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INDIAN LAW REPORT (M.P.) COMMITTEE

DECEMBER 2021

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THE HIGH COURT OF MADHYA PRADESH
JABALPUR 2021

(From 01-01-2021 to 31-12-2021)

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Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Alleged Cancellation of Agreement **– Held – Even assuming that the agreement has been cancelled, the arbitration clause of agreement/MOU still exists and can be pressed into service for invoking jurisdiction of this Court u/S 11(6) of 1996 Act. [Rajeev Agnihotri Vs. Ashok Jain] ...1941**

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Arbitration and Conciliation Act (26 of 1996), Section 11(6) –Appointment of Arbitrator by Designation **– Held – Mere change of incumbents by reason of transfer or retirement would not make any difference as they were made members of Arbitral Tribunal by designation and not by name. [Ellora Paper Mills Ltd. Vs. State of M.P.] ...2110**

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Arbitration and Conciliation Act (26 of 1996), Section 11(6) and Scheme for Appointment of Arbitrators by The Chief Justice of M.P. High Court, 1996, Scheme No. 2(a) – Existence of Agreement – Notarized Copy of agreement/MOU **– Held – Entire reply of respondent is in context of agreement/MOU denying either existence of disputes or allegations made in present application but there is no denial of factum of execution of agreement/MOU containing arbitration clause – Substantial requirement of Scheme No. 2(a) is fulfilled for appointment of arbitrator – Arbitrator appointed – Application allowed. [Rajeev Agnihotri Vs. Ashok Jain] …1941**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) एवं मध्यप्रदेश उच्च न्यायालय के मुख्य न्यायमूर्ति द्वारा मध्यस्थों की नियुक्ति के लिए स्कीम, 1996, स्कीम क्र. 2 (a) – करार का अस्तित्व/विद्यमान होना – करार/समझौता ज्ञापन (MOU) की नोटरीकृत प्रति – अभिनिर्धारित – प्रतिवादी का संपूर्ण उत्तर, करार/समझौता ज्ञापन के संदर्भ में है जो या तो विवादों के अस्तित्व या वर्तमान आवेदन में किये गये अभिकथनों का प्रत्याख्यान करता है परंतु मध्यस्थता खंड वाले करार/समझौता ज्ञापन के निष्पादन के तथ्य का कोई प्रत्याख्यान नहीं – मध्यस्थ की नियुक्ति के लिए स्कीम क्र. 2(a) की सारभूत् आवश्यकता पूर्ण होती है – मध्यस्थ नियुक्त – आवेदन मंजूर। (राजीव अग्निहोत्री वि. अशोक जैन) **…1941**

Arbitration and Conciliation Act (26 of 1996), Sections 11(6), 12(5) & 21 and Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016), Section 26 – Change of Arbitrator **– Held – Apex Court concluded that Amendment Act of 2015 cannot have retrospective operation in the arbitration proceedings which had already commenced unless parties otherwise agree – In instant case, proceedings commenced before amendment came into force – Applicant failed to produce any material to show any bias or partiality on part of any member of Arbitral Tribunal – No need to appoint another arbitrator. [Ellora Paper Mills Ltd. Vs. State of M.P.] …2110**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 11(6), 12(5) व 21 एवं माध्यस्थम् और सुलह (संशोधन) अधिनियम, 2015 (2016 का 3), धारा 26 – मध्यस्थ का परिवर्तन – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि 2015 का संशोधित अधिनियम, पहले से ही आरंभ हो चुकी माध्यस्थम् कार्यवाहियों में भूतलक्षी रूप से प्रवर्तनीय नहीं हो सकता जब तक कि पक्षकार अन्यथा सहमत न हों – वर्तमान प्रकरण में, संशोधन के प्रवर्तन में आने के पूर्व ही कार्यवाहियाँ आरंभ की गई – आवेदक माध्यस्थम् अधिकरण के किसी भी सदस्य की ओर से कोई पक्षपात या भेदभाव दर्शाने के लिए कोई सामग्री प्रस्तुत करने में विफल रहा – किसी अन्य मध्यस्थ को नियुक्त करने की आवश्यकता नहीं है। (एलोरा पेपर मिल्स लि. वि. म.प्र. राज्य) **…2110**

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माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) व 37 – देखें – संविधान – अनुच्छेद 226/227 (एम.पी. रोड डव्हेलपमेन्ट कारपोरेशन वि. द मिनिस्ट्री ऑफ रोड, ट्रान्सपोर्ट एण्ड हाईवे (एमओआरटी एण्ड एच)) **(DB)…2072**

Arbitration and Conciliation Act (26 of 1996), Section 16 & 34 – Scope & Jurisdiction **– Held – Once if Arbitral Tribunal takes a decision to reject the plea referred u/S 16(2) or 16(3), it shall continue with arbitral proceedings and make an arbitral award – It cannot be said that aggrieved party has been left remediless against rejection of his objection regarding jurisdiction of Tribunal, the only thing is that its remedy has been deferred till stage of Section 34 of the Act – No infirmity in Tribunal's order – Petition dismissed. [M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H)] (DB)…2072**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 16 व 34 – व्याप्ति व अधिकारिता – अभिनिर्धारित – एक बार यदि माध्यस्थम् अधिकरण धारा 16(2) या 16(3) के अंतर्गत निर्दिष्ट अभिवाक् को नामंजूर करने का विनिश्चय करता है, वह माध्यस्थम् कार्यवाहियों को जारी रखेगा और माध्यस्थम् अवार्ड देगा – यह नहीं कहा जा सकता कि व्यथित पक्षकार को अधिकरण की अधिकारिता के संबंध में उसकी आपत्ति की नामंजूरी के विरूद्ध उपचारहीन छोड़ दिया गया है, केवल एक बात यह है कि इसके उपचार को अधिनियम की धारा 34 के प्रक्रम पर आस्थगित कर दिया गया है – अधिकरण के आदेश में कोई दोष नहीं – याचिका खारिज। (एम.पी. रोड डव्हेलपमेन्ट कारपोरेशन वि. द मिनिस्ट्री ऑफ रोड, ट्रान्सपोर्ट एण्ड हाईवे (एमओआरटी एण्ड एच)) **(DB)…2072**

Arbitration and Conciliation Act (26 of 1996), Section 16 & 37(2) **– Held – It is evident from Section 37(2) that it purposely does not provide for an appeal against an order of Arbitral Tribunal rejecting the plea referred u/S 16(2) or 16(3) – Plea of petitioner jurisdiction or that proper notice of appointment of arbitrator was not given, may only be available to it as ground of challenge to the award if eventually it is passed against it. [M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H)] (DB)…2072**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 16 व 37(2) – अभिनिर्धारित – धारा 37(2) से यह साक्ष्यित है कि यह सप्रयोजन धारा 16(2) या 16(3) के अंतर्गत निर्दिष्ट अभिवाक् को नामंजूर करने वाले माध्यस्थम् अधिकरण के आदेश के विरूद्ध अपील उपबंधित नहीं करती है – अधिकारिता या मध्यस्थ की नियुक्ति का उचित नोटिस न दिये जाने के संबंध में याची का अभिवाक्, उसे अवार्ड को चुनौती के आधार केवल तब उपलब्ध हो सकता है यदि अंततः उसके विरूद्ध पारित किया गया है। (एम.पी. रोड डव्हेलपमेन्ट

कारपोरेशन वि. द मिनिस्ट्री ऑफ रोड, ट्रान्सपोर्ट एण्ड हाईवे (एमओआरटी एण्ड एच))
(DB)…2072

***Arbitration and Conciliation Act (26 of 1996), Sections 16(2), 34 & 37 and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7-A – Adjudication of Dispute – Applicability of Act* – Held – If despite existence of Arbitration Tribunal under the Act of 1983, parties have agreed for arbitration in accordance with ICADR Rules and Arbitration Act and consciously did not mention in agreement about existence of Arbitration Tribunal established under Act of 1983, which then was already in existence, petitioner cannot be permitted now to raise this plea. [M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H)] (DB)…2072**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 16(2), 34 व 37 एवं माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 7–A – विवाद का न्यायनिर्णयन – अधिनियम की प्रयोज्यता – अभिनिर्धारित – यदि 1983 के अधिनियम के अंतर्गत माध्यस्थम् अधिकरण के विद्यमानता के बावजूद, पक्षकार आई.सी.ए.डी.आर. नियमों एवं माध्यस्थम् अधिनियम के अनुसार मध्यस्थता के लिए सहमत हुए एवं भानपूर्वक 1983 के अधिनियम के अंतर्गत स्थापित माध्यस्थम् अधिकरण की विद्यमानता के बारे में करार में उल्लेख नहीं किया है, जो तब पहले से ही अस्तित्व में था, याची को अब इस अभिवाक् को उठाने की अनुमति नहीं दी जा सकती। (एम.पी. रोड डव्हेलपमेन्ट कारपोरेशन वि. द मिनिस्ट्री ऑफ रोड, ट्रान्सपोर्ट एण्ड हाईवे (एमओआरटी एण्ड एच)) **(DB)…2072**

***Arbitration and Conciliation Act (26 of 1996), Section 37(1) & 37(2) and High Court of Madhya Pradesh Rules, 2008, Chapter II, Rule 2 – Jurisdiction of High Court – Clarification/Distinction* – Held – Distinction to be made in Chapter II, Rule 2 of M.P. High Court Rules, 2008 between Section 37(1) & 37(2) of the Act – Chapter II, Rule 2 required to be amended that appeal arising from orders mentioned in Section 37(1) will lie before High Court – Matter directed to be placed before Rules making Committee for consideration. [Upadhyay Constructions Pvt. Ltd. (M/s.) Vs. M/s. Prism Infra Projects] …2353**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 37(1) व 37(2) एवं मध्य प्रदेश उच्च न्यायालय नियम, 2008, अध्याय II, नियम 2 – उच्च न्यायालय की अधिकारिता – स्पष्टीकरण / विभेद – अभिनिर्धारित – म.प्र. उच्च न्यायालय नियम, 2008 के अध्याय II, नियम 2 में, अधिनियम की धारा 37(1) व 37(2) के बीच विभेद किया जाए – अध्याय II, नियम 2 को संशोधित किया जाना अपेक्षित है कि धारा 37(1) में उल्लिखित आदेशों से उत्पन्न अपील, उच्च न्यायालय के समक्ष प्रस्तुत होगी – मामले को नियम बनाने वाली समिति (रूल मेकिंग कमेटी) के समक्ष विचार करने हेतु रखने के लिए निदेशित किया गया। (उपाध्याय कंस्ट्रक्शन प्रा. लि. (मे.) वि. मे. प्रिज्म इन्फ्रा प्रोजेक्टस्) **…2353**

Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016), Section 26 – See – Arbitration and Conciliation Act, 1996, Sections 11(6), 12(5) & 21 **[Ellora Paper Mills Ltd. Vs. State of M.P.] …2110**

माध्यस्थम् और सुलह (संशोधन) अधिनियम, 2015 (2016 का 3), धारा 26 – देखें – माध्यस्थम् और सुलह अधिनियम, 1996, धाराएँ 11(6), 12(5) व 21 (एलोरा पेपर मिल्स लि. वि. म.प्र. राज्य) **…2110**

Arms Act (54 of 1959), Section 25 & 27 – See – Penal Code, 1860, Section 302 **[Lalu Sindhi @ Dayaldas Vs. State of M.P.] (DB)…1932**

आयुध अधिनियम (1959 का 54), धारा 25 व 27 – देखें – दण्ड संहिता, 1860, धारा 302 (लालू सिंधी उर्फ दयालदास वि. म.प्र. राज्य) **(DB)…1932**

Ayurvigyan Vishwavidyalay (Eligibility and Enrolment of Students for Under Graduate Courses) Ordinance, M.P., 2014, Clause 8 & 9 – Enrollment Procedure **– Held – Clause 9 is mandatory in nature and it deals with a separate enrollment, different than the exercise of admission of students and submission of their certified list as mentioned in clause 8 – It is imperative /obligatory for institution to obtain enrollment prior to submission of exam form – Students shall not be deprived to undertake examination for technical/clerical mistake of institution moreso when no prejudice will be caused to University – Cost of Rs. 50,000 imposed on petitioner allowing them to complete the necessary formalities of enrollment – Petition partly allowed. [Sapphire Institute of Nursing & Science Vs. State of M.P.] (DB)…2264**

आयुर्विज्ञान विश्वविद्यालय (पूर्वस्नातक पाठ्यक्रमों के लिए छात्रों की पात्रता तथा नामांकन) अध्यादेश, म.प्र., 2014, खंड 8 व 9 – नामांकन प्रक्रिया – अभिनिर्धारित – खंड 9 आज्ञापक स्वरूप का है एवं यह एक पृथक नामांकन से संबंधित है, जो छात्रों के प्रवेश एवं उनकी प्रमाणित सूची को प्रस्तुत करने की कवायद से भिन्न है जैसा खण्ड 8 में उल्लिखित है – परीक्षा फॉर्म जमा किये जाने से पूर्व नामांकन प्राप्त करना संस्था के लिए अनिवार्य/बाध्यकर है – संस्था की तकनीकी/लिपिकीय त्रुटि के लिए छात्रों को परीक्षा देने से वंचित नहीं किया जाएगा वह भी तब जबकि विश्वविद्यालय को कोई प्रतिकूल प्रभाव कारित नहीं होगा – याची को नामांकन की आवश्यक औपचारिकताएं पूर्ण करने की मंजूरी देते हुए, उन पर 50,000/– रू. का व्यय अधिरोपित किया गया – याचिका अंशतः मंजूर। (सफायर इंस्टीट्यूट ऑफ नर्सिंग एण्ड साइंस वि. म.प्र. राज्य) **(DB)…2264**

Binding Precedent **– Held – Observation made by Court in a judgment or order is not binding on Court – Reasons for the decision and findings of Court on an issue is binding precedent. [Suresh Kumar Kurve Vs. State of M.P.] …*15**

बाध्यकारी पूर्व निर्णय – अभिनिर्धारित – किसी निर्णय अथवा आदेश में न्यायालय द्वारा किया गया संप्रेक्षण न्यायालय पर बाध्यकारी नहीं है – निर्णय के कारण तथा किसी

विवाद्यक पर न्यायालय के निष्कर्ष बाध्यकारी पूर्व निर्णय हैं। (सुरेश कुमार कुर्वे वि. म.प्र. राज्य) ...*15

***Building and Other Construction Workers' Welfare Cess Act (28 of 1996), Section 3(1) & 3(1A) and Building and Other Construction Workers' Welfare Cess Rules, 1998, Rule 3 – Scope & Applicability* – Held – The cost incurred in purchase and construction of plant and machinery and such other costs meant to be used in a factory falls within ambit of Section 3(1A) – Both the cost are related to a factory – This provision does not permit exclusion of the other costs which are not meant to be used in "factory" – Provision not applicable to petitioner establishment. [Suzlon Energy Ltd. Vs. State of M.P.] (DB)...1843**

भवन तथा अन्य संनिर्माण कर्मकार कल्याण उपकर अधिनियम (1996 का 28), धारा 3(1) व 3(1A) एवं भवन तथा अन्य संनिर्माण कर्मकार कल्याण उपकर नियम, 1998, नियम 3 – व्याप्ति व प्रयोज्यता – अभिनिर्धारित – संयंत्र एवं मशीनरी के क्रय और सन्निर्माण में उपगत लागत एवं ऐसी अन्य लागत जो एक कारखाने में उपयोग के लिए होती है, धारा 3(1A) की परिधि के भीतर आती हैं – दोनों लागत एक कारखाने से संबंधित हैं – यह उपबंध अन्य लागतें जो कि ''कारखाने'' में उपयोग के लिए नहीं हैं, के अपवर्जन की अनुज्ञा नहीं देता है – उपबंध याची की स्थापना पर लागू नहीं है। (सुजलॉन एनर्जी लि. वि. म.प्र. राज्य) **(DB)...1843**

***Building and Other Construction Workers' Welfare Cess Act (28 of 1996), Section 11 – See – Constitution – Article 226* [Suzlon Energy Ltd. Vs. State of M.P.] (DB)...1843**

भवन तथा अन्य संनिर्माण कर्मकार कल्याण उपकर अधिनियम (1996 का 28), धारा 11 – देखें – संविधान – अनुच्छेद 226 (सुजलॉन एनर्जी लि. वि. म.प्र. राज्य) **(DB)...1843**

***Building and Other Construction Workers' Welfare Cess Rules, 1998, Rule 3 – See – Building and Other Construction Workers' Welfare Cess Act, 1996, Section 3(1) & 3(1A)* [Suzlon Energy Ltd. Vs. State of M.P.](DB)...1843**

भवन तथा अन्य संनिर्माण कर्मकार कल्याण उपकर नियम, 1998, नियम 3 – देखें – भवन तथा अन्य संनिर्माण कर्मकार कल्याण उपकर अधिनियम, 1996, धारा 3(1) व 3(1A) (सुजलॉन एनर्जी लि. वि. म.प्र. राज्य) **(DB)...1843**

***Civil Practice – Adjudication of Nature of Sale Deed – Jurisdiction* – Held – In present case, nature of sale deed is to be decided, which is the sole domain of Civil Court and Revenue Courts are expected not to entertain such matter – In such cases, jurisdiction solely vests in Civil Court – Impugned order is perverse and is set aside – Petition disposed. [Naresh Soni Vs. Shankar Singh] ...*17**

सिविल पद्धति – विक्रय विलेख के स्वरूप का न्यायनिर्णयन – अधिकारिता – अभिनिर्धारित – वर्तमान प्रकरण में, विक्रय विलेख के स्वरूप का विनिश्चय किया जाना है, जो कि एकमात्र सिविल न्यायालय का अधिकार क्षेत्र है एवं राजस्व न्यायालयों से ऐसे मामले पर विचार न करने की अपेक्षा की जाती है – ऐसे प्रकरणों में, अधिकारिता एकमात्र सिविल न्यायालय में निहित है – आक्षेपित आदेश विपर्यस्त है एवं अपास्त किया जाता है – याचिका निराकृत। (नरेश सोनी वि. शंकर सिंह) …*17

***Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10 & 14 – Major Punishment – Departmental Enquiry* – Held – Major punishment like dismissal from service can be inflicted after conducting a regular departmental enquiry as per provisions of Rule 14 of the Rules of 1966. [Amit Chaurasia Vs. State of M.P.] …2049**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10 व 14 – मुख्य दण्ड – विभागीय जांच – अभिनिर्धारित – सेवा से पदच्युति जैसे मुख्य दण्ड को, 1966 के नियमों के नियम 14 के उपबंधों के अनुसार नियमित विभागीय जांच संचालित करने के पश्चात दिया जाना चाहिए। (अमित चौरसिया वि. म.प्र. राज्य) …2049

***Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rules 10, 14 & 15 and Constitution – Article 311(2)(b) – Punishment of Dismissal – Dispensing with Departmental Enquiry – Grounds* – Lady constable lodged FIR against male constable (petitioner) u/S 452, 354, 354-Gh, 376 & 506 IPC – Petitioner dismissed from service without departmental enquiry on ground that calling prosecutrix in enquiry would tarnish her image, dignity and respect – Held – Lady constable who can file FIR and would appear before Court, there should be no hitch while appearing in enquiry that too before police officers – Reason assigned for dispensing with regular departmental enquiry is unreasonable and unjustified – Article 311(2)(b) cannot be applied – Impugned order of dismissal set aside – Petition allowed. [Amit Chaurasia Vs. State of M.P.] …2049**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10, 14 व 15 एवं संविधान – अनुच्छेद 311(2)(b) – पदच्युति का दण्ड – विभागीय जांच से अभिमुक्ति – आधार – महिला आरक्षक ने पुरूष आरक्षक (याची) के विरूद्ध धारा 452, 354, 354–Gh, 376 व 506 भा.दं.सं. के अंतर्गत प्रथम सूचना प्रतिवेदन दर्ज किया – याची को विभागीय जांच किये बिना इस आधार पर सेवा से पदच्युत किया गया कि अभियोक्त्री को जांच में बुलाने से उसकी छवि, गरिमा व सम्मान मलीन होगा – अभिनिर्धारित – महिला आरक्षक जो प्रथम सूचना प्रतिवेदन प्रस्तुत कर सकती है और न्यायालय के समक्ष उपस्थित होगी, तो जांच में उपस्थित होने में कोई अड़चन नहीं होनी चाहिए, वह भी पुलिस अधिकारियों के समक्ष – नियमित विभागीय जांच से अभिमुक्त करने हेतु दिया गया कारण, अयुक्तियुक्त व अन्यायपूर्ण है – अनुच्छेद 311(2)(b) लागू नहीं किया जा सकता – पदच्युति का आक्षेपित आदेश अपास्त – याचिका मंजूर। (अमित चौरसिया वि. म.प्र. राज्य) …2049

***Class III (Non-Ministerial) Forest Service Recruitment Rules, M.P., 2000, Rule 8(1) – Appointment – Age Relaxation for Woman* – Held – Rules do not permit relaxation of age of women candidates in recruitment of Forest Guards – Circular dated 12.05.2017 regarding age relaxation is a general circular and it would not override specific provisions of Rule 8(1) – Appeal dismissed. [Swaran Vibha Pandey Vs. State of M.P.] (DB)…2259**

तृतीय श्रेणी (अलिपिक वर्गीय) वन सेवा भर्ती नियम, म.प्र., 2000, नियम 8(1) – नियुक्ति – महिला के लिए आयु में छूट – अभिनिर्धारित – नियम, वन रक्षकों की भर्ती में महिला अभ्यर्थीगण की आयु में छूट की अनुमति नहीं देते हैं – आयु में छूट के संबंध में परिपत्र दिनांक 12.05.2017 एक साधारण परिपत्र है एवं यह नियम 8(1) के विनिर्दिष्ट उपबंधों पर अध्यारोही नहीं होगा – अपील खारिज। (स्वर्ण विभा पाण्डे वि. म.प्र. राज्य) **(DB)…2259**

***Constitution – Article 14 – Appointment – Rights of Selected Candidates* – Held – State must give some justifiable and non-arbitrary reasons for not filling up the posts – It is not at the whims and fancies of State to keep the advertised post vacant when select list is operative, as same would run counter to the mandate of Article 14 of Constitution. [Shailesh Kumar Sonwane Vs. State of M.P.] (DB)…2092**

संविधान – अनुच्छेद 14 – नियुक्ति – चयनित अभ्यर्थियों के अधिकार – अभिनिर्धारित – राज्य को पदों को न भरे जाने हेतु कुछ न्यायोचित एवं गैर–मनमाने कारण देने चाहिए – यह राज्य की सनक और कल्पना पर नहीं है कि विज्ञापित पद रिक्त रखें जब चयन सूची प्रवर्तनशील है क्योंकि ऐसा करना संविधान के अनुच्छेद 14 की आज्ञा के विपरीत होगा। (शैलेष कुमार सोनवाने वि. म.प्र. राज्य) **(DB)…2092**

***Constitution – Article 19(6) – See – Disaster Management Act, 2005, Section 24* [M.P. Bus Operator Association Vs. State of M.P.] (DB)…2242**

संविधान – अनुच्छेद 19(6) – देखें – आपदा प्रबंधन अधिनियम, 2005, धारा 24 (एम.पी. बस ऑपरेटर एसोसिएशन वि. म.प्र. राज्य) **(DB)…2242**

***Constitution – Article 21 – False Implication – Compensation* – Held – Appellants were falsely and maliciously implicated in connivance with the Investigating Officer, because of which they had to remain in custody for more than 11 years for which State is responsible – State directed to pay 3 lacs to each appellant by way of compensation on account of violation of their fundamental rights guaranteed under Article 21 of Constitution. [Suresh Vs. State of M.P.] (DB)…2319**

संविधान – अनुच्छेद 21 – मिथ्या आलिप्त किया जाना – प्रतिकर – अभिनिर्धारित – अपीलार्थीगण को अन्वेषण अधिकारी की मौनानुकूलता से मिथ्या एवं द्वेषपूर्ण रूप से

आलिप्त किया गया था, जिसकी वजह से उन्हें 11 वर्षों से अधिक समय तक अभिरक्षा में रहना पड़ा जिसके लिए राज्य जिम्मेदार है – संविधान के अनुच्छेद 21 के अंतर्गत प्रत्याभूत अपीलार्थीगण के मूलभूत अधिकारों का उल्लंघन होने के कारण राज्य को, प्रतिकर के रूप में प्रत्येक अपीलार्थी को तीन लाख रूपये का भुगतान करने हेतु निदेशित किया गया। (सुरेश वि. म.प्र. राज्य) **(DB)…2319**

***Constitution – Article 21 – Right to Environment Protection* – Held – It is expected from Government authorities that in discharging obligations of planning/development of city, they should mandatorily adhere to requirements of sufficient space being left open to be used as parks, gardens, playground and recreational grounds for entertainment and health activity for local residents especially the children. [Preeti Singh Vs. State of M.P.] (DB)…1886**

संविधान – अनुच्छेद 21 – पर्यावरण संरक्षण का अधिकार – अभिनिर्धारित – सरकारी प्राधिकारियों से यह अपेक्षा की जाती है कि शहरी योजना /विकास के दायित्वों का निर्वहन करने में, उन्हें स्थानीय निवासियों विशेष रूप से बच्चों के मनोरंजन एवं स्वास्थ्य गतिविधि के लिए पार्क, उद्यान, क्रीड़ा स्थल और मनोरंजक स्थलों के रूप में उपयोग करने के लिए खुले छोड़े जाने वाले पर्याप्त स्थान की आवश्यकताओं का आज्ञापक रूप से पालन करना चाहिए। (प्रीति सिंह वि. म.प्र. राज्य) **(DB)…1886**

***Constitution – Article 22 – See – National Security Act, 1980, Section 3(3)* [Kamleshwar Dixit Vs. State of M.P.] (DB)…2035**

संविधान – अनुच्छेद 22 – देखें – राष्ट्रीय सुरक्षा अधिनियम, 1980, धारा 3(3) (कमलेश्वर दीक्षित वि. म.प्र. राज्य) **(DB)…2035**

***Constitution – Article 226 – Delay* – Held – Since no third party right is created in favour of anybody because of belated approach to this Court, we are not inclined to dismiss the petition on ground of delay. [Suzlon Energy Ltd. Vs. State of M.P.] (DB)…1843**

संविधान – अनुच्छेद 226 – विलंब – अभिनिर्धारित – चूंकि न्यायालय के समक्ष विलंब से पहुंचने के कारण कोई तृतीय पक्ष अधिकार सृजित नहीं किया गया है, हम विलंब के आधार पर याचिका खारिज करने के इच्छुक नहीं है। (सुजलॉन एनर्जी लि. वि. म.प्र. राज्य) **(DB)…1843**

***Constitution – Article 226 – Dismissal – Judicial Review – Scope* – Held – Apex Court concluded that dismissal without conducting a departmental enquiry on the ground of being not reasonably practicable, is open for judicial review – Petition maintainable. [Amit Chaurasia Vs. State of M.P.] …2049**

संविधान – अनुच्छेद 226 – पदच्युति – न्यायिक पुनर्विलोकन – व्याप्ति – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि युक्तियुक्त रूप से व्यवहारिक न

होने के आधार पर, विभागीय जांच संचालित किये बिना पदच्युति, न्यायिक पुनर्विलोकन हेतु खुली है – याचिका पोषणीय है। (अमित चौरसिया वि. म.प्र. राज्य) …2049

Constitution – Article 226 – Habeas Corpus – Scope & Conditions – **Held – Condition precedent for instituting a petition seeking writ of *habeas corpus* is that the person for whose release, writ is sought must be in detention by either authorities or by any private individual – Such writ is available only against any person who is suspected of detaining another unlawfully. [Chhaya Gurjar (Smt.) Vs. State of M.P.] …2301**

संविधान – अनुच्छेद 226 – बंदी प्रत्यक्षीकरण – व्याप्ति व शर्तें – अभिनिर्धारित – बंदी प्रत्यक्षीकरण की रिट चाहते हुए याचिका दायर करने के लिए एक पुरोभाव्य शर्त यह है कि जिस व्यक्ति को छोड़े जाने के लिए, रिट चाही गई है, उसे या तो प्राधिकारीगण द्वारा या किसी निजी व्यक्ति द्वारा निरोध में रखा जाना चाहिए – ऐसी रिट केवल किसी ऐसे व्यक्ति के विरूद्ध उपलब्ध है जिस पर किसी अन्य को विधिविरूद्धतया निरूद्ध रखने का संदेह हो। (छाया गुर्जर (श्रीमती) वि. म.प्र. राज्य) **…2301**

Constitution – Article 226 – Habeas Corpus – Scope & Jurisdiction – **Held – Petitioner has not arrayed any of the suspects as party respondent – There is no allegation of illegal confinement by any of private individual – Only assertion that *corpus* have been abducted by some unknown miscreants, is not sufficient to invoke extraordinary jurisdiction of this Court for issuance of writ of *habeas corpus*, which though a writ of right, is not a writ of course – Petition dismissed. [Chhaya Gurjar (Smt.) Vs. State of M.P.] …2301**

संविधान – अनुच्छेद 226 – बंदी प्रत्यक्षीकरण – व्याप्ति व अधिकारिता – अभिनिर्धारित – याची ने किसी भी संदिग्ध को प्रत्यर्थी पक्षकार के रूप में शामिल नहीं किया है – किसी भी निजी व्यक्ति द्वारा अवैध परिरोध का कोई अभिकथन नहीं है – मात्र यह प्राख्यान कि कुछ अज्ञात बदमाशों द्वारा बंदी का अपहरण किया गया है, बंदी प्रत्यक्षीकरण की रिट जारी करने के लिए इस न्यायालय की असाधारण अधिकारिता का अवलंब लेने के लिए पर्याप्त नहीं है, जो यद्यपि अधिकार की एक रिट है, एक सामान्य अनुक्रम की रिट नहीं है – याचिका खारिज। (छाया गुर्जर (श्रीमती) वि. म.प्र. राज्य)**…2301**

Constitution – Article 226 – Interference in Contractual Matter – Scope & Jurisdiction **– Held – Interference can be made in contract matters if decision making process is arbitrary, capricious and hits Wednesbury principles. [Mohd. Sultan Khan Vs. Union of India] (DB)…2041**

संविधान – अनुच्छेद 226 – संविदात्मक मामले में हस्तक्षेप – व्याप्ति व अधिकारिता – अभिनिर्धारित – संविदा मामलों में हस्तक्षेप किया जा सकता है यदि विनिश्चय की प्रक्रिया मनमानी, अनुचित है एवं वेडनसबरी सिद्धांतों को प्रभावित करती है। (मोहम्मद सुल्तान खान वि. यूनियन ऑफ इडिया) **(DB)…2041**

***Constitution – Article 226 – Punishment in Departmental Enquiry – Scope of Judicial Review* – Held – Scope of interference in writ petition against order of punishment passed in departmental enquiry is limited – Court does not sit in appeal against order passed in departmental inquiry – Power of judicial review is not directed against decision but confined to decision making process – Interference can be done if inquiry has not been conducted as per prescribed procedure/rules or if there is violation of principles of natural justice or if the findings are based on no evidence or conclusions have been drawn extraneous to evidence. [Suraj Pal Singh Rathor Vs. M.P. High Court] (DB)…1881**

संविधान – अनुच्छेद 226 – विभागीय जांच में दण्ड – न्यायिक पुनर्विलोकन की व्याप्ति – अभिनिर्धारित – विभागीय जांच में पारित दण्ड के आदेश के विरूद्ध रिट याचिका में हस्तक्षेप की व्याप्ति सीमित है – विभागीय जांच में पारित आदेश के विरूद्ध, न्यायालय, अपील के रूप में नहीं बैठेगा – न्यायिक पुनर्विलोकन की शक्ति, विनिश्चय के विरूद्ध निदेशित नहीं बल्कि निर्णय करने की प्रक्रिया तक सीमित है – हस्तक्षेप किया जा सकता है यदि जांच विहित प्रक्रिया/नियमों के अनुसार संचालित नहीं की गयी है या यदि नैसर्गिक न्याय के सिद्धांतों का उल्लंघन हुआ है या यदि निष्कर्ष, साक्ष्य पर आधारित नहीं है अथवा निष्कर्ष साक्ष्य के असंगत निकाले गये हैं। (सूरज पाल सिंह राठौर वि. एम.पी. हाई कोर्ट) **(DB)…1881**

***Constitution – Article 226 – See – Prevention of Corruption Act, 1988, Section 19* [Sabit Khan Vs. State of M.P.] (DB)…1871**

संविधान – अनुच्छेद 226 – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धारा 19 (साबित खान वि. म.प्र. राज्य) **(DB)…1871**

***Constitution – Article 226 – Tender – Review of Decision* – Decision of disqualification of Respondent No. 4 was reviewed by Committee and his bid was accepted – Held – In absence of enabling provision, decision to review the previous decision was wholly impermissible – No reasons assigned in minutes as to what compelled the committee to review the decision – Such decision to review is arbitrary, unjust, unreasonable and attracts Wednesbury Principles – Contract given to Respondent No. 4 set aside – Respondents directed to consider claim of petitioner – Petition allowed. [Mohd. Sultan Khan Vs. Union of India] (DB)…2041**

संविधान – अनुच्छेद 226 – निविदा – विनिश्चय का पुनर्विलोकन – समिति द्वारा प्रत्यर्थी क्र. 4 की निरर्हता के विनिश्चय का पुनर्विलोकन किया गया एवं उसकी बोली स्वीकार की गई थी – अभिनिर्धारित – सामर्थ्यकारी उपबंध के अभाव में, पूर्व विनिश्चय का पुनर्विलोकन करने का निर्णय पूर्णतया अननुज्ञेय था – समिति को विनिश्चय का पुनर्विलोकन करने की क्या बाध्यता थी इसके बारे में कार्यवृत्त में कोई कारण नहीं दिये गये – पुनर्विलोकन का उक्त विनिश्चय मनमाना, अनुचित, अयुक्तियुक्त है एवं वेडनसबरी

सिद्धान्तों को आकर्षित करता है – प्रत्यर्थी क्र. 4 को दी गई संविदा अपास्त – प्रत्यर्थीगण को याची के दावे पर विचार करने हेतु निदेशित किया गया – याचिका मंजूर। (मोहम्मद सुल्तान खान वि. यूनियन ऑफ इंडिया) (DB)…2041

***Constitution – Article 226 – Writ of Quo Warranto – Locus Standi* – Held – For issuance of writ of *quo warranto, locus standi* is insignificant but to maintain a regular writ petition, petitioner must show that he is a "person aggrieved". [Arun Singh Chouhan Vs. State of M.P.] (DB)…*12**

संविधान – अनुच्छेद 226 – अधिकार पृच्छा की याचिका – सुने जाने का अधिकार – अभिनिर्धारित – अधिकार पृच्छा की रिट जारी करने के लिए, सुने जाने का अधिकार महत्वहीन है परंतु एक नियमित रिट याचिका को कायम रखने के लिए, याची को यह दर्शाना होगा कि वह एक ''व्यथित व्यक्ति'' है। (अरूण सिंह चौहान वि. म.प्र. राज्य) (DB)…*12

***Constitution – Article 226 – Writ of Quo Warranto – Maintainability* – Held – Writ of *quo warranto* can be issued against a person and related to a post which he is substantively holding – Appointment of R-4 not challenged nor his appointment order has been filed – Posting and working of R-4 cannot be a reason for issuing writ of *quo warranto* – Petition filed to either settle personal score or gain publicity and cannot be treated as PIL – Petition not maintainable and dismissed with cost of Rs. 10,000. [Arun Singh Chouhan Vs. State of M.P.] (DB)…*12**

संविधान – अनुच्छेद 226 – अधिकार पृच्छा की याचिका – पोषणीयता – अभिनिर्धारित – अधिकार पृच्छा की रिट एक व्यक्ति के विरूद्ध जारी की जा सकती है तथा उस पद से संबंधित है जिसे वह मूल रूप से धारण किये हुए है – प्रत्यर्थी क्र. 4 की नियुक्ति को चुनौती नहीं, न ही उसका नियुक्ति आदेश प्रस्तुत किया गया है – प्रत्यर्थी क्र. 4 की पदस्थापना एवं कार्य करना, अधिकार पृच्छा की रिट जारी करने का कारण नहीं हो सकता – याचिका या तो व्यक्तिगत बदला लेने या लोक–प्रसिद्धि प्राप्त करने प्रस्तुत की गई एवं इसे लोक हित वाद नहीं माना जा सकता – याचिका पोषणीय नहीं एवं 10,000 रू. के व्यय सहित खारिज। (अरूण सिंह चौहान वि. म.प्र. राज्य) (DB)…*12

***Constitution – Article 226 – Writ of Quo Warranto – Necessary Party* – Apex Court concluded that the person against whom the writ of *quo warranto* is prayed for is a necessary party. [Arun Singh Chouhan Vs. State of M.P.] (DB)…*12**

संविधान – अनुच्छेद 226 – अधिकार पृच्छा की याचिका – आवश्यक पक्षकार – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि जिस व्यक्ति के विरूद्ध अधिकार पृच्छा की रिट के लिए प्रार्थना की गई है, वह एक आवश्यक पक्षकार है। (अरूण सिंह चौहान वि. म.प्र. राज्य) (DB)…*12

Constitution – Article 226 and Building and Other Construction Workers' Welfare Cess Act (28 of 1996), Section 11 – Alternate Remedy of

Appeal – **Held – Competence of authority who passed the order is not under doubt – If impugned order is erroneous, it can be corrected in appeal – Merely because appellant is required to deposit 25% of disputed amount before filing appeal, it would not cause palpable injustice to petitioner – No reason to permit petitioner to bypass statutory remedy of appeal – If petitioner files an appeal, authority shall not dismiss it on ground of delay but shall decide on merits – Petition disposed. [Suzlon Energy Ltd. Vs. State of M.P.] (DB)…1843**

संविधान – अनुच्छेद 226 एवं भवन तथा अन्य संनिर्माण कर्मकार कल्याण उपकर अधिनियम (1996 का 28), धारा 11 – अपील का वैकल्पिक उपचार – अभिनिर्धारित – आदेश पारित करने वाले प्राधिकारी की सक्षमता संदेहास्पद नहीं है – यदि आक्षेपित आदेश त्रुटिपूर्ण है, उसे अपील में सुधारा जा सकता है – मात्र क्योंकि अपीलार्थी को अपील प्रस्तुत करने के पूर्व विवादित राशि का 25 प्रतिशत जमा करना आवश्यक है, यह याची के साथ प्रत्यक्ष रूप से अन्याय कारित नहीं करेगा – याची को अपील के कानूनी उपचार को दरकिनार करने की अनुज्ञा देने का कोई कारण नहीं है – यदि याची एक अपील प्रस्तुत करता है, प्राधिकारी उसे विलंब के आधार पर खारिज नहीं करेगा बल्कि गुणदोषों पर विनिश्चित करेगा – याचिका निराकृत। (सुजलॉन एनर्जी लि. वि. म.प्र. राज्य)**(DB)…1843**

