THE INDIAN LAW REPORTS

M.P. SERIES

CONTAINING-CASES DECIDED BY THE SUPREME COURT OF INDIA AND THE HIGH COURT OF MADHYA PRADESH

Year-9
Vol. 3

SEPTEMBER 2017 (pp 2043 to 2298)

VOL.3

INDIAN LAW REPORT (M.P.) COMMITTEE

SEPTEMBER 2017

PUBLISHED BY
SHRI AKHIL KUMAR SRIVASTAVA, PRINCIPAL REGISTRAR (ILR)

TABLE OF CASES REPORTED

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

Amrat Singh Dhakad Vs. State of M.P. ...*101

Antar Singh Darbar Vs. Kailash Vijayvargiya ...1694

Anupam Chouksey Vs. State of M.P. ...2016

Anurag Mathur Vs. State of M.P. ...2031

Archana Bagla Vs. M/s. Betul Oil Ltd. ...*86

Arvind Kumar Jain Vs. State of M.P. (DB)...1623

Ashish Singh Pawar Vs. State of M.P. ...2124

Ashok Sharma (Dr.) Vs. State of M.P. ...2173

Ashok Vs. State of M.P. ...*114

B.C. Jain (Dr.) Vs. Maulana Saleem ...1762

Badri Prasad Jharia Vs. Smt. Seeta Jharia ...1824

Badri Singh Vs. State of M.P. (DB)...1952

Bhagwan Das Yadav Vs. State of M.P. ...*87

Bhupendra Singh Yadav Vs. State of M.P. ...1788

Chandar Singh Vs. State of M.P. ...*115

Chandra Kumar Chandwani Vs. Anil Gupta ...1701

Chhanga @ Manoj Vs. State of M.P. (SC)...1795

Chinda Bai @ Baku Bai Vs. Govindrao ...*88

Choti Patel (Smt.) Vs. State of M.P. ...*89

Das Motwani (Dr.) Vs. State of M.P. ...*102

Deepti Chaurasia (Dr.) Vs. Union of India ...2118

Dinesh Agarwal & Associates (M/s.)
Vs. Pawan Kumar Jain (DB)...2142

Durga Das Nawit Vs. State of M.P. ...*103

Executive Engineer (City Division North)
M.P.M.K.V.V.C.L. Roshnighar, Gwalior Vs. Kishorilal ...*90

Gajendra Singh Vs. S.G. Motors ...*91

Grand Ridge Homes (M/s.) Vs. Maheshwari
Homes & Developers ...2251

TABLE OF CASES REPORTED

Hariram Vs. Jat Seeds Greeding & Warehousing	...2192
Hindalco Industries Ltd. (M/s.) Vs. State of M.P.	(DB)...1799
Ideal Carpets Ltd. Vs. Union of India	(DB)...*116
In Reference Vs. Lavit Rawtani	(DB)...1669
Indrasingh Vs. State of M.P.	...*92
Ishwar Prasad Vs. State of M.P.	...1756
ITC Ltd. Vs. State of M.P.	...1814
Jaikumar Meena Vs. Smt. Radha Meena	...1994
Jakir Khan Vs. State of M.P.	...1747
Jitendra @ Jeetu Vs. State of M.P.	(DB) ...*93
Jitendra Singh Narwariya Vs. State of M.P.	(DB) ...*94
K.K. Mishra Vs. State of M.P.	(DB)...2269
Kapil Vs. Union of India	(DB)...1891
Lal Singh Marabi Vs. National Insurance Co. Ltd	(SC)...1619
Laxmi Verma (Smt.) Vs. Sharik Khan	(DB)...1978
Laxmi Yadav (Smt.) Vs. Barelal Yadav	...2006
Madhav Prasad Vs. State of M.P.	(DB)...1934
Madhyanchal Gramin Bank Vs. Neeraj Kumar Barman	(DB)...1633
Mahesh Chandra Giroti Vs. Rahul Dev Chourasia	...*95
Mahindra Two Wheelers Vs. State of M.P.	...1865
Manohar Vs. State of M.P.	...2000
Manoj Ahirwar Vs. State of M.P.	...*96
Manoj Kumar Agrawal Vs. Nepa Ltd. Nepanagar Through Its CMD	...2256
Manoj Pillai Vs. Smt. Prasita Manoj Pillai	...1736
Manulal Vs. State of M.P.	...*117
Manvati Pandey (Smt.) Vs. Smt. Indira Chaturvedi	...*104
Mayaram Vs. State of M.P.	...*105
Mohit Jain Vs. State of M.P.	...*97

Mohsin Vs. State of M.P. ...*118
Munni Devi (Smt.) Vs. Pritam Singh Goyal ...*106
Nagal Garment Industries Pvt. Ltd. (M/s.) Vs. Commissioner of Income Tax-I (DB)...2011
Nanhe Singh Maravi Vs. State of M.P. ...*107
Nidhi Kaim Vs. State of M.P. (SC)...1547
Nirmala Dhurve (Smt.) Vs. Ramgopal ...1972
Nitin Sirbhaiya Vs. Divya Badhwani ...1860
Pappu @ Chandra Prakash Vs. State of M.P. (DB)...1724
Patel Motors (M/s.) Vs. State of M.P. (DB) ...*98
Poojan Trading Co. (M/s.) Vs. M/s. Betul Oils & Floors Ltd. ...2290
Pooranlal Vs. State of M.P. (DB)...1944
Power Machines India Ltd. Vs. State of M.P. (SC)...2043
Pramod Kumar Agrawal Vs. State of M.P. (DB)...*119
Pramod Kumar Dwivedi Vs. State of M.P. (DB)...2103
Prem Chand Chaturvedi Vs. State of M.P. ...1636
Pushkar Gupta (Dr.) Vs. State of M.P. ...*99
Pushpa Singh Vs. State of M.P. ...2265
Ram Krishna Kanade Vs. State of M.P. ...*120
Ram Kumar Meena Vs. State of M.P. (DB)...2099
Ram Sevak Vs. State of M.P. (DB)...1960
Ram Sewak Mishra Vs. State of M.P. (FB)...2076
Ram Sewak Prajapati Vs. Shiv Kumar Yadav ...1875
Ramcharan Vs. Damodar ...1882
Ramcharan Yadav Vs. State of M.P. (DB)...*108
Ramesh Tiwari Vs. State of M.P. ...*109
Ramjilal Kushwah Vs. State of M.P. ...1850
Ramkrishan Solvex Pvt. Ltd. (M/s.) Vs. Superintendent of Police ...1770

TABLE OF CASES REPORTED

Ramsujan Kol @ Munda Vs. State of M.P. (DB)...*110
Ranchhod Vs. Ramchandra ...1718
Ratia Bai Vs. State of M.P. (DB)...*111
Ravi Jain Vs. Central Bureau of Narcotics ...*121
Reeta Singh (Smt.) Vs. Indian Oil Corporation Ltd. ...1656
Rohit Agrawal Vs. The Principal Commissioner of Income Tax-II (DB)...1857
S.K. Agarwal Vs. State of M.P. ...1840
Sachin Gupta Vs. State of M.P. ...*100
Sandhaya Mihilal Rai (Smt.) Vs. State of M.P. ...1832
Sangram Vs. State of M.P. ...2243
Sardarsingh Vs. Smt. Chainkunwar ...*112
Satish Vs. Murlidhar ...1706
Shanti Verma (Smt.) Vs. State of M.P. ...2134
Shiv Kumar Kushwah Vs. State of M.P. ...1750
Shivco L.P.G. Bottling Co. Vs. M.P. Electricity Board ...*113
Shivvam Awasthi Vs. Vice Chancellor Jiwaji University (DB)...1641
Shri Banke Bihariji Bazar Vs. State of M.P. ...2205
Shrichand Vs. State of M.P. (DB)...2231
Shriram General Insurance Co. Ltd. Vs. Jagdish Prasad Dubey ...*122
State of M.P. Vs. M/s. Pernod Ricard India (P) Ltd. (DB)...1805
State of M.P. Vs. Smt. Kallo Bai (SC)...2063
Syed Parvez Ali Vs. Smt. Nahila Akhtar ...1776
Tapan Bhattacharya (Dr.) Vs. State of M.P. (DB)...1649
Vinay Kumar Vs. State of M.P. ...2283

..*.*.*.*.*.*.*.

INDEX

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

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a), 12(1)(c), 12(1)(f) & 13 – Bonafide Requirement and Arrears of Rent – Concurrent decree of eviction against tenant – Held – Courts below has concurrently held that plaintiff has proved his bonafide need and such concurrent findings are not liable to be disturbed in Second Appeal – Further held – After receiving notice for arrears of rent, tenant sent the pay order to landlord's counsel who was not authorized to receive the same and thus counsel rightly refused to accept the rent – Defendant was required to pay rent to plaintiff and not to his counsel – Appellant in his cross examination has admitted that he deposited the arrears of rent in Court after 1 ½ months from receipt of summons – There was a delay in depositing the rent on time – Appellate Court rightly granted decree u/S 12(1)(a) of the Act of 1961 – Appeal dismissed. [Satish Vs. Murlidhar] ...1706

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए), 12(1)(सी), 12(1)(एफ) व 13 – वास्तविक आवश्यकता एवं भाड़े का बकाया – किराएदार के विरूद्ध बेदखली की समवर्ती डिक्री – अभिनिर्धारित – निचले न्यायालयों ने समवर्ती रूप से अभिनिर्धारित किया है कि वादी ने अपनी वास्तविक आवश्यकता साबित की है और ऐसे समवर्ती निष्कर्ष, द्वितीय अपील में बाधित करने योग्य नहीं है – आगे अभिनिर्धारित – भाड़े के बकाया हेतु नोटिस प्राप्त करने के पश्चात्, किराएदार ने भूमिस्वामी के काउंसेल को भुगतान आदेश भेजा जो कि उक्त को प्राप्त करने के लिए प्राधिकृत नहीं था और इसलिए काउंसेल ने भाड़ा स्वीकार करने से उचित रूप से मना कर दिया – प्रतिवादी को भाड़े का भुगतान वादी को करना अपेक्षित था और न कि उसके काउंसेल को – अपीलार्थी ने अपने प्रतिपरीक्षण में स्वीकार किया है कि उसने समन की प्राप्ति से 1 ½ माह पश्चात्, भाड़े का बकाया न्यायालय में जमा किया – समय पर भाड़ा जमा करने में विलम्ब हुआ था – अपीली न्यायालय ने उचित रूप से 1961 के अधिनियम की धारा 12(1)(ए) के अंतर्गत डिक्री प्रदान की – अपील खारिज। (सतीश वि. मुरलीधर) ...1706

Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a), 12(1)(c), 12(1)(f) & 23 (J) – Category of Special Landlord – Jurisdiction of Civil Court – Trial Court held, that although plaintiff comes under the category of special landlord, but he filed composite suit u/S 12(1)(a), 12(1)(c) and 12(1)(f) of the Act of 1961, therefore Civil Court has jurisdiction to entertain the suit – Supreme Court also held that composite suit for eviction of tenant can be filed by plaintiff of special

INDEX

category. [Satish Vs. Murlidhar] ...1706

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(ए), 12(1)(सी), 12(1)(एफ) व 23(जे) – विशेष भूमिस्वामी की श्रेणी – सिविल न्यायालय की अधिकारिता – विचारण न्यायालय ने अभिनिर्धारित किया कि यद्यपि वादी विशेष भूमिस्वामी की श्रेणी के अंतर्गत आता है परंतु उसने 1961 के अधिनियम की धारा 12(1)(ए), 12(1)(सी) व 12(1)(एफ) के अंतर्गत सम्मिश्र वाद प्रस्तुत किया, इसलिए सिविल न्यायालय को वाद ग्रहण करने की अधिकारिता है – उच्चतम न्यायालय ने भी अभिनिर्धारित किया कि विशेष श्रेणी के वादी द्वारा किराएदार की बेदखली हेतु सम्मिश्र वाद प्रस्तुत किया जा सकता है। (सतीश वि. मुरलीधर) ...1706

Arbitration and Conciliation Act (26 of 1996), Section 16 – Term of Arbitration Clause – Effect of termination of contract **– Held – As per legislative mandate ingrained in section 16 of the Act, Arbitration clause would not cease to exist on termination of contract or for the reason that agreement has outlived its life. [Grand Ridge Homes (M/s.) Vs. Maheshwari Homes & Developers] ...2251**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 16 – माध्यस्थम् खंड की अवधि – संविदा के पर्यवसान का प्रभाव – अभिनिर्धारित – अधिनियम की धारा 16 में अंतर्निहित विधायी आज्ञा के अनुसार, संविदा के पर्यवसित होने पर या इस कारण से कि करार अपनी अवधि से अधिक समय तक रहा, माध्यस्थम् खंड का अस्तित्व समाप्त नहीं होगा। (ग्रेंड रिज होम्स (मे.) वि. माहेश्वरी होम्स एण्ड डव्हेलपर्स) ...2251

Arbitration and Conciliation Act (26 of 1996), Section 34 – See – Constitution – Article 14 **[Power Machines India Ltd. Vs. State of M.P.] (SC)...2043**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 – देखें – संविधान – अनुच्छेद 14 (पॉवर मशीन्स् इंडिया लि. वि. म.प्र. राज्य) **(SC)...2043**

Arbitration and Conciliation Act (26 of 1996), Section 34 & 36 – See – Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5 **[Power Machines India Ltd. Vs. State of M.P.] (SC)...2043**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 व 36 – देखें – सूक्ष्म एवं लघु उद्यम सुविधा परिषद् नियम, म.प्र., 2006, नियम 5 (पॉवर मशीन्स् इंडिया लि. वि. म.प्र. राज्य) **(SC)...2043**

Arbitration and Conciliation Act (26 of 1996), Section 36 –

See – Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5 [Power Machines India Ltd. Vs. State of M.P.] (SC)...2043

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 36 – देखें – सूक्ष्म एवं लघु उद्यम सुविधा परिषद् नियम, म.प्र., 2006, नियम 5 (पॉवर मशीन्स् इंडिया लि. वि. म.प्र. राज्य) (SC)...2043

Caste Certificates – Notifications – Addition & Deletion – Held – It is established law that there cannot be any addition or deletion in Presidential Notification regarding a caste certificate by Court of Law except by Legislature. [Ram Kumar Meena Vs. State of M.P.] (DB)...2099

जाति प्रमाणपत्र – अधिसूचनाऐं – जोड़ना एवं हटाना – अभिनिर्धारित – यह सुस्थापित विधि है कि सिवाय विधान मंडल के, जाति प्रमाणपत्र के संबंध में राष्ट्रपति की अधिसूचना में न्यायालय द्वारा कोई जोड़ना या हटाना नहीं किया जा सकता। (राम कुमार मीणा वि. म.प्र. राज्य) (DB)...2099

Caste Certificate – Proof – Petitioner appointed as Sub-Inspector, Police in 1992 as a SC candidate – On complaint regarding his caste certificate, matter was referred to Scrutiny Committee whereby vide impugned order, certificate was held to be bogus and forged – Challenge to – Held - "Meena" caste in the State of Madhya Pradesh is not included in Scheduled Tribes category, except who are residing in Shironj Sub-Division of District Vidisha – Petitioner did not produce any credentials like ration card or votor list etc. to substantiate his claim that his forefather use to reside in District Vidisha – He did his High School and graduation from District Hoshangabad – No record with Tehsildar, Shironj regarding issuance of caste certificate to petitioner – No illegality with decision of High Level Scrutiny Committee – Writ appeal dismissed. [Ram Kumar Meena Vs. State of M.P.] (DB)... 2099

जाति प्रमाणपत्र – सबूत – याची अनुसूचित जाति के अभ्यर्थी के रूप में 1992 में पुलिस उपनिरीक्षक के रूप में नियुक्त किया गया – उसके जाति प्रमाणपत्र से संबंधित शिकायत पर, मामले को छानबीन समिति को निर्दिष्ट किया गया था जिस पर आक्षेपित आदेश द्वारा प्रमाणपत्र को बनावटी एवं कूटरचित ठहराया गया – को चुनौती – अभिनिर्धारित – मध्य प्रदेश राज्य में "मीणा" जाति अनुसूचित जनजाति की श्रेणी में समाविष्ट नहीं सिवाय जो विदिशा जिले के सिरोंज उपसंभाग में निवासरत है – याची ने उसके दावे को सिद्ध करने के लिए कि उसके पूर्वज

विदिशा जिले में निवास करते थे, राशन कार्ड या मतदाता सूची इत्यादि जैसे किसी प्रत्यय पत्र को प्रस्तुत नहीं किया – उसने अपनी उच्च माध्यमिक एवं स्नातक शिक्षा होशंगाबाद जिले से की है – याची को जाति प्रमाणपत्र जारी किये जाने के संबंध में तहसीलदार सिरोंज के पास कोई अभिलेख नहीं – उच्च स्तरीय छानबीन समिति के निर्णय में कोई अवैधता नहीं – रिट अपील खारिज। (राम कुमार मीणा वि. म.प्र. राज्य) (DB)...2099

Civil Procedure Code (5 of 1908), Section 5 – See – Railway Claims Tribunal Act, 1987, Section 23 [Kapil Vs. Union of India] (DB)...1891

सिविल प्रक्रिया संहिता (1908 का 5), धारा 5 – देखें – रेल दावा अधिकरण अधिनियम, 1987, धारा 23 (कपिल वि. यूनियन ऑफ इंडिया) (DB)...1891

***Civil Procedure Code (5 of 1908), Section 10 and Land Revenue Code, M.P. (20 of 1959), Section 178 – Stay of Suit – Scope* – Suit filed by respondents/Plaintiffs for declaration of title and possession against petitioner/defendant No.1 and prior to filing of civil suit, an application for partition was filed by petitioner before Tehsildar – Respondent No.1/ Plaintiff filed an application u/S 10 of the C.P.C. seeking stay of the proceedings before Tehsildar which was allowed by Trial Court – Challenge to – Held – Section 10 is applicable to suits and not to the proceedings and application u/S 178 of the Code of 1959 before Tehsildar comes under the definition of Proceedings – Suit means a process instituted in the Court of justice whereas proceedings means a legal action or process – Further held – As per section 10 C.P.C., subsequent suit is to be stayed where as in the present case, application filed prior to the filing of said civil suit – Order passed by Trial Court is contrary to law and section 10 C.P.C. – Impugned order is set aside – Application filed u/S 10 C.P.C. is rejected – Petition allowed. [Chinda Bai @ Baku Bai Vs. Govindrao]** ...*88

सिविल प्रक्रिया संहिता (1908 का 5), धारा 10 एवं भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 178 – वाद पर रोक – विस्तार – प्रत्यर्थीगण/वादीगण द्वारा याची/प्रतिवादी क्र.1 के विरूद्ध स्वत्व की घोषणा एवं कब्जा हेतु वाद प्रस्तुत किया गया तथा सिविल वाद प्रस्तुत किये जाने से पूर्व, याची द्वारा तहसीलदार के समक्ष विभाजन हेतु एक आवेदन प्रस्तुत किया गया था – प्रत्यर्थी क्र.1/वादी ने सिविल प्रक्रिया संहिता की धारा 10 के अंतर्गत तहसीलदार के समक्ष कार्यवाहियों पर रोक चाहते हुये आवेदन प्रस्तुत किया जो कि विचारण न्यायालय द्वारा मंजूर किया गया

था – को चुनौती – अभिनिर्धारित – धारा 10 वाद पर लागू है न कि कार्यवाहियों पर तथा 1959 की संहिता की धारा 178 के अंतर्गत आवेदन कार्यवाहियों की परिभाषा के अंतर्गत आता है – वाद का अर्थ न्यायालय में संस्थित की गई प्रक्रिया से है जबकि कार्यवाहियों का अर्थ विधिक कार्रवाई या प्रक्रिया से है – आगे अभिनिर्धारित – सिविल प्रक्रिया संहिता की धारा 10 के अनुसार, पश्चात्वर्ती वाद रोका जाना चाहिए जबकि वर्तमान प्रकरण में उक्त सिविल वाद आवेदन के प्रस्तुतीकरण से पूर्व प्रस्तुत किया गया था – विचारण न्यायालय द्वारा पारित आदेश विधि एवं सिविल प्रक्रिया संहिता की धारा 10 के विपरीत है – आक्षेपित आदेश अपास्त – सिविल प्रक्रिया संहिता की धारा 10 के अंतर्गत प्रस्तुत आवेदन अस्वीकार किया गया – याचिका मंजूर। (छिंदा बाई उर्फ बाकू बाई वि. गोविन्दराव) ...*88

Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Proper Party & Necessary Party – Eviction Suit **– Petitioner's application under Order 1 Rule 10 CPC for impleading him in suit on the ground that he is in possession of suit property since last 40-50 years and same was gifted to his father by the owner and thus he is a necessary party, was rejected – Challenge to – Held – Petitioner has not purchased the suit property from plaintiffs nor is a tenant of plaintiff's house – For effective adjudication of controversy involved in suit, presence of petitioner is not necessary – Effective decree could be passed in his absence – If he is added, the scope of suit will be enlarged and suit for eviction will convert into suit for title – Further held – Plaintiffs being *dominus litus*, cannot be compelled to add a stranger to the suit against whom they have not prayed any relief, unless it is a rule of law – A stranger to suit making his claim independently and adverse to title of plaintiff, is neither necessary party nor proper party – Petition dismissed. [Nitin Sirbhaiya Vs. Divya Badhwani]** ...1860

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 –उचित पक्षकार एवं आवश्यक पक्षकार – बेदखली का वाद– याची का उसे वाद में पक्षकार बनाए जाने हेतु आदेश 1 नियम 10 सि.प्र.सं. के अंतर्गत इस आधार पर आवेदन कि पिछले 40–50 वर्षों से वाद संपत्ति उसके कब्जे में है तथा वह उसके पिता को, स्वामी द्वारा दान की गई थी और इसलिए वह आवश्यक पक्षकार है, अस्वीकार किया गया – को चुनौती – अभिनिर्धारित – याची ने वाद संपत्ति वादीगण से क्रय नहीं की है न ही वादी के मकान का किराएदार है – वाद में अंतर्ग्रस्त विवाद के प्रभावकारी न्यायनिर्णयन हेतु, याची की उपस्थिति आवश्यक नहीं – उसकी अनुपस्थिति में प्रभावकारी डिक्री पारित की जा सकती है – यदि उसे जोड़ा गया, वाद की व्याप्ति बढ़ जाएगी और बेदखली हेतु वाद, हक हेतु वाद में परिवर्तित हो जाएगा – आगे

अभिनिर्धारित – वादी, वाद के नियंत्रणकर्ता होने के नाते उन्हें वाद में एक अपरिचित को जोड़ने के लिए बाध्य नहीं किया जा सकता जिसके विरूद्ध उन्होनें किसी अनुतोष की प्रार्थना नहीं की है, जब तक कि यह विधि का नियम न हो – वाद में स्वतंत्र रूप से एवं वादी के हक के विपरीत दावा करने वाला अपरिचित न तो आवश्यक पक्षकार है न ही उचित पक्षकार – याचिका खारिज। (नितिन सरमैया वि. दिव्या बाधवानी) ...1860

Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Question of Limitation **– Revision against the dismissal of application filed by Petitioner/ defendant under Order 7 Rule 11 C.P.C. – Held – Suit was filed on 20.11.12 and it has been specifically pleaded that cause of action arose on 06.10.12 – Question of limitation is a mixed question of facts and law and truthfulness or otherwise can be decided only after recording of evidence – Whether any party was having knowledge of any particular fact at a particular time or not, could not be decided without recording evidence of parties – Supreme Court has held, that while exercising powers under Order 7 Rule 11 C.P.C., only averments of plaint has to be read as a whole and at that stage stand of defendants in written statement or in application for rejection of plaint is immaterial – Trial Court rightly dismissed the application – Revision dismissed. [Mahesh Chandra Giroti Vs. Rahul Dev Chourasia] ...*95**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – परिसीमा का प्रश्न – याची/प्रतिवादी द्वारा आदेश 7 नियम 11 सि.प्र.सं. के अंतर्गत प्रस्तुत आवेदन की खारिजी के विरूद्ध पुनरीक्षण – अभिनिर्धारित – वाद, 20–11–12 को प्रस्तुत किया गया था और यह विनिर्दिष्ट रूप से अभिवाक् किया गया है कि वाद कारण, 6–10–12 को उत्पन्न हुआ था – परिसीमा का प्रश्न तथ्यों एवं विधि का एक मिश्रित प्रश्न है तथा सत्यता अथवा अन्यथा का विनिश्चय केवल साक्ष्य अभिलिखित करने के पश्चात् ही किया जा सकता है – क्या किसी पक्षकार को किसी विशिष्ट समय किसी विशिष्ट तथ्य की जानकारी थी अथवा नहीं इसका विनिश्चय पक्षकारों के साक्ष्य अभिलिखित किये बिना नहीं किया जा सकता – उच्चतम न्यायालय ने अभिनिर्धारित किया है कि आदेश 7 नियम 11 सि.प्र.सं. के अंतर्गत शक्तियों का प्रयोग करते समय केवल वादपत्र के प्रकथनों को संपूर्णता में पढ़ा जाना चाहिए और उस प्रक्रम पर लिखित कथन में या वादपत्र की खारिजी हेतु आवेदन में प्रतिवादीगण का पक्ष पूर्णतः महत्वहीन है – विचारण न्यायालय ने आवेदन को उचित रूप से खारिज किया – पुनरीक्षण खारिज। (महेश चन्द्र गिरोती वि. राहुल देव चौरसिया) ...*95

Civil Procedure Code (5 of 1908), Order 21 Rule 1 & 4 – Deposit of Decreetal Amount – Interest **– Arbitrator passed an award for refund**

of money alongwith interest – In appeal, execution was stayed subject to deposit of 50% amount in Court which could be withdrawn by the decree holder by furnishing security – Subsequently appeal dismissed – Judgment debtor filed an application with a plea that as he has already paid 50% amount, he will not be liable to pay interest on that amount – Application allowed – Challenge to – Held – Deposit made by Judgment debtor under the directions of the Court while passing interim order, would not amount to deposit of the decreetal amount under the purview of Order 21 Rule 1 C.P.C. – Judgment debtor is liable to pay interest on the said deposit amount – Revision allowed. [Manoj Kumar Agrawal Vs. Nepa Ltd. Nepanagar through its CMD] ...2256

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 1 व.4 – डिक्रीत राशि जमा की जाना – ब्याज – मध्यस्थ ने ब्याज के साथ धन के प्रतिदाय के लिए एक अवार्ड पारित किया – अपील में, न्यायालय में 50% राशि जमा किये जाने के अधीन निष्पादन रोक दिया गया था जो कि डिक्रीदार द्वारा प्रतिभूति देकर वापस ली जा सकती थी – तत्पश्चात् अपील खारिज की गई – निर्णीत ऋणी ने इस अभिवाक् के साथ आवेदन प्रस्तुत किया कि चूंकि उसने 50% राशि का भुगतान पहले से ही कर दिया है, वह उस राशि पर ब्याज का भुगतान करने हेतु दायी नहीं होगा – आवेदन मंजूर – को चुनौती – अभिनिर्धारित – अंतरिम आदेश पारित करते समय न्यायालय के निदेशों के अंतर्गत निर्णीत ऋणी द्वारा राशि जमा किया जाना, सिविल प्रक्रिया संहिता के आदेश 21 नियम 1 की परिधि के अंतर्गत डिक्रीत राशि का जमा किया जाना नहीं होगा – निर्णीत ऋणी कथित डिक्रीत राशि पर ब्याज का भुगतान करने के लिए दायी है – पुनरीक्षण मंजूर। (मनोज कुमार अग्रवाल वि. नेपा लि. नेपानगर द्वारा सीएमडी) ...2256

Civil Procedure Code (5 of 1908), Order 21 Rule 97, 100 & 102 – Execution Proceedings – Bonafide Purchaser Lis pendens – **Respondent No.1/Plaintiff filed a suit for specific performance of contract against Respondent No.2/Defendant in which ex-parte decree was passed – In execution proceedings before Trial Court, appellant herein filed application under Order 21 Rule 97 on the ground that he was a bonafide purchaser of the suit property – Application was dismissed – Challenge to – Held – A purchaser of suit property during pendency of litigation has no right to resist or obstruct execution of decree passed by Court – *Lis pendens* prohibits a party from dealing with property which is the subject matter of suit – Rule 102 further clarifies that there should not be resistance or obstruction by a**

transferee *pendente lite* and if it is caused/offered by a transferee pendente lite of the judgment debtor, he cannot seek benefit of Rule 98 or 100 of Order 21 C.P.C. – Further held – It seems that appellants must have colluded with judgement debtor and have been set up by him to resist the execution of decree – Application is absolutely frivolous and does not disclose any legal right to obstruct delivery of possession of property so as to recording of evidence – Trial Court rightly dismissed the application after affording opportunity of hearing – Appeal dismissed with cost of Rs. 5000. [Chandra Kumar Chandwani Vs. Anil Gupta] ...1701

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97, 100 व 102 – निष्पादन कार्यवाहियाँ – सद्भाविक क्रेता का विचाराधीन वाद – प्रत्यर्थी क्र. 1/वादी ने प्रत्यर्थी क्र. 2/प्रतिवादी के विरूद्ध संविदा के विनिर्दिष्ट पालन हेतु एक वाद प्रस्तुत किया जिसमें एकपक्षीय डिक्री पारित की गई थी – विचारण न्यायालय के समक्ष निष्पादन कार्यवाहियों में, अपीलार्थी यहाँ ने इस आधार पर आदेश 21 नियम 97 के अन्तर्गत आवेदन प्रस्तुत किया कि वह वाद संपत्ति का सद्भाविक क्रेता था – आवेदन खारिज किया गया था – को चुनौती – अभिनिर्धारित – वाद संपत्ति के क्रेता को मुकदमे के लंबित रहने के दौरान न्यायालय द्वारा पारित डिक्री के निष्पादन का प्रतिरोध करने या बाधा डालने का कोई अधिकार नहीं है – विचाराधीन वाद एक पक्षकार को, ऐसी संपत्ति के संबंध में व्यवहार करने से प्रतिषिद्ध करता है जो कि वाद की विषय वस्तु है – नियम 102 आगे यह स्पष्ट करता है कि वादकालीन अंतरिती द्वारा प्रतिरोध या बाधा नहीं होनी चाहिए तथा यदि यह निर्णीत ऋणी के वादकालीन अंतरिती द्वारा कारित/प्रस्तावित किया जाता है, तो वह सिविल प्रक्रिया संहिता के आदेश 21 नियम 98 या 100 का लाभ नहीं चाह सकता – आगे अभिनिर्धारित – यह प्रतीत होता है कि अपीलार्थीगण ने निर्णीत ऋणी के साथ सांठगांठ की थी तथा डिक्री के निष्पादन का विरोध करने के लिए उसके द्वारा खड़े किये गये थे – आवेदन आत्यंतिक रूप से परेशान करने वाला है तथा संपत्ति के कब्जे का परिदान को बाधित करने हेतु कोई विधिक अधिकार प्रकट नहीं करता है ताकि साक्ष्य अभिलिखित हो सके – विचारण न्यायालय ने सुनवाई का अवसर प्रदान करने के पश्चात् उचित रूप से आवेदन खारिज किया – अपील 5000 रू./– के व्यय के साथ खारिज। (चन्द्र कुमार चांदवानी वि. अनिल गुप्ता) ...1701

Civil Procedure Code (5 of 1908), Order 43 Rule 1(a) and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 17 & 34 –Maintainability of Suit – Jurisdiction of Civil Court **– Suit for specific performance, permanent injunction and damages by**

Appellant/Plaintiff – Relief against bank was also claimed which was later on deleted vide amendment – Suit returned to plaintiff on the ground that it is not maintainable u/S 34 of the Act of 2002 – Challenge to – Held – Bank sold the suit property to defendant u/S 13(4) of the Act of 2002 for which appellant was aggrieved, he ought to have filed an appeal u/S 17 of the Act of 2002 – In the instant case, relief clause against bank has been deleted by appellant vide amendment in the suit, he confined his suit against defendant only, for specific performance of agreement – Bar u/S 34 of the Act of 2002 would not apply – Suit would be maintainable – Appeal allowed. [Hariram Vs. Jat Seeds Greeding & warehousing] ...2192

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 43 नियम 1(ए) एवं वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 17 व 34 – वाद की पोषणीयता, – सिविल न्यायालय की अधिकारिता – अपीलार्थी/वादी द्वारा विनिर्दिष्ट पालन, स्थायी व्यादेश एवं क्षतियों हेतु वाद – बैंक के विरूद्ध अनुतोष का दावा भी किया गया जो कि बाद में संशोधन के माध्यम से हटा दिया गया था – वादी को इस आधार पर वाद वापस किया गया कि वह 2002 के अधिनियम की धारा 34 के अंतर्गत पोषणीय नहीं है – को चुनौती – अभिनिर्धारित – बैंक ने 2002 के अधिनियम की धारा 13(4) के अंतर्गत प्रतिवादी को वाद संपत्ति का विक्रय कर दिया जिसके लिए अपीलार्थी व्यथित था, उसे 2002 के अधिनियम की धारा 17 के अंतर्गत अपील प्रस्तुत करनी चाहिए थी – वर्तमान प्रकरण में, अपीलार्थी द्वारा वाद में संशोधन के माध्यम से बैंक के विरूद्ध अनुतोष का खंड हटा दिया गया है, उसने केवल प्रतिवादी के विरूद्ध, करार के विनिर्दिष्ट पालन हेतु अपने वाद को सीमित रखा है– 2002 के अधिनियम की धारा 34 के अंतर्गत वर्जन लागू नहीं होगा – वाद पोषणीय होगा – अपील मंजूर। (हरिराम वि. जाट सीड्स ग्रीडिंग एण्ड वेयरहाउसिंग) ...2192

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 3(1)(d) & 29(1)(iii) – See – Service Law **[Ashish Singh Pawar Vs. State of M.P.]** ...2124

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 3(1)(डी) व 29(1)(iii) – देखें – सेवा विधि (आशीष सिंह पवार वि. म.प्र. राज्य) ...2124

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10(6) & 14 – Delayed Charge Sheet and Show Cause Notice – Explanation **– Held – Charges leveled for alleged misconduct of 21 years**

ago – Explanation for such inordinate delay is totally insufficient and vague – Delay not properly explained – No point to continue with such delayed charge sheet – Charge sheet and show cause notice are quashed – Petition allowed. [Amrat Singh Dhakad Vs. State of M.P.] ...*101

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10(6) व 14 –विलंबित आरोप–पत्र एवं कारण बताओ नोटिस – स्पष्टीकरण– अभिनिर्धारित – 21 वर्ष पूर्व के अभिकथित अवचार हेतु आरोप लगाये गये – ऐसे अत्याधिक विलंब के लिए स्पष्टीकरण पूर्णतः अपर्याप्त एवं अस्पष्ट है – विलंब उचित रूप से स्पष्ट नहीं किया गया – उक्त विलंबित आरोप पत्र बनाये रखने का कोई औचित्य नहीं – आरोप पत्र एवं कारण बताओ नोटिस अभिखंडित किये गये – याचिका मंजूर। (अमृत सिंह धाकड़ वि. म.प्र. राज्य) ...*101

***Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 & 15 – See – Service Law* [Pramod Kumar Agrawal Vs. State of M.P.] (DB)...*119**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 व 15 – देखें – सेवा विधि (प्रमोद कुमार अग्रवाल वि. म.प्र. राज्य)(DB)...*119

***Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 15(2) – See – Service Law* [Ashok Sharma (Dr.) Vs. State of M.P.] ...2173**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र.1966, नियम 15(2) – देखें – सेवा विधि (अशोक शर्मा (डॉ.) वि. म.प्र. राज्य) ...2173

***Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 15(2) – Show Cause Notice & Opportunity of Hearing – Natural Justice – Dismissal from Service* – Held – Rule 15(2) is mandatory and disciplinary authority is under legal obligation to issue a show cause notice and to afford opportunity of hearing in case of disagreement with findings of Inquiry Officer – Impugned order of punishment violates the provisions of Rule 15(2) of the Rules of 1966 and also the principle of natural justice – Impugned orders quashed and matter remanded back to disciplinary authority – Petition disposed. [Ram Krishna Kanade Vs. State of M.P.] ...*120**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 15(2) – कारण बताओ नोटिस एवं सुनवाई का अवसर – नैसर्गिक न्याय – सेवा से पदच्युति – अभिनिर्धारित – नियम 15(2) आज्ञापक है तथा अनुशासनिक

प्राधिकारी, जांच अधिकारी के निष्कर्षों से असहमत होने पर कारण बताओ नोटिस जारी करने तथा सुनवाई का अवसर देने की विधिक बाध्यता के अधीन है – दंड का आक्षेपित आदेश 1966 के नियमों के नियम 15(2) के उपबंधों तथा नैसर्गिक न्याय के सिद्धांतों का भी उल्लंघन करता है – आक्षेपित आदेश अभिखंडित तथा मामला अनुशासनिक प्राधिकारी को प्रतिप्रेषित – याचिका निराकृत। (राम कृष्ण कनाडे वि. म.प्र. राज्य) ...*120

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 19 – See – Service Law **[Prem Chand Chaturvedi Vs. State of M.P.]** **...1636**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 19 – देखें – सेवा विधि (प्रेम चंद चतुर्वेदी वि. म.प्र. राज्य) **...1636**

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 27(2) – See – Service Law **[S.K. Agarwal Vs. State of M.P.]** **...1840**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 27(2) – देखें – सेवा विधि (एस.के. अग्रवाल वि. म.प्र. राज्य) **...1840**

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966 and All India Services (Discipline and Appeal) Rules, 1955 – Applicability **– Rules of 1955 shall be applicable to regulate the punishment of and appeals from officers belonging to Indian Police Service and the CCA Rules to the State Police Service. [Ashish Singh Pawar Vs. State of M.P.]** **...2124**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966 एवं अखिल भारतीय सेवा (अनुशासन और अपील) नियम, 1955 – प्रयोज्यता – भारतीय पुलिस सेवा के अधिकारियों की शास्ति एवं अपीलों को विनियमित करने हेतु 1955 के नियम तथा राज्य पुलिस सेवा हेतु सी.सी.ए. नियम प्रयोज्य होगें। (आशीष सिंह पवार वि. म.प्र. राज्य) **...2124**

Civil Services (Pension) Rules, M.P. 1976, Rule 9 – See – Service Law **[Prem Chand Chaturvedi Vs. State of M.P.]** **...1636**

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 – देखें – सेवा विधि (प्रेम चंद चतुर्वेदी वि. म.प्र. राज्य) **...1636**

Civil Services (Pension) Rules, M.P. 1976, Rule 42 – See – Service Law **[Shanti Verma (Smt.) Vs. State of M.P.]** **...2134**

INDEX

सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42 – देखें – सेवा विधि (शांति वर्मा (श्रीमती) वि. म.प्र. राज्य) ...2134

Constitution – Article 14 – Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5 and Arbitration and Conciliation Act (26 of 1996), Section 34 – **Held – Recovery procedure has been resorted to after arbitral award is passed and when it is not further objected within time prescribed u/S 34 of the Act of 1996 – Thus, procedure is not violative of Article 14 of Constitution – C.P.C. cannot be the only remedy, it is open to legislate recovery mechanism without interference of Civil Court. [Power Machines India Ltd. Vs. State of M.P.]** (SC)...2043

संविधान – अनुच्छेद 14 – सूक्ष्म एवं लघु उद्यम सुविधा परिषद् नियम, म.प्र., 2006, नियम 5 एवं माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 – अभिनिर्धारित – माध्यस्थम अवार्ड पारित किये जाने के पश्चात् तथा जब 1996 के अधिनियम की धारा 34 के अंतर्गत विहित समयावधि के भीतर उस पर आगे आक्षेप नहीं लिया गया, वसूली प्रक्रिया का अवलंब लिया गया है – अतः प्रक्रिया, संविधान के अनुच्छेद 14 के उल्लंघन में नहीं है – सि.प्र.सं. एकमात्र उपचार नहीं हो सकता, सिविल न्यायालय के हस्तक्षेप के बिना वसूली प्रक्रिया का विधान बनाया जा सकता है। (पॉवर मशीन्स् इंडिया लि. वि. म.प्र. राज्य) (SC)...2043

Constitution – Article 14, 19, 25, 26, 38, 39, 39A, 48A, 51-A(h) & Part XII – Public Interest Litigation – Narmada Seva Yatra – Purpose – **It was alleged that CM of the State is organizing the "Narmada Seva Yatra" and on pretext of cleaning and purifying holy river Narmada, he want to polarize Hindu votes and spending crores of rupees from State Exchequer and prayed to prohibit such yatra – Held – Move of the Government of M.P. is to clean holy river Narmada and have decided planting 5 crores plants on both sides of Narmada river for protection of environment of forest – Purpose of Yatra is to save water of river Narmada from pollution and to put awareness to villagers residing near the banks of river – Yatra is not to polarize Hindu vote in the name of holy river nor it is against the provisions of Article 14, 19, 25, 26, 38, 39, 39A, 48A and Part XII of Constitution – Cleaning of holy river Narmada is a secular activity of State and nothing to do with any religion – There is no prohibition of participation of any person or class or any other leader of political party, all are free to participate – Present PIL filed without thorough study of factual situation and there are no specific pleadings to substantiate**

allegations – Court cannot issue a writ of prohibition to stop Narmada Seva Yatra – Petition dismissed. [Tapan Bhattacharya (Dr.) Vs. State of M.P.] (DB)...1649

संविधान – अनुच्छेद 14, 19, 25, 26, 38, 39, 39ए, 48ए, 51–ए(एच) एवं भाग XII – लोक हित वाद – नर्मदा सेवा यात्रा – प्रयोजन – यह अभिकथन किया गया था कि राज्य के मुख्यमंत्री "नर्मदा सेवा यात्रा" का आयोजन कर रहे हैं तथा पवित्र नदी नर्मदा की सफाई एवं शुद्धि के बहाने, वह हिन्दू मतों का ध्रुवीकरण करना चाहते हैं तथा राजकोष से करोड़ों रूपये खर्च कर रहे हैं एवं इस तरह की यात्रा को प्रतिषिद्ध करने हेतु प्रार्थना की – अभिनिर्धारित – म.प्र. शासन का कदम पवित्र नदी नर्मदा को साफ करने हेतु है तथा वन के पर्यावरण का संरक्षण करने हेतु नर्मदा नदी के दोनों किनारों पर 5 करोड़ पौधे लगाने का विनिश्चय किया है – यात्रा का प्रयोजन नर्मदा नदी के जल को प्रदूषण से बचाना है तथा नदी के तटों के पास रहने वाले ग्रामीणों में जागरूकता फैलाना है – यात्रा पवित्र नदी के नाम पर हिन्दू वोट का ध्रुवीकरण करने के लिए नहीं है, न ही यह संविधान के अनुच्छेद 14, 19, 25, 26, 38, 39, 39ए, 48ए एवं भाग XII के विरूद्ध है – पवित्र नदी नर्मदा की सफाई करना राज्य की एक धर्मनिर्पेक्ष गतिविधि है तथा किसी धर्म से कोई लेना देना नहीं है – किसी व्यक्ति या वर्ग या राजनीतिक पार्टी के किसी अन्य नेता के भाग लेने में कोई प्रतिशेध नहीं है, भाग लेने हेतु सभी स्वतंत्र हैं – वर्तमान लोक हित वाद तथ्यात्मक स्थिति का विस्तृत अध्ययन किये बिना प्रस्तुत किया गया तथा अभिकथनों को सिद्ध करने हेतु कोई विनिर्दिष्ट अभिवचन नहीं हैं – न्यायालय नर्मदा सेवा यात्रा को रोकने के लिए प्रतिशेध की रिट जारी नहीं कर सकती – याचिका खारिज। (तपन भट्टाचार्य (डॉ.) वि. म.प्र. राज्य) (DB)...1649

Constitution – Article 16(4) – Reservation- Singular cadre post – Clubbing of posts – **Held – Singular post of different disciplines cannot be clubbed together unless it is shown that such posts are interchangeable – It is further held that such posts are isolated posts in different disciplines and they do not form a singular cadre. [Deepti Chaurasia (Dr.) Vs. Union of India]** ...2118

संविधान – अनुच्छेद 16(4) – आरक्षण – एकल संवर्ग पद – पदों का इकट्ठा किया जाना – अभिनिर्धारित – विभिन्न विषय क्षेत्रों/अध्ययन क्षेत्रों के एकल पदों को इकट्ठा नहीं किया जा सकता जब तक यह दर्शाया नहीं गया हो कि ऐसे पद अंतः परिवर्तनीय हैं – आगे अभिनिर्धारित किया गया कि ऐसे पद विभिन्न विषय क्षेत्रों में पृथक्कृत पद हैं तथा वे एकल संवर्ग निर्मित नहीं करते। (दीप्ती चौरसिया (डॉ.) वि. यूनियन ऑफ इंडिया) ...2118

Constitution – Article 142 – Madhya Pradesh Professional

INDEX

Examination Board (Vyapam) – Pre-Medical Test for Admission in M.B.B.S. Course – Cancellation of Results – Unfair Means **– Board cancelled the results of the appellants for using unfair means during Pre-Medical Test conducted in the 2008 to 2012 – Appellants filed writ petitions before the High Court whereby the same were dismissed – Challenge to – Held – None of the appellants would have been admitted, as their merit position in the examination was not because of their own efforts but was based on extraneous assistance – The deception and deceit adopted by the appellants cannot be termed as simple affair which can be overlooked, in fact it was the outcome of well orchestrated strategy based on an established fraud and manipulation – It is not possible to accept that, involvement of appellants was not serious in fact it was indeed the most grave and extreme – Earlier also this Court has held that such admission of the candidates to M.B.B.S. course was vitiated and this view of the court has attained finality – Appellants herein are the beneficiaries of such vitiated process – Nothing obtained by fraud can be sustained, as fraud unravels everything – Jurisdiction under Article 142 of the Constitution cannot be invoked in such cases which would not serve the "larger interest of justice", on the contrary, would cause manifest injustice – Scope and jurisdiction of Article 142 of Constitution discussed – Order passed by Vyapam upheld – Appeals dismissed. [Nidhi Kaim Vs. State of M.P.]** **(SC)...1547**

संविधान – अनुच्छेद 142 – मध्य प्रदेश व्यावसायिक परीक्षा बोर्ड (व्यापम) – एम.बी.बी.एस. पाठ्यक्रम में प्रवेश हेतु प्री–मेडिकल टेस्ट – परिणामों का रद्दकरण – अनुचित साधन – बोर्ड ने, वर्ष 2008 से 2012 में संचालित किये गये प्री–मेडिकल टेस्ट के दौरान अनुचित साधनों का प्रयोग करने के लिए अपीलार्थीगण के परिणामों को रद्द कर दिया – अपीलार्थीगण ने उच्च न्यायालय के समक्ष रिट याचिकाएं प्रस्तुत की जिसमें उक्त को खारिज किया गया था – को चुनौती – अभिनिर्धारित – अपीलार्थीगण में से किसी को भी प्रवेश नहीं दिया गया, क्योंकि परीक्षा में उनका मैरिट स्थान उनके स्वयं के प्रयासों के कारण नहीं था बल्कि बाहरी सहायता पर आधारित था – अपीलार्थीगण द्वारा अपनाई गई प्रवंचना और छल को साधारण मामला नहीं कहा जा सकता है जिसे अनदेखा किया जा सके, वास्तव में यह स्थापित कपट तथा छल साधन पर आधारित गुप्त रूप से आयोजित रणनीति का परिणाम था – यह स्वीकार करना संभव नहीं है कि अपीलार्थीगण की सहभागिता गंभीर नहीं थी, वास्तव में यह वाकई अति गंभीर और चरम थी – पूर्व में भी इस न्यायालय ने यह अभिनिर्धारित किया है कि एम.बी.बी.एस. पाठ्यक्रम में अभ्यर्थीयों का इस तरह का प्रवेश दूषित था तथा न्यायालय के इस दृष्टिकोण ने अंतिमता प्राप्त

कर ली है – इसमें अपीलार्थीगण ऐसी दूषित प्रक्रिया के हिताधिकारी हैं – कपट द्वारा अभिप्राप्त कुछ भी कायम नहीं रखा जा सकता क्योंकि कपट सब कुछ विफल कर देता है संविधान के अनुच्छेद 142 के अन्तर्गत अधिकारिता का अवलम्ब ऐसे प्रकरणों में नहीं लिया जा सकता जिनसे "बड़े पैमाने में न्यायहित" की पूर्ति नहीं होगी. इसके विपरीत, प्रकट रूप से अन्याय कारित होगा – संविधान के अनुच्छेद 142 के विस्तार एवं अधिकारिता की विवेचना की गई है – व्यापम द्वारा पारित आदेश कायम रखा गया – अपीलें खारिज। (निधि केम वि. म.प्र. राज्य) (SC)...1547

***Constitution** – Article 226 – L.P.G. Distributorship – Cancellation of Candidature – Grounds – Natural Justice* – **Petitioner was found eligible for the distributorship of LPG retail outlet – Indian Oil Corporation cancelled his candidature on the ground that the land for godown offered by petitioner is not connected with approach road and gift deed for approach road was registered after the date of submitting application form – I.O.C. issued letter of intent to R-2 – Challenge to – Held – After selection of petitioner, field verification was carried out and on the basis of verification report which mentioned absence of connecting motorable approach road, candidature was cancelled – Looking to the procedure, such condition is directory and not mandatory effecting the eligibility of petitioner – On the date of verification, petitioner could have been asked to give undertaking to make the road motorable within time specified – Without giving such option to petitioner, action of IOC cancelling his candidature is unfair, non-judicious, partial and arbitrary and is not based on principle of natural justice – Moreso, letter of intent issued to respondent no.2 inspite of the fact that as per search and title report of land, the title and possession of respondent no. 2 was not clear and was under litigation – Order of cancellation of candidature of petitioner and order issuing letter of intent to respondent no.2 are quashed – Petition allowed. [Reeta Singh (Smt.) Vs. Indian Oil Corporation Ltd.] ...1656**

संविधान – अनुच्छेद 226 – एल.पी.जी. वितरक – अभ्यर्थिता का रद्दकरण – आधार – नैसर्गिक न्याय – याची एल.पी.जी. खुदरा दुकान की वितरकता हेतु पात्र पाया गया था – इंडियन ऑइल कॉर्पोरेशन ने इस आधार पर उसकी अभ्यर्थिता रद्द कर दी कि याची द्वारा गोदाम के लिये प्रस्थापित की गई भूमि पहुँच मार्ग से नहीं जुड़ी है तथा पहुँच मार्ग हेतु दान विलेख, आवेदन पत्र प्रस्तुत किये जाने की तिथि के पश्चात् रजिस्ट्रीकृत किया गया था – इंडियन ऑइल कॉर्पोरेशन ने प्रत्यर्थी क्र. 2 का आशय पत्र जारी किया – को चुनौती – अभिनिर्धारित – याची का

चयन होने के, पश्चात् क्षेत्र का सत्यापन किया गया था तथा सत्यापन प्रतिवेदन जिसमें वाहनयोग्य पहुँच मार्ग को जोड़ने की अनुपस्थिति का उल्लेख किया गया है, के आधार पर अभ्यर्थिता रद्द की गई थी – प्रक्रिया को देखते हुए, इस प्रकार की शर्त निदेशात्मक है तथा याची की पात्रता को आज्ञापक रूप से प्रभावित नहीं करती – सत्यापन की तिथि को याची को विनिर्दिष्ट समय के भीतर मार्ग को वाहनयोग्य बनाने हेतु परिवचन देने के लिए कहा जा सकता था – याची को ऐसा विकल्प दिये बिना, आई.ओ.सी. द्वारा उसकी अभ्यर्थिता रद्द करने की कार्रवाई अनुचित, गैर–न्यायसम्मत, पक्षपातपूर्ण तथा मनमानी है एवं नैसर्गिक न्याय के सिद्धांत पर आधारित नहीं है – और तो और, प्रत्यर्थी क्र. 2 को इस तथ्य के बावजूद आशय पत्र जारी किया गया कि छानबीन एवं भूमि के हक संबंधी प्रतिवेदन के अनुसार, प्रत्यर्थी क्र. 2 का हक एवं कब्जा स्पष्ट नहीं था तथा मुकदमेबाजी के अधीन था – याची की अभ्यर्थिता के रद्दकरण का आदेश तथा प्रत्यर्थी क्र. 2 को आशय पत्र जारी करने का आदेश अभिखंडित – याचिका मंजूर। (रीता सिंह (श्रीमती) वि. इंडियन ऑयल कारपोरेशन लि.) ...1656

Constitution – Article 226 – Payment of Gratuity Act (39 of 1972), Section 2(f) & 2(i) and Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmchariyon Ke Vetano Ka Sanday) Adhiniyam, M.P. (20 of 1978) – Benefit of Gratuity – Entitlement – **Held – Teachers/employees working in grant-in-aided institutions are under the control of State Government – Looking to the definition of "Employer" u/S 2(f) of the Act of 1972, State of M.P. is the employer of the petitioners for the purpose of gratuity and State being the employer is liable to make payment of amount of gratuity to the employees/teachers working at such institutions – Further held – Persons who are being appointed prior to Amendment Act of 2000 which came into force on 01.04.2000 shall be continue to be covered by the Act of 1978 – Claim of the petitioner to receive gratuity from State of M.P. is established – Petitions allowed. [Ramjilal Kushwah Vs. State of M.P.]** ...1850

संविधान – अनुच्छेद 226 – उपदान संदाय अधिनियम (1972 का 39), धारा 2(एफ) व 2(आई) एवं अशासकीय शिक्षण संस्था (अध्यापकों तथा अन्य कर्मचारियों के वेतनों का संदाय) अधिनियम, म.प्र. (1978 का 20) – उपदान का लाभ – हकदारी – अभिनिर्धारित – सहायता अनुदान प्राप्त संस्थाओं में कार्यरत शिक्षक/कर्मचारी राज्य शासन के नियंत्रण के अधीन हैं – 1972 के अधिनियम की धारा 2(एफ) के अंतर्गत "नियोक्ता" की परिभाषा को देखते हुये, उपदान के प्रयोजन हेतु म.प्र. राज्य याचीगण का नियोक्ता है तथा राज्य नियोक्ता होने के नाते ऐसी संस्थाओं में

कार्यरत कर्मचारीगण/शिक्षकों को उपदान की राशि का भुगतान करने हेतु दायी है – आगे अभिनिर्धारित – संशोधन अधिनियम 2000, जो कि 01.04.2000 से प्रभाव में आया के पूर्व नियुक्त किये गये व्यक्ति 1978 के अधिनियम के द्वारा आच्छादित होना जारी रहेंगे – याची का म.प्र. राज्य से उपदान प्राप्त करने का दावा स्थापित – याचिकाएँ मंजूर। (रामजीलाल कुशवाह वि. म.प्र. राज्य) ...1850

Constitution – Article 226 – Proctorial Board – Maintenance of Discipline Amongst Students of University Teaching Department, Ordinance No. 15, Clause 4, 11 & 12 – Rustication Order – Show Cause Notice – Natural Justice – Opportunity of Hearing – **On numerous complaints made by different students regarding misbehavior, mental and physical torture by petitioners, rustication orders of the petitioners were passed by Proctorial Board – Held – As per the provisions of Ordinance 15, Proctorial Board is empowered to enquire into acts of indiscipline and to impose fine and/or other punishment which includes recommendation for rustication or expulsion of student – In the present case, no show cause notice in writing was given to petitioners specifying charges/complaint against them, thereby disabling them from effectively defending themselves – Principles of natural justice appears to have been violated – Principle of natural justice of *audi alterem partem* is binding not only on judicial but also on executive authorities – Reasonable opportunity of being heard should be afforded to persons before they are condemned/punished – Order of rustication is set aside and University is directed to follow the process contained in Ordinance 15 especially clause 11 and 12 before proceeding against petitioners – University is free to take suitable action against petitioners in accordance with law. [Shivvam Awasthi Vs. Vice Chancellor Jiwaji University]** (DB)...1641

संविधान – अनुच्छेद 226 – प्रोक्टोरियल बोर्ड – विश्वविद्यालय शैक्षणिक विभाग के छात्रों के बीच अनुशासन का रखरखाव, अध्यादेश क्र. 15, खंड 4, 11 एवं 12 – निष्कासन आदेश – कारण बताओ नोटिस – नैसर्गिक न्याय – सुने जाने का अवसर – याचीगण द्वारा कदाचार, मानसिक और शारीरिक यातना किये जाने के संबंध में विभिन्न छात्रों द्वारा किये गये अनेक परिवादों पर, प्रोक्टोरियल बोर्ड द्वारा याचीगण के निष्कासन आदेश पारित किये गये थे – अभिनिर्धारित – अध्यादेश 15 के उपबंधों के अनुसार, प्रोक्टोरियल बोर्ड अनुशासनहीनता के कृत्यों में जांच करने तथा जुर्माना एवं/या अन्य दंड जिसमें छात्र के निष्कासन या बाहर निकाल देने हेतु सिफारिश सम्मिलित है, अधिरोपित करने के लिए सशक्त है – वर्तमान प्रकरण में,

याचीगण को उनके विरूद्ध आरोपों/परिवाद को विनिर्दिष्ट करते हुये लिखित में कोई कारण बताओ नोटिस नहीं दिया गया था, जिससे उन्हें प्रभावी रूप से स्वयं का बचाव करने से निर्योग्य किया गया – नैसर्गिक न्याय के सिद्धान्तों को उल्लंघन किया जाना प्रतीत होता है – दूसरे पक्ष को भी सुनने के नैसर्गिक न्याय का सिद्धांत न केवल न्यायिक बल्कि कार्यपालक प्राधिकारीगण पर भी बाध्यकारी है – व्यक्तियों को सिद्धदोष/दंडित करने से पूर्व उन्हें सुनवाई का उचित अवसर प्रदान किया जाना चाहिए – निष्कासन का आदेश अपास्त किया गया तथा विश्वविद्यालय को याचीगण के विरूद्ध आगे बढ़ने से पूर्व अध्यादेश 15 विशेष रूप से खंड 11 एवं 12 में अंतर्विष्ट प्रक्रिया का पालन करने हेतु निदेशित किया गया – विश्वविद्यालय, याचीगण के विरूद्ध, विधि के अनुसार उचित कार्रवाई करने हेतु स्वतंत्र है। (शिवम अवस्थी वि. वाइस चान्सलर जीवाजी यूनिवर्सिटी) (DB)...1641

Constitution – Article 226 – Public Interest Litigation – Jurisdiction & Scope of Interference **– Held – Jurisdiction of PIL should be invoked very sparingly and in favour of vigilant litigant and not for persons who invoke this jurisdiction for sake of publicity – Further held – Constitution does not recognize or permit mixing of religion and State power and the two must be kept apart. [Tapan Bhattacharya (Dr.) Vs. State of M.P.] (DB)...1649**

संविधान – अनुच्छेद 226 – लोक हित वाद – अधिकारिता एवं हस्तक्षेप की सीमा – अभिनिर्धारित – लोक हित वाद की अधिकारिता का अवलंब बहुत मितव्ययता से तथा जागरूक मुकदमेबाज के पक्ष में लिया जाना चाहिए एवं न कि उन व्यक्तियों के लिए जो कि प्रचार के लिए इस अधिकारिता का अवलंब लेते हैं – आगे अभिनिर्धारित – संविधान धर्म तथा राज्य की शक्ति की मिलावट को मान्यता या अनुमति नहीं देता एवं दोनों को पृथक रखा जाना चाहिए। (तपन भट्टाचार्य (डॉ) वि. म.प्र. राज्य) (DB)...1649

Constitution – Article 226 – Public Interest Litigation – Locus Standi **– Held – A person acting bonafide and having sufficient interest in proceedings of Public Interest litigation will only have *locus standi*, who can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions – It cannot be invoked for personal gain or personal causes or private profit or political motive or to satisfy personal grudge and enmity or any oblique considerations. [Tapan Bhattacharya (Dr.) Vs. State of M.P.] (DB)...1649**

संविधान – अनुच्छेद 226 – लोक हित वाद – सुने जाने का अधिकार – अभिनिर्धारित – एक व्यक्ति जो कि सद्भाविक रूप से कार्य कर रहा है तथा लोक हित

वाद की कार्यवाहियों में पर्याप्त रूचि रखता है, केवल उसको सुने जाने का अधिकार है, जो कि मूलभूत अधिकारों का उल्लंघन तथा कानूनी उपबंधों का वास्तविक व्यतिक्रमण खत्म करने हेतु न्यायालय के समक्ष जा सकता है – इसका अवलंब व्यक्तिगत लाभ या व्यक्तिगत कारणों या निजी लाभ या राजनीतिक हेतु या व्यक्तिगत द्वेष या वैमनस्यता को संतुष्ट करने के लिए या किसी अस्पष्ट प्रतिफलों के लिए नहीं लिया जा सकता। (तपन भट्टाचार्य (डॉ.) वि. म.प्र. राज्य) (DB)...1649

Constitution – Article 226 – Registration of FIR Against Police Officials **– Fight amongst the Police Officials and Army Trainee Officers – Police authorities lodged three FIR against the army officers whereas no report was lodged against any police officers despite written complaint filed by the Army Officers – Held – On written complaint, investigation conducted by Addl. S.P. whereby despite of the fact that some Army Officers sustained fractures and without considering medical evidence concluded that no case is made out against Police Officers – Allegation regarding Army Officers for consuming liquor openly has been specifically denied by respondents nor there is any medical evidence in this respect – Young Army Officers were beaten by Police personnel for which medical reports are present on record – Police did not investigate the matter properly and impartially – Material on record prima facie calling for an investigation by independent agency – CBI directed to take over investigation of the case – Petition allowed. [Pramod Kumar Dwivedi Vs. State of M.P.] (DB)...2103**

संविधान – अनुच्छेद 226 – पुलिस अधिकारियों के विरूद्ध प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जाना – पुलिस अधिकारियों और सेना के प्रशिक्षु अधिकारियों के मध्य लड़ाई हुई – पुलिस प्राधिकारियों ने सेना अधिकारियों के विरूद्ध तीन प्रथम सूचना प्रतिवेदन दर्ज किये जबकि सेना अधिकारियों द्वारा लिखित शिकायत प्रस्तुत करने के बावजूद किसी पुलिस अधिकारी के विरूद्ध रिपोर्ट दर्ज नहीं की गई – अभिनिर्धारित – लिखित शिकायत पर, अति. पुलिस अधीक्षक द्वारा अन्वेषण संचालित किया गया जिसमें, बावजूद इस तथ्य के कि कुछ सेना अधिकारियों ने अस्थि–भंग सहन किया और चिकित्सीय साक्ष्य को विचार में लिये बिना; निष्कर्षित किया कि पुलिस अधिकारियों के विरूद्ध कोई प्रकरण नहीं बनता – सेना अधिकारियों के संबंध में खुले रूप से मदिरा सेवन करने के अभिकथन को प्रत्यर्थीगण द्वारा विनिर्दिष्ट रूप से अस्वीकार किया गया, ना ही इस संबंध में कोई चिकित्सीय साक्ष्य है – जवान सेना अधिकारियों को पुलिस कर्मियों द्वारा पीटा गया था जिसके लिए अभिलेख पर चिकित्सीय प्रतिवेदन उपस्थित है – पुलिस ने मामले का उचित रूप से एवं निष्पक्ष रूप से अन्वेषण नहीं किया – अभिलेख की सामग्री प्रथम दृष्ट्या स्वतंत्र

एजेंसी द्वारा अन्वेषण हेतु आवश्यकता बताती है – CBI को प्रकरण का अन्वेषण ले लेने के लिए निदेशित किया गया – याचिका मंजूर। (प्रमोद कुमार द्विवेदी वि. म.प्र. राज्य)
(DB)...2103

Constitution – Article 226 – Unaided Private Institution – Scope and Jurisdiction – Maintainability of Petition – Held – Supreme Court urged that respondent Institutions are imparting education to students at large and are exercising public functions and thus amenable to writ jurisdiction – Writ Petition is maintainable. [Pushkar Gupta (Dr.) Vs. State of M.P.]
...*99

संविधान – अनुच्छेद 226 – गैर–सहायता प्राप्त संस्था – विस्तार एवं अधिकारिता – याचिका की पोषणीयता – अभिनिर्धारित – उच्चतम न्यायालय ने बताया कि प्रत्यर्थी संस्थाएँ बड़े पैमाने पर छात्रों को शिक्षा प्रदान कर रही हैं तथा इस प्रकार रिट अधिकारिता के अध्याधीन हैं – याचिका पोषणीय है। (पुष्कर गुप्ता (डॉ.) वि. म.प्र. राज्य)
...*99

Constitution – Article 226/227 – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39 – Suspension of Sarpanch – Ground – Sarpanch was suspended on production of challan in a criminal case – Challenge to – Held – As per Section 39 of the Adhiniyam of 1993, suspension of an office bearer can be passed after framing of charge in criminal cases – In criminal trial, stage of filing of challan is different than the stage of framing charge – Charge is framed after application of mind by the Court of law - In the present case, when suspension order was passed, on that date, no charge was framed in the criminal case against the petitioner – Order of suspension is contrary to Section 39 of the Adhiniyam – Impugned order quashed – Petition allowed. [Choti Patel (Smt.) Vs. State of M.P.]
...*89

संविधान – अनुच्छेद 226/227 – पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 39 – सरपंच का निलंबन – आधार – सरपंच को दाण्डिक प्रकरण में चालान प्रस्तुत होने पर निलंबित किया गया था – को चुनौती – अभिनिर्धारित – 1993 के अधिनियम की धारा 39 के अनुसार, दाण्डिक प्रकरण में आरोप विरचित किये जाने के पश्चात् पदाधिकारी का निलंबन पारित किया जा सकता है – दाण्डिक विचारण में, चालान प्रस्तुत करने का प्रक्रम, आरोप विरचित किये जाने के प्रक्रम से भिन्न है –, न्यायालय द्वारा मस्तिष्क का प्रयोग करने के पश्चात् आरोप विरचित किया जाता है – वर्तमान प्रकरण में, जब निलंबन आदेश पारित किया गया था, उस तिथि को याची के विरूद्ध दाण्डिक प्रकरण में कोई आरोप

विरचित नहीं था – निलंबन का आदेश, अधिनियम की धारा 39 के विपरीत है – आक्षेपित आदेश अभिखंडित – याचिका मंजूर। (छोटी पटेल (श्रीमती) वि. म.प्र. राज्य) ...*89

Constitution – Article 227 and Evidence Act (1 of 1872), Section 112 & 114 – DNA Test in Matrimonial Cases – **Husband filed a divorce case on the ground that wife is living an adulterous life and questioned the paternity of daughter – Before starting of evidence, husband filed application for DNA test whereas wife refused for the same and accordingly application was dismissed – Challenge to – Held – Apex Court has concluded that though DNA test is most legitimate and scientifically perfect to ascertain the paternity and infidelity, but for preservation of individual privacy, a person cannot be compelled for DNA test – On such refusal by wife, Court can draw presumption u/S 114 of the Evidence Act without disturbing the presumption envisaged u/S 112 of Evidence Act – No illegality in impugned order – Petitioner will be at liberty to file application for DNA test after recording of evidence or may request the Court to draw adverse inference in terms of Section 114 of the Act of 1872 for refusing the DNA test. [Badri Prasad Jharia Vs. Smt. Seeta Jharia]** ...1824

संविधान – अनुच्छेद 227 एवं साक्ष्य अधिनियम (1872 का 1), धारा 112 व 114 –वैवाहिक प्रकरणों में डी.एन.ए. जांच – पति ने इस आधार पर विवाह–विच्छेद का प्रकरण प्रस्तुत किया कि पत्नी जारता का जीवन जी रही है तथा पुत्री के पितृत्व पर सवाल उठाया – साक्ष्य प्रारंभ होने से पूर्व, पति ने डी.एन.ए. जांच हेतु आवेदन प्रस्तुत किया जिस पर पत्नी ने उक्त के लिए इंकार किया एवं तद्नुसार आवेदन खारिज किया गया था – को चुनौती – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यद्यपि डी.एन.ए. जांच पितृत्व तथा व्यभिचार सुनिश्चित करने हेतु अत्यन्त विधिसम्मत एवं वैज्ञानिक रूप से उत्तम है, परंतु व्यक्तिगत निजता के परिरक्षण के लिए, एक व्यक्ति को डी.एन.ए. जांच के लिए विवश नहीं किया जा सकता – पत्नी द्वारा ऐसे इंकार पर, न्यायालय साक्ष्य अधिनियम की धारा 112 के अंतर्गत परिकल्पित उपधारणा को छुए बिना साक्ष्य अधिनियम की धारा 114 के अंतर्गत उपधारणा कर सकता है – आक्षेपित आदेश में कोई अवैधता नहीं – याची, साक्ष्य अभिलिखित होने के पश्चात् डी.एन.ए. जांच हेतु आवेदन प्रस्तुत करने के लिए स्वतंत्र होगा या डी.एन.ए. जांच से इंकार करने के लिए 1872 के अधिनियम की धारा 114 के अनुसार प्रतिकूल निष्कर्ष निकालने हेतु न्यायालय से निवेदन कर सकता है। (बदी प्रसाद झारिया वि. श्रीमती सीता झारिया) ...1824

Constitution – Article 311(2) – **Held – Apex Court held, that if**

disciplinary authority disagrees with findings of inquiry authority then it has to issue a show cause notice to delinquent employee mentioning the grounds of disagreement – In the instant case, no show cause notice was issued to petitioner at the time when department/disciplinary authority disagreed with findings of Inquiry Officer and subsequently issued show cause notice regarding why he should not be punished with dismissal of service and recovery of amount – Procedure adopted by disciplinary authority is contrary to law and violative of Article 311(2) of Constitution. [Ashok Sharma (Dr.) Vs. State of M.P.] ...2173

संविधान – अनुच्छेद 311(2) – अभिनिर्धारित – सर्वोच्च न्यायालय ने अभिनिर्धारित किया कि यदि जांच प्राधिकारी के निष्कर्षों के साथ अनुशासनिक प्राधिकारी असहमत होता है तब उसे अपचारी कर्मचारी को, असहमति के आधार उल्लिखित करते हुए कारण बताओ नोटिस जारी करना होता है – वर्तमान प्रकरण में, याची को उस समय कोई कारण बताओ नोटिस जारी नहीं किया गया था जब विभाग/अनुशासनिक प्राधिकारी, जांचकर्ता अधिकारी के निष्कर्षों से असहमत हुआ था और पश्चात्वर्ती रूप से इस संबंध में कारण बताओ नोटिस जारी किया गया था कि क्यों न उसे सेवा से पदच्युति से दण्डित किया जाए एवं रकम वसूली जाए – अनुशासनिक प्राधिकारी द्वारा अपनायी गयी प्रक्रिया विधि के विपरीत तथा संविधान के अनुच्छेद 311(2) के उल्लंघन में है। (अशोक शर्मा (डॉ.) वि. म.प्र. राज्य) ...2173

Constitution – Article 320(3) – See – Service Law **[S.K. Agarwal Vs. State of M.P.]** ...1840

संविधान – अनुच्छेद 320(3) – देखें – सेवा विधि (एस.के. अग्रवाल वि. म. प्र. राज्य) ...1840

Contempt of Courts Act (70 of 1971), Section 2(c), 12 & 14 – Allegation of Corruption against Judges without any justification and Proof **– Petitioner filed a PIL which was later converted into a regular petition and was subsequently dismissed because of the default of peremptory directions – Petitioner sent a communication to Court through speed post stating "Judges of this Court are possibly corrupt", – Contempt proceedings were drawn against petitioner – Held – Contemner is not an illiterate person and is a professor – In the highlighted portion of his reply, he clearly stated that, Bench dismissed his petition "possibly due to receiving corruption amount" – Petitioner fails to produce or submit any evidence in respect of such allegations – Amicus curiae appointed by this Court has explained the petitioner**

that such conduct was contemptuous but petitioner was stick to the allegation – Prima facie looking to his conduct and the repeated assertions and unsubstantiated allegations made by him against sitting judges of this Court, he is guilty of committing contempt of this Court – Such statement is defamatory, libelous, scurrilous, vilificatory and is totally unfounded attack on judicial system, the dignity and authority of this Court – Petitioner sentenced to three months simple imprisonment. [In Reference Vs. Lavit Rawtani] (DB)...1669

न्यायालय अवमान अधिनियम (1971 का 70), धारा 2(सी), 12 व 14 – न्यायाधीशों के विरूद्ध, बिना किसी न्यायोचित्य एवं सबूत के भ्रष्टाचार का अभिकथन – याची ने लोक हित वाद प्रस्तुत किया जिसे बाद में नियमित याचिका के रूप में संपरिवर्तित किया गया था तथा तत्पश्चात्, अवश्य पालनीय निदेशों के व्यतिक्रम के कारण खारिज किया गया – याची ने न्यायालय को स्पीड पोस्ट के द्वारा यह कथन करते हुए संसूचना भेजी कि "इस न्यायालय के न्यायाधीश संभवतः भ्रष्ट हैं" – याची के विरूद्ध अवमानना कार्यवाहियां तैयार की गई – अभिनिर्धारित – अवमान करने वाला निरक्षर व्यक्ति नहीं है और एक प्रोफेसर है – उसके प्रतिउत्तर के चिन्हित अंश में उसने स्पष्ट रूप से कहा कि न्यायपीठ ने उसकी याचिका को "संभवतः भ्रष्टाचार की राशि प्राप्त करने के कारण" खारिज किया – उक्त अभिकथनों के संबंध में याची किसी साक्ष्य को प्रस्तुत करने या निवेदन करने में विफल रहा – इस न्यायालय द्वारा नियुक्त न्याय–मित्र ने याची को स्पष्ट किया है कि उक्त आचरण, अवमानकारक था, परंतु याची उक्त अभिकथन पर अड़ा रहा था – प्रथम दृष्ट्या उसके आचरण एवं बारंबार प्राख्यान तथा इस न्यायालय के पीठासीन न्यायाधीशों के विरूद्ध उसके द्वारा लगाये गये सार विहीन अभिकथनों को देखते हुए, वह इस न्यायालय का अवमान कारित करने का दोषी है – उक्त कथन मानहानिकारक, अपमानलेखीय, अभद्र, निन्दास्पद है तथा न्यायिक प्रणाली एवं इस न्यायालय की गरिमा व प्राधिकार पर पूर्णतः निराधार आकमण है – याची को तीन माह साधारण कारावास से दण्डादिष्ट किया गया। (इन रेफ्रेन्स वि. लवित रावतानी) **(DB)...1669**

Criminal Practice – Court of Magistrate and Court of Session – Same Judge **– Held – Proceedings are not vitiated only because the Judge in Session Court is same who heard the matter as Magistrate before committal also – When it is shown that some prejudice is caused to accused, case may be transferred to some other Court – No interference called for. [Pushpa Singh Vs. State of M.P.] ...2265**

दांडिक पद्धति – मजिस्ट्रेट न्यायालय एवं सत्र न्यायालय – समान न्यायाधीश – अभिनिर्धारित – कार्यवाहियाँ केवल इस कारण से दूषित नहीं हो जाती कि सत्र न्यायालय में न्यायाधीश वही है जिसने उपार्पण करने के पूर्व भी मजिस्ट्रेट के रूप मामले

को सुना – जब यह दर्शाया गया है कि अभियुक्त को कुछ प्रतिकूल प्रभाव कारित किया गया है, प्रकरण किसी अन्य न्यायालय में अंतरित किया जा सकता है – किसी हस्तक्षेप की आवश्यकता नहीं। (पुष्पा सिंह वि. म.प्र. राज्य) ...2265

Criminal Practice – Excise Act, M.P. (2 of 1915), Section 61(1) & (2) and Criminal Procedure Code, 1973 (2 of 1974), Section 468 – Limitation for Prosecution – Held – M.P. Excise Act is a special enactment and its provisions shall prevail over the provisions of Cr.P.C. in so far as it relates to limitation of prosecution is concerned – Provisions of general statute would apply only to the effect to which nothing is specified in special enactment. [Ramesh Tiwari Vs. State of M.P.] ...*109

दाण्डिक पद्धति – आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 61(1) व (2) एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 468 – अभियोजन के लिए परिसीमा – अभिनिर्धारित – म.प्र. आबकारी अधिनियम एक विशेष अधिनियमिती है तथा जहां तक यह अभियोजन की परिसीमा से संबंधित है, इसके उपबंध दण्ड प्रक्रिया संहिता के उपबंधों पर अभिभावी होंगे – साधारण कानून के उपबंध केवल उस प्रभाव के लिए लागू होंगे जिसके लिए विशेष अधिनियमिती में कुछ भी विनिर्दिष्ट नहीं किया गया है। (रमेश तिवारी वि. म.प्र. राज्य) ...*109

Criminal Practice – Related witness – Credibility – Held – Discarding the evidence of the prosecution witness at the outset only on the ground of his being a relative of deceased, was uncalled for – Findings recorded by Trial Court regarding evidentiary value of such deposition of witness is *ex-facie* wrong and cannot be sustained – Recovery of mobile hand set with suspected IMEI number from Athar Ali stands proved. [Laxmi Verma (Smt.) Vs. Sharik Khan] (DB)...1978

दाण्डिक पद्धति – संबंधी साक्षी – विश्वसनीयता – अभिनिर्धारित – अभियोजन साक्षी का साक्ष्य केवल वह मृतक का रिश्तेदार होने के नाते आरंभ में ही अस्वीकार करना आवश्यक नहीं था – साक्षी के उक्त अभिसाक्ष्य के साक्ष्यिक मूल्य के संबंध में विचारण न्यायालय द्वारा अभिलिखित निष्कर्ष प्रत्यक्षतः गलत है और कायम नहीं रखे जा सकते –अतहर अली से संदिग्ध आई.एम.ई.आई. के साथ मोबाईल हैंड सेट की बरामदगी साबित होती है। (लक्ष्मी वर्मा (श्रीमती) वि. शरीक खान) (DB)...1978

Criminal Practice – Statements of Hostile Witnesses – Held – It is well settled legal position that evidence of hostile declared prosecution witnesses could not be discarded totally, but that part of

their depositions could be taken into consideration which is supported by other evidence available on record. [Madhav Prasad Vs. State of M.P.] (DB)...1934

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

Criminal Practice – Testimony of Witnesses – Contradictions and Omissions – Effect – **Held – It is true that there are some contradictions and omissions in the testimony of witnesses but they do not affect the whole prosecution case – Such contradictions and omissions are found in testimony of villagers which indicate that they were not making up any false story but were narrating the incident by memory. [Sangram Vs. State of M.P.] ...2243**

दांडिक पद्धति – साक्षीगण के परिसाक्ष्य – विरोधाभास एवं लोप – प्रभाव – अभिनिर्धारित – यह सत्य है कि साक्षीगण के परिसाक्ष्य में कुछ विरोधाभास एवं लोप हैं परन्तु वे संपूर्ण अभियोजन प्रकरण को प्रभावित नहीं करते – ऐसे विरोधाभास एवं लोप गांववालों के परिसाक्ष्य में पाये गये हैं जो यह इंगित करता है कि वे कोई मिथ्या कहानी नहीं बना रहे थे बल्कि स्मरण कर घटना का वर्णन कर रहे थे। (संग्राम वि. म.प्र. राज्य) **...2243**

Criminal Procedure Code, 1973 (2 of 1974), Section 70(2) – Cancellation of Warrant – Personal Appearance of Accused – **Trial Court, on absence of petitioner/accused on date of hearing, cancelled the bail bonds and issued non-bailable warrant – Counsel for petitioner filed application u/S 70(2) Cr.P.C. showing cause of absence and praying for cancellation of non-bailable warrant – Trial Court was satisfied with reason of absence but dismissed the application on the ground that accused was not personally present before the Court which is essential for exercising jurisdiction u/S 70(2) Cr.P.C. – Challenge to – Held – Trial Court is well within its rights to issue a non-bailable warrant which cannot be faulted, however, it is advisable that said power be not exercised in a routine or mechanical manner – It will be in the larger interest of justice to examine if presence of accused could be secured for next date by way of a bailable warrant instead, at the first instance**

– Application for cancellation of warrant cannot be dismissed only on the ground that physical presence of accused is essential as the same is not necessary u/S 70(2) Cr.P.C. – Further, petitioner remained absent only on one date of hearing – Impugned order set aside – Bail bond and sureties restored – Petition allowed. [Sachin Gupta Vs. State of M.P.] ...*100

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 70(2) – वारंट को रद्द किया जाना – अभियुक्त की व्यक्तिगत उपस्थिति – विचारण न्यायालय ने, सुनवाई की तिथि को याची/अभियुक्त की अनुपस्थिति पर, जमानतपत्रों को रद्द कर दिया तथा गैर–जमानतीय वारंट जारी किया – याची के अधिवक्ता ने अनुपस्थिति का कारण दर्शाते हुये दण्ड प्रक्रिया संहिता की धारा 70(2) के अंतर्गत आवेदन प्रस्तुत किया तथा गैर–जमानतीय वारंट के रद्द किये जाने हेतु प्रार्थना कर रहा है – विचारण न्यायालय अनुपस्थिति के कारण से संतुष्ट था परन्तु इस आधार पर आवेदन खारिज कर दिया कि अभियुक्त न्यायालय के समक्ष व्यक्तिगत रूप से उपस्थित नहीं हुआ था जो कि दण्ड प्रक्रिया संहिता की धारा 70(2) के अंतर्गत अधिकारिता का प्रयोग करने हेतु आवश्यक है – को चुनौती – अभिनिर्धारित – विचारण न्यायालय गैर–जमानतीय वारंट जारी करने के लिए भली भांति अपने अधिकारों के भीतर है जो दोषयुक्त नहीं हो सकता, तथापि, यह सलाह योग्य है कि कथित शक्ति का प्रयोग नैत्यिक एवं यांत्रिक ढंग से नहीं किया जाना चाहिए – पर परीक्षण करना बड़े पैमाने पर न्यायहित में होगा यदि प्रथम बार के बजाय, जमानतीय वारंट के जरिये, अगली तिथि हेतु अभियुक्त की उपस्थिति सुनिश्चित की जा सकती है – वारंट रद्द किये जाने हेतु आवेदन केवल इस आधार पर खारिज नहीं किया जा सकता कि अभियुक्त की व्यक्तिगत उपस्थिति आवश्यक है क्योंकि उक्त दण्ड प्रक्रिया संहिता की धारा 70(2) के अंतर्गत आवश्यक नहीं है – आगे, याची केवल सुनवाई की दिनांक को अनुपस्थित रहा – आक्षेपित आदेश अपास्त – जमानतपत्र तथा प्रतिभूतियां पुनः स्थापित – याचिका मंजूर। (सचिन गुप्ता वि. म.प्र. राज्य) ...*100

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

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 –क्रूरता – विलंबित

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

Criminal Procedure Code, 1973 (2 of 1974), Section 125, Dissolution of Muslim Marriages Act, (8 of 1939), Section 2 and Hindu Marriage Act (25 of 1955), Section 5 – Maintenance – Second Marriage by Wife – Validity of Marriage – Entitlement **– Family Court dismissed wife's application for maintenance – Challenge to – Held – Applicant was earlier married to one Hanif Khan and later she divorced her husband by pronouncing triple "Talak" and was married to present respondent – Held – Applicant has not validly dissolved her first marriage – Dissolution of marriage by Muslim wife can only be in terms of Section 2 of the Act of 1939 – Muslim wife cannot dissolve marriage by pronouncing triple "Talak" – As per Hindu marriage, with regard to validity of marriage, consummation of marriage is a relevant factor but not the only criteria for determination – Subsequent marriage with respondent is contrary to Section 5 of the Act of 1955 and is a nullity – Maintenance application not maintainable – Revision petition dismissed. [Munni Devi (Smt.) Vs. Pritam Singh Goyal] ...*106**

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

INDEX

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

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 –मूलभूत सिद्धांत – अभिनिर्धारित – धारा 125 दं.प्र.सं. के पीछे अंतर्निहित एवं मूलभूत सिद्धांत, वित्तीय दशा को सुधारने के साथ साथ मानसिक पीड़ा एवं मनःस्ताप दूर करने हेतु है जिसे एक महिला सहन करती है जब उसे उसके दाम्पत्य निवास छोड़ने के लिए विवश किया जाता है। (निर्मला धुर्वे (श्रीमती) वि. रामगोपाल) ...1972

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

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

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Second Marriage by Wife – Validity of Marriage – Entitlement **– Family Court dismissed wife's application for maintenance – Challenge to – Held – Respondent entered into marriage with applicant vide a notarized document having complete knowledge of existence of applicant's previous marriage and started residing with her as husband and wife for a considerable long period – Husband cannot be permitted to take advantage of his own wrong – Husband admitted his signature on the instrument hence it is obvious that he also admits the contents of the same – Parties have admitted the existence of marriage – It is husband's legal obligation to maintain his wife – Matter remanded to Family Court for decision afresh keeping in mind that wife is entitled for maintenance and regarding quantum of maintenance, it is to be examined whether applicant has her own means to maintain herself – Impugned order set aside. [Laxmi Yadav (Smt.) Vs. Barelal Yadav] ...2006**

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

Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 127 – Maintenance – Enhancement from Date of Application – Discretion of Magistrate **– On application by wife u/S 127 Cr.P.C., maintenance of Rs. 4000 pm was enhanced to Rs. 15,000 pm from date of application – Challenge to – Held – Section 127 Cr.P.C. has been provided for alteration in order passed u/S 125 Cr.P.C., therefore it cannot be treated**

as an independent provision, it has to be read along with Section 125 Cr.P.C. and Section 125(2) empowers the Magistrate to pass order of maintenance from date of application – Legislature has left the discretion to Magistrate and Family Court with regard to date from which enhanced/altered allowance shall be payable – Revision dismissed. [Jaikumar Meena Vs. Smt. Radha Meena] ...1994

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 127 – भरण–पोषण – आवेदन की तिथि से वृद्धि – मजिस्ट्रेट का विवेकाधिकार – दण्ड प्रक्रिया संहिता की धारा 127 के अंतर्गत पत्नी द्वारा आवेदन पर, आवेदन की तिथि से भरण–पोषण 4000 रू. प्रतिमाह से बढ़ाकर 15000 रू. प्रतिमाह किया गया था – को चुनौती – अभिनिर्धारित – दण्ड प्रक्रिया संहिता की धारा 127 को, दण्ड प्रक्रिया संहिता की धारा 125 के अंतर्गत पारित आदेश में परिवर्तन करने हेतु उपबंधित किया गया है, इसलिए इसे स्वतंत्र उपबंध के रूप में नहीं माना जा सकता, इसे दण्ड प्रक्रिया संहिता की धारा 125 के साथ पढ़ना होगा तथा धारा 125(2) मजिस्ट्रेट को, आवेदन की तिथि से भरण–पोषण का आदेश पारित करने हेतु सशक्त करती है – विधान मंडल ने उस तिथि जिससे बढ़ाया हुआ/परिवर्तित भत्ता देय होगा, के संबंध में विवेकाधिकार मजिस्ट्रेट एवं परिवार न्यायालय पर छोड़ा है – पुनरीक्षण खारिज। (जयकुमार मीणा वि. श्रीमती राधा मीणा) ...1994

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

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 127 – भरण–पोषण – पति की आय – माता–पिता के उत्तरदायित्व का अभिवाक्– अभिनिर्धारित – पति उपखंड अधिकारी के रूप में कार्यरत है एवं उसका शुद्ध वेतन 50,000 रू. प्रतिमाह है – उसने यह भी स्वीकार किया है कि उसके भाई सहा.जिला अभियोजन अधिकारी एवं औषधि निरीक्षक के रूप में पदस्थ हैं – यह स्पष्ट है कि परिवार की आर्थिक स्थिति

अच्छी है तथा यह नहीं कहा जा सकता कि आवेदक पर उसके माता–पिता का भरण–पोषण करने का पूर्ण उत्तरदायित्व था – बीमा प्रीमियम के भुगतान को अनिवार्य कटौती नहीं कहा जा सकता, इसके अतिरिक्त वे पॉलिसी पत्नी के नाम पर नहीं हैं – अभित्यक्त पत्नी को निराश्रित महिला का जीवन नहीं जीना चाहिए, वह भी उसी प्रास्थिति की हकदार है जिसका वह अपने दाम्पत्य निवास में अन्यथा उपभोग कर सकती थी – पक्षकारों की प्रास्थिति पर विचार करते हुए, बढ़ायी गई राशि अधिक नहीं है – पुनरीक्षण खारिज। (जयकुमार मीणा वि. श्रीमती राधा मीणा) ...1994

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

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

INDEX

Criminal Procedure Code, 1973 (2 of 1974), Sections 154, 156 & 482 – Lodging of F.I.R. – Alternate Remedy – Inherent Power – **Applicant seeking direction against respondent no. 1 to 3 for registering F.I.R. against respondent no. 4 & 5 for offence u/S 420, 467, 468, 471 & 120-B IPC on it's complaint – Held – Where a person has approached the police station u/S 154 of Code, but the police does not register F.I.R. as contemplated under law, he has right to make a complaint to superintendent of police concerned in terms of Section 154(3) Cr.P.C. - Superintendent of Police concerned exercising the power of officer–in–charge would investigate the matter himself or direct another police officer subordinate to him – If there is inaction on the part of Station House Officer & Superintendent of Police, Complainant is at liberty to move to Jurisdictional Magistrate u/S 156(3) Cr.P.C. and not directly to the High Court u/S 482 Cr.P.C. - Complaint shall be accompained by affidavit as mandated by Supreme Court – On receipt of complaint, Magistrate shall pass order thereon – Petition disposed of. [Ramkrishan Solvex Pvt. Ltd. (M/s.) Vs. Superintendent of Police]** ...1770

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154, 156 व 482 – प्रथम सूचना प्रतिवेदन दर्ज किया जाना – वैकल्पिक उपचार – अंतर्निहित शक्ति – आवेदक, प्रत्यर्थी क्र. 4 व 5 के विरूद्ध उसके परिवाद पर धारा 420, 467, 468, 471 व 120–बी भा.दं. सं. के अंतर्गत प्रथम सूचना प्रतिवेदन पंजीबद्ध करने के लिए प्रत्यर्थी क्र. 1 से 3 के विरूद्ध निदेश चाहता है – अभिनिर्धारित – जहां एक व्यक्ति संहिता की धारा 154 के अंतर्गत पुलिस थाना जाता है किन्तु पुलिस, विधि अंतर्गत अनुध्यात प्रथम सूचना प्रतिवेदन दर्ज नहीं करती, उसे धारा 154(3) दं.प्र.सं. के निबंधनों के अनुसार संबंधित पुलिस अधीक्षक को परिवाद करने का अधिकार है – प्रभारी अधिकारी की शक्ति का प्रयोग करते हुए संबंधित पुलिस अधीक्षक स्वयं मामले का अन्वेषण करेगा या उसके अधीनस्थ अन्य पुलिस अधिकारी को निदेशित करेगा – यदि थाना प्रभारी एवं पुलिस अधीक्षक की ओर से निष्क्रियता होती है, परिवादी, दं.प्र.सं. की धारा 156(3) के अंतर्गत अधिकारिता के मजिस्ट्रेट के समक्ष जाने के लिए स्वतंत्र है न कि धारा 482 दं.प्र.सं. के अंतर्गत सीधे उच्च न्यायालय के समक्ष – परिवाद के साथ शपथपत्र होना चाहिए जैसा कि उच्चतम न्यायालय द्वारा आदेशित है – परिवाद प्राप्त होने पर, मजिस्ट्रेट उस पर आदेश पारित करेगा – याचिका निराकृत। (रामकृष्ण सॉलवेक्स प्रा. लि. (मे.) वि. सुपरिंटेंडेंट ऑफ पुलिस) ...1770

Criminal Procedure Code, 1973 (2 of 1974), Section 161 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(x) **[Mohsin Vs. State of M.P.]** ...*118

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 – देखें – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989, धारा 3(1)(x) (मोहसिन वि. म.प्र. राज्य) ...*118

Criminal Procedure Code, 1973 (2 of 1974), Section 164 & 439, Penal Code (45 of 1860), Section 363, 366, 376/34 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3 & 4 – Bail – Grounds **– In the trial Court, Special Judge rejected the bail application of the applicant – Held – Prosecutrix's statement recorded u/S 164 shows that she stated her age to be 19 years, she married with applicant with her consent and therafter started living in Delhi as husband and wife and applicant had sexual intercourse with her upon her will and consent – She also stated that she wants to remain in company of applicant as his wife – While rejecting the bail application, Special Judge has not assigned any reason as to why he has not placed reliance upon and disbelieved the statement of prosecutrix recorded u/S 164 Cr.P.C. – Order of rejection of bail smacks of arbitrariness and willfulness on the part of Special Judge and such approach is strongly disapproved by this Court – It is a fit case for grant of bail – Bail granted to applicant/accused – Application allowed. [Manoj Ahirwar Vs. State of M.P.]** ...*96

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 164 व 439, दण्ड संहिता (1860 का 45), धारा 363, 366, 376/34 व लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 3 व 4 – जमानत – आधार – विचारण न्यायालय में, विशेष न्यायाधीश ने आवेदक का जमानत आवेदन नामंजूर किया – अभिनिर्धारित – धारा 164 के अंतर्गत अभिलिखित किये गये अभियोक्त्री के कथन यह दर्शाते हैं कि उसने अपनी आयु 19 वर्ष होने का कथन किया, उसने अपनी सहमति से आवेदक के साथ विवाह किया एवं तत्पश्चात् पति और पत्नी के रूप में दिल्ली में रहने लगे तथा आवेदक ने उसकी स्वेच्छा और सहमति पर उसके साथ लैंगिक संभोग किया था – उसने यह भी कथन किया कि वह आवेदक के साथ उसकी पत्नी के रूप में रहना चाहती है – जमानत आवेदन नामंजूर करते समय, विशेष न्यायाधीश ने कोई कारण नहीं दिये कि क्यों उन्होंने दण्ड प्रक्रिया संहिता की धारा 164 के अंतर्गत अभिलिखित किये गये अभियोक्त्री के कथन पर भरोसा नहीं किया तथा अविश्वास किया – जमानत नामंजूरी के आदेश में विशेष न्यायाधीश की ओर से मनमानापन एवं दुराग्रह झलकता है तथा इस तरह के दृष्टिकोण को इस न्यायालय द्वारा दृढ़ता से अननुमोदित किया गया है – जमानत प्रदान करने के लिए यह एक उचित प्रकरण है – आवेदक/अभियुक्त को जमानत प्रदान की गई – आवेदन मंजूर। (मनोज अहिरवार वि. म.प्र. राज्य) ...*96

INDEX

Criminal Procedure Code, 1973 (2 of 1974), Section 177 & 178, Penal Code (45 of 1860), Section 498-A/34 & 406 and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Cognizance – Territorial Jurisdiction **– Complaint lodged by wife at Bhopal – Husband's native place is Jaipur and he is working in Agartala – Marriage performed at Jaipur – Court at Bhopal took cognizance of the offences – Challan was filed and charges framed – Husband filed application u/S 239 for discharge on the ground of territorial jurisdiction which was dismissed – Held – As per the FIR and case diary statement of wife and her father and brother, petitioner No.1/husband came to Bhopal and committed dowry related offences – Provisions of Section 178(b) Cr.P.C. is wholly attracted in the present case irrespective of the fact that an isolated part/portion of whole crime occurred in Bhopal – Court at Bhopal has the territorial jurisdiction to hold trial against all petitioners – Application dismissed. [Anurag Mathur Vs. State of M.P.] ...2031**

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

Criminal Procedure Code, 1973 (2 of 1974), Section 197, 200 & 482 and Penal Code (45 of 1860), Section 304-A – Quashment – Sanction of State Government – Cognizance Against Government Doctor **– Offence was registered u/S 304-A I.P.C. against petitioner, a doctor in State Government, alleged to have committed negligence while discharging his duty, because of which daughter of respondent died – Challenge to – Held – It is undisputed that post-mortem was not done in present case and therefore cause of death remained speculative**

without any certainty – Nothing on record to show that deceased died on account of conduct by petitioner which can be termed as "grossly negligent" – Petitioner being a public servant and was discharging his duties as such, the alleged negligent omission arising therefrom had to be seen in context of discharge of official duties and a sanction u/S 197 Cr.P.C. was *sin qua non* for taking cognizance of offence against petitioner – Proceedings against the petitioner is quashed – In respect of such cases, guidelines for Court below and Police laid down – Petition allowed. [B.C. Jain (Dr.) Vs. Maulana Saleem] ...1762

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 197, 200 व 482 एवं दण्ड संहिता (1860 का 45), धारा 304–ए – अभिखंडन – राज्य सरकार की मंजूरी – शासकीय चिकित्सक के विरूद्ध संज्ञान – याची, जो कि राज्य शासन में एक चिकित्सक है, के विरूद्ध भारतीय दण्ड संहिता की धारा 304–ए के अन्तर्गत अपराध पंजीबद्ध किया गया, जिस पर अपने कर्तव्य का निर्वहन करते समय उपेक्षा कारित करने का अभिकथन किया गया था, जिसकी वजह से प्रत्यर्थी की पुत्री की मृत्यु हुई थी – को चुनौती – अभिनिर्धारित – यह अविवादित है कि वर्तमान प्रकरण में शव परीक्षण नहीं किया गया था तथा इसलिए मृत्यु का कारण बिना किसी निश्चितता के काल्पनिक बना रहा – यह दर्शाने हेतु अभिलेख पर कुछ मौजूद नहीं कि मृतक की मृत्यु याची द्वारा किये गये आचरण के कारण हुई जिसे 'घोर रूप से उपेक्षा' कहा जा सकता है – याची एक लोक सेवक होने के नाते अपने कर्तव्यों का निर्वहन कर रहा था इसलिए, उसमें से उत्पन्न अभिकथित उपेक्षित लोप को पदीय कर्तव्यों के निर्वहन के संदर्भ में देखा गया था तथा याची के विरूद्ध अपराध का संज्ञान लेने के लिए दण्ड प्रक्रिया संहिता की धारा 197 के अन्तर्गत मंजूरी अनिवार्य थी – याची के विरूद्ध कार्यवाहियाँ अभिखंडित – ऐसे प्रकरणों के संबंध में, निचले न्यायालय एवं पुलिस हेतु दिशा निर्देश प्रतिपादित – याचिका मंजूर। (बी.सी. जैन (डॉ.) वि. मौलाना सलीम) ...1762

