suits are directly and substantially the same and identical – In the present case, parties in both the suits are different and reliefs claimed by the plaintiff in both the suits are not identical and therefore judgment passed in the previous suit will not operate as *res judicata* in the subsequent suit – Trial Court rightly rejected the application – Petition dismissed. [Mahant Hanuman Das Guru Swami Purshottam Das Ji Vs. Sapna Choudhary] ...*51

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 – कार्यवाही का रोका जाना – अभिनिर्धारित – सिविल प्रक्रिया संहिता की धारा 10 के उपबंध केवल तब आकर्षित होते हैं जहाँ वाद के पक्षकार समान हों, दोनों वादों की संपूर्ण विषय वस्तु प्रत्यक्षतः एवं सारतः समान एवं समरूप हो – वर्तमान प्रकरण में, दोनों वादों में पक्षकार भिन्न हैं तथा दोनों वादों में वादी द्वारा दावा किया गया अनुतोष समरूप नहीं है एवं इसलिए पूर्व वाद में पारित किया गया निर्णय पश्चात्पूर्ति वाद में पूर्वन्याय में प्रवर्तित नहीं होगा – विचारण न्यायालय ने उचित रूप से आवेदन नामंजूर किया – याचिका खारिज। (महंत हनुमान दास गुरु स्वामी पुरुषोत्तमदास जी वि. सपना चौधरी) ...*51

Civil Procedure Code (5 of 1908), Section 10 – Stay of Proceeding
– Petitioner through a NIT allotted work of construction of stadium and road to the respondent company which was not completed by the respondent by the stipulated period of 12 months, as a result of which the contract rescinded and bank guarantee of respondent was revoked – Respondent filed a suit before the Civil Court at Lucknow – Subsequently, another suit was filed by the respondent at the Civil Court Sagar – Petitioner moved an application u/S 10 CPC to stay the proceedings of subsequent suit at Sagar, which was dismissed – Challenge to – Held – The basic issue in both the suit is same and it is between the same parties, thus there is identity of whole cause of action in both the suits – It is also clear that in such a situation the subsequent suit shall be stayed and not the previous one – Impugned order set aside – Matter remanded back to trial Court to decide the application u/S 10 CPC afresh – Petition allowed. [Hindustan Steel Works Construction Ltd. Vs. M/s. Kandarp Construction (India) Pvt. Ltd.] ...1100

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 – कार्यवाही पर रोक – याची ने निविदा आमंत्रण सूचना के जरिए स्टेडियम एवं सड़क के निर्माण का कार्य प्रत्यर्थी कंपनी को आबंटित किया, जिसे प्रत्यर्थी द्वारा नियत 12 माह की अवधि तक पूर्ण नहीं किया गया, जिसके परिणामस्वरूप संविदा विखंडित की गई और प्रत्यर्थी की बैंक गारंटी का प्रतिसंहरण किया गया था – प्रत्यर्थी ने लखनऊ के सिविल न्यायालय के समक्ष वाद प्रस्तुत किया था – तत्पश्चात्, प्रत्यर्थी द्वारा सागर सिविल न्यायालय में अन्य वाद प्रस्तुत किया था – याची ने सागर के पश्चात्पूर्वी वाद की कार्यवाहियों पर रोक हेतु धारा 10 सि.प्र.सं. के अंतर्गत आवेदन पेश किया जिसे खारिज किया गया था – को चुनौती – अभिनिर्धारित – दोनों वादों में मूल विवाद समान है तथा वह समान पक्षकारों के बीच है, अतः दोनों वादों में संपूर्ण वाद हेतुक की समरूपता है – यह भी स्पष्ट है कि ऐसी स्थिति में पश्चात्पूर्वी वाद रोका जाएगा और न कि पूर्वतर वाद – आक्षेपित आदेश अपास्त – धारा 10 सि.प्र.सं. के अंतर्गत आवेदन का नये सिरे से विनिश्चय करने हेतु विचारण न्यायालय को मामला प्रतिप्रेषित किया गया – याचिका मंजूर। (हिन्दुस्तान स्टील वर्क्स कंस्ट्रक्शन लि. वि. मे. कंदर्प कंस्ट्रक्शन (इंडिया) प्रा. लि.) ...1100

Civil Procedure Code (5 of 1908), Section 96 – Appeal – Maintainability – Appellant/Plaintiff filed a suit against Respondent No.3/defendant for specific performance of contract whereby a compromise decree was passed before the Lok Adalat, under which defendant agreed to enforce the agreement to sale – Respondent No.

1 & 2 filed an appeal u/S 96 C.P.C. submitting that before the date of compromise, Respondent No.3 has already executed a sale deed in their favour and has suppressed this fact before the Lok Adalat and on basis of the sale deed their names have also been mutated in revenue records – Appellate Court allowed the appeal and remanded the matter back for fresh adjudication – Appellant/Plaintiff filed this appeal – Held – When compromise was executed before the Lok Adalat, Respondent No.3 was not the owner of the property and compromise was effected by playing fraud – Compromise has been entered before the Lok Adalat in accordance with provisions of C.P.C. and when the award is *void ab initio*, then an appeal u/S 96 is maintainable – Miscellaneous Appeal dismissed. [Jahar Singh Lodhi Vs. Ramkali] ...1462

सिविल प्रक्रिया संहिता (1908 का 5), धारा 96 – अपील – पोषणीयता – अपीलार्थी/वादी ने संविदा के विनिर्दिष्ट पालन हेतु प्रत्यर्थी क्र. 3/प्रतिवादी के विरुद्ध, वाद प्रस्तुत किया जिसमें लोक अदालत के समक्ष समझौता डिक्री पारित की गई थी जिसके अंतर्गत प्रतिवादी, विक्रय के करार के प्रवर्तन हेतु सहमत हुआ – प्रत्यर्थी क्र. 1 व 2 ने धारा 96 सि.प्र.सं. के अन्तर्गत, इस निवेदन के साथ अपील प्रस्तुत की कि समझौते की तिथि से पूर्व, प्रत्यर्थी क्र. 3 ने पहले ही उनके पक्ष में विक्रय विलेख निष्पादित किया है और लोक अदालत के समक्ष इस तथ्य का छिपाव किया गया है तथा विक्रय विलेख के आधार पर राजस्व अभिलेखों में उनके नामों का नामांतरण भी किया गया है – अपीली न्यायालय ने अपील मंजूर की और नये सिरे से न्यायनिर्णयन हेतु मामला प्रतिप्रेषित किया – अपीलार्थी/वादी ने यह अपील प्रस्तुत की – अभिनिर्धारित – जब लोक अदालत के समक्ष समझौता निष्पादित किया गया था, प्रत्यर्थी क्र. 3 सम्पत्ति का स्वामी नहीं था और कपट द्वारा समझौता किया गया था – लोक अदालत के समक्ष समझौता, सि.प्र.सं. के उपबंधों के अनुसरण में किया गया है और जब अवार्ड प्रारंभ से शून्य है, तब धारा 96 के अन्तर्गत अपील पोषणीय है – विविध अपील खारिज। (जाहर सिंह लोधी वि. रामकली) ...1462

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – See – Accommodation Control Act, M.P., 1961, Section 12(1)(a) & 12(1)(f) [Madhav Gogia Vs. Smt. K. Fatima Khursheed] ...1147

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – देखें – स्थान नियंत्रण अधिनियम, म.प्र., 1961, धारा 12(1)(ए) व 12(1)(एफ) (माधव गोगिया वि. श्रीमती के. फातिमा खुरशीद) ...1147

Civil Procedure Code (5 of 1908), Order 6 Rule 17 and Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) and

12(1)(f) – Subsequent Event – Respondent/Plaintiff filed a suit for eviction against Appellant/Defendant which was decreed u/S.12(1)(c) and 12(1)(f) of the Act of 1961 – In first appeal, decree was upheld u/S.12(1)(f) of the Act of 1961 – Second Appeal – Appellant filed an application under Order 6 Rule 17 C.P.C. seeking amendment on the ground of subsequent event – Consideration of amendment application before admission – Held – The question whether party should or should not be allowed to amend its pleadings at appellate stage, cannot be decided unless the appeal is first heard on merits – Consideration of such interim application before admission stage is not proper – Application for amendment shall be considered at the time of final hearing of appeal on merits. [Ashok Kumar Dureja Vs. Shri Rajendra Kumar Jain Through L.Rs.]

...1457

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 एवं स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) व 12(1)(एफ) – पश्चात्पूर्ती घटना – प्रत्यर्थी/वादी ने अपीलार्थी/प्रतिवादी के विरुद्ध बेदखली हेतु वाद प्रस्तुत किया जिसे 1961 के अधिनियम की धारा 12(1)(सी) व 12(1)(एफ) के अंतर्गत डिक्रीत किया गया – प्रथम अपील में, 1961 के अधिनियम की धारा 12(1)(एफ) के अंतर्गत डिक्री को मान्य ठहराया गया था – द्वितीय अपील – अपीलार्थी ने पश्चात्पूर्ती घटना के आधार पर संशोधन चाहते हुए, आदेश 6 नियम 17 सि.प्र.सं. के अंतर्गत आवेदन प्रस्तुत किया – ग्रहण किये जाने से पूर्व संशोधन आवेदन पर विचार – अभिनिर्धारित – प्रश्न कि क्या अपीली प्रक्रम पर, पक्षकार को उसके अभिवचनों को संशोधित करने की अनुमति दी जानी चाहिए अथवा नहीं दी जानी चाहिए, का विनिश्चय नहीं किया जा सकता जब तक कि अपील को प्रथमतः गुणदोषों पर नहीं सुना जाता – ग्रहण किये जाने के प्रक्रम से पूर्व ऐसे अंतरिम आवेदन पर विचार किया जाना उचित नहीं – संशोधन हेतु आवेदन पर विचार, अपील की गुणदोषों पर अंतिम सुनवाई के समय किया जायेगा। (अशोक कुमार दुरेजा वि. श्री राजेन्द्र कुमार जैन द्वारा विधिक प्रतिनिधि)

...1457

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Res Judicata – Scope and Applicability – Held – If at an earlier stage of same suit, identical application had been moved and same had been rejected then subsequent application under same provision of law will not be maintainable being defeated by principle of *res judicata* – Further held – If grounds mentioned in the previous and subsequent applications under Order 7 Rule 11 C.P.C. are different then also subsequent application would be barred by principle of constructive *res judicata*,

as ground raised in the subsequent application was available at the time when previous/first application under Order 7 Rule 11 was moved. [Mannu Raje Trust Vs. Mohd. Azad] ...*81

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 - पूर्व न्याय - विस्तार एवं प्रयोज्यता - अभिनिर्धारित - यदि एक ही वाद के पूर्वतर प्रक्रम पर, ऐसा ही आवेदन प्रस्तुत किया गया था तथा उक्त को नामजूर किया गया था, तो पूर्व न्याय के सिद्धांत से परामृत होने के कारण विधि के उसी उपबंध के अन्तर्गत पश्चात्पूर्ती आवेदन पोषणीय नहीं होगा - आगे अभिनिर्धारित- यदि सिविल प्रक्रिया संहिता के आदेश 7 नियम 11 के अन्तर्गत पूर्व एवं पश्चात्पूर्ती आवेदनों में उल्लिखित आधार भिन्न हैं तब भी पश्चात्पूर्ती आवेदन आन्वयिक पूर्व न्याय के सिद्धांत से वर्जित होगा, क्योंकि पश्चात्पूर्ती आवेदन में उठाया गया आधार उस समय उपलब्ध था जब आदेश 7 नियम 11 के अंतर्गत पूर्व/प्रथम आवेदन प्रस्तुत किया गया था। (मन्नू राजे ट्रस्ट वि. मोहम्मद आजाद) ...*81*

Civil Procedure Code (5 of 1908), Order 7 Rule 11 - See - Partnership Act, 1932, Section 69(2) & 69(3) [Abdul Saleem Vs. Shamim Ahmed] ...1485

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 - देखें - भागीदारी अधिनियम, 1932, धारा 69(2) व 69(3) (अब्दुल सलीम वि. शमीम अहमद) ...1485

Civil Procedure Code (5 of 1908), Order 17 Rule 2 & 3 and Order 9 Rule 9 - Applicability - In a civil suit for permanent injunction, counsel for plaintiff sought adjournment - Trial Court rejected the prayer and dismissed the suit for want of evidence - Plaintiff filed an application under Order 9 Rule 9 CPC which was also rejected - Plaintiff filed an appeal whereby the same was allowed by the lower appellate Court - Challenge to - Held - When the suit was fixed for evidence/hearing, plaintiff was not present in person, his counsel appeared and sought adjournment because he was instructed by Plaintiff to ask for adjournment only and not to proceed with trial - In such circumstances, Rule 2 of Order 17 applies in case of dismissal of suit and against which application lies under Order 9 Rule 9 - No interference warranted - Revision dismissed. [Prathvi Raj Singh Vs. Krishan Gopal] ...1219

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 17 नियम 2 व 3 एवं आदेश 9 नियम 9 - प्रयोज्यता - स्थाई व्यादेश हेतु सिविल वाद में, वादी के अधिवक्ता ने स्थगन चाहा - विचारण न्यायालय ने प्रार्थना अस्वीकार की तथा साक्ष्य के अभाव

के कारण वाद खारिज किया - वादी ने आदेश 9 नियम 9 सि.प्र.सं. के अंतर्गत आवेदन प्रस्तुत किया, उसे भी अस्वीकार किया गया - वादी ने अपील प्रस्तुत की जहाँ उक्त को निचले अपीली न्यायालय द्वारा मंजूर किया गया - को चुनौती - अभिनिर्धारित - जब वाद, साक्ष्य/सुनवाई हेतु नियत किया गया था, वादी व्यक्तिगत रूप से उपस्थित नहीं था, उसका अधिवक्ता उपस्थित हुआ और स्थगन चाहा क्योंकि उसे वादी द्वारा केवल स्थगन की मांग करने के लिए एवं विचारण में कार्यवाही नहीं करने के लिए अनुदेशित किया गया था - उक्त परिस्थितियों में, वाद खारिज होने की स्थिति में आदेश 17 का नियम 2 लागू होता है और इसके विरुद्ध आदेश 9 नियम 9 के अंतर्गत आवेदन प्रस्तुत होगा - हस्तक्षेप की आवश्यकता नहीं - पुनरीक्षण खारिज। (पृथ्वीराज सिंह वि. कृष्ण गोपाल) ...1219

*Civil Procedure Code (5 of 1908), Order 22 Rule 10, Order 1 Rule 10 & Order 6 Rule 17 - Assignment of Rights - Impleadment of Party - Amendment - Plaintiff Sanjeev Lunkad filed suit for specific performance of contract - Evidence was over and final hearing was done, matter was reserved for judgment - At this stage, appellant filed applications under Order 22 Rule 10 and Order 1 Rule 10 CPC for adding them as co-plaintiff on the ground that plaintiff had executed deed of assignments in their favour - Application under Order 6 Rule 17 was also filed - Trial Court rejected the applications - Challenge to - Held - Assignee is not a party to contract of sale sought to be enforced in the present suit - Presence of appellant/assignee is not necessary for full and effective disposal of the suit - Since original Plaintiff himself is the shareholder and promoter director of the appellant/assignee company, such assignment made by plaintiff at final stage of suit, lacks *bonafides* - Applications rightly rejected - Further held - Application under Order 6 Rule 17 was filed belatedly at the final stage of the suit i.e. after 5 years of filing of suit without satisfying the test of due diligence, hence rightly rejected by Trial Court - Misc. Appeals and Writ Petitions dismissed. [Devikulam Developers (India) Pvt. Ltd. Vs. Sanjeev Lunkad] ...1154*

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 10, आदेश 1 नियम 10 व आदेश 6 नियम 17 - अधिकारों का समनुदेशन - पक्षकार बनाया जाना - संशोधन - वादी संजीव लुंकड़ ने संविदा के विनिर्दिष्ट पालन हेतु वाद प्रस्तुत किया - साक्ष्य समाप्त हो चुके थे एवं अंतिम सुनवाई हो चुकी थी, मामला निर्णय हेतु सुरक्षित रखा गया था - इस प्रक्रम पर, अपीलार्थी ने इस आधार पर कि वादी ने उनके पक्ष में समनुदेशनों के विलेख निष्पादित किये थे, सिविल प्रक्रिया संहिता

के आदेश 22 नियम 10 एवं आदेश 1 नियम 10 के अंतर्गत उन्हें सह-वादी के रूप में जोड़े जाने हेतु आवेदन प्रस्तुत किया - आदेश 6 नियम 17 के अंतर्गत भी आवेदन प्रस्तुत किया गया था - विचारण न्यायालय ने आवेदनों को नामंजूर किया - को चुनौती - अभिनिर्धारित - समनुदेशिती, ऐसे विक्रय की संविदा का पक्षकार नहीं है जिसका वर्तमान वाद में प्रवर्तन चाहा गया है - वाद के पूर्ण एवं प्रभावी निपटारे हेतु अपीलार्थी/समनुदेशिती की उपस्थिति आवश्यक नहीं है - चूंकि वास्तविक वादी स्वयं अपीलार्थी/समनुदेशिती कंपनी का अंशधारी एवं संप्रवर्तक निदेशक है, वाद के अंतिम प्रक्रम पर वादी द्वारा किया गया इस प्रकार के समनुदेशन में सद्भाविकता की कमी है - आवेदन उचित रूप से नामंजूर किये गये - आगे अभिनिर्धारित - आदेश 6 नियम 17 के अंतर्गत आवेदन, वाद के अंतिम प्रक्रम पर विलंबित रूप से अर्थात् वाद प्रस्तुत होने के पांच वर्षों के पश्चात् सम्यक् तत्परता की कसौटी को संतुष्ट किये बिना प्रस्तुत किया गया था, अतः विचारण न्यायालय द्वारा उचित रूप से नामंजूर किया गया - विविध अपीलें एवं रिट याचिकाएँ खारिज। (देवीकुलम डेव्हेलपर्स (इंडिया) प्रा. लि. वि. संजीव लंकड) ...1154

Civil Procedure Code (5 of 1908), Order 30 Rule 1 and Partnership Act, (9 of 1932), Section 69(2) - Maintainability of Suit - Respondent/plaintiff firm filed a recovery suit represented by its two partners against the petitioners - Out of two partners, one partner was not a registered partner - Held - Section 69(2) of the Act of 1932 prohibits institution of suit filed by a partnership firm or the partners against a third party unless atleast two qualified partners (whose names are mentioned in registration certificate of partnership firm) represent the plaintiff partnership firm - In the present case, institution of suit by only one qualified partner runs contrary to the mandatory provisions of Section 69(2) of the Act - Suit not maintainable and is accordingly dismissed - Revision allowed. [Vijay Kumar Vs. M/s. Shriram Industries] ...937

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 30 नियम 1 एवं भागीदारी अधिनियम, (1932 का 9), धारा 69(2) - वाद की योषणीयता - प्रत्यर्थी/वादी फर्म ने याचिका के विरुद्ध एक वसूली वाद प्रस्तुत किया जिसका प्रतिनिधित्व उसके दो भागीदारों द्वारा किया गया - दोनों भागीदारों में से एक रजिस्ट्रीकृत भागीदार नहीं था - अभिनिर्धारित - 1932 के अधिनियम की धारा 69(2), एक भागीदारी फर्म या भागीदारों द्वारा तीसरे पक्षकार के विरुद्ध वाद संस्थित किया जाना प्रतिषिद्ध करती है जब तक कि कम से कम दो अर्हित भागीदार (जिनके नाम भागीदारी फर्म के रजिस्ट्री प्रमाण-पत्र में उल्लिखित हों) भागीदारी फर्म का प्रतिनिधित्व नहीं करते - वर्तमान प्रकरण में, केवल एक अर्हित भागीदार द्वारा वाद का संस्थित किया जाना,

अधिनियम की धारा 69(2) के आज्ञापक उपबंधों के विपरीत जाता है - वाद पोषणीय नहीं एवं तदनुसार खारिज - पुनरीक्षण मंजूर। (विजय कुमार वि. भे. श्रीराम इंडस्ट्रीज) ...937

Civil Procedure Code (5 of 1908), Order 32 Rule 3(A), Evidence Act (1 of 1872), Section 44 and Limitation Act (36 of 1963), Article 6, 8, 59 & 60 - Limitation to file a Suit - In 1982, plaintiffs filed a suit after 17 years of consent decree praying to set aside the consent decree passed in the year 1965, the same been obtained by fraud - Trial Court decreed the suit in favour of plaintiffs on the basis of Article 59 of the Limitation Act, treating the suit within limitation from the date of knowledge of passing of consent decree passed in 1965 and holding that plaintiffs came to know about the same in the year 1982 - Defendant filed an appeal whereby the appellate Court reversed the judgment and decree on the ground of Section 6 and 8 of the Limitation Act - Appellants/Plaintiff filed this second appeal - Held - If plaintiff no. 1 and 2 were not aware of consent decree or were aggrieved by the said decree then they should have come out with the case pleading misconduct/gross negligence as provided under Order 32 Rule 3(A) of CPC or under Section 44 of the Evidence Act for fraud or collusion but record of the case shows that there is no such pleadings/submissions made by appellants - Further held - Plaintiffs filed suit after 17 years of consent decree - Conjoined reading of Section 6, 7 and 8 of Limitation Act shows that litigant is entitled to a fresh period of limitation i.e three years from the date of cessation of disability - Suit has not been filed within three years after attaining the majority and therefore barred by time - Appellate Court rightly dismissed the appeal - Second Appeal dismissed. [Chironji Bai Vs. Narayan Singh] ...1135

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 32 नियम 3(ए), साक्ष्य अधिनियम (1872 का 1), धारा 44 एवं परिसीमा अधिनियम (1963 का 36), अनुच्छेद 6, 8, 59 व 60 - वाद प्रस्तुत करने के लिए परिसीमा - 1982 में, वादीगण ने सहमति डिक्री के 17 वर्ष पश्चात् वर्ष 1965 में पारित सहमति डिक्री को उसे कपट द्वारा अभिप्राप्त किये जाने के आधार पर अपास्त करने की प्रार्थना के साथ एक वाद प्रस्तुत किया - विचारण न्यायालय ने परिसीमा अधिनियम के अनुच्छेद 59 के आधार पर, वाद को 1965 में पारित सहमति डिक्री के पारित किये जाने का ज्ञान होने की तिथि से परिसीमा के भीतर मानते हुए तथा यह धारणा करते हुए कि उक्त के बारे में वादीगण को वर्ष 1982 में पता चला था, वादीगण के पक्ष में वाद डिक्रीत किया

— प्रतिवादी ने अपील प्रस्तुत की जिसमें अपीली न्यायालय ने परिसीमा अधिनियम की धारा 6 व 8 के आधार पर निर्णय और डिक्री को उलटा दिया — अपीलार्थीगण/वादी ने यह द्वितीय अपील प्रस्तुत की — अभिनिर्धारित — यदि वादी क्र. 1 व 2 सहमति डिक्री से अवगत नहीं थे या उक्त डिक्री से व्यथित थे तब उन्हें कदाचार/घोर उपेक्षा जैसा कि सि.प्र.सं. के आदेश 32 नियम 3(ए) के अंतर्गत उपबंधित है, अभिवाक् करते हुए अथवा कपट या दुस्संधि हेतु साक्ष्य अधिनियम की धारा 44 के अंतर्गत प्रकरण लेकर आना चाहिए था परंतु अभिलेख दर्शाता है कि अपीलार्थीगण द्वारा ऐसे कोई अभिवचन/निवेदन नहीं किये गये — आगे अभिनिर्धारित — वादीगण ने सहमति डिक्री के 17 वर्ष पश्चात् वाद प्रस्तुत किया — परिसीमा अधिनियम की धारा 6, 7 व 8 को एक साथ पढ़ने पर दर्शित होता है कि मुकदमेबाज परिसीमा की नई अवधि का हकदार है अर्थात्, अक्षमता समाप्त होने की तिथि से तीन वर्ष — वयस्कता प्राप्त करने के पश्चात् तीन वर्षों के भीतर वाद प्रस्तुत नहीं किया गया है और इसलिए समय द्वारा वर्जित है — अपीली न्यायालय ने अपील उचित रूप से खारिज की — द्वितीय अपील खारिज। (चिरोंजी बाई वि. नारायण सिंह) ...1135

Civil Procedure Code (5 of 1908), Order 38 Rule 5—Attachment Order of property before Judgment — Respondent/Plaintiff filed suit for recovery of loan amount against Petitioners — Respondent filed an application under Order 38 Rule 5 C.P.C. seeking attachment of property of Petitioner on the ground that Petitioner is trying/planning to sell the property and is going to leave the city — Application allowed by the trial Court — Challenge to — Held — The essential requirement for an order of attachment before judgment is the malafide intention and conduct of defendant in disposing of the property with dishonest intention of defeating or delaying the decree that may be passed in the suit — Powers given under Order 38 Rule 5 C.P.C. are drastic and extraordinary and same must be used sparingly and not in a mechanical manner — In the present case, Court below has not assigned any reasons for taking drastic step in passing the impugned order and has passed the same in a mechanical manner — Impugned order set aside — Petition allowed. [Rajput Road Lines Vs. Devendra Kumar Pranami] ...1396

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 38 नियम 5 — निर्णय से पहले संपत्ति का कुर्की आदेश — प्रत्यर्थी/वादी ने ऋण की रकम की वसूली हेतु याचीगण के विरुद्ध वाद प्रस्तुत किया — प्रत्यर्थी ने इस आधार पर याची की संपत्ति की कुर्की चाहते हुये सिविल प्रक्रिया संहिता के आदेश 38 नियम 5 के अन्तर्गत आवेदन प्रस्तुत किया कि याची संपत्ति का विक्रय करने का प्रयास कर रहा है/योजना बना रहा है एवं नगर छोड़कर जा रहा है — विचारण न्यायालय द्वारा आवेदन मंजूर किया गया

— को चुनौती — अभिनिर्धारित — निर्णय से पहले कुर्की के आदेश हेतु आवश्यक अपेक्षा वाद में पारित होने वाली डिक्री को पराजित या विलंबित करने के बेईमान आशय से संपत्ति का व्ययन करने में प्रतिवादी का असदभावपूर्वक आशय एवं आचरण है — सिविल प्रक्रिया संहिता के आदेश 38 नियम 5 के अन्तर्गत दी गई शक्तियाँ कठोर एवं असाधारण हैं तथा उक्त का कम से कम उपयोग किया जाना चाहिए एवं न कि यांत्रिकी ढंग से — वर्तमान प्रकरण में, निचले न्यायालय ने आक्षेपित आदेश पारित करने में कठोर कदम उठाने हेतु कोई भी कारण नहीं दिया है तथा उक्त को यांत्रिकी ढंग से पारित किया है — आक्षेपित आदेश अपास्त — याचिका मंजूर। (राजपूत रोड़ लाइन्स वि. देवेन्द्र कुमार प्रनामी) ...1396

*Civil Procedure Code (5 of 1908), Order 39 Rule 7 & Order 26 Rule 9—Inspection of the suit property by appointing commission—Issue of possession—Held—Commission can be appointed only in case of demarcation and encroachment—Purpose of Order 26 Rule 9 or Order 39 Rule 7 CPC is not to collect evidence—Issue of possession is a matter to be decided only on the basis of evidence that too after framing the issues and burden lies on the plaintiff to establish by way of evidence—Such findings regarding possession cannot be recorded by the trial Court on the basis of the report of Tehsildar—Trial Court's order set aside so far it relates to recording the finding about the possession of plaintiff—Petition allowed. [Ashok Parwat Vs. Sudarshan] ...*67*

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 39 नियम 7 व आदेश 26 नियम 9 — कमीशन नियुक्ति द्वारा वाद संपत्ति का निरीक्षण — कब्जे का विवादक — अभिनिर्धारित — कमीशन केवल सीमांकन एवं अतिक्रमण के प्रकरण में नियुक्त किया जा सकता है — आदेश 26 नियम 9 या आदेश 39 नियम 7 सि.प्र.सं. का प्रयोजन साक्ष्य एकत्रित करना नहीं है — कब्जे का विवाद एक ऐसा मामला है जिसे केवल साक्ष्य के आधार पर विनिश्चित किया जा सकता है, वह भी विवादकों को विरचित किये जाने के पश्चात् तथा वादी पर साक्ष्य द्वारा स्थापित करने का भार होगा — विचारण न्यायालय द्वारा कब्जे के संबंध में उक्त निष्कर्ष, तहसीलदार के प्रतिवेदन के आधार पर अभिलिखित नहीं किये जा सकते — विचारण न्यायालय का आदेश जहाँ तक वादी के कब्जे के बारे में निष्कर्ष अभिलिखित किये जाने से संबंधित है, अपास्त — याचिका मंजूर। (अशोक पर्वत वि. सुदर्शन) ...*67*

Civil Procedure Code (5 of 1908), Order 41 Rule 27—Additional Evidence before Appellate Court—Decree obtained by fraud—Proof—Held—Appellant had an opportunity to prove the allegation of fraud when he filed an application under Order 41 Rule 27 C.P.C. but he missed that opportunity right up to this Court—Appellant took a second

shot at alleging fraud and filed another suit against respondent where his evidence was so weak that it could not be even considered as secondary evidence because of which both the trial Court and High Court rejected the allegation of fraud – Further held – A mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intent to deceive would not render a decree obtained by a party as fraudulent – In the present case, fraud not having been proved but merely alleged, no interference is called for – Appeal dismissed with cost of Rs. 50,000. [Harjas Rai Makhija (D) Thr. L.Rs. Vs. Pushparani Jain] (SC)...1283

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 – अपीली न्यायालय के समक्ष अतिरिक्त साक्ष्य – कपट द्वारा अभिप्राप्त डिक्ली – सबूत – अभिनिर्धारित – अपीलार्थी को कपट के अभिकथन को साबित करने का अवसर था जब उसने सिविल प्रक्रिया संहिता के आदेश 41 नियम 27 के अन्तर्गत आवेदन प्रस्तुत किया था परन्तु वह इस न्यायालय तक उस अवसर को गवां चुका था – अपीलार्थी ने कपट का अभिकथन करते हुए दूसरा प्रयत्न किया एवं प्रत्यर्थी के विरुद्ध अन्य वाद प्रस्तुत किया जहाँ उसका साक्ष्य इतना कमजोर था कि इसे द्वितीयक साक्ष्य के रूप में भी विचार में नहीं लिया जा सकता था जिसके कारण विचारण न्यायालय एवं उच्च न्यायालय दोनों ने कपट के अभिकथन को अस्वीकार किया – आगे अभिनिर्धारित – प्रवचना के आशय के बिना मात्र छिपाव अथवा अप्रकटन या बिना सबूत एवं प्रवचना के आशय से कपट का कोरा अभिकथन पक्षकार द्वारा अभिप्राप्त डिक्ली को कपटपूर्ण नहीं बनाएगा – वर्तमान प्रकरण में, कपट साबित नहीं हुआ है परन्तु मात्र अभिकथित किया गया है, हस्तक्षेप की कोई आवश्यकता नहीं – अपील 50,000 रु./- के व्यय के साथ खारिज। (हरजस राय माखीजा (मृतक) द्वारा विधिक प्रतिनिधि वि. पुष्पारानी जैन) (SC)...1283

Civil Procedure Code (5 of 1908), Order 41 Rule 27 – Public Documents – Held – In the instant appeal, respondents filed application for taking additional document on record – Since all the proposed documents are public documents and are not disputed by the appellant, therefore no further evidence is required to consider them while disposing this appeal, application is allowed. [Manjula Bai Vs. Premchand] ...1119

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 – सार्वजनिक दस्तावेज – अभिनिर्धारित – वर्तमान अपील में, प्रत्यर्थीगण ने अभिलेख पर अतिरिक्त दस्तावेज लेने हेतु आवेदन प्रस्तुत किया – चूंकि सारे प्रस्तावित दस्तावेज

सार्वजनिक दस्तावेज हैं एवं अपीलार्थी द्वारा विवादित नहीं है, इसलिए, इस अपील का निपटारा करते समय उन पर विचार किये जाने हेतु कोई अतिरिक्त साक्ष्य अपेक्षित नहीं, आवेदन मंजूर। (मंजुला बाई वि. प्रेमचन्द्र) ...1119

Civil Procedure Code (5 of 1908), Order 43 Rule 1 & 2 – Appeal against order of setting aside judgment and decree and remanding the matter for retrial – In appeal respondent filed two applications, one under Order 6 Rule 17 C.P.C., amendment sought, that u/S 169(2) MPLRC 1959, respondent No. 1 got bhumiswami rights after remaining possession for two years and other application under Order 41 Rule 27 C.P.C. for taking documents on record to show possession over the property, appellate Court allowed both applications – Held – Possession of respondent No. 1 was undisputed, he raised plea of adverse possession also according to appellant the land was given to respondent No. 1 on Ardhbatai, she claimed possession u/S 168 MPLRC, therefore this question can be decided on the basis of material available on record – Certified copy of Khasra can be admitted without any evidence and read in evidence – Merely on producing some additional document, which was already in possession during pendency of suit, matter should not be remanded to trial Court – Order of remand set aside, appeal allowed. [Sevanti Bai Vs. Babu Singh] ...885

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 43 नियम 1 व 2 – निर्णय व डिक्री अपास्त किये जाने एवं पुनःविचारण हेतु मामला प्रतिप्रेषित करने के आदेश के विरुद्ध अपील – अपील में प्रत्यर्थी ने दो आवेदन प्रस्तुत किये, एक, आदेश 6 नियम 17 सि.प्र.सं. के अंतर्गत संशोधन चाहा गया कि प्रत्यर्थी क्र. 1 को म.प्र. भू-राजस्व संहिता, 1959 की धारा 169(2) के अंतर्गत, दो वर्ष से कब्जे में रहने के पश्चात् भूमिस्वामी अधिकार प्राप्त हुए तथा अन्य आवेदन, आदेश 41 नियम 27 सि.प्र.सं. के अंतर्गत, संपत्ति पर कब्जा दर्शाने के लिए दस्तावेज अभिलेख पर लेने हेतु, अपीली न्यायालय ने दोनों आवेदन मंजूर किये – अभिनिर्धारित – प्रत्यर्थी क्र. 1 का कब्जा अविवादित था, उसने प्रतिकूल कब्जे का अभिवाक् भी उठाया, अपीलार्थी के अनुसार प्रत्यर्थी क्र. 1 को अर्धबटाई पर भूमि दी गई थी, उसने म.प्र. भू-राजस्व संहिता की धारा 168 के अंतर्गत कब्जे का दावा किया, इसलिए इस प्रश्न का विनिश्चय अभिलेख पर उपलब्ध सामग्री के आधार पर किया जा सकता है – खसरे की प्रमाणित प्रति को बिना किसी साक्ष्य के ग्रहण किया जा सकता है और साक्ष्य में पढ़ा जा सकता है – मात्र कुछ अतिरिक्त दस्तावेज प्रस्तुत किये जाने पर, जो वाद के लंबित रहने के दौरान पहले से कब्जे में था, मामला विचारण न्यायालय को प्रतिप्रेषित नहीं किया जाना चाहिए – प्रतिप्रेषण का आदेश अपास्त, अपील मंजूर। (सेवन्ती बाई वि. बाबू

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Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9(1) – Held – As per Rule 9(1), an employee can be placed under suspension (a) where a disciplinary proceeding against him is contemplated or is pending, or (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial. [Umesh Shukla Vs. State of M.P.] ...807

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9(1) – अभिनिर्धारित – नियम 9(1) के अनुसार, किसी कर्मचारी को निलंबन में रखा जा सकता है (ए) जहां उसके विरुद्ध अनुशासनिक कार्यवाही विचाराधीन या लंबित हो अथवा (बी) जहां उसके विरुद्ध किसी दण्डिक अपराध के संबंध में प्रकरण, अन्वेषण, जांच या विचारण के अधीन हो। (उमेश शुक्ला वि. म.प्र. राज्य) ...807

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9(1)(a) & 9(5)(a), (2-a) (2-b) – Disciplinary Enquiry and Criminal Investigation/Enquiry – Automatic revocation of suspension order, if charge-sheet not filed within 90 days – Held – Conjoint reading of these rules, makes it clear that question of automatic revocation of suspension would arise when employee is placed under suspension because of disciplinary proceeding as per Rule 9(1)(a) of the Rules but in the present case, petitioner was not suspended because of any disciplinary proceeding, but was suspended because an investigation for a criminal offence was going on – In such circumstances, there is no provision in the Rules that suspension would automatically revoked after 90 days – Further held – Despite pendency of a criminal investigation/enquiry, the employer may initiate a disciplinary proceeding against the employee – In the present case, there is nothing to show that order has been passed under the dictate of Lokayukt rather the same has been passed with proper application of mind and necessary ingredients for placing the petitioner under suspension is taken into account – Petition dismissed. [Umesh Shukla Vs. State of M.P.] ...807

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9(1)(ए) व 9(5)(ए), (2-ए)(2-बी) – अनुशासनिक जांच एवं दण्डिक अन्वेषण/जांच – निलंबन आदेश की स्वतः वापसी, यदि आरोपपत्र को 90 दिनों के भीतर प्रस्तुत नहीं किया जाता – अभिनिर्धारित – इन नियमों को एक साथ पढ़े जाने पर यह

स्पष्ट है कि निलंबन आदेश की स्वतः वापसी का प्रश्न तब उत्पन्न होगा जब कर्मचारी को नियमों के नियम 9(1)(ए) के अनुसार अनुशासनिक कार्यवाही के कारण निलंबन में रखा गया है परंतु वर्तमान प्रकरण में, याची को किसी अनुशासनिक कार्यवाही के कारण निलंबित नहीं किया गया था बल्कि इसलिए निलंबित किया गया था क्योंकि एक दाण्डिक प्रकरण हेतु अन्वेषण चल रहा था — उक्त परिस्थितियों में, नियमों में कोई उपबंध नहीं कि 90 दिनों के पश्चात् निलंबन स्वतः वापस होगा — आगे अभिनिर्धारित — दाण्डिक अन्वेषण/जांच लंबित रहने के बावजूद, नियोक्ता कर्मचारी के विरुद्ध अनुशासनिक कार्यवाही आरंभ कर सकता है — वर्तमान प्रकरण में, यह दर्शाने के लिए कुछ नहीं कि लोकायुक्त के कहने पर आदेश पारित किया गया है, बल्कि उसे मस्तिष्क के उचित प्रयोग के साथ पारित किया गया है और याची को निलंबन में रखने के आवश्यक घटकों को विचार में लिया गया है — याचिका खारिज। (उमेश शुक्ला वि. म.प्र. राज्य)

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Civil Services (Pension) Rules, M.P. 1976, Rule 9 – Petitioner challenging the order of withholding 100% pension and clause (Kha) of GAD circular no, C-6-2/98/3/1 dated 08.02.1999 – Held – As per language of circular, first part denies the applicability of principle of natural justice which is foundational and fundamental concept against undue exercise of power of authority – Principle of natural justice consist with two components “Audi Alteram Partem” i.e., nobody shall be condemned unheard and “Nemo debet esse Judex in propria Sue causa”, i.e. Nobody shall be judge in own case – Audi Alteram Partem is fundamental in governance to the rule of Law – The principle of natural justice is implied even the statute do not contemplate so, particularly when the order passed by authority is prejudicial to the affected person, and effects the civil consequences, otherwise the order cannot be said to have passed with fairness and judicially – Condition of denial of issuance of notice and affording an opportunity in the circular is arbitrary, unfair and unjust. [Nirmal Kumar Jain Vs. State of M.P.]

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सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 – याची ने 100% पेन्शन रोके जाने के आदेश एवं सामान्य प्रशासन विभाग परिपत्र क्र. सी-6-2/98/3/1 दिनांक 08.02.1999 के खंड(ख) को चुनौती दी – अभिनिर्धारित – परिपत्र की भाषा के अनुसार, प्रथम भाग नैसर्गिक न्याय के सिद्धांत जो प्राधिकारी की शक्ति का असम्यक्/अनुचित प्रयोग के विरुद्ध मौलिक एवं मूलभूत सिद्धांत है की प्रयोज्यता अस्वीकार करता है – नैसर्गिक न्याय के सिद्धांत में दो घटक शामिल हैं “दूसरे पक्ष को भी सुनो” अर्थात् किसी को भी बिना सुने दोषी नहीं ठहराया जायेगा और

“कोई भी व्यक्ति अपने मामले का स्वयं निर्णायक नहीं हो सकता” – दूसरे पक्ष को भी सुना जाना, विधि के नियम के शासन में मूलभूत है – नैसर्गिक न्याय का सिद्धांत विवक्षित है यद्यपि कानून ऐसा अनुध्यात नहीं करता, विशिष्ट रूप से जब प्राधिकारी द्वारा पारित आदेश, प्रभावित व्यक्ति पर प्रतिकूल प्रभाव डालता है और जिसके सिविल परिणाम होते हैं, अन्यथा आदेश को निष्पक्षता से एवं न्याय रूप से पारित किया जाना नहीं कहा जा सकता – परिपत्र में नोटिस जारी करना एवं अवसर प्रदान करना अस्वीकार करने की शर्त मनमानी, अनुचित एवं अन्यायपूर्ण है। (निर्मल कुमार जैन वि. म.प्र. राज्य) ...856

Civil Services (Pension) Rules, M.P. 1976, Rule 66 – See – Service Law [Ramnarayan Sharma Vs. State of M.P.] (DB)...1324

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 66 – देखें – सेवा विधि (रामनारायण शर्मा वि. म.प्र. राज्य) (DB)...1324

College Code, Statute 28 – See – Vishwavidyalaya Adhinyam, M.P., 1973 – Section 4(xxiv), 34 & 35(j) [S.C. Jain (Dr.) Vs. State of M.P.] (FB)...1299

महाविद्यालय संहिता, स्टैट्यूट 28 – देखें – विश्वविद्यालय अधिनियम, म.प्र., 1973 – धारा 4(xxiv), 34 व 35(जे) (एस.सी. जैन (डॉ.) वि. म.प्र. राज्य) (FB)...1299

Commission for Protection of Child Rights Act, 2005 (4 of 2006), Section 25 – Children’s Court – Jurisdiction – Every offence in which a ‘child’ happens to be a complainant or a victim is not compulsorily triable under the Act of 2005, unless in respect of it, a proceeding has been initiated by concerned government or authority on the recommendation of the commission constituted under the Act of 2005 – If commission finds “violation of child rights of a serious nature” or “contravention of provisions of any law for the time being in force”, then on the recommendation, case shall be deemed to be cognizable and triable by specified “Children’s Court” constituted u/S 25 of the Act of 2005 otherwise in all other cases, ordinary procedure provided under the CrPC is to be followed – Reference answered with directions. [In Reference Vs. Jitendra] ...1223

बालक अधिकार संरक्षण आयोग अधिनियम, 2005 (2006 का 4), धारा 25 – बालक न्यायालय – अधिकारिता – प्रत्येक अपराध जिसमें ‘बालक’ परिवादी या पीड़ित है, 2005 के अधिनियम के अंतर्गत आवश्यक रूप से विचारणीय नहीं है जब

तक कि उसके संबंध में संबंधित सरकार या प्राधिकारी द्वारा, 2005 के अधिनियम के अंतर्गत गठित आयोग की अनुशंसा पर कार्यवाही आरंभ न की गई हो — यदि आयोग “बालक अधिकारों का गंभीर स्वरूप का उल्लंघन” या “तत्समय प्रवर्तनशील किसी विधि के उपबंधों का अतिलंघन” पाता है तब प्रकरण को अनुशंसा पर, 2005 के अधिनियम की धारा 25 के अंतर्गत गठित विनिर्दिष्ट “बालक न्यायालय” द्वारा संज्ञेय एवं विचारणीय माना जाएगा, अन्यथा अन्य सभी प्रकरणों में, द.प्र.सं. के अंतर्गत उपबंधित साधारण प्रक्रिया का पालन करना होता है — निदेशों के साथ निर्देश उत्तरित किया गया। (इन रेफ्रेन्स वि. जितेन्द्र) ...1223

Constitution – Article 19(1)(g) – See – Forest Act, 1927, Sections 52(3), 52(5) & 55 [Santra Bai Lodha (Smt.) Vs. State of M.P.] ...1269

संविधान – अनुच्छेद 19(1)(जी) – देखें – वन अधिनियम, 1927, धाराएँ 52(3), 52(5) व 55 (संतरा बाई लोढ़ा (श्रीमती) वि. म.प्र. राज्य) ...1269

Constitution – Article 226 – Examination – Markings – Maintainability of Petition – Written examination was conducted by the Public Service Commission (PSC) for certain vacancies/ post – It was submitted by petitioner and was duly admitted by respondent that answer to one particular question was not evaluated and marks have not been granted – It was also submitted that a candidate who obtained 1199 marks has been selected and petitioner, because of such default, secured 1197 marks and was kept in the supplementary list – On the next date of hearing, subject expert was called for evaluation of that particular answer whereby Petitioner was granted 7 marks out of 15 – Respondent directed to include 7 marks in the result of the petitioner and she be given appropriate placement in the merit list and shall be considered accordingly for the appropriate post – Further held – Under Article 14 and 16 of the Constitution, right of consideration is a fundamental right of a candidate which includes a right of fair consideration, which in the present case was infringed because of improper valuation by the respondent – Valuation must be done meticulously – Court should not generally direct revaluation in a routine manner but in cases where negligence manifest on the face of the record, directions can be issued – Petition allowed. [Roma Sonkar Vs. State of M.P.] ...*71

संविधान – अनुच्छेद 226 – परीक्षा – अंकन – याचिका की पोषणीयता –

लोक सेवा आयोग (पी.एस.सी.) द्वारा कतिपय रिक्तियों/पदों हेतु लिखित परीक्षा संचालित की गई थी - याची द्वारा निवेदन किया गया तथा प्रत्यर्थी द्वारा सम्यक् रूप से स्वीकार किया गया था कि एक विशिष्ट प्रश्न के उत्तर का मूल्यांकन नहीं किया गया था तथा अंक प्रदान नहीं किये गये हैं - यह भी निवेदन किया गया था कि वह अभ्यर्थी जिसने 1199 अंक प्राप्त किये, उसका चयन किया गया है और उक्त चूक के कारण याची ने 1197 अंक प्राप्त किये तथा उसे अनुपूरक सूची में रखा गया था - सुनवाई की अगली तिथि को विषय विशेषज्ञ को उस विशिष्ट उत्तर के मूल्यांकन हेतु बुलाया गया था जिसके द्वारा याची को 15 में से 7 अंक प्रदान किये गये थे - प्रत्यर्थी को याची के परिणाम में 7 अंक शामिल करने के लिए एवं उसे योग्यता क्रम सूची में समुचित स्थान देने और उचित पद हेतु तदनुसार उसका विचार करने के लिए निदेशित किया गया - आगे अभिनिर्धारित - संविधान के अनुच्छेद 14 व 16 के अंतर्गत, विचार किये जाने का अधिकार, अभ्यर्थी का मूलभूत अधिकार है जिसमें निष्पक्ष विचार किये जाने का अधिकार शामिल है, जिसका वर्तमान प्रकरण में, प्रत्यर्थी द्वारा अनुचित मूल्यांकन के कारण अतिरिक्त किया गया है - मूल्यांकन बारीकी से किया जाना चाहिए - न्यायालय को सामान्यतः पुनर्मूल्यांकन का निदेश आमतौर पर नहीं देना चाहिए परंतु ऐसे मामलों में जहां अभिलेख को देखकर उपेक्षा प्रकट होती है, निदेश जारी किये जा सकते हैं - याचिका मंजूर। (रोमा सोनकर वि. म.प्र. राज्य) ...*71

Constitution - Article 226 - Habeas Corpus - Compensation -
It was alleged that respondent no.4 (Petitioner's brother-in-law) was taken by the police authorities for interrogation and thereafter he never returned home and was missing - CID enquiry and Judicial enquiry ordered whereby enquiry reports revealed that Respondent No.5 arrested the corpus and police authorities placed some other person before the SDM and it also revealed that arrest memo and bail bonds did not bear signatures of the corpus - FIR was registered against the police officer and compensation of Rs. 5,80,000 was ordered to be given to wife of corpus subject to an undertaking to be given by her that if corpus is found alive, compensation amount will be returned back - Petition disposed of. [Ramhit Lodhi Vs. State of M.P.] (DB)...1050

संविधान - अनुच्छेद 226 - बंदी प्रत्यक्षीकरण - प्रतिकर - यह अभिकथन किया गया था कि प्रत्यर्थी क्र. 4 (याची की पत्नी का भाई) को पुलिस प्राधिकारियों द्वारा पूछताछ हेतु ले जाया गया था और उसके बाद वह कभी घर वापस नहीं आया और लापता था - सी.आई.डी. जांच एवं न्यायिक जांच के आदेश दिये गये जिसके जांच प्रतिवेदन से यह प्रकट हुआ कि प्रत्यर्थी क्र. 5 ने बंदी को गिरफ्तार किया एवं पुलिस प्राधिकारियों ने उपखंड मजिस्ट्रेट के समक्ष किसी अन्य व्यक्ति को प्रस्तुत

किया एवं यह भी प्रकट होता है कि गिरफ्तारी ज्ञापन और जमानत पत्र में बंदी के हस्ताक्षर मौजूद नहीं — पुलिस अधिकारी के विरुद्ध प्रथम सूचना प्रतिवेदन दर्ज किया गया था एवं बंदी की पत्नी को उसके द्वारा इस वचनबंध के दिये जाने की दशा में कि यदि बंदी जीवित पाया जाता है तो प्रतिकर राशि वापस लौटा दी जायेगी, रु. 5,80,000 का प्रतिकर आदेशित किया गया था — याचिका निराकृत। (रामहित लोधी वि. म.प्र. राज्य) (DB)...1050

Constitution — Article 226 — Maintainability of Petition — Impleadment of Parties — In respect of a dispute regarding sale of land, Petitioner (purchaser) seeking direction to Respondent/State for registering FIR against the sellers u/S 420, 467, 468, 471 and 120-B IPC and u/S 22-A of Registration Act — Held — Petitioner wanted a direction from this Court against the sellers without impleading them as parties — Petition is liable to be dismissed on this ground alone — Further held — Petitioner is having remedy to approach the Magistrate u/S 156 CrPC or to resort the remedy available under civil law — Writ Petition not maintainable — Petition dismissed. [Surendra Kumar Vs. State of M.P.] ...*74

संविधान — अनुच्छेद 226 — याचिका की पोषणीयता — पक्षकार बनाया जाना — भूमि के विक्रय से संबंधित एक विवाद के संबंध में, याची (क्रेता) भा.दं.सं. की धारा 420, 467, 468, 471 व 120-बी तथा रजिस्ट्रीकरण अधिनियम की धारा 22-ए के अंतर्गत विक्रेताओं के विरुद्ध प्रथम सूचना प्रतिवेदन पंजीबद्ध करने हेतु प्रत्यर्थी/राज्य को निदेश चाहता है — अभिनिर्धारित — याची ने विक्रेताओं के विरुद्ध उन्हें पक्षकार बनाये बिना इस न्यायालय से निदेश चाहा — याचिका अकेले इस आधार पर ही खारिज किये जाने योग्य है — आगे अभिनिर्धारित — याची के पास दं.प्र.सं. की धारा 156 के अंतर्गत मजिस्ट्रेट के समक्ष जाने अथवा सिविल विधि के अंतर्गत उपलब्ध उपचार का अवलंब लेने का उपचार है — रिट याचिका पोषणीय नहीं — याचिका खारिज। (सुरेन्द्र कुमार वि. म.प्र. राज्य) ...*74

Constitution — Article 226 — Principle of Natural Justice — Opportunity of Hearing — Termination of Petrol Pump Dealership — In a surprise inspection from appellant corporation, certain critical discrepancies were found in the petrol pump of respondent whereby following the due process, the dealership was terminated — Respondent filed a writ petition whereby the same was allowed and dealership was restored — Challenge to — Held — As per records, show cause notices were issued to respondents and he filed replies to the notices — Opportunity of person's hearing was also accorded where respondent appeared personally

before the authority of appellant – In appeal also, personal hearing was provided by the Appellate Authority – In the writ petition, respondent made total false and misleading statement regarding violation of principle of natural justice and non grant of opportunity of hearing – Respondent did not approached the writ Court with clean hands – If there is willful concealment of facts by respondent, he is not entitle for any relief under Article 226 of the constitution – Order passed in Writ petition is set aside – Appeal allowed. [Indian Oil Corporation Ltd. Vs. M/s. Govind Saraf Kisan Seva Kendra] (DB)...1336

संविधान – अनुच्छेद 226 – नैसर्गिक न्याय का सिद्धांत – सुनवाई का अवसर – पेट्रोल पंप डीलरशिप समाप्त करना – अपीलार्थी कार्पोरेशन द्वारा अकस्मात् निरीक्षण में प्रत्यर्थी के पेट्रोल पंप में कतिपय गंभीर अनियमितताएँ पायी गई थी जिससे सम्यक प्रक्रिया का पालन कर डीलरशिप समाप्त की गई थी – प्रत्यर्थी ने एक रिट याचिका प्रस्तुत की जिसे मंजूर किया गया तथा डीलरशिप प्रत्यावर्तित की गई – को चुनौती – अभिनिर्धारित – अभिलेख के अनुसार, प्रत्यर्थीगण को कारण बताओ नोटिस जारी किये गये थे और उसने नोटिस के प्रतिउत्तर प्रस्तुत किये थे – व्यक्तिगत सुनवाई का अवसर भी प्रदान किया गया था जहां प्रत्यर्थी, अपीलार्थी के प्राधिकारी के समक्ष व्यक्तिगत रूप से उपस्थित हुआ – अपील में भी, अपीली प्राधिकारी द्वारा व्यक्तिगत सुनवाई प्रदान की गई थी – रिट याचिका में, प्रत्यर्थी ने पूर्णतः मिथ्या एवं दिग्भ्रमित करने वाले कथन, नैसर्गिक न्याय के सिद्धांत का उल्लंघन एवं सुनवाई का अवसर प्रदान नहीं किये जाने के संबंध में दिये – प्रत्यर्थी स्वच्छ अंतःकरण से रिट न्यायालय के समक्ष नहीं गया – यदि प्रत्यर्थी द्वारा तथ्यों का जानबूझकर छिपाव किया गया है, वह संविधान के अनुच्छेद 226 के अंतर्गत किसी अनुतोष का हकदार नहीं – रिट याचिका में पारित आदेश अपास्त – अपील मंजूर। (इंडियन ऑयल कारपोरेशन लि. वि. मे. गोविन्द सराफ किसान सेवा केन्द्र) (DB)...1336

Constitution – Article 226 – Public Interest Litigation – Government of M.P., publishes text books for schools run by the State Government – Photo of the Chief Minister and good works should be published in every book, so that message would reach to every child of the State – Held – Holder of a constitutional post, who is responsible for over all development of the State, the Chief Minister is well within his right to convey his expectations and thoughts to young generation of the State – No prima facie case for admitting the petition – Petition dismissed. [Tapan Bhattacharya (Dr.) Vs. State of M.P.] (DB)...*63

संविधान – अनुच्छेद 226 – लोक हित वाद – म.प्र. शासन, राज्य सरकार

द्वारा चलाये जा रहे विद्यालयों हेतु पाठ्य पुस्तकें प्रकाशित करता है - प्रत्येक पुस्तक में मुख्यमंत्री का फोटो तथा अच्छे कार्यों का प्रकाशन होना चाहिए, ताकि संदेश, राज्य के प्रत्येक बच्चे तक पहुंचे - अभिनिर्धारित - एक संवैधानिक पदधारक जो कि राज्य के सर्वांगीण विकास के लिए उत्तरदायी है, राज्य की युवा पीढ़ी तक अपनी अपेक्षाएं एवं विचार पहुंचाने हेतु मुख्यमंत्री अपने अधिकार के मली-मांति भीतर है - याचिका ग्रहण करने हेतु कोई प्रथम दृष्ट्या प्रकरण नहीं है - याचिका खारिज। (तपन भट्टाचार्य (डॉ.) वि. म.प्र. राज्य) (DB)...*63

Constitution - Article 226 - Temple of Private Trust - Manager
- On the strength of a circular of State Government, name of Collector was recorded as manager of private trust property in the revenue records/khasra entries - Challenge to - Held - It is a settled principle of law that on the basis of executive instructions passed by Government, proprietary rights cannot be brought to an end and the right of ownership which may be less than absolute ownership can only be brought to an end by due procedure of law and such law has not been shown in the present case - Action of respondent entering the name of Collector as Manager in revenue records is hereby declared illegal and directed to be deleted from revenue record - Further held - In respect of land attached to temple, no third party right shall be created by alienating or transferring the land in any manner by persons managing the land on behalf of temple - Petition disposed of. [Ranumal Sharma @ Ranu Vs. State of M.P.] ...1371

संविधान - अनुच्छेद 226 - निजी न्यास का मंदिर - प्रबंधक - राज्य सरकार के एक परिपत्र की शक्ति पर, कलेक्टर का नाम राजस्व अभिलेख/खसरा प्रविष्टियों में निजी न्यास संपत्ति के प्रबंधक के रूप में अभिलिखित किया गया था - को चुनौती - अभिनिर्धारित - यह विधि का सुस्थापित सिद्धांत है कि सरकार द्वारा पारित कार्यपालिक अनुदेशों के आधार पर, सांपत्तिक अधिकारों को समाप्त नहीं किया जा सकता है एवं स्वामित्व का अधिकार जो कि पूर्व स्वामित्व से कम हो सकता है, को केवल विधि की सम्यक् प्रक्रिया द्वारा समाप्त किया जा सकता है एवं वर्तमान प्रकरण में ऐसी विधि को नहीं दर्शाया गया है - राजस्व अभिलेख में प्रबंधक के रूप में कलेक्टर के नाम की प्रविष्टि करने की प्रत्यर्थी की कार्रवाई को एतद्वारा अवैध घोषित किया गया एवं इसे राजस्व अभिलेख से हटाये जाने हेतु निदेशित किया गया - आगे अभिनिर्धारित - मंदिर से संलग्न भूमि के संबंध में, मंदिर की ओर से भूमि का प्रबंधन करने वाले व्यक्तियों द्वारा किसी भी रीति से भूमि का अन्यसंक्रामण या हस्तांतरण करके किसी तीसरे पक्षकार का अधिकार सृजित नहीं किया जाएगा - याचिका निराकृत। (रानूमल शर्मा उर्फ रानू वि. म. प्र. राज्य) ...1371

Constitution – Article 226 & 227 – Jurisdiction of Court – Held – Jurisdiction of this Court under Article 226 and 227 of Constitution in such matters is required to be exercised with care, caution and circumspection, as this Court cannot sit in appeal over the judgment of disciplinary authority. [Rajendra Singh Kushwah Vs. State of M.P.]

...1086

संविधान – अनुच्छेद 226 व 227 – न्यायालय की अधिकारिता – अभिनिर्धारित – ऐसे मामलों में संविधान के अनुच्छेद 226 व 227 के अंतर्गत इस न्यायालय की अधिकारिता का प्रयोग सावधानी से, सतर्कता से एवं समझदारी से किया जाना चाहिए क्योंकि यह न्यायालय, अनुशासनिक प्राधिकारी के निर्णय पर अपील के रूप में सुनवाई नहीं कर सकता। (राजेन्द्र सिंह कुशवाहा वि. म.प्र. राज्य) ...1086

Constitution – Article 226/227 and Legal Services Authorities Act, (39 of 1987), Section 21 – Award of Lok Adalat – Prohibition of Appeal – Writ Petition – Maintainability – Held – Section 21 prohibits appeal against the award of Lok Adalat – Remedy of writ under Article 226 and 227 is available to those persons who were parties to the settlement and if any party wants to challenge such award based on settlement that too on very limited grounds. [Jahar Singh Lodhi Vs. Ramkali]

...1462

संविधान – अनुच्छेद 226/227 एवं विधिक सेवा प्राधिकरण अधिनियम (1987 का 39), धारा 21 – लोक अदालत का अवार्ड – अपील का प्रतिशोध – रिट याचिका – पोषणीयता – अभिनिर्धारित – धारा 21, लोक अदालत के अवार्ड के विरुद्ध अपील प्रतिषिद्ध करती है – अनुच्छेद 226 व 227 के अन्तर्गत रिट का उपचार उन व्यक्तियों को उपलब्ध है जो समझौते के पक्षकार थे और यदि कोई पक्षकार उक्त अवार्ड को समझौते के आधार पर चुनौती देना चाहता है, वह भी अति सीमित आधारों पर। (जाहर सिंह लोधी वि. रामकली) ...1462

Constitution – Article 227 – Consolidation of Suits – Petition against rejection of application u/S 151 CPC filed by petitioner for consolidation of suits – Held – Evidence recorded in one civil suit cannot be utilized for the purpose of other civil suit except with the express consent of the parties and in the present case, no such consent given by the parties – Further held – It is settled that each case must be decided on the evidence recorded in it and evidence recorded in another case cannot be taken into account in arriving at a decision of another case – No jurisdictional error in the impugned order calling interference

under Article 227 of Constitution – Petition dismissed. [Udayraj Vs. Dinesh Chandra Bansal] ...1116

संविधान – अनुच्छेद 227 – वादों का समेकन – याची द्वारा धारा 151 सि. प्र.सं. के अंतर्गत वादों के समेकन हेतु प्रस्तुत आवेदन की खारिजी के विरुद्ध याचिका – अभिनिर्धारित – पक्षकारों की अभिव्यक्त सहमति के सिवाय एक सिविल वाद में अभिलिखित साक्ष्य का उपयोग अन्य सिविल वाद के प्रयोजन हेतु नहीं किया जा सकता और वर्तमान प्रकरण में, पक्षकारों द्वारा ऐसी कोई सहमति नहीं दी गई है – आगे अभिनिर्धारित – यह सुस्थापित है कि प्रत्येक प्रकरण का विनिश्चय, उसमें अभिलिखित किये गए साक्ष्य पर किया जाना चाहिए और अन्य प्रकरण में अभिलिखित साक्ष्य को दूसरे प्रकरण के विनिश्चय पर पहुँचने के लिए विचार में नहीं लिया जा सकता – संविधान के अनुच्छेद 227 के अंतर्गत हस्तक्षेप किये जाने के लिए आक्षेपित आदेश में अधिकारिता की कोई त्रुटि नहीं – याचिका खारिज। (उदयरज वि. दिनेश चन्द्र बंसल) ...1116

Constitution – Article 229(2) – Powers of Chief Justice – Under Article 229(2) of the Constitution, Chief Justice has the power to frame Rules with regard to pay and allowances of the employees of the Court and send the same to the State Government for approval of the Hon'ble Governor. [Kishan Pilley Vs. State of M.P.] (DB)...1423

संविधान – अनुच्छेद 229(2) – मुख्य न्यायमूर्ति की शक्तियाँ – संविधान के अनुच्छेद 229(2) के अंतर्गत, मुख्य न्यायमूर्ति को न्यायालय के कर्मचारीगण के वेतन एवं भत्ते के संदर्भ में नियमों की विरचना करने एवं उक्त को माननीय राज्यपाल के अनुमोदन हेतु राज्य सरकार को भेजने की शक्ति है। (किशन पिल्ले वि. म.प्र. राज्य) (DB)...1423

Constitution – Article 246 – See – VAT Act, M.P., 2002, Section 2(u) & 2(v) [Idea Cellular Ltd., Indore (M/s.) Vs. The Asstt. Commissioner of Commercial Tax LTU, Indore] (DB)...1350

संविधान – अनुच्छेद 246 – देखें – वैट अधिनियम, म.प्र., 2002, धारा 2(u) व 2(v) (आइडिया सेल्यूलर लि., इंदौर (मे.) वि. द असि. कमिश्नर ऑफ कमर्शियल टैक्स एल.टी.यू., इंदौर) (DB)...1350

Constitution – Article 300A – Protection thereof – When can be claimed – Held – To claim protection of the Article, onus is on the person claiming to show that the land in question is his property and he had acquired Bhumiswami rights. [Gajraj Singh Vs. State of M.P.] ...889

संविधान - अनुच्छेद 300ए - उसका संरक्षण - कब दावा किया जा सकता है
 - अभिनिर्धारित - अनुच्छेद के संरक्षण का दावा करने हेतु, दावा करने वाले व्यक्ति पर यह दर्शाने का भार है कि प्रश्नगत भूमि उसकी संपत्ति है तथा उसने भूमिस्वामी के अधिकार अर्जित कर लिये थे। (गजराज सिंह वि. म.प्र. राज्य) ...889

Constitution - Article 300-A - Right to Property - Held - A title holder of property who is recorded as *Bhumiswami* cannot be thrown out of his property and is deprived of his constitutional rights guaranteed under Article 300-A of the Constitution, without there being any statutory provision reflected in the impugned order on the basis of which said property could be declared property of State Government. [The Malwa Vanaspati & Chemicals Co. Ltd. Vs. State of M.P.] ...1063

संविधान - अनुच्छेद 300-ए - संपत्ति का अधिकार - अभिनिर्धारित -
 आक्षेपित आदेश में बिना ऐसे किसी कानूनी उपबंध के, जिसके आधार पर उक्त संपत्ति को राज्य सरकार की संपत्ति घोषित किया जा सके, संपत्ति के ऐसे स्वत्वधारक को जो भूमिस्वामी के रूप में अभिलिखित है उसकी संपत्ति से बाहर नहीं फेंका जा सकता एवं संविधान के अनुच्छेद 300-ए के अंतर्गत प्रत्याभूत उसके संवैधानिक अधिकारों से वंचित नहीं किया जा सकता। (द मालवा वनस्पति एण्ड केमिकल्स कं. लि. वि. म.प्र. राज्य) ...1063

Constitution - Article 311(2)(b) - See - Service Law [Brijpal Singh Vs. Dy. Inspector General of Police, Indore] ...*68

संविधान - अनुच्छेद 311(2)(बी) - देखें - सेवा विधि (ब्रजपाल सिंह वि. डिप्टी इंस्पेक्टर जनरल ऑफ पुलिस, इंदौर) ...*68

Co-operative Societies Act, M.P. 1960 (17 of 1961) - Extinguishment Deed - Held - If a member of Society fail to comply with stipulations of allotment, it would be open to Society to cancel such allotment including membership of that member and in such event it is necessary for the Society to execute an Extinguishment deed in respect of the such allotment deed - Mere cancellation of membership is not enough. [Satya Pal Anand Vs. State of M.P.] (SC)...1015

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17) - निर्वापन विलेख -
 अभिनिर्धारित - यदि सोसाइटी का कोई सदस्य, आबंटन की शर्तों का अनुपालन करने में विफल होता है, सोसाइटी उस सदस्य की सदस्यता के साथ साथ उक्त आबंटन रद्द करने के लिए स्वतंत्र रहेगी और इस स्थिति में, सोसाइटी के लिए उक्त आबंटन विलेख के संबंध में एक निर्वापन विलेख निष्पादित करना आवश्यक है - मात्र सदस्यता का

रद्दकरण पर्याप्त नहीं है। (सत्यपाल आनंद वि. म.प्र. राज्य) (SC)...1015

*Co-operative Societies Act, M.P. 1960 (17 of 1961), Sections 9, 18-A & 80-A – Cancellation of Registration of Society/ De-Registration – Revision – Powers of Registrar/Joint Registrar – Delegation of Authority – In revision u/S 80-A of the Act of 1960, Registration of the society was cancelled by the Joint Registrar – Held – Powers u/S 80-A which are conferred on the Registrar are not only confined to merely examining the legality or regularity of any proceeding but also enables the Registrar to modify, annul or reverse any decision, order or proceeding taken up by any subordinate officer or the Board of Directors – Perusal of second proviso to Section 80-A and several notification of the State Government makes it clear that powers of the Registrar can be delegated but not below the rank of Joint Registrar and thus powers as conferred on the Registrar u/S 80-A of the Act can be exercised by the Joint Registrar – Further held – Despite having an alternate remedy u/S 18-A for De-Registration of a society, revisional powers u/S 80-A can be invoked and exercised by the authority – No illegality in the impugned order passed by the Joint Registrar – Petition dismissed. [Adarsh Adivasi Machhchua Sahkari Samiti Maryadit Vs. Joint Registrar, Cooperative Societies, Jabalpur Division, Jabalpur (M.P.)] ...*65*

सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धाराएँ 9, 18-ए व 80-ए – सोसाइटी का पंजीयन निरस्त किया जाना/विपंजीकरण – पुनरीक्षण – रजिस्ट्रार/संयुक्त रजिस्ट्रार की शक्तियाँ – प्राधिकार का प्रत्यायोजन – अधिनियम, 1960 की धारा 80-ए के अंतर्गत पुनरीक्षण में, संयुक्त रजिस्ट्रार द्वारा सोसाइटी का पंजीयन निरस्त किया गया – अभिनिर्धारित – धारा 80-ए के अंतर्गत शक्तियाँ जो कि रजिस्ट्रार को प्रदत्त है, केवल किसी कार्यवाही की वैधता अथवा नियमितता के परीक्षण मात्र तक सीमित नहीं है बल्कि रजिस्ट्रार को किसी अधीनस्थ अधिकारी या बोर्ड के निदेशकों द्वारा लिये गये किसी निर्णय, आदेश अथवा कार्यवाही को परिवर्तित करने, वातिल करने या पलट देने के लिए भी समर्थ बनाती है – धारा 80-ए के द्वितीय परंतुक एवं राज्य सरकार की विभिन्न अधिसूचनाओं के परिशीलन से स्पष्ट होता है कि रजिस्ट्रार की शक्तियों का प्रत्यायोजन किया जा सकता है परंतु संयुक्त रजिस्ट्रार के पद से नीचे नहीं और इसलिए अधिनियम की धारा 80-ए के अंतर्गत रजिस्ट्रार को प्रदत्त शक्तियों का प्रयोग संयुक्त रजिस्ट्रार द्वारा किया जा सकता है – आगे अभिनिर्धारित – सोसाइटी के विपंजीकरण के लिए धारा 18-ए के अंतर्गत वैकल्पिक उपचार उपलब्ध होने के बावजूद, प्राधिकारी द्वारा धारा 80-ए

के अंतर्गत पुनरीक्षण शक्तियों का अवलंब लिया जा सकता है और प्रयोग किया जा सकता है - संयुक्त रजिस्ट्रार द्वारा पारित आक्षेपित आदेश में कोई अवैधता नहीं - याचिका खारिज। (आदर्श आदिवासी मछुआ सहकारी समिति मर्यादित वि. ज्वाइंट रजिस्ट्रार, कोऑपरेटिव सोसायटी, जबलपुर डिवीजन, जबलपुर (म.प्र.)) ...*65

Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 64 and Registration Act (16 of 1908), Section 69 - Jurisdiction - Alternate Remedy - Plot allotted to appellant's mother by a Cooperative Society through registered deed in 1962 - Allottee expired in 1988 - In 2001, Society, unilaterally cancelled the allotment vide an extinguishment deed on the ground of violation of bye-laws of society in not raising any construction over the plot - In 2004, Society allotted the same plot to a third party vide an registered deed - Later, though vide a compromise, appellant was paid Rs. 6.5 Lacs, he filed an application u/S 64 of the Act of 1960 challenging society's action - Dispute, pending adjudication, in 2006, same plot was again transferred vide registered deed to other persons (*respondent no. 6 & 7 herein*) - In 2008, appellant also filed application before Sub-Registrar for cancellation of all 3 deeds of 2001, 2004 and 2006 which was dismissed - Appellant's application u/S 69 of the Act of 1908 before Inspector General (Registration) was also dismissed on ground of limited jurisdiction - Appellant's petition before High Court was also dismissed - Challenge to - Held - Party may have several remedies for same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions - Looking to conduct of appellant that he is pursuing multiple proceedings for same relief despite having an alternative and efficacious statutory remedy to which he has already resorted to, High Court rightly dismissed the petition - Appeal dismissed. [Satya Pal Anand Vs. State of M.P.] (SC)...1015

सहकारी सोसाइटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 एवं रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 69 - अधिकारिता - वैकल्पिक उपचार - सहकारी सोसाइटी द्वारा 1962 में रजिस्ट्रीकृत विलेख के जरिए अपीलार्थी की माता को भूखंड आबंटित किया गया - वर्ष 1988 में आबंटिती की मृत्यु हुई - 2001 में, सोसाइटी ने, भूखंड पर कोई निर्माण खड़ा नहीं किये जाने से सोसाइटी की उप-विधियों के उल्लंघन के आधार पर निर्वापन विलेख द्वारा एकपक्षीय रूप से आबंटन रद्द किया - 2004 में, सोसाइटी ने उसी भूखंड को रजिस्ट्रीकृत विलेख द्वारा तृतीय पक्षकार को आबंटित किया - बाद में, यद्यपि समझौते द्वारा अपीलार्थी

को रु. 6.5 लाख अदा किये गये थे, उसने सोसाइटी की कार्रवाई को चुनौती देते हुए 1960 के अधिनियम की धारा 64 के अंतर्गत एक आवेदन प्रस्तुत किया - विवाद, न्यायनिर्णयन हेतु लंबित रहते, 2006 में वही मूखंड पुनः एक रजिस्ट्रीकृत विलेख द्वारा अन्य व्यक्तियों को (इसमें प्रत्यर्थी क्र. 6 व 7) हस्तांतरित किया - 2008 में, अपीलार्थी ने 2001, 2004 व 2006 के सभी तीन विलेखों के रद्दकरण हेतु सब-रजिस्ट्रार के समक्ष आवेदन भी प्रस्तुत किया, जिसे खारिज किया गया - अपीलार्थी के 1908 के अधिनियम की धारा 69 के अंतर्गत महानिरीक्षक (रजिस्ट्रीकरण) के समक्ष प्रस्तुत आवेदन को भी सीमित अधिकारिता के आधार पर खारिज किया गया था - उच्च न्यायालय के समक्ष अपीलार्थी की याचिका भी खारिज की गई थी - को चुनौती - अभिनिर्धारित - पक्षकार के पास समान वाद हेतुक के लिए कई उपचार हो सकते हैं, उसे अपना उपचार चुनना चाहिए तथा उसे विभिन्न कार्रवाईयों में लिप्त होने की अनुमति नहीं दी जा सकती - अपीलार्थी के आचरण को देखते हुए कि उसके पास वैकल्पिक एवं प्रभावकारी कानूनी उपचार जिसका अवलंब वह पहले ही ले चुका है, होने के बावजूद वह समान अनुतोष हेतु विभिन्न कार्यवाहियों में लगा है, उच्च न्यायालय ने उचित रूप से याचिका खारिज की - अपील खारिज। (सत्यपाल आनंद वि. म.प्र. राज्य) (SC)...1015

Court Fees Act (7 of 1870), Section 7(iii) & 7(iv)(c) - Payment of Court Fees - Deed of transfer/conveyance - Executant or non-executant - Ad-Valorem or fixed - Three situations discussed. [Geeta Omre (Smt.) Vs. Smt. Chandrakanta Rai] ...874

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iii) व 7(iv)(c) - न्यायालय फीस की अदायगी - अंतरण/हस्तांतरण का विलेख - निष्पादक या गैर निष्पादक - मूल्यानुसार या निश्चित - तीन स्थितियों की चर्चा की गई। (गीता ओमरे (श्रीमती) वि. श्रीमती चन्द्रकांता राय) ...874

Court Fees Act (7 of 1870), Section 7(iii) & 7(iv)(c) - Under valuation and deficit court fees - Facts - Respondent/plaintiff filed a suit for declaration that gift deed executed by plaintiff (mother of the petitioner) in favour of petitioner/defendant is null & void - Objection regarding under valuation and deficit court fees by defendant/petitioner was rejected by trial Court - Held - The plaintiff (mother) being executant of the gift deed in favour of defendant (daughter) has parted with possession of the property, so in this light of the fact the order impugned herein is unsustainable in the eyes of law and therefore set aside - Trial Court directed to reconsider and decide the objection of the petitioner/defendant afresh - Petition disposed of. [Geeta Omre (Smt.) Vs. Smt. Chandrakanta Rai] ...874

न्यायालय फीस अधिनियम (1870 का 7), धारा 7(iii) व 7(iv)(c) – न्यून मूल्यांकन एवं न्यायालय फीस में कमी – तथ्य – प्रत्यर्थी/वादी ने इस घोषणा हेतु वाद प्रस्तुत किया कि वादी (याची की माता) द्वारा याची/प्रतिवादी के पक्ष में निष्पादित दान विलेख अकृत एवं शून्य है – विचारण न्यायालय द्वारा प्रतिवादी/याची का न्यून मूल्यांकन एवं न्यायालय फीस में कमी से संबंधित आक्षेप अस्वीकार किया गया – अभिनिर्धारित – प्रतिवादी (पुत्री) के पक्ष में दान विलेख का निष्पादक होने के नाते, वादी (माता) सम्पत्ति के कब्जे से विलग हुई है, इस प्रकार तथ्य के आलोक में, यहां आक्षेपित आदेश विधि की दृष्टि में कायम रखने योग्य नहीं और इसलिए अपास्त किया गया – विचारण न्यायालय को याची/प्रतिवादी के आक्षेप पर पुनः विचार करने और नये सिरे से विनिश्चित करने के लिए निदेशित किया गया – याचिका निराकृत की गई। (गीता ओमरे (श्रीमती) वि. श्रीमती चन्द्रकांता राय) ...874

Criminal Courts and Court-martial (Adjustment of Jurisdiction)
Rules, 1952, Rule 3 & 4 – See – Criminal Procedure Code, 1973, Section 475 [Karamjeet Singh Vs. State of M.P.] ...946

दण्ड न्यायालय और सेना न्यायालय (अधिकारिता का समायोजन) नियम, 1952, नियम 3 व 4 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 475 (करमजीत सिंह वि. म.प्र. राज्य) ...946

Criminal Court and Court Martial (Adjustment of Jurisdiction)
Rules, 1978 – See – Criminal Procedure Code, 1973, Section 475 [Station Commander, Mhow Cantt. Major General R.S. Shekhawat, SM, VSM Vs. State of M.P.] ...1275

दाण्डिक न्यायालय और सेना न्यायालय (अधिकारिता का समायोजन) नियम, 1978 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 475 (स्टेशन कमांडर, महू केन्ट, मेजर जनरल आर.एस. शेखावत, एसएम, व्हीएसएम वि. म.प्र. राज्य) ...1275

Criminal Procedure Code, 1973 (2 of 1974), Section 24 – Appointment of Public Prosecutor – Cancellation – Grounds – Petition against the cancellation of appointment order of petitioner, being selected as Public Prosecutor and further appointment of Respondent No.3 – Held – State Government in its reply has neither assigned any reason nor explained, what were the unavoidable reasons or probable cause for cancellation of appointment order of petitioner – Affidavit also does not disclose any reasons which required cancellation of petitioner's appointment after due approval by Law Secretary – Further held – A fair, reasonable and non-discriminatory process of appointment is the demand of the rule of Law – Arbitrariness has no place in a

polity governed by rule of law, Article 14 of the Constitution strikes at arbitrariness in every State action – Authorities directed to draw a fresh panel of lawyers in terms of the Supreme Court guidelines. [Umesh Kumar Sharma Vs. State of M.P.] ...1403

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 24 – लोक अभियोजक की नियुक्ति – निरस्तीकरण – आधार – लोक अभियोजक के रूप में चयनित होने वाले याची की नियुक्ति के आदेश के निरस्तीकरण तथा आगे प्रत्यर्थी क्र. 3 की नियुक्ति के विरुद्ध याचिका – अभिनिर्धारित – राज्य सरकार ने अपने प्रतिउत्तर में न तो कोई कारण दिया है न ही स्पष्ट किया है कि याची की नियुक्ति के आदेश के निरस्तीकरण हेतु क्या अपरिहार्य कारण या संभाव्य कारण थे – शपथपत्र भी कोई कारण प्रकट नहीं करता जिससे विधि सचिव द्वारा सम्यक् अनुमोदन के पश्चात् याची की नियुक्ति का निरस्तीकरण अपेक्षित हो गया हो – आगे अभिनिर्धारित – नियुक्ति की एक निष्पक्ष, युक्तियुक्त एवं भेदभाव रहित प्रक्रिया, विधि के नियम की मांग है – विधि के नियम द्वारा शासित राजतंत्र में मनमानेपन का कोई स्थान नहीं है, संविधान का अनुच्छेद 14, राज्य की प्रत्येक कार्यवाही में मनमानेपन को खंडित करता है – प्राधिकारीगण को उच्चतम न्यायालय के दिशानिर्देशों के निबंधनों में विधिवक्ताओं का नया पेनल बनाये जाने हेतु निदेशित किया गया। (उमेश कुमार शर्मा वि. म.प्र. राज्य) ...1403

Criminal Procedure Code, 1973 (2 of 1974), Section 41 – Arrest – Held – The scope for issuing a direction to arrest the accused persons is limited – Apex Court held that Section 41 gives discretion to the police officer to arrest any person in the situation enumerated in the section and since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence – Since an arrest is in the nature of encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. [Ritesh Inani Vs. State of M.P.] ...1409

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 41 – गिरफ्तारी – अभिनिर्धारित – अभियुक्तगण को गिरफ्तार करने हेतु निदेश जारी करने के लिए परिधि सीमित है – सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया कि धारा 41, धारा में प्रगणित स्थिति में किसी भी व्यक्ति को गिरफ्तार करने के लिए पुलिस अधिकारी को विवेकाधिकार देती है एवं चूंकि शक्ति वैवेकिक है, एक पुलिस अधिकारी हमेशा अभियुक्त को गिरफ्तार करने के लिए आवद्ध नहीं है, यद्यपि उसके विरुद्ध संज्ञेय अपराध कारित करने का अभिकथन हो – चूंकि गिरफ्तारी विषय की स्वतंत्रता पर अधिक्रमण की प्रकृति में है तथा नागरिक की ख्याति एवं प्रतिष्ठा को प्रभावित करती

है, शक्ति का प्रयोग सावधानीपूर्वक किया जाना चाहिए। (रीतेश इनानी वि. म.प्र. राज्य) ...1409

Criminal Procedure Code, 1973 (2 of 1974), Section 41(b) – Judicial Enquiry – Held – In the present case, since the investigation is being conducted by an officer of high rank under the supervision of I.G., thus there is no reason to direct the investigation by any other investigating agency other than the competent police officer. [Ritesh Inani Vs. State of M.P.] ...1409

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 41(बी) – न्यायिक जांच – अभिनिर्धारित – वर्तमान प्रकरण में, चूंकि अन्वेषण आई.जी. के पर्यवेक्षण में उच्च रैंक के एक अधिकारी द्वारा संचालित की गई है, इसलिए सक्षम पुलिस अधिकारी के अलावा किसी अन्य अन्वेषण एजेंसी द्वारा जांच को निदेशित करने का कोई कारण नहीं है। (रीतेश इनानी वि. म.प्र. राज्य) ...1409

*Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 126 – Compromise – Res Judicata – Ex-parte Order – Opportunity of Hearing – Wife filed an application u/S 125 Cr.P.C. in the year 2005 whereby the same was dismissed in the year 2008 on the ground that wife failed to establish that she was living separately with sufficient reasons – In the year 2011, wife again filed an application u/S 125 Cr.P.C. whereby wife withdrawn the case on a compromise whereby husband submitted that wife received a lump sum amount of Rs. 5 lacs from him – Subsequently, wife again filed a third application u/S 125 Cr.P.C. whereby husband was proceeded ex-parte and Family Court allowed the application and granted Rs. 3000 pm to wife as maintenance – Challenge to – Held – Principle of *res-judicata* are not attracted – Further, with regard to compromise, order sheet reflects that matter is withdrawn in terms of compromise but terms or particulars of compromise is not mentioned – Further held – With regard to ex-parte proceeds against applicant, remedy u/S 126 Cr.P.C. is available – Court cannot permit bypassing of remedy – Applicant is at liberty to move appropriate application u/S 126 Cr.P.C. before the Court below – No interference is called for – Revision disposed. [Kamal Singh Vs. Savitri Bai] ...1490*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 एवं 126 – समझौता – पूर्व न्याय – एकपक्षीय आदेश – सुनवाई का अवसर – वर्ष 2005 में पत्नी ने

दं.प्र.सं. की धारा 125 के अंतर्गत आवेदन प्रस्तुत किया जिस पर उक्त को वर्ष 2008 में इस आधार पर खारिज किया गया कि पत्नी यह स्थापित करने में असफल रही कि वह पर्याप्त कारणों से पृथक रूप से निवासरत थी - वर्ष 2011 में, पत्नी ने पुनः दं.प्र.सं. की धारा 125 के अंतर्गत आवेदन प्रस्तुत किया जिस पर पत्नी ने समझौते पर प्रकरण वापस लिया जिसमें पति ने निवेदन किया कि पत्नी ने उससे रु. 5 लाख की एकमुश्त रकम प्राप्त की - तत्पश्चात्, पत्नी ने पुनः एक तीसरा आवेदन दं.प्र.सं. की धारा 125 के अंतर्गत प्रस्तुत किया जिसमें पति पर एकपक्षीय कार्यवाही की गई और कुटुम्ब न्यायालय ने आवेदन मंजूर किया और पत्नी को भरण पोषण के रूप में रु. 3000 प्रतिमाह प्रदान किया - को चुनौती - अभिनिर्धारित - पूर्व न्याय का सिद्धांत आकर्षित नहीं होता - इसके अतिरिक्त, समझौते के संबंध में, आदेश पत्र प्रतिबिंबित करता है कि समझौते के निबंधनों के अनुसार मामला वापस लिया गया था परंतु समझौते के निबंधन या विशिष्टियां उल्लिखित नहीं हैं - आगे अभिनिर्धारित - आवेदक के विरुद्ध एक पक्षीय कार्यवाही के संबंध में, दं.प्र.सं. की धारा 126 के अंतर्गत उपचार उपलब्ध है - न्यायालय उपचार की उपेक्षा करने की अनुमति नहीं दे सकता - आवेदक निचले न्यायालय के समक्ष धारा 126 दं.प्र.सं. के अंतर्गत समुचित आवेदन प्रस्तुत करने के लिए स्वतंत्र है - हस्तक्षेप की कोई आवश्यकता नहीं - पुनरीक्षण निराकृत। (कमल सिंह वि. सावित्री बाई) ...1490

Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) - Investigation - Held - Magistrate has wide powers to ensure proper investigation and for this purpose he can monitor the investigation and if the investigation is not done properly, aggrieved person has a remedy of approaching the Magistrate - No need for any further direction - Petition disposed of. [Ritesh Inani Vs. State of M.P.] ...1409

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) - अन्वेषण - अभिनिर्धारित - मजिस्ट्रेट को उचित अन्वेषण सुनिश्चित करने के लिए व्यापक शक्तियाँ हैं एवं इस उद्देश्य के लिए वह अन्वेषण की निगरानी कर सकता है तथा यदि अन्वेषण उचित रूप से नहीं की जाती है, पीड़ित व्यक्ति के पास मजिस्ट्रेट के पास जाने का उपचार है - आगे किसी और निदेश की आवश्यकता नहीं - याचिका निराकृत। (रीतेश इनानी वि. म.प्र. राज्य) ...1409

*Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3), 173(8) & 465(2) - See - Prevention of Corruption Act, 1988, Section 13(1)(e) r/w Section 13(2) [Raj Kamal Sharma Vs. State of M.P. through Special Police Establishment (Lokayukt)] (DB)...*58*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156(3), 173(8) व 465(2) - देखें - भ्रष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(ई) सहपठित धारा 13(2) (राज

कमल शर्मा वि. म.प्र. राज्य द्वारा स्पेशल पुलिस इस्टैब्लिशमेंट (लोकायुक्त)) (DB)...*58

Criminal Procedure Code, 1973 (2 of 1974), Section 190 – Cognizance – Opportunity of hearing – Appreciation of Evidence – Held – No opportunity of hearing is required to be extended to persons against whom the court proposes to take cognizance u/S 190 Cr.P.C. and even no meticulous appreciation of evidence is required nor permissible – Whether FIR and police case diary statement of complainant should be accepted or not and whether statements of independent witnesses should be discarded in the light of FIR and case diary statement of complainant, is a question to be decided by the trial Court after taking evidence. [Uttam Chand Verma Vs. State of M.P.] ...1519

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 190 – संज्ञान – सुनवाई का अवसर – साक्ष्य का मूल्यांकन – अभिनिर्धारित – उन व्यक्तियों को, जिनके विरुद्ध न्यायालय दण्ड प्रक्रिया संहिता की धारा 190 के अंतर्गत संज्ञान लिया जाना प्रस्तावित करती है, कोई सुनवाई का अवसर बढ़ाया जाना अपेक्षित नहीं है एवं यहाँ तक कि साक्ष्य का बारीकी से मूल्यांकन अपेक्षित नहीं और न ही अनुज्ञेय है – क्या प्रथम सूचना प्रतिवेदन एवं परिवादी के पुलिस केस डायरी कथन को स्वीकार किया जाना चाहिए या नहीं एवं क्या स्वतंत्र साक्षीगण के कथनों को, प्रथम सूचना प्रतिवेदन एवं परिवादी के केस डायरी कथन के आलोक में अस्वीकार किया जाना चाहिए, यह प्रश्न विचारण न्यायालय द्वारा साक्ष्य लेने के पश्चात् विनिश्चित किया जाता है। (उत्तम चंद वर्मा वि. म.प्र. राज्य) ...1519

Criminal Procedure Code, 1973 (2 of 1974), Section 193 & 194 – See – Practice and Procedure [In Reference Vs. Jitendra] ...1223

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 193 व 194 – देखें – पद्धति व प्रक्रिया (इन रेफरेन्स वि. जितेन्द्र) ...1223

Criminal Procedure Code, 1973 (2 of 1974), Section 195(1)(a)(i) & 216, Penal Code (45 of 1860), Sections 186, 353 & 506 part II and Electricity Act (36 of 2003), Section 135 – Alteration of charges – Electricity theft case – Initially charge u/S 135 of Electricity Act was framed against the accused but later, charges u/S 186, 353 and 506 part II of IPC were added by the trial Court – Held – There is a specific bar created u/S 195(1)(a)(i) CrPC according to which the trial Court cannot take cognizance of the offence u/S 186 IPC without there being any complaint by the concerned public servant – Further held – Since the ingredients of the offence u/S 186 and 353 IPC are different, court

can take cognizance of offence u/S 353 IPC – Charge u/S 186 IPC set aside – Trial Court to proceed with charges u/S 353 and 506 part II IPC and u/S 135 Electricity Act, 2003 – Application partly allowed. [Pooran Singh Jatav Vs. State of M.P.] ...*56

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 195(1)(ए)(आई) व 216, दण्ड संहिता (1860 का 45), धाराएँ 186, 353 व 506 भाग-II एवं विद्युत अधिनियम (2003 का 36), धारा 135 – आरोपों को परिवर्तित किया जाना – विद्युत चोरी प्रकरण – आरंभ में अभियुक्त के विरुद्ध विद्युत अधिनियम की धारा 135 के अंतर्गत आरोप विरचित किया गया परंतु बाद में, विचारण न्यायालय द्वारा मा.द.सं. की धाराएँ 186, 353 व 506 भाग-II के अंतर्गत आरोप जोड़े गये – अभिनिर्धारित – द.प्र.सं. की धारा 195(1)(ए)(आई) के अंतर्गत विनिर्दिष्ट वर्जन सृजित है जिसके अनुसार विचारण न्यायालय, संबंधित लोक सेवक की किसी शिकायत के बिना मा.द.सं. की धारा 186 के अंतर्गत अपराध का संज्ञान नहीं ले सकता – आगे अभिनिर्धारित – चूंकि मा.द.सं. की धारा 186 एवं 353 के अंतर्गत अपराध के घटक भिन्न हैं, न्यायालय मा.द.सं. की धारा 353 के अंतर्गत अपराध का संज्ञान ले सकता है – आरोप अंतर्गत धारा 186 मा.द.सं. अपास्त – विचारण न्यायालय मा.द.सं. की धारा 353 व 506 भाग-II एवं विद्युत अधिनियम 2003 की धारा 135 के अंतर्गत आरोपों पर कार्यवाही करें – आवेदन अंशतः मंजूर। (पूरन सिंह जाटव वि. म. प्र. राज्य) ...*56

Criminal Procedure Code, 1973 (2 of 1974), Section 197 – Public Servant – Sanction for Prosecution – Acts of cheating, fabrication of records or misappropriation of public money cannot be said to be a part of official duty of a public servant and therefore no sanction required u/S 197 of the Cr.P.C. [Suraj Kero Vs. State of M.P.] (DB)...1237

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197 – लोक सेवक – अभियोजन हेतु मंजूरी – छल, अभिलेखों को गढ़ना या लोक धन के दुर्विनियोजन के कृत्यों को लोक सेवक के पदीय कर्तव्य का भाग नहीं कहा जा सकता और इसलिए द.प्र.सं. की धारा 197 के अंतर्गत मंजूरी अपेक्षित नहीं। (सूरज केरो वि. म. प्र. राज्य) (DB)...1237

Criminal Procedure Code, 1973 (2 of 1974), Section 202 – Complaint Case – Issue of Summons – Police Enquiry Report – Held – At the initial stage, when the complaint was filed, the trial Court ordered the police to conduct an inquiry u/S 202 Cr.P.C. which shows that there was not much material available in the complaint prima facie to issue process against the petitioner – After 15 adjournments, report was not filed by the police – In such circumstances, summoning order

passed by the Trial Court without waiting for the Police Report u/S 202 Cr.P.C. is bad in law and is hereby set aside – Proceedings against petitioner quashed – Revision allowed. [Sahara India Ltd. Vs. State of M.P.] ...1497

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 202 – परिवाद प्रकरण – समन जारी किया जाना – पुलिस जांच प्रतिवेदन – अभिनिर्धारित – प्रारंभिक प्रक्रम पर, जब परिवाद प्रस्तुत किया गया था, विचारण न्यायालय ने पुलिस को दण्ड प्रक्रिया संहिता की धारा 202 के अंतर्गत जांच संचालित करने हेतु आदेशित किया, जो यह दर्शाता है कि याची के विरुद्ध आदेशिका जारी करने हेतु परिवाद में प्रथम दृष्टया ज्यादा सामग्री उपलब्ध नहीं थी – 15 स्थगनों के पश्चात्, पुलिस द्वारा प्रतिवेदन प्रस्तुत नहीं किया गया था – ऐसी परिस्थितियों में, विचारण न्यायालय द्वारा दण्ड प्रक्रिया संहिता की धारा 202 के अंतर्गत पुलिस प्रतिवेदन की प्रतीक्षा किये बिना समन आदेश पारित किया जाना विधि विरुद्ध है एवं एतद्वारा अपास्त – याची के विरुद्ध कार्यवाहियाँ अभिखंडित – पुनरीक्षण मंजूर। (सहारा इंडिया लि. वि. म.प्र. राज्य) ...1497

Criminal Procedure Code, 1973 (2 of 1974), Section 311 – See – Protection of Children from Sexual Offences Act, 2012, Section 34 [Umesh Kumar Vs. State of M.P.] ...1230

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 – देखें – लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012, धारा 34 (उमेश कुमार वि. म.प्र. राज्य) ...1230

Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Admission of Offence by Accused – Any admission made by an accused in his examination u/S 313 Cr.P.C. cannot be made sole basis for conviction of the offence with which he is charged – Acquitted accused in criminal appeal no. 1398/2007 filed by the State, cannot be convicted u/S 12 of the Act upon the admission made by him in his examination u/S 313 Cr.P.C. even if the admissions are taken to be true at their face value without taking into account the background facts – Trial Court rightly acquitted the accused – Criminal Appeal filed by the State against acquittal fails and is dismissed. [Archana Nagar (Ku.) Vs. State of M.P.] (DB)...1162

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 – अभियुक्त द्वारा अपराध की स्वीकृति – अभियुक्त द्वारा द.प्र.सं. की धारा 313 के अंतर्गत, उसके परीक्षण में की गई किसी स्वीकृति को, उस अपराध हेतु दोषसिद्धि का एकमात्र

आधार नहीं बनाया जा सकता जो उस पर आरोपित है — राज्य द्वारा प्रस्तुत दाण्डिक अपील क्र. 1398/2007 में दोषमुक्त अभियुक्त को उसके द्वारा दं.प्र.सं. की धारा 313 के अंतर्गत उसके परीक्षण में उसके द्वारा की गई स्वीकृति पर उसे अधिनियम की धारा 12 के अंतर्गत दोषसिद्ध नहीं किया जा सकता, यदि पृष्ठभूमि के तथ्यों को विचार में लिए बिना, स्वीकृतियों को उनके प्रकट मूल्य पर सत्य माना जाए तब भी — विचारण न्यायालय ने उचित रूप से अभियुक्त को दोषमुक्त किया — दोषमुक्ति के विरुद्ध राज्य द्वारा प्रस्तुत दाण्डिक अपील असफल होती है और खारिज की गई। (अर्चना नागर (कुमारी) वि. म.प्र. राज्य) (DB)...1162

Criminal Procedure Code, 1973 (2 of 1974), Section 319 & 190
— *Comparison* — While exercising powers u/S 319 Cr.P.C., Court has to prima facie form an opinion on the basis of evidence which has already come on record, whereby additional accused can be convicted whereas that is not the scope while exercising powers u/S 190 Cr.P.C.. [Uttam Chand Verma Vs. State of M.P.] ...1519

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 व 190 — तुलना — दण्ड प्रक्रिया संहिता की धारा 319 के अन्तर्गत शक्तियों का प्रयोग करते समय न्यायालय को उन साक्ष्य के आधार पर जो कि पहले ही अभिलेख पर आ चुके हैं, प्रथम दृष्टया एक राय बनानी होगी, जिससे अतिरिक्त अभियुक्त को दोषसिद्ध किया जा सके, जबकि दण्ड प्रक्रिया संहिता की धारा 190 के अन्तर्गत शक्तियों का प्रयोग करते समय यह विस्तार नहीं है। (उत्तम चंद वर्मा वि. म.प्र. राज्य) ...1519

Criminal Procedure Code, 1973 (2 of 1974), Section 321, Legal Services Authorities Act (39 of 1987), Section 20 and Penal Code (45 of 1860), Sections 294, 506 & 323/34 — Lok-Adalat — Whether powers u/S 321 of Cr.P.C. can be exercised by the Lok-Adalat for withdrawal of prosecution by the State Government — Held — No, the powers u/S 321 of Cr.P.C. cannot be exercised by the Lok-Adalat for withdrawal of prosecution, as the power u/S 321 of Cr.P.C. can only be exercised by the regular Court after examining the merits of the case — Revision dismissed. [Ram Milan Dubey Vs. Ku. Vandana Jain] ...952

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 321, विधिक सेवा प्राधिकरण अधिनियम (1987 का 39), धारा 20 एवं दण्ड संहिता (1860 का 45), धारा 294, 506 व 323/34 — लोक अदालत — क्या राज्य सरकार द्वारा अभियोजन वापस लेने के लिए दण्ड प्रक्रिया संहिता की धारा 321 के अंतर्गत शक्तियों का प्रयोग लोक अदालत द्वारा किया जा सकता है — अभिनिर्धारित — नहीं, लोक अदालत द्वारा अभियोजन वापस लेने हेतु दण्ड प्रक्रिया संहिता की धारा 321 के अंतर्गत शक्तियों

का प्रयोग नहीं किया जा सकता चूंकि, दण्ड प्रक्रिया संहिता की धारा 321 के अंतर्गत शक्तियों का प्रयोग केवल नियमित न्यायालय द्वारा प्रकरण के गुणदोषों का परीक्षण करने के पश्चात् ही किया जा सकता है - पुनरीक्षण खारिज। (राम मिलन दुबे वि. कुमारी वंदना जैन) ...952

*Criminal Procedure Code, 1973 (2 of 1974), Section 360 and Public Gambling Act (3 of 1867), Section 13 - Conviction - Applicant seeking benefit u/S 360 of CrPC and praying to be released on probation - Held - While extending benefit of Section 360 Cr.P.C., nature of the offence is to be seen and that whether the offence committed is against the society at large - Gambling has become a menace to the peaceful society which adversely affects the financial position of the family of the persons involved in it - If a person loses money in gambling then it can be safely said that the money which could have been utilized for upbringing the children of the family or for looking after elder persons of the family has been misused - It affects the society at large - Benefit of Section 360 CrPC cannot be granted - Petition dismissed. [Sanjay Vs. State of M.P.] ...*72*

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 360 एवं सार्वजनिक घूत अधिनियम (1867 का 3), धारा 13 - दोषसिद्धि - आवेदक का दण्ड प्रक्रिया संहिता की धारा 360 के अंतर्गत लाभ चाहते हुए तथा परिवीक्षा पर मुक्त किये जाने हेतु प्रार्थना की जाना - अभिनिर्धारित - दण्ड प्रक्रिया संहिता की धारा 360 का लाभ देते समय, अपराध की प्रकृति देखी जानी चाहिए तथा यह भी कि क्या जो अपराध कारित हुआ है वह व्यापक रूप से समाज के विरुद्ध है - घूत शांतिपूर्ण समाज के लिए एक खतरा बन चुका है जो कि उसमें सम्मिलित व्यक्तियों के परिवार की आर्थिक स्थिति पर विपरीत प्रभाव डालता है - यदि एक व्यक्ति घूत में रुपये गंवाता है तब यह सुरक्षित रूप से कहा जा सकता है कि जिन रूपयों का उपयोग परिवार के बच्चों की परवरिश या परिवार के बुजुर्गों की देखरेख में किया जा सकता था उनका दुरुपयोग हुआ है - यह व्यापक रूप से समाज को प्रभावित करता है - दण्ड प्रक्रिया संहिता की धारा 360 का लाभ प्रदान नहीं किया जा सकता - याचिका खारिज। (संजय वि. म.प्र. राज्य) ...*72*

Criminal Procedure Code, 1973 (2 of 1974), Section 378(3) & 372, Penal Code (45 of 1860), Section 304-B, 498-A and Dowry Prohibition Act (28 of 1961), Section 3(1) & 4-A - Application Against Acquittal - Wife committed suicide by hanging herself in the matrimonial house within one year of marriage - Case was registered

against husband and his relatives – Trial concluded and only husband was convicted and rest of the relatives were acquitted – Challenge to – Held – The acquittal is based on the scrutiny of evidence available on record – Prosecution witnesses made omnibus allegations against the relatives of husband – Further held – Sisters of the husband are married and are living separately with their husband far away in Jhansi, Lucknow and Bangalore whereas deceased was living at Sagar – Apex Court has held that in case of death of a woman in her matrimonial home, it is a common feature that incident is exaggerated by the relatives of the deceased and it is a common practice to implicate all members of the family of husband – In the present case, there is nothing on record to establish demand of dowry by the relatives of husband – Application is devoid of merits and is hereby dismissed. [Vinod Kumar Sen Vs. Smt. Shanti Devi] (DB)...*85

*दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 378(3) व 372, दण्ड संहिता (1860 का 45), धारा 304-बी, 498-ए एवं दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3(1) एवं 4-ए – दोषमुक्ति के विरुद्ध आवेदन – विवाह के एक वर्ष के भीतर पत्नी ने दाम्पत्य निवास में स्वयं को फाँसी लगाकर आत्महत्या की – पति एवं उसके रिश्तेदारों के विरुद्ध प्रकरण पंजीबद्ध किया गया – विचारण समाप्त हुआ तथा केवल पति को दोषसिद्ध किया गया एवं शेष रिश्तेदारों को दोषमुक्त किया गया – को चुनौती – अभिनिर्धारित – दोषसिद्धि, अभिलेख पर उपलब्ध साक्ष्य की संवीक्षा पर आधारित है अभियोजन साक्षियों ने पति के रिश्तेदारों के विरुद्ध सर्वग्राही अभिकथन किये हैं – आगे अभिनिर्धारित – पति की बहनें विवाहित हैं और पृथक् रूप से दूर अपने-अपने पति के साथ झाँसी, लखनऊ एवं बंगलौर में निवासरत हैं जबकि मृतिका सागर में निवासरत थी – सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि महिला की उसके दाम्पत्य निवास में मृत्यु के प्रकरण में, यह सामान्य लक्षण है कि मृतिका के रिश्तेदारों द्वारा घटना को अतिरंजित किया जाता है तथा पति के परिवार के सभी सदस्यों को आलिप्त करना एक सामान्य पद्धति है – वर्तमान प्रकरण में, पति के रिश्तेदारों द्वारा दहेज की मांग स्थापित करने के लिए अभिलेख पर कुछ नहीं है – आवेदन गुणदोष रहित है एवं एतद् द्वारा खारिज। (विनोद कुमार सेन वि. श्रीमती शांती देवी) (DB)...*85*

Criminal Procedure Code, 1973 (2 of 1974), Section 397(2) – Interlocutory order – Test to determine whether the order rejects the plea of the accused on a point which when accepted will conclude the particular proceeding and whether the order substantially affects the rights of the parties – If answer of any one is affirmative, the order

would not be interlocutory order – Bar of the Section 397(2) would not be attracted. [Akhtar Uddin Vs. State of M.P.] ...984

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397(2) – अंतर्वर्ती आदेश – यह निर्धारित करने हेतु परीक्षण कि क्या आदेश अभियुक्त के अभिवाक् को उस बिन्दु पर अस्वीकार कर देता है जिसे यदि स्वीकार किया जाए तो विशिष्ट कार्यवाही समाप्त हो जाएगी और क्या आदेश सारभूत रूप से पक्षकारों के अधिकारों को प्रभावित करता है – यदि किसी एक का उत्तर सकारात्मक है, वह आदेश, अंतर्वर्ती आदेश नहीं होगा – धारा 397(2) का वर्जन आकर्षित नहीं होगा। (अख्तर उद्दीन वि. म.प्र. राज्य) ...984

Criminal Procedure Code, 1973 (2 of 1974), Section 397(2) – Revision against framing of charge – Maintainability – Order framing charge is not an order which if passed in favour of the accused would terminate the proceedings, but also decides substantial rights of the parties – Not an interlocutory order – Revision is maintainable. [Akhtar Uddin Vs. State of M.P.] ...984

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397(2) – आरोप विरचित किये जाने के विरुद्ध पुनरीक्षण – पोषणीयता – आरोप विरचित करने का आदेश, ऐसा आदेश नहीं है जो यदि अभियुक्त के पक्ष में पारित किया जाता है तो कार्यवाहियों को समाप्त करेगा परंतु पक्षकारों के सारभूत अधिकारों का विनिश्चय भी करेगा – अंतर्वर्ती आदेश नहीं है – पुनरीक्षण पोषणीय है। (अख्तर उद्दीन वि. म.प्र. राज्य) ...984

Criminal Procedure Code, 1973 (2 of 1974), Section 468 and Prize Chits and Money Circulation Schemes (Banning) Act, (43 of 1978), Section 4 & 5 – Complaint Case – Limitation – Held – In absence of a precise date on which the complainant is stated to have come to know about commission of offence for the first time which is readily and unambiguously reflected from record of the case, the same would be a matter of evidence and cannot be assessed by this Court in revision proceedings or even u/S 482 Cr.P.C. through a roving enquiry – At this stage, complaint cannot be said to be barred by limitation u/S 468 Cr.P.C. [Sahara India Ltd. Vs. State of M.P.] ...1497

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 468 एवं इनामी चिट और धन परिचालन स्कीम (पाबंदी) अधिनियम, (1978 का 43), धारा 4 व 5 – परिवाद प्रकरण – परिसीमा – अभिनिर्धारित – एक निश्चित दिनांक की अनुपस्थिति में, जिसमें परिवादी पहली बार अपराध कारित होने के बारे में पता चलने का कथन

करता है जो कि प्रकरण के अभिलेख द्वारा सरलता से एवं सुस्पष्ट ढंग से प्रकट होता है, उक्त साक्ष्य का मामला होगा तथा इस न्यायालय द्वारा पुनरीक्षण कार्यवाहियों में या दण्ड प्रक्रिया संहिता की धारा 482 के अंतर्गत अतिगामी जांच के माध्यम से भी निर्धारित नहीं किया जा सकता - इस प्रक्रम पर, परिवाद दण्ड प्रक्रिया संहिता की धारा 468 के अंतर्गत परिसीमा द्वारा वर्जित नहीं कहा जा सकता। (सहाय इंडिया लि. वि. म.प्र. राज्य) ...1497

Criminal Procedure Code, 1973 (2 of 1974), Section 475, Army Act, (45 of 1950), Section 125, Army Rules, 1954 and Criminal Court and Court Martial (Adjustment of Jurisdiction) Rules, 1978 - Transfer of Proceedings - Altercation between Police Officers and Army Personnel - FIR was lodged by police officers against 60-70 Army Personnel - Matter was also reported to Military Police whereby they started investigation and Army also initiated Court of Enquiry - Station Commander filed an application u/S 475 Cr.P.C. seeking transfer of entire proceedings to Army Station Commander enabling them to proceed under the provisions of Army Act but the same was dismissed on the ground that charge sheet was not filed - Challenge to - Held - 60-70 Army Personnel are involved in the matter and they shall be forced to attend criminal Court every month, which the nation cannot afford, especially keeping in view the present situation - Matter is pending before two different forums in respect of same incident - Statutory provisions of law permits transfer of criminal proceedings to Competent Army Authority in such a situation - Impugned order quashed - State directed to transfer the complete record to petitioner authority - Petition allowed. [Station Commander, Mhow Cantt. Major General R.S. Shekhawat, SM, VSM Vs. State of M.P.] ...1275

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 475, सेना अधिनियम (1950 का 45), धारा 125, सेना नियम, 1954 एवं दण्डिक न्यायालय और सेना न्यायालय (अधिकारिता का समायोजन) नियम, 1978 - कार्यवाहियों का अंतरण - पुलिस अधिकारियों और सेना कर्मियों के बीच कहासुनी - पुलिस अधिकारियों द्वारा 60-70 सेना कर्मियों के विरुद्ध प्रथम सूचना प्रतिवेदन दर्ज किया गया - सैन्य पुलिस को भी मामले की रिपोर्ट की गई जिससे, उन्होंने अन्वेषण आरंभ किया और सेना ने जांच न्यायालय भी आरंभ किया - स्टेशन कमांडर ने, उन्हें सेना अधिनियम के उपबंधों के अधीन कार्यवाही करने हेतु समर्थ बनाने के लिए आर्मी स्टेशन कमांडर को संपूर्ण कार्यवाहियों का अंतरण चाहते हुए, द.प्र.सं. की धारा 475 के अंतर्गत आवेदन प्रस्तुत किया परंतु उक्त को इस आधार पर खारिज किया गया कि आरोप

पत्र प्रस्तुत नहीं किया गया था - को चुनौती - अभिनिर्धारित - मामले में 60-70 सेना कर्मों शामिल हैं और उन्हें प्रत्येक माह दण्डिक न्यायालय में उपस्थित होना अनिवार्य होगा, जिसको राष्ट्र वहन नहीं कर सकता, विशिष्ट रूप से वर्तमान स्थिति को दृष्टिगत रखते हुए - उसी घटना के संबंध में दो भिन्न फोरम के समक्ष मामला लंबित है - ऐसी किसी स्थिति में, विधि के कानूनी उपबंध, सक्षम सेना प्राधिकारी को दण्डिक कार्यवाहियों के अंतरण की अनुमति देते हैं - आक्षेपित आदेश अभिखंडित - याची प्राधिकारी को संपूर्ण अभिलेख अंतरित करने के लिए राज्य को निदेशित किया गया - याचिका मंजूर। (स्टेशन कमांडर, महू केन्ट, मेजर जनरल आर.एस. शेखावत, एसएम, व्हीएसएम वि. म.प्र. राज्य) ...1275

Criminal Procedure Code, 1973 (2 of 1974), Section 475, Army Act, (45 of 1950), Section 125 & 126 and Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1952, Rule 3 & 4 - Trial of an accused liable to be tried by Court-martial or by a Competent Criminal Court - When the accused is an army man - The criminal Court before proceeding should give notice to the Commanding Officer of accused as envisaged u/S 125 & 126 of the Army Act. [Karamjeet Singh Vs. State of M.P.] ...946

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 475, सेना अधिनियम (1950 का 45), धारा 125 व 126 एवं दण्ड न्यायालय और सेना न्यायालय (अधिकारिता का समायोजन) नियम, 1952, नियम 3 व 4 - सेना न्यायालय या सक्षम दण्ड न्यायालय के द्वारा विचारण योग्य अभियुक्त का विचारण - जब अभियुक्त एक सैनिक है - दण्ड न्यायालय को आगे कार्यवाही करने से पूर्व अभियुक्त के कमान अधिकारी को नोटिस देना चाहिए जैसा कि सेना अधिनियम की धारा 125 व 126 के अंतर्गत परिकल्पित है। (करमजीत सिंह वि. म.प्र. राज्य) ...946

*Criminal Procedure Code, 1973 (2 of 1974), Section 482 - Inherent Powers - Facts - False implication by non-applicant No. 2 after filing of complaint & petition u/S 12 of Domestic Violence Act, 2005 by the applicant - Question of facts - Maintainability u/S 482 - Held - All contentions raised by the applicants are question of facts which has to be decided after recording of evidence - It is settled law that truthfulness of documents can not be evaluated at this stage in proceedings u/S 482 of Cr.P.C. - Inherent powers u/s. 482 of Cr.P.C. should be exercised with great care and caution. [Muin Sheik Vs. State of M.P.] ...*54*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - अंतर्निहित शक्तियाँ

— तथ्य — आवेदक द्वारा घरेलू हिंसा अधिनियम, 2005 की धारा 12 के अंतर्गत परिवाद एवं याचिका प्रस्तुत करने के पश्चात्, अनावेदक क्र. 2 द्वारा मिथ्या आलिप्त किया जाना — तथ्य का प्रश्न — धारा 482 के अंतर्गत पोषणीयता — अभिनिर्धारित — आवेदकगण द्वारा उठाये गये सभी तर्क तथ्य के प्रश्न हैं जिन्हें कि साक्ष्य अभिलिखित किये जाने के पश्चात् विनिश्चित किया जाना चाहिए — यह सुस्थापित विधि है कि दण्ड प्रक्रिया संहिता की धारा 482 के अंतर्गत कार्यवाहियों में इस प्रक्रम पर दस्तावेजों की सत्यता का मूल्यांकन नहीं किया जा सकता — धारा 482 के अंतर्गत अंतर्निहित शक्तियों का प्रयोग अधिक सतर्कता एवं सावधानी से किया जाना चाहिए। (मुईन शेख वि. म.प्र. राज्य) ...*54

Criminal Procedure Code, 1973 (2 of 1974), Section 482 — See — Probation of Offenders Act, 1958, Section 4 & 12 [Tulsidas Vs. State of M.P.] ...1265

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 — देखें — अपराधी परिवीक्षा अधिनियम, 1958, धारा 4 व 12 (तुलसीदास वि. म.प्र. राज्य) ...1265

Criminal Procedure Code, 1973 (2 of 1974), Section 482 — Whether complainant is required to be heard — Complainant is not required to be heard in this particular case because neither the applicant has been named in the FIR nor there is any imputation against him for being involved in the offence — Since the Application is pending since the year 2006 it is not practical or in the interest of justice to now implead the complainant or some one from his family as a respondent to oppose this Application — Charge sheet so far as it relates to the applicant is quashed. [Arun Kapur Vs. State of M.P.] ...1008

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 — क्या परिवादी को सुना जाना अपेक्षित है — इस विशिष्ट प्रकरण में परिवादी को सुना जाना अपेक्षित नहीं क्योंकि आवेदक को न तो प्रथम सूचना प्रतिवेदन में नामित किया गया और न ही अपराध में शामिल होने का उसके विरुद्ध कोई आरोप है — चूंकि आवेदन वर्ष 2006 से लंबित है, इस आवेदन का विरोध करने के लिए अब परिवादी अथवा उसके परिवार के किसी व्यक्ति को प्रत्यर्थी के रूप में पक्षकार बनाना व्यवहारिक अथवा न्यायहित में नहीं — आरोप पत्र, जहां तक आवेदक से संबंधित है अभिखंडित किया जाता है। (अरुण कपूर वि. म.प्र. राज्य) ...1008

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Excise Act, M.P. (2 of 1915), Section 34(2), 44 & 61 — Quashment of Criminal Proceedings — Cognizance of Complaint — Court took cognizance against the petitioner for offence u/S 34(2) & 44 of the Act

of 1915 – Challenge to – Held – As per Section 61 of the Act of 1915, cognizance can only be taken by Magistrate on a complaint filed by the Collector or Excise officer not below the rank of District Excise officer as may be authorized by the Collector in this behalf – In the present case, complaint was not filed by the said officers – Provisions of Section 61 was not followed – Proceedings pending before the magistrate are quashed – Application allowed. [Dinesh Vs. State of M.P.] ...1544

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 34(2), 44 व 61 – आपराधिक कार्यवाहियों का अभिखंडित किया जाना – परिवाद का संज्ञान – न्यायालय ने याची के विरुद्ध 1915 के अधिनियम की धारा 34(2) व 44 के अंतर्गत अपराध हेतु संज्ञान लिया – को चुनौती – अभिनिर्धारित – 1915 के अधिनियम की धारा 61 के अनुसार, मजिस्ट्रेट द्वारा संज्ञान केवल कलेक्टर या आबकारी अधिकारी जो जिला आबकारी अधिकारी के पद से नीचे का न हो, जैसा कि इस हेतु कलेक्टर द्वारा प्राधिकृत किया गया हो, के द्वारा प्रस्तुत परिवाद पर लिया जा सकता है – वर्तमान प्रकरण में, उक्त अधिकारियों द्वारा परिवाद प्रस्तुत नहीं किया गया था – धारा 61 के उपबंधों का पालन नहीं किया गया था – मजिस्ट्रेट के समक्ष लंबित कार्यवाहियां अभिखंडित की गई – आवेदन मंजूर। (दिनेश वि. म.प्र. राज्य) ...1544

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Factories Act (63 of 1948), Section 9 & 92 – On a complaint filed by the Factory Inspector, cognizance taken by Court and criminal case was registered against petitioners, who are the owner and manager of the company – Challenge to, on the ground that Factory Inspector was not accompanied by any other person/expert during inspection as contemplated in Section 9 of the Act of 1948 – Held – In the instant case, Inspector did not inspect the factory after any accident so as to require an expert to accompany but the inspection was made in a routine manner – Section 9 gives power to Inspector to either himself inspect the factory alone or along with assistance of any government or local or other public authority or with an expert as he thinks fit – Inspector pointed out certain violation of the Factory Act so it cannot be said that prima facie no offence is made out – No ground established to quash the proceedings – Petition dismissed. [Indu Batni (Mrs.) Vs. State of M.P.] ...*79

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं कारखाना

अधिनियम (1948 का 63), धारा 9 व 92 — कारखाना निरीक्षक द्वारा प्रस्तुत परिवाद पर, न्यायालय द्वारा संज्ञान लिया गया और याचीगण, जो कि कम्पनी के स्वामी एवं पबंधक हैं के विरुद्ध संज्ञान लिया गया — इस आधार पर चुनौती कि निरीक्षण के दौरान कारखाना निरीक्षक के साथ और कोई अन्य व्यक्ति/विशेषज्ञ नहीं था जैसा कि 1948 के अधिनियम की धारा 9 में अनुध्यात है — अभिनिर्धारित — वर्तमान प्रकरण में, निरीक्षक ने किसी दुर्घटना के पश्चात् कारखाने का निरीक्षण नहीं किया है जिससे कि एक विशेषज्ञ के साथ जाना अपेक्षित हो, बल्कि वह एक नियमित ढंग से किया गया निरीक्षण था — धारा 9, निरीक्षक को या तो स्वयं अकेले अथवा किसी सरकारी या स्थानीय या अन्य लोक प्राधिकारी या किसी विशेषज्ञ के साथ, जैसा कि वह उचित समझे, कारखाने का निरीक्षण करने की शक्ति प्रदान करती है — निरीक्षक ने कारखाना अधिनियम के कतिपय उल्लंघन इंगित किये, अतः यह नहीं कहा जा सकता कि प्रथम दृष्ट्या कोई अपराध नहीं बनता — कार्यवाहियाँ अभिखंडित किये जाने हेतु कोई आधार स्थापित नहीं होता — याचिका खारिज। (इन्दु बाटनी (श्रीमती) वि. म.प्र. राज्य)

...*79

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Motor Vehicles Act (59 of 1988), Section 180 & 181 — The offending vehicle which was involved in the accident belonged to the company and was not the personal property of the applicant — Therefore the provisions u/S 180 & 181 of Motor Vehicle Act will not be applicable on the applicant. [Arun Kapur Vs. State of M.P.]