Constitution – Article 226 and District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2016, Rule 17(3) – Validity Period of Select List – Exclusion of Litigation Period – **Held – Validity period of 18 months was to expire on 20.03.2020 and writ petition was filed on 20.02.2020, thus right of petitioners were existing on date of filing petition – Act of Court shall prejudice no one – Respondent directed to exclude the period from date of filing petition till date of judgment, for calculating validity period. [Shailesh Kumar Sonwane Vs. State of M.P.] (DB)…2092**

संविधान – अनुच्छेद 226 एवं जिला न्यायालय स्थापना (भर्ती एवं सेवा की शर्तें) नियम, म.प्र., 2016, नियम 17(3) – चयन सूची की विधिमान्यता अवधि – मुकदमेबाजी की अवधि का अपवर्जन – अभिनिर्धारित – 18 माह की विधिमान्य अवधि, 20.03.2020 को समाप्त होनी थी और रिट याचिका 20.02.2020 को प्रस्तुत की गयी थी, अतः, याचिका प्रस्तुत करने की तिथि को याचीगण का अधिकार विद्यमान था – न्यायालय की कार्रवाई से किसी पर प्रतिकूल प्रभाव नहीं पड़ेगा – विधिमान्यता अवधि की गणना हेतु, याचिका प्रस्तुत करने की तिथि से निर्णय की तिथि तक की अवधि अपवर्जित करने के लिए प्रत्यर्थी को निदेशित किया गया। (शैलेष कुमार सोनवाने वि. म.प्र. राज्य) **(DB)…2092**

Constitution – Article 226 and NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015, Clause 10(3) – Legal Proceedings – Scope & Jurisdiction – **Held – State authority/District authority may file appropriate legal proceedings as per clause 10(3) by way of complaint before Lokayukt as per relevant provisions or may file private complaint against the erring persons or may file a petition if subject matter requires so by way of a**

Public Interest Litigation under Article 226 of Constitution. [Omnarayan Sharma Vs. State of M.P.] (DB)…2025

संविधान – अनुच्छेद 226 एवं नालसा (गरीबी उन्मूलन योजनाओं का प्रभावी कार्यान्वयन) योजना, 2015, खंड 10(3) – विधिक कार्यवाहियां – व्याप्ति व अधिकारिता – अभिनिर्धारित – राज्य प्राधिकरण/जिला प्राधिकरण सुसंगत उपबंधों के अनुसार लोकायुक्त के समक्ष शिकायत के माध्यम से खंड 10(3) के अनुसार समुचित विधिक कार्यवाहियां प्रस्तुत कर सकता है या गलती करने वाले व्यक्तियों के विरूद्ध निजी शिकायत प्रस्तुत कर सकता है या यदि विषयवस्तु द्वारा अपेक्षित हो तो संविधान के अनुच्छेद 226 के अंतर्गत लोक हित वाद के माध्यम से याचिका प्रस्तुत कर सकता है। (ओमनारायण शर्मा वि. म.प्र. राज्य) **(DB)…2025**

***Constitution – Article 226 and NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015, Clause 10(3) – Swachh Bharat Mission – Constructions of Toilets* – Held – Allegations of irregularities/ corruption and siphoning off money of beneficiaries in respect of construction of toilets are *prima facie* serious in nature – Collector and CEO, Zila Panchayat directed to look into the allegations with utmost promptitude and role of concerned persons be enquired expeditiously. [Omnarayan Sharma Vs. State of M.P.] (DB)…2025**

संविधान – अनुच्छेद 226 एवं नालसा (गरीबी उन्मूलन योजनाओं का प्रभावी कार्यान्वयन) योजना, 2015, खंड 10(3) – स्वच्छ भारत अभियान – शौचालयों का निर्माण – अभिनिर्धारित – शौचालयों के निर्माण के संबंध में अनियमितताओं/भ्रष्टाचार एवं हिताधिकारियों से बेईमानी से पैसा निकालने के अभिकथन, प्रथम दृष्ट्या गंभीर स्वरूप के हैं – कलेक्टर एवं सी.ई.ओ., जिला पंचायत को अभिकथनों पर अत्यंत तत्परता से विचार करने एवं संबंधित व्यक्तियों की भूमिका की शीघ्रता से जांच करने हेतु निदेशित किया गया। (ओमनारायण शर्मा वि. म.प्र. राज्य) **(DB)…2025**

***Constitution – Article 226 and National Security Act (65 of 1980), Section 3(2) – Detention Order – Scope of Judicial Review* – Held – The correctness and sufficiency of evidence is beyond the scope of judicial review. [Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur] (DB)…2272**

संविधान – अनुच्छेद 226 एवं राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निरोध आदेश – न्यायिक पुनर्विलोकन की परिधि – अभिनिर्धारित – साक्ष्य की सत्यता एवं पर्याप्तता न्यायिक पुनर्विलोकन की परिधि से परे है। (सरबजीत सिंह मोखा वि. द डिस्ट्रिक्ट मजिस्ट्रेट, जबलपुर) **(DB)…2272**

***Constitution – Article 226 and Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) – Writ Appeal – Pleadings at Appellate Stage* – Held – In writ petition, no pleadings regarding aspect of competency of authority – Competency of authority was a mixed question of facts and law, which should have been specifically pleaded in writ**

petition with accuracy and precision – In absence of any such pleadings and foundation, at appellate stage, no interference warranted. [M.P. Bus Operator Association Vs. State of M.P.] (DB)…2242

संविधान – अनुच्छेद 226 एवं उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1) – रिट अपील – अपीली प्रक्रम पर अभिवचन – अभिनिर्धारित – रिट याचिका में, प्राधिकारी की सक्षमता के पहलू के संबंध में कोई अभिवचन नहीं – प्राधिकारी की सक्षमता तथ्यों एवं विधि का मिश्रित प्रश्न था, जिसका रिट याचिका में यथार्थता एवं सूक्ष्मता के साथ विनिर्दिष्ट रूप से अभिवाक् किया जाना चाहिए था – ऐसे किसी भी अभिकथनों और आधार के अभाव में, अपीली प्रक्रम पर, किसी हस्तक्षेप की आवश्यकता नहीं। (एम.पी. बस ऑपरेटर एसोसिएशन वि. म.प्र. राज्य) **(DB)…2242**

***Constitution – Article 226/227 and Arbitration and Conciliation Act (26 of 1996), Section 11(6) & 37 – Scope of Interference* – Apex Court concluded that the legislative object of enacting the consolidated Act is to minimize judicial intervention while the matter is in process of arbitration – Once arbitration has commenced in Arbitral Tribunal, parties have to wait until award is pronounced, however right of appeal is available to them u/S 37 even at an early stage. [M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H)] (DB)…2072**

संविधान – अनुच्छेद 226/227 एवं माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) व 37 – हस्तक्षेप की व्याप्ति – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि समेकित अधिनियम को अधिनियमित करने का विधायी उद्देश्य, न्यायिक मध्यक्षेप को कम करना है जब मामला मध्यस्थता की प्रक्रिया में हो – एक बार माध्यस्थम् अधिकरण में मध्यस्थता आरंभ हो जाने पर, पक्षकारों को अवार्ड सुनाए जाने तक प्रतीक्षा करनी होगी, तथापि धारा 37 के अंतर्गत अपील का अधिकार उन्हें प्रारंभिक प्रक्रम पर भी उपलब्ध है। (एम.पी. रोड डव्हेलपमेन्ट कारपोरेशन वि. द मिनिस्ट्री ऑफ रोड, ट्रान्सपोर्ट एण्ड हाईवे (एमओआरटी एण्ड एच)) **(DB)…2072**

***Constitution – Article 227 – Interim Relief* – Held – When interim order is read in juxtaposition with main relief and interim relief prayer, it is manifest that Tribunal virtually granted final relief to original applicants at *ex-parte* stage even without affording any opportunity of hearing to petitioners – Later Tribunal disposed original application holding the same to have rendered infructuous whereas respondent Railway contested the matter on merits – Tribunal abdicated its duty of deciding the matter on merits – Petition allowed – Matter remanded back to Tribunal. [Atul Kumar Ben Vs. Union of India] (DB)…1899**

संविधान – अनुच्छेद 227 – अंतरिम अनुतोष – अभिनिर्धारित – जब अंतरिम आदेश को मुख्य अनुतोष एवं अंतरिम अनुतोष की प्रार्थना के साथ–साथ पढ़ा जाता है, यह प्रकट होता है कि अधिकरण ने याचीगण को सुनवाई का कोई अवसर प्रदान किये बिना ही

एकपक्षीय प्रक्रम पर मूल आवेदकगण को वास्तव में अंतरिम अनुतोष प्रदान किया – बाद में अधिकरण ने मूल आवेदन को निष्फल ठहराते हुए उक्त को निराकृत किया जबकि प्रत्यर्थी रेलवे ने गुण–दोष के आधार पर मामले का प्रतिवाद किया – अधिकरण ने गुण–दोष के आधार पर मामले को विनिश्चित करने के उसके कर्तव्य का त्याग किया – याचिका मंजूर – मामला अधिकरण को प्रतिप्रेषित। (अतुल कुमार बेन वि. यूनियन ऑफ इंडिया)
(DB)…1899

***Constitution – Article 311(2)(b) – See – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rules 10, 14 & 15* [Amit Chaurasia Vs. State of M.P.] …2049**

संविधान – अनुच्छेद 311(2)(b) – देखें – सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10, 14 व 15 (अमित चौरसिया वि. म.प्र. राज्य)**…2049**

***Criminal Practice – Adjudication of Objections of Accused* – Held – Where life and liberty of a person is involved, objections of accused should be decided by assigning reasons and should not be decided by holding the same to be "*non-effective*" – Trial Court is expected to at-least mention the nature of objections raised by accused – Rejection of objection to DNA report by terming as "*non-effective objection*" was not in accordance with law. [State of M.P. Vs. Nandu @ Nandkishore Gupta] (DB)…2122**

दाण्डिक पद्धति – अभियुक्त की आपत्तियों का न्यायनिर्णयन – अभिनिर्धारित – जहां एक व्यक्ति का जीवन और स्वतंत्रता शामिल है, कारण देते हुए अभियुक्त की आपत्तियों का विनिश्चय किया जाना चाहिए तथा उक्त को *''प्रभावहीन''* ठहराते हुए विनिश्चय नहीं किया जाना चाहिए – विचारण न्यायालय द्वारा कम से कम अभियुक्त द्वारा उठाई गई आपत्तियों के स्वरूप का उल्लेख करना अपेक्षित है – डी.एन.ए. रिपोर्ट पर आपत्ति को *''अप्रभावी आपत्ति''* के रूप में परिभाषित करते हुए नामंजूर करना विधि के अनुसार नहीं था। (म.प्र. राज्य वि. नन्दू उर्फ नन्दकिशोर गुप्ता) **(DB)…2122**

***Criminal Practice – Child Witness – Credibility* – Held – The perceived contradiction in testimony can at best be seen as a mere exaggeration on behalf of a child witness whose remaining testimony completely supports the prosecution – Courts are obliged not to discard entire testimony on basis of a minor exaggeration. [State of M.P. Vs. Mahendra @ Golu] (SC)…2231**

दाण्डिक पद्धति – बाल साक्षी – विश्वसनीयता – अभिनिर्धारित – परिसाक्ष्य में बोधगम्य विरोधाभास को ज्यादा से ज्यादा बाल साक्षी की ओर से मात्र एक अतिशयोक्ति के रूप में देखा जा सकता है, जिसका शेष परिसाक्ष्य पूर्णतः अभियोजन का समर्थन करता है – न्यायालय, एक छोटी अतिशयोक्ति के आधार पर संपूर्ण परिसाक्ष्य को त्यक्त न करने के लिए बाध्य हैं। (म.प्र. राज्य वि. महेन्द्र उर्फ गोलू) **(SC)…2231**

***Criminal Practice – Discrepancy in Prosecution Documents – Typographical Error* – Held – When there is any discrepancy which does not**

go to the root of the matter thereby making it inadmissible or unreliable, then prosecution witness should also get opportunity to explain such discrepancy – Without asking any question, prosecution cannot be thrown overboard on account of some typographical error. [In Reference (Suo Motu) Vs. Manoj] (DB)…2150

दाण्डिक पद्धति – अभियोजन दस्तावेजों में विसंगति – टंकण त्रुटि – अभिनिर्धारित – जब कोई ऐसी विसंगति होती है जो मामले की जड़ तक नहीं जाती है जिससे यह अग्राह्य या अविश्वसनीय हो जाता है, तो अभियोजन साक्षी को भी उक्त विसंगति को स्पष्ट करने का अवसर दिया जाना चाहिए – बिना कोई प्रश्न पूछे, कुछ टंकण त्रुटि के कारण अभियोजन का परित्याग नहीं किया जा सकता। (इन रेफ्रेन्स (सू मोटो) वि. मनोज) **(DB)…2150**

***Criminal Practice – Dock Identification* – Held – Dock Identification is the substantive piece of evidence and even in absence of Test Identification Parade, it can be relied – Since appellants were already shown to the witnesses in the police station, Dock Identification of appellants cannot be relied upon. [Suresh Vs. State of M.P.] (DB)…2319**

दाण्डिक पद्धति – कठघरे में पहचान – अभिनिर्धारित – कठघरे में पहचान, साक्ष्य का सारभूत भाग है एवं पहचान परेड परीक्षा के अभाव में भी इस पर विश्वास किया जा सकता है – चूंकि अपीलार्थीगण पहले ही पुलिस थाने में साक्षीगण को दिखाये जा चुके थे, अपीलार्थीगण की कठघरे में पहचान करे जाने पर विश्वास नहीं किया जा सकता। (सुरेश वि. म.प्र. राज्य) **(DB)…2319**

***Criminal Practice – Faulty Investigation* – Held – Every faulty investigation would not make the prosecution unreliable but the faulty investigation must lead to an inference that investigation was been done with a preconceived notions – If prosecution established the guilt of accused beyond reasonable doubt, then some minor omission on part of IO would not give dent to the prosecution case. [In Reference (Suo Motu) Vs. Manoj] (DB)…2150**

दाण्डिक पद्धति – त्रुटिपूर्ण अन्वेषण – अभिनिर्धारित – प्रत्येक त्रुटिपूर्ण अन्वेषण अभियोजन को अविश्वसनीय नहीं बनायेगा परंतु त्रुटिपूर्ण अन्वेषण से यह निष्कर्ष निकाला जाना चाहिए कि अन्वेषण एक पूर्वकल्पित धारणाओं के साथ किया गया था – यदि अभियोजन अभियुक्त की दोषिता को युक्तियुक्त संदेह के परे स्थापित करता है, तब अन्वेषण अधिकारी की ओर से कुछ मामूली लोप अभियोजन प्रकरण को क्षति नहीं पहुंचाएंगे। (इन रेफ्रेन्स (सू मोटो) वि. मनोज) **(DB)…2150**

***Criminal Practice – Identification of Accused* – Held – Villagers have the ability of identifying the things even in poor light – Villages have limited number of inhabitants and are closely watched by each and every resident of the village – Evidence of witness that he identified accused from his back, style of walking and body buildup, cannot be said to be unreliable. [In Reference (Suo Motu) Vs. Manoj] (DB)…2150**

दाण्डिक पद्धति – अभियुक्त की पहचान – अभिनिर्धारित – ग्रामीणों में धुंधले प्रकाश में भी चीजों को पहचानने की क्षमता होती है – ग्रामों में निवासियों की संख्या सीमित होती है एवं ग्राम के प्रत्येक निवासी द्वारा बारीकी से नजर रखी जाती है – साक्षी के साक्ष्य कि उसने अभियुक्त को उसकी पीठ से, चलने के तरीके और शारीरिक बनावट से पहचाना, अविश्वसनीय नहीं कहा जा सकता। (इन रेफ्रेन्स (सू मोटो) वि. मनोज)
(DB)…2150

***Criminal Practice – Motive* – Held – Motive is a thing which is primarily known to accused himself and it may not be possible for prosecution to explain what actually prompted or excited him to commit a particular crime. [Narbad Ahirwar Vs. State of M.P.] (DB)…2339**

दाण्डिक पद्धति – हेतु – अभिनिर्धारित – हेतु एक ऐसी वस्तु है जो प्राथमिक रूप से स्वयं अभियुक्त को ज्ञात होती है एवं एक विशिष्ट अपराध को कारित करने के लिए उसे वास्तव में किसने प्रेरित या प्रदीप्त किया यह स्पष्ट करना अभियोजन के लिए संभव नहीं हो सकता। (नरबद अहिरवार वि. म.प्र. राज्य) **(DB)…2339**

***Criminal Practice – Prosecution Witness – Quality & Quantity* – Held – Evidence is to be weighed and not counted – It is the quality and not the quantity of witnesses which decided the fate of trial – Each and every possible witness is not required to be examined – If prosecution witnesses, so examined are trustworthy and reliable then their evidence cannot be discarded only on ground that some more witnesses should have been examined to corroborate the prosecution witnesses. [In Reference (Suo Motu) Vs. Manoj] (DB)…2150**

दाण्डिक पद्धति – अभियोजन साक्षी – गुणवत्ता व संख्या – अभिनिर्धारित – साक्ष्य को तौला जाना चाहिए एवं गिना नहीं जाना चाहिए – यह साक्षीगण की गुणवत्ता है तथा न कि उनकी संख्या जो विचारण के भाग्य का विनिश्चय करती है – प्रत्येक संभव साक्षी का परीक्षण किया जाना अपेक्षित नहीं है – यदि अभियोजन साक्षीगण जिनका परीक्षण किया गया है, भरोसेमंद और विश्वसनीय है, तो उनके साक्ष्य को केवल इस आधार पर अमान्य नहीं किया जा सकता कि अभियोजन साक्षीगण की संपुष्टि के लिए कुछ और साक्षीगण का परीक्षण किया जाना चाहिए। (इन रेफ्रेन्स (सू मोटो) वि. मनोज)**(DB)…2150**

***Criminal Practice – Rape Case – Injury on Genital Organ of Accused* – Held – Presence of injuries on male organ is not necessary in all cases – As per Modi's Jurisprudence, it is not necessary that there should always be mark of injuries on the penis of accused – Absence of any injury on penis of accused would not belie the prosecution case. [In Reference (Suo Motu) Vs. Manoj]**
(DB)…2150

दाण्डिक पद्धति – बलात्संग प्रकरण – अभियुक्त के जननांग पर चोट – अभिनिर्धारित – लिंग पर चोटों की मौजूदगी, सभी प्रकरणों में आवश्यक नहीं है – मोदी के विधिशास्त्र के अनुसार, यह आवश्यक नहीं है कि अभियुक्त के लिंग पर हमेशा चोटों के निशान होने चाहिए – अभियुक्त के लिंग पर किसी चोट का अभाव अभियोजन के प्रकरण को नहीं झुठलायेगा। (इन रेफ्रेन्स (सू मोटो) वि. मनोज) **(DB)…2150**

Criminal Practice – Sole Evidence of Prosecutrix **– Held – Victim's deposition even on a standalone basis is sufficient for conviction unless cogent reasons for corroboration exist. [State of M.P. Vs. Mahendra @ Golu] (SC)…2231**

दाण्डिक पद्धति – अभियोक्त्री का एकमात्र साक्ष्य – अभिनिर्धारित – यहाँ तक कि खुद को साबित करने के /स्वाश्रयी आधार पर पीड़ित के कथन भी दोषसिद्धि के लिए पर्याप्त है जब तक संपुष्टि के लिए प्रबल कारण विद्यमान न हों। (म.प्र. राज्य वि. महेन्द्र उर्फ गोलू) **(SC)…2231**