Criminal Procedure Code, 1973 (2 of 1974), Section 199(2) and Penal Code (45 of 1860), Section 499 & 500 – Sanction before filing complaint by Public Prosecutor **– Revision against framing of charge – Defamatory allegations by applicant against Chief Minister and his family members regarding corruption – Criminal Complaint filed against applicant by Public Prosecutor whereby charges were framed against applicant – Challenge to –Regarding sanction for prosecution – Held – 'Sanction' is required before a Public Prosecutor files a complaint and not that he himself has to seek 'sanction' before filing a complaint – Role of Public Prosecutor is not to seek sanction, but to file a complaint after sanction is granted – In the instant case, Public**

INDEX

Prosecutor was competent to file the complaint – Revision dismissed. [K.K. Mishra Vs. State of M.P.] (DB)...2269

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 199(2) एवं दण्ड संहिता (1860 का 45), धारा 499 व 500 – लोक अभियोजक द्वारा परिवाद प्रस्तुत करने से पूर्व मंजूरी – आरोप विरचित किये जाने के विरूद्ध पुनरीक्षण – आवेदक द्वारा मुख्यमंत्री तथा उनके परिवार के सदस्यों के विरूद्ध भ्रष्टाचार से संबंधित मानहानिकारक अभिकथन – लोक अभियोजक द्वारा आवेदक के विरूद्ध आपराधिक परिवाद प्रस्तुत किया गया जिससे आवेदक के विरूद्ध आरोप विरचित किये गये थे – को चुनौती – अभियोजन हेतु मंजूरी के संबंध में – अभिनिर्धारित – लोक अभियोजक के परिवाद प्रस्तुत करने से पूर्व 'मंजूरी' अपेक्षित है तथा यह नहीं कि परिवाद प्रस्तुत करने से पूर्व उसे स्वयं 'मंजूरी' लेनी होगी – लोक अभियोजक की भूमिका मंजूरी लेने की नहीं है, बल्कि मंजूरी प्रदान होने के पश्चात् परिवाद प्रस्तुत करने की है – वर्तमान प्रकरण में, लोक अभियोजक परिवाद प्रस्तुत करने में सक्षम था – पुनरीक्षण खारिज। (के.के. मिश्रा वि. म.प्र. राज्य) **(DB)... 2269**

Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – See – Penal Code, 1860, Section 115 & 120-B **[Chandar Singh Vs. State of M.P.] ...*115**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 – देखें – दण्ड संहिता, 1860, धारा 115 व 120–बी (चंदर सिंह वि. म.प्र. राज्य) **...*115**

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

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

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

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

Criminal Procedure Code, 1973 (2 of 1974), Section 437(6) and Excise Act, M.P. (2 of 1915), Section 34(2) – Non Conclusion of Trial within 60 days – Right of Bail **– Offence u/S 34(2) of the Act of 1915 was**

registered against petitioner for possessing 1000 bulk litres of illicit liquor – He filed application u/S 437(6) Cr.P.C. praying bail on the ground that trial was not concluded within 60 days from the first date when matter was fixed for evidence – Application was dismissed – Challenge to – Held – Seizure memo indicates that petitioner was preparing illicit liquor and a huge quantity was seized from his possession – Order sheet shows that when prosecution witnesses appeared in Court, counsel for accused refused to examine them on the ground that accused was not produced from custody – This amounts to delay in progress of trial attributable to accused – Magistrate has used his discretion rightly and has given cogent reasons for not allowing the application – Accused cannot be allowed to take advantage of his own mistake – Petition dismissed. [Ishwar Prasad Vs. State of M.P.] ...1756

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 437(6) एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 34(2) – विचारण की समाप्ति 60 दिनों के भीतर न की जाना – जमानत का अधिकार – याची के विरूद्ध भारी मात्रा में 1000 लीटर अवैध मदिरा का कब्जा रखने के लिए 1915 के अधिनियम की धारा 34(2) के अन्तर्गत अपराध पंजीबद्ध किया गया था – उसने दण्ड प्रक्रिया संहिता की धारा 437(6) के अन्तर्गत जमानत के लिए प्रार्थना करते हुये इस आधार पर आवेदन प्रस्तुत किया कि विचारण, उस पहली दिनांक से जब मामला साक्ष्य हेतु नियत किया गया था से 60 दिनों के भीतर समाप्त नहीं किया गया था – आवेदन खारिज किया गया था – को चुनौती – अभिनिर्धारित – जब्ती मेमो यह दर्शाता है कि याची अवैध मदिरा तैयार कर रहा था तथा उसके कब्जे में से भारी मात्रा जब्त की गई थी – आदेश पत्र यह दर्शाता है कि जब अभियोजन साक्षीगण न्यायालय में प्रस्तुत हुये, अभियुक्त के अधिवक्ता ने इस आधार पर उनका परीक्षण करने से इंकार कर दिया कि अभियुक्त को अभिरक्षा से प्रस्तुत नहीं किया गया था – यह अभियुक्त के कारण विचारण की प्रगति में विलंब की कोटि में आता है – मजिस्ट्रेट ने उचित रूप से अपने विवेकाधिकार का प्रयोग किया है तथा आवेदन मंजूर न किये जाने के लिए प्रबल कारण दिये हैं – अभियुक्त को स्वयं की भूल का लाभ उठाने की मंजूरी नहीं दी जा सकती – याचिका खारिज। (ईश्वर प्रसाद वि. म.प्र. राज्य) ...1756

Criminal Procedure Code, 1973 (2 of 1974), Section 438 and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/22, 29, 36-A(3) & 37 – Anticipatory Bail Application – Maintainability **– Held – No specific provision under the Act of 1985, ousting jurisdiction of High Court to entertain application u/S 438 Cr.P.C. – Section 36-A of the Act of 1985 does not explicit oust the jurisdiction of High Court to**

entertain such application for bail – Further held – Present application was filed on 10.07.17 whereas complaint was filed on 12.07.17, thus it cannot be said that accused was absconding prior to filing of bail application – Anticipatory bail granted – Application allowed. [Ravi Jain Vs. Central Bureau of Narcotics] ...*121

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 एवं स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8/22, 29, 36–ए(3) व 37 – अग्रिम जमानत आवेदन – पोषणीयता – अभिनिर्धारित – 1985 के अधिनियम के अंतर्गत कोई विनिर्दिष्ट उपबंध नहीं हैं जो कि दण्ड प्रक्रिया संहिता की धारा 438 के अंतर्गत आवेदन ग्रहण करने की उच्च न्यायालय की अधिकारिता छीनता हो – 1985 के अधिनियम की धारा 36–ए, जमानत हेतु ऐसे आवेदन को ग्रहण करने की उच्च न्यायालय की अधिकारिता को सुस्पष्ट रूप से नहीं छीनती – आगे अभिनिर्धारित – वर्तमान आवेदन दिनांक 10.07.17 को प्रस्तुत किया गया था जबकि परिवाद दिनांक 12.07.17 को प्रस्तुत किया गया था, अतः यह नहीं कहा जा सकता कि अभियुक्त जमानत आवेदन के प्रस्तुत होने के पूर्व से ही फरार था – अग्रिम जमानत प्रदान की गई – आवेदन मंजूर। (रवि जैन वि. सेन्ट्रल ब्यूरो ऑफ नारकोटिक्स) ...*121

Criminal Procedure Code, 1973 (2 of 1974), Section 451 & 457 and Forest Act (16 of 1927), Section 52 – Custody of Vehicle on Supurdnama – Confiscation Proceeding – Jurisdiction of Magistrate **– Held – Considering the fact that there is specific provision u/S 52 of the Act of 1927 which provides for confiscation proceedings and remedies against such order, it is clear that once an intimation of initiation of confiscation proceedings is given to the Magistrate, he looses it's jurisdiction to release the vehicle on *Supurdgi* – In the instant case, confiscation proceedings had begun and hence Magistrate had no jurisdiction to release the vehicle on *Supurdgi* – Revisional Court rightly set aside the order of Magistrate – Application dismissed. [Jakir Khan Vs. State of M.P.]** ...1747

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451 व 457 एवं वन अधिनियम (1927 का 16), धारा 52 – सुपुर्दनामें पर वाहन की अभिरक्षा – अधिहरण कार्यवाही – मजिस्ट्रेट की अधिकारिता – अभिनिर्धारित – यह तथ्य विचार में लेते हुए कि 1927 के अधिनियम की धारा 52 के अंतर्गत विनिर्दिष्ट उपबंध है जो अधिहरण कार्यवाहियां एवं उक्त आदेश के विरूद्ध उपचारों को उपबंधित करता है, यह स्पष्ट है कि एक बार मजिस्ट्रेट को अधिहरण कार्यवाहियां आरंभ किये जाने की सूचना दी जाने पर, वह सुपुर्दगी पर वाहन को मुक्त करने की अधिकारिता खो देता

है – वर्तमान प्रकरण में अधिहरण कार्यवाहियां आरंभ हो चुकी थी और इसलिए मजिस्ट्रेट को वाहन को सुपुर्दगी पर मुक्त करने की कोई अधिकारिता नहीं थी – पुनरीक्षण न्यायालय ने मजिस्ट्रेट के आदेश को उचित रूप से अपास्त किया – आवेदन खारिज। (जाकिर खान वि. म.प्र. राज्य) ...1747

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

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

Criminal Procedure Code, 1973 (2 of 1974), Section 468 – See – Protection of Women from Domestic Violence Act, 2005, Section 12 **[Manoj Pillai Vs. Smt. Prasita Manoj Pillai]** ...1736

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 468 – देखें – घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005, धारा 12 (मनोज पिल्लई वि. श्रीमती प्रासिता मनोज पिल्लई) ...1736

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

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

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – See – Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 3 **[Syed Parvez Ali Vs. Smt. Nahila Akhtar]** ...1776

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें – मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम, 1986, धारा 3 (सैय्यद परवेज अली वि. श्रीमती नाहिला अख्तर) ...1776

Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Section 341 & 384 – Quashment of Proceeding **– Offence registered against petitioner, a police constable on an allegation that while on duty, he stopped two dumpers carrying/ transporting sand illegally and asked for money showing fear of arrest**

and seizure of vehicle – Held – As per provisions of Section 341, it is clear that if any person or officer with a view to prevent crime or chase criminal, restrains or stopped him from going ahead, such act does not come within purview of Section 341 IPC – Similarly, saying or threatening of any person who is involved in crime concerned that if he is not paid money, he will be arrested or property will be seized by a public servant like police constable, it cannot be said that he caused fear to complainant to cause injury and dishonestly induced the person to deliver any money and therefore such act of the petitioner does not come within the purview of Extortion – There is no ingredient in FIR or outcome of investigation, to prosecute petitioner for offence u/S 341 and 384 IPC – Proceedings quashed – Petition allowed. [Bhupendra Singh Yadav Vs. State of M.P.] ...1788

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धारा 341 व 384 – कार्यवाही का अभिखंडन – याची, एक पुलिस आरक्षक के विरूद्ध इस अभिकथन पर अपराध पंजीबद्ध किया गया कि ड्यूटी पर रहते समय, उसने अवैध रूप से रेत ले जा रहे/परिवहन करते दो डम्परों को रोका तथा गिरफ्तारी एवं वाहन की जब्ती का भय दर्शाते हुये पैसे की मांग की – अभिनिर्धारित – धारा 341 के उपबंधों के अनुसार, यह स्पष्ट है कि यदि कोई व्यक्ति या अधिकारी अपराध का निवारण करने या अपराधी का पीछा करने के दृष्टिकोण के साथ, उसे आगे बढ़ने में अवरोध करता है या रोकता है, तो ऐसा कृत्य भारतीय दण्ड संहिता की धारा 341 की परिधि के भीतर नहीं आता है – उसी प्रकार, संबंधित अपराध में अंतर्वलित किसी भी व्यक्ति को कहना या धमकी देना कि यदि वह पैसे का भुगतान नहीं करता है, तो उसे गिरफ्तार कर लिया जाएगा या लोक सेवक जैसे पुलिस आरक्षक द्वारा संपत्ति को जब्त कर लिया जाएगा, यह नहीं कहा जा सकता कि उसने परिवादी को चोट पहुँचाने का भय कारित किया एवं कोई पैसे देने हेतु बेईमानी से व्यक्ति को उत्प्रेरित किया तथा इसलिए याची का इस तरह का कृत्य उद्दापन की परिधि के भीतर नहीं आता – याची को भारतीय दण्ड संहिता की धारा 341 एवं 384 के अंतर्गत अपराध के लिए अभियोजित करने हेतु प्रथम सूचना प्रतिवेदन में कोई घटक या अन्वेषण का कोई परिणाम नहीं है – कार्यवाहियाँ अभिखंडित – याचिका मंजूर। (भूपेन्द्र सिंह यादव वि. म.प्र. राज्य) ...1788

Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code (45 of 1860), Section 498-A & 506 r/w Section 34 and Dowry Prohibition Act (28 of 1961), Section 3 & 4 – Quashment of FIR **– On a complaint by wife, offence u/S 498-A & 506 r/w Section 34 IPC and u/S 3/4 of the Act of 1961 was registered against husband, mother-in-law, father-in-law and brother-in-law – Challenge to – Held – Earlier**

also wife has lodged a report before Mahila Thana Bhopal where averments relating to dowry demands or harassment in relation thereto was not made – No explanation as to why such averment was not made in first report – It is clear that since police did not registered offence on her first report and when the conciliation proceedings failed, she again filed a report concocting events and introducing ingredients of Section 498-A IPC so as to ensure that Court at Bhopal gets territorial Jurisdiction – Proceeding is manifestly initiated with malafide and maliciously instituted with ulterior motive for wreaking vengeance on husband and his family members – Fit case for interference – FIR quashed. [Mohit Jain Vs. State of M.P.] ...*97

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता (1860 का 45), धारा 498–ए व 506 सहपठित धारा 34 एवं दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3 व 4 – प्रथम सूचना प्रतिवेदन का अभिखंडन – पत्नी द्वारा परिवाद पर, पति, सास, ससुर तथा पति के भाई के विरूद्ध भारतीय दण्ड संहिता की धारा 498–ए एवं 506 सहपठित धारा 34 तथा 1961 के अधिनियम की धारा 3/4 के अंतर्गत अपराध पंजीबद्ध किया गया था – को चुनौती – अभिनिर्धारित – पूर्व में भी पत्नी ने महिला थाना भोपाल में प्रतिवेदन दर्ज किया गया है जहां दहेज की मांगों या उससे संबंधित उत्पीड़न के संबंध में प्रकथन नहीं किये गये थे – इस बारे में कोई स्पष्टीकरण नहीं है कि इस तरह के प्रकथन प्रथम प्रतिवेदन में क्यों नहीं किये गये थे – यह स्पष्ट है कि चूंकि पुलिस ने उसके प्रथम प्रतिवेदन पर अपराध पंजीबद्ध नहीं किया तथा जब सुलह कार्यवाहियां विफल हुई, तो उसने पुनः घटनाएँ गढ़ी तथा भारतीय दण्ड संहिता की धारा 498–ए के घटकों को पहली बार पेश करते हुये, प्रतिवेदन दर्ज किया ताकि यह सुनिश्चित किया जा सके कि भोपाल के न्यायालय को क्षेत्रीय अधिकारिता प्राप्त हो सके – कार्यवाही दुराशय के साथ आरंभ की गई है तथा पति एवं उसके परिवार के सदस्यों से बदला लेने के लिए, अंतरस्थ हेतु के साथ द्वेषपूर्ण रूप से संस्थित की गई है – हस्तक्षेप के लिए उचित प्रकरण – प्रथम सूचना प्रतिवेदन अभिखंडित। (मोहित जैन वि. म.प्र. राज्य) ...*97

***Criminal Procedure Code, 1973 (2 of 1974), Chapter VII A – See – Protection of Women from Domestic Violence Act, 2005, Section 28* [Manoj Pillai Vs. Smt. Prasita Manoj Pillai] ...1736**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), अध्याय VII ए – देखें – घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005, धारा 28 (मनोज पिल्लई वि. श्रीमती प्रासिता मनोज पिल्लई) ...1736

***Criminal Trial – Delay in FIR* – Held – In FIR, it is narrated that at the time of incident, husband of prosecutrix was out of station, hence**

FIR was lodged after two days – Delay satisfactorily explained and is not fatal to prosection. [Shiv Kumar Kushwah Vs. State of M.P.] ...1750

दाण्डिक विचारण – प्रथम सूचना प्रतिवेदन में विलम्ब – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन में यह वर्णित है कि घटना के समय अभियोक्त्री का पति शहर से बाहर था, अतः प्रथम सूचना प्रतिवेदन दो दिनों के पश्चात् दर्ज किया गया – विलम्ब संतोषजनक रूप से स्पष्ट किया गया एवं अभियोजन हेतु घातक नहीं है। (शिव कुमार कुशवाह वि. म.प्र. राज्य) ...1750

***Criminal Trial – Practice* – Held – If any documentary evidence is available which is not produced then oral evidence shall be discarded. [Jitendra @ Jeetu Vs. State of M.P.] (DB)...*93**

आपराधिक विचारण – पद्धति – अभिनिर्धारित – यदि कोई दस्तावेजी साक्ष्य उपलब्ध है जो कि प्रस्तुत नहीं किया गया है तो मौखिक साक्ष्य अस्वीकार कर दिया जाएगा। (जितेन्द्र उर्फ जीतू वि. म.प्र. राज्य) (DB)...*93

***Criminal Trial – Related Witness – Credibility* – Held – Law does not prohibit reliance upon evidence of closely related witnesses, however it requires that such evidence must be appreciated with care and caution – Such evidence cannot be discarded merely on the ground that witnesses are closely related to victim – If such evidence is found cogent, reliable and trustworthy, it can be relied upon. [Shiv Kumar Kushwah Vs. State of M.P.] ...1750**

दाण्डिक विचारण – संबंधी साक्षी – विश्वसनीयता – अभिनिर्धारित – विधि, निकट संबंधी साक्षियों के साक्ष्य पर विश्वास करने से प्रतिषिद्ध नहीं करती अपितु यह अपेक्षित है कि ऐसे साक्ष्य का मूल्यांकन सावधानी एवं सतर्कता से करना चाहिए – ऐसे साक्ष्य को मात्र इस आधार पर अस्वीकार नहीं किया जा सकता कि साक्षीगण पीड़ित के निकट संबंधी है – यदि उक्त साक्ष्य प्रबल, विश्वसनीय एवं भरोसेमंद पाया गया है, उस पर विश्वास किया जा सकता है। (शिव कुमार कुशवाह वि. म.प्र. राज्य) ...1750

***Customs Act (52 of 1962) – Liability to Pay Demurrage Charges* – Petitioner, a company engaged in business of import and export, imported an consignment which did not get clearance from the custom authorities and were kept in the Inland Container Depot (ICD) – Custom authorities claimed demurrage charges – Challenge to – Held – Supreme Court has held, that once consignment is handed over to Port Trust and the goods are detained for want of clearance from custom authorities, demurrage**

has to be collected from the consignee – Respondents were justified in claiming demurrage charges from petitioner company who is liable to pay the same till goods were released from ICD – Petition dismissed. [Ideal Carpets Ltd. Vs. Union of India] **(DB)...*116**

सीमा–शुल्क अधिनियम (1962 का 52) – डेमरेज प्रभार के भुगतान का दायित्व – याची, आयात–निर्यात के कारोबार में लगी एक कम्पनी ने एक ऐसे परेषण को आयात किया जिसे सीमा शुल्क प्राधिकारियों से निकासी प्राप्त नहीं हुई एवं उसे इन्लैंड कंटेनर डिपो (आइ.सी.डी) में रखा गया था – सीमा शुल्क प्राधिकारियों ने डेमरेज प्रभार का दावा किया – को चुनौती – अभिनिर्धारित – उच्चतम न्यायालय ने अभिनिर्धारित किया है कि एक बार परेषण को पत्तन न्यास को हस्तांतरित किया जाता है और सीमा शुल्क प्राधिकारियों के द्वारा निकासी के अभाव में माल को निरूद्ध किया जाता है, परेषिती से डेमरेज प्रभार वसूला जाना होता है – प्रत्यर्थीगण का याची कम्पनी से डेमरेज प्रभार का दावा न्यायोचित है जो उक्त का भुगतान करने के लिए दायी है जब तक आइ.सी.डी. से मुक्त नहीं किए गए थे – याचिका खारिज। (आईडीअल कार्पेट्स लि. वि. यूनियन ऑफ इंडिया) **(DB)...*116**

Dakaiti Aur Vyapharan Prabhavit Ksheshtra Adhiniyam, M.P. (36 of 1981), Section 13 – See – Penal Code, 1860, Section 302 & 384 **[Jitendra @ Jeetu Vs. State of M.P.]** **(DB)...*93**

डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 – देखें – दण्ड संहिता, 1860, धारा 302 व 384 (जितेन्द्र उर्फ जीतू वि. म.प्र. राज्य) **(DB)...*93**

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

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

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

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

Dowry Prohibition Act (28 of 1961), Section 3 & 4 – See – Criminal Procedure Code, 1973, Section 482 **[Mohit Jain Vs. State of M.P.]** **...*97**

INDEX

दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3 व 4 – देखें – दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 (मोहित जैन वि. म.प्र. राज्य) ...*97

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

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

Entry Tax Act, M.P. (52 of 1976), Section 2 & 3(1) – Entry Tax on Second Hand Vehicles **– Petitioner company engaged in business of purchase/exchange of old/used vehicles by brand name of Maruti True Value – Taxation department imposed entry tax on second hand vehicles purchased/sold within the local area of Madhya Pradesh – Challenge to – Held – Petitioner is already paying entry tax on vehicles brought from outside the State, in respect of which no entry tax has been paid at all – Respondents cannot charge entry tax on those vehicle which are sold within the local area of State and which have already entered the local area and for which entry tax has already been paid – In such cases, there is only change of ownership –Entry tax assessed is bad in law – Impugned order of assessment quashed – Respondents**

directed to refund the amount recovered – Petition allowed. [Patel Motors (M/s.) Vs. State of M.P.] (DB)...*98

प्रवेश कर अधिनियम, म.प्र. (1976 का 52), धारा 2 व 3(1) – सेकेन्ड हैंड वाहनों पर प्रवेश कर – मारूति ट्रू वेल्यू के ब्रांड नाम से याची कम्पनी के पुराने/उपयोग किये हुए वाहनों का क्रय/अदला बदली के कारोबार में लगी हुई है – कर विभाग ने म.प्र. के स्थानीय क्षेत्र के भीतर क्रय/विक्रय किये जाने वाले सेकंड हैंड वाहनों पर प्रवेश कर अधिरोपित किया – को चुनौती – अभिनिर्धारित – याची, राज्य के बाहर से लाये जा रहे वाहनों पर पहले से प्रवेश कर अदा कर रहा है जिसके संबंध में किसी प्रवेश कर का भुगतान किया ही नहीं गया है – प्रत्यर्थीगण उन वाहनों पर प्रवेश कर नहीं लगा सकते जिन्हें राज्य के स्थानीय क्षेत्र के भीतर विक्रय किया जा रहा है एवं जो स्थानीय क्षेत्र में पहले ही प्रविष्ट हों चुके हैं और जिनके लिए प्रवेश कर पहले ही अदा किया जा चुका है – ऐसे प्रकरणों में, केवल स्वामित्व का परिवर्तन है – निर्धारण किया गया प्रवेश कर विधि में अनुचित है – निर्धारण का आक्षेपित आदेश अभिखंडित किया गया – प्रत्यर्थीगण को वसूली गयी राशि का प्रतिदाय करने हेतु निदेशित किया गया – याचिका मंजूर। (पटेल मोटर्स (मे.) वि. म.प्र. राज्य) (DB)...*98

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

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

Evidence Act (1 of 1872), Section 27 – See – Penal Code, 1860, Section 302 & 384 **[Jitendra @ Jeetu Vs. State of M.P.] (DB)...*93**

साक्ष्य अधिनियम (1872 का 1), धारा 27 – देखें –दण्ड संहिता, 1860, धारा 302 व 384 (जितेन्द्र उर्फ जीतू वि. म.प्र. राज्य) (DB)...*93

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

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

Evidence Act (1 of 1872), Section 32 – See – Penal Code, 1860, Section 302 **[Pappu @ Chandra Prakash Vs. State of M.P.] (DB)...1724**

साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड संहिता, 1860, धारा 302 (पप्पू उर्फ चन्द्र प्रकाश वि. म.प्र. राज्य) (DB)...1724

INDEX

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

साक्ष्य अधिनियम (1872 का 1), धारा 65–बी –इलेक्ट्रॉनिक साक्ष्य – ग्राह्यता – वर्तमान प्रकरण में, प्रस्तुत किये गये मोबाईल के कॉल विवरण एवं लेन्डलाईन डाटा को दूरसंचार विभाग के संबंधित कार्यालय द्वारा सम्यक् रूप से प्रमाणित किया गया – साक्ष्य अधिनियम की धारा 65–बी का अनुपालन हुआ है – अतहर अली, इलेक्ट्रॉनिक एवं दस्तावेजी साक्ष्य के रूप में उस पर आए भार को उन्मोचित करने में विफल रहा जो स्थापित करता है कि फिरौती हेतु कॉल, अतहर अली द्वारा किया गया था। (लक्ष्मी वर्मा (श्रीमती) वि. शरीक खान) **(DB)...1978**

Evidence Act (1 of 1872), Section 65-B – Electronic Records – Certificate – Admissibility – **In compliance of the order passed by this Court, enquiry conducted and report submitted to Commissioner alongwith CD, which was later produced before this Court – Held – CD produced was a copy of original CD prepared by Constable in a computer shop run by a person who reportedly expired – Held – The said constable was posted at the relevant place of Vidhan Sabha elections and was having knowledge of all the circumstances under which the copy was prepared and therefore he appears to be the proper person to issue the certificate in this regard – Notice issued to Constable directing him to issue a certificate and to appear before the Court for evidence to prove the certificate. [Antar Singh Darbar Vs. Kailash Vijayvargiya]** **...1694**

साक्ष्य अधिनियम (1872 का 1), धारा 65–बी – इलेक्ट्रॉनिक अभिलेख – प्रमाण–पत्र – ग्राह्यता – इस न्यायालय द्वारा पारित आदेश के अनुपालन में, जांच संचालित की गई तथा आयुक्त को सी.डी. के साथ–साथ प्रतिवेदन प्रस्तुत किया गया, जिसे कि बाद में इस न्यायालय के समक्ष प्रस्तुत किया था – अभिनिर्धारित – प्रस्तुत की गई सी.डी. मूल सी.डी. की प्रति थी जिसे आरक्षक द्वारा, एक व्यक्ति जिसकी सूचना अनुसार मृत्यु हो चुकी है द्वारा चलाई जा रही कम्प्यूटर दुकान में तैयार किया गया था – अभिनिर्धारित – उक्त आरक्षक विधान सभा निर्वाचनों के सुसंगत स्थान पर पदस्थ था एवं उसे उन सभी परिस्थितियों जिसके अन्तर्गत प्रति

तैयार की गई थी, का ज्ञान था एवं इसलिए इस संबंध में प्रमाण–पत्र जारी करने हेतु वह उचित व्यक्ति प्रतीत होता है – प्रमाण–पत्र जारी करने को तथा प्रमाण–पत्र को साबित करने के लिए साक्ष्य हेतु न्यायालय के समक्ष प्रस्तुत होने के लिए निदेशित करते हुये आरक्षक को नोटिस जारी किया गया। (अंतरसिंह दरबार वि. कैलाश विजयवर्गीय) ...1694

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

साक्ष्य अधिनियम (1872 का 1), धाराऐं 68, 69 व 90, सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 54 एवं भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 117 – 30 वर्ष पुराना दस्तावेज – उपधारणा – विक्रय विलेख 30 वर्ष पुराना है तथा उक्त के निष्पादक एवं उसके अनुप्रमाणक साक्षीगण जीवित नहीं हैं – साक्ष्य अधिनियम की धारा 90 का सिद्धांत यह है कि यदि कोई दस्तावेज, जो कि 30 वर्ष या उससे अधिक पुराना है उचित अभिरक्षा से प्रस्तुत किया जाता है तथा प्रत्यक्षतः संदेह से मुक्त है, न्यायालय उपधारित कर सकती है कि इसे सम्यक् रूप से निष्पादित एवं अनुप्रमाणित किया गया है परन्तु उसी समय में ऐसी उपधारणा की जाना आज्ञापक नहीं है, उपधारणा करने का विवेकाधिकार न्यायालय के पास है – आगे अभिनिर्धारित – 1954 के अधिनियम की धारा 54 विक्रय विलेख के अनुप्रमाणन की अपेक्षा अनुध्यात नहीं करती, इसलिए वर्तमान प्रकरण में, साक्ष्य अधिनियम की धारा 68 एवं 69 का अनुपालन आज्ञापक नहीं है – राजस्व अभिलेख (नामांतरण एवं खसरा पंचशाला) भी यह साबित करते हैं कि संपत्ति

क्रय करने के पश्चात् प्रतिवादीगण का निरंतर उक्त पर कब्जा था – 1959 की संहिता की धारा 117 के अंतर्गत, प्रतिवादी के पक्ष में कब्जे की उपधारणा भी की जा सकती है – अपीलार्थी/वादी विवादित संपत्ति पर अपना स्वत्व साबित करने में विफल रहे – आक्षेपित निर्णय में कोई अवैधता नहीं – अपील खारिज। (रामचरण वि. दामोदर) ...1882

Evidence Act (1 of 1872), Section 90 – 30 years Old Document – Presumption – **Held – When a document is or purports to be more than 30 years old, if it be produced from proper custody, it may be presumed that signature and every other part of such document which purports to be in handwriting of any particular person, is in the person's handwriting and that it was duly executed and attested by the person by whom it purposes to be executed and attested – It is not necessary that signatures of attesting witnesses or of the scribe be proved – In the instant case, 30 yrs old documents produced from custody of authorities who in their official capacity keep the record, they are as good as public documents – Such document can be read as evidence. [Shri Banke Bihariji Bazar Vs. State of M.P.]** ...2205

साक्ष्य अधिनियम (1872 का 1), धारा 90 – 30 वर्ष पुराना दस्तावेज – उपधारणा – अभिनिर्धारित – जब एक दस्तावेज 30 वर्ष से अधिक पुराना है या तात्पर्यित है, यदि उसे समुचित अभिरक्षा से प्रस्तुत किया गया है, यह उपधारणा की जा सकती है कि उक्त दस्तावेज पर हस्ताक्षर एवं प्रत्येक अन्य भाग जो किसी विशिष्ट व्यक्ति के हस्तलेख में होना तात्पर्यित है, उसी व्यक्ति के हस्तलेख में है तथा यह कि वह उसी व्यक्ति द्वारा सम्यक रूप से निष्पादित एवं प्रमाणित है जिसके द्वारा निष्पादित एवं प्रमाणित होना तात्पर्यित है – यह आवश्यक नहीं कि प्रमाणक साक्षीगण या लेखक के हस्ताक्षरों को साबित किया जाए – वर्तमान प्रकरण में, उन प्राधिकारियों की अभिरक्षा से 30 वर्ष पुराने दस्तावेज प्रस्तुत किये गये जो उनकी शासकीय सक्षमता में अभिलेख रखते है, वह वस्तुतः सार्वजनिक दस्तावेजों जैसे हैं – उक्त दस्तावेज को साक्ष्य में पढ़ा जा सकता है। (श्री बांके बिहारीजी बाजार वि. म.प्र. राज्य) ...2205

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

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

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

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

Evidence Act (1 of 1872), Section 134 – Hostile Witness **– Held – In the instant case, some witnesses turned hostile but it is not proper to reject the whole prosecution case on that ground – Section 134 of Evidence Act requires no particular number of witnesses to prove the case – Conviction can be based on sole testimony of reliable witness. [Sangram Vs. State of M.P.]** ...2243

साक्ष्य अधिनियम (1872 का 1), धारा 134 – पक्षद्रोही साक्षी – अभिनिर्धारित – वर्तमान प्रकरण में, कुछ साक्षीगण पक्षद्रोही हो गये परन्तु उस आधार पर संपूर्ण अभियोजन प्रकरण को अस्वीकार करना उचित नहीं है – साक्ष्य अधिनियम की धारा 134 के अनुसार प्रकरण को साबित करने के लिए साक्षीगण की कोई विशिष्ट संख्या अपेक्षित नहीं है – दोषसिद्धि, विश्वसनीय साक्षी के एकमात्र परिसाक्ष्य पर आधारित हो सकती है। (संग्राम वि. म.प्र. राज्य) ...2243

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

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

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

आबकारी अधिनियम, म.प्र. (1915 का 2), धाराएँ 34(1), 61(1) व (2) –अभियोजन

INDEX

हेतु परिसीमा – विशेष मंजूरी – अभिखंडन– दिनांक 18.10.2011 को याचीगण के विरूद्ध 1915 के अधिनियम की धारा 34(1) के अंतर्गत अपराध पंजीबद्ध किया गया तथा दिनांक 11.10.2012 को चालान प्रस्तुत किया गया था एवं तद्नुसार न्यायालय ने संज्ञान लिया – याची ने अधिनियम की धारा 61(2) के अंतर्गत प्रारंभिक आक्षेप प्रस्तुत किया जिसे खारिज किया गया था – को चुनौती – अभिनिर्धारित – अधिनियम, 1915 की धारा 61(1) एवं (2) के अनुसार अभियोजन उस तिथि जब अपराध कारित किया जाना अभिकथित है, से 6 माह की अवधि के भीतर या राज्य शासन की विशेष मंजूरी से कथित अवधि के पश्चात् संस्थित किया जाना चाहिए अन्यथा कोई न्यायिक मजिस्ट्रेट संज्ञान नहीं लेगा क्योंकि अधिनियम के अंतर्गत उक्त अनुज्ञेय नहीं है – ऐसा अनुपालन आज्ञापक है – याचीगण के विरूद्ध लंबित दाण्डिक प्रकरण अभिखंडित किया गया – आवेदन मंजूर। (रमेश तिवारी वि. म.प्र. राज्य) ...*109

Excise Act, M.P. (2 of 1915), Section 34(2) – See – Criminal Procedure Code, 1973, Section 437(6) **[Ishwar Prasad Vs. State of M.P.] ...1756**

आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 34(2) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 437(6) (ईश्वर प्रसाद वि. म.प्र. राज्य) ...1756

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

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

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

sanction, authority is required to apply mind while reaching to conclusion – Impugned order of sanction and prosecution launched against petitioner quashed – Petition allowed. [ITC Ltd. Vs. State of M.P.] ...1814

खाद्य सुरक्षा और मानक अधिनियम, (2006 का 34), धाराएँ 3(जेड एफ)(ए)(i), 26(1)(2)(ii), 36(3)(ई), 52 व 58, खाद्य सुरक्षा और मानक नियम, 2011, नियम 1(3), 2 व 4 एवं पैकेजिंग एवं लेवलिंग विनियम, 2011, विनियमन 2.3(1)(5)– अभियोजन हेतु मंजूरी – आधार – "सन्फीस्ट यिप्पी नूडल्स" के नमूने परीक्षण हेतु भेजे गये – प्रतिवेदन ने नमूनों को इस आधार पर मिथ्या छापवाला घोषित किया है कि पैकेजिंग में "कोई एम.एस.जी. नहीं" का उल्लेख करना विनियमनों के अनुसार भ्रामक है – मंजूरी प्रदान की गई तथा न्यायालय के समक्ष परिवाद प्रस्तुत किया गया था – को चुनौती – अभिनिर्धारित – प्रतिवेदन यह प्रकट करता है कि नमूनों में कोई एम.एस.जी. पदार्थ नहीं पाया गया था – "कोई एम.एस.जी. नहीं" की घोषणा उचित रूप से की गई थी जिसे कि भ्रामक, मिथ्या या प्रवंचक अभिनिर्धारित नहीं किया जा सकता – एफ.एस.एस.ए.आई. का परिपत्र यह भी वर्णित करता है कि अभियोजन आरम्भ किया जा सकता है जब लेबल यह वर्णित करता है कि "कोई एम.एस.जी. नहीं" तथा आक्षेपित खाद्य पदार्थ में एम.एस.जी. पाया जाता है – याची ने प्रथम दृष्ट्या अधिनियम या विनियमनों के उपबंधों का कोई उल्लंघन नहीं किया है – आगे अभिनिर्धारित – मंजूरी प्रदान करते समय, प्राधिकारी द्वारा निष्कर्ष पर पहुँचने से पहले मस्तिष्क का प्रयोग किया जाना अपेक्षित है – मंजूरी का आक्षेपित आदेश एवं याची के विरूद्ध आरंभ किया गया अभियोजन अभिखंडित – याचिका मंजूर। (आई.टी.सी. लि. वि. म.प्र. राज्य) ...1814

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

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

***Foreign Liquor Rules, M.P., 1996, Rule 19(2) – Amendment – Prospective or Retrospective* – Held – Amendment in Statute or Rules is prospective unless it is specifically made retrospective, however amendment in respect of procedure is retrospective – In the instant case, license granted to petitioner in 2009-10 and Rule 19(2) was amended on 29.03.2011 – Rule of penalty is not a matter of procedure, it deals with substantive rights of parties therefore Rules applicable during the relevant**

license year would determine the rights and liabilities of such licensee – Amendment will apply to license granted thereafter and not in respect of license granted earlier – Amendment carried out on 29.03.2011 liberalizing the amount of penalty will operate prospective only. [State of M.P. Vs. M/s. Pernod Ricard India (P) Ltd.] (DB)...1805

विदेशी मदिरा नियम, म.प्र., 1996, नियम 19(2) –संशोधन – भविष्यलक्षी या भूतलक्षी – अभिनिर्धारित – कानून अथवा नियमों में संशोधन भविष्यलक्षी है, जब तक कि यह विनिर्दिष्ट रूप से भूतलक्षी नहीं बनाया गया हो, यद्यपि प्रक्रिया के संबंध में संशोधन भूतलक्षी है – वर्तमान प्रकरण में, याची को 2009–10 में अनुज्ञप्ति प्रदान की गई एवं नियम 19(2) दिनांक 29.03.2011 को संशोधित हुआ था – शास्ति का नियम प्रक्रिया का मामला नहीं है, यह पक्षकारों के मूल अधिकारों से संबंधित है इसलिए सुसंगत अनुज्ञप्ति वर्ष के दौरान लागू नियम, ऐसे अनुज्ञप्तिधारी के अधिकारों एवं दायित्वों का अवधारण करेंगे – संशोधन तत्पश्चात् प्रदान की गई अनुज्ञप्ति पर लागू होगा तथा न कि पूर्व में प्रदान की गई अनुज्ञप्ति के संबंध में –शास्ति की राशि का उदारीकरण करते हुए, दिनांक 29.03.2011 को किया गया संशोधन केवल भविष्यलक्षी रूप से प्रभावी होगा। (म.प्र. राज्य वि. मे. परनॉड रिकार्ड इंडिया (प्रा.) लि.) **(DB)...1805**

Forest Act (16 of 1927), Section 26 & 41 – See – Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P., 1969, Section 5 & 15 **[State of M.P. Vs. Smt. Kallo Bai] (SC)...2063**

वन अधिनियम (1927 का 16), धारा 26 व 41 – देखें – वन उपज व्यापार (विनियमन) अधिनियम, म.प्र., 1969, धारा 5 व 15 (म.प्र. राज्य वि. श्रीमती कल्लो बाई) **(SC)...2063**

Forest Act (16 of 1927), Section 52 – See – Criminal Procedure Code, 1973, Section 451 & 457 **[Jakir Khan Vs. State of M.P.] ...1747**

वन अधिनियम (1927 का 16), धारा 52 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 451 व 457 (जाकिर खान वि. म.प्र. राज्य) **...1747**

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

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

General Clauses Act (10 of 1897), Section 27 – See – Negotiable

Instruments Act, 1881, Section 138(b) & (c) [Poojan Trading Co. (M/s.) Vs. M/s. Betul Oils & Floors Ltd.] ...2290

साधारण खण्ड अधिनियम (1897 का 10), धारा 27 – देखें – परक्राम्य लिखत अधिनियम, 1881, धारा 138(बी) व (सी) (पूजन ट्रेडिंग कं. (मे.) वि. मे. बैतूल ऑयल एण्ड फ्लोर्स लि.) ...2290

Hindu Adoptions and Maintenance Act (78 of 1956), Section 12(b) – Effect of Adoption – **Appellants challenging the concurrent findings of civil & appellate Court – Suit filed by plaintiff is decreed on the ground that he was taken in adoption at the age of 10-11 years but his right on the ancestral property has not come to an end – Held – Suit filed by plaintiff is for partition – Share of a coparcener in undivided property is fluctuating share which keeps on varying with addition and extinct of members of coparcenery – Share is crystallized when property is partitioned – Therefore, till partition takes place the ancestral property cannot be said to have vested in coparcener – Property which stands vested in the adopted child before adoption continues to be vested in him u/S 12 (b) – Respondent no. 01 being a member of Coparcenery having undivided share in coparcenery before the adoption – Properties of the Coparcenery of the natural father did not vest in him and are not protected u/S 12(b) – Respondent no. 1 not entitled to partition of ancestral property after his adoption – Appeal allowed – Judgment and decree set aside. [Ranchhod Vs. Ramchandra] ...1718**

हिन्दू दत्तक और भरण–पोषण अधिनियम, (1956 का 78), धारा 12(बी) – दत्तक ग्रहण का प्रभाव – अपीलार्थीगण द्वारा सिविल एवं अपीली न्यायालय के समवर्ती निष्कर्षों को चुनौती – वादी द्वारा प्रस्तुत वाद को इस आधार पर डिक्रीत किया गया कि 10–11 वर्ष की आयु में उसे दत्तक लिया गया परन्तु पैतृक संपत्ति पर उसका अधिकार समाप्त नहीं हुआ है – अभिनिर्धारित – वादी द्वारा प्रस्तुत वाद विभाजन के लिए है – अविभाजित संपत्ति में सहदायिक का अंश घटता–बढ़ता अंश है जो कि सहदायिकी के सदस्यों के बढ़ने एवं निर्वापित होने के साथ परिवर्तित होता रहता है – अंश निश्चित रूप धारण कर लेता है जब संपत्ति विभाजित है – इसलिए, जब तक विभाजन नहीं हो जाता है, पैतृक संपत्ति सहदायिक में निहित नहीं कही जा सकती – संपत्ति जो कि दत्तक ग्रहण पूर्व दत्तक बालक में निहित है वह धारा 12(बी) के अंतर्गत उसमें निहित रहना जारी रहेगी – प्रत्यर्थी क्र. 1 का सहदायिकी का सदस्य होने के नाते दत्तक ग्रहण के पूर्व सहदायिकी में अविभाजित अंश है – नैसर्गिक पिता की सहदायिकी की संपत्तियां उसमें निहित नहीं थी तथा धारा 12 (बी) के अंतर्गत सुरक्षित नहीं है – प्रत्यर्थी क्र. 1 उसके दत्तक ग्रहण के

पश्चात् पैतृक संपत्ति के विभाजन के लिए हकदार नहीं है – अपील मंजूर – निर्णय एवं डिक्री अपास्त। (रणछोड वि. रामचंद) ...1718

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

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

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

आयकर अधिनियम (1961 का 43), धारा 263 –निर्धारण के पुनरीक्षण की स्वप्रेरणा शक्ति– अपीलार्थी ने विवरणी प्रस्तुत की जिससे उसका कर हेतु निर्धारण किया गया – बाद में, प्रत्यर्थी ने इस आधार पर स्वप्रेरणा से निर्धारण के पुनरीक्षण की शक्ति का अवलंब प्रस्तावित करते हुए नोटिस जारी किया कि निर्धारण आदेश त्रुटिपूर्ण तथा राजस्व के हित के प्रतिकूल था – अपीलार्थी ने अधिकरण के समक्ष अपील प्रस्तुत की जिसे खारिज किया गया था – को चुनौती – अभिनिर्धारित – यद्यपि निर्धारण अधिकारी ने टिप्पणी–पत्र में अभिलिखित किया कि अपीलार्थी का जवाब संतोषजनक नहीं है और सभी तथ्यों को स्पष्ट नहीं करता, तब भी उसके द्वारा कोई जांच संचालित नही की गई तथा उसने निर्धारिती का दावा स्वीकार किया – अधिकरण ने उचित रूप से निष्कर्षित किया कि निर्धारण अधिकारी द्वारा कोई जांच संचालित नहीं की गई न ही मस्तिष्क का कोई प्रयोग किया गया था – निर्धारण अधिकारी द्वारा उचित जांच के अभाव के तथ्य को दृष्टिगत रखते हुए न्यायनिर्णयन हेतु विधि का कोई सारवान् प्रश्न उत्पन्न नहीं होता – अपील खारिज। (नागल गारमेन्ट इंडस्ट्रीज प्रा.लि. (मे.) वि. कमिश्नर ऑफ इनकम टैक्स–I) (DB)...2011

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

आयकर अधिनियम (1961 का 43), धारा 264 –पुनरीक्षण – पोषणीयता – याची के बचत खाते में रू. 16,31,700 की जमा राशि – नोटिस जारी किया गया – एक पक्षीय निर्धारण किया गया और वसूली की कार्यवाही आरंभ की गई – याची ने 1961 के अधिनियम की धारा 264 के अंतर्गत पुनरीक्षण प्रस्तुत किया जो खारिज किया गया – को चुनौती – अभिनिर्धारित – कई अवसरों के बावजूद; याची ने उक्त जमाराशि हेतु कारण देने के किसी अवसर का लाभ नहीं लिया –शास्ति के भुगतान का नोटिस भी जारी किया गया था, इसका भी उसके द्वारा लाभ नहीं लिया गया – पुनरीक्षण को केवल तब प्रस्तुत किया गया जब शास्ति आदेश पारित किया गया था और वसूली की कार्यवाही आरंभ की गई थी – प्राधिकारी ने सर्वोच्च न्यायालय द्वारा सुस्थापित विधि को विचार में लेते हुए एक सकारण आदेश पारित किया है, अस्पष्ट आदेश नहीं कहा जा सकता – पुनरीक्षण उचित रूप से खारिज – याची ने निर्धारण अधिकारी द्वारा उसे जारी किये गये नोटिस का जवाब न देकर स्वयं ऐसी परेशानी आमंत्रित की है – याचिका गुणदोष विहीन एवं खारिज की गई। (रोहित अग्रवाल वि. द प्रिन्सिपॅल कमिश्नर ऑफ इनकम टैक्स.प्प्) (DB)...1857

Income Tax (Certificate Proceedings) Rules, 1962, Rules 60, 61, 62 & 63 – Recovery of Decreetal Amount – Absolute Sale – Maintainability of Petition – Locus **– Held – Rule 63(1) provides that where no application is made for setting aside the sale or where such an application is made and is disallowed, the Tax Recovery Officer shall, if full amount of purchase money has been paid, make an order confirming the sale to be absolute – In the instant case, judgment debtor**

has not filed any objection to set aside the sale, thus petitioner (*auction purchaser*) has a right accrued in his favour – Petitioner has the locus to challenge the impugned order – Petition maintainable. [Dinesh Agarwal & Associates (M/s.) Vs. Pawan Kumar Jain] (DB)...2142

आयकर (प्रमाणपत्र कार्यवाहियाँ) नियम, 1962, नियम 60, 61, 62 व 63 – डिक्रीत राशि की वसूली – पूर्ण विक्रय – याचिका की पोषणीयता – अधिकार – अभिनिर्धारित – नियम 63(1) यह उपबंधित करता है कि जहाँ विक्रय अपास्त किये जाने हेतु कोई आवेदन प्रस्तुत नहीं किया गया है या जहाँ ऐसा आवेदन प्रस्तुत किया गया तथा अस्वीकार किया गया हो, कर वसूली अधिकारी यदि क्रय रकम की संपूर्ण राशि का भुगतान कर दिया गया है, विक्रय के पूर्ण होने की पुष्टि करने का आदेश करेगा – वर्तमान प्रकरण में, निर्णीत ऋणी ने विक्रय को अपास्त करने हेतु कोई आपत्ति प्रस्तुत नहीं की है, इसलिये याची *(नीलामी क्रेता)* के पक्ष में अधिकार प्रोद्भूत होता है – याची के पास आक्षेपित आदेश को चुनौती देने का अधिकार है – याचिका पोषणीय। (दिनेश अग्रवाल एण्ड एसोसिएट्स (मे.) वि. पवन कुमार जैन) (DB)... 2142

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

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 2–ए व 10 –परिसीमा – कर्मचारी 06.07.12 को सेवानिवृत्त हुआ – 4 वर्ष पश्चात्, 2016 में उसने अपने अधिवर्षिता को चुनौती देते हुए 1947 के अधिनियम की धारा 10 के अंतर्गत आवेदन प्रस्तुत किया – अतिरिक्त श्रम आयुक्त ने श्रम न्यायालय को विवाद निर्देशित किया – को चुनौती – अभिनिर्धारित – कर्मकार, सेवामुक्ति, पदच्युति, छंटनी या अन्यथा सेवा समाप्ति के प्रकरण में अधिनियम की धारा 10 के अंतर्गत अपने अधिकारों को प्रभावित किये बिना सीधे श्रम न्यायालय/अधिकरण के समक्ष जा सकता है – आगे अभिनिर्धारित

– धारा 2–ए(3), केवल धारा 2–ए(2) के अंतर्गत आवेदन हेतु परिसीमा की अवधि उपबंधित करती है और न कि धारा 2–ए(1) हेतु – वर्तमान प्रकरण धारा 2–ए(1) के अंतर्गत आता है और औद्योगिक विवाद माना जाता है – कर्मकार, परिसीमा की किसी अवधि के बिना निर्देश चाह सकता है – अन्यथा भी, अधिनियम की धारा 10 के अंतर्गत शक्तियों का प्रयोग करते समय, समुचित सरकार को विवाद का न्यायनिर्णयन करना अपेक्षित नहीं है, उक्त का विनिश्चय श्रम न्यायालय एवं अधिकरण को करना है – याचिका खारिज। (महिन्द्रा टू व्हीलर्स वि. म.प्र. राज्य) ...1865

Interpretation of Statute - Protection of Women from Domestic Violence Act (43 of 2005) – Aims and Objects – **Act of 2005 is essentially a remedial statute and it is trite law that a remedial statute needs to be interpreted liberally to promote the beneficial object behind it and any interpretation which may defeat its object necessarily needs to be eschewed. [Manoj Pillai Vs. Smt. Prasita Manoj Pillai] ...1736**

कानून का निर्वचन – घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43) – लक्ष्य एवं उद्देश्य – 2005 का अधिनियम आवश्यक रूप से एक उपचारी कानून है तथा यह जीर्ण विधि है कि एक उपचारी कानून के पीछे के लाभकारी उद्देश्य को बढ़ावा देने हेतु, उसका उदारतापूर्वक निर्वचन करने की आवश्यकता है तथा ऐसा कोई निर्वचन जो उसके उद्देश्य को विफल कर सकता है से आवश्यक रूप से दूर रहने की जरूरत है। (मनोज पिल्लई वि. श्रीमती प्रासिता मनोज पिल्लई) ...1736

Juvenile Justice (Care and Protection of Children) Act (56 of 2000) (now Repealed), Section 7-A and Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 94 & 111 – Determination of Age – Procedure – **In the trial Court, Special Judge got conducted ossification test and held that age of accused on the date of occurrence was above 18 years and thus trial would be held under provisions of Cr.P.C. – Challenge to – Held – Impugned order was passed in March 2016 whereas new Act came into force in January 2016 – According to Section 94 of new Act of 2015, Court of Sessions had no power to determine the age of accused and this power is granted only to the Juvenile Board constituted under the Act – It was incumbent for Special Judge to follow provisions of Section 94 of the new Act – Impugned order not in accordance with new Act and is set aside – Application allowed. [Indrasingh Vs. State of M.P.] ...*92**

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम (2000 का 56)

INDEX

(अब निरसित), धारा 7–ए एवं किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2), धारा 94 व 111 – आयु का निर्धारण – प्रक्रिया – विचारण न्यायालय में, विशेष न्यायाधीश ने अस्थि विकास परीक्षण संचालित किया तथा अभिनिर्धारित किया कि घटना दिनांक को अभियुक्त की आयु 18 वर्ष से अधिक थी तथा इसलिए विचारण दण्ड प्रक्रिया संहिता के उपबंधों के अन्तर्गत अभिनिर्धारित किया जाएगा – को चुनौती – अभिनिर्धारित – मार्च, 2016 में आक्षेपित आदेश पारित किया गया था जबकि नया अधिनियम जनवरी, 2016 को प्रभाव में आया – 2015 के नये अधिनियम की धारा 94 के अनुसार, सत्र न्यायालय को अभियुक्त की आयु का निर्धारण करने की कोई शक्ति नहीं थी तथा यह शक्ति केवल अधिनियम के अन्तर्गत गठित की गई किशोर बोर्ड को प्रदान की गई है – नये अधिनियम की धारा 94 के उपबंधों का पालन करना विशेष न्यायाधीश के लिए अनिवार्य था – आक्षेपित आदेश नये अधिनियम के अनुसार नहीं तथा इसलिए अपास्त – आवेदन मंजूर। (इंद्रसिंह वि. म.प्र. राज्य) ...*92

Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 94 & 111 – See – Juvenile Justice (Care and Protection of Children) Act, 2000 (now Repealed), Section 7-A **[Indrasingh Vs. State of M.P.]** ...*92

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2), धारा 94 व 111 – देखें – किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2000 (अब निरसित), धारा 7–ए (इंद्रसिंह वि. म.प्र. राज्य) ...*92

Land Acquisition Act (1 of 1894), Section 18 – Reference to Court for Enhancement – Limitation **– Revision against dismissal of application u/S 18 of the Act of 1894 by Land Acquisition Officer – Held – Award was passed on 31.01.2001 which was subsequently amended on 23.01.2003 and was finally approved on 25.01.2003 – Application u/S 18 of the Act was filed by applicant on 09.06.2003, is well within limitation as filed within 6 months from date of knowledge of award – Respondent directed to refer the matter to Reference Court for adjudication – Revision allowed. [Manulal Vs. State of M.P.]** ...*117

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 – वृद्धि हेतु न्यायालय को निर्देश – परिसीमा – भूमि अर्जन अधिकारी द्वारा 1894 के अधिनियम की धारा 18 के अंतर्गत आवेदन की खारिजी के विरूद्ध पुनरीक्षण – अभिनिर्धारित – दिनांक 31.01.2001 को अवार्ड पारित हुआ था जो कि बाद में दिनांक 23.01.2003 को संशोधित किया गया था तथा दिनांक 25.01.2003 को अंतिम रूप से अनुमोदित किया गया था – आवेदक द्वारा दिनांक 09.06.2003 को अधिनियम की धारा 18 के

अंतर्गत प्रस्तुत आवेदन भली–भांति परिसीमा के भीतर है चूंकि अवार्ड का ज्ञान होने की तिथि से 6 माह के भीतर प्रस्तुत किया गया था – प्रत्यर्थीगण को मामला न्यायनिर्णयन हेतु निर्देश न्यायालय को निर्दिष्ट करने हेतु निदेशित किया गया – पुनरीक्षण मंजूर। (मनूलाल वि. म.प्र. राज्य) ...*117

Land Acquisition Act (1 of 1894), Section 18 – See – Town Improvement Trust Act, (M.P.) 1960, Section 72(2) **[Arvind Kumar Jain Vs. State of M.P.] (DB)...1623**

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 – देखें – नगर सुधार न्यास अधिनियम, (म.प्र.) 1960, धारा 72(2) (अरविन्द कुमार जैन वि. म.प्र. राज्य) **(DB)...1623**

Land Acquisition Act (1 of 1894), Section 18 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Section 24(2) – Compensation – Enhancement – Applicability of Act of 2013 – Ground **– Vide notification dated 02.12.2011, land of appellants were acquired – On 30.09.2013, Land Acquisition Officer passed an award – During this period Act of 2013 was introduced which came into force on 01.01.2014 – Appellants filed reference application before the District Judge for enhancement of compensation as per the provisions of Act of 2013 – Reference was dismissed – Challenge to – Held – Till 01.01.2014, when Act of 2013 came into force, compensation was neither paid to the account of beneficiaries nor was deposited in Court and in such circumstances, appellants are entitled to receive compensation as per the provisions of the Act of 2013 – Matters remanded back to District Judge to pass fresh award calculating quantum of compensation as per provisions of Act of 2013 – Appeals allowed. [Mayaram Vs. State of M.P.] ...*105**

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 एवं भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम, (2013 का 30), धारा 24(2) – प्रतिकर –वृद्धि – 2013 के अधिनियम की प्रयोज्यता – आधार– अधिसूचना दिनांक 02.12.2011 के माध्यम से अपीलार्थीगण की भूमि अर्जित की गई थी – दिनांक 30.09.2013 को, भूमि अर्जन अधिकारी ने एक अधिनिर्णय पारित किया – इस अवधि के दौरान 2013 का अधिनियम पुरःस्थापित किया गया था जो कि दिनांक 01.01.2014 को प्रभाव में आया – अपीलार्थीगण ने 2013 के अधिनियम के उपबंधों के अनुसार प्रतिकर में वृद्धि हेतु जिला न्यायाधीश के समक्ष निर्देश आवेदन प्रस्तुत किया – निर्देश खारिज किया गया था – को

चुनौती – अभिनिर्धारित – दिनांक 01.01.2014 तक, जब 2013 का अधिनियम प्रभाव में आया, प्रतिकर का न तो हिताधिकारियों के खाते में भुगतान किया गया था और न ही न्यायालय में जमा किया गया था तथा ऐसी परिस्थितियों में, अपीलार्थीगण 2013 के अधिनियम के उपबंधों के अनुसार प्रतिकर प्राप्त करने के हकदार हैं – मामला, 2013 के अधिनियम के उपबंधों के अनुसार प्रतिकर की मात्रा की गणना करते हुए नया अधिनिर्णय पारित करने हेतु जिला न्यायाधीश को प्रतिप्रेषित किया गया – अपीलें मंजूर। (मायाराम वि. म.प्र. राज्य) ...*105

Land Acquisition Act (1 of 1894), Section 41 and Rehabilitation Policy 2002, Clause 29(1) **– Land acquired by the company – Displaced persons, R-2 to R-6 are deaf and dumb – Held – As per Section 41 of the Act, it is mandatory to provide pension to those persons who attained age of 60 years or above, employment to oustees looking to their eligibility criteria, plots to oustees in rehabilitation colony etc – In the instant case, Collector allotted plot, ordered to pay lumpsum amount of 1.5 lac as well as pension also, but no order for employment was made as per Section 41 of the Act of 1894 and Clause 29(1) of the Policy of 2002 – Respondent directed to provide employment in appellant company to any one of Respondents 4 to 6 as per their eligibility – Further held – If posts are not available, appellant should create post looking to their eligibility – Order passed by Collector and Commissioner is set aside – Matter remanded back to Collector – Appeal allowed. [Hindalco Industries Ltd. (M/s.) Vs. State of M.P.] (DB)...1799**

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

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

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

Land Revenue Code, M.P. (20 of 1959), Section 178 – See – Civil Procedure Code, 1908, Section 10 [Chinda Bai @ Baku Bai Vs. Govindrao] ...*88

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 178 – देखें – सिविल प्रक्रिया संहिता, 1908, धारा 10 (छिंदा बाई उर्फ बाकू बाई वि. गोविन्दराव) ...*88

Limitation Act (36 of 1963), Section 5 & 14 – Condonation of Delay – Suit for arrears of rent and eviction decreed in favour of respondents/plaintiffs – Appellant/defendant filed appeal whereby appellate Court dismissed the same as time barred – Second Appeal – Held – There is delay of three days – Judgment and decree passed on 28.04.16, appellant got information from lawyer on 25.05.16, he made application for certified copy on 30.05.16 just after 5 days from date of knowledge and received the copy on 21.06.16 – No inordinate and deliberate undue delay in making application by the appellant – Application for certified copy and delivery of the same was done through counsel and not by him personally – Appellant living in a remote area and certainly it was not possible to get day to day information from his counsel – Appeal allowed – Matter remitted back to lower Appellate Court for deciding the first appeal on merits, treating the same to be within limitation. [Ram Sewak Prajapati Vs. Shiv Kumar Yadav] ...1875

परिसीमा अधिनियम (1963 का 36), धारा 5 व 14 –विलंब के लिए माफी – भाड़े का बकाया तथा बेदखली हेतु वाद, प्रत्यर्थीगण/वादीगण के पक्ष में डिक्रीत किया गया – अपीलार्थी/प्रतिवादी ने अपील प्रस्तुत की जिसे समय वर्जित होने के कारण अपीली न्यायालय द्वारा खारिज किया गया – द्वितीय अपील – अभिनिर्धारित – तीन दिनों का विलंब है – दिनांक 28.04.2016 को निर्णय एवं डिक्री पारित की गई, दिनांक 25.05.2016 को अपीलार्थी को अधिवक्ता से सूचना प्राप्त हुई, उसने जानकारी मिलने की तिथि से ठीक पांच दिनों के पश्चात् दिनांक 30.05.2016 को, प्रमाणित प्रतिलिपि के लिए आवेदन प्रस्तुत किया तथा दिनांक 21.06.2016 को प्रतिलिपि प्राप्त की – अपीलार्थी द्वारा आवेदन प्रस्तुत करने में कोई असाधारण तथा जानबूझकर अनुचित विलंब नहीं – प्रमाणित प्रतिलिपि के लिए आवेदन तथा उक्त

का परिदान अधिवक्ता के माध्यम से किया गया था तथा न कि व्यक्तिगत रूप से उसके द्वारा – अपीलार्थी दूरस्थ क्षेत्र में रह रहा है तथा निश्चित रूप से उसके लिए अपने अधिवक्ता से रोजाना जानकारी प्राप्त करना संभव नहीं था – अपील मंजूर – मामला निचले अपीली न्यायालय को, उक्त को परिसीमा के भीतर मानते हुए, प्रथम अपील को गुण–दोषों के आधार पर विनिश्चय करने हेतु प्रतिप्रेषित किया गया। (राम सेवक प्रजापति वि. शिवकुमार यादव) ...1875

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

परिसीमा अधिनियम (1963 का 36), धारा 5 व 14 – अतत्परता – पर्याप्त कारण –अभिनिर्धारित – प्रमाणित प्रतिलिपि प्राप्त करने हेतु आवेदन प्रस्तुत करने के संबंध में ली गई समय की अवधि के दौरान अतत्परता तथा उक्त को उस तिथि पर प्राप्त नहीं किया जाना जब उसे वह प्रमाणित प्रतिलिपि प्राप्त करने को कहा गया था, 1963 के अधिनियम की धारा 5 के अंतर्गत आवेदन अस्वीकार करने हेतु आधार नहीं हो सकते – सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि यदि ऐसे व्यक्ति दूरस्थ क्षेत्र में निवास कर रहे हैं, तो यह विलंब माफ करने के लिए 'पर्याप्त कारण' निर्मित करता है तथा एक उदार दृष्टिकोण अपनाया जाना चाहिए था। (राम सेवक प्रजापति वि. शिवकुमार यादव) ...1875

Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5 and Arbitration and Conciliation Act (26 of 1996), Section 36 – Validity and Choice of Remedies – **Held – Providing of plural remedies is valid when two or more remedies are available to a person even if inconsistent – It is for the person to elect one of them – There is no question of repugnancy in providing such remedy. [Power Machines India Ltd. Vs. State of M.P.]** (SC)...2043

सूक्ष्म एवं लघु उद्यम सुविधा परिषद् नियम, म.प्र., 2006, नियम 5 एवं माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 36 – उपचारों की विधिमान्यता एवं पसंद – अभिनिर्धारित – अनेक उपचार उपबंधित करना विधिमान्य है जब व्यक्ति को दो या अधिक उपचार उपलब्ध है, यदि असंगत हो तब भी – यह व्यक्ति पर है कि वह उनमें से एक का चुनाव करे – उक्त उपचार उपबंधित करने में प्रतिकूलता का कोई प्रश्न नहीं। (पॉवर मशीन्स् इंडिया लि. वि. म.प्र. राज्य) (SC)...2043

Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5, Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 30 & 18 and Arbitration and Conciliation Act (26 of 1996), Section 34 & 36 – Recovery of Award Amount as Arrears of Land Revenue – **Petition before High Court to declare Rule 5 of Rules of 2006 as Ultra Vires dismissed – Challenge to – Held – Once arbitral award is passed, it was expected to appellants to honour it after lapse of time u/S 34 of the Act of 1996 – Rule 5 intends to simplify the procedure of execution which is not discriminatory, harsh or drastic and prejudicial to appellants but is quite a reasonable procedure and being a remedial provision is ancillary – Rule 5 provides an additional speedier remedy to carry out the objective of Act of 2006 – Framing of such Rule by State Government does not reveal that authority has been exceeded or the scope of Act has been widened – Object of provision is to ensure recovery – Rule 5 has been rightly enacted to ensure that small, micro and medium industries do not suffer – Rule 5 cannot be held to be ultra vires – Appeal dismissed. [Power Machines India Ltd. Vs. State of M.P.]** **(SC)...2043**

सूक्ष्म एवं लघु उद्यम सुविधा परिषद् नियम, म.प्र., 2006, नियम 5, सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 30 व 18 एवं माध्यंस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 व 36 – भूमि राजस्व का बकाया के रूप में अवार्ड राशि की वसूली – 2006 के नियमों के नियम 5 को अधिकारातीत घोषित किये जाने हेतु उच्च न्यायालय के समक्ष प्रस्तुत याचिका खारिज की गई – को चुनौती – अभिनिर्धारित – एक बार जब मध्यस्थम अवार्ड पारित किया गया है, 1996 के अधिनियम की धारा 34 के अंतर्गत समय व्यपगत होने के पश्चात् अपीलार्थीगण से उसके आदर की अपेक्षा थी – नियम 5, निष्पादन की प्रक्रिया को सरल बनाना आशयीत करता है जो कि भेदभावपूर्ण, कठोर या भीषण एवं अपीलार्थीगण पर प्रतिकूल प्रभाव डालने वाला नहीं है बल्कि काफी युक्तियुक्त प्रक्रिया है तथा उपचारात्मक उपबंध होने के नाते आनुशंगिक है – नियम 5, 2006 के अधिनियम के उद्देश्य को पूरा करने के लिए एक अतिरिक्त त्वरित उपचार है – राज्य सरकार द्वारा उक्त नियम विरचित किया जाना यह प्रकट नहीं करता कि प्राधिकारी का अतिलंघन किया गया है या अधिनियम की व्याप्ति का विस्तार किया गया है – उपबंध का उद्देश्य वसूली को सुनिश्चित करना है – नियम 5 को उचित रूप से अधिनियमित किया गया है, यह सुनिश्चित करने के लिए कि लघु, सूक्ष्म एवं मध्यम उद्योगों को सहना न पड़े – नियम 5 को अधिकारातीत नहीं ठहराया जा सकता – अपील खारिज। (पॉवर मशीन्स् इंडिया लि. वि. म.प्र. राज्य) **(SC)...2043**

INDEX

Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 30 & 18 – See – Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5 [Power Machines India Ltd. Vs. State of M.P.] (SC)...2043

सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 30 व 18 – देखें – सूक्ष्म एवं लघु उद्यम सुविधा परिषद् नियम, म.प्र., 2006; नियम 5 (पॉवर मशीन्स् इंडिया लि. वि. म.प्र. राज्य) (SC)...2043

Mohammedan Law, Clause 311 & 312 – See – Muslim Women (Protection of Rights on Divorce) Act, 1986, Section 3 [Syed Parvez Ali Vs. Smt. Nahila Akhtar] ...1776

मुस्लिम विधि, खंड 311 व 312 – देखें – मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम, 1986, धारा 3 (सैय्यद परवेज अली वि. श्रीमती नाहिला अख्तर) ...1776

Motor Vehicles Act (59 of 1988), Section 166 & 173 – *Disability – Compensation – Quantum* – In an accident, appellant was severly injured and during treatment, his left leg was amputated from thigh portion – As per doctor certificate, he sustained 90% permanent disability – MACT recorded 60% permanent disability and holding his income to be Rs. 15000 p.a. and applying multiplier of 18, awarded total amount of Rs. 2,75,000 where Rs. 60,000 was awarded for artificial limb – In appeal, the High Court holding his income to be Rs. 24,000 p.a. and applying the multiplier of 17, enhanced the total amount to Rs. 3,57,800 – Challenge to – Held – Appellant was 29 years old at the time of accident and after suffering this major injury in accident, with the amputated leg, he cannot pursue his livelihood as a driver (*as he used to be*) or daily wage labourer and further taking into account doctor's certificate showing 90% permanent disability, holding his income to be Rs. 24,000 p.a. and applying multiplier of 17, the compensation amount is enhanced to Rs. 5,20,000 which includes Rs. 1,00,000 for cost of artificial limb instead of Rs. 60,000 as awarded earlier – Appellant also entitled for interest @ 6% p.a. from date of claim till realization of amount – Appeal allowed. [Lal Singh Marabi Vs. National Insurance Co. Ltd.] (SC)...1619

मोटर यान अधिनियम (1988 का 59), धारा 166 व 173 – निःशक्तता – प्रतिकर – मात्रा – एक दुर्घटना में, अपीलार्थी गंभीर रूप से घायल हुआ एवं उपचार

के दौरान उसके बांयें पैर का जांघ के हिस्से से अंगविच्छेद किया गया – चिकित्सक के प्रमाणपत्र के अनुसार, उसने 90% स्थाई निःशक्तता सहन की – मोटर दुर्घटना दावा अधिकरण ने 60% स्थाई निःशक्तता अभिलिखित की तथा रू. 15000 प्रति वर्ष उसकी आय अभिनिर्धारित की एवं 18 का गुणक लागू करते हुए कुल रू. 2,75,000 की राशि अवार्ड की, जहां रू. 60,000 कृत्रिम पैर हेतु अवार्ड किया गया था – अपील में, उच्च न्यायालय ने उसकी आय रू. 24,000 प्रति वर्ष अभिनिर्धारित की और 17 का गुणक लागू करते हुए कुल राशि बढ़ाकर रू. 3,57,800 की – को चुनौती – अभिनिर्धारित – अपीलार्थी, दुर्घटना के समय 29 वर्ष की आयु का था और दुर्घटना में यह मुख्य चोट सहन करने के पश्चात्, अंगविच्छेदित पैर के साथ वह वाहन चालक *(जो कि वह हुआ करता था)* या दैनिक वेतन के श्रमिक के रूप में अपनी जीविका जारी नहीं रख सकता और इसके अतिरिक्त 90% स्थाई निःशक्तता दर्शाते हुए चिकित्सक का प्रमाणपत्र विचार में लेते हुए, उसकी आय रू. 24,000 प्रति वर्ष ठहराते हुएं एवं 17 का गुणक लागू करते हुए प्रतिकर की राशि बढ़ाकर रू. 5,20,000 की गई जिसमें कृत्रिम पैर हेतु पूर्व में अवार्ड किये गये रू. 60,000 की बजाए रू. 1,00,000 शामिल है – अपीलार्थी, दावे की दिनांक से राशि की वसूली तक 6% प्रतिवर्ष की दर से ब्याज का भी हकदार – अपील मंजूर। (लाल सिंह मरावी वि. नेशनल इंश्योरेन्स कं. लि.) (SC)...1619

Motor Vehicles Act (59 of 1988), Section 166 & 173 – Liability of Insurance Company – **Held – In application u/S 166 of the Act of 1988, profession of deceased shown as cleaner – It is clear that statement of respondent no. 1 is totally false and concocted to escape from his liability because deceased was not possessing driving license at the time of accident – Respondent no. 1 is owner and driver of offending vehicle and has failed to prove that at time of accident, tractor was used for agricultural purpose for which it was insured – Insurance company not liable to pay compensation – Appeal allowed. [Shriram General Insurance Co. Ltd. Vs. Jagdish Prasad Dubey]** ...*122

मोटर यान अधिनियम (1988 का 59), धारा 166 व 173 – बीमा कम्पनी का दायित्व – अभिनिर्धारित – 1988 के अधिनियम की धारा 166 के अंतर्गत आवेदन में, मृतक का व्यवसाय क्लीनर के रूप में दर्शाया गया है – यह स्पष्ट है कि अपने दायित्वों से बचने हेतु प्रत्यर्थी क्र. 1 के द्वारा दिये गये कथन पूर्ण रूप से मिथ्या एवं मनगढ़ंत है क्योंकि दुर्घटना के समय मृतक के पास ड्रायविंग अनुज्ञप्ति नहीं थी – प्रत्यर्थी क्र. 1 आक्षेपित वाहन का स्वामी एवं चालक है तथा यह साबित करने में विफल रहा कि दुर्घटना के समय, ट्रेक्टर का उपयोग कृषि प्रयोजन के लिए किया गया था जिसके लिए वह बीमाकृत था – बीमा कम्पनी प्रतिकर का भुगतान करने हेतु दायी नहीं है – अपील मंजूर। (श्रीराम जनरल इंश्योरेंस कं. लि. वि. जगदीश प्रसाद दुबे) ...*122

INDEX

Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Amount of Maintenance – Quantum – **Trial Court directed husband to pay Rs. 5 lacs to wife as lumpsum maintenance alongwith Rs. 51,000 towards amount of Mahr – In revision, the same was upheld by the Revisional Court – Held – It is not disputed that husband use to work at Dubai and he was a sales person, hence his potentiality of earning cannot be doubted – Finding of fact recorded by the Courts below do not warrant interference u/S 482 Cr.P.C. – Petition dismissed with cost of Rs. 10,000, which shall be paid to wife. [Syed Parvez Ali Vs. Smt. Nahila Akhtar]** ...1776

मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम (1986 का 25), धारा 3 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – भरणपोषण की राशि – मात्रा – विचारण न्यायालय ने पति को 51,000 रू. की मेहर की राशि के साथ 5 लाख रू. एकमुश्त भरण पोषण के रूप में पत्नी को दिये जाने हेतु निदेशित किया – पुनरीक्षण में, उक्त को पुनरीक्षण न्यायालय द्वारा कायम रखा गया था – अभिनिर्धारित – यह विवादित नहीं है कि पति दुबई में काम करता है तथा एक विक्रेता व्यक्ति था इसलिए उसकी आय की क्षमता पर संदेह नहीं किया जा सकता – निचले न्यायालय द्वारा अभिलिखित किये गये तथ्य के निष्कर्ष पर दण्ड प्रक्रिया संहिता की धारा 482 के अंतर्गत किसी हस्तक्षेप की आवश्यकता नहीं – याचिका, 10,000 रू. के व्यय के साथ खारिज की गई, जो कि पत्नी को भुगतान किये जाऐंगे। (सैय्यद परवेज अली वि. श्रीमती नाहिला अख्तर) ...1776

Muslim Women (Protection of Rights on Divorce) Act (25 of 1986), Section 3 and Mohammedan Law, Clause 311 & 312 – Maintenance – Entitlement – "Divorced Women" – Mode of Talak – "Talak ahsan" – **Wife filed application u/S 3 of the Act of 1986 against husband before the JMFC – Magistrate allowed the application holding the wife to be a divorced woman – Husband filed revision whereby the same was dismissed – Challenge to – Husband submitted that he communicated and pronounced Talak once, which is revocable and is not complete Talak and hence wife is not a divorced woman – Held – As per Mohammedan Law, such single pronouncement falls under clause 311(1) *"Talak ahsan"* which is revocable under Clause 312(1) – *"Talak ahsan"* becomes irrevocable and complete on expiration of iddat period until husband resumes sexual intercourse during period of iddat to make it revocable by express or implied act – In the present case,**

husband has not taken any plea in written statement that adopting a mode specified in Clause 312(1) and substantiating by evidence, talak was revoked by him – Wife is a "Divorced Woman" and her application u/S 3 of the Act of 1986 is maintainable – Trial Court rightly allowed the application – Petition dismissed. [Syed Parvez Ali Vs. Smt. Nahila Akhtar] ...1776

मुस्लिम स्त्री (विवाह विच्छेद पर अधिकार संरक्षण) अधिनियम (1986 का 25), धारा 3 एवं मुस्लिम विधि, खंड 311 व 312 – भरणपोषण – हकदारी – "तलाकशुदा महिला" – तलाक की रीति – "तलाक अहसन" – पत्नी ने न्यायिक मजिस्ट्रेट प्रथम श्रेणी के समक्ष पति के विरूद्ध 1986 के अधिनियम की धारा 3 के अंतर्गत आवेदन प्रस्तुत किया – मजिस्ट्रेट ने पत्नी को एक तलाकशुदा महिला ठहराते हुए आवेदन मंजूर किया – पति ने पुनरीक्षण प्रस्तुत किया जिससे उक्त को खारिज किया गया था – को चुनौती – पति ने निवेदित किया कि उसने एक बार तलाक का संवाद तथा उच्चारण किया, जो कि प्रतिसंहरणीय है एवं पूर्ण तलाक नहीं है तथा इसलिए पत्नी तलाकशुदा महिला नहीं है – अभिनिर्धारित – मुस्लिम विधि के अनुसार, इस तरह की एक घोषणा खंड 311(1) "तलाक अहसन" के अंतर्गत आती है, जो कि खंड 312(1) के अंतर्गत प्रतिसंहरणीय है – इद्दत अवधि समाप्त होने पर तलाक अहसन प्रतिसंहरणीय एवं पूर्ण हो जाता है जब तक कि पति अभिव्यक्त या विवक्षित कृत्य द्वारा इसे प्रतिसंहरणीय बनाने हेतु इद्दत अवधि के दौरान पुनः लैंगिक संभोग नहीं करता – वर्तमान प्रकरण में, पति ने लिखित कथन में कोई अभिवाक् नहीं किया है कि खंड 312(1) में विनिर्दिष्ट ढंग अंगीकृत कर एवं साक्ष्य द्वारा सिद्ध कर उसके द्वारा तलाक प्रतिसंहृत किया गया था पत्नी एक "तलाकशुदा महिला" है तथा 1986 के अधिनियम की धारा 3 के अंतर्गत उसका आवेदन पोषणीय है – विचारण न्यायालय ने उचित रूप से आवेदन मंजूर किया – याचिका खारिज। (सैय्यद परवेज अली वि. श्रीमती नाहिला अख्तर) ...1776

Nagar Sudhar Nyas (Nirsan) Adhiniyam (22 of 1994), Section 3 – See – Town Improvement Trust Act, (M.P.) 1960, Section 72(2) **[Arvind Kumar Jain Vs. State of M.P.]** **(DB)...1623**

नगर सुधार न्यास (निरसन) अधिनियम (1994 का 22), धारा 3 – देखें – नगर सुधार न्यास अधिनियम, (म.प्र.) 1960, धारा 72(2) (अरविन्द कुमार जैन वि. म. प्र. राज्य) **(DB)...1623**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/15(C) – Testimony of Police Officer – Credibility **– Held – Law is well settled that testimony of a police officer cannot be thrown overboard only on the ground that he is a police officer – If testimony of a police officer on due appreciation is found to be trustworthy and free from material**

contradictions and anomalies, conviction can be recorded on the basis of such evidence. [Badri Singh Vs. State of M.P.] (DB)...1952

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

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

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराऐं 8/15(सी), 42, 50 व 57 – दोषसिद्धि तथा दण्डादेश की मात्रा – साक्षीगण का परिसाक्ष्य – अनन्य एवं मानपूर्वक कब्जा– अपीलार्थी के मकान के गलियारे/बरामदे से 450 किलोग्राम अफीम भूसा जब्त किया गया था – अभिनिर्धारित – भू–अभिलेखों के अनुसार, मकान अपीलार्थी के नाम पर अभिलिखित है – ग्राम पंचायत के सचिव ने शपथपूर्वक यह कथन किया कि बरामदे के साथ वह मकान जहाँ से विनिषिद्ध बरामद हुआ था, अपीलार्थी का है तथा उसके कब्जे में है – यह साबित होता है कि विनिषिद्ध, अपीलार्थी के अनन्य एवं मानपूर्वक कब्जे से बरामद हुआ था – धारा 42 तथा 57 के अंतर्गत अनुपालन सम्यक् रूप से स्थापित किया गया है – विस्तृत प्रतिपरीक्षण के बावजूद, अभियोजन साक्षीगण में कोई तात्विक दुर्बलता नहीं – आगे अभिनिर्धारित – अधिरोपित दण्डादेश अधिक है, अतः 15 वर्ष के कठोर कारावास को 12 वर्ष के कठोर कारावास तक कम किया गया है – पुनरीक्षण अंशतः मंजूर। (बद्री सिंह वि. म.प्र. राज्य) (DB)...1952

INDEX

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/22, 29, 36-A(3) & 37 – See – Criminal Procedure Code, 1973, Section 438 [Ravi Jain Vs. Central Bureau of Narcotics] ...*121

स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8/22, 29, 36–ए(3) व 37 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 438 (रवि जैन वि. सेन्ट्रल ब्यूरो ऑफ नारकोटिक्स) ...*121

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

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

Negotiable Instruments Act (26 of 1881), Section 138 & 141 – Quashment – Director of Company – Respondent filed a complaint case whereby offence u/S 138 of the Act of 1881 was registered against petitioner and her husband, both being Director of a company – Held – Nothing has been averred against the petitioner except that she is the wife of accused and is a Director of the Company – Husband who was the director of the company made all the transactions and was responsible for it – Earlier also cheques were issued by the husband which were dishonoured and subsequently letter of apology was also written by husband and further eight cheques were signed and issued by the husband – Petitioner was a dormant partner/Director of the company, not having any active role in transactions of the company – Under these circumstances, summoning the accused/petitioner by trial Court seems to be not justified – Order passed by trial Court against the petitioner is set aside – Petition allowed. [Archana Bagla Vs. M/s. Betul Oil Ltd.] ...*86

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 व 141 – अभिखंडन – कम्पनी का निदेशक – प्रत्यर्थी ने एक परिवाद प्रस्तुत किया जिससे याची तथा उसके पति, दोनों को कम्पनी के निदेशक होने के नाते उनके विरूद्ध 1881 के

अधिनियम की धारा 138 के अंतर्गत अपराध पंजीबद्ध किया गया था – अभिनिर्धारित – याची के विरूद्ध कुछ प्रकथित नहीं किया गया सिवाय इसके कि वह अभियुक्त की पत्नी है तथा कम्पनी की निदेशक है – पति जो कि कम्पनी का निदेशक था, ने सभी संव्यवहार किये तथा उसके लिये उत्तरदायी था – पति द्वारा पूर्व में भी चेक जारी किये गये थे जो कि अनादृत हुये थे एवं तत्पश्चात् पति द्वारा क्षमा याचना का पत्र भी लिखा गया था तथा आगे पति द्वारा 8 चेक पर हस्ताक्षर किये गये एवं जारी किये गये थे – याची कम्पनी की एक निष्क्रिय भागीदार/निदेशक थी, जिसकी कम्पनी के संव्यवहारों में कोई सक्रिय भूमिका नहीं रही – इन परिस्थितियों में, विचारण न्यायालय द्वारा अभियुक्त/याची को समन किया जाना न्यायोचित प्रतीत नहीं होता – विचारण न्यायालय द्वारा याची के विरूद्ध पारित किया गया आदेश अपास्त – याचिका मंजूर। (अर्चना बागला वि. मे. बैतूल ऑयल लि.) ...*86

Negotiable Instruments Act (26 of 1881), Section 138(b) & (c) – Demand Notice – Service of Notice – Accrual of Cause of Action **– Two complaint cases registered against applicant/accused – Objections filed by complainant on the ground that cases were filed prior to expiry of 15 days period from the date of receiving notices – Objections dismissed – Challenge to – Held – Commission of offence and its prosecutability are two distinct issues – When cheque is dishonoured, offence is committed but its prosecutability is based on conditions as specified in Section 138(a), (b) and (c) – In the present case, notice was returned unclaimed on 01.01.2008 and 03.01.2008 and complaints were filed on 14.01.2008, prior to expiry of 15 days – Cause of action to take cognizance and to prosecute the complainant do not arise – Date of return of notice as unclaimed will be the date for reckoning the period of 15 days – Order of cognizance set aside – Application allowed. [Poojan Trading Co. (M/s.) Vs. M/s. Betul Oils & Floors Ltd.]** ...2290

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138(बी) व (सी) – मांग नोटिस – नोटिस की तामील – वाद हेतुक का प्रोदभवन – आवेदक/अभियुक्त के विरूद्ध दो परिवाद प्रकरण पंजीबद्ध किये गये – परिवादी द्वारा इस आधार पर आक्षेप प्रस्तुत किये गये कि प्रकरण, नोटिस प्राप्त होने की तिथि से 15 दिनों की अवधि के अवसान से पूर्व प्रस्तुत किये गये थे – आक्षेप खारिज – को चुनौती – अभिनिर्धारित – अपराध कारित किया जाना तथा उसकी अभियोजनीयता दो भिन्न विवाद्यक हैं – जब चैक अनादृत होता है, अपराध कारित होता है परन्तु उसकी अभियोजनीयता धारा 138 (ए), (बी) तथा (सी) में विनिर्दिष्ट की गई शर्तों पर आधारित है – वर्तमान प्रकरण में, दिनांक 01.01.2008 तथा 03.01.2008 को नोटिस अदावाकृत वापस किया गया था एवं परिवाद दिनांक 14.01.2008 को, 15 दिनों के अवसान के पूर्व प्रस्तुत किये गये थे – संज्ञान लेने तथा

परिवादी को अभियोजित करने का वाद हेतुक उत्पन्न नहीं होता – अदावाकृत के रूप में नोटिस वापस किये जाने की तिथि, 15 दिनों की अवधि की गणना करने की तिथि होगी – संज्ञान का आदेश अपास्त – आवेदन मंजूर। (पूजन ट्रेडिंग कं. (मे.) वि. मे. बैतूल ऑयल एण्ड फ्लोर्स लि.) ...2290

Negotiable Instruments Act (26 of 1881), Section 138(b) & (c) and General Clauses Act (10 of 1897), Section 27 – Service of Notice – Interpretation – **Section 27 of the Act of 1897 indicates expression "served, "give" or "sent" whereas Section 138(c) of Act of 1881 indicates "giving of notice" and "accrual of cause of action" – Therefore for the purpose of Section 138, Court ought to construe the word "give" as "receive". [Poojan Trading Co. (M/s.) Vs. M/s. Betul Oils & Floors Ltd.]** ...2290

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138(बी) व (सी) एवं साधारण खण्ड अधिनियम (1897 का 10), धारा 27 – नोटिस की तामील – निर्वचन – 1897 के अधिनियम की धारा 27 अभिव्यक्ति "तामील" "देना" या "भेजना" उपदर्शित करती है जबकि अधिनियम 1881 की धारा 138(सी) "नोटिस दिया जाना" एवं "वाद हेतुक का प्रोद्भवन" उपदर्शित करती है – इसलिए धारा 138 के प्रयोजन हेतु न्यायालय को शब्द "देना" का अर्थ "प्राप्त" के रूप में लगाना चाहिए। (पूजन ट्रेडिंग कं. (मे.) वि. मे. बैतूल ऑयल एण्ड फ्लोर्स लि.) ...2290

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

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

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

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

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 39 – See – Constitution – Article 226/227 **[Choti Patel (Smt.) Vs. State of M.P.]** ...*89

INDEX

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 39 – देखें – संविधान – अनुच्छेद 226/227 (छोटी पटेल (श्रीमती) वि. म.प्र. राज्य) ...*89

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 – Election Petition – Recounting of Votes – **Petitioner elected as a Sarpanch by margin of one votes – Election petition filed by respondent No.1 whereby prescribed authority issued direction for recounting of votes – Challenge to – Held – Prescribed authority instead of dwelling upon the allegations made in election petition, without formulating issues directed for recounting – No material evidence nor any findings that 20 votes were wrongly rejected – Prescribed authority not justified in directing recounting of votes merely because respondent No.1 lost by a margin of one vote – Petition allowed. [Manvati Pandey (Smt.) Vs. Smt. Indira Chaturvedi] ...*104**

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

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

[Sandhaya Mihilal Rai (Smt.) Vs. State of M.P.] ...1832

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 एवं पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 72, 77 व 81 –निर्वाचन याचिका – वैकल्पिक उपचार – याची चार मतों से सरपंच के रूप में निर्वाचित घोषित हुआ – परिणाम की घोषणा होने के पश्चात् मतपेटियों की लूट – निर्वाचन अधिकारी ने राज्य निर्वाचन आयोग को सूचना दी जिस पर पुनर्मतदान निर्देशित करते हुए आदेश जारी किया गया था – पुनर्मतदान के पश्चात्, प्रत्यर्थी क्र. 6 निर्वाचित घोषित किया गया था – को चुनौती – अभिनिर्धारित – 1995 के नियमों के नियम 72 के अनुसार, पुनर्मतदान केवल तब निर्देशित किया जा सकता है जब नियम 81 के अंतर्गत घोषणा होने से पूर्व मतपेटियां नष्ट हो गई हों – वर्तमान प्रकरण में, निर्वाचन अधिकारी द्वारा नियम 81 के अंतर्गत परिणाम घोषित नहीं किया गया है, इसलिए यह नहीं कहा जा सकता कि याची को निर्वाचित घोषित किया गया था – याची के पास 1993 के अधिनियम की धारा 122 के अंतर्गत निर्वाचन याचिका का वैकल्पिक उपचार है – याचिका खारिज। (संध्या मिहीलाल राय (श्रीमती) वि. म.प्र. राज्य) ...1832

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

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

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

दण्ड संहिता (1860 का 45), धारा 84 व 302 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 –हत्या – चित्तविकृति का अभिवाक् – सबूत – अभियुक्त का परीक्षण– अभिनिर्धारित – मृतक पर हमला करने के पश्चात्, अपीलार्थी घटनास्थल से भाग गया, गिरफ्तारी से बचने के लिए न केवल पहाड़ी पार की बल्कि जलाशय में छलांग भी लगा दी – उसने अपराध के साक्ष्य को मिटाने की कोशिश

करते हुए, अपने रक्त रंजित कपड़ों को धोने का प्रयत्न भी किया – घटना के समय, एक विकृतचित्त वाला व्यक्ति नहीं कहा जा सकता – चित्तविकृति के अभिवाक् को विनिर्दिष्ट रूप से लिये जाने तथा साबित करने की आवश्यकता है – अपीलार्थी ने इस संबंध में किसी साक्षीगण का परीक्षण नहीं किया है और न ही ऐसी अस्वस्थता के बारे में दण्ड प्रक्रिया संहिता की धारा 313 के अंतर्गत अपने परीक्षण में कोई उल्लेख किया है – भारतीय दण्ड संहिता की धारा 84 के अंतर्गत संरक्षण के योग्य नहीं। (रामसुजान कोल उर्फ मुण्डा वि. म.प्र. राज्य) (DB)...*110

Penal Code (45 of 1860), Section 115 & 120-B and Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Framing of Charge – Extra Judicial Confession of Co-accused **– Revision against the order framing charge against applicant u/S 115 and 120-B IPC – On basis of confessional statement of one co-accused, offence registered against applicant – Held – FIR lodged by complainant is based only on information by one of the co-accused – Mobile call details only shows that on date of incident co-accused talked with each other but only on this basis it cannot be inferred that applicant hatched conspiracy with other co-accused for murdering complainant – Confession of co-accused is no evidence at all, it is just a corroborative piece of evidence against applicant and alone cannot be used as a foundation for conviction of accused – No substantive evidence on record to frame charge against applicant – Applicant discharged – Revision allowed. [Chandar Singh Vs. State of M.P.] ...*115**

दण्ड संहिता (1860 का 45), धारा 115 व 120–बी एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 – आरोप विरचित किया जाना – सह–अभियुक्त की न्यायिकेतर संस्वीकृति – भारतीय दंड संहिता की धारा 115 एवं 120–बी के अंतर्गत आवेदक के विरूद्ध आरोप विरचना के आदेश के विरूद्ध पुनरीक्षण – एक सह–अभियुक्त की संस्वीकृति के कथन के आधार पर, आवेदक के विरूद्ध अपराध पंजीबद्ध किया गया – अभिनिर्धारित – परिवादी द्वारा दर्ज किया गया प्रथम सूचना प्रतिवेदन केवल सह–अभियुक्तगण में से किसी एक द्वारा दी गई सूचना पर आधारित है – मोबाईल के कॉल विवरण केवल यह दर्शाते हैं कि घटना दिनांक को सह–अभियुक्तों ने आपस में बातचीत की थी परन्तु केवल इस आधार पर यह निष्कर्ष नहीं निकाला जा सकता कि आवेदक ने परिवादी की हत्या करने के लिये अन्य सह–अभियुक्त के साथ भाड़यंत्र रचा था – सह–अभियुक्त की संस्वीकृति कोई साक्ष्य नहीं है, यह आवेदक के विरूद्ध साक्ष्य का, केवल एक संपोषक भाग है तथा अभियुक्त की दोषसिद्धि के लिए आधार के रूप में अकेले उपयोग नहीं किया जा सकता – आवेदक के विरूद्ध आरोप विरचित करने हेतु अभिलेख पर कोई सारभूत साक्ष्य नहीं

– आवेदक को आरोपमुक्त किया गया – पुनरीक्षण मंजूर। (चंदर सिंह वि. म.प्र. राज्य) ...*115

Penal Code (45 of 1860), Sections 294, 323, 506 & 34 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(x) [Mohsin Vs. State of M.P.] ...*118

दण्ड संहिता (1860 का 45), धाराएँ 294, 323, 506 व 34 – देखें – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989, धारा 3(1)(x) (मोहसिन वि. म.प्र. राज्य) ...*118

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

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

Penal Code (45 of 1860), Section 300 Exception 4, 302/34, 326 & 304 Part I and II – Murder – Conviction – Intention – Solitary Blow – Appellant Shrichand convicted u/S 302/34 IPC – Held – Regarding

payment of price of sheaves grass supplied/sold by appellants to deceased, appellants had an altercation with deceased where Shrichand struck a solitary axe blow on back of deceased – Held – There was a sudden quarrel/fight and appellant in heat of passion inflicted solitary blow without premeditation on back of deceased which is not a vital part of human body – No intention to cause death – Act would fall under exception 4 to Section 300 IPC – Injury caused by dangerous weapon like axe which could likely to cause death, therefore act would not come u/S 304 (Part I) but u/S 304 (Part II) IPC – Conviction of Shrichand modified to one u/S 304 (Part II) IPC – Sentence of life imprisonment reduced to 10 years R.I. – Appeal partly allowed. [Shrichand Vs. State of M.P.] (DB)...2231

दण्ड संहिता (1860 का 45), धारा 300 अपवाद 4, 302/34, 326 व 304 भाग I व II – हत्या – दोषसिद्धि – आशय – एकमात्र वार – अपीलार्थी श्रीचंद को धारा 302/34 भा.दं.सं. के अंतर्गत दोषसिद्ध किया गया – अभिनिर्धारित – अपीलार्थीगण द्वारा मृतक को प्रदाय/विक्रय किये गये मुठ्टा घास की कीमत के भुगतान के संबंध में, अपीलार्थीगण का मृतक के साथ कहासुनी हुई जहां श्रीचंद ने मृतक की पीठ पर कुल्हाड़ी का एकमात्र वार किया – अभिनिर्धारित – अचानक झगड़ा/लड़ाई हुई थी और अपीलार्थी ने भावनावेग में, बिना पूर्व चिंतन मृतक की पीठ, जो कि मानव शरीर का कोमल अंग नहीं है, पर एकमात्र वार किया – मृत्यु कारित करने का कोई आशय नहीं – कृत्य, धारा 300 भा.दं.सं. के अपवाद 4 के अंतर्गत आयेगा – कुल्हाड़ी जैसे घातक शस्त्र से चोट कारित की गई जिससे मृत्यु कारित होने की संभावना हो सकती है इसलिए कृत्य, धारा 304 (भाग I) के अंतर्गत नहीं बल्कि धारा 304 (भाग II) भा.दं.सं. के अंतर्गत आएगा – श्रीचंद की दोषसिद्धि को परिवर्तित कर धारा 304 (भाग II) भा.दं.सं. के अंतर्गत किया गया – आजीवन कारावास के दण्डादेश को घटाकर 10 वर्ष सश्रम कारावास किया गया – अपील अंशतः मंजूर। (श्रीचंद वि. म.प्र. राज्य) (DB)...2231

Penal Code (45 of 1860), Section 302 – Conviction – Life Imprisonment – Appreciation of Evidence – Appellant was tenant of deceased **– Regarding demand of payment of rent, dispute occurred and appellant assaulted the deceased with a wood which resulted in his death – Held – No defence witness was examined – Prosecution witness Banti clearly deposed that he had witnessed the beating given by appellant to deceased and his statement was materially corroborated by two other prosecution witnesses which inspires confidence in prosecution story – Appellant rightly convicted – Appeal dismissed. [Madhav Prasad Vs. State of M.P.] (DB)...1934**

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

Penal Code (45 of 1860), Section 302 – Intention to Kill **– Held – Looking to conduct of appellant that after quarrel he left and came back with his father and other companions and gave as many as 11 blows to deceased on chest, abdomen and on other vital parts of the body which caused injuries to many vital parts like omentum, large intestine and small intestine etc – In these circumstances it is proved beyond doubt that appellant had intended to kill the deceased. [Pappu @ Chandra Prakash Vs. State of M.P.] (DB)...1724**

दण्ड संहिता (1860 का 45), धारा 302 – हत्या का आशय – अभिनिर्धारित – अपीलार्थी के आचरण को देखते हुये कि झगड़े के पश्चात् वह चला गया अपने पिता तथा अन्य साथियों के साथ वापस आया एवं मृतक की छाती, पेट तथा शरीर के अन्य महत्वपूर्ण अंगों पर 11 वार किये, जिससे कि ओमेन्टम, बड़ी आंत और छोटी आंत इत्यादि जैसे कई महत्वपूर्ण अंगों में चोटें कारित हुई – इन परिस्थितियों में संदेह से परे यह साबित होता है कि अपीलार्थी का मृतक की हत्या करने का आशय था। (पप्पू उर्फ चन्द्र प्रकाश वि. म.प्र. राज्य) (DB)...1724

