VOL. 1

INDIAN LAW REPORT (M.P.) COMMITTEE

MARCH 2019

PATRON

Hon'ble Shri Justice SANJAY KUMAR SETH

Chief Justice

CHAIRMAN

Hon'ble Shri Justice SUJOY PAUL

MEMBERS

Shri Rajendra Tiwari, Advocate General, *(ex-officio)*
Shri Umakant Sharma, Senior Advocate
Shri Kishore Shrivastava, Senior Advocate
Shri Aditya Adhikari, Senior Advocate
Shri Ritesh Kumar Ghosh, Advocate, Chief Editor, *(ex-officio)*
Shri Rajeev Kumar Shrivastava, Principal Registrar (ILR)
Shri Manoj Kumar Shrivastava, Principal Registrar (Judicial), *(ex-officio)*

SECRETARY

Shri Joginder Singh, Registrar (Exam)

PUBLISHED BY

Shri Rajeev Kumar Shrivastava, Principal Registrar (ILR)

TABLE OF CASES REPORTED

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

Aatamdas Vs. State of M.P.		…*1
Ajay Sharma Vs. Neha Sharma	(DB)	…406
Amitabh Gupta Vs. Election Commission of India	(DB)	…*14
Anik Industries Ltd. (M/s.) Vs. DCM Shriram Consolidated Ltd. (M/s.)		…*15
Ankit Baghel Vs. State of M.P.		…390
Aram Bai Vs. Pratap Singh (Dead) Through L.Rs.		…293
Arif Aquil Vs. State of M.P.		…*2
Arun Kumar Brahmin Vs. Smt. Maanwati		…136
Asha Kushwah (Smt.) Vs. State of M.P.	(DB)	…*3
Ashish Singh Vs. State of M.P.		…689
Atendra Singh Rawat Vs. State of M.P.		…168
Babulal Vs. State of M.P.		…*4
Badri Vs. State of M.P.		…196
Bhagirath Vs. State of M.P.	(SC)	…520
Bhagwan Vs. State of M.P.	(DB)	…184
Bhikam Singh Vs. Ranveer Singh		…577
Brijlal Vs. State of M.P.	(DB)	…177
Central Board of Trustees Vs. M/s. Indore Composite Pvt. Ltd.	(SC)	…1
Chauda Vs. State of M.P.	(DB)	…471
Chief General Manager Vs. Shiv Shankar Tripathi		…328
Devki Nandan Dubey Vs. Purshottam Sahu		…316
Dhiraj Jaggi Vs. Smt. Chuntibai		…164
Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank		…379
Etiam Emedia Ltd. (M/s.) Vs. Income Tax Officer-2 (2)	(DB)	…*16
Gangaram Patel Vs. State of M.P.		…*23

Harjeet Vs. Abhay Kumar …594

Hemant Bakolia Vs. State of M.P. …305

Idea Cellular Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax (DB) …102

Indore Holding Pvt. Ltd. (M/s.) Vs. Chimanlal …415

Jagdish Chandra Gupta Vs. Madanlal …140

Jai Prakash Sharma Vs. State of M.P. …223

Jarnail Singh Vs. Lachhmi Narain Gupta (SC) …261

Jehangir D. Mehta Vs. The Real Nayak Sakh Sahkari Maryadit …*5

Lal Singh Vs. State of M.P. …203

Lawrence Robertson Vs. Smt. Vani Jogi …*6

Laxminarayan Agrawal Vs. State of M.P. …494

Madan Singh Dawar Vs. Labour Commissioner, M.P. …*17

Mahendra Kumar Vs. Lalchand …606

Mahesh Sahu Vs. Shri Rakesh Sahu (DB) …*24

Mahesh Vs. State of M.P. …629

Manbodh Singh Vs. State of M.P. (DB) …637

Mangaram Vs. State of M.P. …435

Manoj Shrivastava Vs. State of M.P. …207

Manorama Bai (Smt.) Vs. State of M.P. …674

Mastram Vs. Karelal (through LRs) …*25

Miss A Vs. State of M.P. …662

Mohd. Hasan Vs. Abu Bakar …423

Mohd. Shafiq Ansari Vs. Mohd. Rasool Ansari …*7

Motilal Daheriya Vs. State of M.P. …*8

Nandlal Gupta Vs. Union of India (DB) …700

Narayanlal Tandan Vs. State of M.P. …442

Nizamuddin Vs. State of M.P. …*26

Noor Mohammad Vs. State of M.P. …132
Pawan Vs. State of M.P. …8
Prabhat Ranjan Singh Vs. R.K. Kushwaha (SC) …245
Pradeep Hinduja Vs. State of M.P. (DB) …339
Pramod Kumar Sharma Vs. State of M.P. …551
Prashant Sharma Vs. State of M.P. …*18
Pratibha Syntex Ltd. Vs. State of M.P. …542
Premnarayan Yadav Vs. State of M.P. …*9
Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P. …122
Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P. …565
Rajendra Singh Vs. State of M.P. …*19
Rakhi Shukla (Smt.) Vs. Manoj Shukla (DB) …*27
Ram Biloki Vs. Ramswaroop …537
Rambahor Saket Vs. State of M.P. …214
Ramkripal @ Kripal Vs. State of M.P. (DB) …*20
Ramswaroop Vs. Matadin Shivhare (Dead) Through L.Rs. …*21
Ranjan Vs. State of M.P. …230
Ranjana Kushwaha (Dr.) Vs. State of M.P. …*10
Ratiram Gond Vs. State of M.P. (DB) …644
Rishi Jalori Vs. State of M.P. …*28
Sajni Bajaj (Smt.) (Dr.) Vs. Indore Development Authority (DB) …*11
Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P. (DB) …16
Shiva Salame Vs. State of M.P. …*12
Somdatt Mishra Vs. State of M.P. …477
State of M.P. Vs. Abhijit Singh Pawar (SC) …526
State of M.P. Vs. Chhaakki Lal (SC) …507
State of M.P. Vs. Gangabishan @ Vishnu (SC) …4
State of M.P. Vs. Mukesh Kewat (DB) …489

State of M.P. Vs. Preetam (SC) …241
State of M.P. Vs. Rajaram @ Raja (SC) …523
Suhagrani Rajput (Smt.) Vs. Mukund Sahu …*22
Sunil Dangi Vs. Indore Development Authority …367
The Principal Commissioner of Income Tax-I Vs. Shri Pukhraj Soni (DB) …*29
Utkarsh Saxena Vs. State of M.P. …653
Vikas Malik Vs. Union of India …558
Vikram Singh Vs. State of M.P. …*13

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

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

Administrative Law – Applicability of the Act – **Held – The Central Legislation of 1972 must prevail over the Pension Rules of 1972 – Applicability and benefits of Central enactment cannot be taken away by issuing administrative instructions/orders or statutory rules. [Chief General Manager Vs. Shiv Shankar Tripathi]** **…328**

प्रशासनिक विधि – अधिनियम की प्रयोज्यता – अभिनिर्धारित – 1972 के पेंशन नियमों पर 1972 का केंद्रीय विधान अवश्य अभिभावी होना चाहिए – केंद्रीय अधिनियमिती की प्रयोज्यता एवं लाभों को प्रशासनिक अनुदेशों/आदेशों या कानूनी नियमों को जारी कर छीना नहीं जा सकता। (चीफ जनरल मेनेजर वि. शिव शंकर त्रिपाठी) **…328**

Administrative Law – Principle of Estoppel – **Held – Principle of estoppel is not applicable where huge public interest is involved – Petitioner authorities acted in flagrant breach of agreement and Rules causing harm to public interest and loss to public exchequer – No estoppels operates against statutory provisions – Entire exercise initiated on application of promoter, he cannot be held blameless. [Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.]** **(DB)…16**

प्रशासनिक विधि – विबंध का सिद्धांत – अभिनिर्धारित – विबंध का सिद्धांत वहां लागू नहीं होता जहां वृहद लोकहित शामिल हो – याची प्राधिकारियों ने करार तथा नियमों को प्रत्यक्ष रूप से भंग करते हुए कार्रवाई की जिससे लोकहित को नुकसान तथा राजकोष को हानि पहुंची है – कानूनी उपबंधों के विरूद्ध कोई विबंध प्रवर्तित नहीं होते – संपूर्ण कार्रवाई संप्रवर्तक के आवेदन पर आरंभ हुई, उसे निर्दोष अभिनिर्धारित नहीं किया जा सकता। (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) **(DB)…16**

Appointment – Panchayat Karmi – Eligibility & Suitability – **Held – Gram Panchayat was entitled to adjudge not only eligibility but also the suitability of candidate – Eligibility is to be seen on the cut off date whereas suitability can be adjudged even on date of consideration of appointment – There was a criminal case pending against respondent No. 4 on date of adjudging suitability and hence has become ineligible – Appointing authority was entitled to adjudge suitability of candidate on touchstone of criminal antecedents – Impugned order set aside – Appeal allowed. [Asha Kushwah (Smt.) Vs. State of M.P.]** **(DB)…*3**

नियुक्ति – पंचायत कर्मी – पात्रता व उपयुक्तता – अभिनिर्धारित – ग्राम पंचायत, न केवल अभ्यर्थी की पात्रता बल्कि उपयुक्तता भी न्यायनिर्णित करने के लिए हकदार थी – पात्रता को अंतिम तिथि पर देखा जाना चाहिए जबकि उपयुक्तता को नियुक्ति का विचार किये जाने की तिथि को भी न्यायनिर्णित किया जा सकता है – उपयुक्तता न्यायनिर्णित करने की तिथि को प्रत्यर्थी क्र. 4 के विरूद्ध एक दाण्डिक प्रकरण लंबित था और इसलिए अपात्र हो गया है – नियुक्ति प्राधिकारी, आपराधिक पूर्ववृत्त की कसौटी पर अभ्यर्थी की

उपयुक्तता न्यायनिर्णित कर सकता है – आक्षेपित आदेश अपास्त – अपील मंजूर। (आशा कुशवाह (श्रीमती) वि. म.प्र. राज्य) **(DB)…*3**

***Arbitration and Conciliation Act (26 of 1996), Sections 5, 7(5) & 8 – Arbitration Agreement* – Held – If arbitration clause is contained in the annexure to the contract document and annexure is specifically mentioned therein, then arbitration agreement exists between the parties – In present case, arbitration clause is present in the annexure which form part of the purchase order itself – In view of the existence of such agreement, suit is not maintainable – Trial Court rightly dismissed the suit directing the appellant to invoke arbitration clause – Appeal dismissed. [Anik Industries Ltd. (M/s.) Vs. DCM Shriram Consolidated Ltd. (M/s.)] …*15**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 5, 7(5) व 8 – माध्यस्थम् करार – अभिनिर्धारित – यदि संविदा दस्तावेज के अनुलग्नक में माध्यस्थम् खंड अंतर्विष्ट है और उसमें अनुलग्नक को विनिर्दिष्ट रूप से उल्लिखित किया गया है, तब पक्षकारों के बीच माध्यस्थम् करार अस्तित्व में है – वर्तमान प्रकरण में, माध्यस्थम् खंड अनुलग्नक में उपस्थित है जो स्वतः क्रय आदेश का भाग है – उक्त करार की विद्यमानता की दृष्टि से वाद पोषणीय नहीं है – विचारण न्यायालय ने अपीलार्थी को माध्यस्थम् खंड का अवलंब लेने के लिए निदेशित करते हुए वाद को उचित रूप से खारिज किया – अपील खारिज। (अनिक इंडस्ट्रीज लि. (मे.) वि. डीसीएम श्री राम कनसौलिडेटिड लि. (मे.)) **…*15**

***Backward Classes and Minority Welfare Department (Gazetted) Service Recruitment Rules, M.P., 2013, Rule 6(1)(b) & (c) – Recruitment – Secretary* – Held – Post of Secretary, Minority Commission which is Class I gazetted post, is to be filled up 100% by way of promotion from post of feeder cadre and if such candidate is not available then by way of transfer of persons who hold in substantive capacity such posts in such services – Respondent No. 4, an Assistant Veterinary Surgeon, Class II appointed as Secretary – It is not a case of promotion – Minority Commission is a public office created by Statute on which a person possessing eligibility as prescribed in Rules can be appointed and posted – In present case, neither respondent No. 4 possess the eligibility nor the procedure followed is just – Appointment set aside – Petition allowed. [Arif Aquil Vs. State of M.P.] …*2**

पिछड़ा वर्ग तथा अल्पसंख्यक कल्याण विभाग (राजपत्रित) सेवा भर्ती नियम, म.प्र., 2013, नियम 6(1)(बी) व (सी) – भर्ती – सचिव – अभिनिर्धारित – सचिव, अल्पसंख्यक आयोग का पद, जो कि श्रेणी–I राजपत्रित पद है, को फीडर काडर के पद से 100% पदोन्नति के जरिए भरा जाएगा तथा यदि ऐसा अभ्यर्थी उपलब्ध नहीं है तब ऐसे व्यक्तियों के स्थानांतरण के जरिए जो उक्त सेवाओं में ऐसे पदों को मौलिक क्षमता में धारण करते हैं – प्रत्यर्थी क्र. 4, एक सहायक पशु शल्य–चिकित्सक, श्रेणी–II को सचिव के रूप में नियुक्त किया गया – यह पदोन्नति का प्रकरण नहीं है – अल्पसंख्यक आयोग, कानून द्वारा सृजित एक लोक कार्यालय है जिस पर नियमों में यथाविहित पात्रता धारक व्यक्ति को

नियुक्त एवं पदस्थ किया जा सकता है – वर्तमान प्रकरण में, न तो प्रत्यर्थी क्र. 4 पात्रता रखता है न ही पालन की गई प्रक्रिया न्यायसंगत है – नियुक्ति अपास्त – याचिका मंजूर। (आरिफ अकील वि. म.प्र. राज्य) **...*2**

Bhumi Vikas Rules, M.P., 1984-2012, Rule 103 – See – Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973, Section 24 & 74 **[Pradeep Hinduja Vs. State of M.P.] (DB)...339**

भूमि विकास नियम, म.प्र., 1984–2012, नियम 103 – देखें – नगर तथा ग्राम निवेश अधिनियम, म.प्र., 1973, धारा 24 व 74 (प्रदीप हिन्दुजा वि. म.प्र. राज्य) **(DB)...339**

Bhumi Vikas Rules, M.P., 1984-2012 and Indore Development Plan, 2021 – Group Housing & High Rise Building – Master Plan – Object & Purpose **– Held – Master Plan is meant for specific cities and Bhumi Vikas Rules are meant for places/cities/town where no specific master plan is in existence – Master Plan is a specific document whereas Bhumi Vikas Rules are generalized set of rules which are to be adhered to in a given condition – Rules provide for Group Housing with regard to population density but do not provide any rider of population density on High Rise Building and thus as per specifications, High Rise Building will not fall under technical nomenclature prescribed for Group Housing Building. [Pradeep Hinduja Vs. State of M.P.] (DB)...339**

भूमि विकास नियम, म.प्र., 1984–2012 एवं इंदौर विकास योजना, 2021 – समूह आवास व ऊँचे भवन – मास्टर प्लान – उद्देश्य व प्रयोजन – अभिनिर्धारित – मास्टर प्लान विनिर्दिष्ट शहरों के लिए है और भूमि विकास नियम उन स्थानों/नगरों/शहर के लिए हैं, जहां कोई विनिर्दिष्ट मास्टर प्लान अस्तित्व में नहीं है – मास्टर प्लान एक विनिर्दिष्ट दस्तावेज है जबकि भूमि विकास नियम, नियमों का सामान्यीकृत संवर्ग हैं जिनका किसी दी गई शर्त में पालन किया जाना है – नियम जनसंख्या घनत्व के संबंध में समूह आवास उपबंधित करते हैं परंतु ऊँचे भवन पर जनसंख्या घनत्व की कोई अनुवृद्धि (राइडर) उपबंधित नहीं करते हैं एवं इसलिए विनिर्देशों के अनुसार, ऊँचे भवन, समूह आवास भवन हेतु विहित तकनीकी नाम पद्धति के अंतर्गत नहीं आते। (प्रदीप हिन्दुजा वि. म. प्र. राज्य) **(DB)...339**

Central Civil Services (Pension) Rules, 1972, Section 37-A(4) & (21) – See – Service Law **[Chief General Manager Vs. Shiv Shankar Tripathi]...328**

केन्द्रीय सिविल सेवा (पेंशन) नियम, 1972, धारा 37–ए(4) व (21) – देखें – सेवा विधि (चीफ जनरल मेनेजर वि. शिव शंकर त्रिपाठी) **...328**

Circular of Government of India for Transfer of Female Employees in Public Sector Bank, Clause 20 – See – Service Law **[Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank] ...379**

INDEX

सार्वजनिक क्षेत्र के बैंकों में महिला कर्मचारियों के स्थानांतरण हेतु भारत सरकार का परिपत्र, खंड 20 – देखें – सेवा विधि (दुर्गेश कुवर (श्रीमती) वि. पंजाब एण्ड सिंध बैंक) **…379**

***Civil Practice – Abatement* – Held – When legal representatives of dead person are not brought on record, then decree passed against dead person is a nullity but in present case, facts are distinguishable – Defendant No. 2 expired during pendency of suit but other defendants who are real brother and mother of deceased did not inform the court about his death – One of the legal representatives of dead person was already on record, it cannot be said that suit had abated or decree has been passed against dead person – When estate of deceased is substantially represented by one of the legal representatives, suit cannot be dismissed as having abated. [Bhikam Singh Vs. Ranveer Singh] …577**

सिविल पद्धति – उपशमन – अभिनिर्धारित – जब मृत व्यक्ति के विधिक प्रतिनिधियों को अभिलेख पर नहीं लाया जाता है, तब मृत व्यक्ति के विरूद्ध पारित की गई डिक्री अकृत है परंतु वर्तमान प्रकरण में, तथ्य भेद करने योग्य हैं – प्रतिवादी क्र. 2 की वाद के लंबित रहने के दौरान मृत्यु हो गई, परंतु अन्य प्रतिवादीगण जो कि मृतक के सगे भाई और माँ हैं, उन्होनें उसकी मृत्यु के बारे में न्यायालय को सूचित नहीं किया – मृत व्यक्ति के विधिक प्रतिनिधियों में से एक पहले से ही अभिलेख पर था, यह नहीं कहा जा सकता कि वाद उपशमित हो गया था या मृत व्यक्ति के विरूद्ध डिक्री पारित की गई है – जब मृतक की संपदा का सारभूत रूप से प्रतिनिधित्व विधिक प्रतिनिधियों में से एक द्वारा किया जाता है, उपशमन हो जाने के कारण वाद खारिज नहीं किया जा सकता। (भीकम सिंह वि. रणवीर सिंह) **…577**

***Civil Practice – Principle of Estoppel* – Held – Defendants who are beneficiary of the said Will are stopped from challenging the said Will because on the basis of the same Will, one defendant was brought in the suit as legal representative who later entered into compromise with defendants and suit was decreed in their favour – Defendants took indirect advantage of the Will hence, they are estopped to challenge the validity of the Will in the suit. [Jagdish Chandra Gupta Vs. Madanlal] …140**

सिविल पद्धति – विबंध का सिद्धांत – अभिनिर्धारित – प्रतिवादीगण, जो कि कथित वसीयत के हिताधिकारी हैं, को उक्त वसीयत को चुनौती देने से रोका गया क्योंकि उसी वसीयत के आधार पर एक प्रतिवादी को वाद में विधिक प्रतिनिधि के रूप में लाया गया था, जिसने बाद में प्रतिवादीगण के साथ समझौता किया और वाद उनके पक्ष में डिक्रीत किया गया था – प्रतिवादीगण ने वसीयत का अप्रत्यक्ष लाभ उठाया, अतः उन्हें वाद में वसीयत की विधिमान्यता को चुनौती देने से विबंधित किया गया। (जगदीश चन्द्र गुप्ता वि. मदनलाल) **…140**

***Civil Procedure Code (5 of 1908), Section 2(2) – See – Swayatta Sahakarita Adhiniyam, M.P., 1999, Section 56 & 57* [Jehangir D. Mehta Vs. The Real Nayak Sakh Sahkari Maryadit] …*5**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 2(2) – देखें – स्वायत्त सहकारिता अधिनियम, म.प्र., 1999, धारा 56 व 57 (जहांगीर डी. मेहता वि. द रियल नायक साख सहकारी मर्यादित) **…*5**

***Civil Procedure Code (5 of 1908), Section 2(2) & Order 20 Rule 18 – Preliminary & Final Decree – Amendment* – Held – At the stage of final decree in appropriate circumstances, preliminary decree can be amended and even another preliminary decree can be passed re-determining the rights and interest of parties. [Mahendra Kumar Vs. Lalchand] …606**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 2(2) व आदेश 20 नियम 18 – प्रारंभिक व अंतिम डिक्री – संशोधन – अभिनिर्धारित – समुचित परिस्थितियों में अंतिम डिक्री के प्रक्रम पर, प्रारंभिक डिक्री को संशोधित किया जा सकता है तथा पक्षकारों के अधिकारों और हित को पुनः अवधारित करते हुए एक और प्रारंभिक डिक्री भी पारित की जा सकती है। (महेन्द्र कुमार वि. लालचंद) **…606**

***Civil Procedure Code (5 of 1908), Section 13 & 14 – See – Hindu Marriage Act, 1955, Sections 1(2), 2 & 9* [Ajay Sharma Vs. Neha Sharma] (DB)…406**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 13 व 14 – देखें – हिन्दू विवाह अधिनियम, 1955, धाराएँ 1(2), 2 व 9 (अजय शर्मा वि. नेहा शर्मा) **(DB)…406**

***Civil Procedure Code (5 of 1908), Section 100 – Substantial Questions of Law – Findings of Fact – Possession* – Held – Finding with regard to possession are findings of fact – There is a concurrent finding that R-1/ plaintiff is in possession of land in dispute – Civil Suit cannot be dismissed on ground of non-claiming the relief of possession – Apex Court concluded that even if findings of fact may be erroneous findings of fact, then it would not give rise to substantial question of law – Substantial questions of law does not mean the question of law, it is to be substantial in nature – High Court while exercising powers u/S 100 CPC should not interfere with concurrent findings of fact – Appeal dismissed. [Bhikam Singh Vs. Ranveer Singh] …577**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – विधि के सारवान् प्रश्न – तथ्य के निष्कर्ष – कब्जा – अभिनिर्धारित – कब्जे के संबंध में निष्कर्ष तथ्य के निष्कर्ष हैं – यह एक समवर्ती निष्कर्ष है कि प्रत्यर्थी क्र. 1/वादी विवादित भूमि के कब्जे में है – सिविल वाद कब्जे के अनुतोष का दावा न करने के आधार पर खारिज नहीं किया जा सकता – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यद्यपि तथ्य के निष्कर्ष, तथ्य के त्रुटिपूर्ण निष्कर्ष हो सकते हैं, तब भी यह विधि के सारवान् प्रश्न को जन्म नहीं देंगे – विधि के सारवान् प्रश्नों का अर्थ विधि का प्रश्न नहीं है, यह सारवान् स्वरूप के होना चाहिए – उच्च न्यायालय को सि.प्र.सं. की धारा 100 के अंतर्गत शक्तियों का प्रयोग करते समय तथ्य के समवर्ती निष्कर्षों के साथ हस्तक्षेप नहीं करना चाहिए – अपील खारिज। (भीकम सिंह वि. रणवीर सिंह) **…577**

Civil Procedure Code (5 of 1908), Section 151 & 152 – Correction in Judgment/Decree – Accidental Slip or Omission – Scope **– Held – Apex Court concluded that u/S 152 CPC, any clerical or arithmetical mistake in judgment or decree due to any accidental slip or omission may be corrected at any time but validity of decree cannot be examined – In present case, in the decree, condition of return of sale consideration with interest in the event of failure to execute the sale deed does not amount to accidental mistake or slip warranting correction of mistake u/S 151 or 152 CPC – Revision dismissed. [Mastram Vs. Karelal (Through LRs)] …*25**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 व 152 – निर्णय/डिक्री में सुधार – आकस्मिक भूल अथवा लोप – व्याप्ति – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि सि.प्र.सं. की धारा 152 के अंतर्गत, आकस्मिक भूल अथवा लोप के कारण निर्णय या डिक्री में कोई लेखन अथवा गणित संबंधी भूल को किसी भी समय सुधारा जा सकता है परंतु डिक्री की विधिमान्यता का परीक्षण नहीं किया जा सकता – वर्तमान प्रकरण में, डिक्री में, विक्रय विलेख को निष्पादित करने में विफलता की दशा में ब्याज सहित विक्रय प्रतिफल की वापसी की शर्त, आकस्मिक गलती अथवा भूल नहीं होती जिसे सि.प्र.सं. की धारा 151 अथवा 152 के अंतर्गत गलती को सुधारा जाना आवश्यक हो – पुनरीक्षण खारिज। (मस्तराम वि. कारेलाल (द्वारा विधिक प्रतिनिधि) …*25

Civil Procedure Code (5 of 1908), Order 9 Rule 13 and Order 5 Rule 17 & 20 – Setting Aside Ex-parte Decree – Service of Summons – Substituted Service **– Held – Trial Court straight-a-way ordered for substituted service through publication without taking steps for service of summons by ordinary way as contemplated under Order 5 Rules 12, 15 & 17 CPC – Before ordering for substituted service, Court was under statutory obligation to record reasons germane for justification of compliance of Order 5 Rule 20 CPC which was not done in present case, thus service of summons is not complete – Impugned order passed in hot haste and slip shod manner and is thus set aside – Further, ex-parte judgment and decree passed by trial Court is prejudicial and detrimental to rights and interest of defendants/appellants and is set aside – Appeal allowed. [Indore Holding Pvt. Ltd. (M/s.) Vs. Chimanlal] …415**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 9 नियम 13 एवं आदेश 5 नियम 17 व 20 – एक पक्षीय डिक्री अपास्त की जाना – समन की तामील – प्रतिस्थापित तामील – अभिनिर्धारित – विचारण न्यायालय ने जैसा कि सि.प्र.सं. के आदेश 5 नियम 12, 15 व 17 में अनुध्यात है, साधारण तरीके से समन की तामील के लिए कदम उठाये बिना सीधे प्रकाशन के माध्यम से प्रतिस्थापित तामील हेतु आदेशित किया – प्रतिस्थापित तामील के लिए आदेश करने से पूर्व, न्यायालय सि.प्र.सं. के आदेश 5 नियम 20 के अनुपालन के न्यायोचित्य के लिए उचित कारणों को अभिलिखित करने हेतु कानूनी बाध्यता के अधीन था जो कि वर्तमान प्रकरण में नहीं किया गया था, अतः समन की तामील पूर्ण नहीं है – आक्षेपित आदेश शीघ्रता में तथा असावधानीपूर्ण पारित किया गया एवं इसलिए अपास्त

किया गया – इसके अतिरिक्त, विचारण न्यायालय द्वारा पारित एकपक्षीय निर्णय एवं डिक्री, प्रतिवादीगण/अपीलार्थीगण के अधिकारों और हितों पर प्रतिकूल प्रभाव डालने वाले तथा अहितकर हैं और अपास्त किये गये – अपील मंजूर। (इंदौर होल्डिंग प्रा. लि. (मे.) वि. चिमन लाल) **...415**

Civil Procedure Code (5 of 1908), Order 14 Rule 2 – Preliminary Issue – Question of Limitation – Trial Court refused to decide the question of limitation as preliminary issue **– Held – While dismissing an earlier application filed under Order 7 Rule 11 by petitioner/defendant, trial Court held that question of limitation can be decided while deciding the entire matter on merits – This order has attained finality – Apex Court has concluded that question of limitation is a mixed question of law and fact and it is discretion of Court to decide issue based on law as preliminary issue – Court below took a plausible view and discretion was exercised in a permissible manner – Further, if the issue of limitation is decided at later point of time, no prejudice will be caused to petitioner – Petition dismissed. [Arun Kumar Brahmin Vs. Smt. Maanwati]** **...136**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 14 नियम 2 – प्रारंभिक विवाद्यक – परिसीमा का प्रश्न – विचारण न्यायालय ने परिसीमा के प्रश्न को प्रारंभिक विवाद्यक के रूप में विनिश्चित करने से इंकार किया – अभिनिर्धारित – याची/प्रतिवादी द्वारा आदेश 7 नियम 11 के अंतर्गत प्रस्तुत एक पूर्व आवेदन को खारिज करते समय, विचारण न्यायालय ने अभिनिर्धारित किया कि परिसीमा के प्रश्न का विनिश्चय संपूर्ण मामले को गुणदोषों के आधार पर विनिश्चित करते समय किया जा सकता है – इस आदेश ने अंतिमता प्राप्त की है – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि परिसीमा का प्रश्न विधि और तथ्य का मिश्रित प्रश्न है तथा यह न्यायालय का विवेकाधिकार है कि वह विधि पर आधारित विवाद्यक का प्रारंभिक विवाद्यक के रूप में विनिश्चय करे – निचले न्यायालय ने एक संभाव्य दृष्टिकोण अपनाया तथा एक अनुज्ञेय ढंग से विवेकाधिकार का प्रयोग किया था – इसके अतिरिक्त, यदि परिसीमा का विवाद्यक बाद में विनिश्चित किया जाता है, तो याची को कोई प्रतिकूल प्रभाव कारित नहीं होगा – याचिका खारिज। (अरूण कुमार ब्राह्मण वि. श्रीमती मानवती) **... 136**

Civil Procedure Code (5 of 1908), Order 21 Rule 34 – See – Specific Relief Act, 1963, Section 28 **[Harjeet Vs. Abhay Kumar]** **...594**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 34 – देखें – विनिर्दिष्ट अनुतोष अधिनियम, 1963, धारा 28 (हरजीत वि. अभय कुमार) **...594**

Civil Procedure Code (5 of 1908), Order 22 Rule 5 – Legal Representatives – Applicability & Enquiry **– Held – If a party comes forward on basis of 'Will' executed by deceased, then an enquiry is contemplated – In present case, neither appellant nor respondent is seeking substitution of LR of deceased, thus provision of Order 22 Rule 5 CPC cannot be attracted –**

Under Order 22 Rule 5 CPC, limited question relating to LR is decided only for purpose of bringing LRs on record which does not operate as res-judicata – Inter se dispute between rival LRs has to be independently tried and decided in appropriate proceedings. [Mahendra Kumar Vs. Lalchand]…606

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 5 – विधिक प्रतिनिधि – प्रयोज्यता व जांच – अभिनिर्धारित – यदि एक पक्षकार मृतक द्वारा निष्पादित 'वसीयत' के आधार पर आगे आता है, तब जांच की जाना अनुध्यात है – वर्तमान प्रकरण में, न तो अपीलार्थी न ही प्रत्यर्थी मृतक के विधिक प्रतिनिधि का प्रतिस्थापन चाहते हैं, इसलिए सि.प्र. सं. के आदेश 22 का नियम 5 आकर्षित नहीं हो सकता – सि.प्र.सं. के आदेश 22 नियम 5 के अंतर्गत, विधिक प्रतिनिधियों को अभिलेख पर लाने के प्रयोजन से केवल विधिक प्रतिनिधि से संबंधित सीमित प्रश्न का विनिश्चय किया गया है जो कि पूर्व न्याय का प्रभाव नहीं रखता – विरोधी विधिक प्रतिनिधियों के मध्य परस्पर विवाद का स्वतंत्र रूप से विचारण तथा समुचित कार्यवाहियों में विनिश्चय किया जाना चाहिए। (महेन्द्र कुमार वि. लालचंद) **…606**

***Civil Procedure Code (5 of 1908), Order 23 Rule 1(3) – "Formal Defect" – Effect* – Held – In partition suit, plaintiff has not submitted any map or description of property – Amendment application was also dismissed which attained finality – Having failed to get the plaint amended, plaintiff adopted alternative method of getting rid of weakness of pleadings – After recording of evidence, plaintiff realized her weakness and in order to frustrate the valuable right which already accrued in favour of defendants, she tried to withdraw the suit in the garb of "formal defect" – Case of petitioner do not come within purview of Order 23 Rule 1(3) CPC – Petition dismissed. [Aram Bai Vs. Pratap Singh (Dead) Through L.Rs.] …293**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 23 नियम 1(3) – ''प्रारूपिक त्रुटि'' – प्रभाव – अभिनिर्धारित – विभाजन प्रकरण में, वादी ने संपत्ति का कोई नक्शा या विवरण प्रस्तुत नहीं किया है – संशोधन आवेदन भी खारिज किया गया था जिसने अंतिमता प्राप्त की – वादपत्र में संशोधन करने में विफल रहने पर, याची ने अभिवचनों की कमजोरी से छुटकारा पाने के लिए वैकल्पिक तरीका अपनाया – साक्ष्य अभिलिखित हो जाने के पश्चात्, वादी को अपनी कमजोरी का अहसास हुआ तथा पहले से ही प्रतिवादीगण के पक्ष में प्रोद्भूत मूल्यवान अधिकार को विफल करने हेतु, उसने ''प्रारूपिक त्रुटि'' की आड़ में वाद वापस लेने का प्रयास किया – याची का प्रकरण सि.प्र.सं. के आदेश 23 नियम 1(3) की परिधि के भीतर नहीं आता – याचिका खारिज। (अराम बाई वि. प्रताप सिंह (मृतक) द्वारा विधिक प्रतिनिधि) **…293**

***Civil Procedure Code (5 of 1908), Order 23 Rule 1(3) – "Formal Defect" – "Non-Joinder of Party"* – Held – If plaintiff comes to know that some necessary party has not been impleaded, then she could have filed an application under Order 1 Rule 10 CPC – Non-joinder of party cannot be termed as "formal defect". [Aram Bai Vs. Pratap Singh (Dead) Through L.Rs.] …293**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 23 नियम 1(3) – ''प्रारूपिक त्रुटि'' – ''पक्षकार का असंयोजन'' – अभिनिर्धारित – यदि वादी को यह ज्ञात हो जाता है कि किसी आवश्यक पक्षकार को अभियोजित नहीं किया गया है, तो वह सि.प्र.सं. के आदेश 1 नियम 10 के अंतर्गत आवेदन प्रस्तुत कर सकती थी – पक्षकार के असंयोजन को ''प्रारूपिक त्रुटि'' नहीं कहा जा सकता है। (अराम बाई वि. प्रताप सिंह (मृतक) द्वारा विधिक प्रतिनिधि) **...293**

***Civil Procedure Code (5 of 1908), Order 23 Rule 1(3) – "Formal Defect Resulting in Failure of Suit" – Effect* – Held – Plaintiff filed a suit for partition but had not given the details of property at all – Plaintiff decided to file the suit as per her wisdom and when later on if it is found by her that she may not get the relief of her choice, then it cannot be said that the defect was formal in nature resulting in failure of suit as provided under Order 23 Rule 1(3) CPC – Further held – Failure of suit and failure to get relief of her choice are two different aspect. [Aram Bai Vs. Pratap Singh (Dead) Through L.Rs.] ...293**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 23 नियम 1(3) – ''प्रारूपिक त्रुटि के परिणामस्वरूप वाद की विफलता'' – प्रभाव – अभिनिर्धारित – वादी ने विभाजन के लिए एक वाद प्रस्तुत किया परंतु संपत्ति का विवरण बिल्कुल भी नहीं दिया था – वादी ने अपने प्रज्ञान के अनुसार वाद प्रस्तुत करने का विनिश्चय किया और जब बाद में अगर उसके द्वारा यह पाया जाता है कि उसे उसकी पसंद का अनुतोष प्राप्त नहीं हो सकता है, तब यह नहीं कहा जा सकता है कि त्रुटि प्रारूपिक स्वरूप की थी जिसके परिणामस्वरूप वाद की विफलता हुई जैसा कि सि.प्र.सं. के आदेश 23 नियम 1(3) के अंतर्गत उपबंधित किया गया है – आगे अभिनिर्धारित – वाद की विफलता तथा उसकी पसंद का अनुतोष प्राप्त करने में विफलता दो भिन्न पहलू हैं। (अराम बाई वि. प्रताप सिंह (मृतक) द्वारा विधिक प्रतिनिधि) **...293**

***Civil Procedure Code (5 of 1908), Order 23 Rule 1(4) – Subsequent Suit – Maintainability – Grounds* – Held – In the former as well as subsequent suit, the subject matter and dominant reliefs claimed are the same and in respect of the same property – In subsequent suit, plaintiff has added some more defendants and given some different date of cause of action but the nature of the suit is similar – Former suit was withdrawn without any liberty – Subsequent suit is barred by law and not maintainable – Appeal dismissed. [Mohd. Hasan Vs. Abu Bakar] ...423**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 23 नियम 1(4) – पश्चात्वर्ती वाद – पोषणीयता – आधार – अभिनिर्धारित – पूर्ववर्ती के साथ–साथ पश्चात्वर्ती वाद में, विषय वस्तु तथा दावा किये गये प्रमुख अनुतोष समान हैं तथा उसी संपत्ति के संबंध में है – पश्चात्वर्ती वाद में, वादी ने कुछ और प्रतिवादीगण जोड़ें तथा वाद हेतुक की कुछ भिन्न तिथि दी परंतु वाद की प्रकृति समान है – पूर्ववर्ती वाद बिना किसी स्वतंत्रता के वापस लिया गया था – पश्चात्वर्ती वाद विधि द्वारा वर्जित है तथा पोषणीय नहीं – अपील खारिज। (मोहम्मद हसन वि. अबू बकर) **...423**

Civil Procedure Code (5 of 1908), Order 23 Rule 1(4) and Limitation Act (36 of 1963), Article 58 – Subsequent Suit – Cause of Action **– Held – Plaintiff claimed relief of declaration of his share in property and he got the cause of action when he filed suit in 1993 – Subsequent suit filed in 2000 is barred by limitation as per Article 58 of Limitation Act – Merely because plaintiff has given a cause of action saying that same arose in 2000 when defendants refuse to comply with oral assurance, does not mean that plaintiff got a separate cause of action and a different subject matter. [Mohd. Hasan Vs. Abu Bakar] …423**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 23 नियम 1(4) एवं परिसीमा अधिनियम (1963 का 36), अनुच्छेद 58 – पश्चात्वर्ती वाद – वाद हेतुक – अभिनिर्धारित – वादी ने संपत्ति में अपने हिस्से की घोषणा के अनुतोष का दावा किया तथा उसे वाद हेतुक प्राप्त हुआ जब उसने 1993 में वाद प्रस्तुत किया – सन् 2000 में प्रस्तुत किया गया पश्चात्वर्ती वाद परिसीमा अधिनियम के अनुच्छेद 58 के अनुसार परिसीमा द्वारा वर्जित है – मात्र इसलिए कि वादी ने यह कहते हुए वाद हेतुक दिया है कि उक्त सन् 2000 में उत्पन्न हुआ जब प्रतिवादीगण ने मौखिक आश्वासन का अनुपालन करने से इंकार किया, इसका अर्थ यह नहीं है कि वादी को एक पृथक वाद हेतुक तथा एक भिन्न विषय–वस्तु प्राप्त हुई। (मोहम्मद हसन वि. अबू बकर) …423

Civil Procedure Code (5 of 1908), Order 23 Rule 3 & Order 43 Rule 1A – Compromise Decree – Appeal **– Held – An appeal lies against a compromise decree under Order 43 Rule 1A CPC – Provisions is applicable to those persons who are party in the suit as well as to the compromise – In present case, appellant/plaintiff was not a party to suit as well in the compromise – Appellant can certainly filed a suit seeking declaration that decree passed in earlier suit is void and not binding on him – Findings recorded by trial Court set aside – Appeal allowed. [Jagdish Chandra Gupta Vs. Madanlal] …140**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 23 नियम 3 व आदेश 43 नियम 1ए – समझौता डिक्री – अपील – अभिनिर्धारित – समझौता डिक्री के विरूद्ध, आदेश 43 नियम 1ए सि.प्र.सं. के अंतर्गत अपील होती है – उपबंध उन व्यक्तियों को लागू होते हैं जो वाद के साथ ही समझौते के भी पक्षकार हैं – वर्तमान प्रकरण में, अपीलार्थी/वादी वाद के साथ साथ समझौते में भी पक्षकार नहीं था – अपीलार्थी निश्चित रूप से यह घोषणा चाहते हुए वाद प्रस्तुत कर सकता है कि पूर्वतर वाद में पारित डिक्री शून्य है तथा उस पर बंधनकारी नहीं है – विचारण न्यायालय द्वारा अभिलिखित निष्कर्ष अपास्त – अपील मंजूर। (जगदीश चन्द्र गुप्ता वि. मदनलाल) …140

Civil Procedure Code (5 of 1908), Order 26 Rule 9 – Appointment of Local Commissioner – Dispute of Boundaries – Consideration **– Held – It is established principle of law that where dispute is of boundaries, then same can be resolved by appointing a commissioner but there should not be any claim of title over the land belonging to another party – Except the question**

of identity of property, no other dispute should be involved – Present case cannot be said to be a simple case of boundary dispute. [Ram Biloki Vs. Ramswaroop] …537

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 26 नियम 9 – स्थानीय कमिश्नर की नियुक्ति – सीमाओं का विवाद – विचार – अभिनिर्धारित – यह विधि का स्थापित सिद्धांत है कि जहां सीमाओं का विवाद है तब उक्त का समाधान एक कमिश्नर की नियुक्ति द्वारा किया जा सकता है परंतु वहां अन्य पक्षकार की भूमि पर हक का कोई दावा नहीं होना चाहिए – संपत्ति की पहचान के प्रश्न को छोड़कर कोई अन्य विवाद अंतर्ग्रस्त नहीं होना चाहिए – वर्तमान प्रकरण को सीमा विवाद का एक साधारण प्रकरण नहीं कहा जा सकता। (राम बिलोकी वि. रामस्वरूप) …537

***Civil Procedure Code (5 of 1908), Order 26 Rule 9 – Appointment of Local Commissioner – Grounds* – Held – The prayer made in application under Order 26 Rule 9 and by reply to the application, parties to suit have tried to collect evidence through appointment of local commissioner, which cannot be allowed – Court while passing an order under Order 26 Rule 9 CPC cannot delegate its powers of adjudicating the dispute to a local Commissioner – Words "elucidating any matter in dispute" would not include collection of evidence – Impugned order set aside. [Ram Biloki Vs. Ramswaroop] …537**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 26 नियम 9 – स्थानीय कमिश्नर की नियुक्ति – आधार – अभिनिर्धारित – आदेश 26 नियम 9 के अंतर्गत आवेदन में की गई प्रार्थना तथा आवेदन के उत्तर द्वारा, वाद के पक्षकारों ने स्थानीय कमिश्नर की नियुक्ति के जरिए साक्ष्य एकत्रित करने के लिए प्रयास किया, जिसे मंजूर नहीं किया जा सकता – आदेश 26 नियम 9 सि.प्र.सं. के अंतर्गत आदेश पारित करते समय न्यायालय, विवाद के न्यायनिर्णयन की अपनी शक्तियों को एक स्थानीय कमिश्नर को प्रत्यायोजित नहीं कर सकता – शब्द ''विवाद में के किसी विषय का विशदीकरण'' में साक्ष्य एकत्रित करना शामिल नहीं होगा – आक्षेपित आदेश अपास्त। (राम बिलोकी वि. रामस्वरूप) …537

***Civil Procedure Code (5 of 1908), Order 41 Rule 21 – Cross Appeal/ Cross Objection* – Held – If respondent is interested in challenging the adverse findings recorded against him by Court below, he is required to file at least his memo of objection in writing which may not be in form of cross objection or cross appeal – Respondents not permitted to challenge the findings recorded in favour of plaintiff in respect of will without filing any cross objection in appeal. [Jagdish Chandra Gupta Vs. Madanlal] …140**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 21 – प्रति–अपील/प्रत्याक्षेप – अभिनिर्धारित – यदि प्रत्यर्थी निचले न्यायालय द्वारा उसके विरूद्ध अभिलिखित किये गये प्रतिकूल निष्कर्षों को चुनौती देने में रूचि रखता है, उसे कम से कम लिखित में अपना आक्षेप ज्ञापन प्रस्तुत करना अपेक्षित है जो कि प्रत्याक्षेप अथवा प्रति–अपील के प्रारूप में नहीं हो सकता – प्रत्यर्थीगण को अपील में कोई प्रत्याक्षेप प्रस्तुत

किये बिना, वसीयत के संबंध में वादी के पक्ष में अभिलिखित निष्कर्षों को चुनौती देने की अनुज्ञा नहीं। (जगदीश चन्द्र गुप्ता वि. मदनलाल) **...140**

Classification of Branches – Scale of Officer – Change of Status **– Held – Bank notified five categories of branches and such classification has been approved by the Board as a Policy and is having statutory force – Petitioner, being a Scale IV officer transferred to the branch where only Scale I Officer can be the Branch Manager – It is lowering the status of petitioner which cannot be permitted under the garb of transfer showing it to be service and administrative exigencies – Impugned order quashed. [Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank]** **...379**

शाखाओं का वर्गीकरण – अधिकारी का स्केल – स्थिति में बदलाव – अभिनिर्धारित – बैंक ने शाखाओं की पांच श्रेणियां अधिसूचित की तथा उक्त वर्गीकरण को मंडल द्वारा एक नीति के रूप में अनुमोदित किया गया है और इसे कानूनी बल प्राप्त है – याची, एक स्केल IV अधिकारी को उस शाखा में स्थानांतरित किया गया जहां केवल स्केल I अधिकारी, शाखा प्रबंधक हो सकता है – यह याची की स्थिति को नीचे लाना है जिसे, सेवा एवं प्रशासनिक अत्यावश्यकताऐं दर्शाते हुए स्थानांतरण की आड़ में करने की अनुज्ञा नहीं दी जा सकती – आक्षेपित आदेश अभिखंडित किया गया। (दुर्गेश कुवर (श्रीमती) वि. पंजाब एण्ड सिंध बैंक) **...379**

Commercial Tax Department Subordinate Taxation Services (Class III – Executive) Recruitment Rules, M.P., 2007, Rule 4 & 6 – Recruitment – Written Examination – Revaluation **– Held – There exist no statutory rule, regulations, provision or legal right providing for revaluation of the answer sheet – Rule of 2007 do not provide for any revaluation – Prayer rejected. [Hemant Bakolia Vs. State of M.P.]** **...305**

वाणिज्यिक कर विभाग अधीनस्थ कराधान सेवा (तृतीय श्रेणी–कार्यपालिक) भर्ती नियम, म.प्र., 2007, नियम 4 व 6 – भर्ती – लिखित परीक्षा – पुनर्मूल्यांकन – अभिनिर्धारित – उत्तर पुस्तिका का पुनर्मूल्यांकन उपबंधित करने हेतु कोई कानूनी नियम, विनियमन, उपबंध अथवा विधिक अधिकार अस्तित्व में नहीं हैं – 2007 का नियम कोई पुनर्मूल्यांकन उपबंधित नहीं करता – प्रार्थना अस्वीकृत। (हेमन्त बकोलिया वि. म.प्र. राज्य) **...305**

Commercial Tax Department Subordinate Taxation Services (Class III – Executive) Recruitment Rules, M.P., 2007, Rule 4 & 6 – Recruitment – Written Examination – Rounding off of Marks **– Petitioner seeking rounding off of marks as he was awarded 44.75 marks where as cut off marks for him was 45 – Held – Petitioner not entitled for rounding off of marks because of the express language of the Rules and even it does not provide for rounding off of marks – When Rule itself provides for obtaining minimum marks and lays emphasis thereon, principle of rounding off cannot be applied – Permitting rounding off in such a case would be contrary to the expressed provisions of the Rule – Petitioner's name rightly excluded from select list – Petition dismissed. [Hemant Bakolia Vs. State of M.P.]** **...305**

वाणिज्यिक कर विभाग अधीनस्थ कराधान सेवा (तृतीय श्रेणी–कार्यपालिक) भर्ती नियम, म.प्र., 2007, नियम 4 व 6 – भर्ती – लिखित परीक्षा – अंकों का पूर्णांकित किया जाना – याची द्वारा अंकों को पूर्णांकित करना चाहा गया चूंकि उसे 44.75 अंक प्रदान किये गये थे जबकि उसके लिए कट ऑफ अंक 45 थे – अभिनिर्धारित – याची नियमों की अभिव्यक्त भाषा के कारण अंकों के पूर्णांकित किये जाने हेतु हकदार नहीं है, और यहां तक कि वह अंकों को पूर्णांकित करने हेतु उपबंधित नहीं करते हैं – जब नियम स्वयं न्यूनतम अंक प्राप्त करने हेतु उपबंधित करता है तथा उस पर जोर देता है, पूर्णांकित करने का सिद्धांत लागू नहीं किया जा सकता – ऐसे प्रकरणों में पूर्णांकित करने की अनुमति देना नियम के अभिव्यक्त उपबंधों के प्रतिकूल होगा – याची का नाम चयन सूची से उचित रूप से अपवर्जित किया गया – याचिका खारिज। (हेमन्त बकोलिया वि. म.प्र. राज्य) **...305**

Companies Act (18 of 2013), Section 430 – See – Interpretation of Statutes **[Manoj Shrivastava Vs. State of M.P.] ...207**

कम्पनी अधिनियम (2013 का 18), धारा 430 – देखें – कानूनों का निर्वचन (मनोज श्रीवास्तव वि. म.प्र. राज्य) **...207**

Companies Act (18 of 2013), Sections 439(1),(2), 436(1),(2), 441, 442, 435 & 445 – See – Penal Code, 1860, Sections 420, 467, 409 & 120-B **[Manoj Shrivastava Vs. State of M.P.] ...207**

कम्पनी अधिनियम (2013 का 18), धाराएँ 439(1),(2), 436(1),(2), 441, 442, 435 व 445 – देखें – दण्ड संहिता, 1860, धाराएँ 420, 467, 409 व 120–बी (मनोज श्रीवास्तव वि. म.प्र. राज्य) **...207**

Conduct of Election Rules, 1961, Section 56D and Constitution – Article 329(b) – Voter Verifiable Paper Audit Trail (VVPAT) **– Petitioner seeking directions to count all VVPAT slips alongwith counting of votes through EVM's in ongoing state assembly elections – Held – Once the election process has commenced, writ petition cannot be entertained in view of Article 329(b) of Constitution – Candidate or his agent can make application before the Returning Officer under Rule 56D(2) of the Rules of 1961 – Petitioner could have submitted his suggestions before Election Commission of India – No directions can be issued – Petition dismissed. [Amitabh Gupta Vs. Election Commission of India] (DB)...*14**

निर्वाचन का संचालन नियम, 1961, धारा 56डी एवं संविधान – अनुच्छेद 329(बी) – वोटर वेरीफाएबल पेपर ऑडिट ट्रेल (VVPAT) – याची, चल रहे विधान सभा के निर्वाचनों में ई.वी.एम. के द्वारा मतों की गणना के साथ ही सभी वी.वी.पी.ए.टी. पर्चियों की गणना के लिए निदेश चाहता है – अभिनिर्धारित – एक बार निर्वाचन प्रक्रिया आरंभ हो जाने पर, संविधान के अनुच्छेद 329(बी) को दृष्टिगत रखते हुए रिट याचिका ग्रहण नहीं की जा सकती – प्रत्याशी या उसका ऐजेंट, 1961 के नियमों के नियम 56डी(2) के अंतर्गत निर्वाचन अधिकारी के समक्ष आवेदन कर सकता है – याची अपने सुझावों को भारत के निर्वाचन आयोग के समक्ष प्रस्तुत कर सकता था – कोई निदेश जारी नहीं किये जा सकते – याचिका खारिज। (अमिताभ गुप्ता वि. इलेक्शन कमीशन ऑफ इंडिया) **(DB)...*14**

INDEX

Constitution – Article 14 – Equality **– Petitioner claimed that JDA/State has taken no coercive action against other parties who has been allotted land similarly – Held – It is settled law that Article 14 provides for positive equality and does not permit negative parity and not meant to perpetuate illegality – Further, petitioner failed to show that other parties got lease deed executed in respect of "Nazul Land". [Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.] (DB)…16**

संविधान – अनुच्छेद 14 – समता – याची ने दावा किया कि जेडीए/राज्य ने अन्य पक्षकारों के विरूद्ध कोई प्रपीड़क कार्रवाई नहीं की है, जिन्हें समान रूप से भूमि आबंटित की गई है – अभिनिर्धारित – यह सुस्थापित विधि है कि अनुच्छेद 14 सकारात्मक समता उपबंधित करता है एवं नकारात्मक समानता को अनुमति नहीं देता है तथा अवैधता कायम रखने हेतु नहीं है – इसके अतिरिक्त, याची यह दर्शाने में विफल रहा कि अन्य पक्षकारों ने ''नजूल भूमि'' के संबंध में पट्टा विलेख का निष्पादन करा लिया। (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) **(DB)…16**

Constitution – Article 14 & 16 – See – Lok Seva Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhade Vargon Ke Liye Arakshan Rules, M.P., 1998, Rule 4-B **[Ankit Baghel Vs. State of M.P.] …390**

संविधान – अनुच्छेद 14 व 16 – देखें – लोक सेवा अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य पिछड़े वर्गों के लिए आरक्षण नियम, म.प्र., 1998, नियम 4–बी (अंकित बघेल वि. म.प्र. राज्य) **…390**

Constitution – Article 16(2) – Public Employment – Equality of Opportunity **– Held – After written examination, department exempted the requirement of holding viva-voce/interview as prescribed in statutory rules/ advertisement – State has ample power to relax the recruitment rules – Action of State Government cannot be said to prejudice any candidate as the change/relaxation in norms/rules does not adversely affect the right to be considered in public employment – It is not a case where participation in interview is waived for few and not for others thus no ground of discrimination established – No interference called for – Petition dismissed. [Ranjana Kushwaha (Dr.) Vs. State of M.P.] …*10**

संविधान – अनुच्छेद 16(2) – लोक नियोजन – समानता का अवसर – अभिनिर्धारित – लिखित परीक्षा के पश्चात्, विभाग ने मौखिक परीक्षा/साक्षात्कार आयोजित करने की, आवश्यकता जैसा कि कानूनी नियमों/विज्ञापन में विहित है, से छूट प्रदान की – राज्य को भर्ती नियमों को शिथिल करने की पर्याप्त शक्ति है – राज्य सरकार द्वारा की गई कार्रवाई से किसी अभ्यर्थी को प्रतिकूल प्रभाव कारित होना नहीं कहा जा सकता क्योंकि सन्नियमों/नियमों में बदलाव/शिथिलीकरण से लोक नियोजन में विचार में लिए जाने का अधिकार प्रतिकूल रूप से प्रभावित नहीं होता – यह ऐसा प्रकरण नहीं जहां कुछ के लिए साक्षात्कार का अधित्यजन किया गया और अन्य के लिए नहीं अतः विभेद

का कोई आधार स्थापित नहीं – हस्तक्षेप की कोई आवश्यकता नहीं – याचिका खारिज। (रंजना कुशवाहा (डॉ.) वि. म.प्र. राज्य) ...*10

***Constitution – Articles 16(4), 16(4-A), 16(4-B), 46, 330, 335, 341 & 342 – Promotion – Reservation for Backward Class* – Held – *"Nagaraj"* case has wisely left the test for determining adequacy of representation in promotional post to States for simple reason that as the post gets higher, it may be necessary to reduce the number of Scheduled Caste and Scheduled Tribes in promotional post, as one goes upwards – This is for simple reason that efficiency of administration has to be looked at every time promotions are made – Article 16(4) has been couched in language which would leave it to States to determine adequate representation depending upon the promotional post that is in question – Thus, the conclusion in *"Nagaraj"* case that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and Scheduled Tribes, being contrary to nine-judge bench in Indra Sawhney (1) is held to be invalid to this extent – Reference answered accordingly. [Jarnail Singh Vs. Lachhmi Narain Gupta] (SC)...261**

संविधान – अनुच्छेद 16(4), 16(4–ए), 16(4–बी), 46, 330, 335, 341 व 342 – पदोन्नति – पिछड़ा वर्ग हेतु आरक्षण – अभिनिर्धारित – *''नागराज''* प्रकरण ने बुद्धिमत्तापूर्वक पदोन्नति पद में प्रतिनिधित्व की पर्याप्तता अवधारित करने के लिए परीक्षण इस साधारण कारण से राज्य पर छोड़ा है कि चूंकि पद उच्चतर होता जाता है पदोन्नति पद में जैसे–जैसे कोई ऊपर बढ़ता है, अनुसूचित जाति एवं अनुसूचित जनजाति की संख्या घटाना आवश्यक हो सकता है – यह इस साधारण कारण से कि प्रत्येक बार पदोन्नति किये जाते समय प्रशासन की दक्षता को देखा जाना होता है – अनुच्छेद 16(4) ऐसी भाषा में वर्णित है जो कि प्रश्नगत पदोन्नति पद पर निर्भर रहते हुए प्रतिनिधित्व की पर्याप्तता अवधारित करना राज्य पर छोड़ेगा – अतः *''नागराज''* प्रकरण में यह निष्कर्ष कि राज्य को अनुसूचित जाति एवं अनुसूचित जनजाति का पिछड़ापन दर्शाते हुए परिमाणन योग्य डाटा एकत्रित करना होगा, इंदिरा साहनी (1) में नौ–न्यायाधीश की न्यायपीठ के विपरीत होने के कारण इस सीमा तक अविधिमान्य अभिनिर्धारित किया गया – निर्देश तद्नुसार उत्तरित। (जर्नेल सिंह वि. लक्ष्मी नारायण गुप्ता) (SC)...261

***Constitution – Article 21 – Right to Life and Personal Liberty* – Held – Even otherwise, Article 21 of Constitution wherein right to life and personal liberty are secured, no person can be debarred of such liberty at the instance of false complaint. [Atendra Singh Rawat Vs. State of M.P.] ...168**

संविधान – अनुच्छेद 21 – प्राण और दैहिक स्वतंत्रता का अधिकार – अभिनिर्धारित – अन्यथा भी, संविधान का अनुच्छेद 21 जिसमें प्राण और दैहिक स्वतंत्रता सुनिश्चित है, किसी व्यक्ति को, मिथ्या परिवाद के आधार पर उक्त स्वतंत्रता से विवर्जित नहीं किया जा सकता। (अतेन्द्र सिंह रावत वि. म.प्र. राज्य) ...168

***Constitution – Article 21 – See – Criminal Procedure Code, 1973, Section 2(h)* [Utkarsh Saxena Vs. State of M.P.] ...653**

संविधान – अनुच्छेद 21 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 2(एच) (उत्कर्ष सक्सेना वि. म.प्र. राज्य) **…653**

***Constitution – Article 226 – Allotment of Plot – Legitimate Expectation* – Petitioner was allotted plot in Sector E whereby he paid the entire premium amount but possession was not given by respondents because of certain encroachments and litigation – Board passed a resolution to allot plot to such people in Sector F for which consent was not given by petitioner – Fresh NIT issued by respondents to sell plots in Sector 'E' – Challenge to – Held – As allotment was done in 1994, petitioner who is waiting for possession since last 20 years, is having legitimate expectation for taking possession of plot from respondents, either in Sector 'E' or 'F' – Respondents directed to either handover one plot from Sector 'E' which are under fresh auction in impugned NIT or allot the Plot No. T-1 or T-2, as being bigger in size, petitioner is ready to pay the difference amount for extra area as per collector guideline – Petition partly allowed. [Sunil Dangi Vs. Indore Development Authority] …367**

संविधान – अनुच्छेद 226 – भूखंड का आबंटन – विधिसम्मत प्रत्याशा – याची को सेक्टर ई में भूखंड आबंटित किया गया था, जिसमें उसने पूरी प्रीमियम राशि का भुगतान किया था परंतु कुछ अधिक्रमणों तथा मुकदमेबाजी के कारण प्रत्यर्थीगण द्वारा कब्जा नहीं दिया गया था – बोर्ड ने सेक्टर एफ में ऐसे लोगों को भूखंड आबंटित करने का संकल्प पारित किया, जिसके लिए याची द्वारा सहमति नहीं दी गई थी – सेक्टर 'ई' में भूखंडों को बेचने हेतु प्रत्यर्थीगण द्वारा नयी एन.आई.टी. जारी की गई – को चुनौती – अभिनिर्धारित – चूंकि आबंटन 1994 में किया गया था, याची जो पिछले 20 वर्षों से कब्जे के लिए प्रतीक्षा कर रहा है, उसे या तो सेक्टर 'ई' या 'एफ' में, प्रत्यर्थीगण से भूखंड का कब्जा लेने की विधिसम्मत प्रत्याशा है – प्रत्यर्थीगण को निदेशित किया गया कि या तो सेक्टर 'ई' से एक भूखंड सौंप दे जो कि आक्षेपित एन.आई.टी. में नये सिरे से नीलामी के अधीन है या भूखंड क्र. टी–1 अथवा टी–2 आबंटित करे, क्योंकि आकार में बड़ा होने के नाते, याची, कलेक्टर के मार्गदर्शन अनुसार अतिरिक्त क्षेत्र के लिए अंतर राशि का भुगतान करने के लिए तैयार है – याचिका अंशतः मंजूर। (सुनील दांगी वि. इंदौर डव्हेलपमेन्ट अथॉरिटी) …367

***Constitution – Article 226 – Scope & Jurisdiction* – Held – If the screening committee constituted for such purpose finds the petitioner unfit for appointment due to prosecution in criminal case, then this Court in writ jurisdiction cannot act as an appellate authority and interfere in such a decision, unless same is found to be palpably erroneous or de hors the rules, regulations or settled law. [Pawan Vs. State of M.P.] …8**

संविधान – अनुच्छेद 226 – व्याप्ति एवं अधिकारिता – अभिनिर्धारित – यदि उक्त प्रयोजन हेतु गठित छानबीन समिति याची को दाण्डिक प्रकरण में अभियोजन के कारण अयोग्य पाती है तब यह न्यायालय, रिट अधिकारिता में एक अपीली प्राधिकारी के रूप में कार्य नहीं कर सकता एवं उक्त निर्णय में हस्तक्षेप नहीं कर सकता जब तक कि वह त्रुटिपूर्ण

या सुस्पष्ट रूप से नियमों, विनियमों या स्थापित विधि से असंबद्ध नहीं पाया जाता। (पवन वि. म.प्र. राज्य) **...8**

Constitution – Article 226 – See – Income Tax Act, 1961, Sections 142(1), 147 & 148 **[Etiam Emedia Ltd. (M/s.) Vs. Income Tax Officer-2 (2)] (DB)...*16**

संविधान – अनुच्छेद 226 – देखें – आयकर अधिनियम, 1961, धाराएँ 142(1), 147 व 148 (इतियम ईमीडिया लि. (मे.) वि. इनकम टैक्स ऑफीसर–2 (2)) **(DB)...*16**

Constitution – Article 226 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(r) & (s) **[Mangaram Vs. State of M.P.] ...435**

संविधान – अनुच्छेद 226 – देखें – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989, धारा 3(1)(आर) व (एस) (मंगाराम वि. म.प्र. राज्य) **...435**

Constitution – Article 226 and Prakostha Swamitva Adhiniyam, M.P., 2000 (15 of 2001), Sections 2, 3(b), 3(i) & 4(2) – Cancellation of Lease – Validity and Legality of Lease **– Held – Tender document, promoter agreement and provisions of Adhiniyam of 2000 shows that license was given to promoter/ petitioner to construct building and give first allotment to persons of his choice and receive sale consideration for first time out of it – Ownership of shops/ showrooms/chambers was to remain with JDA (lessor) – Promotor had limited rights to nominate a party for execution of lease deed, who will later become lessee of JDA who is entitled to receive transfer fee – No right to execute lease deed of land accrued in favour of petitioner and was clearly impermissible – Such unauthorized transfer of land in favour of promoter dehors the tender document, agreement and Prakoshta Adhiniyam and is void ab initio – Petition dismissed. [Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.] (DB)...16**

*संविधान – अनुच्छेद 226 तथा प्रकोष्ठ स्वामित्व अधिनियम, म.प्र., 2000 (2001 का 15), धाराएँ 2, 3(बी), 3(*i*) व 4(2) – पट्टे का रद्दकरण – पट्टे की विधिमान्यता तथा वैधता* – अभिनिर्धारित – निविदा दस्तावेज, संप्रवर्तक करार एवं 2000 के अधिनियम के उपबंध यह दर्शाते हैं कि संप्रवर्तक/याची को, भवन निर्माण के लिए तथा अपनी पसंद के व्यक्तियों को पहला आबंटन देने और उससे प्रथम बार बिक्री प्रतिफल प्राप्त करने हेतु, अनुज्ञप्ति प्रदान की गई थी – दुकानों/शोरूम/कक्षों का स्वामित्व जेडीए (पट्टाकर्ता) के पास ही रहना था – संप्रवर्तक के पास पट्टा विलेख के निष्पादन हेतु किसी पक्षकार को नामित करने के लिए सीमित अधिकार हैं, जो बाद में जेडीए का पट्टेदार बन जायेगा जो कि हस्तांतरण शुल्क प्राप्त करने का हकदार है – याची के पक्ष में भूमि के पट्टा विलेख को निष्पादित करने का कोई अधिकार प्रोद्भूत नहीं होता है तथा स्पष्ट रूप से अननुज्ञेय था – संप्रवर्तक के पक्ष में भूमि का ऐसा अप्राधिकृत हस्तांतरण, निविदा दस्तावेज, करार एवं

प्रकोष्ठ अधिनियम से बाहर है तथा आरंभ से ही शून्य है – याचिका खारिज। (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) **(DB)…16**

Constitution – Article 226/227 – Appointment – Judicial Review – Scope & Grounds **– Held – An order of appointment is subject to judicial review on ground of illegality, non application of mind and malafide – If suitability of candidate has not been found to be proper by assessing authority and reasons have been assigned for the same, that cannot be a ground for judicial review. [Asha Kushwah (Smt.) Vs. State of M.P.] (DB)…*3**

संविधान – अनुच्छेद 226/227 – नियुक्ति – न्यायिक पुनर्विलोकन – व्याप्ति व आधार – अभिनिर्धारित – नियुक्ति का आदेश, अवैधता, मस्तिष्क का प्रयोग न किये जाने एवं असद्भावपूर्णता के आधार पर न्यायिक पुनर्विलोकन के अधीन है – यदि अभ्यर्थी की उपयुक्तता को निर्धारण प्राधिकारी द्वारा उचित नहीं पाया गया है और उसके लिए कारण दिये गये है, तब यह न्यायिक पुनर्विलोकन हेतु आधार नहीं हो सकता। (आशा कुशवाह (श्रीमती) वि. म.प्र. राज्य) **(DB)…*3**

Constitution – Article 226/227 – Scope & Jurisdiction – Interference – Ground **– Held – Normally transfer orders should not be required to be interfered by this Court but impugned order was passed contrary to statutory provisions with a malafide intention which requires interference by this Court. [Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank] …379**

संविधान – अनुच्छेद 226/227 – व्याप्ति व अधिकारिता – हस्तक्षेप – आधार – अभिनिर्धारित – सामान्यतः, स्थानांतरण आदेशों में इस न्यायालय द्वारा हस्तक्षेप अपेक्षित नहीं होना चाहिए परंतु आक्षेपित आदेश को कानूनी उपबंधों के विपरीत असद्भावपूर्ण आशय के साथ पारित किया गया था जिसमें इस न्यायालय द्वारा हस्तक्षेप अपेक्षित है। (दुर्गेश कुवर (श्रीमती) वि. पंजाब एण्ड सिंध बैंक) **…379**

Constitution – Article 226 & 309 – See – Service Law **[Vikas Malik Vs. Union of India] …558**

संविधान – अनुच्छेद 226 व 309 – देखें – सेवा विधि (विकास मलिक वि. यूनियन ऑफ इण्डिया) **…558**

Constitution – Article 227 – Scope and Jurisdiction **– Held – Interference u/S 227 can be made on limited grounds, if impugned order suffers from any jurisdictional error, manifest procedural impropriety or palpable perversity – "Another view is possible" is not a ground for interference – High Court is not obliged to correct the mistakes of facts and law which does not have any drastic effect. [Arun Kumar Brahmin Vs. Smt. Maanwati] …136**

संविधान – अनुच्छेद 227 – व्याप्ति एवं अधिकारिता – अभिनिर्धारित – यदि आक्षेपित आदेश किसी अधिकारिता की त्रुटि, प्रकट प्रक्रियात्मक अनुचितता अथवा प्रत्यक्ष विपर्यस्तता से ग्रसित हो तो धारा 227 के अंतर्गत सीमित आधारों पर हस्तक्षेप किया जा

सकता है – ''अन्य दृष्टिकोण संभव है'' यह हस्तक्षेप का आधार नहीं है – उच्च न्यायालय तथ्यों एवं विधि की भूल जिनका कोई कठोर प्रभाव नहीं है, को सुधारने हेतु बाध्य नहीं है। (अरूण कुमार ब्राह्मण वि. श्रीमती मानवती) **...136**

Constitution – Article 227 – Scope and Jurisdiction **– Held – It is settled law that jurisdiction under Article 227 cannot be exercised to correct all errors of Subordinate Court – It can be exercised where any order is passed in grave dereliction of duty and flagrant abuse of fundamental principles of law and justice. [Noor Mohammad Vs. State of M.P.] ...132**

संविधान – अनुच्छेद 227 – व्याप्ति एवं अधिकारिता – अभिनिर्धारित – यह सुस्थापित विधि है कि अनुच्छेद 227 के अंतर्गत अधिकारिता का प्रयोग, अधीनस्थ न्यायालय की सभी त्रुटियों को सुधारने के लिए नहीं किया जा सकता – इसका प्रयोग वहां किया जा सकता है जहां कोई आदेश कर्तव्य की घोर उपेक्षा में पारित किया गया है तथा विधि एवं न्याय के सिद्धांतों का प्रत्यक्ष दुरूपयोग है। (नूर मोहम्मद वि. म.प्र. राज्य) **...132**

Constitution – Article 309, Proviso and Indian Railways Establishment Manual (IREM) – Service Conditions **– Held – Rules under IREM has been issued in exercise of powers vested under proviso to Article 309 of Constitution and hence has statutory force. [Prabhat Ranjan Singh Vs. R.K. Kushwaha] (SC)...245**

संविधान – अनुच्छेद 309, परंतुक एवं भारतीय रेल स्थापना निर्देशिका (आई.आर. ई.एम.) – सेवा शर्तें – अभिनिर्धारित – आई.आर.ई.एम. के अंतर्गत नियम संविधान के अनुच्छेद 309 के परंतुक के अधीन निहित शक्तियों के प्रयोग में जारी किये गये हैं तथा इसलिए कानूनी बल रखते हैं। (प्रभात रंजन सिंह वि. आर. के. कुशवाहा) **(SC)...245**

Constitution – Article 329(b) – See – Conduct of Election Rules, 1961, Section 56D **[Amitabh Gupta Vs. Election Commission of India] (DB)...*14**

संविधान – अनुच्छेद 329(बी) – देखें – निर्वाचन का संचालन नियम, 1961, धारा 56डी (अमिताभ गुप्ता वि. इलेक्शन कमीशन ऑफ इंडिया) **(DB)...*14**

Contract Act (9 of 1872), Section 128 – Bank Loan – Principle of Promissory Estoppel **– Held – Execution of lease deed of land which was the reason/foundation for grant of loan to SBPL, itself was contrary to law and against public interest – Cancellation of such lease deed of land got stamp of approval from this Court – Principle of promissory estoppels or Section 128 cannot be pressed into service in the case of this nature – No fault of JDA withdrawing the consent/ undertaking given for loan – Decision of JDA is taken in public interest and as per public trust doctrine – Petition by Bank dismissed. [Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.] (DB)...16**

संविदा अधिनियम (1872 का 9), धारा 128 – बैंक ऋण – वचन विबंध का सिद्धांत – अभिनिर्धारित – भूमि के पट्टा विलेख का निष्पादन जो कि एस.बी.पी.एल. को ऋण

प्रदान करने का कारण/आधार था, स्वयं विधि के विपरीत तथा लोकहित के विरूद्ध था – भूमि के उक्त पट्टा विलेख के रद्दकरण को इस न्यायालय से अनुमोदन का स्टाम्प मिल गया – वचन विबंधों के सिद्धांत अथवा धारा 128 को इस स्वरूप के प्रकरण में प्रयोग में नहीं लाया जा सकता – ऋण के लिए दी गई सहमति/वचनबंध वापस लेने में जेडीए का कोई दोष नहीं – जेडीए का विनिश्चय लोकहित में लिया गया तथा लोक न्यास सिद्धांत के अनुसार है – बैंक द्वारा प्रस्तुत याचिका खारिज। (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) **(DB)…16**

Criminal Practice – Appeal Against Acquittal **– Held – In appeal against acquittal, appellate Court would not ordinarily interfere with order of acquittal but where the order suffers serious infirmity, this Court can re-appreciate the evidence and reasoning upon which acquittal is based. [State of M.P. Vs. Chhaakki Lal] (SC)…507**

दाण्डिक पद्धति – दोषमुक्ति के विरूद्ध अपील – अभिनिर्धारित – दोषमुक्ति के विरूद्ध अपील में, अपीली न्यायालय दोषमुक्ति के आदेश में सामान्यतः हस्तक्षेप नहीं करेगा परंतु जहां आदेश गंभीर कमी से ग्रस्त है, यह न्यायालय साक्ष्य एवं तर्क जिस पर दोषमुक्ति आधारित है, का पुनः मूल्यांकन कर सकता है। (म.प्र. राज्य वि. छक्की लाल) **(SC)…507**

Criminal Practice – Benefit of Acquittal to Non Appealing Accused **– Held – Apex Court concluded that where the Court disbelieves the entire incident/case, then the benefit of the same should be extended to the non-appealing accused – It is well established principle of law that non-appealing accused should not suffer only because of the fact that he could not file the appeal. [Aatamdas Vs. State of M.P.] …*1**

दाण्डिक पद्धति – अपील न करने वाले अभियुक्त को दोषमुक्ति का लाभ – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि जहां न्यायालय संपूर्ण घटना/प्रकरण पर अविश्वास करता है, तब उक्त का लाभ अपील न करने वाले अभियुक्त को भी दिया जाना चाहिए – यह विधि का सुस्थापित सिद्धांत है कि अपील न करने वाले अभियुक्त को मात्र इस तथ्य के कारण कि वह अपील प्रस्तुत नहीं कर सका, भुगतना नहीं पड़ना चाहिए। (आतमदास वि म.प्र. राज्य) **…*1**

Criminal Practice – Delay in Trial – Responsibility of Trial Court **– Held – It is the responsibility of the trial Court to secure presence of prosecution witnesses at the earliest and record their statements within the shortest time possible. [Rambahor Saket Vs. State of M.P.] …214**

दाण्डिक पद्धति – विचारण में विलंब – विचारण न्यायालय का उत्तरदायित्व – अभिनिर्धारित – अभियोजन साक्षीगण की यथाशीघ्र उपस्थिति सुनिश्चित करने एवं उनके कथनों को यथासंभव कम से कम समय के भीतर अभिलिखित करने का उत्तरदायित्व विचारण न्यायालय का है। (रामबहोर साकेत वि. म.प्र. राज्य) **…214**

Criminal Practice – Order of Acquittal – Interference **– Held – It is settled law that if trial Court after due appreciation of evidence comes to**

conclude finding of acquittal then normally if findings are not perverse, it should not be interfered by Appellate Court. [State of M.P. Vs. Mukesh Kewat] (DB)…489

दाण्डिक पद्धति – दोषमुक्ति का आदेश – हस्तक्षेप – अभिनिर्धारित – यह स्थापित विधि है कि यदि विचारण न्यायालय, साक्ष्य के सम्यक् मूल्यांकन पश्चात् दोषमुक्ति के निष्कर्ष पर पहुंचता है तब सामान्यतः, यदि निष्कर्ष विपर्यस्त नहीं है, अपीली न्यायालय द्वारा उसमें हस्तक्षेप नहीं किया जाना चाहिए। (म.प्र. राज्य वि. मुकेश केवट) **(DB)…489**

***Criminal Practice – Suspicion* – Held – Suspicion howsoever may be grave and strong cannot take place of proof of commission of crime. [Ratiram Gond Vs. State of M.P.] (DB)…644**

दाण्डिक पद्धति – संदेह – अभिनिर्धारित – संदेह कितना ही गंभीर एवं पक्का क्यों न हो, अपराध किये जाने के सबूत का स्थान नहीं ले सकता। (रतीराम गोंड वि म.प्र. राज्य) **(DB)…644**

***Criminal Procedure Code, 1973 (2 of 1974), Section 2(h) and Constitution – Article 21 – Police Investigation* – Held – Investigative powers of police are not merely an "Authority" but also a "Responsibility – Fair investigation is one which is done for purpose of unearthing the truth and not for sole purpose of securing conviction – Fair trial entails to considering the defence of the accused and investigating the same to ascertain if the allegations against accused is true or not – If accused provides credible material to police to investigate and ascertain his innocence, it is bounden duty of police to investigate into his version – Ignoring the same would violate his rights under Article 21 of Constitution. [Utkarsh Saxena Vs. State of M.P.] …653**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 2(एच) एवं संविधान – अनुच्छेद 21 – पुलिस अन्वेषण – अभिनिर्धारित – पुलिस की अन्वेषण करने की शक्तियाँ न केवल एक ''प्राधिकार'' है बल्कि एक ''उत्तरदायित्व'' भी है – निष्पक्ष अन्वेषण वह है जो कि सत्य को खोजने के प्रयोजन से किया जाता है तथा न कि दोषसिद्धि के एकमात्र प्रयोजन से – निष्पक्ष विचारण में, यह सुनिश्चित करने हेतु कि क्या अभियुक्त के विरूद्ध लगाये गये अभिकथन सत्य है अथवा नहीं, अभियुक्त के बचाव को विचार में लेना तथा उक्त का अन्वेषण करना आवश्यक है – यदि अभियुक्त पुलिस को अन्वेषण करने तथा उसकी निर्दोषिता सुनिश्चित करने के लिए विश्वसनीय सामग्री प्रदान करता है, पुलिस का यह आबद्धकर कर्तव्य है कि वह उसके कथनों पर अन्वेषण करे – उक्त को अनदेखा करना संविधान के अनुच्छेद 21 के अंतर्गत उसके अधिकारों का उल्लंघन होगा। (उत्कर्ष सक्सेना वि. म.प्र. राज्य) …653

***Criminal Procedure Code, 1973 (2 of 1974), Section 41 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, Section 18-A* [Atendra Singh Rawat Vs. State of M.P.] …168**

INDEX

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 41 – देखें – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) संशोधन अधिनियम, 2018, धारा 18–ए (अतेन्द्र सिंह रावत वि. म.प्र. राज्य) **...168**

Criminal Procedure Code, 1973 (2 of 1974), Sections 41-A, 41-B, 41-C, 41-D & 438 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(r) & 18 **[Mangaram Vs. State of M.P.] ...435**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 41–ए, 41–बी, 41–सी, 41–डी व 438 – देखें – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989, धारा 3(1)(आर) व 18 (मंगाराम वि. म.प्र. राज्य) **...435**

Criminal Procedure Code, 1973 (2 of 1974), Section 53-A & 164-A – DNA Test – Credibility **– Held – By insertion of Section 53-A and 164-A vide amendment of 2005, DNA profiling has now become a part of statutory scheme and is a must – DNA test is a step towards more Forensic and scientific investigation. [Rajendra Singh Vs. State of M.P.] ...*19**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 53–ए व 164–ए – डीएनए परीक्षण – विश्वसनीयता – अभिनिर्धारित – 2005 के संशोधन द्वारा धारा 53–ए व 164–ए के अंतःस्थापन द्वारा, अब डीएनए प्रोफाईलिंग कानूनी प्रणाली का एक हिस्सा बन गया है और आवश्यक है – डीएनए परीक्षण, अधिक न्यायालयिक एवं वैज्ञानिकी अन्वेषण की ओर एक कदम है। (राजेन्द्र सिंह वि. म.प्र. राज्य) **...*19**

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Entitlement of Father or Mother – Liability of Major Daughter **– Trial Court awarded Rs. 750 p.m. as maintenance jointly against major son and daughter – Held – Father is entitled to claim maintenance from his children – Apex court concluded that both son and daughter are liable to maintain their father or mother who is unable to maintain himself or herself – Looking to daily needs for an old person of 70 yrs. of age including health etc, maintenance amount is not on higher side – Revision dismissed. [Mohd. Shafiq Ansari Vs. Mohd. Rasool Ansari] ...*7**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरणपोषण – पिता या माता की हकदारी – वयस्क पुत्री का दायित्व – विचारण न्यायालय ने वयस्क पुत्र एवं पुत्री के विरूद्ध संयुक्त रूप से भरणपोषण के रूप में 750/– प्रतिमाह भरणपोषण प्रदान किया – अभिनिर्धारित – पिता अपने बच्चों से भरणपोषण का दावा करने के लिए हकदार है – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि दोनों, पुत्र व पुत्री, अपने ऐसे पिता या माता जो स्वयं का भरणपोषण करने में अक्षम है, का भरणपोषण करने के लिए दायी हैं – 70 वर्ष आयु के वृद्ध व्यक्ति की दैनिक जरूरतों, जिसमें स्वास्थ्य इत्यादि शामिल हैं को देखते हुए, भरणपोषण की राशि अधिक नहीं है – पुनरीक्षण खारिज। (मोहम्मद शफीक अंसारी वि. मोहम्मद रसूल अंसारी) **...*7**

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance of Daughter – Quantum – **Held – Trial Court granted maintenance to daughter @ Rs. 15000 p.m. – Held – Daughter living separately with mother since 2013 – For maintenance of daughter, not a single penny paid by applicant/father, who is Class I Officer with net salary of Rs. 72,084 p.m. – Just because daughter is living with her mother who is earning Rs. 36,076 p.m. would not provide a ground for applicant father to shirk from responsibility of his own daughter – Amount awarded is justified – Revision dismissed. [Lawrence Robertson Vs. Smt. Vani Jogi] …*6**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – पुत्री का भरणपोषण – मात्रा – अभिनिर्धारित – विचारण न्यायालय ने पुत्री को रू. 15000/– प्रतिमाह की दर से भरणपोषण प्रदान किया – अभिनिर्धारित – पुत्री 2013 से, माता के साथ पृथक रूप से रह रही है – पुत्री के भरणपोषण हेतु आवेदक/पिता, जो कि एक प्रथम श्रेणी अधिकारी है जिसका शुद्ध वेतन रू. 72,084/– प्रतिमाह है, ने एक पैसे का भुगतान नहीं किया – केवल इसलिए कि पुत्री उसकी माता के साथ रह रही है जो रू. 36,076/– प्रतिमाह अर्जित कर रही है, आवेदक पिता के लिए उसकी स्वयं की पुत्री की जिम्मेदारी से बचने का आधार नहीं होगा – अवार्ड की गई राशि न्यायोचित है – पुनरीक्षण खारिज। (लॉरेन्स रॉबर्टसन वि. श्रीमती वाणी जोगी) …*6**

Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Delay in FIR – **Held – Incident is of 26.10.2016 and FIR was lodged on 18.02.2017 – Had it been a case of cruelty or a case of abetment to commit suicide, nothing prevented the parents of the girl or other relatives to lodge a FIR with quite promptitude. [Manorama Bai (Smt.) Vs. State of M.P.] …674**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना प्रतिवेदन में विलंब – अभिनिर्धारित – घटना 26.10.2016 की है तथा प्रथम सूचना प्रतिवेदन दिनांक 18.02.2017 को दर्ज किया गया – चाहे यह क्रूरता का प्रकरण था अथवा आत्महत्या के दुष्प्रेरण का प्रकरण था, लड़की के माता–पिता या अन्य रिश्तेदारों को पूर्णतया तत्परता से प्रथम सूचना प्रतिवेदन दर्ज करने से नहीं रोका गया। (मनोरमा बाई (श्रीमती) वि. म.प्र. राज्य) …674

Criminal Procedure Code, 1973 (2 of 1974), Section 154 – FIR – **Held – FIR is not an encyclopedia which is expected to contain all minute details of prosecution case – It may be sufficient if broad effects of the case is stated therein. [State of M.P. Vs. Chhaakki Lal] (SC)…507**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना प्रतिवेदन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन कोई विश्वकोष नहीं जिसमें अभियोजन प्रकरण के सभी सूक्ष्म विवरणों का समावेश अपेक्षित हो – यह पर्याप्त हो सकता है यदि उसमें प्रकरण के व्यापक प्रभाव दिये गये हैं। (म.प्र. राज्य वि. छक्की लाल) (SC)…507

INDEX

Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 311 – See – Evidence Act, 1872, Section 145 **[Laxminarayan Agrawal Vs. State of M.P.] …494**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 व 311 – देखें – साक्ष्य अधिनियम, 1872, धारा 145 (लक्ष्मीनारायण अग्रवाल वि. म.प्र. राज्य) **…494**

***Criminal Procedure Code, 1973 (2 of 1974), Sections 177, 178 & 179 and Penal Code (45 of 1860), Sections 420, 467, 409 & 120-B – Territorial Jurisdiction* – Held – Residential township constructed within territorial jurisdiction of police station Sirol, Distt. Gwalior and all sham sale deeds were also executed at Gwalior – Entire offence has been committed in Gwalior – Contention that, Company having registered office at Noida and all decisions were taken at Noida, has no significance – Court at Gwalior has jurisdiction to try the offence – However, it is settled law that where offence has taken place within territorial jurisdiction of more than one police stations, then each police station has jurisdiction to investigate the offence – Application dismissed. [Manoj Shrivastava Vs. State of M.P.] …207**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 177, 178 व 179 एवं दण्ड संहिता (1860 का 45), धाराएँ 420, 467, 409 व 120–बी – क्षेत्रीय अधिकारिता – अभिनिर्धारित – पुलिस थाना सीरोल, जिला ग्वालियर की क्षेत्रीय अधिकारिता के भीतर निवासीय नगरी का संनिर्माण किया गया तथा सभी बनावटी विक्रय विलेखों को भी ग्वालियर में निष्पादित किया गया था – संपूर्ण अपराध ग्वालियर में कारित किया गया है – तर्क कि, कंपनी का पंजीकृत कार्यालय नोएडा में है और सभी निर्णय नोएडा में लिये गये थे, कोई महत्व नहीं रखता – ग्वालियर के न्यायालय को अपराध का विचारण करने की अधिकारिता है – अपितु, यह स्थापित विधि है कि जहां अपराध, एक से अधिक पुलिस थानों की क्षेत्रीय अधिकारिता के भीतर घटित हुआ है, तब प्रत्येक पुलिस थाने को अपराध का अन्वेषण करने की अधिकारिता है – आवेदन खारिज। (मनोज श्रीवास्तव वि. म.प्र. राज्य) **…207**

***Criminal Procedure Code, 1973 (2 of 1974), Section 203 & 401(2) – Revision – Right of Accused – Opportunity of Hearing* – Held – Apex Court concluded that it is a plain requirement of Section 401(2) Cr.P.C. that if Magistrate dismissed the complaint u/S 203 and a revision has been preferred by complainant, the accused is entitled for hearing by the Revisional Court although the impugned order was passed without his participation – No interference warranted in impugned order issuing process to accused – Application dismissed. [Nizamuddin Vs. State of M.P.] …*26**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 203 व 401(2) – पुनरीक्षण – अभियुक्त का अधिकार – सुनवाई का अवसर – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यह धारा 401(2) दं.प्र.सं. की एक स्पष्ट अपेक्षा है कि यदि मजिस्ट्रेट ने धारा 203 के अंतर्गत परिवाद खारिज किया और परिवादी द्वारा एक पुनरीक्षण प्रस्तुत

किया गया है, अभियुक्त, पुनरीक्षण न्यायालय द्वारा सुनवाई हेतु हकदार है यद्यपि आक्षेपित आदेश उसके सहभाग के बिना पारित किया गया था – अभियुक्त को प्रोसेस जारी करने के आक्षेपित आदेश में हस्तक्षेप आवश्यक नहीं – आवेदन खारिज। (निजामुद्दीन वि. म.प्र. राज्य) …*26

Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – See – Penal Code, 1860, Section 304-B & 498-A **[Utkarsh Saxena Vs. State of M.P.] …653**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 – देखें – दण्ड संहिता, 1860, धारा 304–बी व 498–ए (उत्कर्ष सक्सेना वि. म.प्र. राज्य) …653

Criminal Procedure Code, 1973 (2 of 1974), Section 228 – See – Penal Code, 1860, Section 107 & 306 **[Rishi Jalori Vs. State of M.P.] …*28**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – देखें – दण्ड संहिता, 1860, धारा 107 व 306 (रिषी जालोरी वि. म.प्र. राज्य) …*28

Criminal Procedure Code, 1973 (2 of 1974), Section 311 – Recall of Witness – Stage of Trial – Grounds **– Held – Jurisdiction u/S 311 Cr.P.C. can be exercised at any stage of any inquiry, trial or other proceeding by Trial Court till it signs the judgment – Grounds on which application was based are perfunctory where no reason is given as to why it is essential to recall the witnesses and what prejudice will cause to defence if they are not recalled – In present case, petitioners had elaborately cross examined the witnesses who are sought to be recalled for further cross-examination – Power u/S 311 Cr.P.C. can not be used for the purpose of filling up the lacuna left behind by the defence during cross examination – Application dismissed. [Laxminarayan Agrawal Vs. State of M.P.] …494**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 – साक्षी का पुनः बुलाया जाना – विचारण का प्रक्रम – आधार – अभिनिर्धारित – दण्ड प्रक्रिया संहिता की धारा 311 के अंतर्गत अधिकारिता का प्रयोग विचारण न्यायालय द्वारा निर्णय पर हस्ताक्षर करने से पूर्व, किसी जांच, विचारण अथवा अन्य कार्यवाही के किसी भी प्रक्रम पर किया जा सकता है – आधार जिन पर आवेदन आधारित था, यंत्रवत् थे जिसमें कोई कारण नहीं दिया गया है कि साक्षीगण को पुनः बुलाया जाना क्यों आवश्यक है तथा यदि उन्हें नहीं बुलाया गया तो बचाव पक्ष को क्या प्रतिकूल प्रभाव कारित होगा – वर्तमान प्रकरण में, याचीगण ने साक्षीगण का विस्तारपूर्वक प्रतिपरीक्षण किया था जिन्हें आगे प्रतिपरीक्षण हेतु पुनः बुलाया जाना चाहा गया – दं.प्र.सं. की धारा 311 के अंतर्गत शक्ति का प्रयोग बचाव पक्ष द्वारा प्रतिपरीक्षण के दौरान पीछे छूटी कमी को पूरा करने के प्रयोजन हेतु नहीं किया जा सकता – आवेदन खारिज। (लक्ष्मीनारायण अग्रवाल वि. म.प्र. राज्य) …494

Criminal Procedure Code, 1973 (2 of 1974), Section 311 & 482 – Recall of Witness – Stage of Trial – Grounds **– Application filed at the stage of final**

arguments in a case which was 5 yrs. old – Held – Accused got the case adjourned for final arguments for more than a dozen times – While considering application filed u/S 311 Cr.P.C., Courts required to consider interests of victims/witnesses and prosecution alongwith all accused – Considering the concept of fair trial and interest of justice, a balance has to be struck between the two contrasting interests moreso when application filed at a very belated stage – Interest of justice also involves refraining from giving undue adjournments which may become a necessary corollary, once application u/S 311 Cr.P.C. is allowed – No error in impugned order – Application dismissed. [Babulal Vs. State of M.P.] **…*4**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 व 482 – साक्षी को पुनः बुलाया जाना – विचारण का प्रक्रम – आधार – एक प्रकरण में जो कि 5 वर्ष पुराना था, अंतिम तर्कों के प्रक्रम पर, आवेदन प्रस्तुत किया गया – अभिनिर्धारित – अभियुक्त को अंतिम तर्क के लिए एक दर्जन से अधिक बार प्रकरण में स्थगन मिला – दं.प्र.सं. की धारा 311 के अंतर्गत प्रस्तुत आवेदन पर विचार करते समय, न्यायालय द्वारा समस्त अभियुक्तगण के साथ–साथ पीड़ितों/साक्षीगण तथा अभियोजन के हितों पर विचार किया जाना अपेक्षित है – निष्पक्ष विचारण तथा न्याय हित के सिद्धांत को विचार में लेते हुए, दो विषम हितों के मध्य संतुलन बनाना पड़ता है अधिकतर जब आवेदन अतिविलम्बित प्रक्रम पर प्रस्तुत किया गया हो – न्याय के हित में अनुचित स्थगन देने से विरत रहना भी अंतर्ग्रस्त है, जो एक बार दं.प्र.सं. की धारा 311 के अंतर्गत आवेदन मंजूर हो जाने के बाद आवश्यक परिणाम बन सकता है – आक्षेपित आदेश में कोई त्रुटि नहीं – आवेदन खारिज। (बाबूलाल वि. म.प्र. राज्य) **…*4**

