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स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(f) – वास्तविक आवश्यकता – वादी की मृत्यु – प्रभाव – अभिनिर्धारित – इस द्वितीय अपील के लंबित रहने के दौरान वादी की मृत्यु हो गई – मृतक वादी की वास्तविक आवश्यकता पहले ही स्थापित और उसकी मृत्यु पर व्यपगत हो जाना नहीं कहा जा सकता जब तक कि यह स्थापित नहीं किया जाता कि कारबार चलाने के लिए मृतक के कुटुंब में कोई भी नहीं है – वादी के विधिक प्रतिनिधिगण पहले से ही अभिलेख पर है – बेदखली की डिक्री से इंकार नहीं किया जा सकता – अपील खारिज। (अशोक कुमार वि. बाबूलाल साहू) ...941

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माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11 व 16 एवं माध्यस्थम् और सुलह (संशोधन) अधिनियम, 2015, धारा 11(6A) – व्याप्ति – परिसीमा – अभिनिर्धारित – धारा 11(6A) के अनुसार, न्यायालय को अब केवल मध्यस्थता करार के अस्तित्व का परीक्षण करने की आवश्यकता है – अन्य सभी प्रारंभिक अथवा शुरुआती विवादक धारा 16 के अंतर्गत मध्यस्थ द्वारा विनिश्चित किया जाना बाकी हैं – परिसीमा का विवादक एक अधिकारिता संबंधी विवादक है एवं मध्यस्थ द्वारा विनिश्चित किया जाना है तथा न कि अधिनियम की धारा 11 के अंतर्गत निदेश-पूर्व प्रक्रम पर उच्च न्यायालय द्वारा। (उत्तराखण्ड पूर्व सैनिक कल्याण निगम लि. (मे.) वि. नार्दन कोल फील्ड लि.) (SC)...770

Arbitration and Conciliation Act (26 of 1996), Section 16 – Doctrine of “Kompetenz-Kompetenz” – Held – This doctrine is intended to minimize judicial intervention, so that arbitral process is not thwarted at the threshold, when a preliminary objection is raised by one of the parties. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. (M/s) Vs. Northern Coal Field Ltd.]

(SC)...770

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 16 – “कॉम्पीटेन्ज-कॉम्पीटेन्ज” का सिद्धांत – अभिनिर्धारित – इस सिद्धांत का आशय न्यायिक मध्यक्षेप को कम करने का है, ताकि जब किसी पक्षकार द्वारा एक प्रारंभिक आक्षेप उठाया

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Arbitration and Conciliation (Amendment) Act, 2015, Section 11(6A) – See – Arbitration and Conciliation Act, 1996, Section 11 & 16 [Uttarakhand Purv Sainik Kalyan Nigam Ltd. (M/s) Vs. Northern Coal Field Ltd.] (SC)...770

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*Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Delay – Amendment application filed after three years of filing of suit – Held – Mere delay cannot be a ground for rejection of the application unless and until a serious prejudice is caused to defendants. [Vallabh Electronics (M/s) Vs. Branch Manager United Bank of India] ...*10*

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – विलंब – वाद प्रस्तुत किये जाने की तिथि से 3 वर्ष पश्चात् संशोधन आवेदन प्रस्तुत किया गया – अभिनिर्धारित – आवेदन अस्वीकार करने के लिए मात्र विलंब एक आधार नहीं हो सकता, जब तक कि प्रतिवादीगण को एक गंभीर प्रतिकूल प्रभाव कारित न हो। (वल्लभ इलेक्ट्रॉनिक्स (मे.) वि. ब्रॉच मेनेजर यूनाईटेड बैंक ऑफ इंडिया) ...*10

Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Scope – “Consequential Relief” – Held – By seeking amendment, petitioner has not tried to set up a new case, only consequential relief was sought, which was already in substance in the suit in another form – Cross examination of plaintiff witness has not yet started, no prejudice would be caused to respondents, if amendment is allowed, otherwise suit may be dismissed as non maintainable in absence of consequential relief – Amendment

application allowed. [Vallabh Electronics (M/s) Vs. Branch Manager United Bank of India] ...*10

*सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – विस्तार – “परिणामिक अनुतोष” – अभिनिर्धारित – संशोधन चाहकर, याची ने एक नया प्रकरण स्थापित करने का प्रयत्न नहीं किया है, केवल परिणामिक अनुतोष चाहा गया था, जो कि अन्य रूप में पहले से ही वाद के सार में था – वादी साक्षी का प्रतिपरीक्षण अभी तक शुरू नहीं हुआ है, यदि संशोधन मंजूर किया जाता है, तो प्रत्यर्थागण को कोई प्रतिकूल प्रभाव कारित नहीं होगा, अन्यथा परिणामिक अनुतोष की अनुपस्थिति में वाद खारिज किया जा सकता है – संशोधन आवेदन मंजूर। (वल्लभ इलेक्ट्रॉनिक्स (मे.) वि. ब्रॉच मेनेजर यूनाईटेड बैंक ऑफ इंडिया) ...*10*

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संविधान – अनुच्छेद 32, 51-A, 136 व 226 – लोक हित वाद – सुने जाने का अधिकार व व्याप्ति – अभिनिर्धारित – अनुच्छेद 32, 51-A एवं 136 के अंतर्गत, सुने जाने के अधिकार का नियम कठोर नियम नहीं है – सर्वोच्च न्यायालय द्वारा लोक हित वाद की व्याप्ति को, किसी व्यक्ति या संघ द्वारा, मूलभूत अधिकारों के उल्लंघन की शिकायत करते हुए, भेजे गये पत्रों या याचिकाओं को ग्रहण कर और लोक भावना के एवं नीति अवगत कार्यकर्ताओं द्वारा अथवा किसी संगठन द्वारा अनुच्छेद 32 के अंतर्गत प्रस्तुत रिट याचिकाओं को भी ग्रहण कर, सुने जाने के अधिकार के नियम का शिथिलीकरण एवं उदारीकरण कर व्यापक रूप से बढ़ाया गया है। (गौरव पाण्डे वि. यूनियन ऑफ इंडिया) (DB)...895

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संविधान – अनुच्छेद 226 – काली सूची में नाम डालना – नैसर्गिक न्याय का सिद्धांत – सुनवाई का अवसर – प्रत्यर्थागण द्वारा याची कंपनी का नाम काली सूची में डाला गया – अभिनिर्धारित – याची को न तो कोई कारण बताओ नोटिस जारी किया गया तथा न ही सुनवाई का कोई अवसर प्रदान किया गया था – सर्वोच्च न्यायालय ने निष्कर्षित किया कि काली सूची में नाम डालने के आदेश के सिविल परिणाम होते हैं तथा बिना नोटिस के पारित नहीं किया जा सकता – आक्षेपित आदेश एक तर्कसंगत सकारण आदेश भी नहीं है – आक्षेपित आदेश अभिखंडित – याचिका मंजूर। (टेक्नोसिस सिक्योरिटी सिस्टम प्रा.लि. (मे.) वि. म.प्र. राज्य) (DB)...866

Constitution – Article 226 – Professional Misconduct – Held – This Court has no jurisdiction to consider that whether an Advocate has committed professional misconduct or not – It is within the exclusive domain of the State Bar Council. [Manoj Pratap Singh Yadav Vs. Union of India] ...795

संविधान – अनुच्छेद 226 – वृत्तिक अवचार – अभिनिर्धारित – इस न्यायालय को यह विचार करने की अधिकारिता नहीं कि क्या किसी अधिवक्ता ने वृत्तिक अवचार कारित किया है अथवा नहीं – यह अनन्य रूप से राज्य अधिवक्ता परिषद् के अधिकार-क्षेत्र के भीतर है। (मनोज प्रताप सिंह यादव वि. यूनियन ऑफ इंडिया) ...795

Constitution – Article 226 – Public Servant – Jurisdiction of CBI – Held – As R-8, an employee of a registered society, which is under control of Central Government, he is certainly a central government employee and a public servant – Further, CBI itself concluded that appointment was obtained by R-8 by furnishing false information and role of the officials was to be enquired, then certainly, offence under the Prevention of Corruption Act is made out – CBI has jurisdiction to investigate the case – CBI directed to restart investigation. [Manoj Pratap Singh Yadav Vs. Union of India] ...795

संविधान – अनुच्छेद 226 – लोक सेवक – सी.बी.आई. की अधिकारिता – अभिनिर्धारित – चूंकि प्रत्यर्थी-8 एक पंजीकृत सोसाईटी का एक कर्मचारी है जो कि केंद्र सरकार के नियंत्रण के अधीन है, वह निश्चित रूप से केंद्र सरकार का एक कर्मचारी है एवं एक लोक सेवक है – इसके अतिरिक्त, सी.बी.आई. ने स्वतः निष्कर्षित किया कि प्रत्यर्थी-8 द्वारा मिथ्या जानकारी देकर नियुक्ति अभिप्राप्त की गई थी तथा अधिकारियों की भूमिका की जांच की जानी थी, तब निश्चित रूप से भ्रष्टाचार निवारण अधिनियम के अंतर्गत अपराध बनता है – सी.बी.आई. को प्रकरण का अन्वेषण करने की अधिकारिता है – सी.बी.आई. को अन्वेषण पुनः आरंभ करने के लिए निदेशित किया गया। (मनोज प्रताप सिंह यादव वि. यूनियन ऑफ इंडिया) ...795

Constitution – Article 226 – Writ of “Quo Warranto” – Delay & Laches – Held – Apex Court concluded that delay and laches do not constitutes any impediment to consider the lis – Writ of Quo Warranto cannot be dismissed on ground of delay and laches. [Manoj Pratap Singh Yadav Vs. Union of India] ...795

संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – विलंब एवं अनुचित विलंब – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि वाद पर विचार करने के लिए, विलंब एवं अनुचित विलंब कोई अड़चन गठित नहीं करते – अधिकार पृच्छा की रिट को विलंब एवं अनुचित विलंब के आधार पर खारिज नहीं किया जा सकता। (मनोज प्रताप सिंह यादव वि. यूनियन ऑफ इंडिया) ...795

Constitution – Article 226 – Writ of “Quo Warranto” – Ground – Maintainability – Held – Petition cannot be thrown overboard only on technical ground that initial order of appointment was not challenged – In writ of Quo Warranto, challenge to appointment on public post was made on ground of eligibility of candidate – Question of eligibility is important. [Manoj Pratap Singh Yadav Vs. Union of India] ...795

संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – आधार – पोषणीयता – अभिनिर्धारित – याचिका को केवल तकनीकी आधार पर अस्वीकार नहीं किया जा सकता कि नियुक्ति के आरंभिक आदेश को चुनौती नहीं दी गई थी – अधिकार पृच्छा की रिट में, लोक पद पर नियुक्ति को चुनौती, अभ्यर्थी की पात्रता के आधार पर दी गई थी – पात्रता का प्रश्न महत्वपूर्ण है। (मनोज प्रताप सिंह यादव वि. यूनियन ऑफ इंडिया) ...795

Constitution – Article 226 – Writ of “Quo Warranto” – Locus Standi – Held – Writ of Quo Warranto can be maintained by any citizen of the Country, therefore concept of locus standi has no application to the writ of Quo Warranto. [Manoj Pratap Singh Yadav Vs. Union of India] ...795

संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – सुने जाने का अधिकार – अभिनिर्धारित – अधिकार पृच्छा की रिट देश के किसी भी नागरिक द्वारा लाई जा सकती है इसलिए सुने जाने के अधिकार की संकल्पना, अधिकार पृच्छा की रिट हेतु प्रयोज्यता नहीं है। (मनोज प्रताप सिंह यादव वि. यूनियन ऑफ इंडिया) ...795

Constitution – Article 226 – Writ of “Quo Warranto” – Recruitment – Adverse Inference – Held – Without any authority, Selection Committee waived the requirement of 10 years PG experience and also rejected candidature of 5 candidates – Minutes of meetings were fraudulently prepared – An adverse inference would be drawn against respondents regarding appointment of R-8, who was not having minimum qualification and has given wrong information in his CV – Record also reveals that no such post was in existence for which R-8 was appointed – Appointment liable to be and is quashed – Petition allowed. [Manoj Pratap Singh Yadav Vs. Union of India] ...795

संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – भर्ती – प्रतिकूल निष्कर्ष – अभिनिर्धारित – बिना किसी प्राधिकार के चयन समिति ने 10 वर्ष स्नातकोत्तर अनुभव की आवश्यकता का अधित्यजन किया और 5 अभ्यर्थियों की अभ्यर्थिता भी अस्वीकार कर दी – बैठकों के मसौदे कपटपूर्वक तैयार किये गये थे – प्रत्यर्थी-8, जिसके पास न्यूनतम अर्हता नहीं थी तथा जिसने अपने संक्षिप्त विवरण में गलत जानकारी दी है, की नियुक्ति के संबंध में प्रत्यर्थीगण के विरुद्ध प्रतिकूल निष्कर्ष निकाला जाएगा – अभिलेख भी प्रकट करता है कि ऐसा कोई पद अस्तित्व में नहीं था जिसके लिए प्रत्यर्थी-8 को नियुक्त किया गया था – नियुक्ति अभिखंडित किये जाने योग्य तथा की गई – याचिका मंजूर। (मनोज प्रताप सिंह यादव वि. यूनियन ऑफ इंडिया) ...795

Constitution – Article 226 – Writ of “Quo Warranto” – Recruitment – Practice & Procedure – It is well established principle of law that regarding recruitment, required qualifications cannot be changed in mid of recruitment process – If some changes/relaxation was required, then fresh advertisement should have been issued, so that other desirous candidates could have applied – Since minimum qualification was relaxed in mid way, that too without approval of Board of Governors, entire selection process gets vitiated. [Manoj Pratap Singh Yadav Vs. Union of India] ...795

संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – भर्ती – पद्धति एवं प्रक्रिया – यह विधि का भली-भांति स्थापित सिद्धांत है कि भर्ती के संबंध में, आवश्यक अर्हताओं को भर्ती प्रक्रिया के मध्य में बदला नहीं जा सकता – यदि कुछ बदलाव/शिथिलीकरण अपेक्षित था तब नया विज्ञापन जारी किया जाना चाहिए था जिससे कि अन्य इच्छुक अभ्यर्थी आवेदन कर सकते थे – चूंकि न्यूनतम अर्हता बीच रास्ते में शिथिल की गई थी, वह भी गवर्नर बोर्ड के अनुमोदन के बिना, संपूर्ण चयन प्रक्रिया दूषित हो जाती है। (मनोज प्रताप सिंह यादव वि. यूनियन ऑफ इंडिया) ...795

Constitution – Article 226 – Writ of “Quo Warranto” – Scope & Jurisdiction – Recruitment – “Eligibility” & “Suitability” of Candidate – Held – For writ of Quo Warranto, it is not required that petitioner should be one of the candidate to recruitment process – Writ can be issued, if public appointment is contrary to statutory provisions – Court can consider the

“Eligibility” of a candidate but not the “Suitability” – Sometimes, *malafides* may encroach upon the question of “Suitability”, thus the manner in which appointment was made and the procedure adopted can also be considered. [Manoj Pratap Singh Yadav Vs. Union of India] ...795

संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – विस्तार एवं अधिकारिता – भर्ती – अभ्यर्थी की “पात्रता” एवं “उपयुक्तता” – अभिनिर्धारित – अधिकार पृच्छा की रिट हेतु यह अपेक्षित नहीं कि याची, भर्ती प्रक्रिया के अभ्यर्थियों में से एक हो – रिट जारी की जा सकती है यदि लोक नियुक्ति, कानूनी उपबंधों के विपरीत है – न्यायालय, एक अभ्यर्थी की “पात्रता” को विचार में ले सकता है परंतु “उपयुक्तता” को नहीं – कभी-कभी, “उपयुक्तता” के प्रश्न पर असद्भावना अधिक्रमण कर सकती है, अतः नियुक्ति करने का ढंग और अपनाई गई प्रक्रिया को भी विचार में लिया जा सकता है। (मनोज प्रताप सिंह यादव वि. यूनियन ऑफ इंडिया) ...795

Constitution – Article 226 and Plastic Waste Management Rules, 2016 – PIL – Ban on Production, Transport, Storage, Sale & Use of Plastic Carry Bags/Polythene – Held – Banning of polythene/plastic bags has to be considered as a most significant moment of life – If any material which is generally used is not biodegradable then whole ecosystem will be affected and indirectly will affect all living organisms of world – Directions issued to Citizens/authorities/Print Media. [Gaurav Pandey Vs. Union of India] (DB)...895

संविधान – अनुच्छेद 226 एवं प्लास्टिक कचरा प्रबंधन नियम, 2016 – लोक हित वाद – प्लास्टिक थैलियों / पॉलिथिन के उत्पादन, परिवहन, भंडारण, विक्रय व उपयोग पर पाबंदी – अभिनिर्धारित – पॉलिथिन / प्लास्टिक थैलों पर पाबंदी को जीवन का एक सबसे महत्वपूर्ण क्षण माना जाना चाहिए – यदि कोई सामग्री जिसे सामान्य रूप से उपयोग किया जाता है, जैवनिम्नीकरणीय (बायोडिग्रेडेबल) नहीं है तब संपूर्ण पारिस्थितिकी तंत्र (ईकोसिस्टम) प्रभावित होगा तथा दुनिया के सभी जीव जंतुओं को अप्रत्यक्ष रूप से प्रभावित करेगा – नागरिकों / प्राधिकारियों / प्रिंट मीडिया को निदेश जारी किये गये। (गौरव पाण्डे वि. यूनियन ऑफ इंडिया) (DB)...895

Criminal Practice – Defence witnesses – Held – Accused can maintain silence on a particular issue, but once he appears as defence witness, then he has to explain each and every circumstances – He loses all the immunities which are available to an accused. [Ramjilal @ Munna Vs. State of M.P.]...*9

*दाण्डिक पद्धति – बचाव साक्षीगण – अभिनिर्धारित – अभियुक्त किसी विशिष्ट विवाद्यक पर चुप्पी बनाए रख सकता है, परंतु एक बार वह बचाव साक्षी के रूप में प्रस्तुत हो गया, तो उसे प्रत्येक परिस्थितियों को स्पष्ट करना होगा – वह, उन सभी उन्मुक्तियों को खो देता है जो अभियुक्त के लिए उपलब्ध हैं। (रामजीलाल उर्फ मुन्ना वि. म.प्र. राज्य)...*9*

*Criminal Practice – Injuries – Explanation – Held – Injuries sustained are minor, thus non-explanation of the same is not fatal to prosecution case. [Ramjilal @ Munna Vs. State of M.P.] ...*9*

*दाण्डिक पद्धति – चोटें – स्पष्टीकरण – अभिनिर्धारित – कारित हुई चोटें छोटी हैं, अतः उक्त का अस्पष्टीकरण अभियोजन प्रकरण के लिए घातक नहीं है। (रामजीलाल उर्फ मुन्ना वि. म.प्र. राज्य) ...*9*

*Criminal Practice – Plea of Alibi – Held – Plea of alibi has to be proved beyond reasonable doubt – Burden of proof is heavily on accused – Plea of alibi cannot be proved by preponderance of probabilities. [Ramjilal @ Munna Vs. State of M.P.] ...*9*

*दाण्डिक पद्धति – अन्यत्र उपस्थित होने का अभिवाक् – अभिनिर्धारित – अन्यत्र उपस्थित होने के अभिवाक् को युक्तियुक्त संदेह से परे साबित करना होगा – सबूत का भार अधिकतम अभियुक्त पर है – अन्यत्र उपस्थित होने के अभिवाक् को अधिसंभाव्यता की प्रबलता द्वारा साबित नहीं किया जा सकता। (रामजीलाल उर्फ मुन्ना वि. म.प्र. राज्य) ...*9*

*Criminal Practice – Related Witnesses – Held – Evidence of prosecution witnesses cannot be discarded merely on ground that they are related witnesses – Injuries sustained by injured persons fully corroborates the ocular evidence. [Ramjilal @ Munna Vs. State of M.P.] ...*9*

*दाण्डिक पद्धति – संबंधी साक्षीगण – अभिनिर्धारित – अभियोजन साक्षीगण के साक्ष्य को मात्र इस आधार पर अस्वीकार नहीं किया जा सकता कि वे संबंधी साक्षीगण हैं – आहत व्यक्तियों को आई चोटें चाक्षुष साक्ष्य की पूर्णतया संपुष्टि करती हैं। (रामजीलाल उर्फ मुन्ना वि. म.प्र. राज्य) ...*9*

Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 482 – See – Penal Code, 1860, Section 306/34 [Digvijay Singh Vs. State of M.P.] ...979

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 व 482 – देखें – दण्ड संहिता, 1860, धारा 306/34 (दिग्विजय सिंह वि. म.प्र. राज्य) ...979

Criminal Procedure Code, 1973 (2 of 1974), Section 228 and Penal Code (45 of 1860), Section 302/34 – Framing of Charge – Requirement – Held – For framing charges u/S 228 Cr.P.C., Judge is not required to record detailed reason and hold an elaborate enquiry, neither any strict standard of proof is required, only prima facie case has to be seen – Upon hearing the parties and after considering allegations in charge sheet, Session Court found sufficient grounds for proceeding against accused persons – High Court erred in interfering with order framing charge – Impugned judgment set aside – Session Trial Case restored – Appeal allowed. [Bhawna Bai Vs. Ghanshyam] (SC)...788

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 एवं दण्ड संहिता (1860 का 45), धारा 302/34 – आरोप विरचित किया जाना – आवश्यकता – अभिनिर्धारित – दं.प्र. सं. की धारा 228 के अंतर्गत आरोपों की विरचना करने हेतु, न्यायाधीश को सविस्तार कारण अभिलिखित करने तथा एक विस्तृत जांच आयोजित करने की आवश्यकता नहीं है, न ही किसी कठोर मानक के सबूत की आवश्यकता होती है, केवल प्रथम दृष्ट्या प्रकरण देखा जाना चाहिए – पक्षकारों को सुनने पर तथा आरोप पत्र में दिये गये अभिकथनों को विचार में लेने के पश्चात्, सत्र न्यायालय ने अभियुक्तगण के विरुद्ध कार्रवाई करने हेतु पर्याप्त आधार पाये – उच्च न्यायालय ने आरोप विरचना के आदेश में हस्तक्षेप कर त्रुटि की है – आक्षेपित निर्णय अपास्त – सत्र न्यायालय का प्रकरण प्रत्यावर्तित – अपील मंजूर। (भावना बाई वि. घनश्याम) (SC)...788

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR & Criminal Proceedings – Inherent Powers of Court – Discussed and explained with case laws. [Digvijay Singh Vs. State of M.P.] ...979

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन व दाण्डिक कार्यवाहियों को अभिखंडित किया जाना – न्यायालय की अंतर्निहित शक्तियां – निर्णय विधि के साथ विवेचित एवं स्पष्ट किया गया। (दिग्विजय सिंह वि. म.प्र. राज्य) ...979

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – See – Penal Code, 1860, Sections 336, 337, 338, 308 & 384 [Arif Ahmad Ansari (Dr.) Vs. State of M.P.] ...972

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – देखें – दण्ड संहिता, 1860, धाराएँ 336, 337, 338, 308 व 384 (आरिफ अहमद अंसारी (डॉ.) वि. म.प्र. राज्य) ...972

Evidence Act (1 of 1872), Section 45 & 73 – Examination of Signature by Expert – Suit for specific performance of contract – Held – When signature was denied by defendants, it was the duty of appellant/plaintiff to file application u/S 45 for expert examination of disputed signatures with the admitted one – Application was not filed deliberately and even no explanation was forwarded for the same – Court rightly did not take the task to compare the signatures on its own – Impugned Judgment affirmed – Appeal dismissed. [Raja Bhaiya Vs. Badal Singh] ...935

साक्ष्य अधिनियम (1872 का 1), धारा 45 व 73 – विशेषज्ञ द्वारा हस्ताक्षर का परीक्षण – संविदा के विनिर्दिष्ट पालन हेतु वाद – अभिनिर्धारित – जब प्रतिवादीगण द्वारा हस्ताक्षर का प्रत्याख्यान किया गया था, अपीलार्थी/वादी का यह कर्तव्य था कि वह विवादित हस्ताक्षरों का विशेषज्ञ परीक्षण स्वीकृत हस्ताक्षर के साथ किये जाने हेतु धारा 45 के अंतर्गत आवेदन प्रस्तुत करे – आवेदन जानबूझकर प्रस्तुत नहीं किया गया तथा उक्त हेतु कोई स्पष्टीकरण भी प्रस्तुत नहीं किया गया था – न्यायालय ने स्वयं से हस्ताक्षरों की

तुलना करने का कार्य न करते हुए उचित किया – आक्षेपित निर्णय अभिपुष्ट – अपील खारिज। (राजा भैया वि. बादल सिंह) ...935

Financial Code No.1 (M.P.), Rule 84 & 85 – Date of Birth – Correction – Held – Apex Court concluded that in view of Rule 84 of the Code, date of birth recorded in service book at the time of entry in service is conclusive and binding on Govt. servant except if there is any clerical mistake or negligence on part of that other employee who is recording the same in service book. [Hussaina Bai (Smt.) Vs. State of M.P.] ...873

वित्तीय संहिता क्र. 1 (म.प्र.), नियम 84 व 85 – जन्म तिथि – सुधार – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि संहिता के नियम 84 को दृष्टिगत रखते हुए, सेवा में प्रवेश करने के समय सेवा पुस्तिका में अभिलिखित की गई जन्म तिथि निश्चायक है तथा शासकीय सेवक पर बाध्यकारी है सिवाय इसके कि उस अन्य कर्मचारी की ओर से, जो कि सेवा पुस्तिका में उक्त को अभिलिखित कर रहा है, कोई लेखन संबंधी भूल अथवा उपेक्षा हो। (हुसैना बाई (श्रीमती) वि. म.प्र. राज्य) ...873

Hindu Succession Act (30 of 1956), Section 6(5) – Applicability – Held – Section 6(5) clearly stipulates that “nothing contained in this section shall apply to a partition which has been effected before 20.12.2004” – Since partition took place on 21.11.2007, therefore Section 6 of the Act of 1956 would apply. [Radha Bai (Smt.) Vs. Mahendra Singh Raghuvanshi] ...914

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 6(5) – प्रयोज्यता – अभिनिर्धारित – धारा 6(5) स्पष्ट रूप से यह अनुबंधित करती है कि “इस धारा में अंतर्विष्ट कोई भी बात दिनांक 20.12.2004 के पूर्व प्रभावी हुए विभाजन पर लागू नहीं होगी” – चूंकि विभाजन दिनांक 21.11.2007 को हुआ, इसलिए 1956 के अधिनियम की धारा 6 लागू होगी। (राधा बाई (श्रीमती) वि. महेन्द्र सिंह रघुवंशी) ...914

Interpretation of Statutes – Ambiguity – Held – Any ambiguity in a penal statute has to be interpreted in favour of the accused. [Alkem Laboratories Ltd. (M/s) Vs. State of M.P.] (SC)...779

कानूनों का निर्वचन – अस्पष्टता – अभिनिर्धारित – एक दण्डक कानून में किसी अस्पष्टता का निर्वचन अभियुक्त के पक्ष में किया जाना चाहिए। (अल्केम लेबोरेट्रीज लि. (मे.) वि. म.प्र. राज्य) (SC)...779

Land Acquisition Act (1 of 1894), Sections 18, 50 & 54 – Enhancement of Compensation – Opportunity of Hearing to Local Authority – Held – It is the Local Authority who has to pay the enhanced compensation, who was not even made a party to land acquisition proceedings, before Reference Court and in first appeal before this Court – Section 50 gives right of hearing to Local Authority – Serious prejudice caused to petitioner – Order passed by this Court reviewed and recalled, setting aside the order/award passed in

Reference/First Appeal/Lok Adalat and remanding the matter to Reference Court to pass fresh award after giving opportunity of hearing to petitioner – Petition allowed. [M.P. Road Development Corporation Vs. Jagannath]

...928

भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 18, 50 व 54 – प्रतिकर का बढ़ाया जाना – स्थानीय प्राधिकारी को सुनवाई का अवसर – अभिनिर्धारित – यह स्थानीय प्राधिकारी है जिसे बढ़े हुए प्रतिकर का भुगतान करना है, जो कि निर्देश न्यायालय के समक्ष तथा प्रथम अपील में इस न्यायालय के समक्ष, भूमि अर्जन की कार्यवाहियों में पक्षकार तक नहीं बनाया गया था – धारा 50 स्थानीय प्राधिकारी को सुनवाई का अवसर प्रदान करती है – याची को गंभीर रूप से प्रतिकूल प्रभाव कारित हुआ – इस न्यायालय द्वारा पारित आदेश का पुनर्विलोकन किया गया तथा उसे वापस लिया गया एवं निर्देश/प्रथम अपील/लोक अदालत में पारित आदेश/अधिनिर्णय को अपास्त किया गया तथा याची को सुनवाई का अवसर प्रदान करने के पश्चात् नये सिरे से अधिनिर्णय पारित करने हेतु मामला निर्देश न्यायालय को प्रतिप्रेषित किया गया – याचिका मंजूर। (एम.पी. रोड डव्हलपमेन्ट कारपोरेशन वि. जगन्नाथ) ...928

Land Acquisition Act (1 of 1894), Section 18 & 54 – Award By Lok Adalat – Review Petition – Maintainability – Held – Judgment passed in First Appeal itself has been found patently illegal and Lok Adalat has passed the award based upon that very judgment – Award of Lok Adalat not sustainable. [M.P. Road Development Corporation Vs. Jagannath] ...928

भूमि अर्जन अधिनियम (1894 का 1), धारा 18 व 54 – लोक अदालत द्वारा अधिनिर्णय – पुनर्विलोकन याचिका – पोषणीयता – अभिनिर्धारित – प्रथम अपील में पारित निर्णय अपने आप में प्रत्यक्ष रूप से अवैध पाया गया तथा लोक अदालत ने उस वास्तविक निर्णय के आधार पर अधिनिर्णय पारित किया – लोक अदालत का अधिनिर्णय कायम रखे जाने योग्य नहीं। (एम.पी. रोड डव्हलपमेन्ट कारपोरेशन वि. जगन्नाथ) ...928

Land Revenue Code, M.P. (20 of 1959), Sections 158, 185, 189 & 190, Madhya Bharat Zamindari Abolition Act (13 of 1951), Sections 2(c), 4 & 37 – Bhumiswami Rights – Khud-Kasht Land – Held – U/S 37(1) of Abolition Act, “pakka tenancy” rights were conferred upon only on such a proprietor having land under his possession as Khud-Kasht land as per Section 2(c) r/w Section 4(2) and there had to be personal cultivation by Zamindars himself or through employees or hired labours – In instant case, as per khasra entries before date of vesting, land not recorded as Khud-Kasht of erstwhile Zamindars and is recorded as “Bir Land” i.e “grassland” – No personal cultivation over the said land – Mandatory requirement of Section 4(2) not fulfilled – Such land not saved from vesting u/S 4(1) to State government automatically, free from all encumbrances – Impugned order set aside – Appeal allowed. [State of M.P. Vs. Sabal Singh (Dead) By LRs.] (SC)...751

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 158, 185, 189 व 190, मध्य भारत जमींदारी उन्मूलन अधिनियम (1951 का 13), धाराएँ 2(c), 4 व 37 – भूमिस्वामी के अधिकार – खुद-काश्त भूमि – अभिनिर्धारित – उन्मूलन अधिनियम की धारा 37(1) के अंतर्गत “पक्का अभिधारण” अधिकार केवल ऐसे स्वत्वधारी को प्रदत्त किये गये थे जिसके पास धारा 2(c) सहपठित धारा 4(2) के अनुसार उसके कब्जाधीन भूमि खुद-काश्त भूमि के रूप में हो तथा स्वयं जमीनदारों द्वारा अथवा कर्मचारीगण अथवा भाड़े के श्रमिकों के माध्यम से उस पर वैयक्तिक खेती की जाती थी – वर्तमान प्रकरण में, खसरा प्रविष्टियों के अनुसार, निहित किये जाने की तिथि से पूर्व, भूमि तत्कालीन जमीनदारों की खुद काश्त भूमि के रूप में अभिलिखित नहीं की गई तथा “बिर भूमि” अर्थात् “चारागाह” के रूप में अभिलिखित है – उक्त भूमि पर व्यक्तिगत रूप से कोई खेती नहीं – धारा 4(2) की आज्ञापक आवश्यकता पूर्ण नहीं – उक्त भूमि को सभी विल्लंगमों से मुक्त, स्वतः राज्य सरकार को धारा 4(1) के अंतर्गत निहित होने से बचाया नहीं जा सकता – आक्षेपित आदेश अपास्त – अपील मंजूर। (म.प्र. राज्य वि. सबल सिंह (मृतक) द्वारा विधिक प्रतिनिधि)

(SC)...751

Land Revenue Code, M.P. (20 of 1959), Section 178 – Partition – Ancestral /Joint Property – Held – If property is ancestral or joint property, only then the same can be partitioned amongst co-owner – Partition presupposes that properties in question are joint or ancestral – An individual holding cannot be put for partition u/S 178 of the Code of 1959 – Further held, by way of partition, owners of property cannot exchange his property with another owner of another property. [Radha Bai (Smt.) Vs. Mahendra Singh Raghuvanshi] ...914

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 178 – विभाजन – पैतृक/संयुक्त संपत्ति – अभिनिर्धारित – यदि संपत्ति पैतृक अथवा संयुक्त संपत्ति है, केवल तब उक्त संपत्ति का सह-स्वामी के मध्य विभाजन किया जा सकता है – विभाजन पूर्वानुमानित करता है कि प्रश्नगत संपत्तियां संयुक्त अथवा पैतृक हैं – एक व्यक्तिगत धृति जोत का 1959 की संहिता की धारा 178 के अंतर्गत विभाजन नहीं किया जा सकता – आगे अभिनिर्धारित, विभाजन के माध्यम से, संपत्ति के स्वामी किसी अन्य संपत्ति के अन्य स्वामी के साथ संपत्ति का विनिमय नहीं कर सकते। (राधा बाई (श्रीमती) वि. महेन्द्र सिंह रघुवंशी)

...914

Land Revenue Code, M.P. (20 of 1959), Section 178 – Partition – Procedure – Held – Filing of application u/S 178 by respondents, itself shows that property was still joint/ancestral in nature and earlier registered “Sale Deed” and “Will” were sham documents and were never intended to be acted upon – In mutation proceedings and partition proceedings, no notice was issued to petitioner – Both orders were obtained behind her back – No adverse inference can be drawn against petitioner – Petition allowed. [Radha Bai (Smt.) Vs. Mahendra Singh Raghuvanshi] ...914

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 178 – विभाजन – प्रक्रिया – अभिनिर्धारित – प्रत्यर्थागण द्वारा धारा 178 के अंतर्गत आवेदन प्रस्तुत किया जाना, स्वयं यह दर्शाता है कि संपत्ति अभी भी संयुक्त/पैतृक स्वरूप की थी एवं पूर्व रजिस्ट्रीकृत “विक्रय विलेख” और “वसीयत” मिथ्या दस्तावेज थे एवं उन पर कभी भी कार्रवाई करने का आशय नहीं था – नामांतरण कार्यवाहियों एवं विभाजन कार्यवाहियों में, याची को कोई नोटिस जारी नहीं किया गया था – दोनों आदेश उसके पीठ पीछे प्राप्त किये गये थे – याची के विरुद्ध कोई प्रतिकूल निष्कर्ष नहीं निकाला जा सकता – याचिका मंजूर। (राधा बाई (श्रीमती) वि. महेन्द्र सिंह रघुवंशी) ...914

Madhya Bharat Land Revenue and Tenancy Act (66 of 1950), Section 52 and Madhya Bharat Zamindari Abolition Act (13 of 1951), Section 4(1) – Statutory Presumption – Held – There is a presumption of correctness of Kharsa entries u/S 52 of the Act of 1950 – Tenancy can only be proved by khasra entries, which shows that the said land not recorded as Khud-Kasht land and there was no personal cultivation – Further, entry of “Jwar” cultivation was ex-facie spurious, manipulated and illegally made – No presumption can be drawn in favour of respondent/plaintiff. [State of M.P. Vs. Sabal Singh (Dead) By LRs.] (SC)...751

मध्य भारत लैंड रेवेन्यू एण्ड टेनेन्सी ऐक्ट (1950 का 66), धारा 52 एवं मध्य भारत जमींदारी उन्मूलन अधिनियम (1951 का 13), धारा 4(1) – कानूनी उपधारणा – अभिनिर्धारित – 1950 के अधिनियम की धारा 52 के अंतर्गत खसरा प्रविष्टियों की शुद्धता की उपधारणा है – अभिधृति को केवल खसरा प्रविष्टियों द्वारा ही साबित किया जा सकता है, जो यह दर्शाती हैं कि कथित भूमि खुद काशत भूमि के रूप में अभिलिखित नहीं की गई है तथा कोई वैयक्तिक खेती नहीं थी – इसके अतिरिक्त, “ज्वार” की खेती की प्रविष्टि स्पष्ट रूप से मिथ्या, छलसाधित तथा अवैध रूप से की गई है – प्रत्यर्था/वादी के पक्ष में कोई उपधारणा नहीं की जा सकती। (म.प्र. राज्य वि. सबल सिंह (मृतक) द्वारा विधिक प्रतिनिधि) (SC)...751

Madhya Bharat Zamindari Abolition Act (13 of 1951), Sections 2(c), 4 & 37 – See – Land Revenue Code, M.P., 1959, Sections 158, 185, 189 & 190 [State of M.P. Vs. Sabal Singh (Dead) By LRs.] (SC)...751

मध्य भारत जमींदारी उन्मूलन अधिनियम (1951 का 13), धाराएँ 2(c), 4 व 37 – देखें – भू राजस्व संहिता, म.प्र., 1959, धाराएँ 158, 185, 189 व 190 (म.प्र. राज्य वि. सबल सिंह (मृतक) द्वारा विधिक प्रतिनिधि) (SC)...751

Madhya Bharat Zamindari Abolition Act (13 of 1951), Section 4(1) – See – Madhya Bharat Land Revenue and Tenancy Act, 1950, Section 52 [State of M.P. Vs. Sabal Singh (Dead) By LRs.] (SC)...751

मध्य भारत जमींदारी उन्मूलन अधिनियम (1951 का 13), धारा 4(1) – देखें – मध्य भारत लैंड रेवेन्यू एण्ड टेनेन्सी ऐक्ट, 1950, धारा 52 (म.प्र. राज्य वि. सबल सिंह (मृतक) द्वारा विधिक प्रतिनिधि) (SC)...751

Panchayat Nirvachan Niyam, M.P., 1995, Rule 5 – See – Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993, Section 30 [Digvijay Singh Vs. State of M.P.] (DB)...881

पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 5 – देखें – पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993, धारा 30 (दिग्विजय सिंह वि. म.प्र. राज्य) (DB)...881

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 30 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 5 – Delimitation – Competent Authority – Held – U/S 30 of 1993 Adhiniyam, power is vested with the State Government – Vide notification, power was conferred on Commissioner – Thus, for Jila Panchayat, Commissioner has been designated as competent authority. [Digvijay Singh Vs. State of M.P.] (DB)...881

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 30 एवं पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 5 – परिसीमन – सक्षम प्राधिकारी – अभिनिर्धारित – 1993 के अधिनियम की धारा 30 के अंतर्गत, राज्य सरकार को शक्ति निहित है – अधिसूचना द्वारा, आयुक्त को शक्ति प्रदत्त की गई थी – अतः, जिला पंचायत के लिए, आयुक्त सक्षम प्राधिकारी के रूप में नामनिर्दिष्ट किया गया है। (दिग्विजय सिंह वि. म.प्र. राज्य) (DB)...881

*Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 30 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 5 – Delimitation – Objections – Opportunity of Hearing – Held – Till it is established that objections were not invited and no hearing was provided to objectors, order of delimitation cannot be interfered with, especially in absence of any allegation of *malafide* – In instant case, record shows that objections were invited and after considering the same, order has been passed – No allegation of *malafide* or prejudice – No illegality in impugned notification – Petition dismissed. [Digvijay Singh Vs. State of M.P.] (DB)...881*

पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 30 एवं पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 5 – परिसीमन – आपत्तियां – सुनवाई का अवसर – अभिनिर्धारित – जब तक यह स्थापित नहीं हो जाता कि आपत्तियां आमंत्रित नहीं की गई थी तथा आपत्ति करने वालों को सुनवाई का अवसर प्रदान नहीं किया गया था, परिसीमन के आदेश के साथ हस्तक्षेप नहीं किया जा सकता, विशेष रूप से दुर्भावना के किसी अभिकथन के अभाव में – वर्तमान प्रकरण में, अभिलेख यह दर्शाता है कि आपत्तियां आमंत्रित की गई थीं तथा उक्त पर विचार करने के पश्चात्, आदेश पारित किया गया – दुर्भावना या प्रतिकूल प्रभाव का कोई अभिकथन नहीं – आक्षेपित अधिसूचना में कोई अवैधता नहीं – याचिका खारिज। (दिग्विजय सिंह वि. म.प्र. राज्य) (DB)...881

Penal Code (45 of 1860), Section 107 & 306 – Abetment of Suicide – Discussed and explained with case laws. [Digvijay Singh Vs. State of M.P.]

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दण्ड संहिता (1860 का 45), धारा 107 व 306 – आत्महत्या का दुष्प्रेरण – निर्णय विधि के साथ विवेचित एवं स्पष्ट किया गया। (दिग्विजय सिंह वि. म.प्र. राज्य) ...979

Penal Code (45 of 1860), Section 107 & 306 – Abetment of Suicide – Held – If circumstances are extreme, in that conditions the women may commit suicide – Continuous torture may also create a mental torture and this is also a form of abetment of suicide. [Digvijay Singh Vs. State of M.P.]

...979

दण्ड संहिता (1860 का 45), धारा 107 व 306 – आत्महत्या का दुष्प्रेरण – अभिनिर्धारित – यदि परिस्थितियां आत्यंतिक हैं, ऐसी स्थितियों में, महिलाएं आत्महत्या कर सकती हैं – निरंतर प्रताड़ना भी मानसिक प्रताड़ना सृजित कर सकती है और यह भी आत्महत्या के दुष्प्रेरण का एक रूप है। (दिग्विजय सिंह वि. म.प्र. राज्य) ...979

Penal Code (45 of 1860), Sections 147, 148 & 149 – Common Object & Unlawful Assembly – Held – Common object can develop even on the spot of occurrence – Just because one appellant gave axe blow to victim, it cannot be said that other appellants were not having common object or they were not members of unlawful assembly. [Ramjilal @ Munna Vs. State of M.P.] ...*9

दण्ड संहिता (1860 का 45), धाराएँ 147, 148 व 149 – सामान्य उद्देश्य व विधिविरुद्ध जमाव – अभिनिर्धारित – सामान्य उद्देश्य घटना के स्थान पर भी विकसित हो सकता है – सिर्फ क्योंकि एक अपीलार्थी ने पीड़ित पर कुल्हाड़ी से वार किया, यह नहीं कहा जा सकता कि अन्य अपीलार्थीगण का सामान्य उद्देश्य नहीं था अथवा वे विधिविरुद्ध जमाव के सदस्य नहीं थे। (रामजीलाल उर्फ मुन्ना वि. म.प्र. राज्य) ...*9

Penal Code (45 of 1860), Sections 147, 148, 307/149, 323 & 324/149 – Appreciation of Evidence – Weapon of Offence – Non-recovery – Effect – Held – In the light of direct ocular evidence of injured witnesses, prosecution case cannot be disbelieved merely on ground of non-recovery of weapon of Offence – Ocular evidence fully corroborated by medical evidence – It is well established principle of law that mere non-recovery of weapon of offence would not make ocular evidence unreliable – Conviction upheld. [Ramjilal @ Munna Vs. State of M.P.] ...*9

दण्ड संहिता (1860 का 45), धाराएँ 147, 148, 307/149, 323 व 324/149 – साक्ष्य का मूल्यांकन – अपराध का शस्त्र – गैर बरामदगी – प्रभाव – अभिनिर्धारित – आहत साक्षीगण के प्रत्यक्ष चाक्षुष साक्ष्य के आलोक में, अभियोजन प्रकरण पर मात्र अपराध के शस्त्र की गैर बरामदगी के आधार पर अविश्वास नहीं किया जा सकता – चाक्षुष साक्ष्य, चिकित्सीय साक्ष्य द्वारा पूर्ण रूप से संपुष्ट – विधि का यह सुस्थापित सिद्धांत है कि अपराध

के शस्त्र की गैर बरामदगी मात्र, चाक्षुष साक्ष्य को अविश्वसनीय नहीं बनायेगी – दोषसिद्धि कायम। (रामजीलाल उर्फ मुन्ना वि. म.प्र. राज्य) ...*9

Penal Code (45 of 1860), Section 149 – Unlawful Assembly – Participation in Crime – Motive & Intention – Held – Merely because other three accused persons (respondents) had not used their weapons does not absolve them of the responsibility and vicarious liability on which the very idea of charge u/S 149 IPC is founded. [State of M.P. Vs. Killu @ Kailash]
(SC)...761

दण्ड संहिता (1860 का 45), धारा 149 – विधिविरुद्ध जमाव – अपराध में सहभागिता – हेतु व आशय – अभिनिर्धारित – मात्र इस कारण से कि अन्य तीन अभियुक्तगण (प्रत्यर्थागण) ने अपने शस्त्रों का प्रयोग नहीं किया था वे उस उत्तरदायित्व तथा प्रतिनिधिक दायित्व जिस पर भा.दं.सं. की धारा 149 के अंतर्गत आरोप का मूल विचार आधारित है, से मुक्ति नहीं पा जाते। (म.प्र. राज्य वि. किल्लू उर्फ कैलाश) (SC)...761

Penal Code (45 of 1860), Section 302/34 – See – Criminal Procedure Code, 1973, Section 228 [Bhawna Bai Vs. Ghanshyam] (SC)...788

दण्ड संहिता (1860 का 45), धारा 302/34 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 228 (भावना बाई वि. घनश्याम) (SC)...788

Penal Code (45 of 1860), Section 302 & 149 – Unlawful Assembly – Principle of Vicarious Liability – Applicability – Held – Presence of accused in house of deceased, the fact that they were armed, fact that all of them entered the house at midnight and fact that two out of those five accused used their deadly weapons to cause death of deceased, was sufficient to attract principle of vicarious liability u/S 149 IPC – High Court erred in acquitting respondents – Order of conviction restored – Appeal allowed. [State of M.P. Vs. Killu @ Kailash]
(SC)...761

दण्ड संहिता (1860 का 45), धारा 302 व 149 – विधिविरुद्ध जमाव – प्रतिनिधिक दायित्व का सिद्धांत – प्रयोज्यता – अभिनिर्धारित – मृतक के घर में अभियुक्त की मौजूदगी, यह तथ्य कि वे सशस्त्र थे, तथ्य कि उन सभी ने मध्यरात्रि में घर में प्रवेश किया एवं तथ्य कि उन पांच अभियुक्तों में से दो ने मृतक की हत्या कारित करने हेतु अपने घातक शस्त्रों का प्रयोग किया, भा.दं.सं. की धारा 149 के अंतर्गत प्रतिनिधिक दायित्व के सिद्धांत को आकर्षित करने हेतु पर्याप्त था – उच्च न्यायालय ने प्रत्यर्थागण को दोषमुक्त करने में त्रुटि की – दोषसिद्धि का आदेश पुनःस्थापित – अपील मंजूर। (म.प्र. राज्य वि. किल्लू उर्फ कैलाश) (SC)...761

Penal Code (45 of 1860), Section 306/34 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 482 – Primary Evidence – Considerations – Held – FIR registered on basis of documents and statements of 10 witnesses which prima facie shows that deceased was being continuously pressurized

by applicants to bring money from her parents, for which she was also beaten – Minute marshalling of evidence recorded u/S 161 and of prosecution documents cannot be done at primary stage – Sufficient material to proceed against applicants – Application dismissed. [Digvijay Singh Vs. State of M.P.] ...979

दण्ड संहिता (1860 का 45), धारा 306/34 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 व 482 – प्राथमिक साक्ष्य – विचार – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन दस्तावेजों एवं 10 साक्षियों के कथनों के आधार पर पंजीबद्ध किया गया जो प्रथम दृष्ट्या दर्शाता है कि आवेदकगण द्वारा मृतिका पर उसके माता-पिता से धन लाने के लिए निरंतर दबाव डाला जा रहा था, जिसके लिए उसे पीटा भी गया था – धारा 161 के अंतर्गत अभिलिखित साक्ष्य तथा अभियोजन दस्तावेजों का सूक्ष्म क्रमबन्धन, प्राथमिक प्रक्रम पर नहीं किया जा सकता – आवेदकगण के विरुद्ध आगे कार्यवाही करने हेतु पर्याप्त सामग्री है – आवेदन खारिज। (दिग्विजय सिंह वि. म.प्र. राज्य) ...979

Penal Code (45 of 1860), Section 306/34 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 482 – Quashment of FIR – Held – No allegations against applicants in dying declaration and in statement of victim recorded u/S 161 Cr.P.C. – Dying declaration prima facie seems to be suspicious – When doubt is created upon any statement or document, it may be resolved or justified only by elaborate statement before Trial Court – Such document/statement cannot be made basis for quashment of FIR – Application dismissed. [Digvijay Singh Vs. State of M.P.] ...979

दण्ड संहिता (1860 का 45), धारा 306/34 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 व 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – अभिनिर्धारित – धारा 161 दं.प्र.सं. के अंतर्गत अभिलिखित पीड़िता के कथन एवं मृत्युकालिक कथन में आवेदकगण के विरुद्ध कोई अभिकथन नहीं – मृत्युकालिक कथन प्रथम दृष्ट्या संदेहास्पद लगता है – जब किसी कथन या दस्तावेज पर शंका उत्पन्न होती है, उसका समाधान या न्यायोचित ठहराया जाना केवल विचारण न्यायालय के समक्ष विस्तृत कथन द्वारा किया जा सकता है – उक्त दस्तावेज/कथन को, प्रथम सूचना प्रतिवेदन अभिखंडित करने के लिए आधार नहीं बनाया जा सकता – आवेदन खारिज। (दिग्विजय सिंह वि. म.प्र. राज्य) ...979

Penal Code (45 of 1860), Section 306 & 498-A – Separate Living of Accused – Effect – Held – Only upon the basis of separate living of any accused it cannot be believed that he could not participate in crime like u/S 498-A and 306 IPC related to women. [Digvijay Singh Vs. State of M.P.]...979

दण्ड संहिता (1860 का 45), धारा 306 व 498-A – अभियुक्त का अलग रहना – प्रभाव – अभिनिर्धारित – केवल किसी अभियुक्त के अलग रहने के आधार पर यह विश्वास नहीं किया जा सकता कि वह महिलाओं से संबंधित अपराध, जैसे कि धारा 498-A एवं 306 भा.दं.सं. में सहभागी नहीं हो सकता। (दिग्विजय सिंह वि. म.प्र. राज्य) ...979

Penal Code (45 of 1860), Sections 336, 337, 338, 308 & 384 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Held – Prima facie material about negligence on part of petitioner is available in final report but no material or any opinion of expert doctor against petitioner that the injury was sufficient in ordinary course of nature, to cause death – If death cannot be caused by such injury, petitioner cannot be prosecuted u/S 308 IPC – Physical hurt is not a necessary prerequisite for invoking the provision of Section 308 IPC – Quashment of entire FIR not warranted at this stage – FIR u/S 308 IPC is quashed – Application partly allowed. [Arif Ahmad Ansari (Dr.) Vs. State of M.P.] ...972

दण्ड संहिता (1860 का 45), धाराएँ 336, 337, 338, 308 व 384 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – अभिनिर्धारित – याची की ओर से उपेक्षा के बारे में प्रथम दृष्ट्या सामग्री अंतिम प्रतिवेदन में उपलब्ध है लेकिन याची के विरुद्ध कोई सामग्री अथवा विशेषज्ञ चिकित्सक की कोई राय नहीं है कि प्रकृति के सामान्य अनुक्रम में मृत्यु कारित करने हेतु चोट पर्याप्त थी – यदि उक्त चोट द्वारा मृत्यु कारित नहीं की जा सकती, तो याची को भा.दं.सं. की धारा 308 के अंतर्गत अभियोजित नहीं किया जा सकता – भा.दं.सं. की धारा 308 के उपबंध का अवलंब लेने के लिए शारीरिक उपहति एक पूर्वापेक्षित आवश्यकता नहीं है – इस प्रक्रम पर संपूर्ण प्रथम सूचना प्रतिवेदन को अभिखंडित करने की आवश्यकता नहीं है – भा.दं.सं. की धारा 308 के अंतर्गत प्रथम सूचना प्रतिवेदन अभिखंडित – आवेदन अंशतः मंजूर। (आरिफ अहमद अंसारी (डॉ.) वि. म.प्र. राज्य) ...972

Plastic Waste Management Rules, 2016 – See – Constitution – Article 226 [Gaurav Pandey Vs. Union of India] (DB)...895

प्लास्टिक कचरा प्रबंधन नियम, 2016 – देखें – संविधान – अनुच्छेद 226 (गौरव पाण्डे वि. यूनियन ऑफ इंडिया) (DB)...895

Precedent – Held – SLP dismissed in limine at admission stage, does not amount to precedence. [MPD Industries Pvt. Ltd. (M/s) Vs. Union of India] (DB)...905

पूर्व निर्णय – अभिनिर्धारित – ग्रहण करने के प्रक्रम पर आरंभ में ही विशेष इजाजत याचिका का खारिज किया जाना, पूर्व निर्णय की कोटि में नहीं आता। (एमपीडी इंडस्ट्रीज प्रा. लि. (मे.) वि. यूनियन ऑफ इंडिया) (DB)...905

Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d) & 13(2) – Demand of Bribe – Examination of Voice – Proof – Held – Voice of appellant recorded in digital voice recorder but prosecution has not taken any sample voice of appellant for comparison – Aspect of demand through tape recorder, not established by prosecution beyond reasonable doubt. [Anil Bhaskar Vs. State of M.P. (SPE) Lokayukt] ...952

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(d) व 13(2) – रिश्वत की मांग – आवाज का परीक्षण – सबूत – अभिनिर्धारित – अपीलार्थी की आवाज को डिजीटल व्हाईस रिकार्डर में अभिलिखित किया गया था परंतु अभियोजन ने तुलना करने के लिए अपीलार्थी की आवाज का कोई नमूना नहीं लिया – टेप रिकार्डर के जरिए मांग के पहलू को अभियोजन द्वारा युक्तियुक्त संदेह से परे स्थापित नहीं किया गया। (अनिल भास्कर वि. म.प्र. राज्य (एसपीई) लोकायुक्त) ...952

***Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d) & 13(2) – Illegal Gratification – Hostile Witness – Credibility – Held – Complainant although turned hostile, but for major part, supports prosecution story including demand and acceptance of bribe – Other panch witnesses have not turned hostile and supported prosecution story – Tainted currency notes were recovered from appellant's pocket, particulars of which were same as recorded earlier during pre-trap stage – It was established that money was accepted as gratification – Defence taken by appellant not established – Conviction and sentence upheld – Appeal dismissed. Anil Bhaskar Vs. State of M.P. (SPE) Lokayukt]* ...952**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(d) व 13(2) – अवैध परितोषण – पक्ष विरोधी साक्षी – विश्वसनीयता – अभिनिर्धारित – यद्यपि परिवादी पक्ष विरोधी हो गया किंतु अभियोजन कहानी के मुख्य भाग का समर्थन करता है, जिसमें रिश्वत की मांग एवं स्वीकृति शामिल है – अन्य पंच साक्षीगण पक्ष विरोधी नहीं हुए और अभियोजन कहानी का समर्थन किया – दूषित करेंसी नोट, अपीलार्थीगण के पॉकेट से बरामद किये गये थे जिसकी विशिष्टियां पूर्वतर, ट्रैप-पूर्व प्रक्रम के दौरान अभिलिखित विशिष्टियों के समान है – यह स्थापित किया गया था कि परितोषण के रूप में रूपये स्वीकार किये गये थे – अपीलार्थी द्वारा लिया गया बचाव स्थापित नहीं – दोषसिद्धि एवं दण्डादेश कायम रखा गया – अपील खारिज। (अनिल भास्कर वि. म.प्र. राज्य (एसपीई) लोकायुक्त) ...952

***Prevention of Corruption Act (49 of 1988), Section 20(1) – Presumption – Held – Acceptance of gratification implies that there was demand – No defence by appellant that the money was stealthily inserted into his pocket – No such contention in accused statement – Legal presumption u/S 20(1) of the Act drawn against appellant – Onus was upon appellant to rebut the same which he failed to discharge. Anil Bhaskar Vs. State of M.P. (SPE) Lokayukt]* ...952**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 20(1) – उपधारणा – अभिनिर्धारित – परितोषण की स्वीकृति विवक्षित करती है कि वहां मांग की गई थी – अपीलार्थी द्वारा कोई बचाव नहीं कि रूपये चोरी छिपे उसकी पॉकेट में डाले गये थे – अभियुक्त के कथन में ऐसा कोई तर्क नहीं – अपीलार्थी के विरुद्ध, अधिनियम की धारा 20(1) के अंतर्गत विधिक उपधारणा निकाली गई – उक्त को खंडित करने का भार

अपीलार्थी पर था जिसका निर्वहन करने में वह विफल रहा। (अनिल भास्कर वि. म.प्र. राज्य (एसपीई) लोकायुक्त) ...952

Prevention of Food Adulteration Act (37 of 1954), Sections 2(ia)(a), 2(ix)(g), 11 & 13(2) – Adulteration and Misbranding – Held – Where examination of contents/ingredients of food article is integral to prove offence of “misbranding”, the procedure prescribed u/S 11 & 13 has to be complied with, regardless of whether “adulteration” is alleged or not – This includes right to obtain second opinion u/S 13(2) of the Act. [Alkem Laboratories Ltd. (M/s) Vs. State of M.P.] (SC)...779

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धाराएँ 2(ia)(a), 2(ix)(g), 11 व 13(2) – अपमिश्रण तथा मिथ्या छाप देना – अभिनिर्धारित – जहां खाद्य पदार्थ की सामग्री/संघटकों का परीक्षण किया जाना “मिथ्या छाप” के अपराध को साबित करने के लिए अनिवार्य है, इसका ध्यान रखे बगैर कि क्या “अपमिश्रण” अभिकथित है अथवा नहीं धारा 11 व 13 के अंतर्गत विहित प्रक्रिया का अनुपालन किया जाना चाहिए – इसमें अधिनियम की धारा 13(2) के अंतर्गत द्वितीय राय प्राप्त करने का अधिकार शामिल है। (अल्केम लेबोरेट्रीज लि. (मे.) वि. म.प्र. राज्य) (SC)...779

Prevention of Food Adulteration Act (37 of 1954), Sections 2(ix)(g), 7(ii), 13(2), 16(1)(a)(ii) & 20-A – Adulteration and Misbranding – Quashment of Charge – After several years of pending litigation, on application of accused, appellant was added as an accused – Held – Appellant lost their chance to get the sample re-tested u/S 13(2) of the Act on account of respondent's negligence – Appellant ought to get such valuable opportunity for a second opinion from Central Laboratory and claim exoneration from criminal proceedings – Impugned order quashed – Appeal allowed. [Alkem Laboratories Ltd. (M/s) Vs. State of M.P.] (SC)...779

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धाराएँ 2(ix)(g), 7(ii), 13(2), 16(1)(a)(ii) व 20-A – अपमिश्रण एवं मिथ्या छाप देना – आरोप का अभिखंडित किया जाना – लंबित मुकदमेबाजी के अनेक वर्षों के पश्चात्, अभियुक्त के आवेदन पर, अपीलार्थी को एक अभियुक्त के रूप में जोड़ा गया था – अभिनिर्धारित – अपीलार्थी ने प्रत्यर्थी की उपेक्षा के कारण अधिनियम की धारा 13(2) के अंतर्गत नमूने के पुनः परीक्षण कराये जाने का मौका खो दिया – अपीलार्थी को केंद्रीय प्रयोगशाला से दूसरी राय के लिए तथा दाण्डिक कार्यवाहियों से विमुक्ति करने का दावा करने हेतु इस तरह का बहुमूल्य अवसर प्राप्त करना चाहिए – आक्षेपित आदेश अभिखंडित – अपील मंजूर। (अल्केम लेबोरेट्रीज लि. (मे.) वि. म.प्र. राज्य) (SC)...779

Prevention of Food Adulteration Act (37 of 1954), Section 2(ix)(g) & 13(2) – Ingredient – Held – The word “adulterated” in section 13(2) would have to be read as including “misbranded” in so far as it relates to ingredient

of food article and clause of Section 13 have to be complied with in its entirety. [Alkem Laboratories Ltd. (M/s) Vs. State of M.P.] (SC)...779

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 2(ix)(g) व 13(2) – संघटक – अभिनिर्धारित – धारा 13(2) में शब्द “अपमिश्रित” को जहां तक वह खाद्य पदार्थ के संघटक से संबंधित है “मिथ्या छापवाला” सहित पढ़ा जाना होगा तथा धारा 13 के खंड का संपूर्णता के साथ अनुपालन किया जाना चाहिए। (अल्केम लेबोरेट्रीज लि. (मे.) वि. म.प्र. राज्य) (SC)...779

Road Transport Corporation Act (64 of 1950) – Service Regulation, No. 59 – Age of Superannuation – Held – Division Bench of this Court considering Service Regulation No. 59 had concluded that employee could be retired after attaining age of 58 years – Corporation had option to retain an employee upto age of 60 years, but no vested right is created in favour of employee to continue upto 60 years – Petition dismissed. [Ashutosh Pandey Vs. The Managing Director, MPRTC] (DB)...888

सड़क परिवहन निगम अधिनियम (1950 का 64) – सेवा विनियमन, क्र. 59 – अधिवर्षिता की आयु – अभिनिर्धारित – इस न्यायालय की खंड न्यायपीठ ने सेवा विनियमन क्र. 59 पर विचार करते हुए यह निष्कर्षित किया था कि कर्मचारी 58 वर्ष की आयु पूर्ण करने के पश्चात् सेवानिवृत्त हो सकता है – निगम के पास एक कर्मचारी को 60 वर्षों की आयु तक सेवा पर बनाए रखने का विकल्प था, परंतु 60 वर्षों तक सेवा जारी रखने हेतु कर्मचारी के पक्ष में कोई निहित अधिकार सृजित नहीं होता है – याचिका खारिज। (आशुतोष पाण्डे वि. द मेनेजिंग डायरेक्टर, एमपीआरटीसी) (DB)...888

Service Law – Age of Superannuation – Enhancement – Grounds – Held – Documents on record shows that Corporation has not adopted the Circular or amendment made in FIR regarding age of superannuation of State Government employees, thus such Circulars are not ipso facto applicable to employees of Corporation – They cannot claim equality with Government employees in respect of age of superannuation. [Ashutosh Pandey Vs. The Managing Director, MPRTC] (DB)...888

सेवा विधि – अधिवर्षिता की आयु – वृद्धि – आधार – अभिनिर्धारित – अभिलेख पर मौजूद दस्तावेज यह दर्शाते हैं कि निगम ने राज्य सरकार के कर्मचारीगण की अधिवर्षिता की आयु के संबंध में परिपत्र अथवा मूल नियमों में किये गये संशोधन को अंगीकृत नहीं किया, अतः उक्त परिपत्र निगम के कर्मचारीगण पर स्वतः लागू नहीं होंगे – अधिवर्षिता की आयु के संबंध में वे सरकारी कर्मचारियों के साथ समानता का दावा नहीं कर सकते। (आशुतोष पाण्डे वि. द मेनेजिंग डायरेक्टर, एमपीआरटीसी) (DB)...888

Service Law – Age of Superannuation – Fixation of – Held – In respect of fixation of age of superannuation, Apex Court concluded that it is a policy decision and is within the wisdom of Rule making authority, thus judicial

review in such administrative action is not called for. [Ashutosh Pandey Vs. The Managing Director, MPRTC] (DB)...888

सेवा विधि – अधिवर्षिता की आयु – का निर्धारण – अभिनिर्धारित – अधिवर्षिता की आयु के निर्धारण के संबंध में, सर्वोच्च न्यायालय ने यह निष्कर्षित किया है कि यह एक नीति विनिश्चय है तथा नियम बनाने वाले प्राधिकारी के प्रज्ञान के भीतर है, इसलिए उक्त प्रशासनिक कार्य में न्यायिक पुनर्विलोकन की आवश्यकता नहीं है। (आशुतोष पाण्डे वि. द मेनेजिंग डायरेक्टर, एमपीआरटीसी) (DB)...888

Service Law – Date of Birth – Correction – Held – Even if birth certificate found to be genuine, petitioner not entitled for correction of date of birth because she applied at fag end of her service and she failed to prove that there was any clerical error or negligence on part of employee while recording the same in service book – No case for interference – Petition dismissed. [Hussaina Bai (Smt.) Vs. State of M.P.] ...873

सेवा विधि – जन्म तिथि – सुधार – अभिनिर्धारित – यद्यपि जन्म प्रमाण-पत्र वास्तविक पाया गया हो, याची जन्म तिथि में सुधार करवाने के लिए हकदार नहीं है क्योंकि उसने अपनी सेवा के अंतिम भाग में आवेदन किया है तथा वह यह साबित करने में विफल रही है कि सेवा पुस्तिका में उक्त को अभिलिखित करते समय कर्मचारी की ओर से कोई लेखन की गलती अथवा उपेक्षा थी – हस्तक्षेप का प्रकरण नहीं – याचिका खारिज। (हुसैना बाई (श्रीमती) वि. म.प्र. राज्य) ...873

Special Economic Zones Act (28 of 2005), Section 30(3) – “Bill of Export” – Held – “Bill of Export” is mandatory requirement and no claim can be accepted in absence of proper authorization – “Aayat Niryat Form” provides for submission of proofs by furnishing “Bill of Export” – For purpose of exemption from payment of duty, petitioners were required to submit proof of export to SEZ unit – Statutory provisions of furnishing “Bill of Export” not complied with – Further, SEZ unit, which is a necessary party is not impleaded as respondent, who could verify receipt of goods – Petitioner not entitled for any relief – Petition dismissed. [MPD Industries Pvt. Ltd. (M/s) Vs. Union of India] (DB)...905

विशेष आर्थिक जोन अधिनियम (2005 का 28), धारा 30(3) – “निर्यात पत्र” – अभिनिर्धारित – “निर्यात पत्र” आज्ञापक आवश्यकता है तथा उचित प्राधिकार के अभाव में कोई दावा स्वीकार नहीं किया जा सकता – “आयात निर्यात प्रपत्र”, “निर्यात पत्र” प्रस्तुत कर सबूत प्रस्तुत किये जाने हेतु उपबंधित करता है – शुल्क के भुगतान से छूट के प्रयोजन हेतु, याचीगण को सेज ईकाई को निर्यात का सबूत प्रस्तुत करना आवश्यक था – “निर्यात पत्र” प्रस्तुत करने के कानूनी उपबंधों का अनुपालन नहीं किया गया – इसके अतिरिक्त, सेज (विशेष आर्थिक जोन) ईकाई, जो कि एक आवश्यक पक्षकार है, उसे प्रत्यर्थी के रूप में अभियोजित नहीं किया गया, जो कि माल की प्राप्ति सत्यापित कर सकता था – याची

किसी अनुतोष का हकदार नहीं – याचिका खारिज। (एमपीडी इंडस्ट्रीज प्रा. लि. (मे.) वि. यूनियन ऑफ इंडिया) (DB)...905

Words & Phrases – Expression “Litigation” & “PIL” – Discussed & explained. [Gaurav Pandey Vs. Union of India] (DB)...895

शब्द एवं वाक्यांश – अभिव्यक्ति “वाद” व “लोकहित वाद” – विवेचित एवं स्पष्ट किये गये। (गौरव पाण्डे वि. यूनियन ऑफ इंडिया) (DB)...895

Words & Phrases – “Natural Justice” – Discussed & explained. [Technosys Security Systems Pvt. Ltd. (M/s) Vs. State of M.P.] (DB)...866

शब्द व वाक्यांश – “नैसर्गिक न्याय” – विवेचित व स्पष्ट। (टेक्नोसिस सिक्योरिटी सिस्टम प्रा.लि. (मे.) वि. म.प्र. राज्य) (DB)...866

Words & Phrases – “Speaking Order” – Discussed & explained. [Technosys Security Systems Pvt. Ltd. (M/s) Vs. State of M.P.] (DB)...866

शब्द व वाक्यांश – “सकारण आदेश” – विवेचित व स्पष्ट। (टेक्नोसिस सिक्योरिटी सिस्टम प्रा.लि. (मे.) वि. म.प्र. राज्य) (DB)...866

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THE INDIAN LAW REPORTS M.P. SERIES, 2020**(Vol.-2)****JOURNAL SECTION****IMPORTANT ACTS, AMENDMENTS, CIRCULARS,
NOTIFICATIONS AND STANDING ORDERS.****THE MADHYA PRADESH GOODS AND SERVICES TAX
(AMENDMENT) RULES, 2019**

[Published in Madhya Pradesh Gazette, (Extra-ordinary), dated 20 March 2020, page Nos. 258 to 258(1)]

No. F-A 3-03-2020-1-V (17).— In exercise of the powers conferred by Section 164 of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), the State Government, on the recommendations of the Council, hereby makes the following rules further to amend the Madhya Pradesh Goods and Services Tax Rules, 2017, namely :—

- 1.(1) These rules may be called the Madhya Pradesh Goods and Services Tax (Amendment) Rules, 2019.
- (2) This notification shall be deemed to have come into force with effect from the 26th day of December, 2019.
2. In the Madhya Pradesh Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), with effect from the 1st January, 2020, in rule 36, in sub-rule (4), for the figures and words "20 per cent.", the figures and words "10 per cent." shall be substituted.
3. In the said rules, after rule 86, the following rule shall be inserted, namely :—

"86-A. Conditions of use of amount available in electronic credit ledger.—

- (1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as —

- a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36—
 - i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - ii. without receipt of goods or services or both; or
- b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
- c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
- d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36.

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

- (2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
 - (3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction."
4. In the said rules, with effect from the 11th January, 2020, in rule 138E, after clause (b), the following clause shall be inserted, namely :—

"(c) being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be."

By order and in the name of the Governor of Madhya Pradesh,
ADITI KUMAR TRIPATHI, Dy. Secy.

**NOTIFICATION REGARDING THE MADHYA PRADESH GOODS
AND SERVICES TAX ACT, 2017**

[Published in Madhya Pradesh Gazette, (Extra-ordinary), dated 20 March 2020, page No. 266]

No. F A-3-51-2019-1-V(13).— In exercise of the powers conferred by sub-rule (4) to Rule 48 of Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), the State Government on the recommendations of the Council, hereby notifies registered person, whose aggregate turnover in a financial year exceeds one hundred crore rupees, as a class of registered person who shall prepare invoice in terms of sub-rule (4) of Rule 48 of the said rules in respect of supply of goods or services or both to a registered person.

2. This notification shall come into force from the 1st day of April, 2020.

By order and in the name of the Governor of Madhya Pradesh,
ADITI KUMAR TRIPATHI, Dy. Secy.

**THE MADHYA PRADESH GOODS AND SERVICES TAX (REMOVAL
OF DIFFICULTIES) ORDER , 2019**

[Published in Madhya Pradesh Gazette, (Extra-ordinary), dated 20 March 2020, page No. 256]

Ordere No. F A-3-02-2020-1-V(18).— WHEREAS, sub-section (1) of section 44 of the Madhya Pradesh Goods and Services Tax Act, 2017 (19 of 2017), (hereafter in this Order referred to as the said Act) provides that every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year;

AND WHEREAS, for the purpose of furnishing of the annual return electronically for every financial year as referred to in sub-section (1) of section 44 of the said Act, certain technical problems are being faced by the taxpayers as a result whereof, the said annual return for the period from the 1st July, 2017 to the 31st March, 2018 could not be furnished by the registered persons, as referred to in the said sub-section (1) and because of the that, certain difficulties have arisen in giving effect to the provisions of the said section.

NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Madhya Pradesh Goods and Services Tax Act, 2017, the State Government, on recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely :—

1. **Short title.**— This Order may be called the Madhya Pradesh Goods and Services Tax (Tenth Removal of Difficulties) Order, 2019.
2. In section 44 of the Madhya Pradesh Goods and Services Tax Act, 2017, in the Explanation, for the figures, letters and word "31st December, 2019", the figures, letters and word "31st December, 2019", the figures, letters and word "31st January, 2020" shall be substituted.

By order and in the name of the Governor of Madhya Pradesh,
ADITI KUMAR TRIPATHI, Dy. Secy.