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

tested on touchstone of motive – Accused rightly convicted – Appeal dismissed. [Ramsujan Kol @ Munda Vs. State of M.P.] (DB)...*110

दण्ड संहिता (1860 का 45), धारा 302 –हत्या – दोषसिद्धि – साक्ष्य का मूल्यांकन – चक्षुदर्शी साक्षीगण – संबंधित साक्षीगण – हेतु –शस्त्र की बरामदगी– मृतक से क्रय किये गये अंडों के मूल्य का भुगतान करने में अभियुक्त की विफलता के कारण विवाद उत्पन्न हुआ – अभियुक्त ने मृतक पर कुल्हाड़ी से हमला किया तथा उसके सिर, गर्दन एवं पीठ पर आठ चोटें पहुंचाई – अभिनिर्धारित – चार चक्षुदर्शी साक्षीगण हैं जिन्होंने घटना के बारे में कथन किया है एवं उनके परिसाक्ष्य पर अविश्वास करने हेतु कुछ नहीं है – मात्र इस कारण से उन पर अविश्वास नहीं किया जा सकता कि वे मृतक से संबंधित थे क्योंकि जलाऊ लकड़ियां एकत्रित करने के लिए एक साथ जाना, परिवार के सदस्यों के लिए स्वाभाविक था – मात्र अपराध के शस्त्र की बरामदगी में अन्वेषण एजेन्सी की विफलता, संपूर्ण अभियोजन प्रकरण को अविश्वसनीय नहीं बनाती – आगे अभिनिर्धारित – जहां एक प्रकरण प्रत्यक्ष साक्ष्य पर आधारित है, दोषसिद्धि की सत्यता को हेतु की कसौटी पर नहीं परखा जा सकता – अभियुक्त उचित रूप से दोषसिद्ध किया गया – अपील खारिज। (रामसुजान कोल उर्फ मुण्डा वि. म.प्र. राज्य) **(DB)...*110**

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

दण्ड संहिता (1860 का 45), धारा 302 –हत्या – दोषसिद्धि – आजीवन कारावास – बाल साक्षी का परिसाक्ष्य – विश्वसनीयता – साक्ष्य का मूल्यांकन – अभियुक्त ने मृतक पर कुल्हाड़ी से हमला किया – बाल साक्षी की आयु लगभग 11 वर्ष – अभिनिर्धारित – यह सुस्थापित विधि है कि बाल साक्षी के साक्ष्य को अपने आप में अस्वीकार किया जाना अपेक्षित नहीं है, परंतु न्यायालय, प्रज्ञा के नियम के अनुसार सूक्ष्म

संवीक्षा के साथ ऐसे साक्ष्य पर विचार करता है तथा ऐसे साक्ष्य की गुणवत्ता तथा उसकी विश्वसनीयता के बारे में विश्वास हो जाने पर, बाल साक्षी के अभिसाक्ष्य को स्वीकार करते हुए, दोषसिद्धि आधारित करता है – वर्तमान प्रकरण में, बाल साक्षी ने कोई विरोधाभासी कथन नहीं किये हैं तथा उसके अभिसाक्ष्य में कोई तात्विक विसंगति नहीं पाई गई है – अन्य साक्षीगण के कथन को प्रतिपरीक्षण में चुनौती नहीं दी गई एवं मरोसेमंद हैं – बाल साक्षी के कथन की अन्य साक्षीगण द्वारा संपुष्टि की गई – अभियुक्त द्वारा न्यायिकेत्तर संस्वीकृति तथा अंतिम बार साथ देखे जाने की परिस्थितियां भी साबित हुई हैं – विचारण न्यायालय ने अभियुक्त को उचित रूप से दोषसिद्ध किया – अपील खारिज। (रतिया बाई वि. म.प्र. राज्य) (DB)...*111

Penal Code (45 of 1860), Section 302 and Evidence Act (1 of 1872), Section 32 – Conviction – Dying Declaration – Identity of Accused – **Appellant gave 11 blows with knife to deceased, who was taken to hospital where he lodged dehati Nalishi – Doctor recorded the dying declaration – Held – Evidence of the eye witnesses is duly corroborated by the testimony of the other prosecution witnesses and by Dehati Nalishi – Further held – Dying declaration is a substantive piece of evidence and accused can be convicted for the offence u/S 302 IPC on the sole basis of dying declaration – Dying declaration can be used for corroboration of eye witnesses – Deceased has stated in the dying declaration that he was assaulted by Pappu son of Dayaram Lahri, and in terms of such submission, he gave a complete address and identification of appellant – Doctor also confirmed that at the time of recording of dying declaration, deceased was in a fit condition to give his statement – Dying declaration is trustworthy and is acceptable – Trial Court rightly convicted the appellant – Appeal dismissed. [Pappu @ Chandra Prakash Vs. State of M.P.]** (DB)...1724

दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – दोषसिद्धि – मृत्युकालिक कथन – अभियुक्त की पहचान – अपीलार्थी ने मृतक पर चाकू से 11 वार किये, जिसे चिकित्सालय ले जाया गया जहां उसने देहाती नालिशी दर्ज कराई – चिकित्सक ने मृत्युकालिक कथन अभिलिखित किये – अभिनिर्धारित – चक्षुदर्शी साक्षीगण के साक्ष्य की अन्य अभियोजन साक्षीगण के परिसाक्ष्य से तथा देहाती नालिशी द्वारा सम्यक् रूप से संपुष्टि की गई – आगे अभिनिर्धारित – मृत्युकालिक कथन, साक्ष्य का एक सारभूत हिस्सा है तथा अभियुक्त को मृत्युकालिक कथन के एकमात्र आधार पर भारतीय दण्ड संहिता की धारा 302 के अंतर्गत दोषसिद्ध किया जा सकता है – मृत्युकालिक कथन को चक्षुदर्शी साक्षीगण की संपुष्टि हेतु उपयोग किया जा सकता है – मृतक ने मृत्युकालिक कथन

में यह कथन किया है कि उस पर पप्पू पुत्र श्री दयाराम लहरी द्वारा हमला किया गया था तथा ऐसे निवेदन के संबंध में, उसने अपीलार्थी का पूर्ण पता एवं पहचान दी – चिकित्सक ने भी पुष्टि की कि मृत्युकालिक कथन अभिलिखित करने के समय, मृतक अपना कथन देने के लिए स्वस्थ स्थिति में था – मृत्युकालिक कथन भरोसेमंद है तथा स्वीकार्य है – विचारण न्यायालय ने अपीलार्थी को उचित रूप से दोषसिद्ध किया – अपील खारिज। (पप्पू उर्फ चन्द्र प्रकाश वि. म.प्र. राज्य) (DB)...1724

Penal Code (45 of 1860), Section 302 & 84 and Evidence Act (1 of 1872), Section 105 – Murder – Conviction – Life Imprisonment – Insanity/Unsoundness of Mind – Proof of – Burden **–Appellant killed his wife hitting her by a 'musal' – Plea of unsoundness of mind – Held – When a person pleads for defence u/S 84 IPC, burden of proof in its strictest sense, is upon accused to establish the exception – In the instant case, there is no specific documents regarding unsoundness of mind of appellant but the evidence establishes that appellant has been a mental patient since last 8-9 years and he was being treated at different places for his mental illness – At the time of incident, due to unsoundness of mind, he was incapable of knowing the nature of the act and that is why he was doing acts which were contrary to law which constitute insanity – Entitled for benefit u/S 84 IPC – Appellant acquitted of the charge – Appeal allowed. [Ramcharan Yadav Vs. State of M.P.]** (DB)...*108

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

Penal Code (45 of 1860), Section 302 &304-A – Murder –

Conviction – Life Imprisonment – Solitary Blow – Intention & Motive – Appreciation of Evidence – Held – Existence of previous enmity between accused and deceased regarding partition of agricultural land – When deceased was sitting quietly near his field for grazing of his cattle, accused arrived there and attacked him with axe and gave a single blow in neck which caused his death – Circumstances in which blow was delivered clearly betrayed the intention to cause death – No provocation offered by deceased – No quarrel or fight – It was a cold blooded and premeditated murder – No discrepancy between statement of eye witness and medical evidence with regard to fatal injury – Act would not fall u/S 304-A IPC under the garb of solitary blow – Apex Court held that there is no fixed rule that whenever a single blow is inflicted, Section 302 IPC would not be attracted – Trial Court rightly convicted the appellant – Appeal dismissed. [Pooranlal Vs. State of M.P.] (DB)...1944

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

Penal Code (45 of 1860), Section 302 & 304 Part I – Murder – Intention – Evidence on record shows that after receiving first blow on head, unarmed deceased fall down and thereafter appellant again gave three blows while deceased was lying down – Cause of death was injuries to vital organs like right kidney and liver leading to heavy internal hemorrhage – Mode of death was shock – Appellant had

intention to cause death – Case would not fall into any category u/S 304 IPC. [Madhav Prasad Vs. State of M.P.] (DB)...1934

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

Penal Code (45 of 1860), Section 302 & 304 Part II – Sentence **– Conviction modified from Section 302 IPC to one u/S 304 Part II IPC – Appellant was in custody since 12.06.1998 and remained in jail custody till 12.03.2004 – Appellant sentenced to the period already undergone. [Ram Sevak Vs. State of M.P.] (DB)...1960**

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

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

imprisonment imposed. [Laxmi Verma (Smt.) Vs. Sharik Khan] (DB)...1978

दण्ड संहिता (1860 का 45), धारा 302 व 364–ए –अपहरण एवं हत्या – परिस्थितिजन्य साक्ष्य – साक्ष्य का मूल्यांकन– मृतक एक 14 वर्षीय बालक, का अपहरण किया गया और तत्पश्चात् हत्या की गई थी –शरीक, अतहर अली एवं सलमान के विरूद्ध अपराध पंजीबद्ध किया गया – विचारण न्यायालय से दोषमुक्ति – दोषमुक्ति के विरूद्ध अपील – अभिनिर्धारित – जहां तक अंतिम बार एक साथ देखे जाने का साक्ष्य है, चक्षुदर्शी साक्षी पंकज (मृतक का रिश्ते का भाई) ने अभिसाक्ष्य दिया है कि उसने अभियुक्तगण को मोटरसाईकिल पर मृतक के साथ देखा था परंतु उसने यह जानते हुए भी कि उसका भाई लापता है, उक्त का प्रकटन कभी नहीं किया जब तक शव नहीं मिला था – उसका परिसाक्ष्य विश्वसनीय नहीं – इसी प्रकार, शरीक की निशानदेही पर शव की बरामदगी भी संदेहास्पद है – अतः, शरीक एवं सलमान के विरूद्ध अपील खारिज – आगे अभिनिर्धारित – फिरौती के लिए मृतक के माता–पिता को किये गये कॉल एवं आई.एम.ई.आई. नंबर के जरिए यह पता लगाया गया कि वह अतहर अली का मोबाईल सेट था और यह भी स्थापित किया गया था कि उसने नकली सिम के साथ मोबाईल सेट का उपयोग कॉल करने के लिए किया था – अतहर अली के विरूद्ध निश्चित साक्ष्य है और अपराध में उसकी संलिप्तता को नकारा नहीं जा सकता –अतहर अली के विरूद्ध अपील मंजूर की गई – आजीवन कारावास का दण्डादेश अधिरोपित किया गया। (लक्ष्मी वर्मा (श्रीमती) वि. शरीक खान) **(DB)...1978**

Penal Code (45 of 1860), Section 302 & 384, Dakaiti Aur Vyapharan Prabhavit Ksheshtra Adhiniyam, M.P. (36 of 1981), Section 13 and Evidence Act (1 of 1872), Section 27 – Robbery and Murder – Conviction – Confessional Statement – Chain of Circumstantial Evidence – Test Identification Parade – Last Seen – **A person booked a taxi disclosing his name to be Ajay and subsequently dead body of taxi driver was found – Later, it was revealed that actual name of Ajay was Jitendra/Appellant – On interrogation, appellant gave a confessional statement u/S 27 of Evidence Act – Key of car (taxi) and its registration papers were recovered from appellant – Appellant did not produce any defence witnesses – Held – There is no Ocular Evidence and case depends upon various circumstances – Prosecution witness Rakesh stated that he met appellant with deceased but he did not identify the appellant when he was present in Court – No identification parade was conducted by Police – Factor of "last seen" is not proved beyond doubt – There is uncorroborated testimony of prosecution**

witnesses – Independent witnesses had turned hostile – No fair investigation was done by Police – Confessional Statement of accused, recovery and seizure of key and documents of car is not proved beyond doubt – Chain of circumstances is not complete – Since prosecution could not prove all the circumstantial evidence beyond doubt, the false defence taken by appellant cannot be used as an additional link – Trial Court committed gross error in convicting appellant without any substantive evidence – Appellant acquitted – Appeal allowed. [Jitendra @ Jeetu Vs. State of M.P.] **(DB)...*93**

दण्ड संहिता (1860 का 45), धारा 302 व 384, डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 एवं साक्ष्य अधिनियम (1872 का 1), धारा 27 – लूट एवं हत्या – दोषसिद्धि – संस्वीकृति कथन – परिस्थितिजन्य साक्ष्य की श्रृंखला – पहचान परेड – अंतिम बार देखा जाना – एक व्यक्ति ने अपना नाम अजय बताते हुए एक टैक्सी बुक की एवं तत्पश्चात् टैक्सी चालक का शव पाया गया था – बाद में, यह प्रकट हुआ कि अजय का वास्तविक नाम जितेन्द्र/अपीलार्थी था – पूछताछ में, अपीलार्थी ने साक्ष्य अधिनियम की धारा 27 के अंतर्गत संस्वीकृति कथन दिये – कार (टैक्सी) की चाबी तथा उसके रजिस्ट्रीकरण कागजात, अपीलार्थी से बरामद किये गये थे – अपीलार्थी ने कोई बचाव साक्षीगण प्रस्तुत नहीं किये – अभिनिर्धारित – कोई चाक्षुष साक्ष्य नहीं है तथा प्रकरण विभिन्न परिस्थितियों पर निर्भर करता है – अभियोजन साक्षी राकेश ने कथन किया कि वह मृतक के साथ अपीलार्थी से मिला था परंतु वह अपीलार्थी को नहीं पहचान पाया जब वह न्यायालय में उपस्थित था – पुलिस द्वारा कोई पहचान परेड संचालित नहीं की गई थी – "अंतिम बार देखे जाना" का कारक संदेह से परे साबित नहीं हुआ है – अभियोजन साक्षीगण के असंपुष्ट परिसाक्ष्य हैं – स्वतंत्र साक्षीगण पक्षद्रोही हो गये थे – पुलिस द्वारा कोई निष्पक्ष अन्वेषण नहीं किया गया था – अभियुक्त के संस्वीकृति कथन, कार की चाबी एवं दस्तावेजों की बरामदगी एवं जब्ती संदेह से परे साबित नहीं हुई है – परिस्थितियों की श्रृंखला पूर्ण नहीं है – चूंकि अभियोजन सभी परिस्थितिजन्य साक्ष्य को संदेह से परे साबित नहीं कर सका, अपीलार्थी द्वारा लिये गये मिथ्या बचाव को अतिरिक्त कड़ी के रूप में उपयोग नहीं किया जा सकता – विचारण न्यायालय ने बिना किसी सारभूत साक्ष्य के अपीलार्थी को दोषसिद्ध करने में घोर त्रुटि की है – अपीलार्थी दोषमुक्त – अपील मंजूर। (जितेन्द्र उर्फ जीतू वि. म.प्र. राज्य)** **(DB)...*93**

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

attains a higher degree where the pedestrian happens to be a child of tender years. [Durga Das Nawit Vs. State of M.P.] ...*103

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

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

दण्ड संहिता (1860 का 45), धारा 304–ए –दोषसिद्धि – परिवीक्षा का लाभ – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह अभिनिर्धारित किया है कि उतावलेपन एवं उपेक्षापूर्ण चालन के परिणामस्वरूप मृत्यु या गंभीर चोट वाले प्रकरणों में, अपराधी को दण्डादिष्ट करते समय निवारण मुख्य विचार होना चाहिए – प्रत्येक चालक के मन में यह भय होना चाहिए कि दोषसिद्धि होने पर, न्यायालय उसके साथ उदारतापूर्वक व्यवहार नहीं करेगा – भारतीय दण्ड संहिता की धारा 304–ए के अंतर्गत दोषी अभियुक्त को परिवीक्षा का लाभ प्रदान नहीं किया जा सकता। (दुर्गा दास नावित वि. म.प्र. राज्य) ...*103

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

INDEX

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

Penal Code (45 of 1860), Section 304-A – See – Criminal Procedure Code, 1973, Section 197, 200 & 482 **[B.C. Jain (Dr.) Vs. Maulana Saleem] ...1762**

दण्ड संहिता (1860 का 45), धारा 304–ए – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 197, 200 व 482 (बी.सी. जैन (डॉ.) वि. मौलाना सलीम) ...1762

Penal Code (45 of 1860), Section 306/34 & 107 – Revision against Charge – Ingredients **– Deceased husband used to object the relationship of his wife with the applicant/accused whereby wife not only use to quarrel with the deceased but also used to threaten him in front of applicant/accused of falsely implicating him in criminal case – Held – It is clear that applicant and co-accused had created such a situation which indicate something more than mere relationship – There is sufficient material available on record to draw an inference that applicant with co-accused (wife of deceased) by their conduct has instigated the deceased to commit suicide – Charge rightly framed – Revision dismissed. [Ashok Vs. State of M.P.] ...*114**

दण्ड संहिता (1860 का 45), धारा 306/34 व 107 – आरोप के विरूद्ध पुनरीक्षण – घटक – मृतक पति को अपनी पत्नी के आवेदक/अभियुक्त के साथ संबंध पर आपत्ति थी जिस पर पत्नी न केवल मृतक के साथ झगड़ा करती थी बल्कि आवेदक/अभियुक्त के सामने उसे आपराधिक प्रकरण में मिथ्या रूप से आलिप्त करने की धमकी भी देती थी – अभिनिर्धारित – यह स्पष्ट है कि आवेदक तथा सह–अभियुक्त ने ऐसी परिस्थिति सृजित की थी जो कि संबंध मात्र से कहीं अधिक कुछ और उपदर्शित करती है – यह निष्कर्ष निकालने हेतु अभिलेख पर पर्याप्त सामग्री उपलब्ध है कि आवेदक ने सह–अभियुक्त (मृतक की पत्नी) के साथ मिलकर, उनके आचरण द्वारा मृतक को आत्महत्या करने के लिये उकसाया था – आरोप उचित रूप से विरचित किया गया

– पुनरीक्षण खारिज। (अशोक वि. म.प्र. राज्य) ...*114

Penal Code (45 of 1860), Section 307 r/w Section 34 – Appreciation of Evidence – **Conviction and Sentence – Appellant and four others were accused – Two bombs were thrown on complainant whereby complainant suffered simple injuries – High Court confirmed the conviction and sentence – Challenge to – Held – Present appellant specifically shouted *"kill him, he should not be spared, he habitually reports"* – It is not essential that bodily injury capable of causing death should have been inflicted in order to make out a charge u/S 307 IPC – It is enough, if there is an intention coupled with some common act in execution thereof – In the instant case, nature of weapon used predominates as two bombs were hurled, which are lethal weapons by which it can be inferred that intention was to cause death – Further held – It is true that injuries were simple but this is only because of fortuitous circumstances that bombs exploded at a distance far from the injured/complainant – Accused/ appellant coming alongwith four other persons, committed the offence and going back together with them and appellant shouting the words "*kill him*" certainly attract the charge u/S 307 r/w Section 34 IPC – Intention was to kill the complainant as he was an informer – Crime committed is heinous in nature and it appears that appellant has got away lightly – No interference required – Appeal dismissed. [Chhanga @ Manoj Vs. State of M.P.] (SC)...1795**

दण्ड संहिता (1860 का 45), धारा 307 सहपठित धारा 34 – साक्ष्य का अधिमूल्यन –दोषसिद्धि एवं दण्डादेश – अपीलार्थी एवं चार अन्य अभियुक्त थे – परिवादी पर दो बम फेंके गये जिससे परिवादी ने साधारण क्षतियां सहन की – उच्च न्यायालय ने दोषसिद्धि एवं दण्डादेश की पुष्टि की – को चुनौती – अभिनिर्धारित – वर्तमान अपीलार्थी विनिर्दिष्ट रूप से चिल्लाया था *"मार डालो उसे, उसे छोड़ना नहीं चाहिए, वह आदतन रिपोर्ट करता है"* – धारा 307 भा.दं.सं. के अंतर्गत आरोप निर्मित करने हेतु यह आवश्यक नहीं कि मृत्यु कारित कर सकने वाली शारीरिक क्षति पहुंचाई गई हो – यह पर्याप्त है, यदि उसके निष्पादन में आशय के साथ–साथ कोई सामान्य कृत्य है – वर्तमान प्रकरण में, प्रयुक्त शस्त्र का स्वरूप प्रधानता रखता है क्योंकि दो बम फेंके गये थे, जो कि घातक शस्त्र हैं जिसके द्वारा यह निष्कर्ष निकाला जा सकता है कि मृत्यु कारित करने का आशय था – आगे अभिनिर्धारित – यह सत्य है कि क्षतियां साधारण थी परंतु ऐसा केवल भाग्यशाली परिस्थितियों के कारण है कि बम, आहत/परिवादी से काफी दूरी पर फटे थे – अभियुक्त/अपीलार्थी का चार अन्य व्यक्तियों के साथ आना, अपराध कारित करना और उनके साथ वापस जाना तथा अपीलार्थी का यह शब्द *"मार*

डालो उसे" चिल्लाना, निश्चित रूप से धारा 307 सहपठित धारा 34 भा.दं.सं. का आरोप आकर्षित करता है – परिवादी को जान से मारने का आशय था क्योंकि वह खबरी था – कारित किया गया अपराध जघन्य स्वरूप का है और यह प्रतीत होता है कि अपीलार्थी थोड़े में बच गया – किसी हस्तक्षेप की आवश्यकता नहीं – अपील खारिज। (छंगा उर्फ मनोज वि. म.प्र. राज्य). (SC)...1795

Penal Code (45 of 1860), Section 307/34 – Conviction – Related Witness – Appreciation of Evidence – Injuries **– Bull of appellant damaged the crops of complainant whereby objection was raised and panchayat was called – Subsequently complainant was assaulted by appellants with rod and sticks – Held – Doctor who examined complainant deposed that injuries were sufficient to cause death – Nature and number of injuries itself indicate that complainant was assaulted by more than one person as injuries were caused on different parts of his body – Common intention established – Complainant was admitted for 21 days in hospital for treatment – Further held – Complainant and PW-3 are husband and wife and are related witnesses and their evidence cannot be rejected on this ground alone – Evidence of complainant and his wife is corroborated by doctors and circumstances – Testimony reliable and do not require corroboration from other independent witness – Trial Court rightly convicted the appellants – Appeal dismissed. [Sangram Vs. State of M.P.] ...2243**

दण्ड संहिता (1860 का 45), धारा 307/34 – दोषसिद्धि – संबंधित साक्षी – साक्ष्य का मूल्यांकन – चोटें – अपीलार्थी के बैल ने परिवादी की फसलों को नुकसान पहुंचाया जिस पर आपत्ति उठाई गई तथा पंचायत बुलाई गई थी – तत्पश्चात् परिवादी पर, अपीलार्थीगण द्वारा रॉड और डंडो से हमला किया गया था – अभिनिर्धारित – चिकित्सक जिसने परिवादी का परीक्षण किया, ने यह कथन किया है कि चोटें मृत्यु कारित करने हेतु पर्याप्त थीं – चोटों की प्रकृति एवं संख्या स्वयं यह इंगित करती है कि परिवादी पर एक से अधिक व्यक्ति द्वारा हमला किया गया था क्योंकि उसके शरीर के विभिन्न भागों पर चोटें कारित की गई थी – सामान्य आशय स्थापित – परिवादी इलाज हेतु चिकित्सालय में 21 दिनों के लिए भर्ती था – आगे अभिनिर्धारित – परिवादी एवं अ.सा.–3 पति और पत्नी हैं एवं संबंधित साक्षीगण हैं तथा उनके साक्ष्य केवल इस आधार पर अस्वीकार नहीं किये जा सकते – परिवादी तथा उसकी पत्नी के साक्ष्य की चिकित्सकों एवं परिस्थितियों द्वारा संपुष्टि की गई है – परिसाक्ष्य विश्वसनीय है तथा अन्य स्वतंत्र साक्षी द्वारा संपुष्टि की जाना अपेक्षित नहीं – विचारण न्यायालय ने अपीलार्थीगण को उचित रूप से दोषसिद्ध किया – अपील खारिज। (संग्राम वि. म.प्र. राज्य) ...2243

Penal Code (45 of 1860), Section 326 – Conviction – Nature of Injury – **Appellant no. 2, Shivcharan convicted u/S 326 IPC – Held – Shivcharan inflicted a blow to cousin of deceased with sharp side of axe resulting in incised wound and fracture of left elbow joint – He cause grievous injury to victim with a sharp cutting object – Shivcharan rightly convicted u/S 326 IPC – His appeal against conviction dismissed. [Shrichand Vs. State of M.P.]** **(DB)... 2231**

दण्ड संहिता (1860 का 45), धारा 326 – दोषसिद्धि – चोट का स्वरूप – अपीलार्थी क्र. 2 शिवचरण धारा 326 भा.दं.सं. के अंतर्गत दोषसिद्ध – अभिनिर्धारित – शिवचरण ने मृतक के रिश्ते में भाई पर कुल्हाड़ी के तीक्ष्ण भाग से वार किया जिसके परिणाम स्वरूप कटा घाव व बाएँ कोहनी के जोड़ का अस्थि–भंग हुआ – उसने पीड़ित को तीक्ष्ण धारदार वस्तु से गंभीर चोट कारित की – शिवचरण को उचित रूप से धारा 326 भा.दं.सं. के अंतर्गत दोषसिद्ध किया गया – दोषसिद्धि के विरूद्ध उसकी अपील खारिज। (श्रीचंद वि. म.प्र. राज्य) **(DB)...2231**

Penal Code (45 of 1860), Section 341 & 384 – See – Criminal Procedure Code, 1973, Section 482 **[Bhupendra Singh Yadav Vs. State of M.P.] ...1788**

दण्ड संहिता (1860 का 45), धारा 341 व 384 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (भूपेन्द्र सिंह यादव वि. म.प्र. राज्य) **...1788**

Penal Code (45 of 1860), Section 354 – Conviction – Testimony of Prosecutrix – **Held – In such type of cases, sole testimony of prosecutrix can be relied on because accused would have committed the offence in lonely place when he found the prosecutrix alone, therefore it is not expected that in every case, independent witnesses will be available – In the instant case, testimony of prosecutrix was cogent and consistent – No previous enmity proved – No ground for interference – Applicant rightly convicted – Revision dismissed. [Shiv Kumar Kushwah Vs. State of M.P.] ...1750**

दण्ड संहिता (1860 का 45), धारा 354 – दोषसिद्धि – अभियोक्त्री का परिसाक्ष्य – अभिनिर्धारित – इस प्रकार के प्रकरणों में, मात्र अभियोक्त्री के परिसाक्ष्य पर विश्वास किया जा सकता है क्योंकि अभियुक्त एकांत स्थान पर, जहां उसने अभियोक्त्री को अकेले पाया, अपराध कारित करेगा, इसलिए यह अपेक्षित नहीं कि प्रत्येक प्रकरण में स्वतंत्र साक्षीगण उपलब्ध होंगे – वर्तमान प्रकरण में, अभियोक्त्री का परिसाक्ष्य प्रबल एवं संगत था – कोई पूर्व वैमनस्यता सिद्ध नहीं – हस्तक्षेप हेतु कोई आधार नहीं – आवेदक उचित रूप से दोषसिद्ध – पुनरीक्षण खारिज। (शिव

कुमार कुशवाह वि. म.प्र. राज्य) ...1750

Penal Code (45 of 1860), Section 363, 366, 376/34 – See – Criminal Procedure Code, 1973, Section 164 & 439 [Manoj Ahirwar Vs. State of M.P.] ...*96

दण्ड संहिता (1860 का 45), धारा 363, 366, 376/34 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 164 व 439 (मनोज अहिरवार वि. म.प्र. राज्य)...*96

Penal Code (45 of 1860), Section 376 & 506 – Free and Fair Investigation – Source of Information/Material – **Offence u/S 376 and 506 IPC registered against appellant – Accused/appellant seeking to produce certain photographs, compact Disc (C.D.) and other cogent material before investigation agency to establish his innocence – Held – Investigating agency should not feel diffident or shy of allowing accused to furnish or disclose material/information which may help investigation to discover truth which is the prime object behind every process of crime investigation – Cr.P.C. or M.P. Police Manual do not restrict or prohibit the investigating agency from accepting relevant material/information during process of investigation – Investigating agency should be receptive to all possible sources or material/ information which may assist the agency to conclude the truth – One of the sources can also be the accused – Investigating Authority is directed to allow appellant to submit all such relavant information which if done shall be considered objectively without discarding it merely because of being furnished by accused – Writ Appeal disposed.** [Jitendra Singh Narwariya Vs. State of M.P.] (DB)...*94

दण्ड संहिता (1860 का 45), धारा 376 एवं 506 – स्वतंत्र एवं निष्पक्ष अन्वेषण – जानकारी/सामग्री का स्त्रोत – अपीलार्थी के विरूद्ध भारतीय दण्ड संहिता की धारा 376 एवं 506 के अन्तर्गत अपराध पंजीबद्ध किया गया – अभियुक्त/अपीलार्थी का अपनी निर्दोषिता सिद्ध करने के लिए अन्वेषण एजेन्सी के समक्ष कुछ तस्वीरे, कॉम्पेक्ट डिस्क (सी.डी.) तथा अन्य प्रबल सामग्री की प्रस्तुति चाहा जाना – अभिनिर्धारित – अन्वेषण एजेंसी को अभियुक्त को सामग्री/जानकारी प्रस्तुत करने/प्रकट करने की मंजूरी देने में संकोच या शर्म महसूस नहीं करना चाहिए जो सत्य खोजने हेतु अन्वेषण में सहायता कर सकता है जो कि अपराध अन्वेषण की प्रत्येक प्रक्रिया के पीछे मुख्य उद्देश्य है – दण्ड प्रक्रिया संहिता या एम. पी. पुलिस निर्देशिका, अन्वेषण एजेन्सी को अन्वेषण प्रक्रिया के दौरान सुसंगत सामग्री/जानकारी स्वीकार करने से निर्बंधित या प्रतिबिद्ध नहीं करती – अन्वेषण

एजेन्सी को सभी संभावित स्त्रोतों या सामग्री/जानकारी के लिए ग्रहणशील होना चाहिए जो कि एजेन्सी को सत्य निष्कर्षित करने में सहायता कर सकते हैं – इसमें एक स्त्रोत अभियुक्त भी हो सकता है – अन्वेषण प्राधिकारी को अपीलार्थी को ऐसी सभी सुसंगत जानकारी प्रस्तुत करने की मंजूरी देने हेतु निदेशित किया गया जो यदि किया जाता है तो उसे मात्र अभियुक्त द्वारा प्रस्तुत किये जाने के कारण अस्वीकार किये बिना निष्पक्षता से विचार में लिया जायेगा – रिट अपील निराकृत। (जितेन्द्र सिंह नरवरिया वि. म.प्र. राज्य) (DB)...*94

Penal Code (45 of 1860), Sections 419, 420, 467, 468 & 471 – Revision Against framing of Charge – **Ingredients – Complainant invested in Unit Trust of India where applicant, being sister-in-law was named as guardian of her minor daughter – Subsequently complainant came to know that applicant opened an account by name of minor daughter where she named herself to be the natural mother of minor daughter and deposited the maturity amount received from the investment – Held – Applicant knowing well that she is not the natural mother has opened the account and shown herself to be the natural mother – When natural mother and father are alive, she had no authority to open the account and withdraw the amount – *Prima facie*, charges u/S 419 and 420 IPC are made out. [Pushpa Singh Vs. State of M.P.]** ...2265

दण्ड संहिता (1860 का 45), धाराएँ 419, 420, 467, 468 व 471 – आरोप विरचित करने के विरूद्ध पुनरीक्षण – घटक – परिवादी ने यूनिट ट्रस्ट ऑफ इंडिया में निवेश किया जहाँ आवेदिका को, जेठानी होने के नाते उसकी अवयस्क पुत्री के संरक्षक के रूप में नामित किया गया था – तत्पश्चात् परिवादी को यह पता चला कि आवेदिका ने अवयस्क पुत्री के नाम से एक खाता खोला है जहाँ उसने स्वयं को अवयस्क पुत्री की प्राकृतिक/वास्तविक माँ के रूप में नामित किया तथा निवेश से प्राप्त हुई परिपक्व राशि जमा की – अभिनिर्धारित – आवेदिका ने भलीभांति यह जानते हुए कि वह प्राकृतिक/वास्तविक माँ नहीं है, खाता खुलवाया तथा स्वयं का प्राकृतिक/वास्तविक माँ होना दर्शाया – जब प्राकृतिक/वास्तविक माता एवं पिता जीवित हैं, उसे खाता खुलवाने का तथा राशि प्रत्याहृत करने का कोई प्राधिकार नहीं था – प्रथम दृष्टया, भारतीय दंड संहिता की धारा 419 एवं 420 के अंतर्गत आरोप बनते हैं। (पुष्पा सिंह वि. म.प्र. राज्य) ...2265

Penal Code (45 of 1860), Section 420 & 120-B and Evidence Act (1 of 1872), Section 10 & 27 – Confessional Statement of Co-accused – Admissibility – **It was alleged that accused persons took money from parents for admission in Medical College against management quota – Application against framing of charge against**

applicant – Held – Name of applicant not in FIR – No direct allegations against him – Confessional statement of co-accused persons recorded u/S 27 of the Evidence Act cannot be read against the applicant nor such memorandum statement can be admissible u/S 10 of the Evidence Act – For prosecution and framing of charge, mere suspicion is not sufficient, it requires grave suspicion to prosecute or put on trial a person in a criminal case – *Prima facie* no material on record where inference can be drawn regarding involvement of applicant in alleged crime with other co-accused persons so as to prosecute him, hence continuation of proceedings against him is not justifiable and it would amount to misuse of process of law – Applicant stands exonerated from criminal proceedings – Application allowed. [Anupam Chouksey Vs. State of M.P.] ...2016

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

***Penal Code (45 of 1860), Sections 465, 471 & 120-B and Prevention of Corruption Act (49 of 1988), Section 19(1)(c) – Revision against Framing of Charge – Sanction for Prosecution – Competent Authority* – Sanction granted by State Government – Applicant, employee of Municipal Council – Held – State Government being an authority superior to Municipal Council and having supervisory powers**

over the same including power of validating the appointments made in Council has the character of an appointing authority – State Government is competent to grant sanction for prosecution – Further held – Prima facie there are sufficient material against applicants regarding criminal conspiracy and forgery – Charges rightly framed – Revision dismissed. [Vinay Kumar Vs. State of M.P.] ...2283

दण्ड संहिता (1860 का 45), धाराएँ 465, 471 व 120–बी एवं भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19(1)(सी) – आरोप विरचित किये जाने के विरूद्ध पुनरीक्षण – अभियोजन के लिए मंजूरी – सक्षम प्राधिकारी – राज्य सरकार द्वारा मंजूरी प्रदान की गई – आवेदक, नगरपालिक परिषद का कर्मचारी – अभिनिर्धारित – राज्य सरकार को नगरपालिक परिषद से वरिष्ठतर प्राधिकारी होने एवं उस पर पर्यवेक्षी शक्तियां होने के नाते, जिसमें परिषद में की गई नियुक्तियों को मान्यता देने की शक्ति शामिल है, एक नियुक्ति प्राधिकारी का स्वरूप प्राप्त है – राज्य सरकार अभियोजन हेतु मंजूरी प्रदान करने के लिए सक्षम है – आगे अभिनिर्धारित – प्रथम दृष्ट्या, आवेदकगण के विरूद्ध आपराधिक षड्यंत्र एवं कूटरचना के संबंध में पर्याप्त सामग्री है – आरोप उचित रूप से विरचित किये गये – पुनरीक्षण खारिज। (विनय कुमार वि म.प्र. राज्य) ...2283

Penal Code (45 of 1860), Sections 467, 468 & 471 – Held – There is no document which can be called as valuable security – Allegation is that applicant opened an account for which she signed the application form and other documents, but she signed as Pushpa Singh and not as Sadhna Singh (complainant), therefore such documents can not be called as forged or false documents – There is no document in the charge sheet which was used by applicant as original one and which was admittedly forged – No forgery was committed – *Prima facie*, offence u/S 467, 468 and 471 IPC are not made out – Charges framed under these sections are quashed – Revision partly allowed. [Pushpa Singh Vs. State of M.P.] ...2265

दण्ड संहिता (1860 का 45), धाराएँ 467, 468 व 471 – अभिनिर्धारित – ऐसा कोई दस्तावेज नहीं है जिसे मूल्यवान प्रतिभूति कहा जा सकता है – अभिकथन है कि आवेदिका ने एक खाता खोला जिसके लिए उसने आवेदन पत्र तथा अन्य दस्तावेजों पर हस्ताक्षर किये, परन्तु उसने पुष्पा सिंह के रूप में हस्ताक्षर किये तथा न कि साधना सिंह (परिवादी) के रूप में, इसलिए ऐसे दस्तावेजों को कूटरचित या मिथ्या दस्तावेज नहीं कहा जा सकता – आरोप पत्र में कोई दस्तावेज नहीं है, जिसका उपयोग आवेदक द्वारा मूल के रूप में किया गया था तथा जो कि स्वीकार्य रूप से कूटरचित था – कोई कूटरचना कारित नहीं की गई थी – प्रथम दृष्टया,

भारतीय दंड संहिता की धारा 467, 468 एवं 471 के अंतर्गत कोई अपराध नहीं बनता – इन धाराओं के अंतर्गत विरचित किये गये आरोप अभिखंडित – पुनरीक्षण अंशतः मंजूर। (पुष्पा सिंह वि. म.प्र. राज्य) ...2265

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

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

Penal Code (45 of 1860), Section 498-A & 506 r/w Section 34 – See – Criminal Procedure Code, 1973, Section 482 [Mohit Jain Vs. State of M.P.] ...*97

दण्ड संहिता (1860 का 45), धारा 498–ए व 506 सहपठित धारा 34 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (मोहित जैन वि. म.प्र. राज्य) ...*97

Penal Code (45 of 1860), Section 499 & 500 – See – Criminal Procedure Code, 1973, Section 199(2) [K.K. Mishra Vs. State of M.P.] (DB)... 2269

दण्ड संहिता (1860 का 45), धारा 499 व 500 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 199(2) (के.के. मिश्रा वि. म.प्र. राज्य) (DB)... 2269

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), Section 61 – Power of Commissioner – **Under the Act, Commissioner is empowered to take up the matter for implementation of law, with regard to welfare and protection of rights of persons with disabilities under the Land Acquisition Act and Rehabilitation Policy – He is not empowered to direct for employment of anyone of the respondents, thus the order passed by Commissioner is without jurisdiction. [Hindalco Industries Ltd. (M/s.) Vs. State of M.P.]** (DB)...1799

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

Police Regulations, M.P., Regulation 213 & 270(4) – See – Service Law [Ashish Singh Pawar Vs. State of M.P.] ...2124

पुलिस विनियम, म.प्र., विनियमन 213 व 270 (4) – देखें – सेवा विधि (आशीष सिंह पवार वि. म.प्र. राज्य) ...2124

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

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

Practice – Principle of Law **– Held – The principle of law is that High Court can interfere in disciplinary matter if finding recorded by disciplinary authority are perverse or its a case of no evidence or there is violation of natural justice or rule. [Ashok Sharma (Dr.) Vs. State of M.P.] ...2173**

पद्धति – विधि का सिद्धांत – अभिनिर्धारित – विधि का सिद्धांत है कि उच्च न्यायालय अनुशासनिक मामलों में हस्तक्षेप कर सकता है यदि अनुशासनिक प्राधिकारी द्वारा अभिनिर्धारित निष्कर्ष विपर्यस्त है या यह एक साक्ष्य विहीन प्रकरण है या नैसर्गिक न्याय अथवा नियम का उल्लंघन हुआ है। (अशोक शर्मा (डॉ.) वि. म.प्र. राज्य) ...2173

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

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

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

INDEX

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

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

Prevention of Corruption Act (49 of 1988), Section 13(1)(e) and

Vishesh Nyayalaya Adhiniyam, M.P. 2011, Section 2(1)(e) – "Offence" – Maintainability of Revision – Definition of offence given in Section 2(1)(e) of the Adhiniyam shows that Adhiniyam of 2011 comes into operation only when offence u/S 13(1)(e) of PC Act, independently or in combination with other provision of PC Act or any provision of IPC is alleged in any case and not otherwise – Presence of allegation u/S 13(1)(e) of the PC Act is an essential ingredient to attract Adhiniyam of 2011 – Allegation made merely in respect of offence of IPC would not attract the Adhiniyam of 2011 – In the instant case, only offence under IPC was only registered against applicant – Revision is maintainable. [Vinay Kumar Vs. State of M.P.] ...2283

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) एवं विशेष न्यायालय अधिनियम, म.प्र. 2011, धारा 2(1)(ई) – "अपराध" – पुनरीक्षण की पोषणीयता – अधिनियम की धारा 2(1)(ई) में दी गई अपराध की परिभाषा दर्शाती है कि 2011 का अधिनियम केवल तब प्रवर्तित होगा जब किसी प्रकरण में भ्रष्टाचार निवारण अधिनियम की धारा 13(1)(ई) अंतर्गत अपराध, का स्वतंत्र रूप से या भ्रष्टाचार निवारण अधिनियम के किसी अन्य उपबंध के साथ या भा.दं.सं. के किसी उपबंध के साथ मिलकर अभिकथन किया गया है और अन्यथा नहीं – 2011 के अधिनियम को आकर्षित करने के लिए भ्रष्टाचार निवारण अधिनियम की धारा 13(1)(ई) के अंतर्गत अभिकथन की उपस्थिति एक आवश्यक घटक है – मात्र भा.दं.सं. के अपराध के संबंध में किया गया अभिकथन, 2011 के अधिनियम को आकर्षित नहीं करेगा – वर्तमान प्रकरण में, आवेदक के विरूद्ध केवल भा.दं.सं. के अंतर्गत अपराध को पंजीबद्ध किया गया था – पुनरीक्षण पोषणीय है। (विनय कुमार वि म. प्र. राज्य) ...2283

Prevention of Corruption Act (49 of 1988), Section 19(1)(c) – See – Penal Code, 1860, Sections 465, 471 & 120-B [Vinay Kumar Vs. State of M.P.] ...2283

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19(1)(सी) – देखें – दण्ड संहिता, 1860, धाराएँ 465, 471 व 120–बी (विनय कुमार वि म.प्र. राज्य) ...2283

Prevention of Food Adulteration Act (37 of 1954), Sections 13(2), 16(1)(A)(i) & 20(1), Criminal Procedure Code, 1973 (2 of 1974), Section 313 and Evidence Act (1 of 1872), Section 134 – Adulteration – Sole Witness – Effect – Sample of ground nut oil was found adulterated and below standard – Conviction based on sole testimony of Food Inspector – Applicant was minor at the relevant time and was sitting at his father's

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

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

***Protection of Children from Sexual Offences Act, (32 of 2012), Section 3 & 4 – See – Criminal Procedure Code, 1973, Section 164 & 439* [Manoj Ahirwar Vs. State of M.P.]** ...*96

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 3 व 4 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 164 व 439 (मनोज अहिरवार वि. म.प्र. राज्य) ...*96

***Protection of Women from Domestic Violence Act (43 of 2005), Section 2(a) & 2(f) – "Domestic Relationship" & "Aggrieved Person"* — There is no divorce between the parties – Wife is still in domestic relationship and therefore respondent wife would be an aggrieved person u/S 2(a) of the Act – Supreme Court has held that legal relationship between**

husband and wife continues even after the decree for judicial separation. [Manoj Pillai Vs. Smt. Prasita Manoj Pillai] ...1736

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 2(ए) व 2(एफ) – "घरेलू नातेदारी" एवं "व्यथित व्यक्ति" – पक्षकारों के मध्य कोई विवाह विच्छेद नहीं हुआ – पत्नी अभी भी घरेलू नातेदारी में है एवं इसलिए प्रत्यर्थी पत्नी अधिनियम की धारा 2(ए) के अंतर्गत व्यथित व्यक्ति होगी – उच्चतम न्यायालय ने यह अभिनिर्धारित किया है कि न्यायिक पृथक्करण हेतु डिक्री के बाद भी पति और पत्नी के मध्य विधिक नातेदारी जारी रहेगी। (मनोज पिल्लई वि. श्रीमती प्रासिता मनोज पिल्लई) ...1736

***Protection of Women from Domestic Violence Act (43 of 2005), Section 2(q) – "Respondent" – Female Member* – Wife seeking relief under the Act of 2005 against mother-in-law – Challenge to – Held – Supreme Court has recently deleted the word "male" appearing in the definition of Section 2(q) – Aggrieved person may seek remedies under the Act against female members also. [Manoj Pillai Vs. Smt. Prasita Manoj Pillai] ...1736**

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 2(क्यू) – "प्रत्यर्थी" – महिला सदस्य – पत्नी, सास के विरूद्ध, 2005 के अधिनियम के अंतर्गत अनुतोष चाह रही है – को चुनौती – अभिनिर्धारित – उच्चतम न्यायालय ने हाल ही में धारा 2(क्यू) की परिभाषा में वर्णित "पुरूष" शब्द को हटा दिया है – अधिनियम के अंतर्गत व्यथित व्यक्ति, महिला सदस्यों के विरूद्ध भी उपचार चाह सकता है। (मनोज पिल्लई वि. श्रीमती प्रासिता मनोज पिल्लई) ...1736

***Protection of Women from Domestic Violence Act (43 of 2005), Section 12 and Criminal Procedure Code, 1973 (2 of 1974), Section 468 – Retrospective Effect of the Act – Limitation – Maintainability of Application* – Incidents and conduct of the parties prior to the date of coming into force of the Act will also be considered while passing orders u/S 18, 19 and 20(1)(d) of the Act – Further held – Provisions of Section 468 Cr.P.C. are not applicable at the time of filing an application u/S 12 of the Act of 2005 – Application is maintainable. [Manoj Pillai Vs. Smt. Prasita Manoj Pillai] ...1736**

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 12 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 468 – अधिनियम के भूतलक्षी प्रभाव – परिसीमा – आवेदन की पोषणीयता – अधिनियम की धारा 18, 19 एवं 20(1)(डी) के अंतर्गत आदेश पारित करते समय अधिनियम के प्रभाव में आने से पूर्व

की घटनाओं तथा पक्षकारों के आचरण को भी विचार में लिया जायेगा – आगे अभिनिर्धारित – 2005 के अधिनियम की धारा 12 के अंतर्गत आवेदन प्रस्तुत करते समय, दण्ड प्रक्रिया संहिता की धारा 468 के उपबंध लागू नहीं होंगे – आवेदन पोषणीय है। (मनोज पिल्लई वि. श्रीमती प्रासिता मनोज पिल्लई) ...1736

Protection of Women from Domestic Violence Act (43 of 2005), Section 27(1)(a) – Territorial Jurisdiction – **Husband presently living in Dubai and wife living at Bhopal – As per Section 27(1)(a), aggrieved person may file an application where the person permanently or temporarily resides or carries on the business or is employed – It is undisputed that wife is presently residing with her parents at Bhopal – JMFC Court at Bhopal has jurisdiction to entertain the application – Revision dismissed. [Manoj Pillai Vs. Smt. Prasita Manoj Pillai]** ...1736

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 27(1)(ए) – क्षेत्रीय अधिकारिता – पति वर्तमान में दुबई में रह रहा है तथा पत्नी भोपाल में रह रही है – धारा 27(1)(ए) के अनुसार, व्यथित व्यक्ति आवेदन प्रस्तुत कर सकता है जहां वह व्यक्ति स्थायी रूप से या अस्थायी रूप से निवास करता है या कारबार करता है या नियोजित है – यह अविवादित है कि पत्नी वर्तमान में अपने माता–पिता के साथ भोपाल में निवास कर रही है – न्यायिक मजिस्ट्रेट प्रथम श्रेणी, भोपाल को आवेदन को ग्रहण करने की अधिकारिता है – पुनरीक्षण खारिज। (मनोज पिल्लई वि. श्रीमती प्रासिता मनोज पिल्लई) ...1736

Protection of Women from Domestic Violence Act (43 of 2005), Section 28 and Criminal Procedure Code, 1973 (2 of 1974), Chapter VII A – Execution of Order – **Held – Section 28 of the Act of 2005 lays down that Courts shall be governed by general provisions of the Cr.P.C. – If husband is living at Dubai, wife may take recourse to provisions of Chapter VII A of Cr.P.C. to get the order executed in Dubai against husband. [Manoj Pillai Vs. Smt. Prasita Manoj Pillai]** ...1736

घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 28 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), अध्याय VII ए – आदेश का निष्पादन – अभिनिर्धारित – 2005 के अधिनियम की धारा 28 यह प्रतिपादित करती है कि न्यायालय दण्ड प्रक्रिया संहिता के सामान्य उपबंधों द्वारा शासित होगा – यदि पति दुबई में रह रहा है, तो पति के विरूद्ध दुबई में आदेश निष्पादित किये जाने हेतु पत्नी दण्ड प्रक्रिया संहिता के अध्याय VII ए के उपबंधों का अवलंब ले सकती है। (मनोज पिल्लई वि. श्रीमती प्रासिता मनोज पिल्लई) ...1736

Public Trusts Act, M.P. (30 of 1951), Sections 4, 5 & 8 –

Declaration for Ownership/Title – Adverse Possession – Non participation in Evidence – Adverse Inference – **Held – Respondents claimed to be 'Pujari' of temple – 'Pujari' cannot claim ownership of property of temple, they will remain as 'Pujari' without any interest and title over property of temple – Respondents alternatively claimed that by virtue of adverse possession they have acquired the title, such claim itself is untenable – Claiming title on basis of ancestral property and at the same time claiming adverse possession, are mutually inconsistent – Further held – Non-entrance of respondents in witness box to prove their case as per their pleadings, are sufficient circumstances to draw an adverse inference against them – Properties mentioned at Serial No. 1 to 10 at para 11 of this judgment belong to Appellant/Trust – Appeal partly allowed. [Shri Banke Bihariji Bazar Vs. State of M.P.]** ...2205

लोक न्यास अधिनियम, म.प्र. (1951 का 30), धाराएँ 4, 5 व 8 – स्वामित्व/हक की घोषणा – प्रतिकूल कब्जा – साक्ष्य में सहभाग न लिया जाना – प्रतिकूल निष्कर्ष – अभिनिर्धारित – प्रत्यर्थीगण ने मंदिर के 'पुजारी' होने का दावा किया – 'पुजारी', मंदिर की सम्पत्ति के स्वामित्व का दावा नहीं कर सकते, वे मंदिर की सम्पत्ति पर बिना किसी हित या हक के 'पुजारी' बने रहेंगे – प्रत्यर्थीगण ने वैकल्पिक रूप से दावा किया कि प्रतिकूल कब्जे के द्वारा उन्होंने हक अर्जित किया है, उक्त दावा अपने आप में असमर्थनीय है – पैतृक सम्पत्ति के आधार पर हक का दावा करना और उसी समय प्रतिकूल कब्जे का दावा करना परस्पर असंगत है – आगे अभिनिर्धारित – प्रत्यर्थीगण द्वारा उनके अभिवचनों के अनुसार उनके प्रकरण को साबित करने हेतु साक्षी कठघरे में प्रवेश न करना, उनके विरूद्ध प्रतिकूल निष्कर्ष निकालने के लिए पर्याप्त परिस्थितियां है – इस निर्णय के कंडिका 11 के अनुक्रमांक 1 से 10 तक उल्लिखित सम्पत्तियां अपीलार्थी/न्यास की है – अपील अंशतः मंजूर। (श्री बांके बिहारीजी बाजार वि. म.प्र. राज्य) ...2205

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

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

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

Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993), Section 29 & 30 – Title of Auctioned Property – Rights of Auction Purchaser and Judgment Debtor **– Held – Since the sale certificate was not issued by the authority, the said auction sale was not absolute, no vested right accrued in favour of petitioner and thus the borrower (Judgment Debtor) has the right to protect/defend its title over the mortgaged property subject to his paying the entire dues adjudged by Tribunal – Act of 1993 aims at recovery of dues and does not foreclose the rights of the borrower – Further held – Even if the borrower, instead of taking recourse to stipulations under Rules of 1962, approaches the High Court, his right regarding the mortgaged property would not be waived – Petition dismissed. [Dinesh Agarwal & Associates (M/s.) Vs. Pawan Kumar Jain]** **(DB)... 2142**

बैंकों और वित्तीय संस्थाओं को शोध्य ऋण वसूली अधिनियम (1993 का 51), धारा 29 व 30 – नीलामी संपत्ति का हक – नीलामी क्रेता एवं निर्णीत ऋणी के अधिकार – अभिनिर्धारित – चूंकि प्राधिकारी द्वारा विक्रय प्रमाण पत्र जारी नहीं

किया गया था, कथित नीलामी विक्रय पूर्ण नहीं थी, याची के पक्ष में कोई निहित अधिकार प्रोद्भूत नहीं हुआ तथा इसलिए उधारगृहीता (निर्णीत ऋणी) को अधिकरण द्वारा न्यायनिर्णीत अपने संपूर्ण देय का भुगतान करने के अधीन रहते हुये बंधक संपत्ति पर अपने हक के बचाव का अधिकार है – 1993 के अधिनियम का लक्ष्य देय की वसूली का है तथा उधारगृहीता के अधिकारों को पुरोबंधित नहीं करता – आगे अभिनिर्धारित – यद्यपि उधारगृहीता, 1962 के नियमों के अंतर्गत शर्तों का आश्रय लेने के बजाय, उच्च न्यायालय के समक्ष जाता है, बंधक संपत्ति के संबंध में उसका अधिकार अधित्यजित नहीं होगा – याचिका खारिज। (दिनेश अग्रवाल एण्ड एसोसिएट्स (मे.) वि. पवन कुमार जैन) **(DB)... 2142**

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

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

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

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

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

पुनर्वास नीति 2002, खण्ड 29(1) – देखें – भूमि अर्जन अधिनियम, 1894, धारा 41 (हिंडाल्को इंडस्ट्रीज लि. (मे.) वि. म.प्र. राज्य) **(DB)...1799**

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

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

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x), Penal Code (45 of 1860),

Sections 294, 323, 506 & 34 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 – Subsequent Addition of Charge – **Offence registered against applicant u/S 294, 323, 506 & 34 IPC – Later, additional charge u/S 3(1)(x) of the Act of 1989 was added – Challenge to – Held – Charge sheet reveals that supplementary statement was recorded after about 8 days of the incident – No reason showed in statement as to why such facts were not mentioned in FIR immediately after incident and while recording of statement u/S 161 Cr.P.C. - No case is made out under the Act of 1989 – Subsequent charge framed u/S 3(1)(x) of the Act of 1989 is hereby quashed – Application allowed. [Mohsin Vs. State of M.P.]** ...*118

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(x), दण्ड संहिता (1860 का 45), धाराएँ 294, 323, 506 व 34 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 – बाद में आरोप का जोड़ा जाना – आवेदक के विरूद्ध भारतीय दंड संहिता की धारा 294, 323, 506 व 34 के अंतर्गत अपराध पंजीबद्ध किया गया – बाद में, 1989 के अधिनियम की धारा 3(1)(x) के अंतर्गत अतिरिक्त आरोप जोड़े गये थे – को चुनौती – अभिनिर्धारित – आरोप पत्र यह प्रकट करता है कि अनुपूरक कथन घटना के लगभग 8 दिनों के पश्चात् अभिलिखित किये गये थे – कथन में कोई कारण नहीं दर्शाया गया है कि क्यों ऐसे तथ्यों का घटना के तुरंत पश्चात् प्रथम सूचना प्रतिवेदन में तथा दण्ड प्रक्रिया संहिता की धारा 161 के अंतर्गत कथन अभिलिखित करते समय उल्लेख नहीं किया गया था – 1989 के अधिनियम के अंतर्गत कोई प्रकरण नहीं बनता – 1989 के अधिनियम की धारा 3(1)(x) के अंतर्गत बाद में विरचित किया गया आरोप एतद्द्वारा अभिखंडित – आवेदन मंजूर। (मोहसिन वि. म.प्र. राज्य) ...*118

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 17 & 34 – See – Civil Procedure Code, 1908, Order 43 Rule 1(a) **[Hariram Vs. Jat Seeds Greeding & warehousing]** ...2192

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 17 व 34 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 43 नियम 1(ए) (हरिराम वि. जाट सीड्स ग्रीडिंग एण्ड वेयरहाउसिंग) ...2192

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 34 **– Held – Section 34 clearly prohibits that no Civil Court**

shall have jurisdiction to entertain any suit or proceeding for which Debt Recovery Tribunal is empowered and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance to the power conferred under the Act. [Hariram Vs. Jat Seeds Greeding & warehousing] ...2192

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 34 – अभिनिर्धारित – धारा 34 स्पष्ट रूप से प्रतिषिद्ध करती कि किसी सिविल न्यायालय को ऐसे किसी भी वाद या कार्यवाही को ग्रहण करने की अधिकारिता नहीं हैं जिसके लिए ऋण वसूली अधिकरण सशक्त है तथा किसी न्यायालय या अन्य प्राधिकारी द्वारा अधिनियम के अंतर्गत प्रदत्त की शक्ति के अनुसरण में की गई कार्रवाई या की जाने वाली कार्रवाई के संबंध में कोई व्यादेश प्रदान नहीं किया जाएगा। (हरिराम वि. जाट सीड्स ग्रीडिंग एण्ड वेयरहाउसिंग) **...2192**

Service Law – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 3(1)(d) & 29(1)(iii) and Police Regulations, M.P., Regulation 213 & 270(4) – Power of Revision – Limitation, Scope and Grounds **– DIG (Dy. Inspector General of Police) imposed penalty of censure (minor penalty) to petitioner – After lapse of more than one year, IG (Inspector General of Police) cancelled the earlier order and issued charge sheet to petitioner and initiated departmental enquiry – DGP dismissed the representation of petitioner – Challenge to – Held – Power of revision has been exercised after a lapse of more than 1½ years - Police Regulation does not prescribe within how much time, power of revision can be exercised but assistance of principle laid down in Rule 29(1)(iii) of CCA Rules can be taken to conclude that the order passed by revising authority after a lapse of six months is bad in law – Further held – Wherever specific provisions in Police regulations is not there, applicability of CCA Rules cannot be ousted and guidance may be taken from the same – Without cancelling the order of minor penalty, issuance of charge sheet on same cause and allegation and to initiate departmental enquiry is not permissible under Police Regulations – Order passed by the IG and DGP and the charge sheet is quashed restoring the order of minor penalty passed by DIG – Petition allowed. [Ashish Singh Pawar Vs. State of M.P.] ...2124**

सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 3(1)(डी) व 29(1)(iii) एवं पुलिस विनियम, म.प्र., विनियमन 213 व 270 (4) – पुनरीक्षण की शक्ति – परिसीमा, विस्तार एवं आधार – पुलिस उपमहानिरीक्षक

ने याची पर परिनिंदा (लघु शास्ति) की शास्ति अधिरोपित की – एक वर्ष से अधिक बीत जाने के पश्चात्, पुलिस महानिरीक्षक ने पूर्वतर आदेश निरस्त किया तथा याची को आरोप–पत्र जारी किया एवं विभागीय जांच आरंभ की – पुलिस महानिदेशक ने याची का अभ्यावेदन खारिज किया – को चुनौती – अभिनिर्धारित – पुनरीक्षण की शक्ति का प्रयोग 1½ वर्ष से अधिक बीत जाने के पश्चात् किया गया है – पुलिस विनियमन यह विहित नहीं करते कि कितने समय के भीतर, पुनरीक्षण की शक्ति का प्रयोग किया जा सकता है परन्तु यह निष्कर्ष निकालने हेतु कि छहः माह बीत जाने के पश्चात् पुनरीक्षण प्राधिकारी द्वारा आदेश पारित किया जाना विधि की दृष्टि से दोषपूर्ण है, सी.सी.ए. नियमों के नियम 29(1)(iii) में प्रतिपादित सिद्धांत की सहायता ली जा सकती है – आगे अभिनिर्धारित – जहाँ पुलिस विनियम में विनिर्दिष्ट उपबंध नहीं हैं, सी.सी.ए. नियमों की प्रयोज्यता को बेदखल नहीं किया जा सकता तथा उक्त से मार्गदर्शन लिया जा सकता है – लघु शास्ति का आदेश निरस्त किये बिना, उक्त कारण एवं अभिकथनों पर आरोप पत्र जारी किया जाना तथा विभागीय जांच आरम्भ करना पुलिस विनियमों के अन्तर्गत अनुज्ञेय नहीं है – पुलिस उपमहानिरीक्षक द्वारा पारित लघु शास्ति के आदेश को पुनः स्थापित करते हुए पुलिस महानिरीक्षक तथा पुलिस महानिदेशक द्वारा पारित आदेश अपास्त किया गया – याचिका मंजूर। (आशीष सिंह पवार वि. म.प्र. राज्य) ...2124

Service Law – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 & 15 – Order for Fresh Inquiry – **Held – In case of disagreement with report of Inquiry Officer, Disciplinary Authority can order for further inquiry and not *de novo* fresh enquiry – Decision of fresh inquiry by appointment of a new Inquiry Officer is not in accordance with Rule 15 of the Rules of 1966 – Matter remanded back to Inquiry officer to hold further inquiry – Appeal allowed. [Pramod Kumar Agrawal Vs. State of M.P.]** **(DB)...*119**

सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 व 15 – नये सिरे से जांच के लिए आदेश – अभिनिर्धारित – जांच अधिकारी के प्रतिवेदन के साथ असहमति होने के प्रकरण में, अनुशासनिक प्राधिकारी अतिरिक्त जांच के लिए आदेश कर सकता है तथा न कि पुनः नये सिरे से जांच हेतु – नये जांच अधिकारी की नियुक्ति द्वारा नये सिरे से जांच का विनिश्चय 1966 के नियमों के नियम 15 के अनुरूप नहीं है – मामला अतिरिक्त जांच चालू रखने हेतु जांच अधिकारी को प्रतिप्रेषित किया गया – अपील मंजूर। (प्रमोद कुमार अग्रवाल वि. म.प्र. राज्य) **(DB)...*119**

Service Law – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 15(2) – Disagreement with Inquiry Authority – Procedure – Dismissal from Service and Recovery – **Tender/**

Contract regarding Deendayal Mobile Health Unit was floated whereby the same was awarded to a party which was later terminated – Party challenged the termination of contract in an earlier writ petition whereby the same was allowed and this Court quashed the termination of contract – Subsequently, regarding alleged financial irregularities, petitioner, under disciplinary proceedings was punished with dismissal of service and order of recovery was passed against him – Challenge to – Held – Inquiry Commissioner exonerated petitioner from the charges – Even matter was referred to Lokayukta whereby they did not find any irregularity and closed the inquiry – Petitioner was proceeded *ex-parte* and punishment was imposed – Decision of Disciplinary Authority is contrary to decision taken by Division Bench of this Court – Impugned order of dismissal of service and order of recovery quashed – Petitioner directed to be reinstated with backwages – Petition allowed. [Ashok Sharma (Dr.) Vs. State of M.P.] ...2173

सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 15(2) – जांच प्राधिकारी से असहमति – प्रक्रिया – सेवा से पदच्युति एवं वसूली – दीनदयाल मोबाईल स्वास्थ्य यूनिट के संबंध में निविदा/संविदा जारी की गई जिससे उक्त को एक पक्षकार को प्रदान किया गया, बाद में जिसका पर्यवसान किया गया – पक्षकार ने पूर्वतर रिट याचिका में संविदा के पर्यवसान को चुनौती दी जिसमें उक्त को मंजूर किया गया और इस न्यायालय ने संविदा के पर्यवसान को अभिखंडित किया – तत्पश्चात्, याची को, अभिकथित वित्तीय अनियमितताओं के संबंध में अनुशासनिक कार्यवाहियों के अंतर्गत सेवा से पदच्युती से दण्डित किया गया और उसके विरूद्ध वसूली का आदेश पारित किया गया – को चुनौती – अभिनिर्धारित – जांच आयुक्त ने याची को आरोपों से विमुक्त कर दिया – यहां तक कि मामला लोकायुक्त को निर्दिष्ट किया गया जिसमें उन्होंने कोई अनियमितता नहीं पायी और जांच बंद की – याची पर एक पक्षीय कार्यवाही की गई थी और दण्ड अधिरोपित किया गया था – अनुशासनिक प्राधिकारी का निर्णय, इस न्यायालय की खंड न्यायपीठ द्वारा लिये गये निर्णय के विपरीत है – सेवा से पदच्युति का आक्षेपित आदेश एवं वसूली का आदेश अभिखंडित – याची को पिछले वेतन के साथ बहाल किये जाने के लिए निदेशित किया गया – याचिका मंजूर। (अशोक शर्मा (डॉ.) वि. म.प्र. राज्य) ...2173

***Service Law – Civil Services (Pension) Rules, M.P. 1976, Rule 9 and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 19 – Permanent Stoppage of Entire Pension – Opportunity of Hearing – Approval* – Held – State Government has ample power**

under Rule 9 of the Pension Rules to stop the pension in cases where pensioner is found guilty of grave misconduct/offence in departmental enquiry or judicial proceedings – Such conduct should be related to the period when he was in service – In the present case, conviction is founded upon his conduct as an employee – Conviction was upheld by this Court and Supreme Court – Full Bench of this Court held that after conviction by a Court of competent jurisdiction, no opportunity of hearing is required to be given – Further held – Vide executive instruction, State Government clarified that approval of PSC is required in such cases where employee is appointed through PSC – In the present case, petitioner was not appointed through PSC, thus no approval was required – Petitioner not entitled to receive pension from the date of impugned order – Petition dismissed. [Prem Chand Chaturvedi Vs. State of M.P.] ...1636

सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 9 एवं सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 19 – संपूर्ण पेंशन पर स्थाई रोक – सुनवाई का अवसर – अनुमोदन – अभिनिर्धारित – राज्य सरकार को पेंशन नियमों के नियम 9 के अंतर्गत ऐसे प्रकरणों में पेंशन रोकने की पर्याप्त शक्ति है जहां पेंशनभोगी को विभागीय जांच अथवा न्यायिक कार्यवाहियों में घोर अवचार/अपराध का दोषी पाया गया है – उक्त अवचार उस अवधि से संबद्ध होना चाहिए जब वह सेवा में था – वर्तमान प्रकरण में, दोषसिद्धि उसके कर्मचारी के रूप में आचरण पर आधारित है – दोषसिद्धि को इस न्यायालय द्वारा एवं उच्चतम न्यायालय द्वारा कायम रखा गया था – इस न्यायालय की पूर्ण न्यायपीठ ने अभिनिर्धारित किया कि सक्षम अधिकारिता के न्यायालय द्वारा दोषसिद्धि के पश्चात्, सुनवाई का अवसर दिया जाना अपेक्षित नहीं – आगे अभिनिर्धारित – कार्यपालिक अनुदेश द्वारा राज्य सरकार ने स्पष्ट किया कि पी.एस.सी. का अनुमोदन ऐसे प्रकरणों में अपेक्षित है जहां कर्मचारी पी.एस.सी. के जरिए नियुक्त किया गया है – वर्तमान प्रकरण में, याची को पी.एस.सी. के जरिए नियुक्त नहीं किया गया था, अतः कोई अनुमोदन अपेक्षित नहीं था – याची, आक्षेपित आदेश की तिथि से पेंशन प्राप्त करने का हकदार नहीं – याचिका खारिज। (प्रेम चंद चतुर्वेदी वि. म.प्र. राज्य) ...1636

Service Law – Civil Services (Pension) Rules, M.P. 1976, Rule 42 – Voluntary Retirement – Withdrawal **– Held – As per Rule 42 of the Rules of 1976, once application for voluntary retirement is accepted by respondent, the same cannot be withdrawn – Application for withdrawal of resignation can be filed before its acceptance – So far as 30 days notice period is concerned, the same would be applicable in**

those cases where no period has been mentioned in application for voluntary retirement – In the instant case, choiced date has been mentioned in application – No illegality in impugned order – Petition dismissed. [Shanti Verma (Smt.) Vs. State of M.P.] ...2134

सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42 – स्वैच्छिक सेवानिवृत्ति – वापस लेना – अभिनिर्धारित – 1976 के नियमों के नियम 42 के अनुसार, एक बार प्रत्यर्थी द्वारा स्वैच्छिक सेवानिवृत्ति का आवेदन स्वीकार कर लिया गया है, तो उक्त को वापस नहीं लिया जा सकता – त्यागपत्र वापस लेने हेतु आवेदन उसके स्वीकार होने से पूर्व प्रस्तुत किया जा सकता है – जहाँ तक 30 दिनों की नोटिस अवधि का संबंध है, उक्त उन प्रकरणों में लागू होगा जहाँ स्वैच्छिक सेवानिवृत्ति के लिए आवेदन में कोई अवधि का उल्लेख नहीं किया गया है – वर्तमान प्रकरण में, चुनी गई तिथि का आवेदन में उल्लेख किया गया है – आक्षेपित आदेश में कोई त्रुटि नहीं – याचिका खारिज। (शांति वर्मा (श्रीमती) वि. म. प्र. राज्य) ...2134

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

सेवा विधि – संविधान – अनुच्छेद 320(3) एवं सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 27(2) –अपीली प्राधिकारी की शक्ति – लोक सेवा आयोग से सलाह – अनुशासनिक प्राधिकारी ने याची पर गुरूतर शास्ति अधिरोपित की – अपील में, अपीली प्राधिकारी ने शास्ति को कम कर लघु करने की राय दी – मामला

परामर्श तथा सलाह हेतु पी.एस.सी. को अग्रेषित किया गया – पी.एस.सी. ने अधिरोपित की गई शास्ति को कम न करने की राय दी, परिणामस्वरूप अपीली प्राधिकारी ने अपील खारिज की – को चुनौती – अभिनिर्धारित – एम.पी.पी.एस.सी. से परामर्श करने की आवश्यकता तथा उसका प्रतिवेदन/सलाह न्यायिककल्प शक्तियों का प्रयोग करते समय अनुशासनिक प्राधिकारी या अपीली प्राधिकारी पर बाध्यकारी नहीं है – अनुच्छेद 320(3) एवं 1966 के नियमों के नियम 27(2) के अनुसार, प्राधिकारीगण पी.एस.सी. की सलाह ले सकते हैं – मात्र परामर्श का अर्थ प्रस्तावित दण्ड को प्रभावित करना नहीं होगा – यह प्राधिकारियों की कानूनी शक्तियों के त्याग के समान नहीं होगा जो कि विधि की दृष्टि में कायम रखने योग्य नहीं है – आक्षेपित आदेश अभिखंडित तथा मामला आयोग (पी. एस.सी.) की सलाह से अप्रभावित होकर दण्ड के बिंदु पर पुनर्विचार करने हेतु अपीली प्राधिकारी को प्रतिप्रेषित किया गया – याचिका मंजूर। (एस.के. अग्रवाल वि. म.प्र. राज्य) ...1840

Service Law – Daily Wagers – Industrial Disputes Act (14 of 1947) **– Central Government vide notification decided to amalgamate three Regional Rural Banks with the appellant bank whereby services of the daily wagers was decided to be dispensed with – Respondents, daily wage employees filed writ petitions before High Court whereby appellants were prohibited to hand over the petitioners (daily wagers) appointed by the erstwhile Regional Rural Banks to private agency and allow them in service as engaged by the erstwhile Regional Rural Banks – Challenge to – Held – A daily wager, by nomenclature itself is not a regular employee of Bank as there is no established employer and employee relationship – Daily wagers have protection as provided under the Industrial Disputes Act of 1947 but there cannot be any prohibition against employer, not to terminate services of daily wager as it is not even available to regular employees – Services of workmen can be dispensed with as and when it is considered appropriate by following due process of law – Order passed by single bench is set aside – Appeal disposed. [Madhyanchal Gramin Bank Vs. Neeraj Kumar Barman] (DB)...1633**

सेवा विधि – दैनिक वेतनभोगी – औद्योगिक विवाद अधिनियम (1947 का 14) – केन्द्र सरकार ने अधिसूचना द्वारा, अपीलार्थी बैंक के साथ तीन क्षेत्रीय ग्रामीण बैंको को समामेलित करने का निर्णय लिया जिससे दैनिक वेतनभोगियों की सेवा से अभिमुक्ति का निर्णय लिया गया – प्रत्यर्थीगण, दैनिक वेतन कर्मचारियों ने उच्च न्यायालय के समक्ष रिट याचिकाऐं प्रस्तुत की जिससे तत्कालीन क्षेत्रीय ग्रामीण बैंको द्वारा नियुक्त याचीगण (दैनिक वेतनभोगी) को प्राईवेट ऐजेंसी को सौंपने से

अपीलार्थीगण को प्रतिषिद्ध किया गया था तथा उन्हे सेवा में बने रहने की अनुमति दी गई जैसा कि तत्कालीन क्षेत्रीय ग्रामीण बैंको द्वारा उन्हे नियुक्त किया गया था – को चुनौती – अभिनिर्धारित – एक दैनिक वेतनभोगी, स्वयं नाम पद्धति द्वारा बैंक का एक नियमित कर्मचारी नहीं है क्योंकि यहां नियोक्ता एवं कर्मचारी का कोई स्थापित संबंध नहीं – दैनिक वेतनभोगियों को औद्योगिक विवाद अधिनियम, 1947 के अंतर्गत यथा उपबंधित संरक्षण प्राप्त है परंतु नियोक्ता के विरूद्ध कोई प्रतिषेध नहीं हो सकता कि वह दैनिक वेतनभोगी की सेवाओं को समाप्त न करें क्योंकि यह तो नियमित कर्मचारियों को तक उपलब्ध नहीं – विधि की सम्यक प्रक्रिया के पालन द्वारा, जैसा कि एवं जब उचित समझा जाता है, कर्मकारों को सेवा से अभिमुक्त किया जा सकता है – एकल न्यायपीठ द्वारा पारित आदेश अपास्त – अपील निराकृत। (मध्यांचल ग्रामीण बैंक वि. नीरज कुमार बर्मन) (DB)...1633

Service Law – Principle of Audi Alteram Partem **– Held – Apex Court has concluded that audi alteram partem is one of basic pillars of natural justice which means no one should be condemned unheard – Whenever possible, it should be followed but it is not necessary where it would be a futile exercise or where the result would remain the same – A Court of Law does not insist on useless formality – In the instant case also even though notice was issued by respondents to petitioner, the result would remain the same. [Shanti Verma (Smt.) Vs. State of M.P.] ...2134**

सेवा विधि – दूसरे पक्ष को भी सुनने का सिद्धांत – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह निष्कर्षित किया है कि दूसरे पक्ष को भी सुनना, नैसर्गिक न्याय के मूलभूत स्तम्भों में से एक है जिसका अर्थ है कि किसी को भी सुने बगैर सिद्धदोष नहीं करना चाहिए – जब भी संभव हो, इसका पालन किया जाना चाहिए परन्तु वहाँ पर यह आवश्यक नहीं है, जहाँ यह एक व्यर्थ प्रयोग होगा या जहाँ परिणाम वही रहेगा – न्यायालय निरर्थक औपचारिकता पर जोर नहीं देता है – वर्तमान प्रकरण में भी, प्रत्यर्थीगण द्वारा याची को नोटिस जारी किये जाने पर भी परिणाम वही रहेगा। (शांति वर्मा (श्रीमती) वि. म.प्र. राज्य) ...2134

Service Law – Registration and Stamp Class III (Non-Ministerial) Service Recruitment Rules, M.P., 2007 and Registration and Stamp Class III Ministerial Service Recruitment Rules, M.P., 2007 – Appointment – Amalgamation of Post – Amendment in Rules **– Petitioners applied for and got selected for post of Registration Clerk – Respondents took consent of petitioners for the post of Assistant Grade III on the ground that post of Registration Clerk and Assistant Grade III were amalgamated by decision of State Government – Later,**

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

सेवा विधि – पंजीयन एवं मुद्रांक, तृतीय श्रेणी (अलिपिक वर्गीय) सेवा भर्ती नियम, म.प्र., 2007 – पंजीयन एवं मुद्रांक, तृतीय श्रेणी (लिपिक वर्गीय) सेवा भर्ती नियम, म.प्र., 2007 –नियुक्ति – पद का समामेलन – नियमों में संशोधन– याचीगण ने पंजीयन लिपिक के पद के लिए आवेदन किये तथा चयनित हुए – प्रत्यर्थीगण ने इस आधार पर सहायक ग्रेड–III के पद हेतु याचीगण की सहमति ली कि पंजीयन लिपिक तथा सहायक ग्रेड–III के पद, राज्य सरकार के विनिश्चय द्वारा समामेलित किये गये थे – बाद में, सहायक ग्रेड–III के रूप में पदग्रहण करने के पश्चात् याचीगण को यह ज्ञात हुआ कि समामेलन का अभिवाक् गलत था तथा नियमों में ऐसा कोई संशोधन नहीं किया गया है – को चुनौती – अभिनिर्धारित – पंजीयन लिपिक का पद अलिपिक वर्गीय नियमों द्वारा शासित है तथा सहायक ग्रेड–III का पद विभाग के लिपिक वर्गीय नियमों द्वारा शासित है – नियमों में संशोधन किये बिना मात्र संसूचना के आधार पर इन दो पदों का समामेलन अनुज्ञेय नहीं है – मंत्रीमंडल ने भी समामेलन का उक्त विनिश्चय नहीं लिया है – आज दिनांक तक, नियमों में कोई संशोधन नहीं किया गया है – याचीगण ने पंजीयन लिपिक के पद हेतु आवेदन किये तथा कथित पद पर सम्यक् रूप से चयनित हुये थे – राज्य सरकार द्वारा उठाया गया कदम भ्रामक तथा नियमों के विपरीत है – याचीगण को पंजीयन लिपिक के पद पर कार्य करने की मंजूरी दी जाए – याचिकाएँ मंजूर। (नन्हे सिंह मरावी वि. म.प्र. राज्य) ...*107**

***Service Law – Removal of Employee – College Code, Clause 28 – Procedure* – Petitioner, a professor in a private unadided educational institution, was abruptly restrained by respondent institution to put his signature in attendance register and was deprived to perform his lawful duties – Institution neither conducted any disciplinary proceedings nor placed him under suspension – Challenge**

to – Held – It is admitted fact that service conditions of teachers of even an unaided institution admitted to the privileges of University are governed by College Code – Petitioner can be deprived from his right to perform his duties only as per the procedure laid down in College Code – No material/Order on record to show that any lawful order was passed in respect of petitioner – Action taken by institution/employer against petitioner is disapproved – Respondents directed to permit petitioner to perform his lawful duties forthwith, however Institute will be free to take action against petitioner in accordance with law – Petition allowed. [Pushkar Gupta (Dr.) Vs. State of M.P.] ...*99

सेवा विधि – कर्मचारी को हटाया जाना – महाविद्यालय संहिता, खंड 28 – प्रक्रिया – याची, एक निजी गैर–सहायता प्राप्त शैक्षणिक संस्था में प्राध्यापक को, प्रत्यर्थी संस्था द्वारा उपस्थिति रजिस्टर में अपने हस्ताक्षर करने से अचानक अवरोध किया गया था तथा उसके विधिपूर्ण कर्तव्यों का पालन करने से वंचित किया गया था – संस्था ने न तो कोई अनुशासनात्मक कार्यवाहियों का संचालन किया न ही उसे निलंबित रखा – को चुनौती – अभिनिर्धारित – यह स्वीकृत तथ्य है कि गैर सहायता प्राप्त संस्था जो कि विश्वविद्यालय जन्य विशेषाधिकार हेतु स्वीकृत है, के भी शिक्षकों की सेवा शर्तें महाविद्यालय संहिता द्वारा ही शासित होती है – याची को केवल महाविद्यालय संहिता में प्रतिपादित प्रक्रिया के अनुसार अपने कर्तव्यों का पालन करने के उसके अधिकार से वंचित किया जा सकता है – यह दर्शाने हेतु अभिलेख पर कोई सामग्री/आदेश नहीं कि याची के संबंध में कोई विधिपूर्ण आदेश पारित हुआ था – संस्था/नियोक्ता द्वारा याची के विरूद्ध की गई कार्रवाई अननुमोदित – प्रत्यर्थीगण को, याची को तत्काल अपने विधिपूर्ण कर्तव्यों का पालन करने की अनुमति देने हेतु निदेशित किया गया, तथापि संस्था विधि के अनुसार याची के विरूद्ध कार्रवाई करने के लिए स्वतंत्र होगी – याचिका मंजूर। (पुष्कर गुप्ता (डॉ.) वि. म.प्र. राज्य) ...*99

***Service Law – Stoppage of Pension – Civil Services (Pension) Rules, M.P. 1976, Rule 8 – Opportunity of Hearing – Natural Justice* – Conviction u/s 7 of Prevention of Corruption Act, 1988 against which, appeal is pending – Stoppage of pension of petitioner without issuing any show cause notice and without giving any opportunity of hearing – Held – After retirement, pensioner is entitled to pension in view of his past service under the State – An employee earns his pension by serving the State for many years – Pension is not a bounty – Deprivation of pension affects civil rights of pensioner, the means of his survival – Show cause notice is required to be given to the retired government**

servant convicted by the Criminal Court – Natural justice warrants that opportunity of hearing is required to be provided before an order of stoppage of pension is passed u/R 8(2) of the Rules of 1976 – Reference answered accordingly by majority. [Ram Sewak Mishra Vs. State of M.P.] (FB)...2076

सेवा विधि – पेंशन रोका जाना – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 8 – सुनवाई का अवसर – नैसर्गिक न्याय – भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 7 के अंतर्गत दोषसिद्धि जिसके विरूद्ध, अपील लंबित है – किसी कारण बताओ नोटिस को जारी किये बिना तथा सुनवाई का अवसर प्रदान किये बिना, याची की पेंशन रोका जाना – अभिनिर्धारित – सेवानिवृत्ति के पश्चात् पेंशनर, राज्य के अधीन उसकी पूर्व सेवा को दृष्टिगत रखते हुये पेंशन का हकदार है – एक कर्मचारी अनेक वर्षों तक राज्य की सेवा करके अपनी पेंशन उपार्जित करता है – पेंशन एक उपहार नहीं है – पेंशन से वंचित किया जाना, पेंशनर के सिविल अधिकारों को प्रभावित करता है, जो उसकी उत्तरजीविता का साधन है – दांडिक न्यायालय द्वारा सेवानिवृत्त शासकीय कर्मचारी को कारण बताओ नोटिस दिया जाना अपेक्षित है – नैसर्गिक न्याय के लिए आवश्यक है कि 1976 के नियमों के नियम 8(2) के अंतर्गत पेंशन को रोके जाने के आदेश के पूर्व सुनवाई का अवसर प्रदान किया जाना अपेक्षित है – निर्देश बहुमत द्वारा तद्नुसार उत्तरित। (राम सेवक मिश्रा वि. म.प्र. राज्य) (FB)...2076

Service Law – Termination – Character Verification – Suppression of Fact – Petty Offence **– Petitioner, presently 46 yrs old was initially appointed as daily wager in 1989 and in the year 2015 he was regularized – Subsequently his service was terminated on the ground that he suppressed his criminal antecedents in character verification form, which has rendered him unfit for government employment – Challenge to – Held – Petitioner was charged for offence u/S 147, 148, 294, 323, 506 and 324 IPC in 1999 which was a family dispute and was later compromised in 2000 – He stood acquitted around 15 years back before his verification – Offences are petty in nature and incident took place when he was 28 yrs old - It cannot be said that petitioner was involved in any case of moral turpitude – Discretion exercised is not just and proper and was exercised in a mechanical manner – Impugned order quashed – Petition allowed. [Bhagwan Das Yadav Vs. State of M.P.] ...*87**

सेवा विधि – सेवा समाप्ति – चरित्र सत्यापन – तथ्य का छिपाव – मामूली अपराध – याची, वर्तमान में 46 वर्ष की आयु, को 1989 में दैनिक वेतनभोगी के रूप

में आंरभिक रूप से नियुक्त किया गया था तथा वर्ष 2015 में उसे नियमित किया गया था – तत्पश्चात् उसकी सेवा इस आधार पर समाप्त कर दी गई थी कि उसने चरित्र सत्यापन प्रारूप में अपने आपराधिक पूर्ववृत्त को छिपाया जिसने उसे शासकीय नियोजन हेतु अयोग्य बना दिया – को चुनौती – अभिनिर्धारित – याची को 1999 में धारा 147, 148, 294, 323, 506 व 324 भा.दं.सं. के अंतर्गत अपराध हेतु आक्षेपित किया गया था जो कि एक पारिवारिक विवाद था और बाद में 2000 में समझौता हुआ था – उसके सत्यापन के लगभग 15 वर्ष पूर्व वह दोषमुक्त हो गया था – अपराध मामूली प्रकृति के है तथा घटना तब घटी थी जब वह 28 वर्ष की आयु का था – यह नहीं कहा जा सकता कि याची नैतिक अधमता के किसी प्रकरण में शामिल था – प्रयोग किया गया विवेकाधिकार न्याय संगत एवं उचित नहीं तथा यांत्रिक ढंग से प्रयोग किया गया था – आक्षेपित आदेश अभिखंडित – याचिका मंजूर। (भगवान दास यादव वि. म.प्र. राज्य) ...*87

***Town Improvement Trust Act, (M.P.) 1960 (14 of 1961), Section 71(1) and Nagar Sudhar Nyas (Nirsan) Adhiniyam (22 of 1994) – Acquisition of Land – Use of Land – Right of Trust* – Land of appellants were acquired vide notification u/S 71(1) of the Act of 1960 – Land was not used by the Trust as for the purpose, it was acquired – Appellant filed a writ petition which was dismissed – Challenge to – Held – Once a notification has been published u/S 71(1) of the Act of 1960, the land owned by appellants vest in the Trust absolutely free from all encumbrance and Trust can utilize the acquired land for any other purpose which it deems appropriate – Trust, using the acquired land by carving out residential plots cannot be said to be illegal – No merit in appeal and is dismissed. [Arvind Kumar Jain Vs. State of M.P.] (DB)...1623**

नगर सुधार न्यास अधिनियम, (म.प्र.) 1960 (1961 का 14), धारा 71(1) एवं नगर सुधार न्यास (निरसन) अधिनियम (1994 का 22) – भूमि का अर्जन – भूमि का उपयोग – न्यास के अधिकार – 1960 के अधिनियम की धारा 71(1) के अंतर्गत अधिसूचना द्वारा अपीलार्थीगण की भूमि अर्जित की गई थी – न्यास द्वारा भूमि का उपयोग नहीं किया गया था, जिस प्रयोजन हेतु वह अर्जित की गई थी – अपीलार्थी ने रिट याचिका प्रस्तुत की जो कि खारिज की गई थी – को चुनौती – अभिनिर्धारित – 1960 के अधिनियम की धारा 71(1) के अंतर्गत एक बार अधिसूचना प्रकाशित किये जाने पर, अपीलार्थीगण के स्वामित्व की भूमि समस्त भारों से मुक्त आत्यंतिक रूप से न्यास में निहित हो जाती है तथा न्यास अर्जित भूमि का किसी अन्य प्रयोजन के लिए उपयोग कर सकता है, जिसे वह उचित मानता हो – न्यास द्वारा आवासीय भूखंडों को बनाकर अर्जित भूमि का उपयोग किया जाना अवैध नहीं कहा जा सकता – अपील में कोई गुणदोष नहीं एवं खारिज। (अरविन्द कुमार जैन

वि. म.प्र. राज्य) (DB)...1623

Town Improvement Trust Act, (M.P.) 1960 (14 of 1961), Section 72(2), Nagar Sudhar Nyas (Nirsan) Adhiniyam (22 of 1994), Section 3 and Land Acquisition Act (1 of 1894), Section 18 – Compensation – Agreement – Jurisdiction of Court – **In the instant case, no proceedings were initiated for determination of amount of compensation by an agreement in terms of Section 72(2) of the Act of 1960 nor the matter was referred to the Tribunal – Act of 1960 was repealed by the Act of 1994 where Section 3 of the Act of 1994 shows that pending proceedings before the Tribunal will continue as if Municipality was a party and if proceedings are filed after the repealed Act, it shall be disposed of by the Court of District Judge of the concerned district as if reference made to that Court u/S 18 of the Land Acquisition Act, 1894 – Appellant permitted to invoke jurisdiction of filing proceeding before the District Judge within 90 days from today. [Arvind Kumar Jain Vs. State of M.P.]** (DB)...1623

नगर सुधार न्यास अधिनियम, (म.प्र.) 1960 (1961 का 14), धारा 72(2) एवं नगर सुधार न्यास (निरसन) अधिनियम (1994 का 22), धारा 3 एवं भूमि अर्जन अधिनियम (1894 का 1), धारा 18 – प्रतिकर – करार – न्यायालय की अधिकारिता – वर्तमान प्रकरण में, 1960 के अधिनियम की धारा 72(2) के निबंधनों के अनुसार करार द्वारा प्रतिकर की राशि के निर्धारण के लिए कोई कार्यवाही आरंभ नहीं की गई थी और न ही मामला अधिकरण को निर्देशित किया गया था – 1960 के अधिनियम को 1994 के अधिनियम द्वारा निरसित किया गया था जहां 1994 के अधिनियम की धारा 3 यह दर्शाती है कि अधिकरण के समक्ष लंबित कार्यवाहियाँ जारी रहेंगी जैसे कि नगरपालिका एक पक्षकार थी तथा यदि कार्यवाहियाँ निरसित अधिनियम के पश्चात् प्रस्तुत की जाती हैं, इन्हें संबंधित जिले के जिला न्यायाधीश के न्यायालय द्वारा निराकृत किया जायेगा जैसे कि भूमि अर्जन अधिनियम, 1894 की धारा 18 के अंतर्गत उस न्यायालय को निर्देश हेतु भेजा गया हो – अपीलार्थी को आज से 90 दिनों की अवधि के भीतर जिला न्यायाधीश के समक्ष कार्यवाही प्रस्तुत करने की अधिकारिता का अवलंब लेने की अनुमति दी गई। (अरविन्द कुमार जैन वि. म.प्र. राज्य) (DB)...1623

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

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

Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P. (9 of 1969),

Section 5 & 15 and Forest Act (16 of 1927), Section 26 & 41 – Confiscation of Seized Property **– Illegal transportation of teak wood – Tractor and trolly seized – Confiscation order passed by forest authority/SDO under provisions of Adhiniyam – In revision before the Session Court, seized vehicle was directed to be released – High Court upheld the order of release of seized vehicle – Challenge to – Held – Criminal prosecution is distinct from confiscation proceedings under the Adhiniyam – Both proceedings are different and parallel – Section 15 gives power to concerned authority to confiscate the articles even before the guilt is completely established – Confiscation being incidental and ancillary to conviction, State Government has separated the process of confiscation from process of prosecution – Order passed by High Court is set aside – Appeal allowed. [State of M.P. Vs. Smt. Kallo Bai] (SC)... 2063**

वन उपज व्यापार (विनियमन) अधिनियम, म.प्र. (1969 का 9), धारा 5 व 15 एवं वन अधिनियम (1927 का 16), धारा 26 व 41 – जब्तशुदा संपत्ति का अधिहरण – सागौन की लकड़ी का अवैध परिवहन – ट्रेक्टर एवं ट्राली जब्त – वन प्राधिकारी/उपखंड अधिकारी द्वारा अधिनियम के उपबंधों के अंतर्गत अधिहरण का आदेश पारित किया गया – सत्र न्यायालय के समक्ष पुनरीक्षण में, जब्तशुदा वाहन को निर्मुक्त करने हेतु निदेशित किया गया था – उच्च न्यायालय ने जब्तशुदा वाहन के निर्मुक्ति के आदेश को कायम रखा – को चुनौती – अभिनिर्धारित – अधिनियम के अंतर्गत दांडिक अभियोजन, अधिहरण कार्यवाहियों से सुभिन्न है – दोनों कार्यवाहियाँ भिन्न तथा समानांतर हैं – धारा 15, संबंधित प्राधिकारी को पूर्ण रूप से दोषिता स्थापित होने के पूर्व वस्तुओं को अधिहृत करने की शक्ति प्रदान करती है – अधिहरण का, दोषसिद्धि के लिये आनुशंगिक एवं सहायक होने के कारण राज्य सरकार ने अधिहरण की प्रक्रिया को अभियोजन की प्रक्रिया से पृथक किया है – उच्च न्यायालय द्वारा पारित आदेश अपास्त किया गया – अपील मंजूर। (म.प्र. राज्य वि. श्रीमती कल्लो बाई) (SC)...2063

Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P. (9 of 1969), Section 15(5) – Protection to owners of seized vehicle **– Held – A protection is provided for the owners of seized vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged u/S 15(5) of the Adhiniyam and the said offence was committed without their knowledge and connivance. [State of M.P. Vs. Smt. Kallo Bai] (SC)... 2063**

वन उपज व्यापार (विनियमन) अधिनियम, म.प्र. (1969 का 9), धारा 15(5) –

INDEX

जब्तशुदा वाहन के मालिकों को संरक्षा – अभिनिर्धारित – जब्तशुदा वाहनों/वस्तुओं के मालिकों को संरक्षा प्रदान की गई है, यदि वे साबित करने में सक्षम हैं कि उन्होनें अधिनियम की धारा 15(5) के अंतर्गत परिकल्पित की गई सभी युक्तियुक्त सतर्कता एवं सावधानियाँ बरती तथा कथित अपराध उनके ज्ञान तथा मौनानुकुलता के बिना कारित किया गया था। (म.प्र. राज्य वि. श्रीमती कल्लो बाई) (SC)... 2063

Vishesh Nyayalaya Adhiniyam, M.P. 2011, Section 2(1)(e) – See – Prevention of Corruption Act, 1988, Section 13(1)(e) [Vinay Kumar Vs. State of M.P.] ...2283

विशेष न्यायालय अधिनियम, म.प्र. 2011, धारा 2(1)(ई) – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(ई) (विनय कुमार वि म.प्र. राज्य) ...2283

Vishesh Nyayalaya Adhiniyam, M.P. 2011 – Object – **The object of Adhiniyam is to expedite trials of offences related to disproportionate assets punishable u/S 13(1)(e) of the PC Act, simplicitor or in combination with other offences under IPC by establishment of Special Courts and laying down procedure for confiscation of unaccounted property and money procured by means of offences as defined u/S 2(1)(e) of 2011 Adhiniyam. [Vinay Kumar Vs. State of M.P.] ...2283**

विशेष न्यायालय अधिनियम, म.प्र. 2011 – उद्देश्य – विशेष न्यायालयों की स्थापना द्वारा, केवल अननुपातिक आस्तियों के संबंध में भ्रष्टाचार निवारण अधिनियम की धारा 13(1)(ई) के अंतर्गत दण्डनीय अथवा भा.दं.सं. के अंतर्गत अन्य अपराधों के संयोजन में अपराधों का शीघ्र विचारण तथा 2011 के अधिनियम की धारा 2(1)(ई) के अंतर्गत यथा परिभाषित अपराधों के माध्यम से उपाप्त बेहिसाब सम्पत्ति एवं धन के अधिहरण हेतु प्रक्रिया निर्धारित करना, अधिनियम का उद्देश्य है। (विनय कुमार वि म.प्र. राज्य) ...2283

Writ Appeal – Limitation – Condonation of Delay – Ground – **Held – Appellant was prosecuting remedy before this Court by way of writ appeal and review petition and hence delay in filing present appeal is bonafide constituting sufficient cause – Delay condoned. [Ram Kumar Meena Vs. State of M.P.] (DB)...2099**

रिट अपील – परिसीमा – विलंब के लिए माफी – आधार – अभिनिर्धारित – अपीलार्थी रिट अपील एवं पुनर्विलोकन याचिका के जरिए इस न्यायालय के समक्ष उपचार की कार्यवाही कर रहा था और इसलिए वर्तमान अपील प्रस्तुत करने में विलंब सद्भाविक है, जो पर्याप्त कारण गठित करता है – विलंब माफ किया गया। (राम कुमार मीणा वि. म.प्र. राज्य) (DB)...2099

Workmen's Compensation Act (8 of 1923) – Section 2(1)(n) – Definition of "Workmen" – **Appellant filed a claim case for compensation on account of accidental death of his son while on duty during the course of employment under the respondent – Claim case was dismissed – Challenge to – Held – It is clear from the facts that death of employee has occurred during the course of employment but Section 2(1)(n) shows that the Workmen's Compensation Act excludes the employees doing clerical or supervisory work – In the present case, deceased was employed as a clerk and was thus not a "Workman" within the ambit of the provisions of the Act – Impugned order is just and proper – Appeal dismissed. [Gajendra Singh Vs. S.G. Motors]** ...*91

कर्मकार प्रतिकर अधिनियम, (1923 का 8) – धारा 2(1)(एन) – "कर्मकार" की परिभाषा – अपीलार्थी ने अपने पुत्र की दुर्घटनापूर्ण मृत्यु, प्रत्यर्थी के अधीन नियोजन के दौरान कर्तव्य पर रहने के दौरान हो जाने के कारण प्रतिकर हेतु दावा प्रकरण प्रस्तुत किया – दावा प्रकरण खारिज किया गया था – को चुनौती – अभिनिर्धारित – तथ्यों से यह स्पष्ट है कि कर्मचारी की मृत्यु नियोजन के दौरान हुई है परंतु धारा 2(1)(एन) दर्शाती है कि कर्मकार प्रतिकर अधिनियम, लिपिकीय या पर्यवेक्षण कार्य करने वाले कर्मचारियों को अपवर्जित करती है – वर्तमान प्रकरण में, मृतक एक लिपिक के रूप में नियोजित था और इसलिए अधिनियम के उपबंधों की परिधि के भीतर "कर्मकार" नहीं था – आक्षेपित आदेश न्यायपूर्ण एवं उचित है – अपील खारिज। (गजेन्द्र सिंह वि. एस.जी. मोटर्स) ...*91

Workmen's Compensation Act (8 of 1923), Section 30 – Compensation – Quantum – Interest on Compensation – **Respondent while carrying out repairing and maintenance of electric line got electric shock from High Tension Line and died – In claim case, Commissioner under the Act of 1923 awarded a compensation of Rs. 3,78,575 alongwith interest @ 12% from the date of accident – Challenge to – Held – Appellant contended that respondent was not their employee but was the employee of the contractor who was contracted for maintenance work – In written statements, appellant stated the place of work as Transport Nagar whereas Contractor stated the place of work as Kishanbagh – Appellant and Contractor could not establish their respective contention – Further, appellant miserably failed to establish the shift duty allocated to workers whose names were found in attendance sheet – Oral and documentary evidence shows that findings recorded by Commissioner cannot be faulted with – Further held –**

INDEX

Supreme Court held that interest on compensation should be paid from date of accident – In the present case, award of interest from date of accident, also cannot be faulted with – Appeal dismissed. [Executive Engineer (City Division North) M.P.M.K.V.V.C.L. Roshnighar, Gwalior Vs. Kishorilal] **...*90**

कर्मकार प्रतिकर अधिनियम, (1923 का 8), धारा 30 – प्रतिकर – मात्रा – प्रतिकर पर ब्याज – प्रत्यर्थी को विद्युत लाइन की मरम्मत एवं रखरखाव करते समय हाइटेंशन लाइन से विद्युत का झटका लगा और उसकी मृत्यु हो गई – दावा के प्रकरण में, 1923 के अधिनियम के अंतर्गत आयुक्त ने दुर्घटना की तिथि से 12% ब्याज की दर के साथ 3,78,575 रू./– का प्रतिकर अधिनिर्णीत किया – को चुनौती – अभिनिर्धारित – अपीलार्थी ने यह तर्क दिया कि प्रत्यर्थी उनका कर्मचारी नहीं था बल्कि उस ठेकेदार का कर्मचारी था जिससे रखरखाव के कार्य हेतु संविदा की गई थी – लिखित कथनों में, अपीलार्थी ने कार्य का स्थल ट्रांसपोर्ट नगर बताया है जबकि ठेकेदार ने कार्य का स्थल किशनबाग बताया है – अपीलार्थी और ठेकेदार अपने संबंधित तर्क स्थापित नहीं कर सके – आगे, अपीलार्थी उन कर्मकारों की आबंटित शिफ्ट ड्यूटी स्थापित करने में बुरी तरह विफल रहा जिनके नाम उपस्थिति पत्रक में पाये गये थे – मौखिक एवं दस्तावेजी साक्ष्य यह दर्शाते हैं कि आयुक्त द्वारा अभिलिखित किये गये निष्कर्षों में कोई त्रुटि नहीं निकाली जा सकती – आगे अभिनिर्धारित – उच्चतम न्यायालय ने अभिनिर्धारित किया है कि प्रतिकर पर ब्याज का भुगतान दुर्घटना की तिथि से किया जायेगा – वर्तमान प्रकरण में, दुर्घटना की तिथि से ब्याज अधिनिर्णीत किये जाने में भी कोई त्रुटि नहीं निकाली जा सकती – अपील खारिज। (एग्जिक्यूटिव इंजीनियर (सिटी डिवीजन नॉर्थ) एम.पी.एम.के.व्ही.व्ही. सी.एल. रोशनीघर, ग्वालियर वि. किशोरीलाल) **...*90**

* * * * *

THE INDIAN LAW REPORTS M.P. SERIES, 2017

(VOL-3)

JOURNAL SECTION

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

MADHYA PRADESH ACT

No. 22 OF 2017

THE INDIAN STAMP (MADHYA PRADESH AMENDMENT) ACT, 2017

[Received the assent of the Governor on the 18th August, 2017; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 22nd August, 2017, page No. 914 (1)].