***Criminal Procedure Code, 1973 (2 of 1974), Section 372, Proviso – Right of Victim to Appeal – Amendment of 31.12.2009 – Date of Offence & Date of Order* – Held – Apex Court concluded that cause of action to file appeal accrues in favour of victim only when order of acquittal is passed – If order has been passed after the date of amendment i.e. 31.12.2009, then victim has a right to appeal against acquittal and can also challenge conviction of an accused for lesser offence or imposing inadequate compensation – Date of offence has no relevance – In present case, date of judgment of acquittal is 01.10.2015 – Appeal is maintainable – Revision allowed. [Mahesh Sahu Vs. Shri Rakesh Sahu]** **(DB)…*24**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 372, परंतुक – अपील करने का पीड़ित का अधिकार – 31.12.2009 का संशोधन – अपराध की तिथि व आदेश की तिथि – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि अपील प्रस्तुत करने का वाद हेतुक पीड़ित के पक्ष में केवल तब प्रोद्भूत होता है जब दोषमुक्ति का आदेश पारित हो गया है – यदि आदेश संशोधन की तिथि अर्थात् 31.12.2009 के पश्चात् पारित किया गया है, तब पीड़ित को दोषमुक्ति के विरूद्ध अपील का अधिकार है तथा वह अभियुक्त को लघु अपराध के लिए दोषसिद्धि किये जाने अथवा अपर्याप्त प्रतिकर अधिरोपित करने के लिए भी चुनौती दे सकता है – अपराध की तिथि की कोई सुसंगतता नहीं – वर्तमान प्रकरण में,

दोषमुक्ति के निर्णय की तिथि 01.10.2015 है – अपील पोषणीय है – पुनरीक्षण मंजूर। (महेश साहू वि. श्री राकेश साहू) **(DB)…*24**

Criminal Procedure Code, 1973 (2 of 1974), Section 378(3) and Penal Code (45 of 1860), Section 304-B & 498-A – Leave to Appeal Against Acquittal – Ingredients of Offence – Appreciation of Evidence **– Held – FSL report proves that deceased consumed poison and then hanged herself but it is not found proved that poison was given by somebody else and she was put to hang by someone else – Independent witness admitted that there was no dowry demand by respondents at the time of marriage and thereafter also – He also admitted that the room wherein deceased was found hanged was closed from inside and there was no injury on person of deceased – He also admitted that false case lodged in order to fetch money from accused persons and Rs. 2 lacs were demanded to withdraw the case – Only general and omnibus allegations against accused regarding dowry demands and ill treatment – Trial Court rightly acquitted the accused – No ground to grant leave to appeal – Petition dismissed. [State of M.P. Vs. Mukesh Kewat] (DB)…489**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 378(3) एवं दण्ड संहिता (1860 का 45), धारा 304–बी व 498–ए – दोषमुक्ति के विरूद्ध अपील करने की इजाजत – अपराध के घटक – साक्ष्य का मूल्यांकन – अभिनिर्धारित – एफ एस एल प्रतिवेदन साबित करता है कि मृतिका ने विष प्राशन किया फिर स्वयं को फांसी लगाई परंतु यह साबित नहीं पाया गया है कि विष किसी अन्य व्यक्ति ने दिया था और उसे किसी अन्य व्यक्ति द्वारा फांसी लगाई गयी थी – स्वतंत्र साक्षी ने स्वीकार किया कि विवाह के समय और तत्पश्चात् भी प्रत्यर्थीगण द्वारा दहेज की कोई मांग नहीं थी – उसने यह भी स्वीकार किया कि जिस कमरे में मृतिका को फंदे पर लटका पाया गया था वह अंदर से बंद था तथा मृतिका के शरीर पर कोई चोट नहीं थी – उसने यह भी स्वीकार किया कि अभियुक्तगण से धन निकालने के उद्देश्य से मिथ्या प्रकरण दर्ज किया गया है और प्रकरण वापस लेने हेतु रू. 2 लाख की मांग की गई थी – अभियुक्त के विरूद्ध दहेज की मांग एवं दुर्व्यवहार संबंधी सामान्य व अस्पष्ट अभिकथन – विचारण न्यायालय ने उचित रूप से अभियुक्त को दोषमुक्त किया – अपील करने की इजाजत प्रदान करने हेतु कोई आधार नहीं – याचिका खारिज। (म.प्र. राज्य वि. मुकेश केवट) **(DB)…489**

Criminal Procedure Code, 1973 (2 of 1974), Section 437 & 439 – Bail Applications – Delay in Trial **– Held – In present cases, till date not a single witness has been examined – Accused persons are in jail since a long period – Looking to inordinate delay in recording statement of witnesses, applicants granted bail – Further held – An expeditious examination of prosecution witnesses is the only way to ensure that rights of accused and interest of society are balanced in equal measure, subserving the interest of justice – Guidelines issued for Courts below to expedite recording of prosecution evidence – Applications allowed. [Rambahor Saket Vs. State of M.P.] …214**

INDEX

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 437 व 439 – जमानत के आवेदन – विचारण में विलंब – अभिनिर्धारित – वर्तमान प्रकरणों में, आज दिनांक तक एक भी साक्षी का परीक्षण नहीं किया गया – अभियुक्तगण लंबे समय से जेल में हैं – साक्षीगण का कथन अभिलिखित करने में अत्यधिक विलंब को देखते हुए आवेदकगण को जमानत प्रदान की गई – आगे अभिनिर्धारित – यह सुनिश्चित करने के लिए कि अभियुक्त के अधिकार एवं समाज के हित, समान मात्रा में संतुलित हो, न्याय का हितसाधन करते हुए, अभियोजन साक्षीगण का शीघ्र परीक्षण ही एक रास्ता है – अभियोजन साक्ष्य शीघ्र अभिलिखित किये जाने हेतु निचले न्यायालयों हेतु दिशानिर्देश जारी किये गये – आवेदन मंजूर किये गये। (रामबहोर साकेत वि. म.प्र. राज्य) **...214**

Criminal Procedure Code, 1973 (2 of 1974), Section 438 – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 12 **[Miss A Vs. State of M.P.] ...662**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – देखें – किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015, धारा 12 (मिस ए वि. म.प्र. राज्य) **...662**

Criminal Procedure Code, 1973 (2 of 1974), Section 438 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(r) & (s) **[Mangaram Vs. State of M.P.] ...435**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – देखें – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989, धारा 3(1)(आर) व (एस) (मंगाराम वि. म.प्र. राज्य) **...435**

Criminal Procedure Code, 1973 (2 of 1974), Section 438 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(w)(i) **[Atendra Singh Rawat Vs. State of M.P.] ...168**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – देखें – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989, धारा 3(1)(डब्ल्यू)(i) (अतेन्द्र सिंह रावत वि. म.प्र. राज्य) **...168**

Criminal Procedure Code, 1973 (2 of 1974), Section 438 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, Section 18-A **[Atendra Singh Rawat Vs. State of M.P.] ...168**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – देखें – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) संशोधन अधिनियम, 2018, धारा 18–ए (अतेन्द्र सिंह रावत वि. म.प्र. राज्य) **...168**

Criminal Procedure Code, 1973 (2 of 1974), Section 438 and Penal Code (45 of 1860), Section 11 – Anticipatory Bail – Term "any person" **– Held – The word "any person" as referred in Section 438 Cr.P.C. and as defined in**

Section 11 IPC gives liberty to a child in conflict with law to prefer anticipatory bail u/S 438 Cr.P.C. [Miss A Vs. State of M.P.] …662

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 एवं दण्ड संहिता (1860 का 45), धारा 11 – अग्रिम जमानत – शब्द ''कोई व्यक्ति'' – अभिनिर्धारित – शब्द ''कोई व्यक्ति'' जैसा कि दं.प्र.सं. की धारा 438 में निर्दिष्ट है और जैसा कि भा.दं.सं. की धारा 11 में परिभाषित है, विधि का उल्लंघन करने वाले बालक को दं.प्र.सं. की धारा 438 के अंतर्गत अग्रिम जमानत प्रस्तुत करने की स्वतंत्रता देता है। (मिस ए वि. म.प्र. राज्य) **…662**

***Criminal Procedure Code, 1973 (2 of 1974), Section 439 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/21 & 37* [Ranjan Vs. State of M.P.] …230**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – देखें – स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985, धारा 8/21 व 37 (रंजन वि. म.प्र. राज्य) **…230**

***Criminal Procedure Code, 1973 (2 of 1974), Section 439(2) – Cancellation of Bail* – Held – After the release of respondent No. 2 on bail, at least three more criminal cases have been registered against him by police – He misused the liberty granted – Bail earlier granted liable to be and is cancelled – Respondent directed to surrender immediately before trial Court – Application allowed. [Premnarayan Yadav Vs. State of M.P.] …*9**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439(2) – जमानत का रद्दकरण – अभिनिर्धारित – प्रत्यर्थी क्र. 2 को जमानत पर मुक्त करने के पश्चात्, पुलिस द्वारा उसके विरूद्ध कम से कम तीन और दाण्डिक प्रकरण पंजीबद्ध किये गये हैं – उसने प्रदान की गई स्वतंत्रता का दुरूपयोग किया – पूर्व में प्रदान की गई जमानत रद्द किये जाने योग्य है और रद्द की गई – प्रत्यर्थी को तत्काल रूप से विचारण न्यायालय के समक्ष समर्पण करने के लिए निदेशित किया गया – आवेदन मंजूर। (प्रेमनारायण यादव वि. म.प्र. राज्य) **…*9**

***Criminal Procedure Code, 1973 (2 of 1974), Section 457 and Excise Act, M.P. (2 of 1915), Section 47-A & 47-D – Release of Seized Vehicle on Supurdnama* – Car seized for illegal transportation of liquor – Held – Confiscation proceedings commenced prior to filing of application u/S 457 Cr.P.C. – Notice of confiscation sent by Collector to trial Court – Application for custody of vehicle u/S 457 Cr.P.C. is not maintainable where confiscation proceedings u/S 47-A of the Act of 1915 is pending which itself provides a complete mechanism for obtaining seized vehicle on supurdnama – Section 47-D of the Act of 1915 bars the jurisdiction of Court under such circumstances – Application dismissed. [Gangaram Patel Vs. State of M.P.] …*23**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 457 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 47–ए व 47–डी – जब्तशुदा वाहन को सुपुर्दनामे पर छोड़ा जाना –

मदिरा के अवैध परिवहन के लिए कार जब्त की गई – अभिनिर्धारित – अधिहरण कार्यवाहियां दं.प्र.सं. की धारा 457 के अंतर्गत आवेदन प्रस्तुत करने के पूर्व प्रारंभ की गई – अधिहरण का नोटिस, कलेक्टर द्वारा विचारण न्यायालय को भेजा गया – दं.प्र.सं. की धारा 457 के अंतर्गत, वाहन की अभिरक्षा हेतु आवेदन पोषणीय नहीं है जहां 1915 के अधिनियम की धारा 47–ए के अंतर्गत अधिहरण की कार्यवाहियां लंबित हों जो स्वयं सुपुर्दनामा पर जब्तशुदा वाहन प्राप्त करने हेतु एक संपूर्ण क्रियाविधि प्रदान करती है – 1915 के अधिनियम की धारा 47–डी उक्त परिस्थितियों के अंतर्गत न्यायालय की अधिकारिता का वर्जन करती है – आवेदन खारिज। (गंगाराम पटेल वि म.प्र. राज्य) **...*23**

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Powers of High Court **– Held – Apex Court has concluded that High Court powers to quash criminal proceedings should be exercised sparingly and in rarest of rare cases – Reliability of allegations made in FIR or complaint not be examined. [Nandlal Gupta Vs. Union of India] (DB)...700**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – उच्च न्यायालय की शक्तियाँ – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह निष्कर्षित किया है कि दाण्डिक कार्यवाहियों को अभिखंडित करने की उच्च न्यायालय की शक्तियों का प्रयोग मितव्ययता से तथा विरलतम से विरल प्रकरणों में किया जाना चाहिए – प्रथम सूचना प्रतिवेदन अथवा परिवाद में किये गये अभिकथनों की विश्वसनीयता का परीक्षण नहीं किया जाना चाहिए। (नन्दलाल गुप्ता वि. यूनियन ऑफ इण्डिया) **(DB)...700**

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Scope and Jurisdiction **– Held – Exercise of powers u/S 482 Cr.P.C. in this nature of case is exception and not rule – While exercising such powers Court does not function as Court of Appeal or Revision – Inherent jurisdiction though wide has to be exercised sparingly, carefully and with caution. [Jai Prakash Sharma Vs. State of M.P.] ...223**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – व्याप्ति एवं अधिकारिता – अभिनिर्धारित – इस प्रकृति के प्रकरण में धारा 482 दं.प्र.सं. के अंतर्गत शक्तियों का प्रयोग एक अपवाद है और न कि नियम – न्यायालय ऐसी शक्तियों का प्रयोग करते समय, अपीली या पुनरीक्षण न्यायालय के रूप में कार्य नहीं करता – अंतर्निहित अधिकारिता यद्यपि व्यापक है, इसका प्रयोग मितव्ययिता से, सतर्कता से एवं सावधानी के साथ किया जाना चाहिए। (जय प्रकाश शर्मा वि. म.प्र. राज्य) **...223**

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – See – Penal Code, 1860, Section 419 & 420 **[Nandlal Gupta Vs. Union of India] (DB)...700**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें – दण्ड संहिता, 1860, धारा 419 व 420 (नन्दलाल गुप्ता वि. यूनियन ऑफ इण्डिया) **(DB)...700**

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – See – Penal Code, 1860, Sections 498-A, 304-B & 34 **[Manorama Bai (Smt.) Vs. State of M.P.] ...674**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें – दण्ड संहिता, 1860, धाराएँ 498–ए, 304–बी व 34 (मनोरमा बाई (श्रीमती) वि. म.प्र. राज्य) **...674**

***Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Sections 354, 452 & 506 – Frivolous Complaint – Duty of Investigating Officer* – Held – Harassment of public servant on pretext of false complaint at the instance of those who were restrained by public servant for committing illegal and unauthorized act, is anathema to rule of law – It is duty of the Investigating officer to investigate thoroughly and reach to motive of such complaint and not in a routine manner – Order of Court summoning the accused must reflect application of mind. [Somdatt Mishra Vs. State of M.P.]** **...477**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धाराएँ 354, 452 व 506 – तुच्छ परिवाद – अन्वेषण अधिकारी का कर्तव्य – अभिनिर्धारित – उन लोगों के अनुरोध पर जिन्हें अवैध एवं अप्राधिकृत कृत्य कारित करने हेतु लोक सेवक द्वारा अवरूद्ध किया गया था, मिथ्या परिवाद के बहाने लोक सेवक का उत्पीड़न, विधि शासन के लिए अभिशाप है – अन्वेषण अधिकारी का यह कर्तव्य है कि वह अच्छी तरह से अन्वेषण करे और उक्त परिवाद के हेतु पर पहुंचे तथा न कि नैत्यिक ढंग से अन्वेषण करे – अभियुक्त को समन भेजने के न्यायालय के आदेश से मस्तिष्क का प्रयोग प्रतिबिंबित होना चाहिए। (सोमदत्त मिश्रा वि. म.प्र. राज्य) **...477**

***Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code (45 of 1860), Sections 354, 452 & 506 and Electricity Act (36 of 2003), Section 135(1) & 138-B – Quashment of FIR, Charge Sheet & Criminal Proceedings* – False Complaint Against Public Servant – Held – Applicant, a J.E. in electricity department, in discharge of official duty lodged a case under provisions of Act of 2003 against complainant's husband whereby summons was issued – Subsequently, complainant lodged FIR against applicant u/S 354 IPC – Records reveals that lodging of FIR was an afterthought – Complainant suffered electricity disconnection and thus she made a false complaint to settle score, exert pressure and wreak vengeance – Judicial process cannot be used as instrument of oppression and harassment – Complainant abused the process of law – Documents and event established the frivolousness, mischief, falsehood and vexatious litigation – FIR, Charge Sheet and proceedings quashed – Application allowed. [Somdatt Mishra Vs. State of M.P.]** **...477**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता (1860 का 45), धाराएँ 354, 452 व 506 एवं विद्युत अधिनियम (2003 का 36), धारा 135(1) व 138–बी – प्रथम सूचना प्रतिवेदन, आरोप–पत्र व दाण्डिक कार्यवाहियों का अभिखंडन – लोक सेवक के विरूद्ध मिथ्या परिवाद – अभिनिर्धारित – आवेदक, जो कि विद्युत विभाग में जे.ई. है, ने पदीय कर्तव्य के निर्वहन में परिवादी के पति के विरूद्ध 2003 के अधिनियम के अंतर्गत एक प्रकरण दर्ज किया, जिसमें समन जारी किया गया था – तत्पश्चात्, परिवादी ने आवेदक के

विरूद्ध भा.दं.सं. की धारा 354 के अंतर्गत प्रथम सूचना प्रतिवेदन दर्ज कराया – अभिलेख यह प्रकट करते हैं कि प्रथम सूचना प्रतिवेदन दर्ज किया जाना एक पश्चात् कल्पना थी – परिवादी का बिजली कनेक्शन काट दिया गया था और इसलिए उसने हिसाब चुकता करने, दबाव बनाने तथा बदले की भावना से मिथ्या परिवाद दायर किया – न्यायिक प्रक्रिया को दमन तथा उत्पीड़न के उपकरण के रूप में उपयोग नहीं किया जा सकता – परिवादी ने विधि की प्रक्रिया का दुरूपयोग किया है – दस्तावेज एवं घटना तुच्छता, रिष्टि, असत्यता तथा तंग करने के लिए किया गया मुकदमा स्थापित करते हैं – प्रथम सूचना प्रतिवेदन, आरोप–पत्र तथा कार्यवाहियां अभिखंडित – आवेदन मंजूर। (सोमदत्त मिश्रा वि. म.प्र. राज्य) **…477**

***Criminal Procedure Code, 1973 (2 of 1974), Section 482, Penal Code (45 of 1860), Sections 420, 467, 468, 471 & 120-B and Motoryan Karadhan Adhiniyam, M.P., (25 of 1991), Section 3/16(3) – Quashment of FIR* – Charges of creating fabricated/forged documents and plying buses on routes other than the permitted one and causing tax evasion resulting in loss to government – Held – Perusal of record and charge sheet reveals that there is ample prima facie evidence and circumstances available to initiate proceedings against appellants – Offence committed or not is a matter of evidence which can only be decided after recording of evidence by both parties – Application dismissed. [Jai Prakash Sharma Vs. State of M.P.] …223**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482, दण्ड संहिता (1860 का 45), धाराएँ 420, 467, 468, 471 व 120–बी एवं मोटरयान कराधान अधिनियम, म.प्र. (1991 का 25), धारा 3/16 (3) – प्रथम सूचना प्रतिवेदन को अभिखंडित किया जाना – गढंत/कूटरचित दस्तावेज सृजित करने एवं अनुज्ञप्ति प्राप्त से भिन्न मार्गों पर बसें चलाने तथा कर का अपवंचन कारित करने के परिणामस्वरूप सरकार को हानि के आरोप – अभिनिर्धारित – अभिलेख एवं आरोप पत्र के परिशीलन से प्रकट होता है कि अपीलार्थीगण के विरूद्ध कार्यवाहियां आरंभ करने के लिए पर्याप्त प्रथम दृष्ट्या साक्ष्य एवं परिस्थितियां उपलब्ध है – अपराध कारित किया गया अथवा नहीं यह एक साक्ष्य का मामला है जिसे केवल दोनों पक्षकारों द्वारा दी गई साक्ष्य को अभिलिखित करने के पश्चात् विनिश्चित किया जा सकता है – आवेदन खारिज। (जय प्रकाश शर्मा वि. म.प्र. राज्य) **…223**

***Dowry Prohibition Act, (28 of 1961), Section 3 & 4 – See – Penal Code, 1860, Section 304-B & 498-A* [Utkarsh Saxena Vs. State of M.P.] …653**

दहेज प्रतिषेध अधिनियम, (1961 का 28), धारा 3 व 4 – देखें – दण्ड संहिता (1860 का 45), धारा 304–बी व 498–ए (उत्कर्ष सक्सेना वि. म.प्र. राज्य) **…653**

***Electricity Act (36 of 2003), Section 135(1) & 138-B – See – Criminal Procedure Code, 1973, Section 482* [Somdatt Mishra Vs. State of M.P.] …477**

विद्युत अधिनियम (2003 का 36), धारा 135(1) व 138–बी – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (सोमदत्त मिश्रा वि. म.प्र. राज्य) **…477**

Entry Tax Act, M.P. (52 of 1976), Section 2(1)(aa) & 3(1) – Dealer – Telecommunication Services – Liability for Taxation – **Held – As per definition of Section 2(1)(aa) "entry of goods into a local area" means entry of goods into that local area from any place outside other than that local area – Assesse, in order to do the business brings plant & machinery, equipment etc to the local area from outside – Entry Tax is chargeable on entry of such goods – Appellant/assesse is engaged in activities of supply or distribution of goods for its consumption and use and thus is a "Dealer" as per the Act of 1976 and is covered by charging Section 3(1) of the Act – Assesse liable to pay entry tax – Petitions/Appeals & TR dismissed. [Idea Cellular Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax]** **(DB)…102**

प्रवेश कर अधिनियम, म.प्र. (1976 का 52), धारा 2(1)(एए) व 3(1) – डीलर – दूर–संचार सेवायें – कराधान हेतु दायित्व – अभिनिर्धारित – धारा 2(1)(एए) की परिभाषा के अनुसार ''स्थानीय क्षेत्र में माल का प्रवेश'' का अर्थ है उस स्थानीय क्षेत्र के व्यतिरिक्त अन्य किसी बाहरी स्थान से उस स्थानीय क्षेत्र में माल का प्रवेश – निर्धारिती, व्यवसाय करने के लिए, बाहर से स्थानीय क्षेत्र में संयंत्र व मशीनरी, उपस्कर इत्यादि ले आया – उक्त माल के प्रवेश पर प्रवेश कर प्रभार्य है – अपीलार्थी/निर्धारिती माल के उपभोग एवं उपयोग हेतु उसके प्रदाय या वितरण के क्रियाकलापों में लिप्त है और इसलिए 1976 के अधिनियम के अनुसार एक ''डीलर'' है और अधिनियम की प्रभारी धारा 3(1) द्वारा आच्छादित है – निर्धारिती प्रवेश कर अदा करने के लिए दायी है – याचिकाएँ/अपीलें व कर निर्देश खारिज। (आइडिया सेल्यूलर लि. (मे.) वि. असिस्टेन्ट कमिश्नर, कमर्शियल टैक्स) **(DB)…102**

Entry Tax Act, M.P. (52 of 1976), Section 3(1) – SIM Cards – Liability for Taxation – **Held – Assesse company though not selling the SIM cards to its customers, but are supplying the same in order to provide services – SIM cards can be termed as "goods" for purpose of Entry Tax as the same is being used and consumed in order to provide service to the customer by the Assesse – It will fall under the incidence of taxation u/S 3(1) of the Act of 1976. [Idea Cellular Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax]** **(DB)…102**

प्रवेश कर अधिनियम, म.प्र. (1976 का 52), धारा 3(1) – सिमकार्ड – कराधान हेतु दायित्व – अभिनिर्धारित – निर्धारिती कंपनी, यद्यपि उसके ग्राहकों को सिम कार्ड का विक्रय नहीं कर रही परंतु सेवाएं प्रदान करने के लिए उसका प्रदाय कर रहे हैं – सिम कार्ड को, प्रवेश कर के प्रयोजन हेतु ''माल'' कहा जा सकता है क्योंकि निर्धारिती द्वारा उसका उपयोग एवं उपभोग, ग्राहकों को सेवा प्रदान करने के लिए किया जा रहा है – यह, 1976 के अधिनियम की धारा 3(1) के अंतर्गत कर के भार के अंतर्गत आयेगा। (आइडिया सेल्यूलर लि. (मे.) वि. असिस्टेन्ट कमिश्नर, कमर्शियल टैक्स) **(DB)…102**

Entry Tax Act, M.P. (52 of 1976), Section 3(1) and VAT Act, M.P. (20 of 2002), Sections 2(1), 2(1)(a) & (d) – Liability for Taxation – Classification –

Held – Entry Tax is not part and parcel of VAT Act, where a dealer who is covered under the VAT Act is only liable to Entry Tax – Any businessman who brings goods for consumption, use or sale is liable to pay Entry Tax whether he is a dealer under VAT Act or not. [Idea Cellular Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax] (DB)…102

प्रवेश कर अधिनियम, म.प्र. (1976 का 52), धारा 3(1) एवं वैट अधिनियम, म.प्र., (2002 का 20), धाराएँ 2(1), 2(1)(ए) व (डी) – कराधान हेतु दायित्व – वर्गीकरण – अभिनिर्धारित – प्रवेश कर, वैट अधिनियम का अनिवार्य अंग नहीं है जहां एक डीलर जो वैट अधिनियम के अंतर्गत आच्छादित है, केवल प्रवेश कर के लिए दायी है – कोई व्यवसायी जो उपभोग, उपयोग या विक्रय हेतु माल लेकर आता है, प्रवेश कर अदा करने के लिए दायी है चाहे वह वैट अधिनियम के अंतर्गत एक डीलर हो अथवा नहीं हो। (आइडिया सेल्यूलर लि. (मे.) वि. असिस्टेन्ट कमिश्नर, कमर्शियल टैक्स) **(DB)…102**

***Evidence Act (1 of 1872), Section 90 – Presumption – Validity of Document* – Held – Original sale deed never produced before Court – Sale deed produced before Court although 30 yrs. old is actually a certified copy – Even original defendant/purchaser neither got his name mutated in revenue records nor was examined before Court, thus cannot be said to be a valid sale deed – Conditions enumerated u/S 90 of the Act of 1872 not satisfied thus presumption to validity of such document not available – Appeal dismissed. [Dhiraj Jaggi Vs. Smt. Chuntibai] …164**

साक्ष्य अधिनियम (1872 का 1), धारा 90 – उपधारणा – दस्तावेज की विधिमान्यता – अभिनिर्धारित – मूल विक्रय विलेख न्यायालय के समक्ष कभी भी प्रस्तुत नहीं किया गया – न्यायालय के समक्ष प्रस्तुत विक्रय विलेख, यद्यपि 30 वर्ष पुराना है, वास्तविक रूप से एक प्रमाणित प्रति है – यहां तक कि मूल प्रतिवादी/क्रेता ने न तो राजस्व अभिलेखों में उसके नाम को नामांतरित किया, न ही न्यायालय के समक्ष उसका परीक्षण किया गया था, अतः विधिमान्य विक्रय विलेख नहीं कहा जा सकता – 1872 के अधिनियम की धारा 90 के अंतर्गत प्रगणित शर्तों की संतुष्टि नहीं की गई अतः उक्त दस्तावेज की विधिमान्यता की उपधारणा उपलब्ध नहीं – अपील खारिज। (धीरज जग्गी वि. श्रीमती चुनतीबाई) **…164**

***Evidence Act (1 of 1872), Section 113-B – See – Penal Code, 1860, Section 304-B & 498-A* [State of M.P. Vs. Mukesh Kewat] (DB)…489**

साक्ष्य अधिनियम (1872 का 1), धारा 113–बी – देखें – दण्ड संहिता, 1860, धारा 304–बी व 498–ए (म.प्र. राज्य वि. मुकेश केवट) **(DB)…489**

***Evidence Act (1 of 1872), Section 145 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 311 – Recall of Witness – Confrontation* – Held – Confrontation of prosecution witness with the relevant portion of her earlier statement u/S 161 Cr.P.C. is essential u/S 145 of the Evidence Act in order to discredit her statement in Court, which was not done in present case – Further, law of evidence does not provide for any procedure whereby court**

statement of one witness can be put forth to another either to seek a corroboration or a contradiction. [Laxminarayan Agrawal Vs. State of M.P.] …494

साक्ष्य अधिनियम (1872 का 1), धारा 145 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 व 311 – साक्षी को पुनः बुलाया जाना – सामना – अभिनिर्धारित – अभियोजन साक्षी का दं.प्र.सं. की धारा 161 के अंतर्गत उसके पूर्वतर कथन के सुसंगत भाग से सामना, न्यायालय में उसके कथन को अविश्वसनीय ठहराने हेतु साक्ष्य अधिनियम की धारा 145 के अंतर्गत आवश्यक है, जो कि वर्तमान प्रकरण में नहीं किया गया था – इसके अतिरिक्त, साक्ष्य विधि ऐसी कोई प्रक्रिया उपबंधित नहीं करती है जिससे एक साक्षी का न्यायालय कथन अन्य के समक्ष संपुष्टि या विरोधाभास चाहने हेतु रखा जा सकता है। (लक्ष्मीनारायण अग्रवाल वि. म.प्र. राज्य) …494

Excise Act, M.P. (2 of 1915), Section 47-A & 47-D – See – Criminal Procedure Code, 1973, Section 457 **[Gangaram Patel Vs. State of M.P.] …*23**

आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 47–ए व 47–डी – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 457 (गंगाराम पटेल वि म.प्र. राज्य) …*23

Government of India (Allocation of Business) Rules, 1961, Article 77 Clause 3 and Department of Personnel and Training (DoPT) Circulars – Applicability **– Held – Railways is specifically excluded from ambit of the scope of business allocated to Department of Personnel and Training (DoPT) – Railways is not bound by the memorandum issued by Department of Personnel and Training (DoPT) and are empowered to frame its own rules to lay down service conditions of its employees – Matters relating to recruitment, promotion and seniority in respect of Ministry of Railways do not fall within jurisdiction of Department of Personnel and Training (DoPT) and thus it cannot issue binding circulars upon Railways – Service conditions of Railway employees are governed by rules framed by Railways which includes IREC and IREM. [Prabhat Ranjan Singh Vs. R.K. Kushwaha] (SC)…245**

भारत सरकार (कार्य आबंटन) नियम, 1961, अनुच्छेद 77 खंड 3 एवं कार्मिक एवं प्रशिक्षण विभाग (डी.ओ.पी.टी.) के परिपत्र – प्रयोज्यता – अभिनिर्धारित – रेलवे को विनिर्दिष्ट रूप से कार्मिक एवं प्रशिक्षण विभाग (डी.ओ.पी.टी.) को आबंटित कारबार के विस्तार की परिधि से अपवर्जित किया गया है – रेलवे, कार्मिक एवं प्रशिक्षण विभाग (डी.ओ.पी.टी.) द्वारा जारी ज्ञापन से बाध्य नहीं है तथा अपने कर्मचारियों की सेवा शर्तों को अधिकथित करने के लिए स्वयं के नियमों को विरचित करने के लिए सशक्त है – रेल मंत्रालय के संबंध में भर्ती, पदोन्नति और वरिष्ठता से संबंधित मामले कार्मिक एवं प्रशिक्षण विभाग (डी.ओ.पी.टी.) की अधिकारिता के भीतर नहीं आते हैं और इसलिए यह रेलवे पर बाध्यकारी परिपत्र जारी नहीं कर सकता है – रेलवे कर्मचारियों की सेवा शर्तें रेलवे द्वारा विरचित नियमों द्वारा शासित होती है जिसमें आई.आर.ई.सी. तथा आई.आर.ई.एम. शामिल हैं। (प्रभात रंजन सिंह वि. आर. के. कुशवाहा) (SC)…245

INDEX

Hindu Marriage Act (25 of 1955), Section 1(2) & 2 – Applicability of the Act **– Held – Apex Court concluded that Hindus domiciled in India even if residing outside its territory, the provisions of Act of 1955 shall be applicable to them – Appellant has not made any averment nor adduced any evidence that he abandoned his domicile of origin i.e. India and acquired domicile in USA. [Ajay Sharma Vs. Neha Sharma] (DB)…406**

हिन्दू विवाह अधिनियम (1955 का 25), धारा 1(2) व 2 – अधिनियम की प्रयोज्यता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि भारत में अधिवासित हिन्दू भले ही इसके राज्य क्षेत्र के बाहर निवास कर रहे हों, 1955 के अधिनियम के उपबंध उन पर लागू होंगे – अपीलार्थी ने न कोई प्रकथन किया और न ही ऐसा कोई साक्ष्य प्रस्तुत किया है कि उसने अपने मूल देश अर्थात् भारत के अधिवास का परित्याग कर दिया है तथा यू.एस.ए. में अधिवास अर्जित कर लिया है। (अजय शर्मा वि. नेहा शर्मा) **(DB)…406**

Hindu Marriage Act (25 of 1955), Sections 1(2), 2 & 9 and Civil Procedure Code (5 of 1908), Section 13 & 14 – Restitution of Conjugal Rights – Territorial Jurisdiction – Domicile **– Husband, citizen of U.S.A. – Marriage performed at Gwalior according to Hindu customs and rites – Decree for restitution of conjugal rights passed against husband whereas Court of USA passed a decree of divorce – Held – Wife never visited or resided with husband in USA after marriage and hence did not submit to jurisdiction of the Court of USA – Fact of acquiring domicile of USA is a matter of evidence which has to be proved by cogent evidence, thus at this stage it cannot be said the Courts in India have been bereft of their jurisdiction just because appellant has acquired citizenship of USA – Act of 1955 is in regard to "domicile" and not of "nationality" and hence applicable in present case – Appeal dismissed. [Ajay Sharma Vs. Neha Sharma] (DB)…406**

हिन्दू विवाह अधिनियम (1955 का 25), धाराएँ 1(2), 2 व 9 एवं सिविल प्रक्रिया संहिता (1908 का 5), धारा 13 व 14 – दाम्पत्य अधिकारों का प्रत्यास्थापन – क्षेत्रीय अधिकारिता – अधिवास – पति, संयुक्त राज्य अमेरिका का नागरिक – विवाह, हिन्दू रूढ़ि एवं रीतियों के अनुसार ग्वालियर में संपन्न हुआ – पति के विरूद्ध दाम्पत्य अधिकारों के प्रत्यास्थापन हेतु डिक्री पारित की गई जबकि यू.एस.ए. के न्यायालय ने विवाह विच्छेद की डिक्री पारित की – अभिनिर्धारित – पत्नी विवाह के पश्चात् कभी भी पति के साथ यू.एस.ए. नहीं गई और न ही वहां रही और इसलिए यू.एस.ए. के न्यायालय की अधिकारिता को प्रस्तुत नहीं किया गया – यू.एस.ए. का अधिवास प्राप्त करने का तथ्य साक्ष्य का मामला है जिसे प्रबल साक्ष्य द्वारा साबित किया जाना है, अतः इस प्रक्रम पर यह नहीं कहा जा सकता है कि भारत के न्यायालय अपनी अधिकारिता से वंचित हो गये हैं मात्र क्योंकि अपीलार्थी ने यू.एस.ए. की नागरिकता अर्जित कर ली है – 1955 का अधिनियम ''अधिवास'' के संबंध में है, न कि ''राष्ट्रीयता'' के संबंध में तथा इसलिए वर्तमान प्रकरण में प्रयोज्य है – अपील खारिज। (अजय शर्मा वि. नेहा शर्मा) **(DB)…406**

Hindu Marriage Act (25 of 1955), Section 13-B – Divorce by Mutual Consent – Rights of Minor Children – Determination **– Held – Dissolution of**

marriage is between husband and wife where they can give up their rights and interest in property of other party but rights of minor daughter cannot be terminated with consent of parents, her legal right will survive and it will be as per her discretion when she attains majority whether to exercise such right or not – Application u/S 13-B allowed – Appeal disposed of. [Rakhi Shukla (Smt.) Vs. Manoj Shukla] (DB)…*27

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13–बी – पारस्परिक सम्मति द्वारा विवाह विच्छेद – अप्राप्तवय बच्चों के अधिकार – अवधारण – अभिनिर्धारित – विवाह का विघटन पति एवं पत्नी के बीच होता है जहां वे दूसरे पक्ष की संपत्ति में उनके अधिकार एवं हित त्याग सकते हैं परंतु माता–पिता की सम्मति से अप्राप्तवय पुत्री के अधिकारों को समाप्त नहीं किया जा सकता, उसका विधिक अधिकार जीवित रहेगा और यह उसके विवेकाधिकार पर होगा, जब वह वयस्कता प्राप्त करेगी कि क्या उसे उक्त अधिकार का प्रयोग करना है अथवा नहीं – धारा 13–बी के अंतर्गत आवेदन मंजूर – अपील निराकृत। (राखी शुक्ला (श्रीमती) वि. मनोज शुक्ला) **(DB)…*27**

***Hindu Succession Act (30 of 1956), Section 14 – See – Hindu Women's Right to Property Act, 1937, Section 3(3)* [Mahendra Kumar Vs. Lalchand] …606**

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 14 – देखें – हिन्दू महिला का सम्पत्ति का अधिकार अधिनियम, 1937, धारा 3(3) (महेन्द्र कुमार वि. लालचंद) **…606**

***Hindu Women's Right to Property Act (18 of 1937), Section 3(3) and Hindu Succession Act (30 of 1956), Section 14 – Female Hindu – Right in Property* – Held – Under Act of 1937, a female hindu was having limited rights but on commencement of Act of 1956, her limited rights has ripen into full rights – Prior to riping of full rights, she had no right to alienate the estate except for necessity for benefit of estate – In present case, relinquishment done prior to 1949, which she could not have done due to her limited rights – As she expired during pendency of appeal, parties will be at liberty to establish their claim over her property in separate proceedings – Appeal dismissed. [Mahendra Kumar Vs. Lalchand] …606**

हिन्दू महिला का सम्पत्ति का अधिकार अधिनियम (1937 का 18), धारा 3(3) एवं हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 14 – हिन्दू महिला – संपत्ति में अधिकार – अभिनिर्धारित – 1937 के अधिनियम के अंतर्गत, एक हिन्दू महिला को सीमित अधिकार होते थे परंतु 1956 के अधिनियम के प्रारंभ होने पर उसके सीमित अधिकार पूर्ण अधिकारों में परिपक्व हो गये – पूर्ण अधिकारों के परिपक्व होने के पूर्व, उसे संपदा के लाभ हेतु आवश्यकता के सिवाय संपदा के अन्यसंक्रामण करने का कोई अधिकार नहीं था – वर्तमान प्रकरण में, त्यजन 1949 के पूर्व किया गया था, जो कि वह अपने सीमित अधिकारों के कारण नहीं कर सकती थी – चूंकि अपील के लंबित रहने के दौरान उसकी मृत्यु हो गई, पक्षकारों को पृथक कार्यवाहियों में उसकी संपत्ति पर उनका दावा स्थापित करने की स्वतंत्रता होगी – अपील खारिज। (महेन्द्र कुमार वि. लालचंद) **…606**

INDEX

***Income Tax Act (43 of 1961), Sections 142(1), 147 & 148 and Constitution – Article 226 – Reassessment Proceeding – Reasons & Formation of Believe – Writ Jurisdiction* – Petitioner's assessment was reopened and notice issued – Held – It is not a case of mere suspicion, competent authority having information and reasons to believe to reopen assessment – Reasons communicated to petitioner and objection have been properly dealt with vide detailed and speaking order – Sufficiency or insufficiency for formation of reasons to believe cannot be considered under exercise of writ jurisdiction under Article 226 of Constitution – Assessee has to participate in re-assessment proceedings and to put forth its stand to satisfy the Assessing Officer that no escapement of income has taken place – No reason to interfere with impugned notice – Petition dismissed. [Etiam Emedia Ltd. (M/s.) Vs. Income Tax Officer-2 (2)] (DB)…*16**

आयकर अधिनियम (1961 का 43), धाराएँ 142(1), 147 व 148 एवं संविधान – अनुच्छेद 226 – पुनः निर्धारण कार्यवाही – विश्वास के कारण व सृजन – रिट अधिकारिता – याची का निर्धारण पुनः प्रारंभ किया गया तथा नोटिस जारी किया गया – अभिनिर्धारित – यह मात्र संदेह का प्रकरण नहीं है, निर्धारण पुनः प्रारंभ करने के लिए सक्षम प्राधिकारी के पास जानकारी तथा विश्वास करने के पर्याप्त कारण हैं – याची को संसूचित किये गये कारणों तथा आपत्ति का विस्तृत एवं सकारण आदेश के माध्यम से उचित रूप से निपटान किया गया – संविधान के अनुच्छेद 226 के अंतर्गत रिट अधिकारिता के प्रयोग के अधीन विश्वास करने के कारणों के सृजन के लिए पर्याप्तता या अपर्याप्तता को विचार में नहीं लिया जा सकता है – निर्धारिती को पुनः निर्धारण की कार्यवाहियों में भाग लेना होगा तथा निर्धारण अधिकारी को संतुष्ट करने हेतु आगे आकर अपना पक्ष रखना होगा कि कोई आय नहीं छूटी है – आक्षेपित नोटिस में हस्तक्षेप करने का कोई कारण नहीं – याचिका खारिज। (इतियम ईमीडिया लि. (मे.) वि. इनकम टैक्स ऑफीसर–2 (2)) (DB)…*16

***Income Tax Act (43 of 1961), Section 148 – Re-assessment – Grounds* – Notice issued to respondent and his assessment was re-opened – Held – Assessment has been done on basis of notings found in the books of third person – Apex Court concluded that incriminating materials in form of random sheets, loose papers, computer prints, hard disc and pen drive are inadmissible in evidence as they are in the form of loose papers – In present case, entries found during search and seizure which are on loose papers, are being made basis to add income of respondent – Appeal was rightly dismissed by the Tribunal – Appeal dismissed. [The Principal Commissioner of Income Tax-I Vs. Shri Pukhraj Soni] (DB)…*29**

आयकर अधिनियम (1961 का 43), धारा 148 – पुनः–निर्धारण – आधार – प्रत्यर्थी को नोटिस जारी किया गया तथा उसका निर्धारण पुनः चालू किया गया था – अभिनिर्धारित – निर्धारण, तीसरे व्यक्ति की किताबों में पायी गयी टिप्पणियों के आधार पर किया गया था – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि रेंडम शीट्स, खुले कागजों, कम्प्यूटर प्रिंट, हार्डडिस्क और पेन ड्राईव के रूप में अपराध में फंसाने वाली सामग्री साक्ष्य

में ग्राह्य नहीं हैं, क्योंकि वह खुले कागजों के रूप में है – वर्तमान प्रकरण में, तलाशी और जब्ती के दौरान खुले कागजों के रूप में पायी गई प्रविष्टियों को प्रत्यर्थी की आय में जोडने हेतु आधार बनाया जा रहा है – अधिकरण द्वारा अपील उचित रूप से खारिज – अपील खारिज। (द प्रिंसिपल कमिश्नर ऑफ इनकम टेक्स–I वि. श्री पुखराज सोनी) **(DB)…*29**

Indore Development Plan 2021 – See – Nagar Tatha Gram Nivesh Adhiniyam, M.P., 1973, Section 24 & 74 **[Pradeep Hinduja Vs. State of M.P.] (DB)…339**

इंदौर विकास योजना 2021 – देखें – नगर तथा ग्राम निवेश अधिनियम, म.प्र., 1973, धारा 24 व 74 (प्रदीप हिन्दुजा वि. म.प्र. राज्य) **(DB)…339**

Industrial Disputes Act (14 of 1947), Section 2(A) & 10(1) – Validity of Reference – Existence of Industrial Dispute **– Held – Terms of reference is very precise and clearly indicates industrial dispute between workmen and petitioner – Objections raised by petitioner are either issue of law or mixed question of law and facts and comes under the category of incidental, additional or ancillary issues required to be decided by Tribunal – It is discretion of Tribunal either to decide as preliminary issue or while answering terms of reference – Impugned order not liable to be quashed in writ petition under Article 226 of Constitution – Petition disposed of. [Pratibha Syntex Ltd. Vs. State of M.P.] …542**

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 2(ए) व 10(1) – निर्देश की विधिमान्यता – औद्योगिक विवाद का विद्यमान होना – अभिनिर्धारित – निर्देश के निबंधन अति यथावत् हैं तथा कर्मकार और याची के मध्य औद्योगिक विवाद का होना स्पष्ट रूप से इंगित करते हैं – याची द्वारा उठाये गये आक्षेप या तो विधि का विवाद्यक हैं या विधि और तथ्यों के मिश्रित प्रश्न हैं तथा आनुषंगिक, अतिरिक्त अथवा प्रासंगिक विवाद्यकों की कोटि में आते हैं जिनका अधिकरण द्वारा विनिश्चय किया जाना अपेक्षित है – यह अधिकरण का विवेकाधिकार है या तो प्रारंभिक विवाद्यक के रूप में विनिश्चय करे या निर्देश के निबंधनों का उत्तर देते समय – आक्षेपित आदेश संविधान के अनुच्छेद 226 के अंतर्गत रिट याचिका में अभिखंडित किये जाने योग्य नहीं – याचिका निराकृत। (प्रतिभा सिंटेक्स लि. वि. म.प्र. राज्य) **…542**

Industrial Disputes Act (14 of 1947), Sections 2(s), 36(1)(c) & 36(4) – Workmen – Locus **– Held – If worker is not a member of any Trade Union, still he can be represented by any other workman employed in industry on basis of authorization – Workman includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute – Further, u/S 36(4), workman can even be represented by legal practitioner with the consent of other party to the proceeding and with leave of Labour Court/Tribunal. [Pratibha Syntex Ltd. Vs. State of M.P.] …542**

INDEX

औद्योगिक विवाद अधिनियम (1947 का 14), धाराएँ 2(एस), 36(1)(सी) व 36(4) – कर्मकार – अधिकार – अभिनिर्धारित – यदि कर्मकार किसी व्यवसाय संघ का सदस्य नहीं है, तब भी प्राधिकरण के आधार पर उद्योग में नियोजित किसी अन्य कर्मकार द्वारा उसका प्रतिनिधित्व किया जा सकता है – कर्मकार में कोई भी ऐसा व्यक्ति शामिल होता है जिसे उस विवाद के संबंध में या उसके परिणामस्वरूप पदच्युत, भारमुक्त अथवा निकाल दिया गया हो – इसके अतिरिक्त, धारा 36(4) के अंतर्गत कर्मकार का कार्यवाही के अन्य पक्षकार की सहमति से तथा श्रम न्यायालय/अधिकरण की अनुमति से विधिक व्यवसायी द्वारा प्रतिनिधित्व भी किया जा सकता है। (प्रतिभा सिंटेक्स लि. वि. म.प्र. राज्य) **...542**

Industrial Disputes Act (14 of 1947), Section 10 – Rights of Workmen – Increment & HRA – Entitlement **– Held – Apex Court concluded that employee classified as permanent employee are not entitled for increment and other benefits like regular employees – They are only entitled for minimum wages and allowance as per fixed schedule of pay scale. [Madan Singh Dawar Vs. Labour Commissioner, M.P.] ...*17**

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 10 – कर्मकार के अधिकार – वेतनवृद्धि व गृह भाड़ा भत्ता – हकदारी – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि स्थायी कर्मचारी के रूप में श्रेणीबद्ध कर्मचारी, नियमित कर्मचारियों के समान वेतनवृद्धि एवं अन्य लाभों के हकदार नहीं – वे केवल वेतनमान की नियत अनुसूची के अनुसार न्यूनतम वेतन एवं भत्ते हेतु हकदार है। (मदन सिंह डावर वि. लेबर कमिश्नर, एम. पी.) **...*17**

Industrial Disputes Act (14 of 1947), Section 10 & 33-C(2) and Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Section 17(2) — Recovery of Arrears of Wages – Reference – Validity **– Held – Whether particular workman is employee of particular employer can be decided by making reference u/S 10 of the Act of 1947 and not by making reference u/S 17(2) of the Act of 1955, thus reference made u/S 17(2) is incompetent – Impugned order set aside – Labour Commissioner is further to make reference to Labour Court for determination of question of existence of employer-employee relationship between parties and then go to decide entitlement of R-3 to receive arrears – Petitions allowed. [Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P.] ...565**

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 10 व 33–सी(2) एवं श्रमजीवी पत्रकार और अन्य समाचार–पत्र कर्मचारी (सेवा की शर्तें) और प्रकीर्ण उपबंध अधिनियम, (1955 का 45), धारा 17(2) – मजदूरी के बकाया की वसूली – निर्देश – विधिमान्यता – अभिनिर्धारित – क्या विशिष्ट कर्मकार विशिष्ट नियोक्ता का कर्मचारी है, यह 1947 के अधिनियम की धारा 10 के अंतर्गत निर्देश प्रस्तुत करते हुए विनिश्चित किया जा सकता है तथा न कि 1955 के अधिनियम की धारा 17(2) के अंतर्गत निर्देश प्रस्तुत कर, अतः धारा 17(2) के अंतर्गत प्रस्तुत किया गया निर्देश अक्षम है – आक्षेपित आदेश अपास्त – श्रम

आयुक्त को आगे पक्षकारों के मध्य नियोक्ता–कर्मचारी संबंध के अस्तित्व के प्रश्न के निर्धारण हेतु श्रम न्यायालय को निर्देश प्रस्तुत करना है और फिर बकाया प्राप्त करने की प्रत्यर्थी क्र.–3 की हकदारी विनिश्चित करना है – याचिकाएं मंजूर। (राजस्थान पत्रिका प्रा. लि. (मे.) वि. म.प्र. राज्य) **…565**

***Industrial Disputes Act (14 of 1947), Section 29 & 33(c)(2) – Non-Compliance of Award – Sanction for Prosecution* – Labour Court awarded increment and HRA to employee u/S 33(c)(2) and on non-compliance of the same, sanction of prosecution against petitioner granted – Held – Scope of Section 33(c)(2) is very limited where Labour Court act as executing Court – Apex Court concluded that application u/S 33(c)(2) of ID Act is maintainable only when workman right has been established in proceedings u/S 10 of the Act – In present case, right of employee not established by Labour Court in proceedings u/S 10 of the Act and for the first time award of increment and HRA passed in proceeding u/S 33(c)(2) of the Act – Impugned order unsustainable in law and is set aside – Petition allowed. [Madan Singh Dawar Vs. Labour Commissioner, M.P.] …*17**

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 29 व 33(सी)(2) – अवार्ड का अननुपालन – अभियोजन हेतु मंजूरी – श्रम न्यायालय ने कर्मचारी को धारा 33(सी)(2) के अंतर्गत वेतनवृद्धि एवं गृहभाड़ा भत्ता अवार्ड किया और इसके अननुपालन पर, याची के विरूद्ध अभियोजन की मंजूरी प्रदान की गई – अभिनिर्धारित – धारा 33(सी)(2) की व्याप्ति अति सीमित है जहां श्रम न्यायालय, एक निष्पादन न्यायालय के रूप में कार्य करता है – सर्वोच्च न्यायालय ने निष्कर्षित किया कि औद्योगिक विवाद अधिनियम की धारा 33(सी)(2) के अंतर्गत आवेदन केवल तब पोषणीय है जब अधिनियम की धारा 10 के अंतर्गत कार्यवाहियों में कर्मकार का अधिकार स्थापित हुआ है – वर्तमान प्रकरण में, अधिनियम की धारा 10 के अंतर्गत कार्यवाहियों में श्रम न्यायालय द्वारा कर्मचारी का अधिकार स्थापित नहीं किया गया और अधिनियम की धारा 33(सी)(2) के अंतर्गत कार्यवाहियों में प्रथम बार वेतनवृद्धि एवं गृह भाड़ा भत्ता का अवार्ड पारित किया गया – आक्षेपित आदेश विधि में अपोषणीय है एवं अपास्त – याचिका मंजूर। (मदन सिंह डावर वि. लेबर कमिश्नर, एम.पी.) **…*17**

***Interpretation – "Citizenship" & "Domicile"* – Held – There is difference between concept of citizenship and domicile – Citizenship can be acquired whereas domicile is to be proved – In present case, it cannot be said that merely on acquiring USA citizenship, appellant has ceased to be a domicile in India – Principles resolved in 1951 Hague Conference enumerated. [Ajay Sharma Vs. Neha Sharma] (DB)…406**

निर्वचन – ''नागरिकता'' व ''अधिवास'' – अभिनिर्धारित – नागरिकता तथा अधिवास के सिद्धांत के मध्य एक अंतर है – नागरिकता अर्जित की जा सकती है जबकि अधिवास को साबित करना होता है – वर्तमान प्रकरण में, यू.एस.ए. की नागरिकता अर्जित कर लेने मात्र पर, यह नहीं कहा जा सकता कि अपीलार्थी का भारत में अधिवास समाप्त हो

चुका है – 1951 में हेग सम्मेलन में संकल्पित सिद्धांत प्रगणित किये गये। (अजय शर्मा वि. नेहा शर्मा) **(DB)…406**

Interpretation – (i). Judgment & Precedent **– Held – Supreme Court concluded that a precedent is what is actually decided by Supreme Court and not what is logically flowing from a judgment – Precedent relates to the principles laid down or ratio decidendi of a case which does not include any factual matrix of case – A judgment should not be construed as Statute – Blind reliance on a judgment without considering fact and situation is not proper – Further, a singular different fact in subsequent case may change the precedential value of judgment.**

(ii). ***Separate Entity*** **– Held – In a calculated manner, lease deed was executed in favour of petitioner which is a separate entity for namesake – Beneficiaries behind curtains are the same persons.**

(iii). ***Premium Amount/Cost of Land*** **– Held – License to construct and payment of premium cannot be treated as payment of "cost of land" – Amount of premium sought to be equated with cost of land is not only misconceived but also amounts to misrepresentation – Inadvertent use of words "cost of land" in some annexures will not alter the meaning of word "premium".**

(iv). ***Fraud*** **– Held – Petitioner, despite knowing the fact, that he has limited right for construction and to receive sale consideration as one time measure, he applied for execution of sale deed which was not at all envisaged in tender or agreement to which he was the signatory – Conduct of petitioner not free from blemish – Respondents established the plea of fraud/malice in law with sufficient material.**

(v). ***Terminology of Instrument/Document*** **– Held – A loose terminology used in instrument at some place is not determinative – To find out real intention of parties, complete document needs to be read in light of relevant statutory provisions to understand what is decipherable from it. [Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.] (DB)…16**

निर्वचन – (I) निर्णय व पूर्व न्याय – अभिनिर्धारित – उच्चतम न्यायालय ने निष्कर्षित किया है कि एक पूर्व न्याय वह है जो वास्तव में उच्चतम न्यायालय द्वारा विनिश्चित किया जाता है न कि वह जो किसी निर्णय से तार्किक रूप से बाहर आता है – पूर्व न्याय, प्रतिपादित सिद्धांत अथवा प्रकरण के विनिश्चय किये जाने के आधार से संबंधित होता है जिसमें प्रकरण का कोई तथ्यात्मक मैट्रिक्स शामिल नहीं है – एक निर्णय का अर्थान्वयन कानून के रूप में नहीं किया जाना चाहिए – तथ्य एवं परिस्थितियों पर विचार किये बिना निर्णय पर आंख बंद कर भरोसा करना उचित नहीं है – इसके अतिरिक्त, पश्चात्वर्ती प्रकरण में एक अकेला भिन्न तथ्य निर्णय के न्यायिक मूल्य को परिवर्तित कर सकता है।

(ii) *पृथक अस्तित्व* – अभिनिर्धारित – एक परिकल्पित ढंग से, पट्टा विलेख का निष्पादन याची के पक्ष में किया गया था जो नाम मात्र के लिए एक पृथक अस्तित्व रखता है – परदे के पीछे के हिताधिकारी भी वही व्यक्ति हैं।

(iii) *प्रीमियम राशि/भूमि का मूल्य* – अभिनिर्धारित – निर्माण करने की अनुज्ञप्ति तथा प्रीमियम के भुगतान को ''भूमि के मूल्य'' के भुगतान के रूप में नहीं माना जा सकता – प्रीमियम की राशि को भूमि के मूल्य के बराबर चाहे जाने, को न केवल गलत समझा गया है बल्कि दुर्व्यपदेशन की कोटि में भी आता है – कुछ अनुलग्नकों में ''भूमि का मूल्य'' शब्द का अनवधानता से प्रयोग ''प्रीमियम'' शब्द का अर्थ परिवर्तित नहीं करेगा।

(iv) *कपट* – अभिनिर्धारित – याची ने, यह तथ्य जानने के बावजूद कि उसके पास एक बार के उपचार के रूप में निर्माण करने तथा विक्रय प्रतिफल प्राप्त करने हेतु सीमित अधिकार हैं, विक्रय विलेख के निष्पादन हेतु आवेदन किया जो कि निविदा अथवा करार जिसमें वह हस्ताक्षरकर्ता था में बिल्कुल भी परिकल्पित नहीं था – याची का आचरण बेदाग नहीं – प्रत्यर्थीगण ने कपट/विधि में विद्वेष का अभिवाक् पर्याप्त सामग्री के साथ स्थापित किया।

(v) *लिखत/दस्तावेज की शब्दावली* – अभिनिर्धारित – लिखत में कुछ स्थान पर प्रयुक्त अस्पष्ट शब्दावली अवधारक नहीं है – पक्षकारों के वास्तविक आशय का पता लगाने के लिए पूर्ण दस्तावेज को सुसंगत कानूनी उपबंधों के आलोक में पढ़ने की आवश्यकता है ताकि उससे जो स्पष्ट हो रहा है, उसे समझा जा सके। (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) **(DB)…16**

***Interpretation – "Legal Heir" & "Legal Representative"* – Held – The meaning of word "legal representative" is having different connotation from the word "legal heir" in CPC – Name of legal representative recorded in earlier suit was for purpose of contesting the suit but not as owner of the property – Defendant, as a legal representative was not competent to enter into a compromise against the interest of the plaintiff – Impugned order to this effect is set aside. [Jagdish Chandra Gupta Vs. Madanlal] …140**

निर्वचन – ''विधिक वारिस'' व ''विधिक प्रतिनिधि'' – अभिनिर्धारित – सि.प्र.सं. में शब्द ''विधिक प्रतिनिधि'' के अर्थ का शब्द ''विधिक वारिस'' से भिन्न लाक्षार्थ है – पूर्वतर वाद में अभिलिखित विधिक प्रतिनिधि का नाम, वाद लड़ने के प्रयोजन हेतु था किंतु संपत्ति के स्वामी के रूप में नहीं था – प्रतिवादी, विधिक प्रतिनिधि के रूप में, वादी के हित के विरूद्ध समझौता करने के लिए सक्षम नहीं था – आक्षेपित आदेश, इस प्रभाव तक अपास्त किया गया। (जगदीश चन्द्र गुप्ता वि. मदनलाल) **…140**

***Interpretation of Statutes – Companies Act (18 of 2013), Section 430 – Jurisdiction of Court* – Held – It is well established principle of law that exclusion of jurisdiction of Court has to be specific and cannot be inferred and the provisions excluding the jurisdiction have to be construed strictly – In Section 430 of the Act of 2013, word "Civil Court" cannot be read as**

"Criminal Court" – Jurisdiction of Criminal Court is not barred under the Act of 1956. [Manoj Shrivastava Vs. State of M.P.] …207

कानूनों का निर्वचन – कम्पनी अधिनियम (2013 का 18), धारा 430 – न्यायालय की अधिकारिता – अभिनिर्धारित – यह विधि का सुस्थापित सिद्धांत है कि न्यायालय की अधिकारिता का अपवर्जन विनिर्दिष्ट होना चाहिए एवं अनुमित नहीं किया जा सकता तथा अधिकारिता के अपवर्जन के उपबंधों का कठोर रूप से अर्थान्वयन किया जाना चाहिए – 2013 के अधिनियम की धारा 430 में शब्द ''सिविल न्यायालय'' को ''दाण्डिक न्यायालय'' के रूप में नहीं पढ़ा जा सकता – 1956 के अधिनियम के अंतर्गत, दाण्डिक न्यायालय की अधिकारिता वर्जित नहीं है। (मनोज श्रीवास्तव वि. म.प्र. राज्य) …207

***Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 10 & 12 – Words "arrest", "detained" and "apprehended"* – Held – In the Act of 2015, the word "apprehended" or "detained" has been used in place of "arrest" which indicates the legislative intent that juvenile cannot be placed under harsh or embarrassing conditions – Remedy of Section 438 Cr.P.C. to a juvenile furthers the legislative intent of Act of 2015. [Miss A Vs. State of M.P.] …662**

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2), धारा 10 व 12 – शब्द ''गिरफ्तारी'', ''निरूद्ध'' तथा ''आशंकित'' – अभिनिर्धारित – 2015 के अधिनियम में शब्द ''आशंकित'' या ''निरूद्ध'' का उपयोग ''गिरफ्तारी'' के स्थान पर किया गया है जो यह विधायी आशय इंगित करता है कि किशोर को कठोर अथवा उलझन भरी परिस्थितियों के अधीन नहीं रखा जा सकता है – एक किशोर को दं.प्र.सं. की धारा 438 का उपचार, 2015 के अधिनियम के विधायी आशय को आगे बढ़ाता है। (मिस ए वि. म. प्र. राज्य) …662

***Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 10 & 12 and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Maintainability of Application* – Held – Remedy of seeking anticipatory bail u/S 438 Cr.P.C. by a juvenile is maintainable – No provision in the Act of 2015 either expressedly or by necessary implication, excludes applicability of Section 438 of the Code – Section 10 & 12 of the Act of 2015 do not bar the remedy of anticipatory bail. [Miss A Vs. State of M.P.] …662**

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2), धारा 10 व 12 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – आवेदन की पोषणीयता – अभिनिर्धारित – एक किशोर द्वारा दं.प्र.सं. की धारा 438 के अंतर्गत अग्रिम जमानत चाहने का उपचार पोषणीय है – 2015 के अधिनियम में कोई उपबंध अभिव्यक्त रूप से या आवश्यक विवक्षा द्वारा संहिता की धारा 438 की प्रयोज्यता को अपवर्जित नहीं करता है – 2015 के अधिनियम की धारा 10 व 12 अग्रिम जमानत के उपचार को वर्जित नहीं करती। (मिस ए वि. म.प्र. राज्य) …662

***Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 12, Criminal Procedure Code, 1973 (2 of 1974), Section 438 and Penal Code (45 of 1860), Sections 498-A, 376, 506(B) & 34 – Anticipatory Bail* – Held – Charge sheet against co-accused persons has been filed and only allegation against present applicant is in respect of criminal intimidation – From the very nature of allegations, it is fit case for grant of anticipatory bail – Application allowed. [Miss A Vs. State of M.P.] …662**

किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2), धारा 12, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 एवं दण्ड संहिता (1860 का 45), धाराएँ 498–ए, 376, 506(बी) व 34 – अग्रिम जमानत – अभिनिर्धारित – सह–अभियुक्तगण के विरूद्ध आरोप–पत्र प्रस्तुत किया गया तथा वर्तमान आवेदक के विरूद्ध अभिकथन केवल आपराधिक अभित्रास के संबंध में है – अभिकथनों के मूल स्वरूप से अग्रिम जमानत प्रदान करने हेतु यह उचित प्रकरण है – आवेदन मंजूर। (मिस ए वि. म. प्र. राज्य) …662

***Land Revenue Code, M.P. (20 of 1959), Section 57(2) & 189 – Jurisdiction of Court* – Held – The relief to the effect that decree passed in earlier suit is void and not binding on plaintiff can only be granted by Civil Court and not by Revenue Court – Relief of possession was consequential relief – Court below wrongly held that plaintiff can approach Revenue Court u/S 189 of the Code for obtaining possession – Suit is maintainable. [Jagdish Chandra Gupta Vs. Madanlal] …140**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 57(2) व 189 – न्यायालय की अधिकारिता – अभिनिर्धारित – इस प्रभाव का अनुतोष कि पूर्वतर वाद में पारित डिक्री शून्य है एवं वादी पर बंधनकारी नहीं है, केवल सिविल न्यायालय द्वारा प्रदान किया जा सकता है और न कि राजस्व न्यायालय द्वारा – कब्जे का अनुतोष, परिणामिक अनुतोष था – निचले न्यायालय ने गलत रूप से अभिनिर्धारित किया कि वादी, संहिता की धारा 189 के अंतर्गत, कब्जा अभिप्राप्त करने के लिए, राजस्व न्यायालय के समक्ष जा सकता है – वाद पोषणीय है। (जगदीश चन्द्र गुप्ता वि. मदनलाल) …140

***Limitation Act (36 of 1963), Section 5 – See – Penal Code, 1860, Section 327/34 & 323/34* [Aatamdas Vs. State of M.P.] …*1**

परिसीमा अधिनियम (1963 का 36), धारा 5 – देखें – दण्ड संहिता, 1860, धारा 327/34 व 323/34 (आतमदास वि म.प्र. राज्य) …*1

***Limitation Act (36 of 1963), Article 58 – See – Civil Procedure Code, 1908, Order 23 Rule 1(4)* [Mohd. Hasan Vs. Abu Bakar] …423**

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 58 – देखें – सिविल प्रक्रिया संहिता, 1908, आदेश 23 नियम 1(4) (मोहम्मद हसन वि. अबू बकर) …423

Limitation Act (36 of 1963), Article 65 – Adverse Possession **– Held – Plaintiff cannot claim title by way of adverse possession – Trial Court committed error in holding the title on basis of adverse possession as no issue in this regard was framed nor necessary ingredients of adverse possession were discussed. [Mahendra Kumar Vs. Lalchand] …606**

परिसीमा अधिनियम (1963 का 36), अनुच्छेद 65 – प्रतिकूल कब्जा – अभिनिर्धारित – वादी प्रतिकूल कब्जे के माध्यम से स्वत्व का दावा नहीं कर सकता है – विचारण न्यायालय ने प्रतिकूल कब्जे के आधार पर स्वत्व धारित करने में त्रुटि कारित की है क्योंकि इस संबंध में न तो किसी विवाद्यक की विरचना की गई थी न ही प्रतिकूल कब्जे के आवश्यक घटकों की विवेचना की गई थी। (महेन्द्र कुमार वि. लालचंद) **…606**

Lok Parisar (Bedakhali) Adhiniyam, M.P. (46 of 1974), Sections 3, 4, 5, 7 & 17 – Allotment of land & Lease Deed – Cancellation of – Competent Authority **– As per State Government notifications, all Rent Controlling Authorities in township of Indore have also been delegated with powers to function as competent authority under Adhiniyam of 1974 over the area in which they are exercising jurisdiction – Impugned order passed by competent authority – Further, competent authority not empowered to decide the correctness of lease cancellation order acting like a Civil Court – Order of eviction rightly passed under Adhiniyam of 1974 – Petition dismissed. [Sajni Bajaj (Smt.) (Dr.) Vs. Indore Development Authority] (DB)…*11**

लोक परिसर (बेदखली) अधिनियम, म.प्र. (1974 का 46), धाराएँ 3, 4, 5, 7 व 17 – भूमि का आबंटन व पट्टा विलेख – का रद्दकरण – सक्षम प्राधिकारी – राज्य सरकार की अधिसूचनाओं के अनुसार, इंदौर नगरी में सभी भाड़ा नियंत्रक प्राधिकारीगण को उस क्षेत्र में जिसमें वे अधिकारिता का प्रयोग कर रहे हैं, 1974 के अधिनियम के अंतर्गत सक्षम प्राधिकारी के रूप में भी कार्य करने के लिए शक्तियाँ प्रत्यायोजित की गई हैं – आक्षेपित आदेश सक्षम प्राधिकारी द्वारा पारित किया गया – इसके अतिरिक्त, सक्षम प्राधिकारी सिविल न्यायालय के रूप में कार्य करते हुए पट्टे के रद्दकरण के आदेश की सत्यता विनिश्चित करने हेतु सशक्त नहीं है – 1974 के अधिनियम के अंतर्गत, बेदखली का आदेश उचित रूप से पारित किया गया – याचिका खारिज। (सजनी बजाज (श्रीमती) (डॉ.) वि. इंदौर डव्हेलपमेन्ट अथॉरिटी) **(DB)…*11**

Lok Parisar (Bedakhali) Adhiniyam, M.P. (46 of 1974), Sections 3, 4, 5, 7 & 17 – Allotment of land & Lease Deed – Cancellation of – Grounds **– Plot which was earmarked for hospital, allotted to petitioner through NIT – Petitioner instead of constructing a hospital, started shopping/ commercial complex – Flagrant breach of mandatory conditions of lease deed resulting into cancellation of allotment order and lease deed – Petitioner has not challenged the lease cancellation order before appropriate forum as per liberty granted by this Court earlier – No case in favour of petitioner –**

Respondent entitled to take possession of premises – Petitions dismissed. [Sajni Bajaj (Smt.) (Dr.) Vs. Indore Development Authority] (DB)…*11

लोक परिसर (बेदखली) अधिनियम, म.प्र. (1974 का 46), धाराएँ 3, 4, 5, 7 व 17 – भूमि का आबंटन व पट्टा विलेख – का रद्दकरण – आधार – भूखंड जो चिकित्सालय हेतु चिन्हित किया गया था, एन आई टी के माध्यम से याची को आबंटित किया गया – याची ने चिकित्सालय का निर्माण करने के बजाय, शॉपिंग/वाणिज्यिक कॉम्प्लेक्स आरंभ किया – पट्टा विलेख की आज्ञापक शर्तों के स्पष्ट भंग के परिणामस्वरूप आबंटन आदेश एवं पट्टा विलेख का रद्दकरण – याची ने पूर्व में इस न्यायालय द्वारा प्रदान की गई स्वतंत्रता के अनुसार समुचित फोरम के समक्ष पट्टा रद्दकरण के आदेश को चुनौती नहीं दी है – याची के पक्ष में कोई प्रकरण नहीं – प्रत्यर्थी परिसर का कब्जा लेने का हकदार है – याचिकाएँ खारिज। (सजनी बजाज (श्रीमती) (डॉ.) वि. इंदौर डव्हेलपमेन्ट अथॉरिटी) **(DB)…*11**

***Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhade Vargon Ke Liye Arakshan) Rules, M.P., 1998, Rule 4-B and Constitution – Article 14 & 16 – Special ST Category – Direct Recruitment – Validity* – Held – Action of State calling 38 Special ST Category candidates for document verification as a mode of direct recruitment, without there being any proposal of the government for appointing such candidates on executive post of "Samagra Samajik Suraksha Vistar Adhikari" is bad in law and is prejudicial to rights of petitioners (candidates of select list) under Article 14 and 16 of Constitution – Post of "Vistar Adhikari" is an executive post and reservations available for special ST Category candidates under Rule 4-B is not applicable to such executive post – Further, after declaration of results, state government reduced the posts of ST category candidate without even taking out any corrigendum – Respondents directed to appoint petitioners on the said post – Petition allowed. [Ankit Baghel Vs. State of M.P.] …390**

लोक सेवा (अनुसूचित जातियों, अनुसूचित जनजातियों और अन्य पिछड़े वर्गों के लिए आरक्षण) नियम, म.प्र., 1998, नियम 4–बी एवं संविधान – अनुच्छेद 14 व 16 – विशेष अनुसूचित जनजाति वर्ग – सीधी भर्ती – विधिमान्यता – अभिनिर्धारित – राज्य द्वारा सीधी भर्ती की रीति के रूप में दस्तावेज के सत्यापन हेतु विशेष अनुसूचित जनजाति वर्ग के 38 अभ्यर्थियों को बुलाये जाने की कार्रवाई, वो भी ''समग्र सामाजिक विस्तार अधिकारी'' के कार्यपालिक पद पर उक्त अभ्यर्थियों की नियुक्ति के लिए सरकार के किसी प्रस्ताव के बिना, विधि की दृष्टि से दोषपूर्ण है तथा संविधान के अनुच्छेद 14 एवं 16 के अंतर्गत याचीगण (चयन सूची के अभ्यर्थियों) के अधिकारों पर प्रतिकूल प्रभाव डालने वाली है – ''विस्तार अधिकारी'' का पद एक कार्यपालिक पद है तथा नियम 4–बी के अंतर्गत विशेष अनुसूचित जनजाति वर्ग के अभ्यर्थियों के लिए उपलब्ध आरक्षण उक्त कार्यपालिक पद के लिए प्रयोज्य नहीं है – इसके अतिरिक्त, परिणाम की घोषणा के पश्चात् राज्य सरकार ने किसी शुद्धिपत्र के निकाले बिना ही अनुसूचित जनजाति वर्ग के अभ्यर्थी के पदों को घटा दिया – याचीगण को उक्त पद पर नियुक्त करने हेतु प्रत्यर्थीगण को निदेशित किया गया – याचिका मंजूर। (अंकित बघेल वि. म.प्र. राज्य) **…390**

Maxim "Falsus in Uno, falsus in Omnibus" – Applicability – Held – In India, the maxim "falsus in uno, falsus in omnibus" **is not applicable in criminal trial – Evidence of such witnesses which is partly unreliable cannot be discarded wholly. [Chauda Vs. State of M.P.] (DB)…471**

सूत्र ''एक बात में मिथ्या तो सब में मिथ्या'' – प्रयोज्यता – अभिनिर्धारित – भारत में ''एक बात में मिथ्या तो सब में मिथ्या'' का सूत्र दाण्डिक विचारण में लागू नहीं होता है – ऐसे साक्षीगण का साक्ष्य जो कि अंशतः अविश्वसनीय है, को पूर्णतः अस्वीकार नहीं किया जा सकता है। (चौदा वि. म.प्र. राज्य) **(DB)…471**

Minor Mineral Rules, M.P. 1996, Rule 53 – See – Penal Code, 1860, Sections 109, 378 & 379 **[Ashish Singh Vs. State of M.P.] …689**

गौण खनिज नियम, म.प्र. 1996, नियम 53 – देखें – दण्ड संहिता, 1860, धाराएँ 109, 378 व 379 (आशीष सिंह वि. म.प्र. राज्य) *…689*

Motoryan Karadhan Adhiniyam, M.P., (25 of 1991), Section 3/16(3) – See – Criminal Procedure Code, 1973, Section 482 **[Jai Prakash Sharma Vs. State of M.P.] …223**

मोटरयान कराधान अधिनियम, म.प्र. (1991 का 25), धारा 3/16 (3) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (जय प्रकाश शर्मा वि. म.प्र. राज्य) **…223**

Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Section 2(j) – See – Nagar Tatha Gram Nivesh Vikasit Bhumiyon, Griho, Bhavano Tatha Anya Sanrachnao Ka Vyayan Niyam, M.P., 1975, Rule 3 & 5 **[Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.] (DB)…16**

नगर तथा ग्राम निवेश अधिनियम, म.प्र. (1973 का 23), धारा 2(जे) – देखें – नगर तथा ग्राम निवेश विकसित भूमियों, गृहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, म. प्र., 1975, नियम 3 व 5 (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) **(DB)…16**

Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Section 24 & 74 and Bhumi Vikas Rules, M.P., 1984-2012, Rule 103 and Indore Development Plan, 2021 – High Rise Buildings – Permissions – Challenge to **– Held – Provisions of Development Plan gets precedence and provisions of Bhumi Vikas Rules are treated as deemed to have been modified mutatis mutandis in so far as their application to that planned area is concerned – Development Plan supercedes and have an overriding effect on the Bhumi Vikas Rules – Permissions were granted keeping in view the Development Plan, 2021, framed in consonance with UDPFI guidelines issued by Government of India, thus no violation of any statutory provisions of law – Petition based on grave misconception – No case for interference made out – PIL filed with oblique and ulterior motive – Petition dismissed. [Pradeep Hinduja Vs. State of M.P.] (DB)…339**

नगर तथा ग्राम निवेश अधिनियम, म.प्र. (1973 का 23), धारा 24 व 74 एवं भूमि विकास नियम, म.प्र., 1984–2012, नियम 103 एवं इंदौर विकास योजना, 2021 – ऊँचे भवन – अनुमति – को चुनौती – अभिनिर्धारित – जहां तक उस योजनाबद्ध क्षेत्र के लिए उनकी प्रयोज्यता का संबंध है, विकास योजना के उपबंधों को अग्रता मिलती है तथा भूमि विकास नियमों को यथावश्यक परिवर्तन सहित उपांतरित माना जाता है – विकास योजना, भूमि विकास नियमों का अधिक्रमण करती है तथा उस पर अध्यारोही प्रभाव डालती है – भारत सरकार द्वारा जारी किये गये यूडीपीएफआई मार्गदर्शन के अनुरूप, विकास योजना, 2021 को ध्यान में रखते हुए अनुमति प्रदान की गई थी, अतः विधि के किसी कानूनी उपबंधों का कोई उल्लंघन नहीं – याचिका घोर भ्रम पर आधारित है – हस्तक्षेप का कोई प्रकरण नहीं बनता – परोक्ष एवं अंतरस्थ हेतु के साथ पी.आई.एल. प्रस्तुत की गई – याचिका खारिज। (प्रदीप हिन्दुजा वि. म.प्र. राज्य) **(DB)…339**

Nagar Tatha Gram Nivesh Vikasit Bhumiyon, Griho, Bhavano Tatha Anya Sanrachnao Ka Vyayan Niyam, M.P., 1975, Rule 3 & 5, Town Improvement Trust Act, 1960 (14 of 1961), Section 52 & 87(c)(iii), Nagar Tatha Gram Nivesh Adhiniyam, M.P. (23 of 1973), Section 2(j) and Revenue Book Circulars – Nazul Land/Authority Land – Sanction of State Government **– Held – Nazul Land, unless notified, does not automatically gets vested in any Authority or Trust – No transfer or disposal of Nazul/Authority land is permissible without prior approval of State Government as mandated in Rule 3/5 of Rules of 1975 – Petitioner failed to show any such notification whereby character of land has been changed from Nazul/Government land to Authority land – As per 1975 Niyam, no transfer through promoter agreement is permissible – State and JDA were bound to act according to statutory rules – JDA violated provisions of 1975 Niyam and Prakoshta Adhiniyam – It amount to "malice in law". [Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.] (DB)…16**

नगर तथा ग्राम निवेश विकसित भूमियों, गृहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, म.प्र., 1975, नियम 3 व 5, नगर सुधार न्यास अधिनियम, 1960 (1961 का 14), धारा 52 व 87(सी)(iii), नगर तथा ग्राम निवेश अधिनियम, म.प्र. (1973 का 23), धारा 2(जे) एवं राजस्व पुस्तिका परिपत्र – नजूल भूमि/प्राधिकरण भूमि – राज्य सरकार की मंजूरी – अभिनिर्धारित – नजूल भूमि, जब तक कि अधिसूचित नहीं की जाती है, अपने आप से किसी भी प्राधिकरण अथवा न्यास में निहित नहीं होती है – राज्य सरकार के पूर्व अनुमोदन के बिना नजूल/प्राधिकरण भूमि का कोई हस्तांतरण अथवा व्ययन अनुज्ञेय नहीं है जैसा कि 1975 के नियमों के नियम 3/5 में आज्ञापक है – याची ऐसी कोई अधिसूचना दर्शाने में विफल रहा जिससे भूमि का स्वरूप नजूल/सरकारी भूमि से प्राधिकरण भूमि में परिवर्तित किया गया हो – 1975 के नियमों के अनुसार, संप्रवर्तक करार के माध्यम से कोई हस्तांतरण अनुज्ञेय नहीं है – राज्य एवं जेडीए कानूनी नियमों के अनुसार कार्रवाई करने हेतु बाध्य थे – जेडीए ने नियम 1975 एवं प्रकोष्ठ अधिनियम के उपबंधों का उल्लंघन किया है – यह ''विधि अंतर्गत विद्वेष'' की कोटि में आता है। (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) **(DB)…16**

INDEX

Nagar Tatha Gram Nivesh Vikasit Bhumiyon, Griho, Bhavano Tatha Anya Sanrachnao Ka Vyayan Niyam, M.P., 1975, Rule 5-A – Tenant/ Sub Lessees – Public Interest – **Held – Petitioner admittedly given shops/ offices/showroom on rent but possession was not given to tenants by joint signatures of JDA and promoter which was contrary to promoter agreement read with scheme of Prakoshta Adhiniyam – For every transfer of apartment, JDA was entitled to receive 3% of Collector guideline rate of property – JDA was deprived of its benefits and also the amount of rent by putting sub-lessees and licensees – Action is not only against JDA but also against public interest – Impugned orders rightly passed. [Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.]** **(DB)…16**

नगर तथा ग्राम निवेश विकसित भूमियों, गृहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, म.प्र., 1975, नियम 5–ए – किराएदार/उप–पट्टेदार – लोकहित – अभिनिर्धारित – याची ने स्वीकृत रूप से दुकानें/कार्यालय/शोरूम भाड़े पर दिये परंतु किराएदारों को कब्जा जेडीए एवं संप्रवर्तक के संयुक्त हस्ताक्षरों द्वारा नहीं दिया गया था जो कि संप्रवर्तक करार सहपठित प्रकोष्ठ अधिनियम की स्कीम के विपरीत था – प्रकोष्ठ के प्रत्येक हस्तांतरण के लिए, जेडीए संपत्ति की कलेक्टर द्वारा मार्गदर्शक दर का 3% प्राप्त करने का हकदार था – उप–पट्टेदारों तथा अनुज्ञप्तिधारियों को रखकर, जेडीए को इसके लाभों तथा भाड़े की राशि से भी वंचित रखा गया था – कार्रवाई न केवल जेडीए के विरूद्ध है बल्कि लोकहित के भी विरूद्ध है – आक्षेपित आदेश उचित रूप से पारित। (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) **(DB)…16**

Nagar Tatha Gram Nivesh Vikasit Bhumiyon, Griho, Bhavano Tatha Anya Sanrachnao Ka Vyayan Niyam, M.P., 1975, Rule 27(b) – Allotment of Additional Land – **Held – Precondition of applicability of clause (b) was that largest plot is already held by a person who is claiming the adjoining plot – On the date (19.05.2008), High Rise Committee meeting had taken place, petitioner was not holding any such largest plot of land, thus there was no occasion for Committee to recommend grant of additional land – Since the grant of largest plot to petitioner vide lease deed dated 30.05.2008 stood cancelled, very foundation of allotment of additional land became non-existent automatically. [Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.]** **(DB)…16**

नगर तथा ग्राम निवेश विकसित भूमियों, गृहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, म.प्र., 1975, नियम 27(बी) – अतिरिक्त भूमि का आबंटन – अभिनिर्धारित – खंड (बी) की प्रयोज्यता की पूर्व शर्त यह थी कि सबसे बड़ा भूखंड पहले से ही उस व्यक्ति के पास हो जो लगे हुए भूखंड का दावा कर रहा है – दिनांक (19.05.2008) को, उच्च स्तरीय समिति की बैठक हुई थी, याची, भूमि का कोई ऐसा सबसे बड़ा भूखंड धारित नहीं करता था, इसलिए अतिरिक्त भूमि प्रदान किये जाने की अनुशंसा करने हेतु समिति के पास कोई अवसर नहीं था – चूंकि विक्रय विलेख दिनांक 30.05.2008 के माध्यम से याची को सबसे बड़ा भूखंड प्रदान किया जाना रद्द कर दिया गया, अतिरिक्त भूमि के आबंटन का

मूल आधार स्वतः ही अस्तित्वहीन हो गया। (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) **(DB)...16**

***Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8(C) & 20(b)(ii)(B) – Investigation – Procedure* – Held – Sub-Inspector not only lodged the FIR but had also carried out entire investigation including all procedural formalities – Apex Court concluded that such practice creates occasion to suspect fair and impartial investigation – Applying dictum of Apex Court in present case, rights of appellant has violated by action of the over zealous Investigating Officer who has taken upon himself to lodge the FIR and to carry out the entire investigation as well, which cannot be sustained – Conviction set aside – Appeal allowed. [Motilal Daheriya Vs. State of M.P.] ...*8**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8(सी) व 20(बी)(ii)(बी) – अन्वेषण – प्रक्रिया – अभिनिर्धारित – उप–निरीक्षक ने न केवल प्रथम सूचना प्रतिवेदन दर्ज किया बल्कि संपूर्ण अन्वेषण भी पूरा किया जिसमें सभी प्रक्रियात्मक औपचारिकताऐं शामिल हैं – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि उक्त पद्धति, निष्पक्ष एवं पक्षपातरहित अन्वेषण पर संदेह का कारण सृजित करता है – सर्वोच्च न्यायालय के आदेश को वर्तमान प्रकरण में लागू करते हुए, अतिउत्साही अन्वेषण अधिकारी की कार्रवाई द्वारा अपीलार्थी के अधिकारों का उल्लंघन हुआ है, जिसने प्रथम सूचना प्रतिवेदन दर्ज करना और संपूर्ण अन्वेषण पूरा करना भी अपने ऊपर लिया है, जिसे कायम नहीं रखा जा सकता – दोषसिद्धि अपास्त – अपील मंजूर। (मोतीलाल डहेरिया वि. म.प्र. राज्य) **...*8**

***Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/21 & 37 and Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – Grounds – Quantity of Psychotropic Substance – Calculation of* – Held – Government of India vide notification dated 18.11.2009 made it clear that for purpose of determining quantity, gross weight of the drug recovered and not the pure content of psychotropic substance shall be taken into consideration – In present case, even if net quantity is considered, total quantity of seized "Codeine" is 1.993 Kg which is commercial quantity which was kept in possession without any document to show that it was meant for therapeutic use – Restrictions u/S 37 of the Act of 1985 is applicable – Petitioners not entitled for bail – Applications dismissed. [Ranjan Vs. State of M.P.] ...230**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8/21 व 37 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत – आधार – मनःप्रभावी पदार्थ की मात्रा – की गणना – अभिनिर्धारित – भारत सरकार ने अधिसूचना दिनांक 18.11.2009 द्वारा यह स्पष्ट किया है कि मात्रा की अवधारणा के प्रयोजन हेतु, बरामद औषधि का सकल माप और न कि मनःप्रभावी पदार्थ का शुद्ध तत्व विचार में लिया जाएगा – वर्तमान प्रकरण में, यदि शुद्ध मात्रा विचार में ली जाए तब भी जब्तशुदा ''कोडीन'' की कुल मात्रा 1.993 कि.ग्रा. है जो कि वाणिज्यिक मात्रा है जिसे बिना किसी

ऐसे दस्तावेज के कब्जे में रखा गया था जो दर्शाता हो कि वह रोगोपचारक उपयोग हेतु अर्थान्वित थी – 1985 के अधिनियम की धारा 37 के अंतर्गत निर्बंधन लागू होते हैं – याचीगण, जमानत हेतु हकदार नहीं – आवेदन खारिज किये गये। (रंजन वि. म.प्र. राज्य) **…230**

Panchayat Nirvachan Niyam, M.P., 1995, Rule 80 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 122 **[Devki Nandan Dubey Vs. Purshottam Sahu] …316**

पंचायत निर्वाचन नियम, म.प्र., 1995, नियम 80 – देखें – पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993, धारा 122 (देवकी नंदन दुबे वि. पुरूषोत्तम साहू) **…316**

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 40 – Removal of Sarpanch – Enquiry **– On a complaint against petitioner, SDO directed CEO to investigate the matter and submit enquiry report – As per report, irregularities found against petitioner – Show cause notice issued whereby petitioner filed reply, which was not found satisfactory resulting in his removal – Held – Before passing order u/S 40, enquiry is necessary – Such enquiry does not mean issuance of show cause notice, but requires a detail enquiry where office bearer must be given opportunity to examine and cross examine the witnesses – No such enquiry conducted by SDO – Impugned order of removal quashed – Petition allowed. [Vikram Singh Vs. State of M.P.] …*13**

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 40 – सरपंच को हटाया जाना – जांच – याची के विरूद्ध शिकायत पर एस डी ओ ने सी.ई.ओ. को मामले का अन्वेषण करने तथा जांच प्रतिवेदन प्रस्तुत करने के लिए निदेशित किया – प्रतिवेदन के अनुसार, याची के विरूद्ध अनियमितताऐं पायी गई – कारण बताओ नोटिस जारी किया गया जिसमें याची ने उत्तर प्रस्तुत किया जिसे संतोषजनक नहीं पाये जाने के परिणामस्वरूप उसे हटाया गया – अभिनिर्धारित – धारा 40 के अंतर्गत आदेश पारित करने के पूर्व जांच आवश्यक है – उक्त जांच का अर्थ कारण बताओ नोटिस जारी करना नहीं बल्कि विस्तृत जांच अपेक्षित है जहां पदाधिकारी को साक्षियों के परीक्षण एवं प्रतिपरीक्षण का अवसर अवश्य दिया जाना चाहिए – एस डी ओ द्वारा ऐसी कोई जांच संचालित नहीं की गई – हटाये जाने का आक्षेपित आदेश अभिखंडित – याचिका मंजूर। (विक्रम सिंह वि. म.प्र. राज्य) **…*13**

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 80 – Recounting – Application **– Held – Even if an application seeking recounting is not preferred on the date of counting, Tribunal/ Court has the jurisdiction/ authority to direct recounting. [Devki Nandan Dubey Vs. Purshottam Sahu] …316**

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 एवं पंचायत निर्वाचन नियम, म.प्र., 1995, नियम 80 – पुनर्गणना – आवेदन – अभिनिर्धारित – यदि मतगणना की तिथि को पुनर्गणना चाहते हुए आवेदन प्रस्तुत नहीं किया गया है तब भी अधिकरण/न्यायालय को पुनर्गणना निदेशित करने की अधिकारिता/प्राधिकार है। (देवकी नंदन दुबे वि. पुरूषोत्तम साहू) **...316**

***Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 122 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 80 – Recounting – Grounds* – Petitioner elected by margin of one vote – R-1 filed election petition whereby Tribunal ordered recounting where he was declared elected – Held – R-1's application seeking recounting is ambiguous which does not contain any specific allegation, factual details and nature of irregularity – Recounting was ordered on basis of irregularity which was neither pleaded nor proved by R-1, thus he failed to establish the grounds for recounting – Victory by margin of one vote cannot be a ground for recounting – Further, Tribunal travelled beyond the scope of pleading and evidence while directing recounting on basis of roving inquiry which is impermissible – Impugned order set aside – Petition allowed. [Devki Nandan Dubey Vs. Purshottam Sahu]** **...316**

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 122 एवं पंचायत निर्वाचन नियम, म.प्र., 1995, नियम 80 – पुनर्गणना – आधार – याची एक मत के अंतर से निर्वाचित – प्रत्यर्थी–1 ने निर्वाचन अर्जी प्रस्तुत की जिसमें अधिकरण ने पुनर्गणना आदेशित की जहां उसे निर्वाचित घोषित किया गया था – अभिनिर्धारित – पुनर्गणना चाहते हुए प्रत्यर्थी–1 का आवेदन अस्पष्ट है जिसमें कोई विनिर्दिष्ट अभिकथन, तथ्यात्मक विवरण एवं अनियमितता का स्वरूप अंतर्विष्ट नहीं है – पुनर्गणना को अनियमितता के आधार पर आदेशित किया गया था जिसका न तो अभिवाक् था न ही प्रत्यर्थी–1 द्वारा साबित किया गया था, अतः वह पुनर्गणना हेतु आधारों को स्थापित करने में असफल रहा – एक मत के अंतर से जीत, पुनर्गणना हेतु आधार नहीं हो सकता – इसके अतिरिक्त, अधिकरण, अतिगामी जांच के आधार पर पुनर्गणना निदेशित करते समय अभिवचन एवं साक्ष्य की व्याप्ति से परे गया जो कि अननुज्ञेय है – आक्षेपित आदेश अपास्त – याचिका मंजूर। (देवकी नंदन दुबे वि. पुरूषोत्तम साहू) **...316**

***Payment of Gratuity Act (39 of 1972), Section 2(e) – "Employee"* – Held – It does not include any such persons who holds a post under the Central or State Government and is governed by any other Act or Rules. [Chief General Manager Vs. Shiv Shankar Tripathi]** **...328**

उपदान संदाय अधिनियम (1972 का 39), धारा 2(ई) – "कर्मचारी" – अभिनिर्धारित – इसमें कोई ऐसे व्यक्ति शामिल नहीं जो केंद्र अथवा राज्य सरकार के अधीन पद धारण करते हैं तथा किसी अन्य अधिनियम या नियमों द्वारा शासित होते है। (चीफ जनरल मेनेजर वि. शिव शंकर त्रिपाठी) **...328**

Payment of Gratuity Act (39 of 1972), Section 2(e) & 14 – See – Service Law **[Chief General Manager Vs. Shiv Shankar Tripathi] …328**

उपदान संदाय अधिनियम (1972 का 39), धारा 2(ई) व 14 – देखें – सेवा विधि (चीफ जनरल मेनेजर वि. शिव शंकर त्रिपाठी) **…328**

***Payment of Gratuity Act (39 of 1972), Section 14* – Held – No executive instructions, orders or rule can take away the rights flowing from Gratuity Act in view of the overriding effect given to the Act u/S 14. [Chief General Manager Vs. Shiv Shankar Tripathi] …328**

उपदान संदाय अधिनियम (1972 का 39), धारा 14 – अभिनिर्धारित – उपदान अधिनियम से उत्पन्न अधिकारों को धारा 14 के अंतर्गत अधिनियम को अध्यारोही प्रभाव दिये जाने को दृष्टिगत रखते हुए, कोई कार्यपालिक अनुदेश, आदेश या नियम छीन नहीं सकते। (चीफ जनरल मेनेजर वि. शिव शंकर त्रिपाठी) **…328**

***Penal Code (45 of 1860), Section 11 – See – Criminal Procedure Code, 1973, Section 438* [Miss A Vs. State of M.P.] …662**

दण्ड संहिता (1860 का 45), धारा 11 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 438 (मिस ए वि. म.प्र. राज्य) **…662**

***Penal Code (45 of 1860), Section 26 – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018, Section 18-A* [Atendra Singh Rawat Vs. State of M.P.] …168**

दण्ड संहिता (1860 का 45), धारा 26 –देखें – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) संशोधन अधिनियम, 2018, धारा 18–ए (अतेन्द्र सिंह रावत वि. म.प्र. राज्य) **…168**

***Penal Code (45 of 1860), Sections 84, 323 & 302 – Insanity – Appreciation of Evidence* – Held – Trial Court has recorded a finding that from perusal of evidence, it appears that mental condition of accused is not completely good – Evidence of prosecution witnesses goes to show that accused was insane and was treated at Mental Hospital, Gwalior – In absence of any evidence in rebuttal while the burden of proof was on prosecution, trial Court ought to have extended the benefit of provisions of Section 84 IPC to appellant – Appeal allowed. [Ramkripal @ Kripal Vs. State of M.P.] (DB)…*20**

दण्ड संहिता (1860 का 45), धाराएँ 84, 323 व 302 – उन्मत्तता – साक्ष्य का मूल्यांकन – अभिनिर्धारित – विचारण न्यायालय ने निष्कर्ष अभिलिखित किया है कि साक्ष्य के परिशीलन से यह प्रकट होता है कि अभियुक्त की मानसिक स्थिति पूर्ण रूप से ठीक नहीं है – अभियोजन साक्षीगण का साक्ष्य दर्शाता है कि अभियुक्त उन्मत्त था और मानसिक चिकित्सालय, ग्वालियर में उसका उपचार किया गया था – खंडन में किसी साक्ष्य की

अनुपस्थिति में, जब सबूत का भार अभियोजन पर था, विचारण न्यायालय को धारा 84 भा. दं.सं. के उपबंधों का लाभ अपीलार्थी को देना चाहिए था – अपील मंजूर। (रामकृपाल उर्फ कृपाल वि. म.प्र. राज्य) **(DB)…*20**

***Penal Code (45 of 1860), Section 107 & 306 and Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Revision Against Charge – Abetment to Suicide* – Held – Deceased, a 17 yrs. old girl of impressionable age – Where abetment to suicide relates to person of impressionable age, the yardstick of adjudication becomes stringent – Case against applicant based upon overt acts of repeated stalking, pressurizing and abusing which on prima facie assessment, constitutes offence of abetment – Further, as per post mortem report, deceased was carrying a male fetus – Strong suspicion against applicant – Framing of charge cannot be found fault with – Revision dismissed. [Rishi Jalori Vs. State of M.P.] …*28**

दण्ड संहिता (1860 का 45), धारा 107 व 306 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – आरोप के विरूद्ध पुनरीक्षण – आत्महत्या का दुष्प्रेरण – अभिनिर्धारित – मृतिका एक 17 वर्षीय शीघ्रप्रभावित उम्र की लड़की – जहाँ आत्महत्या का दुष्प्रेरण शीघ्रप्रभावित उम्र के व्यक्ति से संबंधित होता है, तब न्यायनिर्णयन का मानदंड बहुत कठोर बन जाता है – आवेदक के विरूद्ध प्रकरण, बारंबार पीछा करने, दबाव देने एवं दुर्व्यवहार के प्रकट कृत्यों पर आधारित है, जिसके प्रथम दृष्ट्या निर्धारण पर, दुष्प्रेरण का अपराध गठित होता है – इसके अतिरिक्त, शव परीक्षण प्रतिवेदन के अनुसार, मृतिका एक पुरूष भ्रूणधारण किये हुए थी – आवेदक के विरूद्ध प्रबल संदेह – आरोप को विरचित किये जाने में कोई दोष नहीं पाया जा सकता – पुनरीक्षण खारिज। (रिषी जालोरी वि. म.प्र. राज्य) **…*28**

***Penal Code (45 of 1860), Sections 109, 378 & 379 and Minor Mineral Rules, M.P. 1996, Rule 53 – Quashment of Criminal Proceedings* – Dumpers filled with sand were seized as the same was being transported without permit – Held – Ingredients of offences u/S 378 IPC and under Rule 53 of Rules of 1996 are quite distinct – Rule 53 deals with unauthorized extraction and transportation of minor minerals and provides for penalty in graded manner as well as seizure and confiscation of tools, machines and vehicles used whereas Section 378 IPC deals with theft of sand without consent of owner/State – Apart from proceedings under the Rules of 1996, Court can take cognizance u/S 379 IPC for theft of sand owned by the Government – Application dismissed. [Ashish Singh Vs. State of M.P.] …689**

दण्ड संहिता (1860 का 45), धाराएँ 109, 378 व 379 एवं गौण खनिज नियम, म.प्र. 1996, नियम 53 – दाण्डिक कार्यवाहियों को अभिखंडित किया जाना – रेत से भरे डम्परों को जब्त कर लिया गया था क्योंकि बिना परमिट के ही उक्त का परिवहन किया जा रहा था – अभिनिर्धारित – भा.दं.सं. की धारा 378 तथा 1996 के नियमों के नियम 53 के अंतर्गत अपराधों के घटक काफी सुभिन्न है – नियम 53 गौण खनिज के अप्राधिकृत निष्कर्षण और

परिवहन से संबंधित है तथा वर्गीकृत ढंग से शास्ति के साथ–साथ उपयोग किये गये औजारों, मशीनरों एवं वाहनों का अभिग्रहण और जब्ती उपबंधित करता है जबकि भा.दं.सं. की धारा 378 स्वामी/राज्य की सहमति के बिना रेत की चोरी से संबंधित है – 1996 के नियमों के अंतर्गत कार्यवाहियों के अलावा, न्यायालय सरकार के स्वामित्व की रेत की चोरी के लिए धारा 379 भा.दं.सं. के अंतर्गत संज्ञान ले सकता है – आवेदन खारिज। (आशीष सिंह वि. म.प्र. राज्य) **...689**

***Penal Code (45 of 1860), Section 149 – Unlawful Assembly – Common Object & Common Intention – Vicarious Liability* – Held – Apex Court concluded that while overact and active participation may indicate common intention, mere presence in unlawful assembly may fasten vicarious criminal liability u/S 149 IPC – Common Object is different from Common Intention as it does not require a prior concert and a common meeting of mind before the attack – It is enough if each appellant has same object and their assembly was to achieve that object – In such case, individual act of each appellant losses its relevance. [Manbodh Singh Vs. State of M.P.] (DB)...637**

दण्ड संहिता (1860 का 45), धारा 149 – विधिविरूद्ध जमाव – सामान्य उद्देश्य व सामान्य आशय – प्रतिनिधिक दायित्व – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि प्रकट कृत्य एवं सक्रिय सहभाग सामान्य आशय इंगित कर सकता है, विधिविरूद्ध जमाव में मात्र उपस्थिति से धारा 149 भा.दं.सं. के अंतर्गत प्रतिनिधिक दाण्डिक दायित्व जुड़ सकता है – सामान्य उद्देश्य, सामान्य आशय से भिन्न है क्योंकि उसमें आक्रमण से पूर्व सामान्य मति एवं मस्तिष्क का सामान्य मेल अपेक्षित नहीं – यह पर्याप्त है यदि प्रत्येक अपीलार्थी का समान उद्देश्य है और उनका जमाव उस उद्देश्य को प्राप्त करने के लिए था – ऐसी स्थिति में, प्रत्येक अपीलार्थी का व्यक्तिगत कृत्य अपनी सुसंगतता खो देता है। (मनबोध सिंह वि. म.प्र. राज्य) **(DB)...637**

***Penal Code (45 of 1860), Section 300 & 302 – Appreciation of Evidence – Circumstantial Evidence & Medical Evidence – Hostile Witnesses* – Appellant killed his one year old daughter by strangulating her – Held – FIR lodged promptly by father of appellant naming only appellant as accused – At initial stage itself, all eye witnesses named only appellant as accused in statements u/S 161 Cr.P.C. and later turned hostile – All hostile witnesses are relatives and interested witnesses and it seems they are trying to protect and shield appellant having entered into a compromise – Even complainant admitted in cross examination that matter has been compromised – Prosecution story duly corroborated by medical evidence – Case does not fall in any exceptions of Section 300 IPC – Conviction affirmed – Appeal dismissed. [Brijlal Vs. State of M.P.] (DB)...177**

दण्ड संहिता (1860 का 45), धारा 300 व 302 – साक्ष्य का मूल्यांकन – परिस्थितिजन्य साक्ष्य व चिकित्सीय साक्ष्य – पक्षविरोधी साक्षीगण – अपीलार्थी ने अपनी एक वर्ष की बालिका को गला घोंटकर मार डाला – अभिनिर्धारित – अपीलार्थी के पिता द्वारा अभियुक्त के रूप में केवल अपीलार्थी का नाम लेते हुए तत्परता से प्रथम सूचना

प्रतिवेदन दर्ज किया गया – प्रारंभिक प्रक्रम पर ही, सभी चक्षुदर्शी साक्षीगण ने दं.प्र.सं. की धारा 161 के अंतर्गत कथनों में अभियुक्त के रूप में केवल अपीलार्थी का नाम लिया तथा बाद में पक्षविरोधी हो गये – सभी पक्षविरोधी साक्षीगण, रिश्तेदार और हितबद्ध साक्षीगण हैं एवं यह प्रतीत होता है कि समझौता हो जाने के कारण वे अपीलार्थी की सुरक्षा तथा बचाव करने का प्रयास कर रहे हैं – यहाँ तक कि परिवादी ने प्रति परीक्षण में यह स्वीकार किया है कि मामले में समझौता किया गया है – अभियोजन कहानी, चिकित्सीय साक्ष्य द्वारा सम्यक् रूप से संपुष्ट – प्रकरण भा.दं.सं. की धारा 300 के किसी भी अपवाद में नहीं आता है – दोषसिद्धि अभिपुष्ट – अपील खारिज। (ब्रिजलाल वि. म.प्र. राज्य) **(DB)…177**

***Penal Code (45 of 1860), Section 302 – Circumstantial Evidence – Last Seen Together* – Held – Looking to the time gap, evidence of wife of deceased is not sufficient to establish proximity of accused in commission of crime though he was last seen in company of deceased, a day back – Possibility of not having access of any other persons during the time gap not proved by prosecution – Last seen evidence not proved, thus recovery of weapon is not relevant – No blood stained clothes or any incriminating articles found to connect appellant with crime – Chain of circumstantial evidence is not fully established/proved beyond reasonable doubt to bring home the charge u/S 302 IPC – Conviction set aside – Appeal allowed. [Ratiram Gond Vs. State of M.P.] (DB)…644**

दण्ड संहिता (1860 का 45), धारा 302 – परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखा जाना – अभिनिर्धारित – समय के अंतराल को देखते हुए, अपराध के किये जाने में अभियुक्त की निकटता स्थापित करने के लिए मृतक की पत्नी का साक्ष्य पर्याप्त नहीं है, यद्यपि उसे एक दिन पहले अंतिम बार मृतक के साथ देखा गया था – समय अंतराल के दौरान किसी अन्य व्यक्ति की पहुंच न होने की संभावना को अभियोजन द्वारा साबित नहीं किया गया – अंतिम बार साथ देखे जाने का साक्ष्य साबित नहीं, इसलिए शस्त्र की बरामदगी सुसंगत नहीं है – अपीलार्थी को अपराध से जोड़ने हेतु कोई रक्तरंजित वस्त्र अथवा अपराध में फंसाने वाली वस्तुएं नहीं पाई गई – भा.दं.सं. की धारा 302 के आरोप हेतु दोषी ठहराने के लिए परिस्थितिजन्य साक्ष्य की श्रृंखला पूर्णतः स्थापित / युक्तियुक्त संदेह से परे साबित नहीं होती है – दोषसिद्धि अपास्त – अपील मंजूर। (रतीराम गोंड वि म.प्र. राज्य) **(DB)…644**

***Penal Code (45 of 1860), Section 302 – Delay in FIR* – Held – It is not expected from the sole eye witness, a 70 yrs. old rural woman to leave the dead bodies of family members at the spot and go 10 km. to police station to lodge the complaint – Delay properly explained and is not fatal for prosecution. [State of M.P. Vs. Chhaakki Lal] (SC)…507**

दण्ड संहिता (1860 का 45), धारा 302 – प्रथम सूचना प्रतिवेदन में विलंब – अभिनिर्धारित – एक मात्र चक्षुदर्शी साक्षी एक 70 वर्षीय ग्रामीण महिला से, परिवार के सदस्यों के मृत शरीरों को घटनास्थल पर छोड़कर, शिकायत दर्ज करने के लिए 10 कि.मी.