Criminal Practice – Suppression of Facts – Effect **– Held – If Court finds suppression of material fact, then case may be dismissed on this ground, however if suppression is not of material fact and does not have any effect on outcome of the case, then such suppression cannot be made basis for dismissing the case. [Pankaj Karoriya Vs. State of M.P.] …2360**

दाण्डिक पद्धति – तथ्यों का छिपाव – प्रभाव – अभिनिर्धारित – यदि न्यायालय तात्विक तथ्य का छिपाव पाता है, तो प्रकरण को इस आधार पर खारिज किया जा सकता है, हालांकि यदि छिपाव तात्विक तथ्य का नहीं है एवं प्रकरण के परिणाम पर इसका कोई प्रभाव नहीं पड़ता है, तो उक्त छिपाव को प्रकरण खारिज करने का आधार नहीं बनाया जा सकता। (पंकज करोरिया वि. म.प्र. राज्य) **…2360**

Criminal Procedure Code, 1973 (2 of 1974), Section 54-A – See – Evidence Act, 1872, Section 9 **[Rajesh Vs. State of M.P.] …1910**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 54–A – देखें – साक्ष्य अधिनियम, 1872, धारा 9 (राजेश वि. म.प्र. राज्य) **…1910**

Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 162 – See – Penal Code, 1860, Section 302 **[Devkaran Vs. State of M.P.] (DB)…1920**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 व 162 – देखें – दण्ड संहिता, 1860, धारा 302 (देवकरण वि. म.प्र. राज्य) **(DB)…1920**

Criminal Procedure Code, 1973 (2 of 1974), Section 227 – See – Penal Code, 1860, Section 498-A **[Abhishek Pandey @ Ramji Pandey Vs. State of M.P.] …1960**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 – देखें – दण्ड संहिता, 1860, धारा 498–A (अभिषेक पाण्डे उर्फ रामजी पाण्डे वि. म.प्र. राज्य) **…1960**

Criminal Procedure Code, 1973 (2 of 1974), Section 230 & 231 – Prosecution Evidence & Cross-examination – Expeditious Trial **– Held – If trial Court has proceeded expeditiously by examining the witnesses on the date so fixed, no fault can be found on part of trial Court – No objection raised by counsel for accused that witnesses are appearing on their first date of**

appearance, therefore he is not in a position to cross-examine them effectively – No application of recall of witness filed by accused on ground that certain questions could not be put to them as the evidence is being recorded expeditiously – Objection rejected. [State of M.P. Vs. Nandu @ Nandkishore Gupta] (DB)…2122

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 230 व 231 – अभियोजन साक्ष्य व प्रति–परीक्षण – शीघ्र विचारण – अभिनिर्धारित – यदि विचारण न्यायालय नियत की गई तिथि पर साक्षीगण का परीक्षण कर शीघ्रता से कार्यवाही करता है, तो विचारण न्यायालय की ओर से कोई त्रुटि नहीं पाई जा सकती – अभियुक्त के अधिवक्ता द्वारा कोई आपत्ति नहीं उठाई गई कि साक्षीगण उनकी उपस्थिति की पहली तिथि को उपस्थित हो रहे हैं, इसलिए वह प्रभावी रूप से उनका प्रति–परीक्षण करने की स्थिति में नहीं है – अभियुक्त द्वारा इस आधार पर साक्षी को पुनः बुलाने का कोई आवेदन प्रस्तुत नहीं किया गया कि शीघ्रता से साक्ष्य अभिलिखित किये जाने के कारण उनसे कुछ प्रश्न नहीं पूछे जा सके – आपत्ति नामंजूर। (म.प्र. राज्य वि. नन्दू उर्फ नन्दकिशोर गुप्ता) **(DB)…2122**

Criminal Procedure Code, 1973 (2 of 1974), Sections 233, 234 & 273 – Fair opportunity to Accused **– Held – Evidence of PW-15 & PW-16 recorded in absence of accused – Procedures adopted by trial Court certainly prejudiced the accused – Matter remanded back to trial Court to record evidence of above witnesses afresh in presence of accused and proceed further from stage of filing of DNA report – Accused shall be granted opportunity to file written objection/lead evidence in defence to DNA report and if application for cross-examination of Scientific Officer is filed, same shall be decided – After following provisions of Section 233 Cr.P.C., case be fixed for final hearing giving atleast one week time to prepare and argue the case – Impugned judgment set aside – Reference & appeal disposed. [State of M.P. Vs. Nandu @ Nandkishore Gupta] (DB)…2122**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 233, 234 व 273 – अभियुक्त को उचित अवसर – अभिनिर्धारित – अ.सा.–15 व अ.सा.–16 के साक्ष्य अभियुक्त की अनुपस्थिति में अभिलिखित किये गये – विचारण न्यायालय द्वारा अपनाई गई प्रक्रियाओं ने निश्चित रूप से अभियुक्त को प्रतिकूल रूप से प्रभावित किया – अभियुक्त की उपस्थिति में उपरोक्त साक्षीगण का नये सिरे से साक्ष्य अभिलिखित करने एवं डी.एन.ए. रिपोर्ट प्रस्तुत करने के प्रक्रम से आगे बढ़ने हेतु मामला विचारण न्यायालय को प्रतिप्रेषित किया गया – अभियुक्त को डी.एन.ए. रिपोर्ट के बचाव में लिखित आपत्ति/साक्ष्य प्रस्तुत करने का अवसर प्रदान किया जाएगा एवं यदि वैज्ञानिक अधिकारी के प्रति–परीक्षण के लिए आवेदन प्रस्तुत किया जाता है, उसका विनिश्चय किया जावेगा – दं.प्र.सं. की धारा 233 के उपबंधों का पालन करने के पश्चात्, प्रकरण की तैयारी करने एवं तर्क करने के लिए कम से कम एक सप्ताह का समय देते हुए प्रकरण को अंतिम सुनवाई के लिए नियत किया जाए – आक्षेपित आदेश अपास्त – निर्देश व अपील निराकृत। (म.प्र. राज्य वि. नन्दू उर्फ नन्दकिशोर गुप्ता) **(DB)…2122**

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Criminal Procedure Code, 1973 (2 of 1974), Section 234 – Final Arguments – **Held – Final argument is Final Sum up of the case – Court must give patient hearing to both parties, so that they can effectively present their case – Order rejecting the objection to DNA report and fixing the case for final arguments on the same day and hearing the final arguments on same day is held to be bad in law – DNA report be exhibited afresh after deciding the objections or after examining the Scientific Officer. [State of M.P. Vs. Nandu @ Nandkishore Gupta] (DB)…2122**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 234 – अंतिम तर्क – अभिनिर्धारित – अंतिम तर्क प्रकरण का अंतिम संक्षिप्त सार है – न्यायालय को दोनों पक्षों की धैर्यपूर्वक सुनवाई करनी चाहिए, ताकि वे प्रभावी रूप से उनका प्रकरण प्रस्तुत कर सकें – डी.एन.ए. रिपोर्ट पर आपत्ति नामंजूर करने के आदेश को एवं उसी दिन अंतिम तर्क के लिए प्रकरण को नियत करने तथा उसी दिन अंतिम तर्क पर सुनवाई करने को विधि की दृष्टि से दोषपूर्ण ठहराया जाता है – आपत्तियां विनिश्चित करने के पश्चात् या वैज्ञानिक अधिकारी का परीक्षण करने के पश्चात् डी.एन.ए. रिपोर्ट को नये सिरे से प्रदर्शित किया जाए। (म.प्र. राज्य वि. नन्दू उर्फ नन्दकिशोर गुप्ता) **(DB)…2122**

Criminal Procedure Code, 1973 (2 of 1974), Section 235(2) – Question of Sentence – Opportunity of Hearing – **Held – No opportunity of effective hearing on the question of sentence as required u/S 235(2) Cr.P.C. was given to accused – No suggestion was given to accused that Court is intending to award death sentence so as to give opportunity to accused to argue in light of "Aggravating" and "Mitigating circumstances" – Even trial Court has not considered the "Mitigating" circumstances – Sentence modified to life imprisonment till natural death – Appeal partly allowed. [In Reference (Suo Motu) Vs. Manoj] (DB)…2150**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 235(2) – दण्डादेश का प्रश्न – सुनवाई का अवसर – अभिनिर्धारित – अभियुक्त को जैसा दं.प्र.सं. की धारा 235(2) के अंतर्गत अपेक्षित है, दण्डादेश के प्रश्न पर प्रभावी सुनवाई का कोई अवसर प्रदान नहीं किया गया था – अभियुक्त को कोई सुझाव नहीं दिया गया था कि न्यायालय मृत्युदण्ड देने का आशय रखता है ताकि अभियुक्त को ''गुरूतरकारी'' एवं ''कम करने वाली'' परिस्थितियों के आलोक में तर्क करने का अवसर दिया जा सके – यहां तक कि विचारण न्यायालय ने भी ''कम करने वाली'' परिस्थितियों को विचार में नहीं लिया – दण्डादेश को प्राकृतिक मृत्यु होने तक आजीवन कारावास में उपांतरित किया गया – अपील अंशतः मंजूर। (इन रेफ्रेन्स (सू मोटो) वि. मनोज) **(DB)…2150**

Criminal Procedure Code, 1973 (2 of 1974), Section 273 – Evidence in Presence of Accused – **Held – Accused was in jail and was not produced by prosecution, thus there was no question of disturbing the proceedings in Court – Any Undertaking or No Objection given by counsel for accused without instructions of accused cannot be said to be given on behalf of accused and it**

would not bind him – He was not responsible for his absence but it was the prosecution who failed to keep him present in Court – Case remanded back to record evidence of PW-15 & PW-16 in presence of accused. [State of M.P. Vs. Nandu @ Nandkishore Gupta] (DB)…2122

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 273 – अभियुक्त की उपस्थिति में साक्ष्य – अभिनिर्धारित – अभियुक्त जेल में था एवं अभियोजन द्वारा पेश नहीं किया गया था, अतः न्यायालय की कार्यवाहियों में विघ्न डालने का कोई प्रश्न नहीं था – अभियुक्त के अनुदेश के बिना अभियुक्त के अधिवक्ता द्वारा दिये गये किसी भी वचनबंध अथवा अनापत्ति को अभियुक्त की ओर से दिया जाना नहीं कहा जा सकता है एवं वह उसे बाध्य नहीं करेगा – वह अपनी अनुपस्थिति के लिए जिम्मेदार नहीं था, बल्कि वह अभियोजन था जो उसे न्यायालय में उपस्थित रखने में विफल रहा – अभियुक्त की उपस्थिति में अ.सा.–15 व अ.सा.–16 के साक्ष्य अभिलिखित करने के लिए प्रकरण प्रतिप्रेषित। (म.प्र. राज्य वि. नन्दू उर्फ नन्दकिशोर गुप्ता) **(DB)…2122**

***Criminal Procedure Code, 1973 (2 of 1974), Section 273 – Evidence of Complainant in absence of Accused* – Held – Appellants in their application gave an undertaking that their counsel will cross-examine the witness in their absence – Trial Court mentioned in the order that counsel expressed no objection regarding identification of accused persons nor they dispute the same, thus examination of complainant in absence of appellants cannot be said to be violative of Section 273 Cr.P.C. [Rajesh Vs. State of M.P.] …1910**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 273 – अभियुक्त की अनुपस्थिति में परिवादी का साक्ष्य – अभिनिर्धारित – अपीलार्थीगण ने उनके आवेदन में एक वचन दिया था कि उनके अधिवक्ता, उनकी अनुपस्थिति में साक्षी का प्रति–परीक्षण करेंगे – विचारण न्यायालय ने आदेश में उल्लिखित किया कि अधिवक्ता ने अभियुक्तगण की पहचान के संबंध में कोई आपत्ति अभिव्यक्त नहीं की न ही उन्होंने उक्त पर विवाद किया, अतः अपीलार्थीगण की अनुपस्थिति में परिवादी के परीक्षण को दं.प्र.सं. की धारा 273 का उल्लंघन नहीं कहा जा सकता। (राजेश वि. म.प्र. राज्य) **…1910**

***Criminal Procedure Code, 1973 (2 of 1974), Section 273 & 317 – Absence of Accused during Evidence* – Held – If personal attendance of accused has been dispensed with, then the evidence in presence of his pleader can be taken on any condition which may be imposed by the Court. [Rajesh Vs. State of M.P.] …1910**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 273 व 317 – साक्ष्य के दौरान अभियुक्त की अनुपस्थिति – अभिनिर्धारित – यदि अभियुक्त को व्यक्तिगत हाजिरी से अभिमुक्त किया गया है, तब उसके अभिवक्ता की उपस्थिति में किसी भी शर्त पर जो कि न्यायालय द्वारा अधिरोपित की जा सकती है, साक्ष्य लिया जा सकता है। (राजेश वि. म.प्र. राज्य) **…1910**

Criminal Procedure Code, 1973 (2 of 1974), Section 317 & 273 – Presence of Accused – **Held – Only when an application u/S 317 is filed and a statement made by accused that his presence through his counsel may be accepted and he don't have any objection regarding question of identity or recording of evidence of witness in his absence, then the effect of such declaration can be considered – In present case, accused was in jail, thus provisions of Section 317 are not applicable. [State of M.P. Vs. Nandu @ Nandkishore Gupta] (DB)…2122**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 317 व 273 – अभियुक्त की उपस्थिति – अभिनिर्धारित – केवल जब धारा 317 के अंतर्गत एक आवेदन प्रस्तुत किया जाता है एवं अभियुक्त द्वारा यह कथन किया जाता है कि उसके अधिवक्ता के माध्यम से उसकी उपस्थिति को स्वीकार किया जा सकता है एवं उसे उसकी अनुपस्थिति में, पहचान के प्रश्न या साक्षी के साक्ष्य अभिलिखित किये जाने के संबंध में कोई आपत्ति नहीं है, तब उक्त घोषणा के प्रभाव पर विचार किया जा सकता है – वर्तमान प्रकरण में, अभियुक्त जेल में था, अतः धारा 317 के उपबंध लागू नहीं होते हैं। (म.प्र. राज्य वि. नन्दू उर्फ नन्दकिशोर गुप्ता) **(DB)…2122**

Criminal Procedure Code, 1973 (2 of 1974), Section 366 – Fair Procedure – **Held – Reference u/S 366 is a continuation of trial, thus it is obligatory on High Court to ensure that persons who are facing trial for murder are provided fair procedure and no prejudice should be caused to them due to procedural lapse. [State of M.P. Vs. Nandu @ Nandkishore Gupta] (DB)…2122**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 366 – उचित प्रक्रिया – अभिनिर्धारित – धारा 366 के अंतर्गत निर्देश, विचारण का जारी रहना है, अतः यह सुनिश्चित करना उच्च न्यायालय पर बाध्यकर है कि जो व्यक्ति हत्या के विचारण का सामना कर रहे हैं उनको उचित प्रक्रिया प्रदान की जाए एवं प्रक्रियात्मक गलती के कारण उन्हें कोई प्रतिकूल प्रभाव कारित नहीं होना चाहिए। (म.प्र. राज्य वि. नन्दू उर्फ नन्दकिशोर गुप्ता) **(DB)…2122**

Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Cancellation of Anticipatory Bail – Factors to be Considered – **Discussed and explained. [Prashant Singh Rajput Vs. State of M.P.] (SC)…2000**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत का रद्दकरण – विचार किये जाने योग्य कारक – विवेचित एवं स्पष्ट किये गये। (प्रशांत सिंह राजपूत वि. म.प्र. राज्य) **(SC)…2000**

Criminal Procedure Code, 1973 (2 of 1974), Section 438 and Penal Code (45 of 1860), Section 302 – Anticipatory Bail – Cancellation – Counter FIR by Parties – **R-2 in both appeals (accused persons) were granted anticipatory bail by High Court – Held – The offence is of serious nature in**

which a person was murdered – FIR and statements u/S 161 & 164 Cr.P.C. indicates a specific role of accused persons in the crime – Fact of previous enmity also exists – Order granting anticipatory bail has ignored material aspects, including the nature and gravity of offence and specific allegations – Sufficient case made out for cancelling the anticipatory bail – Orders granting anticipatory bail to R-2 in both appeals set aside – Appeals allowed. [Prashant Singh Rajput Vs. State of M.P.] (SC)…2000

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 एवं दण्ड संहिता (1860 का 45), धारा 302 – अग्रिम जमानत – रद्दकरण – पक्षकारों द्वारा प्रति–प्रथम सूचना प्रतिवेदन – दोनों अपीलों में प्रत्यर्थी क्र. 2 (अभियुक्तगण) को उच्च न्यायालय द्वारा अग्रिम जमानत प्रदान की गई – अभिनिर्धारित – अपराध गंभीर स्वरूप का है जिसमें एक व्यक्ति की हत्या की गई थी – प्रथम सूचना प्रतिवेदन एवं दं.प्र.सं. की धारा 161 व 164 के अंतर्गत कथन, अपराध में अभियुक्तगण की एक विनिर्दिष्ट भूमिका इंगित करते हैं – पूर्व वैमनस्यता का तथ्य भी विद्यमान है – अग्रिम जमानत प्रदान करने के आदेश में तात्विक पहलुओं जिसमें अपराध का स्वरूप और गंभीरता एवं विनिर्दिष्ट अभिकथन शामिल हैं, को अनदेखा किया गया है – अग्रिम जमानत को रद्द करने के लिए पर्याप्त प्रकरण बनता है – दोनों अपीलों में प्रत्यर्थी क्र. 2 को अग्रिम जमानत प्रदान करने के आदेश अपास्त – अपीलें मंजूर। (प्रशांत सिंह राजपूत वि. म.प्र. राज्य) **(SC)…2000**

***Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Accused on Parole* – Held – Whenever an application u/S 439 Cr.P.C. is filed, applicant(s) must declare that he/they are not on parole. [Rahul Kumar Vs. State of M.P.] …*19**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – अभियुक्त पैरोल पर – अभिनिर्धारित – जब भी दं.प्र.सं. की धारा 439 के अंतर्गत एक आवेदन प्रस्तुत किया जाता है, आवेदक/आवेदकों को यह घोषित करना चाहिए कि वह/वे पैरोल पर नहीं है। (राहुल कुमार वि. म.प्र. राज्य) **…*19**

***Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Accused on Parole – Maintainability of Application* – Held – Since applicant has been released on parole in the wake of Covid-19 pandemic, therefore it cannot be said that he is in custody and accordingly application u/S 439 is not maintainable unless and until he surrenders before trial Court – Bail and parole are two different connotation. [Rahul Kumar Vs. State of M.P.] …*19**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – अभियुक्त पैरोल पर – आवेदन की पोषणीयता – अभिनिर्धारित – चूंकि आवेदक को कोविड–19 महामारी के परिणामस्वरूप पैरोल पर छोड़ा गया है, अतः यह नहीं कहा जा सकता कि वह अभिरक्षा में है एवं तद्नुसार धारा 439 के अंतर्गत आवेदन तब तक पोषणीय नहीं है जब तक कि वह विचारण न्यायालय के समक्ष अभ्यर्पण नहीं करता – जमानत एवं पैरोल दो भिन्न लक्ष्यार्थ हैं। (राहुल कुमार वि. म.प्र. राज्य) **…*19**

Criminal Procedure Code, 1973 (2 of 1974), Section 439 – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/18(c) & 29 **[Gopal Krishna Gautam @ Pandit Vs. State of M.P.] ...1975**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – देखें – स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 1985, धारा 8/18(c) व 29 (गोपाल कृष्ण गौतम उर्फ पंडित वि. म.प्र. राज्य) **...1975**