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

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

1. Short title and commencement. (1) This Act may be called the Indian Stamp (Madhya Pradesh Amendment) Act, 2017.

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

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

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

(i) in article 25, in column (2), in proviso, after clause (f), the following clause shall be added, namely :-

"(g) when an instrument relates to transfer of development right and/or construction right, obtained from the instrument executed under article 6(d) (i), along with consent of land owner or lessee, as the case may be, the rate of duty shall be one percent of market value of the land related to transfer of such right or consideration, whichever is higher, subject to a minimum of one thousand rupees.";

(ii) in article 62, in column (2), the following explanation shall be added, namely :-

"Explanation.- In case of assignment of a mining lease, the duty shall be equal to the amount or value calculated under article 38(b) depending upon the remaining period of the lease.".

NOTES OF CASES SECTION

Short Note
****(114)***
Before Mr. Justice G.S. Ahluwalia
Cr.R. No. 437/2017 (Gwalior) decided on 3 July, 2017

ASHOK ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

Penal Code (45 of 1860), Section 306/34 & 107 – Revision against Charge – Ingredients **– Deceased husband used to object the relationship of his wife with the applicant/accused whereby wife not only use to quarrel with the deceased but also used to threaten him in front of applicant/accused of falsely implicating him in criminal case – Held – It is clear that applicant and co-accused had created such a situation which indicate something more than mere relationship – There is sufficient material available on record to draw an inference that applicant with co-accused (wife of deceased) by their conduct has instigated the deceased to commit suicide – Charge rightly framed – Revision dismissed.**

दण्ड संहिता (1860 का 45), धारा 306/34 व 107 – आरोप के विरूद्ध पुनरीक्षण – घटक – मृतक पति को अपनी पत्नी के आवेदक/अभियुक्त के साथ संबंध पर आपत्ति थी जिस पर पत्नी न केवल मृतक के साथ झगड़ा करती थी बल्कि आवेदक/अभियुक्त के सामने उसे आपराधिक प्रकरण में मिथ्या रूप से आलिप्त करने की धमकी भी देती थी – अभिनिर्धारित – यह स्पष्ट है कि आवेदक तथा सह–अभियुक्त ने ऐसी परिस्थिति सृजित की थी जो कि संबंध मात्र से कहीं अधिक कुछ और उपदर्शित करती है – यह निष्कर्ष निकालने हेतु अभिलेख पर पर्याप्त सामग्री उपलब्ध है कि आवेदक ने सह–अभियुक्त (मृतक की पत्नी) के साथ मिलकर, उनके आचरण द्वारा मृतक को आत्महत्या करने के लिये उकसाया था – आरोप उचित रूप से विरचित किया गया – पुनरीक्षण खारिज।

Cases referred :

(2002) 5 SCC 731, (2015) 11 SCC 753, 2016 (3) MPLJ (Cri) 549, 2016 (3) MPLJ (Cri) 96, (2009) 16 SCC 605, (2012) 9 SCC 734, (2002) 5 SCC 371, (2010) I SCC 750, 1994 (1) SCC 73, AIR 2011 SC 1238, (2007) 10 SCC 797, (2010) 1 SCC 707, (2012) 9 SCC 460.

J.S. Kushwah, for the applicant.
Girdhari Singh Chauhan, P.P. for the non-applicant/State.

NOTES OF CASES SECTION

Short Note

**(115)*

Before Mr. Justice Rajeev Kumar Dubey

Cr.R. No. 792/2016 (Indore) decided on 4 April, 2017

CHANDAR SINGH ...Applicant

Vs.

STATE OF M.P. ...Non-applicant

Penal Code (45 of 1860), Section 115 & 120-B and Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Framing of Charge – Extra Judicial Confession of Co-accused – **Revision against the order framing charge against applicant u/S 115 and 120-B IPC – On basis of confessional statement of one co-accused, offence registered against applicant – Held – FIR lodged by complainant is based only on information by one of the co-accused – Mobile call details only shows that on date of incident co-accused talked with each other but only on this basis it cannot be inferred that applicant hatched conspiracy with other co-accused for murdering complainant – Confession of co-accused is no evidence at all, it is just a corroborative piece of evidence against applicant and alone cannot be used as a foundation for conviction of accused – No substantive evidence on record to frame charge against applicant – Applicant discharged – Revision allowed.**

दण्ड संहिता (1860 का 45), धारा 115 व 120–बी एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 – आरोप विरचित किया जाना – सह–अभियुक्त की न्यायिकेतर संस्वीकृति – भारतीय दंड संहिता की धारा 115 एवं 120–बी के अंतर्गत आवेदक के विरूद्ध आरोप विरचना के आदेश के विरूद्ध पुनरीक्षण – एक सह–अभियुक्त की संस्वीकृति के कथन के आधार पर, आवेदक के विरूद्ध अपराध पंजीबद्ध किया गया – अभिनिर्धारित – परिवादी द्वारा दर्ज किया गया प्रथम सूचना प्रतिवेदन केवल सह–अभियुक्तगण में से किसी एक द्वारा दी गई सूचना पर आधारित है – मोबाईल के कॉल विवरण केवल यह दर्शाते हैं कि घटना दिनांक को सह–अभियुक्तों ने आपस में बातचीत की थी परन्तु केवल इस आधार पर यह निष्कर्ष नहीं निकाला जा सकता कि आवेदक ने परिवादी की हत्या करने के लिये अन्य सह–अभियुक्त के साथ षड्यंत्र रचा था – सह–अभियुक्त की संस्वीकृति कोई साक्ष्य नहीं है, यह आवेदक के विरूद्ध साक्ष्य का, केवल एक संपोषक भाग है तथा अभियुक्त की दोषसिद्धि के लिए आधार के रूप में अकेले उपयोग नहीं किया जा सकता – आवेदक के विरूद्ध आरोप विरचित करने हेतु अभिलेख पर कोई सारभूत साक्ष्य नहीं – आवेदक को आरोपमुक्त किया गया–पुनरीक्षण मंजूर।

Cases referred :

(2010) 9 SCC 368, AIR 1952 SC 159.

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

Short Note
****(116)(DB)***
Before Mr. Justice S.K. Seth & Smt. Justice Anjuli Palo
W.P. No. 11586/2014 (Jabalpur) decided on 9 August, 2017

IDEAL CARPETS LTD. ...Petitioner
Vs.
UNION OF INDIA & ors. ...Respondents

Customs Act (52 of 1962) – Liability to Pay Demurrage Charges **– Petitioner, a company engaged in business of import and export, imported an consignment which did not get clearance from the custom authorities and were kept in the Inland Container Depot (ICD) – Custom authorities claimed demurrage charges – Challenge to – Held – Supreme Court has held, that once consignment is handed over to Port Trust and the goods are detained for want of clearance from custom authorities, demurrage has to be collected from the consignee – Respondents were justified in claiming demurrage charges from petitioner company who is liable to pay the same till goods were released from ICD – Petition dismissed.**

सीमा–शुल्क अधिनियम (1962 का 52) – डेमरेज प्रभार के भुगतान का दायित्व – याची, आयात–निर्यात के कारोबार में लगी एक कम्पनी ने एक ऐसे परेषण को आयात किया जिसे सीमा शुल्क प्राधिकारियों से निकासी प्राप्त नहीं हुई एवं उसे इन्लैंड कंटेनर डिपो (आइ.सी.डी) में रखा गया था – सीमा शुल्क प्राधिकारियों ने डेमरेज प्रभार का दावा किया – को चुनौती – अभिनिर्धारित – उच्चतम न्यायालय ने अभिनिर्धारित किया है कि एक बार परेषण को पत्तन न्यास को हस्तांतरित किया जाता है और सीमा शुल्क प्राधिकारियों के द्वारा निकासी के अभाव में माल को निरूद्ध किया जाता है, परेषिती से डेमरेज प्रभार वसूला जाना होता है – प्रत्यर्थीगण का याची कम्पनी से डेमरेज प्रभार का दावा न्यायोचित है जो उक्त का भुगतान करने के लिए दायी है जब तक आइ.सी.डी. से मुक्त नहीं किए गए थे – याचिका खारिज।

The order of the Court was delivered by : **S.K. Seth, J.**

Cases referred :

(1997) 10 SCC 285, 1995 AIR SCW 1802.

Preetam Jaiswal with *Shreyash Pandit*, for the petitioner.
Gautam Prasad, for the respondent Nos.1 to 6 & 10.
Manoj Sharma with *Deepak Kumar Raghuwanshi*, for the respondent Nos. 7, 8 & 9.

Short Note

****(117)***

Before Mr. Justice S.C. Sharma

C.R. No. 532/2010 (Jabalpur) decided on 22 August, 2017

MANULAL & ors. ...Applicants

Vs.

STATE OF M.P. ...Non-applicant

Land Acquisition Act (1 of 1894), Section 18 – Reference to Court for Enhancement – Limitation **– Revision against dismissal of application u/S 18 of the Act of 1894 by Land Acquisition Officer – Held – Award was passed on 31.01.2001 which was subsequently amended on 23.01.2003 and was finally approved on 25.01.2003 – Application u/S 18 of the Act was filed by applicant on 09.06.2003, is well within limitation as filed within 6 months from date of knowledge of award – Respondent directed to refer the matter to Reference Court for adjudication – Revision allowed.**

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 – वृद्धि हेतु न्यायालय को निर्देश – परिसीमा – भूमि अर्जन अधिकारी द्वारा 1894 के अधिनियम की धारा 18 के अंतर्गत आवेदन की खारिजी के विरूद्ध पुनरीक्षण – अभिनिर्धारित – दिनांक 31.01.2001 को अवार्ड पारित हुआ था जो कि बाद में दिनांक 23.01.2003 को संशोधित किया गया था तथा दिनांक 25.01.2003 को अंतिम रूप से अनुमोदित किया गया था – आवेदक द्वारा दिनांक 09.06.2003 को अधिनियम की धारा 18 के अंतर्गत प्रस्तुत आवेदन भली–भांति परिसीमा के भीतर है चूंकि अवार्ड का ज्ञान होने की तिथि से 6 माह के भीतर प्रस्तुत किया गया था – प्रत्यर्थीगण को मामला न्यायनिर्णयन हेतु निर्देश न्यायालय को निर्दिष्ट करने हेतु निदेशित किया गया – पुनरीक्षण मंजूर।

Case referred :

AIR 2005 SC 3464.

Mohd. Adil Usmani, for the applicant.
Piyush Jain, P.L. for the non-applicant Nos.1 & 2/State.
Rohit Jain, for the non-applicant No.3.

Short Note

****(118)***

Before Mr. Justice Alok Verma

M.Cr.C. No. 7223/2016 (Indore) decided on 13 April, 2017

MOHSIN ...Applicant

Vs.

STATE OF M.P. ...Non-applicant

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x), Penal Code (45 of 1860), Sections 294, 323, 506 & 34 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 – Subsequent Addition of Charge **– Offence registered against applicant u/S 294, 323, 506 & 34 IPC – Later, additional charge u/S.3(1)(x) of the Act of 1989 was added – Challenge to – Held – Charge sheet reveals that supplementary statement was recorded after about 8 days of the incident – No reason showed in statement as to why such facts were not mentioned in FIR immediately after incident and while recording of statement u/S 161 Cr.P.C. - No case is made out under the Act of 1989 – Subsequent charge framed u/S 3(1)(x) of the Act of 1989 is hereby quashed – Application allowed.**

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(x), दण्ड संहिता (1860 का 45), धाराएँ 294, 323, 506 व 34 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 – बाद में आरोप का जोड़ा जाना – आवेदक के विरूद्ध भारतीय दंड संहिता की धारा 294, 323, 506 व 34 के अंतर्गत अपराध पंजीबद्ध किया गया – बाद में, 1989 के अधिनियम की धारा 3(1)(x) के अंतर्गत अतिरिक्त आरोप जोड़े गये थे – को चुनौती – अभिनिर्धारित – आरोप पत्र यह प्रकट करता है कि अनुपूरक कथन घटना के लगभग 8 दिनों के पश्चात् अभिलिखित किये गये थे – कथन में कोई कारण नहीं दर्शाया गया है कि क्यों ऐसे तथ्यों का घटना के तुरंत पश्चात् प्रथम सूचना प्रतिवेदन में तथा दण्ड प्रक्रिया संहिता की धारा 161 के अंतर्गत कथन अभिलिखित करते समय उल्लेख नहीं किया गया था – 1989 के अधिनियम के अंतर्गत कोई प्रकरण नहीं बनता – 1989 के अधिनियम की धारा 3(1)(x) के अंतर्गत बाद में विरचित किया गया आरोप एतद्द्वारा अभिखंडित – आवेदन मंजूर।

I.A. Behna, for the applicant.
Prasanna Bhatnagar, for the non-applicant/State.

Short Note
****(119)(DB)***
Before Mr. Justice Hemant Gupta, Chief Justice
& Mr. Justice Vijay Kumar Shukla
W.A. No. 1039/2009 (Jabalpur) decided on 2 August, 2017

PRAMOD KUMAR AGRAWAL ...Appellant
Vs.
STATE OF M.P. & ors. ...Respondents

Service Law – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 14 & 15 – Order for Fresh Inquiry **– Held – In case of disagreement with report of Inquiry Officer, Disciplinary Authority**

can order for further inquiry and not *de novo* fresh enquiry – Decision of fresh inquiry by appointment of a new Inquiry Officer is not in accordance with Rule 15 of the Rules of 1966 – Matter remanded back to Inquiry officer to hold further inquiry – Appeal allowed.

सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 14 व 15 – नये सिरे से जांच के लिए आदेश – अभिनिर्धारित – जांच अधिकारी के प्रतिवेदन के साथ असहमति होने के प्रकरण में, अनुशासनिक पाधिकारी अतिरिक्त जांच के लिए आदेश कर सकता है तथा न कि पुनः नये सिरे से जांच हेतु – नये जांच अधिकारी की नियुक्ति द्वारा नये सिरे से जांच का विनिश्चय 1966 के नियमों के नियम 15 के अनुरूप नहीं है – मामला अतिरिक्त जांच चालू रखने हेतु जांच अधिकारी को प्रतिप्रेषित किया गया – अपील मंजूर।

The judgment of the Court was delivered by : **V.K. SHUKLA, J.**

Cases referred :

AIR 1971 SC 1447, (1988) 3 SCC 385, (2005) 7 SCC 597, 1994 (1) MPWN 91.

Anjali Shrivastava, for the appellant.
Sanjay Dwivedi, Dy. A.G. for the respondents/State.

Short Note

****(120)***

Before Mr. Justice Vijay Kumar Shukla

W.P. No. 4643/2005 (Jabalpur) decided on 23 May, 2017

RAM KRISHNA KANADE ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 15(2) – Show Cause Notice & Opportunity of Hearing – Natural Justice – Dismissal from Service **– Held – Rule 15(2) is mandatory and disciplinary authority is under legal obligation to issue a show cause notice and to afford opportunity of hearing in case of disagreement with findings of Inquiry Officer – Impugned order of punishment violates the provisions of Rule 15(2) of the Rules of 1966 and also the principle of natural justice – Impugned orders quashed and matter remanded back to disciplinary authority – Petition disposed.**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 15(2) – कारण बताओ नोटिस एवं सुनवाई का अवसर – नैसर्गिक न्याय – सेवा से पदच्युति – अभिनिर्धारित – नियम 15(2) आज्ञापक है तथा अनुशासनिक प्राधिकारी, जांच अधिकारी के निष्कर्षों से असहमत होने पर कारण बताओ नोटिस जारी करने

तथा सुनवाई का अवसर देने की विधिक बाध्यता के अधीन है – दंड का आक्षेपित आदेश 1966 के नियमों के नियम 15(2) के उपबंधों तथा नैसर्गिक न्याय के सिद्धांतों का भी उल्लंघन करता है – आक्षेपित आदेश अभिखंडित तथा मामला अनुशासनिक प्राधिकारी को प्रतिप्रेषित – याचिका निराकृत।

Cases referred :

2005 7 SCC 597, (1998) 7 SCC 84, (1999) 7 SCC 739, (2007) 1 SCC 437, 2013 (2) MPLJ 232.

Vinod Mehta, for the petitioner.
Girish Kekre, G.A. for the respondent/State.

Short Note
****(121)***
Before Mr. Justice G.S. Ahluwalia
M.Cr.C. No. 7530/2017 (Gwalior) decided on 16 August, 2017

RAVI JAIN ...Applicant
Vs.
CENTRAL BUREAU OF NARCOTICS ...Non-applicant

***Criminal Procedure Code, 1973 (2 of 1974), Section 438 and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8/22, 29, 36-A(3) & 37 – Anticipatory Bail Application – Maintainability* – Held – No specific provision under the Act of 1985, ousting jurisdiction of High Court to entertain application u/S 438 Cr.P.C. – Section 36-A of the Act of 1985 does not explicit oust the jurisdiction of High Court to entertain such application for bail – Further held – Present application was filed on 10.07.17 whereas complaint was filed on 12.07.17, thus it cannot be said that accused was absconding prior to filing of bail application – Anticipatory bail granted – Application allowed.**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 एवं स्वापक औषधि और मनः प्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8/22, 29, 36–ए(3) व 37 – अग्रिम जमानत आवेदन – पोषणीयता – अभिनिर्धारित – 1985 के अधिनियम के अंतर्गत कोई विनिर्दिष्ट उपबंध नहीं हैं जो कि दण्ड प्रक्रिया संहिता की धारा 438 के अंतर्गत आवेदन ग्रहण करने की उच्च न्यायालय की अधिकारिता छीनता हो – 1985 के अधिनियम की धारा 36–ए, जमानत हेतु ऐसे आवेदन को ग्रहण करने की उच्च न्यायालय की अधिकारिता को सुस्पष्ट रूप से नहीं छीनती – आगे अभिनिर्धारित – वर्तमान आवेदन दिनांक 10.07.17 को प्रस्तुत किया गया था जबकि परिवाद दिनांक 12.07.17 को प्रस्तुत किया गया था, अतः यह नहीं कहा जा सकता कि अभियुक्त जमानत आवेदन के प्रस्तुत होने के पूर्व से ही फरार था – अग्रिम जमानत प्रदान की गई – आवेदन मंजूर।

Cases referred :

Cr.(M) No. 108/2003 decided on 28.02.2003 (Himachal Pradesh High Court), B.A. No. 246/2003 order dated 09.05.2003 (Gauhati High Court), B.A. Nos. 246/2003 & 464/2003 order dated 23.06.2003 (D.B.)(Gauhati High Court), (2011) 12 SCC 298, (2013) 16 SCC 31, 2008 (4) SCC 668.

Sankalp Sharma, for the applicant.
Vivek Khedkar, A.S.G. for Union of India - non-applicant.

Short Note

****(122)***

Before Smt. Justice Anjuli Palo

M.A. No. 2576/2012 (Jabalpur) decided on 14 September, 2017

SHRIRAM GENERAL INSURANCE COMPANY LTD. ...Appellant
Vs.
JAGDISH PRASAD DUBEY & ors. ...Respondents

Motor Vehicles Act (59 of 1988), Section 166 & 173 – Liability of Insurance Company **– Held – In application u/S 166 of the Act of 1988, profession of deceased shown as cleaner – It is clear that statement of respondent no. 1 is totally false and concocted to escape from his liability because deceased was not possessing driving license at the time of accident – Respondent no. 1 is owner and driver of offending vehicle and has failed to prove that at time of accident, tractor was used for agricultural purpose for which it was insured – Insurance company not liable to pay compensation – Appeal allowed.**

मोटर यान अधिनियम (1988 का 59), धारा 166 व 173 – बीमा कंम्पनी का दायित्व – अभिनिर्धारित – 1988 के अधिनियम की धारा 166 के अंतर्गत आवेदन में, मृतक का व्यवसाय क्लीनर के रूप में दर्शाया गया है – यह स्पष्ट है कि अपने दायित्वों से बचने हेतु प्रत्यर्थी क्र. 1 के द्वारा दिये गये कथन पूर्ण रूप से मिथ्या एवं मनगढ़ंत है क्योंकि दुर्घटना के समय मृतक के पास ड्रायविंग अनुज्ञप्ति नहीं थी – प्रत्यर्थी क्र. 1 आक्षेपित वाहन का स्वामी एवं चालक है तथा यह साबित करने में विफल रहा कि दुर्घटना के समय, ट्रेक्टर का उपयोग कृषि प्रयोजन के लिए किया गया था जिसके लिए वह बीमाकृत था – बीमा कम्पनी प्रतिकर का भुगतान करने हेतु दायी नहीं है – अपील मंजूर।

Cases referred :

2008 (1) M.P.L.J. 72, 2007 (1) M.P.L.J. 315.

Rakesh Jain, for the appellant.
Arun Nema, for the respondents Nos.1 & 2.
G. Rajput, for the respondent No.3.

I.L.R. [2017] M.P., 2043

SUPREME COURT OF INDIA

Before Mr. Justice Arun Mishra & Mr. Justice S. Abdul Nazeer

C.A. No. 5317/2017 decided on 17 April, 2017

POWER MACHINES INDIA LIMITED ...Appellant

Vs.

STATE OF M.P. & ors. ...Respondents

A. ***Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5, Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 30 & 18 and Arbitration and Conciliation Act (26 of 1996), Section 34 & 36 – Recovery of Award Amount as Arrears of Land Revenue*** **– Petition before High Court to declare Rule 5 of Rules of 2006 as Ultra Vires dismissed – Challenge to – Held – Once arbitral award is passed, it was expected to appellants to honour it after lapse of time u/S 34 of the Act of 1996 – Rule 5 intends to simplify the procedure of execution which is not discriminatory, harsh or drastic and prejudicial to appellants but is quite a reasonable procedure and being a remedial provision is ancillary – Rule 5 provides an additional speedier remedy to carry out the objective of Act of 2006 – Framing of such Rule by State Government does not reveal that authority has been exceeded or the scope of Act has been widened – Object of provision is to ensure recovery – Rule 5 has been rightly enacted to ensure that small, micro and medium industries do not suffer – Rule 5 cannot be held to be ultra vires – Appeal dismissed.**

(Paras 18, 20, 21 & 26 to 29)

क. *सूक्ष्म एवं लघु उद्यम सुविधा परिषद् नियम, म.प्र., 2006, नियम 5, सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 30 व 18 एवं माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 व 36 – भूमि राजस्व का बकाया के रूप में अवार्ड राशि की वसूली* – 2006 के नियमों के नियम 5 को अधिकारातीत घोषित किये जाने हेतु उच्च न्यायालय के समक्ष प्रस्तुत याचिका खारिज की गई – को चुनौती – अभिनिर्धारित – एक बार जब मध्यस्थम अवार्ड पारित किया गया है, 1996 के अधिनियम की धारा 34 के अंतर्गत समय व्यपगत होने के पश्चात् अपीलार्थीगण से उसके आदर की अपेक्षा थी – नियम 5, निष्पादन की प्रक्रिया को सरल बनाना आशयीत करता है जो कि भेदभावपूर्ण, कठोर या भीषण एवं अपीलार्थीगण पर प्रतिकूल प्रभाव डालने वाला नहीं है बल्कि काफी युक्तियुक्त प्रक्रिया है तथा उपचारात्मक उपबंध होने के नाते आनुषंगिक है – नियम 5, 2006

के अधिनियम के उद्देश्य को पूरा करने के लिए एक अतिरिक्त त्वरित उपचार है – राज्य सरकार द्वारा उक्त नियम विरचित किया जाना यह प्रकट नहीं करता कि पाधिकारी का अतिलंघन किया गया है या अधिनियम की व्याप्ति का विस्तार किया गया है – उपबंध का उद्देश्य वसूली को सुनिश्चित करना है – नियम 5 को उचित रूप से अधिनियमित किया गया है, यह सुनिश्चित करने के लिए कि लघु, सूक्ष्म एवं मध्यम उद्योगों को सहना न पड़े – नियम 5 को अधिकारातीत नहीं ठहराया जा सकता – अपील खारिज।

B. Constitution – Article 14 – Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5 and Arbitration and Conciliation Act (26 of 1996), Section 34 – **Held – Recovery procedure has been resorted to after arbitral award is passed and when it is not further objected within time prescribed u/S 34 of the Act of 1996 – Thus, procedure is not violative of Article 14 of Constitution – C.P.C. cannot be the only remedy, it is open to legislate recovery mechanism without interference of Civil Court.** **(Para 17)**

ख. संविधान – अनुच्छेद 14 – सूक्ष्म एवं लघु उद्यम सुविधा परिषद् नियम, म.प्र., 2006, नियम 5 एवं माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34 – अभिनिर्धारित – माध्यस्थम अवार्ड पारित किये जाने के पश्चात् तथा जब 1996 के अधिनियम की धारा 34 के अंतर्गत विहित समयावधि के भीतर उस पर आगे आक्षेप नहीं लिया गया, वसूली प्रक्रिया का अवलंब लिया गया है – अतः प्रक्रिया, संविधान के अनुच्छेद 14 के उल्लंघन में नहीं है – सि.प्र.सं. एकमात्र उपचार नहीं हो सकता, सिविल न्यायालय के हस्तक्षेप के बिना वसूली प्रक्रिया का विधान बनाया जा सकता है।

C. Micro and Small Enterprises Facilitation Council Rules, M.P., 2006, Rule 5 and Arbitration and Conciliation Act (26 of 1996), Section 36 – Validity and Choice of Remedies – **Held – Providing of plural remedies is valid when two or more remedies are available to a person even if inconsistent – It is for the person to elect one of them – There is no question of repugnancy in providing such remedy.** **(Para 14)**

ग. सूक्ष्म एवं लघु उद्यम सुविधा परिषद् नियम, म.प्र., 2006, नियम 5 एवं माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 36 – उपचारों की विधिमान्यता एवं पसंद – अभिनिर्धारित – अनेक उपचार उपबंधित करना विधिमान्य है जब व्यक्ति को दो या अधिक उपचार उपलब्ध है, यदि असंगत हो तब भी – यह व्यक्ति पर है कि वह उनमें से एक का चुनाव करे – उक्त उपचार उपबंधित करने में प्रतिकूलता का कोई प्रश्न नहीं।

Cases referred :

(1992) 4 SCC 196, (2004) 4 SCC 311, (1997) 5 SCC 516, (2004) 8 SCC 747, (1987) 1 SCC 618, (2011) 8 SCC 274, (1988) 2 SCC 351, (1988) 2 SCC 360, (1979) 1 SCC 137, (1955) 1 SCR 448, AIR 1955 SC 13, (1974) 2 SCC 402.

JUDGMENT

The Judgment of the Court was delivered by : ARUN MISHRA, J. :- Leave granted.

2. This appeal has been preferred by the appellant – Power Machines India Ltd., aggrieved by the judgment and order dated 18.7.2016 passed by the High Court of Madhya Pradesh at Jabalpur, thereby dismissing the Writ Petition filed by the appellant for declaring Rule 5 of Madhya Pradesh Micro and Small Enterprises Facilitation Council Rules, 2006 (hereinafter referred to as "the Rules') *ultra vires*, which had been framed by the Government of Madhya Pradesh in exercise of the power conferred by section 30 read with section 21(3) of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as "the Act of 2006"). Rule 5 provides for recovery of the amount for which award is passed under section 18(3) of the Act of 2006 as arrears of land revenue thereby providing additional remedy for recovery of the awarded sum than the one provided in section 36(1) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996").

3. It is pertinent to mention that the award was passed under the Act of 2006 by which the appellant was directed to pay awarded sum to respondent No.3 *i.e.* Lakshmi Engineering Industries (Bhopal) Pvt. Ltd. The award was passed by the Madhya Pradesh Facilitation Council for a sum of Rs.1,15,77,630/- along with an amount of Rs.1,04,96,746/- towards interest up to 10.1.2013. Payment of actual amount of interest was @ three times of the bank rate as notified by the Reserve Bank of India to be paid within 30 days of the award. The award was passed on 15.1.2014.

4. The Collector, Noida, initiated recovery of the amount as per letter dated 2.4.2016 issued by the Madhya Pradesh Micro and Small Enterprises Facilitation Council under the Rules. The recovery citation was served upon the appellant on 20.4.2016 purported to be one under the Uttar Pradesh

Zamindari Abolition and Land Reforms Act, 1950. Another citation was received by the appellant on 16.5.2016 which was issued on 20.4.2016. Thereafter, appellant filed a writ petition before the Allahabad High Court for quashing the recovery proceedings. However, Tehsildar of Dadri, Gautam Buddha Nagar on 23.5.2016 withdrew an amount of Rs.1,18,78,588.14/- from the appellant's bank account with ICICI Bank pursuant to the recovery citation. On 24.5.2016, it is averred by the appellant that a further amount of Rs.2,12,33,618.57/- was recovered from the bank account of the appellants with the State Bank of India. The appellant filed Writ Petition [C] No.11824 of 2016 in the High Court of Madhya Pradesh for declaring Rule 5 as *ultra vires*. The appellant filed another W.P. [C] No.12127 of 2016 for quashing the recovery proceedings on the ground that the recovery was not in compliance with Rule 5. The said writ petition questioning the rule had been dismissed. Writ Petition [C] No.12127 of 2016 had been allowed by the High Court of Madhya Pradesh and it permitted respondent No. 3 to initiate recovery proceedings under the rule *de novo* and in accordance with law. The petition filed in the High Court of Allahabad was dismissed in view of the fact that the aforesaid writ petition had been allowed by the High Court of Madhya Pradesh.

5. The Tehsildar, Dadri issued fresh recovery proceedings under Rule 5 for recovery of Rs.5,29,58,937/- as per the award dated 15.1.2014. Fresh recovery citation was served on the petitioner on 19.9.2016. The High Court of Madhya Pradesh in the impugned judgment and order has held that Rule 5 is not *ultra vires* and is in strict conformity with the Act of 2006. Aggrieved thereby, the appeal has been preferred.

6. It was submitted by Mr. P. Chidambram and Dr. A.M. Singhvi, learned senior counsel representing the appellant that Rule 5 is *ultra vires*, arbitrary and violative of Article 14 of the Constitution of India and is repugnant to the provisions contained in section 36 of the Act of 1996 read with the provisions contained in section 18 of the Act of 2006. It is beyond rule making power conferred under sections 21 and 30 of the Act of 2006. Once the provisions of the Code of Civil Procedure (for short, 'the CPC') had been made applicable, recovery could have been initiated only under Order 21 of the CPC which provides adequate safeguards to the judgment debtor. Order 21 Rule 22 of the CPC provides that in case execution is made after more than two years, delay has to be explained. There is power with the court to stay execution under Order 21 Rule 26 of the CPC. Order 21 Rule 58 of the CPC

provides for an objection to attachment of property and the procedure is provided under Order 21 for adjudication of objections. In case objection is not entertained, there is a right to file a suit as provided in Order 21 Rule 58(1) of the CPC. Elaborate procedure is provided under Order 21 Rules 66, 69, 89 and 92 of the CPC with respect to sale, if required. The remedy provided under Rule 5 of the Rules does not contain the aforesaid safeguards and the amount can be recovered outrightly as arrears of land revenue. Thus, the remedy is harsh under Rule 5 and thus could not have been resorted to. It was also strenuously urged on behalf of the appellants that in the four States only, *i.e.*, West Bengal, Madhya Pradesh, Punjab & Haryana and Andhra Pradesh recovery is made as per the CPC provided under section 36 of Act of 1996. Thus, there is a discriminatory provision made by the four States which is quite arbitrary and impermissible. States could not have enacted a provision in derogation to what is contained in the Central legislation.

7. It was contended on behalf of the respondents that the rule has been framed within the purview of section 30 of the Act of 2006. It is in furtherance of the objective of the Act to provide speedy recovery. There is no repugnancy with the provisions of the Act of 2006 or that of the Act of 1996. It is impermissible to provide inconsistent remedies also. In such matters there is no question of conflict of provisions. It is open to elect one of the remedies out of the available ones.

8. Before adverting to the rival submissions, it is appropriate to refer to the relevant provisions of Rule 5 of the Rules which provides for recovery of the amount awarded under the Act of 2006 read with the Act of 1996. Rule 5 is extracted hereunder :

> **"5.Recovey of amount due as arrears of land revenue:**
>
> If a buyer does not file any appeal under section 19 of the Act for setting aside any decree, award or other order made either by the Council itself or by any institution or centre or if such appeal is dismissed, in that situation such decree, award or order shall be executed by the Collector of the District concerned and the amount due shall be recovered as arrears of land revenue."

9. The aforesaid Rule 5 has been framed in exercise of the power conferred by the State Government to frame the rules under section 30 of the

Act of 2006 which enables the State Government to make the rules. Section 30 is extracted hereunder :

> **"30. Power to make rules by State Government.**—(1) The State Government may, by notification, make rules to carry out the provisions of this Act.
>
> (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
>
> *(a)* the composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of the members and the procedure to be followed in the discharge of their functions by the members of the Micro and Small Enterprises Facilitation Council under sub-section (3) of Section 21;
>
> *(b)* any other matter which is to be or may be, prescribed under this Act.
>
> (3) The rule made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House."

Section 30 enables the State Government to make rules to carry out the provisions of the Act. The power is general and pervasive in nature. It encompasses any other matter which is to be and may be prescribed under the Act, and the Rule is required to be laid in the House of the State Legislature.

10. The Act of 2006 has been enacted for the benefit of micro, small and medium enterprises. The object of the Act is to provide for facilitating the promotion and development, enhancing the competitiveness of micro, small and medium enterprises and the matters connected therewith or incidental thereto. Section 18 of the Act of 2006 is extracted hereunder :

> **"18. Reference to Micro and Small Enterprises Facilitation Council.**—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under

Section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the disputes as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of Section 7 of that Act."

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.."

Section 18(1) of the Act of 2006 provides that the dispute with respect to any amount due under section 17 may be referred to the Facilitation Council. On reference being made, the Council can itself conduct reconciliation with the assistance of any institution or ADR Centre. In that case provisions of sections 65 to 81 of the Act of 1996 shall apply and in case conciliation under

section 18(2) is not successful, Council shall either itself take up the dispute for arbitration or refer it to some other Centre or institution for arbitration and thereupon the provisions of the Act of 1996 shall apply.

11. Section 36 of the Act of 1996 provides that once the time for filing application to set aside an arbitral award under section 34 has expired, the same shall be enforced in accordance with the provisions of the CPC as if it were a decree of the court. Section 36(1) is extracted hereunder :

> **"36. Enforcement.—** (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.
>
> (2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.
>
> (3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:
>
> Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908)."

No doubt about it that by virtue of the provisions contained in section 18(3) of the Act of 2006, the provisions contained in section 36 of the Act of 1996 are clearly applicable and it is permissible to execute the arbitral award in accordance with the procedure prescribed for execution of a decree under the CPC.

12. However, the question in the instant case is whether it was permissible

to the State Government to enact Rule 5 of the Rules for recovery of the amount as arrears of land revenue and whether speedy remedy could have been provided under the Rules framed under the Act of 2006, notwithstanding the remedy as provided in section 36 of the Act of 1996 for executing the arbitral award as a decree in accordance with the provisions of the CPC, while providing remedy the State has exceeded its ken of powers.

13. Section 30 of the Act of 2006 extracted above clearly authorizes the State Government to frame the rules to carry out the provisions of the Act and the power is general, as is apparent from reading of section 30(1), 30(2) and 30(2)(b). The objective of the Act is to provide protection to the micro, small and medium enterprises and to facilitate their development. In order to carry out the objective of the Act speedy recovery mechanism has been provided under Rule 5 of the Rule by providing that amount awarded in an arbitral award can be recovered as arrears of land revenue. No doubt that Rule 5 is inconsistent with the provisions contained in section 36(1) of the Act of 1996 which provides recovery mechanism under Order 21 of CPC as a decree, but, in the matter of providing such remedies, it is open to legislate different remedies which may be inconsistent. It is a question of electing a remedy. Election of a remedy for recovery of the amount would depend upon the choice of the award-holder. Both the provisions *i.e.* section 36 of the Act of 1996 as well as Rule 5 of the Rules of 2006 intend to recover the amount though by different procedures. Intendment of provisions is same. There is no question of any prejudice being caused to the judgment debtor.

14. In *Bihar State Co-operative Marketing Union Ltd. v. Uma Shankar Sharan & Anr.* (1992) 4 SCC 196 question arose of plurality of the remedies provided under sections 40 and 48 of the Bihar and Orissa Cooperative Societies Act, 1935. Both the provisions may be attracted to a case. It was held that application of section 40 will not exclude operation of section 48. It is only a question where one of the provisions has to be opted. This Court has further held that when two remedies are provided under a statute even if inconsistent, would continue to be in operation until one of them is elected for application. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, for commencing an action. As no action under section 40 was taken, this Court held that section 48 was available to the appellant for recovery of the loss. This Court in *Bihar State Cooperative Marketing Union Ltd.* (supra) has

laid down thus :

> "6. Validity of plural remedies, if available under the law, cannot be doubted. If any standard book on the subject is examined, it will be found that the debate is directed to the application of the principle of election, where two or more remedies are available to a person. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, commencing an action accordingly. In the present case there is no such problem as no steps under Section 40 were ever taken by the appellant. The provisions of Section 48 must, therefore, be held to be available to the appellant for recovery of the loss.
>
> 7. Our view that a matter which may attract Section 40 of the Act will continue to be governed by Section 48 also if the necessary conditions are fulfilled, is consistent with the decision of this Court in *Prem Jeet Kumar v. Surender Gandotra* arising under the Delhi Co-operative Societies Act, 1972. The two Acts are similar and Sections 40 and 48 of the Bihar Act and Sections 59 and 60 of the Delhi Act are in pari materia. The reported judgment followed an earlier decision of this Court in *Pentakota Srirakulu v. Co-operative Marketing Society Ltd.* We accordingly hold that the High Court was in error in assuming that the application of provisions of Section 48 of the Bihar Act could not be applied to the present case for the reason that Section 40 was attracted."

It is apparent from the aforesaid dictum of this Court that providing of plural remedies is valid when two or more remedies are available to a person even if inconsistent, they are valid. It is for the person to elect one of them and there is no question of repugnancy in providing such remedy.

15. In *"Principles of Statutory Interpretation"* by *Justice G.P. Singh,* 14th Edn. while dealing with the question of inconsistency and repugnancy, it has been observed that harmonious construction has to be adopted and the principle that special provision excludes the application of general provision has not been applied when two provisions deal with the remedies for the reason that the validity of plural remedies cannot be doubted, even if the two

remedies are inconsistent, court has to harmonize the provisions. Following discussion has been made :

> **"(b) Inconsistency and repugnancy to be avoided; harmonious construction**
>
> It has already been seen that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid "a head on clash" between two sections of the same Act and, "whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise". Accordingly, the provisions of the Maharashtra Regional and Town Planning Act, 1966, were read together by the Supreme Court and after noting the purpose of the Act. The Act was held not to envisage a situation of conflict, and therefore, the edges were required to be ironed out to read those provisions of the Act which were slightly incongruous, so that all of them are read in consonance with the object of the Act, which is to bring about orderly and planned development. It should not be lightly assumed that "Parliament had given with one hand what it took away with the other". The provisions of one section of a statute cannot be used to defeat those of another "unless it is impossible to effect reconciliation between them". The same rule applies in regard to sub-sections of a section. In the words of Gajendragadkar, J. "The sub-sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy". As stated by Venkatarama Aiyer, J., "The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction".

That, effect should be given to both, is the very essence of the rule. Thus a construction that reduces one of the provisions to a "useless lumber" or dead letter" is not harmonious construction. To harmonise is not to destroy. A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific. The question as to the relative nature of the provisions general or special has to be determined with reference to the area and extent of their application either generally or specially in particular situations. The principle is expressed in the maxims *Generalia specialibus non derogant,* and *Generalibus specilia derogant.* If a special provisions is made on a certain matter, that matter is excluded from the general provision. Apart from resolving conflict between two provisions in the Act, the principle can also be used for resolving a conflict between a provision in the Act and a rule made under the Act. Further, these principles have also been applied in resolving a conflict between two different Acts and two provisions in the Constitution added by two different Constitutions Amendment Acts and in the construction of statutory rules and statutory orders. But the principle, that a special provision on a matter excludes the application of a general provision on that matter, has not been applied when the two provisions deal with remedies, for validity of plural remedies cannot be doubted. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from. Until he elects one of them."

16. Thus, the submission raised by learned senior counsel on behalf of the appellant that Rule 5 is inconsistent and repugnant to the provisions of section 36 of the Act of 1996 cannot withstand judicial scrutiny and is liable to be rejected on the anvil of the aforesaid reasoning.

17. This Court while considering the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) in *Mardia Chemicals Ltd. & Ors. v. Union of India* (2004) 4 SCC 311 has held that secured interest can be enforced without

intervention of the court. This Court has also laid down that there is a presumption of constitutionality in favour of the legislation. While considering presumption in favour of such legislation it would be necessary to see that the person aggrieved gets a fair deal at the hands of those vested with power under such legislation. This Court also considered the question whether the SARFAESI Act was uncalled for and a superimposition of an undesired law in the light of operation of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in the field. This Court has laid down that given the level of indebtedness and NPAs on the balance-sheets of banks and financial institutions, the time taken for recovery of debts via the civil courts, the importance of liquid and solvent banks and financial institutions to economic progress, especially in the present day global economy with a need to give up old and conventional methods of financing and recovery of debts, and the failure of the 1993 Act to bring about the desired results, it could not be said that a step taken towards securitization of debts and to evolve means for faster recovery of NPAs was not called for. This Court has also laid down that primacy is to be given to public interest over private interest. Thus, the provision of recovery outrightly, without recourse to the Civil Court, was upheld. In the instant case, the recovery of arrears of land revenue has been resorted to after adjudication process when arbitral award had been passed and when it is not objected to within the time prescribed under section 34 of the Act of 1996. Thus, the procedure cannot be said to be illegal or arbitrary in any manner and cannot be said to be violative of Article 14 of the Constitution, as contended by the appellant. On the basis of aforesaid reasoning it is clear that Code of Civil Procedure cannot be the only remedy. It is open to legislate recovery mechanism without interference of Civil Court.

18. The submission was raised on behalf of the appellant that Order 21 of the CPC provides more safeguards under different rules, which are referred to above, to a judgment debtor to raise various kinds of objections to file suits and has a right to object also at various stages. No doubt that a detailed procedure is provided under the CPC. But by now it is well known that after a decree is obtained, it has become more difficult to ensure its speedy execution due to misuse of the provisions by unscrupulous judgment debtors of a detailed procedure prescribed for execution of a decree in CPC which was never envisaged. Thus, providing a speedy recovery by way of arrears of land revenue, in fact, was the need of the day and Rule 5 has been rightly enacted to ensure speedy recovery and to ensure that small, micro and medium

industries do not suffer.

19. We find no force in the submission that the recovery procedure as arrears of land revenue is harsh. It is quite reasonable and is provided in various enactments for recovery of the sums due. The procedure cannot be said to be illegal, arbitrary, onerous or harsh in any manner.

20. Learned counsel appearing on behalf of the appellant has placed reliance on the decision in *Agricultural Market Committee v. Shalimar Chemical Works Ltd.* (1997) 5 SCC 516 which has been laid down thus :

> "24. The power of delegation is a constituent element of the legislative power as a whole under Article 245 of the Constitution and other relative Articles and when the Legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by the Acts as part of the Administrative Law. The Legislature has to lay down the legislative policy and prin-ciple to afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf (See: Vasantlal Maganbhai Sanjanwala v. The State of Bombay and Others, [1961] 1 SCR 341. This Court in another case, namely, The Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, AIR (1968) SC 1232 as also in an earlier decision in In Re : The Delhi Laws Act, 1912, The Ajmer-Merwara (Extension of Laws) Act, 1947, and The Part C States (Laws) Act, 1950, [1951] SCR 747 has laid down the principle that the Legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act concerned.
>
> 25. In Avinder Singh v. State of Punjab, [1979] 1 SCC 137, Krishna Iyer, J. laid down the following tests for valid delegation of legislative power. These are :
>
> "(1) the legislature cannot efface itself :

(2) it cannot delegate the plenary or the essential legislative function;

(3) even if there be delegation, Parliamentary control over delegated legislation should be a living continuity as a constitution-al necessity."

It was further observed as under :

> "While what constitutes an essential feature cannot be delineated in detail it certainly cannot include a change of policy. The legislature is the master of legislative policy and if the delegate is free to switch policy it may be usurpation of legislative power itself."

26. The principle which, therefore, emerges out is that the essential legislative function consists of the determination of the legislative policy and the Legislature cannot abdicate essential legislative function in favour of another. Power to make subsidiary legislation may be entrusted by the Legislature to another body of its choice but the Legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates. These principles also apply to Taxing Statutes. The effect of these principles is that the delegate which has been authorised to make subsidiary Rules and Regulations has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making Rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act."

This Court has laid down that the legislature has to lay down the legislative policy to delegate for carrying out the said policy. What can be delegated is the task of the subordinate legislation necessary for implementing the purposes and objects of the Act. In the instant case by exercising the rule making power conferred under Section 30, the purpose of the Act of 2006 is being protected. The rule intends to implement the object. It cannot be said that authority has been exceeded nor it can be said that the scope of the Act has been widened or constricted under the garb of rule making power. Object

of both provisions is to ensure recovery.

21. Reliance has also been placed on a decision of this Court in *Dr. Mahachandra Prasad Singh v. Chairman, Bihar Legislative Council & Ors.* (2004) 8 SCC 747 in which this Court has observed that delegated legislations are subject to certain fundamental factors. The delegatee is not intended to travel wider than the object of the legislature. A delegatee cannot extend the scope or general operation of the enactment but power is strictly ancillary. This Court has laid down thus:

> **"13.** It may be noted that under Paragraph 8, the Chairman or the Speaker of a House is empowered to make rules for giving effect to the provisions of the Tenth Schedule. The rules being delegated legislation are subject to certain fundamental factors. Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can in practice do is to lay down the outline. This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it. The true extent of the power governs the legal meaning of the delegated legislation. The delegate is not intended to travel wider than the object of the legislature. The delegate's function is to serve and promote that object, while at all times remaining true to it. That is the rule of primary intention. Power delegated by an enactment does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends. (See Section 59 in chapter "Delegated Legislation" in Francis Bennion's *Statutory Interpretation,* 3rd Edn.) The aforesaid principle will apply with greater rigour where rules have been framed in exercise of power conferred by a constitutional provision. No rules can

be framed which have the effect of either enlarging or restricting the content and amplitude of the relevant constitutional provisions. Similarly, the rules should be interpreted consistent with the aforesaid principle."

In our opinion Rule 5 of the Rules being a remedial provision is ancillary. It is open to provide for an additional speedier remedy so as to carry out the objective of the Act.

22. Reliance has also been placed on a decision of this Court in *B.K. Srinivasan & Ors. v. State of Karnataka & Ors.* (1987) 1 SCC 618 in which this Court considered the question that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Mode of publication of subordinate legislation should be reasonable, which is necessary, only then it will take effect. The question was entirely different. Even otherwise procedure for recovery of land revenue is quite reasonable.

23. Reliance has been placed on *Academy of Nutrition Improvement & Ors. v. Union of India etc.* (2011) 8 SCC 274 in which this Court has laid down thus :

> **"66.** Statutes delegating the power to make rules follow a standard pattern. The relevant section would first contain a provision granting the power to make rules to the delegate in general terms, by using the words "to carry out the provisions of this Act" or "to carry out the purposes of this Act". This is usually followed by another sub-section enumerating the matters/areas in regard to which specific power is delegated by using the words "in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters". Interpreting such provisions, this Court in a number of decisions has held that where power is conferred to make subordinate legislation in general terms, the subsequent particularization of the matters/ topics has to be construed as merely illustrative and not limiting the scope of the general power. Consequently, even if the specific enumerated topics in Section 23(1-A) may not

empower the Central Government to make the impugned rule (Rule 44-I), making of the rule can be justified with reference to the general power conferred on the Central Government under Section 23(1), provided the rule does not travel beyond the scope of the Act.

> "But even a general power to make rules or regulations for carrying out or giving effect to the Act, is strictly ancillary in nature and cannot enable the authority on whom the power is conferred to extend the scope of general operation of the Act. Therefore, such a power 'will not support attempts to widen the purposes of the Act, to add new and different means to carrying them out, to depart from or vary its terms'."

Considering the question of power of food authority under section 7(iv) to ban a food article in interest of public *vis-a-vis* power of the Central Government under section 23 to make rule, it was held that the Central Government cannot exercise power under section 23 to ban use of non-iodised salt for human consumption. Thus, provision of Rule 44-I of Prevention of Food Adulteration Rules, 1955 was held to be *ultra vires*. Rule 44-I was wholly outside the scope of the Act. It was held not to be a rule made or required to be made to carry out the provisions of the Act having regard to its object and the scheme whereas the position in the instant case is juxtaposed. Hence the decision is of no help to the appellants.

24. Similarly reliance has been placed on a decision of this Court in *General Officer Commanding-in-Chief & Anr. v. Dr. Subhash Chandra Yadav & Anr.* (1988) 2 SCC 351. Rules were framed enabling the transfer of one Cantonment Board's employee to another. It was held that service was not transferable as such Rule 5 was *ultra vires* of section 280(2)(c) of the Cantonments Act, 1924. On facts the case has no application.

25. Reliance has also been placed on *International Airports Authority of India v. K.D. Bali & Anr.* (1988) 2 SCC 360 in which it has been laid down that when subordinate legislation is in conflict with the Parent Act then it must give way to the substantive statute. The principle has no application in the case of remedial statutory provisions as plurality of inconsistent remedies can always be provided and only one remedy has to be chosen. In *Avinder*

Singh & Ors. v. State of Punjab & Ors. (1979) 1 SCC 137, it has been laid down that a delegate is not free to switch policy laid down by the Legislature. On the anvil of the aforesaid reasons, the decision is of no utility to the cause espoused.

26. Reliance has also been placed on *Suraj Mall Mohta & Co. v. A.V. Visvanatha Sastri & Anr.* (1955) 1 SCR 448 in which it has been observed that if persons dealt with by the impugned Act are deprived of the substantial and valuable privileges which they would otherwise have if they were dealt with under the Indian Income-Tax Act, in that situation it is no defense to say that discriminatory procedure also advances the course of justice. The matter has to be judged from the point of view of the ordinary reasonable man and not from the point of view of the Government. The ordinary reasonable man would say, when the stakes are heavy and serious charge of evasion of income-tax are made against him, why one person similarly placed should have the advantage substantially of the procedure prescribed by the Indian Income Tax Act, while another person similarly situated be deprived of it. The ratio of said decision has no application to the instant case, provision in question being remedial one and no substantial or valuable privilege is being deprived of by Rule 5. It is only procedural provision and intends to simplify the procedure of execution, once arbitral award is passed.

27. Reliance has also been placed on *Shree Meenakshi Mills Ltd., Madurai etc. v. Sri A.V. Visvanatha Sastri & Anr.* AIR 1955 SC 13 in which this Court has laid down thus :

> "3. The procedure prescribed by the Act for making the investigation under its provisions is of a summary and drastic nature. It constitutes a departure from the ordinary law of procedure and in certain important aspects is detrimental to the persons subjected to it and as such is discriminatory. The substantial differences in the normal procedure of the Income Tax Act for catching escaped income and in the procedure prescribed by Act 30 of 1947, were fully discussed by this Court in *Suraj Mal Mohta v. Sri A.V. Visvanatha Sastri* AIR 1954 SC 545 and require no further discussion here."

In said case, there was substantial difference in the normal procedure of the income-tax Act for catching escaped income and in the procedure

prescribed by Act 30 of Taxation on Income (Investigation Commission) Act, 1947. The classification made was held to be impermissible without any rationale. Such is not the situation in the instant case. The procedural provision of recovery of arrears of land revenue cannot be said to be prejudicial to the appellants. Once adjudication of dues has been made it was expected of the appellant to honour it after lapse of time under Section 34 of Act of 1996.

28. The decision in *Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay & Ors.* (1974) 2 SCC 402 has also been referred to in which this Court has laid down thus :

> "14. To summarise: Where a statute providing for a more drastic procedure different from the ordinary procedure covers the whole field covered by the ordinary procedure, as in *Anwar Sarkar's* case and *Suraj Mall Mohta's* case without any guidelines as to the class of cases in which either procedure is to be resorted to, the statute will be hit by Art.14. Even there, as mentioned in *Suraj Mall Mohta's case* (supra) a provision for appeal may cure the defect. Further, in such cases if from the preamble and surrounding circumstances, as well as the provisions of the statute themselves explained and amplified by affidavits, necessary guidelines could be inferred as in *Saurashtra case* (supra) and *Jyoti Pershad's case* (supra) the statute will not be hit by Art.14. Then again where the statute itself covers only a class of cases as in *Haldar's* case (supra) and *Bajoria's case* (supra) the statute will not be bad. The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute. Therefore, the contention that the mere availability of two procedures will vitiate one of them, that is the special procedure, is not supported by reason or authority."

In *Maganlal Chhaganlal* (supra), this Court considered the alternative procedure for eviction of unauthorized occupants on Government premises; one by suit and the other by summary procedure alleged to be more drastic and onerous under Chapter V-A of the Bombay Municipal Corporation Act, 1888 or the Bombay Government Premises Act, 1955.

The procedure for recovery of land revenue envisaged under Rule 5 of the Rules could not be said to be discriminatory, it being quite reasonable procedure. It cannot be said to be harsh or drastic but is quite a reasonable procedure and it furthers the mandate of the Act. The difference between the procedure of execution of Rule 5 and that of CPC cannot be said to be unconscionable so as to attract the vice of discrimination.

29. Resultantly, the appeal is found to be without any merit and the same is hereby dismissed. IA No. 6 of 2017 has been filed for de-freezing the bank account of the appellant. In case, the appellant has deposited the amount of Rs.5,29,58,937/- as per the fresh recovery citation No.484002 and the interest as well, till the date when the amount was deposited, it would be open to the concerned Tehsildar to de-freeze the account on being satisfied that the amount has been so deposited. The cost is quantified at Rs.50,000/- to be deposited in Supreme Court Advocates on Record Welfare Trust within six weeks.

Appeal dismissed.

I.L.R. [2017] M.P., 2063

SUPREME COURT OF INDIA

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

Cr.A. No. 932/2017 decided on 8 May, 2017

STATE OF M.P. & ors. ...Appellants

Vs.

SMT. KALLO BAI ...Respondent

A. Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P. (9 of 1969), Section 5 & 15 and Forest Act (16 of 1927), Section 26 & 41 – Confiscation of Seized Property **– Illegal transportation of teak wood – Tractor and trolly seized – Confiscation order passed by forest authority/SDO under provisions of Adhiniyam – In revision before the Session Court, seized vehicle was directed to be released – High Court upheld the order of release of seized vehicle – Challenge to – Held – Criminal prosecution is distinct from confiscation proceedings under the Adhiniyam – Both proceedings are different and parallel – Section 15 gives power to concerned authority to confiscate the articles even before the guilt is completely established – Confiscation being incidental and ancillary to conviction, State Government has separated the process of confiscation from process of prosecution – Order passed**

by High Court is set aside – Appeal allowed. (Para 24 & 25)

क. वन उपज व्यापार (विनियमन) अधिनियम, म.प्र. (1969 का 9), धारा 5 व 15 एवं वन अधिनियम (1927 का 16), धारा 26 व 41 – जब्तशुदा संपत्ति का अधिहरण – सागौन की लकड़ी का अवैध परिवहन – ट्रेक्टर एवं ट्राली जब्त – वन प्राधिकारी/उपखंड अधिकारी द्वारा अधिनियम के उपबंधों के अंतर्गत अधिहरण का आदेश पारित किया गया – सत्र न्यायालय के समक्ष पुनरीक्षण में, जब्तशुदा वाहन को निर्मुक्त करने हेतु निदेशित किया गया था – उच्च न्यायालय ने जब्तशुदा वाहन के निर्मुक्ति के आदेश को कायम रखा – को चुनौती – अभिनिर्धारित – अधिनियम के अंतर्गत दांडिक अभियोजन, अधिहरण कार्यवाहियों से सुभिन्न है – दोनों कार्यवाहियाँ भिन्न तथा समानांतर हैं – धारा 15, संबंधित प्राधिकारी को पूर्ण रूप से दोषिता स्थापित होने के पूर्व वस्तुओं को अधिहृत करने की शक्ति प्रदान करती है – अधिहरण का, दोषसिद्धि के लिये आनुषंगिक एवं सहायक होने के कारण राज्य सरकार ने अधिहरण की प्रक्रिया को अभियोजन की प्रक्रिया से पृथक किया है – उच्च न्यायालय द्वारा पारित आदेश अपास्त किया गया – अपील मंजूर।

B. Van Upaj Vyapar (Viniyaman) Adhiniyam, M.P. (9 of 1969), Section 15(5) – Protection to owners of seized vehicle **– Held – A protection is provided for the owners of seized vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged u/S 15(5) of the Adhiniyam and the said offence was committed without their knowledge and connivance. (Para 24)**

ख. वन उपज व्यापार (विनियमन) अधिनियम, म.प्र. (1969 का 9), धारा 15(5) – जब्तशुदा वाहन के मालिकों को संरक्षा – अभिनिर्धारित – जब्तशुदा वाहनों/वस्तुओं के मालिकों को संरक्षा प्रदान की गई है, यदि वे साबित करने में सक्षम हैं कि उन्होनें अधिनियम की धारा 15(5) के अंतर्गत परिकल्पित की गई सभी युक्तियुक्त सतर्कता एवं सावधानियाँ बरती तथा कथित अपराध उनके ज्ञान तथा मौनानुकुलता के बिना कारित किया गया था।

Cases referred :

(1985) 4 SCC 573, (2002) 1 SCC 495, (2004) 4 SCC 448.

JUDGMENT

The Judgment of the Court was delivered by : **N.V. RAMANA, J. :-** Leave granted.

2. This appeal is filed assailing the judgment, dated 21.01.2014, in M.Cr.C No. 12750/2013, passed by the High Court of Madhya Pradesh at

Jabalpur, wherein the High Court has dismissed the appeal filed by the appellant State by upholding the order of the lower court, which through its order directed to release the confiscated vehicle during the pendency of the main criminal case.

3. Brief facts of the case in nut shell are that the respondent is the owner of the tractor bearing number (MP-22 AA-0736) and trolley bearing number (MP 22 AA 0764). On 03.1.2012 while this vehicle was being used to transport 1.054 cubic meters of teak wood from Saliwara to Parasia Road, Reserve Forest Compartment No. 117.A the driver was not carrying the documents required for the transportation of teak wood, the staff of Forest Development Corporation, at Dhuma District, Seoni, after completion of formalities seized the teakwood and the aforesaid vehicle, being tractor (MP-22 AA-0736) and trolley (MP22 AA 0764). Thereafter, the Project Range Officer registered the offence under Section 5 and Section 15 of Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969 [*hereinafter* **'Adhiniyam'** *for brevity*] read with Section 26 and Section 41 of the Indian Forest Act, 1927. The said case was registered as Offence No. 251/2013. In relation to this, a charge sheet was filed which was numbered as Criminal Case No. 269/2013 before the trial court.

4. The Authorized Officer-cum-Sub Divisional Officer Lakhnadone, Forest Division North (territorial), Seoni simultaneously initiated the confiscation proceeding under Section 15 of the Adhiniyam. The same was registered as Confiscation Case No. 9/2012

5. In the process, the Authorized Officer-cum-Sub Divisional Officer Lakhnadone, Forest Division North (territorial), Seoni, ordered confiscation of tractor (MP-22 AA-0736) and trolley (MP 22 AA 0764) and teak wood. The Authorized Officer-cum-Sub Divisional Officer held that the vehicle operator and his companion had deliberately transported the teak wood without the requisite permit or any valid document. Further, he held that the owner was aware of the said illegal transport.

6. Aggrieved by the said order, the respondent carried the matter in appeal before the Appellate Authority i.e. Appellate Authority-cum-Chief Conservator of Forest, Seoni Circle, Seoni (M.P.), who in turn dismissed the appeal and confirmed the order of the authority below by order dated 06.12.2012.

7. The respondent having been unsatisfied with the order dated 6-11-2012 preferred revision before the additional sessions judge, Seoni, under Section 15-B of the Adhiniyam. The additional sessions judge, Seoni, by judgment dated 18-07-2013, allowed the revision and quashed the order of confiscation and directed to release the vehicle. Moreover the court was of the view that unless the guilt of the accused is proved, there cannot be any confiscation of the vehicle and the forest produce. The reasoning of the first revisional court is extracted as under:

> 14. As such, the order of Authorized Officer and Sub Divisional Officer dated 09-04-2012 and order of Appellate Authority and Designated Conservator of Forests dated 06-12-2012 in Appeal No. 7/2012 are violation of Section 55 of the Indian Forest Act, 1927 and also Adhiniyam, 1969. **The Sub Divisional Forest officer lakhnadon and Appellate Authority without holding accused guilty in criminal case no. 269/2012 had no right to confiscate the vehicle and forest produce.**
>
> **(emphasis supplied)**

8. The State challenged the aforesaid order of the additional sessions judge, Seoni, dated 18.07.2013, by filing a petition under Section 482 of the Code of Criminal Procedure, 1973 being M.Cr.C No. 12750/2013 before the High Court of Madhya Pradesh at Jabalpur. The High Court, by order dated 21.01.2014, dismissed the petition filed by the appellant/state and affirmed the order of the lower court. Aggrieved by the order of the High Court, the appellant/state has knocked on the doors of this Court by way of special leave petition.

9. Heard the learned counsel for both parties and perused the material available on record.

10. Madhya Pradesh is famous for its abundant biodiversity. The rich biodiversity generates minor forest produce such as tendu, harra, sal seed and gum etc.[1] These forest produce are a good source of revenue for the state and provides employment opportunities for the people.

11. In order facilitate development of a good forest policy, the State of

---

1. Madhya Pradesh Development Report, Planning Commission (2011).

Madhya Pradesh enacted the Adhiniyam in the year 1969.[2] This legislation was enacted with an object to regulate the trade of certain forest produce in the State of Madhya Pradesh.[3] The Adhiniyam is a statute enacted for the purpose of preserving certain forest produce in the State of Madhya Pradesh. The Scheme of the Act, as expressed in several provisions, is to empower the authorized officers of the Forest Department for proper implementation/ enforcement of the statutory provisions and for enabling them to take effective steps for preserving these forest produce. For this purpose certain powers including the power of seizure, confiscation and forfeiture have been vested in them. This position is made clear by giving overriding effect to the provisions of the Act over other statutes and laws.

12. At this juncture it is important to have a glance at certain changes the Adhiniyam has undergone over the years. Sections 15 and 22 (1) were replaced by Section 15-A to 15-D by the *State Act 15 of 1987*. Adhiniyam as originally enacted did not provide for separate confiscatory proceedings. Original enactment only had penal provisions. The newly introduced Sections from Section 15-A to 15-D were brought in line with Indian Forest Act, as amended by the State of Madhya Pradesh to provide for a separate confiscatory mechanism.

13. Before we delve into the issue, a brief reference to the overall scheme of the Act is necessary. Section 2 of the Adhiniyam is the definition clause. Under Sub-clause (d) of Section 2 various forest produce have been elucidated. Section 3 of the Adhiniyam empowers State Government to divide forest area into units for carrying out the purposes of the Act. Section 4 of the Adhiniyam states that the State Government may appoint requisite number of agents to trade in specific forest produce. Further, Section 5 creates bar on individuals other than the State Government or authorized officers of the State Government or an agent appointed under Section 4, to purchase or transport such specified forest produce in such area with certain exceptions as provided under Sub-section (2) of Section 5. Furthermore, Section 7,8 and 9 of the Adhiniyam allows the State Government to fix prices, prescribe procedures for opening depots, publication of price lists etc. at the depot.

14. Section 10 and 11 of the Adhiniyam prescribes registration of growers, manufactures, traders and consumers of specified forest produce respectively.

---

2. Preamble, Adhiniyam.
3. Ibid

Section 12 vests discretionary powers upon the State Government to dispose of specified forest produce. Section 12-A provides for re-sale of excess specified forest produce by manufacturer, trader or consumer. Section 13 provides for the mode of retail sale of specified forest produce. Section 14 empowers State Government to delegate powers or functions under the Act.

15. It would be useful for the purpose of this case to reproduce Section 15 of the Adhiniyam-

> **15. Search and seizure of property liable to confiscation and procedure thereof-**(1) Any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub Inspector or any other person authorized by the State Government may, with a view to securing compliance with the provisions of this Act or the Rules made thereunder or to satisfying himself that the said provisions have been complied with,-
>
> (i) stop and search any person, boat, vehicle or receptacle use or intended to be used for the transport of satisfied forest produced;
>
> (ii) Enter and search any place.
>
> (2) When there is reason to believe that any officer under this Act has been committed in respect of any specified forest produce, 3 [Any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub Inspector] or any person authorized by the State Government in this behalf may, seize such specified Forest Produce along with all tools, boats, vehicles, ropes, chains or any other articles used in committing such offence under the provisions of this Act.
>
> (3) Any Officer or Person seizing any property under this Section shall place on all such property a mark indicating that the same has been so seized and shall, as soon as may be, either produce the property seized before the officer not below the rank of an Assistant Conservator or Forest authorized by the State Government in this behalf, by notification (hereinafter referred to as the Authorised Officer) or where it is having

regard to quantity or bulk or other genuine difficulty, not practicable to produce the property seized before the Authorised Officer, make a report about the seizure to the Authorised Officer, or where it is intended to launch criminal proceedings against the offender immediately make report of such seizure to the Magistrate having jurisdiction to try the offence account of which seizure has been made:

Provided that, when the specified Forest Produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown it shall be sufficient if the officer make as soon as may be a report of the circumstances to his official superior.

(3A) Any forest officer of a rank not inferior to that of a Ranger, who or whose subordinate, has seized any tools, boats, vehicles, ropes, claims or any other article as liable for confiscation, may release the same on the execution by the owner thereof, of a security in a form as may the prescribed, of an amount equal to double the value of such property, as estimated by such officer, of the production of the property so released, when so required, before the officer authorized order the confiscation or the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(4) Subject to the provisions of sub-section (6), where the authorized officer upon production before him of the specified forest produce or upon receipt of report about the seizure, as the case may be, is satisfied that offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded confiscate the specified forest produce so seized together with all tools, vehicles, boats ropes, chains or any other articles used in committing such offence. A copy of order of confiscation shall be forwarded without any undue delay to the 1[Officer-in-charge of Forest Circle] in which the specified forest produce has been seized.

(5) No order confiscating any property shall be made under sub-section (4) unless the authorized officer,-

(a) sends as intimation in forms prescribed about intimation of proceedings for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the authorized officer to have some interest in such property;

(c) affords an opportunity to the persons referred to in clause (b) of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation; and

(d) gives to the officer or person effecting the seizure and the person or persons to whom notice has been issued under clause (b), hearing on the date to be fixed for such purpose.

(5A) When the authorized officer having the jurisdiction over the case is himself involved in the seizure of investigation, the next higher authority may transfer the case to any other officer of the same rank for conducting proceedings under this section.]

(6) No order of confiscation under sub-section (4) of any tools, vehicles, boats, ropes, chains or any other articles (other than specified forest produce seized) shall be made if any person referred to in clause (b) of sub-section (5) proves to the satisfaction of authorized officer that any such knowledge or connivance or as the case may be without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of an offence under this Act.

(6A) The seized forest produce or any other property, if ordered to be released by the authorized officer, shall continue to be under custody until confirmation of the order of the authorized officer by the Appellate Authority or until the expiry of the period for initiating *"suomotu"* action by him, whichever is earlier, as specified under Section 15-A.

(7) The provisions of Sections 102 and 103 of the Code of Criminal Procedure, 1973 (No.2 of 1974) relating to search and seizures shall so far as may be apply to searches and seizures under this section.

Sub-section (1) of Section 15 empowers concerned forest officers to conduct search to secure compliance of the provisions of the Adhiniyam. On a plain reading of Sub-section (2), it is clear that the concerned officer may seize vehicles, ropes etc, if he has reason to believe that the said items were used for the commission of an offence under the Adhiniyam. Confiscation proceedings as contemplated under Section 15 of the Adhiniyam is a quasi-judicial proceedings and not a criminal proceedings. Confiscation proceeds on the basis of the 'satisfaction' of the Authorized Officer with regard to the commission of forest offence. Sub-section (3) of the provision lays down the procedure to be followed for confiscation under the Adhiniyam. Sub-section (3A) authorizes forest officers of rank not inferior to that of a Ranger, who or whose subordinate, has seized any tools, boats, vehicles, ropes, claims or any other article as liable for confiscation, may release the same on execution of a security worth double the amount of the property so seized. This provision is similar to that of Section 53 of the Indian Forest Act as amended by the State of Madhya Pradesh. Sub-section (4) mandates that the concerned officer should pass a written order recording reasons for confiscation, if he is satisfied that a forest offence has been committed by using the items marked for confiscation. Sub-section (5) prescribes various procedures for confiscation proceedings. Sub-Section (5A) prescribes that whenever an Authorized Officer having jurisdiction over the case is himself involved in the seizure, the next higher authority may transfer the case to any other officer of the same rank for conducting confiscation proceedings. Sub-section (6) provides that with respect to tools, vehicles, boats, ropes, chains or any other article other than timber or forest-produce seized, confiscation may be directed unless the person referred in clause (b) of Sub-section 5 is able to satisfy that the articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against the use of such objects for commission of forest offence.

16. Section 15 A provides the remedy of appeal against the order of the authorized officer under Section 15 in confiscation proceedings. Section 15-B of the Adhiniyam provides for revision before the Court of Sessions against

the order of the Appellate Authority in the confiscation proceedings.

17. Under Section 15-C of the Adhiniyam, a jurisdictional bar on courts and tribunals have been provided for, if the confiscation proceedings are initiated under Section 15 of the Adhiniyam. Moreover Sub-section (2) of Section 15-C provides that nothing hereinbefore contained shall be deemed to prevent any officer authorized in this behalf by the State Government from directing at any time the immediate release of any property seized under Section 15. The necessary proposition which follows such a provision is that, in a case where the Authorized Officer is empowered to confiscate the seized forest produce on being satisfied that an offence under the Act has been committed, the general power vested in the Magistrate for dealing with interim custody/release of the seized materials under the Cr. P.C. gives way. The Magistrate while dealing with a case of seizure of forest produce under the Act should first examine whether the power to confiscate the seized forest produce is vested in the Authorized Officer under the Act and if he finds so, then he has no power to pass any order dealing with interim custody/release of the seized material. Such ouster of jurisdiction would aid in proper implementation of the Adhiniyam. If in such cases the power to grant interim custody/release of seized forest produce is vested in the Magistrate, then it will defeat the very scheme of the Act. Such a consequence is to be avoided.

18. Another relevant provision which needs to be discussed is Section 15-D of the Adhiniyam. It provides that:

> **15-D. Confiscation of property when the produce is not the property of Government-** All specific forest produce which in either case is not the property of the Government and in respect of which a contravention of any provision of the Act or the rules made thereunder has been committed and all tools, boats, vehicles, ropes, chains or any other articles, in case used in committing such contravention shall, subject to the provisions of Sections 15, 15A, 15B and 15C be liable to confiscation upon conviction of the offender for such contravention.

19. The said section makes it clear that section 15-D subjects itself to confiscation proceedings under Section 15, 15-A, 15-B and 15-C of Act. Further Section 15-D speaks of confiscation of all tools, boats, vehicles, ropes, chains or any other articles upon conviction of the offender for such forest

offence. This Section is equivalent to Section 55 of the Indian Forest Act as amended by the State of Madhya Pradesh. In this Section the confiscation after the conviction is subjected to separate confiscation proceedings as contemplated under Section 15, 15-A, 15-C. At the cost of repetition it should be noted that if a confiscation proceeding under Section 15 has commenced and the confiscation has already occurred, then there is no question of confiscation under Section 15-D again. If the confiscation has not taken place under Section 15, then the Court after final conviction can order confiscation under Section 15-D of the Adhiniyam.

20. The broad scheme of the Adhiniyam is to punish those who are in contravention of the law at the hand of the criminal court. The confiscation being incidental and ancillary to the conviction, State of Madhya Pradesh, separated the process of confiscation from the process of prosecution. The purpose of the enactment seems to be that the power of the criminal court regarding the disposal of property is made subject to the jurisdiction of the authorized officer with regard to that aspect; the jurisdiction of criminal court in regard to the main trial remains unaffected.

21. Before we deal with the question concerned in this appeal it would be apt to have a look at three cases decided by this court. In *Divisional Forest Officer And Anr. Vs. G.V. Sudhakar and Ors.*[4], this Court was concerned with the question as to whether the proceedings for confiscation of illegally felled timber by the respondent therein can be continued till the disposal of main criminal case pending against him. This Court after considering the various provisions of the Andhra Pradesh Forest Act came to the conclusion that there is no doubt that the object of the legislation was to provide for two separate proceedings before two different forums and that there is no conflict of jurisdiction as Section 45, as amended by the Amendment Act, in turn curtails the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused. This Court proceeded to observe-

> The conferral of the power of confiscation of seized timber or forest produce and the implements, etc. on the Authorized Officer under Sub-section (2a) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal

4. (1985) 4 SCC 573.

prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under Sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber before the Authorized Officer along with a report under Section 44 (2), the Authorized Officer can direct confiscation to Government of such timber or forest produce and the implements, etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence under Section 20 or 29 of the Act.

22. In the case of *State of West Bengal vs. Gopal Sarkar,*[5] this Court again had an opportunity to deal with the confiscatory proceedings initiated for forest offences. This Court while relying on the judgment in *Divisional Forest Officer vs. G.V.Sudhakar Rao* (Supra) has come to the following conclusion:

> **10.** On a fair reading of the provision it is clear that in a case where any timber or other forest produce which is the property of the State Government is produced under sub-section (1) and an Authorised Officer is satisfied that a forest offence has been committed in respect of such property he may pass order of confiscation of the said property (forest produce) together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence. The power of confiscation is independent of any proceeding of prosecution for the forest offence committed. This position is manifest from the statute and has also been held by this Court in *Divisional Forest Officer vs. G.V.Sudhakar Rao* [(1985) 4 SCC 573 : 1986 SCC (Cri) 34: AIR 1986 SC 328].

23. In the case of *State of M.P. vs. S.P. Sales Agencies,*[6] the brief facts therein were a truck was intercepted by the police in the District of Gwalior. It was found that 281 cases of Kuttcha manufactured by M/s Harsh Food Products, respondent 2 therin were found in the truck. These wood cases were being

---

5. (2002) 1 SCC 495
6. (2004) 4 SCC 448

transported without requisite transit pass under Rule 3 of M.P. Transit Rules thereafter; this matter was reported to Sub-Divisional Forest Officer, Gwalior, who initiated confiscation proceedings under Section 52 of the Act. This Court has an opportunity to deal with the question as to whether confiscation proceedings can be initiated under section 52 of the Act only after launching of the criminal prosecution or is it open to the forest authorities upon seizure of forest produce to initiate both or either. This Court relying on the cases in *Divisional Forest Officer vs. G.V.Sudhakar Rao and State of West Bengal vs. Gopal Sarkar,* came to the conclusion that the power of confiscation is independent of any criminal prosecution for forest offences committed.

24. In view of the foregoing discussions, it is apparent that Section 15 gives independent power to the concerned authority to confiscate the articles, as mentioned there under, even before the guilt is completely established. This power can be exercised by the concerned officer if he is satisfied that the said objects were utilized during the commission of a forest offence. A protection is provided for the owners of the vehicles/articles, if they are able to prove that they took all reasonable care and precautions as envisaged under Sub-section (5) of Section 15 of the Adhiniyam and the said offence was committed without their knowledge or connivance.

25. Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a district purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle.

26. At the cost of repetition we clarify that confiscatory proceedings are independent of the main criminal proceedings. In view of our detailed discussion in the preceding paragraph we are of opinion that High Court as well as the revisional court erred in coming to a conclusion that the confiscation under the law was not permissible unless the guilt of the accused is completely established.

27. Consequently the appeal is allowed and the judgment of the High Court is set aside.

Appeal allowed.

I.L.R. [2017] M.P., 2076
FULL BENCH

Before Mr. Justice Hemant Gupta, Chief Justice,
Mr. Justice Sujoy Paul & Mr. Justice Subodh Abhyankar
W.P. No. 1353/2011 (Jabalpur) order passed on 18 July, 2017

RAM SEWAK MISHRA ...Petitioner
Vs.
STATE OF M.P. & anr. ...Respondents

Service Law – Stoppage of Pension – Civil Services (Pension) Rules, M.P. 1976, Rule 8 – Opportunity of Hearing – Natural Justice – **Conviction u/s 7 of Prevention of Corruption Act, 1988 against which, appeal is pending – Stoppage of pension of petitioner without issuing any show cause notice and without giving any opportunity of hearing – Held – After retirement, pensioner is entitled to pension in view of his past service under the State – An employee earns his pension by serving the State for many years – Pension is not a bounty – Deprivation of pension affects civil rights of pensioner, the means of his survival – Show cause notice is required to be given to the retired government servant convicted by the Criminal Court – Natural justice warrants that opportunity of hearing is required to be provided before an order of stoppage of pension is passed u/R 8(2) of the Rules of 1976 – Reference answered accordingly by majority. (Para 15 & 16)**

सेवा विधि – पेंशन रोका जाना – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 8 – सुनवाई का अवसर – नैसर्गिक न्याय – भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 7 के अंतर्गत दोषसिद्धि जिसके विरूद्ध, अपील लंबित है – किसी कारण बताओ नोटिस को जारी किये बिना तथा सुनवाई का कोई अवसर प्रदान किये बिना, याची की पेंशन रोका जाना – अभिनिर्धारित – सेवानिवृत्ति के पश्चात् पेंशनर, राज्य के अधीन उसकी पूर्व सेवा को दृष्टिगत रखते हुये पेंशन का हकदार है – एक कर्मचारी अनेक वर्षों तक राज्य की सेवा करके अपनी पेंशन उपार्जित करता है – पेंशन एक उपहार नहीं है – पेंशन से वंचित किया जाना, पेंशनर के सिविल अधिकारों को प्रभावित करता है, जो उसकी उत्तरजीविता का साधन है – दांडिक न्यायालय द्वारा सेवानिवृत्त शासकीय कर्मचारी को कारण बताओ नोटिस दिया जाना अपेक्षित है – नैसर्गिक न्याय के लिए आवश्यक है कि 1976 के नियमों के नियम 8(2) के अंतर्गत पेंशन को रोके जाने के आदेश के पूर्व सुनवाई का अवसर प्रदान किया जाना अपेक्षित है – निर्देश बहुमत द्वारा तद्नुसार उत्तरित।

Cases referred :

2017 (1) MPLJ 640, AIR 1967 SC 1269, (1971) 2 SCC 330, (1973) 1 SCC 120, (1976) 2 SCC 1, (1987) 2 SCC 179, (2007) 2 SCC 181, (1994) 4 SCC 328, 2004 (4) MPLJ 555, (1985) 3 SCC 398, (1970) 2 SCC 458, (1978) 1 SCC 405, (1981) 1 SCC 664, (2011) 2 SCC 258, 1978 (1) SCC 248, 1994 (5) SCC 267, 2010 (13) SCC 255, 1987 (1) SCC 424, 1976 (3) SCC 190.

K.C. Ghildiyal and *Jai Shukla*, for the petitioner.
P.K. Kaurav, A.G. with *Amit Seth*, G.A. for the respondents/State.

ORDER

The Order of the Court was passed by :

HEMANT GUPTA, C.J. :- The matter has been placed before this Bench in view of the reference made by the learned Single Judge of this Court doubting the correctness of an order passed by Single Bench of this Court in the case of *Dau Ram Maheshwar Vs. State of M.P. and another* reported as 2017(1) MPLJ 640. The learned Single Bench has framed the following questions:-

> "(I) Whether a show cause notice/opportunity of hearing is required to be given to the Retired Government Servant who is convicted of a serious crime by the Court of law?
>
> (II) Whether the view taken in **Dau Ram Maheshwar's** case (supra) is correct in view of Rule 8 of the Pension Rules?

2. The facts as are necessary for examining the question posed are that the Petitioner was convicted in a criminal case under Section 7 of the Prevention of Corruption Act, 1988. The petitioner filed an appeal against his conviction which is pending before this Court, wherein there is order of suspension of sentence. The petitioner attained the age of superannuation on 31.12.2004 and was granted anticipatory pension on 31.3.2005 by the Collector. The entire pension has been withheld under Rule 8 of the Civil Services (Pension) Rules, 1976 (hereinafter referred to as the "Pension Rules" for short) in view of the conviction of the Petitioner in the criminal case without giving any notice and opportunity of hearing. The impugned order of stoppage of pension has been passed on 15.3.2010. The ground of challenge in the writ petition is that pension could not be stopped without giving notice or opportunity of hearing.

3. On behalf of the State it is stated that the pension has been stopped after consultation of the Public Service Commission and the approval from the Council of Ministers. It is denied that there is any violation of principles of natural justice as the pension has been stopped in terms of Rule 8 (1) of the Pension Rules, 1976. Rule 8 of the said Rules reads as under:-

> **"8. Pension subject to future good conduct.** - (1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.
>
> (b) The pension sanctioning authority may, by order in writing withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct:
>
> Provided that no such order shall be passed by an authority subordinate to the authority competent at the time of retirement of the pensioner, to make an appointment to the post held by him immediately before his retirement from service:
>
> Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension as determined by the Government from time to time.
>
> (2) Where a pensioner is convicted of a serious crime by a court of law, action under clause (b) of sub-rule (1) shall be taken in the light of the judgment of the court relating to such conviction.
>
> (3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is *prima facie* guilty of grave misconduct, it shall before passing an order under sub-rule (1) :-
>
> (a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days

as may be allowed by the pension sanctioning authority, such representation as he may with to make against the proposal; and

(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).

(4) where the authority competent to pass an order under sub-rule (1) is the Governor, the State Public Service Commission shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule (1), passed by any authority other than the Governor, shall lie to the Governor and the Governor shall in consultation with the State Public Commission pass such order on the appeal as he deems fit.

Explanation. - In this rule, -

(a) the expression "serious crime" includes a crime involving an offence under the Official Secrets Act, 1923 (No.19 of 1923);

(b) the expression "grave misconduct" includes the communication or disclosure of any secret official code or pass word or any sketch, plan, model, article, note, document or information such as is mentioned in section 5 of the Official Secrets Act, while holding office under the Government so as to prejudicially affect the interests of the general public or the security of the country.

[**Note.** - The Provisions of this rule shall also be applicable to family pension payable under rule 47 and 48. The authority competent to make an appointment to the post held by the deceased Government servant/pensioner immediately before the death or retirement from the service, as the case may be, shall be the competent authority to withhold or withdraw any part of family pension.]"

4. The learned counsel for the petitioner contends that even a convicted employee is entitled to notice and opportunity of hearing as part of rule of

natural justice. The argument is based upon a principle that pension is not a bounty, but a right; therefore, any order which affects the vested civil right of a citizen can only be passed after compliance of principle of natural justice. Reliance is placed on the judgments of Supreme Court in the cases reported as AIR 1967 SC 1269 *(State Of Orissa Vs. Dr. (Miss) Binapani Dei & Ors)*, (1971) 2 SCC 330 *(Deoki Nandan Prasad Vs. State Of Bihar & Ors)*, (1973) 1 SCC 120 *(State of Punjab Vs. K. R. Erry)*, (1976) 2 SCC 1 *(State of Punjab and another Vs. Iqbal Singh)*, (1987) 2 SCC 179 *(State of Uttar Pradesh Vs. Brahm Datt Sharma and another)* and (2007) 2 SCC 181 *(Rajesh Kumar and others Vs. Dy. CIT and others)*.

5. On the other hand, learned Advocate General refers to Supreme Court judgment in the case of *Dr. Umrao Singh Choudhary Vs. State of M.P. and another* reported as (1994) 4 SCC 328, to contend that principles of natural justice can be excluded which stands impliedly excluded which is apparent from bare reading of Rule 8. It is contended that sub-rule (3) of Rule 8 contemplates issuing of a prior show cause notice that is in respect of cases of grave misconduct. Since the finding of misconduct is to be recorded for the first time, the opportunity of hearing is contemplated in sub-rule (3) of Rule 8 of the Pension Rules. But sub-rule (2) does not contemplate any opportunity of hearing as the order of stoppage of pension is based upon a judgment of a competent Court. Therefore, the opportunity of hearing stands excluded by implication when there is prior finding recorded by the competent Court, whereas when an action is being taken for the first time opportunity of hearing is provided for.

6. We have heard learned counsel for the parties and find that to answer the first question, it is necessary to examine as to whether the principle of natural justice stands excluded by implication, when action is taken under sub-rule (2) of Rule 8 of the Pension Rules, 1976.

7. *Dr. Umrao Singh Choudhary's* case (supra), to which the learned Advocate General has put a strong reliance, deals with the situation of removal of Vice Chancellor of the University. The term of Vice Chancellor can be reduced by a notification issued by the Governor under Section 14 of the M.P. Vishwavidyala Adhiniyam, 1973 (for short "1973 Act"). Section 14 of the Act engrafts an elaborate procedure to conduct an enquiry after giving reasonable opportunity against the Vice Chancellor for his removal. Section 52 of 1973 Act is an exception to Section 14 of the said Act. To exercise the

jurisdiction under Section 52, the condition precedent is that the State Government should be satisfied that the administration of University cannot be carried out in accordance with the provisions of the Act. It was held that application of principle of natural justice may be excluded either expressly or by necessary implication. It was held that the principle of natural justice does not supplant but supplement the law. The relevant extract from the judgment reads as under:-

> "4..... Section 14 engrafts an elaborate procedure to conduct an enquiry against the Vice-Chancellor and after giving reasonable opportunity, to take action thereon for his removal from the office. Section 52 engrafts an exception thereto. The condition precedent, however, is that the State Government should be satisfied, obviously on objective consideration of the material relevant to the issue, as on record, that the administration of the University cannot be carried out in accordance with the provisions of the Act, without detriment to the interest of the University, and that it is expedient in the interest of the University and for proper administration thereof, to apply in a modified form, excluding the application of Sections 13 and 14, etc. and to issue the notification under Section 52(1). By necessary implication, the application of the principle of natural justice has been excluded. In view of this statutory animation the contention that the petitioner is entitled to the notice and an opportunity before taking action under Section 52(1) would be self-defeating. The principle of natural justice does not supplant the law, but supplements the law. Its application may be excluded, either expressly or by necessary implication Section 52 in juxtaposition to Section 14, when considered, the obvious inference would be that the principle of natural justice stands excluded."

After recording such finding, the Court examined the record to find out the satisfaction recorded by the Governor in exercise of the powers conferred under Section 52 of the Act. It was found that the action under Section 52 is a statutory action, but subject to judicial review. The said judgment deals with the exercise of the powers by the Governor and that Section 52 of the said Act is an exception to Section 14 of the Act. The said

judgment leads to one conclusion that the principles of natural justice can be excluded by implication as well.

8. The Full Bench of this Court in the case of *Laxmi Narayan Hayaran Vs. State of M.P. and another* reported as 2004 (4) MPLJ 555, which was also referred by the learned Advocate General, deals with dismissal of employee from service without holding an enquiry on the basis of his conviction in bribery case. The Court excluded the principles of natural justice in respect of termination of an convicted employee in view of the Supreme Court judgment in the case of *Union of India Vs. Tulsiram Patel* reported as (1985) 3 SCC 398. The Full Bench held as the follows:-

> "10. Rule 19 of the State CCA Rules is similar to Rule 14 of Railway Rules considered in *Challappan* (supra) and unamended Rule 19 of Central CCA Rules considered in Tulsiram Patel, which did not provide for any opportunity of hearing in regard to the penalty to be imposed. In *Tulsiram Patel* (supra), the Supreme Court has categorically held that no opportunity need be given to the employee concerned, but the disciplinary authority, on consideration of the facts and circumstances (in the manner set out in Challappan and Tulsiram Patel) may impose the penalty. It was also clarified that if the penalty imposed was whimsical or disproportionately excessive, the same was open to correction in judicial review. The subsequent decision of the Supreme Court in *Sunil Kumar Sarkar* (supra) dealt with the amended Rule 19 of the Central CCA Rules which provided for a hearing. Therefore, the principle laid down in *Sunil Kumar Sarkar* (supra) can not be of any assistance in interpreting Rule 19 of the State CCA Rules in the absence of an amendment in the State CCA Rules corresponding to the amendment made in the Central CCA Rules. As the State CCA Rules stand today, the law applicable is as laid down in *Tulsiram Patel* (supra) and not as laid down in Sunil Kumar Sarkar."

9. Learned Advocate General argued that the judgment in the cases of *Deokinandan Prasad* (supra), *K. R. Erry* (supra), *Iqbal Singh* (supra), *Brahmdatt Sharma* (supra), all pertain to reduction or withholding of pension based upon the misconduct and not based upon conviction in a criminal trial.

The case of *Rajesh Kumar* (supra) is said to be distinguishable for the reason that it deals with an administrative action entailing civil consequences, which requires an opportunity of hearing.

10. The rule of natural justice was found to be not necessary in the matter of compulsory retirement of the Government employees on attaining age of 50 years as provided in Fundamental Rule 56(i) in *Union of India v. Col. J.N. Sinha*, (1970) 2 SCC 458. But it was held, the exclusion of the principles of natural justice depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power. The Court held as follows:-

> "8. Fundamental Rule 56(i) in terms does not require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement. A government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *A.K. Kraipak v. Union of India* "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it". It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be

made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

11. The Constitution Bench in *Mohinder Singh Gill Vs. Chief Election Commr.*, (1978) 1 SCC 405, held that natural justice is now a brooding omnipresence concept although varying in its play and that the "exceptions" to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. The rule of *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self- defeating or plainly contrary to the common sense of the situation. The Court held as under:-

"47. It is fair to hold that subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play.

48. Once we understand the soul of the rule as fairplay in action — and it is so — we must hold that it extends to both the fields. After all, administrative power in a democratic setup is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more — but nothing less. The "exceptions" to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the

common sense of the situation.

66. It was argued, based on rulings relating to natural justice, that unless civil consequences ensued, hearing was not necessary. A civil right being adversely affected is a sine qua non for the invocation of the audi alteram partem rule. This submission was supported by observations in Ram Gopal, Col. Sinha. of course, we agree that if only spiritual censure is the penalty, temporal laws may not take cognizance of such consequences since human law operates in the material field although its vitality vicariously depends on its morality. But what is a civil consequence, let us ask ourselves, bypassing verbal booby-traps? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence. "Civil" is defined by Black (Law Dictionary, 4th Edn.) at p. 311:

> "Ordinarily, pertaining or appropriate to a member of a civitas of free political community; natural or proper to a citizen. Also, relating to the community, or to the policy and government of the citizens and subjects of a state.
>
> The word is derived from the Latin civilise, a citizen ....
>
> In law, it has various significations.
>
> * * *
>
> 'Civil Rights' are such as belong to every citizen of the State or country, or, in a wider sense, to all its inhabitants, and are not connected with the organisation or administration of Government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury etc.... Or, as otherwise defined, civil rights are rights

> appertaining to a person in virtue of his citizenship in a State or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the Constitution, and by various acts of Congress made in pursuance thereof.
>
> (p. 1487, Black's Legal Dictionary)

The interest of a candidate at an election to Parliament regulated by the Constitution and the laws comes within this gravitational orbit. The most valuable right in a democratic polity is the "little man's" little pencil-marking, assenting or dissenting, called his vote. A democratic right, if denied, inflicts civil consequences. Likewise, the little man's right, in a representative system of Government, to rise to Prime Ministership or Presidentship by use of the right to be candidate, cannot be wished away by calling it of no civil moment. It civics mean anything to a self-governing citizenry, if participatory democracy is not to be scuttled by the law, we shall not be captivated by catchwords. The straight forward conclusion is that every Indian has a right to elect and be elected and this is a constitutional as distinguished from a common law right and is entitled to cognizance by courts subject to statutory regulation. We may also notice the further refinement urged that a right accrues to a candidate only when he is declared returned and until then it is incipient, inchoate and intangible for legal assertion — in the twilight zone of expectancy, as it were. This too, in our view, is logicid sophistry. Our system of "ordered" rights cannot disclaim cognizance of orderly processes as the right means to a right end. Our jurisprudence is not so jejune as to ignore the concern with means as with the end, with the journey as with the destination. Every candidate, to put it cryptically, has an interest or right to fair and free and legally run election. To draw lots and decide who wins, if announced as the electoral methodology, affects his

right, apart from his luckless rejection at the end. A vested interest in the prescribed process is a processual right, actionable if breached, the Constitution permitting. What is inchoate, viewed from the end, may be complete, viewed midstream. It is a subtle fallacy to confuse between the two. Victory is still an expectation; qua mado is a right to the statutory procedure. The appellant has a right to have the election conducted not according to humour or hubris but according to law and justice. And so natural justice cannot be stumped out on this score. In the region of public law locus standi and person aggrieved, right and interest have a broader import. But, in the present case, the Election Commission contends that a hearing has been given although the appellant retorts that a vacuous meeting where nothing was disclosed and he was summarily told off would be strange electoral justice. We express no opinion on the factum or adequacy of the hearing but hold that where a candidate has reached the end of the battle and the whole poll is upset, he has a right to notice and to be heard, the quantum and quality being conditioned by the concatenation of circumstances.

67. The rulings cited, bearing on the touchstone of civil consequences, do not contradict the view we have propounded. Col. Sinha merely holds — and we respectfully agree — that the lowering of retirement age does not deprive a government servant's rights, it being clear that every servant has to quit on the prescribed age being attained. Even Binapani concedes that the State has the authority to retire a servant on superannuation. The situation here is different. We are not in the province of substantive rights but procedural rights statutorily regulated. Sometimes processual protections are too precious to be negotiable, temporised with or whittled down."