दूर पुलिस थाने जाना अपेक्षित नहीं है – विलंब उचित रूप से स्पष्ट किया गया तथा अभियोजन के लिए घातक नहीं है। (म.प्र. राज्य वि. छक्की लाल) **(SC)…507**

Penal Code (45 of 1860), Section 302 – Hostile Witnesses – Credibility – **Held – Evidence of a person does not become effaced from record merely because he has turned hostile – His deposition must be examine more cautiously – Apex Court concluded that deposition of hostile witness can be relied upon at least upto the extent he supported the prosecution case. [Brijlal Vs. State of M.P.] (DB)…177**

दण्ड संहिता (1860 का 45), धारा 302 – पक्षविरोधी साक्षीगण – विश्वसनीयता – अभिनिर्धारित – एक व्यक्ति का साक्ष्य अभिलेख से मिट नहीं जाता मात्र इसलिये कि वह पक्षविरोधी हो गया है – उसके अभिसाक्ष्य का अधिक सावधानी से परीक्षण किया जाना चाहिए – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि पक्षविरोधी साक्षी के अभिसाक्ष्य पर कम से कम उसके द्वारा अभियोजन प्रकरण का समर्थन किये जाने की सीमा तक विश्वास किया जा सकता है। (ब्रिजलाल वि. म.प्र. राज्य) **(DB)…177**

Penal Code (45 of 1860), Section 302 – Sentence – **Murder of 4 persons including a child of three years – Trial Court awarded death sentence – Held – Incident is of 2006 – Looking to facts and circumstances and the passage of time, award of death penalty is not warranted and imposing sentence of life imprisonment would meet the ends of justice. [State of M.P. Vs. Chhaakki Lal] (SC)…507**

दण्ड संहिता (1860 का 45), धारा 302 – दण्डादेश – चार व्यक्तियों की हत्या जिसमें एक तीन वर्षीय बालक भी शामिल – विचारण न्यायालय ने मृत्युदण्ड प्रदान किया – अभिनिर्धारित – घटना 2006 की है – तथ्यों एवं परिस्थितियों तथा बीत चुके समय को देखते हुए मृत्युदण्ड प्रदान किया जाना आवश्यक नहीं है और आजीवन कारावास का दण्डादेश अधिरोपित कर न्याय का उद्देश्य पूरा होगा। (म.प्र. राज्य वि. छक्की लाल) **(SC)…507**

Penal Code (45 of 1860), Section 302 – Sole Eye Witness – Appreciation of Evidence – Weapon of Offence – Appeal against acquittal – **Held – High Court ignored credible evidence of sole eye witness which is corroborated by medical evidence and evidence of ballistic expert and unnecessarily laid emphasis on minor contradictions and omissions which are immaterial – Testimony of sole eye witness cannot be discarded merely because she is related to deceased – It is well settled that it is not the number but the quality of evidence that matters – Opinion of Ballistic expert tallying with the arms recovered from accused – Any slight variation in description of weapon is not fatal for prosecution – Delay in FIR properly explained – Judgment of acquittal suffers from serious infirmity and is set aside – Accused convicted u/S 302 IPC. [State of M.P. Vs. Chhaakki Lal] (SC)…507**

दण्ड संहिता (1860 का 45), धारा 302 – एकमात्र चक्षुदर्शी साक्षी – साक्ष्य का मूल्यांकन – अपराध का शस्त्र – दोषमुक्ति के विरूद्ध अपील – अभिनिर्धारित – उच्च न्यायालय ने एकमात्र चक्षुदर्शी साक्षी के विश्वसनीय साक्ष्य को अनदेखा किया जो कि चिकित्सीय साक्ष्य तथा प्राक्षेपिकी विशेषज्ञ द्वारा संपुष्ट है और अनावश्यक रूप से गौण विरोधाभासों एवं लोपों को महत्व दिया जो सारहीन है – एकमात्र चक्षुदर्शी साक्षी के परिसाक्ष्य को मात्र इसलिए अस्वीकार नहीं किया जा सकता कि वह मृतक से संबंधित है – यह सुस्थापित है कि साक्ष्य की संख्या नहीं बल्कि उसकी गुणवत्ता महत्व रखती है – प्राक्षेपिकी विशेषज्ञ की राय, अभियुक्त से बरामद शस्त्रों से मेल खाती है – शस्त्र के विवरण में कोई हल्का सा अंतर, अभियोजन हेतु घातक नहीं है – प्रथम सूचना प्रतिवेदन में विलंब को उचित रूप से स्पष्ट किया गया – दोषमुक्ति का निर्णय, गंभीर कमियों से ग्रसित तथा अपास्त किया गया – अभियुक्त को धारा 302 भा.दं.सं. के अंतर्गत दोषसिद्ध किया गया। (म.प्र. राज्य वि. छक्की लाल) **(SC)…507**

Penal Code (45 of 1860), Section 302/149, 304(Part I) & Exception 4 to S. 300 – Motive/Intention – Premeditation **– Held – In a wordy quarrel, appellant inflicted farsi blow on head of deceased – One injury inflicted by farsi which shows that appellant has not taken undue advantage – Death committed in sudden fight without premeditation – Exception 4 to Section 300 IPC attracted – Conviction modified to one u/S 304 (Part I) IPC – Appeal allowed. [Bhagirath Vs. State of M.P.] (SC)…520**

दण्ड संहिता (1860 का 45), धारा 302/149, 304 (भाग I) व धारा 300 का अपवाद 4 – हेतु/आशय – पूर्व चिंतन – अभिनिर्धारित – एक शाब्दिक झगड़े में, अपीलार्थी ने मृतक के सिर पर फर्सी से वार किया – फर्सी से एक चोट पहुँचाई गई जो यह दर्शाता है कि अपीलार्थी ने अनुचित लाभ नहीं लिया है – बिना पूर्व चिंतन के, अचानक लड़ाई में मृत्यु कारित हुई – भा.दं.सं. की धारा 300 का अपवाद 4 आकर्षित होगा – दोषसिद्धि को धारा 304 (भाग–I) भा.दं.सं. के अंतर्गत उपांतरित किया गया – अपील मंजूर। (भागीरथ वि. म.प्र. राज्य) **(SC)…520**

Penal Code (45 of 1860), Sections 302/149, 304 (Part II) & Exceptions to Section 300 – Ingredients **– Held – No quarrel taken place between appellants and victims – Merely because electricity was disrupted in village for which victims were not responsible, appellants assaulted and killed one of them – Appellants acted in cruel and unusual manner – Attack on vital parts of body by use of tangi is sufficient to infer that he had knowledge that any such injury would cause death – Exceptions to Section 300 IPC not attracted, thus appellant cannot be convicted u/S 304 Part II IPC. [Manbodh Singh Vs. State of M.P.] (DB)…637**

दण्ड संहिता (1860 का 45), धाराएँ 302/149, 304 (भाग II) व धारा 300 के अपवाद – घटक – अभिनिर्धारित – अपीलार्थीगण एवं पीड़ितों के मध्य कोई झगड़ा नहीं हुआ – मात्र इसलिए कि गांव में विद्युत बाधित की गई थी जिसके लिए पीड़ितगण जिम्मेदार नहीं थे, अपीलार्थीगण ने हमला किया और उनमें से एक की हत्या कर दी –

अपीलार्थीगण ने क्रूर एवं असामान्य ढंग से कृत्य किया – टांगी के प्रयोग द्वारा शरीर के कोमल अंगों पर हमला यह निष्कर्षित करने के लिए पर्याप्त है कि उसे इस बात का ज्ञान था कि ऐसी कोई चोट मृत्यु कारित करेगी – धारा 300 भा.दं.सं. के अपवाद आकर्षित नहीं होते, अतः अपीलार्थी को धारा 304 भाग II भा.दं.सं. के अंतर्गत दोषसिद्ध नहीं किया जा सकता। (मनबोध सिंह वि. म.प्र. राज्य) **(DB)…637**

***Penal Code (45 of 1860), Sections 302/149, 323/149 & 148 – Appreciation of Evidence – Injured Eye Witnesses – Weapon of Offence* – Held – Statement of prosecution witnesses, particularly injured eye witnesses are trustworthy – Minor contradictions about use of a particular weapon by appellants will not cause any dent on credibility of their statements – Individual conduct of each of the appellants in relation to use of a particular weapon is immaterial – Appellants being member of unlawful assembly acted with common object cannot wriggle out of the clutches of vicarious liability enshrined in Section 149 IPC – Appellants rightly convicted – Appeal dismissed. [Manbodh Singh Vs. State of M.P.] (DB)…637**

दण्ड संहिता (1860 का 45), धाराएँ 302/149, 323/149 व 148 – साक्ष्य का मूल्यांकन – आहत चक्षुदर्शी साक्षीगण – अपराध का शस्त्र – अभिनिर्धारित – अभियोजन साक्षीगण, विशिष्ट रूप से आहत चक्षुदर्शी साक्षीगण के कथन विश्वसनीय हैं – अपीलार्थीगण द्वारा किसी विशिष्ट शस्त्र के उपयोग के बारे में गौण विरोधाभासों से उनके कथनों की विश्वसनीयता पर कोई खरोंच कारित नहीं होगी – विशिष्ट शस्त्र के उपयोग के संबंध में अपीलार्थीगण में से प्रत्येक का व्यक्तिगत आचरण महत्वहीन है – अपीलार्थीगण ने विधिविरूद्ध जमाव के सदस्य होने के नाते सामान्य उद्देश्य के साथ कृत्य किया, धारा 149 भा.दं.सं. में प्रतिष्ठापित प्रतिनिधिक दायित्व के चंगुल से बच नहीं सकते – अपीलार्थीगण उचित रूप से दोषसिद्ध – अपील खारिज। (मनबोध सिंह वि. म.प्र. राज्य) **(DB)…637**

***Penal Code (45 of 1860), Section 302 & 304 (Part I) – Injury – Intention* – Held – Deceased suffered single gun shot injury and entry wound was back of his left thigh which shows that shot was fired from his back side – No blackening, charring on exit wound but was present on entry wound which shows that shot was fired within range of 6-8 feet – It can be inferred that there was no intention of murder, if it had been so, injury could have been caused on upper limb, above waist of deceased – High Court rightly converted the conviction from Section 302 to one u/S 304 (Part I) IPC – Appeal dismissed. [State of M.P. Vs. Gangabishan @ Vishnu] (SC)…4**

दण्ड संहिता (1860 का 45), धारा 302 व 304 (भाग I) – चोट – आशय – अभिनिर्धारित – मृतक ने बंदूक की गोली की एकल चोट सहन की और प्रवेषण घाव उसकी बांयी जांघ के पीछे की ओर था जो दर्शाता है कि गोली उसके पीछे की ओर से चलायी गई थी – निर्गमन घाव पर कालापन, झुलसन नहीं परंतु प्रवेषण घाव पर उपस्थित थी जो दर्शाती है कि गोली, 6–8 फीट की दूरी से चलायी गई थी – यह निष्कर्षित किया जा सकता है कि हत्या का आशय नहीं था, यदि ऐसा होता, चोट, मृतक की कमर के ऊपर,

ऊपरी अवयव पर कारित की जा सकती थी – उच्च न्यायालय ने धारा 302 भा.दं.सं. के अंतर्गत दोषसिद्धि को उचित रूप से परिवर्तित कर धारा 304 (भाग I) भा.दं.सं. के अंतर्गत किया – अपील खारिज। (म.प्र. राज्य वि. गंगाविशन उर्फ विष्णु) (SC)...4

Penal Code (45 of 1860), Sections 302, 323 & 325 r/w 34 – Appreciation of Evidence – Interested Eye witnesses **– Held – Presence of eye witnesses is clearly established in their statements, appellants failed to rebut their testimony which was quite natural and without any material contradictions and omissions – Conviction can be based on the testimony of close relatives/interested witnesses – Further, no material contradictions between testimony of eye witnesses and medical evidence – Appellants rightly convicted – Appeal dismissed. [Chauda Vs. State of M.P.] (DB)...471**

दण्ड संहिता (1860 का 45), धाराएँ 302, 323 व 325 सहपठित 34 – साक्ष्य का मूल्यांकन – हितबद्ध चक्षुदर्शी साक्षीगण – अभिनिर्धारित – चक्षुदर्शी साक्षीगण की उपस्थिति उनके कथनों में स्पष्ट रूप से स्थापित होती है, अपीलार्थीगण उनके परिसाक्ष्य का खंडन करने में विफल रहे, जो कि काफी स्वाभाविक तथा किसी तात्विक विरोधाभासों और लोपों के बिना था – दोषसिद्धि, निकट रिश्तेदारों/हितबद्ध साक्षीगण के परिसाक्ष्य पर आधारित की जा सकती है – इसके अतिरिक्त, चक्षुदर्शी साक्षीगण के परिसाक्ष्य तथा चिकित्सीय साक्ष्य के मध्य कोई तात्विक विरोधाभास नहीं हैं – अपीलार्थीगण को उचित रूप से दोषसिद्ध किया गया – अपील खारिज। (चौदा वि. म.प्र. राज्य) (DB)...471

Penal Code (45 of 1860), Section 304-B & 498-A, Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 and Dowry Prohibition Act, (28 of 1961), Section 3 & 4 – Revision Against Charge **– Held – Applicant, brother-in-law (devar) of deceased staying in different State, pursuing his education and profession and was away from deceased, his brother and his parents – His participation in the alleged offence seems extremely improbable – Applicant was roped in to wreck vengeance on entire family – Even otherwise, allegations against applicant are so generalized, omnibus and flippant which do not constitute prima facie case against him – Applicant discharged – Revision allowed. [Utkarsh Saxena Vs. State of M.P.] ...653**

दण्ड संहिता (1860 का 45), धारा 304–बी व 498–ए, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 एवं दहेज प्रतिषेध अधिनियम, (1961 का 28), धारा 3 व 4 – आरोप के विरूद्ध पुनरीक्षण – अभिनिर्धारित – आवेदक, जो कि मृतिका का देवर है, अपनी शिक्षा पूरी करने तथा व्यवसाय के लिए भिन्न राज्य में रह रहा था तथा मृतिका, अपने भाई और अपने माता–पिता से दूर था – अभिकथित अपराध में उसकी सहभागिता अत्यंत अनधिसंभाव्य प्रतीत होती है – संपूर्ण परिवार से बदला लेने के लिए आवेदक को फंसाया गया था – अन्यथा भी, आवेदक के विरूद्ध अभिकथन इतने सामान्यीकृत, बहुप्रयोजनीय तथा तुच्छ हैं जो कि उसके विरूद्ध प्रथम दृष्ट्या प्रकरण गठित नहीं करते – आवेदक आरोपमुक्त – पुनरीक्षण मंजूर। (उत्कर्ष सक्सेना वि. म.प्र. राज्य) ...653

INDEX

Penal Code (45 of 1860), Section 304-B & 498-A – See – Criminal Procedure Code, 1973, Section 378(3) **[State of M.P. Vs. Mukesh Kewat] (DB)…489**

दण्ड संहिता (1860 का 45), धारा 304–बी व 498–ए – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 378(3) (म.प्र. राज्य वि. मुकेश केवट) **(DB)…489**

***Penal Code (45 of 1860), Section 304-B & 498-A and Evidence Act (1 of 1872), Section 113-B – Presumption* – Held – Prosecution failed to prove essential ingredients of Section 304-B and 498-A IPC, hence no presumption can be drawn against accused persons u/S 113-B of Evidence Act. [State of M.P. Vs. Mukesh Kewat] (DB)…489**

दण्ड संहिता (1860 का 45), धारा 304–बी व 498–ए एवं साक्ष्य अधिनियम (1872 का 1), धारा 113–बी – उपधारणा – अभिनिर्धारित – अभियोजन, धारा 304–बी व 498–ए भा.दं.सं. के आवश्यक घटकों को साबित करने में असफल रहा, अतः अभियुक्तगण के विरूद्ध साक्ष्य अधिनियम की धारा 113–बी के अंतर्गत कोई उपधारणा नहीं की जा सकती। (म.प्र. राज्य वि. मुकेश केवट) **(DB)…489**

***Penal Code (45 of 1860), Section 306 – Ingredients* – Held – Facts and circumstances do not suggest mental preparedness of applicants with intention to instigate, provoke, incite or encourage to commit suicide – Suicide note left by deceased also does not implicates the applicants at all. [Manorama Bai (Smt.) Vs. State of M.P.] …674**

दण्ड संहिता (1860 का 45), धारा 306 – घटक – अभिनिर्धारित – तथ्य और परिस्थितियां आत्महत्या कारित करने के लिए आवेदकगण द्वारा उकसाने, प्रकोपित करने, उद्दीप्त करने अथवा बढ़ावा देने की मानसिक तैयारी नहीं सुझाते हैं – मृतिका द्वारा छोड़ा गया आत्महत्या लेख आवेदकगण को बिल्कुल भी आलिप्त नहीं करता है। (मनोरमा बाई (श्रीमती) वि. म.प्र. राज्य) **…674**

***Penal Code (45 of 1860), Section 327/34 & 323/34 and Limitation Act (36 of 1963), Section 5 – Appeal – Condonation of Delay* – Held – Delay of 5 yrs. and five months in filing appeal against conviction – In absence of sufficient cause for such default, specifically when applicant was not in jail, Trial Court rightly dismissed the application for condonation of delay – But, as co-accused has been acquitted by Appellate Court by raising doubt on the very basic allegation made against accused persons including present applicant, Court should have allowed the application u/S 5 of the Act of 1963 on this ground – Delay condoned – Matter remanded back for consideration on merits. [Aatamdas Vs. State of M.P.] …*1**

दण्ड संहिता (1860 का 45), धारा 327/34 व 323/34 एवं परिसीमा अधिनियम (1963 का 36), धारा 5 – अपील – विलंब के लिए माफी – अभिनिर्धारित – दोषसिद्धि के विरूद्ध अपील प्रस्तुत करने में 5 वर्ष और 5 माह का विलंब – उक्त व्यतिक्रम हेतु पर्याप्त

कारण की अनुपस्थिति में, विनिर्दिष्ट रूप से जब आवेदक जेल में नहीं था, विचारण न्यायालय ने विलंब के लिए माफी हेतु आवेदन को उचित रूप से खारिज किया – किंतु, चूंकि अपीली न्यायालय द्वारा अभियुक्तगण, जिसमें वर्तमान आवेदक शामिल है, के विरूद्ध किये गये मूल अभिकथन पर ही संदेह उठाते हुए सह–अभियुक्त को दोषमुक्त किया गया है, न्यायालय को इस आधार पर, 1963 के अधिनियम की धारा 5 के अंतर्गत आवेदन मंजूर करना चाहिए था – विलंब माफ किया गया – गुणदोषों पर विचार किये जाने हेतु मामला प्रतिप्रेषित। (आतमदास वि म.प्र. राज्य) **...*1**

Penal Code (45 of 1860), Sections 354, 452 & 506 – See – Criminal Procedure Code, 1973, Section 482 **[Somdatt Mishra Vs. State of M.P.] ...477**

दण्ड संहिता (1860 का 45), धाराएँ 354, 452 व 506 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (सोमदत्त मिश्रा वि. म.प्र. राज्य) **...477**

Penal Code (45 of 1860), Section 354-A – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(w)(i) **[Atendra Singh Rawat Vs. State of M.P.] ...168**

दण्ड संहिता (1860 का 45), धारा 354–ए – देखें – अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम, 1989, धारा 3(1)(डब्ल्यू)(i) (अतेन्द्र सिंह रावत वि. म.प्र. राज्य) **...168**

Penal Code (45 of 1860), Sections 363, 366, 376 & 506(2) – Rape – Medical Evidence – Appreciation of Evidence **– Held – As per medical evidence, no injury on private parts and no definite opinion regarding rape – Prosecutrix was earlier engaged with appellant No. 1 – Previous enmity between appellant No. 1 and father of prosecutrix – It can be inferred by Ossification test report that prosecutrix was more than 16 yrs. of age – Prosecutrix never disclosed the incident to her relatives – It is very much probable that prosecutrix was a consenting party – No cogent evidence against appellant No. 2 for abduction – False implication is probable – No offence of rape and abduction made out – Conviction and sentence set aside – Appeal allowed. [Bhagwan Vs. State of M.P.] (DB)...184**

दण्ड संहिता (1860 का 45), धाराएँ 363, 366, 376 व 506(2) – बलात्संग – चिकित्सीय साक्ष्य – साक्ष्य का मूल्यांकन – अभिनिर्धारित – चिकित्सीय साक्ष्य के अनुसार गुप्तांगों पर कोई चोट नहीं तथा बलात्संग संबंधी कोई निश्चित राय नहीं – अभियोक्त्री की पूर्व में अपीलार्थी क्र. 1 से सगाई हुई थी – अपीलार्थी क्र. 1 एवं अभियोक्त्री के पिता के बीच पूर्वतर वैमनस्यता – अस्थि विकास परीक्षण प्रतिवेदन से निष्कर्षित किया जा सकता है कि अभियोक्त्री 16 वर्ष से अधिक आयु की थी – अभियोक्त्री ने कभी भी उसके रिश्तेदारों को घटना प्रकट नहीं की – यह अधिक संभाव्य है कि अभियोक्त्री सम्मत पक्षकार थी – अपहरण हेतु अपीलार्थी क्र. 2 के विरूद्ध कोई प्रबल साक्ष्य नहीं – मिथ्या आलिप्ति संभाव्य है – बलात्संग एवं अपहरण का कोई अपराध नहीं बनता – दोषसिद्धि एवं दण्डादेश अपास्त – अपील मंजूर। (भगवान वि. म.प्र. राज्य) **(DB)...184**

INDEX

Penal Code (45 of 1860), Sections 363, 366 & 376(2)(i) and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/4 – Medical & Chemical Examination – Delayed FIR – Explanation **– Held – After the incident prosecutrix remained in the night with her mother and father but did not disclose the incident – FIR lodged after more than 36 hours and delay was not properly explained by prosecution. [Shiva Salame Vs. State of M.P.] …*12**

दण्ड संहिता (1860 का 45), धाराएँ 363, 366 व 376(2)(i) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 3/4 – चिकित्सीय व रासायनिक परीक्षण – विलंबित प्रथम सूचना प्रतिवेदन – स्पष्टीकरण – अभिनिर्धारित – घटना के पश्चात् अभियोक्त्री रात्रि में अपनी माता तथा पिता के साथ रही परंतु घटना प्रकट नहीं की – प्रथम सूचना प्रतिवेदन, 36 घंटे से अधिक समय पश्चात् दर्ज किया गया तथा अभियोजन द्वारा विलंब को उचित रूप से स्पष्ट नहीं किया गया था। (शिवा सलामे वि. म.प्र. राज्य) **…*12**

Penal Code (45 of 1860), Sections 363, 366 & 376(2)(i) and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/4 – Medical & Chemical Examination – FSL Report **– Held – As per medical report, Doctor has found no injury either on the person of prosecutrix or on her private parts and there was no sign of any intercourse – Doctor opined that no definite opinion of rape can be given – Vaginal swab and undergarment sent for chemical examination but prosecution failed to produce FSL Report – No corroboration with medical evidence – Further, Lady doctor who examined prosecutrix was not examined before Court – Adverse inference has to be drawn – Conviction set aside – Appeal allowed. [Shiva Salame Vs. State of M.P.] …*12**

दण्ड संहिता (1860 का 45), धाराएँ 363, 366 व 376(2)(i) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 3/4 – चिकित्सीय व रासायनिक परीक्षण – एफ.एस.एल. प्रतिवेदन – अभिनिर्धारित – चिकित्सीय प्रतिवेदन के अनुसार, चिकित्सक को अभियोक्त्री के शरीर अथवा उसके गुप्तांगों पर कोई चोट नहीं मिली तथा किसी संभोग की कोई निशानी नहीं थी – चिकित्सक का मत था कि बलात्संग की कोई निश्चित राय नहीं दी जा सकती – वैजाइनल स्वैब तथा अंतर्वस्त्र रासायनिक परीक्षण हेतु भेजे गये परंतु अभियोजन एफ.एस.एल. प्रतिवेदन प्रस्तुत करने में विफल रहा – चिकित्सीय साक्ष्य से कोई संपुष्टि नहीं – इसके अतिरिक्त, महिला चिकित्सक जिसने अभियोक्त्री का परीक्षण किया, का न्यायालय के समक्ष परीक्षण नहीं किया गया था – प्रतिकूल निष्कर्ष निकालना होगा – दोषसिद्धि अपास्त – अपील मंजूर। (शिवा सलामे वि. म.प्र. राज्य)…*12

Penal Code (45 of 1860), Section 375 & 376 – Rape – Consent – Medical Evidence **– Held – As per doctor's evidence, hymen was torn and swelling present in vagina having redness suggesting sexual intercourse in the occurrence – Absence of external injury on person of prosecutrix does not**

conclude a consent on the part of prosecutrix – Evidence of prosecutrix is supported by medical evidence and evidence of prosecution witness who saw the accused running from the scene of occurrence – Offence made out – Appeal allowed. [State of M.P. Vs. Preetam] (SC)…241

दण्ड संहिता (1860 का 45), धारा 375 व 376 – बलात्संग – सहमति – चिकित्सीय साक्ष्य – अभिनिर्धारित – चिकित्सक के साक्ष्य के अनुसार, योनिच्छद फटा था और योनि पर लाली के साथ सूजन मौजूद थी जो प्रकटतः लैंगिक संभोग इंगित करता – अभियोक्त्री के शरीर पर बाह्य चोट की अनुपस्थिति, अभियोक्त्री की ओर से सहमति निष्कर्षित नहीं करती – अभियोक्त्री का साक्ष्य चिकित्सीय साक्ष्य तथा अभियोजन साक्षी जिसने अभियुक्त को घटना स्थल से भागते देखा था, के साक्ष्य द्वारा समर्थित है – अपराध बनता है – अपील मंजूर। (म.प्र. राज्य वि. प्रीतम) **(SC)…241**

***Penal Code (45 of 1860), Section 375 & 376 – Rape – Consent – Proof of Age* – Held – Prosecution got examined the Head Master of primary school where he stated the date of birth of prosecutrix according to which she was 12 yrs. of age at the time of occurrence – School certificate was also produced – School registers are authentic documents being maintained in official course entitled for credence of much weight unless proved otherwise – Victim being aged 12 yrs., her consent or otherwise was of no relevance to bring the offence within meaning of Section 375 IPC. [State of M.P. Vs. Preetam] (SC)…241**

दण्ड संहिता (1860 का 45), धारा 375 व 376 – बलात्संग – सहमति – आयु का सबूत – अभिनिर्धारित – अभियोजन ने प्राथमिक शाला के प्रधान अध्यापक का परीक्षण कराया जहां उसने अभियोक्त्री की जन्मतिथि का कथन किया जिसके अनुसार वह घटना के समय 12 वर्ष की आयु की थी – शाला प्रमाणपत्र भी प्रस्तुत किया गया था – शाला पंजी, शासकीय क्रम में संधारित अधिप्रमाणीकृत दस्तावेज है, अधिक महत्व के प्रत्यय हेतु हकदार है जब तक कि अन्यथा साबित नहीं किया जाता – पीड़िता 12 वर्ष आयु की होने के कारण, अपराध को धारा 375 भा.दं.सं. के अर्थान्तर्गत लाने के लिए उसकी सहमति या अन्यथा कोई सुसंगति नहीं रखती। (म.प्र. राज्य वि. प्रीतम) **(SC)…241**

***Penal Code (45 of 1860), Section 375 & 376 – Rape – Delay in FIR – Explanation* – Held – Incident is of 6th March when uncle of prosecutrix was not in village and on his return on 8th March, complaint was lodged – Medical examination of prosecutrix was done on 9th March and FIR was registered on 10th March – Delay properly explained which was not considered by the High Court. [State of M.P. Vs. Preetam] (SC)…241**

दण्ड संहिता (1860 का 45), धारा 375 व 376 – बलात्संग – प्रथम सूचना प्रतिवेदन में विलंब – स्पष्टीकरण – अभिनिर्धारित – घटना 6 मार्च की है जब अभियोक्त्री का चाचा गांव में नहीं था और 8 मार्च को उसकी वापसी पर, शिकायत दर्ज की गई थी – अभियोक्त्री का चिकित्सीय परीक्षण 9 मार्च को किया गया था तथा प्रथम सूचना प्रतिवेदन 10 मार्च को पंजीबद्ध किया गया था – विलंब उचित रूप से स्पष्ट किया जिस पर उच्च न्यायालय द्वारा विचार नहीं किया गया था। (म.प्र. राज्य वि. प्रीतम) **(SC)…241**

Penal Code (45 of 1860), Section 376 – Delay in FIR **– Held – Incident occurred on 11.07.2015 and FIR lodged on 13.07.2015 – Delay is quite long – No plausible explanation by prosecution. [Rajendra Singh Vs. State of M.P.] …*19**

दण्ड संहिता (1860 का 45), धारा 376 – प्रथम सूचना प्रतिवेदन में विलंब – अभिनिर्धारित – घटना 11.07.2015 को घटी और प्रथम सूचना प्रतिवेदन 13.07.2015 को दर्ज किया गया – विलंब काफी लंबा है – अभियोजन द्वारा कोई स्वीकार्य स्पष्टीकरण नहीं। (राजेन्द्र सिंह वि. म.प्र. राज्य) …*19

Penal Code (45 of 1860), Section 376 – Medical Evidence – DNA Test – Authenticity **– Held – As per DNA report, although DNA profile of male was found on petticoat but it was not of petitioners – Prosecutrix, a 45 yrs. old married woman, it is possible that male DNA may be of her husband – Further, no male DNA detected in vaginal slide – In case of rape, DNA report is most important piece of evidence – No injury found – False implication of accused cannot be ruled out – DNA Report is supported by Medical Evidence – Charge framed against petitioners quashed – Revision allowed. [Rajendra Singh Vs. State of M.P.] …*19**

दण्ड संहिता (1860 का 45), धारा 376 – चिकित्सीय साक्ष्य – डीएनए परीक्षण – अधिप्रमाणिकता – अभिनिर्धारित – डीएनए प्रतिवेदन के अनुसार, यद्यपि पुरूष का डीएनए प्रोफाईल पेटीकोट पर पाया गया था किंतु वह याचीगण का नहीं था – अभियोक्त्री एक 45 वर्षीय विवाहित महिला, संभव है कि पुरूष डीएनए उसके पति का हो सकता है – इसके अतिरिक्त, वैजाईनल स्लाईड में किसी पुरूष डीएनए का पता नहीं चला – बलात्संग के प्रकरण में, डीएनए प्रतिवेदन साक्ष्य का सबसे महत्वपूर्ण भाग है – कोई चोट नहीं पायी गई – अभियुक्त की मिथ्या आलिप्ति से इंकार नहीं किया जा सकता – डीएनए प्रतिवेदन, चिकित्सीय साक्ष्य द्वारा समर्थित है –याचीगण के विरूद्ध विरचित आरोप अभिखंडित किया गया – पुनरीक्षण मंजूर। (राजेन्द्र सिंह वि. म.प्र. राज्य) …*19

Penal Code (45 of 1860), Section 376 – Rape – Age of Victim – Birth Certificate **– Held – Birth certificate issued by Station House Officer – There is no mention whether he is entitled to issue such certificate – No explanation for not producing birth register though available with police – Such certificate cannot be relied – Age determined by ossification test is more probable and reasonable. [Bhagwan Vs. State of M.P.] (DB)…184**

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – पीड़िता की उम्र – जन्म प्रमाणपत्र – अभिनिर्धारित – थाना प्रभारी द्वारा जन्म प्रमाणपत्र जारी किया गया – कहीं कोई उल्लेख नहीं कि वह उक्त प्रमाणपत्र जारी करने के लिए हकदार है – जन्म पंजी, प्रस्तुत न किये जाने हेतु कोई स्पष्टीकरण नहीं यद्यपि पुलिस के पास उपलब्ध थी – उक्त प्रमाणपत्र पर विश्वास नहीं किया जा सकता – अस्थि विकास परीक्षण द्वारा अवधारित आयु अधिक संभाव्य एवं युक्तियुक्त है। (भगवान वि. म.प्र. राज्य) (DB)…184

Penal Code (45 of 1860), Section 376 – Rape – Delay in FIR – Appreciation of Evidence – **Held – FIR lodged after almost 30 hours of the incident and medical examination done thereafter – There was a considerable delay in FIR which has not been explained by the prosecution – Further, one Ranjit Singh who allegedly accompanied the accused was not examined – Statement of prosecutrix do not inspire confidence. [Lal Singh Vs. State of M.P.] …203**

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – प्रथम सूचना प्रतिवेदन में विलंब – साक्ष्य का मूल्यांकन – अभिनिर्धारित – घटना से लगभग 30 घंटों पश्चात् प्रथम सूचना प्रतिवेदन दर्ज किया गया और तत्पश्चात् चिकित्सीय परीक्षण किया गया – प्रथम सूचना प्रतिवेदन में पर्याप्त विलंब हुआ था जिसे अभियोजन द्वारा स्पष्ट नहीं किया गया है – इसके अतिरिक्त, एक व्यक्ति, रंजीत सिंह, जो अभिकथित रूप से अभियुक्त के साथ था, का परीक्षण नहीं किया गया – अभियोक्त्री का कथन विश्वास उत्पन्न नहीं करता। (लाल सिंह वि. म.प्र. राज्य) …203

Penal Code (45 of 1860), Section 376 – Rape – FSL Report – Significance – **Held – FSL report is insignificant as FIR was lodged and prosecutrix was examined after nearabout 5 days of incident – Prosecutrix is a married lady and presence of semen and spermatozoa on her petticoat or vaginal swab can be found otherwise the incident – Further, no question was asked to appellant regarding FSL report during his examination u/S 313 Cr.P.C. – FSL report cannot be taken into consideration. [Badri Vs. State of M.P.] …196**

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन – महत्व – अभिनिर्धारित – न्यायालयिक विज्ञान प्रयोगशाला का प्रतिवेदन महत्वहीन है क्योंकि घटना के करीब 5 दिन पश्चात् प्रथम सूचना प्रतिवेदन दर्ज किया गया तथा अभियोक्त्री का परीक्षण किया गया था – अभियोक्त्री एक विवाहित महिला है और उसके पेटीकोट या वैजाईनल स्वैब में वीर्य एवं शुक्राणु की उपस्थिति, घटना के अन्यथा भी पायी जा सकती है – इसके अतिरिक्त, अपीलार्थी से धारा 313 दं.प्र.सं. के अंतर्गत उसके परीक्षण के दौरान न्यायालयिक विज्ञान प्रयोगशाला के प्रतिवेदन के संबंध में कोई प्रश्न नहीं पूछा गया था – न्यायालयिक विज्ञान प्रयोगशाला का प्रतिवेदन विचार में नहीं लिया जा सकता। (बद्री वि. म.प्र. राज्य) …196

Penal Code (45 of 1860), Section 376 – Rape – Medical Examination – Credibility – **Held – Prosecutrix, an adult married woman – FIR was lodged on the next day of incident and thereafter she was medically examined – In absence of explanation of her stay in the night of the date of incident, as she was a married woman, presence of semen on vaginal swab and on undergarments loses its significance – Further, as per her statement she was thrown on rough surface, does not get any corroboration from medical evidence – No external injury found on her person – Conviction not sustainable – Appeal allowed. [Lal Singh Vs. State of M.P.] …203**

INDEX

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – चिकित्सीय परीक्षण – विश्वसनीयता – अभिनिर्धारित – अभियोक्त्री एक वयस्क विवाहित महिला – घटना के अगले दिन प्रथम सूचना प्रतिवेदन दर्ज किया गया और तत्पश्चात् उसका चिकित्सीय परीक्षण किया गया – चूंकि वह एक विवाहित महिला थी, घटना की तिथि की रात में उसके रूकने के स्पष्टीकरण की अनुपस्थिति में, वैजाईनल स्वैब एवं अंतर्वस्त्रों पर वीर्य की उपस्थिति अपना महत्व खो देती है – इसके अतिरिक्त, उसके कथन के अनुसार उसे खुरदरी सतह पर फेंका गया था, इसे चिकित्सीय साक्ष्य से कोई संपुष्टि नहीं मिलती – उसके शरीर पर कोई बाह्य चोट नहीं पायी गई – दोषसिद्धि कायम रखने योग्य नहीं – अपील मंजूर। (लाल सिंह वि. म.प्र. राज्य) **…203**

Penal Code (45 of 1860), Section 376 – Rape – Testimony of Prosecutrix – Credibility – Medical Evidence **– Held – As per medical evidence, no sign of sexual intercourse found – Prosecutrix, during or after incident she did not make any hue and cry or made any effort to call attention of persons, working nearby the field – After returning home, she has not even narrated the incident to her in-laws – Husband and mother-in-law not examined and there is no explanation thereof – Contradictions and omissions in FIR and her deposition – Independent witness simply deposed that there was a quarrel with accused – Infirmity in statement of prosecutrix – Prosecution has not established the case beyond reasonable doubt – Conduct of prosecutrix reflects that she exaggerated the story to give natural shape to incident – Reasonable possibility of false implication cannot be ruled out – Conviction set aside – Appeal allowed. [Badri Vs. State of M.P.]** **…196**

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – अभियोक्त्री का परिसाक्ष्य – विश्वसनीयता – चिकित्सीय साक्ष्य – अभिनिर्धारित – चिकित्सीय साक्ष्य के अनुसार लैंगिक संभोग का कोई चिन्ह नहीं पाया गया – अभियोक्त्री ने, घटना के दौरान अथवा पश्चात् कोई कोलाहल नहीं मचाया या नजदीकी खेत में काम कर रहे व्यक्तियों का ध्यान आकर्षित करने के लिए कोई प्रयास नहीं किया – घर लौटने के पश्चात्, उसने उसके ससुरालवालों को भी घटना नहीं बतायी – पति एवं सास का परीक्षण नहीं किया गया और इसका कोई स्पष्टीकरण नहीं है – प्रथम सूचना प्रतिवेदन एवं उसके अभिसाक्ष्य में विरोधाभास और लोप है – स्वतंत्र साक्षी ने केवल यह अभिकथन किया कि अभियुक्त के साथ झगड़ा हुआ था – अभियोक्त्री के कथन में कमी है – अभियोजन ने प्रकरण को युक्तियुक्त संदेह से परे स्थापित नहीं किया है – अभियोक्त्री का आचरण दर्शाता है कि उसने घटना को नैसर्गिक स्वरूप देने के लिए कहानी को अतिरंजित किया है – मिथ्या आलिप्ति की युक्तियुक्त संभावना से इंकार नहीं किया जा सकता – दोषसिद्धि अपास्त – अपील मंजूर। (बद्री वि. म. प्र. राज्य) **…196**

Penal Code (45 of 1860), Section 376 – Rape – Testimony of Prosecutrix – Medical Evidence – Injury **– Held – Apex Court concluded that guilt in rape case can be based on uncorroborated evidence of prosecutrix – Her testimony should not be rejected on basis of minor discrepancies and contradictions – Further, absence of injuries on private parts of victim will**

not by itself falsify the offence nor can be construed as evidence of consent – False charges of rape are also not uncommon where parent persuade the obedient daughter to make false charges either to take revenge or extort money or to get rid of financial liability, thus whether there was rape or not would depend ultimately upon facts and circumstances of each case. [Bhagwan Vs. State of M.P.] (DB)…184

दण्ड संहिता (1860 का 45), धारा 376 – बलात्संग – अभियोक्त्री का परिसाक्ष्य – चिकित्सीय साक्ष्य – चोट – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि बलात्संग के प्रकरण में, दोषिता, अभियोक्त्री के असंपुष्ट साक्ष्य पर आधारित की जा सकती है – उसके परिसाक्ष्य को गौण असंगतियों एवं विरोधाभासों के आधार पर अस्वीकार नहीं किया जाना चाहिए – इसके अतिरिक्त, पीड़िता के गुप्तांगों पर चोटों की अनुपस्थिति से अपराध का स्वयंमेव मिथ्याकरण नहीं होगा, न ही सम्मति के साक्ष्य के रूप में अर्थान्वयन किया जा सकता है – बलात्संग के मिथ्या आरोप भी असामान्य नहीं जहां माता–पिता, या तो बदला लेने या रकम उद्धापित करने या वित्तीय दायित्व से छुटकारा पाने के लिए उनकी आज्ञाकारी पुत्री को मिथ्या आरोप लगाने के लिए प्रेरित करते हैं, अतः बलात्संग था अथवा नहीं, यह प्रत्येक प्रकरण के तथ्यों एवं परिस्थितियों पर अंतिम रूप से निर्भर होगा। (भगवान वि. म.प्र. राज्य) **(DB)…184**

Penal Code (45 of 1860), Section 376 & 306 – Appeal against Acquittal – Child Witness – Credibility – Appreciation of Evidence **– Held – Sister of deceased aged 12 yrs. stated in cross-examination, she was threatened by police and thus at the instance of police, she made a statement in favour of prosecution case – Difficult to rely on uncorroborated testimony of a 12 yrs. old girl who is likely to have been tutored or under influence while giving her testimony – No other material or medical evidence to substantiate prosecution case – Accused rightly acquitted. [State of M.P. Vs. Rajaram @ Raja] (SC)…523**

दण्ड संहिता (1860 का 45), धारा 376 व 306 – दोषमुक्ति के विरूद्ध अपील – बालक साक्षी – विश्वसनीयता – साक्ष्य का मूल्यांकन – अभिनिर्धारित – मृतिका की 12 वर्षीय बहन ने प्रतिपरीक्षण में कथन किया कि उसे पुलिस द्वारा धमकाया गया था और इसलिए पुलिस के कहने पर उसने अभियोजन प्रकरण के पक्ष में कथन किया – 12 वर्षीय बालिका, जिसे संभावित रूप से सिखाया गया था जो अपना परिसाक्ष्य देते समय असम्यक् प्रभाव के अधीन थी, के असंपुष्ट परिसाक्ष्य पर विश्वास करना कठिन है – अभियोजन प्रकरण को सिद्ध करने हेतु कोई अन्य सामग्री अथवा चिकित्सीय साक्ष्य नहीं – अभियुक्त को उचित रूप से दोषमुक्त किया गया। (म.प्र. राज्य वि. राजाराम उर्फ राजा) **(SC)…523**

Penal Code (45 of 1860), Section 376 & 306 – Merg Intimation **– Held – Father of deceased, who lodged *merg* intimation stated that he scolded his daughter and thus she took poisonous substance – In *merg* intimation, there is no mention that deceased told her father of any rape committed by accused as a result of which she committed suicide due to depression or self-torment. [State of M.P. Vs. Rajaram @ Raja] (SC)…523**

INDEX

दण्ड संहिता (1860 का 45), धारा 376 व 306 – मर्ग सूचना – अभिनिर्धारित – मृतिका के पिता, जिसने मर्ग सूचना दर्ज कराई थी, का कथन है कि उसने उसकी पुत्री को डांटा था और इसलिए उसने विषैला पदार्थ खा लिया – मर्ग सूचना में, यह कहीं उल्लिखित नहीं कि मृतिका ने उसके पिता को अभियुक्त द्वारा कारित किसी बलात्संग के बारे में बताया था जिसके परिणामस्वरूप, अवसाद या आत्म–पीड़ा के कारण उसने आत्महत्या कारित की। (म.प्र. राज्य वि. राजाराम उर्फ राजा) **(SC)…523**

***Penal Code (45 of 1860), Section 419 & 420, Recognised Examination Act, M.P. (10 of 1937), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Charge Sheet* – Admission in MBBS course – Investigation revealed that applicant appeared in PMT 2008 impersonating a candidate Manoj Kumar Dubey – Expert opinion proves applicant's handwritings similar to writings in answer sheets of Manoj – Photographs available on student details of VYAPAM is similar to photograph of applicant, which shows that he committed offence of impersonation and conspiracy – No ground for interference against Charge Sheet u/S 482 Cr.P.C. – Application dismissed. [Nandlal Gupta Vs. Union of India] (DB)…700**

दण्ड संहिता (1860 का 45), धारा 419 व 420, मान्यताप्राप्त परीक्षा अधिनियम, म. प्र. (1937 का 10), धारा 3 व 4 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – आरोप पत्र अभिखंडित किया जाना – एम.बी.बी.एस. पाठ्यक्रम में प्रवेश – अन्वेषण से यह प्रकट हुआ है कि आवेदक, एक अभ्यर्थी मनोज कुमार दुबे का प्रतिरूपण कर, वर्ष 2008 की पी.एम.टी. में सम्मिलित हुआ था – विशेषज्ञ की राय यह साबित करती है कि आवेदक की लिखावट मनोज की उत्तर पुस्तिकाओं में लिखावट के समान है – व्यापम के छात्र विवरण में उपलब्ध फोटोचित्र आवेदक के फोटोचित्र के समान है, जो यह दर्शाता है कि उसने प्रतिरूपण और षड्यंत्र का अपराध कारित किया – दं.प्र.सं. की धारा 482 के अंतर्गत आरोप–पत्र के विरूद्ध हस्तक्षेप के लिए कोई आधार नहीं – आवेदन खारिज। (नन्दलाल गुप्ता वि. यूनियन ऑफ इण्डिया) **(DB)…700**

***Penal Code (45 of 1860), Sections 420, 467, 409 & 120-B and Companies Act (18 of 2013), Sections 439(1),(2), 436(1),(2), 441, 442, 435 & 445 – Applicability of Code* – Held – There is no provision in Companies Act which ousts the applicability of the provisions of Indian Penal Code. [Manoj Shrivastava Vs. State of M.P.] …207**

दण्ड संहिता (1860 का 45), धाराएँ 420, 467, 409 व 120–बी एवं कम्पनी अधिनियम (2013 का 18), धाराएँ 439(1),(2), 436(1),(2), 441, 442, 435 व 445 – संहिता की प्रयोज्यता – अभिनिर्धारित – कंपनी अधिनियम में ऐसा कोई उपबंध नहीं जो भारतीय दण्ड संहिता के उपबंधों की प्रयोज्यता को बाहर करता हो। (मनोज श्रीवास्तव वि. म.प्र. राज्य) **…207**

***Penal Code (45 of 1860), Sections 420, 467, 468, 471 & 120-B – See – Criminal Procedure Code, 1973, Section 482* [Jai Prakash Sharma Vs. State of M.P.] …223**

दण्ड संहिता (1860 का 45), धाराएँ 420, 467, 468, 471 व 120–बी – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (जय प्रकाश शर्मा वि. म.प्र. राज्य) **...223**

Penal Code (45 of 1860), Sections 498-A, 304-B & 34 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR & Criminal Proceedings **– Held – Wife committed suicide after 7 yrs. of marriage – Statements of brother-in-law and real brother of deceased do not specify any specific instances except for bald statement against entire family of husband including 87 yrs. old grandmother – In suicide note, there is no whisper of any kind of cruelty nor any kind of demand of dowry by applicants – Statements recorded after 4 months of incident, also do not establish prima facie commission of offence – FIR and criminal proceedings quashed – Application allowed. [Manorama Bai (Smt.) Vs. State of M.P.] ...674**

दण्ड संहिता (1860 का 45), धाराएँ 498–ए, 304–बी व 34 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन व दाण्डिक कार्यवाहियाँ अभिखंडित की जाना – अभिनिर्धारित – विवाह के सात वर्ष के पश्चात् पत्नी ने आत्महत्या कारित की – मृतिका के जीजा एवं सगे भाई के कथन उसके पति की 87 वर्षीय दादी सहित पूरे परिवार के विरूद्ध कोरे कथन के अलावा कोई विनिर्दिष्ट घटना का उल्लेख नहीं करते हैं – आत्महत्या लेख में, आवेदकगण द्वारा न तो किसी प्रकार की क्रूरता तथा न ही किसी प्रकार के दहेज की मांग करने का उल्लेख है – घटना के 4 माह के पश्चात् अभिलिखित किये गये कथन भी प्रथम दृष्ट्या अपराध का कारित किया जाना स्थापित नहीं करते हैं – प्रथम सूचना प्रतिवेदन तथा दाण्डिक कार्यवाहियाँ अभिखंडित – आवेदन मंजूर। (मनोरमा बाई (श्रीमती) वि. म.प्र. राज्य) **...674**

Penal Code (45 of 1860), Sections 498-A, 376, 506(B) & 34 – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Section 12 **[Miss A Vs. State of M.P.] ...662**

दण्ड संहिता (1860 का 45), धाराएँ 498–ए, 376, 506(बी) व 34 – देखें – किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015, धारा 12 (मिस ए वि. म.प्र. राज्य) **...662**

Plea of Alibi **– Held – Presence of accused not challenged during cross-examination of main eye witnesses and it is only after concluding prosecution evidence, the plea of alibi was taken which makes it clear that it is an afterthought and thus not believable. [Chauda Vs. State of M.P.] (DB)...471**

अन्यत्र उपस्थित होने का अभिवाक् – अभिनिर्धारित – अभियुक्त की उपस्थिति को मुख्य चक्षुदर्शी साक्षीगण के प्रति परीक्षण के दौरान चुनौती नहीं दी गई तथा यह केवल अभियोजन साक्ष्य के समाप्त हो जाने के पश्चात्, अन्यत्र उपस्थित होने का अभिवाक् लिया गया था जो यह स्पष्ट करता है कि यह एक पश्चात् कल्पना है और इसलिए विश्वास करने योग्य नहीं है। (चौदा वि. म.प्र. राज्य) **(DB)...471**

INDEX

Practice – Order/Judgment of Court – Principle of Reasoning **– Held – Division Bench of High Court dismissed the writ petition cursorily without dealing with any of the issues arising in the case as also the arguments urged by parties – The only expression used by Court while disposing the case was "on due consideration" and it is not clear as to what was that due consideration – Courts need to pass reasoned order – It causes prejudice to parties and deprive them to know the reasons as to why one party has won and other has lost – Matter remanded back to High Court for decision afresh – Appeal allowed. [Central Board of Trustees Vs. M/s. Indore Composite Pvt. Ltd.] (SC)…1**

पद्धति – न्यायालय का आदेश/निर्णय – तर्कपूर्णता का सिद्धांत – अभिनिर्धारित – उच्च न्यायालय की खंड न्यायपीठ ने प्रकरण में उत्पन्न हुए किसी विवाद्य का एवं पक्षकारों द्वारा बताये गये तर्कों का भी निपटारा किये बिना सरसरी रूप से रिट याचिका खारिज की – प्रकरण निराकृत करते समय न्यायालय द्वारा केवल ''सम्यक् विचारोपरांत'' अभिव्यक्ति का प्रयोग किया गया और यह स्पष्ट नहीं कि वह सम्यक् विचार में लिया जाना क्या था – न्यायालयों को सकारण आदेश पारित करना आवश्यक है – यह पक्षकारों को प्रतिकूल प्रभाव कारित करता है तथा उन्हें उन कारणों के ज्ञान से वंचित करता है कि क्यों एक पक्षकार जीता है दूसरा हारा है – उच्च न्यायालय को नये सिरे से विनिश्चय करने हेतु मामला प्रतिप्रेषित – अपील मंजूर। (सेन्ट्रल बोर्ड ऑफ ट्रस्टी वि. मे. इंदौर कम्पोजिट प्रा. लि.) (SC)…1

Prakostha Swamitva Adhiniyam, M.P., 2000 (15 of 2001), Sections 2, 3(b), 3(i) & 4(2) – Term "Land", "Building" & "Apartment" **– Held – "Apartment" is a part of "building" and not the building itself – Section 2 of Adhiniyam is applicable to "every apartment" in any "building" constructed by promoter and not the land or building itself – Adhiniyam of 2000 intends to recognize the right of ownership on an apartment and not on any land or building – In present case, individual lease for apartment/s was permissible, lease of entire land or building is not at all envisaged. [Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.] (DB)…16**

प्रकोष्ठ स्वामित्व अधिनियम, म.प्र., 2000 (2001 का 15), धाराएँ 2, 3(बी), 3(i) व 4(2) – शब्द ''भूमि'', ''भवन'' व ''प्रकोष्ठ'' – अभिनिर्धारित – ''प्रकोष्ठ'', ''भवन'' का एक भाग है, न कि स्वयं भवन – अधिनियम की धारा 2 संप्रवर्तक द्वारा निर्मित किसी भी ''भवन'' में ''हर प्रकोष्ठ'' के लिए प्रयोज्य है तथा न कि स्वयं भूमि अथवा भवन हेतु – सन् 2000 का अधिनियम एक प्रकोष्ठ पर स्वामित्व के अधिकार को मान्यता प्रदान करने का आशय रखता है तथा किसी भूमि अथवा भवन पर नहीं – वर्तमान प्रकरण में, प्रकोष्ठ/प्रकोष्ठों के लिए व्यक्तिगत पट्टा अनुज्ञेय था, संपूर्ण भूमि अथवा भवन का पट्टा बिल्कुल भी परिकल्पित नहीं है। (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) (DB)…16

Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d) & 13(2) – Illegal Gratification – Demand – Appreciation of Evidence **– Held –**

Appellant before the incident, vide letter to his seniors expressed apprehension that he might be trapped in a false case by complainant – FIR lodged not by society but by complainant in personal capacity, even bribe amount was also raised from personal resources – Trap was organized in unseemly haste within an hour and half – Although, facility of tape recorder was available, but no attempt made by prosecution to get recorded the conversation of parties – Several anomalies, discrepancies in prosecution evidence which failed to prove beyond reasonable doubt not only demand of bribe but also voluntary acceptance of currency notes by appellant – Benefit of doubt must go to appellant – Conviction set aside – Appeal allowed. [Narayanlal Tandan Vs. State of M.P.] …442

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(डी) व 13(2) – अवैध परितोषण – मांग – साक्ष्य का मूल्यांकन – अभिनिर्धारित – अपीलार्थी ने घटना के पूर्व, पत्र के माध्यम से अपने वरिष्ठों को यह आशंका अभिव्यक्त की थी कि परिवादी द्वारा उसे मिथ्या प्रकरण में फंसाया जा सकता है – प्रथम सूचना प्रतिवेदन, सोसाइटी द्वारा नहीं बल्कि परिवादी द्वारा व्यक्तिगत क्षमता में दर्ज कराया गया, यहां तक कि रिश्वत भी व्यक्तिगत संसाधनों द्वारा जुटाई गई – आधा एक घंटे के भीतर अनुचित जल्दबाजी में जाल बिछाया गया – यद्यपि टेप रिकार्डर की सुविधा उपलब्ध थी, परंतु अभियोजन द्वारा पक्षकारों की बातचीत रिकार्ड करने हेतु कोई प्रयास नहीं किया गया था – अभियोजन साक्ष्य में अनेक विषमताएं, विसंगतियां जो न केवल अपीलार्थी द्वारा रिश्वत की मांग की जाना बल्कि उसके द्वारा करेंसी नोटों को स्वेच्छया स्वीकार किया जाना भी युक्तियुक्त संदेह से परे साबित करने में विफल रहा – संदेह का लाभ अपीलार्थी को अवश्य जाना चाहिए – दोषसिद्धि अपास्त – अपील मंजूर। (नारायणलाल टंडन वि. म.प्र. राज्य) …442

***Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d) & 13(2) – Testimony of Complainant – Interested Witnesses – Credibility* – Allegation, that appellant, a Deputy Registrar, Co-operative Society took illegal gratification from complainant/member of society on the threat that he will dissolve the society on ground of irregularities – Held – Facts and evidence reveals that appellant was inquiring into the affairs of society and complainant wanted the appellant/public servant to desist from performing his legal duties – Complainant is a highly interested witness and wanted to derail the inquiry – His uncorroborated testimony cannot be relied upon. [Narayanlal Tandan Vs. State of M.P.] …442**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(डी) व 13(2) – परिवादी का परिसाक्ष्य – हितबद्ध साक्षीगण – विश्वसनीयता – अभिकथन है कि अपीलार्थी, जो कि सहकारी सोसाइटी में डिप्टी रजिस्ट्रार है, ने परिवादी/सोसाइटी के सदस्य से इस धमकी पर अवैध परितोषण लिया कि अनियमितताओं के आधार पर वह सोसाइटी का विघटन कर देगा – अभिनिर्धारित – तथ्य और साक्ष्य यह प्रकट करते हैं कि अपीलार्थी सोसाइटी के मामलों की जांच कर रहा था तथा परिवादी यह चाहता था कि

अपीलार्थी / लोक सेवक अपने विधिक कर्तव्यों का पालन करने से प्रविरत रहे – परिवादी एक अत्याधिक हितबद्ध साक्षी है तथा जांच को पटरी से उतारना चाहता है – उसके असंपुष्ट परिसाक्ष्य पर विश्वास नहीं किया जा सकता। (नारायणलाल टंडन वि. म.प्र. राज्य) **...442**

***Prevention of Corruption Act (49 of 1988), Section 19 – Sanction for Prosecution – Competent Authority* – Held – In view of amendment in circular, in spite of a contrary opinion of Administrative department, the Department of Law and Legislative Affairs was competent to overrule that opinion and accord sanction – This Court has earlier concluded that opinion of parent department is not at all binding for Law department while considering the case of sanction – Sanction granted after due application of mind with a speaking order and cannot be held to be invalid. [Narayanlal Tandan Vs. State of M.P.]** **...442**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – अभियोजन हेतु मंजूरी – सक्षम प्राधिकारी – अभिनिर्धारित – परिपत्र में संशोधन के दृष्टिकोण से, प्रशासनिक विभाग की विपरीत राय होने के बावजूद, विधि एवं विधायी कार्य विभाग उस राय को उलटने तथा मंजूरी प्रदान करने हेतु सक्षम था – इस न्यायालय ने पूर्व में निष्कर्षित किया है कि मंजूरी के प्रकरण पर विचार करते समय, मूल विभाग की राय विधि विभाग के लिए बिल्कुल भी बाध्यकारी नहीं है – मंजूरी, सम्यक् रूप से मस्तिष्क का प्रयोग करने के पश्चात् सकारण आदेश सहित प्रदान की गई तथा अविधिमान्य नहीं ठहराई जा सकती। (नारायणलाल टंडन वि. म.प्र. राज्य) **...442**

***Prevention of Corruption Act (49 of 1988), Section 19(2) – Sanction for Prosecution – Competent State Authority – Territorial Jurisdiction* – Held – Sanction shall be granted by that Government or Authority which would have been competent to remove the public servant from his office at the time of commission of offence – Although at the time of grant of sanction, appellant was employee of Chhattisgarh but at the time, offence was alleged to have been committed, he was an employee of Madhya Pradesh, thus sanction granted by government of Madhya Pradesh was proper and not beyond jurisdiction. [Narayanlal Tandan Vs. State of M.P.]** **...442**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19(2) – अभियोजन हेतु मंजूरी – सक्षम राज्य प्राधिकारी – क्षेत्रीय अधिकारिता – अभिनिर्धारित – मंजूरी उस सरकार अथवा प्राधिकारी द्वारा प्रदान की जायेगी जो अपराध गठित होने के समय लोक सेवक को उसके पद से हटाने के लिए सक्षम होता – यद्यपि मंजूरी प्रदान किये जाने के समय, अपीलार्थी छत्तीसगढ़ का कर्मचारी था परंतु उस समय, जब अपराध का कारित किया जाना अभिकथित था, वह मध्यप्रदेश का एक कर्मचारी था, इसलिए मध्यप्रदेश सरकार द्वारा प्रदान की गई मंजूरी उचित थी तथा अधिकारिता से परे नहीं थी। (नारायणलाल टंडन वि. म.प्र. राज्य) **...442**

Principle of Estoppel/Waiver/Acquiescence – **Held – Principle of estoppel/waiver/acquiescence cannot be pressed into service against provision of Statute – No "estoppels" operates against provisions of an Act – If employees have accepted retiral dues/gratuity computed by employer as per Pension Rules of 1972, that acceptance does not mean that they have waived their right to claim benefits to be computed as per Gratuity Act. [Chief General Manager Vs. Shiv Shankar Tripathi] …328**

विबंध/अधित्यजन/उपमति का सिद्धांत – अभिनिर्धारित – विबंध/अधित्यजन / उपमति के सिद्धांत का प्रयोग, कानून के उपबंध के विरूद्ध नहीं किया जा सकता – किसी अधिनियम के उपबंधों के विरूद्ध कोई ''विबंध'' प्रवर्तित नहीं होता – यदि कर्मचारियों ने 1972 के पेंशन नियमों के अनुसार नियोक्ता द्वारा संगणना किये गये निवृत्ति देय/उपदान को स्वीकार किया है, इस स्वीकृति का अर्थ यह नहीं होगा कि उन्होंने उपदान अधिनियम के अनुसार संगणना किये जाने वाले लाभों का दावा करने के उनके अधिकार को अधित्यजित किया है। (चीफ जनरल मेनेजर वि. शिव शंकर त्रिपाठी) **…328**

Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/4 – See – Penal Code, 1860, Sections 363, 366 & 376(2)(i) **[Shiva Salame Vs. State of M.P.] …*12**

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 3/4 – देखें – दण्ड संहिता, 1860, धाराएँ 363, 366 व 376(2)(i) (शिवा सलामे वि. म.प्र. राज्य) **…*12**

Punjab & Sind Bank (Officers) Service Regulations, 1982, (updated upto 31.08.2013) – See – Service Law **[Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank] …379**

पंजाब एण्ड सिंध बैंक (अधिकारी) सेवा विनियम, 1982 (31.08.2013 तक अद्यतनीकृत) – देखें – सेवा विधि (दुर्गेश कुवर (श्रीमती) वि. पंजाब एण्ड सिंध बैंक)**…379**

Recognised Examination Act, M.P. (10 of 1937), Section 3 & 4 – See – Penal Code, 1860, Section 419 & 420 **[Nandlal Gupta Vs. Union of India] (DB)…700**

मान्यताप्राप्त परीक्षा अधिनियम, म.प्र. (1937 का 10), धारा 3 व 4 – देखें – दण्ड संहिता, 1860, धारा 419 व 420 (नन्दलाल गुप्ता वि. यूनियन ऑफ इण्डिया) **(DB)…700**

Registration Act (16 of 1908), Section 17 & 49 – Unregistered Sale Deed – Admissibility in Evidence **– Suit for specific performance of contract – Held – Unregistered sale deed is admissible in evidence under proviso to Section 49 of the Act of 1908 – Petition dismissed. [Suhagrani Rajput (Smt.) Vs. Mukund Sahu] …*22**

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 17 व 49 – अरजिस्ट्रीकृत विक्रय विलेख – साक्ष्य में ग्राह्यता – संविदा के विनिर्दिष्ट पालन हेतु वाद – अभिनिर्धारित –

1908 के अधिनियम की धारा 49 के परंतुक के अंतर्गत अरजिस्ट्रीकृत विक्रय विलेख साक्ष्य में ग्राह्य है – याचिका खारिज। (सुहागरानी राजपूत (श्रीमती) वि. मुकुंद साहू) …*22

Registration Act (16 of 1908), Section 17(1)(b) & 49 – Unregistered Document – Admissibility in Evidence **– Held – A compulsorily registrable document if unregistered is inadmissible in evidence for primary purpose – In suit for partition, such unstamped instrument is inadmissible in evidence even for collateral purpose until same is impounded. [Mahendra Kumar Vs. Lalchand] …606**

रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 17(1)(बी) व 49 – अरजिस्ट्रीकृत दस्तावेज – साक्ष्य में ग्राह्यता – अभिनिर्धारित – एक अनिवार्यतः रजिस्ट्रीयोग्य दस्तावेज यदि अरजिस्ट्रीकृत है तो प्रारंभिक प्रयोजन हेतु साक्ष्य में अग्राह्य है – विभाजन हेतु वाद में, ऐसा अस्टांपित लिखत साक्ष्य में अग्राह्य है, यहां तक कि संपार्श्विक प्रयोजन के लिए भी जब तक कि उक्त परिबद्ध न हो। (महेन्द्र कुमार वि. लालचंद) …606

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(r) & 18 and Criminal Procedure Code, 1973 (2 of 1974), Sections 41-A, 41-B, 41-C, 41-D & 438 – Anticipatory Bail **– Held – Accusation reveals a prima facie case u/S 3(1)(r), therefore statutory bar u/S 18 of the Act of 1989 comes in way to this Court to grant anticipatory bail but the mandatory procedure prescribed in Sections 41-A, 41-B, 41-C and 41-D Cr.P.C. would apply with full vigor and the preconditions of Chapter V Cr.P.C. shall have to be satisfied before extreme step of arrest can be taken – Trial Court is directed that (i) police may resort to extreme step of arrest only when same is necessary and if appellants fail to co-operate in investigation. (ii) appellants should first be summoned to cooperate in investigation, and if they co-operate then occasion of their arrest should not arise. [Mangaram Vs. State of M.P.] …435**

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(आर) व 18 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 41–ए, 41–बी, 41–सी, 41–डी व 438 – अग्रिम जमानत – अभिनिर्धारित – अभियोग धारा 3(1)(आर) के अंतर्गत एक प्रथम दृष्ट्या प्रकरण प्रकट करता है, इसलिए 1989 के अधिनियम की धारा 18 के अंतर्गत कानूनी वर्जन अग्रिम जमानत प्रदान करने हेतु इस न्यायालय के मार्ग में आता है परंतु दं.प्र.सं. की धारा 41–ए, 41–बी, 41–सी एवं 41–डी में विहित आज्ञापक प्रक्रिया पूर्ण प्रबलता से लागू होगी तथा गिरफ्तारी का चरम कदम उठाने से पूर्व, दण्ड प्रक्रिया संहिता के अध्याय V की पूर्व शर्तों को पूरा करना होगा – विचारण न्यायालय को निदेशित किया गया है कि (i) पुलिस गिरफ्तारी का चरम कदम केवल तब उठा सकती है जब उक्त आवश्यक हो तथा यदि अपीलार्थीगण अन्वेषण में सहयोग में विफल हों (ii) अपीलार्थीगण को अन्वेषण में सहयोग करने हेतु पहले समन किया जाना चाहिए, और यदि वे सहयोग करते हैं तो उनकी गिरफ्तारी का अवसर उत्पन्न नहीं होना चाहिए। (मंगाराम वि. म.प्र. राज्य) …435

***Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(r) & (s), Criminal Procedure Code, 1973 (2 of 1974), Section 438 and Constitution – Article 226 – Anticipatory Bail – Judicial Review* – Provisions of anticipatory bail u/S 438 Cr.P.C. stands completely excluded qua an offence under the Act of 1989 – Any judgment/ order/direction of any Court of law cannot be passed granting anticipatory bail – However, power of judicial review under Article 226 of Constitution which forms part of the basic structure of Constitution is always available. [Mangaram Vs. State of M.P.] …435**

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(आर) व (एस), दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 एवं संविधान – अनुच्छेद 226 – अग्रिम जमानत – न्यायिक पुनर्विलोकन – दं.प्र.सं. की धारा 438 के अंतर्गत अग्रिम जमानत के उपबंध 1989 के अधिनियम के अंतर्गत अपराध के रूप में पूर्णतः अपवर्जित हो जाते हैं – अग्रिम जमानत प्रदान करते हुए न्यायालय का कोई निर्णय/आदेश/निदेश पारित नहीं किया जा सकता – तथापि, संविधान के अनुच्छेद 226 के अंतर्गत न्यायिक पुनर्विलोकन की शक्ति जो कि संविधान की आधारिक संरचना का भाग है, हमेशा उपलब्ध है। (मंगाराम वि. म.प्र. राज्य) …435

***Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(s) – Ingredients* – Held – Allegations *prima facie* reveals that abusive words were uttered by appellants and name of caste of victim was taken in derisive manner in public view – Essential ingredients of offence u/S 3(1)(s) made out especially when offence occurred during post amendment era. [Mangaram Vs. State of M.P.] …435**

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(एस) – घटक – अभिनिर्धारित – अभिकथन प्रथम दृष्ट्या यह प्रकट करते हैं कि अपीलार्थीगण द्वारा अपमानजनक शब्दों का उच्चारण किया गया था तथा पीड़ित की जाति का नाम लोक दृष्टिकोण में/सार्वजनिक रूप से उपहासपूर्ण तरीके से लिया गया था – धारा 3(1)(एस) के अंतर्गत अपराध के आवश्यक घटक विशेष रूप से तब कारित हुए जब अपराध संशोधन काल के बाद के दौरान घटित हुआ। (मंगाराम वि. म.प्र. राज्य) …435

***Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(w)(i), Penal Code (45 of 1860), Section 354-A and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Grounds* – Held – Appellant and complainant working under CMHO Shivpuri – Date of incident is 01.08.2017 whereas appellant was transferred to Sagar and was relieved from office on 14.07.2017, thus appellant was not at the helm of affairs at Government Hospital Shivpuri on date of incident – FIR lodged on 19.05.2018 after delay of about 10 months – Delayed FIR is a material fact – Prima facie, offence not made out – Appellant, a government servant and his arrest may bring adverse departmental proceedings**

prejudicial to his interest – Matter can be investigated without causing arrest – Anticipatory bail granted with conditions – Appeal allowed. [Atendra Singh Rawat Vs. State of M.P.] …168

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(डब्ल्यू)(i), दण्ड संहिता (1860 का 45), धारा 354–ए एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – आधार – अभिनिर्धारित – अपीलार्थी एवं परिवादी, सी एम एच ओ, शिवपुरी के अधीन कार्यरत – घटना 01.08.2017 की है जबकि अपीलार्थी को सागर स्थानांतरित किया गया था और 14.07.2017 को कार्यालय से अवमुक्त किया गया था, अतः घटना दिनांक को अपीलार्थी के पास शासकीय चिकित्सालय, शिवपुरी के मामलों की पतवार नहीं थी – प्रथम सूचना प्रतिवेदन, 19.05.2018 को दर्ज किया गया, करीब 10 माह के विलंब के पश्चात् – विलंबित प्रथम सूचना प्रतिवेदन एक तात्विक तथ्य है – प्रथम दृष्ट्या अपराध नहीं बनता – अपीलार्थी एक शासकीय सेवक है और उसकी गिरफ्तारी से उसके हित को प्रतिकूल रूप से प्रभावित करते हुए प्रतिकूल विभागीय कार्यवाहियां की जा सकती है – मामले में गिरफ्तारी कारित किये बिना अन्वेषण किया जा सकता है – शर्तों के साथ अग्रिम जमानत प्रदान की गई – अपील मंजूर। (अतेन्द्र सिंह रावत वि. म.प्र. राज्य) **…168**

***Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act (27 of 2018), Section 18-A, Criminal Procedure Code, 1973 (2 of 1974), Section 41 and Penal Code (45 of 1860), Section 26 – Amendment of 2018 – Procedure – Effect* – Held – Amendment Act of 2018 nowhere restricts procedure of Section 41 Cr.P.C., whereby, before arresting a person, police officer must have "Credible Information" which is different from a mere complaint and must have "Reasons to believe" which is different from mere suspicion or knowledge that arrest is necessary – Provisions are still intact and not taken away by amendment of 2018. [Atendra Singh Rawat Vs. State of M.P.] …168**

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) संशोधन अधिनियम (2018 का 27), धारा 18–ए, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 41 एवं दण्ड संहिता (1860 का 45), धारा 26 – 2018 का संशोधन – प्रक्रिया – प्रभाव – अभिनिर्धारित – 2018 का संशोधन अधिनियम कहीं भी धारा 41 दं.प्र.सं. की प्रक्रिया को निर्बंधित नहीं करता जिससे एक व्यक्ति को गिरफ्तार करने से पूर्व, पुलिस अधिकारी को ''विश्वसनीय सूचना'' होनी चाहिए जो कि मात्र एक शिकायत से भिन्न है तथा ''विश्वास के लिए कारण'' होने चाहिए जो कि मात्र संदेह या यह ज्ञान कि गिरफ्तारी आवश्यक है, से भिन्न है – उपबंध अभी भी अविकल है और 2018 के संशोधन द्वारा हटाये नहीं गये है। (अतेन्द्र सिंह रावत वि. म.प्र. राज्य) **…168**

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act (27 of 2018), Section 18-A and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Amendment of 2018 – Jurisdiction **– Held – Although vide amendment of 2018, preliminary enquiry has been**

dispensed with and power of investigating officer to arrest has been reiterated, still the power of judicial review and power to grant bail u/S 438 Cr.P.C., if offence is not prima facie made out, is not curtailed and cannot be curtailed by any Act. [Atendra Singh Rawat Vs. State of M.P.] …168

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) संशोधन अधिनियम (2018 का 27), धारा 18–ए एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – 2018 का संशोधन – अधिकारिता – अभिनिर्धारित – यद्यपि 2018 के संशोधन द्वारा, प्रारंभिक जांच से अभिमुक्ति दी गई है और गिरफ्तारी हेतु अन्वेषण अधिकारी की शक्ति को दोहराया गया है, तब भी, यदि प्रथम दृष्ट्या अपराध नहीं बनता है, न्यायिक पुनर्विलोकन की शक्ति एवं धारा 438 दं.प्र.सं. के अंतर्गत जमानत प्रदान करने की शक्ति कम नहीं हो जाती तथा किसी अधिनियम द्वारा कम नहीं की जा सकती। (अतेन्द्र सिंह रावत वि. म.प्र. राज्य) **…168**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (54 of 2002), Section 34 – See – Constitution – Article 227 **[Noor Mohammad Vs. State of M.P.] …132**

वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन अधिनियम (2002 का 54), धारा 34 – देखें – संविधान – अनुच्छेद 227 (नूर मोहम्मद वि. म.प्र. राज्य) **…132**

Service Law – Appointment – Criminal Antecedent – Effect – Appointment in Police Service **– Held – Petitioner was convicted u/S 325 IPC and in appeal he was acquitted on basis of compromise – As per dictum of Apex Court, such acquittal did not fall under clean or honourable acquittal – While considering the case of candidate for appointment in police force, his criminal antecedents are required to be meticulously examined – Petitioner not fit for appointment – Petition dismissed. [Pawan Vs. State of M.P.] …8**

सेवा विधि – नियुक्ति – आपराधिक पूर्ववृत्त – प्रभाव – पुलिस सेवा में नियुक्ति – अभिनिर्धारित – याची को धारा 325 भा.दं.सं. के अंतर्गत दोषसिद्ध किया गया था तथा अपील में उसे समझौते के आधार पर दोषमुक्त किया गया था – सर्वोच्च न्यायालय के आदेशानुसार उक्त दोषमुक्ति, साफ–सुथरी या सम्मानपूर्ण दोषमुक्ति के अंतर्गत नहीं आती – पुलिस बल में नियुक्ति हेतु अभ्यर्थी के प्रकरण का विचार करते समय उसके आपराधिक पूर्ववृत्त का बारीकी से परीक्षण किया जाना अपेक्षित होता है – याची, नियुक्ति के लिए उपयुक्त नहीं – याचिका खारिज। (पवन वि. म.प्र. राज्य) **…8**

Service Law – Appointment – Criminal Antecedent **– Post of Subedars, Platoon Commanders and Inspectors of Police – Held – Apex Court has earlier concluded that even in cases where truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents and suitability of candidate and could not be compelled to appoint such candidate – Employer can take into account the job profile,**

severity of charges levelled against candidate and whether the acquittal was an honourable acquittal or was merely on ground of benefit of doubt or as a result of composition – Decision of authority on question of suitability of candidate was correct and not actuated with any malafide – Appeal allowed. [State of M.P. Vs. Abhijit Singh Pawar] (SC)…526

सेवा विधि – नियुक्ति – आपराधिक पूर्ववृत्त – सूबेदारों, प्लाटून कमांडरों और पुलिस निरीक्षकों के पद – अभिनिर्धारित – सर्वोच्च न्यायालय ने पूर्व में निष्कर्षित किया है कि उन प्रकरणों में भी जहां एक निष्कर्षित प्रकरण के बारे में सच्चा प्रकटीकरण किया गया था, नियोक्ता को तब भी अभ्यर्थी के पूर्ववृत्त और उपयुक्तता पर विचार करने का अधिकार होगा तथा ऐसे अभ्यर्थी को नियुक्त करने हेतु उसे विवश नहीं किया जा सकता – नियोक्ता, अभ्यर्थी के कार्य विवरण, उसके विरूद्ध लगाये गये आरोपों की कठोरता एवं क्या दोषमुक्ति एक सम्मानपूर्ण दोषमुक्ति थी या मात्र संदेह के लाभ के आधार पर थी या समझौते के परिणामस्वरूप थी को विचार में ले सकता है – अभ्यर्थी की उपयुक्तता के प्रश्न पर प्राधिकारी का विनिश्चय सही था तथा न कि किसी असद्भावना से प्रेरित था – अपील मंजूर। (म.प्र. राज्य वि. अभिजीत सिंह पवार) **(SC)…526**

***Service Law – Compassionate Appointment – Delay* – Held – Impugned order was passed in the year 2016 whereas petition was filed in the year 2018 – Delay not explained in the petition – Considering the fact that petitioner lost his father, there might be financial crunch before him, thus taking a humanitarian view, delay in filing petition is ignored. [Prashant Sharma Vs. State of M.P.] …*18**

सेवा विधि – अनुकंपा नियुक्ति – विलंब – अभिनिर्धारित – आक्षेपित आदेश वर्ष 2016 में पारित किया गया था जबकि याचिका वर्ष 2018 में प्रस्तुत की गई थी – याचिका में विलंब स्पष्ट नहीं किया गया – इस तथ्य पर विचार करते हुए कि याची ने अपने पिता को खो दिया है, उसके समक्ष वित्तीय संकट हो सकता है, इसलिए मानवीय दृष्टिकोण अपनाते हुए, याचिका प्रस्तुत करने में हुए विलंब को नज़रअंदाज किया जाता है। (प्रशांत शर्मा वि. म.प्र. राज्य) …*18

***Service Law – Compassionate Appointment – Relevant Policy* – Held – Petitioner's application was rejected on basis of policy which came in the year 2014 whereas petitioner lost his father in 2011 – Application has to be decided on the basis of policy which was in vogue at the time of death of father of the petitioner – Impugned order quashed – Petition allowed. [Prashant Sharma Vs. State of M.P.] …*18**

सेवा विधि – अनुकंपा नियुक्ति – सुसंगत नीति – अभिनिर्धारित – याची के आवेदन को नीति के आधार पर अस्वीकार किया गया था जो कि वर्ष 2014 में आई थी जबकि याची ने वर्ष 2011 में अपने पिता को खो दिया था – आवेदन उस नीति के आधार पर विनिश्चित किया जाना चाहिए जो याची के पिता की मृत्यु के समय प्रचलन में थी – आक्षेपित आदेश अभिखंडित – याचिका मंजूर। (प्रशांत शर्मा वि. म.प्र. राज्य) …*18

Service Law – Constitution – Article 226 & 309 – Appointment – Prescription of Qualification – Writ Jurisdiction – **Held – Mode of appointment is within domain of appointing authority or selection body – Courts and Tribunals can neither prescribe qualifications nor entrench upon powers of authority so long as such prescribed qualification is reasonably relevant and do not obliterate the equality clause – Appointing authority is competent in its power of general administration to prescribe eligibility criteria/educational qualifications as it deems necessary and reasonable – Impugned advertisement for appointment has been issued for specific project but not under any statutory rules either referable to Article 309 of Constitution or a statute – Prescription of qualification and Roster system has no relevance – No interference warranted under writ jurisdiction – Petitions dismissed. [Vikas Malik Vs. Union of India] …558**

सेवा विधि – संविधान – अनुच्छेद 226 व 309 – नियुक्ति – अर्हता विहित करना – रिट अधिकारिता – अभिनिर्धारित – नियुक्ति की रीति नियुक्ति प्राधिकारी अथवा चयन समिति के अधिकार क्षेत्र के भीतर है – न्यायालय और अधिकरण न तो अर्हताएँ विहित कर सकते हैं और न ही प्राधिकारी की शक्तियों पर अधिक्रमण कर सकते हैं जब तक कि ऐसी निर्धारित अर्हता युक्तियुक्त रूप से सुसंगत है तथा समता खंड को न मिटाती हो – नियुक्ति प्राधिकारी जैसा वह आवश्यक तथा युक्तियुक्त समझे पात्रता मानदंड/शैक्षणिक अर्हताएं विहित करने के लिए अपनी सामान्य प्रशासन की शक्ति में सक्षम है – नियुक्ति के लिए आक्षेपित विज्ञापन विनिर्दिष्ट परियोजना के लिए जारी किया गया है परंतु किन्हीं ऐसे कानूनी नियमों के अंतर्गत नहीं, जो या तो संविधान के अनुच्छेद 309 या किसी कानून के संदर्भ योग्य हो – अर्हता विहित करने तथा रोस्टर प्रणाली की कोई सुसंगतता नहीं है – रिट अधिकारिता के अंतर्गत किसी हस्तक्षेप की आवश्यकता नहीं है – याचिकाएँ खारिज। (विकास मलिक वि. यूनियन ऑफ इण्डिया) …558

Service Law – Departmental Enquiry – Procedure – Inquiry Officer – **Held – It is trite law that even if there exist some procedural infirmity in departmental enquiry, delinquent employee has to show the prejudice caused to him because of such infirmity in enquiry – Inquiry Officer has not asked any leading questions to petitioner, thus cannot be said that he acted as a prosecutor – Inquiry Officer can put questions to elicit the truth as has been done in present case – Inquiry and decision making process are not vitiated neither any prejudice has caused to the petitioner. [Pramod Kumar Sharma Vs. State of M.P.] …551**

सेवा विधि – विभागीय जांच – प्रक्रिया – जांच अधिकारी – अभिनिर्धारित – यह जीर्ण विधि है कि यद्यपि विभागीय जांच में कोई प्रक्रियात्मक अशक्तता विद्यमान हो, तो अपचारी कर्मचारी को जांच में इस तरह की अशक्तता के कारण उसे कारित हुआ प्रतिकूल प्रभाव दर्शाना होगा – जांच अधिकारी ने याची से कोई सूचक प्रश्न नहीं पूछे, इसलिए नहीं कहा जा सकता कि उसने अभियोजक के रूप में कार्य किया – जांच अधिकारी सत्य जानने हेतु प्रश्न पूछ सकता है जैसा कि वर्तमान प्रकरण में किया गया है – जांच और विनिश्चय