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दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं मोटर यान अधिनियम (1988 का 59), धारा 180 व 181 — आक्षेपित वाहन जो दुर्घटना में शामिल था, वह कंपनी का था और आवेदक की व्यक्तिगत संपत्ति नहीं था — अतः आवेदक पर मोटर यान अधिनियम की धाराएँ 180 व 181 लागू नहीं होंगी। (अरुण कपूर वि. म.प्र. राज्य)

...1008

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Negotiable Instruments Act (26 of 1881), Section 138, Proviso (b), (c) & 142(1)(b) — Demand Notice — Time Period — Held — Notice of demand must be given within a period of 30 days from the date of receiving information of dishonor of cheque - In the present case, notice was issued after the period of thirty days therefore compliance to Section 138 proviso (b) of the Act of 1881 is not made out — Complaint is not maintainable — Further held — Order passed by the Trial Court is not justified and it is the case of abuse of process of Court and for which inherent powers of the High Court must be exercised u/S 482 Cr.P.C. — It is the duty of the High Court to exercise continuous superintendence

over the Courts of Judicial Magistrates u/S 483 Cr.P.C. – Order framing charge against petitioner is set aside – Petition allowed. [Mohd. Jahin Vs. Nibbaji] ...1534

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं परक्राम्य लिखित अधिनियम (1881 का 26), धारा 138, परंतुक (बी), (सी) व 142(1)(बी) – मांग नोटिस – समयावधि – अभिनिर्धारित – मांग का नोटिस, चैक के अनादृत होने की सूचना प्राप्ति की दिनांक से 30 दिनों की अवधि के भीतर दिया जाना चाहिए – वर्तमान प्रकरण में, नोटिस तीस दिनों की अवधि के पश्चात् जारी किया गया था इसलिए 1881 के अधिनियम की धारा 138 के परंतुक (बी) का अनुपालन नहीं होता है – परिवाद पोषणीय नहीं है – आगे अभिनिर्धारित – विचारण न्यायालय द्वारा पारित आदेश न्यायोचित नहीं और यह न्यायालय की प्रक्रिया के दुरुपयोग का प्रकरण है तथा जिसके लिए दं.प्र.सं. की धारा 482 के अंतर्गत, उच्च न्यायालय की अंतर्निहित शक्तियों का प्रयोग किया जाना चाहिए – यह उच्च न्यायालय का कर्तव्य है कि दं.प्र.सं. की धारा 483 के अंतर्गत न्यायिक मजिस्ट्रेट के न्यायालयों पर निरंतर अधीक्षण का प्रयोग करें – याची के विरुद्ध आरोप विरचित करने का आदेश अपास्त – याचिका मंजूर। (मोहम्मद जहीन वि. निब्बाजी) ...1534

*Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Section 306 & 498-A – Quashment of FIR – Held – Applicant has been implicated only because he happens to be the distant relative of husband of the deceased – Applicant is resident of District Morena whereas, according to the prosecution witnesses, deceased was residing separately along with her husband and children in Gwalior – No allegation that deceased was residing jointly with the accused/applicant – Witnesses had not clarified that on what date and at which place and in what manner, the accused/applicant harassed the deceased – Merely bald allegations were made against the relative of the husband without there being any specific overt act on their part and sending those persons to ordeal of trial will not be proper – FIR and consequential proceedings with regard to applicant are quashed – Petition allowed. [Mahendra Singh Vs. State of M.P.] ...*80*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धारा 306 व 498-ए – प्रथम सूचना प्रतिवेदन का अभिखंडन – अभिनिर्धारित – आवेदक को केवल इसलिए आलिप्त किया गया क्योंकि वह मृतिका के पति का दूर का रिश्तेदार है – आवेदक जिला मुरैना का निवासी है जबकि अभियोजन साक्षीगण के अनुसार, मृतिका अपने पति और बच्चों के साथ ग्वालियर में पृथक रूप से निवास कर रही थी – ऐसा कोई अभिकथन नहीं है कि मृतिका, अभियुक्त/आवेदक

के साथ संयुक्त रूप से निवास कर रही थी - साक्षीगण ने यह स्पष्ट नहीं किया था कि किस दिनांक को, किस स्थान पर एवं किस ढंग से अभियुक्त/आवेदक ने मृत्तिका को उत्पीड़ित किया - पति के रिश्तेदार के विरुद्ध, उनकी तरफ से किसी विनिर्दिष्ट प्रत्यक्ष कृत्य के न होते हुये भी, मात्र कोरे अभिकथन किये गये थे एवं उन व्यक्तियों को विचारण की कठिन परीक्षा के लिए भेजना उचित नहीं होगा - आवेदक के संबंध में प्रथम सूचना प्रतिवेदन एवं परिणामिक कार्यवाहियाँ अभिखण्डित - याचिका मंजूर। (महेन्द्र सिंह वि. म.प्र. राज्य) ...*80

*Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Sections 420, 467, 468 & 471 - Quashment of Charges - Compromise - Held - As per the present status of the trial, out of 20 witnesses, 16 witnesses have already been examined, hence trial has reached to an advanced stage - Proceedings cannot be quashed at this advance stage on the ground of compromise - Apart from the advanced stage of trial, as per the allegations, accused not only cheated the complainant but by making an attempt to sell the lands of other, accused has tried to cheat other persons also who are cited as witnesses and without there being any compromise between the said witnesses and accused persons, entire proceedings cannot be quashed merely on the ground that first informant has settled his disputes with the accused persons - Petition dismissed. [Haji Nanhe Khan Vs. State of M.P.] ...*69*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धाराएँ 420, 467, 468 व 471 - आरोपों का अभिखण्डित किया जाना - समझौता - अभिनिर्धारित - विचारण की वर्तमान स्थिति के अनुसार, 20 साक्षीगण में से, 16 साक्षीगण का पहले ही परीक्षण किया जा चुका है, अतः विचारण एक उन्नत प्रक्रम पर पहुँच चुका है - इस उन्नत प्रक्रम पर समझौते के आधार पर कार्यवाहियाँ अभिखण्डित नहीं की जा सकती - विचारण के उन्नत प्रक्रम के अलावा, अभिकथनों के अनुसार, अभियुक्त ने परिवादी से न केवल छल किया है बल्कि अन्य की भूमि विक्रय करने का प्रयास करके, अभियुक्त ने अन्य व्यक्तियों के साथ भी छल करने का प्रयास किया है जो कि साक्षीगण के रूप में वर्णित हैं तथा उक्त साक्षीगण एवं अभियुक्तगण के मध्य किसी समझौते के बिना, संपूर्ण कार्यवाहियाँ मात्र इस आधार पर अभिखण्डित नहीं की जा सकती कि प्रथम सूचना देने वाले व्यक्ति ने अभियुक्तगण के साथ अपने विवादों का निपटारा कर लिया है - याचिका खारिज। (हाजी नन्हे खान वि. म.प्र. राज्य) ...*69

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Sections 498-A, 323 & 506/34 - Quashing of

the FIR – Petitioners are the relatives of the husband of the complainant – All of them living separately and have been arrayed as accused on the basis of omnibus allegation – Prior to the registration of the FIR the husband of the complainant submitted a written complaint in which he has already expressed his apprehension about the conduct of his wife – Supreme Court, time and again, has deprecated this practice of implicating the family members of the husband in FIR as co-accused in the matrimonial disputes – Held – In absence of any specific allegation the FIR registered against the petitioners liable to be quashed. [Saurabh Tripathi Vs. State of M.P.] ...1000

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धाराएँ 498-ए, 323 व 506/34 – प्रथम सूचना रिपोर्ट अभिखंडित की जाना – याचीगण, परिवादी के पति के रिश्तेदार हैं – सभी पृथक रूप से निवास कर रहे हैं और उन्हें बहुप्रयोजनीय अभिकथन के आधार पर अभियुक्त के रूप में आलिप्त किया गया – प्रथम सूचना प्रतिवेदन पंजीबद्ध किये जाने के पूर्व, परिवादी के पति ने लिखित शिकायत प्रस्तुत की थी जिसमें उसने पहले ही अपनी पत्नी के आचरण संबंधी आशंका व्यक्त की है – उच्चतम न्यायालय ने विवाह विषयक विवादों में पति के परिवार के सदस्यों को प्रथम सूचना प्रतिवेदन में सह-अभियुक्त के रूप में आलिप्त करने के इस चलन की बार बार निन्दा की है – अभिनिर्धारित – किसी विनिर्दिष्ट अभिकथन की अनुपस्थिति में याचीगण के विरुद्ध पंजीबद्ध प्रथम सूचना प्रतिवेदन अभिखंडित किये जाने योग्य है। (सौरभ त्रिपाठी वि. म.प्र. राज्य) ...1000

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code (45 of 1860), Section 498-A/34 and Dowry Prohibition Act (28 of 1961), Section 3/4 – Quashing of FIR – Complainant is wife of brother of petitioner No. 2 and petitioner No. 1 is husband of petitioner No. 2 – Omnibus allegations against them that they have pressurised complainant to provide 35 lakhs to buy a flat for her and her husband in Hyderabad – They have also abused, beaten and harassed the complainant mentally and physically for dowry demand – They have come to Jabalpur for attending the marriage on 13.04.2015 and flew back to Delhi on 20.04.2015 and back to London on 04.05.2015 – There was no further occasion for interaction of the petitioners with the complainant – Held – Since the charge sheet did not disclose any offence against the petitioners – The undesirable and mechanical process of taking cognizance of offences against accused persons mentioned in the charge sheet is unsustainable which has the propensity of reducing

the criminal court to a tool of convenience in the hands of unscrupulous complainant who would like to contort the criminal justice process – Proceedings initiated against petitioners quashed. [Rajesh Kumar Gupta Vs. State of M.P.] ...989

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता (1860 का 45), धारा 498-ए/34 एवं दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3/4 – प्रथम सूचना प्रतिवेदन का अभिखंडित किया जाना – परिवादी, याची क्र. 2 के भाई की पत्नि है तथा याची क्र. 1, याची क्र. 2 का पति है – उनके विरुद्ध बहुप्रयोजनीय/भिन्न अभिकथन हैं कि उन्होंने परिवादी पर स्वयं अपने और अपने पति के नाम से हैदराबाद में फ्लैट खरीदने हेतु पैंतीस लाख रु. का प्रबंध करने हेतु दबाव बनाया – दहेज की मांग के संबंध में उन्होंने परिवादी के साथ दुर्व्यवहार, मारपीट तथा मानसिक और शारीरिक उत्पीड़न भी किया – दिनांक 13.04.2015 को विवाह में उपस्थित होने के लिए, वे जबलपुर आये तथा दिनांक 20.04.2015 को दिल्ली वापस लौटे एवं दिनांक 04.05.2015 को लंदन वापस लौट गये – उसके बाद ऐसा कोई अवसर नहीं आया कि वादीगण की परिवादी से मुलाकात हुई हो – अभिनिर्धारित – चूंकि आरोप-पत्र याचीगण के विरुद्ध कोई अपराध प्रकट नहीं करता – आरोप-पत्र में वर्णित अभियुक्तगण के विरुद्ध, अपराध का संज्ञान लेने की अवांछनीय तथा यांत्रिकी प्रक्रिया अपोषणीय है, जिसमें आपराधिक न्यायालय को ऐसे बेईमान परिवादी के हाथ में एक सुविधा का साधन बनाने की प्रवृत्ति है, जो कि आपराधिक न्याय प्रक्रिया को विकृत करना चाहती है – याचीगण के विरुद्ध आरंभ की गई कार्यवाही अभिखंडित। (राजेश कुमार गुप्ता वि. म.प्र. राज्य) ...989

*Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Prevention of Food Adulteration Act (37 of 1954), Sections 7, 13(2), 16(1)(a)(i)/(ii) – Adulteration – Notice u/S 13(2) – Object – Quashment of Proceeding – Complaint case against the petitioner for charges of adulteration in milk – Three samples of milk were seized, one sample sent to State Food Laboratory Bhopal for examination whereby adulteration was found – No notice was served u/S 13(2) of the Act of 1954 to petitioner/accused – Challenge to – Held – According to Section 13(2) of the Act of 1954, if adulteration is found in the seized article, the local (health) authority, should sent a copy of report to accused affording him an opportunity to get the other sample tested/examined by the Central Food Laboratory – Accused was deprived of his valuable right – Provisions of Section 13(2) is mandatory and violation thereof will entitle the accused to acquittal – Proceedings quashed – Petition allowed. [Abha Garg Vs. State of M.P.] ...*75*

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 7, 13(2), 16(1)(ए)(i)/(ii) – अपमिश्रण – धारा 13(2) के अंतर्गत नोटिस – उद्देश्य – कार्यवाही अभिखंडित की जाना – याची के विरुद्ध दूध के अपमिश्रण के आरोप हेतु परिवाद प्रकरण – दूध के तीन नमूने जब्त किये गये थे, एक नमूना राज्य खाद्य प्रयोगशाला भोपाल को परीक्षण हेतु भेजा गया जिसमें अपमिश्रण पाया गया था – याची/अभियुक्त को 1954 के अधिनियम की धारा 13(2) के अंतर्गत कोई नोटिस तामील नहीं किया गया था – को चुनौती – अभिनिर्धारित – 1954 की धारा 13(2) के अनुसार, यदि जब्तशुदा वस्तु में अपमिश्रण पाया जाता है, स्थानीय (स्वास्थ्य) प्राधिकारी को रिपोर्ट की, एक प्रति अभियुक्त को अन्य नमूने की जाँच/परीक्षण, केन्द्रीय खाद्य प्रयोगशाला द्वारा करवाए जाने का अवसर प्रदान करते हुए भेजी जानी चाहिए – अभियुक्त को उसके मूल्यवान अधिकार से वंचित किया गया था – धारा 13(2) के उपबंध आज्ञापक है तथा उनका उल्लंघन अभियुक्त को दोषमुक्ति हेतु हकदार बनाएगा – कार्यवाहियाँ अभिखंडित – याचिका मंजूर। (आमा गर्ग वि. म.प्र. राज्य) ...*75

Criminal Trial – Practice and Procedure – Held – Prosecution is required to prove the guilt beyond reasonable doubt and has to stand on its own legs – Accused has a right to keep mum, however when a particular fact can be said to be within the personal knowledge of accused, then unless he comes out with some plausible explanation regarding the same, his silence or failure to offer any plausible explanation may be taken as an incriminating circumstance against him. [Suraj @ Suresh Vs. State of M.P.] (DB)...1475

अपराधिक विचारण – पद्धति एवं प्रक्रिया – अभिनिर्धारित – अभियोजन द्वारा संदेह से परे दोषिता साबित की जाना अपेक्षित है एवं उसे स्वयं के पक्ष को साबित करना होगा – अभियुक्त को मौन रहने का अधिकार है, यद्यपि जब एक विशिष्ट तथ्य अभियुक्त के व्यक्तिगत ज्ञान में होना कहा जा सकता है तब, जब तक वह उक्त के संबंध में कोई संभाव्य स्पष्टीकरण प्रस्तुत नहीं करता, उसके मौन या संभाव्य स्पष्टीकरण प्रस्तावित करने में विफलता को उसके विरुद्ध अपराध में फँसाने वाली परिस्थिति के रूप में लिया जा सकता है। (सूरज उर्फ सुरेश वि. म.प्र. राज्य) (DB)...1475

Criminal Trial – Rojnamcha Entries – Credibility – Held – There is no evidence on record to hold even remotely that entries are tampered with and ante-dated – Correctness of entries is not even challenged by the prosecution – In normal course, rojnamcha entries are reliable as they records day to day working of a particular police station until they are disproved by cogent evidence – Rojnamcha entries are not supporting the complainant's version and proves falsehood of the complainant's statement.

[Archana Nagar (Ku.) Vs. State of M.P.]

(DB)...1162

दाण्डिक विचारण - रोजनामचा प्रविष्टियां - विश्वसनीयता - अभिनिर्धारित - अभिलेख पर दूरस्थ रूप से भी यह धारणा करने हेतु कोई साक्ष्य नहीं कि प्रविष्टियों के साथ छेड़छाड़ की गई है एवं पूर्व दिनांकित है - प्रविष्टियों की सत्यता को अभियोजन द्वारा चुनौती भी नहीं दी गई है - सामान्य क्रम में रोजनामचा प्रविष्टियां विश्वसनीय है क्योंकि वे एक विशिष्ट पुलिस थाने के प्रति दिन के कार्यकलाप अभिलिखित करती हैं, जब तक कि उन्हें प्रबल साक्ष्य द्वारा नासाबित नहीं किया जाता - रोजनामचा प्रविष्टियां परिवादी के कथनों का समर्थन नहीं करती तथा परिवादी के कथन को झूठ साबित करती हैं। (अर्चना नागर (कुमारी) वि. म.प्र. राज्य)

(DB)...1162

Dentists Act, (16 of 1948), Section 10-B as amended by Amendment Act, (30 of 1993) - High Court cannot disturb that balance between the capacity of the institution and the number of admissions on "Compassionate ground" and to issue a fiat to create additional seat which amounts to a direction to violate the provision. [Sir Aurobindo College Dentistry Vs. Union of India]

(DB)...848

दंत-विकित्सक अधिनियम (1948 का 16), धारा 10-बी, संशोधन अधिनियम (1993 का 30) द्वारा यथासंशोधित - उच्च न्यायालय "अनुकंपा आधार" पर संस्थान की क्षमता एवं प्रवेश की संख्या के मध्य संतुलन पर बाधा नहीं डाल सकता एवं अतिरिक्त स्थान सृजित करने हेतु आदेश जारी करना उपबंध का उल्लंघन करने के लिए एक निदेश की कोर्ट में आएगा। (सर अरविन्दो कॉलेज डेन्टिस्ट्री वि. यूनियन ऑफ इंडिया)

(DB)...848

Disciplinary Authority - Appreciation of Evidence - Held - Appreciation and assessment of material brought on record by department and delinquent is within the exclusive domain of disciplinary authority and cannot be faulted unless conclusions drawn by the authority suffer from the vices of (i) Jurisdiction; (ii) perversity of approach when relevant materials are ignored and irrelevant materials are considered while recording findings; (iii) conclusions drawn by authority are such which no man of common prudence shall arrive at, and (iv) conclusions are lacking in bonafides applying principles of Wednesbury reasonableness. [Rajendra Singh Kushwah Vs. State of M.P.]

...1086

अनुशासनिक प्राधिकारी - साक्ष्य का मूल्यांकन - अभिनिर्धारित - विभाग द्वारा एवं अपचारी द्वारा अभिलेख पर लायी गई सामग्री का मूल्यांकन एवं निर्धारण,

अनन्य रूप से अनुशासनिक प्राधिकारी के कार्यक्षेत्र के भीतर है और उसमें त्रुटि नहीं निकाली जा सकती जब तक कि प्राधिकारी द्वारा निकाले गये निष्कर्ष निम्न दोषों से ग्रसित न हो (i) अधिकारिता; (ii) दृष्टिकोण की विपर्यस्तता, जब निष्कर्ष अभिलिखित करते समय सुसंगत सामग्री को अनदेखा किया और असंगत सामग्री को विचार में लिया गया है; (iii) प्राधिकारी द्वारा निकाले गये निष्कर्ष ऐसे हैं जिन पर कोई सामान्य प्रज्ञावान व्यक्ति नहीं पहुँचता; तथा (iv) वेडन्सबरी युक्तियुक्तता के सिद्धांत को लागू करते हुए, निष्कर्षों में सद्भावना का अभाव है। (राजेन्द्र सिंह कुशवाहा वि. म.प्र. राज्य) ...1086

*Dowry Prohibition Act (28 of 1961), Section 3(1) & 4-A – See – Criminal Procedure Code, 1973, Section 378(3) & 372 [Vinod Kumar Sen Vs. Smt. Shanti Devi] (DB)...*85*

दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3(1) एवं 4-ए – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 378(3) व 372 (विनोद कुमार सेन वि. श्रीमती शांती देवी) (DB)...*85

Dowry Prohibition Act (28 of 1961), Section 3/4 – See – Criminal Procedure Code, 1973, Section 482 [Rajesh Kumar Gupta Vs. State of M.P.] ...989

दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3/4 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (राजेश कुमार गुप्ता वि. म.प्र. राज्य) ...989

Education Guarantee Scheme, M.P., 1997 – See – Adhyapak Samvarg (Employment & Conditions of Services) Rules, M.P., 2008 [Vinod Rathore Vs. State of M.P.] ...823

शिक्षा गारंटी योजना, म.प्र., 1997 – देखें – अध्यापक संवर्ग (रोजगार और सेवा की शर्तें) नियम, म.प्र., 2008 (विनोद राठौर वि. म.प्र. राज्य) ...823

*Electricity Act (36 of 2003), Section 135 – See – Criminal Procedure Code, 1973, Section 195(1)(a)(i) & 216 [Pooran Singh Jatav Vs. State of M.P.] ...*56*

विद्युत अधिनियम (2003 का 36), धारा 135 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 195(1)(ए)(आई) व 216 (पूरन सिंह जाटव वि. म.प्र. राज्य) ...*56

Evidence Act (1 of 1872), Section 44 – See – Civil Procedure Code, 1908, Order 32 Rule 3(A) [Chironji Bai Vs. Narayan Singh] ...1135

साक्ष्य अधिनियम (1872 का 1), धारा 44 – देखें – सिविल प्रक्रिया संहिता,

1908, आदेश 32 नियम 3(ए) (चिरोंजी बाई वि. नारायण सिंह) ...1135

Evidence Act (1 of 1872), Section 65(b) – Evidentiary Value – Prosecution has not attached a certificate of authenticity and correctness of transcriptions of conversations recorded in cassettes in terms of Section 65(b) of the Evidence Act – When the cassettes were played at the time of complainant's evidence for identification of voice of accused, the voices were inaudible – Transcription has no evidentiary value to support complainant's statement. [Archana Nagar (Ku.) Vs. State of M.P.] (DB)...1162

साक्ष्य अधिनियम (1872 का 1), धारा 65(बी) – साक्ष्यिक मूल्य – अभियोजन ने साक्ष्य अधिनियम की धारा 65(बी) के निबंधनों के अनुसार, कैसेट में रेकॉर्ड की गयी बातचीत के प्रतिलेखन की प्रमाणिकता एवं सत्यता का प्रमाणपत्र संलग्न नहीं किया – परिवादी के साक्ष्य के समय, अभियुक्त की आवाज की पहचान हेतु जब कैसेट चलायी गई, आवाजें अश्रव्य थी – परिवादी के कथन के समर्थन के लिए, प्रतिलेखन का कोई साक्ष्यिक मूल्य नहीं है। (अर्चना नागर (कुमारी) वि. म.प्र. राज्य) (DB)...1162

Evidence Act (1 of 1872), Section 113-B – See – Penal Code, 1860, Section 304-B/34 & 498-A [Suresh Kumar Vs. State of M.P.] ...902

साक्ष्य अधिनियम (1872 का 1), धारा 113-बी – देखें – दण्ड संहिता, 1860, धारा 304-बी/34 व 498-ए (सुरेश कुमार वि. म.प्र. राज्य) ...902

Evidence Act (1 of 1872), Section 114 – Presumption of Marriage – Applicant was living with the deceased as husband and wife since more than last 20 years – Deceased always treated her as his wife and also constructed a house for her – They have 3 children from such relationship – A presumption of marriage can be raised in favour of the applicant. [Roopadevi @ Agarabai (Smt.) Vs. Smt. Geeta Devi] ...1211

साक्ष्य अधिनियम (1872 का 1), धारा 114 – विवाह की उपधारणा – आवेदिका, मृतक के साथ पिछले 20 वर्षों से अधिक समय से पति-पत्नी के रूप में रह रही थी – मृतक ने सदैव पत्नी के रूप उसके साथ व्यवहार किया और उसके लिए मकान का भी निर्माण किया – उक्त संबंध से उन्हें 3 संतानें हैं – आवेदिका के पक्ष में विवाह की उपधारणा की जा सकती है। (रूपादेवी उर्फ आगराबाई (श्रीमती) वि. श्रीमती गीता देवी) ...1211

Examination Rules, 2012 – Rule 1.8 & 1.9 – PEPT (M.P.) Examinations – Unfair Means – Held – Rules do not restrict use of two different pens in the answer sheets – Candidate may carry more than one

pen in the examination hall and is permitted to use them while giving answers – Use of two or three pens in the answer sheet or just because shades of two pens are different, the same would not fall in the category of Unfair Means – Order cancelling the results is quashed – Writ Petitions allowed. [Vikalp Nayak Vs. State of M.P.] (DB)...*64

परीक्षा नियम, 2012 – नियम 1.8 एवं 1.9 – पी.ई.पी.टी. (म.प्र.) परीक्षाएँ – अनुचित साधन – अभिनिर्धारित – नियम, उत्तर पुस्तिकाओं में दो भिन्न कलमों के प्रयोग को प्रतिबंधित नहीं करते – अभ्यर्थी, परीक्षा हॉल में एक से अधिक कलम साथ ले जा सकता है तथा उत्तर लिखते समय उनका प्रयोग करने की अनुमति है – उत्तर पुस्तिका में दो या तीन कलमों का प्रयोग या केवल इसलिए कि दो कलमों का रंग भिन्न है, अनुचित साधन की श्रेणी में नहीं आएगा – परिणाम निरस्त करने का आदेश अभिखंडित – रिट याचिकाएँ मंजूर। (विकल्प नायक वि. म.प्र. राज्य) (DB)...*64

Excise Act, M.P. (2 of 1915), Section 34(2), 44 & 61 – See – Criminal Procedure Code, 1973, Section 482 [Dinesh Vs. State of M.P.] ...1544

आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 34(2), 44 व 61 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (दिनेश वि. म.प्र. राज्य) ...1544

Factories Act (63 of 1948), Section 2(k) & (m) – See – Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996, Section 2(1)(d) [Vippy Industries Ltd. Vs. Assessing Officer, Under Building and Other Construction Workers' Welfare Cess Act, 1996] (DB)...789

कारखाना अधिनियम (1948 का 63), धारा 2(के) व (एम) – देखें – मवन एवं अन्य संनिर्माण कर्मकार (नियोजन विनियमन एवं सेवा शर्तों) अधिनियम, 1996, धारा 2(1)(डी) (विप्पी इंडस्ट्रीज लि. वि. असेसिंग ऑफीसर, अंडर बिल्डिंग एण्ड अदर कंस्ट्रक्शन वर्कर्स वेलफेयर सेस एक्ट, 1996) (DB)...789

*Factories Act (63 of 1948), Section 9 & 92 – See – Criminal Procedure Code, 1973, Section 482 [Indu Batni (Mrs.) Vs. State of M.P.] ...*79*

कारखाना अधिनियम (1948 का 63), धारा 9 व 92 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (इन्दु बाटनी (श्रीमती) वि. म.प्र. राज्य) ...*79

Forest Act (16 of 1927), Section 6 – Personal notice to the possessor – Whether required – Held – Section 6 only requires that

Forest Settlement Officer shall publish in local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation specifying as nearly as possible, the situation and limits of the proposed forest; explaining the consequences which will ensue on the reservation of such forest and fixing a period not less than three months from the date of such proclamation, and requiring every person claiming any right u/S 4 or 5 either to present to Forest Settlement Officer a written notice specifying or to appear before him and state the nature of such right and the amount and particulars of the compensation claimed in respect thereof – There is no provision of issuing personal notice to the possessor of the land. [Gajraj Singh Vs. State of M.P.] ...889

वन अधिनियम (1927 का 16), धारा 6 – कब्जाधारक को व्यक्तिगत नोटिस – क्या अपेक्षित है – अभिनिर्धारित – धारा 6 में केवल यह अपेक्षित है कि वन व्यवस्थापन अधिकारी, समाविष्ट भूमि के आस-पास के प्रत्येक नगर तथा ग्राम में, प्रस्तावित वन की स्थिति एवं सीमाओं को यथा संभव विनिर्दिष्ट करते हुए, उक्त वन को आरक्षित करने पर उत्पन्न परिणामों को स्पष्ट करते हुए उद्घोषणा का; तथा उक्त उद्घोषणा से कम से कम तीन माह की अवधि नियत करते हुए धारा 4 या 5 के अंतर्गत अधिकार का दावा करने वाले प्रत्येक व्यक्ति से वन व्यवस्थापन अधिकारी को उक्त अधिकार का स्वरूप और उसके संबंध में किये गये प्रतिकर के दावे की राशि एवं विशिष्टियों का कथन या तो लिखित नोटिस में विनिर्दिष्ट करते हुए या उसके समक्ष उपस्थित होकर प्रस्तुत करने की अपेक्षा करते हुए, स्थानीय भाषा में प्रकाशन करेगा – भूमि पर कब्जा रखने वाले को व्यक्तिगत नोटिस जारी किये जाने का कोई उपबंध नहीं है। (गजराज सिंह वि. म.प्र. राज्य) ...889

Forest Act (16 of 1927), Sections 52(3), 52(5) & 55 and Constitution – Article 19(1)(g) – Confiscation of Vehicle – Stage of Trial – Fundamental Rights – In respect of transportation of contraband teak wood, tractor of petitioner/accused was seized by Forest authorities – Competent authority SDO started the confiscation proceedings and ordered confiscation of vehicle – Challenge to – Held – Confiscation can be made upon conviction of the offender in such forest offence committed by him for which his vehicle has been seized – Legislative intent is clear that confiscation proceeding can only be held and culminated after criminal trial for commission of forest offence is over otherwise, confiscation before conviction would be a serious encroachment on the fundamental right of a citizen under Article

19(1)(g) of the Constitution to carry on his trade, occupation or business – Vehicle was directed to be returned to petitioner on furnishing a bank guarantee alongwith certain conditions – Petition disposed. [Santra Bai Lodha (Smt.) Vs. State of M.P.] ...1269

वन अधिनियम (1927 का 16), धाराएँ 52(3), 52(5) व 55 एवं संविधान – अनुच्छेद 19(1)(जी) – वाहन का अधिहरण – विचारण का प्रक्रम – मूलभूत अधिकार – विनिषिद्ध सागौन लकड़ी के परिवहन के संबंध में वन प्राधिकारियों द्वारा याची/अभियुक्त के ट्रैक्टर को जब्त किया गया था – सक्षम प्राधिकारी उपखंड अधिकारों ने अधिहरण कार्यवाहियां शुरू की और वाहन का अधिहरण आदेशित किया – को चुनौती – अभिनिर्धारित – अपराधी द्वारा कारित ऐसे वन अपराध में जिसके लिए उसका वाहन जब्त किया गया है, अधिहरण किया जा सकता है – विधायिका का आशय स्पष्ट है कि, अधिहरण कार्यवाही केवल वन अपराध कारित किये जाने हेतु, दाण्डिक विचारण पूर्ण होने के पश्चात् चलायी एवं समाप्त की जा सकती है अन्यथा, दोषसिद्धि से पहले अधिहरण, एक नागरिक का संविधान के अनुच्छेद 19(1)(जी) के अंतर्गत अपना व्यापार, व्यवसाय या कारोबार चलाने के मूलभूत अधिकार का अधिक्रमण होगा – याची को कतिपय शर्तों के साथ बैंक गारंटी पेश करने पर, वाहन वापस करने के लिए निदेशित किया गया – याचिका निराकृत। (संतरा बाई लोढ़ा (श्रीमती) वि. म.प्र. राज्य) ...1269

Fundamental Rules, M.P., Rule 53 – See – Service Law [Rajesh Patel Vs. MP PKVV Co. Ltd.] ...801

मूलभूत नियम, म.प्र., नियम 53 – देखें – सेवा विधि (राजेश पटेल वि. एम.पी. पी.के.व्ही.व्ही. कं. लि.) ...801

High Court of Madhya Pradesh Officers and Employees Recruitment and Conditions of Service (Classification, Control, Appeal and Conduct) Rules, 1996 – Equal Pay for Equal Work – Petitioners who are class III and IV employees of the High Court praying for grant of higher pay scale on the ground that the State Government on the basis of Shetty Pay Commission has revised the pay scale of the employees working in the District Court under the same cadre – Held – As per the principle laid down by the Apex Court, respondents directed to grant one additional increment to petitioners who are working below grade pay of Rs. 3600 and two additional increments to petitioners who are working in the grade pay of Rs. 3600 – Petitioners would be eligible to get arrears of salary – Further held – In respect of the higher pay scale and allowance, High Court has already made

recommendations to the State Government for implementation of Shetty Pay Commission to the employees of the High Court which is still pending – Respondents are directed to finalize the same within a period of four months – Petition partly allowed. [Kishan Pilley Vs. State of M.P.] (DB)...1423

उच्च न्यायालय मध्य प्रदेश अधिकारी एवं कर्मचारी मर्ती एवं सेवा शर्तों (वर्गीकरण, नियंत्रण, अपील तथा आचरण) नियम, 1996 – समान कार्य के लिए समान वेतन – याचीगण जो कि उच्च न्यायालय के तृतीय एवं चतुर्थ श्रेणी के कर्मचारीगण हैं, द्वारा इस आधार पर उच्चतर वेतनमान प्रदान किये जाने हेतु प्रार्थना की जाना कि राज्य सरकार ने शेट्टी वेतन आयोग के आधार पर जिला न्यायालय में समान संवर्ग के अंतर्गत कार्यरत कर्मचारीगण का वेतनमान पुनरीक्षित किया है – अभिनिर्धारित – सर्वोच्च न्यायालय द्वारा प्रतिपादित सिद्धांत के अनुसार, प्रत्यर्थीगण को उन याचीगण को जो कि 3600 ग्रेड पे के नीचे कार्यरत हैं उन्हें एक अतिरिक्त वेतनवृद्धि एवं वे याचीगण जो कि 3600 ग्रेड पे पर कार्य कर रहे हैं उन्हें दो अतिरिक्त वेतनवृद्धि प्रदान करने हेतु निदेशित किया गया – याचीगण वेतन का बकाया प्राप्त करने हेतु पात्र होंगे – आगे अभिनिर्धारित – उच्चतर वेतनमान एवं मत्ता के संदर्भ में, उच्च न्यायालय ने राज्य सरकार से उच्च न्यायालय के कर्मचारीगण पर शेट्टी वेतन आयोग के क्रियान्वयन हेतु पहले ही सिफारिशों की हैं जो कि अभी तक लंबित हैं – प्रत्यर्थीगण को चार माह की अवधि के भीतर उक्त का निश्चय करने हेतु निदेशित किया गया – याचिका अंशतः मंजूर। (किशन पिल्ले वि. म.प्र. राज्य) (DB)...1423

High Court of Madhya Pradesh Rules, 2008, Chapter IV - Rule 12 – Practice and Procedure – Questions Referred to Larger Bench – Jurisdiction – Division bench referred the present matter to Larger bench without formulating questions to be adjudicated – Held – Rule 12 does not envisage reference of the entire case to a larger bench and thus it is incumbent upon the referring bench to formulate questions for reference to Larger bench and the referee bench has jurisdiction only to answer the questions referred to it and thereafter it is required to be decided by the referring bench in accordance with the opinion of the larger bench on referred questions – Larger bench cannot delve into the matter and formulate questions involved in the controversy – In such circumstances, in Rule 12, the word “may” occurring between words “it” and “formulate” will have to be read as “shall” – Further held – In the present case, an application for withdrawal of the proceedings was also filed before the larger bench for which the

referring Court is competent to decide the same and hence the matter is required to be sent back to the referring division bench for disposal of the same – Matter be placed before the Acting Chief Justice for being posted before the referring division bench for disposal of the application for withdrawal and in case application is rejected, to formulate questions for reference to larger bench – Questions referred answered accordingly. [Bhawna Kale Vs. State of M.P.] (FB)...1293

मध्य प्रदेश उच्च न्यायालय नियम, 2008, अध्याय IV – नियम 12 – पद्धति एवं प्रक्रिया – वृहद न्यायपीठ को निर्दिष्ट प्रश्न – अधिकारिता – खण्ड न्यायपीठ ने न्यायनिर्णयन के लिए प्रश्नों का निरूपण किये बिना वर्तमान मामला वृहद न्यायपीठ को निर्दिष्ट किया – अभिनिर्धारित – नियम 12 सम्पूर्ण प्रकरण एक वृहद न्यायपीठ को निर्दिष्ट करना परिकल्पित नहीं करता एवं इस प्रकार निर्देश भेजने वाली न्यायपीठ के लिए यह अनिवार्य है कि वृहद न्यायपीठ को निर्देश हेतु प्रश्नों का निरूपण करे एवं निर्देश प्राप्त करने वाली न्यायपीठ को केवल निर्दिष्ट किये गये प्रश्नों का उत्तर देने की अधिकारिता होगी एवं तत्पश्चात् उसे निर्देश हेतु भेजने वाली न्यायपीठ द्वारा वृहद न्यायपीठ की राय के अनुसार निर्देशित प्रश्नों को विनिश्चित किया जाना अपेक्षित है – वृहद न्यायपीठ मामले में गहरी छानबीन एवं विवाद में अन्तर्गुस्त प्रश्नों का निरूपण नहीं कर सकती – ऐसी परिस्थितियों में, नियम 12 में शब्द “वह” एवं “निरूपित” के साथ आने वाला शब्द “कर सकती है” को “करेगी” पढ़ा जाएगा – आगे अभिनिर्धारित – वर्तमान प्रकरण में, कार्यवाहियों के प्रत्याहरण हेतु वृहद न्यायपीठ के समक्ष एक आवेदन भी प्रस्तुत किया गया था जिसके लिए निर्देश भेजने वाला न्यायालय उक्त का विनिश्चय करने हेतु सक्षम है एवं इसलिए मामले को निर्देश भेजने वाली खण्ड न्यायपीठ को उक्त के निपटारे हेतु वापस भेजा जाना अपेक्षित है – प्रत्याहरण हेतु आवेदन का निपटारा करने के लिए और आवेदन अस्वीकार किये जाने की स्थिति में, वृहद न्यायपीठ को निर्देश के लिए प्रश्न निरूपित करने हेतु, निर्देश भेजने वाली खण्ड न्यायपीठ के समक्ष नियत किये जाने के लिए मामले को कार्यकारी मुख्य न्यायाधिपति के समक्ष रखा जाए – निर्देशित प्रश्नों को तदनुसार उत्तरित किया गया। (भावना काले वि. म.प्र. राज्य) (FB)...1293

Hindu Adoptions and Maintenance Act (78 of 1956), Section 12 – Compassionate Appointment – Whether an adopted son has a right of consideration for compassionate appointment – Held – Yes, ‘Son’ includes an ‘adopted son’ as per the provisions of the Act of 1956, so adopted son has a right of consideration for compassionate appointment – It is open to respondents to examine the validity of adoption – Respondents to take a final decision by a reasoned order within 90 days – Petition allowed. [Manoj Kumar Nagre Vs. The

Commissioner of M.P.]

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हिन्दू दत्तक और भरण-पोषण अधिनियम, (1956 का 78), धारा 12 - अनुकम्पा नियुक्ति - क्या एक दत्तक पुत्र को अनुकम्पा नियुक्ति हेतु विचार किये जाने का अधिकार है - अभिनिर्धारित - हाँ, 1956 के अधिनियम के उपबंधों के अनुसार 'पुत्र' में 'दत्तक पुत्र' भी सम्मिलित है, इसलिए दत्तक पुत्र को अनुकम्पा नियुक्ति पर विचार किये जाने का अधिकार है - प्रत्यर्थीगण दत्तक ग्रहण की विधिमान्यता का परीक्षण करने हेतु स्वतंत्र है - प्रत्यर्थीगण 90 दिनों के भीतर सकारण आदेश द्वारा एक अंतिम निर्णय लें - याचिका मंजूर। (मनोज कुमार नागरे वि. द कमिश्नर ऑफ एम.पी.)

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Hindu Marriage Act (25 of 1955), Sections 5, 11 & 16 - See - Succession Act, Indian, 1925, Section 372 [Roopadevi @ Agarabai (Smt.) Vs. Smt. Geeta Devi]

...1211

हिन्दू विवाह अधिनियम (1955 का 25), धाराएँ 5, 11 व 16 - देखें - उत्तराधिकार अधिनियम, भारतीय, 1925, धारा 372 (रूपादेवी उर्फ आगराबाई (श्रीमती) वि. श्रीमती गीता देवी)

...1211

Hindu Marriage Act (25 of 1955), Section 5(iii) & 12(1)(c) - Child Marriage - Annulment of Marriage - Husband filed a suit seeking declaration of marriage null and void on the ground that at the time of marriage his wife was less than 18 years of age and marriage was consummated under threat and pressure - Suit was decreed and was further confirmed by the High Court - Challenge to - Held - Child marriages are voidable at the option of the minor spouse at the time of marriage - Section 12(1)(c) makes it clear that only minor spouse has a right to seek annulment of marriage - It is admitted that husband was a major at the time of marriage and was seeking annulment of marriage on the ground of fraud and coercion where age of wife was one of the grounds raised by husband - Matter remanded back to High Court for fresh consideration - Appeal disposed of. [Bhagwati @ Reena Vs. Anil Choubey]

(SC)...1289

हिन्दू विवाह अधिनियम (1955 का 25), धारा 5(iii) एवं 12(1)(सी) - बाल विवाह - विवाह का बातिलीकरण - पति ने विवाह की अकृत एवं शून्य होने की घोषणा चाहते हुये इस आधार पर वाद प्रस्तुत किया कि विवाह के समय उसकी पत्नी 18 वर्ष की आयु से कम थी तथा विवाह धमकी एवं दबाव में संपन्न हुआ था - वाद डिक्रिट किया गया था तथा उच्च न्यायालय द्वारा आगे पुष्टि की गई थी - को चुनौती - अभिनिर्धारित - विवाह के समय अवयस्क पति या पत्नी के विकल्प

पर बाल विवाह शून्यकरणीय हैं - धारा 12(1)(सी) यह स्पष्ट करती है कि केवल अवयस्क पति या पत्नी को विवाह का बातिलीकरण चाहने का अधिकार है - यह स्वीकार किया गया कि विवाह के समय पति वयस्क था तथा कपट एवं प्रपीड़न के आधार पर विवाह का बातिलीकरण चाह रहा था जहाँ पत्नी की आयु, पति द्वारा उठाए गये आधारों में से एक थी - मामला नये सिरे से विचार किये जाने हेतु उच्च न्यायालय को प्रतिप्रेषित किया गया - अपील निराकृत। (भगवती उर्फ रीना वि. अनिल चौबे) (SC)...1289

Homoeopathy Central Council Act, (59 of 1973), Section 12(A) and Homoeopathy Central Council (Minimum Standards of Requirement of Homoeopathic Colleges and Attached Hospitals) Regulations, 2013 - Clause 3(9) - Petition against the order passed by Government of India declining permission to petitioner institute for making admissions to BHMS course for academic session 2016-17 - Held - The Central Council found various deficiencies in the College for which show cause notice was issued - Despite grant of opportunity of being heard, petitioner college did not appear and also failed to rectify the deficiencies pointed out in the show cause notice - The deficiencies and shortcomings found were serious in nature which would adversely affect the ability of college to provide quality medical education in the field of Homoeopathy and which would render the college to fall short of the requirements of minimum standards fixed by the 1973 Act and 2013 Regulations - Petitioner college failed to rectify and cure the deficiencies by the statutory fixed dead line and even later did nothing to cure such deficiencies - Impugned order neither suffers from any illegality nor for want of jurisdiction - Petitions dismissed. [Shri Ramnath Singh Homoeopathic Medical College Vs. Union of India] (DB)...1379

होम्योपैथी केन्द्रीय परिषद् अधिनियम (1973 का 59), धारा 12(ए) एवं होम्योपैथी केन्द्रीय परिषद् (होम्योपैथी महाविद्यालय तथा संलग्न अस्पतालों के लिए न्यूनतम मानक स्तर) विनियम, 2013 - खण्ड 3(9) - भारत सरकार द्वारा याची संस्था को शैक्षणिक सत्र 2016-17 हेतु बी.एच.एम.एस. पाठ्यक्रम के लिए दाखिले करने की अनुमति से इन्कार करते हुए पारित किये गये आदेश के विरुद्ध याचिका - अभिनिर्धारित - केन्द्रीय परिषद् ने महाविद्यालय में विभिन्न कमियाँ पाई, जिसके लिए कारण बताओ नोटिस जारी किया गया था - सुने जाने का अवसर दिये जाने के बावजूद, याची महाविद्यालय उपस्थित नहीं हुआ और कारण बताओ नोटिस में दर्शाई गई कमियों को सुधारने में भी विफल रहा - पायी गई कमियाँ और दोष गंभीर स्वरूप की थी जिससे कि होम्योपैथी के क्षेत्र में

गुणवत्ता की चिकित्सीय शिक्षा उपलब्ध कराने की महाविद्यालय की समर्थता प्रतिकूल रूप से प्रभावित होगी और जिससे महाविद्यालय 1973 के अधिनियम एवं 2013 के विनियमनों द्वारा निश्चित न्यूनतम मानकों की अपेक्षाओं से कम पड़ेगा – याची महाविद्यालय कानूनी रूप से नियत समयावधि तक कमियों को सुधारने एवं उपाय करने में विफल रहा तथा बाद में भी उक्त कमियों का उपाय करने के लिए कुछ नहीं किया – आक्षेपित आदेश, न तो किसी अवैधता से और न ही अधिकारिता के अभाव से ग्रसित है – याचिकाएँ खारिज। (श्री रामनाथ सिंह होम्योपैथिक मेडिकल कॉलेज वि. यूनियन ऑफ इंडिया) (DB)...1379

Homoeopathy Central Council (Minimum Standards of Requirement of Homoeopathic Colleges and Attached Hospitals) Regulations, 2013 – Clause 3(9) – See – Homoeopathy Central Council Act, 1973, Section 12(A) [Shri Ramnath Singh Homoeopathic Medical College Vs. Union of India] (DB)...1379

होम्योपैथी केन्द्रीय परिषद् (होम्योपैथी महाविद्यालय तथा संलग्न अस्पतालों के लिए न्यूनतम मानक स्तर) विनियम, 2013 – खण्ड 3(9) – देखें – होम्योपैथी केन्द्रीय परिषद् अधिनियम, 1973, धारा 12(ए) (श्री रामनाथ सिंह होम्योपैथिक मेडिकल कॉलेज वि. यूनियन ऑफ इंडिया) (DB)...1379

Indian Railway Medical Manual (IRMM), Volume 1, 2000 (III Edition), Para 504, 532(i) & 539(a) – See – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Section 47 [General Manager, Union of India Vs. Moses Benjamin] (DB)...1110

भारतीय रेल चिकित्सा निर्देशिका (IRMM), भाग-1, 2000 (III संस्करण), कंडिका 504, 532(i) व 539(ए) – देखें – निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण भागीदारी) अधिनियम, 1995 (1996 का 1), धारा 47 (जनरल मैनेजर, यूनियन ऑफ इंडिया वि. मोसेस बेन्जामिन) (DB)...1110

Industrial Disputes Act (14 of 1947), Section 11 A – Power of the Tribunal – In a departmental enquiry, workman/respondent was ordered to be dismissed from service – Tribunal converted the punishment of dismissal into compulsory retirement holding that workman having rendered 15 years of service, punishment of dismissal is not justified and at the same time to enable the workman earn his pension – Held – Insertion of Section 11A to the Act confers power to the Tribunal to re-appreciate the evidence and also interfere on the quantum of punishment – Tribunal can examine as to whether the

finding of misconduct recorded by the employer is fair and reasonable and even if such finding is in favour of the employer, Tribunal can interfere in the order of punishment – This jurisdiction is not vested in the Writ Court or Civil Court – No illegality done by Tribunal while interfering with the quantum of punishment. [State Bank of India Vs. Vishwas Sharma] (DB)...877

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 11 ए – अधिकरण की शक्ति – विभागीय जांच में, कर्मकार/प्रत्यर्थी को सेवा से पदच्युति हेतु आदेशित किया गया था – अधिकरण ने पदच्युति की शास्ति को अनिवार्य सेवा निवृत्ति में संपरिवर्तित किया यह अभिनिर्धारित करते हुए कि कर्मकार द्वारा 15 वर्ष की सेवा दिये जाने के कारण, पदच्युति की शास्ति न्यायोचित नहीं है एवं इसके साथ ही कर्मकार को अपनी पेंशन उपार्जित करने के लिए सक्षम बनाया जाना – अभिनिर्धारित – अधिनियम में धारा 11ए की प्रविष्टि, अधिकरण को साक्ष्य का पुनर्मूल्यांकन करने और साथ ही शास्ति की मात्रा में मध्यक्षेप करने के लिए शक्ति प्रदत्त करती है – अधिकरण परीक्षण कर सकता है कि क्या नियोक्ता द्वारा अभिलिखित अवचार का निष्कर्ष निष्पक्ष एवं युक्तियुक्त है तथा यदि उक्त निष्कर्ष नियोक्ता के पक्ष में हो तब भी, अधिकरण शास्ति के आदेश में मध्यक्षेप कर सकता है – यह अधिकारिता रिट न्यायालय या सिविल न्यायालय में निहित नहीं है – शास्ति की मात्रा में मध्यक्षेप करने में अधिकरण द्वारा कोई अवैधता नहीं की गई। (स्टेट बैंक ऑफ इंडिया वि. विश्वास शर्मा) (DB)...877

Industrial Disputes Act (14 of 1947), Section 17-B – Payment of full wages to workman during pendency of proceedings before High Court or Supreme Court – Facts – Central Government Industrial Tribunal cum-Labour Court directing for reinstatement of respondent/workman with back wages from date of termination – Petition against – Operation of award was stayed subject to compliance of provisions u/S 17-B of Industrial Disputes Act, 1947 – Petitioner bank depositing entire back wages of Rs. 3,82,554/- – Application by petitioner bank seeking direction for refund of the amount paid towards back wages – Grounds – Provisions u/S 17-B of Industrial Disputes Act, 1947 has been misconstrued – Held – Section 17-B of Industrial Disputes Act, 1947 makes specific provisions that with the institution of proceedings in the High Court or Supreme Court by the employer it entails the liability to pay wages last drawn by the workman subject to the condition that workman is not gainfully employed and an affidavit to that effect is filed – In this case the employer has deposited entire back wages but Section 17-B of Industrial Disputes Act, 1947

creates no bar for whole or partial compliance of the award—No direction for refund can be given nor direction for adjusting the amount towards last wages drawn to be paid during pendency of petition can be given—Petitioner can recover the said amount by taking recourse to law if it succeeds in the petition—I.A. disposed of. [Central Bank of India Vs. Shri Dinesh Kumar Kahar]
...812

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 17-बी — उच्च न्यायालय या उच्चतम न्यायालय के समक्ष कार्यवाही लंबित रहने के दौरान कर्मकार को पूर्ण मजदूरी का संदाय — तथ्य — केंद्र सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय ने प्रत्यर्थी/कर्मकार को सेवा समाप्ति की तिथि से पिछली मजदूरी के साथ बहाल करने हेतु निदेशित किया — के विरुद्ध याचिका — औद्योगिक विवाद अधिनियम, 1947 की धारा 17-बी के अंतर्गत उपबंधों के अनुपालन के अधीन अवार्ड का प्रवर्तन रोका गया था — याची बैंक द्वारा रु. 3,82,554/- की संपूर्ण पिछली मजदूरी का जमा किया जाना — याची बैंक द्वारा पिछली मजदूरी की ओर संदाय की गई राशि का प्रतिदाय करने हेतु निदेश चाहने के लिए आवेदन — आधार — औद्योगिक विवाद अधिनियम, 1947 की धारा 17-बी के अंतर्गत उपबंधों का गलत अर्थ निकाला गया है — अभिनिर्धारित — औद्योगिक विवाद अधिनियम, 1947 की धारा 17-बी विनिर्दिष्ट उपबंध बनाती है कि नियोक्ता द्वारा उच्च न्यायालय या उच्चतम न्यायालय में कार्यवाही संस्थित होने के साथ ही वह कर्मकार द्वारा अंतिम बार प्राप्त मजदूरी का संदाय करने का दायित्व उत्पन्न करती है, इस शर्त के अधीन कि कर्मकार लाभकारी रूप से नियुक्त नहीं है तथा उस प्रभाव का एक शपथपत्र प्रस्तुत किया गया है — इस प्रकरण में नियोक्ता ने संपूर्ण पिछली मजदूरी जमा की है परंतु औद्योगिक विवाद अधिनियम, 1947 की धारा 17-बी, अवार्ड के संपूर्ण या आंशिक अनुपालन हेतु कोई वर्जन सृजित नहीं करती — प्रतिदाय हेतु कोई निदेश नहीं दिया जा सकता और याचिका लंबित रहने के दौरान संदाय किये जाने हेतु प्राप्त की गई अंतिम मजदूरी की राशि समायोजित करने का निदेश नहीं दिया जा सकता — याची विधि का अवलंब लेते हुए उक्त राशि वसूल कर सकता है यदि वह याचिका में सफल होता है — अंतर्वर्ती आवेदन निराकृत। (सेन्ट्रल बैंक ऑफ इंडिया वि. श्री दिनेश कुमार केहार)
...812

Industrial Disputes Act (14 of 1947) — Section 33 (C)(2) — Back wages — Principle of “No Work No Pay” — Petitioner challenging the order to pay Rs. 2,11,002 as arrears of wages from 01/01/2002 to 09/07/2006 — After completion of 30 years of service, Respondent was retired on 29/12/01 — Order of premature retirement was set aside by High Court and he was directed to be reinstated in service with consequential benefits — Respondent gave joining on 10/07/06 but wages

were not paid – Industrial Court directed to petitioner to pay back wages – Held – Retirement order of 29/12/01 was challenged in the year 2005, after period of 4 years – He cannot claim wages for the said period on the principle of “No Work No Pay” – Impugned award modified to the extent that respondent be paid wages from the date when he gave joining on 10/07/06 – Petition partly allowed. [State of M.P. Vs. Bapula] ...*84

औद्योगिक विवाद अधिनियम (1947 का 14) – धारा 33 (सी)(2) – पिछला वेतन– “कार्य नहीं तो वेतन नहीं” का सिद्धांत – याची द्वारा दिनांक 01/01/2002 से 09/07/2006 तक के वेतन के बकाया के रूप में रु. 2,11,002 का भुगतान करने के आदेश को चुनौती – 30 वर्षों की सेवा पूर्ण होने के पश्चात्, दिनांक 29/12/01 को प्रत्यर्थी सेवानिवृत्त हुआ था – समयपूर्व सेवानिवृत्ति का आदेश उच्च न्यायालय द्वारा अपास्त किया गया एवं उसे परिणामिक लाभों के साथ सेवा में बहाल करने हेतु निदेशित किया गया – प्रत्यर्थी ने 10/07/06 को कार्यभार ग्रहण किया परन्तु वेतन का भुगतान नहीं किया गया – औद्योगिक न्यायालय ने, याची को बकाया वेतन का भुगतान करने हेतु निदेशित किया – अभिनिर्धारित – 29/12/01 के सेवानिवृत्ति के आदेश को चार वर्षों की अवधि के पश्चात्, वर्ष 2005 में चुनौती दी गई थी – वह “कार्य नहीं तो वेतन नहीं” के सिद्धांत पर उक्त अवधि के वेतन का दावा नहीं कर सकता – आक्षेपित अवार्ड इस प्रभाव तक उपांतरित किया गया कि प्रत्यर्थी को 10/07/06 जब उसने कार्यभार ग्रहण किया, उस दिनांक से वेतन का भुगतान किया जावे – याचिका अंशतः मंजूर। (म. प्र. राज्य वि. बापूलाल) ...*84

Interpretation of Statutes – Criminal law – Life imprisonment – Meaning of– Life imprisonment shall actually mean imprisonment for whole of the natural life or to a lesser extent as indicated by the Court in the light of facts of a particular case. [Tattu Lodhi @ Pancham Lodhi Vs. State of M.P.] (SC)...773

कानूनों का निर्वचन – आपराधिक विधि – आजीवन कारावास – अर्थ – आजीवन कारावास का वास्तविक अर्थ संपूर्ण प्राकृतिक जीवन का कारावास या किसी विशिष्ट प्रकरण के तथ्यों के आलोक में न्यायालय द्वारा उपदर्शित लघुतर सीमा से होगा। (टट्टू लोधी उर्फ पंचम लोधी वि. म.प्र. राज्य) (SC)...773

Issuing Summons – Duty of the Court – It is expected of the Court to go through the charge sheet, the documents and the statements of the witnesses u/S 161 Cr.P.C. and examine if necessary to take cognizance of the offences stated in the charge sheet, summon any or all of the persons arrayed as accused by the police – Where, the trial

Court is of the opinion that there is some evidence which may reveal a slight suspicion against a person, it ought to take recourse of the procedure u/S 156(3) Cr.P.C. and remand the matter to the police for further investigation, rather than taking cognizance and summon a person as an accused where the evidence on record *prima facie* reveals only a peripheral presence of such a person. [Rajesh Kumar Gupta Vs. State of M.P.] ...989

समन जारी किया जाना - न्यायालय का कर्तव्य - न्यायालय से यह प्रत्याशा की जाती है कि आरोप-पत्र, दस्तावेजों तथा दण्ड प्रक्रिया संहिता की धारा 161 के अंतर्गत साक्षीगण के कथनों का अवलोकन करे एवं परीक्षण करे यदि आरोप-पत्र में वर्णित अपराधों का संज्ञान लेना आवश्यक है, पुलिस द्वारा अभियुक्त के रूप में दोषारोपित व्यक्तियों में से किसी को या सभी को समन करे - जहाँ विचारण न्यायालय इस मत का है कि कुछ साक्ष्य हैं जो कि व्यक्ति के विरुद्ध कुछ संदेह प्रकट कर सकते हैं, उसे दण्ड प्रक्रिया संहिता की धारा 156(3) के अंतर्गत प्रक्रिया का सहारा लेना चाहिए एवं जहाँ अभिलेख पर उपलब्ध साक्ष्य प्रथम दृष्ट्या ऐसे व्यक्ति की केवल परिधीय उपस्थिति प्रकट करता हो वहाँ संज्ञान लेने और व्यक्ति को अभियुक्त के रूप में समन करने की अपेक्षा आगे अन्वेषण हेतु मामला पुलिस को प्रतिप्रेषित करना चाहिए। (राजेश कुमार गुप्ता वि. म.प्र. राज्य) ...989

Kashtha Chiran (Vinnyaman) Adhiniyam, M.P. (13 of 1984), Section 5 & 6 - Revocation of License of saw mill on the ground of possessing illegal stock of wood - Opportunity of hearing - Held - Statement of all prosecution witnesses and other material/documents on the basis of which opinion has been formed, were neither supplied to the petitioner nor an opportunity of cross examination was given - Licensing authority also failed to exercise the powers u/S 6 of the Act on a reference to impose cost of Rs. 10,000 - No enquiry was conducted by the Licensing Authority - Order is *per-se-illegal* - Matter remitted back to Licensing Authority to proceed afresh in accordance with law - Petition disposed. [Kedar Singh Yadav Vs. State of M.P.] ...*50

काष्ठ चिरान (विनियमन) अधिनियम, म.प्र. (1984 का 13), धारा 5 व 6 - काष्ठ का अवैध भंडार कब्जे में होने के आधार पर आरामशीन की अनुज्ञप्ति का प्रतिसंहरण - सुनवाई का अधिकार - अभिनिर्धारित - सभी अभियोजन साक्षियों के कथन एवं अन्य सामग्री/दस्तावेज, जिनके आधार पर राय बनायी गई है, उन्हें न तो याची को प्रदाय किया गया था न ही प्रतिपरीक्षण का अवसर दिया गया था - अनुज्ञप्ति प्राधिकारी, रु. 10,000 व्यय अधिरोपित करने के निर्देश पर, अधिनियम की धारा 6 के अंतर्गत शक्तियों का प्रयोग करने में भी विफल रहा - अनुज्ञप्ति प्राधिकारी द्वारा कोई जांच

संचालित नहीं की गई थी - आदेश स्वतः अवैध है - अनुज्ञप्ति प्राधिकारी को विधि अनुसार नये सिरे से कार्यवाही करने के लिए मामला प्रतिप्रेषित किया गया - याचिका का निपटारा किया गया। (केदार सिंह यादव वि. म.प्र. राज्य) ...*50

Land Acquisition Act (1 of 1894), Section 11 & 16 - Acquisition of Land - Power of Collector to take Possession - Applicability - In the year 1944, Petitioner, through permission from erstwhile Maharaja Holkar State, acquired some land for the purpose of starting a public limited company - Land was acquired, possession was taken and compensation was paid by petitioner to land owners - During a period when company faced crisis, they sold certain piece of land and in respect of this transfer, on a complaint, Collector ordered to take back the whole property from petitioner - Challenge to - Held - State has not pointed out any statutory provision of law which empowers the Collector to dispossess the petitioner company - Collector has no jurisdiction to pass such order u/S 16 of the Land Acquisition Act - Order u/S 16 can only be passed when land of a person is acquired by passing an award by the Collector u/S 11 of the Act - This provision does not empower the State Government to forcibly dispossess the titleholder from his property against whom no such award has been passed and who has received the possession in 1946 after due acquisition and has paid compensation to the land owners directly, who is recorded as Bhumiswami and is in settled possession as lawful owner since pre-independence - Petitioner is entitled to possess and utilize the property - Order passed by Collector is set aside - Petition allowed. [The Malwa Vanaspati & Chemicals Co. Ltd. Vs. State of M.P.] ...1063

भूमि अर्जन अधिनियम (1894 का 1), धारा 11 व 16 - भूमि का अर्जन - कलेक्टर की कब्जा लेने की शक्ति - प्रयोज्यता - वर्ष 1944 में, याची ने पब्लिक लिमिटेड कंपनी आरंभ करने के प्रयोजन हेतु तत्कालीन होलकर राज्य के महाराजा से अनुमति द्वारा कुछ भूमि अर्जित की - भूमि अर्जित की गई, कब्जा लिया गया और भूमि स्वामियों को याची द्वारा प्रतिकर अदा किया गया था - जब कंपनी संकट का सामना कर रही थी, उस अवधि के दौरान उन्होंने भूमि के कतिपय टुकड़े का विक्रय किया और इस अंतरण के संबंध में एक शिकायत पर कलेक्टर ने याची से संपूर्ण संपत्ति वापस लेने के लिए आदेशित किया - को चुनौती - अभिनिर्धारित - राज्य ने विधि का कोई कानूनी उपबंध नहीं दिखाया जो कलेक्टर को याची कंपनी को कब्जा रहित करने के लिए सशक्त करता हो - कलेक्टर को भूमि अर्जन अधिनियम की धारा 16 के अंतर्गत उक्त आदेश पारित करने की कोई अधिकारिता नहीं - धारा

16 के अंतर्गत आदेश केवल तब पारित किया जा सकता है जब कलेक्टर द्वारा अधिनियम की धारा 11 के अंतर्गत अवार्ड पारित करके किसी व्यक्ति की भूमि अर्जित की गई है — यह उपबंध राज्य सरकार को ऐसे स्वत्वधारक को उसकी संपत्ति से बलपूर्वक बेकब्जा करने के लिए सशक्त नहीं करता जिसके विरुद्ध ऐसा कोई अवार्ड पारित नहीं किया गया है एवं जिसने सम्यक् अर्जन के पश्चात्, 1946 में कब्जा प्राप्त किया है तथा प्रत्यक्ष रूप से भूमिस्वामियों को प्रतिकर अदा किया है जो भूमिस्वामी के रूप में अभिलिखित है एवं स्वतंत्रता पूर्व से विधिपूर्ण स्वामी के रूप में जिसका स्थापित कब्जा है — याची, संपत्ति का कब्जा लेने एवं उपभोग करने का हकदार है — कलेक्टर द्वारा पारित आदेश अपास्त — याचिका मंजूर। (द मालवा वनस्पति एण्ड केमिकल्स कं. लि. वि. म.प्र. राज्य)

...1063

Land Acquisition Act (1 of 1894), Section 18 – Enhancement of Compensation – Computation – Comparison Method – Compensation of Rs. 8026 granted by Land Acquisition Officer holding the rate of land to be Rs. 1010 per acre, against which an application u/S 18 was filed by claimants, which was referred to District Court – Reference Court determined market price of acquired land to be of Rs. 12000 per acre – Claimant and State Government, both filed separate appeals – Held – Applying comparison method, claimant produced two sale deeds before acquisition of land and two sale deeds executed after acquisition of land – Although both sale deeds executed before date of acquisition belong to same village but within a very short span, there was a vast difference in rates and there is no evidence on record to show that the lands sold were situated near the acquired land – Such sale deeds cannot be taken into consideration for determination of compensation – Further held – In F.A. No. 111/96, land situated at Sidhi was acquired in 1990 and rate was determined to be Rs. 24,000 per acre – Present acquired land is also situated in District Sidhi and was acquired in 1979, near about 12 years before – Looking to the rate of escalation of price of land which was not more than 6 to 9%, determination of market value @ Rs. 12000 acre is neither meager nor excessive – Court below rightly considered the rate of escalation and appropriately fixed the value of land – Appeal filed by State is dismissed whereas the one filed by claimants is partly allowed. [Shyam Singh (MST.) Vs. State of M.P.]

...1449

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 – प्रतिकर की वृद्धि – संगणना – तुलना प्रणाली – भूमि अर्जन अधिकारी द्वारा भूमि की दर रु. 1010 प्रति

एकड़ ठहराकर रु. 8026 का प्रतिकर प्रदान किया गया जिसके विरुद्ध दावेदारों द्वारा धारा 18 के अंतर्गत आवेदन प्रस्तुत किया गया था जिसे जिला न्यायालय को निर्देशित किया गया था - निर्देश न्यायालय ने अर्जित भूमि का बाजार मूल्य रु. 12,000 प्रति एकड़ निर्धारित किया - दावाकर्ता तथा राज्य सरकार दोनों ने पृथक अपील प्रस्तुत की - अभिनिर्धारित - तुलना प्रणाली लागू करते हुए दावेदारों ने भूमि के अर्जन से पूर्व के दो विक्रय विलेख एवं भूमि के अर्जन के पश्चात् निष्पादित दो विक्रय विलेख प्रस्तुत किये - यद्यपि अर्जन की तिथि से पूर्व निष्पादित दोनों विक्रय विलेख एक ही गांव के हैं किन्तु बहुत अल्प समयावधि के भीतर, दूरों में प्रचंड अंतर था और यह दर्शाने के लिए अभिलेख पर कोई साक्ष्य नहीं कि विक्रय की गई भूमियां, अर्जित भूमि के नजदीक स्थित थीं - प्रतिकर के निर्धारण हेतु उक्त विक्रय विलेखों को विचार में नहीं लिया जा सकता - आगे अभिनिर्धारित - प्रथम अपील क्र. 111/96 में सीधी स्थित भूमि को 1990 में अर्जित किया गया था और रु. 24,000 प्रति एकड़ की दर निर्धारित की गई थी - वर्तमान में अर्जित भूमि भी सीधी जिले में स्थित है और 1979 में अर्जित की गई थी, लगभग 12 वर्ष पूर्व - भूमि के मूल्यवृद्धि की दर को देखते हुए, जो कि 6 से 9 % से अधिक नहीं थी, रु. 12,000 प्रति एकड़ की दर से बाजार मूल्य का निर्धारण न तो अल्प है न अत्याधिक है - निचले न्यायालय ने उचित रूप से मूल्यवृद्धि की दर को विचार में लिया और समुचित रूप से भूमि का मूल्य निश्चित किया - राज्य द्वारा प्रस्तुत अपील खारिज जबकि दावेदारों द्वारा प्रस्तुत अपील अंशतः मंजूर। (श्याम सिंह (मुस.) वि. म.प्र. राज्य)

...1449

Land Acquisition Act (1 of 1894), Section 18 & 54 - Reference to Court - Determination and enhancement of compensation - Maintainability of reference application - Appeal against the order of the Reference Court/District Court whereby the amount of compensation was enhanced - Held - learned court below on the basis of the proved sale deed calculated total price of land in the year 1994 which was acquired on 05.05.2000 - Lower Court, considering the fact of escalation in the price of land per year, considered the rate of escalation by 10 to 15 percent per year with cumulative effect, thereby for more than six years, as in the present case, considered 100% escalation in the price of the land - Approach of the Court below is not arbitrary - Further held - Filing of application u/S 18 of the Act for reference shows that compensation was received under protest - Person cannot be deprived to get appropriate compensation of his property merely on the hyper technical ground that person has not expressed his protest in writing - Reference application was maintainable - Appeal dismissed. [Executive Engineer Grah Niraman

Mandal Vs. Chain Singh]

...*48

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 व 54 – न्यायालय को निर्देश – प्रतिकर का निर्धारण एवं वृद्धि – निर्देश आवेदन की पोषणीयता – निर्देश न्यायालय/जिला न्यायालय के आदेश जिसके द्वारा प्रतिकर की राशि बढ़ायी गई थी, के विरुद्ध अपील – अभिनिर्धारित – विद्वान निचले न्यायालय ने प्रमाणित विक्रय विलेख के आधार पर वर्ष 1994 में भूमि की कुल कीमत की गणना की जिसे 05.05.2000 को अर्जित किया गया था – निचले न्यायालय ने भूमि की कीमत में प्रतिवर्ष बढ़ोतरी के तथ्य को विचार में लेते हुए, संचयी प्रभाव से 10 से 15 प्रतिशत बढ़ोतरी को विचार में लिया, जिससे छः वर्ष से अधिक के लिए, जैसा कि वर्तमान प्रकरण में है, भूमि की कीमत में 100% बढ़ोतरी को विचार में लिया – निचले न्यायालय का दृष्टिकोण मनमाना नहीं – आगे अभिनिर्धारित – निर्देश हेतु अधिनियम की धारा 18 के अंतर्गत आवेदन प्रस्तुत किया जाना दर्शाता है कि प्रतिकर को विरोध के साथ प्राप्त किया गया था – व्यक्ति को मात्र अति तकनीकी आधार पर कि उस व्यक्ति ने लिखित में विरोध अभिव्यक्त नहीं किया है, उसे अपनी संपत्ति का समुचित प्रतिकर प्राप्त करने से वंचित नहीं किया जा सकता – निर्देश आवेदन पोषणीय था – अपील खारिज। (एग्जीक्यूटिव इंजीनियर गृह निर्माण मंडल वि. चैन सिंह)

...*48

Land Acquisition Act (1 of 1894), Section 23(1-A) – Interest on Market Value of the acquired land – Determination – Notification published in official gazette dated 21.09.1990 – Date of taking possession of land is 01.06.1989 – Interest is payable only on market value of acquired land from date of taking possession of land or from the date of the publication of the notification under sub-Section (1), whichever is earlier – Both the respondents/claimants are entitled to get interest on the market value of the land @ 12% per annum from the date of taking its possession i.e. 01.06.1989. [State of M.P. Vs. Ghanshyam Pathak]

...*61

भूमि अर्जन अधिनियम (1894 का 1), धारा 23(1-ए) – अर्जित भूमि के बाजार मूल्य पर ब्याज – निर्धारण – अधिसूचना, दिनांक 21.09.1990 के शासकीय राजपत्र में प्रकाशित – भूमि का कब्जा लेने की तिथि दिनांक 01.06.1989 है – ब्याज, भूमि का कब्जा लेने की तिथि से या उप-धारा (1) के अंतर्गत अधिसूचना प्रकाशित होने की तिथि से जो भी पहले हो, अर्जित भूमि के केवल बाजार मूल्य पर देय है – दोनों प्रत्यर्थीगण/दावेदार कब्जा लेने की तिथि अर्थात् 01.06.1989 से 12% की वार्षिक दर से भूमि के बाजार मूल्य पर ब्याज पाने के हकदार है। (म.प्र. राज्य वि. घनश्याम पाठक)

...*61

Land Acquisition Act (1 of 1894), Section 23(1-A) & 23(2) – Amendment – Amount of Interest and Solatium – Enhancement – Held – In the present case, land was acquired in 1979 – Provisions were inserted in the Statute in 1984 – Reference Court passed the judgment in 2000 where proceedings were pending since 1982 – Supreme Court held that in aforesaid circumstances, Reference Court will grant compensation considering the amended provision of the Act – Thus, Reference Court is duty bound to grant interest and Solatium as per amended provision – Claimants entitled for solatium @ 30% instead of 15%. [Shyam Singh (MST.) Vs. State of M.P.] ...1449

भूमि अर्जन अधिनियम (1894 का 1), धारा 23(1-ए) व 23(2) – संशोधन – ब्याज एवं तोषण की रकम – वृद्धि – अभिनिर्धारित – वर्तमान प्रकरण में, भूमि 1979 में अर्जित की गई थी – कानून में उपबंधों को 1984 में अंतःस्थापित किया गया था – निर्देश न्यायालय ने 2000 में निर्णय पारित किया जहां 1982 से कार्यवाहियां लंबित थी – उच्चतम न्यायालय ने अभिनिर्धारित किया कि उपरोक्त परिस्थितियों में, निर्देश न्यायालय, अधिनियम के संशोधित उपबंध को विचार में लेकर प्रतिकर प्रदान करेगा – अतः, निर्देश न्यायालय, ब्याज एवं तोषण को संशोधित उपबंध के अनुसार प्रदान करने के लिए कर्तव्यबद्ध है – दावेदार 15 % की बजाय 30 % की दर से तोषण के हकदार। (श्याम सिंह (मुस.) वि. म.प्र. राज्य) ...1449

Legal Services Authorities Act (39 of 1987), Section 20 – Lok-Adalat – “Compromise” or “Settlement” – Powers of disposal of cases by the Lok Adalat relates to only settlement between parties through compromise and no case can be disposed of without compromise or settlement between the parties. [Ram Milan Dubey Vs. Ku. Vandana Jain] ...952

विधिक सेवा प्राधिकरण अधिनियम (1987 का 39), धारा 20 – लोक अदालत – “समझौता” या “निपटारा” – लोक अदालत द्वारा प्रकरणों के निराकरण की शक्तियों का प्रयोग केवल पक्षकारों के मध्य समझौते के जरिए निपटाने से संबंधित है तथा कोई भी प्रकरण पक्षकारों के मध्य “समझौता” या “निपटारे” के बिना निराकृत नहीं किया जा सकता। (राम मिलन दुबे वि. कुमारी वंदना जैन) ...952

Legal Services Authorities Act, (39 of 1987), Section 21 – See – Constitution, Article 226/227 [Jahar Singh Lodhi Vs. Ramkali] ...1462

विधिक सेवा प्राधिकरण अधिनियम (1987 का 39), धारा 21 – देखें – संविधान, अनुच्छेद 226/227 (जाहर सिंह लोधी वि. रामकली) ...1462

Limitation Act (36 of 1963), Section 5 – Condonation of Delay – Sufficient Cause – Delay of more than 10 years – Appellant submitted that counsel did not inform him about the case from 1996 till 2009 – Held – Appellant was expected to seek information about the progress of his case from his counsel time to time as the case was fixed for evidence – It is also not possible that counsel of appellant did not informed him despite seven adjournments taken by the counsel – For more than 10 years, appellant remained silent which shows his lack of interest in the case, his negligence and lack of *bonafide* – Appellant himself neglected to participate in the suit and without any reasonable cause avoided to enquire about his case which shows that he himself was not diligent in prosecution of his case – Delay not properly explained – No sufficient cause is made out for condonation of delay – Application for condonation of delay and Appeal dismissed. [Gulab Chand Vs. Sardar Patel]

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परिसीमा अधिनियम (1963 का 36), धारा 5 – विलम्ब की माफी – पर्याप्त कारण – 10 वर्षों से अधिक का विलंब – अपीलार्थी ने यह प्रस्तुत किया कि अधिवक्ता ने उसे 1996 से लेकर 2009 तक प्रकरण के बारे में कोई जानकारी नहीं दी – अभिनिर्धारित – अपीलार्थी को अपने अधिवक्ता से समय-समय पर अपने प्रकरण की प्रगति के बारे में जानकारी चाहने की प्रत्याशा थी क्योंकि प्रकरण साक्ष्य हेतु नियत किया गया था – यह भी संभव नहीं है कि अपीलार्थी के अधिवक्ता ने उसके द्वारा लिये गये सात स्थगन के बावजूद उसे सूचित नहीं किया – दस वर्षों से अधिक समय तक अपीलार्थी मौन रहा जो कि उसकी प्रकरण में रुचि का अभाव, उपेक्षा तथा सद्भाविकता का अभाव दर्शाता है – अपीलार्थी ने स्वयं से वाद में सहभाग लेने में उपेक्षा की तथा बिना किसी युक्तियुक्त कारण के अपने प्रकरण के बारे में पूछताछ करने से बचा, जो यह दर्शाता है कि वह स्वयं अपने प्रकरण के अभियोजन में तत्पर नहीं था – विलंब उचित रूप से स्पष्ट नहीं किया गया – विलंब की माफी हेतु कोई पर्याप्त कारण नहीं बनता – विलंब की माफी हेतु आवेदन तथा अपील खारिज। (गुलाब चंद वि. सरदार पटेल)

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Limitation Act (36 of 1963), Article 6, 8, 59 & 60 – See – Civil Procedure Code, 1908, Order 32 Rule 3(A) [Chironji Bai Vs. Narayan Singh]

...1135

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 6, 8, 59 व 60 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 32 नियम 3(ए) (चिरोंजी बाई वि. नारायण सिंह)

...1135

Madhya Bharat Zamindari Abolition Act, (13 of 1951), Section 4/37-38 – Vesting of land in State – Held – Beed land got vested in the State automatically – Onus is on the plaintiff to prove that the land in question was not a Beed land, but Khud-kasht land which was recorded as Beed land – It is also not the case that Khud-kasht land has been given on lease – Thus the ratio of Devi Singh, Gorabai and Gordhandas case is not applicable in present case. [Gajraj Singh Vs. State of M.P.] ...889

मध्य भारत जमीनदारी उन्मूलन अधिनियम, (1951 का 13), धारा 4/37-38 – भूमि का राज्य में निहित किया जाना – अभिनिर्धारित – बीड़ भूमि राज्य में स्वतः निहित हो गई – यह साबित करने का भार वादी पर है कि प्रश्नगत भूमि बीड़ भूमि नहीं थी, बल्कि खुदकाशत भूमि है जो कि बीड़ भूमि के रूप में अभिलिखित है – प्रकरण यह भी नहीं है कि खुदकाशत भूमि पट्टे पर दी गई है – इसलिए देवी सिंह, गोरा बाई एवं गोस्वदनदास प्रकरण के निर्णय आधार वर्तमान प्रकरण में लागू नहीं होंगे। (गजराज सिंह वि. म.प्र. राज्य) ...889

Motor Vehicles Act (59 of 1988), Schedule II (Amended) – Compensation – Quantum – Held – Tribunal while passing award of compensation relied on a matter which was decided in 1995 where notional income was considered of that year, holding the income of deceased to be Rs. 500 per month – Schedule II was amended in the year 1999 whereby minimum income of Rs. 15000 per annum was presumed to be the notional income in case where person was non-earning – Tribunal should have assessed the notional income of the deceased for the year 1999 – Compensation awarded was re-computed as per amended Schedule II of the Act of 1988 and was enhanced from Rs. 83,500 to Rs. 3,22,000 alongwith interest @ 8% per annum. [National Insurance Co. Ltd. Vs. Smt. Parwati Bai] ...1467

मोटर यान अधिनियम (1988 का 59), अनुसूची II (संशोधित) – प्रतिकर – मात्रा – अभिनिर्धारित – प्रतिकर का अवार्ड पारित करते समय, अधिकरण ने ऐसे मामले पर विश्वास किया जो 1995 में विनिश्चित किया गया था, जहां मृतक की आय रु. 500 प्रति माह ठहराते हुए, उसी वर्ष की काल्पनिक आय विचार में ली गई थी – अनुसूची II को वर्ष 1999 में संशोधित किया गया था जिससे न्यूनतम आय रु. 15,000 प्रति वर्ष काल्पनिक आय उपधारित की गई थी, ऐसे प्रकरण में जहां व्यक्ति गैर उपार्जक था – अधिकरण को वर्ष 1999 हेतु मृतक की काल्पनिक आय का निर्धारण करना चाहिए था – अवार्ड किये गये प्रतिकर की, 1988 के अधिनियम की संशोधित अनुसूची II के अनुसार पुनः संगणना की गई और रु. 83,500 को बढ़ाकर

8% प्रति वर्ष की दर से ब्याज के साथ रु. 3,22,000 किया गया। (नेशनल इश्योरेंस कं. लि. वि. श्रीमती पार्वती बाई) ...1467

Motor Vehicles Act (59 of 1988), Second Schedule – Compensation Amount – Quantum – Determination – No documentary or oral evidence regarding age, education, ownership of any agricultural land, income of corpus at the time of incident has been produced by the petitioner – Holding the age group of 35-40 years, applying the Second Schedule of Motor Vehicles Act, 1988, multiplier of 15 was applied and Amount of Rs. 4,80,000 granted towards loss of dependency, Rs. 50,000 towards loss of consortiums, Rs. 20,000 towards loss of love and affection to children and Rs. 30,000 towards loss of estate, a total amount of Rs. 5,80,000 was awarded. [Ramhit Lodhi Vs. State of M.P.] (DB)...1050

मोटर यान अधिनियम (1988 का 59), द्वितीय अनुसूची – प्रतिकर राशि – मात्रा – अवधारण – याची द्वारा घटना के समय बंदी की आयु, शिक्षा, किसी कृषि भूमि के स्वामित्व, आय के संबंध में कोई दस्तावेजी या मौखिक साक्ष्य प्रस्तुत नहीं किये गये – 35-40 वर्ष के आयु वर्ग की धारणा करते हुए, मोटर यान अधिनियम, 1988 की द्वितीय अनुसूची लागू करते हुए, 15 का गुणक अपनाया गया एवं रु. 4,80,000 की राशि आश्रित की हानि के प्रति प्रदान की गयी, रु. 50,000 सहकार की हानि के प्रति, रु. 20,000 बच्चों के लिए प्यार और स्नेह के प्रति, रु. 30,000 संपदा की हानि के प्रति, रु. 5,80,000 की कुल राशि अधिनिर्णीत की गई थी। (रामहित लोधी वि. म.प्र. राज्य) (DB)...1050

Motor Vehicles Act (59 of 1988), Section 173 – Liability of Insurance Company – Driving License – Validity – Burden of Proof – MACT awarded compensation of Rs. 83,500 alongwith interest to respondents no. 1 to 3, being wife and children of deceased – Challenge to – Held – It was the plea of the insurance company that driver of the offending vehicle was not having a valid driving license on the date of incident – Accident took place on 05.04.1999 and in the photocopy of the license of driver of offending vehicle, it was mentioned that it was renewed from 11.01.1999 to 10.01.2001 – Burden of proof was on the Insurance Company to prove that the renewal entry was fake and it was not done by the licensing authority and to get the certificate from the licensing authority to that effect – Insurance company failed to discharge its burden – Further held – When license was renewed from time to time, then it shall be presumed that it was properly renewed unless rebutted by the insurance

company – In such circumstances, insurance company cannot be absolved from its liability to pay compensation. [National Insurance Co. Ltd. Vs. Smt. Parwati Bai] ...1467

मोटर यान अधिनियम (1988 का 59), धारा 173 – बीमा कम्पनी का दायित्व – चालक अनुज्ञप्ति – विधिमान्यता – सबूत का भार – मोटर दुर्घटना दावा अधिकरण ने प्रत्यर्थागण क्र. 1 से 3 को, मृतक की पत्नी एवं संताने होने के नाते, ब्याज के साथ रु. 83,500 प्रतिकर अवार्ड किया – को चुनौती – अभिनिर्धारित – यह बीमा कम्पनी का अभिवाक् था कि आक्षेपित वाहन के चालक के पास, दुर्घटना की दिनांक को विधिमान्य चालक अनुज्ञप्ति नहीं थी – दुर्घटना 05.04.1999 को घटी और आक्षेपित वाहन की चालक अनुज्ञप्ति की फोटोप्रति पर यह उल्लिखित था कि उसे 11.01.1999 से 10.01.2001 तक नवीकृत किया गया था – यह साबित करने के लिए कि नवीकरण प्रविष्टि नकली थी और वह अनुज्ञप्ति प्राधिकारी द्वारा नहीं की गई थी, सिद्ध करने एवं अनुज्ञप्ति प्राधिकारी से उस प्रभाव का प्रमाणपत्र प्राप्त करने का भार बीमा कम्पनी पर था – बीमा कम्पनी अपने भार का निर्वहन करने में असफल रही – आगे अभिनिर्धारित – जब अनुज्ञप्ति को समय-समय पर नवीकृत किया गया था तब यह उपधारणा की जायेगी कि उसे उचित रूप से नवीकृत किया गया था जब तक कि बीमा कम्पनी द्वारा खंडन नहीं किया जाता – ऐसी परिस्थितियों में, बीमा कम्पनी, प्रतिकर अदा करने के अपने दायित्व से मुक्ति नहीं पा सकती। (नेशनल इश्योरेंस कं. लि. वि. श्रीमती पार्वती बाई) ...1467

Motor Vehicles Act (59 of 1988), Section 180 & 181 – See – Criminal Procedure Code, 1973, Section 482 [Arun Kapur Vs. State of M.P.] ...1008

मोटर यान अधिनियम (1988 का 59), धारा 180 व 181 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (अरुण कपूर वि. म.प्र. राज्य) ...1008

Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, M.P. (15 of 1984), Section 3 – Aims and Objects – Held – Act of 1984 was enacted to settle land in favour of landless persons in any urban area – Cut-off date has been extended from time to time in terms of Section 3 of the Act of 1984 – Leasehold rights conferred u/S 3(3) are not transferable by sub-lease, sale, gift or mortgage or by any other manner except by way of inheritance. [Kashiram (deceased) through L.Rs. Durgashankar Vs. State of M.P.] (DB)...1043

नगरीय क्षेत्रों के भूमिहीन व्यक्ति (पट्टाधृति अधिकारों का प्रदान किया जाना) अधिनियम, म.प्र. (1984 का 15), धारा 3 – लक्ष्य एवं उद्देश्य – अभिनिर्धारित – 1984 के अधिनियम को किसी नगरीय क्षेत्र में भूमिहीन व्यक्ति के पक्ष में भूमि की

व्यवस्था हेतु अधिनियमित किया गया था - 1984 के अधिनियम की धारा 3 के निबंधनों के अनुसार समय समय पर अंतिम तिथि बढ़ायी गई है - धारा 3(3) के अंतर्गत प्रदत्त पट्टाधृति अधिकार, उत्तराधिकार के द्वारा छोड़कर, उपपट्टा, विक्रय, दान अथवा बंधक द्वारा या किसी अन्य ढंग से अंतरणीय नहीं है। (काशीराम (मृतक) द्वारा विधिक प्रतिनिधि दुर्गाशंकर वि. म.प्र. राज्य) (DB)...1043

Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, M.P. (15 of 1984), Section 3 and Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Rules (M.P.) 1998, Rule 7 - Cancellation of Patta - Alternate Accommodation - House of the appellant was coming in alignment of LIG link road - Patta given to the father of appellant was cancelled and for the purpose of resettlement, appellants were allotted a flat in a different location - Challenge to - Held - As per clause 4 of the allotment letter, if land is required in public interest, then pattedar will be relocated - In the instant case, appellants seeking allotment of plot of 2000 Sqfts with construction of double storied house for them - As a 'settled person' on a 'public land', they have a right for alternative accommodation but not as per the size and in the area desired by the appellant - Alternate accommodation is to provide shelter over the head of the settlers but not to provide a source of income or an investment for settlers - Further held - Allotment of patta was made in 1998 in favour of appellant's father and wife and cannot be said to be an honest act of allotment of settlement of his near relations - Family of appellant no.1 does not appears to fall in category of 'landless persons' and 'urban poor' - Allotment lacking in bonafides - Process adopted by appellants for allotment of alternate accommodation is not fair and reasonable - Appeal dismissed. [Kashiram (deceased) through L.Rs. Durgashankar Vs. State of M.P.] (DB)...1043

नगरीय क्षेत्रों के भूमिहीन व्यक्ति (पट्टाधृति अधिकारों का प्रदान किया जाना) अधिनियम, म.प्र. (1984 का 15), धारा 3 एवं नगरीय क्षेत्रों के भूमिहीन व्यक्ति (पट्टाधृति अधिकारों का प्रदान किया जाना), नियम (म.प्र.) 1998, नियम 7 - पट्टे का रद्दकरण - वैकल्पिक स्थान - अपीलार्थी का मकान एल.आई.जी. लिंक रोड के संरेखण में आ रहा था - अपीलार्थी के पिता को दिया गया पट्टा रद्द किया गया था और पुनर्स्थापन के प्रयोजन हेतु अपीलार्थीगण को भिन्न स्थान पर एक फ्लैट आवंटित किया गया था - को चुनौती - अभिनिर्धारित - आबंटन पत्र के खंड 4 के अनुसार, यदि लोकहित में भूमि की आवश्यकता है तब पट्टेदार को पुनर्स्थापित

किया जाएगा — वर्तमान प्रकरण में, अपीलार्थीगण उनके लिए द्वि मंजिला मकान के निर्माण के साथ 2000 वर्गफुट के भूखंड का आबंटन चाह रहे हैं — 'सार्वजनिक भूमि' पर 'बसे हुए व्यक्ति' के रूप में उन्हें वैकल्पिक स्थान का अधिकार है किंतु अपीलार्थी द्वारा चाहे अनुसार आकार एवं क्षेत्र में नहीं — वैकल्पिक स्थान, अधिवासियों के सर पर छत उपलब्ध कराने के लिए है न कि अधिवासियों के लिए आय का स्रोत या निवेश उपलब्ध कराने के लिए — आगे अभिनिर्धारित — 1998 में अपीलार्थी के पिता व पत्नी के पक्ष में पट्टे का आबंटन किया गया था और उसके नजदीकी रिश्तेदारों के व्यवस्थापन के आबंटन को ईमानदार कृत्य नहीं कहा जा सकता — अपीलार्थी क्र. 1 का परिवार, 'भूमिहीन व्यक्ति' एवं 'नगरीय गरीब' की श्रेणी में आना प्रतीत नहीं होता — आबंटन में सद्भाविकता का अभाव है — वैकल्पिक स्थान के आबंटन हेतु अपीलार्थीगण द्वारा अपनायी गई प्रक्रिया उचित एवं युक्तियुक्त नहीं है — अपील खारिज। (काशीराम (मृतक) द्वारा विधिक प्रतिनिधि दुर्गाशंकर वि. म.प्र. राज्य) (DB)...1043

Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Rules (M.P.) 1998, Rule 7 — See — Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhinyam, M.P., 1984, Section 3 [Kashiram (deceased) through L.Rs. Durgashankar Vs. State of M.P.] (DB)...1043

नगरीय क्षेत्रों के भूमिहीन व्यक्ति (पट्टाधृति अधिकारों का प्रदान किया जाना), नियम (म.प्र.) 1998, नियम 7 — देखें — नगरीय क्षेत्रों के भूमिहीन व्यक्ति (पट्टाधृति अधिकारों का प्रदान किया जाना) अधिनियम, म.प्र., 1984, धारा 3 (काशीराम (मृतक) द्वारा विधिक प्रतिनिधि दुर्गाशंकर वि. म.प्र. राज्य) (DB)...1043

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/20 (C), 42, 50 & 57 — Conviction and Quantum of Sentence — Appellant was convicted for offence u/S 8/20 (C) of the Act of 1985 and was sentenced to 15 years RI alongwith a fine of Rs. 1,50,000 — Challenge to — Held — As the search/seizure was made at a public place (bus stand), therefore Section 42 is not attracted — Section 50 is applicable in case of 'search of a person' and does not extend to search of a vehicle or a container or a bag or premises — In the instant case, cannabis (ganja) was recovered from gunny bags carried by appellant and therefore no personal search was in question, thus it cannot be said that there was a non-compliance of Section 50 of the Act of 1985 — Sufficient corroboration of evidence regarding compliance of Section 57 of the Act — Substances recovered from possession of appellant was cannabis (ganja), has been duly proved by testimony of Doctor

and he, being an expert, his conclusion carries weight and in absence of any material anomaly deserves to be accepted – Trial Court rightly convicted the appellant – Further held – Considering the quantity of contraband (24 kgs) recovered from possession of appellant, sentence imposed appears to be disproportionate and on higher side – Sentence reduced from 15 years RI to 10 years RI and fine amount reduced from Rs. 1,50,000 to 1,00,000 – Appeal partly allowed. [Mohd. Nayan Choudhary Vs. State of M.P.] (DB)...1191

स्वापक औषधि और मनःप्रमादी पदार्थ अधिनियम (1985 का 61), धाराएं 8/20(सी), 42, 50 व 57 – दोषसिद्धि एवं दण्डादेश की मात्रा – अपीलार्थी को 1985 के अधिनियम की धारा 8/20(सी) के अंतर्गत अपराध हेतु दोषसिद्ध किया गया था और रु. 1,50,000 अर्थादण्ड के साथ 15 वर्षों के सश्रम कारावास से दण्डादिष्ट किया गया था – को चुनौती – अभिनिर्धारित – चूंकि तलाशी/जब्ती सार्वजनिक स्थान (बस स्टैंड) पर की गई थी, इसलिए धारा 42 आकर्षित नहीं होती – धारा 50 'व्यक्ति की तलाशी' के प्रकरण में प्रयोज्य है और किसी वाहन या कन्टेनर या बैग अथवा परिसर की तलाशी पर लागू नहीं होती – वर्तमान प्रकरण में, अपीलार्थी द्वारा थामें हुए बोरियों से गांजा बरामद किया गया था और इसलिए व्यक्तिगत तलाशी का प्रश्न नहीं था, अतः यह नहीं कहा जा सकता कि 1985 के अधिनियम की धारा 50 का अननुपालन हुआ था – अधिनियम की धारा 57 के अनुपालन के संबंध में साक्ष्य की पर्याप्त अभिपुष्टि – अपीलार्थी के कब्जे से बरामद किया गया पदार्थ, गांजा था, यह विकित्सक के परिसाक्ष्य द्वारा सम्यक् रूप से साबित किया गया है, और उसके विशेषज्ञ होने के नाते, उसका निष्कर्ष महत्व रखता है तथा किसी तात्त्विक विषमता की अनुपस्थिति में स्वीकार किये जाने योग्य है – विचारण न्यायालय ने अपीलार्थी को उचित रूप से दोषसिद्ध किया – आगे अभिनिर्धारित – अपीलार्थी के कब्जे से बरामद विनिर्दिष्ट पदार्थ की मात्रा (24 कि.ग्रा.) को विचार में लेते हुए, अधिरोपित दण्डादेश अननुपातिक एवं उच्च पक्ष का प्रतीत होता है – दण्डादेश 15 वर्ष के सश्रम कारावास से घटाकर 10 वर्ष सश्रम कारावास एवं अर्थादण्ड की राशि को रु. 1,50,000 के घटाकर 1,00,000 किया गया – अपील अंशतः मंजूर। (मोहम्मद नयन चौधरी वि. म.प्र. राज्य) (DB)...1191

National Council for Teacher Education Act (73 of 1993) – Affiliation – Grant/Refusal thereof – Right of Inspection – Petitioner, a private unaided self financed institution imparting training and education in teacher training courses of D.Ed/D.El.Ed – Petition against the order passed by Respondent Board to all Collectors of State of MP asking to conduct inspection of all institutions for purpose of renewal/grant of affiliation and also to inspect as to whether institutions have complied

with conditions and requirements prescribed under the Act of 1993 – Held – Respondents may conduct a preliminary fact finding enquiry in respect of the institutions granted recognition under the Act of 1993 and regulations thereunder regarding violation of norms and standard prescribed therein and may also conduct inspection for affiliation but after doing so, if they find any such violation, they shall not take any action on their own and shall forward the enquiry report to the competent authority i.e Regional Committee constituted under the Act of 1993 for further action – Respondent Board shall not on their own take any action towards refusal of or withholding renewal or affiliation on account of any violation committed by petitioner institutions regarding norms and standard prescribed under the Act – With above observations, petition stands dismissed. [Renaissance Education Society Vs. National Council for Teacher Education] (DB)...833

राष्ट्रीय अध्यापक शिक्षा परिषद अधिनियम (1993 का 73) – संबद्धीकरण – उसका प्रदान/इंकार – निरीक्षण का अधिकार – याची, एक गैर-अनुदानित स्ववित्त संस्था है जो कि डी.एड./डी.एल.एड. के शिक्षक प्रशिक्षण पाठ्यक्रमों में प्रशिक्षण एवं शिक्षा प्रदान करती है – प्रत्यर्थी बोर्ड द्वारा म.प्र. राज्य के सभी कलेक्टरों को संबद्धता के नवीकरण/प्रदान किये जाने के प्रयोजन हेतु सभी संस्थाओं के निरीक्षण का संचालन करने को कहे जाने एवं यह भी निरीक्षण करने हेतु कि क्या संस्थाओं ने 1993 के अधिनियम के अंतर्गत विहित शर्तों एवं अपेक्षाओं का अनुपालन किया, पारित आदेश के विरुद्ध याचिका – अभिनिर्धारित – प्रत्यर्थीगण 1993 के अधिनियम एवं उसके अधीन विनियमों के अंतर्गत मान्यता प्रदान की गई संस्थाओं के संबंध में, उक्त अधिनियम एवं विनियमों में विहित सन्नियमों एवं मानकों के उल्लंघन के बारे में तथ्य का पता लगाने प्रारंभिक जांच संचालित कर सकता है और साथ ही संबद्धता हेतु निरीक्षण भी कर सकता है, परंतु ऐसा करने के पश्चात् यदि वह ऐसा कोई उल्लंघन पाते हैं, वे स्वयं से कोई कार्रवाई नहीं करेंगे और सक्षम प्राधिकारी अर्थात् 1993 के अधिनियम के अंतर्गत आगे कार्रवाई करने हेतु गठित क्षेत्रीय समिति को जांच प्रतिवेदन अग्रेषित करेंगे – प्रत्यर्थी बोर्ड, याची संस्थाओं द्वारा अधिनियम के अंतर्गत विहित सन्नियमों एवं मानकों के संबंध में किये गये किसी भी उल्लंघन के कारण, इंकार करने अथवा नवीकरण या संबद्धता को रोकने के लिए, स्वयं से कोई कार्रवाई नहीं करेगा – उपरोक्त संप्रेक्षण के साथ, याचिका खारिज। (रिनायसांस एजुकेशन सोसायटी वि. नेशनल काउंसिल फार टीचर एजुकेशन) (DB)...833

Negotiable Instruments Act (26 of 1881), Section 138 – Demand Notice – Initially notice was issued and complaint was filed against one Azad Kumar Jain as partner of firm and during pendency of the

case, complainant amended the cause title and name of Azad Kumar Jain was substituted by Sanad Kumar Jain, as partner of the firm – Charges were framed against Sanad Kumar Jain, against which in a revision, Sanad Kumar Jain was discharged of the charges – Held – Notice was issued against Azad Kumar Jain, who was neither the partner of the firm nor was the signatory of the cheques issued – Sanad Kumar Jain who was the partner of the firm and was the signatory of the cheques, was not issued any demand notice, which is a mandatory requirement u/S 138 of the Act – Revisional Court rightly discharged Sanad Kumar Jain – Application dismissed. [Rajesh Kumar Samaiya Vs. M/s. Mahaveer Stationers] ...977

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – मांग नोटिस – आरंभ में, फर्म के भागीदार के रूप में एक आजाद कुमार जैन के विरुद्ध नोटिस जारी किया गया था एवं परिवाद प्रस्तुत किया गया था और प्रकरण लंबित रहने के दौरान परिवादी ने वाद शीर्षक संशोधित किया और फर्म के भागीदार के रूप में आजाद कुमार के नाम को सनद कुमार जैन से प्रतिस्थापित किया गया था – सनद कुमार जैन के विरुद्ध आरोप विरचित किये गये जिसके विरुद्ध पुनरीक्षण में सनद कुमार जैन को आरोपों से आरोपमुक्त किया गया – अभिनिर्धारित – आजाद कुमार जैन के विरुद्ध नोटिस जारी किया गया था जो कि न तो फर्म का भागीदार था न ही जारी किये गये चैक का हस्ताक्षरकर्ता था – सनद कुमार जैन, जो कि फर्म का भागीदार था और चैक का हस्ताक्षरकर्ता था, को कोई मांग नोटिस जारी नहीं किया गया जो कि अधिनियम की धारा 138 के अंतर्गत आज्ञापक अपेक्षा है – पुनरीक्षण न्यायालय ने उचित रूप से सनद कुमार जैन को आरोपमुक्त किया – आवेदन खारिज। (राजेश कुमार समैया वि. मे. महावीर स्टेशनर्स) ...977

Negotiable Instruments Act (26 of 1881), Section 138 – Signatory of Cheque – Maintainability of Case – Complaint case u/S. 138 of the Act of 1881 registered before the trial Court against applicant on the ground that he was allegedly the joint signatory of the cheque which was dishonoured – Challenge to – Held – Name of applicant is not printed in the disputed cheque, only name of co-accused is printed – Applicant not liable and is hereby discharged for the offence u/S 138 of Act of 1881 – Application allowed. [Rajendra Kumar (Dr.) Vs. Vallabh Chandak] ...*82

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – चैक का हस्ताक्षरकर्ता – प्रकरण की पोषणीयता – आवेदक के विरुद्ध, अधिनियम 1881 की धारा 138 के अंतर्गत परिवाद प्रकरण विचारण न्यायालय के समक्ष इस आधार पर पंजीबद्ध किया

गया कि वह अभिकथित रूप से उस चैक का संयुक्त हस्ताक्षरकर्ता था जो अनादृत हुआ था - अभिनिर्धारित - विवादित चैक में आवेदक का नाम मुद्रित नहीं है, केवल सह-अभियुक्त का नाम मुद्रित है - आवेदक दायित्वाधीन नहीं है एवं एतद्वारा 1881 के अधिनियम की धारा 138 के अन्तर्गत अपराध से उन्मुक्त किया गया - आवेदन मंजूर। (राजेन्द्र कुमार (डॉ.) वि. वल्लभ चांडक) ...*82

Negotiable Instruments Act (26 of 1881), Section 138 Proviso (b), (c) & 142(1)(b) - See - Criminal Procedure Code, 1973, Section 482 [Mohd. Jahin Vs. Nibbaji] ...1534

परक्राम्य लिखित अधिनियम (1881 का 26), धारा 138 परंतुक (बी), (सी) एवं 142(1)(बी) - देखें - दण्ड प्रक्रिया संहिता, 1973, धारा 482 (मोहम्मद जहीन वि. निब्बाजी) ...1534