THE MADHYA PRADESH EPIDEMIC DISEASES, COVID-19 REGULATIONS, 2020

[Published in Madhya Pradesh Gazette, (Extra-ordinary), dated 23 March 2020, page Nos. 271 to 272 (1)]

No. PS/Health/17/Medi-3/595 - In exercise of the powers conferred under Section 2,3 & 4 of The Epidemic Diseases Act, 1897, the Governor of Madhya Pradesh is pleased to issue the following regulations regarding COVID-19 (Corona Virus Disease 2019)

1. These regulations may be called "The Madhya Pradesh Epidemic Diseases, COVID-19 Regulations, 2020.
2. "Epidemic Disease" in these regulations means COVID-19 (Corona Virus Disease 2019) which has been notified as Notified Epidemic disease and "Notified Infectious Disease" under Madhya Pradesh Public Health Act, 1949 by notification dated 18.03.2020.
3. Authorized persons under this Act are Principal Secretary (Public Health & Family Welfare) at the State Level, District Magistrate, Commissioner of Municipal Corporation, Sub Divisional Magistrate (SDM), Chief Medical and Health Officer and Civil Surgeon cum Hospital Superintendent in the districts.
4. Staff of all Government Departments and Organization of the concerned area will be at the disposal of the District Magistrate, Sub

Divisional Magistrate (SDM), and officers authorized by the Department of Public Health and Family Welfare, for discharging the duty of containment measures in the districts. If required, District Magistrate may order requisition of services and facilities of any other person/institution.

5. No persons/institution/organization will use any print or electronic or social media for dissemination of any information regarding COVID-19 without ascertaining the facts and prior clearance of the Principal Secretary (Public Health & Family Welfare), Commissioner, Health, Commissioner Medical Education, Director (Public Health & Family Welfare), Director (Medical Education) or the District Magistrate as the case may be. This is necessary to avoid spread of any unauthenticated information and/or rumors regarding COVID-19. If any person/institution/organization is found indulging in such activity, it will be treated as a punishable offence under these Regulations.
6. All hospitals, nursing homes and clinical establishments (government or private) during screening of specified cases shall record the history of travel of the person to any country or area (as per the guidelines issued from time to time by Government of India) where COVID-19 has been reported. The history of contacts with the suspected or confirmed case of COVID-19 is required to be recorded. Contact tracing for patients (required as per the guidelines issued from time to time) will be conducted by the Health Department or by other identified staff. Information of all such cases must be given to District Integrated Disease Surveillance Unit and District Magistrate immediately.
7. If the owner or occupier(s) of any premises or any individual suspected/confirmed with COVID-19, refuses to take measures for prevention or treatment i.e., Home Quarantine/Institutional Quarantine/Isolation or any such person refuses to co-operate with, render assistance to, or comply with the directions of the Surveillance Personnel, the concerned District Magistrate having jurisdiction specifically in this regard, may pass an appropriate order and may proceed with proceedings under Section 133 of the Code of Criminal

Procedure, 1973 (2 of 1974), or take any other coercive action as deemed necessary and expedient for enforcing such cooperation and assistance. In case of a minor, such Order shall be directed to the guardian or any other adult member of the family of the minor.

8. All advisories issued/or to be issued by the Government of India on COVID-19 will ipso facto be treated as directions under the Epidemic Diseases Act, 1897 in the State of Madhya Pradesh.
9. With the concurrence of Health and Family Welfare Department, Madhya Pradesh, District Disaster Management Committee headed by District Magistrate is authorized for planning strategy regarding containment measures for COVID-19 in their respective districts. The District Magistrate may co opt more officers from different departments for District Disaster Management Committee for this activity under these regulations.
10. **Penalty:** Any person/institution/organization found violating any provisions of this regulation shall be deemed to have committed an offence punishable under Section 187/ 188/269/270/271 of the Indian Penal Code (45 of 1860). District Magistrate of a District may penalize any person/institution/organization if found violating provisions of these regulation or any further orders issued by the Government under these Regulations.
11. **Protection to persons acting under the Act:** No suit or legal proceedings shall lie against any person for anything done or intended to be done in good faith under this Act unless proved otherwise.
12. These regulations shall come into force immediately and shall remain valid for a period of one year from the date of publication of this notification.

By order and in the name of the Governor of Madhya Pradesh,
RAJEEV CHANDRA DUBEY, Secy.

THE MADHYA PRADESH MASK (2 PLY AND 3 PLY SURGICAL MASK, N 95 MASK) AND HAND SANITIZER, CONTROL ORDER, 2020

[Published in Madhya Pradesh Gazette, (Extra-ordinary), dated 20 March 2020, page Nos. 246(3) to 246(5)]

No. F 4-3-2020-XXIX-1.- In exercise of the powers conferred under Section 3 and 5 of Essential Commodities Act, 1955 (No. 10 of 1955) read with S.O. 681 (E) dated 30-11-1974 (No. 10 of 1955) and in pursuance to notification of Central Government published under Ministry of Consumer Affairs (Department of Consumer Affairs) S.O. 1087 (A) dated 13-03-2020 the State Government, hereby, makes the following order, namely:-

1. Title, extent and commencement.-

- (1) This order may be called the Madhya Pradesh mask (2 ply and 3 ply surgical mask, N 95 mask) and hand sanitizer, control Order, 2020.
- (2) It extends to the whole of Madhya Pradesh.
- (3) It shall come into force from the date of its publication in the Madhya Pradesh Gazette and shall remain in force upto 30th June, 2020 or upto the date as notified by the Government of India in this regard.

2. Definitions. - In this order, unless the context otherwise requires, -

- (a) "**Appendix**" means Appendix appended to this order.
- (a) "**Trader**" means such a person, society, firm or company that is engaged in the business of sale and purchase of mask (2 ply and 3 ply surgical mask, N-95 mask) and hand sanitizer as a wholesaler or retailer.

3. Display of stock and price.-

The trader shall display information of available stock and the sale price of mask (2 ply and 3 ply surgical mask, N95 mask) and hand sanitizer on a board fix at a conspicuous place in its transaction premise daily.

4. The trader shall not refuse to sale the essential commodities mentioned in clause 3 to any consumer.
5. The trader shall not commit any act for the purpose of profiteering which creates an artificial shortage of the said essential commodity mentioned in clause 3 in the market.

6. The trader shall submit the details of sale and purchase of the said commodity in annexure-1 mentioned in clause 3 before the office of Food and Drug Administration fortnightly. Every trader shall submit the information on 20th of every month for the fortnight ending on 15th of the said month and on 5th of every month for the fortnight ending on last of the previous month.

7. Search and Seizure.-

- (1) Any officer not below the rank of drug inspector of the department of Health and Family Welfare and Inspector of Weights and Measure, Department of the Food, Civil Supplies and Consumer Protection within the district/jurisdiction with such assistance, if any, as he thinks fit, -
- (a) may expect to produce the books, accounts and other documents from the owner or any other person in charge thereof, about the violation of the related transactions, if he has reason to believe that this order or the provisions of this order have been violated, are being violated or about to be violated in respect of place, premise or conveyance.
 - (b) may enter, inspect, open or search such place, premise or conveyance in respect of which he has reason to believe that this order or the provisions of this order have been violated, is being violated or to be violated in respect of a place, premise or conveyance by the owner thereof.
 - (c) may seize the register, bill book or any other documents are cause to be seized.
 - (d) may search the stock as well as the vehicle used for carrying the commodity mentioned in clause 3 and seize it or remove it and shall do such other proceedings or authorize someone for this which is necessary to ensure the production of the seized stock and vehicles of essential commodities before the competent court and for secured custody of the same until its production before the court.
- (2) The provisions of the Civil Procedure Court, 1973 (No. 2 of 1974) related to search and seizure shall be applicable, as far as possible, in this order.

8. Exemption.-

The State Government may exempt any person or a section of persons, by a general or special order, from all or any of this provision of this order and at, any point of time, may suspend or revoke the such exemption.

Appendix-1
(see clause 6)

Date- From.....To.....

S.No.	Name of commodity	Opening stock on beginning of fortnight	Purchase of commodity during the fortnight	Sale of commodity during the fortnight	Balance of stock at the end of fortnight

By order and in the name of the Governor of Madhya Pradesh,
B.K. CHANDEL, Dy. Secy.

AMENDMENTS IN THE MADHYA PRADESH MASK (2 PLY AND 3 PLY SURGICAL MASK,N 95 MASK) AND HAND SANITIZER, CONTROL ORDER, 2020

[Published in Madhya Pradesh Gazette, (Extra-ordinary), dated 24 March 2020, page No. 284]

No. F-4-3-2020-XXIX-1.— In exercise of the powers conferred under section 3 and 5 of Essential Commodities Act, 1955 (No. 10 of 1955) read with S.O. 681 (E), dated 30th November 1974 (No. 10 of 1955) and in pursuance to notification of Central Government published under Ministry of Consumer Affairs (Department of Consumer Affairs) S.O. 1197 (A), dated 21st March 2020, the State Government, hereby, makes the followings amendments in the Madhya Pradesh Mask (2 ply and 3 ply surgical mask, N 95 mask) and Hand Sanitizer, Control Order, 2020, namely:—

AMENDMENT

1. After sub-clause 'B' the clause 2 of this order, the following clause is inserted:—

"(C) "Price" means such a price as fixed by Government of India in respect of essential commodities at different time intervals.

2. After clause '3' of this order, a new clause 3(A) is inserted as under:—

"3A No trader sell the essential commodities at the price more than the price declared by Government of India in this regard."

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

B.K. CHANDEL, Dy. Secy.

NOTES OF CASES SECTION

Short Note

*(9)

Before Mr. Justice G.S. Ahluwalia

Cr.A. No. 1014/2015 (Gwalior) decided on 14 August, 2019

RAMJILAL @ MUNNA & ors.

...Appellants

Vs.

STATE OF M.P.

...Respondent

A. Penal Code (45 of 1860), Sections 147, 148, 307/149, 323 & 324/149 – Appreciation of Evidence – Weapon of Offence – Non-recovery – Effect – Held – In the light of direct ocular evidence of injured witnesses, prosecution case cannot be disbelieved merely on ground of non-recovery of weapon of Offence – Ocular evidence fully corroborated by medical evidence – It is well established principle of law that mere non-recovery of weapon of offence would not make ocular evidence unreliable – Conviction upheld.

क. दण्ड संहिता (1860 का 45), धाराएँ 147, 148, 307/149, 323 व 324/149 – साक्ष्य का मूल्यांकन – अपराध का शस्त्र – गैर बरामदगी – प्रभाव – अभिनिर्धारित – आहत साक्षीगण के प्रत्यक्ष चाक्षुष साक्ष्य के आलोक में, अभियोजन प्रकरण पर मात्र अपराध के शस्त्र की गैर बरामदगी के आधार पर अविश्वास नहीं किया जा सकता – चाक्षुष साक्ष्य, चिकित्सीय साक्ष्य द्वारा पूर्ण रूप से संपुष्ट – विधि का यह सुस्थापित सिद्धांत है कि अपराध के शस्त्र की गैर बरामदगी मात्र, चाक्षुष साक्ष्य को अविश्वसनीय नहीं बनायेगी – दोषसिद्धि कायम।

B. Penal Code (45 of 1860), Sections 147, 148 & 149 – Common Object & Unlawful Assembly – Held – Common object can develop even on the spot of occurrence – Just because one appellant gave axe blow to victim, it cannot be said that other appellants were not having common object or they were not members of unlawful assembly.

ख. दण्ड संहिता (1860 का 45), धाराएँ 147, 148 व 149 – सामान्य उद्देश्य व विधिविरुद्ध जमाव – अभिनिर्धारित – सामान्य उद्देश्य घटना के स्थान पर भी विकसित हो सकता है – सिर्फ क्योंकि एक अपीलार्थी ने पीड़ित पर कुल्हाड़ी से वार किया, यह नहीं कहा जा सकता कि अन्य अपीलार्थीगण का सामान्य उद्देश्य नहीं था अथवा वे विधिविरुद्ध जमाव के सदस्य नहीं थे।

C. Criminal Practice – Related Witnesses – Held – Evidence of prosecution witnesses cannot be discarded merely on ground that they are

NOTES OF CASES SECTION

related witnesses – Injuries sustained by injured persons fully corroborates the ocular evidence.

ग. दाण्डिक पद्धति – संबंधी साक्षीगण – अभिनिर्धारित – अभियोजन साक्षीगण के साक्ष्य को मात्र इस आधार पर अस्वीकार नहीं किया जा सकता कि वे संबंधी साक्षीगण हैं – आहत व्यक्तियों को आई चोटें चाक्षुष साक्ष्य की पूर्णतया संपुष्टि करती हैं।

D. *Criminal Practice – Plea of Alibi – Held – Plea of alibi has to be proved beyond reasonable doubt – Burden of proof is heavily on accused – Plea of alibi cannot be proved by preponderance of probabilities.*

घ. दाण्डिक पद्धति – अन्यत्र उपस्थित होने का अभिवाक् – अभिनिर्धारित – अन्यत्र उपस्थित होने के अभिवाक् को युक्तियुक्त संदेह से परे साबित करना होगा – सबूत का भार अधिकतम अभियुक्त पर है – अन्यत्र उपस्थित होने के अभिवाक् को अधिसंभाव्यता की प्रबलता द्वारा साबित नहीं किया जा सकता।

E. *Criminal Practice – Injuries – Explanation – Held – Injuries sustained are minor, thus non-explanation of the same is not fatal to prosecution case.*

ङ. दाण्डिक पद्धति – चोटें – स्पष्टीकरण – अभिनिर्धारित – कारित हुई चोटें छोटी हैं, अतः उक्त का अस्पष्टीकरण अभियोजन प्रकरण के लिए घातक नहीं है।

F. *Criminal Practice – Defence witnesses – Held – Accused can maintain silence on a particular issue, but once he appears as defence witness, then he has to explain each and every circumstances – He loses all the immunities which are available to an accused.*

च. दाण्डिक पद्धति – बचाव साक्षीगण – अभिनिर्धारित – अभियुक्त किसी विशिष्ट विवाद्यक पर चुप्पी बनाए रख सकता है, परंतु एक बार वह बचाव साक्षी के रूप में प्रस्तुत हो गया, तो उसे प्रत्येक परिस्थितियों को स्पष्ट करना होगा – वह, उन सभी उन्मुक्तियों को खो देता है जो अभियुक्त के लिए उपलब्ध हैं।

Cases referred:

Cr.A. No. 6426/2017 decided on 10.05.2019, (2018) 3 SCC 66, (2017) 11 SCC 195, (2015) 4 SCC 749, (2010) 8 SCC 430, (1997) 1 SCC 283, (2012) 4 SCC 79, (2017) 13 SCC 98, (2018) 16 SCC 525, (2018) 7 SCC 536, (2016) 10 SCC 537, (2018) 7 SCC 743, (2019) 5 SCC 67, (2016) 16 SCC 426, (2016) 3 SCC 317, (2013) 12 SCC 796.

NOTES OF CASES SECTION

R.K.S. Kushwah, as amicus curiae.
Vijay Sundaram, P.L. for the respondent/State.

Short Note

***(10)**

Before Mr. Justice G.S. Ahluwalia

M.P. No. 1396/2019 (Gwalior) decided on 21 June, 2019

VALLABH ELECTRONICS (M/S) ...Petitioner
Vs.
BRANCH MANAGER UNITED BANK OF INDIA ...Respondent

A. Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Scope – “Consequential Relief” – Held – By seeking amendment, petitioner has not tried to set up a new case, only consequential relief was sought, which was already in substance in the suit in another form – Cross examination of plaintiff witness has not yet started, no prejudice would be caused to respondents, if amendment is allowed, otherwise suit may be dismissed as non maintainable in absence of consequential relief – Amendment application allowed.

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – विस्तार – “परिणामिक अनुतोष” – अभिनिर्धारित – संशोधन चाहकर, याची ने एक नया प्रकरण स्थापित करने का प्रयत्न नहीं किया है, केवल परिणामिक अनुतोष चाहा गया था, जो कि अन्य रूप में पहले से ही वाद के सार में था – वादी साक्षी का प्रतिपरीक्षण अभी तक शुरू नहीं हुआ है, यदि संशोधन मंजूर किया जाता है, तो प्रत्यर्थागण को कोई प्रतिकूल प्रभाव कारित नहीं होगा, अन्यथा परिणामिक अनुतोष की अनुपस्थिति में वाद खारिज किया जा सकता है – संशोधन आवेदन मंजूर।

B. Civil Procedure Code (5 of 1908), Order 6 Rule 17 – Delay – Amendment application filed after three years of filing of suit – Held – Mere delay cannot be a ground for rejection of the application unless and until a serious prejudice is caused to defendants.

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 – विलंब – वाद प्रस्तुत किये जाने की तिथि से 3 वर्ष पश्चात् संशोधन आवेदन प्रस्तुत किया गया – अभिनिर्धारित – आवेदन अस्वीकार करने के लिए मात्र विलंब एक आधार नहीं हो सकता, जब तक कि प्रतिवादीगण को एक गंभीर प्रतिकूल प्रभाव कारित न हो।

NOTES OF CASES SECTION

Cases referred:

AIR 1967 SC 96, (2001) 8 SCC 97.

Sanjeev Jain, for the petitioner.

G.K. Agrawal, for the respondent No. 1.

I.L.R. [2020] M.P. 751 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Arun Mishra & Mr. Justice M.R. Shah

C.A. No. 7991/2019 decided on 14 October, 2019

STATE OF M.P.

...Appellant

Vs.

SABAL SINGH (DEAD) BY LR.s. & ors.

...Respondents

A. Land Revenue Code, M.P. (20 of 1959), Sections 158, 185, 189 & 190, Madhya Bharat Zamindari Abolition Act (13 of 1951), Sections 2(c), 4 & 37 – Bhumiswami Rights – Khud-Kasht Land – Held – U/S 37(1) of Abolition Act, “pakka tenancy” rights were conferred upon only on such a proprietor having land under his possession as Khud-Kasht land as per Section 2(c) r/w Section 4(2) and there had to be personal cultivation by Zamindars himself or through employees or hired labours – In instant case, as per khasra entries before date of vesting, land not recorded as Khud-Kasht of erstwhile Zamindars and is recorded as “Bir Land” i.e “grassland” – No personal cultivation over the said land – Mandatory requirement of Section 4(2) not fulfilled – Such land not saved from vesting u/S 4(1) to State government automatically, free from all encumbrances – Impugned order set aside – Appeal allowed. (Paras 16, 19 to 22, 25 & 27)

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 158, 185, 189 व 190, मध्य भारत जमींदारी उन्मूलन अधिनियम (1951 का 13), धाराएँ 2(c), 4 व 37 – भूमिस्वामी के अधिकार – खुद-काशत भूमि – अभिनिर्धारित – उन्मूलन अधिनियम की धारा 37(1) के अंतर्गत “पक्का अभिधारण” अधिकार केवल ऐसे स्वत्वधारी को प्रदत्त किये गये थे जिसके पास धारा 2(c) सहपठित धारा 4(2) के अनुसार उसके कब्जाधीन भूमि खुद-काशत भूमि के रूप में हो तथा स्वयं जमीनदारों द्वारा अथवा कर्मचारीगण अथवा भाड़े के श्रमिकों के माध्यम से उस पर वैयक्तिक खेती की जाती थी – वर्तमान प्रकरण में, खसरा प्रविष्टियों के अनुसार, निहित किये जाने की तिथि से पूर्व, भूमि तत्कालीन जमीनदारों की खुद काशत भूमि के रूप में अभिलिखित नहीं की गई तथा “बिर भूमि” अर्थात् “चारागाह” के रूप में अभिलिखित है – उक्त भूमि पर व्यक्तिगत रूप से कोई खेती नहीं – धारा 4(2) की आज्ञापक आवश्यकता पूर्ण नहीं – उक्त भूमि को सभी विल्लंगमों से मुक्त, स्वतः राज्य सरकार को धारा 4(1) के अंतर्गत निहित होने से बचाया नहीं जा सकता – आक्षेपित आदेश अपास्त – अपील मंजूर।

B. Madhya Bharat Land Revenue and Tenancy Act (66 of 1950), Section 52 and Madhya Bharat Zamindari Abolition Act (13 of 1951), Section 4(1) – Statutory Presumption – Held – There is a presumption of correctness of Kharsa entries u/S 52 of the Act of 1950 – Tenancy can only be proved by khasra entries, which shows that the said land not recorded as Khud-Kasht land and there was no personal cultivation – Further, entry of “Jwar”

cultivation was *ex-facie* spurious, manipulated and illegally made – No presumption can be drawn in favour of respondent/plaintiff. (Para 27 & 28)

ख. मध्य भारत लैण्ड रेवेन्यू एण्ड टेनेन्सी ऐक्ट (1950 का 66), धारा 52 एवं मध्य भारत जमींदारी उन्मूलन अधिनियम (1951 का 13), धारा 4(1) – कानूनी उपधारणा – अभिनिर्धारित – 1950 के अधिनियम की धारा 52 के अंतर्गत खसरा प्रविष्टियों की शुद्धता की उपधारणा है – अभिधृति को केवल खसरा प्रविष्टियों द्वारा ही साबित किया जा सकता है, जो यह दर्शाती हैं कि कथित भूमि खुद काश्त भूमि के रूप में अभिलिखित नहीं की गई है तथा कोई वैयक्तिक खेती नहीं थी – इसके अतिरिक्त, "ज्वार" की खेती की प्रविष्टि स्पष्ट रूप से मिथ्या, छलसाधित तथा अवैध रूप से की गई है – प्रत्यर्थी/वादी के पक्ष में कोई उपधारणा नहीं की जा सकती।

C. Civil Procedure Code (5 of 1908), Section 100 – Second Appeal – Scope & Jurisdiction – Held – It was not open to High Court u/S 100 CPC to interfere with concurrent findings of fact which was based on proper appreciation of evidence on record. (Para 29)

ग. सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील – विस्तार व अधिकारिता – अभिनिर्धारित – सि.प्र.सं. की धारा 100 के अंतर्गत उच्च न्यायालय तथ्य के उन समवर्ती निष्कर्षों के साथ हस्तक्षेप नहीं कर सकता था जो कि अभिलेख पर उपलब्ध साक्ष्य के उचित मूल्यांकन पर आधारित थे।

Case referred:

1983 R.N. 243.

J U D G M E N T

The Judgment of the Court was delivered by :
ARUN MISHRA, J. :- The question involved in the appeal is whether the land recorded in the revenue papers before the date of vesting as 'Grass' land can be treated as khud-kasht land of Ex-Zamindar.

2. The suit was filed by the plaintiffs/respondents, as the successor of the Ex-Zamindar. At the time of the abolition of Zamindari, it was recorded as 'Grass' land, in the name of their predecessor. They prayed for declaration of Bhumiswami rights and permanent injunction, restraining the defendants from interfering in their possession of the land comprised in Survey Nos.77, 83, 191, 195 and 799 corresponding to new Survey Nos.37, 103 and 460 total area 83 Bighas 4 Biswas situated in village Enchada, Tehsil Nateran, District Vidisha in the State of Madhya Pradesh. The defendant -State of Madhya Pradesh treated plaintiffs/respondents as encroacher of agricultural land, and they were threatened with dispossession on 1.5.1980 and 12.10.1980, whereas they have acquired the rights of Bhumiswami under provisions contained in Madhya Pradesh Land Revenue Code as they became Pacca tenant on the abolition of

Zamindari. The plaintiffs/ respondents claimed that the land was Khud-kasht land of their predecessors; Nirbhay Singh and Pratap Singh who were Zamindars of Village Enchada.

3. The State Government in the written statement denied the plaint averments. However, it was admitted that Nirbhay Singh and Pratap Singh, the predecessors were the Zamindars of the village Enchada. The land was not a Khud-kasht land. It was recorded as 'Bir,' i.e., 'Grass' land before coming into force of the M.B. Zamindari Abolition Act.

4. The Trial Court dismissed the suit. The First Appellate Court affirmed the same; however, the High Court allowed the second appeal and decreed the suit filed by the plaintiffs. They have been declared to be Bhumiswami of the land, and the permanent injunction has also been granted. Aggrieved thereby the appeal has been preferred by the State of Madhya Pradesh.

5. It is submitted by the learned counsel appearing for the State that land was not 'Khud-kasht' land. The High Court could not have reversed the concurrent findings of fact recorded by the trial court and the first appellate court in the second appeal. The judgment is based on the misreading of the Khasra entries and provisions of Section 2(c), and Section 4(2) of the Zamindari Abolition Act have not been correctly interpreted.

6. Learned counsel appearing on behalf of the plaintiff/ respondents submitted that growing of Grass was also an agricultural purpose. In Khasra for Survey No.77 for Samvat year 2007, cultivation of crop of "Jwar" was mentioned, though in Col.5 thereof. Thus, the said survey No.77 did not vest in the State. The remaining land was Grassland under personal cultivation of Zamindars as such it did not vest in the State. Nirbhay Singh and Pratap Singh became pakka tenant of the disputed land and ultimately acquired the rights of Bhumiswami.

7. The main question for consideration is whether the plaintiff acquired the rights of Pakka tenant under the Zamindari Abolition Act and that of Bhumiswami under the provisions of section 158 of Madhya Pradesh Land Revenue Code, 1959 (hereafter referred to as "M.P. Land Revenue Code, 1959").

8. The Zamindari system came to be abolished on 2.10.1951 in the erstwhile State of Madhya Bharat. The Zamindari Abolition Act, had been reserved under Article 31(4) of the Constitution of India for the consideration of the Hon'ble President and received his assent in 1951 and was enforced with effect from 2.10.1951, resulting into the abolition of intermediaries. The same was enacted for the public purpose of the improvement of agriculture, and financial condition of agriculturist by abolition and acquisition of rights of proprietors in the village, muhals, chak or blocks settled on Zamindari system which used to be a system of keeping an intermediary between the State and the tenants.

9. Section 3 of the Zamindari Abolition Act provided for vesting of proprietary rights in the State, and the rights of the proprietor shall pass from such proprietor to such other person, to and vests in the State free of all encumbrances. Section 4 provided for the consequence of the vesting of an estate in the State. As per section 4(1)(a) all rights, title and interest of the proprietor in such area, including land (cultivable, barren or Bir), forest, trees, fisheries, wells (other than private wells), tanks, ponds, water channels, ferries, pathways village-sites, hats, and bazaars and mela-grounds and in all sub-soil, including rights, if any, in mines and minerals, whether being worked or not shall cease and be vested in the State free from all encumbrances automatically. Section 4(2) contains saving in favour of the proprietor to the extent that he shall continue to remain in possession of his Khud-kasht land so recorded in the annual village papers on the date of vesting. Section 2(c) defines the 'Khud-kasht' to mean land personally cultivated by Zamindars or through employees or hired labourers and includes sir land.

10. Section 2(c) and 4 of the Abolition Act are extracted hereunder:

"2. Definitions:-

(c) "*Khud-kasht*" means land cultivated by the Zamindar himself or through employees or hired labourers and includes sir land;

4. Consequence by the vesting of an estate in the State. -

(1) Save as otherwise provided in this Act when the notification under Section 3 in respect of any area has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force, the consequences as hereinafter set forth shall from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting) ensue, namely :-

(a) all rights, title and interest of the proprietor in such area, including land (cultivable, barren or Bir), forest, trees, fisheries, wells (other than private wells), tanks, ponds, water channels, ferries, pathways village-sites, hats, and bazars and mela-grounds and in all sub-soil, including rights, if any, in mines and minerals, whether being worked or not shall cease and be vested in the State free from all encumbrances;

....

(2) Notwithstanding anything contained in sub-section (1), the proprietor shall continue to remain in possession of his Khud-kasht land, so recorded in the annual village papers before the date of vesting.

(3)Nothing contained in sub-section (1) shall operate as a bar to the recovery by the outgoing proprietor of any sum which becomes due to him before the date of vesting in virtue of his proprietary rights."

(emphasis supplied)

It is apparent from the provisions contained in section 4(1) it contained non-obstante clause and that all rights and interest of the proprietor in the area of Zamindari including the land (cultivable, barren or bir), etc. shall vest in the State automatically. What is saved with the Zamindar was only the land which was under his Khud-kasht, *i.e.*, under his personal cultivation and not the land which was cultivable, barren or bir, *i.e.*, grassland.

11. The requirement of section 4(2) of the Abolition Act is dual that the land should not only be Khud-kasht, but it should be so recorded in the annual village papers before the date of vesting. As the date of vesting was 2.10.1951, the agricultural year in the erstwhile Madhya Bharat commenced from 1st July to 30th June of the succeeding Gregorian calendar year, the only relevant entry was before the date of vesting, *i.e.*, of Samvat 2007. The land is required to be so recorded as 'Khud-kasht' in the revenue papers before the date of vesting. As 2.10.1951 fell in the Samvat year 2008, thus the entry in record of rights of Samvat 2007 assumes significance as that has been made the basis for conferring of the rights on abolition of Zamindari.

12. The land to be saved from vesting was required to be under personal cultivation *i.e.*, Khud-kasht, but besides it must have been so recorded as "Khud-kasht" in the revenue paper before the date of vesting, *i.e.*, 2007. Thus, there are three requirements namely (i) personal cultivation as defined in Section 2 (c); (ii) entry in the record of right; and (iii) before the date of vesting, *i.e.*, 2007. In case the land was so recorded as Khud-kasht, but was not personally cultivated by the Zamindar as specified in section 2(c), such land shall vest in State.

13. With reference to Khud-kasht land so recorded as per section 4(2) which was under personal cultivation as defined in section 2(c) of the Abolition Act, such a Zamindar acquired rights of pakka tenancy, in the land held by him, under the provisions of section 37 of the Abolition Act. In case of tenant and sub-tenant, Conferral of pakka tenancy rights is dealt with under section 38 of the Abolition Act, 2003. We are concerned here with the rights of the proprietor in which the 'pakka tenancy' rights were conferred under section 37(1) as to land so recorded as Khud-Kasht. The same is extracted hereunder:

"37. Conferral of pacca tenancy rights on proprietor. - (1)
Every proprietor who is divested of his proprietary rights in an estate, chak, block or Muhal shall, with effect from this date of vesting, be a pacca tenant of the khud-kasht land in his possession and the land revenue payable by him shall be determined at the rate fixed by the current settlement for the same kind of land.

(emphasis supplied)

14. The pakka tenant has been defined in section 54(vii), Part II of the Madhya Bharat Land Revenue and Tenancy Act, (Samvat 2007) (Act No.66 of 1950). Besides that, the Zamindari Abolition Act conferred right of pakka tenant on a proprietor concerning the khudkasht land and so recorded in revenue papers before the date of vesting. Section 54(vii) of Madhya Bharat Land Revenue and Tenancy Act is extracted hereunder:

"54.(vii) **Pakka tenant** - means a tenant who has been or whose predecessor in interest had been lawfully recorded in respect of his holding as a "Ryot Pattedar", "Mamuli Maurusi", "Gair Maurusi", and "Pukhta Maurusi" when this Act comes into force or who may in future be duly recognized as such by a competent authority."

15. The pakka tenancy rights are conferred on a proprietor concerning Khud-kasht land in his possession.

16. M.P. Land Revenue Code, 1959 was enacted on the formation of Madhya Pradesh and came into force w.e.f. 2.10.1959 to unify the law concerning land. Section 158 of M.P. Land Revenue Code, 1959 provided classes/ categories which shall be called tenure holder, i.e., Bhumiswami. Section 158(1)(a) of M.P. Land Revenue Code, 1959 conferred Bhumiswami rights on a tenant or Muafidar, etc. Provisions of section 158 (1)(b) provided that 'pakka tenant' shall be called Bhumiswami in M.P. Land Revenue Code, 1959, in case he was a pakka tenant or a Maufidar, Inamdar or Concessional holder as defined in Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (66 of 1950). The provisions of section 158 of the M.P. Land Revenue Code, 1959, read as under:

158. [1] Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a Bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumiswami by or under this Code, namely :-

(a) every person in respect of land held by him in the Mahakoshal region in Bhumisami or Bhumidhari rights in accordance with the provisions of the Madhya Pradesh Land Revenue Code, 1954 (II of 1955);

(b) every person in respect of land held by him in the Madhya Bharat region as Pakka tenant or as a Muafidar, Inamdar or Concessional holder, as defined in the Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007 (66 of 1950)

(c) every person in respect of land held by him in the Bhopal region as an occupant as defined in the Bhopal State Land Revenue Act, 1932 (IV of 1932);

(d) (i) every person in respect of land held by him in the Vindhya Pradesh region as a pachapan paintalis tenant, pattedar tenant, a grove holder or as a holder of tank as defined in the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III of 1955)

(ii) every person in respect of land (other than land which is a grove or tank or which has been acquired or which is required for Government or public purposes) held by him in the Vindhya Pradesh region as a gair haqdar tenant and in respect of which he is entitled to a patta in accordance with the provisions of sub-section (4) of section 57 of the Rewa State Land Revenue and Tenancy Code, 1935.

(iii) every person in respect of land held by him as a tenant in the Vindhya Pradesh region and in respect of which he is entitled to a patta in accordance with the provisions of subsections (2) and (3) of section 151 of the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (III) of 1955), but has omitted to obtain such patta before the coming into force of this Code,

(e) every person in respect of land held by him in Sironj region as a Khatedar tenant or as a grove holder as defined in the Rajasthan Tenancy Act, 1955 (3 of 1955)

[(2) A Ruler of an Indian State forming part of the State of Madhya Pradesh who, at the time of coming into force of this Code, was holding land or was entitled to hold land as such Ruler by virtue of the covenant or agreement entered into by him before the commencement of the Constitution, shall, as from the date of coming into force of this Code, be a Bhumiswami of such land under the Code and shall be subject to all the rights and liabilities conferred and imposed upon a Bhumiswami by or under this Code."

17. For conferral of Bhumiswami rights on sub-tenants, the process of conferral of rights of occupancy tenant is provided under section 185 of M.P. Land Revenue Code, 1959 and the conferral of Bhumiswami rights on such occupancy tenants is provided under section 190 of M.P. Land Revenue Code, 1959.

18. Under section 185 of the M.P. Land Revenue Code, 1959 every person who at the coming into force of the Code holds any 'Inam land' as a tenant or as a

subtenant or as an ordinary tenant or any land as ryotwari sub-lessee as defined in the Madhya Bharat Ryotwari Sub-Lessee Protection Act, 1955, any Jagir land as defined in Madhya Bharat Abolition of Jagirs Act, 1951 as a subtenant or as a tenant of a subtenant, or any land of proprietor as defined in Madhya Bharat Zamindari Abolition Act, 1951 as a sub-tenant or as a tenant of a subtenant shall be called as "Occupancy Tenants". Under section 189 of MPLRC, 1959 right was given to a Bhumiswami, whose land is held by an occupancy tenant, to resume the land within one year of the coming into force of this Code, if he was holding the area of land under his cultivation below twenty-five acres of unirrigated land. The right was given to him to apply for the resumption of the land held by his occupancy tenant for his cultivation and his failure to do so within the specified period, Section 190 of the M.P. Land Revenue Code, 1959 conferred the rights on the occupancy tenant of the Bhumiswami. Rights of Bhumiswami accrued to the occupancy tenant regarding the land held by him on the expiry of the period fixed for resumption of the land as specified in section 190(1).

19. In the present case the rights have been claimed under section 158 of the M.P. Land Revenue Code, 1959 on the ground that the predecessors of the plaintiff were pakka tenants and acquired Bhumiswami rights under section 158 of M.P. Land Revenue Code, 1959. Under section 37(1) of Madhya Pradesh Zamindari Abolition Act, "pakka tenancy" rights were conferred upon only on such a proprietor with respect to the land under his possession as Khud-kasht land as per section 2(c) read with section 4(2).

20. When we consider the entry of 2007 placed on record by the learned counsel on behalf of the plaintiff, it is apparent that Survey No.77, 191, 195 and 199 are recorded as "Bir land." Concerning survey No.83 also finding recorded by the trial court and a first appellate court is that the same was recorded as "Bir land," *i.e.*, "grassland." Learned counsel appearing on behalf of the plaintiffs/respondents has submitted that at least concerning Survey No.77, entry of cultivation of 'Jwar' was recorded in Column No.5. Whereas in Column No.21 and 22 there was the entry of the 'Bir.'

21. It is apparent from Khasra entries before the date of vesting; in the relevant Samvat year 2007, the land is not recorded as Khud-kasht of the erstwhile zamindars, *i.e.*, predecessor in interest of the plaintiffs. The land not being so recorded as Khud-kasht in the revenue papers before the date of vesting, the mandatory requirement of section 4(2) of the Abolition Act, is not fulfilled. Such land is not saved from vesting under section 4(1) of the Abolition Act, 2003 as a cultivable, barren or Bir land vested in the State automatically free from all encumbrances. Thus, the grassland, *i.e.*, 'bir' land as per section 4(1) of the Act vested in the State.

22. Apart from that requirement of section 2(c), there had to be personal cultivation of the land by the Zamindar was not fulfilled. The land was required to be personally cultivated either by Zamindars himself or through employees or hired labourers. There was no personal cultivation recorded in revenue papers of erstwhile Zamindars and land was also not so recorded as Khud-kasht land.

23. It is submitted that growing of Grass is an agricultural purpose under section 55 of Madhya Bharat Land Revenue Tenancy Act, as there was an entry of 'grass,' i.e., 'Bir' in the revenue paper of Samvat Year 2007 before the date of vesting, such grassland did not vest in the State. Section 55 is extracted hereunder:

"55. **Duties of a tenant** - A tenant shall use his holding only for agricultural purposes namely:-

- i) the growth of any crops, except such as may, from time to time, be prohibited by the Government; or
- ii) the growth of Grass or food for cattle; or
- iii) the growth of trees; or
- iv) the erection of a dwelling house for his domestic use; or
- v) the erection of such buildings or other structures as he may reasonably require for the purpose of his agriculture; or
- iv) the construction and maintenance of any work of the kind described in section 56."

24. No doubt about it that a tenant was required to use his holding for agricultural purposes. The growth of Grass or food for cattle inter alia was one of the agricultural purposes. In our opinion, there is no requirement for a tenant personally to cultivate the land as on the date of abolition as such provision lends no help to a proprietor. The rights of the proprietor are quite different. The rights of the proprietor are limited to land cultivated personally and so recorded as required under the provisions of the Abolition Act, instrumental for bringing the agrarian reforms and conferred the rights on the actual tiller of the land by removing the intermediaries.

25. Bir land is vested in State under Section 4(1). The grass is naturally grown without effort, and it cannot be said to be produced by way of rendering one's labour or through employees or hired labour. The land should have been under Khud-kasht i.e., personal cultivation and so recorded of the ex-proprietor to be saved from vesting as statutorily mandated. There is a specific provision in Section 4(1) of the Abolition Act that the grassland, i.e., 'Bir land,' held by the proprietor automatically vested in the State free from all encumbrances. In which case land lying fallow also vested in the State.

26. Now we come to entry of Samvat year of 2007. There is presumption of correctness of Khasra entries under section 52 of Madhya Pradesh Land Revenue Tenancy Act unless the contrary is proved. Section 52 is extracted hereunder:

"52. **Presumption as to entries in Annual Village Papers** - All entries made under this Chapter in the Annual Village Papers shall be presumed to be correct until the contrary is proved."

27. The Khasra in the relevant year in Samvat year 2007 as to Survey No.77 contains the entry of crop of 'Jwar' in Column No.5 which is meant for recording the name of tenants, his father's name, caste, and residence and the nature of his rights. The Columns to record the cultivation of crop of Kharib and Rabi are Column Nos.10 to 15. All these columns are empty in the Khasra concerning all the disputed survey numbers, and when we come to the column containing an entry for the land lying uncultivated, there was the entry of 'bir' land, which has been scored out. Thus, the entry makes it clear that it was not so recorded as Khud-kasht land and there was no personal cultivation as such the land automatically vested in the State under Section 4(1) of Abolition Act.

28. The tenancy can be proved by Khasras entries alone. The revenue entries carry a statutory presumption of correctness under the provisions of Section 52 and unless rebutted, the statutory presumption of correctness attached to the entries is an inevitable one. Unless such the presumption is rebutted, entries cannot be discarded. The entry produced of 2007 is not as per the rules, it contains an entry of 'Jwar' in column No.5 which is not meant for recording such cultivation and in the Khasra column 21 and 22 which originally recorded 'Bir,' i.e., Grassland. Both entries are irreconcilable with each other. The entries have been made of 'Jwar' cultivation in a column not meant for recording cultivation, the entry is *ex-facie* spurious manipulated one, impermissible and inconceivable and is against instructions contained in *Kawayad patwariyan*, as such no presumption of it being correct can be drawn under the provision of Section 52 of Madhya Bharat Land Revenue Tenancy Act. The entry which is on the face of it has been illegally made and is contradicted by the original entries in Column Nos.21 and 22 in the same Khasra. Even otherwise land is not recorded as Khud-kasht land.

29. About entries in revenue record Trial Court and First Appellate Court, have recorded a concurrent finding of fact that the land was not under personal cultivation. It was not open to the High Court to interfere with the findings of fact, which was based on the proper appreciation of evidence on record. Even the plaintiff was unable to state whether there was any crop in the relevant year 2007 before Zamindari abolition. Such finding of fact based on proper appreciation of evidence could not have been interfered with by the High Court within the ken of Section 100, CPC.

30. The decision of High Court of Madhya Pradesh in *Bheron Singh vs. Government of M.P.*, 1983 R.N. 243 has been relied upon, on behalf of the plaintiffs/ respondents, in which the entry of "Bir" land, *i.e.*, Grass Land came up for consideration, which was made in the column of 'Alavajot' *i.e.*, not under plough. The plaintiff in the said case was erstwhile Zamindar of the suit land, and it was recorded as 'Khudkasht land.' We are unable to accept the proposition mentioned above as the provision of section 4(1) of the Abolition Act, 2003 had not been considered in *Bheron Singh* (supra). Where 'Bir' land vests in the State and only the land under personal cultivation as defined in section 2(c) and so recorded as Khud-Kasht as per section 4(2), was saved from vesting. 'Grass' was recorded in Alavajot column *i.e.*, in area not under plough. The decision in *Bhairon Singh* (supra) cannot be said to be laying down good law, as such it is overruled.

31. Resultantly, the judgment and decree passed by the High Court deserves to be and are set aside. The judgment and decree passed by the Trial Court are restored. The appeal is accordingly allowed. No costs.

Appeal allowed

**I.L.R. [2020] M.P. 761 (SC)
SUPREME COURT OF INDIA**

Before Mr. Justice Uday Umesh Lalit & Ms. Justice Indu Malhotra
Cr.A. Nos. 1709-1710/2019 decided on 19 November, 2019

STATE OF M.P.

...Appellant

Vs.

KILLU @ KAILASH & ors.

...Respondents

A. Penal Code (45 of 1860), Section 302 & 149 – Unlawful Assembly – Principle of Vicarious Liability – Applicability – Held – Presence of accused in house of deceased, the fact that they were armed, fact that all of them entered the house at midnight and fact that two out of those five accused used their deadly weapons to cause death of deceased, was sufficient to attract principle of vicarious liability u/S 149 IPC – High Court erred in acquitting respondents – Order of conviction restored – Appeal allowed.

(Paras 11 to 15)

क. दण्ड संहिता (1860 का 45), धारा 302 व 149 – विधिविरुद्ध जमाव – प्रतिनिधिक दायित्व का सिद्धांत – प्रयोज्यता – अभिनिर्धारित – मृतक के घर में अभियुक्त की मौजूदगी, यह तथ्य कि वे सशस्त्र थे, तथ्य कि उन सभी ने मध्यरात्रि में घर में प्रवेश किया एवं तथ्य कि उन पांच अभियुक्तों में से दो ने मृतक की हत्या कारित करने हेतु अपने घातक शस्त्रों का प्रयोग किया, भा.दं.सं. की धारा 149 के अंतर्गत प्रतिनिधिक दायित्व के

सिद्धांत को आकर्षित करने हेतु पर्याप्त था – उच्च न्यायालय ने प्रत्यर्थागण को दोषमुक्त करने में त्रुटि की – दोषसिद्धि का आदेश पुनःस्थापित – अपील मंजूर।

B. Penal Code (45 of 1860), Section 149 – Unlawful Assembly – Participation in Crime – Motive & Intention – Held – Merely because other three accused persons (respondents) had not used their weapons does not absolve them of the responsibility and vicarious liability on which the very idea of charge u/S 149 IPC is founded. (Para 12)

ख. दण्ड संहिता (1860 का 45), धारा 149 – विधिविरुद्ध जमाव – अपराध में सहभागिता – हेतु व आशय – अभिनिर्धारित – मात्र इस कारण से कि अन्य तीन अभियुक्तगण (प्रत्यर्थागण) ने अपने शस्त्रों का प्रयोग नहीं किया था वे उस उत्तरदायित्व तथा प्रतिनिधिक दायित्व जिस पर भा.दं.सं. की धारा 149 के अंतर्गत आरोप का मूल विचार आधारित है, से मुक्ति नहीं पा जाते।

Cases referred:

(1964) 8 SCR 133, AIR 1956 SC 181, (2015) 15 SCC 77.

J U D G M E N T

The Judgment of the Court was delivered by :
UDAY UMESH LALIT, J. :- Leave granted.

2. These Appeals question the judgment and order dated 29.06.2018 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal Nos.2676 of 2008 and 158 of 2009.

3. The basic facts as stated in the judgment under appeal are as under:-

"3. Prosecution story, in brief is that, accused/appellant No.4 Khushiram in Cr. Appeal No.2678 of 2008, who is uncle [mousia] of the son of the deceased, had some enmity with Balaprasad Pathak [since deceased]. He along with other accused persons entered in the house of Balaprasad Pathak in the mid night [2 O'clock] of 23.05.2005. Deceased was sleeping with his family members. Accused/appellants [in Cr. Appeal No.2678/2008] namely; Khushiram and Himmu @ Hemchand were armed with axe, appellant Devendra was armed with Ballam and other two accused namely Killu @ Kailash and Kailash Nayak were armed with lathi. Two accused persons namely; Khushiram and Himmu @ Hemchand [appellants No.2 and 4 in Cr. Appeal No.2676/2008] inflicted injuries by axe on the person of deceased. Allegation against other accused persons is of exhortation. Deceased died on the spot. Report of the incident was lodged by (PW-5) Rameshwar Pathak. Police conducted investigation and filed charge-sheet. During trial, appellants abjured their guilt and pleaded innocence. ..."

4. In support of its case, the prosecution relied upon the testimony of PW3-Prabha Rani, wife of the deceased, PW4-Devendra Kumar, son of the deceased and PW5-Rameshwar Pathak, a relative of the deceased, who had lodged the First Information Report ('the FIR', for short). It was narrated in the FIR that after having received information about the assault, the informant had gone to the house of the deceased where PW3 narrated the incident to him, based on which the reporting was made by the informant. The medical evidence was unfolded through the testimony of PW2-Dr. R.K. Bhardwaj, who had conducted the post-mortem. He had found following injuries on the person of the deceased:-

- "(i) Incised wound over left anterior part of scalp 4"x1/2" underlying bone and brain matter cut in hacranial cavity filled with blood.
- (ii) Incised wound 5" x 1" x 2 1/2" uppermost part of chest and adjoining anterior part of neck slightly left side obliquely placed undergone and blood vessels cut."

According to him, the injuries were ante-mortem and the deceased had died as a result of those injuries.

5. In due course, five accused were tried in connection with the murder of said Balaprasad Pathak for the offence punishable under Section 302 read with Section 149 IPC in Sessions Trial No.173 of 2005 before the First Additional Sessions Judge, Damoh, Madhya Pradesh. After considering the evidence on record, the Trial Court concluded that all the five accused were members of an unlawful assembly and had entered the house of the deceased on the fateful night with the common object of causing death of the deceased and as such, they were guilty of the offence punishable under Section 302 read with Section 149 IPC. Holding them guilty of the aforesaid offence, by its judgment dated 19.12.2001, the Trial Court sentenced them to suffer life imprisonment and to pay fine in the sum of Rs.500/- each, in default whereof, each of the convicts was to undergo further rigorous imprisonment of three months. The view so taken by the Trial Court was challenged by way of Criminal Appeal No.2676 of 2008 by four accused while Criminal Appeal No.158 of 2009 was filed by accused Kailash Nayak.

6. Insofar as accused Himmu @ Hemchand and Khushiram, who were armed with sharp cutting weapons, the High Court found as under:-

"16. Appellants No.2 and 4 namely Himmu @ Hemchand and Khushiram were armed with axe, i.e. deadly weapons. They inflicted blows on the vital part of deceased as a result of which, deceased died on the spot. Evidence of causing injury by axe is

against the appellants Himmu @ Hemchand and Khushiram. Hence, in our opinion, the Trial Court has rightly held the appellants guilty for commission of offence of murder. Other three accused persons namely; Killy @ Kailash and Devendra (appellants No. 1 and 3 in Cr. A No. 2676/2008) and appellant Kailash Nayak (appellant in Cr.A.No. 158/2009) have been convicted with the aid of Section 149 of IPC. Allegation against them is that they entered in the house and they were armed with lathis and Ballam. From the evidence, this fact has also been proved that deceased was facing trial of Section 302 of IPC because he had killed one Rammilan Pathak."

7. The High Court further found that the other three accused were stated to be armed with lathis and Ballam but there were no injuries which could be associated with lathis and Ballam. The High Court, therefore, gave benefit to said three accused as under:-

"21. From the aforesaid quoted judgment, the principle of law is that "the member of unlawful assembly may have committed for the offence caused by another accused, if he has knowledge about the act committed by the main accused". In the present case, evidence is that the accused entered the house of deceased and thereafter, two accused had inflicted blow by axe. The other accused persons did not give any blow on the deceased. It is alleged that they were present on the spot. There was previous enmity between the accused persons and the deceased, he was also facing criminal trial. Hence, it cannot be ruled out that other three persons, who had not inflicted any injury may have been named along with the other accused persons.

22. Looking to the evidence on record, in our opinion, the conviction of three appellants namely; Killu @ Kailash, Devendra and Kailash Nayak, who were armed with lathis and Ballam and did not inflict any blow with the aid of Section 149 of IPC, is not proper. There is lack of sufficient evidence to prove them guilty for commission of offence under Section 149 of IPC beyond reasonable doubt. Hence, the appeal filed by appellant Kailash Nayak (Cr. Appeal No. 158/2009) is hereby allowed.

23. Cr. Appeal No.2676/2008, filed by four accused/ appellants is partly allowed. Appeal filed by appellants No. 2 and 4 namely; Himmu @ Hemchand and Khushiram is hereby dismissed. They are convicted for commission of offence punishable under Section 302 of IPC and awarded a sentence of life. Appellant No.2 Himmu @ Hemchand is on bail. His bail bonds are hereby cancelled. He is directed to surrender before the Trial Court for facing remaining jail sentence.

24. Appeal filed by the appellants No.1 and 3 namely; Killu @ Kailash and Devendra [Cr.Appeal No.2676/2008] is hereby allowed. They are acquitted from the charge of Section 302/149 of IPC. The judgment passed by the trial Court in regard to appellants No.1 and 3 namely; Killu @ Kailash and Devendra, is hereby set aside. Appellants Killu @ Kailash, Devendra and Kailash Nayak, are on bail, their bail bonds are hereby discharged."

8. The State, being aggrieved by the order of acquittal of accused Killu @ Kailash, Devendra and Kailash Nayak, has preferred the instant appeals. We heard Mr. Varun K. Chopra, Deputy Advocate General (Madhya Pradesh), in support of the Appeal and Mr. S.K. Shrivastava and Mr. R.R. Rajesh, learned Advocates who appeared for three acquitted accused.

9. Since the instant case depends upon the extent and application of the principle of vicarious liability under Section 149 of the IPC, at the outset, we may consider the leading case of *Masalti vs. State of U.P.*¹ The submission of the appellants therein was that mere presence in an assembly would not make a person member of an unlawful assembly unless it was shown that he had done something or omitted to do something which would make him a member of unlawful assembly. Reliance was placed by said appellants on the earlier judgment of this Court in *Baladin vs. State of Uttar Pradesh*². The issue was dealt with as under:-

".....The observation of which Mr. Sawhney relies, prima facie, does seem to support his contention; but, with respect, we ought to add that the said observation cannot be read as laying down a general proposition of law that unless an overt act is proved against a person who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of such an unlawful assembly. In appreciating the effect of the relevant observation on which Mr. Sawhney has built his argument, we must bear in mind the facts which were found in that case. It appears that in the case of *Baladin*², the members of the family of the appellants and other residents of the village had assembled together; some of them shared the common object of the unlawful assembly, while others were merely passive witnesses. Dealing with such an assembly, this Court observed that the presence of a person in an assembly of that kind would not necessarily show that he was a member of an unlawful assembly. What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the

¹ (1964) 8 SCR 133

² AIR 1956 SC 181

persons constituting the assembly, and he entertained along with the other members of the assembly the common object as defined by s.141, I.P.C. Section 142 provides that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of s. 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by s.141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. It is in that context that the observations made by this Court in the case of *Baladin*² assume significance; otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that he had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly. In fact, s.149 makes it clear that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence; and that emphatically brings out the principle that the punishment prescribed by s.149 is in a sense vicarious and does not always proceed on the basis that the offence has been actually committed by every member of the unlawful assembly. Therefore, we are satisfied that the observations made in the case of *Baladin*² must be read in the context of the special facts of that case and cannot be treated as laying down an unqualified proposition of law such as Mr. Sawhney suggests."

(underlined by us)

10. After considering the cases on the point including *Masalti*¹, the order of acquittal passed by the High Court was set aside by this Court in *State of Maharashtra vs. Ramlal Devappa Rathod and others*³. Relevant paragraphs of the decision are:-

³ (2015) 15 SCC 77

"22. We may at this stage consider the law of vicarious liability as stipulated in Section 149 IPC. The key expressions in Section 149 IPC are:

- (a) if an offence is committed by any member of an unlawful assembly;
- (b) in prosecution of common object of that assembly;
- (c) which the members of that assembly knew to be likely to be committed in prosecution of that object;
- (d) every person who is a member of the same assembly is guilty of the offence.

This section makes both the categories of persons, those who committed the offence as also those who were members of the same assembly liable for the offences under Section 149 IPC, if other requirements of the section are satisfied. That is to say, if an offence is committed by *any person* of an unlawful assembly, which the members of that assembly knew to be likely to be committed, *every member* of that assembly is guilty of the offence. The law is clear that *membership* of unlawful assembly is sufficient to hold such members vicariously liable.

23. It would be useful to refer to certain decisions of this Court. In *State of U.P. v. Kishanpal*⁴ it was observed: (SCC p. 93, para 47)

"47. ... It is well settled that once a membership of an unlawful assembly is established it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. In other words, mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in the prosecution of the common object of the unlawful assembly or such which the members of the unlawful assembly knew were likely to be committed."

Further, in *Amerika Rai v. State of Bihar*⁵ it was observed as under: (SCC p. 682, para 13)

⁴ (2008) 16 SCC 73

⁵ (2011) 4 SCC 677

"13. The law of vicarious liability under Section 149 IPC is crystal clear that even the presence in the unlawful assembly, but with an active mind, to achieve the common object makes such a person vicariously liable for the acts of the unlawful assembly."

24. The liability of those members of the unlawful assembly who actually committed the offence would depend upon the nature and acceptability of the evidence on record. The difficulty may however arise, while considering the liability and extent of culpability of those who may not have actually committed the offence but were members of that assembly. What binds them and makes them vicariously liable is the common object in prosecution of which the offence was committed by other members of the unlawful assembly. Existence of common object can be ascertained from the attending facts and circumstances. For example, if more than five persons storm into the house of the victim where only few of them are armed while the others are not and the armed persons open an assault, even unarmed persons are vicariously liable for the acts committed by those armed persons. In such a situation it may not be difficult to ascertain the existence of common object as all the persons had stormed into the house of the victim and it could be assessed with certainty that all were guided by the common object, making every one of them liable. Thus when the persons forming the assembly are shown to be having same interest in pursuance of which some of them come armed, while others may not be so armed, such unarmed persons if they share the same common object, are liable for the acts committed by the armed persons."

11. If we now consider the facts in the present matter, the case lies in a short compass. The case of the prosecution that five accused had entered the house of the deceased on the fateful night is accepted. It is also found that each one of them was separately armed and two of them were armed with sharp cutting weapons. As far as other three accused i.e. the present respondents were concerned, the first one had a Ballam while the other two were having lathis. It is true that the deceased had only two injuries on the person which were the cause of death. To the extent that the persons who were armed with sharp cutting weapons were found responsible for causing the death is also not disputed or challenged. The evidence on record fully establishes that the present respondents had also accompanied those two accused persons who were found responsible for the crime and all of them had entered the house of the deceased around midnight. It is crucial to note that the incident did not happen in any public place where the presence of a non-

participating accused could, at times, be labelled as that of an innocent bystander. The role played by each one of them was clear and specific. They had stormed into the house in the dead of the night.

12. On the strength of the principles accepted and laid down in the cases as aforementioned, their liability is fully established. Merely because the other three accused persons i.e. the present respondents had not used their weapons does not absolve them of the responsibility and vicarious liability on which the very idea of charge under Section 149 IPC is founded. For the application of the principle of *vicarious liability* under Section 149 IPC what is material to establish is that the persons concerned were members of an unlawful assembly, the common object of which was to commit a particular crime. The fact that five persons were separately armed and had entered the house of the deceased during night time is clearly indicative that each one of them was a member of that unlawful assembly, the object of which was to commit the crime with which they came to be charged in question. The High Court was not justified in granting benefit to those three accused.

13. The presence of the respondents in the house of the deceased; the fact that they were armed; the fact that all of them had entered the house around midnight and further fact that two out of those five accused used their deadly weapons to cause the death of the deceased was sufficient to attract the principles of *vicarious liability* under Section 149 IPC.

14. The High Court was not justified in entertaining a doubt that it could not be ruled out that the respondents were merely named along with the other accused persons. There was absolutely no room for such doubt. The testimony of the eye witnesses namely the wife and the son, who were occupants of the same house, was quite clear and cogent.

15. We have, therefore, no hesitation in allowing these Appeals. We, thus, set aside the view taken by the High Court insofar as the present respondents namely Killu @ Kailash, Devendra and Kailash Nayak are concerned. We set aside their acquittal as recorded by the High Court and restore the judgment and order of conviction passed by the Trial Court in Sessions Trial No. 173 of 2005 against said respondents.

16. The respondents shall surrender within three weeks, failing which the concerned police shall immediately arrest them and send them to custody to undergo the sentence imposed upon them. A copy of this Judgment shall be sent to the concerned Chief Judicial Magistrate and the Police Station for immediate compliance.

Appeal allowed

I.L.R. [2020] M.P. 770 (SC)
SUPREME COURT OF INDIA

Before Ms. Justice Indu Malhotra & Mr. Justice Ajay Rastogi

S.L.P. (C) No. 11476/2018 decided on 27 November, 2019

UTTARAKHAND PURV SAINIK
KALYAN NIGAM LTD. (M/S.)

...Petitioner

Vs.

NORTHERN COAL FIELD LTD.

...Respondent

A. Arbitration and Conciliation Act (26 of 1996), Section 11 & 16 and Arbitration and Conciliation (Amendment) Act, 2015, Section 11(6A) – Scope – Limitation – Held – As per Section 11(6A), Court is now only required to examine the existence of arbitration agreement – All other preliminary or threshold issues are left to be decided by Arbitrator u/S 16 – Issue of limitation is a jurisdictional issue and has to be decided by Arbitrator and not by High Court at pre-reference stage u/S 11 of the Act.

(Paras 9.3, 9.6, 9.8, 9.11 & 10)

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11 व 16 एवं माध्यस्थम् और सुलह (संशोधन) अधिनियम, 2015, धारा 11(6A) – व्याप्ति – परिसीमा – अभिनिर्धारित – धारा 11(6A) के अनुसार, न्यायालय को अब केवल मध्यस्थता करार के अस्तित्व का परीक्षण करने की आवश्यकता है – अन्य सभी प्रारंभिक अथवा शुरुआती विवादक धारा 16 के अंतर्गत मध्यस्थ द्वारा विनिश्चित किया जाना बाकी हैं – परिसीमा का विवादक एक अधिकारिता संबंधी विवादक है एवं मध्यस्थ द्वारा विनिश्चित किया जाना है तथा न कि अधिनियम की धारा 11 के अंतर्गत निदेश-पूर्व प्रक्रम पर उच्च न्यायालय द्वारा।

B. Arbitration and Conciliation Act (26 of 1996), Section 16 – Doctrine of “Kompetenz-Kompetenz” – Held – This doctrine is intended to minimize judicial intervention, so that arbitral process is not thwarted at the threshold, when a preliminary objection is raised by one of the parties.

(Para 9.9)

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 16 – “कॉम्पीटेन्ज-कॉम्पीटेन्ज” का सिद्धांत – अभिनिर्धारित – इस सिद्धांत का आशय न्यायिक मध्यक्षेप को कम करने का है, ताकि जब किसी पक्षकार द्वारा एक प्रारंभिक आक्षेप उठाया जाए, मध्यस्थ प्रक्रिया शुरुआत में ही विफल न हो जाए।

Cases referred:

(2005) 8 SCC 618, (2009) 1 SCC 267, (2011) 12 SCC 349, (2017) 9 SCC 729, (2017) 8 SCC 377, (2006) 1 SCC 751, (2010) 5 SCC 213, (2018) 10 SCC 525, (2004) 3 SCC 48, (2007) 4 SCC 451, (2018) 2 SCC 534.

ORDER

The Order of the court was passed by :
INDU MALHOTRA, J. :- The issue which has arisen for consideration is whether the High Court was justified in rejecting the application filed under Section 11 for reference to arbitration, on the ground that it was barred by limitation.

2. The factual background of the case arises from an agreement dated 21.12.2010 entered into between the parties, under which the Petitioner - Contractor was to provide security to the Respondent - Company around the clock on need basis, as per the agreed contractual rates.

The Agreement contained an arbitration clause which reads as follows :

"13. Arbitration :

- 13.1 *If any dispute, difference, question or disagreement shall at any time hereafter arise between the parties hereto or the respective or assigns in connection with or arising out of or in respect of contract, application of provision thereof, anything there-under contained or arising there-under or as to rights, liabilities or duties of the said parties hereunder or any matter whatsoever incidental to this contract shall be referred to the sole Arbitration of the person appointed by Director (Pers.) of NCL. CONTRACTOR shall have no objection to any such appointment that the arbitrator so appointed is an employee of NCL or that he had dealt with the matter to which the contract related and that in the course of his duties as NCL employees he has expressed views on all or any of the matter of disputes or difference.*
- 13.2 *If the arbitrator to whom the matter is originally by referred dies or refused to act or resigns for any reason from the position of arbitrator, it shall be lawful, for Director (Pers.) of NCL to appoint another person to act as Arbitrator. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor or to precede denovo.*
- 13.3 *It is agreed that no person other than the person appointed by Directed (Pers.) of NCL as aforesaid shall act as Arbitrator.*
- 13.4 *It is term of the contract that the CONTRACTOR shall not stop the work under this contract and the work shall continue whether the arbitration proceedings were commenced or not*

- 13.5 *It is term of this contract that the parties invoking the arbitration shall specify the dispute to be referred for arbitration.*
- 13.6 *The Arbitrator shall give reasoned award in respect of each of the difference referred to him. The award as aforesaid shall be final and binding on all the parties to this contract in accordance with the law.*
- 13.7 *The venue of arbitration shall at Singrauli in India and subject as aforesaid, the provisions of Indian Arbitration and Conciliation Act, 1996 and any statutory modification or reenactment thereof and rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.*

(emphasis supplied)

3. Disputes arose between the parties with respect to payment of amounts under the contract by the Respondent - Company, and the deduction of the security amount from the running bills.

The Petitioner-Contractor issued a Legal Notice dated 29.05.2013 demanding payment of amounts to the tune of Rs. 1,43,69,309/- alongwith interest from the Respondent -Company.

4. On 09.03.2016, the Petitioner - Contractor issued a Notice of Arbitration calling upon the Respondent - Company to nominate a Sole Arbitrator in terms of the arbitration clause, to adjudicate the disputes between the parties.

The Respondent - Company did not respond to the Notice dated 09.03.2016.

5. The Petitioner-Contractor sent a further notice on 30.05.2016 to the Respondent - Company proposing the name of Mr. Jai Singh, a retired Additional District Judge for appointment as the Sole Arbitrator.

The Respondent - Company did not respond to this Notice as well.

6. The Petitioner - Contractor filed an Application on 20.09.2016, under Section 11 invoking the default power of the High Court to make the appointment of a sole arbitrator.

7. The High Court *vide* the impugned Order held that the claims of the Petitioner - Contractor were barred by limitation, and therefore an arbitrator could not be appointed under Section 11 of the 1996 Act.

8. Aggrieved by the impugned Order dated 11.01.2018, the Petitioner has filed the present Special Leave Petition before this Court.

9. We have heard learned Counsel for the parties and perused the pleadings.

9.1. Section 21 of the 1996 Act provides that arbitral proceedings commence on the date on which a request for disputes to be referred to arbitration is received by the respondent.

9.2 In the present case, the Notice of Arbitration was issued by the Petitioner - Contractor to the Respondent - Company on 09.03.2016.

The invocation took place after Section 11 was amended by the 2015 Amendment Act, which came into force on 23.10.2015, the amended provision would be applicable to the present case.

9.3. The 2015 Amendment Act brought about a significant change in the appointment process under Section 11 : first, the default power of appointment shifted from the Chief Justice of the High Court in arbitrations governed by Part I of the Act, to the High Court; second, the scope of jurisdiction under sub-section (6A) of Section 11 was confined to the examination of the existence of the arbitration agreement at the pre-reference stage.

9.4. Prior to the coming into force of the 2015 Amendment Act, much controversy had surrounded the nature of the power of appointment by the Chief Justice, or his designate under Section 11.

A seven judge constitution bench of this Court in *SBP & Co. v. Patel Engineering Ltd.*,¹ defined the scope of power of the Chief Justice under Section 11. The Court held that the scope of power exercised under Section 11 was to first decide :

- i. whether there was a valid arbitration agreement; and
- ii. whether the person who has made the request under Section 11, was a party to the arbitration agreement; and
- iii. whether the party making the motion had approached the appropriate High Court.

Further, the Chief Justice was required to decide all threshold issues with respect to jurisdiction, the existence of the agreement, whether the claim was a dead one; or a time-barred

¹ (2005) 8 SCC 168.

claim sought to be resurrected; or whether the parties had concluded the transaction by recording satisfaction of their mutual rights and obligations, and received the final payment without objection, under Section 11, at the pre-reference stage.

The decision in *Patel Engineering* (supra) was followed by this Court in *Boghara Poly fab*², *Master Construction*³, and other decisions.

- 9.5. The Law Commission in the 246th Report⁴ recommended that:

"the Commission has recommended amendments to sections 8 and 11 of the Arbitration and Conciliation Act, 1996. The scope of the judicial intervention is only restricted to situations where the Court/ Judicial Authority finds that the arbitration agreement does not exist or is null and void. In so far as the nature of intervention is concerned, it is recommended that in the event the Court/ Judicial Authority is prima facie satisfied against the argument challenging the arbitration agreement, it shall appoint the arbitrator and/or refer the parties to arbitration, as the case may be. The amendment envisages that the judicial authority shall not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void. If the judicial authority is of the opinion that prima facie the arbitration agreement exists, then it shall refer the dispute to arbitration, and leave the existence of the arbitration agreement to be finally determined by the arbitral tribunal."

(emphasis supplied)

- 9.6. Based on the recommendations of the Law Commission, Section 11 was substantially amended by the 2015 Amendment Act, to overcome the effect of all previous judgments rendered on the scope of power by a non obstante clause, and to reinforce the *kompetenz-kompetenz* principle enshrined in Section 16 of the 1996 Act.

² *National Insurance Co. v. Boghara Polyfab (P) Ltd.* (2009) 1 SCC 267.

³ *Union of India & Ors. v. Master Construction Co.*, (2011) 12 SCC 349.

⁴ *Amendments to the Arbitration & Conciliation Act, 1996*, Report No. 246, Law Commission of India (August 2014), p. 20.

The 2015 Amendment Act inserted sub-section (6A) to Section 11 which provides that :

"The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement."

(emphasis supplied)

By virtue of the *non obstante* clause incorporated in Section 11(6A), Previous judgments rendered in *Patel Engineering* (supra) and *Boghara Polyfab* (supra), were legislatively over-ruled. The scope of examination is now confined only to the existence of the arbitration agreement at the Section 11 stage, and nothing more.

- 9.7. Reliance is placed on the judgment in *Duro Felguera S.A. v. Gangava ram Port Limited*,⁵ wherein this Court held that:

"From a reading of Section 11 (6A), the intention of the legislature is crystal clear i.e. the Court should and need only look into one aspect-the existence of an arbitration agreement. What are the factors for deciding as to whether there is an arbitration agreement is the next question. The resolution to that is simple- it needs "to be seen if the agreement contains a Clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement."

(emphasis supplied)

- 9.8. In view of the legislative mandate contained in Section 11 (6A), the Court is now required only to examine the existence of the arbitration agreement. All other preliminary or threshold issues are left to be decided by the arbitrator under Section 16, which enshrines the *Kompetenz-Kompetenz* principle.
- 9.9. The doctrine of "*Kompetenz-Kompetenz*", also referred to as "*Competence-Competence*", or "*Competence de la reconnue*", implies that the arbitral tribunal is empowered

⁵ (2017) 9 SCC 729.

Refer to *T.R.F. Ltd. v. Energo Engineering Projects Ltd.* (2017) 8 SCC 377.

and has the competence to rule on its own jurisdiction, including determining all jurisdictional issues, and the existence or validity of the arbitration agreement. This doctrine is intended to minimize judicial intervention, so that the arbitral process is not thwarted at the threshold, when a preliminary objection is raised by one of the parties.

The doctrine of *kompetenz-kompetenz* is, however, subject to the exception i.e. when the arbitration agreement itself is impeached as being procured by fraud or deception. This exception would also apply to cases where the parties in the process of negotiation, may have entered into a draft agreement as an antecedent step prior to executing the final contract. The draft agreement would be a mere proposal to arbitrate, and not an unequivocal acceptance of the terms of the agreement. Section 7 of the Contract Act, 1872 requires the acceptance of a contract to be absolute and unqualified⁶. If an arbitration agreement is not valid or non-existent, the arbitral tribunal cannot assume jurisdiction to adjudicate upon the disputes. Appointment of an arbitrator may be refused if the arbitration agreement is not in writing, or the disputes are beyond the scope of the arbitration agreement.

Article V(1)(a) of the New York Convention states that recognition and enforcement of an award may be refused if the arbitration agreement 'is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made'.

- 9.10. The legislative intent underlying the 1996 Act is party autonomy and minimal judicial intervention in the arbitral process. Under this regime, once the arbitrator is appointed, or the tribunal is constituted, all issues and objections are to be decided by the arbitral tribunal.
- 9.11. In view of the provisions of Section 16, and the legislative policy to restrict judicial intervention at the pre-reference

⁶ *Dresser Rand SA v. Bindal Agro-Chem Ltd.* (2006) 1 SCC 751.

See also *BSNL v. Telephone Cables Ltd.* (2010) 5 SCC 213.

Refer to *PSA Mumbai Investments PTE Ltd. v. Board of Trustees of the Jawaharlal Nehru Port Trust & Anr.* (2018) 10 SCC 525.

stage, the issue of limitation would require to be decided by the arbitrator.

Sub-section (1) of Section 16 provides that the arbitral tribunal may rule on its own jurisdiction, "including any objections" with respect to the existence or validity of the arbitration agreement. Section 16 is as an inclusive provision, which would comprehend all preliminary issues touching upon the jurisdiction of the arbitral tribunal. The issue of limitation is a jurisdictional issue, which would be required to be decided by the arbitrator under Section 16, and not the High Court at the pre-reference stage under Section 11 of the Act. Once the existence of the arbitration agreement is not disputed, all issues, including jurisdictional objections are to be decided by the arbitrator.

- 9.12. In the present case, the issue of limitation was raised by the Respondent - Company to oppose the appointment of the arbitrator under Section 11 before the High Court.

Limitation is a mixed question of fact and law. In *ITW Signode India Ltd. v. Collector of Central Excise*⁷ a three judge bench of this Court held that the question of limitation involves a question of jurisdiction. The findings on the issue of limitation would be a jurisdictional issue. Such a jurisdictional issue is to be determined having regard to the facts and the law.

Reliance is also placed on the judgment of this Court in *NTPC v. Siemens Atkein Gesell Schaff*⁸, wherein it was held that the arbitral tribunal would deal with limitation under Section 16 of the 1996 Act. If the tribunal finds that the claim is a dead one, or that the claim was barred by limitation, the adjudication of these issues would be on the merits of the claim. Under sub-section (5) of Section 16, the tribunal has the obligation to decide the plea; and if it rejects the plea, the arbitral proceedings would continue, and the tribunal would make the award. Under sub-section (6) a party aggrieved by such an arbitral award may challenge the award under Section 34.

⁷ (2004) 3 SCC 48.

⁸ (2007) 4 SCC 451.

In *M/s. Indian Farmers Fertilizers Cooperative Ltd. v. Bhadra Products*⁹ this Court held that the issue of limitation being a jurisdictional issue, the same has to be decided by the tribunal under Section 16, which is based on Article 16 of the UNCITRAL Model Law which enshrines the *Kompetenze* principle.