करने की प्रक्रिया दूषित नहीं है और न ही याची को कोई प्रतिकूल प्रभाव कारित किया गया। (प्रमोद कुमार शर्मा वि. म.प्र. राज्य) …551

Service Law – Dismissal from Service – Departmental Enquiry – Grounds – **Held – Petitioner submitted attestation form in respect of his candidature for post of police constable, deliberately suppressing the fact of pending criminal case against him – Such charge is enough to dismiss petitioner from service – Petitioner being a member of disciplined police force, cannot be permitted to remain in employment when he deliberately suppressed material fact and given incorrect information in attestation form – Punishment is not shockingly disproportionate/harsh – Petition dismissed. [Pramod Kumar Sharma Vs. State of M.P.]** …551

सेवा विधि – सेवा से पदच्युति – विभागीय जांच – आधार – अभिनिर्धारित – याची ने जानबूझकर उसके विरूद्ध लंबित आपराधिक प्रकरण के तथ्य को छिपाते हुए, पुलिस आरक्षक के पद के लिए अपनी अभ्यर्थिता के संबंध में अनुप्रमाणन प्रपत्र जमा किया – याची को सेवा से पदच्युत करने के लिए उक्त आरोप पर्याप्त है – याची को अनुशासित पुलिस बल का सदस्य होने के नाते, रोजगार में बने रहने की अनुमति नहीं दी जा सकती है, जब उसने जानबूझकर तात्विक तथ्य को छिपाया हो एवं अनुप्रमाणन प्रपत्र में गलत जानकारी दी हो – दंड आश्चर्यजनक रूप से अननुपातिक/कठोर नहीं है – याचिका खारिज। (प्रमोद कुमार शर्मा वि. म.प्र. राज्य) …551

Service Law – Payment of Gratuity Act (39 of 1972), Section 2(e) & 14 and Central Civil Services (Pension) Rules, 1972, Section 37-A(4) & (21) – Gratuity – Entitlement – **Held – Erstwhile employees of DOT after their absorption were no more a government employee and are thus covered under definition of "employee" under the Gratuity Act – Merely because government has taken liability to pay pensionary benefits of absorbed employees, they cannot be termed as government employees – Right of employee cannot be defeated by any option/contract or instrument – Employees entitled to get their gratuity computed under Gratuity Act, being more beneficial – Employer/BSNL directed to compute gratuity as per revised pay scale and in consonance with Gratuity Act – Petition by employer/BSNL dismissed. [Chief General Manager Vs. Shiv Shankar Tripathi]** …328

सेवा विधि – उपदान संदाय अधिनियम (1972 का 39), धारा 2(ई) व 14 एवं केन्द्रीय सिविल सेवा (पेंशन) नियम, 1972, धारा 37–ए(4) व (21) – उपदान – हकदारी – अभिनिर्धारित – दूरसंचार विभाग के तत्कालीन कर्मचारीगण, उनके संविलयन पश्चात् सरकारी कर्मचारी नहीं रहे और इसलिए उपदान अधिनियम के अंतर्गत ''कर्मचारी'' की परिभाषा के अंतर्गत आच्छादित है – मात्र इसलिए कि सरकार ने संविलयीत कर्मचारियों के पेंशन लाभों के भुगतान का दायित्व उठाया है, उन्हें सरकारी कर्मचारी नहीं कहा जा सकता – कर्मचारी का अधिकार किसी विकल्प/संविदा या लिखत द्वारा पराजित नहीं हो सकता – कर्मचारीगण, उपदान अधिनियम के अंतर्गत, अधिक लाभकारी होने के नाते, उनके उपदान

की संगणना किये जाने हेतु हकदार हैं – नियोक्ता/बी.एस.एन.एल. को पुनरीक्षित वेतनमान के अनुसार तथा उपदान अधिनियम के अनुरूप उपदान की संगणना करने के लिए निदेशित किया गया – नियोक्ता/बी.एस.एन.एल. की याचिका खारिज। (चीफ जनरल मेनेजर वि. शिव शंकर त्रिपाठी) **…328**

***Service Law – Punjab & Sind Bank (Officers) Service Regulations, 1982, (updated upto 31.08.2013) and Circular of Government of India for Transfer of Female Employees in Public Sector Bank, Clause 20 – Transfer – Competent Authority* – Held – As per clause 20, transfer order issued after month of June even on administrative exigency except on promotion requires prior approval of Board of Directors which is not done in present case – Transfer order is thus issued by incompetent Authority – Further, bank is obliged to follow the policy guidelines/circular dated 08.08.14 issued by Government of India regarding transfer of female employees of public sector banks and is nor permitted to take shelter of Regulations of 1982 and make transfers at their own whim – Circular provides to accommodate married woman employee at her place where her husband is stationed or as near as possible to that place or vice versa – Order of transfer is against the transfer policy and guidelines and is hereby quashed – Petition allowed. [Durgesh Kuwar (Mrs.) Vs. Punjab and Sind Bank] …379**

सेवा विधि – पंजाब एण्ड सिंध बैंक (अधिकारी) सेवा विनियम, 1982 (31.08.2013 तक अद्यतनीकृत) व सार्वजनिक क्षेत्र के बैंकों में महिला कर्मचारियों के स्थानांतरण हेतु भारत सरकार का परिपत्र, खंड 20 – स्थानांतरण – सक्षम प्राधिकारी – अभिनिर्धारित – खंड 20 के अनुसार, जून माह के पश्चात् पदोन्नति छोड़कर, यहां तक कि प्रशासनिक अत्यावश्यकता पर भी, जारी स्थानांतरण आदेश को निदेशक मंडल का पूर्वानुमोदन अपेक्षित है जो कि वर्तमान प्रकरण में नहीं किया गया – अतः स्थानांतरण आदेश अक्षम प्राधिकारी द्वारा जारी किया गया – इसके अतिरिक्त, बैंक, सार्वजनिक क्षेत्र के बैंकों की महिला कर्मचारियों के स्थानांतरण के संबंध में भारत सरकार द्वारा जारी नीति दिशानिर्देश/परिपत्र दिनांक 08.08.14 का पालन करने के लिए बाध्य है और उसे 1982 के विनियम का आश्रय लेने की तथा स्वयं की सनक पर स्थानांतरण करने की अनुमति नहीं है – परिपत्र, विवाहित महिला कर्मचारी को उसके पति की पदस्थापना के स्थान पर या यथा संभव उस स्थान के निकट या विपर्ययेन सुविधा उपबंधित करता है – स्थानांतरण का आदेश, स्थानांतरण नीति एवं दिशानिर्देशों के विरूद्ध है और एतद् द्वारा अभिखंडित किया गया – याचिका मंजूर। (दुर्गेश कुवर (श्रीमती) वि. पंजाब एण्ड सिंध बैंक) **…379**

***Service Law – Seniority – Criteria* – Held – Court made it clear that law laid down in N.R. Parmar's case would apply only if the recruitment year is the same as the year of vacancy – In present case, though requisition was sent in 2007, the vacancies related to year 2009 and therefore CAT as well as High Court rightly held that direct recruits were not entitled to promotion from year 2007 – Appeal dismissed. [Prabhat Ranjan Singh Vs. R.K. Kushwaha] (SC)…245**

सेवा विधि – वरिष्ठता – मानदंड – अभिनिर्धारित – न्यायालय ने यह स्पष्ट किया है कि एन.आर. परमार के प्रकरण में प्रतिपादित विधि केवल तब लागू होगी यदि भर्ती वर्ष वही है जो रिक्ति का वर्ष है – वर्तमान प्रकरण में, यद्यपि मांग पत्र 2007 में भेजा गया था, रिक्तियां वर्ष 2009 से संबंधित हैं और इसलिए केन्द्रीय प्रशासनिक अधिकरण के साथ–साथ उच्च न्यायालय ने भी उचित रूप से यह अभिनिर्धारित किया है कि वर्ष 2007 से सीधी भर्ती वाले पदोन्नति के हकदार नहीं हैं – अपील खारिज। (प्रभात रंजन सिंह वि. आर. के. कुशवाहा) **(SC)…245**

Service Law – Seniority – Determination – Indian Railways Establishment Manual (IREM), Rule 334 – Amendment of Rules **– Held – Action of Railways in amending the Rules to bring them in line with judgment of the CAT by removing "Date of increment in the timescale (DITS)" as determining factor for fixing seniority and introducing the "year of allotment" as criteria for determining seniority cannot be said to be violative or against the order of CAT – Further, there was neither any challenge to Rule 334 of IREM in the original application before CAT nor the Tribunal had gone into this issue – Thus this cannot be dealt in contempt proceedings or appeal – Appeal and Contempt petitions dismissed. [Prabhat Ranjan Singh Vs. R.K. Kushwaha] (SC)…245**

सेवा विधि – वरिष्ठता – अवधारण – भारतीय रेल स्थापना निर्देशिका (आई.आर. ई.एम.), नियम 334 – नियमों का संशोधन – अभिनिर्धारित – वरिष्ठता निश्चित करने हेतु अवधारण कारक के रूप में ''समयमान में वेतनवृद्धि की तिथि (डीआईटीएस)'' को हटाकर तथा वरिष्ठता अवधारण करने हेतु मापदंड के रूप में ''आबंटन का वर्ष'' पुरः स्थापित करते हुए, रेलवे द्वारा नियमों को केन्द्रीय प्रशासनिक अधिकरण के निर्णय के अनुरूप लाने हेतु उनमें की गई संशोधन की कार्रवाई को केन्द्रीय प्रशासनिक अधिकरण के आदेश का उल्लंघन या उसके विरूद्ध नहीं कहा जा सकता – इसके अतिरिक्त, केन्द्रीय प्रशासनिक अधिकरण के समक्ष मूल आवेदन में भारतीय रेल स्थापना निर्देशिका के नियम 334 को न तो कोई चुनौती दी गई थी, न ही अधिकरण द्वारा इस विषय पर विचार किया गया था – अतः इसका निपटान अवमानना कार्यवाहियों अथवा अपील में नहीं किया जा सकता – अपील एवं अवमानना याचिकाएँ खारिज। (प्रभात रंजन सिंह वि. आर. के. कुशवाहा) **(SC)…245**

Specific Relief Act (47 of 1963), Section 28 and Civil Procedure Code (5 of 1908), Order 21 Rule 34 – Execution of Decree – Limitation **– Held – Judgment and decree for specific performance of contract passed against appellant on 11.08.2004 – Application for execution filed by plaintiff/respondent on 03.12.2004 (within 4 months) – Merely because relatives of appellants succeeded in keeping the execution application pending by instituting various litigation on one ground or the other and obtaining interim orders, it cannot be said that application for execution was barred by limitation – Executing Court rightly rejected the objections – Appeal dismissed. [Harjeet Vs. Abhay Kumar] …594**

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 28 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 34 – डिक्री का निष्पादन – परिसीमा – अभिनिर्धारित – दिनांक 11.08.2004 को अपीलार्थी के विरूद्ध संविदा के विनिर्दिष्ट पालन हेतु निर्णय और डिक्री पारित किये गये – वादी/प्रत्यर्थी द्वारा दिनांक 03.12.2004 (4 माह के भीतर) को निष्पादन हेतु आवेदन प्रस्तुत किया गया – मात्र क्योंकि अपीलार्थीगण के रिश्तेदारों ने एक या अन्य आधार पर विभिन्न मुकदमें संस्थित करते हुए तथा अंतरिम आदेशों को प्राप्त करते हुए निष्पादन आवेदन को लंबित रखने में सफलता प्राप्त की, यह नहीं कहा जा सकता कि निष्पादन के लिए आवेदन परिसीमा द्वारा वर्जित था – निष्पादन न्यायालय ने आक्षेपों को उचित रूप से अस्वीकार किया – अपील खारिज। (हरजीत वि. अभय कुमार) **…594**

***Specific Relief Act (47 of 1963), Section 28 and Civil Procedure Code (5 of 1908), Order 21 Rule 34 – Objections – Non Deposit of Consideration Amount* – Held – Once there was a legal impediment before respondents and they were not entitled to get the decree executed in form of execution of sale deed, then the contention of appellant that although respondents were not entitled for execution of sale deed in view of interim orders passed by different courts at different stages but still respondents were under obligation to deposit consideration amount, cannot be accepted – Contract has not rescinded u/S 28 of the Act of 1963. [Harjeet Vs. Abhay Kumar] …594**

विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 28 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 34 – आपत्तियाँ – प्रतिफल राशि का जमा न किया जाना – अभिनिर्धारित – एक बार प्रत्यर्थीगण के समक्ष विधिक अड़चन थी और वे विक्रय विलेख के निष्पादन के रूप में डिक्री का निष्पादन कराने हेतु हकदार नहीं थे, तब अपीलार्थी का यह तर्क कि यद्यपि प्रत्यर्थीगण, विभिन्न प्रक्रमों पर भिन्न न्यायालयों द्वारा पारित किये गये अंतरिम आदेशों को दृष्टिगत रखते हुए, विक्रय विलेख के निष्पादन के लिए हकदार नहीं है परंतु फिर भी प्रत्यर्थीगण प्रतिफल राशि जमा करने हेतु बाध्यताधीन हैं, स्वीकार नहीं किया जा सकता – 1963 के अधिनियम की धारा 28 के अंतर्गत संविदा विखंडित नहीं की गई है। (हरजीत वि. अभय कुमार) **…594**

***Swayatta Sahakarita Adhiniyam, M.P., 1999 (2 of 2000), Section 56 & 57 and Civil Procedure Code (5 of 1908), Section 2(2) – Award by Arbitration Council – Execution – Stamp Duty* – Held – A decree is passed by Civil Court in a suit on adjudication but Arbitration Council is neither a Court nor its proceedings falls within the meaning of suit – Order/award passed by Arbitration Council is not a decree as defined in Section 2(2) CPC – Section 56(4) of the Act treats the order of Council as decree only for purpose of its execution by Civil Court – Stamp Duty is payable on execution of the said award as per clause 11 of Schedule 1A of the Indian Stamp Act, 1899 (MP amendment) – Impugned order set aside – Petition allowed. [Jehangir D. Mehta Vs. The Real Nayak Sakh Sahkari Maryadit] …*5**

INDEX

स्वायत्त सहकारिता अधिनियम, म.प्र., 1999 (2000 का 2), धारा 56 व 57 एवं सिविल प्रक्रिया संहिता (1908 का 5), धारा 2(2) – माध्यस्थम् परिषद् द्वारा अवार्ड – निष्पादन – स्टाम्प शुल्क – अभिनिर्धारित – एक वाद में न्यायनिर्णयन पर सिविल न्यायालय द्वारा एक डिक्री पारित की जाती है परंतु माध्यस्थम् परिषद न तो एक न्यायालय है, न ही उसकी कार्यवाहियां वाद के अर्थान्तर्गत आती है – माध्यस्थम् परिषद द्वारा पारित आदेश/अवार्ड एक डिक्री नहीं है जैसा कि धारा 2(2) सि.प्र.सं. में परिभाषित है – अधिनियम की धारा 56(4), परिषद् के आदेश को डिक्री के रूप में केवल सिविल न्यायालय द्वारा उसके निष्पादन के प्रयोजन हेतु मानती है – भारतीय स्टाम्प अधिनियम, 1899 (म.प्र. संशोधन) की अनुसूची 1ए के खंड 11 के अनुसार, उक्त अवार्ड के निष्पादन पर स्टाम्प शुल्क देय है – आक्षेपित आदेश अपास्त – याचिका मंजूर। (जहांगीर डी. मेहता वि. द रियल नायक साख सहकारी मर्यादित) **...*5**

Town Improvement Trust Act, 1960 (14 of 1961), Section 52 & 87(c)(iii) – See – Nagar Tatha Gram Nivesh Vikasit Bhumiyon, Griho, Bhavano Tatha Anya Sanrachnao Ka Vyayan Niyam, M.P., 1975, Rule 3 & 5 **[Samdariya Builders Pvt. Ltd. (M/s.) Vs. State of M.P.] (DB)...16**

नगर सुधार न्यास अधिनियम, 1960 (1961 का 14), धारा 52 व 87(सी)(iii) – देखें – नगर तथा ग्राम निवेश विकसित भूमियों, गृहों, भवनों तथा अन्य संरचनाओं का व्ययन नियम, म.प्र., 1975, नियम 3 व 5 (समदड़िया बिल्डर्स प्रा. लि. (मे.) वि. म.प्र. राज्य) **(DB)...16**

T*ransfer of Property Act (4 of 1882), Section 52 – Transfer of Property during pendency of Suit – Subsequent Purchaser – Right to Lead Evidence* – Held – Where suit property is sold during pendency of suit without seeking leave from Court, then the transferee steps into the shoes of transferor and he is bound by the decree which would be passed in suit – Subsequent purchaser does not get any right to lead evidence as he stepped into the shoes of defendant, whose right to lead evidence is already closed by the Court in present case – Further, subsequent purchaser/petitioner cannot be allowed to take contrary stand to the one taken by his transferor. [Ramswaroop Vs. Matadin Shivhare (Dead) Through L.Rs.] ...*21

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 52 – वाद लंबित रहने के दौरान संपत्ति का अंतरण – पश्चात्वर्ती क्रेता – साक्ष्य प्रस्तुत करने का अधिकार – अभिनिर्धारित – जहां न्यायालय से अनुमति चाहे बिना, वाद के लंबित रहने के दौरान वाद संपत्ति का विक्रय किया जाता है, तब अंतरिती, अंतरक का स्थान ले लेता है तथा वह उस डिक्री द्वारा बाध्य है, जो वाद में पारित की जायेगी – पश्चात्वर्ती क्रेता को साक्ष्य प्रस्तुत करने का कोई अधिकार नहीं मिलता क्योंकि उसने प्रतिवादी का स्थान ले लिया है, जिसका वर्तमान प्रकरण में साक्ष्य प्रस्तुत करने का अधिकार न्यायालय द्वारा पहले से ही समाप्त किया जा चुका है – इसके अतिरिक्त, पश्चात्वर्ती क्रेता/याची को अपने अंतरक द्वारा उठाये गये एक कदम के प्रतिकूल जाने की अनुमति नहीं दी जा सकती है। (रामस्वरूप वि. मातादीन शिवहरे (मृतक) द्वारा विधिक प्रतिनिधि) **...*21**

Transfer of Property Act (4 of 1882), Section 55 – Payment of Sale Consideration – **Held – Payment of sale consideration is simultaneous act with execution of sale deed – Nothing in decree which required respondents to deposit entire consideration amount irrespective of whether sale deed could have been executed or not – All sorts of legal hurdles were created in order to avoid execution of decree – No delay on part of respondents in depositing consideration amount before Court. [Harjeet Vs. Abhay Kumar] …594**

सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 55 – विक्रय प्रतिफल का भुगतान – अभिनिर्धारित – विक्रय प्रतिफल का भुगतान विक्रय विलेख के निष्पादन के साथ किये जाने वाला समसामयिक कृत्य है – डिक्री में ऐसा कुछ नहीं है जिससे प्रत्यर्थीगण द्वारा संपूर्ण प्रतिफल राशि जमा करना अपेक्षित हो, भले ही विक्रय विलेख निष्पादित किया जा सकता हो अथवा नहीं – डिक्री के निष्पादन से बचने हेतु सभी प्रकार की विधिक अड़चने सृजित की गई थी – प्रत्यर्थीगण की तरफ से न्यायालय के समक्ष प्रतिफल राशि जमा करने में कोई विलंब नहीं। (हरजीत वि. अभय कुमार) **…594**

VAT Act, M.P. (20 of 2002), Sections 2(1), 2(1)(a) & (d) – See – Entry Tax Act, M.P., 1976, Section 3(1) **[Idea Cellular Ltd. (M/s.) Vs. Assistant Commissioner, Commercial Tax] (DB)…102**

वैट अधिनियम, म.प्र., (2002 का 20), धाराएँ 2(1), 2(1)(ए) व (डी) – देखें – प्रवेश कर अधिनियम, म.प्र., 1976, धारा 3(1) (आइडिया सेल्यूलर लि. (मे.) वि. असिस्टेन्ट कमिश्नर, कमर्शियल टैक्स) **(DB)…102**

Vikas Pradhikarano Ki Sampatiyo Ka Prabandhan Tatha Vyayan Niyam, 2013 – Inter Change of Plots – Applicability of Rules – **Held – Scheme was introduced by respondents in 1994 and allotment in favour of petitioner have been done in 1994, therefore provisions of Niyam of 2013 would not apply in case of interchange of plot between one sector to another sector. [Sunil Dangi Vs. Indore Development Authority] …367**

विकास प्राधिकरणों की संपत्तियों का प्रबंधन तथा व्ययन नियम, 2013 – भूखंडों का अंतर्परिवर्तन – नियमों की प्रयोज्यता – अभिनिर्धारित – प्रत्यर्थीगण द्वारा 1994 में स्कीम पुरःस्थापित की गई थी तथा याची के पक्ष में आबंटन 1994 में किया गया है, इसलिए एक सेक्टर से दूसरे सेक्टर के मध्य भूखंड के अंतर परिवर्तन के प्रकरण में 2013 के नियम के उपबंध लागू नहीं होंगे। (सुनील दांगी वि. इंदौर डव्हेलपमेन्ट अथॉरिटी) **…367**

Vishesh Nyayalaya Adhiniyam, M.P., 2011 (8 of 2012), Section 13 and Vishesh Nyayalaya Niyam, M.P., 2012, Rules 10(1), (2) & (3) – Statement of Defence – Period of Limitation – **As per Rules of 2012, a period of 30 days time to file statement of defence is permitted which can be extended to further period of 15 days and if it is not filed as per time prescribed, Authorized Officer has no option but to presume that affected person has no defence to**

put forward and to proceed with adjudication of the matter – Provision is mandatory – Appellant filing statement of defence after two years from date of service of notice – Authorized Officer rightly refused to take statement of defence on record – Appeal dismissed. [Mahesh Vs. State of M.P.] …629

विशेष न्यायालय अधिनियम, म.प्र., 2011 (2012 का 8), धारा 13 एवं विशेष न्यायालय नियम, म.प्र., 2012, नियम 10(1), (2) व (3) – बचाव का कथन – परिसीमा की अवधि – 2012 के नियमों के अनुसार, बचाव का कथन प्रस्तुत करने हेतु 30 दिनों की समयावधि की अनुमति है जिसे 15 दिनों की अतिरिक्त अवधि तक बढ़ाया जा सकता है तथा यदि यह विहित समय के अनुसार प्रस्तुत नहीं किया गया, प्राधिकृत अधिकारी के पास यह उपधारणा करने कि प्रभावित व्यक्ति के पास आगे प्रस्तुत करने हेतु कोई बचाव नहीं है तथा मामले के न्यायनिर्णयन में आगे कार्यवाही करने के अलावा कोई विकल्प नहीं है – उपबंध आज्ञापक है – अपीलार्थी ने नोटिस की तामील की तिथि से 2 वर्ष के पश्चात् बचाव का कथन प्रस्तुत किया – प्राधिकृत अधिकारी ने बचाव का कथन अभिलेख पर लेने से उचित रूप से इंकार किया – अपील खारिज। (महेश वि. म.प्र. राज्य) …629

Vishesh Nyayalaya Niyam, M.P., 2012, Rules 10(1), (2) & (3) – See – Vishesh Nyayalaya Adhiniyam, M.P., 2011, Section 13 **[Mahesh Vs. State of M.P.] …629**

विशेष न्यायालय नियम, म.प्र., 2012, नियम 10(1), (2) व (3) – देखें – विशेष न्यायालय अधिनियम, म.प्र., 2011, धारा 13 (महेश वि. म.प्र. राज्य) …629

Vishesh Nyayalaya Niyam, M.P., 2012, Rule 10(2) & (3) – Mandatory or Directory – Statutory Interpretation **– Held – In the Rule, if the consequence of non-compliance is provided, then the rule is mandatory and where the consequence of non-compliance is not provided, then the rule is directory – In present case, Rule 10(2) & (3) provides consequence of not filing the statement of defence in prescribed period, thus the provisions is mandatory. [Mahesh Vs. State of M.P.] …629**

विशेष न्यायालय नियम, म.प्र., 2012, नियम 10(2) व (3) – आज्ञापक अथवा निदेशात्मक – कानूनी निर्वचन – अभिनिर्धारित – नियम में, यदि अननुपालन का परिणाम उपबंधित किया गया है, तो नियम आज्ञापक है तथा, जहां अननुपालन का परिणाम उपबंधित नहीं किया गया है, तो नियम निदेशात्मक है – वर्तमान प्रकरण में, नियम 10(2) व (3) विहित अवधि में बचाव पक्ष का कथन प्रस्तुत न करने का परिणाम उपबंधित करते हैं, इसलिए उपबंध आज्ञापक हैं। (महेश वि. म.प्र. राज्य) …629

Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Sections 13, 17(1) & (2) and Recommendations of Majithia Wage Board, Clause 20(j) – Recovery of Wages from Employer **– Held – On recommendations of Wage Board, Central Government notification issued on 11.11.2011 and as per clause 20(j) of**

recommendations, three weeks period of submission of option by employees expired on 02.12.2011 – Employee(R-3) was not even in employment on that date as he was initially appointed on 01.11.2012 and hence clause 20(j) has no application in case of R-3 – As per notified recommendations, the revised wages and emoluments are higher than what is paid to R-3 which is in violation of Section 13 of the Act of 1955 – He is entitled to receive revised wages and emoluments – Recovery Certificate rightly issued – Petition dismissed. [Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P.] …122

श्रमजीवी पत्रकार और अन्य समाचार–पत्र कर्मचारी (सेवा की शर्तें) और प्रकीर्ण उपबंध अधिनियम, (1955 का 45), धाराएँ 13, 17(1) व (2) तथा मजीठिया वेज बोर्ड की सिफारिशें, खंड 20(जे) – नियोक्ता से मजदूरी की वसूली – अभिनिर्धारित – वेज बोर्ड की सिफारिशों पर, दिनांक 11.11.2011 को केंद्र सरकार की अधिसूचना जारी हुई तथा सिफारिशों के खंड 20(जे) के अनुसार कर्मचारियों द्वारा विकल्प प्रस्तुत करने की तीन सप्ताह की अवधि दिनांक 02.12.2011 को समाप्त हो गई – उस तिथि को कर्मचारी (प्रत्यर्थी क्र.–3) नियोजन में भी नहीं था क्योंकि वह प्रारंभिक रूप से दिनांक 01.11.2012 को नियुक्त किया गया था और इसलिए खंड 20(जे) का प्रत्यर्थी क्र.–3 के प्रकरण में कोई प्रयोजन नहीं है – अधिसूचित सिफारिशों के अनुसार, पुनरीक्षित मजदूरी तथा उपलब्धियां, प्रत्यर्थी क्र.–3 को किये गये भुगतान से अधिक हैं, जो कि 1955 के अधिनियम की धारा 13 का उल्लंघन है – वह पुनरीक्षित मजदूरी तथा उपलब्धियां प्राप्त करने का हकदार है – वसूली प्रमाण–पत्र उचित रूप से जारी किया गया – याचिका खारिज। (राजस्थान पत्रिका प्रा.लि. (मे.) वि. म.प्र. राज्य) …122

***Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Section 17(2) – Reference – Enquiry* – Held – While making reference u/S 17(2) of the Act of 1955, Government should have made enquiry about relationship of employer and employee between petitioner and R-3 – In absence of any enquiry, reference is bad in law. [Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P.] …565**

श्रमजीवी पत्रकार और अन्य समाचार–पत्र कर्मचारी (सेवा की शर्तें) और प्रकीर्ण उपबंध अधिनियम, (1955 का 45), धारा 17(2) – निर्देश – जांच – अभिनिर्धारित – 1955 के अधिनियम की धारा 17(2) के अंतर्गत निर्देश प्रस्तुत करते समय, सरकार को याची एवं प्रत्यर्थी क्र. 3 के मध्य नियोक्ता और कर्मचारी के संबंध के बारे में जांच कर लेनी चाहिए – किसी जांच के अभाव में, निर्देश विधि की दृष्टि से दोषपूर्ण है। (राजस्थान पत्रिका प्रा.लि. (मे.) वि. म.प्र. राज्य) …565

***Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Section 17(2) – Reference – Validity – Jurisdiction of High Court* – Held – Apex Court has concluded that High Court can go into the question of validity of reference. [Rajasthan Patrika Pvt. Ltd. (M/s.) Vs. State of M.P.] …565**

INDEX

श्रमजीवी पत्रकार और अन्य समाचार–पत्र कर्मचारी (सेवा की शर्तें) और प्रकीर्ण उपबंध अधिनियम, (1955 का 45), धारा 17(2) – निर्देश – विधिमान्यता – उच्च न्यायालय की अधिकारिता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि उच्च न्यायालय निर्देश की विधिमान्यता के प्रश्न पर जा सकता है। (राजस्थान पत्रिका प्रा.लि. (मे.) वि. म.प्र. राज्य) **…565**

***Writ Jurisdiction – Inquiry* – Court cannot conduct a roving inquiry in respect of each and every High Rise Building in the township – There is High Rise Building Committee comprising of experts and permissions are granted in accordance with law for such construction. [Pradeep Hinduja Vs. State of M.P.] (DB)…339**

रिट अधिकारिता – जांच – न्यायालय, नगरी के प्रत्येक ऊँचे भवन के संबंध में एक अतिगामी जांच संचालित नहीं कर सकता है – विशेषज्ञों से युक्त एक ऊँचा भवन समिति है तथा इस तरह के निर्माण के लिए विधि अनुसार अनुमतियां दी जाती है। (प्रदीप हिन्दुजा वि. म.प्र. राज्य) **(DB)…339**

* * * * *

FAREWELL

HON'BLE MR. JUSTICE CHANDRAHAS SIRPURKAR

Born on March 4, 1957 at Chhindwara, Madhya Pradesh. Did B.Sc. from Govt. Motilal Nehru College, Chhindwara and LL.B. from Sagar University. Practised in District Court, Chhindwara from 1981-1983. Joined Judicial Service as Civil Judge Class-II in the year 1983. Was appointed as Civil Judge, Class-I in the year 1989. Was posted as Deputy Welfare Commissioner for Bhopal Gas Victims in the year 1992. Was appointed as CJM/ACJM in the year 1994 and was promoted as Offg. District Judge in Higher Judicial Service in the year 1996. Worked in the High Court of Madhya Pradesh, Jabalpur from the year 1998-2009 in various capacities, as O.S.D., Additional Registrar (J-1), Registrar Judicial and O.S.D. to the High Court of M.P. (Rule Making and Computerization). Was posted as District & Sessions Judge, Dewas in the year 2009. Was posted as Director, J.O.T.R.I. (now MPSJA) in the year 2013-2014 and thereafter as Principal Secretary, Law & Legislative Affairs Department, Government of M.P. at Bhopal from 15.04.2014 till elevation. Elevated as Additional Judge of the High Court of Madhya Pradesh on 25.10.2014. Became Permanent Judge of the High Court on 27.02.2016 and demitted office on 03.03.2019.

We, on behalf of The Indian Law Reports (M.P. Series), wish His Lordship a healthy, happy and prosperous life.

FAREWELL OVATION TO HON'BLE MR. JUSTICE C.V. SIRPURKAR, GIVEN ON 01.03.2019, IN THE CONFERENCE HALL OF HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Hon'ble Mr. Justice S.K. Seth, Chief Justice, bids farewell to the demitting Judge:-

We have gathered here to bid farewell to Shri Justice C.V. Sirpurkar, who is demitting office after a successful judicial career of about 36 years.

Shri Justice Sirpurkar was born on 4th March, 1957 at Chhindwara. After obtaining LL.B. Degree in 1980 from Sagar University, Shri Justice Sirpurkar got himself enrolled as an Advocate but he preferred to become a judicial officer. He topped 1983 Batch of Civil Judges in Madhya Pradesh and was appointed as Civil Judge, Class-II on 04.03.1983. He earned promotions at regular intervals and ultimately he became District and Sessions Judge.

He was elevated as Additional Judge of this High Court on 25.10.2014 and became Permanent Judge on 27.02.2016. As a Judge of this Court, Justice Sirpurkar was closely associated with computerization and Rule Making of the High Court. Justice Sirpurkar is known for his soft and polite behaviour and witty sense of humour. He has a phenomenal memory regarding small details relating to the sport of cricket.

Not many people know, that like his late father, Justice Sirpurkar is an ace photographer. I have seen some of his pictures and DVD on wild life, therefore I can say with certainty, that like Yousuf Karsh, Justice Sirpurkar belongs to the elite group of photographers. This wonderful hobby, he has inherited from his Late father. His father was also a keen photographer of his time. Besides photography, Justice Sirpurkar is a keen gardener and voracious reader.

As Chief Justice, I have found his contribution on administrative matters very valuable. I am sure that his vast knowledge and experience will be handy even after his retirement as useful member of the society.

I, on behalf of my esteemed colleagues and on my own behalf, wish Shri Justice C.V. Sirpurkar and his gracious lady, Mrs. Sujata Sirpurkar a very happy, healthy and glorious life ahead.

Shri Rajendra Tiwari, Advocate General, M.P., bids farewell :-

We have assembled here to bid a farewell to Hon'ble Shri Justice C.V. Sirpurkar, who is to demit his office on the 3rd March, 2019. I have known Shri Sirpurkar very closely, when I was a member of the Rule Drafting Committee along with him. The Rules took about 3 years to be given the final shape and the same are published and known as the High Court Rules, 2008. During this period I found in him all ingredients of a good draftsman with clear understanding of Law and the Rules. It developed in me a sense of high appreciation for him.

Mr. Justice Sirpurkar was born on 4th March, 1957, at Chhindwara. Having taken Education at Chhindwara, up to the B.Sc level, he joined and obtained the LL.B. Degree with the honour of being First Class First in the year 1980, at the University of Saugar. He practiced for sometime at District Court, Chhindwara, and then appeared in the examination, organized by the Public Service Commission M.P., in the year 1982, for the post of Civil Judge; and having finally succeeded, he joined as a Civil Judge Class II on the 4th March, 1983. In his service career he was promoted to Higher Judicial Service on 06.06.1996. He was Registrar (Judicial) in the High Court while he was associated with the Rule drafting and making committee and computerization. Many things were highly appreciable and mentionable in his career as a member of the higher judiciary. He was Principal Secretary to the Department of Law and Legislative Affairs in the year 2014. The most important thing in his career was his joining the Advanced Course on Andragogy (Adult Learning Strategies) in Canadian Judicial Institute in Ottawa (Canada) in the year 2013. He became a permanent Judge of this Court on 27.02.2016.

My Lord, it is common knowledge that a Judge is a leader whether he wants to be or not. He cannot escape the responsibility in his jurisdiction, for setting the level of the administration of justice and of the practice of law. I say so basing myself on the observation of Cantrall that a Judge is called a leader, because he is embodiment of ideal of Justice. “Over 2,000 years ago, Socrates said, 'Four things belong to a Judge: to hear courteously, to answer wisely, to consider soberly and to decide impartially.' These four effects strive to improve the Judge's competence, conduct and productivity.

The Forbes Magazine commented to the effect that judgment can be acquired only by acute observation; by actual experience in the school of life; by ceaseless alertness to learn from others; by study of the activities of men who have

made notable marks; by striving to analyze the everyday play of causes and effects; by constant study of human nature; by the cultivation of a spirit of fairness, even with generosity, to all. These qualities infact make a Judge, a perfect source of dispensation of justice to those that have been wronged in the society and have been clamouring for restoration of their rights, because of the mighty persons in the social order. These qualities I have found in Mr. Justice Sirpurkar in abundance.

My Lord, it is no doubt that it is difficult to find a very good and satisfied Judge. We can conclude not that the law is unknowable, not that judging is impossible, but that it takes a great deal of hard work to be a good Judge. This is infact an acquisition of Justice Sirpurkar in his career as Judge. His temperament was always cool and ready to hear. He would not shut a lawyer arguing in his Court, because he was not in agreement with him. It is always beneficial that one cool judgment is worth a thousand hasty counsels. The thing, to be supplied in the Court, is light and not heat. This is what Wilson Woodrow observed in his speech at Pittsburgh.

My Lord, it reminds me of a passage in Shakespeare's Macbeth in the following words:-

"But in these cases, we still have judgment here; that we but teach Bloody instructions, which, being taught return to plague the inventor: this even-handed justice commends the ingredients of our poison'd chalice to our own lips."

That is why we say one Judge differs in many respects from the other. Each one has got his own approach to problem and similarly, each one has got his own thoughts in achieving justice. Justice has nowhere been defined. To my mind, it is the noblest gift, a Judge can makeover to a person suffering on account of wrong done to him. All these qualities have made your lordship always capable of being remembered in this High Court and among the lawyers. I, on behalf of the Law Officers of the State Government, the State Government and my own behalf, wish you a very long life with your life partner and pray the Almighty to bestow upon you all his favours for your future endeavours towards sustaining the suffering humanity.

Thank you very much.

Shri Adarsh Muni Trivedi, President, M.P. High Court Bar Association, bids farewell :-

Again and again the cold waves are colluding today to shimmer the feelings of our heart with bidding a farewell to Your Lordship Shri Justice C.V. Sirpurkar. A void is felt by us in the portals of this Temple of Justice, when Your Lordship are demitting the high office of the Judge of this High Court due to your retirement.

Your Lordship were born of 4th March, 1957 at Chhindwara. Your Lordship passed matriculation examination in first division from Govt. Multipurpose School, Chhindwara in 1973 and B.Sc. degree from Govt. Motilal Nehru College Chhindwara in 1977, in first division. Thereafter, Your Lordship obtained your LL.B. degree from Sagar University in 1980 and stood first class first. Then Your Lordship practiced law in the District Court, Chhindwara from 1981 to 1983. Your Lordship topped Civil Judge examination held by Public Service Commission in year 1982 and joined State Judicial Service as Civil Judge, Class-II on 4th March 1983. The month of March was always obedient to Your Lordship.

Thereafter, Your Lordship worked as Deputy Commissioner for the welfare of Bhopal Gas Victims between 1992 and 1996. Your Lordship were then promoted in Higher Judicial Service on 6th June 1996. Your Lordship also worked as Registrar (Judicial) from 1998 to 2007 and were associated with Rule Making and Computerization as Secretary of High Court Rule Committee. As a member of High Court Rule Committee, I was privileged to work with Your Lordship in Rule-making task. Your Lordship were then assigned with another important and challenging work as Central Project Co-ordinator for Madhya Pradesh between 1998 and 2013. Your Lordship also held the important post of Director, M.P. State Judicial Academy in 2013 and 2014 and Principal Secretary, Law and Legislative Affairs Department in year 2014. Your Lordship attended advanced course on Andragogy (Adult Learning strategies) in Canadian Judicial Institute in Ottawa (Canada) in year 2013. With all vivid experience and flying colours Your Lordship were appointed as Additional Judge of the High Court of Madhya Pradesh on 25th October 2014 and as Permanent Judge on 27th February 2016.

With adorning of Your Lordship the high pedestal of Justice, we observed a sea-change in the working on the dias. We have often seen Your Lordship on the Board with your fingers on key-board of a lap-top while hearing a case. That was

presentation of a high-tech Court of the future. It was because Your Lordship were instrumental to introduce the high technology to the portals of this while in registry. We at Jabalpur have had occasions to acknowledge your excellence and great virtues as an upright, intelligent and experienced Judge.

Your Lordship's appearance as a Judge have always been like a Vedic sage with a great knowledge, as Lord Krishna in "Bhagwad Geeta" Says – "Nothing is holier than the knowledge" :-

''न हि ज्ञानेन सदृशं पवित्रसिह विद्यते।

तत्स्वयं योग संसिद्धः कालेनात्मनि विन्दति।।''

[Bhagwad Geeta 4:38]

[Nothing is holier like the 'Knowledge'. A person feels this knowledge in his soul through his senses, which itself is a 'Yoga']

Your Lordship's performance on the Board was that of an authority on all disciplines of law and Your Lordship have made exemplary contribution in the field of law with your deep insight. A sage of 'Rigved' says:-

''इहि ब्रवीतु स यु उच्चिकेतत्।।'' [Rigved]

[I have my own limitations. If you know beyond that, tell me. I am ready to learn.]

Your Lordship were always keen to learn more and more like that great sage of Rigved on the Board as there is no end of knowledge and senses have their own limitations to know. Only the great persons like Your Lordship may go beyond your senses for the quest of knowledge. It is the quality of a real Judge.

A great thinker James Russel Lowell says:-

"Exact Justice is commonly more merciful in the long run than pity, for it tends to faster in man those stronger qualities which make them good citizens."

Your Lordship achieved the perfection as a Judge by hearing the cases in courteous manner with patience and decided the cases by adopting mental balance and reason; as the reason is the soul of law and Justice. No Judgment of Your Lordship was without rhyme and reason, and never inexplicable-nor inefficient. It is the Justice and not charity, that is wanting in the world. Your Lordship's quality

of Justice always exhibited a vast and deep reading and learning, knowledge to the core and great study of human behavior and ground realities of life.

In the words of a great poet 'Firaq Gorakhpuri':-

''हूं वो जोशे– मुहब्बत मैं जिसे नफरत भी प्यारी है।

मैं चाहूं तो समुन्दर दूर हट जाये किनारे से।।''

Such energy and love as an eternal delight is still playing a symphony in your personality, to do more and more for the welfare of humanity. Your Lordship's retirement is only a technical half-colon in long passage of your life span. The society in large is still waiting for your more substantial contributions.

''अभी तो अंधेरा बहुत है दिल की बस्ती में।

मोहब्बत के चिरागों को अभी जलने दो ।।''

I, on behalf of all the members of M.P. High Court Bar Association and my own behalf bid a heart-felt farewell to Your Lordship and pray Almighty to keep your love towards us warmer the ever, to keep your energy ever-green, to keep you hale and healthy for ever to walk in the words of Robert Frost, in the woods of life, which are lovely, dark and deep, in which you have to go miles and miles. We wish you and your family a glorious future full of delight and pleasure.

जीवेत् शरदः शतम्।

[Let Your Lordship live for hundred and hundred years]

Shri Manoj Sharma, President, High Court Advocates' Bar Association, Jabalpur, bids farewell :-

We have assembled here to bid a fond farewell to Hon'ble Shri Justice C.V. Sirpurkar on the eve of his demitting the office of Judge High Court of Madhya Pradesh.

My Lord Justice C.V. Sirpurkar has had an illustrious and distinguished career as a Judge for 36 years. My Lord after completing studies joined Madhya Pradesh Judicial Service on 04.03.1983 and after earning promotions was appointed to Higher Judicial Service on 05.06.1996. My Lord has held a range of offices such as Deputy Welfare Commissioner; Registrar, High Court, Jabalpur;

Director JOTRI; Principal Secretary, Law and Legislative Affairs Department, State of M.P. besides Judicial Offices.

My Lord Justice C.V. Sirpurkar was elevated as Judge of this Hon'ble Court on 25.10.2014, and has been performing the duties, functions and responsibilities of the high office ever since.

It has been a common experience of all the members of the Bar, that it has always been a pleasure to appear in the Court of My Lord Justice C.V. Sirpurkar. The courtesy and politeness and easy manners with which My Lord dealt with the advocates and the litigants appearing before him, has been remarkable. Today while demitting the high office of Judge of this Hon'ble Court, My Lord can positively look back and be satisfied of a job well done.

On good authority we have been informed that My Lord has varied hobbies and he is an accomplished Lens-man and an voracious reader and would like to devote some time to these hobbies.

We are fully hopeful, though My Lord, is demitting office of Judge, High Court, but he shall be contributing to the legal community and society at large and be putting his rich experience and knowledge to good use for the benefit of the society.

On behalf of High Court Advocates' Bar Association and on my own behalf I wish God speed to Hon'ble Shri Justice C.V. Sirpurkar in all his future endeavors.

I wish Hon'ble Shri Justice C.V. Sirpurkar, and Mrs. Sirpurkar abundance of happiness, peace and good health.

Shri Shivendra Upadhyay, Chairman, M.P. State Bar Council, bids farewell :-

माननीय न्यायमूर्ति श्री सी. वी. सिरपुरकर, सन् 1983 से न्यायिक जगत की सेवा करते हुये सफलता पूर्वक यह मुकाम प्राप्त किया, आपने इस सफल सफर मे इस उंचाई तक जाने के लिये जो लगन व तनमयता से प्राप्त किया है वह अनुकरणीय है। विभिन्न क्षेत्रों मे दक्षता पूर्वक आपने काम किया व जिस ईमानदारी व लगन से आपने न्यायिक कार्य किया है वह आने वाले न्यायिक अधिकारियों के लिये अनुकरणीय होगा। आपने इस सफल यात्रा को शानदार तरीके से पूरा किया उसके लिये राज्य अधिवक्ता परिषद् आपका इस्तकबाल करती है।

मध्यप्रदेश राज्य मे न्यायाधिपतियों की नियुक्तियां किन्हीं न किन्हीं वजह से नहीं हो पा रही है। जिसका खामियाजा मध्यप्रदेश का पक्षकार व अभिभाषक हर रोज सामना कर रहा है। आशा नहीं विश्वास है कि मुख्य न्यायाधिपति महोदय व उनके कॉलेजियम के साथी कुशल न्यायाधिपति जल्द ही मध्यप्रदेश के न्यायिक जगत को देंगे। अधीनस्थ न्यायालयों मे काम करने वाले अभिभाषकों की ओर भी माननीय उच्च न्यायालय में न्यायाधिपति बनाने के लिये विचार किया जाना चाहिये क्योंकि संविधान मे ऐसा कोई विभेद नहीं है। साथ ही साथ आर्टिकल 312 को प्रभावशील बनाना चाहिये व न्यायाधीश चयन की प्रक्रिया मे बदलाव समय की मांग है। उच्च न्यायालयों मे लंबित प्रकरणों के निपटारे की संभावना जो वर्तमान व्यवस्था है इसमें संभव नही दिखता। विधायिका व न्यायपालिका दोनों को वैकल्पिक व्यवस्था की ओर बढना चाहिये। अन्यथा न्याय मे हो रही देरी से न्यायिक व्यवस्था पर ही अविश्वास समाज को हो जावेगा।

आदरणीय न्यायमूर्ति श्री सिरपुरकर साहब अत्यंत लगनशील, त्वरित निराकरण के लिये सदैव प्रयासरत रहे व न्यायालय मे निरंकार भाव से न्यायिक कार्य अपने जीवन काल मे किया वह समाज के लिये व न्यायिक अधिकारियों के लिये एक मार्गदर्शन होगा। आदरणीय श्री सिरपुरकर साहब अब फिर से अपने तीसरी पारी मे एक अभिभाषक के रूप में समाज को मार्गदर्शन देते रहेंगे। राज्य अधिवक्ता परिषद् की ओर से फिर से उनके सफल भविष्य के लिये कामना करता हूं व अपनी ओर से व राज्य अधिवक्ता परिषद् की ओर से ईश्वर से प्रार्थना करता हूं कि अभी सतायू तक न्यायिक जगत को अपनी सेवा देते रहें।

Shri Vikram Singh Standing Counsel for Central Govt. bids farewell :-

We have assembled here to bid a farewell to Hon'ble Shri Justice C.V. Sirpurkar, who is to demit his office on the 3rd March, 2019.

Mr. Justice Sirpurkar was born on 4th March, 1957, at Chhindwara, He passed matriculation examination in first division from Govt Model Multipurpose School, Chhindwara in 1973 and B.Sc. examination from Govt. Motilal Nehru College, Chhindwara in first Division in 1977. After obtaining LL.B. degree standing first class first in 1980 from Sagar University, His Lordship practiced law in District Court, Chhindwara from 1981 to 1983. He topped Civil Judge Examination held by Public Service Commission in the year 1982 and joined Judicial Service as Civil Judge, Class-II on 04.03.1983. He worked as Deputy Commissioner for the welfare of Bhopal Gas Victims between 1992 and 1996. He was promoted in Higher Judicial Service on 06.06.1996. His Lordship worked as Registrar (Judicial), from 1998 to 2007 and was associated with Rule Making and Computerization as Secretary, High Court Rule Committee. His

Lordship was appointed as Additional Judge of the High Court of Madhya Pradesh on 25.10.2014 and thereafter as Permanent Judge on 27.02.2016.

The tenure of your Lordship has been excellent as your lordship had maintained the highest standard and has always strived hard to bring the best out of advocate's appearing before his Court. Young lawyers were always given a word encouragement. Your Lordship had a very keen interest in making sure that each and every point raised by the counsel is dealt with in proper legal manner. This habit of your Lordship made a tremendous impact on the lawyers and they always felt satisfied regardless of the result, your Lordship's persistence has helped many young lawyers to develop their professional skill.

I, on behalf of the Law Officers of the Central Govt., the Central Govt. and my own behalf, wish your Lordship a very healthy and happy life with family members.

Thank you very much.

Shri Aditya Adhikari, General Secretary, Senior Advocates' Council, bids farewell :-

My lord, Hon'ble Justice Sirpurkar was sworn as a Judge of this High Court on 25.10.2014. He has a tenure of almost 31 years in the Judicial Service and nearly 4 ½ years as a Judge of this Hon'ble Court. Hon'ble Justice Sirpurkar held several important assignments during his long career. He played a very major role in the year 2007 when he was assigned the duties of OSD for Rule making and Computerization. He also held the important assignment of Principal Secretary, Law and Legislative Affairs, before being elevated as a Judge of this Hon'ble Court.

My lords, we have assembled here today to bid farewell to Hon'ble Justice Sirpurkar on the occasion of his retirement.

I wish Hon'ble Justice Sirpurkar all success for his new assignments. On behalf of the Senior Advocates' Council and on my behalf, I wish your Lordship a very a very a happy retirement and at the same time wish your Lordship all the best for the future.

Farewell Speech delivered by Hon'ble Mr. Justice Chandrahas Sirpurkar :-

I am overwhelmed by the compliments showered on me today; though, I am acutely aware that this is nothing more than expression of your magnanimity and generosity towards me; or may be simply observance of high traditions of this Court.

Sir, a little more than four years ago I had taken solemn oath on this podium to truly and faithfully and to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will, perform the duties of my office. When I introspect, I find that I have performed the duties of my office truly and faithfully, to the best of my knowledge and judgment and without fear or favour, affection or ill will. However, the question remains did I perform the duties of my office to the best of my ability? I am not so sure. Perhaps, I should have been able to work harder; and that would remain an abiding regret. I cannot help reflecting that my contribution to this institution as a Registry Officer, was far more valuable than my contribution as a Judge.

Sir, today my decade and half long association with this august institution is coming to an end. I will surely miss its magnificent Neo-Gothic edifice and rows of majestically swaying palm trees under which I worked in various capacities, first as Registrar Judicial, Central Project Co-ordinator for Computerization and Secretary to High Court Rule Committee; then as Director of State Judicial Academy and finally as a Judge of this High Court. Sir, I will certainly miss the serene atmosphere for work, which this institution has always provided.

At this juncture, I wish to sincerely thank all Chiefs of Justice under whom I worked and all brother Judges for their guidance and co-operation. I also wish to thank the Registrar General and his team of officers including the Medical Officer of the High Court, as also the support staff for their assistance from the bottom of my heart. I shall refrain from taking any names, lest I miss someone important. My special gratitude is reserved for the Bar at Jabalpur. They tolerated a ponderous yet overbearing Judge for more than 4 years without a murmur. In fact I can hardly recall any instance, when tempers ran high or hot words were exchanged in my Court.

Sir, this State and this High Court has already given me much more than I ever deserved; hence, I am hanging my gown as a happy and contended man. Under the circumstances, I wish to place on record my firm resolve neither to seek nor accept any post retiral assignment from the government. I hope and trust that my hobbies like photography, gardening, reading, music and travelling as also my deep friendship with my life partner, will see me peacefully and happily through the rest of my days. I earnestly seek your blessing for the same.

Thank you sir, thank you very much for everything you have done for me.

NOTES OF CASES SECTION

Short Note
****(23)***
Before Mr. Justice Subodh Abhyankar
M.Cr.C. No. 635/2019 (Jabalpur) decided on 25 February, 2019

GANGARAM PATEL …Applicant

Vs.

STATE OF M.P. …Non-applicant

***Criminal Procedure Code, 1973 (2 of 1974), Section 457 and Excise Act, M.P. (2 of 1915), Section 47-A & 47-D – Release of Seized Vehicle on Supurdnama* – Car seized for illegal transportation of liquor – Held – Confiscation proceedings commenced prior to filing of application u/S 457 Cr.P.C. – Notice of confiscation sent by Collector to trial Court – Application for custody of vehicle u/S 457 Cr.P.C. is not maintainable where confiscation proceedings u/S 47-A of the Act of 1915 is pending which itself provides a complete mechanism for obtaining seized vehicle on supurdnama – Section 47-D of the Act of 1915 bars the jurisdiction of Court under such circumstances – Application dismissed.**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 457 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 47–ए व 47–डी – जब्तशुदा वाहन को सुपुर्दनामे पर छोड़ा जाना – मदिरा के अवैध परिवहन के लिए कार जब्त की गई – अभिनिर्धारित – अधिहरण कार्यवाहियां दं.प्र.सं. की धारा 457 के अंतर्गत आवेदन प्रस्तुत करने के पूर्व प्रारंभ की गई – अधिहरण का नोटिस, कलेक्टर द्वारा विचारण न्यायालय को भेजा गया – दं.प्र.सं. की धारा 457 के अंतर्गत, वाहन की अभिरक्षा हेतु आवेदन पोषणीय नहीं है जहां 1915 के अधिनियम की धारा 47–ए के अंतर्गत अधिहरण की कार्यवाहियां लंबित हों जो स्वयं सुपुर्दनामा पर जब्तशुदा वाहन प्राप्त करने हेतु एक संपूर्ण क्रियाविधि प्रदान करती है – 1915 के अधिनियम की धारा 47–डी उक्त परिस्थितियों के अंतर्गत न्यायालय की अधिकारिता का वर्जन करती है – आवेदन खारिज।

Ankit Saxena, for the applicant.
Rajbahoran Singh, G.A. for the non-applicants-State.

Short Note
****(24)(DB)***
Before Mr. Justice J.K. Maheshwari & Smt. Justice Anjuli Palo
Cr.R. No. 2350/2016 (Jabalpur) decided on 25 February, 2019

MAHESH SAHU …Applicant

Vs.

SHRI RAKESH SAHU & anr. …Non-applicants

Criminal Procedure Code, 1973 (2 of 1974), Section 372, Proviso – Right of Victim to Appeal – Amendment of 31.12.2009 – Date of Offence & Date

of Order **– Held – Apex Court concluded that cause of action to file appeal accrues in favour of victim only when order of acquittal is passed – If order has been passed after the date of amendment i.e. 31.12.2009, then victim has a right to appeal against acquittal and can also challenge conviction of an accused for lesser offence or imposing inadequate compensation – Date of offence has no relevance – In present case, date of judgment of acquittal is 01.10.2015 – Appeal is maintainable – Revision allowed.**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 372, परंतुक – अपील करने का पीड़ित का अधिकार – 31.12.2009 का संशोधन – अपराध की तिथि व आदेश की तिथि – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि अपील प्रस्तुत करने का वाद हेतुक पीड़ित के पक्ष में केवल तब प्रोद्भूत होता है जब दोषमुक्ति का आदेश पारित हो गया है – यदि आदेश संशोधन की तिथि अर्थात् 31.12.2009 के पश्चात् पारित किया गया है, तब पीड़ित को दोषमुक्ति के विरूद्ध अपील का अधिकार है तथा वह अभियुक्त को लघु अपराध के लिए दोषसिद्धि किये जाने अथवा अपर्याप्त प्रतिकर अधिरोपित करने के लिए भी चुनौती दे सकता है – अपराध की तिथि की कोई सुसंगतता नहीं – वर्तमान प्रकरण में, दोषमुक्ति के निर्णय की तिथि 01.10.2015 है – अपील पोषणीय है – पुनरीक्षण मंजूर।

The order of the Court was passed by : **J.K. MAHESHWARI, J.**

Cases referred :

2011 CriLJ 1962, 2018 SCC Online SC 1941.

Ruchika Gohil, for the applicant.
Puneet Shroti, P.L. for the non-applicant No. 2/State.

Short Note
****(25)***
Before Mr. Justice Vijay Kumar Shukla
C.R. No. 84/2011 (Jabalpur) decided on 16 January, 2019

MASTRAM …Applicant

Vs.

KARELAL (THROUGH LRs) …Non-applicant

Civil Procedure Code (5 of 1908), Section 151 & 152 – Correction in Judgment/Decree – Accidental Slip or Omission – Scope **– Held – Apex Court concluded that u/S 152 CPC, any clerical or arithmetical mistake in judgment or decree due to any accidental slip or omission may be corrected at any time but validity of decree cannot be examined – In present case, in the decree, condition of return of sale consideration with interest in the event of failure to execute the sale deed does not amount to accidental mistake or slip warranting correction of mistake u/S 151 or 152 CPC – Revision dismissed.**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 व 152 – निर्णय/डिक्री में सुधार – आकस्मिक भूल अथवा लोप – व्याप्ति – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि सि.प्र.सं. की धारा 152 के अंतर्गत, आकस्मिक भूल अथवा लोप के कारण निर्णय या डिक्री में कोई लेखन अथवा गणित संबंधी भूल को किसी भी समय सुधारा जा सकता है परंतु डिक्री की विधिमान्यता का परीक्षण नहीं किया जा सकता – वर्तमान प्रकरण में, डिक्री में, विक्रय विलेख को निष्पादित करने में विफलता की दशा में ब्याज सहित विक्रय प्रतिफल की वापसी की शर्त, आकस्मिक गलती अथवा भूल नहीं होती जिसे सि.प्र.सं. की धारा 151 अथवा 152 के अंतर्गत गलती को सुधारा जाना आवश्यक हो – पुनरीक्षण खारिज।

Cases referred :

2010 (1) MPLJ 98, AIR 1966 SC 1047, (2001) 4 SCC 181, AIR 2008 SC 225, 2002 (1) MPLJ 475, 2008 (2) MPLJ 586, (2001) 5 SCC 37.

R.K. Samaiya, for the applicant.
Dilip Parihar, for the non-applicant.

Short Note
****(26)***
Before Smt. Justice Anjuli Palo
M.Cr.C. No. 4471/2019 (Jabalpur) decided on 22 February, 2019

NIZAMUDDIN …Applicant

Vs.

STATE OF M.P. …Non-applicant

***Criminal Procedure Code, 1973 (2 of 1974), Section 203 & 401(2) – Revision – Right of Accused – Opportunity of Hearing* – Held – Apex Court concluded that it is a plain requirement of Section 401(2) Cr.P.C. that if Magistrate dismissed the complaint u/S 203 and a revision has been preferred by complainant, the accused is entitled for hearing by the Revisional Court although the impugned order was passed without his participation – No interference warranted in impugned order issuing process to accused – Application dismissed.**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 203 व 401(2) – पुनरीक्षण – अभियुक्त का अधिकार – सुनवाई का अवसर – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यह धारा 401(2) दं.प्र.सं. की एक स्पष्ट अपेक्षा है कि यदि मजिस्ट्रेट ने धारा 203 के अंतर्गत परिवाद खारिज किया और परिवादी द्वारा एक पुनरीक्षण प्रस्तुत किया गया है, अभियुक्त, पुनरीक्षण न्यायालय द्वारा सुनवाई हेतु हकदार है यद्यपि आक्षेपित आदेश उसके सहभाग के बिना पारित किया गया था – अभियुक्त को प्रोसेस जारी करने के आक्षेपित आदेश में हस्तक्षेप आवश्यक नहीं – आवेदन खारिज।

Cases referred :

(2008) 2 SCC 705, Cr.A. No. 1577/2012 decided on 01.10.2012 (Supreme Court), (2014) 9 SCC 640.

Ishteyaq Hussain, for the applicant.
Devika Singh Thakur, G.A. for the non-applicant/State.

Short Note
****(27)(DB)***
Before Mr. Justice Sanjay Yadav & Mr. Justice Vivek Agarwal
F.A. No. 171/2016 (Gwalior) decided on 19 December, 2018

RAKHI SHUKLA (SMT.) …Appellant

Vs.

MANOJ SHUKLA …Respondent

***Hindu Marriage Act (25 of 1955), Section 13-B – Divorce by Mutual Consent – Rights of Minor Children – Determination* – Held – Dissolution of marriage is between husband and wife where they can give up their rights and interest in property of other party but rights of minor daughter cannot be terminated with consent of parents, her legal right will survive and it will be as per her discretion when she attains majority whether to exercise such right or not – Application u/S 13-B allowed – Appeal disposed of.**

हिन्दू विवाह अधिनियम (1955 का 25), धारा 13–बी – पारस्परिक सम्मति द्वारा विवाह विच्छेद – अप्राप्तवय बच्चों के अधिकार – अवधारण – अभिनिर्धारित – विवाह का विघटन पति एवं पत्नी के बीच होता है जहां वे दूसरे पक्ष की संपत्ति में उनके अधिकार एवं हित त्याग सकते हैं परंतु माता–पिता की सम्मति से अप्राप्तवय पुत्री के अधिकारों को समाप्त नहीं किया जा सकता, उसका विधिक अधिकार जीवित रहेगा और यह उसके विवेकाधिकार पर होगा, जब वह वयस्कता प्राप्त करेगी कि क्या उसे उक्त अधिकार का प्रयोग करना है अथवा नहीं – धारा 13–बी के अंतर्गत आवेदन मंजूर – अपील निराकृत।

The judgment of the Court was delivered by : **VIVEK AGARWAL, J.**

Case referred :

(2017) 8 SCC 746.

Abhishek Bindal, for the appellant.
Arun Sharma, for the respondent.

NOTES OF CASES SECTION

Short Note
****(28)***
Before Mr. Justice Sheel Nagu
Cr.R. No. 2/2016 (Gwalior) decided on 2 January, 2019

RISHI JALORI …Applicant

Vs.

STATE OF M.P. …Non-applicant

***Penal Code (45 of 1860), Section 107 & 306 and Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Revision Against Charge – Abetment to Suicide* – Held – Deceased, a 17 yrs. old girl of impressionable age – Where abetment to suicide relates to person of impressionable age, the yardstick of adjudication becomes stringent – Case against applicant based upon overt acts of repeated stalking, pressurizing and abusing which on *prima facie* assessment, constitutes offence of abetment – Further, as per *post mortem* report, deceased was carrying a male fetus – Strong suspicion against applicant – Framing of charge cannot be found fault with – Revision dismissed.**

दण्ड संहिता (1860 का 45), धारा 107 व 306 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 – आरोप के विरूद्ध पुनरीक्षण – आत्महत्या का दुष्प्रेरण – अभिनिर्धारित – मृतिका एक 17 वर्षीय शीघ्रप्रभावित उम्र की लड़की – जहाँ आत्महत्या का दुष्प्रेरण शीघ्रप्रभावित उम्र के व्यक्ति से संबंधित होता है, तब न्यायनिर्णयन का मानदंड बहुत कठोर बन जाता है – आवेदक के विरूद्ध प्रकरण, बारंबार पीछा करने, दबाव देने एवं दुर्व्यवहार के प्रकट कृत्यों पर आधारित है, जिसके प्रथम दृष्ट्या निर्धारण पर, दुष्प्रेरण का अपराध गठित होता है – इसके अतिरिक्त, शव परीक्षण प्रतिवेदन के अनुसार, मृतिका एक नर भ्रूणधारण किये हुए थी – आवेदक के विरूद्ध प्रबल संदेह – आरोप को विरचित किये जाने में कोई दोष नहीं पाया जा सकता – पुनरीक्षण खारिज।

Case referred :

Cr.R. No. 3662/2017 decided on 04.05.2018.

R.K. Sharma with *V.K. Agrawal,* for the applicant.
Vivek Bhargava, P.P. for the State.

NOTES OF CASES SECTION

Short Note
****(29 (DB)***
Before Mr. Justice S.C. Sharma & Mr. Justice Virender Singh
ITA No. 53/2017 (Indore) decided on 6 February, 2019

THE PRINCIPAL COMMISSIONER OF INCOME TAX-I …Appellant

Vs.

SHRI PUKHRAJ SONI …Respondent

Income Tax Act (43 of 1961), Section 148 – Re-assessment – Grounds – **Notice issued to respondent and his assessment was re-opened – Held – Assessment has been done on basis of notings found in the books of third person – Apex Court concluded that incriminating materials in form of random sheets, loose papers, computer prints, hard disc and pen drive are inadmissible in evidence as they are in the form of loose papers – In present case, entries found during search and seizure which are on loose papers, are being made basis to add income of respondent – Appeal was rightly dismissed by the Tribunal – Appeal dismissed.**

आयकर अधिनियम (1961 का 43), धारा 148 – पुनः–निर्धारण – आधार – प्रत्यर्थी को नोटिस जारी किया गया तथा उसका निर्धारण पुनः चालू किया गया था – अभिनिर्धारित – निर्धारण, तीसरे व्यक्ति की किताबों में पायी गयी टिप्पणियों के आधार पर किया गया था – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि रेंडम शीट्स, खुले कागजों, कम्प्यूटर प्रिंट, हार्डडिस्क और पेन ड्राईव के रूप में अपराध में फंसाने वाली सामग्री साक्ष्य में ग्राह्य नहीं हैं, क्योंकि वह खुले कागजों के रूप में है – वर्तमान प्रकरण में, तलाशी और जब्ती के दौरान खुले कागजों के रूप में पायी गई प्रविष्टियों को प्रत्यर्थी की आय में जोडने हेतु आधार बनाया जा रहा है – अधिकरण द्वारा अपील उचित रूप से खारिज – अपील खारिज।

The judgment of the Court was delivered by : **S.C. SHARMA, J.**

Cases referred :

(1998) 3 SCC 410, [2017] 77 taxmann.com 245 (SC).

Veena Mandlik, for the appellant.
Sumit Nema with *A. Gupta,* for the respondent.

I.L.R. [2019] M.P. 507 (SC)
SUPREME COURT OF INDIA
Before Smt. Justice R. Banumathi & Mr. Justice Vineet Saran
Cr.A. No. 21-22/2011 decided on 26 September, 2018

STATE OF M.P. …Appellant

Vs.

CHHAAKKI LAL & anr. …Respondents

(Alongwith Cr.A. Nos. 23-24/2011)

***A. Penal Code (45 of 1860), Section 302 – Sole Eye Witness – Appreciation of Evidence – Weapon of Offence – Appeal against acquittal* – Held – High Court ignored credible evidence of sole eye witness which is corroborated by medical evidence and evidence of ballistic expert and unnecessarily laid emphasis on minor contradictions and omissions which are immaterial – Testimony of sole eye witness cannot be discarded merely because she is related to deceased – It is well settled that it is not the number but the quality of evidence that matters – Opinion of Ballistic expert tallying with the arms recovered from accused – Any slight variation in description of weapon is not fatal for prosecution – Delay in FIR properly explained – Judgment of acquittal suffers from serious infirmity and is set aside – Accused convicted u/S 302 IPC. (Paras 22, 23, 27, 29, 35 & 36)**

क. दण्ड संहिता (1860 का 45), धारा 302 – एकमात्र चक्षुदर्शी साक्षी – साक्ष्य का मूल्यांकन – अपराध का शस्त्र – दोषमुक्ति के विरूद्ध अपील – अभिनिर्धारित – उच्च न्यायालय ने एकमात्र चक्षुदर्शी साक्षी के विश्वसनीय साक्ष्य को अनदेखा किया जो कि चिकित्सीय साक्ष्य तथा प्राक्षेपिकी विशेषज्ञ द्वारा संपुष्ट है और अनावश्यक रूप से गौण विरोधाभासों एवं लोपों को महत्व दिया जो सारहीन है – एकमात्र चक्षुदर्शी साक्षी के परिसाक्ष्य को मात्र इसलिए अस्वीकार नहीं किया जा सकता कि वह मृतक से संबंधित है – यह सुस्थापित है कि साक्ष्य की संख्या नहीं बल्कि उसकी गुणवत्ता महत्व रखती है – प्राक्षेपिकी विशेषज्ञ की राय, अभियुक्त से बरामद शस्त्रों से मेल खाती है – शस्त्र के विवरण में कोई हल्का सा अंतर, अभियोजन हेतु घातक नहीं है – प्रथम सूचना प्रतिवेदन में विलंब को उचित रूप से स्पष्ट किया गया – दोषमुक्ति का निर्णय, गंभीर कमियों से ग्रसित तथा अपास्त किया गया – अभियुक्त को धारा 302 भा.दं.सं. के अंतर्गत दोषसिद्ध किया गया।

***B. Penal Code (45 of 1860), Section 302 – Delay in FIR* – Held – It is not expected from the sole eye witness, a 70 yrs. old rural woman to leave the dead bodies of family members at the spot and go 10 km. to police station to lodge the complaint – Delay properly explained and is not fatal for prosecution. (Para 24 & 25)**

ख. दण्ड संहिता (1860 का 45), धारा 302 – प्रथम सूचना प्रतिवेदन में विलंब – अभिनिर्धारित – एक मात्र चक्षुदर्शी साक्षी एक 70 वर्षीय ग्रामीण महिला से, परिवार के

सदस्यों के मृत शरीरों को घटनास्थल पर छोड़कर, शिकायत दर्ज करने के लिए 10 कि.मी. दूर पुलिस थाने जाना अपेक्षित नहीं है – विलंब उचित रूप से स्पष्ट किया गया तथा अभियोजन के लिए घातक नहीं है।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 154 – FIR – **Held – FIR is not an encyclopedia which is expected to contain all minute details of prosecution case – It may be sufficient if broad effects of the case is stated therein. (Para 19)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना प्रतिवेदन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन कोई विश्वकोष नहीं जिसमें अभियोजन प्रकरण के सभी सूक्ष्म विवरणों का समावेश अपेक्षित हो – यह पर्याप्त हो सकता है यदि उसमें प्रकरण के व्यापक प्रभाव दिये गये हैं।

D. Penal Code (45 of 1860), Section 302 – Sentence – **Murder of 4 persons including a child of three years – Trial Court awarded death sentence – Held – Incident is of 2006 – Looking to facts and circumstances and the passage of time, award of death penalty is not warranted and imposing sentence of life imprisonment would meet the ends of justice. (Para 37)**

घ. दण्ड संहिता (1860 का 45), धारा 302 – दण्डादेश – चार व्यक्तियों की हत्या जिसमें एक तीन वर्षीय बालक भी शामिल – विचारण न्यायालय ने मृत्युदण्ड प्रदान किया – अभिनिर्धारित – घटना 2006 की है – तथ्यों एवं परिस्थितियों तथा बीत चुके समय को देखते हुए मृत्युदण्ड प्रदान किया जाना आवश्यक नहीं है और आजीवन कारावास का दण्डादेश अधिरोपित कर न्याय का उद्देश्य पूरा होगा।

E. Criminal Practice – Appeal Against Acquittal – **Held – In appeal against acquittal, appellate Court would not ordinarily interfere with order of acquittal but where the order suffers serious infirmity, this Court can re-appreciate the evidence and reasoning upon which acquittal is based. (Para 35)**

ङ. दाण्डिक पद्धति – दोषमुक्ति के विरूद्ध अपील – अभिनिर्धारित – दोषमुक्ति के विरूद्ध अपील में, अपीली न्यायालय दोषमुक्ति के आदेश में सामान्यतः हस्तक्षेप नहीं करेगा परंतु जहां आदेश गंभीर कमी से ग्रस्त है, यह न्यायालय साक्ष्य एवं तर्क जिस पर दोषमुक्ति आधारित है, का पुनः मूल्यांकन कर सकता है।

Cases referred:

(2009) 11 SCC 588, (1985) 1 SCC 505, (2012) 1 SCC 10, (2016) 3 SCC 26, (2016) 3 SCC 317, (2015) 9 SCC 588.

J U D G M E N T

The Judgment of the Court was delivered by :

R. BANUMATHI, J. :- These appeals arise out of the judgment of the High court of Madhya Pradesh in Criminal Death Reference No.2 of 2008 in and by which the High Court has allowed the appeal filed by the respondents-accused thereby acquitting the respondents-accused under Section 302 IPC and setting aside the death penalty awarded to the respondents/accused and his son accused Akhilesh by the trial court.

2. During the pendency of these appeals, respondent No.2-Akhilesh had died and by the order dated 28.02.2017, the appeal against respondent No.2 was dismissed as abated.

3. Briefly stated case of the prosecution is that on 20.02.2006 at about 12.00-12.30 p.m., Kesar Bai (PW-1), her daughter-in-law deceased Phoolwati and grandson Rinku aged three years were going towards the field to cut the mustard crop. Deceased Ganeshi Bai who was the daughter of Kesar Bai (PW-1) and deceased Ganga Singh who was the son of the *jeth* of Ganeshi Bai were little ahead to them. As soon as Kesar Bai reached near Madhawala Danda on the public way, she heard the sound of four to five gun-shots fired and saw the accused firing at Ganga Singh and Ganeshi Bai. Thereafter, accused Chhaakki Lal and his son Akhilesh carrying the guns came towards them from the front side. Chhaakki Lal told Kesar Bai (PW-1) that they have already killed her daughter, Ganeshi Bai and Ganga Singh and now the turn is hers. Chhaakki Lal-accused No.1 then fired at Phoolwati in her abdomen, the second fire was fired by Akhilesh-accused No.2 at Rinku. Then accused-Chhaakki Lal jumped on the child Rinku due to which the intestines of Rinku tossed out because of the impact and as a result, he died on the spot. Kesar Bai (PW-1) challenged the accused persons and said 'what are you waiting for, kill me now'. Chhaakki Lal is said to have replied that he would not kill her as she will die automatically after looking at these incidents. Complaint - Dehati Nalishi (Ex. P-1) was recorded on 20.02.2006 and after initial investigation, FIR was registered under Section 302 IPC read with Section 34 IPC and Sections 25, 27, 29 and 30 of the Arms Act against both the accused persons (Ex. P-25-26).

4. Dr. S.K. Singh Niranjan (PW-6) conducted post-mortem on the dead bodies of all the four deceased namely Phoolwati, Rinku Singh, Ganeshi Bai and Ganga Singh and noted the injuries and issued post-mortem certificates. Accused Chhaakki Lal and Akhilesh were arrested on 26.02.2006. Based on the disclosure statement of Chhaakki Lal-accused No.1, a *katta* had been seized *vide* seizure memo Ex. P-20. Based on the disclosure statement of Akhilesh-accused No.2, a 12 bore gun along with two live cartridges of 12 bore was seized from Akhilesh. Also a gun licence of accused-Chhaakki Lal had been seized from Akhilesh *vide*

seizure memo Ex. P-21. According to the FSL reports (Exts. P-31, P-32 and P-33), the fired *kartoos* Ex.EC-1 to Ex.EC-4 had been fired by pistol Ex. A-4, the two live kartoos Ex. LR-1 and LR-2 could be fired by 12 bore gun/*bandook* (Ex. A-3), Exs. EB-1 and EB-2 was fired by rifle weapon. Ex.-EB-3 can be part of Ex.-EB-2.

5. To bring home the guilt of the accused, prosecution has examined PW-1 to PW-13 and exhibited number of documents. The accused were questioned under Section 313 Cr.P.C. about the incriminating evidence and circumstances and the accused denied all of them. Accused in their defence stated that deceased Ganga Singh was a person of criminal character who was also in collusion with dacoits and engaged in theft and snatching. The accused persons have stated that due to previous enmity, they have been falsely implicated. Upon consideration of evidence of Kesar Bai (PW-1) and other evidence adduced by the prosecution, the trial court held accused Nos.1 and 2 guilty under Section 302 IPC read with Section 34 IPC. The trial court held that the case would come under the category of 'rarest of rare cases' and awarded death penalty to both the accused persons apart from imposing a fine of Rs.5,000/-each. In appeal, the High court allowed the appeal preferred by the accused. The High Court found that the evidence of sole eye witness Kesar Bai (PW-1) is not reliable and that the same is full of contradictions and omissions. The High Court held that Kesar Bai (PW-1) is not a reliable witness and on those findings reversed the verdict of conviction and acquitted the accused persons.

6. Heard learned counsel for the State of Madhya Pradesh and learned counsel for the respondents/accused. Learned counsel for the State of Madhya Pradesh submitted that the evidence of Kesar Bai (PW-1) was credible and acceptable and the same was supported by other evidence and circumstances and the High Court erred in disbelieving the evidence of Kesar Bai (PW-1). It was further contended that the delay in sending the weapons for examination to Forensic Science Laboratory on 19.04.2006 which were recovered on 01.03.2006 was a mistake/omission on the part of B.L. Dhanele -Investigating Officer (PW-13) and the benefit of such omission cannot be given to the accused. It was urged that the High court was wrong in believing the story of the defence to the effect that all the four deceased were killed by the dacoits as the deceased Ganga Singh had illegal relations with the dacoits and the High court has failed to see that the story of the defence was without any basis.

7. Contention of the respondent/accused is that Kesar Bai (PW-1) is not an honest and trustworthy witness because there are lot of improvements on important aspects in her court depositions on vital aspects. Assailing the evidence of Kesar Bai (PW-1), the learned counsel *inter alia* made the following submissions:-

- In her court deposition, Kesar Bai (PW-1) claimed that she had witnessed the murder of Ganga Singh and Ganeshi Bai whereas in the police complaint, she stated that she heard four to five gun shots and thereafter when she reached there, she saw the respondents/accused Chhaakki Lal and Akhilesh proceeding towards them;
- Improved version of Kesar Bai (PW-1) as to the overt act attributed to Chhaakki Lal that he threw Rinku on the ground and jumped upon his abdomen region as a result of which his intestines came out did not find place in the FIR.

8. The learned counsel appearing for the respondents-accused submitted that the evidence of sole witness Kesar Bai (PW-1) could not have formed the basis for conviction and the High Court has rightly discarded the evidence of Kesar Bai (PW-1) and has rightly set aside the conviction and acquitted the accused.

9. We have carefully considered the rival contentions and perused the impugned judgment, evidence and materials placed on record. The point falling for consideration is whether the High court was right in reversing the verdict of conviction of the respondents-accused and acquitting them from the charges under Section 302 IPC.

10. It is the case where four people were murdered in the broad day light. One of the deceased - Rinku was a child of three years of age. Case of the prosecution is based upon the sole testimony of Kesar Bai (PW-1). In her evidence, Kesar Bai (PW-1) has stated that Ganga Singh and Ganeshi Bai had gone ahead for cutting the neem tree and that she (PW-1), her daughter-in-law Phoolwati and grandson Rinku were following them. Kesar Bai (PW-1) stated that when they reached at Madhawala Danda, Ganga Singh was at a distance of 10-15 feet and that she saw accused Chhaakki Lal and Akhilesh firing gun-shot at Ganga Singh and thereafter firing gun-shot at Ganeshi Bai. Then accused-Chhaakki Lal and Akhilesh came towards Phoolwati and Chhaakki Lal fired the bullet in the abdomen of Phoolwati. Akhilesh also fired at Phoolwati. Akhilesh fired at Rinku and Chhaakki Lal had thrown Rinku on the ground. Chhaakki Lal also fired at Rinku. Chhaakki Lal climbed over Rinku and jumped, due to which, his intestines came out. When Kesar Bai (PW-1) told them to kill her also by firing, Chhaakki Lal replied that they would not kill her and that she had to see all these things and then she would die automatically.

11. Thakurdas (PW-2) who is Village Chowkidar stated that he had heard about the incident from Kesar Bai (PW-1) and gone to the place of the incident and saw the dead bodies of Ganga Singh, Ganeshi Bai, Phoolwati and Rinku. Thakurdas (PW-2) stated that when he reached the village, Kesar Bai (PW-1) was

weeping and she told him that Chhaakki Lal and his son Akhilesh had committed all the four murders when they were going towards the field.

12. The prosecution case revolves around the solitary testimony of eye-witness Kesar Bai (PW-1) which was accepted by the trial court as trustworthy. While reversing the verdict of conviction, the High Court held that the evidence of Kesar Bai (PW-1) is fraught with inconsistencies and hence, her evidence is not reliable. The High court pointed out that the evidence of Kesar Bai (PW-1) is exaggerated and that accused-Chhaakki Lal fired at Rinku is totally missing in her statement (Ex.-P1). The High Court also pointed out further inconsistencies.

13. In her evidence before the court, Kesar Bai (PW-1) stated that when she and her daughter-in-law Phoolwati and grandson Rinku reached near Madhawala Danda, other deceased persons namely Ganeshi Bai and Ganga Singh were only ten paces away from them and that she saw both the accused firing at Ganga Singh and Ganeshi Bai and thereafter the accused came towards her. In Dehati Nalishi-complaint (Ex.-P1), Kesar Bai (PW-1) stated that she heard four-five gun shots and then saw the accused coming towards her telling that they have killed Ganeshi Bai and Ganga Singh and then fired at Phoolwati and child Rinku. The High Court held that in the version of Kesar Bai (PW-1) before the court, there is a material improvement and that the evidence of Kesar Bai (PW-1) is not reliable.

14. Of course, there is a slight improvement in the version of Kesar Bai (PW-1) before the court but the circumstance under which Dehati Nalishi-complaint (Ex.-P1) was recorded has to be seen. Kesar Bai (PW-1) has lost her four kith and kin. At the time when Dehati Nalishi-complaint (Ex.-P1) was recorded, Kesar Bai (PW-1) must have been grief-stricken and under mental trauma and she might have stated that she heard four-five gun shots and then saw the dead bodies of Ganga Singh and Ganeshi Bai and then the accused came near Phoolwati and child Rinku and fired at them.

15. Learned counsel for the respondent/accused submitted that in her cross-examination, Kesar Bai (PW-1) stated about one assailant Kailash and also named in *Dehati Nalishi* and the said Kailash was detained by the police for one or two days after the incident but later let off by the police because of the pressure. It was submitted that mention of another assailant Kailash by Kesar Bai (PW-1) raises serious doubts about the prosecution case. Ex.-P1-Dehati Nalishi was an earliest one lodged on the date of incident on 20.02.2006 at 05.15 pm. Name of Kailash is not mentioned in Ex.-P1-Dehati Nalishi. FIR (Ex.-P25-26) also does not contain the name of alleged assailant Kailash. Since name of Kailash was not mentioned either in the Dehati Nalishi or FIR, the answers elicited from Kesar Bai (PW-1) in the cross-examination regarding Kailash does not affect her credibility. It is also pertinent to point out that in her cross-examination, though Kesar Bai (PW-1) had stated that Kailash was taken to police custody after two to three days of

complaint, Kesar Bai (PW-1) stated that she cannot say that whether police had taken Kailash to custody in connection with her case or other case.

16. Though much arguments are advanced regarding the alleged involvement of Kailash and that he was taken to custody, the entire argument advanced qua one Kailash is based upon certain answers elicited from Kesar Bai (PW-1). The Investigating Officer has also denied that he has brought Kailash and one Ardaman and kept them in custody for 4-5 days. He has also denied that based on the statement of Kesar Bai (PW-1), he kept their guns. Investigating Officer has denied that he released both Kailash and Ardaman due to some pressure and falsely involved respondents/accused. Investigating Officer has also denied that Kesar Bai (PW-1) had told him that Kailash and Ardaman had done the incident through dacoits. Investigating Officer has also denied that Kesar Bai (PW-1) had named Kailash and Ardaman in her statement and the same was not written by him. In the light of categorical denial by the investigation, there is no merit in the contention of the respondent/accused as to the alleged involvement of Kailash.

17. In his evidence, Ram Naresh (PW-3) stated that the dead bodies of Ganeshi Bai and Ganga Singh were found close to each other and that dead bodies of Phoolwati and Rinku were at a distance of 25-30 feet away from the dead bodies of Ganeshi Bai and Ganga Singh. In his statement, B.L. Dhanele - Investigating Officer (PW-13) has stated that dead body of Phoolwati was at a distance of about fifty yards from the dead bodies of Ganeshi Bai and Ganga Singh and that has been mentioned by him in the Site Plan (Ex.-P24).

18. After referring to the Site Plan (Ex.-P24) and the evidence of Ram Naresh (PW-3) and PW-13-IO, the trial court pointed out that the place where Phoolwati and Rinku were shot and dead bodies of Ganeshi Bai and Ganga Singh were found, were at a short distance of about fifty yards. The trial court observed that since the distance was not far away, case of the prosecution that Ganga Singh, Ganeshi Bai, Phoolwati and Rinku were all shot by the accused in the course of the same transaction is established by the oral evidence of Kesar Bai (PW-1) and also by the Site Plan (Ex.-P24). After referring to the evidence of PW-13-Investigating Officer and Site Plan (Ex.-P24), when the trial court has recorded that the firing of all the four deceased were in the course of the same transaction, the High Court ought not to have doubted the version of Kesar Bai (PW-1) on the slight improvement made in her evidence. For the sake of arguments, even assuming that PW-1 could not have seen the firing at Ganeshi Bai and Ganga Singh, her evidence is to be accepted to the extent of the occurrence of firing at deceased Phoolwati and child Rinku. In her statement Kesar Bai (PW-1) has stated that after gun shot fired at deceased Rinku, accused-Chhaakki Lal threw the child Rinku on the ground and also jumped on his abdomen, as a result of which intestines came out. The learned counsel for the respondents-accused submitted that Chhaakki

Lal jumping on the abdomen of the child Rinku was not mentioned in Dehati Nalishi (Ex.P.1) and FIR and this material omission suggests that Kesar Bai (PW-1) exaggerated her version about throwing of child Rinku on the floor and jumping on his abdominal region.

19. FIR is not an encyclopaedia which is expected to contain all the minute details of the prosecution case, it may be sufficient if the broad effects of the prosecution case are stated in the FIR. In this case, firing by accused-Chhaakki Lal at child Rinku was stated in the FIR and the omission of minute detail that Chhaakki Lal jumped on the abdomen of child Rinku cannot be regarded as fatal to the prosecution case. As discussed earlier, the effect of the occurrence on the mind of an old woman like Kesar Bai (PW-1) cannot be measured in yardstick. Being grief-stricken because of the death of her four kith and kin, it may not have occurred to Kesar Bai (PW-1) to narrate all the minute details of the occurrence. The non-mention of accused-Chhaakki Lal throwing the child Rinku on the ground and jumping on his abdomen due to which the intestine came out cannot be regarded as fatal to the prosecution case.

20. The High Court acquitted the accused merely on the ground that the evidence of Kesar Bai (PW-1) is fraught with contradictions. Kesar Bai (PW-1) was a rustic villager and also aged. After seeing her own daughter and daughter in law and grandson being put to death, she must have been under tremendous shock. Kesar Bai (PW-1) was deposing in the court after some time. Naturally, there are bound to be variations from her earlier version. The trial court which had the opportunity to observe the demeanour of the witnesses found that the evidence of PWs is credible and trustworthy. While so, the High Court ought not to have recorded a finding raising doubts about the credibility of Kesar Bai (PW-1).

21. The trial court had the opportunity of seeing and observing the demeanour of the witnesses and the views of the trial court as to the credibility of the witnesses is entitled to great weight. Unless the appreciation of evidence by the trial court was vitiated by serious error, the findings recorded by the trial court ought not to have been interfered by the High Court.

22. In our considered view, the High court erred in doubting the testimony of Kesar Bai (PW-1). It would be unreasonable to contend that merely because Kesar Bai (PW-1) is related to the deceased and that there were contradictions in her evidence, her evidence has to be discarded. Discrepancies which do not shake the credibility of the witness and the basic version of the prosecution case are to be discarded. If the evidence of the witness as a whole contains the ring of truth, the evidence cannot be doubted. In *Prithu alias Prithi Chand and Another v. State of Himachal Pradesh* (2009) 11 SCC 588, it was held as under:-

> "**14.** In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* (1983) 3 SCC 217, it was observed that undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the root of the matter and shake the basic version of the prosecution witnesses. A witness cannot be expected to possess a photographic memory and to recall the details of an incident verbatim. Ordinarily, it so happens that a witness is overtaken by events. A witness could not have anticipated the occurrence which very often has an element of surprise. The mental faculties cannot, therefore, be expected to be attuned to absorb all the details. Thus, minor discrepancies were bound to occur in the statement of witnesses."

The same principle was reiterated in *State of U.P. v. M.K. Anthony* (1985) 1 SCC 505.

23. The High court proceeded on the footing that the evidence of Kesar Bai (PW-1) being the solitary witness is not reliable to base the conviction unless corroborated in material particulars. As discussed above, so far as the place of occurrence is concerned, the evidence of PW-1 is amply corroborated by other evidence. It is fairly well settled that it is not the number; but the quality of the evidence that matters. In terms of Section 134 of the Evidence Act, *"no particular number of witnesses shall in any case be required for the proof of any fact".* The test whether the evidence has a ring of truth is cogent and trustworthy. In *Prithipal Singh and Others v. State of Punjab and Another* (2012) 1 SCC 10, it was held as under:-

> "49. This court has consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence."

The same principle was reiterated in *Sudip Kumar Sen alias Biltu v. State of West Bengal and others* (2016) 3 SCC 26.

24. The version of the prosecution was doubted by the High Court on the ground that FIR was registered after much delay. As per Dehati Nalishi-complaint

(Ex.-P1), time of incident was at about 12.00-12.30 pm on 20.02.2006 and Dehati Nalishi-complaint (Ex.-P1) was written at 05.15 pm on the same day. PW-13-IO stated that on 20.02.2006, he was on duty at Health Mela in Senwdha and on receipt of information from SDO Smt. Rekha Singh, he reached the place of occurrence and wrote Dehati Nalishi-complaint (Ex.-P1). After the inquest and the preliminary investigation like preparation of spot map, seizure etc. on 20.02.2006, FIR was registered on 21.02.2006 at about 02.00 pm. Ramveer (PW-8), son of Kesar Bai (PW-1) was not present in the village and that he had gone to see his sister. When all the family members of PW-1 were killed and her son Ramveer (PW-8) away from the village, it cannot be accepted from Kesar Bai (PW-1) a seventy years old rural woman to leave the dead bodies of family members at the spot and go to the police station situated at a distance of ten kilometres to lodge the complaint. As pointed out by the trial court, the delay in registration of FIR has been properly explained.

25. Delay in setting the law in motion by lodging the complaint or registration of FIR is normally viewed by courts with suspicion because there is possibility of concoction of the case against the accused. But when there is proper explanation for the delay, the prosecution case cannot be doubted on the ground that there was delay in registration of FIR. In this case, the delay in FIR has been properly explained and the same is not fatal to the prosecution case.

26. The High Court referred to the evidence of Mewalal (PW-11) who in his cross-examination has stated that he saw PW-1 weeping at 08.00-09.00 am and that PW-1 told him that accused persons have killed Ganga Singh, Ganeshi Bai, Phoolwati and Rinku. Be it noted that Mewalal (PW-11) in his chief-examination stated that at about 12.00-12.30 pm, when he was present at his home in village Ruhera, he heard the firing sound of five-six gun shots and that PW-1, mother-in-law of Phoolwati passed from the passage crying and saying that the accused Chhaakki Lal and Akhilesh had committed the murder of her daughter-in-law Phoolwati, her grandson Rinku, Ganeshi Bai and Ganga Singh in Mandawali Dang. Resiling from his version in the chief-examination, in cross-examination, PW-11 stated that at about 08.00-09.00 am, when he was in his house, PW-1 came to his house saying that accused Chhaakki Lal and Akhilesh have committed murder of her daughter-in-law Phoolwati, her grandson Rinku, Ganeshi Bai and Ganga Singh. The learned counsel appearing on behalf of the respondent/accused submitted that the prosecution has not treated PW-11 hostile and the statement of PW-11 in his cross-examination throws serious doubts about the time and the manner of occurrence. Of course, PW-11 was not treated hostile; but his prevaricating version stood in the cross-examination neither affects his version in the chief-examination nor does it affect the prosecution case. The High court was not right in doubting the prosecution case and the trustworthiness of Kesar Bai (PW-1) based on the evidence of an infirm witness like PW-11.

27. The accused were arrested on 26.02.2006 and on the basis of the disclosure statement recorded under Section 27 of the Evidence Act, on 01.03.2006, one 0.315 bore *katta*/desi pistol (Ex.-A4) was seized at the instance of accused Chhaakki Lal vide seizure memo Ex.-P20. One 12 bore gun (Ex.-A3) along with two live cartridges (Ex.-EB1 and EB2) and a gun licence of accused Chhaakki Lal have been seized under seizure memo Ex.-P21 from accused Akhilesh. One petal *khoka* of 0.315 bore (Ex.-P8) was recovered from the dead body of Phoolwati. Two fired cartridges of 0.315 bore (Ex.-P7) were found near the dead bodies of deceased Ganeshi Bai and Ganga Singh respectively. In Ex.-P32 and Ex.-P33, the Ballistic expert opined that the fired *kartoos* (Ex.-EC1 to EC4) have been fired from 0.315 bore k*atta*/desi pistol (Ex.-A4). Likewise, in Ex.-P32 and Ex.-P33, the Ballistic expert opined that the two live *kartoos* (Ex.-LR1 and LR2) could have been fired from 12 bore gun (Ex.-A3). The opinion of the Ballistic expert tallying with the arms recovered from the accused is seen from the following:-

Accused	Fired at	Arm recovered	Opinion of Ballistic report
Chhaakki Lal (A1)	Phoolwati	315 bore *katta* (Ex.- A4)- Desi Pistol seized under Ex. P20	According to the FSL reports (Ex. - P31, P32 and P33), the fired *kartoos* (Ex.-EC1 to Ex.-EC4) has been fired by 0.315 bore *katta,* a desi pistol (Ex. A4). EB - 2 bullet recovered from the body of Ganga Singh was fired from 0.315 bore *katta* (Ex. A4). **EB-3 can be part of EB-2.**
Akhilesh (A2)	Rinku	12 bore gun (Ex.- A3) and two live cartridges (EB1 + EB2) seized under Ex. P21	According to the FSL reports (Ex. P31, P32 and P33), two live *kartoos* (Ex.-LR1 and LR2) could be fired by 12 bore gun (Ex. - A3). Ex.-EB-1 is fired by 12 bore gun (Ex. - A3) which was found from the dead body of Rinku.