Panchayat Samvida Shala Shikshak (Appointment and Conditions of Service) Rules, M.P. 2001 - See - Adhyapak Samvarg (Employment & Conditions of Services) Rules, M.P., 2008 [Vinod Rathore Vs. State of M.P.] ...823

पंचायत संविदा शाला शिक्षक (नियुक्ति और सेवा की शर्तें) नियम, म.प्र. 2001 - देखें - अध्यापक संवर्ग (रोजगार और सेवा की शर्तें) नियम, म.प्र., 2008 (विनोद राठौर वि. म.प्र. राज्य) ...823

Panchayat Samvida Shala Shikshak (Employment and Conditions of Contract) Niyam, M.P., 2005 - See - Adhyapak Samvarg (Employment & Conditions of Services) Rules, M.P., 2008 [Vinod Rathore Vs. State of M.P.] ...823

पंचायत संविदा शाला शिक्षक (रोजगार और संविदा की शर्तें) नियम, म.प्र. 2005 - देखें - अध्यापक संवर्ग (रोजगार और सेवा की शर्तें) नियम, म.प्र., 2008 (विनोद राठौर वि. म.प्र. राज्य) ...823

Partnership Act, (9 of 1932), Section 69(2) - See - Civil Procedure Code, 1908, Order 30 Rule 1 [Vijay Kumar Vs. M/s. Shriram Industries] ...937

सागीदारी अधिनियम, (1932 का 9), धारा 69(2) - देखें - सिविल प्रक्रिया संहिता, 1908, आदेश 30 नियम 1 (विजय कुमार वि. मे. श्रीराम इंडस्ट्रीज) ...937

Partnership Act (9 of 1932), Section 69(2) & 69(3) and Civil Procedure Code (5 of 1908), Order 7 Rule 11 - Maintainability of Suit - Scope and Applicability - Respondent/Plaintiff filed a suit for

declaration and dividend – Applicant/defendant filed application under Order 7 Rule 11 C.P.C. on the ground that partnership firm was not registered and hence suit was not maintainable – Trial Court dismissed the application – Challenge to – Held – There is an inter se dispute between partners of firm – Plaintiff demanded accounts and share in dividend from another partner of firm, therefore registration of firm is not necessary – Present case will fall u/S 69(3) of the Act of 1932 – Suit is maintainable – Further held – Application under Order 7 Rule 11 C.P.C. shall be decided on the basis of pleading in the plaint alone – No error in the impugned order – Revision dismissed. [Abdul Saleem Vs. Shamim Ahmed] ...1485

भागीदारी अधिनियम (1932 का 9), धारा 69(2) व 69(3) एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – वाद की पोषणीयता – विस्तार एवं प्रयोज्यता – प्रत्यर्थी/वादी ने घोषणा एवं लामांश हेतु वाद प्रस्तुत किया – आवेदक/प्रतिवादी ने इस आधार पर सिविल प्रक्रिया संहिता के आदेश 7 नियम 11 के अन्तर्गत आवेदन प्रस्तुत किया कि भागीदारी फर्म रजिस्ट्रीकृत नहीं थी एवं इसलिए वाद पोषणीय नहीं था – विचारण न्यायालय ने आवेदन खारिज किया – को चुनौती – अभिनिर्धारित – फर्म के भागीदारों के मध्य परस्पर विवाद था – वादी ने फर्म के अन्य भागीदार से खातों और लामांश में हिस्से की मांग की, इसलिए फर्म का रजिस्ट्रीकरण आवश्यक नहीं है – वर्तमान प्रकरण 1932 के अधिनियम की धारा 69(3) के अन्तर्गत आता है – वाद पोषणीय है – आगे अभिनिर्धारित – सिविल प्रक्रिया संहिता के आदेश 7 नियम 11 के अन्तर्गत आवेदन मात्र वादपत्र के अभिवचन के आधार पर विनिश्चित की जाएगी – आक्षेपित आदेश में कोई त्रुटि नहीं – पुनरीक्षण खारिज। (अब्दुल सलीम वि. शमीम अहमद) ...1485

Penal Code (45 of 1860), Section 107 & 306 – Abetment of suicide – If deceased had given a love letter to a girl and thereafter he was scolded or even beaten by the shopkeepers and making a complaint to his family members about his conduct, cannot be said to be an act which may amount to instigating the deceased to commit suicide – Evidence on record shows that accused only made a telephonic call to the family members of the deceased informing them about the conduct of the deceased – It cannot be presumed that the applicant/accused in any manner instigated or abetted or provoked the deceased to commit suicide – *Prima facie* no case is made out against the accused/applicant u/S 306 IPC – Proceedings stand quashed – Application allowed. [Manoj Vs. State of M.P.] ...*53

दण्ड संहिता (1860 का 45), धारा 107 व 306 – आत्महत्या का दुष्प्रेरण – यदि मृतक ने युवती को एक प्रेमपत्र दिया था और तत्पश्चात् उसे दुकानदारों द्वारा डांटा या पीटा भी गया तथा उसके परिवार के सदस्यों से उसके आचरण के बारे में शिकायत की जाना ऐसा कृत्य नहीं कहा जा सकता जो मृतक को आत्महत्या करने के लिए उकसाने की कोटि में आता हो – अभिलेख का साक्ष्य दर्शाता है कि अभियुक्त ने मृतक के आचरण के बारे में मृतक के परिवार के सदस्यों को केवल दूरभाष पर जानकारी दी – यह उपधारणा नहीं की जा सकती कि आवेदक/अभियुक्त ने किसी भी ढंग से मृतक को आत्महत्या करने के लिए उकसाया या दुष्प्रेरित किया या प्रकोपित किया – प्रथम दृष्ट्या, अभियुक्त/आवेदक के विरुद्ध भा.द.सं. की धारा 306 के अंतर्गत कोई प्रकरण नहीं बनता – कार्यवाहियां अभिखंडित की गईं – आवेदन मंजूर। (मनोज वि. म.प्र. राज्य) ...*53

*Penal Code (45 of 1860), Sections 186, 353 & 506 part II – See – Criminal Procedure Code, 1973, Section 195(1)(a)(i) & 216 [Pooran Singh Jatav Vs. State of M.P.] ...*56*

दण्ड संहिता (1860 का 45), धाराएँ 186, 353 व 506 भाग-II – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 195(1)(ए)(आई) व 216 (पूरन सिंह जाटव वि. म. प्र. राज्य) ...*56

Penal Code (45 of 1860), Sections 218, 466, 471, 474 & 120-B – See – Prevention of Corruption Act, 1988, Sections 13(1)(d), 13(2) & 19 [Suraj Kero Vs. State of M.P.] (DB)...1237

दण्ड संहिता (1860 का 45), धाराएँ 218, 466, 471, 474 व 120-बी – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धाराएँ 13(1)(डी), 13(2) व 19 (सूरज केरो वि. म.प्र. राज्य) (DB)...1237

Penal Code (45 of 1860), Sections 279, 337 & 338 – Conviction – Term ‘Negligent’ – Applicant was the registered owner of the offending vehicle – Trial Court convicted the applicant primarily on the testimony of Kamal, who identified the applicant as the driver of the offending vehicle – Perusal of examination-in-chief of Kamal (PW-2) does not reveal extent of speed at which the offending vehicle was being plied – Merely using the term ‘negligent’ in the statement cannot be made basis of conviction – None of the examined witnesses has stated the exact or approximate speed of the vehicle, even prosecution has not made any attempt to prove the exact speed of the vehicle from any of the witnesses nor any attempt was made to collect scientific and technical evidence – Merely, on the basis of witnesses stating high

speed of vehicle and negligent driving, applicant cannot be convicted – Other two injured witnesses have not even identified the present applicant as the driver of the vehicle, one of them was the complainant who got the FIR registered – Judgment passed by the Sessions Court as well as by the Trial Court are set aside – Appellant acquitted. [Narayan Singh Vs. State of M.P.] ...*55

दण्ड संहिता (1860 का 45), धाराएँ 279, 337 व 338 – दोषसिद्धि – शब्द 'उपेक्षापूर्वक' – आवेदक, आक्रामक वाहन का रजिस्ट्रीकृत स्वामी था – विचारण न्यायालय ने आवेदक को मुख्य रूप से कमल जिसने आवेदक की आक्रामक वाहन के चालक के रूप में पहचान की, के परिसाक्ष्य पर दोषसिद्ध किया – कमल (अ.सा. -2) के मुख्य परीक्षण का अवलोकन गति की सीमा को प्रकट नहीं करता जिस पर आक्रामक वाहन चलाया जा रहा था – कथन में मात्र 'उपेक्षापूर्वक' शब्द का उपयोग किये जाने को दोषसिद्धि का आधार नहीं बनाया जा सकता – परीक्षित साक्षीगण में से किसी ने भी वाहन की निश्चित या अनुमानित गति के बारे में कथन नहीं किया है, यहाँ तक कि अभियोजन ने भी किसी भी साक्षीगण से वाहन की निश्चित गति साबित करने का कोई प्रयास नहीं किया है और न ही वैज्ञानिक एवं तकनीकी साक्ष्य एकत्रित करने हेतु कोई प्रयास किया गया था – मात्र वाहन की उच्च गति तथा उपेक्षापूर्वक वाहन चलाने का कथन करने वाले साक्षीगण के आधार पर आवेदक को दोषसिद्ध नहीं किया जा सकता – अन्य दो आहत साक्षीगण ने वर्तमान आवेदक की वाहन के चालक के रूप में पहचान भी नहीं की है, जिनमें से एक परिवादी था जिसने प्रथम सूचना प्रतिवेदन दर्ज कराई थी – सत्र न्यायालय के साथ-साथ विचारण न्यायालय द्वारा पारित निर्णय अपास्त – अपीलार्थी दोषमुक्त। (नारायण सिंह वि. म.प्र. राज्य) ...*55

Penal Code (45 of 1860), Sections 279, 337, 338 & 304-A and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashing of criminal proceeding – A Roller Machine being used for construction of road, being driven negligently by its driver non-applicant No. 2, caused injuries to three persons and out of them one succumbed to the said injuries – Applicant was not named in the FIR – There are no specific allegation at all against him, he has been made accused only on account of being the president of company – Held – Liability for offence involving element of negligence or rashness is always direct and restricted in its application only to the person to whom the impugned act is directly attributed – No one can be made liable for an offence if that person did not cause the effect of such rash or negligent act by his own action . [Arun Kapur Vs. State of M.P.] ...1008

दण्ड संहिता (1860 का 45), धाराएँ 279, 337, 338 व 304-ए एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 - दाण्डिक कार्यवाही अभिखंडित की जाना - सड़क निर्माण हेतु रोलर मशीन का उपयोग किया जा रहा था, उसके चालक अनावेदक क्र. 2 द्वारा उसे उपेक्षापूर्ण ढंग से चलाये जाने के कारण तीन व्यक्तियों को चोटें कारित की और उनमें से एक की उक्त चोटों के कारण मृत्यु हुई - आवेदक को प्रथम सूचना प्रतिवेदन में नामित नहीं किया गया - उसके विरुद्ध कोई भी विनिर्दिष्ट अभिकथन नहीं, उसे केवल कंपनी का अध्यक्ष होने के नाते अभियुक्त बनाया गया है - अभिनिर्धारित - अपराध जिसमें उपेक्षा या उतावलेपन का तत्व शामिल है, के लिए दायित्व सदैव प्रत्यक्ष होगा तथा उसकी प्रयोज्यता केवल उस व्यक्ति के लिए सीमित होगी जिस पर आक्षेपित कृत्य प्रत्यक्ष रूप से आरोपित है - किसी व्यक्ति को अपराध का उत्तदायी नहीं माना जा सकता यदि उस व्यक्ति ने अपने स्वयं के कार्य द्वारा उक्त उतावलेपन या उपेक्षापूर्ण कृत्य का प्रभाव कारित नहीं किया है। (अरुण कपूर वि. म.प्र. राज्य) ...1008

Penal Code (45 of 1860), Sections 294, 506 & 323/34 - See - Criminal Procedure Code, 1973, Section 321 [Ram Milan Dubey Vs. Ku. Vandana Jain] ...952

दण्ड संहिता (1860 का 45), धारा 294, 506 व 323/34 - देखें - दण्ड प्रक्रिया संहिता, 1973, धारा 321 (राम मिलन दुबे वि. कुमारी वंदना जैन) ...952

Penal Code (45 of 1860), Section 302 - Conviction - Life Imprisonment - Child Eye Witness (daughter) - Credibility - Murder of wife - Daughter was the eye witness who disclosed that father killed her mother - Held - It is a settled law that a reasonable degree of caution and circumspection is required while dealing with the evidence of a child witness, however if the same on a close and careful scrutiny is found reliable, the Court can act upon such an evidence - Testimony of daughter of accused aged 12 years is clear, cogent, consistent and free from any material infirmity or anomaly - Nothing in the cross examination of the child witness to indicate that she has any ill will, reason or motive to falsely implicate her own father - Further held - Why a person whose wife has suffered death, will keep hiding or absconding for more than 30-35 hrs of the incident and what has prevented him from bringing the incident to the notice of neighbours, relatives or the police - Conviction based on proper appreciation of evidence and does not call for interference - Appeal dismissed. [Suraj @ Suresh Vs. State of M.P.] (DB)...1475

दण्ड संहिता (1860 का 45), धारा 302 - दोषसिद्धि - आजीवन कारावास - बाल चक्षुदर्शी साक्षी (पुत्री) - विश्वसनीयता - पत्नी की हत्या - पुत्री चक्षुदर्शी साक्षी थी जिसने यह प्रकट किया कि पिता ने उसकी माँ को मार डाला - अभिनिर्धारित - यह सुस्थापित विधि है कि बाल साक्षी के साक्ष्य पर विचार करते समय युक्तियुक्त मात्रा की सावधानी एवं सतर्कता अपेक्षित है, तथापि यदि बारीकी और सावधानी से संवीक्षा पर उक्त को विश्वसनीय पाया जाता है, तो न्यायालय ऐसे साक्ष्य पर कार्रवाई कर सकती है - अभियुक्त की पुत्री जो कि 12 वर्ष की आयु की है का परिसाक्ष्य स्पष्ट, प्रबल, संगत तथा किसी तात्त्विक शैथिल्यता अथवा विषमता से मुक्त है - बाल साक्षी के प्रतिपरीक्षण में यह उपदर्शित करने हेतु कुछ भी नहीं है कि उसके पास अपने पिता को मिथ्या आलिप्त करने के लिए कोई वैमनस्य, कारण या हेतु है - आगे अभिनिर्धारित - क्यों एक व्यक्ति जिसकी पत्नी की मृत्यु हुई है, घटना के 30-35 घंटों से अधिक समय तक छुपा या फरार रहेगा और ऐसा क्या है जिसने उसे घटना को पड़ोसियों, रिश्तेदारों या पुलिस के ध्यान में लाने से रोका है - दोषसिद्धि साक्ष्य के उचित मूल्यांकन पर आधारित है एवं हस्तक्षेप की आवश्यकता नहीं - अपील खारिज। (सूरज उर्फ सुरेश वि. म.प्र. राज्य) (DB)...1475

Penal Code (45 of 1860), Section 302 r/w 34 - Appeal against conviction - Witness stated that the appellants assaulted the deceased with an axe whereas according to the post-mortem report no such injury was found on the body of deceased which could be caused by sharp cutting weapon - No indication of dragging was found in the post mortem report - According to eyewitness, deceased was assaulted with heavy log on the back but no such injury was found on the back of the deceased - Evidence of eyewitnesses regarding the injuries caused to the deceased is not found corroborated by the post mortem report - Chain of circumstantial evidence is broken - There is no evidence of last seen against the appellants to connect them with crime - Conviction and sentence for offence u/S 302 r/w Section 34 of the IPC is set aside. [Kallu @ Kammod Rawat @ Kalyan Vs. State of M.P.] (DB)...912

दण्ड संहिता (1860 का 45), धारा 302 सहपठित 34 - दोषसिद्धि के विरुद्ध अपील - साक्षी ने कथन किया कि अपीलार्थीगण ने मृतक पर कुल्हाड़ी से हमला किया था, जबकि शव-परीक्षण रिपोर्ट के अनुसार मृतक के शरीर पर ऐसी कोई चोट नहीं मिली जो कि धारदार काटने वाले हथियार से कारित हो सकती थी - शव-परीक्षण रिपोर्ट में घसीटने का कोई संकेत नहीं पाया गया - चक्षुदर्शी साक्षी के अनुसार मृतक की पीठ पर किसी भारी लकड़ी के लट्ठे से हमला किया गया था, परंतु मृतक की पीठ पर ऐसी कोई चोट नहीं पाई गई - मृतक को कारित हुई क्षति के संबंध में चक्षुदर्शी साक्षीगण के साक्ष्य, शव-परीक्षण रिपोर्ट से संपुष्ट नहीं पाए गये - परिस्थितिजन्य साक्ष्य

की श्रृंखला खंडित है — अपीलार्थीगण को अपराध से जोड़ने के लिए उनके विरुद्ध अंतिम बार देखे जाने का कोई साक्ष्य नहीं है — भारतीय दण्ड संहिता की धारा 302 सहपठित धारा 34 के अंतर्गत दोषसिद्धि एवं दण्डादेश अपास्त। (कल्लू उर्फ कमोद रावत उर्फ कल्याण वि. म.प्र. राज्य) (DB)...912

Penal Code (45 of 1860), Section, 302/34 & 201 – Death due to Burn Injuries – Conviction and Sentence – Oral Dying Declaration – Death Penalty – Husband, brother-in-law and mother-in-law were charged with the offence – Husband was awarded death sentence whereas other two accused were sentenced for life imprisonment – Held – It is alleged that husband sprinkled petrol on deceased and set her ablaze – No circumstantial evidence against brother-in-law and mother-in-law – Oral dying declaration of deceased against them is not reliable – Both are living separately from the deceased and except the oral dying declaration, there is no other evidence to connect them with the incident, benefit of doubt should be given to them – Evidence of cruelty by husband towards deceased, he did not even reached the spot nor accompanied the deceased to hospital – In forensic report, smell of petrol was found on under garments of deceased – Mother of deceased specifically stated that deceased told her that appellant husband sprinkled petrol on the deceased and set her ablaze, her testimony is reliable – Prosecution has proved the guilt of husband beyond reasonable doubt – Husband's conviction upheld whereas the conviction of brother-in-law and mother-in-law is set aside – Further held – Death penalty can be inflicted only on the gravest of the grave cases – Act of the appellant husband could not be termed as gravest of grave cases – Trial Court Committed error in awarding death sentence – Reference answered in negative – Husband's sentence modified to life imprisonment – Appeal filed by brother-in-law and mother-in-law allowed. [In Reference Vs. Mahendra Tiwari] (DB)...1243

दण्ड संहिता (1860 का 45), धारा 302/34 व 201 – जलने की क्षतियों के कारण मृत्यु – दोषसिद्धि एवं दण्डादेश – मौखिक मृत्युकालिक कथन – मृत्युदण्ड – पति, देवर व सास अपराध से आरोपित किये गये थे – पति को मृत्युदण्ड जबकि अन्य दो अभियुक्तों को आजीवन कारावास से दण्डादिष्ट किया गया – अभिनिर्धारित – यह अभिकथित किया गया है कि पति ने मृत्तिका पर पेट्रोल छिड़का और उसे आग लगा दी – देवर और सास के विरुद्ध कोई परिस्थितिजन्य साक्ष्य नहीं – उनके विरुद्ध मृत्तिका का मौखिक मृत्युकालिक कथन विश्वसनीय नहीं – दोनों मृत्तिका से

पृथक रह रहे थे और मौखिक मृत्युकालिक कथन के अलावा उन्हें घटना के साथ जोड़ने के लिए कोई अन्य साक्ष्य नहीं, उन्हें संदेह का लाभ दिया जाना चाहिए — मृत्तिका के साथ पति द्वारा क्रूरता के व्यवहार का साक्ष्य, यहाँ तक कि वह मौके पर पहुंचा भी नहीं और न ही मृत्तिका के साथ चिकित्सालय गया — फॉरेंसिक प्रतिवेदन में मृत्तिका के अंतर्वस्त्रों पर पेट्रोल की गंध पायी गई थी — मृत्तिका की माँ ने विनिर्दिष्ट रूप से कथन किया है कि मृत्तिका ने उसे बताया था कि अपीलार्थी पति ने मृत्तिका पर पेट्रोल छिड़का और उसे आग लगा दी, उसका परिसाक्ष्य विश्वसनीय है — अभियोजन ने पति की दोषिता युक्तियुक्त संदेह से परे साबित की है — पति की दोषसिद्धि कायम रखी गई जबकि देवर एवं सास की दोषसिद्धि अपास्त की गई — आगे अभिनिर्धारित — मृत्युदण्ड केवल गंभीर से गंभीरतम प्रकरणों में दिया जा सकता है — पति का कृत्य गंभीर से गंभीरतम नहीं कहा जा सकता — विचारण न्यायालय ने मृत्युदण्ड प्रदान करने में त्रुटि कारित की — निर्देश को नकारात्मकता में उत्तरित किया गया — पति के दण्डादेश को आजीवन कारावास में परिवर्तित किया गया — देवर एवं सास द्वारा प्रस्तुत की गई अपील मंजूर की गई। (इन रेफ्रेन्स वि. महेन्द्र तिवारी)

(DB)...1243

Penal Code (45 of 1860), Sections 302/149, 148 & 304 Part II – Conviction – Life Imprisonment – Appreciation of Evidence – Common Object – Looking to the evidence on record, it is proved beyond doubt that appellant Harkishan, Toran and Kallu assaulted deceased whereby he succumbed to injuries on spot – During Pendency of this appeal, Kallu expired, thus his appeal abates – Toran gave lathi blows without any common intention to kill, his conviction modified to one u/S 323 IPC – Appellant Harkishan gave the fatal blow to deceased causing contusion on tempo-parietal region, doctor found that bones below the wound were broken and brain was also found damaged, thus deceased died due to head injury – Harkishan was responsible for death of deceased – Further held – In the present case, quarrel started on spur of moment thus it cannot be concluded that Harkishan intended to kill the deceased especially when no deadly weapon was used by him and there is no allegation against him of repeated assault – Harkishan wrongly convicted u/S 302, conviction modified to one u/S 304 Part II IPC – Appeal partly allowed. [Bhagwanlal Vs. State of M.P.]

(DB)...1199

दण्ड संहिता (1860 का 45), धाराएँ 302/149, 148 व 304 भाग II – दोषसिद्धि – आजीवन कारावास – साक्ष्य का मूल्यांकन – सामान्य उद्देश्य – अभिलेख पर उपस्थित साक्ष्य को देखते हुए, यह संदेह से परे साबित होता है कि अपीलार्थी हरकिशन, तोरन एवं कल्लू ने मृतक पर हमला किया जिससे चोटों के

कारण घटनास्थल पर ही उसकी मृत्यु हो गई — इस अपील के लंबित रहने के दौरान, कल्लू की मृत्यु हो गई, इस प्रकार उसकी अपील का उपशमन हुआ — तोरन ने मारने के किसी सामान्य उद्देश्य के बिना लाठी से वार किये, उसकी दोषसिद्धि भारतीय दण्ड संहिता की धारा 323 में उपांतरित की गई — अपीलार्थी हरकिशन ने मृतक पर घातक वार किया जिसके कारण टेम्पो-पैराइटल माग पर नीलगू चोट कारित हुई, चिकित्सक ने यह पाया कि घाव के नीचे की अस्थियाँ टूटी हुई थी तथा मस्तिष्क भी क्षतिग्रस्त पाया गया था, इस प्रकार सिर की चोट के कारण मृतक की मृत्यु हो गई — मृतक की मृत्यु के लिए हरकिशन उत्तरदायी था — आगे अभिनिर्धारित — वर्तमान प्रकरण में, क्षणिक आवेश पर झगड़े की शुरुआत हुई, इस प्रकार यह निष्कर्ष नहीं निकाला जा सकता कि हरकिशन का आशय मृतक की हत्या करने का था विशेष रूप से जब उसके द्वारा कोई घातक आयुध का उपयोग नहीं किया गया था एवं उसके विरुद्ध बार-बार हमला करने का कोई अभिकथन नहीं है — हरकिशन को धारा 302 के अंतर्गत गलत रूप से दोषसिद्ध किया गया, दोषसिद्धि को भारतीय दण्ड संहिता की धारा 304 भाग II में उपांतरित की गई — अपील अंशतः मंजूर। (भगवानलाल वि. म.प्र. राज्य) (DB)...1199

Penal Code (45 of 1860), Sections 302, 366(A), 363, 364, 376(2)(f)/511 & 201 – Facts – Minor girl aged 7 years kidnapped and after sexual abuse, throttled to death – Trial Court – Conviction & sentence u/S 302, 363, 364, 376(2)(f)/511 and 201 – Death Sentence – Reference to High Court – Confirmation – Challenged in appeal – Held – Not rarest of rare case – Conviction confirmed – Death sentence commuted into imprisonment for actual period of 25 years – Sentence modified – Appeal dismissed. [Tattu Lodhi @ Pancham Lodhi Vs. State of M.P.] (SC)...773

दण्ड संहिता (1860 का 45), धाराएँ 302, 366(ए), 363, 364, 376(2)(एफ)/511 व 201 – तथ्य – 7 वर्ष की आयु की अप्राप्तवय बालिका का व्यपहरण किया गया तथा लैंगिक दुराचार के पश्चात् गलां घोट कर मृत्यु कारित की गई – विचारण न्यायालय – धारा 302, 363, 364, 376(2)(एफ)/511 व 201 के अंतर्गत दोषसिद्धि एवं दण्डादेश – मृत्युदण्ड – उच्च न्यायालय को निर्देश – पुष्टि – अपील में चुनौती दी गई – अभिनिर्धारित – विरल से विरलतम प्रकरण नहीं – दोषसिद्धि की पुष्टि की गई – मृत्युदण्ड को 25 वर्षों की वास्तविक अवधि के कारावास में लघुकृत किया गया – दण्डादेश उपांतरित – अपील खारिज। (टट्टू लोधी उर्फ पंचम लोधी वि. म.प्र. राज्य) (SC)...773

*Penal Code (45 of 1860), Section 304-B, 498-A – See – Criminal Procedure Code, 1973, Section 378(3) & 372 [Vinod Kumar Sen Vs. Smt. Shanti Devi] (DB)...*85*

दण्ड संहिता (1860 का 45), धारा 304-बी, 498-ए — देखें — दण्ड प्रक्रिया संहिता, 1973, धारा 378(3) व 372 (विनोद कुमार सेन वि. श्रीमती शांती देवी) (DB)...*85

Penal Code (45 of 1860), Section 304-B/34 & 498-A and Evidence Act (1 of 1872), Section 113-B — Dowry death by burning within seven years of marriage — Presumption — Appreciation of Evidence — Conviction — Held — In appreciation of the entire evidence available on record, the prosecution evidence failed to prove beyond reasonable doubt that soon before the death of the deceased or after the marriage deceased was subjected to cruelty or harassment in relation to demand of bicycle in dowry by the present appellants and deceased appellant/accused, thus the trial Court erred in taking resort of Section 113-B of the Evidence Act — Prosecution remained unsuccessful to rule out the possibility of an accidental death of deceased — Trial Court remained unable to properly and legally analyze the prosecution evidence available on record, and totally over looked the material contradictions among the depositions of P.W. 2, P.W. 3 and P.W. 7 and material improvements and exaggerations introduced for the first time in their Court's evidence — Appellant is acquitted from the charge of Section 304-B/34 and 498-A of I.P.C. — Appeal allowed. [Suresh Kumar Vs. State of M.P.] ...902

दण्ड संहिता (1860 का 45), धारा 304-बी/34 व 498-ए एवं साक्ष्य अधिनियम (1872 का 1), धारा 113-बी — विवाह से 7 वर्षों के भीतर जलाकर दहेज मृत्यु — उपधारणा — साक्ष्य का मूल्यांकन — दोषसिद्धि — अभिनिर्धारित — अभिलेख पर उपलब्ध संपूर्ण साक्ष्य का मूल्यांकन करने पर, अभियोजन साक्ष्य युक्तियुक्त संदेह से परे यह साबित करने में असफल रहे कि मृत्यु से ठीक पूर्व या विवाह के पश्चात् मृतिका के साथ वर्तमान अपीलार्थीगण तथा मृतक अपीलार्थी/अभियुक्त द्वारा दहेज में साईकिल की मांग के संबंध में क्रूरता का व्यवहार या उत्पीड़न किया गया, इसलिए विचारण न्यायालय ने साक्ष्य अधिनियम की धारा 113-बी का सहारा लेकर त्रुटि की है — अभियोजन मृतिका की आकस्मिक मृत्यु की संभावना को खारिज करने में असफल रहा — विचारण न्यायालय अभिलेख पर उपलब्ध अभियोजन साक्ष्य का उचित व वैध रूप से विश्लेषण करने में असमर्थ रहा तथा अ.सा. 2, अ.सा. 3 एवं अ.सा. 7 के अभिसाक्ष्य में तात्त्विक विरोधामास एवं उनके न्यायालय के साक्ष्य में प्रथम बार प्रस्तावित तात्त्विक सुधारों तथा अतिशयोक्ति को पूर्ण रूप से अनदेखा किया — अपीलार्थी भारतीय दण्ड संहिता की धारा 304-बी/34 एवं 498-ए के आरोप से दोषमुक्त किया गया — अपील मंजूर। (सुरेश कुमार वि. म.प्र. राज्य) ...902

Penal Code (45 of 1860), Section 306 & 498-A – See – Criminal Procedure Code, 1973, Section 482 [Mahendra Singh Vs. State of M.P.]
...*80

दण्ड संहिता (1860 का 45), धारा 306 व 498-ए – देखें – दण्ड प्रक्रिया संहिता, 1973; धारा 482 (महेन्द्र सिंह वि. म.प्र. राज्य) ...*80

Penal Code (45 of 1860), Section 363 & 366 – Kidnapping/ Abduction – Quashment of F.I.R. – It was alleged that applicant has abducted the prosecutrix from lawful custody of her parents – Prosecutrix more than 18 years of age – Statement of prosecutrix that she had voluntarily accompanied the applicant as she was in love with the applicant and got married – Living as husband & wife for last six months – Held – It is amply clear that prosecutrix had voluntarily accompanied the applicant and she was major at the time of incident and she had married the applicant, so at this stage no useful purpose will be served if prosecution is permitted to proceed further and is allowed to file the charge sheet – F.I.R. registered against the applicant quashed – Application u/S 482 of Cr.P.C. allowed. [Raj Kumar Choudhary Vs. State of M.P.]
...*59

दण्ड संहिता (1860 का 45), धारा 363 व 366 – व्यपहरण/अपहरण – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – यह अभिकथन किया गया था कि आवेदक ने अभियोक्त्री का उसके माता-पिता की विधिपूर्ण अभिरक्षा से व्यपहरण किया – अभियोक्त्री की आयु 18 वर्ष से अधिक – अभियोक्त्री का कथन कि वह स्वेच्छापूर्वक आवेदक के साथ गई थी क्योंकि वह आवेदक से प्रेम करती थी और उन्होंने विवाह किया – पिछले छः माह से पति-पत्नी के रूप में रह रहे हैं – अभिनिर्धारित – यह पर्याप्त रूप से स्पष्ट है कि अभियोक्त्री स्वेच्छापूर्वक आवेदक के साथ गई और घटना के समय वह वयस्क थी तथा उसने आवेदक से विवाह किया था, अतः इस प्रक्रम पर कोई उपयोगी प्रयोजन पूरा नहीं होगा यदि अभियोजन को आगे कार्यवाही करने की अनुमति दी जाती है और आरोप पत्र प्रस्तुत करने के लिए मंजूरी दी जाती है – आवेदक के विरुद्ध पंजीबद्ध प्रथम सूचना प्रतिवेदन अभिखंडित – द.प्र.सं. की धारा 482 के अंतर्गत आवेदन मंजूर। (राज कुमार चौधरी वि. म.प्र. राज्य) ...*59

Penal Code (45 of 1860), Section 420/34 – Essentials – Distinction between breach of contract and offence of cheating is very fine – It depends on the intention of the accused at the very inception which may be judged by his subsequent conduct – Mere failure to keep

the promise at the subsequent stage may not be an offence u/S 420 IPC – Accused persons obtaining Rs. 50 lacs from complainant on the pretext of executing a sale deed in his favour and subsequently eloping from their residence and shutting off their mobiles clearly shows that they want to hide their whereabouts from the complainant – It cannot be said that it is a case of purely civil nature – FIR *prima facie* discloses the commission of cognizance offence and cannot be quashed at this stage where investigation is still in progress – Application dismissed. [Rahul Mathur Vs. State of M.P.] ...*57

दण्ड संहिता (1860 का 45), धारा 420/34 – आवश्यक घटक – संविदा का मंग और छल के अपराध के बीच में विभेद बहुत सूक्ष्म है – यह अभियुक्त के एकदम शुरुआत के आशय पर निर्भर होता है जिसे उसके पश्चात्पूर्ती आचरण द्वारा परखा जा सकता है – पश्चात्पूर्ती प्रक्रम पर मात्र वचन पर कायम रहने में विफलता, भा.दं.सं. की धारा 420 के अंतर्गत अपराध नहीं हो सकता – अभियुक्तों द्वारा शिकायतकर्ता से उसके पक्ष में विक्रय विलेख निष्पादित करने के बहाने रुपये 50 लाख प्राप्त करना और तत्पश्चात् अपने निवास स्थान से भाग जाना एवं अपने मोबाईल बंद करना स्पष्ट रूप से दर्शाता है कि वे शिकायतकर्ता से अपने ठिकाने को छुपाना चाहते हैं – यह नहीं कहा जा सकता कि यह शुद्ध रूप से सिविल स्वरूप का प्रकरण है – प्रथम दृष्ट्या, प्रथम सूचना रिपोर्ट संज्ञेय अपराध कारित होना प्रकट करती है और इस प्रक्रम पर जहाँ अन्वेषण अभी प्रगति पर है, इसे अभिखंडित नहीं किया जा सकता – आवेदन खारिज। (राहुल माथुर वि. म.प्र. राज्य) ...*57

*Penal Code (45 of 1860), Sections 420, 467, 468 & 471 – See – Criminal Procedure Code, 1973, Section 482 [Haji Nanhe Khan Vs. State of M.P.] ...*69*

दण्ड संहिता (1860 का 45), धाराएँ 420, 467, 468 व 471 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (हाजी नन्हे खान वि. म.प्र. राज्य) ...*69

Penal Code (45 of 1860), Section 498-A – Reconciliation proceeding – Husband of the complainant submitted a written complaint in which he has already expressed his apprehension about the conduct of his wife – It is the duty of the investigation officer to objectively consider the factum of reconciliation proceeding if any going on between the parties as well as the apprehension of husband and/ or his relatives reflected through some complaint made to police authorities. [Saurabh Tripathi Vs. State of M.P.] ...1000

दण्ड संहिता (1860 का 45), धारा 498-ए – सुलह की कार्यवाही – परिवादी

के पति ने लिखित शिकायत प्रस्तुत की जिसमें उसने पहले ही अपनी पत्नी के आचरण संबंधी आशंका व्यक्त की है - यह विवेचना अधिकारी का कर्तव्य है कि वह पक्षकारों के बीच सुलह की कार्यवाही, यदि कोई हो तथा साथ ही पति एवं/अथवा उसके रिश्तेदारों की आशंका जो कि पुलिस प्राधिकारियों को शिकायत के जरिए दर्शाई गई है, के तथ्य को वस्तुनिष्ठ रूप से विचार में लें। (सौरभ त्रिपाठी वि. म. प्र. राज्य) ...1000

Penal Code (45 of 1860), Section 498-A/34 - See - Criminal Procedure Code, 1973, Section 482 [Rajesh Kumar Gupta Vs. State of M.P.] ...989

दण्ड संहिता (1860 का 45), धारा 498-ए/34 - देखें - दण्ड प्रक्रिया संहिता, 1973, धारा 482 (राजेश कुमार गुप्ता वि. म.प्र. राज्य) ...989

Penal Code (45 of 1860), Sections 498-A, 323 & 506/34 - See - Criminal Procedure Code, 1973, Section 482 [Saurabh Tripathi Vs. State of M.P.] ...1000

दण्ड संहिता (1860 का 45), धाराएँ 498-ए, 323 व 506/34 - देखें - दण्ड प्रक्रिया संहिता, 1973, धारा 482 (सौरभ त्रिपाठी वि. म.प्र. राज्य) ...1000

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), Section 47 and Indian Railway Medical Manual (IRMM), Volume 1, 2000 (III Edition), Para 504, 532(i) & 539(a) - Promotion - Colour Blindness - Respondent, who qualified in written test conducted through Limited Departmental Competitive Examination (LDCE) for selection for the post of Assistant Commercial Manager (Group 'B' Post), was rejected on the ground that he was suffering from colour blindness - He filed application before the Central Administrative Tribunal whereby his application was allowed and petitioners were directed to convene a review viva-voce to consider the case of respondent against 30% quota, irrespective of his visual standards (colour blindness) - Challenge to - Held - Duties of ACM includes matter related to coach goods and claims etc and further looking to the organizational chart, it is clear that Group 'B' post of Assistant Commercial Manager is a commercial post and is not a technical/safety post and therefore rejection for promotion of petitioner to the post of ACM on the ground of colour blindness is bad in law - No error committed by the Tribunal - Petition dismissed with cost of Rs. 5000. [General Manager, Union of India

Vs. Moses Benjamin]

(DB)...1110

निःशक्त व्यक्ति (समान अवसर, अधिकार संरक्षण और पूर्ण मागीदारी) अधिनियम, 1995 (1996 का 1), धारा 47 एवं भारतीय रेल चिकित्सा निर्देशिका (IRMM), भाग-1, 2000 (III संस्करण), कंडिका 504, 532(i) व 539(ए) - पदोन्नति - वर्णान्धता - प्रत्यर्थी, जिसने सहायक वाणिज्य प्रबंधक (समूह 'बी' पद) के पद हेतु चयन के लिए सीमित विभागीय प्रतियोगी परीक्षा (एल.डी.सी.ई.) द्वारा संचालित की गई लिखित परीक्षा में अर्हता प्राप्त की, उसे इस आधार पर अस्वीकार किया गया कि वह वर्णान्धता से ग्रसित था - उसने केन्द्रीय प्रशासनिक अधिकरण के समक्ष आवेदन प्रस्तुत किया जिसने उसके आवेदन को मंजूर किया तथा याचीगण को 30% कोटा के विरुद्ध प्रत्यर्थी के प्रकरण का विचार करने के लिए, उसके दृष्टि मानकों (वर्णान्धता) को विचार में लिए बिना पुनर्विलोकन साक्षात्कार संयोजित करने के लिए निदेशित किया - को चुनौती - अभिनिर्धारित - सहायक वाणिज्य प्रबंधक के कर्तव्यों में रेल डिब्बा माल व दावों इत्यादि के संबंध में मामले शामिल होते हैं और इसके अतिरिक्त, संगठन चार्ट को देखते हुए यह स्पष्ट है कि समूह 'बी' का सहायक वाणिज्य प्रबंधक का पद एक वाणिज्यिक पद है और न कि तकनीकी/सुरक्षा पद और इसलिए वर्णान्धता के आधार पर याची को सहायक वाणिज्य प्रबंधक के पद पर पदोन्नति के लिए नामंजुरी, विधि की दृष्टि में अनुचित है - अधिकरण द्वारा कोई त्रुटि कारित नहीं की गई - याचिका, रु. 5000 के खर्च के साथ खारिज। (जनरल मेनेजर, यूनियन ऑफ इंडिया वि. मोसेस बेन्जामिन) (DB)...1110

Pleading and Proof - At the time of scrutiny, no objection was taken to the effect that returned candidate was not qualified to contest election as he was not a voter of any assembly constituency and returned candidate was ineligible to participate in the election having not furnished the electoral roll/certified copy of the constituency in which he was a voter - There was no pleading to the effect that the appellant was not a voter of any assembly constituency and therefore he was not qualified - Held - Trial of an election petition has to be in accordance with the provisions of the Civil Procedure Code 1908 - When no pleadings were made that election of the returned candidate was void on the grounds mentioned u/S 100(1)(a) and no issue on the same was struck and no opportunity was availed to returned candidate to adduce relevant evidence, High Court could not have found that election of returned candidate was void u/S 100(1)(a) - Finding of the High Court that the election petitioner had made out a case for declaration that the election of returned candidate was void u/S 100(1)(a) cannot be upheld - Appeal allowed - Election of appellant/

returned candidate declared valid in law. [Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma] (SC)...779

अभिवचन एवं सबूत — संविधा के समय इस प्रभाव का कोई आक्षेप नहीं लिया गया कि निर्वाचित प्रत्याशी निर्वाचन लड़ने के लिए अर्हित नहीं था क्योंकि वह किसी विधान सभा निर्वाचन क्षेत्र का मतदाता नहीं था एवं निर्वाचित प्रत्याशी निर्वाचन में भाग लेने के लिए अपात्र था क्योंकि उसने उस निर्वाचन क्षेत्र जिसमें वह मतदाता था की निर्वाचक नामावली की प्रमाणित प्रति प्रस्तुत नहीं की। — इस प्रभाव का कोई अभिवचन नहीं था कि अपीलार्थी किसी विधान सभा निर्वाचन क्षेत्र का मतदाता नहीं था और इसलिए वह अर्हित नहीं था — अभिनिर्धारित — निर्वाचन याचिका का विचारण, सिविल प्रक्रिया संहिता, 1908 के उपबंधों के अनुसार होना चाहिए — जब कोई अभिवचन नहीं किये गये थे कि निर्वाचित प्रत्याशी का निर्वाचन, धारा 100(1)(ए) में उल्लिखित आधारों पर शून्य था एवं उक्त पर कोई विवाद नहीं बनाया गया था तथा निर्वाचित प्रत्याशी को सुसंगत साक्ष्य प्रस्तुत करने का अवसर प्रदान नहीं किया गया था, उच्च न्यायालय यह निष्कर्ष नहीं निकाल सकता कि निर्वाचित प्रत्याशी का निर्वाचन धारा 100(1)(ए) के अंतर्गत शून्य था — उच्च न्यायालय का निष्कर्ष कि निर्वाचन याचिका ने निर्वाचित प्रत्याशी का निर्वाचन, धारा 100(1)(ए) के अंतर्गत शून्य घोषित किये जाने के लिए प्रकरण साबित किया है, की पुष्टि नहीं की जा सकती — अपील मंजूर — अपीलार्थी/निर्वाचित प्रत्याशी का निर्वाचन विधिमान्य घोषित किया गया। (राजेन्द्र कुमार मेश्राम वि. वंशमणी प्रसाद वर्मा) (SC)...779

Practice – Application for intervention – Held – In the instant appeal, Trust filed an application to intervene on the ground that as a changed circumstances, trust has now been registered – Held – Order of Registrar was held to be void and illegal and this issue has already been decided in favour of appellant on the ground that Trust was already revoked by the deed executed by Birdi Bai during her lifetime and such revocation was upheld by this Court in F.A. No. 22/1997 – Hence, Trust is not in existence and thus there is no change in circumstances, trust is not allowed to intervene in this appeal – Application dismissed. [Manjula Bai Vs. Premchand] ...1119

पद्धति – मध्यक्षेप हेतु आवेदन — अभिनिर्धारित — वर्तमान अपील में, न्यास ने इस आधार पर मध्यक्षेप हेतु एक आवेदन प्रस्तुत किया कि परिवर्तित परिस्थितियों के अनुसार, न्यास अब रजिस्ट्रीकृत हो चुका है — अभिनिर्धारित — रजिस्ट्रार का आदेश शून्य और अवैध अभिनिर्धारित किया गया था एवं यह विवाद इस आधार पर पहले ही अपीलार्थी के पक्ष में विनिश्चित किया जा चुका है कि न्यास पहले ही बिरडी बाई द्वारा उसके जीवन काल में निष्पादित किये गये विलेख द्वारा प्रतिसंहृत किया

जा चुका था एवं ऐसे प्रतिसंहरण की इस न्यायालय द्वारा एफ.ए. क्रं. 22/1997 में पुष्टि की गई - इस कारण से, न्यास अस्तित्व में नहीं है एवं इसलिए परिस्थितियों में कोई परिवर्तन नहीं है, न्यास को इस अपील में मध्यक्षेप की मंजूरी नहीं दी गई - आवेदन खारिज। (मंजुला बाई वि. प्रेमचन्द्र) ...1119

Practice - Civil - Consolidation of Suits - Provision and Purpose - Held - Though the consolidation of suits is not specifically provided in Civil Procedure Code as applicable to the State of M.P, it may be achieved by invoking Section 151 of CPC - Basic purpose for directing consolidation of suits is to firstly avoid conflicting judgments and secondly to save valuable time, energy and money by clubbing the cases together, involving common questions. [Udayraj Vs. Dinesh Chandra Bansal] ...1116

पद्धति - सिविल - वादों का समेकन - उपबंध एवं प्रयोजन - अभिनिर्धारित - यद्यपि म.प्र. राज्य हेतु यथाप्रयोज्य सिविल प्रक्रिया संहिता में वादों का समेकन विनिर्दिष्ट रूप से उपबंधित नहीं, इसे सि.प्र.सं. की धारा 151 के अवलंब द्वारा प्राप्त किया जा सकता है - वादों का समेकन निदेशित किये जाने हेतु मूल प्रयोजन प्रथमतः अंतर्विरोधी निर्णयों से बचना है और द्वितीयतः समान प्रश्न से अंतर्गसित प्रकरणों को एक साथ संयोजित कर मूल्यवान समय, उर्जा व धन बचाना है। (उदयराज वि. दिनेश चन्द्र बंसल) ...1116

Practice - Criminal Trial - Testimony of Police Officer & Newspaper Publication - Evidentiary Value - Held - Testimony of Police Officer cannot be thrown overboard only on the ground that he is a police officer - If testimony of police officer, on due appreciation is found to be trustworthy and free from material contradictions and anomalies, nothing prevents in law in recording conviction on the basis of such evidence - Publication of news item in newspaper carries no evidentiary value in absence of testimony of reporter, news correspondent or editor of the newspaper. [Mohd. Nayan Choudhary Vs. State of M.P.] (DB)...1191

पद्धति - दण्डिक विचारण - पुलिस अधिकारी एवं समाचार पत्र प्रकाशन का परिसाक्ष्य - साक्ष्यक मूल्य - अभिनिर्धारित - पुलिस अधिकारी के परिसाक्ष्य को केवल इस आधार पर अस्वीकार नहीं किया जा सकता कि वह एक पुलिस अधिकारी है - यदि सम्यक् मूल्यांकन पर, पुलिस अधिकारी का साक्ष्य विश्वसनीय एवं तात्विक विरोधाभासों एवं असंगतियों से मुक्त पाया जाता है, तब उक्त साक्ष्य के आधार पर दोषसिद्धि अभिलिखित करने के लिए विधि में कोई प्रतिषेध नहीं - समाचार पत्र के

समाचार दाता, संवाददाता या संपादक के परिसाक्ष्य की अनुपस्थिति में समाचार पत्र में प्रकाशित समाचार कोई साक्ष्यिक मूल्य नहीं रखता। (मोहम्मद नयन चौधरी वि. म.प्र. राज्य) (DB)...1191

Practice – Second Recommendation – Held – Dental Council of India was very well aware of the fact that such a recommendation has already been rejected by the Central Government and the matter has been concluded by the High Court as well as by the Supreme Court – At no point of time, D.C.I. sought permission of the High Court to move second recommendation to Central Government – Stand and conduct of D.C.I. is highly deprecated. [Association of Private Dental and Medical Colleges Vs. Union of India] (DB)...1508

पद्धति – दूसरी सिफारिश – अभिनिर्धारित – भारतीय दन्त चिकित्सा परिषद् भली-भाँति इस तथ्य से अवगत था कि इस प्रकार की सिफारिश पहले ही केन्द्र सरकार द्वारा नामंजूर की जा चुकी है एवं मामला उच्च न्यायालय के साथ-साथ उच्चतम न्यायालय द्वारा भी समाप्त किया जा चुका है – भारतीय दन्त चिकित्सा परिषद् ने समय के किसी बिन्दु पर केन्द्र सरकार को दूसरी सिफारिश भेजने के लिए उच्च न्यायालय की अनुमति नहीं चाही है – भारतीय दन्त चिकित्सा का कदम एवं आचरण अत्याधिक निन्दनीय है। (एसोसिएशन ऑफ प्राइवेट डेंटल एण्ड मेडिकल कॉलेजेस वि. यूनियन ऑफ इंडिया) (DB)...1508

Practice – Validity of Order – Held – It is well settled proposition of law that validity of an order has to be judged only on the basis of contents of order and not by any reason supplemented in the return/ affidavits filed by the State in support of the order. [The Malwa Vanaspati & Chemicals Co. Ltd. Vs. State of M.P.] ...1063

पद्धति – आदेश की विधिमान्यता – अभिनिर्धारित – यह विधि की सुस्थापित प्रतिपादना है कि एक आदेश की विधिमान्यता का निर्णय केवल आदेश की अंतर्वस्तु के आधार पर किया जाना होता है और न कि राज्य द्वारा आदेश के समर्थन में प्रस्तुत रिटर्न/शपथपत्रों में अनुपूरक किसी कारण द्वारा। (द मालवा वनस्पति एण्ड केमिकल्स कं. लि. वि. म.प्र. राज्य) ...1063

Practice – Writ Jurisdiction – Held – Remedy of writ cannot be used for declaration of private rights of the parties or enforcement of their contractual rights and obligations. [Satya Pal Anand Vs. State of M.P.] (SC)...1015

पद्धति – रिट अधिकारिता – अभिनिर्धारित – रिट के उपचार का उपयोग,

पक्षकारों के व्यक्तिगत अधिकारों की घोषणा या उनके संविदात्मक अधिकारों एवं बाध्यताओं के प्रवर्तन हेतु नहीं किया जा सकता। (सत्यपाल आनंद वि. म.प्र. राज्य) (SC)...1015

Practice and Procedure – Although there is no occasion of any clash or contradiction between the provisions of Section 69(2) of the Partnership Act, 1932 and Order 30 of the Civil Procedure Code, it is settled law that special enactment prevails upon the general law – The law relating to procedure gives way to substantive provisions of law – Provisions of Partnership Act shall supersede upon the provisions of Civil Procedure Code. [Vijay Kumar Vs. M/s. Shriram Industries] ...937

पद्धति एवं प्रक्रिया – यद्यपि भागीदारी अधिनियम, 1932 की धारा 69(2) एवं सिविल प्रक्रिया संहिता के आदेश 30 के उपबंधों में कोई टकराव या विरोधाभास का अवसर नहीं है, यह एक सुस्थापित विधि है कि विशेष अधिनियमिति, सामान्य विधि पर अधिमावी होती है – प्रक्रिया से संबंधित विधि, विधि के सारमूल उपबंधों को रास्ता देती है – भागीदारी अधिनियम के उपबंध सिविल प्रक्रिया संहिता के उपबंधों पर अधिष्ठित होंगे। (विजय कुमार वि. मे. श्रीराम इंडस्ट्रीज) ...937

Practice and Procedure – Criminal Procedure Code, 1973 (2 of 1974), Section 193 & 194 – Jurisdiction – Irregularity/Procedural Lapse – Offence u/S 342, 354 and 377 IPC was registered – Case, after committal was tried by Additional Sessions Judge – On the date of judgment, matter was returned back to Sessions Judge on the ground that Court of Additional Sessions Judge is not the designated Court under the Act of 2005 – Case was further remanded to the Magistrate for re-committal – Held – Once cognizance has been taken by Sessions Judge there is no need to send back the case to Magistrate for recalling his earlier order of committal and ask him to recommit – Since Additional Sessions Judge is competent to exercise jurisdiction of Sessions Court, therefore he is competent to try a case made over for consideration even though it is triable by some designated Court – In such a situation, trial by Additional Sessions Judge is not illegal but could be an irregularity or error which may attract Section 465 CrPC – Further held – Additional Sessions Judge retransmitted the case to Sessions Judge then, being the designated Court, the Sessions Judge could have tried the matter instead of remanding back the case for recommitment – Trial will not be vitiated by a mere irregularity or error unless it is shown that there is a failure of justice on account of said

irregularity or error – No need for de-novo trial. [In Reference Vs. Jitendra] ...1223

पद्धति व प्रक्रिया – दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 193 व 194 – अधिकारिता – अनियमितता/प्रक्रियात्मक गलती – भा.दं.सं. की धारा 342, 354 व 377 के अंतर्गत अपराध पंजीबद्ध किया गया था – उपार्पण पश्चात्, प्रकरण का विचारण अतिरिक्त सत्र न्यायाधीश द्वारा किया गया था – निर्णय की तिथि को मामला सत्र न्यायाधीश को इस आधार पर प्रतिप्रेषित किया गया कि अतिरिक्त सत्र न्यायाधीश का न्यायालय, 2005 के अधिनियम के अंतर्गत नामनिर्दिष्ट न्यायालय नहीं है – प्रकरण को पुनः उपार्पण हेतु मजिस्ट्रेट को प्रतिप्रेषित किया गया था – अभिनिर्धारित – एक बार सत्र न्यायाधीश द्वारा संज्ञान लिये जाने पर, मजिस्ट्रेट को अपना पूर्वतर उपार्पण आदेश वापस लेने हेतु प्रकरण प्रतिप्रेषित करने तथा उसे पुनः उपार्पित करने को कहने की कोई आवश्यकता नहीं – चूंकि सत्र न्यायालय की अधिकारिता का प्रयोग करने के लिए अतिरिक्त सत्र न्यायाधीश सक्षम है, अतः वह उसे विचार किये जाने हेतु अग्रेषित प्रकरण का विचारण करने के लिए सक्षम है यद्यपि वह किसी नामनिर्दिष्ट न्यायालय द्वारा विचारणीय है – उक्त स्थिति में, अतिरिक्त सत्र न्यायाधीश द्वारा विचारण अवैध नहीं अपितु वह अनियमितता या त्रुटि हो सकती है जो धारा 465 दं.प्र.सं. को आकर्षित कर सकती है – आगे अभिनिर्धारित – अतिरिक्त सत्र न्यायाधीश ने प्रकरण को सत्र न्यायाधीश को पुनः सौंपा तब नामनिर्दिष्ट न्यायालय होने के नाते सत्र न्यायाधीश पुनः उपार्पण हेतु मामला प्रतिप्रेषित करने के बजाय विचारण कर सकता था – विचारण मात्र अनियमितता या त्रुटि द्वारा दूषित नहीं होगा जब तक कि यह दर्शाया न जाए कि उक्त अनियमितता या त्रुटि के कारण न्याय हानि हुई है – नये सिरे से विचारण की कोई आवश्यकता नहीं। (इन रेफ्रेन्स वि. जितेन्द्र) ...1223

Practice and Procedure – Criminal Trial – Marking Exhibit on Document – Effect – Revision against refusal by trial Court in granting permission to mark exhibit on the document produced by the handwriting expert during his evidence – Held – Applicant facing trial u/S 307/149, 147, 148 & 506 IPC – Handwriting expert took into consideration certain documents for natural handwriting of the applicant – State as well as applicant has a right to examine and cross-examine the expert on these documents – Merely by putting exhibit marks on the documents would not mean that these documents would be read in evidence – Documents are to be proved as per the Evidence Act and till they are not proved they cannot be read in evidence – Burden is on applicant to prove the documents but at this stage putting exhibit marks on documents will not harm the opposite party – Additional Sessions Judge erred in

disallowing the applicant to mark exhibit on documents – Impugned order set aside – Documents used by handwriting expert are allowed to be marked exhibit in the case – Revision allowed. [Sunil Vs. State of M.P.]
...1234

पद्धति एवं प्रक्रिया – दाण्डिक विचारण – दस्तावेज पर प्रदर्श चिन्हित किया जाना – प्रभाव – हस्तलेख विशेषज्ञ द्वारा अपने साक्ष्य के दौरान प्रस्तुत किये गये दस्तावेज पर विचारण न्यायालय द्वारा प्रदर्श चिन्हित करने की अनुमति प्रदान करने से इंकार किये जाने के विरुद्ध पुनरीक्षण – अभिनिर्धारित – आवेदक, भा.दं.सं. की धारा 307/149, 147, 148 व 506 के अंतर्गत विचारण का सामना कर रहा है – हस्तलेख विशेषज्ञ ने आवेदक के नैसर्गिक हस्तलेख हेतु कतिपय दस्तावेज विचार में लिए – राज्य के साथ-साथ आवेदक को भी इन दस्तावेजों पर विशेषज्ञ के परीक्षण एवं प्रतिपरीक्षण का अधिकार है – दस्तावेजों पर मात्र प्रदर्श चिन्हित करने का यह अर्थ नहीं होगा कि इन दस्तावेजों को साक्ष्य में पढ़ा जाएगा – दस्तावेजों को साक्ष्य अधिनियम के अनुसार साबित किया जाना होता है और जब तक उन्हें साबित नहीं किया जाता, उन्हें साक्ष्य में पढ़ा नहीं जा सकता – दस्तावेजों को सिद्ध करने का भार आवेदक पर है परंतु इस प्रक्रम पर दस्तावेजों पर प्रदर्श चिन्हित करने से विरोधी पक्षकार को हानि नहीं होगी – अतिरिक्त सत्र न्यायाधीश ने आवेदक को दस्तावेजों पर प्रदर्श चिन्हित करने की अनुमति नहीं देने में त्रुटि की – आक्षेपित आदेश अपास्त – हस्तलेख विशेषज्ञ द्वारा प्रयुक्त दस्तावेजों को प्रकरण में प्रदर्श चिन्हित करने की अनुमति दी गई – पुनरीक्षण मंजूर। (सुनील वि. म.प्र. राज्य)
...1234

Practice and Procedure – Jurisdiction of Court – Similar matter pending at the Principal Bench – Held – Court is not bound to await decision by a coordinate bench at the Principal Seat in matter of similar nature – For sake of maintaining judicial discipline, question of awaiting decision would only arise when the said similar matter is pending before a higher Court and not before a court of coordinate jurisdiction. [Shri Ramnath Singh Homoeopathic Medical College Vs. Union of India] (DB)...1379

पद्धति एवं प्रक्रिया – न्यायालय की अधिकारिता – मुख्यपीठ में समान मामला लंबित – अभिनिर्धारित – मुख्यपीठ में समान स्वरूप के मामले के समकक्ष न्यायपीठ द्वारा विनिश्चय की प्रतीक्षा करने के लिए न्यायालय बाध्य नहीं है – न्यायिक अनुशासन बनाये रखने हेतु, विनिश्चय की प्रतीक्षा का प्रश्न केवल तब उत्पन्न होगा जब कथित समान मामला उच्चतर न्यायालय के समक्ष लंबित है और न कि समकक्ष अधिकारिता के न्यायालय के समक्ष। (श्री रामनाथ सिंह होम्योपैथिक मेडिकल कॉलेज वि. यूनियन ऑफ इंडिया)
(DB)...1379

Prevention of Corruption Act (49 of 1988), Section 3 & 4 – Jurisdiction of Special Court to frame the charges against the persons other than public servants for offences falling under IPC or any other law for the time being in force when it had discharged the other co-accused persons who were the public servants – Held – No charge of any conspiracy was framed against any of the non-public servants coupled with any of the sections of the Prevention of Corruption Act – It is also not a case where the public servant had died after framing of charges against all accused persons whereas public servants have been discharged – Wrong interpretation of the ratio laid down in the case of Jitendra Kumar Singh and failure in analysing the import of Prevention of Corruption Act itself – Impugned orders were quashed – Special Court is directed to remit the charge sheet to Chief Judicial Magistrate to proceed in accordance with law. [K.L. Sahu Vs. State of M.P.] (DB)...959

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 3 व 4 – मा.दं.सं. अथवा वर्तमान समय प्रभावी किसी अन्य विधि के अंतर्गत आने वाले अपराधों के लिए लोक सेवकों के अतिरिक्त व्यक्तियों के विरुद्ध आरोप विरचित करने की विशेष न्यायालय की अधिकारिता जबकि उसने अन्य सह अभियुक्तों को आरोपमुक्त किया था जो कि लोक सेवक थे – अभिनिर्धारित – किसी गैर-लोक सेवक के विरुद्ध, कोई षड्यंत्र का आरोप भ्रष्टाचार निवारण अधिनियम की किसी धारा के साथ विरचित नहीं किया गया था – यह ऐसा प्रकरण भी नहीं जहां सभी अभियुक्तगण के विरुद्ध आरोप विरचित किये जाने के पश्चात् लोक सेवक की मृत्यु हुई थी जबकि लोक सेवकों को आरोपमुक्त किया गया था – जितेन्द्र कुमार सिंह के प्रकरण में प्रतिपादित आधार का गलत निर्वचन एवं भ्रष्टाचार निवारण अधिनियम के प्रयोजन का विश्लेषण करने में विफलता – आक्षेपित आदेश अभिखंडित – विशेष न्यायालय को आरोपपत्र मुख्य न्यायिक दण्डाधिकारी को विधिनुसार कार्यवाही करने के लिए प्रतिप्रेषित करने का निदेश दिया गया। (के.एल. साहू वि. म.प्र. राज्य) (DB)...959

Prevention of Corruption Act (49 of 1988), Section 7 & 13(1)(d) r/w 13(2) – Conviction – Testimony of Complainant – Demand of illegal gratification by a police officer – Held – There are material contradictions and omissions between complainant's version and the prosecution witnesses – Rojnamcha entries also did not support the prosecution case – Complainant himself has a criminal background and has been twice prosecuted, once u/S 456, 294 & 506 IPC and secondly u/S 392 & 397 IPC and from the record it appears that complainant came from jail to record his evidence in the present case and in such

circumstances it is unsafe to rely upon his evidence – Voices in the audio cassette were inaudible – Looking to the evidence on record there is a strong possibility of false implication of accused by the complainant – Trial Court committed gross error in holding that prosecution has proved the case beyond reasonable doubt – Demand of illegal gratification by the accused is not proved – Conviction and sentence unsustainable in law and is hereby set aside. [Archana Nagar (Ku.) Vs. State of M.P.] (DB)...1162

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 7 व 13(1)(डी) सहपठित 13(2) – दोषसिद्धि – परिवादी का परिसाक्ष्य – एक पुलिस अधिकारी द्वारा अवैध परितोषण की मांग – अभिनिर्धारित – परिवादी के कथन और अभियोजन साक्षियों के बीच तात्त्विक विरोधाभास एवं लोप है – रोजनामचा प्रविष्टियां भी अभियोजन प्रकरण का समर्थन नहीं करती – स्वयं परिवादी की आपराधिक पृष्ठभूमि है और उसे दो बार अभियोजित किया गया है, एक बार धारा 456, 294 व 506 भा.दं.सं. के अंतर्गत और दूसरी बार धारा 392 व 397 भा.दं.सं. के अंतर्गत तथा अभिलेख से यह प्रकट होता है कि वर्तमान प्रकरण में परिवादी अपना साक्ष्य अमिलिखित कराये जाने हेतु कारागृह से आया था एवं ऐसी परिस्थितियों में उसके साक्ष्य पर विश्वास करना असुरक्षित है – ऑडियो कैसेट में आवाजें अश्रव्य हैं – अभिलेख पर साक्ष्य को देखते हुए परिवादी द्वारा अभियुक्त की मिथ्या आलिप्ति की प्रबल संभावना है – विचारण न्यायालय ने यह धारणा करने में घोर त्रुटि कारित की कि अभियोजन ने प्रकरण को युक्तियुक्त संदेह से परे साबित किया है – अभियुक्त द्वारा अवैध परितोषण की मांग साबित नहीं होती – दोषसिद्धि एवं दण्डादेश, विधि में कायम रखे जाने योग्य नहीं एवं एतद् द्वारा अपास्त। (अर्चना नागर (कुमारी) वि. म.प्र. राज्य) (DB)...1162

Prevention of Corruption Act (49 of 1988), Section 7 & 13(2) – Complainant turning hostile – Effect – Even if the complainant has turned hostile, part of his statement which supports the prosecution story can be relied on – For proving the offence u/S 7 and 13(1)(d) of the Act, both demand and acceptance need to be proved but if complainant turned hostile, it can also be proved by circumstantial or other oral documentary evidence – Evidence of the hostile witness cannot be rejected merely because he has been declared hostile and such evidence does not become effaced from the record – Relevant portion of evidence of hostile witness can be used at least to corroborate the evidence of other independent witnesses – In the present case, FSL report of hand wash, trouser wash and note wash clearly indicates the recovery of bribe money – Basic ingredients i.e. Demand of bribe, its acceptance and recovery of currency notes,

required to prove the offence, stands duly proved beyond reasonable doubt – Ocular testimony of prosecution witnesses has been duly corroborated by the documentary evidence – Based on the facts and evidence, a legitimate presumption can be drawn that appellant has received or accepted the said currency notes on his own volition – Trial Court rightly convicted the appellant – Appeal dismissed. [Rajesh Khatik Vs. State of M.P.] (DB)...924

अष्टाचार निवारण अधिनियम (1988 का 49), धारा 7 व 13(2) – परिवादी का पक्षद्रोही हो जाना – प्रभाव – यद्यपि परिवादी पक्षद्रोही हो चुका है, उसके कथनों का वह भाग जो अभियोजन कहानी का समर्थन करता है उस पर विश्वास किया जा सकता है – अधिनियम की धारा 7 एवं 13(1)(डी) के अंतर्गत अपराध को साबित करने हेतु, मांग एवं प्रतिग्रहण दोनों को साबित करने की आवश्यकता है, परंतु यदि परिवादी पक्षद्रोही हो चुका है, तो इसे परिस्थितिजन्य या अन्य मौखिक दस्तावेजी साक्ष्य द्वारा भी साबित किया जा सकता है – पक्षद्रोही साक्षी का साक्ष्य मात्र इसलिए अस्वीकार नहीं किया जा सकता कि उसे पक्षद्रोही घोषित कर दिया गया है तथा ऐसे साक्ष्य अभिलेख पर से मिटने वाले नहीं होते हैं – पक्षद्रोही साक्षी के साक्ष्य का सुसंगत भाग को कम से कम अन्य स्वतंत्र साक्षीगण के साक्ष्य की संपुष्टि करने हेतु उपयोग किया जा सकता है – वर्तमान प्रकरण में, हाथ, पतलून और नोट के धोवन की एफ.एस.एल. रिपोर्ट, स्पष्ट रूप से रिश्वत के रुपये की बरामदगी इंगित करती है – आधारभूत घटक अर्थात् रिश्वत की मांग, उसका प्रतिग्रहण तथा करेंसी नोट की बरामदगी जो अपराध साबित करने के लिए अपेक्षित है, युक्तियुक्त संदेह से परे सम्यक् रूप से साबित होते हैं – अभियोजन साक्षीगण की चाक्षुष परिसाक्ष्य को दस्तावेजी साक्ष्य द्वारा सम्यक् रूप से अभिपुष्ट किया गया है – तथ्य एवं साक्ष्य के आधार पर विधिसम्मत उपधारणा निकाली जा सकती है कि अपीलार्थी ने उसकी स्वेच्छा से उक्त करेंसी नोट को अभिप्राप्त अथवा प्रतिग्रहीत किया है – विचारण न्यायालय ने अपीलार्थी को उचित रूप से दोषसिद्ध किया – अपील खारिज। (राजेश खटीक वि. म.प्र. राज्य) (DB)...924

Prevention of Corruption Act (49 of 1988), Sections 13(1)(d), 13(2) & 19 and Penal Code (45 of 1860), Sections 218, 466, 471, 474 & 120-B – Sanction for Prosecution – Petition against dismissal of application u/S 19 of the Act of 1988 filed by the petitioner/accused seeking his discharge on the ground that at the time of filing of charge sheet, he was a Corporator of Indore Municipal Corporation and being a public servant, sanction as required for his prosecution was not taken by the respondents – Held – U/S 19 of the Act of 1988, question of obtaining sanction is relatable to the time of holding of office when

offence was alleged to have been committed and in case when the person is not holding the said office as he might have retired, superannuated, discharged or dismissed then the question of sanction would not arise – In the instant case, petitioner was an elected Corporator from 2000 to 2005 and this term came to end by efflux of time – Simply because he was again elected as Corporator in February 2015, will not go to relate back his position as Corporator in the year 2000 to the same post – Subsequent election in 2015 was not by virtue of his holding the office of Corporator due to his election in the year 2000 rather it was on account of his fresh mandate, therefore two offices were different for the purpose of prosecution – No sanction required – Petition dismissed. [Suraj Kero Vs. State of M.P.] (DB)...1237

ग्रन्थाचार निवारण अधिनियम (1988 का 49), धाराएँ 13(1)(डी), 13(2) व 19 एवं दण्ड संहिता (1860 का 45), धाराएँ 218, 466, 471, 474 व 120-बी – अभियोजन हेतु मंजूरी – याची/अभियुक्त द्वारा 1988 के अधिनियम की धारा 19 के अंतर्गत, अपनी आरोपमुक्ति चाहते हुए आवेदन की खारिजी के विरुद्ध याचिका इस आधार पर कि आरोप पत्र प्रस्तुत करने के समय वह इंदौर नगरपालिका निगम का पार्षद था और एक लोक सेवक होने के नाते उसके अभियोजन हेतु प्रत्यर्थागण द्वारा यथा अपेक्षित मंजूरी नहीं ली गई थी – अभिनिर्धारित – 1988 के अधिनियम की धारा 19 के अंतर्गत, मंजूरी अभिप्राप्त करने का प्रश्न उस समय पद धारित होने के संबंध में है जब अभिकथित रूप से अपराध कारित किया गया था और जब व्यक्ति उक्त पद धारक नहीं था जैसा कि वह सेवानिवृत्त, अधिवर्षिता, कार्यभारमुक्त या पदच्युत हो गया हो तब मंजूरी का प्रश्न उत्पन्न नहीं होगा – वर्तमान प्रकरण में, याची वर्ष 2000 से 2005 तक एक निर्वाचित पार्षद था और समय बीत जाने पर यह पदावधि समाप्त हो गई थी – केवल इसलिए कि वह पार्षद के रूप में फरवरी 2015 में पुनः निर्वाचित हुआ था, इससे उसी पद पर वर्ष 2000 में पार्षद के रूप में उसकी स्थिति का संबंध नहीं जोड़ा जाएगा – 2015 में पश्चात्पूर्ति निर्वाचन, वर्ष 2000 में उसके निर्वाचन के कारण उसके पार्षद का पद धारण करने के नाते नहीं था बल्कि वह उसे मिले नये जनादेश के कारण था, इसलिए, अभियोजन के प्रयोजन हेतु दो पद भिन्न थे – मंजूरी अपेक्षित नहीं – याचिका खारिज। (सूरज केरो वि. म.प्र. राज्य) (DB)...1237

Prevention of Corruption Act (49 of 1988), Section 13(1)(e) r/w Section 13(2) and Criminal Procedure Code, 1973 (2 of 1974), Sections 156(3), 173(8) & 465(2) – Revision against dismissal of application for issuance of direction to conduct further investigation with regard to his own income from various sources as well as income of family members – Held – Prayer made by petitioner clearly indicates that in

guise of further investigation he wants to establish his defence – A public servant accused of being in possession of disproportionate assets is required to establish his defence before trial Court and that the investigating agency is not under an obligation to look into the same – Application devoid of merit dismissed. [Raj Kamal Sharma Vs. State of M.P. through Special Police Establishment (Lokayukt)] (DB)...*58

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) सहपठित धारा 13(2) एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 156(3), 173(8) व 465(2) – विभिन्न स्रोतों से अपनी आय के साथ ही परिवार के सदस्यों की आय के संबंध में अतिरिक्त अन्वेषण का संचालन करने के लिए निदेश जारी करने हेतु आवेदन की खारिजी के विरुद्ध पुनरीक्षण – अभिनिर्धारित – याची द्वारा की गई प्रार्थना स्पष्ट रूप से यह दर्शाती है कि अतिरिक्त अन्वेषण की आड़ में वह अपना बचाव स्थापित करना चाहता है – एक लोकसेवक जिस पर कि अननुपातिक आस्तियों को कब्जे में रखने का अभियोग है, उसे विचारण न्यायालय के समक्ष अपना बचाव स्थापित करना अपेक्षित है तथा अन्वेषण एजेंसी उक्त की जांच-पड़ताल करने हेतु बाध्यताधीन नहीं है – आवेदन गुणदोष रहित होने से खारिज। (राज कमल शर्मा वि. म.प्र. राज्य द्वारा स्पेशल पुलिस इस्टैब्लिशमेंट (लोकायुक्त)) (DB)...*58

Prevention of Food Adulteration Act (37 of 1954), Sections 7, 13(2), 16(1)(a)(i)/(ii) – See – Criminal Procedure Code, 1973, Section 482 [Abha Garg Vs. State of M.P.] ...*75

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 7, 13(2), 16(1)(ए)(i)/(ii) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (आमा गार्ग वि. म.प्र. राज्य) ...*75

Prevention of Insults to National Honour Act (69 of 1971), Section 2, Explanation 4(1) & 3 – Unfurling/Displaying National Flag upside down – Allegation against Collector – Held – Collector is the highest authority in District and he can't be expected to check beforehand the position of the flag – It was the job of one of his staff for which Collector cannot be held vicariously liable – No prudent person would believe that Collector would unfurl the flag upside down to jeopardize his career and reputation – Further held – When the National Anthem was going on, on being pointed out about the said mistake, Collector rightly continued with the National Anthem and did not tried to stop the National Anthem in the midway – If that was done by the Collector, he would have committed an offence u/S 3 of the Act – No

case is made out – Out of such unfortunate lapse, petitioner ventured to such litigation to gain publicity or petitioner may have personal axe to grind against the Collector – To discourage filing of such petitions, cost of Rs. 10,000/- imposed on petitioner – Petition dismissed. [Anand Tiwari Vs. State of M.P.] ...*46

राष्ट्र गौरव अपमान निवारण अधिनियम (1971 का 69), धारा 2, स्पष्टीकरण 4(1) व 3 – उल्टा राष्ट्रध्वज फहराया/प्रदर्शित किया जाना – कलेक्टर के विरुद्ध अभिकथन – अभिनिर्धारित – कलेक्टर जिले का सर्वोच्च प्राधिकारी होता है और उससे यह अपेक्षा नहीं की जा सकती कि वह ध्वज की स्थिति की पहले से जांच करें – यह काम उसके स्टाफ में से किसी एक का था जिसके लिए कलेक्टर को प्रतिनिधिक रूप से दायी नहीं ठहराया जा सकता – कोई प्रज्ञावान व्यक्ति विश्वास नहीं करेगा कि कलेक्टर अपने करियर और प्रतिष्ठा को खतरे में डालकर उल्टा ध्वज फहरायेगा – आगे अभिनिर्धारित – जब राष्ट्रगान चल रहा था, कलेक्टर ने, उसे उक्त गलती की ओर ध्यान दिलाये जाने पर, उचित रूप से राष्ट्रगान जारी रखा और बीच में राष्ट्रगान रोकने का प्रयास नहीं किया – यदि कलेक्टर द्वारा ऐसा किया गया होता तो उससे अधिनियम की धारा 3 के अंतर्गत अपराध कारित होता – कोई प्रकरण नहीं बनता है – ऐसी दुर्भाग्यपूर्ण त्रुटि से याची ने लोकप्रियता प्राप्त करने हेतु उक्त मुकदमा करने का कार्य किया या हो सकता है उसे कलेक्टर के विरुद्ध कोई व्यक्तिगत बदला लेना हो – ऐसी याचिकाओं के प्रस्तुतीकरण को हतोत्साहित करने हेतु, याची पर रु. 10,000/- का व्यय अधिरोपित किया गया – याचिका खारिज। (आनंद तिवारी वि. म.प्र. राज्य) ...*46

Prize Chits and Money Circulation Schemes (Banning) Act, (43 of 1978), Section 4 & 5 – See – Criminal Procedure Code, 1973, Section 468 [Sahara India Ltd. Vs. State of M.P.] ...1497

इनामी चिट और घन परिचालन स्कीम (पाबंदी) अधिनियम, (1978 का 43), धारा 4 व 5 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 468 (सहारा इंडिया लि. वि. म.प्र. राज्य) ...1497

Prize Chits and Money Circulation Schemes (Banning) Act, (43 of 1978), Section 9 – Power to Try Offences – Jurisdiction to Issue Process – Held – As per Section 9 of the Act of 1978, no court inferior to that of a Chief Judicial Magistrate shall try the offence punishable under the Act – In the present case, the CJM gravely erred in making over the case to JMFC without appreciating the provisions of the Act, which specifically forbade the trial by a Court inferior to CJM – Issuance of process by JMFC is in violation to Section 9 of the Act –

Summoning order against petitioners quashed on account of lack of jurisdiction of JMFC. [Sahara India Ltd. Vs. State of M.P.] ...1497

इनामी चिट और धन परिचालन स्कीम (पाबंदी) अधिनियम, (1978 का 43), धारा 9 – अपराध विचारण करने की शक्ति – आदेशिका जारी करने की अधिकारिता – अभिनिर्धारित – 1978 के अधिनियम की धारा 9 के अनुसार, मुख्य न्यायिक मजिस्ट्रेट से अवर कोई न्यायालय इस अधिनियम के अन्तर्गत दण्डनीय अपराध का विचारण नहीं करेगा— वर्तमान प्रकरण में, मुख्य न्यायिक मजिस्ट्रेट ने इस अधिनियम के उपबंध जो कि विनिर्दिष्ट रूप से मुख्य न्यायिक मजिस्ट्रेट से अवर किसी न्यायालय द्वारा विचारण निषेध करते हैं, का मूल्यांकन किये बिना न्यायिक मजिस्ट्रेट प्रथम श्रेणी को प्रकरण सौंप कर गंभीर त्रुटि की है, – न्यायिक मजिस्ट्रेट प्रथम श्रेणी द्वारा आदेशिका जारी की जाना इस अधिनियम की धारा 9 का उल्लंघन है – न्यायिक मजिस्ट्रेट प्रथम श्रेणी की अधिकारिता की कमी के कारण याचीगण के विरुद्ध समन आदेश अभिखंडित। (सहारा इंडिया लि. वि. म.प्र. राज्य) ...1497

Probation of Offenders Act, (20 of 1958), Section 4 & 12 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Practice and Procedure – Maintainability of Petition – Petitioner No.1 and Petitioner No.2 were convicted u/S 325 and u/S 325/34 IPC respectively – In appeal, conviction of petitioner no.1 was maintained and conviction of petitioner no.2 was converted to one u/S 323 IPC – Sentence of petitioner no.1 was reduced to imprisonment till rising of the Court because he was a government servant, but fine amount was enhanced from Rs 500 to Rs. 3000 – They filed a revision before High Court whereby the court declined to interfere – They again filed the present petition u/S 482 CrPC alongwith an interlocutory application u/S 4 r/w Section 12 of the Act of 1958 submitting that even after making a prayer for relief under the provisions of the Act of 1958, all the courts have not considered the said provisions – Held – This court in revision filed by the petitioners have declined to interfere on merits of the case thus the relief of acquittal or the relief under the Act of 1958 shall be deemed to have been declined – Petitioners have exhausted all their remedies up to the stage of High Court and this is a second attempt before High Court by which petitioners are invoking inherent jurisdiction of Court to overturn the order passed earlier in revision by a coordinate bench of this Court, which tantamount to virtual review of a final order, which obviously is not permissible – Petition dismissed. [Tulsidas Vs. State of M.P.] ...1265

अपराधी परीक्षा अधिनियम, (1958 का 20), धारा 4 व 12 एवं दण्ड प्रक्रिया

संहिता, 1973 (1974 का 2), धारा 482 — पद्धति एवं प्रक्रिया — याचिका की पोषणीयता — याची क्र. 1 व याची क्र. 2 को क्रमशः धारा 325 एवं धारा 325/34 भा.दं.सं. के अंतर्गत दोषसिद्ध किया गया था — अपील में याची क्र. 1 की दोषसिद्धि कायम रखी गई और याची क्र. 2 की दोषसिद्धि को अंतर्गत धारा 323 भा.दं.सं. में परिवर्तित किया गया था — याची क्र. 1 के दण्डादेश को न्यायालय उठने तक के कारावास तक घटाया गया क्योंकि वह एक शासकीय सेवक था, किंतु अर्थदण्ड की रकम रु. 500 से बढ़ाकर रु. 3000 की गई थी — उन्होंने उच्च न्यायालय के समक्ष एक पुनरीक्षण प्रस्तुत किया जिसमें न्यायालय ने हस्तक्षेप करने से इंकार कर दिया — उन्होंने पुनः दं.प्र.सं. की धारा 482 के अंतर्गत वर्तमान याचिका, 1958 के अधिनियम की धारा 4 सहपठित धारा 12 के अंतर्गत अंतर्वर्ती आवेदन इस निवेदन के साथ प्रस्तुत किया, कि 1958 के अधिनियम के उपबंधों के अंतर्गत अनुतोष हेतु प्रार्थना किये जाने के पश्चात् भी, सभी न्यायालयों ने उक्त उपबंधों को विचार में नहीं लिया है — अभिनिर्धारित — याचीगण द्वारा प्रस्तुत पुनरीक्षण में इस न्यायालय ने प्रकरण के गुणदोषों पर हस्तक्षेप करने से इंकार किया, अतः दोषमुक्ति का अनुतोष अथवा 1958 के अधिनियम के अंतर्गत अनुतोष से इंकार माना जाएगा — याचीगण ने उच्च न्यायालय के प्रक्रम तक अपने सभी उपचारों को निःशेषित किया है और यह उच्च न्यायालय के समक्ष द्वितीय प्रयास है जिसके द्वारा याचीगण इस न्यायालय की समक्ष न्यायपीठ द्वारा पूर्व में पुनरीक्षण में पारित आदेश को पलटायें जाने के लिए न्यायालय की अंतर्निहित अधिकारिता का अवलंब ले रहे हैं जो कि एक अंतिम आदेश के परोक्ष पुनर्विलोकन के बराबर है, जो स्पष्टतः अननुज्ञेय है — याचिका खारिज। (तुलसीदास वि. म.प्र. राज्य) ...1265

Protection of Children from Sexual Offences Act, (32 of 2012), Section 34 and Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Determination of Age of Prosecutrix – Stage of Trial – Petitioner charged with the offence u/S 363/34, 366-a/34, & 376 IPC – After completion of trial, at the stage of final arguments, DPO filed an application u/S 311 Cr.P.C. to adduce evidence with regard to the age of prosecutrix, which was allowed – Challenge to – Held – Section 34 mandates the determination of age of minor victim child which is very vital for trial – In view of Section 34 of the Act of 2012, Court was duty bound to determine the age of the child victim – Further held – Section 311 Cr.P.C. has been enacted in order to enable the Court to find out the truth and render a just decision – The words “at any Stage of the trial” indicates that once it is found that evidence is essential for just decision of the case, witness can be called at any time before pronouncement of judgment – Time factor would not come in the way – Impugned order cannot be said to be illegal or perverse – Revision

dismissed. [Umesh Kumar Vs. State of M.P.]

...1230

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 34 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 – अभियोक्त्री की आयु का निर्धारण – विचारण का प्रक्रम – याची, धारा 363/34, 366-ए/34 व 376 मा.द.सं. के अंतर्गत अपराध के लिए आरोपित – विचारण पूर्ण होने के पश्चात्, अंतिम तर्कों के प्रक्रम पर, जिला अभियोजन अधिकारी ने, अभियोक्त्री की आयु के संबंध में साक्ष्य प्रस्तुत करने हेतु द.प्र.सं. की धारा 311 के अंतर्गत आवेदन प्रस्तुत किया जिसे मंजूर किया गया था – को चुनौती – अभिनिर्धारित – धारा 34, अप्राप्तवय पीड़ित बालिका की आयु का निर्धारण आदेशित करती है जो कि विचारण के लिए अति महत्वपूर्ण है – 2012 के अधिनियम की धारा 34 को दृष्टिगत रखते हुए न्यायालय, पीड़ित बालिका की आयु का निर्धारण करने के लिए कर्तव्यबद्ध था – आगे अभिनिर्धारित – धारा 311 द.प्र.सं. की अधिनियमिती, न्यायालय को सत्य का पता लगाने एवं न्यायपूर्ण विनिश्चय देने के लिए समर्थ बनाने हेतु की गई है – शब्द “विचारण के किसी प्रक्रम पर” इंगित करता है कि जब एक बार यह पाया जाता है कि प्रकरण के न्यायपूर्ण विनिश्चय हेतु साक्ष्य आवश्यक है, निर्णय घोषित किये जाने पूर्व किसी भी प्रक्रम पर साक्षी को बुलाया जा सकता है – समय का कारक रास्ते में नहीं आयेगा – आक्षेपित आदेश को अवैध या विपर्यस्त नहीं कहा जा सकता – पुनरीक्षण खारिज। (उमेश कुमार वि. म.प्र. राज्य)

...1230

Protection of Women from Domestic Violence Act (43 of 2005), Section 12 & 29 – Interim Maintenance – Grounds – Income of Wife – In a proceeding u/S 12 of the Act, on an application being filed by wife u/S 29 of the Act, the trial Court as well as lower appellate Court directed husband to pay interim maintenance to wife @ Rs. 2000 per month – Challenge to – Held – Wife herself admitted in her reply that she is working as ANM in a hospital and is getting a salary of Rs. 11,400 per month – Salary certificate and bank pass book of wife corroborates the fact of income of wife – Further held – Interim maintenance should be awarded only where there is urgent requirement of wife to be maintained or to prevent destitution and vagrancy of woman/wife who has become used to a certain standard of living by virtue of her marriage – Trial Court as well as lower appellate court committed mistake in awarding interim maintenance – Orders passed by Courts below are set aside – Revision allowed. [Anil Vs. Smt. Veena]

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घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 12 व 29 – अंतरिम मरणपोषण – आधार – पत्नी की आय – अधिनियम की धारा 12 के अंतर्गत कार्यवाही में, पत्नी द्वारा अधिनियम की धारा 29 के अंतर्गत आवेदन प्रस्तुत किये जाने

पर, विचारण न्यायालय के साथ-साथ निचले अपीली न्यायालय ने पत्नी को रु. 2000 प्रतिमाह की दर से अंतरिम भरणपोषण के भुगतान हेतु पति को निदेशित किया — को चुनौती — अभिनिर्धारित — पत्नी ने अपने प्रतिउत्तर में स्वयं स्वीकार किया कि वह एक चिकित्सालय में ए.एन.एम. के रूप में कार्यरत है और रु. 11,400 प्रतिमाह वेतन प्राप्त कर रही है — पत्नी के वेतन प्रमाणपत्र एवं बैंक पास बुक से पत्नी की आय के तथ्य की पुष्टि होती है — आगे अभिनिर्धारित — अंतरिम भरणपोषण केवल तब प्रदान किया जाना चाहिए जब भरणपोषण हेतु पत्नी की तात्कालिक आवश्यकता है या महिला/पत्नी जो उसके विवाह के नाते जीविका के कतिपय मानक की आदी हो गई है, के अक्षम और निराश्रित होने से रोकने के लिए प्रदान किया जाना चाहिए — विचारण न्यायालय के साथ ही निचले अपीली न्यायालय ने अंतरिम भरणपोषण प्रदान करने में भूल कारित की — निचले न्यायालयों द्वारा पारित आदेशों को अपास्त किया गया — पुनरीक्षण मंजूर। (अनिल वि. श्रीमती वीना) ...*66

*Public Gambling Act (3 of 1867), Section 13 – See – Criminal Procedure Code, 1973, Section 360 [Sanjay Vs. State of M.P.] ...*72*

सार्वजनिक द्यूत अधिनियम (1867 का 3), धारा 13 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 360 (संजय वि. म.प्र. राज्य) ...*72

Public Trusts Act, M.P. (30 of 1951), Section 12 – Notice to Registrar – Held – Notice is only to be given when there is likelihood of affecting any entry in the register – In the instant case, Trust was never registered during the lifetime of Birdi Bai till it was revoked, so there is no question of affecting any entry in the register, therefore application by respondent for issuing notice to Registrar has no force and is dismissed. [Manjula Bai Vs. Premchand] ...1119

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 12 – रजिस्ट्रार को नोटिस – अभिनिर्धारित – नोटिस केवल तब दिया जाता है जब रजिस्टर में कोई प्रविष्टि प्रभावित होने की संभावना है – वर्तमान प्रकरण में, न्यास को बिरडी बाई के जीवन काल के दौरान से उसके प्रतिसंहरण होने तक कभी रजिस्ट्रीकृत नहीं किया गया था, इसलिए रजिस्टर में किसी प्रविष्टि को प्रभावित करने का कोई प्रश्न नहीं है, अतः प्रत्यर्थी द्वारा, रजिस्ट्रार को नोटिस जारी किये जाने हेतु आवेदन में कोई बल नहीं है एवं खारिज किया गया। (मंजुला बाई वि. प्रेमचन्द्र) ...1119

Public Trusts Act, M.P. (30 of 1951), Section 26 – Powers of Registrar – Petition filed against passing of interim injunction by the Registrar restraining the President of Trust to conduct meetings, operating bank account and to pass regulation regarding movable & immovable properties till fresh elections – Held – U/S 26, Registrar,

only on application or *Suo Motu* can direct the trustee or himself make an application to Court to decide the issue regarding administration of public trust – Power of adjudication not granted to Registrar under this Section – Neither u/S 26 nor any other Section gives power of injunction to Registrar – Even inherent power has not been granted – Power to issue direction on such issue is only granted to the Court u/S 27(2)(F) of the Act. [Shree Maheshwari Samaj Ramola Trust Through President & Trustees Vs. Registrar of Public Trust and Sub-Divisional Officer Ratlam (M.P.)] ...816

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 26 – रजिस्ट्रार की शक्तियाँ – रजिस्ट्रार द्वारा न्यास के अध्यक्ष को नया निर्वाचन होने तक बैठक संचालित करने, बैंक खाता चलाने एवं चल तथा अचल संपत्तियों के संबंध में विनियमन पारित करने से अवरुद्ध करते हुए पारित किये गये अंतरिम व्यादेश के विरुद्ध याचिका प्रस्तुत की गई – अभिनिर्धारित – धारा 26 के अंतर्गत, रजिस्ट्रार, केवल आवेदन पर अथवा स्वयं से लोक न्यास के प्रशासन से संबंधित विवादक का विनिश्चय करने के लिए न्यासी को निदेश दे सकता है अथवा न्यायालय के समक्ष स्वयं आवेदन कर सकता है – इस धारा के अंतर्गत, रजिस्ट्रार को न्यायनिर्णयन की शक्ति प्रदत्त नहीं – न तो धारा 26 न ही कोई अन्य धारा रजिस्ट्रार को व्यादेश की शक्ति देती है – यहां तक कि अंतर्निहित शक्ति भी प्रदान नहीं की गई है – उक्त विवादक पर निदेश जारी करने की शक्ति, अधिनियम की धारा 27(2)(एफ) के अंतर्गत केवल न्यायालय को प्रदान की गई है। (श्री माहेश्वरी समाज रामोला ट्रस्ट द्वारा प्रेसीडेन्ट एण्ड ट्रस्टीज वि. रजिस्ट्रार ऑफ पब्लिक ट्रस्ट एण्ड सब-डिवीजनल ऑफीसर रतलाम (एम.पी.)) ...816

Public Trusts Act, M.P. (30 of 1951), Section 36(1)(b) – See – Society Registrikan Adhinyam, M.P., 1973 [Maa Sheetla Sayapeeth Mandir Vyavasthapan Samiti/Shitla Mata Kalyan Samiti Vs. State of M.P.] ...1078

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 36(1)(बी) – देखें – सोसायटी रजिस्ट्रीकरण अधिनियम, म.प्र., 1973 (मौ शीतला सायापीठ मंदिर व्यवस्थापन समिति/शीतला माता कल्याण समिति वि. म.प्र. राज्य) ...1078

Rajya Suraksha Adhinyam, M.P. 1990 (4 of 1991), Section 5 – Externment Orders – District Magistrate passed order of externment against the petitioner – Appeal by petitioner was also dismissed by Commissioner – Challenge to – Held – District Magistrate has stated that petitioner is a habitual offender and has created group of anti

social elements right from 1990 to 2009 and is continuously involved in committing violence, beating persons belonging to lower caste, committing robbery and because of this there is terror amongst general public, witnesses are not coming forward to give evidence against him for reasons of their safety of person and property – Petitioner had not appeared before District Magistrate even though opportunity was granted to him – He had not produced any order of acquittal in any criminal cases – Two conditions enumerated under Section 5(b) for passing order of externment against petitioner are satisfied – No fault with the order of District Magistrate and Commissioner – Petition dismissed. [Arvind Singh @ Pappu Vs. State of M.P.] ...*76

राज्य सुरक्षा अधिनियम, म.प्र., 1990 (1991 का 4), धारा 5 – निष्कासन के आदेश – जिला मजिस्ट्रेट ने याची के विरुद्ध निष्कासन का आदेश पारित किया – याची द्वारा की गई अपील भी आयुक्त द्वारा खारिज की गई – को चुनौती – अभिनिर्धारित – जिला मजिस्ट्रेट ने कहा है कि याची एक आदतन अपराधी है और उसने 1990 से 2009 तक असामाजिक तत्वों का समूह निर्मित किया है तथा निरंतर रूप से हिंसा करने, निचली जाति के व्यक्तियों को पीटने, लूट कारित करने में लिप्त है एवं इस कारण साधारण जनता में आतंक है, साक्षीगण, उनकी व्यक्तिगत एवं सम्पत्ति की सुरक्षा के कारणों से उसके विरुद्ध साक्ष्य देने के लिए आगे नहीं आ रहे हैं – याची, जिला मजिस्ट्रेट के समक्ष उपस्थित नहीं हुआ था, यद्यपि उसे अवसर प्रदान किया गया था – उसने किसी दाण्डिक प्रकरण में दोषमुक्ति के किसी आदेश को प्रस्तुत नहीं किया था – याची के विरुद्ध निष्कासन का आदेश पारित करने हेतु धारा 5(बी) के अंतर्गत प्रगणित दो शर्तों की संतुष्टि होती है – जिला मजिस्ट्रेट और आयुक्त के आदेश में कोई दोष नहीं – याचिका खारिज। (अरविन्द सिंह उर्फ पप्पू वि. म.प्र. राज्य) ...*76

Registration Act (16 of 1908), Section 32 & 34 – Presence of Parties – Held – Section 32 does not require presence of both parties to the document when it is presented for registration and in this view of the matter, presentation of Extinguishment Deed by authorized person of Society for registration cannot be faulted u/S 34 of the Act of 1908 – Requirement of presence of both the parties is not mandatory. [Satya Pal Anand Vs. State of M.P.] (SC)...1015

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 32 व 34 – पक्षकारों की उपस्थिति – अभिनिर्धारित – धारा 32, रजिस्ट्रीकरण हेतु प्रस्तुत किये जाते समय दस्तावेज के दोनों पक्षकारों की उपस्थिति की अपेक्षा नहीं करती और मामले के इस दृष्टिकोण पर, 1908 के अधिनियम की धारा 34 के अंतर्गत, रजिस्ट्रीकरण हेतु

सोसाइटी के प्राधिकृत व्यक्ति द्वारा निर्वापन विलेख के प्रस्तुतिकरण में त्रुटि नहीं निकाली जा सकती — दोनों पक्षकारों की उपस्थिति की अपेक्षा, आज्ञापक नहीं है। (सत्यपाल आनंद वि. म.प्र. राज्य) (SC)...1015

Registration Act (16 of 1908), Section 35 – Powers & Functions of Registrar – Held – Role of Sub-Registrar stands discharged, once document is registered – No express provision in the Act of 1908 which empowers Registrar to recall such registration – Power to cancel registration is a substantive matter – Further held – Powers of Inspector General (Registration) is limited to do superintendence of registration offices and make rules in that behalf, even he don't have powers to cancel registration of any document which is already registered – Function of the Registering Officer is purely administrative and not quasi judicial thus he cannot decide whether document presented for registration is executed by person having title as mentioned in instrument. [Satya Pal Anand Vs. State of M.P.] (SC)...1015

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 35 – रजिस्ट्रार की शक्तियां एवं कार्य – अभिनिर्धारित – एक बार दस्तावेज रजिस्ट्रीकृत हो जाने पर सब-रजिस्ट्रार की भूमिका निर्वहित हो जाती है – 1908 के अधिनियम में कोई प्रकट उपबंध नहीं जो रजिस्ट्रार को उक्त रजिस्ट्रीकरण वापस लेने के लिए सशक्त करता हो – रजिस्ट्रीकरण रद्द करने की शक्ति एक सारभूत मामला है – आगे अभिनिर्धारित – महानिरीक्षक (रजिस्ट्रीकरण) की शक्तियां रजिस्ट्रीकरण कार्यालयों का पर्यवेक्षण करने एवं इस संबंध में नियम बनाने तक सीमित है, यहां तक कि उसे भी किसी ऐसे दस्तावेज का रजिस्ट्रीकरण रद्द करने की शक्तियां नहीं जो पहले से रजिस्ट्रीकृत है – रजिस्ट्रीकरण अधिकारी का कार्य शुद्ध रूप से प्रशासनिक है तथा अर्ध-न्यायिक नहीं है अतः वह यह विनिश्चित नहीं कर सकता कि क्या रजिस्ट्रीकरण हेतु प्रस्तुत किया गया दस्तावेज, लिखित में उल्लिखित अनुसार स्वत्वधारी व्यक्ति द्वारा निष्पादित किया गया है। (सत्यपाल आनंद वि. म.प्र. राज्य) (SC)...1015

Registration Act (16 of 1908), Section 69 – See – Cooperative Societies Act, M.P. 1960, Section 64 [Satya Pal Anand Vs. State of M.P.] (SC)...1015

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 69 – देखें – सहकारी सोसाइटी अधिनियम, म.प्र. 1960, धारा 64 (सत्यपाल आनंद वि. म.प्र. राज्य) (SC)...1015

Representation of the People Act (43 of 1951), Section 5 & 100(1)(a) – Whether failure of the returned candidate to furnish electoral roll of the constituency, where his name appears as a voter

or a certified copy thereof would by itself establish that he was not qualified to take part in the election having failed to prove that he is a voter – Under section 100(1)(a), election of returned candidate is liable to be declared void if he was not qualified for the membership of Parliament or State legislature – Section 5 requires a candidate to be an elector of any assembly constituency of the State – To declare an election void u/S 100(1)(a), it has to be established that the returned candidate is not a voter of any assembly constituency of the State. [Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma] (SC)...779

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 5 व 100(1)(ए) – क्या निर्वाचित प्रत्याशी द्वारा, निर्वाचन क्षेत्र की निर्वाचक नामावली या उसकी प्रमाणित प्रति जिसमें उसका नाम मतदाता के रूप में प्रकट होता है, प्रस्तुत किये जाने में विफलता, स्वयं स्थापित करेगी कि वह निर्वाचन में भाग लेने के लिए अर्हित नहीं था चूंकि वह यह साबित करने में विफल रहा कि वह एक मतदाता है – धारा 100(1)(ए) के अंतर्गत निर्वाचित प्रत्याशी का निर्वाचन शून्य घोषित किये जाने योग्य है यदि वह संसद अथवा राज्य विधानमंडल की सदस्यता हेतु अर्हित नहीं था – धारा 5 अपेक्षा करती है कि प्रत्याशी राज्य के किसी विधान सभा निर्वाचन क्षेत्र का एक निर्वाचक हो – धारा 100(1)(ए) के अंतर्गत निर्वाचन शून्य घोषित किये जाने हेतु यह स्थापित किया जाना होता है कि निर्वाचित प्रत्याशी राज्य के किसी विधान सभा निर्वाचन क्षेत्र का मतदाता नहीं। (राजेन्द्र कुमार मेश्राम वि. वंशमणी प्रसाद वर्मा) (SC)...779

Representation of the People Act (43 of 1951), Section 33(4) – Returning Officer to satisfy himself that candidate's name and electoral roll number is identical with the one entered in the nomination paper – If candidate is a voter from the same constituency from where he seeks election, electoral roll would be readily available with the returning officer. [Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma] (SC)...779

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 33(4) – निर्वाचन अधिकारी को स्वयं की संतुष्टि करनी चाहिए कि प्रत्याशी का नाम व निर्वाचक नामावली संख्या, जैसा नामांकन पत्र में प्रविष्ट किया गया है, वैसा ही है – यदि प्रत्याशी उसी निर्वाचन क्षेत्र का मतदाता है जहां से वह निर्वाचन चाहता है, तब निर्वाचन अधिकारी के पास निर्वाचक नामावली आसानी से उपलब्ध होगी। (राजेन्द्र कुमार मेश्राम वि. वंशमणी प्रसाद वर्मा) (SC)...779

Representation of the People Act (43 of 1951), Section 33(5) – Candidate a voter from other constituency – He is required to enclose alongwith the nomination or at the time of scrutiny, the electoral roll or

certified copy of the same. [Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma] (SC)...779

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 33(5) — प्रत्याशी अन्य निर्वाचन क्षेत्र का मतदाता — उससे नामांकन के साथ अथवा संविदा के समय, निर्वाचक नामावली या उसकी प्रमाणित प्रति संलग्न करना अपेक्षित है। (राजेन्द्र कुमार मेश्रम वि. वंशमणी प्रसाद वर्मा) (SC)...779

Representation of the People Act (43 of 1951), Section 100(1)(c) — Improper rejection of a nomination itself is a sufficient ground for invalidating the election without any further requirement of proof of material effect of such a rejection on the result of the election. [Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma] (SC)...779

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 100(1)(सी) — नामांकन पत्र की अनुचित अस्वीकृति, निर्वाचन के परिणाम पर उक्त अस्वीकृति के तात्त्विक प्रभाव के सबूत की किसी अतिरिक्त आवश्यकता के बिना, निर्वाचन को अविधिमान्य ठहराने के लिए अपने आप में पर्याप्त आधार है। (राजेन्द्र कुमार मेश्रम वि. वंशमणी प्रसाद वर्मा) (SC)...779

Representation of the People Act (43 of 1951), Sections 100(1)(c), 100(1)(d) & 33(5) — High Court did not keep in mind the distinction between Section 100(1)(c) and 100(1)(d). — Before setting aside election on the ground that appellant/returned candidate had not filed the electoral roll or a certified copy thereof and did not comply with the mandatory provisions of Section 33(5), High Court ought to have found whether improper acceptance of nomination had materially affected the result of election — High Court failed to determine Issue No. 6 and therefore it was not empowered to declare the election of the returned candidate as void, even if it is assumed that acceptance of his nomination was improper. [Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma] (SC)...779

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(सी), 100(1)(डी) व 33(5) — उच्च न्यायालय ने धारा 100(1)(सी) एवं 100(1)(डी) के विमोद को ध्यान में नहीं रखा — निर्वाचन को इस आधार पर अपास्त किये जाने से पूर्व कि अपीलार्थी/निर्वाचित प्रत्याशी ने निर्वाचक नामावली या उसकी प्रमाणित प्रति प्रस्तुत नहीं की थी और धारा 33(5) के आज्ञापक उपबंधों का अनुपालन नहीं किया था, उच्च न्यायालय को यह पता लगाना चाहिए कि क्या नामांकन की अनुचित स्वीकृति

ने निर्वाचन के परिणाम को तात्त्विक रूप से प्रभावित किया - उच्च न्यायालय विवादक क्र. 6 का निर्धारण करने में विफल रहा और इसलिए यदि यह धारणा की जाए कि उसके नामांकन को स्वीकार करना उचित नहीं था, तब भी वह निर्वाचित प्रत्याशी के निर्वाचन को शून्य घोषित करने के लिए सशक्त नहीं था। (राजेन्द्र कुमार मेश्राम वि. वंशमणी प्रसाद वर्मा) (SC)...779

Representation of the People Act (43 of 1951), Section 100(1)(d)
 - An election is liable to be declared void on the ground of improper acceptance of nomination provided such acceptance has materially affected the result of the election. [Rajendra Kumar Meshram Vs. Vanshmani Prasad Verma] (SC)...779

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 100(1)(डी) - नामांकन की अनुचित स्वीकृति के आधार पर कोई निर्वाचन शून्य घोषित किये जाने योग्य है, परंतु यह तब जब उक्त स्वीकृति से निर्वाचन का परिणाम तात्त्विक रूप से प्रभावित हुआ हो। (राजेन्द्र कुमार मेश्राम वि. वंशमणी प्रसाद वर्मा) (SC)...779

Revenue Book Circular, Part I no.4 - Applicability - Held -
 Petitioner cannot be thrown out of his property by an executive action - Petitioner is in possession of land since 1946 as Bhumiswami and is not guilty of transgression of law of the land in the present case - Revenue Book Circular has no application in the present case. [The Malwa Vanaspati & Chemicals Co. Ltd. Vs. State of M.P.] ...1063

राजस्व पुस्तिका परिपत्र, भाग I क्र. 4 - प्रयोज्यता - अभिनिर्धारित - याची को कार्यपालिक कार्यवाही द्वारा उसकी संपत्ति से बाहर नहीं फेंका जा सकता - वर्तमान प्रकरण में, याची के पास 1946 से भूमिस्वामी के रूप में भूमि का कब्जा है और देश-विधि के उल्लंघन का दोषी नहीं है - राजस्व पुस्तिका परिपत्र की वर्तमान प्रकरण में प्रयोज्यता नहीं। (द मालवा वनस्पति एण्ड केमिकल्स कं. लि. वि. म.प्र. राज्य) ...1063

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(X) - Calling a member of the Scheduled Caste as 'Bedia' with an intent to insult or humiliate him in a place within public view is certainly an offence u/S 3(1)(X) of the Act of 1989 - No error committed by the lower Court - Petition dismissed. [Uttam Chand Verma Vs. State of M.P.] ...1519

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(X) - अनुसूचित जाति के किसी सदस्य को ऐसे स्थान

में जो लोक दृष्टिगोचर हो अनादर या अपमान करने के आशय से 'बेड़िया' बुलाना निश्चित रूप से 1989 के अधिनियम की धारा 3(1)(X) के अन्तर्गत अपराध है – निचले न्यायालय द्वारा कोई त्रुटि कारित नहीं की गई – याचिका खारिज। (उत्तम चंद वर्मा वि. म.प्र. राज्य) ...1519

*Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 14 – Jurisdiction of Court – Chief Judicial Magistrate took cognizance of an application u/S 14 of the Act of 2002 filed on behalf of the secured creditors – Challenge to – Held – Section 14 does not contemplate secured creditors to approach CJM for assistance to secure their assets – They can approach the Chief Metropolitan Magistrate in Metropolitan and the District Magistrate in non-Metropolitan areas – CJM has no jurisdiction to entertain application u/S 14 of the Act of 2002 – Impugned order set aside – Further held – Respondent bank will be at liberty to take recourse to remedy before District Magistrate – Petition disposed of. [Shyam Sunder Rohra Vs. Indus Ind Bank] ...*83*

*वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 14 – न्यायालय की अधिकारिता – मुख्य न्यायिक मजिस्ट्रेट ने, 2002 के अधिनियम की धारा 14 के अंतर्गत, प्रतिभूत लेनदारों की ओर से प्रस्तुत आवेदन का संज्ञान लिया – को चुनौती – अभिनिर्धारित – धारा 14, प्रतिभूत लेनदारों को उनकी आस्तियों को प्रतिभूत करने के लिए सहायता हेतु मुख्य न्यायिक मजिस्ट्रेट जाना अनुध्यात नहीं करती – वे, महानगर में, मुख्य महानगर मजिस्ट्रेट के समक्ष एवं गैर महानगरीय क्षेत्रों में जिला मजिस्ट्रेट के समक्ष जा सकते हैं – मुख्य न्यायिक मजिस्ट्रेट को 2002 के अधिनियम की धारा 14 के अंतर्गत आवेदन ग्रहण करने की अधिकारिता नहीं – आक्षेपित आदेश अपास्त – आगे अभिनिर्धारित – प्रत्यर्थी बैंक को जिला मजिस्ट्रेट के समक्ष उपचार का अवलंब लेने की स्वतंत्रता होगी – याचिका निराकृत। (श्याम सुंदर रोहरा वि. इंडस इंड बैंक) ...*83*

Security Interest (Enforcement) Rules, 2002, Rules 3, 8(6) (e), 9 & 9(4) and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002) – Earnest money was deposited by successful bidders who could not deposit 25% of bid amount, therefore, the earnest money was forfeited – DRAT in appeal directed to refund the earnest money – Nothing on record that Bank at any point of time had waived off its right against the forfeited amount – Order passed

by DRAT not in accordance of legal provision of law – Liable to be set aside. [State Bank of India Vs. Shri Rajeev Arya] (DB)...*60

प्रतिभूति हित (प्रवर्तन) नियम, 2002, नियम 3, 8(6)(ई), 9 व 9(4) एवं वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम (2002 का 54) – सफल बोली लगाने वालों द्वारा अग्रिम राशि जमा की गई थी, जो बोली राशि का 25 प्रतिशत जमा नहीं कर सके, इसलिए अग्रिम राशि समपहृत की गई थी – अपील में डी.आर.ए.टी. ने अग्रिम राशि वापस करने हेतु निदेशित किया – अभिलेख में ऐसा कुछ नहीं है कि बैंक ने किसी समय समपहृत राशि के विरुद्ध अपने अधिकार का त्यजन किया हो – डी.आर.ए.टी. द्वारा पारित आदेश विधिक उपबंधों के अनुसार नहीं – अपास्त किये जाने योग्य है। (स्टेट बैंक ऑफ इंडिया वि. श्री राजीव आर्य) (DB)...*60

Service Law – Civil Services (Pension) Rules, M.P. 1976, Rule 66 – Recovery – Petitioner filed a writ petition challenging the recovery of G.P.F. debit balance of Rs. 1,86,836 made by his department after superannuation of petitioner, from the amount of gratuity withheld – Petition was dismissed – Writ Appeal – Held – Scheme of Rule 66 can be bifurcated in two parts, first pertains to recovery of ascertainable dues and second of unascertainable dues – In case of ascertainable dues, the mode of taking cash deposit or surety or recovery from gratuity at the time of retirement is permissible and period of 12 months from the date of retirement is prescribed for completing the process of assessment and calculation but in case of unascertainable dues relating to house rent and water charges, period of six months from the date of retirement is provided for the government for assessment and calculation of actual due amount – After the stipulated period of 6/12 months, only mode available for recovery of such dues is to file a suit of recovery before the Civil Court – In the instant case, respondents made the impugned recovery of ascertainable dues after more than two years from the date of retirement and without following the prescribed procedure of approaching the Civil Court for recovery of the said dues – Recovery made from gratuity amount is hereby declared unlawful and is set aside – Respondents directed to refund the amount so recovered, and release the full gratuity amount alongwith 10% interest from the date of retirement till realization – Appeal allowed. [Ramnarayan Sharma Vs. State of M.P.] (DB)...1324

सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 66 – वसूली

— याची ने उसके विभाग द्वारा उसके अधिवर्षिता के पश्चात्, विधारित उपदान की राशि में से रु. 1,86,836 जी.पी.एफ. नामे पक्ष के अतिशेष की वसूली को चुनौती देते हुए याचिका प्रस्तुत की — याचिका खारिज की गई थी — रिट अपील — अभिनिर्धारित — नियम 66 की स्कीम दो भागों में विभाजित की जा सकती है, पहली अभिनिश्चयेय शोध्य तथा दूसरी अनभिनिश्चयेय शोध्य की वसूली से संबंधित है — अभिनिश्चयेय शोध्य के प्रकरण में, सेवानिवृत्ति के समय उपदान से नकद जमा या प्रतिभूति या वसूली करने की रीति अनुज्ञेय है एवं निर्धारण तथा संगणना की प्रक्रिया पूर्ण करने हेतु सेवानिवृत्ति की तिथि से 12 माह की अवधि विहित है परन्तु गृह माड़ा एवं जल प्रभार से संबंधित अनभिनिश्चयेय शोध्य के प्रकरण में सरकार को वास्तविक शोध्य राशि के निर्धारण एवं संगणना हेतु सेवानिवृत्ति की तिथि से 6 माह की अवधि उपबंधित है — 6/12 माह की नियत अवधि के पश्चात् उक्त शोध्य की वसूली हेतु केवल सिविल न्यायालय के समक्ष वाद प्रस्तुत करने की रीति उपलब्ध है — वर्तमान प्रकरण में, प्रत्यर्थीगण ने अभिनिश्चयेय शोध्य की आक्षेपित वसूली, सेवानिवृत्ति की तिथि से दो वर्षों से अधिक समय के पश्चात् एवं उक्त शोध्य की वसूली हेतु सिविल न्यायालय के समक्ष जाने की विहित प्रक्रिया का पालन किये बिना की है — उपदान की राशि से की गई वसूली एतद्वारा अविधिपूर्ण घोषित की गई एवं अपास्त की गई — प्रत्यर्थीगण को इस प्रकार वसूली गई राशि प्रतिदाय करने हेतु तथा सेवानिवृत्ति की तिथि से वसूल करने तक 10 प्रतिशत ब्याज के साथ पूर्ण उपदान की राशि निर्मुक्त करने के लिए निदेशित किया गया — अपील मंजूर। (रामनारायण शर्मा वि. म.प्र. राज्य) (DB)...1324

Service Law – Compassionate Appointment – Amended Policy – Applicability – Held – Record shows that on 02.06.2008 when petitioner's application for compassionate appointment came up for consideration, at that time there was a ban on compassionate appointment in the respondent Board, thus it was rightly denied – Later, amended compassionate appointment policy 2013 was introduced which was further amended in 2014, according to which petitioner was found ineligible – Since father of petitioner dies on account of heart attack therefore, in terms of clause 1.1(a) and 3.8 of policy, petitioner's case falls outside the purview of consideration under the new amended policy of 2013 – Further held – Compassionate appointment is not a vested right and is an exception to the general rule of appointment to public offices – Amended policy 2013 is not tailor made to favour any particular person nor any malafide is reflected – Petitioner's challenge to the amended policy 2013 cannot be accepted – Petitioner not entitled for compassionate appointment – Petition dismissed. [Sanjay Shriwas Vs.