12. In *Swadeshi Cotton Mills v. Union of India,* (1981) 1 SCC 664, the Court examined as to whether there are any exceptions to the application of the principles of natural justice, particularly the *audi alteram partem* rule. It was held that in the case of express exclusion, there is no difficulty but the

urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature can be a case of implied exclusion. The Court held as under:-

> "32. The maxim audi alteram partem has many facets. Two of them are: *(a)* notice of the case to be met; and *(b)* opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Lore-burn's oft-quoted language, is "a duty lying upon everyone who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, "convenience and justice" — as Lord Atkin felicitously put it — "are often not on speaking terms".
>
> 33. The next general aspect to be considered is: Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by *express* language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought *by implication* due to the presence of certain factors: such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. ..... Similarly, action on grounds of public safety, public health may justify disregard of the rule of prior hearing.
>
> 44. In short, the general principle — as distinguished from an absolute rule of uniform application — seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that

> decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

13. In another judgment reported as *Automotive Tyre Manufacturers Assn. v. Designated Authority,* (2011) 2 SCC 258, the Supreme Court held that the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. The Court held as under:-

> "80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application.

> 81. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of application of the said principle can be properly determined. (See *Union of India v. Col. J.N. Sinha.*)"

14. In view of the Judgments mentioned above, we find that though the applicability of principals (sic:principles) of natural justice can be excluded by necessary implication but the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences relating to infraction of property, personal rights and material deprivations for the party affected. The rule of *audi alteram partem* is the rule of the law without which law would be lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. The concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. The procedural pre-condition of fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity

so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications.

15. The judgment of Full Bench in the case of *Laxmi Narayan Hayaran's* case (Supra) deals with a situation of termination of an employee on account of conviction in a criminal trial. The said judgment of dispensing with the opportunity of hearing to a pensioner cannot be extended to a case of stoppage of pension. Relationship between employer and employee before the superannuation is governed by the Rules of services. If the rules do not permit any opportunity of hearing, the same can be excluded. It may be required in case of serving officer as it is not in public interest to allow a tainted person in public employment. It has been so ordered relying upon the Constitutional Bench judgment in the case of *Tulsiram Patel's* case (supra). But after retirement, the pensioner is entitled to pension in view of his past service under the State. An employee earns his pension. Pension is not a bounty, but a benefit earned by him by serving State for many years. The deprivation of such pension affects civil rights of the pensioner, the means of survival. Though sub-rule (2) of Rule 8 of the Pension Rules is silent about opportunity of hearing, but neither the dispensing with an opportunity of hearing is urgent nor is any other purpose expected to be achieved by denying the benefit of opportunity of hearing.

If an opportunity of hearing is granted, an employee can point out the mitigating family circumstance, the role in the criminal trial which led to his conviction or other circumstances as to why the pension should not be stopped and that too for life. Therefore, in case of a pensioner, the rule of natural justice would warrant an opportunity of hearing, at least of serving a show cause and elucidating the reply of the pensioner and thereafter, pass an order as may be considered appropriate by the authority so as to enable the appellate authority or the judicial courts to test the legality of the same while exercising the powers of the judicial review.

16. Thus, the first question of law is answered that a show cause notice is required to be given to the retired government servant convicted by the criminal Court. As a consequence thereof, we find that the order passed by this Court in the case of *Dau Ram Maheshwar* (supra) is correctly decided.

(Hemant Gupta)
Chief Justice

(Subodh Abhyankar)
Judge

Per Sujoy Paul, J. (Dissenting)

1. . The pivotal question before us, in nutshell is whether a retired employee after his conviction in a serious crime is entitled to get an opportunity of hearing before imposition of punishment as per Rule 8 of the Pension Rules?

2. Sub-Rule (2) of Rule 8, in no uncertain terms, makes it clear that where a pensioner is convicted of a serious crime, action against him under Sub-Rule (1) shall be taken *in the light of the judgment of the Court relating to such conviction.* The law makers in Sub-Rule (3) of Rule 8 provided an opportunity of hearing to the retired government servant. This Sub-Rule is applicable when competent authority considers that the pensioner is *prima facie* guilty of grave misconduct.

3. In view of settled legal position, the principles of natural justice are to be read into the provision unless the statutory provision either specifically or by necessary implication excluded the application of principles of natural justice.

4. Before dealing with the rule in hand, it is profitable to refer to certain authorities on this aspect. In 1970 (2) SCC 458 *[Union of India vs. Col. J.N. Sinha]* the Court opined as under:

> *"8. ..... it is true that if a statutory provision can be read consistently with the principles of natural justice, the Court should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the Court cannot ignore the mandate of legislature or the statutory authority and read into the provision concerned the principles of natural justice."*
>
> [Emphasis Supplied]

5. The Constitution Bench in *Maneka Gandhi vs. Union of India,* 1978 (1) SCC 248 dealt with the aforesaid aspect and held:

> *"14. .... now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Morris of*

Borth-Y-Gest, from 'fair play in action', it may equally be excluded where, having regard to the nature of action to be taken, its object and purpose and the scheme of relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion.

182. .... in this connection, it cannot be denied that the legislature by making an express provision may deny a person the right to be heard. Rules of natural justice cannot be equated with the fundamental rights."

[Emphasis Supplied]

6. After considering the judgment of *J.N. Sinha* (Surpa), in the same paragraph it is stated-

"The rules of natural justice are not embodied rules nor can they be elevated to the position of the fundamental rules.... but if a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice then the Court cannot ignore the mandate of legislature or the statutory authority and read into the concerned provision the principles of natural justice."

[Emphasis Supplied]

7. In *Swadeshi Cotton Mills* (Supra), the Apex Court again held that the rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it. If a statutory provision either specifically or by inevitable implication excludes the application of the natural justice, then the Court cannot ignore the mandate of legislature. (Para 31).

8. In 1994 (5) SCC 267, *Dr. Rash Lal Yadav vs. State of Bihar* the same principle is reiterated by holding-

"9. What emerges from the above discussion is that unless the law expressly or by necessary implication excludes the application of the rules of natural justice, Courts will read the said requirement in enactment that are silent and insist

on its application even in cases of administrative action having civil consequences."

[Emphasis Supplied]

9. In catena of judgments it was held that the requirements of natural justice depend on the circumstances of the case, the nature of the inquiry, *the rules* under which authority is acting, the subject matter to be dealt with and so forth (See: 2010 (13) SCC 255 *[Natwer Singh vs. Director]*, B Sudershan Reddy, J in *Natwer Singh* (Supra) expressed his view that *"concept of fairness is not a one way street. The principles of natural justice are not intended to operate as road blocks to obstruct statutory inquires.... the extent of its applicability depends upon the statutory frame work.")*

10. In view of the aforesaid judgments of Supreme Court, the core issue is relating to the interpretation of Rule 8 of the Pension Rules. Whether Rule 8 (2) specifically or by necessary implication excludes the principles of natural justice, is the point to ponder upon. The contention of the petitioner is that if an opportunity of hearing is granted, the retired employee can point out his personal hardship, the nature of involvement in the criminal case which resulted into his conviction and other circumstances. Hence, there is no harm if principles of natural justice are followed. Such grant of opportunity to the retired employee as per principles of natural justice will not cause any prejudice to the department.

11. Before dealing with aforesaid aspect, it is apposite to mention that in my view Sub-rule (2) of Rule 8 does not expressly excludes the application of principles of natural justice. Sub-rule (3), as noticed, provides an opportunity of hearing when competent authority considers that pensioner is *prima facie* guilty of grave misconduct. In Sub-rule (3), principles of natural justice were inserted in a mandatory form, whereas in Sub-rule (2), it is provided that action shall be taken in the light of the judgment of the Court relating to such conviction. In the manner Sub-rule (2) is worded, in my considered opinion, it has impliedly excluded the principles of natural justice. The golden rule of interpretation of a statute is that interpretation must depend on the text and the context. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted (See: 1987 (1) SCC 424, *RBI vs. Peerless General Finance Co. Ltd.*).

12. Article 311 of the Constitution or Rule 19 of CCA Rules provides that an employee can be punished on the ground of conduct which has led to his conviction on a criminal charge. If an existing employee is convicted on a serious criminal charge, he can be dismissed or removed from service. Needless to mention that when an existing government employee is dismissed or removed from service, his source of livelihood, remaining years of service as well as and right to get pension and retiral dues comes to an end. Thus, penalty/termination on an existing employee on the ground of conviction is much severe than the case of an retired government employee who loses pension.

13. In *Divisional Personnel Officer Southern Railways vs. T.R. Challppan,* 1976 (3) SCC 190 a three judge Bench of Supreme Court considered a provision analogous to Rule 19 of CCA Rules and held that delinquent employee should be heard before imposition of penalty. This judgment of *Challppan* (Supra) to the extent it holds that the employee should be heard before imposition of punishment was overruled by the Constitution Bench of the Supreme Court in *Tulsiram Patel* (Supra). It is pertinent to mention here that argument advanced before the Supreme Court was that if principles of natural justice are followed, it will not cause any prejudice. The employee will get an opportunity against the penalty proposed. He will be able to convince the disciplinary authority that the nature of conduct attributed to him did not call for his dismissal, removal or reduction in rank . The government servant will be able to point out that the offence of which he was convicted was a trivial or a technical one in respect of which a small punishment can be imposed. It is profitable to quote the relevant para from *Tulsiram Patel* (Supra).

> *"It was submitted on behalf of the government servants that an inquiry consists of several stages and, therefore, even where by the application of the second proviso the full inquiry is dispensed with, there is nothing to prevent the disciplinary authority from holding at least a minimal inquiry because no prejudice can be caused by doing so. It was further submitted that even though the three clauses of the second proviso are different in their content, it was feasible in the case of each of the three clauses to give to the government servant an opportunity of showing cause*

against the penalty proposed to be imposed so as to enable him to convince the disciplinary authority that the nature of the misconduct attributed to him did not call for his dismissal, removal or reduction in rank. For instance, in a case falling under clause (a) the government servant can point out that the offence of which he was convicted was a trivial or a technical one in respect of which the criminal court had taken a lenient view and had sentenced him to pay a nominal fine or had given him the benefit of probation. Support of this submission was derived from Challappan's case ..... It was further submitted that apart from the opportunity to show cause against the proposed penalty it was also feasible to give a further opportunity in the case of each of the three clauses though such opportunity in each case may not be identical. Thus, it was argued that the charge-sheet or at least a notice informing the government servant of the charges against him and calling for his explanation thereto was always feasible. It was further argued that though under clause (a) of the second proviso an inquiry into the conduct which led to the conviction of the government servant on a criminal charge would not be necessary, such a notice would enable him to point out that it was a case of mistaken identity and he was not the person who had been convicted but was an altogether different individual. It was urged that there could be no practical difficulty in serving such charge-sheet to the concerned government servant because even if he were sentenced to imprisonment, the charge-sheet or notice with respect to the proposed penalty can always be sent to the jail in which he is serving his sentence. .... "

[Emphasis Supplied]

14. The said argument could not find favour and Apex Court ruled that -

"the consideration under Rule 14 of what penalty should be imposed upon a delinquent railway servant must, therefore, be *ex parte* and where the disciplinary authority comes to the

conclusion that the penalty which the facts and circumstances of the case warrant is either of dismissal or removal or reduction in rank, no opportunity of showing cause against such penalty proposed to be imposed upon him can be afforded to the delinquent government servant. Undoubtedly, the disciplinary authority must have regard to all the facts and circumstances of the case as set out in *Challappan case*. As pointed out earlier, considerations of fair play and justice requiring a hearing to be given to a government servant with respect to the penalty proposed to be imposed upon him do not enter into the picture when the second proviso to Article 311(2) comes into play and "....To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in *Challappan* case. This, however, has to be done by it *ex parte* and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted,

he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order."

(Emphasis supplied)

15. In my considered opinion, neither in Rule 19 of CCA Rules nor in Sub-rule (2) of Rule 8, principles of natural justice can be read into. Indeed, principles of natural justice are excluded by implication in both the aforesaid provisions for same reasons. The sole basis of decision of competent authority will depend upon judgment of conviction arising out of conduct/crime of delinquent. Once an existing or a retired employee is convicted for a serious offence/crime, the only requirement of the rule (Rule 19 of CCA Rules or Rule 8(2) of Pension Rules) is that the competent authority shall take a decision regarding penal action in the light of judgment of the Court. No opportunity of hearing is required to be provided to such existing/retired employee before taking action under Rule 8 (1) or Rule 19. It is noteworthy that in *Tulsiram Patel* (Supra), the Supreme Court categorically laid down that the competent authority while taking decision regarding punishment must bear in mind that a conviction on a criminal charge does not automatically entails dismissal, removal or reduction in rank of the government servant. Considering the judgment of conviction, even a lessor (sic:lesser) punishment can be imposed. The liberty is reserved to the government servant who is aggrieved by the penalty imposed, to assail it in appeal, revision or review or seek judicial review of the same before a court of competent jurisdiction. The said view of *Tulsiram Patel* (Supra) was followed by the Full Bench of this Court in *Laxmi Narayan Hayaran* (Supra).

16. In view of aforesaid analysis, my opinion regarding question No.1 is that no opportunity of hearing is required to be given to a retired government

servant before taking a decision under Sub-rule (1) of Rule 8 and such decision needs to be taken by competent authority in the light of the judgment of the Court relating to such conviction. Since Rule 8(2) impliedly excludes the principles of natural justice, this Court cannot ignore the mandate of statutory authority and read into the provision concern the principles of natural justice. Needless to emphasis that if retired employee is aggrieved by such punishment, he can seek redressal from departmental/judicial Forum, as the case may be. The necessary corollary of aforesaid view is that *Dauram Mahawar* (Supra) is not correctly decided. It is opined accordingly.

(Sujoy Paul)
Judge

ORDER

In view of the majority opinion, it is held that opportunity of hearing is required to be provided before an order of stoppage of pension is passed under Section 8(2) of the Civil Services (Pension) Rules, 1976 and that judgment of *Dau Ram Maheshwar Vs. State of M.P. and another* reported as 2017(1) MPLJ 640 is correctly decided.

Order accordingly.

I.L.R. [2017] M.P., 2099
WRIT APPEAL
Before Mr. Justice Hemant Gupta, Chief Justice
& Mr. Justice Vijay Kumar Shukla
W.A. No. 524/2017 (Jabalpur) decided on 21 July, 2017

RAM KUMAR MEENA ...Appellant
Vs.
STATE OF M.P. & ors. ...Respondents

A. ***Caste Certificate – Proof*** **– Petitioner appointed as Sub-Inspector, Police in 1992 as a SC candidate – On complaint regarding his caste certificate, matter was referred to Scrutiny Committee whereby vide impugned order, certificate was held to be bogus and forged – Challenge to – Held - "Meena" caste in the State of Madhya Pradesh is not included in Scheduled Tribes category, except who are residing in Shironj Sub-Division of District Vidisha – Petitioner did not produce any credentials like ration card or votor list etc. to substantiate**

his claim that his forefather use to reside in District Vidisha – He did his High School and graduation from District Hoshangabad – No record with Tehsildar, Shironj regarding issuance of caste certificate to petitioner – No illegality with decision of High Level Scrutiny Committee – Writ appeal dismissed. (Paras 5 to 7, 9 & 10)

क. जाति प्रमाणपत्र – सबूत – याची अनुसूचित जाति के अभ्यर्थी के रूप में 1992 में पुलिस उपनिरीक्षक के रूप में नियुक्त किया गया – उसके जाति प्रमाणपत्र से संबंधित शिकायत पर, मामले को छानबीन समिति को निर्दिष्ट किया गया था जिस पर आक्षेपित आदेश द्वारा प्रमाणपत्र को बनावटी एवं कूटरचित ठहराया गया – को चुनौती – अभिनिर्धारित – मध्य प्रदेश राज्य में "भीणा" जाति अनुसूचित जनजाति की श्रेणी में समाविष्ट नहीं सिवाय जो विदिशा जिले के सिरोंज उपसंभाग में निवासरत है – याची ने उसके दावे को सिद्ध करने के लिए कि उसके पूर्वज विदिशा जिले में निवास करते थे, राशन कार्ड या मतदाता सूची इत्यादि जैसे किसी प्रत्यय पत्र को प्रस्तुत नहीं किया – उसने अपनी उच्च माध्यमिक एवं स्नातक शिक्षा होशंगाबाद जिले से की है – याची को जाति प्रमाणपत्र जारी किये जाने के संबंध में तहसीलदार सिरोंज के पास कोई अभिलेख नहीं – उच्च स्तरीय छानबीन समिति के निर्णय में कोई अवैधता नहीं – रिट अपील खारिज।

***B. Caste Certificates – Notifications – Addition & Deletion* – Held – It is established law that there cannot be any addition or deletion in Presidential Notification regarding a caste certificate by Court of Law except by Legislature. (Para 8)**

ख. जाति प्रमाणपत्र – अधिसूचनाऐं – जोड़ना एवं हटाना – अभिनिर्धारित – यह सुस्थापित विधि है कि सिवाय विधान मंडल के, जाति प्रमाणपत्र के संबंध में राष्ट्रपति की अधिसूचना में, न्यायालय द्वारा कोई जोड़ना या हटाना नहीं किया जा सकता।

***C. Writ Appeal – Limitation – Condonation of Delay – Ground* – Held – Appellant was prosecuting remedy before this Court by way of writ appeal and review petition and hence delay in filing present appeal is bonafide constituting sufficient cause – Delay condoned. (Para 3)**

ग. रिट अपील – परिसीमा – विलंब के लिए माफी – आधार – अभिनिर्धारित – अपीलार्थी रिट अपील एवं पुनर्विलोकन याचिका के जरिए इस न्यायालय के समक्ष उपचार की कार्यवाही कर रहा था और इसलिए वर्तमान अपील प्रस्तुत करने में विलंब सद्भाविक है, जो पर्याप्त कारण गठित करता है – विलंब माफ किया गया।

Cases referred :

(2008) 9 SCC 54, (2014) 4 SCC 434, (1994) 1 SCC 359.

Aditya Adhikari with *Seema Pushkar*, for the appellant.

Deepak Awasthi, G.A. for the respondents/State.

ORDER

The Order of the Court was passed by : **VIJAY KUMAR SHUKLA, J. :-** Heard on **I.A. No.8760/2017** on the question of limitation regarding delay in filing the instant appeal. The appellant-petitioner challenged the order passed by the Writ Court in the Review Petition No.139/2016 which was dismissed on 3-5-2016. The writ petition forming the subject-matter of W.P. No.6162/2014 was filed by the appellant-petitioner challenging the order dated 16-02-2005 passed by the High Level Caste Scrutiny Committee [hereinafter referred to as 'the Scrutiny Committee'] which was dismissed by order dated 17-6-2015 by the writ Court. Against the said order a writ appeal was preferred which was decided on 17-02-2016 granting liberty to the petitioner to file a review petition before the learned Single Judge.

2. Thereafter, the appellant-petitioner filed Review Petition No.139/2016 which was decided by the learned Single Judge on 3- 5-2017. Assailing the original order passed by the learned Single Judge, dated 17-6-2015 in the writ petition and the order dated 3-5-2015 passed in the review petition, the present intra-court appeal has been filed.

3. Considering the averments made in the interlocutory application which is duly supported by an affidavit, it is apparent that the appellant was prosecuting remedy before this Court by way of a writ appeal or review petition. Hence, the delay in filing the present writ appeal is bonafide constituting sufficient cause. Accordingly delay is condoned and the **I.A. No.8760/2017** is allowed.

4. Also heard on admission. The appellant-petitioner has challenged the order passed by the Scrutiny Committee, vide (Annexure-P/6), dated 16-6-2015 contending that the findings recorded by the Scrutiny Committee regarding his caste certificate are perverse.

5. The factual score that is essential to be depicted are that the petitioner was appointed as a Sub-Inspector in the Police Department in the year 1992

as a scheduled caste candidate. He submitted a caste certificate to the effect that he belongs to "Meena" caste which is a scheduled tribe in the State of Madhya Pradesh. Some complaints were received against the caste certificate of the petitioner. Thereafter, a show cause notice was issued to the petitioner. The matter was referred to the Scrutiny Committee to verify the caste status of the petitioner. The Scrutiny Committee vide impugned order (Annexure-P/6) held that the petitioner has submitted a forged and bogus caste certificate at the time of his recruitment. It was also found that the petitioner does not belong to the scheduled caste and his father or he was not a resident of Shironj Sub-Division of District Vidisha and, therefore, the petitioner is not covered under the category of the scheduled tribes, as claimed by him.

6. It is not in dispute that "Meena" caste is not included under the category of the Scheduled Tribes in the State of Madhya Pradesh, except "Meena" who were residing in Shironj Sub-Division of the District Vidisha, as per Notification issued by the Government of India in the year 2003 whereby "Meena" caste has been deleted from the category of the Scheduled Castes and Scheduled Tribes in the State of Madhya Pradesh. It is also not in dispute against the enquiry conducted by the Scrutiny Committee in similar cases of "Meena" category, a special leave petition forming the subject-matter of SLP (Civil) No.19248/2007 was filed before the apex Court which has been dismissed. Thus, it is clear that the "Meena" caste in the State of Madhya Pradesh is not included in the Scheduled Tribes category, except for Shoronj Sub-Division of District Vidisha.

7. From a bare perusal of the record of the present case and also the findings ascribed by the Scrutiny Committee, it is found that the appellant-petitioner did not produce any credentials viz. Ration card and voters' list etc. in order to substantiate his claim that his forefather was residing in the District Vidisha. Contention of the petitioner that he had produced evidence before the Scrutiny Committee that his forefather had left the State of Rajasthan and shifted in the Village – Kolukhedi, Tahsil Lateri, District Vidisha was rightly not accepted by the Scrutiny Committee, as the same was not found to be corroborated by any cogent evidence. On the contrary, the record shows that the petitioner passed Middle and High School examinations from Village, Gudariya District Hoshangabad and also did his Graduation from Sohagpur in the District Hoshangabad. In his caste certificate there was serial number mentioned therein. His certificate was not found to be genuine as the Tahsildar,

Shironj had informed the police authority that there was no record available in the Office of Tahsildar, Shironj in regard to issuance of the caste certificate in favour of the petitioner. Therefore, no leniency can be shown to the petitioner.

8. It is established law that there cannot be any addition or deletion in the Presidential Notification regarding a caste certificate by the Court of law except by the Legislature. [See : *Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar and another,* (2008) 9 SCC 54; *R. Unnikrishnan and another vs. V.K. Mahanudevan and others,* (2014) 4 SCC 434 and *Palghat Jilla Thandan Samudhaya Samrakshana Samithi and another vs. State of Kerala and another,* (1994) 1 SCC 359].

9. In the case in hand, the petitioner-appellant has availed appointment in the Police Department on the strength of a fake and fictitious caste certificate.

10. Considering the facts and circumstances of the case and proponement of law laid down by the apex Court, we do not perceive any error or illegality in the decision of the High Level Caste Scrutiny Committee and the findings ascribed by the learned Single Judge in the writ petition as well as review petition are impeccable.

11. *Ex-consequenti* the **writ appeal is dismissed**. There shall be no order as to costs.

Appeal dismissed.

I.L.R. [2017] M.P., 2103
WRIT PETITION

Before Mr. Justice P.K. Jaiswal & Mr. Justice Virender Singh
W.P. No. 6554/2015 (Indore) decided on 6 April, 2017

PRAMOD KUMAR DWIVEDI ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

Constitution – Article 226 – Registration of FIR Against Police Officials **– Fight amongst the Police Officials and Army Trainee Officers – Police authorities lodged three FIR against the army officers whereas no report was lodged against any police officers despite written complaint filed by the Army Officers – Held – On written complaint, investigation conducted by Addl. S.P. whereby despite of the fact that**

some Army Officers sustained fractures and without considering medical evidence concluded that no case is made out against Police Officers – Allegation regarding Army Officers for consuming liquor openly has been specifically denied by respondents nor there is any medical evidence in this respect – Young Army Officers were beaten by Police personnel for which medical reports are present on record – Police did not investigate the matter properly and impartially – Material on record prima facie calling for an investigation by independent agency – CBI directed to take over investigation of the case – Petition allowed.

(Paras 19 to 21, 24, 27 & 29)

संविधान – अनुच्छेद 226 – पुलिस अधिकारियों के विरूद्ध प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जाना – पुलिस अधिकारियों और सेना के प्रशिक्षु अधिकारियों के मध्य लड़ाई हुई – पुलिस प्राधिकारियों ने सेना अधिकारियों के विरूद्ध तीन प्रथम सूचना प्रतिवेदन दर्ज किये जबकि सेना अधिकारियों द्वारा लिखित शिकायत प्रस्तुत करने के बावजूद किसी पुलिस अधिकारी के विरूद्ध रिपोर्ट दर्ज नहीं की गई – अभिनिर्धारित – लिखित शिकायत पर, अति. पुलिस अधीक्षक द्वारा अन्वेषण संचालित किया गया जिसमें, बावजूद इस तथ्य के कि कुछ सेना अधिकारियों ने अस्थि–भंग सहन किया और चिकित्सीय साक्ष्य को विचार में लिये बिना, निष्कर्षित किया कि पुलिस अधिकारियों के विरूद्ध कोई प्रकरण नहीं बनता – सेना अधिकारियों के संबंध में खुले रूप से मदिरा सेवन करने के अभिकथन को प्रत्यर्थीगण द्वारा विनिर्दिष्ट रूप से अस्वीकार किया गया, ना ही इस संबंध में कोई चिकित्सीय साक्ष्य है – जवान सेना अधिकारियों को पुलिस कर्मियों द्वारा पीटा गया था जिसके लिए अभिलेख पर चिकित्सीय प्रतिवेदन उपस्थित है – पुलिस ने मामले का उचित रूप से एवं निष्पक्ष रूप से अन्वेषण नहीं किया – अभिलेख की सामग्री प्रथम दृष्ट्या स्वतंत्र एजेंसी द्वारा अन्वेषण हेतु आवश्यकता बताती है – CBI को प्रकरण का अन्वेषण ले लेने के लिए निदेशित किया गया – याचिका मंजूर।

Cases referred :

2013 (5) MPHT 336, 1996 (11) SCC 253, 2002 (5) SCC 521, 2008 (2) SCC 409, 2016 6 SCC 277, 2016 (3) SCC 135.

Manish Yadav, for the petitioner.

Sunil Jain, A.A.G. with *Y. Mittal*, G.A. for the respondent Nos.2 to 5.

Deepak Rawal, A.S.G. for the respondent No.1.

ORDER

The Order of the Court was passed by : **P.K. JAISWAL, J. :-** This public interest litigation has been filed by the petitioner, seeking relief of registration of FIR against the police, involved in the incident happened in the police station Vijay Nagar, Indore (ie., quarrel between Police and Army Personnel at parking area of BCM Heights Vijay Nagar Indore) be ensured. In the petition, the petitioner has also prayed that liquor shop be also closed at an early time, but he is pressing a relief for registration of FIR, criminal case against the police personnel involved in the incident happened on the intervening night on 9.9.2015 and 10.9.2015.

2. The facts of the case are as under :-

(i) On 9.9.2015 at about 12.00 to 12.30, midnight some officers of the army visited the Woodstock Lounge, situated at BCM Heights, Indore. While the officers were in the parking area of BCM Heights and were leaving for Mhow, 4-5 police persons arrived and asked the officers to leave immediately, on which the officers informed the police persons that, they were waiting for their colleagues who were clearing their bill and will soon leave. The police persons used abusive language and passed derogatory remarks, resulting in an argument. Within no time a PCR Van arrived at the spot and was joined by Mr. Vipul Shrivastava, IPS and other police officers.

(ii) The army officers identified themselves and informed the police officers about the behavior of police persons. Rather than taking action against the erring police persons, large number of police persons under the supervision of Mr. Vipul Shrivastava, brutally assaulted the army officers with sticks and weapons. The army officers were mercilessly beaten even when they identified themselves as army officers. Thereafter, the army officers were forcibly dragged to Vijay Nagar police station where they were again beaten up by Mr. Vipul Shrivastava, Police Inspector Mr. Saiyed and Police Inspector Mr. Chhatarpalsingh Solanki. At about 0100 hrs., after inflicting several injuries the army officers were left who

somehow reached Mhow with broken limbs, fractures, multiple contusions and injuries caused by blunt objects. The injured army officers were rushed to Military Hospital Mhow where 3 of them had to be admitted in the ICU. The nature of injuries was such that 2 of them had to be referred to the Command Hospital at Lucknow.

(iii) As per medical documents (Annexure R/1) Army No.IC-78793A **Lieutenant Shailendra Kumar,** sustained the following injuries :-

"(i) Contusion over left leg (8 x 4 cm)

*(ii) Bruise on (RT) leg (6 x 5 cm) **fracture** (Rt) Tibia (upper 1/3rd) "*

Army No.IC—78612K **Lieutenant Ankit Siwach,** sustained the following injuries :-

"(i) Swelling over Rt. forearm

*(ii) displaced **fracture** ulna (Rt Hand) lower 1/3".*

Army No.IC—78363W **Lieutenant Kunal,** sustained the following injuries :-

"(i) Multiple abrasion over (Lt) forearm and (Lt) Knee and Lower Abdomen.

(ii) Contusion over back"

Army No.IC—79215X Lieutenant **Ritwick Singh,** sustained the following injuries :-

"(i) Contusion over B/L scapular region.

(ii) Contusion over (Rt) forearm.

(iii) Contusion over B/L thighs & legs.

3. As per police patrolling party some army personnel were consuming liquor publicly on road, which was retaliated and started quarrel with the police personnel. Ultimately the police personnel have lodged FIR No.972/15, under Sections 353 and 332, IPC against the unknown persons on 10.9.2015 at

4.15 a.m. In daily diary, the entry was made on 16.10 hrs. vide Entry No.023.

It is also alleged that on 10.9.2015, at 5.20 AM in the morning a large number of army personnel have come to attack on police station – Vijay Nagar and they have started beating the police staff of police station Vijay Nagar, Indore. During the said incident, they have taken hard disc of CCTV Camera and they further damaged the computer and furniture of police station. The said attack was committed by 60-70 personnel, who also looted rifle from the guard. An FIR has been lodged for commission of offence on the same day at 5.40 AM in the morning for commission of offence under Sections 147, 148, 149, 395, 397, 352, 307, 427 and 201, IPC vide FIR No.973/15. In daily diary the entry was made at 17.06 hrs vide entry No.028.

Thereafter, again some unknown persons have come in large number and attacked another police patrolling vehicle, which was operated under a lady Sub-Inspector, wherein they misbehaved with the said lady Sub-Inspector and assaulted on her and vehicle was also damaged. The said incident was reported by Sub-Inspector to police station Vijay Nagar, Indore, wherein FIR No.974/2015, in respect of Commission of an offence under Section 353, 354 and 332, IPC has been registered vide Annexure R/2. In daily diary the entry was made at (17.22) hrs vide entry No.029.

4. On 11.9.2015, a written complaint by the Army Officers was sent by hand to SHO police station Vijay Nagar apprising him about incident and request to register FIR against Shri Vipul Shrivastava and against other police persons vide (Annexure R/2). Para 1 to 4 of the written complaint reads as under :-

> *"(1) This is to inform you that on 9.9.2015, we a group of eight Army Officers, visited Indore at 2330 hrs we came out of Woodstock lounge. We were stopped by police personnel and they started abusing us. We politely informed them that we were Army Officers and we were going back. On hearing this one of the police Officer became abusive to Army as an organisation.*
>
> *(2) We told him firmly not to abuse the Indian Army. The police personnel replied arrogantly and called in all the police personnel around (approx 25-30 in 3-4 PCR vans). Without giving a fair listening to us they started a lathi*

charge. Four of us were injured, which included two severely injured. One officer suffered fracture on his leg and one suffered a forearm fracture (copy of medical reports attached).

(3) After beating us they illegally detained two officers and took them to Vijay Nagar Police Station.

(4) You are requested to lodge an FIR against these police personnel, incl city SP Mr. Vipul Shrivastav, who was involved in beating us and also take strict action against them especially against the Officer who ordered the lathi charge on unarmed and civilized Army Officers.

(5) For your necessary action."

(i) The SHO refused to accept aforementioned intimation and it had to be sent by registered post (Annexure R.3) of written complaint was also submitted to DIG police on 11.9.2015 vide (Annexure P/4). However, no FIR has been registered against the concerned police persons.

(ii) On 10.9.2015, a senior officers of the army visited police station Vijay Nagar together first hand information about the incident. On the same day, the Station Commander Mhow, along with other senior army officers, held a meeting with civil administration including the DIG police, Collector etc at the DIR Office, Indore. The army authorities on the same day, *ie.*, on 10.9.2015 itself ordered a court of enquiry under the provisions of Army Act, 1950, to ensure a fair trial and dispensation of justice in a time bound manner. In order to investigate the matter and conclude the court of inquiry repeated intimations / summons were issued to Mr. Vipul Shrivastava, Mr. G.D. Vaishnav, Sub – Inspector Vijay Nagar, Police Station and Mr. Solanki, Sub-Inspector Vijay Nagar, Police Station, on 7.10.2015, 14.10.2015, 21.10.2015 and 12.11.2015. When the police persons did not co-operate in the court of inquiry an application under the provisions of Army Act and Army Rules was made to the Chief Judicial Magistrate, Indore, on 14.10.2015 with a prayer to direct the witnesses to report to the Presiding Officer, court of inquiry on 20.10.2015. Thereafter, another application was made to the Chief Judicial Magistrate, Indore on 12.11.2015 for attendance of police witnesses before the presiding officer, court of inquiry, despite of which none of the police persons ever appeared before the court of inquiry.

5. Learned counsel for the petitioner submits that despite of repeated intimation and report no case has been registered against the erring police persons, but a case was promptly registered against army officers at Crime No.972/2015, 973/2015 and 974/2015 by police station Vijay Nagar, Indore. An application under Section 475 of Cr.P.C., read with Section 125 of the Army Act and Rule 5 of the Criminal court and Court Marshal Adjustment of jurisdiction Rule, 1978 has been filed on behalf of the Army before the JMFC, Indore praying for transfer of the said case to the Army court. The SHO police station Vijay Nagar issued notice with respect to the case registered against the army officers requiring their statements. Vide letter dated 6.11.2015, the police authorities were requested to record the statements of the concerned army officers at Mhow since they were committed in the court of inquiry and were also undergoing the mandatory young officers course. In respect of the incident, which had taken place in the parking area of BCM Heights, Indore, and young Army Officers were mercilessly beaten, but no FIR was lodged by the police personnel. Whereas police personnel registered prompt FIR 971/15, against the unknown persons under Sections 353 and 332, IPC. As per FIR the army personnel started quarrelling with the police personnel. It was found by the police persons that 10-12 persons were having intoxicated effect of liquor and in such intoxicated they abused and quarrelling with on duty police persons.

6. As per reply of the police personnel, a large number of army personnel have come to attack on the police station Vijay Nagar and started beating to police staff of police station Vijay Nagar, Indore. During the said incident, they have taken hard disk of CCTV Camera with a view to conceal their identity and they further damaged the computer and furniture of police station. The said attack was committed by 60-70 army personnel who have also looted one rifle from the guard, therefore, in such manner, again an FIR 972/15, has been lodged for commission of offence under Sections 147, 148, 149, 395, 397, 352, 307, 427 and 201, IPC. The stand of the police personnel that due to the said incident of *'Maarpeet'* (assault) with the staff of police station Vijay Nagar, Indore, the entire police personnel had been taken to hospital where their MLC were performed and in furtherance of investigation the statement of staff deployed at police station Vijay Nagar, at the time of incident were also recorded.

7. It is submitted by the learned counsel for the petitioner that army

officers were victims and brutally assault by the police personnel, but till today no FIR has been registered. He has also drawn our attention to the medical reports of four army officers and submits that as per the injuries inflicted upon the army officers and two of them sustained fracture, but till today no FIR has been registered by the police personnel whereas against the army officer they have registered three FIR's. He submitted that as per injuries inflicted upon the army officers is of loss to the nation that since these officers are from the fighting arm of the Indian Army who lead the troop in battle and counter insurgency / counter terrorist operations and protect the borders of the country. After a tough selection process only a few out of lacs of participants are selected, who undergo rigorous training and are then commissioned as officers. The fractures and injuries inflicted upon these officers might adversely affect their efficiency. The above incident could have been avoided by the police by simply informing and coordinating with the army authorities at Mhow, in time. There was no need to treat the army officers as hardened criminals.

8. The stand of the respondent No.1 – Union of India that, the high handed manner in which the police officers had been dealing with the matter is evident from the fact that despite having medical evidence and written complaint, no FIR has been registered against the erring police officers till date. The inaction on part of police authorities to register FIR is also in contravention to the directions given by the Hon'ble Supreme court in the matter of *Lalita Kumari V/s. Government of U.P.* reported as [2013(5) MPHT 336].

9. In respect of action of the army officer for the alleged misconduct concerned, a court of enquiry is ordered without any delay. However, in defiance of mandate of law the police officers have refused to appear before the court of inquiry. In case, the involvement of any Army Officer is found in the alleged incident then appropriate action as per law.

10. Shri D. Rawal, learned ASG submits that minimum action has been taken by the army authorities by instituting a court of enquiry as per the Army Act. At the earliest available opportunity co-ordination was carried out with the civil authorities to prevent any untoward incident. The army authorities have taken appropriate steps without any delay by initiating the court of inquiry, summoning the witnesses, co-ordinating with civil authorities and lodging complaint with the police. On the contrary the police authorities have not cooperated in investigating and have not registered any case against the erring police officers. He has also drawn our attention to the order passed in

M.Cr.C.No.10037/2016 and M.Cr.C.No.10039/2016 *(Station Commander, Mhow Cantt. V/s. State of M.P. & Others)* decided on 5.10.2016. In the aforesaid matter, the learned Single Bench directed the respondents/State to transfer the complete record of the proceedings in respect of Crime Nos.973/2015, 972/2015 and 974/2015, registered at police station Vijay Nagar, Indore to petitioner therein under the relevant provisions of Army Act, 1950 read with Army Rules, 1954 :-

> *"During post-lunch session when the matter was listed in the supplementary cause list before this court, Mr. Sunil Jain, learned AAG appeared in the matter and prayed for grant of some time to the respondent – State Government to file reply and submitted he does not have any instructions in the matter as he is appearing on advance notice.*
>
> *This court is of the considered opinion that once this court has heard two identical matter and the order was pronounced in the open court, in respect of the third matter, the prayer for grant of time deserved to be rejected and is accordingly rejected. The judgment delivered in two identical matters shall be applicable mutatis mutandis in the present case also and the respondents are directed to transfer the case ie., Crime No.974/2015, registered at police station Vijay Nagar, Indore to the* Competent Military Authority under the relevant provisions of the Army Act, 1950 read with the Army Rules, 1954.
>
> *With the aforesaid, the present petition stands allowed and disposed of."*

11. Shri Sunil Jain, learned AAG has submitted that against the aforesaid order dated 5.10.2016, Petition for Special Leave to Appeal vide No.1384/17 and 1386/17 have been preferred by the State and the Hon'ble Supreme court issued a show cause notice. Shri Jain, learned AAG has also submitted that a written complaint lodged by the army personnel regarding the incident by which number of young officers have been beaten, the matter was investigated by the police and no case was made out against the police personnel to register FIR against them. A report of Addl. Superintendent of

Police (East) Zone – 1, Distt. Indore, dated 30.9.2015 (Annexure R/6) is relevant, which reads as under :-

कार्यालय अतिरिक्त पुलिस अधीक्षक (पूर्व) जोन –1, जिला इंदौर
पलासिया चौराहा, इन्दौर, मध्यप्रदेश फोन 0731.2491360
Email-aspeastindore@gmail.com

कमाकं अपुअ/इ/पूर्व/109–ए/2015 दिनांक 30/09/2015

प्रति,

पुलिस अधीक्षक महोदय,
जिला इन्दौर (पूर्व)

विषय :–आवेदक सुनिल कुमारसिंह द्वारा प्रस्तुत आवेदन के संबंध में प्रतिवेदन।

संदर्भ :– आप का पत्र कमांक पुअ/इन्दौर (पूर्व)/पीए/पुशि/जांच/365 सी/2015, दिनांक 16, सितम्बर, 2015

उपरोक्त विषयांतर्गत एवं संदर्भित पत्र के संबंध में लेख है कि आवेदक सुनिल कुमारसिंह वरिष्ठि कार्यालय में आवेदन पत्र प्रस्तुत किया गया है । आवेदन पत्र का अवलोकन किया गया आवेदन पत्र के संबंध में बीसीएम हाईट्स के पास बुटसरेस्ट्रॉ मैनेजर स्वतंत्र एवं चश्मदीद साक्षी अंकुर शर्मा व विकाश चौहान के कथन लिये गये है जिसने प्राथमिक घटना का समर्थन करते हुए कथन दिया है संलग्न कथन प्रतिवेदन निम्नानुसार है :–

यह कि कन्ट्रोल रूम से सूचना मिलने पर जब सी0एस.पी0 विपुल श्रीवास्तव एवं अन्य पुलिस बल मौके पर पहुंचा तो वहां 8–10 बुडस्टाक रेस्तरा के सामने शराब के नशे में हुडदंग कर रहे थे और पूर्व से पहुँचे पुलिस बल के साथ मारपीट कर रहे थे । मौके पर बिगड़ते हालात को देखते हुए स्थिति को नियंत्रित करने हेतु मौके पर पहुंचे पुलिस बल ने आवश्यकतानुसार बल का प्रयोग कर हंगामा कर रहे हुडदंगियों को वहां से खदेड़ा । मौके पर उपस्थित पुलिस बल ने हालात का नियत्रित करने में बाकायदा उनके द्वारा अपने कर्त्तव्य के निर्वहन में आवश्यक बल का प्रयोग किया, जिसे करने हेतु पुलिस बल विधि द्वारा आबद्ध एवं न्यायनुमत था । मौके पर उपस्थित पुलिस द्वारा दुर्भावना पूर्वक अथवा आपराधिक आशय से कोई कार्य नही किया गया है । इन्फेन्ट्री स्कूल, महू के अधिकारियों द्वारा पहले तो नशे ही हालात में बी,सी,एम. हाईट्स के सामने सार्वजनिक स्थान पर शराब पीकर उत्पाद मचाया, उक्त कृत्य से रोकने पर उनके द्वारा वहीं पर पुलिस सदस्यों के साथ मारपीट की । उसके उपरांत प्रातः थाने पर पहुंचकर वहां तोड़फोड़ कर मारपीट, लूट आदि की गई, जिसके आधार पर उनके विरूद्ध पृथक–पृथक तीन अपराध पंजीबद्ध किए गए । इसी कार्यवाही से रूस्ट होकर सेना के अधिकारियों द्वारा श्री विपुल श्रीवास्तव एवं अन्य पुलिस अधिकारियों के विरूद्ध अपराध पंजीबद्ध किए

जाने हेतु उक्त आवेदन प्रस्तुत किया जाना प्रतीत होता है।

श्री विपुन श्रीवास्तव एवं अन्य पुलिस अधिकारीगण घटना के समय अपनी ड्यूटी पर थे और उनके द्वारा अपने लोक कर्तव्य के निर्वहन में कार्य करते हुए घटना स्थल पर निर्मित स्थिति को नियंत्रित करने हेतु आवश्यक कदम उठाये, जिसे करने के लिए वह विधि द्वारा आबद्ध एवं न्यायानुमत थे । उनका कोई भी कृत्य अपराध की श्रेणी में नही आता है ।

संलग्न मूल आवेदन पत्र सहपत्रो सहित 1–7

राजेश सहाय
अतिरिक्त पुलिस अधीक्षक,
पूर्व, जोन–1, जिला इन्दौर

12. The medical documents filed by the respondent No.1 along with the reply are the clear evidence of police brutality against the young trainee officers on the intervening night of 9.9.2015 to 10.9.2015 at Indore. If the allegation that, the trainee army officers had consumed liquor, then as per procedure, police should have carried out medical test to gather (sic:together). The supporting evidence, which infact was never done. The MLC submitted along with the trainee officer's complaint was substantial prima – facie evidence for filing of an FIR at police station – Vijaynagar, Indore, at the first instance, which was not done deliberately to protect their own officers. Infact, police officers from police station – Vijay Nagar, themselves were involved in the incident, so they have managed to evade registering of FIR against their own personnel.

13. A serious allegation has been made by the respondent No.1 that some police personnel including City Superintendent of Police Mr. Vipin Shrivastava, blatantly misused the authority vested with the police and physically assaulted the army trainee officer from Infantry school, Mhow, causing grievous injuries to them. The medical reports, which have been produced herein in the preceding paragraphs are the testimony of police's unprovoked violence, brutality and severe injuries suffered by the trainee army officers in the said incident. No law of the land permits police to resort to such acts resulting into breaking the limbs of the army personnel, who are known for their high discipline and supreme sacrifice for the defence of the Nation. Moreover, despite clinching medical evidence attached with aggrieved officer's complaint, police action of not filing mandatory FIR against its own erring personnel for

commission of an undisputed cognizable offence is entirely arbitrary and unlawful. It amount to travesty of the truth and justice to suit their vested interest.

14. The police under the relevant laws of section 154 Cr.P.C., is duty bound to register army complaint's FIR disclosing a prima facie cognizable offence. Refusal to register an FIR for commission of a cognizable offence is also contrary to the law laid-down by the Apex court in the case of *Lalita Kumari V/s. Government of U.P.* (supra) therefore, police has not only flouted and defied the mandate of law as envisage under section 154 of Cr.P.C, but also virtually violated the directions given by the Apex court. A counter allegation has been made by the Union of India that, it is the police who is shielding its own erring personnel responsible for the incident, which is evident from the police report dated 30.9.2016, giving clean cheat (sic:chit) to its erring personnel thereby not filing required FIR at police station Vijay Nagar, Indore. The police has dragged its investigation for more than a year with seemingly vested interests.

15. In respect of non-cooperation, the stand of police officers are that they are ready to cooperate 'in house enquiry' subject to provide security because after the incident at midnight of 9th and 10th September, 2015, the police officers are scared because if they will go in 'inhouse enquiry', inquiry in the military guidelines then, there are chances army person will take law in hand and the position will be worse. Even, there is no enquiry conducted in accordance with law and enquiry is going on before the criminal court, which will decide the fate of the case. In respect of in-house enquiry and transfer of three FIR's by order dated 5.10.2016, now the matter is pending before Hon'ble the Supreme court and, therefore, all those questions cannot be considered in the present public interest litigation.

16. Now the only question, which is to be decided in this public interest litigation is that the matter to be ordered to be investigated by any other independent agency like Central Bureau of Investigation (for short 'CBI').

17. The Apex court in the case of *Central Bureau of Investigation & Anr. V/s. Rajesh Gandhi & Anr.* reported as 1996 (11) SCC 253 has held that no one can insist that offence be investigated by a particular agency. The aggrieved person can only claim that offence he alleges be investigated properly, but he has no right to claim it be investigated by a particular agency of his

choice.

18. The stand of the respondents No.2 to 5 that if a person is aggrieved that a police station is not registering his FIR under Section 154 Cr.P.C, then, he can approach the Superintendent of Police under Section 154 (3) Cr.P.C, by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) of Cr.P.C., before the learned Magistrate concerned. If such an application under Section 156(3) Cr.P.C is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct an appropriate investigation to be made in a case where, according to the aggrieved person no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

19. In the present case, on a written complaint lodged by army officer, there was an investigation by the Addl. Superintendent of Police, East Zone – I, Distt. Indore and as per his report dated 30.9.2015, inspite of the fact that some of the army officers sustained fractures but the Addl. S.P., without considering their medical papers, on the basis of statement of police and independent witnesses namely Ankur Sharma and Vikas Chouhan, came to the conclusion that, no case for registering the FIR is made out. As per reply of the respondents No.2 to 5, the Addl. S.P. was justified in rejecting the prayer for registering an FIR.

20. In *Secy., Minor Irrigation & Rural Engg. Services, U.P. V/s. Sahngoo Ram Arya,* reported as 2002 (5) SCC 521, the Apex Court observed that although the High court has power to order a CBI enquiry that power should only be exercised if the High court, after considering the material on record comes to the conclusion that such material discloses prima facie case calling for investigation by a CBI or by any other similar agency. A CBI enquiry cannot be ordered as matter of routine merely because the party makes some allegation.

21. In the present case, we are of the opinion that, the material on record discloses a prima facie case calling for an investigation by any independent agency because police personnel are involved and, therefore, inspite of clinching medical evidence, no FIR has been registered. On the contrary, they rejected the prayer for registering of an FIR on 30.9.2015.

22. Shri Jain, learned AAG relied on the decisions of the Apex court in the case of *Sakiri Vasu V/s. State of Uttar Pradesh & Others*, reported 2008 (2) SCC 409 & *Sudhir Bhaskar Rao Tambe V/s. Hemant Yashwant Dhage & Others,* reported as 2016 6 SCC 277 and contended that a person has a grievance that his FIR has not been registered by police or proper investigation has not been done, then the remedy of the aggrieved person is not to go to this court under Article 226 of the Constitution, but to approach the Magistrate concerned under Section 156 (3) Cr.P.C and prayed for dismissal of the writ petition.

23. Recently, Hon'ble the Supreme Court in the case of *Puja Pal V/s. Union of India & Others,* reported as 2016 (3) SCC 135 has held that the extraordinary power of the Constitutional courts under Article 226 of the Constitution of India qua the issuance of direction to the CBI to conduct investigation must be exercised sparingly, cautiously and in exceptional situations, when it is necessary to provide credibility and instill confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. The Apex court held that the power of Constitutional courts to direct further investigation or re-investigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self imposed restraint, the plentitude and content thereof can neither be enervated nor moderated by any legislation.

24. The allegation regarding army officers to consume liquor openly has been denied by the respondent No.1. Nor there is any medical report to this effect. The consumption of liquor at a public place like a parking area is beyond imagination because inspite of the facilities available to the army officers, they will drive away from Mhow to Indore to consume liquor that to in a parking lawn. It appears that, in order to satisfy their ego, the police personnel had mercilessly beaten up the young officers and a story was cooked up regarding consumption of liquor.

25. The role of the police is to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties. The aim of the investigation is ultimately to search for truth and to bring offendor to book. "Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission

and the mental state accompanying it". It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

26. From the aforesaid facts and circumstances of the case, we are of the view that the statutory agency has not functioned in an effective way or that the circumstances are such that, it may reasonably be presumed or inferred that it may not able to conduct the investigation fairly or impartially. The army personnel have made specific allegation against the police authority. The report dated 30.9.2015, clearly shows that they have not investigated the matter properly inspite of clinching medical evidence, no FIR has been registered. The prime concerned and the endeavour of the court of law is to secure justice on the basis of true facts, which ought to have been unearthed through a committed resolved and a competent investigating agency.

27. From the return and the record of the respondents No.2 to 5, which has been produced though the young officers were beaten by the police personnel and their medical reports are on record, the police did not investigate the case properly at all and letter dated 30.9.2015, has been issued, stating therein that, no case is made out against the police personnel.

28. We are also not impressed by the submission of the learned Additional Advocate General that, if the respondent No.1 is dissatisfied, they may file a private complaint. On the other hand, police personnel acted promptly in registering three FIR's against army personnel.

29. We accordingly, direct the Director, CBI, to take over the investigation of the case of the incident of non-registration of FIR against police personnel. In respect of written complaint lodged by the respondent No.1 against the police personnel and bring the investigation to its logical conclusion in accordance with law. The record of the case, which has been submitted by the State Government will be kept in a sealed cover in the custody of Principal Registrar of this court and shall be handed over after completing the necessary formalities to the officers / authorities to receive them by the Director CBI. We also direct the State Government and its police to cooperate fully with the CBI in the investigation.

30. In the result, the petition succeeds and is hereby allowed, but without any order as to costs.

Petition allowed.

I.L.R. [2017] M.P., 2118
WRIT PETITION
Before Mr. Justice Sujoy Paul
W.P. No. 8323/2016 (Jabalpur) decided on 25 May, 2017.

DEEPTI CHAURASIA (DR.) ...Petitioner
Vs.
UNION OF INDIA & ors. ...Respondents

(Along with W.P. No. 7495/2016 & W.P. No. 7662/2016)

Constitution – Article 16(4) – Reservation- Singular cadre post – Clubbing of posts **– Held – Singular post of different disciplines cannot be clubbed together unless it is shown that such posts are interchangeable – It is further held that such posts are isolated posts in different disciplines and they do not form a singular cadre. (Para 23)**

संविधान – अनुच्छेद 16(4) – आरक्षण – एकल संवर्ग पद – पदों का इकट्ठा किया जाना – अभिनिर्धारित – विभिन्न विषय क्षेत्रों/अध्ययन क्षेत्रों के एकल पदों को इकट्ठा नहीं किया जा सकता जब तक यह दर्शाया नहीं गया हो कि ऐसे पद अंतः परिवर्तनीय हैं – आगे अभिनिर्धारित किया गया कि ऐसे पद विभिन्न विषय क्षेत्रों में पृथक्कृत पद हैं तथा वे एकल संवर्ग निर्मित नहीं करते। **Cases referred :**

(1988) 2 SCC 214, (2009) 1 SCC 1, AIR 1995 SC 1371, 1998 (4) SCC 1, 2011 (4) SCC 120.

N.S. Ruprah, for the petitioner in W.P. Nos. 8323/2016, 7495/2016, 7662/2016.

J.K. Jain, A.S.G. for the respondent No. 1 in W.P. Nos. 8323/2016, 7495/2016, 7662/2016.

Rajendra Jaiswal, for the respondent No. 2 & 3 in W.P. Nos. 8323/2016, 7495/2016, 7662/2016.

ORDER

SUJOY PAUL, J. :- This order shall govern disposal of connected W.P. No. 7495/16 and 7662/16. The facts are taken from W.P. No. 8323/16

2. Petitioner is aggrieved by advertisement dated 2.3.2016 and its amendment dated 11.4.2016 (AnnexureP/1). The grievance of the petitioner is that numerous subjects/ disciplines have been grouped together and total

number of Professors, Additional Professors, Associate Professors and Assistant Professors have been calculated and reservation roster has been applied in such a way that all the posts which falls on roster point are reserved.

3. Petitioner intended to submit her candidature for the post of Additional Professor in the subject of microbiology. It is contended that there exists a single post of Additional Professor (microbiology) and, therefore, the said post could not have been reserved in the impugned advertisement. In the advertisement, the said post is reserved for the candidate of OBC community.

4. Shri N.S. Ruprah, learned counsel for the petitioner submits that the action of respondents in grouping/ clubbing different posts is wholly impermissible. By taking this court to the document relating to grouping made for various departments, it is submitted that such grouping is not permissible. Reliance is placed on the "Report of Methodology for Reservation Roster" in each of six individual AIIMS at Bhopal, Bhubaneshwar, Jodhpur, Patna, Rishikesh and Raipur. Clause-18 of this report deals with Bhopal AIIMS. It is submitted that respondents have clubbed together the posts of (i) Community Medicine/ Family medicine, (ii) Forensic medicine/ Toxicology, (iii) Microbiology, (iv) Pathology/ Lab Medicine and (v) Pharmacology. Learned counsel for the petitioner placed heavy reliance on the judgment of Supreme Court in the case of *Dr. Chakradhar Paswan Vs. State of Bihar*- (1988) 2 SCC 214 and another judgment in *State of Karnataka Vs. K. Govindappa*- (2009) 1 SCC-1. It is argued that grouping of isolated posts is not permissible merely because they carry the same pay scale. On the strength of *K. Govindappa* (supra), Shri Ruprah contended that the real test for the purpose of grouping is whether a single post in a particular discipline should be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. It is strenuously contended that in order to apply reservation within a cadre, there must be plurality of posts. In absence of interchangeability of posts in different discipline, each single post must be treated as a solitary post for the purpose of reservation. It is further argued that aforsaid posts mentioned in clause-18 of the said report belong to different disciplines and those posts are not interchangeable. Hence , such grouping runs contrary to the judgment of Supreme Court and, therefore, reservation applied by grouping the posts is bad in law.

5. Per contra, Shri J.K. Jain, ASG and Shri Rajendra Jaiswal for the respondents contended that AIIMS is creation of All India Institute of Medical

Science Act, 1956 (No. 25 of 1956) (hereinafter referred to as "AIIMS Act").

6. Shri Jain urged that section 25 of AIIMS Act envisages that the institute shall carry out such directions as may be issued to it from time to time by the Central Government for efficient administration of this Act. Section 26 is relied upon to contend that the Central Government is the supreme authority to take a decision in relation to different aspects/disputes.

7. Learned counsel for the respondents submits that as per the aforesaid provisions of AIIMS Act, the Ministry of Home Affairs or the Nodal department, namely, the Department of Personnel Training, is competent to issue appropriate directions.

8. Shri Jain, relied on Office Memorandum dated 28.1.1952 (Annexure R-1) issued by Ministry of Home Affairs. He also relied on Annexure R-2 issued by the same Ministry on 12.12.1974. On the strength of these Office Memorandums, it is contended that the respondents are competent to apply reservation roster and reserve adequate number of posts as per roster. In addition, they are competent to undertake the exercise of grouping in relation to certain posts to be filled-up through direct recruitment.

9. The stand of respondents is that on the basis of AIIMS Act and OMs mentioned hereinabove, the respondents are competent to take a decision regarding grouping of the posts. It is submitted that a Committee was constituted for the purpose of taking decision regarding grouping. The said Committee submitted its report in which posts in five disciplines were decided to be grouped together. It is submitted that the said decision is neither without authority of law nor suffers from any other irregularity. He placed reliance on *R.K. Sabharwal Vs. State of Punjab*-AIR 1995 SC 1371.

10. Shri Rajendra Jaiswal, learned counsel for the other side relied on Annexure R-5 (brochure of Reservation for SC/ST and OBC). It is submitted that grouping of post is permissible and its methodology is prescribed in Chapter-V (Annexure R-5). By placing heavy reliance on this document, Shri Jaiswal submits that the following particulars are required to be taken into account for the purpose of taking decision regarding grouping- (i) Designation and number of each post, (ii) group to which post belong i.e. Group A,B,C or D, (iii) Scale of Pay of each post, (iv) method of recruitment for each post as per Recruitment Rules and (v) minimum qualification prescribed for direct recruitment of each post. It is contended that after taking into account

the relevant factors, the decision of grouping was taken and no fault can be found in such a decision. It is submitted that reservation was applied on the basis of the grouping which is in consonance with the enabling provisions.

11. No other point is pressed by learned counsel for the parties.

12. I have heard the parties at length and perused the record.

13. In the aforesaid factual back drop, it is clear that petitioner has assailed the impugned recruitment process on twin ground. Firstly, it is contended that singular post of Additional Professor in the subject of Microbiology cannot be reserved. Otherwise, it will amount to 100% reservation on the said solitary post. Secondly, it is submitted that grouping of posts made by the respondents is impressible because different singular posts are not interchangeable.

14. The respondents in their return stated that the faculty post having similar nomenclature and qualification in different departments were clubbed together for the purpose of finalizing the reservation roster.For this purpose, the source of power is drawn from OM dated 28.01.1952 and OM dated 12.12.1994 (Annexure-R/1 & R/2). It is further averred that isolated individual posts in similar cadre can be grouped together for the purpose of reservation in cases of direct recruitment. In Para No.9 of the return, it is stated that grouping comprising of different disciplines were formed and each group is considered as separate unit. The vacancies were determined on the basis of available vacancies in each subject including in a particular group after determinimg the vacancy in the group. The posts were reserved following reservation rules, rosters and further ceiling of 50% reservation.

15. The stand of the respondents is that in the present case the post based roster for the cadre strength upto 14 post has been applied. It is specifically pleaded in para 14 that it was felt necessary by the answering respondent to fill up the singular post by the candidate belonging to reserved category. A particular post of a particular department cannot constitute a cadre in itself even if there is a singular vacancy because it cannot be taken as separate unit for the purpose of determining the vacancy. Thr reservation of faculty posts was based on grouping of posts which is permissible taking into account the status, salary and qualification.

16. In W.P. No. 7495/2016, the post in question is Assistant Professor in Gastroenterology, whereas in W.P. No.7862/2016 the post involved is Associate Professor in Pulmonary Medicine. During the course of arguments,

learned counsel for the parties fairly admitted that question involved in these batch of petitions are common. For this reason, these matters were analogously heard, and decided by this common order.

17. In view of aforesaid stand of the parties, it is clear that post in question in these three petitions are singular post in the relevant subject. The grouping was made permissible by DOP & T instruction and as per the report (Page no. 56) . The grouping of posts was done by taking into account the status, salary and qualification. In the considered opinion of this Court, the existence of power to club the posts together cannot be doubted. However, it is necessary to remember that existence of power is one thing and justifiability or propriety while exercisig such power is another thing. Accordingly, merely because there exists an enabling provision or the respondents are empowered to undertake the exercise of grouping of posts, it cannot be said that grouping in all circumstances will be justifiable. The judicial review of grouping is permissible on the touch stone of principles laid down by the Supreme Court.

18. The petitioner in para No. 6.4 of the petition has categorically pleaded that grouping of posts is arbitrary as the posts are neither interchangeable nor do they form a singular cadre. The respondents have not denied these averments and did not produced any material to show that the posts in question are interchangeable.

19. In the considered opinion of this Court, the point involved in this case is no more *res integra*. The Supreme Court in the case of *Dr. Chakradhar Paswan* (Supra) opined that although the pay scale of three Deputy Directors was identical, the posts were belonging to different branches of indigenous medicine. In the said case, the Government grouped together all Class-I posts viz. the posts of Directors as well as of Deputy Directors in the subjects of Homoeopathy, Unani and Ayurvedic Medicines. The Apex Court held that three posts of Deputy Directors of Homoeopathy, Unani and Ayurvedic are distinct and separate as they pertains to different disciplines and each one is an isolated post by itself carried in the same cadre. In no uncertain terms, it was made clear that there can not be any grouping of isolated posts even if they are carried on the same scale..

20. The judgment of *Dr. Chakradhar Paswan* (Supra) has been considered by the the Constitutional Bench of the Supreme Court in the case reported in 1998(4) SCC 1, [*Post Graduate Institute of Medical Education & Research, Chandigarh vs. Faculty Association & others*]. The principle

laid down in the case of *Dr. Chakradhar Paswan* (Supra) were approved by the Supreme Court. Para 34 of the judgment reads as under:

> *"34. In a single post cadre, reservation at any point of time on account of rotation of roster is bound to bring about a situation where such a single post in the cadre will be kept reserved exclusively for the members of the backward classes and in total exclusion of the general members of the public. Such total exclusion of general members of the public and cent per cent reservation for the backward classes is not permissible within the constitutional framework. The decision of this Court to this effect over the decades have been consistent."*

21. In the case of *K. Govindappa* (Supra), the Apex Court opined that while there can be no difference of opinion that the expressions "cadre", "post" and "service" cannot be equated with each other, at the same time the submissions at single and isolated posts in respect of different disciplines cannot exist as a separate cadre cannot be accepted. In order to apply the rule of reservation within a cadre, there has to be plurality of posts. Since there is no scope of interchangeability of posts in the different disciplines, each single post in a particular discipline has to be treated as a single post for the purpose of reservation within the meaning of Article 16(4) of the Constitution. In the absence of duality of posts, if the rule of reservation is to be applied, it will offend the constitutional bar against 100% reservation as envisaged in Article 16(1) of the Constitution.

22. The judgment of *Dr. Chakradhar Paswan* (Supra) was again followed in 2011(4) SCC 120 *[State of Uttar Pradesh & others vs. Bharat Singh & others.]*

23. In view of the aforesaid judgments of the Supreme Court, it is clear that the singular post of different disciplines cannot be clubbed together unless it is shows that such posts are interchangeable. It is further held that all these posts are isolated posts in different disciplines and they do not form singular cadre. The grouping of such isolated posts is impermissible. The respondents have not placed any material on record to show that the posts are interchangeable. Their grouping is based on the consideration of status, salary and qualification. As noticed, the status and salary alone is not determinative. So far as the qualification is concerned, merely because qualification is same

does not means that a person having qualification in "A" subject can performed the duties of "B" subject. For example, there is no material to show that a candidate having qualification in the subject of Microbiology can perform the duties of Pharmacology or vise (sic:vice) versa. Putting it differently, the candidates in the stream of Microbiology and Pharmacology may having degree or qualification of same status, but their subjects are different. Unless it is shown that their subjects are same and their posts are interchangeable, grouping is wholly impermissible.

24. In view of aforesaid analysis, I am constrained to hold that although respondents have power of grouping posts, their action in grouping the isolated post of different subjects is unjustifiable and runs contrary to the law laid down by the Supreme Court in the aforesaid cases. If said action is upheld, it will amounts to permitting 100% reservation on singular post which will be against the constitutional mandate. In the return, the respondents have contended that similar recruitment in other AIIMS was not challenged and appointments have been made accordingly. In my view this cannot be a ground to upheld the impugned action, Merely because similar action has not been challenged in other AIIMS, impugned action cannot be upheld.

25. For the reasons mentioned hereinabove, the impugned advertisement to the extent it relates to the posts in question are set aside. The grouping of the aforesaid posts cannot be countenanced. The impugned orders/ action to the extent indicated hereinabove are set aside. The petitions are allowed.

Petition allowed.

I.L.R. [2017] M.P., 2124
WRIT PETITION
Before Mr. Justice J.K. Maheshwari
W.P. No. 14567/2016 (Jabalpur) decided on 19 June, 2017

ASHISH SINGH PAWAR ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

(Alongwith W.P. No. 14571/2016)

A. ***Service Law – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 3(1)(d) & 29(1)(iii) and Police Regulations, M.P., Regulation 213 & 270(4) – Power of Revision –***

Limitation, Scope and Grounds – **DIG (Dy. Inspector General of Police) imposed penalty of censure (minor penalty) to petitioner – After lapse of more than one year, IG (Inspector General of Police) cancelled the earlier order and issued charge sheet to petitioner and initiated departmental enquiry – DGP dismissed the representation of petitioner – Challenge to – Held – Power of revision has been exercised after a lapse of more than 1½ years - Police Regulation does not prescribe within how much time, power of revision can be exercised but assistance of principle laid down in Rule 29(1)(iii) of CCA Rules can be taken to conclude that the order passed by revising authority after a lapse of six months is bad in law – Further held – Wherever specific provisions in Police regulations is not there, applicability of CCA Rules cannot be ousted and guidance may be taken from the same – Without cancelling the order of minor penalty, issuance of charge sheet on same cause and allegation and to initiate departmental enquiry is not permissible under Police Regulations – Order passed by the IG and DGP and the charge sheet is quashed restoring the order of minor penalty passed by DIG – Petition allowed. (Paras 9 to 12)**

क. सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म. प्र. 1966, नियम 3(1)(डी) व 29(1)(iii) एवं पुलिस विनियम, म.प्र., विनियमन 213 व 270 (4) – पुनरीक्षण की शक्ति – परिसीमा, विस्तार एवं आधार – पुलिस उपमहानिरीक्षक ने याची पर परिनिंदा (लघु शास्ति) की शास्ति अधिरोपित की – एक वर्ष से अधिक बीत जाने के पश्चात्, पुलिस महानिरीक्षक ने पूर्वतर आदेश निरस्त किया तथा याची को आरोप–पत्र जारी किया एवं विभागीय जांच आरंभ की – पुलिस महानिदेशक ने याची का अभ्यावेदन खारिज किया – को चुनौती – अभिनिर्धारित – पुनरीक्षण की शक्ति का प्रयोग 1½ वर्ष से अधिक बीत जाने के पश्चात् किया गया है – पुलिस विनियमन यह विहित नहीं करते कि कितने समय के भीतर, पुनरीक्षण की शक्ति का प्रयोग किया जा सकता है परन्तु यह निष्कर्ष निकालने हेतु कि छहः माह बीत जाने के पश्चात् पुनरीक्षण प्राधिकारी द्वारा आदेश पारित किया जाना विधि की दृष्टि से दोषपूर्ण है, सी.सी.ए. नियमों के नियम 29(1)(iii) में प्रतिपादित सिद्धांत की सहायता ली जा सकती है – आगे अभिनिर्धारित – जहाँ पुलिस विनियम में विनिर्दिष्ट उपबंध नहीं हैं, सी.सी.ए. नियमों की प्रयोज्यता को बेदखल नहीं किया जा सकता तथा उक्त से मार्गदर्शन लिया जा सकता है – लघु शास्ति का आदेश निरस्त किये बिना, उक्त कारण एवं अभिकथनों पर आरोप पत्र जारी किया जाना तथा विभागीय जांच आरम्भ करना पुलिस विनियमों के अन्तर्गत अनुज्ञेय नहीं है – पुलिस उपमहानिरीक्षक द्वारा पारित लघु शास्ति के आदेश को पुनः स्थापित करते हुए पुलिस महानिरीक्षक तथा पुलिस महानिदेशक द्वारा पारित आदेश अपास्त किया गया – याचिका मंजूर।

B. ***Civil Services (Classification, Control and Appeal) Rules, M.P. 1966 and All India Services (Discipline and Appeal) Rules, 1955 – Applicability*** **– Rules of 1955 shall be applicable to regulate the punishment of and appeals from officers belonging to Indian Police Service and the CCA Rules to the State Police Service. (Para 6)**

ख. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966 एवं अखिल भारतीय सेवा (अनुशासन और अपील) नियम, 1955 – प्रयोज्यता – भारतीय पुलिस सेवा के अधिकारियों की शास्ति एवं अपीलों को विनियमित करने हेतु 1955 के नियम तथा राज्य पुलिस सेवा हेतु सी.सी.ए. नियम प्रयोज्य होगें।

Cases referred :

2013 (3) MPLJ 508, 1970 MPLJ 430, 1985 MPLJ 516, 2007(1) MPLJ 95, 2010 (1) MPLJ 417, 2010 (1) MPLJ 171.

Mahendra Pateriya, for the petitioners.
Girish Kekre, G.A. for the respondents.

ORDER

J.K. Maheshwari, J. :- Invoking the jurisdiction under Article 226 of the Constitution of India and challenging the order dated 2.8.2016 Annexure P/8 rejecting the representation against the order dated 29.3.2016 Annexure P/9 and to quash the charge sheets dated 14.3.2016 asking further relief to restore the order dated 27.9.2014 passed by the Dy. Inspector General of Police, imposing the penalty of censure, this petition has been filed.

2. The facts not in dispute are that petitioners are Class III Non-ministerial employees. They were punished by a penalty of censure as per order dated 27.9.2014 passed by the Dy. Inspector General of Police, Bhopal vide Annexure P/1. After lapse of more than one year, without issuing any show cause notice and affording an opportunity of hearing respondent No.4 Inspector General of Police, Bhopal issued an order dated 29.3.2016 cancelling the order of penalty of censure dated 27.9.2014 and prior to cancellation of said order of censure, a charge sheet was issued for the same incident to both the petitioners as well as other persons. However, on submitting representation, it has been decided by the Director General of Police vide order dated 2.8.2016 rejecting the same. Being aggrieved by both the orders dated 29.3.2016 and 2.8.2016 and on account of continuation of the departmental enquiry, petitioners have approached to this Court seeking quashment of both these orders and to

quash the charge sheets issued due to rejection of the order of censure.

3. Respondents have filed their reply inter alia contending that the order dated 27.9.2014 passed by the Dy. Inspector General of Police, Bhopal was not justified commensurate to the misconduct of the petitioners, however, the said order has rightly been cancelled by the higher authority on 29.3.2016. The representation submitted against the said order has rightly been decided in furtherance to the directions issued by the High Court in WP No. 8763/2016 vide order dated 13.5.2016 because by the order of the same dated 27.9.2014 penalty of censure was imposed on the petitioner of the said writ petition, who approached this Court in similar circumstances. It is said that the department has not taken any action as per Regulation 270(4) of the M.P. Police Regulations or under Rule 29(1)(iii) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966. It is said that M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 is not applicable to the case of the petitioners in view of the provisions contained in Regulation 213 of the M.P. Police Regulations and also as per note in the schedule of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, as decided by the Division Bench of this Court in the case of *Arun Prakash Yadav v. State of M.P. and others* – 2013(3) MPLJ 508. In view of the said submission, it is urged that the petitions filed by the petitioners may be dismissed.

4. After hearing learned counsel for both the parties and in view of the foregoing facts, it is seen from the record that the petitioners while posted at Bhopal in traffic police alongwith other officials have not properly applied the provisions of the Motor Vehicle Act while discharging their dues and while making challan of the defaulted citizen. However, due to not following the procedure as prescribed action was proposed against them. On the allegations both the petitioners and five other police officers were suspended. Thereafter notice to show cause was issued to them for taking action as per Rule 16 of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as "CCS Rules"). On filing their reply, the order Annexure P/1 dated 27.9.2014 was passed inflicting penalty of censure on all of them. After lapse of more than one year, charge sheets were issued to the petitioners on 4.11.2015 for the same cause with same allegations. Petitioners have submitted their representations to the authority, however, Inspector General of Police passed an order cancelling the order of minor penalty dated

27.9.2014 vide order Annexure P/9 dated 23.9.2016 and the departmental enquiry has been directed to be commenced as per the charge sheet served on them. Petitioners have submitted representation, which was rejected vide Annexure P/11 by the Director General of Police on 2.8.2016. However, this petition has been filed. Considering the aforesaid, the following questions have cropped up for determination in this case:-

1. Whether, on imposing the penalty of censure vide order dated 27.9.2014, it can be cancelled on 29.3.2016 without following the procedure prescribed under Regulation 270(4) of the M.P. Police Regulations (hereinafter referred to as the Police Regulations)?

2. Whether the power under Regulation 270(4) of the Police Regulations can be exercise *suo motu* at any time or it ought to be exercised within a reasonable time?

3. Whether in case of Class III employees of Non-ministerial Police Services, if specific provision has not been specified in the Police Regulation, guidance can be taken applying the principle of CCS Rules?

5. In the facts of the case, all three questions have been taken into consideration simultaneously. In the context of arguments, as advanced by the learned counsel for the respondents regarding applicability of the Police Regulations and non-applicability of the provisions of CCS Rules, M.P. Police Regulation Clause 213 is relevant, therefore, reproduced as under:-

> "**213.** The rules contained in the All India Service (Discipline and Appeal) Rules, 1955 and those in the Civil Service (Classification, Control and Appeal) Rules, Will regulate the punishment of and appeal from officers belonging to the Indian Police Service and the State Police Service respectively. "

In the context to the subject-matter of the case, Regulation 270 is also relevant, however, reproduced as under:-

> "**270. (1)** Every order punishment of exoneration whether original or appellate shall be liable to revision suo-motu by any authority superior to the authority making the order.
>
> **(2)** Every appellate order by a final appellate authority shall be liable to revision by such final appellate authority on application made in that

behalf by the person against whom the order has been passed.

Explanation:- For the purpose of of this clause the expression "final appellate authority" means the final authority empowered to hear an appeal under Police Regulation 262.

(3) The provisions of Regulation 266,267,268 and 271 shall be as nearly as may be apply to an application for revision.

(4) The revising authority may for reason to be recorded in writing exonerate or may remit vary or enhance the punishment imposed or may order a fresh enquiry of the taking of further evidence in the case: Provided that it shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard.

6. On perusal of the aforesaid, it is apparent that applicability of All India Service (Discipline and Appeal) Rules, 1955 shall be applicable to regulate the punishment of and appeals from officers belonging to the Indian Police Service and the CCS Rules to the State Police Service. As per Regulation 270 of the Police Regulation, every order of punishment or exoneration either original or appellate is revisable *suo motu* by any superior authority to the authority making the order. In case the order has been passed by final appellate authority, the same authority may exercise the power of revision on an application made by the person against whom the order has been passed. It is clarified that revising authority by recording the reasons may exonerate, remit, vary or enhance the punishment imposed or may order a fresh enquiry or to direct to take further evidence in the case. The proviso thereto makes it clear that the revising authority shall not vary or reverse any order without issuing notice to the interested person and affording him an opportunity of being heard. Rule 5 of CCS Rules makes it clear that for the State Civil Services Class I, Class II, Class III and Class IV employees specified in the schedule attached to the said Rules are governed by those Rules. As per Rule 8 appointments to other service and posts to the State Civil Services Class III and Class IV shall be made by the authorities specified in this behalf in the schedule. Rule 10 of CCS Rules specifies the penalties to which the powers can be exercised by those authorities and the appellate authority is specified in the schedule. The appellate authority has also been specified in Rule 24 while Rule 29 deals with the power of review. In the schedule it is clarified that Class III Non-

Ministerial Employees of the Police Department are governed by the Police Regulations framed under the provisions of Indian Police Act. The Control and Appeal Rules will therefore not apply to them. In addition to the aforesaid, CCS Rules deal with the applicability of those rules to every government servant, but in case any special provision is made in respect of the matters covered by these rules or under any law for the time being in force or by any agreement entered into by or with the previous approval of the Governor, the applicability of the CCA Rules is excluded. The said issue has been considered by this Court in the case of *Sushil Kumar Shrivastava v. State of M.P. and others*. The said case has been decided in the context of the provisions of Regulation 270(4) of the Police Regulation by which the Court relying upon the Full Bench judgment of this Court in the case of *Premchandra Chalpuria, Ex-Sub-Inspector, Police v. The State through the I.G. Police, Bhopal* – 1970 MPLJ 430 has taken the view as taken by Krishnan Judge. The Court said "the Civil Service Regulations, as in force in the State are applicable to all Civil Departments including the Police. Within the Department, there are the Police Regulations which naturally prevail wherever there is conflict between them and the Civil Service Regulations; but in a field like temporary employment, for which there is no special Police Regulation, the Civil Service Regulations as in force in the State would apply. A probationary Sub-Inspector can be removed without a proceedings under Article 311, unless he has been confirmed during the interval". The Court further relied upon the case of *Mahesh Kumar Shrikishan Tiwari vs. State of Madhya Pradesh and others* – 1985 MPLJ 516 wherein the Court further referred the judgment of *State of M.P. vs. Prahlad* – MPWN (113) wherein the said issue was dealt with considering Rule 29 of CCS Rules and the Court has expressed the view that power of review to enhance punishment cannot be exercised after expiry of a period of six months. However, the Court opined that the power of review cannot be exercised prior to six months, therefore, quashed the order of punishment passed against the petitioner for the same cause in a subsequent round of litigation. It is to be noted here that this Court has dealt with the same issue in the case of *Vikram Sing Rana vs. State of M.P. and others* – 2007(1) MPLJ 95. In the said case, superior authority has cancelled the order without issuing notice and affording an opportunity of hearing and directed to conduct a fresh departmental enquiry to impose the major penalty, however, the Court quashed the order as it was found in violation of 270(4) of the Police Regulation. Thereafter, in the case of *Rajendra Kumar Chaturvedi vs. State of M.P.*

and others – 2010(1) MPLJ 417 the same issue in the context of Regulation 270(4) came for consideration and the order cancelling the minor penalty and consequential order thereto was quashed restoring the order of minor penalty passed by the authority. Thereafter, in the case of *Angad Singh Rathore v. State of M.P. and others* – 2010(1) MPLJ 171 the same issue came for consideration in the context of the provisions of Regulation 270(4) of the Police Regulation and regarding applicability of Rule 29(1)(3) of CCA Rules. In the said case the Court relied upon the judgments of *Sushil Kumar Shrivastava* (supra) and also of the *Mahesh Kumar Shrikishan Tiwari* (supra) and the Full Bench in the Case of *Premchandra Dhalpuria* (supra). The Court observed that revising authority cannot exercise the power under Regulation 270(4) after elapse of more than six months. The said view had taken with the aid of Rule 29(1)(3) of the CCS Rules. The Court has also referred Regulation 262 of the Police Regulations, however, after considering the other provisions of Police Regulations aid was taken by Rule 29(1)(iii) and concluded that the order passed by the revising authority after elapse of more than six months is bad in law, and the order of review was set aside, with further direction that consequential action imposing the penalty as directed has also been set aside.

7. Considering ratio of the various judgments of this Court and the various provisions of the Regulation and Rules, I do not have any hesitation to hold that as per Rule 3(1)(d) of the CCS Rules the special provisions if made to a government servant to which CCS Rules do not apply then those Rules would be made applicable otherwise by any agreement entered into by or with the previous approval of the Governor before or after the commencement of CCS Rules, the exception is permissible.

8. Regulation 270 of Police Regulations makes it clear that every order of punishment or exoneration either original or appellate may be looked into in *suo motu* revision by revising authority recording its reasons in writing, but it shall not reverse or vary any order without issuing notice and giving an opportunity of being heard to the interested person. What would be the period of exercising the power of *suo motu* revision has not been specified under Clause 270(4) of Police Regulations. It is true that CCS Rules do not specify the time to exercise *suo motu* power of revision, but it specifies power of review by the appellate authority to which a time of six months has been specified, but in the Police Regulations also the power of appeal has been

conferred to the authorities that include the final appellate authority and under Regulation 270 the power has been conferred to the appellate authority to exercise the *suo motu* power in revision or to the final authority on an application by the aggrieved person. Therefore, the said power of *suo motu* revision can be equated with the power of review as specified in the CCS Rules. It is relevant to point out that under the M.P. Land Revenue Code, 1959 (hereinafter referred to as 'the Code') the power of *suo motu* review was specified to the appellate authority under Section 50 of the Code. In the said provision it has not been clarified that within how many time such power of *suo motu* review can be exercised. The said issue was brought for consideration before the Full Bench on the point that exercise of *suo motu* power after any length of period is not justifiable in law. The majority view of the said judgment was that upper limit to exercise such power is six months from the date of the knowledge of the order.

9. In view of the foregoing discussion and looking to the provisions as contained under Regulation 270(4) of the Police Regulations it is apparent that revising authority may exercise the power of review by recording the reasons in writing to remit, vary, enhance the punishment' imposed on the employee or to direct of taking of the further evidence in the matter. While exercising the powers the revising authority may reverse or vary any order after issuing a notice and affording an opportunity of hearing to the interested party. It has not been specified that within how many period such power can be exercised by the appellate authority or by final appellate authority in case of an application submitted by the aggrieved person under Regulation 270(4) of the Police Regulation time limit to exercise such power has not been specified, however, when complete exclusion of CCS Rules to the employees of Police Department is not there and the specific provision has not been enumerated in the Police Regulations, assistance can be taken from the provisions of CCA Rules which is otherwise applicable to all employees of the State Government that includes the officers of the State Police who do not cover-up within Class III non-ministerial services to whom the specific exclusion is there. It may be clarified here that this being a case of Class III employees, they fall within the purview of exclusion, but looking to the applicability to police regulations to other employees to the extent specific provision has not been specified, the assistance of the principles can be taken by Rule 9(1)(3) of the CCA Rules. Therefore, for the reasons specified hereinabove, in addition to the reasons given by this Court in the case of *Sushil Kumar Shrivastava* (supra), my

view is fortified from the judgment of *Sushil Kumar Shrivastava, Vikram Singh Rana, Rajendra Kumar Chaturvedi* and *Angad Singh Rathore* (supra) of this Court. In the said context, it is concluded that the power of revision can be exercised by the revising authority in terms of Regulation 270(1) and (2) of the Police Regulations within a period of six months from the date of knowledge of the order. In case such powers have been exercised after elapse of a period of six months, the order passed by the revising authority are liable to be quashed and further action, if any, is also bad in law.

10. In view of the foregoing legal discussion, the facts of the present case may be examined. It is apparent that on 27.9.2014 for the same cause of action and the allegations petitioners were punished by a minor penalty of censure. The said order was cancelled on 29.3.2016 by the revising authority without issuing any show cause notice and affording an opportunity of hearing. The said power has been exercised after elapse of more than one and half years. beyond the period of six months. On submitting a representation by the petitioners, those were rejected by the Director General of Police on 2.8.2016 without due consideration of the provisions as discussed hereinabove. Therefore, the order dated 29.3.2016 passed by the Inspector General of Police and the order dated 2.8.2016 passed by the Director General of Police stand quashed. It is relevant to note here that after passing the order of minor penalty of censure against the petitioner on 27.9.2014, the Superintendent of Police, Bhopal issued a charge sheet on 4.11.2015 for the same cause and for the same allegations to which the minor penalty was already imposed on the petitioners. However, without cancellation of the said order, issuance of the charge sheet and the revising authority cancelled the order of the minor penalty of censure. However, in my considered opinion without cancelling the order of the minor penalty issuance of the charge sheet on same cause and allegation and to initiate departmental enquiry is not permissible under Police Regulations. Therefore, issuance of the charge sheet and further action on the said charge sheet cannot be recognized under the law. Therefore, the charge sheet is also quashed.

11. In consequence to the discussion made hereinabove, the petitions filed by the petitioners succeed and are hereby allowed. The order cancelling the minor penalty dated 29.3.2016 Annexure P/9 passed by the Inspector General of Police and the order dated 2.8.2016 rejecting representation by Director General of Police are hereby quashed restoring the order of minor penalty

dated 29.7.2014. As discussed above, the charge sheet dated 4.11.2015 and the subsequent charge sheet dated 14.3.2016 issued for the same cause and for the same allegations are also quashed. In the facts and circumstances of the case, parties are directed to bear their own cost.

12. In view of the discussion made hereinabove, it is to clarify that all the questions are answered in favour of the petitioners. It is also clarified that in a case of Class III Non-ministerial employees to which Police Regulations shall be applicable. As complete exclusion to applicability of the provisions of CCS Rules is not there, therefore, wherever specific provisions in the Police Regulations is not there, the applicability of CCS Rules cannot be ousted and the guidance may be taken from the CCA Rules.

13. Accordingly, these petitions succeed and are allowed. The parties are directed to bear their own costs.

Petition allowed.

I.L.R. [2017] M.P., 2134
WRIT PETITION
Before Ms. Justice Vandana Kasrekar
W.P. No. 1600/2007 (Jabalpur) decided on 3 July, 2017

SHANTI VERMA (SMT.) ...Petitioner
Vs.
STATE OF M.P. ...Respondent

A. Service Law – Civil Services (Pension) Rules, M.P. 1976, Rule 42 – Voluntary Retirement – Withdrawal – **Held – As per Rule 42 of the Rules of 1976, once application for voluntary retirement is accepted by respondent, the same cannot be withdrawn – Application for withdrawal of resignation can be filed before its acceptance – So far as 30 days notice period is concerned, the same would be applicable in those cases where no period has been mentioned in application for voluntary retirement – In the instant case, choiced date has been mentioned in application – No illegality in impugned order – Petition dismissed. (Para 5 & 7)**

क. सेवा विधि – सिविल सेवा (पेंशन) नियम, म.प्र. 1976, नियम 42 – स्वैच्छिक सेवानिवृत्ति – वापस लेना – अभिनिर्धारित – 1976 के नियमों के नियम 42 के अनुसार, एक बार प्रत्यर्थी द्वारा स्वैच्छिक सेवानिवृत्ति का आवेदन स्वीकार कर

लिया गया है, तो उक्त को वापस नहीं लिया जा सकता – त्यागपत्र वापस लेने हेतु आवेदन उसके स्वीकार होने से पूर्व प्रस्तुत किया जा सकता है – जहाँ तक 30 दिनों की नोटिस अवधि का संबंध है, उक्त उन प्रकरणों में लागू होगा जहाँ स्वैच्छिक सेवानिवृत्ति के लिए आवेदन में कोई अवधि का उल्लेख नहीं किया गया है – वर्तमान प्रकरण में, चुनी गई तिथि का आवेदन में उल्लेख किया गया है – आक्षेपित आदेश में कोई त्रुटि नहीं – याचिका खारिज।

B. ***Service Law – Principle of Audi Alteram Partem*** **– Held – Apex Court has concluded that audi alteram partem is one of basic pillars of natural justice which means no one should be condemned unheard – Whenever possible, it should be followed but it is not necessary where it would be a futile exercise or where the result would remain the same – A Court of Law does not insist on useless formality – In the instant case also even though notice was issued by respondents to petitioner, the result would remain the same. (Para 7)**

ख. सेवा विधि – दूसरे पक्ष को भी सुनने का सिद्धांत – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह निष्कर्षित किया है कि दूसरे पक्ष को भी सुनना, नैसर्गिक न्याय के मूलभूत स्तम्भों में से एक है जिसका अर्थ है कि किसी को भी सुने बगैर सिद्धदोष नहीं करना चाहिए – जब भी संभव हो, इसका पालन किया जाना चाहिए परन्तु वहाँ पर यह आवश्यक नहीं है, जहाँ यह एक व्यर्थ प्रयोग होगा या जहाँ परिणाम वही रहेगा – न्यायालय निरर्थक औपचारिकता पर जोर नहीं देता है – वर्तमान प्रकरण में भी, प्रत्यर्थीगण द्वारा याची को नोटिस जारी किये जाने पर भी परिणाम वही रहेगा।

Cases referred :

AIR 1999 SC 1571, AIR 1978 SC 597, 2013 (1) M.P.L.J. 396, (2007) 4 SCC 54, (2010) 5 SCC 335.

R.K. Verma with *Anjali Shrivastava*, for the petitioner.
Manoj Kushwaha, P.L. for the respondents/State.

ORDER

VANDANA KASREKAR, J. :- The petitioner has filed the present petition challenging the order dated 04.01.2007 passed by the respondent No.3.

2. The petitioner was working on the post of Assistant Grade-3 in the Office of Divisional Forest Officer, Chhindwara. After completing about 28 years of service she submitted an application on 12.07.2005 seeking voluntary

retirement. The application submitted by the petitioner was accepted by the respondents on 15.07.2005. As the said application submitted by the petitioner was under haste, therefore, she submitted an application for withdrawal of the application for voluntary retirement on 04.08.2005. As no decision was taken on the application submitted by the petitioner, the petitioner submitted a representation to the respondent No.2 on 05.08.2005 and made request for withdrawal of the application for voluntary retirement. The said application was accepted on 02.09.2005 and vide letter dated 02.09.2005, the application submitted by the petitioner was rejected as the application for withdrawal of voluntary retirement was submitted by the petitioner after stipulated period of notice. Then, the petitioner represented on 23.09.2005 to the respondent No.2 and further to the Chief Conservator of Forest on 06.03.2006 and 10.05.2006. The application submitted by the petitioner was accepted by the respondents vide order dated 10.04.2006 whereby the earlier order dated 15.07.2005 was cancelled with a direction to the respondents to take the petitioner back in service. It was also made specific that the period with effect from 12.07.2005 till her re-joining would be treated on the principle of "no work no pay". The petitioner thereafter immediately joined the services, however, after a period of 8 months, the respondent No.3 has passed an order dated 04.01.2007 whereby cancelled the earlier order dated 10.04.2006 and consequently the petitioner is being treated as voluntarily retired. Being aggrieved by the said order, the petitioner has filed the present petition.

3. Learned Senior Counsel for the petitioner submits that the impugned order dated 04.01.2007 is illegal and arbitrary and is in violation of principles of natural justice. It is further submitted that no notice or any opportunity of hearing was given to the petitioner before passing the said order. It is further submitted that the petitioner submitted an application for withdrawal of the voluntary retirement within a period of one month as has been provided under Rule 42 of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (hereinafter in short referred to as "the Rules, 1976"). It is further submitted that the application for voluntary retirement was submitted by the petitioner in hot haste manner. However, thereafter looking to her economic condition and age of the children, petitioner submitted an application for withdrawal of the application for voluntary retirement. On sympathetic ground, the respondents have allowed the said application and permitted the petitioner to join on duties. It has further been submitted that the application for voluntary retirement was accepted by the respondents immediately within a period of 3 days. Learned

counsel for the petitioner relied on the decision passed by the Apex Court in the case of *J.N. Shrivastava Vs. Union of India and another,* AIR 1999 SC 1571 and *Smt. Maneka Gandhi Vs. Union of India another,* AIR 1978 SC 597.

4. The respondents have filed reply and stated that after 28 years of service of the petitioner, she moved an application seeking voluntary retirement under Rule 42 of the Rules, 1976. In the said application, the petitioner has prayed for voluntary retirement to be accepted with immediate effect and in lieu of one month salary of Rs.8,370/- remitted in favour of the respondents through bankers cheque. Thereafter, the competent authority vide order dated 15.07.2005 accepted the application for voluntary retirement of the petitioner and the same was communicated to the petitioner. The petitioner has applied for withdrawal of the application for voluntary retirement on 04.08.2005, which was rejected by the respondent No.3. It has further been submitted that as the Rule 42 of the Rules, 1976, once the application for voluntary retirement service is submitted and accepted by the respondents then the same cannot be withdrawn subsequently and therefore, the decision could not be taken in the case of the petitioner. The petitioner represented to the higher authorities and the case of the petitioner was placed before the authority concerned for taking decision on her application for withdrawal of voluntary retirement sympathetically. The petitioner was permitted to re-join her services. Thereafter, the respondent No.2 reviewed the entire case of the petitioner, whereby the petitioner's application seeking for voluntary retirement with immediate effect was considered. Thereafter, the voluntary retirement of the petitioner under Rule 42 of the Rules, 1976 was accepted by the competent authority and after acceptance, it could not withdrawn by the retired employee. Thus, after considering the entire facts and provisions of the Rules, 1976, the earlier order dated 10.04.2006, by which the petitioner was permitted to re-join the service was cancelled and therefore, the petitioner is not entitled for any relief sought in the present petition. In support of his submissions, learned counsel for the respondents relied on the decisions in the cases of *S.S. Nafde Vs. State of Madhya Pradesh and Others,* 2013 (1) M.P.L.J. 396, *Ashok Kumar Sonkar Vs. Union of India and Others,* (2007) 4 SCC 54, *New India Assurance Company Limited Vs. Raghuvir Singh Narang and another,* (2010) 5 SCC 335.

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

The petitioner was initially appointed on the post of Lower Division Clerk in Forest Department on 19.02.1977. She was promoted to the post of Assistant Grade-II vide order dated 19.04.1991. After completion of 28 years 4 months 23 days of service, the petitioner filed an application seeking voluntary retirement under Rule 42 of the Rules, 1976. In the said application, the petitioner prayed that the voluntary retirement be accepted with immediate effect and in lieu thereof one month salary of Rs.8,370/- was remitted in favour of the respondents through bankers cheque. Thereafter, the competent authority vide order dated 15.07.2005 accepted the application for voluntary retirement and the same was communicated to the petitioner on 15.07.2005. Thereafter, the petitioner has submitted an application for withdrawal of the application for voluntary retirement on 04.08.2005 and the said application was rejected by the respondents on 06.08.2005. The petitioner thereafter submitted a representation to the respondent No.2. The respondent No.2 vide letter dated 03.09.2005 directed the respondent No.3 to take appropriate action on the representation submitted by the petitioner. The respondent No.3 again vide order dated 21.09.2005 rejected the prayer of the petitioner. The petitioner further represented to the higher authorities and the higher authorities has passed order dated 12.04.2006 thereby permitting the petitioner to rejoin her services stating that she would not be entitled to get salary for the aforesaid period. The respondent No.2 thereafter reviewed the case of the petitioner regarding voluntary retirement and found that the petitioner has wrongly been allowed to re-join the duties and the same being contrary to the provisions of Rule 42 of the Rules, 1976, the respondents have passed order dated 04.01.2007 thereby cancelling order dated 10.04.2006. As per Rule 42 of the Rules, 1976, after completion of 20 years of qualifying service, the employee of the State Government is entitled to file application seeking voluntary retirement and under Rule 42(1)(a), in the notice, the date of retirement should be mentioned. The Rule again permits to withdraw the same prior to date of voluntary retirement. In the present case, the petitioner sought voluntary retirement with immediate effect on 12.07.2005 in lieu of one month salary thereof. As the petitioner has submitted an application for voluntary retirement to be made effective with immediate effect, the respondents have rightly accepted the application preferred by the petitioner on 15.07.2005 itself. As per Rule 42 of the Rules, 1976, once the application for voluntary retirement is accepted by the respondents then the same could not be withdrawn. So far as 30 days' of notice period for acceptance of voluntary retirement of service

is concerned that would be applicable in those cases where no period has been mentioned for acceptance in the application for voluntary retirement of service. This Court in the case of *S.S. Nafde* (supra) has held that once the notice of voluntary retirement is given indicating a choiced date, the same will be become operative from the date mentioned in the notice. Paragraph-5 of the said decision is reproduced as under :

> "**5.** Once a notice in prescribed proforma is given, there is a specific bar under sub-rule (2) of Rule 42 of the Rules that the same will not be withdrawn by the Government servant without the approval of the competent authority. This is indicative of the fact that the acceptance of a notice of voluntary retirement is not required or contemplated for full operation of the said notice of voluntary retirement. If no orders are communicated in this respect or if the notice of voluntary retirement is not withdrawn before the date indicated in the said notice of voluntary retirement, it will become automatically operative from the date indicated in the notice of voluntary retirement and the Government servant would retire voluntarily from the date of his choice indicated in the aforesaid notice. This particular aspect has been considered by this Court in the case of *Indra Prakash Bhatnagar Vs. State of M.P. and another,* 1985 MPLJ 229, wherein this Court has categorically held that once the notice of voluntary retirement is given, indicating a choiced date, the same will become operative from the date mentioned in the notice. For better appreciation, the findings given by this Court in paragraphs 27, 28 and 29 of the report are reproduced hereunder :-
>
> "27. It is, therefore, such a statutory right, indefeasible and absolute in the nature that is enshrined in clause (a) of sub-rule (i) of Rule 42 of the Civil Services (Pension) Rules, 1976.
>
> 28. The next factor is the choice of the Government servant of the date of his retirement. Now the first part of clause (a) of sub-rule (i) of Rule 42 says that a Government may retire at any time which falls after completing the period of 20 years qualifying service. The second part of clause (a) of sub-rule (i) of Rule 42 gives the Government servant a wide choice.

He may choose to retire on the date of his notice. He may also choose to retire on the date of expiry of a period of three months, the beginning of which period is reckonable in accordance with note 2 below sub-rule (i) of Rule 42, or any date within the aforementioned period of 3 months or any date following after a period of 3 months from the date of the giving of the notice under clause (a) but in such a case – understandably-before the date of his superannuation.

29. Now where a Government servant chooses to retire on the date of sending of the notice under clause (a) or on a date which falls after the date of sending or on a date which falls before expiry of a period of three months, he has to make payment of pay and allowances respectively for a period of three months or for the period by which the notice period falls short of a period of three months in both cases reckoning of the beginning of the period of three months will be done in accordance with note 2, which is the second of the four Notes set out after the end of clause (b) of sub-rule (i) of Rule 42. However, even in these two cases it is the Government servant's choice of the date of his retirement which determines the date of his retirement under clause (a)."