The opinion of the Ballistic expert that the fired *kartoos* has been fired by 0.315 bore *katta*/desi pistol (Ex.-A4) recovered from accused Chhaakki Lal and the opinion that live *kartoos* (Ex.-EB1 and EB2) were fired from 12 bore gun (Ex.-A3) recovered from accused Akhilesh amply proves the involvement of the complicity of the accused in the occurrence thereby corroborating the evidence of PW-1.

28. As pointed out earlier, country made pistol of 315 bore was recovered from Chhaakki Lal on 01.03.2006 (seizure memo Ex.-P20) and 12 bore gun was recovered from Akhilesh (Ex.-P21). Contention of the learned counsel for the respondent is that Ex.-P20 refers to recovery of 315 bore *katta* whereas the FSL report (Ex.-P32) speaks about the examination of country made pistol of 0.315

bore. Further contention of the respondent/accused is that it has not been explained as to how country made pistol of 315 bore has been transformed into 0.315 bore during FSL report (Ex.-P32).

29. Of course, in Ex.-P20, it is stated that 315 bore *katta* was recovered from Chhaakki Lal and the same is also mentioned in the sanction order under the Arms Act (Ex.-P14). No doubt, in FSL report (Ex.-P32), the gun which was examined by the ballistic expert is stated as 0.315 bore *katta*. There seems to be no variation in the pistol which was seized by the police and the one that was examined by the ballistic expert. The difference seems to be only in the description of *315 bore katta* and *0.315 bore katta*. Investigating Officer who seized the weapon and the one who wrote Ex.-P20 are not ballistic experts and are only laymen in so far as the examination of guns/pistol. Any slight variation in the description of *katta* recovered from Chhaakki Lal does not make it a different *katta* from the one which was examined by the ballistic expert (0.315 bore *katta*).

30. Contention of the respondent/accused is that the FSL Report does not say anything about the use of rifle by any of the assailants. It was submitted that EB-1 and EB-2 cannot be fired by a country made pistol of 0.315 bore or a gun of 12 bore and that EB-1 and EB-2 must have been fired from some other big size gun. It was submitted that Kesar Bai (PW-1) has named one Kailash in her cross-examination that the said Kailash was kept in custody for about four to six days and the possibility that the gun recovered from Kailash was planted on Chhaakki Lal cannot be ruled out. It was further submitted that country made pistol examined by the FSL must have been recovered only from Kailash and the discrepancies between the recovery and the FSL report has not been properly explained.

31. It appears that there is no 315 bore gun but only 0.315 bore gun. The description given by the police that the recovered gun from Chhaakki Lal was 315 bore gun is only a mistaken description.

32. Investigating Officer has stated that Kesar Bai (PW-1) told in her statement recorded by him that the accused used big guns. Kesar Bai (PW-1) being a rustic village woman may not have been in a position to give proper description of the gun; the accused cannot take advantage of the answers elicited from Kesar Bai (PW-1) that ***" the accused persons were holding big size gun"*** as it was only a manner of description by a rustic villager like Kesar Bai (PW-1). The contention of the respondents that only "big sized gun" stated by Kesar Bai (PW-1) could have been the gun of Kailash who was taken to custody by the police along with his gun and later released. This contention does not merit acceptance. Investigation Officer has categorically denied that the big guns were of Kailash and Ardaman. Investigating Officer has also denied that because of pressure he did not implicate Kailash and Ardaman and falsely implicated the accused.

33. For reversing the verdict of conviction, the High Court has pointed out that there was delay in sending the seized gun and pistol (recovered on 01.03.2006) which was sent to the FSL only on 19.04.2006. The High Court has doubted the case of prosecution by observing that apart from delay in sending the seized guns/pistol, there is no material showing as to where the seized weapons were kept during the period from 01.03.2006 to 19.04.2006. Such delay in sending the recovered weapons to FSL could only be an omission or lapse on the part of the Investigating Officer. Such omissions or lapses in the investigation cannot be a ground to discard the prosecution case which is otherwise credible and cogent. In *Nankaunoo v. State of Uttar Pradesh* (2016) 3 SCC 317, it was held as under:-

> "9.... Any omission on the part of the investigating officer cannot go against the prosecution case. Story of the prosecution is to be examined dehors such omission by the investigating agency. Otherwise, it would shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice".

34. In *V.K. Mishra and Another v. State of Uttarakhand and Another* (2015) 9 SCC 588, it was held as under:-

> "38. The investigating officer is not obliged to anticipate all possible defences and investigate in that angle. In any event, any omission on the part of the investigating officer cannot go against the prosecution. Interest of justice demands that such acts or omission of the investigating officer should not be taken in favour of the accused or otherwise it would amount to placing a premium upon such omissions".

35. We are conscious that in an appeal against acquittal, the appellate court would not ordinarily interfere with the order of acquittal. But where the approach of the High Court suffers from serious infirmity, this court can reappreciate the evidence and reasonings upon which the order of acquittal is based. A miscarriage of justice which may arise from the acquittal of the guilty is no less than from the conviction of the innocent. Upon reappreciation of the evidence and the reasonings of the trial court and the High Court, in our considered view, the judgment of the High Court suffers from serious infirmity. The High Court erred in doubting the version of PW-1-the sole eye witness whose evidence is corroborated by the medical evidence and the evidence of ballistic expert. The High Court did not appreciate the evidence of PW-1 in proper perspective and erred in disbelieving her version on the contradictions which are not material. The High court erred in rejecting the credible evidence of Kesar Bai (PW-1), which in our considered view resulted in serious miscarriage of justice, where four persons were murdered.

36. Where the evidence has not been properly analysed or the High court has acted on surmises and findings of the impugned judgment is unreasonable, it is the

duty of the appellate court to set right the wrong. In the instant case, the High court has ignored the credible evidence of Kesar Bai (PW-1) and unnecessarily laid emphasis on the minor contradictions and omissions. However, the order of acquittal by the High court cannot be sustained and the judgment of the trial court is to be restored.

37. After convicting the accused Chhaakki Lal and Akhilesh under Section 302 IPC, the trial court held that the case would be one of the 'rarest of rare cases' and awarded death penalty. The occurrence was of the year 2006 and moreover, the appeal against second accused -Akhilesh has been abated due to his passing away. Therefore, considering the facts and circumstances of the case and the passage of time, we are of the view that awarding of death penalty is not warranted and imposing sentence of life imprisonment upon the respondents/accused Chhaakki Lal would meet the ends of justice.

38. In the result, the impugned judgment is set aside and these appeals are allowed. The judgment of the trial court convicting the respondent/accused Chhaakki Lal under Section 302 IPC is restored and the respondent/accused is sentenced to undergo imprisonment for life. The respondent/accused Chhaakki Lal shall surrender himself forthwith within a week to serve the remaining sentence failing which he shall be taken into custody.

Appeal allowed

I.L.R. [2019] M.P. 520 (SC)
SUPREME COURT OF INDIA

Before Smt. Justice R. Banumathi & Ms. Justice Indira Banerjee

Cr.A. No. 2301/2009 decided on 23 October, 2018

BHAGIRATH …Appellant

Vs.

STATE OF M.P. …Respondent

***Penal Code (45 of 1860), Section 302/149, 304(Part I) & Exception 4 to S. 300 – Motive/Intention – Premeditation* – Held – In a wordy quarrel, appellant inflicted *farsi* blow on head of deceased – One injury inflicted by *farsi* which shows that appellant has not taken undue advantage – Death committed in sudden fight without premeditation – Exception 4 to Section 300 IPC attracted – Conviction modified to one u/S 304 (Part I) IPC – Appeal allowed. (Para 7 & 8)**

दण्ड संहिता (1860 का 45), धारा 302/149, 304 (भाग I) व धारा 300 का अपवाद 4 – हेतु/आशय – पूर्व चिंतन – अभिनिर्धारित – एक शाब्दिक झगड़े में, अपीलार्थी ने मृतक के सिर पर फर्सी से वार किया – फर्सी से एक चोट पहुँचाई गई जो यह

दर्शाता है कि अपीलार्थी ने अनुचित लाभ नहीं लिया है – बिना पूर्व चिंतन के, अचानक लड़ाई में मृत्यु कारित हुई – भा.दं.सं. की धारा 300 का अपवाद 4 आकर्षित होगा – दोषसिद्धि को धारा 304 (भाग–I) भा.दं.सं. के अंतर्गत उपांतरित किया गया – अपील मंजूर।

Case referred:

(2010) 10 SCC 259,

J U D G M E N T

The Judgment of the Court was delivered by :
R. BANUMATHI, J. :- This appeal arises out of the judgment of the High Court of Madhya Pradesh in Criminal Appeal No. 309 of 2007 in and by which the High Court has affirmed the conviction of the appellant under Section 302 IPC and also the life imprisonment imposed upon him.

2. The case of the prosecution is that on 19.08.2005 at about 10.00 p.m. the deceased-Bherulal was surrounded by the appellant-Bhagirath (armed with *farsi*) and other accused persons (since acquitted) viz. Mangu, Sangita Bai, Suma Bai and Ramkunwar. In the wordy quarrel between the deceased and the appellant-accused Bhagirath is said to have inflicted the *farsi* blow on the right side of skull near ear. When PW-6 (Ramchandra) tried to save the deceased; he also sustained injuries on his right hand. Further, case of the prosecution is that all other accused (since acquitted) also inflicted injuries on the deceased-Bherulal. On completion of investigation, the appellant-accused and other accused were charge-sheeted for the offence under Sections 148/325/302 read with 149 IPC.

3. Relying upon the evidence of injured eye witness (PW-6), the Trial Court has convicted the appellant-accused under Section 302 IPC and other accused under Section 302 read with Section 149 IPC and sentenced all of them to undergo life imprisonment. For the conviction under Section 325 read with Section 149 IPC, they were sentenced to undergo R.I. for one year.

4. In the appeal before the High Court, the High Court confirmed the conviction of the appellant-accused and also sentence of imprisonment as aforesaid. So far as the other co-accused are concerned, the High Court acquitted all of them holding that the charges against them have not been established beyond reasonable doubt.

5. We have heard Mr. P.C. Agarwal, learned senior counsel appearing on behalf of the appellant, as well as Ms. Swarupama Chaturvedi, learned counsel appearing on behalf of the State of Madhya Pradesh, and also perused the impugned judgment and the materials on record.

6. The case of the prosecution rests upon the evidence of PW-6 (Ramchandra), an injured eye witness, who has deposed about quarrel between

the deceased-Bherulal and the accused party. PW-6 has also spoken about the infliction of *farsi* blow by the appellant-Bhagirath on the right side of the head near the ear of the deceased. When PW-6 tried to rescue the deceased-Bherulal, PW-6 (Ramchandra) also sustained injuries on his right hand. PW-6 was also injured in the occurrence is supported by the medical evidence and evidence of PW-2 (Dr. C.S. Gangrade). PW-6 being injured eye witness, his evidence stands on higher footing. Presence of injuries on the person of PW-6 lends assurance to his testimony (See: *Abdul Sayeed v. State of M.P.* reported in (2010) 10 SCC 259). We do not find any convincing reason to disbelieve the testimony of injured eye witness(PW-6).

7. The High Court acquitted all the other accused, since fatal blow is attributed to the appellant-accused. The question falling for consideration is to the nature of the offence. As pointed out earlier, the occurrence was at about 10.00 p.m., when there was wordy quarrel between the accused party and the deceased - Bherulal that there was a quarrel between them is established from the evidence of PW-6 also. In the quarrel, the appellant-accused has inflicted injuries on the right side of the head of the deceased measuring 15x2 ½ x 3 c.m. Though there was another injury found on the deceased it was one contusion measuring 10x2 cm on lower portion of right neck. The fourth exception to Section 300 IPC deals with death committed in sudden fight without premeditation. The sudden fight implies the absence of premeditation. Even as per the evidence of PW-6, there was a wordy quarrel and in that quarrel the appellant inflicted *farsi* blow on the head of the deceased. As the injuries inflicted on the deceased in the sudden fight between the deceased and the accused party. There was no premeditation. One injury was caused to the deceased by *farsi* blow on the head which indicates that the appellant has not taken undue advantage of the deceased. The manner the occurrence and the injury inflicted on the deceased attract Exception 4 to Section 300. In the facts and circumstances of the case, the conviction of the appellant is modified under Section 304 Part-I IPC and the sentence is reduced to the period already undergone.

8. In the result, the conviction of the appellant under Section 302 IPC is modified as conviction Section 304 Part-I IPC and sentence of the appellant is reduced to the period already undergone by him. The appellant is ordered to be released forthwith if his presence is not required in any other case.

9. The appeal is, accordingly, allowed.

Appeal allowed

I.L.R. [2019] M.P. 523 (SC)
SUPREME COURT OF INDIA
Before Mr. Justice N.V. Ramana & Mr. Justice Mohan M. Shantanagoudar
Cr.A. No. 637/2016 decided on 24 October, 2018

STATE OF M.P. …Appellant

Vs.

RAJARAM @ RAJA …Respondent

***A. Penal Code (45 of 1860), Section 376 & 306 – Appeal against Acquittal – Child Witness – Credibility – Appreciation of Evidence* – Held – Sister of deceased aged 12 yrs. stated in cross-examination, she was threatened by police and thus at the instance of police, she made a statement in favour of prosecution case – Difficult to rely on uncorroborated testimony of a 12 yrs. old girl who is likely to have been tutored or under influence while giving her testimony – No other material or medical evidence to substantiate prosecution case – Accused rightly acquitted. (Para 10 & 12)**

क. दण्ड संहिता (1860 का 45), धारा 376 व 306 – दोषमुक्ति के विरूद्ध अपील – बालक साक्षी – विश्वसनीयता – साक्ष्य का मूल्यांकन – अभिनिर्धारित – मृतिका की 12 वर्षीय बहन ने प्रतिपरीक्षण में कथन किया कि उसे पुलिस द्वारा धमकाया गया था और इसलिए पुलिस के कहने पर उसने अभियोजन प्रकरण के पक्ष में कथन किया – 12 वर्षीय बालिका, जिसे संभावित रूप से सिखाया गया था जो अपना परिसाक्ष्य देते समय असम्यक् प्रभाव के अधीन थी, के असंपुष्ट परिसाक्ष्य पर विश्वास करना कठिन है – अभियोजन प्रकरण को सिद्ध करने हेतु कोई अन्य सामग्री अथवा चिकित्सीय साक्ष्य नहीं – अभियुक्त को उचित रूप से दोषमुक्त किया गया।

***B. Penal Code (45 of 1860), Section 376 & 306 – Merg Intimation* – Held – Father of deceased, who lodged *merg* intimation stated that he scolded his daughter and thus she took poisonous substance – In *merg* intimation, there is no mention that deceased told her father of any rape committed by accused as a result of which she committed suicide due to depression or self-torment. (Para 11)**

ख. दण्ड संहिता (1860 का 45), धारा 376 व 306 – मर्ग सूचना – अभिनिर्धारित – मृतिका के पिता, जिसने मर्ग सूचना दर्ज कराई थी, का कथन है कि उसने उसकी पुत्री को डांटा था और इसलिए उसने विषैला पदार्थ खा लिया – मर्ग सूचना में, यह कहीं उल्लिखित नहीं कि मृतिका ने उसके पिता को अभियुक्त द्वारा कारित किसी बलात्संग के बारे में बताया था जिसके परिणामस्वरूप, अवसाद या आत्म–पीड़ा के कारण उसने आत्महत्या कारित की।

Cases referred:

(2003) 3 SCC 21, (2011) 6 SCC 450, (2008) 11 SCC 153, (1995) 2 SCC 486.

J U D G M E N T

The Judgment of the Court was delivered by :
N.V. RAMANA, J. :- This criminal appeal is preferred by the Appellant-State of Madhya Pradesh by special leave against the impugned order dated 12.01.2009 passed by the High Court of Madhya Pradesh, Bench at Jabalpur in Criminal Appeal No. 923 of 2005, wherein, High Court allowed the appeal preferred by respondent herein and set aside the order of conviction & sentence passed by the trial court on 05.04.2005 under Sections 376(1) and 306 of the Indian Penal Code.

2. The factual matrix as advanced by the prosecution, necessary for disposal of this case is that on 13.04.2004, at around 6.00 P.M., Rinky @ Inky (hereinafter referred as 'deceased') started vomiting. The deceased was taken to Dr. Tripathi's dispensary, but he was not available therein. Therefore, deceased was taken to the quarter of Dr. Tripathi. After being examined by Dr. Tripathi, deceased was declared dead.

3. On the basis of Merg intimation/information of death of the deceased (Ex. P/3) by Dinesh Prasad Kushwaha (PW-3), father of the deceased, Merg No. 25/04 was registered by J.B. Singh Chandel (PW-9). The post mortem of deceased was conducted by Dr. S.D. Kanwar (PW-6).

4. Thereafter, on Merg Inquiry, it was found that respondent herein committed rape on the deceased, who under depression, committed suicide by consuming poisonous substance. On this basis, K.N. Banjare (PW-7) registered Crime No. 181/04 for the offence punishable under Sections 376 and 305 of IPC at Police Station, Jaisingh Nagar and the case was investigated. Respondent was apprehended in the crime and he was arrested accordingly. Thereafter, medical examinations were conducted by Dr. Piyush Nigam (PW-1) and other investigations by K.N. Banjare (PW-7) took place. On completion of investigation, charge sheet was filed against the respondent and the case was committed to Sessions Court for trial.

5. Learned Additional Sessions Judge, in Sessions Trial No. 173 of 2004, vide order dated 05.04.2005, convicted the respondent under Sections 376(1) and 306 of I.P.C. and sentenced him to undergo 10 year Rigorous Imprisonment and imposed fine of Rs. 500/-, and in default, three months Simple Imprisonment in both the counts. Further, each of the sentence(s) was ordered to run concurrently.

6. Being aggrieved by the order of conviction and sentence, respondent approached the High Court in appeal and the High Court vide impugned order dated 12.01.2009, allowed the appeal and set aside the conviction and sentence imposed on respondent by the Trial Court.

7. Heard Ms. Swarupama Chaturvedi, learned counsel for the appellant and Ms. Nidhi, learned counsel for the respondent.

8. Learned counsel for appellant i.e. State of Madhya Pradesh mainly relied upon the evidence of Anju Kumari (PW-4), sister of the deceased and Dinesh Prasad Kushwaha (PW-3), father of the deceased.

9. We have thoroughly examined the evidence of abovementioned witnesses and also the evidence of Dr. Piyush Nigam (PW-1) and Dr. S.D. Kanwar (PW-6).

10. Anju Kumari (PW-4), who is stated to be 12 years of age, categorically stated in Para 12 of her cross-examination that on the next day of incident, when the police came, she did not tell anything about the incident to the police. Subsequently, after a week, police came again and at the instance of police, she made a statement. She also admitted that she was threatened by the police and due to that, she has made a statement in support of the prosecution case. It has been held in *Bhagwan Singh and Others vs. State of M.P.* (2003) 3 SCC 21, that *'if the case is based on evidence of child witness, court should seek corroboration from other evidence'*. Further, it was also held that *'if possibility of tutoring the child witness appears to the court, it should be careful in accepting the evidence'*. Therefore, it is difficult for this court to rely on uncorroborated testimony/ evidence of a 12 year old girl, who is very likely to have been tutored or under influence while giving her testimony.

11. Another evidence relied upon by the appellant is that of Dinesh Prasad Kushwaha (PW-3), who lodged Merg intimation (Ex.P/3) on the same day of incident i.e. 13.04.2004 at about 4.00 P.M., in which *inter alia* he stated that he scolded her daughter i.e. the deceased and resultantly she took poisonous substance. It is also worthwhile to note here that there is no mention in the *Merg Intimation* that the deceased told PW-3 about commission of rape by respondent and as a result deceased committed suicide due to depression or self-torment, after being raped by respondent. In view of the above, we are of the considered opinion that the evidence of PW-3 is not reliable at all.

12. In the instant case, except the evidence of PW-3 and PW-4, there is no other material or medical evidence to support or substantiate the case of prosecution. In a case of acquittal by the High Court, the State has to make out a strong case to interfere with the impugned order. Until and unless, there is some perversity or non-consideration of the material facts, it is not proper to interfere with the order of acquittal passed by the High Court. Similar view was taken by this Court in the case of *State of Kerala & Anr. vs. C.P. Rao* (2011) 6 SCC 450.

13. Similarly, in the case of *'State of U.P. vs. Punni & Ors.'* (2008) 11 SCC 153, it was held that-

"11. In any view of the matter, we are of the view that **this Court, while dealing with the order of acquittal of the High Court, would not ordinarily interfere with the findings of the High Court unless it is satisfied that such finding is vitiated by some glaring infirmity in the appraisement of evidence or such finding was perverse or arbitrary."**

(emphasis supplied)

14. In *State of Punjab vs. Ajaib Singh* (1995) 2 SCC 486, this Court, on the same lines, held that *"if the order of acquittal was not perverse or palpably erroneous, this Court would not interfere with such finding of the High Court acquitting the accused/respondents from the offences charged against them".*

15. In the light of above-stated findings, reasons and discussions, we find no merits in this appeal to interfere with the impugned order passed by the High Court. Accordingly, the instant appeal is dismissed being devoid of merits.

Appeal dismissed.

I.L.R. [2019] M.P. 526 (SC)
SUPREME COURT OF INDIA
Before Mr. Justice Uday Umesh Lalit &
Mr. Justice Dr. Dhananjaya Y. Chandrachud
C.A. No. 11356/2018 decided on 26 November, 2018

STATE OF M.P. & ors. …Appellants

Vs.

ABHIJIT SINGH PAWAR …Respondent

***Service Law – Appointment – Criminal Antecedent* – Post of Subedars, Platoon Commanders and Inspectors of Police – Held – Apex Court has earlier concluded that even in cases where truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents and suitability of candidate and could not be compelled to appoint such candidate – Employer can take into account the job profile, severity of charges levelled against candidate and whether the acquittal was an honourable acquittal or was merely on ground of benefit of doubt or as a result of composition – Decision of authority on question of suitability of candidate was correct and not actuated with any *malafide* – Appeal allowed.**

(Paras 14, 15 & 17)

सेवा विधि – नियुक्ति – आपराधिक पूर्ववृत्त – सूबेदारों, प्लाटून कमांडरों और पुलिस निरीक्षकों के पद – अभिनिर्धारित – सर्वोच्च न्यायालय ने पूर्व में निष्कर्षित किया है कि उन प्रकरणों में भी जहां एक निष्कर्षित प्रकरण के बारे में सच्चा प्रकटीकरण किया गया

था, नियोक्ता को तब भी अभ्यर्थी के पूर्ववृत्त और उपयुक्तता पर विचार करने का अधिकार होगा तथा ऐसे अभ्यर्थी को नियुक्त करने हेतु उसे विवश नहीं किया जा सकता – नियोक्ता, अभ्यर्थी के कार्य विवरण, उसके विरूद्ध लगाये गये आरोपों की कठोरता एवं क्या दोषमुक्ति एक सम्मानपूर्ण दोषमुक्ति थी या मात्र संदेह के लाभ के आधार पर थी या समझौते के परिणामस्वरूप थी को विचार में ले सकता है – अभ्यर्थी की उपयुक्तता के प्रश्न पर प्राधिकारी का विनिश्चय सही था तथा न कि किसी असद्भावना से प्रेरित था – अपील मंजूर।

Cases referred:

(2013) 7 SCC 685, (2015) 2 SCC 591, (2018) 1 SCC 797, (2016) 8 SCC 471, C.A. No. 10571/2018 decided on 12.10.2018, AIR 1964 SC 787, (2013) 1 SCC 598, (1994) 1 SCC 541.

J U D G M E N T

The Judgment of the Court was delivered by :
UDAY UMESH LALIT, J. :- Leave granted. This appeal challenges correctness of the judgment and order dated 22.09.2015 passed by the High Court of Madhya Pradesh at Indore in Writ Appeal No.132 of 2015.

2. In 2012, the Professional Examination Board, Madhya Pradesh invited applications for filling up the posts of Subedars, Platoon Commanders and Inspectors of Police. Clause 1.13 of the advertisement dealt with character verification of the candidates. True translation of said clause 1.13 along with Note appended thereto was to the following effect:

> **"1.13 Appointment:** The character verification shall be carried out about the selected candidates and the appointment only of the candidates found in the selection list upon finding them fit in character. The medical examination of the candidates also shall be conducted. The candidate to be medically fit for the entitlement of the appointment is also required.
>
> **Note:** To save time and for the convenience, the verification form is sent earlier to the candidates declared fit to sit in the physical fitness examination, which the candidates have to submit after filling up and the character and earlier verification of all the candidates to appear in interview is made. The candidate who is not selected, his form will not used further. The candidates should fill up full and correct information in the character verification form. They should not provide any false information, incomplete information and semi true information. They should not conceal any information as well. Particularly it is required to fill up the correct information in column no.12. Now according to the new

guidelines of Madhya Pradesh Government regarding character verification, to give the undertaking to this effect is required that he has not concealed any fact in the details given by him earlier about the criminal cases."

3. The respondent participated in the selection process and as mandated, tendered an affidavit on 22.12.2012 disclosing following information:

"I affirm on oath that Case No.592/06 under Sections 323, 325, 506, 34 was registered in Police Station Madhav Nagar against me the deponent. I the deponent myself had come to the court. I was never arrested. The aforesaid case is pending in the Court. In addition no criminal record is registered in any police station anywhere in India, nor has the deponent convicted by the Court in any criminal case."

4. According to the disclosure, a case registered in the year 2006 was pending on the date when the affidavit was tendered. However, it appears that within four days, a compromise was entered into between the original complainant and the respondent and an application for compounding the offences was filed under Section 320 Code of Criminal Procedure. True translation of relevant portions of the proceedings dated 26.12.2012 before the Judicial Magistrate, First Class, Ujjain, M.P. is as under:

"The case was perused. This case is listed for the presence of the accused. The accused was taken in judicial custody. .....

The bond forfeiture amount on behalf of the accused was deposited in compliance with the order, vide receipt No.85. The receipt was given to the accused....

At this very stage, Rajiv Rawat submitted an application for compromise under Section 320(2) Cr.P.C. and expressed that a compromise has been made between him and the accused persons so the permission for compounding be granted. Copy of the application was given to ADPO. The remaining accused persons with Sashank Advocate are present. I heard the matter regarding compromise. The case was perused.

It is clear from perusal that the case being of offences under Sections 294, 325/34, 323, 506 Part-2, IPC is fit for compromise. The present complainant is a competent party for the compromise. Hence, the permission for compounding can be granted.

The parties submitted a deed of compromise, jointly signed having photographs. The parties were identified by their

> counsel. Both the parties have stated that the compromise was arrived at voluntarily without any fear and pressure. Hence, the application for compounding was allowed after verification. As a result of the composition, the accused persons are acquitted of the charges under Sections 294, 325/34, 323, 506 Part-2 IPC.
>
> The bail bonds of the accused persons are discharged."

5. The proceedings, thus, indicate that the amount of bond submitted on the earlier occasion had been forfeited for non-compliance; that the respondent was taken in judicial custody and that after the compromise was entered into between the parties, the application for compounding of the offences was allowed.

6. The respondent was selected in the written examination and was called for medical examination. Around the same time, his character verification was also undertaken. After due consideration of character verification report, the candidature of the respondent was however rejected vide order dated 19.07.2013 passed by the Additional Director General of Police (Selection/Recruitment), Police Headquarters, Bhopal. Said order observed as under:-

> "3-B The services of the persons seeking uniform service/ employment comes under the category different from other services and candidates. The duty of the candidates selected is to maintain law and order of the State and to protect the life and property of the public. The high moral conduct and not to be involved in the criminal activities is required for the police service.
>
> 3-C According to the principles about the excellent conduct with the Government in respect of the Government Servants, the Government Servants should be of high character. Since the officers of the Police Department are responsible to control the persons of criminal nature, it is not proper to appoint the persons of criminal record in public interest."

7. The respondent being aggrieved, filed Writ Petition No.9412 of 2013 before the High Court of Madhya Pradesh at Indore challenging the aforesaid order dated 19.07.2013. A Single Judge of the High Court allowed said writ petition and directed as under:

> "... The petitioner shall be appointed in case his name finds place in the merit list and is entitled to be appointed as per merit. The petitioner shall be entitled for all consequential benefits, except back wages."

8. The State challenged the decision of the Single Judge by filing Writ Appeal No.132 of 2015, which challenge was found to be without any merit by the Division Bench. The view taken by the Single Judge was thus affirmed by the Division Bench vide its judgment and order dated 22.09.2015 which decision is presently under challenge.

9. Since the respondent, despite being served in the matter had chosen not to enter appearance, this Court requested Mr. Siddhartha Dave, learned Advocate to assist as Amicus Curiae and appear on behalf of the respondent. We heard Mr. Rajesh Srivastava, learned Advocate for the State and Mr. Siddhartha Dave, learned Amicus Curiae for the respondent.

10. It was submitted by Mr. Rajesh Srivastava, learned Advocate that in terms of Rule 12(3) of M.P. Police Executive (Non-Gazetted) Services Recruitment Rules, 1996, inclusion of a candidate's name in the list would not confer any right to appointment and that a candidate had to be found suitable in all respects before he could be appointed. Relying on the decisions of this Court in *Commissioner of Police, New Delhi and another v. Mehar Singh*[1], *State of Madhya Pradesh and others v. Parvez Khan*[2] and *Union Territory, Chandigarh Administration and others v. Pradeep Kumar and another*[3] he submitted that the candidature of the respondent was rightly rejected and there being no allegation of *mala fides,* no interference with the decision in question was called for. Mr. Siddhartha Dave, learned Amicus Curiae, on the other hand, submitted that by virtue of Section 320(8) of Cr.P.C. composition of an offence would have the effect of an acquittal. He further submitted that the respondent had not suppressed any information and he having been acquitted, the High Court was right in accepting his challenge.Mr. Dave further relied upon the decisions of this Court in *Avtar Singh v. Union of India and others*[4] and In *Mohammed Imran v. State of Maharashtra and others*[5].

11. In *Mehar Singh* (supra) the selection in question was for the post of Constable (Executive). The offences alleged against Mehar Singh were under Sections 341, 323 and 427 of the IPC. He had arrived at a compromise with the complainant and in terms of the compromise, Mehar Singh and other co-accused were acquitted of the offences under Sections 323, 341 and 427 of the IPC on 30.01.2009. In the selection which was undertaken thereafter, said Mehar Singh had disclosed the factum regarding his involvement and his acquittal. His candidature was, however cancelled in terms of the concerned Standing Order. The challenge raised by him was accepted by the Administrative Tribunal and the Delhi High Court. But this Court reversed said decisions and the observations in

[1](2013) 7 SCC 685
[2](2015) 2 SCC 591
[3](2018) 1 SCC 797
[4](2016) 8 SCC 471
[5]In Civil Appeal No. 10571 of 2018, decided on 12.10.2018.

paragraphs 23, 24, 25, 33 to 35 of the decision of this Court are quite relevant for the present purposes:-

> **"23. A careful perusal of the policy leads us to conclude that** the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.
>
> **24.** We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental enquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical, namely, whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on a par with a clean acquittal on merit after a full-fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India*[6] this Court has taken a view that departmental proceedings

[6]AIR 1964 SC 787

can proceed even though a person is acquitted when the acquittal is other than honourable.

25. The expression *"honourable acquittal"* was considered by this Court in *S. Samuthiram*[7]. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *RBI v. Bhopal Singh Panchal*[8], where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions *"honourable acquittal"*, *"acquitted of blame"* and *"fully exonerated"* are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression *"honourably acquitted"*. This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.

33. So far as respondent Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of the Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of

[7](2013) 1 SCC 598
[8](1994) 1 SCC 541

a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

34. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/ attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later on acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.

35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating.

> In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand."

12. The conclusions in *Mehar Singh* (supra) have been followed and the principles reiterated by this Court in later decisions, namely in *State of M.P. v. Parvez Khan* (supra) and in *Union Territory, Chandigarh Administration and others v. Pradeep Kumar and another* (supra).

13. A three Judge Bench of this Court in *Avtar Singh v. Union of India* (supra) was required to consider the difference of opinion in decisions of this Court on the question of suppression of information or submission of false information in the verification form on issues pertaining to involvement in criminal cases and the effect thereof. The law on the point was settled by this Court in following terms in paragraph No.38 of its decision as under:

> **"38.** We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:
>
> **38.1.** Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.
>
> **38.2.** While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.
>
> **38.3.** The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.
>
> **38.4.** In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:
>
> **38.4.1.** In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty

offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, *holding* departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only

> such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.
>
> **38.11.** Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

14. In *Avtar Singh* (supra), though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in paragraph 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.

15. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of Cr.P.C., the law declared by this Court in *Mehar Singh* (supra), specially in paragraphs 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.

16. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in *Mohammed Imran* (supra) is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an auto-rickshaw which was following the auto-rickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in *Mohammed Imran* (supra) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in *Mehar Singh* (supra), *Parvez Khan* (supra) and *Pradeep Kumar* (supra).

17. We must observe at this stage that there is nothing on record to suggest that the decision taken by the concerned authorities in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No.9412 of 2013 preferred by the respondent. No costs.

18. Before we part, we must record our appreciation for the efforts put in by Mr. Siddharth Dave, learned Amicus Curiae and the assistance rendered by him.

Appeal allowed

I.L.R. [2019] M.P. 537
WRIT PETITION
Before Mr. Justice G.S. Ahluwalia
W.P. No. 1115/2014 (Gwalior) decided on 10 December, 2018

RAM BILOKI & anr. …Petitioners

Vs.

RAMSWAROOP & ors. …Respondents

***A. Civil Procedure Code (5 of 1908), Order 26 Rule 9 – Appointment of Local Commissioner – Grounds* – Held – The prayer made in application under Order 26 Rule 9 and by reply to the application, parties to suit have tried to collect evidence through appointment of local commissioner, which cannot be allowed – Court while passing an order under Order 26 Rule 9 CPC cannot delegate its powers of adjudicating the dispute to a local Commissioner – Words "elucidating any matter in dispute" would not include collection of evidence – Impugned order set aside.**

(Paras 11, 13 & 14)

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 26 नियम 9 – स्थानीय कमिश्नर की नियुक्ति – आधार – अभिनिर्धारित – आदेश 26 नियम 9 के अंतर्गत आवेदन में की गई प्रार्थना तथा आवेदन के उत्तर द्वारा, वाद के पक्षकारों ने स्थानीय कमिश्नर की नियुक्ति के जरिए साक्ष्य एकत्रित करने के लिए प्रयास किया, जिसे मंजूर नहीं किया जा सकता – आदेश 26 नियम 9 सि.प्र.सं. के अंतर्गत आदेश पारित करते समय न्यायालय, विवाद के न्यायनिर्णयन की अपनी शक्तियों को एक स्थानीय कमिश्नर को प्रत्यायोजित नहीं कर सकता – शब्द ''विवाद में के किसी विषय का विशदीकरण'' में साक्ष्य एकत्रित करना शामिल नहीं होगा – आक्षेपित आदेश अपास्त।

B. Civil Procedure Code (5 of 1908), Order 26 Rule 9 – Appointment of Local Commissioner – Dispute of Boundaries – Consideration

– Held – It is established principle of law that where dispute is of boundaries, then same can be resolved by appointing a commissioner but there should not be any claim of title over the land belonging to another party – Except the question of identity of property, no other dispute should be involved – Present case cannot be said to be a simple case of boundary dispute. (Para 9)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 26 नियम 9 – स्थानीय कमिश्नर की नियुक्ति – सीमाओं का विवाद – विचार – अभिनिर्धारित – यह विधि का स्थापित सिद्धांत है कि जहां सीमाओं का विवाद है तब उक्त का समाधान एक कमिश्नर की नियुक्ति द्वारा किया जा सकता है परंतु वहां अन्य पक्षकार की भूमि पर हक का कोई दावा नहीं होना चाहिए – संपत्ति की पहचान के प्रश्न को छोड़कर कोई अन्य विवाद अंतर्ग्रस्त नहीं होना चाहिए – वर्तमान प्रकरण को सीमा विवाद का एक साधारण प्रकरण नहीं कहा जा सकता।

Case referred :

2004 (3) MPLJ 213.

J.P. Mishra with *Gaurav Mishra,* for the petitioners.
None, for the respondents.

(Supplied: Paragraph numbers)

O R D E R

G.S. AHLUWALIA, J. :- Heard finally.

This petition under Article 227 of the Constitution of India has been filed against the order dated 7-1-2014 passed by Civil Judge, Class 1 Karera, Distt. Shivpuri, in C.S. No.13-A/2013, by which the application filed by the petitioner under Order 26 Rule 9 C.P.C. for appointment of Local Commissioner was allowed with a further direction that the Local Commissioner would also submit his report with regard to the objections raised by the respondent in his reply to the application.

2. The necessary facts for the disposal of the present petition in short are that the petitioner has filed a suit for permanent injunction in respect of suit plot admeasuring 35x36 sq. meters in survey no.20001/ area 0.12 hectare situated at Tila Road Chouraha, National Highway, Tahsil Karera, Distt. Shivpuri. It was pleaded that the plot in question is on the North of National Highway and now the defendants are trying to dispossess them.

3. The respondents filed their written statement and denied plaint averments.

4. The plaintiffs/petitioners filed an application under Order 26 Rule 9 C.P.C. seeking for appointment of Commissioner to seek report on the following issues :

जांच बिंदु

1. वादीगण की दुकान के उत्तर दिशा मे फोर लाइन से डिवाइडर तक बीच की दूरी कितनी है तथा राष्ट्रीय राजमार्ग मे कितनी भूमि आती है तथा दुकान से फोरलाइन रोड तक बीच की दुरी कितनी वादीगण का दुकान का दरवाजा फोर लाइन की तरफ स्थित है या नही।

2. पुराने टीला रोड से लगकर प्रतिवादी कं 1 की दुकानों की पीछे खुली व पुराना कच्चा मकान स्थित है या नही ।

3. यह कि प्रतिवादी कं 1 की दुकानों से फोर लाइन तक की बीच की दूरी कितनी है।

4. यह कि उक्त मौके की स्थिति की जांच हो जाने से प्रकरण के निराकरण मे जांच रिर्पोट सहायक होगी तथा पक्षकारों को न्याय मिल सकेगा। प्रार्थी कमिश्नर फीस जमा करने को तैयार है।

5. The defendants filed their reply and submitted no objection for appointment of Commissioner, but prayed that the Commissioner should also be directed to submit his report on the following issues also :

प्रतिवादीगण की ओर से आवेदन का उत्तर प्रस्तुत करते हुए सीमांकन कराये जाने मे सहमति व्यक्त की गई है और यह लेख किया गया है कि जांच के बिन्दु मे फोर लाइन से लगकर किस सर्वे नं की कितनी भूमि है तथा वादीगण कितनी भूमि मे मालिक है व उनका मकान व दुकान कितने रकवे पर बना हुआ है तथा कितना रकबा शासकीय भूमि पर बना है व कितना स्वयं के पर बना है के तथ्य की भी जांच कराई जाना आवश्यक है।

6. By the impugned order, the Trial Court allowed the application and appointed the Commissioner, but also directed that the Commissioner shall also submit his report with regard the prayer made by the defendants.

7. Being aggrieved by the order of the Trial Court, it is submitted by the counsel for the petitioner that while allowing the application, the Trial Court should not have directed the Commissioner to submit the report with regard to the prayer made by the defendants also, because it would amount to collecting evidence, which is not permissible.

8. Heard the learned Counsel for the petitioner. None appears for respondents though served.

9. It is well established principle of law that where the dispute is of boundaries, then the same can be resolved by appointing a Commissioner. Thus, in order to hold that there is dispute of boundaries, there should not be any claim of title over the land belonging to another party. Thus, except the question of identity of property, no other dispute should be involved. However, where a party

to the suit claims that the area of his land has been wrongly reduced, then it cannot be said that it is a simple case of boundary dispute. Unless and until, the claim of the plaintiff that the area of his land has been reduced is established, no further relief can be granted to him. Thus, the present case, cannot be said to be a simple case of boundary dispute.

10. Order 26 Rule 9 CPC reads as under :

> **9. Commissions to make local investigations.**— In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any *mesne profits* or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:
>
> Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

11. Thus, it is clear that a local Commissioner can be appointed for either elucidating any matter in dispute, or of ascertaining the market-value of any property or the amount of any *mesne profits* or damages or annual net profits. However, the words "elucidating any matter in dispute" would not include, collection of evidence. The Court by passing an order under Order 26 Rule 9 C.P.C. cannot delegate its powers of adjudicating the dispute to a Local Commissioner.

12. This Court in the case of *Ashutosh Dubey and another Vs Tilak Grih Nirman Sashkari Samiti and another* reported in 2004(3) MPLJ 213 has held as under:

> (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied :-- (i) the error is manifest and apparent on the fact of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.
>
> Considering the aforesaid, it is apparent that the order passed by the Courts below is without jurisdiction and the Court below has assumed jurisdiction which was not vested in it. Once the application under Order 26 Rule 9,

CPC was rejected by the Trial Court on merits, there was no occasion for the Trial Court for re-consideration of the aforesaid application on similar facts. Apart from this, it is settled law that no such commission may be issued for collecting the evidence in the case. If the aforesaid order allowed to remain in existence it will cause serious injustice to the other side. This Court in Laxman v. Ramsingh, Civil Revision No. 18 of 1982, decided on 24-2-1982 (1992 MPWN 255) has considered similar question held :-

"The prayer for appointment of a Commissioner was made on the ground that the Commissioner would be able to see on the spot the crop which is standing on the suit lands. This according to the defendant will bring out the truth of his case as according to him it was gram crop as sown by the applicant which was standing on it. Learned Counsel for the non-applicant plaintiff had submitted that the appointment of Commissioner as being sought on certain assumptions. He had in this connection pointed out certain pleadings in that behalf. The object of local investigation is not so much to collect evidence for either of the parties. It is within the discretion of the Court to order a local investigation or reject the prayer. The Court below has exercised that discretion by rejecting that application. In view of the circumstances, it can not be said that the Court has committed any error on jurisdiction while rejecting the application in that behalf."

7. Similar position is here, in this case the prayer for collecting of the evidence on spot has been sought through appointment of the commission which is beyond the scope of Order 26 Rule 9, CPC. In the circumstances Court below erred in allowing the application.

13. If the facts of this case are considered, then it is clear that even the application filed by the petitioners for appointment of Commissioner should not have been allowed by the Trial Court, because by prayer made in the application as well as in the reply to the application, the parties to the suit have tried to collect evidence through Commissioner, which cannot be allowed.

14. Accordingly, this Court is of the considered opinion that the order dated 7-1-2014 passed by Civil Judge, Class-1 Karera, Distt. Shivpuri, in C.S. No.

13-A/2013, by which the application filed by the petitioner under Order 26 Rule 9 C.P.C. for appointment of Local Commissioner was allowed with a further direction that the Local Commissioner would also submit his report with regard to the objections raised by the respondent in his reply to the application, cannot be allowed to stand in its entirety. Accordingly, the same is set aside and the application filed by the petitioners under Order 26 Rule 9 C.P.C. is hereby rejected. The parties are directed to prove their case by leading evidence in the Court.

15. The Trial Court is directed to proceed in accordance with law.

16. The Petition is **allowed**, however, the impugned order, in its entirety is set aside.

17. The interim relief granted by this Court by order dated 18-2-2014 is hereby vacated.

Petition allowed

I.L.R. [2019] M.P. 542
WRIT PETITION
Before Mr. Justice Vivek Rusia
W.P. No. 21886/2018 (Indore) decided on 4 January, 2019

PRATIBHA SYNTEX LTD. …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Industrial Disputes Act (14 of 1947), Section 2(A) & 10(1) – Validity of Reference – Existence of Industrial Dispute* – Held – Terms of reference is very precise and clearly indicates industrial dispute between workmen and petitioner – Objections raised by petitioner are either issue of law or mixed question of law and facts and comes under the category of incidental, additional or ancillary issues required to be decided by Tribunal – It is discretion of Tribunal either to decide as preliminary issue or while answering terms of reference – Impugned order not liable to be quashed in writ petition under Article 226 of Constitution – Petition disposed of.**

(Para 19)

क. *औद्योगिक विवाद अधिनियम (1947 का 14), धारा 2(ए) व 10(1) – निर्देश की विधिमान्यता – औद्योगिक विवाद का विद्यमान होना* – अभिनिर्धारित – निर्देश के निबंधन अति यथावत् हैं तथा कर्मकार और याची के मध्य औद्योगिक विवाद का होना स्पष्ट रूप से इंगित करते हैं – याची द्वारा उठाये गये आक्षेप या तो विधि का विवाद्यक हैं या विधि और तथ्यों के मिश्रित प्रश्न हैं तथा आनुषंगिक, अतिरिक्त अथवा प्रासंगिक विवाद्यकों की कोटि में आते हैं जिनका अधिकरण द्वारा विनिश्चय किया जाना अपेक्षित है – यह

अधिकरण का विवेकाधिकार है या तो प्रारंभिक विवाद्यक के रूप में विनिश्चय करे या निर्देश के निबंधनों का उत्तर देते समय – आक्षेपित आदेश संविधान के अनुच्छेद 226 के अंतर्गत रिट याचिका में अभिखंडित किये जाने योग्य नहीं – याचिका निराकृत।

***B. Industrial Disputes Act (14 of 1947), Sections 2(s), 36(1)(c) & 36(4) – Workmen – Locus* – Held – If worker is not a member of any Trade Union, still he can be represented by any other workman employed in industry on basis of authorization – Workman includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute – Further, u/S 36(4), workman can even be represented by legal practitioner with the consent of other party to the proceeding and with leave of Labour Court/Tribunal. (Para 12 & 15)**

ख. औद्योगिक विवाद अधिनियम (1947 का 14), धाराएँ 2(एस), 36(1)(सी) व 36(4) – कर्मकार – अधिकार – अभिनिर्धारित – यदि कर्मकार किसी व्यवसाय संघ का सदस्य नहीं है, तब भी प्राधिकरण के आधार पर उद्योग में नियोजित किसी अन्य कर्मकार द्वारा उसका प्रतिनिधित्व किया जा सकता है – कर्मकार में कोई भी ऐसा व्यक्ति शामिल होता है जिसे उस विवाद के संबंध में या उसके परिणामस्वरूप पदच्युत, भारमुक्त अथवा निकाल दिया गया हो – इसके अतिरिक्त, धारा 36(4) के अंतर्गत कर्मकार का कार्यवाही के अन्य पक्षकार की सहमति से तथा श्रम न्यायालय/अधिकरण की अनुमति से विधिक व्यवसायी द्वारा प्रतिनिधित्व भी किया जा सकता है।

Cases referred :

(1975) 4 SCC 838, (2000) 1 SCC 371, (2014) 1 SCC 536, 2016 (3) MPLJ 117, (2018) 11 SCC 258.

Piyush Mathur with *Prateek Patwardhan,* for the petitioner.
H.Y. Mehta, G.A. for the respondent No. 1.
Pratush Mishra, for the respondent Nos. 6, 8 19, 13, 15, 16 & 17.
Abhinav Dhanodkar, for the respondent Nos. 3, 4, 7, 10, 11, 18 & 19.

O R D E R

VIVEK RUSIA, J.:- Petitioner has filed the present petition being aggrieved by order dated 20.7.2018(Annexure P/4) by which Labour Commissioner, M.P., Indore in exercise of powers u/s 10 (1) of Industrial Disputes act, 1947 (hereinafter in short I.D. Act) has referred an industrial dispute to the Industrial Tribunal, M.P., Indore for adjudication.

2. Petitioner is a company incorporated under the provisions of Companies Act having its 6 manufacturing units situated at Pithampur. Petitioner is engaged in manufacturing of yarn, weaving, garments, stitching, hosiery material, etc.. According to the petitioner, textile industries are not performing well globally as well as in India because of overall recession in the business world.

Even in Pithampur Industrial Area, some of the industries have stopped their production activities for want of orders. Petitioner was also not in a position to provide the work to almost 600 workers in all the six units, but somehow managed to pay the minimum wages as prescribed under the Minimum Wages Act. There was no industrial dispute between the management and the employees / workmen.

3. For the first time, in the month of March, 2018, one Munnalal Sahni claiming himself to be a District President Mazdoor Sabha and member of Samajwadi Party submitted an application dated 13.3.2018 raising various demands for the workers working in the units of the petitioner. He also made a complaint to the Labour Department in which the cognizance was taken and thereafter petitioner was directed to appear on 27.3.2018 before labour Officer. In response to the aforesaid notice, representative of the petitioner/management appeared and submitted that no such trade union affiliated with Samajwadi Party is operating in any of their establishment. It has also been submitted that handful terminated employees backed by political party are creating problems in smooth functioning of the plant. Despite objection taken about the maintainability of the dispute, demands made by political party and 16 employees, labour officer started conciliation proceedings .The conciliation proceedings ended into the failure and vide order dated 20.7.2018, the industrial dispute has been referred to the Industrial Tribunal for its adjudication.

4. The Industrial Tribunal at Indore has registered it as Ref. Case No.15/ID/18 on 8.8.2018 and directed the respondent Nos.2 to 19 to submit the statement of claims. On 14.8.2018, a statement of claim along with the documents was filed and notice was issued to the petitioner. On 28.8.2018, Shri Vinay Patwardhan advocate appeared along with Vakalatnama and Interlocutory Application and sought time to file the written statement. On 11.9.2018, the petitioner being Second Party filed an application seeking rejection of the Reference (I.A.no.2) and the learned Chairman directed the respondent Nos.2 to 19 to file the reply. Thereafter, the petitioner has filed the present petition before this Court on 14.9.2018 challenging Annexure P/4. By order dated 17.9.2018, while issuing notices to the respondents, this Court has stayed the further proceedings of the Tribunal.

5. All the Respondents have filed the return refuting the allegations made in the petition.

6. Shri Piyush Mathur, learned senior counsel for the petitioner, submitted that the State Government has wrongly referred the dispute to the Industrial Court contrary to the provisions of Section 2-A and 10 of the ID Act. There is no registered Union in the Establishment of the petitioner, therefore, u/s. 2-A, the industrial dispute between workmen of industry and industry could not have been referred without being sponsored or espoused by a Trade Union. In absence of

registered Trade Union, the dispute ought to have been raised by substantial number of employees, but in the present case, with the support of political parties, only 18 terminated employees have raised the dispute. In support of his contention, he has placed reliance over the judgment of apex Court in the case of *State of Punjab V/s. The Gandhara Transport Co. (P). Ltd.* : (1975) 4 SCC 838.

7. Shri Mathur, learned senior counsel further emphasised that the appropriate Government ought not to have acted as a Post Office but should have applied the mind as to whether the industrial dispute does exist or not. If there is no industrial dispute in existence or apprehended, the appropriate Government lacks power to make any reference. The Writ Court can entertain the writ petition impugning a reference on a ground of non-existence of actual or apprehended industrial dispute because the Industrial Tribunal cannot decide the validity of the reference. In support of his contention, he has placed reliance over the judgment of apex Court in the case of *National Engineering Industries Ltd. V/s. State of Rajasthan* : (2000) 1 SCC 371: and *TATA Iron & Steel Co. Ltd.(TISCO) V/s. State of Jharkhand* : (2014) 1 SCC 536. He further urged that in a joint meeting with the employees, the petitioner had agreed to enhance the salary of workmen working in the plant @ Rs.260/- per month CTC, therefore, the dispute ought not to have referred. The services of respondents No.2 to 19 have already been terminated: therefore, they cannot raise the industrial dispute in respect of the working conditions of the existing employees. Because of the industrial unrest created by handful terminated employees the petitioner had to stop the production activities which have rendered 600 workers jobless. If the dispute is further permitted to continue at their behest, Management would not be in a position to restart the production, hence prayed for setting aside of impugned order and quashment of proceedings of the Industrial Tribunal.

8. *Per contra*, Shri Pratush Mishra, learned counsel appearing for respondents Nos.6, 8 19, 13, 15, 16 and 17, submitted that the petitioner has already filed an application before the Tribunal challenging the validity of reference and by suppressing this fact filed the present petition and ex-parte stay has been obtained, hence the petition is liable to be dismissed with cost on this ground alone as the petitioner did not approach this Court with clean hands. He has drawn attention of this Court to the proceeding dated 11.4.2018 written by labour officer in which, the petitioner raised an objection that the complaint is made over the letterhead of Samajwadi Party who have no existence in the establishment. It has been made clear by the Labour Officer that the complaint was made by the workmen along with authority letter of their representative, therefore, this issue has already been considered and decided by the Labour Officer and thereafter, the petitioner participated in the conciliation proceedings which ended into failure. Now the petitioner is estopped from assailing the order of reference dated 20.7.2018. He further submitted that in absence of any

registered Union u/s. 36 of the ID Act any other workmen employed in an industry with the authorisation may represent the workmen who is party to the dispute. He further submitted that during pendency of conciliation proceedings, the management has terminated the services of respondents No.2 to 19 contrary to the provisions of Section 33 of the ID Act. Before termination of service, the petitioner ought to have taken the permission from the Labour Commissioner or the Industrial Tribunal. The conduct of the petitioner amounts to 'unfair labour practice'. The respondent Nos 2 to 19 are still covered under the definition of 'workmen' even after their termination from service, therefore, they can very well represent their claim before the Industrial tribunal. The Tribunal is competent to decide the dispute after framing the appropriate issue/s.

9. Shri Abhinav Dhanodkar learned counsel appearing respondent Nos.3, 4, 7, 10, 11, 18 & 19 and Shri H.Y. Mehta, ld Govt. Advocate argued in support of the argument of Shri Mishra and prayed for dismissal of the writ petition.

10. Shri Mathur, learned senior counsel refuted the arguments of Shri P. Mishra by submitting that u/s. 36(1)(c) of the ID Ac (sic:Act) the respondent Nos. 2 to 19 could be represented through any member/office bearer of any Trade Union or any other workmen employed in the industry and authorised, but in the present case, all the respondents are terminated employees, therefore, they cannot represent their case or the case of other workmen. He further submitted that the petitioner has already filed an application for withdrawal of I.A. No.2 before the Industrial Tribunal, therefore, this Court can decide the validity of the reference in this petition.

11. Undisputedly there is no registered Trade Union in any establishment of the petitioner. The employees/workmen working in the petitioner's establishment raised various demands vide Annexure R/2 on 16.3.2018 before the Labour Officer, Pithampur and Labour Officer, Indore along with a authority letter signed by number of employees. It appears that in support of their demand, Shri Munnalal Sahni, District President Mazdoor Sabha wrote a letter to the Governor of M.P. and to the Minister, Department of commerce and Industries . On the basis of such demand, Labour Officer has registered it as Industrial Case No.15/ID/18. On the very first date of hearing 11.4.2018, the Labour Officer has made it clear that the dispute has been raised by the workmen along with authorisation letter. Thereafter, the petitioner further participated in the conciliation proceedings which ended into failure. Therefore, the ground raised by the petitioner that the political party has sponsored the dispute the workmen is misconceived and liable to be rejected.

12. So far as objection of the petitioner that respondents No.2 to 19 are the terminated employees, therefore, they cannot raise industrial dispute is also misconceived because as per definition of 'workmen' u/s. 2(s), the workmen

includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute. It has been informed that they have also raised a dispute in respect of their termination.

13. As per definition of 'industrial dispute' u/s. 2(k), industrial dispute means any dispute or difference between employee and employer or between employer and workmen which is connected with the employment or non-employment or terms of employment or with the condition of labour or any person and as per Section 10, if the appropriate Government is of the opinion that any dispute exists or is apprehended, it may refer it to the Labour Court or Industrial Tribunal, as the case may be. There is no controversy in regards to terms of reference which clearly reflects that there is an industrial dispute between the petitioner and the respondent nos. 2 to 19 which in respect of non-payment of certain benefits to all the workmen. The terms of reference is properly worded, clearly reflects that the demand is being made by respondents No.2 to 19 not for themselves only but for all the workmen/employees working in the petitioner's establishment.

14. In case of *State of Punjab V/s. Gandhara Transport* (supra), the dispute was in respect of dismissal of 3 workmen sponsored by 18 co-workers, which was referred to Labour Court for adjudication in the year 1960. The apex Court has held that such since dispute is not represented by substantial or appreciable body of workmen so as to make the dispute an industrial dispute hence liable to be quashed. After the aforesaid judgment, Section 2A has been inserted, where the dispute in respect of dismissal of individual workman is deemed to be an industrial dispute. In the case in hand, the dispute is in respect of demand of certain benefits for all the workmen has been referred to the Labour Court. If the reference sought by the respondent nos. 2 to 19 is answered in favour of the workmen, then all the employees working in the establishment of the petitioner would be benefited.

15. Section 36(1)(c) of the ID Act specifically provides that where the worker is not a member of any Trade Union, still he can be represented by any other workman employed in the industry on the basis of authorisation. As held above, workman includes the dismissed workman also. Therefore, the respondent Nos. 2 to 19 as authorised can very well represent the other workmen for the dispute pending before the Industrial Tribunal. U/s. 36(4), even the workman can be represented by a legal practitioner with the consent of other party to the proceeding and with the leave of Labour Court and the Tribunal, as the case may be.

16. In case of *TISCO Ltd.* (supra), the management disputed that the workman who raised the dispute is not its worker; therefore there cannot be any industrial dispute u/s. 2(k). The apex Court has held that this itself would be a dispute which has to be determined by means of adjudication. The role of Labour Department is

to confine to discharge administrative function of referring the matter to the Labour Court/Tribunal and if dispute is referred, needs to be adjudicated upon by the Industrial Tribunal. Para 10 of the said judgement is reproduced below :

> "10. Section 2 (k) of the Industrial Disputes Act which defines Industrial Dispute reads as under: "2(k) "industrial dispute" means any dispute or difference between employers and employers, between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."
>
> No doubt, as per the aforesaid provision, industrial dispute has to be between the employer and its workmen. Here, the appellant is denying the respondents to be its workmen. On the other hand, respondents are asserting that they continue to be the employees of the appellant company. This itself would be a "dispute" which has to be determined by means of adjudication. Once these respective contentions were raised before the Labour Department, it was not within the powers of the Labour Department/ appropriate Government decide this dispute and assume the adjudicatory role as its role is confined to discharge administrative function of referring the matter to the Labour Court/ Industrial Tribunal. Therefore, this facet of dispute also needs to be adjudicated upon by the Labour Court. It cannot, therefore, be said that no dispute exists between the parties. Of course, in a dispute like this, M/s. Lafarge also becomes a necessary party."

The apex Court in the aforesaid case, has further held that the jurisdiction of the Tribunal is not confined to a terms of reference, but at the same time it is empowered to go into the incidental issues. If the reference is properly worded, then it is still open to the management to contend and prove that the respondent/workman ceased to be their employee. Para 12 of the aforesaid judgment is reproduced below.

> "12. We would hasten to add that, though the jurisdiction of the Tribunal is confined to the terms of reference, but at the same time it is empowered to go into the incidental issues. Had the reference been appropriately worded, as discussed later in this judgment, probably it was still open to the appellant to contend and prove that the respondent workmen ceased to be their employees. However, the reference in the present form does not leave that scope for the appellant at all."

17. The Division Bench of this Court in the case of *Birla Corporation Ltd. V/s. Dy. Labour Commissioner* : 2016 (3) MPLJ 117, has held that on the basis of pleading made by the parties, the Industrial Tribunal is entitled to frame certain

issues which fall in the category of 'incidental issues' which are either issue of law or mixed question of law and facts. Such 'incidental', 'additional' or 'ancillary issues' are required to be decided by the Tribunal as a preliminary issue if they pertain to the jurisdictional issue. Para 10 and 13 of the aforesaid judgment are reproduced below :

> "10. Even though it is a well settled principle of law that an Industrial Tribunal or a Labour Court while adjudicating a dispute has no power to vary or alter the points or issues referred for adjudication, however, on the basis of pleadings made by the parties, the Tribunal is entitled to frame certain issues which fall in the category of 'incidental issues' which are either issues of law or mixed question of law and fact. Such 'incidental', 'additional' or 'ancillary issues' are required to be determined by the Tribunal as they pertain to the jurisdictional question and are normally required to be decided as a preliminary issue. If the issue goes to the root of the matter and is an issue or an objection pertaining to the maintainability of the Industrial Dispute referred for adjudication or the jurisdiction of the Tribunal itself, the Tribunal is well within its right to go into this question as an 'incidental issue' and decide it as a preliminary issue. If the Tribunal on such examination comes to the conclusion that it has no jurisdiction, the Tribunal is free to reject the reference."
>
> "13. If the aforesaid legal principle is applied in the facts and circumstances of the present case, we are of the considered view that the question as to whether the reference should be made to the Labour Court or to the Industrial Court or whether the Labour Court to which the reference is made, has jurisdiction to deal with the matter, is a mixed question of law and fact and in our considered view when the Labour Court itself is clothed with the power to decide the question of its own jurisdiction as a preliminary issue, challenge to the order of reference on this count in a petition under Article 226/227 of the Constitution of India, is not required. An objection can be raised before the Labour Court and the Court after framing a preliminary issue can decide this question of jurisdiction, as the question of jurisdiction is nothing but an 'incidental matter' which can be answered while adjudicating the dispute by the Labour Court itself."

18. In a recent case of *Hind Kamgar Sangathan V/s. Dai Ichi Karkaria Ltd.* : (2018) 11 SCC 258, the apex Court has referred the matter to High Court to adjudicate upon as to what happens in case there is no recognized Union available in the establishment. The apex Court has observed that this issue is required to be decided by the Industrial Tribunal and the High Court ought to have remanded the matter back to the Industrial Tribunal. Para 3 and 4 are reproduced below :

"3. The learned senior Counsel appearing for the Appellant has brought to our notice that there is no recognized union under the first Respondent since the registration under the Trade Unions Act granted to the Second Respondent has been cancelled. The learned Counsel for the second Respondent submits that the issue is pending before the appellate authority. Be that as it may, as rightly pointed out by Sh. C.U. Singh, learned senior Counsel, that this issue has not been adjudicated before the High Court. At any rate, the High Court has not gone into the issue, apparently because according to the learned senior Counsel, this point was not canvassed before the High Court. Though there are serious disputes as to whether this point was canvassed or not, we find that this was one of the issues raised even before the Industrial Tribunal and the point is seen raised in the High Court as well. Though normally, the court would have relegated the Appellate to pursue the remedy of review, we do not propose to do so since the matter was pending for the last four years. Hence, we are of the view that the matter needs to be sent back to the High Court."

"4. Accordingly, without expressing any opinion on the merits of the issue raised before this Court by the Appellant on the recognition/registration aspect of the unions, we set aside the judgment and remit the matter to the High Court with a request to the High Court to hear the parties afresh and decide on the point, as to what happens in case there is no recognised union available in an establishment. We also make it clear that the High Court may also go into other questions as to what happens when there is a registered union under the Trade Unions Act. Since the writ petition is of the year 2012, we request the High Court to dispose of the writ petition expeditiously and preferably, within six months from the date of production of a copy of this judgment."

19. In view of the above, this Court is of the opinion that the terms of reference is very precise clearly indicates the industrial dispute between the workmen and the petitioner hence impugned order is not liable to be quashed in a writ petition under Article 226 of the Constitution of India. So far as other objections raised by the petitioner are concerned, they are either issue of law or mixed question of law and fact both, comes under the category of incidental, additional or ancillary issues which are required to be decided by the Industrial Tribunal either as a preliminary issue or while answering the terms of the Reference in view of law laid down by apex Court in the case *TISCO* (supra) and by this Court in the case of *Birla Corporation* (supra). It is discretion of the Tribunal either to decide as a preliminary issue or while answering the terms of reference. The Industrial Court is directed to decide the issues independently without being influenced by the observation made by this Court hereinabove.

20. In view of the above, the petition is disposed of.

No order as to costs.

Order accordingly

I.L.R. [2019] M.P. 551
WRIT PETITION
Before Mr. Justice Sujoy Paul

W.P. No. 3432/2016 (Jabalpur) decided on 17 January, 2019

PRAMOD KUMAR SHARMA …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Service Law – Dismissal from Service – Departmental Enquiry – Grounds* – Held – Petitioner submitted attestation form in respect of his candidature for post of police constable, deliberately suppressing the fact of pending criminal case against him – Such charge is enough to dismiss petitioner from service – Petitioner being a member of disciplined police force, cannot be permitted to remain in employment when he deliberately suppressed material fact and given incorrect information in attestation form – Punishment is not shockingly disproportionate/harsh – Petition dismissed.**

(Para 7 & 9)

क. सेवा विधि – सेवा से पदच्युति – विभागीय जांच – आधार – अभिनिर्धारित – याची ने जानबूझकर उसके विरूद्ध लंबित आपराधिक प्रकरण के तथ्य को छिपाते हुए, पुलिस आरक्षक के पद के लिए अपनी अभ्यर्थिता के संबंध में अनुप्रमाणन प्रपत्र जमा किया – याची को सेवा से पदच्युत करने के लिए उक्त आरोप पर्याप्त है – याची को अनुशासित पुलिस बल का सदस्य होने के नाते, रोजगार में बने रहने की अनुमति नहीं दी जा सकती है, जब उसने जानबूझकर तात्विक तथ्य को छिपाया हो एवं अनुप्रमाणन प्रपत्र में गलत जानकारी दी हो – दंड आश्चर्यजनक रूप से अननुपातिक/कठोर नहीं है – याचिका खारिज।

***B. Service Law – Departmental Enquiry – Procedure – Inquiry Officer* – Held – It is trite law that even if there exist some procedural infirmity in departmental enquiry, delinquent employee has to show the prejudice caused to him because of such infirmity in enquiry – Inquiry Officer has not asked any leading questions to petitioner, thus cannot be said that he acted as a prosecutor – Inquiry Officer can put questions to elicit the truth as has been done in present case – Inquiry and decision making process are not vitiated neither any prejudice has caused to the petitioner.**

(Para 7 & 8)

ख. सेवा विधि – विभागीय जांच – प्रक्रिया – जांच अधिकारी – अभिनिर्धारित – यह जीर्ण विधि है कि यद्यपि विभागीय जांच में कोई प्रक्रियात्मक अशक्तता विद्यमान हो,

तो अपचारी कर्मचारी को जांच में इस तरह की अशक्तता के कारण उसे कारित हुआ प्रतिकूल प्रभाव दर्शाना होगा – जांच अधिकारी ने याची से कोई सूचक प्रश्न नहीं पूछे, इसलिए नहीं कहा जा सकता कि उसने अभियोजक के रूप में कार्य किया – जांच अधिकारी सत्य जानने हेतु प्रश्न पूछ सकता है जैसा कि वर्तमान प्रकरण में किया गया है – जांच और विनिश्चय करने की प्रक्रिया दूषित नहीं है और न ही याची को कोई प्रतिकूल प्रभाव कारित किया गया।

Cases referred :

2013 (9) SCC 363, 2018 (2) MPLJ 419 (FB), 2005 (1) LLJ 931, 2018 (7) SCC 670, (2003) 3 SCC 437.

R.S. Tripathi, for the petitioner.
Puneet Shroti, P.L. for the respondents.

O R D E R

SUJOY PAUL, J. :- This petition filed under Article 226 of the Constitution takes exception to the order of punishment dated 13.4.2015 whereby a punishment of dismissal from service was inflicted on the petitioner. Petitioner is also aggrieved by the appellate orders dated 9.7.2015 and 28.10.2015 Annexure P/3 and Annexure P/1, respectively, whereby his regular appeal as well mercy appeal were rejected by the department.

2. Learned counsel for the petitioner submits that petitioner was served with a charge-sheet dated 1.8.2014 Annexure P/7. The petitioner filed his reply Annexure P/8 dated 25.8.2014. The disciplinary authority appointed an inquiry officer. The Inquiry Officer after conducting the inquiry, prepared his report dated 23.3.2015 Annexure P/9. Thereafter, the petitioner was punished by aforesaid impugned order and he challenged the said orders unsuccessfully by preferring appeal and mercy appeal.

3. The learned counsel for the petitioner has attacked the disciplinary proceeding on following counts:-

(i) The Inquiry Officer has cross-examined the delinquent employee because of which inquiry is vitiated in the light of recent judgment of Supreme Court reported in 2018 (7) SCC 670;

(ii) Disciplinary authority has imposed more than one punishment on the basis of single charge-sheet;

(iii) The Disciplinary authority has taken into account the past misconduct while passing the punishment order whereas in the charge-sheet, there was no mention/allegations relating to past record of the petitioner;

(iv) The defence assistant was not provided by the inquiry officer in the inquiry;

(v) Punishment order is harsh/disproportionate.

4. To elaborate, the learned counsel for the petitioner has placed reliance on question No.1 to question No.5 reproduced in the inquiry report. On the strength of these questions, it is urged that the petitioner was cross-examined by the inquiry officer. Thus, he acted as a prosecutor rather than a judge. This ground is sufficient to vitiate the entire inquiry. It is further argued that it was the duty of inquiry officer to ask the petitioner whether he wants to engage a defence assistant in the domestic inquiry. In absence of any such action on the part of the inquiry officer, inquiry is polluted. The punishment is excessive whereby petitioner a young citizen of India with whom a lenient view should have been taken, is subjected to a extreme punishment.

5. *Per contra*, Shri Puneet Shroti, learned Panel Lawyer supported the impugned order and contended that the main allegation against the petitioner is that he suppressed the material information in his attestation form (clause 12) wherein he was required to apprise the department whether he is facing any prosecution. Learned Panel Lawyer submits that Clause 12 is wide enough which covers a series of eventualities which were required to be answered by the candidate. The petitioner categorically stated that no eventuality mentioned in Clause 12(ka) is applicable by mentioning "no". Shri Shroti submits that FIR was lodged on 11.5.2009. Attestation form was filled up by the petitioner on 23.2.2011 and the criminal court passed its judgment on 9.7.2014. During trial, the petitioner being an accused participated in the proceeding and therefore by no stretch of imagination, his argument can be accepted that he did not have knowledge about the pendency of a criminal case against him. Shri Shroti submits that there is no such procedural impropriety or violation of principles of natural justice in this case which warrants interference by this Court. He further urged that punishment is commensurate to the misconduct which does not require interference. In support of aforesaid submissions, reliance is placed on 2013 (9) SCC 363 *(Devendra Kumar vs. State of Uttaranchal and others)* and 2018 (2) MPLJ 419(FB) *(Ashutosh Pawar vs. High Court of M.P. and another)*.

6. I have bestowed our anxious consideration on rival contentions and perused the record.

As to point (i) and (iv)

7. These two points are related with decision making process adopted by inquiry officer in the instant case. This is trite law that even if there exists some procedural infirmity in conducting the departmental enquiry, the delinquent employees has to show the prejudice caused to him by such infirmity

in the inquiry. In the present case, the first charge against the petitioner is that on 5.1.2011, he submitted candidature for the post of Constable but suppressed the fact of pendency of a criminal case. Pertinently, in reply, the petitioner categorically submitted that offences under Section 147, 148, 149, 294, 323 and 506 IPC were registered against him and six other persons. The police filed challan in the Court of Law. Thus, it is clear that the applicant has admitted the fact in the reply that a criminal case arising out of Crime No.48/2009 was pending against him. He also specifically admitted in the reply that he did not furnish the information about pendency of said criminal case. Interestingly, his explanation is that since he was falsely implicated and aforesaid offences were not related with moral turpitude; and, it was a case relating to simple assault etc. he did not disclose this fact in the attestation form. The relevant portion of petitioner's reply needs reproduction-

''उपरोक्त आरोपों के संबंध में मेरा प्रतिउत्तर निम्नानुसार है :–
आरोप कमांक –1

यह कि शिकायतकर्ता कमलेश कुमार शर्मा हमारे परिवार का ही सदस्य है एवं इनके साथ काफी समय से हमारा पारिवारिक विवाद/जमीन जायदाद का विवाद चल रहा है । इस विवाद में अपना पक्ष मजबूत करने तथा हम पर दबाव डालने के लिये शिकायतकर्ता कमलेश कुमार शर्मा ने दिनांक 11.05.2009 को हेण्ड पंप पर उसके साथ मारपीट करने की शिकायत थाना पनवार जिला–रीवा में की गयी थी । जिस पर से थाना पनवार में अपराध कमांक 48/09 धारा 147,148,149, 294, 323, 506 आईपी सी का प्रकरण मेरे तथा अन्य 6 व्यक्तियों के विरूद्ध पंजीबद्ध किया गया था। चूँकि एफ.आई.आर. दर्ज हुई थी, अतः पुलिस ने ऐने–केन प्रकारेण हम लोगो के विरूद्ध प्रकरण बनाकर न्यायालय में चालान पेश कर दिया। हालाकि फरियादी कमलेश कुमार अभी भी न्यायालय में पेश होकर हमारे विरूद्ध गवाही नहीं दिया है। जहॉ तक कि न्यायालय में उपस्थित उपस्थित होने के लिए उसके विरूद्ध वारंट भी जारी किऐ गये है किन्तु वह न्यायालय में उपस्थित नहीं हुआ। चूँकि वह जानता था कि उसने हमें झूठा फंसाया है इसलिये उसके पास कोई सबूत ही नहीं थे। माननीय न्यायिक मजिस्ट्रेट, प्रथम श्रेणी त्योथर जिला रीवा में भी दिनांक 09.07.14 को आदेश पारित कर सभी आरोपियों को बाइज्जत बरी कर दिया है। न्यायालय के निर्णय की प्रति संलग्न है।

चूँकि शिकायतकर्ता ने हमें पारिवारिक विवादवश रजिशन फसाया था। मामला मारपीट का बताया गया था इसमें कोई नैतिक अंधापतन का मामला नहीं था। यह मामला न ही कोई गबन या 420 का था। साधारण मारपीट का मामला था। फरियादी भी न्यायालय में उपस्थित नहीं हो रहा था। इसलिये झूँठा एवं साधारण मामला समझकर प्रार्थी ने इस बात की जानकारी आवेदन–पत्र, शपथ–पत्र, अथवा अनुप्रमाणन फार्म में नही दी । प्रार्थी इसकी गंभीरता को समझता ही नहीं था क्योंकि प्रार्थी पहली बार शासकीय सेवा में आया था। अनेकों लोग आपसी रंजिशवस कई लोगों की झूठी शिकायत थाने में कर देते है– लेकिन झूठी मारपीट की शिकायत पर एसा गंभीर मामला बनेगा प्रार्थी ने ऐसा सोचा भी नहीं था । न्यायालय नें भी प्रार्थी एवं अन्य सभी आरोपियों को बाइज्ज्त बरी कर दिया है।

8. The learned counsel for petition on a specific query from the Bench argued that Q. No.(v) asked by inquiry officer has vitiated the inquiry. Question No.(v) and its answer reads as under:

> *''प्रश्न कमांक 5. पुलिस सेवा में भर्ती हेतु आवेदन पत्र के कालम क0 16 में क्या आपके ऊपर कोई अपराध पंजीबद्ध हुआ है या आप किसी आपराधिक प्रकरण में गिरफ्तार किए गए हैं यदि हां तो पूर्ण विवरण लिखे इसी प्रकार अनुप्रमाणन फार्म परिशिष्ट एक के कालम क0 12 के कालम एक में अपराध/आरोप (नहीं) दोनो में पुलिस थाने में पंजीबद्ध (नहीं) यदि न्यायालय में चालान प्रस्तुत किया गया हो तो न्यायालय का नाम (नहीं) उपरोक्त सभी कालमों में थाना पनवार जिला रीवा में अपराध क0/48/2009 पंजीबद्ध था । अतः आपने भर्ती आवेदन पत्र एवं अनुप्रमाणन फार्म के उक्त कालमों में (नहीं) में । असत्य जानकारी क्यों दी थी ।*
>
> *उत्तरः– जी मैने भर्ती होने के पूर्व थाना पनवार जिला रीवा में जाकर जानकारी ली थी थाना पनवार द्वारा मुझे बताया गया था कि आपके विरूद्ध थाना पनवार जिला रीवा में कोई भी आपराधिक, प्रकरण पंजीबद्ध नही है उन्होने मुझे बताया था कि आपके विरूद्ध एक फर्जी आवेदन पत्र प्राप्त हुआ है अतः थाना पनवार द्वारा दी गई जानकारी के आधार पर उक्त कालमों की जानकारी मैंने नहीं में दी थी।''*

A Division Bench of this Court in 2005 (1) LLJ 931 *(Union of India vs. Mohd. Naseem Siddiqui)* summarized the principles relating to cross-examination by inquiry officer and effect of non-appointment of presenting officer. Relevant paras read as under:

> *" 16. We may summarise the principles thus:*
>
> *(i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.*
>
> *(ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.*
>
> *(iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.*
>
> *(iv) If the Inquiry Officer conducts a regular examination-in- chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses*

or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may. "

The principle aforesaid laid down by this Court is recently approved by Supreme Court in 2018 (7) SCC 670 *(Union of India vs. Ram Lakhan Sharma)*. If the present case is tested on the anvil of aforesaid principles, it will be crystal clear that inquiry officer has not asked any leading question to the petitioner nor has taken the petitioner through prosecution case in a manner it can be said that he has acted as a prosecutor. It is clearly held that the inquiry officer can put question to elicit the truth and in the present case in my opinion, he has done the same. Thus, I am unable to hold that inquiry is vitiated on this count. The reply to the charge-sheet given by petitioner leaves no room for any doubt that petitioner has admitted this fact that he has not disclosed the fact of submission of attestation form by suppressing about the details of pending criminal case. Thus, no prejudice is caused to the petitioner if inquiry officer has asked the aforesaid question in order to elicit the truth. For the same reason, if inquiry officer has not specifically asked the petitioner to appoint defence assistant, inquiry has not been vitiated. No prejudice is caused to the petitioner due to non-appointment of defence assistant.

Point No. (ii), (iii) & (v)

9. The disciplinary authority imposed the punishment of dismissal for two allegations. In the considered opinion of this Court, the first charge itself is sufficient to dismiss the petitioner from service. The petitioner, a member of a disciplined police force, cannot be permitted to remain in employment when he

has deliberately suppressed the material fact and has given incorrect information in the attestation form. See *Kendriya Vidhyalaya Sangathan vs. Ram Ratan Yadav*, (2003) 3 SCC 437. If punishment order can sustain even if one charge is proved, no useful purpose would be served in examining the punishment order in the background of other charges which were also held to be proved. Apart from this, even if it is held that disciplinary authority should not have taken into account the past record of the petitioner, in the instant case, it will not make any material difference to the punishment order because it has already held that even if first charge is proved, it is enough to oust the petitioner from employment. This aspect was considered by this Court in W.P. No.5277/2009 *(Rajendra Singh vs. State of M.P. and others)* on the basis of certain Supreme Court judgments. The relevant para reads as under:

> *"Thus, the question is whether because of a partial illegality whereby Disciplinary Authority has taken into account the past conduct of petitioner, entire punishment order can be set aside. This aspect is no more res integra. In AIR 1963 SC 779 (State of Orissa & Ors. vs. Bidyabhushan) a five judges Bench held as under:-*
>
> > *"The reasonable opportunity contemplated by Article 311 (2) has manifestly to be in accordance with the rules framed under Art. 309 of the Constitution. But the Court in a case in which an order of dismissal of a public servant is impugned, is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules are not justiciable: nor is the penalty open to review by the Court. If the order of dismissal may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal Prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice. "*
> >
> > *(Emphasis supplied)*

18. This doctrine of severability of charges was again considered by Supreme Court in AIR 1967 SC 1353 (The State Of Maharashtra & Anr vs B. K. Takkamore & Ors), it was held that an administrative or quasi-judicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing show that the authority would have passed the order on the basis of the other relevant and existing grounds. On the other hand, an order based on several grounds some of which are found to be nonexistent or irrelevant, can be sustained if the court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds, and the exclusion of the irrelevant or non-existent grounds could not have affected the ultimate opinion or decision.

It was further held the fact that "the first ground mentioned in the order is now found not to exist and is irrelevant, does not affect the order. We are reasonably certain that the State Government would have passed the order on the basis of the second ground alone. The order is, therefore, valid and cannot be set aside."

In the light of aforesaid, this court is unable to hold that punishment is shockingly disproportionate/harsh. Thus, these points are also decided against the petitioner.

10. In view of foregoing analysis, it cannot be said that decision making process adopted by the respondents is vitiated and punishment is shockingly disproportionate. Thus, I find no reason to interfere in this matter.

11. Petition sans substance and is hereby **dismissed**.

Petition dismissed

I.L.R. [2019] M.P. 558
WRIT PETITION
Before Mr. Justice Rohit Arya
W.P. No. 19665/2017 (Indore) decided on 5 February, 2019

VIKAS MALIK …Petitioner

Vs.

UNION OF INDIA & ors. …Respondents

(Alongwith W.P. Nos. 19666/2017, 19667/2017, 19669/2017 & 19763/2017)

***Service Law – Constitution – Article 226 & 309 – Appointment – Prescription of Qualification – Writ Jurisdiction* – Held – Mode of**

appointment is within domain of appointing authority or selection body – Courts and Tribunals can neither prescribe qualifications nor entrench upon powers of authority so long as such prescribed qualification is reasonably relevant and do not obliterate the equality clause – Appointing authority is competent in its power of general administration to prescribe eligibility criteria/educational qualifications as it deems necessary and reasonable – Impugned advertisement for appointment has been issued for specific project but not under any statutory rules either referable to Article 309 of Constitution or a statute – Prescription of qualification and Roster system has no relevance – No interference warranted under writ jurisdiction – Petitions dismissed. (Paras 7 to 9)

सेवा विधि – संविधान – अनुच्छेद 226 व 309 – नियुक्ति – अर्हता विहित करना – रिट अधिकारिता – अभिनिर्धारित – नियुक्ति की रीति नियुक्ति प्राधिकारी अथवा चयन समिति के अधिकार क्षेत्र के भीतर है – न्यायालय और अधिकरण न तो अर्हताएँ विहित कर सकते हैं और न ही प्राधिकारी की शक्तियों पर अधिक्रमण कर सकते हैं जब तक कि ऐसी निर्धारित अर्हता युक्तियुक्त रूप से सुसंगत है तथा समता खंड को न मिटाती हो – नियुक्ति प्राधिकारी जैसा वह आवश्यक तथा युक्तियुक्त समझे पात्रता मानदंड/शैक्षणिक अर्हताएं विहित करने के लिए अपनी सामान्य प्रशासन की शक्ति में सक्षम है – नियुक्ति के लिए आक्षेपित विज्ञापन विनिर्दिष्ट परियोजना के लिए जारी किया गया है परंतु किन्हीं ऐसे कानूनी नियमों के अंतर्गत नहीं, जो या तो संविधान के अनुच्छेद 309 या किसी कानून के संदर्भ योग्य हो – अर्हता विहित करने तथा रोस्टर प्रणाली की कोई सुसंगतता नहीं है – रिट अधिकारिता के अंतर्गत किसी हस्तक्षेप की आवश्यकता नहीं है – याचिकाएँ खारिज।

Cases referred :

AIR 2012 SC 729, W.P. No. 2031/2017 decided on 21.03.2018 (Supreme Court), (1990) 1 SCC 288, (2011) 9 SCC 645.

Gagan Bajad and *Vijaywargiya,* for the petitioners.

L.M. Acharya, Koustubh Pathak and *Shrey Saxena,* for the respondent Nos. 1 & 2.

Prakhar Mohan Karpe, for the respondent No. 2.

Ajinkya Dagaonakar, for the respondent No. 3.

Archna Kher, G.A. for the respondent/State.

O R D E R

ROHIT ARYA, J.:- This order shall govern disposal of batch of writ petitions, viz., W.P.Nos.19665, 19666, 19667, 19669 and 19763 of 2017. As similar controversy involved in all these writ petitions, they are heard analogously and disposed of by this common order.

Facts have been dealt with from W.P.No.19665/2017:

Taking exception to the advertisement dated 30/10/2017 issued by the respondent No.2, (National Project Implementation Unit, Government of India through its Secretary) inviting applications for 1221 posts of Assistant Professor in 53 colleges through the Centralized Engagement Process under the Technical Education Quality Improvement Project (for short, 'the TEQIP III) spread over in different States as indicated in Annexure P/1, providing the educational qualification:

> BE/BTech and ME/MTech in relevant branch with 1st Class (60% or 6.75 grade point) either in bachelors or Masters degree from a recognized institution/university (for equivalent UG/PG degree refer Annexure P/1) and should have qualified through GATE exam;

petitioner with Master of Technology degree working as temporary Assistant Professor with respondent No.5; Ujjain Engineering College, Ujjain (for short, 'the respondent No.5') on clock hour basis and being paid on the basis of number of hours worked, has approached this Court under Article 226 of the Constitution of India *inter alia* contending that; (i) the norms/educational qualifications prescribed by the University Grants Commission (for short, 'the UGC') and All India Council for Technical Education (for short, 'AICTE') do not contemplate passing/qualifying GATE exam as essential qualification for recruitment to the post of Assistant Professor; (ii) one set of *ad hoc* employees cannot be replaced by another set of *ad hoc* /contractual employees and (iii) the advertisement does not provide for reservation for various categories as per Roster system.

(Emphasis supplied)

2. On notice, the respondents No.1 and 2 have filed counter-affidavit opposing the admission of the writ petition. The respondent No.3 has also filed counter-affidavit with the contention that no relief since has been sought against it, it is not necessary party. However, it has no objection if the recruiting agency, i.e., respondents No.3 and 4 adopts higher standards and qualifications in addition to the minimum qualification notified by the respondent No.3 as long as there is availability of the courses and applicants in the country, as the case may be. Respondent No.4 in its separate counter-affidavit has also sought dismissal of the writ petition.

3. Respondents No.1 and 2 *inter alia* contend that;

> (i) petitioner is not in the regular employment of respondent No.5 on the post of Assistant Professor. Therefore, no legal right vested on to him to claim any regular employment or seek protection of

employment taking exception to the advertisement criticizing the prescription of educational qualifications and the eligibility conditions fixed thereunder;

(ii) TEQIP-III Project is sponsored by the World Bank and the Government of India. The Centralized Engagement Process has issued the advertisement for availing the services of the specialized teaching faculty under the aforesaid project and is in addition to the existing teaching faculty already engaged by the respondent No.5 either on temporary basis or on sanctioned post. Therefore, the apprehension expressed by the petitioner in the instant writ petition that he is sought to be replaced by the selection process through advertisement issued by the respondent No.2 is misconceived and misdirected, besides factually incorrect;

(iii) the Centralized Engagement of Teaching Faculty initiated by the respondent No.2 is for and on behalf of respondent No.5/institution to fulfill the faculty requirement of the institution for seeking Accreditation from National Board of Accreditation (Autonomus Body constituted by the Government of India); as upon accreditation, the respondent No.5/institution shall be eligible to seek aid under the aforementioned TEQIP-III project;

(iv) The Engagement of specialized teaching faculty through the aforesaid process is project related and such engagement would come to an end automatically upon completion of the project; the outer period being three years. In other words, the Centralized Engagement Process does not seek to create new teaching posts in the respondent No.5/institution. As such, neither the centralized engagement process nor the respondent No.2 is in any manner concerned with the terms of the present employment of the petitioner;

(v) while rebutting the challenge to the requirement of qualifying GATE exam in the advertisement, it is submitted that in the year 2002-03, the Government of India with financial assistance from the World Bank has launched the Technical Education Quality Improvement Programme in three phases for systemic transformation of the Technical Education System in the India;

(a) the first phase of TEQIP commenced in the month of March, 2003 and ended in the month of March, 2009 benefiting 127 institutions in 13 States;

This project covered less than 10% of the institutions existed on that date;

(b) the second phase of TEQIP was commenced in the year 2009 and ended in March, 2017 with the objects as indicated in paragraph 7(B) of the counter-affidavit;

(c) in the current third phase of TEQIP, only the Government and Government aided AICTE approved Engineering Institutions / Engineering faculty/ Engineering Teaching Department/ Constituent Institutions of Universities/ Deemed to be Universities and new centrally funded institutions from the focused States mentioned in the advertisement are made eligible for seeking aid. The financial agreement signed by Department of Economic Affairs (DEA), Government of India and the World Bank for TEQIP-III envisages four Disbursement Link Indicators; accreditation and GATE qualification are amongst them. Copy of Financial Agreement is placed on record as exhibit A;

> (vi) TEQUIP-III seeks to enhance the quality, improvement and efficiency of the engineering education system in the focused States in the concerned institutions;
>
> (vii) The qualification as prescribed in the advertisement, i.e., B.E./B.Tech alongwith M.E.,/ M.Tech with candidates having qualified GATE exam has direct nexus with the object for recruitment of the faculty sought to be recruited for specific project only with the maximum life of three years. It is not a regular appointment against the sanctioned posts to be filled through the recruitment process with due observance of recruitment process thereof including the Roster system;
>
> (Emphasis supplied)

Subject to the aforesaid, it is submitted that even otherwise, the prescription of educational qualification and the eligibility conditions are within the rights and authority of the respondents No.1 and 2 having direct nexus with the project for which the temporary appointments are to be made and the same are beyond the purview of writ jurisdiction under Article 226 of the Constitution of India in the obtaining facts and circumstances. That apart, the educational qualifications so prescribed in the advertisement in no way even either in violation of any statutory rules or *de hors* the norms prescribed by the AICTE or UGC.

4. The respondent No.5/institution has filed separate counter-affidavit with the submission that pursuant to the instant advertisement, the selection process has already been completed and the candidates have already joined and working properly with further contention that the petitioner's appointment as guest faculty is purely temporary and receiving Rs.275/- per period engaged for maximum three periods on certain terms and conditions. The privity of contract between the petitioner and the respondent No.5 is regulated by such conditions. No right in excess thereto accrues to the petitioner, particularly; in the context of challenge to the instant advertisement. It is altogether for a different purpose as detailed in the counter-affidavit filed by the respondents No.1 and 2. To support the submissions, respondent No.5 has relied upon the judgment of the Hon'ble Supreme Court in the case of *Grido Ltd., and another Vs. Sadan and others,* AIR 2012 SC 729 and order passed by the coordinate Bench in W.P.No.2031/2017 (*Dr. Vikas Mishra Vs. State of M.P., and others*) decided on 21/03/2018 (Annexure R/3).

5. Heard.

6. Before adverting to the rival contentions, regard being had to the factual matrix in hand, it is considered apposite to reiterate the law holding the field in the matter of prescription of educational qualifications and the eligibility conditions in public employment.

7. The prescription of minimum qualifications and the mode of appointment in the sphere of public employment is within the domain of the appointing authority or the selection body. The courts and tribunals can neither prescribe the qualifications nor entrench upon the power of the authority concerned so long as the qualification so prescribed is reasonably relevant and do not obliterate the equality clause [*J. Ranga Swamy Vs. Govt., of A.P.,* (1990)1 SCC 288 & *Chandigarh Administration Through the Director Public Instructions (Colleges), Chandigarh* (2011) 9 SCC 645)].

Besides, in the absence of any rules under Article 309 of the Constitution of India or a statute, the appointing authority is competent in its power of general administration to prescribe such eligibility criteria as it is necessary and reasonable in the obtaining facts and circumstances.

8. The appointment of Assistant Professor under the advertisement is since related to an object being co-terminus with the project for a limited period; till completion of the project or maximum three years whichever is earlier has no correlation with the engagement of guest faculty/Assistant Professor on clock hour/*ad hoc* basis in the technical institution. As such, it is not a case of substitution of contract faculty for contract faculty as sought to be alleged in the writ petition. As a matter of fact, the project of TEQUIP-III is a joint venture of Government of India and the World Bank intends to enhance the quality, improvement and efficiency standards in the participating engineering institutions. The respondents No.1 and 2 have rightly laid emphasis on and insistence of well qualified faculty in the advertisement in addition to B.E.,/B.Tech alongwith M.E./M.Tech with requirement of qualifying GATE exam. In fact, the same subserves the object for which the faculty is engaged under the instant third phase project as discussed above, i.e., upgradation of the institutions making them eligible for seeking financial aid under the financial agreement signed by the Department of Economic Affairs, Government of India and the World Bank for TEQIP-III whereunder accreditation and GATE qualification are amongst the four relevant considerations (exhibit A). Hence, the challenge to the prescription of the qualification and GATE examination in the advertisement and that too at the instance of the petitioner is found to be misconceived and misdirected. Under the circumstances, no interference is warranted under Article 226 of the Constitution of India.