Criminal Procedure Code, 1973 (2 of 1974), Section 457 and Excise Act, M.P. (2 of 1915), Sections 34(2), 47-A(3)(a) & 47-D – Jurisdiction of Trial Court **– Held – The cut-off point for jurisdiction of trial Court is not commencement of confiscation proceedings but intimation thereof received by Magistrate. [Ajay Khateek Vs. State of M.P.] ...1986**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 457 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धाराएँ 34(2), 47–A(3)(a) व 47–D – विचारण न्यायालय की अधिकारिता – अभिनिर्धारित – विचारण न्यायालय की अधिकारिता हेतु अंतिम सीमाबिंदु, अधिहरण कार्यवाहियों का प्रारंभ नहीं है बल्कि मजिस्ट्रेट द्वारा प्राप्त उसकी सूचना है। (अजय खटीक वि. म.प्र. राज्य) **...1986**

Criminal Procedure Code, 1973 (2 of 1974), Section 457 and Excise Act, M.P. (2 of 1915), Sections 34(2), 47-A(3)(a) & 47-D – Release of Seized Vehicle & Confiscation Proceeding **– Held – Application u/S 457 Cr.P.C. filed on 27.01.2021 and regarding confiscation of vehicle, Collector intimated to trial Court on 04.02.2021, thus on 27.01.2021 there was no communication of intimation by confiscating authority – On 27.01.2021, there was no compliance u/S 47-A(3)(a) of the Act, hence bar u/S 47-D would not be attracted – Conditional release of vehicle directed – Application disposed of. [Ajay Khateek Vs. State of M.P.] ...1986**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 457 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धाराएँ 34(2), 47–A(3)(a) व 47–D – जब्तशुदा वाहन की निर्मुक्ति व अधिहरण कार्यवाही – अभिनिर्धारित – धारा 457 दं.प्र.सं. के अंतर्गत आवेदन, 27.01.2021 को प्रस्तुत किया गया तथा वाहन के अधिहरण के संबंध में कलेक्टर ने विचारण न्यायालय को 04.02.2021 को सूचित किया, अतः 27.01.2021 को अधिहरण प्राधिकारी द्वारा सूचना की कोई संसूचना नहीं थी – 27.01.2021 को अधिनियम की धारा 47–A(3)(a) का अनुपालन नहीं किया गया था, अत, धारा 47–D का वर्जन आकर्षित नहीं होगा – वाहन की सशर्त निर्मुक्ति निदेशित – आवेदन निराकृत। (अजय खटीक वि. म.प्र. राज्य) **...1986**

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Investigation – Scope of Interference **– Applicant seeking direction for authorities for not taking any coercive step against him – Held – In present matter, not only anticipatory bail application has been dismissed earlier by this Court but it is**

never desirable to pass such a blanket order thereby hampering investigation – Prayer rejected. [Pankaj Karoriya Vs. State of M.P.] …2360

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अन्वेषण – हस्तक्षेप की व्याप्ति – आवेदक द्वारा उसके विरूद्ध कोई प्रपीड़क कदम न उठाने हेतु प्राधिकारियों के लिए निदेश चाहा जाना – अभिनिर्धारित – वर्तमान मामले में, पूर्व में इस न्यायालय द्वारा न केवल अग्रिम जमानत का आवेदन खारिज किया गया है बल्कि इस तरह का व्यापक आदेश पारित करना कदापि वांछनीय नहीं है जिससे अन्वेषण में बाधा उत्पन्न हो – प्रार्थना नामंजूर। (पंकज करोरिया वि. म.प्र. राज्य) **…2360**

***Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Demanding Gratification* – Held – The authority of a person/ delinquent officer demanding gratification is not important, but the impression in the mind of bribe-giver is important. [Pankaj Karoriya Vs. State of M.P.] …2360**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – परितोषण की मांग – अभिनिर्धारित – परितोषण की मांग करने वाले व्यक्ति/अपचारी अधिकारी का प्राधिकार महत्वपूर्ण नहीं है, बल्कि रिश्वत देने वाले व्यक्ति के मस्तिष्क पर प्रभाव आवश्यक है। (पंकज करोरिया वि. म.प्र. राज्य) **…2360**

***Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Preliminary Enquiry* – Held – Holding of preliminary enquiry prior to lodging of FIR is desirable and not mandatory – FIR cannot be quashed on the ground that FIR is not preceded by a preliminary enquiry. [Pankaj Karoriya Vs. State of M.P.] …2360**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – प्रारंभिक जांच – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन दर्ज करने से पहले प्रारंभिक जांच करना वांछनीय है तथा आज्ञापक नहीं – प्रथम सूचना प्रतिवेदन इस आधार पर अभिखंडित नहीं किया जा सकता कि प्रथम सूचना प्रतिवेदन से पहले प्रारंभिक जांच नहीं की गई है। (पंकज करोरिया वि. म.प्र. राज्य) **…2360**

***Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Scope* – Held – FIR not lodged by police directly on complaint by shopkeepers rather complaint was made by the office of Collector – Although this Court cannot make a roving enquiry at this stage, but if un-controverted allegations do not make out a *prima facie* offence, only then this Court can quash FIR – Since allegations made in FIR *prima facie* discloses commission of cognizable offence, therefore legitimate investigation cannot be stifled in the midway – Application dismissed. [Pankaj Karoriya Vs. State of M.P.] …2360**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – व्याप्ति – अभिनिर्धारित – दुकानदारों की शिकायत पर पुलिस

द्वारा प्रत्यक्ष रूप से प्रथम सूचना प्रतिवेदन दर्ज नहीं किया गया बल्कि कलेक्टर कार्यालय द्वारा शिकायत की गई थी – यद्यपि यह न्यायालय इस प्रक्रम पर अतिगामी जांच नहीं कर सकता, लेकिन यदि अविवादित अभिकथन प्रथम दृष्ट्या अपराध नहीं बनाते हैं, केवल तब यह न्यायालय प्रथम सूचना प्रतिवेदन को अभिखंडित कर सकता है – चूंकि प्रथम सूचना प्रतिवेदन में किये गये अभिकथन प्रथम दृष्ट्या संज्ञेय अपराध का किया जाना प्रकट करते हैं, अतः विधिसम्मत अन्वेषण को बीच में दबाया नहीं जा सकता – आवेदन खारिज। (पंकज करोरिया वि. म.प्र. राज्य) …2360

Criminal Trial – Appreciation of Evidence **– Held – Appreciation of evidence in criminal trial is a deductive process by which the Court eliminates the "possibilities" in a given case to arrive at the most "probable" inference, in the sum totality of the evidence on record and therein lies the truth, beyond reasonable doubt. [Lalu Sindhi @ Dayaldas Vs. State of M.P.] (DB)…1932**

दाण्डिक विचारण – साक्ष्य का मूल्यांकन – अभिनिर्धारित – दाण्डिक विचारण में साक्ष्य का मूल्यांकन एक निगमनात्मक प्रक्रिया है, जिसके द्वारा न्यायालय, दिये गये प्रकरण में, अभिलेख पर साक्ष्य के योगफल में, सबसे ''संभाव्य'' निष्कर्ष पर पहुंचने हेतु ''संभावनाओं'' को हटा देता है और इसमें, युक्तियुक्त संदेह से परे सत्य होता है। (लालू सिंधी उर्फ दयालदास वि. म.प्र. राज्य) **(DB)…1932**

Criminal Trial – Country Made Firearms & Branded Firearms – Barrel Marks **– Discussed & explained. [Lalu Sindhi @ Dayaldas Vs. State of M.P.] (DB)…1932**

दाण्डिक विचारण – देशी अग्नेयायुध व ब्रांडेड अग्नेयायुध – नली के निशान – विवेचित व स्पष्ट किये गये। (लालू सिंधी उर्फ दयालदास वि. म.प्र. राज्य) **(DB)…1932**

Criminal Trial – Standard of Proof **– Held – Standard of proof in a criminal trial is proof beyond reasonable doubt because the right to personal liberty of a citizen can never be taken away by the standard of preponderance of probability – Apex Court concluded that suspicion, however strong, cannot take place of legal proof. [Amar Singh Vs. State of M.P.] (DB)…2212**

दाण्डिक विचारण – सबूत का मानक – अभिनिर्धारित – दाण्डिक विचारण में सबूत का मानक, युक्तियुक्त संदेह से परे सबूत है क्योंकि एक नागरिक की दैहिक स्वतंत्रता का अधिकार, अधिसंभाव्यता की प्रबलता के मानक द्वारा कभी छीना नहीं जा सकता – सर्वोच्च न्यायालय ने निष्कर्षित किया कि संदेह चाहे जितना प्रबल हो, विधिक सबूत का स्थान नहीं ले सकता। (अमर सिंह वि. म.प्र. राज्य) **(DB)…2212**

Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13 – See – Penal Code, 1860, Section 346 & 364-A **[Suresh Vs. State of M.P.] (DB)…2319**

डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 – देखें – दण्ड संहिता, 1860, धारा 346 व 364–A (सुरेश वि. म.प्र. राज्य) **(DB)…2319**

Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13 – See – Penal Code, 1860, Section 392 & 397 **[Rajesh Vs. State of M.P.] …1910**

डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 – देखें – दण्ड संहिता, 1860, धारा 392 व 397 (राजेश वि. म.प्र. राज्य) **…1910**

***Disaster Management Act (53 of 2005), Section 24 and Constitution – Article 19(6) – Ban on Interstate Bus Operation* – Held – Section 24 gives ample power to "Control and Restrict vehicular traffic" and provision is wide enough to impose complete ban on vehicular movement – Prohibition on vehicular movement falls within ambit of reasonable restriction as per Article 19(6) of Constitution – Petitioner failed to establish that impugned order is illegal, irrational and outcome of any procedural impropriety – Appeal dismissed. [M.P. Bus Operator Association Vs. State of M.P.] (DB)…2242**

आपदा प्रबंधन अधिनियम (2005 का 53), धारा 24 एवं संविधान – अनुच्छेद 19(6) – अंतरराज्यीय बस परिचालन पर रोक – अभिनिर्धारित – धारा 24 ''वाहन यातायात को नियंत्रित और निर्बन्धित'' करने हेतु व्यापक शक्ति प्रदान करती है एवं वाहनों की गतिविधि पर पूर्ण प्रतिबंध लगाने हेतु उपबंध पर्याप्त विस्तृत है – वाहनों की आवाजाही पर प्रतिषेध संविधान के अनुच्छेद 19(6) के अनुसार युक्तियुक्त निर्बंधन की परिधि में आता है – याची यह स्थापित करने में विफल रहा कि आक्षेपित आदेश अवैध, तर्कहीन एवं किसी प्रक्रियात्मक अनौचित्य का परिणाम है – अपील खारिज। (एम.पी. बस ऑपरेटर एसोसिएशन वि. म.प्र. राज्य) **(DB)…2242**

***Disaster Management Act (53 of 2005), Section 24 and Government of India, Guidelines dated 31.03.2021, Clause 12 & 19 – Administrative Instructions & Statutory Provisions* – Held – Guidelines are issued in executive fiat – No executive instructions can prevail over statutory provision – Administrative instructions can supplement statutory provisions but cannot supplant it. [M.P. Bus Operator Association Vs. State of M.P.] (DB)…2242**

आपदा प्रबंधन अधिनियम (2005 का 53), धारा 24 एवं भारत सरकार, दिशा निर्देश दिनांक 31.03.2021, खंड 12 व 19 – प्रशासनिक अनुदेश व कानूनी उपबंध – अभिनिर्धारित – दिशानिर्देश, कार्यपालक आदेश में जारी किये गये हैं – कोई भी कार्यपालक अनुदेश कानूनी उपबंध पर अभिभावी नहीं हो सकते – प्रशासनिक अनुदेश कानूनी उपबंधों के अनुपूरक हो सकते है परंतु उनका स्थान नहीं ले सकते। (एम.पी. बस ऑपरेटर एसोसिएशन वि. म.प्र. राज्य) **(DB)…2242**

District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2016, Rule 17(3) – See – Constitution – Article 226 **[Shailesh Kumar Sonwane Vs. State of M.P.] (DB)…2092**

जिला न्यायालय स्थापना (भर्ती एवं सेवा की शर्तें) नियम, म.प्र., 2016, नियम 17(3) – देखें – संविधान – अनुच्छेद 226 **(शैलेष कुमार सोनवाने वि. म.प्र. राज्य) (DB)…2092**

***District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2016, Rule 17(3) and District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2019, Rule 17(3) – Select List/Wait List Candidates – Validity Period of Select/Wait List – Applicability of Rules –* Though posts were lying vacant, petitioners (wait list candidates) were denied appointment on ground that as per Rules of 2019, validity period of select list was reduced from 18 months to 12 months and accordingly the list has lapsed – Held – Norms of process of selection cannot be changed by changing Rules in middle of selection process – Selection process commenced as per 2016 Rules, wherein as per Rule 17(3), validity period will be 18 months – 2019 Rules have not been made retrospective by any express provision – Decision of respondents set aside – Petitioners have right to be considered for appointment on unfilled posts – Respondents directed accordingly – Petitions disposed. [Shailesh Kumar Sonwane Vs. State of M.P.] (DB)…2092**

जिला न्यायालय स्थापना (भर्ती एवं सेवा की शर्तें) नियम, म.प्र., 2016, नियम 17(3) एवं जिला न्यायालय स्थापना (भर्ती एवं सेवा की शर्तें) नियम, म.प्र., 2019, नियम 17(3) – चयन सूची/प्रतीक्षा सूची के अभ्यर्थी – चयन/प्रतीक्षा सूची की विधिमान्यता अवधि – नियमों की प्रयोज्यता – यद्यपि पद रिक्त थे, याचीगण (प्रतीक्षा सूची के अभ्यर्थी) को इस आधार पर नियुक्ति से इन्कार किया गया कि 2019 के नियमों के अनुसार, चयन सूची की विधिमान्यता अवधि को 18 माह से घटाकर 12 माह किया गया था और तद्नुसार सूची व्यपगत हो गयी है – अभिनिर्धारित – चयन की प्रक्रिया के बीच में नियमों को बदलकर, चयन प्रक्रिया के मानकों को नहीं बदला जा सकता – चयन प्रक्रिया, 2016 के नियमों के अनुसार आरंभ हुई थी जिसमें नियम 17(3) के अनुसार, विधिमान्यता अवधि 18 माह होगी – 2019 के नियमों को किसी अभिव्यक्त उपबंध द्वारा भूतलक्षी नहीं बनाया गया है – प्रत्यर्थीगण का विनिश्चय अपास्त – याचीगण को, रिक्त पदों पर नियुक्ति हेतु विचार में लिए जाने का अधिकार है – प्रत्यर्थीगण को तद्नुसार निदेशित किया गया – याचिकाएं निराकृत। (शैलेष कुमार सोनवाने वि. म.प्र. राज्य) **(DB)…2092**

District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2019, Rule 17(3) – See – District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2016, Rule 17(3) **[Shailesh Kumar Sonwane Vs. State of M.P.] (DB)…2092**

जिला न्यायालय स्थापना (भर्ती एवं सेवा की शर्तें) नियम, म.प्र., 2019, नियम 17(3) – देखें – जिला न्यायालय स्थापना (भर्ती एवं सेवा की शर्तें) नियम, म.प्र., 2016, नियम 17(3) शैलेष कुमार सोनवाने वि. म.प्र. राज्य) **(DB)…2092**

Dowry Prohibition Act (28 of 1961), Section 3/4 – See – Penal Code, 1860, Section 498-A **[Abhishek Pandey @ Ramji Pandey Vs. State of M.P.] …1960**

दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3/4 – देखें – दण्ड संहिता, 1860, धारा 498–A (अभिषेक पाण्डे उर्फ रामजी पाण्डे वि. म.प्र. राज्य) …1960

***Essential Commodities Act (10 of 1955) and Penal Code (45 of 1860), Section 409 & 420 – Applicability of Act/Code* – Held – In absence of any bar to the applicability of provisions of IPC, it cannot be said that since a separate procedure has been provided under Special Act, therefore invocation of provisions of IPC is unwarranted – Prayer rejected. [Pankaj Karoriya Vs. State of M.P.] …2360**

आवश्यक वस्तु अधिनियम (1955 का 10) एवं दण्ड संहिता (1860 का 45), धारा 409 व 420 – अधिनियम/संहिता की प्रयोज्यता – अभिनिर्धारित – भा.दं.सं. के उपबंधों की प्रयोज्यता पर किसी वर्जन के अभाव में, यह नहीं कहा जा सकता कि चूंकि विशेष अधिनियम के अंतर्गत एक पृथक प्रक्रिया उपबंधित की गई है, अतः भा.दं.सं. के उपबंधों का अवलंब अनपेक्षित है – प्रार्थना नामंजूर। (पंकज करोरिया वि. म.प्र. राज्य) …2360

***Evidence Act (1 of 1872), Section 9 and Criminal Procedure Code, 1973 (2 of 1974), Section 54-A – Identification* – Held – Identification of accused is a relevant fact and has to be given importance. [Rajesh Vs. State of M.P.] …1910**

साक्ष्य अधिनियम (1872 का 1), धारा 9 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 54–A – पहचान – अभिनिर्धारित – अभियुक्त की पहचान एक सुसंगत तथ्य है एवं उसे महत्व दिया जाना चाहिए। (राजेश वि. म.प्र. राज्य) …1910

***Evidence Act (1 of 1872), Section 32 – Dying Declaration* – Apex Court concluded that before convicting the accused only on basis of dying declaration, Court must act with prudence and due caution and care. [Devkaran Vs. State of M.P.] (DB)…1920**

साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृत्युकालिक कथन – सर्वोच्च न्यायालय ने निष्कर्षित किया कि अभियुक्त को केवल मृत्युकालिक कथन के आधार पर दोषसिद्ध करने से पूर्व न्यायालय को प्रज्ञा एवं सम्यक् सतर्कता तथा सावधानी के साथ कार्य करना चाहिए। (देवकरण वि. म.प्र. राज्य) (DB)…1920

***Evidence Act (1 of 1872), Section 32 – See – Penal Code, 1860, Section 302* [Devkaran Vs. State of M.P.] (DB)…1920**

साक्ष्य अधिनियम (1872 का 1), धारा 32 – देखें – दण्ड संहिता, 1860, धारा 302 (देवकरण वि. म.प्र. राज्य) (DB)…1920

***Evidence Act (1 of 1872), Section 112 – DNA Test – Permissibility* – Held – Matter relates to inheritance of property of Hindu Undivided Family – Petitioner denying Respondent No. 1 to be his real sister – It is true that u/S 112, birth during marriage is conclusive proof of legitimacy, therefore, bars**

DNA testing but when blood relations of siblings is challenged, there shall be no bar u/S 112 – Trial Court rightly permitted for DNA test – Petition dismissed. [Radheshyam Vs. Kamla Devi] …*18

साक्ष्य अधिनियम (1872 का 1), धारा 112 – DNA परीक्षण – अनुज्ञेयता – अभिनिर्धारित – मामला हिन्दू अविभक्त कुटुंब की संपत्ति के उत्तराधिकार से संबंधित है – याची, प्रत्यर्थी क्र. 1 को उसकी सगी बहन होने से इंकार कर रहा है – यह सत्य है कि धारा 112 के अंतर्गत, विवाहित स्थिति के दौरान जन्म, धर्मजता का निश्चयात्मक सबूत है इसलिए, **DNA** परीक्षण वर्जित करती है किंतु जब भाई–बहनों के रक्त संबंधों को चुनौती दी गई है, धारा 112 के अंतर्गत कोई वर्जन नहीं होगा – विचारण न्यायालय ने उचित रूप से **DNA** परीक्षण की अनुमति दी – याचिका खारिज। (राधेश्याम वि. कमला देवी) **…*18**