The Chairman-cum-Managing Director, M.P. Paschim Kshetra Vidyut Vitaran Co. Ltd.] ...1104

सेवा विधि – अनुकंपा नियुक्ति – संशोधित नीति – प्रयोज्यता – अभिनिर्धारित – अभिलेख दर्शाता है कि 02.06.2008 को जब याची के अनुकंपा नियुक्ति हेतु आवेदन पर विचार किया गया, उस समय प्रत्यर्थी बोर्ड में अनुकंपा नियुक्ति पर रोक थी अतः उसे उचित रूप से नकार दिया गया था—बाद में, संशोधित अनुकंपा नियुक्ति नीति 2013 पुरःस्थापित की गई थी जिसे और आगे 2014 में संशोधित किया गया था, जिसके अनुसार याची को अयोग्य पाया गया था—चूंकि याची के पिता की मृत्यु दिल का दौरा पड़ने से हुई थी, इसलिए नीति के खंड 1.1(ए) व 3.8 के निबंधनों में, याची का प्रकरण 2013 की नई संशोधित नीति के अंतर्गत विचार की परिधि के बाहर है—आगे अभिनिर्धारित—अनुकंपा नियुक्ति निहित अधिकार नहीं है एवं लोक पद पर नियुक्ति के सामान्य नियम के लिए अपवाद है—संशोधित नीति 2013 किसी विशिष्ट व्यक्ति पर अनुग्रह करने के अनुकूल तैयार नहीं किया गया है, न ही कोई दुर्मावना प्रतिबिम्बित होती है—याची द्वारा संशोधित नीति 2013 को दी गई चुनौती को स्वीकार नहीं किया जा सकता—याची अनुकंपा नियुक्ति हेतु हकदार नहीं—याचिका खारिज। (संजय श्रीवास वि. द चेयरमेन—कम—मेनेजिंग डायरेक्टर, एम. पी. पश्चिम क्षेत्र विद्युत वितरण कं. लि.) ...1104

Service Law – Compassionate Appointment – Petitioner's claim for compassionate appointment rejected on the ground that 7 years from the date of death have passed and the policy of State Government regarding compassionate appointment has drastically changed – Held – Petitioner submitted application immediately after the death of his father – Seven years have passed due to exchange of communication between departments of Government of M.P. for which petitioner cannot be held responsible for the delay – Claim of petitioner liable to be considered afresh and delay should not come into play. [Sunil Jain Vs. State of M.P.] ...*62

सेवा विधि – अनुकम्पा नियुक्ति – याची का अनुकम्पा नियुक्ति हेतु दावा इस आधार पर अस्वीकार किया गया कि मृत्यु की तिथि से 7 वर्ष बीत चुके हैं और अनुकम्पा नियुक्ति के संबंध में राज्य सरकार की नीति अत्यधिक रूप से परिवर्तित हुई है – अभिनिर्धारित – याची ने अपने पिता की मृत्यु के तुरंत पश्चात् आवेदन प्रस्तुत किया था – म.प्र. शासन के विभागों के बीच पत्राचार के आदान-प्रदान के कारण सात वर्ष बीत गये, जिसके लिए याची को विलम्ब हेतु उत्तरदायी नहीं ठहराया जा सकता – याची का दावा नये सिरे से विचार किये जाने योग्य और विलम्ब का मुद्दा विचार में नहीं लिया जाएगा। (सुनील जैन वि. म.प्र. राज्य) ...*62

Service Law – Constitution – Article 311(2)(b) – Dismissal from service – Petitioner dismissed from service on the ground that offence has been registered against him under provisions of Prevention of Corruption Act – Held – In the instant case, neither there was any departmental enquiry conducted nor any charge-sheet was issued – Only show cause notice was issued, statement of petitioner was recorded and authority passed an order of dismissal – Article 311(2)(b) of the constitution provides that where the authority empowered to dismiss or remove a person is satisfied that for some reason to be recorded by the authority in writing that it is not reasonably practicable to hold such enquiry, disciplinary authority can dismiss a person, but in the instant case, impugned order does not reveal any such reason recorded by the authority – Order is not in consonance with Article 311(2)(b) of Constitution – Further held – Petitioner is still not convicted under the offence of corruption – Impugned order set aside – Respondents directed to reinstate the petitioner – Petition allowed. [Brijpal Singh Vs. Dy. Inspector General of Police, Indore] ...*68

सेवा विधि – संविधान – अनुच्छेद 311(2)(बी) – सेवा से पदच्युति – याची को सेवा से इस आधार पर पदच्युत किया गया कि उसके विरुद्ध भ्रष्टाचार निवारण अधिनियम के उपबंधों के अंतर्गत अपराध पंजीबद्ध किया गया है – अभिनिर्धारित – वर्तमान प्रकरण में, न तो कोई विभागीय जांच संचालित की गई थी न ही कोई आरोप पत्र जारी किया गया था – केवल कारण बताओ नोटिस जारी किया गया था, याची का कथन अभिलिखित किया गया था और प्राधिकारी ने पदच्युति का आदेश पारित किया – संविधान का अनुच्छेद 311(2)(बी) उपबंधित करता है कि जहां एक व्यक्ति को पदच्युत अथवा हटाने हेतु सशक्त प्राधिकारी की संतुष्टि होती है कि किसी कारण, जिसे प्राधिकारी द्वारा लिखित में अभिलिखित किया जाना होगा कि उक्त जांच संचालित करना युक्तियुक्त रूप से साध्य नहीं, प्राधिकारी, एक व्यक्ति को पदच्युत कर सकता है, परंतु वर्तमान प्रकरण में, आक्षेपित आदेश, प्राधिकारी द्वारा अभिलिखित ऐसा कोई कारण प्रकट नहीं करता – आदेश, संविधान के अनुच्छेद 311(2)(बी) के अनुरूप नहीं – आगे अभिनिर्धारित – याची को अभी तक भ्रष्टाचार के अपराध में दोषसिद्ध नहीं किया गया है – आक्षेपित आदेश अपास्त – याची को सेवा में बहाल किये जाने हेतु प्रत्यर्थीगण को निदेशित किया गया – याचिका मंजूर। (ब्रजपाल सिंह वि. डिप्टी इंसपेक्टर जनरल ऑफ पुलिस, इंदौर) ...*68

Service Law – Departmental Enquiry and Criminal Trial – Stay of Proceeding – Offence was registered against the petitioner, a Head Constable, u/S 7 of the Prevention of Corruption Act, 1988 –

Superintendent of Police also issued charge-sheet for initiation of departmental enquiry – Petitioner seeking stay of the departmental enquiry on the ground that continuation of the departmental enquiry would disclose his defence in the criminal trial because the facts and evidence are identical in both the proceedings – Held – Departmental enquiry shall remain stayed till the conclusion of the criminal trial and at the same time trial court directed to expedite and conclude the criminal trial within a period of one year from the date of this order – Petition allowed. [Hariprasad Gehlot Vs. State of M.P.] ...*78

सेवा विधि – विभागीय जांच एवं आपराधिक विचारण – कार्यवाही पर रोक – याची, एक प्रधान आरक्षक के विरुद्ध भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 7 के अन्तर्गत अपराध पंजीबद्ध किया गया था – पुलिस अधीक्षक ने विभागीय जांच प्रारम्भ किये जाने हेतु आरोप-पत्र भी जारी किया – याची द्वारा इस आधार पर विभागीय जांच पर रोक चाही गई है कि विभागीय जांच का जारी रहना, आपराधिक विचारण में उसके बचाव को प्रकट करेगा क्योंकि दोनों कार्यवाहियों में तथ्य एवं साक्ष्य समान हैं – अभिनिर्धारित – आपराधिक विचारण की समाप्ति तक विभागीय जांच रूकी रहेगी एवं उसके साथ ही विचारण न्यायालय को इस आदेश की दिनांक से एक वर्ष की अवधि के भीतर आपराधिक विचारण को शीघ्रता से कार्यवाही कर समाप्त करने हेतु निदेशित किया गया – याचिका मंजूर। (हरिप्रसाद गहलोत वि. म. प्र. राज्य) ...*78

Service Law – Deputation – Practice – Petitioner granted permission from parent department to participate in selection process whereby he was selected and was appointed as Deputy Director on deputation – Subsequently, parent department did not relieve him and withdrawn the permission earlier granted – Challenge to – Held – Petitioner has a lien on the substantive post of parent department where he was appointed to render service, they being the employer/master of petitioner has every right to decide whether the services of petitioner are required with the parent department – Permission cannot be treated as indefinite license to join the post as deputationist – In administrative exigency, parent department can very well review its decision and can take a different view, such decision is neither without jurisdiction nor arbitrary or capricious in nature – Further held – Employee has no indefeasible right to continue as deputationist or get absorbed in the borrowing department – In the present case, petitioner did not join the borrowing department as deputationist and thus no legal, vested or

constitutional right of petitioner is infringed – Petition dismissed. [Sunil Singh Baghel (Dr.) Vs. State of M.P.] ...1374

सेवा विधि – प्रतिनियुक्ति – पद्धति – याची को चयन प्रक्रिया में भाग लेने के लिए मूल विभाग से अनुमति प्रदान की गई, जिससे उसका चयन हुआ था एवं प्रतिनियुक्ति पर उप निदेशक के रूप में नियुक्त किया गया था – तत्पश्चात्, मूल विभाग ने उसे भारमुक्त नहीं किया तथा पूर्व में प्रदान की गई अनुमति वापस ले ली – को चुनौती – अभिनिर्धारित – याची का मूल विभाग के अधिष्ठायी पद पर धारणाधिकार है जहाँ उसे सेवा प्रदान करने हेतु नियुक्त किया गया था, उन्हें याची का नियोक्ता/मालिक होने के नाते यह विनिश्चय करने का पूर्ण अधिकार है कि क्या मूल विभाग में याची की सेवा आवश्यक है – अनुमति को, प्रतिनियुक्त व्यक्ति के रूप में पद ग्रहण करने की अनिश्चितकालीन अनुज्ञप्ति के रूप में नहीं माना जा सकता – प्रशासनिक अत्यावश्यकता में, मूल विभाग अपने निर्णय का बहुत अच्छे से पुनर्विलोकन कर सकता है एवं एक भिन्न दृष्टिकोण ले सकता है, कि ऐसा निर्णय न तो अधिकारिता के बिना है और न ही मनमानी या अशुचित प्रकृति का है – आगे अभिनिर्धारित – कर्मचारी को प्रतिनियुक्त व्यक्ति के रूप में जारी रहने या सेवा उधार लेने वाले विभाग में आमेलित होने का कोई अजेय अधिकार नहीं है – वर्तमान प्रकरण में, याची ने सेवा उधार लेने वाले विभाग में प्रतिनियुक्त व्यक्ति के रूप में पद ग्रहण नहीं किया और इस प्रकार याची के कोई विधिक, निहित अथवा संवधानिक अधिकार का अतिलंघन नहीं हुआ – याचिका खारिज। (सुनील सिंह बघेल (डॉ.) वि. म.प्र. राज्य) ...1374

Service Law – Dismissal from Service – Police Regulations, Para 64 – Petitioner, head constable alongwith three other constables were assigned a duty of custody of an accused who was taken to hospital – Accused fled away – Joint enquiry by the department – One Naresh Singh (constable) was found negligent and responsible for the incident whereby he was dismissed from service – Petitioner was not found guilty by enquiry officer – Disciplinary Authority disagreed with the appreciation of evidence by Enquiry Officer and again issued notice to petitioner and ordered punishment of dismissal to petitioner – Appellate Authority modified the punishment to compulsory retirement – Petitioner's mercy appeal was also dismissed – Challenge to – Held – Disciplinary authority gave a reasoning that petitioner, being head constable did not exercise proper supervision and control on other constables which led to escape of accused – Further held – For the act of negligence and omission of Naresh, punishment imposed on petitioner of compulsory retirement depriving him of his service tenure

is a disproportionate penalty moreso in view of the fact that during his service tenure, he has earned 170 awards – Matter remanded back to appellate authority for imposition of lesser punishment – Petition partly allowed. [Rajendra Singh Kushwah Vs. State of M.P.] ...1086

सेवा विधि – सेवा से पदच्युति – पुलिस विनियम, कंडिका 64 – याची, प्रधान आरक्षक को तीन अन्य आरक्षकों के साथ एक अभियुक्त जिसे चिकित्सालय ले जाया जा रहा था, की अभिरक्षा का कर्तव्य सौंपा गया था – अभियुक्त भाग गया – विभाग द्वारा संयुक्त जांच – नरेश सिंह (आरक्षक) को घटना के लिए उपेक्षावान एवं उत्तरदायी पाया गया जिसके लिए उसे सेवा से पदच्युत किया गया था – जांचकर्ता अधिकारी द्वारा याची को दोषी नहीं पाया गया था – जांचकर्ता अधिकारी द्वारा साक्ष्य के मूल्यांकन से अनुशासनिक प्राधिकारी असहमत थे और याची को पुनः नोटिस जारी किया तथा याची को पदच्युति का दण्ड आदेशित किया – अपीली प्राधिकारी ने दण्ड को अनिवार्य सेवानिवृत्ति में परिवर्तित किया – याची की दया अपील भी खारिज की गई थी – को चुनौती – अभिनिर्धारित – अनुशासनिक प्राधिकारी ने कारण दिया कि याची ने प्रधान आरक्षक होने के नाते, अन्य आरक्षकों पर उचित पर्यवेक्षण एवं नियंत्रण का प्रयोग नहीं किया जिसके परिणामस्वरूप अभियुक्त निकल भागा – आगे अभिनिर्धारित – नरेश के उपेक्षा पूर्ण कृत्य एवं लोप के लिए याची को सेवाकाल से वंचित रखते हुए उस पर अनिवार्य सेवानिवृत्ति का दण्ड अधिरापित किया जाना अननुपातिक शास्ति है और अधिक भी है, इस तथ्य को दृष्टिगत रखते हुए कि उसके सेवाकाल के दौरान उसने 170 पुरस्कार अर्जित किये हैं – लघुतर दण्ड के अधिरोपण हेतु अपीली प्राधिकारी को मामला प्रतिप्रेषित किया गया – याचिका अंशतः मंजूर। (राजेन्द्र सिंह कुशवाहा वि. म.प्र. राज्य) ...1086

Service Law – Fundamental Rules, M.P. – Rule 53 – Revision of Subsistence Allowance – Pendency of criminal case – Claim for increase of subsistence allowance from 50% to 75% – Held – If the period of suspension is prolonged beyond three months and if the delay is not attributable to the Government Servant, the employer is under an obligation to consider the aspect of revision of subsistence allowance – Provision does not make any distinction between suspension because of D.E. and suspension because of any criminal case – Since there is no assertion about the aspect of delay in the revision application, liberty is given to the petitioner to make comprehensive representation and employer shall decide the same preferably within 30 days. [Rajesh Patel Vs. MP PKVV Co. Ltd.] ...801

सेवा विधि – मूलभूत नियम, म.प्र. – नियम 53 – निर्वाह भत्ते का पुनरीक्षण – दायिद्वक प्रकरण लंबित रहना – निर्वाह भत्ता 50% से बढ़ाकर 75% करने हेतु

दावा - अभिनिर्धारित - यदि निलंबन की अवधि तीन माह से परे विलंबित की गई और यदि विलंब हेतु शासकीय सेवक जिम्मेदार नहीं, नियोक्ता, निर्वाह भत्ते के पुनरीक्षण के पहलू पर विचार करने के लिए बाध्यताधीन है - उपबंध, विभागीय जांच के कारण निलंबन तथा किसी दाण्डिक प्रकरण के कारण निलंबन के बीच कोई विभेद नहीं करता - चूंकि पुनरीक्षण आवेदन में विलंब के पहलू के बारे में प्राख्यान नहीं है, याची को विस्तृत अभ्यावेदन करने की स्वतंत्रता दी गई तथा नियोक्ता उक्त को प्राथमिकता से 30 दिनों के भीतर विनिश्चित करेगा। (राजेश पटेल वि. एम.पी. पी.के.व्ही.व्ही. कं. लि.) ...801

Service Law - Judicial Proceedings after retirement - Petitioner attained superannuation on 31.01.1991 w.e.f. 01.02.1991 - Getting full pension on issuing PPO by State Government - Offence registered against him on 25.01.1995 - Challan filed on 11.01.1998 - Date of institution of criminal case against petitioner was after 6 years and 11 months, which is not permissible as per Rule 9(3) of Pension Rules - In case, judicial proceedings is barred looking to the date of institution - Government cannot take decision of withdrawal of pension - Decision taken by the council of ministers in the name of governor without taking note of the said discussion is contrary to spirit of Rule 9 - Pension is hard earned benefit which accrues to an employee and is in the nature of "Property" - Right of property cannot taken away without the due process of law - Order of withdrawing pension is wholly unjustified, unreasonable, arbitrary and violative of principles of natural justice, liable to be quashed. [Nirmal Kumar Jain Vs. State of M.P.] ...856

सेवा विधि - सेवा निवृत्ति पश्चात् न्यायिक कार्यवाही - याची ने 31.01.1991 को 01.02.1991 से प्रभावी अधिवार्षिकी प्राप्त की - राज्य सरकार द्वारा पीपीओ आदेश जारी करने पर पूर्ण पेंशन प्राप्त कर रहा है - उसके विरुद्ध 25.01.1995 को अपराध पंजीबद्ध किया गया - 11.01.1998 को चालान प्रस्तुत किया गया - याची के विरुद्ध दाण्डिक प्रकरण संस्थित करने की तिथि, 6 वर्ष एवं 11 माह पश्चात् की है जो कि पेंशन नियमों के नियम 9(3) के अनुसार अनुज्ञेय नहीं - प्रकरण में न्यायिक कार्यवाहियाँ, संस्थित किये जाने की तिथि को देखते हुए वर्जित है - सरकार पेंशन वापस लेने का निर्णय नहीं ले सकती - मंत्रीमंडल द्वारा उक्त चर्चा को ध्यान में लिए बिना राज्यपाल के नाम से लिया गया निर्णय, नियम 9 की भावना के विपरीत है - पेंशन एक कष्ट से अर्जित लाभ है जो एक कर्मचारी को प्रोद्भूत होता है और "संपत्ति" के स्वरूप का है - संपत्ति के अधिकार को विधि की सम्यक् प्रक्रिया के बिना समाप्त नहीं किया जा सकता - पेंशन वापस लेने का आदेश पूर्णतः अन्यायपूर्ण, अयुक्तियुक्त, मनमाना एवं नैसर्गिक न्याय के सिद्धांतों का उल्लंघन है, जो अभिखंडित किये जाने योग्य है। (निर्मल

कुमार जैन वि. म.प्र. राज्य)

...856

Service Law – Pension and Retiral Dues – Conviction u/S 324/34 IPC and Civil Services (Pension) Rules, M.P. 1976, Rule 8 – Petitioner, a government high school teacher, suspended from service due to conviction u/S 324/34 IPC – After retirement, he was deprived from the fruits of pension and other retiral dues – Held – Offence punishable u/S 324 IPC does not involve moral turpitude – Trial Court's judgment reveals that a private dispute resulted into a criminal case which has no impact on the society or public at large – Petitioner was not punished for any heinous offence – Stoppage of full pension amounts to inflicting punishment of financial death sentence – Respondents directed to pay pension and other retiral dues from the date of his retirement within three months, failing which delayed payment will carry 12% interest – Respondents may deduct the subsistence allowance and provisional pension already paid to petitioner – Petition allowed. [Mahima Chand Gangwar Vs. State of M.P.] ...*70

सेवा विधि – पेंशन एवं सेवानिवृत्ति देय – मा.द.सं. की धारा 324/34 के अंतर्गत दोषसिद्धि एवं सिविल सेवा (पेंशन) नियम, म.प्र. 1976 का नियम 8 – याची एक शासकीय हाईस्कूल शिक्षक को मा.द.सं. की धारा 324/34 के अंतर्गत दोषसिद्धि के कारण सेवा से निलंबित किया गया – सेवा निवृत्ति पश्चात्, उसे पेंशन एवं अन्य निवृत्ति देय के परिणामों से वंचित किया गया – अभिनिर्धारित – मा.द.सं. की धारा 324 के अंतर्गत दण्डनीय अपराध में नैतिक अधमता शामिल नहीं – विचारण न्यायालय का निर्णय प्रकट करता है कि एक व्यक्तिगत विवाद दाण्डिक प्रकरण में परिणित हुआ जिसका समाज अथवा जनता पर व्यापक रूप से कोई प्रभाव नहीं हुआ है – याची को किसी जघन्य अपराध के लिए दण्डित नहीं किया गया था – पूर्ण पेंशन को रोका जाना, वित्तीय मृत्युदण्ड की शास्ति अधिरोपित करने की कोटि में आता है – प्रत्यर्थीगण को याची की सेवा निवृत्ति की तिथि से पेंशन एवं अन्य निवृत्ति देय का भुगतान तीन माह के भीतर करने के लिए निदेशित किया गया, ऐसा करने में विफल होने पर विलंबित भुगतान के साथ 12% ब्याज लगेगा – प्रत्यर्थीगण, याची को अदा किया जा चुका जीवन-निर्वाह भत्ता एवं अनंतिम पेंशन का कटोत्रा कर सकते हैं – याचिका मंजूर। (महिमा चंद गंगवार वि. म.प्र. राज्य) ...*70

Service Law – Relaxation in the upper age limit for the purposes of recruitment – Police Executive (Non-Gazetted) Service Recruitment Rules, M.P. 1997, Rule 8 – Exercise of powers u/A 226 and 227 of the Constitution of India – The Court cannot give direction to the State to relax the conditions stipulated in the Rules based on executive instructions

in the matter of recruitment to posts under the Rules – Writ Petitions dismissed. [Bhupendra Singh Rawat Vs. State of M.P.] ...*47

सेवा विधि – भर्ती के प्रयोजन हेतु उच्चतर आयु सीमा में छूट – म.प्र. पुलिस कार्यपालिक (अराजपत्रित) सेवा भर्ती नियम, 1997, नियम 8 – भारतीय संविधान के अनुच्छेद 226 एवं 227 के अंतर्गत शक्तियों का प्रयोग – न्यायालय राज्य को नियमों के अंतर्गत पदों की भर्ती के मामले में कार्यकारी अनुदेशों के आधार पर नियमों में निर्धारित शर्तों को शिथिल करने का निदेश नहीं दे सकता – रिट याचिकाएँ खारिज। (भूपेन्द्र सिंह रावत वि. म.प्र. राज्य) ...*47

Service Law – Teacher of Aided Private Institution – Age of Superannuation – Jurisdiction of Coordination Committee – Held – Fixation of age of superannuation in a private aided institution/college is within the jurisdiction of the Coordination Committee. [S.C. Jain (Dr.) Vs. State of M.P.] (FB)...1299

सेवा विधि – सहायता प्राप्त संस्था के शिक्षक – अधिवर्षिता की आयु – समन्वय समिति की अधिकारिता – अभिनिर्धारित – सहायता प्राप्त संस्था/महाविद्यालय में अधिवर्षिता की आयु का निर्धारण समन्वय समिति की अधिकारिता के भीतर है। (एस.सी. जैन (डॉ.) वि. म.प्र. राज्य) (FB)...1299

Service Law – Withdrawal of Pension – In case of withdrawal of pension to which it has already been granted for about 24 years, without opportunity to explain the circumstances as specified in the circular, cannot be said to be in conformity to the spirit of Rule 9 – Clause (Kha) of GAD circular except the condition to pass an order by council of ministers is contrary to Rule 9 and is unreasonable – Circular C-6-2/98/3/1 dated 08.02.1999 is arbitrary, unjustified, unreasonable and violative of principle of natural justice – Also contrary to spirit of Rule 9 – Hereby quashed. [Nirmal Kumar Jain Vs. State of M.P.] ...856

सेवा विधि – पेन्शन वापस ली जाना – परिस्थितियों को स्पष्ट करने का अवसर दिये बिना पेन्शन, जिसे पहले ही करीब 24 वर्षों तक प्रदान किया जा चुका है, को वापस लिये जाने के मामले में, जैसा कि परिपत्र में विनिर्दिष्टित है, नियम 9 की भावना के अनुरूप नहीं कहा जा सकता – सामान्य प्रशासन विभाग के परिपत्र का खंड(ख), मंत्रीमंडल द्वारा आदेश पारित करने की शर्त को छोड़कर, नियम 9 के विपरीत है एवं अयुक्तियुक्त है – परिपत्र सी-6-2/98/3/1 दिनांक 08.02.1999 मनमाना अनुचित, अयुक्तियुक्त एवं नैसर्गिक न्याय के सिद्धांत का उल्लंघन करने वाला है – साथ ही नियम 9 के भावार्थ के विपरीत भी है – एतद् द्वारा अभिखंडित। (निर्मल कुमार जैन वि. म.प्र. राज्य) ...856

Service Law – Wrongful Denial of Promotion – Arrears of salary – Entitlement of difference of salary – Held – Once this court in earlier round of litigation held that promotion of petitioner was wrongly denied and such denial is not based on any reason attributed to the petitioner, and at the same time there is no restriction in law for grant of arrears of salary to him, he is entitled to relief of difference of salary – Further held – State should have justified its claim being a welfare State – Petitioner is also entitled to interest on the arrears of salary @ 9% per annum from the date the arrears became due till realization – Petition allowed. [Manohar Lal Vs. State of M.P.] ...*52

सेवा विधि – पदोन्नति की दोषपूर्ण अस्वीकृति – बकाया वेतन – वेतन में अंतर की हकदारी – अभिनिर्धारित – एक बार इस न्यायालय ने मुकदमेबाजी के पूर्वतर दौर में यह अभिनिर्धारित किया कि याची की पदोन्नति गलत रूप से अस्वीकार की गई थी तथा ऐसा अस्वीकार किया जाना किसी ऐसे कारण पर आधारित नहीं है जिसके लिए याची जिम्मेदार हो तथा उसी समय उसको वेतन का बकाया प्रदान करने हेतु विधि में कोई निर्बन्धन नहीं है, वह वेतन में अंतर का अनुतोष पाने का हकदार है – आगे अभिनिर्धारित – राज्य को कल्याणकारी राज्य होने के अपने दावे को न्यायोचित सिद्ध करना चाहिए – याची, बकाया देय होने की तिथि से वसूली होने तक 9 प्रतिशत प्रति वर्ष की दर से बकाया वेतन पर ब्याज प्राप्त करने का भी हकदार है – याचिका मंजूर। (मनोहर लाल वि. म.प्र. राज्य) ...*52

Society Registrakaran Adhiniyam, M.P. (44 of 1973), Section 3(e), 20, 21 & 25 and Public Trusts Act, M.P. (30 of 1951), Section 36(1)(b) – Exemption – On 16.03.2009, petitioner Samiti got itself registered under the Adhiniyam of 1973 – Later, on 03.07.2010, Registrar, Public Trust ordered for registration of petitioner Samiti as public trust – Challenge to – Held – Despite interim orders passed by this court on 24.06.2010, impugned order was passed on 03.07.2010, therefore for this reason alone, the same is hereby set aside – Further held – In absence of any documentary evidence relating to title, possession or any other right and interest of the society with regard to temple on record and looking to the undisputed fact that temple is constructed on forest land as mutated in revenue records, claim for temple as a private property is not sustainable and is hereby rejected – Further held – For the purpose of attracting provisions of Section 36(1)(b) of Public Trust Act, the public trust or society must be engaged in activities of management of its properties/estate/assets with its functional orientation amenable to regulatory measures as provided under the

Adhiniyam of 1973 – In the instant case, there is no document produced on record to claim that said society is administered under the provisions of the Adhiniyam of 1973 – Contention of petitioner that society is immune from the applicability of Trust Act, u/S 36(1)(b) cannot be accepted and is hereby rejected – Public Trust Act is applicable in the present case – Registrar public Trust is directed to initiate the proceedings – Petition partly allowed. [Maa Sheetla Sayapeeth Mandir Vyavasthapan Samiti/ Shitla Mata Kalyan Samiti Vs. State of M.P.] ...1078

सोसायटी रजिस्ट्रीकरण अधिनियम, म.प्र. (1973 का 44), धारा 3 (ई), 20, 21 व 25 एवं लोक न्यास अधिनियम, म.प्र. (1951 का 30), धारा 36(1)(बी) – छूट – 16.03.2009 को याची समिति ने 1973 के अधिनियम के अंतर्गत स्वयं को रजिस्ट्रीकृत करवाया – बाद में, 03.07.2010 को रजिस्ट्रार, लोक न्यास ने याची समिति के लोक न्यास के रूप में रजिस्ट्रीकरण हेतु आदेशित किया – को चुनौती – अभिनिर्धारित – 24.06.2010 को इस न्यायालय द्वारा अंतरिम आदेश पारित किये जाने के बावजूद, 03.07.2010 को आक्षेपित आदेश पारित किया गया था, इसलिए इस एकमात्र कारण से उक्त को एतद्वारा अपास्त किया गया – आगे अभिनिर्धारित – अभिलेख पर मंदिर के संबंध में सोसाईटी के हक, कब्जे या अन्य किसी अधिकार एवं हित से संबंधित किसी दस्तावेजी साक्ष्य की अनुपस्थिति में तथा इस अविवादित तथ्य को देखते हुए कि मंदिर का निर्माण वन भूमि पर किया गया है जैसा कि राजस्व अभिलेखों में नामांतरित है, व्यक्तिगत संपत्ति के रूप में मंदिर हेतु दावा कायम रखने योग्य नहीं है एवं एतद्वारा खारिज किया गया – आगे अभिनिर्धारित – लोक न्यास अधिनियम की धारा 36(1)(बी) के उपबंधों को आकर्षित करने के प्रयोजन हेतु, लोक न्यास या सोसाईटी को विनियामक उपायों के अधीन रहते हुए अपने कार्यशील अभिविन्यास के साथ अपनी संपत्तियों/संपदा/आस्तियों के प्रबंधन के क्रियाकलापों में लगा हुआ होना चाहिए, जैसा कि 1973 के अधिनियम के अंतर्गत उपबंधित है – वर्तमान प्रकरण में, यह दावा करने के लिए अभिलेख पर कोई दस्तावेज प्रस्तुत नहीं है कि उक्त सोसाईटी, 1973 के अधिनियम के उपबंधों के अधीन प्रशासित है – याची का तर्क कि सोसाईटी, धारा 36(1)(बी) के अंतर्गत न्यास अधिनियम की प्रयोज्यता से उन्मुक्त है, स्वीकार नहीं किया जा सकता और एतद्वारा अस्वीकार किया गया – वर्तमान प्रकरण में, लोक न्यास अधिनियम लागू होता है – रजिस्ट्रार लोक न्यास को कार्यवाहियां आरंभ करने के लिए निदेशित किया गया – याचिका अंशतः मंजूर। (मौ शीतला सायापीठ मंदिर व्यवस्थापन समिति/शीतला माता कल्याण समिति वि. म.प्र. राज्य) ...1078

Specific Relief Act (47 of 1963), Section 14 – Restoration of Contract – Held – In view of the clause of termination provided in the agreement, Oil Corporation has every right to terminate the contract

and once the contract is terminated then relief of restoration of contract cannot be granted as the same is accountable to the expressed provision of Section 14 of the Act of 1963. [Indian Oil Corporation Ltd. Vs. M/s. Govind Saraf Kisan Seva Kendra] (DB)...1336

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 14 – संविदा का प्रत्यावर्तन – अभिनिर्धारित – करार में उपबंधित, समाप्ति के खंड को दृष्टिगत रखते हुए, ऑयल कारपोरेशन को संविदा समाप्त करने का पूर्ण अधिकार है एवं एक बार संविदा समाप्त होने पर, संविदा के प्रत्यावर्तन का अनुतोष प्रदान नहीं किया जा सकता क्योंकि वह अधिनियम 1963 की धारा 14 के अभिव्यक्त उपबंध के लिए उत्तरदायी है। (इंडियन ऑयल कारपोरेशन लि. वि. मे. गोविन्द सराफ किसान सेवा केन्द्र) (DB)...1336

State Bank of Indore (Employees') Pension Regulation, 1955, Regulation 33 – Entitlement of Pension – Under Regulation 33, workman would not be entitled to pension if an order of punishment of dismissal has been substituted by compulsory retirement unless workman is entitled to pension on superannuation – Order of punishment of compulsory retirement may not entitle the workman for the benefit of pension but the intention of the Tribunal is categorical so as to entitle him to pensionary benefits – The issue, that pension cannot be paid, was neither raised before the Tribunal nor examined at the time of rendering award by Tribunal – Matter remitted back to Tribunal on the point of punishment so as to make the workman eligible for pensionary benefits. [State Bank of India Vs. Vishwas Sharma] (DB)...877

स्टेट बैंक ऑफ इंदौर (कर्मचारी) पेंशन विनियम, 1955, विनियमन 33 – पेंशन की हकदारी – विनियमन 33 के अंतर्गत, कर्मकार पेंशन का हकदार नहीं होगा यदि पदच्युति की शास्ति को अनिवार्य सेवानिवृत्ति से प्रतिस्थापित किया गया है जब तक कि कर्मकार अधिवार्षिकी पर पेंशन का हकदार न हो – अनिवार्य सेवानिवृत्ति की शास्ति का आदेश कर्मकार को पेंशन का हकदार नहीं बना सकता परंतु अधिकरण का आशय सुस्पष्ट है जिससे कि वह पेंशन लाभों के लिए हकदार हो सके – पेंशन का संदाय न किये जा सकने का मुद्दा न तो अधिकरण के समक्ष उठाया गया न ही अधिकरण द्वारा अवार्ड दिये जाने के समय परीक्षण किया गया – कर्मकार को पेंशन लाभों हेतु पात्र बनाने के लिए, शास्ति के बिंदु पर मामला अधिकरण को प्रतिप्रेषित किया गया। (स्टेट बैंक ऑफ इंडिया वि. विश्वास शर्मा) (DB)...877

Succession Act, Indian (39 of 1925), Section 372 and Hindu Marriage Act (25 of 1955), Sections 5, 11 & 16 – Second Marriage –

Presumption of Marriage – Entitlement of Wife and Children – Deceased was earlier married to Respondent and had three children – During the subsistence of first marriage, deceased started living with applicant and also had three children from the relationship – Due to such relationship, the first wife was divorced in the year 1977 – After death of husband, both the wives alongwith their children claiming succession certificate in their favour – Held – As the first wife was divorced, she is not entitled for any succession certificate – So far as the second wife is concerned, she started living with the deceased as husband and wife, during the subsistence of first marriage of deceased and therefore the said marriage was void as per section 11 and in contravention as per Section 5 of the Act of 1955 and therefore she is also not entitled for the succession certificate – Further held – Children of both the marriages are legitimate children, so they are entitled for succession certificate – Impugned order modified accordingly – Revision partly allowed. [Roopadevi @ Agarabai (Smt.) Vs. Smt. Geeta Deyi] ...1211

उत्तराधिकार अधिनियम, भारतीय (1925 का 39), धारा 372 एवं हिन्दू विवाह अधिनियम (1955 का 25), धाराएँ 5, 11 व 16 – द्वितीय विवाह – विवाह की उपधारणा – पत्नी एवं बच्चों की हकदारी – मृतक का पूर्व में प्रत्यर्थी से विवाह हुआ था और तीन संताने थी – प्रथम विवाह के अस्तित्व में रहते मृतक ने आवेदिका के साथ रहना आरंभ किया और इस संबंध से भी उसे तीन संताने हुई – उक्त संबंध के कारण प्रथम पत्नी से वर्ष 1977 में विवाह विच्छेद हुआ – पति की मृत्यु के पश्चात् दोनों पत्नियां अपनी संतानों के साथ अपने अपने पक्ष में उत्तराधिकार प्रमाणपत्र का दावा कर रही हैं – अभिनिर्धारित – चूंकि प्रथम पत्नी से विवाह विच्छेद हुआ था, वह किसी उत्तराधिकार प्रमाणपत्र की हकदार नहीं है – जहां तक द्वितीय पत्नी का संबंध है, उसने मृतक के साथ पति-पत्नी के रूप में रहना, मृतक के प्रथम विवाह के अस्तित्व में रहते आरंभ किया था और इसलिए धारा 11 के अनुसार उक्त विवाह शून्य था तथा अधिनियम, 1955 की धारा 5 के अनुसार उसके उल्लंघन में था और इसलिए वह भी उत्तराधिकार प्रमाणपत्र की हकदार नहीं – आगे अभिनिर्धारित – दोनों विवाहों की संताने धर्मज संतान हैं अतः वे उत्तराधिकार प्रमाणपत्र की हकदार हैं – आक्षेपित आदेश को तदनुसार परिवर्तित किया गया – पुनरीक्षण अंशतः मंजूर। (रूपादेवी उर्फ आगराबाई (श्रीमती) वि. श्रीमती गीता देवी) ...1211

Transfer of Property Act (4 of 1882), Section 54 – Held – Agreement of sale itself does not create any interest or charge in the property. [Devikulam Developers (India) Pvt. Ltd. Vs. Sanjeev Lunkad] ...1154

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 54 – अभिनिर्धारित – विक्रय का करार संपत्ति पर स्वयं कोई हित या भार सृजित नहीं करता। (देवीकुलम डेव्हेलपर्स (इंडिया) प्रा. लि. वि. संजीव लंकड) ...1154

University Grants Commission Minimum Qualifications for Appointment of Teachers and Other Academic Staff in University and Colleges and Measures for Maintenance of Standards of Higher Education, Regulation 2010 – See – Vishwavidyalaya Adhiniyam, M.P., 1973 – Section 4(xxiv), 34 & 35(j) [S.C. Jain (Dr.) Vs. State of M.P.] (FB)...1299

विश्वविद्यालय अनुदान आयोग (विश्वविद्यालयों एवं महाविद्यालयों में शिक्षकों एवं अन्य अकादमिक संवर्गों की नियुक्ति हेतु न्यूनतम अर्हताएँ एवं उच्च शिक्षा का स्तर बनाये रखने हेतु मापदण्ड) विनियम, 2010 – देखें – विश्वविद्यालय अधिनियम, म.प्र., 1973 – धारा 4(XXIV), 34 व 35(जे) (एस.सी. जैन (डॉ.) वि. म.प्र. राज्य) (FB)...1299

VAT Act, M.P. (20 of 2002), Section 2(u) & 2(v) and Finance Act (32 of 1994) and Constitution, Article 246 – Levy of Service Tax and VAT – State Government levied service tax on petitioner company on the services rendered by providing SIM replacement charges and Lease Line Revenue and simultaneously levying VAT – Challenge to – Held – Supreme Court held that no sales tax can be charged for providing a SIM, hence question of charging of tax on replacement of SIM does not arise – SIM card is not sold to subscriber but merely forms part of the services rendered and cannot be charged separately to sales tax – Further, in case of levy of VAT on lease line, since a subscriber of a lease line does not become the owner of the line either by control or by possession and hence such charges are only for services rendered and there is no element of sale therein – Section 2(u) and 2(v) of MP Vat Act, 2012 is ultra-vires and void so far it relates to imposition of VAT on SIM replacement charges and lease line revenue, which are merely services – Demand order and Notice issued by assessing authority is hereby quashed – Petition allowed. [Idea Cellular Ltd., Indore (M/s.) Vs. The Asstt. Commissioner of Commercial Tax LTU, Indore] (DB)...1350

वैट अधिनियम, म.प्र. (2002 का 20), धारा 2(u) व 2(v) एवं वित्त अधिनियम (1994 का 32) एवं संविधान, अनुच्छेद 246 – सेवा कर एवं वैट का उद्ग्रहण – राज्य सरकार ने याची कम्पनी से प्रदान की गई सेवाओं पर सिम की प्रतिस्थापना प्रभार एवं लीज लाइन राजस्व पर सेवा कर उद्ग्रहीत किया एवं साथ ही वैट

उद्ग्रहीत किया - को चुनौती - अभिनिर्धारित - उच्चतम न्यायालय ने अभिनिर्धारित किया कि सिम प्रदान करने हेतु कोई विक्रय कर नहीं भारित किया जा सकता, अतः सिम के प्रतिस्थापन पर कर भारित करने का प्रश्न उत्पन्न नहीं होता - सिम कार्ड ग्राहक को बेचा नहीं जाता बल्कि मात्र प्रदान की गई सेवाओं का हिस्सा है एवं पृथक् रूप से विक्रय कर भारित नहीं किया जा सकता - इसके अतिरिक्त, लीज लाइन पर वैट के उद्ग्रहण के प्रकरण में, चूंकि ग्राहक न तो लीज लाइन का नियंत्रण अथवा न ही कब्जे द्वारा स्वामी बनता है और इसलिए ऐसे मार केवल प्रदान की गई सेवाओं हेतु होते हैं और इसमें विक्रय का कोई तत्व नहीं है - एम.पी. वैट अधिनियम, 2012 की धारा 2(u) व 2(v) अधिकारातीत एवं शून्य है, जहाँ तक इसका संबंध सिम प्रतिस्थापन प्रभार एवं लीज लाइन राजस्व पर वैट के अधिरोपण से है, जो कि मात्र सेवाएँ हैं - निर्धारण प्राधिकारी द्वारा जारी मांग आदेश एवं नोटिस एतद्द्वारा अभिखंडित - याचिका मंजूर। (आइडिया सेल्यूलर लि., इंदौर (मे.) वि. द असि. कमिश्नर ऑफ कमर्शियल टैक्स एल.टी.यू., इंदौर) (DB)...1350

Vishwavidyalaya Adhiniyam, M.P. (22 of 1973) - Section 4(xxiv), 34 & 35(j), College Code, Statute 28, University Grants Commission Minimum Qualifications for Appointment of Teachers and Other Academic Staff in University and Colleges and Measures for Maintenance of Standards of Higher Education, Regulation 2010 - Teachers/Petitioner working in aided private institutions, on the ground of amended Statute 28 of College Code seeking entitlement for benefit of having their age of superannuation at 65 years as is applicable for government teachers - Held - Statute 28 of College Code has not been amended, language of the resolution dated 07.01.2014 is not to enhance the age of superannuation, but it was only a recommendation which has not been accepted either by Executive Council of respective Universities or by the State Government - Resolution dated 07.01.2014 in respect of amendment to Statute 28 of College Code will not amount to increase in age of superannuation of the member of teaching faculty of private aided institutions - Further held - UGC Regulations, 2010 are not applicable to the State Government per se but could be adopted by the State Government - Further held - Any financial liability on State Government cannot be created impliedly, but has to be specifically accepted by State Government - Hence, teachers working in the aided private institutions are not entitled to claim that their age of superannuation shall be 65 years as is applicable in case of Government teachers - Questions of Law referred to Larger Bench answered accordingly. [S.C. Jain (Dr.) Vs. State of M.P.] (FB)...1299

विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22) – धारा 4(XXIV), 34 व 35(जे), महाविद्यालय संहिता, स्टेट्यूट 28, विश्वविद्यालय अनुदान आयोग (विश्वविद्यालयों एवं महाविद्यालयों में शिक्षकों एवं अन्य अकादमिक संवर्गों की नियुक्ति हेतु न्यूनतम अर्हताएँ एवं उच्च शिक्षा का स्तर बनाये रखने हेतु मापदण्ड) विनियम, 2010 – सहायता प्राप्त निजी संस्थानों में कार्यरत शिक्षकों/याची द्वारा महाविद्यालय संहिता के संशोधित स्टेट्यूट 28 के आधार पर उनकी अधिवर्षिता की आयु, जैसा कि शासकीय शिक्षकों के लिए लागू है, 65 वर्ष के लाम हेतु हकदारी चाही गई – अभिनिर्धारित – महाविद्यालय संहिता का स्टेट्यूट 28 संशोधित नहीं किया गया है, दिनांक 07.01.2014 के संकल्प की भाषा अधिवर्षिता की आयु में वृद्धि करने हेतु नहीं है, बल्कि वह केवल एक अनुशंसा थी जो कि संबंधित विश्वविद्यालयों की कार्यकारिणी परिषद् द्वारा या राज्य सरकार द्वारा स्वीकार नहीं की गई है – महाविद्यालय संहिता के स्टेट्यूट 28 में संशोधन के संबंध में दिनांक 07.01.2014 का संकल्प सहायता प्राप्त निजी संस्थाओं के शिक्षण संकाय के सदस्यों की अधिवर्षिता की आयु में वृद्धि की कोटि में नहीं आयेगा – आगे अभिनिर्धारित – यूजीसी विनियम, 2010 राज्य सरकार पर स्वतः लागू नहीं होता परन्तु राज्य सरकार द्वारा अंगीकृत किया जा सकता है – आगे अभिनिर्धारित – राज्य सरकार पर विवक्षित रूप से कोई वित्तीय दायित्व सृजित नहीं किया जा सकता, परन्तु राज्य सरकार द्वारा विनिर्दिष्ट रूप से स्वीकार किया जाना चाहिए – अतः, सहायता प्राप्त संस्थाओं में कार्यरत शिक्षक यह दावा करने के हकदार नहीं होंगे कि उनकी अधिवर्षिता की आयु 65 वर्ष होगी जैसा कि शासकीय शिक्षकों के प्रकरण में लागू है – वृहद न्यायपीठ को निर्देशित विधि के प्रश्नों को तदनुसार उत्तरित किया गया। (एस.सी. जैन (डॉ.) वि. म.प्र. राज्य) (FB)... 1299

Words & Phrases – “administered under any enactment for time being in force” – Held – In Section 36(1)(b) of the Public Trust Act, the legislature has consciously used the word ‘administered’ and has not used the word ‘registered’ – Word ‘administration’ means management of the affairs of an institution. [Maa Sheetla Sayapeeth Mandir Vyavasthapan Samiti/Shitla Mata Kalyan Samiti Vs. State of M.P.] ...1078

शब्द और वाक्यांश – “तत्समय प्रवृत्त किसी अधिनियमिति के अंतर्गत प्रशासित” – अभिनिर्धारित – लोक न्यास अधिनियम की धारा 36(1)(बी) में, विधान-मंडल ने शब्द “प्रशासित” शब्द का उपयोग सचेत रूप से किया है तथा शब्द “रजिस्ट्रीकृत” उपयोग नहीं किया है – शब्द “प्रशासन” का अर्थ है, संस्था के कार्यकलापों का प्रबंध। (मॉ शीतला सायापीठ मंदिर व्यवस्थापन समिति/शीतला माता कल्याण समिति वि. म.प्र. राज्य) ...1078

Words and Phrases – ‘Landless Person’ – Held – A ‘landless person’ is a person who does not own either in his own name or in the

name of any member of his family any house or land in an urban area where he is actually residing – Patta can be given to those persons who are 'urban poor', who do not have any means to purchase land and construct houses in the urban locality. [Kashiram (deceased) through L.Rs. Durgashankar Vs. State of M.P.] (DB)...1043

शब्द और वाक्यांश – 'भूमिहीन व्यक्ति' – अभिनिर्धारित – 'भूमिहीन व्यक्ति' वह व्यक्ति है जिसका नगरीय क्षेत्र में, जहाँ वह वास्तविक रूप से निवासरत है किसी मकान या भूमि का, उसके स्वयं के नाम से या उसके परिवार के किसी सदस्य के नाम से स्वामित्व नहीं – पट्टा उन व्यक्तियों को दिया जा सकता है जो 'नगरीय गरीब' है जिनके पास नगरीय स्थान में भूमि क्रय करने एवं मकान निर्माण करने के लिए कोई साधन नहीं है। (काशीराम (मृतक) द्वारा विधिक प्रतिनिधि दुर्गाशंकर वि. म.प्र. राज्य) (DB)...1043

Words & Phrases – 'Proper Party' and 'Necessary Party' – Explained – Necessary party is one in whose absence an effective decree cannot be passed by Court and proper party is one whose presence enables the Court to completely, effectively and properly adjudicate the issues involved in case, though he may not be a person in whose favour or against whom a decree is to be made. [Devikulam Developers (India) Pvt. Ltd. Vs. Sanjeev Lunkad] ...1154

शब्द एवं वाक्यांश – 'उचित पक्षकार' एवं 'आवश्यक पक्षकार' – स्पष्ट किया गया – आवश्यक पक्षकार वह है जिसकी अनुपस्थिति में न्यायालय द्वारा प्रभावी डिक्री पारित नहीं की जा सकती एवं उचित पक्षकार वह है जिसकी उपस्थिति न्यायालय को प्रकरण में अंतर्वलित विवादकों को पूर्ण, प्रभावी तथा उचित रूप से न्यायनिर्णीत करने हेतु सक्षम बनाती है, यद्यपि वह वो व्यक्ति नहीं हो सकता है जिसके पक्ष में या जिसके विरुद्ध डिक्री बनाई जानी चाहिए। (देवीकुलम डेवेलपर्स (इंडिया) प्रा. लि. वि. संजीव लंकड) ...1154

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THE INDIAN LAW REPORTS M.P. SERIES, 2017

(VOL-2)

JOURNAL SECTION

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

MADHYA PRADESH ACT

No. 3 OF 2017

**THE MADHYA PRADESH NAGARPALIK VIDHI (TRITIYA
SANSHODHAN) ADHINIYAM, 2016**

[Received the assent of the Governor on the 8th January, 2017; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 11th January, 2017.]

An Act further to amend the Madhya Pradesh Municipal Corporation Act, 1956 and the Madhya Pradesh Municipalities Act, 1961.

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

1. Short title. This Act may be called the Madhya Pradesh Nagarpalik Vidhi (Tritiya Sanshodhan) Adhiniyam, 2016.

PART I

**AMENDMENT TO THE MADHYA PRADESH MUNICIPAL
CORPORATION ACT, 1956**

(NO. 23 OF 1956)

2. Amendment to the Madhya Pradesh Act No. 23 of 1956. In Section 10 of the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956), in sub-section (4), for full stop, the colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

“Provided that the process of inclusion or exclusion of area or reformation of wards inevitably be completed before six months of completion of tenure of any Municipal Corporation otherwise the State Election Commission shall start electoral process on the basis of preset and prevailing delimitation:

Provided further that inclusion or exclusion of such area or reformation of wards shall apply for upcoming election process.”.

PART II

AMENDMENT TO THE MADHYA PRADESH MUNICIPALITIES ACT, 1961

(No. 37 OF 1961)

3. Amendment to the Madhya Pradesh Act No. 37 of 1961. In Section 29 of the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961) in sub-section (4), for full stop, the colon shall be substituted and thereafter the following proviso shall be inserted, namely :-

“Provided that the process of inclusion or exclusion of area or reformation of wards inevitably be completed before six months of completion of tenure of any Municipal Council otherwise the State Election Commission shall start electoral process on the basis of preset and prevailing delimitation:

Provided further that inclusion or exclusion of such area or reformation of wards shall apply for upcoming election process.”.

NOTES OF CASES SECTION

Short Note

*(75)

Before Mr. Justice Sushil Kumar Palo

M.Cr.C. No. 12131/2011 (Jabalpur) decided on 6 February, 2017

ABHA GARG

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Prevention of Food Adulteration Act (37 of 1954), Sections 7, 13(2), 16(1)(a)(i)/(ii) – Adulteration – Notice u/S 13(2) – Object – Quashment of Proceeding – Complaint case against the petitioner for charges of adulteration in milk – Three samples of milk were seized, one sample sent to State Food Laboratory Bhopal for examination whereby adulteration was found – No notice was served u/S 13(2) of the Act of 1954 to petitioner/accused – Challenge to – Held – According to Section 13(2) of the Act of 1954, if adulteration is found in the seized article, the local (health) authority, should sent a copy of report to accused affording him an opportunity to get the other sample tested/examined by the Central Food Laboratory – Accused was deprived of his valuable right – Provisions of Section 13(2) is mandatory and violation thereof will entitle the accused to acquittal – Proceedings quashed – Petition allowed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 7, 13(2), 16(1)(ए)(i)/(ii) – अपमिश्रण – धारा 13(2) के अंतर्गत नोटिस – उद्देश्य – कार्यवाही अभिखंडित की जाना – याची के विरुद्ध दूध के अपमिश्रण के आरोप हेतु परिवाद प्रकरण – दूध के तीन नमूने जब्त किये गये थे, एक नमूना राज्य खाद्य प्रयोगशाला भोपाल को परीक्षण हेतु भेजा गया जिसमें अपमिश्रण पाया गया था – याची/अभियुक्त को 1954 के अधिनियम की धारा 13(2) के अंतर्गत कोई नोटिस तामिल नहीं किया गया था – को चुनौती – अभिनिर्धारित – 1954 की धारा 13(2) के अनुसार, यदि जब्तशुदा वस्तु में अपमिश्रण पाया जाता है, स्थानीय (स्वास्थ्य) प्राधिकारी को रिपोर्ट की, एक प्रति अभियुक्त को अन्य नमूने की जाँच/परीक्षण, केन्द्रीय खाद्य प्रयोगशाला द्वारा करवाए

NOTES OF CASES SECTION

जाने का अवसर प्रदान करते हुए मेजी जानी चाहिए – अभियुक्त को उसके मूल्यवान अधिकार से वंचित किया गया था – धारा 13(2) के उपबंध आज्ञापक है तथा उनका उल्लंघन अभियुक्त को दोषमुक्ति हेतु हकदार बनाएगा – कार्यवाहियां अभिखंडित – याचिका मंजूर।

Cases referred :

2013(1) MPWN 118, 2012 (4) MPHT 358.

Kunal Dubey, for the applicant.

A.R.S. Chouhan, P.L. for the non-applicant No.1/State.

None, for the non-applicant No.2.

Short Note

*(76)

Before Mr. Justice S.A. Dharmadhikari

W.P. No. 8585/2011 (Gwalior) decided on 19 May, 2017

ARVIND SINGH @ PAPPU
Vs.

... Petitioner

STATE OF M.P. & ors.

...Respondents

Rajya Suraksha Adhiniyam, M.P. 1990 (4 of 1991), Section 5 – Externment Orders – District Magistrate passed order of externment against the petitioner – Appeal by petitioner was also dismissed by Commissioner – Challenge to – Held – District Magistrate has stated that petitioner is a habitual offender and has created group of anti social elements right from 1990 to 2009 and is continuously involved in committing violence, beating persons belonging to lower caste, committing robbery and because of this there is terror amongst general public, witnesses are not coming forward to give evidence against him for reasons of their safety of person and property – Petitioner had not appeared before District Magistrate even though opportunity was granted to him – He had not produced any order of acquittal in any criminal cases – Two conditions enumerated under Section 5(b) for passing order of externment against petitioner are satisfied – No fault with the order of District Magistrate and Commissioner – Petition

NOTES OF CASES SECTION

dismissed.

राज्य सुरक्षा अधिनियम, म.प्र., 1990 (1991 का 4), धारा 5 – निष्कासन के आदेश – जिला मजिस्ट्रेट ने याची के विरुद्ध निष्कासन का आदेश पारित किया – याची द्वारा की गई अपील भी आयुक्त द्वारा खारिज की गई – को चुनौती – अभिनिर्धारित – जिला मजिस्ट्रेट ने कहा है कि याची एक आदतन अपराधी है और उसने 1990 से 2009 तक असामाजिक तत्वों का समूह निर्मित किया है तथा निरंतर रूप से हिंसा करने, निचली जाति के व्यक्तियों को पीटने, लूट कारित करने में लिप्त है एवं इस कारण साधारण जनता में आतंक है, साक्षीगण, उनकी व्यक्तिगत एवं सम्पत्ति की सुरक्षा के कारणों से उसके विरुद्ध साक्ष्य देने के लिए आगे नहीं आ रहे हैं – याची, जिला मजिस्ट्रेट के समक्ष उपस्थित नहीं हुआ था, यद्यपि उसे अवसर प्रदान किया गया था – उसने किसी दायिद्विक प्रकरण में दोषमुक्ति के किसी आदेश को प्रस्तुत नहीं किया था – याची के विरुद्ध निष्कासन का आदेश पारित करने हेतु धारा 5(बी) के अंतर्गत प्रगणित दो शर्तों की संतुष्टि होती है – जिला मजिस्ट्रेट और आयुक्त के आदेश में कोई दोष नहीं – याचिका खारिज।

Cases referred :

AIR 1973 SC 630, AIR 1989 SC 1304, AIR 2005 SC 2080.

H.K. Shukla, for the petitioner.

Nidhi Patankar, G.A. for the respondents/State.

Short Note

***(77)**

Before Mr. Justice Ashok Kumar Joshi

S.A. No. 1158/2012 (Jabalpur) decided on 10 January, 2017

BHAIYA LAL RAJAK

...Appellant

Vs.

MOH. SHAMIM

...Respondent

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) & 13(1) – Arrears of Rent – Service of Notice – Eviction suit filed by the Respondent/Plaintiff u/S 12(1)(a) was dismissed – Appeal filed by plaintiff was allowed and decree was passed u/S 12(1)(a) – Second appeal by the Appellant/tenant on the ground that no notice for demand of arrears of rent was ever served thus no compliance u/S 13(1) was

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made – Held – The closed envelope (Article-'A') proves that notice was properly addressed to the appellant/tenant, sent through registered post with acknowledgment – Endorsement in the envelope "refused to accept, hence returned" - Appellant has not stated that postman had recorded a wrong endorsement – Provisions of Section 13(1) complied with – No error, illegality or irregularity by the court below while decreeing suit for eviction – Appeal dismissed.

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए) एवं 13(1) – भाड़े का बकाया – नोटिस की तामीली – प्रत्यर्थी/वादी द्वारा धारा 12(1)(ए) के अन्तर्गत प्रस्तुत किया गया बेदखली का वाद खारिज किया गया था – वादी द्वारा प्रस्तुत अपील मंजूर की गई थी एवं धारा 12(1)(ए) के अन्तर्गत डिक्री पारित की गई थी – अपीलार्थी/किरायेदार द्वारा इस आधार पर द्वितीय अपील कि भाड़े के बकाये की मांग के लिए कमी किसी नोटिस की तामीली नहीं की गई इस प्रकार धारा 13(1) के अन्तर्गत कोई अनुपालन नहीं किया गया था – अभिनिर्धारित – बंद लिफाफा (वस्तु-‘ए’) यह साबित करता है कि रजिस्ट्रीकृत डाक के माध्यम से अभिस्वीकृति के साथ भेजा गया नोटिस उचित रूप से अपीलार्थी/किरायेदार को संबोधित किया गया था – लिफाफे में पृष्ठांकन "स्वीकार करने से इंकार, इसलिए वापिस" – अपीलार्थी ने यह कथन नहीं किया है कि डाकिये ने गलत पृष्ठांकन अभिलिखित किया था – धारा 13(1) के उपबंधों का अनुपालन किया गया – बेदखली हेतु वाद को डिक्रीत करते समय निचले न्यायालय द्वारा कोई त्रुटि, अवैधता या अनियमितता नहीं की गई – अपील खारिज।

Case referred :

1983 J.L.J. 287.

Satish Shrivastava, for the appellant.

A.K. Shrivastava, for the respondent.

Short Note

***(78)**

Before Mr. Justice Vivek Rusia

W.P. No. 274/2016 (Indore) decided on 4 January, 2017

HARIPRASAD GEHLOT

...Petitioner

Vs.

STATE OF M.P. & anr.

....Respondents

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Service Law – Departmental Enquiry and Criminal Trial – Stay of Proceeding – Offence was registered against the petitioner, a Head Constable, u/S 7 of the Prevention of Corruption Act, 1988 – Superintendent of Police also issued charge-sheet for initiation of departmental enquiry – Petitioner seeking stay of the departmental enquiry on the ground that continuation of the departmental enquiry would disclose his defence in the criminal trial because the facts and evidence are identical in both the proceedings – Held – Departmental enquiry shall remain stayed till the conclusion of the criminal trial and at the same time trial court directed to expedite and conclude the criminal trial within a period of one year from the date of this order – Petition allowed.

सेवा विधि – विभागीय जांच एवं आपराधिक विचारण – कार्यवाही पर रोक – याची, एक प्रधान आरक्षक के विरुद्ध भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 7 के अन्तर्गत अपराध पंजीबद्ध किया गया था – पुलिस अधीक्षक ने विभागीय जांच प्रारम्भ किये जाने हेतु आरोप-पत्र भी जारी किया – याची द्वारा इस आधार पर विभागीय जांच पर रोक चाही गई है कि विभागीय जांच का जारी रहना, आपराधिक विचारण में उसके बचाव को प्रकट करेगा क्योंकि दोनों कार्यवाहियों में तथ्य एवं साक्ष्य समान हैं – अभिनिर्धारित – आपराधिक विचारण की समाप्ति तक विभागीय जांच रुकी रहेगी एवं उसके साथ ही विचारण न्यायालय को इस आदेश की दिनांक से एक वर्ष की अवधि के भीतर आपराधिक विचारण को शीघ्रता से कार्यवाही कर समाप्त करने हेतु निदेशित किया गया – याचिका मंजूर।

Cases referred :

(1999) 3 SCC 679, 2005 (10) SCC 471, 2008 (1) SCC 650, W.P. No. 8686/2015 order passed on 12.08.2016, (2016) 9 SCC 491.

Rajeev Bhatjiwale, for the petitioner.

Yogesh Mittal, G.A. for the respondents/State.

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Short Note

*(79)

Before Mr. Justice Rajeev Kumar Dubey

M.Cr.C. No. 6210/2015 (Indore) decided on 20 February, 2017.

INDU BATNI (MRS.) & anr.

...Applicants

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Factories Act (63 of 1948), Section 9 & 92 – On a complaint filed by the Factory Inspector, cognizance taken by Court and criminal case was registered against petitioners, who are the owner and manager of the company – Challenge to, on the ground that Factory Inspector was not accompanied by any other person/expert during inspection as contemplated in Section 9 of the Act of 1948 – Held – In the instant case, Inspector did not inspect the factory after any accident so as to require an expert to accompany but the inspection was made in a routine manner – Section 9 gives power to Inspector to either himself inspect the factory alone or along with assistance of any government or local or other public authority or with an expert as he thinks fit – Inspector pointed out certain violation of the Factory Act so it cannot be said that *prima facie* no offence is made out – No ground established to quash the proceedings – Petition dismissed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं कारखाना अधिनियम (1948 का 63), धारा 9 व 92 – कारखाना निरीक्षक द्वारा प्रस्तुत परिवाद पर, न्यायालय द्वारा संज्ञान लिया गया और याचीगण, जो कि कम्पनी के स्वामी एवं प्रबंधक है के विरुद्ध संज्ञान लिया गया – इस आधार पर चुनौती कि निरीक्षण के दौरान कारखाना निरीक्षक के साथ और कोई अन्य व्यक्ति/विशेषज्ञ नहीं था जैसा कि 1948 के अधिनियम की धारा 9 में अनुध्यात है – अभिनिर्धारित – वर्तमान प्रकरण में, निरीक्षक ने किसी दुर्घटना के पश्चात् कारखाने का निरीक्षण नहीं किया है जिससे कि एक विशेषज्ञ के साथ जाना अपेक्षित हो, बल्कि वह एक नियमित ढंग से किया गया निरीक्षण था – धारा 9, निरीक्षक को या तो स्वयं अकेले अथवा किसी सरकारी या स्थानीय या अन्य लोक प्राधिकारी या किसी विशेषज्ञ के साथ, जैसा कि

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वह उचित समझे, कारखाने का निरीक्षण करने की शक्ति प्रदान करती है – निरीक्षक ने कारखाना अधिनियम के कतिपय उल्लंघन इंगित किये, अतः यह नहीं कहा जा सकता कि प्रथम दृष्ट्या कोई अपराध नहीं बनता – कार्यवाहियाँ अभिखंडित किये जाने हेतु कोई आधार स्थापित नहीं होता – याचिका खारिज।

Cases referred :

MPLJ 2008(3) page 526, M.Cr.C. No. 1916/2014 decided on 01.03.2016.

Girish Patwardhan, for the applicants.

Himanshu Joshi, P.L. for the non-applicant/State.

Short Note

*(80)

Before Mr. Justice G.S. Ahluwalia

M.Cr.C. No. 10477/2014 (Gwalior) decided on 10 January, 2017

MAHENDRA SINGH

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Section 306 & 498-A – Quashment of FIR – Held – Applicant has been implicated only because he happens to be the distant relative of husband of the deceased – Applicant is resident of District Morena whereas, according to the prosecution witnesses, deceased was residing separately along with her husband and children in Gwalior – No allegation that deceased was residing jointly with the accused/applicant – Witnesses had not clarified that on what date and at which place and in what manner, the accused/applicant harassed the deceased – Merely bald allegations were made against the relative of the husband without there being any specific overt act on their part and sending those persons to ordeal of trial will not be proper – FIR and consequential proceedings with regard to applicant are quashed – Petition allowed.

NOTES OF CASES SECTION

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धारा 306 व 498-ए – प्रथम सूचना प्रतिवेदन का अभिखंडन – अभिनिर्धारित – आवेदक को केवल इसलिए आलिप्त किया गया क्योंकि वह मृतिका के पति का दूर का रिश्तेदार है – आवेदक जिला मुरैना का निवासी है जबकि अभियोजन साक्षीगण के अनुसार, मृतिका अपने पति और बच्चों के साथ ग्वालियर में पृथक रूप से निवास कर रही थी– ऐसा कोई अभिकथन नहीं है कि मृतिका, अभियुक्त/आवेदक के साथ संयुक्त रूप से निवास कर रही थी – साक्षीगण ने यह स्पष्ट नहीं किया था कि किस दिनांक को, किस स्थान पर एवं किस ढंग से अभियुक्त/आवेदक ने मृतिका को उत्पीड़ित किया – पति के रिश्तेदार के विरुद्ध, उनकी तरफ से किसी विनिर्दिष्ट प्रत्यक्ष कृत्य के न होते हुये भी, मात्र कोरे अभिकथन किये गये थे एवं उन व्यक्तियों को विचारण की कठिन परीक्षा के लिए भेजना उचित नहीं होगा – आवेदक के संबंध में प्रथम सूचना प्रतिवेदन एवं परिणामिक कार्यवाहियाँ अभिखंडित – याचिका मंजूर।

Cases referred :

AIR 2000 SC 2324, (2015) 13 SCC 693, (2012) 10 SCC 741.

None, for the applicant.

R.D. Agrawal, P.L. for the non-applicant/State.

Short Note

***(81)**

Before Mr. Justice S.K. Awasthi

C.R. No. 110/2011 (Gwalior) decided on 31 January, 2017

MANNU RAJE TRUST

...Applicant

Vs.

MOHAMMAD AZAD & ors.

...Non-applicants

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Res Judicata – Scope and Applicability – Held – If at an earlier stage of same suit, identical application had been moved and same had been rejected then subsequent application under same provision of law will not be maintainable being defeated by principle of res judicata – Further held – If grounds mentioned in the previous and subsequent applications under Order 7 Rule 11 C.P.C. are different then also subsequent application would be barred by principle of constructive res judicata,

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as ground raised in the subsequent application was available at the time when previous/first application under Order 7 Rule 11 was moved.

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – पूर्व न्याय – विस्तार एवं प्रयोज्यता – अभिनिर्धारित – यदि एक ही वाद के पूर्वतर प्रक्रम पर, ऐसा ही आवेदन प्रस्तुत किया गया था तथा उक्त को नामंजूर किया गया था, तो पूर्व न्याय के सिद्धांत से परामूर्त होने के कारण विधि के उसी उपबंध के अन्तर्गत पश्चात्पूर्ती आवेदन पोषणीय नहीं होगा – आगे अभिनिर्धारित– यदि सिविल प्रक्रिया संहिता के आदेश 7 नियम 11 के अन्तर्गत पूर्व एवं पश्चात्पूर्ती आवेदनों में उल्लिखित आधार भिन्न हैं तब भी पश्चात्पूर्ती आवेदन आन्वयिक पूर्व न्याय के सिद्धांत से वर्जित होगा, क्योंकि पश्चात्पूर्ती आवेदन में उठाया गया आधार उस समय उपलब्ध था जब आदेश 7 नियम 11 के अंतर्गत पूर्व/प्रथम आवेदन प्रस्तुत किया गया था।

Cases referred :

C.R. No. 105/2011 order passed on 28.09.2015, 2005 (1) SCC 444.

Ankur Mody, for the applicant.

Gaurav Mishra, for the non-applicant No.1.

Short Note

*(82)

Before Mr. Justice Sushil Kumar Palo

M.Cr.C. No. 11149/2016 (Jabalpur) decided on 9 January, 2017

RAJENDRA KUMAR (Dr.)

....Applicant

Vs.

VALLABH CHANDAK

...Non-applicant

Negotiable Instruments Act (26 of 1881), Section 138 – Signatory of Cheque – Maintainability of Case – Complaint case u/S 138 of the Act of 1881 registered before the trial Court against applicant on the ground that he was allegedly the joint signatory of the cheque which was dishonoured – Challenge to – Held – Name of applicant is not printed in the disputed cheque, only name of co-accused is printed – Applicant not liable and is hereby discharged for the offence u/S 138 of Act of 1881 – Application allowed.

NOTES OF CASES SECTION

परक्राम्य लिखित अधिनियम (1881 का 26), धारा 138 – चैक का हस्ताक्षरकर्ता
– प्रकरण की पोषणीयता – आवेदक के विरुद्ध; अधिनियम 1881 की धारा 138 के अंतर्गत परिवाद प्रकरण विचारण न्यायालय के समक्ष इस आधार पर पंजीबद्ध किया गया कि वह अभिकथित रूप से उस चैक का संयुक्त हस्ताक्षरकर्ता था जो अनादृत हुआ था – अभिनिर्धारित – विवादित चैक में आवेदक का नाम मुद्रित नहीं है, केवल सह-अभियुक्त का नाम मुद्रित है – आवेदक दायित्वाधीन नहीं है एवं एतद्द्वारा 1881 के अधिनियम की धारा 138 के अन्तर्गत अपराध से उन्मुक्त किया गया – आवेदन मंजूर।

Case referred :

AIR 2015 SC 157.

Manish Soni, for the applicant.

None, for the non-applicant though served.

Short Note

*(83)

Before Mr. Justice Sanjay Yadav

W.P. No. 6401/2011 (Jabalpur) decided on 9 January, 2017

SHYAM SUNDER ROHRA

...Petitioner

Vs.

INDUS IND BANK

...Respondent

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 14 – Jurisdiction of Court – Chief Judicial Magistrate took cognizance of an application u/S 14 of the Act of 2002 filed on behalf of the secured creditors – Challenge to – Held – Section 14 does not contemplate secured creditors to approach CJM for assistance to secure their assets – They can approach the Chief Metropolitan Magistrate in Metropolitan and the District Magistrate in non-Metropolitan areas – CJM has no jurisdiction to entertain application u/S 14 of the Act of 2002 – Impugned order set aside – Further held – Respondent bank will be at liberty to take recourse to remedy before District Magistrate – Petition disposed of.

NOTES OF CASES SECTION

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 14 – न्यायालय की अधिकारिता – मुख्य न्यायिक मजिस्ट्रेट ने, 2002 के अधिनियम की धारा 14 के अंतर्गत, प्रतिभूत लेनदारों की ओर से प्रस्तुत आवेदन का संज्ञान लिया – को चुनौती – अभिनिर्धारित – धारा 14, प्रतिभूत लेनदारों को उनकी आस्तियों को प्रतिभूत करने के लिए सहायता हेतु मुख्य न्यायिक मजिस्ट्रेट के समक्ष जाना अनुध्यात नहीं करती – वे, महानगर में, मुख्य महानगर मजिस्ट्रेट एवं गैर महानगरीय क्षेत्रों में जिला मजिस्ट्रेट के समक्ष जा सकते हैं – मुख्य न्यायिक मजिस्ट्रेट को 2002 के अधिनियम की धारा 14 के अंतर्गत आवेदन ग्रहण करने की अधिकारिता नहीं – आक्षेपित आदेश अपास्त – आगे अभिनिर्धारित – प्रत्यर्थी बैंक को जिला मजिस्ट्रेट के समक्ष उपचार का अवलंब लेने की स्वतंत्रता होगी – याचिका निराकृत।

Cases referred :

AIR 2009 Kerala 14, AIR 2013 Madras 206, (2009) 2 DRTC 431, MATNO. 389/2013 with CAN 3023/2013 decided on 23.04.2013 (Calcutta High Court).

Wajid Hyder, for the petitioner.

Atul Choudhary, for the respondent..

Short Note

*(84)

Before Mr. Justice Vivek Rusia

W.P. No. 3684/2015 (Indore) decided on 11 January, 2017

STATE OF M.P.

...Petitioner

Vs.

BAPULAL

...Respondent

Industrial Disputes Act (14 of 1947) – Section 33 (C)(2) – Back wages – Principle of “No Work No Pay” – Petitioner challenging the order to pay Rs. 2,11,002 as arrears of wages from 01/01/2002 to 09/07/2006 – After completion of 30 years of service, Respondent was retired on 29/12/01 – Order of premature retirement was set aside by High Court and he was directed to be reinstated in service with consequential benefits – Respondent gave joining on 10/07/06 but wages

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were not paid – Industrial Court directed to petitioner to pay back wages – Held – Retirement order of 29/12/01 was challenged in the year 2005, after period of 4 years – He cannot claim wages for the said period on the principle of “No Work No Pay” – Impugned award modified to the extent that respondent be paid wages from the date when he gave joining on 10/07/06 – Petition partly allowed.

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 33 (सी)(2) – पिछला वेतन– “कार्य नहीं तो वेतन नहीं” का सिद्धांत – याची द्वारा दिनांक 01/01/2002 से 09/07/2006 तक के वेतन के बकाया के रूप में रु. 2,11,002 का भुगतान करने के आदेश को चुनौती – 30 वर्षों की सेवा पूर्ण होने के पश्चात्, दिनांक 29/12/01 को प्रत्यर्थी सेवानिवृत्त हुआ था – समयपूर्व सेवानिवृत्ति का आदेश उच्च न्यायालय द्वारा अपास्त किया गया एवं उसे परिणामिक लाभों के साथ सेवा में बहाल करने हेतु निदेशित किया गया – प्रत्यर्थी ने 10/07/06 को कार्यभार ग्रहण किया परन्तु वेतन का भुगतान नहीं किया गया – औद्योगिक न्यायालय ने, याची को बकाया वेतन का भुगतान करने हेतु निदेशित किया – अभिनिर्धारित – 29/12/01 के सेवानिवृत्ति के आदेश को चार वर्षों की अवधि के पश्चात्, वर्ष 2005 में चुनौती दी गई थी – वह “कार्य नहीं तो वेतन नहीं” के सिद्धांत पर उक्त अवधि के वेतन का दावा नहीं कर सकता – आक्षेपित अवार्ड इस प्रभाव तक उपांतरित किया गया कि प्रत्यर्थी को 10/07/06 जब उसने कार्यभार ग्रहण किया, उस दिनांक से वेतन का भुगतान किया जावे – याचिका अंशतः मंजूर।

Case referred :

2006 (1) MPLJ 23.

Romesh Dave, for the petitioner/State.

Mahesh Choudhary, for the respondent.

NOTES OF CASES SECTION

Short Note

*(85)(DB)

Before Mr. Justice S.K. Gangele & Mr. Justice Subodh Abhyankar

M.Cr.C. No. 15804/2016 (Jabalpur) decided on 3 January, 2017

VINOD KUMAR SEN

...Applicant

Vs.

SMT. SHANTI DEVI & ors.

..Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 378(3) & 372, Penal Code (45 of 1860), Section 304-B, 498-A and Dowry Prohibition Act (28 of 1961), Section 3(1) & 4-A – Application Against Acquittal – Wife committed suicide by hanging herself in the matrimonial house within one year of marriage – Case was registered against husband and his relatives – Trial concluded and only husband was convicted and rest of the relatives were acquitted – Challenge to – Held – The acquittal is based on the scrutiny of evidence available on record – Prosecution witnesses made omnibus allegations against the relatives of husband – Further held – Sisters of the husband are married and are living separately with their husband far away in Jhansi, Lucknow and Bangalore whereas deceased was living at Sagar – Apex Court has held that in case of death of a woman in her matrimonial home, it is a common feature that incident is exaggerated by the relatives of the deceased and it is a common practice to implicate all members of the family of husband – In the present case, there is nothing on record to establish demand of dowry by the relatives of husband – Application is devoid of merits and is hereby dismissed.

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 378(3) व 372, दण्ड संहिता (1860 का 45), धारा 304-बी, 498-ए एवं दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3(1) एवं 4-ए – दोषमुक्ति के विरुद्ध आवेदन – विवाह के एक वर्ष के भीतर पत्नी ने दाम्पत्य निवास में स्वयं को फाँसी लगाकर आत्महत्या की – पति एवं उसके रिश्तेदारों के विरुद्ध प्रकरण पंजीबद्ध किया गया – विचारण समाप्त हुआ तथा केवल पति को दोषसिद्ध किया गया एवं शेष रिश्तेदारों को दोषमुक्त किया गया – को चुनौती – अभिनिर्धारित – दोषसिद्धि, अभिलेख पर उपलब्ध साक्ष्य की संवीक्षा पर

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आधारित है अभियोजन साक्षियों ने पति के रिश्तेदारों के विरुद्ध सर्वग्राही अभिकथन किये हैं — आगे अभिनिर्धारित — पति की बहनें विवाहित हैं और पृथक रूप से दूर अपने-अपने पति के साथ झांसी, लखनऊ एवं बंगलौर में निवासरत हैं जबकि मृतिका सागर में निवासरत थी — सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि महिला की उसके दाम्पत्य निवास में मृत्यु के प्रकरण में, यह सामान्य लक्षण है कि मृतिका के रिश्तेदारों द्वारा घटना को अतिरंजित किया जाता है तथा पति के परिवार के सभी सदस्यों को आलिप्त करना एक सामान्य पद्धति है — वर्तमान प्रकरण में, पति के रिश्तेदारों द्वारा दहेज की मांग स्थापित करने के लिए अभिलेख पर कुछ नहीं है — आवेदन गुणदोष रहित है एवं एतद् द्वारा खारिज।

The order of the Court was delivered by : SUBODH ABHYANKAR, J.

Case referred :

AIR 1984 SC 1622.

S.S. Bisen, for the applicant.

None, for the non-applicants.

I.L.R. [2017] M.P., 1283

SUPREME COURT OF INDIA

Before Mr. Justice Madan B. Lokur &

Mr. Justice Adarsh Kumar Goel

C.A. No. 11491/2016 decided on 2 January, 2017

HARJAS RAI MAKHIJA (D) THR. LRs.

...Appellants

Vs.

PUSHPARANI JAIN & anr.

...Respondents

Civil Procedure Code (5 of 1908), Order 41 Rule 27 – Additional Evidence before Appellate Court – Decree obtained by fraud – Proof – Held – Appellant had an opportunity to prove the allegation of fraud when he filed an application under Order 41 Rule 27 C.P.C. but he missed that opportunity right up to this Court – Appellant took a second shot at alleging fraud and filed another suit against respondent where his evidence was so weak that it could not be even considered as secondary evidence because of which both the trial Court and High Court rejected the allegation of fraud – Further held – A mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intent to deceive would not render a decree obtained by a party as fraudulent – In the present case, fraud not having been proved but merely alleged, no interference is called for – Appeal dismissed with cost of Rs. 50,000. (Para 21 & 23)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 – अपीली न्यायालय के समक्ष अतिरिक्त साक्ष्य – कपट द्वारा अभिप्राप्त डिक्री – सबूत – अभिनिर्धारित – अपीलार्थी को कपट के अभिकथन को साबित करने का अवसर था जब उसने सिविल प्रक्रिया संहिता के आदेश 41 नियम 27 के अन्तर्गत आवेदन प्रस्तुत किया था परन्तु वह इस न्यायालय तक उस अवसर को गवां चुका था – अपीलार्थी ने कपट का अभिकथन करते हुए दूसरा प्रयत्न किया एवं प्रत्यर्थी के विरुद्ध अन्य वाद प्रस्तुत किया जहाँ उसका साक्ष्य इतना कमजोर था कि इसे द्वितीयक साक्ष्य के रूप में भी विचार में नहीं लिया जा सकता था जिसके कारण विचारण न्यायालय एवं उच्च न्यायालय दोनों ने कपट के अभिकथन को अस्वीकार किया – आगे अभिनिर्धारित – प्रवचना के आशय के बिना मात्र छिपाव अथवा अप्रकटन या बिना सबूत एवं प्रवचना के आशय से कपट का कोरा अभिकथन पक्षकार द्वारा अभिप्राप्त डिक्री को कपटपूर्ण नहीं बनाएगा – वर्तमान प्रकरण में, कपट साबित नहीं हुआ है परन्तु मात्र अभिकथित किया गया है, हस्तक्षेप की कोई आवश्यकता नहीं – अपील 50,000 रु./- के व्यय के साथ खारिज।

Cases referred :

(2007) 4 SCC 221, (2012) 1 SCC 476, (2010) 8 SCC 383 (paragraphs 28 to 36), (2005) 7 SCC 605, (2009) 12 SCC 378.

J U D G M E N T

The Judgment of the Court was delivered by : **MADAN B. LOKUR, J. :-** The appellant (Harjas Rai Makhija represented by his legal representatives) is aggrieved by the judgment and order dated 3rd April, 2012 passed by the High Court of Madhya Pradesh at Jabalpur in FA No.961 of 2010 whereby his appeal has been dismissed with costs of Rs.25,000/-.

2. Respondent No.1, Pushparani Jain (Pushparani) was allotted Plot No.251 in Major Shopping Centre Zone - II, Habibganj, Bhopal under Scheme No.13 of the Bhopal Development Authority (for short BDA). Since she was a resident of the United States of America and had some difficulty in completing the formalities with regard to the allotment, she appointed her brother Jinendra Jain as her attorney on or about 28th August, 1981. This was communicated by her to the Chairman of the BDA by a letter of the same date.

3. On the basis of the communication sent by Pushparani to the BDA, and on the basis of the Power of Attorney given by her to Jinendra Jain, she was able to obtain possession of the plot allotted to her and complete the necessary formalities.

4. According to the appellant Harjas Rai Makhija (Makhija), another Power of Attorney had been executed by Pushparani on 30th April, 1983 in favour of Jinendra Jain. The original of this document has not been produced by anybody. Be that as it may, on the basis of the alleged Power of Attorney dated 30th April, 1983, an agreement was entered into between Jinendra Jain and Makhija on 16th October, 1988 to sell the plot allotted to Pushparani in favour of Makhija. In terms of the agreement, the sale deed was to be executed on or before 30th April, 1989.

5. When Pushparani came to know about the agreement for sale in respect of the plot allotted to her, she filed a civil suit before the District Judge, Bhopal and that suit subsequently came to be numbered as Suit No. 51-A of 1999. The prayer made by Pushparani in the plaint was for a declaration that the agreement for sale dated 16th October, 1988 was without any authority given

to Jinendra Jain. She also made a prayer for recovery of possession and grant of mesné profits since possession of the plot had been given by Jinendra Jain to Makhija.

6. Makhija also filed a civil suit before the District Judge which subsequently came to be numbered as Suit No.52-A of 1999. The prayer made by Makhija was for specific performance of the agreement dated 16th October, 1988 entered into by him with Pushparani through her attorney Jinendra Jain.

7. Both the suits one filed by Pushparani and the other by Makhija were taken up and heard together. By a judgment and decree dated 4th October, 1999 the suit filed by Pushparani was decreed with the result that the agreement for sale dated 16th October, 1988 was declared to be illegal. It was also decreed that Makhija shall handover possession of the suit property to Pushparani and pay monthly compensation of Rs.5,000/- per month. The suit filed by Makhija was dismissed.

8. Feeling aggrieved by the result of the two suits mentioned above, Makhija preferred two appeals before the High Court being F.A. No. 607 of 1999 and F.A. No.638 of 1999 challenging the decree granted in favour of Pushparani and the dismissal of his suit.

9. During the pendency of the aforesaid appeals, Makhija filed an application before the High Court under Order XLI Rule 27 of the Code of Civil Procedure¹ (for short the CPC) for adducing additional evidence. By

¹ **Order XLI Rule 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) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

virtue of this application, Makhija sought to bring on record an application said to have been filed by Jinendra Jain with the BDA on behalf of Pushparani as her attorney for the grant of a No Objection Certificate in respect of the suit property. According to the averment made in the application, Jinendra Jain had moved the application before the BDA on 1st June, 1983.

10. By a judgment and order dated 13th September, 2002 the High Court dismissed both the appeals filed by Makhija as well as the application under Order XLI Rule 27 of the CPC. While dismissing the appeals and the application, the High Court held that no document was produced before the Trial Court to establish that Pushparani had executed a Power of Attorney in favour of Jinendra Jain on 30th April, 1983. The High Court also noted that according to Makhija what was produced before the BDA as the Power of Attorney dated 30th April, 1983 was in fact a photocopy of the alleged Power of Attorney. Therefore, the High Court took the view that a photocopy produced before it was a photocopy of another photocopy (filed before the BDA) and as such it could not even be considered as secondary evidence. Even otherwise, the High Court concluded that there was no material to indicate that Jinendra Jain was authorized to enter into an agreement for sale the suit property on behalf of Pushparani.

11. Feeling aggrieved by the dismissal of the appeals as well as the application, Makhija preferred S.L.P.(C) Nos.524-525 of 2003 which came to be dismissed by this Court on 25th July, 2003. The review petitions filed by Makhija also came to be dismissed by this Court on 9th September, 2003.

12. Notwithstanding the dismissal of Makhija's case, he was unrelenting and filed yet another suit before the Additional District Judge, Bhopal which came to be numbered as Suit No.471-A of 2008. In this suit, he produced a certified copy of the Power of Attorney dated 30th April, 1983 allegedly filed by Jinendra Jain before the BDA. The prayer made in the plaint filed by Makhija was for a declaration that the decree dated 4th October, 1999 passed in favour of Pushparani was obtained in a fraudulent manner and is void and not worthy of being executed. This suit came to be dismissed by the Additional District Judge by the judgment and decree dated 28th September, 2010.

13. Feeling aggrieved by the dismissal of the suit filed by him, Makhija preferred FA No. 961 of 2010 in the High Court of Madhya Pradesh. The appeal was taken up for consideration by the High Court and by judgment

and order dated 3rd April, 2012 (impugned) the appeal was dismissed. The High Court took the view that the alleged Power of Attorney dated 30th April, 1983 could not be accepted as a valid piece of documentary evidence being a certified copy of a photocopied document. It was also held that Makhija had an opportunity to raise the same issue when the application for leading additional evidence was filed but did not do so and cannot have a second shot for the same purpose. The allegation of fraud leveled by Makhija was not accepted by the High Court.

14. Learned counsel for Makhija raised quite a few submissions before us but in our opinion, the present appeal deserves to be dismissed on the ground that no fraud has been alleged in the plaint filed by Makhija or found in respect of the decree dated 4th October, 1999.

15. There is no doubt that a decree was passed in favour of Pushparani by the District Judge on 4th October, 1999 after a full-fledged trial and that decree was upheld not only by the High Court but also by this Court. Makhija made an application before the High Court to produce additional evidence to suggest that the agreement for sale entered into by him with Pushparani through her attorney Jinendra Jain on 16th October, 1988 was genuine and based on the Power of Attorney given by her to Jinendra Jain on 30th April, 1983. Not only was the application for bringing on record additional evidence dismissed by the High Court but the decree dismissing the suit for specific performance of the agreement for sale filed by Makhija was dismissed by the High Court. That dismissal attained finality when the petitions for special leave to appeal filed by Makhija were dismissed by this Court.

16. It is significant to note that Makhija has not sought (and indeed could not seek) to reopen the proceedings pertaining to the dismissal of his suit for specific performance. As such, as mentioned above, the decree dismissing his suit for specific performance of the agreement dated 16th October, 1988 has become final. Therefore, under no circumstances can Makhija now collaterally pray for a decree of specific performance in respect of that agreement.

17. Through a collateral attack, Makhija has now sought to deprive Pushparani of her allotment of the suit property by alleging that she had concealed the Power of Attorney executed by her in favour of Jinendra Jain on 30th April, 1983 and had thereby committed a fraud on the courts.

18. We have been taken through the plaint filed by Makhija in Suit No.

471-A of 2008 and find that he has nowhere made any specific allegation of a fraud having been played by Pushparani on the Trial Court while obtaining the decree dated 4th October, 1999.

19. During the course of submissions, it was contended on behalf of Makhija that it is a settled proposition of law that a decree obtained by playing fraud on the court is a nullity and that such a decree could be challenged at any time in any proceedings. Reliance was placed on *A.V. Papayya Sastry v. Government of A.P.*² This proposition is certainly not in dispute.

20. Learned counsel also placed reliance on *Union of India v. Ramesh Gandhi*³ which reads as under:-

“27. If a judgment obtained by playing fraud on the court is a nullity and is to be treated as *non est* by every court, superior or inferior, it would be strange logic to hear that an enquiry into the question whether a judgment was secured by **playing fraud on the court by not disclosing the necessary facts relevant for the adjudication of the controversy before the court is impermissible**. From the above judgments, it is clear that **such an examination is permissible**. Such a principle is required to be applied with greater emphasis in the realm of public law jurisdiction as the mischief resulting from such fraud has larger dimension affecting the larger public interest.” (Emphasis supplied by us).

21. We agree that when there is an allegation of fraud by non-disclosure of necessary and relevant facts or concealment of material facts, it must be inquired into. It is only after evidence is led coupled with intent to deceive that a conclusion of fraud could be arrived at. A mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intent to deceive would not render a decree obtained by a party as fraudulent. To conclude in a blanket manner that in every case where relevant facts are not disclosed, the decree obtained would be fraudulent, is stretching the principle to a vanishing point.

22. What is fraud has been adequately discussed in *Meghmala & Ors. v. G. Narasimha Reddy & Ors.*⁴ Unfortunately, this decision does not refer to earlier decisions where also there is an equally elaborate discussion on fraud.

2. (2007) 4 SCC 221

3. (2012) 1 SCC 476

4. (2010) 8 SCC 383 (paragraphs 28 to 36)

These two decisions are *Bhaurao Dagdu Paralkar v. State of Maharashtra & Ors.*⁵ and *State of Orissa & Ors. v. Harapriya Bisoi.*⁶ In view of the elaborate discussion in these and several other cases which have been referred to in these decisions, it is clear that fraud has a definite meaning in law and it must be proved and not merely alleged and inferred.

23. In so far as the present appeal is concerned, there is no doubt that Makhija had an opportunity to prove the allegation of fraud when he filed an application under Order XLI Rule 27 of the CPC. However, he missed that opportunity right up to this court. Makhija took a second shot at alleging fraud and filing another suit against Pushparani. However, the evidence that he relied upon was very thin and could not even be considered as secondary evidence. Accordingly both the Trial Court as well as the High Court rejected the allegation of fraud by not accepting the evidence put forward by Makhija to allege that fraud had been committed by Pushparani when she obtained the decree dated 4th October, 1999.

24. Fraud not having been proved but merely alleged, we do not find any reason to differ with the judgment and order passed by the High Court and the Trial Court.

25. The appeal is dismissed with costs quantified at Rs.50,000/-.

Appeal dismissed.

I.L.R. [2017] M.P., 1289

SUPREME COURT OF INDIA

Before Mr. Justice N.V. Ramana & Mr. Justice Prafulla C. Pant

C.A. No. 4890/2017 decided on 1 March, 2017

BHAGWATI @ REENA

...Appellant

Vs.

ANIL CHOUBEY

...Respondent

Hindu Marriage Act (25 of 1955), Section 5(iii) & 12(1)(c) – Child Marriage – Annulment of Marriage – Husband filed a suit seeking declaration of marriage null and void on the ground that at the time of marriage his wife was less than 18 years of age and marriage was consummated under threat and pressure – Suit was decreed and was

5. (2005) 7 SCC 605

6. (2009) 12 SCC 378

further confirmed by the High Court – Challenge to – Held – Child marriages are voidable at the option of the minor spouse at the time of marriage – Section 12(1)(c) makes it clear that only minor spouse has a right to seek annulment of marriage – It is admitted that husband was a major at the time of marriage and was seeking annulment of marriage on the ground of fraud and coercion where age of wife was one of the grounds raised by husband – Matter remanded back to High Court for fresh consideration – Appeal disposed of.

(Paras 9, 10 & 12)

हिन्दू विवाह अधिनियम (1955 का 25), धारा 5(iii) एवं 12(1)(सी) – बाल विवाह – विवाह का बातिलीकरण – पति ने विवाह की अकृत एवं शून्य होने की घोषणा चाहते हुये इस आधार पर वाद प्रस्तुत किया कि विवाह के समय उसकी पत्नी 18 वर्ष की आयु से कम थी तथा विवाह धमकी एवं दबाव में संपन्न हुआ था – वाद डिक्रिट किया गया था तथा उच्च न्यायालय द्वारा आगे पुष्टि की गई थी – को चुनौती – अभिनिर्धारित – विवाह के समय अवयस्क पति या पत्नी के विकल्प पर बाल विवाह शून्यकरणीय हैं – धारा 12(1)(सी) यह स्पष्ट करती है कि केवल अवयस्क पति या पत्नी को विवाह का बातिलीकरण चाहने का अधिकार है – यह स्वीकार किया गया कि विवाह के समय पति वयस्क था तथा कपट एवं प्रपीड़न के आधार पर विवाह का बातिलीकरण चाह रहा था जहाँ पत्नी की आयु, पति द्वारा उठाए गये आधारों में से एक थी – मामला नये सिरे से विचार किये जाने हेतु उच्च न्यायालय को प्रतिप्रेषित किया गया – अपील निराकृत।

ORDER

Leave granted.

2. This appeal is preferred by the appellant/wife questioning the order dated 06-05-2015 passed by the High Court of Madhya Pradesh at Jabalpur in First Appeal No. 623 of 2005 whereby the High Court confirmed the order passed by the Family Court dated 17-06-2005 in Civil Suit No.24-A/2002 declaring the marriage between the appellant/wife and the respondent/husband as void ab initio on account of appellant/wife having not completed 18 years of age at the time of marriage.

3. The respondent/husband filed Civil Suit No. 24-A/2002 on the file of the Presiding Officer, Family Court seeking declaration of the marriage between the parties solemnized on 07-07-1999 as null and void and sought for a decree of annulment.

4. It is the specific case of the husband that under the threat of registering a false complaint he was forced to marry the appellant-wife. Several complaints were given by her and he was put to lot of stress and coercion. It is also his specific case that their marriage was not consummated willfully. There was a threat to his life at the hands of his wife and her family after the marriage. He has also stated that at the time of marriage, his wife was less than 18 years of age and hence sought for annulment of marriage.

5. In response to this, the appellant-wife stated that marriage was not performed by exerting pressure and the same was solemnized with the sheer will and consent of the husband. She stated that marriage was consummated between the parties and in fact the respondent-husband has contracted a second marriage with another girl named Anita and to conceal this offence, he has come up with the Suit seeking annulment of marriage with the appellant. According to her, she was major at the time of her marriage with the respondent-husband.

6. The trial Court, after a full fledged trial, formed the opinion that the appellant-wife was aged less than 18 years at the time of her marriage which violates the provisions of Section 5(iii) of the Hindu Marriage Act, 1955. The trial Court has also come to the conclusion that the respondent-husband has proved that his marriage with the appellant-wife was held by force. Accordingly, the trial Court annulled the marriage and decreed for the dissolution.

7. Aggrieved by the same, the appellant-wife carried the matter to the High Court. Before the High Court she filed an application under Order 41 Rule 27 of CPC to place birth certificate as additional evidence. Very interestingly, the High Court has delivered the Judgment only harping on the age of the wife and further refused to receive the document i.e. Birth Certificate. There was a finding recorded by the High Court with regard to the age of the wife that she accepted that she was adult on 28-06-1999 being the date on which her marriage was fixed with the respondent and she was short of 8-9 days to complete 18 years, but on the date of her marriage i.e. 7.7.1999 she was 18 years old.

8. We have heard learned counsel for the rival parties and perused the record as well. In our considered view, the High Court has clearly erred in reaching to the conclusion that the appellant was a minor at the time of her

marriage, whereas the appellant has categorically stated that she was above 18 years old on the date of marriage. It is an admitted position of both the parties that the husband was major at the time of marriage and he only sought annulment of marriage. Here it is pertinent to have a look at Section 12(1)(c) of the Hindu Marriage Act, 1955 which reads thus:

“that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restrain (Amendment) Act, 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent;”

9. It is no more *res integra* that child marriages are voidable at the option of the minor spouse at the time of marriage. Therefore it is clear from the reading of the said Section that only minor spouse has a right to seek annulment of marriage. In this case, admittedly it is respondent-husband who sought annulment of marriage and he was major at the time of marriage.

10. We are, therefore, unable to agree with the findings and discussion made by the High Court. The High Court has sidetracked and diluted the main issue involved in the appeal i.e. annulment of marriage sought by the respondent-husband on the ground of fraud and coercion and went on giving findings on the aspect of age of the wife. In fact age of the wife is one of the grounds raised by the husband. Even before us also the thrust of the argument is on that.

11. Hence we feel that in order to meet the ends of justice this matter should be remanded back to the High Court for fresh consideration in accordance with law.

12. Accordingly the matter is remanded to the High Court for fresh consideration in the proper perception of law uninfluenced by any of the observations made by us. As the Suit is of the year 2000, the High Court may dispose of the appeal as expeditiously as possible.

13. The appeal stands disposed of without any order as to costs.

Order accordingly.

I.L.R. [2017] M.P., 1293

FULL BENCH

*Before Mr. Justice C.V. Sirpurkar, Mr. Justice Atul Sreedharan &
Mr. Justice A.K. Shrivastava*

M.Cr.C. No. 17270/2016 (Jabalpur) decided on 27 January, 2017

BHAWNA KALE

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

High Court of Madhya Pradesh Rules, 2008, Chapter IV - Rule 12 – Practice and Procedure – Questions Referred to Larger Bench – Jurisdiction – Division bench referred the present matter to Larger bench without formulating questions to be adjudicated – Held – Rule 12 does not envisage reference of the entire case to a larger bench and thus it is incumbent upon the referring bench to formulate questions for reference to Larger bench and the referee bench has jurisdiction only to answer the questions referred to it and thereafter it is required to be decided by the referring bench in accordance with the opinion of the larger bench on referred questions – Larger bench cannot delve into the matter and formulate questions involved in the controversy – In such circumstances, in Rule 12, the word “may” occurring between words “it” and “formulate” will have to be read as “shall” – Further held – In the present case, an application for withdrawal of the proceedings was also filed before the larger bench for which the referring Court is competent to decide the same and hence the matter is required to be sent back to the referring division bench for disposal of the same – Matter be placed before the Acting Chief Justice for being posted before the referring division bench for disposal of the application for withdrawal and in case application is rejected, to formulate questions for reference to larger bench – Questions referred answered accordingly. (Paras 9, 10, 11, 12 & 15)

मध्य प्रदेश उच्च न्यायालय नियम, 2008, अध्याय IV – नियम 12 – पद्धति एवं प्रक्रिया – वृहद न्यायपीठ को निर्दिष्ट प्रश्न – अधिकारिता – खण्ड न्यायपीठ ने न्यायनिर्णयन के लिए प्रश्नों का निरूपण किये बिना वर्तमान मामला वृहद न्यायपीठ को निर्दिष्ट किया – अभिनिर्धारित – नियम 12 सम्पूर्ण प्रकरण एक वृहद न्यायपीठ को निर्दिष्ट करना परिकल्पित नहीं करता एवं इस प्रकार निर्देश भेजने वाली न्यायपीठ के लिए यह अनिवार्य है कि वृहद न्यायपीठ को निर्देश हेतु प्रश्नों का निरूपण करे एवं निर्देश प्राप्त करने वाली न्यायपीठ को केवल निर्दिष्ट किये गये प्रश्नों का उत्तर देने

की अधिकारिता होगी एवं तत्पश्चात् उसे निर्देश हेतु भेजने वाली न्यायपीठ द्वारा वृहद न्यायपीठ की राय के अनुसार निर्देशित प्रश्नों को विनिश्चित किया जाना अपेक्षित है – वृहद न्यायपीठ मामले में गहरी छानबीन एवं विवाद में अन्तर्गुप्त प्रश्नों का निरूपण नहीं कर सकती – ऐसी परिस्थितियों में, नियम 12 में शब्द “वह” एवं “निरूपित” के साथ आने वाला शब्द “कर सकती है” को “करेगी” पढ़ा जाएगा – आगे अभिनिर्धारित – वर्तमान प्रकरण में, कार्यवाहियों के प्रत्याहरण हेतु वृहद न्यायपीठ के समक्ष एक आवेदन भी प्रस्तुत किया गया था जिसके लिए निर्देश भेजने वाला न्यायालय उक्त का विनिश्चय करने हेतु सक्षम है एवं इसलिए मामले को निर्देश भेजने वाली खण्ड न्यायपीठ को उक्त के निपटारे हेतु वापस भेजा जाना अपेक्षित है – प्रत्याहरण हेतु आवेदन का निपटारा करने के लिए और आवेदन अस्वीकार किये जाने की स्थिति में, वृहद न्यायपीठ को निर्देश के लिए प्रश्न निरूपित करने हेतु, निर्देश भेजने वाली खण्ड न्यायपीठ के समक्ष नियत किये जाने के लिए मामले को कार्यकारी मुख्य न्यायाधिपति के समक्ष रखा जाए – निर्देशित प्रश्नों को तदनुसार उत्तरित किया गया।

Manish Datt with Siddharth Sharma and Aditya Sharma, for the applicant.

Bramhadutt Singh, G.A. for the non-applicant/State.

Anil Khare with Jasneet Hora, as amicus curiae.

O R D E R

The Order of the Court was delivered by :
C.V. SIRPURKAR, J. :- By order dated 12.01.2017, the Court had observed that following four preliminary questions arise for consideration before the Full Bench :

- (i) Whether an application for withdrawal by the petitioner can be considered by this Bench or it is required to be posted before the Division Bench for consideration?
- (ii) Since no question has been formulated by referring bench; whether the Full Bench has jurisdiction to delve into the matter and cull out for itself the questions involved and then answer them?
- (iii) Whether the Full Bench has jurisdiction to call for and decide Criminal Revision Nos.581/2016 and 599/2016, which allegedly involve the same question, analogously with M.Cr.C.No.17270/2016 ?
- (iv) Whether in view of pendency of the *lis* challenging the order dated 08.07.2016 passed in M.Cr.C.No.9915/2015 before the Supreme Court, the Full Bench should stay its hands for the present ?

2. Heard learned counsel for the parties and learned *amicus curiae* on all four questions, at length.

For the sake of convenience, the Bench shall firstly consider question no. (iii).

This matter has been referred to the Full Bench on the direction of Hon'ble Acting the Chief Justice dated 25.10.2016. in view of order dated 14.10.2016, passed by a division bench comprising of Hon'ble Shri Justice S.K.Seth and Hon'ble Shri Justice G.S. Ahluwalia. The division bench in its order dated 14.10.2016 had made following observations:

"The aforesaid judgment has been followed and relied upon by the Supreme Court in the case of Union of India Vs. Prakash P. Hinduja and another, AIR 2003 SC 2612. Thus, it is clear that once the charge-sheet is filed, merely because the investigating agency had no jurisdiction to investigate the matter, the charge-sheet cannot be quashed as it is not possible to say that "cognizance on an invalid police report is prohibited and, is, therefore, a nullity".

In view of the aforesaid discussion, we respectfully differ from the order rendered by the Coordinate Bench of this Court in M.Cr.C.No.9915/2015. We, therefore, direct the Registry to place the papers before Hon'ble The Acting Chief Justice for necessary orders to resolve the controversy."

Aforesaid directions were made by the division bench in the backdrop of the earlier judgment passed by another division bench comprising Hon'ble Shri Justice S.K. Gangele and Hon'ble Shri Justice Ashok Kumar Joshi in M.Cr.C.No.9915/2015, whereby the final report under Section 173(2) of the Cr.P.C. in crime no.47/2015 registered by P.S. Harda, District-Harda and the criminal proceedings arising therefrom, were quashed holding as follows:

"In this view of the matter, the investigation conducted by the local police and the charge-sheet filed by the police against the petitioner is without power and

authority in regard to special offences i.e. punishable under the Prevention of Corruption Act 1988, because the matter is interrelated hence, it would not be appropriate that local police may prosecute the petitioner for other offences also. Consequently, the charge-sheet and the criminal proceedings initiated against the petitioner vide Crime No.47/2015 registered at Police Station Harda are hereby quashed being without jurisdiction. It is hereby clarified that this Court has not opined on the merits of the case and the competence of competent prosecuting Agency."

The matter has been referred to a larger Bench presumably under Rule 12 of Chapter IV of the High Court of Madhya Pradesh Rules, 2008, as Rule 8 applies to a case where a substantial question of law of general importance is involved and not where an earlier decision of a co-ordinate bench requires reconsideration. Though, it may be noted that no question has been formulated for reference to the larger bench.

3. Thus, it is clear that the matter has been referred to the larger bench to resolve the controversy which arose because the division bench headed by Hon'ble Shri Justice S.K. Seth did not concur with the view taken by the division bench headed by Hon'ble Shri Justice S. K. Gangele with regard to jurisdiction of the State police to investigate a case involving offences punishable under the provisions of the Prevention of Corruption Act, 1988: If Criminal Revision Nos.581/2016 and 599/2016 involve same or similar questions, they may be decided as covered cases after the resolution of aforesaid controversy in the instant case by the Full Bench. Learned counsel appearing for the parties in those cases are free to address the Full Bench; however, the Full Bench, which has been constituted in a specific case, has no jurisdiction to call for and hear analogously, Criminal Revision Nos. 581/2016 and 599/2016 because those cases have not been referred by Hon'ble the Acting Chief Justice to this Bench.

4. As such, the preliminary question no.3 is answered accordingly.

Preliminary question nos.(1) & (2)

5. No sooner this Bench had assembled for the first time on 08.12.2016,

then learned counsel for the petitioner Shri Siddharth Gupta had invited attention of the Bench to I.A.No.23969/2016 filed by the petitioner for withdrawal of this petition under section 482 of the Code of Criminal Procedure (*Bhawna Kale Vs. State of Madhya Pradesh* in M.Cr.C.No.17270/2016) on the ground that the order dated 08.07.2016 passed in M.Cr.C.No.9915/2015 by the Division Bench headed by Hon'ble Shri Justice S.K. Gangele, has been challenged before the Supreme Court; therefore, the petitioner did not wish to prosecute this case any further and prayed for its withdrawal with liberty to re-agitate the matter after disposal of proceedings before the Supreme Court.

6. As already observed by us, this matter has been referred to a larger bench presumably under Rule 12 of Chapter IV of the High Court of Madhya Pradesh Rules, 2008 because it involves reconsideration of an earlier decision of a coordinate bench, though no question has been formulated for reference to the larger bench.

7. In this regard, inviting attention of the Bench to various authorities, learned *amicus curiae* submits that though, in some of the cases, it has been held that the larger bench can only answer those questions that have been referred to it, in some others, where precise questions had not been formulated by the referring benches, the larger benches had proceeded to formulate the questions for itself and had then answered the same. It has been contended that even if no precise question has been referred for answer by the larger Bench, this Bench has jurisdiction to cull out the questions, which are at the root of the controversy and may then answer the same. If the Bench adopts such a course, the application for withdrawal of the petition, shall become redundant. It has further been contended that in any case, I.A.No.23969/2016 is not for unconditional withdrawal but is for withdrawal with liberty to re-agitate the matter after the decision of the Supreme Court.

8. In our opinion, this question has to be addressed with reference to the provision of Rule 12 of Chapter IV of the High Court of Madhya Pradesh Rules, 2008, which reads as hereunder:

12 Where a division bench or a full bench while hearing a case is of the opinion that for the decision of that case, an earlier decision of coordinate or larger bench of this Court needs reconsideration, it may formulate question(s) and refer the same to the Chief Justice with a recommendation that it be placed before a larger bench.

The referring bench shall thereafter, dispose of the case in accordance with the opinion of the larger bench on the referred question (s).

9. Thus, where the Division Bench is of the view that an earlier decision of a coordinate bench needs reconsideration, it may formulate question(s) and refer the same to the Chief Justice with a recommendation that it be placed before a larger bench. The referring bench shall thereafter, dispose of the case in accordance with the opinion of the larger bench on the referred questions. It is true that in Rule 12 word "may" and not "shall" has been used, which *ex facie* indicates that the referring bench has a discretion either to formulate or not to formulate question (s); however, immediately thereafter, the Rule states that **"and refer the same to the Chief Justice"**. The phrase "the same" connotes the question (s), which signifies that what is required to be referred to the Chief Justice with a recommendation that it be placed before the larger bench, is question (s). Hence, it is incumbent upon the referring bench to formulate question (s) for reference to a larger bench. In this situation, the word "may" occurring between words "it" and "formulate" will have to be read as "shall". This view is fortified by the last sentence of the rule, which reads as follows:

" The referring bench shall thereafter, dispose of the case in accordance with the opinion of the larger bench on the referred question (s)."

The rule 12 does not envisage reference of a nebulous controversy or entire case to a larger bench at all.

10. In this view of the matter, the question (s) involved in the case is required to be formulated by the referring bench and the referee bench has jurisdiction only to answer the question (s) referred to it. As per the scheme of Rule 12, the case thereafter, is required to be decided by the referring bench in accordance with the opinion of the larger bench on referred question (s).