10. In view of the aforesaid discussion, we set aside the impugned judgment and order dated 11.01.2018 passed by the High Court, and direct that the issue of limitation be decided by the arbitral tribunal.

11. With the consent of Counsel for the parties, we appoint Mr. Justice (Retd.) A. M. Sapre, former Judge of this Court, as the Sole Arbitrator, subject to the declarations being made under Section 12 of the 1996 Act (as amended) with respect to the independence and impartiality of the arbitrator, and the ability to devote sufficient time to complete the arbitration within the period specified by Section 29A of the 1996 Act.

12. The arbitration agreement states that the arbitration will be at Singrauli, Madhya Pradesh. Consequently, the seat of arbitration is at Singrauli, subject to any modification that may be made by consent of the parties. The arbitrator is, however, at liberty to conduct the proceedings at a convenient venue as per the convenience of the arbitrator and the parties if so required.

The Arbitrator will be paid fees in accordance with the Fourth Schedule of the 1996 Act. Both parties will share the costs of the arbitration equally.

The Registry is directed to despatch a copy of this Order to Mr. Justice (Retd.) A. M. Sapre, Former Judge, Supreme Court of India at the following address:

"Mr. Justice (Retd.) A. M. Sapre,
Former Judge, Supreme Court of India,
C-203, Second Floor
Sarvodaya Enclave
New Delhi - 110017
Tel No.: 011-40254823
Mob. No.: 7042955488"

The parties are directed to appear before the learned Arbitrator on 02.12.2019 at 2 p.m.

The matter is disposed of accordingly.

Order accordingly

⁹ (2018) 2 SCC 534.

I.L.R. [2020] M.P. 779 (SC)
SUPREME COURT OF INDIA

*Before Mr. Justice Mohan M. Shantanagoudar &
 Mr. Justice Krishna Murari*

Cr.A. No. 1798/2019 decided on 29 November, 2019

ALKEM LABORATORIES LTD. (M/S)

...Appellant

Vs.

STATE OF M.P. & anr.

...Respondents

A. *Prevention of Food Adulteration Act (37 of 1954), Sections 2(ix)(g), 7(ii), 13(2), 16(1)(a)(ii) & 20-A – Adulteration and Misbranding – Quashment of Charge* – After several years of pending litigation, on application of accused, appellant was added as an accused – Held – Appellant lost their chance to get the sample re-tested u/S 13(2) of the Act on account of respondent's negligence – Appellant ought to get such valuable opportunity for a second opinion from Central Laboratory and claim exoneration from criminal proceedings – Impugned order quashed – Appeal allowed.

(Paras 6, 9 & 10)

क. खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धाराएँ 2(ix)(g), 7(ii), 13(2), 16(1)(a)(ii) व 20-A – अपमिश्रण एवं मिथ्या छाप देना – आरोप का अभिखंडित किया जाना – लंबित मुकदमेबाजी के अनेक वर्षों के पश्चात्, अभियुक्त के आवेदन पर, अपीलार्थी को एक अभियुक्त के रूप में जोड़ा गया था – अभिनिर्धारित – अपीलार्थी ने प्रत्यर्थी की उपेक्षा के कारण अधिनियम की धारा 13(2) के अंतर्गत नमूने के पुनः परीक्षण कराये जाने का मौका खो दिया – अपीलार्थी को केंद्रीय प्रयोगशाला से दूसरी राय के लिए तथा दाण्डिक कार्यवाहियों से विमुक्ति करने का दावा करने हेतु इस तरह का बहुमूल्य अवसर प्राप्त करना चाहिए – आक्षेपित आदेश अभिखंडित – अपील मंजूर।

B. *Prevention of Food Adulteration Act (37 of 1954), Sections 2(ia)(a), 2(ix)(g), 11 & 13(2) – Adulteration and Misbranding* – Held – Where examination of contents/ingredients of food article is integral to prove offence of “misbranding”, the procedure prescribed u/S 11 & 13 has to be complied with, regardless of whether “adulteration” is alleged or not – This includes right to obtain second opinion u/S 13(2) of the Act. (Para 8)

ख. खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धाराएँ 2(ia)(a), 2(ix)(g), 11 व 13(2) – अपमिश्रण तथा मिथ्या छाप देना – अभिनिर्धारित – जहां खाद्य पदार्थ की सामग्री/संघटकों का परीक्षण किया जाना “मिथ्या छाप” के अपराध को साबित करने के लिए अनिवार्य है, इसका ध्यान रखे बगैर कि क्या “अपमिश्रण” अभिकथित है अथवा नहीं धारा 11 व 13 के अंतर्गत विहित प्रक्रिया का अनुपालन किया जाना चाहिए – इसमें अधिनियम की धारा 13(2) के अंतर्गत द्वितीय राय प्राप्त करने का अधिकार शामिल है।

C. *Prevention of Food Adulteration Act (37 of 1954), Section 2(ix)(g) & 13(2) – Ingredient – Held – The word “adulterated” in section 13(2) would have to be read as including “misbranded” in so far as it relates to ingredient of food article and clause of Section 13 have to be complied with in its entirety. (Para 8)*

ग. खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 2(ix)(g) व 13(2) – संघटक – अभिनिर्धारित – धारा 13(2) में शब्द “अपमिश्रित” को जहाँ तक वह खाद्य पदार्थ के संघटक से संबंधित है “मिथ्या छापवाला” सहित पढ़ा जाना होगा तथा धारा 13 के खंड का संपूर्णता के साथ अनुपालन किया जाना चाहिए।

D. *Interpretation of Statutes – Ambiguity – Held – Any ambiguity in a penal statute has to be interpreted in favour of the accused. (Para 8)*

घ. कानूनों का निर्वचन – अस्पष्टता – अभिनिर्धारित – एक दाण्डिक कानून में किसी अस्पष्टता का निर्वचन अभियुक्त के पक्ष में किया जाना चाहिए।

Cases referred:

(1975) 1 SCC 866, AIR 1967 SC 970, (2009) 15 SCC 64, (1994) 1 SCC 754.

J U D G M E N T

The Judgment of the Court was delivered by :
MOHAN M. SHANTANAGOUDAR, J. :- Leave granted.

2. This appeal by special leave arises out of judgment dated 11.04.2018 of the High Court of Madhya Pradesh at Jabalpur, dismissing the Appellant's application under Section 482 of the Criminal Procedure Code ('CrPC') for quashing of order dated 01.09.2015 of the Special Magistrate (Prevention of Food Adulteration Act), Bhopal.

3. The facts giving rise to this appeal are as follows: The Appellant was the marketer of packed food article 'Orange Tammy Sugarless Jelly' ('Jelly'). The Jelly was manufactured separately by one Cachet Pharmaceuticals Private Limited ('Manufacturer'), which is not connected to the Appellant entity. On 3.10.2008, Respondent No. 2 Food Inspector, (from the Food and Drugs Administration, Bhopal District), conducted inspection in Valecha Enterprises in Bhopal, the proprietor of which is one Mr. Dinesh Valecha ('Retailer'). Respondent No. 2 purchased three company packed jars of the Jelly, weighing 350 grams each, from the Retailer and the said samples were deposited with the State Food Testing Laboratory ('State Laboratory') and the Local Health Authority, Bhopal for the purpose of testing. At this stage, the Retailer did not have receipt of purchase from the Appellant/marketer and stated that they would

produce it before Respondent No. 2 at a later stage.

The Local Health Authority by letter dated 26.11.2008 informed Respondent No. 2 that the Report of the Public Analyst, State Laboratory had found 'sugar' in the Jelly sample, hence the Jelly was misbranded. Notably, it was *pursuant to this letter* that, Respondent No. 2 made further query and the Retailer produced a receipt showing that the Jelly was purchased from the Appellant. Respondent No. 2 sent a letter to the Local Health Authority and to the Indore branch of the Appellant company, for information as regards the Manager/Director/Partner or nominee of the Appellant. However, as the Respondents claim, the Appellant did not respond to this query and the letter was received back. The attempts of Respondent No. 2 to obtain information about the Appellant from the Office of the Deputy Director, Food and Drugs Administration and the Commissioner, Nagar Nigam, Indore also failed.

Consequently, Respondent No. 2 filed a complaint in the Court of the Judicial Magistrate, First Class, Bhopal for the offence of selling a misbranded food article under Section 16(1)(a)(ii) read with Sections 2(ix)(g) and 7(ii) of the Prevention of Food Adulteration Act, 1954 ('1954 Act'). During the course of the trial, after the closing of the prosecution evidence, the Retailer examined himself as a witness for the defence under Section 315 of the CrPC. Subsequently on 26.8.2014, the Retailer moved an application under Section 20A of the 1954 Act for impleading the Appellant as an accused, which was allowed by the Special Magistrate (Prevention of Food Adulteration Act), Bhopal by order dated 1.9.2015. Hence the Appellant approached the High Court under Section 482 of the CrPC for quashing the said order.

The High Court in the impugned judgment held that firstly, *mens rea* was not an ingredient of the offence under Section 7 of the 1954 Act. Therefore the Appellant could not avail of the defense that since they were only the marketer of the Jelly, they were not privy to the ingredients thereof. Secondly, that the Appellant could not have availed of the right to get the sample re-tested by the Central Food Laboratory ('Central Laboratory') under Section 13(2) of the 1954 Act as the same was only available to the vendor of an 'adulterated' food article and not a 'misbranded' one. Hence the denial of the said right would not prejudice the case against the Appellant.

Thirdly, that the delay of 5 years in arraying the Appellant as co-accused would also not be fatal inasmuch as Respondent No. 2 had made best attempts to contact the Appellant, and the Appellant's name was probably omitted to avoid delay in filing the complaint. Lastly, that the application under Section 20A was maintainable as the Court may be satisfied on the basis of evidence adduced by either of the parties, including the prosecution, that the distributor/dealer of a food article is also concerned with the offence and such evidence need not be adduced

by the applicant only. In any case the applicant/Retailer had given his evidence prior to impleadment. Hence the High Court declined to exercise its inherent powers under Section 482 of CrPC and quash the impleadment order dated 01.09.2015. However, this Court has directed stay of proceedings before the trial court against the Appellant during pendency of this appeal.

4. Learned senior counsel for the Appellant, Mr. C.U. Singh argued that the application for impleadment under Section 20A was not maintainable at the outset as such an application can only be made by a person who is not the 'manufacturer, distributor or dealer' of the food article, and the Retailer would be included in the phrase 'manufacturer, distributor or dealer'. That in any case, as a catena of decisions dealing with the 1954 Act as well as similar legislations such as the Seeds Act, 1966 and the Insecticides Act, 1968 have held, where an accused is denied their statutory right to get a sample re-tested by a Central testing laboratory on account of delay, such denial will render prosecution of the offence futile. He argued that the right under Section 13(2) of the 1954 Act is not restricted to cases of 'adulterated' food articles but applies to testing of samples for other offences under the 1954 Act as well; hence the order impleading the Appellant is liable to be quashed.

Further, that the delay in impleading the Appellant was attributable to the Respondents' negligence as the label on the packaging of the Jelly clearly stated that their registered office was in Mumbai whereas the Respondents' communications were addressed to their Indore branch which is an old address.

Per contra, learned counsel for the Respondents stressed that a plain reading of Section 13(2) shows that the right available thereunder is only in respect of 'adulterated' food samples. Whereas in other provisions of the 1954 Act, where a provision is meant to be additionally applicable to misbranded food articles, the word 'misbranded' has been separately mentioned after 'adulterated'. Hence, the legislative intent to exclude misbranding from the purview of re-testing by the Central Laboratory is clear. Further that though the packaging on the Jelly stated that the Appellant had their office in Mumbai, the food license produced by the Retailer before Respondent No.2/Food Inspector showed that their address was in Indore and the cause title of the Appellant's application under Section 482, CrPC states that their branch office/manufacturing unit is located at Indore; hence they cannot be blamed for the delay in impleading the Appellant. In any case, the High Court's powers under Section 482 against an interlocutory order are to be exercised sparingly, and it was open to the Appellant to prove their innocence at the stage of trial.

5. At the outset, it must be noted that the Appellant's contention that an application under Section 20A could not have been made by a retailer is misguided. The provisions of the 1954 Act clearly distinguish between a 'vendor'

and 'manufacturer' of a food article. The very purpose of Section 20A is to enable the Court to implead the manufacturer or distributor during the trial of the vendor of the food article, so as to detect and punish adulteration at all stages of the supply chain. Admittedly, the prosecution may have to prove, for the purpose of trying the Retailer and the Appellant in a joint trial, that they shared a common object that the misbranded Jelly should reach consumers as food, as per this Court's decision in *Bhagwan Das Jagdish Chander v. Delhi Administration*, (1975) 1 SCC 866. However, we find that this question need not be looked into at the stage of mere impleadment of the Appellant for the offence of misbranding.

It is pertinent to note that in *Bhagwan Das Jagdish Chander*, M.H. Beg J. in his majority opinion directed quashing of charge against the Appellant distributor on the ground that on account of long passage of time since the initiation of prosecution, it would be difficult for the Appellant to challenge the correctness of the Public Analyst's Report. Hence the primary issue which arises for our consideration is whether the denial of the right to get the Jelly sample tested by the Central Laboratory, under Section 13(2) of the 1954 Act, would entitle quashing of proceedings against the Appellant for the offence of 'misbranding'?

6. Before we turn to the substantial question of law involved in the appeal, it may be useful to refer to the relevant provisions of the 1954 Act. It is explained in the Statement of Objects and Reasons of the 1954 Act that prior to its enactment, there were numerous State legislations on the subject of prevention of adulteration of food-stuffs but these lacked uniformity. Hence the need for a Central legislation was felt which could *inter alia*, provide for a uniform procedure and the constitution of 'a Central Food Laboratory to which food samples can be referred to *for final opinion in disputed cases*.'

Section 8 of the 1954 Act provides for the appointment of Public Analysts by the Central or the State Government as the case may be, for the purpose of carrying out analysis and testing of food samples in a given local area. Section 9 provides for the appointment of Food Inspectors for the purpose of *inter alia*, carrying out inspection of establishments where food articles are manufactured or sold, and seizing food articles which require analysis. Section 14A mandates vendors of food articles to disclose the name and other particulars of the person from whom the food article was purchased, if the Food Inspector so requires.

Section 11 stipulates the procedure to be followed by Food Inspectors while taking food samples for analysis. It is important to note that the first step of the procedure is to immediately notify on the spot, not only the vendor but also the person whose particulars are disclosed under Section 14A (which would include a distributor/marketer such as the Appellant), that a sample is being sent for analysis. The sample is then divided into three parts-while the first part is sent to

the Public Analyst, the other two are deposited with the Local Health Authority as a contingency in case the first part is lost or damaged.

It is this backdrop that Section 13 of the 1954 Act prescribes the subsequent procedure to be followed after the Public Analyst prepares their report:

"(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2A), the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

(3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2B) shall supersede the report given by the public analyst under sub-section (1)."

Therefore the purpose of Section 13 is to give a second opportunity to accused persons, against whom prosecution is initiated under the 1954 Act based on the Public Analyst's report, to get the relevant food sample tested again by the Central Laboratory. Since the Central Laboratory's report will have precedence over that of the Public Analyst, this is a valuable opportunity for accused persons to claim exoneration from criminal proceedings.

7. It can be seen from the above-mentioned provisions that under the scheme of the 1954 Act, the accused has to be given prior notice, as provided under

Section 11, that samples of a food article manufactured and/or sold by them have been sent for analysis, before the Public Analyst prepares their report. The 1954 Act does not envisage a situation such as the present case where the sample is sent for analysis, and the Public Analyst's report is also prepared, but the marketer is informed several years later that prosecution is sought to be instituted against them. During such period, the food article being perishable in nature would most probably be incapable of being sent for re-testing to the Central Laboratory.

Thus, it has been settled by this Court in *Municipal Corporation of Delhi v. Ghisa Ram*, AIR 1967 SC 970, that where inordinate delay in instituting prosecution has resulted in denial of the right under Section 13(2), it is deemed to have caused serious prejudice to the accused such that their conviction on the basis of the Public Analyst's report cannot be upheld. In *Girishbhai Dahyabhai Shah v. C.C. Jani*, (2009) 15 SCC 64, this Court affirmed that a delay in sending a report of the Public Analyst to the accused, such that he is no longer in a position to apply for re-testing under Section 13(2) of the 1954 Act, would entitle quashing of criminal proceedings under Section 482 of the CrPC. However the above-mentioned decisions dealt with the offence of adulteration *simpliciter* and did not touch upon the question of the consequence of non-compliance with Section 13(2) in cases involving other offences.

However, upon a comparison of Section 2(ia) of the 1954 Act which defines 'adulterated' and Section 2(ix) which defines 'misbranded', we find that there is an overlap between the two provisions. Section 2(ia)(a) includes within the definition of 'adulterated' a case where a food article is 'not of the nature, substance, or quality which it purports or is represented to be.' Whereas Section 2(i)(ix)(g) includes within the definition of 'misbranded' the following:

"if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents."

Therefore for example, in cases where it is found that a food article contains an additional ingredient which is not advertised on its packaging, or *vice versa*, where a food article is found to be missing an ingredient which is purported to be included in the contents thereof in the labelling/packaging of the article; or where the food article has used an inferior quality substitute but the labelling purports to use the superior quality original ingredient, it would be a case of both adulteration and misbranding.

This is not an exhaustive list of examples, but it suffices to say that in certain situations, even for the purpose of proving the offence of 'misbranding',

samples of the article would have to be taken according to the procedure prescribed under Sections 11-13 of the 1954 Act. This is because in such cases it would not be possible to conclude whether or not the manufacturer, marketer or vendor has put a deceptive label/package on the food article, without making a finding as to whether there has been any adulteration in the contents thereof.

8. The question which arises then is, what is the procedure to be followed in cases where proving 'misbranding' requires testing of the relevant food samples, but the corresponding charge of 'adulteration' has not been made? Section 13(2) is unfortunately silent in this regard. It is a settled principle of statutory interpretation that any ambiguity in a penal statute has to be interpreted in favour of the accused. It would be absurd and discriminatory for the prosecution to, on one hand, rely on the report of the Public Analyst under Section 13(1) for proving the offence of 'misbranding', and on the other hand, claim that the accused cannot avail of their right to challenge the said report as per Sections 13(2) and 13(3) because it is not a case of 'adulteration'. In such a scenario, the word 'adulterated' in Section 13(2) would have to be read as including 'misbranded' in so far as it relates to the ingredients of the concerned food article, and the relevant clauses of Section 13 have to be complied with in their entirety.

Hence we are of the considered opinion that where examination of the contents/ingredients of the food article is integral to proving the offence 'misbranding', the procedure prescribed under Sections 11-13 of the 1954 Act has to be complied with, regardless of whether 'adulteration' is alleged or not. This includes the right to obtain a second opinion from the Central Laboratory under Section 13(2). The same test would apply in respect of any other offence for which penalty is prescribed under the 1954 Act.

It is needless to say that this rule would not apply if proving the offence does not necessarily require sampling of the food article. For example, if the offence is one of 'bearing the name of a fictitious individual or company as the manufacturer or producer of the article' under Section 2(ix)(h) it may not be necessary to analyse the contents of the food article to prove the offence so long as the prosecution is able to establish that the real manufacturer has deceptively concealed their identity.

9. Applying the above-mentioned test to the present case, it has to be seen whether *first*, the Appellant was entitled to apply for testing of the Jelly by the Central Laboratory under Section 13(2); *second*, whether the denial of the right was the Respondents' fault and *third*, whether such denial is prejudicial to the Appellant's case. With respect to the first point, the Respondents have relied upon the Public Analyst's Report which states that the Jelly contains 'sugar/sucrose', so as to institute a complaint for misbranding under Section 2(ix)(g) of the 1954 Act.

This is because the label on the packaging claims that the Jelly is 'sugarless'. Hence, the Public Analyst's finding on whether 'sugar' as an ingredient is present in the Jelly sample is crucial to proving the offence of 'misbranding' against the Appellant. Thus, the Appellant ought to have had the opportunity to make an application under Section 13(2) for a second opinion from the Central Laboratory on the contents of the Jelly sample.

With respect to the second point, we are of the view that Respondent No. 2 erred in not making query to the Retailer, at the first instance, about the marketer of the Jelly, as she was empowered to do under Section 14A of the 1954 Act. If she had done so, the Appellant could have been notified in 2008 itself that the Jelly is being taken for analysis. Even if this lapse is condoned, once the Retailer had intimated the Respondents that the Appellant was the marketer of the Jelly, they ought to have made more efforts in notifying the Appellant of the alleged irregularity found in the Jelly sample, as per Section 13(2). We do not find merit in the Respondents' submission that the delay in informing the Appellant was because the Appellant was deliberately avoiding service of notice. Even if the address produced by the Retailer was of the Appellant's Indore Branch, the label on the packaging of the Jelly clearly indicated that the official address for communication would be "Alkem House, Senapati Bapat Marg, Lower Parel, Mumbai-400013". Hence even if no response was being received from the Indore branch, the Respondents could have attempted to send the details of the Public Analyst's Report to the Appellant's Mumbai address. Thus it is clear that the Appellant lost their chance to get the Jelly sample re-tested under Section 13(2) on account of the Respondents' negligence.

Finally, with regard to the third point, it is true that non-compliance with Section 13(2) would not be fatal in every case, if it is found that the sample is still fit for analysis (*T. V. Usman v. Food Inspector, Tellicherry Municipality, Tellicherry*, (1994) 1 SCC 754). However the Respondents have not disputed that the shelf life of the Jelly sample would have, in all probability, expired at this stage. Hence we find that this is a fit case for quashing of proceedings against the Appellant on account of denial of their valuable right under Section 13(2).

10. The appeal is allowed, and the impugned judgment dated 11.04.2018 and the impleadment order dated 01.09.2015 are set aside, in the above terms.

Appeal allowed

I.L.R. [2020] M.P. 788 (SC)
SUPREME COURT OF INDIA

*Before Smt. Justice R. Banumathi, Mr. Justice A.S. Bopanna &
 Mr. Justice Hrishikesh Roy*

Cr.A. No. 1820/2019 decided on 3 December, 2019

BHAWNA BAI

...Appellant

Vs.

GHANSHYAM & ors.

...Respondents

Criminal Procedure Code, 1973 (2 of 1974), Section 228 and Penal Code (45 of 1860), Section 302/34 – Framing of Charge – Requirement – Held – For framing charges u/S 228 Cr.P.C., Judge is not required to record detailed reason and hold an elaborate enquiry, neither any strict standard of proof is required, only prima facie case has to be seen – Upon hearing the parties and after considering allegations in charge sheet, Session Court found sufficient grounds for proceeding against accused persons – High Court erred in interfering with order framing charge – Impugned judgment set aside – Session Trial Case restored – Appeal allowed. (Paras 12, 16 & 17)

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 228 एवं दण्ड संहिता (1860 का 45), धारा 302/34 – आरोप विरचित किया जाना – आवश्यकता – अभिनिर्धारित – द.प्र.सं. की धारा 228 के अंतर्गत आरोपों की विरचना करने हेतु, न्यायाधीश को सविस्तार कारण अभिलिखित करने तथा एक विस्तृत जांच आयोजित करने की आवश्यकता नहीं है, न ही किसी कठोर मानक के सबूत की आवश्यकता होती है, केवल प्रथम दृष्ट्या प्रकरण देखा जाना चाहिए – पक्षकारों को सुनने पर तथा आरोप पत्र में दिये गये अभिकथनों को विचार में लेने के पश्चात्, सत्र न्यायालय ने अभियुक्तगण के विरुद्ध कार्रवाई करने हेतु पर्याप्त आधार पाये – उच्च न्यायालय ने आरोप विरचना के आदेश में हस्तक्षेप कर त्रुटि की है – आक्षेपित निर्णय अपास्त – सत्र न्यायालय का प्रकरण प्रत्यावर्तित – अपील मंजूर।

Cases referred:

(2012) 9 SCC 460, (2014) 13 SCC 137, (2000) 1 SCC 722.

J U D G M E N T

The Judgment of the Court was delivered by :
R. BANUMATHI, J. :- Leave granted.

2. This appeal arises out of the impugned judgment and final order dated 25.02.2019 passed by the High Court of Madhya Pradesh at Indore Bench in Criminal Revision No.402 of 2019 in and by which the High Court has quashed the charges framed by the trial court/Additional Sessions Judge against respondent Nos.1 and 2/accused Nos.1 and 2.

3. Brief facts which led to filing of this appeal are as follows:-

On 24.12.2015, the husband of the complainant-Gopal Saran at about 06.00 pm went saying to prepare food as he is going outside to plough the field and shall return by 09.00-10.00 pm. Even by 12.00 mid night, Gopal Saran did not return home; then his wife Bhawna Bai, appellant herein tried to contact him over his mobile; but he did not receive the call. The appellant informed her father-in-law who tried to search the deceased and there was no information about the deceased. On the next morning at about 08.00 am, the appellant-complainant and her family members came to know from the neighbours that Gopal Saran was lying in the tank/hose in the field of the first respondent-Ghanshyam. The appellant has alleged that when she tried to approach her husband then Ganesh s/o Mohanlal Kushwah prevented her going near her husband and locked her in a room and did not allow her to see her husband. The dead body of Gopal Saran was taken to government hospital. The appellant-complainant alleged that without informing her, post-mortem of her husband was conducted. Merg No.94 of 2015 was registered for investigation under Section 174 CrI.P.C.; but no case was registered against any person.

4. On 31.12.2015, the appellant made a written complaint before the Superintendent of Police, Khargaon and in spite of the same, no case was registered. Thereafter, the complainant-appellant filed a complaint before the Additional Chief Judicial Magistrate (ACJM), Kasrawad under Section 156(3) CrI.P.C. on 12.04.2016. The learned ACJM accepted the complaint and directed the Officer-in-Charge, P.S. Kasrawad to register the FIR under Section 302 IPC and proceed with the investigation. FIR was registered in Crime No.145 of 2016 under Section 302 IPC read with Section 34 IPC. Challenging the direction of ACJM to register a FIR, the State of Madhya Pradesh has filed revision before the Additional Sessions Judge, Mandleswar in Criminal Revision No.300051 of 2016. The said revision petition was dismissed vide order dated 27.10.2016.

5. Respondent Nos.1 and 2/accused Nos.1 and 2 have prayed for anticipatory bail and the same was dismissed by the learned Special Judge SC/ST (Prevention of Atrocities) Act, West Nimad, Mandleswar vide order dated 10.09.2018. Being aggrieved, respondent Nos.1 and 2 filed appeal before the High Court and the High Court had granted anticipatory bail to them vide order dated 19.09.2018. Against the grant of anticipatory bail, the appellant-complainant has filed SLP(CrI.) Diary No.39785/2018 before the Supreme Court in which the Supreme Court by order dated 14.12.2018 has issued notice. In the meanwhile, charge sheet has been filed against the accused-respondent Nos.1 and 2 under Section 302 IPC read with Section 34 IPC on 26.09.2018. Upon hearing the prosecution and also the respondents-accused, vide order dated 12.12.2018, the learned Second Additional Sessions Judge, Mandleswar has found that there

are sufficient grounds for proceeding against the accused and framed the charges against the accused-respondent Nos.1 and 2 under Section 302 IPC read with Section 34 IPC.

6. Challenging the order of framing charges, respondent Nos.1 and 2 have filed revision before the High Court. Holding that, while framing charges, the court should apply the judicial mind and should give reasons in concise manner for framing charges and that the trial court has failed to apply its mind while framing charges, the High Court vide impugned order dated 25.02.2019 has quashed the charges against respondent Nos.1 and 2 and discharged them. Being aggrieved, the appellant-complainant has preferred this appeal.

7. Mr. Bijan Kumar Ghosh, learned counsel appearing for the appellant has submitted that there are circumstances like "last seen together"; "recovery of dead body"; "not informing the family of the victim immediately upon discovery of dead body"; "not informing the police"; "recovery of other belongings of dead body including tractor" and such other circumstances connecting the accused-respondent Nos.1 and 2 with the death of Gopal Saran and considering those circumstances, the learned Second Additional Sessions Judge satisfied himself that there are sufficient ground for framing charges against the accused. The learned counsel submitted that when the trial judge has so satisfied that there are sufficient grounds for framing the charges against the accused, in exercise of its revisional jurisdiction, the High Court ought not to have interfered and quashed the charges framed by the trial court.

8. Mr. Harsh Parashar, learned counsel appearing for the State of Madhya Pradesh reiterated the contentions and submitted that the averments in the charge sheet and the circumstances indicated thereon are sufficient to *prima facie* link respondent Nos.1 and 2 to the occurrence and while so, the High Court erred in setting aside the order of the Second Additional Sessions Judge and quashing the charges.

9. Mr. Santosh Kumar, learned counsel appearing for the accused-respondent Nos.1 and 2 submitted that even if the averments in the charge sheet are accepted, no *prima facie* case is made out against the accused-respondent Nos.1 and 2 and there was non-application of judicial mind by the learned trial judge and considering the facts and circumstances of the case, the High Court rightly quashed the charges framed against the accused-respondent Nos.1 and 2 and the impugned order therefore, does not suffer from any infirmity.

10. We have carefully considered the submissions and perused the impugned order and materials on record.

11. As per the allegations in the charge sheet, on the date of occurrence i.e. 24.12.2015, the accused-respondents Ghanshyam and Bhagwan went with

deceased Gopal Saran to the farm of Ghanshyam for ploughing the land with tractor and that all the three consumed liquor together at the place of incident. Thus, as per the allegations in the charge sheet, the deceased was last seen alive in the company of accused-respondent Nos.1 and 2. As per the statement of Usha, wife of Ghanshyam and Nisha, daughter of Ghanshyam, the accused-respondent Nos.1 and 2 had returned home at 09.00 pm in the night of 24.12.2015. Though, the body of deceased was found in the field of respondent-accused Ghanshyam, he did not inform the family of deceased Gopal Saran nor informed the police about the same. In the complaint filed by the appellant before the Magistrate, the appellant has alleged that "*when she went running near to her husband's dead body, Ganesh son of Ghanshyam caught hold of her and forcibly locked her in a room in his house and did not allow her to go near the dead body of her husband*". The allegations in the charge sheet also suggest that the accused-respondent Nos.1 and 2 had earlier quarrelled with deceased Gopal Saran and thereby suggesting a motive for the crime.

12. Though the circumstances alleged in the charge sheet are to be established during the trial by adducing the evidence, the allegations in the charge sheet show a *prima facie* case against the accused-respondent Nos.1 and 2. The circumstances alleged by the prosecution indicate that there are sufficient grounds for proceedings against the accused. At the time of framing the charges, only *prima facie* case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only *prima facie* case against the accused is to be seen.

13. Chapter XVIII CrI.P.C. deals with "**Trial before a Court of Session**". As per Section 226 CrI.P.C., the public prosecutor is required to open the case before the Sessions Court by describing the charge brought against the accused and stating by what evidence, he proposes to prove the guilt of the accused. Section 227 CrI.P.C. deals with discharge and it reads as under:-

"227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

14. Considering the scope of Sections 227 and 228 CrI.P.C., in *Amit Kapoor v. Ramesh Chander and another* (2012) 9 SCC 460, the Supreme Court held as under:-

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for *presuming that the accused has committed an offence*, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

.....

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39: (SCC pp. 41-42, para 4)

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which —

... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227. ""

15. After referring to *Amit Kapoor, in Dinesh Tiwari v. State of Uttar Pradesh and another* (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 CrI.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the

accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.

16. As discussed above, in the present case, upon hearing the parties and considering the allegations in the charge sheet, the learned Second Additional Sessions Judge was of the opinion that there were sufficient grounds for presuming that the accused has committed the offence punishable under Section 302 IPC read with Section 34 IPC. The order dated 12.12.2018 framing the charges is not a detailed order. For framing the charges under Section 228 CrI.P.C., the judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only *prima facie* case is to be seen. As held in *Knati Bhadra Shah and another v. State of West Bengal* (2000) 1 SCC 722, while exercising power under Section 228 CrI.P.C., the judge is not required record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there is sufficient ground for proceeding against the accused and framed the charges against the accused-respondent Nos.1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-respondent Nos.1 and 2 under Section 302 IPC read with Section 34 IPC and the High Court, in our view, erred in quashing the charges framed against the accused. The impugned order cannot therefore be sustained and is liable to be set aside.

17. In the result, the impugned judgment dated 25.02.2019 passed by the High Court of Madhya Pradesh at Indore Bench in Criminal Revision No.402 of 2019 is set aside and this appeal is allowed. Sessions Trial Case No.ST/150/2018 is restored and Second Additional Sessions Judge, Mandleswar, West Nimad, Madhya Pradesh shall proceed with the matter in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter.

Appeal allowed

I.L.R. [2020] M.P. 795**WRIT PETITION***Before Mr. Justice G.S. Ahluwalia*

W.P. No. 4308/2016 (Gwalior) decided on 27 August, 2019

MANOJ PRATAP SINGH YADAV

...Petitioner

Vs.

UNION OF INDIA & ors.

...Respondents

A. Constitution – Article 226 – Writ of “Quo Warranto” – Recruitment – Adverse Inference – Held – Without any authority, Selection Committee waived the requirement of 10 years PG experience and also rejected candidature of 5 candidates – Minutes of meetings were fraudulently prepared – An adverse inference would be drawn against respondents regarding appointment of R-8, who was not having minimum qualification and has given wrong information in his CV – Record also reveals that no such post was in existence for which R-8 was appointed – Appointment liable to be and is quashed – Petition allowed.

(Paras 61, 62, 79, 80, 83, 102, 105 & 131)

क. संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – भर्ती – प्रतिकूल निष्कर्ष – अभिनिर्धारित – बिना किसी प्राधिकार के चयन समिति ने 10 वर्ष स्नातकोत्तर अनुभव की आवश्यकता का अधित्यजन किया और 5 अभ्यर्थियों की अभ्यर्थिता भी अस्वीकार कर दी – बैठकों के मसौदे कपटपूर्वक तैयार किये गये थे – प्रत्यर्थी-8, जिसके पास न्यूनतम अर्हता नहीं थी तथा जिसने अपने संक्षिप्त विवरण में गलत जानकारी दी है, की नियुक्ति के संबंध में प्रत्यर्थीगण के विरुद्ध प्रतिकूल निष्कर्ष निकाला जाएगा – अभिलेख भी प्रकट करता है कि ऐसा कोई पद अस्तित्व में नहीं था जिसके लिए प्रत्यर्थी-8 को नियुक्त किया गया था – नियुक्ति अभिखंडित किये जाने योग्य तथा की गई – याचिका मंजूर।

B. Constitution – Article 226 – Writ of “Quo Warranto” – Recruitment – Practice & Procedure – It is well established principle of law that regarding recruitment, required qualifications cannot be changed in mid of recruitment process – If some changes/relaxation was required, then fresh advertisement should have been issued, so that other desirous candidates could have applied – Since minimum qualification was relaxed in mid way, that too without approval of Board of Governors, entire selection process gets vitiated.

(Paras 93, 95 & 96)

ख. संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – भर्ती – पद्धति एवं प्रक्रिया – यह विधि का भली-भांति स्थापित सिद्धांत है कि भर्ती के संबंध में, आवश्यक अर्हताओं को भर्ती प्रक्रिया के मध्य में बदला नहीं जा सकता – यदि कुछ बदलाव/शिथिलीकरण अपेक्षित था तब नया विज्ञापन जारी किया जाना चाहिए था जिससे

कि अन्य इच्छुक अभ्यर्थी आवेदन कर सकते थे – चूंकि न्यूनतम अर्हता बीच रास्ते में शिथिल की गई थी, वह भी गवर्नर बोर्ड के अनुमोदन के बिना, संपूर्ण चयन प्रक्रिया दूषित हो जाती है।

C. Constitution – Article 226 – Writ of “Quo Warranto” – Scope & Jurisdiction – Recruitment – “Eligibility” & “Suitability” of Candidate – Held – For writ of Quo Warranto, it is not required that petitioner should be one of the candidate to recruitment process – Writ can be issued, if public appointment is contrary to statutory provisions – Court can consider the “Eligibility” of a candidate but not the “Suitability” – Sometimes, malafides may encroach upon the question of “Suitability”, thus the manner in which appointment was made and the procedure adopted can also be considered.

(Para 50)

ग. संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – विस्तार एवं अधिकारिता – भर्ती – अभ्यर्थी की “पात्रता” एवं “उपयुक्तता” – अभिनिर्धारित – अधिकार पृच्छा की रिट हेतु यह अपेक्षित नहीं कि याची, भर्ती प्रक्रिया के अभ्यर्थियों में से एक हो – रिट जारी की जा सकती है यदि लोक नियुक्ति, कानूनी उपबंधों के विपरीत है – न्यायालय, एक अभ्यर्थी की “पात्रता” को विचार में ले सकता है परंतु “उपयुक्तता” को नहीं – कभी-कभी, “उपयुक्तता” के प्रश्न पर असदभावना अधिक्रमण कर सकती है, अतः नियुक्ति करने का ढंग और अपनाई गई प्रक्रिया को भी विचार में लिया जा सकता है।

D. Constitution – Article 226 – Writ of “Quo Warranto” – Locus Standi – Held – Writ of Quo Warranto can be maintained by any citizen of the Country, therefore concept of locus standi has no application to the writ of Quo Warranto.

(Para 53)

घ. संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – सुने जाने का अधिकार – अभिनिर्धारित – अधिकार पृच्छा की रिट देश के किसी भी नागरिक द्वारा लाई जा सकती है इसलिए सुने जाने के अधिकार की संकल्पना, अधिकार पृच्छा की रिट हेतु प्रयोज्यता नहीं है।

E. Constitution – Article 226 – Writ of “Quo Warranto” – Delay & Laches – Held – Apex Court concluded that delay and laches do not constitutes any impediment to consider the lis – Writ of Quo Warranto cannot be dismissed on ground of delay and laches.

(Para 50 & 54)

ङ. संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – विलंब एवं अनुचित विलंब – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि वाद पर विचार करने के लिए, विलंब एवं अनुचित विलंब कोई अड़चन गठित नहीं करते – अधिकार पृच्छा की रिट को विलंब एवं अनुचित विलंब के आधार पर खारिज नहीं किया जा सकता।

F. Constitution – Article 226 – Public Servant – Jurisdiction of CBI – Held – As R-8, an employee of a registered society, which is under control of Central Government, he is certainly a central government

employee and a public servant – Further, CBI itself concluded that appointment was obtained by R-8 by furnishing false information and role of the officials was to be enquired, then certainly, offence under the Prevention of Corruption Act is made out – CBI has jurisdiction to investigate the case – CBI directed to restart investigation. (Paras 52, 108, 112 & 131)

च. संविधान – अनुच्छेद 226 – लोक सेवक – सी.बी.आई. की अधिकारिता – अभिनिर्धारित – चूंकि प्रत्यर्थी-8 एक पंजीकृत सोसाईटी का एक कर्मचारी है जो कि केंद्र सरकार के नियंत्रण के अधीन है, वह निश्चित रूप से केंद्र सरकार का एक कर्मचारी है एवं एक लोक सेवक है – इसके अतिरिक्त, सी.बी.आई. ने स्वतः निष्कर्षित किया कि प्रत्यर्थी-8 द्वारा मिथ्या जानकारी देकर नियुक्ति अभिप्राप्त की गई थी तथा अधिकारियों की भूमिका की जांच की जानी थी, तब निश्चित रूप से भ्रष्टाचार निवारण अधिनियम के अंतर्गत अपराध बनता है – सी.बी.आई. को प्रकरण का अन्वेषण करने की अधिकारिता है – सी.बी.आई. को अन्वेषण पुनः आरंभ करने के लिए निदेशित किया गया।

G. Constitution – Article 226 – Writ of “Quo Warranto” – Ground – Maintainability – Held – Petition cannot be thrown overboard only on technical ground that initial order of appointment was not challenged – In writ of Quo Warranto, challenge to appointment on public post was made on ground of eligibility of candidate – Question of eligibility is important.

(Para 57)

छ. संविधान – अनुच्छेद 226 – “अधिकार पृच्छा” की रिट – आधार – पोषणीयता – अभिनिर्धारित – याचिका को केवल तकनीकी आधार पर अस्वीकार नहीं किया जा सकता कि नियुक्ति के आरंभिक आदेश को चुनौती नहीं दी गई थी – अधिकार पृच्छा की रिट में, लोक पद पर नियुक्ति को चुनौती, अभ्यर्थी की पात्रता के आधार पर दी गई थी – पात्रता का प्रश्न महत्वपूर्ण है।

H. Constitution – Article 226 – Professional Misconduct – Held – This Court has no jurisdiction to consider that whether an Advocate has committed professional misconduct or not – It is within the exclusive domain of the State Bar Council. (Para 117 & 118)

ज. संविधान – अनुच्छेद 226 – वृत्तिक अवचार – अभिनिर्धारित – इस न्यायालय को यह विचार करने की अधिकारिता नहीं कि क्या किसी अधिवक्ता ने वृत्तिक अवचार कारित किया है अथवा नहीं – यह अनन्य रूप से राज्य अधिवक्ता परिषद् के अधिकार-क्षेत्र के भीतर है।

Cases referred :

(2009) 11 SCC 726, AIR 1957 MP 60, (1993) 4 SCC 119, (2013) 5 SCC 1, (2006) 11 SCC 731, (1964) 4 SCR 575, (2014) 1 SCC 161, (2013) 1 SCC 501, (2003) 4 SCC 712, (2011) 4 SCC 1, (2009) 8 SCC 273, (2014) 14 SCC 50, (2002) 7 SCC 631, (2005) 4 SCC 154, (2009) 4 SCC 555, (2008) 3

SCC 512, (2001) 10 SCC 51, (2008) 2 SCC 409, (2007) 6 SCC 171, (2008) 3 SCC 542, (2014) 2 SCC 1, W.P. [C] No. 612/2016 decided on 28.01.2019 (Supreme Court), (2017) 1 SCC 113, CRL. M.A. 17199/2017 decided on 15.05.2019 (High Court of Delhi), (2005) 4 SCC 370.

Manoj Pratap Singh Yadav, petitioner is present in person.

S.S. Bansal, for the respondent Nos. 1, 2 & 9.

Nakul Khedkar, on behalf of *Vivek Khedkar*, A.S.G. for the respondent No. 3.

Himanshu Pandey, for the respondent No. 6.

Prashant Sharma, for the respondent No. 8.

ORDER

G.S. AHLUWALIA, J. :- This petition under Article 226 of the Constitution of India has been filed seeking the following relief(s) :

- (i) *That, the present petition filed by the petitioner may kindly be allowed;*
- (ia) *That, the orders contained in Annexure - P/1-A and P/6 may kindly be quashed.*
- (ib) *That, the respondent no.3-C.B.I be commanded to take cognizance and register F.I.R. over the fraudulent act of the respondent no.8 who got appointment over the regular post of Professor and further at the post of Director in collusion with Respondent No. 6 and 7 as Respondent No. 6-Usha Sharma and Respondent No. 7-Neela Lad deliberately gave undue advantages to Respondent No. 8 by practicing undue favoritism and relaxing the rules, causing loss to the government exchequer.*
- (ic) *That, the respondents be further commanded to cease the functioning of the Respondent No. 8 as Director with a further to cease the drawing and disbursing powers and with appropriate direction of recovering the public exchequer money from the Respondent No. 8, in the interest of justice.*
- (ii) *That, the letter dated 18.3.2016 Annexure P/1 issued by the CBI may kindly be directed to be quashed and the respondent-CBI may kindly be directed to register the FIR and to investigate the matter against the respondent no. 8-Sandeep Kulshrestha in accordance with law.*

- (iii) *That, in an alternative the Hon'ble Court may direct the S.H.O. Police Station University Gwalior to register the complaint filed by the petitioner in an FIR against the respondent no. 8-Sandeep Kulshrestha and to investigate the matter to conclude the investigation in a time bound programme and to take action against the respondents no. 6 and 7.*
- (iv) *That, any other just, suitable and proper relief, which this Hon'ble Court deems fit, may also kindly be granted to the petitioner. Costs be also awarded in favour of the petitioner.*

2. Initially, the present petition was filed seeking a relief of quashment of order dated 18-3-2016 by which the CBI had informed the petitioner, that the Bhopal Branch of CBI had registered a complaint against Dr. Sandeep Kulshreshtha, Director, IITTM Gwalior on 9-7-2014, and after completion of verification, the matter has been referred to the CVO, Ministry of Tourism, Govt. of India, with request to enquire into the role of Dr. Sandeep Kulshreshtha and if deems fit, the local police may be approached for taking necessary action against him. Thus, a prayer was made seeking quashment of the above mentioned letter and for direction to the CBI to register the FIR and investigate the matter. Thereafter, by amendment, the present petition was converted into a petition seeking writ of Quo Warranto and relief Clause(s) 7(i-a) to 7(i-c) were inserted.

Thus, this petition is in two parts i.e.,

- (i) seeking direction to the CBI to investigate the matter after registering FIR;
- (ii) to issue writ of Quo Warranto against the respondent no.8 Sandeep Kulshreshtha, and also to recover the salary.

3. The facts, which according to the petitioner, are necessary for disposal of the present petition in short are that an advertisement was issued for appointment on the post of Professor (Tourism) in Indian Institute of Tourism and Travel Management (in short "IITTM") and accordingly, the Respondent No.8 Sandeep Kulshreshtha also applied for appointment on the post of Professor (Tourism). The respondent no.8 also submitted his Curriculum Vitae (in Short "CV") and disclosed his work experience.

4. It is pleaded in the writ petition, that the respondent no.8 Sandeep Kulshreshtha had claimed that he had around six years of experience of teaching MBA, MPA and M.Com. Classes at Madhav College, Gwalior affiliated to Jiwaji University, Gwalior during 1991 to 1997. He also claimed that he had taught for another around six years at Post Graduate Level in IITTM during 1997 to 2003.

He also claimed that between 1990 to 1991 for a period of around six months, he was working as Guest Faculty and was teaching M.B.A. Classes in Jiwaji University, Gwalior. Thus, he claimed that he has total 12 ½ years of teaching experience, whereas for appointment to the post of Professor (Tourism), in IITTM,, the requirement was of 10 years post Graduate Teaching experience. It was contented (sic: contended) by the petitioner, that during 1991 to 1997, there were no MBA or MPA classes in Madhav College, Gwalior, and thus claim of six years of teaching experience was false. It has been further pleaded that between 1997 to 2002, the IITTM was not running the classes of Post Graduate Level. Thus, it has been claimed that the respondent no.8 Sandeep Kulshreshtha, had submitted a false declaration with regard to his work experience of teaching Post Graduate Classes. It was further pleaded that the selection committee had met twice on 24-2-2003 and the minutes were not signed by their chairperson. It is further pleaded that the constitution of two selection committees on the same day for single purpose in itself is *actus reus* accompanied by *mens rea*. Thus, a complaint was made by the petitioner against the respondent no.8 Sandeep Kulshreshtha that he has willfully provided false information. An enquiry was done at the level of Ministry of Tourism, Govt. of India and it was observed as under :

"Dr. Kulshreshtha has not been able to substantiate the claim that he has taught MBA/MPA classes in Madhav College. He had provided certificates about teaching these courses in Jiwaji University and that too for short period as guest faculty etc."

5. It is further pleaded that after having come to know that, no FIR was lodged by the Ministry of Tourism, therefore, on 1-9-2014, the petitioner made a complaint before the CBI which was registered and it was claimed that the CBI has found that the allegations/complaint is true. However, the CBI instead of registering the FIR, diverted the matter to CVO, MoT, which should not have been done. Further, it was pleaded that the petitioner had also made complaints to the Superintendent of Police Gwalior, as well as to SHO Police Station, University, Gwalior and the police in its report dated 11-01-2016 maintained that MBA and MPA programmes were not conducted by Madhav College, Gwalior and the respondent no.8 Sandeep Kulshreshtha could not produce documents in support of his 10 years experience of teaching Post Graduate Classes. However, the local police has refused to proceed further on the ground that the CBI is already investigating the matter. It was further pleaded that the petitioner had filed an application under Section 482 of Cr.P.C. which has been disposed of with liberty to undertake the appropriate remedy available to him under the law. It was further pleaded that on 12-6-2014 the respondent no.8 was thereafter, appointed as Director, IITTM. One of the essential requirement was that the candidate should

have vigilance clearance given by Secretary/Vice Chairman of the Department. However, no such Vigilance Clearance was obtained, although the respondent no.6 was aware of the enquiry which was pending against the petitioner. Later on, the petition was amended and it was pleaded that the initial appointment of the respondent no.8 against the regular post of Professor (Tourism) is based on false information/declaration and these facts were inquired, investigated and were found to be correct by CBI, Ministry of Tourism and the M.P. Police, Gwalior. The respondent no.8 Sandeep Kulshreshtha got the employment in collusion with competent authorities. Such an appointment deserves to be quashed. It was further pleaded that the respondent no.8 further got the appointment to the post of Director, with undue favoritism from the competent authority as well as in violation of the rules of selection process, particularly, the candidature of one Mr. A.R. Subramanian was rejected on similar allegations. Rules should have been fair and square for all, but nepotism and collusion brought the post of Director to respondent no.8. It is also pleaded that in spite of the fact that an inquiry was pending against the respondent no.8 at the time of selection process for the post of Director, IITTM, the candidature of respondent no.8 was taken into consideration. It is claimed that such appointment is *de hors* the rules and is based on illegal and colourable exercise of powers, which deserves to be quashed.

6. Thereafter, IA No.4752 of 2016 was filed by the petitioner for taking facts and documents on record.

7. I.A. No. 4753 of 2016 was filed for impleading The Chief Vigilance Officer, Ministry of Tourism, Govt. of India, Transport Bhawan, New Delhi. The application was allowed and C.V.O. was impleaded as Respondent no.9.

8. The respondent no.8, thereafter, filed his return and raised a Preliminary Submission, that the petitioner had earlier filed a M.Cr.C. which was withdrawn with liberty to file writ petition. It was claimed that the respondent no.8 was teaching M.Com classes in Madhav College, Gwalior from 25-02-1991 to 27-01-1997. He has also taught MBA and MPA classes in Jiwaji University as Guest Faculty. He had been teaching as Reader IITTM since, 29-01-1997 to 2003 (upto the date of submission of application for the position of Professor (Tourism)) in post graduate course as course of diploma in Tourism Management is available after graduation and is more than 12 months, therefore, as per AICTE norms, it is Post Graduate Course. It was further claimed that no vigilance enquiry was pending against the respondent no.8. It was further claimed that CVO and CVC have found that no incorrect declaration has been made. It was further prayed that since, the petitioner has filed the petition seeking direction to the CBI to investigate the matter, therefore, the writ petition is not maintainable. It was further claimed that the petitioner had misconstrued and misinterpreted the letter Annexure P/1. The CBI had referred the matter to CVO with a request of enquiry.

It was further claimed that the complaint made by the petitioner has no basis. The CVC has already made an enquiry which has not been challenged by the petitioner. So far as the work experience of the respondent no. 8 is concerned, it has been duly verified by Jiwaji University as well as Madhav College. The vigilance Clearance was also given. Even Police Station University has also found that no case was pending against the respondent no. 8. It was further pleaded that the CV submitted by the respondent no.8 was clear and unambiguous. The respondent no.8 had claimed that he was teaching MBA and MPA classes in Jiwaji University as guest faculty and certificates have also been duly granted by the Jiwaji University. From 1997 to 2002, the respondent no.8 was teaching Post Graduation Courses as Reader (Business Study) in IITTM. It was further pleaded that the Selection Committee was duly appointed and after due consideration, it has issued the appointment order. The order of appointment has not been put to challenge. The petition is completely silent about the delay and, accordingly, it is liable to be dismissed on the said ground only. It was further pleaded that there is no difference in the proceedings of both the selection committees held on 24-2-2003. It was further pleaded that the respondent no. 8 had never claimed that he had taught MBA and MPA Course in Madhav College, but in fact he was teaching in Jiwaji University. The note sheet (Annexure P/9) is an incomplete note sheet. It was also pleaded that all necessary work experience certificates were produced by the respondent no.8 at the time of appointment on the post of Professor (Tourism). Only after verifying the experience certificates from Jiwaji University, the CBI had referred the matter to CVO. The dismissal of petition under Section 482 of Cr.P.C. has not been disclosed by the petitioner. The respondent no.8 has been appointed as Director, IITTM after due procedure of law. Vigilance clearance is also there. It was further mentioned that the petitioner is habitual of making complaints. He was continuously uploading obnoxious material on Facebook against the Institute as well as against the respondent no. 8. The petitioner is a dismissed employee of IITTM.

9. It appears that after the writ petition was amended by order dated 22-10-2018, and a writ of Quo Warranto was prayed, the respondent no.8 did not file any additional return.

10. I.A. No. 1700 of 2017 was filed on 10-03-2017, by respondents through their Counsel Vivek Khedkar. This application was supported by an affidavit of K.P. Gautam, who was in the service of IITTM, Gwalior and had claimed himself to be the OIC of the case. In this application, it was pleaded that the petitioner has no *locus standi*, because neither he was an employee of IITTM nor had applied for appointment on the post of Professor (Tourism) or Director. Otherwise, the matter was sent by CBI to the CVO and CVO has investigated the matter and vide office memorandum dated 8-02-2017, it has been decided to close the action at the end of CVO. Thus, it was claimed that nothing survives in the petition.

11. Thereafter, the respondent no.3, CBI filed its separate return on 12-7-2017 and admitted that during 1991 to 1997 there were no MBA or MPA Classes in Madhav College, Gwalior. Further, regarding six years teaching experience of respondent no. 8 at Post Graduate Level between 1997 to 2002, Shri Sitikantha Mishra, Chairman, All India Board of Hospitality & Tourism Management, AICTE, New Delhi has clarified vide his E-mail dated January 22, 2015 that Diploma in Tourism Management Course, IITTM, in the year 1997 to 2002 was approved by AICTE. In the year 1997, AICTE had not instituted Post Graduate Certificate in Management/Tourism courses with the duration of more than 12 months and less than 24 months. It is further submitted that the complaint was received through E-mail dated 1-9-2014 which was registered in CBI on 1-09-2014 for verification. **The verification of complaint revealed that Dr. Sandeep Kulshreshtha had given wrong information in his curriculum-vitae regarding taking classes of MBA and MPA Courses at Madhav Mahavidyalaya, Gwalior and no offence was found made out as under PC Act, 1988. Further, as per notification no. 428 dated 12-10-2012 issued by the Govt. of Madhya Pradesh (Annexure -1), CBI cannot take up cases for investigation which involve only IPC offences. Hence, the result of verification of the complaint was referred to the CVO, Ministry of Tourism, Government of India, New Delhi through Self Contained Note (SCN) with the request to enquire into the role of respondent no. 8 and if deemed fit, the local police may be approached for taking necessary action against him.** This return is supported by an affidavit of Shri Bivash Kumar, Dy.S.P./CBI/ACB/Bhopal.

12. I.A. No. 4426/2017 was filed on 12-7-2017 itself by the petitioner for taking certain facts on record. In this application, it was pleaded that Shri Vivek Khedkar, Advocate is appearing on behalf of the Union of India as well as also on behalf of CBI/respondent no.3. Shri Vivek Khedkar has not filed his Vakalatnama along with I.A. No.1700/2017. As per direction of this Court dated 29-8-2016, Shri Vivek Khedkar has filed I.A. No.1700/2017 on behalf of Union of India, for dismissal of the writ petition, however, he maintained silence on the stand of the CBI/respondent no.3, and certain observations made by CBI in its report dated 07-10-2015 were reproduced.

13. However, since, the CBI in its return which was filed on 12-07-2017 itself, has accepted its Self Contained Note, therefore, the details of Self Contained Note of CBI shall be considered at later stage. Thus, it is not necessary to mention the contents of I.A. No.4426/2017 in detail. However, a reply was given by IITTM under the RTI, mentioning therein that **there is no provision in IITTM Byelaw/Constitution/Recruitment Rules to relax the essential qualification of a candidate applying to the post of the Professor in IITTM.**

14. After considering the pleadings of the parties, which were already on record, this Court on 31-7-2017, passed the following detailed order:

"31.7.2017.

Petitioner, Manoj Pratap Singh Yadav, present in person.

Shri Shashank Indapurkar, learned counsel for respondents No.1, 3 and 9.

Shri Nirmal Sharma, learned counsel for respondent No.8.

Heard on I.A.No.1476/2017 for pleading his case himself.

As petitioner has discharged his counsel, therefore, he is permitted to address the Court in person. I.A. is allowed.

Petitioner submits that though respondents No.1, 3 and 9 have filed a reply and have submitted that CBI has recommended for closure of the case, but they have deliberately not filed detailed note of the CBI on the basis of which such decision was taken to close the case against respondent No.8, despite there being a categorical finding by the Central Bureau of Investigation which too is represented by the same counsel showing that there were glaring irregularities like Ministry of Tourism was not able to explain about non-availability of signatures of the then Secretary (Tourism) on the minutes of the Selection Committee dated 24.2.03 and secondly though respondent No.8 Dr. Sandeep Kulshrestha remained posted as Assistant Professor (Commerce) at Madhav Mahavidyalaya, Gwalior, from 25.2.1991 to 27.1.1997, the course of MBA and MPA were not conducted at Madhav Vidyalaya, Gwalior. In view of the above facts, the role of the then officials of IITTM, Gwalior, and Ministry of Tourism, Govt. of India, were required to be inquired and if some criminality is found against them, the matter may be referred to CBI, Bhopal. It is also submitted that Dr. Sandeep Kulshrestha had falsely declared in his CV that he has 10 years post graduate teaching experience while applying for the post of Professor (Tourism) at IITTM, Gwalior. His role may be inquired into and if it is deemed fit, the local police may be approached for taking necessary legal action against him. He submits that this report of the CBI as has been filed by him along with list of documents dated 10.3.17 was examined by the Under Secretary of Ministry of Tourism, Govt. of India, whereby there are specific findings against the officials of Ministry of Tourism by the CBI and it has directed that enquiry be conducted in that matter. This closure as has been relied on by learned counsel for respondents No.1, 3 and 9 amounts to

decision of the case in the matter of Julius Caesar by Caesar's wife.

In view of such matter, learned counsel for respondents No.1, 3 and 9 is required to show that how there is no conflict of interest between respondents No.1, 3 and 9 inasmuch as on the one hand respondent No.3 has castigated respondents No.1, 2, 8 and 9, but same authority whose role has been sought to be inquired has closed the file. He may also file complete copy of the file in which this order dated 8.2.17 passed by the Under Secretary, Ministry of Tourism, Union of India, was dealt with. Let needful be done within two weeks by filing specific affidavit as to the conflict of interest between respondents No.1, 3 and 9, so also the documentations on the basis of which order dated 8.2.2017 was passed.

List after two weeks in the week commencing 21st August, 2017."

and the Counsel for respondent nos. 1, 3 and 9 was directed to show that how there is no conflict of interest between respondents no. 1,3 and 9.

15. Thereafter, clarification on behalf of respondents no. 1 (Union of India), respondent no.3 (CBI) and respondent no. 9 (CVO) was filed on 24-8-2017, pleading *inter alia*, that in fact, the respondents no. 1 and 9 have not filed their return so far and therefore, there is no conflict of stand between respondents no. 1, 3 and 9. In a separate return which has been filed by respondent no.3/CBI, it has been specifically mentioned that the "verification of the complaint reveals that Dr. Sandeep Kulshreshtha had given wrong information in his curriculum vitae regarding taking class of MBA and MPA courses from Madhav Mahavidyalaya, Gwalior and no offence was made under the PC Act." In this clarification, much thrust was given to the Self Contained Note of CBI, according to which it was specifically found that Dr. Sandeep Kulshreshtha has given false information in his CV. However, it is further submitted that CVC has closed the matter on 20-10-2015. This clarification is supported by an affidavit of Akhil Saxena, working as Asstt. Director General (Vig) Ministry of Tourism, Government of India, Delhi.

16. Thereafter on 01-09-2017, I.A. No.5508/2017, an application under Section 195 r/w Section 340 of Cr.P.C. was filed pleading *inter alia*, that although the CBI has already filed its return which is duly supported by Dy.S.P., CBI, ACB, Bhopal, but the clarification has been filed on behalf of CBI, which is supported by an affidavit of Asstt. Director General (Vig), Ministry of Tourism, GOI, which cannot be done, because Shri Akhil Saxena cannot act as an OIC on behalf of CBI. It is also mentioned that Shri Vivek Khedkar ASG, has breached the promise of abiding by canons of professional ethics of one of the noblest profession of advocacy. ASG must recall the oath he took as a lawyer and he should not resort to

these kinds of undignified acts before the Court. The attempted machination before the Court is disgraceful, and a clear case of a mockery of the administration, rules and regulations of this Court and same must be noted and taken on record. IA No. 1700/2017 for dismissal of writ petition was submitted by Shri Vivek Khedkar, Advocate, who is representing respondents no. 1, 2, 3 and 9. **IA. No. 1700/2017 was filed along with an affidavit of KP. Gautam, aged about 66 years, and is a contractual employee of IITTM. The respondent no. 8 is the Director of IITTM and K.P. Gautam is employed beyond the age of 65 years on the mercy of respondent no.8.** In the clarification, it was mentioned that no return has been filed by respondents no. 1 and 9, then it was questioned by the petitioner that, then on whose behalf, IA. No.1700/2017 was filed for dismissal of the writ petition in the name of respondents by Counsel Shri Vivek Khedkar, who is representing respondents no. 1, 2, 3 and 9. It was further pleaded that K.P. Gautam is directly reporting to respondent no. 8, against whom allegations have been made. It was further pleaded that this sinister machination clearly depicts the wrong doing of K.P. Gautam and ASG Shri Vivek Khedkar, as they are plying (sic:playing) hide and seek with this Court as a dillydallying tactics. It was further pleaded that in fact it was the respondent no. 8 who had got IA No. 1700/2017 filed for dismissal of the writ petition as the whole play has been knitted with *malafide* and on the directions of respondent no. 8 to safeguard himself by managing to present wrong documents and information, which tantamount to contempt of this Court. It was further pleaded that although the CBI had already come to a conclusion, that respondent no.8 Sandeep Kulshreshtha has submitted wrong information, but still the CVC has closed the case, thus, under these circumstances, it is absolutely unacceptable and unethical on the part of Shri Vivek Khedkar to present the views of the respondents no. 1 and 9 that conflicts with the stand of respondent no.3. Thus, it was pleaded that presenting the different views and measures of respondents by the same Counsel, namely, Shri Vivek Khedkar makes it crystal clear that he is not appearing with clean hands before the Court. Thus, it was pleaded that Shri Vivek Khedkar is playing a substantial role to hamper the delivery of justice to the petitioner. It was further pleaded that IA No. 1700/2017 was filed on behalf of respondents (in IA No. 1700/2017, it has not been clarified that the said application was filed by which respondent and it was merely mentioned that the application is being filed on behalf of respondents, and even the Vakalatnama was not filed). It was further pleaded that K.P. Gautam, aged about 66 years, is working on the mercy of the respondent no.8 and has prejudiced interest in respondent no.8 while the Counsel for respondent nos. 1, 2, 3 and 9 appear to be managing the ploy by arguing on both sides of the contention. ASG Shri Vivek Khedkar has also violated his service rules (Law Officer Service Rule 1972). Shri Vivek Khedkar has also given a legal opinion, by his letter dated 27-11-2016 to Director IITTM, Gwalior (who is respondent no.8). By referring to office Memorandum dated 24-10-2014,

issued by Ministry of Law and Justice, it is pleaded that point 8 puts certain restrictions on the law officer, which reads as under :

A Law Officer shall not,

(e) advice any ministry or department or Government of India or any statutory organization or any public sector undertaking unless the proposal or a reference in this regard is received through Ministry of Law and Justice department of legal affairs.

Point 3. Stated that, "the law officer are requested not to tender opinion/advice to Central Government Ministeries/ departments/PSU's/autonomous bodies or any other Central Government Instrumentries without getting reference from this Ministry."

17. It was further pleaded that K.P. Gautam, by pleading on behalf of respondents no. 1, 2, 3 and 9 have made a mockery of judicial process. This amounts to fraud to defeat the rights of the petitioner by perverting arguments and misguiding on behalf of respondents no. 1, 2, 3 & 9 and such manner of OIC and ASG, itself falls within the purview of criminal conspiracy in the present case. It was further pleaded that the clarification on behalf of respondents no. 1, 3 and 9 is also a fraudulent act of Akhil Saxena ADG (Vig) Ministry of Tourism, as he cannot represent CBI, whereas the OIC of CBI is Shri Bivash Kumar Dy.S.P., CBI, ACB, Bhopal who had sworn an affidavit in support of return filed by CBI. CBI is an independent agency and filing of clarification by Akhil Saxena, without any authority from CBI is highly condemnable. Thus, it was prayed that K.P. Gautam, and ASG Shri Vivek Khedkar be prosecuted as per provisions of law and Shri Vivek Khedkar be debarred from presenting this case.

18. It appears that neither K.P. Gautam nor Shri Vivek Khedkar, ASG have filed any reply to I.A. No. 5508/2017.

19. Thereafter, it appears that on 04-10-2017, Shri S.S. Bansal Advocate, filed his Vakalatnama on behalf of respondents no.1 and 2 (Union of India and Chairman Board of Governors, IITTM, New Delhi), however, the said Vakalatnama was signed by one Saurabh Dixit, Nodal Officer, working in IITTM-Gwalior, on behalf of respondents no.1 and 2. Thereafter, vide document No.7031/2017 filed on 01-12-2017, Shri S.S. Bansal, Advocate, filed authority letter issued by respondent no.1 in favor of Saurabh Dixit to sign Vakalatnama and other legal documents and to represent on behalf of respondents no.1 and 2.

20. It is not out of place to mention that even Saurabh Dixit, Associate Professor, is working in IITTM-Gwalior under the administrative control of

respondent no. 8 and the respondents no. 1, 2 and 9 did not appoint any independent OIC to defend the case on their behalf.

21. Thereafter I.A. No.15/2018 was filed on 02-01-2018 by the petitioner that IA No.1700/2017 was filed on behalf of the respondents along with the affidavit of K.P. Gautam by mentioning himself to be the Officer-in-charge of the case, however, K.P. Gautam is neither the employee of Union of India nor of CBI, whereas K.P. Gautam is a contract employee of IITTM, Gwalior which is led by respondent no.8 himself. It was further pleaded that RTI reveals that K.P. Gautam was never authorized by Union of India to file I.A. No.1700/2017 dated 10-03-2017. The letter dated 21-11-2017 given under the Right to Information Act is filed as **Annexure 31. It was further pleaded that although K.P. Gautam was aware that he has never been authorized by Union of India to represent, but still IA No. 1700/2017 was filed on behalf of respondents to dismiss the petition. Further, clarification on behalf of respondents no. 1, 3 and 9 was filed with an affidavit of Akhil Saxena, whereas Akhil Saxena was never authorized by CBI. It is also mentioned that Akhil Saxena, himself has replied under the Right to Information Act in its reply dated 19-12-2017 and has mentioned that he was never appointed as OIC by CBI. However, it appears that the Counsel inadvertently committed a mistake which has been communicated to him.** It was further pleaded that it is a sheer case of undignified attempt on part of Mr. Akhil Saxena in collusion with Mr. Vivek Khedkar to damage the petition at large in order to get it dismissed by the Court. Thus, it was prayed that K.P. Gautam and Akhil Saxena be prosecuted for having committed criminal contempt of Court.

22. The respondents no. 1 and 2 filed its reply to the above mentioned application and submitted that allegations are being made against those persons, who are not party to the petition. It was further mentioned that the Union of India had directed the Director, IITTM vide its letter dated 11-08-2016 to engage the Counsel for the respondent no.1 and 2 and in compliance of that letter, the Director, IITTM engaged the Counsel as well as authorized K.P. Gautam, to act as an OIC vide its letter dated 11-08-2016. The query of the petitioner was not proper therefore, the Union of India has given its reply to the query correctly. This reply was filed along with an affidavit of Saurabh Dixit, OIC. Along with this reply, the letter dated 11-8-2016, and order dated 11-08-2016 issued by respondent no.8, have been annexed. Order dated 11-8-2016 issued by respondent no. 8 reads as under :

To whom so ever it may concern

Shri Manoj Pratap Singh Yadav, has filed a WP No. 4308/2016 in Hon'ble High Court of M.P., bench at Gwalior, in which Union of India, Chairman, BOG-IITTM, and Dr. Sandeep Kulshreshtha, Director-IITTM, Gwalior have been

impleaded as respondent no. 1,2 and 8 respectively. Ministry of Tourism, Govt. of India, vide its office Memorandum no. 67(2)/2016j-IITTM dated 11-08-2016 has advised IITTM to engage a counsel on behalf of Union of India and also the Chairman BOG-IITTM, who also represents Union of India. Therefore, Shri Vivek Khedkar, Assistant Solicitor General, will represent Union of India as well as the Chairman, BOG-IITTM in the instant WP in Hon'ble High Court of MP, bench at Gwalior. As Dr. Sandeep Kulshreshtha, Director, IITTM, has been impleaded the case as respondent no.8, Shri K.P. Gautam, Consultant (A&f), IITTM, Gwalior has been authorized to sign all the Vakalatnama, legal documents, and affidavits on behalf of respondent no. 1,2 & 8 for submission in High Court of M.P., Bench at Gwalior.

Signature

(Dr. Sandeep Kulshreshtha)

23. On 26-2-2018, vide document No.1778/2018, the petitioner has filed the reply dated 31-1-2018 given by Ministry of Tourism, that no action was initiated by the HRD Divisional regarding authorizing K.P. Gautam, in the matter of writ petition no.4308/2016. A reply dated 31-01-2018 given by Ministry of Tourism has also been place on record which is to the effect that HRD Division, Ministry of Tourism had not yet initiated any proposal with regard to authorizing Sh. K.P. Gautam, to appear in the Court on 08-01-2018. Along with this list of documents, the petitioner has also placed a letter issued by IITTM, Gwalior titled as "**Search for Director**" in which apart from other aspects, the Essential Qualifications have also been mentioned for appointment on the post of Director, IITTM-Gwalior.

24. On 1-3-2018, the respondents no. 1 and 2 filed their return along with an affidavit of Dr. Saurabh Dixit, Asstt. Professor, IITTM, Gwalior. In this return also, a preliminary submission was made that the petitioner has no *locus standi* to file the present petition. It was further pleaded that the petitioner has misconstrued and misinterpreted the letter Annexure P/1. It is further mentioned that CVC is the apex vigilance body of Union of India and it has perused a report and has advised closure of matter vide office memorandum dated 20-10-2015. The Ministry of Tourism (Vigilance Division) has also closed the matter after investigation. The closure report has not been put to challenge by the petitioner, and therefore, nothing survives in the petition, and it has become infructuous. The CBI cannot take up cases for investigation involving offences under Penal Code only. The petitioner has an alternative remedy against the non-registration of F.I.R. It was further pleaded that the petitioner has already withdrawn petition under Section 482 of Cr.P.C. It was further admitted that during 1991 to 1997, there was no MBA or MPA classes in Madhav College, Gwalior. So far as 6 years teaching experience of respondent no. 8 at Post Graduate Level between 1997 to 2003 is concerned, it is submitted that Shri Sitikantha Mishra, Chairman, All India Board of Hospitality and Tourism Management, AICTE, New Delhi has clarified by his e-mail dated

22-1-2015 that teaching in Diploma in Tourism Management Course run by IITTM from the year 1997 to 2002 was approved by AICTE. Therefore, teaching by Faculty Members of IITTM in the said diploma course is a Post Graduate Teaching as the entry qualification for this Course was minimum graduation from a recognized University. Further, it was mentioned that the Board of Governors had waived the requirement of ten years experience of PG teaching. Ministry has taken approval of Secretary (T) for the appointment of respondent no. 8 as Professor (Tourism) in the IITTM who was the Chairman, Board of Governors of IITTM. The Selection Committee, in its meeting held on 4-7-2003, had recommended waiver of 10 years PG experience which has been approved by the BOG in its 27th meeting held on 21-7-2003 and the respondent no. 8 was appointed as Professor (Tourism) w.e.f. 1-10-2003. It was further pleaded that the appointment of the respondent no. 8 has not been put to challenge by the petitioner. There is no difference between Annexure P/7 & P/8. No two committees were constituted. It was denied that the respondent no. 8 has secured appointment by providing false information. It was further pleaded that if the local police has declined to interfere in the matter, then the petitioner has an alternative and efficacious remedy. The petitioner has filed the present petition after withdrawing his petition under Section 482 of Cr.P.C.

25. Thereafter, IA No. 2040/2018 was filed by the petitioner on 25-4-2018 along with certain documents including answer given by Ministry of Tourism (HRD Division) dated 9-5-2018, which reads as under :

Point No. 3 : No such information is available in the HRD Division with respect to appointment of Sh. Vivek Khedkar, ASGI to represent the case in respect of WP No. 4308/2016 on the behalf of respondent no. 1,2, and 9

Point No. 4 : As per information available in the file, no such information exists regarding sending of draft reply (WP No. 4308/2016) from IITTM to the HRD Division of the Ministry.

26. Thus, it is clear that replies were being filed on behalf of Union of India, without seeking approval of the draft from the Union of India, and Ministry of Tourism.