9. This Court holds that such prescription of the qualifications in the advertisement to the post in question as laid down by the Hon'ble Supreme Court

in the cases referred above, i.e., qualifying in the GATE exam is not only relevant but, also has direct rationale or nexus for the purpose of improvement, quality and efficiency standards of the engineering institutions to help facilitate accreditation to become eligible for aid under the financial agreement signed by the Department of Economic Affairs, Government of India and the World Bank as contemplated under the scheme. Further, as the impugned advertisement for appointments at issue has been issued for a specific project but, not under any statutory rules either referable to Article 309 of the Constitution of India or a statute, the prescription of qualification and implementation of Roster system has no relevance and the competent authority is fully empowered to prescribe the educational qualifications with qualifying GATE exam.

10. Upshot of the aforesaid discussion leads to dismissal of all the writ petitions.

11. All the writ petitions sans merit and are hereby dismissed. No order as to cost.

A copy of order be placed on the record of the connected writ petitions.

Petition dismissed

I.L.R. [2019] M.P. 565
WRIT PETITION

Before Ms. Justice Vandana Kasrekar

W.P. No. 27939/2018 (Indore) decided on 27 February, 2019

RAJASTHAN PATRIKA PVT. LTD. (M/S) …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

(Alongwith W.P. Nos. 18826/2018, 18829/2018, 27656/2018, 27657/2018, 27661/2018, 27672/2018, 27676/2018, 27825/2018, 27828/2018, 27922/2018, 27931/2018, 27937/2018, 27995/2018, 28731/2018, 28733/2018, 00231/2019, 00234/2019, 00237/2019, 00238/2019, 00242/2019 & 232/2019)

A. Industrial Disputes Act (14 of 1947), Section 10 & 33-C(2) and Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Section 17(2) — Recovery of Arrears of Wages – Reference – Validity **– Held – Whether particular workman is employee of particular employer can be decided by making reference u/S 10 of the Act of 1947 and not by making reference u/S 17(2) of the Act of 1955, thus reference made u/S 17(2) is incompetent – Impugned order set aside – Labour Commissioner is further to make reference to Labour Court for determination of question of existence of employer-employee relationship between parties and then go to decide entitlement of**

R-3 to receive arrears – Petitions allowed. (Para 21 & 22)

क. औद्योगिक विवाद अधिनियम (1947 का 14), धारा 10 व 33–सी(2) एवं श्रमजीवी पत्रकार और अन्य समाचार–पत्र कर्मचारी (सेवा की शर्तें) और प्रकीर्ण उपबंध अधिनियम, (1955 का 45), धारा 17(2) – मजदूरी के बकाया की वसूली – निर्देश – विधिमान्यता – अभिनिर्धारित – क्या विशिष्ट कर्मकार विशिष्ट नियोक्ता का कर्मचारी है, यह 1947 के अधिनियम की धारा 10 के अंतर्गत निर्देश प्रस्तुत करते हुए विनिश्चित किया जा सकता है तथा न कि 1955 के अधिनियम की धारा 17(2) के अंतर्गत निर्देश प्रस्तुत कर, अतः धारा 17(2) के अंतर्गत प्रस्तुत किया गया निर्देश अक्षम है – आक्षेपित आदेश अपास्त – श्रम आयुक्त को आगे पक्षकारों के मध्य नियोक्ता–कर्मचारी संबंध के अस्तित्व के प्रश्न के निर्धारण हेतु श्रम न्यायालय को निर्देश प्रस्तुत करना है और फिर बकाया प्राप्त करने की प्रत्यर्थी क्र.–3 की हकदारी विनिश्चित करना है – याचिकाएं मंजूर।

***B. Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Section 17(2) – Reference – Enquiry* – Held – While making reference u/S 17(2) of the Act of 1955, Government should have made enquiry about relationship of employer and employee between petitioner and R-3 – In absence of any enquiry, reference is bad in law. (Para 17)**

ख. श्रमजीवी पत्रकार और अन्य समाचार–पत्र कर्मचारी (सेवा की शर्तें) और प्रकीर्ण उपबंध अधिनियम, (1955 का 45), धारा 17(2) – निर्देश – जांच – अभिनिर्धारित – 1955 के अधिनियम की धारा 17(2) के अंतर्गत निर्देश प्रस्तुत करते समय, सरकार को याची एवं प्रत्यर्थी क्र. 3 के मध्य नियोक्ता और कर्मचारी के संबंध के बारे में जांच कर लेनी चाहिए – किसी जांच के अभाव में, निर्देश विधि की दृष्टि से दोषपूर्ण है।

***C. Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, (45 of 1955), Section 17(2) – Reference – Validity – Jurisdiction of High Court* – Held – Apex Court has concluded that High Court can go into the question of validity of reference. (Para 20)**

ग. श्रमजीवी पत्रकार और अन्य समाचार–पत्र कर्मचारी (सेवा की शर्तें) और प्रकीर्ण उपबंध अधिनियम, (1955 का 45), धारा 17(2) – निर्देश – विधिमान्यता – उच्च न्यायालय की अधिकारिता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि उच्च न्यायालय निर्देश की विधिमान्यता के प्रश्न पर जा सकता है।

Cases referred :

W.P. (Civil) No. 246/2011 decided on 07.02.2014 (Supreme Court), (1995) 1 SCC 235, 1998 (III) LLJ Del, 1993 (I) LLN 372, 1992 (II) LLN 1094, 2016 (3) MPLJ 117, Appeal (Civil) No. 16832/1996 decided on 01.12.1999 (Supreme Court).

Girish Patwardhan, for the petitioners.

Sudhir Shah, for the petitioner in W.P. Nos. 18826/2018 & 18829/2018.
Mukesh Porwal, G.A. for the respondent/State.
Prakash Kapse, for the respondent No. 3.

O R D E R

VANDANA KASREKAR, J. :- This order shall govern the disposal of all the aforementioned writ petitions. Regard being had to the similar controversy involved and the nature of the relief claimed in all the writ petitions, they have been heard and disposed of by this common order. For the sake of convenience, facts in W.P. no. 27939/2018 are narrated as under

Petitioner Rajasthan Patrika Pvt Ltd is a Company registered under the Companies Act, 1956. The Company is engaged in the work of publication of newspaper and other media works as per objects set out under the memorandum of Association of the Company. The Central Government while exercising powers under the working journalist and other newspaper employees (Conditions of Service) and Misc. Provisions Act, 1955 (hereinafter referred to as "The Act") constituted Wage Board for the purpose of fixing / revising the rates of wages of employees employed in newspaper establishment on 24/05/2007.

2. The Wage board constituted under the Chairmanship of Justice Gurbax Rai Majithia, retired Judge of High Court at Mumbai submitted its recommendations which were subsequently accepted by the Central Government vide notification dated 11/11/2011. Various newspaper establishments challenged the recommendations of the Majithia Wage Board before the Hon'ble Supreme Court in writ petitions filed under Article 32 of the Constitution of India on various grounds. All these writ petitions were consolidated and decided vide judgment and order dated 07/02/2014 and detailed judgment has been passed in Writ Petition (Civil)no. 246/2011 (*ABP Pvt Ltd and another Vs. Union of India and others*). Hon'ble Supreme Court has directed that the revised wages to all the eligible persons shall be payable from 11/11/2011 i.e. the date of notification of the recommendations of Majithia Wage Board by the Government of India and further directed that all the arrears upto March, 2014 shall be paid to all eligible persons in four equal installments within a period of one year from today.

3 That alleging non-compliance of the order dated 07/02/2014, several employees of various newspapers preferred contempt petitions before the Hon'ble Supreme Court wherein Hon'ble Supreme Court issued notices to the petitioners and several others petitioners. During pendency of the aforesaid contempt petitions, the Hon'ble Supreme Court vide order dated 28/04/2015 issued directions to all the State Government to appoint Inspectors under section 17-B of the Act to determine, as to whether the dues and entitlements of all categories of newspaper employees under the Majithia Wage Board award has been

implemented in accordance with the terms thereof. It was further directed that the Inspectors so appointed were to submit their report to the Hon'ble Supreme Court through Labour Commissioners of each State within three months. In pursuance to the directions issued by Hon'ble Supreme Court, the Labour Commissioner, Government of M.P submitted its report before the Hon'ble Supreme Court on 02/09/2015.

4 After submission of the report, Hon'ble Supreme Court vide order dated 14/03/2016 observed that various interlocutory applications have been filed alleging wrongful termination of services and fraudulent surrender of the rights under the Wages Board recommendations to avoid liabilities in terms of the order of the Court. The Hon'ble Supreme Court, therefore, issued specific directions granting liberty to each of the individual employees who have filed the interlocutory applications and also such employees who are yet to approach this Court, but have a grievance of the kind indicated above to move the Labour Commissioner of the State concerned in terms of the present order.

5 That the petitioner entered into an agreement for supply of manpower with one M/s Forte Foliage Pvt Ltd. Respondent no. 3 is the person, who was employee of the said company and working with the petitioner's organization pursuant to the said agreement for supply of manpower. Respondent no. 3 was not the employee of the petitioner and there is no relationship of master and servant between the petitioner and respondent no. 3. The petitioner availed of the manpower services from M/s Forte Foliage Pvt Ltd on contract basis. Respondent no. 3 filed its complaint before the Dy. Labour Commissioner, Indore with regard to the payments of arrears as per the Majithia Wage Board recommendations under the Act. The petitioner submitted reply to the said complaint stating therein that respondent no. 3 is not the employee of the petitioner and it was also stated that respondent no. 3 is the employee of respondent no. 4 M/s Forte Foliage Pvt Ltd, which is engaged in manpower rendering services. It is further submitted that respondent no. 3 has never worked in the newspaper establishment of the petitioner. Respondent no. 3 vide its order dated 10/08/2018, without authority of law decided that respondent no. 3 is entitled to the benefits recommended by the Majithia Wage Board. Respondent no. 2, however, treated the amount claimed by respondent as disputed and therefore vide order dated 10/08/2018, made reference of dispute to the Labour Court under section 17(2) of the Act. Being aggrieved by the said order, the petitioner has filed the present writ petition

6 Learned counsel for the petitioner submits that the reference of dispute is illegal and contrary to the provision of law and without any authority. He submits that the primary issue of dispute between the petitioner and the respondent no. 3 is as to whether the respondent no. 3 is newspaper employee of the petitioner or not ? and the said issue can only be decided by Court or Tribunal of the competent

jurisdiction. Respondent no. 2 failed to appreciate the above dispute. Respondent no. 2 ought to have referred the said question to the Court or Tribunal for determination. Further the finding of respondent no. 2 that respondent no. 3 is entitled to wages as per Majithia Wage Board recommendation is without jurisdiction and without authority of law as respondent no. 2 has no jurisdiction to determine that respondent no. 3 is employee of the petitioner. Whether a person is an employee of a particular employer can only be decided by the Labour Court or Industrial Tribunal under the Industrial Dispute Act, 1947. He further submits that the impugned order is not maintainable under section 17 of the Act. From bare perusal of the provisions contained under section 17(2) of the Act, it is clear that the mandate of the provision is that a question as to the amount due to a newspaper employee under the Act can only be referred to the Labour Court constituted under the Industrial Disputes Act, 1947. However, determination of employment status of respondent no. 3 has to be decided first, and only thereafter, the question arises as to whether any amount is due to respondent no. 3 under the Act.

7 He further relied upon the definition given under section 2(c)(d) of the Act i.e. "*newspaper employee*" and "*newspaper establishment*". On the basis of the said definition, he submits that to qualify as a newspaper employee, a person has to be working journalist or employed to do any work in the newspaper establishment or in relation to any newspaper establishment. In the present case, respondent no. 3 do not qualify to be a newspaper employee as he is neither working journalists not employed to do any work in the newspaper establishment nor in relation to any newspaper establishment. As per section 17(2) of the Act, if any question arises as to the amount due under this Act to the newspaper employee from the employer, the State Government may refer the question to any labour Court constituted by the Government under the Industrial Dispute Act, 1947. A bare reading of section 17(2) of the act clearly proves that the wages which are claimed should have correlation to the newspaper employees from his employer. He further argues that section 17(2) of the Act is *pari-materia* with section 33-C(2) of the Industrial Disputes Act, 1947. According to section 33-C(2) of the I.D. Act, powers of the labour Court are of the executive powers and not adjudicatve powers. Similarly in the case of provision under section 17 of the Act, powers have been given to the Labour Court as executive powers and not adjudicating authority.

8 Learned counsel for the petitioner has further relied upon the judgment passed by the Hon'ble Supreme Court in the case of *Municipal Corporation of Delhi Vs. Ganesh Razak and another* reported in (1995) 1 SCC 235; *Moolchand Khairati Ram Hospital Karamchari Union Vs. Labour Commissioner* reported in 1998 (III) LLJ Del; *National Engineering Industries Vs. State of Rajasthan* (Appeal (Civil) 16832/1996 decided on 01/12/201999) and order passed in Gujarat High Court in the case of *Keshavlal M. Rao Vs. State of Gujarat and*

others reported in 1993 (I)LLN 372; *Andhra Printers Ltd Vs. Industrial Tribunal-cum- Labour Court* reported in 1992 (II) LLN 1094 passed by High Court of Andhra Pradesh.

9 The respondent/s has filed reply and in the reply, it has been stated that respondent no. 3, as per entitlement of Majithia Wage Board recommendation, has submitted its claim for arrears of revised salary, in light of the judgment passed by Hon'ble Supreme Court, before the Dy. Labour Commissioner under section 17 of the Act and as the same was not considered for long period of time, therefore, respondent no. 3 through its union Madhya Pradesh Journalist - non Journalist Union, Indore had preferred a writ petition before the Hon'ble Court bearing W.P. no. 1422/2018 which was disposed of vide order dated 18/08/2018, wherein the authorities were directed to decide the claim submitted by the respondent no. 3 within a period of 15 days. In pursuance to the said order, respondent no. 3 has submitted his claim before respondent no. 2 and respondent no. 2 after considering the objection of the petitioner, vide orde (sic : order) dated 10/08/2018 forwarded the decision for approval from the State Government. The respondents have further submitted that from perusal of the reference, it is clear that reference question no. 1 makes it abundantly clear that the Labour Court shall adjudicate the question, whether respondent no. 3 is an employee of the petitioner or not ?. Apparently, if the aforesaid question is answered in favour of respondent no. 3, thereafter the question of entitlement of revised salary and arrears as per Majithia Wage Board Recommendation shall be considered for adjudication. He supports the order passed by the Dy. Labour Commissioner. Respondent no. 3 has further stated that he is an employee of the petitioner, however, has entered into contract of appointment with respondent no. 4, which is a manpower supply company. It is a well settled principle of law that as per the wages salary, gratuity and other salary emoluments are concerned, it is liability of the principal employer to disburse the same and grant it according to the norms. Respondent no. 4 is merely as denoted in the agreement, " Manpower Supply" company, however, respondent no. 3 has been continuously working in the petitioner's institution. He relied upon sub-section 2 of section 17 of the Act, 1955 and stated that the said section suggests that if any question arises as to the amount due under this act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to investigation and settlement of Industrial Disputes in force..

10 He has further relied upon the order passed in W.P. no. 16209/2018 (*Nai Dunia Vs. SOMP and others*) decided on 25/07/2018. He further submits that "whether a person is an employee of a particular employer can only be decided by the Labour Court / Industrial Tribunal under the Industrial Dispute Act, 1947" and for the same reason, the reference has been made to the learned labour Court under

section 17(2) of the Act, 1955. The petitioner is trying to demarcate the scope of section 17(2) of the Act, 1955 and section 10 of Industrial Disputes Act, 1947. Respondent no. 2 is the conciliation officer and not the adjudicating authority and therefore, any question which needs adjudication is to be referred to the Labour Court / Tribunal for examination and finalization. He further relied upon the judgment passed by this Court in the case of *Birla Corporation Vs. Dy. Labour Commissioner* reported in 2016(3) MPLJ 117. The petitioner can very well raise the ground regarding maintainability of reference before the Labour Court and in light of the aforesaid submissions, he submits that the petition filed by the petitioner deserved to be dismissed.

11 Heard learned counsel for the parties and perused the records.

12 In the present case, the petitioner is a public company, which carries on business of publication of newspapers in the name of Rajasthan Patrika Pvt Ltd and engaged in other media works like FM, Outdoor Advertising, event management, digital news portal and TV etc Respondent no. 4 is a manpower supply agency and supply its manpower as per the demand of the client. Respondent no. 4 is supplying manpower to the petitioner / Company through agreement for supply of manpower dated 25/09/2012 and 25/09/2017. As per clause 6, 7, 8, 13 and 15, it is clear that respondent no. 4 shall be responsible to pay entire emoluments and other benefits to the employees supplied to the petitioner / Company. It is also clear that respondent no. 4 shall ensure to follow stationary mandates under Employee's State Insurance Act, Shops and Commercial Establishment Act, Employee's Provident Fund Act etc. It is also agreed between the parties that employees of respondent no. 4 may be transferred to any locations where the works are available for employee. That the central Government, while exercising powers under the Act constituted a Wage Board for the purpose of fixing / revising the rates of wages of employees employed in the newspaper establishment on 24/05/2007. The said Wage Board was constituted under the Chairmanship of Justice Gurbax Rai Majithia, retired Judge of High Court at Mumbai. The recommendations made by the Majithia Board were challenged before the Hon'ble Supreme Court in various writ petitions. These petitions were heard analogously by Hon'ble Supreme Court and disposed vide judgment and order dated 07/02/2014 with the following observations :

> "In view of our conclusion and dismissal of all the writ petitions, the wages as revised / determined shall be payable from 11/11/2011 when the Government of India notified the recommendations of the Majithia Wage Board. All the arrears upto March 2014 shall be paid to all eligible persons in four equal installments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards"

13. As the order passed by Hon'ble Supreme Court was not complied with, therefore, contempt petitions were filed before the Hon'ble Supreme Court. Vide order dated 28/04/2015, Hon'ble Supreme Court issued direction to all the State Governments to appoint inspectors under section 17-B of the Act to determine, as to whether the dues and entitlements of all categories of newspaper employees under the Majithia Wage Board. In pursuance to the directions given by Hon'ble Supreme Court, Labour Commissioner, State of M.P submitted its report before the Hon'ble Supreme Court on 02/09/2015. Thereafter, all the contempt petitions were disposed of by Hon'ble Supreme Court vide order dated 14/03/2016 with the following directions :

> "We therefore, direct the Labour Commissioner of each of the States to look into all such grievances and on determination of the same file necessary reports before the Court which will also be so filed on or before 12th July, 2016. We grant liberty to each of the individual employees who have filed the interlocutory applications and also such employees who are yet to approach this Court but have a grievance of the kind indicated above to move the Labour Commissioner of the State concerned in terms of the present order"

14. Respondent no. 3 who is the employee of respondent no. 4, has submitted his complaint before the Dy. Labour Commissioner with regard to payment of arrears as per the Majithia Board Recommendations under the Act. The petitioner submitted his reply to the said complaint stating therein that respondent no. 3 is not the employee of the petitioner. Respondent no. 2 vide its order dated 10/08/2018 has referred the dispute to the Labour Court, which reads as under:

> क्या आवेदक कु. जैनब खान पिता श्री एस.डी. खान, निवासी–27/ए, सिकन्दरा बाद कालोनी, इंदौर म.प्र. अनावेदक संस्थान राजस्थान पत्रिका प्रा. लि. का कर्मचारी है ? यदि हॉ तो आवेदक को श्रमजीवी पत्रकार एवं अन्य समाचार पत्र कर्मचारी सेवा शर्त एवं विधिक उपबंध अधिनियम 1955 के अंतर्गत मजीठिया वेतन बोर्ड की अनुशंसा अनुसार कितनी राशि पाने की पात्रता है ? और इस संबंध में नियोजक संस्थान को क्या निर्देश दिये जाने चाहिये ?

Being aggrieved by the said reference, the petitioner has filed the present writ petition.

15. Learned counsel for the petitioner relied upon section 17 (2) of the Act, which reads as under :

> 17(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the

> State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

16 As per the said section, if any question has to be made to the State Government for recovery of the amount due to him and if any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to him, refer the dispute to any Labour Court for adjudication under the Act. Thus, section 17 is the Act of executing authority and not as a authority for adjudication. In the present case, the petitioner has denied the relationship of employee and employer between the respondent nos. 3 and 4 and therefore, without determining whether respondent no. 3 is the employee of the petitioner, the question regarding his entitlement for getting benefit of Majithia board Recommendation would not arise. Expression "newspaper employee" and "newspaper establishment" has defined as under section 2(c(d) of the Act, which read as under :

> (c) "newspaper employee" means any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment
>
> (d) "newspaper establishment" means an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate 1[and includes newspaper establishments specified as one establishment under the schedule;

17 From bare perusal of the above provisions, it is apparent that to qualify as newspaper employee, a person has to be working journalist or employed to do any work in the newspaper establishment or in relation to any newspaper establishment. In the present case, from perusal of the clauses in the agreement, which has been entered between the petitioner and respondent no. 4, it is clear that respondent no. 4 is acting as a manpower company and therefore, respondent no. 3 is the employee of respondent no. 4. All the benefit like EPF and other consequential benefits are being paid by respondent no. 4 to respondent no. 3.

While making reference, respondent no. 2 has to refer dispute as to whether respondent no. 3 is the employee of the petitioner under the Industrial Dispute Act, 1947 and if the answer of this reference is positive, then only entitlement of respondent no. 3 as per the recommendation of the Wage Board would arise. Section 17(2) of the Act provides that if any question arises as to the amount due under this Act to the newspaper employee from the employer, the State Government may refer the dispute to any other Labour Court constituted by the Government under the Industrial Dispute Act. Section 17(2) of the Act clearly provides that the wages which are claimed should have co-relation to the newspapers employee from its employer and as in the present case, the respondent no. 3 is the employee of respondent no. 4, therefore, he is not the newspaper employee and therefore, reference is incompetent. While making reference under section 17(2) of the Act, the Government should have made inquiry about the relationship of the employer and employee between the petitioner and respondent no. 3. In absence of any inquiry, reference is bad in law.

18. Section 33-C(2) of the Industrial Dispute Act is *pari-materia* with section 17 of the Act. Section 33-C(2) of I.D Act reads as under :

> (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months:] [2]
>
> Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

19. Gujrat High Court in the case of Keshavlal M. Rao (supra) has held that the provisions of section 33-C of the Industrial Dispute Act are *pari-materia* with section 17 of the Act.

Hon'ble Supreme Court in the case of *Municipal Corporation Delhi* (supra) has held as under :

> "Where the very basis of the claim or the entitlement of the workmen in a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not

> incidental to the benefit claimed and is therefore, clearly outside the scope of a proceeding under section 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under section 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under section 33-C(2) like that of the Executing Court's power is interpret the decree for the purpose of its execution. The power of the Labour Court under section 33-C(2) extends to interpretation of the award or settlement on which the workman's right rests.

Similarly in the case of *Mool Khairati Ram Hospital Karamchari Union* (supra), Hon'ble Supreme Court has held as under :

> "Labour and Industrial - quashment of reference-Section 10(1) of Industrial Disputes Act, 1947 and Article 226 of Constitution of India-appeal filed challenging order, by which reference related to industrial dispute quashed by High Court - Order challenged on ground that it was not open to High Court in exercise of jurisdiction under Article 226 to quash the reference - as per decision of Supreme Court in precedent High Court can to into the validity of reference in certain situations -High Court can quash reference on ground that relevant material placed before Government was not considered and real dispute between parties had not been referred - appeal dismissed."

Gujrat High Court in the case of *Keshavlal M. Rao* (supra) has held as under :

> "So far as section 17(1) of Working Journalists and other Newspaper Employees (Conditions of Services) and Miscellaneous Provisions Act, 1955 is concerned its working will come into play only when there is no dispute of any nature either with regard to the status claimed by the person as the newspaper employee or, the quantum of the amount claimed as due by him from the employer. The condition precedent for invocation of section 17(1) is a

> prior determination by a competent authority or forum as to the amount due to the newspaper employee from his employer and that too under the Act. It is only after the amount due to the newspaper employee from his employer under the Act stands determined, without any disputation over it, the stage will be set for recovery as per Section 17(1) ".

20. So far as whether the High Court can go into the question of validity of the reference is concerned, Hon'ble Apex Court in the case of *National Engineering Industries Ltd Vs. State of Rajasthan and others* (Appeal (Civil) 16832/1996 decided on 01/12/1999) has held as under :

> "Industrial Tribunal is the creation statute and it gets jurisdiction on that basis of reference. It cannot go into the question on validity of the reference. Question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the management, labour Union and the Staff Union. When such a settlement is arrived at, it is a package deal. In such a deal, some demands may be left out. It is not that demands which are left out, should be specifically mentioned in the settlement. It is not the contention of Workers' Union that tripartite settlement is in any by malafide. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings under section 12 of the Act and as such not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite settlement clearly shows that the settlement was arrived at during the conciliation proceedings.

So far as the judgment relied upon by learned counsel for the respondent in the case of *Nai Dunia* (supra) is concerned, in that case, language of the dispute is different than in the present case. So far as another judgment relied upon by him in the case of *Birla Corporation* (supra) is concerned, Hon'ble Supreme Court in the case of *National Engineering Industries* (supra) has held that High Court can go into the question of validity of reference, therefore, in light of the said judgment passed by Hon'ble Supreme Court, the judgment passed in the case of *Birla Corporation* (supra) would not be applicable. .

21. Thus, whether particular workman is the employee of particular employer can be decided by making reference under section 10 of the Industrial Disputes

Act and not by making reference under section 17(2) of the Act, therefore, reference made by the respondent under section 17 of the Act is incompetent.

22. Thus, in light of the aforesaid judgments and the submissions, present writ petitions are allowed. The impugned order dated 10/08/2018 is hereby set aside and the Labour Commissioner is further to make reference to the concerned Labour Court, whether the respondent no. 3 is the employee of the petitioner / Company and after determination of the said question, the Labour Court may decide the entitlement of the petitioner for recommendations of the Majithia Board.

A copy of this order be placed in other connected writ petitions.

C c as per rules.

Petition allowed

I.L.R. [2019] M.P. 577
APPELLATE CIVIL
Before Mr. Justice G.S. Ahluwalia
S.A. No. 2254/2018 (Gwalior) decided on 14 November, 2018

BHIKAM SINGH & ors. …Appellants

Vs.

RANVEER SINGH & ors. …Respondents

***A. Civil Procedure Code (5 of 1908), Section 100 – Substantial Questions of Law – Findings of Fact – Possession* – Held – Finding with regard to possession are findings of fact – There is a concurrent finding that R-1/ plaintiff is in possession of land in dispute – Civil Suit cannot be dismissed on ground of non-claiming the relief of possession – Apex Court concluded that even if findings of fact may be erroneous findings of fact, then it would not give rise to substantial question of law – Substantial questions of law does not mean the question of law, it is to be substantial in nature – High Court while exercising powers u/S 100 CPC should not interfere with concurrent findings of fact – Appeal dismissed. (Para 20 & 29)**

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – विधि के सारवान् प्रश्न – तथ्य के निष्कर्ष – कब्जा – अभिनिर्धारित – कब्जे के संबंध में निष्कर्ष तथ्य के निष्कर्ष हैं – यह एक समवर्ती निष्कर्ष है कि प्रत्यर्थी क्र. 1/वादी विवादित भूमि के कब्जे में है – सिविल वाद कब्जे के अनुतोष का दावा न करने के आधार पर खारिज नहीं किया जा सकता – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यद्यपि तथ्य के निष्कर्ष, तथ्य के त्रुटिपूर्ण निष्कर्ष हो सकते हैं, तब भी यह विधि के सारवान् प्रश्न को जन्म नहीं देंगे – विधि के सारवान् प्रश्नों का अर्थ विधि का प्रश्न नहीं है, यह सारवान् स्वरूप के होना चाहिए – उच्च न्यायालय को सि.प्र.सं. की धारा 100 के अंतर्गत शक्तियों का प्रयोग करते समय तथ्य के

समवर्ती निष्कर्षों के साथ हस्तक्षेप नहीं करना चाहिए – अपील खारिज।

***B. Civil Practice – Abatement* – Held – When legal representatives of dead person are not brought on record, then decree passed against dead person is a nullity but in present case, facts are distinguishable – Defendant No. 2 expired during pendency of suit but other defendants who are real brother and mother of deceased did not inform the court about his death – One of the legal representatives of dead person was already on record, it cannot be said that suit had abated or decree has been passed against dead person – When estate of deceased is substantially represented by one of the legal representatives, suit cannot be dismissed as having abated.**

(Paras 10 to 12 & 18)

ख. सिविल पद्धति – उपशमन – अभिनिर्धारित – जब मृत व्यक्ति के विधिक प्रतिनिधियों को अभिलेख पर नहीं लाया जाता है, तब मृत व्यक्ति के विरूद्ध पारित की गई डिक्री अकृत है परंतु वर्तमान प्रकरण में, तथ्य भेद करने योग्य हैं – प्रतिवादी क्र. 2 की वाद के लंबित रहने के दौरान मृत्यु हो गई, परंतु अन्य प्रतिवादीगण जो कि मृतक के सगे भाई और माँ हैं, उन्होनें उसकी मृत्यु के बारे में न्यायालय को सूचित नहीं किया – मृत व्यक्ति के विधिक प्रतिनिधियों में से एक पहले से ही अभिलेख पर था, यह नहीं कहा जा सकता कि वाद उपशमित हो गया था या मृत व्यक्ति के विरूद्ध डिक्री पारित की गई है – जब मृतक की संपदा का सारभूत रूप से प्रतिनिधित्व विधिक प्रतिनिधियों में से एक द्वारा किया जाता है, उपशमन हो जाने के कारण वाद खारिज नहीं किया जा सकता।

Cases referred:

(2001) 5 SCC 570, (2008) 8 SCC 521, (2007) 5 SCC 669, 1988 (Supp) SCC 578, (2010) 7 SCC 603, 1995 Supp (3) SCC 331, AIR 1967 SCC 49, AIR 1977 SCC 2029, (2010) 15 SCC 530, (2011) 1 SCC 158, (2012) 8 SCC 148.

Sarvesh Sharma, for the appellant.
KS Tomar with *JS Kaurav,* for the respondent No. 1.

(Supplied: Paragraph numbers)

J U D G M E N T

G.S. AHLUWALIA, J. :- This Second Appeal under Section 100 of CPC has been filed calling in question the judgment and decree dated 10/09/2018, passed by Fourth Additional District Judge, Bhind, District Bhind in Regular Civil Appeal No.49/2018, by which the judgment and decree dated 01/05/2018 passed by First Civil Judge, Class II, Bhind, District Bhind in Civil Suit No. 2400063A/2015, has been affirmed and the appeal filed by the appellant has been dismissed.

2. The necessary facts for the disposal of the present appeal in short are that the respondent no.1 had filed a civil suit against the appellants for declaration of

title, permanent injunction and correction of revenue records in respect of agricultural land, having survey no.940, area 5 bigha 3 biswa (new survey nos. 1388 & 1393).

3. It was the case of the plaintiff that his father late Khilan Singh is the resident of village Kalyanpura, Mouza Rachhedi and survey no.940 area 5 bigha 3 biswa was lying barren and his father made it fit for cultivation and the Collector, by order passed in the year 1960 in Case No. 110/60x162, gave a Patta in favour of his father and accordingly, he is in possession of the same. Survey no.940 was renumbered and new survey numbers are 1388 & 1393. Late Kundan Singh, who is father of the appellants, was Patel of the village and he got annoyed because of allotment of land in favour of father of the plaintiff/respondent no.1 and by hatching a conspiracy the plaintiff was made an accused in a case of murder, which continued for a long time and ultimately, the plaintiff has been sentenced by the Supreme Court for a period of seven years. However, the plaintiff continued to be in cultivating possession of the land in dispute. The cultivated crop was lying on the disputed land and was set on fire and accordingly, the plaintiff had made a complaint to the Patwari, Tehsildar and Collector and obtained revenue records and came to know that instead of entire 5 bigha and 3 biswa of land, the name of the father of the plaintiff was recorded, merely in respect of 1 bigha and 13 biswa land and the remaining land i.e. 3 bigha and 10 biswa has been recorded in the name of the appellants/defendants. It was further pleaded that the father of the appellants/defendants was the Patel of the village and taking advantage of innocence of the father of the plaintiff, he got the revenue records corrected. When the plaintiff demanded the certified copy of the documents, then his application was returned on the ground that as the records are in dilapidated condition, therefore, the certified copy cannot be granted. It was further pleaded that the appellants have got their names mutated in the revenue records by playing fraud and accordingly, the suit was filed for declaration of title, permanent injunction and correction of revenue records.

4. The appellants and Pooran Singh, who was the defendant no.2 in the suit, filed written statement and denied that the land in dispute was made cultivable by the father of the plaintiff. They also denied that the father of the plaintiff was declared as "Bhoomiswami" in Samvat 2018-19. It was pleaded that Kundan Singh was in possession of the land in dispute and after his death, the appellants are cultivating the land. Even name of the father of the appellants continued to be recorded in the revenue records and after his death, the names of the appellants have been mutated in the revenue records.

5. The trial Court after recording the evidence of the parties, decreed the suit.

6. Being aggrieved by the judgment and decree passed by the trial Court, the appellants filed the First Appeal and the objection was raised that Pooran Singh,

who was the defendant no.2, had expired on 31/03/2017. The legal representatives of Pooran Singh were not brought on record and thus, it is clear that the decree dated 01/05/2018 has been passed by the trial Court against the dead person and thus, it is a nullity. The appellate Court, after considering the grounds raised by the appellants before it, also dismissed the appeal by judgment and decree dated 10/09/2018 passed in Regular Civil Appeal No.49/2018.

7. Challenging the judgment and decree passed by the Courts below, it is submitted by the counsel for the appellants that Pooran Singh was impleaded as defendant no.2, being legal representative of Late Kundan Singh. Pooran Singh had expired on 31/03/2017 i.e. during pendency of the civil suit and his legal representatives were not brought on record and later on, the judgment and decree dated 01/05/2018 was passed by the trial Court against the defendants, which clearly shows that the decree has been passed against dead person and thus, it is a nullity.

8. To buttress his contention, the counsel for the appellants has relied upon the judgment passed by the Supreme Court in the case of *Amba Bai and Others vs. Gopal and Others* reported in (2001) 5 SCC 570 and in the case of *Jaladi Suguna (Deceased) through LRS. vs. Satya Sai Central Trust and Others*, reported in (2008) 8 SCC 521.

9. Considered the submissions made by the counsel for the appellants.

10. The defendants no.1, 2 and 3 are the real brothers, whereas the defendant no.4 is the mother of the defendants no.1, 2 and 3. The defendant no.2, according to the appellants, had expired on 31/03/2017 i.e. during pendency of the civil suit. However, it is admitted that the defendant no.4 i.e. mother of the defendant no.2 was already on record and after the death of defendant no.2, the mother of the defendant no.2 is one of the legal representatives, being Class-I heir of the defendant no.2. It is also admitted that the defendants never informed the Court about the death of the defendant no.2 or the details of his legal representatives as required under Order 22 Rule 10A of CPC and all the defendants including the mother of the dead defendant no.2 continued to contest the suit and allowed the trial Court to pass a decree. Even when the defendants filed an appeal against the judgment and decree passed by trial Court, they did not disclose the names of the legal representatives of the dead defendant no.2 and dead defendant no.2 was made party as respondent no.3 by showing that Pooran Singh is dead but his legal representatives are not on record. After dismissal of Regular Civil Appeal even in the present appeal, the appellants have not disclosed the details of the legal representatives of deceased Pooran Singh and he has been made as respondent no.3 by showing Pooran Singh dead (the legal representatives are not brought on record).

11. There is no dispute that when the legal representatives of a dead person are not brought on record, then the decree passed against the dead person would be a nullity. But in the present case,the facts are distinguishable. Undisputedly, the defendant no.3/appellant no.3 is the mother of the defendant no.2 who had expired during pendency of the civil suit. Being Class-I heir the mother is one of the legal representatives of defendant No.2 Pooran Singh. Thus, it is clear that one of the legal representatives of deceased Pooran Singh was already on record.

12. It is well-established principle of law that where one of the legal representatives of a dead person is already on record, then no abatement would take place only on the ground of non-bringing the remaining legal representatives on record within the stipulated period. Similarly, when there is substantial representation of estate of deceased, then the suit cannot be dismissed.

13. The Supreme Court in the case of *P. Chandrasekharan and Others vs. S. Kanakarajan and Others,* reported in (2007) 5 SCC 669 has held as under:-

> **"19.**Indisputably, an appeal would abate automatically unless the heirs and legal representatives of a deceased plaintiffs or defendants are brought on record within the period specified in the Code of Civil Procedure. Abatement of the appeal, however, can be set aside if an appropriate application is filed therefor. The question, however, as to whether a suit or an appeal has abated or not would depend upon the fact of each case. Had such a question been raised, the respondents could have shown that their cross-objection did not abate as the estate of the deceased cross objector was substantially represented.
>
> **20.** In Mithailal Dalsangar Singh & Ors. v. Annabai Devram Kini & Ors. [(2003) 10 SCC 691] whereupon Mr. Balakrishnan himself relied, this Court held :
>
> > "8. Inasmuch as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside the abatement. So also a prayer for setting aside abatement as regards one of the plaintiffs can be construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for

bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.

9. The courts have to adopt a justice-oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court. The opinion of the trial Judge allowing a prayer for setting aside abatement and his finding on the question of availability of sufficient cause within the meaning of sub-rule (2) of Rule 9 of Order 22 and of Section 5 of the Limitation Act, 1963 deserves to be given weight, and once arrived at would not normally be interfered with by superior jurisdiction."

21. The ratio of the said decision does not militate against the observations made by us hereinbefore. The question in regard to abatement of a suit or appeal has not been raised. We cannot enter into the disputed question of fact at this stage as to whether there has been a substantial representation of the estate of the deceased cross-objectors."

14. The Supreme Court in the case of *Collector of 24 Parganas and Others vs. Lalith Mohan Mullick and Others* reported in 1988 (Supp) SCC 578 has held as under:-

"1. This Review Petition has been instituted on the plea that original respondent No. 2 Smt. Sibadasi Mullick, widow of Shri Krishna Mohan Mullick had died during the pendency of the appeal in this Court and that original respondent No. 5 Smt.

> Kamalini Mullick.widow of Shri Khirode Mohan Mullick had also died during the pendency of the appeal in this Court which was disposed of on merits by a Judgment and Order dated February 13. 1986 reported in AIR 1986 SC 622 after hearing the parties. So far as Smt. Sibadasi Mullick, widow of Shri Krishna Mohan Mullick is concerned, her two sons viz. Lakshmi Kanto Mullick and Nilkanto Mullick were already on record as respondents Nos. 3 and 4. Therefore, the estate of the deceased was sufficiently represented before this Court. So far as respondent No. 5 Smt. Kamalini Mullick, widow of Shri Khirode Mohan Mullick is concerned, her son Ramendra Mullick was already on record as respondent No. 6. In her case also the estate was sufficiently represented. Under the circumstances it is not possible to uphold the plea that the appeal had abated and the judgment on merits rendered by this Court on February 13, 1986 requires to be set aside on this ground."

15. The Supreme Court in the case of *K. Naina Mohamed (Dead) through LRS. vs. A.M. Vasudevan Chettiar (Dead) through LRs and Others,* reported in (2010) 7 SCC 603 has held as under:-

> **"18.** A reading of the judgment under challenge shows that neither the factum of death of Rukmani Ammal and her son was brought to the notice of the learned Judge who decided the appeal nor any argument was made before him that the second appeal will be deemed to have abated on account of non impleadment of the legal representatives of the deceased. The reason for this appears to be that Rukmani Ammal and her son A.B.M. Ramanathan Chettiar, who had also signed the sale deed as one of the vendors did not challenge the judgment and decree of the trial Court and only the appellant had questioned the same by filing an appeal. A.B.M. Ramanathan Chettiar did not even contest the second appeal preferred by respondent Nos.1 and 2.
>
> 19. Before this Court, the issue of abatement has been raised but the memo of appeal is conspicuously silent whether such a plea was raised and argued before the High Court. Therefore, we do not think that the appellant can be allowed to raise this plea for frustrating the right of respondent Nos.1 and 2 to question alienation of the suit property in violation of the restriction contained in clause 11 of the Will. Here, it is necessary to mention that by virtue of the Will executed by her sister, Rukmani Ammal got only life interest in the property of the testator and her male

heir, A.B.M. Ramanathan Chettiar got absolute right after her death. Therefore, during her life time, Rukmani Ammal could not have sold the property by herself. This is the precise reason why she joined her son in executing the sale deed in favour of the appellant.

20. If an objection had been taken before the High Court that legal representatives of A.B.M. Ramanathan Chettiar have not been brought on record, an order could have been passed under Rule 4 of Order XXII which reads as under:

> "The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

21. The definition of the term 'legal representative' contained in Section 2(11) of the Code of Civil Procedure also supports the argument of the learned counsel for the respondents that the second appeal cannot be treated as having abated because the appellant who had purchased the property was representing the estate of the deceased. In Mohd. Arif v. Allah Rabbul Alamin (1982) 2 SCC 455, this Court considered a somewhat similar issue and held as under:(SCC p456, para 2)

> "2.....It is true that the appellant did not prefer any appeal to the District Court against the original decree but in the first appeal he was a party respondent. But that apart, in the second appeal itself Mohammad Arif had joined as co-appellant along with his vendor, Mohammad Ahmed. On the death of Mohammad Ahmed all that was required to be done was that the appellant who was on record should have been shown as a legal representative inasmuch as he was the transferee of the property in question and at least as an intermeddler was entitled to be treated as legal representative of Mohammad Ahmed. He being on record the estate of the deceased appellant qua the property in question was represented and there was no necessity for application for bringing the legal representatives of the deceased appellant on record. The appeal in the circumstances could not be regarded

as having abated and Mohammad Arif was entitled to prosecute the appeal."

16. The Supreme Court in the case of *Bhurey Khan vs. Yaseen Khan (Dead) by LRs. and Others,* reported in 1995 Supp (3) SCC 331 has held as under:-

> **"4.** We have heard the learned counsel for the parties. After the order dismissing the appeal for non-prosecution was set aside by this Court the parties were relegated to the position as it stood earlier, namely, that the substitution application filed by the appellant for bringing on record the legal representatives to whom the notices were issued stood dismissed. But that could not furnish valid ground for abating the appeal as the six sons of Yaseen were already on record. The estate of the deceased was thus sufficiently represented. If the appellant would not have filed filed any application to bring on record the daughters and the widow of the deceased the appeal would not have abated under Order 22 Rule 4 of the Code of Civil Procedure as held by this Court in *Mahabir Prasad v. Jage Ram (1971)1 SCC 265*. The position, in our opinion, would not be worse where an application was made for bringing on record other legal representatives but that was dismissed for one or the other reason. Since the estate of the deceased was represented the appeal could not have been abated. "

17. When some of the legal representatives of the deceased party are not joined, then the suit cannot be dismissed on the said ground as held by the Supreme Court in the case of *Dolai Maliko and Others vs. Krushna Chandra Patnaik and Others,* reported in AIR 1967 SCC 49, in which it has been held as under:-

> **"11.**We are of opinion that these cases have been correctly decided and even where the plaintiff or the appellant has died and an his heirs have not been brought on the record because of oversight or because of some doubt as to who are his heirs, the suit or the appeal as the case may be, does not abate and the heirs brought on the record fully represent the estate unless there are circumstances like fraud or collusion to which we have already referred above."

18. Thus, it is clear that the defendant no.2 Pooran Singh had expired during pendency of the civil suit but the other defendants who are the real brother of the deceased Pooran Singh and mother of the deceased Pooran Singh, did not file an application under Order 22 Rule 10-A of CPC, informing about the death of Pooran Singh as well as the details of the legal representatives of Pooran Singh. Even otherwise, till today, the defendants/ appellants have not disclosed the

details of the legal representatives of Pooran Singh. It is not known that whether Pooran Singh had any other legal representatives except his mother or not? Even otherwise, when one of the legal representatives of dead person was already on record, then it cannot be said that the suit had abated or the decree has been passed against a dead person. When the estate of the deceased was being substantially represented by one of the legal representatives, then the suit cannot be dismissed as having abated. Thus, the substantial question of law formulated by the appellants, does not arise.

19. It is next contended by the counsel for the appellants that the trial Court has misread the evidence and the documents which give rise to substantial question of law. It is further submitted that as the plaintiff was not in possession of the land in dispute and the finding with regard to possession over the land in dispute is erroneous and, therefore, in view of Section 34 of the Specific Relief Act, the civil suit was not maintainable in absence of relief for possession. To buttress his contention, the counsel for the appellants has relied upon the judgment passed by the Supreme Court in the case of *Matindu Prakash (Deceased) by LRS. vs. Bachan Singh and Others,* reported in AIR 1977 SCC 2029.

20. So far as the concurrent findings of fact given by the Courts below with regard possession of the plaintiff over the land in question are concerned, it is well-established principle of law that the findings with regard to possession are findings of fact and it is equally established principle of law that in exercise of power under Section 100 of CPC, this Court cannot interfere with the concurrent findings of fact, until and unless they are found to be contrary to the record or based on no evidence. Merely because, the findings of fact are erroneous findings of fact, cannot give rise to substantial questions of law. Thus, in view of the concurrent findings of fact given by the Courts below that the plaintiff/respondent no.1 is in possession of the land in dispute, this Court is of the considered opinion that the civil suit cannot be dismissed on the ground of non-claiming of relief of possession.

21. It is next contended by the counsel for the appellants that the Courts below have misread the evidence as well as the documents which give rise to substantial of law. It is further submitted that the name of the father of the appellants was mutated in the revenue record vide order Ex.D3 which was based on the consent given by the father of the plaintiff Ex.D4. Once the father of the plaintiff has given consent that he is not in possession of the land in dispute and in fact, Kundan Singh, the father of the appellants is in possession and he has no objection if Kundan Singh is recorded in the revenue record, then it is not open for the plaintiff/respondent no.1 to challenge the revenue entries and declaration of Kundan Singh as "Bhoomiswami".

22. I have gone through the evidence of the parties for the limited purpose that whether the consent letter Ex.D4 purportedly executed by Khilan Singh, was admitted by the plaintiff/respondent no.1 or not. It is the case of the respondent No.1 that Ex.D4 does not contain signature of his father and it is a forged document. It is the case of the respondent No.1 that his father had never given consent for recording the name of Khilan Singh as "Bhoomiswami".

23. It is submitted by the counsel for the appellants that in order to controvert the stand taken by the plaintiff/respondent No.1, they had filed Ex.D1, which is a sale deed executed by the father of plaintiff/ respondent no.1 which bears his signatures.

24. Thus, it is clear that the father of the plaintiff/ respondent no.1 was in habit of signing the documents and the contention made by the plaintiff/respondent no.1 that his father was an illiterate person and was always putting thumb impression is incorrect. When Ex.D1 was put to the plaintiff/respondent No.1 in his cross-examination, then it was replied by him that if his father had learnt to sign, at a later stage, then he cannot say anything with regard to signatures of his father Ex.D1. Consent letter Ex.D4 purportedly executed by the father of the plaintiff/ respondent no.1 is of the year 1964, whereas the sale deed Ex.D1 is of the year 1996. Thus, it is clear that the sale deed was executed after 32 years of execution of so-called consent letter. Furthermore, it is an undisputed fact that the application filed by Kundan Singh, the father of the appellants for mutation of his name, was rejected by Tahsildar and Kundan Singh being aggrieved by the order of Tahsildar, had filed an appeal before the Court of SDO. It is also a matter of doubt that when Khilan Singh, the father of the respondent no.1/ plaintiff had succeeded in the Court of Tahsildar, then why he would give consent letter, admitting that Kundan Singh, the father of the appellants is in possession of the land in dispute and he has no objection if he is declared as "Bhoomiswami".Thus, this Court is of the considered opinion that the concurrent findings of fact given by the Courts below are based on appreciation of evidence and cannot be kept within the category of perverse findings.

25. The Supreme Court in the case of *Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and Others,* reported in (1999) SCC 722, has held as under:-

> **"3.** After the amendment a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such question. If satisfied, the High Court has to formulate the substantial question of law involved in the case. The appeal is required to be heard on the

question so formulated. However, the respondent at the time of the hearing of the appeal has a right to argue that the case in the court did not involve any substantial question of law. The proviso to the Section acknowledges the powers of the High Court to hear the appeal on a substantial point of law, though not formulated by it with the object of ensuring that no injustice is done to the litigant where such question was not formulated at the time of admission either by mistake Or by inadvertence.

4. It has been noticed time and again that without insisting for the statement of such substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100, Code of Civil Procedure, It has further been found in a number of cases that no efforts are made to distinguish; between a question of law and a substantial question of law. In exercise of the powers under this Section the findings of fact of the 1st appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the Section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add to or enlarge those grounds. The second appeal : cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this Section. The substantial question of law has to be distinguished from a substantial question of fact This Court in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spinning and Manufactuing Co. Ltd, AIR (1962) SC 1314 held that :-

> "The proper test for determining whether a question of law raised in the case is substantial would, in bur opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views, If the question is settled by the highest Court or the general principles to be applied in

determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurbed the question would not be a substantial question of law."

5. It is not within the domain of the High Court to investigate the grounds on which findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the tower appellate court were erroneous being contrary to the mandatory provisions of law applicable of its settled position on the basis of pronouncements made by the apex Court, or was based upon in inadmissible evidence or arrived at without evidence.

6. If the question of law termed as substantial question stands already decided by a larger bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on facts of the case would not be termed to be a substantial question of Jaw. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entrie and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it Cannot be termed to be an error either of law or procedure requiring interference in second appeal. This Court in Reserve Bank of India & Anr, v. Ramakrishan Govind Morey, AIR (1976) SC 830 held that whether trial court should not have

exercised its jurisdiction differently is not a question of law justifying interference."

26. The Supreme Court in the case of *Gurvachan Kaur and Others vs. Salikram (dead) through Lrs.* reported in (2010) 15 SCC 530 has held as under:-

> "10. It is settled law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court was not justified in reversing the finding of fact recorded by the first appellate court on the issues of existence of landlord-tenant relationship between the plaintiff and defendant and default committed by the latter in payment of rent."

27. The Supreme Court in the case of *D.R.Rathna Murthy vs. Ramappa,* reported in (2011) 1 SCC 158, has held as under:-

> "9. Undoubtedly, the High Court can interfere with the findings of fact even in the Second Appeal, provided the findings recorded by the courts below are found to be perverse i.e. not being based on the evidence or contrary to the evidence on record or reasoning is based on surmises and misreading of the evidence on record or where the core issue is not decided. There is no absolute bar on the re-appreciation of evidence in those proceedings, however, such a course is permissible in exceptional circumstances. (*Vide Rajappa Hanamantha Ranoji v. Mahadev Channabasappa (2000) 6 SCC 120, Hafazat Hussain vs. Abdul Majeed (2001) 7 SCC 189* and *Bharatha Matha vs. R. Vijaya Renganathan*, *(2010) 11 SCC 483)*"

28. The Supreme Court in the case of *Union of India vs. Ibrahim Uddin and Another,* reported in (2012) 8 SCC 148 has held as under:-

> "**59**. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a Second Appeal does not lie on question of facts or of law. In State Bank of India & Ors. v. S.N. Goyal, AIR 2008 SC 2594, this Court explained the terms "substantial question of law" and observed as under : (SCC p.103, para 13)
>
> > "13.....The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of

law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. .... any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case."
(Emphasis added).

60. Similarly, in Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd., AIR 1962 SC 1314, this Court for the purpose of determining the issue held:- (AIR P. 1318, para 6)

"6.....the proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties....."

(Emphasis added)

61. In Vijay Kumar Talwar v. Commissioner of IncomeTax, New Delhi, (2011) 1 SCC 673, this Court held that:(SCC pp.679-80, para 21)

"21.....14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. It will, therefore, depend on the facts and circumstance of each case, whether a question of law is a substantial one or

> not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis." (See also: Rajeshwari v. Puran Indoria, (2005) 7 SCC 60).

62. The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, the existence of a substantial question of law is a sine-qua-non for the exercise of jurisdiction under the provisions of Section 100 CPC. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

63. There may be a question, which may be a "question of fact", "question of law", "mixed question of fact and law" and "substantial question of law." Question means anything inquired; an issue to be decided. The "question of fact" is whether a particular factual situation exists or not. A question of fact, in the Realm of Jurisprudence, has been explained as under:-

> "A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong."
>
> (Vide: Salmond, on Jurisprudence, 12th Edn. page 69, cited in Gadakh Yashwantrao Kankarrao v. E.V. alias Balasaheb Vikhe Patil & ors., AIR 1994 SC 678).

64. In Smt. Bibhabati Devi v. Ramendra Narayan Roy & Ors., AIR 1947 PC 19, the Privy Council has provided the guidelines as in what cases the second appeal can be entertained, explaining the provisions existing prior to the amendment of 1976, observing as under: (IA p.259.)

> ".(4).... that miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happen not in the proper sense of the word 'judicial procedure' at all. That the violation of some principles of law or procedure must be such erroneous proposition of law that if that proposition to be corrected, the finding cannot stand, or it may be the neglect of some

principle of law or procedure, whose application will have the same effect. The question whether there is evidence on which the Courts could arrive at their finding, is such a question of law.

(5).That the question of admissibility of evidence is a proposition of law but it must be such as to affect materially the finding. The question of the value of evidence is not sufficient reason for departure from the practice....."

65. In Suwalal Chhogalal v. Commissioner of IncomeTax, (1949) 17 ITR 269, this Court held as under:-

".....A fact is a fact irrespective of evidence, by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient evidence."

66. In **Oriental Investment Company Ltd. v.Commissioner of Income Tax, Bombay,** AIR 1957 SC 852, this Court considered a large number of its earlier judgments, including Sree Meenakshi Mills Ltd., Madurai v. Commissioner of Income Tax, Madras, AIR 1957 SC 49, and held that where the question of decision is whether certain profit is made and shown in the name of certain intermediaries, were, in fact, profit actually earned by the assessee or the intermediaries, is a mixed question of fact and law. The Court further held that (Oriental Investment case, AIR p.856, para 29)

"29..... inference from facts would be a question of fact or of law according as the point for determination is one of pure fact or a "mixed question of law and fact" and that a finding of fact without evidence to support it or if based on relevant or irrelevant matters, is not unassailable."

67. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse. (*Vide: Jagdish Singh v. Nathu Singh, AIR 1992 SC 1604; Smt. Prativa Devi (Smt.) v. T.V. Krishnan, (1996) 5 SCC 353; Satya Gupta (Smt.) @ Madhu*

Gupta v. Brijesh Kumar, (1998) 6 SCC 423; Ragavendra Kumar v. Firm Prem Machinary & Co., AIR 2000 SC 534; Molar Mal (dead) through Lrs. v. M/s. Kay Iron Works Pvt. Ltd., AIR 2000 SC 1261;Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors., AIR 2010 SC 2685; and *Dinesh Kumar v. Yusuf Ali, (2010) 12 SCC 740)*."

29. The Supreme Court in the aforesaid judgments of *Kondiba Dagadu Kadam, Gurvachan Kaur, D.R.Rathna Murthy and Ibrahim Uddin* (supra) has held that even if the findings of fact may be erroneous findings of fact, then it would not give rise to substantial question of law and it has been held that the High Court while exercising the power under Section 100 of CPC should not interfere with the concurrent findings of fact. It is further held that the substantial question of law does not mean the question of law and it is to be a substantial in nature.

No other arguments were advanced by the counsel for the appellants.

In the considered opinion of this Court, no substantial question of law arises in this appeal. Accordingly, it is **dismissed** at the stage of admission only itself.

Appeal dismissed

I.L.R. [2019] M.P. 594
APPELLATE CIVIL
Before Mr. Justice G.S. Ahluwalia

M.A. No. 4601/2018 (Gwalior) decided on 27 November, 2018

HARJEET …Appellant

Vs.

ABHAY KUMAR & ors. …Respondents

***A. Specific Relief Act (47 of 1963), Section 28 and Civil Procedure Code (5 of 1908), Order 21 Rule 34 – Execution of Decree – Limitation* – Held – Judgment and decree for specific performance of contract passed against appellant on 11.08.2004 – Application for execution filed by plaintiff/respondent on 03.12.2004 (within 4 months) – Merely because relatives of appellants succeeded in keeping the execution application pending by instituting various litigation on one ground or the other and obtaining interim orders, it cannot be said that application for execution was barred by limitation – Executing Court rightly rejected the objections – Appeal dismissed. (Para 12 & 18)**

क. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 28 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 34 – डिक्री का निष्पादन – परिसीमा –

अभिनिर्धारित – दिनांक 11.08.2004 को अपीलार्थी के विरूद्ध संविदा के विनिर्दिष्ट पालन हेतु निर्णय और डिक्री पारित किये गये – वादी/प्रत्यर्थी द्वारा दिनांक 03.12.2004 (4 माह के भीतर) को निष्पादन हेतु आवेदन प्रस्तुत किया गया – मात्र क्योंकि अपीलार्थीगण के रिश्तेदारों ने एक या अन्य आधार पर विभिन्न मुकदमें संस्थित करते हुए तथा अंतरिम आदेशों को प्राप्त करते हुए निष्पादन आवेदन को लंबित रखने में सफलता प्राप्त की, यह नहीं कहा जा सकता कि निष्पादन के लिए आवेदन परिसीमा द्वारा वर्जित था – निष्पादन न्यायालय ने आक्षेपों को उचित रूप से अस्वीकार किया – अपील खारिज।

***B. Specific Relief Act (47 of 1963), Section 28 and Civil Procedure Code (5 of 1908), Order 21 Rule 34 – Objections – Non Deposit of Consideration Amount* – Held – Once there was a legal impediment before respondents and they were not entitled to get the decree executed in form of execution of sale deed, then the contention of appellant that although respondents were not entitled for execution of sale deed in view of interim orders passed by different courts at different stages but still respondents were under obligation to deposit consideration amount, cannot be accepted – Contract has not rescinded u/S 28 of the Act of 1963. (Para 18)**

ख. विनिर्दिष्ट अनुतोष अधिनियम (1963 का 47), धारा 28 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 34 – आपत्तियाँ – प्रतिफल राशि का जमा न किया जाना – अभिनिर्धारित – एक बार प्रत्यर्थीगण के समक्ष विधिक अड़चन थी और वे विक्रय विलेख के निष्पादन के रूप में डिक्री का निष्पादन कराने हेतु हकदार नहीं थे, तब अपीलार्थी का यह तर्क कि यद्यपि प्रत्यर्थीगण, विभिन्न प्रक्रमों पर भिन्न न्यायालयों द्वारा पारित किये गये अंतरिम आदेशों को दृष्टिगत रखते हुए, विक्रय विलेख के निष्पादन के लिए हकदार नहीं है परंतु फिर भी प्रत्यर्थीगण प्रतिफल राशि जमा करने हेतु बाध्यताधीन हैं, स्वीकार नहीं किया जा सकता – 1963 के अधिनियम की धारा 28 के अंतर्गत संविदा विखंडित नहीं की गई है।

***C. Transfer of Property Act (4 of 1882), Section 55 – Payment of Sale Consideration* – Held – Payment of sale consideration is simultaneous act with execution of sale deed – Nothing in decree which required respondents to deposit entire consideration amount irrespective of whether sale deed could have been executed or not – All sorts of legal hurdles were created in order to avoid execution of decree – No delay on part of respondents in depositing consideration amount before Court.**

(Para 20 & 21)

ग. सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 55 – विक्रय प्रतिफल का भुगतान – अभिनिर्धारित – विक्रय प्रतिफल का भुगतान विक्रय विलेख के निष्पादन के साथ किये जाने वाला समसामयिक कृत्य है – डिक्री में ऐसा कुछ नहीं है जिससे प्रत्यर्थीगण द्वारा संपूर्ण प्रतिफल राशि जमा करना अपेक्षित हो, भले ही विक्रय विलेख निष्पादित किया जा सकता हो अथवा नहीं – डिक्री के निष्पादन से बचने हेतु सभी प्रकार की विधिक अड़चने सृजित की गई थी – प्रत्यर्थीगण की तरफ से न्यायालय के समक्ष प्रतिफल राशि जमा करने में कोई विलंब नहीं।

Cases referred:

AIR 1999 SC 918, (2005) 9 SCC 262.

R.P. Rathi, for the appellant.
D.D. Bansal, for the respondent Nos. 1 & 2.

(Supplied: Paragraph numbers)

O R D E R

G.S. AHLUWALIA, J.:-Heard finally with the consent of the parties.

This Miscellaneous Appeal under Order XLIII Rule 1 (i) of CPC has been filed against the order dated 26/9/2018 passed by the Executing Court (ADJ, Mungawali, District Ashoknagar) in Execution Case No.4-A/03/04, by which the application filed by the appellant under Order XXI Rule 34 of CPC has been rejected.

2. The present appeal depicts a very sorry state of affairs, where the decree for specific performance of contract, which was passed in the year 2004, has still remained unexecuted.

3. The necessary facts for disposal of the present appeal in short are that the respondents filed a suit for specific performance of contract against the appellant and the State on the ground that the appellant had entered into an agreement to sell the land bearing survey no.224 area 0.554 hectare situated in Kasba Range Mungawali, District Ashoknagar alongwith two rooms constructed over it.

4. The appellant filed his written statement and rebutted the plaint averments.

5. The said civil suit was decreed by judgment and decree dated 11/8/2004 and the following decree was passed:-

> 1. प्रतिवादी क्र. 1 को आदेश दिया जाता है कि वह कस्बा रेंज मुंगावली स्थित सर्वे क्रमांक 224 रकबा–0.554 है. भूमि और उस पर बने दो पक्के कमरों का विक्रयपत्र अवशेष–75,000/–(पिचहत्तर हजार रूपये) प्रतिफल और वादीगण द्वारा देय रजिस्ट्री खर्चे पर वादीगण के पक्ष में संपादित कर विक्रीत संपत्ति का कब्जा वादीगण को अंतरित करे।
>
> 2. तीन माह के अंदर उपरोक्तानुसार विक्रयपत्र संपादित न करने पर वादीगण न्यायालय के माध्यम से अवशेष प्रतिफल न्यायालय में जमा कर विक्रय पत्र संपादित कराने के अधिकारी होंगे।
>
> 3. प्रतिवादी क्र.1 अपने साथ–साथ वादीगण का वाद व्यय भी वहन करेगा। अभिभाषक शुल्क प्रमाणित होने पर निर्धारित तालिका की सीमा तक मान्य किया जाता है।

6. On 3/12/2004, the respondents filed an application for execution of the decree before the Executing Court. Thereafter, the siblings and other relatives of the appellant filed a civil suit seeking declaration of their title over the said disputed land, which was the subject matter of agreement to sale. The said civil suit was dismissed, against which, a first appeal was filed, which too was dismissed. The second appeal was filed before this Court, which was registered as SA No.582/2005, which too was dismissed by order dated 14/8/2006 and ultimately, SLP (Civil) No.3973 of 2007 was dismissed by the Supreme Court by order dated 28/8/2009. Thereafter, an application under Order XXI Rule 97 of CPC was filed by the siblings and other relatives including the mother of the appellant, who had earlier filed the suit for declaration of title. The said application was rejected by the Court by order dated 8/4/2010, against which, first appeal was filed. In the first appeal, interim order was passed. The first appeal was ultimately dismissed by this Court by judgment dated 18/4/2016 passed in First Appeal No.100/2010. It appears that after the dismissal of first appeal the appellant filed an objection before the Executing Court alleging *inter alia* that the draft sale deed was filed in the Executing Court on 13/8/2016, on which objections were invited and accordingly, the objections are being submitted under Order XXI Rule 34 of CPC. It was stated in the objection that according to the decree, the plaintiffs/respondents were directed to get the sale deed executed within a period of three months after making payment of Rs.75,000/- and since the respondents have not deposited the amount of Rs.75,000/-, therefore, now the decree is not executable. It is further submitted that the decree was passed in the year 2004 and now the execution proceedings are barred by limitation. Again it was objected that the land in question was not the self acquired property of the appellant, but it was the ancestral property.

7. *Per contra,* it was submitted by the respondents that the execution proceedings are not barred by limitation.

8. The Executing Court by order dated 26/9/2018 rejected the objections filed by the appellant.

9. Challenging the order dated 26/9/2018 passed by the Executing Court (ADJ, Mungawali, District Ashoknagar), it is submitted by the counsel for the appellant that as the remaining consideration amount of Rs.75,000/- was not paid by the plaintiffs/respondents within a period of three months, therefore, the contract had stood rescinded as per the provisions of Section 28 of the Specific Relief Act and secondly the application for execution of decree is barred by limitation, as the application was not filed within a period of 12 years from the date of passing of the decree.

10. *Per contra,* it is submitted by the counsel for the respondents that the decree was passed on 11/8/2004 and the application for execution of the decree was filed on 3/12/2004, i.e. within a period of four months from the date of passing of the decree and because of various litigation, which were instituted by the siblings and other relatives of the appellant and in view of the fact that there were interim orders in those litigation, decree could not be executed and the execution application, which was filed on 3/12/2004 remained pending and where the appellant or his relatives themselves are responsible for causing delay in execution of the sale deed in compliance of the decree, then it cannot be said that the application for execution of decree is barred by limitation. It is submitted that the period of limitation would be counted from the date of filing of the application only and not otherwise.

11. Heard learned counsel for the parties.

12. So far as the contention raised by the counsel for the appellant that execution proceedings are delayed and barred by limitation is concerned, the same is misconceived. The judgment and decree in Civil Suit No.4A/2003 was passed on 11/8/2004 and undisputedly the application for execution of the decree was filed by the respondents/plaintiffs on 3/12/2004, i.e. within a period of four months and thus, by no stretch of imagination it can be said that the application filed by the respondents for execution of the decree was barred by limitation. Merely because the relatives of the appellant succeeded in keeping the application pending by instituting various litigation and obtaining interim orders, then it cannot be said that now the application has become barred by limitation. Accordingly, the objection raised by the counsel for the appellant, that the application for execution of the decree is barred by limitation, is rejected as misconceived and devoid of merits.

13. It is next contended by the counsel for the appellant that as per the decree awarded by the trial court, the plaintiffs/respondents were under an obligation to deposit the amount of Rs.75,000/- within a period of three months and since the said amount has not been deposited, therefore, the Executing Court has committed a mistake by extending the period and without there being any application, the period for depositing the consideration amount cannot be extended. It is further submitted that since the consideration amount has not been deposited within a period of 12 years, therefore, the decree has become barred by limitation.

14. Considered the submissions made by the counsel for the parties.

15. The decree, which was passed by the trial court in Civil Suit No.4A/2003, has already been reproduced. According to the decree, the appellant was directed to execute the sale deed within a period of three months after receiving the

consideration amount of Rs.75,000/- and registration expenses and it was further directed that in case if the sale deed is not executed within a period of three months, then the plaintiffs can get the sale deed executed after depositing the amount in the Court.

16. Section 28 of the Specific Relief Act reads as under:-

> **"28 - Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.-**
>
> (1)Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.
>
> (2) Where a contract is rescinded under sub-section (1), the court-
>
> (a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and
>
> (b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or lessee as earnest money or deposit in connection with the contract.
>
> (3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub- section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:-

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court."

17. By relying on the judgment passed by the Supreme Court in the case of *V.S. Palanichamy Chettiar Firm v. C. Alagappan and another* reported in AIR 1999 SC 918 it is submitted by the counsel for the appellant that since the execution of the decree is being sought after 12 years and the consideration amount has not been deposited so far and no explanation has been given by the plaintiffs for not depositing the consideration amount at the earliest, therefore, the time cannot be extended under Section 28 of the Specific Relief Act.

18. The submission made by the counsel for the appellant is misconceived. As already pointed out that immediately after the decree dated 11/8/2004 was passed, the siblings and other relatives of the appellant filed a suit for declaration of title in respect of the land in dispute, which went upto the Supreme Court and the SLP was dismissed by the Supreme Court by order dated 28/8/2009 passed in SLP (Civil) No.3973 of 2007 and thereafter, the siblings and other relatives of the appellant filed an application under Order XXI Rule 97 of CPC, which was dismissed and against which, First Appeal No.100/2010 was filed before this Court and the said first appeal was dismissed by judgment dated 18/4/2016 by this Court. Thus, it is clear that from the date of the decree, i.e.11/8/2004, till 18/4/2016 all sorts of legal hurdles were created by the siblings and other relatives of the appellant on one ground or the other and obtained the interim orders. Once there was a legal impediment before respondents and they were not entitled to get the decree executed in the form of execution of sale deed, then the contention made by the counsel for the appellant, that although the respondents were not entitled for execution of the sale deed in view of the interim orders passed by different courts at different stages, but still the respondents were under an obligation to deposit the consideration amount, cannot be accepted.

19. Section 55 of the Transfer of Property Act reads as under:-

"55. Rights and liabilities of buyer and seller. - In the absence of a contract to the contrary, the buyer and the

seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following or such of them as are applicable to the property sold:

(1) The seller is bound-

(a) to disclose to the buyer any material defect in the property [or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase- money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and,

(b) where the whole of such property is sold to different buyers, the buyers of the lot of greatest value is entitled to such documents.

But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts there from as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, unconcealed and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled-

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, [any transferee without consideration or any

transferee with notice of the non-payment], for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part [from the date on which possession has been delivered].

(5) The buyer is bound-

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs:

Provided that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled-

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation

> of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.
>
> An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a) and paragraph (5), clause (a), is fraudulent."

20. Clause (d) of Section 55 (1) of the Transfer of Property Act clearly provides that ordinary rule of law is that the payment of sale consideration is simultaneous act with the execution of sale deed. There is nothing in the decree which had required the respondents to deposit the entire consideration amount irrespective of the fact that whether the sale deed could have been executed or not. In absence of any contrary direction requiring the respondents to deposit the remaining consideration amount before the Trial Court/Executing Court irrespective of any legal impediment, it cannot be said that there was any delay on the part of respondents/plaintiffs in depositing the consideration amount before the Trial Court/Executing Court. The Supreme Court in the case of *Kumar Dhirendra Mullick v. Tivoli Park Apartments (P) Ltd.,* reported in (2005) 9 SCC 262, has held as under :

> "**34.** Applying the above tests to the facts of the present case, the decree in question is not a self-operative final decree. It is a preliminary decree. It merely directs the trust to execute the lease on or before 24-10-1985. It does not prescribe any consequence of non-deposit of premium. It does not prescribe any consequence of non-tender of rent on or before 24-10-1985. Till date, the decree-holder has paid the premium of Rs 30 lakhs. It has paid rent amounting to Rs 96 lakhs. In the circumstances, it cannot be said that the decree-holder intended to abandon the contract dated 16-8-1980. There is no positive refusal on the part of the respondent to complete the lease. There is no explanation given by the trust for not moving the application for rescission of the contract for nine years. The decree was passed on 25-7-1985 whereas the application for rescission of the agreement is dated 3-10-1994. As stated above, the trust did not lead the evidence in Suit No. 176 of 1981. The corresponding Suit No. 87 of 1981 filed by the trust was dismissed for non-prosecution. The trust moved under Order 9 Rule 13 CPC for setting

> aside the decree dated 25-7-1985. That application was dismissed for default vide order dated 1-8-1987. The trust moved the application for restoration which was also dismissed for default on 16-7-1988. The trust moved in appeal against the decree dated 25-7-1985. That appeal was also dismissed. The decree-holder has referred to the entire correspondence between the parties which indicates that during this period of nine years in the guise of negotiations, the decree-holder was prevented from filing execution application. The decree-holder was repeatedly assured of settlement. The decree-holder was repeatedly assured that lease would be executed in its favour. Attempt was also made by the trustees during the interregnum to lease the property to Dilip Chand Kankaria and Smt Sudha Kankaria. Lastly, in the present case, the decree-holder was put in possession under the deed of assignment dated 20-8-1970. The respondent was not put in possession under the agreement dated 16-8-1980. In the circumstances, the trial court erred in directing rescission of the said agreement dated 16-8-1980. For the aforestated reasons, we do not find any merit in this appeal."

21. In the present case, there was no direction by the Trial Court to deposit the consideration amount within a specified period. On the contrary, the direction was to the appellant to execute the sale deed within a period of three months from the date of the decree, otherwise, the decree holder was entitled to get the sale deed executed through the Court. It is not the case of the appellant that he was ready and willing to execute the sale deed, but the respondents did not tender the remaining consideration amount and the registration charges. On the contrary, it appears that when the appellant did not execute the sale deed, then immediately after the expiry of three months, the respondents moved an application for execution of the decree. Thus, it cannot be said that the respondents had abandoned the contract. It is also not out of place to mention here that a suit was filed by the relatives of the appellant seeking declaration of their title and after losing the suit, even from the Supreme Court, an application under Order XXI Rule 97 of C.P.C. was filed and thereafter, the First Appeal was filed before the High Court, which remained pending till 18-4-2016. Thus, it is clear that all sorts of legal hurdles were created in order to avoid the execution of the decree. From the facts and circumstances of the case, it is clear that in fact the appellant never appeared before the Trial Court and only after exhausting all remedies by his relatives, he came forward and submitted objections to the draft sale deed. In the present case, it is an admitted position that now the respondents have already deposited the entire consideration

amount with the Court. Thus, it is held that neither the application for execution of the decree is barred by time nor the contract has rescinded under Section 28 of Specific Relief Act.

22. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that the Trial Court /Executing Court did not commit any mistake in rejecting the objections made by the appellants by its order dated 26-9-2018.

Accordingly, this appeal fails and is hereby **Dismissed.**

Appeal dismissed

I.L.R. [2019] M.P. 606
APPELLATE CIVIL
Before Mr. Justice Prakash Shrivastava
F.A. No. 69/1997 (Indore) decided on 11 March, 2019

MAHENDRA KUMAR …Appellant

Vs.

LALCHAND & anr. …Respondents

***A. Civil Procedure Code (5 of 1908), Order 22 Rule 5 – Legal Representatives – Applicability & Enquiry* – Held – If a party comes forward on basis of 'Will' executed by deceased, then an enquiry is contemplated – In present case, neither appellant nor respondent is seeking substitution of LR of deceased, thus provision of Order 22 Rule 5 CPC cannot be attracted – Under Order 22 Rule 5 CPC, limited question relating to LR is decided only for purpose of bringing LRs on record which does not operate as *res-judicata* – *Inter se* dispute between rival LRs has to be independently tried and decided in appropriate proceedings. (Para 25 & 27)**

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 5 – विधिक प्रतिनिधि – प्रयोज्यता व जांच – अभिनिर्धारित – यदि एक पक्षकार मृतक द्वारा निष्पादित 'वसीयत' के आधार पर आगे आता है, तब जांच की जाना अनुध्यात है – वर्तमान प्रकरण में, न तो अपीलार्थी न ही प्रत्यर्थी मृतक के विधिक प्रतिनिधि का प्रतिस्थापन चाहते हैं, इसलिए सि.प्र.सं. के आदेश 22 का नियम 5 आकर्षित नहीं हो सकता – सि.प्र.सं. के आदेश 22 नियम 5 के अंतर्गत, विधिक प्रतिनिधियों को अभिलेख पर लाने के प्रयोजन से केवल विधिक प्रतिनिधि से संबंधित सीमित प्रश्न का विनिश्चय किया गया है जो कि पूर्व न्याय का प्रभाव नहीं रखता – विरोधी विधिक प्रतिनिधियों के मध्य परस्पर विवाद का स्वतंत्र रूप से विचारण तथा समुचित कार्यवाहियों में विनिश्चय किया जाना चाहिए।

***B. Civil Procedure Code (5 of 1908), Section 2(2) & Order 20 Rule 18 – Preliminary & Final Decree – Amendment* – Held – At the stage of final decree in appropriate circumstances, preliminary decree can be amended**

and even another preliminary decree can be passed re-determining the rights and interest of parties. (Para 40)

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 2(2) व आदेश 20 नियम 18 – प्रारंभिक व अंतिम डिक्री – संशोधन – अभिनिर्धारित – समुचित परिस्थितियों में अंतिम डिक्री के प्रक्रम पर, प्रारंभिक डिक्री को संशोधित किया जा सकता है तथा पक्षकारों के अधिकारों और हित को पुनः अवधारित करते हुए एक और प्रारंभिक डिक्री भी पारित की जा सकती है।

***C. Registration Act (16 of 1908), Section 17(1)(b) & 49 – Unregistered Document – Admissibility in Evidence* – Held – A compulsorily registrable document if unregistered is inadmissible in evidence for primary purpose – In suit for partition, such unstamped instrument is inadmissible in evidence even for collateral purpose until same is impounded. (Para 44)**

ग. रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 17(1)(बी) व 49 – अरजिस्ट्रीकृत दस्तावेज – साक्ष्य में ग्राह्यता – अभिनिर्धारित – एक अनिवार्यतः रजिस्ट्रीयोग्य दस्तावेज यदि अरजिस्ट्रीकृत है तो प्रारंभिक प्रयोजन हेतु साक्ष्य में अग्राह्य है – विभाजन हेतु वाद में, ऐसा अस्टांपित लिखत साक्ष्य में अग्राह्य है, यहां तक कि संपार्श्विक प्रयोजन के लिए भी जब तक कि उक्त परिबद्ध न हो।

***D. Hindu Women's Right to Property Act (18 of 1937), Section 3(3) and Hindu Succession Act (30 of 1956), Section 14 – Female Hindu – Right in Property* – Held – Under Act of 1937, a female hindu was having limited rights but on commencement of Act of 1956, her limited rights has ripen into full rights – Prior to riping of full rights, she had no right to alienate the estate except for necessity for benefit of estate – In present case, relinquishment done prior to 1949, which she could not have done due to her limited rights – As she expired during pendency of appeal, parties will be at liberty to establish their claim over her property in separate proceedings – Appeal dismissed. (Paras 49, 51 & 53)**

घ. हिन्दू महिला का सम्पत्ति का अधिकार अधिनियम (1937 का 18), धारा 3(3) एवं हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 14 – हिन्दू महिला – संपत्ति में अधिकार – अभिनिर्धारित – 1937 के अधिनियम के अंतर्गत, एक हिन्दू महिला को सीमित अधिकार होते थे परंतु 1956 के अधिनियम के प्रारंभ होने पर उसके सीमित अधिकार पूर्ण अधिकारों में परिपक्व हो गये – पूर्ण अधिकारों के परिपक्व होने के पूर्व, उसे संपदा के लाभ हेतु आवश्यकता के सिवाय संपदा के अन्यसंक्रामण करने का कोई अधिकार नहीं था – वर्तमान प्रकरण में, त्यजन 1949 के पूर्व किया गया था, जो कि वह अपने सीमित अधिकारों के कारण नहीं कर सकती थी – चूंकि अपील के लंबित रहने के दौरान उसकी मृत्यु हो गई, पक्षकारों को पृथक कार्यवाहियों में उसकी संपत्ति पर उनका दावा स्थापित करने की स्वतंत्रता होगी – अपील खारिज।

***E. Limitation Act (36 of 1963), Article 65 – Adverse Possession* – Held – Plaintiff cannot claim title by way of adverse possession – Trial Court committed error in holding the title on basis of adverse possession as no issue in this regard was framed nor necessary ingredients of adverse possession were discussed. (Para 52)**

ङ. परिसीमा अधिनियम (1963 का 36), अनुच्छेद 65 – प्रतिकूल कब्जा – अभिनिर्धारित – वादी प्रतिकूल कब्जे के माध्यम से स्वत्व का दावा नहीं कर सकता है – विचारण न्यायालय ने प्रतिकूल कब्जे के आधार पर स्वत्व धारित करने में त्रुटि कारित की है क्योंकि इस संबंध में न तो किसी विवाद्यक की विरचना की गई थी न ही प्रतिकूल कब्जे के आवश्यक घटकों की विवेचना की गई थी।

Cases referred:

AIR 1965 SC 1055, AIR 1977 SC 292, 2014 (3) MPLJ 336, (2018) 11 SCC 449, (1996) 10 SCC 293, 2008 AIR SCW 4733, AIR 1972 SC 1181, (1999) 3 SCC 109, 2007 (2) MPLJ 445, AIR 2009 Raj. 36, 1994 JLJ 110, AIR 1994 SC 853, (2001) 2 SCC 221, AIR 2001 SC 807, 2010 (2) MPLJ 304, C.A. No. 1051/2001 order passed on 06.02.2001 (Supreme Court), AIR 2012 SC 169, (2015) 16 SCC 787, AIR 1974 SC 749, AIR 1936 NAGPUR 186, AIR 1962 SC 83.

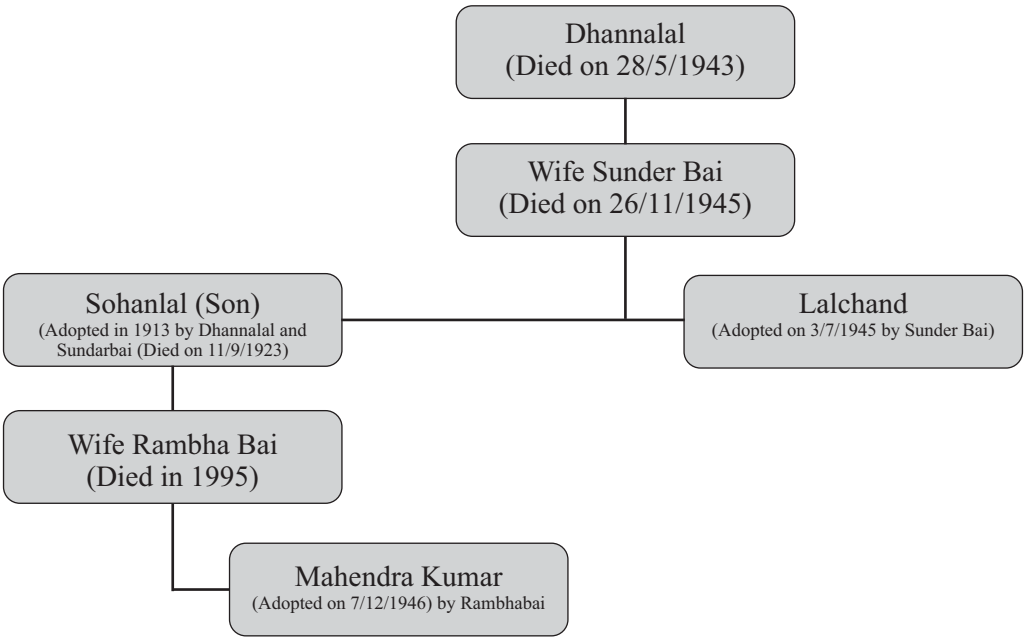
A.K. Sethi with *Rishabh Sethi,* for the appellant.
A.S. Garg with *Yashpal Rathore,* for the respondent Lalchand.
Respondent *S.K. Chourishi,* present in person.

J U D G M E N T

PRAKASH SHRIVASTAVA, J.:- By this first appeal u/S.96 of the CPC, plaintiff No.2 has challenged the judgment and decree dated 6/6/1987 and 14/7/1987 passed by the learned V Addl. District Judge, Indore in COS No.2/1972-A which is in the nature of final decree in the partition suit holding that Rambhabai plaintiff No.1 and Lalchand has ½ - ½ share in the suit property and accordingly partitioning it.

2. In this appeal, the *lis* is between Mahendra Kumar and Rambhabai (since deceased through Shrikrishna Chourishi).

3. The Family Tree for convenience is reproduced as under:-



4. It would be worthwhile to take note of the chequered history of this case.

5. On 6/9/1943 Rambhabai had filed the suit for partition as against Sundarbai with the plea that Seth Dhannalal was the owner of the suit property who died intestate on 28/5/1943. Sundarbai was the wife of Dhannalal and mother-in-law of Rambhabai. Sohanlal was adopted by Dhannlal in 1913 (Samvad year 1970) and Rambhabai was married to Sohanlal thereafter, but about four years after the marriage Sohanlal had died on 11/9/1923, thereafter Rambhabai had continued to live with Dhannalal and Sunderbai as their daughter-in-law. Dhannalal had died on 28/5/1943 and the relationship between Sundarbai and Rambhabai became strained, hence the suit for partition was filed by Rambhabai.

6. Sundarbai (defendant in the suit) filed the written statement and denied the factum of adoption of Sohanlal and had also denied that Rambhabai was treated by her as daughter-in-law and further denied her any right on the suit property. After the issues were framed on 5/11/1943 pleaders for both the parties made a request to pass the preliminary decree at the first instance.

7. Trial court had passed the preliminary decree dated 31/7/1944 holding in Para 11 of the judgment that the adoption of Sohanlal was duly proved and accordingly by way of preliminary decree declared that Rambabai and Sundarbai had equal share in the suit property and further directed that a Commissioner will be appointed who will proceed with the partition by *metes and bounds* and issued

certain other further directions. The preliminary decree came to be challenged at the instance of Sundarbai in Civil FA No.27/44 (New No.1/1948) before His Highness the Maharaja Holkar, High Court of Judicature Indore.

8. During the pendency of first appeal Sundarbai had filed an application on 20th July, 1945 with a prayer to add Lalchand as the party in the appeal on the ground that Lalchand was adopted by her as son on 03rd July, 1945. The application was initially rejected on 25th August, 1945, but subsequently Sundarbai had died on 26/11/1945 and Lalchand had filed an application for his substitution as her L.R u/O.22 Rule 3 read with Rule 11 of the CPC which was opposed by Rambhabai, hence the issue arose before the first appellate court if Lalchand was adopted son of Sundarbai and was entitled to prosecute the appeal as L.R. Vide order dated 17th September, 1946 the first appellate court held Lalchand to be validly adopted and he was brought on record. Meanwhile another development took place and Rambhabai adopted Mahendra Kumar and the first appellate court vide order dated 1/9/1947 held the adoption to be valid and brought Mahendra Kumar on record, Rambhabai made an application along with the affidavit stating that she had no claim in the suit property and would be contended to have a decree for ½ share of the property made in favour of Mahendra Kumar.

9. In view of the aforesaid development, the first appellate court by judgment dated 29/4/1949 modified the preliminary decree by declaring Lalchand and Mahendra Kumar entitled to equal share in the suit property left by deceased Dhannalal. The aforesaid preliminary decree was not challenged any further and in pursuance thereto the steps were taken for the final decree.

10. At the stage of passing of preliminary decree Mahendra Kumar was minor who subsequently became major. In the proceedings for the final decree Mahendra Kumar had filed an application on 13/7/1976 stating that he had not engaged any counsel. Accordingly on 15/7/196 the Advocate for the plaintiffs had filed an application withdrawing the vakalatnama for Mahendra Kumar. On 15/7/1976 Rambhabai (plaintiff No.1) had filed an application for striking off the name of Mahendra Kumar (plaintiff No.2) on the ground that Mahendra Kumar had transferred his interest in the decree by an assignment written in favour of Rambhabai. This was objected by Mahendra Kumar. The alleged deed of assignment executed by Mahendra Kumar in favour of Rambhabai is dated 7/7/1961 filed as Ex.P/1. The issue relating to the admissibility of this document came up before the trial court and the trial court vide order dated 3rd October, 1979 held that the adopted son cannot repudiate his status but he can relinquish his claim over the properties which he gets in the adopted family due to adoption. The document Ex.P/1 was unregistered, hence the trial court held the document to be admissible in respect of the movable properties and admissible only for the

collateral purposes for immovable properties by holding it inadmissible for immovable properties for other purposes. The CR No.750/1979 against this order was dismissed by the High Court vide order dated 16/10/1979.

11. The trial court thereafter has passed the final decree dated 6th June, 1987 holding that Rambhabai and Lalchand had ½ - ½ share in the suit property and partitioning it accordingly. The trial court held that much before 1976 Mahendra Kumar had lost all the interest in the immovable suit property and Rambabai's ½ share had ripened into absolute share after Hindu Succession Act, 1956 by virtue of Sec.14 thereof and she came in possession of the share of Mahendra Kumar as her own with effect from 7/7/1961 and also became the full owner of the share of Mahendra Kumar after the lapse of 12 years by virtue of adverse possession.

12. Learned counsel for appellant submits that in the modified preliminary decree passed on 29/4/1949 Mahendra Kumar and Lalchand were held entitled to have ½ - ½ share, therefore, while passing the final decree Rambhabai can not be held to be entitled instead of Mahendra Kumar. He submits that scope of any change in the final decree is very limited and that after 29/4/1949 Rambhabai had unnecessarily continued as plaintiff when she was not found entitled to any share in the preliminary decree and in respect of the limited scope of consideration at the final decree he has placed reliance upon the judgments of the Supreme Court in the matter of *Gyarsi Bai and others Vs. Dhansukh Lal and others* AIR 1965 SC 1055 and *Muthangi Ayyana Vs. Muthangi Jaggarao and others* AIR 1977 SC 292. He has also submitted that the document dated 7/7/1961 Ex.P/1 is unregistered document and referring to Sec.15 of the Hindu Adoption and Maintenance Act he submitted that adopted child has no right to cancel the adoption and also submitted that the issue relating to limited admissibility of Ex.P/1 was settled by the order dated 3rd October, 1979 as affirmed in CR No.750/1979. He also submits that document Ex.P/1 is a suspicious document because it was not produced by Rambhabai till 1976 for 15 years. He has also raised an issue that the trial court could not have gone behind the preliminary decree by holding the suit property to be *sthreedhan* property of Rambhabai and finding relating to adverse possession of Rambhabai is unsustainable because the suit is pending since 1947. The document Ex.P/1 dated 7/7/1961 was executed pending the suit, therefore, no question of adverse possession pending the suit arises. He has also submitted that plaintiff Rambhabai could not have taken the plea of adverse possession in view of the judgment in the case of *Gurudwara Sahib Vs. Gram Panchayat Village Sirthala* 2014(3) MPLJ 336 and subsequent judgment reported in *Dharampal (Dead) Through L.Rs Vs. Punjab Wakf Board and others* (2018) 11 SCC 449. He has also submitted that Rambhabai had died on 9/11/1995 and Mahendra Kumar being the adopted son otherwise has become entitled to the share of Rambhabai because the will in favour of the respondent Shrikrishna Chourishi is suspicious. He has also opposed the IA filed by respondent no.3.

13. Respondent No.3 Shrikrishna Chourishi present in person submits that he has filed IA No.824/2013 u/O.22 Rule 2, 22 Rule 5, Sec.2(11), Order 12 Rule 6 read with Sec.151 of the CPC and Sec.70 of the Evidence Act and Sec.95 of the Indian Succession Act in pursuance to the order of the Hon'ble Supreme Court in CA No.1501/2001 which is pending and deserves to be allowed. He further submits that with deletion of name of Rambhabai the decree passed in favour of Rambhabai has become final and in support of his submission he has placed reliance upon the judgment *Satguru Sharan Shrivastava Vs. Dwarka Prasad Mathuyr (Dead) through L.Rs and others* (1996) 10 SCC 293. He has fairly submitted that he has no right prior to the death of Rambhabai as he is claiming right on the basis of will executed byRambhabai. Referring to the order dated 2/1/1996 passed in IA No.5764/1995 he submits that the effect of deletion is required to be considered at this stage ie. at the stage of hearing of the appeal. He also submits that the appeal is not maintainable because the judgment of the trial court has become final against Rambhabai and has placed reliance upon the judgment in the matter of *Jaladi Suguna (Dead) through L.Rs Vs. Satya Sai Central Trust & Ors.* 2008 AIR SCW 4733 and *Ramagya Prasad Gupta and others Vs. Brahmadeo Prasad Gupta and another* AIR 1972 SC 1181.

14. He has also referred to order dated 13/3/1997 passed in IA No.602/1996 in connected FA No.80/1997 and has submitted that he has already been found entitled to continue the appeal as L.R of Rambhabai. He also submits that Mahendra Kumar is appellant and Rambhabai was respondent in this appeal, therefore, he cannot claim himself to be the L.R of Rambhabai as appellant and Rambhabai have conflicting interest and in support of his submission he has placed reliance upon the judgment in the matter of *Gajraj Vs. Sudha and others* (1999) 3 SCC 109, *Shivamangal through L.Rs Vs. Narainprasad and others* 2007(2) MPLJ 445, *Bajrang Lal & Ors. Vs. Dal Chand & Ors* AIR 2009 Raj.36. He has also submitted that ground raised in this appeal and the connected appeal No.FA No.80/1997 are common which reflects the collusion between Lalchand and Mahendra Kumar and in support of his submission he has placed reliance upon the judgments in the matter of *Naraindas Vs. Bhagwandas* 1994 JLJ 110 and *S.P. Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by L.Rs and others* AIR 1994 SC 853. He also submits that his impleadment after the deletion of name of Rambhabai has no effect on the plea that decree against Rambhabai has become final. He has also submitted that the appellant has manipulated the record by mentioning incorrect date of order while amending the cause title and deleting the name of Rambhabai and inserting the name of respondent No.3 Shrikrishna Chourishi and in this regard he has placed reliance upon the judgment in the matter of *D.P. Chadha Vs. Triyungi Narain Mishra and others* (2001) 2 SCC 221.

15. Shri A.S.Garg, learned Sr.Counsel on behalf of respondent No.2 Lalchand has supported the case of appellant Mahendra Kumar.

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

17. It is worth noting that none of the parties have advanced arguments referring to the oral as well as documentary evidence in detail, but have confined the arguments mainly to the legal issues.