***Evidence Act (1 of 1872), Section 145 – Omission & Contradictions –* Held – If the attention of the witness is not drawn towards the omissions in his previous statement, then the accused cannot take advantage of such omission and contradictions – If a party intends to contradict a witness, then his attention must be called to those parts of it which are to be used for purpose of contradicting him. [In Reference (Suo Motu) Vs. Manoj] (DB)…2150**

साक्ष्य अधिनियम (1872 का 1), धारा 145 – लोप व विरोधाभास – अभिनिर्धारित – यदि साक्षी का ध्यान उसके पूर्व कथन में हुए लोप की ओर आकर्षित नहीं किया जाता है, तो अभियुक्त उक्त लोप एवं विरोधाभासों का लाभ नहीं उठा सकता – यदि कोई पक्षकार किसी साक्षी का विरोध करने का आशय रखता है, तो उसका ध्यान उसके उन भागों की ओर आकर्षित करना चाहिए जिनका उपयोग उसका विरोध करने के प्रयोजन से किया जाना हो। (इन रेफ्रेन्स (सू मोटो) वि. मनोज) **(DB)…2150**

***Excise Act, M.P. (2 of 1915), Sections 34(2), 47-A(3)(a) & 47-D – See – Criminal Procedure Code, 1973, Section 457* [Ajay Khateek Vs. State of M.P.] …1986**

आबकारी अधिनियम, म.प्र. (1915 का 2), धाराएँ 34(2), 47–A(3)(a) व 47–D – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 457 (अजय खटीक वि. म.प्र. राज्य) **…1986**

***Government of India, Guidelines dated 31.03.2021, Clause 12 & 19 – See – Disaster Management Act, 2005, Section 24* [M.P. Bus Operator Association Vs. State of M.P.] (DB)…2242**

भारत सरकार, दिशा निर्देश दिनांक 31.03.2021, खंड 12 व 19 – देखें – आपदा प्रबंधन अधिनियम, 2005, धारा 24 (एम.पी. बस ऑपरेटर एसोसिएशन वि. म.प्र. राज्य) **(DB)…2242**

***Government Servants (Temporary and Quasi-Permanent Service) Rules, M.P. 1960, Rule 12 – See – Police Regulations, M.P., Regulation 59* [State of M.P. Vs. Yogesh Pathak] (DB)…2253**

शासकीय सेवक (अस्थायी एवं स्थायीवत् सेवा) नियम, म.प्र. 1960, नियम 12 – देखें – पुलिस विनियमन, म.प्र., विनियम 59 (म.प्र. राज्य वि. योगेश पाठक) **(DB)…2253**

High Court of Madhya Pradesh Rules, 2008, Chapter II, Rule 2 – See – Arbitration and Conciliation Act, 1996, Sections 2(1)(e), 16(2)(3), 17, 37(1) & 37(2) **[Upadhyay Constructions Pvt. Ltd. (M/s.) Vs. M/s. Prism Infra Projects] …2353**

मध्य प्रदेश उच्च न्यायालय नियम, 2008, अध्याय II, नियम 2 – देखें – माध्यस्थम् और सुलह अधिनियम, 1996, धाराएँ 2(1)(e), 16(2)(3), 17, 37(1) व 37(2) (उपाध्याय कंस्ट्रक्शन प्रा. लि. (मे.) वि. मे. प्रिज्म इन्फ्रा प्रोजेक्टस्) **…2353**

Interpretation of Statute – "Explanation" in Statute **– Held – Use of "explanation" in a statute is an internal aid to construction – An "explanation" may be added to include something within or to exclude something from the ambit of main enactment or the connotation of some word occurring in it – Objects of an "explanation" to a statutory provision, discussed and explained. [Sonu Bairwa Vs. State of M.P.] (DB)…1832**

कानून का निर्वचन – कानून में ''स्पष्टीकरण'' – अभिनिर्धारित – एक कानून में ''स्पष्टीकरण'' का प्रयोग अर्थान्वयन के लिए एक आंतरिक सहायता है – एक ''स्पष्टीकरण'' को, मुख्य अधिनियमिति की परिधि में कुछ सम्मिलित करने अथवा उससे कुछ अपवर्जित करने अथवा उसमें आये कुछ शब्द का अर्थ लगाने हेतु जोड़ा जा सकता है – एक कानूनी उपबंध के ''स्पष्टीकरण'' के उद्देश्य, विवेचित और स्पष्ट किये गये। (सोनू बैरवा वि. म.प्र. राज्य) **(DB)…1832**

Interpretation of Statute – Text & Context **– Held – Interpretation of statute must depend on the text and the context – Neither can be ignored, both are important – That interpretation is best which makes the textual interpretation match the contextual – A statute is best interpreted when you know why it was enacted. [Sonu Bairwa Vs. State of M.P.] (DB)…1832**

कानून का निर्वचन – विषय व संदर्भ – अभिनिर्धारित – कानून का निर्वचन विषय एवं संदर्भ पर आश्रित होना चाहिए – दोनों में से किसी को भी अनदेखा नहीं किया जा सकता है, दोनों आवश्यक हैं – वह निर्वचन सबसे अच्छा है जो शाब्दिक निर्वचन का संदर्भगत से मेल करवाता हो – एक कानून का सबसे अच्छा निर्वचन तब होता है जब आपको यह ज्ञात हो कि वह किस लिए अधिनियमित किया गया था। (सोनू बैरवा वि. म.प्र. राज्य) **(DB)…1832**

Land Revenue Code, M.P. (20 of 1959), Section 31 – Adjudication of Title **– Held – Any proceedings between parties as contemplated u/S 31 of Code does not take into its ambit the question of adjudication of title of parties on the basis of Will – It does not contemplate adjudication of title – Writ Court rightly relegated the parties to the Civil Court – Appeal dismissed. [Hariprasad Bairagi Vs. Radheshyam] (DB)…*16**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 31 – हक का न्यायनिर्णयन – अभिनिर्धारित – पक्षकारों के मध्य कोई भी कार्यवाहियां, जैसा कि संहिता की धारा 31 के अंतर्गत अनुध्यात है, वसीयत के आधार पर पक्षकारों के हक के न्यायनिर्णयन के प्रश्न को अपनी परिधि में नहीं लेती हैं – यह हक का न्यायनिर्णयन अनुध्यात नहीं करती – रिट न्यायालय ने उचित रूप से पक्षकारों को सिविल न्यायालय के समक्ष भेजा – अपील खारिज। (हरीप्रसाद बैरागी वि. राधेश्याम) (DB)…*16

Land Revenue Code, M.P. (20 of 1959), Section 178 – Partition Suit – Jurisdiction of Revenue Authorities **– Held – Partition suit cannot be decided by Revenue Authorities, whole jurisdiction vests with the Civil Court – Impugned order passed by Tehsildar is set aside – Petition allowed. [Chetna Dholakhandi (Smt.) Vs. State of M.P.] …1896**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 178 – विभाजन वाद – राजस्व प्राधिकारीगण की अधिकारिता – अभिनिर्धारित – राजस्व प्राधिकारीगण द्वारा विभाजन वाद विनिश्चित नहीं किया जा सकता, संपूर्ण अधिकारिता सिविल न्यायालय में निहित है – तहसीलदार द्वारा पारित आक्षेपित आदेश अपास्त – याचिका मंजूर। (चेतना धौलाखण्डी (श्रीमती) वि. म.प्र. राज्य) **…1896**

Land Revenue Code, M.P. (20 of 1959), Section 178 – Title Dispute **– Held – In all pending litigation u/S 178, Revenue Authorities shall direct parties to submit their affidavit stating therein that no title dispute is pending regarding land in question – If any title dispute is found directly or indirectly, Revenue Authorities shall immediately stop the proceeding and direct parties to approach Civil Court. [Chetna Dholakhandi (Smt.) Vs. State of M.P.] …1896**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 178 – हक विवाद – अभिनिर्धारित – धारा 178 के अंतर्गत लंबित सभी मुकदमों में, राजस्व प्राधिकारीगण पक्षकारों को इस कथन के साथ कि प्रश्नगत भूमि के संबंध में कोई हक विवाद लंबित नहीं है, उनके शपथ–पत्र प्रस्तुत करने हेतु निदेशित करेंगे – यदि प्रत्यक्ष अथवा अप्रत्यक्ष रूप से कोई हक विवाद पाया जाता है, राजस्व प्राधिकारीगण तत्काल कार्यवाही रोक देंगे एवं पक्षकारों को सिविल न्यायालय के समक्ष जाने हेतु निदेशित करेंगे। (चेतना धौलाखण्डी (श्रीमती) वि. म.प्र. राज्य) **…1896**

Legal Services Authorities Act (39 of 1987), Section 29-A and NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015 – Framing Regulations **– Held – State authority is requested to contemplate for framing suitable regulations as per provisions of Act of 1987, especially u/S 29-A for effective implementation of different schemes of Government of India/State Government falling under the Scheme of 2015 – It is also requested to contemplate about preparation of a software/Mobile Application for keeping a tab over the complaints received and their outcome. [Omnarayan Sharma Vs. State of M.P.] (DB)…2025**

विधिक सेवा प्राधिकरण अधिनियम (1987 का 39), धारा 29–A एवं नालसा (गरीबी उन्मूलन योजनाओं का प्रभावी कार्यान्वयन) योजना, 2015 – विनियम विरचित करना – अभिनिर्धारित – राज्य प्राधिकरण से 2015 की योजना के अंतर्गत भारत सरकार/राज्य सरकार की विभिन्न योजनाओं के प्रभावी क्रियान्वयन हेतु, 1987 के अधिनियम के उपबंध अनुसार, विशेष रूप से धारा 29–A के अंतर्गत उपयुक्त विनियम विरचित करने हेतु अनुध्यात करने का अनुरोध है – यह भी अनुरोध है कि प्राप्त शिकायतों और उनके परिणामों पर लगातार नजर रखने के लिए एक सॉफ्टवेयर/मोबाईल एप्लिकेशन तैयार करने पर विचार करें। (ओमनारायण शर्मा वि. म.प्र. राज्य) **(DB)…2025**

***Legal Services Authorities Act (39 of 1987) and NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015, Clause 9, 10 & 11 – Complaint of Corruption* – Held – If any complaint is received regarding inaction, inappropriate execution, corruption or any matter related thereto which comes under purview of the Act of 1987 and Scheme of 2015, then District Legal Services Authority (DLSA) shall proactively take care of situation by proceeding as per clause 9, 10 & 11 of the Scheme 2015. [Omnarayan Sharma Vs. State of M.P.] (DB)…2025**

विधिक सेवा प्राधिकरण अधिनियम (1987 का 39) एवं नालसा (गरीबी उन्मूलन योजनाओं का प्रभावी कार्यान्वयन) योजना, 2015, खंड 9, 10 व 11 – भ्रष्टाचार की शिकायत/परिवाद – अभिनिर्धारित – यदि अकर्मण्यता, अनुचित निष्पादन, भ्रष्टाचार या उससे संबंधी किसी मामले के संबंध में कोई शिकायत प्राप्त होती है, जो 1987 के अधिनियम एवं 2015 की स्कीम की परिधि के अंतर्गत आती है, तब जिला विधिक सेवा प्राधिकरण (DLSA) 2015 की स्कीम के खंड 9, 10 एवं 11 के अनुसार कार्यवाही करते हुए स्थिति का अग्रसक्रिय रूप से ध्यान रखेगा। (ओमनारायण शर्मा वि. म.प्र. राज्य) **(DB)…2025**

***Madhyanchal Gramin Bank (Officers and Employees) Service Regulation, 2010, Rule 10(1)(a) – Seeking Cancellation of Resignation* – Held – There was reiteration of intention of appellant to consciously resign from service by submitting letter of resignation with notice of 3 months, mentioning the Rules and requesting for its acceptance after 3 months – No application for withdrawal of resignation letter within 3 months notice period rather on last date of expiry of notice period submitted fresh application stating that notice period has ended and now his resignation may be accepted – Letter of resignation was unconditional one and without any reservation – Impugned judgment upheld – Appeal dismissed. [Lavlesh Kumar Mishra Vs. The Madhyanchal Gramin Bank] (DB)…1818**

मध्यांचल ग्रामीण बैंक (अधिकारियों और कर्मचारियों) सेवा विनियम, 2010, नियम 10(1)(a) – त्यागपत्र का रद्दकरण चाहा जाना – अभिनिर्धारित – नियमों का उल्लेख करते हुए तीन माह के नोटिस के साथ त्यागपत्र प्रस्तुत कर एवं तीन माह पश्चात् इसे स्वीकार किये जाने का अनुरोध करते हुए, अपीलार्थी के सेवा से भानपूर्वक त्यागपत्र देने के आशय की पुनरावृत्ति थी – नोटिस अवधि के तीन माह के भीतर त्यागपत्र वापस लेने हेतु

कोई आवेदन नहीं, बल्कि नोटिस अवधि के समाप्त होने की अंतिम तिथि को यह कथन करते हुए नया आवेदन प्रस्तुत किया कि नोटिस अवधि समाप्त हो गई है और अब उसका त्यागपत्र स्वीकार किया जा सकता है – त्याग पत्र शर्त रहित एवं बिना किसी संदेह के था – आक्षेपित निर्णय कायम – अपील खारिज। (लवलेश कुमार मिश्रा वि. द मध्यांचल ग्रामीण बैंक) **(DB)…1818**

Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7-A – See – Arbitration and Conciliation Act, 1996, Sections 16(2), 34 & 37 **[M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H)] (DB)…2072**

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 7–A – देखें – माध्यस्थम् और सुलह अधिनियम, 1996, धाराएँ 16(2), 34 व 37 (एम.पी. रोड डव्हेलपमेन्ट कारपोरेशन वि. द मिनिस्ट्री ऑफ रोड, ट्रान्सपोर्ट एण्ड हाईवे (एमओआरटी एण्ड एच)) **(DB)…2072**

Maxim – "actus curiae neminem gravabit" **– Discussed. [Shailesh Kumar Sonwane Vs. State of M.P.] (DB)…2092**

सूत्र – "न्यायालय के कृत्यों के कारण किसी भी पक्ष को हानि नहीं होनी चाहिए – विवेचित। (शैलेष कुमार सोनवाने वि. म.प्र. राज्य) **(DB)…2092**

Maxim – "nemo moriturus praesumitur mentire" **– Discussed. [Devkaran Vs. State of M.P.] (DB)…1920**

सूत्र – ''एक आदमी अपने निर्माता (भगवान) से अपने मुंह में झूठ लेकर नहीं मिलेगा'' – विवेचित। (देवकरण वि. म.प्र. राज्य) **(DB)…1920**

Minor Mineral Rules, M.P. 1996, Rule 53, Sand (Mining, Transportation, Storage and Trading) Rules, M.P., 2019, Rule 27 and Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P., 2006 and Sand Rules, M.P., 2018, Rule 23(1) – Confiscation of Vehicle – Illegal transportation of Sand **– Held – Repealing clause under Rule 27 of 2019 Sand Rules eclipse 1996 Rules, 2006 and 2018 Sand Rules *qua* minor mineral of sand, therefore, an eclipse provision is not available to be borrowed – Confiscation entails serious adverse consequences of penal nature, Competent Authority cannot assume the said power of confiscation unless it is expressly provided in Statute – Impugned orders quashed – Petitions allowed. [Rajendra Singh Vs. State of M.P.] (DB)…1854**

गौण खनिज नियम, म.प्र. 1996, नियम 53, रेत (खनन, परिवहन, भण्डारण एवं व्यापार) नियम, म.प्र., 2019, नियम 27 एवं खनिज (अवैध खनन, परिवहन तथा भंडारण का निवारण) नियम, म.प्र., 2006 एवं रेत नियम, म.प्र., 2018, नियम 23(1) – वाहन का अधिहरण – रेत का अवैध परिवहन – अभिनिर्धारित – जहां तक रेत के गौण खनिज का संबंध है, रेत नियम 2019 के नियम 27 के अंतर्गत निरसन खंड 1996 के नियमों, 2006 के नियमों एवं 2018 के रेत नियमों को प्रभावहीन करता है, अतः एक प्रभावहीन उपबंध लेने

हेतु उपलब्ध नहीं है – अधिहरण के दाण्डिक स्वरूप के गंभीर प्रतिकूल परिणाम होते है, सक्षम प्राधिकारी अधिहरण की उक्त शक्ति को तब तक धारण नहीं कर सकता जब तक की यह अभिव्यक्त रूप से कानून में उपबंधित नहीं की गई हो – आक्षेपित आदेश अभिखंडित – याचिकाएं मंजूर। (राजेन्द्र सिंह वि. म.प्र. राज्य) **(DB)…1854**

Minor Mineral Rules, M.P. 1996, Rule 53 – See – Sand (Mining, Transportation, Storage and Trading) Rules, M.P., 2019 **[Rajendra Singh Vs. State of M.P.] (DB)…1854**

गौण खनिज नियम, म.प्र. 1996, नियम 53 – देखें – रेत (खनन, परिवहन, भण्डारण एवं व्यापार) नियम, म.प्र., 2019 (राजेन्द्र सिंह वि. म.प्र. राज्य) **(DB)…1854**

Municipalities Act, M.P. (37 of 1961), Section 279 & 282 – Construction of Community Hall in Public Park Space **– Held – Once a public park is dedicated to citizens/residents, it is held by Municipality in trust on behalf of public at large and cannot be put to any other use – Change of its use for any other purpose would tantamount to breach of trust – Hall constructed in park directed to be demolished – Relevant area shall always be maintained only as a park and shall not be used for any other purpose – Petition disposed. [Preeti Singh Vs. State of M.P.] (DB)…1886**

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 279 व 282 – सार्वजनिक पार्क के स्थान में सामुदायिक सभागार का सन्निर्माण – अभिनिर्धारित – एक बार जब कोई सार्वजनिक पार्क नागरिकों /निवासियों को समर्पित कर दिया जाता है, तो इसे जन सामान्य की ओर से नगरपालिका द्वारा न्यास में रखा जाता है तथा इसे किसी अन्य उपयोग में नहीं लाया जा सकता – किसी अन्य प्रयोजन के लिए इसके उपयोग में परिवर्तन न्यास भंग करने की कोटि में आएगा – पार्क में सन्निर्मित सभागार को तोड़ने हेतु निदेशित किया गया – सुसंगत क्षेत्र को हमेशा एक पार्क के रूप में बनाए रखा जाएगा एवं किसी अन्य प्रयोजन हेतु उपयोग नहीं किया जाएगा – याचिका निराकृत। (प्रीति सिंह वि. म.प्र. राज्य) **(DB)…1886**

Mutation – Jurisdiction of Civil Court **– Held – Apex Court concluded that party who is claiming title/right on basis of a Will, has to approach appropriate Civil Court and get his right crystallized and only thereafter on basis of the decision of Civil Court, necessary mutation entry can be made. [Tarasiya (Smt.) Vs. Ramlakhan] …2299**

नामांतरण – सिविल न्यायालय की अधिकारिता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि पक्षकार जो एक वसीयत के आधार पर हक/अधिकार का दावा कर रहा है, उसे समुचित सिविल न्यायालय के समक्ष जाना होगा तथा अपना अधिकार स्पष्ट करना होगा तथा उसी के उपरांत सिविल न्यायालय के निर्णय के आधार पर, आवश्यक नामांतरण प्रविष्टि की जा सकेगी। (तारासिया (श्रीमती) वि. रामलखन) **…2299**