11. In view of foregoing discussion, it would not be appropriate for this bench to attempt to formulate questions involved in the controversy. This task is required to be performed by the referring bench.

12. Moreover, we have an application for withdrawal of the proceedings which has given rise to the controversy. We cannot ignore this application and proceed to resolve the controversy which is not before us in the form of a precise question. Thus, what is before us is not the case, wherein the controversy has arisen but

only the controversy. The *sei sin* of the case is still with the division bench, which alone is competent to decide the application for withdrawal; therefore, the matter is required to be sent back to the division bench for disposal of the application for withdrawal in accordance with law. In case the application for withdrawal is allowed and the case is dismissed as withdrawn, the controversy would cease to exist and the reference may not be warranted.

13. The question nos.(1) & (2) are answered accordingly.

Question No.(4).

14. In the light of the view taken by us on question nos.1, 2 & 3, question no.4 need not be answered for the present.

15. On the basis of foregoing discussion, let the matter be placed before Hon'ble the Acting Chief Justice for being posted before the division bench for:

- (i) disposal of I.A.No.23969/2016 for withdrawal; and
- (ii) in case the application is disallowed, for formulation of the question (s) for being referred to the larger bench.

Order accordingly.

I.L.R. [2017] M.P., 1299

FULL BENCH

Before Mr. Justice Hemant Gupta, Chief Justice,

Mr. Justice J.K. Maheshwari & Mr. Justice Anurag Shrivastava

W.A. No. 950/2015 (Jabalpur) order passed on 8 May, 2017

S.C JAIN (Dr.)

...Appellant

Vs.

STATE OF M.P. & ors.

...Respondents

A. *Vishwavidyalaya Adhiniyam, M.P. (22 of 1973) – Section 4(xxiv), 34 & 35(j), College Code, Statute 28, University Grants Commission Minimum Qualifications for Appointment of Teachers and Other Academic Staff in University and Colleges and Measures for Maintenance of Standards of Higher Education, Regulation 2010 – Teachers/Petitioner working in aided private institutions, on the ground of amended Statute 28 of College Code seeking entitlement for benefit of having their age of superannuation at 65 years as is applicable for*

government teachers – Held – Statute 28 of College Code has not been amended, language of the resolution dated 07.01.2014 is not to enhance the age of superannuation, but it was only a recommendation which has not been accepted either by Executive Council of respective Universities or by the State Government – Resolution dated 07.01.2014 in respect of amendment to Statute 28 of College Code will not amount to increase in age of superannuation of the member of teaching faculty of private aided institutions – Further held – UGC Regulations, 2010 are not applicable to the State Government per se but could be adopted by the State Government – Further held – Any financial liability on State Government cannot be created impliedly, but has to be specifically accepted by State Government – Hence, teachers working in the aided private institutions are not entitled to claim that their age of superannuation shall be 65 years as is applicable in case of Government teachers – Questions of Law referred to Larger Bench answered accordingly. (Paras 39, 40, 43 & 53)

अ. विश्वविद्यालय अधिनियम, म.प्र. (1973 का 22) – धारा 4(XXIV), 34 व 35(जे), महाविद्यालय संहिता, स्टेट्यूट 28, विश्वविद्यालय अनुदान आयोग (विश्वविद्यालयों एवं महाविद्यालयों में शिक्षकों एवं अन्य अकादमिक संवर्गों की नियुक्ति हेतु न्यूनतम अर्हताएँ एवं उच्च शिक्षा का स्तर बनाये रखने हेतु मापदण्ड) विनियम, 2010 – सहायता प्राप्त निजी संस्थानों में कार्यरत शिक्षकों/यात्री द्वारा महाविद्यालय संहिता के संशोधित स्टेट्यूट 28 के आधार पर उनकी अधिवर्षिता की आयु, जैसा कि शासकीय शिक्षकों के लिए लागू है, 65 वर्ष के लाम हेतु हकदारी चाही गई – अभिनिर्धारित – महाविद्यालय संहिता का स्टेट्यूट 28 संशोधित नहीं किया गया है, दिनांक 07.01.2014 के संकल्प की भाषा अधिवर्षिता की आयु में वृद्धि करने हेतु नहीं है, बल्कि वह केवल एक अनुशंसा थी जो कि संबंधित विश्वविद्यालयों की कार्यकारिणी परिषद् द्वारा या राज्य सरकार द्वारा स्वीकार नहीं की गई है – महाविद्यालय संहिता के स्टेट्यूट 28 में संशोधन के संबंध में दिनांक 07.01.2014 का संकल्प सहायता प्राप्त निजी संस्थाओं के शिक्षण संकाय के सदस्यों की अधिवर्षिता की आयु में वृद्धि की कोटि में नहीं आयेगा – आगे अभिनिर्धारित – यूजीसी विनियम, 2010 राज्य सरकार पर स्वतः लागू नहीं होता परन्तु राज्य सरकार द्वारा अंगीकृत किया जा सकता है – आगे अभिनिर्धारित – राज्य सरकार पर विवक्षित रूप से कोई वित्तीय दायित्व सृजित नहीं किया जा सकता, परन्तु राज्य सरकार द्वारा विनिर्दिष्ट रूप से स्वीकार किया जाना चाहिए – अतः, सहायता प्राप्त संस्थाओं में कार्यरत शिक्षक यह दावा करने के हकदार नहीं होंगे कि उनकी अधिवर्षिता की आयु 65 वर्ष होगी जैसा कि शासकीय शिक्षकों के प्रकरण में लागू है – वृहद न्यायपीठ को निर्देशित विधि के प्रश्नों को तदनुसार उत्तरित किया गया।

B. Service Law – Teacher of Aided Private Institution – Age of Superannuation – Jurisdiction of Coordination Committee – Held – Fixation of age of superannuation in a private aided institution/college is within the jurisdiction of the Coordination Committee. (Paras 34, 35, & 36)

ख. सेवा विधि – सहायता प्राप्त संस्था के शिक्षक – अधिवर्षिता की आयु – समन्वय समिति की अधिकारिता – अभिनिर्धारित – सहायता प्राप्त संस्था/महाविद्यालय में अधिवर्षिता की आयु का निर्धारण समन्वय समिति की अधिकारिता के भीतर है।

Cases referred :

C.A. No. 6362/2004 decided on 07.01.2014 (Supreme Court), 2008 (1) SCC (L&S) 59, 1965(2) SCR 173, AIR 1989 SC 341, (2013) 8 SCC 633, (2007) 11 SCC 58, 1994 Supp (3) SCC 191, 2012 (1) MPLJ 386.

L.C. Patne and Abhay Pandey, for the appellant.

P.K. Kaurav, Addl. A.G., *Samdarshi Tiwari*, Deputy A.G., *Swapnil Ganguly*, G.A. & *Amit Seth*, G.A., for the respondents/State.

Sandeep Shukla and Nirmala Nayak, for the respondent no.4-UGC.

Rajendra Tiwari assisted by *Nityanand Mishra* as Amicus Curiae.

ORDER

The Order of the Court was delivered by : **HEMANT GUPTA, C.J.** :- A Division Bench of this Court on 19.1.2017 referred the following two questions for decision by the Larger Bench in a petition filed by the Teachers working in the aided private institutes in the State, seeking the benefit of enhanced age of superannuation i.e. 65 years, as has been granted to the Teachers working in the Government Institutes. The questions are:-

- “1. Whether in view of the provisions of statute 28 of the College Code as amended and brought into force w.e.f. 7th January, 2004 and whether in view of the provisions of U. G. C. Regulation 2010, teachers working in the aided private institutes are also entitled to the benefit of having their age of superannuation fixed at 65 as is applicable in the case of Government Teachers?

2. Whether the Co-ordinate Bench of this Court while deciding the writ appeal in the case of Dr. Arun Kumar has laid down the principle correctly?"

2. Before the aforesaid questions are examined, certain statutory provisions relating to the Teachers working in the aided institutes and that of the Teachers in the Government Institutes including members of teaching faculty of the Universities are required to be noticed.

3. The Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (hereinafter referred to as 'University Act') was enacted on 23.4.1973, to consolidate and amend the law relating to Universities and to make better provisions for organization and administration of Universities in the State. The Eight Universities as mentioned in the Schedule enacted by different statutes were now to be governed by the said Act after the enactments incorporating the said Universities were repealed.

4. The relevant provisions of the said University Act are extracted hereinafter:-

"Clause 4 – In this Act, unless the context otherwise requires:

xxx xxx xxx xxx

- (xii) 'College' means an institution maintained by, or admitted to the privileges of the University by or under the provisions of this Act;

xxx xxx xxx xxx

- (xvii) 'University' means:

- (i) the University deemed to be established under this Act and specified in Part I of the Second Schedule; and,
(ii) the University which may be established after the commencement of this Act and specified in part II of the second schedule;

xxx xxx xxx xxx

- (xx) 'Teachers of the University' means Professors, Readers, Lecturers and such other persons as may be

appointed for imparting instructions or conducting research, with the approval of the Academic Council in the University or any College or Institution maintained or recognized by the University;

xxx xxx . xxx xxx

(xxiv) 'Affiliated College' means an institution admitted to the privileges of the University in accordance with the provisions of this Act and the Statutes;"

5. The University Act also contemplated constitution of a Coordination Committee in terms of Section 34(1) of the said Act. The said Coordination Committee was to draw the first Statute and Ordinances within a period of one year. It is thereafter the Coordination Committee was to exercise the powers conferred in sub-section (4) of Section 34. The relevant provisions contained in Section 34 sub-sections (3) and (4) read as under:-

"34(3) On coming into force of this Act, notwithstanding the provisions of section 36 and section 38, the first Statutes and Ordinances shall be drawn up by the Co-ordination Committee. The first Statutes and Ordinances shall come into force from such date as the Kuladhipati may by an order specify;

Provided that the power conferred on the Coordination Committee to draw up the first Statutes and Ordinances shall be exercised within a period of one year from the date appointed under sub-section (3) of section 1.

34(4) The Co-ordination Committee shall exercise the following powers and discharge the following functions;

(i) to undertake from time to time examination of the Statutes and Ordinances in force in the various Universities and to suggest modifications;

(ii) to approve or reject the statutes and Ordinances submitted by the Executive Council of the University;

6. Section 35 of the University Act provides for matters which can be included in the statutes to be framed by the Coordination Committee. The relevant clause reads as under:-

“35. Subject to the provisions of this Act and the rules made thereunder the Statutes may provide for all or any of the following matters, namely;

xxx xxx xxx xxx

(j) the conditions under which colleges and other institutions may be admitted to the privileges of the University and the withdrawal of such privileges;

(l) qualifications of Professors, Readers, Lecturers and other teachers in affiliated colleges, and recognized institutions;

(n) the emoluments and terms and conditions of service of the officers and the emoluments and terms and conditions of service other than pay scales of teachers of the University, paid by the University;
.....”

7. Section 36 contemplates that first statutes of the University shall be prepared by the Coordination Committee, whereas sub-section (2) empowers the Coordination Committee to amend or repeal any statute by a statute in the manner as to consider the proposal received from the Executive Council or on its own motion and then to approve the same. Section 36 reads as under:-

“36. (1) The first statutes of the University shall be prepared by the Co-ordination Committee.

(2) The Co-ordination Committee may, from time to time make amend or repeal any statutes by passing a statute in the manner hereinafter appearing.

(3) The Co-ordination Committee may on receiving a proposal from the Executive Council of a University or on its own motion consider the draft of a statute that is in the interest of either one or

all the Universities;

- (4) Where a draft is proposed by the Executive Council, the Co-ordination Committee may approve of such draft and pass the Statute or reject it or return it to the Executive Council for reconsideration either in whole or in part together with any amendment, which the Co-ordination Committee may suggest.
- (5) After any draft returned under sub-section (4) has been further considered by the Executive Council together with any amendment suggested by the Co-ordination Committee it shall again be presented to the Co-ordination Committee with a report of the Executive Council thereon and the Co-ordination Committee may approve or reject the Statute.
- (6) The Co-ordination Committee shall not take into consideration nor the Executive Council shall propose the draft of any Statutes or of any amendment of a statute or of the repeal of any Statute:
 - (a) Affecting the statutes, power or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal; or
 - (b) affecting the conditions of admission of colleges to privileges of the University, until the Academic Council has been given an opportunity of expressing an opinion upon the proposal and such opinion shall be forwarded by the Executive Council to the Co-ordination Committee along with any draft it may propose.

- (7) Where the Co-ordination Committee approves the Statutes, they shall become effective from such date as the Co-ordination Committee may specify.”

8. In terms of such statutory provisions, the first statutes were framed by the Coordination Committee and approved on 20.4.1974, which came into force on 4.5.1974.

9. Statute 7 deals with Standing Committee of the Academic Council. It contemplates that the Standing Committee by examination in consultation with the faculty concerned and such matters as may be referred to it by the Academic Council, the Executive Council or the Vice Chancellor.

10. Statute 27 deals with admission of colleges to the privileges of University and withdrawal thereof. It provides for procedure for admission, payment of fee in respect of colleges owned and maintained by the Government; Colleges owned or maintained by Association referred as ‘Foundation Society’; or, in cases of Colleges maintained solely by a person, referred to as ‘Founder’. In the application form, the application to seek affiliation contemplates submission of information regarding qualification and adequacy of the teaching staff, whereas sub-clause 8(ii) of the said statute enjoins upon a College to comply with the following provisions. The relevant provisions read as under:-

- “8(2) Without prejudice to the generality of the provision contained in sub-para (I) the college shall in particular comply with the following provisions namely:

xxx . xxx xxx xxx

- (e) the qualification and adequacy of the teaching staff and the conditions governing their recruitment and term of employment shall be strictly according to the provisions of the Statutes;

xxx xxx xxx xxx

10. (1) The Principal and the teachers in a college admitted to the privileges of the University shall not be appointed on scales of pay lower than those sanctioned by the State Government for the Principals and teachers of

corresponding status in Government colleges.”

11. It is Statute 28 which is subject matter of consideration before this Court. Part II of the said Statute deals with the requirements to be followed by ‘Foundation Society’. The ‘Foundation Society’ is defined under Clause 1-sub clause (b) of the said statute. A ‘College’ in the said statute means an educational institution admitted to the privileges of University [Section 4 (24 of the University Act)].

12. Clause 22 of Statute 28 provides for parity in the pay scale whereas Clause 26 provides for the age of superannuation. The age of superannuation was initially fixed at 60 years. The Statute 28 (as published on May 1, 2002) appended as Annexure R-6 with the reply by State in Writ Appeal No. 950 of 2015 contains the following Clause 26 and the amendment carried out in 1998, reads as under:-

“26. A permanent teacher shall be entitled to be in the service of the college until he/she completes the age of sixty two.

Provided that if the Governing Body is satisfied that extension of service is in the interest of the college, it may extend his/her services upto a period of two years beyond the age of sixty.

Provided also that where the date of retirement of a teacher with or without extension falls due during the course of the academic session, the Governing Body shall allow the teacher to continue till the end of the academic year.

26* Age of superannuation has been raised from 60 years to 62 years w.e.f 7.8.1998 as per provision of the MP Shashkiya Sevak Adhivarshiki Ayu Dwitiya Sanshodhan Adhiniyam No.27 of 1998 as approved by the Co-ordination Committee at its meeting dated 3.4.2002 and by the Executive Council at its meeting dated 25.9.2002 (Item No.6).”

13. The State Government enacted the Madhya Pradesh Shaskiya Sewak (Adhivarshiki-Ayu) Dwitiya Sanshodhan Adhiniyam, 1998 (Act 27 of 1998)

published on 2.9.1998 amending the Madhya Pradesh Shaskiya Sewak (Adhivarshiki-Ayu) Adhiniyam, 1967. By virtue of amendment, the age of Government Teachers was increased to 62 years with effect from 7.8.1998. The State Government issued a circular on 14.10.1998 that teachers in the aided institutions shall not be retired who attain the age of 60 years after 6.8.1998 (Annexure P-6) till further orders. Another circular (Annexure P-7 in Writ Appeal No. 674 of 2016) was issued on 1.1.2000 by the State Government to treat the teachers working in the private aided institutes to be at par with the teachers working in the Government Institutes. It appears that the said decision of the State Government was approved by the Co-ordination Committee at its meeting on 3.4.2002 and by the Executive Council of Rani Durgavati Vishwavidyalaya Jabalpur at its meeting on 25.9.2002.

14. The claim of the appellants, teachers in the aided private institutions, is that on the basis of recommendations of the Standing Committee, dated 1.4.2003, the Coordination Committee enhanced the age of superannuation of the teachers working in the aided institution to 65 years. The exact language of the resolution dated 7.1.2004 of the Coordination Committee after its translation reads as under:-

“The Professors, Teachers and Employees working in Private Colleges – that it would be suitable/desirable to keep the age of superannuation of Professors, Teachers and Employees of the non-governmental colleges at par with the Professors, Teachers and Employees of the Government Colleges.”

15. Apart from the said resolution of the Coordination Committee, the reliance is on the Regulations framed by the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in University and Colleges and Measures for Maintenance of Standards of Higher Education, 2010 (for short ‘Regulation of 2010’). The said Regulation of 2010 applies to every University established or managed by a Central Act, Provincial Act or a State Act, and every institute including an ‘Affiliated College’, recognized by the Commission in consultation with Section 2(f) of the University Grants Commission Act, 1956 and every institution deemed to be University under section 3 of the said Act. The University Regulation was notified on September 18th, 2010.

16. Clause 2.1.0 deals with the revised scale of pay and other service

conditions, including the age of superannuation in Central Universities and other institutions managed or funded by the UGC, as contained in Appendix I, which reads as under:-

“2.1.0. The revised scales of pay and other service conditions including age of superannuation in central universities and other institutions maintained and/or funded by the University Grants Commission (UGC), shall be strictly in accordance with the decision of the Central Government, Ministry of Human Resource Development (Department of Education), as contained in **Appendix-I.**”

17. Clause 8(f) of the Regulations deal with age of superannuation. The relevant conditions read as under:-

“Appendix I, Clause 8 – Other terms and conditions:

xxx xxx xxx xxx

(f) Age of superannuation:

- (i) In order to meet the situation arising out of shortage of teachers in universities and other teaching institutions and the consequent vacant positions therein, the age of superannuation for teachers in Central Educational Institutions has already been enhanced to sixty five years vide the Department of Higher Education letter No.F.No.119/2006-U.II dated 23.3.2007, for those involved in class room teaching in order to attract eligible persons to the teaching career and to retain teachers in service for a longer period. Consequent on upward revision in the age of superannuation of teachers, the Central Government has already authorized the Central Universities, vide Department of Higher Education D.O letter No.F.1-24/2006-Desk(U) dated 30.3.2007 to enhance the age of superannuation of Vice- Chancellors of Central Universities from 65 years to 70 years, subject to

amendments in the respective statutes, with the approval of the competent authority (Visitor in the case of Central Universities), (ii) subject to availability of vacant positions and fitness, teachers shall also be reemployed on contract appointment beyond the age of sixty five years (sic:years) up to the age of seventy years. Reemployment beyond the age of superannuation shall, however, be done selectively, for a limited period of 3 years in the first instance and then for another further period of 2 years purely on the basis of merit, experience, area of specialization and peer group review and only against available vacant positions without affecting selection or promotion prospects of eligible teachers.”

18. The Ministry of Human Resource Development, Department of Higher Education, Government of India issued a Circular on 31.12.2008 and communicated to the UGC to revise the pay scales of Teachers in the “Central Universities”, as reproduced here-in-above.

19. After the said circular was issued, the Government of Madhya Pradesh issued a Circular on 16.4.2010 to revise the pay scale of Teachers in the Government Colleges and also decided to increase the age of superannuation from 62 to 65 years. Such office order was modified on 14.9.2012, whereby the benefit of revised pay scale was granted to Librarians etc, but in respect of Teachers working in Class room teaching, the age was resolved to be increased to 65 years, but the age of superannuation in respect of non-teaching staff, Librarians, Physical Education Teachers etc working in the Colleges were contemplated to be superannuated at the age of 62 years.

20. Later, the State Government enacted The Madhya Pradesh Shaskiya Sevak Adhivarshiki-Ayu Sansodhan Adhiniyam, 2011, which was published on 6.5.2011, increasing the age of superannuation of the teaching faculty in the Government Institutions. By the said Act, The Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967 (No.29 of 1967) and Rule 56 of the Fundamental Rules were amended to increase the age of superannuation of teaching faculty of the Government Institutes to 65 years.

21. The State Government issued another Circular on 22.12.2014, indicating that age of superannuation in private institutions is 62 years only and has not been increased to 65 years.

22. The Ministry of Human Resource Development, Department of Higher Education, Government of India vide Circular dated 4th August, 2012, Annexure P/19 (in Writ Appeal No.674/2016), clarified that the Scheme circulated on 31.12.2008 was essentially for Teachers in the "Central Universities", but the provisions of the Scheme could be made applicable by the State Government to the State Universities and Colleges under the purview of the State. Relevant Clauses read as under:-

"2. Although this Scheme was essentially for teachers in Central Universities, provisions of the Scheme could be made applicable by State Governments to State Universities and Colleges coming under the purview of the State Government, provided the State Governments adopt and implement the scheme as a composite scheme, including the enhanced age of superannuation and the regulations laid down by the UGC in this regard. The age of superannuation for teachers in Central Universities had been enhanced to 65 years vide this Ministry's letter No.1-19/2006-U.II dated 23.3.2007, for those involved in class room teaching.

5. Bearing in mind that the question of enhancement of age of retirement is exclusively within the domain of the policy making power of the State Governments, the issue of retirement has been left to the State Governments to decide at their level. The condition of enhancement of age of superannuation to 65 years as mentioned in this Ministry's letter dated 31.12.2008 may be treated as withdrawn, for the purpose of seeking reimbursement of central share of arrears to be paid to State University and College teachers. However, the other conditions as mentioned in the letters cited above shall continue to apply."

23. It may also be noticed that an enactment, The Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ka Vetano Ka Sandaya) Adhiniyam, 1978 was enacted which contemplated to

give grant-in-aid to the private institutions. Such Act was amended on 13.4.2000, whereby the payment of grant-in-aid to such institutions was curtailed vide Act No.2 of 2000. Legality of the said amending statute came to be finally decided by the Hon'ble Supreme Court vide its order dated 7.1.2014 passed in Civil Appeal No.6362/2004 [*State of MP Vs. Dr. Sharique Ali and others*] when the following order was passed:-

“1. This order is in continuation of our earlier order dated 12.12.2013. Both the orders should be read together.

2. By order dated 12.12.2013 we had requested Shri Tankha, learned senior counsel to get appropriate instructions/clarification from the State Government insofar as Clause ‘C’ of the affidavit dated 26.11.2013.

3. Today, learned senior counsel, Shri Tankha has filed an affidavit on behalf of the State of Madhya Pradesh. In the said affidavit they have pleaded their inability to extend the 6th Pay Commission Scales to the Teachers/Lecturers/non-teaching staff working in private aided educational institutions in the State of Madhya Pradesh though their appointment is approved by the State Government.

4. After hearing Shri Tankha, Shri Shanti Bhushan and Dr. Rajeev Dhawan and other learned counsel appearing for the parties, we are of the opinion that the request of Shri Shanti Bhushan for extending the 6th Pay commission scales to the Teachers/Lecturers/non-teaching staff working in the private aided educational institutions should be accepted and granted. We are also of the view that whatever amount that is being paid pursuant to the orders passed by this court on 12.12.2013 and 07.01.2014 shall not be recovered from the Teachers/Lecturers/Non-Teaching staff working in the private aided educational institutions.

5. Accordingly, while setting aside the judgment and order passed by the High Court, we direct that the 6th Pay commission scales shall be given to the Teachers/Lecturers/non-teaching staff working in the private aided educational institution in the State of Madhya Pradesh. We further direct that the amount

that is already paid pursuant to the orders passed by this Court on 12.12.2013 and 07.01.2014 shall not be recovered from the Teachers/Lecturers/non-teaching staff working in the private aided educational institutions in the State of Madhya Pradesh.

6. It is clarified that the Madhya Pradesh Ashaskiya Shikshan Sanstha Adhiniyam, 1978, as amended by Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmchariyon Ke Vetno Ka Sandaya) Sanshodhan Adhiniyam, 2000 (for short "the Amended Act") shall not be made applicable to the respondents and other similarly situated persons.

7. It is further clarified that the Amended Act is applicable to those Teachers/Lecturers/Non-Teaching staff, who are appointed by the private aided educational institutions, in the State of Madhya Pradesh, after promulgation of the Amended Act."

24. After the order of the Hon'ble Supreme Court, the State Government passed an order on 19th/20th March, 2015, so as to grant benefit of pay revision on the basis of 6th Pay Commission to the teachers working in private aided institutions from 1.1.2006. It was specified that benefit of such pay revision would be available to only those teachers who were appointed prior to 1.4.2000, in terms of Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamchariyon Ka Vetano Ka Sandaya) Sanshodhan Adhyadesh, 2000 [Amending Act No. 27 of 2000]. Later, a clarification was issued on 16.8.2015 – Annexure P/8 that teachers of privately aided institutions would be granted pay as per 6th Pay Commission adopted by the Madhya Pradesh Government. The pay would be revised as per UGC Pay Revision Norms as circulated on 16.6.2011 and as modified on 14.9.2012. But, there is no decision of the State Government to extend age of the teachers in private aided institutions in the said Circulars nor was the issue raised before the Hon'ble Supreme Court in *Dr. Sharique Ali's* case.

25. With these background, the argument of learned counsel for the appellants is that the Coordination Committee was competent to frame statutes in terms of sub-section (3) of Section 34 read with Clause (j) of section 35 of

the Act, to prescribe conditions under which the colleges and other institutions are admitted to the privileges of University. The conditions under which Colleges can be admitted to the privileges of University include the age of superannuation as well.

26. Reliance is placed upon Supreme Court judgment reported as 2008(1) SCC (L&S) 59 [*Chairman, UP Jal Nigam and another Vs. Radhey Shyam Gautam and another*] to contend that the decision of the Coordination Committee to adopt the same age of superannuation as the members of the teaching faculty in the government institutions would equally apply to the employees of the private aided colleges. Relevant paragraph 10 is reproduced here-in-under:-

“10. After the amendment made in Rule 56(a) of the Rules by the State Government and thereby enhancing the age of superannuation of government servants from 58 to 60 years, the same would equally apply to the employees of the Nigam and in case the State Government as well as the Nigam intended that the same would not be applicable, the only option with it was to make suitable amendments in Regulation 31 of the Regulations after taking previous approval of the State Government and by simply issuing direction by the State Government purporting to act under Section 89 of the Act and thereupon taking administrative decision by the Nigam under Section 15 of the Act in relation to the age of the employees would not tantamount to amending Regulation 31 of the Regulations.”

27. Reliance is also placed upon a judgment reported as 1965 (2) SCR 173, [*Prabhakar Ramakrishna Jodh Vs. A.L. Pande and another*] wherein in the case of an appellant – Lecturer in an affiliated college to the University of Saugar and managed by a Governing Body of an aided private institution, held that the College Code similar to Statute 28 has been framed by the University and is *intra vires* to the powers of the University contained in section 32 read with Section 6(6) of the University of Saugar Act, 1946. It was held that the College Code does not merely regulate relationship between the University and the College alone, and that the power to fix pay scale falls within the statutory power of affiliation granted to the University under the Act. Thus, it was held that the College Code creates legal right in favour of

the affiliated colleges.

28. Reference is also made to another Supreme Court judgment reported as AIR 1989 SC 341 [*Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and others*], wherein the regulations framed by Board of Secondary Education, Madhya Pradesh under the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1955 has statutory force and that a Higher Secondary School receiving 100% grant from the Government is amenable to writ jurisdiction.

29. It is thus argued that the College Code as framed by the Coordination Committee has the force of law and fixation of age of superannuation is part of the qualification required to be determined by the statute in terms of Section 35(j) of the University Act. It is further contended that the said clause of age of superannuation was provided in 1974, but the State Government never challenged the power of the Coordination Committee to prescribe the age of superannuation, therefore, at this stage the State cannot contend that the fixation of age of superannuation does not fall within the scope of powers conferred on the Coordination Committee. It is also contended that age of 60 years fixed in the initial statute framed by the Coordination Committee, has been admittedly increased to 62 years by the State Government in the year 1998, therefore, it cannot be said that Clause 26 of Statute 28 is beyond the competence of the Coordination Committee. It is contended that the qualification prescribed under section 35(j) of the Act, will include disqualifications to hold post which would include the age of superannuation which would make the incumbent disqualified to hold the post thereafter. It is also contended that once the State Government has decided to extend the age of superannuation of the Government teachers from 62 to 65 years, in terms of the UGC Regulations, by Circular dated 16.4.2010 which was modified vide Circular dated 14.9.2012. The teachers of the aided private institutions are entitled to the same benefit as has been conferred on the members of the teaching faculty of Government Institutes.

30. It is contended that Statute 28 (College Code) and, the Regulations of the UGC were not brought to the notice of the earlier Benches of this Court, therefore, appellants/petitioners are entitled to serve the colleges till they attain the age of 65 years.

31. On the other hand, the stand of the State as per the affidavit filed in **Writ Appeal No.950/2015**, which has been adopted as reply in all the writ

appeals, is as under:-

- “8. That it is also relevant to mention that a bare perusal of the resolution dated 7.1.2004 also goes to show that the aforesaid discussion took place in the year 2004 wherein there was no iota of recommendation of 6th Pay Commission. That an amendment was made in the year 2004 in College Code 28 and after the implementation of recommendation of 6th Pay Commission, no further deliberation in this regard was made by the Executive Council/ Coordination Committee. Hence the resolution dated 7.1.2004 cannot be relied upon by the appellant at this juncture. The recommendation of UGC, its applicability to the State Government, wisdom of the State Government to implement the recommendation of UGC etc, has been considered by the Hon’ble Apex Court in the case of *T.P. George Vs. State of Kerala*, 1992 SCR (2) 311. So far as the applicability of the resolution dated 7.1.2004 is concerned, it is respectfully submitted that the amendment has been incorporated as per decision of the Coordination Committee dated 7.1.2004, and the following amendment has been incorporated:

समन्वय समिति के निर्णय दिनांक 07.01.2014 में परिनियम 28 की कंडिका 26 में निम्नानुसार संशोधन किया गया है की सूचना ग्रहण करने पर विचार किया गया ।

“अशासकीय महाविद्यालयों के प्राचार्य, शिक्षकों और कर्मचारियों की सेवा निवृत्ति आयु शासकीय महाविद्यालयों के प्राचार्य, शिक्षकों और कर्मचारियों के समान रखा जाना उचित होगा ”

It is respectfully submitted that this amendment was incorporated in consonance to the recommendations of the UGC qua the Fifth Pay Commission, by which the age of superannuation of the teachers was increased from 60 years to 62 years. It is submitted that this amendment was suggestive in nature and it not binding

for the State, moreover the same is not applicable in the matter of Six Pay Scale.”

32. In addition thereto, reliance is placed upon Supreme Court orders passed in the case of *Jagdish Prasad Sharma and others Vs. State of Bihar and others*, (2013) 8 SCC 633; *B. Bharat Kumar and others Vs. Osmania University and others*, (2007) 11 SCC 58; *T.P. George Vs. State of Kerala*, 1994 Supp (3) SCC 191; as well as a judgment of this Court in the case of *Sikandar Shabana Vs. State of MP and others*, 2012 (1) MPLJ 386.

33. We have learned counsel for the parties at length.

34. The first question which is required to be examined is ‘*Whether the fixation of age of superannuation in the College Code [Statute 28] falls within the jurisdiction of the Coordination Committee*’?

35. An ‘affiliated college’ is defined in section 4(xxiv) of the University Act to mean ‘an institution admitted to the privileges of the University in accordance with the provisions of this Act and the Statutes’. Section 34 of the University Act empowers the Coordination Committee to draw the first Statutes and Ordinances, within a period of one year. Section 35 (j) provides for fixation of qualification of Professors, Readers, Lecturers and other teachers in the affiliated colleges and recognized institutions, which include private aided institutions. The qualifications will include not only the educational qualifications but also the age up to which such persons would be qualified to discharge duties as a member of the teaching faculty. Therefore, fixation of the age of superannuation of a private aided college was within the jurisdiction of the Coordination Committee.

36. Still further, the decision to fix the age of superannuation was taken in the year 1974 and for the last more than 40 years; there is no challenge to the competence of the Coordination Committee to frame such regulations. A fact which has not been disputed for long period of time cannot be disputed at this stage when in the reply filed, there is not even an iota of assertion that Coordination Committee was not competent to fix the age of superannuation. It may be noticed that no statutory provision has been brought to our notice, including the 1978 Act granting grant-in-aid, which contemplates the date of superannuation of a member of the teaching faculty of a private aided institution. Since there is no other provision of determining the age of superannuation, therefore, the Statute framed by the Coordination Committee, including the

age of superannuation, cannot be permitted to be disputed at this stage.

37. Having said so, the next question which arises is as to *whether the Standing Committee could make recommendations for enhancing the age of superannuation or the Coordination Committee can amend the statute to enhance the age of superannuation.*

38. In terms of section 34(4) of the University Act, the Coordination Committee can suggest modification of the statutes in force in various Universities. On the other hand, sub-clause (2) of Section 36 of the University Act empowers the Coordination Committee to amend or repeal any statute by passing a statute as prescribed in Section 37. We find that the resolution dated 7.1.2004 is not passed by the Standing Committee nor is based upon a proposal of the Executive Council of the University. No doubt, the Coordination Committee is competent to consider the draft of the statute, but any amendment in the statute is required to be sent to the Executive Council. The resolution dated 7.1.2004 has not been accepted or approved by the Executive Council of any of the Universities nor sent to the Executive Council of any of the Universities after the same was passed to give effect to such resolution by each of the Universities in respect of the Institutions affiliated to it.

39. Still further, the language of the resolution dated 7.1.2004 is in the nature of recommendations. Such recommendation was required to be accepted by the Executive Council of each or all of the Universities before the same can take the force of a statute. Such fact becomes relevant as some of the Universities as Devi Ahilya University, Indore in its communication dated 29.3.2017 has indicated to the State Government that the resolution dated 7.1.2004 was not approved by the Executive Council. Since the language of the resolution dated 7.1.2004 is not to enhance the age of superannuation, but is only a recommendation, therefore, such recommendation will not be effective till such time it is approved by the Executive Council of the Universities.

40. Earlier, the age of the members of the teaching faculty of the private institutions from 60 to 62 years was increased by the State Government, which decision was adopted by the Coordination Committee and by the Executive Council. Therefore, the recommendation of the Coordination Committee on 7.1.2004 per se cannot be treated to mean that the age of superannuation of the members of the teaching faculty in the private aided institutions stands

enhanced to 65 years as such decision has not been approved either by the Executive Council or by the State Government. Any financial liability on the State Government cannot be created impliedly, but has to be specifically accepted by the State Government.

41. We are not examining the question as to whether the decision of the Coordination Committee amounts to amendment of the Statute, if any, by reference or by incorporation, as it was not argued before this Bench. The other question which arises is as to whether said resolution of 7.1.2004 would amount to increase in the age of superannuation, as and when increased by the State Government, even, if amount to the decision of increase in age.

42. The State Government has increased the age of superannuation of the members of the teaching faculty in the Government Institutions firstly in the year 1998 and secondly in the year 2011: when it increased the age from 60 to 62 years; and, later from 62 to 65 years, respectively by amending the relevant Statute. The State Government has increased the age of the members of the teaching faculty of the private aided institutes from 60 to 62 years when a circular to this effect was issued on 1.1.2000. But there is no conscious decision of the State Government to increase the age of superannuation of the members of the teaching faculty in the private aided institutions thereafter, therefore, the same cannot be deemed to be increased as and when the State Government extends the age of the members of the teaching faculty of its institutions.

43. Therefore, in respect of the first part of Question No.(1), it is held that resolution dated 7.1.2004 in respect of amendment to Statute 28 of College Code will not amount to increase in age of superannuation of the members of the teaching faculty of the private aided institutions.

44. In respect of second limb of the question as to whether in terms of the UGC Regulations, 2010, teachers working in the aided private institutions are entitled to the benefit of age of superannuation as 65 years, needs to be examined now.

45. The UGC Regulations of 2010 are applicable in respect of revised scale of pay and other service conditions, including age of superannuation in "Central Universities" and other Institutes maintained, aided or funded by the UGC. The Universities, to which the affiliated Colleges are entitled to privilege in terms of section 4(xxiv) of the University Act, are not "Central Universities",

they are incorporated under the Statute enacted by the State, therefore, in terms of Clause 2.1.0, the UGC Regulations of 2010 are not applicable to affiliated colleges admitted to the privileges of University in terms of section 4(xxiv). Appendix I of Circular dated 31.12.2008, as reproduced above, also shows that it is applicable to teachers in "Central Universities". In respect of age of superannuation, the Circular contemplates that age of superannuation of teachers in "Central Universities" has been enhanced to 65 years i.e. vide Circular dated 23.3.2007 to those teachers, who are involved in class room teaching. Members of the teaching faculty of the private aided colleges are not teachers engaged in class room teaching of "Central Educational Institutions".

46. The Circular of the State Government dated 16.4.2010 as modified on 14.9.2012 pertains to revision of pay scale of the teachers of the Government Institutions. In terms of such decision, two amendments in the Madhya Pradesh Shaskiya Sevak (Adhivarshiki-Ayu) Adhiniyam, 1967 have been carried out so as to increase the age of the members of the teaching faculty working in the Government institutions firstly from 60 to 62 years and then from 62 to 65 years. There is no corresponding increase in the age of the members of the teaching faculty of the private aided institutions to 65. The age was increased to 62 years in the year 1998 vide circular dated 1.1.2000. Still further, the circular dated 31.12.2008 has been clarified by the Ministry on 14.9.2012 that it is for the State Governments to accept the recommendation of the UGC to fix pay scale as circulated by the UGC, including the age of superannuation. The conscious decision taken by the State Government is to increase the age of superannuation of members of the teaching faculty of the Government Teachers, the same cannot be forced upon the State to pay grant-in-aid to the private institutions in the absence of any conscious decision by the State Government.

47. It may be noticed that earlier Grant-in-aid Act, 1978 was amended in the year 2000 so as to withdraw the grant-in-aid in a phased manner. The Hon'ble Supreme Court in *Dr. Sharique Ali's* case (Supra) has upheld the amendment, but clarified that same is applicable only to the members of the teaching faculty appointed after the said date. Since the appellants/petitioners were appointed prior to the amendment of the said Act, they are entitled to the benefit. The decision to withdraw the benefit of grant in aid was taken in respect of members of the teaching faculty of the private aided Institutes even

before the recommendation of the co-ordination committee to recommend the same pay as the pay of the teachers of the Government institutes. Therefore, it cannot be said that the decision of the coordination committee would be applicable to the private aided institutes so as to create financial liability on the State Government, when the amendment in the Act has been upheld. However, the fact remains that the State Government has taken a policy decision keeping in view its financial position that the benefits would not be payable to the teachers of the private aided institutes. Though, the State is bound to pay grant in aid to the teachers appointed prior to 2000, but to say that the decision of the Coordination Committee to increase the age of superannuation and to increase the financial burden of payment of grant in aid does not seem to be plausible.

48. Thus, we find that the UGC Regulations, 2010 and the Circular dated 31.12.2008 issued by the Government of India will not be *ipso facto* apply to the members of the teaching faculty of the private aided institutions.

49. Therefore, it is held that the benefit of age of superannuation at 65 years will not be applicable to the members of the teaching faculty of the private aided institutions.

50. Now, coming to Question No.(2) we find that though the provisions of the College Code and the UGC Regulations were not brought to the notice of the Court, but in view of the discussions above, we do not find any error in the ultimate conclusion recorded by the learned Single Bench which were not interfered with by the Division Bench.

51. Infact, the Hon'ble Supreme Court in *T.P. George's* case (supra) was considering UGC Scheme of 1986. It was held as under in paragraph 5:-

“5. We may further point out that the teachers in Universities are governed in respect of their condition of service and the age of retirement by the separate statutes made by the Universities concerned. On the other hand the teachers in private colleges or affiliated colleges are governed in respect of their conditions of service by regulations or rules framed by the Government (separate state (sic set) of statutes). In these circumstances, the two classes of Universities teachers and teachers in private colleges cannot be regarded as similar for purposes of conditions of service as to bring the case under

Article 14 of the Constitution.”

52. Later, in respect of Regulations of 2010, the Hon’ble Supreme Court in the case of *Jagdish Prasad Sharma* (supra) held as under:-

“67. One of the common submissions made on behalf of the Respondents was whether the aforesaid scheme would automatically apply to centrally-funded institutions, to State universities and educational institutions and also private institutions at the State level, on account of the stipulation that the scheme would have to be accepted in its totality. As indicated hereinbefore in this judgment, the purport of the scheme was to enhance the pay of the teachers and other connected staff in the State universities and educational institutions and also to increase their age of superannuation from 62 to 65 years. The scheme provides that if it was accepted by the concerned State, the UGC would bear 80% of the expenses on account of such enhancement in the pay structure and the remaining 20% would have to be borne by the State. This would be for the period commencing from 1.1.2006 till 31.3.2010, after which the entire liability on account of revision of pay-scales would have to be taken over by the State Government. Furthermore, financial assistance from the Central Government would be restricted to revision of pay-scales in respect of only those posts which were in existence and had been filled up as on 1.1.2006. While most of the States were willing to adopt the scheme, for the purpose of receiving 80% of the salary of the teachers and other staff from the UGC which would reduce their liability to 20% only, they were unwilling to accept the scheme in its composite form which not only entailed acceptance of the increase in the retirement age from 62 to 65 years, but also shifted the total liability in regard to the increase in the pay-scales to the States, after 1.4.2010.

69. To some extent there is an air of redundancy in the prayers made on behalf of the Respondents in the submissions made regarding the applicability of the Scheme to the State and its universities, colleges and other educational institutions.

The elaborate arguments advanced in regard to the powers of the UGC to frame such Regulations and/or to direct the increase in the age of teachers from 62 to 65 years as a condition precedent for receiving aid from the UGC, appears to have little relevance to the actual issue involved in these cases. That the Commission is empowered to frame Regulations under Section 26 of the UGC Act, 1956, for the promotion and coordination of university education and for the determination and maintenance of standards of teaching, examination and research, cannot be denied. The question that assumes importance is whether in the process of framing such Regulations, the Commission could alter the service conditions of the employees which were entirely under the control of the States in regard to State institutions.

70. The authority of the Commission to frame Regulations with regard to the service conditions of teachers in the Centrally- funded educational institutions is equally well established. As has been very rightly done in the instant case, the acceptance of the scheme in its composite form has been left to the discretion of the State Governments. The concern of the State Governments and their authorities that the UGC has no authority to impose any conditions with regard to its educational institutions is clearly unfounded. There is no doubt that the Regulations framed by the UGC relate to Schedule VII List I Entry 66 to the Constitution, but it does not empower the Commission to alter any of the terms and conditions of the enactments by the States under Article 309 of the Constitution. Under List III Entry 25, the State is entitled to enact its own laws with regard to the service conditions of the teachers and other staff of the universities and colleges within the State and the same will have effect unless they are repugnant to any central legislation.”

53. Therefore, in the light of the discussion above, the questions of law referred for decision to the Larger Bench stands answered in the following manner:-

- (i) That Statute 28 of the College Code has not been

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amended with effect from 7.1.2004 as it was a recommendation, which recommendation has not been accepted either by the Executive Council of the respective Universities or by the State Government.

- (ii) The UGC Regulations, 2010 are not applicable to the State Government *per se*, but could be adopted by the State Government. The State Government has accepted the revised pay scale in respect of members of the teaching faculty in the Government Institutes alone. Therefore, the teachers working in aided private institutes shall not be entitled to claim that their age of superannuation shall be 65 years.

54. In the light of the aforesaid opinion, the writ appeals shall be posted for hearing as per Roster.

Order accordingly.

I.L.R. [2017] M.P., 1324

WRIT APPEAL

Before Mr. Justice Sheel Nagu & Mr. Justice S.A. Dharmadhikari

W.A. No. 357/2016 (Gwalior) decided on 6 March, 2017

RAMNARAYAN SHARMA

...Appellant

Vs.

STATE OF M.P. & ors.

...Respondents

Service Law – Civil Services (Pension) Rules, M.P. 1976, Rule 66 – Recovery – Petitioner filed a writ petition challenging the recovery of G.P.F. debit balance of Rs. 1,86,836 made by his department after superannuation of petitioner, from the amount of gratuity withheld – ***Petition was dismissed – Writ Appeal – Held –*** Scheme of Rule 66 can be bifurcated in two parts, first pertains to recovery of ascertainable dues and second of unascertainable dues – In case of ascertainable dues, the mode of taking cash deposit or surety or recovery from gratuity at the time of retirement is permissible and period of 12 months from the date of retirement is prescribed for completing the process of assessment and calculation but in case of unascertainable dues relating to house rent and water charges, period of six months from the date of

retirement is provided for the government for assessment and calculation of actual due amount – After the stipulated period of 6/12 months, only mode available for recovery of such dues is to file a suit of recovery before the Civil Court – In the instant case, respondents made the impugned recovery of ascertainable dues after more than two years from the date of retirement and without following the prescribed procedure of approaching the Civil Court for recovery of the said dues – Recovery made from gratuity amount is hereby declared unlawful and is set aside – Respondents directed to refund the amount so recovered, and release the full gratuity amount alongwith 10% interest from the date of retirement till realization – Appeal allowed.

(Paras 8.12, 8.13, 9, 11 & 12)

सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 66 – वसूली – याची ने उसके विभाग द्वारा उसके अधिवर्षिता के पश्चात्, विधारित उपदान की राशि में से रु. 1,86,836 जी.पी.एफ. नामे पक्ष के अतिशेष की वसूली को चुनौती देते हुए याचिका प्रस्तुत की – याचिका खारिज की गई थी – रिट अपील – अभिनिर्धारित – नियम 66 की स्कीम दो भागों में विभाजित की जा सकती है, पहली अभिनिश्चय शोध्य तथा दूसरी अनभिनिश्चय शोध्य की वसूली से संबंधित है – अभिनिश्चय शोध्य के प्रकरण में, सेवानिवृत्ति के समय उपदान से नकद जमा या प्रतिभूति या वसूली करने की रीति अनुज्ञेय है एवं निर्धारण तथा संगणना की प्रक्रिया पूर्ण करने हेतु सेवानिवृत्ति की तिथि से 12 माह की अवधि विहित है परन्तु गृह भाड़ा एवं जल प्रभार से संबंधित अनभिनिश्चय शोध्य के प्रकरण में सरकार को वास्तविक शोध्य राशि के निर्धारण एवं संगणना हेतु सेवानिवृत्ति की तिथि से 6 माह की अवधि उपबंधित है – 6/12 माह की नियत अवधि के पश्चात् उक्त शोध्य की वसूली हेतु केवल सिविल न्यायालय के समक्ष वाद प्रस्तुत करने की रीति उपलब्ध है – वर्तमान प्रकरण में, प्रत्यर्थीगण ने अभिनिश्चय शोध्य की आक्षेपित वसूली, सेवानिवृत्ति की तिथि से दो वर्षों से अधिक समय के पश्चात् एवं उक्त शोध्य की वसूली हेतु सिविल न्यायालय के समक्ष जाने की विहित प्रक्रिया का पालन किये बिना की है – उपदान की राशि से की गई वसूली एतद्वारा अविधिपूर्ण घोषित की गई एवं अपास्त की गई – प्रत्यर्थीगण को इस प्रकार वसूली गई राशि प्रतिदाय करने हेतु तथा सेवानिवृत्ति की तिथि से वसूल करने तक 10 प्रतिशत ब्याज के साथ पूर्ण उपदान की राशि निर्मुक्त करने के लिए निदेशित किया गया – अपील मंजूर।

Cases referred :

2016 (3) MPLJ 97, (2015) 4 SCC 334.

R.P. Singh, for the appellant.

Kamal Jain, G.A. for the respondents No. 1 to 5/State.

M.K. Sharma, for the respondent No.6.

J U D G M E N T

The Judgment of the Court was delivered by :
SHEEL NAGU, J. :- This intra court appeal filed under Section 2(i) of M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 assails the final order dated 06.09.2016 passed by learned Single Judge in WP No.7453/2014 whereby the petition in question assailing the recovery of GPF debit balance from the amount of gratuity withheld, has been dismissed.

2. Learned counsel for the rival parties are heard.

3. The questions of law which beg for consideration are as follow :-

(i) Whether the amount of gratuity withheld at the time of superannuation (30.04.2012) could have been appropriated in 2014 for recovery of G.P.F debit balance of Rs.1,86,836/-?

(ii) Whether the said recovery can take place after more than two years of retirement?

4. Undisputed facts in nutshell are that the petitioner superannuated on 30.04.2012 from the post of Accountant from the office of Civil Surgeon cum Chief Hospital Superintendent, Shivpuri. Full pension due to the petitioner was released at the time of superannuation. However 90% amount of gratuity was though sanctioned vide order dated 25.10.2012 but was not paid. The withheld gratuity amount was used for adjusting the GPF debit balance of Rs. 1,86,836/-.

4.1. The petitioner filed WP No. 7453/2014 praying for the following reliefs:-

“7.1 That, the impugned endorsement made at the backside of L.P.C Annexure P-5 and P-5A to that extent may kindly be set aside.

7.2 That, the impugned order Annexure P-6 dt.27.06.2014, whereby petitioner's claim about the payment of Gratuity amount has been rejected may kindly be set-aside and the respondents further may kindly be directed to provide all

Gratuity payment to the petitioners Rs. 4,35,633/-, with the interest from due date to the date of realization of amount may kindly be provided within the stipulated period of one month.

7.3 That any other relief doing justice into the matter including cost of petition, advocate fee etc. may also kindly be awarded to the petitioner.”

4.2 The said WP was dismissed by the impugned order by finding no illegality in the action of respondents in recovering the excess withdrawals made in the GPF account from the outstanding Gratuity.

5. Before adjudication, it would be appropriate to quote relevant provisions which have bearing on the issue involved :-

Rule 14(7) and Rule 29 of the M.P. General Provident Rules (for brevity GPF Rules) are as follows :-

“ Rule14(7). In case a subscriber is found to have drawn from the fund an amount in excess of the amount standing to his credit on the date of the drawal, the overdrawn amount, irrespective of whether the over-drawal occurred in the course of an advance or a withdrawal or the final payment from the fund, shall be repaid by him with interest thereon, in one lump sum, or in default, be ordered to be recovered, by deduction in one lump sum, from the emoluments of the subscriber. If the total amount to be recovered is more than half of the subscriber's emoluments, recoveries shall be made in monthly installments of moieties of his emoluments till the entire amount together with interest, is recovered. For this rule, the rate of interest to be charged on overdrawn amount would be 2 ½ % over and above the normal rate of Provident Fund balances under sub-rule (1). The interest realised on the overdrawn amount shall be credited to Government account under a distinct sub-head “Interest on overdrawn from Provident Fund.”

29. Final withdrawal of accumulations in the fund :-
when a subscriber quits the service, the amount standing

to his credit in the Fund shall become payable to him:

Provided that a subscriber who has been dismissed or removed from the service and is subsequently reinstated in the service, shall, if required to do so by Government, repay any amount paid to him from the Fund in pursuance of this rule, with interest thereon at the rate provided in rule 14 in the manner provided in the proviso to the rule 30. The amount so repaid shall be credited to his account in the Fund.

Note 1- A subscriber, re-employed in Government service after retirement, is considered to have quitted service from the date of retirement, even though his reemployment may have been in continuation of his active service without break.

Note 2-A subscriber cannot be considered to quit Government service finally when he resigns service under one Government to take up service under another or when he transfers his service from one branch of Government to another. Consequently, a subscriber to any Provident Fund is not entitled to the refund of his deposits in such circumstances if the rules governing the Provident Fund do not permit of the final withdrawal of deposits until he has quitted Government service. In such cases interest shall be calculated under Rule 14(4) and the amount together with interest shall be transferred.

Note 2A:- In respect of calculation of interest and final payment of General Provident Fund money at his credit, the Government servant resigning Government service to take up appointment under a body corporate, owned or controlled by Government, will be subject to the provision of note 2 above, if that body maintains a fund and agrees to such transfer.

Note 3:- When a non-gazetted subscriber retires, resigns, dies or is dismissed or removed from service or proceeds on leave preparatory to retirement, the head of

the office should immediately report the fact to the Account Officer and submit the claim for final payment of Provident Fund money at his credit to the Account Officer in the form prescribed in the Fifth Schedule. The same form should be used also for claims of withdrawal of Provident Fund money of a Gazetted Officer If any of the particulars or documents required cannot be furnished at once they should be sent as early thereafter as possible but the report of the event should not be delayed on that account.

Rule 65 & Rule 66 of the M.P. Civil Services (Pension) Rules, 1976, (for brevity "1976, Rules"):- are as follows :-

65. Recovery and adjustment of Government dues-(1)
It shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement.

(2) Where a retiring Government servant does not clear the Government dues and such dues are ascertainable:-

(a) an equivalent cash deposit may be taken from him; or

(b) out of the gratuity payable to him, his nominee or legal heir, an amount equal to that recoverable on account of ascertainable Government dues shall be deducted.

Explanation-1. The expression "ascertainable" Government dues" includes balance of house building or conveyance advance, arrears of rent and other charges pertaining to occupation of Government accommodation, over-payment of pay and allowances and arrears of income-tax deductible at source under the Income-tax Act, 1961 (No.43 of 1961).

"66. Furnishing of surety by retiring Government servant:-

(1) (a) If any of the Government dues (other than those referred to in rule 65 remain unrealised and unassessed for any reasons, the retiring Government servant may be asked to furnish in Form 8 a surety of a suitable permanent Government servant, holding a pensionable post.

(b) If the surety furnished by him is found acceptable the grant of his pension and gratuity shall not be delayed.

(2) (a) If the retiring Government servant is unable or unwilling to furnish a surety, a suitable cash deposit may be taken from him, or such portion of gratuity payable to him as may be considered sufficient may be held over till the outstanding dues are assessed and adjusted.

(b) The cash deposit to be taken or the amount of gratuity to be withheld shall not exceed the estimated amount of the outstanding dues plus twenty-five per cent thereof.

(c) Where it is not possible to estimate the approximate amount recoverable from the retiring Government servant the amount of deposit to be taken or the portion of gratuity to be withheld shall be limited to ten per cent of the amount of gratuity or one thousand rupees, which ever is less.

3(a) Efforts shall be made to assess and adjust the recoverable Government dues within a period not exceeding six months from the date of retirement of the Government servant and, if no claim is made on Government account against the Government servant within such a period it shall be presumed that no Government claim excluding claim of house rent and water charges is outstanding against him.

(b) The Government dues as assessed shall be adjusted against the cash deposit or the amount withheld from the gratuity and the balance, if any, shall be released to the retired Government servant after the expiry of the

period referred to in clause (a).

(c) Where a pensioner has furnished a surety, the surety shall be released after the expiry of the period referred to in clause (a) provided the dues assessed up to that time have been recovered.

(4) The Government dues which remain unrealised within the period referred to in clause (a) of sub-rule (3) and such other dues, the claim for which is received after that period, shall be recoverable from the retired Government servant through legal procedure.

Provided that in respect of house rent and water charges, the amount, if any, the claim for which is received after the period of 12 months from the date of retirement of the Government servant shall not be recoverable from the retired Government servant."

6. Learned counsel for the petitioner relying on the provisions of Rule 64 and 66 of the Civil Services Pension Rules, 1976 submits that no recovery from gratuity can take place except in accordance with the provisions laid down in the 1976 Rules. It is submitted that Rule 65 and 66 which provide for recovery of Government dues do not empower the State or its functionaries to make any recovery of Government dues from gratuity after expiry of 6/12 months of the date of superannuation.

6.1. In this legal background, it is submitted that action of respondents / authority in recovering the unduly withheld gratuity for balancing the GPF account is uncalled for in law.

7. On the other hand, learned counsel for the AGMP have supported the action of recovery by contending that the course adopted by the respondents was in line with the provision of Rule 14(7) read with Rule 29 of the GPF rules. Reliance is placed on the Division Bench decision of this Court in the case of *Kashi Yadav Vs. State of M.P. and Ors.*, 2016 (3) MPLJ, 97.

8. After hearing learned counsel for the parties, this Court is of the considered view that the present appeal is liable to be allowed as the action of the respondents in adjusting the debit balance of the GPF account from the

gratuity amount due to the petitioner after more than two years of superannuation is unsupported by any authority of law for the reasons mentioned infra.

8.1 The GPF rules are framed under the proviso to Article 309 of the Constitution of India for constitution of General Provident Fund and prescribing procedure for depositing, withdrawal, payment of interest and borrowing qua the said GPF.

8.2 The State has referred to Rule 14(7) of the GPF Rules which is reproduced supra. Rule 14(7) contemplates situation that if withdrawal is made from the fund by the subscriber in excess of the amount to his credit on the date of drawal, the overdrawn amount shall be repaid by the subscriber with interest thereon in lump sum or in default shall be recovered by deduction in one lump sum / in installments from the emoluments of the subscriber.

8.3 Apart from Rule 14(7) in GPF Rules, no other rule governs the field of recovery of over drawn GPF amount. Therefore, this court will have to fall upon Rule 14(7) for judging the validity and legality of the order of recovery assailed herein.

8.4 The expression "emoluments" used in Rule 14(7) is not defined in the GPF Rules. However, if assistance of the Pension Rules of 1976 is sought then definition of emoluments is found in Rule 3(1) (d) read with Rule 30, to mean the pay as defined in Rule 9 (21) of Fundamentals Rules (including dearness allowance pay, if any,) which a Government servant was receiving immediately before his retirement or on the date of his death, as the case may be. For ready reference and convenience rule 3(1) (d) and Rule 30 of the Pension Rules are reproduced below:-

"Rule 3(1)(d)-"Emoluments" means emoluments as defined in Rule 30.

Rule 30. Emoluments- The expression " emoluments" means pay as defined in rule 9(21) of the Fundamental Rules (including dearness pay, if any, as determined by the order of the Government issued from time to time) which a Government servant was receiving immediately before his retirement or on the date of his death, as the case may be.

Explanation-(1) For those Government servants who are drawing pay in the revised pay scales, under the Madhya Pradesh Revision of Pay Rules, 1990 or Madhya Pradesh Revision of Pay Rules, 1998 or pay scales of U.G.C. Or All India Council of Technical Education or all India Services, the expression 'emoluments' means basic pay as defined in rule 9(21)(a)(i) of the Fundamental Rules, which a Government servant was receiving immediately before his retirement and will also include dearness pay and personal pay, if any, as determined by the order of State Government, from time to time."

8.5 From the definition of emoluments it becomes clear that the same refers to the pay which a Govt. servant receives till his retirement. Thus, the expression "emoluments" employed in Rule 14 (7) of GPF Rules necessarily implies that the rule making authority had in service Govt. servant in mind and not a retired Govt. servant in mind while bestowing power of recovery. Thus, it can safely be concluded that the Provident Fund Rules do not empower in expressed terms recovery to be made for adjustment of debit balance in the GPF account from gratuity.

8.6 The subject of accrual of, calculation of, payment of and recovery from the amount of gratuity of a Government servant is governed by the M.P. Civil Services Pension Rules of 1976.

8.7 Gratuity is defined in Rule 3(1)(i) while recovery of Govt. dues from gratuity is provided in rule 65 and 66 which are reproduced supra.

8.8 Rule 65 provides that every retiring Govt. servant is duty bound to clear all Govt. dues before retiring failing which the competent authority is empowered to take equivalent cash deposit from the retiring Govt. servant or recovering the ascertainable Govt. dues from the amount of gratuity payable. The expression "ascertainable Govt. dues" have though not been exhaustively defined but few illustrations i.e. house building / conveyance advance, arrears of rent and other charges pertaining to occupation of Govt. accommodation or over payment of pay and allowances and arrears of income-tax deductible at source under the income-tax Act, are prescribed in Explanation-1 appended to Rule 65 of Pension Rules.

8.9 Rule 66 circumscribes the generic power under Rule 65. The said

Rule provides that if any Govt. dues (other than those referred in Rule 65) remained unrealized and unassessed, surety may be taken from the retiring Govt. servant and the amount of pension and gratuity should be released without any delay. Rule further provides that in case of inability expressed by retired Govt. servant to furnish the surety, suitable cash deposit may be taken from him or a portion of gratuity which is sufficient to meet out the standing dues should be withheld. Rule further provides that where the dues are unascertainable then withholding of gratuity should be limited to 10%.

8.10 Clause (3) of Rule 66 emphasizes that the assessment of dues and its adjustment should be completed within a period six months from the date of retirement and if there is no claim made on Government account against the Government servant within this period then it shall be presumed that no Government claim excluding claim of house rent and water charges are outstanding against him. This sub rule further provides that in case the dues as ascertainable, the same be adjusted against the cash deposit or the amount withheld gratuity and the balance shall be released in favour of the retired Govt. servant immediately after six months from the date of retirement.

8.11 Clause (4) of Rule 66 which is relevant herein provides that after completion of exercise of assessing the unascertainable Govt. dues, if the dues remain unascertained within six months from the date of retirement then recovery can take place from the retired Govt. servant only through legal procedure barring dues pertaining to house rent and water charges for which period of 12 months instead of 6 months is provided.

8.12 Scheme of Rule 66 can be bifurcated in two parts. The first part pertains to recovery of ascertainable dues and the second of unascertainable dues. In case of ascertainable dues the mode of taking cash deposit or surety or recovery from gratuity at the time of retirement is permissible. However, in case of unascertainable except dues relating to house rent and water charge, period of six months from the date of retirement is provided for the Govt. to assess and calculate the exact amount of dues. For adopting the same procedure of adjustment against the cash deposit or partly withheld gratuity within the period of six months. Whereas in case of unascertainable dues pertaining to house rent and water charges long period of 12 months is prescribed for completing the process of assessment and calculation.

8.13 After the period of 6 months / 12 months from the date of retirement the only mode available for recovering ascertainable and unascertainable Govt.

dues is by taking recourse to legal procedure which means filing the suit for recovery in the court of competent civil jurisdiction.

9. In the instant case, the dues squarely falls within the category of ascertainable dues i.e overdrawal by the petitioner from his GPF account. Thus the respondents were empowered to recover the said ascertainable dues for adjusting the debit balance in GPF account by withholding / withdrawing gratuity of the petitioner within a period of six months from the date of retirement. Petitioner attained the age of superannuation on 30.04.2012. The period of six months expired on 30th October, 2012, however, respondents by the impugned action made recovery of the dues after more than two years from the date of retirement without following the prescribed procedure of approaching the civil court for recovery of the Govt. dues.

10. The decision relied upon by the State in the case of *Kashi Yadav* (supra) is of no assistance as in the said case the statutory provision, as discussed above, have not been considered and the sole reason for upholding the decision of the writ Court of dismissal of petition was that the case of *State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors*, (2015) 4 SCC 334 is not applicable. None of the statutory provisions relating to gratuity and the GPF Rules were taken into account and thus the decision in the case of *Kashi Yadav* appears to be rendered in peculiar facts prevailing in that case.

11. In view of the above discussion, this Court has no manner of doubt that the only course open to the respondents after expiry of 6 months of the date of retirement of the petitioner for effecting recovery of Govt. dues (overdrawal of GPF amount) was to file a civil suit for recovery in the court of competent jurisdiction. The recovery made from the gratuity dues of the petitioner is uncalled for in law and therefore is liable to be set aside.

12. Consequently, the appeal is allowed in the following terms :-

- (i) The action of respondents in making recovery for adjustment of GPF debit balance from the gratuity amount, is declared unlawful.
- (ii) In case the amount of gratuity has been recovered, then the same be refunded to the petitioner forthwith.
- (iii) In case the gratuity has not been recovered then the same may not be recovered and the full gratuity due to the petitioner in terms of order of sanction dated 25.10.2012 be released along with

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interest of 10% from the date of retirement till realization.

(iv) The order of the writ Court dated 06.09.2016 passed in WP No. 7453/2014 is set aside.

(v) Pertinently the respondents are free to adopt the lawful mode to make recovery.

Appeal allowed.

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WRIT APPEAL

Before Mr. Justice P.K. Jaiswal & Mr. Justice Virender Singh

W.A. No. 72/2017 (Indore) decided on 9 March, 2017

INDIAN OIL CORPORATION LIMITED & anr.

...Appellants

Vs.

M/S GOVIND SARAF KISAN SEVA KENDRA

...Respondent

A. Constitution – Article 226 – Principle of Natural Justice – Opportunity of Hearing – Termination of Petrol Pump Dealership –
In a surprise inspection from appellant corporation, certain critical discrepancies were found in the petrol pump of respondent whereby following the due process, the dealership was terminated – Respondent filed a writ petition whereby the same was allowed and dealership was restored – Challenge to – Held – As per records, show cause notices were issued to respondents and he filed replies to the notices – Opportunity of personal hearing was also accorded where respondent appeared personally before the authority of appellant – In appeal also, personal hearing was provided by the Appellate Authority – In the writ petition, respondent made total false and misleading statement regarding violation of principle of natural justice and non grant of opportunity of hearing – Respondent did not approached the writ Court with clean hands – If there is willful concealment of facts by respondent; he is not entitle for any relief under Article 226 of the constitution – Order passed in Writ petition is set aside – Appeal allowed.

(Para 27 & 28)

क. संविधान – अनुच्छेद 226 – नैसर्गिक न्याय का सिद्धांत – सुनवाई का अवसर – पेट्रोल पंप डीलरशिप समाप्त करना – अपीलार्थी कार्पोरेशन द्वारा अकस्मात निरीक्षण में प्रत्यर्थी के पेट्रोल पंप में कतिपय गंभीर अनियमितताएँ पायी

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गई थी जिससे सम्यक प्रक्रिया का पालन कर डीलरशिप समाप्त की गई थी – प्रत्यर्थी ने एक रिट याचिका प्रस्तुत की जिसे मंजूर किया गया तथा डीलरशिप प्रत्यावर्तित की गई – को चुनौती – अभिनिर्धारित – अभिलेख के अनुसार, प्रत्यर्थीगण को कारण बताओ नोटिस जारी किये गये थे और उसने नोटिस के प्रतिउत्तर प्रस्तुत किये थे – व्यक्तिगत सुनवाई का अवसर भी प्रदान किया गया था जहां प्रत्यर्थी, अपीलार्थी के प्राधिकारी के समक्ष व्यक्तिगत रूप से उपस्थित हुआ – अपील में भी, अपीली प्राधिकारी द्वारा व्यक्तिगत सुनवाई प्रदान की गई थी – रिट याचिका में, प्रत्यर्थी ने पूर्णतः मिथ्या एवं दिग्भ्रमित करने वाले कथन, नैसर्गिक न्याय के सिद्धांत का उल्लंघन एवं सुनवाई का अवसर प्रदान नहीं किये जाने के संबंध में दिये – प्रत्यर्थी स्वच्छ अंतकरण से रिट न्यायालय के समक्ष नहीं गया – यदि प्रत्यर्थी द्वारा तथ्यों का जानबूझकर छिपाव किया गया है, वह संविधान के अनुच्छेद 226 के अंतर्गत किसी अनुतोष का हकदार नहीं – रिट याचिका में पारित आदेश अपास्त – अपील मंजूर।

B. Specific Relief Act (47 of 1963), Section 14 – Restoration of Contract – Held – In view of the clause of termination provided in the agreement, Oil Corporation has every right to terminate the contract and once the contract is terminated then relief of restoration of contract cannot be granted as the same is accountable to the expressed provision of Section 14 of the Act of 1963. (Para 30)

ख. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 14 – संविदा का प्रत्यावर्तन – अभिनिर्धारित – करार में उपबंधित, समाप्ति के खंड को दृष्टिगत रखते हुए, ऑयल कॉर्पोरेशन को संविदा समाप्त करने का पूर्ण अधिकार है एवं एक बार संविदा समाप्त होने पर, संविदा के प्रत्यावर्तन का अनुतोष प्रदान नहीं किया जा सकता क्योंकि वह अधिनियम 1963 की धारा 14 के अभिव्यक्त उपबंध के लिए उत्तरदायी है।

Cases referred :

M.P. No. 400/1987 decided on 29.04.1987, 1991 (1) SC 533, 2014 (4) ALD 139, 2014 (6) ALD 640, 2011 (3) ALD 505 = 2011 (3) ALT 221, W.A. No. 318/2011 decided on 21.07.2011 (DB), AIR 1963 SC 1558.

B.L. Pavecha with Yogesh Mittal, for the appellants.

A.S. Kutumbale with M.M. Bohra, for the respondent.

ORDER

The Order of the Court was delivered by :
P.K. JAISWAL, J. :- This intra court appeal has been filed against order dated

09.12.2016 (Annexure A/1) passed in Writ Petition No.9473/2014, whereby the learned Writ Court has quashed termination order dated 13.03.2014 regarding dealership of the respondent and order dated 17.12.2014 by which the Appellate Authority has dismissed the appeal and restored the dealership of the respondent.

2. Facts of the case are that respondent – M/s. Govind Saraf Kisan Seva Kendra was a licensee of Kisan Seva Kendra Retail Outlet established by the Indian Oil Corporation Limited and ran Kisan Seva Kendra Retail Outlet at Machalpur, District Rajgarh (Biaora) in the name and style of “M/s. Govind Saraf Kisan Seva Kendra”. The covenants of respondent’s license were incorporated in a dealership agreement executed between the respondent and the appellant – Indian Oil Corporation Limited on 21.11.2008.

3. In the year 2012, a machine named as “MIDCO S. No.1136 Midco 980 C” was installed in the respondent’s petrol pump by way of transfer from M/s. Digendra Fuel & Service Station Petrol Pump. The said machine was installed on “as it is” basis. The verification report was prepared on 11.10.2012. At the time of installation, the reading of meter of machine was 2808681.

4. The Officers of the appellant oil company conducted random investigation on 08.02.2013 and 11.07.2013 and found no violation of Marketing Discipline Guideline 2013.

5. On 21.08.2013, Authorized Officer of the Corporation i.e. from Department of Anti Adulteration Cell visited on the aforesaid Retail Outlet i.e. M/s. Govind Saraf Kisa (sic:Kisan) Seva Kendra for its surprise inspection. The Officers of the Anti Adulteration Cell inspected the Retail Outlet of the respondent in presence of the respondent / his representation (sic:representative). During inspection, they made the following observation and prepared a panchnama:-

- “1. There is stock variation of (+) 1241 liter beyond permissible limit in MS and (-) 2505 liter in HSD. Samples of MS and HSD from one tank each drawn. TT1 and TT2 retention samples not collected since there is no plastic seal on inner Aluminum Container.
2. There is stock variation of (+) 1241 Liter beyond permissible limit in MS and (-) 2505 liter in HSD.

Samples of MS and HSD drawn as per MDG. TT1 and TT2 retention samples are not sealed with no plastic seal for inner container hence not collected. Advised dealer to stock and suspend seal and supplies of all products. Closing motor (sic: meter) reading and dip stock is given above.

3. GVR Sr.No.130-1PO585 is being operated without W/M seal. There is no calibration and stamping done b W/M and no certificate is available. On the unit there is only seal of GVR which is put at factory at the time of manufacture.
4. MS DU MIDCO Sr. No.1136 is having double gear mechanism in metering unit. Photograph of double gear is taken. This is an additional and unauthorized fitting. Divisional Office to take action as per clause 5.1.4 of MDG 2012. DU sealed with AAC holograms.”

6. As the discrepancies found by the Ante Adulteration Cell Team were of critical nature, the respondent was immediately directed to stop the sale of petroleum products from the Retail Outlet. The investigation report was submitted by the inspection team on 21.08.2013 (Annexure P/8). Thereafter, looking to the gravity of the discrepancies, appellant No.1 sought an explanation of the respondent for the following irregularities found by the Ante Adulteration Cell Team during their inspection vide Fact Finding Letter dated 04.09.2013 (Annexure P/9): -

- (i) Seals of the metering unit found tampered in the dispensing pumps.
- (ii) **Additional / unauthorized fitting and gears inside the dispensing units / tampering with dispensing units.**
- (iii) Positive stock variation beyond permissible limits but sample passing quality tests.
- (iv) Negative stock variation beyond permissible limits but sample passing quality tests.

7. The respondent vide his reply dated 16.09.2013 (Annexure P/10) accepted the aforesaid irregularity found at the time of investigation and submitted his detailed clarification / reply on all the discrepancies raised by the Corporation vide their letter dated 04.09.2013 (Annexure P/9). The submission of the respondent on Irregularities No.(i), (iii) and (iv) were found satisfactory. Thus the said discrepancies recorded by the Ante Adulteration Cell Team during their inspection were dropped against the respondent. However, by his reply dated 16.09.2013 the respondent just tried to wash off his hands and tried to shift his responsibility from Irregularity No.(ii) of putting an additional fitting in the Dispensing Unit, stating an unacceptable reason that this dispensing unit was shifted on his Retail Outlet from the other Retail Outlet namely Digendra Auto, thus he is totally unaware of any fitting in the unit and further stated that the maintenance and protection of the Dispensing Units installed at his Retail Outlet was not his responsibility. Respondent did not submit a satisfactory reply for Irregularity No.(ii) found at the time of investigation, which was made in his presence.

8. Thereafter, a show cause notice dated 05.12.2013 (Annexure P/11) was issued to the respondent, seeking his reply why dealership agreement dated 21.11.2008 (Annexure P/1) should not be terminated in violation of Clause 5.1.4 of the MDG and Clause 15, 16 and 46 of the dealership agreement. On 26.12.2013 (Annexure P/12) respondent submitted his reply on the pretext that MS Dispensing Unit Sr. No.1136 (MIDCO) is not maintained by the respondent and the said DU was brought from some other Retail Outlet and has been inspected many times since the date of its installation at the respondent's Retail Outlet and having latent defect prior to being shifted which could not be visible through reasonable care and caution. The aforesaid reasons submitted by the respondent were found unsatisfactory and baseless as the report of the Anti Adulteration Cell Team is very much clear that the double gears arrangement was available inside the metering unit, which is clearly visible from the pictures taken at the time of investigation (Annexure R/1).

9. The General Manager of the Madhya Pradesh State Office of Appellate Corporation considered the entire material placed before him and after granting personal hearing to the respondent and after giving careful consideration to the submissions made by the respondent, came to the conclusion that respondent's action / inaction amounts to violation of Clause 15, 16 and 46 of the Dealership Agreement read with Clause 5.1.4 of MDG 2013, as dispensing

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unit is having double gera (sic:gear) mechanism in metering unit which falls under the category of an additional and unauthorized fitting. This cause was prejudicial to the interests of the Corporation and tarnished the image of the Corporation.

On the basis of these facts, it was decided that the dealership of the respondent should be terminated and consequently termination letter dated 13.03.2014 (Annexure P/13) was issued to the respondent.

10. The respondent preferred an appeal challenging termination letter dated 13.03.2014 (Annexure P/13) before the Appellate Authority of the appellant – Indian Oil Corporation Limited, as prescribed under Clause 8.9 (i) of the Marketing Discipline Guidelines, 2013. The Appellate Authority provided an opportunity of personal hearing to the respondent on 28.10.2014 in the matter and thereafter considered the entire case and recorded the finding that the dispensing unit is having double gear mechanism in metering unit which falls under the category of an additional and unauthorized fitting found in the metering unit of the Dispensing Unit and affirmed the letter / order of termination dated 13.03.2014 (Annexure P/13) by dismissing the appeal on 17.12.2014 (Annexure P/14).

11. The respondent challenged the aforesaid orders by filing a writ petition under Article 226 of the Constitution of India. A detail reply to the writ petition was filed by the appellant and prayed for dismissal of the writ petition on the ground of making incorrect statement in the writ petition regarding non providing an opportunity of hearing to the respondent (writ petitioner).

12. Learned Writ Court by impugned order quashed the order of terminating the dealership and allowed the writ petition and restored the dealership of the respondent. Paragraphs No.18 and 19 of the order reads, as under: -

“18. In the present case, there is no such material available on record to prove that due to double gear mechanism, there was any shortage in delivery. No finding was recorded by the authority, who has terminated the agreement as well by the appellate authority. This clause further provides that in case of those irregularities sale from the concerned dispensing unit DU would be sealed and send to the laboratory for the testing. In the present case, the DU was not sealed and did not send to

the laboratory for testing. There is no lab testing report available on the record. The petitioner's request for obtaining report about short delivery or the gear is active or dead has been turned down by the authorities, therefore, there is no material or satisfaction of the authority that because of gear, there was any intention of manipulating the delivery by the petitioner, coupled with the fact that the machine was installed by the company itself by way of transfer from another fuel station.

19. The entire plea of the petitioner was rejected only on the ground of double gear was found in DU machine. There is no finding of deliberate insertion or shortage of delivery and whether double gear was active or dead. Similar issue came up before the High Court of Andhra Pradesh in the case of *Ram Lal Agrawal* (Supra) and the action of the respondent was found to be arbitrary exercise of power and the writ petition was allowed.”

13. Shri B.L. Pavecha, learned Senior Counsel for the appellants has drawn our attention to paragraph No.5 and paragraph No.6 (c) of the writ petition. In paragraph No.5, the respondent (writ petitioner) has very categorically stated that reply to the first and second show cause notices was filed, but in Paragraph No.5 (l) of the writ petition, he stated that appellant No.2 (respondent No.2), without properly considering the reply and rules, terminated his dealership vide letter dated 13.03.2014. He in paragraph No.5 (m) stated that the appeal dated 12.04.2014 preferred by him was also dismissed by order dated 17.12.2014, but in paragraph No.6 (c) of the ground, he stated that no opportunity of hearing was granted by the appellant – Corporation before passing the impugned order of termination and while dismissing the appeal, which suggests violation of sacrosanct principles of natural justice.

14. Learned Senior Counsel for the appellants has drawn our attention to paragraph No.11 of the impugned order where this question has been considered by the learned Writ Court and submitted that the learned Writ Court committed a grave error of law in recording erroneous finding that the respondent has not made statement of not providing an opportunity of hearing in the grounds or in facts of writ petition; the learned Writ Court should have seen that the respondent made such baseless and ill founded statement in the petition memo, whether mentioned in the facts or under grounds will not make

a difference as the same was done by the respondent with a motive to mislead the Court and to gain wrongful sympathy. The finding recorded by the learned Writ Court that the respondent has himself submitted show cause notice and reply submitted by him along with the writ petition, goes to show that the respondent did not intend to hide the material facts from the learned Writ Court of providing an opportunity of hearing by the appellant – Corporation is in itself contradictory to the statement made by the respondent in the writ petition. The learned Writ Court should have seen that the appellant – Corporation never violated principle of natural justice and it was the respondent who did not come up with clean hands and it is the respondent who has made false and baseless statements in the writ petition.

15. He also submitted that the learned Writ Court has committed grave error of law and facts in recording a finding in the impugned order that the respondent may have intention to say that opportunity of hearing provided to him by the appellant was not adequate and meaningful. The finding recorded by the learned Writ Court is solely based upon assumption, no statement in this regard was made by the respondent in the rejoinder nor at the time of final arguments. It is also submitted that the learned Writ Court should have also seen that any averment made in the writ petition whether raised at the time of final arguments or not should be treated as pleading of the respondent and he cannot be permitted to put false pleadings in the writ petition. He submitted that the act of the respondent goes to show that the respondent has betrayed the confidence of the Court.

16. To appreciate the aforesaid submissions, we quote paragraph No.11 of the impugned order and relevant paragraph No.7 of decision dated 29.04.1987 of the Division Bench of the High Court of Madhya Pradesh, Bench at Indore in the case of *Jagdish s/o Hiralal Mali v. State of MP & others*, Miscellaneous Petition No.400/1987, which read, as under: -

“11. That the respondent has alleged that the petitioner has made misleading as well as incorrect statement in the writ petition about the fact that he was not given any opportunity of hearing before passing the impugned order. The said statement was made by the petitioner in ground No. C, but in para 5 of memo of petition where the facts of the case are pleaded, the petitioner did not made any statement that he was not given any opportunity of hearing. On the contrary, he

has stated that he received first and second show cause notice and submitted the replies in response to those show cause notices. The petitioner has filed copy of show cause notice as well as copy of replies in the writ petition, therefore, it cannot be alleged that he has given incorrect statement or tried to suppress the fact about issuance of show cause notice and denial of opportunity of hearing. The petitioner may have intention to say that adequate & meaning full opportunity of hearing was not given to him. At the time of argument also, Shri Kutumble did not argued on the point that the petitioner was not given any opportunity of hearing, therefore, the averment made in Clause 6 does not came under the category of misleading or making incorrect statement.”

“07. Even if the allegation now made by the petitioners are to be believed, as urged on behalf of the petitioners, the petitioners should have disclosed all those facts in their application for grant of ad-interim writ. They suppressed all these facts and led the Court to believe that they were not dispossessed by the authorities concerned from the land in question. The conclusion is irresistible that the petitioners did not come to the Court with clean hands. In AIR 1951 Nagpur 17 (*Nikar s/o Yusuf v. The Government of Madhya Pradesh*), a Division Bench of this Court has held that where the Court has reason to be satisfied that there has been a willful concealment of facts so as to deceive it, the Court will decline to consider the merits of the petition. As observed in AIR 1951 Nagpur 17 (*supra*), the reason for adoption of this rule is not to arm an applicant’s opponent with a weapon of technicality but to provide an essential safeguard against abuse of the process of the Court. A person invoking the assistance of a Court by way of one of the high prerogative writs is required to exhibit complete candour and if he suppresses material facts, it would amount to lack of good faith on the part of the petitioner. In these circumstances, therefore, the petitions are liable to be dismissed on the short ground that the conduct of the petitioners in suppressing material facts was improper. In this view of the matter, it is not necessary to decide the other

questions raised in these petitioners.”

17. Learned Senior Counsel for the appellant has drawn our attention to paragraph No.17 of the impugned order wherein the learned Writ Court, after considering Clause 5.1.4 of MDG – 8th January, 2013, came to the conclusion that mere finding of gear in the dispensing unit is not sufficient, there has to be a material before the authorities to establish that by insertion of such mechanism / gear, the delivery of the dispensing unit was affected or reduced. The learned Writ Court also observed that there is no such material available on record to prove that due to double gear mechanism, there was any shortage in delivery. No finding was recorded by the authority. He also gave a finding that DU was not sealed and did not send to the laboratory for testing. The request of the respondent for obtaining report about short delivery or the gear is active or dead has been turned down by the authorities and gave finding that there is no material or satisfaction of the authority that because of gear, there was any intention of manipulating the delivery by the respondent, coupled with the fact that the machine was installed by the company itself by way of transfer from another fuel station.

18. Learned Senior Counsel for the appellants has submitted that delivery from the said Dispensing Unit could not have been checked by the appellants, as the said Dispensing Unit was out of order on the date of inspection. He submitted that the finding of additional fitting gear in the Dispensing Unit was enough to proceed against the respondent and to find a *prima facie* case against the respondent that the said gears were fitted by the respondent with an intention of manipulating the delivery from the Dispensing Unit. The learned Writ Court should have also seen that no additional gears were found in the Dispensing Unit at the time of earlier two inspections as conducted by the officers of the appellant – Oil Corporation and the same was found at the time of last inspection which clearly depicts that the said gears were inserted in the Dispensing Unit before the said inspection and were not in the Dispensing Unit since the time of its installation at the Retail Outlet of the respondent. He submitted that the learned Writ Court has erroneously recorded observation that mere finding of gears in the unit will not be sufficient to establish that the respondent has manipulated the delivery from the Dispensing Unit. He submitted that the learned Writ Court should have considered the relevant clause and should have accordingly hold that there could not have been any other reason for fitting the gears in the Dispensing Unit then to wrongfully gain monetary

benefits by way of manipulating the delivery.

19. His third ground of attack is that as per Clause (2) of the agreement dated 21.11.2008 (Annexure P/1) either of the parties have a right to terminate the agreement earlier by giving three months notice in writing to the other of its intention to terminate the agreement and upon the expiration of any such notice, the agreement shall stand cancelled and revoked.

20. He has also drawn our attention to Clause 45 (a), (l) and (p) of the agreement dated 21.11.2008 (Annexure P/1) and submitted that if the dealer shall commit a breach of any of the terms, conditions, covenants and stipulations contained in this Agreement, the appellant – Oil Corporation has every right to terminate the contract. He submitted that if any dispute or difference of any nature whatsoever arises between the parties, then either party may invoke arbitration clause, as provided under Clause 62 (a) of the agreement (Annexure P/1).

21. He has drawn our attention to Clause (c), Sub-Section (1) of Section 14 of the Specific Relief Act, 1963 and submitted that at the most the respondent is entitled for compensation by way of damages for a period of three months and drawn our attention to paragraph No.14 of the decision of the Apex Court in the case of *Indian Oil Corporation Limited v. Amritsar Gas Agency* reported in 1991 (1) SC 533. He submitted that the learned Writ Court granted relief of specific performance of contract, which is barred under Clause (c), Sub-Section (1) of Section 14 of the Specific Relief Act, 1963.

22. Relevant Clause 45 (a) (l) and (m) and Clause 62 (a) of the agreement dated 21.11.2008 (Annexure P/1), read as under: -

“45. Notwithstanding anything to the contrary herein contained, the Corporation shall be at liberty at its entire discretion to terminate this Agreement forthwith upon or at any time fter (sic:after) the happening of any of the following events namely:-

- (a) If the Dealer shall commit a breach or default of any of the terms, conditions, covenants and stipulations contained in this Agreement.
- (l) If the Dealer does not adhere to the instructions /

guidelines issued from time to time by the corporation in connection with Marketing Discipline and / or safe practices to be followed by him in the sale or supply and storage of the Corporation's products or otherwise.

- (m) If the Dealer shall contaminate / adulterate or tamper with the quality of any of the products supplied by the Corporation.

62 (a) Any dispute or difference of any nature whatsoever, any claim, cross claim, counter-claim or set-off or regarding any right, liability, act omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the Director (Marketing) of the Corporation who may either himself act as the Arbitrator or nominate some other officer of the Corporation to act as the Arbitrator. The Dealer will not be entitled to raise any objection to any such Arbitrator on the ground that the Arbitrator is an officer of the Corporation."

23. Learned Senior Counsel for the appellant submitted that in view of arbitration clause, the learned Writ Court should have referred the matter to the Arbitrator by invoking the arbitration clause; the writ petition filed by the respondent was barred by suppression of material fact as well as alternative remedy available to him; these questions cannot be decided in the writ proceedings; and prayed that the impugned order be set aside.

24. Shri Pavecha, learned Senior counsel has invited our attention to the facts mentioned in para 6 (c) of the writ petition wherein the respondent – writ petitioner has made totally false and misleading statement regarding violation of natural justice by not giving any opportunity of hearing, before passing the impugned order of termination and while dismissing the appeal whereas as per record after receipt of show cause, opportunity of personal hearing was accorded on 16.1.2014 and thereafter order dated 13.3.2014 was passed even before dismissing the appeal on 17.12.2014, an opportunity of personal hearing was accorded to the respondent.

25. The Hon'ble Supreme Court in the case of *Hari Narain V/s. Badri Das* (supra) has observed that it is of utmost importance that in making material

statements and setting forth grounds in applications for special leave care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. The remedy of writ which is discretionary relief and whatever may be merit of the case in the peculiar facts and circumstances, the court may refuse to exercise its jurisdiction and we accept the contention of the learned Senior counsel for the appellant that the writ petition was liable to be dismissed even without dealing with the merits of the case. Para 14 of the decision of the Apex court in the case of *Indian Oil Corporation Ltd. V/s. Amritsar Gas Agency* (supra) is relevant which reads as under :-

"14. The question now is of the relief which could be granted by the arbitrator on its finding that termination of the distributorship was not validly made under clause 27 of the agreement. No doubt, the notice of termination of distributorship dated March 11, 1983 specified the several acts of the distributor (sic:distributor) on which the termination was based and there were complaints to that effect made against the distributor which had the effect of prejudicing the repuration (sic:reputation) of the appellant – Corporation; and such acts would permit exercise of the right of termination of distributorship under clause 27. However, the arbitrator having held that clause 27 was not available to the appellant – Corporation, the question of grant of relief on that finding has to proceed on that basis. In such a situation, the agreement being revokable by either party in accordance with clause 28 by giving 30 days' notice, the only relief which could be granted was the award of compensation for the period of notice, that is, 30 days. The plaintiff-respondent 1 is, therefore, entitled to compensation being the loss of earnings for the notice period of 30 days instead of restoration of the distributorship. The award has, therefore, to be modified accordingly. The compensation for 30 days notice period from March 11, 1983 is to be calculated on

the basis of earnings during that period disclosed from the records of the Indian Oil Corporation Ltd."

26. Per contra, Shir Ashok S. Kutumbale, learned Senior Counsel for the respondent has submitted that machine was installed by the appellants, and therefore, there was no manipulation and no presumption can be drawn because unit was out of order. He submitted that the contract cannot be terminated on the basis of panchnama dated 21.08.2013. The learned Writ Court rightly considered the objections raised by the learned counsel for the appellants and dismissed the writ petition. He mainly placed reliance on paragraphs No.28, 29 and 30 of the decision of the Andhra Pradesh High Court in the case of *Ram Lal Agrawal v. Indian Oil Corporation Limited* reported in 2014 (4) ALD 139, *Ranjith Filling Station v. Indian Oil Corporation Limited* reported in 2014 (6) ALD 640, *P. Laxmikanth Rao v. Union of India* reported in 2011 (3) ALD 505 = 2011 (3) ALT 221. He submitted that the learned Writ Court in the case of *Ram Lal Agrawal v. Indian Oil Corporation Limited* (supra), after considering the judgment of the Division Bench dated 21.07.2011 passed in Writ Appeal No.318/2011 allowed the writ petition; the situation in the present case and the aforesaid case is identical; and prayed for dismissal of the writ appeal.

27. From the record, it is clear that the respondent gave its reply to first and second show cause notice. Thereafter, in third show cause notice / inspection report dated 21.08.2013, an opportunity of personal hearing was accorded and the respondent personally appeared before the Competent Authority of the appellant - Corporation on 16.01.2014 and thereafter order dated 13.03.2014 passed. He totally on false and misleading statement made in paragraph No.6 (c) of the writ petition regarding violation of principles of the natural justice by not giving any opportunity of hearing, renders the petition liable to be dismissed. In an appeal also, personal hearing was provided by the Appellate Authority to the respondent on 28.10.2014 and thereafter order dated 17.12.2014 (Annexure P/14) was passed.

28. This question was considered by the Apex Court in paragraph No.9 in the case of *Nari Narain v. Badri Das* reported in AIR 1963 SC 1558 and in paragraph No.7 of the Division Bench of Madhya Pradesh High Court at Indore in the case of *Jagdish s/o Harilal Mali v. State of MP & others* (supra). Even if allegation now made by the appellant – Oil Corporation is to be believed, as urged, the respondent should have disclosed all these facts in

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their writ petition. In the writ petition, the respondent suppressed all these facts and led the Court to believe that no opportunity of hearing was granted to him before passing order dated 13.03.2014 and 17.12.2014, the conclusion is irresistible, that the respondent did not come to the Writ Court with clean hands. Thus, we are of the view that if there has to be a willful concealment of facts by the respondent, then he is not entitled for any relief under Article 226 of the Constitution of India.

29. It is not in dispute that the contract can be revoked at the instance of either party in accordance with Clause 2 and 45 of the agreement and only relief which can be granted on finding breach of contract, is damage for the notice period i.e. for a period of ninety days and no more.

30. In view of clause of termination, as provided in the agreement, the appellant – Oil Corporation has every right to terminate the contract and once the contract is terminated by invoking Clause 2 and 45 of Agreement dated 21.11.2008 (Annexure P/1), then relief of restoration of contract cannot be granted, as the same is accountable to the expressed provision of Section 14 of the Specific Relief Act, 1963.

31. For these reasons, we are of the view that order dated 09.12.2016 passed in Writ Petition No.9473/2014 is liable to be set aside and is hereby set aside.

32. Accordingly, Writ Appeal No.72/2017 is allowed. No costs.

Appeal allowed.

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WRIT PETITION

Before Mr. Justice S.C. Sharma & Mr. Justice Rajeev Kumar Dubey

W.P. No. 7631/2014 (Indore) decided on 3 January, 2017

IDEA CELLULAR LTD., INDORE (M/S)

...Petitioner

Vs.

THE ASSTT. COMMISSIONER OF COMMERCIAL TAX

LTU, INDORE & ors.

... Respondents

(Alongwith W.P. No. 3767/2015, W.P. No. 363/2016 & W.P. No. 2320/2016)

VAT Act, M.P. (20 of 2002), Section 2(u) & 2(v) and Finance Act (32 of 1994) and Constitution, Article 246 – Levy of Service Tax

and VAT – State Government levied service tax on petitioner company on the services rendered by providing SIM replacement charges and Lease Line Revenue and simultaneously levying VAT – Challenge to – Held – Supreme Court held that no sales tax can be charged for providing a SIM, hence question of charging of tax on replacement of SIM does not arise – SIM card is not sold to subscriber but merely forms part of the services rendered and cannot be charged separately to sales tax – Further, in case of levy of VAT on lease line, since a subscriber of a lease line does not become the owner of the line either by control or by possession and hence such charges are only for services rendered and there is no element of sale therein – Section 2(u) and 2(v) of MP Vat Act, 2012 is *ultra-vires* and void so far it relates to imposition of VAT on SIM replacement charges and lease line revenue, which are merely services – Demand order and Notice issued by assessing authority is hereby quashed – Petition allowed.

(Paras 20, 25, 26 & 29)

वैट अधिनियम, म.प्र. (2002 का 20), धारा 2(u) व 2(v) एवं वित्त अधिनियम (1994 का 32) एवं संविधान, अनुच्छेद 246 – सेवा कर एवं वैट का उद्ग्रहण – राज्य सरकार ने याची कम्पनी से प्रदान की गई सेवाओं पर सिम की प्रतिस्थापना प्रभार एवं लीज लाइन राजस्व पर सेवा कर उद्ग्रहीत किया एवं साथ ही वैट उद्ग्रहीत किया – को चुनौती – अभिनिर्धारित – उच्चतम न्यायालय ने अभिनिर्धारित किया कि सिम प्रदान करने हेतु कोई विक्रय कर नहीं भारित किया जा सकता, अतः सिम के प्रतिस्थापन पर कर भारित करने का प्रश्न उत्पन्न नहीं होता – सिम कार्ड ग्राहक को बेचा नहीं जाता बल्कि मात्र प्रदान की गई सेवाओं का हिस्सा है एवं पृथक रूप से विक्रय कर भारित नहीं किया जा सकता – इसके अतिरिक्त, लीज लाइन पर वैट के उद्ग्रहण के प्रकरण में, चूंकि ग्राहक न तो लीज लाइन का नियंत्रण अथवा न ही कब्जे द्वारा स्वामी बनता है और इसलिए ऐसे भार केवल प्रदान की गई सेवाओं हेतु होते हैं और इसमें विक्रय का कोई तत्व नहीं है – एम. पी. वैट अधिनियम, 2012 की धारा 2(u) व 2(v) अधिकारातीत एवं शून्य है, जहाँ तक इसका संबंध सिम प्रतिस्थापन प्रभार एवं लीज लाइन राजस्व पर वैट के अधिरोपण से है, जो कि मात्र सेवाएँ हैं – निर्धारण प्राधिकारी द्वारा जारी मांग आदेश एवं नोटिस एतद्वारा अभिखंडित – याचिका मंजूर।

Cases referred :

(2011) 19 STJ 2301 (SC), 2006 (145) STC 91, (2006) 3 SCC 1, 2009 (2) SCC 614, (2007) 11 STJ 795 (MP), (2011) 19 STJ 201 (SC), (2006) 3 SCC 1, (2009) 15 STJ 337 (Kerala), W.P. No. 5340/2013 decided

(Supplied : Paragraph numbers)

ORDER

The Order of the Court was delivered by :
S.C. SHARMA, J. :- Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No. 7631/2014 are narrated hereunder.

2. The petitioner before this Court, a Company registered under the Companies Act, has filed this present Writ Petition being aggrieved by the final assessment order dated 31/7/2014 read with demand notice dated 31/7/2014 under Form 28 (Rule 40) of the M.P. VAT Act, 2002. It has been stated in the Writ Petition that the petitioner Company has been granted a Unified Access Services Licences (hereinafter referred to as, 'the UASL') by the Central Government for providing telecom services, *inter-alia*, for the Telecom Circle which is contiguous with the State of Madhya Pradesh and State of Chattisgarh. The petitioner Company provides various kinds of services i.e., Cellular, Fixed Line and Broadband services which includes roaming facilities, STD and ISD and other various value added services to its subscribers. The petitioner is rendering a service.

3. It has been further stated that the Central Government by Finance Act of 1994 has imposed service tax on the said services of the petitioner and they are assessed to said tax w.e.f. 14/05/2004.

4. The petitioner Company is aggrieved by the action of the respondent – State in levying tax on the services provided by the petitioner Company. The contention of the petitioner is that the respondents have no authority under the Constitution of India to levy service tax on the services rendered by the petitioner and the same cannot be recovered under the provisions of the M.P. VAT Act, 2002. It has been further stated by the petitioner Company that levy of service tax on the service rendered by providing SIM Replacement Charges and the Lease Line Revenue and simultaneously levy of VAT by the State of Madhya Pradesh is contrary to the separation of legislative powers envisaged under Article 246 of the Constitution of India. The petitioner Company has placed reliance upon various judgments delivered by the Hon'ble Supreme

Court of India as well as by this Court and their contention is that the case law in respect of overlapping of powers between the State and the Union is well established and there is no scope of overlapping. The petitioner is aggrieved by the action of the State Government in levying VAT on consideration received for providing logistic charges and warranty claims received by the petitioner Company.

5. The contention of the petitioner is that Central Government by Finance Act of 1994 has imposed "Service tax" on the said service of the petitioners and the petitioners are being assessed to the said tax and the petitioner is paying the requisite tax w.e.f. May 14, 2004.

6. It is further contended on behalf of the petitioner – service provider that the use/utility of the SIM card remains the same in both the prepaid and the postpaid connections. In the case of a pre-paid SIM card, service charge is collected mainly for activating the connection, service tax is paid on this consideration as "telecommunication service"; a SIM card is incidental to the rendering of telecommunication service; SIM cards are not sold by the service provider to the subscribers, and are not chargeable to VAT. Similarly, when a new SIM card is issued in case the old one is lost, the process of activation is the same and again the charges remain the charges for reactivation and cannot be treated as a sale price.

7. It is submitted by the learned counsel for the petitioner that a Subscriber Identification Module (SIM) card contains a computer chip with prerecorded instructions. It is a device which helps the service provider to identify the subscriber. It also enables the subscriber to access the service provider's network by means of electro-magnetic waves. The SIM card is merely a key to enter the service provider's facility and use their services. The process of activation involves information being fed into the computer maintained by the service provider, such as particulars of the amount charged, the identity of the subscriber, etc. Thus the SIM card is not sold to the subscriber but merely forms part of the service rendered by the service provider and it cannot be charged separately to sales tax. It is only if the parties intend that the SIM card should be a separate object of sale, sales tax can be levied thereon. If the sale of a SIM card is incidental to the service being provided, and merely facilitates identification of the subscribers, their credit and other details, it would not be assessable to sales tax. On the same analogy the SIM replacement charges are also not liable to be taxed since

these again are in the form of service charges and do not represent sale price.

8. The learned counsel for the petitioner submits that SIM cards are included under the definition of telecommunication service which are liable for service tax u/s 65(109a) of Finance Act 1994 read with Finance Act 2007. A SIM card as such is only a card containing a code which enables the person to use his mobile number. It is basically an identity number which is then used for receiving the signals on the mobile network.

9. Learned counsel for the petitioner has relied upon the judgment delivered by the Hon'ble Supreme Court in the case of *IDEA Mobile Communication Ltd. v. C.C.E. & C., Cochin* reported in (2011) 19 STJ 2301 (SC) wherein the question which arose for consideration, in "IDEA Mobile, was whether the value of SIM cards, sold by the service provider to their mobile subscribers, should be included as "taxable service" under Section 65(105) zzzx of the Finance Act, 1994, (which provides for levy of service tax on telecommunication service), or whether it is taxable as "sale of goods" under the Sales Tax Act. The Hon'ble Supreme Court held that the charges paid by subscribers, for procuring a SIM card, were generally processing charges for activating the cellular phone which would, necessarily, be included in the value of the SIM card; the amount received by the cellular telephone company from its subscribers, towards the SIM Card, forms part of the taxable value for the levy of service tax; SIM cards are never sold as goods independent of the services provided; they are considered part and parcel of the services provided; the dominant intention of the transaction is to provide services, and not to sell the material i.e.; SIM Cards which, on its own but without the service, would hardly have any value; the value of the SIM card forms part of the activation charges as no activation is possible without a valid functioning of the SIM card; the value of the "taxable service" is calculated on the gross total amount received by the operator from the subscribers; and no element of sale is involved in the transaction. In view of the law laid down by the Supreme Court, in *Idea Mobile Communication*, that the value of the SIM card forms part of the activation charges, service tax can alone be levied for such services, and not sales tax, the assessing authority has exceeded their jurisdiction in levying tax on pre-paid and post-paid SIM cards. Learned counsel for the petitioner submits that levy of VAT on the consideration received for SIM replacement is *ultra-vires* to the provisions of the Constitution of India and thus, the impugned order and the impugned demand notice are liable to be set aside.

10. Learned counsel for petitioner further contended that the petitioner who is

covered by the provisions of the Finance Act, 1994 as amended from time to time, is required to pay Service Tax on the service activity to the Central Government under Section 696 of the said Act. The petitioner has paid Service Tax on the entire amount received towards the SIM replacement. Therefore, any attempt on the part of the State Government to levy sales tax on the same activity which is already covered by the entry in List I of the Seventh Schedule to the Constitution, would be *ultra vires* Article 246 of the Constitution of India and consequently the State Government cannot levy sales tax.

11. It has been further contended that Hon'ble the Apex Court in the case of *Bharat Sanchar Nigam Ltd., and another Vs. Union of India* reported in 2006 (145) STC 91 has examined the position as regards taxation of the same transaction under two different headings. The Apex Court in para 83 of its decision has noted the definition of "subscriber" as defined under the Finance Act enacted by the Parliament which includes a person to whom any service of a leased circuit has been provided. The Apex Court further in paragraph 84 thereof observed that a telephone service is nothing but a service; that there is no sale element apart from any hand set or other accessory supplied.

12. It has been further contended that in the light of the categorical conclusion arrived at by the Apex Court and in view of the fact that the Petitioner is law bound to pay service tax under the Finance Act, 1994 passed by the Parliament, the very same transaction cannot be subjected to sales tax by the State Government.

13. Learned counsel for the petitioner has placed reliance upon the judgment delivered by the Hon'ble Supreme Court in the case of *Bharat Sanchar Nigam Ltd., and another Vs. Union of India* reported in (2006) 3 SCC 1 and in the case of *Imagic Creative Pvt. Ltd. v. Commissioner of Commercial Taxes* reported in 2009 (2) SCC 614 wherein it has been categorically held that service tax and VAT is not payable on the same amount as both taxes are mutually exclusive. Learned counsel has submitted that the impugned order seeking to confirm demand of VAT on a transaction which is taxed as a service and on which service tax has been paid under the Finance Act, 1994 is improper and liable to be set aside.

14. The respondents have filed a detailed and exhaustive return and their contention is that the petitioner was not assessed for sale of SIM cards provided to the customer treating it to be a service as it will be activated. It has been argued that initially at the time of giving original SIM card no sale tax

has been imposed but in the event when the customer comes before the service provider for issuance of new SIM or for replacement of damaged SIM the petitioner Company is charging valuable consideration for such replacement and, therefore, Sales Tax / VAT has rightly been charged.

15. Learned counsel for the respondent – State has drawn attention of this Court towards the provision of Section 2 (u) and 2 (v) and from its perusal it is clear that charges taken by the petitioner Company virtually falls within the purview of section 2 (u) and 2 (v) as initially the SIM is the property of the petitioner Company and no consideration is charged but later at the time of SIM replacement, may be because of damage, the petitioner Company is charging certain amount for that replacement which is valuable consideration as defined in section 2 (v). In support of their contention, learned counsel for the respondent State has placed heavy reliance upon the judgment delivered by the apex Court in the case of *Reliance Mobile v. CCT* reported in (2007) 11 ST J 795 (MP).

16. A rejoinder has also been filed in the matter and the petitioner has stated that the judgment delivered in the case of *Reliance Mobile Vs. CCT* reported in (2007) 11 STJ 795 (MP) has been considered in the judgment delivered by the Hon'ble Supreme Court in the case of *Idea Mobile Communication Ltd., Vs. Commissioner of Central Excise & Customs* reported in (2011) 19 STJ 201 (SC) and, therefore, the judgment relied upon by the respondents is of no help to the respondents.

17. It has been stated that the concept of valuable consideration and sale price u/s 2 (u) or 2 (v) would apply only if the amount charged is qua “goods” and not when the amount charged is qua “services”. It has been stated in the rejoinder that the Sim cards are just like a license card which enables the petitioner to identify a subscriber and connect the electromagnetic frequency to that particular number. Activation is the process of enabling such an identity creation. For this process both at the time of sale and even at the time of replacement, KYC norms are required to be fulfilled – i.e. customers identity and address is required as well as signature on the form. A very nominal charge is levied both at the time of issuance of original SIM as well as its replacement. The process itself shows that this activity is nothing but a service.

18. It has been contended that in a case of a driving licence/high court bar license, the card itself does not have any value. It only enables the holder to

drive/practice. If the driving licence is lost, for a new one some charges are levied which again are part of service. Same is the case of a SIM card. Replacement charges are only service charges on which service tax has been duly paid. These SIM cards are not the goods and hence there cannot be any element of sale therein and therefore, the consideration received thereof both at the time of issuance and replacement are of the nature of service charges and not sale.

19. Heard learned counsel for the parties at length and perused the record. The matter is being disposed of with the consent of the parties.

20. In the present case, the respondents are charging on VAT from the petitioner Company for providing SIM replacement to customers and Lease Line Charges received from the customers. A SIM Card which is a short form of 'Subscriber Identification Module' contains a Computer Chip with pre-recorded instructions. It is a device which helps the service provider to identify the subscriber. It also enables the subscriber to access the service provider's network by means of electro-magnetic waves. SIM is merely a key to enter service provider's facility and use their services. The process of activation involves information being fed into the computer maintained by the services provider, such as price of the amount charged, the identity of the subscriber etc., Thus, the SIM card is not sold to the subscriber but merely forms part of the services rendered by the service provider. It cannot be charged separately to sales tax. It is only if the parties intend that the SIM card should be a separate object of sale, then only sales tax can be levied thereon. If the sale of a SIM Card is incidental to the services being provided and merely facilitates identification of the subscribers, their credit and other details, it would not be accessible to sales tax. On the same analogy the SIM replacement charges are also not liable to tax since these again are in the form of service charges and do not represent sale price. SIM cards are included under the definition of 'Telecommunication Services' which are liable for service tax under Sec. 65(109a) of the Finance Act, 2002. A SIM card as such is only a card containing a Code which enables a person to use his mobile number. It is basically an identity which is then used for receiving the signals in mobile network. In case, for the first time, a SIM card is given, no VAT is imposed and the Assessing Officer has erroneously held that for the first time there is no sale, hence no VAT can be imposed, however, when the SIM is replaced on account of loss /damage then there is a sale, meaning thereby, for first issuance of a

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SIM card no VAT is being levied and for replacement VAT is being levied.
The matter relating to levy of VAT Taxes has been considered by the Hon'ble
Supreme Court in various judgments.

21. In the case of *Bharat Sanchar Nigam Ltd., and another Vs. Union of India and others* reported in (2006) 3 SCC 1, the apex Court in paragraph 87, 88, 89 and 90 has held as under :

87. What a SIM card represents is ultimately a question of fact as has been correctly submitted by the States. In determining the issue, however the Assessing Authorities will have to keep in mind the following principles: If the SIM Card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon. There is insufficient material on the basis of which we can reach a decision. However we emphasise that if the sale of a SIM card is merely incidental to the service being provided and only facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax. In our opinion the High Court ought not to have finally determined the issue. In any event, the High Court erred in including the cost of the service in the value of the SIM card by relying on the aspects doctrine. That doctrine merely deals with legislative competence. As has been succinctly stated in *Federation of Hotel & Restaurant Association of India Vs. Union of India* (1989) 3 SCC 634- "subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power. They might be overlapping; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is overlapping does not detract from the distinctiveness of the aspects".

88. No one denies the legislative competence of States to levy sales tax on sales provided that the necessary

concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction. This does not however allow State to entrench upon the Union list and tax services by including the cost of such service in the value of the goods. Even in those composite contracts which are by legal fiction deemed to be divisible under Art. 366(29A), the value of the goods involved in the execution of the whole transaction cannot be assessed to Sales Tax. As was said in *Larsen & Toubro Vs. Union of India*(supra):-

"The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the goods involved in the execution of a contract and the cost of establishment which is relatable to supply of materials involved in the execution of the works contract only can be included in the value of the goods".

89. For the same reason the Centre cannot include the value of the SIM cards, if they are found ultimately to be goods, in the cost of the service. As was held by us in *Gujarat Ambuja Cements Ltd. Vs. Union of India* (2005) 4 SCC 214,228.

"This mutual exclusivity which has been reflected in Article 246(1) means that taxing entries must be construed so as to maintain exclusivity. Although generally speaking, a liberal interpretation must be given to taxing entries, this would not bring within its purview a tax on subject-matter which a fair reading of the entry does not cover. If in substance, the statute is not referable to a field given to the State, the Court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field."

90. We will therefore have to allow the appeals filed by BPL in Civil Appeal Nos. 3329-30 of 2002 and Escotel in Civil Appeal No.2408 of 2002 and remand the matter to the Sales Tax Authorities concerned for determination of the issue relating to SIM Cards in the light of the observations contained in this judgment.

22. The Division Bench of this Court in the case of *M.P. Reliance Telecom Ltd., Indore Vs. Commissioner of Commercial Tax*, reported in (2007) 11 STJ 795, in paragraph 2 to 7 has held as under :

2. Learned Counsel for the appellant does not dispute that during the period pertaining to the Assessment Year 1998-1999 and 1999-2000, the appellant had floated a Scheme for rendering Telecom service to the subscribers in which hand sets were made available to the subscribers on non returnable basis along with the Sim Cards. The Department, levied tax on the value of the hand set and also the value of the Sim Cards which substituted the original Sim Cards on account of damage etc. for which extra charge was made. It was this levy of commercial tax which was assailed by the appellant.

3. Learned Counsel submits that insofar as the supply of hand set to the subscribers was concerned, it was not the main business of the appellant who was liable to pay only service tax under the provisions of Finance Act, 1994 with the result the appellant was not required to get itself registered as a 'Dealer' under the Commercial Tax Act, 1994 but on account of some mis-conception, application was made to the Department and a registration as 'Dealer' was obtained. Learned Counsel has referred to the decision in *State of Tamil Nadu and Anr. v. Board of Trustees of the Port of Madras* STC Vol. 114 1999 Page 520 and the decision in *Bharat Sanchar Nigam Ltd. and Anr. v. Union of India and Ors.* STC Vol. 145 2006 Page 91. It is on the strength of the above authorities that the learned Counsel contends that once the hand set forms a negligible part of the service and is not a sale, the commercial tax could not have been claimed by the respondents on the said Cellular hand sets.