18. Lengthy arguments have been advanced by counsel for parties on IA No.824/2013 u/O.22 Rule 2, 22 Rule 5, Sec.2(11), Order 12 Rule 6 read with Sec.151 of the CPC and Sec.70 of the Evidence Act and Sec.95 of the Indian Succession Act filed by the respondent No.3 Shrikrishna Chourishi and on the issue of maintainability of appeal after the death of Rambhabai.

19. The record reflects that against the impugned judgment and decree of the trial Court, appellant Mahendra Kumar had initially filed MCC No.206/1987 seeking permission to file appeal as pauper. Pending this MCC Rambhabai had died in 1995, hence appellant Mahendra Kumar had filed an application being IA No.5764/1995 u/O.22 Rule 2 read with Sec.151 of the CPC for deleting the name of Rambhabai. This Court vide order dated 2/1/1996 passed MCC No.206/1987 had permitted Mahendra Kumar to delete the name of Rambhabai with following observation:-

> "Shri Gajankush for applicant.
> Heard on IA No.5764/1995.
> Application is allowed.
>
> Name of NAW No.1 is permitted to be deleted within a week from today.
> The effect of deletion, if any, may be considered at the time of hearing".

20. MCC was converted into appeal vide order dated 21/2/1997 because in the mean while the court fee was paid. The appeal was registered and it was dismissed vide order dated 13/3/1997 as abated since the name of Rambhabai was struck off without bringing her L.Rs on record. MCC No.283/1998 was filed by Mahendra Kumar for setting aside the abatement order passed in the first appeal and the said MCC was dismissed vide order dated **13/9/2001**, hence the Civil Appeal No.1051/2001 (arising out of SLP(Civil) No.10121/2000) was filed by Mahendra Kumar which was allowed by the Hon. Supreme Court vide order dated 6/2/2001 reported in AIR 2001 SC 807 *Mahendra Kumar Vs. Lalchand and another* holding that the order of the High Court dismissing the appeal as abated is contrary to its own earlier order passed in the appeal filed by Lalchand. The Hon'ble Supreme Court in this regard held that:-

> "7-- Undisputedly, the appellant is a legal heir of his mother Rambhabai. Therefore, his right to sue survives and appellant was entitled to be substituted as legal representative of deceased Rambhabai. However, the question would be, whether

Rambhabai has executed Will dated 20th August, 1980, in favour of respondent No.2, Shrikrishna, and if so, by not joining him whether the appeal would abate ? Respondent No.2 has not obtained probate, hence considering the procedure prescribed under the above quoted Order XXII, Rule 5, there is no question of abatement of appeal. It was for the respondent No.2, Shrikrishna Chourasia, who claims that Will has been executed by the deceased Rambhabai in his favour to file proper application to be joined as party respondent by contending that he is legal representative as the estate has devolved upon him on the basis of the Will. On such application being filed, the Court was required to determine it under Order XXII, Rule 5. This legal provision was completely overlooked by the High Court and on this ground the impugned judgment and order is not sustainable.

8-- Further, while dismissing the appeal filed by the present appellant by the impugned judgment, High Court did not recall the Order already passed for deletion of name of late Rambhabai. Having formed the opinion that the appeal could proceed in the absence of late Rambhabai, High Court erred in law in dismissing the appeal filed by the present appellant on the ground that appeal has abated.

9-- Learned counsel for the appellant has fairly stated that the appellant would make an application before the Court below for impleadment of the present respondent No.2 as party and we direct him to do so.

10-- For the reasons stated above, we hold that the High Court erred in law in dismissing the appeal filed by the present appellant on the ground of abatement without following the procedure laid down under Order XXII. CPC."

21. In the aforesaid, appellant Mahendra Kumar has not filed any application for substituting him as L.R because the lis in this appeal was mainly between Mahendra Kumar and Rambhabai. The above order of the Supreme Court also reveals that the respondent No.2 Shrikrishna Chourishi was required to file an application for bringing him on record as L.R of Rambhabai on the basis of the will dated 20th August, 1980 executed by Rambhabai but he did not take immediate steps by filing any such application. In the mean while appellant Mahendra Kumar had filed IA No.1524/2001 for impleading Shrikrishna Chourishi as additional respondent No.3 on the basis of the aforesaid order of the Hon'ble Supreme Court and this court vide order dated 25/7/2002 had allowed the application and permitted him to be impleaded as a party respondent in the

appeal. IA No.451/2002 was filed by Shrikrishna Chourishi for dismissing the appeal on the ground that the appeal cannot be proceeded with after deletion of the name of Rambabai. This Court vide order dated 25/7/2002 had disposed off the IA by permitting the respondent No.2 Shrikrishna Chourishi to raise this objection at the time of hearing of the appeal. The respondent No.2 Shrikrishna Chourishi in the year 2013 has filed present IA No.824/2013 u/O.22 Rule 2, Order 22 Rule 5, Sec.2(11), Order 12 Rule 6 read with Sec.151 of the CPC, Sec.70 of the Evidence Act, Sec.95 of Indian Succession Act with the following prayer:-

> "Therefore, it is most humbly prayed, that according to the above last WILL dt.20/8/1980 duly executed by testatrix Smt. Rambhabai in favour of Shreekrishna Chourishi which is admitted by the all parties on record and considering the perfect and unimpleachable material of its proof as already exist in the record of this case, respondent No.3 Shreekrishna Chourishi held to be treated as sole legal representative of dead Rambhabai, and therefore, he is entitled to get rights and share of dead Rambhabai in the final decree dtd.14/07/1987 passed by the Trial Court. It is to be held also that the above decree dt.14/07/1987 passed by the Trial Court, has already been become final and conclusive against the dead respondent Rambhabai due to struck-off her name from the array of the parties in this appeal, and the above decree has become final for the respondent No.2 Lalchand also, because no inconsistent decree can be passed between the same parties. It is also prayed that the name of respondent No.3 Shreekrishna Chourishi be substituted in the above final decree as sole legal representative of late respondent Rambhabai on the basis of the aforesaid WILL dt.20/08/1980 and he is held to be entitled to get all the proceeds in the above final decree as mentioned in the aforesaid registered WILL dt.20/08/1980 executed by Smt.Rambhabai. In support of this application affidavit of the propounder Shreekrishna Chourishi enclosed.
>
> Therefore, it is prayed, that, the application be allowed with heavy cost."

22. The respondent Shrikrishna Chourishi present in person has categorically stated before this court that he does not want himself to be impleaded in the appeal as L.R of the deceased respondent No.1 Rambhabai. He submits that since the will is undisputed, therefore, straightway his name should be recorded in the decree as legal heir of Rambhabai.

23. Shri A.K.Sethi, learned Sr.Counsel for appellant has made a limited submission that if Shrikrishna Chourishi is brought on record as L.R of deceased

Rambhabai on the basis of the will then he has no objection because the Order 22 Rule 5 provisions are meant for continuation of the appeal at the instance of the L.R but not for determining the final right of the parties on the basis of the will. He has also submitted that if the respondent Shrikrishna Chourishi does not want to be impleaded as L.R of deceased Rambhabai, then he has nothing to say in this I.A.

24. The respondent Shrikrishna Chourishi has also not disputed that no provision exists in the CPC under which without impleading him as L.R of Rambhabai his name can be straightway entered in the decree as the L.R of Rambhabai.

25. So far as the legal position in this regard is concerned, if a party comes forward on the basis of the will executed by the deceased party, then an enquiry under Order 22 Rule 5 is contemplated, but in the present case neither the appellant nor the respondent Shrikrishna Chourishi is seeking the substitution of L.R of deceased respondent No.1, therefore, the provisions of Order 22 Rule 5 of the CPC cannot be attracted. Even otherwise Shrikrishna Chourishi has already been impleaded as additional respondent and he is contesting the appeal.

26. The Supreme Court in the matter of *Suresh Kumar Bansal Vs. Krishna Bansal & another* 2010(2) MPLJ 304 has clarified the position in this regard as under:-

> 9--Having heard the learned counsel for the parties and after going through the impugned order as well as the application for substitution of the appellant on the basis of the Will alleged to have been executed by the deceased plaintiff, we are of the view that the impugned order of the High Court is liable to be interfered with and the application for impleadment filed at the instance of the appellant on the basis of the Will alleged to have been executed by the deceased plaintiff must be allowed and the appellant must be impleaded in the suit along with the natural heirs and legal representatives of the deceased plaintiff, subject to grant of probate by a competent court of law. It is true that in the impugned order, the High Court has made it clear that the finding regarding genuineness of the Will was made only for the purpose of deciding the application for impleadment filed at the instance of the appellant. But, in our view, if at this stage, the appellant is not permitted to be impleaded and in the event an order of eviction is passed ultimately against the tenant/respondent, the tenants will be evicted by the natural heirs and legal representatives of the deceased plaintiff who thereby shall take possession of the suit premises, but if ultimately the probate of the alleged Will of the

deceased plaintiff is granted by the competent court of law, the suit property would devolve on the appellant but not on the natural heirs and legal representative of the deceased. Therefore, in the event of grant of probate in favour of the appellant, he has to take legal proceeding against the natural heirs and legal representatives of the deceased plaintiff for recovery of possession of the suit premises from them which would involve not only huge expenses but also considerable time would be spent to get the suit premises recovered from the natural heirs and legal representatives of the deceased plaintiff. On the other hand, if the appellant is allowed to carry on the eviction petition along with the natural heirs and legal representatives of the deceased plaintiff, in that case decree can be passed for eviction of the tenant when the appellant shall not be entitled to get possession from the tenants in respect of the suit premises until the probate in question is granted and produced before the Court. Therefore, ultimately if the court grants a decree for eviction of the tenant/respondent from the suit premises, such decree shall be passed subject to production of probate by the appellant. That apart, since the question of genuineness of the will cannot be conclusively gone into by the court in a proceeding for substitution in a pending eviction suit and in view of the fact that an application was made at the instance of the appellant for impleadment as a legal representative of the deceased on the basis of the Will which is yet to be probated, in our view, best course open to the court is to allow impleadment of the appellant in the eviction proceeding, thereby permitting him to proceed with the eviction suit along with natural heirs and legal representatives of the deceased plaintiff, but in case the decree is to be passed for eviction of the tenant from the suit premises such eviction decree shall be subject to the grant of probate of the Will alleged to have been executed by the deceased plaintiff. At the same time, it is clear that in case the Will of the deceased plaintiff is found not to be genuine and probate is not granted, the court shall proceed to grant the eviction decree in favour of the respondent no.1 and not in favour of the appellant. It is well settled that in the event, the Will is found to be genuine and probate is granted, only the appellant would be entitled to get an order of eviction of the tenants/respondents from the suit premises excluding the claim of the natural heirs and legal representatives of the deceased plaintiff. The Code of Civil Procedure enjoins various provisions only for the purpose of avoiding multiplicity of proceedings and for adjudicating of related disputes in the same proceedings, the

> parties cannot be driven to different Courts or to institute different proceedings touching on different facets of the same major issue. Such a course of action will result in conflicting judgments and instead of resolving the disputes, they would end up in creation of confusion and conflict. It is now well settled that determination of the question as to who is the legal representatives of the deceased plaintiff or defendant under Order XXII Rule 5 of the Code of Civil Procedure is only for the purposes of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited. In order to shorten the litigation and to consider the rival claims of the parties, in our view, the proper course to follow is to bring all the heirs and legal representatives of the deceased plaintiff on record including the legal representatives who are claiming on the basis of the Will of the deceased plaintiff so that all the legal representatives namely, the appellant and the natural heirs and legal representatives of the deceased plaintiff can represent the estate of the deceased for the ultimate benefit of the real legal representatives. If this process is followed, this would also avoid delay in disposal of the suit. In view of our discussions made hereinabove, we are, therefore, of the view that the High Court as well as the trial Court were not at all justified in rejecting the application for impleadment filed at the instance of the appellant based on the alleged Will of the deceased plaintiff at this stage of the proceedings."

27. From the aforesaid judgment, it is clear that under Order 22 Rule 5 of the CPC, the limited question relating to the L.R is decided only for the purpose of bringing the L.Rs on record which does not operate as res-judicata and the inter-se dispute between the rival L.Rs has to be independently tried and decided in appropriate proceedings.

28. It would not be out of place to mention here that another appeal FA No.80/87 has been filed against the same judgment by Lalchand. In that appeal the cross objection has been filed by the respondent Shrikrishna Chourishi. In that appeal IA No.6088/1995 was filed by the appellant for deleting the name of deceased respondent No.1 Rambabai on the ground that her Legal representative respondent No.2 was already on record, hence the court by order dated 17/1/1996 had allowed the application with the caveat that the effect of deletion, if any, will

be considered at the time of final hearing. Subsequently, the IA No.602/1996 filed by respondent Shrikrishna Chourishi for substituting him in place of Rambhabai on the strength of will along with other I.As of the appellant and respondent was considered and by order dated 13/3/1997 IA No.602/1996 was allowed and Shrikrishna Chourishi was substituted as L.R of Rambhabai deceased respondent No.1 therein. Shrikrishna Chourishi was also allowed to be substituted as L.R of Rambhabai in cross objection. Hence, in FA No.80/1987 Shrikrishna Chourishi has already come on record as L.R of Rambhabai.

29. Having examined the prayer made in the IA No.824/2013 in the aforesaid back ground, it is noticed that no finding on the basis of the alleged will dated 20th August, 1980 can be given at this stage that Shrikrishna Chourishi was legal heir of Rambhabai and he had inherited the properties of Rambhabai by that will because the will is yet to be proved by Shrikrishna Chourishi in appropriate proceedings by tendering it in evidence as per the requirement of the Evidence Act and Indian Succession Act. By this I.A, the prayer of Shrikrishna Chourishi is not to bring on record as L.R of Rambhabai on the strength of the alleged will executed by her, but by this I.A Shrikrishna Chourishi is seeking substitution of his name in the decree of the court below in place of Rambhabai, but no such provision permitting the adoption of such a recourse has been pointed out. Hence, I do not find any merit in this IA.

30. So far as the judgment in the case of *Satguru Sharan Shrivastava* (supra) relied upon by the respondent No.3 is concerned, the question therein was about maintainability of appeal against a dead person, but in view of the order of the Supreme Court dated 6/2/2001 passed in CA No.1051/2001 in this case the respondent No.3 is not entitled to the benefit of this judgment.

31. So far as the judgment of the Supreme Court in the case of *Jaladi Suguna* (supra) is concerned, in that case it has been held that the trial cannot proceed without deciding the issue of L.R, but in this case the Supreme Court has already noted that Mahendra Kumar is one of the L.R and has set aside the order dismissing the appeal as abated.

32. So far as the judgment in the case of *Ramagya Prasad Gupta* (supra) is concerned, no benefit of the said judgment can be granted because both the parties who are claiming right over the properties of Rambhabai are already before this Court.

33. So far as the judgment in the case of *Gajraj* (supra) and *Bajrang Lal* (supra) are concerned, since in this case Mahendra Kumar is the appellant and Shrikrishna Chourishi is opposing the claim of Mahendra Kumar and setting up the claim in respect of the properties of the deleted deceased Rambhabai, therefore, no benefit of the said judgment can be extended to him. This appeal as

well as another appeal FA No.80/1997 arise of the same judgment, therefore, if certain facts and grounds mentioned in the memo of appeal are common that would not lead to the conclusion that Lalchand (appellant in FA No.80/1997) and Mahendra Kumar (appellant in this appeal) have colluded, therefore, no benefit of the judgment in the case of *Naraindas* (supra) and *S.P. Chengalvaraya* (supra) can be extended to respondent No.3. Even otherwise such a plea has no merit.

34. So far as the plea of the respondent No.3 that the Advocate for the appellant has manipulated the record and has committed fraud while amending the cause title of the appeal is concerned, it is noticed that mere mentioning of the incorrect date of the court order while incorporating the amendment cannot lead to such an inference. Hence, no benefit of the judgment in the case of *D.P. Chadha* (supra) can be extended to the respondent No.3.

35 Having regard to the aforesaid, finding no merit in the plea of the respondent No.3, IA No.824/2013 is rejected.

36. So far as appellant Mahendra Kumar is concerned, though he has been treated to be the legal representative of Rambhabai but in view of the judgment of this court in the matter of *Shivmangal through L.Rs Vs. Narainprasad & Ors* reported in 2007(2)MPLJ 445 he cannot litigate his personal right as legal representative.

37. Before entering into merits of the controversy, it would be appropriate to examine the argument about scope of altering, modifying or amending the preliminary decree in this appeal.

38. The Supreme Court in the matter of *Ganduri Koteshwaramma & Anr. Vs. Chakiri Yanadi & Anr.* AIR 2012 SC 169 has held that by passing the preliminary decree the partition suit does not stand disposed of and continues till the passing of the final decree and if the events and supervening circumstances occur in the mean while necessitating change in share, there is no impediment for the court to amend the preliminary decree or determine the right. In this regard it has been held that:-

> "17. A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree

redetermining the rights and interests of the parties having regard to the changed situation. We are fortified in our view by a 3- Judge Bench decision of this Court in the case of *Phoolchand and Anr. Vs. Gopal Lal* wherein this Court stated as follows:

> "We are of opinion that there is nothing in the Code of Civil Procedure which prohibits the passing of more than one preliminary decree if circumstances justify the same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented..... So far therefore as partition suits are concerned we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the court can and should do so; ..... there is no prohibition in the Code of Civil Procedure against passing a second preliminary decree in such circumstances and we do not see why we should rule out a second preliminary decree in such circumstances only on the ground that the Code of Civil Procedure does not contemplate such a possibility. . . for it must not be forgotten that the suit is not over till the final decree is passed and the court has jurisdiction to decide all disputes that may arise after the preliminary decree, particularly in a partition suit due to deaths of some of the parties. . . . . a second preliminary decree can be passed in partition suits by which the shares allotted in the preliminary decree already passed can be amended and if there is dispute between surviving parties in that behalf and that dispute is decided the decision amounts to a decree ....."

18. This Court in the case of *S. Sai Reddy vs. S. Narayana Reddy and Others* had an occasion to consider the question identical to the question with which we are faced in the present appeal. That was a case where during the pendency of the proceedings in the suit for partition before the trial court and prior to 1 AIR 1967 SC 1470 2 (1991) 3 SCC 647 the passing of final decree, the 1956 Act was amended by the State Legislature of Andhra Pradesh as a result of which unmarried daughters became entitled to a share in the joint family property. The unmarried daughters respondents 2 to 5 therein made application before the trial court claiming their share in the property after the State amendment in the 1956 Act. The trial court by its judgment and

order dated August 24, 1989 rejected their application on the ground that the preliminary decree had already been passed and specific shares of the parties had been declared and, thus, it was not open to the unmarried daughters to claim share in the property by virtue of the State amendment in the 1956 Act. The unmarried daughters preferred revision against the order of the trial court before the High Court. The High Court set aside the order of the trial court and declared that in view of the newly added Section 29-A, the unmarried daughters were entitled to share in the joint family property. The High Court further directed the trial court to determine the shares of the unmarried daughters accordingly. The appellant therein challenged the order of the High Court before this Court. This Court considered the matter thus;

> "..... A partition of the joint Hindu family can be effected by various modes, viz., by a family settlement, by a registered instrument of partition, by oral arrangement by the parties, or by a decree of the court. When a suit for partition is filed in a court, a preliminary decree is passed determining shares of the members of the family. The final decree follows, thereafter, allotting specific properties and directing the partition of the immovable properties by metes and bounds. Unless and until the final decree is passed and the allottees of the shares are put in possession of the respective property, the partition is not complete. The preliminary decree which determines shares does not bring about the final partition. For, pending the final decree the shares themselves are liable to be varied on account of the intervening events. In the instant case, there is no dispute that only a preliminary decree had been passed and before the final decree could be passed the amending Act came into force as a result of which clause (ii) of Section 29-A of the Act became applicable. This intervening event which gave shares to respondents 2 to 5 had the effect of varying shares of the parties like any supervening development. Since the legislation is beneficial and placed on the statute book with the avowed object of benefitting women which is a vulnerable section of the society in all its stratas, it is necessary to give a liberal effect to it. For this reason also, we cannot equate the concept of partition that the legislature has in mind in the present case with a mere severance of the status of the

> joint family which can be effected by an expression of a mere desire by a family member to do so. The partition that the legislature has in mind in the present case is undoubtedly a partition completed in all respects and which has brought about an irreversible situation. A preliminary decree which merely declares shares which are themselves liable to change does not bring about any irreversible situation. Hence, we are of the view that unless a partition of the property is effected by metes and bounds, the daughters cannot be deprived of the benefits conferred by the Act. Any other view is likely to deprive a vast section of the fair sex of the benefits conferred by the amendment. Spurious family settlements, instruments of partitions not to speak of oral partitions will spring up and nullify the beneficial effect of the legislation depriving a vast section of women of its benefits".

20. The High Court was clearly in error in not properly appreciating the scope of Order XX, Rule 18 of CPC. In a suit for partition of immovable property, if such property is not assessed to the payment of revenue to the Government, ordinarily passing of a preliminary decree declaring the share of the parties may be required. The court would thereafter proceed for preparation of final decree. In Phoolchand this Court has stated the legal position that C.P.C creates no impediment for even more than one preliminary decree events have taken place necessitating the re-adjustment of shares as declared in the preliminary decree. The court has always power to revise the preliminary decree or pass another preliminary decree if the situation in the changed circumstances so demand. A suit for partition continues after the passing of the preliminary decree and the proceedings in the suit get extinguished only on passing of the final decree. It is not correct statement of law that once a preliminary decree has been passed, it is not capable of modification. It needs no emphasis that the rights of the parties in a partition suit should be settled once for all in that suit alone and no other proceedings.

21. Section 97 of C.P.C. that provides that where any party aggrieved by a preliminary decree passed after the commencement of the Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree does not create any hindrance or obstruction in the power of the court to modify,

> amend or alter the preliminary decree or pass another preliminary decree if the changed circumstances so require.
>
> 22. It is true that final decree is always required to be in conformity with the preliminary decree but that does not mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the trial court in the event of changed or supervening circumstances even if no appeal has been preferred from such preliminary decree."

39. So far as the judgment in the case of *Gyarsi Bai* (supra) relied upon by counsel for appellant is concerned, that is in respect of the suit by mortgagee to enforce mortgage which stands on a different footing, therefore, no benefit of the said judgment can be extended. The judgment in the case of *Muthangi Ayyana* (supra) relied upon by counsel for the appellant lays down the general proposition that the final decree cannot amend or go behind the preliminary decree on a matter determined by the preliminary decree, but in the subsequent judgment in the case of *Gandhuri Koteshwari* (supra) the circumstances permitting such a recourse have duly been laid down.

40. Hence it is clear that at the stage of final decree in the appropriate circumstances the preliminary decree can be amended and even another preliminary decree re-determining the rights and interest of parties can be passed.

41. The next issue is if Mahendra Kumar has ½ share in the suit property.

42. So far as adoption of Mahendra Kumar by Rambhabai is concerned, at the stage of the preliminary decree the issue of adoption of Mahendra Kumar by Rambhabai had come up and the first appellate court by order dated 1/9/1947 had held the adoption of Mahendra Kumar by Rambhabai as valid and on that basis the modified preliminary decree dated 29/4/1949 was passed holding Mahendra Kumar to be entitled to ½ share in place of Rambhabai. The order holding the adoption of Mahendra Kumar by Rambhabai has attained finality. The first appellate court also has noted the legal position in para 23 of the judgment that valid adoption once made cannot be cancelled. Hence, I am of the opinion that it has been conclusively established that Mahendra Kumar was adopted son of Rambhabai.

43. The issue relating to effect of relinquishment without executing a registered duly stamped document is well settled by Supreme Court in the matter of *Yellapu Uma Maheswari and another Vs. Buddha Jagadheeshwararao and others* (2015) 16 SCC 787. In this regard it has been held that:-

> "13- Section 17 (1) (b) of the Registration Act mandates that any document which has the effect of creating and taking away

the rights in respect of an immovable property must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered u/s 17 of the Act.

15- It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exhibits B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registerable document and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exhibits B-21 and B-22 are the documents which squarely fall within the ambit of section 17 (i) (b) of the Registration Act and hence are compulsorily registerable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exhibits B 21 and B22 are not admissible in evidence for the purpose of proving primary purpose of partition.

16- Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of Andhra Pradesh High Court in Chinnappa Reddy Gari Muthyala Reddy Vs. Chinnappa Reddy Gari Vankat Reddy, AIR 1969 A.P. (242) has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. In a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellants/defendants want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get

> the document impounded and the Trial Court is at liberty to mark Exhibits B-21 and B- 22 for collateral purpose subject to proof and relevance."

44. From the aforesaid judgment it is clear that a compulsorily registerable document if unregistered is inadmissible in evidence for primary purpose and in a suit for partition, such an un-stamped instrument is inadmissible in evidence even for collateral purpose until same is impounded.

45. So far as the issue of relinquishment of share is concerned, the trial court in the judgment under challenge has examined this issue in detail and has recorded a finding that the right of Rambhabai under the preliminary decree dated 31/7/1944 were not extinguished by a disclaimer and the order of the High Court dated 29/4/1949 does not operate as *res-judicata*. While holding so the trial court has placed reliance upon the judgment of the Supreme Court reported in AIR 1974 SC 749 and judgment of the Nagpur High Court reported in AIR 1936 NAGPUR 186 and had found that Rambhabai did not intend to assign her interest in the suit property to Mahendra Kumar.

46. The record reflects that in the preliminary decree dated 31/7/1944 trial court had found that Rambhabai and Sundarbai had ½ share each in the suit property. In appeal High Court vide order dated 29/4/1949 had modified the preliminary decree on the basis of the application filed along with an affidavit by Rambhabai that she was contented to have a decree for the ½ property in favour of her adopted son Mahendra Kumar. No registered document was executed by Rambhabai relinquishing her share in favour of Mahendra Kumar. Same was the position when vide unregistered relinquishment deed dated 7/7/1961 Ex.P/1 Mahendra Kumar had relinquished his share in favour of Rambhabai. Both these documents stand on the same footing, hence it would be travesty of justice to admit one document and hold that Rambhabai had relinquished her share on the basis of her affidavit and reject the other document Ex.P/1 by holding that since it is not registered, therefore, it cannot be considered for proving the relinquishment by Mahendra Kumar in favour of Rambhabai.

47. The trial court vide order dated 3rd October, 1979 has held that document Ex.P-1 was admissible for relinquishment of right with regard to movable property and for collateral purposes with regard to immovable property. In that order it was also noted that stamp duty with penalty was already charged on the document by the Collector Stamps. This order has been affirmed in Civil Revision No.750/1979 by the High Court vide order dated 16/10/1979.

48. After examining the evidence in detail, trial court has rightly found that Mahendra Kumar had failed to prove that relinquishment deed Ex.P/1 was got

executed by practicing fraud. In this regard placing reliance upon Article 493 of Mulla's Principles of Hindu Law as also Para 156 of N.R. Raghava Chariar's Hindu Law 1987 Edition it has been found by the trial court that though the valid adoption once made cannot be cancelled, but adopted son can renounce his right of inheritance in the adopted family. The relationship and conduct of Rambabai and Mahendra Kumar has been discussed by the trial court while examining the evidence from para 16 to 19 of the judgment which reflects that though Rambhabi was showering all the love and affection on Mahendra Kumar, but Mahendra Kumar had not accepted the adoption and was living with his natural family and in this back ground about eight months after attaining majority had executed the relinquishment deed Ex.P/1 dated 7/7/1961 in favour of Rambhabai. The execution of Ex.P/1 by Mahendra Kumar has duly been established from the evidence on record.

49. The legal position as regards the nature of the suit properties in the hands of Rambhabai cannot be ignored. The succession had opened when Dhannalal had died intestate on 20th May, 1943 leaving behind his wife Sundarbai and the widow daughter-in-law Rambhabai. (Sohanlal S/o Dhannalal had pre deceased him on 11/9/1923). By virtue of Sec.3(3) of the Hindu Women's Right to Property Act, 1937, Rambhabai had limited interest known as a Hindu woman's estate in respect of her ½ share. Hence, she was entitled to the full beneficial enjoyment of the estate to the extent of her share, but had no right to alienate it except for the necessity for the benefit of the estate.

50. The Hon'ble Supreme Court in the matter of *Jaisri Sahu Vs. Rajdewan Dubey & Ors.* [AIR 1962 SC 83] has held that:-

> "4.....If the learned Judge intended to lay down as an inflexible proposition of law that whenever there is a usufructuary mortgage, the widow cannot sell the property, as that would deprive the reversioners of the right to redeem the same, we must dissent from it. Such a proposition could be supported only if the widow is in the position of a trustee, holding the estate for the benefit of the reversioners, with a duty cast on her to preserve the properties and pass them on intact to them. That, however, is not the law. When a widow succeeds as heir to her husband, the ownership in the properties, both legal and beneficial, vests in her. She fully represents the estate, the interest of the reversioners therein being only spes successionis. The widow is entitled to the full beneficial enjoyment of the estate and is not accountable to anyone. It is true that she cannot alienate the properties unless it be for necessity or for benefit to the estate, but this restriction on her powers is not one imposed for the benefit of reversioners but is an

> incident of the estate as known to Hindu law. It is for this reason that it has been held that when Crown takes the property be escheat it takes it free from any alienation made by the widow of the last male holder which is not valid under the Hindu law, vide: Collector of Masulipatam Vs. Cavaly Venkata, 8 Moo India App 529 (PC). Where, however, there is necessity for a transfer, the restriction imposed by Hindu law on her power to alienate ceases to operate, and the widow as owner has got the fullest discretion to decide what form the alienation should assume."

51. In view of above, Rambhabai had limited right which had ripen into full right by virtue of Sec.14 of the Hindu Succession Act, 1956, but the alleged relinquishment through affidavit was done by Rambhabai in favour of Mahendra Kumar prior to 1949 which she could not have done due to her limited right and for want of necessity on benefit of estate.

52. The trial court has committed an error in holding the title in favour of Rambhabai on the basis of adverse possession, as no issue in this regard was framed nor the necessary ingredients of adverse possession were considered and even otherwise Rambahbai being plaintiff in view of the judgment of the Supreme Court in the case of *Gurudwara Sahib Vs. Gram Panchayat Village Sirthala* 2014(3) MPLJ 336 and subsequent judgment reported in *Dharampal (Dead) Through L.Rs Vs. Punjab Wakf Board and others* (2018) 11 SCC 449 could not have claimed title by way of adverse possession. Hence, the finding of the trial court in this regard is set aside, but that will have no effect on the rights of the parties because on the other issues the judgment of the trial court has been affirmed by this court.

53. In view of the above analysis, I find no reason to interfere in the judgment of the trial court. The trial court has rightly held the share of Rambhabai, hence the said conclusion is affirmed. Since Rambhabai has died pending this appeal and the issue relating to Shrikrishna Chourishi being her heir on the basis of the will is yet to be decided, hence the parties namely Mahendra Kumar and Shrikrishna Chourishi will be at liberty to establish their claim over the properties of Rambhabai in separate proceedings.

54. Hence, no merit is found in this appeal which is accordingly dismissed.

Appeal dismissed

I.L.R. [2019] M.P. 629
APPELLATE CRIMINAL
Before Mr. Justice Prakash Shrivastava
Cr.A. No. 7840/2018 (Indore) decided on 21 December, 2018

MAHESH & anr. …Appellants

Vs.

STATE OF M.P. …Respondent

***A. Vishesh Nyayalaya Adhiniyam, M.P., 2011 (8 of 2012), Section 13 and Vishesh Nyayalaya Niyam, M.P., 2012, Rules 10(1), (2) & (3) – Statement of Defence – Period of Limitation* – As per Rules of 2012, a period of 30 days time to file statement of defence is permitted which can be extended to further period of 15 days and if it is not filed as per time prescribed, Authorized Officer has no option but to presume that affected person has no defence to put forward and to proceed with adjudication of the matter – Provision is mandatory – Appellant filing statement of defence after two years from date of service of notice – Authorized Officer rightly refused to take statement of defence on record – Appeal dismissed. (Para 22 & 23)**

क. विशेष न्यायालय अधिनियम, म.प्र., 2011 (2012 का 8), धारा 13 एवं विशेष न्यायालय नियम, म.प्र., 2012, नियम 10(1), (2) व (3) – बचाव का कथन – परिसीमा की अवधि – 2012 के नियमों के अनुसार, बचाव का कथन प्रस्तुत करने हेतु 30 दिनों की समयावधि की अनुमति है जिसे 15 दिनों की अतिरिक्त अवधि तक बढ़ाया जा सकता है तथा यदि यह विहित समय के अनुसार प्रस्तुत नहीं किया गया, प्राधिकृत अधिकारी के पास यह उपधारणा करने कि प्रभावित व्यक्ति के पास आगे प्रस्तुत करने हेतु कोई बचाव नहीं है तथा मामले के न्यायनिर्णयन में आगे कार्यवाही करने के अलावा कोई विकल्प नहीं है – उपबंध आज्ञापक है – अपीलार्थी ने नोटिस की तामील की तिथि से 2 वर्ष के पश्चात् बचाव का कथन प्रस्तुत किया – प्राधिकृत अधिकारी ने बचाव का कथन अभिलेख पर लेने से उचित रूप से इंकार किया – अपील खारिज।

***B. Vishesh Nyayalaya Niyam, M.P., 2012, Rule 10(2) & (3) – Mandatory or Directory – Statutory Interpretation* – Held – In the Rule, if the consequence of non-compliance is provided, then the rule is mandatory and where the consequence of non-compliance is not provided, then the rule is directory – In present case, Rule 10(2) & (3) provides consequence of not filing the statement of defence in prescribed period, thus the provisions is mandatory. (Paras 13, 16 & 21)**

ख. विशेष न्यायालय नियम, म.प्र., 2012, नियम 10(2) व (3) – आज्ञापक अथवा निदेशात्मक – कानूनी निर्वचन – अभिनिर्धारित – नियम में, यदि अननुपालन का परिणाम उपबंधित किया गया है, तो नियम आज्ञापक है तथा, जहां अननुपालन का परिणाम उपबंधित नहीं किया गया है, तो नियम निदेशात्मक है – वर्तमान प्रकरण में, नियम 10(2) व

(3) विहित अवधि में बचाव पक्ष का कथन प्रस्तुत न करने का परिणाम उपबंधित करते हैं, इसलिए उपबंध आज्ञापक हैं।

Cases referred:

AIR 1965 SC 895, AIR 1955 SC 425, AIR 2005 SC 2441, AIR 2002 SC 2487, 2003 (8) SC 431, (2016) 3 SCC 183.

Bhaskar Agrawal, for the appellants.
Vaibhav Jain, for the respondent.

J U D G M E N T

PRAKASH SHRIVASTAVA, J. :- By this appeal under Section 17 of Madhya Pradesh Vishesh Nyayalaya Adhiniyam, 2011 (for short the Act), appellants have challenged the order dated 14/9/2018 passed by Authorised officer allowing the application under Rule 10 of Madhya Pradesh Vishesh Nyayalaya Niyam, 2012 (for short the Rules) filed by respondent and refusing to take statement of defence of appellants on record.

2. The brief facts are that the proceedings under Section 13 of the Act have been initiated for confiscation of properties of appellants on the basis of application dated 21/4/2016 filed by respondent under section 13(1) of the Act. The notice of the application was served upon the appellants on 9/6/2016 and they had appeared before the Authorised officer on 11/7/2016 but they did not file their reply for a period of two years and filed the same on 17/7/2018. Hence an application was filed by respondent for rejecting the reply on the ground that it was not filed within the prescribed period and therefore, right to file reply was closed.

3. The Authorised officer while passing the impugned order referring to Rule 10 has noted that he had the power to permit 30 day's time to file statement of defence which can be extended for further period of 15 days, thereafter he had no jurisdiction to extend the time.

4. Learned counsel for appellants submits that time was granted to appellants by the Authorised officer on earlier dates therefore, he is not right in taking the view that he had no jurisdiction to extend time beyond 45 days. He further submits that since copy of documents were not supplied, therefore, the application was filed and delay had taken place in filing the reply.

5. Learned counsel for respondent supporting the order has submitted that in terms of applicable Rule, only time up-to 45 days can be granted to file reply. He further submits that the proceedings are interim in nature and that two simultaneous proceedings one the criminal case and second the confiscation proceedings are initiated, therefore, the order passed in the confiscation proceedings is interim in nature subject to outcome in the criminal case.

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

7. The sole issue involved in the present case is as to whether Rule 10(1) & (2) of the Rules is directory or mandatory in nature?

8. The Rule 10 which needs consideration by this Court reads as under:-

> ***"10. Authorised officer to follow summary procedure -***
>
> (1) On receipt of application under Section 13 read with Section 14 of the Act, the authorised officer shall immediately issue notice to the person affected.
>
> (2) If the person affected responds to the notice and appears before the authorised officer either in person or through his legal representative, he shall be furnished with the copy of the application filed under Section 13 alongwith all the enclosures. The authorised officer shall allow 30 days time to file his statement in defence. If for good and valid reasons, to the satisfaction of the authorised officer, the person affected does not file his statement of defence, he may allow a further period of 15 days within which he shall have to file his statement of defence.
>
> (3) If the person affected does not file his statement of defence within the prescribed period of 30 days or within extended period of 15 days, it shall be presumed that he has no defence to put forward and then the authorised officer shall be free to adjudicate the proceeding instituted before him.
>
> (4) If the person affected submits his statement in defence, a copy of the same shall be made available to the Special Public Prosecutor conducting the proceeding before the authorised officer who shall have the opportunity to reply to the same.

9. Sub-Rule 2 above provides for granting 30 days time to file statement of defence and that period can further be extended for 15 days on showing good and valid reason for delay to the satisfaction of the authorised officer. The above Rule is clear that the affected person within further extended period of 15 days "shall have to file his statement of defence".

10. Sub rule 3 above provides for consequence of not filing the reply within period of 30 days with extended period of 15 days. In such a case the Authorised officer has no option but to presume that affected person has no defence to put forward and then the Authorised officer is free to adjudicate the proceedings.

11. The issue if the Rule 10 is directory or mandatory is to be decided having regard to the principles of statutory interpretation relating to directory and

mandatory provisions. In the principles of statutory interpretation G.P. Singh 11th Edition 2008 the General Principle of Interpretation in this regard is noted as under:

> **(a) General**. The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage LORD CAMPBELL said: "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be considered". As approved by the Supreme Court: "The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other." "For ascertaining the real intention of the Legislature", points out SUBBARAO, J. "the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered". If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. But all this does not mean that the language used is to be ignored but only that the prima facie inference of the intention of the Legislature arising from the words used may be displaced by considering the nature of the enactment, its design

> and the consequences flowing from alternative constructions. Thus, the use of the words 'as nearly as may be' in contrast to the words 'at least' will prima facie indicate a directory requirement, negative words a mandatory requirement 'may' a directory requirement and 'shall' a mandatory requirement.

12. The Constitution Bench of the Supreme Court in the matter of *Raza Buland Sugar Co. Ltd. Rampur Vs. The Municipal Board Rampur,* reported in AIR 1965 SC 895 has taken note of the relevant factors which need consideration for holding a particular provision as mandatory or directory, as under:-

> (7) The question whether a particular provision of a statute which on the face of it appears mandatory-inasumuch as it uses the word 'shall' as in the present case- or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

13. It is also the settled principle of interpretation that while considering a provision relating to non compliance of the procedural requirement it has to be kept in view that the same is designed to facilitate justice and therefore, if the consequence of non compliance is not provided, the requirement must be held to be directory. (*Sangram Singh Vs. Election Tribunal Kotan and others* reported in AIR 1955 SC 425; *Kailash Vs. Nanhku and others* reported in AIR 2005 SC 2441; & *Topline Shoes Ltd. Vs. Corporation Bank* reported in AIR 2002 SC 2487).

14. Supreme Court in the matter of *Prakash H. Jain Vs. Marie Fernandes (Ms)* reported in 2003(8) SC 431) has considered the similar provision of Maharashtra Rent Control Act, 1999 providing that in the eviction proceeding the tenant can apply to the competent authority within 30 days of service of summons for leave to defend and further providing that in default of statement, statement filed by landlord shall be deemed to be admitted and he would be entitled to decree of eviction and has held as under:

> 13.The Competent Authority constituted under and for the purposes of the provisions contained in Chapter VIII of the Act is

> merely and at best a statutory authority created for a definite purpose and to exercise, no doubt, powers in a quasi-judicial manner but its powers are strictly circumscribed by the very statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefor and subject to such conditions and limitations stipulated by the very provision of law under which the Competent Authority itself has been created. Clause (a) of sub-section (4) of section 43 mandates that the tenant or licensee on whom the summons is duly served should contest the prayer for eviction by filing, within thirty days of service of summons on him, an affidavit stating the grounds on which he seeks to contest the application for eviction and obtain the leave of the Competent Authority to contest the application for eviction as provided therefor. The legislature further proceeds to also provide statutorily the consequences as well laying down that in default of his appearance pursuant to the summons or obtaining such leave, by filing an application for the purpose within the stipulated period, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant or licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground so stated by him in his application for eviction. It is only when leave has been sought for and obtained in the manner stipulated in the statute that an hearing is envisaged to be commenced and completed once again within the stipulated time. The net result of an application/ affidavit with grounds of defence and leave to contest, not having been filed within the time as has been stipulated in the statute itself as a condition precedent for the Competent Authority to proceed further to enquire into the merits of the defence, the Competent Authority is obliged, under the constraining influence of the compulsion statutorily cast upon it, to pass orders of eviction in the manner envisaged in clause (a) of sub-section (4) of section 43 of the Act. The order of the learned Single Judge of the High Court under challenge in this appeal is well merited and does not call for any interference in our hands.

15. Thus similar provision in the above judgment has been held to be mandatory.

16. While considering the issue as regards directory or mandatory nature of provision, this court is required to look into not only the expressed language of the Rule but also the intention of the legislature, the object, nature and design of the

enactment, the consequence of treating the provision directory or mandatory and the consequence provided therein and its effect.

17. The intention of legislature is to be gathered from the object and nature of the proceedings. Madhya Pradesh Vishesh Nyayalaya Adhiniyam, 2011(for short Act) has been enacted to provide for constitution of Special court for speedy trial of certain class of offences and for confiscation of the properties involved and for the matters connected therewith and incidental thereto. Sections 13 to 15 of the Act provide for summary procedure for confiscation of the property of person accused of committing offence by the authorized officer and such confiscation is temporary in nature which is subject to order in appeal under Section 17 or outcome of the trial by the special court as provided in Section 19.

18. Supreme Court considering the similar enactment i.e. Orissa Special Courts Act, 2006 and Bihar Special Courts Act, 2009 and the rules framed thereunder in the matter of *Yogendra Kumar Jaiswal and others Vs. State of Bihar and others* reported in (2016) 3 SCC 183 has held that confiscation is interim in nature and does not assume the character of finality, since accused is entitled to get return of the property or money in case he succeeds in appeal against the order passed by authorized officer or in the ultimate eventuality when the order of acquittal is recorded. Rejecting the argument that confiscation under the Act is pre-trial punishment, it has been held that confiscation being interim in nature is not a punishment as envisaged in law. It has also been held that an accused has no vested right as regards the interim measure. He is not protected by any constitutional right to advance the plea that he cannot be made liable to face confiscation proceedings of the property which has been accumulated by illegal means.

19. The entire scheme of Act and the Rule is time bound because the proceedings are interim in nature. In terms of Section 15(5) the confiscation proceedings are to be disposed off within 6 months from the date of service of notice and even the appeal under Section 17 is to be disposed off within 6 months from the date of its filing in terms of Section 17(3) of the Act.

20. Not only Rule 10(2) fixes a time limit of 30 days extendable by 15 days, for filing statement of defence, but Rule 5 & 6 also fixes time limit of 15 days extendable by another 15 days for filing reply by the special public prosecutor with consequence thereof. The purpose of providing time bound manner of concluding the proceedings is, to deprive a person, who acquires property by means which are not legally approved, from enjoyment of such ill-gotten wealth. Hence if these confiscation proceedings are allowed to be delayed till conclusion of prosecution for the offence under Section 13(1) (e) of the Prevention of Corruption Act, 1988 which otherwise every affected person would made an

attempt for, the very purpose of confiscation provided under the Act would be frustrated and once the order of conviction or acquittal is passed, then, these interim proceedings, if pending, would become infructuous.

21. While holding a provision mandatory or directory another important factor is the consequence provided therein. Rule 10(3) provides for consequence of not filing the reply within the extended period of 15 days and in such a case consequence is that the presumption arises that the affected person has no defence and also authorised officer becomes free to proceed with adjudication without waiting for reply.

22. Having regard to the nature of confiscation order, the time bound scheme of the act and the rule, the fact that consequence is provided for not filing the statement of defence within time and also explicit language of the Rule 10(2) & (3) of the Rules, I am of the opinion that provisions contained in rule 10(2) & (3) are mandatory in nature and in case of non filing of reply within period of 30 days with extended period of 15 days, the authorized officer has no option but to presume that the affected person has no defence to put forward and to proceed with adjudication of the matter.

23. Examining the present case in the light of the aforesaid position in law, it is noticed that the appellant was served with the notice on 9/6/2016 and he had not filed statement of defence within 45 days and after two years he had filed statement of defence that too without any application for condonation of delay. Hence the authorized officer has committed no error in passing the impugned order dated 14/9/2018 and refusing to take on record the statement of defence. There is no order on record condoning the delay and permitting the appellants to file statement of defence after considering the provision of Rule 10(2) & (3), therefore, appellant's submission that trial court had no power of review is found to be of no substance.

24. Hence the appeal is found to be devoid of any merit, which is accordingly dismissed.

C.c. as per rules.

Appeal dismissed

I.L.R. [2019] M.P. 637 (DB)
APPELLATE CRIMINAL

Before Mr. Justice Sujoy Paul & Smt. Justice Nandita Dubey

Cr.A. No. 191/2010 (Jabalpur) decided on 11 January, 2019

MANBODH SINGH & ors. …Appellants

Vs.

STATE OF M.P. …Respondent

***A. Penal Code (45 of 1860), Sections 302/149, 323/149 & 148 – Appreciation of Evidence – Injured Eye Witnesses – Weapon of Offence* – Held – Statement of prosecution witnesses, particularly injured eye witnesses are trustworthy – Minor contradictions about use of a particular weapon by appellants will not cause any dent on credibility of their statements – Individual conduct of each of the appellants in relation to use of a particular weapon is immaterial – Appellants being member of unlawful assembly acted with common object cannot wriggle out of the clutches of vicarious liability enshrined in Section 149 IPC – Appellants rightly convicted – Appeal dismissed. (Para 15 & 16)**

क. दण्ड संहिता (1860 का 45), धाराएँ 302/149, 323/149 व 148 – साक्ष्य का मूल्यांकन – आहत चक्षुदर्शी साक्षीगण – अपराध का शस्त्र – अभिनिर्धारित – अभियोजन साक्षीगण, विशिष्ट रूप से आहत चक्षुदर्शी साक्षीगण के कथन विश्वसनीय हैं – अपीलार्थीगण द्वारा किसी विशिष्ट शस्त्र के उपयोग के बारे में गौण विरोधाभासों से उनके कथनों की विश्वसनीयता पर कोई खरोंच कारित नहीं होगी – विशिष्ट शस्त्र के उपयोग के संबंध में अपीलार्थीगण में से प्रत्येक का व्यक्तिगत आचरण महत्वहीन है – अपीलार्थीगण ने विधिविरूद्ध जमाव के सदस्य होने के नाते सामान्य उद्देश्य के साथ कृत्य किया, धारा 149 भा.दं.सं. में प्रतिष्ठापित प्रतिनिधिक दायित्व के चंगुल से बच नहीं सकते – अपीलार्थीगण उचित रूप से दोषसिद्ध – अपील खारिज।

***B. Penal Code (45 of 1860), Sections 302/149, 304 (Part II) & Exceptions to Section 300 – Ingredients* – Held – No quarrel taken place between appellants and victims – Merely because electricity was disrupted in village for which victims were not responsible, appellants assaulted and killed one of them – Appellants acted in cruel and unusual manner – Attack on vital parts of body by use of *tangi* is sufficient to infer that he had knowledge that any such injury would cause death – Exceptions to Section 300 IPC not attracted, thus appellant cannot be convicted u/S 304 Part II IPC. (Para 16)**

ख. दण्ड संहिता (1860 का 45), धाराएँ 302/149, 304 (भाग II) व धारा 300 के अपवाद – घटक – अभिनिर्धारित – अपीलार्थीगण एवं पीड़ितों के मध्य कोई झगड़ा नहीं हुआ – मात्र इसलिए कि गांव में विद्युत बाधित की गई थी जिसके लिए पीड़ितगण

जिम्मेदार नहीं थे, अपीलार्थीगण ने हमला किया और उनमें से एक की हत्या कर दी – अपीलार्थीगण ने क्रूर एवं असामान्य ढंग से कृत्य किया – टांगी के प्रयोग द्वारा शरीर के कोमल अंगों पर हमला यह निष्कर्षित करने के लिए पर्याप्त है कि उसे इस बात का ज्ञान था कि ऐसी कोई चोट मृत्यु कारित करेगी – धारा 300 भा.दं.सं. के अपवाद आकर्षित नहीं होते, अतः अपीलार्थी को धारा 304 भाग II भा.दं.सं. के अंतर्गत दोषसिद्ध नहीं किया जा सकता।

***C. Penal Code (45 of 1860), Section 149 – Unlawful Assembly – Common Object & Common Intention – Vicarious Liability* – Held – Apex Court concluded that while overact and active participation may indicate common intention, mere presence in unlawful assembly may fasten vicarious criminal liability u/S 149 IPC – Common Object is different from Common Intention as it does not require a prior concert and a common meeting of mind before the attack – It is enough if each appellant has same object and their assembly was to achieve that object – In such case, individual act of each appellant losses its relevance. (Para 13 & 14)**

ग. दण्ड संहिता (1860 का 45), धारा 149 – विधिविरूद्ध जमाव – सामान्य उद्देश्य व सामान्य आशय – प्रतिनिधिक दायित्व – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि प्रकट कृत्य एवं सक्रिय सहभाग सामान्य आशय इंगित कर सकता है, विधिविरूद्ध जमाव में मात्र उपस्थिति से धारा 149 भा.दं.सं. के अंतर्गत प्रतिनिधिक दाण्डिक दायित्व जुड़ सकता है – सामान्य उद्देश्य, सामान्य आशय से भिन्न है क्योंकि उसमें आक्रमण से पूर्व सामान्य मति एवं मस्तिष्क का सामान्य मेल अपेक्षित नहीं – यह पर्याप्त है यदि प्रत्येक अपीलार्थी का समान उद्देश्य है और उनका जमाव उस उद्देश्य को प्राप्त करने के लिए था – ऐसी स्थिति में, प्रत्येक अपीलार्थी का व्यक्तिगत कृत्य अपनी सुसंगतता खो देता है।

Cases referred:

2010 (10) SCC 259, 2011 (6) SCC 288, 2000 (4) SCC 484, 1989 (1) SCC 437, 1997 (3) SCC 747, 2004 (4) SCC 205, 1999 (1) MPLJ 354, 2004 (1) MPLJ 530, 1997 (4) SCC 192, 1993 AIR SC 1977, AIR 1997 SC 687.

V.K. Lakhera, for the appellant.
Vaibhav Tiwari, for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by :
SUJOY PAUL, J.- The six appellants faced trial for alleged commission of offence punishable under Section 148, 323/149 and 302/149 of the Indian Penal Code, 1860 (IPC). They are convicted by the trial court by judgment dated 25.11.2009 passed in Sessions case No.270/07. For the offence relatable to Section 148 and 323/149 IPC, they were directed to undergo RI for one year for each of the said offence whereas for the offence relatable to Section 302 read with Section 149

IPC, life imprisonment was awarded with a fine of Rs.100/- with default stipulation.

2. The prosecution version as unfolded during trial is as follows:

On the fateful night of 12.8.2007 at around 21:00 O' clock in village Sagra, Amar Singh was informed by Bhaleshwar Rao that his brother Maniram and Bharat Paw were being assaulted by Manbodh Singh, Ramkhilawan, Padsu Paw, Samna Paw, Buddhu Paw and Mahesh Paw.They with common object assaulted the said two persons with *lathi, tangi, farsa* etc. Amar Singh upon receiving said information, visited the place of incident with his father Samanlal, mother Nanbai, *kaki* Meerabai and *Dai* Butnibai. They were carrying a torch and when reached to the place of incident, Maniram was lying dead. There was bleeding in the backside of his head. In the adjacent agriculture field, Bharat Paw was lying injured and crying. Bharat Paw was not in a position to stand on his own feet. Bharat Paw informed Amar Singh that appellants attacked Maniram with *tangi, farsa and lathi*.

3. In turn, FIR Exhibit P/3 was lodged in the concerned Police Station. During investigation, the spot map was prepared. Injured Bhale Singh and Bharat Singh were medically examined. From the spot, bloodstained and simple earth was collected. During interrogation of accused, their memorandum statements were recorded. The *farsa* and *lathies* were allegedly recovered from the appellants. The appellants were arrested. The seized materials were sent for chemical examination whereas weapons used were sent to FSL, Sagar. The report of FSL, Sagar Exhibit P/40 was obtained. After completion of investigation, the charge-sheet was filed before Judicial Magistrate First Class, Shahdol. The matter was committed for trial before 1st Additional Sessions Judge, Shahdol.

4. The learned Additional Sessions Judge framed charges against all the appellants. The appellants abjured the guilt and pleaded that they have been falsely implicated in the offence. The Court below after concluding the trial found all the appellants guilty for the offences mentioned above.

5. In support of the present appeal, Shri V.K. Lakhera, learned counsel for the appellants contended that (i) there was no prior animosity between the appellants and deceased Maniram and injured persons namely; Bhale Singh and Bharat Singh; (ii) the quarrel was sudden and there was no pre meditation amongst the appellants; (iii) in the facts and circumstances of the present case and as per the prosecution story also, the appellant No.1 who was allegedly carrying a *tangi*, can at best be convicted under Part-II of Section 304 IPC whereas remaining appellants can be held guilty under Section 323 IPC. Since all the appellants have undergone sentence for a period prescribed for committing said offences, they may be released forthwith by treating them to have undergone the said sentence; (iv) there exists contradiction in the statement of prosecution

witnesses in relation to use of a particular weapon during attack on Maniram and other persons.

6. To bolster these points, Shri Lakhera took us to the statement of witnesses, medical evidence, seizure memo, etc. and urged that judgment of Court below holding the appellants as guilty under Section 149 IPC is totally unwarranted and uncalled for. The Court below has erred in applying Section 149 IPC in a case of this nature. Hence, individual act of each of appellants gains significance. At the cost of repetition, Shri Lakhera argued that except appellant No.1, remaining appellants who have used *lathies* cannot be held guilty under Section 302 IPC because reason of death as per postmortem report is "*coma* due to head injury" and said injury shows that it was caused by a sharp and hard object. The injury No.1, 2 and 3 mentioned in the PM report was pointed out for this purpose. The appellant No.1 can at best be convicted under Section 304 Part-II IPC.

7. Shri Vaibhav Tiwari, learned Government Advocate also relied on relevant portion of the statement of witnesses, medical report and certain other documents.

8. The parties confined their argument to the extent indicated above. We have bestowed our anxious consideration on rival contentions and perused the record.

9. Bhan Singh(PW/1) is an injured eye-witness. He, in his deposition clearly deposed that Manbodh Singh armed with *tabbas(tangi)* attacked Maniram whereas Buddhu, Padsu, Samna, Mahesh and Ramkhilawan used *lathies* to assault Maniram. Ganga Paw(PW/2) deposed that Manbodh, Padsu, Mahesh, Samna, Ramkhilawan, all accused came out of their house and they were carrying *tabbal* and *lathies*. All the appellants except Manbodh were carrying *lathies/danda*. He deposed that dead body of Maniram was found in the farm of Babulal. Bhaleshwar @ Bhale Singh was lying in the adjacent field in injured condition. The appellants assaulted Maniram, Bharatpaw and Maleshwar Paw also.

10. PW/5 Bhale Singh is an injured eye-witness. He categorically deposed that Manbodh Singh was armed with *tangi* assaulted Maniram whereas other appellants used *lathi* for this purpose. Another injured witness Bharat Singh (PW/6) narrated the same story and stated that appellant No.1 was carrying *tangi.* Other appellants were armed with *lathies*. They used the said weapons to attack Maniram, Bhale Singh and Bharat Singh.

11. The medical report shows that the reason of death is "coma due to head injury and precipitated by associated injury". Dr. R.S. Parihar(PW/12) entered the witness box and deposed his statement. As per his statement, following injuries were found in the body of deceased Maniram

''मृतक की आंख बंद थी कार्निया धुंधली थी पुतली फेली हुई, मुंह खुला था, कमर पर पीछे की तरफ ब्राउन कलर के धब्बे उपस्थित थे वह पेंट व बेल्ट पहने हुए था कोई शर्ट नहीं पहना था नीचे के दोनों पैरों में अकडन थी मृत्यु पूर्व की निम्न चोटे पाई गई थीः–

1. कटा हुआ घाव जिसका आकार तिकोना था 5X2 से.मी. मांस पेशी की गहराई तक घाव लंबाई में था खून का थक्का भी उपस्थित था सिर के बाई ओर था।

2. कटा हुआ घाव सिर के बाई ओर आक्सीपिटल रीजन में 9X2 से.मी. दिमाग की गइराई तक था जिसमें हड्डी टूटी हुई थी और धस गई थी और खून का थक्का भी उपस्थित था।

3. नीलूग बांये स्केपूला पर 4X3 से.मी. लबांई में रेडिस ब्राउन रंग था।

3:– आंतरिक परीक्षण करने पर मैंने पाया कि सिर में पीछे की तरफ हड्डी टूटी व धसी थी खून का थक्का जमा हुआ पाया गया। शरीर के शेष सभी अंग कंजेस्टेड थे पे में चावल था तथा छोटी आंत एवं बडी आंत में मल उपस्थित था।

4:– चोट के संबंध में अभिमत चोट क्र. 1,2 सख्त और तेज धारदार हथियार से पहुंचाई गई थी तथा चोट क्र.3 सख्त एवं मौथरे धार के हथियार से पहुंचाई गई थी।''

12. A careful and combined reading of statement of PW/1, PW/5 and PW/6 makes it clear that all the appellants came out of their respective houses immediately before the incident. They shouted and chased Maniram, Bhale Singh and Bharat Singh. By using respective weapons, they assaulted Maniram, Bharat Singh and Bhale Singh. Maniram died because of said attacks instantaneously whereas other two persons were injured. This is trite law that statement of injured witness carries more weight (see: 2010(10)SCC 259 (*Abdul Sayeed vs. State of M.P.*) and 2011(6) SCC 288 (*Brahm Swaroop and another vs. State of Uttar Pradesh*). The injured witnesses narrated about the incident with great detail. The appellants criticised the impugned judgment based upon the statement of injured witnesses by contending that there are glaring contradictions in their statements. Particularly, in relation to use of weapon by them.

13. The Court below recorded conviction under Section 302, 323, 148 and 149 IPC. This is trite law that Section 34 and 149 IPC deal with the vicarious liability of an accused for an offence committed by another. Section 149 IPC provides for the guilt of every member of an unlawful assembly if in prosecution of a common object an offence is committed, or which the member know would be likely to be committed in prosecution of that object (see 2000 (4) SCC 484 (*Jaswant Singh vs. State of Haryana*]. This is equally well settled that so far Section 149 is concerned, in addition to common object, merely being a member

of an unlawful assembly within the meaning of Section 141 IPC may be sufficient. In 1989 (1) SCC 437 (*Lalji vs. State of U.P.*), the Apex Court made it clear that once the case of a person falls within the ingredients of Section 149 IPC, the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hands commit the offence committed in prosecution of the common object of the unlawful assembly. It is also not necessary that all the persons farming (sic : forming) an unlawful assembly must do some overt act. When the accused persons assembled together, armed with *lathies* and were parties to the assault, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This judgment in *Lalji* (Supra) was followed by Apex Court in *Jaswant Singh* (Supra).

14. In our judgment, the appellants instantaneously assembled together. They were more than five in number. The "common object" of their assembly is to assault Maniram and two others mentioned above. In *Lalji* (Supra), the Court came to hold that "common object" of the unlawful assembly can be gathered from the nature of assembly, arms used by them and the behaviour of the assembly at or before scene of occurrence. Similarly in *State of U.P. vs. Dan Singh,* 1997 (3) SCC 747, it was held that while overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicarious criminal liability under Section 149 IPC. The "common object" is different from a "common intention" as it does not require a prior concert and a common meeting of mind before the attack. It is enough if each of appellant has the same object and their assembly was to achieve that object. Their conduct shows that they acted with a "common object". We find support in our view from *Charan Singh and others vs. State of U.P.,* 2004 (4) SCC 205. In view of this analysis, the point (i) and (ii) which are related with prior animosity and premeditation etc. pales into insignificance. In *Charan Singh* (Supra), it was clearly laid down that common object can develop at the spot *eo instanti*. Once formed, it may exist upto a particular stage whereafter it may get modified or may be abandoned. Hence, in our view, once necessary ingredients for invoking Section 149 are established by prosecution beyond reasonable doubt, the individual act of each of the appellants lost its relevance. In 1999 (1) MPLJ 354 (*Devi Singh vs. State of M.P.*), a Division Bench of this Court opined that when eight accused persons armed with firearms, *farsa, lathi, lohangi* have attacked with common object, Section 149 IPC comes into play. Hence all eight accused persons who were members of said unlawful assembly were liable with the aid of Section 149 of IPC for commission of murder of deceased.

15. Furthermore, in *Jugru vs. State of M.P.,* 2004 (1) MPLJ 530, the Division Bench opined that when five persons with different weapons mercilessly attacked on the deceased who died on spot leads to inference that intention of appellants was to cause death. The presumption of law is that a person intends to natural and

inevitable consequence of his own act. In the light of this discussion, point (iii) raised by Shri Lakhera deserves to be rejected. The Court below has rightly held that Section 149 of IPC is attracted. In that situation, the individual conduct of each of the appellants in relation to use of a particular weapon- *lathis* etc. is immaterial. The appellants being members of an unlawful assembly which acted with a common object cannot wriggle out of the clutches of vicarious liability enshrined in Section 149 of IPC.

16. So far point (iv) is concerned, this point, in view of settled legal position, will have the same fate of rejection. In *Satbir vs. Surat Singh,* 1997 (4) SCC 192, it was held that "an incident where a number of persons assaulted three persons at one and the same time with different weapons, some contradictions as to who assaulted whom and with which weapon with what weapon, were not unlikely and such contradiction could not be made a ground to reject the evidence of eye-witnesses, if it was otherwise reliable". This judgment was relied upon with profit in the case of *Jawant Singh* (Supra).The statements of prosecution witnesses and particularly injured witnessess are trustworthy. Minor contradictions about use of a particular weapon by appellants will not cause any dent on the credibility of their statements. We will be failing in our duty if argument of learned counsel for the appellants that alleged offence committed by appellant No.1 with the use of a *tangi* is covered under Part-II of Section 304 IPC is not considered. This is trite law that before accused can be convicted under Part-I or II of Section 304, death must have been caused by him under any of the circumstances mentioned in five exceptions of Section 300 (See *Harendra Vs. State of Bihar,* 1993 AIR SC 1977). In the instant case, the learned counsel for the appellants is unable to show that the case of appellant No.1 is covered by any of the exceptions of Section 300. It is noteworthy that in the instant case, no quarrel between offenders and victims had taken place. Merely because electricity was disrupted in the village for which victims were not responsible, the appellants assaulted them and killed one of them. The appellants acted in a cruel and unusual manner. Thus, this argument deserves rejection. The attack by appellant on the vital part of the body of deceased by use of *tangi* is sufficient to infer that he had knowledge that any injury on the vital part of the body of deceased would cause death. Hence, he cannot be convicted under Section 304 Part II, IPC. See AIR 1997 SC 687, *M. T. Nambiar vs. State of Kerala*.

17. In view of foregoing discussions, we find no flaw in the impugned judgment which warrants interference by this Court. The prosecution has established its case beyond reasonable doubt. The Court below after meticulous examination of evidence rightly held the appellents as guilty. Resultantly, interference is declined. The appeal is **dismissed**.

Appeal dismissed

I.L.R. [2019] M.P. 644 (DB)
APPELLATE CRIMINAL

Before Mr. Justice J.K. Maheshwari & Mr. Justice Rajeev Kumar Dubey

Cr.A. No. 2273/2009 (Jabalpur) decided on 11 March, 2019

RATIRAM GOND …Appellant

Vs.

STATE OF M.P. …Respondent

***A. Penal Code (45 of 1860), Section 302 – Circumstantial Evidence – Last Seen Together* – Held – Looking to the time gap, evidence of wife of deceased is not sufficient to establish proximity of accused in commission of crime though he was last seen in company of deceased, a day back – Possibility of not having access of any other persons during the time gap not proved by prosecution – Last seen evidence not proved, thus recovery of weapon is not relevant – No blood stained clothes or any incriminating articles found to connect appellant with crime – Chain of circumstantial evidence is not fully established/proved beyond reasonable doubt to bring home the charge u/S 302 IPC – Conviction set aside – Appeal allowed.**

(Paras 14 & 16 to 18)

क. दण्ड संहिता (1860 का 45), धारा 302 – परिस्थितिजन्य साक्ष्य – अंतिम बार साथ देखा जाना – अभिनिर्धारित – समय के अंतराल को देखते हुए, अपराध के किये जाने में अभियुक्त की निकटता स्थापित करने के लिए मृतक की पत्नी का साक्ष्य पर्याप्त नहीं है, यद्यपि उसे एक दिन पहले अंतिम बार मृतक के साथ देखा गया था – समय अंतराल के दौरान किसी अन्य व्यक्ति की पहुंच न होने की संभावना को अभियोजन द्वारा साबित नहीं किया गया – अंतिम बार साथ देखे जाने का साक्ष्य साबित नहीं, इसलिए शस्त्र की बरामदगी सुसंगत नहीं है – अपीलार्थी को अपराध से जोड़ने हेतु कोई रक्तरंजित वस्त्र अथवा अपराध में फंसाने वाली वस्तुएं नहीं पाई गई – भा.दं.सं. की धारा 302 के आरोप हेतु दोषी ठहराने के लिए परिस्थितिजन्य साक्ष्य की श्रृंखला पूर्णतः स्थापित / युक्तियुक्त संदेह से परे साबित नहीं होती है – दोषसिद्धि अपास्त – अपील मंजूर।

***B. Criminal Practice – Suspicion* – Held – Suspicion howsoever may be grave and strong cannot take place of proof of commission of crime.**

(Para 17)

ख. दाण्डिक पद्धति – संदेह – अभिनिर्धारित – संदेह कितना ही गंभीर एवं पक्का क्यों न हो, अपराध किये जाने के सबूत का स्थान नहीं ले सकता।

Cases referred:

(2002) 8 SCC 45, (2016) 12 SCC 251, (2017) 14 SCC 359, Cr.A. No. 1207/2005 decided on 21.05.2018 (DB), AIR 1952 SC 343, (1984) 4 SCC 116, 1994 Supp. (2) SCC 372, (2014) 4 SCC 715, AIR 2013 SC 3150.

Nitin Mahajan, amicus curiae on behalf of the appellant.
A.P. Singh, G.A. for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by :

J.K. MAHESHWARI, J.:- This appeal under Section 374(2) of the Code of Criminal Procedure (hereinafter shall be referred to as "Cr.P.C") has been filed being aggrieved by the judgment of conviction and sentence dated 8.10.2009 passed by Sessions Judge, Dindori in Sessions Trial No.29/2009 convicting the appellant Ratiram Gond for the charge under Section 302 of the IPC and directing to undergo imprisonment for life with fine of Rs.1000/-, in default S.I. for one year.

2. The prosecution story in brief is that Lalju, father of Chamru Singh and Amru was found dead in the morning of 7.2.2009 in the forest of Pataldobhi near village Bhurkadobhi. The incident took place between 3 p.m. of 6.2.2009 to the next day morning 8 a.m. of 7.2.2009. The Merg intimation was registered by the police through Chamru Singh, son of deceased Lalju in the noon at 3:20 p.m. on 7.2.2009 *inter alia* stating that his father was residing in a hut situated in the field where some cattle were also kept for grazing. The mother Hiriya Bai use to visit there to look after the cattle and to serve meals to her husband Lalju and grandson Ratiram, who also use to live with him. On 6.2.2009, after serving meals, she came back to village Dhamni at about 3 p.m. On the next day morning i.e. 7.2.2009, when she again visited to the hut (*Gwari*) at about 8 a.m., she found that her husband Lalju was lying dead on a cot. He was having injuries on the neck and hands. Blood stains were spread all over the cot. On asking Ratiram, he was not found on spot then she came back at home and informed Chamru (complainant) about the incident, on which, he immediately reached on the spot alongwith his sister Amrutia and brother-in-law Mahru Singh and saw the injuries present on the neck and hands of Lalju due to which he succumbed and having suspicion of committing his murder by someone, noticed that his nephew Ratiram, who was residing with Lalju is not present on the spot. The police recorded the confessional statement of the Ratiram Ex.P/15 in presence of Amrit Singh and Vishram with respect to commission of murder and weapon used in the offence i.e. Axe has been thrown near the *khalihan of Kodo Kutki Paira Dhig*. The recovery of the said weapon was made at the instance of accused. During the course of investigation, as per post mortem report, the doctor opined that the injuries received to the deceased may be caused by means of axe, connecting the said circumstance with last seen.

3. After completion of investigation challan was filed registering an offence under Section 302 of the IPC against the appellant in the Court of competent

Judicial Magistrate First Class. On found that the case was triable by Court of Sessions, the Magistrate committed the case to the Court of Sessions where charge under Section 302 was framed against the accused. The accused abjured the guilt and demanded trial taking defence of false implication with a plea of alibi *inter alia* contending that he was not present on the spot.

4. Learned trial Court relying upon the testimony of Hiriya Bai (PW2) regarding last seen and her visit to the hut (*Gwari*) at the field on the next day when she did not found the accused, dead body of the deceased was lying on the cot and considering the confessional statement upon which recoveries were made from the accused including the recovery of weapon allegedly used in commission of offence and appreciating the medical evidence said the injuries received could be caused by the weapon used and said that the complete chain of circumstances has been established by the prosecution and also that the conduct of the accused creates suspicion, because when he was residing alongwith grandfather, he should not have left the place without giving intimation regarding his death, however, convicted the accused for the charge under Section 302 of the IPC observing that the prosecution has proved the charge beyond reasonable doubt on the basis of circumstantial evidence and directed to undergo the sentence as described hereinabove.

5. Learned *amicus curiae* appearing on behalf of appellant has strenuously urged that in a case of circumstantial evidence, for the last seen, the facts of the present case, cannot be relied upon because PW2 Hiriya Bai saw the accused and the deceased on 6.2.2009 at about 3 p.m. The dead body was found on the next day i.e. 7.2.2009 at about 8 a.m., however, the time gap of last seen of accused with the deceased and the time of commission of crime is not so small whereby the possibility of any person other than the accused reaching on the spot can be possibly ruled out, therefore, the last seen evidence of Hiriya Bai cannot be relied upon. It is further said that mere recovery without credible last seen evidence is of no relevance, particularly, when no other incriminating article has been seized from the accused and the FSL examination report on the alleged weapon used in commission of offence and the other articles seized has not been brought on record, however, the complete chain of circumstances is lacking in this case, therefore, merely not giving satisfactory explanation of absence from the place of occurrence cannot form the basis of conviction and the finding of the trial Court is unsustainable in law. In support of the said contention, reliance has been placed on the judgment of Apex Court in the case of *Bodhraj alias Bodha and others vs. State of Jammu and Kashmir* reported in (2002) 8 SCC 45 and another judgment of Supreme Court in the case of *Rambraksh alias Jalim vs. State of Chhattisgarh* reported in (2016) 12 SCC 251 and at the recent judgment of the Supreme Court in the case of *Anjan Kumar Sarma and others vs. State of Assam* reported in (2017) 14 SCC 359. A Division Bench decision of Indore Bench of this Court in the case

of *Gabji vs. State of Madhya Pradesh* decided in Criminal Appeal No.1207/2005 on 21.5.2018 has also been relied upon. In view of the foregoing, it is urged that conviction of the appellant is unsustainable in law which may be set aside.

6. On the other hand, learned Government Advocate representing the State submits that in the facts of the case wherein the appellant was last seen at a place where the deceased was residing alongwith him in a hut situated in the field, the time gap between 3 p.m. of 6.2.2009 to 8 a.m. of 7.2.2009, do not create any doubt because no evidence has been brought by defence to say that other person can reach at a place of commission of offence. However, the last seen evidence is credible, in furtherance to it the recovery of the weapon used in offence was made from the accused at his instance and medical evidence that the injuries received to the deceased could be caused by the said weapon, therefore, the conviction is based on the complete chain of circumstances, which do not warrant any interference in this appeal.

7. After hearing learned counsel appearing on behalf of both the parties, the question arises for determination in the facts of the case is that whether the evidence brought by prosecution is sufficient to convict the appellant establishing the chain of circumstances, particularly, in a case of circumstantial evidence. Hon'ble the Apex Court in some of the judgments has laid down the principles to establish the chain of circumstances which may be relevant to prove the guilt of the accused and it should be tested on the touchstone of law relating to circumstantial evidence.

8. The Apex Court in the case of *Hanumant Govind Nargundkar vs. State of M.P.* reported in AIR 1952 SC 343. The Apex Court has held as under :-

> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

9. The said judgment has further been referred in the decision of *Sharad Birdhichand Sarda vs. State of Maharashtra* reported in (1984) 4 SCC 116 wherein the Apex Court has held that the factors which may be taken into account for adjudicating a case of circumstantial evidence are as under :-

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;
>
> (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
>
> (3) the circumstances should be of a conclusive nature and tendency;
>
> (4) they should exclude every possible hypothesis except the one to be proved; and
>
> (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

The aforesaid is well known five golden celebrated principles to establish the guilt of an accused in a case of circumstantial evidence, which is being followed in catina of judgments.

10. In the case of *Arjun Marik vs. State of Bihar* reported in 1994 Supp. (2) SCC 372, the Court has held as under :-

> "Thus the evidence that the appellant had gone to Sitaram in the evening of 19.7.1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstances of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

11. Later in the case of *Kanhaiya Lal vs. State of Rajasthan* reported in (2014) 4 SCC 715, the Apex Court said that the last seen together without establishing connectivity between the accused and the commission of crime is not sufficient in absence of sufficient non-explanation by accused. In para 12, the Court held as under :-

> "The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant."

12. On the touch stone of the aforesaid judgment, the facts of the present case is required to be examined. As per the prosecution case itself, the dead body of the deceased was found on 7.2.2009 in a hut (*Gwari*) situated nearby the Pataldobhi forest in the field where deceased was residing alongwith PW2 Hiriya Bai (wife) and the accused/appellant was also with them. Hiriya Bai visited to the hut on 6.2.2009 and left at about 3 p.m. at that time, she saw the accused there. On the next day, when she visited to the hut (*Gwari*) she saw the dead body of Lalju lying on a cot having injuries on the body. On being called her grandson (accused) he has not responded because he was not present there. However, she came back and narrated the incident to Chamru (PW1) who along with Amritiya and Mahru Singh again visited in the field and on return lodged the Merg at 3:20 p.m. in the police station, on which FIR was registered. The police was under suspicion because the accused was not found at the place of occurrence, however, taken his confessional statement on 12.2.2009 wherein the story of commission of murder by means of axe on account of scolding by him has been narrated and the said weapon was also recovered at his instance. The post mortem was conducted by the doctor Ex.P/6 on 8.2.2009 at 2:35 p.m. in which it was opined that the death is homicidal in nature due to the incised injury present on the left side of the neck.

13. In the said facts, it is held by trial Court that if the accused was last seen with the deceased on 6.2.2009 and the dead body was found on the next day in the morning, the said time gap, proximity of the deceased with the accused connecting him being author of the crime cannot be doubted. To advert the argument that whether the time gap between last seen and the deceased found dead on the next day can be long in absence of proving proximity of accused with crime. In this regard, in the case of *Bodhraj alias Bodha and others vs. State of Jammu and Kashmir* reported in (2002) 8 SCC 45 the Apex Court has held as under :-

> "The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.
>
> It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together."

14. Above case has been taken into consideration by the Apex Court in the case of *Rambraksh alias Jalim vs. State of Chhattisgarh* reported in (2016) 12 SCC 251 wherein the Court held as under :-

> "Conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where time gap, between the point of time when accused and deceased were seen last alive and when deceased is found dead, is so small that possibility of any person other than accused being the perpetrator of crime, becomes impossible. It will be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and deceased were last seen together. Courts below convicted appellant on basis of last seen evidence, correctness of which is also doubtful for delay in FIR and lack of identification of skeleton. Conviction of appellant cannot be sustained in law and liable to be set aside."

Therefore, the time gap between the point of time when the accused and the deceased were seen alive and when the deceased is found dead was not so small and the possibility of not having access of any other person during the time gap 3 p.m. of 6.2.2009 till morning of 7.2.2009 has not been proved by prosecution.

15. The Apex Court in the case of *Raj Kumar Singh alias Raju alias Batya vs. State of Rajasthan* reported in AIR 2013 SC 3150 has held that in a criminal trial, suspicion, however grave it may be, cannot take the place of proof. The Court said that there is a large difference between something that 'may be' proved and 'will be proved'. It is said that the distance between 'may be' and 'must be' is quite large and divides vague conjectures from sure conclusions, which must be covered by way of a clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict. It is said that the Court must

maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. In the said case, the Apex Court has also referred to an Essay on the Principles of Circumstantial Evidence by William Wills by T. & J.W. Johnson & Co. 1872. In para 22 and 23 of the said judgment, the Court crystallized as under :-

> "In matters of direct testimony, if credence be given to the relators, the act of hearing and the act of belief, though really not so, seem to be contemporaneous. But the case is very different when we have to determine upon circumstantial evidence, the judgment in respect of which is essentially inferential. There is no apparent necessary connection between the facts and the inference; the facts may be true, and the inference erroneous, and it is only by comparison with the results of observation in similar or analogous circumstances, that we acquire confidence in the accuracy of our conclusions.
>
> The term PRESUMPTIVE is frequently used as synonymous with CIRCUMSTANTIAL EVIDENCE; but it is not so used with strict accuracy, The word "presumption," ex vi termini, imports an inference from facts; and the adjunct "presumptive," as applied to evidentiary facts, implies the certainty of some relation between the facts and the inference. Circumstances generally, but not necessarily, lead to particular inferences; for the facts may be indisputable, and yet their relation to the principal fact may be only apparent, and not real; and even when the connection is real, the deduction may be erroneous. Circumstantial and presumptive evidence differ, therefore, as genus and species.
>
> The force and effect of circumstantial evidence depend upon its incompatibility with, and incapability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of argument resembling the method of demonstration by the reductio ad absurdum."

Thus, in view of the above, the Court must consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial

> evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The Court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused."

16. The Apex Court further considered the circumstances where if the clinching chain of circumstances has not been completed and only the circumstance of last seen together is available then the absence of satisfactory explanation cannot form the basis of conviction. The Court in para- 16 and 18 has held that in a case of circumstantial evidence not only the various links of the chain of evidence must be established but the chain must be proved dispelling the innocence of the accused. Therefore, in such circumstances, looking to the time gap, the evidence of Hiriya Bai (PW2) is not sufficient to establish the proximity of accused in commission of crime, though he was last seen in the company of the deceased, a day back. It may be suspicious but in the facts, it is not sufficient to prove the guilt.

17. In view of the foregoing, it is clear that the last seen evidence has not been proved showing proximity of accused in commission of crime, beyond reasonable doubt. The suspicion howsoever may be grave cannot take place to prove the commission of offence. In absence of last seen, the recovery of alleged weapon (axe) on his instance, is not of much relevance, particularly, in a case when the weapon has been sent for FSL examination but report is not on record. The investigating agency has not recovered any incriminating article to connect the appellant for commission of murder which includes clothes in which any blood stains were found. In such circumstances, it is a clear case in which chain of circumstantial evidence has not been fully established by the prosecution to bring the charge of Section 302 of the IPC at home. The observations made by the trial Court showing adverse inference on conduct of the appellant is of no help to prosecution as held by the Apex Court in the case of *Raj Kumar Singh alias Raju alias Batya* (supra).

18. As per the discussion made hereinabove, in our considered opinion, the conviction of the appellant for the charge under Section 302 completing the chain of circumstances has not been proved beyond reasonable doubt by the prosecution, therefore, the conviction and sentence as directed by the trial Court stands set aside and this appeal is hereby allowed.

19. Accordingly, the appeal succeeds and is hereby allowed. The impugned judgment of conviction and sentence passed by the trial Court stands set aside. The appellant is in custody, therefore, he shall be released forthwith if not required in any other case.

20. At the end, it is our duty to record the word of appreciation in favour of the *amicus curiae* who assisted the Court in the disposal of the held-up case which was pending since last about ten years, however, his assistance is hereby acknowledged.

21. Office is directed to send a copy of this judgment to the trial Court concerned immediately to take appropriate steps as per law.

Appeal allowed

I.L.R. [2019] M.P. 653
CRIMINAL REVISION

Before Mr. Justice Atul Sreedharan

Cr.R. No. 2969/2018 (Jabalpur) decided on 26 February, 2019

UTKARSH SAXENA …Applicant

Vs.

STATE OF M.P. …Non-applicant

***A. Penal Code (45 of 1860), Section 304-B & 498-A, Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 and Dowry Prohibition Act, (28 of 1961), Section 3 & 4 – Revision Against Charge* – Held – Applicant, brother-in-law (*devar*) of deceased staying in different State, pursuing his education and profession and was away from deceased, his brother and his parents – His participation in the alleged offence seems extremely improbable – Applicant was roped in to wreck vengeance on entire family – Even otherwise, allegations against applicant are so generalized, omnibus and flippant which do not constitute *prima facie* case against him – Applicant discharged – Revision allowed. (Para 25 & 26)**

क. दण्ड संहिता (1860 का 45), धारा 304–बी व 498–ए, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 एवं दहेज प्रतिषेध अधिनियम, (1961 का 28), धारा 3 व 4 – आरोप के विरूद्ध पुनरीक्षण – अभिनिर्धारित – आवेदक, जो कि मृतिका का देवर है, अपनी शिक्षा पूरी करने तथा व्यवसाय के लिए भिन्न राज्य में रह रहा था तथा मृतिका, अपने भाई और अपने माता–पिता से दूर था – अभिकथित अपराध में उसकी सहभागिता अत्यंत अनधिसंभाव्य प्रतीत होती है – संपूर्ण परिवार से बदला लेने के लिए आवेदक को फंसाया गया था – अन्यथा भी, आवेदक के विरूद्ध अभिकथन इतने सामान्यीकृत, बहुप्रयोजनीय तथा तुच्छ हैं जो कि उसके विरूद्ध प्रथम दृष्ट्या प्रकरण गठित नहीं करते – आवेदक आरोपमुक्त – पुनरीक्षण मंजूर।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 2(h) and Constitution – Article 21 – Police Investigation* – Held – Investigative powers of police are not merely an "Authority" but also a "Responsibility – Fair investigation is one which is done for purpose of unearthing the truth and not for sole purpose of securing conviction – Fair trial entails to considering the defence of the accused and investigating the same to ascertain if the allegations against accused is true or not – If accused provides credible material to police to investigate and ascertain his innocence, it is bounden duty of police to investigate into his version – Ignoring the same would violate his rights under Article 21 of Constitution. (Paras 21 to 24)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 2(एच) एवं संविधान – अनुच्छेद 21 – पुलिस अन्वेषण – अभिनिर्धारित – पुलिस की अन्वेषण करने की शक्तियाँ न केवल एक ''प्राधिकार'' है बल्कि एक ''उत्तरदायित्व'' भी है – निष्पक्ष अन्वेषण वह है जो कि सत्य को खोजने के प्रयोजन से किया जाता है तथा न कि दोषसिद्धि के एकमात्र प्रयोजन से – निष्पक्ष विचारण में, यह सुनिश्चित करने हेतु कि क्या अभियुक्त के विरूद्ध लगाये गये अभिकथन सत्य है अथवा नहीं, अभियुक्त के बचाव को विचार में लेना तथा उक्त का अन्वेषण करना आवश्यक है – यदि अभियुक्त पुलिस को अन्वेषण करने तथा उसकी निर्दोषिता सुनिश्चित करने के लिए विश्वसनीय सामग्री प्रदान करता है, पुलिस का यह आबद्धकर कर्तव्य है कि वह उसके कथनों पर अन्वेषण करे – उक्त को अनदेखा करना संविधान के अनुच्छेद 21 के अंतर्गत उसके अधिकारों का उल्लंघन होगा।

Cases referred:

(2015) 6 SCC 332, (2012) 3 SCC 126, (2008) 16 SCC 705.

Manish Datt with *Rahul Sharma* and *P.K. Hazari,* for the applicant.
Anurag Gohil and *Ruchika Gohil,* for the objectors/Complainants.
Sharad Sharma, G.A. for the State.

O R D E R

ATUL SREEDHARAN, J. : - The criminal revision under judgement has been preferred by the Petitioner against the order dated 16/04/18, passed by the Court of the Ld. XVIII Additional Sessions Judge, Bhopal in Sessions Trial No. 192/2018 (State of Madhya Pradesh [through P.S. Chunabhatti, Bhopal] Vs. Utkarsh Saxena). By the said order, the Ld. Trial Judge was pleased to dismiss the application filed by the Petitioner u/s. 227 Cr.P.C for discharge and instead, exercising jurisdiction u/s. 228 Cr.P.C, framed charges against the Petitioner for offences u/s. 304-B, 498-A IPC and u/s. 3 and 4 of the Dowry Prohibition Act, 1961.

2. This case raises some questions of public importance with regard to the authority and responsibility of the police while investigating an offence. To be more specific, **(A)** whether the investigation into an offence is done solely for the

purpose of securing an indictment and subsequent conviction of a person accused of committing an offence **or,** does investigation entail a fair enquiry into the allegations levelled against a person with an avowed aim of unearthing the truth? And **(B)** Is there a duty owed by the police to investigate the parallel hypotheses/defences put forward by a person accused of an offence with the same amount of diligence and impartiality and at the end of it, either reject or accept the case of the person accused of the offence?

3. The facts briefly are as hereafter. Dr. Capt. Aditya Saxena is the elder brother of the Petitioner. He is a doctor serving with the Indian Army. The marriage of Dr. Capt. Aditya Saxena with Dr. Ayushi Saxena was solemnised on 18/01/17 at Hotel Sayaji in Indore as per Hindu rites and rituals. At the time of marriage, Dr. Ayushi Saxena was prosecuting her studies for a Post-Graduation degree in medicine from the Gandhi Medical College at Bhopal. At the time of marriage, the brother of the Petitioner was posted with 9 Grenadiers, Mewar, 56 APO, as the Regimental Medical Officer.

4. Dr. Ayushi Saxena (hereinafter shall be referred to as the "Deceased") committed suicide at her parental home on 15/08/17 by hanging. Admittedly, there is no suicide note left behind by the deceased. The deceased is stated to have gone along with her parents to participate in the flag hoisting ceremony in the neighbourhood on the occasion of Independence Day, but left early from the venue, alone, returned home and took the extreme step before her parents returned.

5. The FIR bearing Crime No. 220/2017 was registered at P.S. Chunabhatti, Bhopal on18/08/17, for offences u/s. 498-A, 304-B IPC, 3 and 4 of the Dowry Prohibition Act, 1961 against Dr. Aditya Saxena (the husband of the deceased), Mr. Lokesh Kumar Saxena (father in law of the deceased), Mrs. Renu Saxena (mother in law of the deceased) and Mr. Utkarsh Saxena (brother in law of the deceased and the Petitioner herein).

6. The allegations in the FIR are to the effect that the parents of the deceased had gifted twenty tolas of gold ornaments and articles of household use to the deceased at the time of her marriage. Upon a demand being made for a car, a cheque of rupees six lakhs was given on the day after the marriage. Even after all this was given, the husband Aditya, the father in law Lokesh Kumar Saxena, mother in law Renu Saxena and brother in law Utkarsh Saxena used to mentally harass the deceased for more dowry/money. It is further alleged in the FIR that the father of the deceased, in order to ensure that the deceased is not harassed, gave a cheque of rupees five lakhs to the husband of the deceased. Besides, it was also alleged that the husband of the deceased was demanding rupees eleven lakhs which was available in the bank account of the deceased in order to finance the MBA course of the Petitioner.

7. It was alleged that on 09/03/17, the "in laws" of the deceased got her foetus aborted by Dr. Meena Agarwal at CHL Hospital in Indore and on the next day, they sent the deceased alone to her parental home on a bus, in a "pitiable" condition. On 14/08/17, a day prior to the deceased committing suicide, the deceased is stated to have celebrated her husband's birthday at Bhopal and sent her husband and her in laws, the photographs of the celebration and also informed them over phone upon which, the deceased was allegedly taunted by her husband for having celebrated his birthday at her parental home and thereby mentally harassed the deceased. On account of these "taunts" and the demand for dowry and the mental and physical harassment meted out to the deceased by her "in laws, father in law, mother in law, brother in law, husband" the deceased committed suicide on 15/08/17. This is the long and short of the allegations against the Petitioner and other co-accused persons, as is borne out in the FIR.

8. In the course of the investigation, the police recorded the statement of the witness u/s. 161 Cr.P.C. Briefly, the Court feels it essential to discuss the alleged involvement of the Petitioner as disclosed from the statements of the witnesses u/s. 161 Cr.P.C. The statement of Devendra Saxena, the father of the deceased was recorded u/s. 161 Cr.P.C on 19/08/17. The allegation against the Petitioner in the statement of the father of the deceased is omnibus and highly generalised. The only allegation seen is "आयुषी की सास रेणु सक्सेना और ससुर लोकेश कुमार सक्सेना और देवर उत्कर्ष सक्सेना लड़की पर रुपयो के लिए दबाव बना रहे थे तथा मार पीट कर प्रताड़ित करते थे " The second statement recorded by the police u/s. 161 Cr.P.C is that of the uncle of the deceased, also on 19/08/17. He is Rajendra Saxena and he alleges that "मई जब भी अपने बड़े भाई देवेन्द्र सक्सेना के घर छत्रपति शिवाजी कालोने चूनाभट्टी भोपाल जाता था, तो भाई कहता था की, आयुषी के ससुराल वाले सास, ससुर, देवर, तथा पति सभी परेशान करतें रहते हैं और रुपये की मांग कर रहे हैं। बच्ची आयुषी ने भी मुझसे तीन चार बार बताया था की ससुराल वाले मुझे प्रताड़ित करते हैं".

9. The next witness whose statement has been recorded by the police u/s. 161 Cr.P.C is Ms. Kanchan Kishore Shrivastava, a friend of the family. This witness, whose statement u/s. 161 Cr.P.C is recorded on 22/09/17, says "दिनांक 23 मई 2017 जब आयुषी भोपाल आई तो और दुबली दिखी तो मैंने पूछा तुम्हें क्या टेंशन है दुबली क्यों हो रही हो तो बोली सास तथा देवर उत्कर्ष ने बिना वजह मुझे मारा तथा मेरा मोबाइल भी तोड़ दिया....." । The next statement is that of Mrs. Meena Saxena. She is the mother of the deceased. The allegations against the Petitioner as per her statement u/s. 161 Cr.P.C are "....आयुषी के साथ लोकेश सक्सेना सास श्रीमती रेणु सक्सेना देवर उत्कर्ष सक्सेना लड़की आयुषी पर रुपयों के लिए दबाव बनाते थे तथा तथा प्रताड़ित कर मार पीट ते थे मेरी लड़की का फोन भी छीन लिया था बात भी नहीं करने देते थे....." ।....आयुषी का देवर उत्कर्ष एड्मिशन के पहले ताने मारता था बड़ी पढ़ने वाली बनती है फिर भी अछे नंबर नहीं आते हैं प्रताड़ित करता था" । The aforementioned is the material on record against the Petitioner.

10. The Petitioner and the other co-accused persons applied for anticipatory bail and the same was granted to them by this Court. After investigation, the police filed the charge sheet against all the accused persons for offences u/s. 498-A, 304-B of the IPC and setions 3 and 4 of the Dowry Prohibition Act, 1961. The Petitioner moved an application u/s. 227 Cr.P.C before the Ld, Trial Court praying for a discharge. The Petitioner had filed several documents from his side to show how he has been falsely implicated only to wreck vengeance on the entire family. The impugned order dated 16/04/18, by which the discharge application filed by the Petitioner was dismissed is from page 22 to 24 of the revision petition. In paragraph 5 of the impugned order, the Ld. Trial Court has held that at the time of framing charges the Court only has to see the *prima facie* evidence against the accused persons on the basis of the material filed along with the charge sheet and the probative value of the evidence is not to be gone into. The legal position appreciated by the Ld. Court below cannot be faulted which, brings us back to the primary question involved in this case that if the police had, in the course of investigation also taken the defence of the accused into reckoning, it may then have arrived at an entirely different conclusion and may not have filed a charge sheet against the Petitioner. The Ld. Counsel for the Petitioner submits that even if the entire evidence of the prosecution is taken as indelible truth, the same does not disclose a *prima facie* case against the Petitioner. The Ld. Counsel for the Petitioner has also argued that the police never investigated into the flimsy and flippant allegations levelled against the Petitioner and had the police investigated as to where the Petitioner was during the eight months after the marriage of the deceased with the brother of the Petitioner, it would have been convinced that the Petitioner was, for most of the time, in Bangalore and in Mumbai. He further states that had the police investigated into the WhatsApp conversations between the Petitioner and the deceased it would have been convinced that there was great bonhomie between the Petitioner and the deceased and that the omnibus allegations levelled by the parents of the deceased against the Petitioner were completely untenable.