Mutation – Jurisdiction of Revenue Court **– Held – Revenue Court does not have any jurisdiction to dwell upon the question of title of a party –**

Civil rights of the party are to be determined by Civil Court and not by Revenue Courts – Impugned order quashed – Petition allowed. [Tarasiya (Smt.) Vs. Ramlakhan] …2299

नामांतरण – राजस्व न्यायालय की अधिकारिता – अभिनिर्धारित – राजस्व न्यायालय को पक्षकार के हक के प्रश्न पर ध्यान केंद्रित करने की कोई अधिकारिता नहीं – पक्षकार के सिविल अधिकारों का निर्धारण सिविल न्यायालय द्वारा किया जाना है, ना कि राजस्व न्यायालय द्वारा – आक्षेपित आदेश अभिखंडित – याचिका मंजूर। (तारासिया (श्रीमती) वि. रामलखन) **…2299**

***NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015, Clause 9, 10 & 11 – See – Legal Services Authorities Act, 1987* [Omnarayan Sharma Vs. State of M.P.] (DB)…2025**

नालसा (गरीबी उन्मूलन योजनाओं का प्रभावी कार्यान्वयन) योजना, 2015, खंड 9, 10 व 11 – देखें – विधिक सेवा प्राधिकरण अधिनियम, 1987 (ओमनारायण शर्मा वि. म.प्र. राज्य) **(DB)…2025**

***NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015, Clause 10(3) – See – Constitution – Article 226* [Omnarayan Sharma Vs. State of M.P.] (DB)…2025**

नालसा (गरीबी उन्मूलन योजनाओं का प्रभावी कार्यान्वयन) योजना, 2015, खंड 10(3) – देखें – संविधान – अनुच्छेद 226 (ओमनारायण शर्मा वि. म.प्र. राज्य) **(DB)…2025**

***NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015 – See – Legal Services Authorities Act, 1987, Section 29-A* [Omnarayan Sharma Vs. State of M.P.] (DB)…2025**

नालसा (गरीबी उन्मूलन योजनाओं का प्रभावी कार्यान्वयन) योजना, 2015 – देखें – विधिक सेवा प्राधिकरण अधिनियम, 1987, धारा 29–A (ओमनारायण शर्मा वि. म.प्र. राज्य) **(DB)…2025**

***Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/18(c) & 29 and Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – Grounds* – Held – Applicant 52 years old having no previous criminal record and is a land owner and a family man, thus chance of absconsion is remote – Many witnesses are government employees, chance of tampering with evidence/witness is also remote – Applicant suffered more than 3 months of incarceration which amounts to pretrial detention – Applicant expressed his intention to perform community services to reform himself – Bail granted imposing conditions – Application allowed. [Gopal Krishna Gautam @ Pandit Vs. State of M.P.] …1975**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8/18(c) व 29 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – जमानत – आधार – अभिनिर्धारित – आवेदक की आयु 52 वर्ष है, जिसका कोई पूर्व आपराधिक अभिलेख नहीं है एवं वह एक भूमि स्वामी है तथा एक पारिवारिक व्यक्ति है, अतः उसके फरार होने की अल्प संभावना है – कई साक्षीगण सरकारी कर्मचारी हैं, साक्ष्य के साथ छेड़छाड़/साक्षी को तोड़ने की संभावना भी अल्प है – आवेदक को 3 माह से अधिक की कैद भोगना पड़ा जो कि विचारणपूर्व निरोध की कोटि में आता है – आवेदक ने स्वयं को सुधारने के लिए सामुदायिक सेवाएं करने के उसके आशय को अभिव्यक्त किया है – शर्तें अधिरोपित कर जमानत प्रदान की गई – आवेदन मंजूर। (गोपाल कृष्ण गौतम उर्फ पंडित वि. म.प्र. राज्य) **…1975**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 35 & 54 – Burden of Proof – **Held – Initial burden exist upon prosecution and when it stands satisfied, legal burden would shift over accused to lead evidence or establish his case for innocence as per standard proof required – Accused cannot wriggle out from such liability and trial Court must weigh this aspect of "presumptions" while appreciating evidence – Even implications of Section 27 of Evidence Act are available to trial Court to reach the truth. [Gopal Krishna Gautam @ Pandit Vs. State of M.P.] …1975**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 35 व 54 – सबूत का भार – अभिनिर्धारित – आरंभिक भार अभियोजन पर विद्यमान होता है एवं जब यह संतुष्ट हो जाता है, अपेक्षित मानक सबूत के अनुसार साक्ष्य प्रस्तुत करने अथवा निर्दोषिता के लिए अपना प्रकरण स्थापित करने का विधिक भार अभियुक्त पर चला जाएगा – अभियुक्त उक्त दायित्व से बच निकल नहीं सकता एवं विचारण न्यायालय को साक्ष्य का मूल्यांकन करते समय ''उपधारणाओं'' के इस पहलू को तौलना चाहिए – यहां तक कि सत्यता तक पहुंचने के लिए विचारण न्यायालय के लिए साक्ष्य अधिनियम की धारा 27 की विवक्षायें उपलब्ध हैं। (गोपाल कृष्ण गौतम उर्फ पंडित वि. म.प्र. राज्य) **…1975**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 35 & 54 – Standard of Proof – "Preponderance of Probability" – **Held – Because of Section 35 and 54, standard of proof required for accused to proof innocence is "Preponderance of Probability" at least which accused shall have to establish – "Presumption of culpable mental state" u/S 35 and "presumption from possession of illicit articles" u/S 54(b) are to be countered by accused on touchstone of preponderance of probability, at least. [Gopal Krishna Gautam @ Pandit Vs. State of M.P.] …1975**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 35 व 54 – सबूत का मानक – ''अधिसंभाव्यता की प्रबलता'' – अभिनिर्धारित – धारा 35 व 54 के कारण, निर्दोषिता साबित करने हेतु अभियुक्त के लिए अपेक्षित सबूत का मानक ''अधिसंभाव्यता की प्रबलता है'' कम से कम जिसे अभियुक्त को स्थापित करना होगा – धारा 35 के अंतर्गत ''सदोष मानसिक स्थिति की उपधारणा'' एवं धारा 54(b) के अंतर्गत

''अवैध वस्तुओं के कब्जे से उपधारणा'' का प्रत्युत्तर अभियुक्त द्वारा कम से कम अधिसंभाव्यता की प्रबलता की कसौटी पर दिया जाना है। (गोपाल कृष्ण गौतम उर्फ पंडित वि. म.प्र. राज्य) **...1975**

***Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 35, 54 & 66 – Presumption* – Held – Presumption is rule of evidence which has evolved and is essentially invoked to plug certain gaps or remove lacuna in the evidence – Section 35 and 54 raises presumption with regard to culpable mental state on part of accused and these provisions carry reverse burden of proof on the accused. [Gopal Krishna Gautam @ Pandit Vs. State of M.P.] ...1975**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 35, 54 व 66 – उपधारणा – अभिनिर्धारित – उपधारणा साक्ष्य का नियम है जिसे साक्ष्य में कुछ अंतर को भरने या कमी को दूर करने के लिए विकसित किया गया है एवं जिसका आवश्यक रूप से अवलंब लिया गया है – धारा 35 एवं 54 अभियुक्त की सदोष मानसिक स्थिति के संबंध में उपधारणा उत्पन्न करती है एवं ये उपबंध अभियुक्त पर उल्टा सबूत का भार डालते हैं। (गोपाल कृष्ण गौतम उर्फ पंडित वि. म.प्र. राज्य) **...1975**

***National Security Act (65 of 1980), Section 3(2) – Applicability* – Held – Apex Court concluded that there is no straight jacket/static formula for applying /invoking NSA because it varies according to the *pressures of the day* and according to *intensity of imperatives* – Its depends on factual backdrop of each case. [Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur] (DB)...2272**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – प्रयोज्यता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि राष्ट्रीय सुरक्षा कानून लागू करने/का अवलंब लेने हेतु कोई निश्चित/स्थिर सूत्र नहीं है यह समय के दबाव और अनिवार्यताओं की तीव्रता के अनुसार परिवर्तित होता रहता है – यह प्रत्येक प्रकरण की तथ्यात्मक पृष्ठभूमि पर निर्भर करता है। (सरबजीत सिंह मोखा वि. द डिस्ट्रिक्ट मजिस्ट्रेट, जबलपुर) **(DB)...2272**

***National Security Act (65 of 1980), Section 3(2) – Detention Order for Singular Act* – Held – Order of detention on a solitary act can be passed keeping in view the conduct of person in view of facts and circumstances prevailing at relevant time – In pandemic situation where people were dying for want of essential drugs, treatment and other facilities, singular act of blackmarketing of remedesivir injections is sufficient to maintain detention order, moreso when allegation is that such injections were fake/duplicate – It is such hard and ugly fact which make application of detention law imperative – No flaw in decision making process – Petition dismissed. [Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur] (DB)...2272**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – एकल कृत्य के लिए निरोध आदेश – अभिनिर्धारित – सुसंगत समय पर अभिभावी तथ्यों और परिस्थितियों को दृष्टिगत रख व्यक्ति के आचरण को ध्यान में रखते हुए एकल कृत्य पर निरोध का आदेश पारित किया जा सकता है – महामारी की स्थिति में जहां लोग आवश्यक औषधियों, उपचार एवं अन्य सुविधाओं के अभाव में मर रहे थे, रेमडेसिविर इंजेक्शनों की चोरबाजारी का एकल कृत्य निरोध आदेश को कायम रखने के लिए पर्याप्त है, वह भी तब जब अभिकथन यह है कि उक्त इंजेक्शन फर्जी/नकली थे – यह एक ऐसा कठोर एवं घिनौना तथ्य है जो निरोध कानून को लागू करना अनिवार्य बनाता है – विनिश्चय करने की प्रक्रिया में कोई दोष नहीं – याचिका खारिज। (सरबजीत सिंह मोखा वि. द डिस्ट्रिक्ट मजिस्ट्रेट, जबलपुर) **(DB)…2272**

***National Security Act (65 of 1980), Section 3(2) – Detention Order – Principles* – Discussed and enumerated. [Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur] (DB)…2272**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निरोध आदेश – सिद्धांत – विवेचित एवं प्रगणित। (सरबजीत सिंह मोखा वि. द डिस्ट्रिक्ट मजिस्ट्रेट, जबलपुर) **(DB)…2272**

***National Security Act (65 of 1980), Section 3(2) – Detention Order – Statements u/S 161 Cr.P.C.* – Held – Impugned detention order cannot be said to be irrational or illegal because statement of witnesses recorded during investigation were relied upon – There definitely exists some probative material sufficient for passing detention order – Statement recorded u/S 161 Cr.P.C. can become basis for passing detention order. [Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur] (DB)…2272**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निरोध आदेश – दं.प्र.सं. की धारा 161 के अंतर्गत कथन – अभिनिर्धारित – आक्षेपित निरोध आदेश को अतार्किक या अवैध नहीं कहा जा सकता क्योंकि अन्वेषण के दौरान अभिलिखित किये गये साक्षीगण के कथन पर विश्वास किया गया था – निरोध आदेश पारित करने के लिए पर्याप्त, कुछ प्रमाणक सामग्री निश्चित रूप से विद्यमान है – दं.प्र.सं. की धारा 161 के अंतर्गत अभिलिखित कथन निरोध आदेश पारित करने के लिए आधार बन सकते हैं। (सरबजीत सिंह मोखा वि. द डिस्ट्रिक्ट मजिस्ट्रेट, जबलपुर) **(DB)…2272**

***National Security Act (65 of 1980), Section 3(2) – Detenu already in Custody* – Held – It is submitted that offences mentioned in FIR are trivial in nature and are triable by Magistrate – District Magistrate rightly formed opinion that there is likelihood of petitioner's release on bail – Necessary ingredients for detaining a person, who is already arrested are satisfied. [Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur] (DB)…2272**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निरूद्ध व्यक्ति का पहले से ही अभिरक्षा में होना – अभिनिर्धारित – यह निवेदित किया जाता है कि प्रथम सूचना

प्रतिवेदन में उल्लिखित अपराध तुच्छ प्रकृति के हैं एवं मजिस्ट्रेट द्वारा विचारणीय हैं – जिला मजिस्ट्रेट ने उचित रूप से राय बनाई कि याची को जमानत पर छोड़े जाने की संभावना है – पहले से ही गिरफ्तार व्यक्ति को निरूद्ध करने के लिए आवश्यक घटक संतुष्ट हैं। (सरबजीत सिंह मोखा वि. द डिस्ट्रिक्ट मजिस्ट्रेट, जबलपुर) **(DB)…2272**

***National Security Act (65 of 1980), Section 3(2) – Explanation – Blackmarketing of Essential Drug* – Held – The "explanation" appended to Section 3(2) will not exclude the operation of NSA in a case of this nature where public order is breached, threatened and put to jeopardy – The "explanation" in instant case has a limited impact on main provision of Section 3(2) – It does not dilute or take away the right of detaining authority under NSA regarding eventualities relating to maintenance of public order or security of State. [Sonu Bairwa Vs. State of M.P.] (DB)…1832**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – स्पष्टीकरण – आवश्यक औषधि की चोरबाजारी – अधिनिर्धारित – धारा 3(2) से संलग्न ''स्पष्टीकरण'' ऐसे स्वरूप के प्रकरण में राज्य सुरक्षा अधिनियम का प्रवर्तन अपवर्जित नहीं करेगा जहां लोक व्यवस्था का भंग हो, खतरा हो एवं उसे संकट में डाला गया हो – वर्तमान प्रकरण में ''स्पष्टीकरण'' का धारा 3(2) के मुख्य उपबंध पर सीमित प्रभाव है – यह लोक व्यवस्था अथवा राज्य की सुरक्षा बनाये रखने से संबंधित घटनाओं के संबंध में राष्ट्रीय सुरक्षा अधिनियम के अंतर्गत निरोध प्राधिकारी के अधिकार को कम या समाप्त नहीं करता। (सोनू बैरवा वि. म.प्र. राज्य) **(DB)…1832**

***National Security Act (65 of 1980), Section 3(2) – Public Order* – Held – Allegation against petitioner is relating to blackmarketing and using fake injections in hospital, which certainly falls within ambit and scope of "public order". [Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur] (DB)…2272**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – लोक व्यवस्था – अभिनिर्धारित – याची के विरूद्ध अभिकथन चोरबाजारी एवं अस्पताल में नकली इंजेक्शनों का उपयोग करने से संबंधित है, जो निश्चित रूप से ''लोक व्यवस्था'' की परिधि एवं व्याप्ति के भीतर आता है। (सरबजीत सिंह मोखा वि. द डिस्ट्रिक्ट मजिस्ट्रेट, जबलपुर) **(DB)…2272**

***National Security Act (65 of 1980), Section 3(2) – See – Constitution – Article 226* [Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur] (DB)…2272**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – देखें – संविधान – अनुच्छेद 226 (सरबजीत सिंह मोखा वि. द डिस्ट्रिक्ट मजिस्ट्रेट, जबलपुर) **(DB)…2272**

***National Security Act (65 of 1980), Section 3(2) and Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (7 of 1980) – Contingencies – Explanation – Scope* – Held – Section 3(2) with**

explanation shows that sub-Section (2) is wide enough and deals with 3 contingencies when a citizen can be detained (i) for preventing him from acting in any manner prejudicial to security of State (ii) for preventing him from acting in any manner prejudicial to maintenance of public order (iii) for preventing him from acting in any manner prejudicial to maintenance of supplies and services essential to community – "Explanation" of Section 3(2) is limited to and takes only contingency (iii) beyond the purview of NSA if it is covered by Blackmarketing Act. [Sonu Bairwa Vs. State of M.P.](DB)…1832

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) एवं चोरबाजारी निवारण और आवश्यक वस्तु प्रदाय अधिनियम (1980 का 7) – आकस्मिकता – स्पष्टीकरण – व्याप्ति – अभिनिर्धारित – धारा 3(2) स्पष्टीकरण के साथ यह दर्शाती है कि उप–धारा (2) पर्याप्त व्यापक है एवं तीन आकस्मिकताओं से संबंधित है जब एक नागरिक को (i) राज्य की सुरक्षा पर प्रतिकूल प्रभाव डालने हेतु किसी भी तरीके के कार्य करने से उसे निवारित करने के लिए (ii) लोक व्यवस्था बनाये रखने में प्रतिकूल प्रभाव डालने हेतु किसी भी तरीके से कार्य को करने से उसे निवारित करने के लिए (iii) समाज के लिए आवश्यक सेवा और पूर्ति बनाये रखने में प्रतिकूल प्रभाव डालने हेतु किसी भी तरीके से कार्य करने से उसे निवारित करने के लिए, निरूद्ध किया जा सकता है – धारा 3(2) का ''स्पष्टीकरण'' सीमित है एवं केवल आकस्मिकता (iii) को राज्य सुरक्षा अधिनियम की परिधि से परे लेता है यदि वह चोरबाजारी अधिनियम द्वारा आच्छादित है। (सोनू बैरवा वि. म.प्र. राज्य) **(DB)…1832**

***National Security Act (65 of 1980), Section 3(2) & 3(3) – Communication of Detention Order* – Held – Detention order was communicated to uncle of petitioner – No prejudice caused to petitioner, indeed he filed the present petition and had taken legal recourse with quite promptitude – In absence of showing any prejudice, no interference warranted. [Sonu Bairwa Vs. State of M.P.] (DB)…1832**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) व 3(3) – निरोध आदेश की संसूचना – अभिनिर्धारित – निरोध आदेश याची के चाचा को संसूचित किया गया था – याची को कोई प्रतिकूल प्रभाव कारित नहीं हुआ, वास्तव में उसने वर्तमान याचिका प्रस्तुत की एवं अत्यंत तत्परता से विधिक आश्रय लिया था – कोई प्रतिकूल प्रभाव दर्शाने के अभाव में, किसी हस्तक्षेप की आवश्यकता नहीं। (सोनू बैरवा वि. म.प्र. राज्य) **(DB)…1832**

***National Security Act (65 of 1980), Section 3(2) & 3(3) – Detention Orders – Blackmarketing of Essential Drug* – Held – Blackmarketing of drug like remedisivir in days of extreme crises is certainly an ugly act and fact which can very well be a reason for District Magistrate to invoke Section 3 of the Act against petitioner – Blackmarketing of remedisivir has direct impact and creates a threat to "public order" – If "public order" is breached or threatened, NSA can be invoked – Petitioner failed to show any flaw in decision making process adopted by District Magistrate – Petition dismissed. [Sonu Bairwa Vs. State of M.P.] (DB)…1832**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) व 3(3) – निरोध आदेश – आवश्यक औषधि की चोरबाजारी – अभिनिर्धारित – अत्याधिक संकट के दिनों में रेमडेसिविर जैसी औषधि की चोरबाजारी निश्चित रूप से एक बुरा कृत्य एवं तथ्य है जो कि जिला मजिस्ट्रेट के लिए याची के विरूद्ध अधिनियम की धारा 3 का अवलंब लेने का भली–भांति एक कारण हो सकता है – रेमडेसिविर की चोरबाजारी का प्रत्यक्ष प्रभाव है और ''लोक व्यवस्था'' के लिए खतरा उत्पन्न करती है – यदि ''लोक व्यवस्था'' भंग हो या उसे खतरा हो, तो राष्ट्रीय सुरक्षा अधिनियम का अवलंब लिया जा सकता है – याची, जिला मजिस्ट्रेट द्वारा अपनाई गई विनिश्चय की प्रक्रिया में कोई दोष दर्शाने में विफल रहा – याचिका खारिज। (सोनू बैरवा वि. म.प्र. राज्य) **(DB)…1832**