6. The Apex Court in the case of *New India Assurance Company Ltd.* (supra), paragraph No.10, 11 and 12 is reproduced as under :

"**10.** It is true that the principles of contract law relating to offer and acceptance enable the person making the offer to withdraw the offer any time before its acceptance ; and that any subsequent acceptance of the offer by the offeree, after such withdrawal, will not result in a binding contract. Where the voluntary retirement is governed by a contractual scheme, as contrasted from a statutory scheme, the said principle of contract will apply and consequently the letter of voluntary retirement will be considered as an offer by the employee and therefore any time before its acceptance, the employee could withdraw the offer. But the said general principle of contract will be inapplicable where the voluntary retirement is under a statutory scheme which categorically bars the employee from

withdrawing the option once exercised. The terms of the statutory scheme will prevail over the general principles of contract. This distinction has been recognised by a series of decisions of this Court. We may refer to a few of them.

11. In *Union of India v. Gopal Chandra Misra* , (1978) 2 SCC 301 a Constitution Bench of this Court held : (SCC p. 317, para 50)

> "50. It will bear repetition that the general principle is that *in the absence of a legal, contractual or constitutional bar,* a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resignor. ...In the case of a government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/ or office tenure terminated, when it is accepted by the competent authority."
>
> (emphasis supplied)

12. In *Balram Gupta v. Union of India* , 1987 Supp SCC 228 this Court held that *independent of any statutory rules,* an employee who gives notice of voluntary retirement to take effect prospectively from a subsequent date, is at liberty to withdraw his notice of voluntary retirement, any time before it comes into effect. But this normal rule would not apply, where having regard to the statutory rules governing the matter, the employee cannot withdraw except with the approval of an authority. But such approval can not be the ipse dixit of the approving authority. He should act reasonably and rationally. He cannot keep the matter pending for unduly long time, nor can he discriminate in dealing with applications of employees

similarly situated."

7. Thus, as per the said decision, the application for withdrawal of resignation can be withdrawn before its acceptance. So far as opportunity of hearing is concerned, the Apex Court in the case of *Ashok Kumar Sonkar* (supra) has held that there cannot be any doubt whatsoever that the *audi alteram partem* is one of the basic pillars of natural justice, which means no one should be condemned unheard. However, whenever possible the principles of natural justice should be followed. The said principle may not be applied in a given case, unless a prejudice is shown. It is not necessary where it would be a futile exercise. A Court of law does not insist on compliance with useless formality. It will not issue any direction where the result would remain the same. Thus, in the present case, even though notice was issued by the respondents to the petitioner, the result would remain the same. Thus, I do not find any reason to interfere in the said writ petition. Accordingly, the writ petition is dismissed. So far as, recovery of salary from the petitioner is concerned, as the petitioner has worked on the said post due to interim order passed by this Court 02.02.2007, therefore, that amount cannot be recovered from the petitioner. However, the petitioner would be entitled to get the retiral dues as such of leave encashment, gratuity and GIS, etc. as on 12.07.2005.

Petition dismissed.

I.L.R. [2017] M.P., 2142
WRIT PETITION

Before Mr. Justice Sanjay Yadav & Mr. Justice S.K. Awasthi
W.P. No. 8646/2013 (Gwalior) decided on 10 August, 2017

DINESH AGARWAL & ASSOCIATES (M/S) ...Petitioner
Vs.
PAWAN KUMAR JAIN & ors. ...Respondents

A. Income Tax (Certificate Proceedings) Rules, 1962, Rules 60, 61, 62 & 63 – Recovery of Decreetal Amount – Absolute Sale – Maintainability of Petition – Locus* – Held – Rule 63(1) provides that where no application is made for setting aside the sale or where such an application is made and is disallowed, the Tax Recovery Officer shall, if full amount of purchase money has been paid, make an order confirming the sale to be absolute – In the instant case, judgment debtor has not filed any objection to set aside the sale, thus petitioner (*auction

purchaser) has a right accrued in his favour – Petitioner has the locus to challenge the impugned order – Petition maintainable. (Para 19)

क. *आयकर (प्रमाणपत्र कार्यवाहियाँ) नियम, 1962, नियम 60, 61, 62 व 63 – डिक्रीत राशि की वसूली – पूर्ण विक्रय – याचिका की पोषणीयता – अधिकार* – अभिनिर्धारित – नियम 63(1) यह उपबंधित करता है कि जहाँ विक्रय अपास्त किये जाने हेतु कोई आवेदन प्रस्तुत नहीं किया गया है या जहाँ ऐसा आवेदन प्रस्तुत किया गया तथा अस्वीकार किया गया हो, कर वसूली अधिकारी यदि क्रय रकम की संपूर्ण राशि का भुगतान कर दिया गया है, विक्रय के पूर्ण होने की पुष्टि करने का आदेश करेगा – वर्तमान प्रकरण में, निर्णीत ऋणी ने विक्रय को अपास्त करने हेतु कोई आपत्ति प्रस्तुत नहीं की है, इसलिये याची *(नीलामी क्रेता)* के पक्ष में अधिकार प्रोद्भूत होता है – याची के पास आक्षेपित आदेश को चुनौती देने का अधिकार है – याचिका पोषणीय।

B. ***Recovery of Debts Due to Banks and Financial Institutions Act (51 of 1993), Section 29 & 30 – Title of Auctioned Property – Rights of Auction Purchaser and Judgment Debtor*** – Held – Since the sale certificate was not issued by the authority, the said auction sale was not absolute, no vested right accrued in favour of petitioner and thus the borrower (Judgment Debtor) has the right to protect/defend its title over the mortgaged property subject to his paying the entire dues adjudged by Tribunal – Act of 1993 aims at recovery of dues and does not foreclose the rights of the borrower – Further held – Even if the borrower, instead of taking recourse to stipulations under Rules of 1962, approaches the High Court, his right regarding the mortgaged property would not be waived – Petition dismissed.

(Paras 22, 24, 26, 37 & 38)

ख. *बैंकों और वित्तीय संस्थाओं को शोध्य ऋण वसूली अधिनियम (1993 का 51), धारा 29 व 30 – नीलामी संपत्ति का हक – नीलामी क्रेता एवं निर्णीत ऋणी के अधिकार* – अभिनिर्धारित – चूंकि प्राधिकारी द्वारा विक्रय प्रमाण पत्र जारी नहीं किया गया था, कथित नीलामी विक्रय पूर्ण नहीं थी, याची के पक्ष में कोई निहित अधिकार प्रोद्भूत नहीं हुआ तथा इसलिए उधारगृहीता (निर्णीत ऋणी) को अधिकरण द्वारा न्यायनिर्णीत अपने संपूर्ण देय का भुगतान करने के अधीन रहते हुये बंधक संपत्ति पर अपने हक के बचाव का अधिकार है – 1993 के अधिनियम का लक्ष्य देय की वसूली का है तथा उधारगृहीता के अधिकारों को पुरोबंधित नहीं करता – आगे अभिनिर्धारित – यद्यपि उधारगृहीता, 1962 के नियमों के अंतर्गत शर्तों का आश्रय लेने के बजाय, उच्च न्यायालय के समक्ष जाता है, बंधक संपत्ति के संबंध में उसका अधिकार अधित्यजित नहीं होगा – याचिका खारिज।

Cases referred :

2015 (5) SCC 574, (2006) 2 SCC 385, (2008) 12 SCC 582, (2008) 9 SCC 299, (2014) 5 SCC 610, (2014) 6 SCC 397, (2008) 1 SCC 125, (2000) 4 SCC 406, (2016) 3 SCC 762, (2015) 10 SCC 94, (2015) 14 SCC 316, (2013) 4 SCC 381, (2009) 8 SCC 646, (1989) 4 SCC 344, (1988) 3 SCC 298, (1995) 1 SCC 161.

D.K. Agrawal, for the petitioner.
K.N. Gupta with *R.S. Dhakad*, for the respondent No.1.
M.P. Agrawal, for the respondent No.2.

ORDER

The Order of the Court was passed by : **SANJAY YADAV, J. :-** Present petition is directed against the order dated 29.10.2013 passed by the Debts Recovery Appellate Tribunal, Allahabad whereby the appeal directed against the order dated 08.03.2013 passed by the Debts Recovery Tribunal has been disposed of with certain directions.

2. Relevant facts briefly are that respondent No.1 sole proprietor of M/s Arpit Brothers availed cash credit facility from respondent No.2/Bank. As respondent No.1 defaulted in repayment, proceedings were brought by respondent No.2 for recovery of Rs.21,49,778.92 on 12.01.2005 before the Debts Recovery Tribunal along with *pendente lite* and future interest @ 15.50% *per annum* with quarterly rests. Respondent No.1 remained *ex parte*. Consequently, *ex parte* judgment was passed on 08/11/2005 whereby respondent No.1 was directed to pay to respondent No.2 sum of Rs.21,49,778.92 along with interest @ 12%, *pendente lite* and future interest, from 12/01/2005 and costs. Failing which it was ordered that the Bank shall have the right to recover by sale of charge/hypothecated/mortgaged properties. Since respondent No.1 failed to honour the judgment, respondent No.2 took recourse to auction the property bearing land bearing Survey No.1541 admeasuring 0.531 and 5681 Sq. Ft. Built up area at ground floor with RCC and built up area at ground floor with GI sheet roof 1500 Sq. Ft situated at Ward No.13, opposite old ice factory, Sironj Guna Road, District Vidisha on 14.12.2007 with an upset price Rs.25,00,000/- (Rupees Twenty Five Lacs). The petitioner participated in the auction held on 21.01.2008, as his price bid of Rs.25,12,000/- was highest, he was declared the highest bidder. Petitioner deposited earnest money Rs.2,50,000/- on 18.1.2008. Further deposited

Rs.3,78,000/- on 21.01.2008 i.e. the date of acceptance of bid and remaining amount was deposited on 28.01.2008.

3. However, before the issuance of sale certificate respondent No.1 filed a Writ Petition bearing number 2868/2008 wherein on 12.03.2008, taking note of the contentions that the order has been passed *ex parte* and that application for recalling is pending and the respondent judgment Debtor has expressed the willingness to retain the property by depositing the entire amount received in the auction held for the sale of property, further steps for confirmation of sale and issuance of sale certificate in pursuance to the auction was stayed. Later on, in the same proceedings, i.e. in W.P.No.2868/2008 learned Single Judge recording the demeanor of the respondent No.1 borrower/judgment Debtor, directed for his personal presence as to why he be not proceeded in contempt. The order records:

> "In the present case, petitioner has given a written undertaking before this Court that he shall deposit all the amounts due to be paid to the respondent-Bank. The amount has not yet been paid. This Court on 14.05.2008 recorded the statement of the petitioner that he is willing to deposit the entire amount due against him on or before the next date of hearing. The case was fixed for 28.7.2008. The matter was taken up on 30.07.2008. Again on behalf of the petitioner it was stated that petitioner went to deposit the amount with the Bank but the Bank has not accepted the same.
>
> Today, the petitioner is present before this Court and as against the total dues of Rs.51,50,000/- he is not even willing to deposit a sum of Rs.40.00 Lac. On basis of the same, it is apparent that petitioner is *prima facie* guilty of breach of the undertaking given by him in writing and a statement was also given before this Court that the entire amount shall be deposited by the next date of hearing i.e. 28.07.2008 as per order of this Court dated 14.05.2008 and thus he has made himself liable for contempt of this Court in view of the breach of the undertaking given before the Court.
>
> At this stage, the petitioner has handed over the two cheques of Rs.25.00 Lac and Rs.15.00 Lac dated 19.08.2008

and 5.9.2008 respectively in the name of respondent No.1 Bank to the learned counsel appearing for respondent No.1."

4. This order was assailed in Writ Appeal No.939/2008 which was disposed of on 02.09.2008 in the following terms:

"Though the matter was listed as regards the maintainability of the appeal without entering into the same we have thought it apt to hear the learned counsel for the parties and accordingly, we have heard Mr. R.K. Verma, learned counsel for the appellant and Mr. Rajesh Maindiratta, learned counsel for the respondent No.1 the real contesting party.

Be it noted, under certain circumstances the appellant had handed over the two cheques amounting to Rs.25 lacs and Rs.15 lacs dated 19.08.2008 and 05.09.2008 respectively in the name of respondent No.1 Bank. Number of submission have been put forth by Mr. R.K. Verma but we do not enter into the same. We have been apprised by Mr. Maindiratta that the Cheque of Rs.25 lacs has been dishonored. However, Mr. Maindiratta submits that Bank will not take any action if the appellant deposits a sum of Rs.40 lacs by way of bank drafts.

Having heard learned counsel for the parties and without entering into any kind of debate with regard to the merits of the case and the contentions which have been raised before us, we direct that the appellant shall present a bank draft of Rs.25 lacs in the respondent No.1, Bank by 17.09.2008 and further sum of Rs.7.5 lacs by 13.10.2008 positively failing which it will open to the Bank to take appropriate steps against the petitioner. If the aforesaid direction is complied with, we would request the learned Single judge to take up the writ petition and dispose of the same as expeditiously as possible. We repeat at the cost of repetition that we have made such a request regard being had to lis in question. It needs no special emphasis to state that the deposition of the amount in the bank is without prejudice to the contentions raised by either of the parties.

The writ appeal is disposed of accordingly. There shall

be no order as to costs.

C.C. as per rules in course of the day."

5. Respondent No.1 who was required to deposit Rs.32,50,000/- (Rs.25 lacs by 17.09.2008 and Rs.7.5 lacs by 13.10.2008) in the account of M/s Arpit Brothers, deposited Rs.15 Lacs in M/s Arpit Brothers' account and Rs.10 Lacs in M/s Jain Brothers' account on 17.10.2008, as is evident from the certificate issued by the Bank on 17.09.2008 (Annexure R/5). That on 13.10.2008 respondent No.1 deposited Rs.2,50,000/- in the account of M/s Jain Brothers and Rs.5,00,000/- in the account of M/s Arpit Brothers. Thus, instead of depositing Rs.32,50,000/- in the account of M/s Arpit Brothers, respondent No.1 deposited only Rs.20 lacs in the said account. It can be argued that since the auction proceedings were in respect of two properties respectively mortgaged in the account of M/s Arpit Brothers and M/s Jain Brothers and therefore respondent No.1 was justified in depositing the amount in both the accounts, though may sound well but does not reason to logic as the auction was only in respect of property which was mortgaged to secure the cash credit limit in account of M/s Arpit Brothers. The respondent No.1, thus *prima facie*, violated the direction in Writ Appeal No.939/2008. Be that as it may.

6. The Writ Petition No.2868/2008 was later on disposed of on 09/12/2009 with the liberty to respondent No.1 to avail the remedy before the Debts Recovery Tribunal. It was ordered that in case if the appeal is filed within 30 days, the same was directed to be decided on merit.

7. Pertinent it is to note at this juncture that the auction proceedings which were initiated to recover the decreetal amount was as per second schedule to the Income Tax Act 1961 and the Income-Tax (Certificate Proceedings) Rules 1962, made applicable by virtue of Section 29 of the Recovery of Debtss (sic:Debts). Due to Banks and Financial Institutions Act 1993. That Rule 60, 61, 62 and 63 of said second schedule provides that:

> "60. Application to set aside sale of immovable property on deposit.-(1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing-

(a) the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of one and one-fourth per cent for every month or part of a month calculated from the date of the proclamation of sale to the date when the deposit is made; and

(b) for payment to the purchaser, as penalty, a sum equal to five per cent. of the purchase money, but not less than one rupee.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

61. Application to set aside sale of immovable property on ground of non-service of notice or irregularity.- Where immovable property has been sold in execution of a certificate, such Income-tax officer as may be authorized by the Principal Chief Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in this behalf, the defaulter, or any person whose interests are affected by the sale, may at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale:

Provided that-

(a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that

the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) An application made by a defaulter under this rule shall be disallowed unless the applicant deposit the amount recoverable from him in execution of the certificate.

> 62. Setting aside sale where defaulter has no saleable interest. -At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the default had no saleable interest in the property sold.
>
> 63. Confirmation of sale.-(1) where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase-money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.
>
> (2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale:
>
> Provided that no order shall be made unless notice of the application has been given to the persons affected thereby."

8. Furthermore in case any order is passed by the recovery officer on the objections raised in respect of the auction proceedings, such order is made appealable vide Section 30 of the Act of 1993.

9. In the case at hand though the respondent of his own wanting sought leave to avail the remedy of appeal under Section 30 of 1993 Act but there was no cause because there was no order by the Recovery Officer under Rule 61, 62 or 63 of Second Schedule since the petitioner had not raised any objection before the Recovery Officer. This aspect led the Debts Recovery Tribunal record a finding in its order dated 08.03.2013 that the respondent No.1 has not complied with Rule 61 of second schedule. Be it noted that the Debts Recovery Tribunal was in *seisin* with the appeal after its remand from the Debts Recovery Appellate Tribunal by its order dated 06.07.2012 to decide the appeal on merit. The Debt Recovery Tribunal observed:

> "As seen rightly contended by the Bank the appellant had not deposited the amount of Rs.36,26,816/- along with interest at

12% w.e.f. 12.01.05 as required under Rule 61 proviso (b) of Income Tax Act and therefore, he is not entitled to challenge the auction proceedings in this claim specially when the 2nd respondent had deposited the purchase price in Jan.08 and no illegality is proved by the appellant. So also it is revealed that ground raised in this appeal and the amount raised in the W.P.2868/2008 are totally different which reveals an after though on the part of the appellant for deliberately delaying the recovery proceedings seen conducted by the RO. The decision in S.A.No.71/09 of this Tribunal is not applicable to the case of the appellant because the facts is entirely different. In this case against the dues of Rs.36,26,816/- he is intending to settle for Rs.27.00 lacs since the property was sold for an lesser amount. He could have easily participated in the bid and purchased the property for Rs.27.00 lacs instead of doing so he is now attempting to set aside the sale illegally without complying Rule 61 of the Income Tax Rules which cannot be permitted. The collusion between the Bank, RO and Advocate Commissioner is not seen pleaded in the Writ Petition which was lodged against the very same auction. On 04.09.12 an IA was lodged for taking subsequent development on record and producing some more documents. These pleadings do not form part of the appeal as the same ought to have been incorporated in the appeal by way of amendment. Therefore, these documents are not taken on record for the purpose of this appeal. Moreover, the signature of the appellant on page 20, 40 & 48 reveal that different signatures are being put by the appellant for his convenience as seen rightly submitted by Respondent no.2 in its reply to the IA. When it is revealed that no illegality as pleaded is seen proved against the recovery proceedings, there is no scope for allowing the prayer of the appellant in this appeal. Therefore, the appeal found to be devoid of merits is dismissed with costs of Rs.25,000/- each to the Respondents Bank.

10. Respondent No.1 challenged the order dated 08/03/2013 in appeal which was disposed of on 29.10.2013 in the following terms:

"1. The Bank shall be entitled to the amount of Rs.22.16 lacs in addition to the amount already paid by the appellant in full and final settlement of the claim.

2. Since the auction purchaser has deposited the amount on 21.01.2008 and 29.01.2008 and the auction has not yet been confirmed, therefore, the auction purchaser shall be entitled to the interest @ 12% per annum on the amount deposited with the Recovery Officer and the total amount to which the auction purchaser is entitled to receive is Rs.42,44,660/-. This amount includes the interest @ 12% per annum inclusive of deposit made by the auction purchaser.

3. Since the amount deposited by the auction purchaser is lying with the Recovery Officer, therefore, whatever the amount with interest paid by the Recovery Officer on deposit of the amount, the balance of the amount of interest to make it Rs.42,44,660/- shall be paid by the appellant.

4. The appellant shall pay the aforesaid amount to the Bank as well as to the Auction Purchaser through two demand drafts before the Recovery Officer on or before 09.12.2013. If the amount as such is not paid by the appellant within the period of 40 days from today as directed, then the Recovery Officer shall be free to issue the sale certificate in favour of the auction purchaser and the appellant shall lose all rights to claim the property.

5. The Recovery Officer shall return the amount to the auction purchaser within 10 days from today and shall also intimate the borrower with respect to the total amount paid to the auction purchaser. On such intimation the difference amount payable to the auction purchaser shall be paid by the borrower within the stipulated period as stated herein above.

6. The Bank has filed its calculation sheet and on the basis of the same, the Bank has to recover the total amount of Rs.22.16 lacs from the borrower. The borrower is ready to pay the said amount. The amount which has been arrived at by the Bank is in accordance with the Recovery Certificate,

wherein the DRT has directed to pay the simple rate of interest @ 12% per annum and against the same the Bank has not preferred any appeal to this Tribunal, therefore, the judgment passed by the DRT has attained the finality so far as not only the rate of interest but also wherein the amount is also quantified. The borrower is prepared to pay the full amount.

7. On payment of full amount as aforesaid, the Bank shall release the title deed in favour of the appellant."

11. Interestingly, there is no whisper in the appellate order as to whether the order under challenge is modified or set aside. Be that as it may.

12. There are a few more developments which have taken place after passing of the order by DRAT. Petitioner in compliance to said order deposited Rs.29,10,000/- by 06/12/2013, a certificate to said effect was issued by the Recovery Officer, Second, DRT. Though as per the petitioner the respondent No.1 who was required to deposit as per direction by the Appellate Tribunal did not deposit the entire amount. It is urged that the respondent was to deposit Rs.22,16,000/- in favour of Bank and Rs.17,32,660/- in favour of the auction purchasee: total amount of Rs.39,48,660/-. The amount of Rs.17,32,660/- is arrived at as per paragraph 3 of the judgment by the DRAT. It is urged that the respondent No.1 is still in default of Rs.10,38,660/-. This aspect will be dwelt at later stage.

13. It is pertinent to note that in the earlier round, this petition was dismissed on 26.04.2016 on the ground that appeal before Debt Recovery Tribunal was belatedly filed on 08/02/2010, instead of 08/01/2010 without an application for condonation of delay. Consequently, the orders passed by DRT and DRAT were quashed. The said order has been reversed in Civil Appeal No.11730/2016 (Arising out of Special Leave Petition (Civil) No.24319/2016 decided on 05/12/2016 whereby their Lordships were pleased to remit the matter for adjudication on merit.

14. The parties were heard at length. Issues which arise for consideration are:

1. Whether the petitioner has any locus to challenge the order passed by the Debt Recovery Appellate Tribunal?

2. Whether it can be said that the petitioner had acquired

any right to protect the auction sale proceedings?

3. Whether the respondent No.1 had any right to question the auction sale proceedings?

4. Whether the decision by the Debt Recovery Tribunal would operate as a clog on the right of respondent No.1 to secure the property on payment of entire amount due and recoverable at the stage of auction sale proceedings?

Issue No.1 and 2: As these issues compliment each other are taken up together.

15. It is contended on behalf of respondent No.1 that the auction having not culminated into a sale, as no sale certificate has been issued because of stay of entire proceedings by order dated 12.03.2008 in Writ Petition No.2868/2008, there is no accrual of right in favour of the petitioner who is an alien to entire transaction between respondent No.1 and respondent No.2, Bank, has no *locus standi* to question the order passed by the Appellate Tribunal which has directed for restoration of mortgaged property in favour of the respondent No.1, its owner. It is urged that since the mortgage remains with non-confirmation of sale, the petitioner has no legal right to enforce the auction sale. The petitioner on his turn has refuted the contentions. It is urged that there being the order for recovery of debt due with a further direction to recover the same by auctioning the property mortgaged; and the creditor Bank having exercised the option, the petitioner being the highest bidder and the bid having been settled in his favour, in furtherance whereof the petitioner has deposited the entire sale amount within the stipulated period which is being duly acknowledged the Appellate Tribunal, the petitioner has the right to protect the interest which has accrued in him. It is urged that the petitioner is, thus, not an alien to the cause, which is the sale of property. It is also contended that the respondent No.1 at no point of time during auction proceedings raised any objection when the bid was finalized in favour of petitioner. On these contentions, it is submitted on behalf of the petitioner that the objection as to locus of the petitioner to question the order by Appellate Tribunal is *sans* merit. Petitioner has placed reliance on the decision in *"Sadashiv Prasad Singh v. Harendar Singh and others* [(2015) 5 SCC 574]" wherein issue having close similarity to the question raised herein as to accrual of interest of the auction purchaser was under consideration. It was held:

"19. It is, therefore, apparent that the rights of an auction-purchaser in the property purchased by him cannot be extinguished except in cases where the said purchase can be assailed on grounds of fraud or collusion."

16. While holding so following judicial precedence was taken into consideration; in *"Ashwin S. Mehta and another Vs. Custodian and others* [(2006) 2 SCC 385]" it was held:

"70. In that view of the matter, evidently, creation of any third-party interest is no longer in dispute nor the same is subject to any order of this Court. In any event, ordinarily, a bona fide purchaser for value in an auction-sale is treated differently than a decree-holder purchasing such properties. In the former event, even if such a decree is set aside, the interest of the bona fide purchaser in an auction-sale is saved. [See Nawab Zain-ul-Abdin Khan v. Mohd. Asghar Ali Khan -(1887) 15 IA 12]. The said decision has been affirmed by this Court in Gurjoginder Singh v. Jaswant Kaur (Smt.) and Another [(1994) 2 SCC 368]."

17. In *"Janatha Textiles and others Vs. Tax Recovery Officer and another* [(2008) 12 SCC 582]", it was held:

"18. It is an established principle of law that in a third party auction purchaser's interest in the auctioned property continues to be protected notwithstanding that the underlying decree is subsequently set aside or otherwise. This principle has been stated and re-affirmed in a number of judicial pronouncements by the Privy Council and this court. Reliance has been placed on the following decisions:

(i) The Privy Council in Nawab Zain-Ul-Abdin Khan v. Muhammad Asghar Ali Khan & others (1887-88) 15 IA 12 for the first time crystallized the law on this point, wherein a three Judge Bench held as follows: (IA p.16)

"A great distinction has been made between the case of bona fide purchasers who are not parties to a decree at a sale under execution and the decree-holders

themselves. In Bacon's Abridgment, it is laid down, citing old authorities, that "If a man recovers damages, and hath execution by fieri facias, and upon the fieri facias the sheriff sells to a stranger a term for years, and after the judgment is reversed, the party shall be restored only to the money for which the term was sold, and not to the term itself, because the sheriff had sold it by the command of the writ of fieri facias.". So in this case, those bona fide purchasers who were no parties to the decree which was then valid and in force, had nothing to do further than to look to the decree and to the order of sale."

(ii) In Janak Raj vs. Gurdial Singh & Another (1967) 2 SCR 77, the Division Bench comprising Wanchoo, J. and Mitter, J. held that in the facts of the said case the appellant auction-purchaser was entitled to a confirmation of the sale notwithstanding the fact that after the holding of the sale, the decree was set aside. It was observed: (AIR p.613, para 24)

"24. .....The policy of the Legislature seems to be that unless a stranger auction-purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution would not attract customers and it would be to the detriment of the interest of the borrower and the creditor alike if sales were allowed to be impugned merely because the decree was ultimately set aside or modified."

(iii) In Gurjoginder Singh v. Jaswant Kaur (Smt.) & Another (1994) 2 SCC 368, this court relying on the judgment rendered by the Privy Council held that the status of a bona fide purchaser in an auction sale in execution of a decree to which he was not a party stood on a distinct and different footing from that of a person who was inducted as a tenant by a decree-holder-landlord. It was held as follows: (SCC p.370, para 3)

"3. ...A stranger auction purchaser does not derive his

title from either the decree-holder or the judgment-debtor and therefore restitution may not be granted against him but a tenant who obtains possession from the decree-holder landlord cannot avail of the same right as his possession as a tenant is derived from the landlord."

(iv) In Padanathil Ruqmini Amma v. P. K. Abdulla (1996) 7 SCC 668, this court in para 11 observed as under: (SCC p.672)

"11. In the present case, as the ex parte decree was set aside, the judgment-debtor was entitled to seek restitution of the property which had been sold in court auction in execution of the ex parte decree. There is no doubt that when the decreeholder himself is the auction-purchaser in a court auction sale held in execution of a decree which is subsequently set aside, restitution of the property can be ordered in favour of the judgment-debtor. The decree-holder auction-purchaser is bound to return the property. It is equally well settled that if at a court auction sale in execution of a decree, the properties are purchased by a bona fide purchaser who is a stranger to the court proceedings, the sale in his favour is protected and he cannot be asked to restitute the property to the judgment-debtor if the decree is set aside. The ratio behind this distinction between a sale to a decree-holder and a sale to a stranger is that the court, as a matter of policy, will protect honest outsider purchasers at sales held in the execution of its decrees, although the sales may be subsequently set aside, when such purchasers are not parties to the suit. But for such protection, the properties which are sold in court auctions would not fetch a proper price and the decree-holder himself would suffer. The same consideration does not apply when the decree-holder is himself the purchaser and the decree in his favour is set aside. He

is a party to the litigation and is very much aware of the vicissitudes of litigation and needs no protection."

In Para 16, the court further elaborated the distinction between the decree-holder auction purchaser and a stranger who is a bona fide purchaser in auction. Para 16 reads as under: (P.K. Abdulla case, p.674)

"16. The distinction between a stranger who purchases at an auction sale and an assignee from a decree-holder purchaser at an auction sale is quite clear. Persons who purchase at a court auction who are strangers to the decree are afforded protection by the court because they are not in any way connected with the decree. Unless they are assured of title; the court auction would not fetch a good price and would be detrimental to the decree- holder. The policy, therefore, is to protect such purchasers. This policy cannot extend to those outsiders who do not purchase at a court auction. When outsiders purchase from a decree-holder who is an auction-purchaser clearly their title is dependent upon the title of decree-holder auction- purchaser. It is a defeasible title liable to be defeated if the decree is set aside. A person who takes an assignment of the property from such a purchaser is expected to be aware of the defeasibility of the title of his assignor. He has not purchased the property through the court at all. There is, therefore, no question of the court extending any protection to him. The doctrine of a bona fide purchaser for value also cannot extend to such an outsider who derives his title through a decree-holder auction-purchaser. He is aware or is expected to be aware of the nature of the title derived by his seller who is a decree-holder auction- purchaser."

(v) In Ashwin S. Mehta & Another v. Custodian & Others (2006) 2 SCC 385, this court whilst relying upon the aforementioned two judgments stated the principle in the following words: (SCC p.407, para 70)

> "70. ....In any event, ordinarily, a bona fide purchaser for value in an auction sale is treated differently than a decree holder purchasing such properties. In the former event, even if such a decree is set aside, the interest of the bona fide purchaser in an auction sale is saved."

20. Law makes a clear distinction between a stranger who is a bona fide purchaser of the property at an auction sale and a decree holder purchaser at a court auction. The strangers to the decree are afforded protection by the court because they are not connected with the decree. Unless the protection is extended to them the court sales would not fetch market value or fair price of the property."

18. In *"Valji Khimji and Company Vs. Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and others* [(2008) 9 SCC 299]", it is held:

> "30. In the first case mentioned above i.e. where the auction is not subject to confirmation by any authority, the auction is complete on the fall of the hammer, and certain rights accrue in favour of the auction purchaser. However, where the auction is subject to subsequent confirmation by some authority (under a statute or terms of the auction) the auction is not complete and no rights accrue until the sale is confirmed by the said authority. Once, however, the sale is confirmed by that authority, certain rights accrue in favour of the auction purchaser, and these rights cannot be extinguished except in exceptional cases such as fraud."

19. In the present case, evidently, the proceedings for auction of property in question is as per Rule 60 of the Rules of 1962. Sub-Rule (1) of Rule 63 of the Rules 1962 provides that where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall if the full amount of the purchase money has been paid make an order confirming the sale, and, therefore, the sale shall become absolute. That no objection to set aside the sale is shown to have been filed by the respondent No.1 and except that there was an interim order passed on 12.03.2008 in

W.P.2868/2008 which is much after the entire deposit made by the petitioner on 28.01.2008, the petitioner, in our considered opinion, has an interest accrued in his favour to protect the right under the auction in his favour to protect the right under the auction sale. The first and second question is thus answered in favour of the petitioner. The petition is, thus, held maintainable at the instance of auction-purchaser. These issues are answered in favour of the petitioner.

Issues No.3 and 4:

20. Issues No.3 and 4 are jointly taken up. Evidently, respondent no.1 suffered an order of recovery in an original application preferred by the Bank respondent no.2 for recovery of dues in cash credit limit. The Tribunal has passed an order for recovery of Rs.21,49,778.92 and the interest thereon @ 12% *per annum pendente lite* and future w.e.f. 12.01.2005 and the cost with a further direction that if the amount is not paid, the Bank would be at liberty to recover the same through auction of mortgaged property. Admittedly, the respondent No.1 did not challenge the order of recovery and has allowed the same to attain finality. The question is whether with the attainment of finality of the recovery order, the respondent No.1 can be deprived to secure the property without taking recourse to redeem by bringing a suit for redemption. The question is more pertinent in the backdrop of the fact that the sale has not been made absolute under Rule 63(1) of the Rules of 1962.

21. It is urged on behalf of the petitioner that incumbent it was on the part of the respondent No.1 to have raised objection against the auction sale proceedings. Having not objected to the proceedings, the respondent No.1 borrower had waived his right to secure the property mortgaged. Reliance is placed on the Rules viz. Rule. 61, 62 and 63 of the Rules 1962 and Section 29 of Act 1993 to substantiate the contention that they being mandatory in nature cannot be surpassed. These submissions, as evident, are to meet the course resorted by the respondent No.1 by filing Writ Petition 2868/2008 and depositing the dues as directed therein.

22. It must be remembered at this juncture that the Act of 1993 aims at recovery of dues to the Bank and the object of the Act of 1993 is not to declare that the order passed by it would tantamount to foreclose the right of the borrower. Be it also noted that the petitioner had not perfected his right over the suit property for want of an order from the Recovery Officer that the

sale has become absolute under sub-rule (1) of Rule 63 of the Rules of 1962. Though in earlier part of this judgment we have opined that an executable right accrues in favour of the petitioner to protect the interest in property even before sale has become absolute; however, since the sale has not attained the stage of absoluteness, the borrower has the right to protect its title over the mortgaged property, subject to his paying of the entire dues adjudged by the Tribunal. No such provisions under the Act of 1993 have been commended at that, with the order of recovery the borrower's right to retain the mortgaged property is extinguished. On the contrary the scheme of Section 29 read with the Rules of 1962, more particularly Rule 60, 61, 62 and 63 that the borrower has a right to defend the title over the mortgaged property even at the stage of its sale by auction. Thus even if the adherence to the procedure prescribed in these Rules are held to be mandatory as suggested on behalf of the petitioner, they do not lead to conclusion as to exclusion of the right of the owner of the mortgaged property to retain the same if he is willing and ready to pay of entire dues. Petitioner has placed reliance on the decisions in *Mathew Varghese v. M. Amritha Kumar* (2014) 5 SCC 610, *Annapurna v. Mallikarjun* (2014) 6 SCC 397, *Sadashiv Prasad Singh v. Harendar Singh,* (2015) 5 SCC 574, *Transcore v. Union of India,* (2008) 1 SCC 125, *Allahabad Bank v. Canara Bank,* (2000) 4 SCC 406, *Vishal N. Kalsaria Vs. Bank of India and others* (2016) 3 SCC 762, *Vedica Procon (P) Ltd. v. Balleshwar Greens (P) Ltd.,* (2015) 10 SCC 94, *Embassy Hotels (P) Ltd. v. Gajaraj & Co.* (2015) 14 SCC 316 and *Official Liquidator v. Allahabad Bank,* (2013) 4 SCC 381 to substantiate the contentions that the Rules of 1962 are imperative and unless taken recourse to, the borrower's right to retain the property extinguishes.

23. The case of *Mathew Varghese* (supra) was in regard to the interpretation of Section 13(8) of the SARFASI Act read with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. Sub-section (8) of Section 13 envisages that if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset. Paragraph 49 whereon reliance is placed envisages:

"49. Reference to the above principles laid down in the various

decisions also supports our conclusion that the application of the SARFAESI Act will be in addition to, in the present case to Section 29 of the RDDB Act. Once we steer clear of the said position without any hesitation, it can be held that whatever stipulations contained in Section 29 as regards the application of certain provisions of the Income Tax Act, 1961 in particular Schedule II Part I Rule 15 of the Income Tax Act, 1961 for effecting a sale or transfer would apply automatically. We have already extracted Section 29 of the RDDB Act, as well as Schedule 2 Part I Rule 15 of the Income Tax Act, 1961. Therefore, what is to be considered is as to what is the mode prescribed under the above provisions, namely, Rule 15 prescribed under Schedule 2 Part I of the Income Tax Act, 1961.

However, in paragraph 50, it is held:

"50. Section 29 of the RDDB Act is an enabling provision under which the Second and Third Schedules to the Income Tax Act, 1961 (43 of 1961) and the Income Tax Rules, 1962 can be applied as far as possible with necessary modifications as if the provisions and the Rules are referable to the debt due, instead of the income tax due. Therefore, fictionally, by virtue of section 29 of the RDDB Act, the mode and method by which a recovery of income tax can be resorted to under the Second and Third Schedules to the Income Tax Act and the Income Tax Rules, 1962 have to be followed. Therefore, reading Section 37 of the SARFAESI Act and Section 29 of the RDDB Act, the only aspect which has to be taken care of is that while applying the procedure prescribed under Rule 15 of the Income Tax Rules, 1962 (Ed.: The reference is to Rule 15 of Schedule II Part I of the Income Tax Act, 1961.), no conflict with reference to any of the provisions of the SARFAESI Act, takes place."

Furthermore affirming the decision in Ram Kishun V. State of U.P. [(2012) 11 SCC 511], it is held:

"43. The above principles laid down by this Court also make it

clear that though the recovery of public dues should be made expeditiously, it should be in accordance with the procedure prescribed by law and that it should not frustrate a constitutional right, as well as the human right of a person to hold a property and that in the event of a fundamental procedural error occurred in a sale, the same can be set aside.

24. Thus, unless the sale is confirmed as absolute the borrower's right to hold the property in question does not get extinguished. The procedure laid down in Section 29 of 1993 Act is held to be an enabling provision. Therefore, even if the borrower has, instead of taking recourse to the stipulations contained under Rules 61, 62 & 63 of the Rules of 1962, approaches the High Court where instead of non-suiting him his interest in the mortgaged property is protected subject to certain direction, the right to retain the mortgaged property cannot be said to have been waived by the borrower.

25. In *Sadashiv Prasad Singh* (supra), the Court was concerned with an absolute right vesting in the auction purchaser, which is not the present case. In this context it was observed:

> "**22.** Since it was nobody's case that Sadashiv Prasad Sinha, the highest bidder at the auction conducted on 28-8-2008, had purchased the property in question at a price lesser than the then prevailing market price, there was no justification whatsoever to set aside the auction-purchase made by him on account of escalation of prices thereafter. The High Court in ignoring the vested right of the appellant in the property in question, after his auction bid was accepted and confirmed, subjected him to grave injustice by depriving him to property which he had genuinely and legitimately purchased at a public auction. In our considered view, not only did the Division Bench of the High Court in the matter ignore the sound, legal and clear principles laid down by this Court in respect of a third-party auction-purchaser, the High Court also clearly overlooked the equitable rights vested in the auction-purchaser during the pendency of a *lis*. The High Court also clearly overlooked the equitable rights vested in the auction-purchaser while disposing of the matter.

23. At the time of hearing, we were thinking of remanding the matter to the Recovery Officer to investigate into the objection of Harender Singh under Rule 11 of the Second Schedule to the Income Tax Act, 1961. But considering the delay such a remand may cause, we have ourselves examined the objections of Harender Singh and rejected the objections for a variety of reasons:

23.1. Firstly, the contention raised at the hands of the respondents before the High Court, that the facts narrated by Harender Singh [the appellant in Special Leave Petition (C) No. 26550 of 2010] were a total sham, as he was actually the brother of one of the judgment-debtors, namely, Jagmohan Singh. And that Harender Singh had created an unbelievable story with the connivance and help of his brother, so as to save the property in question. The claim of Harender Singh in his objection petition was based on an unregistered agreement to sell dated 10-1-1991. Not only that such an agreement to sell would not vest any legal right in his favour, it is apparent that it may not have been difficult for him to have had the aforesaid agreement to sell notarised in connivance with his brother, for the purpose sought to be achieved.

23.2. Secondly, it is apparent from the factual position depicted in the foregoing paragraphs that Harender Singh, despite his having filed objections before the Recovery Officer, had abandoned the contest raised by him by not appearing (and by not being represented) before the Recovery Officer after 26-10-2005, whereas, the Recovery Officer had passed the order of sale of the property by way of public auction more than two years thereafter, only on 5-5-2008. Having abandoned his claim before the Recovery Officer, it was not open to him to have reagitated the same by filing a writ petition before the High Court.

23.3. Thirdly, a remedy of appeal was available to Harender Singh in respect of the order of the Recovery

Officer assailed by him before the High Court under Section 30, which is being extracted herein to assail the order dated 5-5-2008:

> *"30. Appeal against the order of Recovery Officer.*—(1) Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.
>
> (2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive)."

The High Court ought not to have interfered with in the matter agitated by Harender Singh in exercise of its writ jurisdiction. In fact, the learned Single Judge rightfully dismissed the writ petition filed by Harender Singh.

23.4. Fourthly, Harender Singh could not be allowed to raise a challenge to the public auction held on 28-8-2008 because he had not raised any objection to the attachment of the property in question or the proclamations and notices issued in newspapers in connection with the auction thereof.

23.5. All these facts cumulatively lead to the conclusion that after 26-10-2005, Harender Singh had lost all interest in the property in question and had therefore, remained a silent spectator to various orders which came to be passed from time to time. He had, therefore, no equitable right in his favour to assail the auction-purchase made by Sadashiv Prasad Sinha on 28-8-2008.

23.6. Finally, the public auction under reference was held on

28-8-2008. Thereafter the same was confirmed on 22-9-2008. Possession of the property was handed over to the auction-purchaser Sadashiv Prasad Sinha on 11-3-2009. The auction-purchaser initiated mutation proceedings in respect of the property in question. Harender Singh did not raise any objections in the said mutation proceedings. The said mutation proceedings were also finalised in favour of Sadashiv Prasad Sinha. Harender Singh approached the High Court through CWJC No. 16485 of 2009 only on 27-11-2009. We are of the view that the challenged raised by Harender Singh ought to have been rejected on the grounds of delay and laches, especially because third-party rights had emerged in the meantime. More so, because the auction-purchaser was a bona fide purchaser for consideration, having purchased the property in furtherance of a duly publicised public auction, interference by the High Court even on the ground of equity was clearly uncalled for."

26. The factual scenario of the case at hand is, however, totally different. The title in the property is not transferred in favour of the petitioner because of the stay order as such no absolute right accrued in favour of the petitioner. Since there is no vested right in favour of the petitioner there was no merger of mortgaged debt in the decreetal debt, as would create further right in the petitioner to impede the borrower from retaining the property after paying the entire amount due. Thus, the decision in *Sadashiv Prasad Singh* (supra) is also of no assistance to the petitioner.

27. In *Annapurna* (supra), the issue was whether the High Court could have ignored the settled law that under Article 127 of the Limitation Act, 1963 and application to set aside a sale under Order XXI Rule 89 CPS has to be filed within 60 days from the date of sale and the same is the period for making the required deposit, is also of not much help to the petitioner in present fact situation.

28. Reliance is also placed on the decision in *Transcore v. Union of India* (supra), wherein it is held:

"**18.** On analysing the above provisions of the DRT Act, we find that the said Act is a complete code by itself as far as

recovery of debt is concerned. It provides for various modes of recovery. It incorporates even the provisions of the Second and Third Schedules to the Income Tax Act, 1961. Therefore, the debt due under the recovery certificate can be recovered in various ways. The remedies mentioned therein are complementary to each other. The DRT Act provides for adjudication. It provides for adjudication of disputes as far as the debt due is concerned. It covers secured as well as unsecured debts. However, it does not rule out applicability of the provisions of the TP Act, in particular Sections 69 and 69-A of that Act. Further, in cases where the debt is secured by pledge of shares or immovable properties, with the passage of time and delay in the DRT proceedings, the value of the pledged assets or mortgaged properties invariably falls. On account of inflation, value of the assets in the hands of the bank/FI invariably depletes which, in turn, leads to asset-liability mismatch. These contingencies are not taken care of by the DRT Act and, therefore, Parliament had to enact the NPA Act, 2002.

22. Section 13 falls in Chapter III which deals with enforcement of security interest. It begins with a non obstante clause. It states inter alia that notwithstanding anything contained in Section 69 or Section 69-A of the TP Act, any security interest created in favour of any secured creditor may be enforced, without the court's intervention, by such creditor in accordance with the provisions of this Act. When we refer to the word "court", it includes DRT. We quote hereinbelow sub-section (2) of Section 13 of the NPA Act:

> "13. *Enforcement of security interest.*—
>
> (1) * * *
>
> (2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-

performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4)."

29. Furthermore, in the case of *Allahabad Bank* (supra), *it is held*:

"**23.** Even in regard to *"execution"*, the jurisdiction of the Recovery Officer is exclusive. Now a procedure has been laid down in the Act for recovery of the debt as per the certificate issued by the Tribunal and this procedure is contained in Chapter V of the Act and is covered by Sections 25 to 30. It is not the intendment of the Act that while the basic liability of the defendant is to be decided by the Tribunal under Section 17, the banks/financial institutions should go to the civil court or the Company Court or some other authority outside the Act for the actual realisation of the amount. The certificate granted under Section 19(22) has, in our opinion, to be executed only by the Recovery Officer. No dual jurisdictions at different stages are contemplated. Further, Section 34 of the Act gives overriding effect to the provisions of the RDB Act. That section reads as follows:

> "34. (1) *Act to have overriding effect.*—(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
>
> (2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984) and the Sick Industrial Companies

(Special Provisions) Act, 1985 (1 of 1986)."

The provisions of Section 34(1) clearly state that the RDB Act overrides other laws to the extent of "inconsistency". In our opinion, the prescription of an exclusive Tribunal both for *adjudication* and *execution* is a procedure clearly *inconsistent* with realisation of these debts in any other manner."

30. The question is whether Section 60 of the Transfer of Property Act will have any bearing in the matter as would attract the principle of law laid down in *Transcore* (supra) and *Allahabad Bank* (supra). Section 60 of Transfer of Property Act provides:

"60. Right of mortgagor to redeem.—At any time after the principal money has become 1[due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver 2[to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by 3[decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice

before payment or tender of such money.

Redemption of portion of mortgaged property.—Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except 4[only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

31. In *"Embassy Hotels (P) Ltd. v. Gajaraj & Co.* [(2015) 14 SCC 316]", it is held:

> "**16.** Section 60 of the Transfer of Property Act protects the right of redemption available to a mortgagor by providing that the mortgagor can exercise such a right by paying the mortgaged money at any time after the principal money has become due. But the proviso clarifies that the right conferred by that section is available only if it has not been extinguished by act of the parties or by decree of the court. The act of the parties would cover act of the mortgagor and the mortgagee, if they are unable to settle the dispute arising out of money claim covered by the mortgage and by their action, allow the mortgaged property to be sold through auction in favour of a third party. Hence, it is not possible to accept the case of the plaintiff-respondent that in spite of sale of the suit property becoming final through court auction, for the purpose of grant of specific relief to the plaintiff in the present suit, the first defendant would be deemed to still retain the right to redeem the mortgage and transfer the suit property to the plaintiff regardless of the right, title and possession already legally vested in the auction-purchaser the appellant."

32. First of all it is to be seen as to whether Section 60 is attracted in the case at hand wherein the order of recovery precedes the sale of property to recover the money due. In this context reference can be had of the decision in *"Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn.,* Reported in [(2009) 8 SCC 646]" wherein it is held:

> "85. If the Tribunal was to be treated to be a civil court, the

debtor or even a third party must have an independent right to approach it without having to wait for the bank or financial institution to approach it first. The continuance of its counterclaim is entirely dependent on the continuance of the applications filed by the bank. Before it no declaratory relief can be sought for by the debtor. It is true that claim for damages would be maintainable but the same have been provided by way of extending the right of counterclaim.

86. The Debts Recovery Tribunal cannot pass a decree. It can issue only recovery certificates. [See Sections 19(2) and 19(22) of the Act.] The power of the Tribunal to grant interim order is attenuated with circumspection. [See Dataware Design Labs (P) Ltd. v. SBI - (2005) 127 Comp Cas 176 (Ker) Comp Cas at p. 184.] Concededly in the proceeding before the Debts Recovery Tribunal detailed examination, cross-examinations, provisions of the Evidence Act as also application of other provisions of the Code of Civil Procedure like interrogatories, discoveries of documents and admission need not be gone into. Taking recourse to such proceedings would be an exception. Entire focus of the proceedings before the Debts Recovery Tribunal centres round the legally recoverable dues of the bank.

92. We have held that the Tribunals are neither civil courts nor courts subordinate to the High Court. The High Court ordinarily can be approached in exercise of its writ jurisdiction under Article 226 or its jurisdiction under Article 227 of the Constitution of India. The High Court exercises such jurisdiction not only over the courts but also over the Tribunals. The Appellate Tribunals have been constituted for determining the appeals from judgments and orders of the Tribunal.

33. That sub-section (1) of Section 34 of 1993 Act mandates that the Act of 1993 overrides other laws to the extent of "inconsistency". However, no provision in the Act of 1993 or any rule made thereunder is commended at which may be "inconsistent" with Section 60 of the Transfer of Property Act particularly proviso thereto. Consequently, no provision in the Act of 1993 can be read in derogation of the said Section 60.

34. In "*Maganlal Vs. M/s Jaiswal Industries, Neemach and others* [(1989) 4 SCC 344]", it is held:

> "13. It was further held that in a suit for redemption of a mortgage other than a mortgage by conditional sale or an anomalous mortgage, the mortgagor has a right of redemption even after the sale has taken place pursuant to the final decree, but before the confirmation of such sale. In view of these provisions the question of merger of mortage-debt in the decretal-debt does not arise at all.
>
> 14. In this view of the matter we are of the opinion that in case the provisions of Order 34 Rule 5 of the Code are held to be applicable to the facts of the instant case appropriate relief can be granted thereunder as the order of confirmation of the sale passed by the High Court in favour of the first purchaser has not become absolute due to the pendency of these appeals against that order nor has the right of redemption of Maganlal yet extinguished.
>
> 21. In this connection, it is relevant to note that in neither of the two cases namely, Gujarat State Financial Corporation and M/s Everest India Corporation, (supra) Sub- section (8) of the Section 32 of the Act came up for consideration. Section 46-B of the Act reads as hereunder:
>
> > "46B. The provisions of this Act and of any rules or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern."
>
> 22. No provision in the Act or any Rule or Order made thereunder has been brought to our notice stating that the effect of any action taken thereunder including the passing or orders

> of attachment and sale under Sections 31 and 32 thereof, is to extinguish the right of redemption. In other words, there is nothing in the Act or in any Rule or Order made thereunder which may be inconsistent with Section 60 of the Transfer of Property Act particularly the proviso there- to. Consequently no provision in the Act can be read "in derogation" of the said Section 60."

.5. In *"Mhadagonda Ramgonda Patil and others Vs. Shripal Balwant Rainade and others* [(1988) 3 SCC 298]", it is observed that..... "in a final decree in a suit for foreclosure, on the failure of the defendant to pay all amounts due, the extinguishment of the right of redemption has to be specifically declared. Again, in a final decree in a suit for redemption of mortgage by conditional sale or for redemption of an anomalous mortgage, the extinguishment of the right of redemption has to be specifically declared, as provided in clause (a) of sub-rule (3) of Rule 8 of Order XXXIV of the Code of Civil Procedure. These are the two circumstances-(1) a final decree in a suit for foreclosure under Order XXXIV, Rule 3(2); and (2) a final decree in a suit for redemption under Order XXXIV, Rule 8(3)(a) of the Code of Civil Procedure-when the right of redemption is extinguished."

36. In *"New Kenilworth Hotels (P) Ltd. v. Ashoka Industries Ltd.* [(1995) 1 SCC 161]", it is held:-

> "4. It is also equally settled law that in the suit for redemption unless it is a conditional sale or anomalous mortgage so long as the sale is not confirmed, the debtor has a right to deposit the entire sale money including the sale expenses and poundage fee and the court is under the statutory duty to accept the payment and direct redemption of the mortgage. In the light of the above law, it is not open to the appellant to contend that under the proviso to Section 60 of the T.P. Act, the Corporation has acted in derogation of its right as a mortgagee but acted as an owner under Section 29 of the Act. As stated earlier, the limited right given to the Corporation under Section 29 is to act as an owner to bring the properties of the defaulter to sale and not in derogation of the right under Section 60. The fiction of law under Section 29 does not have the effect of wiping out the statutory right of redemption under Section 60

of the T.P. Act. Therefore, the right of the mortgagee still subsists and that thereby the mortgagor is entitled to exercise the right under Section 60 of the T.P. Act."

37. In view whereof the issues No.3 and 4 are to be answered in favour of the borrower respondent No.1. That, it was within his right to secure the mortgaged property even without bringing a suit for redemption, subject to payment of entire dues of the Bank.

38. Since respondent No.1 has already deposited Rs.20 Lacs (Rs.15 Lacs on 17.10.2008) + 5 Lacs on 13.10.2008) and Rs.29,10,000/- by 06/12/2013. Thus, total amount of Rs.49,10,000/- Lacs having been deposited, the settlement arrived at by the Debt Recovery Appellate Tribunal cannot be found fault with. The petitioner is at liberty to recover Rs.42,44,660/- from respondent No.2 Bank.

39. As we are not inclined to interfere with the order passed by the DRAT, petition fails and is dismissed. There shall be no costs.

Petition dismissed.

I.L.R. [2017] M.P., 2173
WRIT PETITION
Before Mr. Justice S.K. Gangele
W.P. No. 16805/2015 (Jabalpur) decided on 24 August, 2017

ASHOK SHARMA (Dr.) ...Petitioner
Vs.
STATE OF M.P. & ors. ...Respondents

A. Service Law – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 15(2) – Disagreement with Inquiry Authority – Procedure – Dismissal from Service and Recovery **– Tender/ Contract regarding Deendayal Mobile Health Unit was floated whereby the same was awarded to a party which was later terminated – Party challenged the termination of contract in an earlier writ petition whereby the same was allowed and this Court quashed the termination of contract – Subsequently, regarding alleged financial irregularities, petitioner, under disciplinary proceedings was punished with dismissal of service and order of recovery was passed against him – Challenge to – Held – Inquiry Commissioner exonerated petitioner from the charges – Even matter was**

referred to Lokayukta whereby they did not find any irregularity and closed the inquiry – Petitioner was proceeded *ex-parte* and punishment was imposed – Decision of Disciplinary Authority is contrary to decision taken by Division Bench of this Court – Impugned order of dismissal of service and order of recovery quashed – Petitioner directed to be reinstated with backwages – Petition allowed. (Paras 14, 15, 26 & 27)

क. सेवा विधि – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र.1966, नियम 15(2) – जांच प्राधिकारी से असहमति – प्रक्रिया – सेवा से पदच्युति एवं वसूली – दीनदयाल मोबाईल स्वास्थ्य यूनिट के संबंध में निविदा/संविदा जारी की गई जिससे उक्त को एक पक्षकार को प्रदान किया गया, बाद में जिसका पर्यवसान किया गया – पक्षकार ने पूर्वतर रिट याचिका में संविदा के पर्यवसान को चुनौती दी जिसमें उक्त को मंजूर किया गया और इस न्यायालय ने संविदा के पर्यवसान को अभिखंडित किया – तत्पश्चात्, याची को, अभिकथित वित्तीय अनियमितताओं के संबंध में अनुशासनिक कार्यवाहियों के अंतर्गत सेवा से पदच्युती से दण्डित किया गया और उसके विरूद्ध वसूली का आदेश पारित किया गया – को चुनौती – अभिनिर्धारित – जांच आयुक्त ने याची को आरोपों से विमुक्त कर दिया – यहां तक कि मामला लोकायुक्त को निर्दिष्ट किया गया जिसमें उन्होंने कोई अनियमितता नहीं पायी और जांच बंद की – याची पर एक पक्षीय कार्यवाही की गई थी और दण्ड अधिरोपित किया गया था – अनुशासनिक प्राधिकारी का निर्णय, इस न्यायालय की खंड न्यायपीठ द्वारा लिये गये निर्णय के विपरीत है – सेवा से पदच्युति का आक्षेपित आदेश एवं वसूली का आदेश अभिखंडित – याची को पिछले वेतन के साथ बहाल किये जाने के लिए निदेशित किया गया – याचिका मंजूर।

***B. Constitution – Article 311(2)* – Held – Apex Court held, that if disciplinary authority disagrees with findings of inquiry authority then it has to issue a show cause notice to delinquent employee mentioning the grounds of disagreement – In the instant case, no show cause notice was issued to petitioner at the time when department/ disciplinary authority disagreed with findings of Inquiry Officer and subsequently issued show cause notice regarding why he should not be punished with dismissal of service and recovery of amount – Procedure adopted by disciplinary authority is contrary to law and violative of Article 311(2) of Constitution. (Para 18 & 26)**

ख. संविधान – अनुच्छेद 311(2) – अभिनिर्धारित – सर्वोच्च न्यायालय ने अभिनिर्धारित किया कि यदि जांच प्राधिकारी के निष्कर्षों के साथ अनुशासनिक प्राधिकारी असहमत होता है तब उसे अपचारी कर्मचारी को, असहमति के आधार उल्लिखित करते हुए कारण बताओ नोटिस जारी करना होता है – वर्तमान प्रकरण

में, याची को उस समय कोई कारण बताओ नोटिस जारी नहीं किया गया था जब विभाग/अनुशासनिक प्राधिकारी, जांचकर्ता अधिकारी के निष्कर्षों से असहमत हुआ था और पश्चात्वर्ती रूप से इस संबंध में कारण बताओ नोटिस जारी किया गया था कि क्यों न उसे सेवा से पदच्युति से दण्डित किया जाए एवं रकम वसूली जाए – अनुशासनिक प्राधिकारी द्वारा अपनायी गयी प्रक्रिया विधि के विपरीत तथा संविधान के अनुच्छेद 311(2) के उल्लंघन में है।

C. ***Practice – Principle of Law*** – **Held – The principle of law is that High Court can interfere in disciplinary matter if finding recorded by disciplinary authority are perverse or its a case of no evidence or there is violation of natural justice or rule. (Para 25)**

ग. *पद्धति – विधि का सिद्धांत* – अभिनिर्धारित – विधि का सिद्धांत है कि उच्च न्यायालय अनुशासनिक मामलों में हस्तक्षेप कर सकता है यदि अनुशासनिक प्राधिकारी द्वारा अभिनिर्धारित निष्कर्ष विपर्यस्त है या यह एक साक्ष्य विहीन प्रकरण है या नैसर्गिक न्याय अथवा नियम का उल्लंघन हुआ है।

Cases referred :

AIR 1964 SC 72, AIR 1987 SC 1554, AIR 1992 SC 1439, AIR 1999 SC 3734, AIR 2003 SC 1843, 2013 (2) MPLJ 232, (2016) 14 SCC 1, (1997) 3 SCC 72, (1999) 5 SCC 762, (2009) 3 SCC 310, (1998) 3 SCC 385, 2011 (4) MPLJ 477, 1999 SCC (L&S) 620, (2017) 2 SCC 308, AIR 1963 SC 1612.

Rajendra Tiwari assisted by *Sobhitaditya,* for the petitioner.
R.N. Singh assisted by *B.D. Singh,* G.A. for the respondents/State.

ORDER

S.K. GANGELE, J. :- Petitioner has filed this petition against the order of disciplinary authority dated 22.11.2014 (Annexure-P/25), by which a punishment of dismissal from service is imposed against the petitioner. The disciplinary authority further ordered that an amount of Rs.8,58,42,035/- (Eight crore, fifty eight, lakh forty two thousand thirty five) be also recovered from the petitioner. The petitioner also challenged the order of appellate authority dated 24.08.2015 (Annexure-P/29), by which the appeal of the petitioner has been dismissed. The petitioner further prayed a relief that he be reinstated in service with all consequential benefits.

2. At the relevant time, the petitioner was working as Director, Heath

(sic:Health) Services. Respondent No.1-Principal Secretary, Department of Public Health and Family Welfare invited tenders for award of contract of Deendayal Mobile Health Unit for different districts including Dhar, Badwani and Betul. M/s Jagran Solutions Ltd. submitted its tender. The petitioner was a Member being Director, Health Services/Chairman of the Committee considered the tenders including other Members namely Mr. Hafizurrehman, Mr. Prakash Jangade, Mr. A.N. Mittal and Mr. L.B. Asthana. The Committee approved the tender of Jagran Solutions, New Delhi for 11 blocks. On the recommendation of the Committee, Deputy Director, Additional Director and Commissioner Health Services approved recommendation and submitted comments to the Principal Secretary and the Hon'ble Minister for approval. Principal Secretary remanded the matter to the Commissioner, Health Services, who had again submitted his noting and forwarded the same to the Principal Secretary. The Principal Secretary forwarded the same to the Hon'ble Minister. The Hon'ble Minister sought some additional information and the Principal Secretary forwarded the same to the Commissioner, Health Services. The Commissioner, Health Services forwarded the same to the Deputy Director and, thereafter, again the matter was referred to the different Committees and thereafter, the Hon'ble Minister approved the tender.

3. State of Madhya Pradesh constituted a State Level Negotiations Committee for award of contract on the basis of tenders. The Committee had following persons: (1) Smt. Alka Upadhyay, Commissioner Health Services; (2) Dr. K.K. Shukla, Director Public Health; (3) Dr. Rajeev Shrivastava, Deputy Director, Deendayal Mobile Hospital and (4) Shri Omprakash Panthi, Account Officer. The Negotiation Committee after negotiating with M/s Jagran Solutions awarded the contract and Mr. Rajesh Rajoura, Commissioner Health Services issued work orders in favour of M/s Jagran Solutions on 31.05.2007, 05.07.2007, 14.09.2007 and 18.09.2007.

4. The contract awarded to the petitioner was canceled. The petitioner challenged the cancellation of the contract and one M/s KGN Welfare Society, Betul challenged the orders of award of contract in favour of the petitioner of districts Betul, Badwani and Dhar before the High Court in separate writ petitions. The aforesaid petition were registered as W.P. No.8163/2008 (KGN Welafare Society, Betul vs The State of Madhya Pradesh and others) and W.P. No.364/2009 (Jagran Solutions vs State of Madhya Pradesh and others). The High Court dismissed the writ petition filed by M/s KGN Welfare Society,

Betul and allowed the writ petition filed by the petitioner (Jagran Solutions) with following observations:

> *"6. In the present case, the orders of running of mobile health units by Jagran Solutions have been cancelled only on the ground that the said firm was not fulfilling the requisite terms of NIT. It has been demonstrated before us that the petitioner, Jagran Solutions, was affiliated with the Jagran Prakashan Ltd. and it was having the requisite qualification and contract was for a period of three years and the period is going to be over shortly. It is also evident that prior to the issuance of the communication dated 07.01.2009 the contract was already entered into between the petitioner, Jagran Solutions and the State machinery and the contract was never terminated. Be that as it may, since there was a substantial compliance of the tender conditions, the facts and circumstances of the case do not warrant any interference as to the fulfillment of eligibility criteria or the allegations made against the petitioner, Jagran Solutions.*
>
> *7. In view of the aforesaid, we are only inclined to observe that since the period of contract granted in favour of petitioner, Jagran Solutions is going to be over shortly it would be in the fitness of things that the present contract continues for its remaining period. Accordingly, the impugned communication dated 07.01.2009 deserves to be and is hereby quashed. However, in case any fresh tenders are invited for the purpose, the eligibility of the petitioner, Jagran Solutions shall be considered in the light of the conditions enumerated in the tender notice. In the result, the present petitions stand disposed of. There shall be not order as to costs."*

5. Subsequently, the petitioner was subjected to a departmental inquiry alleging that he had committed illegalities and awarded the contract to M/s Jagran Solutions and a loss was caused to the Government. A charge-sheet was issued to the petitioner and following charges were leveled against him:

"1. That, tenders dated 26.04.2007 were invited for completion of its scheme named as Deendayal Mobile Hospital for the years 2007-08. At that time, the petitioner was working as Director, Health Services, Bhopal and he was Chairman of the State Level Committee to consider the tenders. The petitioner recommended for award of contract in favour of M/s Jagran Solutions in the meeting of the Committee held on 12.07.2007 against the rules of the contract for 14 blocks. The petitioner submitted wrong information to the higher officials in the aforesaid matter.

2. The meeting of the Committee was held on 22.09.2008. In the aforesaid meeting one of the Member Mr. N.K. Joshi, Director Public Health Services has submitted his noting that M/s Jagran Solutions is not a recognized society and procedure adopted to award the contract in favour of the aforesaid institution is faulty. The petitioner overlooked the aforesaid noting and recommended that the work be awarded to M/s Jagran Solutions, which was contrary to law. Hence, the petitioner doubtfully benefited M/s Jagran Solutions and violated the rules and procedure of tender and also misrepresented the facts to higher authorities.

Hence, integrity of the petitioner was doubtful and the petitioner committed misconduct in accordance with sub-rule 3 and 2 of Service Rules, 1965 and he was subjected to a disciplinary inquiry."

6. The petitioner in his reply to show cause notice denied the allegations. The reply was not found satisfactory and the matter was referred for departmental inquiry to Inquiry Commissioner. The post of Inquiry Commissioner was held by a Senior District and Sessions Judge. The Inquiry Commissioner vide inquiry report dated 10.06.2013 found the charges not proved and exonerated the petitioner from both the charges. The disciplinary authority, Department of Public Health and Family Welfare did not agree with the inquiry report and held that after perusal of the record both the charges are found proved. Hence, the punishment of dismissal from services including recovery of an amount of Rs.8,58,42,035/- could be imposed against the

petitioner. Consequently, the disciplinary authority issued a show cause notice dated 07.02.2014 to the petitioner that why the punishment of dismissal from service and recovery of amount of Rs.8,58,42,035/- be not imposed against the petitioner. The petitioner submitted his reply to the show cause notice on 24.02.2014. The petitioner pleaded in the reply that earlier, issue of award of contract to M/s Jagran Solutions was raised before the High Court in a writ petition and the High Court dismissed the writ petition by holding that the award of contract was proper. The Inquiry Commissioner, who was Senior District and Sessions Judges of the High Court did not found both the charges proved against the petitioner. The disciplinary authority did not assign any reason that why the decision of the inquiry authority is contrary to law and what is the evidence on which the disciplinary authority reached on the conclusion that the charges leveled against the petitioner are found proved. The petitioner prayed for a relief that the show cause notice be canceled and the order of Inquiry Commissioner be upheld.

7. The matter was referred by the Government to Public Service Commission for its approval in regard to imposition of punishment. The Public Service Commission opined that a proper procedure was not adopted in issuing the show cause notice to the petitioner in regard to imposition of punishment and the recovery of the amount. The disciplinary authority had found the charges proved against the petitioner contrary to the decision of Inquiry Commissioner, however, show cause notice was not issued to the petitioner communicating the reasons that why the disciplinary authority did not agree with the findings of the Inquiry Commissioner. It was obligatory on the part of the disciplinary authority to issue a show cause notice to the petitioner mentioning the reasons that why it had disagreed with the findings of the Inquiry Officer.

8. On the basis of aforesaid opinion of the Public Service Commission, another show cause notice was issued to the petitioner on 12.06.2014. It is mentioned in the show cause notice that the Inquiry Commissioner submitted its report and the Department examined the report of the Inquiry Commissioner and had come to the conclusion that the petitioner is guilty for serious financial irregularities. The reasons assigned in the show cause notice in holding the petitioner responsible for serious financial irregularities, as mentioned in the show cause notice, are that in the earlier proceedings it was mentioned that the meeting of the Committee was held on 12.07.2007, however, the meeting was held on 10.05.2007. It was a typing mistake. The petitioner was the

Chairman of the State Level Committee and the Committee in its meeting held on 10.05.2007 decided that out of 20 tenderers, 11 were found eligible to have technical requirements. In the 11 tenderers one of the institution was Jagran Solutions. The aforesaid institution was not competent to bid in accordance with the terms of the contract. In spite of that, recommendation was made and in the proceedings and presence of Mr. Prakash Jangare was mentioned, however, he was not present. Further on 06.08.2007, meeting was held and it was recommended that Jagran Solutions is a unit of Jagran Prakashan, although in the audit report of Jagran Prakashan, Jagran Solutions has been mentioned as a subsidiary and it was not a condition in the tender that a subsidiary institution could participate in the bid. In the meeting of the Committee held on 16.08.2007 presided by the petitioner, acceptance was accorded to award the contract for five blocks of Dhar district to M/s Jagran Solutions. There was no term of negotiation in the contract. Inspite of this, negotiation was held with Jagran Solutions and some documents were added subsequently. No meeting was held on 26.09.2007, although, it is mentioned that the meeting was held. Due to aforesaid act, a loss to the Government of Rs.5,58,42,035/- (sic:8,58,42,035) was caused. Hence, the petitioner was directed to show cause that why the petitioner be not dismissed from service and an amount of Rs.8,58,42,035/- be not ordered to be recovered from the petitioner.

9. The petitioner in its reply/communication filed on 08.07.2014 sought certain documents from the department. Thereafter, the petitioner submitted a detailed reply on 24.07.2014. Copy of the same has been filed as Annexure-P/19 alongwith the petition. The petitioner in reply pleaded that he has been exonerated from the charges by the Inquiry Commissioner. Apart from this, Hon'ble High Court has upheld the award of contract in favour of Jagran Solutions and quashed the order of cancellation of contract in a writ petition. The petitioner further pleaded that under National Rural Mission, scheme in the name of Deendayal Mobile Hospital was introduced. The implementation of the scheme was entrusted to Commissioner posted in N.R.H.M, Mission Director, Director Health Services, Joint Director and Assistant Director and the petitioner was not posted in connection with the scheme. The petitioner being Senior Director was the Chairman of the Committee and also a Member of the Committee. All the Members of the Committee had taken joint decision and the State government had taken a decision to cancel the contract. The Commissioner Health Services also in his noting mentioned the fact that Jagran

Solutions is a sister concern of Jagran Publication and he was discharged. Mr. Pankaj Agrawal mentioned in his noting that Jagran Solutions is eligible for award of contract. The petitioner also stated that he had not recommended for negotiation of award of contract for five blocks. It was done by the Committee consisting Health Commissioner. The meeting of the Committee was held on 10.05.2007 and on the basis of the decision in the meeting various notings were given by the different officers of Health Department including the Principal Secretary and the Hon'ble Minister and thereafter, the orders were passed. Another Committee was constituted by the Government at State Level for negotiations comprising Smt. Alka Upadhyay, Commissioner Health Services, Dr. K.K. Shukla, Director Health Services, Dr. Rajeev Shrivastava, Deputy Director, Deendayal Mobile Hospital and Mr. Omprakash Panthi, Account Officer. The Committee, after negotiations with Jagran Solutions, had fixed the rates for award of contract for Sardarpur, Nalchha, Dhar, Bagh and Kukshi blocks, however, the Committee headed by the petitioner did not recommend award of contract to Jagran Solutions for the aforesaid blocks. Hence, there was no question of causing any loss to the Government. The petitioner also denied the fact that any document was added subsequently. The petitioner further pleaded that on the basis of recommendation of the petitioner Committee, another meeting of another Committee chaired by the then Commissioner Smt. Alka Upadhyay was held and a decision was taken to award the contract to Jagran Solutions. The petitioner pleaded that the show cause notice be dropped.

10. It appears that reply to aforesaid show cause notice was not reached to Department within time, hence, the Department vide order dated 22.11.2014 has held the petitioner guilty for commission of offence. It is further observed in the order that the petitioner was given opportunity to show cause, however, he had not replied the same. The Committee, which was headed by the petitioner, had recommended for award of contract in favour of Jagran Solutions, although the institution was not eligible for award of contract, hence, the petitioner committed gross irregularities. The petitioner was directed to appear for hearing on 03.09.2014, but, he did not appear, neither he filed reply. Hence, the Department had taken *exparte* decision and consequently awarded punishment of dismissal from service and recovery of an amount of Rs.8,58,42,035/-.

11. Against the aforesaid order, the petitioner filed an appeal; that appeal

was also dismissed vide order dated 24.08.2015 (Annexure-P/29).

12. Learned Senior Counsel appearing on behalf of the petitioner has contended that the order of dismissal is contrary to law and violative of Article 311(2) of the Constitution. The order is also against the provisions of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred as 'the Rules of 1966'). Learned Senior Counsel further submitted that Inquiry Commissioner consisting Senior most District and Sessions Judge of the State after inquiry did not find the charges proved against the petitioner. The Department did not mention the reasons that why the reasoning assigned by the Inquiry Commissioner is improper and held the petitioner guilty for the misconduct. It is further submitted by the learned Senior Counsel that Division Bench of this Court upheld the award of contract in favour of Jagran Solutions and held that there was no irregularity in award of contract, hence, there is no question of illegality in award of contract. Hence, the findings recorded by the disciplinary authority are perverse and without any basis. In support of his contentions, the learned Senior Counsel relied on the following judgments:

1. *S. Pratap Singh vs State of Punjab,* AIR 1964 SC 72;

2. *State of Bihar vs Kripalu Shankar,* AIR 1987 SC 1554;

3. *M/s Shree Chamundi Mopeds Ltd vs Church of South India Trust,* AIR 1992 SC 1439;

4. *Yoginath D. Bagde vs State of Maharashtra,* AIR 1999 SC 3734;

5. *Indian Railways Construction Co. Ltd. vs Ajay Kumar,* AIR 2003 SC 1843 and

6. *Vikram Singh Rana vs Principal Secretary,* 2013(2) MPLJ 232.

13. On the other hand, learned Senior Counsel appearing on behalf of the State has contended that there was allegations of serious financial irregularities against the petitioner. The petitioner was the Chairman of the Committee and the Committee had made recommendations to award the contract in favour of Jagran Solutions. That institution was not eligible for award of contract in terms of tender notice. This fact has been considered by the disciplinary authority and the order passed by the disciplinary authority is in accordance with law. An opportunity of hearing was accorded to the petitioner before passing the order of punishment. This Court cannot interfere and re-appreciate the findings

of facts recorded by the disciplinary authority. The Court has limited jurisdiction in disciplinary matters in exercise of powers under Article 226 of the Constitution. In support of his contentions, the learned Senior Counsel relied on the following judgments:

1. *R.R. Parekh vs High Court of Gujarat,* (2016) 14 SCC 1;

2. *Indian Oil Corporation & Ltd. vs Ashok Kumar Arora,* (1997) 3 SCC 72;

3. *Bank of India vs. Degala Suryanarayan,* (1999) 5 SCC 762;

4. *State of UP vs Man Mohan Sinha and anr,* (2009) 3 SCC 310;

5. *State of Rajasthan vs M. C. Mehta,* (1998) 3 SCC 385;

6. *S.B. Bhargava vs State of MP,* 2011 (4) MPLJ 477;

7. *Food Corporation of India vs Padmakumar Bhuvan,* 1999 SCC (L&S) 620 and

8. *Allahabad Bank and others vs. Krishna Narayan Tewari,* (2017) 2 SCC 308.

14. Admitted facts of the case are, as mentioned in this order, that the petitioner was subjected to a departmental inquiry. The Inquiry Commissioner comprising senior Judge of District and Sessions Judge level did not find the charges proved against the petitioner and exonerated him from the charges. Thereafter, on the advise of Public Service Commission, a show cause notice was issued to the petitioner because the Department has held that the petitioner was guilty for misconduct. It is mentioned in the impugned order of dismissal from service that the petitioner was not present when the opportunity of hearing was accorded to him. Neither he filed reply. Hence, the matter was proceeded *exparte* and the disciplinary authority decided to award punishment of dismissal from service against the petitioner and ordered recovery of an amount of Rs. 8,58,42,035/- from the petitioner.

15. Rule 15 of the Rules of 1966 prescribes action on the inquiry report. Rule 15(2) prescribes proceedings if disciplinary authority disagrees with the findings of the inquiring authority on any article of charge. The relevant rule i.e. Rule 15(1) and (2) of the Rules of 1966 reads as under:

"15. Action on the inquiry report.-(1) The disciplinary

authority if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiry authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 14 as for as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."

16. The Hon'ble Supreme Court in the matter of *Yoginath D. Bagde vs. State of Maharashtra and another,* AIR 1999 SC 3734 has considered the procedure which is to be adopted by the discipinary authority in case if it disagrees with the findings recorded by the inquiring authority. In the aforesaid judgment, the Hon'ble Supreme Court has considered Rule 9(2) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This Rule 9(2) is *para materia* to Rule 15(2) of the Rules of 1966 as mentioned above in the order. The Apex Court in the aforesaid judgment has considered the Constitution Bench of the Apex Court and has held as under:

"39. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges levelled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of ***Punjab National Bank*** *(AIR 1998 SC 2713) (supra) in which it had been categorically provided, following earlier decisions, that if the Disciplinary Authority does not agree with the findings of*

the Enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the Disciplinary Authority that the findings already recorded by the Enquiry Officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case."

17. The Constitution Bench of the Apex Court in The *State of Assam and another vs Bimal Kumar Pandit,* AIR 1963 SC 1612 has considered the same question and held as under:

(8) We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but, the dismissing authority disagrees with the said findings and proceeds to issue the notice under Art. 311(2). In such a case, it would obviously be necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all. ..."

18. The principle of law laid down by the Apex Court is that if the disciplinary authority disagrees with the findings of inquiring authority then it has to issue a show cause notice to the delinquent employee mentioning the facts that why it disagrees with the findings recorded by the inquiring authority and why the aforesaid findings be not made absolute. In the present case, no such notice was issued to the petitioner. The notice dated 12.06.2014 mentions that why the punishment of dismissal from service be not imposed against the petitioner and why an amount of Rs.8,58,42,035/- be not ordered to be recovered from the petitioner. Hence, the procedure adopted by the disciplinary authority is contrary to law and violative of Article 311(2) of the Constitution.

19. In regard to merits of the case, it is a fact that the Division Bench of this Court has quashed the cancellation of award of contract in favour of Jagran Solutions. The Division Bench has specifically held in para 6, as quoted above in the order, that Jagran Solutions was affiliated with Jagran Prakashan Ltd. and it was having the requisite qualification. There was a substantial compliance of the tender conditions. The facts and circumstances of the case do not warrant any interference as to the fulfillment of eligibility criteria or allegations made against the petitioner /Jagran Solutions. These findings have become final. No review petition was filed by the State challenging the aforesaid findings. A decision can not be taken in a departmental proceedings contrary to the decision taken by the Division Bench of this High Court in judicial proceedings. This is not the case of the respondents that the order passed by the Division Bench of this High Court in W.P. No.8163/2008 or W.P. No. 364/2009 was set aside in any other proceedings.

20. The Inquiry Commissioner in its report dated 10.06.2013 after appreciation of evidence has held that there is no evidence to hold the petitioner guilty for the charge of misconduct and exonerated him from the charges. Before the Inquiry Officer, the Department produced four witnesses i.e. Rakesh Munshi, Dr. Rajeev Shrivastava, Dr. M.K. Joshi and Mr. Prakash Jangade and produced 13 documents Ex.P/1 to Ex.P/13. The petitioner denied the charges and produced three documents Ex.D/1 to Ex.D/3. The Inquiry Commissioner has held that no meeting was held on 12.07.2007. The Inquiry Commissioner further held that the Committee did not recommend award of contract of 22 blocks where single tender were received. The Committee had taken the decision cumulatively. The Inquiry Officer also recorded statement of Dr. Rajeev Shrivastava, who deposed that as per the document available on record Jagran Solutions was a sister concern of Jagran Prakashan Ltd., which was a registered society. The Committee in its meeting held on 06.08.2007 examined the documents and upheld the contention. It is further observed by the Inquiry Commissioner that after perusal of the documents, the Committee observed that Jagran Solutions had requisite qualifications and the Commissioner, Principal Secretary and the Hon'ble Minister had approved the decision in view of the order passed by the High Court and the cancellation of award of contract in favour of Jagran Solutions was withdrawn and the contract was continued. The Negotiation Committee, which negotiated the rates with Jagran Solutions was headed by Smt. Alka Upadhyay and the Members of the Committee were K.K. Shukla, Omprakash Panthi. On the

recommendations of the Negotiation Committee the work orders were issued and the act was affirmed by the Commissioner Health, Principal Secretary and the Hon'ble Minister. The petitioner was not involved in the process and as per the statement of Mr. M.K. Joshi in the proceedings, Jagran Solutions was accepted as registered society and the meeting was attended by Dr. K.K. Shukla, Mr. Hafizurrehman and others and they had not objected, it was the cumulative decision, hence, the petitioner could not be held responsible. The Inquiry Commissioner analyzed the evidence of Mr. M.K. Joshi and thereafter, upheld that the petitioner was not responsible for the act.

21. In the show cause notice issued to the petitioner, it is held that the report of the Inquiry Commissioner and the documents were considered by the department and the department has held the petitioner guilty for misconduct. It is nowhere mentioned in the show cause notice that on what grounds the department had disagreed with the findings recorded by the Inquiry Commissioner. Nowhere in this show cause notice it is mentioned that the department has independently reconsidered or re-appreciated the evidence of the witnesses produced before the inquiring authority or the documents produced before the Inquiry Commissioner. Simply, it is mentioned that the Jagran Solutions was not competent for award of contract becuase it did not fulfill the eligibility criteria. There is no mention in the show cause notice that the Department has taken into consideration the order passed by this Court in the writ petitions.

22. The Apex Court in the matter of *Indian Oil Corporation Ltd. And another vs. Ashok Kumar Arora,* (1997) 3 SCC 72 has considered the power of the High Court to interfere with the findings recorded in departmental inquiry after considering earlier judgments on this point and held as under:

> *"20. At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee. There is a catena of*

judgments of this Court which had settled the law on this topic and it is not necessary to refer to all these decisions. Suffice it to refer to a few decisions of this Court on this topic viz. ***State of A.P. v. S. Sree Rama Rao****, AIR 1963 SC 1723,* ***State of A.P. v. Chitra Venkata Rao*** *(1975) 2 SCC 557,* ***Corpn. of the City of Nagpur v. Ramchandra*** *(1981) 2 SCC 714 and* ***Nelson Motis v. Union of India*** *(1992) 4 SCC 711."*

23. The Hon'ble Apex Court in the matter of *Allahabad Bank and others vs. Krishna Narayan Tewari,* (2017) 2 SCC 308 has again considered the power of the High Court in the inquiry matters:

"7. We have given our anxious consideration to the submissions at the bar. It is true that a writ court is very slow in interfering with the findings of facts recorded by a Departmental Authority on the basis of evidence available on record. But it is equally true that in a case where the Disciplinary Authority records a finding that is unsupported by any evidence whatsoever or a finding which no reasonable person could have arrived at, the writ court would be justified if not duty bound to examine the matter and grant relief in appropriate cases. The writ court will certainly interfere with disciplinary enquiry or the resultant orders passed by the competent authority on that basis if the enquiry itself was vitiated on account of violation of principles of natural justice, as is alleged to be the position in the present case. Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent's case that the enquiry was conducted without giving a fair and reasonable opportunity for leading evidence in defense has not been effectively rebutted by the appellant. More importantly the

Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority. All told the Enquiry Officer, the Disciplinary Authority and the Appellate Authority have faltered in the discharge of their duties resulting in miscarriage of justice. The High Court was in that view right in interfering with the orders passed by the Disciplinary Authority and the Appellate Authority.

8. *There is no quarrel with the proposition that in cases where the High Court finds the enquiry to be deficient either procedurally or otherwise the proper course always is to remand the matter back to the concerned authority to redo the same afresh. That course could have been followed even in the present case. The matter could be remanded back to the Disciplinary Authority or to the Enquiry Officer for a proper enquiry and a fresh report and order. But that course may not have been the only course open in a given situation. There may be situations where because of a long time lag or such other supervening circumstances the writ court considers it unfair, harsh or otherwise unnecessary to direct a fresh enquiry or fresh order by the competent authority. That is precisely what the High Court has done in the case at hand."*

24. The Hon'ble Apex Court further in another case i.e. in the matter of *R.P. Parekh vs High Court of Gujarat and another,* (2016) 14 SCC 1 has considered the power of the High Court to interfere in disciplinary inquiry matters as under:

*"**20.** A disciplinary inquiry, it is well settled, is not governed by the strict rules of evidence which govern a criminal trial. A charge of misconduct in a disciplinary proceeding has to be established on a preponderance of*

probabilities. The High Court while exercising its power of judicial review under Article 226 has to determine as to whether the charge of misconduct stands established with reference to some legally acceptable evidence. The High Court would not interfere unless the findings are found to be perverse. Unless it is a case of no evidence, the High Court would not exercise its jurisdiction under Article 226. If there is some legal evidence to hold that a charge of misconduct is proved, the sufficiency of the evidence would not fall for re-appreciation or re- evaluation before the High Court. Applying these tests, it is not possible to fault the decision of the Division Bench of the Gujarat High Court on the charge of misconduct. The charge of misconduct was established in disciplinary Inquiry 15 of 2000."

25. The principle of law is that the High Court can interefer in the disciplinary matter if the findings recorded by the disciplinary authority are perverse or its a case of no evidence or there is violation of natural justice or rule.

26. In the present case, as held earlier, there is violation of Article 311 (2) of the Constitution because no show cause notice was issued to the petitioner at the time when the Department disagreed with the findings recorded by the Inquiry Officer. The show cause notice issued to the petitioner is that why punishment of dismissal from service and recovery of an amount of Rs.8,58,42,035/- be not imposed against the petitioner. Hence, the action is in violation of Article 311(2) of the Constitution as held by the Apex Court in the case of *Indian Oil Corporation* (Supra). The disciplinary authority did not record that the findings recorded by the Inquiry Commissioner are perverse. Apart from this, the disciplinary authority did not consider the order of the Division Bench of this Court in which it has been held that M/s Jagran Solutions fulfills the terms and conditions for award of contract and the cancellation of contract in favour of M/s Jagran Solutions quashed. The disciplinary authority did not consider the fact that the petitioner was Chairman of the Committee comprising other persons and the decision was taken by various authorities and why the petitioner alone is responsible for the act. Apart from this the disciplinary authority proceeded *exparte* against the petitioner. Hence, the decision of the disciplinary authority is based on no evidence rather it is contrary to the decision taken by the Division Bench of the High Court and without any

evidence.

27. The question of award of contract was also referred to the Lokayukta Organization in inquiry and it is an admitted fact that the Lokayukta Organization did not find any irregularity and closed the inquiry against the petitioner; neither any criminal case has been registered against the petitioner.

28. The disciplinary authority also ordered recovery from the petitioner the amount which was paid to Jagran Solutions in terms of the contract. The contract was awarded to the institution. The High Court quashed termination of contract. Thereafter, the institution i.e. Jagran Solutions completed the contract. The payment was made by different authorities i.e. Chief Medical and Health Officer of the concerned district. This is not a case that the petitioner received any amount.

29. Rule 10 (iii) of the Rules of 1966 prescribes recovery from the pay, which is to be imposed on a Government servant; it reads as under:

> *"**10 (iii).** recovery from his pay of the whole or part of any pecuniary loss cause by him to the Government by negligence or breach of order;"*

It mentions that the recovery can be made from employee if any pecuniary loss caused by him to the Government by negligence or breach of order. In the present case, no pecuniary loss was caused to the Government due to the act of the petitioner. The contract which was awarded to Jagran Solutions was terminated. Thereafter, Hon'ble High Court quashed the termination order. Hence, the contract was continued and Jagran Solutions performed the work. In such situation, there is no question that due to the act of the petitioner any pecuniary loss was caused to the Government. Consequently, the order of dismissal from service and the order of recovery of disciplinary authority are contrary to law.

30. The petition filed by the petitioner is hereby allowed. The impugned order dated 22.11.2014 (Annexure-P/25) passed by the disciplinary authority and the order dated 24.08.2015 (Annexure- P/29) passed by the appellate authority are hereby quashed. The petitioner be reinstated in service forthwith with backwages.

31. No order as to costs.

Petition allowed.

I.L.R. [2017] M.P., 2192
APPELLATE CIVIL
Before Mr. Justice Vivek Rusia
M.A. No. 1998/2016 (Indore) decided on 11 July, 2017

HARIRAM ...Appellant
Vs.
JAT SEEDS GREEDING & WAREHOUSING ...Respondent

A. Civil Procedure Code (5 of 1908), Order 43 Rule 1(a) and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 17 & 34 –Maintainability of Suit – Jurisdiction of Civil Court **– Suit for specific performance, permanent injunction and damages by Appellant/Plaintiff – Relief against bank was also claimed which was later on deleted vide amendment – Suit returned to plaintiff on the ground that it is not maintainable u/S 34 of the Act of 2002 – Challenge to – Held – Bank sold the suit property to defendant u/S 13(4) of the Act of 2002 for which appellant was aggrieved, he ought to have filed an appeal u/S 17 of the Act of 2002 – In the instant case, relief clause against bank has been deleted by appellant vide amendment in the suit, he confined his suit against defendant only, for specific performance of agreement – Bar u/S 34 of the Act of 2002 would not apply – Suit would be maintainable – Appeal allowed. (Paras 14 to 17, 23 & 24)**

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 43 नियम 1(ए) एवं वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 17 व 34 – वाद की पोषणीयता – सिविल न्यायालय की अधिकारिता – अपीलार्थी/वादी द्वारा विनिर्दिष्ट पालन, स्थायी व्यादेश एवं क्षतियों हेतु वाद – बैंक के विरूद्ध अनुतोष का दावा भी किया गया जो कि बाद में संशोधन के माध्यम से हटा दिया गया था – वादी को इस आधार पर वाद वापस किया गया कि वह 2002 के अधिनियम की धारा 34 के अंतर्गत पोषणीय नहीं है – को चुनौती – अभिनिर्धारित – बैंक ने 2002 के अधिनियम की धारा 13(4) के अंतर्गत प्रतिवादी को वाद संपत्ति का विक्रय कर दिया जिसके लिए अपीलार्थी व्यथित था, उसे 2002 के अधिनियम की धारा 17 के अंतर्गत अपील प्रस्तुत करनी चाहिए थी – वर्तमान प्रकरण में, अपीलार्थी द्वारा वाद में संशोधन के माध्यम से बैंक के विरूद्ध अनुतोष का खंड हटा दिया गया है, उसने केवल प्रतिवादी के विरूद्ध, करार के विनिर्दिष्ट पालन हेतु अपने वाद को सीमित रखा है– 2002 के अधिनियम की धारा 34 के अंतर्गत वर्जन लागू नहीं होगा – वाद पोषणीय होगा –

अपील मंजूर।

B. Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 34 – **Held – Section 34 clearly prohibits that no Civil Court shall have jurisdiction to entertain any suit or proceeding for which Debt Recovery Tribunal is empowered and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance to the power conferred under the Act.** **(Para 5)**

ख. वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 34 – अभिनिर्धारित – धारा 34 स्पष्ट रूप से प्रतिषिद्ध करती कि किसी सिविल न्यायालय को ऐसे किसी भी वाद या कार्यवाही को ग्रहण करने की अधिकारिता नहीं हैं जिसके लिए ऋण वसूली अधिकरण सशक्त है तथा किसी न्यायालय या अन्य प्राधिकारी द्वारा अधिनियम के अंतर्गत प्रदत्त की शक्ति के अनुसरण में की गई कार्रवाई या की जाने वाली कार्रवाई के संबंध में कोई व्यादेश प्रदान नहीं किया जाएगा।

Cases referred :

(2009) 8 SCC 646, (2009) 8 SCC 366, (2014) 1 SCC 479, (2017) 1 SCC 622, (2017) 1 SCC 53.

Sameer Athawale, for the appellant.
Abhinav Malhotra, for the respondent.

ORDER

VIVEK RUSIA, J. :- THE appellant/plaintiff has filed the present appeal under Order XLIII Rule 1 (a) of CPC against the order dated 25.10.2016 passed in Civil Suit No.16-A/2014 by Additional District Judge, Dharampuri, District Dhar by which the plaint has been returned under Order VII Rule 10 of CPC while deciding the Issue No.8 as preliminary issue.

2. Facts of the case, in short, for disposal of this appeal are as under :-

(a) The appellant/plaintiff has filed the suit for specific performance, permanent injunction and damages against the Respondent/defendant. As per the pleading in the plaint, the ICICI Bank, Indore has sold the agricultural land of Survey No.91/1/1 area 0.582 hectares, Survey No.91/1/2 area 0.292 hectares, Survey No.91/1/3 area 0.292 hectares and Survey No.91/2 area 1.265 hectares; total 2.431 hectares of Village Guljhara, Dhamnod, Tehsil

Dharampuri, District Dhar mortgaged as security to recover his secured debts on 22.02.2011. The defendant participated in the auction proceedings and was declared as successful bidder. The Bank has agreed to issue sale certificate in his favor for the above the land in total consideration of Rs.3.00 crores. Initially the defendant has deposited Rs.80.00 lacs with the bank and he was required to deposit the balance amount within the time given by the Bank.

(b) It is further pleaded that the defendant could not arrange the money to deposit the balance amount, therefore, he gave an offer to the plaintiff to become co-purchaser of the said land. Since the plaintiff and the defendant were having cordial relation and he was having faith on the defendant, therefore, he has accepted the offer and agreed to invest Rs.1.5 crores in the said transaction. The defendant firm has inducted the plaintiff as a Partner by way of Partnership Agreement dated 23.08.2012 and at that time the plaintiff has paid the amount of Rs.5.00 lacs vide Cheque No.003382 dated 22.08.2012. Thereafter he has also paid the amount of Rs.70.00 lacs vide Cheque No.20359 dated 24.12.2012 and an agreement was executed between the plaintiff and the defendant on 11.12.2012. Thereafter the plaintiff has paid the balance amount up to 21.12.2012 to the defendant.

(c) That by of the agreement dated 11.12.2012, it was agreed between them that they shall jointly pay the sale amount, taxes and other liabilities to the Bank and thereafter bank shall issue sale certificate in the name of Defendant Firm. It has further been agreed that they shall jointly develop the land and after approval by the Town and Country Planning, they would sale the plots and share the loss and profit in the ratio of 50 – 50%.

(d) The plaintiff has further pleaded in para 23 of the plaint that he heard certain whisper in the market that the defendant is getting the entire land transferred in his name from the Bank. When he tried to inquire from him, the defendant did not give the satisfactory reply, therefore, the plaintiff has apprehended that the intention of the defendant is not *bona-fide*. Therefore, he gave a notice through his counsel on 14.07.2014. When the defendant did not give any satisfactory reply then plaintiff served him legal notice and thereafter filed the present suit in the month of September, 2014 seeking the relief of specific performance of agreements dated 23.08.2012 and 11.12.2012, permanent injunction and damages along with an application under Order XXXIX Rule 1 & 2 of CPC for temporary injunction.

(e) The defendant filed the written statement as well as reply to the application under Order XXXIX Rule 1 & 2 of CPC. In the written statement he has stated that he took the money as a loan from the plaintiff and he intent to return to him but he has unnecessary filed the suit with *mala-fide* intention to harass him. He is ready and willing to refund the balance amount which he took as a loan from the plaintiff. The Bank has issued a Sale Certificate in his favor, therefore, the ICICI Bank is a necessary party in the plaint. The agreement dated 23.08.2012 is not registered deed therefore, no decree of specific performance can be granted. It has also been pleaded that under Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in brief "the SARFAESI Act, 2002"], the present suit is not maintainable as the jurisdiction of Civil Court is barred.

(f) Vide order dated 29.09.2014 the Trial Court has directed the parties to maintain the *status-quo*, . Vide order dated 04.12.2014, the Trial Court has finally disposed of the application under Order XXXIX Rule 1 & 2 of CPC in favour of the plaintiff. The defendant filed Misc. Appeal before this Court has Misc. Appeal No.124 of 2015. By order dated 09.08.2016 this Court has declined to interfere with the order of temporary injunction and dismissed the Misc. Appeal with the direction to the Trial Court to decide the suit within a period of four months.

(g) On the basis of pleadings, by order dated 27.01.2015 the Trial Court has framed 9 issues for adjudication and directed the parties to argue on Issue Nos.7-अ, 7-ब and 8 for deciding them as a preliminary issues. For ready reference, the issues framed by the Trial Court are reproduced below :-

" –:: वाद प्रश्न ::–

(आज दिनांक 27/01/2015 को निर्मित)

1– क्या प्रतिवादी दिनांक 23.08.2012 को भागीदारी अनुबंध पत्र एवं दिनांक 11.12.2012 को अनुबंध पत्र निष्पादित कर वादी को वादग्रस्त भूमियों के संबंध में अपना भागीदार होना स्वीकार किया है ?

2– क्या क्या वादी वादग्रस्त भूमियों के संबंध में भागीदार के हैसियत से प्रतिवादी को 1,63,00,000/ रूपये प्रदान किया है ?

3– क्या वादी वादग्रस्त भूमियों के कय विकय से होने वाले

हानि एवं लाभ में आधे अंश तक का हकदार है ?

4– क्या वादी वादपत्र के कंडिका 30–अ में याचित आज्ञापक व्यादेश एवं कंडिका 30 ब में याचित स्थाई निषेधाज्ञा के आज्ञप्ति का अधिकारी है ?

5– क्या वादी, प्रतिवादी से क्षतिपूर्ति राशि के रूप में 50,00,000/ रूपये प्राप्त करने का अधिकारी है ?

6– क्या वादी भागीदारी फर्म बनने तक स्वयं द्वारा प्रतिवादी को दिये गये रूपयों पर डेढ़ रूपये सेकडा के दर से नुकसानी प्राप्त करने का अधिकारी है?

7–अ क्या आय.सी.आय.सी.आय. बैंक प्रकरण में आवश्यक पक्षकार है?

7–ब यदि हॉ तो प्रभाव ?

8– क्या यह वाद भागीदारी अधिनियम एवं सरफेसी अधिनियम के प्रावधानों के अनुसार प्रचलन योग्य नहीं है ?