27. On 3-7-2018, the respondent no. 6 also filed her return and submitted that the petition is not maintainable and further the petitioner has no *locus standi* to file the petition and no enquiry was pending against the respondent no. 8.

28. Thereafter, on 11-07-2018, the respondents no.1 and 2 filed their additional return. It was pleaded that one meeting was held under the Chairpersonship of Mrs. Rathi Vinay Jha who was the Secretary (T) and Chairperson of IITTM. Though Mrs. Rathi Vinay Jha had not signed the minutes

of meeting of selection committee held on 24-2-2003, but Secretary (T) and Chairperson of IITTM is the appointing and competent authority for appointment and the appointment of respondent no. 8 was approved in the 27th meeting of BOG held on 21-7-2003 and later on was approved by Secretary (T) being appointing authority. Thus, it was stated that non-signing of minutes of meeting dated 24-2-2003 by Mrs. Rathi Vinay Jha cannot be questioned at all. It was further pleaded that minutes of another meeting dated 24-2-2003 were merely draft therefore, the contention of the petitioner, that two meetings of two selection Committees were held on 24-2-2003 was denied. It was further pleaded that the note of Government of India, Ministry of Tourism (HRD) Division vide its letter dated 22-9-2015 was received from the office of the Minister (sic: Minister) of State for Tourism (IC) without any signature of anybody, and therefore, the case was re-examined and re-submitted to Minister (Tourism) indicating the actual facts and drawing attention to the reply received from the Principal, Madhav College Gwalior, and it was conveyed that Dr. Sandeep Kulshreshtha had taught MBA/MPA classes in Jiwaji University Gwalior as a Guest Faculty, on honorary basis. The PS to HM (T) recorded on the concerned file on 24-7-2015 that "HM(T) has been apprised of the situation. Page 55 of the file is not an official communication and may not be treated so."

29. Thereafter, on 16-07-2018, the respondent no.3, CBI, filed clarification to the effect that, earlier CBI has submitted the "self contained note" to the Chief Vigilance Officer, Ministry of Tourism, Govt. of India. The Central Vigilance Act, 2003 came into existence and the basic aim and object of the aforesaid Act is to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act. The CVC is the main authority under which the CBI is working. It was also mentioned that the CBI has been informed that CVO, a Vigilance Division of Tourism Ministry has considered the case and has decided to close the case. It was once again submitted that there was no conflict of interest between the CBI and the CVO.

30. I.A. No. 4283/2018 was filed on 10-8-2018 by respondents no. 1, 2 and 9 for correction in clarification dated 18-8-2017 and it was mentioned that in fact the above clarification was filed by respondents no. 1, 2 & 9, but by mistake, it was mentioned as 1, 3 & 9 and thus, prayer was made to correct the typographical error. This application was filed along with an affidavit of Sh. Raja Kar, Under Secretary, Vigilance, Ministry of Tourism.

31. On 10-8-2018, the petitioner by Document No. 6623/2018 placed certain documents on record.

32. Document No.7734/2018 was filed by the petitioner on 14-9-2018 and certain documents were filed. Letter dated 4-7-2016 written by Ministry of Tourism to the Director IITTM, and reply dated 11-8-2016 written by Director IITTM, Gwalior to Ministry of Tourism reads as under :

"To,

The Director,
IITTM, Govindpuri,
Gwalior.

Subject : WP No. 4308/16 Manoj Pratap Singh Yadav Vs.
UOI & Ors

Sir,

I am directed to forward the above writ petition provided by the Asstt. Solicitor General of India, High Court of India, Madhya Pradesh. Shri Manoj Pratap Singh Yadav has filed the Case and has made the respondents to Secretary Tourism, Govt. of India, Chairman BOG, Director CBI, SP Gwalior and Director, IITTM Gwalior etc. The enclosed writ petition is self Explanatory.

You are requested to kindly prepare the joint reply of the above writ petition and defend the case on behalf of Union of India under intimation to this Ministry.

Kindly acknowledge the receipt of this letter.

Yours faithfully

Sudhir Kumar
Asstt. Director (HRD)"

Reply dated 11-8-2016 sent by respondent no. 8 reads as
under :

"To,

Sh. Sagnik Chowdhury,
Asstt. Director General (HRD),
HRD, Division,
Ministry of Tourism,
Transport Bhavan,
New Delhi -110001

Sub: Engaging a counsel to plead on behalf of Union of India, by IITTM in Hon'ble High Court of MP, bench at Gwalior in WP No. 4308/2016 filed by Sh. Manoj Pratap Singh Yadav Vs. UOI & Ors.

Ref: MoT (HRD) Office Memorandum No. 67(2) 2016-
IITTM dated 11-8-2016

Sir,

I am to invite a reference to MoT (HRD) OM dated 11-08-2016 on the subject cited above wherein Director-IITTM has been authorized to engage a counsel to plead the case on behalf of Union of India in WP 4308/2016, as well as to protect the interest of Union of India, and to state that as per the telephonic discussion held with you today, and as advised by that we may engage Sh. Vivek Khedkar, Assistant Solicitor General, High Court, Gwalior to represent Union of India, in the instant WP 4308/2016 as the counsel of IITTM cannot represent the Union of India as because I have been made one of the respondents by the petitioner in the WP. Accordingly, as per the decision taken by MoT, I am informing Sh. Vivek Khedkar, ASG to represent the Union of India in WP.

As regards, the signing of Vakalatnama, affidavits, other legal papers and related documents, I am further authorizing Sh. Kanti Prasad Gautam, Consultant (A&F), IITTM Gwalior separately to do the needful as I cannot sign any paper/document on behalf of Union of India, as I am impleaded as one of the respondents in the subject WP. This will meet the requirement of MoT as discussed.

This is for your kind information and necessary action please.

(Dr. Sandeep Kulshreshtha)
Director "

33. A copy of e-mail dated 30-9-2016 sent by Kanti Prasad Gautam to Sandeep Sagnik has also been annexed in which it was mentioned that Sh. Vivek Khedkar, Assistant Solicitor (sic : Solicitor) General is representing UOI as well as the CVO, MoT and CBI.

34. Another e-mail sent by Sagnik Chowdhary to respondent no. 8 Sandeep Kulshreshtha dated 28-2-2017 has been annexed by which the copy of the report of the Chief Vigilance Officer, Ministry of Tourism was forwarded to the respondent no. 8.

35. I.A. No. 4853/2018 was filed on 14-9-2018 seeking permission to amend the writ petition.

36. Certain more documents were filed on 18-9-2018 by the petitioner by document No.7940/2018. A copy of note sheet dated 27-11-2017 of MoT has also been placed on record by which it was decided that Sh. S.S. Bansal be appointed as Counsel to represent the case on behalf of respondents no.1, 2 and 9 which was approved.

37. Thereafter, on 22-10-2018, the respondents no.1 and 2 filed their reply to the application for amendment in the writ petition. It was pleaded that the Court had not advised the petitioner to amend the petition, but during the course of hearing, when the petitioner realized that he has no *locus standi*, therefore, he had prayed for time. The amendment application has been filed to convert the writ of mandamus to the writ of Quo Warranto after passing of more than 2 years, which is *malafide* and not tenable.

38. By order dated 22-10-2018, the said application was allowed and the petition was allowed to be amended and additional relief(s) were incorporated. Thus, it can be said that by amendment the nature of petition was changed to Quo Warranto.

39. On 26-10-2018, certain more documents were filed along with Document No. 9001/2018.

40. On 6-12-2018, I.A. No.6046/2018 was filed by the respondents no. 1 and 2 for recall of order dated 22-10-2018 on the ground that the reply submitted by it was not considered.

41. Additional Return was filed by the respondents no.1 and 2 pleading that the respondent no. 2 is a registered Society and the respondent no. 8 does not come in the ambit of Public Servant. The petitioner has no *locus standi*. The appointment of the respondent no. 8 was made strictly in accordance with law. The petitioner was not the candidate and by misleading the Court, the petitioner has converted this petition into a petition in the nature of Quo Warranto. Initially, the petitioner had made a complaint before the Central Vigilance Commission and thereafter, the case was closed by CVC. Later on, the complaint was filed with CBI, Bhopal. Without conducting any investigation, the Bhopal office of CBI forwarded the Self Contained Note to CVO, and the CVO has also closed the matter. The allegation of undue favoritism to the respondent no. 8 was also denied. It was further pleaded that one A.R. Subramanian was another candidate for the post of Director, but since, a departmental enquiry was pending therefore, vigilance clearance was not given to Sh. A.R. Subramanian.

42. I.A. No.3782 of 2019 was filed by the petitioner in the light of liberty granted by this Court by order dated 5-8-2019.

43. By document No.7072/2019, the respondent no. 8 has filed his rejoinder to the petition. In the rejoinder, it is mentioned that the respondent no. 8 was appointed on the post of Professor (Tourism) in the year 2003 and the petitioner has challenged the order of regularization dated 15-1-2007. The order of appointment has not been challenged by the petitioner. It is further mentioned that the respondent no. 8 was having requisite qualification for the post of Professor (Tourism). The petitioner has not filed the recruitment rules. The CVO and CVC

have already considered the allegations and have rejected the same. It was further pleaded that it appears that the present petition is a sponsored petition as the issue regarding non-appointment of Mr. Subramanian has been raised. The method of filing documents along with List of Documents without there being any pleading was also criticized and it was submitted that the document no.1406/2016 deserves to be discarded. The recruitment rules requires 8 years experience of teaching to Graduate/Post Graduate Classes. The petitioner has not quoted the proceedings correctly. The petitioner has not mentioned the fact that 10 years PG Teaching Experience in Tourism was relaxed. Neither under the recruitment rules nor under the advertisement, the PG teaching experience in Tourism was required. Recruitment Rules, require Graduate/Post Graduate teaching of 8 years and in the advertisement, 10 years of experience in Post Graduate Teaching was required, hence, the contention of the petitioner runs contrary to record. Since, none of candidate was available with P.G. Experience in Tourism therefore, the candidate having 10 years PG teaching experience has been selected. It is further submitted that certain allegations have been made against K.P. Gautam, who has not been made a party to the petition. The pleadings are contrary to the record and have nothing to do with the subject of the petition and the factum of W.P. No.3854/2012 has been concealed. I.A. No.4752/2016 cannot substitute the pleading and cannot be treated to be so. The replies given under the Right to Information Act have no concern with quo warranto petition. The matter has been closed by CVC. No mandamus can be issued for registration of F.I.R. The contentions of the petitioner are beyond the scope of quo warranto. The power of relaxation is with the BOG under Regulation 64. Document filed as Annexure P/28 cannot substitute the by-laws and even otherwise, no relaxation in relation to essential qualification was sought. Questions cannot be asked under Right to Information Act. Document No.1406/2016 cannot be taken into consideration as it is not under the prescribed procedure and the documents cannot be filed in the said manner. It is also mentioned that the respondent no. 8 in his CV had clearly mentioned that he has taught classes of M.Com, MBA, MPA in Commerce Department, Madhav Post Graduate College and Jiwaji University. M.Com was taught at Commerce Department of Madhav College, MBA and MPA has been taught at Jiwaji University as Guest Faculty and proof thereof has already been submitted along with the return previously. The petitioner's silence about the experience certificates is required to be taken note of and instead of filing his reply to these documents, he has submitted confusing and misstatement and is trying to take advantage of certain reports which are non explanatory and without consideration of documents. No personal advice has been taken by the respondent no.8 and if the institute has taken any advice from the ASG, then it cannot be said to be advice taken by the answering respondent. The allegations made against K.P. Gautam cannot be taken in to consideration as he has not been impleaded as a party. One writ petition No.3854 /2012 was filed by one Harnarayan Yadav seeking relief of

setting aside the appointment of respondent no. 8 which was dismissed vide order Annexure C. The address of Harnarayan Yadav and that of petitioner is same and petitioner has concealed this fact, therefore, petitioner may be asked to disclose his relationship with said Harnarayan Yadav. The petitioner had previously filed W.P. No. 1405/2009 which was dismissed and the W.A. was also dismissed and the SLP was also withdrawn. The petitioner had filed one PIL bearing W.P. No.8593/2016 which has been dismissed vide order Annexure E. The petitioner has filed incomplete documents. Certain documents along with list of documents have been filed, which cannot be taken into consideration. No mandamus can be issued for registration of F.I.R. The CVC has already closed the matter.

44. This Court had requisitioned the record of W.P. No. 1405/2009 and found that it was filed by the petitioner in relation to his own service conditions and it has nothing to do with the present subject matter.

45. I.A. No. 3824/2019 has been filed by respondent no. 8 for extension of time to file the reply/rejoinder.

46. The respondents no.1 and 2 have also filed their reply to pending Interlocutory Applications filed by the petitioner and the similar stand has been taken.

47. However, when Dr. Saurabh Dixit, OIC of the case was asked as to from where he got the copy of the writ petition No.3854/2012 and other documents filed along with the reply, then he submitted that the same have been made available by the Ministry of Tourism. When he was asked to file the copy of the covering letter, then he kept quite. Further, the copy of the W.P. No. 3854/2012 indicates, that the copy of the said W.P. which was sent to the Director, IITTM, Gwalior has been placed on record. Thus, it is clear that the copy of the petition has not been made available by MoT. It is the allegation of the petitioner, that the OICs are working under the control and administration of the respondent no. 8 and are reporting to the respondent no.8. When the Ministry of Tourism, has not provided the copy of W.P. No. 3854/2012 to the OIC, then it is clear that the OIC of the case has taken the assistance of the respondent no. 8. However, the effect of such an act would be considered at a later stage.

48. Before considering the contentions of the parties, this Court, feel it appropriate to consider the question of maintainability of this petition as well as the scope of Writ of Quo Warranto.

49. The Supreme Court in the case of *All India Council for Technical Education v. Surinder Kumar Dhawan*, reported in (2009) 11 SCC 726, has held as under :

17. The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question

of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in. In *J.P. Kulshrestha (Dr.) v. Allahabad University* this Court observed: (SCC pp. 424 & 426, paras 11 & 17)

"11. ... Judges must not rush in where even educationists fear to tread. ...

* * *

17. ... While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies."

18. In *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth* this Court reiterated: (SCC pp. 56-57, para 29)

"29. ... *the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.*"

(emphasis supplied)

The Supreme Court in the case of *Rajendra Kumar Chandanmal Vs. Govt. of State of M.P. and others* reported in AIR 1957 MP 60, the High Court held as under :

16. As regards the first question there is no doubt that the offices of Chancellor, Vice-Chancellor and other Officers of the University in respect of which the writ is prayed for are important offices of public nature and sought to be held under a Statute. For the issue of a writ of quo-warranto no special kind of interest in the relator is needed nor is it necessary that any of his specific legal right be infringed. It is enough for its issue that the relator is a member of the public and acts bona fide and is not a mere pawn in the game having been set up by others. If the Court is of the view that it is in the interest of the public that the legal position with respect to the alleged usurpation of an important public office should be judicially cleared, it can issue a writ of quo-warranto at the instance of any member of the public. The authorities on this point are practically unanimous.

17. *Rex v. Speyer*, (1916) 1 KB 595 (A), the question related to the appointment of Mr. Speyer to the Privy Council. It was contended by Mr. F.E. Smith who appeared for him that the applicant had no personal interest to question the appointment of the respondent. This contention was negated on the ground that the application concerned public Government and that there was no ground for impugning the motives of the relator. This case was approved by this Court in *G.D. Karkare v. T.L. Shevde*, AIR 1952 Nag 330 (B), in a case which was heard by a Division Bench.

18. Similar view is taken in *V.D. Deshpande v. Hyderabad State*, (S) AIR 1955 Hyd 36 (C) by Misra, C.J., who observed as follows :

"The rule that no person may invoke the Court's aid in respect of a wrongful act of a public nature not affecting prejudicially the real and special interest or a specific legal right of the relator is true only so far as the issue of writs mandamus and certiorari etc., are concerned. In respect of writ quo-warranto there is no such restriction and a member of the public may challenge a public act of the State Provided he does so bona fide and is not a 'man of straw' *R. v. Briggs*, (1864) 11 LT 372 (D), set up by others as a mere pawn in the game and provided it is in the interest of the public that the legal position should be judicially declared once for all"

19. It therefore follows that the petition cannot be thrown out merely on the ground that the petitioner has no special interest in the matter nor on the ground that none of his special legal right is in jeopardy. The offices to which the petition relates are of public nature and are statutory and the petitioner as a member of public can move this Court to examine the validity of the claim of respondents Nos. 3, 4, 6 and 7 to the same.

The Supreme Court in the case of *R.K. Jain Vs. Union of India* reported in (1993) 4 SCC 119 has held as under :

74. Shri Harish Chander, admittedly was the Senior Vice-President at the relevant time. The contention of Shri Thakur of the need to evaluate the comparative merits of Mr Harish Chander and Mr Kalyansundaram a seniormost member for appointment as President would not be gone into in a public interest litigation. Only in a proceedings initiated by an aggrieved person it may be open to be considered. This writ petition is also not a writ of quo warranto. In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to

canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person.

The Supreme Court in the case of *State of Punjab Vs. Salil Sabhlok and others* reported in (2013) 5 SCC 1 has held as under :

Findings of the Court

25. The first question that I have to decide is whether the High Court was right in entertaining the writ petition as a public interest litigation at the instance of Respondent 1.

26. I have perused the writ petition CWP No. 11846 of 2011, which was filed before the High Court by Respondent 1, and I find that in the first paragraph of the writ petition Respondent 1 has stated that he was a public-spirited person and that he had filed the writ petition for espousing the public interest and for the betterment of citizens of the State of Punjab. In the writ petition, Respondent 1 has relied on the provisions of Articles 315, 316, 317, 318, 319 and 320 of the Constitution relating to Public Service Commissions to contend that the functions of the Public Service Commission are sensitive and important and it is very essential that a person, who is appointed as the Chairman of the Public Service Commission, must possess outstanding and high degree educational qualifications and a great amount of experience in the field of selection, administration and recruitment and he must also be a man of integrity and impartiality. Respondent 1 has alleged in the writ petition that the State Government has not laid down any qualification for appointment to the post of Chairman of the Punjab Public Service Commission and is continuing to appoint persons to the post of Chairman of the Public Service Commission on the basis of political affiliation.

27. In the writ petition, Respondent 1 has also given the example of Mr Ravi Pal Singh Sidhu, who was appointed as the Chairman, Punjab Public Service Commission on the basis of political affiliation and the result was that during his period as the Chairman of the Punjab Public Service Commission, several cases of undeserving candidates being selected and appointed to the Public Service Commission in the State of Punjab came to light and investigations were carried out leading to filing of various criminal cases against the officials of the Public Service Commission as well Mr Sidhu.

28. Respondent 1 has further stated in the writ petition that he has filed the writ petition after he read a news report titled "*MLA Dhanda to be new PPSC Chairperson*". He has stated in

the writ petition that Mr Harish Dhanda was an advocate at Ludhiana before he ventured into politics and had unsuccessfully contested the Vidhan Sabha election before he was elected as MLA on the Shiromani Akali Dal ticket and that he had close political affiliation and affinity with high-ups of the ruling party and that the ruling party in the State of Punjab has cleared his name for appointment as the Chairman of the Punjab Public Service Commission shortly. Respondent 1 has also alleged in the writ petition various irregularities and illegalities committed by Mr Harish Dhanda. He has further stated in the writ petition that his colleague has even sent a representation to the Governor of Punjab and the Chief Minister of Punjab against the proposed appointment of Mr Harish Dhanda. He has accordingly prayed in the writ petition for a mandamus to the State of Punjab to frame regulations governing the conditions of service and appointment of the Chairman and Members of the Punjab Public Service Commission and for an order restraining the State of Punjab from appointing Mr Harish Dhanda as Chairman of the Punjab Public Service Commission.

29. On a reading of the entire writ petition filed by Respondent 1 before the High Court, I have no doubt that Respondent 1 has filed this writ petition for espousing the cause of the general public of the State of Punjab with a view to ensure that a person appointed as the Chairman of the Punjab Public Service Commission is a man of ability and integrity so that recruitment to public services in the State of Punjab are from the best available talents and are fair and is not influenced by politics and extraneous considerations. Considering the averments in the writ petition, I cannot hold that the writ petition is just a service matter in which only the aggrieved party has the locus to initiate a legal action in the court of law. The writ petition is a matter affecting interest of the general public in the State of Punjab and any member of the public could espouse the cause of the general public so long as his bona fides are not in doubt. Therefore, I do not accept the submission of Mr P.P. Rao, learned Senior Counsel appearing for the State of Punjab, that the writ petition was a service matter and the High Court was not right in entertaining the writ petition as a public interest litigation at the instance of Respondent 1. The decisions cited by Mr Rao were in cases where this Court found that the nature of the matter before the Court was essentially a service matter and this Court accordingly held that in such service matters, the aggrieved party, and not any third party, can only initiate a legal action.

86. About twenty years ago, in a case relating to the appointment of the President of a statutory tribunal, this Court held in *R.K. Jain v. Union of India* that an aggrieved person—a "non-appointee"—would alone have the locus standi to challenge the offending action. A third party could seek a remedy only through a public law declaration. This is what was held: (SCC p. 174, para 74)

"74. ... In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person.

" This view was reiterated in *B. Srinivasa Reddy*. Therefore, assuming the appointment of the Chairperson of a Public Service Commission is a "service matter", a third party and a complete stranger such as the writ petitioner cannot approach an Administrative Tribunal to challenge the appointment of Mr Dhanda as Chairperson of the Punjab Public Service Commission.

87. However, as an aggrieved person he or she does have a public law remedy. But in a service matter the only available remedy is to ask for a writ of quo warranto. This is the opinion expressed by this Court in several cases. One of the more recent decisions in this context is *Hari Bansh Lal* wherein it was held that: (SCC p. 661, para 15)

"15. ... except for a writ of quo warranto, public interest litigation is not maintainable in service matters."

This view was referred to (and not disagreed with) in *Girjesh Shrivastava v. State of M.P.* after referring to and relying on *Duryodhan Sahu v. Jitendra Kumar Mishra*, *B. Srinivasa Reddy*, *Dattaraj Nathuji Thaware v. State of Maharashtra*, *Ashok Kumar Pandey v. State of W.B.* and *Hari Bansh Lal*.

88. The significance of these decisions is that they prohibit a PIL in a service matter, except for the purposes of a writ of quo warranto.....

89. However, in a unique situation like the present, where a writ of quo warranto may not be issued, it becomes necessary to mould the relief so that an aggrieved person is not left without any remedy, in the public interest. This Court has, therefore, fashioned a writ of declaration to deal with such cases. Way back, in *T.C. Basappa v. T. Nagappa-it* was said: (AIR p. 443, para 6)

"6. The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of 'habeas corpus, mandamus, quo warranto, prohibition and certiorari' as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions of our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges."

90. More recently, such a writ was issued by this Court in *Kumar Padma Prasad v. Union of India* when this Court declared that Mr K.N. Srivastava was not qualified to be appointed as a Judge of the Gauhati High Court even after a warrant for his appointment was issued by the President under his hand and seal. This Court, therefore, directed: (SCC p. 457, para 41)

"41. As a consequence, we quash his appointment as a Judge of the Gauhati High Court. We direct the Union of India and other respondents present before us not to administer oath or affirmation under Article 219 of the Constitution of India to K.N. Srivastava. We further restrain K.N. Srivastava from making and subscribing an oath or affirmation in terms of Article 219 of the Constitution of India and assuming office of the Judge of the High Court."

91. Similarly, in *N. Kannadasan v. Ajoy Khose*, this Court held that Justice N. Kannadasan (retired) was ineligible to hold the post of the President of the State Consumer Redressal Forum. It was then concluded: (SCC p. 68, para 163)

"163. ... (ii) The superior courts may not only issue a writ of quo warranto but also a writ in the nature of quo warranto. It is also entitled to issue a writ of declaration which would achieve the same purpose."

92. Finally and even more recently, in *Centre for PIL v. Union of India*, the recommendation of a High-Powered Committee recommending the appointment of Mr P.J. Thomas as the Central Vigilance Commissioner under the proviso to Section 4(1) of the Central Vigilance Commission Act, 2003 was held to

be non est in law and his appointment as the Central Vigilance Commissioner was quashed. This Court opined: (SCC p. 25, para 53)

"53. At the outset it may be stated that in the main writ petition the petitioner has prayed for issuance of any other writ, direction or order which this Court may deem fit and proper in the facts and circumstances of this case. Thus, nothing prevents this Court, if so satisfied, from issuing a writ of declaration."

The Supreme Court in the case of *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply & Drainage Board Employee's Association* reported in (2006) 11 SCC 731 has held as under :

49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to whether a case has been made out for issuance of a *writ of quo warranto*. The jurisdiction of the High Court to issue a *writ of quo warranto* is a limited one which can only be issued when the appointment is contrary to the statutory rules.

* * * *

51. It is settled law by a catena of decisions that the court cannot sit in judgment over the wisdom of the Government in the choice of the person to be appointed so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. This Court in *R.K. Jain v. Union of India* was pleased to hold that the evaluation of the comparative merits of the candidates would not be gone into a public interest litigation and only in a proceeding initiated by an aggrieved person, may it be open to be considered. It was also held that in service jurisprudence it is settled law that it is for the aggrieved person, that is, the non-appointee to assail the legality or correctness of the action and that a third party has no *locus standi* to canvass the legality or correctness of the action. Further, it was declared that public law declaration would only be made at the behest of a public-spirited person coming before the court as a petitioner. Having regard to the fact that neither Respondents 1 and 2 were or could have been candidates for the post of Managing Director of the Board and the High Court could not have gone beyond the limits of *quo warranto* so very well delineated by a catena of decisions of this Court and applied the test which could not have been applied even in a certiorari proceedings brought before the Court by an aggrieved party who was a candidate for the post.

The Supreme Court in the case of *The University of Mysore and another Vs. C.D. Govinda Rao and another* reported in (1964) 4 SCR 575 has held as under :

6. The judgment of the High Court does not indicate that the attention of the High Court was drawn to the technical nature of the writ of quo warranto which was claimed by the respondent in the present proceedings, and the conditions which had to be satisfied before a writ could issue in such proceedings.

As Halsbury has observed:

"An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined."

Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons, not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not.

The Supreme Court in the case of *Central Electricity Supply Utility of Odisha Vs. Dhobei Sahoo and others* reported in (2014) 1 SCC 161 has held as under :

21. From the aforesaid exposition of law it is clear as noontday that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority.

22. While dealing with the writ of quo warranto another aspect has to be kept in view. Sometimes a contention is raised pertaining to doctrine of delay and laches in filing a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on the one hand and an interest by a citizen as a relator to the Court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the Court. The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds.

The Supreme Court in the case of *Rajesh Awasthi Vs. Nandlal Jaiswal and others* reported in (2013) 1 SCC 501 has held as under :

19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in *Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana* held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B. Srinivasa Reddy*, this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this Court in *Hari Bansh Lal* wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules.

* * * *

29. In *B.R. Kapur v. State of T.N.*, in the concurring opinion Brijesh Kumar, J., while dealing with the concept of writ of quo warranto, has referred to a passage from *Words and Phrases*, Permanent Edn., Vol. 35, at p. 647, which is reproduced below: (SCC p. 316, para 80)

"80. ... 'The writ of "quo warranto" is not a substitute for mandamus or injunction nor *for an appeal or writ of error*; and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. *State ex inf McKittrick v. Murphy*, SW 2d pp. 529-30.

Information in the nature of "*quo warranto*" does not command performance of official functions by any officer to whom it may run, since it is not directed to officer as such, *but to person holding office or exercising franchise, and not for purpose of dictating or prescribing official duties, but only to ascertain whether he is rightfully entitled to exercise functions claimed. State ex Inf Walsh v. Thatcher*, SW 2d p. 938."

(emphasis in original)

30. In *University of Mysore v. C.D. Govinda Rao*, while dealing with the nature of the writ of quo warranto, Gajendragadkar, J. has stated thus: (AIR p. 494, para 7)

"7. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons not entitled to public office may be allowed to occupy

them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked, the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

31. From the aforesaid pronouncements it is graphically clear that a citizen can claim a writ of quo warranto and he stands in the position of a relater. He need not have any special interest or personal interest. The real test is to see whether the person holding the office is authorised to hold the same as per law. Delay and laches do not constitute any impediment to deal with the lis on merits and it has been so stated in *Kashinath G. Jalmi v. Speaker*.

32. In *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat* it has been laid down by this Court that a writ of quo warranto can be issued when there is violation of statutory provisions/rules. The said principle has been reiterated in *Retd. Armed Forces Medical Assn. v. Union of India*.

33. In *Centre for PIL v. Union of India* a three-Judge Bench, after referring to the decision in *R.K. Jain v. Union of India*, has opined thus: (*Centre for PIL case*, SCC p. 29, para 64)

"64. Even in *R.K. Jain case*, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and *the manner in which the appointment came to be made* or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction.

(emphasis in original)

It is also worth noting that in the said case a view has been expressed that the judicial determination can be confined to the

integrity of the decision-making process in terms of the statutory provisions.

The Supreme Court in the case of *High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat*, reported in (2003) 4 SCC 712 has held as under :

22. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari. (See *R.K. Jain v. Union of India*, SCC para 74.)

23. A writ of quo warranto can only be issued when the appointment is contrary to the statutory rules. (See *Mor Modern Coop. Transport Society Ltd. v. Financial Commr. & Secy. to Govt. of Haryana*.)

The Supreme Court in the case of *Centre for PIL v. Union of India*, reported in (2011) 4 SCC 1 has held as under :

51. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of quo warranto he must satisfy the court inter alia that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority.

The Supreme Court in the case of *Mahesh Chandra Gupta v. Union of India*, reported in (2009) 8 SCC 273, has held as under :

39. At this stage, we may state that, there is a basic difference between "eligibility" and "suitability". The process of judging the fitness of a person to be appointed as a High Court Judge falls in the realm of suitability. Similarly, the process of consultation falls in the realm of suitability. On the other hand, eligibility at the threshold stage comes under Article 217(2)(b). This dichotomy between suitability and eligibility finds place in Article 217(1) in juxtaposition to Article 217(2). The word "consultation" finds place in Article 217(1) whereas the word "qualify" finds place in Article 217(2).

40. This dichotomy is succinctly brought out in *Constitutional Law of India* by H.M. Seervai, 4th Edn., at p. 2729, which is quoted hereinbelow:

"From Article 217(1) as enacted in 1950 the following things are clear. First, Article 217(1) *provided for the appointment* of only permanent High Court Judges. They were permanent in the sense that they continued to hold their office till they attained the age of 60 years. They were not 'permanent' as opposed to Additional Judges who held office for a period not exceeding 2 years, because in 1950 our Constitution did not provide for Additional Judges. Secondly, *Article 217(2) prescribed the qualifications* which a person must possess before he could be appointed a High Court Judge. Thirdly, Article 217(1) provided the procedure to be followed before a person was appointed a High Court Judge. That procedure was designed *to test the fitness* of a person to be appointed a High Court Judge: his character, his integrity, and his competence in various branches of the law, and the like. In recruiting a person from the Bar, his experience in different kinds of litigation would also be taken into account. The thing to note is that Article 217(1) provides for a *once for all test* * of a person's fitness to be a High Court Judge. A person who has passed that test is subject to no other test of fitness but will continue to hold his office till he attains the age of retirement which had been fixed at 60 years till 1963. But once appointed, his performance on the Bench may be good, bad or indifferent. His judgments and orders may be subject to appeal in the High Court, and are certainly subject to appeal to the Supreme Court under Article 136, if not under other articles of Chapter IV of Part VI."

The Supreme Court in the case of *Renu and others Vs. district and Sessions Judge, Tis Hazari Courts, Delhi and another* reported in (2014) 14 SCC 50 has held as under :

15. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined,

and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the judiciary a weapon to control the executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide *University of Mysore v. C.D. Govinda Rao*, *Kumar Padma Prasad v. Union of India*, *B.R. Kapur v. State of T.N.*, *Mor Modern Coop. Transport Society Ltd. v. State of Haryana*, *Arun Singh v. State of Bihar*, *Hari Bansh Lal v. Sahodar Prasad Mahto* and *Central Electricity Supply Utility of Odisha v. Dhobei Sahoo*.)

16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

50. Thus, it is clear that in educational matters, the Court should not step in the educational policies and should interfere only when any provision of law is to be interpreted. Further, while considering the writ of Quo Warranto, this Court can consider the "Eligibility" of a Candidate, but cannot consider the "Suitability" of the Candidate. However, the public appointment should be transparent and the advertisement must specify the number of posts available, eligibility criteria and schedule of recruitment process be also published. Further the writ of Quo Warranto cannot be dismissed on the ground of delay and laches. To maintain the writ of Quo Warranto, it is not required, that the petitioner should be one of the

candidate to the recruitment process. A writ of Quo Warranto can be issued, if the public appointment is contrary to statutory provisions. Sometimes, the *malafides* may encroach upon the question of "Suitability". Therefore, the manner in which the appointment was made and the procedure which was adopted, can also be considered while considering the Writ of Quo Warranto.

51. Thus, the preliminary objections raised by the respondents shall be taken into consideration before proceedings further with the matter.

Whether the respondent no. 8 is a Public-Servant being the employee of IITTM-Gwalior, which according to the respondents is a registered Society?

52. Although no document has been filed to show that IITTM is a registered Society. Even if it is accepted, then it is clear that it is under the control of the Ministry of Tourism. The Supreme Court in the case of *Govt. of A.P. Vs. P. Venku Reddy* reported in (2002) 7 SCC 631 has held as under :

4. The High Court by the impugned order quashed the criminal case pending against Respondent 1 under the 1988 Act on the sole ground that the accused is not a "public servant" as defined in sub-clause (ix) of clause (c) of Section 2 of the 1988 Act. In the opinion of the High Court, the definition contained in sub-clause (ix) of clause (c) of Section 2 of the 1988 Act covers only President, Secretary and other office-bearers of a registered cooperative society engaged amongst other businesses in banking. Section 2 of the 1988 Act with the relevant clause (c) and sub-clauses (iii) and (ix) read as under:

"2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a)-(b) * * *

(c) 'public servant' means—

(i)-(ii)* * *

(iii) any person *in the service* or pay of a corporation established by or under a Central, Provincial or State Act, *or an authority or a body owned or controlled or aided by the Government* or a government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(iv)-(viii)* * *

(ix) any person who is *the president, secretary or other office-bearer of a registered cooperative society* engaged in agriculture, industry, trade or banking, receiving or having

received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);"

(emphasis supplied)

5. The learned counsel appearing for the State and the District Cooperative Central Bank Limited, Nellore submit that the definition of "public servant" in clause (c) of Section 2 of the 1988 Act is very wide and the respondent-accused who is employed as Supervisor in the District Cooperative Central Bank Limited which is "an authority or a body owned or controlled or aided by the Government" in terms of sub-clause (iii) of clause (c) of Section 2 of the 1988 Act, clearly falls within the definition of "public servant".

6. On the other hand, learned counsel appearing for the respondent-accused, who supports the impugned judgment of the High Court by placing reliance on the decisions of the Supreme Court in the cases of *State of Gujarat v. Patel Ramjibhai Danabhai*¹ and *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*² contends that on comparative reading of sub-clauses (iii) and (ix) of clause (c) of Section 2 of the 1988 Act, the principle of interpretation *generalia specialibus non derogant* would apply. There being a special provision in sub-clause (ix) which covers only certain holders of offices of the specified cooperative societies, and does not include other employees of such societies, the general provision contained in sub-clause (iii) of clause (c) of Section 2 of the 1988 Act shall have no application. It is argued that the special provision in sub-clause (ix) shall exclude the general provision in sub-clause (iii).

7. After hearing the learned counsel appearing for the parties, our conclusion is that the High Court is clearly in error in relying on sub-clause (ix) and overlooking sub-clause (iii) of clause (c) of Section 2 of the 1988 Act for quashing the proceedings on the ground that the respondent-accused is not covered by the definition of "public servant".

8. From the abovequoted sub-clause (ix) of clause (c) of Section 2 of the 1988 Act, it is evident that in the expansive

definition of "public servant", elected office-bearers with the President and Secretary of a registered cooperative society which is engaged in trade amongst others in "banking" and "receiving or having received any financial aid" from the Central or State Government, are included although such elected office-bearers are not servants in employment of the cooperative societies. But employees or servants of a cooperative society which is controlled or aided by the Government, are covered by sub-clause (iii) of clause (c) of Section 2 of the 1988 Act. Merely because such employees of cooperative societies are not covered by sub-clause (ix) along with holders of elective offices, the High Court ought not to have overlooked that the respondent, who is admittedly an employee of a cooperative bank which is controlled and aided by the Government, is covered within the comprehensive definition of "public servant" as contained in sub-clause (iii) of clause (c) of Section 2 of the 1988 Act. It is not disputed that the respondent-accused is in service of a cooperative Central bank which is an "authority or body" controlled and aided by the Government.

Thus, it is clear that although the respondent no. 8 might be an employee of a registered society, but since, the IITM-Gwalior is under the control of the Central Govt., therefore, he is certainly a Public Servant. Furthermore, the CBI had raised eyebrows against other officers of Central Govt. Therefore, it is held that since, the respondent no. 8 and other employees of the Central Govt., who may be involved in the present case are public Servants, therefore, the CBI had jurisdiction to investigate the case.

Locus Standi of the petitioner

53. As already observed, a Writ of Quo Warranto can be maintained by any citizen of the Country, therefore, the concept of *Locus Standi* has no application to the writ of Quo Warranto. Thus, the objection raised by the respondents, that since, the petitioner was not the candidate for the post of Professor (Tourism), therefore, he has no *locus standi* to file this petition, is hereby rejected.

Delay in filing this petition

54. It is submitted by the Counsel for the respondents that there is an inordinate delay in filing this petition. The Supreme Court in the case of *Rajesh Awasthi* (Supra) has held that delay and laches do not constitute any impediment to consider the *lis*. Therefore, the objection with regard to delay and laches is also rejected.

Order of appointment of the respondent no. 8 to the post of Professor (Tourism) has not been challenged

55. It is submitted by the Counsel for the respondents 1, 2, 8 and 9 that since, the petitioner has not challenged the order of appointment of the respondent no. 8 to the post of Professor (Tourism), therefore, this petition is not maintainable. The petitioner has challenged the order of Regularization dated 15th January 2007 to the post of Professor (Tourism) (Annexure P/6). Neither, the respondents no. 1, 2 and 9 nor the respondent no. 8 has filed the order of appointment of the respondent no. 8 on the post of Professor (Tourism). Thus, when the respondents no. 1, 2, 8 and 9 who could have placed the order of appointment on record, have failed to do so, then it is clear that if the petitioner could not place the order of appointment of the respondent no. 8 on record, would not make much difference.

56. Further, the documents which have been provided by the Counsel for the respondents no. 1 and 2 contain the appointment order of the respondent no. 8, dated September 30, 2003, which reads as under :

"Sub: Offer of appointment for the post of Professor in Tourism

Dear Sir,

With reference to your application and the subsequent interview held on 4th July 2003, for the post of Professor in Tourism at IITTM-Gwalior, Institute is happy to offer you appointment as Professor in Tourism in the pay scale of Rs. 16400-450-20900-500-26400. Your initial basic pay will be Rs. 16400/-. Besides this, you will be entitled for other allowances admissible under rules of the Institute from time to time.

2. The above appointment will be subject to the following terms and conditions :-

(a) The appointment is purely on temporary basis and will not confer any title to permanent employment.

(b) You will be on probation for two years. The appointment may be terminated at any time by a month's notice given by either side or by paying one month's salary in lieu thereof. The appointing authority, however, reserves the right of terminating your services at any time without assigning any reason during the period of probation.

(c)

(d)

(e) You will be given written confirmation on satisfactory completion of your probation period. However, it should be clearly understood that you will be deemed to have been confirmed in the post only when you are so initiated in writing.

(f)

(g)

(h)

(i)

(j)

(k) If there is any concealment of any information or if any information furnished by you at the time of appointment proves to be false, your services shall be liable for termination, without notice and Institute may take any such other action as deemed fit.

(l)

3. Your appointment will be further subject to the following :-

a)

b)

c) Production of following original certificates/attested copies of certificates at the time of your reporting for duty.

i)

ii)

iii).....

iv).....

v).....

4.

5.

6.

7. "

57. Thus, it is clear from the order of appointment on the post of Professor (Tourism), that the initial appointment of the respondent no. 8 was purely on temporary basis and unless and until, the order of confirmation is issued, the respondent no. 8 was to continue to remain on probation period. It is the case of the parties, that the respondent no. 8 was regularized on the post of Professor (Tourism) by order dated 15th January 2007 and the order dated 15th January 2007, has been challenged. It can be safely said that the order of initial appointment of the respondent no. 8 on the post of Professor (Tourism), had merged in the order of regularization on the post of Professor (Tourism). Since, the order dated 15th January 2007, by which the respondent no. 8 was regularized on the post of Professor (Tourism) has been challenged, therefore, this petition cannot be thrown overboard only on the technical ground that the initial order of appointment of the respondent no. 8 has not been challenged. Further, in a writ of quo warranto, the challenge is to the appointment of a respondent to the public post on the ground of eligibility. Therefore, the question of eligibility of the respondent no. 8 to hold the post of Professor (Tourism) is important. Thus, this objection is rejected.

Two Selection Committees were constituted on 24-2-2003 and what are the reasons for the same

58. It is the contention of the Petitioner, that two Selection Committees were constituted on 24-2-2003, whereas it is the stand of the respondents no. 1 and 2, that the Selection Committee constituted under the chairpersonship of Ms. Rathi Vinay Jha, Secretary (T) was the only Selection Committee and the minutes which have been placed as Annexure P/7 are only draft. However, it is the stand of the CBI that the respondents could not explain the reasons for constituting two Selection Committees on one day i.e., 24-2-2003.

59. Considered the submissions made by the Counsel for the parties.

60. Annexure P/7 and P/8 are the minutes of two Selection Committees dated 24-2-2003.

Minutes of the Selection Committee Meeting Dated 24-2-2003 (Annexure P/7) reads as under :

"Selection Committee met on 24-2-2003, under the chairmanship of Mrs. Rashmi Verma ADG, Dept. Of Tourism at conference Hall, New Delhi for interviewing candidates for one post of Professor in Tourism. The following were present :

1. Prof. Kapil Kumar, Subject Expert
2. Dr. Ravi Bhoothalilngam, Subject Expert
3. Mr. D. Singhal, Director, IITTM

Committee interviewed 5 candidates for the post of Professor and also considered request of two candidates being considered inabsentia.

Based on their academic record, earlier background, experience and performance, the selection committee unanimously recommended that the qualification of 10 years post graduate experience may be waived since none of the applicants has 10 years PG experience in Tourism. Committee didnot find any of the candidates interviewed suitable for the post. The Committee decided that the applicants who had requested for consideration inabsentia, may be called for an interview on a subsequent date in continuation of today's interview.

Not signed
Signed

Signed

Signed

(Rashmi Verma) (D/ Singhai) (Kapil Kumar (Ravi Bhoothalilngam))"

Minutes of Selection Committee dated 24-2-2003, filed as Annexure P/8 reads as under :

"INDIAN INSTITUTE OF TOURISM AND TRAVEL MANAGEMENT, GWALIOR

Minutes of the Selection Committee meeting dated 24-2-2003.

Selection Committee met on 24th february 2003 under the chairmanship of Mrs. Rathi Vinay Jha, Secretary (Tourism) at Conference Hall, New Delhi for interviewing candidates for 1 post of Professor in Tourism. The following were present :

1. Mrs. Rashmi Verma, ADG, Deptt. Of Tourism, Nominee
2. Prof. Kapil Kumar, Subject Expert
3. Dr. Ravi Bhoothalilngam, Subject Expert

4. Mr. D. Singhal, Director, IITTM

Committee interviewed five candidates for the post of Professor and also considered the request of two candidates being considered in absentia.

Based on their academic record, earlier background, experience and performance, the Selection Committee unanimously recommended that the qualification of 10 year post graduate, experience may be waived since none of the applicants has 10 years PG experience in tourism. Committee did not find any of the candidate interviewed suitable for the post. The Committee decided that the applicants who had requested for consideration in absentia, may be called for an interview on a subsequent date in continuation of today's interview.

Not signed	Signed	Signed
Rathi Vinay Jha	Rashmi Verma	D.Singhai
Secretary (T)&Chairperson	Addl. DG(T)	Director (IITTM)
Signed		Signed
Prof. Kapil Kumar	Dr. R. Bhoothalingam	
Subject Expert	Subject Expert"	

61. It is the contention of the respondents no. 1 and 2 that the minutes of Selection Committee dated 24-2-2003 (Annexure P/7) are nothing but a draft of minutes of Selection Committee dated 24-2-2003 (Annexure P/8). The contention of the respondents no. 1 and 2 is considered. What was the need of preparing a draft of minutes of meeting has not been explained. The minutes of the meeting are always drawn after the meeting is over. If the contention of the respondents no. 1 and 2 is accepted that minutes of meeting dated 24-2-2003, filed as Annexure P/7 are the draft, then it is clear that the meeting of Selection Committee which have been filed as Annexure P/8 is nothing but a farce because everything was already pre-decided. Further, the minutes of meeting dated 24-2-2003 clearly mentions that 5 candidates were interviewed and they were not found suitable. Further, it also mentions that the qualification of 10 years of teaching PG classes be also waived. Thus, according to the respondents no. 1 and 2, everything was already pre-decided before holding of meeting of Selection Committee dated 24-2-2003 (Annexure P/8) including the rejection of the candidature of 5 candidates as well as to waive the qualification. Further, it is not the case of any of the respondents that the Selection Committee had any authority to waive the PG teaching experience. However, both the Selection Committees while waiving the 10 years PG experience, also rejected the candidature of 5 candidates. If the Selection Committees were of the view that the requirement of 10 years PG

experience should be waived, then instead of proceeding further with the interview, it should have taken further instructions from the BoG. However, that was not done, and without any authority, the Selection Committees in its meetings dated 24-2-2003, not only waived the requirement of 10 years PG experience but also rejected the candidature of 5 candidates. Therefore, the decision taken by the Selection Committee dated 24-2-2003, which have been filed as Annexure P/8 are liable to be quashed on the basis of stand taken by the respondents no. 1 and 2 only.

62. Further, this stand is nothing but an afterthought. In the "Self Contained Note" of CBI, a finding has been recorded by the CBI that in fact two Selection Committee met on the same day i.e., 24-2-2003-one under the Chairmanship of Secretary (T) and another under the Chairmanship of the then ADG(T). Since, the respondents no. 1 and 2 have failed to explain as to why two Selection Committees were constituted for the same purpose on the same day i.e., 24-2-2003, therefore, it appears that in fact the minutes of both the Selection Committees dated 24-2-2003 have been fraudulently prepared. Surprisingly, the chairperson of both the Selection Committees held on 24-2-2003 have not signed the minutes. Not only that, it appears from the minutes of both the Selection Committees dated 24-2-2003, in fact the chairpersons were also not present. It appears from the minutes of selection committee dated 24-2-2003 which has been filed as Annexure P/7, only the Subject Experts and Director of IITTM were present and the Chairperson Smt. Rashmi Verma was not present. Then why it was mentioned in the minutes of the said Selection Committee, that the meeting was held under the Chairpersonship of Mrs. Rashmi Verma and how the Subject Experts and Director of IITTM on their own, can waive the requirement of 10 years PG experience and can reject the candidature of 5 candidates. When the Selection Committee was not competent to waive any qualification, then why the interviews of 5 candidates was taken and on what basis, all the 5 candidates were declared unfit? Similarly, the Second meeting of the Selection Committee dated 24-2-2003 was held under the Chairpersonship of Mrs. Rathi Vinay Jha, but she was not present, then why it was mentioned that the meeting of the Selection Committee was held under the chairmanship of Mrs. Rathi Vinay Jha? Further, why the interview of 5 candidates was taken by both the Selection Committees? Why, the minutes of both the Selection Committees dated 24-2-2003 are verbatim the same? It has also not been clarified by the respondents no.1 and 2 that why the request for consideration in absentia made by two persons, including the respondent no. 8 was accepted? Once, the candidates were directed to appear before the Selection Committee, then why special treatment was given to the respondent no.8 by accepting his request for his consideration in absentia? Further, the CBI in its self contained note had specifically mentioned as under :

" It may be mentioned here that there were two sets of Minutes of Selection Committee Meeting dated

24-2-2003 for the selection of Professor, IITM. One Selection Committee met under the Chairmanship of Mrs. Rashmi Verma, the then ADG (T) on 24-2-2003 at Conference Hall, Deptt. Of Tourism, New Delhi and another Selection Committee met on the same date and venue under the Chairmanship of Mrs. Rathi Vinay Jha, Secretary (Tourism). However, signatures of Mrs. Verma are not available on the first Minutes and similarly signatures of Mrs. Rathi Vinay Jha are not available on the second Minutes. The Ministry of Tourism is unable to explain about non-availability of signatures of the then Secretary (Tourism) on the Minutes of the Selection Committee dated 24-2-2003."

63. Thus, it is clear that the respondents have failed to explain as to why two Selection Committees were held on 24-2-2003 and why the minutes of both the Selection Committees were not signed by the Chairperson, and when the Chairperson was not present, then how it can be mentioned in the minutes that the meeting of the Selection Committee(s) dated 24-2-2003 were held under the Chairpersonship of Mrs. Rashmi Verma and Mrs. Vinay Rathi Jha, respectively. Further, these Committees had rejected all the five candidates who had appeared for interview and the request for participation in absentia was accepted. Further, a recommendation was made to waive the requirement of 10 years experience of teaching Post Graduate Classes. Further, so far as the stand of the respondents that since, the Secretary (Tourism) had approved the appointment of the respondent no. 8, therefore, the non-signing the minutes of Selection Committee held on 24-2-2003 loses its effect is concerned, it is suffice to mention that according to the respondents, the name of the respondent no. 8 was recommended by the Selection Committee held on 4-7-2003. Thus, it cannot be said that by approving the appointment of the respondent no. 8, the Secretary (Tourism) had validated the minutes of meeting dated 24-2-2003 in which the candidature of 5 candidates were rejected and not only a decision was taken to waive the requirement of 10 years PG experience, but even the candidates were interviewed after waiving the requirement of 10 years PG experience.

64. As per the interview call letters issued to the candidates, the interview was to be held on 24-2-2003 at 3:30 P.M.. It is beyond conciliation that why two selection committees were constituted and why both the selection committees had interviewed the candidates? At what time the interviews were held is also not explained.

65. Further, the CVC by its communique dated 10-2-2014 had informed the MoT, that "the Commission advises CVO, Ministry of Tourism to examine the information given by Shri Kulshreshtha in his curriculum-vitae and take action as

deemed fit, subject to above the Commission allows the matter rest." From note sheets forming part of documents supplied in sealed cover, it appears that the comparative chart was prepared indicating points raised in the letter, comments of IITM and Ministry's views on the point. For Point No.3 which was in relation to the query raised by the Prime Ministers Office with regard to the qualification of respondent no. 8, the following was the Ministry's view :

"All the paper provided by Dr. Kulshreshtha has been scrutinized. It reveals that he did not teach MBA/MPA Classes in Madhav College and the contention of Shri Yadav is correct. He had taken some classes of MBA/MPA in Jiwaji Univesity and that too as guest faculty for some specific periods and not from 1991-1997 as claimed by him in his application for the post of Professor. The Certificates provided by him would not stand legal scrutiny in Court of Law, if challenged, as it doesnot substantiate his claim of teaching MBA/M PA Classes in Madhav College."

The Ministry's view to the letter dated 25-6-2014 written by the Petitioner is as under :

"As explained above, the contention of Dr. Kulshreshtha would not stand judicial scrutiny. RTI information with Shri Yadav that MBA/MPA classes have not been conducted in Madhav College till date."

66. Therefore, the entire selection process is *prima facie* vitiated, however, the effect of holding meetings by two different Selection Committees on the same date i.e., 24-2-2003 and making a note that the candidates were interviewed and the stand taken by the respondents no. 1 and 2 that the minutes of Selection Committee dated 24-2-2003 filed as Annexure P/7 are merely draft and the effect of such a stand, would be considered at a later stage cumulatively along with other circumstances.

Whether the Board of Governors had waived the minimum qualification of 10 years Post Graduate Experience?

67. The Counsel for the respondents no. 1 and 2, in his reply to the query raised by the Court, has submitted that under the Recruitment Rules, the Board of Governor has no power to waive the minimum qualification and Regulation 64 of Indian Institute of Tourism and Travel Management (Services) Bye-laws does not apply.

68. However, it is submitted by the Counsel for the respondents no. 1 and 2 that the Board of Governors, in its meeting dated 21-7-2003 had waived the minimum qualification of 10 years post-graduate experience.

69. The submission made by the Counsel for the respondents no.1 and 2 is misconceived and contrary to record.

70. It is not out of place to mention here that according to the respondents, the candidature of the respondent no. 8 was considered by the Selection Committee which was held on 4-7-2003 and had recommended that the respondent no. 8 may be appointed on the post of Professor (Tourism). However, the copy of the minutes of Selection Committee held on 4-7-2003 have not been placed on record. When a specific question was put to Shri S.S. Bansal, Counsel for respondents no.1 and 2 as to why the minutes of Selection Committee held on 4-7-2003 have not been placed on record, then he fairly conceded that the said minutes are not on record. However, he submitted that since, certain documents have been filed in a sealed cover, therefore, the minutes of Selection Committee held on 4-7-2003 might be in the sealed cover. The sealed cover was in a torn condition which was repaired by putting tape. However, on opening, it is found that the minutes of Selection Committee dated 4-7-2003 are not there. Thus, it is clear that the minutes of the Selection Committee dated 4-7-2003 are not on record and therefore, either it has been deliberately suppressed by the respondents no. 1, 2 and 9 or the minutes of meeting of Selection Committee held on 4th July 2003 are not in existence all.

71. However, in order to substantiate that the condition of qualification of 10 years post graduate experience was waived by the Board of Governors, the Counsel for the respondents no. 1 and 2 have relied upon the Suppl. Agenda Item No. 3 which reads as under :

"Appointment of Professor in Tourism at IITTM, Gwalior

One post of Professor in Tourism at Gwalior fall vacant consequent upon the reversion of Prof. G. Krishna Ranga Rao on 30th September 2001. As per the decision taken in the 25th meeting of the Board of Governors, appointment of Dr. Amitabh Upadhyaya for the post of Professor was not approved and it was decided to re-advertise the post. Accordingly, the post of Professor in Tourism was re-advertised. Selection Committee interviewed 5 candidates for the post of Professor on 24th February 2003 and also considered request of 2 candidates being considered in absentia. Based on their academic record, earlier background and other considerations, selection committee unanimously recommended that the qualification of 10 years postgraduate experience may be waived since none of the applicants has 10 years PG experience in tourism. Committee also did not find any of the applicants interviewed suitable for the post.

Committee further decided that the applicants who had requested for consideration in absentia may be called for interview on a subsequent date in continuation of this interview. In accordance with this decision, the selection committee met again on 4th July 2003 and recommended that Dr. S. Kulshreshtha be appointed on the post of Professor in Tourism. Since, the post has been advertised three times and work at the Institute has been suffering in the absence of the Professor, appointment of Professor is essential at the earliest. Hence, it is proposed that Dr. S. Kulshreshtha, who is already working as Reader in the Institute may be appointed on the post of Professor in Tourism in the scale of Rs. 16400-22400.

BOG may kindly consider and approve."

The relevant minutes of 27th meeting of BOG dated 25th Nov. 2003 reads as under :

"Supp. Agenda Item No. 3 : Appointment of Professor in Tourism at IITTM, Gwalior

Board considered the matter and authorized the Chairperson of the BOG to approve the appointment of Professor."

72. From the plain reading of the minutes of the 27th meeting of BOG dated 25th November 2003, it is clear that the qualification of 10 years post-graduate experience was never waived.

73. The petitioner by document no. 6623/2018 has placed the copy of minutes of meeting of BOG dated 25-2-2003. Although the respondent no. 8 has objected that the documents cannot be filed along with List of Documents only and therefore, any document filed in such manner may be ignored, but the minutes of 25th meeting of BOG held on 25-2-2003 is in the file provided by the respondents no. 1 and 2 in a sealed cover. Thus, the minutes of 25th meeting of BOG dated 25-2-2003 are taken up for consideration which reads as under :

"Supplementary Agenda Item No. 2 : Appointment of Professor in Tourism

It was informed that none of the 5 candidates interviewed for the post of Professor in Tourism on 24-2-2003 was found suitable. The request made by two candidates for consideration in absentia was considered and it was decided that their candidature would be considered only after their interview at a future date in extension of the interviews conducted on 24th Feb. 2003."

74. It is clear from the above mentioned minutes of the 25th meeting of BOG dated 25-2-2003, that the minimum qualification of 10 years post-graduate experience was neither considered nor waived. Further, the petitioner has filed a copy of the Verification of Complaint No. CO0082013A0021 of CBI, ACB, Bhopal dated May 22, 2015, which was sent to S.P., CBI, Bhopal as Annexure P/25. It has been mentioned in this communication, that since, the requirement of 10 years post-graduate experience was waived by Selection Committee dated 24-2-2003, therefore, presumably the same relaxation must have been applied in the case of the two candidates who were interviewed on July 04, 2003. Thus, it is clear that when the BOG had never taken a decision on the question of waiver of minimum qualification of 10 years Post-graduate experience, then the same could not have been applied to the case of any candidate, including the respondent no. 8.

75. Further, in note sheet dated 18-2-2015, which is a part of the documents provided to the Court in a sealed cover by the respondents no. 1 and 2, it is clear that even the Ministry was of the view that the Board of Governors have not waived the minimum qualification of 10 years post-graduate experience. The relevant part of the note sheet dated 18-02-2015 written by Sh. A.K. Bose Consultant (HRD) reads as under :

"2. The Selection Committee in its meeting held on 24-2-2003 had observed that (page- 143/c) the 10 years PG experience in Tourism may be waived as none of the candidates shortlisted possessed the requisite experience. The reply of former Director in this regard may please be seen at Pages 161-162/c. The BOG, however, in its meeting on 4-7-2003 didnot consider to waive of the 10 years experience crieteria as this experience qualification was neither mentioned in the advertisement for direct recruitment to the post of Professor in Tourism in IITTM nor in the Recuritment rules of this post. The BOG only ratified and authorised the Chairman of the BOG to approve the appointment of Dr. Sandeep Kulshreshtha. The para-wise comments in response to the PIL filed by Shri Harnarayan Yadav may please be seen at page 214/c.

3. The Public Interest Litigation filed by Shri Harnarayan Yadav in Hon. High Court of Madhya Pradesh is pending and might come up for hearing in near future. The court would examine the records submitted by the litigant and IITTM's reply. In case the documents obtained by Shri MPS Yadav is also presented before the Hon. Court, then it would be difficult to prove that Dr. Kulshreshtha had taught MBA/MPA Classes in Madhav College and Court

may take a serious view in the matter. However, for the present, we have to wait and watch about the case as and when it comes up for hearing."

76. Although in this note sheet it is mentioned that the experience qualification was not mentioned in the advertisement, but it is factually incorrect.

77. Thus, it is clear that according to Vigilance Division, the respondent no. 8 Dr. Sandeep Kulshreshtha was not having 10 years post-graduate experience and therefore, relaxation was given.

78. The petitioner has also filed the note sheet dated 20-3-2015 (Annexure P/26). The reply to Point No. 5 reads as under :

"In the Supplementary agenda for the 27th meeting of the BOG, the question of waiving off the 10 years PG teaching experience was placed before the BOG and also about the meeting of the selection committee on 04-07-2003 which met to consider the candidates inabsentia. The selection committee which met on 04-07-2003 recommended appointment of Dr. Sandeep Kulshreshtha as Professor in the IITTM. **It is presumed that when the Selection Committee made recommendations for appointment of Dr. Kulshreshtha, it might have kept the relaxation of 10 years PG teaching in view though the records do not reflect anything towards this.**"

79. Thus, it is clear that there is nothing specific on record and every thing was being presumed, which is not permissible under the law.

Thus, it is clear that the minimum qualification of 10 years post-graduate experience was never waived by the BOG in its 25th meeting dated 25-2-2003 and also in its 27th meeting dated 25-11-2003. However, it is clear from the minutes of meeting of Selection Committees that in fact the minimum qualification of 10 years PG experience was waived by the Selection Committee, whereas the Selection Committees had no right to waive the minimum qualification of 10 years PG experience.

Whether the Selection Committee held its meeting on 4th July 2003?

80. Although, it is the case of the respondents that the Selection Committee in its meeting dated 4th July 2003, had recommended the name of Dr. Sandeep Kulshreshtha for his appointment on the post of Professor (Tourism), however, the minutes of the said meeting are not on record. Even the names of the members are also not known. It is also not known that whether Mrs. Rathi Vinay Jha, Secretary (Tourism) had chaired the said meeting or not? It is not out of place to

mention here that Mrs. Rathi Vinay Jha, was the chairperson of the Board of Governors also. If she was the member of Selection Committee, then the Board of Governors, should not have authorized her to approve the appointment. Thus, in absence of minutes of meeting dated 4th July 2003, it is difficult to hold that whether the meeting of Selection Committee dated 4th July 2003 was held validly or not? However, since, the respondents have withheld the minutes of meeting of the Selection Committee dated 4th July 2003, therefore, an adverse inference is drawn against the respondents.

Qualification of Dr. Sandeep Kulshreshtha

81. The relevant portion of the CV of Dr. Sandeep Kulshreshtha is reproduced as under :

S.No.	Post Held & Pay Scale	Year	Classes Taught	Department
1	Reader (12000-18300)	26-02-98 to till date	PGDB M DTM MDP EDP	Indian Institute of Tourism & Travel Management, Govt. of India, Govindpuri, Gwalior
2	Reader (3700-5700)	29-01-97 to 25-02-97	DTM MDP EDP	Business Studies IITTM, ETC, Bhubaneswar, Orissa
3	Sr. Assistant Professor (3000-5000)	25-02-96 to 27 -01-97	M.Com. MBA MPA	Commerce Department, Madhav Post Graduate College, Jiwaji University, Gwalior
4	Asstt.Professor (2200-4000)	25-02-91 to 24 -02-96	M.Com. MBA MPA	Commerce Department, Madhav Post Graduate College, Jiwaji University, Gwalior
5	Lecturer (2200-4000)	25-08-90 to 24 -02-91	M.Phil MBA	School of Commerce and Management Studies, Jiwaji University, Gwalior
6	Lecturer	20-03-90 to 22 -08-90	M.Com	School of Commerce and Management Studies, Jiwaji University, Gwalior

82. From the plain reading of CV, it is clear that at Sr. No. 3, the respondent no. 8 had disclosed that in the **capacity of Sr. Assistant Professor** he had taught M.Com., MBA and MPA Classes in Commerce Department, Madhav Post Graduate College, Jiwaji University, Gwalior and at Sr. No. 4, the respondent no. 8 had disclosed that in the **capacity of Asstt. Professor**, he had taught M.Com., MBA and MPA classes in Commerce Department, Madhav Post Graduate College, Jiwaji University, Gwalior.

83. It is submitted by the Counsel for the respondent no. 8 that no misleading information was given in CV. In the CV, the respondent no. 8 has disclosed that he had taught M.Com. Classes in Commerce Department, Madhav Post Graduate College, and MBA and MPA Classes in Jiwaji University, Gwalior. The explanation given by the respondent no. 8 cannot be accepted. The respondent no. 8 has filed the experience certificates issued by Jiwaji University, Gwalior and it is clear from those certificates, that the respondent no. 8 had taught few classes of MBA and MPA in the capacity of Guest Faculty. If the intention of the respondent no. 8 was to declare that he had taught MBA and MPA classes in Jiwaji University, Gwalior as Guest Faculty, then he should not have clubbed the said information in Sr. No. 3 and 4, and should have disclosed separately that as a Guest Faculty, he has taken few classes of MBA and MPA Classes in Jiwaji University, Gwalior. But instead of disclosing that he had taken the classes as a Guest Faculty, it was disclosed by Dr. Kulshreshtha that he had taken the MBA and MPA classes as Sr. Asstt. Professor or Asstt. Professor. Further, Commerce Department, Madhav Post Graduate College, is affiliated to Jiwaji University, Gwalior. Thus, the explanation given by respondent no. 8 cannot be accepted and in fact, it was disclosed by respondent no. 8 that he had taught M.Com, MBA and MPA classes in Commerce Department, Madhav Post Graduate College, Jiwaji University, Gwalior in the capacity of Sr. Asstt. Professor, and Asstt. Professor, whereas the admitted position is that there were no MBA or MPA classes in Commerce Department, Madhav Post Graduate College, Jiwaji University, Gwalior. Thus, it is held that the respondent no. 8 had given wrong information in his CV about his 10 years experience of post graduate classes.

84. It is next contended by the Counsel for the respondent no. 8 that even if the experience of teaching MBA and MPA classes is excluded, still then the respondent no. 8 had 10 years of Post-graduate experience. To substantiate his submissions, the Counsel for the respondent no. 8 has submitted that the respondent no. 8 had taught post-graduate classes in the capacity of Reader, IITTM, Gwalior, which is mentioned at Sr. No. 1 and 2 of CV.

85. Considered the submissions made by the Counsel for the respondent no. 8.

86. Since, the minutes of meeting of the Selection Committee dated 4th July 2003, which had recommended the appointment of respondent no. 8 is not on record, therefore, in view of the note sheet dated 20-3-2015 written by A.K. Bose, Consultant (HRD) (Annexure P/26), it is clear that the Selection Committee was not of the view that the respondent no. 8 is having 10 years post-graduate experience. The respondents no. 1 and 2 have relied upon a communique dated Jan 22, 2015 written by Dr. Sitikantha Mishra, Chairman, All India Board of Hospitality and Tourism Management, ACITE, New Delhi. It is not out of place, that the respondents no. 1 and 2 have not placed any document of the year 1998 on

record to suggest that AICTE was treating Diploma in Tourism Management Courses run by IITTM as post graduate course. Along with this communique, the approval process handbook of the year 2015-2016 has been annexed and the respondent no. 8 has also relied upon the same handbook. However, no document has been filed to show that what were the norms for PGDM Programmes in the year 1998 onwards. Further, it is submitted by the Counsel for the respondent no. 8 that as per Service Bye-laws dated 18th January 1983, the minimum qualification for recruitment to the post of Professor was at least 8 years experience of teaching to graduate/post graduate Class. However, according to the Counsel for the respondents no. 1 and 2, the qualification is as per UGC Norms i.e., 10 years post-graduate experience.

87. For recruitment to the post of Professor (Tourism), the minimum qualifications as mentioned in the advertisement are as under :

"Max. Age: 50 years

Educational Qualifications:

An eminent scholar with published work of high quality, actively engaged in research in which 10 years of experience in post graduate teaching and/or research at the university/national level institutions including experience of guiding research at doctoral level OR an outstanding scholar with established reputation who has made significant contribution to knowledge."

88. It is submitted by the Counsel for the respondent no. 8 that although the respondent no. 8 has no 10 years post-graduate experience in Tourism, but in the advertisement, it was nowhere mentioned that the 10 years post-graduate experience is required in "Tourism", but it was merely mentioned that 10 years post-graduate experience is required. The contention of the Counsel for the respondent no. 8 cannot be accepted. The advertisement start with the following words :

"Applications are invited for the post of Professor in Tourism at IITTM, Gwalior. No. Of post : One. Pay Scale 16400-450-20900-500-22400."

89. Therefore, the requirement of 10 years post-graduate experience has to be read as 10 years post-graduate experience in Tourism. Therefore, the Selection Committee met on 24-2-2003 had held that none of the candidates are having 10 years post-graduate experience in Tourism.

90. As per note sheet dated 16-7-2015, which is a part of the documents provided under the sealed cover, the Vigilance Division had remarked that "In fact 10 years teaching experience at **Post Graduate Level** was the requirement as per the advertisement. Hence, numbers of years of teaching experience is not

relevant. As none of the candidate, including Shri Sandeep Kulshreshtha had the requisite teaching experience, the relaxation was given."

91. Thus, according to the **Vigilance Division**, the respondent no. 8 Sandeep Kulshreshtha was not having 10 years post-graduate experience.

92. Furthermore, if the advertisement was vague, then the respondent no. 8 cannot take advantage of the same, and the respondents were under obligation to re-advertise the post. Further, it is the case of the respondents, that the requirement of 10 years post-graduate experience was waived.

93. It is well established principle of law that the qualifications cannot be changed in the mid of the recruitment process. If the respondents were of the view that the condition of 10 years post-graduate experience is liable to be waived, then a fresh advertisement should have been issued, so that other desirous candidates could have applied for the post of Professor (Tourism).

94. The Supreme Court in the case of *A.P. Public Service Commission v. B. Swapna*, reported in (2005) 4 SCC 154 has held as under

"14. The High Court has committed an error in holding that the amended rule was operative. As has been fairly conceded by learned counsel for Respondent 1 applicant it was the unamended rule which was applicable. Once a process of selection starts, the prescribed selection criteria cannot be changed. The logic behind the same is based on fair play. A person who did not apply because a certain criterion e.g. minimum percentage of marks can make a legitimate grievance, in case the same is lowered, that he could have applied because he possessed the said percentage. Rules regarding qualification for appointment if amended during continuance of the process of selection do not affect the same. That is because every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. If the rule is expressed in a language which is fairly capable of either interpretation it ought to be considered as prospective only. (See *P. Mahendran v. State of Karnataka* and *Gopal Krishna Rath v. M.A.A. Baig.*)

15. Another aspect which this Court has highlighted is scope for relaxation of norms. Although the Court must look with respect upon the performance of duties by experts in the respective fields, it cannot abdicate its functions of ushering in a society based on rule of law. Once it is most satisfactorily established that the Selection Committee did not have the

power to relax essential qualification, the entire process of selection so far as the selected candidate is concerned gets vitiated. In *P.K. Ramachandra Iyer v. Union of India* this Court held that once it is established that there is no power to relax essential qualification, the entire process of selection of the candidate was in contravention of the established norms prescribed by advertisement. The power to relax must be clearly spelt out and cannot otherwise be exercised.

(Underline applied)"

The Supreme Court in the case of *Mohd. Sohrab Khan v. Aligarh Muslim University*, reported in (2009) 4 SCC 555 has held as under :

"25. We are not disputing the fact that in the matter of selection of candidates, opinion of the Selection Committee should be final, but at the same time, the Selection Committee cannot act arbitrarily and cannot change the criteria/qualification in the selection process during its midstream. Merajuddin Ahmad did not possess a degree in Pure Chemistry and therefore, it was rightly held by the High Court that he did not possess the minimum qualification required for filling up the post of Lecturer in Chemistry, for Pure Chemistry and Industrial Chemistry are two different subjects.

26. The advertisement which was issued for filling up the post of Lecturer in Chemistry could not have been filled up by a person belonging to the subject of Industrial Chemistry when the same having been specifically not mentioned in the advertisement that a Master's degree-holder in the said subject would also be suitable for being considered. There could have been intending candidates who would have applied for becoming candidate as against the said advertised post, had they known and were informed through advertisement that Industrial Chemistry is also one of the qualifications for filling up the said post."

The Supreme Court in the case of *K. Manjusree v. State of A.P* reported in (2008) 3 SCC 512 has held as under :

"27 Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them — *P.K. Ramachandra Iyer v. Union of India*, *Umesh*

Chandra Shukla v. Union of India-and Durgacharan Misra v. State of Orissa."

The Supreme Court in the case of *Maharashtra SRTC v. Rajendra Bhimrao Mandve* reported in (2001) 10 SCC 51 has held as under :

"5..... It has been repeatedly held by this Court that the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced..... "

95. Thus, it is clear that since, the minimum qualification of 10 years post-graduate experience was waived in the mid way, therefore, the entire selection process gets vitiated.

96. **Accordingly, it is held that not only, the respondent no. 8 did not have minimum qualification for holding the post of Professor (Tourism), but in view of the waiver of the minimum qualification of 10 years post-graduate experience, and that too without approval by the Board of Governors, the entire selection process for the post of Professor (Tourism) stood vitiated.**

Whether the Selection Committee met on 24-2-2003 was right in permitting two candidates to participate in absentia?

97. Although, none of the parties have filed the copy of the interview call letter issued to the candidates, but some of them are available in the bundle of documents which were provided in a sealed cover. The interview call letter issued to one of the candidate namely Dr. P. Rajendra reads as under :

February 10,2003

Dr. P. Rajendran
6/56, M. Reddiapatty P.O.
Distt. Virudhu Nagar
Tamilnadu
626118

Dear Sir,

With reference to your application for the post of Professor in Tourism at IITTM-Gwalior, in response to our advertisement, I am happy to invite you for interview on Monday, the 24th Feb 2003 at 3.30 p.m. in the Conference Hall, First Floor, Transport Bhawan , Parliament Street, New Delhi. In the event of failure to report on the above date and time for interview, no representation/claim will be entertained. No TA/DA will be payable for attending the interview. Since, we will have to check the documents

enclosed along with your application before the interview, you are requested to reach by 3:00 p.m. along with all original documents.