11. The Petitioner has averred that at the time of the deceased committed suicide, he was working in Mumbai and also pursing (sic : pursuing) his diploma in Management. In this regard, the Petitioner has drawn the attention of this Court to the certificate issued by SPJIMR Institute of Management, Mumbai dated October 10, 2017, which reveals that the Petitioner was pursuing his Post Graduate Diploma in Management from the said institute for the session 2017 - 2019. There is a letter dated 10/10/17 issued to the Petitioner by the same institution that he is guilty of continued absence from the course and that he would have to start afresh. The prolonged period of absence mentioned by the institution is, according to the Ld. Counsel for the Petitioner, the time the Petitioner was awaiting a decision on his anticipatory bail application pending before this Court.

Ld. Counsel for the Petitioner has also stated that the Petitioner had to lose a year on account of the false implication in this case. Another certificate issued by the Multinational Company Qualcomm India Private Ltd., reveals that the Petitioner was working with the said company from 23/06/14 to 12/06/17. In short, the Ld. Counsel for the Petitioner has submitted that had the police investigated into the case of the Petitioner impartially, it would not have charge sheeted him.

12. The Ld. Counsels for the State and objector/ complainant have argued that the well settled principal (sic : principle) of law at the stage of framing charges by the Trial Court, is to see if there exists a *prima facie* case against the accused. A roving equity into the probative value of the evidence is uncalled for. They have further submitted that the case of the Petitioner that he was at Bangalore and Mumbai pursuing his job and education is his defence which the Petitioner has to prove by adducing evidence at the appropriate stage. Further, it is submitted that the Petitioner has been named by the witnesses and a role is attributed to him. Whether the said act of the Petitioner stands proved or not is a matter for the Trial Court to assess. As regards the investigation by the police, the State and the Objector have submitted that the duty of the police is to see if the evidence accumulated in the course of investigation reveal an indictable case against the accused and its not the job of the police to asses the evidence from the standpoint of whether, the case would end in a conviction or an acquittal. They had thus prayed that there is no error in the order framing charge and that the petition filed by the Petitioner deserves to be dismissed and the Petitioner be asked to stand trial.

13. Heard the Ld. Counsels for the parties and perused the documents on record. The evidence on record against the Petitioner reveals that his involvement if any, appears to be peripheral. However, the questions that this case raise, as mentioned earlier in paragraph 2 of this order, is the approach of the police while investigating a charge against a prospective accused. Investigation is an executive act with far reaching legal implications for the accused. A fair investigation cannot mean an investigation only from the stand point of the victim alone. The right to a fair trial of the accused in fact commences from the stage of investigation itself. A result of a biased investigation continues to flow through the course of the trial. A fair investigation inheres in Article 14 and 21 of the Constitution.

14. A fair investigation is not only a constitutional and statutory mandate on the State but a solemn duty owed by the State in the fulfilment of its commitment towards international covenants to which it is a signatory. India is a signatory to the Universal Declaration of Human Rights (hereinafter referred to as "UDHR"). Article 7 of the UDHR reads, **All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.** This is akin to the

protection provided by Article 14 of the Constitution which guarantees equality under the law and equal protection of the Law. However, the said protection is also available for a person accused of an offence. Procedure established by law requires the police to be fair in investigation which is to be carried out from the standpoint of the accused also.

15. The term "Investigate" has been defined as **"1. To inquire into (a matter) systematically; to make (a suspect) the subject of a criminal inquiry <the police investigated the suspect's involvement in the murder>. 2. To make an official inquiry <after the judge dismissed the case, the police refused to investigate further>[1]"**. "Investigation" has been defined as **"The activity of trying to find out the truth about something, such as crime, accident, or historical issue; esp., either an authoritative enquiry into certain facts, as by a legislative committee, or systematic examination of some intellectual problem or empirical question, as by mathematical treatment or use of the scientific method"**[2].

16. Emphasising on the importance of a fair investigation as an integral step in the dispensation of justice, the Supreme Court observes **"What is of importance is that as justice must not only be done but it must also appear to have been done, similarly, investigation must not only be fair but must appear to have been conducted in a fair manner"**[3]. Again, the Supreme Court while highlighting the necessity of a fair and proper investigation in the establishment of the rule of law held **"A fair and proper investigation is always conducive to the ends of justice and for establishing the rule of law and maintaining proper balance in law and order. These are very vital issues in a democratic setup which must be taken care of by the courts"**[4]**.**

17. Talking about the onerous task upon the police to conduct a fair investigation and while highlighting the role of the investigating agency, the Supreme Court held **"There is a very high degree of responsibility placed on an investigating agency to ensure that an innocent person is not subjected to a criminal trial. This responsibility if coupled with an equally high degree of ethical rectitude required of an investigating officer or an investigating agency to ensure that the investigations are carried out without any bias and are concluded in all fairness not only to the accused person but also the victim of any crime, whether the victim is an individual or the State"**[5]. Elevating a fair investigation to the status of a Human Right, the Supreme Court held

[1] **Black's Law Dictionary - Tenth Edition**
[2] **Black's Law Dictionary - Tenth Edition**
[3] **Common Cause Vs. Union of India - (2015) 6 SCC 332, para 35**
[4] **Azija Begum Vs. State of Maharashtra - (2012) 3 SCC 126, para 13**
[5] **Common Cause Vs. Union of India - (2015) 6 SCC 332, para 31**

".....Fairness in investigation as also trial is a human right of an accused. The state cannot supress any vital document from the Court only because the same would support the case of the accused"[6].

18. Under the Criminal Procedure Code, 1973 (hereinafter referred to as the "Code"), the definition of investigation in section 2(h) reflects that it entails the "collection of evidence" by the police or any other person authorised by a Magistrate. The same process of assimilating and appreciating evidence to see if on the basis of it a person can be put to trial, when done by a Magistrate, is defined in section 2(g) of the Code as an Inquiry.

19. Investigation is an executive action with serious implications to the legal and constitutional rights of an individual. In Administrative Law, the concept of acting fairly involves **"Where an Act of Parliament confers upon an administrative body functions which involve its making decisions which affect to their detriment the rights of other persons or curtail their liberty to do as they please, there is a presumption that Parliament intended that the administrative body should act fairly towards those persons who will be affected by their decisions"**[7].

20. Thus, it is seen that investigation is an executive power vested in the police under the Code, generally. There are other Special Statutes which may provide for additional or different powers of investigation to the police for the investigation of the offence laid down in the Special Statute. Thus, **".....the investigation of an offence is the field exclusively reserved for police officers whose powers in that field are unfettered so long as the power to investigate into the cognisable offences is exercised legitimately and in strict compliance with the provision of the Code of Criminal Procedure 1973...."[8].**

21. Authority without responsibility or accountability, leads to a reprehensible situation where the abuse of authority, or its use with a shade of bias, can render worthless all the hallowed rights of the individual articulated in the Constitution. Investigative powers of the police are not merely an "Authority" but also a "Responsibility". Where the police have vast powers of arrest, search and seizure in the course of an investigation, it also has the hallowed responsibility of being fair in the conduct of investigation. Fairness in investigation can never mean accepting the case put forward by the complainant as the gospel truth but would involve in its scope, considering the case put forth by the accused in his defence. Undoubtedly, the accused is clothed with the right against self-incrimination and many an accused prefers to hold his peace, but where the accused informs the police about his innocence and even offers

---

[6] **Samadhan Dhudaka Koli Vs. State of Maharashtra (2008) 16 SCC 705 - Page 705, Para 12**
[7] **Administrative Law - Tenth Edition - H.W.R. Wade & C.F. Forsyth, Page 415**
[8] **Halsbury's LAWS OF INDIA - Second Edition Vol. 12(2) - Page 1 to 2**

evidence to establish the same, such evidence is either not received by the police or after receiving it, it is lost is the pages of the inner case diary. Investigation into the defence of the accused is seldom done. Where the accused provides credible material to the police to investigate and ascertain his innocence, it is the bounden duty of the police to investigate into the version put forward by the accused though, it is well within its right to arrive at a finding after such investigation, that the defence put forth by the accused is not credible and reject the same by giving reasons.

22. When Article 21 of the Constitution provides that **"No person shall be deprived of his life or personal liberty except according to procedure established by law"**, a fair and unbiased investigation by the police into the defence put forth by an accused, inheres in the "procedure established by law" of Article 21. Thus, ignoring the defence of the accused in the course of investigation, the same would result in a violation of the right of the accused under Article 21 of the Constitution as such a one-sided investigation imperils the accused by exposing him to an arrest and custody, though innocent.

23. Investigations into certain offences like 498-A and offences falling in the penumbra of a civil and criminal liability, the police or the investigative agency would do well to invite from the accused, his version, even if not offered. Many a times, considering the case of the accused may reveal the nonexistence of criminal liability upon the accused. As investigation is the ascertainment of truth, the same can be done only by analysing the case of both, the complainant and the accused. The shortage of manpower and expenditure are not viable excuses available to the police for not investigating into the defence put forth by the accused.

24. Thus, this court concludes **(a)** that a fair investigation is one which is done for the purpose of unearthing the truth and not for the sole purpose of securing a conviction. It goes without saying that where the police would ensure that an accused is tried and convicted on account of adequate evidence to prove his guilt, it would also close the case against the innocent where there is no evidence to sustain a reasonable prospect of conviction. **(b)** that a fair trial entails considering the defence of the accused and investigating the same to ascertain if the allegations levelled by the Complainant against the accused appear to be *prima facie* true or whether the consideration of the material put forth by the accused, renders the allegations against him, as levelled by the Complainant, highly improbable.

25. The facts in the instant case reveal that the police could have and should have investigated into the allegations against the Petitioner and ascertained the veracity of the charges against him, as the Petitioner was staying in a different State, pursing (sic : pursuing) his education and profession, and was away from the deceased and his brother and also away from his parents and therefore, the

probability of him being *particeps criminis* in the offence u/s. 498-A, 304-B and 3 and 4 of the Dowry Prohibition Act, was so extremely improbable and its clear that the Petitioner was roped in to wreck vengeance on the entire family of the Petitioner. Even otherwise, the allegations against the Petitioner, are so generalised, omnibus and flippant that the same do not disclose a prima facie case against the Petitioner.

26. Thus, this petition succeeds and the impugned order dated 16/04/18, passed by the Court of the Ld. XVIII Additional Sessions Judge, Bhopal in Sessions Trial No. 192/2018 (State of Madhya Pradesh [through P.S. Chunabhatti, Bhopal] Vs. Utkarsh Saxena) whereby, the Ld. Trial Court was pleased to frame charges against the Petitioner for offence u/s. 304-B and 498-A IPC and 3/4 of the Dowry Prohibition Act is set aside and the Petitioner is discharged.

Revision allowed

I.L.R. [2019] M.P. 662
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Anand Pathak
M.Cr.C. No. 47297/2018 (Gwalior) decided on 7 December, 2018

MISS A …Applicant

Vs.

STATE OF M.P. …Non-applicant

***A. Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 12, Criminal Procedure Code, 1973 (2 of 1974), Section 438 and Penal Code (45 of 1860), Sections 498-A, 376, 506(B) & 34 – Anticipatory Bail* – Held – Charge sheet against co-accused persons has been filed and only allegation against present applicant is in respect of criminal intimidation – From the very nature of allegations, it is fit case for grant of anticipatory bail – Application allowed. (Paras 28 to 30)**

क. किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2), धारा 12, दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 एवं दण्ड संहिता (1860 का 45), धाराएँ 498–ए, 376, 506(बी) व 34 – अग्रिम जमानत – अभिनिर्धारित – सह–अभियुक्तगण के विरूद्ध आरोप–पत्र प्रस्तुत किया गया तथा वर्तमान आवेदक के विरूद्ध अभिकथन केवल आपराधिक अभित्रास के संबंध में है – अभिकथनों के मूल स्वरूप से अग्रिम जमानत प्रदान करने हेतु यह उचित प्रकरण है – आवेदन मंजूर।

***B. Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 10 & 12 and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Maintainability of Application* – Held – Remedy of seeking anticipatory bail u/S 438 Cr.P.C. by a juvenile is**

maintainable – No provision in the Act of 2015 either expressedly or by necessary implication, excludes applicability of Section 438 of the Code – Section 10 & 12 of the Act of 2015 do not bar the remedy of anticipatory bail. (Para 24 & 26)

ख. किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2), धारा 10 व 12 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – आवेदन की पोषणीयता – अभिनिर्धारित – एक किशोर द्वारा दं.प्र.सं. की धारा 438 के अंतर्गत अग्रिम जमानत चाहने का उपचार पोषणीय है – 2015 के अधिनियम में कोई उपबंध अभिव्यक्त रूप से या आवश्यक विवक्षा द्वारा संहिता की धारा 438 की प्रयोज्यता को अपवर्जित नहीं करता है – 2015 के अधिनियम की धारा 10 व 12 अग्रिम जमानत के उपचार को वर्जित नहीं करती।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 438 and Penal Code (45 of 1860), Section 11 – Anticipatory Bail – Term "any person"* – Held – The word "any person" as referred in Section 438 Cr.P.C. and as defined in Section 11 IPC gives liberty to a child in conflict with law to prefer anticipatory bail u/S 438 Cr.P.C. (Paras 18, 19 & 22)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 एवं दण्ड संहिता (1860 का 45), धारा 11 – अग्रिम जमानत – शब्द ''कोई व्यक्ति'' – अभिनिर्धारित – शब्द ''कोई व्यक्ति'' जैसा कि दं.प्र.सं. की धारा 438 में निर्दिष्ट है और जैसा कि भा.दं.सं. की धारा 11 में परिभाषित है, विधि का उल्लंघन करने वाले बालक को दं.प्र.सं. की धारा 438 के अंतर्गत अग्रिम जमानत प्रस्तुत करने की स्वतंत्रता देता है।

***D. Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Section 10 & 12 – Words "arrest", "detained" and "apprehended"* – Held – In the Act of 2015, the word "apprehended" or "detained" has been used in place of "arrest" which indicates the legislative intent that juvenile cannot be placed under harsh or embarrassing conditions – Remedy of Section 438 Cr.P.C. to a juvenile furthers the legislative intent of Act of 2015. (Para 13 & 17)**

घ. किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2), धारा 10 व 12 – शब्द ''गिरफ्तारी'', ''निरूद्ध'' तथा ''आशंकित'' – अभिनिर्धारित – 2015 के अधिनियम में शब्द ''आशंकित'' या ''निरूद्ध'' का उपयोग ''गिरफ्तारी'' के स्थान पर किया गया है जो यह विधायी आशय इंगित करता है कि किशोर को कठोर अथवा उलझन भरी परिस्थितियों के अधीन नहीं रखा जा सकता है – एक किशोर को दं.प्र.सं. की धारा 438 का उपचार, 2015 के अधिनियम के विधायी आशय को आगे बढ़ाता है।

Cases referred:

MCRCA No. 549/2016 decided on 03.03.2017 (Chhattisgarh High Court) (DB), AIR 1980 SC 1632, AIR 2011 SC 312, AIR 1984 SC 5.

V.D. Sharma, for the applicant.
Ravindra Singh, P.P. for the non-applicant/State.

O R D E R

ANAND PATHAK, J.:-This is first bail application under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') at the instance of a juvenile (aged 15 years 11 months 23 days at the time of commission of offence) for the alleged offence under Sections 498-A, 376, 326-A, 506(B) and 34 of IPC registered at crime No.264/2018 at Police Station Kumbhraj District Guna.

2. At the outset, learned counsel for the respondent/State raised the objection regarding maintainability of application for anticipatory bail under Section 438 of the Code at the instance of a Juvenile, therefore, before adverting to the merits of the case, question of maintainability of application at the instance of juvenile under Section 438 of the Code is decided.

3. As per the case of prosecution, prosecutrix is sister-in-law (Bhabhi) of present applicant because she is married to her brother Arbaz Khan. After marriage of the prosecutrix on 01-11-2017, when she and her parents did not satiate the dowry demand of family members of in-laws, then she was subjected to physical and mental abuse. On 22-05-2018 when she was sleeping, her brother-in-law Shahbaz Khan (Devar) knocked the door and after entering the room, raped her. Immediately thereafter, present applicant came to her and threatened her for life if she discloses this incident to anybody. Acid was also thrown over her. Therefore, report was lodged on which, FIR was registered, case was taken into investigation and application under Section 438 of the Code was preferred before the Sessions Court. Same was rejected. Therefore, this application has been preferred.

4. It is submitted by learned counsel for the applicant that the application under Section 438 of the Code is maintainable and no bar is being created by Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act of 2015'). He referred Section 12 of the Act of 2015 to take argument further by making submission that although Section 12 contemplates grant of bail when juvenile (Child In Conflict with Law) is arrested or detained by the police or appears or brought before Juvenile Justice Board, but from perusal of Section 12 of the Act of 2015, it cannot be gathered that anticipatory bail under Section 438 of the Code is barred in specific terms. Thus, Section 12 of the Act of 2015 nowhere bars the anticipatory bail. While referring Sections 4 and 5 of the Code, it is further submitted that the Act of 2015 does not regulate procedure in any way where remedy of Section 438 of the Code is altogether wiped out in respect of Juvenile or Child In Conflict with Law (hereinafter referred as 'CICL'). He relied upon the judgment rendered by the

High Court of Kerala at Ernakulam in the matter of *Mr. X S/o Baby V.M. Vs. The State of Kerala* passed on 05-06-2018 in Bail Application No.3320 of 2018. According to him, the said judgment has considered the judgment of Division Bench of Chhattisgarh High Court in the case of *Sudhir Sharma Vs. State of Chhattisgarh* passed on 03-03-2017 in MCRCA No.549 of 2016 wherein application under Section 438 of the Code was found to be maintainable in respect of juvenile .

5. On the basis of judgments referred above, learned counsel for the applicant submits that the application under Section 438 of the Code is maintainable. He argued on merits also while making submission that applicant is juvenile and she has been falsely implicated in the case because in a matter like offence under Section 498-A of IPC it is an usual practice to rope in all the members of the family by levelling false and improper allegations to build pressure over the family. In such circumstances, he prayed for anticipatory bail under Section 438 of the Code.

6. Learned counsel for the respondent/State opposed the prayer made by the applicant and submitted that the application under Section 438 of the Code is not maintainable because Section 12 of the Act of 2015 bars such application. He opposed the prayer of grant of anticipatory bail on the basis of merits also.

7. Heard learned counsel for the parties at length and perused the case diary.

8. The first and foremost question under consideration of this Court is maintainability of application under Section 438 of the Code for anticipatory bail at the instance of juvenile or a CICL. It is pertinent to mention that Bail has not been defined in the Code, therefore, exact meaning and import of bail is to be derived from Law Lexicon or Legal Dictionaries or through Common Law procedure.

Black's Law Dictionary defines the bail as " A security such as cash or a bond; especially, security required by a Court for the release of a Prisoner who must appear at future time".

Concise Law Dictionary (Fourth Edition 2012 Lexis Nexis) defined the bail "To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called bail".

Duhaime's Law Dictionary has defined the bail as "The pledge of cash or property to secure the release of a thing or person which would otherwise be held in custody."

In R. Vs. Yue, a 2007 decision of the Ontario Court of Appeal, Justice Mc Pherson used these words:

"... *bail* is not jail. (B) ail is what an accused person seeks in order to stay out of jail.

"In saying this, I do not suggest that *bail* is not a restraint on the liberty of an accused person. It is a restraint and, where there are strict *bail* conditions, it can be a serious restraint. However, ... there is a fundamental difference between *bail* and jail. The natural meaning of these words - known at a practical, common sense level by all accused persons who seek *bail* - is that the pith and substance of *bail* is liberty, whereas the essence of jail is a profound loss of liberty."

9. Besides taking guidance from the definition and judgment as referred above, concept of bail can be deciphered by taking the note of the following facts that:

i- Period of detention under arrest is troublesome and is far from anybody's liking.

ii- According to Criminal Jurisprudence, person is deemed to be innocent unless contrary is proved against him.

iii- Before person is found guilty he should not undergo hardship more than what is absolutely necessary.

On such tenets of Criminal Jurisprudence, concept of Bail rests.

10. In the Code, anticipatory bail is provided under Section 438 whereas Section 439 of the Code provides for remedy of bail when any person is in custody.

11. Sections 4 and 5 of the Code have important bearing in the controversy because Section 4 mandates that all offences under the IPC shall be investigated, enquired into, tried and otherwise dealt with according to the provisions contained in the Code but subject to any enactment for the time being in force regulating the manner or place of investigation, enquiry etc. Besides that, Section 5 of IPC is saving clause which gives sufficient leverage regarding procedure to the special or local law for the time being in force or any special form of procedure prescribed, by any other law for the time being in force regarding jurisdiction or authority etc. Therefore, it is to be seen whether the Act of 2015 provides any special procedure by which Section 438 of the Code has been ousted from the purview of the Act of 2015.

12. Chapter IV of the Act of 2015 (Procedure In Relation to Children In Conflict with Law) deals with procedure. Relevant provisions under the Act may be now adverted to. Section 10(1) of the Act reads as under:

*" **10. (1)** As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended: Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail."*

Section 12 of the Act of 2015 provides as under:

*" **12. (1)** When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:*

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under subsection (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

13. Perusal of Chapter IV specially Sections 10 and 12 of the Act of 2015 indicates that legislature has used the word "apprehend or detained" in respect of restricting liberty of a juvenile and deliberately not used the word "arrest" as provided under Section 46 of the Code wherein procedure has been prescribed how Arrest is to be made. Purpose is obvious because legislative intent is to handle the juvenile with care because of tender age, impact of social development over

juvenile and avoidance of harshness of the procedure, so that it may not adversely affect the mental makeup of a juvenile and therefore, the word has been coined "Child In Conflict with Law". Child has not been referred as accused but with some related terms to scale down the gravity of alleged misdeed or offence. Section 10 of the Act of 2015 empowers the police for apprehending a child alleged to be in conflict with law. It does not provide arrest of a child alleged to be in conflict with law. As per Section 12 of the Act of 2015, when a person who is apparently a child and alleged to have committed bailable or non-bailable offence is apprehended or detained by the police or appears or brought before Juvenile Justice Board such person shall notwithstanding anything contained in the Code or in any other law for the time being in force, be released on bail unless the Board is satisfied that there are reasonable grounds for believing that granting bail to him is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

14. Section 12(1) of the Act of 2015 to a larger extent obliterates distinction between bailable or non-bailable offences as far as CICLis concerned because whatever be the nature of offence bailable or non-bailable, he is entitled to be released on bail unless the proviso to that provision applies. Section 12(1) of the Act of 2015 deals with a situation where CICL is apprehended or detained by the police or appears or brought before the Board, therefore, it contemplates a situation where a person is apprehended or detained. Therefore, objection was raised by the Government counsel that it indicates legislative intent that no remedy of anticipatory bail exists for a juvenile. Government counsel also pressed over the expression "notwithstanding anything contained in the Code of Criminal Procedure, 1973" to submit that only remedy for a juvenile or CICL appears to have regarding bail once he is apprehended or detained. Therefore, it is to be seen whether the expression as referred above would create bar for anticipatory bail under Section 438 of the Code or not. In fact Section 12(1) of the Act of 2015 only deals in respect of procedure when a juvenile is apprehended or detained. It nowhere excludes remedy of Section 438 of the Code in expressed or implied terms because if legislative intent would have been to bar the remedy of Section 438 of the Code then the said remedy would have been categorically incorporated in the statute. It nowhere refers bar in specific terms. Remedy of anticipatory bail under Section 438 of the Code is a substantive right of a person in case of his arrest or detention and is getting its source from Article 21 of the Constitution of India regarding personal liberty. Therefore, seeking anticipatory bail is a substantive right.

15. Chapter IV of the Act of 2015 deals with procedure and usually, chapter which prescribes Procedure for a Statute does not deal in respect of Substantive Rights. Therefore Chapter IV of the Act of 2015 is to be seen holistically and

inference can only be drawn on the basis of language of Section 12(1) of the Act of 2015 which deals in respect of particular exigency (i.e. when CICL is apprehended) rather than crystallizing other substantive right (i.e. regarding anticipatory bail under Section 438 of Code). Chapter IV of the Act of 2015 deals with procedure which includes Sections 10 and 12 and it nowhere bars the application under Section 438 of the Code.

16. Section 12 of the Act of 2015 only put a juvenile/CICL in better position vis-a-vis any other person facing same allegations. Use of expression "notwithstanding anything contained in the Code of Criminal Procedure, 1973" does not mean ouster of remedy of Section 438 of the Code but it refers ouster of other strict conditions contained in Section 439 of the Code which incorporates conditions under Section 437(3) of the Code also as well as a situation under Section 439 (2) of the Code wherein procedure for cancellation of bail is also provided. Expression "notwithstanding anything contained in the Code of Criminal Procedure, 1973" means the conditions incorporated under Section 437 and 439 of the Code would not operate against a juvenile because a juvenile has to be handled with care so that his future and his life may not spoil at the altar of allegations and rigours of investigation and procedure. Relaxation regarding formalities of Section 439 of the Code does not mean that Section 12 of the Act of 2015 creates bar for Section 438 of the Code.

17. One more point needs to be addressed is use of word "*apprehended*" or "*detained*" instead of "*arrest*" and it indicates legislative intent that a juvenile cannot be placed under harsh or embarrassing condition when legislative intent is so sensitive towards cause of juvenile then it cannot be presumed (in absence of any expressed provision) that remedy of Section 438 of the Code is barred, rather the maintainability of Section 438 of the Code takes spirit of the Act of 2015 further and in fact the remedy of anticipatory bail is in line with legislative intent as well as object of the enactment to a higher level because in a particular condition if remedy of Section 438 of the Code is treated as barred then only on the pretext of allegations, criminal law will set into motion against a juvenile and even apprehended or detained (not arrested) would cause social and psychological impact on a juvenile and that cannot be the intention of the legislature at the time of framing enactment which is based upon Reformatory Connotation, than the punitive in nature, therefore, interpretation which takes legislative intent further needs to be adopted. Remedy of Section 438 of the Code for anticipatory bail to a juvenile furthers the legislative intent of the Act of 2015.

18. The word "any person" as has been referred in Section 438 of the Code has been defined in Section 11 of IPC which reads as under:

> *"**Section 11**. Person".—The word "person" includes any Company or Association or body of persons, whether incorporated or not."*

19. The inclusive nature of definition of Person gives liberty to a juvenile to prefer anticipatory bail under Section 438 of the Code.

20. Sections 4 and 5 of the Code contemplate a situation wherein procedure is barred by any special law in specific terms but perusal of Sections 10 and 12 of the Act of 2015 nowhere bars the provisions of Section 438 of the Code in specific terms. Only on the basis of reference of grant of bail when juvenile is apprehended does not *ipso facto* mean exclusion of the remedy of Section 438 of the Code which deals with personal liberty of a person which is basic tenets and rights envisaged under Article 21 of Constitution of India and the Constitutional Bench of Hon'ble Apex Court in the celebrated judgment in the matter of *Gurbaksh Singh Sibbia Vs. State of Punjab*, AIR 1980 SC 1632 has held as under:

> *" Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear is not 'belief ' for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.*
>
> *Any order of bail can, of course, be effective only from the time of arrest because, to grant bail, as stated in Wharton's Law Lexicon, is to 'set at liberty a person arrested or imprisoned, on security being taken for his appearance'. Thus, bail is basically release from restraint, more particularly, release from the custody of the police. The act of arrest directly affects freedom of movement of the person arrested by the police, and speaking generally, an order of bail gives back to the accused that freedom on condition that he will appear to take his trial. Personal recognisance, suretyship bonds and such other modalities are the means by which an assurance is secured from the accused that though he has been released on bail, he will present himself at the trial of offence or offences of which he is charged and for which he was arrested.*

The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. Police custody is an inevitable concomitant of arrest for non-bailable offences. An order of anticipatory bail constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. In other words, unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. Section 46(1) of the Code of Criminal Procedure which deals with how arrests are to be made, provides that in making the arrest, the police officer or other person making the arrest "shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action". A direction under section 438 is intended to confer conditional immunity from this 'touch' or confinement."

21. Later on, the Supreme Court in the case of *Siddharam Satlingappa Mhetre Vs. State of Maharashtra*, AIR 2011 SC 312 reiterated the concept of personal liberty in the following words:

" 17. It is clear from the Statement of Objects and Reasons that the purpose of incorporating Section 438 in the Cr.P.C. was to recognize the importance of personal liberty and freedom in a free and democratic country. When we carefully analyze this section, the wisdom of the legislature becomes quite evident and clear that the legislature was keen to ensure respect for the personal liberty and also pressed in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court.

54. Blackstone in " Commentaries on the Laws of England", Vol.I, p.134 aptly observed that " Personal liberty consists in the power of locomotion, of changing situation or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint unless by due process of law".

55. According to Dicey, a distinguished English author of the Constitutional Law in his treatise on Constitutional Law observed that, "Personal liberty, as understood in England, means in substance a person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification." [Dicey on Constitutional Law, 9th Edn., pp.207-08]. According to him, it is the negative right of not being subjected to any form of physical restraint or coercion that constitutes the essence of personal liberty and not mere freedom to move to any part of the Indian

territory. In ordinary language personal liberty means liberty relating to or concerning the person or body of the individual, and personal liberty in this sense is the antithesis of physical restraint or coercion.

62. This court defined the term "personal liberty" immediately after the Constitution came in force in India in the case of A. K. Gopalan v. The State of Madras, AIR 1950 SC 27. The expression 'personal liberty' has wider as well narrow meaning. In the wider sense it includes not only immunity from arrest and detention but also freedom of speech, association etc. In the narrow sense, it means immunity from arrest and detention. The juristic conception of 'personal liberty', when used the latter sense, is that it consists freedom of movement and locomotion.

63. Mukherjea, J. in the said judgment observed that 'Personal Liberty' means liberty relating to or concerning the person or body of the individual and it is, in this sense, antithesis of physical restraint or coercion.' Personal Liberty' means a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification. This negative right constitutes the essence of personal liberty.

64. In Kharak Singh v. State of U.P. and OtherAIR 1963 SC 1295, Subba Rao, J. defined personal liberty, as a right of an individual to be free from restrictions or encroachment on his person whether these are directly imposed or indirectly brought about by calculated measure. The court held that 'personal liberty' in Article21includes all varieties of freedoms except those included in Article 19.

65. In Maneka Gandhi v. Union of India and Another(1978) 1 SCC 248, this court expanded the scope of the expression 'personal liberty' as used in Article 21of the Constitution of India. The court rejected the argument that the expression 'personal liberty' must be so interpreted as to avoid overlapping between Article 21and Article 19(1).It was observed: "The expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19.

22. Therefore, Sections 4 and 5 of the Code would be applicable in absence of any contrary provisions in the Special Act or in special provision excluding the jurisdiction and applicability of the Code in specific terms. The word "any person" as referred in Section 438 of the Code and as defined in Section 11 of IPC gives liberty to a Child In Conflict with Law to prefer anticipatory bail under Section 438 of the Code.

23. The Hon'ble Apex Court while considering the import of these provisions of the Code has held in the case of *Vishwa Mitter Vs. O.P. Poddar*, AIR 1984 SC 5 in the following words:

" Generally speaking, anyone can put the criminal law in motion unless there is a specific provision to the contrary. This is specifically indicated by the provision of sub-sec. (2) of Sec. 4 which provides that all offences under any other law-meaning thereby law other than the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. It would follow as a necessary corollary that unless in any statute other than the Code of Criminal Procedure which prescribes an offence and simultaneously specifies the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, the provisions of the Code of Criminal Procedure shall apply in respect of such offences and they shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure."

24. At the cost of repeation (sic : repetition) , it is reiterated that no provision in the Act of 2015, either expressedly or by Necessary Implication, excludes applicability of Section 438 of the Code which provides for grant of anticipatory bail. In absence of any special provision dealing with grant of anticipatory bail to a juvenile/CICL the provisions contained in the Code regarding anticipatory bail shall be applicable. The Act of 2015 even otherwise does not exclude general application of the Code, therefore, it cannot be inferred that legislature intended to give overriding effect to statutory scheme of the Act of 2015 over the provisions of general application contained in the Code.

25. This Court is further augmented in its view by taking into consideration, the judgment rendered by the Hon'ble High Court of Kerala in the matter of *Mr. X S/o Baby V.M.* (supra) and the Division Bench judgment of Hon'ble Chhattisgarh High Court in the matter of *Sudhir Sharma* (supra) wherein the application under Section 438 of the Code has been found to be maintainable at the instance of juvenile/CICL.

26. Remedy of seeking anticipatory bail under Section 438 of the Code by a juvenile is maintainable and Sections 10 and 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 do not bar the remedy of anticipatory bail.

27 Therefore, in the cumulative analysis, this Court holds application under Section 438 of the Code at the instance of the applicant who is juvenile (and allegedly CICL) as maintainable and therefore, objection of the respondent/State is overruled and the application is heard on merits.

28. Applicant herein is aged 15 years 11 months 23 days at the time of commission of offence and as per allegations as contained in the FIR itself she threatened the prosecutrix that if she informed anybody regarding alleged rape

committed by the applicant's brother then she will kill the prosecutrix. Although, charge-sheet against the other co-accused persons have been filed but investigation is going on against the present applicant under Section 173 (8) of Cr.P.C., therefore, she is having her apprehension of detention.

29. Perusal of case diary, FIR and other documents indicate that charge-sheet against the co-accused has been filed and only allegation against the present applicant is in respect of criminal intimidation while other co-accused are facing trial for the offence under Section 498-A as well as 376 of IPC and other offences. Therefore, from the very nature of the allegations and facts situation of the case, it is a fit case for grant of anticipatory bail.

30. Therefore, the application preferred by the applicant is allowed. It is directed that applicant shall be released on bail in case of her arrest on furnishing personal bond in the sum of **Rs.25,000/- (Rs. Twenty Five Thousand Only)** with two solvent sureties of the like amount, who shall be her parents or other close relatives, to the satisfaction of Arresting Authority/Investigating Officer. Applicant shall appear before the Juvenile Justice Board as and when she is called upon to do so.

31. Taking into account the spirit and object of Section 74 of the Act of 2015 which prohibits disclosure of the identity of Child in Conflict with Law, this Court intends not to disclose identity of the applicant and therefore, directs that name of the applicant shall not be mentioned in the cause title of this order but her name shall be referred as 'Miss A'.

32. In the result, application under Section 438 of the Code for anticipatory bail is hereby allowed and disposed of.

Ordered accordingly.

Application allowed.

I.L.R. [2019] M.P. 674
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice S.C. Sharma
M.Cr.C. No. 17519/2018 (Indore) decided on 31 January, 2019

MANORAMA BAI (SMT.) & ors. …Applicants

Vs.

STATE OF M.P. …Non-applicant

***A. Penal Code (45 of 1860), Sections 498-A, 304-B & 34 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR & Criminal Proceedings* – Held – Wife committed suicide after 7 yrs. of marriage – Statements of brother-in-law and real brother of deceased do not**

specify any specific instances except for bald statement against entire family of husband including 87 yrs. old grandmother – In suicide note, there is no whisper of any kind of cruelty nor any kind of demand of dowry by applicants – Statements recorded after 4 months of incident, also do not establish *prima facie* commission of offence – FIR and criminal proceedings quashed – Application allowed. (Paras 10 to 12, 17 & 18)

क. दण्ड संहिता (1860 का 45), धाराएँ 498–ए, 304–बी व 34 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन व दाण्डिक कार्यवाहियाँ अभिखंडित की जाना – अभिनिर्धारित – विवाह के सात वर्ष के पश्चात् पत्नी ने आत्महत्या कारित की – मृतिका के जीजा एवं सगे भाई के कथन उसके पति की 87 वर्षीय दादी सहित पूरे परिवार के विरूद्ध कोरे कथन के अलावा कोई विनिर्दिष्ट घटना का उल्लेख नहीं करते हैं – आत्महत्या लेख में, आवेदकगण द्वारा न तो किसी प्रकार की क्रूरता तथा न ही किसी प्रकार के दहेज की मांग करने का उल्लेख है – घटना के 4 माह के पश्चात् अभिलिखित किये गये कथन भी प्रथम दृष्ट्या अपराध का कारित किया जाना स्थापित नहीं करते हैं – प्रथम सूचना प्रतिवेदन तथा दाण्डिक कार्यवाहियाँ अभिखंडित – आवेदन मंजूर।

***B. Penal Code (45 of 1860), Section 306 – Ingredients* – Held – Facts and circumstances do not suggest mental preparedness of applicants with intention to instigate, provoke, incite or encourage to commit suicide – Suicide note left by deceased also does not implicates the applicants at all. (Para 16)**

ख. दण्ड संहिता (1860 का 45), धारा 306 – घटक – अभिनिर्धारित – तथ्य और परिस्थितियां आत्महत्या कारित करने के लिए आवेदकगण द्वारा उकसाने, प्रकोपित करने, उद्दीप्त करने अथवा बढ़ावा देने की मानसिक तैयारी नहीं सुझाते हैं – मृतिका द्वारा छोड़ा गया आत्महत्या लेख आवेदकगण को बिल्कुल भी आलिप्त नहीं करता है।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Delay in FIR* – Held – Incident is of 26.10.2016 and FIR was lodged on 18.02.2017 – Had it been a case of cruelty or a case of abetment to commit suicide, nothing prevented the parents of the girl or other relatives to lodge a FIR with quite promptitude. (Para 12)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 – प्रथम सूचना प्रतिवेदन में विलंब – अभिनिर्धारित – घटना 26.10.2016 की है तथा प्रथम सूचना प्रतिवेदन दिनांक 18.02.2017 को दर्ज किया गया – चाहे यह क्रूरता का प्रकरण था अथवा आत्महत्या के दुष्प्रेरण का प्रकरण था, लड़की के माता–पिता या अन्य रिश्तेदारों को पूर्णतया तत्परता से प्रथम सूचना प्रतिवेदन दर्ज करने से नहीं रोका गया।

Cases referred:

(2002) 5 SCC 177, (2013) 3 SCC 684, M.Cr.C. No. 5952/2018 decided on 26.03.2018.

Amit S. Agrawal with *Rishi Tiwari*, for the applicants.
Sudarshan Joshi, G.A. for the non-applicant/State.

J U D G M E N T

S.C. SHARMA, J.:- The present petition has been filed for quashment of First Information Report and subsequent proceedings arising out of First Information Report registered at Crime No.59/2017 for offences under Section 498-A, 306 and 34 of the Indian Penal Code, 1860.

2. The facts of the case reveal that the petitioner No.1 is the grand mother of petitioner No.5 Kapil Sharma, who was married to Monica Sharma (deceased), the petitioner No.2 is the father of the petitioner No.5, petitioner No.3 is the mother of petitioner No.5, petitioner No.4 is uncle of petitioner No.5 and petitioner No.5 is the husband of the deceased.

3. A marriage took place between the petitioner No.5 Kapil Sharma and the deceased wife Monica Sharma on 12/05/2009 and they were living happily in a joint family at Indore. A child was born out of the wedlock in the year 2010. An unfortunate incident took place on 26/10/2016 in the matrimonial house of Smt. Monica Sharma. She committed suicide by hanging. The death of Smt. M o n i c a Sharma was inquired / investigated after registering an inquest under Section 174 of the Code of Criminal Procedure, 1973 and a postmortem was done by the specialist. The reason assigned for death is Asphyxia as a result of ante mortem hanging.

4. The death has taken place on 26/10/2016 and on 18/02/2017 a First Information Report was lodged by one Saligram Raghuvanshi making allegations against the entire family members. The police has recorded statements of family members and one Shivkumar, who is brother-in-law (*Jeeja*) of the deceased has given his statement on 21/02/2017 stating that the marriage took place on 12/05/2009, dowry was given in the marriage and a demand of dowry was being made and Monica was being subjected to cruelty. The statement of Shivkumar is available in Challan and the same reads as under:-

''कथन

21—2—17

थाना अन्नपूर्णा इन्दौर अप. क्र. 59/17 धारा 498—A, 306, 34 IPC नाम — शिवकुमार पिता राम वल्लभ तिवारी उम्र 48 वर्ष नि—फ्लेट नं. 101, सागर सिटी अपार्टमेन्ट, हिमायत नगर शेड नं. 10 हेदराबाद मो. नं. 9704337000 ..अपठनिय.. बताया कि मै उपरोक्त पते पर रहता हूँ तथा हैदराबाद में सेनेट्री का बिजनेस करता हूँ मेरी ससुराल हरदा में है मोनिका मेरी रिश्ते में साली लगती थी हेमन्त का प्रेम..अपठनिय.. है, मोनिका की शादी 12—5—09 को कपिल शर्मा के साथ इन्दौर से हुई थी शादी में 40 तोला सोना, सवा किलो चांदी के जेवर व अन्य सामग्री कुल

रूपये 20,00,000 बीस लाख रूपये शादी में खिलाने पिलाने में 05 लाख रूपये खर्च हुई थे शादी के डेढ़ साल बाद मोनिका के एक लड़का ऐश्वर्य हुआ था शदी के बाद से ही रूपयों की मंगनी ससुराल वाले ..अपठनिय.. कहने लगे तेरे भाई हेमन्त से रूपया लेकर आ कपड़ों का शोरूम खोलना है इसी बात को लेकर पति कपिल शर्मा, ससुर कृष्णचन्द शर्मा, सास सुशीला देवी, आंटी मनोरमा, चाचा ससुर गोपाल शर्मा शारीरिक रूप एवं मानसिक रूप से प्रताड़ित करते थे इसी बात को लेकर मोनिका ने 26–10–16 फांसी लगा ली । मोनिका ने आते जाते में बाते मेरे को व उसकी बहिन सारिका एवं परिवार वालो रिश्तेदारों को बताया मोनिका की मौत के जुम्मेदार उसका पति कपिल शर्मा ससुर कृष्ण चन्द्र शर्मा, सास सुशीला देवी आंटी मनोरमा चाचा ससुर गोपाल शर्मा जुम्मेदार है ।

हस्ता/– 21–2–17''

The real brother of the deceased Prem Kumar has also given statement to the police on 20/02/2017 and the statement of Prem Kumar also reads as under:-

''कथन

20–2–17

थाना अन्नपूर्णा इन्दौर अप. क. 59/17 धारा 498–A, 306, 34 **IPC** प्रेमकुमार पिता भीकमचन्द्र व्यास उम्र 46 वर्ष नि. 179 गणेश शंकर विधार्थी वार्ड सत्यनारायण मंदिर के पास हरदा (म.प्र.) 9826075175 ने .. अपठनिय..बताया कि मै उपरोक्त पते पर रहता हूँ तथा जिला सहकारी बैंक होशंगाबाद में लिपिक के पद पर कार्यरत हूँ। मेरी मोनिका रिश्ते में बहिन थी मेरी बहिन मोनिका की शादी 12.5.09 में इन्दौर के कपिल शर्मा के साथ हुई थी। शादी में 40 तोला सोना ज्वेलरी व सवा किलो चांदी का घरेलु सामान आदि दिया जिसकी कुल कीमत 20,00,000 रू 20 लाख रूपये थी खानेपीने में 5 लाख रूपया खर्च किये थे मोनिका की शादी में कुल 25,00,000 रू. खर्च किये थे। शादी के बाद से ही उसके ससुराल वाले पति कपिल शर्मा सास सुशीला देवी, आंटी मनोरमा, चाचा ससुर गोपाल शर्मा ससुर कृष्ण शर्मा रूपयों के लिए शारीरिक रूप एवं मानसिक रूप से प्रताड़ित करते थे। मोनिका को एक लड़का ऐश्वर्य हुआ था रूपयों अपने भाई हेमन्त लेकर हमें कपड़े का शोरूम खोलना है इसी बात को लेकर मोनिका ने 26–10–16 को फांसी लगा ली ये बात मोनिका ने आते जाते मेरे को एवं परिवार वालों एवं रिश्तेदारों को बतायी थी, मोनिका की मौत के जुम्मेदार उसका पति कपिल शर्मा, ससुर कृष्ण चन्द्र शर्मा, सास सुशीला देवी, आंटी मनोरमा, चाचा ससुर गोपाल शर्मा जुम्मेदार है।

हस्ता/– 20–2–17''

The statement of both the persons are word by word identical. They are omnibus statement making allegations against all the family members. No specific instance attracting the ingredients of Section 498-A finds place in the statements of the aforesaid persons.

5. The another important aspect of the case is that deceased Monica has left two suicide notes. The first suicide note is at page No.149 of the Challan and the same reads as under:-

> ''मेरी एक विनती है मेरे बेटे ऐश्वर्य को बहुत पढ़ाना उसे डॉक्टर बनाना वह शरारती है उसका ध्यान रखना ऐशू अपने पापा से बहोत प्यार करता है उसे पापा से अलग मत करना। ऐश्वर्य को उसके पापा के पास ही रहने देना।
>
> ऐश्वर्य की परवरिश उसके पापा ही करें।
>
> मेरी मौत का जिम्मेदार कोई नही है।''

The aforesaid suicide note is duly signed by the deceased Monica and the second suicide note is at page No.150 and the same reads as under:-

> ''मेरी एक विनती है मेरे बेटे ऐश्वर्य को बहुत पढ़ाना उसे डॉक्टर बनाना वह शरारती है उसका ध्यान रखना। ऐश्वर्य को उसके पापा के पास ही रहने देना वही उसकी परवरिश करे
>
> मेरी मौत का जिम्मेदार कोई नही है।''

At page No.209 of the Challan, *Tasdeek Nama* by cousin sister of the deceased finds place and she has verified the handwriting of the deceased. Not only this, the suicide notes were recovered from the room of the deceased, where she was found hanging.

6. Shri Amit S. Agrawal, learned Senior Counsel along with Shri Rishi Tiwari has argued before this Court that based upon omnibus statement, the entire family has been roped in. The death has taken place after seven years of marriage and there is in fact no evidence on record on the basis of which, the crime can be established and the registration of FIR is nothing but an after thought to harass the entire family at the behest of the parents of Monica on account of unfortunate incident, which has taken place.

7. To bolster his contentions, he has placed reliance upon a judgment delivered in the case of *Girdhar Shankar Tawade Vs. State of Maharashtra* reported in (2002) 5 SCC 177, *Vipin Jaiswal (A-I) Vs. State of Aandhra Pradesh* reported in (2013) 3 SCC 684 and lastly has placed reliance upon a judgment delivered by coordinate Bench of this Court in the case of *Abhay Kumar Katare Vs. State of Madhya Pradesh* (M.Cr.C.No.5952/2018, decided on 26/03/2018).

8. On the other hand, learned Government Advocate has opposed the prayer made by learned counsel for the petitioners and his contention is that at this stage sufficiency and insufficiency of the evidence cannot be looked into as this Court is dealing with a case of quashment of criminal proceedings and in case there is no evidence, the petitioners will certainly be acquitted by the trial Court.

9. He has drawn the attention of this Court towards the Postmortem Report and he has stated that there was an injury also over the body of the deceased. He has stated that the family members of the Monica have stated against all of the petitioners and it is not a case warranting interference by this Court in exercise of power conferred under Section 482 of the Code of Criminal Procedure, 1973.

10. This Court has carefully gone through the entire record made available by the petitioners as well as by respondent / State. The undisputed facts reveal that death has taken place after seven years of marriage. There is a child also aged about 09 years and there is no statement of child available on record neither he is a witness. The stereo type statement of brother-in-law and real brother, which have been reproduced earlier certainly speaks volumes about the entire episode and the entire case, which is registered against the present petitioners. The statements do not specify any specific instances except for the bald statement against the entire family including 87 years old mother-in-law.

11. It is nobody's case that the deceased has not left behind any suicide note nor it has been argued by the State Government that suicide notes were planted later on. In fact the police has recovered those suicide notes and the handwriting of the deceased has been verified by her own family members. In the suicide notes there is no whisper of any kind of cruelty nor any kind of demand of dowy (sic : dowry) on the part of the petitioners.

12. Apart from the statement of the relatives, which were recorded by the police after about four months of the incident, there is nothing on record even to establish *prima-facie* that the petitioners have committed offence under Section 498-A of the Indian Penal Code, 1860. The suicide has taken place on 26/10/2016 and the First Information Report was lodged only on 18/02/2017. Had it been a case of cruelty or a case of abetment to commit suicide, nothing prevented the parents of the girl or other relatives to lodge a FIR with quite promptitude.

13. The Hon'ble Supreme Court in the case of *Girdhar Shankar Tawade* (Supra) in paragraphs No.3, 14 and 18 has held as under:-

> "3. The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury :

whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrance the attributes of 'cruelty' in terms of Section 498-A.

14. Presently, we have on record a statement before the Executive Magistrate by was of a declaration which however does not lend any assistance in the matter in issue and as such we need not dilate thereon further.

18. A faint attempt has been made during the course of submissions that explanation (a) to the Section stands attracted and as such no fault can be attributed to the judgment. This, in our view, is a wholly fallacious approach to the matter by reason of the specific finding of the trial Court and the High Court concurred therewith that the death unfortunately was an accidental death and not suicide. If suicide is left out, then in that event question of applicability of explanation (a) would not arise -neither the second limb to cause injury and danger to life or limb or health would be attracted. In any event the willful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498- A and not de-hors the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A. The legislative intent is clear enough to indicate in particular reference to explanation (b) that there shall have to be a series of acts in order to be a harassment within the meaning of explanation (b). The letters by itself though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498-A against the accused. Acquittal of a charge under Section 306, as noticed hereinbefore, though not by itself a ground for acquittal under Section 498-A, but some cogent evidence is required to bring home the charge of Section 498-A as well, without which the charge cannot be said to be maintained. Presently, we have no such evidence available on record."

Keeping in view the aforesaid judgment, by no stretch of imagination, it can be held that even *prima-facie* offence under Section 498-A of the IPC has been committed by the present petitioners.

14. The apex Court in the case of *Vipin Jaiswal* (Supra) in paragraphs No.4, 8, 13, 14 and 16 has held as under:-

"4. At the trial, besides other witnesses, the prosecution examined the father of the deceased (informant) as PW 1, the cousin of PW 1 as PW 2 and the mother of the deceased as PW 4. The appellant volunteered to be a witness and got examined himself as DW 1 and took the defence that the deceased had left behind a suicide note written by her one day before her death in which she has stated that she had committed suicide not on account of any harassment by the appellant and her family members but due to the harassment by her own parents.

8. The learned counsel further submitted that so far as the suicide note (Ext. D-19) is concerned, the same cannot be believed to have been written by the deceased who was only a matriculate and the High Court has given good reasons in the impugned judgment why the suicide note cannot be believed to have been written by the deceased. He argued that in any case only on the basis of the evidence given by DW1, the Court cannot hold that the suicide note had been written by the deceased and not by someone else. He submitted that since the prosecution has been able to prove that the deceased had been subjected to not only a demand of dowry but also cruelty soon before her death, the Trial Court and the High Court have rightly held the appellant guilty both under Sections 304B and 498A, IPC.

13. What DW1 has further stated is relevant for the purpose of his defence and is quoted hereinbelow:

> "While cleaning our house we found a chit on our dressingtable. The said chit was written by my wife and it is in her handwriting and it also contains her signature. Ex. D 19 is the said chit. I identified the handwriting of my wife in Ex. D19 because my wife used to write chits for purchasing of monthly provisions as such on tallying the said chit and Ex. D19 I came to know that it was written by my wife only. Immediately I took the Ex. D19 to the P.S. Mangalhat and asked them to receive but they refused to take the same."

From the aforesaid evidence, it is clear that while cleaning the house the appellant came across a chit written in the handwriting of his wife and containing her signature. This chit has been marked as Ext. D-19 and the appellant has identified the handwriting and signature of the deceased in Ext. D19 which is written in Hindi.

14. The English translation of Ext.D19 reproduced in the impugned judgment of the High Court is extracted hereinbelow:

> "I, Meenakshi W/o Vipin Kumar, do hereby execute and commit to writing this in my sound mind, consciousness and senses and with my free will and violation to the effect that nobody is responsible for my death. My parents family members have harassed much to my husband. I am taking this step as I have fed up with his life. Due to me the quarrels are taking place here, as such I want to end my life and I beg to pardon by all."

It appears from Ext. D19 that the deceased has written the chit according to her free will saying that nobody was responsible for her death and that her parents and family members have harassed her husband and she was taking the step as she was fed up with her life and because of her quarrels were taking place.

> 16. In our considered opinion, the evidence of DW1 (the appellant) and Ext.D19 cast a reasonable doubt on the prosecution story that the deceased was subjected to harassment or cruelty in connection with demand of dowry. In our view, onus was on the prosecution to prove beyond reasonable doubt the ingredient of Section 498A, IPC and the essential ingredient of offence under Section 498A is that the accused, as the husband of the deceased, has subjected her to cruelty as defined in the Explanation to Section 498A, IPC. Similarly, for the Court to draw the presumption under Section 113B of the Evidence Act that the appellant had caused dowry death as defined in Section 304B, IPC, the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death. Since the prosecution has not been able to prove beyond reasonable doubt this ingredient of harassment or cruelty, neither of the offences under Sections 498A and 304B, IPC has been made out by the prosecution."

Keeping in view the aforesaid judgment and by taking into account the statement of the family members and also the delay in lodging the FIR as well as the Postmortem Report, this Court is of the opinion that ingredients of harassment or cruelty under Section 498-A nor any offence under Section 304-B of the IPC has been made out by the prosecution.

15. The coordinate Bench of this Court in the case of *Abhay Kumar Katare* (Supra) was dealing with a case of suicide by an employee and the allegation was against the senior officers of the Company. This Court in the aforesaid case in paragraphs No.6 to 15 has held as under:-

> "6. Before adverting to the rival contentions, it shall be useful to reiterate the law as laid down by the Hon'ble Supreme Court on the jurisdictional issues, firstly; the scope of jurisdiction of this Court under section 482 Cr.P.C., in the matter of quashment of the criminal proceedings and secondly; the meaning, concept and dimension of abetment as defined under section 107 IPC with reference to the offence of the abetment of suicide defined under section 306 IPC.
>
> In *R.P.Kapur Vs. State of Punjab*, AIR 1960 SC 866, the Hon'ble Supreme Court summarized categories of cases where the High Court can and should exercise its inherent powers to uash the proceedings and amongst them is a case; where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged.
>
> In *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others*, AIR 1976 SC 1947; the Hon'ble Supreme Court has held that the proceedings against the accused can be quashed; where the allegations made in the complaint or the statements of the witnesses recorded in

support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

In *State of Haryana & others Vs. Bhajan Lal & others*, AIR 1992 SC 604, the Hon'ble Supreme Court while exhaustively reviewing the entire case law on the scope of jurisdiction of the High Court has given exhaustive guidelines as regards the scope of jurisdiction under section 482 Cr.P.C., and one of the circumstance is; where the uncontroverted allegations made in the FIR or the complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

In *Zandu Pharmaceutical Works Ltd., & others Vs. Mohd. Sharaful Haque & Another*, AIR 2005 SC 9, the Hon'ble Supreme Court has observed as under:

> "It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that intimation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

Similar view has been reiterated by the Hon'ble Supreme Court in *Devendra and Others Vs. State of Uttar Pradesh and Another* (2009) 7 SCC 495:

> "There is no dispute with regard to the aforementioned propositions of law. However, it is now well-settled that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the First Information Report, even if given face value and taken to be correct in their entirety, do not make out any offence. When the allegations made in the First Information Report or the evidences collected during investigation do not satisfy the ingredients of an offence, the superior courts would not encourage harassment of a person in a criminal court for nothing."

7. Section 306 IPC defined "Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall

be punished with imprisonment of either description for a term which may extent to ten years, and shall also be liable to fine."

8. The word 'suicide' is not defined in IPC. However, its literal meaning is well known. *'Sui'* means 'self ' and *'cide'* means *'killing'*, i.e., *"self-killing"*. The suicide by itself is not an offence under the Penal Code. However, attempt to suicide is an offence under section 309 IPC as the successful offender committing suicide is beyond the reach of law.

9. Section 107 IPC defined 'Abetment' and reads as under:

"107. Abetment of a thing - A person abets the doing of a thing, who -

First - Instigates any person to do that thing; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes places in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. - Intentionally aides, by any act or illegal omission, the doing of that thing.

Explanation 2 which has been inserted along with Section 107 reads as under:

"Explanation 2 - Whoever, either prior to or at the time of the commission of anact, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

10. In *Ramesh Kumar Vs. State of Chhattisgarh* AIR 2001 SC 3837, the Hon'ble Supreme Court has lucidly examined the dimensions of meaning 'instigation'. Para 20 reads as under:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect. Or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. the present one is not a case where he accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

11. In *State of West Bengal Vs. Orilal Jaiswal & Another* AIR 1994 SC 1418, it has been held by the Hon'ble Supreme Court that if it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and suchpetulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

12. In *Chitresh Kumar Chopra v. State* (Govt. of NCT of Delhi) 2009 (16) SCC 605, the Hon'ble Supreme Court dealt with the dictionary meaning of the word "instigation" and "goading". The court opined that there should be intention to provoke, incite or encourage the doing of an act by the accused.

13. In *M. Mohan Vs. State Represented by the Deputy Superintendent of Police*, AIR 2011 SC 1238, the Hon'ble Supreme Court while reviewing almost the entire case law with reference to section 306 IPC has laid down the meaning and concept of the word 'abetment". Paragraphs 45 and 46 reads as under:

"45. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

46. The intention of the Legislature and the ratio of the cases decided by this court are clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

14. Therefore, to constitute the commission of an offence of abetment of suicide, an element of *mens rea* is an essential ingredient as the abetment involves a mental preparedness with an intention to instigation, provoke, insight or encourage to do an act or a thing. Besides, such process of instigation etc., must have close proximity with the act of commission of suicide. Therefore, a person cannot be accused or punished for an offence of abetment of suicide under section 306 IPC, unless; the aforesaid requirement of law is satisfied as laid down by the Hon'ble Supreme Court in the cases of *Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh*, AIR 2002 SC 1998 and *Madan Mohan Singh Vs. State of Gujarat and another* (2010) 8 SCC 628.

15. In the backdrop of the factual matrix of the case in hand detailed in the preceding paragraphs, it is apparent that the deceased joined the

Company in the year 2011 and continued for a period of six years. During this period, on many occasions, he sought to be relieved of his duties for personal reasons. In email dated 03/11/2012 (Annexure P/4) while intending to resign, he has also expressed his gratitude to the Management for giving him opportunities and support during his service tenure. The request was accepted by S.K.Grover on the same day by an email dated 03/11/2012 assuring him to be relieved on 10/12/2012, however,he continued to work. Thereafter, on 12/09/2014, he sent another email addressed to the applicant with a copy to S.K.Grover expressing his intention for resignation as Section Officer wherein also he has expressed his gratitude for working in the Company. As such, he dropped the idea of leaving the Company and further continued as evident from the email of September, 2014. As a matter of fact, the deceased himself withdrew the resignation twice on the premise that his personal problem was solved and continued to discharge his duties. As such, the communication referred above do not contain allegations of the nature the applicant is accused of in the FIR.

The communication dated 28/04/2017 was made by the applicant through email to the superior officer, S.K.Grover bringing to his notice the shortcomings in the day to day working of the accounting system with a copy to the deceased and another co-worker J.P.Yadav wherein, he has pointed out the lapses and negligence in the discharge of duties by both of them with a request to take some hard action or in the alternative they may be transferred to a different department.

This email finds reference in the alleged email suicide note dated 15/05/2017 while the deceased accused the applicant of causing him harm which led to commission of suicide.

S.K.Grover vide email dated 29/04/2017 called upon the deceased and Yadav for explanation.

The deceased appeared to have taken strong exception and instead of offering explanation had taken extreme stand seeking termination from service or transfer to some other place with immediate effect by an email dated 03/05/2017.

That apart, if the subsequent email exchanges of the deceased, viz., 25/05/1997 and 11/09/2017 are perused, the deceased had not made allegations of harassment, cruelty or incitement tantamounting to provocation by the applicant to take the extreme step of committing suicide. In fact, while tendering resignation by email dated 02/09/2017, the deceased sought to be relieved at the earliest (by 10th September) and expressed his gratitude and appreciation for all the members of the staff while discharging the duties. However, for the first time the deceased made allegations of discontentment in the day to day working, sarcastic comments, arrogant behaviour and induction of a new accounts officer, etc., against the applicant.

After acceptance of resignation of the deceased by the Executive Director & Business Head, DCM Shriram with effect from 11/09/2017, he sent an email on 11/09/2017 addressed to the applicant and other officers recording his appreciation to the staff members during his service tenure but, there was no allegation of any kind against the applicant.

There is no allegation in the suicide note/email dated 15/09/2017 or in the challan that the deceased and the applicant either communicated or met with each other between 11/09/2017 and 15/09/2017. As such, neither with reference to the email of the applicant addressed to S.K.Grover dated 28/04/2017 nor that of the deceased email dated 02/09/2017 could be said to be having nexus or proximity with the alleged act of committing suicide on 15/09/2017.

Facts and circumstances do not suggest mental preparedness of the applicant with an intention to provoke, incite or instigate the deceased to commit suicide. As a matter of fact, the deceased committed suicide after four days of cessation from employmentwith the Company.

A careful reading of the record also suggests that the deceased was rushed to the Bombay Hospital, Indore on 15/09/2017 by dialing number 100. The family members of the deceased were also present during his treatment and thereafter he died on 17/09/2017. The police did not record the statement of any members of the family on the said date. Thereafter, the suicide note is reportedly presented before the police by the brother of the deceased on 19/09/2017. The statement of Rani wife of the deceased was recorded on 04/10/2017, i.e., after unexplained delay of about 17 days from the date of death of the deceased and that of other family members; wherein she allegedly said that the deceased had told her that the applicant used to harass, insult and threatened. It is a queer fact that none of the family members of the deceased including his wife despite, having the alleged knowledge ever lodged any complaint in the Police Station or made any complaint to the police in the hospital where the deceased was admitted.

The police has also not recorded the statement of the deceased during the period 15/09/2017 to 17/09/2017, when he died.

It appears that there was noticeable improvement in the statements of the same witnesses recorded on 04/10/2017 and 07/11/2017, i.e., wife, Rani and mother, Smt. Sunita Vyas of the deceased.

There is no reason forthcoming why the prosecution has not recorded the statement of J.P.Yadav who was also admonished alongwith the deceased in the matter of negligence and dereliction of duties by the applicant in his email dated 28/04/2017 to the superior officer, S.K.Grover.

In the challan papers, there is no material to suggest or attributable positive act on the part of the applicant that he had an intention to push the deceased to commit suicide.

The Magistrate has not applied the mind while taking the cognizance and appears to have passed the impugned cognizance order (Annexure P/2) in a mechanical manner.

In the considered opinion of this Court, the material on record do not suggest mental preparedness of the applicant with an intention to provoke, incite or instigate the deceased to commit suicide attributable to his official duties or otherwise to fulfill the ingredients of abetment for constituting an offence under section 306 IPC in the light of the law laid down by the Hon'ble Supreme Court in the abovementioned cases."

16. This Court has allowed the petition preferred under Section 482 in the aforesaid case. In the present case also facts and circumstances do not suggest mental preparedness of the applicants with an intention to instigate, provoke, incite or encourage to commit suicide. The suicide notes left by her does not implicates the petitioners at all.

17. The First Information Report has been lodged after four months. Not only this, there is no evidence on record to establish even *prima-facie* that the petitioners have committed offence under Section 498-A of the IPC. The brother and the brother-in-law in their statements are referring to some incident of the year 2013 and on the basis of some earlier incident of the year 2013, an attempt has been made to rope in the present petitioners for offence under Section 498-A of the IPC.

18. This Court, after careful consideration of the entire material on record in the facts and circumstance of the case, is of the opinion that the material on record do not suggest mental preparedness of the petitioners with an intention to provoke, incite or instigate the deceased and therefore, the First Information Report and the consequent criminal proceedings arising out of First Information Report No.59/2017, Police Station Annapurna, Indore are hereby quashed.

19. With the aforesaid, petition stands allowed.

Certified copy as per rules.

Application allowed.

I.L.R. [2019] M.P. 689
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Rajendra Kumar Srivastava
M.Cr.C. No. 37375/2018 (Jabalpur) decided on 28 February, 2019

ASHISH SINGH …Applicant

Vs.

STATE OF M.P. …Non-applicant

(Alongwith M.Cr.C. No. 37378/2018)

Penal Code (45 of 1860), Sections 109, 378 & 379 and Minor Mineral Rules, M.P. 1996, Rule 53 – Quashment of Criminal Proceedings **– Dumpers filled with sand were seized as the same was being transported without permit – Held – Ingredients of offences u/S 378 IPC and under Rule 53 of Rules of 1996 are quite distinct – Rule 53 deals with unauthorized extraction and transportation of minor minerals and provides for penalty in graded manner as well as seizure and confiscation of tools, machines and vehicles used whereas Section 378 IPC deals with theft of sand without consent of owner/State – Apart from proceedings under the Rules of 1996, Court can take cognizance u/S 379 IPC for theft of sand owned by the Government – Application dismissed. (Para 9 & 14)**

दण्ड संहिता (1860 का 45), धाराएँ 109, 378 व 379 एवं गौण खनिज नियम, म.प्र. 1996, नियम 53 – दाण्डिक कार्यवाहियों को अभिखंडित किया जाना – रेत से भरे डम्परों को जब्त कर लिया गया था क्योंकि बिना परमिट के ही उक्त का परिवहन किया जा रहा था – अभिनिर्धारित – भा.दं.सं. की धारा 378 तथा 1996 के नियमों के नियम 53 के अंतर्गत अपराधों के घटक काफी सुभिन्न है – नियम 53 गौण खनिज के अप्राधिकृत निष्कर्षण और परिवहन से संबंधित है तथा वर्गीकृत ढंग से शास्ति के साथ–साथ उपयोग किये गये औजारों, मशीनरों एवं वाहनों का अभिग्रहण और जब्ती उपबंधित करता है जबकि भा.दं.सं. की धारा 378 स्वामी/राज्य की सहमति के बिना रेत की चोरी से संबंधित है – 1996 के नियमों के अंतर्गत कार्यवाहियों के अलावा, न्यायालय सरकार के स्वामित्व की रेत की चोरी के लिए धारा 379 भा.दं.सं. के अंतर्गत संज्ञान ले सकता है – आवेदन खारिज।

Cases referred:

2012 CriLJ 1705, (2014) 9 SCC 772, W.P. No. 18818/2017 & W.P. No. 19320-2017 decided on 15.02.2018.

Ashish Trivedi, for the applicant in M.Cr.C. Nos. 37375/2018 & 37378/2018.

Amit Pandey, G.A. for the non-applicant/State.

O R D E R

RAJENDRA KUMAR SRIVASTAVA, J.:- These two petitions arise out from the same Crime No. 141/18 registered at Police Station Chandera District Teekamgarh. Petitioner has been filed these miscellaneous criminal case under Section 482 of Cr.P.C. being aggrieved with criminal proceeding in the offence under Sections 109, 379 of IPC and Section 53 of M.P. Minor Mineral Rules, 1996 vide Crime No. 141/2018 registered at Police State Chandera District Teekamgarh. Looking to this fact that the similar issues are involved in these petition, therefore, this Court shall decide the same through passing a common order.

2. Facts of the case in short are that petitioner-accused Sanad Kumar is registered owner of vehicle (Dumper) No. UP93 AT 9349. Petitioner-accused Ashish Singh is the owner of vehicle (Dumper) No. UP 93 AT 9239 and UP 93 AT 7654. At the time of incident, Sub Inspector- Pradeep Saraf was posted at police station, Chandera. On 05.08.2018 in the night, he was searching the vehicle. At the time of checking four dumpers No. UP 93 AT 9349, UP 93 AT 9239, UP 93 AT 7654 and UP 93 BT 6129 were stopped, in which sand was filled. Sub Inspector-Pradeep Saraf inquired about the sand from the driver, but driver was unable to give any explanation about the said sand. They had no permit for transporting the sand then Dumpers were seized with the sand. First Information was lodged under Section 379 of IPC and Section 53 of MP Minor Mineral Act. Petitioners-accused are also implicated in these cases.

3. Learned counsel for the petitioner submits before this Court the criminal proceeding under Section 379 of IPC is illegal and clear violation of the provision of the Minor Mineral Rules. In Minor Mineral Rules there is specific procedure for the enquiry/investigation by the designated officer and after findings the person guilty the provisions of the filing complaint case is provided and because the special penal provisions of this Act are non-cognizable, so police directly could not the register the offence. It will be quite apparent from the combined reading of Sections 4,5 and 26 of the Cr.P.C. that if there is special law prescribing the special procedure for investigation of the cases falling under that law, the provisions of the code of Criminal Procedure are not applicable, it is only in the absence of any provision regulating investigation inquiry and trial of non-IPC offence i.e. offence under any other law, investigation, inquiry or trial, shall be as per the Code of Criminal Procedure, Under Minor Mineral Rules specific provisions have been made for the investigation, inquiry and recording of statement of witnesses. Therefore, the provision of the Code of Criminal Procedure would not govern the investigation etc. in respect of the offence under Minor Mineral Rules. The effect of Section 5 of the Cr.P.C.is to render the

provision of the code inapplicable in respect of matter covered by special law. This Section clearly excludes the applicability of code in respect of investigation under any special or local law. Therefore, only those officers who have been empowered to investigate under the special law i.e. Minor Mineral Rules can do so and that to in accordance with the special law. Police does out the picture. Code of Criminal procedure also cannot be invoked as on account of specific provisions in the special law, and general provisions contained in the code do not apply. Section 5 of Cr.P.C. provides that all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Cr.P.C. but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiry into, trial or otherwise dealing with such offences. The effect of Section 5 of the Cr.P.C. is to render the provisions of the Cr.P.C. inapplicable in respect of all matters covered by such special law. The principle expressed in the maxim generalia specialibus non-derogant would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. Where an act is an offence under a specific law and such an offence can also be punished under that specific law that law then general law would not apply and this is the principle laid down in Section 5 Penal Code. So it is settled position in law that a special law shall prevail over the general and prior laws. When the Act in various provisions deals with obscenity in electronic form and In support of his contention, he has relied the judgment of Apex Court in the case of *State of M.P. Vs. Sanjay* in Cr.A. No. 499/2011 and he has also relied the Division Bench of this Court in the case of *Ramkumar Sahu Vs. State of M.P. and others* in W.P. No. 188818/2017. So, petitioner prays for quashing the criminal proceeding for under Sections 109, 379 of IPC and Section 53 of M.P. Minor Mineral Rules, 1996 vide Crime No. 141/2018 registered in Police Sation Chandera.

4. Learned counsel for the State submits that Minor Mineral Rules being regulatory, Section 379 of IPC is an offence. Government is the owner of Mineral, Therefore, no person is allowed to transport the sand without permission of the Government, if any person takes the sand without permission, then the offence under Section 379 of IPC would be made out. Minor Mineral Rules provides niether penalty nor any sentence, so he prays for dismissal of petition.

5. Heard both the parties and perused the record.

6. It is alleged by the prosecution that sand was being transported without valid permit by the vehicle of petitioners-accused. It would be appropriate to read first the Rules 53 of Minor Mineral Rules:-

Rule 53 (before amendment)	Rule 53 (after amendment w.e.f. 18.05.2017)
53. Penalty for un-authorised extraction and transportation. - Whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be party to the illegal extraction of minerals and every such person shall be punishable with simple imprisonment for a maximum term of three months which may extend to two years or with fine which may extend to fifty thousand rupees or with both.	**[53. Penalty for un-authorised extraction and transportation. -** Whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made otherwise then in accordance with these rues, shall be presumed to be a party to the illegal mining / transportation, then the Collector or any officer authorized by him not below the rank of Deputy Collector shall after giving an opportunity of being heard determines that such person has extracted/transported the minerals in contravention of the provisions of these rules, then he shall impose the penalty in the following manner, namely :- (a) on first time contravention, a penalty of minimum 30 times of the royalty of illegally extracted/ transported minerals, shall be imposed but it shall not be less than ten thousand rupees. (b) on second time contravention a penalty of minimum 40 times of the royalty of illegally extracted/transported minerals, shall be imposed but it shall not be less than twenty thousand rupees. (c) on third time contravention, a penalty of minimum 50 times of the royalty of illegally extracted/transported minerals shall be imposed but it shall not be less than thirty thousand rupees. (d) on third time or subsequent contravention, a penalty of minimum 70 times of the royalty of illegally extracted/transported minerals, shall be imposed but it shall not be less than fifty thousand rupees. **(2) Forfeiture of minerals in cases of illegal extraction and transportation**. - In respect of the forfeiture/discharge of the mineral extracted/transported illegally the Collector or any other officer authorized by him not below the rank of the Deputy Collector shall take an appropriate decision. Provided that seized minerals shall not be discharged till the penalty imposed as above is not paid. In case of forfeiture', the seized mineral shall be

	disposed of through a transparent auction/ tender procedure as prescribed by the State Government, **(3) Forfeiture/Discharge of the seized tools, machines and vehicles etc. and disposal of forfeited material through Auction / Tender. -** (a) In case of illegal extraction, the Collector or any other officer not below the rank of a Deputy Collator, authorized by him shall take an appropriate decision in respect of forfeiture/discharge of tools, machines and vehicles used. Provided that the tools, machines, vehicles and other material so seized shall not be discharged till the penalty imposed as above is not paid. In case of forfeiture, the seized materials shall be disposed of through a transparent auction/tender procedure as prescribed by the State Government. (b) In respect of Forfeiture/Discharge of vehicle carrying mineral extracted/ transported without any transit pass the Collector or any other officer not below the rank of Deputy Collector authorised by him shall take an appropriate decision. Provided that tools, machines, vehicles and other materials shall not be discharged till the penalty imposed as above is not paid. In case of forfeiture the seized material shall be disposed off through a transparent auction/tender procedure as prescribed by the State Government: Provided that the vehicle carrying minerals in excess as mentioned in transit pass, shall not be forfeited on doing so for first three times but the vehicle shall only be discharged on payment of penalty as imposed above. On repetition for the fourth time vehicle shall be liable to be forfeited. **(4) Action and compounding cases of un-authorized extraction/transportation. -** Whenever any person is found involved extracting/transporting of the minerals in contravention of provisions of these rules, the Collector/ Additional Collector/ Deputy

	Collector /Chief Executive Officer of Zilla Panchayat / Chief Executive Officer of Janpad Panchayat / Deputy Director (Mineral Administration)/Officer in charge (Mining section)/Assistant Mining Officer/Mining Inspector/officer in charge (Flying Squad) /Sub Divisional Officer (Revenue) / Tehsildar / NaibTehsildar and any other officer not below the rank of Class-III executive authorized by the Collector from time to time shall proceed to act in the following manner:- (a) to initiate case of unauthorized extraction /transportation by preparing Panchnama on spot; (b) to collect necessary evidences (including video-graphy) relevant to un-authorized extraction/ transportation; (c) to seize all tools, devices, vehicles and other materials used in excavation of miner mineral in such contravention and to handover all material so seized to the persons or lessee or any other person from whose possession, such material was seized on executing an undertaking up to the satisfaction of the officer seizing such material, to this effect that he shall forthwith produce such material as and when may be required to do so : Provided that where the report is submitted under sub-rule (3) above to the Collector or any other officer not below the rank of a Deputy Collector authorized by him, the seized property shall only be discharged by the order of the Collector or the officer authorized by him. (d) officer as mentioned above shall inform the Collector or any other officer not below the rank of Deputy Collector, authorized by him about the incident within 48 hours of coming into notice of the same. (e) officers as mentioned above shall make a request in writing to the concerning police station/seeking police assistance, if necessary and police officer shall provide such assistance as may be necessary to prevent unlawful excavation/transportation of tine mineral

	(5) Rights and powers of the investigating officer. - During the investigation of the cases of illegal extraction/ transportation of the minerals, in contravention of these rules, the investigation officer shall have the following rights and powers, namely :- (a) to call for person concern to record statements; (b) to seize record and other material related to the case; (c) to enter into place concern and to inspect the same; (d) all powers as are vested in an in-charge of a police station while investigation any cognizable offence under Code of Criminal Procedure; and (e) all other powers as are vested under Code of Civil Procedure to compel any person to appear or to be examined on oath or to produce any document. **(6) Submitting application by illegal extractor/transporter to compound and its disposal. -** Before initiating or during the operation of the case, if the extractor/transporter is agree to compound the case, he shall have to submit an application of his intention to do so before the Collector/Additional Collector / Deputy Collector / Sub Divisional Officer (Revenue) / Deputy Director (Mineral Administration) / Mining Officer / Officer-in-charge (Mining section) /Assistant Mining Officer / Officer in charge (Flying Squad) and he shall proceed to compound in the case. Provided that to avail the benefit of compounding the violator shall have to deposit the amount as determined here under as fine, namely :- (a) For the first time violation 25 time of royalty of unlawfully excavated/transported minerals or rupees 10,000/- (Ten Thousand) whichever is more. (b) For the Second time violation 35 time of royalty of unlawfully excavated/transported

	minerals or rupees 20,000/- (Twenty thousand) whichever is more. (c) For the third time violation 45 time of royalty of unlawfully excavated/transported minerals or rupees 30,000/- (Thirty Thousand) whichever is more, and (d) for the fourth time or subsequent violation minimum 65 time of royalty of unlawfully extracted/transported. Provided that it should not be less than rupees 50,000/- (Fifty thousand). On being compounded, the seized mineral, tools machinery/ and other materials shall be discharged. **(7)Action against/contravention of conditions of extract trade quarry/quarry lease/permit or the provisions of this rule. -** If during the enquiry of any illegal extraction / transportation a fact comes into the knowledge that any lease holder/contractor/permit holder, in order to evade the royalty from any sanctioned quarry lease/tradequarry/ permit, area is involved in dispatching / selling of minerals in excess quantity by showing less quantity of minerals in transit pass/defective transit permit/blank transit permit, then the Collector of the concerned district may suspend the quarrying operation in such quarry lease/trade quarry permit by issuing show cause notice for violating the conditions of the agreement and after providing an opportunity of being heard may cancel the such lease/ trade quarry/permit. The additional royalty may 'be recovered after making the assessment of the quantity dispatched or sold in order to evade the royalty : Provided that during the inspection if it is found that illegal minerals transporter by securing the transit pass from the lease holder in order to evade the royalty has made overwriting or tempered the pass then the officer of the minerals department/ Mineral Inspector may registered a case against the person concerned.

7. Section 378 IPC which deals with the definition of theft is as follows:-

> "378. Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.
>
> Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.
>
> Explanation 2.—A moving effected by the same act which affects the severance may be a theft.
>
> Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.
>
> Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.
>
> Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied."

8. Before proceeding further, it would be appropriate to mention Section 57 of the Land Revenue Code which read as under:-

> **"57 State ownership in all lands-** (1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government:
>
> Provided that nothing in this section shall, save as other wise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property."

9. Thus from a bare perusal of both these provisions of Section 378 of IPC and rule 53 of MP minor mineral Rules, 1996 as amended, it is clear that both these offences are quite distinct. While Rule 53 deals with unauthorized extraction and transportation of minor minerals and provides for penalty imposed in a graded manner as well as the seizure and confiscation of tools, machines and vehicles used, which powers have been conferred on the officers of the State instead of judicial Courts established and governed by Cr.P.C. whereas Section 378 deals with theft of sand without the consent of the owner that is the State.

10. A similar question arose before the Madras High Court in the case of *Sengol, Charlesand K. Kannan etc. Vs. State* Rep. By Inspector of police 2012 CriLJ 1705, where the accused were prosecuted for the offences punishable under Section 21 Mines and Minerals (Development and Regulation) Act, 1957 and also

under Section 379 of IPC, that whether the provisions of the Mines and minerals (Development and Regulation) Act, 1957, will either explicitly or impliedly exclude the provisions of the Indian Penal Code when the act of an accused is an ofence both under the Indian Penal Code and under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957? It was held by the Division Bench of the madras High Court in para 35 that:-

> "35. A cursory comparison of these two provisions with Section 378 of IPC would go to show that the ingredients are totally different. The contravention of the terms and conditions of mining lease, etc. Constitutes an offence ounishable under Section 21 of the Mines and Minerals Act, whereas dishonestly taking and movable property out of the possession of a person without his consent constitutes theft. Thus, it is undoubtedly clear that the ingredients of an offence of theft as defined in Section 378 of IPC are totally different from the ingredients of an offence punishable under Section 21(1) r/w Section 4(1) and 4(1)(A) of the Mines and minerals Act"

11. A similar question arose before the Hon'ble Supreme Court also in the case of *State (NCT of Delhi) Vs. Sanjay,* (2014) 9 SCC 772, where proceedings for illegal extraction of mining for an offence under Sections 379 and 114 of the Indian Penal Code was lodged against the offenders. The argument raised was that in view of the provisions contained in the MMDR Act, the accused can be prosecuted only under the Act and not under the Indian Penal Code. It was held by the Hon'ble Apex Court that Section 22 of the Act is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand and river bed. The Court held that.

> "Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned herein-above. It will not only change the river hydrology but also will deplete the ground water levels."

12. Then further, the Apex Court in paras 69 and 70 of the said judgment, categorically stated that:-

> "69. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other

> minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of Indian Penal Code.
>
> "70 From a close reading of the provisions of MMDR Act and the offence defined under Section 378, IPC, it is manifest that the ingredients constitution the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft."

13. Recently, the MP High Court in WP-18818/2017 & WP- 19320-2017 Ayush Namdeo Vs. The State of M.P. decided on 15 February, 2018 where the Court was dealing with the challenge to the Notification issued by the State Government in exercise of powers conferred by Sub-Section (1) of Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 substitution Rules 53 of Madhya Pradesh Minor Mineral Rules, 1996 (for short "the Rules") published on 18.05.2017 in Madhya Pradesh Gazette, in para 22 of the judgment has also held that "The provisions of the Rule 53 are to ensure that there is no un-authorised extraction and transportation of the minerals. Such confiscation is not a punishment, which is imposible in exercise of the powers conferred under Section 21 of the Act. The confiscation under Rule 53 is independent proceeding but does not affect the legality and validity of the confiscation contemplated under Section 21 of the Act, which provides for imprisonment as well."

14. Thus, from the aforesaid discussion it is apparently clear that the ingredients of offence under Section 378 of IPC and under Rule 53 of MP Minor Mineral Rules, 1996 are different and even after the amendment in Rule 53, the Courts can still take cognizance u/s 379 IPC for theft of sand from the property owned by the Government.

15. The cited cases relied above by the learned counsel for the petitioner are not applicable in the instant case.

16. So the criminal proceeding under Section 379 of IPC is maintainable in the concerned Court, therefore, this is not appropriate case, in which to exercise the inherent power of this Court under Section 482 of the Cr.P.C.

17. Hence this petitions filed by the petitioners are hereby **dismissed**.

Application dismissed.

I.L.R. [2019] M.P. 700 (DB)
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice S.K. Seth, Chief Justice &
Mr. Justice Vijay Kumar Shukla
M.Cr.C. No. 51211/2018 (Jabalpur) decided on 8 March, 2019

NANDLAL GUPTA …Applicant

Vs.

UNION OF INDIA …Non-applicant

***A. Penal Code (45 of 1860), Section 419 & 420, Recognised Examination Act, M.P. (10 of 1937), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Charge Sheet* – Admission in MBBS course – Investigation revealed that applicant appeared in PMT 2008 impersonating a candidate Manoj Kumar Dubey – Expert opinion proves applicant's handwritings similar to writings in answer sheets of Manoj – Photographs available on student details of VYAPAM is similar to photograph of applicant, which shows that he committed offence of impersonation and conspiracy – No ground for interference against Charge Sheet u/S 482 Cr.P.C. – Application dismissed. (Para 7)**

क. दण्ड संहिता (1860 का 45), धारा 419 व 420, मान्यताप्राप्त परीक्षा अधिनियम, म.प्र. (1937 का 10), धारा 3 व 4 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – आरोप पत्र अभिखंडित किया जाना – एम.बी.बी.एस. पाठ्यक्रम में प्रवेश – अन्वेषण से यह प्रकट हुआ है कि आवेदक, एक अभ्यर्थी मनोज कुमार दुबे का प्रतिरूपण कर, वर्ष 2008 की पी.एम.टी. में सम्मिलित हुआ था – विशेषज्ञ की राय यह साबित करती है कि आवेदक की लिखावट मनोज की उत्तर पुस्तिकाओं में लिखावट के समान है – व्यापम के छात्र विवरण में उपलब्ध फोटोचित्र आवेदक के फोटोचित्र के समान है, जो यह दर्शाता है कि उसने प्रतिरूपण और षड्यंत्र का अपराध कारित किया – दं.प्र.सं. की धारा 482 के अंतर्गत आरोप–पत्र के विरूद्ध हस्तक्षेप के लिए कोई आधार नहीं – आवेदन खारिज।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Powers of High Court* – Held – Apex Court has concluded that High Court powers to quash criminal proceedings should be exercised sparingly and in rarest of rare cases – Reliability of allegations made in FIR or complaint not be examined. (Para 10)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – उच्च न्यायालय की शक्तियाँ – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह निष्कर्षित किया है कि दाण्डिक कार्यवाहियों को अभिखंडित करने की उच्च न्यायालय की शक्तियों का प्रयोग मितव्ययता से तथा विरलतम से विरल प्रकरणों में किया जाना चाहिए – प्रथम सूचना प्रतिवेदन अथवा परिवाद में किये गये अभिकथनों की विश्वसनीयता का परीक्षण नहीं किया जाना चाहिए।

Cases referred:

1992 Supp (1) SCC 335, (2002) 1 SCC 555, (2009) 1 SCC 516, (2009) 4 SCC 439, (2012) 9 SCC 460, AIR 2018 SC 2039.

Girish Kumar Shrivastava, for the applicant.
J.K. Jain, Asstt. Solicitor General for the non-applicant.

O R D E R

The order of the Court was passed by :-
V.K. SHUKLA, J.:- The applicant has invoked inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 for quashment of the Final Report/ Charge Sheet No. 38/2018 dated 27-10-2018 filed by Central Bureau of Investigation in the court of Special Judge for Vyapam Cases at Jabalpur (MP) in Case No. RC-217-2015(S)/0098.

2. The facts adumbrated in nutshell are that the applicant is a Medical Practitioner,who has completed MBBS from GSVM Medical College, Kanpur (UP) and is presently practicing and residing at Chalchitra Road, Tehsil Fatehpur, District Barabanki (UP). The case was initially registered by Garha Police Station, Jabalpur (MP) on 16-11-2013 under FIR No.898/2013, based on a written complaint given by the then Dean, Netaji Subhash Chandra Bose (NSCB) Medical College, Jabalpur, alleging fraud committed by some of the students, who obtained admission in MBBS Course in Netaji Subhash Chandra Bose Medical College, Jabalpur by deceitful means. The case was initially registered against 26 persons under Sections 419 & 420 of IPC and Sections 3 and 4 of Madhya Pradesh Recognized Examination Act, 1937. Subsequently, vide letter dated 04-12-2013, the then Dean, NSCB Medical College, Jabalpur gave one more complaint to the Garha Police Station, alleging fraud committed by three more candidates. During the course of investigation, names of 31 more persons who are allegedly middlemen/impersonators were added as the accused by the Police/District Crime Branch. In this case, the local Police has filed one charge sheet on 18-08-2015 against one accused person namely Abhishek Sachan before the Ld. CJM Court, Jabalpur.

3. In compliance to the orders dated 09-07-2015 of Hon'ble Supreme Court of India Writ Petition (Civil) No.417/2015 titled "*Digvijay Singh & others Vs. State of Madhya Pradesh & others*", and also in Writ Petition (Civil) No.372/2015, this case was taken over by CBI from SIT/DCB, Jabalpur on 18-08-2015 and was registered as RC 21720150098 U/s 120-B r/w 417, 419, 420, 467, 468, 471 IPC and U/s 3 & 4 of the Madhya Pradesh Recognized Examinations Act, 1937 against 60 accused persons.

4. Learned counsel for the applicant assiduously submitted that the applicant has been made an accused in the present case only on suspicion and there is no material against him. He submitted that he is only suspected Impersonator for the accused candidate Manoj Kumar Uikey.

5. Learned counsel for the respondent submitted that there is sufficient prima facie material against the applicant which has been filed alongwith the charge sheet. He further submitted that the charge has yet to be framed in the trial and at this stage, there cannot be any interference against the charge sheet.

6. The allegation in brief, as per the FIR is that the accused candidates in connivance with the racketeers, solvers and other unknown persons committed the offences of cheating , cheating by personation, forgery of valuable security, forgery for the purpose of cheating, using forged documents as genuine, criminal conspiracy and use of unfair means in recognized examination and thereby obtained admission in the Netaji Subhas Chandra Bose Medical, College, Jabalpur, for which they were not entitled.

7. Against the present applicant, the investigation revealed that Nand Lal Gupta (A-66) S/o Shri Madan Lal Gupta, student of GSVM Medical College, Kanpur attended the PMT 2008 in the name of Manoj Kumar Uikey (A-2). In this regard the Expert Opinion received from SEQD, Bhopal proves that the specimen handwritings of Nand Lal Gupta are similar to the writings available in the OMR answer sheet of PMT 2008 in the name of Manoj Kumar Uikey. Moreover the statement of Dr. B.K. Guha also shows that the photograph available on the student details of Vyapam is similar to the photograph of Nand Lal Gupta, which again proves that Nand Lal Gupta attended the PMT 2008 in the name of Manoj Kumar Uikey. Therefore, Nand Lal Gupta committed the offence of impersonation and conspiracy.

8. Alongwith the charge sheet, the respondent has filed list of documentary evidence in RC 2172015S0098. In the said list of documents at Serial No. D-227 it is mentioned that specimen writings of Nand Lal Gupta, S/o Madan Lal Gupta, suspected impersonator for the accused candidate Manoj Kumar Uikey (A-2) in the PMT 2008, along with documents having his admitted writings. (41 sheets marked as S-1 to S-41 and 04 sheets having his admitted writings).

9. Upon perusal of the charge sheet and taking into consideration the allegations and material available against the applicant, we do not find any merit in the present case warranting any interference under Section 482 of the Code of Criminal Procedure to quash the charge sheet.

10. In the case of *State of Haryana and others Vs. Bhajan Lal and others* 1992 Supp(1) SCC 335, the Apex Court held that High Court powers to quash criminal proceedings should be exercised sparingly and rarest of rare cases. Reliability of allegations made in FIR or complaint not be be examined . Para 130 reads as under :

> "The power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.

11. In *Kamaladevi Agrawal Vs. State of W.B.* (2002) 1 SCC 555, the Apex Court opined :

> "This court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirely, do not prima faice disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."

12. In the case of *R.Kalyani Vs. Janak C.Mehta*, (2009) 1 SCC 516, the Apex Court laid down the law in the following terms:

> "**15.** Propositions of law which emerge from the said decisions are:
>
> (1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and , in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.
>
> (2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.
>
> (3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.
>
> (4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

13. The aforesaid legal position has been reiterated in the case of *Mahesh Chaudhary Vs. State of Rajasthan and another* (2009) 4 SCC 439. Relevant paras 11 and 12 are reproduced as under :

> "11. ' The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceedings is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence."
>
> 12. It is also well settled that save and except in very exceptional circumstances, the Court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused."

14. In the case of *Amit Kapoor vs. Ramesh Chander and another*, (2012) 9 SCC 460 the Apex Court has culled out certain principles to be considered for proper exercise of jurisdiction with regard to quashing of the charge either in exercise of power under Section 397 or Section 482 of the CrPC, or together, as the case may be. The principles laid down by the Apex Court in paras 27.1, 27.2, 27.3 and 27.6 are reproduced as under:

> "27.1.Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases.
>
> 27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

Xx xx xx xx

Xx xx xx xx

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender."

15. The same view has been reiterated by the Apex Court in a latest judgment of *Asian Resurfacing of Road Agency Pvt.Ltd. and another. Vs. Central Bureau of Investigation*, AIR 2018 SC 2039. Para 100 reads as under :

"100. However, there is a series of cases wherein this Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 CrPC, has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (*Vide State of Karnataka V. L. Muniswamy* (1997)2 SCC 699) : (AIR 1977 SC 1489) All India Bank Officers' Confederation V. *Union of India* (1989) 4 SCC 90 : (AIR 1989 SC 2045) *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia* (1989) 1 SCC 715) *State of M.P. Vs. Krishna Chandra Saksena* (1996) 11 SCC 439) and *State of M.P. Vs. Mohanlal Soni* (2000) 6 SCC 338) : (AIR 2000 SC 2583),

16. Thus, the Apex Court has held that the power under Section 397/401 CrPC against an order framing charge should be exercised very sparingly and with circumspection and that too in the rarest of rare case. The court should apply the test as to whether uncontroverted allegation available from the record of the case and the documents, *prima facie* does not establish any offence and the basic ingredients of the offence are not satisfied, then the Court may interference.

17. In view of the aforesaid, in the facts of the present case, we do not find any case for interference against the charge sheet in exercise of inherent power under Section 482 of the Code of Criminal Procedure. **Accordingly, the application is dismissed**.

Application dismissed.