4. The Board, in considering the said contention, has referred to the decision of the Supreme Court in *Anand Commercial Agencies v. Commercial Tax Officer* STC Vol. 107 1997 Page 586.

5. Apropos the first contention of the learned Counsel that

supplying of the hand set to the subscribers was only an ancillary activity and not the main activity, suffice would be to say that service rendered by the appellant Company would be meaningless unless the receivers are available with the subscribers. The fact that the Company did not insist the subscribers to purchase a receiver from outside and use its Sim Card and proposed to supply the receiver along with the Sim Card clearly indicates the intention of the Company to pass on to the customer the Cellular phone as part of the deal which constituted sale. It cannot be denied that the Cellular phone had a market value and they were supplied to the customer, apparently not free of charge but the charge with constituted part of the package. In *Anand Commercial Agencies* (supra) the Apex Court considered a situation where bottles were supplied free of charge on understanding that they would be returned to the 'Dealer' with a stipulation that the amount of advance deposited would stand forfeited if the bottles were not returned within the prescribed period. This amount was treated as forming sale price and charged appropriately to tax. The decisions relied upon by the learned Counsel for the appellant however, deal with the matter in different field. In *Bharat Sanchar Nigam Limited* Their Lordships were considering whether the Sim Card sold to the subscribers were dealing with a situation where the Sim Card not sold to the subscribers but forming part of the services rendered were held as not chargeable to sales tax. In that decision also it was clarified that if the parties contended that the Sim Card would be a separate subject of sale, it would be open to the Sales-Tax Authorities to levy sales tax thereon.

6. From the orders passed by the Sales-Tax Authorities we find that the Authorities have been discerning enough between the Sim Card supplied free of charge and the Sim Card substituted on payment of charges. It is only the Sim Card which is substituted on account of damage etc. and for which extra charge is made that the Authorities are charging commercial tax. However, the situation with regard to the supply of hand set is entirely different from the one present

before Their Lordships and, therefore, we do not find that the contention of the appellant is substantiated by the ratio of the said decision. Reference has also been made to 114 STC Page 520. The said case was dealing with the incidental transaction of unserviceable goods. The case of the appellant obviously is that it is not an unserviceable item which has been supplied to the subscriber but very much a hand set which is an essential component for receiving the service. Under these circumstances, the decision in *Board of Trustees* (supra) also does not further the case of the appellant.

7. In view of the above discussion, we do not find that these appeals give rise to any question of law, much less substantial, for decision in the appeal under Section 53(2) of the VAT Act.

23. The Division Bench of Kerala High Court in the case of *Commissioner of Central Excise & Customs Vs. Idea Mobile Communication Ltd.*, reported in (2009) 15 STJ 337 (Kerala), in paragraph 3 has held as under :

3. In the *BSNL case* (supra) decided by the Supreme Court, the controversy was whether sales-tax is payable on the value of SIM cards to the State Government or whether the value has to be included in taxable service for reckoning liability towards service-tax payable to Central Government. Now since the State Government after remand by Supreme Court has given up the claim for sales-tax, the question to be considered is whether the value of SIM cards forms part of taxable service. Admittedly respondent answers the description of telegraph authority defined under s. 65(111) of Finance Act, 1994 and they are registered for the payment of service-tax and they are in fact remitting tax on activation charges. The exclusion claimed by them is only on the value of SIM cards, that too only on the ground that they are free to supply SIM cards as sale of goods and remitted sales-tax thereon. In order to consider whether the value of SIM card constitutes taxable service, we have to examine the functioning of this item in the service provided by the respondent. Admittedly SIM card is a computer chip having it's own SIM number on which telephone number can be activated. SIM card is a device through which

customer gets connection from the mobile tower. In other words, unless it is activated, service provider cannot give service connection to the customer. Signals are transmitted and conveyed through towers and through SIM card communication signals reach the customer's mobile instrument. In other words, it is an integral part required to provide mobile service to the customer. Customer cannot get service without SIM card and it is an essential part of the service. SIM card has no intrinsic value or purpose other than use in mobile phone for receiving mobile telephone service from the service provider. Therefore, in our view, the stand taken by the BSNL and BPL mobile services that it is not goods sold or intended to be sold to the customer but supplied as part of service is absolutely tenable and acceptable. Consequently, we hold that the value of SIM card supplied by the respondent forms part of taxable service on which service-tax is payable by the respondent.

24. The apex Court in the case of *Idea Mobile Communication Ltd., Vs. Commissioner of Central Excise & Customs, Cochin* reported in (2011) 19 STJ 201 (SC), in paragraphs 12, 17, 18 and 19 has held as under :

12. A SIM Card or Subscriber Identity Module is a portable memory chip used in cellular telephones. It is a tiny encoded circuit board which is fitted into cell phones at the time of signing on as a subscriber.

The SIM Card holds the details of the subscriber, security data and memory to store personal numbers and it stores information which helps the network service provider to recognize the caller. As stated hereinbefore the Kerala High Court had occasion to deal with the aforesaid issue and in that context in its Judgment pronounced on 15th February, 2002 in *Escotel Mobile Communications Ltd. vs. Union of India and Others*, reported in (2002) Vol. 126 STC 475 (Kerala), it was stated in paragraph 36 that a transaction of selling of SIM Card to the subscriber is also a part of the "service" rendered by the service provider to the subscriber. The Kerala High Court in the facts and circumstances of the case observed at paras 36 and 47 as under: -

"36. With this perspective in mind, if we analyse the transaction that takes place, it appears to us that there is no difficulty in correctly understanding its facts. The transaction of selling the SIM card to the subscriber is also a part of the "service" rendered by the service provider to the subscriber. Hence, while the State Legislature is competent to impose tax on "sale" by a legislation relatable to entry 54 of List II of Seventh Schedule, the tax on the aspect of "services" rendered not being relatable to any entry in the State List, would be within the legislative competence of Parliament under Article 248 read with entry 97 of List I of the Seventh Schedule to the Constitution. We are, therefore, unable to accept the contention of Mr. Ravindranatha Menon that there is any possibility of constitutional invalidity arising due to legislative incompetence by taking the view that "sale" of SIM card is simultaneously exigible to sales tax as well as service tax. Once the "aspect theory" is kept in focus, it would be clear that the same transaction could be exigible to different taxes in its different aspects. Thus, we see no reason to read down the legislation as suggested by Mr. Menon.

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47. Conclusions:

(a) The transaction of sale of SIM Card is without doubt exigible to sales tax under the KGST Act. The activation charges paid are in the nature of deferred payment of consideration for the original sale, or in the nature of value addition, and, therefore, also amount to parts of the sale and become exigible to sales tax under the KGST Act.

(b) Both the selling of the SIM Card and the process of activation are "services" provided by the mobile cellular telephone companies to the subscriber, and squarely fall within the definition of "taxable service" as defined in section 65(72)(b) of the Finance Act. They are also exigible to service tax on the value of "taxable service" as defined in Section 67 of the

Finance Act."

17. The High Court has given cogent reasons for coming to the conclusion that service tax is payable inasmuch as SIM Card has no intrinsic sale value and it is supplied to the customers for providing mobile service to them. It should also be noted at this stage that after the remand of the matter by the Supreme Court to the Sales Tax authorities the assessing authority under the Sales Tax Act dropped the proceedings after conceding the position that SIM Card has no intrinsic sale value and it is supplied to the customers for providing telephone service to the customers. This aforesaid stand of the Sales Tax authority is practically the end of the matter and signifies the conclusion.

18. The sales tax authorities have themselves conceded the position before the High Court that no assessment of sales tax would be made on the sale value of the SIM Card supplied by the appellant to their customers irrespective of the fact whether they have filed returns and remitted tax or not. It also cannot be disputed that even if sales tax is wrongly remitted and paid that would not absolve them from the responsibility of payment of service tax, if otherwise there is a liability to pay the same. If the article is not susceptible to tax under the Sales Tax Act, the amount of tax paid by the assessee could be refunded as the case may be or, the assessee has to follow the law as may be applicable. But we cannot accept a position in law that even if tax is wrongly remitted that would absolve the parties from paying the service tax if the same is otherwise found payable and a liability accrues on the assessee. The charges paid by the subscribers for procuring a SIM Card are generally processing charges for activating the cellular phone and consequently the same would necessarily be included in the value of the SIM Card.

19. There cannot be any dispute to the aforesaid position as the appellant itself subsequently has been paying service tax for the entire collection as processing charges for activating cellular phone and paying the service tax on the activation.

The appellant also accepts the position that activation is a taxable service. The position in law is therefore clear that the amount received by the cellular telephone company from its subscribers towards SIM Card will form part of the taxable value for levy of service tax, for the SIM Cards are never sold as goods independent from services provided. They are considered part and parcel of the services provided and the dominant position of the transaction is to provide services and not to sell the material i.e. SIM Cards which on its own but without the service would hardly have any value at all. Thus, it is established from the records and facts of this case that the value of SIM cards forms part of the activation charges as no activation is possible without a valid functioning of SIM card and the value of the taxable service is calculated on the gross total amount received by the operator from the subscribers. The Sales Tax authority understood the aforesaid position that no element of sale is involved in the present transaction.

25. In the light of the aforesaid judgments delivered on the subject matter, the position of law is very clear that the amount received by the cellular telephone company from its subscribers towards SIM card will form part of the taxable value for levy of service tax, as the SIM cards are never sold as goods independent from service provided. As already held by the Hon'ble Supreme Court, they are considered to be part and parcel of the services provided and dominant position of the transaction is to provide services and not to sell the material i.e., the SIM cards which on its own, but without the services, would hardly have any value at all. Even in the case of replacement of SIM Card, the value of replacement in respect of SIM cards forms part of the activation charges, as no activation is possible without a valid functioning of SIM card and the value of taxable service is calculated on the gross amount received from the operator from the subscriber and, therefore, once it has been held by the Hon'ble Supreme Court that no sales tax can be charged for providing a SIM, the question of charging it on replacement of a SIM, does not arise. The impugned order passed by the assessing authority dt. 31/7/2014 and the Notice dt. 31/7/2014 deserves to be quashed.

26. The other issue in respect of of VAT on lease line charges is only in the present Writ Petition (WP No. 7631/2014) and is covered by the judgment

delivered by the Division Bench of this Court in the case of *Bharti Infratel Ltd., Vs. State of Madhya Pradesh and others* (W.P.No.5340/2013, decided on 20/8/2015), wherein the Division Bench of this Court while deciding the issue of infrastructure charges received in respect of mobile towers has held that such charges are of the nature of service charges and are not liable for VAT since the mobile towers all along remain in control and possession of the Company and hence there is no sale. In the case of lease line charges also this very principle applies since a subscriber of a lease line does not become the owner of the line either by control or by possession and hence such charges are only for services rendered and there is no element of sale therein.

27. The Division Bench of this Court in the case of *Bharti Infratel Ltd., Vs. State of Madhya Pradesh and others* (W.P.No. 5340/2013, decided on 20/8/2015), in paragraph 35, 36, 37, 38, 39 and 40 has held as under :

35. We are in respectful agreement with the view taken by the Karnataka High Court in the judgment cited (supra). The right to use the goods – in this case, the right to use the passive infrastructure – can be said to have been transferred by the petitioner to the sharing telecom operators only if the possession of the said infrastructure had been transferred to them. They would have the right to use the passive infrastructure if they were in lawful possession of it. There has to be, in that case, an act demonstrating the intention to part with the possession of the passive infrastructure. There is none in the present case. The passive infrastructure is an indispensable requirement for the proper functioning of the active infrastructure which is owned and operated by the sharing telecom operators. The passive infrastructure is shared by several telecom operators and that is why they are referred to as sharing telecom operators in the MSA. The MSA merely permits access to the sharing telecom operators to the passive infrastructure to the extent it is necessary for the proper functioning of the active infrastructure. The MSA also defines “site access availability” as meaning the availability of access to the sharing operator to the passive infrastructure at the site. Clause 2 of the MSA which has been quoted above provides for “site access” and Clause 1.7 limits the site access availability

to the sharing operator on use – only basis so far as it is necessary for installation, operation and maintenance etc. of the active infrastructure; the clause further states that the sharing operator does not have, nor shall it ever have, any right, title or interest over the site or the passive infrastructure. The Clause also takes care to declare that the sharing operator shall not be deemed to be the tenant of petitioner and no tenancy rights shall be deemed to exist over the site/passive infrastructure. Clause 2.1.8, presumably by way of abundant caution, states that it is expressly agreed by the sharing operator that nothing contained in the MSA or otherwise shall create any title, right, tenancy, or any similar right in favour of the sharing operator.

36. There are other provisions in the MSA which control the right of the sharing operator to gain access to the site and the passive infrastructure. For instance, Clause 3.1.2 states that the access shall be limited to the purpose of carrying out operation and maintenance activities and that too only to the authorised representatives or properly authorised subcontractors of the sharing operator. Clause 1.8 of the Schedule 2 of the MSA has to be read along with the above clause. The tables set out in this schedule providing for payment of service credits by petitioner to the sharing operators for failure to achieve the uptime service levels and those prescribing payment of service credits by petitioner to the sharing operators for non-submission of the reports and providing for stiff penalties for any failure on the part of petitioner show that it is the responsibility of petitioner to ensure that the passive infrastructure functions to its full efficiency and potential, which in turn means that it has to be in possession of the passive infrastructure and cannot part with the same in favour of the sharing telecom operators. With several such restrictions and curtailment of the access made available to the sharing telecom operators to the passive infrastructure and with severe penalties prescribed for failure on the part of the petitioner to ensure uninterrupted and high quality service provided by the passive infrastructure, it is difficult to imagine how the petitioner could have intended to part with the possession of part of the

infrastructure. That would have been a major impediment in the discharge of its responsibilities assumed under the MSA. The limited access made available to the sharing telecom operators is inconsistent with the notion of a "right to use" the passive infrastructure in the fullest sense of the expression. At best it can only be termed as a permissive use of the passive infrastructure for very limited purposes with very limited and strictly regulated access. It is therefore difficult to see how the arrangement could be understood as a transfer of the right to use the passive infrastructure.

37. When the petitioner has not transferred the possession of the passive infrastructure to the sharing telecom operators in the manner understood in law, the limited access provided to them can only be regarded as a permissive use or a limited licence to use the same. The possession of the passive infrastructure always remained with the petitioner. The sharing telecom operators did not therefore, have any right to use the passive infrastructure.

38. A careful perusal of the judgment of the Karnataka (supra) shows that the following propositions were laid down:-

a) No operation of the infrastructure is transferred to the sharing telecom operator. The latter is only provided access to use the passive infrastructure, but Indus has retained the right to lease, licence etc. the passive infrastructure to any advertising agency;

b) The entire infrastructure is in the physical control and possession of Indus at all times and there is no parting of the same nor any transfer of the right to use the equipment or apparatus;

c) The permission granted to the telecom operator to have access to the passive infrastructure for limited purposes is loosely termed by the taxing authorities as "a right to use the passive infrastructure";

d) There is no intention on the part of the Indus to

transfer the right to use; it is only a licence or an authority granted to telecom operator as defined in Section 52 of the Easements Act, 1952. A licence cannot in law confer any right; it can only prevent an act from being unlawful which, but for the licence, would be unlawful. A licence can never convey by itself any interest in the property;

e) The entire MSA has to be read as a whole without laying any undue emphasis upon a particular word or clause therein. What is permitted under the MSA is a licence to the telecom operators to have access to passive infrastructure and a permission to keep equipments of the sharing telecom operator in a prefabricated shelter with provision to have ingress and egress only to the authorized representatives of the mobile operator.

39. In the matter of *Indus Towers Limited v. Union of India* decided on 18th April, 2013 [Writ Petition (C) No.4976/2011] almost a similar question was raised by the petitioner therein before the Delhi High Court and the Division Bench of Delhi High Court in complete agreement with the view taken by the Karnataka High Court in the case of *M/s. Indus Towers Limited v. The Deputy Commissioner of Commercial Tax & four others* (supra) has allowed the writ petition.

40. For these reasons, we are of the view that the judgment of the Karnataka High Court will be fully applicable in the present facts and circumstances of the case. The order dated 13.03.2013 (Annexure P/1) passed by the Additional Commissioner, Commercial Tax, Indore (Respondent No.3) on the basis that the petitioner transferred the right to use passive infrastructure to the sharing telecom operators is quashed.

28. Thus, the controversy involved in respect of the issue relating to VAT on lease line charges has already been adjudicated by this Court.

29. From the foregoing discussion it, therefore, inevitably follows that Sec.2(u) and 2(v) of the MP VAT Act, 2002 is ultra-vires and void, in so far as it relates to imposition of VAT on SIM replacement charges and lease line

revenue, which are merely services. The impugned order passed by the assessing authority dt. 31/7/2014 and the Notice dt. 31/7/2014 are hereby quashed. The other orders also relating to imposition of VAT on SIM replacement charges and lease line revenue are also quashed.

30. The present Writ Petition stands allowed and disposed of. The order passed in W.P.No. 7631/2014 shall be applicable in all the connected Writ Petitions and the impugned notices and assessment orders passed therein are also hereby quashed.

No order as to costs.

Petition allowed.

I.L.R. [2017] M.P., 1371

WRIT PETITION

Before Mr. Justice Vijay Kumar Shukla

W.P. No. 7357/2014 (Jabalpur) decided on 3 January, 2017

RANUMAL SHARMA @ RANU

...Petitioner

Vs.

STATE OF M.P.

...Respondent

Constitution – Article 226 – Temple of Private Trust – Manager –

On the strength of a circular of State Government, name of Collector was recorded as manager of private trust property in the revenue records/ khasra entries – Challenge to – Held – It is a settled principle of law that on the basis of executive instructions passed by Government, proprietary rights cannot be brought to an end and the right of ownership which may be less than absolute ownership can only be brought to an end by due procedure of law and such law has not been shown in the present case – Action of respondent entering the name of Collector as Manager in revenue records is hereby declared illegal and directed to be deleted from revenue record – Further held – In respect of land attached to temple, no third party right shall be created by alienating or transferring the land in any manner by persons managing the land on behalf of temple – Petition disposed of.

(Para 7 & 9)

संविधान – अनुच्छेद 226 – निजी न्यास का मंदिर – प्रबंधक – राज्य सरकार के एक परिपत्र की शक्ति पर, कलेक्टर का नाम राजस्व अभिलेख/खसरा प्रविष्टियों में निजी न्यास संपत्ति के प्रबंधक के रूप में अभिलिखित किया गया था

— को चुनौती — अभिनिर्धारित — यह विधि का सुस्थापित सिद्धांत है कि सरकार द्वारा पारित कार्यपालिक अनुदेशों के आधार पर, सांपत्तिक अधिकारों को समाप्त नहीं किया जा सकता है एवं स्वामित्व का अधिकार जो कि पूर्व स्वामित्व से कम हो सकता है, को केवल विधि की सम्यक् प्रक्रिया द्वारा समाप्त किया जा सकता है एवं वर्तमान प्रकरण में ऐसी विधि को नहीं दर्शाया गया है — राजस्व अभिलेख में प्रबंधक के रूप में कलेक्टर के नाम की प्रविष्टि करने की प्रत्यर्थी की कार्रवाई को एतद्वारा अवैध घोषित किया गया एवं इसे राजस्व अभिलेख से हटाये जाने हेतु निदेशित किया गया — आगे अभिनिर्धारित — मंदिर से संलग्न भूमि के संबंध में, मंदिर की ओर से भूमि का प्रबंधन करने वाले व्यक्तियों द्वारा किसी भी रीति से भूमि का अन्यसंक्रमण या हस्तांतरण करके किसी तीसरे पक्षकार का अधिकार सृजित नहीं किया जाएगा — याचिका निराकृत।

Cases referred :

1985 RN 317, 1995 RN 235, 1992 Supp(2) SCC 250, W.P. No. 234/2004 decided on 05.05.2011.

Sudipta Choubey, for the petitioner.

Punit Shrotri, P.L. for the respondent.

ORDER

VIJAY KUMAR SHUKLA, J. :- With consent of both the parties the petition is heard finally.

2. In the present petition under Article 226/227 of the Constitution of India the petitioner has prayed for a direction to set-aside the entry the name of the Collector as Manager of the Trust property of the petitioner. It is also stated that it be declared that the Collector can not be appointed as Manager with respect to the petitioner's temple.

3. Learned counsel for the petitioner further submits that one Shri Jai Ram S/o Laxmi Ji Jhat, R/o Bhonkhedi, executed a Tamseekhnama for looking after the temple of Shri Ramchandra Ji & Shankar Ji Mandir of Bhonkhedi in favour of petitioner, appointing him as Sarvakar for installation of Idol of Ramchandra Ji & Shankar Ji. He further submits that after his death his wife Ganga Bai & Rukmani Bai were given this right and after the death of these two wives it was to be looked after by his nephew Shri Ramdeen S/o Dayaram Jhat who died sometime in 2004 and after him the petitioner was given this right as per deed Annexure P-1. The grievance of the petitioner is that, without given any show-cause notice or opportunity of hearing, the respondents got

entered the name of Collector in the capacity of Manager of the Private Trust. The copy of the Khasra entry is Annexure P-2 and P3.

4. At the outset the counsel for the petitioner submits that the present case is covered by the Judgment of this Court passed in W.P. No. 234 of 2004 dated 05.05.2011 in which this Court has held that with respect to the property of a private temple, the name of Collector can not be inserted in the revenue entries as Manager of the property. This court has passed the said judgment relying on the earlier judgment passed by this Court (Division Bench) in the Case of *Sadashiv Giri & Others Vs Commissioner, Ujjain and others*, 1985 RN 317 and also the judgment of this Court (Single Bench) in the case of *Ghanshyamdas and others Vs. State of M.P. and another*, 1995 RN235.

5. Learned Panel Lawyer for the respondents submits that the name of Collector was entered into the khasra entries as Manager on the basis of circular of the Government.

6. After elaborate and extensive considerations, the law has been laid down by this court in the judgments mentioned (supra), this court passed following orders in W.P. No. 234/2004 which is quoted as under:-

"In view view of the settled position the action of the respondents cannot be sustained in law and accordingly it is directed that the name of the Collector as Manager in the revenue record be deleted. However, the lands which are attached to the temple shall be governed by the law laid down by the Apex Court in Mst. Kanchaniya and ors. Vs. Shiv Ram and Ors., 1992 Supp(2) SCC 250. No third party right shall be created and the lands of the temple cannot be alienated, transferred in any manner by the persons who are managing the aforesaid land on behalf of Temple.

With the aforesaid directions this petition is finally disposed of."

7. From the aforesaid judgments, it is settled principle of law that on the basis of the executive instructions passed by the Government, the proprietary rights can not be brought to an end and the right of ownership which may be less than absolute ownership can only be brought to an- end by due procedure

of law and such law has not been shown.

8. Learned counsel for the State could not distinguish the order passed by this Court either on the facts or on the law in the present case.

9. In view of the above submissions and taking into consideration the facts of the present case and also the law laid down by this court, the present petition is allowed. The action of the respondents entering the name of the Collector as Manager in the Revenue Record is declared illegal and accordingly it is directed that the name of the Collector as Manager in the revenue record be deleted. However, the land which are attached to the temple shall be governed by the law led down by the Apex Court in the Case of *Mst. Kanchaniya and ors. Vs. Shiv Ram and Ors.*, 1992 Supp(2) SCC 250 (supra) no third party right shall be created and the land of the temple shall not be alienated, transferred in any manner by the persons who are managing the aforesaid land on behalf of the temple.

10. With the aforesaid directions, the present petition is finally disposed of with no orders as to cost.

Petition allowed.

I.L.R. [2017] M.P., 1374

WRIT PETITION

Before Mr. Justice Sujoy Paul

W.P. No. 1954/2016 (Jabalpur) decided on 9 January, 2017

SUNIL SINGH BAGHEL (Dr.) ...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

Service Law – Deputation – Practice – Petitioner granted permission from parent department to participate in selection process whereby he was selected and was appointed as Deputy Director on deputation – Subsequently, parent department did not relieve him and withdrawn the permission earlier granted – Challenge to – Held – Petitioner has a lien on the substantive post of parent department where he was appointed to render service, they being the employer/master of petitioner has every right to decide whether the services of petitioner are required with the parent department – Permission cannot be treated as indefinite license to join the post as deputationist – In administrative

exigency, parent department can very well review its decision and can take a different view, such decision is neither without jurisdiction nor arbitrary or capricious in nature – Further held – Employee has no indefeasible right to continue as deputationist or get absorbed in the borrowing department – In the present case, petitioner did not join the borrowing department as deputationist and thus no legal, vested or constitutional right of petitioner is infringed – Petition dismissed.

(Paras 12, 13 & 14)

सेवा विधि – प्रतिनियुक्ति – पद्धति – याची को चयन प्रक्रिया में भाग लेने के लिए मूल विभाग से अनुमति प्रदान की गई, जिससे उसका चयन हुआ था एवं प्रतिनियुक्ति पर उप निदेशक के रूप में नियुक्त किया गया था – तत्पश्चात्, मूल विभाग ने उसे भारमुक्त नहीं किया तथा पूर्व में प्रदान की गई अनुमति वापस ले ली – को चुनौती – अभिनिर्धारित – याची का मूल विभाग के अधिष्ठायी पद पर धारणाधिकार है जहाँ उसे सेवा प्रदान करने हेतु नियुक्त किया गया था, उन्हें याची का नियोक्ता/मालिक होने के नाते यह विनिश्चय करने का पूर्ण अधिकार है कि क्या मूल विभाग में याची की सेवा आवश्यक है – अनुमति को, प्रतिनियुक्त व्यक्ति के रूप में पद ग्रहण करने की अनिश्चितकालीन अनुज्ञप्ति के रूप में नहीं माना जा सकता – प्रशासनिक अत्यावश्यकता में, मूल विभाग अपने निर्णय का बहुत अच्छे से पुनर्विलोकन कर सकता है एवं एक भिन्न दृष्टिकोण ले सकता है, कि ऐसा निर्णय न तो अधिकारिता के बिना है और न ही मनमानी या अनुचित प्रकृति का है – आगे अभिनिर्धारित – कर्मचारी को प्रतिनियुक्त व्यक्ति के रूप में जारी रहने या सेवा उधार लेने वाले विभाग में आमेलित होने का कोई अजेय अधिकार नहीं है – वर्तमान प्रकरण में, याची ने सेवा उधार लेने वाले विभाग में प्रतिनियुक्त व्यक्ति के रूप में पद ग्रहण नहीं किया और इस प्रकार याची के कोई विधिक, निहित अथवा संवैधानिक अधिकार का अतिलंघन नहीं हुआ – याचिका खारिज।

Cases referred :

(2002) 4 SCC 638, 2007 (4) MPLJ 548, AIR 2000 SC 2076, 2005 (1) MPLJ 398.

Prashant Singh, for the petitioner.

Pushpendra Yadav, G.A. for the respondents/State.

Manish Kumar Verma, for the respondent nos. 2 & 3.

ORDER

SUJOY PAUL, J. :- The core issue to be decided in this petition filed under Article 226 of the Constitution is : whether the petitioner has any indefeasible and enforceable right to join on deputation as Dy. Director in the State Backward Class Commission ?

2. Briefly stated, the facts are that the petitioner is substantively holding the post of District Coordinator in Centre for Entrepreneurship Development. His parent department is Centre For Entrepreneurship Development of Madhya Pradesh (CEDMAP). The petitioner submitted his candidature pursuant to an advertisement published in "Rojgar Aur Nirman" on 15.09.2014. The petitioner preferred an application on 04.10.2014 seeking permission of parent department to participate in the selection process pursuant to advertisement (Annexure-P/8). The permission was duly granted by the respondents by communication (Annexure-P/9) to (Annexure-P/11). The petitioner, after obtaining necessary permission, participated in the selection process and was selected and appointed as Dy. Director (Class I) on deputation for a period of three years. The order dated 31.07.2015 (Annexure-P/1) shows the said appointment of the petitioner.

3. The respondents did not relieve the petitioner to join the post of Dy. Director. Shri Prashant Singh, learned counsel for the petitioner submits that after having given permission to participate in the selection process, the respondent No.3 cannot take a different stand and say that the petitioner cannot be relieved for joining the post in the borrowing department. More so, when various other employees were permitted to join the posts in different departments of the State Government on deputation. He submits that the action of the respondents in not relieving the petitioner is arbitrary and capricious in nature. It is also submitted in the rejoinder that one Shri Sagar Bisen was sent on deputation but after receiving the notices of this petition, he was called back from deputation to join his duties in parent department.

4. Shri Manish Verma, learned counsel for the respondents opposed the said contention. It is submitted that although initially permission was granted to the petitioner to participate in the selection process and join the post on deputation, in a subsequent meeting held on 05.10.2016 (Agenda No.6) (Annexure-R/2) a conscious decision was taken that permission (for allowing the prayer to go on deputation) given by the Governing Body earlier is withdrawn. To support this reason, Shri Verma advanced two fold contention. Firstly, it is submitted that the advertisement (Annexure-P/8) makes it clear that the deputation is permissible for the employees who are working in "other Government Departments". The petitioner is not working in any Government Department. "CEDMAP", by no stretch of imagination can be said to be a "Government Department". Secondly, the petitioner has no legal right to go

on deputation to borrowing department. Petitioner's services are required in the parent department and, therefore, the parent department has rightly decided that the petitioner cannot be relieved and earlier permission regarding deputation is withdrawn.

5. During the course of argument, learned counsel for the parties agreed that the writ petition is maintainable against the CEDMAP as held by this Court in W.P. No.20615/2011 (IFCI Ltd. Vs. Chairman, CEDMAP). In this view of the matter, this Court is not required to decide whether this petition is maintainable against the CEDMAP.

6. Shri Prashant Singh, learned counsel for the petitioner, in his rejoinder submission, contended that whether or not the petitioner is eligible to be considered for deputation, is a question which was required to be decided by the borrowing department/State Government. The borrowing department did not raise any such objection and, therefore, the parent department has no authority on this aspect to raise its eyebrows.

7. No other point is pressed by the learned counsel for the parties.

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

9. The admitted facts show that the petitioner was initially given permission by the parent department to submit his candidature for appointment on deputation in the State Government. However, the employer, later on, decided to withdraw such permission. The pivotal question is : whether the parent department can subsequently take a different view ? In other words, after having given permission to go on deputation, whether the parent department can withdraw such permission. Secondly, whether the petitioner has any indefeasible/enforceable right to go on deputation ?

10. This is settled in law that writ jurisdiction can be exercised for enforcement of any legal vested, statutory or constitutional right. If any such right is violated, writ petition can be entertained. The Apex Court in (2002) 4 SCC 638 (*Director of Settlements , A.P. & others vs. M.R. Apparao and another*) held as under:-

“A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in

the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be sustaining on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law."

11. The same view is taken by Division Bench of this Court in 2007 (4) MPLJ 548 (*Bhartiya Kishan Sangh, District Bhind vs. Union of India*).

12. So far petitioner's legal right is concerned, in my view, he has a lien on the substantive post occupied by him in his parent department. He was appointed to render services to the parent department. The parent department being the employer/master of the petitioner/servant, has every right to decide whether the services of the petitioner are required with the parent department. No doubt, at one point of time, the parent department decided to permit the petitioner to join the post on deputation. However, this permission cannot be treated as an indefinite license given to the petitioner to join the post as deputationist. The parent department, as per its administrative exigency, can very well review its decision and take a different view. In other words, if at a later point of time, it was decided that the petitioner cannot be spared and his services are required in the parent department, such decision is neither without jurisdiction nor it can be said to be arbitrary or capricious in nature.

13. In AIR 2000 SC 2076 (*Kunal Nanda Vs. Union of India*), the Apex Court held that the parent department or borrowing department at any point of time can seek/direct repatriation. The deputationist has no vested right to continue on deputation. Although this judgment is related with a case where the employee is already sent on deputation, principle flowing from it is clear that even after joining as deputationist, the employee has no indefeasible right to continue as deputationist or get absorbed in the borrowing department. In the present case, the petitioner did not join the borrowing department as deputationist. Thus, it cannot be said that any legal, vested or constitutional right of the petitioner is infringed. The view taken in *Kunal Nanda* (supra) is followed by a Division Bench of this Court in 2005 (1) MPLJ 398 (*S.M.P. Sharma Vs. State of M.P. and another*).

14. In view of the foregoing analysis, this Court is unable to hold that any

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such-enforceable/indefeasible right of the petitioner is infringed by the respondents. Thus, no writ of mandamus can be issued for directing respondent No.3 to relieve the petitioner. Merely because certain employees of respondent No.3 were relieved to join on deputation, no parallel can be drawn by the petitioner from such cases. The administrative exigency may differ from post to post, person to person or from situation to situation. In nutshell, I find no reason to interfere in this petition. Petition fails and is hereby dismissed. No costs.

Petition dismissed.

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WRIT PETITION

Before Mr. Justice Sheel Nagu & Mr. Justice S.K. Awasthi

W.P. No. 8301/2016 (Gwalior) decided on 11 January, 2017

**SHRI RAMNATH SINGH HOMOEOPATHIC MEDICAL ...Petitioner
COLLEGE**

Vs.

UNION OF INDIA & ors.

...Respondents

(Alongwith W.P. No. 8689/2016)

A. *Homoeopathy Central Council Act, (59 of 1973), Section 12(A) and Homoeopathy Central Council (Minimum Standards of Requirement of Homoeopathic Colleges and Attached Hospitals) Regulations, 2013 – Clause 3(9) –* Petition against the order passed by Government of India declining permission to petitioner institute for making admissions to BHMS course for academic session 2016-17 – Held – The Central Council found various deficiencies in the College for which show cause notice was issued – Despite grant of opportunity of being heard, petitioner college did not appear and also failed to rectify the deficiencies pointed out in the show cause notice – The deficiencies and shortcomings found were serious in nature which would adversely affect the ability of college to provide quality medical education in the field of Homoeopathy and which would render the college to fall short of the requirements of minimum standards fixed by the 1973 Act and 2013 Regulations – Petitioner college failed to rectify and cure the deficiencies by the statutory fixed dead line and even later did nothing to cure such deficiencies – Impugned order neither suffers from any illegality nor for want of jurisdiction –

Petitions dismissed.

(Para 10(ii), (ix), (x), 11, 11.1 & 19)

क. होम्योपैथी केन्द्रीय परिषद् अधिनियम (1973 का 59), धारा 12(ए) एवं होम्योपैथी केन्द्रीय परिषद् (होम्योपैथी महाविद्यालय तथा संलग्न अस्पतालों के लिए न्यूनतम मानक स्तर) विनियम, 2013 – खण्ड 3(9) – भारत सरकार द्वारा याची संस्था को शैक्षणिक सत्र 2016–17 हेतु बी.एच.एम.एस. पाठ्यक्रम के लिए दाखिले करने की अनुमति से इन्कार करते हुए पारित किये गये आदेश के विरुद्ध याचिका – अभिनिर्धारित – केन्द्रीय परिषद् ने महाविद्यालय में विभिन्न कमियां पाई, जिसके लिए कारण बताओ नोटिस जारी किया गया था – सुने जाने का अवसर दिये जाने के बावजूद, याची महाविद्यालय उपस्थित नहीं हुआ और कारण बताओ नोटिस में दर्शाई गई कमियों को सुधारने में भी विफल रहा – पायी गई कमियां और दोष गंभीर स्वरूप की थी जिससे कि होम्योपैथी के क्षेत्र में गुणवत्ता की चिकित्सीय शिक्षा उपलब्ध कराने की महाविद्यालय की समर्थता प्रतिकूल रूप से प्रभावित होगी और जिससे महाविद्यालय 1973 के अधिनियम एवं 2013 के विनियमनों द्वारा निश्चित न्यूनतम मानकों की अपेक्षाओं से कम पड़ेगा – याची महाविद्यालय कानूनी रूप से नियत समयावधि तक कमियों को सुधारने एवं उपाय करने में विफल रहा तथा बाद में भी उक्त कमियों का उपाय करने के लिए कुछ नहीं किया – आक्षेपित आदेश, न तो किसी अवैधता से और न ही अधिकारिता के अभाव से ग्रसित है – याचिकाएँ खारिज।

B. Practice and Procedure – Jurisdiction of Court – Similar matter pending at the Principal Bench – Held – Court is not bound to await decision by a coordinate bench at the Principal Seat in matter of similar nature – For sake of maintaining judicial discipline, question of awaiting decision would only arise when the said similar matter is pending before a higher Court and not before a court of coordinate jurisdiction. (Para 17)

ख. पद्धति एवं प्रक्रिया – न्यायालय की अधिकारिता – मुख्यपीठ में समान मामला लंबित – अभिनिर्धारित – मुख्यपीठ में समान स्वरूप के मामले के समक्ष न्यायपीठ द्वारा विनिश्चय की प्रतीक्षा करने के लिए न्यायालय बाध्य नहीं है – न्यायिक अनुशासन बनाये रखने हेतु, विनिश्चय की प्रतीक्षा का प्रश्न केवल तब उत्पन्न होगा जब कथित समान मामला उच्चतर न्यायालय के समक्ष लंबित है और न कि समक्ष अधिकारिता के न्यायालय के समक्ष।

Case referred :

(2003) 9 SCC 234.

MPS Raghuvanshi with Pawan Dwivedi, for the petitioner in W.P.No. 8301/2016.

H.D. Gupta with Santosh Agrawal, for the petitioner in W.P. No. 8689/2016.

Vivek Khedkar, Assistant Solicitor General for the respondent No.1/ Union of India in W.P. No. 8301/2016 & W.P. No. 8689/2016.

Praveen Newaskar, G.A. for the respondent No.2/State in W.P. No. 8301/2016 & W.P. No. 8689/2016.

ORDER

The Order of the Court was delivered by :
SHEEL NAGU, J. :- Before this order could be passed, I.A.No.314/17 has been filed by the petitioner in W.P.No.8689/16 praying for re-hearing of the case in view of subsequent development of inspection having been carried out on 14/12/2016 by a team headed by the Collector, District Gwalior which was followed by Govt. of India, respondent No.1, reiterating its earlier stand as contained in the impugned order, by a fresh letter dated 21/12/2016, A/3. Though, request has been made for re-hearing of this case, but this court deems it to be unnecessary as subsequent inspection conducted by the Collector, District Gwalior on 14/12/2016 has not made any difference in the final decision by the Ministry of the Govt. of India which has reiterated its stand taken in the impugned order passed earlier on 28/11/2016. Thus, I.A. No. 314/17 is though taken on record but is of no avail to the petitioner and therefore request for re-hearing is declined.

2. This common order disposes of both the writ petitions bearing WP No. 8301/2016. & WP No. 8689/2016.

3. For reference, facts are being taken from WP No. 8301/2016.

FACTS

4. The present writ petition under Article 226 of the Constitution of India challenges the order dated 23.11.2016 (Annexure P/1) issued by Government of India invoking its power under Section 12(A) of the Homoeopathy Central Council Act, 1973 (for brevity 1973 Act) read with clause 3(9) of Homoeopathy Central Council (Minimum Standards of Requirement of Homeopathic Colleges and Attached Hospitals), Regulations, 2013 ("2013 Regulations" for brevity) declining permission to the petitioner-institute for making admission to the B.H.M.S. course (Bachelor of Homoeopathic Medicine and Surgery) against 85 undergraduate seats for academic session

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5. Learned counsel for the rival parties are heard on the question of admission and as well as final disposal.

6. The petitioner institute is run by a society registered under the Societies Registration Act, 1973 known by name of Shri Ramnath Singh Prasar Samiti Gormi-Bhind (M.P.). The petitioner is a self financed institution imparting under-graduate education in the filed of Homoeopathy.

SUBMISSIONS

7. It is the contention of the petitioner that petitioner-institute is conducting under-graduate course of BHMS since 2000 and the Central Council of Homoeopathy (for brevity 'CCH') has extended recognition to the petitioner for making admission to the said course from 2002-03 onwards with intake capacity of 85 seats per annum. Hospital is also alleged to be attached to the said institute having 25 beds. It is submitted that notice dated 27.10.2016 was issued to the petitioner vide Annexure P/4 pointing out certain deficiencies which on account of not having been rectified by 31.12.2014 in terms of the said 2013 Regulations, the petitioner was asked to show cause under the first proviso to Section 12(A) (4) of the 2013 Regulations as to why it be not restrained from making admissions to BHMS for the academic session 2016-17. Vide Annexure P/5 dated 28.10.2016 petitioner sought further time to remove the deficiencies pointed out which was followed by another letter vide Annexure P/6 of the same date. It is alleged that instead of affording opportunity to remove the deficiencies, the Government of India vide Annexure P/7 dated 04.11.2016 gave last opportunity to appear before the Hearing Committee to show cause as to why the admission to the BHMS course for the academic session 2016-17 be not stopped.

7.1 It is further urged that instead of acceding to the request of constitution of Committee for physical verification of the petitioner-institute and despite informing respondent No.1 of absence of any deficiency and the assurance given by the petitioner of curing the left out deficiencies, no heed was paid. It is further urged that inspection report submitted by the CCH before respondent No.1 was signed by only two out of three members of the said Committee and both signatures were appended on different dates. Lastly, it is submitted that the impugned order (Annexure P/1) dated 23.11.2016 was passed by respondent No.1 invoking the provision of Section 12(A) denying permission

to the petitioner institution to make admissions in the BHMS course with 85 undergraduate seats for the academic session 2016-17. The impugned order further informed that petitioner college to cure the shortcomings pointed out in the impugned order up to 31.12.2016 so as to enable the Committee to re-inspect the College and in turn enable the respondents to consider the question of grant of permission for making admission in the said course for the next academic session 2017-18.

8. Learned counsel for the petitioner has assailed the impugned order primarily on the following grounds :-

(i) The provision of Section 12(A) of the 1973 Act, which relates to permission for establishment of new medical institution or for starting new or higher course of study or training or for increasing intake capacity in an existing course cannot be invoked in regard to existing functional college of the petitioner institute.

(ii) There is no mechanism under the 1973 Act to regulate the procedure for stopping admission and therefore, the procedure provided in Section 19 of 1973 Act relating to withdrawal of recognition ought to have been adopted before passing the impugned order.

(iii) Though the repository of power to stop admission can be traced in clause 3(9) of the 2013 Regulations but the same can be invoked only when the procedure prescribed under Section 19 is followed.

(iv) The inspection report which led to passing of the impugned order was prepared based upon inspection conducted by three members whereas the same was signed only by two members who appended their signatures on different dates.

(v) The counsel for the petitioner in WP No. 8689/2016 has raised an additional submission that the CCH has constituted a fresh committee headed by Collector of concerned district for carrying out fresh inspection and in this factual background it is submitted that respondent no.1 ought

not to have passed the impugned order till the inspection report of the fresh committee is submitted.

(vi) Learned counsel for the petitioner submits that affiliation granted to the petitioner-institute by M.P. Medical Science University Jabalpur vide letter dated 24/5/2016 for the academic year 2015-16 in regard to BHMS first year against 85 seats has been ignored while passing the impugned order.

(vii) Learned counsel for the parties have lastly submitted that the question involved in the present petition is similar to the one involved in the cases pending before co-ordinate Bench of this Court at the Principal Seat, the decision in which ought to be awaited and therefore the hearing of these cases be deferred.

8.1 *Per contra*, counsel for the Union of India submits that since minimum standards requirements under 1973 Act and Regulations 2013 have not been fulfilled within the prescribed period of time and despite grant of several opportunities to the petitioner- Institute, the impugned order was passed and therefore same is sustainable in law and the petitioner-Institute can always seek permission to admit students in the next academic year 2017-18 subject to fulfilling the requirement of minimum standards fixed by the 1973 Act and 2013 Regulations.

9. Before advertng to the merits of the matter and deciding the same on the anvil of the relevant law, it would be appropriate to delineate the aims, object and contents of the legislation involved.

AIMS AND OBJECTS OF 1973 ACT

9.1 The Act of 1973 was promulgated by the parliament to primarily constitute the Central Council of Homoeopathy and to enable the regulation and maintenance of Central Register and for other issues and entities related to the field of Homoeopathy. The 1973 Act as it stands today is divided into six chapters. Chapter I contains title, extent and commencement of 1973 Act alongwith definitions. Chapter II comprises provision for constitution of Central Council and its committees. Chapter II(A) which was introduced in 2002 relates to permission for establishment of new medical institution, commencement of new course of study or increase in intake capacity. Chapter

III regulates recognition of medical qualifications granted within and without India, the right to practice and withdrawal of recognition. Chapter IV relates to maintenance of Central Register. Lastly, Chapter V concerns issues ancillary and incidental to the above chapters including power of Central Government to constitute a commission to deal with complaints and powers of Central Government to make rules and of the Central Council to make regulations.

9.2 Pertinently, the 1973 Act at the time of its promulgation did not contain any provision for grant or refusal of permission to establish a medical institute, to start a new course or to enhance existing intake capacity in an existing functional medical institute.

9.3 This resulted into indiscriminate sprouting of medical institutes especially in the private sector imparting education in the field of Homoeopathy over which the Central Government and Central Council though had control to the extent of recognition or de-recognition of medical qualification of degree or diploma granted but the said Act did not confer any power to prevent, control and regulate permission for establishment of new medical institute or new courses or increase in intake capacity in an existing course. The fallout of this lacuna in the 1973 Act was the rapid fall in standards of education. State Governments gave indiscriminate approvals for opening new Homoeopathic colleges without insisting for basic facilities for teaching and training. State Governments in the absence of enabling provision could not take corrective steps and remained a mute spectator to the rapidly falling quality of education in the field of Homoeopathy. This problem was considered by the Fifth conference of Central Council of Health and Family Welfare and the first conference of State Health Ministers on Indian System of Medicine and Homoeopathy held on 18.02.1997 whereby it was resolved to *inter alia* amend the 1972 Act which lead to promulgation of Homoeopathy Central Council (Amendment) Act, 2002 made effective from 09.12.2002 introducing Section 12A, Section 12B, and inserting few clauses in Section 33 of 1973 Act.

9.4 Section 12A begins with a *non obstante* clause and therefore has overriding effect over the other provisions of 1973 Act and over any other law for the time being in force. Thus, the subsequently introduced Section 12A prevented any person to establish Homoeopathic Medical College or existing college to open a new or higher course of study or training or increase the existing intake capacity without the prior permission of the Central

Government obtained in accordance with the provisions of Section 12A.

9.5 Sub-section (2) to (8) of Section 12A lay down the procedure to be followed by Central Government for grant of permission. The procedure laid down in these sub-sections, in short, is that for the purpose of obtaining permission the applicant shall submit a scheme in such form containing such particulars and preferred in such a manner and accompanied with such fee as prescribed, before the Central Government. The Central Government then will refer the scheme to the CCH for recommendation. The CCH for making its recommendations is empowered to seek particulars from any person or medical institution concerned and if the scheme is found to be defective or wanting in any requisite particular then the CCH shall give an opportunity to the applicant to rectify the defects as specified by the CCH. Thereafter, the Council having regard to the factors contained in Clause (a) to (g) in sub-section (7) of Section 12A shall submit the scheme to the Central Government along with its recommendation within a period not exceeding six months from the date of receipt of reference from the Central Government. Thereafter, the Central Government after considering the scheme and the recommendation and obtaining necessary particulars from any person or medical institution and having regard to the factors referred to in sub-section (7) (a to g) of Section 12A may either approve conditionally or unconditionally, or disapprove the scheme. If the scheme is approved then the same would constitute a permission contemplated by Section 12A(1). However, before disapproving the scheme the Central Government is obliged to give a reasonable opportunity of being heard to the applicant. Applicant whose application is rejected is at liberty to file a fresh scheme which if filed shall be considered as if it was submitted for the first time. To cater to the inaction on the part of Central Government to act on a duly submitted scheme the provision prescribes a deeming clause to the extent that in case government fails to act on the scheme within a period of one year from the date of submission of the scheme, then the same shall be deemed to have been approved by the Central Government and the permission of the Central Government shall be deemed to have been granted. Section 12B which is penal in nature empowers the Central Government to de-recognize the medical qualification acquired by a student in medical institution established or in a new course opened or within the increase of intake capacity made, in violation of procedure prescribed under Section 12A.

AIMS AND OBJECTS OF REGULATION 2013

9.6 For effective functioning of 1973 Act, CCH framed Homoeopathy (Minimum Standards of Education), Regulations, 1983 which though provided minimum requirement in regard to staff, equipment, training, accommodation etc. but was silent in respect of consequential penal action against Homoeopathic colleges violating the 1973 Act and 1983 Regulations. Thus, the need arose for framing fresh Regulation which could deal with the menace of rapidly falling quality of Homoeopathic education. The CCH thus by superseding 1983 Regulations framed Homoeopathy Central Council (Minimum Standards Requirement of Homoeopathic Colleges and attached Hospitals), Regulations, 2013 (2013 Regulations for brevity), which for the first time in Clause 3 provided fulfillment of minimum standards and requirements and the procedure for taking consequential penal action for non-fulfillment of the same by Homoeopathic Colleges.

9.6.1 For ready reference and convenience, Clause 3 of 2013 Regulations is reproduced below:-

3. Fulfillment of minimum standard requirements.-

(1) *The college and attached hospital(s) shall fulfill the minimum standards requirements of infrastructure and teaching and training facilities referred to in the regulations 4 to 13.*

(2) *For exposure of the students in the clinical field and to understand the depth of operative surgery and operative Gynecology or Obstetrics as well as management in critical illnesses, a college shall have a Memorandum of Understanding with a reputed nearby located super-specialty hospital (of modern medicine) with all required facilities of operation theatre, labor room, Intensive Care Unit and other required facilities for the management of critical patients.*

(3) *In case an attached hospital of a college does not have the facilities to handle operation theatre and other critical patients, the students of such a college can be deputed under the strict supervision of concerned teaching faculty of the college for the required exposure in the said field to the attached super specialty hospital.*

(4) *The existing colleges and their attached hospitals established under section 12A of the Act and those colleges and their hospitals established prior to the 28th January, 2003 and recognized by the Central Council of Homoeopathy shall fulfill the minimum standards requirements of infrastructure teaching and training facilities referred to in these regulations by the 31st December, 2014 for consideration of grant of permission for undertaking admissions in the coming academic years.*

(5) *If a college fulfills the requirement by 31st December, 2014 as per these regulations, it shall be granted permission to undertake admissions for a period not exceeding five years during which the college shall not be inspected, except for random checks on receipt of any complaint, or otherwise as deemed necessary either by the Central Government or by the Central Council of Homoeopathy.*

(6) *The Central Council shall visit the college suo moto (sic: motu) three months before the expiry of permission.*

(7) *The conditional permission shall be granted only to those colleges which are fulfilling at least the requirement of teachers as specified in Schedule-IV, the requirement of functional hospital as specified at sub-regulation (2) of regulation 7 and availability of equipment as specified in schedule-III for each academic year 2013-14 and 2014-15 on the basis of the separate inspections to be carried out by the Central Council of Homoeopathy after the 15th May, 2013 for the academic year 2013-14 and after the 31st December, 2013 for the academic year 2014-15.*

(8) *Such conditional permitted colleges or those colleges which have been denied permissions during the academic year 2013-14 and/or 2014-15, will be required to fulfill the requirements as specified in these regulations by the 31st December, 2014.*

(9) *All the existing colleges, which are not able to achieve full compliance of the requirement as specified in these regulations by the 31st December, 2014, shall be denied permission from academic year 2015-16 onwards and action as envisaged under section 19 of the Act shall be initiated against all such colleges apart from rejection of their applications under sections 12A, which have been under consideration by way of conditional permissions or denials."*

9.7 Above said Clause 3 of 2013 Regulations besides laying down minimum standards requirements for Homoeopathic colleges to be open in future, afforded opportunity to the existing colleges to come up to the minimum standards requirements..

9.8 Clause 3(4) lays down that the colleges and their attached hospitals functioning since 28/1/2003 which are recommended by the CCH should fulfill minimum standards requirements of infrastructure, teaching and training facility mentioned in 2013 Regulations till 31/12/2004, to enable such colleges to be eligible for consideration of grant of permission for undertaking admission in the coming academic year. Clause 3(5) further provided that if an existing college fulfills requirements by 31/12/2014, it shall be granted permission to undertake admission for a period not exceeding 5 years, during which the college shall not be inspected except for random checks on receipt of any complaint or if deemed necessary either by the Central Govt. or CCH. Clause 3(6) empowers the Central Government to visit colleges *suo motu* 3 months before expiry of permission. The concept of conditional permission is also introduced as per Clause 3(7) by providing that conditional permission shall be granted only to such colleges which fulfill at least the requirement of teachers as specified in Schedule IV, the requirement of functional hospital as per Clause 7 (2) of 2013 Regulations and of equipment as specified in Schedule III for each academic year 2013-14 and 2014-15 on the basis of separate inspection to be carried out by the CCH after 15th May, 2013 for the academic year 2013-14 and after 31/12/2014 for the academic year 2014-15. Thereafter Clause 3(8) lays down that all the conditionally permitted colleges and those colleges which are denied permission during the academic year 2013-14 and/or 2014-15 shall be required to fulfill requirements as specified in 2013 Regulations latest by 31/12/2014. Lastly, the penal provision contained in

Clause 3 (9) provide that all existing colleges which fail to comply with the requirements as specified in 2013 Regulations by 31/12/2014 shall be denied permission for academic year 2015-16 onwards and action for withdrawal of recognition under section 19 of the 1973 Act shall be initiated against all such colleges apart from rejecting their applications under Section 12A of 1973 Act which are under consideration by way of conditional permissions or denials.

9.9 Pertinently, none of the statutory provisions of 1973 Act or 2013 Regulations are assailed by any of the petitioners herein and therefore this court need not go into the question of source of power of 1973 Act or of 2013 Regulations or their constitutional validity.

FINDINGS

10. Testing the factual matrix attending the instant case on the anvil of the provisions enumerated above, this court records it's findings as follows :-

(i) When the petitioner-college failed to fulfill requirement by 31/12/2014 in term of Clause 3 of 2013 Regulations, the CCH conducted further inspection of petitioner's college on 7/4/2016 for the academic year 2016-17;

(ii) The CCH found various deficiencies which are enumerated in para 3 of the show-cause notice Annexure-P/4 dated 27/10/2016;

(iii) The petitioner was afforded opportunity of being heard by the CCH for which 31/10/2016 was fixed as date of hearing.

(iv) The petitioner was directed to bring forth all material and evidence as proof to substantiate removal of deficiencies and shortcomings indicated in the show-cause notice.

(v) In response by a letter dated 28/10/2016 vide Annexure-P/5 the petitioner informed that since particulars of the deficiencies are not provided to the petitioner, some further time be granted for providing the same so as to enable it to remove the same.

(vi) Request for inspection by Committee constituted by Ministry was also made. This prayer was repeated by another representation vide Annexure-P/6 of the same date.

(vii) The petitioner for the reason best known to it, did not attend hearing dated 31/10/2016 which impelled the Govt. of India to fix next hearing as 7/11/2016 vide Annexure-P/7;

(viii) Pertinently, the petitioner did not deny receiving the notices dated 27/10/2016 and 4/11/2016 as the reference of the said notices finds mentioned in the subsequent replies of the petitioner vide Annexures-P/5, P/6, P/8 and P/9. A detailed reply was submitted by the petitioner vide Annexure- P/10 dated 19/11/2016 denying the deficiencies pointed out by the notices issued by the Govt. of India and submitting that the college conforms to all the requisite minimum standards prescribed by 2013 Regulations.

(ix) Thereafter, the impugned order, Annexure-P/1 dated 23/11/2016 was passed by the respondent No.1 disclosing that despite grant of opportunities of being heard provided on 31/10/2016 and 4/11/2016 before respondent No.1, petitioner-college did not appear and also failed to rectify the deficiencies pointed out in the show-cause notices issued vide P/4 dated 27/10/2016 and P/7 dated 4/11/2016.

(x) The respondent No.1 after taking the entire gamut of facts, circumstances and the mandates of 1973 Act and 2013 Regulations found petitioner-college wanting in minimum standards requirements prescribed under 2013 Regulations. More so, the deficiencies and shortcomings found were serious and fundamental in nature which adversely affected the ability of the college to provide quality medical education in the field of Homeopathy.

(xi) The respondent No.1 while denying permission for undertaking admission to BHMS course with 85 UG seats for the academic session 2016-17 further informed the petitioner that shortcomings and deficiencies be cured latest by 31/12/2016 to enable the petitioner-institute to be eligible for being considered for grant of permission for undertaking admission in UG course for the academic sessions 2017-18.

11. From the above, it is evident that the petitioner-college failed to rectify

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and cure the deficiencies by the statutorily fixed dead-line of 31/12/2014 and even later did nothing to cure the said deficiencies.

11.1 Bare perusal of Clause 1(10) of the impugned order does not disclose deficiencies to be minor but in fact of are fundamental in nature which render the petitioner-college to fall short of the requirement of minimum standards fixed by the 1973 Act and 2013 Regulations. If petitioner-college is allowed to admit students without removing the deficiencies it would result in further degrading the quality of education in the field of homoeopathy thereby defeating the object of the 1973 Act and 2013 Regulations.

12. The first ground raised by the petitioner contained in para 6.1 (supra) of in-applicability of Section 12A of 1973 Act to the existing colleges such as the petitioner, it is seen from the scheme of the Act that Section 12A regulates permission for establishment of new medical colleges or new course of study or any increase of intake capacity but admittedly does not relate to on going course in a functional Homeopathic College.

12.1 Thus, the question that crops up for consideration is whether the petitioner's existing college can be denied permission to admit students by invoking provision of section 12A.

12.2 A plain reading of Section 12A reveals that answer to the above question is certainly in the negative. However, mere wrong mentioning of provision of Section 12A in the impugned order would not render the same vitiated in law especially when the repository of power exercised by the respondent No.1 to pass the impugned order can be traced in some other provision of law. This proposition is bolstered by the decision of the Apex Court in the case of *Collector of Central Excise, Calcutta Vs. Pradyumna Steel Ltd.* (2003) 9 SCC 234, extract of which is reproduced below:-

“3. It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power. Thus, there is a clear error apparent on the face of the Tribunal's order dated 23/6/1987. Rejection of the application for rectification by the Tribunal was, therefore, contrary to law.”

12.3 In the present case, said provision is Clause 3 of 2013 Regulations

which specifically deals with the requirement of fulfillment of new and additional minimum standards prescribed by 2013 Regulations by existing colleges with further penal provision of denying permission to admit students in case of failure on the part of the existing colleges to do the needful. Resultantly, the first argument that no action can be taken against the petitioner under section 12A is unsustainable and thus does not appeal to this court.

13. The second argument that 1973 Act being silent in regard to procedure for stopping the admission, respondents ought to have taken recourse to the procedure prescribed under Section 19 of 1973 Act and not having done so, renders the impugned order vitiated in law, does not appeal to this court for reasons infra.

13.1 This argument further does not appeal to this court as it has already been held infra that admittedly 1973 Act does not regulate the procedure for grant of permission for admission to existing college, existing course, existing intake capacity but 2013 Regulations in Clause 3 lays down a detailed procedure of affording opportunity to the existing colleges to comply with the minimum requisite requirements under the 2013 Regulations and also consequential penal action that can be taken if the needful is not done by the existing college before the prescribed date. Thus, recourse to the procedure under section 19 for denying permission to induct students need not be taken by the respondents as the said field is occupied by Clause 3 of 2013 Regulations. Therefore second argument also is of no avail to the petitioner.

13.2 More so, Section 19 of 1973 Act regulates the procedure for withdrawal of the recognition of the qualifications mentioned in Second Schedule to 1973 Act. The said prescribed qualifications in the field of Homoeopathy are granted by Universities, Boards and Medical Institutions in India and therefore elaborate procedure has been laid down in Section 19 for seeking opinion and recommendation of all those authorities which concern the conferment of the qualifications sought to be withdrawn. It is for this purpose that the said procedure under Section 19 appears to be more elaborate thereby giving an impression of granting better and more adequate opportunity when compared with the procedure proscribed in Clause 3 of 2013 Regulations for stopping of admissions.

14. Coming to the third argument, it is seen that grievance raised is that though power to stop admission can be traced in Clause 3(1) of 2013

Regulations but there is no detailed procedure provided and therefore resort to provision of Section 19 ought to be made.

14.1 A bare perusal of Clause 3 of 2013 Regulations reveals that reasonable and adequate measures are prescribed of affording opportunity to rectify the deficiencies pointed out up to certain date by way of grant of conditional permission prior to the said date as regards colleges suffering from perfunctory and not substantial deficiencies and thereafter on failure of colleges to make amends power to stop admission in the next academic year, has been conferred. On the other hand, section 19 of 1973 Act which relates to withdrawal of recognition of qualification awarded admittedly provides for a more elaborate procedure involving several authorities i.e., Central Govt., the CCH, State Govt. and the University who were involved in the process of grant of recognition of qualification, affiliation and permission.

14.2 True it is that the procedure enshrined in Section 19 of 1973 Act appears to be comparatively more comprehensive, but Clause 3 of 2013 Regulations satisfies the basic requirements of concept of "reasonable opportunity". This is evident from the provision allowing existing colleges to remove deficiencies, granting conditional permission awaiting removal of deficiencies. Therefore, Clause 3 of 2013 Regulations cannot be categorized as falling foul of reasonableness clause under Article 14 Constitution of India. This court is thus of the considered view that Clause 3 provides for adequate measures and safeguards to prevent said Clause from being sacrificed at the altar of Article 14 Constitution of India.

15. The ground of inspection report prepared by 3 members but signed by only 2 who appended signatures on different dates cannot be of any avail to the petitioner in the face of the fact of petitioner not having cured the fundamental deficiencies of the minimum standards requirements even by the statutorily prescribed date of 31/12/2014. More so, neither the Act nor the Regulations stipulate that all the 3 members of the inspection team should sign the report to save it from being rendered invalid.

15.1 It is pertinent to point out that in para 5.5 of the petition (W.P.No.8689/16) averment is made that inspection was carried out by the CCH qua the academic year 2016-17 and therefore the contention that despite request no inspection was carried out, cannot be accepted.

16. As regards the ground that this court should await submission of the

report by the newly constituted committee headed by the Collector of the same district, it does not deserve any heed.

16.1 The adjudication by this court is of the legality and validity of the impugned order vide Annexure-P/1. The said adjudication is based upon the events that took place anterior to the passing of the order and cannot be guided by any event which takes place subsequent to the passing of the impugned order. Thus, the posterior event of constitution of Committee headed by Collector is of no avail to the petitioner.

17. The other ground of similar matter pending at the Principal seat is also of no avail since this court is not bound to await decision by a coordinate bench at the Principal seat in matter of similar nature. The question of awaiting the decision in a matter involving similar issue for the sake of maintaining judicial discipline can arise only when the said similar matter is pending before a higher court and not before a court of coordinate jurisdiction.

18. The last ground raised by the petitioner that no heed has been given to the order of affiliation granted by the M.P. Medical Science University Jabalpur vide letter dated 24/5/2016 for the academic year 2015-16, it is needless to emphasize that bare perusal of the order of affiliation dated 24/5/16 reflects that the same is subject to certain conditions that the rules and the norms fixed by the Central Council of Homeopathy and the Central Govt. shall be complied with by the petitioner-institute.

18.1 In the instant case, Central Govt. on the recommendation of the CCH has found the petitioner-college wanting in material and substantial minimum standards requirements prescribed in 2013 Regulations.

19. In view of above discussions, this court has no instigation to hold that action of the respondents neither suffers from any illegality nor for want of jurisdiction. Thus, the impugned order warrants no interference in writ jurisdiction under Article 226 of the Constitution of India.

20. Consequently, Writ Petition No. 8301/16 (Shri Ramnath Singh Homoeopathic Medical College Vs. Union of India & others) and Writ Petition No. 8689/16 (Sophia Homoeopathic Medical College Vs. Union of India & others) fail and are hereby dismissed with no order as to cost.

Petition dismissed.

I.L.R. [2017] M.P., 1396

WRIT PETITION

Before Ms. Justice Vandana Kasrekar

W.P. No. 4896/2015 (Jabalpur) decided on 1 February, 2017

RAJPUT ROAD LINES & anr.

...Petitioners

Vs.

DEVENDRA KUMAR PRANAMI

...Respondent

Civil Procedure Code (5 of 1908), Order 38 Rule 5 – Attachment Order of property before Judgment – Respondent/Plaintiff filed suit for recovery of loan amount against Petitioners – Respondent filed an application under Order 38 Rule 5 C.P.C. seeking attachment of property of Petitioner on the ground that Petitioner is trying/planning to sell the property and is going to leave the city – Application allowed by the trial Court – Challenge to – Held – The essential requirement for an order of attachment before judgment is the malafide intention and conduct of defendant in disposing of the property with dishonest intention of defeating or delaying the decree that may be passed in the suit – Powers given under Order 38 Rule 5 C.P.C. are drastic and extraordinary and same must be used sparingly and not in a mechanical manner – In the present case, Court below has not assigned any reasons for taking drastic step in passing the impugned order and has passed the same in a mechanical manner – Impugned order set aside – Petition allowed. (Para 8 & 10)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 38 नियम 5 – निर्णय से पहले संपत्ति का कुर्की आदेश – प्रत्यर्थी/वादी ने ऋण की रकम की वसूली हेतु याचीगण के विरुद्ध वाद प्रस्तुत किया – प्रत्यर्थी ने इस आधार पर याची की संपत्ति की कुर्की चाहते हुये सिविल प्रक्रिया संहिता के आदेश 38 नियम 5 के अन्तर्गत आवेदन प्रस्तुत किया कि याची संपत्ति का विक्रय करने का प्रयास कर रहा है/योजना बना रहा है एवं नगर छोड़कर जा रहा है – विचारण न्यायालय द्वारा आवेदन मंजूर किया गया – को चुनौती – अभिनिर्धारित – निर्णय से पहले कुर्की के आदेश हेतु आवश्यक अपेक्षा वाद में पारित होने वाली डिक्री को पराजित या विलंबित करने के बेईमान आशय से संपत्ति का व्ययन करने में प्रतिवादी का असदभावपूर्वक आशय एवं आचरण है – सिविल प्रक्रिया संहिता के आदेश 38 नियम 5 के अन्तर्गत दी गई शक्तियाँ कठोर एवं असाधारण हैं तथा उक्त का कम से कम उपयोग किया जाना चाहिए एवं न कि यांत्रिकी ढंग से – वर्तमान प्रकरण में, निचले न्यायालय ने आक्षेपित आदेश पारित करने में कठोर कदम उठाने हेतु कोई भी कारण नहीं दिया है तथा

उक्त को यांत्रिकी दंग से पारित किया है — आक्षेपित आदेश अपोस्त — याचिका मंजूर।

Cases referred :

(2008) 2 SCC 302, AIR 2000 Mad 213, 2013 (4) Mh.L.J. 217.

Atul Choudhari, for the petitioners.

S.P. Pandey, for the respondent.

ORDER

VANDANA KASREKAR, J. :- The petitioners have filed the present petition under Article 227 of the Constitution of India challenging the order dated 11.12.2014 passed by 1st Additional District Judge, Satna in Civil Suit No.01-B/2014.

2. The respondent/plaintiff has filed the suit for recovery of amount and legal expenses against the petitioners. The respondent in the plaint has alleged that the petitioners have taken personal loan from the respondent to the tune of Rs.2,21,89,000/-. After taking loan from the respondent, the petitioners have issued a cheque for repayment of loan. During pendency of the said civil suit, the respondent has filed an application under Order 38 Rule 5 of the Code of Civil Procedure (hereinafter in short referred to as “the Code”) to attach the property before judgment. The respondent/plaintiff has stated in the application that the land which he requested for attachment is already mortgaged with the Bank and the loan is granted by Punjab and Sind Bank. The respondent has alleged that the petitioners are trying to sell the property and leave Satna city. The respondent has further stated that the petitioners have engaged brokers and are selling the property. The petitioners have filed a detailed reply to the said application and denied that they are selling the property. It is further denied that they are planing to leave Satna city. It is further stated that the respondent is a small trader and has no money to give to the petitioners. The trial Court after hearing both the parties has allowed the application vide order dated 11.12.2014. Being aggrieved by the aforesaid order, the petitioners have filed the present petition.

3. Learned counsel for the petitioners submits that the trial Court has erred in allowing the application filed under Order 38 Rule 5 of the Code. It is submitted that there is no concrete evidence to establish the fact that the petitioners are intending to sell the property. It is further submitted that the

application submitted by the respondent does not fulfill the requirement of Order 38 Rule 5 of the Code. In support of his submission, learned counsel for the petitioners relied on the decision rendered by the Apex Court in the case of *Raman Tech. & Process Engg. Co. and another Vs. Solanki Traders*, (2008) 2 SCC 302. It is submitted that in the said case, the Hon'ble Supreme Court has laid down that merely having a just and valid claim or a *prima-facie* case, will not entitle the respondent/plaintiff to an order of attachment before the judgment, unless he also establishes that the defendants/petitioners are attempting to remove or dispose of their assets with the intention of defeating the decree that may be passed. The powers under Order 38 Rule 5 of the Code has to be exercised sparingly and rarely by the Court, because it amounts to restrain the right of the person to enjoy the property. Learned counsel for the petitioners further relied on the judgments passed in the cases of *Renox Commercial Ltd. Vs. Inventa Technologies Pvt. Ltd.*, AIR 2000 Mad 213 and *Herald Engineers Vs. Wonderpack Industries Pvt. Ltd.*, 2013 (4) Mh.L.J. 217.

4. In the light of aforesaid decisions, learned counsel for the petitioners submits that the order passed by the trial Court is illegal. It is further submitted that the respondent has not filed any document to show that the petitioners' are intending to dispose of the property. In the said application, the respondent has not given details of the property, which the petitioners are intending to sell during pendency of the said civil suit.

5. On the other hand, learned counsel for the respondent supports the order passed by the trial Court and submits that the trial Court has not committed any error in passing the impugned order.

6. I have heard learned counsel for the parties and perused the record. Order 38 Rule 5 of the Code of Civil Procedure deals with Attachment before judgment, which reads as under :

“5. Where defendant may be called upon to furnish security for production of property.- (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, -

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void."

7. Bare reading of the aforesaid provision would make it clear that there are essential requirements, which must be proved to the satisfaction of the Court. They are as follows :

(1) The defendant is about to dispose of the whole or any part of his property, or.

(2) The defendant is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court.

(3) That, the defendant is intending to do so to cause obstruction or delay in the execution of any decree that may be passed against him. Vague and general allegations that the Defendant is about to dispose of the property or remove it beyond the jurisdiction of the Court, unsupported by particulars, would not be sufficient compliance with the rule.

(4) It is incumbent upon the plaintiff to state the grounds on which he entertains the belief or apprehension that the Defendant would dispose of or remove the property, or, to give the source of his information and belief in the matter through an Affidavit.

8. Thus, the jurisdiction of the Court to order attachment before judgment arises only when it is satisfied by the Affidavit, supported by the particulars that the defendant is about to dispose of the whole or any part of his property with the intention to obstruct or delay the execution of the decree that may be passed against him. Therefore, the essential requirement for an Order of Attachment before Judgment is the malafide intention and the conduct of the defendant in disposing of the property with the dishonest intention of defeating or delaying the decree that may be passed in the Suit.

9. Thus, as per Order 38 Rule 5 of the Code of Civil Procedure, the specific particulars or details of the property, which the defendant is intending to sell has to be given in the application. In present case, no specific particulars supported by material evidence are available. The trial Court in paragraph-7 of the impugned judgment has given a finding that the petitioners have entered into an agreement to sale as well as to register a sale-deed in respect of the said property and the same has been published in daily news-paper namely "Dainik Bhaskar". Learned counsel for the petitioners argued that the property, which is mentioned in paragraph-7 of the judgment has already been sold by the petitioners before filing of the suit by the respondent in pursuance of the action taken by the Bank under The Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Apex Court in the case of *Raman Tech.* (supra) in paragraph-5 has held as under:

"5. The power under Order 38 Rule 5 Code of Civil Procedure is a drastic and extraordinary power. Such power should not be sparingly and strictly in accordance with Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out-

of-court settlements under threat of attachment.”

In the case of *Renox Commercials Ltd.* (supra) in paragraph-26 has held as under :

“26. Before dealing with the said question as to whether those specific allegations supported by materials in the present case, let us refer to the guiding principles that can be deduced from the perusal of all the authorities cited by the Counsel on either side as mentioned above. The following are the guiding principles :-

“(1) That an order under Order 38 Rule 5 can be issued only if circumstances exist as are stated therein to the satisfaction of the Court.

(2) That the Court would not be justified in issuing an order for attachment before judgment, or for security merely because it thinks that no harm would be done thereby or that the defendants would not be prejudiced.

(3) That the affidavit in support of the contentions of the applicant, should not be vague and it must be stated as to which portion is true to knowledge and the source of information should be disclosed and the grounds for belief should be stated.

(4) That a mere allegation that the defendant is selling off his properties is not sufficient. Particulars must be stated.

(5) An order of attachment before judgment is a drastic remedy and the power has to be exercised with utmost care and caution, as it may be likely to ruin the reputation of the party against whom the power is exercised. As the Court must act with the utmost circumspection before issuing an order of attachment, the affidavit filed by the applicant should clearly establish that the defendant, with intent to obstruct or delay the execution of the decree that may be passed against him is about to dispose of the whole or any part of his property.

(6) A mere mechanical repetition of the provisions in the Code

or the language therein without any basic strata of truth underlying the allegation or vague and general allegations that the defendant is about to dispose of the property or to remove it beyond the jurisdiction of the Court, totally unsupported by particulars, would not be sufficient compliance with Order 38, Rule 5 of CPC.

(7) An attachment before judgment is not a process to be adopted as a matter of course. The suit is yet to be tried and the defence of the defendant is yet to be tested. At the nebulous juncture, the relief which extraordinary could be granted only if the conditions for its grant, as per the provisions of the Code, stand satisfied. This process is never meant as a lever for the plaintiff to coerce the defendant to come to terms. Hence utmost caution and circumspection should guide the Court.”

Similarly, in the case of *Herald Engineers* (supra) in paragraph-10 has held as under :

“10. The Apex Court in the case of *Raman Tech and Process Engg Co.* (supra) has in unequivocal terms held that power under Order 38, Rule 5, Civil Procedure Code is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It has been further held that it should be used sparingly and strictly in accordance with the Rule. It has been further held that the instances are not wanting where bloated and doubtful claims are realized by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out-of-court settlements under threat of attachment. It has been further held that a defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. It has been held that shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment.”

10. Thus, as per above cited cases, the powers given under Order 38 Rule 5 of the Code is drastic and extraordinary and the same must be used

sparingly and not in a mechanical manner. In the present case, the Court below has not assigned any reasons for taking drastic step in passing the said order and has passed the impugned order in a mechanical manner. Thus, in the light of aforesaid reasons, the writ petition stands allowed. The impugned order 11.12.2014 passed by the trial Court is set aside and consequently the application filed by the respondent under Order 38 Rule 5 of the Code is hereby dismissed.

Petition allowed.

I.L.R. [2017] M.P., 1403

WRIT PETITION

Before Mr. Justice S.K. Seth

W.P. No. 6452/2016 (Jabalpur) decided on 16 March, 2017

UMESH KUMAR SHARMA

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

(Alongwith W.P. No. 10966/2014)

Criminal Procedure Code, 1973 (2 of 1974), Section 24 – Appointment of Public Prosecutor – Cancellation – Grounds – Petition against the cancellation of appointment order of petitioner being selected as Public Prosecutor and further appointment of Respondent No.3 – ***Held –*** State Government in its reply has neither assigned any reason nor explained, what were the unavoidable reasons or probable cause for cancellation of appointment order of petitioner – ***Affidavit also does not disclose any reasons which required cancellation of petitioner's appointment after due approval by Law Secretary – Further held –*** A fair, reasonable and non-discriminatory process of appointment is the demand of the rule of Law – Arbitrariness has no place in a polity governed by rule of law, Article 14 of the Constitution strikes at arbitrariness in every State action – Authorities directed to draw a fresh panel of lawyers in terms of the Supreme Court guidelines.

(Paras 9, 12, 15, 16 & 18)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 24 – लोक अभियोजक की नियुक्ति – निरस्तीकरण – आधार – लोक अभियोजक के रूप में चयनित होने वाले याची की नियुक्ति के आदेश के निरस्तीकरण तथा आगे प्रत्यर्थी क्र. 3 की नियुक्ति के विरुद्ध याचिका – ***अभिनिर्धारित –*** राज्य सरकार ने अपने प्रतिउत्तर में न तो कोई

कारण दिया है न ही स्पष्ट किया है कि याची की नियुक्ति के आदेश के निरस्तीकरण हेतु क्या अपरिहार्य कारण या संभाव्य कारण थे — शपथपत्र भी कोई कारण प्रकट नहीं करता जिससे विधि सचिव द्वारा सम्यक् अनुमोदन के पश्चात् याची की नियुक्ति का निरस्तीकरण अपेक्षित हो गया हो — आगे अभिनिर्धारित — नियुक्ति की एक निष्पक्ष, युक्तियुक्त एवं मेदभाव रहित प्रक्रिया, विधि के नियम की मांग है — विधि के नियम द्वारा शासित राजतंत्र में मनमानेपन का कोई स्थान नहीं है, संविधान का अनुच्छेद 14, राज्य की प्रत्येक कार्यवाही में मनमानेपन को खंडित करता है — प्राधिकारीगण को उच्चतम न्यायालय के दिशानिर्देशों के निबंधनों में विधिवक्ताओं का नया पेनल बनाये जाने हेतु निर्देशित किया गया।

Cases referred :

AIR 2016 SC 1629, AIR 1991 SC 537, (1974) 4 SCC 3 : AIR 1974 SC 555, 1989 (3) SCC 293 : AIR 1989 SC 1642, AIR 1967 SC 1427.

K.K. Pandey, for the petitioner in W.P. No. 6452/2016 & W.P. No.10966/2014.

Brahmdatt Singh, G.A. for the respondents No.1 & 2 in W.P. No. 6452/2016 & for the respondents No. 1 & 3 in W.P. No. 10966/2014.

Anuj Singh, for the respondent No.3 in W.P. No. 6452/2016 & for the respondent No. 2 in W.P. No. 10966/2014.

ORDER

S.K. SETH, J. :- By this petition, petitioner is assailing the impugned order dated 1.4.2016 issued by the Secretary, Government of M.P., Law & Legislative Department. By the order impugned, respondent No.3 was appointed as Public Prosecutor, Satna and the earlier order dated 15.3.2016 issued in favour of the petitioner was recalled.

2. The challenge to the impugned order is that without following the procedure prescribed under Section 24 of Cr.P.C., the appointment of respondent no.3 has been made. It is alleged that respondent no.3 is junior to the petitioner as both of them were working on the post of Additional Public Prosecutor and as such, he could not have been appointed as Public Prosecutor. It is contended that no reasons have been assigned in the order impugned requiring cancellation of the appointment of the petitioner on the post of Public Prosecutor. It is also alleged that District Judge, Satna never forwarded the name of respondent No.3 and yet he has been appointed Public Prosecutor. It was also alleged that no notice was issued to the petitioner or he was afforded any opportunity before cancellation of his appointment. In

support of his submission, counsel for the petitioner has heavily relied on the latest pronouncement of the Supreme Court in the case of *State of Punjab Vs. Brijeshwar Singh Chahal* AIR 2016 1643.

3. Respondents in their separate returns have contested the claim of the petitioner and it was the case of respondents no.1 and 2 that respondent No.3 was working on the post of Additional Public Prosecutor since 19.11.2004 and in support of this contention the order dated 20.10.2004 has been filed as Annexure R/1. Thus, according to the State, the respondent No.3 was senior to the petitioner as Additional Public Prosecutor and has more experience as compared to the petitioner. It was also stated in the return that the appointment of the respondent No. 3 was in accordance with the procedure prescribed in Section 24 Cr.P.C. and the panel of names were forwarded to the State Government by the District Magistrate, Satna in consultation with the Sessions Judge, Satna. The said panel was received by the Government on 13.4.2015. The panel (sic:panel) contained the name of the petitioner as well as respondent No.3 and the Head of the Department, (Law Secretary) approved the name of petitioner for appointment on 8.3.2016, pursuant to which the order dated 15.3.2016 was issued by the Government. It was contended that the appointment of the petitioner was purely contractual and it could be terminated at any point of time without assigning any reason. It was also contended that petitioner failed to submit the declaration as per requirement of Rule 18 of the Department Manual of the Law & Legislative Affairs, Department of Government of M.P., therefore, the appointment order dated 15.3.2016 was cancelled on 21.3.2016 and fresh order (impugned) dated 1.4.2016 was issued in favour of respondent no.3. It was also contended that since the name of the petitioner was not notified in the official gazette, it could have been withdrawn at any time.

4. On more or less same lines, the respondent no.3 has defended his appointment order.

5. We have heard rival submissions at length and considered the material placed on record.

6. Before we advert to the merit of the case, it is relevant to point out here that keeping in view the averments made in the return filed on behalf of the State Government, vide order dated 25.1.2017 passed in W.P. No. 10966/2014, the Law Secretary was directed to file a detailed return showing how and in what manner the State Government has complied with the law laid

down by the Supreme Court in *Ku. Shrilekha Vidyarthi's* case – AIR 1991 SC 537 and *State of Punjab and another Vs. Brijeshwar Singh Chahal and another*- AIR 2016 SC 1629.

7. In *Brijeshwar Singh* supra the Supreme court held that Fair and realistic assessment, is first and foremost step to be taken by State. It should be fair and reasonable, transparent and credible. There is no gainsaid that if the power to appoint is exercised not because such exercise is called for but because of some extraneous or other reason the legitimacy of the exercise will itself become questionable.

8. No lawyer has a right to be appointed as State Government counsel or as public prosecutor at any level nor does he have a vested right to claim extension in the term for which he/she is initially appointed. All candidates who are eligible for any such appointment can offer themselves for re-appointment or extension in which event their claims can and ought to be considered on their merit uninfluenced by any political or other extraneous consideration. They can at best claim consideration for any such appointment or extension upon expiry of their respective terms. Such consideration shall, however, have to be in accordance with the norms settled for such appointments and on the basis of their inter se merit, suitability and performance if they have already worked as State counsel.

9. A fair, reasonable or non-discriminatory process of appointment of State Counsel is not demanded only by the rule of law and its intolerance towards arbitrariness but also by reason of the compelling need for doing complete justice which the Courts are obliged to do in each and every cause.

10. In *E P Royappa v. State of Tamil Nadu and Anr.* (1974) 4 SCC 3 : (AIR 1974 SC 555), the Supreme Court declared that Article 14 is the genus while Article 16 is a specie and the basic principle which informs both these Articles is equality and inhibition against discrimination. Equality, declared the Court, was antithetic to arbitrariness. The Court described equality and arbitrariness as sworn enemies, one belonging to the rule of law in a republic and the other to the whims and caprice of an absolute monarch. Resultantly if an act is found to be arbitrary, it is implicit that it is unequal both according to political logic and constitutional law, hence violative of Article 14 and if it affects any matter of public employment it is also violative of Article 16. The Court reiterated that Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and inequality of treatment.

11. In *Dwarkadas Marfatia v. Board of Trustees of the Port of Bombay* 1989 (3) SCC 293 : (AIR 1989 SC 1642), the Supreme Court had an occasion to examine whether Article 14 had any application to contractual matters. The court declared that every action of the State or an instrumentality of the State must be informed by reason and actions that are not so informed can be questioned under Articles 226 and 32 of the Constitution.

12. It is by now, fairly well settled that not only the Government but all public bodies are trustees of the power vested in them and custodians of public interest. Discharge of that trust in the best possible manner is the primary duty of those in charge of the affairs of the State or public body. This necessarily implies that the nature of functions and duties including the power to engage, employ or recruit servants, agents, advisors and representatives must be exercised in a fair, reasonable, non-discriminatory and objective manner. It is also fairly well settled that duty to act fairly and reasonably is a facet of 'Rule of Law' in a constitutional democracy like ours. A long line of decisions of the Supreme Court over the past five decades or so have ruled that arbitrariness has no place in a polity governed by rule of law and that Article 14 of the Constitution of India strikes at arbitrariness in every State action.

13. In *S G Jaisinghani v. Union of India* AIR 1967 SC 142 7 the Supreme Court held that absence of arbitrary power is the first essential of "Rule of Law" upon which rests our Constitutional system. The Court ruled that in a system governed by rule of law, any discretion conferred upon the executive authorities must be confined within clearly defined limits. The Court quoted with approval, the following observations of *Douglas J. in United States v. Wunderlick* 1951 342 US 98:96 Law Ed 113:

"Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler... Where discretion is absolute, man has always suffered."

14. Now let us examine the facts of the case in hand. From the perusal of order-sheets, it is clear that the affidavit has been filed only on 7.3.2017 of Shri Amitabh Mishra, Secretary, Law Department, only when the order was passed directing Secretary, Law Department to remain present in the Court to explain why detailed return has not been filed. Despite this order, no detailed return was filed by the Government. Only affidavit of Mr. Mishra is on record wherein instead of showing how the Government has complied with the law laid down by the Supreme Court in the cases no (sic:of) *Shrilekha Vidyarathi*

and *Brijeshwar Singh Chahal* (supra), a feeble (sic: feeble) effort was made to explain what was laid down by their Lordships of Supreme Court in the said two cases.

15. Now coming to the merits of the case, the State Government in its reply has not assigned any reason for cancellation of order dated 15.3.2016 and what has been stated, we think it appropriate to reproduce it here for ready reference:-

“ 5. The answering respondents humbly submit that before the petitioner could give a declaration in writing in terms of the aforesaid rule, on 21.3.2016 order dated 15.3.2016 was cancelled by the Head of the Department **for unavoidable reasons** and approval was given for appointment of respondent no.3 as Public Prosecutor.

6. The answering respondents say and submit that the aforesaid decision was taken at the nascent stage, i.e. within a period of 13 of the earlier decision, the approval of another candidate was from the same panel was forwarded by the District Magistrate as per Section 24 Cr.P.C. **probably** for the reasons that respondent No. 3 had been continuously working as an Additional Public Prosecutor before the petitioner was appointed as such and was having more experience as an Additional Public Prosecutor.” (Emphasis added)

16. The return does not spell out what were the unavoidable reasons or probable cause. The stand of the Government is delightfully vague. The contention that the petitioner has not given declaration required under Rule 18 of Law Department Manual and his name was not notified in the official Gazette, in the opinion of this Court, this is nothing but an attempt to eye wash to justify cancellation within a period of 13 days from the date of appointment order. The affidavit also does not disclose what were the unavoidable reasons which required cancellation of the petitioner's appointment after due approval by Law Secretary. Why these factors were not kept in view at the time of appointment of respondent No.3. No reason is set out what compelled the Law Secretary to change his mind to cancel the appointment order. It is apparent that no one thought of once the petitioner was appointed the panel suggest by the District Magistrate got exhausted before issuing the appointment order of respondent No. 3. The Law Secretary should have called for fresh panel, The

contention that the contractual appointment could be terminated at any time smacks of arbitrariness which is the antithesis of the right to the equality (sic:equality).

17. The upshot of the above discussion is that for a fair and objective system of appointment, there ought to be a fair and realistic assessment of the requirement, for otherwise the appointments may be made not because they are required but because they come handy for political aggrandisement, appeasement or personal benevolence of those in power towards those appointed. The dangers of such an uncanalised and unregulated system of appointment, it is evident are multi-dimensional resulting in erosion of the rule of law, public faith in the fairness of the system and injury to public interest and administration of justice.

18. In view of the above discussion and on the anvil of test laid down by the Supreme Court, we are unable to sustain the order impugned and would have had no hesitation to set aside it but for the fact the appointment of respondent No. 3 is coming to an end on 31.3.2017. We therefore direct the authorities to draw a fresh panel of lawyers in terms of the guidelines laid down by the Supreme Court in *Ku. Shrilekha Vidyarthi's* case – AIR 1991 SC 537 and *State of Punjab and another Vs. Brijeshwar Singh Chahal and another* – AIR 2016 SC 1629 and thereafter appoint Public prosecutor from the empanelled advocate found most suitable on merit for the job. The writ petition is accordingly stands disposed off with no orders as to cost.

19. Ordered accordingly.

Order accordingly.

I.L.R. [2017] M.P., 1409

WRIT PETITION

Before Mr. Justice Prakash Shrivastava

W.P. No. 6408/2016 (Indore) decided on 3 April, 2017

RITESH INANI

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

A. *Criminal Procedure Code, 1973 (2 of 1974), Section 41 – Arrest – Held – The scope for issuing a direction to arrest the accused persons is limited – Apex Court held that Section 41 gives discretion*

to the police officer to arrest any person in the situation enumerated in the section and since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence – Since an arrest is in the nature of encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. (Para 34)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 41 – गिरफ्तारी – अभिनिर्धारित – अभियुक्तगण को गिरफ्तार करने हेतु निदेश जारी करने के लिए परिधि सीमित है – सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया कि धारा 41, धारा में प्रणित स्थिति में किसी भी व्यक्ति को गिरफ्तार करने के लिए पुलिस अधिकारी को विवेकाधिकार देती है एवं चूंकि शक्ति वैवेकिक है, एक पुलिस अधिकारी हमेशा अभियुक्त को गिरफ्तार करने के लिए आबद्ध नहीं है, यद्यपि उसके विरुद्ध संज्ञेय अपराध कारित करने का अभिकथन हो – चूंकि गिरफ्तारी विषय की स्वतंत्रता पर अधिक्रमण की प्रकृति में है तथा नागरिक की ख्याति एवं प्रतिष्ठा को प्रभावित करती है, शक्ति का प्रयोग सावधानीपूर्वक किया जाना चाहिए।

B. *Criminal Procedure Code, 1973 (2 of 1974), Section 41(b) – Judicial Enquiry – Held – In the present case, since the investigation is being conducted by an officer of high rank under the supervision of I.G., thus there is no reason to direct the investigation by any other investigating agency other than the competent police officer.* (Para 38)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 41(बी) – न्यायिक जांच – अभिनिर्धारित – वर्तमान प्रकरण में, चूंकि अन्वेषण आई.जी. के पर्यवेक्षण में उच्च रैंक के एक अधिकारी द्वारा संचालित की गई है, इसलिए सक्षम पुलिस अधिकारी के अलावा किसी अन्य अन्वेषण एजेंसी द्वारा जांच को निदेशित करने का कोई कारण नहीं है।

C. *Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) – Investigation – Held – Magistrate has wide powers to ensure proper investigation and for this purpose he can monitor the investigation and if the investigation is not done properly, aggrieved person has a remedy of approaching the Magistrate – No need for any further direction – Petition disposed of.* (Para 20)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) – अन्वेषण – अभिनिर्धारित – मजिस्ट्रेट को उचित अन्वेषण सुनिश्चित करने के लिए व्यापक शक्तियाँ हैं एवं इस उद्देश्य के लिए वह अन्वेषण की निगरानी कर सकता है तथा

यदि अन्वेषण उचित रूप से नहीं की जाती है, पीड़ित व्यक्ति के पास मजिस्ट्रेट के पास जाने का उपचार है – आगे किसी और निदेश की आवश्यकता नहीं – याचिका निराकृत।

Cases referred :

(2003) 2 SCC 649, (2009) 10 SCC 488, AIR 2014 SC 666, (2008) 2 SCC 409, AIR 2014 SC 1066, 2005 Cr.LJ 755.

A.K. Sethi with Prateek Maheshwari, for the petitioner.

Petitioner also present in person.

Milind Phadke, for the respondents No:1 to 4.

Ankur Sood, for the respondent No.5.

Rajesh Singhal, father of respondent No. 6 present in person.

ORDER

Prakash Shrivastava, J. :- Heard finally with consent.

2. IA No.1601/2017 filed by the counsel for respondent No.5 seeking exemption from filing vakalatnama of local Advocate is not opposed, hence allowed.

3. This writ petition has been filed by the petitioner praying for the following reliefs:-

[A] That, this Hon'ble Court may be pleased to allow this petition by passing appropriate writ, direction or order direct the fair and impartial investigation in the matter by any independent agency as this court deems appropriate;

[B] That, this Hon'ble Court may be pleased to direct the respondent no.2 to immediately arrest the respondent no.5 and 6/accused persons as per the provisions of law and produce them before competent court;

[C] That, alternatively this court may be pleased to remit the matter for investigation to some other senior police officer with time-bound directions for conducting fair and impartial investigation along with

direction for immediately arrest of accused person;

[D] That, this Hon'ble Court may be pleased to direct judicial inquiry in the entire episode along with further directions for initiation of appropriate departmental inquiry in the matter against erring officials involved in the matter;

[E] That, looking to similar incidents taking place in past and to prevent the same in future to uphold the dignity of officers of the court this Court may also direct respondent for enforcement of proposed Advocate's Protection Act;

[F] That, this Hon'ble Court may be pleased to grant any other relief to the petitioner in the facts and circumstances of the case as deemed appropriate;

[G] That, the petitioner may be awarded costs of this petition in the interest of justice."

4. Learned counsel for petitioner at the outset has submitted that he is not pressing the relief No.7(E).

5. The factual background of filing the present writ petition is that the petitioner who is a practicing lawyer of this Court had lodged the report in the police station, Tukoganj in respect of the unfortunate incident which had taken place on 12/9/2016. The Crime No.504/2016 was registered by the police station, Tukoganj, Indore for commission of offence u/Ss.294, 307/34 of the IPC as against the respondent No.5 and 6. The allegation of the petitioner is that he was assaulted by the respondent No.5 and 6 and after the incident the petitioner along with the other persons had handed over the accused persons to the police, yet inspite of registration of the FIR the accused were not arrested. Further grievance of the writ petitioner was that the police authorities did not act in accordance with law and did not fairly investigate the matter.

6. This Court from time to time has issued directions to the police authorities to ensure fair, proper and impartial investigation and the reports have been submitted by them which are on record. A transfer petition TP (Cr) No 365/2016 was filed by respondent No.5 and 6 before Hon. the Supreme Court and the same was dismissed by order dated 18/11/2016 with the

observation for appointment of Senior Advocate as amicus curiae and for deciding the matter expeditiously and also extending protection to the respondent No.5 and 6 in the form of a direction not take any coercive steps against them till the matter is decided by this court. In pursuance to the aforesaid order, this court vide order dated 9/12/2016 had appointed Shri P.K. Saxena, Sr. Advocate as amicus curiae to assist the court with liberty to him to take assistance of any junior advocate of his choice. In the subsequent proceedings, the learned amicus curiae has assisted this court. He has also submitted the written arguments and had advanced the arguments at length on 6/2/2017.

7. The current stage of the investigation is that on completion of investigation the challan was filed by the police before the competent court on 4/2/2017 but some relevant material was not enclosed therewith, therefore, it was returned with a direction to file the challan after further investigation. It is submitted that thereafter on 6/3/2017 the challan was sought to be filed but it was returned for some reason and again the challan was filed on 20/3/2017 but it has been returned on the technical ground that it was not filed by following the due process of law and the SHO, Tukoganj has been directed to file the challan after informing both the parties and following the procedure prescribed in law. When the matter stood thus it has reached the stage of hearing before this Court.

8. The first argument advanced by the learned counsel for petitioner is that the investigation by an independent agency is necessary because the investigation has not been done impartially and improper conduct of investigating officer has already been noted by this court in the earlier proceedings. He has submitted that return of challan by the competent court thrice itself reveals that the investigation is improper and that though the offence u/S.307 was registered, the police is not filing the challan u/S.307 of the IPC but for the lesser offences whereas the police authorities have no jurisdiction to do the same and that no weapon of the offence has been seized by the police authorities.

9. Learned counsel for State opposing the argument has submitted that the investigation has been done by the senior officer under the supervision of the still higher authorities and the directions issued by this court have been complied with to ensure fair investigation and that the challan was returned for the technical ground and the challan will be filed disclosing the offence

which is made out on the basis of material collected in investigation.

10. Learned counsel for respondent No.5 has also submitted that the fair investigation has been done and the scope of interference in investigation is limited and the investigating officer has been changed and there is no infirmity in this regard.

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

12. Before entering into this controversy, it would be proper to look into the scope of interference in the matter of investigation.

13. The Supreme Court in the matter of *M.C.Abraham Vs. State of Maharashtra* (2003) 2 SCC 649 considering the scope of interference by the Courts in the investigation has held:-

“13] This Court held in the case of *J.A.C. Saldanha* (supra) that there is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under section 190 of the Code of Criminal Procedure, its duty comes to an end. On a cognizance of the offence being taken by the Court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.”

14. The Supreme Court in the matter of *D.Venkatasubramaniam and others Vs. M.K. Mohan Krishnamachari and another* (2009) 10 SCC 488

considering the limited scope of interference in investigation has held:-

27] This Court while observing that it was not appropriate for the High Court to issue a direction that the case should not only be investigated but a charge sheet must be submitted, held: (M.C.Abraham case, SCC p.660, para 18)

"18..... In our view the High Court exceeded its jurisdiction in making this direction which deserves to be set aside. *While it is open to the High Court, in appropriate cases, to give directions for prompt investigation etc. the High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency.*"

(emphasis is of ours)

It is worthwhile to notice that the directions in the said case were issued by the High Court of Bombay in writ petition filed in public interest in which a grievance has been made that though the Provident Fund Commissioner has lodged a complaint against several Directors, the investigation has made no progress on account of the fact that the Directors were Government servants and enjoying considerable influence. The High Court issued series of directions which were challenged in this Court contending that the High Court was in error in exercising jurisdiction under Article 226 of the Constitution resulting in unjustified interference of the investigation of the case. It is, therefore, clear that if the High Court, in exercise of its power under Article 226 of the Constitution of India, cannot direct the investigating agency to investigate the case in accord with its views as that would amount to unwarranted interference, equally no such directions could be issued in exercise of inherent jurisdiction under Section 482 of the Code."

15. In the matter of *Manohar Lal Sharma Vs. Principal Secretary and*

others AIR 2014 SC 666 it has been held that the investigation lies within the domain of the police and interference by the court is required only if investigatory power is exercised in breach of the statutory provision or mala-fide. The Courts ordinarily do not interfere in the matter of investigation by police particularly when the facts and circumstances do not indicate that the investigating officer is not functioning bona-fide, but in exceptional circumstances where investigatory power are exercised in breach of statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona-fide or the investigation is tainted with animosity, the court may interfere.

16. In the present case, this court considering the allegation of the petitioner and to ensure the fair and proper investigation has issued directions from time to time to ensure fair and impartial investigation. On 21/9/2016, the parties were heard on the issue of fair investigation and this Court taking note of the allegation that the concerned SHO had colluded with the accused had directed that the investigation be done by some higher officer and had also directed the I.G police to ascertain if there is any deliberate attempt to prevent fair and proper investigation. Certain infirmities were noted in *rojnamcha sanha* produced in the court, hence it was sent to the I.G with certain directions and the I.G of police was also directed to ensure that the investigation is done by the officer not below the rank of Dy.SP under the supervision of the I.G of police himself. Following was the directions issued on 21/9/2016:-

“In the aforesaid circumstances, I am of the considered opinion that it would be in the interest of justice if the investigation is done by some higher officer and it would also be appropriate for the Inspector General of Police to ascertain if there is any deliberate attempt to prevent fair and proper investigation.

Hence I direct that the case diary and the alleged *rojnamcha sanha* produced before this court be kept in the sealed cover and sent to the Inspector General of Police immediately through the office of the Addl. Advocate General.

The Inspector General of Police will ensure that the investigation is done by an officer not below the rank of Deputy

Superintendent of Police under the supervision of the Inspector General of Police himself.

The Inspector General of Police will examine the case diary and will ascertain *whether the provisions contained in Sec.41(1)(b) and 43 of the Cr.P.C were required to be followed and have been followed especially when the offence u/S.307 of the IPC was already registered and the accused was brought to the police station from the spot AND whether there was any deliberate delay on the part of the investigating officer in issuing notice U/S.160 of the Cr.P.C to the complainant and the witnesses disclosed in the FIR and in recording their statements u/S.161 of the Cr.P.C AND if the alleged rojnacha sanha in the loose sheets as computer print without mentioning the time is not contrary to Sec.172 of the Cr.P.C and Regulations 634 and 639 of the Police Regulations AND under what authority the accused was kept in the police station without showing arrest and allowed to go next day ?*

If on examining the aforesaid issues, the Inspector General of police finds that there was any deliberate lapse by any police officer with a view to help the accused, then the appropriate action against the concerned police officer be taken in accordance with law.

The matter is adjourned for the next date to enable the Inspector General of Police through his counsel to apprise this court about the progress of the investigation.”

17. This Court on 29/9/2016 had again directed the I.G Police to ensure expeditious and independent investigation in the matter and the I.G police was directed to look into the earlier order in respect of compliance of Sec.41(b) of the Cr.P.C.

18. The status reports have been submitted by the Investigating Officer from time to time before this court. It has been pointed out that an officer of the rank of CSP is investigating the offence and I.G Police is monitoring the matter.

19. The above facts reveal that the prayer No.(C) made by the petitioner

for charge of the investigating officer and for getting the investigation done by some other senior police officer has already been granted by this court by the interlocutory orders already passed in the matter. At the current stage the investigation is almost complete and the challan which was filed on 20/3/2017 has been returned only on the ground of not following the proper procedure in filing the challan.

20. u/S.156(3), the Magistrate has wide powers to ensure proper investigation and for this purpose he can monitor investigation and if investigation is not done properly, aggrieved person has remedy of approaching the Magistrate u/S.156(3) of the Cr.P.C.

21. The Supreme Court in the matter of *Sakir Vasu Vs. State of U.P and others* (2008) 2 SCC 409 considering this aspect of the matter has held as under:-

“13] The same view was taken by this Court in *Dilawar Singh vs. State of Delhi* JT 2007 (10) SC 585 (vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

17] In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

22. Hence, on the filing of challan by the State authorities before the competent Magistrate it would be open to the petitioner's to point out if any

infirmity is found at that stage in the investigation and this court has no doubt that if any infirmity in the investigation is pointed out, then the Magistrate exercising the competent jurisdiction having wide powers u/S.156(3) of the Cr.P.C will pass appropriate orders.

23. Having issued the directions from time to time to ensure fair investigation by an officer higher in the rank that too under the supervision of the I.G. police, at this stage this court does not find it proper to make any observation about the investigation since it will affect the rights of the parties available u/S.156(3) of the Cr.P.C.

24. So far as the issue relating to not filing the challan for offence u/S.307 of the IPC is concerned, it is premature to state anything in this regard since challan is yet to be filed and if the challan is not filed for the offence u/S.307 of the IPC, the petitioner can agitate the issue before the competent court and which can be looked into by the competent court in accordance with law.

25. Same is the position in respect of the allegation about non seizure of weapon. Though it has been vehemently contended by the counsel for respondents that the weapon of offence was not disclosed by the complainant, but again this court does not deem it proper to make any observation in this regard.

26. Hence, in the aforesaid circumstances, I am of the opinion that no further direction need be issued in respect of the prayer for investigation by any other independent agency. However, this court expresses the hope that the police authorities will remain impartial in the matter of investigation and submission of charge sheet and also expresses hope that if any infirmity in this regard is found, then the court of competent jurisdiction will look into it and do the needful to ensure that no prejudice is caused to any of the parties.

27. The next issue is about a direction to the respondents police authorities to arrest the accused persons.

28. The contention of the learned counsel for petitioner is that after the alleged offence, the accused persons were brought to the police station and handed over to the police and they remained in the police custody overnight, therefore, that amounts to the arrest and the police authorities had no power to release them without bail being granted by any competent court and alternative allegation is that if the same did not amount to arrest, then no

reasons were recorded as required by proviso to Sec.41(1)(b) of the Cr.P.C for not arresting the accused.

29. Counsel for the petitioner has referred to the stand of the State as recorded in the proceedings dated 21/9/2016 that the respondent No.5 was kept in police custody overnight and he was allowed to go before 12 noon on 13/9/2016, but there was nothing on record to show that any formal arrest was made.

30. Sec.46 of the Cr.P.C provides as to how the arrest will be made. Sec.50 provides that the person arrested will be informed of the grounds of arrest and 50-A put an obligation on the person making arrest to inform about the arrest to a nominated person, Sec.51 provides for search of the arrested person and Sec.60-A in clear terms provides that no arrest will be made except in accordance with provisions of the Code or any other law for the time being in force for providing arrest.

31. Considering the aforesaid provision, there is no material to reach to the conclusion that the respondent No.5 was formally arrested. There is also no arrest memo in the case diary. Hence, the contention of the petitioner that the respondent No.5 after arrest could not have been released without grant of bail by the court of competent jurisdiction, cannot be accepted.

32. So far as the issue relating to compliance of proviso to Sec.41(1)(b) is concerned, the *rojnamcha sanha* entry in *parcha* No.2/13.9.2016 contains the reason which can form the basis for not making the arrest.

33. Opposing the argument of arrest, learned counsel for the respondent No.5 has also drawn the attention of this court to para 9,11,16 and 19 of the counter affidavit filed by writ petitioner before Hon. the Supreme Court in TP (Cr) No 365/2016 and has pointed out that the writ petitioner had categorically stated before the Hon. Supreme Court that he would not be pressing for any relief against the respondent No.5 and 6 before the High Court and would be deleting them and also that the prayer No.(B) which relates to the arrest of the respondent No.5 and 6 would be deleted and even respondent No.5 and 6 would be dropped from the writ petition. The aforesaid stand taken before the supreme court itself dilutes the contrary argument of arrest which has been advanced before this court.

34. That apart, the scope for issuing a direction to arrest the accused

persons is limited. The Supreme Court in the matter of *M.C. Abraham Vs. State of Maharashtra* (2003) 2 SCC 649 considering the scope of Sec.41 Cr.P.C has held that the said provision gives discretion to the police officer to arrest any person in the situation enumerated in Section and since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. The supreme Court in that case had found the order of the High Court directing arrest to be unsustainable even in a case where the petition of the person for grant of anticipatory bail was rejected and arrest was not made by the police authorities. In the matter of *M.C. Abraham* (supra), it has been held:-

14] Tested in the light of the principles aforesaid, the impugned orders dated 10th January, 2002 and 11th January, 2002 must be held to be orders passed by overstepping the para-meters of judicial interference in such matters. In the first place, arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the Court has no role to play. Since the power is discretionary, a police officer is not always

bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection."

35. In the matter of *Km.Hema Mishra Vs. State of U.P. and others* AIR 2014 SC 1066 it has been held that in a cognizable offence the arrest is not mandatory and Sec.41 and 41-A place check on arbitrary, unwarranted exercise of power of arrest.

36. The Full Bench judgment of Allahabad High Court in the matter of *Smt. Amarawati and another Vs. State of U.P.* 2005 Cr.LJ 755 has held that the word "may" in Sec.41 of the Cr.P.C cannot be interpreted as must or shall and even in cases relating to disclosure of cognizable offence in FIR or complaint, the arrest of the accused is not must.

37. Having regard to the aforesaid position in law, I do not deem it fit in the facts of the present case to issue any direction for arrest of the accused persons.

38. So far as the prayer of judicial enquiry of the entire episode is concerned, since the investigation is being conducted by an officer of a high rank under the supervision of I.G, therefore, there is no reason to direct the investigation by any other investigating agency other than the competent police officer.

39. So far as the prayer for holding the departmental enquiry against the erring officials involved in the matter is concerned, this court vide order dated 21/9/2016 had taken note of certain lapses in the investigation and, therefore, the I.G police was entrusted with the responsibility to ensure fair investigation. By that order, the I.G. of police was directed to examine the case diary and ascertain certain aspects noted in the order and also directed to take action against the concerned police officer in case, if it was found that any deliberate lapse was committed by any police officer with a view to help the accused persons. It has been pointed out by the learned counsel for State that the then

investigating officer was issued a notice and after receiving the reply he was found to be negligent in not filing the *rojnamcha sanha* in proper proforma, hence penalty in the form of imposition of fine of Rs.2000/- has been imposed. Hence, this prayer has already been granted.

40. Though the counsel for respondent No.5 has during the course of argument submitted that a cross report was made by him, but that has not been investigated but this court need not go into that because that is not the subject matter of the present writ petition.

41. Keeping in view the aforesaid analysis, I am of the opinion that this court has already issued directions from time to time to ensure fair and proper investigation. Acting upon the same, the investigation has been entrusted to an officer of the rank of CSP. The investigation is being conducted under the supervision of the I.G of police. The challan earlier filed has been returned and the fresh challan is yet to be filed when the petitioner will have full opportunity to raise his grievance before the concerned court as per the provisions contained in Cr.P.C. In case if any lapse in the investigation is noted, the court of competent jurisdiction will take appropriate steps in accordance with law to ensure that the needful is done. Needless to mention that the investigating agency will make all possible efforts to collect the relevant material and will file the challan by following the due process of law acting in an impartial manner.

42. This Court appreciate the valuable assistance rendered by learned Amicus Curiae.

43. The writ petition is accordingly disposed of.

Order accordingly.

I.L.R. [2017] M.P., 1423

WRIT PETITION

Before Mr. Justice S.K. Gangele & Mr. Justice Subodh Abhyankar

W.P. No. 7058/2016 (Jabalpur) decided on 28 April, 2017

KISHAN PILLEY & ors.

...Petitioners

Vs.

STATE OF M. P. & ors.

...Respondents

A. High Court of Madhya Pradesh Officers and Employees Recruitment and Conditions of Service (Classification, Control, Appeal and Conduct) Rules, 1996 – Equal Pay for Equal Work – Petitioners

who are class III and IV employees of the High Court praying for grant of higher pay scale on the ground that the State Government on the basis of Shetty Pay Commission has revised the pay scale of the employees working in the District Court under the same cadre— Held —As per the principle laid down by the Apex Court, respondents directed to grant one additional increment to petitioners who are working below grade pay of Rs. 3600 and two additional increments to petitioners who are working in the grade pay of Rs. 3600 — Petitioners would be eligible to get arrears of salary — Further held — In respect of the higher pay scale and allowance, High Court has already made recommendations to the State Government for implementation of Shetty Pay Commission to the employees of the High Court which is still pending — Respondents are directed to finalize the same within a period of four months — Petition partly allowed. (Para 21 & 22)

क. उच्च न्यायालय मध्य प्रदेश अधिकारी एवं कर्मचारी भर्ती एवं सेवा शर्तें (वर्गीकरण, नियंत्रण, अपील तथा आचरण) नियम, 1996 — समान कार्य के लिए समान वेतन — याचीगण जो कि उच्च न्यायालय के तृतीय एवं चतुर्थ श्रेणी के कर्मचारीगण हैं, द्वारा इस आधार पर उच्चतर वेतनमान प्रदान किये जाने हेतु प्रार्थना की जाना कि राज्य सरकार ने शेट्टी वेतन आयोग के आधार पर जिला न्यायालय में समान संवर्ग के अंतर्गत कार्यरत कर्मचारीगण का वेतनमान पुनरीक्षित किया है — अभिनिर्धारित — सर्वोच्च न्यायालय द्वारा प्रतिपादित सिद्धांत के अनुसार, प्रत्यर्थीगण को उन याचीगण को जो कि 3600 ग्रेड पे के नीचे कार्यरत हैं उन्हें एक अतिरिक्त वेतनवृद्धि एवं वे याचीगण जो कि 3600 ग्रेड पे पर कार्य कर रहे हैं उन्हें दो अतिरिक्त वेतनवृद्धि प्रदान करने हेतु निदेशित किया गया — याचीगण वेतन का बंकाया प्राप्त करने हेतु पात्र होंगे — आगे अभिनिर्धारित — उच्चतर वेतनमान एवं भत्ता के संदर्भ में, उच्च न्यायालय ने राज्य सरकार से उच्च न्यायालय के कर्मचारीगण पर शेट्टी वेतन आयोग के क्रियान्वयन हेतु पहले ही सिफारिशों की है जो कि अभी तक लंबित हैं — प्रत्यर्थीगण को चार माह की अवधि के भीतर उक्त का निश्चय करने हेतु निदेशित किया गया — याचिका अंशतः मंजूर।

B. Constitution — Article 229(2) — Powers of Chief Justice — Under Article 229(2) of the Constitution, Chief Justice has the power to frame Rules with regard to pay and allowances of the employees of the Court and send the same to the State Government for approval of the Hon'ble Governor. (Para 20)

ख. संविधान — अनुच्छेद 229(2) — मुख्य न्यायमूर्ति की शक्तियाँ — संविधान के अनुच्छेद 229(2) के अंतर्गत, मुख्य न्यायमूर्ति को न्यायालय के

कर्मचारीगण के वेतन एवं भत्ते के संदर्भ में नियमों की विरचना करने एवं स्वतः को माननीय राज्यपाल के अनुमोदन हेतु राज्य सरकार को भेजने की शक्ति है।

Cases referred :

2002 (6) SCC 72, 2002 (7) SCC 707, 1992 AIR (SC) 1203, 1993 (Sup 3) SCC 727, 2016 (3) CalLJ 448, (2017) 1 SCC 148, (1997) 5 SCC 1, (2004) 8 SCC 286.