This invitation in anyway does not mean that you have the minimum requisite qualifications for regular appointment to the post of Professor. Kindly acknowledge the receipt and send your confirmation for participation at the interview in the enclosed proforma by return fax.

98. The interview call letter issued to the respondent no. 8 for interview on 24-2-2003 is not on record, but it can be safely presumed that similar call letter, as mentioned above, must have been issued to respondent no. 8 also.

99. Thus, it was already decided that in case of failure to participate on 24-2-2003 under no circumstance, any representation or claim would be entertained, then why the request made by the respondent no. 3 for consideration of candidature in absentia was accepted is not clear. Thus, it is clear that the Selection Committee had departed from the norms in the mid of the recruitment process.

Whether there was any post of Professor (Tourism) in IITTM Gwalior?

100. A new fact has emerged from the documents which were supplied in a sealed cover, that an information dated 10-4-2012 was given by Shri S.K. Chakraborti, Dy. Secretary, Union of India, to the effect that there is no post of Professor (Tourism) in IITTM. The relevant portion of the information dated 10-4-2012 reads as under :

2. आपके उपरोक्त आवेदन मे अपेक्षित सूचना आचार्य ;पर्यटनद्ध आई आई टी टी एम से संबंधित है। यह सूचित किया जाता है कि आई आई टी टी एम मे आचार्य ;पर्यटनद्ध का कोई पद नही है।

101. Further, a table was prepared indicating the point raised in the letter, comments of IITTM and Ministry's view on the point. As per this table dated 18-2-2015 (which is a part of the documents provided in a sealed cover), in response to the Letter dated 30-5-2012 it has been mentioned as under :

Comments of IITTM	Ministry's View
It has been clarified in one of the Ministry's reply sent under the Signature of Shri S.K. Chakraborti, that there is no post of Professor (Tourism) in the IITTM. (page 129/cof file No. 67(21)/2011/IITTM	Dr. Sandeep Kulshreshtha was recruited against the post of Professor, Tourism in the IITTM. If there is no post, as initiated to S hri Yadav by the Ministry, then against which post of Professor, he has been appointed.

102. Thus, it appears, that without there being any post of **Professor in Tourism**, the respondent no. 8 was given appointment on the post of Professor in Tourism.

Appointment of Respondent no. 8 on the Post of Director, IITTM-Gwalior.

103. It is the contention of the petitioner, that an enquiry was pending against the respondent no. 8, therefore, he could not have been subsequently appointed on the post of Director, IITTM-Gwalior. To buttress his contentions, the petitioner has relied upon the information given by MoT under the Right to Information Act, by its reply dated 23-6-2015 which reads as under :

Kindly, refer to your RTI Registration No. MTOUR/R/2015/ 60118 dated 21-05-2015. This is regarding the allegations raised by Shri Manoj Pratap Singh Yadav against Shri Sandip Kulshreshtha, Director, Indian Institute of Tourism & Travel Management regarding irregularities in the conduct of guide training programme. The information requested by you is as below.

Q.No.	Information Sought	Reply of the Ministry
1.1	The Ministry may say yes, if the inquiry process was completed on 12 th June 2014?	No, the inquiry process in the aforesaid case was not completed as on 12 th June 2014.
1.2	If the inquiry process was not completed by 12 th June 2014, the Ministry may clearly state that the said inquiry process was pending as on 12 th June 2014?	Yes, the inquiry process was pending as on 12 th June 2014.

104. Thus, according to MoT, an enquiry was pending against the respondent no. 8 on 12th June 2014, therefore, vigilance clearance for appointment on the post of Director, IITTM-Gwalior should not have been given. Whereas, it is the stand of the respondents no. 1 and 2 that no enquiry was pending against the respondent no. 8. The Counsel for the respondent no. 8, has submitted that the role of the respondent no. 8 was not under scrutiny in the enquiry regarding irregularities in guide training programme.

105. As per the Recruitment Rules for the post of Director in the IITTM, the minimum qualification is that the person holding posts in the scale of Rs. 16,000-22400 (pre-revised) or equivalent having 3 years regular service in the grade. The

post of Professor is in the scale of Rs. 16000-22400 (Pre-revised), therefore, 3 years regular service in the said grade is the minimum requirement for recruitment to the post of Director. Since, this Court has already held that the respondent no. 8 was not eligible to hold the post of Professor (Tourism), therefore, it is held that since, the respondent no. 8 was not having minimum qualification for his appointment to the post of Director-IITTM-Gwalior, therefore, his appointment is bad. However, the question of pendency of enquiry on 12th June 2014 is kept open.

Whether the CBI was right in returning the matter to CVO, Ministry of Tourism, even after having come to conclusion that the respondent no. 8 Sandeep Kulshreshtha had furnished false information.

106. It is the stand of the CBI, that it has no authority to investigate the matters involving offence under Penal Code and since, no case for offence under Prevention of Corruption Act was made out, therefore, the matter was sent back to the CVO of Ministry of Tourism.

The self contained note prepared by the CBI mentions as under :

"In view of the above facts, the role of the then officials of IITTM, Gwalior and Ministry of Tourism, Govt. of India is required to be enquired. If some criminality is found against them, the matter may be referred to CBI, Bhopal.

Dr. Sandeep Kulshreshtha had falsely declared in his CV that he had 10 years Post Graduate teaching experience while applying for the post of Professor (Tourism) at IITTM Gwalior. His Role may be enquired into and if deemed fit, the local police may be approached for taking necessary legal action him."

107. Section 13 of Prevention of Corruption Act, 1988, as it was in force in the year 2003 reads as under :

13. Criminal misconduct by a public servant.—(1)

A public servant is said to commit the offence of criminal misconduct,—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted

by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

108. Thus, as per Section 13(1)(d)(ii) and (iii) of Prevention of Corruption Act, 1988, even if any public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest or any public servant by abusing his position, obtains either for himself or for any other person any valuable thing or pecuniary advantage, then it can be said that the said Public Servant had committed an offence punishable under Section 13(1)(d)(ii) or (iii) of Prevention of Corruption Act. Thus, when the CBI had already come to a conclusion that the respondent no. 8 had obtained appointment to the post of Professor (Tourism) by furnishing false information, and was also of the view that the role of the then

officials of IITTM, Gwalior and Ministry of Tourism, Govt. of India is required to be enquired, then it should not have delegated its statutory powers to the Chief Vigilance Officer, Ministry of Tourism. If the then officials of IITTM Gwalior or of Ministry of Tourism had misused their office, for giving appointment to the respondent no. 8 in an illegal manner, then certainly an offence under Section 13(1)(d)(ii) and (iii) read with Section 13(2) of Prevention of Corruption Act would be made out. Thus, the opinion of the CBI that no offence under Prevention of Corruption Act was made is contrary to their own Self Contained Note.

109. It is submitted by the Counsel for the respondents no. 1, 2, 9 and 8 that if the police fails to register a F.I.R., then the writ petition is not maintainable and the only remedy available to the complainant is to file the criminal complaint under Section 200 of Cr.P.C. To buttress their contentions, the Counsel for the respondents no. 1, 2, 9 and 8 have relied upon the judgment of the Supreme Court passed in the case of *Sakiri Vasu vs. State of U.P.*, reported in (2008) 2 SCC 409 and *Aleque Padamsee and others Vs. Union of India & Ors.*, reported in (2007) 6 SCC 171.

110. Considered the submissions made by the Counsel for the respondents. It is well established principle of law that if the police fails to register the F.I.R. in a cognizable offence, then the remedy available to the aggrieved person is to file a criminal complaint under Section 200 of Cr.P.C.

111. The Supreme Court in the case of *Divine Retreat Centre Vs. State of Kerala and others* reported in (2008) 3 SCC 542 has held as under:-

"41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.

112. Thus, where the investigating agency, on incorrect ground, refuses to continue with investigation and decides to transfer the investigation to some other agency, with a request to find out that whether there is any criminal intention on the part of the Public Servants or not, in the considered opinion of this Court, such an act of CBI was not in accordance with law. When the CBI had already started investigation and had also prepared a self contained note with a finding that the

respondent no. 8 has obtained the appointment to the post of Professor (Tourism) by furnishing false information, then it was their duty to find out that whether the other public servants had committed any offence under Section 13(1)(d)(ii) and (iii) of Prevention of Corruption Act or not? The CBI should not have delegated its power to CVO, MoT. The CBI derives its power of investigation under the provisions of Cr.P.C. The same cannot be delegated to an agency which is not a Police Station.

Section 2(s) of Cr.P.C. reads as under :

(s) "police station" means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;

Section 4 of Cr.P.C. reads as under :

4. Trial of offences under the Indian Penal Code and other laws.— (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, 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.

Sections 156, 157 and 160 of Cr.P.C. read as under :

156. Police officer's power to investigate cognizable case.—

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.

157. Procedure for investigation.—(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take

cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that—

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot,

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case:

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

160. Police officer's power to require attendance of witnesses.— (1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person¹ [under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any

place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

113. The Supreme Court in the case of *Lalita Kumari Vs. State of U.P.* reported in (2014) 2 SCC 1 has held as under :

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

114. Thus, it is clear that in a given case, the investigating officer, may conduct a preliminary enquiry, and in the present case, the CBI itself had prepared a Self Contained Note after conducting the preliminary enquiry and had also come to a conclusion that the respondent no. 8 had falsely declared in his CV that he had 10 years Post Graduate teaching experience. This Court has also come to a conclusion that incorrect declarations were made by the respondent no. 8 in his CV. Thus, after conducting a preliminary enquiry, the CBI cannot transfer its powers to CVO of MoT. Thus, in the considered opinion of this Court, the principle laid down by the Supreme Court in the case of *Aleque Padamse* (Supra), *Sakiri Vasu* (Supra) would not apply, and this Court can direct the CBI to proceed further with the investigation, from the stage, where it was left by it.

115. However, it is contended by the Counsel for the respondents no. 1 and 2 that the CVC by its letter dated 20-10-2015 (Annexure R-1/1) has also accepted the report submitted by MoT and had advised the closure of the matter. Thus, the CBI cannot reopen the matter. It is further submitted that the MoT by its letter dated 8-2-2017 (Annexure R-1/2) addressed to Deputy Secretary (HRD) has

informed that the Competent Authority has decided that the above complaint may be closed.

116. Although the note-sheets have not been filed by the Counsel for the respondents no. 1 and 2, but the documents provided in a sealed cover contains note sheets from 3-10-2016 onwards, and once again comments from the respondent no. 8 were called. Thus, it is clear that the MoT was again looking into the allegations made against the respondent no. 8. Further, the CBI has been constituted under the provisions of Delhi Police Establishment Act, whereas CVC has been constituted under Central Vigilance Commission Act, 2003. The CBI is a police station and the CVC is required to give report to the President, and there is nothing on record to suggest that any report, in respect of the present case, was ever submitted to the President. Although CVC exercises powers of superintendence, but the CBI can be directed to start the investigation from the stage where it had left the investigation.

Role of Sh. Vivek Khedkar, Assistant Solicitor General

117. Certain personal allegations have been made by the Petitioner against Sh. Vivek Khedkar, Asstt. Solicitor General. This Court is of the considered opinion that it has no jurisdiction to consider that whether an Advocate has committed a Professional misconduct or not? The Supreme Court by judgment dated 28.01.2019 passed in the case of *R. Muthukrishnan vs. The Registrar General of the High Court of Judicature at Madras* (WRIT PETITION [C] NO.612 OF 2016) has held as under:-

"71. Thus, after the coming into force of the Advocates Act, 1961 with effect from 19-05-1961, matters connected with the enrolment of advocates as also their punishment for professional misconduct is governed by the provisions of that Act only. Since, the jurisdiction to grant license to a law graduate to practice as an advocate vest exclusively in the Bar Councils of the State concerned, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body.

* * *

79. An Advocate who is found guilty of contempt of Court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that Advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case"

118. Thus, it is clear that the question of professional misconduct by an Advocate is within the exclusive domain of the State Bar Council and this Court cannot consider this aspect. However, Shri Vivek Khedkar, ASG, should not have

blindly taken instructions from KP Gautam, who was never authorized by the Union of India as well as the Ministry of Tourism, to act as an OIC. Shri Vivek Khedkar, ASG should have acted, only after receiving instructions from Union of India, and Ministry of Tourism.

Defective Vakalatnama of Shri S.S. Bansal, Counsel for respondents no. 1 and 2

119. It is fairly conceded by the petitioner that any defect in the Vakalatnama is curable and Shri S.S. Bansal had subsequently filed his properly executed Vakalatnama on behalf of the respondents no. 1 and 2.

Whether it was appropriate on the part of the Union of India (MoT) to appoint the OIC working under the respondent no. 8 or in order to maintain transparency the respondents no. 1 and 2 should have appointed a person as OIC who was not under the control of the respondent no.8

120. As already mentioned above, the respondents no.1 and 2 should not have asked the respondent no. 8 to defend on their behalf also. When serious allegations were made against respondent no. 8, then in all fairness, the respondents no. 1, 2 and 9 should have appointed a person as OIC who was not working under the control of the respondent no. 8 and the respondents no. 1, 2 and 9 should have filed their returns/application independently. It is also not known that whether the OIC.s who were working under the control of respondent no. 8 had filed the return or applications on the instruction of the respondents no.1, 2 and 9 or they were filed under the instructions of the respondent no.8? The respondent no. 8 has filed I.A. No.7072/2019 along with certain documents including the photocopy of the petition filed by one Harnarayan Yadav. Similarly, respondents no. 1 and 2 also filed I.A. No. 7066 of 2019 and the same copy of the writ petition filed by one Harnarayan Yadav was also filed. Both the I.A.s were filed on 13-8-2019. When Sh. Saurabh Dixit, the OIC of the case, who is working on the post of Associate Professor and Nodal Officer, IITTM-Gwalior, who was present in the Court was asked about the source of copy of the writ petition filed by Harayana Yadav, then it was replied by him, that the said document was made available by MoT. When Shri Saurabh Dixit was asked to file the covering letter written by MoT, then he kept silence and did not answer. On repeated queries, he submitted that the entire file has already been submitted in sealed cover. The photocopy of the WP filed by Harnarayan Yadav is not available in the documents which were submitted in sealed cover. Further, it is clear from the photocopy of the writ petition filed by respondents no. 1 and 2, that it is the copy of notice which was received by the Director, IITTM- Gwalior. Thus, it is clear that the copy of the writ petition filed by Harnarayan Yadav was not made available by MoT, but still the same was filed. Thus, this Court is of the considered opinion, that the respondents No. 1, 2 and 9 have not contested the case in an independent and fair manner, and possibly the

return and other applications on behalf of respondents no. 1, 2 and 9 were filed on the instructions of respondent no. 8.

IA No. 5508/2017, an Application under Section 195 and 340 of Cr.P.C.

121. None has filed reply to this application.

122. The Supreme Court in the case of *Amarsang Nathaji v. Hardik Harshadbhai Patel*, reported in (2017) 1 SCC 113 has held as under :

5. There are two preconditions for initiating proceedings under Section 340 CrPC:

(i) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b) (i) of sub-section (1) of Section 195 CrPC, and

(ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See *K.T.M.S. Mohd. v. Union of India*). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.

7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In

case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See *Pritish v. State of Maharashtra.*)

123. The High Court of Delhi in the case of *Prem Prakash Dabral Vs. State and others* (CRL. M.A. 17199/2017 in TEST CAS. 40/2012) decided on 15-5-2019 has held as under :

4It must be resorted to only in rare cases where it is absolutely necessary in the interest of justice (*Santokh Singh v. Izhar Hussain*, AIR 1973 SC 2190 and *Patel Laljibhai Somabhai v. State of Gujarat*, AIR 1971 SC 1935).....

124. Certain lapses have been committed by respondents no. 1, 2 and 9 in contesting this petition, and whether it was the respondent no. 8 who was responding through the OIC is a complicated question of fact, therefore, this Court is of the view that at this stage, no action is required against any person under Section 195 and 340 of Cr.P.C. The Supreme Court in the case of *Iqbal Singh Marwah Vs. Meenakshi Marwah* reported in (2005) 4 SCC 370 has held as under :

33. In view of the discussion made above, we are of the opinion that *Sachida Nand Singh* has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in *custodia legis*.

125. Thus, the CBI is also given liberty to look into the conduct of all the OIC's, because none of the document was manipulated while they were in *custodia legis* and thus, the CBI can investigate the conduct of the OICs.

126. Accordingly, I.A. No. 5508/2017, which is an application under Section 195,340 of Cr.P.C. is disposed of accordingly.

Effect of Dismissal of Writ Petition filed by Harnarayan Yadav

127. It is submitted by the Counsel for the respondents no. 1, 2, 9 and 8 that one Harnarayan Yadav, had filed a similar petition before this Court, which was

registered as W.P. No.3854 of 2012 and the said writ petition was dismissed for want of prosecution by order dated 17-6-2016. It is submitted that the address of Harnarayan Yadav and the present petitioner is the same, therefore, it appears that the petition filed by Harnarayan Yadav was a sponsored petition. When a specific question was put to the Counsel for the respondents no. 1, 2, 9 and 8 that whether the dismissal of writ petition No. 3854/2012 in default would have any effect on the present case or not, then it was submitted by them, that the dismissal of W.P. No. 3854/2012 filed by Harnarayan Yadav would not have any adverse effect on the present petition. In view of the said submission made by the Counsel for the respondents no. 1, 2, 9 and 8, this Court does not think it appropriate to deal with this issue any more.

128. So far as the objection of the Counsel for the respondent no. 8 that the petitioner should not have filed the documents along with the list of document is concerned, since the authenticity of any document filed by the petitioner has not been challenged, therefore, at this stage, the objection raised by the respondent no.8 with regard to manner of filing document is ignored. Further, the respondent no. 8 should not have appointed Sh. K.P. Gautam, as Officer-in-charge of the case.

129. All the I.A.s, except IA. No. 6046 of 2018, which were pending are also disposed of. I.A. No. 6046 of 2018, which was for recall of order dated 22-10-2018 is hereby rejected.

Whether any direction can be given against the OIC.s?

130. The respondents have raised an objection that since, none of the OIC has been made a party to this petition, therefore, no allegation made against them can be looked into. The submission made by the respondents is misconceived. The OIC.s have filed their affidavits along with return or applications and the allegations have been made that in fact either they have filed the application(s) without any authority or they were working under the instructions of respondent no. 8. No allegation has been made. Therefore, they are very much party to this litigation. Therefore, their personal conduct in the capacity of OIC can be judged. Thus, the objection raised by the respondents in this regard is hereby rejected.

Conclusion

131. In view of the above discussion, the appointment of the respondent no. 8 to the post of Professor (Tourism) by order dated 30-9- 2003 and regularization by order dated 15th June 2007 (Annexure P/6) are hereby quashed with immediate effect. Similarly, the order dated June 25th, 2014 (Annexure P1/A) by which the respondent no. 8 was appointed to the post of Director IITTM-Gwalior is also hereby quashed with immediate effect. The respondent no. 8 shall cease to hold the office of Director, IITTM-Gwalior with immediate effect.

(ii) This Court has come to a conclusion that the respondent no. 8 had secured appointment to the post of Professor (Tourism) by furnishing incorrect information, and he was not eligible for his appointment to the post of Professor (Tourism). At the time of appointment to the post of Professor (Tourism), the respondent no. 8 was working on the post of Reader, therefore, he shall continue to work on the post of Reader. Consequently, the respondent no. 8 is directed to refund the difference of salary between the pay of Reader and Professor (Tourism)/ Director IITTM-Gwalior, within a period of 3 months from today, failing which the delayed refund would carry the interest at the rate of 6% per annum.

(iii) The CBI is directed to start the investigation from the stage, where it was left by it. The CBI is also directed to investigate that whether all the OIC's, who have filed their affidavits, had actually acted on the instructions of the MoT or not and whether the documents filed along with the return or any other applications were provided by MoT or not and whether the OIC's before filing the return or applications had taken approval from the respondents no. 1, 2 and 9 in writing or not? The CBI is further directed to enquire that whether any enquiry was pending against the respondent no. 8 on 14th June 2014 or not? The CBI is further directed to investigate into the acts of Govt. officials who had facilitated the respondent no. 8 in securing appointment to the post of Professor (Tourism) and Director IITTM-Gwalior. The CBI is further directed to investigate that whether there was any post of Professor in Tourism in IITTM or not?

With aforesaid directions, this petition is **Allowed** with a cost of Rs. 20,000/- payable by the respondent no. 8 to the petitioner. The cost be paid within a period of 3 months from today.

Petition allowed

I.L.R. [2020] M.P. 866 (DB)

WRIT PETITION

Before Mr. Justice Ajay Kumar Mittal, Chief Justice &

Mr. Justice Vijay Kumar Shukla

W.P. No. 2468/2020 (Jabalpur) decided on 10 February, 2020

TECHNOSYS SECURITY SYSTEMS PVT. LTD. (M/S) ...Petitioner

Vs.

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

A. Constitution – Article 226 – Blacklisting – Principle of Natural Justice – Opportunity of Hearing – Petitioner company blacklisted by respondents – Held – No show cause notice issued and no opportunity of hearing was granted to petitioner – Apex Court concluded that an order of

blacklisting has civil consequences and could not be passed without notice – Impugned order is also not a reasoned speaking order – Impugned order quashed – Petition allowed. (Paras 6, 8 & 9)

क. संविधान – अनुच्छेद 226 – काली सूची में नाम डालना – नैसर्गिक न्याय का सिद्धांत – सुनवाई का अवसर – प्रत्यर्थागण द्वारा याची कंपनी का नाम काली सूची में डाला गया – अभिनिर्धारित – याची को न तो कोई कारण बताओ नोटिस जारी किया गया तथा न ही सुनवाई का कोई अवसर प्रदान किया गया था – सर्वोच्च न्यायालय ने निष्कर्षित किया कि काली सूची में नाम डालने के आदेश के सिविल परिणाम होते हैं तथा बिना नोटिस के पारित नहीं किया जा सकता – आक्षेपित आदेश एक तर्कसंगत सकारण आदेश भी नहीं है – आक्षेपित आदेश अभिखंडित – याचिका मंजूर।

B. Words & Phrases – “Speaking Order” – Discussed & explained. (Para 7)

ख. शब्द व वाक्यांश – “सकारण आदेश” – विवेचित व स्पष्ट।

C. Words & Phrases – “Natural Justice” – Discussed & explained. (Para 5)

ग. शब्द व वाक्यांश – “नैसर्गिक न्याय” – विवेचित व स्पष्ट।

Cases referred:

(2005) 6 SCC 321, (1989) 1 SCC 229, (2012) 11 SCC 257, (2014) 14 SCC 731, W.P. No. 22807/2019 decided on 05.11.2019, W.P. No. 2778/2019 decided on 13.02.2019, (2010) 9 SCC 496.

Sanjay K. Agrawal, for the petitioner.

Praveen Dubey, Dy. A.G. for the respondents/State.

ORDER

The Order of the Court was passed by :
V.K. SHUKLA, J. :- The petitioner in the instant writ petition filed under Article 226 of the Constitution of India, has challenged the order dated 04-01-2020 (Annexure P-11), by which the petitioner has been blacklisted by the respondents.

2. The facts adumbrated in nutshell are that the petitioner a Private Limited Company incorporated under the Companies Act, is engaged in the work of supplying security systems and traffic management systems to various Government organizations including the police department and smart city corporations. The respondent nos. 2 and 3 invited tenders for supply of inter alia three Mobile Command and Control Centre. In response to the aforesaid Notice Inviting Tenders (NIT), the petitioner submitted its offer which was accepted and the petitioner was supplied the items vide supply order dated 18-12-2014. It was

mentioned in the supply order that in case the item is not supplied within the stipulated time or during the extended time, the respondents shall be at liberty to cancel the order and blacklist the petitioner. An agreement was executed between the petitioner and the respondents. According to the petitioner, he has duly supplied three Mobile Command and Control Centre to the respondents on 28-07-2015 strictly as per the specifications. The aforesaid vehicles were duly accepted and the respondents conducted a check test of all the three vehicles. It is further pleaded that the petitioner discharged his obligations under the contract strictly in accordance with the terms and conditions of the contract. The contract period ended on 31-07-2018. It is further stated that the petitioner was under obligation to provide warranty to the supply cost and the same was done satisfactorily by him. It is further stated that the petitioner performed his part of the contract of supplying the vehicles and providing warranty over the same. The contract period came to an end on 31-07-2018. It is urged that after more than one and half years from the date of determination of contract, the impugned order dated 04-01-2020 was issued, whereby the petitioner has been blacklisted for a period of one year on the ground that the petitioner did not resolve the issues pertaining to the vehicles supplied by it before expiry of the warranty period.

3. The aforesaid order of blacklisting has been challenged on the ground that the impugned order of blacklisting has been passed without affording any opportunity of hearing to the petitioner. No show cause notice or opportunity of hearing was afforded to the petitioner before passing the impugned order of blacklisting. It is further argued that the impugned order is a non-speaking order passed without assigning any reason. Learned counsel for the petitioner further contended that the order of blacklisting entails serious civil consequences inter alia depriving the petitioner from freedom to do trade and profession thereby violating the rights guaranteed in the Constitution of India, therefore, the said order could not have been passed without following the principles of natural justice.

4. Learned Counsel for the State supported the order of blacklisting and stated that since the petitioner has violated the terms and conditions of the agreement, therefore, the order of blacklisting was passed by the respondents.

5. The Apex Court in the case of *Canara Bank v. V.K. Awasthy*, (2005) 6 SCC 321, has held that the natural justice is another name of common sense justice. The Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. The expressions 'natural justice' and 'legal justice' do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. The relevant extracts of the said decision read as under:-

8. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilised States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works*, (1863) 143 ER 414 the principle was thus stated:

"[E]ven God himself did not pass sentence upon Adam, before he was called upon to make his defence, 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?'"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

11. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

6. In the case of *Raghunath Thakur v. State of Bihar*, (1989) 1 SCC 229, it is held that an order of blacklisting has the civil consequences and could not be passed without notice. In another case of *Patel Engg. Ltd. Vs. Union of India* reported in (2012) 11 SCC 257, the Court held that State is to act fairly and rationally without in any way being arbitrary thereby such a decision can be taken for some legitimate purpose. In the case of *Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Ltd. and others* (2014) 14 SCC 731, the Court held that order of permanent black listing the Contractor from entering into contracts making supplies tantamounts to rendering the Contractor jobless and economically defunct. The same view has been taken by a Co-ordinate Bench of this court in W.P.No.22807/2019 (*M/s Aicons Engineering Pvt. Ltd. Vs. State of M.P. and others*) decided on 05-11-2019 and W.P. No.2778/2019 (*UMC Technologies Private Limited Vs. Food Corporation of India and another*, decided on 13-02-2019).

7. This aspect of the matter has also been considered by the Supreme Court in the case of *M/s Kranti Associates Pvt. Ltd. and another v. Sh. Masood Ahmed Khan and others*, (2010) 9 SCC 496 wherein it is laid down that judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially. It is further held that insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done, it must also appear to be done as well. The relevant extracts from the said judgment are reproduced as under:-

"14. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of writ of certiorari, referred to orders with errors on the face of the record and

pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol. 4 Appeal Cases 30 at 40 of the Report).

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a sphinx'.

*** **

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice

delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor* (1987) 100 Harward Law Review 731-37).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain* (1994) 19 EHRR 553, at 562 para 29 and *Anyia vs. University of Oxford*, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

8. Apparently, in the present case, no show cause notice was issued to the petitioner with regard to blacklisting in respect of which the impugned order has been passed. Further, it does not satisfy the test of being a reasoned speaking order.

9. In view of the foregoing reasons, the present petition is **allowed** and the order dated 04.01.2020 (Annexure P-11) is hereby quashed. However, liberty is granted to the respondents to pass a fresh speaking order in accordance with law after affording an opportunity of hearing to the petitioner. Needless to say, anything observed herein before, shall not be construed as expression of opinion on the merits of the controversy.

Petition allowed

I.L.R. [2020] M.P. 873**WRIT PETITION***Before Mr. Justice Vivek Rusia*

W.P. No. 18284/2018 (Indore) decided on 11 February, 2020

HUSSAINABAI (SMT.)

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

A. Service Law – Date of Birth – Correction – Held – Even if birth certificate found to be genuine, petitioner not entitled for correction of date of birth because she applied at fag end of her service and she failed to prove that there was any clerical error or negligence on part of employee while recording the same in service book – No case for interference – Petition dismissed. (Para 12)

क. सेवा विधि – जन्म तिथि – सुधार – अभिनिर्धारित – यद्यपि जन्म प्रमाण-पत्र वास्तविक पाया गया हो, याची जन्म तिथि में सुधार करवाने के लिए हकदार नहीं है क्योंकि उसने अपनी सेवा के अंतिम भाग में आवेदन किया है तथा वह यह साबित करने में विफल रही है कि सेवा पुस्तिका में उक्त को अभिलिखित करते समय कर्मचारी की ओर से कोई लेखन की गलती अथवा उपेक्षा थी – हस्तक्षेप का प्रकरण नहीं – याचिका खारिज।

B. Financial Code No.1 (M.P.), Rule 84 & 85 – Date of Birth – Correction – Held – Apex Court concluded that in view of Rule 84 of the Code, date of birth recorded in service book at the time of entry in service is conclusive and binding on Govt. servant except if there is any clerical mistake or negligence on part of that other employee who is recording the same in service book. (Para 8)

ख. वित्तीय संहिता क्र. 1 (म.प्र.), नियम 84 व 85 – जन्म तिथि – सुधार – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि संहिता के नियम 84 को दृष्टिगत रखते हुए, सेवा में प्रवेश करने के समय सेवा पुस्तिका में अभिलिखित की गई जन्म तिथि निश्चयक है तथा शासकीय सेवक पर बाध्यकारी है सिवाय इसके कि उस अन्य कर्मचारी की ओर से, जो कि सेवा पुस्तिका में उक्त को अभिलिखित कर रहा है, कोई लेखन संबंधी भूल अथवा उपेक्षा हो।

Cases referred:

(2011) 9 SCC 664, C.A. No. 1009/2020 decided on 05.02.2020 (Supreme Court).

R.R. Trivedi, for the petitioner.

Mayank Purohit, G.A. for the respondent Nos. 1 to 3/State.

Abhishek Tugnawat, for the respondent No. 4.

ORDER

VIVEK RUSIA, J. :- The petitioner has filed the present petition challenging the validity of order dated 09.07.2018; whereby respondent No.4 has rejected representation and declined to correct the date of birth recorded in the service book.

2. Facts of the case in short are as under :-

The petitioner was initially appointed on the post of Safai Daroga vide order dated 01.07.1979. At the time of entry into the service a service book was prepared in which her date of birth was recorded as 27.06.1956 and she put the thumb impression on it. On 24.07.2017, the petitioner filed an affidavit to the effect that her correct date of birth is 08.12.1959 but same is wrongly recorded in the service book, which is liable to be corrected. The respondent No.3 vide letter dated 23.03.2018 informed the petitioner that she is going to be retire from the service on 30.06.2018 upon attaining the age of superannuation i.e. 62 years. The petitioner submitted a representation to the respondent No.1 for correction of her date of birth. In support of her claim she submitted a Birth Certificate issued by Nagar Palika, Shirpur, District Dhule (Maharashtra). The C.M.O. vide letter dated 01.03.2018 sought a direction from the Joint Director. In reply the Joint Director vide letter dated 16.04.2018 has directed C.M.O. to get the Birth Certificate verified from the competent authority and if it is found to be genuine then proposal be sent for further proceeding. Vide letter dated 27.04.2018 the C.M.O., Nagar Parishad, Kasravad requested the C.M.O., Nagar Parishad, Shirpur to do the physical verification of birth register and verify the entries made in the Birth Certificate.

3. According to the petitioner, Nagar Parishad, Shirpur have got verified the Birth Certificate of the petitioner to be correct and accordingly the C.M.O. vide letter dated 24.05.2018 sought a further direction from the Joint Director, Urban Administration and Development for correction of Date of Birth. According to the petitioner despite the aforesaid verification the respondent No.1 has wrongly rejected the claim of the petitioner in light of the Rule 84 and 85 of M.P. Financial Code No.1.

4. Being aggrieved by the aforesaid order, petitioner filed the present petition.

5. After notice the respondent No.4 has filed the return by submitting that the petitioner was found negligent while performing the duties, therefore, she was placed under suspension, thereafter she submitted an apology and the suspension was revoked, hence, her service record is not clear and unblemished as she is claiming. It is further submitted that under Rule 84 and 85 of M.P. Financial Code No.1, the date of birth which was entered in the service book, will be final and no

correction in the same will be permissible except the clerical mistake. The petitioner herself has admitted in her application dated 21.03.2018 that at the time of joining service the date of birth was registered as per her own disclosure since the correct date of birth was not known to her, therefore, there was no clerical error regarding the date of birth, hence, no permission is permissible. Hence, the petition is liable to be dismissed.

6. I have heard learned counsel for the parties.

7. Shri R.R.Trivedi, learned counsel for the petitioner submits that once the respondents have got verified the Birth Certificate of the petitioner in which the correct date of birth is recorded as 08.12.1959 then they ought to have corrected the date of birth. She is an illiterate lady, therefore, she was not aware about the recording of her date of birth as 27.06.1956 in the service book. She was appointed as Class-IV employee and retired as Class-IV employee. There was no promotion or any benefit in the service given to her, therefore, she had no occasion to inspect the service book. Just before the retirement she came to know that her date of birth is wrongly recorded in the service book and still she has two and half years' of service. In support of her contention, learned counsel is relying on the judgment passed by the Apex Court in the case of *State of M.P. & Others V/s. Premal Shrivastava* reported in (2011) 9 SCC 664 in which specially the observation is made in Para 8.

8. The petitioner was appointed as Safai Daroga on 01.07.1979 being a family member of Smt. Nazeembai, who left the service being incapacitated on 3rd September, 1975. At the time of entering into the service her date of birth was recorded 27.06.1956 in the service book which the petitioner did not dispute. According to the petitioner, she was not having any proof of date of birth at that time, therefore, on the basis of assumption she disclosed her date of birth and same was recorded in the service book. In the year 2017 she obtained Birth Certificate from Municipal Council, Shirpur Varvade to establish that her date of birth is 08.12.1959. According to the petitioner, date of birth is recorded in Birth Certificate after obtaining information from the original record of birth. The petitioner obtained this Certificate on 06.07.2017 and thereafter submitted a representation for correction of date of birth. Though the respondents have got verified the validity of the aforesaid Certificate but declined to correct the date of birth in view of the provisions of Rule 84 and 85 of M.P. Financial Code No.1. The aforesaid provision of financial code came up for consideration before the Apex Court in the case of *State of M.P. & Others V/s. Premal Shrivastava* (supra) in which it has been held that it is manifest from the bare reading of Rule 84 of M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the Government servant. It is clear that the said Rule has been made in order to limit the scope of correction of date of birth in

the service record. Obviously, only that the clerical error or mistake would fall within the ambit of the said Rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction and no evidence has been placed on record by the employee to show that the date of birth recorded was due to negligence of some other person. It has also been observed that the delay of over two decades in applying for the correction of date of birth is ex facie fatal.

9. Para 12, 13, 14, 15, 16 and 17 of the judgment passed in *State of M.P. & Others V/s. Premlal Shrivastava* (supra) are reproduced below :-

"12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex-facie fatal to the case of the Respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the Respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the Respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the Appellants were duty bound to correct the clerical error in recording of his date of birth in the service book.

13. Rule 84 of the M.P. Financial Code, heavily relied upon by the Respondent reads as under :-

Rule 84. Every person newly appointed to a service or a post under Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as a matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under Rule 85 should be recorded in the history of service; Service book or any other record that may be kept in respect of the Government servant's service under Government. The date of birth, once recorded in this manner, must be deemed to be absolutely conclusive, and except in the case of a clerical error no revision of such a declaration shall be allowed to be made at a later period for any purpose whatever.

14. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. It is clear that the said rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been carved out in the rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction. Onus is on the employee concerned to prove such negligence.

15. In *Commissioner of Police, Bombay and Anr. v. Bhagwan V. Lahane*, this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which the relief should not be granted to him.

16. Again, in *Union of India v. C. Rama Swamy and Ors.*, it has been observed that a bonafide error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded.

17. As aforesaid, in the instant case, no evidence has been placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person. He had failed to show that the date of birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him. We hold that in this fact situation the High Court ought not to have directed the Appellants to correct the date of birth of the Respondent under Rule 84 of the said Rules."

10. Therefore, the judgment cited by the petitioner goes against her because she has not established that the date of birth recorded in the service book was due to the negligence or want of proper care on part of some other employee.

11. The issue of correction of date of birth at the fag end of service came up before the Apex Court recently in the case of *Bharat Coking Coal Ltd. & Others V/s. Shyam Kishore Singh* (Civil Appeal No.1009/2020) decided on 5th February, 2020, in which the Apex Court has held that,

"..... merely because a verification was made from the Bihar School Examination Board and even if it was confirmed that the date of birth was 20.01.1955 such change at that stage was not permissible.

8. This Court has consistently held that the request for change of the date of birth in the service records at the fag end of service is not sustainable. The learned Additional Solicitor General has in that regard relied on the decision in the case of *State of Maharashtra and Anr. vs. Gorakhnath Sitaram Kamble & Ors.* (2010) 14 SCC 423 wherein a series of the earlier decisions of this Court were taken note and was held as hereunder :-

"16. The learned counsel for the appellant has placed reliance on the judgment of this Court in *U.P. Madhyamik Shiksha Parishad v. Raj Kumar Agnihotri* [(2005) 11 SCC Page 9 of 16 465 : 2006 SCC (L&S) 96]. In this case, this Court has considered a number of judgments of this Court and observed that the grievance as to the date of birth in the service record should not be permitted at the fag end of the service career.

17. In another judgment in *State of Uttaranchal v. Pitamber Dutt Semwal* [(2005) 11 SCC 477 : 2006 SCC (L&S) 106] relief was denied to the government employee on the ground that he sought correction in the service record after nearly 30 years of service. While setting aside the judgment of the High Court, this Court observed that the High Court ought not to have interfered with the decision after almost three decades.

19. These decisions lead to a different dimension of the case that correction at the fag end would be at the cost of a large number of employees, therefore, any correction at the fag end must be discouraged by the court. The relevant portion of the judgment in *Home Deptt.v. R.Kirubakaran* [1994 Supp (1) SCC 155 : 1994 SCC (L&S) 449 : (1994) 26 ATC 828] reads as under: (SCC pp. 158-59,para 7)

"7. An application for correction of the date of birth [by a public servant cannot be entertained at the fag end of his service]. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer

irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotion forever. ... According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. ... the onus is on the applicant to prove the wrong recording of his date of birth, in his service book.

9. This Court in fact has also held that even if there is good evidence to establish that the recorded date of birth is erroneous, the correction cannot be claimed as a matter of right. In that regard, in *State of M.P. vs. Premal Shrivastava*, (2011) 9 SCC 664 it is held as hereunder;

"8. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag end of his career, the court or the tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless the court or the tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the court or the tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction

of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No court or the tribunal can come to the aid of those who sleep over their rights (see *Union of India v. Harnam Singh* [(1993) 2 SCC 162 : 1993 SCC (L&S) 375 : (1993) 24 ATC 92]).

12. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is *ex facie* fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty-bound to correct the clerical error in recording of his date of birth in the service book."

10. The learned Additional Solicitor General has also relied upon the decision of this Court in the case of *Factory Manager Kirloskar Brothers Ltd. vs. Laxman* in SLP (C) Nos.25922593/2018 dated 25.04.2019 wherein the belated claim was not entertained. Further reliance is also placed on the decision of this Court in the case of *M/s Eastern Coalfields Ltd. & Ors. vs. Ram Samugh Yadav & Ors.* in C.A.No.7724 of 2011 dated 27.05.2019 wherein this Court has held as hereunder :-

"Nothing is on record that in the year 1987 when the opportunity was given to Respondent No.1, to raise any issue/dispute regarding the service record more particularly his date of birth in the service record, no such issue/dispute was raised. Only one year prior to his superannuation, Respondent No.1 raised the dispute which can be said to be belated dispute and therefore, the learned Single Judge as well as the employer was justified in refusing to

accept such an issue. The Division Bench of the High Court has, therefore, committed a grave error in directing the appellant to correct the date of birth of Respondent No.1 in the service record after number of years and that too when the issue was raised only one year prior to his superannuation and as observed hereinabove no dispute was raised earlier."

12. Therefore, in view of the aforesaid verdict given by the Apex Court even if the Birth Certificate is found to be genuine as claimed by the petitioner, she is not entitled for correction of date of birth because she applied at the fag end of service and she has failed to prove that there was any clerical error or negligence on part of some employee while recording the date of birth in the service book. Hence, no case for interference is made out. Petition is accordingly **dismissed**.

Petition dismissed

I.L.R. [2020] M.P. 881 (DB)

WRIT PETITION

*Before Mr. Justice Ajay Kumar Mittal, Chief Justice &
Mr. Justice Vijay Kumar Shukla*

W.P. No. 19538/2019 (Jabalpur) decided on 24 February, 2020

DIGVIJAY SINGH

...Petitioner

Vs.

STATE OF M.P. & ors.

...Respondents

(Alongwith W.P. Nos. 21058/2019 & 24049/2019)

A. Panchayat Raj Evam Gram Swaraj Adhinyam, M.P. 1993 (1 of 1994), Section 30 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 5 – Delimitation – Objections – Opportunity of Hearing – Held – Till it is established that objections were not invited and no hearing was provided to objectors, order of delimitation cannot be interfered with, especially in absence of any allegation of *malafide* – In instant case, record shows that objections were invited and after considering the same, order has been passed – No allegation of *malafide* or prejudice – No illegality in impugned notification – Petition dismissed. (Paras 8 & 11)

क. पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 30 एवं पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 5 – परिसीमन – आपत्तियां – सुनवाई का अवसर – अभिनिर्धारित – जब तक यह स्थापित नहीं हो जाता कि आपत्तियां आमंत्रित नहीं की गई थी तथा आपत्ति करने वालों को सुनवाई का अवसर प्रदान नहीं किया गया

था, परिसीमन के आदेश के साथ हस्तक्षेप नहीं किया जा सकता, विशेष रूप से दुर्भावना के किसी अभिकथन के अभाव में – वर्तमान प्रकरण में, अभिलेख यह दर्शाता है कि आपत्तियां आमंत्रित की गई थीं तथा उक्त पर विचार करने के पश्चात्, आदेश पारित किया गया – दुर्भावना या प्रतिकूल प्रभाव का कोई अभिकथन नहीं – आक्षेपित अधिसूचना में कोई अवैधता नहीं – याचिका खारिज।

B. Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994), Section 30 and Panchayat Nirvachan Niyam, M.P., 1995, Rule 5 – Delimitation – Competent Authority – Held – U/S 30 of 1993 Adhiniyam, power is vested with the State Government – Vide notification, power was conferred on Commissioner – Thus, for Jila Panchayat, Commissioner has been designated as competent authority. (Para 6)

ख. पंचायत राज एवं ग्राम स्वराज अधिनियम, म.प्र. 1993 (1994 का 1), धारा 30 एवं पंचायत निर्वाचन नियम, म.प्र. 1995, नियम 5 – परिसीमन – सक्षम प्राधिकारी – अभिनिर्धारित – 1993 के अधिनियम की धारा 30 के अंतर्गत, राज्य सरकार को शक्ति निहित है – अधिसूचना द्वारा, आयुक्त को शक्ति प्रदत्त की गई थी – अतः, जिला पंचायत के लिए, आयुक्त सक्षम प्राधिकारी के रूप में नामनिर्दिष्ट किया गया है।

Cases referred:

1995 Suppl. (2) SCC 305, 2005 (1) J LJ 295.

Swapnil Ganguly, Rajmani Mishra and A.S. Parihar, for the petitioners.

Shashank Shekhar, A.G. with Himanshu, G.A. for the respondents/
State.

ORDER

The Order of the Court was passed by :
VIJAY KUMAR SHUKLA, J. :- Regard being had to the similitive of the atters as they involve common question of fact and law they are being decided by the common order. For the sake of convenience the facts are noted from W.P. No.19538/2019 - Digvijay Singh Vs. State of M.P.

2. These petitions are filed under Article 226 of the Constitution of India challenging the legality and validity of the final notification (Annexure P/1) passed by the respondent No.2, Commissioner, Sagar Division, Sagar, whereby the 15 constituencies in respect of the Jila Panchayat have been formed. The said notification is mainly challenged on the ground that the Commissioner is not the competent authority as per the provisions of Rule 5 of the *Madhya Pradesh Panchayat Nirvachan Niyam, 1995* (hereinafter referred as 'Niyam 1995') framed under the provisions of *Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993* (hereinafter referred as 'Adhiniyam, 1993').

3. It is further urged that initially the objections were sought for formation of only 13 Constituencies and the petitioners did not have any objection regarding the formation of 13 Constituencies for Jila Panchayat and therefore, they did not file objection but when the number of 13 Constituencies was changed from 13 Constituencies to 15 Constituencies, the petitioners made representation but the same has neither been considered nor decided.

4. Counsel for the respondents raised preliminary objection regarding the maintainability of the petition on the ground that matter relates to delimitation, therefore, the petition cannot be entertained in view of the constitutional bar under Article 243-O of the Constitution of India and also placed reliance on the judgment passed by the Supreme Court in the case of *State of U.P. Vs. Pradhan Sangh Kshetra Samiti and others* reported in 1995 Suppl.(2) SCC 305. It was also argued that the Commissioner is the competent authority and the objections submitted in pursuant to the preliminary notification were considered by the Competent Authority. The procedure prescribed under the provisions of Adhiniyam, 1993 and the Niyam, 1995 have been followed.

5. We have heard learned counsel for the parties and perused the record. We do not find any merit in the writ petition with regard to the submission that Commissioner is not the Competent Authority and as per Rule 5 of Niyam, 1995, the Collector is the authority. To appreciate the aforesaid submissions, it would be expedient to reproduce the provisions of Section 30 of the Adhiniyam, 1993 which reads as under :-

"30. Division of district into constituencies. - (1)

Subject to the provisions of sub-section (2), the State Government shall by notification divide a district into such number of constituencies that each constituency shall have as far as practicable, a population of fifty thousand and every constituency shall be a single member constituency

Provided that where the population of a District is less than five lacs, it shall be divided into not less than ten constituencies and the population of each constituency shall as far as practicable, be the same in each constituency :

Provided further that the total number of constituencies shall not exceed thirty five.

(2) The ratio between the population of the territorial area of the Zila Panchayat and number of constituencies in such Zila Panchayat area, shall, as far as practicable, be the same throughout the State.

(3) (i) Seats shall be reserved for,-

(a) the Scheduled Castes; and

(b) the Scheduled Tribes, in every Zila Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Zila Panchayat as the population of the Scheduled Castes or the Scheduled Tribes in that Zila Panchayat area bears to the total population of that area and such seats may be allotted by the prescribed authority [x x x] to different constituencies in that Zila Panchayat in the prescribed manner:

[Provided that for the purpose of computing the number of seats to be reserved for Scheduled Tribes in the Zila Panchayat, other than the Scheduled Areas forming part of that district, the total population of the Scheduled Areas falling within that district and the population of Scheduled Tribes therein shall be excluded.]

(ii) In the Zila Panchayat where fifty per cent or less than fifty per cent seats have been reserved both for Scheduled Castes and Scheduled Tribes, twenty five per cent seats of the total number of seats shall be reserved for Other Backward Classes and such seats shall be allotted by rotation to different constituencies by the Collector, in the prescribed manner.

(4) Not less than [half] of the total number of seats so reserved shall be reserved, for women belonging to the Scheduled Castes or, the Scheduled Tribes or Other Backward Classes, as the case may be.

(5) Not less than [half] (including the number of seats reserved for women belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes) of the total number of seats to be filled by direct election of Zila Panchayat shall be reserved for women and seats may be allotted by the prescribed authority by drawing lots and by rotation to different constituencies in a Zila Panchayat in the prescribed manner.

[x x x]

[(6) The constituencies which have no population of - Scheduled Castes, Scheduled Tribes or Other Backward

Classes shall be excluded for allotment of seats reserved for Scheduled Castes or Scheduled Tribes or Other Backward classes, as the case may be.]

6. Under Section 30 aforesaid, the power is vested with the State Government. Learned Advocate General has produced the copy of notification by which the power has been conferred by the State Government on the Commissioner. Thus, the Commissioner is the competent authority who is higher in rank than the Collector. Keeping in view the provisions of Section 30 of the Adhiniyam, 1993, the Circular dated 22.06.2019 issued by the State Government has been placed on record as Annexure P/4 by which for Jila Panchayat, the Commissioner has been designated as the competent authority.

7. The State Government has filed the reply and submitted that after the initial preliminary notification, the corrigendum was issued with regard to delimitation of the Village Panchayat/ Jila Panchayat. The objections were received and after consideration of the objections, decision was taken by the competent authority in respect of Gram Panchayat. Copy of the decision and objections has been placed along with the return as Annexure R/3. The respondents have further stated that the action of the respondents regarding extension of Jila Panchayat wards is in consonance with the Clause 6.4 of the Circular dated 22.6.2019 which specifically provides that in a Jila Panchayat there can be minimum 10 wards and maximum 35 wards. The procedure prescribed under the Adhiniyam, 1993 and the Niyam, 1995 was strictly followed while issuing the final notification. The final notification was issued on 6.9.2019 which was published in format 4(B) in the Madhya Pradesh Gazette Notification dated 4.10.2019. It is contended that there is no procedural illegality in the power exercised by the respondents and there is no allegation of malafides.

8. In view of the above, in our opinion the respondents have issued the preliminary notification and after inviting and considering the objections, the final notification had been issued in accordance with the procedure prescribed under the Adhiniyam, 1993 and Niyam, 1995. There is no allegation of malafide and prejudice.

9. The issue raised in this petition has been decided by Hon'ble Supreme Court in *State of U.P. and others v. Pradhan Sangh Kshetra Samiti and others* [(1995) Supp 2 SCC 305] wherein it is held:

"45. What is more objectionable in the approach of the High Court is that although clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such

constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this connection, refer to a decision of this Court in *Meghraj Kothari v. Delimitation Commission* [(1967) 1 SCR 400]. In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of sections 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any court of law. There was a very good reason for such a provision because if the orders made under sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Although an order under Section 8 or Section 9 of the Delimitation Commission Act and published under Section 10 (1) of that Act is not part of an Act of Parliament, its effect is the same. Section 10 (4) of that Act puts such an order in the same position as a law made by the Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-O in place of Article 327 and sections 2 (kk), 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged

grievances although the challenge was made after the notification for the election was issued on 31st August, 1994."

10. Similar challenge vide Public Interest Litigation came up for consideration in *Pranay Gupta v. State of M.P. and others* [2005 (1) J.L.J. 295] wherein the relief was negated. It was held by their Lordships:

"22. To conclude, we have desisted from interfering in the matter in spite of the absurdity of notifications dated 3.7.2004 requiring objections to be filed by 8.7.2004, being published in the Gazette dated 9.7.2004, for the following reasons : (i) No resident of any of the villages/areas which are the subject-matter of the notifications under section 125 (1) has challenged the notifications on the ground that he did not have notice of the proposals or on the ground that he did not have opportunity to file objections/suggestions. On the other hand several persons who had notice of the proposal on account of its display on the notice-boards of the Gram Panchayats and in conspicuous places of the affected areas, appear to have filed objections and those objections are stated to have been considered; (ii) The petitioner though espousing a public cause does not say nor in a position to assert that proposals were not published by affixture on the notice boards of the respective Gram Panchayats and in other conspicuous places, (iii) The Publication of the proposal by affixture at Gram Panchayat Notice Board and other conspicuous places, if properly done with sufficient time to file objections/suggestions, it would amount to substantial compliance in regard to the requirement of the publication; and (iv) the question whether there was such substantial compliance or not, in any given case, does not arise for our consideration in this Public Interest Litigation. The assumption of the petitioner that mere defect in publication of the proposals in the Gazette would be sufficient to nullify the entire process of effecting alterations under section 125 (1) is however incorrect and baseless. There is, therefore, no need to direct re-initiation of the process of publication of proposal inviting objections/suggestions under the proviso to section 125 (1), nor any ground to quash the notification under section 125 (1), on the ground of defect in publication of the proposals in the Gazette."

11. Therefore, till it is established that the objections were not invited and no hearing had been provided to the objectors, order of delimitation can not be interfered with, especially in the absence of any allegation of malafide. However, in the case at hand, it is evident from cogent material document placed on record that before passing the impugned order, the Competent Authority had invited the objections and after taking decision thereon has issued the impugned notification.
12. In view whereof we do not perceive any illegality in passing the impugned order as would warrant an indulgence.
13. Consequently, petitions fails and are **dismissed**. No costs.

Petition dismissed

I.L.R. [2020] M.P. 888 (DB)
WRIT PETITION

*Before Mr. Justice Ajay Kumar Mittal, Chief Justice & Mr. Justice Vijay
 Kumar Shukla*

W.P. No. 3694//2019 (Jabalpur) decided on 25 February, 2020

ASHUTOSH PANDEY

...Petitioner

Vs.

THE MANAGING DIRECTOR, MPRTC & ors.

...Respondents

(Alongwith W.P. Nos. 5786/2019, 7785/2019, 8891/2019, 9480/2019, 9848/2019, 10609/2019, 11102/2019, 11103/2019, 12133/2019, 15085/2019, 17741/2019, 20133/2019, 21857/2019, 25193/2019 & 25736/2019)

A. Road Transport Corporation Act (64 of 1950) – Service Regulation, No. 59 – Age of Superannuation – Held – Division Bench of this Court considering Service Regulation No. 59 had concluded that employee could be retired after attaining age of 58 years – Corporation had option to retain an employee upto age of 60 years, but no vested right is created in favour of employee to continue upto 60 years – Petition dismissed. (Para 8)

क. सड़क परिवहन निगम अधिनियम (1950 का 64) – सेवा विनियमन, क्र. 59 – अधिवर्षिता की आयु – अभिनिर्धारित – इस न्यायालय की खंड न्यायपीठ ने सेवा विनियमन क्र. 59 पर विचार करते हुए यह निष्कर्षित किया था कि कर्मचारी 58 वर्ष की आयु पूर्ण करने के पश्चात् सेवानिवृत्त हो सकता है – निगम के पास एक कर्मचारी को 60 वर्षों की आयु तक सेवा पर बनाए रखने का विकल्प था, परंतु 60 वर्षों तक सेवा जारी रखने हेतु कर्मचारी के पक्ष में कोई निहित अधिकार सृजित नहीं होता है – याचिका खारिज।

B. Service Law – Age of Superannuation – Enhancement – Grounds – Held – Documents on record shows that Corporation has not

adopted the Circular or amendment made in FIR regarding age of superannuation of State Government employees, thus such Circulars are not *ipso facto* applicable to employees of Corporation – They cannot claim equality with Government employees in respect of age of superannuation.

(Para 13)

ख. सेवा विधि – अधिवर्षिता की आयु – वृद्धि – आधार – अभिनिर्धारित – अभिलेख पर मौजूद दस्तावेज यह दर्शाते हैं कि निगम ने राज्य सरकार के कर्मचारीगण की अधिवर्षिता की आयु के संबंध में परिपत्र अथवा मूल नियमों में किये गये संशोधन को अंगीकृत नहीं किया, अतः उक्त परिपत्र निगम के कर्मचारीगण पर स्वतः लागू नहीं होंगे – अधिवर्षिता की आयु के संबंध में वे सरकारी कर्मचारियों के साथ समानता का दावा नहीं कर सकते।

C. Service Law – Age of Superannuation – Fixation of – Held – In respect of fixation of age of superannuation, Apex Court concluded that it is a policy decision and is within the wisdom of Rule making authority, thus judicial review in such administrative action is not called for. (Para 12)

ग. सेवा विधि – अधिवर्षिता की आयु – का निर्धारण – अभिनिर्धारित – अधिवर्षिता की आयु के निर्धारण के संबंध में, सर्वोच्च न्यायालय ने यह निष्कर्षित किया है कि यह एक नीति विनिश्चय है तथा नियम बनाने वाले प्राधिकारी के प्रज्ञान के भीतर है, इसलिए उक्त प्रशासनिक कार्य में न्यायिक पुनर्विलोकन की आवश्यकता नहीं है।

Cases referred:

Special Leave to Appeal (C) No. (s) 32869/2017 and SLP (C) No. 32870/2017 order passed on 05.02.2019 (Supreme Court), (1991) 1 MPJR 327, W.A. No. 246/2013 decided on 16.12.2013, (2007) 11 SCC 58, (2010) 7 SCC 643.

Vibha Pathak, Ajay Pratap Singh, Ashok K. Gupta, Sanjay Kumar Verma and Rajendra Nath Roy, for the petitioners.

P.K. Mishra, for the M.P. State Road Transport Corporation.

H.S. Chhabra, G.A. for the respondents/State.

ORDER

The Order of the Court was passed by: **VIJAY KUMAR SHUKLA, J.:-** Regard being had to the similitive of the issue involved in the bunch of petitions, they are being decided by the common order. For the sake of convenience the facts are noted from W.P. No.3694/2019 - Ashutosh Pandey & 2 others Vs. The Managing Director, M.P. Road Transport Corporation and others.

2. The petitioners who are working on different posts like Personal Assistant (Junior Stenographer), Supervisor and Conductor in the M.P. Road Transport Corporation (hereinafter referred in short as 'MPRTC'), have challenged the orders of the respondents retiring them on the completion of the age of 58 years instead of 60 years and further it has been claimed that the age of superannuation should be treated as 62 years in the light of the recent amendment by the State Government in respect of the Government servants. The following reliefs have been claimed :-

" A. Issue writ in the nature of certiorari and they may kindly the impugned order dated 7.5.2018 (Annexure P/1, P/2 and P/3) be quashed.

B. That the respondents be directed to comply the order of Apex Court dated 5.2.2019 (Ann. P/6) and till than the petitioner be continued in service.

C. Any other relief which this Hon'ble Court deems fit and proper including the cost of the petition looking to the facts and circumstances of the case may be granted in the interest of justice."

3. The petitioners are employees of MPRTC. The said Corporation is an independent Autonomous body constituted under the Road Transportation Corporation Act, 1950. It is undertaking of the State of Madhya Pradesh and is governed by its own Rules and Regulations.

4. Before adverting to the principle issue regarding fixation of age of superannuation, it is apt to mention that the Corporation has stated in the reply that it has sustained heavy losses and situation has reached to the extent whereby the corporation is unable to pay salary of the employees for months together as such it has resulted into multifarious litigation. The State Government considering the financial status of the Corporation has resolved to close down the Corporation. In view of the decision made by the State Government to close down the Corporation, a scheme dated 01.07.2005 known as "voluntary Retirement Scheme, 2005" was launched wherein application had been invited for option to be submitted during the period from 01.07.2005 to 01.08.2005. The Purpose of the scheme was to provide financial help and also rehabilitation to those employees who were proposed to be terminated due to closer of the Corporation and financial crisis. The scheme was extended from 12.10.2006 to 28.10.2006. About 90% to 95% of the employees of the Corporation opted under the scheme and retired from service. The Corporation is in winding up process and since there was no source of income, all the property of the Corporation was seized and attached with the State Government or to Finance Company or Bank. At present near about 2% -3% employees are working in the department. It is axiomatic that the financial condition of the Corporation is stringent.

5. Counsel for the petitioners urged that as per the recommendations of 5th Central Pay Commission (CPC), the petitioners are entitled for the enhanced age of superannuation. It was contended that the Apex Court in its order dated 5.2.2019 passed in Special Leave to Appeal (C) No.(s) 32869/2017 and SLP (C) No.32870/2017 (*Rajya Parivahan Karmchhari Mahasangh Vs. M.P. Road Transport Corporation and others*) directed the State Government and the MPRTC to take a decision regarding extension of benefit of the 5th Pay Commission. The petitioners have also placed reliance on a Circular dated 27.04.2018 issued by the Finance Department of the State of M.P., whereby the age of superannuation has been enhanced from 60 to 62 years in respect of the employees working in the Corporation/ Board of the State of Madhya Pradesh. Support was also gathered from the judgment of learned Single Judge in W.P. No.15991/2018 (*Amirruddin Akolawal Vs. Department of Food & Supplies and others*). It was next contended that the Service Regulations framed by the Corporation would not apply to them.

6. Combatting the aforesaid submissions, learned counsel for the respondents/ Corporation submitted that the services of the Corporation employees were not absorbed in the State Government and they are still governed by the Regulation 59 of the Service Regulation framed in exercise of the powers under the Road Transport Act, 1950. The issue regarding the age of superannuation in respect of the employees of the Corporation is no longer res integra in view of decision of the Division Bench in W.A. No.246/2013 (*Heera Singh Narwariya Vs. State of M.P. & Others*) decided on 16.12.2013 and in the number of other writ petitions bearing W.P. No.2659/2013 - *Heera Singh Narwariya Vs. State of M.P. And others* decided on 25.4.2013; W.P. No.2767/2015 - *Gangaram and others Vs. The State of M.P. and others* decided on 21.1.2016 and W.P. No.4339/2016 - *Shrikant Tiwari Vs. State of M.P. and others* decided on 1.4.2016.

7. We have heard learned counsel for the parties. There is no document on record to show that the services of the petitioners have been absorbed in the Government service. The services of the petitioners who are employees of the Corporation are governed by the Regulations framed under the Road Transport Act, 1959 (sic: 1950) Rule 59 of the Service Regulation which reads as under :-

"Employees of State Transport are liable to compulsory retirement on the date of their completion of Fifty Eight years of the age unless specifically permitted by the Corporation to continue in service for a specified period thereafter; but he must not be retained after the age of 60 years, without the sanction of State Government.

Provided that Class IV employees will normally be retired on the date of their completion of 60 years of age."

8. Adverting to the case law on the subject in *Heera Singh Narwariya Vs. State of M.P. And others* - W.P. No.2659/2013 (supra), a case referring to the judgment in *S. P. Dubey Vs. M.P. R.T.C.* reported in (1991)1 MPJR 327 it has been held that the Circular dated 28.5.1989 addressed by the Finance Department to all the departments would not apply to the employees of the Corporation. There was no material to show that the amendment by the State of Madhya Pradesh in F.R.56 relating to the age of superannuation of Government servants is applicable to the employees of MPRTC. Further a Division Bench of this Court in the case of *Heera Singh Narwariya Vs. State of M.P. & Others* (WA No.246/2013) (supra) in its judgment dated 16.12.2013, after taking into consideration the Service Regulation No.59 held that from the aforesaid provision it is clear that the employee could be retired after attaining the age of 58 years. However, the Corporation had the option to retain an employee upto the age of 60 years but no vested right is created in favour of an employee of the Corporation to continue upto 60 years.

9. In the case of *Gangaram Rao and others Vs. State of M.P. And others* (W.P. No.2767/2015(s), this Court held that the amendment in the Employees Industrial Employment (Standing Orders) Rules, 1963 providing age of superannuation to be 60 years would have no applicability to the employees of the Corporation in view of the proviso of the aforesaid amendment as it shall not apply to the employees of the Corporation, Board and Undertakings of the State Government. The same view was followed in Single Bench decision in *Shrikant Tiwari Vs. State of M.P.* (W.P. No.4339/2016) (supra).

10. In the case of *Jagmohan Sharma Vs. State of M.P. and another* (W.P. No.15971/2015(s)) (supra) a Coordinate Bench after taking into consideration the amendment made in the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 and the amendment incorporated in the proviso to serial No. 14A of Annexure appended to Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 held that the amendment in the age of retirement shall not apply to the employees of the Corporation, Board and Undertakings of the State Government. The relevant part of the order reads as under :-

"The context is that the State of M. P. in exercise of the powers conferred by sub-Section (1) and (2) "No.4(E) 1 2001 A-XVI. In exercise of the powers conferred by sub-section (1) and (2) of Section 21 of the Madhya Pradesh Industrial Employment (Standing Orders Act, 1961 (No.26 of 1961), the State Government incorporated amendment in the Madhya Pradesh Industrial Employment (Standing Orders) Rules 1963, in the following terms:

"In the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963 in the Annexure, in

serial number 14-A, the words "An employee shall retire from the service of the employer on the date he attains the age of 58 years. He may, however, be retained in service by the employer after the date of attaining the age of 58 year if his services are necessary in the interest of the undertaking." shall be replaced by the words "An employee shall retire from the service of the employer on the date he attains the age of 60 years, and in the first proviso the words "if the age of retirement is not less than 58 years" shall be replaced by the words "if the age of retirement is not less than 60 years" and at the end of this proviso the words **"provided further that this amendment shall not apply to the employees of Corporations, Boards and Undertakings of the State Government" shall be added**".

Evidently, employees of Corporation, Board and undertakings of the State Government stood excluded from the amendment. In other words the enhanced age of retirement was not extended.

Later on on the basis of the queries sought for by certain establishment as to whether the enhanced age is to be incorporated in award, agreement or settlement, the State Government further issued a notification on 30.12.2014 published in the Madhya Pradesh Gazette and incorporated new provision in Rule 8 in the following terms-

"Provided that where the Government has made any amendments in the Standard Standing Orders the same shall be deemed to be duly incorporated in any award agreement or settlement and in the certified amendments to the Standing Orders applicable to an undertaking."

Careful reading of this newly added proviso makes it clear that the amendment incorporated vide notification dated 28.6.2014 will also apply in "award, agreement or settlement and in certified amendments to the standing orders applicable to an undertakings." The insertion of this proviso; however, does not supersede the amendment incorporated in the proviso to serial No. 14 A of Annexure appended to Madhya Pradesh Industrial Employment (Standing Orders) Rules 1963 which stipulates that the amendment (as to the age of retirement) shall not apply to the employees of Corporation, Boards and Undertakings of the State Government.

These facts distinguishes the case at hand from that of Iqbal Hussain V. The Madhya Pradesh Road Transport

Corporation :Writ Petition No.5478/2014(s) decided on 12.5.2015 wherein the said amendment has not been taken into consideration.

Having thus considered since no relief can be granted to the petitioner petition fails and is **dismissed**.No costs."

11. The Circular dated 27.4.2018 also does not render any help to the case of the petitioners. The said Circular is issued by the Finance Department enhancing the age of superannuation from 60 to 62 years in respect of the employees of the Corporation and Board, leaving it on the discretion of the Corporation/ Board to take a decision in respect of the age of superannuation by incorporating it in the Service Rules/ Regulations keeping in view the financial status of the Corporation/ Board. It is clearly mentioned that those Corporation/ Board of the State of Madhya Pradesh which are already closed or which are under liquidation, the age of superannuation shall not be increased. As noticed herein before, the financial condition of the Corporation was stringent and therefore, a decision was taken to close down the same.

12. Apart from this, the fixation of age of superannuation is within the domain of the employer. In *B. Bharat Kumar and others Vs. Osmania University and others* reported in (2007)11 SCC 58, the Apex Court held that in respect of the fixation of age of superannuation, it is a policy decision and the same is within the wisdom of the Rule Making Authority and the judicial review in such administrative action is not called for. Further similar view has been reiterated in *Nagaland Senior Government Employees Welfare Association and others Vs. State of Nagaland and others* reported in (2010)7 SCC 643.

13. The Circulars and amendment in the Fundamental Rules and *Madhya Pradesh Ardhavarshiki Ayu Adhinyam* enhancing the age of superannuation of the Government Servants are not *ipso facto* applicable to the employees of the Corporation. There is no material to establish that the petitioners have been absorbed in the Government service. Hence, they cannot claim equality with the Government employees in respect of age of superannuation. The Corporation has not adopted the Circular or amendment made in the Fundamental Rules regarding age of superannuation of the State Government employees.

14. In view of the aforesaid, there is no merit in these writ petitions. All the writ petitions fails and are hereby **dismissed**.

Petition dismissed

**I.L.R. [2020] M.P.). 895 (DB)
WRIT PETITION**

Before Mr. Justice Sheel Nagu & Mr. Justice Rajeev Kumar Shrivastava
W.P. No. 17704/2018 (PIL) (Gwalior) decided on 26 February, 2020

GAURAV PANDEY

...Petitioner

Vs.

UNION OF INDIA & ors.

...Respondents

A. Constitution – Article 226 and Plastic Waste Management Rules, 2016 – PIL – Ban on Production, Transport, Storage, Sale & Use of Plastic Carry Bags/Polythene – Held – Banning of polythene/plastic bags has to be considered as a most significant moment of life – If any material which is generally used is not biodegradable then whole ecosystem will be affected and indirectly will affect all living organisms of world – Directions issued to Citizens/authorities/Print Media. (Paras 16 & 21 to 25)

क. संविधान – अनुच्छेद 226 एवं प्लास्टिक कचरा प्रबंधन नियम, 2016 – लोक हित वाद – प्लास्टिक थैलियों / पॉलिथिन के उत्पादन, परिवहन, भंडारण, विक्रय व उपयोग पर पाबंदी – अभिनिर्धारित – पॉलिथिन / प्लास्टिक थैलों पर पाबंदी को जीवन का एक सबसे महत्वपूर्ण क्षण माना जाना चाहिए – यदि कोई सामग्री जिसे सामान्य रूप से उपयोग किया जाता है, जैवनिम्नीकरणीय (बायोडिग्रेडेबल) नहीं है तब संपूर्ण पारिस्थितिकी तंत्र (ईकोसिस्टम) प्रभावित होगा तथा दुनिया के सभी जीव जंतुओं को अप्रत्यक्ष रूप से प्रभावित करेगा – नागरिकों / प्राधिकारियों / प्रिंट मीडिया को निदेश जारी किये गये।

B. Constitution – Article 32, 51-A, 136 & 226 – PIL – Locus & Scope – Held – Under Article 32, 51-A and 136, Rule of locus standi is not a rigid rule – Scope of PIL has been widely enlarged by Apex Court by relaxing and liberalising the rule of locus by entertaining letters or petitions sent by any person or association, complaining violation of fundamental rights and also by entertaining writ petitions filed under Article 32 by public spirited and policy oriented activists or by any organisation. (Para 6 & 7)

ख. संविधान – अनुच्छेद 32, 51-A, 136 व 226 – लोक हित वाद – सुने जाने का अधिकार व व्याप्ति – अभिनिर्धारित – अनुच्छेद 32, 51-A एवं 136 के अंतर्गत, सुने जाने के अधिकार का नियम कठोर नियम नहीं है – सर्वोच्च न्यायालय द्वारा लोक हित वाद की व्याप्ति को, किसी व्यक्ति या संघ द्वारा, मूलभूत अधिकारों के उल्लंघन की शिकायत करते हुए, भेजे गये पत्रों या याचिकाओं को ग्रहण कर और लोक भावना के एवं नीति अवगत कार्यकर्ताओं द्वारा अथवा किसी संगठन द्वारा अनुच्छेद 32 के अंतर्गत प्रस्तुत रिट याचिकाओं को भी ग्रहण कर, सुने जाने के अधिकार के नियम का शिथिलीकरण एवं उदासीकरण कर व्यापक रूप से बढ़ाया गया है।

C. Constitution – Article 39A & 226 – PIL – Prompt Social Justice – Held – Concept of “Public Interest Litigation” is in consonance with the principles enshrined in Article 39A of the Constitution to protect and deliver prompt social justice. (Para 8)

ग. संविधान – अनुच्छेद 39 A व 226 – लोक हित वाद – तत्परता से सामाजिक न्याय – अभिनिर्धारित – ‘लोक हित वाद’ की संकल्पना, तत्परता से सामाजिक न्याय दिलाने एवं संरक्षित करने के लिए संविधान के अनुच्छेद 39A में प्रतिष्ठापित सिद्धांतों के अनुरूप है।

D. Constitution – Article 32, 51-A, 136 & 226 – PIL – Locus – Verifying the Bonafides – Requirements – Discussed and enumerated. (Para 14)

घ. संविधान – अनुच्छेद 32, 51-A, 136 व 226 – लोक हित वाद – सुने जाने का अधिकार – सद्भाविकता का सत्यापन किया जाना – अपेक्षाएँ – विवेचित एवं प्रगणित की गईं।

E. Words & Phrases – Expression “Litigation” & “PIL” – Discussed & explained. (Para 5)

ङ. शब्द एवं वाक्यांश – अभिव्यक्ति “वाद” व “लोकहित वाद” – विवेचित एवं स्पष्ट किये गये।

Cases referred :

1982 (2) SCC 583, 1995 KHC 486, AIR 1981 SC 298, AIR 1962 SC 149, AIR 1979 SC 1369, 1976 (3) SCC 832, AIR 1987 SC 965, AIR 1989 SC 2039, (1997) 6 SCC 241, (2003) 8 SCC 369, (2005) 3 SCC 91, (2002) 1 SCC 428.

Aditya Pratap Singh Rajawat, for the petitioner.

F.A. Shah, G.A. for the respondent Nos. 2 & 5/State.

Harish Dixit, for the respondent No. 3-M.P. Pollution Control Board.

Deepak Khot, for the respondent No. 4-Municipal Corporation, Gwalior.

ORDER

The Order of the Court was passed by : **RAJEEV KUMAR SHRIVASTAVA, J.:-** This petition is preferred for public cause and has been treated as Public Interest Litigation, whereby public cause was raised to protect the environment from plastic carry bags.