9– सहायता एवं वाद व्यय।"

(h) Since during pendency of the plaint, the ICICI Bank has issued sale certificate dated 19.11.2014 in favor of the defendant, therefore, the plaintiff filed an application under Order VI Rule 17 of CPC seeking amendment in para 27 and relief clause 30 (a) and (b). By way of amendment, the plaintiff has sought the relief that the defendant be restrained not to change the nature of the suit property and the sentence ***"that the defendant be restrained not to execute the sale-deed executed in his name alone"*** be deleted.

(i) The said application was opposed by the defendant by filing a reply but vide order dated 29.09.2016, the learned Trial Court has allowed the application and the plaintiff has carried out the amendment.

(j) The plaintiff has also filed an application on 26.09.2016 for deleting the Issue Nos.7-अ and 7-ब. Vide order dated 25.10.2016 the said application has also been allowed and both the issues were directed to be deleted .The Trial Court has further decided that Issue No.8 and held that under Section 34 of the SARFAESI Act, 2002 the civil suit is not maintainable and returned the plaint to the plaintiff under the provisions of Order VII Rule 10 of CPC . Hence, the present appeal before this Court.

3. With the consent of the parties I have heard the appeal finally.

4. Shri Sameer Athawale, learned counsel appearing on behalf of the

appellant/plaintiff put forwarded that the learned additional District Judge has wrongly held that the suit is barred under Section 34 of the SARFAESI Act, 2002. The plaintiff has filed the suit for specific performance of agreements dated 23.08.2012 and 11.12.2012 and sought the relief of permanent injunction that the defendant be restrained not to alienate the suit property. He further submitted that the plaintiff has not impleaded the Bank as a defendant because he was not aggrieved by any measures taken by the Bank under section 13 (4) of SARFAESI Act, 2002 and he has not sought any relief against the Bank. Therefore, the bar Section 34 of the SARFAESI Act, 2002 would not apply to the present suit. In support of his contention, he has placed reliance over the judgment of apex Court in the case of *Nahar Industrial Enterprises Limited v/s Hong Kong and Shanghai Banking Corporation* [(2009) 8 SCC 646] in which from para 105 to 118, the apex Court has held that exclusion of jurisdiction of Civil Court must be expressly barred otherwise the Civil Court is having jurisdiction to determine all dispute of civil nature between the parties.

5. Shri Abhinav Malhotra, learned counsel appearing on behalf of the Respondent/defendant has vehemently opposed the prayer of appellant by submitting that the primarily reliefs sought by the plaintiff was in respect of seeking direction to the ICICI Bank not to execute the sale-deed in favour of the defendant alone and after the amendment he is virtually seeking relief for cancellation of the registered sale- certificate dated 19.11.2014 executed between the Bank and the defendant therefore, the bar created under Section 34 of the SARFAESI Act, 2002 would apply. That section 34 of the SARFAESI Act, 2002 clearly prohibits that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal is empowered and no injunction shall be granted by any court or any action taken or to be taken in pursuance to the power conferred under this Act. He has further drawn attention of this Court to sub-rules (1) and (2) of Rule 9 of the Security Interest (Enforcement) Rules, 2002. The Bank has sold the suit property to the defendant by taking measures under Section 13 (4) of the SARFAESI Act, 2002 and the plaintiff is aggrieved by the aforesaid sale in favour of the defendant. Therefore, he ought to have filed an appeal under Section 17 of the SARFAESI Act, 2002 because he comes under the category of "any person" who is aggrieved by the measures referred to in sub-section (4) of Section 13 of the SARFAESI Act, 2002.

6. In support of his contention, he has further placed reliance over the judgments of apex Court in the case of *Authorised Officer, Indian Overseas Bank v/s Ashok Saw Mill* [(2009) 8 SCC 366]; *Jagdish Singh v/s Heeralal* [(2014) 1 SCC 479]; *Robust Hotels Private Limited v/s EIH Limited* [(2017) 1 SCC 622]; and finally *State Bank of Patiala v/s Mukesh Jain* [(2017) 1 SCC 53].

ORDER

7. The question of law involved in this appeal is whether the suit filed by the plaintiff is barred under Section 34 of the SARFAESI Act, 2002 and whether the Civil Court is not having jurisdiction by virtue of bar created under section 34 of the SARFAESI Act, 2002 to entertain the suit filed by the plaintiff in which he sought the relief of specific performance , permanent injunction and damages against the defendant.

8. The SARFAESI Act, 2002 was enacted by the Central Government with the intention to give power to the bank and financial institutions to take possession of the security and to sale them without intervention of the Court. The act came into force on 21st June, 2002. Under Section 13 of the SARFAESI Act, 2002, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002 (in shor (sic:short) Rules 2002) . Where any borrower, who is under a liability to repay debt or any installment makes any default, then the secured creditor shall be entitled to exercise all or any of the rights conferred under sub-section (4) of Section 13 of the SARFAESI Act, 2002 to recover his secured debts. Under clause (a) of sub-section (4) of Section 13 of the SARFAESI Act, 2002, the secured creditor may take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured assets. The complete procedure is given under Rule 8 if the secured assets is an immovable property. Under the provisions of Rule 8 of Rules 2002, the authorised officer shall take steps to sale the secured assets and realise the debt.

9. That under sub-clause (1) of Rule 9 of the Rules, 2002, no sale of immovable property shall take place before the expiry of thirty days from the date on which the public notice of sale is published. The sale shall be confirmed in favour of the purchaser who has offered the highest sale price of his bid.

Under sub-clause (3) of Rule 9 of the Rules, 2002, on every sale of immovable property, a purchaser shall immediately pay a deposit of twenty-five per cent of the amount of sale price and the balance amount shall be paid on or before fifteenth day of confirmation of sale and if the entire amount is paid, the certificate would be issued under sub-clause (6) of Rule 9 of the Rules, 2002.

10. After completing the sale process, the sale certificate and delivery of possession would be issued under Rule 9 of Rules, 2002. Under sub rule(9) of Rule 9 of Rules, 2002, the authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (6). Under sub rule (10) of Rule 9 of Rules, 2002, the said certificate shall specifically mention that the purchaser has purchased the immovable secured asset free from any encumbrances. That sub-rule (9) of Rule 9 of Rules, 2002 is reproduced below :-

> **"(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above."**

11. In the present case, the plaintiff came into the picture when the defendant was declared as successful bidder and deposited the 25% of the sale amount. Thereafter he was not in a position to deposit the balance amount. According to the plaintiff, he gave an offer to him to become a Partner in his Firm and the sale certificate would issued jointly with him and thereafter two agreements with various conditions were executed between them. According to the plaintiff, he gave the amount of Rs.1.5 crores to the defendant which he paid to the Bank and also paid the other taxes. Thereafter the plaintiff came to know that the defendant is going to get the sale certificate issued in his name alone. Therefore, he filed the suit for specific performance and injunction.

12. Initially the plaintiff claimed the relief that the defendant be restrained not to get the sale-deed registered from the ICICI Bank in his name alone or in the name of some other persons, apart from other reliefs. The unamended relief (a) and (b) are reproduced below :-

> "अ. वादी के पक्ष में प्रतिवादी के विरूद्ध इस आशय का करारपूर्ति का जय पत्र पारित किया जावे कि प्रतिवादी भागीदारी अनुबंध लेख दि. 23–8–2012 एवं अनुबंध लेख दिनांक 11–12–2012 के परिपालन में वादी को 1/2 अंश के भागीदार के रूप में रखतें

हुऐ विधिवत् भागीदार फर्म का निर्माण करके उक्त भागीदारी फर्म के नाम से किसी राष्ट्रीयकृत बैंक में खाता खुलवा कर उसमें प्रतिवादी अपने पास वादी की अमानत बतौर रखे हुऐ रूपये 13,00,000/– अक्षरी रूपये तेरह लाख जमा करतें उसमें अपनी ओर से समान राशि मिलाकर, नीलामकर्ता बैंक, आय. सी.आय.सी. आय. बैंक छोटी खजरानी इन्दौर से अनुबंधित भूमि ग्राम गुलझरा, धामनोद तह. धरमपुरी जिला धार की नगर पालिका सीमा में स्थित परिवर्तित भूमि ख.नं. 91/1/1 रकबा हे. 0.582, ख.नं. 91/1/2 रकबा हे. 0.292, ख.नं. 91/1/3 रकबा हे. 0.292, व ख.नं. 91/2 रकबा हे. 1.265 कुल ख.नं. 4 कुल रकबा हे. 2.431 एवं उस पर निर्मित कुल संरचना का पंजीकृत विकय पत्र पर का निष्पादन उक्त भागीदारी फर्म के नाम से करवा कर उसका कब्जा उक्त भागीदारी फर्म की ओर से प्राप्त करके उक्त भागीदार फर्म के नाम से प्रस्तावित नक्शा नं. 12 अनुसार अथवा उसके विधिक संशोधन अनुसार वादी के साथ समान खर्च से विधिवत् कॉलोनी की स्थापना कर उक्त भागीदारी फर्म के नाम से ही कॉलोनी के भूखंडो का विकय कर विकय पत्र का निष्पादन करतें विकय राशि को भागीदारी फर्म में जमा कर प्राप्त शुद्ध लाभ का समान अधिकार रखें एवं कॉलोनी विकसित कर भूखंडो के विकय में कोई व्यवहारिक या तकनीकी बाधा आवे तों अनुबंधित भूमियों में वादी का समान 1/2 हक्क अधिकार कब्जा होकर वह उसका विभाजन कराकर अपने स्वतंत्र नाम पर कराने का अधिकारी रहतें प्रतिवादी से उक्त दोनो अनुबंध पत्रों की शर्तों का पालन सुनिश्चित करें व करावे एवं प्रतिवादी द्वारा ऐसा न करने की दशा में न्यायालय के मार्फत अनुबंध पत्रों की शर्तों का पालन कराया जावें।

ब. वादी के पक्ष में प्रतिवादी के विरूद्ध इस आशय की स्थायी निषेधाज्ञा जारी की जावे कि प्रतिवादी भागीदारी अनुबंध लेख दि. 23–08–2012 एवं अनुबंध लेख दिनांक 11–12–2012 के अधीन रहते हुऐ ग्राम गुलझरा, धामनोद तह. धरमपुरी जिला धार की नगर पालिका सीमा में स्थित परिवर्तित भूमि ख.नं. 91/1/1 रकबा हे. 0.582, ख.नं. 91/1/2 रकबा हे. 0.292, ख.नं. 91/1/3 रकबा हे. 0.292, व ख.नं. 91/2 रकबा हे. 1.265 कुल ख.नं. 4 कुल रकबा हे. 2.431 के संबंध में आय.सी.आय.सी.आय. बैंक शाखा छोटी खजरानी इन्दौर से अपने अकेले व्यक्तिगत नाम पर अथवा अन्य किसी भी के नाम से कोई भी पंजीकृत विकय पत्र का निष्पादन न करवायें और उन भूमियों के संबंध में किसी भी प्रकार का बिक्री, गिरवी, दान अथवा अन्यत्र अंतरण संबंधी व्यवहार न करे व न करावें।"

13. After filing of the suit when the defendant got executed the registered sale-deed in his favour and the Bank has issued the sale certificate dated 12th November, 2014, the plaintiff filed an application seeking amendment in the plaint and in the relief clause. Para 3, 4 and 5 of the application are reproduced below :-

> " 3. यह कि वादी अपने वादपत्र पैरा 27 के बाद नया पैरा 27 (अ) निम्नानुसार जोडना चाहता है–
>
> 27. अ. यह कि वाद की लंबित अवस्था में प्रतिवादी द्वारा वादी के वाद को निष्फल करने की बदनियती से दिनांक 19.11.14 को आय.सी.आय.सी.आय. बैंक से दाविया भूमियों का पंजीकृत विकय प्रमाण पत्र अपने पक्ष में करवा लिया।
>
> 4. यह कि वादी अपने वाद के सहायता पैरा 30अ. की बारहवीं लाईन में "पर निर्मीत कुल संरचना का" के बाद "पंजीकृत विकय पत्र का निष्पादन उक्त भागीदारी फर्म के नाम से करवाकर उसका कब्जा उक्त भागीदारी फर्म की ओर से प्राप्त करके" वाक्य कम उसके स्थान पर "प्रकरण की लंबित अवस्था में दिनांक 19.11.14 को जो पंजीकृत विकय प्रमाण पत्र का निष्पादन कराया है उक्त भूमियों का संपूर्ण हक अधिकार एवं कब्जा उक्त भागीदारी फर्म में समाहित करके" वाक्य जोडना चाहता है।
>
> 5. यह कि इसी संशोधन के प्रकाश में वादी अपने वाद के सहायता पैरा 30ब. की सातवीं लाईन में "आय.सी.आय.सी.आय. बैंक शाखा छोटी खजरानी से अपने अकेले व्यक्तिगत नाम पर अथवा अन्य किसी भी के नाम से" वाक्य को कम कर उसके स्थान पर "वादी की सहमति के बिना" वाक्य जोडना चाहता है। एवं इसी पैरा के अंत में "न करावे।" में पूर्ण विराम को हटाकर उसके बाद "एवं भूमि की भौतिक स्थिती में किसी भी प्रकार का स्थायी अथवा अस्थायी परिवर्तन न करे व करावे।" वाक्य जोडना चाहता है।"

14. By order dated 29.09.2016, the said amendment has been allowed. The effect of the aforesaid order would be that now the plaintiff is not claiming any relief to the effect that the Bank be directed not to execute the sale-deed in favour of the defendant alone. Now the plaintiff is claiming relief that the defendant be directed to transfer the entire right over the suit property into the Partnership Firm and further restrained not to change the nature of the property, either permanently or temporarily. The plaintiff has now confined

his suit only in respect of specific performance of agreement dated 23.08.2012 and 11.12.2012, permanent injunction and damages.

15. In view of the changed circumstances and amendment in the relief clause, whether the bar created under Section 34 of the SARFAESI Act, 2002 would operate against the plaintiff ? Section 34 of the SARFAESI Act, 2002 is reproduced below :-

> ***"34. Civil court not to have jurisdiction.--*** **No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)."**

16. Under Section 34 of the SARFAESI Act, 2002, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken in pursuance of any power conferred by or under this Act. Therefore, if any person including borrower is aggrieved by any action taken by secured creditor under the Act of the SARFAESI Act, 2002, then only the DRT and DART would be empowered to determine such action and if required shall issue an injunction. An appeal to the DRT and further appeal to the DART lies under Section 17 of the SARFAESI Act, 2002 if any person aggrieved by any measure referred to in sub-clause (4) of Section 13 of the SARFAESI Act, 2002 taken by the secured creditor.

17. Shri Sameer Athawale, learned counsel on behalf of the appellant has specifically argued that the plaintiff is not aggrieved by any measure referred to in sub-clause (4) of Section 13 of the SARFAESI Act, 2002. He has not claimed any relief against the Bank. He is seeking relief specific performance of agreement against the defendant. Even if any relief was there in the plaint against the Bank same has now been deleted. Therefore, the appellant/plaintiff being "any person" cannot said to be aggrieved by any of the measures referred to in sub-clause (4) of Section 13 of the SARFAESI Act, 2002.

18. In the case of *Authorised Officer, Indian Overseas Bank* (supra), the apex Court has held that the DRT is having jurisdiction to interfere with the action taken by the secured creditor even after the stage contemplated under Section 13 (4) of the SARFAESI Act, 2002. Shri Abhinav Malhotra, learned counsel on behalf of the Respondent/ defendant submitted the plaintiff/ appellant is also aggrieved by the action of the defendant after the stage contemplated under Section 13 (4) of the Act. Therefore, he is having remedy under Section 17 of the SARFAESI Act, 2002. In para 35 and 39, the apex Court has held the person should be aggrieved by the measures taken by the Bank under Section 13 (4) of the SARFAESI Act, 2002, then only he is having remedy under Section 17 of the SARFAESI Act, 2002. In the present case, the plaintiff has made clear that he is not aggrieved by the any measures taken by the Bank under Section 13(4) of the SARFAESI Act, 2002.

19. In *Jagdish Singh* (supra), the apex Court has again considered the scope of Section 34 of the SARFAESI Act, 2002 and held that the civil court jurisdiction is completely barred, so far as the "measures" taken by a secured creditor under sub-section (4) of Section 13 of the SARFAESI Act, 2002 against which an aggrieved person has a right of appeal before the DRT or the DART to determine as to whether there has been any illegality in the "measures" taken. In entire plaint, the plaintiff has not alleged any illegality in the measures taken by the ICICI Bank. Therefore, the jurisdiction of civil court is not completely barred for the plaintiff. (Emphasis supplied)

20. In *Robust Hotels Private Limited*(supra), the apex Court considered the scope of Section 9 of CPC and Section 34 of the SARFAESI Act, 2002 and has held that the jurisdiction of civil court barred only in respect of any matter in which the DRT and Appellate Tribunal is empowered under the Act. The bar of jurisdiction of civil court has to co-relate to these conditions. Para 33 of the order is reproduced below :-

> **"33. A perusal of Section 34 indicates that there is express bar of jurisdiction of the Civil Court to the following effect:**
>
> **"(i) Any suit or proceeding in respect of any matter in which Debt Recovery Tribunal or Appellate Tribunal is empowered by or under this Act to determine.**
>
> **(ii) Further, no injunction shall be granted by any**

Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993."

Thus the bar of jurisdiction of Civil Court has to correlate to the above mentioned conditions. For purposes of this case, we are of the view that this Court need not express any opinion as to whether suits filed by EIH were barred by Section 34 or not, since the issue are yet to be decided on merits and the appeal by Robust Hotels have been filed only against an interim order."

21. Therefore, in this case the apex Court has held that Section 34 of the SARFAESI Act, 2002 bars of jurisdiction of civil court only in respect of the power given to the DRT and DART.

22. In case of *State Bank of Patiala* (supra) the plaintiff filed the suit when the Bank has initiated proceedings under Section 13 (2) of the SARFAESI Act, 2002, therefore, the apex Court in this case of *State Bank of Patiala* (supra) has held that the suit is barred under Section 34 of the SARFAESI Act, 2002. But in this case the plaintiff, as stated above, is not aggrieved by any measures taken by the ICICI Bank under Section 34 of the SARFAESI Act, 2002.

23. In view of the above, when the plaintiff has amended his relief clause and the said amendment order has not been challenged by the defendant and the plaintiff is claiming relief only in respect of specific performance of the agreement, permanent injunction against the defendant with damages hence bar under Section 34 of the SARFAESI Act, 2002 would not apply.

24. In view of the statement made by Shri Sameer Athawale, the suit is confined only in respect of specific performance of agreement, permanent injunction and damages against the defendant only .Accordingly this appeal is hereby **allowed** and the impugned order dated 25.10.2016 is set-aside. The matter is remitted back to the Trial Court to decide the civil suit on its merit.. No order as to cost.

Appeal allowed.

I.L.R. [2017] M.P., 2205
APPELLATE CIVIL
Before Mr. Justice Sushil Kumar Palo
F.A. No. 395/2004 (Jabalpur) decided on 17 August, 2017

SHRI BANKE BIHARIJI BAZAR & ors. ...Appellants
Vs.
STATE OF M.P. & ors ...Respondents

A. Public Trusts Act, M.P. (30 of 1951), Sections 4, 5 & 8 – Declaration for Ownership/Title – Adverse Possession – Non participation in Evidence – Adverse Inference – **Held – Respondents claimed to be 'Pujari' of temple – 'Pujari' cannot claim ownership of property of temple, they will remain as 'Pujari' without any interest and title over property of temple – Respondents alternatively claimed that by virtue of adverse possession they have acquired the title, such claim itself is untenable – Claiming title on basis of ancestral property and at the same time claiming adverse possession, are mutually inconsistent – Further held – Non-entrance of respondents in witness box to prove their case as per their pleadings, are sufficient circumstances to draw an adverse inference against them – Properties mentioned at Serial No. 1 to 10 at para 11 of this judgment belong to Appellant/Trust – Appeal partly allowed. (Paras 35, 49, 51 & 63)**

क. लोक न्यास अधिनियम, म.प्र. (1951 का 30), धाराएँ 4, 5 व 8 – स्वामित्व/हक की घोषणा – प्रतिकूल कब्जा – साक्ष्य में सहभाग न लिया जाना – प्रतिकूल निष्कर्ष – अभिनिर्धारित – प्रत्यर्थीगण ने मंदिर के 'पुजारी' होने का दावा किया – 'पुजारी', मंदिर की सम्पत्ति के स्वामित्व का दावा नहीं कर सकते, वे मंदिर की सम्पत्ति पर बिना किसी हित या हक के 'पुजारी' बने रहेंगे – प्रत्यर्थीगण ने वैकल्पिक रूप से दावा किया कि प्रतिकूल कब्जे के द्वारा उन्होंने हक अर्जित किया है, उक्त दावा अपने आप में असमर्थनीय है – पैतृक सम्पत्ति के आधार पर हक का दावा करना और उसी समय प्रतिकूल कब्जे का दावा करना परस्पर असंगत है – आगे अभिनिर्धारित – प्रत्यर्थीगण द्वारा उनके अभिवचनों के अनुसार उनके प्रकरण को साबित करने हेतु साक्षी कठघरे में प्रवेश न करना, उनके विरूद्ध प्रतिकूल निष्कर्ष निकालने के लिए पर्याप्त परिस्थितियां है – इस निर्णय के कंडिका 11 के अनुक्रमांक 1 से 10 तक उल्लिखित सम्पत्तियां अपीलार्थी/न्यास की है – अपील अंशतः मंजूर।

B. Evidence Act (1 of 1872), Section 90 – 30 years Old

Document – Presumption **– Held – When a document is or purports to be more than 30 years old, if it be produced from proper custody, it may be presumed that signature and every other part of such document which purports to be in handwriting of any particular person, is in the person's handwriting and that it was duly executed and attested by the person by whom it purposes to be executed and attested – It is not necessary that signatures of attesting witnesses or of the scribe be proved – In the instant case, 30 yrs old documents produced from custody of authorities who in their official capacity keep the record, they are as good as public documents – Such document can be read as evidence.** **(Para 28)**

ख. साक्ष्य अधिनियम (1872 का 1), धारा 90 – 30 वर्ष पुराना दस्तावेज – उपधारणा – अभिनिर्धारित – जब एक दस्तावेज 30 वर्ष से अधिक पुराना है या तात्पर्यित है, यदि उसे समुचित अभिरक्षा से प्रस्तुत किया गया है, यह उपधारणा की जा सकती है कि उक्त दस्तावेज पर हस्ताक्षर एवं प्रत्येक अन्य भाग जो किसी विशिष्ट व्यक्ति के हस्तलेख में होना तात्पर्यित है, उसी व्यक्ति के हस्तलेख में है तथा यह कि वह उसी व्यक्ति द्वारा सम्यक रूप से निष्पादित एवं प्रमाणित है जिसके द्वारा निष्पादित एवं प्रमाणित होना तात्पर्यित है – यह आवश्यक नहीं कि प्रमाणक साक्षीगण या लेखक के हस्ताक्षरों को साबित किया जाए – वर्तमान प्रकरण में, उन प्राधिकारियों की अभिरक्षा से 30 वर्ष पुराने दस्तावेज प्रस्तुत किये गये जो उनकी शासकीय संक्षमता में अभिलेख रखते है, वह वस्तुतः सार्वजनिक दस्तावेजों जैसे हैं – उक्त दस्तावेज को साक्ष्य में पढ़ा जा सकता है।

Cases referred :

(2005) 1 SCC 457, (2004) 10 SCC 779, 2007 (3) MPHT 159, (2003) 8 SCC 745, (2003) 8 SCC 752, 1996 M.P.L.J. 772, AIR 1961 SC 1655, (2004) 10 SCC 779, 2006 (3) M.P.L.J. 112, AIR 2004 SC 4082, 1991 M.P.L.J. 768, AIR 1965 SC 1744.

R.P. Agrawal with *Sharad Gupta*, for the appellant.
Sharda Dubey, P.L. for the respondent No.1/State.
Avinash Zargar, for the respondents Nos.2 to 5.

JUDGMENT

Sushil Kumar Palo, J. :- This appeal has been preferred under Section 96 of the Code of Civil Procedure filed at the instance of the plaintiffs challenging the part of judgment and decree dated 26.04.2004 passed by 3rd Additional District Judge, Chhatarpur (M.P) in Civil Suit No. 16-A/2001,

wherein the learned trial Court allowed the civil suit partly with regard to some of the properties prayed for as the trust property.

2. Earlier, this Court decided the first appeal on 26.04.2010, wherein the appeal was partly allowed holding that the property mentioned at serial Nos. 1 to 10 belonged to the appellant trust.

3. Respondent No. 3(a)(b)(c) preferred Civil Appeal No. 8868/2013 before the Hon'ble Apex Court, decided on 27.09.2013. The Hon'ble Apex Court setting aside the judgment dated 26.04.2010 requested this High Court to decide the first appeal as earliest as possible, preferably, within a period of six months, after considering the cross-objections raised by the appellants, which could not be considered at the time of passing the judgment dated 26.04.2010.

4. On the above premises, this appeal is being decided after availing opportunity to both the parties.

5. During the course of the arguments, it was observed that the Civil Suit No. 82A/92 was pending before the 3rd Additional District Judge, Chhatarpur. Order-sheet from 26.10.1994 till 28.04.1997 show that the proceedings in the civil suit commenced before me as the Presiding Officer of the Court. Some part of the evidence also was recorded by me as the Presiding Officer of the Court. It was brought to the knowledge of the parties. Both the parties expressed that, as the Presiding Officer of the Court of 3rd Additional District Judge, Chhatarpur, only some part of proceedings has been conducted, but the civil suit was not decided by me finally. Parties expressed that they have no objection if the case be heard and decided by me.

6. The appellants filed the Civil Suit No. 16-A/2001 on 29.03.1973 challenging the order dated 04.10.1972 passed by the Registrar, Public Trust and for declaration that, the properties at Schedule-A and Schedule-B are the properties of the trust "Banke Bihari Ji," Bazar, Chhatarpur.

7. Learned Trial Court vide its judgment dated 26.04.2004 partially allowed the civil suit and modified the order of the Registrar, Public Trust, Chhatarpur dated 04.10.1972 and declared the property temple, shops and the idol and describing at paragraph 52 of the judgment to be in rectangular shape as the property of the trust.

8. Aggrieved by the above, the appellants have challenged the same in

the present appeal.

9. Briefly stated the facts giving rise to the civil suit are that, appellant No. 1 is "Banke Bihari Trust" situated at Bazar Chhatarpur. (Original appellant No. 2) - Buddhi Prakash Pahadiya was the disciple of the appellant No. 1. After the death of Buddhi Prakash Pahadiya, his LR's. have been impleaded as appellant Nos. 2(a) to 2(c). Deceased Buddhi Prakash Pahadiya filed an application before the Registrar, Public Trust, Chhatarpur for registration of the properties mentioned at Schedule-A as the properties of the trust. The Registrar of Public Trust, Chhatarpur vide order dated 04.10.1972 decided Case No. 2B-113/1963-1964 *"Budhi Prasad Pahadiya vs. Basant Lal Pandey"* and declared certain properties belonging to the Temple "Banke Bihari Ji" and refused to declare other properties to be the properties of the trust.

10. This led to filing of the civil suit for declaration on 29.03.1973 under Section 8 of the Public Trust Act, 1961, challenging the order of the Registrar, Public Trust whereby the Registrar had declared certain properties as the properties of the trust.

11. The learned Trial Court held that, the properties shown in D. S. F. E. (which includes the shop rented to Ramsahay, shop rented to the Gutpa at entrance of the temple, shop rented to the Hamid Ali, shop rented to Rambharose, entrance to the east and entrance to the north then "Thakur Ji Ka Rasoi Ghar." Temple of Banke Bihari Ji, Temple of Hanumaan ji etc. in the Map of Exhibit P-1 are the properties of the temple and at the expenses of the respondent, the same be made rectangular. The details of the property are as under :-

Sr. No.	**Property**	**Exhibit(s)**
1.	Temple (Shri Banke Bihari)	P-1 (Map) & P-21 (Map)
2.	Shop of Ram Sahay	
3.	Shop of Gupta Watch Company	P-1 (Map)
4.	Shop of Bharose Swarnakar	P-8 (Tax Receipts)
5.	Shop of Bihari Lal	P-19 (Tax Receipts)
6.	Shop of Kailash Agrawal	P-21 (Map)
7.	Shop of Rameshwar Verma	

8.	Shop of Gyasi Lal	P-33 (Kirayanama) P-34 (Khata-bani) P-35 (Kirayanama)
9.	Shop of Nandlal Piparsania	P-36 (Kirayanama)
10.	Shop & House of Ladle Kanakane	P-37 (Kirayanama)
11.	House near Mau Darwaja **(Deleted)**	
12.	House rented out to Jagannad Agnihotri **(Deleted)**	
13.	Land admeasuring 0.30 acres of Khasra No. 2659	
14.	Khasra No. 618-630 total admeasuring 2.49 acres	
15.	Khasra No. 288-301 total admeasuring 4.57 acres	
16.	Khasra No. 644 total admeasuring 0.25 acres	
17.	Khasra No. 250 (part of petrol pump)	

12. The property mentioned at item No. 11 and 12 have been deleted by the plantiff/ appellant. The appellants do not claim the properties mentioned at items no. 13 to 17 to be the property of the trust. Therefore, the remaining property shown at item No. 1 to 10 are the properties which the appellants claim to be the property of the trust and relief is sought only with regard to these properties only.

13. The original plaintiff Buddhi Prakash Pahadiya filed the application before the Registrar, Public Trust for declaring the "Banke Bihari Temple" as Public Trust. The defendant No. 1-State of M. P., defendant No. 2- the Registrar of Public Trust, defendant no. 3-(deceased) Basant Lal defendant Nos. 4, 5 Pujaris of the temple were impleaded as parties. It is claimed that the temple "Banke Bihari Ji" was constructed by "collecting donations from the residents of Chhatarpur and the "Mahajans" (Affluent citizens) of Chhatarpur town which include the temple and place of living for the "Pujari" and also donations for the "Bhog" (food offered to the deity). Besides these

constructions, a "well" was also dug. To meet the expenses, of the puja etc. the shops were constructed and the same are still exisitng at present, as it is situated in the main road of the main market, it fatched good rental income. It is a Public Temple. The citizen of Chhatarpur according to their sweet will participate in the "Pooja Archana" of the "Banke Bihari Ji' idol. The movable and immovable property belongs to the temple. The ancestors of defendant Nos. 3 to 5 and the State Government never disputed the same. The citizen of Chhatarpur participated in the "Pooja Archana." During festival days the expenses are being taken care of by the public. The people of Chhatarpur also donated movable and immovable properties to the temple. Whenever there is some requirement of repairing etc. the citizen used to bring it to the knowledge of the State Administration and the same are being repaired. The State Government donated certain funds for the "Pooja Archana" of the "Banke Bihari Ji" idol. According to the rituals regular "Pooja Archana" and on festival days special "Pooja Archana" etc. are being performed at the temple.

14. The temple was constructed near the main market which was intended to make available for "Darshan" to public easily. Through the earning of rents, some part of the expenses of the temple were also born. Earlier, the expenses of accounts were maintained. But after the defendant Nos. 3 to 5 used the temple illegally, the account is not maintained. The ancestors of defendants Nos. 3 to 5 Kanhaiyalal Pandey was appointed as the "Pujari" by the State Government. The Defendant Nos. 3 to 5 against the 'will' of the public have failed to maintain the accounts and are not properly looking after the temple and the idol. Therefore, the principle of estoppel is attracted. An application under Section 5 of the Madhya Pradesh Public Trust Act, 1961 was filed on 26.03.1962, before the Registrar of Public Trust, Chhattarpur the same was decided on 04.10.1972. The Registrar Public Trust held that :-

α. The "Banke Bihari" Temple and the idol is the public property.

β. The aid granted by the State Government for the temple is the income of the temple.

χ. The amount of (Rs. 1600/-) deposited in the Tehsil and its interest is the property of the temple.

δ. The "Pujari" of the temple Basantlal (Defendant No. 3) is the Manager of the temple and he is appointed as the Managing Trustee

and as per the "Pujari", tradition would continue in future.

15. Thus, the Registrar, Public Trust declared the Temple "Banke Bihari Ji" as Public Trust and also declared the movable and immovable properties shown at paragraph 1 to 3 as the property of the trust. He further declared Basant Lal Pandey (the ancestor of defedant No. 3 (A) to 3(C) as the Managing Trustee of the temple. The Registrar further held that, committee will be declared later by nominating members from the public for the managing affairs of the temple.

16. By filing the civil suit the plaintiffs assailed the finding of the Registrar, Public Trust on the ground that Basant Lal Pandey was a convicted offender. He was convicted for offence under Section 354 of IPC and sentenced to fine of Rs. 500/- (Five hundred Rupees Only) and in lieu of fine imprisonment for six months. He filed criminal appeal No. 82/1963, challenging his conviction. The same was dismissed on 22.05.1963, Basant Lal Pandey preferred criminal revision No. 259/1963, which was dismissed. The learned Registrar, Public Trust did not consider this aspect before appointing Basant Lal Pandey as the Managing Trustee of the Public Trust. Therefore, the order dated 04.10.1972, is erroneous. The learned Registrar also did not give the metes and bounds of the temple. The properties not described at paragraph 35 of the order dated 04.10.1972 are the properties of the temple but these properties presumed to be the property of defendant no. 3 Basant Lal Pandey is not correct. It is also accepted by the plaintiff/appellant that, after the death of Buddhi Prakash Pahadiya, the LRs. of Buddhi Prakash Pahadiya have been implemented as a party and after the death of defendant No. 3 Basant Lal Pandey, the plaintiff/ appellant claim that, all the property described at Schedule-A and Schedule-B be declared as the properties of the "Banke Bihari Ji" Temple and Basant Lal Pandey declared as managing trustee be set aside.

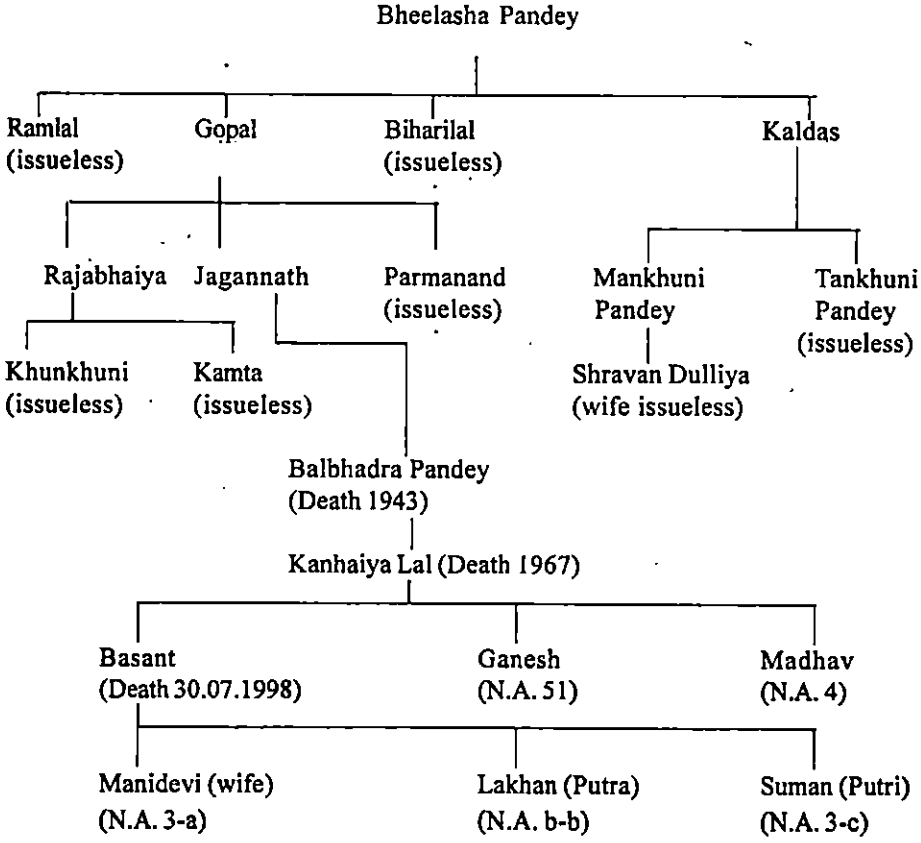
17. Respondent Nos. 3 to 5 filing a common written statement, denied all the averments made by the plaintiff and submitted that the defendants are the owners of the properties and the idol. Defendant No. 5 is in Government service. The defendants are the owners of the property and also are in possession of the property. The appellant trust has no right, title, interest on the properties. Earlier this property belonged to the forefathers of the respondent Nos. 3 to 5 and respondents No. 3 to 5 inherited the same from their forefathers through their father. The respondents are enjoying the properties for more than 12 years. Therefore, on the basis of law of adverse

possession their title has been perfected.

18. The respondents enjoyed the possession continuously in the knowledge of the public. It was also pleaded that the "law of estoppel" does not operate against law. There is no final verdict of the dispute. The appeal has been filed under Section 84 of the Madhya Pradesh Public Trust Act, challenging the order passed by the Registrar of the Public Trust. The plaintiff Buddhi Prakash Pahadiya filed the suit before the Registrar, Public Trust in his personal capacity. After his death the "lis" is no more in existence. Therefore, the successor of Buddhi Prakash Pahadiya are not entitled to prosecute the appeal.

19. The learned 3rd A.D.J. Chhatarpur having examined the averments held that "Banke Bihari Ji" is a public trust as per order dated 04.10.1972.

20. The learned trial Court has described the genealogy "Vansh Vriksha" of the pujaris as follows :-



21. As per order dated 12.03.1949 passed by the Deputy Commissioner Ex. P-9, Kanhaiya Lal Pandey was appointed as Pujari in place of his father Balbhadra Pandey. By virtue of Ex. P/13 Shravan Dulliya wife of Mankhuni Pandey was appointed as "Pujari". Ex. P/11 is the payment received by Smt. Shravan Dulliya as "padarakh" of the temple. Subsequently, she was appointed as Pujari by Ex. P/18 dated 20th August, 1908. Ex. P/20 is an application dated 19.12.1947 filed by Kanhaiya Lal Pandey requesting the Tahsildar that his father Balbhadra Pandey was performing Sewa Puja at the "Banke Bihari" temple in his life time and after the death of his father, he has been performing the duties of the "Pujari". Therefore, he be appointed as the "Pujari" of the temple. This application is also attested by two witnesses Bihari Lal and Nuiya Mahanto Sonar. Ex. P/22 dated 10.07.1946 is the complaint made against Parmanand and Balbhadra Pandey to the Collector, which was forwarded to Tahsildar for submitting report. Ex. P/23 is another complaint made with regard to Balbhadra pandey acting as Pujari after the death of Mankhuni Pandey. Ex. P/24 dated 31.08.1946 is the statement of accounts signed by Balbhadra Pandey showing the accounts of the temple. Similarly, Ex. P/25, Ex. P/26, Ex. P/27 are the documents signed by Balbhadra Pandey as "Pujari" of the temple showing the accounts of the temple. Ex. P/28 is complaint dated 16.06.1915 showing that earlier Mankhuni Pandey was the Pujari of the "Banke Bihari" temple. After his death Balbhadra Pandey performed the duty of "Pujari" and there is no definite income of the temple and no provision has been made for any income. The rents of four shops are being received by Mankhuni Pandey which is being received by his wife Shravan Dulliya. The public who were donating for the temple requested to direct Shravan Dulliya to deposit the accounts of the impugned properties.

22. Ex. P/29 is a complaint made by Shyam Sundar.

23. Ex. P/30 is the judgment dated 12.04.1963 passed by J.M.F.C. Chhatarpur in Criminal Case No. 39/1962 wherein the learned J.M.F.C. held Basant Lal guilty for offence under Section 354 of I.P.C. and sentenced him to pay fine of Rs. 500/-.

24. Ex. P/31 dated 06.10.1909 is the application submitted by Balbhadra Pandey seeking direction that the charge of the property belonging to the temple has not been given to him.

25. Ex. P/32 another letter of Balbhadra Pandey dated 25th December,

1909 for depositing certain proceedings.

26. These documents make it clear that the ancestors of Basant Pandey were appointed as "Pujari" of the temple "Banke Bihari Ji". By virtue of their succession, they have been discharging the duty of Pujari. The defendant Nos. 3 to 5, therefore, utterly failed to prove that the temple is their ancestral property, and they have right, title and interest on the temple "Banke Bihari Ji". The respondents also failed to establish any adverse possession.

27. The documents Ex. P-31 and Ex. P-32, clearly show that the temple of "Banke Bihari Ji" was constructed through the donations of the Mahajans (business community) and other articles for performing puja was purchased by contribution. Balbhadra Pujari wrote letter Ex. P/31 dated 06.10.1909 and admitted that several items including the ornaments have been misplaced and misappropriated by Mst. Shravan Dullaiya. When the devotees come to the temple for "Charanamrit," they ask about these missing items. Hence, Balbhadra Pujari requested the then Maharaja Sahib Ju Dev Bade Huzur Bramha Rana Pratap Singh, to excuse the applicant Balbhadra Pujari for missing of the articles of the temple and also to provide those articles. Exhibit P-32, if read, literally, gives an idea that Mahajan community (shop owners) constructed the temple by donation.

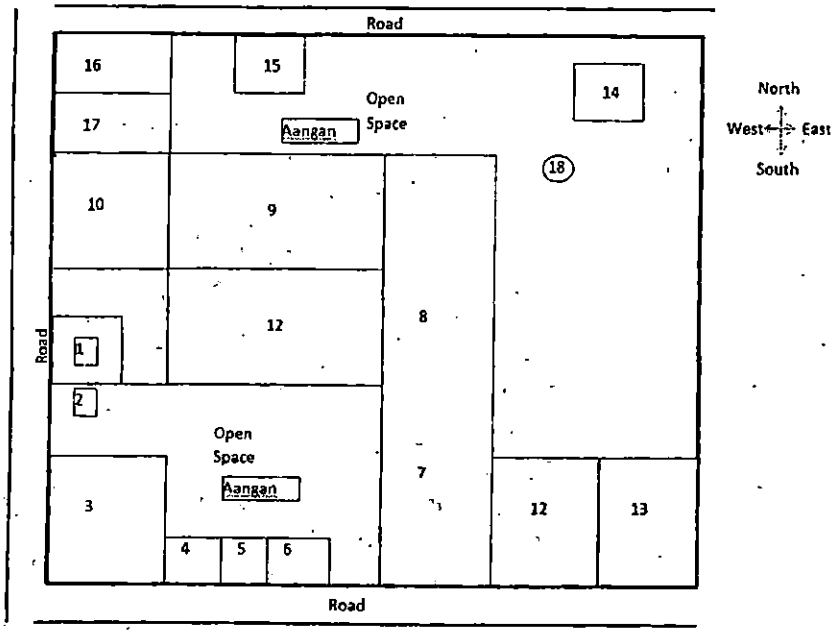
28. Respondent Nos. 3 to 5 are the successors of Balbhadra Pandey and are "Pujari" of the temple Pujaris cannot claim title over the trust property. The documents filed are the documents more than 30 years old and have been produced from the custody of the authorities, who in their official capacity normally keep the record. These documents have been obtained from proper custody, hence, are as good as public documents. Object of Section 90 of the Evidence Act is not to make it too difficult for persons relying upon ancient documents to utilize those documents in proving their case. It is intended to do away with the in seperable difficulty of proving the handwriting, execution, and attestation of documents in the ordinary way after the lapse of many years. When a document is or purports to be more than thirty years old, if it be produced from what the Court considered to be proper custody, it may be presumed that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in the person's handwriting, and that it was duly executed and attested by the person by whom it purports to be executed and attested. It is not necessary that the signatures of the attesting witnesses or of the scribe be proved, for if everything

was proved there would be no need to presume anything. Hence, these 30 years old documents have been produced from the proper custody can be read as evidence, without formal proof as presumption can be drawn about its execution by the person by whom it purports to have been executed.

29. It would be pertinent to mention here that the respondents were allowed time to adduce evidence by way of affidavit under Order 18 Rule 4 of the Code of Civil Procedure. But the respondents Nos. 3 to 5 did not file their affidavits within the prescribed time. After expiry of the date fixed, the affidavits were filed. Hence, the affidavits could not be read as evidence. Regarding respondent Nos. 3 to 5 only written statement has been filed and no evidence has been adduced. Therefore, there is no evidence on record in rebuttal of the case of the appellants.

30. Contention of the respondent Nos. 3 to 5 that they are owners of the temple and the properties mentioned in the plaint. In alternative they claim title by virtue of adverse possession. They also claim that general public have no access to the temple. It is the private property of the respondents. But the aforesaid documents goes to show that this temple and other constructions were made by Mahajans by raising funds. The details of the properties can be depicted by the following map :-

MAP



(1) Temple of Shri Banke Bihari Ji.

(2) Temple of Shri Hanuman Ji

(3) Shop rented to Ramsahay

(4) Shop rented to one Gupta.

(5) Open room and entry to the temple.

(6) Shop rented to Hamid Ali.

(7) Shop rented to Ram Bharose Sunar.

(8) Covered open space.

(9) Covered open space.

(10) Kitchen of the temple.

(11) The path of parikrama.

(12) Shop rented to Lohar.

(13) Shop and room rented to R.P. Verma.

(14) Temple of Shri Shankar Bhagwan.

(15) Toilet.

(16) House.

(17) Kitchen

(18) Well

31. The respondents did not deny the documents filed by the appellants nor adduced any evidence to rebut the same.

32. The documents Exhibit P-8 is the house-holds register of the year 1945-47, which is thirty years old documents, which show that house Nos. 350, 351, 352 and 353 are the properties of the temple. The appellants also placed reliance on the document Ex. P-14 a registered gift deed of the year 1873 whereby a person namely, Ladle Kankare had gifted the property of shop number 10 to "Shri Banke Bihari Ji" Temple. Similarly, shop No. 8 has been gifted to "Shri Banke Bihar Ji" as State Grant vide Exhibit P-17. The State Grant is not required to be registered as per Section 2 of the Government

Grants Act, 1895. Ex. P-12 is the document which shows grant of the State Government.

33. Learned Senior Counsel has vehemently contended that the present suit is not related to "title" but the question is with regard to property which is under the control and management of the "trust". When the property is under the control and management of the "trust" and taxes are being paid, strict rules of Transfer of Property Act do not apply. In this regard he placed reliance on the decision rendered in the case of *Thayarammal v. Kanakammal and Others*, (2005) 1 SCC 457 in which the Apex Court has held that :-

> "15. The contents of the stone inscription clearly indicate that the owner has dedicated the property for use as "Dharamchatra"" meaning a resting place for the travellers and pilgrims visiting the Thyagaraja Temple. Such a dedication in the strict legal sense is neither a "gift" as understood in the property donated nor is it a "trust". The Indian Trusts Act as clear by its preamble and contents is applicable only to private trusts and not to public trusts. A dedication by Hindu for religious or charitable purposes is neither a "gift" nor a "trust" in the strict legal sense. (Sec B. K. Mukherjea on Hindu Law of Religious and Charitable Trusts, 5th Edn. by A. C. Sen, pp. 102-03.)
>
> 16. A religious endowment does not create title in respect of the property dedicated in anybody's favour. A property dedicated for religious or charitable purpose for which the owner of the property or the donor has indicated no administrator or manager becomes res nullius which the learned author in the book (supra) explains as property belonging to nobody. Such a property dedicated for general public use is itself raised to the category of a juristic person. Learned author at p. 35 of his commentary explains how such a property vests in the property itself as a juristic person. In Manohar Ganesh Tambekar v. Lakhmiram Govindram it is held that :-
>
> "The Hindu law, like the Roman law and those derived from it, recognises, not only corporate bodies with rights of property vested in the corporation apart from its individual members,

but also the juridically persons or subjects called foundations."

The religious institutions like mutts and other establishments obviously answer to the description of foundations in Roman Law. The idea is the same, namely, when property is dedicated for a particular purpose, the property itself upon which the purpose is impressed, is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created. And so it has been held in Krishna Singh v. Mathura Ahir that a mutt is under the Hindu law a juristic person in the same manner as a temple where an idol is installed."

34. He reiterated that with a view to determine whether the property belongs to "trust or deity" is not required to be proved with standard of proof as required in a "title suit". In a title suit, the claim of title is based on the documents and required to be proved and established. It is the defendants / respondent Nos. 3 to 5 who claim to be the owners are required to prove their title, whereas the plaintiffs claim it to be property of the trust. Therefore, the plaintiffs have established prima facie by property tax registers / government grants, gift deeds and the application submitted by ancestors of the respondent Nos. 3 to 5. Therefore, the defendants / respondent Nos. 3 to 5 claim of the temple and its property have utterly failed to prove the same.

35. The claim of the respondent Nos . 3 to 5 regarding title of the property on the basis of the ancestral property and at the same time, they also claim to have perfected their title by adverse possession, are mutually inconsistent. True, it is later does not begin until the former is renounced. In this regard, reliance has been placed in the case of *Karnataka Board of Wakf v. Government of India and Others,* (2004) 10 SCC 779 in which the Apex Court has held as under :-

"Ancient Monuments Preservation Act, 1904-S. 4 - Acquisition of immovable property Govt. of India under the Act - Proof - Entry in Register Ancient Protected Monuments - Evidentiary value of - Register maintained by Executive Engineer in charge of the ancient monuments produced wherein suit property was mentioned and the Govt. was referred to as the owner - When manner of acquisition was not under challenge, held, the entry in the Register could be treated as a valid proof of acquisition

under the appropriate provisions of the Act.

Adverse Possession - Essentials of- Held, are exclusive physical possession and *animus possidendi* to hold as owner in exclusion to the actual owner - Facts to establish claim for adverse possession, stated - Pleas of adverse possession and of title are mutually inconsistent."

36. Picking up the same thread, it would be appropriate to refer the case of *Mishrilal v. Rati Ram,* 2007 (3) MPHT 159 wherein it has been held as under :-

"Adverse possession - Plaintiff brought a suit for declaration and permanent injunction against the defendants claiming that he is the owner of the suit land and he has perfected title on the basis of adverse possession - defendants denied that the plaintiff or his father was in possession of the suit land - Trial Court held that the plaintiff had failed to prove his adverse possession and dismissed the suit - Reversing the decision of the trial Court, the First Appellate Court decreed the suit of the plaintiff, holding that the possession of the plaintiff was proved and was adverse - Held in Second Appeal by the High Court that from the pleadings of the plaintiff himself it was not clear against whom the plaintiff was pleading adverse possession - The plaintiff's father was zamindar before the abolition of Zamindari; hence it was not clear who was the owner of the suit land and against whose ownership his father had taken possession of the suit land and his possession had become adverse - The plea of ownership as also adverse possession set up by the plaintiff was mutually inconsistent - It is inherent in the plea of adverse possession that someone else was the owner of the property - Two sets of Khasra entries were produced by the plaintiff and the defendants to prove their respective possession - The Trial Court appreciating that evidence had held that the plaintiff had failed to prove that he was in continuous adverse possession of the suit land, inasmuch as in Khasra entries for Samvat 2023 to 2027 the possession of the plaintiff was not recorded -" The Lower

Appellate was not right in reversing the decision of the Trial Court - The judgment and decree of the Lower Appellate Court was set aside and the judgment and decree of the Trial Court was upheld. Suit of the plaintiff was dismissed."

37. The cross objection under Order 41 Rule 22 of C.P.C. dated 17.08.2004 raised on behalf of the respondent Nos. 3, 4 and 5 considered.

(a) The contention of the respondent Nos. 3 to 5 are that Buddhi Prakash Pahadiya could not have filed the suit in the capacity of next friend. It would be appropriate to mention here that late Buddhi Prakash Pahadiya, filed an application before the Registrar of Trust, had filed the civil suit. Buddhi Prakash Pahadiya was a major and was having sound mind and he did not have any interest adverse to the deity. In the present case, the deity is the God of "Banke Bihari Ji," in the temple situated at the market Chhattarpur. As per Order 32 Rule 4 as amended by the Government of M. P. provides that :-

"4. Who may act as next friend or guardian for the suit :- (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not in the case of a next friend, a defendant, or in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or as his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act in either capacity."

38. Buddhi Prakash Pahadiya was the donatee of the deity "Banke Bihari Ji" Market, Chhatarpur. The respondent Nos. 3 to 5 raised this plea for the sake of objection but has not shown any reason for raising this plea.

(b) It is also claimed by the respondents that the learned trial Judge ought to have appreciated and held that on the death of Buddhi Prakash Pahadiya, the cause of action which was presently available to late Buddhi Prakash Pahadiya and, therefore, his legal representative had no right to continue the suit.

39. Neither Buddhi Prakash Pahadiya had any personal interest in the property nor his successor or the next friend claimed any interest in the trust property. The public trust was created whose statutory guardian is the Registrar of the Public Trust. The Registrar is the controller of the trust. Buddhi Prakash Pahadiya and his next friend only wanted creation of "public trust" whose statutory guardian would be the Registrar of the Public Trust. Without his permission, no trust property could be formed and in case of mismanagement, new trust could be appointed or direction could be sought by the Registrar or from the District Judge. After the death of Buddhi Prakash Pahadiya, present appellants have been substituted as the next friends to pursue the appeal. It cannot be said that they have no legal right to continue the suit and appeal. The respondent Nos. 3 to 5 who have been enjoying the property have raised such plea to frustrate the suit and the appeal whereas very cleverly the respondents have not adduced any evidence in this regard and delayed the proceedings by any means, to enjoy the property of the trust without having any ownership.

(c) It is also claimed by the respondents Nos. 3 to 5 that the deity was not a party before the Registrar of Trust, therefore, the same could not have been impleaded in the proceeding before the trial Court, hence, the suit is not maintainable. After the order of the Registrar, Public Trust, Chhatarpur the trust has been formed. The same has not been challenged. The property of the trust has been challenged. In this regard, it can be very well found that this objection has not been raised.

40. There is no such written statement also. Such a plea cannot be introduced for the first time at the time of appeal. The deity "Banke Bihari Ji" is the main deity in the temple established long back. The persons, who worship in the temple or the persons interested to safeguard the interest of deity in the temple property, filed the application for creation of Public Trust. It is not the case of the respondent Nos. 3 to 5 that Buddhi Prakash Pahadiya or Hari Shankar Pahadiya, Anand Kumar Pahadiya have any personal interest in the property, therefore, the claim of the respondents No. 3 to 5 cannot be acceded to.

(d) The evidence adduced and the documents produced by the plaintiff / appellants before the trial Court are sufficient to hold that the respondent Nos. 3 to 5 and their forefathers were only "Pujaris" of the temple and they were appointed for the purpose of offering "puja". The documents Ex. P/9,

Ex. P/18, Ex. P/20, Ex. P/23, Ex. P/24, Ex. P/25, Ex. P/27, Ex. P/31, Ex. P/32 are related to "Pujari" and these documents have not been denied by the respondents. The documents and the oral evidence adduced are not rebutted by the respondent Nos. 3 to 5. Therefore, the learned trial Court after proper appreciation of evidence held that the property and the deity is that of the Trust.

(e) The respondent Nos. 3 to 5 further raised the objection that the trial Court ought to have appreciated the suit filed by the plaintiff based on hearsay evidence and the documents relied by the plaintiff are not duly proved in accordance with law.

41. As has been already stated the genealogy of the family of "Pujari" to whom the respondent Nos. 3 to 5 belongs have been proved by the appellants and the same has not been denied or rebutted by the respondents No. 3 to 5. The averments are substantiated by documents Ex. P/9, Ex. P/18, Ex. P/20, Ex. P/23, Ex. P/24, Ex. P/26, Ex. P/27. Simply by saying that these documents are not proved, is not enough. These documents raising from the year 1908 and are certified copies. The same have not been challenged by the respondents before the trial Court. The respondent Nos. 3 to 5 relied upon on *Narbada Devi Gupta vs. Birendra Kumar Jaiswal And Another,* (2003) 8 SCC 745 and *R.V.E. Venkatachala Gounder vs. Arulmigu Viswesaraswami & V. S. Temple And Another,* (2003) 8 SCC 752 and claimed that the contents of documents are not proved - mere production and marking of a document as exhibit not enough - Execution has to be proved by admissible evidence.

42. The objection raised by the respondent Nos. 3 to 5 regarding the documents which are 30 years old do not hold good, as the documents are more than 30 years old and Section 90 of the Evidence Act comes into play. These document purported to be produced from proper custody. Therefore, it may be presumed that the signature and every other part of such document, which purports to be in the handwriting of the particular person is in the person's handwriting and that it was duly executed.

43. It is also claimed that this objection can be raised even after the documents have been marked as exhibit or even in appeal or revision. In this regard the observation made by the Hon'ble Apex Court in the case of *R.V.E. Venkatachala Gounder* (Supra) is very relevant. The Court held as under :-

"The objections as to admissibility of documents in evidence

may be classified into two classes : (i) an objection that the document which is sought to be proved it itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular."

44. In a civil case the plaintiff is expected to prove his case by preponderance of probability and not beyond reasonable doubt. In the present case, a high decree of probability lending assurance of the availability of the documents available with the plaintiff was enough to shift the onus on the defendant / respondents. But the defendant / respondent Nos. 3 to 5 did not succeed in shifting back the onus not to say that the respondents deliberately after availing opportunity rather, mischievously did not adduce any evidence. Thus, the plaintiffs/ appellants burden of proof safely be deemed to have been discharged. The appellants in the opinion of this court has safely succeeded in shifting the onus on to the respondents and, therefore, the burden of proof which lay on the appellants had stood discharged. The High Court is not required to enter into evaluation afresh. The findings of facts arrived at by the learned trial Court is not perverse. In the case of *R.V.E. Venkatachala Gounder* (supra), certain photocopies of documents were produced and admitted in evidence, therefore, the learned Apex Court has opined that these documents ought not to have been admitted.

45. In the present case, the documents are certified copies of the relevant

papers / receipts, applications etc., which are more than 30 years old and, therefore, the same cannot be discarded, as provided under Section 90 of the Evidence Act.

46. Counsel for the respondent placed reliance on *Gwalior Ceramic and Potteries Pvt.Ltd. v. Karamchand Thapar and Brothers Coal Sales Ltd.*, 1996 M.P.L.J. 772 and claimed that mere marking of documents as exhibit does not dispense with proof.

47. In the case of *Javer Chand and Others v. Pukhraj Surana,* AIR 1961 SC 1655, the Full Bench of the Hon'ble Apex Court has held that :-

> "Where a question as to the admissibility of a document is raised on the ground that it has not been stamped or has not been properly stamped, the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. Once a document has been marked as an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses; S. 36 comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial Court itself or to a Court of Appeal or Revision to go behind that order. Such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction."

48. Therefore, the objection raised by the respondents cannot be accepted. Once a document has been admitted in evidence, it is not open either to the trial Court itself or to Court of appeal or revision to go behind that order. It is needless to say that this is a Full Bench judgment of the Hon'ble Apex court.

49. The respondent Nos. 3 to 5 have further claimed that in the absence of legal evidence on record, it ought to have been held that the plaintiff has miserably failed to prove its case. Beside, the genealogy of the "Pujari family," the appointment of Pujari Ex. P/15, the state grant in respect of shop occupied by tenant Gyasilal which is the property mentioned at serial No. 8 of Schedule-A. Ex. P/17, the details of state grant to Mankhuni Pandey Ex. P/11 and P/12

are the documents clearly indicate that the Balbhadra Pandey, Mankhuni Pandey have been appointed as Pujari. Subsequently, Shravan Dulliya, Kanhaiyalal Pandey and Basantlal Pandey were appointed as Pujari. The respondents Ganesh and Madho claimed to be the Pujari of temple. Pujari cannot claim the ownership of the temple of the property. The Pujari will remain as Pujari and without any interest, title over the property of the temple. The respondents claim the entire property of the temple as their own property and have claimed alternatively that by virtue of adverse possession have acquired the title. This claim of the respondent itself is untenable.

50. In the case of *Moolchand vs. Radha Shran and Another,* (2006) 2 M.P.L.J., this Court has earlier held that pleadings cannot take the place of proof, until it is proved by reliable evidence by examining the witnesses.

51. Non-entrance of the respondent / defendant Nos. 3 to 5 in witness box to prove their case as per their pleadings are sufficient circumstances to draw an adverse inference against them that they have no case against the appellants.

52. In *Karnataka Board of Wakf Vs. Government of India And Others,* (2004) 10 SCC 779, the Apex court has opined that :-

> "D. Adverse Possession - Essentials of - Held, are exclusive physical possession and animus possidendi to hold as owner in exclusion to the actual owner - Facts to establish claim for adverse possession, stated - Pleas of adverse possession and of title are mutually inconsistent - Limitation Act, 1963, Art. 65."

53. Similarly, in the case of *Gafoor Khan Vs. Sultan Jahan And Others,* 2006 (3) M.P.L.J. 112, a Co-ordinate Bench of this Court has observed that:-

> "Adverse Possession - Suit for declaration of title - Subsequently plaint was amended taking plea of adverse possession - Plea on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced."

54. Reliance has also been placed in the case of *Smt. Dayamathi Bai Vs. K. M. Shaffi,* AIR 2004 SC 4082 wherein it is held that :-

"Evidence Act (1 of 1872), Ss. 65, 90-Civil P. C. (5 of 1908), O. 23, R. 3-Admissibility of documents in evidence - Objection as to mode of proof alleging same to be irregular, insufficient - Objection to be taken at trial before document is marked as an 'exhibit' and admitted to record - Plaintiff submitted certified copy of sale deed in evidence - No objection raised by appellant / defendant when sale deed was taken on record and marked as an 'exhibit' - Even execution of sale deed not challenged by appellant / defendant - Objection by appellant as to mode of proof before lower appellate Court - Not sustainable - Regd. certified copy of sale deed which was 30 years old document is admissible in evidence invoking S. 90 of Evidence Act."

55. In the present case it is not the sale deeds or any documents but the entries of the records and certified copies of applications submitted by the ancestors and appointment of Pujari by the then State of Chhatarpur. The execution of these documents are 30 years old and the scribers or the persons could not be called to prove the documents.

56. The appellants cited *Jai Narayan Durga Prasad Vs. Satyanarayan alias Dhonbabu,* 1991 M.P.L.J., 768, wherein it has been held that :-

"Presumption under - The question as to whether the presumption under section 90 arises or not, in the circumstances of the case, must be decided on the evidence adduced."

57. The plaintiff / appellants had led evidence to prove the documents which are more than 30 years old and certain documents are issued by the then Estate of Chhatarpur and the rent books are maintained by the proper custodian. Certified copies of these documents which are 30 years old and are presumption about its execution and signatures. The defendant / respondents No. 3 to 5 did not rebute the same nor enter into the witness box. Therefore, no reason to disbelieve these documents. Hence, the citation *Jai Narayan Durga Prasad* (supra) is of no avail to the respondent Nos. 3 to 5. The finding of the learned trial Court is not perverse as the learned trial Court has rightly drawn the presumption of the documents which are 30 years old.

(g) The respondents also raised the cross objection that the trial Judge

grossly erred in drawing presumption with regard to the documents which were 30 years old.

(h) The respondents in their cross-objection have also raised the plea that the trial Court ought to have appreciated that no relief to the plaintiff could have been granted totally beyond the scope of the suit and which was not even prayed for. The trial Court placing reliance upon the map Ex. P/1 has tried to give the temple a rectangular shape and this part of the temple was declared to be the Public Trust property and the remaining part are the properties shown in the evidence are left out. Therefore, it cannot be said that the learned trial Court has granted any relief which was not prayed for.

(i) The respondents Nos. 3 to 5 further claimed that the trial Court ought to have held that there was non-compliance of the mandatory provision of Section 8(ii) of the M. P. Public Trust Act and no notice was issued as required. Therefore, the suit ought to have been dismissed on this ground only. Ex. P/3 is the notice issued to the Registrar, Public Trust as well as State. Such notice were received by the Registrar, Public Trust and the State. Their acknowledgment are Ex. P/4 and Ex. P/5 (the postal receipt). Therefore, this objection does not have any merit.

(j) The respondents Nos. 3 to 5 further claimed that the trial Court ought to have appreciated the revision with regard to granting rectangular shape of the temple was not prayed for by the plaintiff. The house and shops would be required to be demolished, in case, rectangular shape is given to the temple. It is to be reckoned that the learned trial Court on the basis of the evidence has tried to give a rectangular shape to the temple and no order was passed with regard to the remaining part of the temple property.

58. The respondent Nos. 3 to 5 have not filed any counter map nor led any evidence. The sole evidence produced by the appellant / plaintiff was considered by the trial Court. Keeping in view the things as understood by the learned trial Court pronounced the judgment giving the reasons at paragraph 51 and 52.

(k) The respondents have also contended that the learned trial Court ought to have decided the suit along with the suit preferred by the defendant Nos. 3 to 5. It would be appropriate to mention here that the suit filed by the respondent Nos. 3 to 5 has been stayed by the order dated 03.03.1981. This order was not challenged by the respondent Nos. 3 to 5. Therefore, the same

has become attained finality. The learned trial Court discussed this at para 14 of judgment impugned.

59. In the case of *Javer Chand and Others Vs. Pukhraj Surana,* AIR 1961 SC 1655, the Four Judge Bench of Hon'ble the Apex Court has held that :-

> "Once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, Section 36 of the Stamp Act comes into operation. Once a document has been admitted in evidence as aforesaid, it is not open either to the trial Court itself or to a Court of appeal or revision to go behind that order."

60. Therefore, the documents which have been considered cannot be discarded on this ground.

61. In the case of *Abdul Karim Khan & Others Vs. Municipal Committee, Raipur,* AIR 1965 SC 1744, the Full Bench of Hon'ble Supreme Court had the occasion to consider similar matter regarding the inquiry permitted by the provisions of M. P. Public Trust Act. The Hon'ble Apex Court at paragraph 10 to 14 has held that :-

> "10. We are not impressed by this argument. In testing the validity of this argument, we must bear in mind the important fact that Act is concerned with the registration of public, religious and charitable trusts in the State of Madhya Pradesh and the inquiry which its relevant provisions contemplate is an inquiry into the question as to whether the trust in question is public or private. The enquiry permitted by the said provisions does not take within its sweep questions as to whether the property belongs to a private individual and is not the subject-matter of any trust at all. It cannot be ignored that the Registrar who, no doubt, is given the powers of a civil Court under Section 28 of the Act, holds a kind of summary inquiry and the points which can fall within his jurisdiction are indicated by clauses (i) to (x) of Section 4(3). Therefore, prima facie, it appears unreasonable to suggest that contested questions of title, such as those which

have arisen in the present case, can be said to fall within the enquiry which the Registrar is authorized to hold under Section 5 of the Act."

11. Besides, it is significant that the only persons who are required to file their objections in response to a notice issued by the Registrar on receiving an application made under Section 4(1), are persons interested in the public trust-not persons who dispute the existence of the trust or who challenge the allegation that any property belongs to the said trust. It is only persons interested in the public trust, such as beneficiaries or others who claim a right to mange the trust, who can file objections and it is objections of this character proceeding from persons belonging to this limited class that fall to be considered by the Registrar. It cannot be said that the respondent falls within this class; and so, it would be idle to contend that it was the duty of the respondent to have filed objections under Section 5(2).

12. It is true, Section 8(1) permits a suit to be filed by a persons having interest in the public trust or any property found to be trust property. The interest to which this section refers must be read in the light of Section 5(2) to be the interest of a beneficiary or the interest of a person who claims the right to maintain the trust or any other interest of a similar character. It is not the interest which adverse to the trust set up by a party who does not claim any relation with the trust at all. That is why we think the finality on which Mr. Sinha's argument is based cannot avail him against the respondent inasmuch the respondent was not a party to the proceedings and could not have filed any objections in the said proceedings.

13. Then again, the right to file a suit to which Section 8(1) refers is given to persons who are aggrieved by any finding of the Registrar. Having regard to the fact that the proceedings before the Registrar are in the nature of proceeding before a civil court, it would be illogical to hold that the respondent who was not a party to the proceedings can be said to be aggrieved by the findings of the Registrar. The normal judicial

concept of a person aggrieved by any order necessarily postulates that the said person must be a party to the proceedings in which the order was passed and by which he feels aggrieved. It is unnecessary to emphasize that it would be plainly unreasonable to assume that though a person is not a party to the proceedings and cannot participate in them by way of filing objections, he would still he found to file a suit within the period prescribed by Section 8(1) if the property in which he claims an exclusive title is held by the Registrar t belong to a public trust.

14. Similarly, the right to prefer an appeal against the Registrar's order prescribed by Section 4(5) necessarily implies that the person must be a party to the proceedings before the Registrar; otherwise how would he know about the order ? Like Section 8(1), Section 4(5) also seems to be confined in its operation to persons who are before the Registrar, or who could have appeared before the Registrar under Section 5(2). The whole scheme is clear; the Registrar inquires into the question as to whether a trust is private or public, and deals with the points specifically enumerated by Section 4(3). Therefore, we have no hesitation in holding that the courts below were right in coming to the conclusion that the fact that the property now in suit was added to the list of properties belonging to the wakf, cannot affect the respondent's title to it. On the merits, all the courts below have rejected the appellants' case and have upheld the pless raised by the respondent in defence."

62. Learned Senior counsel Shri R. P. Agrawal contended that the respondent Nos. 3 to 5 are not persons aggrieved. Therefore, the scope of enquiry under Section 4, 5 and 8 of the M. P. Public Trust Act being a summary enquiry, the respondent as interested party and their interest in adverse to the trust, therefore, their cross-examination cannot be considered.

63. Considering the above circumstances and the legal aspects, this appeal deserves to be partly allowed with regard to property mentioned at Serial Nos. 1 to 10 at paragraph 11 of this judgment and it is held that the above property belongs to the trust "Banke Bihari Ji," Market Chhatarpur. The judgment and decree passed by the 3rd A.D.J., Chhatarpur dated 26.04.2004

is modified accordingly. Fresh decree be withdrawn.

64. The Registrar, Pubilc Trust, Chhatarpur may appoint the Managing Trustee and form the committee at the earliest by nominating the members from the pubic in accordance with the law, for managing the affairs of the temple.

65. Appeal stands partly allowed with cost.

Appeal partly allowed.

I.L.R. [2017] M.P., 2231
APPELLATE CRIMINAL
Before Mr. Justice Hemant Gupta, Chief Justice &
Mr. Justice C.V. Sirpurkar
Cr.A. No. 908/1998 (Jabalpur) decided on 20 June, 2017

SHRICHAND & anr. ...Appellants
Vs.
STATE OF M.P. ...Respondent

A. Penal Code (45 of 1860), Section 300 Exception 4, 302/34, 326 & 304 Part I and II – Murder – Conviction – Intention – Solitary Blow **– Appellant Shrichand convicted u/S 302/34 IPC – Held – Regarding payment of price of sheaves grass supplied/sold by appellants to deceased, appellants had an altercation with deceased where Shrichand struck a solitary axe blow on back of deceased – Held – There was a sudden quarrel/ fight and appellant in heat of passion inflicted solitary blow without premeditation on back of deceased which is not a vital part of human body – No intention to cause death – Act would fall under exception 4 to Section 300 IPC – Injury caused by dangerous weapon like axe which could likely to cause death, therefore act would not come u/S 304 (Part I) but u/S 304 (Part II) IPC – Conviction of Shrichand modified to one u/S 304 (Part II) IPC – Sentence of life imprisonment reduced to 10 years R.I. – Appeal partly allowed. (Paras 21, 22 & 24)**

क. दण्ड संहिता (1860 का 45), धारा 300 अपवाद 4, 302/34, 326 व 304 भाग I व II – हत्या – दोषसिद्धि – आशय – एकमात्र वार – अपीलार्थी श्रीचंद को धारा 302/34 भा.दं.सं. के अंतर्गत दोषसिद्ध किया गया – अभिनिर्धारित – अपीलार्थीगण द्वारा मृतक को प्रदाय/विक्रय किये गये मुठ्टा घास की कीमत के भुगतान के संबंध में, अपीलार्थीगण का मृतक के साथ कहासुनी हुई जहां श्रीचंद ने

मृतक की पीठ पर कुल्हाड़ी का एकमात्र वार किया – अभिनिर्धारित – अचानक झगड़ा/लड़ाई हुई थी और अपीलार्थी ने भावनावेग में, बिना पूर्व चिंतन मृतक की पीठ, जो कि मानव शरीर का कोमल अंग नहीं है, पर एकमात्र वार किया – मृत्यु कारित करने का कोई आशय नहीं – कृत्य, धारा 300 भा.दं.सं. के अपवाद 4 के अंतर्गत आयेगा – कुल्हाड़ी जैसे घातक शस्त्र से चोट कारित की गई जिससे मृत्यु कारित होने की संभावना हो सकती है इसलिए कृत्य, धारा 304 (भाग I) के अंतर्गत नहीं बल्कि धारा 304 (भाग II) भा.दं.सं. के अंतर्गत आएगा – श्रीचंद की दोषसिद्धि को परिवर्तित कर धारा 304 (भाग II) भा.दं.सं. के अंतर्गत किया गया – आजीवन कारावास के दण्डादेश को घटाकर 10 वर्ष सश्रम कारावास किया गया – अपील अंशतः मंजूर।

B. ***Penal Code (45 of 1860), Section 326 – Conviction – Nature of Injury*** **– Appellant no. 2, Shivcharan convicted u/S 326 IPC – Held – Shivcharan inflicted a blow to cousin of deceased with sharp side of axe resulting in incised wound and fracture of left elbow joint – He cause grievous injury to victim with a sharp cutting object – Shivcharan rightly convicted u/S 326 IPC – His appeal against conviction dismissed.** **(Para 23)**

ख. दण्ड संहिता (1860 का 45), धारा 326 – दोषसिद्धि – चोट का स्वरूप – अपीलार्थी क्र. 2 शिवचरण धारा 326 भा.दं.सं. के अंतर्गत दोषसिद्ध – अभिनिर्धारित – शिवचरण ने मृतक के रिश्ते में भाई पर कुल्हाड़ी के तीक्ष्ण भाग से वार किया जिसके परिणाम स्वरूप कटा घाव व बाएँ कोहनी के जोड़ का अस्थि–भंग हुआ – उसने पीड़ित को तीक्ष्ण धारदार वस्तु से गंभीर चोट कारित की – शिवचरण को उचित रूप से धारा 326 भा.दं.सं. के अंतर्गत दोषसिद्ध किया गया – दोषसिद्धि के विरूद्ध उसकी अपील खारिज।

Cases referred :

AIR 1976 SC 2263, (2017) 3 SCC 247, AIR 1995 SC 1674, (2001) 6 SCC 145, AIR 2000 SC 1779.

Yogesh Soni, for the appellant (*amicus curiae*).
M.P.S. Chuckal, P.L. for the respondent/State.

JUDGMENT

The Judgment of the Court was delivered by : **C.V. SIRPURKAR, J. :-** This criminal appeal under Section 374 (2) of the Cr.P.C. filed on behalf of the appellants/accused persons Shrichand and Shivcharan is directed against judgment dated 28.2.1998 passed by the Court

of IIIrd Additional Sessions Judge, Chhindwara in Sessions Trial No. 60/1997, whereby accused Shrichand was convicted under Section 302 of the I.P.C. and was sentenced to undergo life imprisonment and a fine in the sum of Rs.5,000/-. In default of payment of fine, he was directed to undergo rigorous imprisonment for a further period of six months. Accused Shivcharan was convicted under Section 326 of the I.P.C and was directed to undergo rigorous imprisonment for a period of three and half years and a fine in the sum of Rs.1,000/-. In default of payment of fine, he was directed to undergo rigorous imprisonment for a further period of three months.

2. The prosecution case before the trial Court may briefly be stated thus: Accused persons Shrichand and Shivcharan are real brother. Deceased Khoob Chand and injured Dwarika Prasad were cousins. At about 5:30 p.m. on 28.9.1997, deceased Khoob Chand was standing in front of Sarpanch Munna Lal's house. At that time, accused persons Shrichand and Shivcharan arrived on the spot. Shrichand demanded the price of sheaves grass said to have been supplied by him to deceased Khoob Chand. Deceased Khoob Chand replied as to on what account Shrichand was demanding money. Consequently, they started abusing each other. Pursuant to aforesaid altercation, accused Shrichand struck a blow with an axe he was carrying, upon the back of the deceased Khoob Chand. As a result, deceased fell down and started to bleed. His cousin Dwarika tried to pull him up, he asked Shrichand and Shivcharan as to why they had assaulted his brother; whereon, accused Shivcharan exhorted Dwarika and asked him to come and threatened that Shivcharan would also killed Dwarika. Thereafter, Shivcharan struck a blow to Dwarika with the axe he was carrying, near left elbow joint. Consequently, Dwarika also started to bleed. Mohan, Munna Lal and Malook Chand were present on the spot, they intervened in the matter. If they had not protected Khoob Chand and Dwarika, the accused persons would have killed both of them. Since, Khoob Chand had sustained a serious injury in the back, he was losing his consciousness. Deceased Khoob Chand and Dwarika were taken on a bullock cart to police out-post Newton, where the first information report was lodged by injured Dwarika. Deceased Khoob Chand succumbed to his injuries at around the time, they reached the police outpost. During investigation, on the separate disclosure statements made by accused persons Shrichand and Shivcharan, axes with blood like stains were recovered from the possession of accused persons.

3. The trial Court framed the charge under Section 302 read with section 34 of the I.P.C. against accused Shrichand and a charge under Section 302 read with Section 34 and Section 307 of the I.P.C. against accused Shivcharan. The accused persons abjured guilt and claimed to be tried.

4. After the trial, the trial Court held that the prosecution has succeeded in proving beyond reasonable doubt that accused Shrichand had committed murder of Khoob Chand by inflicting a blow with an axe; therefore, he was convicted under Section 302 read with section 34 of the I.P.C. It was further held that co-accused Shivcharan had not participated in aforesaid act of accused Shrichand in any manner; therefore, he was acquitted of the charge under Section 302 read with section 34 of the I.P.C. It was further held that the prosecution had failed to prove that the accused Shivcharan had attempted to commit murder of injured Dwarika; however, the prosecution had succeeded in proving that Shivcharan had caused grievous injury to Dwarika by a sharp cutting objects like axe; therefore, the trial Court acquitted Shivcharan of the offence punishable under Section 307 of the I.P.C. but convicted him under Section 326 of the I.P.C. thereof.

5. Conviction of appellant Shrichand under Section 302 and appellant Shivcharan under Section 326 of the I.P.C. has been challenged before this Court mainly on the ground that appellant Shrichand was demanding Rs.800/- from Khoob Chand for sheaves of grass he had supplied to him. The deceased was disputing the fact that any such amount was due. Deceased Khoob Chand and his cousin Dwarika beat the appellants with sticks. As a result, Shrichand sustained three injuries caused by hard and blunt objects and Shivcharan sustained five injuries also caused by hard and blunt objects. The existence of these injuries upon the person of the appellants have been proved by Dr. R.K. Bansod (PW-10) and recorded in their M.L.C. reports Ex. D-2 and D-3. None of the prosecution witnesses has admitted that the appellants had suffered such significant and numerous injuries in the incident. As such, no explanation is forthcoming from the prosecution to explain the injuries sustained by the appellants in the incident. In these circumstances, the trial Court ought to have drawn following inferences:

(I) that prosecution has suppressed the genesis and origin of the occurrence and has not presented the true version;

(II) the witnesses, who have denied the existence of injuries on the

person of accused are lying on a most material point and; therefore, their evidence is unreliable;

(III) that the defence version which explains injuries on the body of accused persons is rendered probable so as to throw doubt upon the prosecution story.

For aforesaid contention, learned counsel for the appellants has placed reliance upon the judgment in case of *Laxmi Singh and others vs State of Bihar* AIR 1976 SC 2263; therefore, it has been argued that the appellants deserve benefit of doubt.

6. The second argument that has been advanced on behalf of the appellants is that the sole injury that is alleged to have been caused by appellant Shrichand to deceased Khoob Chand was inflicted upon his back, which is a non-vital part of the body; therefore, the appellant Shrichand cannot be attributed with intention to cause death of deceased Khoob Chand. At worst, it can be said that he had knowledge that such an injury may cause death of the deceased; therefore, the act of the appellant Shrichand would fall under the category of Section 304 (Part-II) of the I.P.C. For the aforesaid contention, learned counsel for the appellants has placed reliance upon the judgment rendered by the Supreme Court in the case of *Arjun Vs. State of Chhattisgarh* (2017) 3 SCC 247.

7. Learned panel lawyer for the respondent/State on the other hand has supported the impugned judgment.

8. On perusal of the record and after due consideration of the rival contentions, we are of the view that this appeal must succeed but only in part. The conviction of appellant Shrichand under Section 302 of the I.P.C. is liable to be modified into one under Section 304 (Part-II) and the sentence is also required to be modified accordingly. The conviction of appellant Shivcharan under Section 326 of the I.P.C. does not deserve to be interfered with and is liable to be affirmed. The reasons for our conclusions are as follows:

9. As per prosecution story, the incident is alleged to have taken place in front of Sarpanch Munna Lal's house. Appellant Shrichand lives across the road. Prosecution has examined two eye witnesses namely Mohan (PW-3) and Munna Lal (PW-4), who are witnesses to the incident from the beginning to end. They were sitting in Munna Lal's house waiting for the local MLA to

arrive. Injured eye witness Dwarika reached the spot when the appellant Shrichand inflicted axe blow upon Khoob Chand. The sum and substance of the deposition of aforesaid three prosecution witnesses is that at about 5:00 p.m. on 24.1.1997, Mohan (PW-3) and Munna Lal (PW-4) were sitting in the house of Sarpanch Munna Lal. At that time, deceased Khoob Chand arrived in the alley situated in front of Munna Lal's house. He came from the direction of tailor's house. Appellant Shrichand stopped deceased Khoob Chand and asked for the price of grass sheaves supplied by him. Deceased Khoob Chand protested and said that no money was due by him to appellant Shrichand; whereon, Shrichand started to abuse Khoob Chand and matter flared up. At that juncture, appellant Shrichand delivered a blow to back of deceased Khoob Chand with an axe that he was carrying. As a result, Khoob Chand fell down and started to bleed from the wound.

10. Mohan (PW-3) has stated that after altercation with deceased Khoob Chand, Shrichand had gone inside his house and had returned with an axe. At that time, Dwarika also arrived. During same altercation, accused Shivcharan delivered a blow with an axe to the hand of Dwarika Prasad as he tried to intercede on behalf of Khoob Chand. Dwarika also to blead from his hand.

11. Munna Lal (PW-4) left immediately for police outpost Newton to call the police. Meanwhile, deceased Khoob Chand was lapsing into unconsciousness. The villagers took deceased Khoob Chand and Dwarika in a bullock-cart towards Newton police out-post. The police met them on their way to police out-post Newton; thereafter, Dwarika lodged the FIR at around 10:00 p.m.. At about the same time, Khoob Chand succumbed to his injury.

12. Dr. R.K. Bansod (PW-10) has supported the prosecution case and has stated that at about 11:00 p.m. on 24.1.1997, he had examined deceased Khoob Chand. He had suffered incised wound admeasuring 4" X 1" which was very deep and was bleeding profusely. As a result of aforesaid injury, deceased Khoob Chand was gasping for breath. The injury was surrounded by swelling. It was caused by hard and sharp object. At that time, Khoob Chand was semi-conscious.

13. Dr. R.K. Bansod (PW-10) has further submitted that he had conducted post-mortem examination on the dead body of the deceased at about 10:30 p.m. on 25.1.1997. After dissecting the body, he had found that under aforesaid injury, 5th, 6th and 7th ribs were broken. The muscles were cut and there was

a 4" X 1" cut in lung. In his opinion, the deceased had died as a result of shock and hemorrhage resulting from aforesaid injury.

14. In the back drop of aforesaid prosecution evidence, when we examine the defence taken by the appellants, we find that all three prosecution witnesses namely Dwarika (PW-1) Mohan (PW-3) and Munna (PW-4) have categorically denied that deceased Khoob Chand and Dwarika had caused any injury to Shrichand or Shivcharan. They have stated that if at all Shrichand and Shivcharan have suffered any injury, they do not know how it was caused. However, it is significant to note that Dr. R.K. Bansod (PW-10) had admitted in his cross examination that at about 11:50 p.m. on 24.1.1997, he had examined Shrichand and had found following three injuries on his person:

(i) One lacerated wound admeasuring 1/4" X 1/4" on left eyebrow. Blood had clotted over that injury;

(ii) a contusion admeasuring 3"X 4" upon lips;

(iii) a contusion admeasuring 2" X 1" on right side of neck;

-Aforesaid injuries were caused by hard and blunt object. Duration of aforesaid injuries was 5 to 9 hours. His M.L.C. Report in this regard is Ex. P-3.

15. Dr. Bansod (PW-10) had also stated in his cross examination that at 11:30 p.m. on 24.1.1997, he examined appellant Shivcharan and had found following injuries:

(i) a red contusion admeasuring 4"X1" between 5th and 8th rips (sic:ribs.). The injured was complained of pain;

(ii) a contusion ad measuring 5" X 1" red in colour, on outer aspect of right thy;

(iii) a contusion admeasuring 4"X1"/ red in colour, on outer aspect of right elbow;

(iv) an abrasion below naval admeasuring 2"X1/4",

(v) an abrasion admeasuring 1.5"X 2.5"/ right side of throat.

All of aforesaid injuries were caused by hard and blunt object within 5 to 8 hours of the examination. Appellant Shivcharan was refereed for X-ray

examination of injury number 1. His M.L.C. Report is exhibit D-2.

16. Thus, it is clear that at least 5 injuries on the body of appellant Shivcharan and three injuries on the body of appellant Shrichand were present, which could have been caused in the incident. The prosecution witnesses, had failed to explain any of these injuries. In fact, they denied having seen any such injury on the person of the appellant. In these circumstances, relying upon the judgment rendered by the Supreme Court in the case of *Laxmi Singh and others vs State of Bihar* AIR 1976 SC 2263, learned counsel for the appellant has contended that the appellants deserve benefit of doubt. In the case of *Laxmi Singh* (supra), the Supreme Court has relied upon the judgment rendered by an earlier case of Supreme Court *Mohan Rai Vs. State of Bihar* AIR 1995 S.C. 1674. It has been held in substance, in the case of Laxmi Singh as follows:

In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altecaration is a very important circumstance from which the Court can draw the following inferences :

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the procession one.

There may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where

- the injuries sustained by the accused are minor and superficial

or

- where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries.

17. However, we may note that none of the injuries sustained by appellant Shivcharan was visible, as none of them caused any bleeding. Likewise, there was only one injury on the person of appellant Shrichand, which was 1"x1/4" on left eyebrow, wherein the blood had clotted and which could be said to be visible. Moreover, none of aforesaid injuries was grievous in nature. The fact that these injuries were caused during the incident did not find place in the examination of the accused persons under Section 313 of the Cr.P.C. Moreover, a suggestion was made to Mohan (PW-3) in his cross- examination that after the incident, the appellants were tied up in the courtyard of Sarpanch Munna Lal and Munna Lal, Mohan or some other persons had beaten up the appellants. In these circumstances, the possibility that aforesaid injuries were not caused by the Khoob Chand or Dwarika during the course of the incident also cannot be ruled out. It may further be noted that the injuries found on the person of the appellants pale into insignificance when compared to conspicuous and serious injuries sustained by the victims. In this regard, a three Judge Bench of the Supreme Court in the case of *Takhaji Hiraji Vs. Thakore Kubersing Chaman Singh* (2001) 6 SCC 145 has substantially held as hereunder:

The view taken consistently is that it cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved.

Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the Court has to be satisfied of the existence of two conditions:

(I) that the injury on the person of the accused was a serious nature; and

(ii) that such injuries must have been caused at the time of the

occurrence in question.

Non-explanation of injuries assumes greater significance when

- the evidence consists of interested or partisan witnesses or

- where the defence gives a version which competes in probability with that of the prosecution.

Where the evidence is clear, cogent and creditworthy and

where the Court can distinguish the truth from falsehood

- the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.

The High Court was therefore not right in overthrowing the entire prosecution case for non-explanation of the injuries sustained by the accused persons."

18. Likewise, another three Bench of the Supreme Court in the case of *Rajendra Singh Vs. State of Bihar* AIR 2000 SC 1779 has also held as follows:

The question whether non-explanation of the injuries on accused Rajender ipso facto cannot be held to be fatal to the prosecution case, it is too well settled that ordinarily the prosecution is not obliged to explain each injury on an accused even though the injuries might have been caused in course of the occurrence, if the injuries are minor in nature, but at the same time if the prosecution fails to explain a grievous injury on one of the accused person which is established to have been caused in course of the same occurrence then certainly the Court looks at the prosecution case with little suspicion on the ground that the prosecution has suppressed the true version of the incident.

19. It may be noted in this regard that not only the injuries found on the person of the appellants are insignificant and superficial, the eye witnesses in the case are neither interested nor partisan. There is no defence version which competes in probability with that of prosecution version; therefore, non-explanation of injuries found on the person of the appellants, does not dent

the prosecution case in any manner.

20. The last question that remains for consideration is whether the act of appellant Shrichand would constitute murder punishable under Section 302 of the I.P.C? and if not, whether it would constitute an offence under Section 304 (Part-II).

21. It may be noted in this regard that the weapon used by appellant Shrichand for causing injury was an axe, which *per se*, is a dangerous weapon. Though, Mohan (PW-3) has stated that after the altercation between appellant Shrichand and deceased Khoob Chand started, appellant went home and returned with an axe in his hand. On the basis of aforesaid statement, learned panel lawyer for the respondent/State has argued that aforesaid act on the part of appellant Shrichand betrays his intention to cause death or at any rate, to cause such bodily injury; as is sufficient in the ordinary course of nature to cause death. However, it may be seen that Munna (PW-4), who was present on the spot throughout, has clearly stated that the axe used in the incident was all along in the hands of appellant Shrichand. Thus, on this point, the testimony of Mohan (PW-3) has been contradicted by Munna (PW-4). In such circumstances, the Court would prefer the statement that goes in favour of the accused. Munna (PW-4) has also admitted that preceding the incident, there was an altercation between appellant Shrichand on one hand and deceased Khoob Chand on the other on account of price of grass sheaves purportedly sold by appellant Shrichand to deceased Khoob Chand, with the deceased denying his liability to pay; as such, there was a sudden fight and the appellant was in the heat of passion upon a sudden quarrel and he inflicted solitary injury, without any premeditation upon the back of the deceased. It goes without saying that back is a non-vital part of the human body. If the appellant had intention either to cause death of the deceased or to cause him such bodily injury as is sufficient in the ordinary course of nature to cause death, he could easily have dealt a blow to his head, neck, chest or stomach which are vital parts. In these circumstances, it cannot be said that he had an intention to cause death or cause such bodily injury as was sufficient in the ordinary course of nature to cause death; therefore, his act would fall under exception No.4 of Section 300 of the I.P.C. However, the blow was so severe that it cut through the ribs and caused a 2 inch deep wound in the lung. The injury was caused by a dangerous weapon like axe. Thus, the appellant Shrichand can certainly be attributed with the knowledge that aforesaid act

was likely to cause death; therefore, his act would not come under the purview of Section 304 (Part-I) of the I.P.C. but 304 (Part-II) thereof.

22. On the basis of foregoing discussion, we are of the view that the trial Court erred in convicting appellant Shrichand under Section 302. His act falls under Section 304(Part-II) of the I.P.C.; therefore, his conviction is liable to be modified accordingly.

23. So far as the appellant Shivcharan is concerned, he inflicted a blow with sharp side of the axe to victim Dwarika; as a result, he suffered an incised wound admeasuring 3"x1" from which a lot of blood was gushing out. This fact has been proved by Dr. R.K. Bansod (PW-10). His report in this regard is Ex.P-17. In the X-ray examination of the left elbow joint of victim Dwarika, a fracture was detected. The X-ray plate is Ex.P-19, which had been admitted by the accused persons. Thus, it is proved beyond reasonable doubt that appellant Shivcharan had caused an incised wound to left elbow of the victim Dwarika causing fracture of shaft of ulna bone. Thus, he has been rightly convicted under Section 326 of the I.P.C. for causing grievous injury to the victim Dwarika with a sharp cutting object.

24. On the basis of foregoing discussion, this appeal is allowed in part. The conviction of appellant Shrichand under Section 302 of the I.P.C. is modified to one under Section 304 (Part-II) of the I.P.C. The sentence of life imprisonment is reduced to one of rigorous imprisonment for a period of 10 years. Appellant Shrichand shall appear before the trial Court to undergo remaining part of his sentence (if any) on 10-7-2017. In case he fails to appear before that Court as directed, the trial Court shall issue coercive process to make him undergo the modified sentence imposed upon him.

25. The appeal filed by appellant Shivcharan is dismissed. His conviction and sentence under Section 326 of the I.P.C. is affirmed. He has already been released from jail after undergoing the entire jail sentence. (please refer to order dated 15.9.2008 passed in criminal appeal No.908/1998).

26. For the able assistance rendered by Shri Yogesh Soni, Advocate to this Court as *amicus curiae,* we direct the M.P. State Legal Services Authority to pay a sum of Rs.5,000/- (Rupees five thousand) to the learned *amicus curiae* as honorarium for defending the appellants in the present appeal.

Order accordingly.

I.L.R. [2017] M.P., 2243
APPELLATE CRIMINAL
Before Smt. Justice Anjuli Palo
Cr.A. No. 758/1997 (Jabalpur) decided on 3 August, 2017

SANGRAM & ors. ...Appellants
Vs.
STATE OF M.P. ...Respondent

A. Penal Code (45 of 1860), Section 307/34 – Conviction – Related Witness – Appreciation of Evidence – Injuries – **Bull of appellant damaged the crops of complainant whereby objection was raised and panchayat was called – Subsequently complainant was assaulted by appellants with rod and sticks – Held – Doctor who examined complainant deposed that injuries were sufficient to cause death – Nature and number of injuries itself indicate that complainant was assaulted by more than one person as injuries were caused on different parts of his body – Common intention established – Complainant was admitted for 21 days in hospital for treatment – Further held – Complainant and PW-3 are husband and wife and are related witnesses and their evidence cannot be rejected on this ground alone – Evidence of complainant and his wife is corroborated by doctors and circumstances – Testimony reliable and do not require corroboration from other independent witness – Trial Court rightly convicted the appellants – Appeal dismissed.(Paras 7 to 9, 11, 17 & 22)**

क. दण्ड संहिता (1860 का 45), धारा 307/34 – दोषसिद्धि – संबंधित साक्षी – साक्ष्य का मूल्यांकन – चोटें – अपीलार्थी के बैल ने परिवादी की फसलों को नुकसान पहुंचाया जिस पर आपत्ति उठाई गई तथा पंचायत बुलाई गई थी – तत्पश्चात् परिवादी पर, अपीलार्थीगण द्वारा रॉड और डंडो से हमला किया गया था – अभिनिर्धारित – चिकित्सक जिसने परिवादी का परीक्षण किया, ने यह कथन किया है कि चोटें मृत्यु कारित करने हेतु पर्याप्त थीं – चोटों की प्रकृति एवं संख्या स्वयं यह इंगित करती है कि परिवादी पर एक से अधिक व्यक्ति द्वारा हमला किया गया था क्योंकि उसके शरीर के विभिन्न भागों पर चोटें कारित की गई थी – सामान्य आशय स्थापित – परिवादी इलाज हेतु चिकित्सालय में 21 दिनों के लिए भर्ती था – आगे अभिनिर्धारित – परिवादी एवं अ.सा.–3 पति और पत्नी हैं एवं संबंधित साक्षीगण हैं तथा उनके साक्ष्य केवल इस आधार पर अस्वीकार नहीं किये जा सकते – परिवादी तथा उसकी पत्नी के साक्ष्य की चिकित्सकों एवं परिस्थितियों द्वारा संपुष्टि की गई है – परिसाक्ष्य विश्वसनीय है तथा अन्य स्वतंत्र साक्षी द्वारा संपुष्टि की जाना अपेक्षित नहीं – विचारण न्यायालय ने अपीलार्थीगण को उचित रूप से दोषसिद्ध किया – अपील खारिज।

B. ***Evidence Act (1 of 1872), Section 134 – Hostile Witness*** **– Held – In the instant case, some witnesses turned hostile but it is not proper to reject the whole prosecution case on that ground – Section 134 of Evidence Act requires no particular number of witnesses to prove the case – Conviction can be based on sole testimony of reliable witness. (Para 11)**

ख. साक्ष्य अधिनियम (1872 का 1), धारा 134 – पक्षद्रोही साक्षी – अभिनिर्धारित – वर्तमान प्रकरण में, कुछ साक्षीगण पक्षद्रोही हो गये परन्तु उस आधार पर संपूर्ण अभियोजन प्रकरण को अस्वीकार करना उचित नहीं है – साक्ष्य अधिनियम की धारा 134 के अनुसार प्रकरण को साबित करने के लिए साक्षीगण की कोई विशिष्ट संख्या अपेक्षित नहीं है – दोषसिद्धि, विश्वसनीय साक्षी के एकमात्र परिसाक्ष्य पर आधारित हो सकती है।

C. ***Criminal Practice – Testimony of Witnesses – Contradictions and Omissions – Effect*** **– Held – It is true that there are some contradictions and omissions in the testimony of witnesses but they do not affect the whole prosecution case – Such contradictions and omissions are found in testimony of villagers which indicate that they were not making up any false story but were narrating the incident by memory. (Para 12)**

ग. दांडिक पद्धति – साक्षीगण के परिसाक्ष्य – विरोधाभास एवं लोप – प्रभाव – अभिनिर्धारित – यह सत्य है कि साक्षीगण के परिसाक्ष्य में कुछ विरोधाभास एवं लोप हैं परन्तु वे संपूर्ण अभियोजन प्रकरण को प्रभावित नहीं करते – ऐसे विरोधाभास एवं लोप गांववालों के परिसाक्ष्य में पाये गये हैं जो यह इंगित करता है कि वे कोई मिथ्या कहानी नहीं बना रहे थे बल्कि स्मरण कर घटना का वर्णन कर रहे थे।

Cases referred :

1976 Cri.L.J. 418 (SC), AIR 1953 SC 364, (1990) 3 SCC 190, 2017 Cri.L.J. (NOC) 126 (MP), (1999) 9 SCC 529, 2017 Cri.L.J. 1487.

Vijay Nayak, for the appellants.
Ramesh Kushwah, P.L. for the respondent/State.