Manish Kholiya, for the petitioners.

Amit Seth, G.A. for the respondents No.1 to 3/State.

B.N. Mishra, for the respondent No.4/High Court.

O R D E R

The Order of the Court was delivered by :
S.K. GANGELE, J. :- Petitioners, working in the High Court of Madhya Pradesh on various Class IV and III posts, have filed this petition for grant of higher pay scale. The petitioners further prayed that the petitioners No.1 to 37, who were below the grade pay of Rs.3600/- be granted one additional increment and the petitioners No.38 to 117 who were working on the grade pay of Rs.3600/- be granted two additional increments w.e.f. 01.04.2003 respectively.

2. The petitioners are the employees working in the High Court on Class IV and III posts. Their service conditions are governed by the recruitment rules named as The High Court of Madhya Pradesh (Officers and Employees Recruitment and Conditions of Services, Classification, Control, Appeal and Conduct) Rules, 1996 (hereinafter called as '**the Rules of 1996**'). The aforesaid rule was framed in exercise of powers conferred by Clause 2 of Article 229 of the Constitution of India.

3. The petitioners pleaded in the petition that they are performing the similar work rather onerous work in comparison to the employees who are working on Class IV and III posts in the District Courts in the State of Madhya Pradesh (hereinafter called as '**the employees of Subordinate Courts**'). The pay scale of subordinate Courts' employees have been revised by the State of Madhya Pradesh in accordance with the directions issued by the Apex Court in the matter of *All India Judges Association and others vs. Union of India and others (Shetty Commission)*. The employees of subordinate Courts were also granted benefit of additional one increment, up-gradation of

pay-scale and certain other allowances. The State Government accepted recommendations of Shetty Commission. However, the same benefits have been denied to the petitioners, which has resulted into anomaly in the pay and allowances. The petitioners made a representation to this effect to the High Court and the Committee constituted by the High Court forwarded the recommendations to the State Government. However, the Government has not taken any step in this regard till today.

4. The respondents No.1 to 3-State in its reply raised a preliminary objection that any modification in the existing pay scale and allowances of the petitioners can be made by the Hon'ble Chief Justice after approval of Governor. The petitioners did not submit any representation before the competent authority of the State Government. Hence, the petition is premature. On merits, the respondents No.1 to 3-State pleaded that pay scale and service conditions of the employees working in the District Courts are being improved in accordance with the recommendations of Shetty Commission, however, there is no mention in the recommendation of Shetty Commission in regard to employees working in the High Court. Hence, the State Government is not bound to give same relief to the petitioners as has been given to the employees working in subordinate Courts. It is further pleaded that the Court is not empowered to issue writ in the matter of payment of salary and fixation of pay scale on the basis of equal pay for equal work. In support of aforesaid contentions, learned counsel for the State placed reliance on following judgments of the Apex Court:

(a) *State of Haryana and another vs Haryana Civil Secretariat Personal Staff Association*, 2002 (6) SCC 72;

(b) *Government of Andhra Pradesh vs P. Hari Hara Prasad*, 2002 (7) SCC 707 and

(c) *The Secretary, Finance Department vs The West Bengal Registration Service Association*, 1992 AIR (SC) 1203.

5. The respondent No.4-High Court in its return submitted that the representation submitted by the petitioners was considered by the Grievance Committee of the High Court and the matter was forwarded to the Government. It is also submitted that services of the petitioners are governed by the Rules of 1996. The aforesaid rules are statutory in nature. The employees appointed on the posts mentioned in the recruitment rule are eligible to receive the pay scale mentioned in the Rules of 1996. In absence of any amendment in the

rule, no extra benefit could be provided to the petitioners. It is the discretion of the State to accept or not to accept the recommendations of the High Court.

6. During the course of arguments, learned counsel appearing on behalf of the respondent No.4-High Court produced minutes of the meeting of Grievance Committee dated 20.08.2015 along with the note of the Registry. In the aforesaid noting it is mentioned that the High Court had already made recommendations for implementation of Sheety Pay Commission to the employees of the High Court as back as on 10.12.2007 and on 16/19.09.2008. The Grievance Committee of the High Court, consisting Hon'ble Justice Shri.K.K. Trivedi and Hon'ble Justice Shri Rajendra Mahajan, considered representation of the petitioners and recommended that a reminder in respect of such a proposal sent by the High Court may be sent to the State Government and the representation of the employees of the High Court may be included in the writ petition pending before the High Court. Minutes of the meeting are as under:

“SUBJECT No.3

A representation is made by the employees of the High Court asking for grant of benefits as have been made available to the employees of the Sub-ordinate Court on the basis of the law laid down by the apex Court in the case of All India Judges Association & Others Vs. Union of India and others, whereby Justice Shetty Commission recommendations were accepted and directions were issued to the States to provide such facilities to the employees of the subordinate Courts. It is the grievance of the employees of the High Court that though they are also working in the judicial system and are discharging much higher responsibility than the responsibility cast on the employees of the sub-ordinate Courts, yet they are not given the same treatment as have been given to the employees of the subordinate Courts. Their contention is that in terms of the directions issued by the Apex Court in the case of All India Judges Association (supra), the State government has issued the orders on 6.10.2010 giving medical reimbursement allowances, additional allowances to the

employees working in the Record Room and Nazrat and to the employees who are assigned the duty as Driver and grant of increments of pay in addition to traveling allowances to the personal Assistants and Private Secretaries and employees posted in the cities like Bhopal, Indore, Jabalpur and Gwalior, who are given 150/- per month allowances. However, these benefits are not extended to the employees of the High Court.

The Registry has put a note that such recommendations have already been made by the Registry as back as on 10.12.2007, 16/19.9.2008 and, therefore, nothing more can be suggested as the High Court on administrative side can only make a recommendation to that effect to the State. The other reason assigned in the note is that the Justice Shetty Commission recommendations are not made for the employees of the High Court, but are meant only for the employees of the sub-ordinate Court. Therefore, nothing more is required to be done on the representation of the employees of the High Court.

Though the Shetty Commission recommendations are not specifically applicable to the employees of the High Court, but since they are also part of the judicial system for which the consideration was done in the aforesaid case of All India Judges Association (supra), by the Apex Court, the recommendation made by the Shetty Commission should not be read only for the employees of the sub-ordinate Courts. The employees of the High Court are discharging more onerous duty in comparison to the employees of the District Courts and for the equal cadre at least there should not be disadvantageous service condition for the employees of the High Court.

The Committee, therefore, recommends that a reminder in respect of such a proposal sent by the High Court may be sent to the State Government and the representation of the employees of the High Court may be

included in the writ petitions pending before the High Court on judicial side in respect of grievance of such employees as interlocutory application."

(Emphasis supplied)

7. The Secretary, Law and Legislative Department, State of Madhya Pradesh by order dated 28.01.2017 granted benefit of Shetty Commission to the employees of the Sub-ordinate Court with effect from 01.04.2003.

8. It is an admitted fact, from the pleadings of the petitioners and the pleadings of the respondents that the employees working on Class III and IV posts in the District Courts of the State of Madhya Pradesh are getting higher pay and benefits in comparison to the employees who are working in the High Court of Madhya Pradesh on Class III and IV posts. The District Court employees have been given benefit of one additional increment w.e.f. 01.04.2003 and one up-gradation who are below the grade of pay of Rs.3600/- and two up-gradations to the employees who were in the grade of pay of Rs.3600/- from 01.04.2003. The State in its reply pleaded that the employees of the District Courts have been granted benefits in accordance with the recommendations of Shetty Commission in accordance with the judgment of the apex Court *All India Judges Association* (supra). The employees of the High Courts are not included in the recommendations of Shetty Commission hence, the employees who are working at the High Court level in the same cadre have not been given benefit.

9. The Apex Court in the case of *Supreme Court Employees Welfare Association vs Union of India and another* reported in 1993 (Sup 3) SCC 727 has considered the question for grant of same pay scale and benefits to the employees working in the Supreme Court at par with the employees working in Delhi High Court and held as under:

"15. The aforesaid recommendations of the Committee of Judges of this Court which have been accepted by the then Chief Justice of India and which are to be forwarded to the President for his approval cannot be held, for the present, to be a rule within the meaning of Article 146 of the Constitution. But those recommendations can certainly form basis for issuing interim direction regarding payment of the revised scale to the holders of different categories

of posts within the Registry of this Court. It is an admitted position that the question regarding revision of scale of pay of different categories of employees of this Court w.e.f. 1.1.1986 is pending consideration for more than seven years. During the hearing of the applications for interim directions we were informed that holders of the corresponding posts of the High Court of Delhi have been getting the revised scale of pay pursuant to the orders aforesaid dated 4.11.1991 and 14.11.1991. There does not appear to be any justification that when the holders of corresponding posts in the High Court of Delhi are getting the scales of pay pursuant to the orders aforesaid, how these scales could be denied to holders of the corresponding posts of the Apex Court in the country till the rules come in force.

16. On behalf of Union of India an application has been filed for recall/modification of aforesaid order dated 25.7.1986. We find no reason to recall the said order which has already been implemented. The Committee of Judges while making recommendations have also taken note of this aspect

17. It appears before the Committee on behalf of Ministry of Finance an anomaly was pointed out which has been stated as follows:

(A) The Punjab High Court pay-scale of Rs. 400-600 extended to Junior Clerks of the Delhi High Court w.e.f. 1.1.1978 had been fixed after absorbing the Dearness Allowance calculated at C.P.I. 320.

(B) Even so, the Dearness Allowance was given to the Junior Clerks of Delhi High Court at the Central Government rates which had been calculated over and above the basic pay fixed as on 1.1.1973 taking the then existing C.P.I. 200 as the basis.

(C) The Punjab High Court pay-scale of Rs.

300- 430 accorded to Class IV employees of the Delhi High Court was again arrived at after absorbing the Dearness Allowance calculated at C.P.I. 320 as on 1.1.1978 and even so the Dearness Allowance was given to them at the Central Government rates which was calculated over and above the Basic pay fixed on 1.1.1973 taking C.P.I. 200 as the basis.

(D) As a result their pay-scales were higher than what was legitimately due to the corresponding posts in the Government of India and that had resulted in double payment of Dearness Allowance for 120 points of C.P.I. and this had resulted in an anomaly, namely, the Class IV employees of the Delhi High Court and of the Supreme Court to whom similar benefits were extended pursuant to the interim order of this Court were drawing a higher salary which works out to Rs. 159/- more as on 1.1.1978 and Rs. 308/- more as on 1.1.1986, compared with the salary accorded to Class IV employees in the service of the Central Government and their salary is even more than the pay of L.D.Cs. in Central Government service.

(E) The Junior Clerks of the Delhi High Court and of the Supreme Court to whom the pay-scales of the Delhi High Court were extended pursuant to the interim order of this Court have been drawing a higher salary which works out to Rs. 159/- more than the corresponding Central Government employees as on 1.1.1978 and by Rs. 356/- as on 1.1.1986.

(F) That the confirming of similar pay-scales to Junior Clerks and Class IV employees on the establishment of this Court by the Rules to be made by the Chief Justice of India under Article 146 results in great disparity between the pay-scales of

the corresponding posts under the Central Government and this will constitute a ground for the central Government employees to demand parity in the pay-scales, i.e., pay-scales accorded to the corresponding employees of the Delhi High Court and the Supreme Court and this will result in enormous financial liability on the Central Government.

18. We first remove the anomaly in the recommendations made by the Committee in respect of the posts of Private Secretaries to the Registrars of the Supreme Court and which are the subject matter of interlocutory application No. 5 of 1992. The Committee in its recommendations has allowed the pay-scale of Rs. 3000-4500/- in respect of the posts of Section Officer, Librarian, Court Master and Sr. Assistant Librarian but has recommended the pay-scale to Private Secretary to the Registrar at Rs. 2300-3700/- A perusal of the pay-scales as recommended by the Fourth Pay Commission itself at item No. 11 shows that the Section Officer, Librarian, Private Secretary to the Chief Justice, Private Secretary to the Judges, Private Secretary to Registrar, Court Master, and Sr. Assistant Librarian have been given the pay-scale of Rs. 2300-3700/-. This clearly shows that the posts of Private Secretary to Registrar was kept equivalent to the other posts of Section Officer, Court Master etc., as already mentioned above and fixed in the same pay scale of Rs. 2300-3700/-. The Committee of Judges have recommended the increased pay scale of Rs. 3000-4500/- in case of Section Officer, Librarian, Court Master and Sr. Assistant Librarian who were fixed in the pay scale of Rs. 2300-3700/- by the Fourth Pay Commission. The post of Private Secretary to the Registrar being also in the pay-scale of Rs. 2300- 3700/- should be entitled to the pay-scale of Rs. 3000- 4500/-. It may also be noted that even on 1.1.1986 from which date the recommendations of the Fourth Pay Commission has been made to be effective, Private Secretary to Registrar was

in the same pay-scale of Rs. 775-1200/- as given to Section Officer, Librarian, Private Secretary to The Chief Justice, Private Secretary to the Judges, Court Master and Sr. Assistant Librarian. Thus in the circumstances mentioned above when all the other officers who were in the pay-scale of Rs. 775-1200/- as on 1.1.1986 and fixed in the pay-scale of Rs. 2300-3700/- even by the Fourth Pay Commission have been recommended the pay-scale of Rs. 3000-4500/- by the Committee of Judges; the Private Secretary to the Registrar is also became entitled to the same pay-scale of Rs. 3000-4500/- . The Interlocutory Application No. 5 of 1992 in Writ Petition (Civil) No. 801 of 1984 stands disposed of in the manner indicated above.

19. Taking the recommendations of the Committee of Judges as a base, we would now dispose of the other interim applications mentioned above. In Interlocutory Application No. 4 of 1992 filed by the Junior Stenographers it has been contended that the Junior Clerks of Delhi High Court have been fixed in the pay-scale of Rs. 1350-2200/- from 1.1.1986. By an order of this Court dated 18.4.1991 the Junior Clerks of this Court have also been granted a similar pay-scale of Rs. 1350-2200/- w.e.f. 1.1.1986. It has been submitted that the post of Junior Stenographer is a promotional post from Junior Clerks. In the Third Pay Commission the Junior Stenographers were fixed in the pay-scale of Rs 330-560/- which was also the pay-scale of Senior Clerks. So far as the Junior Clerks are concerned they were fixed in the pay-scale of Rs. 260- 400/- by the Third Pay Commission. The Committee of Judges have also recommended the pay-scale of Rs.1400-2300/- to the Junior Stenographers treating them at par with Senior Clerks of this Court who are equivalent to Upper Division Clerks of the Delhi High Court. It has been contended on behalf of the Junior Stenographers that they are also entitled to the pay-scale of Rs. 1400-2300/- as already recommended by the Committee. We find force in the above contention. The Senior Clerks of this Court have been

treated equivalent to U.D.Cs. of Delhi High Court who have been allowed the pay-scale of Rs. 1400-2300/- and the Junior Stenographers being treated at par with the Senior Clerks of this Court have been rightly placed by the Committee in the pay-scale of Rs. 1400-2300/-. It may also be noted that the Junior Clerks have already been allowed the pay scale of Rs. 1350-2200/- and as such the Junior Stenographers of this Court, who are on a higher posts than the Junior Clerks, are entitled to the pay-scale of Rs. 1400-2300/- as recommended by the Committee of Judges. The Interlocutory Application No. 4 of 1992 in Writ Petition (civil) No. 801 of 1986 filed by the Junior Stenographers stands disposed of in the manner indicated above.

20. As regards Interlocutory Application No. 3 of 1992 in Writ Petition (civil) No. 801 of 1986 filed by the Supreme Court Employees Welfare Association it has been prayed that in view of the order passed by the High Court of Delhi directing payment of the pay-scale of Rs. 3000-4500/- w.e.f. 1.1.1986 to the Court Masters, Superintendents and other categories of employees of the said Court, the staff holding corresponding posts in this Court should also be allowed the aforesaid pay-scales by way of interim measure till the rules are framed under Article 146 of the Constitution.

21. It may be worthwhile to note that the Committee of Judges have already recommended the pay-scale of Rs. 3000-4500/- in the case of Section Officer, Librarian, Court Master, Sr. Assistant Librarian to bring them at par with the incumbents holding corresponding posts of Superintendent, Librarian and Court Master in the Delhi High Court. The Committee of Judges have also recommended new pay-scale of Rs. 3300-4800/- in case of the posts of Assistant Registrar, Principal Private Secretary to the Chief Justice of India, Assistant Editor, Supreme Court Reports, Chief Librarian, Assistant Registrar-cum-Private Secretary to the Chief Justice of India, Assistant

Registrar-cum-Private Secretary to the Judges and Assistant Registrar-cum-Private Secretary to the Registrar-General of this Court. The said new pay-scale has been recommended in view of the fact that the lower post of Section Officer, Librarian, Court Master and Sr. Assistant Librarian have been fixed in the pay-scale of Rs. 3000-4500/-. It is needless to mention that in the aforesaid category of posts for which the pay-scale of Rs. 3000-4500/- has been recommended, one more category of Private Secretary to Registrar shall be added which have already been dealt above while disposing of Interlocutory Application No. 5 of 1992. Thus we direct that the recommendation made by the Committee of Judges for granting the pay-scale of Rs. 3000-4500/- and a new pay-scale of Rs. 3300-4800/- for the posts mentioned therein may be given by way of interim measure from the month of March, 1993 subject to the Rules made by the Chief Justice of India under Article 146 of the Constitution.

22. It may be noted that the Delhi High Court by order dated 14.11.1991 in Writ Petition No. 2756 of 1991 had allowed the pay-scale of Rs. 3000-4500/- from 1.1.1986 to the Court Masters, and Superintendents of Delhi High Court and the Special Leave Petitions No. 2594 of 1992 filed against the Judgment of the High Court having been dismissed on 25.3.92 by this Court and the same having become final, the employees in the Supreme Court are justified in claiming the pay-scale of Rs. 3000-4500/- from 1.1.1986. Same is the position in the case of Junior Stenographer. The Chief Justice may consider and if deem appropriate direct that the payment of arrears can be made by deposit of the whole arrears or part in General Provident Fund or by way of suitable instalments as the case may be by taking note of the financial involvement in consultation with the Government. We are making it clear that we are not giving any direction in this regard and the Chief Justice while framing the Rules under Article 146 of the Constitution shall be free to consider and pass

appropriate orders as regards the arrears. Interlocutory Application Nos.2 and 3 in Writ Petition (civil) No. 801 of 1986 stand disposed of in the manner indicated above.

23. Interlocutory Application No. 2 of 1992 in Writ Petition (civil) No. 1201 of 1986 has been filed by the Supreme Court Class IV Employees Welfare Association claiming the pay-scale of Rs. 975-1660/- as allowed to such employees by the Delhi High Court vide its Judgment dated 4.11.1991 in Civil Writ No. 3464 of 1990. The Committee of Judges have recommended the aforesaid pay-scale to Peon, Frash and Safaiwala employed in the Supreme Court fixing them at par with corresponding post of Peon, Frash and Sweeper in the Delhi High Court. The Committee of Judges have also recommended the new and higher pay-scale of Rs. 1000-1750/- to Daftry and Jamadar employed in the Supreme Court in view of the fact that these posts are promotional posts and are entitled to higher pay-scale as the lower pay-scale of Rs. 975- 1660/- has been recommended to Peon, Frash and Safaiwala. We direct that the pay-scales as recommended by the Committee of Judges may be given from the month of March, 1993 by way of interim measure. It may be noted that the Union of India has already filed Special Leave Petition under Article 136 of the Constitution before this Court against the decision of the Delhi High Court dated 4.11.1991 passed in the Civil Writ Petition No. 3464 of 1990. The said Special Leave Petition is still pending for consideration. We, therefore, direct that the grant of the above-mentioned pay-scales of Rs. 975-1660/- to the Peon, Frash and Safaiwala and the pay-scale of Rs. 1000-1750/- to Daftry and Jamadar from March, 1993 shall be subject to the decision of the Special Leave Petition filed by the Union of India against the Judgment of Delhi High Court dated 4.11.1991. This disposes of the Interlocutory Application No. 2 of 1992 in Writ Petition (civil) No. 1201 of 1986. As regards arrears from 1.1.86 the Chief Justice shall pass appropriate orders."

10. In the above judgment, the Apex Court, by way of judicial pronouncement, granted benefit to the employees working in the Supreme Court at par with the employees who are working in the High Court of Delhi. In the matter of payment of salary, the Apex Court further observed that there does not appear to be any justification that when the holders of corresponding posts in the High Court of Delhi are getting the scales of pay pursuant to the orders aforesaid, how those scales could be denied to holders of the corresponding posts of the Apex Court in the country till the rules come in force.

11. The Calcutta High Court in the case of *State of West Bengal & others vs The High Court Employees' Welfare Association & others*, reported in 2016 (3) Cal LJ 448 has also granted benefit of additional increments to the employees working in the High Court on the principle that the employees working in District Courts of West Bengal were granted the additional benefits.

12. The High Court of Tripura, Agartala in the case of *High Court Employees' Association and others vs The State of Tripura and others*, passed in WP(C) No. 71 of 2015 has also followed the same principle in granting benefit to the employees working in the High Court.

13. Recently, the Apex Court in the case of *State of Punjab and others vs Jagjit Singh and others*, reported in (2017) 1 SCC 148, has considered the applicability of principle of equal pay for equal work in detail and has considered all the previous judgments for and against in regard to equal pay for equal work and held as under:

"42. All the judgments noticed in paragraphs 7 to 24 hereinabove, pertain to employees engaged on regular basis, who were claiming higher wages, under the principle of 'equal pay for equal work'. The claim raised by such employees was premised on the ground, that the duties and responsibilities rendered by them, were against the same post for which a higher pay-scale was being allowed, in other Government departments. Or alternatively, their duties and responsibilities were the same, as of other posts with different designations, but they were placed in a lower scale. Having been painstakingly taken through the parameters laid down by this Court, wherein the principle

of 'equal pay for equal work' was invoked and considered, it would be just and appropriate, to delineate the parameters laid down by this Court. In recording the said parameters, we have also adverted to some other judgments pertaining to temporary employees (also dealt with, in the instant judgment), wherein also, this Court had the occasion to express the legal position with reference to the principle of 'equal pay for equal work'. Our consideration, has led us to the following deductions:

42.1. The 'onus of proof', of parity in the duties and responsibilities of the subject post with the reference post, under the principle of 'equal pay for equal work', lies on the person who claims it. He who approaches the Court has to establish, that the subject post occupied by him, requires him to discharge equal work of equal value, as the reference post (see— the Orissa University of Agriculture & Technology case¹⁰, Union Territory Administration, Chandigarh v. Manju Mathur¹⁵, the Steel Authority of India Limited case¹⁶, and the National Aluminum Company Limited case).

42.2. The mere fact that the subject post occupied by the claimant, is in a "different department" vis-a-vis the reference post, does not have any bearing on the determination of a claim, under the principle of 'equal pay for equal work'. Persons discharging identical duties, cannot be treated differently, in the matter of their pay, merely because they belong to different departments of Government (see – the Randhir Singh case¹, and the D.S. Nakara case).

42.3. The principle of 'equal pay for equal work', applies to cases of unequal scales of pay, based on no classification or irrational classification (see – the Randhir Singh case¹). For equal pay, the concerned employees with whom equation is sought, should be performing work, which besides being functionally equal, should be of the same quality and sensitivity (see

– *the Federation of All India Customs and Central Excise Stenographers (Recognized) case, the Mewa Ram Kanojia case, the Grih Kalyan Kendra Workers' Union case*⁶ and the *S.C. Chandra case*).

42.4. *Persons holding the same rank/designation (in different departments); but having dissimilar powers, duties and responsibilities, can be placed in different scales of pay, and cannot claim the benefit of the principle of 'equal pay for equal work' (see – the Randhir Singh case¹, State of Haryana v. Haryana Civil Secretariat Personal Staff Association, and the Hukum Chand Gupta case). Therefore, the principle would not be automatically invoked, merely because the subject and reference posts have the same nomenclature.*

42.5. *In determining equality of functions and responsibilities, under the principle of 'equal pay for equal work', it is necessary to keep in mind, that the duties of the two posts should be of equal sensitivity, and also, qualitatively similar. Differentiation of pay-scales for posts with difference in degree of responsibility, reliability and confidentiality, would fall within the realm of valid classification, and therefore, pay differentiation would be legitimate and permissible (see – the Federation of All India Customs and Central Excise Stenographers (Recognized) case³ and the State Bank of India case⁸). The nature of work of the subject post should be the same and not less onerous than the reference post. Even the volume of work should be the same. And so also, the level of responsibility. If these parameters are not met, parity cannot be claimed under the principle of 'equal pay for equal work' (see - *State of U.P. v. J.P. Chaurasia*⁴, and the *Grih Kalyan Kendra Workers' Union case*).*

42.6. *For placement in a regular pay-scale, the claimant has to be a regular appointee. The claimant should have been selected, on the basis of a regular*

process of recruitment. An employee appointed on a temporary basis, cannot claim to be placed in the regular pay-scale (see – the Orissa University of Agriculture & Technology case).

42.7. Persons performing the same or similar functions, duties and responsibilities, can also be placed in different pay-scales. Such as - 'selection grade', in the same post. But this difference must emerge out of a legitimate foundation, such as – merit, or seniority, or some other relevant criteria (see - State of U.P. v. J.P. Chaurasia).

42.8. If the qualifications for recruitment to the subject post vis-a- vis the reference post are different, it may be difficult to conclude, that the duties and responsibilities of the posts are qualitatively similar or comparable (see – the Mewa Ram Kanojia case⁵, and Government of W.B. v. Tarun K. Roy). In such a cause, the principle of 'equal pay for equal work', cannot be invoked.

42.9. The reference post, with which parity is claimed, under the principle of 'equal pay for equal work', has to be at the same hierarchy in the service, as the subject post. Pay-scales of posts may be different, if the hierarchy of the posts in question, and their channels of promotion, are different. Even if the duties and responsibilities are same, parity would not be permissible, as against a superior post, such as a promotional post (see - Union of India v. Pradip Kumar Dey, and the Hukum Chand Gupta case).

42.10. A comparison between the subject post and the reference post, under the principle of 'equal pay for equal work', cannot be made, where the subject post and the reference post are in different establishments, having a

different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see – the Harbans Lal case). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see – Official Liquidator v. Dayanand).

42.11. Different pay-scales, in certain eventualities, would be permissible even for posts clubbed together at the same hierarchy in the cadre. As for instance, if the duties and responsibilities of one of the posts are more onerous, or are exposed to higher nature of operational work/risk, the principle of 'equal pay for equal work' would not be applicable. And also when, the reference post includes the responsibility to take crucial decisions, and that is not so for the subject post (see – the State Bank of India case).

42.12. The priority given to different types of posts, under the prevailing policies of the Government, can also be a relevant factor for placing different posts under different pay-scales. Herein also, the principle of 'equal pay for equal work' would not be applicable (see – State of Haryana v. Haryana Civil Secretariat Personal Staff Association).

42.13. The parity in pay, under the principle of 'equal pay for equal work', cannot be claimed, merely on the ground, that at an earlier point of time, the subject post and the reference post, were placed in the same pay- scale. The principle of 'equal pay for equal work' is applicable only when it is shown, that the incumbents of the subject post and the reference post, discharge similar duties and responsibilities (see – State of West Bengal v. West Bengal Minimum Wages Inspectors Association).

42.14. *For parity in pay-scales, under the principle of 'equal pay for equal work', equation in the nature of duties, is of paramount importance. If the principal nature of duties of one post is teaching, whereas that of the other is non-teaching, the principle would not be applicable. If the dominant nature of duties of one post is of control and management, whereas the subject post has no such duties, the principle would not be applicable. Likewise, if the central nature of duties of one post is of quality control, whereas the subject post has minimal duties of quality control, the principle would not be applicable (see - Union Territory Administration, Chandigarh v. Manju Mathur).*

42.15. *There can be a valid classification in the matter of pay-scales, between employees even holding posts with the same nomenclature i.e., between those discharging duties at the headquarters, and others working at the institutional/sub-office level (see - the Hukum Chand Gupta case), when the duties are qualitatively dissimilar.*

42.16. *The principle of 'equal pay for equal work' would not be applicable, where a differential higher pay-scale is extended to persons discharging the same duties and holding the same designation, with the objective of ameliorating stagnation, or on account of lack of promotional avenues (see - the Hukum Chand Gupta case).*

42.17. *Where there is no comparison between one set of employees of one organization, and another set of employees of a different organization, there can be no question of equation of pay-scales, under the principle of 'equal pay for equal work', even if two organizations have a common employer. Likewise, if the management and control of two organizations, is with different entities, which are independent of one another, the principle of 'equal pay for equal work' would not apply (see - the S.C. Chandra case, and the National Aluminum Company Limited case)."*

* * * *

59. We would also like to extract herein Article 7, of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:-

"7. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

India is a signatory to the above covenant, having ratified the same on 10.4.1979. There is no escape from the above obligation, in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of 'equal pay for equal work' constitutes a clear and unambiguous right and is vested in every employee – whether engaged on

regular or temporary basis.

60. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary

employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post."

14. The Apex Court emphatically held in the aforesaid judgment that the principle of equal pay for equal work is applicable if the employees are discharging similar duties and responsibilities in the hierarchy of same posts.

15. To govern the service condition of employees working in the High Court recruitment rules have been framed named as The High Court of Madhya Pradesh (Officers and Employees Recruitment and Conditions of Services, Classification, Control, Appeal and Conduct) Rules, 1996 (hereinafter called 'the Rules of 1996'). The aforesaid rules have been made in exercise of powers conferred by Clause 2 of Article 229 of the Constitution of India by the Chief Justice of the High Court of Madhya Pradesh, Jabalpur. Schedule-I of the Rules prescribes pay scale of the officers and employees working in the High Court.

16. Constitution Bench of the Apex Court in the case of *State of U.P. and another vs C.L. Agrawal and another* reported in (1997) 5 SCC 1 held as under in regard to power of the High Court under Article 226 of the Constitution of India:

"18. There is a passage in the judgment in the case of Supreme Court Employees' Welfare Association that, in the context of the matters before us, deserves to be set out. We endorse what is observed and commend it to the States so that they may deal with proposals made by their Chief Justices with due deference and respect.

"57. So far as the Supreme Court and the High Courts are concerned, the Chief Justice of India and the Chief Justice of the concerned High Court, are empowered to frame rules subject to this that when the rules are framed by the Chief Justice of India or by the Chief Justice of the High Court

relating to salaries, allowances, leave or pensions, the approval of the President of India or the Governor, as the case may be, is required. It is apparent that the Chief Justice of India and the Chief Justice of the High Court have been placed at a higher level in regard to the framing of rules containing the conditions of service. It is true that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions, but it is equally true that when such rules have been framed by a very high dignitary of the State, it should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightaway refuse to grant such approval, but before doing so, there must be exchange of thoughts between the President of India and the Chief Justice of India."

17. Article 229 of the Constitution reads as under:

"229. Officers and servants and the expenses of High Courts;

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct: Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund."

18. The Apex Court further in the case of *State of U.P. Vs Section Officer Brotherhood and another* reported in (2004) 8 SCC 286 has considered the jurisdiction of the Hon'ble the Chief Justice of the High Court and held as under :

32. *In this case, our attention has been drawn to a decision of this Court in Union of India Vs. Kishan K. Sharma and Others [(2004) 2 SCC 173] wherein this Court despite holding that the High Court was not correct in issuing a writ of or in the nature of mandamus directing the Central Government to pay a scale of Rs. 1640-2900 with effect from 1.1.1986 in favour of the Respondents, did not interfere in the matter considering the same to be old one and having regard to the fact that the direction of the High Court had already acted upon. Such is not the position here.*

33. *This Court granted stay of the operation of the judgment regarding enhancement in Civil Appeal No. 1260 of 2001 and granted an ad interim stay of the payment of first instalment of arrears which was going to fall on 1.1.2000 in Civil Appeal No. 1980 of 2000.*

CONCLUSION :

34. *We, therefore, are of the opinion that the impugned judgments cannot be sustained which are set aside accordingly. However, this order shall be subject to the rules framed by the Chief Justice in the case of the Private*

Secretaries of the High Court. It will, however be open to the Chief Justice of the Allahabad High Court to frame appropriate rules as has been done in the case of the Private Secretaries or constitute an appropriate committee for the said purpose. We have no doubt in our mind that if such committee is constituted and any recommendation is made for enhancement of the scale of pay for the concerned officers by the Chief Justice, the same would be considered by the State Government in its proper perspective and in the light of the observations made hereinbefore expeditiously."

19. In the present case, the petitioners have filed a letter dated 27.6.2015 along with the proposed pay-scales by way of additional written submission. The High Court recommended to the Government certain pay scales to its employees. It was forwarded to the Government for necessary approval. That, recommendations are still pending before the State Government for consideration.

20. In view of the aforesaid discussion, the principle of law is that the Chief Justice has power under Article 229 (2) of the Constitution of India to frame rules in regard to pay and allowances of the employees of the Court and send the same to the State Government for approval of the Hon'ble Governor. The Grievance Committee in its meeting dated 20.08.2013 has already considered the matter and resolved that the High Court may sent a proposal to the State Government in regard to pay and allowances. The salary and working conditions of the employees may not be disadvantageous in comparison to salary and service conditions of the District Court employees. The Hon'ble Apex Court and other High Courts have issued certain directions in regard to grant of benefits, as quoted above.

21. Looking to the aforesaid facts of the case and the principle laid down by the Apex Court in the matter of *Supreme Court Employees Welfare Association* (Supra), and other High Courts in the case of *State of West Bengal & others* (supra) and in the case of *High Court Employees' Association, Tripura* (supra) and also keeping in view the fact that High Court had already made recommendations to the State Government for implementation of Sheety Pay Commission to the employees of the High Court as back as on 10.12.2007 and on 16/19.09.2008, in our opinion it would be

just and proper to direct the respondents to grant one additional increment to the petitioners, who were working below the grade pay of Rs.3600/- w.e.f. 01.04.2003 and two additional increments to the remaining petitioners, who were working in the grade pay of Rs.3600/- w.e.f. 01.04.2003. The petitioners would be eligible to get arrears of salary. Arrears of salary be paid within period of two months from the date of receipt of certified copy of this order. Respondents No.2 and 3 are further directed to grant, sanction and release necessary fund to meet the contingent requirement within the period as mentioned above.

22. So far as relief in regard to grant of higher pay scale and allowances are concerned, in view of the principle of law laid down by the Constitution Bench of the Apex Court in the matter of *State of U.P. and another vs C.L. Agrawal and another* reported in (1997) 5 SCC 1, this Court could not issue any direction for grant of pay scale. However, keeping in view the fact that the matter of pay scale and allowances of the employees of the High Court is pending before the State Government since 27.6.2015, the respondents are directed to finalize the same within a period of four months. While considering the recommendations, the State shall take into consideration the principle of law laid down by the apex Court in the case of *State of U.P. and another* (supra).

23. Accordingly, petition is allowed in part with aforesaid observations and directions. No order as to costs.

Petition partly allowed.

I.L.R. [2017] M.P., 1449

APPELLATE CIVIL

Before Mr. Justice J.P. Gupta

F.A. No. 728/2000 (Jabalpur) decided on 8 February, 2017

SHYAM SINGH (MST.) & ors.

...Appellants

Vs.

STATE OF M.P.

...Respondent

(Alongwith F.A. 761/2000)

**A. - Land Acquisition Act (1 of 1894), Section 18 -
Enhancement of Compensation - Computation - Comparison
Method - Compensation of Rs. 8026 granted by Land Acquisition**

Officer holding the rate of land to be Rs. 1010 per acre, against which an application u/S 18 was filed by claimants, which was referred to District Court – Reference Court determined market price of acquired land to be of Rs. 12000 per acre – Claimant and State Government, both filed separate appeals – Held – Applying comparison method, claimant produced two sale deeds before acquisition of land and two sale deeds executed after acquisition of land – Although both sale deeds executed before date of acquisition belong to same village but within a very short span, there was a vast difference in rates and there is no evidence on record to show that the lands sold were situated near the acquired land – Such sale deeds cannot be taken into consideration for determination of compensation – Further held – In F.A. No. 111/96, land situated at Sidhi was acquired in 1990 and rate was determined to be Rs. 24,000 per acre – Present acquired land is also situated in District Sidhi and was acquired in 1979, near about 12 years before – Looking to the rate of escalation of price of land which was not more than 6 to 9%, determination of market value @ Rs. 12000 acre is neither meager nor excessive – Court below rightly considered the rate of escalation and appropriately fixed the value of land – Appeal filed by State is dismissed whereas the one filed by claimants is partly allowed. (Para 8 & 9)

क. भूमि अर्जन अधिनियम (1894 का 1), धारा 18 – प्रतिकर की वृद्धि – संगणना – तुलना प्रणाली – भूमि अर्जन अधिकारी द्वारा भूमि की दर रु. 1010 प्रति एकड़ ठहराकर रु. 8026 का प्रतिकर प्रदान किया गया जिसके विरुद्ध दावेदारों द्वारा धारा 18 के अंतर्गत आवेदन प्रस्तुत किया गया था जिसे जिला न्यायालय को निर्देशित किया गया था – निर्देश न्यायालय ने अर्जित भूमि का बाजार मूल्य रु. 12,000 प्रति एकड़ निर्धारित किया – दावाकर्ता तथा राज्य सरकार दोनों ने पृथक अपील प्रस्तुत की – अभिनिर्धारित – तुलना प्रणाली लागू करते हुए दावेदारों ने भूमि के अर्जन से पूर्व के दो विक्रय विलेख एवं भूमि के अर्जन के पश्चात् निष्पादित दो विक्रय विलेख प्रस्तुत किये – यद्यपि अर्जन की तिथि से पूर्व निष्पादित दोनों विक्रय विलेख एक ही गांव के हैं किन्तु बहुत अल्प समयावधि के भीतर, दरों में प्रचंड अंतर था और यह दर्शाने के लिए अभिलेख पर कोई साक्ष्य नहीं कि विक्रय की गई भूमियां, अर्जित भूमि के नजदीक स्थित थीं – प्रतिकर के निर्धारण हेतु उक्त विक्रय विलेखों को विचार में नहीं लिया जा सकता – आगे अभिनिर्धारित – प्रथम अपील क्र. 111/96 में सीधी स्थित भूमि को 1990 में अर्जित किया गया था और रु. 24,000 प्रति एकड़ की दर निर्धारित की गई थी – वर्तमान में अर्जित भूमि भी सीधी जिले

में स्थित है और 1979 में अर्जित की गई थी, लगभग 12 वर्ष पूर्व - भूमि के मूल्यवृद्धि की दर को देखते हुए, जो कि 6 से 9 % से अधिक नहीं थी, रु. 12,000 प्रति एकड़ की दर से बाजार मूल्य का निर्धारण न तो अल्प है न अत्याधिक है - निचले न्यायालय ने उचित रूप से मूल्यवृद्धि की दर को विचार में लिया और समुचित रूप से भूमि का मूल्य निश्चित किया - राज्य द्वारा प्रस्तुत अपील खारिज जबकि दावेदारों द्वारा प्रस्तुत अपील अंशतः मंजूर।

B. Land Acquisition Act (1 of 1894), Section 23(1-A) & 23(2) - Amendment - Amount of Interest and Solatium - Enhancement - Held - In the present case, land was acquired in 1979 - Provisions were inserted in the Statute in 1984 - Reference Court passed the judgment in 2000 where proceedings were pending since 1982 - Supreme Court held that in aforesaid circumstances, Reference Court will grant compensation considering the amended provision of the Act - Thus, Reference Court is duty bound to grant interest and Solatium as per amended provision - Claimants entitled for solatium @ 30% instead of 15%. (Para 11 & 12)

ख. भूमि अर्जन अधिनियम (1894 का 1), धारा 23(1-ए) व 23(2)-संशोधन - ब्याज एवं तोषण की रकम - वृद्धि - अभिनिर्धारित - वर्तमान प्रकरण में, भूमि 1979 में अर्जित की गई थी - कानून में उपबंधों को 1984 में अंतःस्थापित किया गया था - निर्देश न्यायालय ने 2000 में निर्णय पारित किया जहां 1982 से कार्यवाहियां लंबित थी - उच्चतम न्यायालय ने अभिनिर्धारित किया कि उपरोक्त परिस्थितियों में, निर्देश न्यायालय, अधिनियम के संशोधित उपबंध को विचार में लेकर प्रतिकर प्रदान करेगा - अतः, निर्देश न्यायालय, ब्याज एवं तोषण को संशोधित उपबंध के अनुसार प्रदान करने के लिए कर्तव्यबद्ध है - दावेदार 15% की बजाय 30% की दर से तोषण के हकदार।

Cases referred :

F.A. No. 111/1996 decided on 05.08.1999, (2004) 1 SCC 467.

Kamal Singh, for the appellants.

Amod Gupta, P.L. for the State.

J U D G M E N T

J.P. GUPTA, J. :- This judgment shall govern the disposal of both the aforesaid First Appeals, as both arise against the same judgment.

2. Both the aforesaid First Appeals, i.e. F.A. No.728/2000 and

F.A.No.761/2000, have been filed against the judgment dated 26.6.2000 passed by I Addl. District Judge, Sidhi, in Land Acquisition Case No.7/82, on the reference made by the appellants/claimants of F.A.No.728/2000 under section 18 of the Land Acquisition Act (hereinafter referred to as 'the Act'), against the award dated 29.8.1980 passed in Land Acquisition Case No.17/A-82/1978-79, for the land bearing survey no.479, 481, 482, 483, 488, 489, 494, 495 and 478, total 9 khasras ad measuring 6.91 acres situated at village Karondiya, South Tola, Sidhi, Tahsil Gopadbanas, District Sidhi, which were of the joint ownership of the appellants/claimants, and were acquired vide notification dated 14.3.1979 issued under section 4(1) of the Land Acquisition Act for the purpose of construction of the dam.

3. The Land Acquisition Officer passed the award dated 29.8.1980 whereby total market value of the land on the date of acquisition was determined to the tune of Rs.6,979.10/-, i.e. at the rate of Rs.1,010/- per acre and with other statutory benefits, total compensation was determined to the tune of Rs.8,026/-. Against the aforesaid award, an application under section 18 of the Land Acquisition Act was submitted by the appellants before the Land Acquisition Officer, which was referred to the District Court, Sidhi. In the application appellants claimed that the market value of the land fixed by the Land Acquisition Officer is very meager and not actual. It ought to have been fixed at the rate of Rs.2/- per sqft., as the acquired land had a potential for the purpose of construction of houses, as the land was situated in the midst of the residential area. Apart from it, for Medh and extra soil put in the land for enhancement of productivity Rs.50,000/- be determined as the market price of Medh and soil and with other statutory benefits compensation to be determined.

4. On behalf of the respondent-State before the Reference court no written objection was filed. Learned Reference court, after recording of the evidence and having heard the arguments of learned counsel for the parties and perusal of the record, determined the market price of the acquired land Rs.12,000/- per acre and the cost of expenditure of construction of Medh and excess soil Rs.25,000/-. Accordingly, compensation was determined along with all statutory benefits and on enhanced amount, interest was awarded as per section 28 of the Act.

5. Against the aforesaid impugned judgment of the Reference Court, both the parties have filed appeals. First Appeal No.728/2000 has been filed on

behalf of the claimants on the ground that the finding of the learned lower court is contrary to law, facts and evidence. The adjoining land was acquired for the same purpose by the respondent in the year 1979 and the market value was evaluated at the rate of Rs.20,000/- per acre, therefore, appellants are entitled to enhanced compensation accordingly. In addition, cost of construction of Medh and improvement in soil ought to have been determined to the tune of Rs.50,000/-. It is further submitted that as per the provision of section 23(1-A) of the Act, 12% interest and as per the provision of section 23(2) of the Act, 30% solacium be also awarded. It is further submitted that the learned court below has committed error in refusing to grant the aforesaid benefit on the ground that in this regard amendment has been incorporated in the Act later on, on the date of notification of the acquisition.

6. Contrary to the aforesaid appeal, State has filed F.A.761/2000 challenging the judgment of the Reference court on the ground that the enhancement of compensation by the learned Reference Court is contrary to law. The order of enhancement of the learned lower court is not based on any cogent, sufficient and plausible reason. It is settled law that while determining the rates of the land under the Land Acquisition Act, the rates prevalent in the adjacent area on the date of notification under section 4(1) of the Act shall be taken into consideration. In this case, learned Reference Court has taken several extraneous consideration while fixing the rate at the rate of Rs.12,000/- per acre. Similarly, without any evidence on record fixed Rs.25,000/- as cost of construction of Medh and improvement in soil. The compensation determined by the Land Acquisition Officer was in accordance with law. The finding and order of enhancement of compensation being arbitrary and illegal, is required to be set aside.

7. Having considered the arguments advanced by learned counsel for the parties and on perusal of the record, following questions arise for determination of this appeal :-

- i) Whether the market value of the acquired land determined by the learned Reference court is incorrect and require any interference ? If yes, then what would be the appropriate market value of the acquired land ?
- ii) Whether the interest and solacium ought to have been calculated as per the amended provision w.e.f. 24.9.1984 ?
- iii) Whether the market value determined for Medh and soil are correct

or require any change ? If yes, then to what extent ?

iv) Relief and cost ?

8. **Question No.1 :** On perusal of the record the appellants claimants for the purpose of determination of the market value of the acquired land, have produced sale-deed for applying comparison method, in which sale-deeds Ex.P/1 dated 22.11.1979 and Ex.P/2 dated 15.12.1980 have been executed after the acquisition of the land. Sale-deed Ex.P/3 dated 1.6.1978 and Ex.P/4 dated 16.11.1978 were executed before the date of acquisition of the acquired land and they belong to the same village. Therefore, they are much relevant and can be considered for determination of market value of the acquired land. As per sale-deed, Ex.P/3, Rs.10,000/- sqft. land have been sold for a sum of Rs.2,000/-. Accordingly, per sqft. rate comes to 0.20 Paisa per sqft. In other words, per acre rate will be Rs.8,712/-. By sale-deed Ex.P/4, 27.4 x 70 sqft. land was sold for Rs.4,000/-. In other words, nearabout Rs.2 per sqft. Therefore, it appears that the land of the same village during the very short span were sold on the very different rates having a vast difference in the rates, i.e. Rs.0.20/- to Rs.2/- and there is no evidence on record to show that the aforesaid land was situated near the acquired land. Similarly, the aforesaid sale-deeds are related to small plot for construction of the houses and the acquired land is very big area and accordingly the rate is required to be fixed. There is no evidence to establish the fact that the acquired lands were the potential for the use of construction of the house. In this regard, statement of only the applicant Makardhawaj Singh, PW1 is on record, which cannot be believed without corroboration with other independent evidence, as ordinarily the claimants have the tendency to narrate the facts in exaggeration with a view to get higher compensation.

9. The learned Reference Court ignoring the aforesaid evidence has determined the market value of the land on the basis of the judgment of this Court passed in First Appeal No.111/1996, parties being *M.P.Grih Nirman Mandal Vs. Smt.Meera Singh and others*, decided on 5.8.1999, in which about the lands situated in Municipal area Sidhi and acquired on 4.10.1990, market value of the land was fixed at the rate of Rs.24,000/- per acre. As the lands in the present case are also situated in the Municipal area of Sidhi and both the lands have the same quality, and the land in the aforesaid judgment was acquired on 4.10.1990 and the land in the present case was acquired on 14.3.1979, i.e. nearabout 12 years before, therefore, taking into consideration

the fact of escalation of price, i.e. nearabout 8% per year and determined the market value of the land in the present case Rs.12,000/- per acre on 14.3.1979. It is a matter of common knowledge that before 1990, rate of escalation of price of the land was not more than 6 to 9%. Later on, the rate of escalation of price has increased, therefore, learned court below has rightly considered the rate of escalation and the approach of the learned court below is apparently appropriate and legal. On perusal of the judgment of this Court passed in the aforesaid F.A., and for the purpose of determination of market value, no relevant material is available and this Court has determined the market value of the similarly situated lands than the judicial notice of the judgment can be taken and considering the judgment market value may be determined. Therefore, the learned court below has not committed any error in considering the aforesaid judgment in view of the facts and circumstances of the case and the material available on record.

10. In the aforesaid circumstances, it is held that determination of market value by the learned Reference court at the rate of Rs.12,000/- per acre is neither meager nor excessive.

11. **Question No.2 :** In this case, benefit of section 23(1-A) of the Act has not been granted on the ground that this provision has been inserted in the Statute w.e.f. 24.9.1984 and the notification for acquisition was issued on 14.3.1979. Similarly, as per the provision of section 23(2) of the Act, in place of 30%, 15% solatium has been awarded on the same ground.

12. Learned counsel for the appellants/claimants has contended that the Reference Court has passed the judgment on 26.6.2000 and the reference proceedings was pending since 5.2.1982. The Apex Court has laid down the law in the case of *Pannalal Ghosh and others Vs. Land Acquisition Collector and others*, reported in (2004)1 SCC 467, that in the aforesaid circumstances, the Reference Court will grant compensation, considering the amended provision of the Act, the aforesaid contention has a substance and learned court below has not considered the aforesaid position of law. The reference court is duty bound to grant interest and solatium as per amended provision in the cases which are decided on 24.9.1984 or afterwards as there is no provision of exclusion of applicability of amended provision on such cases. In view of the above, it is held that the appellant/claimants are entitled to get benefit of section 23(1-A) and 23(2) of the Act regarding interest and solatium. In other words, the appellants are entitled on the market value of

the land, 12% interest from the date of publication of notification under section 4(1) of the Act, i.e. 14.3.1979 to the date of award of the Collector or the date of taking possession of the land, whichever is earlier and is also entitled to solatium at the rate of 30% in place of 15%.

13. **Question No.3** : So far as other claims of the appellants/claimants are concerned, there is no clear and sufficient evidence to hold that the amount of Rs.25,000/- is meager or not proper. Learned counsel for the appellant claimant has relied on the order-sheets of the Land Acquisition Officer dated 17.7.1979 in which it has been mentioned that Irrigation Department submitted report and according to the report Rs.48,000/- compensation was proposed in the aforesaid head; but the proposal has been turned down by the Additional Collector. In the aforesaid circumstances, on the basis of Ex.P/1, compensation cannot be determined under the aforesaid head. However, in Ex.P/1, the estimation was based on the basis of opinion of the Panch. In the aforesaid circumstances, it cannot be said that the determination of compensation in the aforesaid head is without any basis or no compensation can be granted, hence in this regard objection of the respondent/State is not considerable. The amount of Rs.25,000/- is not unreasonable or excessive.

14. In view of the aforesaid discussion, it is held that the market value of the acquired land determined by the learned Reference Court is proper and does not require any interference. Therefore, the compensation determined by the Reference Court is held to be appropriate compensation.

15. **Relief and cost** : In the result, First appeal No.761/2000 filed by the State have no substance, hence it is dismissed and First Appeal No.728/2000 filed by the appellant claimants is partly allowed and accordingly impugned judgment is modified to the extent that the appellants/claimants be also paid interest at the rate of 12% on the market value of the land as per provision of section 23(1-A) and solatium be paid at the rate of 30% in place of 15% and compensation be calculated accordingly and thereafter on the enhanced amount interest be paid as per the provision of section 28 of the Act.

16. Accordingly, both the appeals are disposed of with no order as to cost.

Order accordingly

I.L.R. [2017] M.P., 1457

APPELLATE CIVIL

Before Smt. Justice Anjuli Palo

S.A. No. 560/2012 (Jabalpur) order passed on 23 March, 2017

ASHOK KUMAR DUREJA

...Appellant

Vs.

SHRI RAJENDRA KUMAR JAIN THROUGH L.Rs.

...Respondents

A. Civil Procedure Code (5 of 1908), Order 6 Rule 17 and Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(c) and 12(1)(f) – Subsequent Event – Respondent/Plaintiff filed a suit for eviction against Appellant/Defendant which was decreed u/S 12(1)(c) and 12(1)(f) of the Act of 1961 – In first appeal, decree was upheld u/S 12(1)(f) of the Act of 1961 – Second Appeal – Appellant filed an application under Order 6 Rule 17 C.P.C. seeking amendment on the ground of subsequent event – Consideration of amendment application before admission – Held – The question whether party should or should not be allowed to amend its pleadings at appellate stage, cannot be decided unless the appeal is first heard on merits – Consideration of such interim application before admission stage is not proper – Application for amendment shall be considered at the time of final hearing of appeal on merits. (Para 14 & 16)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 एवं स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(सी) व 12(1)(एफ) – पश्चात्पूर्ती घटना – प्रत्यर्थी/वादी ने अपीलार्थी/प्रतिवादी के विरुद्ध वेदखली हेतु वाद प्रस्तुत किया जिसे 1961 के अधिनियम की धारा 12(1)(सी) व 12(1)(एफ) के अंतर्गत डिक्रीत किया गया – प्रथम अपील में, 1961 के अधिनियम की धारा 12(1)(एफ) के अंतर्गत डिक्री को मान्य ठहराया गया था – द्वितीय अपील – अपीलार्थी ने पश्चात्पूर्ती घटना के आधार पर संशोधन चाहते हुए, आदेश 6 नियम 17 सि.प्र.सं. के अंतर्गत आवेदन प्रस्तुत किया – ग्रहण किये जाने से पूर्व संशोधन आवेदन पर विचार – अभिनिर्धारित – प्रश्न कि क्या अपीली प्रक्रम पर, पक्षकार को उसके अभिवचनों को संशोधित करने की अनुमति दी जानी चाहिए अथवा नहीं दी जानी चाहिए, का विनिश्चय नहीं किया जा सकता जब तक कि अपील को प्रथमतः गुणदोषों पर नहीं सुना जाता – ग्रहण किये जाने के प्रक्रम से पूर्व ऐसे अंतरिम आवेदन पर विचार किया जाना उचित नहीं – संशोधन हेतु आवेदन पर विचार, अपील की गुणदोषों पर अंतिम सुनवाई के समय किया जायेगा।

B. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) – Bonafide Requirement – Existence of – Held – An appeal is a continuation of first suit – Landlord’s need must be shown to continue to exist at appellate stage- If tenant is in a position to show that need or requirement no more exist because of subsequent events, it would be open to him to point out such events and the Court including appellate Court has to be examine, evaluate and adjudicate the same. (Para 10)

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(एफ) – वास्तविक आवश्यकता – की विद्यमानता – अभिनिर्धारित – अपील, प्रथम वाद की निरंतरता है—भूमिस्वामी की आवश्यकता की विद्यमानता अपीली प्रक्रम पर जारी रहना दर्शाया जाना चाहिए – यदि किराएदार यह दर्शाने की स्थिति में है कि पश्चात्पूर्ती घटनाओं के कारण अब जरूरत या आवश्यकता विद्यमान नहीं रही, ऐसी घटनाओं को वह इंगित करने के लिए स्वतंत्र होगा तथा न्यायालय, जिसमें अपीली न्यायालय भी समाविष्ट है, को उक्त का परीक्षण, मूल्यांकन एवं न्यायनिर्णयन करना चाहिए।

Cases referred :

2012 SCC OnLine MP 6125, (1981) 3 SCC 103, 1972 MPLJ 524, (1975) 1 SCC 770.

Amit Sohani, for the appellant.

R.K. Sanghi, for the respondent.

ORDER

ANJULI PALO, J. :- Heard on IA No.4343/2017 an application for considering IA No.1118/17. This application under Order 6 Rule 17 of CPC has been filed on the ground that the respondent/plaintiff had filed a suit for eviction of appellant from the suit premises under the provisions of Section 12(1)(c) and 12 (1)(f) of M.P. Accommodation Control Act, 1961 (hereinafter referred to as the “Act”) stating that during the pendency of the suit subsequent events took place. The appeal is in continuation of the suit and therefore, as established principle of law, the appellant prays that IA No.1118/17 be decided first.

2. By filing IA No.1118/17 under order 6 Rule 17 of CPC the appellant/defendant has contended that the learned trial Court decreed the suit for eviction under Section 12 (1)(c) and 12 (1)(f) of the Act. Being aggrieved by the judgment of the trial Court, he preferred an appeal which is partly allowed by the learned lower appellate Court and held that the plaintiff/respondent failed

to make out the case for eviction under Section 12 (1)(c) of the Act. The grounds under Section 12 (1)(f) of the Act stand proved, hence decreed the suit.

3. The proposed amendments are that during the pendency of the second appeal, the respondent/plaintiff obtained possession of another shop No.5 from M/s Vijay Steel and has also made substantial construction over 1620 sq. ft. adjacent to M/s Raj Photoengravers (as shown in the plaint map). The plaintiff/respondent has concealed the availability of the alternative suitable accommodation. The conduct of the plaintiff/respondent clearly shows that he has not having bonafide requirement of the suit premises. Hence, opportunity is required to be given to the defendant/appellant to adduce additional evidence in support of this pleading.

4. Learned counsel for the appellant has placed reliance upon a judgment *Girish Sharma and Anr. Vs. Kailash Chandra (dead) through LRS* [2012 SCC OnLine MP 6125] and *Hasmat Rai and Anr. Vs. Raghunath Prasad* [(1981) 3 SCC 103].

5. In his reply the plaintiff/respondent denied the allegations regarding subsequent events. He specifically denied that he constructed new shop No.6 beside the shop No.5 and got vacated the shop No.5 from M/s Vijay Steel. It is contended by the plaintiff/respondent that Shop No.5 was not in the sole ownership or in possession of the respondent nor any substantial change has been made by him. In Shop No.5 M/s Vandana Kasliwal has a share as per will of late Shri Rajendra Kumar Jain. According to the respondent/plaintiff the proposed amendment is malafide and at the stage of second appeal it cannot be allowed for raising fresh factual question. On the above ground the proposed amendments are liable to be rejected.

6. Learned counsel for the respondent has placed reliance upon a judgment of this Court in the case of *Khemchand Mulchand Vs. Govt. of Madhya Pradesh, Bhopal* [1972 MPLJ 524]

7. Heard learned counsel for the parties and perused the records.

8. It is true that the proposed amendments are covered under the category of "subsequent events" and seems to be relevant for adjudication of the existing dispute. In case of *Hasmat Rai And Anr.* (supra) the Hon'ble Supreme Court has observed that at the stage of second appeal in the High Court the defendant

appellant moved an application under Order VI Rule 17 of CPC for amendment of the written statement for elaborating what was already stated that the decree obtained by the plaintiff against the adjoining tenant of the same building. The High Court thus had before it a fact beyond dispute and beyond controversy that the major portion of the building was vacated by the adjoining tenant way back in 1972.

9. This was an uncontroverted fact. Therefore remand on this point is an exercise in futility under these circumstances, the application for amendment has been admitted. In that case the Hon'ble Supreme Court has also held that the Act enables a landlord to seek eviction of a tenant and obtain possession under various circumstances set out in section 12. If a landlord's bona fide requires possession of a premises let for residential purpose for his own use, he can sue and obtain possession during the pendency of the appeal by the tenant. If the landlord comes in possession of the premises sufficient to satisfy his requirement, on the view taken by the High Court, the tenant should be able to show that the subsequent events disentitled the plaintiff, on the only ground that here is tenant against whom a decree or order for eviction has been passed and no additional evidence was admissible to take note of subsequent events. When a statutory right of appeal is conferred against the decree or the order and once in exercise of the right an appeal is preferred the decree or order ceases to be final. Therefore a tenant against whom a decree for eviction is passed by Trial Court does not lose protection, if he files the appeal, because if the appeal is allowed the umbrella of statutory protection shields him.

10. An appeal is an continuation of first suit. Once an appeal against decree or order of eviction is preferred the appeal being a continuation of suit, landlord's need must be shown to continue to exist at appellate stage. If the tenant is in a position to show that the need or requirement no more exists because of subsequent events, it would be open to him to point out such events and the Court including the appellate Court has to examine, evaluate and adjudicate the same.

11. In light of the above principles laid down by the Hon'ble Supreme (sic:Supreme) Court, the appellant/defendant is entitled to amend his written statement on account of bonafide need and due to subsequent event.

12. In the case of *Girish Sharma* (supra) the Hon'ble Supreme Court in

para 7 has held as under :-

“7. The basic rule of civil law is that the rights of the parties stand crystalised on the date of institution of the suit. A suit must be tried in all its stages on the cause of action that existed on the date of its commencement and the relief in the suit must be confined to matters existing at that date. Although this is settled law as general rule, it is equally settled that there are exceptions to this rule and it is open to the court in exceptional cases to take into consideration subsequent events. Equally clear is the principle, the Court cannot be blind to subsequent events for the purpose of adjudication of the controversy in issue.”

13. It is well settled that the cause of action for the suit grounded on the personal requirement of a land lord is not such personal action that would die with the plaintiff, but survives to his heirs and they can continue the suit as substituted landlords only when it is proved that they also themselves need the premised. The Hon'ble Supreme Court has also held that an appeal in continuation of suit and therefore, making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities. The Hon'ble Suprme (sic:Supreme) Court in the aforesaid case also relying on the case of *Pasupuleti Venkateswarlu Vs. Motor and General Traders* [(1975) 1 SCC 770] has held that the appellate Court can take notice of the subsequent event having bearing on the controversy. On the above grounds the Hon'ble Supreme Court sent back the case to the trial Court for fresh decision after allowing the amendment application.

14. In the present case, it is alleged that during pendency of the appeal the respondent/plaintiff has obtained the possession of shop No.5 from M/s Vijay Steel and he further made construction of another shop over 1620 sq. ft. adjacent to M/s Raj Photoengravers. This alleged availability of the alternative suitable accommodation during pendency of the appeal satisfies the bonafide requirement of the plaintiff which reflect requirement of the plaintiff/respondent under Section 12 (1)(f) of the Act. But in the case of *Khemchand Mulchand* (supra) this Court has held that it is beyond comprehension how the appellate Courts are liable to decide such type of application when they have not idea whatsoever on the merits of the appeal. The question whether the party should or should not be allowed to amend its

pleadings at the appellate stage cannot in its very nature be decided unless the appeal is first heard on merits.

15. Section 101 of CPC provides no second appeal shall lie except on the ground mentioned in Section 100. Section 100 expressly bars second appeal unless a question of law and that too substantial one is involved in a case, this Court before admitting a second appeal has to satisfy its that the case involves a substantial question of law. Needless to say that satisfaction has to be arrived at after considering the grounds as put forth by the appellant as also record and judgment of the two Courts below.

16. In light of the above observation in the case of *Khemchand Mulchand* (supra), the prayer of the appellant for considering IA No.1118/17 before admission stage is not proper. Accordingly, IA No.4343/17 is dismissed with the direction that IA No.1118/17 an application for amendment in the written statement shall be considered at the time of final hearing of appeal on merits.

Order accordingly.

I.L.R. [2017] M.P., 1462

APPELLATE CIVIL

Before Mr. Justice Anand Pathak

M.A. No. 1753/2011 (Gwalior) decided on 6 April, 2017

JAHAR SINGH LODHI

...Appellant

Vs.

RAMKALI & ors.

...Respondents

A. *Civil Procedure Code (5 of 1908), Section 96 – Appeal – Maintainability* – Appellant/Plaintiff filed a suit against Respondent No.3/defendant for specific performance of contract whereby a compromise decree was passed before the Lok Adalat, under which defendant agreed to enforce the agreement to sale – Respondent No. 1 & 2 filed an appeal u/S 96 C.P.C. submitting that before the date of compromise, Respondent No.3 has already executed a sale deed in their favour and has suppressed this fact before the Lok Adalat and on basis of the sale deed their names have also been mutated in revenue records – Appellate Court allowed the appeal and remanded the matter back for fresh adjudication – Appellant/Plaintiff filed this appeal – Held – When compromise was executed before the Lok Adalat, Respondent

No.3 was not the owner of the property and compromise was effected by playing fraud – Compromise has been entered before the Lok Adalat in accordance with provisions of C.P.C. and when the award is void ab initio, then an appeal u/S 96 is maintainable – Miscellaneous Appeal dismissed. (Para 8 & 9)

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 96 – अपील – पोषणीयता – अपीलार्थी/वादी ने संविदा के विनिर्दिष्ट पालन हेतु प्रत्यर्थी क्र. 3/प्रतिवादी के विरुद्ध, वाद प्रस्तुत किया जिसमें लोक अदालत के समक्ष समझौता डिक्री पारित की गई थी जिसके अंतर्गत प्रतिवादी, विक्रय के करार के प्रवर्तन हेतु सहमत हुआ – प्रत्यर्थी क्र. 1 व 2 ने धारा 96 सि.प्र.सं. के अन्तर्गत, इस निवेदन के साथ अपील प्रस्तुत की कि समझौते की तिथि से पूर्व, प्रत्यर्थी क्र. 3 ने पहले ही उनके पक्ष में विक्रय विलेख निष्पादित किया है और लोक अदालत के समक्ष इस तथ्य का छिपाव किया गया है तथा विक्रय विलेख के आधार पर राजस्व अभिलेखों में उनके नामों का नामांतरण भी किया गया है – अपीली न्यायालय ने अपील मंजूर की और नये सिरे से न्यायनिर्णयन हेतु मामला प्रतिप्रेषित किया – अपीलार्थी/वादी ने यह अपील प्रस्तुत की – अभिनिर्धारित – जब लोक अदालत के समक्ष समझौता निष्पादित किया गया था, प्रत्यर्थी क्र. 3 सम्पत्ति का स्वामी नहीं था और कपट द्वारा समझौता किया गया था – लोक अदालत के समक्ष समझौता, सि.प्र.सं. के उपबंधों के अनुसरण में किया गया है और जब अवार्ड प्रारंभ से शून्य है, तब धारा 96 के अन्तर्गत अपील पोषणीय है – विविध अपील खारिज।

B. Constitution- Article 226/227 and Legal Services Authorities Act, (39 of 1987), Section 21 – Award of Lok Adalat – Prohibition of Appeal – Writ Petition – Maintainability – Held – Section 21 prohibits appeal against the award of Lok Adalat – Remedy of writ under Article 226 and 227 is available to those persons who were parties to the settlement and if any party wants to challenge such award based on settlement that too on very limited grounds. (Para 9 & 10)

ख. संविधान – अनुच्छेद 226/227 एवं विधिक सेवा प्राधिकरण अधिनियम (1987 का 39), धारा 21 – लोक अदालत का अवार्ड – अपील का प्रतिषेध – रिट याचिका – पोषणीयता – अभिनिर्धारित – धारा 21, लोक अदालत के अवार्ड के विरुद्ध अपील प्रतिषिद्ध करती है – अनुच्छेद 226 व 227 के अन्तर्गत रिट का उपचार उन व्यक्तियों को उपलब्ध है जो समझौते के पक्षकार थे और यदि कोई पक्षकार उक्त अवार्ड को समझौते के आधार पर चुनौती देना चाहता है, वह भी अति सीमित आधारों पर।

Cases referred :

2005 (6) SCC 478, 2008 (2) SCC 660, 2012 (7) SCC 738, 2013 (5) SCC 397, 2009 (3) MPLJ 183, AIR (2007) SC 1546.

J.P. Mishra and Gaurav Mishra, for the appellant.

Vivek Jain and Kaushailendra Singh Tomar, for the respondents

No. 1 & 2.

None, for the respondent No.3.

Kuldeep Singh, G.A. for the respondent No.4/State.

(Supplied : Paragraph numbers)

ORDER

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

2. Present Miscellaneous Appeal under Order XLIII Rule 1 (u) of CPC has been preferred by the appellant/plaintiff challenging the judgment and decree dated 30.11.2011 passed by Additional District Judge, Pichhor, District Shivpuri, wherein appeal under Section 96 of CPC preferred by the respondents No.1 and 2 has been allowed and matter has been remanded for fresh adjudication.

3. Facts of the case in brief are that appellant/plaintiff filed the suit for specific performance of contract against the respondent No.3 (defendant No.1 in the suit). After notice, respondent No.3 caused his appearance before the trial court, submitted written statement, accepted the plaint allegations and extended his readiness and willingness to enter the compromise regarding enforcement of agreement to sale executed between the parties. The application under order XXIII Rule 1 and 3 of CPC was filed jointly by the parties to *lis*. Decree under Section 21 of M.P. Legal Services Authority Act, 1987 had been drawn in Lok Adalat.

4. During the interregnum period before passing of decree dated 30.04.2011, defendant No.1 on dated 04.06.2010 executed the sale deed in favour of respondents No.1 and 2 but did not disclose the said fact while entering the compromise before the Lok Adalat, therefore, decree of compromise had been passed. Being aggrieved by such decree, respondents No.1 and 2 preferred an appeal under Section 96 of CPC challenging the judgment and decree dated 30.04.2011 passed in Lok Adalat on the basis of compromise reached between the present appellant/plaintiff and respondent No.3/defendant No.1.

5. The First Appellate Court after considering the rival submissions has allowed the appeal preferred by the respondents No.1 and 2 and remanded

the matter back for fresh adjudication which precipitated the present litigation under Order XLIII Rule 1 (u) of CPC, whereby the appellant/plaintiff challenged the said judgment on the ground that once a decree has been drawn in Lok Adalat under Section 21 of Act of 1987, then proper remedy available to any party is to prefer a writ petition under Article 226/227 of the Constitution of India and no remedy under Section 96 of CPC is available to the respondents No.1 and 2 to challenge the judgment and decree passed in Lok Adalat under Section 21 of Act. Learned counsel for the appellant vehemently argued the case and relied upon the judgment in the matter of *P.T.Thomas Vs. Thomas Job*, reported in 2005(6) SCC 478, *State of Punjab and another Vs. Jalour Singh and others*, reported in 2008(2) SCC 660 and *A.Nawab John and others Vs. V.N.Subramaniam*, reported in 2012(7) SCC 738. According to him, respondents No.1 and 2 did not have remedy of appeal available with them.

6. *Per contra*, learned counsel for the respondents No.1 and 2 submits that the agreement between the present appellant and respondent No.3 has been executed on 25.11.2009 and suit was filed on 07.12.2009 by the plaintiff. During the pendency of the suit on dated 04.06.2010, sale deed has been executed by the respondent No.3/defendant no.1 in favour of respondents No.1 and 2 and in pursuance to the same, mutation has been done in favour of respondents No.1 and 2. The said fact has not been disclosed by the respondent No.3 to the plaintiff (and the trial court) and an application under Order XXIII Rule 1 and 3 of CPC has been filed jointly by the plaintiff as well as respondent no.3/defendant No.1 contending *inter alia* for compromise decree and matter was placed in the Lok Adalat wherein a decree has been drawn under Section 21 of Act of 1987. The suit decree is not binding on the respondents No.1 and 2 because they were not the party in the litigation nor in the application before the Lok Adalat, therefore, appropriate remedy for the respondents No. 1 and 2 was to prefer an appeal under Section 96 of CPC, which they rightly did. Learned counsel for the respondents No. 1 and 2 supported the impugned judgment. Learned counsel for the respondents No. 1 and 2 relied upon the judgment rendered by the Hon'ble Apex Court in the matter of *Thomas Press (India Limited Vs. Nayak Builders & Investors Private Limited and others*, reported in 2013 (5) SCC 397 and *Mahila Bhanwari Bai Vs. Kashmir Singh and others*, reported in 2009 (3) MPLJ 183 and prayed for dismissal of the appeal.

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

Question for consideration before this Court is:-

Whether this appeal is maintainable under Section 96 of CPC against the void order of Lok Adalat, wherein appellant was neither party nor signatory of the settlement in the Lok Adalat?

8. In the present case, respondents No. 1 and 2 were never party to the lis against the plaintiff. Suit was filed on 07.12.2009 and during pendency of the suit on dated 04.06.2012, sale deed has been executed by respondent No.3 in favour of respondents No. 1 and 2 and in pursuance to the said transaction, even mutation has been done in favour of respondents No. 1 and 2, therefore, at the relevant point of time when compromise executed between the parties in Lok Adalat, respondent No.3 was not the owner of the property and therefore had no authority to enter the compromise. Here, the compromise has been effected by playing fraud and therefore award could be said to be void.

9. Although, Section 21 of the Act, 1987 prohibits appeal against the award of the Lok Adalat, if the award has been passed by the authority legally. The intention of the legislature in prohibiting appeal against the award of Lok Adalat is to give finality to the award so that unnecessary further litigation could be saved, however when the award is void *ab initio*, the parties who entered the compromise, had no power to enter the compromise and compromise has been entered by playing fraud, in such circumstances, that award could be said to be void and admittedly the compromise has been entered before Lok Adalat in accordance with the provisions of CPC and when the order was void, in that circumstance, an appeal could be maintainable under Section 96 of CPC. If a judgment, decree or order is obtained by parties by playing fraud on the Court, Tribunal or Authority, then the same is nullity and nonest in the eyes of law and such a judgment, decree or order obtained by the parties and passed by the First Court or by the Final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time in appeal, revision, writ or even in collateral proceeding. (See: *A.V.Papayya Sastry and others Vs. Government of A.P. and others*, reported in AIR (2007) SC 1546).

10. The remedy under Article 226 and/or 227 of the Constitution of India

is available to those persons who are parties to the settlement and if any party wants to challenge such award based on settlement then it can be done only by filing a petition under Article 226 and/or 227 of the Constitution of India that too on very limited grounds. Where no compromise or settlement is signed by the parties as in the present case then question of challenging such an order in petition under Article 226/227 of the Constitution of India does not arise. The said distinction has been carved out and mandated by the Hon'ble Supreme Court in the case of *State of Punjab and another Vs. Jalour Singh and others*, reported in 2008 (2) SCC 660.

11. In almost similar fact situation of the case, coordinate Bench of this Court in the matter of *Mahila Bhanwari Bai Vs. Kashmir Singh and others*, reported in 2009 (3) MPLJ 183 has taken the same view relying upon the mandate of Hon'ble Apex Court as referred above. Consequently, I do not find any merit in arguments advanced by the counsel for the appellant. The judgments referred by the learned counsel for appellant are in respect of that exigency wherein parties to the lis have entered the compromise in Lok Adalat and thereafter not following the terms of settlement. Here, respondents No.1 and 2 were never party to the settlement and compromise which has been reached between the parties were those who were otherwise not competent to enter the compromise.

12. Court below had not erred in passing the impugned judgment and decree dated 30.11.2008. Resultantly, the appeal fails and is hereby dismissed.

Appeal dismissed.

I.L.R. [2017] M.P., 1467

APPELLATE CIVIL

Before Mr. Justice N.K. Gupta

M.A. No. 739/2001 (Gwalior) decided on 9 May, 2017.

NATIONAL INSURANCE CO. LTD.

...Appellant

Vs.

SMT. PARWATI BAI & ors.

...Respondents

A. Motor Vehicles Act (59 of 1988), Section 173 – Liability of Insurance Company – Driving License – Validity – Burden of Proof – MACT awarded compensation of Rs. 83,500 alongwith interest to respondents no. 1 to 3, being wife and children of deceased – Challenge

to – Held – It was the plea of the insurance company that driver of the offending vehicle was not having a valid driving license on the date of incident – Accident took place on 05.04.1999 and in the photocopy of the license of driver of offending vehicle, it was mentioned that it was renewed from 11.01.1999 to 10.01.2001 – Burden of proof was on the Insurance Company to prove that the renewal entry was fake and it was not done by the licensing authority and to get the certificate from the licensing authority to that effect – Insurance company failed to discharge its burden – Further held – When license was renewed from time to time, then it shall be presumed that it was properly renewed unless rebutted by the insurance company – In such circumstances, insurance company cannot be absolved from its liability to pay compensation. (Paras 4, 6 & 7)

क. मोटर यान अधिनियम (1988 का 59), धारा 173 – बीमा कम्पनी का दायित्व – चालक अनुज्ञप्ति – विधिमान्यता – सबूत का भार – मोटर दुर्घटना दावा अधिकरण ने प्रत्यर्थागण क्र. 1 से 3 को, मृतक की पत्नी एवं संताने होने के नाते, व्याज के साथ रु. 83,500 प्रतिकर अवार्ड किया – को चुनौती – अभिनिर्धारित – यह बीमा कम्पनी का अभिवाक् था कि आक्षेपित वाहन के चालक के पास, दुर्घटना की दिनांक को विधिमान्य चालक अनुज्ञप्ति नहीं थी – दुर्घटना 05.04.1999 को घटी और आक्षेपित वाहन की चालक अनुज्ञप्ति की फोटोप्रति पर यह उल्लिखित था कि उसे 11.01.1999 से 10.01.2001 तक नवीकृत किया गया था – यह साबित करने के लिए कि नवीकरण प्रविष्टि नकली थी और वह अनुज्ञप्ति प्राधिकारी द्वारा नहीं की गयी थी, सिद्ध करने एवं अनुज्ञप्ति प्राधिकारी से उस प्रभाव का प्रमाण पत्र प्राप्त करने का भार बीमा कम्पनी पर था – बीमा कम्पनी अपने भार का निर्वहन करने में असफल रही – आगे अभिनिर्धारित – जब अनुज्ञप्ति को समय-समय पर नवीकृत किया गया था तब यह उपधारणा की जायेगी कि उसे उचित रूप से नवीकृत किया गया था जब तक कि बीमा कम्पनी द्वारा खंडन नहीं किया जाता – ऐसी परिस्थितियों में, बीमा कम्पनी, प्रतिकर अदा करने के अपने दायित्व से मुक्ति नहीं पा सकती।

B. Motor Vehicles Act (59 of 1988), Schedule II (Amended) – Compensation – Quantum – Held – Tribunal while passing award of compensation relied on a matter which was decided in 1995 where notional income was considered of that year, holding the income of deceased to be Rs. 500 per month – Schedule II was amended in the year 1999 whereby minimum income of Rs. 15000 per annum was presumed to be the notional income in case where person was non-earning – Tribunal should have assessed the notional income of the

deceased for the year 1999 – Compensation awarded was re-computed as per amended Schedule II of the Act of 1988 and was enhanced from Rs. 83,500 to Rs. 3,22,000 alongwith interest @ 8% per annum.

(Para 9 to 15)

ख. मोटर यान अधिनियम (1988 का 59), अनुसूची II (संशोधित) – प्रतिकर – मात्रा – अभिनिर्धारित – प्रतिकर का अवार्ड पारित करते समय, अधिकरण ने ऐसे मामले पर विश्वास किया जो 1995 में विनिश्चित किया गया था, जहाँ मृतक की आय रु. 500 प्रति माह ठहराते हुए, उसी वर्ष की काल्पनिक आय विचार में ली गई थी – अनुसूची II को वर्ष 1999 में संशोधित किया गया था जिससे न्यूनतम आय रु. 15,000 प्रति वर्ष काल्पनिक आय उपधारित की गई थी, ऐसे प्रकरण में जहाँ व्यक्ति गैर उपाजक था – अधिकरण को वर्ष 1999 हेतु मृतक की काल्पनिक आय का निर्धारण करना चाहिए था – अवार्ड किये गये प्रतिकर की, 1988 के अधिनियम की संशोधित अनुसूची II के अनुसार पुनः संगणना की गई और रु. 83,500 को बढ़ाकर 8% प्रति वर्ष की दर से ब्याज के साथ रु. 3,22,000 किया गया।

Cases referred :

1997 (1) Vidhi Bhaswar 204, 1995(2) Vidhi Bhaswar 73.

R. V. Sharma, for the appellant.

Ram Kishore Sharma, for the respondents no. 1 to 3.

ORDER

N.K. GUPTA, J. :- The appellant-Insurance Company has preferred the present appeal against the award dated 31.07.2001-passed by the Motor Accident Claims Tribunal, Shivpuri (M.P.) in Claim Case No.25/2000 whereby the compensation of Rs.83,500/- along with interest was awarded in favour of respondents No.1, 2 and 3 and appellant as well as respondents No. 4 and 5 were made liable to pay the same jointly and severally. Respondents No.1 to 3 have also filed cross-objections under Order XLI Rule 22 of the Code of Civil Procedure for enhancement of the compensation amount.

2. The facts of the case, in short, are that the deceased Ramswaroop, aged 25 years, resident of Ghosipura, District Shivpuri (M.P.), was going towards Pohri from Shivpuri on 05.04.1999 at about 07:00 am. Near Madhav Chowk, respondent No.4, the driver of the offending bus bearing Registration No.MP08-D-1045, drove the said bus rashly and negligently and by doing so he not only dashed the vehicle upon the deceased Ramswaroop but also rushed over him causing his death. Respondents No.1, 2 and 3 being wife

and children of the deceased Ramswaroop filed an application under Section 166 of the Motor Vehicles Act for getting compensation due to death of the deceased Ramswaroop. Respondent No.5 was added as the owner of the bus for his vicarious liability towards respondent No.4. Appellant was also added as the insurer of the vehicle and a compensation of Rs. 16 lacs was demanded.

3. The respondents No.4 and 5 remained *ex parte* before the Tribunal.

4. The appellant insurance company, in reply, has accepted that the vehicle was insured with it but the respondent No.4 did not possess any valid driving licence and therefore insurance company was not liable to pay any compensation being insurer.

5. The Tribunal framed four issues relating to negligence, death of Ramswaroop due to an accident, valid driving licence of respondent No.4 and computation of compensation with relief and costs. After recording the evidence of the parties, the Motor Accident Claims Tribunal awarded a sum of Rs. 83,500/- as a compensation to the claimants/respondents No.1,2 and 3 and set off the sum of Rs.50,000/- which was paid by the appellant as the interim compensation under no fault liability. An interest of 9% *per annum* was also granted from 05.07.1999 i.e. the date of application.

6. In the present matter, only two points are to be decided. First is as to whether the Insurance Company is absolved from its liability and secondly whether the compensation awarded by the trial court was inadequate and hence it can be enhanced. For the first point, the plea was taken by the appellant-insurance company that at the time of incident respondent No.4- Shivkanth Singh Bhadoriya did not possess any valid driving licence to drive the vehicle. In this connection, the surveyor Mr.G.P.Lawaniya (NAW-1) examined himself and produced the documents Ex.D-1 to D-4. The document Ex.D-1 was a receipt for deposit of the fee before the RTO to get the information. The document Ex.D-2 is the certificate issued by the RTO and Ex.P-11 was the photocopy of the driving licence to show that it was renewed upto 28.12.1996. According to Mr.Lawaniya (NAW-1), the driving licence was renewed upto 28.12.1996 and since accident had taken place on 05.04.1999, therefore, respondent No.4 did not have any valid driving licence. The Tribunal has relied upon the judgment passed by this Court in the case of "*Oriental Insurance Co. Ltd. Vs. Barelal and others*" [1997 (1) Vidhi Bhaswar 204] in which it was held that if the driver was experienced to drive

the truck then in the absence of any valid licence the Insurance Company does not absolve from its liability. However, if evidence produced by Mr.Lawaniya (NAW-1) is considered then certificate Ex.D-2 indicates that the Surveyor Mr.G.P.Lawaniya (NAW-1) received the information pertaining to validity of aforesaid licence upto 28.12.1996. No information of that licence after 28.12.1996 was sought by Mr.G.P.Lawaniya (NAW-1). According to his report Ex.D-3, he gave an information to the Insurance Company. The relevant operative para of the said information is as under:

"In my verification of above mentioned driving licence from L.A.Morena and found it genuine and believable."

In the report Ex.D-3, Mr.G.P.Lawaniya (NAW-1) did not mention that the licence was expired and thereafter it was not renewed. Respondent No.4 remained *ex parte* before the tribunal and therefore the photocopy of the licence was produced by the applicants as received from the police. In last page of document Ex.P-11, it is mentioned that licence was renewed from 11.01.1999 to 10.01.2002 and therefore when the accident had taken place on 05.04.1999 it was for the Insurance Company to prove that the renewal entry for the period dated 11.01.1999 to 10.01.2002 was fake and it was not done by the licensing authority, Morena, however, Mr.G.P.Lawaniya (NAW-1) is silent about that entry. No certificate has been obtained from licensing authority, Morena [RTO, Morena] that such entry was fake. When licence of respondent No.4 was renewed from time to time then it shall be presumed that it was renewed for the period 11.01.1999 to 10.01.2002 and it was for the Insurance Company to rebut such an entry.

7. After considering the report Ex.D-3 given by Mr.G.P.Lawaniya (NAW-1) that he found the licence to be valid and effective and no verification was sought from the licensing authority that renewal endorsement for the period 11.01.1999 to 10.01.2002 was not done by the licensing authority Morena or such entry was fake, then in absence of any evidence adduced by the appellant such entry could not be rebutted, hence, that burden of proof was on the appellant to prove that respondent No.4 did not possess any valid driving licence at the time of accident and thus the appellant has failed to discharge its burden. According to letter Ex.D-3, it is apparent that respondent No.4 not only had driving licence but badges were issued to respondent No.4 endorsing that he was entitled to drive the service vehicle. Under these circumstances, when the appellant could not prove that at the time of accident

respondent No.4 did not have any valid driving licence, it could not be absolved from its liability to pay compensation being insurer of the company.

8. Though the tribunal gave a different ground to reject the plea of the appellant but actually the plea of the insurance company was baseless and no basis was produced for that plea of Mr.G.P.Lawaniya. When Mr.G.P.Lawaniya in his own document Ex.D-3 gave an opinion that respondent No.4 had a valid driving licence along with badges and thereafter no verification was obtained for renewal of the licence for the period 11.01.1999 to 10.01.2002 then Mr.G.P.Lawaniya was not expected to give contrary statement before the Tribunal on oath. The evidence of Mr.G.P.Lawaniya is not at all reliable. Now, since the appellant could not prove that respondent No.4 did not have any valid driving licence to drive the bus, plea of the appellant Insurance company cannot be accepted that it is absolved from (sic:from) its liability to pay compensation as insurer, hence, there is no substance in the appeal filed by the appellant-insurance company and it is liable to be dismissed.

9. So far as the question pertaining to enhancement of compensation amount is concerned, it is argued by the learned counsel for respondents no.1 to 3 that the Tribunal has found the income of the deceased Ramswaroop to be 500/- per month which was too low in assessment. Similarly, the tribunal did not award an appropriate compensation in various heads like loss of consortium, funeral expenses and loss of estate. In this connection, if the computation as made by the Tribunal is perused then it appears that the Tribunal has assessed the income of the deceased Ramswaroop on the basis of the order passed by this Court in the case of *"Somti Bai (Smt.) and others Vs. Mishrilal Chowdhary and others"* [1995 (2) Vidhi Bhaswar 73]. It is pertinent to note that the said matter was decided in the year 1995 and therefore the notional income was to be considered of that year in which the accident had taken place and therefore it was for the Tribunal to assess the notional income of the deceased for the year 1999. The learned counsel for respondents No.1 to 3 invited the attention of this Court to Schedule II of the Motor Vehicles Act that after amendment in the year 1994, the minimum income of Rs. 15,000/- *per annum* is to be presumed as notional income in case where the person was non-earning whereas the tribunal has considered the income of the deceased Ramswaroop to be less than the income prescribed in Schedule II. The submission made by the learned counsel for respondents No.1 to 3 is acceptable and income should be re-computed before this Court.

10. The claimant Parwati Bai (AW-1) has stated that the deceased Ramswaroop used to sell ice candies on his bicycle and therefore he was earning a sum of Rs.200/- per day, however, he could perform such a job in the summer season only and in remaining days he used to perform his own cultivation and prosecute the job of labourer. In those days, he was getting a sum of Rs. 50/- per day as wages. Deepak (AW-2) has stated that the deceased Ramswaroop was his brother-in-law who met with an accident when he was having a bag of icecream candies on the bicycle. In this connection, if Dehati Nalisi, Ex.P-3, is perused which was lodged by the deceased Ramswaroop himself then the fact was mentioned in the Dehati Nalisi that at the time of incident he was going to sell ice-candies and the bag of such ice-candies was kept on the carrier of his bicycle. Hence, it is proved by Parwati (AW-1) and Deepak (AW-2) that in summer season, the deceased Ramswaroop used to prosecute the job of selling ice-candies after getting the same from the manufacturer, however, the claim of the claimant Parwati Bai (AW-1) is not acceptable that the deceased was earning a sum of Rs.200/- per day by selling ice-candies. For such purpose, it was for the claimants to examine the distributor of ice-candies to show that how many ice-candies used to be given to deceased Ramswaroop everyday and what was his share and profit. Hence, actual income of the deceased Ramswaroop could be proved by selling of ice-candies. If the ice vendor prosecutes the shop in the summer season only and income is not proved then his earning be computed as if he was earning the remuneration equal to the earnings of an unskilled labourer. Similarly, the claimant Parwati Bai (AW-1) could not produce the relevant documents pertaining to land possessed by the deceased Ramswaroop so that it can be said that he used to cultivate his own land. Under these circumstances, it is apparent that when the deceased Ramswaroop was not a jobless person but he was prosecuting a job of a labourer in the year 1999 and therefore, his notional income should have been computed on the basis of collector rate of such wages of the year 1999.

11. The claimant Parwati Bai (AW-1) could not produce any evidence to show as to what was the collector rate for payment of wages to an unskilled labourer at that time. But the claimant Parwati Bai (AW-1) has accepted that except the summer season, deceased was getting Rs.50/- per day as labourer. When in summer season he was getting a better job of selling ice-candies, it is possible that his average income was more than Rs.50/- per day and therefore if the entire evidence is considered then the average income of the deceased

Ramswaroop can be computed as Rs.60/- per day which comes to Rs.1,800/- per month. It is not established that the deceased Ramswaroop was working six days in a week. Such kind of poor persons are required to work for all the seven days in a week, else they cannot maintain their family and therefore, the monthly income of the deceased Ramswaroop should be computed to the tune of Rs.1,800/-.

12. In Schedule II of the Motor Vehicles Act, 1/3rd income should be deducted while considering the dependency of the concerned claimants because it would have been spent by the deceased for his own maintenance, however, in the present case, such direction as given in Schedule II cannot be taken as it is. The deceased Ramswaroop had a wife and two children and therefore looking to the future of the children it cannot be said that two children may be counted as one unit. Hence, on the income of the deceased four persons were dependent including the deceased and therefore dependency of the claimants should be counted by deducting 25% of the entire income which could be a reasonable expenditure for the deceased Ramswaroop himself and therefore the dependency of the claimants falls to the tune of Rs. 1,350/- per month and thus the annual dependency comes to the tune of Rs.16,200/-. According to the MLC Ex.P-4, age of the deceased was shown to be 25 years and therefore according to Schedule II of the Motor Vehicles Act, the multiplier of 18 should be given to the claimants and hence the compensation on the basis of the aforesaid computation would be Rs.2,91,600/-.

13. The amount of loss of consortium, funeral expenses and loss of estate as mentioned in Schedule II of the Motor Vehicles Act is on the basis of price index of the year 1994 and therefore when accident has taken place in the year 1999 then the amount on these three heads should be increased according to the price index. Hence, it would be appropriate to grant a sum of Rs.10,000/- to the respondent No.1 for loss of consortium, a sum of Rs.10,000/- towards funeral expenses and a sum of Rs.10,000/- due to loss of estate. Hence, the entire compensation comes to the tune of Rs. 3,21,600/-. Since the compensation is computed on the basis of the probabilities and approximation, it would be in the round figures and therefore the entire compensation would be Rs.3,22,000/-.

14. On the basis of the aforesaid discussion, it would be apparent that instead of compensation of Rs. 83,500/- claimants were entitled to get a sum of Rs.3,22,000/- in all. Out of that compensation amount, a sum of Rs.50,000/-

be adjusted which was paid by the Insurance Company as no fault liability compensation or interim compensation. Since respondents No.2 and 3 have become major, at present, it is not desired to keep the amount of compensation in fixed deposit. There is no any objection raised by the Insurance Company that respondents No. 2 and 3 are not literate persons, hence, it would be appropriate that the claimants should get the entire compensation in cash.

15. On the basis of the aforesaid discussion, the appeal filed by the appellant-insurance company is hereby dismissed with cost. The appellant-insurance company shall bear the cost of respondents No.1,2 and 3 of this appeal. Advocate's fee is quantified at Rs. 5,000/-, in all for each party. On the other hand, the cross-objections of respondents No.1 to 3 are accepted and the compensation amount as awarded by the Tribunal is enhanced from Rs. 83,500/- to 3,22,000/-. Since that amount was to be paid on 05.07.1999, therefore, an interest of 8% *per annum* shall be paid on the enhanced amount, by the appellant and respondents No. 4 and 5 to the claimants from 05.07.1999. The amount deposited by the insurance company as interim award or no fault liability compensation and any amount during pendency of the appeal shall be adjusted with the compensation amount and for that amount interest should be computed from 05.07.1999 to the date on which that amount was deposited. The respondents No.1 to 3 shall also be entitled to get the cost incurred in the appeal as well as before the claims tribunal. The appellant and the respondents No. 4 and 5 are jointly and severally liable to pay the compensation. The cross-objections filed by the respondents No.1 to 3 are hereby disposed off with the aforesaid direction.

Appeal dismissed.

I.L.R. [2017] M.P., 1475

APPELLATE CRIMINAL

Before Mr. Justice Alok Verma & Mr. Justice Ved Prakash Sharma

Cr.A. No. 142/2014 (Indore) decided on 28 February, 2017

SURAJ @ SURESH

...Appellant

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Section 302 – Conviction – Life Imprisonment – Child Eye Witness (daughter) – Credibility – Murder of wife – Daughter was the eye witness who disclosed that father killed her

mother – Held – It is a settled law that a reasonable degree of caution and circumspection is required while dealing with the evidence of a child witness, however if the same on a close and careful scrutiny is found reliable, the Court can act upon such an evidence – Testimony of daughter of accused aged 12 years is clear, cogent, consistent and free from any material infirmity or anomaly – Nothing in the cross examination of the child witness to indicate that she has any ill will, reason or motive to falsely implicate her own father – Further held – Why a person whose wife has suffered death, will keep hiding or absconding for more than 30-35 hrs of the incident and what has prevented him from bringing the incident to the notice of neighbours, relatives or the police – Conviction based on proper appreciation of evidence and does not call for interference – Appeal dismissed.
(Paras 16, 17, 25 & 26)

क. दण्ड संहिता (1860 का 45), धारा 302 – दोषसिद्धि – आजीवन कारावास – बाल चक्षुदर्शी साक्षी (पुत्री) – विश्वसनीयता – पत्नी की हत्या – पुत्री चक्षुदर्शी साक्षी थी जिसने यह प्रकट किया कि पिता ने उसकी माँ को मार डाला – अभिनिर्धारित – यह सुस्थापित विधि है कि बाल साक्षी के साक्ष्य पर विचार करते समय युक्तियुक्त मात्रा की सावधानी एवं सतर्कता अपेक्षित है, तथापि यदि बारीकी और सावधानी से संवीक्षा पर उक्त को विश्वसनीय पाया जाता है, तो न्यायालय ऐसे साक्ष्य पर कार्रवाई कर सकती है – अभियुक्त की पुत्री जो कि 12 वर्ष की आयु की है का परिसाक्ष्य स्पष्ट, प्रबल, संगत तथा किसी तात्त्विक शैथिल्यता अथवा विषमता से मुक्त है – बाल साक्षी के प्रतिपरीक्षण में यह उपदर्शित करने हेतु कुछ भी नहीं है कि उसके पास अपने पिता को मिथ्या आलिप्त करने के लिए कोई वैमनस्य, कारण या हेतु है – आगे अभिनिर्धारित – क्यों एक व्यक्ति जिसकी पत्नी की मृत्यु हुई है, घटना के 30-35 घंटों से अधिक समय तक छुपा या फरार रहेगा और ऐसा क्या है जिसने उसे घटना को पड़ोसियों, रिश्तेदारों या पुलिस के ध्यान में लाने से रोका है – दोषसिद्धि साक्ष्य के उचित मूल्यांकन पर आधारित है एवं हस्तक्षेप की आवश्यकता नहीं – अपील खारिज।

B. Criminal Trial – Practice and Procedure – Held – Prosecution is required to prove the guilt beyond reasonable doubt and has to stand on its own legs – Accused has a right to keep mum, however when a particular fact can be said to be within the personal knowledge of accused, then unless he comes out with some plausible explanation regarding the same, his silence or failure to offer any plausible explanation may be taken as an incriminating circumstance against him.
(Para 22)

ख. आपराधिक विचारण – पद्धति एवं प्रक्रिया – अभिनिर्धारित – अभियोजन द्वारा संदेह से परे दोषिता साबित की जाना अपेक्षित है एवं उसे स्वयं के पक्ष को साबित करना होगा – अभियुक्त को मौन रहने का अधिकार है, यद्यपि जब एक विशिष्ट तथ्य अभियुक्त के व्यक्तिगत ज्ञान में होना कहा जा सकता है तब, जब तक वह उक्त के संबंध में कोई संभाव्य स्पष्टीकरण प्रस्तुत नहीं करता, उसके मौन या संभाव्य स्पष्टीकरण प्रस्तावित करने में विफलता को उसके विरुद्ध अपराध में फँसाने वाली परिस्थिति के रूप में लिया जा सकता है।

Cases referred :

JT 1996 SC 140, (2006) 10 SCC 681, (2013) 1 SCC Cri. 430.

J U D G M E N T

The Judgment of the Court was delivered by :
VED PRAKASH SHARMA, J. :- In this appeal, preferred through Superintendent, Central Jail, Barwani, the appellant has challenged the judgment and order dated 17.12.2013 passed by Sessions Judge, Barwani in S.T. No.81/2013, whereby the appellant has been convicted u/s. 302 of the IPC for committing murder of his wife Sumanbai and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- and, in default of payment of fine, to further undergo 3 months' rigorous imprisonment.

2. The prosecution story, as unfolded during trial, briefly stated, is that the appellant Suraj @ Suresh along with his wife Sumanbai (deceased), daughter – Kajal (P.W.3) and son was residing at Village Dawana, Talaipura, Police Station Thikri, District Barwani. In the intervening night of 27th and 28th March, 2013, the appellant came to his house around 11-12 in the midnight and demanded Rs.500/- from his wife for liquor. Allegedly, on refusal of Sumanbai to pay money, the appellant started quarrelling with her. His daughter – Kajal (P.W.3) requested him not to quarrel with her mother, however, the appellant drove her out of the dwelling house, bolted the front door of the house from inside and thereafter started assaulting Sumanbai by wooden log, which was witnessed by Kajal (P.W.3) from the window ('Ujaldan'). As per prosecution, on being asked by Kajal (P.W.3) as to why he is assaulting his (sic:her) mother, the appellant opened the door of the house and also tried to assault Kajal (P.W.3), therefore, she ran away towards the forest and spent the night in an agricultural field. In the morning, when she came back to her house, she found the front door of the house open and saw her mother lying dead inside the house having multiple injuries on various

parts of the body including genitals. As per prosecution, thereafter, Kajal (P.W.3) went to the house of Ajay (P.W.2) – her cousin brother, situated in the same village, and apprised him about the incident. Thereafter, Ajay (P.W.2) and some other persons of the village reached at the place of occurrence and found Sumanbai lying dead inside the house of appellant. Ajay (P.W.2) same day, at around 9.30 am. lodged first information report Ex.P/2 at Police Station Thikri regarding this incident. 'Merg' report Ex. P/8 was also recorded in this regard.

3. The investigation ensued. Umied Singh Borana (P.W.12), the then Station House officer, Police Station Thikri, carried out the inquest proceedings and vide inquest report Ex.P/6 found that Sumanbai died because of multiple injuries caused to her on various parts of the body including genitals. The dead body was sent for post-mortem examination. Same day at around 3.45 pm. a team of doctors comprising of Dr. D.S. Chouhan (P.W.1), Dr. (Smt.) Mandloi and Dr. Manoj Kumar Nirala conducted autopsy on the dead body of Sumanbai. Vide post mortem report Ex.P/1 they found following 9 ante-mortem injuries on various parts of the body :

- (i) L.W. – Size 1 x 1 (Inch) over Lt. eye brow;
- (ii) L.W. – Size 1 x 1 (Inch) over Lt. side of maxillary region;
- (iii) L.W. – Size 1 x 1 (Inch) over Lt. side of mandibular region;
- (iv) L.W. – Size 1 x 1 (Inch) over Rt. Side of upper lip;
- (v) L.W. – Size 1 x ½ over Lt. Forearm and Lt. hand;
- (vi) Contusion – Size 3 x2 (Inch) below umbilicus over pubic region;
- (vii) L.W. – Size 3 x 2 muscle deep with bony fracture over middle of Rt. Leg with fracture of both bone externally visible;
- (viii) Contusion over Lt. thigh (medical aspect) size – 3 x 2 (Inch);
- (ix) Contusion over 2 x 2 just above Lt. knee.

Frontal and left parietal bone were found fractured with a further damage to the brain material. A stabbed wound running from Urethra to the bladder causing intra pelvic hemorrhage was also found.

4. The doctors opined that Sumanbai died due to hemorrhage and shock as a result of injury to brain, urinary bladder and right leg and that, the death was homicidal in nature caused within 24 hours of the examination.

5. Umed Singh Borana (P.W.12) in the course of investigation visited the place of occurrence and prepared sight-map Ex.P/3, simple and blood stained earth including a wooden log, a Sickle, a wooden roller ('Belan'), some broken pieces of bangles and a wooden stick around 1 ft. in length having stains of blood, were recovered from the spot vide seizure memo Ex. P/4. The clothes found on the body of the deceased were removed during autopsy and were handed over in a sealed cover to the Police, which were seized vide seizure memo Ex.P/9. The appellant came to be arrested on next day i.e. on 29.3.2013 in the evening vide arrest memo Ex. P/10. On interrogation, he allegedly, revealed vide Ex. P/11 that he caused the death of his wife Sumanbai by assaulting her with a wooden log, which he had thrown on the spot itself. The articles recovered from the spot were sent for forensic examination to FSL, Indore. The Assistant Chemical Examiner vide report dated 9.5.2014, Ex.P/14 found presence of human blood on all the articles except simple earth.

6. After usual investigation, a charge-sheet was filed before the competent Magistrate, who in turn, committed the case to the Court of Sessions. A charge for the offence u/s. 302 of IPC was framed by the learned Sessions Judge against the appellant, who abjured the guilt and claimed to be tried pleading total innocence.

7. The prosecution, in order to bring home the charge, examined as many as 12 witnesses including Kajal (P.W.3), said to be an eye-witness of alleged assault of the deceased by the appellant; Dr. D.S. Chouhan (P.W.1) is as a member of team of doctors which conducted autopsy, while Umed Singh Borana (P.W. 12) is the Investigating Officer. Apart this, the documents vide P/1 to P/13 were also marked as exhibits.

8. The incriminating materials appearing in the evidence against the appellant were brought to his notice during his examination u/s. 313 of the Criminal Procedure Code, 1973 (hereinafter, for short, 'the Code') however,

he expressed total ignorance regarding the same and stated that he has been falsely implicated in the case and that, he is an innocent. He further stated that on his return to home, he found his wife lying dead in the house and that, the prosecution witnesses want to falsely implicate him in the matter. None was examined in defence.

9. The learned trial Court, on the basis of evidence available on record, vide the impugned judgment, found that on the basis of ocular evidence of Kajal (P.W.3), the daughter of appellant, and the circumstantial evidence, it is proved beyond reasonable doubt that the appellant committed murder of his wife Sumanbai by assaulting her in a brutal manner. Accordingly, he was convicted and sentenced u/s. 302 of the IPC, as stated hereinabove.

10. The learned counsel appearing on behalf of the appellant has challenged the finding of conviction recorded against the appellant submitting that the learned trial Court has seriously erred in placing reliance on the testimony of a child witness viz. Kajal (P.W.3). It is further contended that various inferences drawn against the appellant on the basis of circumstances are based on surmises and conjectures and that, the conviction and sentence being contrary to law and evidence is liable to be set aside.

11. Per contra, it is submitted by learned Public Prosecutor that the learned trial Court on proper appreciation and analysis of evidence has recorded the finding of guilt against the appellant and that, the testimony of Kajal (P.W.3) has been relied upon because despite being subjected to elaborate cross-examination, nothing could be elicited so as to discredit her version. It is further submitted that the appellant on the fateful day was with the deceased, his wife and it was for him to explain as to under what circumstances, she sustained multiple injuries and succumbed to such injuries. It is contended that the learned trial Court has rightly recorded the conviction against the appellant. Hence, the appeal is liable to be dismissed.

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

13. We have given our (sic:our) thoughtful consideration to the rival submissions made by learned counsel for the parties and have also carefully gone through the record.

14. Considering the pleas raised at the Bar, we are required to examine as to whether the learned trial Court has committed any factual or legal error in

arriving at a finding of guilt against the appellant regarding charge u/s. 302 of the IPC.

15. The prosecution case rests on two sets of evidence – firstly, the ocular testimony of Kajal (P.W.3), the daughter of deceased as well as the appellant; secondly, the incriminating circumstances including the evidence of last seen as well as post-incident conduct of the appellant.

16. A serious challenge has been made to the testimony of Kajal (P.W.3), a child witness, aged about 12 years, hence at the very outset it has to be examined whether her testimony inspires confidence. The law is well settled that a reasonable degree of caution and circumspection is required while dealing with the evidence of a child witness (See : *Rajaram Yadav vs. State of Bihar*, JT 1996 SC 140), however, if the same on a close and careful scrutiny is found to be reliable, the Court can act upon such an evidence.

17. In the instant case, Kajal (P.W.3) has been found by the learned trial Court worthy of reliance. We have carefully gone through her testimony which is clear, cogent, consistent and free from any material infirmity or anomaly. Despite being subjected to searching cross-examination, the defence has not been able to shake her credibility. Being the daughter of the deceased and appellant and considering the fact that she was residing with her parents in the same house, where her mother was found dead, her presence on the spot cannot be doubted. Apart this, nothing has emerged in her cross-examination to indicate that she has any motive to falsely implicate her own father in causing death of her mother. While there is nothing to indicate that Kajal (P.W.3) has any ill-will or animosity against the appellant, with whom she being his daughter must naturally be affectionate; the appellant in his examination u/s. 313 of 'the Code' has not stated anything so as to indicate that Kajal (P.W.3) is interested in falsely deposing against him. The learned trial Court, on consideration of various relevant factors discussed in Para 15, 16 and 17 of the impugned judgment, has found the testimony of Kajal (P.W.3) as reliable and trustworthy. On re-appreciation of her evidence, we concur with the finding recorded by the learned trial Court in this regard.

18. Kajal (P.W.3) has deposed that on the fateful night, she along with her mother and younger brother was inside her house. It has further been deposed by this witness that at around 10 to 11 pm., the appellant – her father came to the house and demanded Rs.500/- from her mother and that, on refusal of her

mother to pay the money, the appellant started quarrelling with her and when this witness tried to calm down the appellant, he slapped her and pushed away from the house and bolted the door from inside. As per Kajal (P.W.3), thereafter, she peeped into the house from window situated besides the main door of the house and saw the appellant assaulting Sumanbai by wooden stick and brick and that, when she asked him not to assault her mother, the appellant opened the door and also tried to assault her, therefore, she ran away from the spot towards the forest and that, in the morning on her return, found her mother lying dead inside the house, regarding which, she informed her cousin brother – Ajay (P.W.2). In Para 5 of her cross-examination, this witness has clearly deposed that she narrated the incident to her brother Ajay (P.W.2). Kajal (P.W.3) has denied the suggestion that she did not see the appellant assaulting her mother; though she has admitted that on the date of occurrence, her mother Sumanbai had also consumed liquor, however, it is denied by her that because of influence of liquor, her mother felled down on the ground.

19. Ajay (P.W.2) – cousin brother of Kajal (P.W.3), has supported the version put forth by Kajal (P.W.3) to the extent that at around 6 to 6.30 in the morning, Kajal (P.W.3) came to him and informed about the incident and further told him that the appellant had assaulted Sumanbai on her refusal to pay the money to him and that, she could see the appellant assaulting her mother from the window situated besides the door of the house. There is nothing to indicate that Ajay (P.W.2), who has lodged the First Information Report Ex.P/2 regarding the incident, has an axe to grind against the appellant. On various material points, his testimony is found to be clear and consistent, therefore, we do not find any reason to doubt the credibility of the version put forth by this witness.

20. Apart the aforesaid ocular testimony of Kajal (P.W.3), which stands corroborated with the testimony of Ajay (P.W.2), indicating towards complicity of the appellant in causing death of Sumanbai, there are certain other tall telling circumstances unerringly pointing towards the guilt of the accused.

21. The appellant in his examination u/s. 313 of 'the Code' has stated in response to Question No.72 that when he came back to his house, he saw his wife Sumanbai in a dead state, however, he does not know as to how it has happened. His statement in this regard is quite vague and silent on the point as to where he had gone to perform manual work; at what time he came back to

his house and saw his wife lying dead inside the house; why he immediately did not react and informed his neighbours, relatives and other persons and Police that his wife is lying dead inside the house.

22. No doubt, the prosecution is required to prove the guilt beyond reasonable doubt and has to stand on its own legs and that, the accused has a right to keep mum, however, when a particular fact can be said to be within the personal knowledge of the accused, then unless he comes out with some plausible explanation regarding the same, his silence or failure to offer any plausible explanation may be taken as an incriminating circumstance against him. In this connection, we can refer to the observations made by Hon'ble the apex Court in *Trimukh Maroti Kirkan vs. State of Maharashtra*, (2006) 10 SCC 681, wherein it has been held as under:

"15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

23. In *Pudhi Raja vs. State*, (2013) 1 SCC Cri. 430, the apex Court observed that it is obligatory on the part of the accused while being examined u/s. 313 of 'the Code' to furnish some explanation with respect to the incriminating circumstances appearing against him. It was held that if the accused fails to offer an appropriate explanation or gives a false reply, the said act may be counted as providing an incriminating circumstance.

24. In the instant case, the testimony of Kajal (P.W.3) loudly speaks that on the fateful day, the appellant was in the house with his wife Sumanbai. As Sumanbai was found dead in the house, therefore, it was for the appellant to explain as to how her death occurred. Though, suggestions have been given

on behalf of defence to Ajay- P.W.2 (Para 10), Leela – P.W.8 (Para 5) that Sumanbai having consumed liquor had fell down on the heap (sic:heap) of logs and thus, sustained injuries, however, it is noteworthy that the appellant has not come out with any such plea in his examination u/s. 313 of 'the Code'. Therefore, the defence taken in this behalf appears to be a total concoction.