2. The petitioner has sought relief of implementation of Plastic Waste Management Rules, 2016 (hereinafter shall be referred to as the "Rules of 2016") in whole of State of Madhya Pradesh and has also prayed that respondents be directed to implement notification bearing No.F5-2-2015-18-5 dated 24.05.2017 in its letter and spirit in the State of Madhya Pradesh and in terms of said

notification, prayed to ban production, transport, storage, sale and use of plastic carry bags/polythene. Further relief sought is to initiate imposition of fine against the wrong doers.

3. Respondent No.4 - Municipal Corporation, Gwalior has submitted through its return that all possible steps are being taken by the Municipal Corporation and Municipal Corporation is regularly seizing the carry bags from various fruit vendors, grocery shops, sweet shops and with the help of public they have spread message of 'Swaccha Bharat'. In support of its version, the Municipal Corporation has produced photographs before this Court.

4. Pollution Control Board and State in their return have submitted that the main responsibility is of the Municipal Corporation to meet these challenges and get the rules implemented.

5. The expression 'litigation' means a legal action including all proceedings therein, initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest belonging to public or a class of the community, whereby their legal rights or liabilities are affected. The basic definition of PIL in historical context is in which the commonality of the various forms of legal representation involving the basic and fundamental rights of a significant segment of the public demanding vindication of its rights has been recognised in various parts of the world.

6. Under Article 32, 51A and 136 of the Constitution of India, Rule of locus standi is not a rigid rule, rather, we can say, in defining the rule of locus standi in PIL no "rigid litmus test" can be applied since broad contours of PIL are still developing apace seemingly with divergent views on several aspects of the concept of this developing law and discovering jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial process. The dominant object of PIL is to ensure observance of the provisions of the Constitution and law which can be achieved with permitting the cause of community and disadvantaged groups or public interest by representing a person, who is acting *bonafide* and having sufficient interest in maintaining an action for judicial redressal for public injury to put the judicial machinery in motion like "*actio popularis*" of Roman Law, wherein any citizen/person can bring such an action in respect of a public delict.

7. The scope of PIL has been enlarged and is being enlarged by the Supreme Court widely by relaxing and liberalising the rule of locus by treating letters or petitions sent by any person or association complaining violation of any fundamental rights and also by entertaining writ petitions filed under Article 32 by public-spirited and policy-oriented activists or by any organisation.

8. The present petition is filed as Public Interest Litigation. The concept of "Public Interest Litigation" (PIL) is in consonance with the principles enshrined in Article 39A of the Constitution of India to protect and deliver prompt social justice. Prior to the year 1980, the locus standi was prominent in India Judicial System and only aggrieved party would approach to the Courts of justice. After the emergency era, the High Court reached out to the people devising the means for any person of the public to approach the Courts seeking legal remedy where public interest is involved. There are various instances when letters and telegrams addressed to the Courts have been taken up as PILs and were considered. Two Professors of the University of Delhi sent a letter to the Court seeking enforcement of the Constitutional Rights of the inmates at protective home in Agra who were living in inhuman and degrading conditions. In *Ms. Veena Sethi vs. State of Bihar & Ors.* [1982 (2) SCC 583], the Court treated a letter addressed to a Judge of the Court by the Free Legal Aid Committee in Hazaribagh (Bihar) as a writ petition. In *Citizens For Democracy through its President vs. State of Assam and Ors.* (1995 KHC 486), the Court entertained a letter from Kuldeep Nair to a judge of the Court arising human rights violation of Terrorist and Disruptive Activities (prevention) Act (TADA) detainees. It was also treated as a petition under Article 32 of the Constitution of India.

9. Rule of law is the primary essential of the democracy. However, any person filing the petition must have to prove to the satisfaction of the Court that the petition is being filed for the public interest and not as a frivolous litigation for pecuniary gain. In the case of frivolous PIL, the Court is having jurisdiction to impose substantial costs to the petitioner. "Public Interest Litigation" gives a wider description to the fundamental rights enshrined in the Constitution of India. It functions as an effective measure for changes in the society for its welfare.

10. "Public Interest Litigation" is known as "Social Interest Litigation". The concept of "Public Interest Litigation" was conceived by Hon. Justice V.R. Krishna Iyer in *Socialist Karamchari Sangh (Railway) vs. Union of India* (AIR 1981 SC 298), wherein an unregistered association of workers was permitted to institute a writ petition under Article 32 of the Constitution for redressal of their common grievances. In other words, "Public Interest Litigation" may be moved by public spirited citizen to the Court for the public cause by invoking writ jurisdiction of the superior courts.

11. The traditional rule of locus standi that a person whose right is affected alone can file a petition which has been laid down by the Apex Court in various decisions. Now the Courts permit "Public Interest Litigations" at the instances of public spirited citizens for the enforcement of constitutional legal rights.

12. In the case of *S.P. Gupta vs. Union of India*, (AIR 1962 SC 149), Hon'ble the Apex Court defined the term "Public Interest Litigation" in the Indian context. Thereafter, various prisoners of Bihar Jail had filed a petition before the Supreme Court Bench headed by Hon. Justice Bhagwati which was registered as *Hussainara Khatoon v. State of Bihar*, (AIR 1979 SC 1369), wherein Hon'ble the Apex Court has held that the prisoners should be given benefits of free legal aid and speedy hearing.

13. In various judgments passed by the Apex Court, the issue of PIL was widely considered and PILs have achieved the place of importance in our legal system. See, *Mumbai Kamgar Sangh vs. M/s Abdulbhai Faizullabhai and others* [1976 (3) SCC 832]; *M.C. Mehta vs. Union of India* [AIR 1987 SC 965]; *Parmanand Katara v. Union of India* [AIR 1989 SC 2039]; *Vishaka v. State of Rajasthan*, [(1997) 6 SCC 241]; and, *Javed v. State of Haryana*, [(2003) 8 SCC 369].

14. At this juncture, it is also relevant to mention here that to avoid inappropriate use of PIL, in the light of the judgment passed by Apex Court in *R & M Trust Vs. Kormangla Residents Vigilance Group*, [(2005) 3 SCC 91], following basic requirements are to be seen at the time of verifying the bonafides of a person, group, organization filing PIL before the Court having jurisdiction :-

- (i) Whether the petitioner is bonafide and whether he has/had filed any PIL for any other cause before any competent Court ?
- (ii) Whether the petition filed sounds of bonafide ?
- (iii) No petition was filed earlier for the same cause.
- (iv) No petition was earlier decided by the Court for the same cause.
- (v) Whether cause relates to poor and needy persons in general suffering from violation of their fundamental rights ?
- (vi) The petition is not filed for personal gain or private profit or political motive or oblique consideration ?
- (vii) The petition is not vexatious petition under the colour of PIL .
- (viii) The petition is not filed for vindicating any personal grievance.
- (ix) The petition is not filed with intention to abuse process of law.

- (x) Petitioner is not a proxy of others.
- (xi) The petition is not filed for extraneous motivation or for glare of publicity.

15. It is well said that if you want to survive for years together, you are required to protect the environment. Ecosystem is one of most important factor which protects the environment. Ecosystem is defined as "a system wherein community of living organisms is in conjunction with the nonliving components of their environment, interacting as a system". Such biotic and abiotic components are linked together through nutrient cycles and energy flows. Ecosystem is controlled by external and internal factors. External factors such as climate, parent material which form the soil and topography, control the overall structure of ecosystem but are not themselves influenced by the ecosystem. Internal factors are controlled by decomposition, root competition, shading, disturbance, succession etc. That means, an ecosystem is a geographic area where plants, animals, and other organisms, as well as weather and landscapes, work together to form a bubble of life.

16. In the light of above, banning of polythene/plastic bags has to be considered as a most **significant moment** of life. If any material which is generally used is not biodegradable then the whole ecosystem will be affected and indirectly will affect all living organisms of the world.

17. Polythene is a poly (methylene). The properties of polythene are as under:-

(i) **Mechanical properties of polyethylene:**

Polyethylene is of low strength, hardness and rigidity, but has a high ductility and impact strength as well as low friction. It shows strong creep under persistent force, which can be reduced by addition of short fibers. It feels waxy when touched.

(ii) **Thermal properties :**

The commercial applicability of polyethylene is limited by its comparably low melting point. For common commercial grades of medium- and high-density polyethylene the melting point is typically in the range 120 to 180°C (248 to 356°F). The melting point for average, commercial, low-density polyethylene is typically 105 to 115°C (221 to 239°F). These temperatures vary strongly with the type of polyethylene.

(iii) **Chemical properties :**

Polyethylene consists of nonpolar, saturated, high molecular weight hydrocarbons. Therefore, its chemical behavior is similar to paraffin. The individual macromolecules are not covalently linked. Because of their symmetric molecular structure, they tend to crystallize; overall polyethylene is partially crystalline. Higher crystalline increases density and mechanical and chemical stability.

Most LDPE, MDPE, and HDPE grades have excellent chemical resistance, meaning they are not attacked by strong acids or strong bases, and are resistant to gentle oxidants and reducing agents. Crystalline samples do not dissolve at room temperature. Polyethylene (other than cross-linked polyethylene) usually can be dissolved at elevated temperatures in aromatic hydrocarbons such as toluene or xylene, or in chlorinated solvents such as trichloroethane or trichlorobenzene.

Polyethylene absorbs almost no water. The gas and water vapour permeability (only polar gases) is lower than for most plastics; oxygen, carbon dioxide and flavorings on the other hand can pass it easily.

PE can become brittle when exposed to sunlight, carbon black is usually used as a UV stabilizer.

Polyethylene burns slowly with a blue flame having a yellow tip and gives off an odour of paraffin (similar to candle flame). The material continues burning on removal of the flame source and produces a drip.

Polyethylene cannot be imprinted or bonded with adhesives without pretreatment. High strength joints are readily achieved with plastic welding.

(iv) **Electrical properties of polyethylene :**

Polyethylene is a good electrical insulator. It offers good electrical treeing resistance; however, it becomes easily electrostatically charged (which can be reduced by additions of graphite, carbon black or antistatic agents).

(v) **Optical properties :**

Depending on thermal history and film thickness PE can vary between almost clear (transparent), milky-opaque (translucent) or opaque. LDPE thereby owns the greatest, LLDPE slightly less and HDPE the least transparency.

Transparency is reduced by crystallites if they are larger than the wavelength of visible light.

18. Polythene is produced from ethylene, and although ethylene can be produced from renewable resources, it is mainly obtained from petroleum or natural gas. Moreover, the widespread usage of polyethylene poses difficulties for waste management if it is not recycled. Polyethylene, like other synthetic plastics, is not readily biodegradable, and thus accumulates in landfills and puts the life of human being as well as animals into danger.

19. It is relevant to mention here that the problem raised in this PIL cannot be solved by punitive measures. Time has come to make the citizens/stakeholders aware of their duties and liabilities. This duty of every citizen is constitutionally provided in Article 51-A (g), which for ready reference and convenience is reproduced below :

" (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures ".

The duty to ensure clean and unpolluted environment is as much of the State and its functionaries as it is of the citizen.

20. The fundamental rights are defined in Constitution of India. Similarly, fundamental duties as amended by 42nd Amendment, were incorporated in Article 51-A and contained in Part 4-A of the Constitution. In *AIIMS Students' Union vs. AIIMS and others* [(2002) 1 SCC 428], Apex Court has observed as under:

"Fundamental duties, as defined in Article 51A, are not made enforceable by a writ of court just as the fundamental rights are, but it cannot be lost sight of that duties in Part IVA -Article 51A are prefixed by the same word fundamental which was prefixed by the founding fathers of the Constitution to rights in Part III. Every citizen of India is fundamentally obligated to develop the scientific temper and humanism. He is fundamentally duty bound to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. State is, all the citizens placed together and hence though Article 51A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State. Any reservation, apart from being sustainable on the constitutional anvil, must also be reasonable to be permissible. In assessing the reasonability one of the factors to be taken into consideration would be whether the character and quantum of reservation would stall or accelerate achieving the

ultimate goal of excellence enabling the nation constantly rising to higher levels. In the era of globalisation, where the nation as a whole has to compete with other nations of the world so as to survive, excellence cannot be given an unreasonable go by and certainly not compromised in its entirety. Fundamental duties, though not enforceable by a writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice, peoples wish as manifested through Article 51A, can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts. Constitutional enactment of fundamental duties, if it has to have any meaning, must be used by courts as a tool to tab, even a taboo, on State action drifting away from constitutional values."

21. In such view of the matter, we are compelled to remind all the stakeholders as well as citizens to awake for the welfare of all living organisms of the world by assuming participative role to achieve the goal of elimination of plastic waste/polythene in terms of the provisions contained in Plastic Waste Management Rules, 2016.

22. At this juncture, it is made clear that the responsibility cast upon each stakeholder is independent and requires honest involvement for eradication/elimination of plastic bags/polythene.

23. Thus, this writ petition is hereby disposed of with the following suggestions/directions to the Citizens/Authorities/Print & Electronic Media as under :-

(A) Suggestions :

- (i) Citizens should be made aware of the causes and effects of plastic pollution and how to prevent it.
- (ii) A campaign must be started to immediately stop using non-biodegradable plastic/polythene.
- (iii) Citizens should not purchase single use plastic/ polythene water bags etc.
- (iv) Citizens should use cloth / jute made bags for carrying purchases.
- (v) They may also themselves prepare paper bags from daily newspaper of their house.
- (vi) Citizens should not embed any plastic/ polythene waste in soil/ land.

- (vii) Citizens (parents/teachers) should teach children not to use plastic bottles/ tiffins in schools/ park/ malls etc.
- (viii) Citizens should cooperate in this task with different Authorities of the Government.
- (ix) Citizens should carry non-plastic water- bottles/daily need articles, which are reusable for many years together.
- (x) Similarly, it is expected of the Print & Electronic Media to propagate and install awareness amongst the citizens that use of non- biodegradable polythene/plastic has become a national problem. The Media should create an atmosphere in the society for non-use of non- biodegradable polythene / plastic articles by publishing relevant topics regularly in the media and should also attempt to make the people aware regarding hazardous results of use of non- biodegradable plastic/ polythene.
- (xi) For awareness amongst the children, the subject of adverse affects of use of plastic/polythene and means to manage its waste should be incorporated in curriculum.

(B) Directions :

- (i) The State shall pass direction to Schools and Colleges to stop use of plastic immediately.
- (ii) The State shall issue directions to the industries to take immediate steps to stop the production and use of single use plastic.
- (iii) The State and its instrumentalities shall issue directives ensuring manufacturing and marketing of carry bags and packets made of non-plastic bio-degradable material on highly subsidized rates to be affordable to the common man.
- (iv) For this purpose, the State should encourage the small scale industry to manufacture and market such bags/packets by establishing necessary plants for this purpose in adequate number in all districts in the State of M.P.
- (v) The State shall install adequate number of Water Dispensers in the city area to make available pure water to the citizens.
- (vi) The State should install single use plastic bottles crushing machines in every possible public places in adequate number and on crushing particular numbers of such bottles, deposit return scheme may be started.

- (vii) The State shall install Recycling Plants at various places;
- (viii) The State shall use plastic/polythene waste for Thermal Electric Production Plant.

24. It is further directed that each stakeholder, as mentioned above, shall submit their independent progress reports through respective Collectors every three months before the Principal Registrar of this Court to ensure compliance of this order. As the order is passed in the interest of public at large, therefore, it is expected that the directions given by this Court shall be complied with in letter and spirit with utmost promptitude.

25. Principal Registrar of this Court is hereby directed to send copy of the order to all the responsible stakeholders for compliance.

26. In case of non-compliance or if the compliance is found to be deficient, the Principal Registrar is hereby directed to list this case before the Bench under caption '**Direction**'.

Order accordingly

I.L.R. [2020] M.P. 905 (DB)

WRIT PETITION

Before Mr. Justice S.C. Sharma & Mr. Justice Shailendra Shukla

W.P. No. 18142//2019 (Indore) decided on 29 February, 2020

MPD INDUSTRIES PVT. LTD. (M/S) & anr. ...Petitioners

Vs.

UNION OF INDIA & ors. ...Respondents

(Alongwith W.P. No. 18252/2017)

A. Special Economic Zones Act (28 of 2005), Section 30(3) – “Bill of Export” – Held – “Bill of Export” is mandatory requirement and no claim can be accepted in absence of proper authorization – “Aayat Niryat Form” provides for submission of proofs by furnishing “Bill of Export” – For purpose of exemption from payment of duty, petitioners were required to submit proof of export to SEZ unit – Statutory provisions of furnishing “Bill of Export” not complied with – Further, SEZ unit, which is a necessary party is not impleaded as respondent, who could verify receipt of goods – Petitioner not entitled for any relief – Petition dismissed. (Paras 13 to 20)

क. विशेष आर्थिक जोन अधिनियम (2005 का 28), धारा 30(3) – “निर्यात पत्र” – अभिनिर्धारित – “निर्यात पत्र” आज्ञापक आवश्यकता है तथा उचित प्राधिकार के अभाव में कोई दावा स्वीकार नहीं किया जा सकता – “आयात निर्यात प्रपत्र”, “निर्यात पत्र” प्रस्तुत कर सबूत प्रस्तुत किये जाने हेतु उपबंधित करता है – शुल्क के भुगतान से

छूट के प्रयोजन हेतु, याचीगण को सेज ईकाई को निर्यात का सबूत प्रस्तुत करना आवश्यक था – “निर्यात पत्र” प्रस्तुत करने के कानूनी उपबंधों का अनुपालन नहीं किया गया – इसके अतिरिक्त, सेज (विशेष आर्थिक जोन) ईकाई, जो कि एक आवश्यक पक्षकार है, उसे प्रत्यर्थी के रूप में अभियोजित नहीं किया गया, जो कि माल की प्राप्ति सत्यापित कर सकता था – याची किसी अनुतोष का हकदार नहीं – याचिका खारिज।

B. Precedent – Held – SLP dismissed in *limine* at admission stage, does not amount to precedence. (Para 20)

ख. पूर्व निर्णय – अभिनिर्धारित – ग्रहण करने के प्रक्रम पर आरंभ में ही विशेष इजाजत याचिका का खारिज किया जाना, पूर्व निर्णय की कोटि में नहीं आता।

Cases referred:

W.P. No. 14375/2016 decided on 12.09.2017 (Bombay High Court), (2011) 11 SCC 441.

R.T. Thanevala with Paritosh Seth, for the petitioners.

Prasanna Prasad, for the respondent(s).

ORDER

The Order of the Court was passed by: **S.C. SHARMA, J.** :- Regard being had to the similitude in the controversy involved in the present cases, these writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of the Writ Petition No.18142/2019 are narrated hereunder.

The petitioners before this Court have filed this present petition being aggrieved by the orders dated 11.09.2018 and 20.11.2018 passed by the Policy Relaxation Committee, Directorate General of Foreign Trade. The petitioners' contention is that the petitioner No.1 is Private Limited Company and the petitioner No.2 is the Director of petitioner No.1 / Company.

2. It has been stated by the petitioners that the petitioners have received purchase order from M/s DIC Fine Chemical Private Limited, a SEZ Unit, situated in Dahej, Special Economic Zone, Tal Vagare, District -Bharuch, Gujrat for supply of Soya Long Oil Alkyd Resin falling under Tariff Item No.3907 50 00 of the Schedule II to CETA, 1985.

3. Based upon the purchase order received for supply of the aforesaid goods to SEZ Unit, which is treated at par with export, the petitioners have applied to DGFT for issuance of Advance Licences / Authorizations, and accordingly, five Advance Authorizations were issued by the Office of Joint Director General of Foreign Trade, Bhopal.

4. The petitioner have further stated that they have imported the specified goods / raw material permitted under the Advance Authorization required for manufacture of the said Soya Long Oil Alkyd Resin to be supplied to SEZ Unit. The petitioner has also stated that after completion of export against Advance Authorizations, the exporter is required to get the same discharged / closed by submitting relevant document as proof of export. The petitioners have further stated that they approached the Regional Office of Director General of Foreign Trade to ascertain the document, which are required to be submitted for discharge of export obligation and closure of the Advance Authorizations and at that point of time, they came to know that one of the documents required for proof of export. is "Bill of Export".

5. The petitioners' contention is that they were not aware about such a requirement and did not prepare the "Bills of Export" at the time of supply of goods made to SEZ Unit, and therefore, they approached the Officer-in-Charge of the SEZ Unit with a request to provide necessary Bills of Export against those supply made by them. However, the SEZ authorities have refused to do so stating that Bills of Export cannot be provided at a later date after the exports have been done.

6. The petitioner have further stated that in a case of export relating to M/s Saint Gobain Glass India Limited, the requirement of preparation of Bill of Export for the goods supplied to SEZ Unit was waived and the closure of Advance Authorizations have been allowed on the basis of tax invoices. The petitioners have further stated that the petitioner / Company requested the Policy Relaxation Committee to waive the condition of preparation of Bill of Export for the supplies made by them to SEZ Unit. The petitioners also requested the SEZ Unit to issue necessary certificate confirming that goods supplied by the petitioners under the cover of specified tax invoices and ARE-1s were received / admitted by the respective units of the SEZ, however, the SEZ authorities have declined to issue any such certificate.

7. The petitioner, thereafter, vide letters dated 07.02.2018 and 02.04.2018, approached the PRC along with relevant documents, except Bills of Export, in support of the evidence that goods were supplied to SEZ Unit and request was made for condoning the procedure of lapse for non-preparation and filing of Bills of Export. The request of the petitioners was turned down and by the PRC on 11.09.2019 and the petitioner again made a detailed representation on 12.01.2019 and the same has also been turned down. The petitioners' contention is that the PRC has wrongly rejected the request of the petitioners for conditions of generating Bills of Export against the supply of the goods to SEZ Unit and there cannot be any levy of tax upon the petitioners as the petitioners have imported raw material (duty free) and it was consumed in manufacturing of goods exported and

the manufactured product was received by the importer (Unit of Special Economic Zone, Dahej).

8. The petitioners have prayed for the following reliefs:-

(i) That this Hon'ble Court be pleased to declare the rejection of application for condonation / relaxation of the procedural lapse of non-generation and filing of Bills of Export against the supply of goods made to Sez Units as arbitrary and discriminative;

(ii) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari under Article 226 of the Constitution of India, calling for the records pertaining to the impugned communication / orders / minutes of meetings, rejecting the application for condonation of the procedural lapse of non-generation and filing of Bills of Export against the supply of goods to SEZ Unit and after going into the question of legality and propriety thereof, be pleased to quash and set aside the orders / communication passed / issued by the Policy Relaxation Committee of the DGFT and direct the Respondents to waive the requirement of preparation / filing of Bills of Export for discharge of export obligation against each of the Advance Authorization;

(iii) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or directing ordering and directing the Respondents by themselves, their subordinate servants and agents to relax the requirement of filing the Bills of Export for discharge of exports obligation against each of the Advance Authorizations;

(v) for costs of this Petition;

(vi) for such further and other reliefs as the nature and circumstances of the case may require.

9. Shri Prasanna Prasad, learned counsel appearing for the respondents has argued before this Court that the petitioner / Company has imported raw material (duty free) and as stated by the petitioners after manufacturing of goods, the goods were exported by supplying them to the importer located at Special Economic Zone, Dahej, Gujrat and at no point of time Bill of Export was submitted by the petitioner as required under the statute, and therefore, the petitioner / Company does not have any other choice except to pay custom duty + applicable interest.

He has further stated that the petitioner / Company has stated in the writ petition that the Company has received purchase order from M/s DIC Fine Chemical Private Limited, a SEZ Unit situated in Gujrat, for supply of Soya Long Oil Alkyd Regin falling under Tariff Item No.3907 50 00 of the Schedule II to CETA, 1985 and based upon the purchase order received for supply of the aforesaid goods to SEZ Unit, which is treated at par with export, the petitioner has applied to the Director General of Foreign Trade for issuance of Advance

Licences / Authorizations and five Advance Authorizations were issued by the Officer of the Joint Director General of Foreign Trade, Bhopal / Indore in the year 2013.

He has further stated that the petitioner has imported the specified goods / raw material permitted under the aforesaid Advance Authorizations required of manufacturing of the said Soya Long Oil Alkyd Resin to be supplied to SEZ Unit and after completion of export against Advance Authorization, the petitioners were required to get the same discharged / closed by submitting relevant documents such as proof of export, which means a "Bill of Export". The petitioner, at no point of time, has submitted the Bill of Export, and therefore, the Director General of Foreign Trade was justified in sending letter and instructing the petitioners to regularize the licence by paying all custom duties + applicable interest.

He has further stated that as per the statutory provisions, the petitioners were required to submit proof of export to SEZ Unit and proof of export is Form No.98-VI of Custom Manual. He has also stated as per Section 30 (3) of the SEZ Rules, Bill of Export is a mandatory requirement and no claim for export can be accepted in absence of proper authorization, and therefore, letters were issued to the petitioner / Company, which are impugned in the respect writ petition.

10. Heard learned counsel for the parties at length and perused the record.

11. In the present case, the facts reveal that the petitioners have received purchase order from M/s DIC Fine Chemical Private Limited, a SEZ Unit situated in Gujrat and based upon the purchase order, the petitioner applied to the Director General of Foreign Trade for issuance of Advance Licences / Authorizations. Advance Authorizations were issued by the Officer of Joint Director General of Foreign Trade, Bhopal in the year 2012 - 13 and the petitioners, as stated by them, imported the specified goods / raw material permitted under the Advance Authorization required for manufacture of said Soya Long Oil Alkyd Resin to be supplied to SEZ Unit.

12. As per the export import policy, the petitioners were under an obligation to comply with the provision of Foreign Trade Procedure Hand Book Proviso 4.25, which provides that authorization holder shall furnish prescribed documents in ANF 4F (Aayat Niryat Form) in support of fulfillment of EO and as per the conditions, which are reflected for physical export i.e. Bill of Export, is to be submitted. Relevant extracts of the Foreign Trade Procedure Hand Book reads as under:-

***Advance
Authorisation
for Annual
Requirement***

4.24A Exporters eligible for such Authorisations shall file an application in ANF 4 A to RA concerned. All provisions as to Advance Authorisation given above would apply except

the following:

(i) RA while issuing Authorisation shall mention technical characteristics quality and specifications in respect of such inputs:-

Alloy steel including stainless steel, copper alloy, synthetic rubber, bearings, solvents, perfumes/ essential oils / aromatics chemicals, surfactants, relevant fabrics and marble.

(ii) Authorisation holder shall have flexibility to export any product falling under export product group using duty exempted material.

(iii) Within eligible entitlement, an exporter may apply for one or more than one authorisations in a licensing year, subject to condition that against one port of registration only one authorisation can be issued for same product group. One time enhancement / reduction of the authorisation shall be available in terms of paragraph 4.21 above.

(iv) On completion of EO against one or more authorisations, all issued in same licensing year, entitlement of an exporter for that licensing year shall be deemed to be revived by an amount equivalent to EO completed against authorisation (s).

(v) In respect of export product for which Standard Input Output Norms (SION) does not exist, the authorization holder shall submit an application in "Aayaat-Niryat Form" along with prescribed documents to NC before making the shipment. The applicant shall also furnish Advance Authorisation for Annual Requirement No. and date along with the file No.. Form which the same was issued in the converging letter to the application.

<i>Fulfillment of Export Obligation</i>	4.25	Authorisation holder shall furnish prescribed documents in ANF 4F in support fulfillment of EO.
<i>Discharge of export obligation against advance</i>	4.25A	Quality Based Advance licences issued prior to 1.04.2002 shall be disposed off as per Public Notice No. 79 dated 2.1.2006, PN 151 dated 26.2.09, as amended from time to time.

***licences issued
Prior to 1.4.2002***

***Redemption
No Bond
Certificate*** /4.26 In case EO has been fulfilled, RA shall redeem the case. After redemption, RA shall forward a copy of redemption letter indicating shipping bill number(s), date(s), FOB value in Indian rupees as per shipping bill(s) and description of export product in respect of shipment which were taken into account for the purpose of fulfillment of EO to Customs authority at port of registration. Such details shall also be placed by the Zonal Offices in their website immediately after issuance of export obligation discharge/redemption letter / No Bond Certificate (in case of "No BG / LUT" facility) and by DGFT Hqr in DGFT website on monthly basis for customs authority to access it from website.

GUIDELINES FOR APPLICANT

(Please See paragraph 4.46, 4.47 of HBP)

1. Application will be filed online using digital signature only.
2. Please upload following details
 - a. For physical exports:
 - i. e-BRC / Bank Certificate of Exports and Realisation in the form given at Appendix 2U or Foreign Inward Remittance Certificate (FIRC) in the case of direct negotiation of documents or appendix 2L in case offsetting of export proceeds.
 - ii. EP copy of the shipping bill(s) containing details of shipping bill wise export indicating the shipping bill number, date, FOB value as per shipping bill and description of export product.
 - iii. A statement of exports giving details of shipping bill wise exports indicating the shipping bill number, date FOB value as per shipping bill and description of export product.
 - iv. A statement of Import indicating bill of entry wise item of imports, quantity of imports and its CIF value.
 - v. FOB value of export for the purpose of V.A. Shall be arrived at after excluding the Foreign Agency Commission, if any.

- vi. In case where CENVAT credit facility on inputs have been availed for the exported goods, the goods imported against Advance Authorisation shall be utilized only in the manufacture of dutiable goods whether within the same factory or outside (by a supporting manufacturer) even after completion of export obligation, for which the authorisation holder shall produce a certificate form either the jurisdictional Central Excise Supdt. Or Independent Chartered Accountant or Cost Accountant, at the option of the exporter."

13. As per the aforesaid executive instruction, the "Aayat Niryat Form" provides for submission of proofs by furnishing "Bill of Export". The petitioners were required to submit proof of export to SEZ Unit and the proof of export is mentioned in Form 98-VI of the Custom Manual.

14. Not only this, as per Section 30 (3) of the SEZ Rules, Bill of Export is a mandatory requirement and no claim can be accepted in absence of proper authorization. Section 30 of the SEZ Act reads as under:-

"30. Procedure for procurement from the domestic Tariff Area.-

(1) The Domestic Tariff Area Supplier supplying goods to a Unit or Developer shall clear the goods, as in the case of exports, either under bond or as duty paid goods under claim of rebate on the cover of ARE-1 referred to in Notification number 42/2001-Central Excise (NT) dated the 26th June, 2001 in quintuplicate bearing running serial number beginning from the first day of the financial year.

(2) Goods procured by a Unit or Developer, on which Central Excise Duty exemption has been availed but without any availment of export entitlements, shall be allowed admission into the Special Economic Zone on the basis ARE-1.

(3) The goods procured by a Unit or Developer under claim of export entitlements shall be allowed admission into the Special Economic Zone on the basis of ARE-1 and a Bill of Export filed by the supplier or on his behalf by the Unit or Developer and which is assessed by the Authorised Officer before arrival of the goods.

Provided that if the goods arrive before the Bill of Export has been filed and assessed, the same shall be kept in an area designated for this purpose by the Specified Officer and shall be released to the Unit or Developer only after completion of the assessment of the Bill of Export."

15. Undisputedly, the petitioners have failed to comply with the aforesaid requirement and for the reasons best known to the petitioners, the petitioners have not impleaded the SEZ Unit, Dahej as respondent, which is a necessary party. Whether the goods were received at SEZ Unit, Dahej or not, could have been answered by the SEZ Unit, Dahej only. The petitioner have also not complied various statutory provisions by not furnishing Bill of Exports.

16. Learned counsel for the petitioners has vehemently argued before the Court that the controversy involved in the present case stands concluded on account of judgment delivered by the Bombay High Court in the case of *Larsen & Toubro Limited v/s Union of India & Others* (W.P. No.14375/2016) dated 12.09.2017.

17. Paragraph - 41 of the aforesaid judgment reads as under:-

"41. Then the certificate from the Central Excise in original dated 18.04.2013 issued by the Superintendent of Central Excise, Belapur, certifying exempted material with specification imported against advance authorization and used in the manufacture of the resultant product was enclosed."

18. This Court has carefully gone through the aforesaid judgment. The judgment delivered in the aforesaid case is distinguishable on facts as in the said case the officer of the Central Excise Department issued a certificate dated 18.04.2013 certifying exempted material with specification imported against Advance Authorization and used in manufacture of resultant product. The fact is reflected in paragraph - 41 of the aforesaid judgment. Also the Officer of SEZ, as per paragraph - 54 of the aforesaid judgment, has certified that the goods have been received.

19. In the present case, the petitioners have opted not to implead SEZ as a respondent, and therefore, as there is no verification on the part of the Officer of the SEZ, the petitioners are not entitled for any relief of whatsoever kind on basis of the judgment delivered in the case of *Larsen & Toubro* (supra).

20. It is true that the SLP against the judgment delivered in the case of *Larsen & Toubro* (supra) has been dismissed but the SLP has been dismissed in *limine* at admission stage and it does not amount to precedence keeping in view the judgment delivered in the case of *State of Uttar Pradesh & Others v/s Rekha Rani* reported in (2011) 11 SCC 441. Thus in short, the petitioners in the present case, applied for issuance of Advance Authorizations for duty free import of goods in India against supplies to be made to the purchaser and various Advance Authorizations were issued from time to time. The petitioners' stand is that the petitioners have exported the goods manufactured through M/s DIC Fine Chemical Limited, a SEZ Unit at Dahej, and therefore, they are not liable to pay

any duty keeping in view the Foreign Trade Policy, 2004 - 2009. The proof required for the purpose is "Bill of Export" and the petitioners have not been able to submit the Bill of Export. Whether the petitioners have supplied goods to the SEZ Unit, Gujrat or not, can only be looked into after petitioners file a reply to the Department in respect of the letters issued to the petitioners. It is purely question of fact and can be looked into by the competent authority.

21. In the considered opinion of this Court, the question of interference, at this stage in the peculiar facts and circumstances of the case, does not arise.

Accordingly, the present Writ Petition stands dismissed.

The order passed by this Court in the present case shall govern the connected petition also, and therefore, the connected writ petition i.e. W.P. No.18252/2017 also stands dismissed.

Let a copy of this order be kept in the connected petition also.

Certified copy, as per rules.

Petition dismissed

I.L.R. [2020] M.P. 914
MISCELLANEOUS PETITION

Before Mr. Justice G.S. Ahluwalia

M.P. No. 20/2019 (Gwalior) decided on 1 July, 2019

RADHABAI (SMT.) ...Petitioner

Vs.

MAHENDRA SINGH RAGHUVANSHI & anr. ...Respondents

A. Land Revenue Code, M.P. (20 of 1959), Section 178 – Partition – Ancestral /Joint Property – Held – If property is ancestral or joint property, only then the same can be partitioned amongst co-owner – Partition presupposes that properties in question are joint or ancestral – An individual holding cannot be put for partition u/S 178 of the Code of 1959 – Further held, by way of partition, owners of property cannot exchange his property with another owner of another property. (Para 16 & 17)

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 178 – विभाजन – पैतृक/संयुक्त संपत्ति – अभिनिर्धारित – यदि संपत्ति पैतृक अथवा संयुक्त संपत्ति है, केवल तब उक्त संपत्ति का सह-स्वामी के मध्य विभाजन किया जा सकता है – विभाजन पूर्वानुमानित करता है कि प्रश्नगत संपत्तियां संयुक्त अथवा पैतृक हैं – एक व्यक्तिगत धृति जोत का 1959 की संहिता की धारा 178 के अंतर्गत विभाजन नहीं किया जा सकता – आगे अभिनिर्धारित, विभाजन के माध्यम से, संपत्ति के स्वामी किसी अन्य संपत्ति के अन्य स्वामी के साथ संपत्ति का विनिमय नहीं कर सकते।

B. Land Revenue Code, M.P. (20 of 1959), Section 178 – Partition – Procedure – Held – Filing of application u/S 178 by respondents, itself shows that property was still joint/ancestral in nature and earlier registered “Sale Deed” and “Will” were sham documents and were never intended to be acted upon – In mutation proceedings and partition proceedings, no notice was issued to petitioner – Both orders were obtained behind her back – No adverse inference can be drawn against petitioner – Petition allowed.

(Para 19 & 20)

ख. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 178 – विभाजन – प्रक्रिया – अभिनिर्धारित – प्रत्यर्थागण द्वारा धारा 178 के अंतर्गत आवेदन प्रस्तुत किया जाना, स्वयं यह दर्शाता है कि संपत्ति अभी भी संयुक्त/पैतृक स्वरूप की थी एवं पूर्व रजिस्ट्रीकृत “विक्रय विलेख” और “वसीयत” मिथ्या दस्तावेज थे एवं उन पर कभी भी कार्रवाई करने का आशय नहीं था – नामांतरण कार्यवाहियों एवं विभाजन कार्यवाहियों में, याची को कोई नोटिस जारी नहीं किया गया था – दोनों आदेश उसके पीठ पीछे प्राप्त किये गये थे – याची के विरुद्ध कोई प्रतिकूल निष्कर्ष नहीं निकाला जा सकता – याचिका मंजूर।

C. Hindu Succession Act (30 of 1956), Section 6(5) – Applicability – Held – Section 6(5) clearly stipulates that “nothing contained in this section shall apply to a partition which has been effected before 20.12.2004” – Since partition took place on 21.11.2007, therefore Section 6 of the Act of 1956 would apply.

(Paras 11, 12 & 19)

ग. हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 6(5) – प्रयोज्यता – अभिनिर्धारित – धारा 6(5) स्पष्ट रूप से यह अनुबंधित करती है कि “इस धारा में अंतर्विष्ट कोई भी बात दिनांक 20.12.2004 के पूर्व प्रभावी हुए विभाजन पर लागू नहीं होगी” – चूंकि विभाजन दिनांक 21.11.2007 को हुआ, इसलिए 1956 के अधिनियम की धारा 6 लागू होगी।

Cases referred :

2012 MPRN 73, (2008) 7 SCC 46, 2017 (1) MPLJ 157, (2016) 2 SCC 36, 2009 (3) MPLJ 568, (2009) 9 SCC 689, (2011) 12 SCC 220, 2018 (2) MPLJ 398.

Abhishek Singh Bhadoriya, for the petitioner.

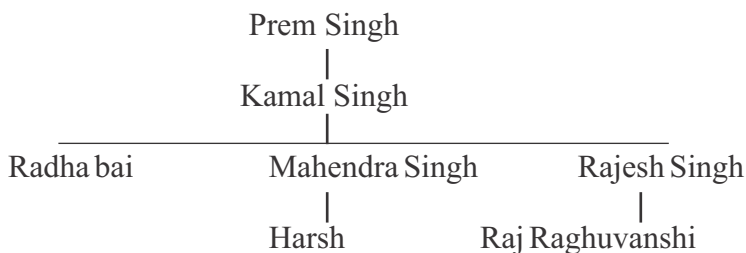
Sanjay Kumar Mishra, for the respondents.

J U D G M E N T

G.S. AHLUWALIA, J.:- By this writ petition, the order dated 20-8-2018 passed by Additional Commissioner, Bhopal passed in Case No. 167/Appeal/2017/18 has been challenged.

2. According to the Petitioner as well as the respondents, the necessary facts for the disposal of the writ petition are that Mahendra Singh and Rajesh Singh

(Respondents in W.P. No. 20/2019) are the real brothers of Radha Bai (Petitioner in W.P. No. 20/2019). The family tree is as under :



(Neither the petitioner nor the respondents have made a specific statement, that Prem Singh had only one Son, namely Kamal Singh. Thus, this judgment would be purely *in personam* and *not in rem*)

3. It is submitted by the Counsel for the Petitioner that her grand father, namely Prem Singh was the owner of approximately 122 bighas of land situated in village Sankalkheda. After the death of Prem Singh, his son Kamal Singh (father of the Petitioner) inherited the said property and after the death of Kamal Singh, She is entitled for 1/3rd share in the property. However, in the year 2016, she came to know that the property has been partitioned amongst Kamal Singh, Mahendra Singh and Rajesh Singh. Since, the petitioner was not given any share in the properties, therefore, She filed an appeal before the Court of S.D.O., Vidisha along with an application for condonation of delay. The delay in filing the appeal was condoned, and the matter was finally heard. By order dated 20-2-2017, it was held by the S.D.O., Vidisha that the partition done by the Tahsildar Vidisha was vitiated and the petitioner has 1/3rd share in the properties and accordingly, the appeal was allowed. The respondents, being aggrieved by the order of the S.D.O., preferred an appeal before the Court of Additional Commissioner, Bhopal Division, Bhopal, which has allowed the appeal and by order dated 25-10-2018 passed in case No. 189/Appeal/2016-17 has held that although the petitioner is the real sister of the respondents but in view the provisions of Section 6(5) of Hindu Succession Act, as the registered sale deed and the "Will" were already executed prior to 20th Day of December 2004, therefore, Section 6 of Hindu Succession Act, would not apply.

4. Challenging the order dated 25-10-2018 passed by Additional Commissioner, Bhopal Division, Bhopal, it is submitted that interpretation made by the Additional Commissioner, Bhopal Division, Bhopal is perverse and hence liable to be set aside, for the simple reason, the partition had taken place on 21-11-2007, therefore, Section 6(5) of Hindu Succession Act, has no application. It is submitted that in fact Prem Singh, the Grand father of the petitioner was the owner of the properties in dispute i.e., Survey No. 131, 159, 164, 165, 320, 398,

404, 412, 429, 440, 449, 572, 505, 596, 758 and 867 total area 25.587 hectares. After the death of Prem Singh, her father Kamal Singh inherited the entire properties, however, some properties were got mutated by the respondents in their names in a clandestine manner. The respondents and Kamal Singh, thereafter, moved an application under Section 178 of M.P.L.R.Code, and without issuing notice to the petitioner, the properties were partitioned amongst the respondents and Kamal Singh (father of the Petitioner), however, nothing was given to the petitioner. It is submitted that in fact the registered sale deed dated 26-9-1969 executed by Prem Singh (Grand Father) in favor of Kamal Singh (father) and so called "Will" executed by Prem Singh (Grand Father) in favor of respondents (brothers) were either sham documents or were forged documents, which were never intended to be acted upon, and therefore, Kamal Singh and the respondents moved an application under Section 178 of M.P.L.R.Code, for partition of the entire properties.

5. *Per contra*, it is submitted by Shri Mishra that by registered sale deed dated 26.06.1969, Prem Singh had sold survey Nos. 643 and 644 which have been renumbered as 505/2 in favour of the father of the petitioner namely Kamal Singh, accordingly, his name was recorded in revenue records. Prem Singh by an unregistered "Will" dated 04.10.1988 had bequeathed survey Nos. 164, 165, ½ of 141, ½ of 398, 440, 0.115 out of 447, 448, 0.626 out of 506/1 to respondent No. 2 Rajesh Singh, whereas 0.062 hectares out of 134, 0.225 hectares out of 141/2, 1.777 hectares out of 392/2, 3.073 hectares out of 449 and 3 hectares out of 505 were given to respondent No. 1. On the basis of this "Will", names of respondents No. 1 and 2 were mutated on 26.12.1989, in the revenue records (Annexure P-6). For the convenience of the parties, the respondents as well as their father Kamal Singh filed an application under Section 178 of MPLRC for partition of survey No. 142/2, 412/1, 505/2, 134/1, 141/1, 398/2, 448/2, 472, 505 /1, 141/ 2, 142/ 1, 308/ 1, 428, 440, 447/2, 448, 449/1, 473, 476, 505/1 and accordingly, the aforesaid property was partitioned by the Tahsildar by order dated 21-11-2007. It is submitted by the counsel for the respondents No. 1 and 2 that this partition was nothing but it was executed for the sake of convenience of the parties, whereas the property was already given to Kamal Singh by way of a registered sale deed as well as to respondents No. 1 and 2 by Unregistered "Will" executed by Prem Singh. It is further submitted that the mutation of name of Kamal Singh on the strength of the sale deed and the mutation of names of respondents No. 1 and 2 on the strength of the "Will" was never challenged by the petitioner. If the petitioner being the daughter of Kamal Singh (grand daughter of Prem Singh) was of the view that she has been deprived of her valid rights then she should have filed a suit, for challenging the sale deed executed in favour of her father Kamal Singh as well as "Will" executed by Prem Singh in favour of the respondents No. 1 and 2 and since the same has not been challenged by the petitioner for 42-45 years,

therefore, now she cannot claim any title or share in the property in dispute. It is further submitted that the land which was disposed of by Prem Singh as well as Kamal Singh during their life time has also been included in the order dated 20-2-2017 passed by S.D.O., Vidisha, which is contrary to fact and law. The property which was already disposed of by Prem Singh and Kamal Singh during their life time should not have been included by the SDO in its order dated 20.02.2017. To buttress his contention, counsel for the respondents No. 1 and 2 has relied upon the judgment passed by Coordinate Bench of this Court in the case of *Poonam Chand Jain Vs. Ramesh Kumar* reported in 2012 MPRN 73. It is further submitted by the counsel for the respondents that as per Section 6(5) of Hindu Succession Act, the property which was disposed of prior to 20th day of December, 2004 would not be governed by Section 6 of the Hindu Succession Act, therefore, the SDO has wrongly held that the petitioner is entitled for her 1/3rd share in the property. It is submitted that after the partition takes place, the holder has an unfettered rights to deal with the separated property which includes alienation by sale or mortgage. It is further submitted that the Hindu Succession (Amendment) Act, 2005 is not retrospective in nature and therefore, any transaction which had taken place prior to 20th day of December 2004, cannot be reopened. To buttress his contentions the Counsel for the respondents have relied upon the judgments passed in the case of *Hardeo Rai Vs. Sakuntala Devi* reported in (2008) 7 SCC 46 and *Sushila bai Vs. Rajkumari* reported in 2017(1) MPLJ 157 and *Prakash Vs. Phulavati* reported in (2016) 2 SCC 36.

6. It is submitted by the counsel for the respondents that the document must be read in its entirety. Once the "Will" was already executed in favour of respondents No. 1 and 2 and the same was acted upon by them by getting their names mutated in the revenue record as well as the sale deed was also executed in favour of Kamal Singh and his name was also mutated in the revenue record on the basis of sale deed, then the SDO by order dated 20.02.2017 should not have held that the property in dispute is an ancestral property. To buttress his contentions, the Counsel for the respondents has relied upon the judgment passed in the case of *C. Cheriathan Vs. P. Narayanan* reported in 2009(3) MPLJ 568.

7. It is submitted by the counsel for the respondents that once the respondents have acquired the property by virtue of sale deed as well as by virtue of a "Will", then they have an exclusive right and, therefore, after execution of the sale deed as well as the "Will" as the case may be, the SDO by its order dated 20.02.2017 has wrongly held that the property in dispute is still ancestral in nature.

8. It is further submitted by the counsel for the respondents that it is well established principle of law that this Court while exercising power under Article 227 of the Constitution of India cannot correct the errors committed by the Courts

below unless and until the jurisdictional error is committed by them. It is further submitted that since the sale deed executed by Prem Singh in favour of Kamal Singh as well as the "Will" executed by Prem Singh in favour of respondents, were never challenged by the petitioner within the period of limitation, therefore, now she cannot not challenge the same. It is further submitted that if the petitioner has any right or title in the property in dispute, then she has an efficacious remedy of filing civil suit.

9. Heard the learned Counsel for the parties.

10. The following factual matrix appears from the arguments of the Counsel for the parties :

1. Prem Singh was the owner of the properties in dispute.
2. By registered Sale deed dated 26-9-1969, he executed a sale deed in favor of his son Kamal and Survey No. 643 and 644 (Renumbered as 505/2) were sold to him.
3. In respect of the remaining land, "Will" dated 4-10-1988 was executed by Prem Singh in favor of the respondents
4. The names of Kamal Singh as well as that of respondents were recorded in the revenue records on the basis of the registered sale deed as well as the "Will".
5. In spite of the fact that the respondents were claiming that Prem Singh has executed a "Will" in their favor and Prem Singh has sold some part of property to their father Kamal Singh, an application under Section 178 of M.P.L.R.Code was filed for partition of the properties.
6. By order dated 21-11-2007, the Tahsildar, by observing that आवेदक आपस में पिता पुत्र है यह खाते पैतृक सम्पत्ति है had partitioned the entire property. In the said proceedings, it was specifically pleaded by the respondents and Kamal Singh (father of respondents and petitioner) that the properties in dispute are still ancestral.
7. Since, the partition was effected by order dated 21-11-2007, then whether the provisions of Section 6(5) of Hindu Succession Act would apply or not?
8. It has not been claimed by either by the petitioner or by the respondents that Prem Singh had no other issue, except Kamal Singh.

9. It has also not been clarified by the Counsel for the respondents that when Kamal Singh was the only legal representative of Prem Singh, then why, Prem Singh, just before 5 months of his death, executed the "Will" dated 4-10-1988 in favor of the respondents, who are his grand sons being son of Kamal Singh.
10. It is well established principle of law that propounder of the "Will" has to remove all suspicious circumstances attached to a "Will" and before mutating the names of the respondents, no findings were recorded by the revenue authorities with regard to the genuineness fo the "Will" dated 4-10-1988.
11. No proceedings have been filed by the respondents, to show that before mutating their names, any enquiry was done by the revenue authorities.
12. It is alleged that Prem Singh had executed a "Will" on 4-10-1988 and he expired on 2-4-1989 and only after his death, the said "Will" dated 4-10-1988 was produced by the respondents, before the Sub-Registrar for its registration, and accordingly, the "Will" dated 2-4-1989 was got registered after the death of Prem Singh.
13. Since, according to the respondents themselves, the "Will" dated 4-10-1988 had remained unregistered during the life time of Prem Singh, therefore, this Court shall consider the "Will" as an unregistered document.

11. By referring to Section 6(5) of Hindu Succession Act, it is submitted by the Counsel for the respondents that since, some part of land was sold by Prem Singh to Kamal Singh by registered sale deed dated 26-9-1969 and Prem Singh had executed a "Will" dated 4-10-1988 in favor of the respondents therefore, the properties were already disposed of prior to 20th day of December 2004, therefore, the provisions of Section 6 of Hindu Succession would not apply. **It is further submitted that partition dated 21-11-2007 was nothing but was done for the sake of convenience, therefore, it has to be ignored.**

12. Section 6 of Hindu Succession Act reads as under :

- 6. Devolution of interest in coparcenary property. —**
(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

- (a) by birth become a coparcener in her own right in the same manner as the son;
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;
- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this subsection shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and, -

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a predeceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this subsection, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great grandson for the recovery of any debt due from his father, grandfather or great grandfather solely on the ground of the pious obligation under the Hindu law, or such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall effect —

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.—For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004."

13. Now, the moot question for consideration is that whether the "Will" executed by Prem Singh in favor of the respondents or the registered sale deed dated 26-9-1969 were sham documents or they were intended to be acted upon.

14. It is the case of the respondents that after the execution of "Will" by Prem Singh, their names were mutated in the revenue records on 26-12-1989, therefore, it is clear that the "Will" was in fact, acted upon by the parties. On deeper scrutiny, it is clear that the above mentioned submissions made by the Counsel for the respondents cannot be accepted.

15. A specific question was put to the Counsel for the respondents, that when a "Will" was already in their favor as well as when there was already a registered sale deed in favor of Kamal Singh, then why they filed an application for partition of the properties, then it was replied by him, that for the sake of convenience, the same was done. The submission made by the Counsel for the respondents, cannot be accepted, for the simple reason, that by partition, owners of the property cannot exchange his property with another owner of another property.

16. Section 178 of M.P.L.R.Code reads as under :

"178. Partition of holding.- (1) If in any holding, which has been assessed for purpose of agriculture under Section 59, there are more than one bhumiswami any such bhumiswami may apply to a Tahsildar for a partition of his share in the holding :

[Provided that if any question of title is raised the Tahsildar shall stay the proceeding before him for a period of three months to facilitate the institution of a civil suit for determination of the question of title.]

[(1-A) If a civil suit is filed within the period specified in the proviso to sub-section (1), and stay order is obtained from the Civil Court, the Tahsildar shall stay his proceedings pending the decision of the Civil Court. If no civil suit is filed within the said period, he shall vacate the stay order and proceed to partition the holding in accordance with the entries in the record of rights.]

(2) The Tahsildar, may, after hearing the co-tenure holders, divide the holding and apportion the assessment of the holding in accordance with the rules made under this Code.

[(3) x x x]

[(4) x x x]

[(5) x x x]

Explanation I. -For purposes of this section any co-sharer of the holding of a bhumiswami who has obtained a declaration of his title in such holding from a competent Civil Court shall be deemed to be a co-tenure holder of such holding.

Explanation II. -[x x x]

[178A. Partition of land in life time of Bhumiswami. - (1) If any Bhumiswami wishes to partition his holding assessed for purpose of agriculture under section 59 or any part thereof amongst his legal heirs during his life time, he may apply for partition of such holding or part thereof to the Tahsildar.

(2) The Tahsildar may after hearing the legal heirs divide the holding or part thereof and apportion the assessment in accordance with the rules made under this Code.]"

17. Thus, from the plain reading of this Section, it is clear that if the property is ancestral or joint property, only then the same can be partitioned amongst the co-owner. Partition presupposes that the properties in question are joint or ancestral. An individual holding cannot be put for partition under Section 178 of M.P.L.R. Code.

18. The Supreme Court in the case of *Shub Karan Bubna v. Sita Saran Bubna* reported in (2009) 9 SCC 689 has held as under :

5. "Partition" is a redistribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty.

6. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. "Separation of share" is a species of "partition". When all co-owners get separated, it is a partition. Separation of share(s) refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother.

19. Thus, the conduct of the respondents and Kamal Singh, in filing an application under Section 178 of M.P.L.R. Code, itself show that the properties in dispute were still joint and were not separated as claimed by them. Thus, it is clear from the conduct of the respondents themselves that the so called registered sale deed dated 26-9-1969 and Will dated 4-10-1988 were nothing but were sham documents, which were never acted upon by the respondents themselves, and since, the partition took place on 21-11-2007, therefore, Section 6(5) of Hindu Succession Act, would not apply to the facts and circumstances of the case, therefore, the findings given by the Additional Commissioner, Bhopal Division Bhopal are erroneous and contrary to law.

20. There is another important aspect of the matter, which cannot be lost sight of. The order of partition dated 21-11-2007 was challenged by the petitioner by filing an appeal before the S.D.O., Vidisha on 19-8-2016 along with an application for condonation of delay. It was mentioned in the application, that the petitioner was not aware of the order of partition dated 21-11-2007, therefore, the appeal could not be filed within the period of limitation. According to the petitioner, the delay in filing the appeal was condoned by the S.D.O. Vidisha. Thus, it is clear that the S.D.O., Vidisha had come to a conclusion that since, the petitioner was not aware of the order of partition dated 21-11-2007, therefore, She could not file the appeal within the period of limitation. The order of S.D.O., by

which the delay in filing the appeal was condoned, was never challenged by the respondents, thus, it is clear that the petitioner was not aware of the order of partition dated 21-11-2007. Further the contention of the Counsel for the respondents, that since, the registered sale deed dated 26-9-1969 and "Will" dated 4-10-1988 were never challenged by the petitioner, therefore, She cannot challenge the correctness of these documents is concerned, this Court has already come to a conclusion, that by filing an application under Section 178 of M.P.L.R. Code, the respondents by their own conduct had proved that the registered sale deed dated 26-9-1969 and "Will" dated 4-10-1988 were never acted upon and the properties in dispute were still joint/ancestral in nature, therefore, when according to the respondents themselves, when these documents were sham documents, and were never intended to be acted upon, then in the considered opinion of this Court, no adverse inference can be drawn against the petitioner, if She had not challenged the said documents. Further, it is clear from the mutation proceedings as well as partition proceedings, no notice was ever issued to the petitioner. Thus, both the orders were obtained by the respondents, behind her back. No separate orders were passed by the authorities while mutating the names of the respondents. The Supreme Court in the case of *Rangammal v. Kuppaswami*, reported in (2011) 12 SCC 220 has held as under :

31. Application of Section 101 of the Evidence Act, 1872 thus came up for discussion in *Subhra Mukherjee* case and while discussing the law on the burden of proof in the context of dealing with the allegation of sham and bogus transaction, it was held that the party which makes the allegation must prove it. But the Court was further pleased to hold, wherein the question before the Court was "whether the transaction in question was a bona fide and genuine one" so that the party/plaintiff relying on the transaction had to first of all prove its genuineness and only thereafter would the defendant be required to discharge the burden in order to dislodge such proof and establish that the transaction was sham and fictitious. This ratio can aptly be relied upon in this matter as in this particular case, it is Respondent 1-plaintiff Kuppaswami who relied upon the alleged sale deed dated 24-2-1951 and included the subject-matter of the property which formed part of the sale deed and claimed partition. This sale deed was denied by the appellant-defendant on the ground that it was bogus and a sham transaction which was executed admittedly in 1951 when she was a minor.

32. Thus, it was Respondent 1-plaintiff who should have first of all discharged the burden that the sale deed executed during the minority of the appellant was genuine and was fit to be relied upon. If the courts below including the High Court had felt

satisfied on this aspect, only then the burden could be shifted on the appellant-defendant to dislodge the case of the plaintiff that the sale deed was not genuine.

21. There is another important aspect of the matter. By registered sale deed dated 26-9-1969, survey no. 643 and 644 (renumbered as 505/2) were given to Kamal Singh and by "Will" dated 4-10-1988 Survey No. 164, 165, ½ of 141, ½ of 398, 440, 0.115 out of 447, 448, 0.626 out of 506/1 to respondent No. 2 Rajesh Singh, whereas 0.062 hectares out of 134, 0.225 hectares out of 141/2, 1.777 hectares out of 392/2, 3.073 hectares out of 449 and 3 hectares out of 505 were given to respondent No. 1.

22. Whereas by partition, Survey No. 412/1,440,447/2,448,449/1 and 449/2 were given to Kamal Singh whereas Survey No. 134/1,1411/1,142/2,429,505/2 were given to respondent no.1 whereas Survey No. 141/1,142/ 1,398/1,398/2,472, 473, 476, 505/1 were given to respondent no.2. Thus, it is clear that different lands were given in partition to the respondents and Kamal Singh. If the contentions of the Counsel for the respondents, that they had become owners of the lands in dispute by virtue of registered sale deed and "Will", is accepted, then they cannot transfer their ownership to a different person by partition. Either they have to exchange their lands or they have to sell the same, but by partition, different lands cannot be given. Thus, it is clear that the registered sale deed dated 26-9-1969 and "Will" dated 4-10-1988 were never acted upon and they were sham documents and in fact the entire property remained joint/ancestral till 21-11-2007, when the same was partitioned on the application filed by the respondents and Kamal Singh under Section 178 of M.P.L.R. Code.

23. The next contention of the Counsel for the respondents, that the S.D.O. Vidisha, in his order, has included even those lands which were already disposed of either by Prem Singh or Kamal Singh is concerned, suffice it to say, that it is apparent from the impugned order passed by the Additional Commissioner, Bhopal Division Bhopal, as well as the order dated 20-2-2007 passed by the S.D.O. Vidisha, that no such objection was ever raised by the respondents either before the S.D.O. Vidisha or the Additional Commissioner, Bhopal Division, Bhopal. Even the copy of reply submitted before the Court of S.D.O. Vidisha or the memo of appeal filed before the Additional Commissioner, Bhopal Division Bhopal has not been placed on record. Thus, it appears that the factual objection with regard to sale of some of the properties by Prem Singh and Kamal Singh during their life time, was never raised by the respondents before the Courts below. Therefore, they cannot be allowed to raise this objection before this Court for the first time.

24. A co-ordinate bench of this Court, in the case of *Samudri Bai and others Vs. Mohit Kumar Jain & Ors.* reported in 2018(2) MPLJ 398 has held as under :

"12. Even otherwise, it is settled law that jurisdiction under Article 227 of the Constitution of India cannot be exercised to correct all errors of subordinate Court acting within its limitation. It can be exercised where the order is passed in grave dereliction of duty and flagrant abuse of fundamental principle of law and justice. [See *Jai Singh and another vs. MCD*, (2010) 9 SCC 385 and *Shalini Shetty vs. Rajendra S. Patil*, 2010(4) M.P.L.J. (S.C.) 590=(2010) 8 SCC329.]

Further co-ordinate Bench of this Court in the case of *Ashutosh Dubey and another vs. Tilak Grih Nirman Sahakari Samiti Maryadit, Bhopal and another*, 2004(3) M.P.L.J. 213=2004(2) MPHT 14 held that Supervisory jurisdiction under Article 227 of the Constitution of India is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. 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 face 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.

Accordingly, the present writ petition is dismissed."

25. From the above mentioned discussion, it is clear that the error in the order of the Additional Commissioner, Bhopal Division Bhopal is manifest and apparent on the face of the proceedings as the same has been passed in utter disregard of the provisions of law.

26. Resultantly, the order dated 25-10-2018 passed by Additional Commissioner, Bhopal Division Bhopal in case no. 189/Appeal/ 2016-2017 is hereby set aside, and the order dated 20-2-2017 passed by S.D.O., Vidisha in case no. 147/Appeal/2015-2016 is hereby restored.

27. The petition succeeds and is hereby **Allowed** with cost of Rs.10,000/-, to be deposited in the Account of Legal Aid Services Authority, Gwalior within a period of one month from today.

Petition allowed

I.L.R. [2020] M.P. 928
REVIEW PETITION

Before Mr. Justice Prakash Shrivastava

R.P. No. 655/2018 (Indore) decided on 26 February, 2020

M.P. ROAD DEVELOPMENT CORPORATION

...Petitioner

Vs.

JAGANNATH & ors.

...Respondents

(Alongwith R.P. Nos. 647/2018, 646/2018, 645/2018, 644/2018, 643/2018, 642/2018, 641/2018, 640/2018, 639/2018, 657/2018, 656/2018, 654/2018, 653/2018, 652/2018, 638/2018, 651/2018, 650/2018, 649/2018, 648/2018, 634/2018, 635/2018, 636/2018 & 637/2018)

A. *Land Acquisition Act (1 of 1894), Sections 18, 50 & 54 – Enhancement of Compensation – Opportunity of Hearing to Local Authority – Held – It is the Local Authority who has to pay the enhanced compensation, who was not even made a party to land acquisition proceedings, before Reference Court and in first appeal before this Court – Section 50 gives right of hearing to Local Authority – Serious prejudice caused to petitioner – Order passed by this Court reviewed and recalled, setting aside the order/award passed in Reference/First Appeal/Lok Adalat and remanding the matter to Reference Court to pass fresh award after giving opportunity of hearing to petitioner – Petition allowed. (Paras 8, 10, 14, 16 & 18)*

क. भूमि अर्जन अधिनियम (1894 का 1), धाराएँ 18, 50 व 54 – प्रतिकर का बढ़ाया जाना – स्थानीय प्राधिकारी को सुनवाई का अवसर – अभिनिर्धारित – यह स्थानीय प्राधिकारी है जिसे बढ़े हुए प्रतिकर का भुगतान करना है, जो कि निर्देश न्यायालय के समक्ष तथा प्रथम अपील में इस न्यायालय के समक्ष, भूमि अर्जन की कार्यवाहियों में पक्षकार तक नहीं बनाया गया था – धारा 50 स्थानीय प्राधिकारी को सुनवाई का अवसर प्रदान करती है – याची को गंभीर रूप से प्रतिकूल प्रभाव कारित हुआ – इस न्यायालय द्वारा पारित आदेश का पुनर्विलोकन किया गया तथा उसे वापस लिया गया एवं निर्देश/प्रथम अपील/लोक अदालत में पारित आदेश/अधिनिर्णय को अपास्त किया गया तथा याची को सुनवाई का अवसर प्रदान करने के पश्चात् नये सिरे से अधिनिर्णय पारित करने हेतु मामला निर्देश न्यायालय को प्रतिप्रेषित किया गया – याचिका मंजूर।

B. *Land Acquisition Act (1 of 1894), Section 18 & 54 – Award By Lok Adalat – Review Petition – Maintainability – Held – Judgment passed in First Appeal itself has been found patently illegal and Lok Adalat has passed the award based upon that very judgment – Award of Lok Adalat not sustainable. (Para 17)*

ख. भूमि अर्जन अधिनियम (1894 का 1), धारा 18 व 54 – लोक अदालत द्वारा अधिनिर्णय – पुनर्विलोकन याचिका – पोषणीयता – अभिनिर्धारित – प्रथम अपील में

पारित निर्णय अपने आप में प्रत्यक्ष रूप से अवैध पाया गया तथा लोक अदालत ने उस वास्तविक निर्णय के आधार पर अधिनिर्णय पारित किया – लोक अदालत का अधिनिर्णय कायम रखे जाने योग्य नहीं।

Cases referred:

(1995) 2 SCC 326, (1995) 1 SCC 221, (2001) 2 SCC 646, (2003) 7 SCC 693, (2004) 12 SCC 96, (2004) 13 SCC 125, (2011) 2 SCC 54, AIR 2017 SC 4428.

Mini Ravindran, for the petitioner.

A.S. Garg with Aditya Garg, for the respondent No. 1.

Akash Sharma, for the State.

ORDER

PRAKASH SHRIVASTAVA, J.:- This order will govern the disposal of RP Nos.634/18, 635/18, 636/18, 637/18, 638/18, 639/18, 640/18, 641/18, 642/18, 643/18, 644/18, 645/18, 646/18, 647/18, 648/18, 649/18, 650/18, 651/18, 652/18, 653/18, 654/18, 655/18, 656/18 & 657/18 since it is jointly submitted by counsel for the parties that all these review petitions involve the same issue on the identical fact situation.

2. These petitions have been filed seeking review of the orders of this Court which have been passed in First Appeals filed under Section 54 of the Land Acquisition Act (for short "the Act") against the award of the Reference Court.

3. For convenience the facts are taken from RP No.655/2018.

4. By this petition the petitioner is seeking review of order dated 4.7.2017 passed in FA No.169/2016, whereby the appeal filed by the respondent-claimant under Section 54 of the Land Acquisition Act has been allowed and the compensation amount has been enhanced.

5. The case of the review petitioner is that the land was acquired for the purpose of widening of road and the project was of MPRDC, therefore, all the expenditure for the said project is required to be undertaken by the review petitioner i.e. M.P. Road Development Corporation. Further case of the review petitioner is that the amount of compensation awarded by LAO was initially deposited by the review petitioner with the Collector but the same was seized in another matter, therefore, on request the review petitioner had issued the demand draft in favour of the land owners. The further case of the review petitioner is that though the petitioner is required to pay the compensation amount and the land has been acquired for construction and widening of road by the review petitioner, yet the review petitioner was not impleaded before the reference Court or before this Court in First Appeal, therefore, a serious prejudice has been caused to it requiring review of the order of this Court and giving an opportunity to the petitioner.

6. Learned counsel for the petitioner submits that since enhanced compensation amount is to be paid by the petitioner and the land is acquired for the benefit of the petitioner, therefore, the petitioner was a proper party before the reference Court and since it was not impleaded, therefore, the proceedings before the reference Court as also before this Court have been vitiated and now the matter is required to be remanded back to the reference Court for fresh adjudication after impleading the petitioner and giving an opportunity to it.

7. Learned counsel for the respondents have opposed the petition by submitting that the petitioner is not entitled for hearing before the reference Court being a beneficiary and that in some of the appeals before this Court, award is passed in the Lok Adalat, therefore, the review petition will not lie.

8. Having heard the learned counsel for the parties and on perusal of the record, it is noticed that the petitioner is undisputedly the beneficiary of the acquisition. The construction and widening of the road is to be done by the review petitioner and it is liable to pay the enhanced compensation and the compensation determined by the Land Acquisition Officer has also been paid by the petitioner. The record further reflects that the petitioner was neither a party in the land acquisition proceedings or proceedings before the reference Court, nor the petitioner has been noticed at that stage. Section 50 of the Land Acquisition Act gives right of hearing to the local authority or company concerned at whose cost or for whom land is acquired and the only limitation is that the local authority or company is not entitled to demand a reference under Section 18. Section 50 of the Land Acquisition Act, 1894 reads as under:-

"50. Acquisition of land at cost of a local authority or Company.-(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of any incidental to such acquisition shall be defrayed from or by such fund or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

provided that no such local authority or Company shall be entitled to demand a reference under section 18."

9. The issue relating to right of the local authority to participate at the stage of determination of compensation in the light of provisions contained in Section 50 of the Act has been settled by the Constitution Bench of the Supreme Court in the matter of *U.P. Awas Evam Vikas Parishad Vs. Gyan Devi and others* reported in (1995) 2 SCC 326, it has been held that:-

"11. Thus, on an interpretation of the provisions of Section 50(2) of the L.A. Act, it must be concluded that, subject to the limitation contained in the proviso, a local authority for whom land is being acquired has a right to participate in the proceedings for acquisition before the Collector as well as the reference court and adduce evidence for the purpose of determining the amount of compensation and the said right imposes an obligation on the Collector as well as the reference court to give a notice to the local authority with regard to the pendency of those proceedings and the date on which the matter of determination of amount of compensation would be taken up. The recognition of this right raises the question whether the local authority, feeling aggrieved by the determination of the amount of compensation by the Collector or the reference court, can take recourse to any legal remedy. Before dealing with this question we would take note of the decisions of this Court have a bearing on the issue."

10. The view of the Constitution Bench is clear that the local authority for whom land is acquired, is entitled to participate in the proceedings before the Collector and the reference Court and such local authority is also entitled to a notice from the Collector and reference Court at the stage of determination of the amount of compensation. The Constitution Bench in the above judgment has further taken note of Section 50(2) of the Act and has held that:-

"20. In a case where no notice is given to the local authority the position of the local authority is not different from that of the Municipal Corporation in *Neelgangabai & Anr. v. State of Kamataka*. In that case there was an express provision in section 20 of L.A. Act as modified by Land Acquisition (Mysore Extension Amendment) Act, 1961 providing for service of notice on the person or local authority for whom the acquisition is made. On a construction of Section 50(2) we have found that service of such a notice is implicit in the right conferred under Section 50(2) of the L.A. Act, Since the failure to give a notice would result in denial of the right conferred on the local authority under Section 50(2) it would be open to the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to challenge the award made by the Collector as was done in *Neelgangabai* case. In a case where notice has been served on the local authority and it has appeared before the Collector the local authority may feel aggrieved on account of it being denied opportunity to adduce evidence or the evidence adduced by it having not been considered by the Collector while making the award or the award being vitiated by malafides. Since the amount of the compensation is to be paid by the local authority and it has an interest in the determination of the said amount, which has been given recognition in Section 50(2) of the L.A. Act, the local authority would be a person

aggrieved who can invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award in spite of the proviso precluding the local authority from seeking a reference. Such a challenge will, however, be limited to the grounds on which judicial review is permissible under Article 226 of the Constitution. In a case where the local authority has failed to appear inspite of service of notice the local authority can have no cause for grievance. Even in such a case it may be permissible for the local authority to invoke the jurisdiction of the High Court under Article 226 of the Constitution to assail the award if it is vitiated by malafides or is perverse."

11. The Constitution Bench has culled out the right of the local authority in this regard as under:-

"24. To sum up, our conclusions are :

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.

3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority, the should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened."

12. In the matter of *Neyvely Lignite Corporation Ltd. Vs. Special Tahsildar (Land Acquisition) Neyvely and others* reported in (1995) 1 SCC 221 the Hon'ble Supreme Court has held that word "person interested" comprehends the local authority or company for whose benefit land is acquired. Hence it is a proper party, if not necessary party, therefore it has a right to participate in the reference proceedings under Section 18 or appeal under Section 54 of the Land Acquisition Act, as also got the right to file a writ petition before the High Court under Article 226 of the Constitution. It has been held that the limited right to lead evidence under Section 50(2) of the Act is available.

13. In the matter of *Agra Development Authority Vs. Special Land Acquisition Officer and others* reported in (2001) 2 SCC 646, it has been held that where the land is acquired at the cost of the local development authority, then it is mandatory for the Land Acquisition Officer to issue notice to the said authority and give an opportunity to adduce evidence while determining the compensation amount.

14. In the matter of *Kanak (Smt.) and another Vs. U.P. Avas Evam Vikas Parishad and others* reported in (2003) 7 SCC 693 it has again been reiterated that local authority for whose benefit the land is acquired or who is responsible for making payment of compensation, is required to be given notice by the Collector as well as Reference Court while determining compensation and the exceptions are that the authority should have knowledge of the proceedings or the authority has not suffered any prejudice on account of the failure to give notice. In the present case the authority had no knowledge of the reference proceedings or the appeal before this Court and that serious prejudice is caused to the petitioner because the compensation amount has been enhanced in these proceedings.

15. In the matter of *NTPC Ltd. Vs. State of Bihar and others* reported in (2004) 12 SCC 96 considering the nature of right of the authority on whose behalf land is acquired, it has been held that such authority has not only right to lead evidence but also has right to support the award made by the LAO by cross-examining the witnesses led by the claimants. In the matter of *Regional Medical Research Centre, Tribals Vs. Gokaran and others* reported in (2004) 13 SCC 125 considering the meaning of "local authority or company" as mentioned in Section 50 of the Act, it has been held that the words include a statutory body on behalf of which land is acquired and it has further been held that such body should be impleaded and given notice in the proceedings before the reference Court. The Supreme Court in the matter of *Delhi Development Authority Vs. Bhola Nath Sharma and others* reported in (2011) 2 SCC 54 while considering the Section 50(2) of the Act, has held that the object of the provision is to afford an opportunity to the local authority or company to participate in the proceedings for determination of compensation amount and to show that the claim made by the land owner for payment of compensation is legally untenable or unjustified, therefore, notice to the local authority is necessary. In this judgment, the Hon'ble Supreme Court has set aside the order of the Division Bench of the High Court and had remanded the matter back to the reference Court for deciding the reference by giving fresh opportunity of hearing to the parties including opportunity to adduce evidence for the purpose of determining the amount of compensation.