JUDGMENT

ANJULI PALO, J. :- This appeal has been preferred by the accused persons under Section 374 of the Code of Criminal Procedure being aggrieved by the judgment and conviction dated 31.03.1997, passed by the first

Additional Sessions Judge, Chhindwara in Session Trial No. 310/1995 whereby the appellants were convicted under Section 307/34 of IPC and sentenced for 7 years rigorous imprisonment for each with fine of Rs. 500/- and in default thereof, additional three months rigorous imprisonment.

2. The appellants were acquitted earlier by this Court vide judgment dated 25.07.2003 in Criminal Appeal No. 758/1997. However, the State of MP (respondent herein) preferred an appeal [SLP (Crl.) No. 2899/2004] against the said order before the Hon'ble Supreme Court. The SLP was decided on 20.10.2005. The Hon'ble Supreme Court, without going into the merits of the case, set aside the order passed by this Court with the direction to consider the matter afresh.

3. The facts of the case in brief goes to show that on 10.05.1995 at village Gumgaon, bull of the appellant Sangram damaged the crops of complainant-Jeewanlal Sahu. Mahawati (wife of the complainant Jeewanlal) raised objection and called Panchayat at about 9:30 pm on the same day. After that while Jeewanlal and his wife Mahawati were returning home, the appellant No.1 Sangram along with other co-accused persons assaulted Jeewanlal with rod and sticks. Complainant Jeewanlal (PW-2) received 14 injuries including some fatal injuries over his head which were dangerous to his life. FIR was lodged at Police Station Chand, District Chhindwara. After due investigation police filed charge-sheet against the appellants under Section 307/34 of Indian Penal Code.

4. After considering the overall prosecution evidence, learned Trial Court found that the accused-appellants had shared common intention and in furtherance of common intention committed attempt to murder of the complainant-Jeewanlal. Therefore, the appellants were convicted as mentioned above.

5. Appellants challenged the aforesaid findings and sentence on the ground that the learned Trial Court failed to see that there is no evidence on record to prove that in furtherance of common intention, the appellants committed offence. The prosecution also failed to prove seizure of the weapon from the appellants. The findings of learned Trial Court are based on the presumption and suspicion. There is no evidence of pre-meditation of mind. All of a sudden, quarrel started and the injuries which have been found on Jeewanlal are not at all sufficient to cause his death. The doctor stated that it can be caused by

falling down on the ground. So many material contradictions and omissions have been found in testimony of the complainant and his wife. No independent witness has supported the prosecution case. Therefore, the appellant prays that impugned judgment of conviction and sentence has to be set aside and appellants be acquitted from the charges.

6. Having heard learned counsel for the parties at length and on perusal of the record, this Court is of the opinion that firstly, it is not in dispute that on 10.05.1995 the complainant-Jeewanlal (PW-2) was found injured. This fact is also narrated by Bhagchand (DW-1) and Chhidarani (DW-2). They saw complainant Jeewanlal in injured condition with fresh head injury. The appellants took the defence that Jeewanlal was drunk due to which he may have fallen down and sustained head injuries. But Dr. R.K.Nema (PW-1) who examined Jeewanlal on the same day just after the incident at about 11:45 pm, found the following injury on his body:

(1) Swelling size, about 4"x4" over the left shoulder region with tenderness. Movement is restricted.

(2) Swelling over the left wrist joint about 1"x1".

(3) Contusion over left shoulder region about 3"x3/4".

(4) Lacerated wound, size 1/2"x1/4" skin-deep over left elbow joint and bleeding.

(5) Contusion, size about 3"x1" over right back at the level of third spine, reddish in colour.

(6) Contusion over right side of chest, size 5"x2 ½" reddish in colour on mid axillary line about.

(7) Abrasion over left scapular region size 3"x1".

(8) Abrasion over left knee size 1"x1".

(9) Lacerated wound, size ½" x ½" bone-deep over right temporal region.

(10) Lacerated bleeding wound, size 3"x1/2" bone-deep over right parietal.

(11) Lacerated wound, size 2"x1/4" bone-deep over right parietal

region.

(12) Lacerated wound, size 1"x1/2" skin-deep over left frontal region.

(13) Lacerated wound, about 1"x1/4" skin-deep over left side of the forehead.

(14) Swelling over left temporal region about 1"x1".

7. In the opinion of Dr. R.K.Nema (PW-1), all the above injuries could have been caused by hard and blunt object, just 5-6 hours before the examination and were sufficient to cause death. After the X-ray examination, Dr. D.Moitre (PW-10) found fracture in 7th and 8th ribs at the right side of the chest. The nature and number of injuries itself indicate that Jeewanlal (PW-2) was assaulted by more than one person as the injuries were caused on different parts of his body, Thus, the defence version that Jeewanlal sustained injuries due falling down, is not found reasonable and probable. None of the defence witness deposed as to how the head injuries were caused to Jeewanlal.

8. Mahawati (PW-3) (wife of the complainant Jeewanlal) deposed that earlier during the day time on the date of incident, the bull of appellant No. 1 Sangram Singh entered in the fields of complainant and damaged the crops. Mahawati had complained and raised objection before Sangram Singh. At that time also appellant No. 1 Sangram Singh was angry over her and was about to hit her. She came back home and told her husband Jeewanlal about the incident. This testimony was corroborated by Jeewanlal (PW-2)/ complainant. After some time, they went to the house of Bissu Patel where they called panchayat but appellant No. 1 Sangram did not attend the panchayat. When the complainant-Jeewanlal and his wife were returning home at night, the appellants assaulted Jeewanlal by rod and sticks due to which Jeewanlal was injured. He also sustained head injuries. As per Jeewanlal (PW-2), his wife lodged report at the police station. Thereafter, he was referred to District Hospital, Chhindwara for further treatment. He was admitted there for about 21 days for treatment. All the above facts are indicative of common intention of the appellants to commit offence with him.

9. Although, complainant-Jeewanlal (PW-2) and Mahawati (PW-3) are husband-wife and are related witnesses. They come in the category of

interested witness, but it is settled law that only on that ground their evidence cannot be rejected.

10. In case of *Mst. Dalbir Kaur Vs. State of Punjab* [1976 Cri.L.J. 418(SC)] the Hon'ble Supreme Court has made following observations :-

> *"Interested witnesses- Relatives witnesses are natural witnesses – are not interested witnesses and their testimony can be relied upon."*

The Hon'ble Supreme Court in case of *Dalip Singh & Ors. Vs. State of Punjab* [AIR 1953 SC 364], has held as under: -

> *"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause' for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a.sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule."*

11. Thus, the evidence of Jeewanlal (PW-2) and Mahawati (PW-3) is properly corroborated by the doctors and the circumstances also, hence, inspires confidence to believe in their evidence. Some other witnesses turned hostile but it is not proper to reject the whole prosecution case on that ground. Section 134 of the Evidence Act requires no particular number of witnesses to prove the case. Conviction can be based on the sole testimony of reliable witness.

12. K.K.Tripathi, Assistant Sub-Inspector (PW-8) deposed that FIR

(Ex. P/9) was registered on the complaint of Jeewanlal just after the incident. The incident took place at about 9:30 pm. Medical examination was conducted within one hour after the registration of FIR. All these facts substantiate the testimony of complainant-Jeewanlal (PW-2) and his wife Mahawati (PW-3). There is nothing on record to prove that the FIR was lodged as an after thought on false grounds to implicate the appellants. It is true that some contradictions and omissions have appeared in the testimony of these witnesses but it cannot be said to affect the original prosecution case wholly. Such type of contradictions and omissions, are found in the testimony of villagers which indicate that they were not making up any false story but were narrating the incident by memory. Hence, no reasonable doubt occurs on the testimony of Jeewanlal (PW-2) and Mahawati (PW-3).

13. In case of *Vijayee Singh Vs. State of UP* [(1990) 3 SCC 190] the Hon'ble Supreme Court discussed about the 'reasonable doubt' as follows:

> *"The 'reasonable doubt' is one which occurs to a prudent and reasonable man. Section 3 of the Evidence Act refers to two conditions - (i) when a person feels absolutely certain of a fact – believe it to exist" and (ii) when he is not absolutely certain and think it so extremely probable that a prudent man would, under the circumstances, act on the assumption of its existence.*
>
> *The doubt which the law contemplates is certainly not that of a weak or unduly vacillating, capricious, indolent, drowsy or confused mind. It must be the doubt of the prudent man who assumed to possess the capacity to "separate the chaff from the grain".*
>
> *The degree need not reach certainty but it must reach a high degree of probability."*

14. While appreciating the evidence of a witness, the Court has to assess whether read as a whole, it is truthful. In doing so, the Court has to bear in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies sake the truthfulness.

15. In case of *Hari Narayan Vs. State of M.P.,* 2017 Cri.L.J. (NOC) 126 (MP)", it was held that:-

"Minor discrepancies in statements occurring due to illiteracy of witness and long gap between recording of testimony and offences – Not a ground to discard evidence".

"Some discrepancies, not touching the core of the case are not enough to reject the evidence as a whole."

16. In the case of *Leelaram Vs. State of Haryana* [(1999) 9 SCC 529], the Hon'ble Supreme Court has held that the Court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted. Mechanical rejection of such type of evidence may lead to failure of justice. It is well known that principle of *"Falsus in uno-falsus in omnibus"* has no general acceptability.

17. Learned counsel for the appellants submitted that no independent witness has supported the prosecution case. Hence, prosecution story is not reliable. This Court is unable to agree with the submission that the testimony of two eye-witnesses namely Jeewanlal (PW-2) and Mahawati (PW-3) requires corroboration from the other independent witness.

18. Investigation Officer Akhil Verma (PW-11) seized an iron rod from appellant No. 1 Sangram as per seizure memo (Ex. P/5), lathi from the appellant No. 2 Guddu @ Vishram as per seizure memo (Ex. P/6) and babool stick from appellant No. 3 Kamlesh as per seizure memo (Ex.P/7) before the punch witnesses Neelam Singh and Motiram.

19. Neelam Singh (PW-5) knew about the incident. He also deposed that the incident took place at night thereafter, the police came to the village to enquire about the matter. He has also signed Exh. P/4 to Exh. P/7. This witness partly corroborated the testimony of Investigation Officer Akhil Verma (PW-11).

20. The importance of discovery of weapons from the appellants lies in the fact that the weapons used in the crime were found in the possession of the appellants. It is a corroborative element in the case of Jeewanlal (PW-2) and his wife Mahawati (PW-2) (sic:PW-3) who do not require corroboration and that makes it all the more safe to accept their testimony.

21. In case *Roop Narayan Mishra Vs. State of U.P.* [2017 Cri.L.J. 1487] it was held that:

"Direct evidence- Testimony of the witnesses is clear, cogent and trustworthy as to time, place, manner of committing crime and identification of accused. Prosecution is able to prove its case beyond all reasonable doubts against accused. Accused held guilty of offence."

22. After taking into consideration all the above facts, I agree with the findings of learned Trial Court. On that finding, the conviction of the appellant under Section 307/34 of Indian Penal Code can be sustained. Accordingly, the conviction of the appellants is upheld. Keeping in view the number of injuries and the manner of incident, on the question of sentence, this Court finds that it is not proper to interfere with the judicial discretion of the learned Trial Court.

23. Accordingly, the appeal is hereby dismissed.

24. The appellants are on bail. Their bail bonds are canceled and they are directed to surrender immediately before the concerned trial Court to undergo the remaining sentence, failing which the trial Court shall take appropriate action under intimation to the registry. The period of sentence already undergone by the appellants in the custody be adjusted.

25. Copy of this order be sent to the Court below alongwith the record for information and compliance.

Appeal dismissed.

I.L.R. [2017] M.P., 2251
ARBITRATION CASE
Before Mr. Justice Sujoy Paul
A.C. No. 67/2016 (Jabalpur) order passed on 8 August, 2017

GRAND RIDGE HOMES (M/S) ...Applicant
Vs.
MAHESHWARI HOMES & DEVELOPERS ...Non-applicant

Arbitration and Conciliation Act (26 of 1996), Section 16 – Term of Arbitration Clause – Effect of termination of contract **– Held – As per legislative mandate ingrained in section 16 of the Act, Arbitration clause would not cease to exist on termination of contract or for the reason that agreement has outlived its life. (Paras 14, 15, 16)**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 16 – माध्यस्थम् खंड की अवधि – संविदा के पर्यवसान का प्रभाव – अभिनिर्धारित – अधिनियम की धारा 16 में अंतर्निहित विधायी आज्ञा के अनुसार, संविदा के पर्यवसित होने पर या इस कारण से कि करार अपनी अवधि से अधिक समय तक रहा, माध्यस्थम् खंड का अस्तित्व समाप्त नहीं होगा।

Cases referred :

2012 (12) SCC 581, 2012 (2) SCC 93, 2014 (5) SCC 68, 2014 (5) SCC 1, 2015 (8) SCC 193.

Nikhil Tiwari, for the applicant.
A.P. Singh, for the non-applicant.

ORDER

SUJOY PAUL, J. :- The applicant has filed this application under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to resolve the dispute between the parties.

2. The admitted facts between the parties are that they have entered into a Memorandum of Understanding (MoU) on 25.10.2013 at Anuppur (Annexure-A/1). As per Clause 9 of MoU, agreement remained in force for a period of 30 months or till completion of the project, whichever is earlier. 30 months period was over on 25.04.2016. On 12.12.2016, the respondent cancelled the MoU.

3. Since the dispute arose between the parties, the applicant sent a legal notice to the respondent on 06.01.2016 (Annexure-A/2) and requested to honour the MoU and pay certain amounts mentioned in Clause 11 of the said notice. The said notice was replied by the respondent by legal notice dated 12.02.2016 (Annexure-A/4). Thereafter the applicant sent another notice dated 16.02.2016 and requested the other side to appoint an Arbitrator as per Clause 10 of the MoU. In reply to this notice, the respondent sent a letter dated 01.03.2016 (Annexure-A/6) and informed the applicant that by communication dated 14.01.2016, the MoU has been cancelled and, therefore, question of appointment of Arbitrator does not arise.

4. Criticizing the action of respondent, Shri Nikhil Tiwari, learned counsel for the applicant submits that the present application, by no stretch of imagination, can be treated to be barred by limitation. Reliance is placed on

Section 43 of the Arbitration & Conciliation Act, 1996. He submits that for the purpose of counting limitation, the reference may be made to Section 21 of the said Act. Section 21 in no uncertain terms makes it clear that as to when arbitral proceedings are commenced. Shri Tiwari submits that it is crystal clear that arbitral proceedings were commenced on the date on which the request for referring the dispute for arbitration is received by the respondent. He submits that request was made to appoint the Arbitrator on 16.02.2016, which is admittedly received by the respondent. Thus, the limitation will start from this day. Reliance is placed on Article 137 of the Limitation Act which prescribes a limitation of three years for a dispute of present nature. He submits that three years are to be counted from the date applicant's demand for appointment of Arbitrator is received by respondent. Thus the present application is well within the limitation. To bolster this contention, reliance is placed on 2012(12) SCC 581 *(State of Goa Vs. Praveen Enterprises)*.

5. Per contra, Shri A. P. Singh, learned counsel for the respondent placed reliance on the return and contended that the life of the MoU was for 30 months. On expiry of 30 months, MoU lost its complete shine. Thus, the arbitration clause contained in MoU is of no significance. He further submits that the present application is filed after 11.11.2016 i.e., after 30 months from 25.04.2013 and, therefore, the arbitration clause contained in the MoU is of no assistance / avail to the applicant. In nutshell, it is submitted that after completion of 30 months, in the present case, there exists no arbitration clause or live claim for the applicant and thus no Arbitrator can be directed to be appointed. Lastly, it is submitted that time was the essence of the contract.

6. No other point is pressed by learned counsel for the parties.

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

8. In view of the aforesaid stand of the parties, it is not in dispute that they have entered into the MoU on 25.10.2013. The said MoU contains an arbitration clause. The other side raised objection on twin grounds. The first objection is relating to limitation whereas second objection is that the time was essence of the contract and once the MoU itself came to an end, the arbitration clause contained in such MoU cannot be pressed into service. Moreso, when subsequently by a specific order the said MoU was cancelled by the respondent.

9. Before dealing with the aforesaid contentions, it is apposite to refer relevant

provisions from the Act. Relevant portion of Section 16 reads as under :-

> "16. **Competence of arbitral tribunal to rule on its jurisdiction :-**
>
> (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose :-
>
> (a) An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract;
>
> (b) A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause."

10. Section 21 reads as under:

> "**21. Commencement of arbitral proceedings.-** Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

11. Section 43(3) provides as under :-

> "**43. Limitation.** (1) The Limitation Act, 1963(36 of 1963), shall apply to arbitrations as it applies to proceedings in Court.
>
> 2. ....
>
> 3. Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the

justice of the case may require, extend the time for such period as it thinks proper.

[Emphasis supplied]

12. So far limitation is concerned, it is clear that the applicant made a request for appointment of Arbitrator in February, 2016. As per Section 21 of the Act, the arbitral proceedings commenced on the date on which a request for that dispute to be referred to arbitration is received by the respondent. The respondent has admitted that he had received the request for appointment of Arbitrator. The limitation is to be counted from the date such request is received by the respondent. This is clear by a conjoint reading of Section 43(3) read with Article 137 of the Limitation Act. Thus, I am unable to hold that the present application is barred by limitation. I find support in my view from the judgment of Supreme Court in the case of *Praveen Enterprises* (supra).

13. So far the second objection of respondent is concerned, a conjoint reading of clause (a) and (b) of sub-section (1) of Section (16) makes it clear that the arbitration clause of a contract must be treated as an independent agreement and such agreement relating to arbitration clause subsists even if contract is treated as null and void.

14. In 2012(2) SCC 93 *(Reva Electric Car Co. (P) Ltd. Vs. Green Mobile),* the Apex Court held that under Section 16(1), the legislature makes it clear that while considering any objection with respect to the existence or validity of the arbitration agreement, the arbitration clause which formed part of the contract, has to be treated as an agreement independent of the other terms of the contract. To ensure that there is no misunderstanding, section 16(1)(b) further provides that even if the arbitral tribunal concludes that the contract is null and void, it should not result, as a matter of law, in an automatic invalidation of arbitration clause. Section 16(1) presumes the existence of a valid arbitration clause and mandates the same to be treated as an agreement independent of the other terms of contract. In no uncertain terms, it was made clear that by virtue of Section 16(1)(b), it continues to be enforceable notwithstanding a declaration of the contract being null and void. Pertinently, in *Rewa Electricals Ltd.* (supra) the Apex Court declined to accept the submission that with the termination of MoU on 31.12.2007, the arbitration clause would also cease to exist. Accordingly, Arbitrator was directed to be appointed in the said case.

15. The same principle was followed in 2014(5) SCC 68 *(Today Homes and Infrastructure Pvt. Ltd. Vs. Ludhiana Improvement Trust)*. In 2014(5) SCC 1, the Apex Court held that the concept of separability of the arbitration clause / agreement from the underlying contract is a necessity to ensure that the intention of the parties to resolve the dispute by arbitration does not evaporate into thin air with every challenge to the legality, validity, finality or breach of the underlying contract.

16. The *ratio decidendi* of said cases was again followed by Supreme Court in 2015(8) SCC 193 *(Ashapura Mine-Chem Limited Vs. Gujrat Mineral Development Corporation)*. In view of principles laid down in aforesaid cases, the legal position becomes clear like noon day. Even if the MoU has completed its life or it is cancelled, the arbitration clause will subsist and it will not vanish in thin air. Arbitration clause must be treated as stand alone agreement. This is the legislative mandate ingrained in Section 16 of the Act. Thus the second objection raised by the respondent is also devoid of substance.

17. In the result, this application must be allowed and accordingly I deem it proper to provisionally appoint **Shri S. N. Khare, Retd. District & Sessions Judge, R/o 405, Arpit Apartment, Nagrath Chowk, Jabalpur 482001 (M.P.)** as Arbitrator. The Registry of this Court is directed to obtain disclosure from the proposed Arbitrator as per the requirement of sub-section (8) of Section 11 of the Act.

18. List along with the disclosure on **17.08.2017.**

Order accordingly.

I.L.R. [2017] M.P., 2256
CIVIL REVISION
Before Mr. Justice J.K. Maheshwari
C.R. No. 368/2012 (Jabalpur) decided on 19 June, 2017

MANOJ KUMAR AGRAWAL ...Applicant
Vs.
NEPA LTD. NEPANAGAR THROUGH ITS CMD ...Non-applicant

***Civil Procedure Code (5 of 1908), Order 21 Rule 1 & 4 – Deposit of Decreetal Amount – Interest* – Arbitrator passed an award for refund of money alongwith interest – In appeal, execution was stayed subject**

to deposit of 50% amount in Court which could be withdrawn by the decree holder by furnishing security – Subsequently appeal dismissed – Judgment debtor filed an application with a plea that as he has already paid 50% amount, he will not be liable to pay interest on that amount – Application allowed – Challenge to – Held – Deposit made by Judgment debtor under the directions of the Court while passing interim order, would not amount to deposit of the decreetal amount under the purview of Order 21 Rule 1 C.P.C. – Judgment debtor is liable to pay interest on the said deposit amount – Revision allowed. (Para 12)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 1 व 4 – डिक्रीत राशि जमा की जाना – ब्याज – मध्यस्थ ने ब्याज के साथ धन के प्रतिदाय के लिए एक अवार्ड पारित किया – अपील में, न्यायालय में 50% राशि जमा किये जाने के अधीन निष्पादन रोक दिया गया था जो कि डिक्रीदार द्वारा प्रतिभूति देकर वापस ली जा सकती थी – तत्पश्चात् अपील खारिज की गई – निर्णीत ऋणी ने इस अभिवाक् के साथ आवेदन प्रस्तुत किया कि चूंकि उसने 50% राशि का भुगतान पहले से ही कर दिया है, वह उस राशि पर ब्याज का भुगतान करने हेतु दायी नहीं होगा – आवेदन मंजूर – को चुनौती – अभिनिर्धारित – अंतरिम आदेश पारित करते समय न्यायालय के निदेशों के अंतर्गत निर्णीत ऋणी द्वारा राशि जमा किया जाना, सिविल प्रक्रिया संहिता के आदेश 21 नियम 1 की परिधि के अंतर्गत डिक्रीत राशि का जमा किया जाना नहीं होगा – निर्णीत ऋणी कथित डिक्रीत राशि पर ब्यांज का भुगतान करने के लिए दायी है – पुनरीक्षण मंजूर।

Cases referred :

AIR 1960 MADRAS 207, AIR 1968 SC 1047, C.M. No. 5462/2007 in FAO(OS) 93/2002 & EFA(OS) 9/2007 (Delhi High Court) decided on 16.03.2009, Ex.P. 403/2010 & EA Nos. 734/2010, 735/2010 & 353/2011 (Delhi High Court) decided on 13.01.2012, G.A. No. 3333 of 2011, G.A. No. 2430 of 2012 & E.C. No. 28 of 2003 (Calcutta High Court) decided on 05.02.2013, 2006 (8) SCC 457, 1999 AIR SCW 53.

Applicant, present in person.
Shreyas Dharmadhikari, for the non-applicant.

ORDER

J.K. Maheshwari, J. :- Being aggrieved by the order dated 5.10.2012 passed in a Execution M.J.C. No.44/12 by District Judge, Burhanpur, petitioner has preferred this revision.

2. The facts unfolded to the present case are the applicant filed a dispute before the arbitrator claiming a sum of Rs.1,05,65,500/-. After filing the reply and on adjudication of the dispute the award was passed on 14.4.2000 refusing the claim as demanded, but to allow the refund of balance amount of security Rs.20,59,800/- deposited with Nepa Limited, deducting the litigation expenses, arrears of rent and electricity charges of the accommodation let out to the claimant Rs.6,10,500/-. It is also held that the balance amount shall carry interest @ 18% per annum, and claimant shall vacate the Coal block on or before 30.4.2000. Against the award, claimant as well as Nepa Limited both filed the appeals bearing M.A. No.363/2001 and M.A. No.868/2001. Upon analogous hearing, this court vide order dated 2.2.2012, dismissed the same but during pendency of those appeals, as per order dated 30.10.2001, recovery of the balance amount was stayed subject to deposit of 50% of the awarded amount by Nepa Limited within a period of 10 days in the executing court. The Court also permitted to withdraw the amount so deposited after furnishing personal undertaking and surety to re-deposit of the said amount, if directed by the Court.

3. It is not in dispute except to deposit the 50% amount, remaining amount and to deposit the half of the amount within the time prescribed under the order of this Court interest @ 18% has been calculated and paid. However, in terms of Order 21 Rule 1 of CPC, objection was raised before the executing Court that mere deposit of the amount under the interim order of the High Court would not amount to withdraw the interest on the said amount from the date of quashing of the interim order by the High Court. It is urged that the interest on the said amount also is payable till it is realized in full satisfaction from the date of its deposit till passing the final order by the High Court in the appeal.

4. Per contra, learned counsel representing Nepa Limited contends that on filing Appeal No. 363/2001, the High Court vide order dated 30.10.2001 stayed the execution of the remaining amount subject to deposit of 50% amount. The decree holder was granted liberty to realize the said amount. He has withdrawn the amount on furnishing the security as directed by the Court, however, on dismissing the appeal by the High Court, he would not be entitled to claim interest on 50% amount deposited by the Nepa Limited as per interim order of the Court claiming interest thereon. It is urged that the deposit made in the Court would be treated to be a deposit under Order 21 Rule 4 of the

CPC, therefore, the applicant is not entitled to claim any interest and the executing Court has rightly dismissed the execution on full satisfaction.

5. It is not in dispute that after dismissal of the appeal filed by Nepa Limited, the remaining decreetal amount along with the interest has been paid. In the facts of the present case, the only question arises for consideration is, as per order dated 30.10.2001 passed in the appeal of Nepa Limited, on deposit of 50% amount, the execution of the remaining amount shall remain stayed, would lead to deposit as specified under Order 21 Rule 1 of the CPC. It is further required to be seen that after deposit of the said amount, if it is withdrawn by the decree holder subject to furnishing the security, would cease payment of interest by the Nepa Limited on the said 50% deposit.

6. After hearing learned counsel appearing on behalf of the parties first of all, the questions put for consideration relates back to the objection submitted by the petitioner under Order 21 Rule 1 & sub rule (4) of CPC. Thus, to understand the letter and spirit of the said provision, it is reproduced below for ready reference –

1. Modes of paying money under decree.-

(1) All money, payable under a decree shall be paid as follows, namely:—

(a) by deposit into the court whose duty it is to execute the decree, or sent to that court by postal money order or through a bank; or

(b) out of court, to the decree holder by postal money order or through a bank, or by any other mode wherein payment is evidenced in writing; or

(c) otherwise, as the court, which made the decree, directs.

(2) Where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment debtor shall give notice thereof to the decree holder either through the court or directly to him by registered post, acknowledgement due.

(3) xxxxxxxxxxxxxxxxx

(4) On any amount paid under clause (a) or clause (c) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (2).

(5) xxxxxxxxxxxxxxx

On perusal of the aforesaid, it may be very well understood that Rule 1 deals with the payment under decree and its mode as specified in Rule 1 (a) & (c). In all, Rule 1 makes it clear that all money, payable under a decree shall be paid as follows.

Under Clause (a) the awarded amount is required to be deposited in the Court who has to execute the decree or it may be sent by postal money order or through a bank. Clause (b) do not apply to the facts of the case, however, clause (c) applies whereby in case deposit of all money has not been made in the executing Court and not offered by postal money order or through the bank then the Court who made the decree directs in the manner it may be deposited. It is relevant to point out here that clause (c) emphasize the fact that the deposit of the money under decree as directed may be by the Court which made the decree. Sub rule (2) makes it clear that if the payment is satisfied under Clause (a) and (c) of sub rule (1) the judgment debtor is required to give notice to decree holder through the Court or by registered post under acknowledgement due. Under Sub rule (4), it is apparent that as per the judgment under the decree and the mode so specified under Sub rule (1)(a) & (c) if opted by the judgment debtor then interest shall cease to run from the date of service of notice referred to in Sub rule (1). However, in the facts of the present case, the moot question crop-up for determination is that after passing the award on 14.4.2000, the deposit made by Nepa mill under the interim order dated 30.10.2001 of half of the awarded amount subject to furnishing of security for receiving the same by the respondent would fall within the purview of Order 21 Rule 4 of the CPC which deals the connotation "cease to run" for "interest from the date of service of the notice" as referred in Sub rule (2) Order 21. In the context of the facts of the case and to elucidate, the real meaning and object of introducing Order 21 Rule 1 sub rule (2) and (4) of the CPC, the guidance may be taken from various judgments of High Courts as well as Hon'ble Apex Court.

7. In the case of *O.RM.P.RM. Ramanathan Chettiar vs. P.S.L. Ramanathan Chettiar and others* AIR 1960 MADRAS 207 Full Bench,

the issue came for consideration whether the payment made under some conditions for drawing the money would fall within the purview of Order 21 Rule 1 of CPC. The Full Bench of Madras High Court has observed –

> "Where money is deposited under an order of court, the terms of the deposit would be governed by the order. If for example an order grants only a time for deposit with no other restriction, the deposit made would go in satisfaction of the decree. If, on the other hand, the order imposes a condition on the decree-holder drawing the money like furnishing of security, there would be an impediment to the satisfaction of thedecree. The mere fact that the decree-holder furnished security would not affect the question as by the order of the court it could be deemed to have been made only provisionally subject to the result of the pending proceedings. The court referring to the decisions in ILR 4 Cal 6 and ILR 41 Made 1053: (AIR 1919 Mad 607) held that the ratio of those judgments apply whereby it is made clear that if the proceedings terminate in favour of the decree-holder, the monies would stand transferred to him on the date, thereof. The conditions imposed by the order would then cease."
>
> Dealing with a vice-versa situation of the case in hand, it is said that the order puts a restriction on the appellant drawing the money. That could not be held to be a deposit under Order 21 rule 1 CPC but one under the order of court. The money deposited could be deemed to be a payment to or a realization on behalf of the appellant only when the said proceedings wherein the interim direction has been issued have been decided finally.

In the said case, other side has approached before the Supreme Court against the Full Bench judgment. The Apex Court in the case of *P.S.L. Ramanathan Chettiar and others vs. O.R.M.P.R.M. Ramanathan Chettiar* AIR 1968 SC 1047, the court held as under :-

> "On principle, it appears to us that the facts of a judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-

holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 Rule 1 CPC in satisfaction of the decree.

The real effect of deposit of money in court as was done in this case is to put the money beyond the reach of the parties pending the disposal of the appeal. The decree- holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment- debtor.

The last contention raised on behalf of the respondent was that at any rate the decree- holder cannot claim any amount by way of interest after the deposit of the money in court. There is no substance in this point because the deposit in this case was not unconditional and the decree-holder was not free to withdraw it whenever he liked even before the disposal of the appeal. In case he wanted to do so, he had to give security in terms of the order. The deposit was not in terms of Order 21, Rule 1 C.P.C. and as such, there is no question of the stoppage of interest after the deposit."

8. Similar issue has come for consideration before the Division Bench of Delhi High Court in the case of *Delhi Development Authority vs. Bhai Sardar Singh & sons* C.M. No.5462/2007 in FAO(OS) 93/2002 & EFA(OS) 9/ 2007 decided on 16.3.2009. The Court held that the act of making payment by the judgment-debtor to the decree-holder under Rule 1 of Order 21 would require a positive act on the part of the judgment- debtor of either depositing "into the Court whose duty it is to execute the decree" or to make payment out of court to the decree-holder through a postal money or through a bank or by any other mode "wherein payment is evidenced in writing", unless the Court

which made the decree otherwise directs. The submission of the judgment-debtor regarding deposit of the amount would result in the stoppage of accrual of any further interest from the date of deposit was also found meritless in terms of the Apex Court judgment in the case of *P.S.L. Ramanathan Chettiar* (supra).

9. In another judgment Delhi High Court in the case of *M/s Engineering Projects (India) Ltd. vs. M/s. Arvind Construction Company Ltd.* decided on 29.5.2009 has re-stated the same view in the context of the judgment of the Supreme Court. The Court has elucidated the same principle as laid down in *Delhi Development Authority Vs. Bhai Sardar Singh & Sons* (supra). In the case of *Klen & Marshalls Manufacturers and Exporters Ltd.* Ex.P. 403/2010 & EA Nos. 734/2010, 735/2010, 353/2011 decided on 13.1.2012 again relying upon the judgment of *Bhai Sardar Singh* (supra) held that deposit, if any, made under conditional order of the Court, would not be termed as deposit under Order 21 Rule 1 of CPC.

10. The Calcutta High Court in the case of *Sea Stream Navigation Ltd. vs. LMJ International Ltd.* (G.A. No.3333 of 2011, G.A. No.2430 of 2012 and E.C. No.28 of 2003) decided on 5.2.2013 restated the position of law in the context of referring basic principle of Order 21 Rule 1 CPC relying upon judgment of *Gurpreet Singh vs. Union of India* reported in 2006 (8) SCC 457. The Court observed that "mere deposit made under an order of Court, does not in the opinion qualify for exemption with regard to running of interest. It is stated that the deposit should be unconditional to the credit of the decree".

11. The Apex Court in the case of *Raunaq International Ltd. vs. I.V.R. Construction Ltd. and others* 1999 AIR SCW 53 has considered the issue that deposit made under the interim order may cease to pay the interest by the judgment-debtor to the decree-holder on dismissal of the said proceedings. The Apex Court in para-18 has observed thus :-

> 18. The same considerations must weight with the Court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the petitioner asking for interim orders, in appropriate cases should be asked

to provide security for any increase in cost as a result of such delay, or any damages suffered by the opposite party in consequences of an interim order. Otherwise public detriment may outweigh public benefit in granting such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution.

12. After analytical discussion to the spirit of the provision of Order 21 Rule 1 of the CPC and as per judgment of Hon'ble the Supreme Court and also Madras High Court, Calcutta High Court and Delhi High Court, it is apparent that the deposit, if any, made by the judgment-debtor under the directions of the Court while passing the interim order, it would not be a deposit within the purview of Order 21 Rule 1 of the CPC. After pronouncing the judgment, Order 21 denotes the execution of decree showing " Modes of Paying money under decree". Rule 1 starts with connotation "all money payable under the decree shall be paid as follows:. The mode to deposit the same in a Court whose duty it is to execute the decree or send to that Court by postal money order or through Bank or otherwise as the Court, which made the decree, directs. Thus, considering the aforesaid, in my considered opinion, the deposit made by Nepa Limited as per the interim order dated 30.10.2001 passed in M.A. No.363/2001 seeking interim relief and finally the said appeal was dismissed without issuing any direction, would not amounting to deposit for the purpose of Order 21 Rule 1 of the CPC. The finding recorded by the executing Court in the order impugned is not in accordance with the spirit of Order 21 Rule 1of the CPC and its interpretation made by the Apex Court and various High Courts, therefore, in my considered opinion, the order impugned is liable to be set aside.

13. Accordingly, this petition succeeds and is hereby allowed. Order impugned passed by the executing Court stands set aside. It is directed that the trial Court shall calculate the amount of interest on the 50% amount Rs.7,78,280/- @ 18% from the date of its deposit in terms of the award as per interim order dated 30.10.2001 and shall take appropriate steps restoring the execution case for satisfaction of the award. In the facts of the case, parties are directed to bear their cost.

Revision allowed.

I.L.R. [2017] M.P., 2265
CRIMINAL REVISION
Before Mr. Justice Alok Verma
Cr.R. No. 1492/2016 (Indore) decided on 10 April, 2017

PUSHPASINGH ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

A. Penal Code (45 of 1860), Sections 419, 420, 467, 468 & 471 – Revision Against framing of Charge – **Ingredients – Complainant invested in Unit Trust of India where applicant, being sister-in-law was named as guardian of her minor daughter – Subsequently complainant came to know that applicant opened an account by name of minor daughter where she named herself to be the natural mother of minor daughter and deposited the maturity amount received from the investment – Held – Applicant knowing well that she is not the natural mother has opened the account and shown herself to be the natural mother – When natural mother and father are alive, she had no authority to open the account and withdraw the amount – *Prima facie*, charges u/S 419 and 420 IPC are made out. (Para 8)**

क. दण्ड संहिता (1860 का 45), धाराएँ 419, 420, 467, 468 व 471 – आरोप विरचित करने के विरूद्ध पुनरीक्षण – घटक – परिवादी ने यूनिट ट्रस्ट ऑफ इंडिया में निवेश किया जहाँ आवेदिका को, जेठानी होने के नाते उसकी अवयस्क पुत्री के संरक्षक के रूप में नामित किया गया था – तत्पश्चात् परिवादी को यह पता चला कि आवेदिका ने अवयस्क पुत्री के नाम से एक खाता खोला है जहाँ उसने स्वयं को अवयस्क पुत्री की प्राकृतिक/वास्तविक माँ के रूप में नामित किया तथा निवेश से प्राप्त हुई परिपक्व राशि जमा की – अभिनिर्धारित – आवेदिका ने भलीभांति यह जानते हुए कि वह प्राकृतिक/वास्तविक माँ नहीं है, खाता खुलवाया तथा स्वयं का प्राकृतिक/वास्तविक माँ होना दर्शाया – जब प्राकृतिक/वास्तविक माता एवं पिता जीवित हैं, उसे खाता खुलवाने का तथा राशि प्रत्याहृत करने का कोई प्राधिकार नहीं था – प्रथम दृष्टया, भारतीय दंड संहिता की धारा 419 एवं 420 के अंतर्गत आरोप बनते हैं।

B. Penal Code (45 of 1860), Sections 467, 468 & 471 – **Held – There is no document which can be called as valuable security – Allegation is that applicant opened an account for which she signed the application form and**

other documents, but she signed as Pushpa Singh and not as Sadhna Singh (complainant), therefore such documents can not be called as forged or false documents – There is no document in the charge sheet which was used by applicant as original one and which was admittedly forged – No forgery was committed – Prima facie, offence u/S 467, 468 and 471 IPC are not made out – Charges framed under these sections are quashed – Revision partly allowed. **(Para 7 & 8)**

ख. दण्ड संहिता (1860 का 45), धाराएँ 467, 468 व 471 – अभिनिर्धारित – ऐसा कोई दस्तावेज नहीं है जिसे मूल्यवान प्रतिभूति कहा जा सकता है – अभिकथन है कि आवेदिका-ने एक खाता खोला जिसके लिए उसने आवेदन पत्र तथा अन्य दस्तावेजों पर हस्ताक्षर किये, परन्तु उसने पुष्पा सिंह के रूप में हस्ताक्षर किये तथा न कि साधना सिंह (परिवादी) के रूप में, इसलिए ऐसे दस्तावेजों को कूटरचित या मिथ्या दस्तावेज नहीं कहा जा सकता – आरोप पत्र में कोई दस्तावेज नहीं है, जिसका उपयोग आवेदक द्वारा मूल के रूप में किया गया था तथा जो कि स्वीकार्य रूप से कूटरचित था – कोई कूटरचना कारित नहीं की गई थी – प्रथम दृष्टया, भारतीय दंड संहिता की धारा 467, 468 एवं 471 के अंतर्गत कोई अपराध नहीं बनता – इन धाराओं के अंतर्गत विरचित किये गये आरोप अभिखंडित – पुनरीक्षण अंशतः मंजूर।

C. Criminal Practice – Court of Magistrate and Court of Session – Same Judge **– Held – Proceedings are not vitiated only because the Judge in Session Court is same who heard the matter as Magistrate before committal also – When it is shown that some prejudice is caused to accused, case may be transferred to some other Court – No interference called for.** **(Para 9)**

ग. दांडिक पद्धति – मजिस्ट्रेट न्यायालय एवं सत्र न्यायालय – समान न्यायाधीश – अभिनिर्धारित – कार्यवाहियाँ केवल इस कारण से दूषित नहीं हो जाती कि सत्र न्यायालय में न्यायाधीश वही है जिसने उपार्पण करने के पूर्व भी मजिस्ट्रेट के रूप मामले को सुना – जब यह दर्शाया गया है कि अभियुक्त को कुछ प्रतिकूल प्रभाव कारित किया गया है, प्रकरण किसी अन्य न्यायालय में अंतरित किया जा सकता है – किसी हस्तक्षेप की आवश्यकता नहीं।

Shadab Khan, for the applicant.

Prasanna Bhatnagar, for the non-applicant/State.

ORDER

ALOK VERMA, J. :- This criminal revision is directed against the order passed by learned IInd Additional Sessions Judge, Ratlam in Sessions Trial No.63/15 dated 08/11/2016, wherein, learned Additional Sessions Judge framed charges against the applicant under Sections 419, 420, 467, 468 and 471 IPC.

2. Relevant facts for disposal of this criminal revision are that complainant Sadhna Singh is wife of younger brother of husband of present applicant. She filed a written complaint before Police Station - Station Road, Ratlam on 23/05/2006. It was stated in the complaint that she invested Rs.20,000/- in CCP plan of Unit Trust of India (UTI). The present applicant being her sister-in-law, was shown the guardian of her minor daughter - Priyanka Singh. She used to receive the account details each year regularly, however, two years prior to lodging of complaint, such statements were not being received by the complainant, and therefore, she inquired from the office of Unit Trust of India at Indore. There, she came to know that present applicant with the help of her husband Rajendra Singh, opened account in the name of her daughter Priyanka Singh and the present applicant showed herself as mother of the girl and she opened the account in the Post Office bearing No.'SB91680'. In this account, she deposited an amount Rs.1,00,000/- that was received in the name of Priyanka Singh as maturity of amount of CCP plan. When, she came to know about this fact and the fact that the present applicant showed herself as natural mother of the child, she lodged a complaint, on which, crime No.455/2006 by police station - Station Road was registered under Sections 419, 420, 467, 468, 471 and 406 IPC. After due investigation, charge-sheet was filed.

3. By the impugned order, learned Additional Sessions Judge framed charges under Sections as aforesaid. Being aggrieved by the impugned order, this revision is filed that there is no evidence to show that any deceit was done by the present applicant.

4. The present applicant deposited initially an amount of Rs.20,000/- in CCP plan of Unit Trust of India. Her name was also mentioned as guardian in the records, and therefore, no cheating or deceit was done by her. There was no forgery on the part of present applicant. She signed in her name as Pushpa Singh. It is not the case of complainant or the prosecution that she made

signature of the complainant or any other person, and therefore, the documents could not be called forged documents.

5. There is no evidence to show that the present applicant misappropriated the amount received from UTI in the name of Priyanka Singh. It is also taken a ground that the same Judge, who was Chief Judicial Magistrate at Ratlam, signed certain orders in this particular case as Chief Judicial Magistrate and then the case was made over to him as he was promoted to the post of Additional Sessions Judge, and therefore, he was not competent to try the case.

6. Learned counsel for the respondent/State opposed the revision and prays for dismissal of the revision.

7. I have gone through the impugned order. Section 463 IPC defines forgery. Section 464 IPC defines making it false documents. Section 467 IPC relates to forgery of valuable security. Learned Sessions Judge charged the present applicant under an offence for making forged valuable security, however, there is no document, which can be called a valuable security, as the allegations are that the present applicant only opened an account, for which, she signed application form and other documents. But, she signed as Pushpa Singh and not as Sadhna Singh - the complainant, and therefore, such documents can not be called forged or false documents. There is no document, which can be called valuable security, on which, the present applicant placed her signature, and therefore, the offence under Section 467 IPC, *prima-facie,* is not made out. Similarly, the offence under Section 468 IPC is a forgery for the purpose of cheating. When there is no forged documents in this matter, there is also no question of committing forgery for the purpose of cheating and similarly, there is no document whatsoever shown by the charge-sheet, which was used by the present applicant as original one, and which was admittedly forged.

8. In this view of the matter, it is apparent that no forgery was committed by the present applicant, and therefore, the charges under Sections 467, 468 and 471 IPC are not made out. So far as the charges under Sections 419 and 420 IPC are concerned, *prima-facie,* the present applicant showed herself as guardian of minor daughter of the complainant Priyanka Singh knowing well that she is not the natural mother. When natural mother, father and guardian are alive, she had no authority to withdraw the amount and to open an account in her name, and therefore, *prima-facie,* the charges under Sections 419 and 420 IPC are made out.

9. So far as the ground taken by the applicant in the capacity of Judge to try the case because he was also signed certain documents, as Chief Judicial Magistrate is concerned, it is true that on the principle of propriety, the practice is normally followed that cases, which are heard by such Judicial Officers as Court of Magistrates in which some orders before the committal to the Court of Sessions were signed by them as Magistrate. However, this is only a principle of propriety. There is no provision in the Cr.P.C. and due to this, the proceedings are not vitiated only because the Judge in the sessions court is same who heard the matter as Magistrate before committal also. When it is shown that some prejudice is caused to the accused, the case may be transferred to some other court. Therefore, the ground taken by the applicant has no force, at this stage.

10. Accordingly, this revision is **partly allowed.** The impugned order in respect of charges framed under Sections 419 and 420 IPC is affirmed while the impugned order in respect of charges framed under Sections 467, 468 and 471 IPC are hereby quashed. The present applicant stands discharged from charges under Sections 467, 468 and 471 IPC. The applicant is given a liberty to apply for transfer of the case to some other Court of Sessions, if he feels that the trial by the same court would cause any prejudice to his defence.

With the aforesaid, the revision stands **disposed of.**

Certified copy as per rules.

Revision partly allowed.

I.L.R. [2017] M.P., 2269
CRIMINAL REVISION
Before Mr. Justice Hemant Gupta, Chief Justice &
Mr. Justice Vijay Kumar Shukla
Cr.R. No. 515/2017 (Jabalpur) decided on 24 July, 2017

K.K. MISHRA ...Applicant
Vs.
STATE OF M.P. & anr. ...Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 199(2) and Penal Code (45 of 1860), Section 499 & 500 – Sanction before filing complaint by Public Prosecutor **– Revision against framing of charge**

– Defamatory allegations by applicant against Chief Minister and his family members regarding corruption – Criminal Complaint filed against applicant by Public Prosecutor whereby charges were framed against applicant – Challenge to –Regarding sanction for prosecution – Held – 'Sanction' is required before a Public Prosecutor files a complaint and not that he himself has to seek 'sanction' before filing a complaint – Role of Public Prosecutor is not to seek sanction, but to file a complaint after sanction is granted – In the instant case, Public Prosecutor was competent to file the complaint – Revision dismissed.

(Para 14 & 16)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 199(2) एवं दण्ड संहिता (1860 का 45), धारा 499 व 500 – लोक अभियोजक द्वारा परिवाद प्रस्तुत करने से पूर्व मंजूरी – आरोप विरचित किये जाने के विरूद्ध पुनरीक्षण – आवेदक द्वारा मुख्यमंत्री तथा उनके परिवार के सदस्यों के विरूद्ध भ्रष्टाचार से संबंधित मानहानिकारक अभिकथन – लोक अभियोजक द्वारा आवेदक के विरूद्ध आपराधिक परिवाद प्रस्तुत किया गया जिससे आवेदक के विरूद्ध आरोप विरचित किये गये थे – को चुनौती – अभियोजन हेतु मंजूरी के संबंध में – अभिनिर्धारित – लोक अभियोजक के परिवाद प्रस्तुत करने से पूर्व 'मंजूरी' अपेक्षित है तथा यह नहीं कि परिवाद प्रस्तुत करने से पूर्व उसे स्वयं 'मंजूरी' लेनी होगी – लोक अभियोजक की भूमिका मंजूरी लेने की नहीं है, बल्कि मंजूरी प्रदान होने के पश्चात् परिवाद प्रस्तुत करने की है – वर्तमान प्रकरण में, लोक अभियोजक परिवाद प्रस्तुत करने में सक्षम था – पुनरीक्षण खारिज।

Cases referred :

AIR 1961 Allahabad 24, 1970 Cri LJ 788, (2015) 8 SCC 239, (2016) 7 SCC 221.

Ajay Gupta & Shashank Shekhar, for the applicant.

P.K. Kaurav, A.G. with *Pushpendra Yadav*, G.A. for the non-applicant/State.

ORDER

The Order of the Court was delivered by :

HEMANT GUPTA, C.J. :- The challenge in the present petition is to charges framed against the petitioner by the learned Special Judge on 4.2.2017. The charges are framed in Hindi, when it is translated into English, reads as follows:-

"Firstly - that, you on 21.6.2014, in a Press Conference

organized at the Headquarters of the MP Congress Committee, 1464 Indra Bhawan Shivaji Nagar, Bhopal, have levelled imputations intentionally, knowingly, or having reason to believe that such imputation will harm reputation of Chief Minister, Shri Shivraj Singh Chouhan; that in the Examination of MP Transport Inspectors, 19 appointments were made of candidates hailing from Gondia (Maharashtra), the parental place of Smt. Sadhna Singh, wife of Chief Minister; that the mobile No.9425365883 used in the communication with Nitin Mohindra and Pankaj Trivedi, who were involved in VYAPAM SCAM, was of one Sanjay Chouhan son of Phool Singh – the maternal uncle of the Chief Minister, in order to get the examinees passed in the said Examination; that the Chief Minister along with his family undertakes contract in that regard; and that from the Chief Minister's residence an influential woman had made 139 calls with Nitin Mohindra, Pankaj Trivedi and Laxmikant, accused of VYAPAM SCAM from the said mobile number. Thereby you have defamed the Chief Minister Shivraj Singh Chouhan, which is a punishable offence under Section 500 of the IPC and it is within the cognizance of this Court."

2. The allegations are that in a Press Conference conducted by the present petitioner on 21.6.2014, the petitioner is said to have levelled allegations in relation to conduct of examination by the MP Professional Examination Board (popularly known as 'Vyapam'). The statement given in the Press Conference has been produced on record – which is available at Page 87 of the paper-book, as part of the complaint. The particular allegations which are said to be defamatory when loosely translated in English reads as under: i) that, in the examination for the post of Transport Inspector, 19 appointments were made from the candidates belonging to Village Gondia, which is the parental village of Smt. Sadhana Singh, wife of the Chief Minister. This fact came to notice when the Officer who was aware of these appointments was transferred; ii) that Sanjay Singh Chouhan, son of maternal uncle of the Chief Minister – Phool Singh Chouhan, was in touch with the officials, namely – Nitin Mahindra and Pankaj Trivedi, and were successful in making the candidates qualify in the examination; iii) that, if the list of selected candidates of 'Transport

Inspector' is made public, then the names of 19 candidates are from the village of in-laws of Hon'ble Chief Minister; and, that of the telephone calls made by S.K. Mishra are made public, then it would be made known as to who was the influential person in the Chief Minister's residence, who has called 139 times to Nitin Mohindra and Pankaj Trivedi – accused of Vyapam scam.

3. Such allegations were said to be defamatory, which led to filing of a complaint – Annexure P/1 by Shri Anand Tiwari, representing himself as Public Prosecutor on 24.6.2014, supported by an affidavit of the same date. On the basis of such complaint, preliminary evidence was recorded by the learned trial court and after recording of the preliminary evidence, the charge as reproduced above, was framed.

4. Learned counsel for the petitioner before this Court has raised the following arguments:-

(a) That, Shri Anand Tiwari – was appointed as the Additional Public Prosecutor for a period of three years i.e. from 30.3.2011 to 29.3.2014, vide order dated 12.6.2012, which order was published in the Government Gazette on 22.6.2012. Since the period of appointment expired on 29.3.2014 and that there was no further appointment of Shri Anand Tiwari as Additional Public Prosecutor, therefore, the complaint filed by Shri Anand Tiwari on 24.6.2014 is a presentation by an 'incompetent person';

(b) That, it is contended that the Public Prosecutor when appeared as a witness in support of the complaint has deposed that he has filed the complaint as directed by the department and is not his own act. It is thus sought to be contended that the complaint was an act on the basis of directions of the superiors and not of Public Prosecutor;

(c) That in terms of Section 199(2) of the Code of Criminal Procure, 1973 [hereinafter referred to as 'Code'], a complaint is required to be made by the Public Prosecutor. Such complaint is required to be made by Public Prosecutor after previous 'sanction' of the State Government in terms of sub-section (4) of Section 199 of the Code. It is contended that sanction has to be sought by the Public Prosecutor, as Public Prosecutor is not a post office, he has a duty to scan the material on the basis of which the claim for defamation is to be filed; and,

(d) That the Press Statement is not in respect of discharge of public functions of the Chief Minister, but relate to questioning the conduct of the investigating agency in the matter of Vyapam, therefore, the pre-condition as required under sub-section (2) of Section 199 of the Code, is not made out.

5. On the other hand, Shri P.K. Kaurav – learned Advocate General, has argued that in terms of the Departmental Manual, a copy of which is part of the paper book, Clause 20 permits that if the term of the Public Prosecutor or Additional Public Prosecutor expires, he will continue to discharge his duties till such time he is either re-appointed or some other successor is appointed. It is contended that the said Departmental Manual is a compilation of departmental instructions issued from time to time by the State Government which are issued in exercise of the executive powers of the State. Such instructions do not run contrary to any statute or rules or the statutory rules, therefore, such instructions can supplement the statutory provisions.

6. Learned Advocate General also relied upon a Division Bench judgment of the *Allahabad High Court, reported as Muneshwara Nand Vs. State* [AIR 1961 Allahabad 24]; and, a Single Bench judgment of the Bombay High Court, reported as *Harikishan Agrawal Vs. The State of Maharashtra* [1970 Cri LJ 788], to contend that the allegations attributed to the petitioner fall within the expression 'conduct in the discharge of his public function', therefore, complaint has been properly presented.

7. It is also argued that the allegations are against the Chief Minister and that false accusation against his wife and members of family said to be residing in the official residence, therefore, the allegations are against the Chief Minister and are not related to the investigations. The allegations of appointment of 19 candidates as belonging to the parental village of wife of Chief Minister; calls made by Sanjay Chouhan and from the house of the Chief Minister all relates to the Chief Minister in respect of his conduct while discharging official functions.

8. Before, we consider the respective contention of the parties, it would be advantageous to reproduce the provisions of section 199 of the Code:-

"199. Prosecution for defamation –

(1) No Court shall take cognizance of an offence

punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub- section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub- section (2) shall be made by the Public Prosecutor except with the previous sanction-

(a) of the State Government, in the case of a person who is or has been the Governor of

that State or a Minister of that Government;

(b) of the State Government, in the case of any other public servant employed in connection with the affairs of the State;

(c) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub- section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint."

9. In respect of the first argument raised by learned counsel for the petitioner that Shri Anand Tiwari was 'in-competent' to file a complaint, we do not find any merit in the argument that Shri Anand Tiwari was 'not competent' to file the complaint for an offence punishable under section 500 of the IPC. As per the Gazette Notification and order on record, Shri Anand Tiwari was appointed as Additional Public Prosecutor till 29.3.2014. In the meantime, the post of Public Prosecutor, Bhopal fell vacant on 3.10.2013 due to retirement of Shri H.L. Jha. Therefore, the Collector passed an order designating Shri Anand Tiwari as Public Prosecutor on 24.10.2013 till 29.3.2014. May be the Collector was not competent to designate an Additional Public Prosecutor as a Public Prosecutor, but Shri Anand Tiwari as Additional Public Prosecutor upto 29.3.2014 could file a complaint in terms of the definition of 'Public Prosecutor' in Section 2(u), of the Code.

10. Though the term of Shri Anand Tiwari expired on 29.3.2014, but in terms of the compilation [Clause 20] published in the Departmental Manual of the Law and Legislative Affairs Department of the State, a Public Prosecutor and Additional Public Prosecutor will continue to discharge his duties till such time either he is re-appointed or his successor is appointed. Since none was

appointed as Additional Public Prosecutor or Public Prosecutor till 24.6.2014, Shri Anand Tiwari was 'competent' to file a complaint for an offence punishable under section 500 IPC, as such executive instructions do not run counter to any statute or the rules framed thereunder. Such executive instructions issued under the Executive Powers of the State can supplement law, but cannot supplant law. Therefore, in terms of such clause, Shri Anand Tiwari would be 'competent' to file a complaint under section 199 of the Code.

11. In support of the second argument that Public Prosecutor when appeared as a witness and supported the complaint, has deposed that he filed the complaint as directed by the Department and not on his own. It does not merit any consideration. The complaint is signed by Shri Anand Tiwari and is supported by his affidavit. As a Public Prosecutor, after grant of sanction, he has to see whether there is enough material available for an offence under section 500 of the Indian Penal Code (hereinafter referred to as 'IPC').

12. The other argument of the learned counsel for the petitioner is that 'sanction' was not sought by the Public Prosecutor but by the Department, whereas it is the satisfaction of the Public Prosecutor which is a pre-condition for filing of a complaint. We do not find any merit in the said argument as well.

13. The question of grant of sanction for an offence under Section 500 IPC has been examined by the Supreme Court in a judgment reported as *Rajdeep Sardesai v. State of A.P.*, (2015) 8 SCC 239. It has been held that previous sanction must be accorded, authorising the initiation of criminal prosecution against the accused. The Court held as under:-

> **"30.** ..... By careful reading of the provision under Section 199 CrPC, read with the All India Services (Conduct) Rules, 1968, it provides that previous sanction must be accorded, authorising the initiation of criminal prosecution against the accused, however, the said provisions do not state that it is necessary to mention the names of each one of the accused who are alleged to have committed the offence in the same alleged transaction. Therefore, in the case on hand, when the previous sanction was accorded by the State Government against those who were responsible for the telecast/publication of the news both in electronic and print media which according

> to the second respondent damaged his reputation, it is not necessary for the State Government to separately issue sanction order against each one of the appellants .....".

14. In terms of Section 199 (2) of the Code, a complaint in writing is required to be made by the Public Prosecutor. Annexure P/1 is the complaint made by the Public Prosecutor as defined in section 2(u) of the Code, supported by his affidavit. Sub-section (4) contemplates that no complaint shall be made by the Public Prosecutor except with the previous sanction in case of a person who is or has been the Governor of that State or a Minister of that Government. Sanction has been granted by Additional Secretary, Department of Law and Legislative Affairs on 24.6.2014 (page 63 of the paper book), on the complaint of Administrative Department. The requirement of section 199(2) of the Code is of filing of complaint by a Public Prosecutor after previous sanction.

15. The argument that sanction has not been sought by the Public Prosecutor is again not tenable as sub-section (2) of Section 199 of the Code contemplates that a complaint in writing is to be made by the Public Prosecutor. Sub-section (4) of Section 199 puts an embargo that no such complaint shall be made by the Public Prosecutor except with a previous sanction. Therefore, the role of the Public Prosecutor is not to seek sanction, but to file a complaint after sanction is granted. In terms of *Subramanian Swamy Vs. Union of India* [(2016) 7 SCC 221] case, the role of a Public Prosecutor is not that of a post office, he has a duty to scan the material on the basis of which a claim for defamation is to be filed. It cannot be said that such test has not been satisfied when Shri Anand Tiwari filed a complaint on the basis of sanction granted by the State Government. In *Rajdeep Sardesai's* case (supra), again the Court has held that the power exercised by the State Government under section 199 of the Code is an administrative and ministerial action and is as per subjective satisfaction on the part of the State Government. The relevant extract reads as under:-

> "31. Further, the reliance placed by the learned counsel on behalf of the appellants upon the judgments of this Court referred to supra while according sanction in favour of the second respondent to initiate the criminal proceedings against the appellants, the State Government has not applied its mind,

this contention is also wholly untenable in law as the exercise of power by the State Government under Section 199 CrPC is in the administrative and ministerial capacity and according of such sanction is as per the subjective satisfaction on the part of the State Government. The learned Senior Counsel on behalf of the appellants has placed reliance upon the judgments of this Court in *Gour Chandra Rout v. Public Prosecutor* [AIR 1963 SC 1193], *P.C. Joshi v. State of UP* [AIR 1961 SC 387] and *Mansukhlal Vithaldas Chauhan v. State of Gujarat* [(1997) 7 SCC 622]. With regard to the above referred cases, the first two cases have not dealt with the exercise of power under Section 199 CrPC, except stating the ministerial exercise of power by the State Government while exercising its power under Section 198-B(3)(a) CrPC, 1898. Insofar as the third case referred to supra upon which the reliance placed upon by the learned Senior Counsel on behalf of the appellants is concerned, the same is in relation to the previous sanction to be accorded by the State Government for the purpose of prosecution under the provisions of the Prevention of Corruption Act. Therefore, none of the above cases on which reliance has been placed by the learned counsel on behalf of the appellants have any relevance to the fact situation on hand."

16. Therefore, 'sanction' is required before a Public Prosecutor files a complaint and not that Public Prosecutor himself has to seek 'sanction' before filing of a complaint. Thus, we do not find any merit in the said argument raised by the petitioner.

17. In respect of an argument that the allegation in the press conference attributed to the petitioner are not in respect of discharge of public functions of Chief Minister, but in respect of the investigation in the Vyapam by the Investigating Agency, therefore, the complaint filed cannot be entertained for the reason that there is no allegation against the Chief Minister in respect of discharge of his public functions. We do not find any merit in such argument as well.

18. In *Muneshwara Nand's* case (supra), the allegation against the complainant was that he does not do any work; that he was always found to

be with his wife (Begum Sahiba) and that he has to be called from inside his house; during the period of his posting none has been happy except one Inspector and that the medicines were taken out of stock and sold in Delhi. It was found that the sanction as contemplated Section 197 of the Code is different than the sanction sought under Section 198-B of the Code of Criminal Procedure, 1898. The relevant extract reads as under:-

> "35. So much for the law with regard to the act/illegal omission or offence of a public servant in the discharge of his official duty. But in Section 198B we have to deal with his conduct. I am of opinion that Parliament's preference for this word over a word like "act" is deliberate. Hence special weight must be given to it. The dictionary meaning of "conduct" is "behaviour, usually with more or less reference to its moral quality, good or bad; manner of conducting oneself or one's life;" quite obviously, its compass is very wide, and it is far more comprehensive than a mere act or illegal omission, incidentally, much more than an act, conduct can be in respect of performance of official duty as well as in dereliction thereof.
>
> Hence for applying Section 198B to any imputation we must concentrate not so much on the public functions as on the alleged conduct of the official concerned, more so because the injury caused by defamation is essentially a moral one inasmuch as by its very nature this offence lowers the victim in the estimation of others. Now, if what Mr. Ansari contends is sound Section 198B will become a dead letter, for unworthy conduct, such as must be affirmed before it could amount to defamation, can be displayed by an official in the proper execution of his duty. It would therefore be absurd to think that such could have been the intention of Parliament.
>
> In these circumstances the conclusion becomes irresistible that the phrase "conduct in the discharge of his public functions" occurring in Section 198B covers a vaster field than what has been held by the Supreme Court in examining Section 197 (1). It is the combined effect of the intendment of Parliament, the use of the word "conduct" as just explained and the

extended meaning given by the Supreme Court to "act in the discharge of official duty" that markedly augments the scope of Section 198B (1). Accordingly, in my judgment the true state of the law is that if there is any defamatory statement concerning the behaviour of a public servant which can be reasonably associated with the discharge or non-discharge of his official duty even if not strictly necessary for that discharge, or relating to his conduct which bears such rational though not pretended or fanciful relation to the duty that it appears to have been displayed in the course of the performance or non-performance of the duty, the behaviour or conduct having reference inter alia to its moral quality, it would immediately attract the operation of Section 198B.

To put it differently in the phraseology of Section 99 IPC, if in the imputation the conduct of the official is made to appear as stemming from the "colour of his office" even if it "may not be strictly justifiable by law", the provisions of Section 198B will apply. On the other hand, if the imputation alludes to behaviour or conduct which relates to his life as a private citizen or which does not hinge on his public functions, even though his office might have furnished the excuse or occasion for it, the section will have no relevance. No hard and fast rules can however be laid down, and in each case the imputation will have to be dealt with on its own facts and circumstances."

19. In the later judgment of *Harikishan Agrawal* (supra), the learned Single Bench of Bombay High Court was examining the words said to be defamatory such as that the revenue minister has taken possession of all the property of Ashram and has locked it up and that the Minister grabbed the Presidentship of the Ashram. It was argued that when a person holding a public office acts in his capacity as an individual dissociated from his official functions, then the provision of Section 198-B of the Code will not apply. Considering the said argument, the Court held that the description of Shri Balasaheb Desai as Revenue Minister, the capacity of giving threat in certain matter which is not described and calling upon the Collector and the Commissioner will only lead to the fact that intention was to lay before the

public the conduct of the Revenue Minister, but the article was so written that the Revenue Minister was exercising his power, whereas he has no such powers. The Court held as under:-

> "12. If this article had no reference to the capacity of Balasaheb Desai as a Revenue Minister, what was the occasion for mentioning that the District Collector, Amravati, and the Commissioner, Nagpur Division, should throw light as to what the true facts are. Here it may be noticed that out of the Revenue Officers, who must be presumed to be acting under the Revenue Minister, the Commissioner and the Collector are the two topmost officers. If information on this point could be given or should be given by the two topmost Revenue Officers, can it be said that the act that was alleged had no reference to capacity of Balasaheb Desai as the Revenue Minister of Maharashtra? In addition to this, there is the further mention that Presidentship was grabbed by Balasaheb Desai by giving threat in respect of certain matter. An objection was taken by Mr. Kotecha that the word in the original is "Bhay" and that the translation whereof would not be 'threat'. Whether it is fear, fright or threat, a mention is made that by giving threat Presidentship was grabbed. An inference would, therefore, follow that the person who gave the threat was capable of causing fright or fear such as would make any person such as 'Rashtrasant' part with an important office or property. This power of giving threat having a reaction of making another person give up the power or the property when considered along with the description of Balasaheb Desai as Revenue Minister would certainly raise in the mind of a lay man a feeling that the article is intended to show that the power was exercised by Balasaheb Desai as the Revenue Minister. The description of Balasaheb Desai as a Revenue Minister, the capacity to give threats in certain matter, which is not described, and calling upon the Collector and the Commissioner to throw light would only lead to a positive inference that the intention in writing this article was to lay before the public the conduct of a Revenue Minister. It may not be that this was one of the functions of the

> Revenue Minister. But the article was so written as to show that the Revenue Minister was exercising his power where he has no such power. It is not one of the functions of the Revenue Minister to be a President of an Ashram or to be in possession of the Ashram, but the article is so written as to show that this was done probably by the Revenue Minister with the help of threat of consequences which would raise a fear or fright in those persons. In my opinion, the reading of the entire article is likely to create in the minds of the public who read it or and who may even be unaware of the functions of the Revenue Minister that this was an act of the Revenue Minister done probably by the abuse of his power."

20. In the complaint, it was asserted that 19 candidates were selected from Gondia, though in the select list of Transport Inspectors there is none selected from Village Gondia. That, Shri Phool Singh Chouhan, who is stated to be maternal uncle of the Hon'ble Chief Minister, is not the Maternal Uncle, but infact Late Shri Randhir Singh Chouhan was the only Maternal Uncle, who expired 8 years back. It is further stated that there is allegation of 139 calls emanating from the residence of the Chief Minister, but without any further details. This indicates that the allegations were directed to the Chief Minister; his family members and his official residence. Reading of the statement *prima facie* does not suggest that the allegations were in respect of lack of proper investigation into the examination conducted by Vyapam, but against the Chief Minister which were said to be defamatory. Therefore, we are unable to agree with the argument raised by learned counsel for the petitioner that the allegations were not leveled against the Chief Minister but against the lack of proper conduct of the investigation.

21. In view of the said fact, we do not find any merit in the present petition.

22. We clarify that any finding regarding the defamatory part of the statement is for the purposes of deciding the present petition. The learned Trial Court shall decide the matter on the basis of evidence on record.

22. With the said observation and finding, **the revision petition is dismissed.**

Revision dismissed.

I.L.R. [2017] M.P., 2283
CRIMINAL REVISION
Before Mr. Justice Sheel Nagu
Cr.R. No. 365/2012 (Gwalior) decided on 10 August, 2017

VINAY KUMAR ...Applicant
Vs.
STATE OF M.P. ...Non-applicant

(Alongwith Cr.R. No. 969/2013)

A. ***Penal Code (45 of 1860), Sections 465, 471 & 120-B and Prevention of Corruption Act (49 of 1988), Section 19(1)(c) – Revision against Framing of Charge – Sanction for Prosecution – Competent Authority*** **– Sanction granted by State Government – Applicant, employee of Municipal Council – Held – State Government being an authority superior to Municipal Council and having supervisory powers over the same including power of validating the appointments made in Council has the character of an appointing authority – State Government is competent to grant sanction for prosecution – Further held – *Prima facie* there are sufficient material against applicants regarding criminal conspiracy and forgery – Charges rightly framed – Revision dismissed. (Paras 7.3, 8 & 9)**

क. दण्ड संहिता (1860 का 45), धाराएँ 465, 471 व 120–बी एवं भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19(1)(सी) – आरोप विरचित किये जाने के विरूद्ध पुनरीक्षण – अभियोजन के लिए मंजूरी – सक्षम प्राधिकारी – राज्य सरकार द्वारा मंजूरी प्रदान की गई – आवेदक, नगरपालिक परिषद का कर्मचारी – अभिनिर्धारित – राज्य सरकार को नगरपालिक परिषद से वरिष्ठतर प्राधिकारी होने एवं उस पर पर्यवेक्षी शक्तियां होने के नाते, जिसमें परिषद में की गई नियुक्तियों को मान्यता देने की शक्ति शामिल है, एक नियुक्ति प्राधिकारी का स्वरूप प्राप्त है – राज्य सरकार अभियोजन हेतु मंजूरी प्रदान करने के लिए सक्षम है – आगे अभिनिर्धारित – प्रथम दृष्ट्या, आवेदकगण के विरूद्ध आपराधिक षड्यंत्र एवं कूटरचना के संबंध में पर्याप्त सामग्री है – आरोप उचित रूप से विरचित किये गये – पुनरीक्षण खारिज।

B. ***Prevention of Corruption Act (49 of 1988), Section 13(1)(e) and Vishesh Nyayalaya Adhiniyam, M.P. 2011, Section 2(1)(e) – "Offence" – Maintainability of Revision*** **– Definition of offence given**

in Section 2(1)(e) of the Adhiniyam shows that Adhiniyam of 2011 comes into operation only when offence u/S 13(1)(e) of PC Act, independently or in combination with other provision of PC Act or any provision of IPC is alleged in any case and not otherwise – Presence of allegation u/S 13(1)(e) of the PC Act is an essential ingredient to attract Adhiniyam of 2011 – Allegation made merely in respect of offence of IPC would not attract the Adhiniyam of 2011 – In the instant case, only offence under IPC was only registered against applicant – Revision is maintainable. (Paras 5.1 to 5.4 & 5.6)

ख. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(ई) एवं विशेष न्यायालय अधिनियम, म.प्र. 2011, धारा 2(1)(ई) – "अपराध" – पुनरीक्षण की पोषणीयता – अधिनियम की धारा 2(1)(ई) में दी गई अपराध की परिभाषा दर्शाती है कि 2011 का अधिनियम केवल तब प्रवर्तित होगा जब किसी प्रकरण में भ्रष्टाचार निवारण अधिनियम की धारा 13(1)(ई) अंतर्गत अपराध, का स्वतंत्र रूप से या भ्रष्टाचार निवारण अधिनियम के किसी अन्य उपबंध के साथ या भा.दं.सं. के किसी उपबंध के साथ मिलकर अभिकथन किया गया है और अन्यथा नहीं – 2011 के अधिनियम को आकर्षित करने के लिए भ्रष्टाचार निवारण अधिनियम की धारा 13(1)(ई) के अंतर्गत अभिकथन की उपस्थिति एक आवश्यक घटक है – मात्र भा.दं.सं. के अपराध के संबंध में किया गया अभिकथन, 2011 के अधिनियम को आकर्षित नहीं करेगा – वर्तमान प्रकरण में, आवेदक के विरूद्ध केवल भा.दं.सं. के अंतर्गत अपराध को पंजीबद्ध किया गया था – पुनरीक्षण पोषणीय है।

C. Vishesh Nyayalaya Adhiniyam, M.P. 2011 – Object **– The object of Adhiniyam is to expedite trials of offences related to disproportionate assets punishable u/S 13(1)(e) of the PC Act, simplicitor or in combination with other offences under IPC by establishment of Special Courts and laying down procedure for confiscation of unaccounted property and money procured by means of offences as defined u/S 2(1)(e) of 2011 Adhiniyam. (Para 5.5)**

ग. विशेष न्यायालय अधिनियम, म.प्र. 2011 – उद्देश्य – विशेष न्यायालयों की स्थापना द्वारा, केवल अननुपातिक आस्तियों के संबंध में भ्रष्टाचार निवारण अधिनियम की धारा 13(1)(ई) के अंतर्गत दण्डनीय अथवा भा.दं.सं. के अंतर्गत अन्य अपराधों के संयोजन में अपराधों का शीघ्र विचारण तथा 2011 के अधिनियम की धारा 2(1)(ई) के अंतर्गत यथा परिभाषित अपराधों के माध्यम से उपाप्त बेहिसाब सम्पत्ति एवं धन के अधिहरण हेतु प्रक्रिया निर्धारित करना, अधिनियम का उद्देश्य है।

Cases referred :

1994 Supp.(2) SCC 405, (2011) 6 SCC 389.

R.K. Sharma with *M.K. Chaudhary* and *Imran Khan,* for the applicant in Cr.R. Nos. 365/2012 & 969/2013.

Sushil Chaturvedi, for the non-applicant-EOW.

ORDER

SHEEL NAGU, J. :- This order shall govern disposal of Cri. Rev. No. 365/12 (Vinay Kumar Vs. State of M.P.) and Cri. Rev. No. 969/13 (A.K.Bansal Vs. State of M.P.)

2. The revisional powers of this Court u/S. 397 Cr.P.C. are invoked to assail framing of charge against the petitioners by the impugned order dated 7/5/2012 in Sessions Case No. 2/2002 alleging offences punishable u/Ss. 120-B, 465 and 471 of I.P.C.

3. Facts giving rise to the present case are that the petitioner Vinay Kumar being Assistant Engineer and petitioner A.K. Bansal being Revenue Inspector at Municipal Council, Morena (M.P.) are implicated in the offence of forgery and criminal conspiracy for having jointly moved a note-sheet proposing allotment of 22,600 sq. ft. of land reserved for stadium, for the purpose of allotment of plots under Awaas Grah Yojna for the employees of Municipal Council, Morena at a rate of Rs. 10/- per sq. ft. which was much lower to the prevailing market value and by wrongly mentioning that the land is not required for the purpose of stadium. It is further alleged that the petitioner would have also been one of the beneficiaries of the said proposal.

4. After lodging of the FIR, investigation was conducted. The sanction for prosecution was obtained from the State and chargesheet was filed wherein charges have been framed as enumerated above which are under challenge.

5. Learned counsel for the respondent-State has raised preliminary objection as to maintainability of this petition on the ground that the present revision is not maintainable as a trial in relation to the offences in question is exclusively triable by the courts constituted under the Madhya Pradesh Vishesh Nyayalaya Adhiniyam, 2011 (for brevity Adhiniyam 2011).

5.1 The said preliminary submission of the State is being considered to be

rejected at the very outset as Sec. 2(e) of the Adhiniyam 2011 clearly provides that the offences contemplated under the Adhiniyam are those which either independently attract Sec. 13(1)(e) of the Prevention of Corruption Act (for short the PC Act) or in combination with any other provision of the PC Act or any of the provisions of the I.P.C. Provision of Sec. 2(e) is reproduced below for ready reference and convenience.

> "2(e) "offence" means an offence of criminal misconduct which attracts application of Section13(l) (e) of the Act either independently or in combination with any other provision of the Act or any of the provision of Indian Penal Code,1860(45 of 1860);

5.2 A bare perusal of the above definition of "offence" makes it clear that the Adhiniyam 2011 comes into operation only when the offence u/S. 13(1)(e) independently or in combination with other provision of the PC Act or any provision of the IPC is alleged in any case and not otherwise. In the instant case, Sec. 13(1)(e) of the PC Act has not been alleged against the petitioners who in fact are charged with offences punishable u/Ss. 120-B, 465 and 471 of I.P.C.

5.3 At this juncture, it is relevant to deal with the feeble attempt of the learned counsel for the prosecution-respondent to contend that the expression ".....or any other provision of I.P.C." found in the definition of offence S. 2(e) of 2011 Adhiniyam should be read to include even those offences of criminal misconduct which attract the provision of I.P.C. simplicitor. This argument holds no water as a close scrutiny of the definition of "offence" u/S. 2(e) makes it clear that presence of allegation under Sec. 13(1)(e) is an essential ingredient to constitute offence defined in section 2(1)(e) and thereby attract Adhiniyam 2011. The expression "---------or any of the provisions of the I.P.C." found in Sec. 2(e) is to be read in conjunction in the following manner:-

> ".....offence of criminal misconduct which attracts application of Sec. 13(1)(e) of the Act either independently or in combination with.....any of the provisions of I.P.C."

5.4 If the contention of the learned counsel for the State is accepted then an incongruous situation would arise where offences of conspiracy and forgery punishable exclusively under the IPC would have to be tried by Special Courts

constituted under 2011 Adhiniyam despite offence u/S. 13(1)(e) of PC Act not being alleged.

5.5 More so, this course of action as suggested by the learned counsel for the State would render the very foundational object of 2011 Adhiniyam nugatory. The object of this Adhiniyam is to expedite the trials of offences related to disproportionate assets punishable u/S 13(1)(e) of the PC Act, simplicitor or in combination with other offences under IPC by establishment of Special Courts and laying down procedure for confiscation of unaccounted property and money procured by means of offence defined u/S 2(1)(e) of 2011 Adhiniyam.

5.6 Thus, the allegation if made merely in respect of offence in IPC (as is the case herein) without involvement of Section 13(1)(e) would not attract the provisions of Act of 2011. Thus, the present revision against an order of framing of charge u/Ss. 120-B, 465 and 471 I.P.C. is maintainable.

6. Learned counsel for the petitioners has raised two fold submissions. The first is in respect of technical ground of sanction for prosecution having been granted by incompetent authority. The other ground is of merit which shall be dealt with later on.

6.1 Taking up the first technical ground of incompetence authority granting sanction for prosecution, it is seen from the record that sanction has been granted by the State Govt. (Department of Law and Legislative Affairs, Bhopal).

6.2 The objection of the petitioners is that they are employees of the Municipal Council and not of the State Govt. and therefore the Municipal Council alone is empowered to grant sanction for prosecution of the petitioners.

6.3 Sec. 19(1)(c) of the PC Act prescribes obtaining of prior sanction for prosecution from an authority competent to remove a public servant from his office.

6.4 The Trial Court while rejecting the said argument of the petitioners has drawn support from Sec. 94 of the M.P. Municipalities Act, 1961 by holding that since every appointment made by the Municipal Council is subject to approval by the State Govt., which thus has final and substantial role to play in the process of appointment and therefore necessarily in removal of the

petitioners from the office. On the basis of this reason, the court-below found that the State Govt. satisfies the requirement of competent authority u/S. 19(1)(c) of the PC Act.

7. The second technical ground raised by the learned counsel for the petitioners is of incompetence of the State Govt. to grant sanction for prosecution u/S. 19(1)(c) of the PC Act in the face of the M.P. Municipalities Act, 1961 and the Rules framed thereunder categorically prescribing the Municipal Council as the appointing authority qua the petitioners.

7.1 This issue of legality and validity and competence of an authority superior to the appointing or disciplinary authority for the purpose of grant of sanction for prosecution is no more *res integra* in view of the Apex Court decision in the case of *State of T.N. Vs. T. Thulasingham & others* reported in 1994 Supp.(2) SCC 405 in which the Apex Court in para 77 held thus:-

> "77. The last finding of the High Court in reversing the decision of the trial court so far as it upheld the sanction for prosecution of the employees is again erroneous. The High Court was in error in its view that only the special officer appointed by the Corporation, when it was superseded, was competent to grant the sanction. It will be noticed that here the sanction had been given by the superior authority, namely the Government itself which appointed the special officer. Once the sanction is granted by the superior authority it does not get invalidated. It could be invalid if the sanction had been granted by the authority subordinate to the authority who had to grant the sanction and in that case would have been subject to challenge. We thus find that the trial court was right in holding that the sanction was validly granted by the competent authority."

7.2 The above said decision has been followed in the case of *State of M.P. Vs. Pradeep Kumar Gupta* reported in (2011) 6 SCC 389. The above said view of the Apex court continues to hold the field till date.

7.3 Therefore, the State Govt. being an authority superior to that of Municipal Council and having supervisory powers over the same including power of validating an appointment made u/S. 94 of the M.P. Municipalities Act, assumes the colour and character of appointing authority. Once having

satisfied the definition of the appointing authority in terms of the law laid down by the Apex court, the State Govt. partakes as the authority competent to remove the petitioners from the respective posts thereby satisfying the requirement of Sec. 19(1)(c) of the PC Act.

7.4 Thus, no fault can be found with the order of sanction for prosecution issued by the State Govt.

8. As regards the arguments on merits, it is seen that the prosecution has alleged conspiracy and forgery against the petitioners. It is alleged that the note-sheet moved by the petitioners proposing allotment of the land in favour of the employees of the Municipal Council intentionally did not mention survey numbers and area of the land so as to prevent detection of the criminal act of conspiracy and forgery. It is further alleged by the prosecution that the land in question was proposed to be allotted at a highly depressed rate of Rs. 10/- per sq.ft. More so, it is alleged that the land was wrongly mentioned as not required for stadium. It is further alleged that the note-sheet of the petitioners further failed to disclose material fact that the land in question which was proposed to be allotted belongs to the Govt. and not to the Municipal Council.

8.1 In this regard, learned counsel for the petitioners has drawn attention of this court to a document brought on record by the petitioners vide document No.2482/12 filed on 25/6/2012 that in revenue record the rate of the land in question was as low as Rs. 6/- per sq.ft., and therefore it is contended that proposal for allotment of the land made by petitioners at the rate of Rs. 10/- per sq. ft. cannot be found fault with.

8.2 A bare perusal of the said document, which though is not part of the charge-sheet, does not disclose the period during which the rate of Rs. 6/- per sq. ft. was prescribed. However, a close scrutiny indicates that the said document pertains to the year 1991 and therefore does not relate to the period in question, i.e., 1994-95, and therefore the said document is of no avail.

8.3 The prosecution has brought on record guidelines issued by the Collector, Morena for the year 1994-95 which prescribe Rs. 90/- per sq.ft., as rate of land in the area in question.

9. From the above, it is evident that the material brought on record by the prosecution *prima facie* indicates a strong suspicion of the offence of

conspiracy and forgery punishable u/Ss. 120-B, 465 and 471 of I.P.C. against the petitioners.

9.1 The basic ingredient of forgery as contained in Sec. 463 I.P.C. is of making of false document *inter alia* causing any person to part with property with intention to commit fraud, which appears to be satisfied in the present case on *prima facie* assessment.

9.2 Whether *mens rea* behind the act of forgery is present or not cannot be decided at this early stage and is best to be left to be adjudicated by the Trial Court after marshalling of evidence.

9.3 From the above discussions, this court is satisfied that no illegality or impropriety is committed by the Trial Court in framing of charge against the petitioners u/Ss. 120-B, 465 and 471 of I.P.C.

10. Consequently, the revisions fail and are dismissed, sans cost.

Revision dismissed.

I.L.R. [2017] M.P., 2290

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice J.K. Maheshwari

M.Cr.C. No. 11770/2013 (Jabalpur) decided on 19 June, 2017

POOJAN TRADING COMPANY (M/S) ...Applicant

Vs.

M/S BETUL OILS & FLOORS LTD. ...Non-applicants

(Alongwith M.Cr.C. No. 11772/2013)

A. Negotiable Instruments Act (26 of 1881), Section 138(b) & (c) – Demand Notice – Service of Notice – Accrual of Cause of Action **– Two complaint cases registered against applicant/accused – Objections filed by complainant on the ground that cases were filed prior to expiry of 15 days period from the date of receiving notices – Objections dismissed – Challenge to – Held – Commission of offence and its prosecutability are two distinct issues – When cheque is dishonoured, offence is committed but its prosecutability is based on conditions as specified in Section 138(a), (b) and (c) – In the present case, notice was returned unclaimed on 01.01.2008 and 03.01.2008 and**

complaints were filed on 14.01.2008, prior to expiry of 15 days – Cause of action to take cognizance and to prosecute the complainant do not arise – Date of return of notice as unclaimed will be the date for reckoning the period of 15 days – Order of cognizance set aside – Application allowed. (Paras 7, 9 & 10)

क. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138(बी) व (सी) – मांग नोटिस – नोटिस की तामील – वाद हेतुक का प्रोद्भवन – आवेदक/अभियुक्त के विरूद्ध दो परिवाद प्रकरण पंजीबद्ध किये गये – परिवादी द्वारा इस आधार पर आक्षेप प्रस्तुत किये गये कि प्रकरण, नोटिस प्राप्त होने की तिथि से 15 दिनों की अवधि के अवसान से पूर्व प्रस्तुत किये गये थे – आक्षेप खारिज – को चुनौती – अभिनिर्धारित – अपराध कारित किया जाना तथा उसकी अभियोजनीयता दो भिन्न विवाद्यक हैं – जब चैक अनादृत होता है, अपराध कारित होता है परन्तु उसकी अभियोजनीयता धारा 138 (ए), (बी) तथा (सी) में विनिर्दिष्ट की गई शर्तों पर आधारित है – वर्तमान प्रकरण में, दिनांक 01.01.2008 तथा 03.01.2008 को नोटिस अदावाकृत वापस किया गया था एवं परिवाद दिनांक 14.01.2008 को, 15 दिनों के अवसान के पूर्व प्रस्तुत किये गये थे – संज्ञान लेने तथा परिवादी को अभियोजित करने का वाद हेतुक उत्पन्न नहीं होता – अदावाकृत के रूप में नोटिस वापस किये जाने की तिथि, 15 दिनों की अवधि की गणना करने की तिथि होगी – संज्ञान का आदेश अपास्त – आवेदन मंजूर।

***B. Negotiable Instruments Act (26 of 1881), Section 138(b) & (c) and General Clauses Act (10 of 1897), Section 27 – Service of Notice – Interpretation* – Section 27 of the Act of 1897 indicates expression "served, "give" or "sent" whereas Section 138(c) of Act of 1881 indicates "giving of notice" and "accrual of cause of action" – Therefore for the purpose of Section 138, Court ought to construe the word "give" as "receive". (Para 10)**

ख. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138(बी) व (सी) एवं साधारण खण्ड अधिनियम (1897 का 10), धारा 27 – नोटिस की तामील – निर्वचन – 1897 के अधिनियम की धारा 27 अभिव्यक्ति "तामील" "देना" या "भेजना" उपदर्शित करती है जबकि अधिनियम 1881 की धारा 138(सी) "नोटिस दिया जाना" एवं "वाद हेतुक का प्रोद्भवन" उपदर्शित करती है – इसलिए धारा 138 के प्रयोजन हेतु न्यायालय को शब्द "देना" का अर्थ "प्राप्त" के रूप में लगाना चाहिए।

Cases referred :

2015 (2) MPLJ 9, AIR 1999 SC 3762, (2014) 9 SCC 129, 2012 (2) MPLJ 147.

Priyank Awasthi, for the applicant.
Abhijit A. Awasthi, for the non-applicant/complainant.

ORDER

J.K. MAHESHWARI, J. :- Seeking quashment of the private complaints No.233/2008 and 234/2008 filed by the respondent/complainant against the petitioner and to set aside the orders dated 18/02/2013 passed by the Judicial Magistrate First Class in the said complaint rejecting the application raising preliminary objection and also to set aside order passed in Cr.R. No.45/2013 and 48/2013 dated 16/05/2013, these petitions have been preferred invoking the jurisdiction of this Court under Section 482 of Cr.P.C.

2. As both the aforesaid complaints were filed by the respondent against the petitioner for dishonouring of various cheques described in the private complaints. It is said that the notice of dishonouring the cheque given by complainant was received and on filing the complaint after recording the statement cognizance were taken in both the complaints by the trial court. On service of the notice, petitioners have filed a preliminary objection on 6.7.2012 *inter alia* contending that in private complaint No.233/08, a notice for dishonouring was issued on 20.12.2007, which remained unclaimed by the noting of the postal department dated 1.1.2008 and the complaint was filed on 14.1.2008 prior to expiry of the period of 15 days; while in complaint case No.234/08, the notice was given on 20.12.2007 to which the intimation was given to the accused on 24.12.2007 and return by the postal department on 3.1.2008, however, filing of the complaints on 14.1.2008 is prior to expiry of the period of 15 days. Counsel for applicant referring the provisions of Section 138 of the Negotiable Instruments Act, 1988 (in short "N.I. Act") contends that for dishonouring of the cheque giving the notice by the payee to the drawer within 30 days from the receipt of intimation of dishonouring from the bank is a *sine qua non* as per Section 138 (b) of the N.I. Act, however the offence is deemed to have committed but if the amount has not been paid within 15 days from the date of receipt of the notice, the offender can be prosecuted for the said offence. In the present case, the date of intimation of unclaimed notice is 1.1.2008 and 3.1.2008, however, on filing the complaint on 14.1.2008 prior to expiry of the period of 15 days, the complaint is not prosecutable and it is liable to be dismissed. It is also

contended that in case where the intimation was given by postal department in reference to the provisions as contained under Section 138 (b) which returned unclaimed then it would not be treated as the notice received by the drawer, therefore, the complaint cannot be prosecuted. The trial Court considering the date of issuance of giving the notice as relevant for reckoning the period of 15 days to prosecute private complaint rejected the said application and which is confirmed by the revisional Court without due consideration of the provision of law, however, both these orders may be set aside and complaint may also be dismissed treating it as premature. In the last, it is urged that if procedure as prescribed under Section 138(b) & (c) has not been followed for commission of any offence, the private complaint is not prosecutable.

3. In support of the said contention reliance is placed on the judgment of the Apex Court in the case of *Yogendra Pratap Singh vs. Savitri Pandey and another* 2015(2) MPLJ 9 to contend that the date of committing an offence may be the date of dishonouring of the cheque but its prosecutability depend upon the expiry of the period contemplated under Section 138 (c) thereto. However, if the notice of 15 days have not been served on the drawer then the said complaint is not prosecutable. Learned counsel further placing reliance on the judgment of Supreme Court in the case *K. Bhaskaran vs. Sankaran Vaidhyan and another* AIR 1999 SC 3762 to contend that in case the notice has returned and remain unclaimed, such date would be the commencing date in reckoning of the period of 15 days as contemplated under clause (c) of section 138 of N.I. Act. Learned counsel has fairly conceded that the judgment of *K. Bhaskaran* (supra) has been overruled by the Supreme Court in the case of *Dashrath Rupsingh Rathod vs. State of Maharashtra and another* reported in (2014) 9 SCC 129 but so far as the observation with respect to reckoning of the period of service has not been touched into by the said judgment, therefore, it would remain operative for the purpose of prosecuting the complaints of Section 138 (b) & (c) of the N.I. Act.

4. Per Contra, learned counsel representing the complainant/respondent placed heavy reliance on the judgment of *K. Bhaskaran* (Supra) referring paragraphs no.20 to 25 and strenuously urged that in a case, the drawer intentionally and tactfully is not accepting the notice sent by the petitioner then in such case, the date of intimation of the said notice given to him on a correct address would be presumed to be the date of receipt of notice. However, if

the said date is taken into consideration then filing of the present complaints is after expiry of the period of 15 days, however, it is prosecutable, therefore, the trial Court as well as revisional Court have not committed error in passing the order impugned and taking cognizance against the petitioner. Reliance has further been placed on the judgment of this Court in the case of *Agrawal Medical Agencies Vs. Govind Prasad* 2012(2) MPLJ 147 to contend that in reference to Section 27 of the General Clauses Act as well as relying upon the provisions of Section 114 of Evidence Act, the Court has interpreted the meaning of the word "Service of notice" in the context of the M.P. Accommodation Control Act. However, considering the same, order impugned passed by the two Courts below do not warrant interference and the complaint presented by the complainant is prosecutable by the Courts.

5. Upon hearing learned counsel for both the parties, in the present case, the issue crops-up for determination is whether after dishonouring of the cheque and on issuing the notice by payee to the drawer for repayment of the amount of the cheque, if it is returned unclaimed then what would be the date of receipt of the said notice to count the period of 15 days as specified under Section 138 of the N.I. Act.

6. After hearing learned counsel appearing on behalf of both the parties and in the context of the facts, to advert the arguments as advanced, relevant provisions of Section 138 of N.I. Act is required to be reproduced, which is as follows –

> **138. Dishonor of cheque for insufficiency, etc., of funds in the accounts**
>
> 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 honor 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 extend

to one year, 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 fifteen 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.

7. On plane reading of the aforesaid, it is apparent that on is advancing loan and to in discharge of the debt or other liability, if the cheque given by the drawer to the payee has returned unpaid with a note of insufficiency of fund or it exceeds the amount arranged to be paid from the account then such person shall be deemed to have committed an offence and shall without prejudiced to any other provisions of this Act, he or she 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. The aforesaid basic provision has been qualified by the proviso using the word "that nothing contained in section 138 shall apply unless", the requirement contemplated under clause (a), (b) and (c) has been observed, which are mandatory. As per the requirement (a), the cheque must be presented before the bank from the date of its issuance within a period of six months or its period of validity whichever is earlier. Clause (b) makes it clear that 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 30 days of the receipt of information by him

from the bank regarding the return of the cheque as unpaid. Clause (c) makes it clear that if the drawer of such cheque fails to make payment of such amount to the payee within 15 days of receipt of such notice then he would be liable to be prosecuted for commission of the offence under Section 138 of the N.I. Act meaning thereby on dishonouring of the cheque, the offence has been committed but its prosecutability is based on three conditions as specified in Clause (a), (b) and (c) of proviso to Section 138. However, commission of the offence and its prosecutability are two distinct issues which is to be observed for the purpose of punishment as contemplated under the N.I. Act.

8. In the above context, undisputed facts of the present case are required to be seen. A loose cheque was given by the drawer to the payee which was dishonoured. Within a period of 30 days from the date of dishonouring, the notice was issued on 20.12.2007 to the drawer by post. The Post Office of the drawer's address gave first intimation on 24.12.2007 and when it remained unclaimed for seven days as per the noting dated 1.1.2008 pleaded in private complaint No.233/08 and on 3.1.2008 pleaded in private complaint No.234/08, it was returned to the payee. It is not in dispute that both the complaints were filed on 14.1.2008, however, from the date it was shown to be unclaimed by the postal department i.e. 1.1.2008 and 3.1.2008 and the complaints have been filed prior to expiry of the 15 days of the said notice. However, in the said context, prosecutability of the private complaint has been objected by filing a preliminary objection by the trial Court which is rejected by the orders impugned, which were confirmed in revision.

9. As per the judgment of Hon'ble Apex Court in the case of *Yogendra Pratap Singh* (supra), the Apex Court has observed that if the complaint has been filed before expiry of 15 days period from the date on which notice has been served on drawer the accrual of cause of action for filing of complaint under Section 138 of N.I. Act is not available to complainant and the Court is not competent to take cognizance of such complaint. In the said context, looking to the undisputed fact, it can safely be held that the notice was returned as unclaimed on 1.1.2008 and 3.1.2008 and the complaints were filed on 14.1.2008, however, prior to expiry of period of 15 days, cause of action to take cognizance and to prosecute the complainant do not arise, therefore, the order taking cognizance passed by the trial Court, affirmed by the revisional Court deserves to be set aside and those complaints are liable to be dismissed.

10. Reverting to the arguments as advanced by the learned counsel for the complainant that the notice was issued on 20.12.2007 which was received to the Post Office and intimation was given by the Post Office to the drawer on 24.12.2007, however, the first date of intimation ought to be counted as a date of notice unclaimed by the petitioner. In this context, much emphasis has been laid on the paragraphs of the judgment of Apex Court in the case of *K. Bhaskaran* (supra). On perusal of the judgment of *K. Bhaskaran* (supra), it is apparent that the notice in the said case was given on 2.2.1993 and it was returned to the complainant on 15.2.1993, thereafter, the complaint was filed on 4.3.1993 after elapse of the period of 15 days. While in the present case, the notice sent by the payee to the drawer remained unclaimed as per the notice of the Postal Department dated 1.1.2008 and 3.1.2008 and the complaint has been filed on 14.1.2008 therefore, in the said fact the observations of the Court in the case of *K. Bhaskaran* that if the notice is returned as unclaimed, such date would be the date of commencement or reckoning the period of 15 days. In the facts of the present case, as discussed hereinabove and the facts of the *K. Bhaskaran's* case (supra) are quite distinguishable, therefore, the arguments as advanced by the learned counsel for the complainant relying upon paragraph-24 of the said judgment cannot be countenanced and is hereby repelled. Now one of the aspect is further required to be dealt with which is contended relying upon the case of *Agrawal Medical Agencies* (supra) wherein issue of service of notice was considered in the context of the provisions of M.P. Accommodation Control Act and in the said case issue of presumption of service has been dealt with in the facts and situation of the case. If the provisions of Section 27 of General Clauses Act has been read in the context of provisions of Section 138 then there is some distinction which is to be drawn and kept in mind always by the Courts. Section 27 of the General Clauses Act indicates expression "served", "give" or "sent" while section 138 (c) of the N.I. Act indicates the giving of notice and accrual of a cause of action, if the amount is not paid within 15 days after receipt of the notice, therefore, for the purpose of Section 138, the Court ought to construe the word "give" as "receive". It should not be construed as specified under the General Clauses Act "served", "give" or "sent". Therefore, the judgment of the *Agrawal Medical Agencies* (supra) as relied upon is of no help to the respondent.

15.(sic:11) In view of the foregoing discussion in my considered opinion,

the order passed by the trial court rejecting the preliminary objection filed by the petitioner, upheld by the revisional Court stands set aside. The preliminary objection filed by the petitioner is hereby upheld. Consequently, both the private complaints filed by the respondent are hereby quashed. However, it is open to the complainant to take recourse of law by filing a fresh complaint in the light of the judgment of Hon'ble Apex Court in the case of *Yogendra Pratap Singh* (supra). Therefore, it is observed that if the complaint is filed afresh within a period of 30 days from the date of order then the same shall be entertained and decided in accordance with law on merits.

Order accordingly.