25. The plea made on behalf of the appellant that on the fateful night, he was engaged in some work and found his wife in dead state when he came back to his house, is not at all convincing. Nothing has been brought either during cross-examination of witnesses or by way of defence as to with whom the appellant was working, what work was being done by him, where he was engaged and at what time he returned his house. In absence of such particulars, the aforesaid plea cannot be accepted. Even if it is taken for a moment for the sake of argument that on his return, he found his wife dead inside the house, then what prevented him from bringing this incident to the notice of neighbours, relatives so also the police and why he did not react in that very manner. Being husband of the deceased, it was something bare minimum expected from him.

26. Another aspect which invites attention of this Court is that, on the following day of the fateful night, the appellant was not available and he could be apprehended only on next day i.e. in the evening of 29th March, 2013. Why a person, whose wife has suffered death, will keep hiding or absconding for more than 30- 35 hours of the incident?

27. The learned trial Court while appreciating and analysing and evaluating the evidence has taken all these aspects into consideration. We ae (sic:are) in agreement with the reasonings so also with the finding recorded by the learned trial Court.

28. As regards nature of death, the testimony of autopsy surgeon Dr. D.S. Chouhan (P.W.1) to the effect that Sumanbai died because of multiple injuries and the consequent hemorrhage and shock and the death was homicidal in nature, has remained unchallenged. Considering the nature of injuries found on the person of the deceased including fracture of left parietal and left frontal bone leading to damage of brain material coupled with the injury found on the internal part of genital organs, there can be no manner of doubt that the deceased was put to death and that the same was homicidal. Considering the nature of injuries, the only inference can be that the injuries were inflicted with an intention to cause death, therefore, the act comes within the category of murder punishable u/s. 302 of the IPC.

29. Hence, the finding of guilt arrived at by the learned trial Court against the appellant that he committed murder of Sumanbai being based on proper appreciation of evidence does not call for any interference.

30. Resultantly, we agree with the finding of guilt and the consequent conviction and sentence recorded against the appellant u/s. 302 of the IPC. Therefore, this appeal having no merit, fails and is hereby dismissed.

Appeal dismissed.

I.L.R. [2017] M.P., 1485

CIVIL REVISION

Before Mr. Justice Vivek Rusia

C.R. No. 306/2015 (Indore) decided on 1 February, 2017

ABDUL SALEEM

...Applicant

Vs.

SHAMIM AHMED.

...Non-applicant

Partnership Act (9 of 1932), Section 69(2) & 69(3) and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Maintainability of Suit – Scope and Applicability – Respondent/Plaintiff filed a suit for declaration and dividend – Applicant/defendant filed application under Order 7 Rule 11 C.P.C. on the ground that partnership firm was not registered and hence suit was not maintainable – Trial Court dismissed the application – Challenge to – Held – There is an inter se dispute between partners of firm – Plaintiff demanded accounts and share in dividend from another partner of firm, therefore registration of firm is not necessary – Present case will fall u/S 69(3) of the Act of 1932 – Suit is maintainable – Further held – Application under Order 7 Rule 11 C.P.C. shall be decided on the basis of pleading in the plaint alone – No error in the impugned order – Revision dismissed. (Para 9 & 10)

भागीदारी अधिनियम (1932 का 9), धारा 69(2) व 69(3) एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – वाद की पोषणीयता – विस्तार एवं प्रयोज्यता – प्रत्यर्थी/वादी ने घोषणा एवं लाभांश हेतु वाद प्रस्तुत किया – आवेदक/प्रतिवादी ने इस आधार पर सिविल प्रक्रिया संहिता के आदेश 7 नियम 11 के अन्तर्गत आवेदन प्रस्तुत किया कि भागीदारी फर्म रजिस्ट्रीकृत नहीं थी एवं इसलिए वाद पोषणीय नहीं था – विचारण न्यायालय ने आवेदन खारिज किया – को चुनौती – अभिनिर्धारित – फर्म के भागीदारों के मध्य परस्पर विवाद था – वादी ने

फर्म के अन्य भागीदार से खातों और लामांश में हिस्से की मांग की, इसलिए फर्म का रजिस्ट्रीकरण आवश्यक नहीं है — वर्तमान प्रकरण 1932 के अधिनियम की धारा 69(3) के अन्तर्गत आता है — वाद पोषणीय है — आगे अभिनिर्धारित — सिविल प्रक्रिया संहिता के आदेश 7 नियम 11 के अन्तर्गत आवेदन मात्र वादपत्र के अभिवचन के आधार पर विनिश्चित की जाएगी — आक्षेपित आदेश में कोई त्रुटि नहीं — पुनरीक्षण खारिज।

Cases referred :

AIR 1977 SC 336, AIR 1998 SC 3085, ILR (2011) MP 2305, 2009 (2) MPLJ 70, (2016) 11 SCC 313.

Brajesh Garg, for the applicant.

Rajeev Bhatjiwale, for the non-applicant.

ORDER

VIVEK RUSIA, J. :- Defendant/applicant has filed the present revision being aggrieved by the order dated 8.10.2015 by which his application under Order 7 Rule 11 CPC has been rejected.

2. Non-applicant/plaintiff filed a suit for declaration and dividend from the property. In the plaint it is pleaded that the plaintiff/defendant and Zakir (brother of defendant) formed a firm on 01.08.1973 in the name and style of M/s Royal Shoe Stores to run the business of sale of shoes in Ratlam city. A partnership deed was executed on a Rs.2/- stamp paper. By way of partnership they have decided to divide share in the profit. One of the partner Mohd.Sahir died on 15.12.1994 and on his death only the plaintiff and defendant became partners with a share (sic:share) of $\frac{1}{2}:\frac{1}{2}$ in the firm. It is alleged that in the month of October, 2014 when the plaintiff demanded the accounts of the firm then he came to know that the defendant has dissolved the firm on 31.03.1992 and inducted his wife as partner, therefore, suit for declaration was filed that he is the partner of $\frac{1}{2}$ share and entitled for dividend and further sought the direction that the defendant to remove his wife from the firm.

3. After notice defendant filed an application under Order 7 Rule 11 read with section 151 CPC and prayed for rejection of the plaint on the ground that the suit is time barred as no cause of action has arisen on 10.11.2014 and the plaintiff has not filed the suit properly as per the claim of the dividend. The said application was replied by the plaintiff.

4. Learned trial Court vide order dated 08.10.2015 has rejected the

application, hence the present civil revision before this Court.

5. Shri Brajesh Garg, learned counsel on behalf of the applicant submits that learned trial Court has wrongly rejected the application as under section 69(2) of the Indian Partnership Act, 1932 the suit is not maintainable against unregistered firm. He submits that admittedly the firm is not registered, therefore, by virtue of the bar created in the Partnership Act the suit is liable to be dismissed. He further submits that on the basis of the pleading in the plaint especially in para-8 the suit itself is time barred because according to the plaintiff the firm was dissolved on 31.03.1992 and suit was filed in the year 2015. When the plaintiff is claiming share in the firm he is required to quantify his claim and pay the ad valorem Court fees. In support of his contentions he has placed reliance over the judgment in the case of *Loonkaran Sethia etc. vs. Mr. Ivan E. John and others* reported in AIR 1977 SC 336, *M/s Raptakos Brett & Co. Ltd. vs. Ganesh property* reported in AIR 1998 SC 3085, *Ashish Verma vs. Neeraj Vyas and others* reported in ILR (2011) M.P 2305 and *Managing Director, Century Textile Industries Ltd., Mumbai and others vs. Manju Gupta and another* reported in 2009 (2) MPLJ 70.

6. Per contra Shri Rajeev Bhatjiwala, learned counsel on behalf of the respondent submits that trial Court has not committed any error while rejecting the application. He further submits that provisions of Section 69 (2) of the Indian Partnership Act would not apply when the suit is in relation to the dispute between partners regarding settlement of accounts. The suit was filed within limitation and the plaintiff came to know about the dissolution of the firm on 10.11.2014 and the dispute of limitation is always a mix question of fact and law which is to be decided only after framing issues and evidence led by either parties. Under Order 7 Rule 11 CPC the suit is not liable to be dismissed unless it is specifically barred under section 9 of the CPC.

7. I have heard learned counsel for the parties.

8. For ready reference Section 69 of the Indian Partnership Act is reproduced below:-

69. Effect of non-registration.—

(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a

partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,—

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4) This section shall not apply,—

(a) to firms or to partners in firms which have no place of business in [the territories to which this Act extends], or whose places of business in [the said territories], are situated in areas to which, by notification under [section 56], this Chapter does not apply, or (b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.

9. Under sub-section (1) of section 69 no suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of any person

suing as a partner in the firm unless the firm is registered. Under sub section (2) no suit is maintainable against any third party unless the firm is registered. Under sub section (3) the provisions of sub sections (1) & (2) shall apply also to a claim of set off or other proceeding to enforce a right but shall not affect the enforcement of any right to sue for the dissolution of firm or for accounts of dissolved firm. In the present suit the plaintiff has sought the relief that he be declared as a partner of the firm with $\frac{1}{2}$ share and entitled to get the dividend and demanded the accounts of the firm since 01.08.1973. The defendant has not disputed the partnership between the parties, therefore, there is an inter se dispute between the partners of the firm. Sub sections (1) & (2) of section 69 bars a suit to be filed by a firm or against a firm against third party unless the firm is registered. Sub section (2) says that no suit to enforce a right arising from a contract shall be instituted against any third party. The present case would fall under section (3) which specifically says that the provisions of sub section (1) & (2) shall not apply to enforce any right to sue for dissolution of firm or for account of a dissolved firm. The Apex Court in the case of *Umesh Goel vs. Himachal Pradesh Cooperative Group Housing Society Ltd.* reported in (2016) 11 SCC 313 has held as under:

16. Keeping the above outcome of the legal position that can be derived from a reading of sub sections (1), (2) and (3) of Section 69 in mind we can draw further conclusions by making specific reference to clauses (a) and (b) of sub section (3) as well as the exceptions set out in clauses (a) and (b) of sub-section (4) as well. When under sub section (3) which also relates to a ban concerning "other proceedings", the law-makers wanted to specifically exclude from such ban such of those proceedings which are also likely to arise in a suit, but yet the imposition of ban of an unregistered firm need not be imposed. Keeping the said intent of the law-makers in mind, when we read clauses (a) and (b) of sub-section (3), it can be understood that even though such other proceedings may be for the enforcement of any right to sue but yet if it is for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm, the same can be worked out by way of a suit in a court or by way of other proceedings in that suit and the

same will not be affected by the ban imposed under sub section (3). Similarly, any steps initiated at the instance of an official assignee, a receiver or court under the Presidency Towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner in a pending suit of a court also stand excluded from the ban imposed under sub section (3). The specific exclusions contained in clauses (a) and (b) of sub section (3), therefore, makes the position clear to the effect that even though such proceedings may fall under the expression "other proceedings" and may be intrinsically connected with a suit in a court, yet the ban would not operate against such proceedings.

10. The application under Order 7 Rule 11 CPC is liable to be decided on the basis of pleading in the plaint alone. In the plaint the plaintiff has specifically stated that the firm has been wrongly dissolved by the defendant by removing the plaintiff and inducting his wife and not showing accounts to the plaintiff. He has demanded the accounts and share in the dividend from another partner of the firm, therefore, the registration of the firm is not necessary. The suit is very much maintainable and the trial Court has not committed any error while rejecting the application under Order 7 Rule 11 CPC, therefore, the impugned order does not call for any interference by this Court. The petition being devoid of merit is hereby dismissed.

Revision dismissed.

I.L.R. [2017] M.P., 1490

CRIMINAL REVISION

Before Mr. Justice S.K. Awasthi

Cr.R. No. 85/2016 (Gwalior) decided on 2 January, 2017

KAMAL SINGH

...Applicant

Vs.

SAVITRI BAI

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 126 – Compromise – Res Judicata – Ex-parte Order – Opportunity of Hearing – Wife filed an application u/S 125 Cr.P.C. in the year 2005 whereby the same was dismissed in the year 2008 on the ground that

wife failed to establish that she was living separately with sufficient reasons – In the year 2011, wife again filed an application u/S 125 Cr.P.C. whereby wife withdrawn the case on a compromise whereby husband submitted that wife received a lump sum amount of Rs. 5 lacs from him – Subsequently, wife again filed a third application u/S 125 Cr.P.C. whereby husband was proceeded ex-parte and Family Court allowed the application and granted Rs. 3000 pm to wife as maintenance – Challenge to – Held – Principle of *res-judicata* are not attracted – Further, with regard to compromise, order sheet reflects that matter is withdrawn in terms of compromise but terms or particulars of compromise is not mentioned – Further held – With regard to ex-parte proceeds against applicant, remedy u/S 126 Cr.P.C. is available – Court cannot permit bypassing of remedy – Applicant is at liberty to move appropriate application u/S 126 Cr.P.C. before the Court below – No interference is called for – Revision disposed. (Paras 12 to 15)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 एवं 126 – समझौता – पूर्व न्याय – एकपक्षीय आदेश – सुनवाई का अवसर – वर्ष 2005 में पत्नी ने द.प्र.सं. की धारा 125 के अंतर्गत आवेदन प्रस्तुत किया जिस पर उक्त को वर्ष 2008 में इस आधार पर खारिज किया गया कि पत्नी यह स्थापित करने में असफल रही कि वह पर्याप्त कारणों से पृथक् रूप से निवासरत थी – वर्ष 2011 में, पत्नी ने पुनः द.प्र.सं. की धारा 125 के अंतर्गत आवेदन प्रस्तुत किया जिस पर पत्नी ने समझौते पर प्रकरण वापस लिया जिसमें पति ने निवेदन किया कि पत्नी ने उससे रु. 5 लाख की एकमुश्त रकम प्राप्त की – तत्पश्चात्, पत्नी ने पुनः एक तीसरा आवेदन द.प्र.सं. की धारा 125 के अंतर्गत प्रस्तुत किया जिसमें पति पर एकपक्षीय कार्यवाही की गई और कुटुम्ब न्यायालय ने आवेदन मंजूर किया और पत्नी को भरण पोषण के रूप में रु. 3000 प्रतिमाह प्रदान किया – को चुनौती – अभिनिर्धारित – पूर्व न्याय का सिद्धांत आकर्षित नहीं होता – इसके अतिरिक्त, समझौते के संबंध में, आदेश पत्र प्रतिबिंबित करता है कि समझौते के निबंधनों के अनुसार मामला वापस लिया गया था परंतु समझौते के निबंधन या विशिष्टियां उल्लिखित नहीं हैं – आगे अभिनिर्धारित – आवेदक के विरुद्ध एक पक्षीय कार्यवाही के संबंध में, द.प्र.सं. की धारा 126 के अंतर्गत उपचार उपलब्ध है – न्यायालय उपचार की उपेक्षा करने की अनुमति नहीं दे सकता – आवेदक निचले न्यायालय के समक्ष धारा 126 द.प्र.सं. के अंतर्गत समुचित आवेदन प्रस्तुत करने के लिए स्वतंत्र है – हस्तक्षेप की कोई आवश्यकता नहीं – पुनरीक्षण निराकृत।

Cases referred :

AIR 1965 MANIPUR 49, M.Cr.C. No. 2439/2011 decided on 26.03.2013, (1995) 5 SCC 299.

D.D. Bansal, for the applicant.

Pawan Singh Raghuvanshi, for the non-applicant.

ORDER

S.K. AWASTHI, J. :- The applicant has filed this criminal revision under Section 397 read with Section 401 CrPC against the order dated 2.7.2015 passed by Principal Judge, Family Court Vidisha in M.J.C. No.342/2014, whereby the application filed by the applicant under Section 125 of the Code of Criminal Procedure, 1973 (for brevity, the 'CrPC') has been allowed and maintenance of Rs.3000/- per month has been awarded to the respondent.

2. This matter canvassed two legal issues pertaining to the maintainability of the application under Section 125 of CrPC. However, before proceeding to discuss the same, it is appropriate to briefly state the relevant facts of the case on which this matter has arrived before the Court.

3. According to the applicant, the respondent-wife in the year 2005 moved first application under Section 125 of CrPC demanding maintenance from the applicant-husband, which was contested on merits and the court below dismissed the application vide order dated 16.12.2008 on the ground that, the respondent failed to establish the fact that she is residing separately for any considerable or sufficient reason. It is submitted that rejection of this application vide order dated 16.12.2008 attained finality as the same remained unchallenged for considerable length of time.

4. Despite aforesaid, the respondent-wife resurfaced with another application under Section 125 CrPC in the year 2011, which according to the applicant was withdrawn without any liberty due to compromise which was entered into between the parties and in lieu of the same, the applicant made lumpsum payment of Rs.5.00 lacs to the respondent. Therefore, according to the applicant, the respondent waived her right under the Statute by accepting the compromise, hence she is estopped from moving any further application under Section 125 CrPC.

5. As per the applicant, the respondent with intention of abusing criminal justice system moved third application under Section 125 CrPC, in which the applicant was not served with any notice and he was proceeded *ex parte*. Further the proceedings were concluded by passing impugned order dated 2.7.2015 whereby the Court has allowed the application under Section 125

CrPC. It is this order against which the instant revision application has been filed before this Court.

6. In view thereof, the sum and substance of the arguments advanced by learned counsel for the applicant is that, the impugned order is bad in law on three counts. First being that, the applicant was not afforded any opportunity to contest the application. Secondly, the application of the respondent was barred by the principle of *res judicata*. Thirdly, withdrawal of second application by the respondent reflects that she had entered into a compromise with the applicant and both parties agreed to reside separately. Therefore, by virtue of Section 125(4) of CrPC she is residing separately out of her own will and thus, she is not entitled to any amount from the applicant.

7. In order to bring home the second proposition regarding principle of *res judicata*, learned counsel for the applicant placed reliance on a judgment pronounced by the High Court of Manipur in the case of *Shri Laisram Nipamacha Singh vs. Smt. Khaidem Ningol Sakhi Devi and others*, AIR 1965 MANIPUR 49.

8. Per Contra, learned counsel for the respondent submitted that for non-grant of opportunity to the applicant to contest the application, the applicant himself is to be blamed as despite of service of notice, the applicant failed to appear before the court below, secondly the principle of *res judicata* is not attracted to the facts of this case. Hence, the impugned order is just and proper and deserves to be upheld.

9. I have considered the rival contentions of both the parties and have perused the documents placed before the Court.

10. Before advertng to the contentions of the respective parties, it is apt to reproduce the excerpt of certain judicial pronouncements necessary for adjudication of the instant case.

11. This Court in the case of *Kamlesh Kumar Patel vs. Smt. Madhularta* (Misc.Cri.Case No.2439/2011, decided on 26.3.2013), concluded in following manner:-

"It is also settled position of law that the principle of res judicata is not applicable to the criminal proceeding including the proceeding under Section 125 of the Cr.P.C. In any case the impugned application under Section 125

of Cr.P.C. could not be treated to be second time prosecution of the applicant by the respondent. It is needless to state here that the provision of Section 125 of Cr.P.C has been enacted by the Legislature for the welfare of weaker section of the society like women, children and parents, who are unable to maintain themselves and if their applications are thrown away without making any enquiry on merits of the same, then till the extent of such parties, the process of justice would be failed. So in such circumstances, without recording the evidence and examining the case on merits, I do not find fit to quash the application of the respondent filed under Section 125 of Cr.P.C. by invoking the power of this court enumerated under Section 125 of the Cr.P.C. Consequently this petition being devoid of any merits is hereby dismissed at this stage."

11. The Hon'ble Supreme Court has laid down in the case of *Vanamala (Smt.) vs. H.M. Ranganatha Bhatta*, (1995) 5 SCC 299, in the following manner:-

"Section 125 of the Code makes provision for the grant of maintenance to wives, children and parents. Sub-section (1) of section 125 inter alia says that if any person having sufficient means neglects or refuses to maintain his wife unable to maintain herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife not exceeding Rs.500/- in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. Clause (b) of the explanation to the sub-section defines the expression 'wife' to include a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. In the instant case it is not contended by the respondent that the appellant has remarried after the decree of divorce was obtained under Section 13-B of the Hindu Marriage Act. It is also not in

dispute that the appellant was the legally wedded wife of the respondent prior to the passing of the decree of divorce. By virtue of the definition referred to above she would, therefore, be entitled to maintenance if she could show that the respondent has neglected or refused to maintain her. Counsel for the respondent, however, invited our attention to sub-section (4) of Section 125, which reads as under:-

125. (4) No wife shall be entitled to receive an allowance from her husband under this Section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On a plain reading of this Section it seems fairly clear that the expression 'wife' in the said sub-section does not have the extended meaning of including a woman who has been divorced. This is for the obvious reason that unless there is a relationship of husband and wife there can be no question of a divorcee woman living in adultery or without sufficient reason refusing to live with her husband. After divorce where is the occasion for the women to live with her husband? Similarly there would be no question of the husband and wife living separately by mutual consent because after divorce there is no need for consent to live separately. In the context, therefore, sub-section (4) of Section 125 does not apply to the case of a woman who has been divorced or who has obtained a decree for divorce. In our view, therefore, this contention is not well founded.

Counsel for the appellant also pointed out that some of the High Courts had taken a similar view. Reference was made to the case of Kongini Balan Vs. M. Visalakshy, 1986 (92) Criminal Law Journal 697 (Kerala), wherein it was held that a wife who obtains a divorce by mutual consent cannot be denied maintenance by virtue of Section 125 (4) of the Code. Similar view was taken in Krishan Kumar Vs. Kiran, 1 (1991) DMC 248 (Madhya Pradesh) wherein

it was held that the expression 'living separately by mutual consent' does not cover cases of those living separately due to divorce. The same view was expressed in M. Ramakrishna Reddy Vs. T. Jayamma and Another, 1992 (98) Criminal Law Journal 1368. In that case divorce was obtained by mutual consent on the ground of incompatibility and thereafter the woman was living separately, it was held that this could not be construed to be an agreement for living separately by mutual consent and hence the woman was entitled to maintenance. We think these decisions are in conformity with the plain language of sub-section (4) of section 125 which we have construed herein before. The contention raised by the counsel for the husband is, therefore, unsustainable. The High Court was, therefore, clearly wrong in reversing the order passed by the Sessions Judge. In the result, this appeal succeeds, The impugned order of the High Court dated 19th August, 1991 is set aside. The order of the learned Sessions Judge dated 5th September, 1988 is restored. The respondent will pay Rs.5,000/- by way of cost."

12. The reproduced portion of the above, answers to both the contentions of the applicant. Therefore, the proposition that the application of the respondent is barred by principle of *res judicata* cannot be exceeded to. Further the judgment of High Court of Manipur in the case of *Shri Laisram Nipamacha Singh* (supra) will also not be of any help to the applicant as this High Court in the case of *Kamlesh Kumar Patel* (supra) has taken a view that the principles of *res judicata* are not attracted and in the face of the same, the judgment of other High Court is not binding on this Court.

13. The submission of learned counsel for the applicant that since compromise has taken place and by virtue of Section 125(4) of CrPC the application of the respondent is defeated, has not been termed as valid argument by the Hon'ble Apex Court in the context of Section 125 of CrPC. Further, if this contention is examined on the anvil of the fact that the order sheet dated 26.9.2014 recorded by the Judicial Magistrate First Class only reflects that the matter is withdrawn in view of the compromise but no

particulars of compromise or its terms have been mentioned, the contention of the applicant cannot be accepted. Be that as it may, the judgment of Hon'ble Apex Court in the case of *Vanamala* (supra) is self-explanatory and is squarely applicable to the facts of this case.

14. In view of the aforesaid, the only contention which is now left for consideration is that the applicant was not extended any opportunity of hearing. In my considered view, this Court cannot permit bypassing of remedy because the applicant has remedy to move an appropriate application under Section 126 CrPC and raise the point in this regard.

15. In the result, the revision petition is disposed of with the observation that no interference in the order impugned is called for, however the applicant is at liberty to move an appropriate application under Section 126 CrPC before the court below and if such application is preferred, the same shall be considered on its own merits by the court below.

Let a copy of the order be sent to the trial court concerned for information and compliance.

Order accordingly.

I.L.R. [2017] M.P., 1497

CRIMINAL REVISION

Before Mr. Justice Atul Sreedharan

Cr.R. No. 878/2003 (Jabalpur) decided on 3 January, 2017

SAHARA INDIA LIMITED & ors.

...Applicants

Vs.

STATE OF M.P. & anr.

...Non-applicants

A. *Prize Chits and Money Circulation Schemes (Banning) Act, (43 of 1978), Section 9 – Power to Try Offences – Jurisdiction to Issue Process – Held– As per Section 9 of the Act of 1978, no court inferior to that of a Chief Judicial Magistrate shall try the offence punishable under the Act – In the present case, the CJM gravely erred in making over the case to JMFC without appreciating the provisions of the Act, which specifically forbade the trial by a Court inferior to CJM – Issuance of process by JMFC is in violation to Section 9 of the Act – Summoning order against petitioners quashed on account of lack of jurisdiction of JMFC.*

(Paras 10, 14 & 19)

क. इनामी चिट और धन परिचालन स्कीम (पाबंदी) अधिनियम, (1978 का 43), धारा 9 – अपराध विचारण करने की शक्ति – आदेशिका जारी करने की अधिकारिता – अभिनिर्धारित – 1978 के अधिनियम की धारा 9 के अनुसार, मुख्य न्यायिक मजिस्ट्रेट से अवर कोई न्यायालय इस अधिनियम के अन्तर्गत दण्डनीय अपराध का विचारण नहीं करेगा— वर्तमान प्रकरण में, मुख्य न्यायिक मजिस्ट्रेट ने इस अधिनियम के उपबंध जो कि विनिर्दिष्ट रूप से मुख्य न्यायिक मजिस्ट्रेट से अवर किसी न्यायालय द्वारा विचारण निषेध करते हैं, का मूल्यांकन किये बिना न्यायिक मजिस्ट्रेट प्रथम श्रेणी को प्रकरण सौंप कर गंभीर त्रुटि की है, – न्यायिक मजिस्ट्रेट प्रथम श्रेणी द्वारा आदेशिका जारी की जाना इस अधिनियम की धारा 9 का उल्लंघन है – न्यायिक मजिस्ट्रेट प्रथम श्रेणी की अधिकारिता की कमी के कारण याचीगण के विरुद्ध समन आदेश अभिखंडित।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 468 and Prize Chits and Money Circulation Schemes (Banning) Act, (43 of 1978), Section 4 & 5 – Complaint Case – Limitation – Held – In absence of a precise date on which the complainant is stated to have come to know about commission of offence for the first time which is readily and unambiguously reflected from record of the case, the same would be a matter of evidence and cannot be assessed by this Court in revision proceedings or even u/S 482 Cr.P.C. through a roving enquiry – At this stage, complaint cannot be said to be barred by limitation u/S 468 Cr.P.C. (Para 8)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 468 एवं इनामी चिट और धन परिचालन स्कीम (पाबंदी) अधिनियम, (1978 का 43), धारा 4 व 5 – परिवाद प्रकरण – परिसीमा – अभिनिर्धारित – एक निश्चित दिनांक की अनुपस्थिति में, जिसमें परिवादी पहली बार अपराध कारित होने के बारे में पता चलने का कथन करता है जो कि प्रकरण के अभिलेख द्वारा संरलता से एवं सुस्पष्ट ढंग से प्रकट होता है, उक्त साक्ष्य का मामला होगा तथा इस न्यायालय द्वारा पुनरीक्षण कार्यवाहियों में या दण्ड प्रक्रिया संहिता की धारा 482 के अंतर्गत अतिगामी जांच के माध्यम से भी निर्धारित नहीं किया जा सकता – इस प्रक्रम पर, परिवाद दण्ड प्रक्रिया संहिता की धारा 468 के अंतर्गत परिसीमा द्वारा वर्जित नहीं कहा जा सकता।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 202 – Complaint Case – Issue of Summons – Police Enquiry Report – Held – At the initial stage, when the complaint was filed, the trial Court ordered the police to conduct an inquiry u/S 202 Cr.P.C. which shows that there was not much material available in the complaint prima facie to issue process against the petitioner – After 15 adjournments, report

was not filed by the police – In such circumstances, summoning order passed by the Trial Court without waiting for the Police Report u/S 202 Cr.P.C. is bad in law and is hereby set aside – Proceedings against petitioner quashed – Revision allowed. (Para 17 & 18)

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 202 – परिवाद प्रकरण – समन जारी किया जाना – पुलिस जांच प्रतिवेदन – अभिनिर्धारित – प्रारंभिक प्रक्रम पर, जब परिवाद प्रस्तुत किया गया था, विचारण न्यायालय ने पुलिस को दण्ड प्रक्रिया संहिता की धारा 202 के अंतर्गत जांच संचालित करने हेतु आदेशित किया, जो यह दर्शाता है कि याची के विरुद्ध आदेशिका जारी करने हेतु परिवाद में प्रथम दृष्ट्या ज्यादा सामग्री उपलब्ध नहीं थी – 15 स्थगनों के पश्चात्, पुलिस द्वारा प्रतिवेदन प्रस्तुत नहीं किया गया था – ऐसी परिस्थितियों में, विचारण न्यायालय द्वारा दण्ड प्रक्रिया संहिता की धारा 202 के अंतर्गत पुलिस प्रतिवेदन की प्रतीक्षा किये बिना समन आदेश पारित किया जाना विधि विरुद्ध है एवं एतद्वारा अपास्त – याची के विरुद्ध कार्यवाहियाँ अभिखंडित – पुनरीक्षण मंजूर।

Cases referred :

AIR 1963 SC 1279, AIR 1981 SC 1155.

S.C. Datt with Janardhan Singh and Siddharth Datt, for the applicants.

Vijay Soni, P.L. for the non-applicant no.1.

Atul Choudhary, for the non-applicant no.2.

ORDER

ATUL SREEDHARAN, J. :- The instant case has been filed by the Petitioners herein seeking to challenge the order dated 10.4.2003 passed by the learned Judicial Magistrate First Class, Satna in complaint case No.211/2003 (Akhilesh Kumar Garg Vs. Sahara India Limited and others). The complainant is the Respondent No.2 herein. By the said order, the learned trial Court was pleased to take cognizance of offences U/s.4 and 5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (hereinafter referred to as the '1978 Act').

2. The Ld. Counsel for the Petitioner has challenged the order issuing process U/s. 204 P.C on three grounds. Firstly, the order has been impugned on the ground of limitation, as according to the Petitioners, the complaint has been filed after the period prescribed u/s. 468 Cr.P.C, which is a question of fact to be determined from the undisputed facts of the case. Secondly, the summoning order is stated to be in violation of Section 9 of the 1978 Act,

which provides that no Court inferior to that of a Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, shall try any offence punishable under the 1978 Act, which is purely a question of law and thirdly, the Petitioners have called into question the appropriateness of the procedure adopted by the Ld. Court below of issuing process, in the absence of the police report which was earlier called for by the Court u/s. 202 Cr.P.C.

3. According to the complaint filed by the Respondent No. 2, a scheme was allegedly floated by the Petitioners in the year 1987 under the name and style of "Golden". The said scheme was said to have been popularised amongst the ordinary citizens of the country by which ₹ 2,500/- was collected from persons interested to become members of the scheme. In paragraph 3 of the complaint, the Complainant/Respondent No. 2 states that the Petitioners herein had set the period of maturity of the scheme as 144 months and that every month a draw would be held and winning members would either get a 12 bedroom bungalow or a car worth ₹ 6 Lacs. This according to the complainant was an inducement held out by the Petitioners. In paragraph 4, the Complainant states that attracted by the alleged promise held out by the Petitioners, he deposited ₹ 500/- on 6.1.1989, ₹ 50/- on 11.1.1989, ₹ 100/- on 13.1.1989, ₹ 250/- on 18.2.1989, ₹ 200/- on 23.2.1989, ₹ 200/- on 22.4.1989 and ₹ 1200/- on 31.10.1989. In this way, the complainant is stated to have become a member of the scheme by depositing ₹ 2500/-.

ON THE COMPLAINT BEING BARRED BY LIMITATION

4. Learned Counsel for the Petitioners has drawn the attention of this Court to paragraph 7 of the complaint in which the complainant has averred that on 17.8.1993, a First Information Report was registered against the Petitioners herein at a Police Station in Lucknow and that the Petitioners had moved the Hon'ble High Court of Allahabad, Bench at Lucknow, in which the Petitioners were directed to appear before the Court of learned Chief Judicial Magistrate, Lucknow. The complainant further states that the Petitioners herein with criminal intent, concealed the said fact from the members of the scheme called "Golden" and did not inform them and also did not commence the monthly draw as stipulated under the scheme and so the Petitioners had dishonestly induced the Complainant/Respondent No. 2 to part with ₹ 2,500/-. Thereafter, the Complainant is stated to have given a written complaint to the Superintendent of Police, Satna on 16.11.1998 against the Petitioners. However, even after the passage of 8 months, the Police did not register an offence against the

Petitioners on account of which the complaint has been filed by the Complainant/Respondent No. 2 in the Court of learned Chief Judicial Magistrate, Satna. This complaint was filed on 15.9.1999.

5. It has been argued that the Respondent No. 2 came to know about the commission of the offence in the year 1993 itself, when he came to know about the F.I.R. which was registered against the Petitioners at Lucknow and that as the maximum punishment U/s. 4 of the Act was not more than three years, the complaint ought to have been filed on or before 17.8.1996. However, as the complaint was filed on 15.9.1999, the same was hit by limitation as provided under Section 468 Cr.P.C.

6. The statement of the complainant/respondent No. 2 U/s. 200 of Cr.P.C was recorded on 15.9.1999 itself and in paragraph 2, the complainant had stated that after the passage of some time, as the accused persons had not conducted the draw, the Complainant/Respondent No. 2 had sent a notice to the Petitioners herein demanding that the draw be held or his money be returned. It is further stated by the Respondent No. 2 that he received a reply from the Petitioners herein by which he was informed that as a stay was operative, the draw could not be conducted. He further says in the same paragraph that when he asked the particulars relating to the order of stay, the Petitioners herein did not give a satisfactory answer. Disheartened by the actions of the Petitioners, he filed a complaint case before the District Consumer Redressal Forum, Satna in the year 1998 which vide order dated 7.11.1998 was dismissed on the grounds that the complainant had concealed the fact that out of ₹ 2,500/- that he had deposited in the Company, the Petitioners had given a national saving certificate for ₹ 1000/-.

7. Learned counsel for the Petitioners has dwelt upon paragraph 2 of the statement of Respondent No. 2 recorded U/s. 200 Cr.P.C, to emphasize that even though the complainant has not mentioned in paragraph 2 the date on which he had given the notice to the Petitioners herein and the date on which he received the reply of the Petitioners declining to hold the draw or to refund his money. According to the Ld. Counsel for the Petitioners, it is certain that the said notice and the reply of the Petitioners refusing to refund the amount of ₹ 2,500/- deposited by Respondent No. 2 had happened on a date before 1998, as the complainant himself states in paragraph 2 that when the Petitioners refused to return the said money by the reply to his notice, the complainant had approached the Consumer Forum for the relief and that was

in the year 1998. Under the circumstances, the Respondent No. 2 is stated to have become aware of the offence on a date before the year 1998 for the second time. The first time that he came to know of the commission of the offence was when he became aware of the F.I.R. being filed against the Petitioners in the year 1993.

8. *Per Contra*, the Ld. Counsel for the Respondent No. 2 has argued that the date on which the Respondent No. 2 became aware of the registration of the FIR is not apparent from the complaint or the statement of the Complainant u/s. 200 Cr.P.C and so, from the material on record before this Court, it is not revealed as to when the Complainant actually came to be aware of the commission of the offence against him and so the same would remain a disputed question of fact till the recording of evidence of the Complainant. Therefore, it could not be said at this stage that the complaint is barred by limitation. This Court is in agreement with the Ld. Counsel for the Respondent No.2. In the absence of a precise date on which the Respondent No.2 is stated to have come to know about the commission of the offence for the first time which is readily and unambiguously reflected from the record of the case, the same would be a matter of evidence and cannot be assessed by this Court in proceedings u/s. 397 r/w 401 Cr.P.C or even u/s. 482 Cr.P.C through a roving enquiry. Under the circumstances, the contention forwarded on behalf of the Petitioners that the case filed by the Respondent No.2/ Complainant before the trial Court is barred by limitation u/s. 468 Cr.P.C is rejected.

9. Thereafter, the learned Chief Judicial Magistrate, Satna, vide order dated 29.3.2001 had reflected therein that the complainant had neither filed any document nor has he has mentioned therein as to how action was taken by the Registrar of Chit Fund and Societies. Therefore, the Ld. Chief Judicial Magistrate was pleased to direct the complainant to submit necessary information before the Court and was further pleased to observe that the matter was required to be enquired into by the Police and so passed an order U/s. 202 of Cr.P.C and sent a copy of the complaint to the Superintendent of Police, Satna, for conducting an enquiry and submit a report and fixed the case for 19.5.2001 for receiving the report from the police. Thereafter, the case continued to be adjourned from one date to another awaiting the report of the Police. Between 19.5.2001 and 6.8.2002 the case was listed 11 times before the trial Court. However, in the meanwhile, another development had taken place in this case as the Chief Judicial Magistrate made over the case to

the Ld. Judicial Magistrate First Class, Satna before whom the proceedings commenced from 15.2.2002. After the case was made over, between 6.6.2002 till 10.4.2003 the case was adjourned 12 times for the filing of the report by the Police and on 10.4.2003 the learned J.M.F.C. passed the impugned order summoning the Petitioners herein to stand trial for offences U/s. 4 and 5 of the Act.

10. Learned counsel for the Petitioners has submitted that the said order summoning the petitioners is bad in law as the impugned order was passed by a Court which was not competent to try the offence under the 1978 Act. He has referred to section 9 of the 1978 Act which reads;

Power to try offences. No court inferior to that of a Chief Metropolitan Magistrate, or as the case may be, Chief Judicial Magistrate, shall try any offence punishable under this Act.

The petitioners contend that the 1978 Act specifically provides that no Court inferior to that of the Chief Judicial Magistrate shall try an offence punishable under the 1978 Act. Ld. Senior Counsel for the Petitioners has argued that the Chief Judicial Magistrate had committed an illegality by making over the case to the Court of the Ld. JMFC as the said Court is inferior to that of the Chief Judicial Magistrate. On the other hand, Ld. Counsel for the Respondent No. 2 has argued that the Court of the Ld. JMFC is not inferior to the Court of the Chief Judicial Magistrate as the appeal from an order passed by the Court of the JMFC is heard by the Court of Sessions and not by the Chief Judicial Magistrate.

ON THE COURT EMPOWERED TO TRY THE CASE AND WHETHER THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS IS A COURT INFERIOR TO THE COURT OF THE CHIEF JUDICIAL MAGISTRATE.

11. This Court is called upon to determine whether the Court of the JMFC is inferior to that of the Chief Judicial Magistrate. There is no doubt that the Court of the JMFC is subordinate to the Court of the Chief Judicial Magistrate as the Chief Judicial Magistrate exercises administrative control over the JMFC as regards the allocation of cases and making over cases to the Court of the JMFC is concerned. However, merely because the Court of the JMFC is subordinate to the Chief Judicial Magistrate, the same is inadequate to deem

the Court of the JMFC being inferior to that of the Chief Judicial Magistrate. The argument forwarded by the Ld. Counsel for the Respondent No.2 that an appeal or revision from an order of the JMFC would lie to the Court of Sessions and not to the Court of the Chief Judicial Magistrate is a point well taken to demonstrate that the Court of the JMFC is not inferior to the Court of the Chief Judicial Magistrate, as an appeal or revision from an order of a Court would lie to such Court to which the Court passing the impugned order was immediately inferior to. In this regard, it would be relevant to refer to the judgement of the Supreme Court in *Ladli Prasad Jaiswal Vs. Karnal Distillery Co. Ltd.*, - AIR 1963 SC 1279, where the Supreme Court had laid down the distinction between a "Court Subordinate to" and a "Court immediately below" and held in paragraph 11 that **"A court subordinate to the High Court is a court subject to the superintendence of the High Court, whereas a court immediately below is the court from whose decision the appeal has been filed"**. The said explanation was given by the Supreme Court while examining whether the order under appeal before the Division Bench of a High Court, which was passed by a Single Judge of the same High Court, exercising original jurisdiction, was an order of a "Court subordinate to" it or that of a "Court immediately below" it. The Supreme Court held that a "Court is subordinate to " another which exercises administrative control over it and a "Court is immediately below to " another to whom the appeal from an order of such Court lies to.

12. However, that inferiority is limited to the realm of appeals and revisions and this Court would have to examine if there are other factors to determine if the Court of the JMFC is inferior to the Court of the Chief Judicial Magistrate or if both are of equivalent stature as both are courts of first instance under the Cr.P.C.

13. The extent of judicial powers exercised by the JMFC and the Chief Judicial Magistrate can be an indicium to determine if the former is inferior to the latter. In this regard, the Ld. Senior Counsel for the Petitioners has drawn the attention of this Court to section 15 of the Cr.P.C which makes the JMFC subordinate to the Chief Judicial Magistrate, subject to the general control of the Sessions Judge. Likewise, section 410 Cr.P.C, which authorizes the Chief Judicial Magistrate to withdraw any case from or recall any case made over to the JMFC by him and try the case himself or refer the same for inquiry of trial to any other Magistrate competent to inquire into or try the same. From these sections, it is clear that the Court of the JMFC is subordinate to the

Court of the Chief Judicial Magistrate, it still does not answer the question if the former is inferior to the latter.

14. Section 29 (1) of the Cr.P.C empowers the Court of the Chief Judicial Magistrate to pass any sentence authorized by law except a sentence of death, of imprisonment for life or of a term exceeding seven years imprisonment. Section 29 (2) of the Cr.P.C empowers a Judicial Magistrate First Class to pass a sentence of imprisonment for a term not exceeding three years and impose a fine not exceeding rupees ten thousand. There are cases where the offence involves imprisonment for a term exceeding three years but which are triable by the Court of the JMFC as the Court of First Instance and if the JMFC is of the opinion that there should be a term of imprisonment which is more than three years which must be brought to bear upon the accused, then in such cases, the JMFC resorts to the procedure u/s. 325 Cr.P.C and forwards the accused to the Chief Judicial Magistrate to whom such JMFC is subordinate to, who can sentence such a person to imprisonment up to seven years. A conjoint reading of section 29 and 325 Cr.P.C make is absolutely clear and unambiguous that the sentencing power of the Judicial Magistrate First Class is inferior to that of the Chief Judicial Magistrate. The power of sentencing an accused is a judicial power that is vested in courts and therefore, on account of the judicial powers of the JMFC being inferior to that of the Chief Judicial Magistrate, the Court of the Judicial Magistrate First Class is inferior to the Court of the Chief Judicial Magistrate. Under the circumstances, the issuance of process and the conduct of the trial by the Court of the Judicial Magistrate First Class is in violation of the provisions of section 9 of the 1978 Act and therefore the summoning orders against the Petitioners deserves to be quashed on account of the lack of jurisdiction of the JMFC to issue process against the Petitioners.

ON ISSUANCE OF PROCESS IN THE ABSENCE OF THE POLICE REPORT, AFTER HAVING CALLED FOR IT.

15. As observed hereinabove at paragraph 8, that the Ld. Chief Judicial Magistrate had observed vide order dated 29/03/01 that the matter was required to be enquired into by the Police and so, called for the report of the police U/s. 202 of Cr.P.C and sent a copy of the complaint to the Superintendent of Police, Satna, for conducting an enquiry and submitting a report and fixed the case for 19/05/01. Thereafter, on at least 23 occasions (11 times before the CJM and 12 times before the JMFC), the Court kept adjourning the case

awaiting the Police report. These adjournments by the Ld. Trial Court disclosed the fact that the complaint and the statement of the complainant were inadequate for the Court to arrive at a conclusion that there existed a triable issue against the Petitioners. Therefore, the impugned order issuing the process on 10/04/03, without the report of the Police coming on record, only went to show that the Ld. Court below has proceeded on material that it had itself previously considered as inadequate to proceed against the Petitioners and that too without giving any reasons as to why the learned Court below had now come to the conclusion that, the non-availability of the Police report notwithstanding, there was adequate material on record to proceed against the Petitioners.

16. The Ld. Senior Counsel for the Petitioners has cited the judgement of the Supreme Court as reported in A.I.R. 1981 SC 1155 - *Mohammad Atullah Vs. Ramsaran Mahto*. In this case, one Ramsaran had filed a complaint against the appellant before the Supreme Court and other persons in the Court of the Sub-Divisional Magistrate, Arrah. The Sub-Divisional Magistrate directed the Executive Officer, Samastipur, Municipality to make an investigation under Section 202 Cr.P.C and to submit a report. The said officer filed a cryptic report to the effect that a prima facie case was made out against three accused persons and that no case was made out against four other accused persons. The Supreme Court held that the said report does not give any detail of the investigation made by the said officer and has no reference to any statement of any witness examined by him or even the nature of document perused by him. It further observed that the report was not accompanied by any other document. Thereafter, on receipt of the report, the Chief Judicial Magistrate, Samastipur is said to have taken cognizance of the case and issued process against the appellant before the Supreme Court and other co-accused persons. The appellant first moved the High Court U/s. 482 Cr.P.C. to quash the said order of the Chief Judicial Magistrate, which was rejected. Thereafter, in the appeal filed before the Hon'ble Supreme Court it was held: "**having directed an investigation U/s.202, what was there in the report of investigation to justify the issue of process to the accused, it was asked. The report of investigation merely set out the conclusion of the Executive Officer, Samastipur Municipality, without mentioning or referring to any material which would justify the issue of a process. It was, therefore, said that the Chief Judicial Magistrate was wrong in issuing process, on the basis of the report of investigation made by the Executive Officer, Samastipur Municipality. We are afraid the submission has to be**

accepted. There is no answer to it. As already pointed out by us the Executive Officer, Samastipur Municipality, in his report, merely expressed his opinion but mentioned no detail of the investigation made by him and referred to no witness examined by him or any document perused by him. Therefore, when the Chief Judicial Magistrate took cognizance of the case and ordered issue of process against the accused there was no additional material before him except what was already there when he ordered an investigation U/s.202 Cr.P.C. Obviously the learned Chief Judicial Magistrate, without any reference to any further material, took cognizance of the case and ordered the issue of process to the accused merely on the basis of the opinion expressed by the Executive Officer, Samastipur Municipality". On the said basis, the Supreme Court quashed the proceeding against the appellant in that case.

17. The Ld. Senior Counsel for the Petitioners has argued that the position of the Petitioners herein is even stronger as in the case before the Supreme Court, there was an investigation that was conducted and a report filed. Whereas in the instant case against the Petitioners, there was no investigation/inquiry that was conducted by the police despite the order of the Chief Judicial Magistrate directing such an enquiry U/s.202 Cr.P.C. Thereafter, having adjourned the case over 15 times only for the purpose of receiving the report of the Police, it was not justified for the Court below to pass the impugned order without waiting for the report.

18. This Court agrees with the contention of the Ld. Senior Counsel on this aspect. The judgement of the Supreme Court *supra* succinctly sums up that law relating to the procedure to be adopted by the Ld. Trial Court after it orders the police to carry out an inquiry u/s. 202 Cr.P.C. Once the said order is passed, the Trial Court must not telescope to the stage of issuing process to the accused persons in the absence of the said report. In the event the police report is not forthcoming, the Trial Court must resort to coercive proceedings in order to compel the police to comply with the order of the Court u/s 202 Cr.P.C. In the alternative, the Trial Court must carry out further inquiry on its own or get an inquiry done by anyone authorized by the Court u/s. 202 Cr.P.C and secure additional evidence from the Complainant or other sources and only thereafter, having satisfied itself that it has now on record such additional evidence/material which was not there earlier at the time of passing the order directing the police to inquire u/s. 202 Cr.P.C, issue process against the accused persons. Under the circumstances, this Court is of the opinion that the

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summoning order passed by the Ld. Trial Court without waiting for the report of the police u/s. 202 Cr.P.C is bad in law and the said order deserves to set aside on this count also.

19. Though the Chief Judicial Magistrate has powers u/s. 410 Cr.P.C to withdraw a case from one JMFC and refer the case to another Magistrate competent to try the said case, the Chief Judicial Magistrate had to firstly satisfy himself that the Magistrate to whom he was referring the case was competent to try the said case. In the instant case, the Ld. Chief Judicial Magistrate gravely erred in making over the case to the Ld. JMFC without appreciating section 9 of the 1978 Act, which specifically forbade the trial of offences under the 1978 Act by a Court inferior to that of the Chief Judicial Magistrate.

20. In view of what has been observed by this Court hereinabove, the criminal revision succeeds and the impugned order summoning the Petitioners to stand trial is set aside and the proceedings against them before the Court below shall cease forthwith.

Revision allowed.

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MISCELLANEOUS CIVIL CASE

Before Mr. Justice R.S. Jha & Mr. Justice Anurag Shrivastava

M.C.C. No. 152/2017 (Jabalpur) decided on 16 January, 2017

**ASSOCIATION OF PRIVATE DENTAL AND
MEDICAL COLLEGES.**

...Applicant

Vs.

UNION OF INDIA & ors.

...Non-applicants

A. Admission in B.D.S. Course – Petitioner association filed the present M.C.C. for extension of time to comply with orders of this Court in original writ petition, in which association was a respondent – **Held –** Present case has been filed for extension of time for affording time to Central Government, so that a decision on second recommendation forwarded by D.C.I. for regularizing the illegal admissions can be taken, whereas such issue has already been examined in detail by the High Court in earlier petitions and also by the Supreme Court and even Central Government has already previously dismissed such a recommendation – **Further held –**

Petitioner has never challenged the original order passed by Dental Council of India nor it has opposed the same before any Court of law – Present application amount to abuse and misuse of process of law and is absolutely misconceived, mischievous and vexatious – M.C.C. dismissed with cost of Rs. 20,000. (Paras 27, 28, 29 & 31)

क. बी.डी.एस. पाठ्यक्रम में प्रवेश – याची एसोसिएशन ने मूल रिट याचिका में, जिसमें एसोसिएशन प्रत्यर्थी था, इस न्यायालय के आदेशों का अनुपालन करने के लिए समय बढ़ाने हेतु एम.सी.सी. प्रस्तुत की – अभिनिर्धारित – वर्तमान प्रकरण केन्द्र सरकार को समय प्रदान करने के लिए समय बढ़ाने हेतु प्रस्तुत किया गया है, ताकि अवैध प्रवेशों को नियमित करने के लिए भारतीय दन्त चिकित्सा परिषद् द्वारा भेजी गई दूसरी सिफारिश पर विनिश्चय किया जा सके, जबकि ऐसे विवादक का पूर्व याचिकाओं में उच्च न्यायालय द्वारा एवं उच्चतम न्यायालय द्वारा भी विस्तृत रूप से परीक्षण किया जा चुका है एवं यहाँ तक कि केन्द्र सरकार ने पहले ही ऐसी सिफारिश को पूर्व में खारिज किया है – आगे अभिनिर्धारित – याची ने कभी भी भारतीय दन्त चिकित्सा परिषद् द्वारा पारित मूल आदेश को चुनौती नहीं दी है और न ही किसी न्यायालय के समक्ष उक्त का विरोध किया है – वर्तमान आवेदन विधि की प्रक्रिया का दुरुपयोग और अनुचित उपयोग है एवं पूर्ण रूप से गलत, हानिप्रद एवं कष्टप्रद है – 20,000 रु. के व्यय के साथ एम.सी.सी. खारिज।

B. Practice – Second Recommendation – Held – Dental Council of India was very well aware of the fact that such a recommendation has already been rejected by the Central Government and the matter has been concluded by the High Court as well as by the Supreme Court – At no point of time, D.C.I. sought permission of the High Court to move second recommendation to Central Government – Stand and conduct of D.C.I. is highly deprecated. (Para 24 & 26)

ख. पद्धति – दूसरी सिफारिश – अभिनिर्धारित – भारतीय दन्त चिकित्सा परिषद् भली-भाँति इस तथ्य से अवगत था कि इस प्रकार की सिफारिश पहले ही केन्द्र सरकार द्वारा नामंजूर की जा चुकी है एवं मामला उच्च न्यायालय के साथ-साथ उच्चतम न्यायालय द्वारा भी समाप्त किया जा चुका है – भारतीय दन्त चिकित्सा परिषद् ने समय के किसी बिन्दु पर केन्द्र सरकार को दूसरी सिफारिश भेजने के लिए उच्च न्यायालय की अनुमति नहीं चाही है – भारतीय दन्त चिकित्सा का कदम एवं आचरण अत्याधिक निन्दनीय है।

Cases referred :

(2009) 7 SCC 751, 2008 (3) MPLJ 282, W.P. No. 6637/2015 decided

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on 06.10.2015, SLP(C) No. 30751/2015 decided on 06.11.2015 (Supreme Court), W.P. No. 6698/2015 decided on 14.10.2015.

Amal Pushp Shroti, for the applicant.

Vikram Singh, for the non-applicant No.1.

Mohan Sausarkar, for the non-applicants No. 2 & 5.

R.N. Singh with Arpan J. Pawar and Ashwariya Singh, for the non-applicant No.6.

P. K. Kaurav, for the non-applicants No. 4 & 7.

ORDER

The Order of the Court was delivered by :
R.S. JHA, J. :- Heard on the application for extension of time to comply with the order passed by this Court in W.P No.16373/2015 and other connected matters which were decided by this Court on 16.12.2016 filed by the Association of Private Dental and Medical Colleges of M.P. (APDMC) who was respondent no.5 in the original petition.

2. Before we advert to the application filed by the applicant APDMC, it is pertinent to note that the original writ petition had been filed by various colleges and students being aggrieved by order and direction of the Dental Council of India directing all concerned colleges to discharge and cancel the admissions of all students who have been granted admissions on the basis of the marks obtained by the students in the 10+2 Higher Secondary School Certificate Examination or equivalent examination as well as those students who had been granted admissions inspite of the fact that they had either not participated in the Competitive Entrance Examination or had obtained less marks than the qualifying marks that had been prescribed in the Competitive Entrance Examination held by the APDMC at the relevant point of time.

3. A similar and identical petition raising the same issues challenging the order of the Dental Council of India came up for hearing before the Gwalior Bench of this Court in *Shraddha Varshney and others vs. Union of India and others*, W.P.No.6637/2015 and the Gwalior Bench of this Court dismissed the petition on 6.10.2015 by holding that students could be admitted to B.D.S Courses only if they qualify in the Competitive Entrance Examination and that no admissions can be made on the basis of the marks obtained by them in the 10+2 examination. The Gwalior Bench, accordingly, dismissed the writ petition upholding the order of the Dental Council of India and the order and judgment

of the Gwalior Bench has been affirmed and confirmed by the Supreme Court in SLP(C) No.30751/2015 which was dismissed by the Supreme Court on 6.11.2015.

4. Another petition *Aarshabh Shukla and another vs. M.P. Medical Science University and others*, W.P No.6698/2015 was also dismissed by the Gwalior Bench by order dated 14.10.2015 and this order has also been affirmed and confirmed by the Supreme Court while dismissing SLP(C) 30751/2015.

5. Apparently and admittedly similar orders passed by the Dental Council of India in the case of the original petitioners were assailed by them before this Court in W.P No.16373/2015 and connected matters by various Dental Colleges as well as students and these petitions have also been dismissed by this Court by order dated 16.12.2016 specifically in view of the fact that similar and identical petitions, as referred to above, had been dismissed by the Gwalior Bench and the dismissal has thereafter been affirmed by the Supreme Court.

6. This Court, while dismissing W.P No.16373/2015 and connected matters, also took note of the fact that subsequent to the dismissal of the SLP, the Dental Council of India had made an attempt to get the illegal admissions regularized by sending a proposal in that regard to the Central Government but the Central Government had categorically rejected the proposal of the Dental Council of India by its letter dated 9.12.2016 by stating that admissions made in violation of the Act and the Rules could not be regularized.

7. After passing of the order by this Court wherein this Court constituted a Committee for scrutinizing all admissions and discharging and cancelling the illegal admissions within two weeks, MCC No.3524/2016 was filed by the applicant APDMC seeking extension of time for implementing the order passed in W.P No.16373/2015.

8. Though the APDMC was neither the petitioner nor the respondent responsible to implement the order, however as all the parties appearing before this Court in the aforesaid MCC conjointly prayed for extension of time, this Court vide order dated 2.1.2017 extended the same till 14.1.2017. In the meanwhile, the applicant has filed a SLP before the Supreme Court which is pending and in which the matter has been ordered to stand over for four weeks granting liberty to the applicant to approach the High Court for further

extension of time, pursuant to which the applicant has filed the present application seeking extension of time by another four weeks for implementing order dated 16.12.2016 passed by this Court in W.P No.16373/2015 and connected matters.

9. At the very outset, we would like to take note of the fact that the present applicant APDMC did not, at any point of time, challenge the order passed by the Dental Council of India directing cancellation of admissions made contrary to law on the basis of 10+2 marks or of those students who have not qualified or participated in the Competitive Entrance Examination.

10. We are constrained to state the aforesaid only to take note of the fact that the APDMC, without ever having challenged the order passed by the Dental Council of India directing cancellation of admissions or ever opposing the action taken by them has, for the first time, after decision of this Court came up for extension of time for implementing the order and in spite of not having raised any grievance against the same, has shown great alacrity in seeking extension of time for implementing the order although none of the petitioners have done so.

11. It is pertinent to note that none of the colleges or the students have filed any such application and it is the APDMC alone who has done so without having challenged the original order passed by the Dental Council of India and; therefore, having waived its right to challenge the order, we have serious doubts as to whether they can be permitted to do so.

12. We may also take note of the fact that before this Court, in the original writ petition, the applicant APDMC, who was a respondent in the petition, filed a return in which the stand taken by them was that the APDMC and the private colleges had the power as well as the authority to grant admission to students on the basis of 10+2 marks obtained by them however the APDMC did not, at any point of time, submit or place any document or the relevant records of the agency which conducted the examination on record to contend that the admissions granted to the students concerned were based on the marks obtained by them in the Competitive Entrance Examination and that these students had in fact qualified in the entrance examination. On the contrary, in all the petitions the original petitioners including the colleges have specifically admitted that admissions had been granted to the students concerned on the basis of the 10+2 marks obtained by them. This fact was also taken note by the Dental Council of India when it drew up the list of the illegal admissions

made by the colleges before directing them to cancel the said admissions.

13. We may also take note of the fact that the Gwalior Bench of this Court as well as this Court in W.P.No.16373/2015 had specifically taken into consideration the stand of the APDMC that admissions could be made at the college level on the basis of 10+2 marks obtained by them and had emphatically rejected the same on the ground that such admissions were prohibited by the Admission Rules of 2008 apart from which they are also contrary to the directions issued by the Supreme Court in the case of *Modern Dental College and Research Centre and Others vs. State of M.P. and others*, (2009) 7 SCC 751, and other decisions of the Supreme Court wherein it has specifically been directed that admissions to all colleges would be made on the basis of a Competitive Entrance Examination strictly in accordance with merits. We are also constrained to observe that this Court in the case of *Subha Mishra and others vs. State of M.P. and others*, 2008 (3) MPLJ 282, has already held that admissions to MBBS Courses cannot be made on the basis of 10+2 marks and that admissions can only be made strictly on the basis of merits of the marks obtained by a student in the competitive entrance examination held in the State of M.P. and that a student cannot be granted admission on the basis of the marks obtained by him in the competitive entrance examination held by another State and therefore the contention of the learned counsel for the applicant deserves to be rejected not just in view of the reasons mentioned by us in the main petition but also in view of the decision of this Court rendered in the case of *Subha Mishra* (supra).

14. Today when the matter has come up before this Court for considering the prayer of second extension of time, the respondents have placed before this Court the minutes of the meeting held on 11.1.2017 to 14.1.2017 of the committee constituted by this Court pursuant to the order dated 16.12.2016 passed in W.P. No.16373/2015 for scrutinizing the admissions, a perusal of which shows that the committee has completed the scrutiny of the cases and has also finalized the proceedings but has not passed the final order only on account of the fact that the Supreme Court has granted liberty to the applicant APDMC to seek extension of time for implementing the order from the High Court.

15. The applicant has also placed before this Court a letter issued by the Dental Council of India dated 11.1.2017 again seeking and recommending regularization of the illegal admissions made by the colleges as a one time

measure for approval of the Government of India issued after the decision of this Court. On the basis of the said letter the learned counsel for the applicant submits that as the matter is pending consideration before the Government of India, therefore, the time for implementing the order passed by this Court in W.P. No.16373/2015 be extended by a further period of four weeks as by that time the Central Government would consider and take a decision on the recommendation for regularization forwarded by the Dental Council of India.

16. We have heard the learned counsel for the parties at length.

17. In the backdrop of the facts narrated by us in the preceding paragraphs namely that the issue regarding validity of the admissions made by the colleges as well as the validity of the directions issued by the Dental Council of India directing cancellation of all admissions that were made on the basis of the marks obtained by the students in the 10+2 examinations and of all those students who have not qualified or participated in the Competitive Entrance Examination has already been considered and finally decided by the Gwalior Bench and by this Court against the petitioners and the order passed by the Gwalior Bench has been affirmed and confirmed by the Supreme Court, we proceed to consider the request of the applicant for extension of time.

18. The narration of the facts in the preceding paragraphs indicates that during the pendency of W.P. No. 16373/2015, the Dental Council of India had previously made an attempt to get the admissions regularized by forwarding a recommendation in that regard to the Central Government, which has been rejected by the Central Government vide its letter dated 9.12.2016.

19. Once this Court and the Supreme Court has held that the admissions made on the basis of 10+2 marks of students who had either not qualified or had not appeared in the Competitive Entrance Examination was illegal and that the direction of the Dental Council of India to cancel all such admissions and discharge such students was valid, we have serious and grave doubts in our mind as to whether the Dental Council of India, in the teeth of the orders passed by this Court, could have forwarded another recommendation for regularizing such admissions, moreso as a favourable decision by the Central Government on that count would amount to nullifying the judgments of this Court as well as the Supreme Court which is prima facie impermissible. It is pertinent to observe that inspite of our repeated query, no provision of law has been placed before us which empowers the Central Government to validate or legalize illegal admissions in M.B.B.S. and B.D.S. Courses or to review its

previous order dated 9.12.2016 rejecting such a recommendation, more so when this Court has already held such admissions to be illegal and contrary to law and has also put a stamp of approval on the order of the Central Government dated 9.12.2016 rejecting the proposal of the Dental Council of India.

20. In the light of the above, we are of the considered opinion that the letter dated 11.1.2017 on the basis of which the applicant APDMC is seeking extension of time is itself misconceived.

21. We are also of the considered opinion that once petitions of a number of colleges and students have been dismissed by the Gwalior Bench as far back as in October, 2015 and the SLP filed against the same has also been dismissed in December, 2015 itself and those orders have become final and binding in respect of those students and colleges as well as the Dental Council of India and others, any recommendation granting relief to another set of students in other parts of the State of Madhya Pradesh would amount to discrimination and victimization of those students and in such circumstances, as the law has to apply uniformly to all, we are of the considered opinion that the decisions of this Court have to bring about uniformity and have to be applied uniformly and, therefore, no further extension of time can be granted for the purposes of implementing the orders passed by this Court merely because the Dental Council of India under some misconception of law has forwarded an untenable recommendation to the Central Government for reconsideration.

22. We may also take note of the fact that though on the previous occasion it was stated that the parties needed more time to furnish information to the Committee constituted by us, however, the original decision of the Dental Council of India was made on the basis of the information furnished by the colleges themselves which information is still available with the committee and this fact has specifically been recorded by the committee constituted by this Court pursuant to order passed by this Court in W.P. No.16373/2015 wherein the Committee has recorded that the colleges have stated and contended before the Committee that they have furnished all the necessary information in the format as required by the committee which is duly signed by them and, therefore, the committee may rely upon that information to decide the matter.

23. It is therefore, also apparent that all the necessary information has already been furnished by the colleges before the Committee which has been

duly considered and thereafter the committee on scrutiny has found several admissions, about 871, to be illegal and contrary to law and the committee does not need any further time to decide the matter.

24. We would be failing in our duty if we fail to take into account and seriously deprecate the conduct of the respondent Dental Council of India in the present case. In the instant case it was the Dental Council of India itself which issued the initial orders directing discharge and cancellation of admissions of those students who had been granted admission who have either not appeared or had not qualified in the Competitive Entrance Examination and had been granted admission only on the basis of the marks obtained by them in the 10+2 Examination. The Dental Council of India was well aware of the fact that its orders have been affirmed and confirmed by the Gwalior Bench of this Court as well as in the present batch of petitions. The Dental Council of India was also aware of the fact that the Supreme Court had also approved its action by dismissing the SLP's filed against the orders passed by the Gwalior Bench and, therefore, inspite of having full knowledge of the fact that the matter stood finally concluded after dismissal of the SLP by the Supreme Court, the Dental Council of India again proposed regularization of the illegal admissions as a one time measure to the Central Government. The Dental Council of India was also aware and infact it was the Dental Council of India itself who produced the order/letter of the Central Government dated 9.12.2016 before this Court during the hearing of W.P No.16373/2015 rejecting the aforesaid proposal of the Dental Council of India. The Dental Council of India is also aware of the fact that this Court while dismissing W.P No.16373/2015 has affirmed and granted a stamp of approval to the decision of the Central Government dated 9.12.2016 rejecting the proposal for regularization of illegal admissions. It is also surprising that though the Dental Council of India was represented before this Court and was fully heard in W.P No.16373/2015 and while presenting its case specifically stated that the petition filed by the petitioners deserved to be dismissed on account of rejection of its proposal by the Central Government vide its order dated 9.12.2016, the Dental Council of India did not, at any point of time, seek any permission or liberty from this Court for sending a second proposal to the Central Government before or after the dismissal of the petition.

25. Inspite of having full knowledge of the aforesaid facts including the two most important facts of the finality of the decision of the Supreme Court and the affirmation of the order of rejection of its proposal by the Central

Government and during implementation of the order passed by this Court in W.P No.16373/2015, the Dental Council of India has forwarded a second proposal for regularizing admissions by giving reference to pendency of various petitions in several High Courts totally ignoring the fact that the matter has finally been concluded by the Supreme Court while dismissing the SLP filed against the judgment of the Gwalior Bench.

26. We have already held that such a second proposal in the backdrop of the aforesaid facts is totally misconceived and untenable and amounts to interference in the judicial process and abuse and misuse of the process of law and, therefore, we severely deprecate the conduct of the Dental Council of India in the present case.

27. There is yet another very important reason for rejecting the application filed by the applicant. This application has been filed by the applicant APDMC seeking extension of time only for the purposes of giving time to the Central Government to take a decision on the second recommendation forwarded by the Dental Council of India for regularizing the illegal admissions.

28. We are of the considered opinion that such a course is absolutely impermissible. If any such application is entertained by us and allowed, it would amount to giving powers to the Central Government to nullify and set at naught the judgment of this Court as well as the Supreme Court on the strength of the order passed in the present application granting them liberty to do so, which to our mind is absolutely impermissible in law. If we permit the Central Government to do so and the Central Government, under some misconception of law allows it, that would result in perpetuating an illegality and would send a very wrong message to the academic community that if private educational institutions practice illegality on a large scale they can get away with it even after their petitions have been dismissed by the High Court and the Supreme Court and would pave the path of laying down a precedent that judicial pronouncements could be nullified by the executive authority which is a course that is neither contemplated nor permissible in law. In fact we are of the considered opinion that the application filed by the APDMC amounts to abuse and misuse of the process of law and is absolutely misconceived, mischievous and vexatious.

29. For the aforesaid reasons and the facts and circumstances namely, that the APDMC who is the applicant in the present case had never challenged the original order passed by the Dental Council of India cancelling the

admissions nor had it opposed the same before any Court of law; that the Gwalior Bench of this Court had already dismissed the petitions way back in the year 2015 which orders have been affirmed and confirmed by the Supreme Court; and as this Court while dismissing W.P No.16373/2015 has taken into consideration and approved the order of the Central Government dated 9.12.2016 rejecting the proposal of the Dental Council of India to regularize the illegal admissions thereby giving finality to it and that as we have expressed our serious doubts as to whether the Dental Council of India or the Central Government can thereafter regularize such illegal admissions which would not just send a very bad message to the academic community at large but, would also result in nullifying the judgments of this Court and the Supreme Court and have, therefore, stated that any such attempt is impermissible and misconceived and as the Committee has already assimilated, considered and scrutinized the entire material before it which was placed by the colleges before the said committee and as the exercise in respect of cancellation of admissions is complete except for passing of the final order, therefore, the extension of time prayed for by the applicant APDMC cannot be accepted merely because the Dental Council of India has forwarded a second misconceived recommendation to the Central Government which is prima facie untenable. The prayer is accordingly rejected.

30. We, accordingly, direct the committee constituted by us to immediately pass orders to implement the order passed by this Court in W.P No.16373/2015 and connected matters and the decision taken by them in its meeting held on 11.1.2017 to 14.1.2017 and while doing so to keep in mind not just the order passed by this Court in W.P No.16373/2015 but also keep in view the law laid down by the Division Bench of this Court in the case of *Subha Mishra* (supra).

31. In the facts and circumstances of this case and in view of the detailed discussions in the preceding paragraphs, we would normally have imposed heavy exemplary penal cost upon the applicant, however looking to the fact that the applicant has filed this application pursuant to the liberty granted by the Supreme Court, a cost of **Rupees Twenty Thousand** is imposed upon the applicant as a deterrent, not just for the applicant but also for all concerned, towards making any such attempt in future. The cost of **Rupees Twenty Thousand** shall be deposited by the applicant before the High Court Legal Services Committee, Jabalpur within a week from today.

32. With the aforesaid directions, the MCC filed by the applicant stands

dismissed.

Certified copy of this order be supplied to all concerned.

Registry is directed to send a copy of this order to all the parties immediately.

Application dismissed.

I.L.R. [2017] M.P., 1519

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice G.S. Ahluwalia

M.Cr.C. No. 7900/2008 (Gwalior) decided on 6 January, 2017

UTTAM CHAND VERMA & anr.

...Applicants

Vs.

STATE OF M.P. & anr.

...Non-applicants

A. Criminal Procedure Code, 1973 (2 of 1974), Section 190 – Cognizance – Opportunity of hearing – Appreciation of Evidence – Held – No opportunity of hearing is required to be extended to persons against whom the court proposes to take cognizance u/S 190 Cr.P.C. and even no meticulous appreciation of evidence is required nor permissible – Whether FIR and police case diary statement of complainant should be accepted or not and whether statements of independent witnesses should be discarded in the light of FIR and case diary statement of complainant, is a question to be decided by the trial Court after taking evidence. (Para 19)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 190 – संज्ञान – सुनवाई का अवसर – साक्ष्य का मूल्यांकन – अभिनिर्धारित – उन व्यक्तियों को, जिनके विरुद्ध न्यायालय दण्ड प्रक्रिया संहिता की धारा 190 के अंतर्गत संज्ञान लिया जाना प्रस्तावित करती है, कोई सुनवाई का अवसर बढ़ाया जाना अपेक्षित नहीं है एवं यहाँ तक कि साक्ष्य का बारीकी से मूल्यांकन अपेक्षित नहीं और न ही अनुज्ञेय है – क्या प्रथम सूचना प्रतिवेदन एवं परिवादी के पुलिस केस डायरी कथन को स्वीकार किया जाना चाहिए या नहीं एवं क्या स्वतंत्र साक्षीगण के कथनों को, प्रथम सूचना प्रतिवेदन एवं परिवादी के केस डायरी कथन के आलोक में अस्वीकार किया जाना चाहिए, यह प्रश्न विचारण न्यायालय द्वारा साक्ष्य लेने के पश्चात् विनिश्चित किया जाता है।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 319 & 190 – Comparison – While exercising powers u/S 319 Cr.P.C., Court has to prima facie form an opinion on the basis of evidence which has already

come on record, whereby additional accused can be convicted whereas that is not the scope while exercising powers u/S 190 Cr.P.C.. (Para 15)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 व 190 – तुलना – दण्ड प्रक्रिया संहिता की धारा 319 के अन्तर्गत शक्तियों का प्रयोग करते समय न्यायालय को उन साक्ष्य के आधार पर जो कि पहले ही अभिलेख पर आ चुके हैं, प्रथम दृष्ट्या एक राय बनानी होगी, जिससे अतिरिक्त अभियुक्त को दोषसिद्ध किया जा सके, जबकि दण्ड प्रक्रिया संहिता की धारा 190 के अन्तर्गत शक्तियों का प्रयोग करते समय यह विस्तार नहीं है।

C. *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(X)* – Calling a member of the Scheduled Caste as ‘Bedia’ with an intent to insult or humiliate him in a place within public view is certainly an offence u/S 3(1)(X) of the Act of 1989 – No error committed by the lower Court – Petition dismissed. (Para 23)

ग. अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(X) – अनुसूचित जाति के किसी सदस्य को ऐसे स्थान में जो लोक दृष्टिगोचर हो अनादर या अपमान करने के आशय से ‘बेड़िया’ बुलाना निश्चित रूप से 1989 के अधिनियम की धारा 3(1)(X) के अन्तर्गत अपराध है – निचले न्यायालय द्वारा कोई त्रुटि कारित नहीं की गई – याचिका खारिज।

Cases referred :

AIR 2015 SC 923, 2015 (1) MPLJ (Cri.) 347, 2014 (2) MPLJ (Cri.) 68, (2013) 6 SCC 384, AIR 1974 SC 344, (2012) 2 SCC 188, (2008) 8 SCC 435.

R.K. Sharma, for the applicants.

Girdhari Singh Chauhan, P.P. for the non-applicants No. 1 & 2/State.

(Supplied : Paragraph numbers)

ORDER

G.S. AHLUWALIA, J. :- This petition has been filed under Section 482 of CrPC against the order dated 18.11.2008 passed by First Additional Sessions Judge to the Court of Special Judge (Atrocities)/First Additional Sessions Judge, Morena in Criminal Revision No.182/2007 arising out of order dated 06.11.2007 passed by JMFC, Morena by which in exercise of powers under Section 190 of CrPC, the Magistrate has taken cognizance against the applicants and two more persons for offences punishable under

Sections 323, 294, 147, 149 of IPC and under Section 3 (1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. The necessary facts for the disposal of this petition are that on 13.08.2007 a FIR was lodged by the complainant Gautam alleging that at about 4:15 PM when he was sitting in the shop of one Vimal Khandelwal, at that time the co-accused Monu Jain was coming from the direction of Maya Temple. When complainant demanded his money which was given to him by way of loan, Monu Jain started abusing him and said that nothing is outstanding and went back to his house. At about 4:30 PM while the complainant and Vimal Khandelwal were going back towards their house, at that time Rinku Jain, Pinki Jain, Forty Verma (applicant No.2), Uttam Verma (applicant No.1) and Manoj Jain, in furtherance of common object were standing with intention to assault the complainant. Immediately after noticing the complainant, Manoj Jain started abusing him and said "मादरूचोद बेड़िया वाले तेरो को पैसा देता हूँ।" Thereafter, Monu went to the roof of his house and threw a stone on the complainant, as a result of which, the complainant received injury on his head due to which blood started oozing out. Rinku Jain, Pinki Jain and Uttam Verma threw the complainant on the road, dragged him and started assaulting him by means of fists and blows. Forty Verma (applicant No.2) assaulted the complainant by means of lathi causing injury on his right forearm. It was further alleged that the accused persons knew the complainant prior to the incident and they knew this fact that the complainant belongs to Schedule Caste and with an intention to humiliate him, he was humiliated and insulted by his caste on a place which is within the public view.

3. On the complaint of the complainant, the FIR was recorded. The complainant was sent for medical examination. In MLC, the doctor found the following injuries:-

- (1) Lacerated wound 2cm x ½ cm x bone deep in center of scalp
- (2) Contusion 4 cm x 6 cm on right side of back of lumber region near spine.
- (3) Swelling on right forearm.

X-ray was advised, however, no bony injury was seen. The statement of complainant was recorded on 13.08.2007 itself in which he reiterated the same allegations which he had made in the FIR. However, after ten days of

the incident i.e., on 23.08.2007, the police recorded the statements of Ajay Jain, Naresh Kumar, and Rampal. The statement of Ram Kumar was recorded on 31.08.2007. The statement of Narottam was recorded on 24.08.2007 and statement of Deepak Kumar was recorded on 24.08.2007 and on subsequent dates the statements of Ashok Jain, Rajendra, Girraj, Vinod, Satish, Pramod Jain, Ramavtar, Rakesh Shivhare, Anand Singh and Bunty Bansal were recorded. All these witnesses have stated that the complainant was demanding money from Monu Jain. Monu had never taken any loan from the complainant. When Monu refused to give the money to the complainant, then the complainant caught hold the collar of Monu, as a result of which, there was a scuffle between both of them and as head of the complainant was dashed against one pillar, therefore, he received injury on his head. All the witnesses have specifically stated that Rinku Jain, Pinki Jain, Forty Verma and Uttam Verma were not present on the place of incident and they had not participated in any crime. The police after considering the statements of the witnesses filed a charge-sheet against Monu Jain only and did not file charge-sheet against Rinku Jain, Pinki Jain, Uttam Chandra and Forty Verma by relying on the statements of the witnesses. Further, the police did not file the charge-sheet against Monu Jain for an offence punishable under Section 3 (1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The Magistrate in exercise of powers under Section 190 of CrPC came to the conclusion that in the light of the statement of the complainant, cognizance was required to be taken against Pinki Jain, Rinku Jain, Forty Verma and Uttam Verma for offence punishable under Section 3 (1) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The said order was challenged by the applicants by filing a criminal revision. The criminal revision filed by the applicants suffered dismissal by order dated 18.11.2008 which is under challenge.

5. It is submitted by the counsel for the applicants that if the statements of the witnesses are considered then it would be clear that all those witnesses have specifically stated that the applicants, Pinki Jain and Rinku Jain were not present on the spot and, therefore, the question of their participation in the crime does not arise. Further, it is submitted by the counsel for the applicants that before exercising powers under Section 190 of CrPC, the Trial Magistrate should have given an opportunity of hearing to the applicants and as the said opportunity was not extended by the Magistrate, therefore, the order is liable to be quashed on the said ground.

6. The counsel for the applicants in support of his contention has relied upon the judgment of the Supreme Court passed in the case of *Sunil Bharti Mittal v. Central Bureau of Investigation* reported in AIR 2015 SC 923 and the judgments passed by the Coordinate Bench of this Court in the cases of *Omprakash vs. State of M.P. & Ano.* reported in 2015 (1) MPLJ (Cri.) 347 and *Virendra Singh v. State of M.P. & Ano.*, reported in 2014 (2) MPLJ (Cri.) 68.

7. Per contra, it is submitted by the counsel for the State that in the FIR as well as in the case diary statement, the complainant has specifically narrated about the overt-act on the part of the applicants and other two accused person. The allegations made in the FIR as well as in the case diary statements find full corroboration with the medical evidence. At the stage of taking cognizance under Section 190 of CrPC, meticulous appreciation of evidence is not permissible and if the Magistrate has taken cognizance against the applicants and two accused persons on the basis of the FIR as well as the case diary statements of the complainant, then it cannot be said that the Court of Magistrate had committed any illegality.

8. Further, it is submitted by the counsel for the respondents that once it is found in the FIR that the accused persons had humiliated the complainant at a place which is within a public view by calling him by his caste then *prima-facie* such an allegation is sufficient to take cognizance for offence punishable under Section 3 (1)(x) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

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

10. So far as the contention of the counsel for the applicants that prior to exercising powers under Section 190 of CrPC, the Magistrate was under obligation to extend an opportunity of hearing to the persons against whom the cognizance was to be taken is concerned, suffice it to say that there is no provision in Code of Criminal Procedure which provides for grant of such an opportunity to the persons against whom the Magistrate is inclined to take cognizance.

11. It is well settled principle of law that the rule of *audi alteram partem* is subject to exceptions. Such exceptions can be provided either by law or by such necessary implications where no other interpretation is possible.

12. The Supreme Court in the case of *Anju Chaudhary v. State of Madhya Pradesh* reported in (2013) 6 SCC 384 has held as under:-

“30. Section 154 of the Code places an unequivocal duty upon the police officer in charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three Judge Bench Judgment of this Court in State of Uttar Pradesh v. Bhagwant Kishore Joshi [AIR 1964 SC 221], a limited discretion is vested in the investigating officer to conduct a preliminary inquiry pre-registration of an FIR as there is absence of any specific prohibition in the Code, express or implied. The subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the view taken is that he is duty bound to register an FIR. Then the question that arises is whether a suspect is entitled to any pre-registration hearing or any such right is vested in the suspect.

31. The rule of audi alteram partem is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Indian Penal Code is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly, to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the First Information Report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer in charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration

hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the Officer Incharge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the pre-dominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons: firstly, the Code does not provide for any such right at that stage, secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in the case of *Union of India v. W.N. Chadha* (1993) Suppl. (4) SCC 260 clearly spelled out this principle in paragraph 98 of the judgment that reads as under:

“98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and selfdefeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.”

32. In the case of *Samaj Parivartan Samuday v. State of Karnataka* (2012) 7 SCC 407, a three-Judge Bench of this Court while

dealing with the right of hearing to a person termed as "suspect" or "likely offender" in the report of the CEC observed that there was no right of hearing. Though the suspects were already interveners in the writ petition, they were heard. Stating the law in regard to the right of hearing, the Court held as under :

"50. There is no provision in CrPC where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of investigation by a specialised agency or transfer investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners."

33. While examining the above-stated principles in conjunction with the scheme of the Code, particularly Section 154 and 156(3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused only when a case is registered for committing a particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.

34. Even in the cases where report under Section 173(2) of the Code is filed in the Court and investigation records the name of a person in column (2), or even does not name the person as an accused at all, the Court in exercise of its powers vested under Section 319 can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.”

13. Thus, it is clear that no opportunity of hearing is required to be extended to the persons against whom the Court proposes to take cognizance under Section 190 of CrPC. Now the question for consideration is that whether at the time of taking the cognizance under Section 190 of CrPC meticulous appreciation of evidence is permissible or the Magistrate is only required to see that there is some material available on record to take cognizance.

14. The counsel for the applicants has placed reliance on the judgments passed by the Coordinate Bench of this Court in the cases of *Omprakash* (supra) and *Virendra Singh* (supra). These judgments are not applicable to the facts of the case because in the present case, the Trial Court has taken cognizance while exercising powers under Section 190 of CrPC whereas the above mentioned two cases deals with exercising of powers under Section 319 of CrPC. The scope of power under Section 319 of CrPC is different from that of under Section 190 of CrPC.

15. It is well settled principle of law that while exercising powers under Section 319 of CrPC, the Court has to prima facie form an opinion that on the basis of the evidence which has already come on record, the additional accused can be convicted, whereas, that is not the scope while exercising powers under Section 190 of CrPC.

16. In the case of *Sunil Mittal* (supra), the Supreme Court has held as under:-

“Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (See *SWIL Ltd. v. State of Delhi*, (2001) 6 SCC 670). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the Court would be justified in taking cognizance of the offence and to summon the accused if it

feels that the evidence and material collected during investigation justifies prosecution of the accused (See *Union of India v. Prakash P. Hinduja and another*, (2003) 6 SCC 195). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer.”

17. The counsel for the applicants relied upon a judgment of the Supreme Court passed in the case of *Harchand Singh & Ano. v. State of Haryana* reported in AIR 1974 SC 344 and submitted that in a case, where the prosecution leads two sets of evidence and each one of which contradict the other then it is difficult to find the conviction of the accused. Accordingly, it was submitted that there are two sets of evidence in the present case i.e.,:-

- (i) The FIR and the case diary statement of the complainant; and
- (ii) The statement of the independent witnesses.

18. It was further submitted by the counsel for the applicants that in view of the statement of the independent witnesses, the Trial Court should have rejected the allegations made by the complainant in the FIR as well as in his case diary statement.

19. Suffice it to say that for taking cognizance under Section 190 of CrPC, meticulous appreciation of evidence is not permissible. Whether the FIR and the police case diary statement of the complainant should be accepted or not or whether the statements made by the independent witnesses should be discarded in the light of the FIR and the case diary statements of the complainant, is a question which is to be decided by the Trial Court after recording of evidence. Even, the case of *Harchand* (supra) was decided after full-fledged trial and, therefore, the preposition as laid down in the said case cannot be made applicable at the stage of taking cognizance in exercise of powers under Section 190 of CrPC.

20. The Supreme Court in the case of *Nupur Talwar v. Central Bureau*

of Investigation, Delhi and another reported in (2012) 2 SCC 188 has held as under:-

"15. Now the question is: what should be the extent of judicial interference by this Court in connection with an order of taking cognizance by a Magistrate while exercising his jurisdiction under Section 190 of the Code?

16. Section 190 of the Code lays down the conditions which are requisite for the initiation of a criminal proceeding. At this stage the Magistrate is required to exercise sound judicial discretion and apply his mind to the facts and materials before him. In doing so, the Magistrate is not bound by the opinion of the investigating officer and he is competent to exercise his discretion irrespective of the views expressed by the Police in its report and may prima facie find out whether an offence has been made out or not.

17. The taking of cognizance means the point in time when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence which appears to have been committed. At the stage of taking of cognizance of offence, the Court has only to see whether prima facie there are reasons for issuing the process and whether the ingredients of the offence are there on record.

18. The principles relating to taking of cognizance in a criminal matter has been very lucidly explained by this Court in S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Ors. - (2008) 2 SCC 492, the relevant observations wherefrom are set out:

"19. The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of and when used with reference to a court or a Judge, it connotes' to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view

to initiating proceedings in respect of such offence said to have been committed by someone.

20. 'Taking Cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a *sine qua non* or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."

19. The correctness of the order whereby cognizance of the offence has been taken by the Magistrate, unless it is perverse or based on no material, should be sparingly interfered with. In the instant case, anyone reading the order of the Magistrate taking cognizance, will come to the conclusion that there has been due application of mind by the Magistrate and it is a well reasoned order. The order of the High Court passed on a Criminal Revision under Sections 397 and 401 of the code (not under Section 482) at the instance of Dr. Mrs. Nupur Talwar would also show that there has been a proper application of mind and a detailed speaking order has been passed.

20. In the above state of affairs, now the question is: what is the jurisdiction and specially the duty of this Court in such a situation under Article 136?

22. Reference in this connection may be made to a three Judge Bench decision of this Court in the case of M/s. India Carat Private Ltd. Vs. State of Karnataka & Anr. (1989) 2 SCC 132. Explaining the relevant principles in paragraphs 16, Justice

Natarajan, speaking for the unanimous three Judge Bench, explained the position so succinctly that we would rather quote the observation as under:-

"The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer; and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused..."

These well settled principles still hold good. Considering these propositions of law, we are of the view that we should not interfere with the concurrent order of the Magistrate which is affirmed by the High Court.

21. Now the question for consideration before this Court is that whether the order passed by the Trial Court taking cognizance against the applicants and two more persons is perverse or the same has been passed on the basis of some evidence which is said to be available on record.

22. The FIR was lodged by the complainant on 13.08.2007 within half an hour of the incident. The incident is alleged to have taken place at 16:30 and the

FIR was lodged at 17:00 on the same day. In the FIR, the complainant has specifically mentioned the overt-act of the accused persons. The said overt-act as alleged in the FIR finds full corroboration with the medical report of the complainant. The statement of the complainant was also recorded on the same day in which he reiterated the same allegation which he had made in the FIR. However, the statement of the remaining witnesses was recorded on 23.08.2007 or on subsequent dates. Some of the witnesses have stated that the applicants and the other two accused persons namely Pinki Jain and Rinku Jain were not present on the spot. What was the occasion for the witnesses to say specifically about the absence of the accused persons on the spot, is not known. It is expected of a witness that he would narrate the incident which he had witnessed and not to say that whether any other person had participated in the assault or not? Further, these witnesses were examined after more than 10 days of the incident. Even, these witnesses have not stated that the co-accused Monu had pelted stone on the head of the complainant from the roof of his house. Their allegation is that the co-accused Monu Jain and the complainant were quarrelling with each other and in that incident the complainant suffered a head injury as his head dashed against the pillar. When the police has come to the conclusion that prima-facie offence has been made against Monu Jain and the police has filed the charge-sheet against him that means the police did not rely on the earlier part of the statements of these witnesses. Then under these circumstances, there was no occasion for the police to believe the later part of the statement of the witnesses which was to the effect that the applicants and the co-accused persons were not on the spot. Further, it was for the Magistrate to consider that whether there is some evidence available on record to take cognizance under Section 190 of CrPC against the applicants and two co-accused persons. Viewed from any angle, it cannot be said that the order passed by the trial magistrate taking cognizance against the applicants and two other co-accused persons was passed based on no evidence.

23. So far as the question of taking cognizance of offence punishable under Section 3 (1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, it is clear from the FIR as well as the case diary statement of the complainant that he was called by his caste and undisputedly the complainant belongs to scheduled caste whereas the applicants and other co-accused persons belongs to higher caste, calling a member of the Scheduled Caste by 'Bedia' with an intent to insult or humiliate him in a place within public view is certainly an offence under section 3(1)(x) of the Act.

24. The Supreme Court in the case of *Swaran Singh & Ors. v. State*

through Standing Counsel & Anr., reported in (2008) 8 SCC 435 has held as under:-

“20. The Chamars also suffered terribly during this period. The British industries e.g. Bata almost completely destroyed the vocation of the Chamars, with the result that while they were a relatively respectable section of society before the coming of British rule (because they could earn their livelihood through manufacture of leather goods) subsequently they sank in the social ladder and went down to the lowest strata in society, because they lost their livelihood and became unemployed.

21. Today the word “Chamar” is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person “Chamar” today is nowadays an abusive language and is highly offensive. In fact, the word “Chamar” when used today is not normally used to denote a caste but to intentionally insult and humiliate someone.

22. It may be mentioned that when we interpret section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects & Reasons of the Act. Hence, while interpreting section 3(1)(x) of the Act, we have to take into account the popular meaning of the word “Chamar” which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word “Chamar” when addressing a member of the Scheduled Caste, even if that person in fact belongs to the “Chamar” caste, because use of such a word will hurt his

feelings. In such a country like ours with so much diversity - so many religions, castes, ethnic and lingual groups, etc. - all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste "Chamar" with intent to insult or humiliate him in a place within public view is certainly an offence under section 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word "Chamar" will of course depend on the context in which it was used."

25. Accordingly for taking cognizance for offence punishable under Section 3 (1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, there is a sufficient material available on record and thus, the trial magistrate did not commit any mistake while taking cognizance against all the accused persons for offence punishable under Section 3 (1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

26. Accordingly, it is held that neither the Court of Magistrate nor the Revisional Court has committed any illegality by passing the orders under challenge. Consequently, this petition fails and is hereby dismissed.

27. The interim order passed on 04.12.2008 is hereby vacated.

28. A copy of this order be sent to the Trial Court for necessary information.

Application dismissed.

I.L.R. [2017] M.P., 1534

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice J.K. Maheshwari

M.Cr.C. No. 2964/2012 (Jabalpur) decided on 3 February, 2017

MOHD. JAHIN

...Applicant

Vs.

NIBBAJI

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Negotiable Instruments Act (26 of 1881), Section 138, Proviso (b), (c) & 142(1)(b) – Demand Notice – Time Period – Held – Notice of demand must be given within a period of 30 days from the date of receiving

information of dishonor of cheque - In the present case, notice was issued after the period of thirty days therefore compliance to Section 138 proviso (b) of the Act of 1881 is not made out - Complaint is not maintainable - Further held - Order passed by the Trial Court is not justified and it is the case of abuse of process of Court and for which inherent powers of the High Court must be exercised u/S 482 Cr.P.C. - It is the duty of the High Court to exercise continuous superintendence over the Courts of Judicial Magistrates u/S 483 Cr.P.C. - Order framing charge against petitioner is set aside - Petition allowed. (Paras 10 to 13)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं परक्राम्य लिखित अधिनियम (1881 का 26), धारा 138, परंतुक (बी), (सी) व 142(1)(बी) - मांग नोटिस - समयावधि - अभिनिर्धारित - मांग का नोटिस, चैक के अनादृत होने की सूचना प्राप्ति की दिनांक से 30 दिनों की अवधि के भीतर दिया जाना चाहिए - वर्तमान प्रकरण में, नोटिस तीस दिनों की अवधि के पश्चात् जारी किया गया था इसलिए 1881 के अधिनियम की धारा 138 के परंतुक (बी) का अनुपालन नहीं होता है - परिवाद पोषणीय नहीं है - आगे अभिनिर्धारित - विचारण न्यायालय द्वारा पारित आदेश न्यायोचित नहीं और यह न्यायालय की प्रक्रिया के दुरुपयोग का प्रकरण है तथा जिसके लिए द.प्र.सं. की धारा 482 के अंतर्गत, उच्च न्यायालय की अंतर्निहित शक्तियों का प्रयोग किया जाना चाहिए - यह उच्च न्यायालय का कर्तव्य है कि द.प्र.सं. की धारा 483 के अंतर्गत न्यायिक मजिस्ट्रेट के न्यायालयों पर निरंतर अधीक्षण का प्रयोग करें - याची के विरुद्ध आरोप विरचित करने का आदेश अपास्त - याचिका मंजूर।

Cases referred :

2014 (3) MPHT 512 (SC), (1993) 1 SCC 435, (2004) 6 SCC 522, AIR 1997 SC 987, AIR 1978 SC 47.

Atul Choudhary, for the applicant.

Siddharth Sharma, for the non-applicant.

ORDER

J.K. MAHESHWARI, J. :- Applicant has filed this petition invoking the jurisdiction under Section 482 of the Cr.P.C. against an order dated 21.07.2011 passed by Judicial Magistrate, First Class Multai framing the charge under Section 138 of Negotiable Instruments Act (hereinafter referred as 'NI Act') and also challenging the order dated 08.02.2012 passed in revision by the First Additional Sessions Judge, Multai, District Betul in Criminal Revision No.127/2011, dismissing the same maintaining the order of trial Court.

2. The facts not disputed in the present case are that a private complaint under Section 138 of N.I. Act was filed by the complainant on 19.08.2009 on account of dishonoring the two cheques bearing numbers 685907 and 685908 of the sum of Rs.1,50,000/- and 1,80,000/- respectively issued on 12.03.2009 and 12.4.2009. The first cheque was submitted to the Bank on 09.04.2009 and the information of dishonoring was received on 25.04.2009. The notice was sent to drawer on 28.04.2009 which remained unserve, thereafter, second notice was sent on 31.07.2009 by publication. The second cheque was submitted to the Bank on 22.04.2009 the intimation of dishonor was received on 11.05.2009. The notice was sent on 15.6.2009 which remained unserve, however a second notice was sent on 31.07.2009 by publication. However, the said private complaint was filed on 19.08.2009 within 30 days from the date of publication of notice.

3. The applicant *inter-alia* contends that in view of the provisions contained under Section 138 proviso (a)(b)(c) of N.I. Act, to maintain a private complaint, compliance of all the ingredients of the provisions is essential by the payee, in absence the cause of action to prosecute the complaint do not accrue to him. In the present case, notices either of the first cheque or of the second cheque were issued after a period of 30 days, therefore, in absence of compliance to the proviso (b) of Section 138 of the Act, the complaint is not maintainable and the charges as framed by the trial Court to adjudicate the complaint is beyond the jurisdiction and also not in accordance to law. To buttress his submissions, reliance has been placed on the judgment of the Apex Court in the Case of *Tameeshwar Vaishnav vs. Ramvishal Gupta* reported in AIR 2010(2) SCC 329, and also on the case of *Kamlesh Kumar vs. State of Bihar*, reported in 2014(3) MPHT 512(SC). It is submitted, if the complaint is not maintainable, the question of framing of charge do not arise, however, the private complaint may be dismissed as not maintainable and the order impugned may be set aside.

4. Per contra, learned counsel representing the respondent in counter to the said arguments, placed reliance on a judgment of Hon'ble the Supreme Court in the case of *Dharampal and others vs. Ramshri (Smt.) and others* reported in (1993) 1 SCC 435 to contend that the applicant remain unsuccessful before the Sessions Court by filing a first Revision against the order of framing of charge, however, the second Revision by way of this petition under Section 482 of the Cr.P.C. is not entertainable. Reliance has also been placed on the judgment of *State of A.P. vs. Golconda Linga Swamy and another*, reported

in (2004) 6 SCC 522, and urged that inherent powers of the High Court though wide but it ought to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid in Section 482 of the Cr.P.C.. In absence thereto, such powers should not be exercised by the Court. It is further a contention that the applicant deliberately and conveniently avoided to receive the notice issued by the complainant even on having knowledge of dishonoring the cheques. However, as required by law, it was incumbent on the complainant to serve the notice by publication prior to file a complaint. Now, again to delay of hearing of private complaint this petition has been filed, in such circumstance maintaining the complaint, interference in the order framing charge may be declined.

5. After hearing learned counsel appearing for both the parties and to appreciate the rival contentions, it would be appropriate to refer the relevant provisions of Section 138 of the Act, which are as under:-

“138 Dishonour of cheque for insufficiency, etc., of funds in the account. — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the

said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]

6. Section 142 of the Act specify when the cognizance of offence cannot be taken by the Court. The aforesaid provision is also relevant, therefore, it is reproduced as under:-

“142 Cognizance of offences. —Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.”

7. On perusal of the aforesaid, it is apparent that if any cheque has been dishonored due to insufficiency of funds or other count, to take the recourse for penalizing the drawer of the cheque, it is incumbent on the payee to present

the said cheque within a period of six months from the date on which it was drawn or within a period of its validity whichever is earlier. After dishonoring by the Bank, the demand must be made to the drawer as per proviso (b) of Section 138 of N.I. Act by issuing notice within 30 days from the date of receipt of the information from the bank regarding return of the cheque as dishonoured. In case the drawer of the cheque fails to make the payment of the said amount within a period of fifteen days from the date of receipt of notice, the cause accrues to the complainant to file it within 30 days as per proviso (c) of Section 138 of N.I. Act for taking cognizance of offence. In case the complaint is not filed within the time so specified, as per Section 142(1)(b) proviso thereto, the Court may have discretion to satisfy that due to sufficient cause applicant was prevented to file it within the specified time and after recording satisfaction cognizance on such complaint may be taken even after the statutory period of thirty days.

8. In view of the foregoing, it is apparent that cause of action to file a complaint, accrues to the payee if the cheque is presented within a period of six months from the date of issuance of the cheque or within the period of validity of the said cheque. After receiving the information of dishonouring, a notice of demand must be given within a period of thirty days from the date of receiving the information from the bank and in case from the date of receipt of notice, the amount has not paid within a period of fifteen days, the cause of action to file a complaint accrues to the complainant and on filing the complaint, cognizance can be taken by the Court. In absence thereto, looking to the *non obstante* clause under Section 142(1)(b) of the Act, the cognizance cannot be taken and the complaint filed by the payee against the drawer is not maintainable. The aforesaid issue has been considered by the Hon'ble Apex Court in the case of *Tameeshwar Vaishvan (sic: Vaishnav)* (supra). The Supreme Court in the said judgment held as under:

"16. On careful scrutiny of the decision in *S.L. Construction's* case (supra), it would appear that the facts on the basis of which the said decision was rendered, were different from a case of mere presentation and dishonour of the cheque after issuance of notice under the proviso to Section 138 of the Act. While the decision in *Sadanandan Bhadran's* case (supra), clearly spells out that a cheque may be presented several times within the period of its validity, the cause of action for a complaint under Section 138 of the Act arises but once,

with the issuance of notice after dishonour of the cheque and the receipt thereof by the drawer. The same view has been reiterated in *Prem Chand Vijay Kumar's* case (supra). The only distinguishing feature of the decision in *S.L. Construction's* case (supra) is that of the three notices issued, the first two never reached the addressee. It is only after the third notice was received that the cause of action arose for filing the complaint. In effect, the cause of action for filing the complaint in the said case did not arise with the issuance of the first two notices since the same were never received by the addressee.

17. The provisions of Section 138 and clauses (a), (b) and (c) to the proviso thereof indicate that a cheque has to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Clause (b) indicates that the payee or the holder in due course of the cheque, has to make demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and clause (c) provides that if the drawer of the cheque fails to make the payment of the said amount of money to the payee or to the holder in due course of the cheque within 15 days of receipt of the said notice, the payee or the holder of the cheque may file a complaint under Section 142 of the Act in the manner prescribed."

9. Recently in the case of *Kamlesh Kumar* (supra), the same issue came for consideration before the Apex Court, wherein, the Apex Court held as under:-

"11. It is thus clear that period of limitation is not to be counted from the date when the cheque in question was presented in the first instance on 25.10.2008 or the legal notice was issued on 27.10.2008, inasmuch as the cheque was presented again on 10.11.2008. For the purposes of limitation, in so far as legal notice is concerned, it is to be served within 30 days of the receipt of information by the drawyee from the bank regarding the return of the cheque as unpaid. Therefore, after the cheque is returned unpaid, notice has to be issued within

30 days of the receipt of information in this behalf. That is the period of limitation provided for issuance of legal notice calling upon the drawer of the cheque to make the payment. After the sending of this notice 15 days time is to be given to the noticee, from the date of receipt of the said notice to make the payment, if that is already not done. If noticee fails to make the payment, the offence can be said to have been committed and in that event cause of action for filing the complaint would accrue to the complainant and he is given one month time from the date of cause of action to file the complaint.”

10. In the said context, the facts of the present case require consideration. In the present case, looking to the facts narrated hereinabove, the relevant dates are given in a tabular form as under: -

S. No.	Cheques Nos.	Date of Issuance of Cheques	Dates of Submission to the Bank	Date of dishonour of Cheques	Date of issuance of First Notice	Date of issuance of Second Notice	Date of filing the private complaint
1	685907 for an amount of Rs. 1,50,000/-	09.04.2009	25.04.2009	25.04.2009	28.04.2009	31.07.2009	19.08.2009
2	685908 for an amount of Rs. 1,80,000/-	12.04.2009	22.04.2009	11.05.2009	15.06.2009	31.07.2009	

On perusal of the said, it is apparent that the first cheque was dishonoured and its information was received on 25.04.2009 for which the first notice of demand was issued on 28.04.2009 which was returned back as unclaimed, and the second notice was issued on 31.07.2009 after about three months, not within statutory period of 30 days. The second cheque was dishonoured and its information was received on 11.05.2009 and the first notice was issued on 15.06.2009 after more than thirty days, and the second notice on 31.07.2009 which was also sent after thirty days. Therefore, the compliance of the proviso (b) of Section 138 of the Act has not been made. After going through the provisions of Section 138, proviso (b) & (c) makes it

clear that on receiving the information regarding dishonoring, a notice must be given within 30 days to demand the amount specified in the cheque and if the said demand has not been fulfilled from the date of receipt of the notice within 15 days, cause of action accrues. Proviso (b) of Section 138 is the first compliance and proviso (c) is the later compliance, therefore, after proviso (b) word "and" has been suffixed, and it is prefixed to proviso (c). However, non-compliance of any of the provisos either (b) or (c) would lead to same conclusion as specified in Section 142(1)(b) of the Act and the cognizance must be refused by the Court on a private complaint filed under Section 138 of the Act. Therefore, in the facts of the case at hand, due to non-compliance of proviso (b) of Section 138 of the Act within the time specified, the irresistible conclusion which can be arrived that complaint is not maintainable.

11. Reverting back to the arguments as advanced by learned counsel for the respondent on the point of non-maintainability of second Revision by way of petition under Section 482 of the Cr.P.C. may be dealt here. The Hon'ble Apex Court in the case of *Dharampal and others*(supra) referring the provisions of Section 397(3) held the second revision in the shape of the petition under Section 482 of the Code is barred. However, inherent powers under Section 482 of the Code cannot be utilized exercising powers which were expressly barred by the Code. The judgment of *Dharampal and others* (supra) was referred to three Judges' Bench in the case of *Krishnan and another vs. Krishnaveni and another* reported in AIR 1997 SC 987. In this case, Hon'ble the Apex Court considering the other three judges Bench's judgment in the case of *Madhu Limaye vs. State of Maharashtra* reported in AIR 1978 SC 47 with majority concluded as under:-

"14. In view of the above discussion, we hold that through the revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, but inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for decision on merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the

Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the context of the revisional power under Section 397 (1) read with Section 397(3) and the inherent powers.”

In view of the foregoing, the objection raised by the complainant that this petition under Section 482 of the Code by way of second revision is not tenable is hereby repelled. It is held that inherent power of the High Court is available under Sections 482 of the Code and also the paramount power of continuous superintendence of the High Court under Section 483 of the Cr.P.C.. Therefore, looking to the facts of the present case, whereby the cognizance of the case itself barred under the provisions of the special enactment; interference under Section 482 of Cr.P.C. in this case cannot be denied due to the said objection.

12. It is further to be noted here this Court arrived at a conclusion that the order passed by trial Court is not justified and it is the case of abuse of process of Court, in the said context, the judgment of *Golconda Linga Swamy* (supra) relied upon by the respondent also requires consideration. The Apex Court in this case has held that inherent jurisdiction though wide but it has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in Section 482. As discussed above and looking to the facts of the case, it is a case wherein inherent powers of the High Court must be exercised, otherwise it would amounting to abuse of process of the Court. Therefore, the respondent cannot take help of the aforesaid judgment and in fact the said judgment is of great help to the petitioner.

13. In the context of foregoing, it is apparent that due to non-compliance of proviso (b) of Section 138 of the Act, the complaint was found to be not maintainable, because the said non-compliance would lead to a conclusion that the Court cannot take cognizance in view of the provisions contained under Section 142(1)(b) of the Act. It is further held under Section 482 of the Cr.P.C., inherent powers of the High Code can be exercised if it is necessary to give effect to any order under this Court or to prevent abuse of process of any Court or otherwise to secure the ends of justice. In addition, it is the duty of the High Court to exercise the continuous superintendence over the Courts of judicial magistrates under Section 483 of Cr.P.C. as the present case is triable by the judicial magistrate First Class, who has exceeded from his

jurisdiction which is not conferred on him under the law. However, it is a fit case wherein maintaining the petition under Section 482 of the Code, abuse of the process of the Court must be checked. In my considered opinion, if the complaint itself is not maintainable, framing of the charge and to compel the accused to saddle with trial would amount to abuse of process of the Court.

14. Accordingly, this petition succeeds and is hereby allowed. The order framing charge against the applicant stands set aside. It is to observe here that the complaint filed by the complainant is not maintainable due to non-compliance of proviso (b) of Section 138 of N.I. Act within the specified time, hence, it is dismissed and consign to the record of the trial Court. In the facts and circumstances of the case, parties are directed to bear their own costs.

Application allowed.

I.L.R. [2017] M.P., 1544

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Alok Verma

M.Cr.C No. 13134/2016 (Indore) decided on 15 March, 2017

DINESH

...Applicant

Vs.

STATE OF M.P.

...Non-applicant

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Excise Act, M.P. (2 of 1915), Section 34(2), 44 & 61 – Quashment of Criminal Proceedings – Cognizance of Complaint – Court took cognizance against the petitioner for offence u/S 34(2) & 44 of the Act of 1915 – Challenge to – Held – As per Section 61 of the Act of 1915, cognizance can only be taken by Magistrate on a compliant filed by the Collector or Excise officer not below the rank of District Excise officer as may be authorized by the Collector in this behalf – In the present case, complaint was not filed by the said officers – Provisions of Section 61 was not followed – Proceedings pending before the magistrate are quashed – Application allowed. (Para 3 & 6)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 34(2), 44 व 61 – आपराधिक कार्यवाहियों का अभिखंडित किया जाना – परिवाद का संज्ञान – न्यायालय ने याची के विरुद्ध 1915 के अधिनियम की धारा 34(2) व 44 के अंतर्गत अपराध हेतु संज्ञान लिया – को चुनौती – अभिनिर्धारित – 1915 के अधिनियम की धारा 61 के अनुसार, मजिस्ट्रेट द्वारा संज्ञान केवल कलेक्टर

या आबकारी अधिकारी जो जिला आबकारी अधिकारी के पद से नीचे का न हो, जैसा कि इस हेतु कलेक्टर द्वारा प्राधिकृत किया गया हो, के द्वारा प्रस्तुत परिवाद पर लिया जा सकता है - वर्तमान प्रकरण में, उक्त अधिकारियों द्वारा परिवाद प्रस्तुत नहीं किया गया था - धारा 61 के उपबंधों का पालन नहीं किया गया था - मजिस्ट्रेट के समक्ष लंबित कार्यवाहियां अभिखंडित की गई - आवेदन मंजूर।

Vivek Singh, for the applicant.

Pankaj Wadhvani, for the non-applicant/State.

ORDER

ALOK VERMA, J. :- This application is filed under Section 482 Cr.P.C. for quashment of criminal proceedings pending in Criminal Case No.1195/2016 in the Court of Judicial Magistrate First Class, Badnawar, District- Dhar.

2. The relevant facts are that Police Station-Kanwan, District- Dhar a source information intercepted the truck bearing registration No.MP-09-KD-4507 in which 1200 boxes of beer were loaded. An offence was registered under Section 34(2) & 44 of M.P. Excise Act by the Police Station- Kanwan, District- Dhar. The driver and the cleaner travelling in the truck, were not having valid license for transportation of the same. On investigation, it was found that the liquor was loaded from Government warehouse at Ujjain and it was to be delivered to license holder Ramesh Singh at Dewas. A permit was also issued, where the driving time from Ujjain to Dewas was stated to be 7:00 pm to 9.30 pm, however, the truck was seized by the police Kanwan, District Dhar, and therefore, there was a breach of conditions of permit and license.

3. This application under Section 482 Cr.P.C. is filed by the applicant on the ground that according to provisions of Section 61 of M.P. Excise Act, 1915, a cognizance by a Magistrate can only be taken on a complaint by the Collector or Excise Officer not below the rank of District Excise Officer as may be authorized by the Collector in this behalf. According to counsel for the applicant, the complaint was not filed by the Collector or District Excise Officer, who was specifically authorized for this behalf by the Collector, and therefore, the Magistrate was not competent to take cognizance in this case.

4. The Section 61 of M.P. Excise Act as substituted by M.P. Act No.23 of 1979 provides as under :-

“61. Limitation of prosecutions.- (1) No court shall take cognizance of an offence punishable,-

(a) under [Section 34 for contravention of any condition of a license, permit or pass granted under this Act, Section 37], Section 38, Section 38- A, Section 39, except on a complaint or report of the Collector or an Excise Officer not below the rank of District Excise Officer as may be authorized by the Collector in this behalf;

(b) under any other section of this Act other than Section 49 except on the complaint or report of an excise Officer or Police officer.]

(2) Except with the special sanction of the State Government no Judicial Magistrate shall take cognizance of any offence punishable under this Act, or any rule or order thereunder, unless the prosecution is instituted within six months from the date on which the offence is alleged to have been committed”.

5. It is apparent that the present case is of breach of condition of permit the consignment should reach its destination before 9.30 pm, however, it could not reach its destination and the vehicle was searched and seized on 02.08.2016. The consignment was duty paid, and therefore, the only criminal act on part of the present applicant was that he committed breach of conditions of permit when the vehicle was searched and seized.

6. Under these circumstances, it was necessary to follow the provisions of Section 61 of M.P. Excise Act, such provisions were not followed, and therefore, the proceedings before the learned Judicial Magistrate are liable to be quashed. Accordingly, this application is allowed. The proceedings pending before the Magistrate in Criminal Case No.1195/2016 are quashed.

7. The applicant is discharged from offence under Section 34(2) & 44 of M.P. Excise Act.

With aforesaid observations and directions, this application stands disposed of.

Certified copy, as per rules.

Application allowed.