16. Having regard to the aforesaid position in law, I am of the opinion that the award passed by the reference court under Section 18 of the Act and the order passed by this Court in First Appeal, without giving any notice to the petitioner and without the knowledge of the petitioner, suffers from patent illegality and the same cannot be sustained.

17. Learned counsel for the respondents based upon the judgment of the Supreme Court in the matter of *Bharvagi Construction and another Vs. Kothakapu Muthyam Reddy and others* reported in AIR 2017 SC 4428 has advanced the argument that in some of the matters the award has been passed by the Lok Adaloat (sic: Adalat), therefore, review is not maintainable. But such an argument can not be accepted in view of the fact that judgment dated 4/7/2017 in FA No.169/2016 has been passed by the court on merit and Lok Adalat has passed the award based upon that judgment. Since the said judgment of this Court dated 4.7.2017 passed in FA No.169/2016 itself in this order has been found to be suffering from patent illegality, therefore, the award of the Lok Adalat based on that judgment cannot be sustained.

18. Hence, the judgment dated 4.7.2017 passed in FA No.169/2016 and the awards of the Lok Adalat in the connected appeals are reviewed and recalled and the First Appeals are disposed off by setting aside the award of the Reference

Court and directing the reference Court to give an opportunity to the petitioner and all the concerned parties in terms of the observation made above and pass afresh award in accordance with law.

19. Review petitions accordingly stand **allowed**.

20. Signed order be kept in the file of RP No.655/18 and a copy thereof be placed in the file of connected RP Nos.634/18, 635/18, 636/18, 637/18, 638/18, 639/18, 640/18, 641/18, 642/18, 643/18, 644/18, 645/18, 646/18, 647/18, 648/18, 649/18, 650/18, 651/18, 652/18, 653/18, 654/18, 656/18 & 657/18.

Petition allowed

I.L.R. [2020] M.P. 935

APPELLATE CIVIL

Before Mr. Justice G.S. Ahluwalia

S.A. No. 167/2001 (Gwalior) decided on 22 August, 2019

RAJABHAIYA & ors.

...Appellants

Vs.

BADAL SINGH & anr.

...Respondents

Evidence Act (1 of 1872), Section 45 & 73 – Examination of Signature by Expert – Suit for specific performance of contract – Held – When signature was denied by defendants, it was the duty of appellant/plaintiff to file application u/S 45 for expert examination of disputed signatures with the admitted one – Application was not filed deliberately and even no explanation was forwarded for the same – Court rightly did not take the task to compare the signatures on its own – Impugned Judgment affirmed – Appeal dismissed. (Paras 15 to 17)

साक्ष्य अधिनियम (1872 का 1), धारा 45 व 73 – विशेषज्ञ द्वारा हस्ताक्षर का परीक्षण – संविदा के विनिर्दिष्ट पालन हेतु वाद – अभिनिर्धारित – जब प्रतिवादीगण द्वारा हस्ताक्षर का प्रत्याख्यान किया गया था, अपीलार्थी/वादी का यह कर्तव्य था कि वह विवादित हस्ताक्षरों का विशेषज्ञ परीक्षण स्वीकृत हस्ताक्षर के साथ किये जाने हेतु धारा 45 के अंतर्गत आवेदन प्रस्तुत करे – आवेदन जानबूझकर प्रस्तुत नहीं किया गया तथा उक्त हेतु कोई स्पष्टीकरण भी प्रस्तुत नहीं किया गया था – न्यायालय ने स्वयं से हस्ताक्षरों की तुलना करने का कार्य न करते हुए उचित किया – आक्षेपित निर्णय अभिपुष्ट – अपील खारिज।

Cases referred:

(1997) 7 SCC 110, (2012) 12 SCC 406.

Sanjay Dwivedi, for the appellants.

M.P.S. Raghuvanshi, for the respondent No. 1.

J U D G M E N T

G.S. AHLUWALIA, J.:- This Second Appeal under Section 100 of CPC has been filed against the judgment and decree dated 15-2-2001 passed by Additional District Judge, Mungawali, District Guna in Civil Appeal No.11A/1999, thereby setting aside the judgment and decree dated 3-2-1999 passed by Civil Judge Class-I, Mungawali, District Guna in Civil Suit No.5A/1995.

2. This appeal was admitted on following Substantial Questions of Law :

1. Whether the Judgment and Decree passed by the Lower Appellate Court is perverse and contrary to the record?
2. Whether the evidence of P.W.1 Shankarlal Prajapati is reliable and on that basis the decree passed by the Trial Court can be set aside?

3. The necessary facts for the disposal of the present appeal in short are that appellants/plaintiffs filed a suit for specific performance of contract. It was their case that the defendant no.1/respondent no.1 is the owner and in possession of agricultural land bearing Khasra No.353:1 area 3.135 hectares of land situated in village Ruhana Pargana Mungawali, District Guna. On 30-3-1994, he entered into an agreement to sell the said land for a consideration amount of Rs. 50,000/- out of which an amount of Rs. 40,000/- was paid and it was agreed that the remaining amount of Rs. 10,000/- would be paid at the time of execution of sale deed. Since, the rin pustika as well as the name of the respondent No.1 was not mutated in the revenue records, therefore, the sale deed could not be executed on 30-3-1994, however, the possession of the land was handed over to the plaintiffs, and they are in possession of the same. The plaintiffs had requested the respondent no.1 and had also sent registered notice, to execute the sale deed, after taking the remaining amount, but the respondent No.1 did not perform his part of contract. The plaintiffs are still ready and willing to perform their part of contract. Accordingly, the suit was filed.

4. The respondent No.1, filed his written statement and denied the plaint averments. He specifically denied that he had ever executed an agreement to sale. He further denied that any money was paid to him. Neither the possession of the land in dispute has been parted away with the appellants/plaintiffs nor any agreement to sell was executed. The respondent no.1 had not given his photograph to the plaintiffs, and it appears that it was affixed at a later stage. The agreement to sell is a concocted and forged document. It was further pleaded that the total area of Kh. No. 353:1 is 9.823 hectares. Earlier, Karan Singh was the owner of the said land. 20 Bigha of land out of this Khasra number was sold by Karan Singh to wife and children of Govind Singh Lodhi. Thereafter, the Karan Singh sold 11 bigha and 10 biswa of land to the plaintiffs and the disputed

property was sold by Karan Singh to the respondent No.1. A false suit was also filed by the plaintiffs against Karan Singh which was dismissed. From thereafter, the plaintiffs were trying to grab the property of the respondent No.1. Thus, it was prayed that the suit filed by the plaintiffs/appellants be dismissed.

5. The Trial Court after framing issues and recording evidence, decreed the suit.

6. Being aggrieved by the judgment and decree passed by the Trial Court, the respondent No.1 filed an appeal, which has been allowed by judgment and decree dated 15-2-2001 passed by Additional District Judge, Mungawalia, District Guna and has dismissed the suit filed by the appellants.

7. Challenging the judgment and decree passed by the First Appellate Court, it is submitted by the Counsel for the appellants, that Shankarlal (P.W.1) did not support the case of the plaintiffs and accordingly he was declared hostile. Initially, the evidence of Shankarlal (P.W.1) was deferred for the reason, that he had not brought the stamp register, but later on also, he did not bring the stamp register, therefore, an adverse inference should be drawn against the respondent No.1. Further, the Court in exercise of power under Section 73 of Evidence Act, should have compared the signatures of the respondent No.1 on its own.

8. *Per contra*, it is submitted by the counsel for the respondent No.1 that the appellants never filed an application for sending the disputed signatures of the respondent no.1 to the handwriting expert. Further, Shankarlal (P.W.1) was the witness of the appellants, and he has narrated the truth. Even if the examination in chief is considered, then it is clear that his evidence runs contrary to the evidence of Nathan Singh (P.W.2). The execution of the agreement to sell Ex. P.1, has not been proved.

9. Heard the learned counsel for the parties.

10. It is the contention of the counsel for the appellants that since, the evidence of Shankarlal (P.W.1) was deferred, and thereafter, he was won over by the respondent No.1, therefore, he did not support the case of the plaintiffs. Therefore, his evidence given in examination-in-chief, should be given more preference. Further, Shankarlal (P.W.1) did not produce the stamp register, therefore, in the light of the fact that since, he had joined hands with the respondent No.1, therefore, an adverse inference should be drawn against the respondent No.1.

11. Shankarlal (P.W.1) in his examination-in-chief has stated that on the instructions of respondent No.1, he had drafted an agreement to sell on 30-3-1994. This agreement was executed for a consideration amount of Rs. 50,000/-. The respondent No.1 had informed that he has received an amount of Rs. 40,000/- in his house and the remaining amount shall be paid at the time of execution of sale deed.

12. Nathan Singh (P.W.2) has stated that an amount of Rs. 40,000/- was paid by the appellant No.1 to the respondent No.1. Thereafter, in cross-examination, this witness has stated that the amount was paid about 1 hour prior to execution of agreement to sell. This witness has not stated that the amount was paid in the house of the respondent No.1. On the plain reading of the evidence of Nathan Singh (P.W.2), it is clear that according to this witness, the amount of Rs. 40,000/- was paid at the time of execution of agreement to sell. Whereas it is the case of Rajabhaiya (P.W.1) [wrongly written as P.W.1] that he had given an amount of Rs. 40,000/- in the Tahsil premises. Rajabhaiya (P.W.1) has not stated that money was paid 1 hour prior to execution of agreement to sell, Ex. P.1. In fact, this witness has stated that after the agreement to sell was executed, only thereafter, the amount was paid. Thus, there is material discrepancy in the evidence of the witnesses, on the issue on payment and place of payment of Rs. 40,000/-.

13. Further Shankarlal (P.W.1) in his examination-in-chief itself, had stated that the witnesses had not signed the agreement to sell in his presence, whereas Nathan Singh (P.W.2) has stated that the agreement to sell was drafted by Shankarlal and he was present and the said document was signed. Thus, the presence of attesting witnesses has also not been proved by the appellants.

14. It is next contended by the counsel for the appellants, that since, Shankarlal (P.W.1) did not bring his stamp register deliberately, therefore, an adverse inference should be drawn against the respondent No.1. However, the counsel for the appellants, fairly conceded that no direction was ever issued by the Trial Court, to produce the Stamp Register. Under these circumstances, this Court is of the considered opinion, that the provisions of Section 89 of Evidence Act, would not come into play. Since, Shankarlal (P.W.1) was the witness of the appellants, therefore, an adverse inference has to be drawn against the appellants, because on the first day, the evidence of Shankarlal (P.W.1) was deferred because on the question put by the counsel for the respondent No.1, this witness had admitted that he had not brought the stamp register. But it is not out of place to mention that while deferring the evidence of Shankarlal (P.W.1), neither the Court had issued any direction to him to produce the stamp register nor any such prayer was made by the appellants, but in fact, it was the respondent no.1 who was insisting that the stamp register is required.

15. It is next contended by the counsel for the appellants, that where the signatures were denied by the respondent No.1, then the Trial Court should have examined the signatures on its own by exercising power under Section 73 of Evidence Act.

16. Considered the submission made by the counsel for the appellants. It is an admitted position, that the appellants did not file an application for sending the disputed signature to the handwriting expert for its comparison with admitted

signatures. Whenever, a report by a handwriting expert is given, then such an expert can be cross-examined by the other party. Therefore, in the considered opinion of this Court, it was the duty of the appellants to file an application under Section 45 of Evidence Act, but they did not deliberately do so. No explanation has been given as to why no such application was filed. The Trial Court should be slow in taking the task of comparing the signatures or handwriting on its own, because in a given case, such a comparison made by the Court, would deprive the effected party to cross-examine the expert. The Supreme Court in the case of *Ajit Savant Majagvai Vs. State of Karnataka* reported in (1997) 7 SCC 110 has held as under :

37. This section consists of two parts. While the first part provides for comparison of signature, finger impression, writing etc. allegedly written or made by a person with signature or writing etc. admitted or proved to the satisfaction of the Court to have been written by the same person, the second part empowers the Court to direct any person including an accused, present in court, to give his specimen writing or fingerprints for the purpose of enabling the Court to compare it with the writing or signature allegedly made by that person. The section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.

38. As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act. [See: *State (Delhi Admn.) v. Pali Ram.*]

The Supreme Court in the case of *Ajay Kumar Parmar Vs. State of Rajasthan* reported in (2012) 12 SCC 406 has held as under :

28. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the

court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the court may also not be conclusive. Therefore, when the court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the court must keep in mind the risk involved, as the opinion formed by the court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.

17. Thus, this Court is of the considered opinion, that where the appellants did not file an application for comparison of the disputed signatures by an expert, then the Trial Court did not commit any mistake in not taking over the task of comparing disputed signatures of the respondent no.1 with that of admitted signatures.

18. No other argument was advanced by the counsel for the appellants.

19. In view of the above discussion, this Court is of the considered opinion, that the Substantial Questions of Law cannot be answered in affirmative, accordingly, they are answered in negative.

20. Resultantly, judgment and decree dated 15-2-2001 passed by Additional District Judge, Mungawali, District Guna in Civil Appeal No. 11A/1999 is hereby affirmed.

21. The appeal fails and is hereby **Dismissed**.

Appeal dismissed

I.L.R. [2020] M.P. 941
APPELLATE CIVIL

Before Mr. Justice Sanjay Dwivedi

S.A. No. 390/2005 (Jabalpur) decided on 6 March, 2020

ASHOK KUMAR

...Appellant

Vs.

BABULAL SAHU & ors.

...Respondents

A. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(a) – Arrears of Rent – Demand Notice – Held – After service of demand notice, defendant/tenant neither replied the same nor deposited the arrears of rent within period of two months – Decree of eviction u/S 12(1)(a) rightly passed – Appeal dismissed. (Para 13 & 14)

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(a) – भाड़े का बकाया – मांग नोटिस – अभिनिर्धारित – मांग नोटिस की तामीली पश्चात् प्रतिवादी/किरायेदार ने न तो उक्त का उत्तर दिया न ही दो माह की अवधि के भीतर भाड़े का बकाया जमा किया – धारा 12(1)(a) के अंतर्गत बेदखली की डिक्री उचित रूप से पारित – अपील खारिज।

B. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) – Bonafide Requirement – Burden of Proof – Held – No specific evidence by defendant/tenant to establish alternate suitable accommodation in exclusive ownership of plaintiff/landlord – Eviction decree u/S 12(1)(f) rightly passed. (Paras 10 to 12)

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(f) – वास्तविक आवश्यकता – सबूत का भार – अभिनिर्धारित – प्रतिवादी/किरायेदार द्वारा यह स्थापित करने के लिए कोई विनिर्दिष्ट साक्ष्य नहीं कि वादी/भूमि स्वामी के अनन्य स्वामित्व में वैकल्पिक योग्य स्थान है – धारा 12(1)(f) के अंतर्गत बेदखली की डिक्री उचित रूप से पारित।

C. Accommodation Control Act, M.P. (41 of 1961), Section 12(3) & 13(1) – Arrears of Rent – Protection to Tenant – Held – Defendant/tenant failed to show any reasons for default in payment of rent and thus unable to establish the compliance of provisions of Section 13(1) – He continuously, on several occasions violated provisions of Section 13(1) – Not entitled for benefits of Section 12(3) of the Act. (Para 16 & 17)

ग. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(3) व 13(1) – भाड़े का बकाया – किरायेदार को संरक्षण – अभिनिर्धारित – प्रतिवादी/किरायेदार, भाड़े के भुगतान में व्यतिक्रम हेतु कोई कारण दर्शाने में असफल रहा और इस प्रकार धारा 13(1) के उपबंधों के अनुपालन को स्थापित करने में असमर्थ है – उसने निरंतर रूप से कई

अवसरों पर धारा 13(1) के उपबंधों का उल्लंघन किया – अधिनियम की धारा 12(3) के लाभों हेतु हकदार नहीं।

D. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) – Bonafide Requirement – Death of Plaintiff – Effect – Held – Plaintiff expired during pendency of this second appeal – Bonafide need of deceased plaintiff, already established and cannot be said to have lapsed on his death unless it is established that there is nobody in family of deceased to run the business – LR's of plaintiff already on record – Decree of eviction cannot be denied – Appeal dismissed. (Para 18)

घ. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(f) – वास्तविक आवश्यकता – वादी की मृत्यु – प्रभाव – अभिनिर्धारित – इस द्वितीय अपील के लंबित रहने के दौरान वादी की मृत्यु हो गई – मृतक वादी की वास्तविक आवश्यकता पहले ही स्थापित और उसकी मृत्यु पर व्यपगत हो जाना नहीं कहा जा सकता जब तक कि यह स्थापित नहीं किया जाता कि कारबार चलाने के लिए मृतक के कुटुंब में कोई भी नहीं है – वादी के विधिक प्रतिनिधिगण पहले से ही अभिलेख पर है – बेदखली की डिक्री से इंकार नहीं किया जा सकता – अपील खारिज।

Cases referred:

2017 (1) MPLJ 69, 1992 MPLJ 90, 2008 (1) MPLJ 114, 2006 (4) MPLJ 115, JIJ SN 11, 1974 MPLJ 64, M.P. Weekly Notes 39, AIR 2004 SC 3484, 1997 AIR SCW 2310.

Imtiyaz Hussain, for the appellant.

Monesh Sahu, for the respondents.

J U D G M E N T

SANJAY DWIVEDI, J.:- This is the defendant's appeal against the judgment dated 28.01.2005 passed by the IV Additional District Judge, Jabalpur in Civil Appeal No. 22-A/2003 confirming the judgment and decree of eviction dated 07.03.2003 passed by the XV Civil Judge Class II, Jabalpur in Civil Suit No. 126-A/2002.

2. This appeal was admitted on 29.03.2005 on the following substantial questions of law:

1. Whether in the facts and circumstances of the case, the findings of both the courts below that the plaintiffs had no alternative accommodation cannot be sustained?
2. Whether the courts below were not justified in holding that the defendant/appellant did not deposit the arrears of rent within 1 month of the service of the notice of the suit?

3. Whether the lower Appellate Court was not legally justified in not condoning the delay in depositing of rent and the order regarding striking out of the defence is not sustainable?

3. Before deciding the controversy involved in this case, brief facts are necessary to be mentioned. The plaintiffs filed a suit seeking eviction of the defendant on the ground of Section 12(1)(a) and 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as 'Act of 1961') stating that the suit shop was given to the appellant/defendant on rent at Rs.330/- per month in which he was running business of selling and repairing the watches in the name and style Deepak Watch Company.

4. As per the plaintiffs, the defendant did not pay the rent of the suit shop w.e.f. 01.03.1985. After reminder also when he did not pay the rent of the suit shop, on 18.09.1998 a notice was sent to him, but, even then he did not pay the rent outstanding against him. Thereafter, a suit was filed by the plaintiffs seeking decree of eviction under Section 12(1)(a) of the Act of 1961 pleading that the plaintiff No. 2 Rajendra Sahu was running business of selling newspapers and magazine from the passage of their house because he had no other suitable alternative accommodation for running his business, therefore, the suit shop was bonafidely needed by him.

5. The appellant/defendant filed written statement denying the plaint allegations stating that the plaintiff No.2 is not unemployed and the place from where he is running his business is sufficient for him to run the business. The defendant has also stated that plaintiff No.2 has an alternative suitable accommodation available to run his business. He has also stated that the plaintiffs have never given any rent receipt and ultimately in 1998 he refused to pay the arrears of rent. However, he has deposited all arrears of rent in the CCD and no rent is outstanding against him.

6. The trial court framed as many as six issues and decreed the suit on the ground of Section 12(1)(a) and 12(1) (f) of the Act of 1961. The trial court recorded the finding that the defendant was in arrears of rent, which he did not pay even after issuing demand notice by the plaintiffs and, therefore, decree on the ground of Section 12(1)(a) of the Act of 1961 for eviction can be passed against the defendant. The trial court also observed that the plaintiff No. 2 was in *bona fide* need of the suit shop because he had no other alternative suitable accommodation for running his business in Jabalpur and as such decree of Section 12(1)(f) has also been passed against the defendant.

7. In appeal, preferred by the appellant/defendant under Section 96 of the Code of Civil Procedure, the appellate court has also affirmed the judgment and decree passed by the trial court and has also directed the appellant/defendant to pay the rent at the rate of Rs.330/- from the month of March, 2003 till handing

over the vacant possession of the suit shop to respondents/plaintiffs and shall also bear the cost of the litigation of the plaintiffs.

8. This Court while admitting the appeal, has framed substantial question of Law No.1 with regard to the finding of the courts whether the plaintiffs had any alternative suitable accommodation or not.

9. Learned counsel for the appellant has drawn attention of this Court to para-4 of the plaint, which reads as under:

"4. The plaintiff No. 2 was unemployed. Therefore, for the time being, he has started the business of library of newspapers, magazines and story books, which he is doing in the passage of 2' width. This business is neither suitable nor sufficient as career in life. The said passage is meant for entrance to and exist from the residential portion of the house. Therefore, it is no place for any business. The plaintiff No. 2 will be starting the business of general goods. Therefore, the tenancy accommodation is bonafidely required by the plaintiffs for starting the said business of plaintiff No. 2. The plaintiffs have no other accommodation of their own in their occupation for the said purpose. Hence, the defendant is liable for eviction on the ground under Section 12(1)(f) of the M.P. Accommodation Control Act."

10. The trial court has framed Issue No.3 in this regard and has dealt with the issue observing that Plaintiff No. 2 Rajendra Kumar while adducing evidence has stated about his *bona fide* need of the suit shop for running his business and his brother plaintiff No.1 Babulal Sahu also supported the version of plaintiff No.1. In rebuttal, defendant has not produced any evidence, but, has stated that the plaintiffs have no experience and sufficient fund to start the business. The trial court has discussed the statements of plaintiffs and has found that the passage from which plaintiff No. 2 is selling the newspaper and magazines is a common passage and the shop which is in possession of the defendant is having more space than that of the common passage and, therefore, he is in *bona fide* need of the suit shop. So far as the alternative suitable accommodation is concerned, since in the plaint it is categorically stated by the plaintiffs that they have no other alternative suitable accommodation in the town for running their business, then it is for the defendant to adduce the cogent evidence to rebut the said pleading of the plaintiffs. But, he did not enter into the witness box to get himself examined and only on the basis of cross-examination of the plaintiffs he tried to establish his stand that the plaintiffs had other alternative suitable accommodation. As per the trial court, even in the cross-examination of plaintiffs' witnesses nothing has come out, on the basis of which it could be gathered that the plaintiffs had another shop or accommodation available to start their business, however, it has been admitted by the plaintiffs that the other shops were in joint possession after their father's death. Plaintiff No.2 stated that there are two other shops of his brother situated in

Galla Bazar and are lying vacant. He has specifically denied that he could start his business from the said shops because those shops were in possession of his brother. From the discussion made by the trial court and on the basis of evidence available on record, the trial court has very categorically observed that it is difficult to gather that plaintiffs have any other vacant shop of their own available in the town which would be suitable for running their business and, therefore, it is observed that the plaintiffs have no alternative shop. The issue has been decided by the trial court in favour of the plaintiffs.

11. Learned counsel for the appellant during the course of arguments has pointed out that both the courts below have not appreciated the evidence properly otherwise the *bona fide* need of the plaintiffs could not have been established on the basis of availability of alternative suitable accommodation, but, I am not satisfied with the contention of learned counsel for the appellant for the reason that not only the trial court but also the appellate court has made a detailed discussion in para-20 and 25 of its judgment and finally observed that it is difficult to draw an inference that the plaintiff No. 2 namely Rajendra Sahu is the exclusive owner of the shops, which are lying vacant in Galla Bazar and, therefore, his need cannot be denied on that context.

12. In this respect, learned counsel for the respondent/defendant has placed reliance upon a decision reported in 2017 (1) MPLJ 69-*Vinod Kumar Goyal vs. Avneet Kumar Gupta* in which the Court has observed as under:

"7. I have heard the learned counsel for the parties at length and have also perused the judgment of the trial Court as well as the Appellate Court and having gone through the evidence available on record, specifically that of landlord PW-1 and son of landlord PW/2. It is apparent that a shop let out to the tenant is admeasuring 18 feet in length and 10 feet in breadth. It is also undisputed that adjacent to the suit shop, the son of the landlord Gaurav Goyal is running a furniture shop. Admittedly, if the partition is removed the landlord will have enough space to run the electronic shop and the same is suitable for the purpose of business. The appellant/tenant was not able to prove that any other alternative accommodation is available with the landlord/defendant.

8. In view of the aforesaid facts and circumstances and the analysis of the evidence on record, the findings recorded by both the Courts below cannot be found fault with and have rightly decreed the suit.

9. The Supreme Court in the case of Meenal Eknath Kshirsagar (Mrs.) vs. Traders and Agencies and another, 1996(5) SCC 344 has held that it is for the landlord to decide how he desires to beneficially enjoy his property and it is not for the Courts to dictate to him the manner in which he should enjoy or utilize his property. Similar view has been taken by this Court in Kailash Chandra Shankarlal Trivedi (*supra*).

10. In the case of Akhileshwar Kumar and others vs. Mustaqim and others, (2003) 1 SCC 462, the Supreme Court has held that once the bona fide requirement of a landlord is established, as in the present case wherein there is a concurrent finding of fact to that effect and which is not assailed by the appellant in the present appeal, then the choice of the accommodation which would be more suitable for his requirement has to be left to the subjective choice of the landlord and the Court cannot thrust its own choice upon him and while discussing the availability of other alternative accommodation has held as under in para 4 :—

"4. So is the case with the availability of alternative accommodation, as opined by the High Court. There is a shop in respect of which a suit for eviction was filed to satisfy the need of plaintiff No. 2. The suit was compromised and the shop was got vacated. The shop is meant for the business of plaintiff No. 2. There is yet another shop constructed by the father of the plaintiffs which is situated over a septic tank but the same is almost inaccessible inasmuch as there is a deep ditch in front of the shop and that is why it is lying vacant and unutilized. Once it has been proved by a landlord that the suit accommodation is required bona fide by him for his own purpose and such satisfaction withstands the test of objective assessment by the Court of facts then choosing of the accommodation which would be reasonable to satisfy such requirement has to be left to the subjective choice of the needy. The Court cannot thrust upon its own choice upon the needy. Of course, the choice has to be exercised reasonably and not whimsically. The alternative accommodations which have prevailed with the High Court are either not available to the plaintiff No. 1 or not suitable in all respects as the suit accommodation is. The approach of the High Court that an accommodation got vacated to satisfy the need of plaintiff No. 2, who too is an educated unemployed, should be diverted or can be considered as relevant alternative accommodation to satisfy the requirement of plaintiff No. 1, another educated unemployed brother, cannot be countenanced. So also considering a shop situated over a septic tank and inaccessible on account of a ditch in front of the shop and hence lying vacant cannot be considered a suitable alternative to the suit shop which is situated in a marketing complex, is easily accessible and has been purchased by the plaintiffs to satisfy the felt need of one of them."

11. Similarly in the case of Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222, wherein the landlord had other suitable accommodation available with him and on that ground the High Court had reversed the finding of the trial Court, the Supreme Court while setting aside the judgment of the High Court and affirming the choice of the landlord in respect of the accommodation held as under in para 13 :—

"13.....Once the Court is satisfied of the bona fides of the need of the landlord for premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the Court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one, but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

12. In view of the above pronouncement by the Apex Court a conclusion can be drawn that mere availability of another accommodation with the landlord does not disqualify him from claiming eviction, therefore, no fault can be found with the findings of both the Courts below."

In view of the above, it is clear that when there was no specific evidence adduced by the defendant to show that any alternative suitable accommodation was available in the exclusive ownership of the plaintiffs, the need of the plaintiffs cannot be ignored and eviction of the appellant/defendant from the suit shop cannot be denied. Therefore, the finding given by both the courts below are not required to be interfered with. The substantial question of law No.1 is accordingly answered.

13. The Substantial Question of Law Nos. 2 and 3 relate to grant of decree of eviction under Section 12(1)(a) of the Act of 1961. The trial court has dealt with this issue in Issue No. 2 in its order and has observed that the appellant/defendant did not make the payment of rent w.e.f. 01.03.1985. The demand notice Ex. P/8 was sent to the defendant, but he did not submit any reply to the same although admittedly the notice was served upon him. However, he had produced the Ex. D/6 i.e. a registered letter, containing details of payment of rent to plaintiff Babulal Sahu.

14. As per the requirement of Section 12(1)(a) of the Act of 1961 if a demand notice is sent to the tenant and the same is duly served on him, he is under obligation to make deposit of arrears of rent demanded within a period of two months from receipt of the said notice. The defendant has admitted that the notice Ex. P/8 was served upon him on 21.09.1998, but neither he replied the same nor he deposited the arrears of rent shown in the notice within the period of two months. Although in cross-examination of the plaintiffs he has shown Ex. D/4, D/5 and D/6 suggesting plaintiffs about payment of rent on different dates, but, that has been denied by the plaintiffs. The defendant did not produce any evidence to substantiate that he was not in arrears of rent although he stated that he had

deposited Rs.17,210/- in the CCD, but in support of that stand he has not filed any document and also not adduced any evidence. The trial court in paragraph-14 of its judgment has discussed all these aspects and has finally given the finding that despite demand notice Ex. P/8 served upon the defendant on 21.09.1998 he has not deposited the said amount within two months i.e. before 21.11.1998 and has given finding about arrears of rent.

15. The appellate court in para-17 and 19 of its judgment has discussed the evidence adduced by the parties regarding payment and non-payment of arrears of rent and finally approved the finding given by the trial court.

16. Learned counsel for the appellant has relied upon the decisions reported in 1992 MPLJ 90 - *Satish Chandra Vs. Janki Prasad* and 2008 (1) MPLJ 114 - *Sonabai vs. Kushum* and has contended that if at all the defendant has committed any default in payment of rent then he should be given benefit of Sub Section (3) of Section 12 of the Act of 1961, but, I am not convinced with the contention raised by the learned counsel for the appellant for the reason that he failed to demonstrate as to why he has committed default in payment of rent. As per the settled principle of law and as per the requirement of respective provision it is clear that when the defendant complies the requirement of Section 13(1) of the Act of 1961 and if he does not commit default in payment of rent in accordance with the requirement of said provision then only he can be given benefit once as per the requirement of sub-section (3) of Section 12 of the Act of 1961, but here in this case the learned counsel for the appellant has failed to show as to how he can be given benefit of the said provision. However, I am not impressed by the contention raised by the learned counsel for the appellant and also on the cases on which he has placed reliance for the reason that the appellant/defendant has also filed an application under Order 13 (1) of the Act of 1961 showing as to in what manner he has deposited the rent. This application filed before the First Appellate Court is of 2004. It also indicates that the appellant has not fulfilled the requirement of Section 13(1) of the Act of 1961 and it is not only once, but, on several occasions, the said provision has been violated. Therefore, the appellant cannot be granted the benefit as he continuously vilated (sic: violated) the provision of Section 13 of the Act of 1961 and made defaults in payment of arrears of rent and that can be gathered from the details given in the application showing deposit made by the appellant.

17. Learned counsel for the respondents has placed reliance upon a decision reported in 2006(4) MPLJ 115-*Rajendra Kumar Jain vs. Laxmi Bai* in which the High Court has considered the respective provision and its impact and also as to when the benefit is available to the tenant. The High Court in para-8 considering the said provision has observed as under:-

"8. To consider the rival contention of the parties, the order dated 19-3-1998 passed by the trial Court may be seen. This order was passed by the trial Court on an application filed by the landlord under section 13(6) of the Act in which it is alleged that the tenant has not deposited the entire rent nor has furnished the receipts of deposit of the rent. On the aforesaid application, the trial Court very specifically passed the order that one week time is allowed to the tenant to furnish the deposit receipts in compliance of the order dt. 6-1-1998 and shall also furnish the particulars of deposit of the rent to the Court, otherwise the defence of the tenant shall be struck out. From the perusal of the entire order, nowhere the trial Court had extended the time to deposit the amount to the tenant in continuation to order dt. 6-1-1998. When time period was not extended by the trial Court, the tenant on deposit of the rent on 20-3-1998 was under an obligation to file an application for seeking condonation of delay or extension of time for depositing the rent. In the absence of which, it can very well be presumed that the tenant has failed to comply with the provisions of section 13(1) of the Act or order dated 6-1-1998 by the trial Court and the landlord was entitled for decree under section 12(1)(a) of the Act. The benefit of section 12(3) of the Act is available only when the provisions of section 13(1) of the Act are complied with. In the absence of which the tenant could not invoke benefit under section 12(3) or 13(5) of the Act and the landlord was entitled for a decree under section 12(1)(a) of the Act. The appellate Court considering the aforesaid aspect has granted decree under section 12(1)(a) of the Act in which there is no infirmity nor any substantial question of law arises in this appeal."

From the above, it is clear that before the courts below the defendant failed to establish that he has complied the provision of Section 13(1) of the Act of 1961. In absence of that, he is not entitled to get the benefit of Section 12 (3). Accordingly, the Substantial Question of Law Nos. 2 and 3 are answered.

18. Learned counsel for the appellant has also submitted that during pendency of the appeal plaintiff No. 2 Rajendra Sahu died and, therefore, after his death the *bona fide* need for which the suit has been decreed has come to an end. Therefore, the decree under Section 12(1) (f) of the Act of 1961 is not sustainable against the appellant and the same is liable to be quashed. Learned counsel has also placed reliance upon the decisions reported in J.L.J. SN 11 (Short notes on Cases) -*Ramlal vs. Vinayakrao* (SA No. 417 of 1975 (I):Decided on 26.09.1977), 1974 MPLJ 64 (Notes on Cases 103) -*Satwanti Bai v. Punla Bai* and M.P. Weekly Notes 39 -*Nabi Ahmed v. Ram Prakash Rastogi* (SA No. 169 of 1982 (G): decided on 12.09.1989) and submitted that since the plaintiff No. 2 died during pendency of appeal and the *bona fide* need was established for him only, therefore, the decree cannot be passed on the ground of Section 12 (1)(f) of the Act of 1961. He has placed reliance upon the judgment of reported in AIR 2004 SC 3484-*Shakuntala Bai &*

Ors. Vs. Narayan Das & Ors. and submitted that after the death of plaintiff No. 2 the plaintiffs/respondents have to establish their *bona fide* need whether the same still exists or not, but no such amendment in the pleading has been made by them to prove this fact. Therefore, the decree passed in favour of the plaintiffs under Section 12(1)(f) of the Act of 1961 cannot be maintained. However, I am not satisfied with the contention raised by the learned counsel for the appellant because the Supreme Court in the same case has observed as under:

"13. The limited question for consideration in this case was whether a decree which had attained finality would become unexecutable on account of death of the landlord and this question was answered in favour of the landlord and against the tenant basically on the principle that the executing court cannot go behind the decree. For the decision of the appeal it was wholly unnecessary to examine the question as to the effect of death of the landlord during the pendency of the appeal preferred by the tenant after a decree for eviction has been passed. The decisions rendered in *Phool Rani* (Supra) and *Shantilal Thakordas* (supra) were not brought to the notice of the Bench. We are, therefore, of the opinion that the observations made in the aforesaid case that "events which take place subsequent to the filing of an eviction petition under any Rent Act can be taken into consideration for the purpose of adjudication until a decree is made by the final Court determining the rights of the parties", which are more in the nature of obiter do not represent the correct legal position.

14. Sub-section (1) of section 12 of the Act says "no suit shall be filed in civil court against a tenant for his eviction.. " The language employed does not say "no decree shall be passed" So the bar created is against filing of the suit except on one of grounds enumerated in clauses (a) to (p) of the sub-section. Therefore what is to be seen is whether the suit was validly filed i.e. whether on the date of filing of the suit one of the grounds was made out. A suit validly filed cannot be scuttled or held no longer maintainable in absence of any specific provision to that effect. Therefore the principle that "the need of the landlord must exist till the decree for eviction is passed by the last court and attains finality" can even otherwise have no application here in view of the express language used in the section.

15. As the preamble shows the Madhya Pradesh Accommodation Control Act, 1961 has been enacted for expeditious trial of eviction cases on the ground of *bona fide* requirement of landlords and generally to regulate and control eviction of tenants. If the subsequent event like the death of the landlord is to be taken note of at every stage till the decree attains finality, there will be no end to litigation. By the time a second appeal gets decided by the High Court, generally a long period elapses and on such a principle if during this period the landlord who instituted the proceedings dies, the suit will have to be dismissed without going

into merits. The same thing may happen in a fresh suit filed by the heirs and it may become an unending process. Taking into consideration the subsequent events may, at times, lead to rendering the whole proceedings taken infructuous and colossal waste of public time. There is no warrant for interpreting a Rent Control legislation in such a manner the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the owners of their properties for all times to come."

Here in this case plaintiff No. 2 died during pendency of second appeal and his legal heirs have already been brought on record. As per the legal representatives, the wife of the plaintiff No. 2 alongwith two sons can continue with the business of plaintiff No. 2 and, therefore, it is not proper to say that the decree passed under Section 12(1)(f) of the Act of 1961 cannot be maintained. However, in view of the law laid down by the Supreme Court it is clear that even after death of a plaintiff for whom the *bona fide* need has been established, the decree of eviction cannot be denied only on the ground that the person for whom the *bona fide* need established has died. The legal representatives of the deceased plaintiff have been brought on record. Therefore, the *bona fide* need is already established before the courts below cannot be said to have lapsed unless it is established that there is nobody in the family of the deceased person to run the business for which need has been established. Here in this case, legal heirs of deceased plaintiff have already been brought on record and there is no additional evidence available showing that the family members of the deceased plaintiff cannot start the business for which the suit shop was needed. Under such circumstance and relying upon the decision of the Supreme Court in the case of *Kamleshwar Prasad vs. Pradumanju Agrawal* (dead) reported in 1997 AIR SCW 2310 in which it is held by the Court that "*the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder son*", I do not find any substance in the contention raised by the learned counsel for the appellant, therefore, the same is rejected and only on the ground of subsequent development that took place, the decree of eviction, which has already been affirmed by both the courts below under Section 12(1)(f) of the Act of 1961 cannot be set aside. The substantial questions of law are answered accordingly.

19. Accordingly the judgment and decree passed by both the courts below are affirmed as they are based upon well reasoned findings arise by both the courts

below after appreciating the proper evidence. The appeal is, therefore, without any substance and is hereby dismissed.

Appeal dismissed

**I.L.R. [2020] M.P. 952
APPELLATE CRIMINAL**

Before Mr. Justice Shailendra Shukla

Cr.A. No. 9930/2018 (Indore) decided on 7 February, 2020

ANIL BHASKAR

...Appellant

Vs.

STATE OF M.P. (SPE) LOKAYUKT

...Respondent

A. *Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d) & 13(2) – Illegal Gratification – Hostile Witness – Credibility – Held – Complainant although turned hostile, but for major part, supports prosecution story including demand and acceptance of bribe – Other panch witnesses have not turned hostile and supported prosecution story – Tainted currency notes were recovered from appellant's pocket, particulars of which were same as recorded earlier during pre-trap stage – It was established that money was accepted as gratification – Defence taken by appellant not established – Conviction and sentence upheld – Appeal dismissed.*

(Paras 30, 58, 65, 66 & 72)

क. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(d) व 13(2) – अवैध परितोषण – पक्ष विरोधी साक्षी – विश्वसनीयता – अभिनिर्धारित – यद्यपि परिवादी पक्ष विरोधी हो गया किंतु अभियोजन कहानी के मुख्य भाग का समर्थन करता है, जिसमें रिश्वत की मांग एवं स्वीकृति शामिल है – अन्य पंच साक्षीगण पक्ष विरोधी नहीं हुए और अभियोजन कहानी का समर्थन किया – दूषित करेंसी नोट, अपीलार्थीगण के पॉकेट से बरामद किये गये थे जिसकी विशिष्टियां पूर्वतर, ट्रैप-पूर्व प्रक्रम के दौरान अभिलिखित विशिष्टियों के समान है – यह स्थापित किया गया था कि परितोषण के रूप में रुपये स्वीकार किये गये थे – अपीलार्थी द्वारा लिया गया बचाव स्थापित नहीं – दोषसिद्धि एवं दण्डादेश कायम रखा गया – अपील खारिज।

B. *Prevention of Corruption Act (49 of 1988), Section 20(1) – Presumption – Held – Acceptance of gratification implies that there was demand – No defence by appellant that the money was stealthily inserted into his pocket – No such contention in accused statement – Legal presumption u/S 20(1) of the Act drawn against appellant – Onus was upon appellant to rebut the same which he failed to discharge.*

(Paras 51, 55, 68 & 73)

ख. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 20(1) – उपधारणा – अभिनिर्धारित – परितोषण की स्वीकृति विवक्षित करती है कि वहां मांग की गई थी – अपीलार्थी द्वारा कोई बचाव नहीं कि रूपये चोरी छिपे उसकी पॉकेट में डाले गये थे – अभियुक्त के कथन में ऐसा कोई तर्क नहीं – अपीलार्थी के विरुद्ध, अधिनियम की धारा 20(1) के अंतर्गत विधिक उपधारणा निकाली गई – उक्त को खंडित करने का भार अपीलार्थी पर था जिसका निर्वहन करने में वह विफल रहा।

C. Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d) & 13(2) – Demand of Bribe – Examination of Voice – Proof – Held – Voice of appellant recorded in digital voice recorder but prosecution has not taken any sample voice of appellant for comparison – Aspect of demand through tape recorder, not established by prosecution beyond reasonable doubt.

(Para 11)

ग. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 7, 13(1)(d) व 13(2) – रिश्वत की मांग – आवाज का परीक्षण – सबूत – अभिनिर्धारित – अपीलार्थी की आवाज को डिजीटल व्हाईस रिकार्डर में अभिलिखित किया गया था परंतु अभियोजन ने तुलना करने के लिए अपीलार्थी की आवाज का कोई नमूना नहीं लिया – टेप रिकार्डर के जरिए मांग के पहलू को अभियोजन द्वारा युक्तियुक्त संदेह से परे स्थापित नहीं किया गया।

Cases referred:

AIR 1986 SC Pg. 3, 1980 SCC (Cri) 121, 2011 (6) SCC 456, AIR 2000 SC 210, AIR 2001 SC 318.

Vivek Singh, for the appellant.

Vaibhav Jain, for the respondent-Lokayukt.

ORDER

SHAIENDRA SHUKLA, J.:- This appeal under Section 374 of Cr.P.C, has been preferred against the judgment dated 26.12.2018, passed by the Special Judge (P.C. Act) Ujjain in Special Case No.16/2017, whereby the charges framed against the appellant under the provisions of Sections 7 of the Prevention of Corruption Act, 1988 (herein after referred as 'the P.C. Act') has been found to be proved and the appellant has been sentenced to undergo 4 years of RI with fine of Rs.2000/-, in default of payment of fine 2 months additional RI and in respect of the charges framed under Section 13(1)(d) read with Section 13(2) of the P.C. Act the appellant has been sentenced to undergo 4 years RI with fine of Rs.2000/-, in default of payment of fine 2 months additional RI. Both sentences would run concurrently.

2. The prosecution story in short was that on 19.5.2014, complainant namely Jitendra Kothar has lodged a complaint with Lokayukt police alleging that appellant working as was asked bribe of Rs.2000/- for releasing the funds to the mother of the complainant under National Family Benefit Scheme. On receiving

such complaint, Inspector Special Police Lokayukt formed a team who would act as witnesses in respect of the demand of acceptance of bribe by the appellant. As per the instructions, the complaint pertaining to the demand of bribe was verified by the team and this was done by providing the complainant a voice recorder and he was again send to the office of the appellant along with one constable namely Ashish Chandel. The complainant went inside the office of the appellant alone and recorded the conversation. This voice recorder was then handed over to Basant Shrivastava, the I.O. A panchnama was prepared and crime No.0/34/2014 under Section 7 of the P.C. Act was registered. Thereafter FIR was also lodged. The complainant was asked to provide Rs.1500/-. The complainant provided two notes of Rs.500/- denomination each and 5 notes of Rs.100/- denomination each. A slip was prepared containing particulars of each currency note by panch witness Manoj Hinge. TLO Shri Basant Shrivastava then arranged for smearing phenolphthalein powder on these notes. These notes were kept in the right pocket of trouser worn by complainant. His hands were washed in sodium carbonate solution which did not turn pink. Subsequently, on 19.5.2014 by around 4.30 PM the team constituted by Lokayukt Police left for Jila Panchayat Damdama, Ujjain, On reaching the spot, the complainant went to the Social Justice Department and after sometime complainant alerted the team as per pre-determined signal showing that he has given the bribe. On receiving such signal raiding party constituted by the police went inside the office and trapped the appellant. His hands were held from above wrist by team members namely Ashish Chandel and Rakesh Bihari. His hands were dipped in sodium carbonate solution resulting in solution turning pink. This showed that he had received the money. Further search by Panch witness Manoj Kumar Hinge led to recovery of currency notes from the pocket of the appellant. These were pre-marked currency notes and thus, it was verified that bribe amount had been received. The trouser worn by the appellant was also seized and its right pocket was dipped in sodium carbonate solution which again turned pink. The appellant was charge-sheeted under Section 7 and 13(1)(d) read with Section 13(2) of the P.C. Act. Charges under aforesaid sections were read over to the appellant who abjured his guilt. The trial court thereafter proceeded to examine the witnesses. Prosecution examined 8 witnesses in all. The defence taken by the appellant was that he had no work relating to the appellant's mother pending with him and all the bills pertaining to Social Justice Department were already deposited by him on 26.3.2014, ie., much before the incident of bribe taking has shown to have taken place. The appellant examined one witness in his support. The trial court as already stated went on to convict and sentence the appellant in the manner described earlier.

3. In the appeal filed under Section 374 of Cr.P.C, it has been submitted that the finding arrived at by the trial court are not in-consonance with the evidence available on record, which is not cogent, clinching and reliable evidence. The

complainant himself has admitted that two constables had caught the appellant at the gate outside of the office and searched him but no money has been recovered from his pocket and thereafter, he was taken back to the office and subsequently after 5 to 10 minutes, the constables came out and said that they have recovered the money from the appellant. Such evidence creates doubt on prosecution story. The constables have clearly failed to find out any money on the person of appellant and thereafter the appellant was taken inside the office and evidence was tampered with and money was shown to be seized from him. The complainant himself has stated that the constables have done a preliminary search of the appellant and had found nothing. In view of such averment, it was not possible to recover the money afterwards. Money which was recovered was of different denomination in the sense that the complainant states in his deposition that 3 currency notes of Rs.500/- denomination each were quoted with powder whereas the prosecution story is that there were 2 currency notes of Rs.500/- denomination each and 5 notes of Rs.100/- denomination were quoted. that hands of Trap laying officer were not worked. One of the witnesses Manoj Kumar Hinge has stated that no documents were seized from the appellant and witness has further substantiated that documents were taken out of a locker which was under the possession of one Smt. Vimla Kaushal and, therefore, no question of recovery of documents from the appellant arises. It was further stated that sample voice of the appellant and complainant were not taken and hence, the recording regarding bribe cannot be verified. It has also been stated that the amount due towards the National Family Relief Scheme had already been paid to the complainant on 28.3.2014 and, therefore, no question arises with respect to the demand of bribe on a later dated i.e., on 19.5.2014. It is also stated that on the date of the alleged offence the appellant was not relieved from his posting from Janpad Panchayat Tarana and therefore, he could not have asked for the money to work he was not incharge of, on the date of commission of the offence. Thus, the material discrepancies in the statements of the witnesses were not taken into account and the learned lower court was wrong in drawing unwarranted inferences. Thus, the judgment pronounced by the trial court was erroneous on both facts and law and was based on surmises and conjectures. Hence, it has been submitted that the appeal be allowed and the judgment pronounced on 26.12.2018 be set aside and appellant be acquitted from the alleged offence.

4. The question before this court is whether in view of the grounds contained in the appeal memo, the appellant Anil Bhaskar can be stated to have been wrongly convicted and whether he deserves to be acquitted ?.

5. The prosecution has examined 8 witnesses in all. These are Jitendra Kothar (PW1), who is complainant, Manoj Kumar Hinge (PW2), Ashok Kumar Chouhan (PW3), who is a witness regarding sanction to prosecute the appellant, Dr. Ram Pratap Singh Pawar (PW4) who is witness of Janpad Panchayat, Tarana

and has exhibited the appointment order of Anil Bhaskar the appellant, Basant Shrivastava (PW5) is the inspector in Lokayukt Police before whom the written complaint was put up which was further process by him. He is also the witness who has managed the process of recording of conversation in digital voice recorder. This witness has also treated the currency notes with phenolphthalein powder, has constituted the trap team and has also taken part in the trap proceedings. Rakesh Bihari (PW6) is the head constable before whom the complainant Jitendra Kothar (PW1), lodged the complaint. Dinesh Chand Patel (PW7) is the inspector who had sought to know the duties of appellant - Anil Bhaskar. Mukesh Sharma (PW8) is the reader to the upper Collector who had arranged the availability of the gazetted officer as witnesses.

(i) That the prosecution story involves demand of money by the appellant for release of Rs.20000/- due to his mother pursuant to death of his father in the form of family relief. This amount was to be released from Municipal Corporation.

(ii) That such demand was recorded in digital voice recorder and a plan was made to apprehend the appellant raid- handed while accepting currency notes.

(iii) That the currency notes were treated with phenolphthalein powder and given to the appellant who accepted the same and kept the same in right hand pocket of the trouser and was instantaneously apprehended.

(iv) That the hands of the appellant when dipped in sodium bicarbonate has turned pink and the right pocket of the trouser worn by him also turned pink when dipped in sodium bicarbonate solution.

(v) That the particulars of the currency notes matched with the already recorded particulars of the currency notes in a Panchnama.

6. As already stated, while prosecution has adduced evidence showing demand of money by appellant and acceptance of money by him thereafter from the complainant so that Rs.20000/- due to mother of complainant may be released, the presumption which was raised against the appellant was sought to be dispelled by him by claiming that there was no demand made by him, that the money had already been deposited two months back and there was nothing more to be done on his part so that the money could be deposited in the name of the mother of the complainant, that on the date of the incident accused was posted in Janpad Panchayat, Tarana and he not even be relieved to join at Ujjain where the incident took place, that the concerned file regarding the claim of the mother of the complainant was not in his possession, but was in possession of another public servant namely Vimla Kaushal and that no money was retrieved from the trouser of the appellant.

7. These aspects would be considered successively.
8. The first aspect is regarding demand of money by the appellant.
9. Jitendra Kothar (PW1) states that he had gone to Nagar Nigam Office at Ujjain for releasing Rs.20000/- due to his mother as family relief accruable to her due to death of his father. In Nagar Nigam he was told to go to Forest Department Office. He then went to the Forest Department Office and he was told that the relevant person for his work is the accused, ie., Anil Bhaskar. Complainant states that he met Anil Bhaskar who told him that he would be needing Rs.2000/- for doing his work then the witness went to the Lokayukt Office on 19.5.2014 and filed an application Exhibit P/1. He then states that he was given a digital voice recorder and was sent along with two other persons to the Forest Department and it was there that he gave the money to the accused who thereafter caught raid-handed. This witness misses one link of the prosecution story which is that after giving application Exhibit P/1 he was given a digital recorder and the conversation was again recorded in the digital voice recorder. Due to such discrepancy, the complainant has been declared hostile by prosecution. The complainant, after being declared hostile supports the prosecution story fully and it was then that he was cross examined by the appellant.
10. The main question involved here is whether the voice recorded in the digital voice recorder is that of the appellant or not. The appellant has denied that he had demanded any such amount from the appellant.
11. Basant Shrivastava (PW5) who is the inspector in the Lokayukt Office at Ujjain had stated that the complainant was sent with the digital voice recorder along with the constable Ashish Chandel. Ashish Chandel has not been examined by the prosecution. Hence, there is no other witness apart from the complainant to affirm that the voice recorded is that of the appellant. In the case of *Ram Singh & Ors. Vs. Col. Ram Singh*, AIR 1986 SC Pg.3 it has been held that the prosecution must prove that the voice contained in the voice recorder is that of the accused. In this matter the prosecution has not been able to prove that the voice of the appellant has been recorded in the digital voice recorder. The sample of the voice of the appellant has also not been taken and therefore there is no voice in the form of sample voice available to compare it with the voice contained in the voice recorded. Thus, the aspect of demand through tape recorder has not been proved appropriately and beyond reasonable doubt of the prosecution.
12. With the evidence regarding voice recording not being found reliable, it is a deposition of complainant only which is available as direct evidence pertaining to demand of bribe. The complainant is declared hostile but he supports the prosecution story regarding demand of bribe by the appellant. In the case of *Panalal Damodar Rathi v/s. State of Maharashtra*, 1980 SCC (Cri) 121, it has been held that the testimony of the complainant cannot be on a better footing than that

of an accomplice. Further, in *State of Kerala & Anr. V/s. C.P. Rao*, 2011 (6) SCC 456, it has been held that a complainant is accomplice and when there is no corroboration of testimony of complainant regarding demand of bribe by accused, it has to be accepted that complainant's version remaining uncorroborated, his evidence cannot be relied upon.

13. Thus, there is need for corroboration of the evidence of the complainant. The prosecution has sought to corroborate the evidence of complainant with trap proceedings.

14. Now the evidence pertaining to trap proceedings shall be considered.

15. Basant Shrivastava (PW5) states that after lodging of FIR Exhibit P/28, he proceeded to lay out a plan to trap the appellant. As per this plan, the complainant gave him two notes of Rs.500/- denomination each and five notes of Rs.100/- denomination each, totaling Rs.1500/- and numbers of these currency notes were typed and a computer print was drawn out which was signed by the witness and two panch witnesses Manoj Kumar Hinge (PW2) and Dr. R.L. Bhamra whose evidence has not been recorded. Basant Shrivastava (PW5) states that this computer print was given to Dr. R.L. Bhamra for safe custody. Basant Shrivastava (PW5) also states that such computer print was prepared which carry the numbers of the currency notes.

16. Witness Manoj Kumar Hinge has stated that Shri Basant Shrivastava asked him to speak out the numbers of the currency notes and the same were noted by Dr. Bhamra. The numbers were taken out in a computer and a print out was prepared. This witness in para 37 admits that the slip in which the numbers were printed is Article L/2. However, he states that Dr. Bhamra was directed to keep the slip.

17. Thus whereas, both Basant Shrivastava (PW5) and Manoj Kumar Hinge (PW2) have stated that currency notes which were provided by the complainant Jitendra Kothar were such that two currency notes were of Rs.500/- denomination each and 5 other currency notes were Rs.100/- denomination each, the evidence of Jitendra Kothar (PW1) differs on this aspect.

18. Complainant Jitendra Kothar (PW1) states in para 7 that he had given the money to the appellant and Rs.1500/- were given and all these notes were Rs.500/- denomination. This money was kept by Anil Bhaskar in his right hand pocket. Thus, as per this witness only 3 notes were given to appellant Anil Bhaskar. He has been declared hostile as he does not narrate the various steps adopted by the prosecution in conducting the proceedings. However, after declaring hostile, he agrees to each and every suggestion given by the prosecutors. However, in para 84 of his cross examination he again admits that only Rs.500/- denomination notes were given to Anil Bhaskar to him.

19. It has been seen that complainant has been declared hostile, but thereafter he supports the prosecution story, but his deposition pertaining to number of currency notes again suffers from uncertainties. However, there are no as such uncertainties in the evidence of Basant Shrivastava (PW5) and Manoj Hinge (PW2). It has also been found that after receipt of the currency notes, Basant Kumar Shrivastava (PW5) got the numbers of currency notes printed in slip which is Article L/2. In view of such consistent testimonies of these two testimonies, the uncertainties in the evidence of Jitendra Kothar (PW1) fails to create suspicion as to the number and denomination of currency notes involved in the trap proceedings.

20. Now the procedure adopted by Basant Shrivastava (PW5) pertaining to steps after treatment of currency notes shall be discussed.

21. Basant Shrivastava (PW5) thereafter says that the currency notes were treated with phenolphthalein powder. Such procedure was conducted by Ghanshyam Mishra and Shiv Kumar Sharma. These currency notes were then put inside the right pocket of the complainant. The hands of the complainant were then dipped in sodium bicarbonate solution, but the color did not change. The hands of Ghanshyam Mishra were dipped in sodium bicarbonate which turned pink. This solution was preserved and sealed. The sample of phenolphthalein powder was also preserved and four such samples were taken and preserved.

22. How the events unfolded after the trap team reached the venue shall be discussed.

23. As per Basant Shrivastava (PW5) the trap team reached District Panchayat Office on 19.5.2014 at 4.30 PM. Along with the complainant, constables Ashish Singh Chandel and Rakesh Bihari (PW6) also proceeded towards the office but it was only the complainant who was made to enter the Department of Social Justice. After sometime, the complainant came out and gave an indication by running his left hand over his head. On receiving such indication both the constables immediately entered the Social Justice Department and each of them held one hand of accused who was sitting in a chair. Ashish Chandel held left hand and Rakesh Bihari (PW6) held the right hand near the wrist.

24. Basant Shrivastava (PW5) states that at this point of time, he also entered the hall where the accused had been trapped.

25. Rakesh Bihari (PW6) corroborates the statements of Basant Shrivastava (PW5) who states that he entered the building as soon as he got indication and caught the accused who was sitting in his office at that time.

26. However, complainant Jitendra Kothar (PW1) in para 7 states that he handed over the money to the appellant in his office. However, in para 82, he states that when he went inside the office, the accused asked him to go out of the building

and after he came out, the appellant followed him 5 minutes later. The appellant then told him that people were standing and hence, it does not look nice and took him to the side of the building where there was no one and it was there that the money changed hands. In para 83 he states that the accused was nabbed near the gate of the building and it was here that money was taken out of his pocket.

27. Thus, there is variance regarding the place where the appellant took money and this variance can be seen in the statement of the complainant on the one hand and statements of the members of the trap team on the other hand.

28. It has already been seen that complainant Jitendra Kothar (PW1) has turned hostile and even in cross-examination by the appellant, he repeatedly accepts the suggestions of the appellant.

29. In the case of *Koli Lakhman Bhai Chandan Bhai v/s. State of Guirat*. AIR 2000 SC 210, it has been held as under :-

"It is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the person version. Evidence of such witness cannot be treated as washed off the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony if corroborated by other reliable evidence.

Therefore, merely because the complainant and the Panch witness have turned hostile to a certain extent, the accused cannot claim that their testimonies have to be disregarded altogether as it would required a deeper scrutiny of the entire evidence to examine whether despite the said witness turning partially hostile, the said witnesses are creditworthy qua their testimony relied upon by the prosecution. "

30. Thus, the Court while evaluating the evidence of a hostile witness, can rely upon the part which supports the prosecution case. It has to be seen that the complainant did not have any animosity or an axe to grind against the appellant. Hence, to say that he deliberately wanted to inculcate the appellant would not be correct. Such witness, however, is interested with his position akin to that of accomplice, hence his evidence needs to be evaluated with caution.

31. As against Jitendra Kothar (PW1) all other members of the trap team have stated that the appellant was trapped inside his office. Such a evidence has not been contradicted in cross- examination. Thus, it is proved that appellant was caught in his office only.

32. The complainant Jitendra Kothar (PW1) states in examination-in-chief that he was asked by appellant to sit out and then he met Anil Bhaskar, the appellant, shook hands with him and gave him the money. He gave money since

appellant was demanding the same. He further states in para 8 that Anil Bhaskar after taking money, kept the same in the right pocket of his trouser.

33. Rakesh Bihari (PW6) states that he and Ashish Chandel had held the hands of the appellant from his wrists.

34. Now the manner and method in which the procedure was followed by the trap team would be considered.

35. Basant Shrivastava (PW5) states that the solution of sodium carbonate was prepared in presence of Anil Bhaskar and his hands were dipped in the solution and the solution turned pink. His statements have again been corroborated by Rakesh Bihari (PW6).

36. Manoj Kumar Hinge (PW2) in para 16 also corroborates such statements. The complainant Jitendra Kothar (PW1) in para 8 further corroborates the statement of Basant Shrivastava (PW5). As per Basant Shrivastava (PW5), solution so kept in a glass bottle was secured and the bottle was seized and sealed. The bottle is Article D, as per Basant Shrivastava (PW5) on which a slip was pasted which carries the signatures of witness Basant Shrivastava (PW5). The signatures of accused / appellant is on D to D part in this slip which also carries the signatures of both panchas and also of complainant Jitendra Kothar (PW1) who in para 29 admits his signatures on this slip at A to A part.

37. Basant Shrivastava (PW5) also states in para 19 that the hands of complainant Jitendra Kothar were also got washed separately in sodium carbonate solution and the solution turned pink. This solution was also secured in a glass bottle and a paper slip was pasted on the same on which complainant, accused, panchas and the witness himself appended their signatures and this bottle is Article E. Jitendra Kothar (PW1) in para 29 admits his signature on slip pasted on Article E.

38. Learned counsel for the appellant has submitted that the hands of Ashish Chandel and Rakesh Bihari (PW6) were not washed in solution prior to the time when they caught hold of the wrist of the appellant. Rakesh Bihari (PW6), in para 18 and Basant Shrivastava (PW5) in para 48 admit this suggestion.

39. Learned counsel has submitted that it cannot be denied that the hands of these panchas were already containing traces of phenolphthelin powder and the same got transferred to the hands of accused when his hands were held by these panchas.

40. On consideration, such possibility is apparently far fetched. Rakesh Bihari (PW6) and Basant Shrivastava (PW5) have stated that the hands of accused were held from his wrist. No suggestion has been given to these witnesses that the palms of accused were held by witnesses. No such suggestion has also been given

that powder got transferred from the hands of witnesses to the palms of appellant.

41. Witness Dinesh Chand Patel (PW7) has exhibited the FSL report as Exhibit P/36. In this report bottles articalised as D and E are found to contain phenolphthelin and sodium carbonate.

42. Basant Shrivastava (PW5) states that thereafter he got prepared sodium carbonate powder in a steel bowl and asked witness Manoj Kumar Hinge to dip both his hands in it. Manoj dipped his hands and solution did not change its color. This exercise was carried out to ensure that there was no traces of powder in his hands. Manoj Kumar Hinge (PW2), in para 18 corroborates these statements. He states that this solution was thereafter transferred to a glass bottle which was sealed and a paper slip was pasted on the same on which complainant, accused and Basant Shrivastava (PW5) also appended their signatures. His statements have been corroborated by Basant Shrivastava (PW5) in para 20. This bottle has been articalised as Article F, as per PW5 in para 31. These statements have also been corroborated by Jitendra Kothar (PW1) in para 54.

43. Basant Shrivastava (PW5) states that thereafter he told panch witness Manoj Kumar Hinge (PW2) that he should ask the accused as to where the money has been kept. Manoj Kumar Hinge (PW2) then asked the accused who told him that the money has been kept in the right pocket and his trouser then Manoj Hinge (PW2) took out the currency from the right pocket of the trouser worn by the accused. Manoj Hinge (PW2) in para 19 of his examination corroborates such statements.

44. Manoj Kumar Hinge (PW2) states that the numbers of the currency notes seized from the pocket of the accused got matched with the numbers printed in computer sheet. The numbers of currency notes were recorded in initial panchnama which was drawn which is Exhibit P/6. Manoj Kumar Hinge (PW2) and Basant Shrivatava (PW5) both state that there were two notes of Rs.500/-denomination and 5 notes of Rs.100/-denomination recovered from the pocket of accused. As per PW5, these notes were kept in a envelope along with computer slip which was prepared earlier containing the particulars of these notes and which was earlier kept in possession with Dr. Bhamra and signatures of accused, complainant, panchas and that of the witness taken on this envelope. These statements have been corroborated by Shri Manoj Kumar Hinge (PW2) and Jitendra Kothar PW1 in para 56. The envelope is Article L/1 and the same was sealed.

45. Basant Shrivastava (PW5), Manoj Kumar Hinge (PW2) and Jitendra Kothar (PW1) state that thereafter fresh solution was got prepared and Shri Hinge dipped his hands in this solution and the solution turned pink. This was again transferred in a glass bottle with a paper slip got pasted on it and same was articalised as Article G.

46. The FSL report Exhibit P/35 shows that in Article F, there is only sodium carbonate solution whereas in Article G there is presence of phenolphthalein powder. This affirms the oral statements of witnesses.

47. Basant Shrivastava (PW5), Manoj Kumar Hinge (PW2) and Jitendra Kothar (PW1) again states that the accused was made to call for another trouser and thereafter the trouser worn by him was recovered and its right hand pocket was drawn out and the same was dipped in freshly prepared sodium bi-carbonate which turned pink. The bottle was seized. This bottle was articalised as H. As per FSL report Exhibit P/35, Article H contained sodium bi-carbonate and phenolphthalein powder.

48. Manoj Kumar Hinge (PW2) has been shown bottles of Article E, D, H, G and A and has been asked questions as to the color of the solution. Articles A, D, E, G and H have been found to contain phenolphthalein and their color as per prosecution story was pink. Witness on seeing solution D which was the solution containing hand wash of accused has stated that this solution is neither pink nor colorless. Witness states that Articles H and G are slightly pink. Article G is the hand wash of Manoj Kumar Hinge and Article H is the pocket wash of the trouser. Learned counsel submits that Article D which is the hand wash of the accused is not pink in color and therefore it cannot be stated that accused had taken the notes in his hand. This submission was considered. Even though from naked eyes the solution may not appear to be pink. However, the chemical analysis report which is Exhibit P/35 this solution has been found to contain traces of phenolphthalein powder and therefore more reliance has to be placed on such report. The complainant Jitendra Kothar (PW1) himself states that notes were taken by appellant and kept in his pocket. In such short duration of contact, the quantity of phenolphthalein powder may not have been adequate to make an effective change in the color of solution. However, FSL report has nevertheless detected the same. It may also be considered that witness (PW2) does not states that Article D is completely color less. He states that the solution is not colorless. Hence, the statements of Manoj Kumar Hinge (PW2) do not go in favour of appellant.

49. Basant Shrivastava (PW5) states in para 25 that the trouser was put inside the cloth bag and the mouth of the cloth back (sic: bag) was stitched and signatures of accused, complainant, panchas and witness were taken on the same and thereafter this bag was sealed. Same witness further states that the trap proceedings and seizure memo were thereafter typed on the spot on a laptop and the print was thereafter taken out from a printer brought on the spot which was given to the accused who read the same and thereafter his signatures, along with the signatures of witness, panchas and complainant were taken. This memo is Exhibit P/7 which runs into three pages, on each of which the aforesaid persons have appended their signatures.

50. Manoj Hinge (PW2) admits in para 58 that his own search and search of others were not given to the appellant. This has been admitted by Basant Shrivastava (PW5) in para 48. Learned counsel submits that in order to obviate the chances of false implication, the accused should have been given an opportunity to search these witnesses.

51. A perusal of deposition of witnesses shows that no such suggestion has been given to these witnesses that currency was inserted inside the pocket of accused. In absence of such suggestion, the aforesaid lapse of prosecution is of no consequence.

52. Learned counsel for the appellant has drawn the attention of this court towards the statements of Jitendra Kothar (PW1) who admits in para 83 that when the accused was caught near the gate of the building, he was searched but no money came out of his pocket and then the officer took the accused inside the office and he came out after 5 - 10 minutes and announced that the currency notes have been recovered.

53. The learned counsel for the appellant submits that these statements have been made by the complainant and there is no re-examination of the complainant by the prosecution. This creates grave doubt in the procedure adopted and if complainant were to be believed then the whole search process becomes shrouded in suspicion.

54. Basant Shrivastava (PW5) has been given a suggestion in para 50 that the accused was taken to another room before recovery of money from him. This suggestion has been denied by him and he states that accused was taken to another room when his trouser was required to be taken out.

55. It can be seen that no such suggestion has been given to Basant Shrivastava (PW5) that currency notes were put in his pocket by member of trap team. Manoj Kumar Hinge (PW2) has not even been given a suggestion that he or any other person had inserted currency notes in the pocket of accused. In his accused statements also no such defence has been taken. Hence, the statements of complainant in para 83 failed to create any suspicion on the prosecution story.

56. It may be seen that complainant has been declared hostile. He makes frequent statements tending to create a dent on prosecution story in his cross-examination. It may be seen that his evidence was recorded in the year 2018 whereas the incident occurred in the year 2014. The Apex court in the case of *N. Narsinga Rao v/s. State of Andhra Pradesh*, AIR 2001 SC 318 was seized with a matter in which evidence had been recorded 4 years after the incident of trapping. The complainant and panch witnesses had turned bolt - face in the trial court and had denied having paid any bribery to the appellant and had also denied that the appellant demanded the bribe amount. Both were declared hostile and

were cross examined. The trial court and the High Court went on to convict the appellant despite the witnesses turning hostile. The Supreme Court considered the submissions of the appellant and observed that there was evidence to the effect that the accused had accepted the amount which gives rise to the presumption under Section 20 of the P.C. Act that he accepted the same as illegal gratification, particularly so when the defence theory put forth is not accepted.

57. Thus, in the aforesaid judgment despite the fact that complainant and witnesses have turned hostile, conviction was still as affirmed on the basis of evidence available and in arriving at such conclusion, it was also found that defence version of appellant was not trustworthy.

58. The present case, stands at still better footing than that narrated in the case of *N Narsinga Rao v/s. State of Andhra Pradesh* (supra). Since in the present case, the complainant has although turned hostile but for major part, he supports the prosecution story including that of demand and acceptance of bribe. Secondly, other panch witnesses have not turned hostile and also supports the prosecution story. Now it remains to be seen as to whether the defence version of the appellant is reliable or not. The defence is two fold. First is that the appellant who was working at Tarana and was ordered to join his new posting at Ujjain where the incident occurred had not joined at Ujjain on the date of incident and secondly that the file of the mother of the complainant had already been process and amount was also disbursed in the month of March 2014 whereas the incident occurred in May 2014.

59. Regarding the first defence Dr. Rampratap Singh Pawar (PW4) is the relevant witness who was posted in Janpad Panchayat at Tarana on the post of Chief Municipal Officer. He states that he was asked to provide the service conditions of accused vide letter dated Exhibit P/20. The information was provided by this witness as per Exhibit P/21 vide letter dated 28.5.2014. He further submits that vide Exhibit P/24, Anil Bhaskar was assigned all the account work pertaining to National Family Relief and other related schemes. This order is dated 17.12.2013. In this letter it was stated CMO Janpad Panchayat Tarana should ensure to relieve Anil Bhaskar with immediate effect. In cross - examination he admits that even after receiving the order Exhibit P/24, the accused was not relieved. He admits that thereafter on 19.3.2014, a letter Exhibit D/3 was received which was written by CMO District Panchayat Ujjain directing immediate release of Anil Bhaskar. The witness was thereafter confronted with Exhibit D/4 which is document obtained under Right to Information Act. This document is dated 28.8.2018. In Exhibit D/4 at B to B part it has been mentioned that CMO Janpad Panchayat Tarana had not relieved Mr. Anil Bhaskar. In re-examination, this witness states that since there is no document regarding the appellant being relieved from Janpad Panchayat Tarana, he is submitting that he had not been relieved.

60. Thus, there is no document to show that appellant had been relieved from his posting at Janpad Panchayat Tarana. However, it has been found proved that accused was trapped in Social Welfare Department situated in Ujjain which is near District Panchayat Office at Ujjain and from the same office the file pertaining to the mother of the complainant was seized at the behest of appellant. Although in para 39 Basant Shrivastava (PW5) admits that the almirah from where the file was taken out is in charge of one Smt. Vimla Kaushal but it was the appellant who took out the file from that almirah which shows that appellant had controlled over that almirah and he knew the whereabouts of this file. If appellant was in-charge of Janpad Panchayat at Tarana, he should have been present at Tarana only. Appellant has not been able to show as to how and why he was performing his duty at Ujjain in an office where the concerned file was also available. An attempt has been made to show that the file was in fact brought from treasury office. Such suggestion has been given to Basant Shrivastava (PW5) who denies the suggestion. The same suggestion has been given to the complainant who admits it. However, as already seen, the evidence of complainant is not reliable because he after being declared hostile, although reasserts the prosecution story, but again, on being cross examined by the appellant condescends to the suggestions and appears to be a malleable witness.

61. Now coming to the second defence of the appellant is that the file of mother of the appellant was processed way back in March 2014 and the cash amount was electronically transferred to her account from treasury itself. However, no such document has been shown that the amount stands transmitted to the aforesaid account.

62. Defence witness Hari Narayan Singh (DW1) has stated that this bill was received in the treasury from the office of the CMO, District Panchayat, Ujjain on 25.03.2014. The bill was dated 24.03.2014. Along with the bill, names of beneficiaries, drawal disbursal permission order, computerized documents etc. were also received. As per the list, Savitribai was to be given Rs.20,000/-. The witness states that whatever list comes to him, online e-payment to such listed person is made directly to the account of such persons. He states that the amount was uploaded on the computer on 28.03.2014. The witness states that on uploading the amount, the same gets transferred to the account of beneficiary on the same day or the next day. The witness further states that Rs.20,000/- was disbursed to the saving bank account of Savitribai in her bank account No.812610110001750 vide e-cheque No.CN2166693500896 and on payment, such bill is sent to the Accountant General at Gwalior. In para-7 of the cross-examination, he states that the bill (Exhibit-D/6) is the photocopy because the original has been sent to the Accountant General, Gwalior. He states that very rarely it happens that even after uploading in computer, amount has not been

transferred to the account of the beneficiary and it only happens when there is some discrepancy in the account number.

63. Thus, as per defence witness Hari Narayan Singh (DW1), the payment is electronically transferred through e-cheque payment. However, complainant Jitendra Kothar (PW1) in para 75 states that he received the payment later on through cheque and he has received a telephone call from Municipal Corporation that the cheque is ready and he should receive a cheque and then he went and received the cheque and deposited the same in his mother's account. The same witness has been given a suggestion in para 91 that cheque was prepared in treasury office and was sent straight to office of Municipal Corporation. This suggestion has been denied by the witness.

64. Thus, as against the statement of defence witness that cheque was electronically prepared and amount was deposited directly to the account of beneficiary is contrary to the suggestion given to the complainant in para 91. In this para there is admission on the part of the appellant that the cheque is prepared in treasury office and the same is sent to the office of Municipal Corporation. Thus, as the appellant admits that the cheque which is prepared in manual cheque as against the evidence of defence witness. The statement of complainant in para 75 therefore appears to be correct that he received the cheque much later from Municipal Corporation. Hari Narayan Singh (PW4) states that he had deposited the e-cheque in the account of Savitribai but he has not supported his statement with any document. The only document he has exhibited is certified copy of the bill which is Exhibit D/6. He admits in cross-examination that there is no document with him to show that Rs.20,000/- had been deposited into the account of Savitribai.

65. Thus, the second defence of appellant is also not proven adequately.

66. From the prosecution evidence it is proved that the appellant was involved in processing of file pertaining to Family Relief Scheme of which Savitribai, mother of the complainant was beneficiary. It is also proved that tainted currency was recovered from his pocket and the particulars of the currency notes were same as written down earlier on computer slip which is Article L/1 which was prepared during pre-trap stage. It is also proved that he had received the amount as his hands when dipped in solution, the later had turned pink. The Apex court in the case of *N. Narsinga Rao* (supra) has discussed the scope and ambit of Section 20(1) of P.C. Act and has held that this sub-section deals with a legal presumption which is in the nature of command. The following excerpt of the judgment is relevant :-

" When the sub-section deals with legal presumption it is to be understood as in terrorum i.e. in tone of a command that it has to

be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the section is satisfied. The only condition for drawing such a legal presumption under Section 20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. Direct evidence is one of the modes through which a fact can be proved. But that is not the only mode envisaged in the Evidence Act. The word proof need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word proved in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in Hawkins vs. Powells Tillery Steam Coal Company, Ltd. [1911 (1) K.B. 988] observed like this: Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion.

The said observation has stood the test of time can now be followed as the standard of proof. In reaching the conclusion the court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the court may have regard to common course of natural events, human conduct, public or private business vis-a-vis the facts of the particular case. The discretion is clearly envisaged in Section 114 of the Evidence Act. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other

facts. But it could as well be final if it remains undisturbed later. Presumption in Law of Evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the court can draw an inference and that would remain until such inference is either disproved or dispelled. For the purpose of reaching one conclusion the court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted, the court can treat the presumption as tantamounting to proof. "

67. The Apex court however cautioned that other evidence be also considered in order to obviate the possibility that money was inserted into the pocket of accused stealthily. The following excerpt is indicative of such observation :-

However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in Suresh Budharmal Kalani vs. State of Maharashtra [1998 (7) SCC 337]. A presumption can be drawn only from facts - and not from other presumptions by a process of probable and logical reasoning.

Illustration

(a) to Section 114 of the Evidence Act says that the court may presume that a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. That illustration can profitably be used in the present context as well when prosecution brought reliable materials that appellants pocket contained phenolphthalein smeared currency notes for Rs.500/- when he was searched by PW-7 DSP of the Anti Corruption Bureau. That by itself may not or need not necessarily lead to a presumption that he accepted that amount from somebody else because there is a possibility of somebody else either stuffing those currency notes into his pocket or stealthily inserting the same therein. But the other circumstances which have been proved in this case and those preceding and succeeding the searching out of the tainted currency notes, are relevant and useful to help the court to draw a factual presumption that appellant had willingly received the currency notes.

68. In the case in hand, the appellant has not taken any such defence that the money was stealthily inserted into his pocket. This could have been vehemently stated in accused statement and such defence should have been raised with witnesses in their cross-examination. However, only fleeting suggestion has been made as a passing suggestion with little heart in it.

69. The Supreme Court in *N. Narsinga Rao* (supra) observed as under :-

" In fact, the story that such currency notes were stuffed into his pocket was concocted by the appellant only after lapse of a period of 4 years and that too when appellant faced the trial in the court. From those proved facts the court can legitimately draw a presumption that appellant received or accepted the said currency notes on his own volition. Of course, the said presumption is not an inviolable one, as the appellant could rebut it either through cross-examination of the witnesses cited against him or by adducing reliable evidence. But if the appellant fails to disprove the presumption the same would stick and then it can be held by the court that the prosecution has proved that appellant received the said amount."

70. In the present case, the situation emerges in the same manner as in the aforementioned Apex court case. Further observations made by the Apex court in the same case are also very relevant which are as under :-

*" In Raghubir Singh vs. State of Haryana [1974 (4) SCC 560] V.R. Krishna Iyer, J, speaking for a three Judge Bench, observed that the very fact of an Assistant Station Master being in possession of the marked currency notes against an allegation that he demanded and received that amount is *res ipsa loquitur*. In this context the decision of a two Judge Bench of this Court (R.S. Sarkaria and O. Chinnappa Reddy, JJ) in Hazari Lal vs. Delhi (Delhi Administration) [1980 (2) SCC 390] can usefully be referred to. A police constable was convicted under Section 5(2) of the Prevention of Corruption Act, 1947, on the allegation that he demanded and received Rs.60/- from one Sriram who was examined as PW-3 in that case. In the trial court PW-3 resiled from his previous statement and was declared hostile by the prosecution. The official witnesses including PW-8 have spoken to the prosecution version. The court found that phenolphthalein smeared currency notes were recovered from the pocket of the police constable. A contention was raised in the said case that in the absence of direct evidence to show that the police constable demanded or accepted bribery no presumption under Section 4 of the Act of 1947 could be drawn merely on the strength of recovery of the marked currency notes from the said police constable. Dealing with the said contention Chinnappa Reddy, J. (who spoke for the two Judge Bench) observed as follows: It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from*

PW3. Under Section 114 of the Evidence Act the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to Section 114 of the Evidence Act is that the court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from PW3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the finding that the accused had obtained the money from PW3, the presumption under Section 4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the courts below. The aforesaid observation is in consonance with the line of approach which we have adopted now. We may say with great respect to the learned Judges of the two Judge Bench that the legal principle on this aspect has been correctly propounded therein."

71. In view of the above, propounding of principle encapsulated in Section 20 (1) of P.C. Act, it is proved that the amount was received as motive or reward by the accused. Section 20 (1) of P.C. Act is reproduced as under :-

20. Presumption where public servant accepts gratification other than legal remuneration.—

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

72. It is clear that money was accepted as gratification. The Supreme court in the same case of *N. Narsinga Rao* (supra) observes :-

"The word gratification must be treated in the context to mean any payment for giving satisfaction to the public servant who received it. In such a situation, the court is under legal compulsion to draw the legal presumption that such gratification was accepted as a reward for doing public duty."

73. The acceptance of gratification implies that there was demand. The evidence of complainant to the extent that appellant demanded Rs.2000/- from him is found to be reliable. Thus, the legal presumption under Section 20 (1) of P.C. Act is drawn against the appellant. The onus was upon him to rebut it. It has already been found that his two fold defence is not acceptable for the reasons already assigned earlier.

74. The citations which the appellant had referred to before the trial court were perused. The trial court has dealt with the citations appropriately and there is nothing which can be added to the same.

75. Consequently, the appellant has been rightly found to be guilty for committing offence under Section 7 and 13(1)(b) (sic:(d)) of the P.C. Act by the Special Court in its impugned judgment. The conviction under aforesaid sections is affirmed. The sentence imposed is also appropriate and there is no reason to deviate from the same. This appeal consequently stands dismissed.

76. A copy of this judgment along with the original record of the case be sent back to the concerned trial court for perusal and necessary action.

Appeal dismissed

I.L.R. [2020] M.P. 972

MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice Vivek Rusia

M.Cr.C. No. 38710/2019 (Indore) decided on 21 January, 2020

ARIF AHMAD ANSARI (DR.)

...Applicant

Vs.

STATE OF M.P. & anr.

...Non-applicants

Penal Code (45 of 1860), Sections 336, 337, 338, 308 & 384 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Held – Prima facie material about negligence on part of petitioner is available in final report but no material or any opinion of expert doctor against petitioner that the injury was sufficient in ordinary course of nature, to cause death – If death cannot be caused by such injury, petitioner cannot be prosecuted u/S 308 IPC – Physical hurt is not a necessary prerequisite for invoking the provision of Section 308 IPC – Quashment of entire FIR not

warranted at this stage – FIR u/S 308 IPC is quashed – Application partly allowed. (Paras 7 to 9)

दण्ड संहिता (1860 का 45), धाराएँ 336, 337, 338, 308 व 384 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – अभिनिर्धारित – याची की ओर से उपेक्षा के बारे में प्रथम दृष्टया सामग्री अंतिम प्रतिवेदन में उपलब्ध है लेकिन याची के विरुद्ध कोई सामग्री अथवा विशेषज्ञ चिकित्सक की कोई राय नहीं है कि प्रकृति के सामान्य अनुक्रम में मृत्यु कारित करने हेतु चोट पर्याप्त थी – यदि उक्त चोट द्वारा मृत्यु कारित नहीं की जा सकती, तो याची को भा.दं.सं. की धारा 308 के अंतर्गत अभियोजित नहीं किया जा सकता – भा.दं.सं. की धारा 308 के उपबंध का अवलंब लेने के लिए शारीरिक उपहति एक पूर्वापेक्षित आवश्यकता नहीं है – इस प्रक्रम पर संपूर्ण प्रथम सूचना प्रतिवेदन को अभिखंडित करने की आवश्यकता नहीं है – भा.दं.सं. की धारा 308 के अंतर्गत प्रथम सूचना प्रतिवेदन अभिखंडित – आवेदन अंशतः मंजूर।

Cases referred:

AIR 2005 SC 3180, 1998 (8) SCC 557.

Z.A. Khan with D. Khanchandani, for the applicant.

Vikas Yadav, G.A. for the respondent/State.

Arshad Ahmad, for the respondent No. 2.

ORDER

VIVEK RUSIA, J.:- Petitioner has filed the present petition under section 482 of the Cr.P.C seeking quashment of an FIR registered against him at Crime No.277/2019 in Police Station Palasia, Indore for the offence punishable under sections 336, 337, 338, 308 & 384 of the IPC.

Facts of the case in short which led to the registration of FIR against the petitioner are as under:

2. Petitioner is a medical practitioner having a degree of MBBS and Master of Surgery (MS). According to him, he is specialized in Minimal Access Surgery and vide certificate dated 14.11.2014 the Association of Minimal Access Surgeons of India (FMAS) has certified that he has been qualified in the art and science of minimal access surgery. As per the allegation in the FIR, on 07.03.2018 complainant Shambhu Dayal Agrawal, R/o D/120, Awas Nagar, Dewas came to M.Y Hospital, Indore for treatment of his daughter viz. Ku.Divya Agrawal, aged 21 years as she was suffering from pain in her abdomen. They met the present petitioner who is posted in the surgery department of the M.Y Hospital, Indore. After preliminary examination of Ku Divya, petitioner advised for a minor operation and told that the operation theater of MY Hospital is contaminated and supporting staff is no competent hence it would be better to take admission in Medi Care Hospital, Old Palasia Indore for which the expenses would be Rs.30,000/- for operation. The petitioner further assured that he is performing

such type of operations regularly. On his advice, the complainant has admitted his daughter in Medi Care hospital and after pathological test on 30.05.2018 performed the operation. After two days of the operation, the health condition of Ku. Divya has started deteriorating. The complainant met the petitioner and requested him to examine his daughter further. He again called him in his clinic on 04.06.2018 and again he demanded Rs.70,000/- for another operation and when he objected Ku. Divya has been forcibly discharged from the hospital by the petitioner. On 06.06.2018 the complainant admitted his daughter in Choitram Hospital and came to know that the petitioner has committed negligence in the operation by putting two clips at a wrong place in her liver. Hence, another P.T.B.T operation was conducted in Choitram Hospital for which he spent further Rs.1,00,000/-. After discharge from Choitram Hospital again his daughter became sick, he had to take her to JM Hospital, Coimbatore by air on 23.07.2018. The complainant has further alleged that although the petitioner is a surgeon of breast cancer, however, to extract money from him he has negligently performed the surgery of gall bladder of his daughter and left her to die and still she could not recover. Based on the complaint made by the complainant, the Police investigated the matter and recorded the statement of Ku.Divya and other witnesses and after completing the investigation Challan has been filed on 19.06.2019 against the petitioner for the offence punishable under sections 336, 337, 338, 308 & 384 of the IPC, hence the present petition before this Court for quashing of the FIR by the petitioner.

3. According to the petitioner, Ku.Divya informed him regarding her stomach ache because of which she was unable to eat properly for a long time. He examined her medically and also gone through the previous reports and after clinical diagnosis, he found that she is suffering from chronic cholecystitis with cholelithiasis commonly known as swelling infection in gall bladder because of stone. He explained them regarding the disease, about the treatment i.e. **laparoscopy cholecystectomy operation** and also advised for some tests to be conducted before such operation. The complainant has agreed for operation and signed the consent letter for operation. On 30.05.2018 she was admitted in Medi Care Hospital and on 31.05.2018 near about 7 hrs. she was shifted to operation theater and operation was started. During operation swelling in gall bladder was seen and small contracted thickened gall bladder was stuck with callous triangle in the stomach. It was also found by him that calloos triangle was completely frozen and artery of the liver was not normal. He performed cholecystectomy very cautiously and carefully and applied abdominal drain on sub haptic region. As there was no bleeding and Biliary leakage, the port side was closed and at around 8.30 hrs. she was shifted to the recovery room in stable condition. On 01.06.2018 petitioner again visited the hospital and examined the patient and found her in stable condition and the abdominal drain output was minimal. She did not make any complaint of stomach ache or fever to him. However, on 02.06.2018 she

started vomiting during the night and after receiving information he immediately rushed to the hospital without any delay and advised for some tests and sonography. After examining the report it was found that she had an injury on bile-duct. Looking to the serious condition of the patient he requested Dr.Vinit Gautam, G.I. Surgeon to visit the hospital for an examination of the patient. Dr.Vinit Gautam visited the hospital and informed that there is a bile-duct injury which is the common and post-operative complication of laparoscopy cholecystectomy and is curable. He suggested for percutaneous transhepatic biliary drainage (P.T.B.D) and since the facility of P.T.B.D was not available in Medi Care Hospital, therefore, the petitioner referred and she was shifted to Choitram hospital on the same day. Thereafter he is not aware of the condition of the patient and on 04.09.2018 the complainant filed a complaint against him before the Chief Medical Officer, who constituted a panel of doctors to enquire about the allegations. The said panel of doctors submitted a report (Annexure P/5) in which she was not found guilty. Later on 19.06.2019 in the police station, Palasia Indore complainant filed the FIR against him.

4. Shri Z.A.Khan, learned Senior Advocate appearing for the petitioner submitted that petitioner is a qualified surgeon having a degree of MS from Devi Ahilya Vishwavidyalaya, Indore in general surgery. He has also passed fellowship in the minimal access surgery examination held at Banaras Hindu University, Varansasi on 10th August, 2014 and has been awarded the certificate in the 9th International Congress of AMASI held on 14.11.2014 in Dubai. The minimally invasive (laparoscopic) surgery has become a major part of general surgery and since the last two decades, the same is being used more widely throughout the world. The doctors having MS in general surgery are eligible to get the training of minimal access abdominal surgery programme. This programme adequately prepares the general surgeon in the art of minimal access surgery. The duration of training is one year in an approved programme, therefore, there is no dispute that the petitioner being a general surgeon having specialization in laparoscopy cholecystectomy. Looking to the clinical diagnosis of the patient the petitioner has rightly operated with due care and precaution. As of today, he has performed more than 300 surgeries of similar nature. There was no irresponsible or wrongful act on the part of the petitioner while treating the patient. The complainant himself decided to admit his daughter in Medi Care Hospital. He has not produced any material before the Police to show that he contacted the petitioner in MY Hospital for the operation. A panel of doctors has examined the patient and submitted the report in favour of the petitioner. The patient suffered the type-4 bile-duct injury after the operation which is very common in such operations. The complainant was explained the percentage of failure of the operation, however, he signed the consent letter. It is very common to occur a bile-duct injury during the attempt or after the operation. In support of his contention, he has placed reliance over the judgment passed by the Apex Court in the case of *Jacob Mathew vs. State of*

Punjab and another reported in AIR 2005 SC 3180. He has referred paras-19, 26, 27, 29, 30, 31, 49, 51, 52 & 53 of the said judgment and submits that the Apex Court in the aforesaid judgment has held that in order to prosecute a medical professional for negligence under the criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary sense or prudence would have done or failed to do. A simple lack of care and error of judgment or an accident is not proof of negligence. A professional may be held liable for negligence on one or two findings; either he was not possessed of the requisite skill which he professed to have possessed or he did not exercise with reasonable competence in a given case the skill which he did possess. The test for determining medical negligence as laid down in *Bolam's* case holds good in its applicability in India. Finally, Shri Khan, learned Senior Advocate submitted that the criminal process once initiated against a medical professional would cause a serious embarrassment and harassment to him. At the end of trial, he may be exonerated by acquittal or discharge but the loss which he has suffered in his reputation cannot be compensated by any standard. There is no material to establish the charges against the petitioner, therefore, this court in the exercise of powers under section 482 can quash the FIR filed against him at this stage alone.

5. Shri Vikas Yadav, learned Govt. Advocate argued that the petitioner is posted as a general surgeon in MY Hospital, Indore. The complainant visited MY Hospital for treatment of his daughter but to extract money he advised him for operation in a private hospital. The hospital has no facility of post-operational care in case of any complication. After the complication in the surgery, the complainant was advised for P.T.B.D operation which was not available in the Medi Care Hospital, therefore, laparoscopy cholecystectomy operation ought not to have been performed by the petitioner in Medi Care Hospital. Still, the daughter of the complainant has not recovered properly and taking food through a tube.

6. Learned counsel appearing for the complainant has also argued in support of the arguments advanced by the learned Govt. Advocate. He stated that it is a matter of trial as to whether the petitioner has advised the complainant to admit his daughter in Medi Care Hospital to extract the money instead of treating her in MY Hospital, Indore. The allegations made in the FIR constitute an offence punishable under sections 336, 337, 338, 308 & 384 of the IPC and no finding cannot be recorded by this Court at this stage to the effect that the petitioner has not committed any offence. In the case of *Jacob Mathew* (supra) itself, the Apex Court has held that we may not be understood as holding that doctors can never be prosecuted for an offence for which rashness or negligence is an essential ingredient and emphasized the need for care and caution in the interest of society while recording the finding by the trial Court. The Apex Court has not held that no FIR can be registered against a medical practitioner. The charges, especially

under sections 336, 337 & 338 are liable to be examined by the trial Court after recording the evidence. At present the charges have not been framed against the petitioner, therefore, the present petition is pre-mature and liable to be dismissed.

I have gone through the case diary and considered the submission of learned counsel for the parties.

7. As per the allegations against the petitioner in the FIR, the complainant went to MY Hospital, Indore for treatment of his daughter and met the present petitioner but he advised him for operation in private Medi Care Hospital. He has not operated with due care and caution and thereafter he had to shift his daughter to Choitram Hospital for further operation and from there to Coimbatore in Tamil Nadu for which he has incurred huge expenses. Prima facie, there is material in the Final Report submitted by the prosecution that in the laparoscopy cholecystectomy operation the clips were put at the wrong place. The Medi Care Hospital was not having the facility of P.T.B.D. operation. In the case of *Jacob Mathew* (supra) the Apex Court has held that a simple lack of care and error of judgment or an accident is not a proof of negligence on the part of the medical professional. So long as the doctor follows the practice acceptable to the medical profession of that day he cannot be held liable for negligence merely because of the better alternate course or method of treatment was also available. When it comes to the failure of taking precautions, a failure to use special or extraordinary precautions which might have prevented the particular happening cannot be a standard of judging the allegation of negligence. It has also been held that a professional may be held liable for negligence on one of the two findings either he has not possessed the requisite skill which he professed to have possessed or he did not exercise with reasonable competence in a given case the skill which he did possess. In the present case, there is no dispute that the petitioner possesses the requisite skill to operate but the issue is whether he did it with reasonable competence. The lack of care constitutes a gross deficiency in service. The allegation against the petitioner is that to extract the money he advised the complainant for operation in a private hospital by giving a dirty picture of a govt. hospital and he has acted so rashly or negligently which endangered the life of Ku. Divya. As per the allegations against the petitioner by putting clips at a wrong place in the liver he has caused grievous hurt to the patient and by doing the said act so rashly and negligently he endangered human life. These are matters of trial and no finding can be given at this stage in this petition under section 482 of the Cr.P.C. The Apex Court in the case of *Jacob Mathew* has not held that there is no complete bar in registering FIR against a medical practitioner or a doctor can never be prosecuted for an offence for which rashness or negligence is an essential ingredient.

8. Counsel for the petitioner submits that FIR is liable to be quashed especially for the offence under Section 308 IPC as same is not attracted in the

facts and circumstances of the present case, as there is no material available on record to show that the petitioner had any knowledge or intention to cause death of the daughter of complainant and that the nature of injuries as recorded in the medical report as also on the parts of the body of the complainant, would not point towards an offence under Section 308 IPC. He submits that merely because the injuries are grievous would not mean that an offence punishable under Section 308 IPC is made out.

That Section 308 IPC is in two parts. The first part deals with a situation where if an act is done by a person, with such intention or knowledge and under such circumstances that, if he by that act caused death, then such person would be guilty of culpable homicide not amounting to murder and shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. The second type of circumstance contemplated under the said Section is when hurt is caused to any person by such act, as mentioned in the first part of the section, then the quantum of punishment would increase to imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Therefore, physical hurt is not a necessary prerequisite for invoking the provisions of Section 308 IPC, which fact is borne out from a bare reading of the aforesaid section, and any hurt which is caused to the victim would only serve to enhance the quantum of sentence. There is no material or any opinion of the expert doctor in the field in this present case, against the petitioner that the injury was sufficient, in the ordinary course of nature, to cause death. If death cannot be caused by such injury, there is no question of the petitioner being prosecuted under Section 308 IPC. A bare reading of the provision of Section 308 IPC would show that even when no hurt is caused, the offence may be made out if other ingredients are fulfilled. A comprehensive reading of provision only reveals what has been stated by the Supreme Court in the case of *Sunil Kumar Vs. NCT of Delhi and others*, 1998 (8) SCC 557 as below-

4.....offence punishable under Section 308 IPC postulates doing of an act with such intention or knowledge and under such circumstances that if one by that act caused death, he would be guilty of culpable homicide not amounting to murder. An attempt of that nature may actually result in hurt or may not. It is the attempt to commit culpable homicide which is punishable under Section 308 IPC whereas punishment for simple hurts can be meted out under Sections 323 and 324 and for grievous hurts under Sections 325 and 326 IPC.

9. Because of the foregoing discussion, no case is made out for quashing of the entire FIR filed against the petitioner at this stage except charge under section 308 of IPC. Hence, FIR registered under No.277/2019 in Police Station Palasia, Indore for the offence punishable under section 308 of the IPC is quashed. Accordingly, the petition is partly allowed. However, the petitioner is at liberty to

raise all the grounds before the trial Court at the time of framing of charges and the trial Court shall decide the matter without being influenced by the observations made in this order.

Appeal Partly allowed

I.L.R. [2020] M.P. 979
MISCELLANEOUS CRIMINAL CASE

Before Mr. Justice B.K. Shrivastava

M.Cr.C. No. 33397/2018 (Jabalpur) decided on 17 March, 2020

DIGVIJAY SINGH & ors.

...Applicants

Vs.

STATE OF M.P. & anr.

...Non-applicants

A. Penal Code (45 of 1860), Section 306/34 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 482 – Quashment of FIR – Held – No allegations against applicants in dying declaration and in statement of victim recorded u/S 161 Cr.P.C. – Dying declaration *prima facie* seems to be suspicious – When doubt is created upon any statement or document, it may be resolved or justified only by elaborate statement before trial Court – Such document/statement cannot be made basis for quashment of FIR – Application dismissed. (Para 67)

क. दण्ड संहिता (1860 का 45), धारा 306/34 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 व 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – अभिनिर्धारित – धारा 161 दं.प्र.सं. के अंतर्गत अभिलिखित पीड़िता के कथन एवं मृत्युकालिक कथन में आवेदकगण के विरुद्ध कोई अभिकथन नहीं – मृत्युकालिक कथन प्रथम दृष्ट्या संदेहास्पद लगता है – जब किसी कथन या दस्तावेज पर शंका उत्पन्न होती है, उसका समाधान या न्यायोचित ठहराया जाना केवल विचारण न्यायालय के समक्ष विस्तृत कथन द्वारा किया जा सकता है – उक्त दस्तावेज/कथन को, प्रथम सूचना प्रतिवेदन अभिखंडित करने के लिए आधार नहीं बनाया जा सकता – आवेदन खारिज।

B. Penal Code (45 of 1860), Section 306/34 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 482 – Primary Evidence – Considerations – Held – FIR registered on basis of documents and statements of 10 witnesses which *prima facie* shows that deceased was being continuously pressurized by applicants to bring money from her parents, for which she was also beaten – Minute marshalling of evidence recorded u/S 161 and of prosecution documents cannot be done at primary stage – Sufficient material to proceed against applicants – Application dismissed. (Paras 66, 71 & 72)

ख. दण्ड संहिता (1860 का 45), धारा 306/34 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 व 482 – प्राथमिक साक्ष्य – विचार – अभिनिर्धारित – प्रथम

सूचना प्रतिवेदन, दस्तावेजों एवं 10 साक्षियों के कथनों के आधार पर पंजीबद्ध किया गया जो प्रथम दृष्ट्या दर्शाता है कि आवेदकगण द्वारा मृतिका पर उसके माता-पिता से धन लाने के लिए निरंतर दबाव डाला जा रहा था, जिसके लिए उसे पीटा भी गया था – धारा 161 के अंतर्गत अभिलिखित साक्ष्य तथा अभियोजन दस्तावेजों का सूक्ष्म क्रमबन्धन, प्राथमिक प्रक्रम पर नहीं किया जा सकता – आवेदकगण के विरुद्ध आगे कार्यवाही करने हेतु पर्याप्त सामग्री है – आवेदन खारिज।

C. Penal Code (45 of 1860), Section 306 & 498-A – Separate Living of Accused – Effect – Held – Only upon the basis of separate living of any accused it cannot be believed that he could not participate in crime like u/S 498-A and 306 IPC related to women. (Para 69)

ग. दण्ड संहिता (1860 का 45), धारा 306 व 498-1 – अभियुक्त का अलग रहना – प्रभाव – अभिनिर्धारित – केवल किसी अभियुक्त के अलग रहने के आधार पर यह विश्वास नहीं किया जा सकता कि वह महिलाओं से संबंधित अपराध, जैसे कि धारा 498-A एवं 306 भा.दं.सं. में सहभागी नहीं हो सकता।

D. Penal Code (45 of 1860), Section 107 & 306 – Abetment of Suicide – Held – If circumstances are extreme, in that conditions the women may commit suicide – Continuous torture may also create a mental torture and this is also a form of abetment of suicide. (Para 17)

घ. दण्ड संहिता (1860 का 45), धारा 107 व 306 – आत्महत्या का दुष्प्रेरण – अभिनिर्धारित – यदि परिस्थितियां आत्यंतिक हैं, ऐसी स्थितियों में, महिलाएं आत्महत्या कर सकती हैं – निरंतर प्रताड़ना भी मानसिक प्रताड़ना सृजित कर सकती है और यह भी आत्महत्या के दुष्प्रेरण का एक रूप है।

E. Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR & Criminal Proceedings – Inherent Powers of Court – Discussed and explained with case laws. (Paras 7 to 34)

ङ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन व दाण्डिक कार्यवाहियों को अभिखंडित किया जाना – न्यायालय की अंतर्निहित शक्तियां – निर्णय विधि के साथ विवेचित एवं स्पष्ट किया गया।

F. Penal Code (45 of 1860), Section 107 & 306 – Abetment of Suicide – Discussed and explained with case laws. (Paras 40 to 64)

च. दण्ड संहिता (1860 का 45), धारा 107 व 306 – आत्महत्या का दुष्प्रेरण – निर्णय विधि के साथ विवेचित एवं स्पष्ट किया गया।

Cases referred:

AIR 1945 PC 18, AIR 1945 PC 94, AIR 1964 SC 1, [1992] 4 SCC 305, [1977] 4 SCC 451, AIR 1960 SC 866 = 1960 Cri.L.J. 1239, [1976] 3 SCC 736 = 1976 SCC (Cri) 507, AIR 1977 SC 1489 = (1977) 2 SCC 699, (1977) 4 SCC 551,

[1981 (2) SCC 454] : (AIR 1981 SC 1164), [1983 (1) SCC 1] : (AIR 1983 SC 67), AIR 1987 SC 877, [1988] 1 SCC 692, 1992 CRI.L.J. 527 = MANU/SC/0115/1992 : (1992) Supp (1) SCC 335, AIR 2003 SC 1386 : (2003 AIR SCW 1824), (2004) 6 SCC 522, (2005) 1 SCC 122, (2005) 13 SCC 540, AIR 2007 SC (Supp) 231, 2007 AIR SCW 4555, 2008 AIR SCW 1649, AIR 2009 S.C. 2646, (2009) 7 SCC 495, AIR 2010 S.C. 3762, (2010) 11 SCC 226, (2013) 3 SCC 330, AIR 2018 SC 1923 = 2018 CriLJ 2412 = 2018 (2) Crimes 58 (SC) = (2018) 5 SCC 678, 2019 (4) JLJ 85, (2011) 3 SCC 626, (2010) 1 SCC 750, (2010) 12 SCC 190, (2010) SCC 628, (2011) 3 SCC 626, (2017) 1 SCC 433, 2019 SCC OnLine SC 44, AIR 2010 SC 1446 = 2010 AIR SCW 645 = (2009) 16 SCC 605, (2001) 9 SCC 618 = AIR 2001 S.C. 3837 = 2001 AIR SCW 4282, AIR 1994 SC 1418 = 1994 AIR SCW 844 = 1994 CriLJ 2104, 2009 (16) SCC page 605 : AIR 2010 SC 1446, AIR 2001 SC page 3837 : (2001 CriLJ 4724) (1), [2010] 12 SCC 190, ILR (2008) M.P. 3333, 1997 MPLJ (2) S.N. 11, 2000 (2) MPLJ (SN) 23, 2000 (4) MPHT 277, AIR 2002 S.C. 3270 = 2002 AIR SCW 3795, AIR 2008 SC 3212, AIR 2009 S.C. 1828, [2010] 10 SCC 353, AIR 2011 SC 3024 = 2011 INDLAW SCO 521 [SC] = [2011] 8 JT 284 = 2011 8 SCALE 115, (1994) 1 SCC 73, (2012) 9 SCC 734.

Aman Dawra and Sankalp Kochar, for the applicants.

Amitabh Gupta, G.A. for the non-applicant/State.

ORDER

B.K. SHRIVASTAVA, J.:- This petition has been filed on 16.08.2018 under Section 482 of Cr.P.C. for quashing the FIR dated 22.05.2018 registered at Police Station Deonagar District Raisen for the offence punishable under Section 306/34 of IPC and also for quashment of Challan No. 169/2018 filed before the trial Court.

2. It is an admitted fact that the deceased Sadhna was marry with the applicant No.1 Digvijay Singh since ten years back. Out of their wedlock one son was also born who is aged about 5 years. On 23.04.2018, the deceased Sadhna was admitted in the Green City Hospital by the applicant No.1 Digvijay Singh and she expired on 29.04.2018, due to the burn injuries. Thereafter, the police received the information and registered the Marg No. 0/2018 on 29.04.2018 at Police Sation, Goutam Nagar, Bhopal. Upon the basis of aforesaid zero number information, original Marg No. 12/1988 was registered at Police Station, Deonagar. After the inquiry into marg on 22.05.2018, Crime No. 136/2018 under Section 306/34 of IPC was registered. Police investigate the matter and after investigation challan No.169/2018 filed before the trial Court.

3. It is submitted by the applicants that the deceased Sadhna was residing with her husband, while Mahendra Singh and Parwati Thakur were living

separately since six years back. As per the applicants no case is culled against the applicants under Section 306/34 of IPC, even if the entire prosecution story is treated to be a gospel truth. The dying declaration of the deceased was recorded and her statement under Section 161 of Cr.P.C. was also recorded. In both the statements, no any allegation has been made against the applicants. The deceased herself said in the dying declaration and her statement under Section 161 of Cr.P.C. that she had gone to the kitchen for cooking the food, but there was no light in the kitchen so she had to light a *Chimni* which was kept over and almarah (sic: an almirah) near the place where she was working. When she stood up the *Chimni* fell on her. Due to which her *sari* caught fire and she got severely burnt. When she scream for help then husband/applicant No.1 reached to the room. The deceased also said in her statement that her mother-in-law and father-in-law/applicant Nos. 1 and 2 are residing separately and the deceased resides with her husband and child. The dying declaration have been recorded by the Executive Magistrate. Therefore, no case is made out upon the basis of the dying declaration and statement under Section 161 of Cr.P.C.

4. It is submitted by the applicants that registration of FIR and continuance of criminal case against the applicant is a gross abuse of process of law. In the light of various judgments of Hon'ble Apex Court the necessary ingredients of Section 107 of IPC are not culled out in the factual matrix of the instant case. The applicants have not played any passive role in the instigating the deceased to commit the suicide. In absence of any prima facie case against the applicants, benefits of doubt ought to have been granted to the applicants. The entire story is based on the inadmissible and concocted evidence. Therefore, this is a fit case for quashment of FIR by exercising the power under Section 482 of Cr.P.C. If such criminal prosecution are allowed to stand then it shall lead to travesty of justice. Upon the aforesaid ground, it is prayed that FIR [Annexure A/1] be quashed by using the power under Section 482 of Cr.P.C. and also to quash the consequent challan in the interest of justice.

5. At the time of oral arguments, learned applicant's counsel also submitted that the applicants are innocent person who have been falsely implicated in this case. As per documents Page. 72 and 130, the applicants Nos. 2 and 3 are living separately. The dying declaration at Page 65 and the statement under Section 161 of Cr.P.C at page 87 were recorded on 24.04.2018 in which it was stated that the accident was the result of falling the *Chimni*. No any allegation was made against the applicants. No any visible injury is found in the postmortem report. If the deceased demanded the ornaments and the applicants refused to give, even then it cannot constitute the offence under Section 306 of IPC. During the period of ten years, no any FIR was lodged, no any panchayat was conducted and no any medical examination was done.

6. On the other side, the State strongly opposed the petition. It is submitted by the State that the matter has been duly investigated. The deceased was 80% burn and the reason of her death was extensive burn. In the case of burn the injury may not be visible. The applicant No.2 Mahendra Singh who is the father-in-law of deceased is a practicing Advocate. When the dying declaration was recorded at that time no any member of the family of the deceased was present. The dying declaration and the statement was the result of pressure created by applicants or the undue adjustment by the Doctor/Police. Counsel for the State also draws the attention towards the statements of Tulsiram Ahirwar (*Chowkidar*) and Prahlad and submits that from the aforesaid statements, it is clearly established that the applicant No.2 was present at the time of incident. False information was given by the husband about the accidental burn. Therefore, the prosecution is based upon strong evidence and not liable to be quashed at the primary stage. Sufficient grounds are available to proceed further. Therefore, petition is liable to be dismissed.

7. In *Emperor v. Khwaja Nazir Ahmad*, AIR 1945 PC 18 and *Lala Jairam Das v. Emperor*, AIR 1945 PC 94, the Judicial Committee has taken the view that **Section 561-A of the old Code which is equivalent to Section 482 of the Cr.P.C.** gave no new powers but only provided that already inherently possessed should be preserved. This view holds the field till date.

8. In *Raghubir Sharan (Dr.) v. State of Bihar*, AIR 1964 SC 1 Court observed as under (AIR p.11, para 31.)

"31.....every High Court as the highest court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers...."

In the said case, the court also observed that the inherent powers can be exercised under this section by the High Court (1) to give effect to any order passed under the Code; (2) to prevent abuse of the process of the court; (3) otherwise to secure the ends of justice.

9. In *Janata Dal v. H.S. Chowdhary*, [1992] 4 SCC 305 the court observed as under:- (SCC p.355, paras 131-32).

"131. Section 482 which corresponds to Section 561-A of the old Code and to Section 151 of the Civil Procedure Code proceeds on the same principle and deals with the inherent powers of the High Court. The rule of inherent powers has its source in the maxim "*Quaerens alicui concedit, concedere videtur id sine quo ipsa, esse non potest*" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.

132. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles."

10. In *Kurukshetra University and Another v. State of Haryana and Another*, [1977] 4 SCC 451, court observed as under: (SCC p.451, para 2)

"Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Thus, the High Court in exercise of inherent powers under Section 482, Criminal Procedure Code cannot quash a first information report more so when the police had not even commenced the investigation and no proceeding at all is pending in any Court in pursuance of the said FIR." (AIR p.2229)

11. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 = 1960 Cri.L.J. 1239, the Apex Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings :-

- (I) Where institution / continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (II) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
- (III) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
- (IV) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

12. In *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi*, [1976] 3 SCC 736 = 1976 SCC (Cri) 507 the court said that the process against the accused can be quashed or set aside :-

"(1) 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;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like". (SCC p.741, para 5)

13. In *State of Karnataka v. L. Muniswamy and Ors.*, AIR 1977 SC 1489 = (1977) 2 SCC 699, the Apex Court observed that the wholesome power under section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the court or that the ends of justice requires that the proceedings ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In this case, the court observed that ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the Legislature. Court held as under :

"In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction."

14. In *Madhu Limaye v. The State of Maharashtra*, (1977) 4 SCC 551 a **three-Judge Bench** of Apex court held as under: (SCC p.551)

"(1).....In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, that the invoking of the revisional power of the High Court is impermissible."

15. In the case of *Drugs Inspector v. Dr. B.K. Krishna* [1981 (2) SCC 454] : (AIR 1981 SC 1164) it was held by Court that in a quashing proceeding, the High Court has to see whether the allegations made in the complaint petition, if proved, make out a prima facie offence and that the accused has prima facie committed the offence.

16. In *Municipal Corporation of Delhi v. Ram Kishan Rohtagi* [1983 (1) SCC 1] : (AIR 1983 SC 67) it was held that when on the allegation made in the complaint, a clear case was made out against all the respondents (accused persons), the High Court ought not to have quashed the proceedings on the ground that the complaint did not disclose any offence.

17. In *Sheonandan Paswan v. State of Bihar*; AIR 1987 SC 877, it has been held:-

"It is a well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of malafides or political vendetta of the first informant or the complainant."(At p. 891, Para 16 of AIR)

18. In *Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre*, [1988] 1 SCC 692, the Apex Court observed as under: (SCC p.695, Para7)

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to

be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

19. *State of Haryana and others Appellants v. Ch. Bhajan Lal and others*, 1992 CRI. L. J. 527 = MANU/SC/0115/1992 : (1992) Supp (1) SCC 335 Apex court said that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. The Court again said that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. The court pointed out certain category of cases by way of illustrations wherein the inherent power under Section 482 of the Code can be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The same are as follows :-

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F. I. R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the un-controverted allegations made in the FIR or 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.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
6. Where there is an express legal bar engrafted in any of the

provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

20. In *B.S. Joshi and Ors. v. State of Haryana and Anr.*, AIR 2003 SC 1386 : (2003 AIR SCW 1824), Court held that inherent power must be utilised with the sole purpose of preventing the abuse of the process of the court or to otherwise serve the ends of justice. In exercise of inherent powers, proper scrutiny of facts and circumstances of the case concerned are absolutely imperative.

21. In *State of A.P. v. Golconda Linga Swamy*, (2004) 6 SCC 522, court observed as under (SCC pp. 526-27, para 5) :-

"5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely:

- (i) to give effect to an order under the Code,
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid aliqne concedit, conceditur et id sine quo res ipsa esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is

justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the 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 initiation or 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."

22. Apex court in *Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque*, (2005) 1 SCC 122 observed thus: (SCC p. 128, para 8)

"8. 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 initiation/ 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."

23. In *State of Orissa and Anr. v. Saroj Kumar Sahoo* (2005) 13 SCC 540, it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus :

"It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

24. *T. Vengama Naidu v. T. Dora Swamy Naidu and Ors.*, AIR 2007 SC (Supp) 231 [27-2-2007] Court said that at **the stage of investigation**, the only inquiry which could be made is whether FIR contains allegation of any offence and if prima facie there were ingredients of offences complained than (sic: then) F.I.R.

and investigation cannot be quashed on ground that no offences were made out, and it was a civil dispute. In para 7 the court said :-

"7. It is settled law that an FIR and the consequent investigation cannot be quashed unless there is no offence spelt out from the same. The law in this respect is settled that the said FIR has to be taken on its face value and then it is to be examined as to whether it spells out the offences complained of. There was no question of considering the merits of the allegations contained in the FIR at that stage or testing the veracity of allegations. In this case, admittedly, the investigation was in progress. The police had also not reported back to the Magistrate the result of their investigation. Under such circumstances, the FIR could have been quashed only and only if there appeared to be no offence spelt out therein"

25. **Three Judges** Bench in *Manjula Sinha v. State of U.P. and Ors.* 2007 AIR SCW 4555 said in para 8 that Section 482 Cr.P.C. does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely,

- (i) to give effect to an order under the Code,
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

Court again said in para 8 and 9 that :-

"8....it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the

administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. 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 initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case, where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See: *Janata Dal v. H. S. Chowdhary* (1992) 4 SCC 305, and *Raghubir Saran (Dr.) v. State of Bihar* (AIR 1964 SC 1)]."

26. In *Central Bureau of Investigation v. K. M. Sharan*, 2008 AIR SCW 1649 [21-2-2008] the court said that High Court should not embark upon enquiry whether allegations in FIR and charge sheet were reliable or not or about veracity of allegations. If the ingredients of offences charged were clearly made out than (sic : then) High Court was not justified in quashing FIR. The powers possessed by the High Court under S. 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court ought to exercise its extraordinary jurisdiction of quashing the proceedings at any stage. In such a case, the High Court in its jurisdiction under S. 482, Cr. P. C. would not be called upon

to embark upon the enquiry whether the allegations in the FIR and the charge sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the concerned Court after the entire material is produced before it on a thorough investigation and evidence is led.

27. **Three Judges Bench in *State of A. P v. Vangaveeti Nagaiah*** AIR 2009 S.C. 2646 said in para 6 and 7 :-

"6.....it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an inquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

7. the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. "

28. In *Devendra and Others v. State of Uttar Pradesh*, (2009) 7 SCC 495 Apex court observed as under: (SCC pp.504-05, para 24)

" 24. 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."

29. In *State of Maharashtra and Ors v. Arun Gulab Gawali and Ors.*, AIR 2010 S.C. 3762 Apex court said that F.I.R. for heinous offence affecting the society at large, therefore cannot be quashed merely on presumption that there would be no chance of conviction or that victim himself is not supporting or has compromised matter, Victim may resile back under undue pressure or influence of accused .

30. In *State of A.P. v. Gourishetty Mahesh*, (2010) 11 SCC 226 this court observed that the power under section 482 of the Code of Criminal Procedure is wide and they require care and caution in its exercise. The interference must be on sound principle and the inherent power should not be exercised to stifle the legitimate prosecution. The court further observed that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is up to the High Court to quash the same in exercise of its inherent power under Section 482 of the Code.

31. Apex court in the case of *Rajiv Thapar v. Madan Lal Kapoor* (2013) 3 SCC 330 delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) **Step one**, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) **Step two**, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) **Step three**, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) **Step four**, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

The Court said that if the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.

32. In the Case of *Munshiram v. State of Rajasthan and Anr. Etc.* AIR 2018 SC 1923 = 2018 CriLJ 2412 = 2018(2) Crimes 58 (SC) = (2018) 5 SCC 678 the deceased was the son of the Appellant married to the second Respondent. There was dispute between the couples which led to filing (sic : filing) of various complains (sic: complaints) by both the parties. It was alleged that the deceased was under a constant fear of arrest and harassment because of false implication in criminal case. Thereafter, a compromise was entered into between the deceased and the second Respondent. But the second Respondent again filed an FIR against the deceased. Due to continuous humiliation and suffering inflicted upon by the wife the deceased committed suicide leaving two suicide notes. An FIR was lodged against the second Respondent. The accused Respondents approached the High Court for quashment of FIR. The High Court allowed the Respondent's application and quashed the FIR. Aggrieved by present appeal was preferred. But The Apex Court while allowing appeal said :-

"11. Having heard the learned counsel for both the parties and perusing the material available on record we are of the opinion that the High Court has prematurely quashed the FIR without proper investigation being conducted by the Police. Further, it is no more res integra that Section 482 of CrPC has to be utilized cautiously while quashing the FIR. This court in a catena of cases has quashed FIR only after it comes to a conclusion that continuing investigation in such cases would only amount to abuse of the process. In this case at hand, the court abridged the investigation which needed to ascertain certain factual assertions made in the FIR concerning the existence or non-existence of any prior mental condition of the deceased prior to the commission of suicide.

12. We are apprised of the FSL report which categorically states that the handwriting of the deceased and the handwriting as present in the suicide note has similarities....

13. In light of the fact that the enquiry was pending and there are aspects which may require investigation, we are of the considered opinion that the High Court erred in quashing the FIR at the threshold itself without allowing the investigation to proceed. We cannot agree with the reasons provided under the impugned judgment concerning certain factual assertions made by the Respondents as to the condition of the deceased and reasons for committing suicide because acceptance of the said would not be in consonance with the settled jurisprudence under Section 482 of CrPC as laid down by various judgments of this Court."

33. In *Nike India Private Limited & Others Vs. My Store Private Limited*, 2019 (4) J.L.J. 85 the Apex court said that it is settled law that in the proceeding under Section 482 of Cr.P.C. with regard to quashment of the proceeding of the trial court the documents which are unimpeachable can be considered with a view to whether continuity of the proceeding would be meaningful or mere wastage of the time etc.; or the proceeding has been launched to take vengeance or malice.

34. Counsel for the applicants cited the case of *M. Mohan Vs. State* (2011) 3 SCC 626 and draws the attention towards the para 51 to 67. It appears from the aforesaid paras that the Hon'ble Apex Court referred the above mentioned cases of *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 = 1960 Cri.L.J. 1239, *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi*, [1976] 3 SCC 736 = 1976 SCC (Cri) 507, *State of Karnataka v. L. Muniswamy*, [1977] 2 SCC 699, *Madhu Limaye v. The State of Maharashtra*, [1977] 4 SCC 551, *Madhavrao Jiwajirao Scindia & Others v. Sambhajirao Chandrojirao Angre*, [1988] 1 SCC 692, *Janata Dal v. H.S. Chowdhary*, [1992] 4 SCC 305, *Raghubir Sharan (Dr.) v. State of Bihar*, AIR 1964 SC 1 *Connelly v. Director of Public Prosecutions* 1964 AC 1254, *Kurukshetra University and Another v. State of Haryana and Another*, [1977] 4 SCC 451, *State of Haryana & Others v. Bhajan Lal*, 1992 Supp (1) SCC 335 *G. Sagar Suri & Another v. State of UP*, (2000) 2 SCC 636, *State of A.P. v. Golconda Linga Swamy*, (2004) 6 SCC 522, *Zandu Pharmaceutical Works Ltd. & Others v. Mohd. Sharaful Haque*, (2005) 1 SCC 122, *Devendra and Others v. State of Uttar Pradesh*, (2009) 7 SCC 49 *State of A.P. v. Gourishetty Mahesh*, (2010) 11 SCC 226.

35. **Therefore** legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. Inherent power should not be exercised to stifle the legitimate prosecution. If the allegations set out in the complaint do not constitute the offence, it is up to the High Court to quash the same in exercise of its inherent power under Section 482 of the Code. When the Court come to the conclusion that the registration of FIR and continuance of criminal case against the applicant is a gross abuse of process of law then High Court Court can use the power under Section 482 of Cr.P.C. for

quashment of the FIR and further proceedings. F.I.R. for heinous offence affecting the society at large, therefore cannot be quashed merely on presumption that there would be no chance of conviction. 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. It will not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.

36. This case is related to the offence under Section 306 of IPC. The deceased was the wife of the applicant No.1 and the daughter-in-law of applicant Nos.2 and 3. Her marriage was took place about ten years back. The deceased was the mother of a male child aged about 5 years. The death was the result of excessive burn injuries. For the purpose of Section 306 of IPC, the counsel for the applicants cited the following cases:-

- (1) *Gangula Mohan Reddy Vs. State of Andhra Pradesh* (2010) 1 SCC 750.
- (2) *S.S. Chheena Vs. Vijay Kumar Mahajan and Another* (2010) 12 SCC 190.
- (3) *Madan Mohan Singh Vs. State of Gujarat and Another* (2010) SCC 628.
- (4) *M. Mohan Vs. State* (2011) 3 SCC 626.
- (5) *Gurucharan Singh Vs. State of Punjab* (2017) 1 SCC 433.
- (6) *Rajesh Vs. State of Haryana* 2019 SCC OnLine SC 44.

37. In order to properly comprehend the scope and ambit of Sec. 306 IPC, it is important to carefully examine the basic ingredients of Sec. 306 IPC. The said Section is reproduced as under:

"306. 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 extend to ten years, and shall also be liable to fine."

38. The word '**suicide**' in itself is nowhere defined in the I.P.C., however its meaning and import is well known and requires no explanation. '**Sui**' means '**self**' and '**cide**' means '**killing**' thus implying an **act of self-killing**. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

39. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviors in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.

40. From a bare reading of the provision, it is clear that to constitute an offence under Section 306, IPC, the prosecution has to establish:

- (i) that a person committed suicide, and
- (ii) that such suicide was abetted by the accused.

In other words, an offence under Section 306 would stand only if there is an "abetment" for the commission of the crime. The parameters of "abetment" have been stated in Section 107 of the IPC, which defines abetment of a thing as follows :

"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 place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing".

Explanation 2 which has been inserted along with Sec. 107 reads as under:

"Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

41. Reading of section 306 and 107 together it is clear that if any person instigates any other person to commit suicide and as a result of such instigation the other person commits suicide, the person causing the instigation is liable to be punished under S. 306 of the I.P.C. for abetting the commission of suicide. A plain reading of this provision shows that before a person can be convicted of abetting the suicide of any other person, it must be established that such other person committed suicide.

42. As per the Section, a person can be said to have abetted in doing a thing, if he, **firstly**, 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 place in pursuance of that conspiracy, and in order to the doing of that thing; or **thirdly**, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to Section 107 states that any willful misrepresentation or willful concealment of material fact which he is bound to disclose, may also come within the contours of "abetment". It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.

43. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "**instigates**" any person to do that thing. The word "**instigate**" is not defined in the IPC. The meaning of the said word was considered by the Supreme Court in *Ramesh Kumar v. State of Chhattisgarh* [(2001) 9 SCC 618 : (2001 AIR SCW 4282)]. It has been said that 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. **Where the 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 to be inferred.** A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

44. The Supreme Court in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, = AIR 2010 SC 1446 = 2010 AIR SCW 645 = (2009) 16 SCC 605 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words '**instigation**' and '**goad**'. The Court said :-

"Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by

"goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action : provoke to action or reaction" (See : Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See : Oxford Advanced Learner's Dictionary - 7th Edition). Similarly, "urge" means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter."

45. In *Ramesh Kumar v. State of Chhattisgarh*, (2001) 9 SCC 618 = AIR 2001 S.C. 3837 = 2001 AIR SCW 4282, (Three-Judge Bench of the Supreme Court) a dispute was between the husband and wife, the appellant husband uttered "**you are free to do whatever you wish and go wherever you like**". Thereafter, the wife of the appellant Ramesh Kumar, committed suicide. The Court in para 20 has examined different shades of the meaning of '**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 the 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."

46. In *State of West Bengal v. Orilal Jaiswal* (AIR 1994 SC 1418 = 1994 AIR SCW 844 = 1994 Cri LJ 2104) the Supreme Court has observed that the Courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences 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.

47. In the case of aforesaid case of *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, = AIR 2010 SC 1446 = 2010 AIR SCW 645 = (2009) 16 SCC 605. the appellant along with other two accused "in furtherance of common intention", mentally tortured Jitendra Sharma (the deceased) and abetted him to commit suicide by the said act of mental torture. Apart from the suicide note, it was appeared from the statements recorded by the police during the course of investigation, that on account of business transactions with the accused, including the appellant, the deceased was put under tremendous pressure to do something which he was perhaps not willing to do. The court said that It is trite that words uttered on the spur of the moment or in a quarrel, without something more cannot be taken to have been uttered with mens rea. The onus is on the prosecution to show the circumstances which compelled the deceased to take an extreme step to bring an end to his life. Briefly dealing with the material available on record, the court held that clause firstly of Section 107 of the IPC is attracted & it cannot be said that the trial court was in error in drawing an inference that the appellant had "instigated" the deceased to commit suicide and, therefore, there was ground for presuming that the appellant has committed an offence punishable under Section 306 read with Section 34, IPC.

48. The Apex Court in the aforesaid case of *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*, reported in 2009 (16) SCC page 605 : (AIR 2010 SC 1446)], reiterated the legal position laid down in its earlier **three Judges Bench** judgment in the case of *Ramesh Kumar v. State of Chhattisgarh*, reported in AIR 2001 SC page 3837: (2001 Cri LJ 4724) (1) and held that where the accused by his acts or continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. Their Lordships in the aforesaid case of *Chitresh Kumar*, (AIR 2010 SC 1446) (supra), summed up the legal position as under :-

"In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and,
- (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mensrea is the necessary concomitant of instigation."

The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person suicidability pattern is

different from the other. Each person has his own idea of self-esteem and self-respect. **Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.**

49. In the Case of *S. S. Cheena Vs. Vijay Kumar and another*, [2010] 12 SCC 190 the Supreme court said that :-

"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. The intention of the legislature and the ratio of the cases decided by this Court is clear that in **order to convict a person under Sec. 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 that act must have been intended to push the deceased into such a position that he committed suicide.** Human sensitivity of each individual differs from the other. Different people behave differently in the same situation. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life."

50. In *Radha Vs. State of M.P.*, ILR (2008) M.P. 3333, it has been held that Cruel or insulting behaviour cannot be taken as an act of abetting suicide, more active role which can be described as instigating or aiding doing of a thing is thus required before a person can be said to be abetting suicide.

51. After taken in to consideration *Pancharam Vs. State*. 1984 (2) Crimes 787 and *Brijlal Vs. State* 1971 J LJ Short Note No. 80 it has been said by the High Court in *Ram Kumar Vs. State of M.P.* , 1997 MPLJ (2) S.N. 11 that refusal of permission of husband to wife to go to parents house would not be a penal offence and conviction under Sec. 306 of the I.P.C. on such count is not suspensible.

52. In *Bhoj Ram Vs. State of M.P.*, 2000(2) MPLJ (SN) 23 suicide was committed by the deceased after beating by the accused. The lower court was of the view that because of the beating by the accused the deceased probably felt bad therefore he must have committed suicide. In the above circumstances (sic: circumstances) the court said that **in absence of the positive evidence that either of the accused instigated some person to do a particular thing or engaged himself or someone for commission of the offence or for illegal omission or intentionally aided in commission of the act by their own acts or illegal omissions it would not be entitled to secure a conviction of the accused persons.** The Court observed :-

"Sec. 109 of I.P.C. provides punishment of abetment, if the act abetted is committed in consequence and where no expression provision is made for his punishment. As Sec. 306 makes special and express provisions for punishment, the provision of Sec. 109 would not be applicable. For providing abetment a Court is obliged to see not only the evidence brought on record but also the definition which defines abetment. The prosecution unless proves application of either of the clauses provided under Sec. 107, IPC would not be successful in securing the conviction of the accused. The prosecution had miserably failed in showing the application of any of the clause provided in Sec. 107, IPC; The criminal jurisprudence begins with the presumption that unless otherwise proved the person facing the trial would be deemed to be an innocent. The burden to prove the ingredients constituting the offence is on the prosecution and not on the accused. If the prosecution fails to connect the act of the accused with the ultimate crime and material links which constitute the chain are missing the accused would be entitled to an acquittal."

53. In *Kanhai Vs. State of M.P.*, 2000(4) MPHT 277 the Dead body of wife of accused was found in a well. It was alleged that accused used to quarrel with deceased and harassed her. On the date of incident also quarrel took place in the family. Accused / husband slapped the deceased. Deceased jumped into the well along with her infant daughter. Both of them died in the well. It was held that it is proved that marriage took place about 4-5 years prior to date of incident. Deceased was harassed and ill-treated. Harassment was to the extent that villagers has to intervene to subside the quarrel. She was immediately before death subjected to cruelty. She was under constant threat. Deceased was subjected to utmost cruelty. The act of accused clearly amounts to abetment of suicide under Sec. 306 and cruelty under Sec. 498- A, IPC.

54. In the case of "*Mohd. Hoshan and another v. State of A.P.*" AIR 2002 S.C. 3270 = 2002 AIR SCW 3795, Hon'ble Supreme court observed that whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not. In this case out of 11 months of married life, the deceased was forced to live in her parents' house and could live with her husband for a period of two months in different spells. The Court also took note of the fact that the accused did not try to save the deceased although he was present when burn

injuries were caused to her therefore accused is liable to be convicted for offences under section 306 and 498-A, I.P.C.

55. In *Raja Babu & anr. Vs. State of M.P.*, AIR 2008 SC 3212, the deceased wanted to be married in a literate family. She was not happy with the fact that her husband was illiterate and also with the status and condition of the family of her husband. She was also required to do some domestic work as the family was poor, for which she was not happy. The deceased was of the view point that her life has been spoiled by marrying Appellant. The court considered the letter reflects the attitude of the in-laws of the deceased towards the deceased and observed that in the said letter there was no reference of any act or incident whereby the appellants were alleged to have committed any willful act or omission or intentionally aided or instigated the deceased to commit suicide.

56. In the case of *Milind Bhagwanrao Godse v. State of Maharashtra*, AIR 2009 S.C. 1828 a letter was written by the deceased to her parents, just before she had committed suicide. The deceased wrote in the letter that she was an unlucky girl. She thought that she would have some moments of happiness, but it was not possible because of the nature of her husband (the appellant herein). She mentioned that on the last day and night, the appellant had quarreled with her and in the morning the appellant cursed the father of the deceased. She stated that the appellant had gone to the extent of saying that since she was so proud of the influence of her father, she should live with her father in matrimony and also said many things of that sort. She specifically stated that the appellant had harassed her so much that it would not be possible for her to live with him any more. She further stated in the letter that it is one thing of not earning money and another to frequently dishonour and to give trouble to the deceased and her son Rohit. She stated in the letter that the appellant deliberately twisted the leg of Rohit (his small son) and broke his bone. She also stated in the letter that the appellant did so because he had a brother Arvind who was physically handicapped and he wanted Rohit to be like Arvind and also because the deceased loved her son Rohit intensely. She stated in the letter that the appellant had unusual attraction towards other girls, particularly towards deceased's sister Asha, Sushma, Sandhya, sister of Charuhas, wife of Anil Pangrikar. The deceased wrote in the letter that the appellant, in order to torture and mentally harass her, used to say that these girls had good physical figures and looked beautiful. The deceased also stated in the letter that the appellant used to say that there would be a row of girls now for marriage with him. She requested her parents to take care of her minor son Rohit and wanted that there should not be a shadow of the appellant on Rohit. The court held that these comments led to severe mental torture and the letter is indeed very emotional and was written in extreme distressing mental condition. This letter clearly demonstrates that the

deceased was so much mentally tortured by the appellant that she had decided to put an end to her life. Therefore conviction under Sec.s 498-A and 306 and punishment thereof held proper.

57. In the case of *Thanu Ram Vs. State of M.P. (Now Chhatisgarh)*, [2010] 10 SCC 353, the victim committed suicide in fourth year of marriage when she was six months' pregnant. Supreme court said that, Sec.107 IPC clearly defines abetment to mean that a person abets the doing of a thing who instigates a person to do that thing. Ordinarily a woman in an advanced stage of pregnancy would not commit suicide even when treated with cruelty. Only in extreme circumstance, may a woman decides to take her life and that of her unborn child when she reaches a point of no return and is in a mental state to take her own life.

58. In the case of *Sudarshan Kumar vs. State of Haryana*, AIR 2011 SC 3024 = 2011 INDLAW SCO 521 [SC] = [2011] 8 JT 284 = 2011 8 SCALE 115, the appellant was married in 1980. She could not conceive & committed suicide on 23.02.1989. The appellant had been maltreating and beating his wife and saying that if she dies, he will be remarried. She was physically assaulted and sent to her father's house where she stayed for one and half years but due to the intervention of the panchayat members and the promise of the appellant that he would not harass her again and his request for pardon, she came back. However, it appears that she was again harassed and tormented and ultimately driven to suicide. The appellant was convicted by the trial Court for abetting the suicide under Sec. 306 IPC, and his conviction was upheld by the High Court. The Supreme court confirmed the conviction and said that from the facts disclosed, it is evident that wife was harassed and beaten because she could not have a child. The Court said :-

"It is natural that everyone wants children, but if a woman does not have a child, that does not mean that she should be insulted or harassed. In such a situation, the best course would be to take medical help, and if that fails, to adopt a child. Experience has shown that an adopted child gives as much happiness to the adoptive parents as any natural child does. Hence, we see no justification to condone such an act of harassing or tormenting a woman just because she did not give birth to a child. It may not be the fault of the wife that she did not have a child. At any event, that is no justification for tormenting or beating her, and this reveals a feudal, backward mentality."

59. In the case of *Madan Mohan Singh* (Supra) the deceased was the driver who committed suicide leaving behind a suicide note and the FIR was lodged by his wife in which it was stated that during the period between the year 2003 to 21.02.2008, the Head of the Department was entrusting his housework to her husband but her husband had not done the work entrusted to him and, therefore, he had bias against her husband and insulted him in

front of the staff several times and because of this, her husband got depressed and committed suicide. After examination of FIR and the suicide note the Court observed in para 10 and 11 as under:-

"10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide.

11. In spite of our best efforts and microscopic examination of the suicide note and the FIR, all that we find is that the suicide note is a rhetoric document in the nature of a departmental complaint. It also suggests some mental imbalance on the part of the deceased which he himself describes as depression. In the so-called suicide note, it cannot be said that the accused ever intended that the driver under him should commit suicide or should end his life and did anything in that behalf. Even if it is accepted that the accused changed the duty of the driver or that the accused asked him not to take the keys of the car and to keep the keys of the car in the office itself, it does not mean that the accused intended or knew that the driver should commit suicide because of this."

60. In the aforesaid case of *Madan Mohan Singh*, the Court referred to Section 306 of IPC and said in para 12 and 16 as under:-

"12. In order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306 IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note.

16. Insofar as Section 294 (b) IPC is concerned, we could not find a single word in the FIR or even in the so-called suicide note. Insofar as Section 306 IPC is concerned, even at the cost of repetition, we may say that merely because a person had a grudge against his superior officer and committed suicide on account of that grudge, even honestly feeling that he was wronged, it would still not be a proper allegation for basing the charge under Section 306 IPC. It will still fall short of a proper allegation. It would have to be objectively seen whether the allegations made could reasonably be viewed as proper allegations against the

appellant-accused to the effect that he had intended or engineered the suicide of the person concerned by his acts, words, etc. When we put the present FIR on this test, it falls short."

61. In the case of *M. Mohan Vs. State* (Supra), the Apex Court after referred to the Section 306 of IPC and the cases of *Ramesh Kumar Vs. State of Chhattisgarh* (2001) 9 SCC 618, *State of W.B. Vs. Orilal Jaiswal* (1994) 1 SCC 73 and *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)* (2009) 16 SCC 605, said that in paras 44 and 45 as under:-

"44. 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.

45. 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."

62. In the case of *Gurcharan Singh*, (Supra), the Apex Court after quoting the Section 306 of IPC, said in para-21 as follows:-

"21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicating existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of these constituents would militate against this indictment. Remoteness or the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide."

63. In the case of *Rajesh Vs. State of Haryana* (Supra), it was stated that the deceased committed suicide due to the behaviour of accused who made false allegation against the deceased regarding demand of dowry. A panchayat was held in the village at the instance of the accused during which the appellant slapped the deceased. The appellant and his sister used to threaten the deceased on telephone at the instance of their father. The case was registered under Section 306 of IPC.

The Apex Court after quoting the section 306 and 107 of IPC, said in para 9 as under:-

"9. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

64. In the aforesaid case the Apex Court again referred the case of *Chitresh Kumar Chopra* (Supra) and *Praveen Pradhan Vs. State of Uttranchal* (2012) 9 SCC 734 and said in para -12 as under:-

"12. We are of the opinion that the evidence on record does not warrant conviction of the appellant under Section 306 IPC. There is no proximity between the Panchayat held in September, 2001 and the suicide committed by Arvind on 23.02.2002. The incident of slapping by the appellant in September, 2001 cannot be the sole ground to hold him responsible for instigating the deceased to commit suicide. As the allegations against all the three accused are similar, the High Court ought not to have convicted the appellant after acquitting the other two accused."

65. Now, we shall examine the fact of present case, it appears from the case diary that the Marg No.0/18 was registered under Section 174 of Cr.P.C., upon the information given by Dr. R.S. Chhabara, Green City Hospital, Bhopal. In the aforesaid information, it has been stated that the Sadhna was admitted in the hospital on 23.04.2018 by her husband Digvijay Singh and the aforesaid patient has been expired on 29.04.2018 at 09:25 A.M. The aforesaid marg intimation was registered at Police Station Goutam Nagar, District Bhopal who forwarded it to the concerned police station Deonagar District Raisen, where the original marg No. 12/2018 was registered on 01.05.2018. The S.D.O.P., Begumganj conducted the marg inquiry. He recorded the statements of father of deceased Prahlad Singh, mother Roopmati, brother Shripal and maternal uncle Ramgulam. He also recorded the statements of village Chowkidar Tulsiram Ahirwar and the witness Raghveer Aadivasi. In addition to aforesaid statements he also recorded the statements of police personnel, ASI Sudhakar Soni, Head Constable No. 335 Ramesh Parashar and Head Constable No. 125 Ramesh Evane, all three posted at

Police Station, Deonagar. During marg inquiry, the police prepared the spot map and seizure of articles, inquest panchnana and collected the postmortem report. Thereafter, come to the conclusion that the death of deceased was the result of abetment of all three applicants who are the husband, father-in-law and mother-in-law of the deceased. Therefore, crime No. 136/2018 under Section 306/34 of IPC was registered on 22.05.2018. During investigation, the police also recorded the statements of various witnesses and come to the conclusion that the offence is proved against the present applicants. Therefore, police filed the challan No. 169/2018 dated 14.07.2018 before the trial Court.

66. Minute marshaling of evidence recorded under Section 161 of Cr.P.C and the prosecution documents cannot be done at primary stage. Only it is required to be seen whether any sufficient ground was available to register the FIR and to investigate the matter. In this case the FIR was register upon the basis of aforementioned documents and the statements of ten witnesses.

67. The applicants strongly rely upon the dying declaration recorded by the Executive Magistrate, Raisen. Primfa (sic: prima) facie this document create a suspicion. In the aforesaid document date "**22.04.2018**" has been mentioned. The time when the statement was started is mentioned as "**12:49 pm**" while the Medical Officer, who signed and paste the seal below the statement has mentioned the time "12:49 pm" after mentioning the fact that after recording of the statement the condition of victim was found satisfactory. The doctor mentioned - बयान देने के पश्चात् पिड़िता की हालत ठीक पाई गई। below this remark he signed and mentioned time "12:49 p.m." while the same time was mentioned in the beginning of the statement for showing the fact that the recording of the statement was started at 12:49 pm. Another fact also create some suspicion which is the time mentioned by the doctor with the date in the beginning of the statement. In the beginning of statement doctor mentioned that -पिड़ित बयान देने की हालत में है। Above the aforesaid remark doctor mentioned the date and time as "**24.04.2018 at 12:49 pm.**". Therefore, prima facie it appears that the doctor gave the back dated certificate but "**true**" has come out by the mistake of himself. Therefore, when the doubt is created upon any statement or document, then it may be resolved or justified only by the elaborate statement before the trial Court. Prima facie this statement cannot made the basis for quashment of FIR.

68. As per the aforesaid statement and the statement under Section 161 of Cr.P.C. it is tried to convince that the death was the result of an accident. The deceased had gone to the kitchen for cocking the food but there was no light in the kitchen. Therefore, she lighted a *chimni*/ [lamp] and kept over in almirah and when she stood up the *chimni* fall on her. This story is not convincing at this stage. Because it is not the case of applicants that there was no any electric connection in

the house. The incident was happened at about 9:00 am in the morning. Therefore, it may be presumed that the sufficient light was available. If there was deem (sic: dim) light then the electric light was also available. It is stated in the aforesaid marg that the deceased was going to flame the *chulha*. While the spot map shows that the cocking (sic: cooking) gas was also available in the house. A cane of diesel was also found there. The burn portion of the body have been mentioned in the postmortem report by making a sketch. The aforesaid sketches also indicates that this may not the result of falling the small *chimni*.

69. Only upon the basis of separate living of any accused it cannot be believed that he could not participate in the crime like 498-A and 306 of IPC related to the women. From the statement of Raghuvveer Aadvasi, it is transpired that the applicant No.2 was present in front of the house of the deceased. The brother of applicant No.2 Pratap Singh Dangi also supported the fact that the applicant No.2 was present at the time of the incident and he called the vehicle of police.

70. Prahlad Singh is the father of the deceased who said in his statement that just after the marriage all three applicants were harassing the deceased for demand of dowry and they also beat the deceased for several times. When the Digvijay Singh met with an accident, the witness gave the Rs. 1,50,000/-but the accused did not satisfy and they continuously creating the pressure upon the deceased by abusing her to took the money from her parents. The aforesaid accident was occurred after three years of marriage. The witness said that the husband beat the deceased for so many times. Before five months from the death at the time of *makar shankranti* the witness took her daughter to his home and when the again had gone to the house of accused for dropping of his daughter, at that time Mahendra misbehaved and abuse and also quarrel with the deceased and assault on deceased by throwing a plastic chair upon the deceased. The deceased sustained injury and 16 stitches were put by the doctor upon the aforesaid injury. The ornaments given at the time of marriage was also taken by the applicants and when the deceased was demanding her ornaments the accused person quarrel with her and beat her, but they did not give the ornaments to the deceased. It is also stated in the statement that on 22.04.2018, the accused Digvijay Singh give the telephonic information to Shripal who is the son of the Prahlad Singh and told that Sadhana sustained burn injury but there are "minor-burn", therefore, they may come on tomorrow. Thereafter, in the night about 1.30 the witness and other family members reached to the hospital.

71. The other witnesses Roopmati, Shripal and Ramgulam also supported the aforesaid statement of Prahlad Singh. It appears that the Digvijay Singh give the false information to the parents that the deceased sustained some "minor-burn" therefore, they may come on tomorrow. This circumstance created doubt upon the statement of dying declaration and the statement of under Section 161 of Cr.P.C.

Both statements have been recorded in the absence of mother, father and other relatives of the deceased. Prima facie it appears from other statements that the all accused continuously created the pressure upon the deceased to take the money from her parents. They also beaten the deceased from time to time. They also did not give the ornaments to the deceased. Accused person by their 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. Normally, a mother of 5 years old child cannot choose the way of suicide. If the circumstances are extreme in that condition the women may commit the suicide. Continuous torture, or the circumstances against a person may also create a mental torture and this is also a form of abetment of suicide.

72. Therefore, it appears that sufficient material is available to proceed further. The FIR was registered upon the basis of sufficient evidence and the documents. Hence, this is not a fit case to exercise the powers under Section 482 of Cr.P.C. for quashment of the FIR.

73. Hence, this petition is **dismissed**.

Application dismissed