***National Security Act (65 of 1980), Section 3(2) & 3(3) – Scope & Jurisdiction – Detenu already in Custody* – Held – Person who is already in custody can still be detained under NSA if (i) detaining authority had knowledge about detenu's custody, (ii) there exists real possibility of detenu's release on bail and (iii) necessity of preventing him from indulging in activities prejudicial to the security of State or maintenance of public order upon his release on bail – All ingredients/parameters were satisfied in present case – No interference required. [Sonu Bairwa Vs. State of M.P.] (DB)…1832**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) व 3(3) – व्याप्ति व अधिकारिता – निरूद्ध व्यक्ति पहले से ही अभिरक्षा में है – अभिनिर्धारित – व्यक्ति जो पहले से ही अभिरक्षा में है, उसे फिर भी राष्ट्रीय सुरक्षा अधिनियम के अंतर्गत निरोध किया जा सकता है यदि (i) निरोध प्राधिकारी को निरूद्ध व्यक्ति की अभिरक्षा के बारे में जानकारी थी, (ii) निरूद्ध व्यक्ति को जमानत पर छोड़े जाने की वास्तविक संभावना विद्यमान है एवं (iii) उसके जमानत पर छूटने पर उसे राज्य की सुरक्षा या लोक व्यवस्था कायम रखने में प्रतिकूल प्रभाव डालने वाली गतिविधियों में शामिल होने से रोकने की आवश्यकता है – वर्तमान प्रकरण में सभी घटक/मापदण्ड संतुष्ट थे – किसी हस्तक्षेप की आवश्यकता नहीं। (सोनू बैरवा वि. म.प्र. राज्य) **(DB)…1832**

***National Security Act (65 of 1980), Section 3(2) & 3(3) – Social Media Post & "Acting under Dictate"* – Held – Unless a clear nexus is established between the social media post and detention order, it cannot be said that District Magistrate has acted under dictate – Social media post cannot be equated with administrative order/instructions – It is not necessary that every social media post of a government functionary is seen/read out and followed in administrative hierarchy. [Sonu Bairwa Vs. State of M.P.] (DB)…1832**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) व 3(3) – सोशल मीडिया पोस्ट व ''दबाव में आकर कार्य करना'' – अभिनिर्धारित – जब तक कि सोशल मीडिया पोस्ट एवं निरोध आदेश के मध्य एक स्पष्ट संबंध स्थापित न हो, यह नहीं कहा जा सकता कि जिला मजिस्ट्रेट ने दबाव में आकर कार्य किया है – सोशल मीडिया पोस्ट की बराबरी

प्रशासनिक आदेश/निर्देशों से नहीं की जा सकती है – यह आवश्यक नहीं है कि एक सरकारी पदाधिकारी की प्रत्येक सोशल मीडिया पोस्ट को प्रशासनिक उत्क्रम में देखा/पढ़ा जाए एवं उसका अनुसरण किया जाए। (सोनू बैरवा वि. म.प्र. राज्य)
(DB)…1832

***National Security Act (65 of 1980), Section 3(2) & 5A – Detention Order – Doctrine of Severability* – Held – If order to the extent it refers to incident of 2004 is treated as invalid, after excision of this invalid part, remaining part is found to be self-contained, it can be a reason to uphold invocation of power u/S 3(2) of Act – Two parts of order are severable – The invalid part will not eclipse the entire order of detention. [Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur] (DB)…2272**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) व 5A – निरोध आदेश – पृथक्करणीयता का सिद्धांत – अभिनिर्धारित – यदि आदेश, जहां तक यह 2004 की घटना को निर्दिष्ट करता है, अविधिमान्य माना जाता है, इस अविधिमान्य भाग की काट–छांट के पश्चात्, शेष भाग स्वतः पूर्ण पाया जाता है, यह अधिनियम की धारा 3(2) के अंतर्गत शक्ति के अवलंब लेने को मान्य ठहराने का एक कारण हो सकता है – आदेश के दोनों भाग पृथक्करणीय हैं – अविधिमान्य भाग निरोध के संपूर्ण आदेश का ग्रसन नहीं करेगा। (सरबजीत सिंह मोखा वि. द डिस्ट्रिक्ट मजिस्ट्रेट, जबलपुर) **(DB)…2272**

***National Security Act (65 of 1980), Section 3(3) – Doctrine of Severability* – Held – Para 4 of detention order, even if it is erroneous and is deleted or treated as invalid, contents of rest of the order will be sufficient to uphold the invocation of power u/S 3(2) of the Act – The invalid para 4 will not eclipse the entire order. [Kamleshwar Dixit Vs. State of M.P.] (DB)…2035**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(3) – पृथक्करणीयता का सिद्धांत – अभिनिर्धारित – निरोध आदेश का चतुर्थ पैरा, भले ही यह त्रुटिपूर्ण हो एवं हटा दिया गया हो या अवैध माना गया हो, शेष आदेश की अंतर्वस्तु अधिनियम की धारा 3(2) के अंतर्गत शक्ति का अवलंबन कायम रखने के लिए पर्याप्त होगा – अवैध चतुर्थ पैरा संपूर्ण आदेश को प्रभावहीन नहीं करेगा। (कमलेश्वर दीक्षित वि. म.प्र. राज्य) **(DB)…2035**

***National Security Act (65 of 1980), Section 3(3) and Constitution – Article 22 – Covid-19 Pandemic – Blackmarketing of Essential Drug* – Held – In the days of extreme crises, a single act of blackmarketing of essential drug like Remedesivir is sufficient to detain a person under NSA – Whether a detenu is a social worker or an advocate is insignificant if his conduct is a threat to "public order" – Petitioner failed to establish any flaw in decision making process – Petition dismissed. [Kamleshwar Dixit Vs. State of M.P.]
(DB)…2035**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(3) एवं संविधान – अनुच्छेद 22 – कोविड–19 महामारी – आवश्यक औषधि की कालाबाजारी – अभिनिर्धारित – अत्यंत

संकट के दिनों में, रेमडेसिविर जैसी आवश्यक औषधि की कालाबाजारी का एक एकल कृत्य किसी व्यक्ति को राष्ट्रीय सुरक्षा अधिनियम के अंतर्गत निरूद्ध करने हेतु पर्याप्त है –एक निरूद्ध व्यक्ति चाहे सामाजिक कार्यकर्ता या अधिवक्ता हो, यह महत्वहीन है यदि उसका आचरण ''लोक व्यवस्था'' के लिए खतरा है – याची विनिश्चिय करने की प्रक्रिया में कोई दोष स्थापित करने में विफल रहा – याचिका खारिज। (कमलेश्वर दीक्षित वि. म.प्र. राज्य) (DB)…2035

***Penal Code (45 of 1860), Section 148 & 302/149 – Appreciation of Evidence* – Held – Ocular evidence is corroborated by medical evidence – Evidence of eye witness is found to be trustworthy and natural – No grave or sudden provocation from victims – Prompt registration of *dehati nalishi* and FIR – Prosecution proved its case beyond reasonable doubt – Appeals dismissed. [Narbad Ahirwar Vs. State of M.P.] (DB)…2339**

दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – साक्ष्य का मूल्यांकन – अभिनिर्धारित – चाक्षुष साक्ष्य की चिकित्सीय साक्ष्य द्वारा संपुष्टि – चक्षुदर्शी साक्षी का साक्ष्य भरोसेमंद एवं स्वाभाविक पाया गया – पीड़ितों द्वारा कोई गंभीर और अचानक प्रकोपन नहीं – देहाती नालिशी एवं प्रथम सूचना प्रतिवेदन का तत्परता से रजिस्ट्रीकरण – अभियोजन ने अपना प्रकरण युक्तियुक्त संदेह से परे साबित किया – अपीलें खारिज। (नरबद अहिरवार वि. म.प्र. राज्य) **(DB)…2339**

***Penal Code (45 of 1860), Section 148 & 302/149 – Defective Investigation – Effect* – Held – Apex Court concluded that defective investigation by itself cannot be a ground for disbelieving eye witnesses and acquitting the accused if their testimony is found trustworthy – Mere on the ground that there is some defect in investigation, does not create doubt over statements of eye witnesses. [Narbad Ahirwar Vs. State of M.P.] (DB)…2339**

दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – त्रुटिपूर्ण अन्वेषण – प्रभाव – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि त्रुटिपूर्ण अन्वेषण चक्षुदर्शी साक्षीगण पर अविश्वास करने एवं यदि उनका परिसाक्ष्य विश्वसनीय पाया जाता है तो अभियुक्त को दोषमुक्त करने के लिए अपने आप में एक आधार नहीं हो सकता – मात्र इस आधार पर कि अन्वेषण में कुछ त्रुटि है, चक्षुदर्शी साक्षीगण के कथनों पर संदेह उत्पन्न नहीं करता। (नरबद अहिरवार वि. म.प्र. राज्य) **(DB)…2339**

***Penal Code (45 of 1860), Section 148 & 302/149 – Eye Witnesses – Credibility* – Held – Eye witnesses in the case were natural and probable, their presence at the place of occurrence is expected being close relatives. [Narbad Ahirwar Vs. State of M.P.] (DB)…2339**

दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – चक्षुदर्शी साक्षीगण – विश्वसनीयता – अभिनिर्धारित – प्रकरण में चक्षुदर्शी साक्षीगण स्वाभाविक और अधिसंभाव्य थे, करीबी रिश्तेदार होने के नाते घटनास्थल पर उनकी उपस्थिति अपेक्षित है। (नरबद अहिरवार वि. म.प्र. राज्य) **(DB)…2339**

***Penal Code (45 of 1860), Section 148 & 302/149 – Interested/Related Witness* – Held – Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person – Interestedness of witness has to be considered and not just that he is interested. [Narbad Ahirwar Vs. State of M.P.] (DB)…2339**

दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – हितबद्ध/संबंधित साक्षी – अभिनिर्धारित – साधारणतया, वास्तविक अपराधी को बचाने एवं एक निर्दोष व्यक्ति को मिथ्या आलिप्त करने के लिए करीबी रिश्तेदार अंतिम होगा – साक्षी की हितबद्धता पर विचार किया जाना चाहिए एवं न कि केवल वह हितबद्ध है। (नरबद अहिरवार वि. म.प्र. राज्य) **(DB)…2339**

***Penal Code (45 of 1860), Section 148 & 302/149 – Motive* – Held – Case is based on ocular evidence and issue of motive becomes irrelevant when there is direct evidence of trustworthy witnesses regarding commission of crime – If motive is not established, it does not mean that evidence of eye witnesses will be untrustworthy. [Narbad Ahirwar Vs. State of M.P.] (DB)…2339**

दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – हेतु – अभिनिर्धारित – प्रकरण चाक्षुष साक्ष्य पर आधारित है एवं हेतु का विवाद्यक असंगत बन जाता है जब अपराध कारित किये जाने के संबंध में विश्वसनीय साक्षीगण का प्रत्यक्ष साक्ष्य है – यदि हेतु स्थापित नहीं हुआ है, तो इसका यह अर्थ नहीं है कि चक्षुदर्शी साक्षीगण का साक्ष्य अविश्वसनीय होगा। (नरबद अहिरवार वि. म.प्र. राज्य) **(DB)…2339**

***Penal Code (45 of 1860), Section 148 & 302/149 – Omissions & Contradictions* – Held – Where a crowd of assailants who are member of unlawful assembly proceed to commit an offence with common object, it is not possible for witnesses to describe accurately the part played by each assailants or to remember each and every blow delivered to the victim – Eye witnesses are rustic villagers, some omissions and contradictions are normal considering the lapse of time and their state of trauma and shock. [Narbad Ahirwar Vs. State of M.P.] (DB)…2339**

दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – लोप व विरोधाभास – अभिनिर्धारित – जहां हमलावर जो कि विधिविरूद्ध जमाव के सदस्य हैं का एक जनसमूह सामान्य उद्देश्य के साथ अपराध कारित करने के लिए अग्रसर होता है, साक्षीगण के लिए प्रत्येक हमलावर के द्वारा निभाई गई भूमिका का यथार्थतः से वर्णन करना अथवा पीड़ित पर किये गये प्रत्येक प्रहार को याद रखना संभव नहीं है – चक्षुदर्शी साक्षीगण देहाती ग्रामीण हैं, समय के बीतने एवं उनके आघात और सदमें की स्थिति को ध्यान में रखते हुए कुछ लोप एवं विरोधाभास सामान्य हैं। (नरबद अहिरवार वि. म.प्र. राज्य) **(DB)…2339**

***Penal Code (45 of 1860), Sections 299, 300, 302 & 304 Part I – Culpable Homicide & Murder* – Held – It is often difficult to distinguish between**

culpable homicide and murder as both involve death, yet there is subtle distinction of intention and knowledge involved in both the crimes – This difference lies in the degree of act – There is very wide variance of degree of intention and knowledge among both the crimes. [Mohd. Rafiq @ Kallu Vs. State of M.P.] (SC)…1991

दण्ड संहिता (1860 का 45), धाराएँ 299, 300, 302 व 304 भाग I – आपराधिक मानव वध व हत्या – अभिनिर्धारित – आपराधिक मानव वध और हत्या के मध्य अंतर करना प्रायः कठिन होता है क्योंकि दोनों में मृत्यु अंतर्ग्रस्त है, फिर भी दोनों अपराधों में अंतर्ग्रस्त आशय एवं ज्ञान में सूक्ष्म अंतर है – यह अंतर कृत्य के परिमाण में निहित है – दोनों अपराधों के मध्य आशय और ज्ञान के परिमाण में बहुत व्यापक फेरफार है। (मोहम्मद रफीक उर्फ कल्लू वि. म.प्र. राज्य) **(SC)…1991**

***Penal Code (45 of 1860), Sections 299, 300, 302 & 304 Part I – Culpable Homicide Not Amounting to Murder – Intention & Knowledge* – Held – No previous quarrel with deceased, thus there was lack of *animus* – No motive or pre-meditation proved – Act of throwing off the deceased from truck and driving on without pausing appears to have been in the heat of passion or rage – It is not proved that appellant with deliberate intention drove over the deceased and he knew that deceased would have fallen inside, so that truck's rear tyre would have gone over him – Conviction u/S 302 altered to one u/S 304 Part I, IPC– Appeal allowed accordingly. [Mohd. Rafiq @ Kallu Vs. State of M.P.] (SC)…1991**

दण्ड संहिता (1860 का 45), धाराएँ 299, 300, 302 व 304 भाग I – हत्या की कोटि में न आने वाला आपराधिक मानव वध – आशय व ज्ञान – अभिनिर्धारित – मृतक के साथ कोई पूर्व झगड़ा नहीं, इस प्रकार आशय की कमी थी – कोई हेतु अथवा पूर्वचिंतन साबित नहीं हुआ – मृतक को ट्रक से फेंकना और बिना रूके गाड़ी चलाने का कृत्य आवेश की तीव्रता अथवा रोष में किया गया प्रतीत होता है – यह साबित नहीं हुआ कि अपीलार्थी ने सोचे–समझे आशय के साथ मृतक के ऊपर से गाड़ी चला दी एवं उसे यह ज्ञात था कि मृतक भीतरी भाग में गिरा होगा ताकि ट्रक का पिछला टायर उसके ऊपर से निकल जाए – भा.दं.सं. की धारा 302 के अंतर्गत दोषसिद्धि, धारा 304 भाग I में संपरिवर्तित की गई – तद्नुसार अपील मंजूर। (मोहम्मद रफीक उर्फ कल्लू वि. म.प्र. राज्य) **(SC)…1991**

***Penal Code (45 of 1860), Section 302 – See – Criminal Procedure Code, 1973, Section 438* [Prashant Singh Rajput Vs. State of M.P.] (SC)…2000**

दण्ड संहिता (1860 का 45), धारा 302 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 438 (प्रशांत सिंह राजपूत वि. म.प्र. राज्य) **(SC)…2000**

***Penal Code (45 of 1860), Section 302 and Arms Act (54 of 1959), Section 25 & 27 – Appreciation of Evidence* – Held – PW-1 (son of deceased), the eye witness, has been consistent on material particulars relating to manner in which murder was committed – FIR registered within 1/2 an hour of incident**

– No major contradictions brought out by defence in cross-examination – Prosecution proved its case beyond reasonable doubt – Appeal dismissed. [Lalu Sindhi @ Dayaldas Vs. State of M.P.] (DB)…1932

दण्ड संहिता (1860 का 45), धारा 302 एवं आयुध अधिनियम (1959 का 54), धारा 25 व 27 – साक्ष्य का मूल्यांकन – अभिनिर्धारित – अ.सा. 1 (मृतक का पुत्र) चक्षुदर्शी साक्षी, जिस तरीके से हत्या कारित की गई थी, से संबंधित तात्विक विशिष्टियों पर दृढ़ रहा है – प्रथम सूचना प्रतिवेदन घटना के 1/2 घंटे के भीतर पंजीबद्ध किया गया – प्रति परीक्षण में बचाव पक्ष द्वारा कोई प्रमुख विरोधाभास बाहर नहीं लाये गये – अभियोजन ने उसका प्रकरण, युक्तियुक्त संदेह से परे साबित किया – अपील खारिज। (लालू सिंधी उर्फ दयालदास वि. म.प्र. राज्य) **(DB)…1932**

***Penal Code (45 of 1860), Section 302 and Arms Act (54 of 1959), Section 25 & 27 – Appreciation of Evidence* – Held – Reason given by trial Court while acquitting co-accused persons that accompanying the appellant to scene of crime and going away from there together, does not show common intention – No evidence by prosecution that there was prior meeting of minds between appellant and co-accused persons – Co-accused persons rightly acquitted – Appeal by State is dismissed. [Lalu Sindhi @ Dayaldas Vs. State of M.P.] (DB)…1932**

दण्ड संहिता (1860 का 45), धारा 302 एवं आयुध अधिनियम (1959 का 54), धारा 25 व 27 – साक्ष्य का मूल्यांकन – अभिनिर्धारित – विचारण न्यायालय द्वारा सह–अभियुक्तगण को दोषमुक्त किये जाते समय दिया गया कारण कि अपराध स्थल पर अपीलार्थी के साथ जाना और एक साथ वहां से चले जाना, सामान्य आशय नहीं दर्शाता – अभियोजन द्वारा कोई साक्ष्य नहीं कि अपीलार्थी और सह–अभियुक्तगण के बीच मस्तिष्कों का पूर्व मिलन था – सह–अभियुक्तगण उचित रूप से दोषमुक्त – राज्य द्वारा अपील खारिज। (लालू सिंधी उर्फ दयालदास वि. म.प्र. राज्य) **(DB)…1932**

***Penal Code (45 of 1860), Section 302 and Arms Act (54 of 1959), Section 25 & 27 – Firearms & Wounds* – Held – The "Trident" shaped entry wound though improbable of being caused by a 315 bore bore bullet, when seen in conjunction with the blackening and tattooing around the trident shaped wound and recovery of bullet lodged in the brain of deceased and absence of any other entry wound on nape of victim, established as "True". [Lalu Sindhi @ Dayaldas Vs. State of M.P.] (DB)…1932**

दण्ड संहिता (1860 का 45), धारा 302 एवं आयुध अधिनियम (1959 का 54), धारा 25 व 27 – अग्नयायुध व घाव – अभिनिर्धारित – एक 315 बोर गोली से ''त्रिशूल'' के आकार का प्रविष्टि घाव कारित होना यद्यपि असंभाव्य है, त्रिशूल के आकार के घाव के आस–पास कालापन एवं गुदने के साथ संयोजन में देखे जाने पर और मृतक के मस्तिष्क में धंसी गोली की बरामदगी एवं पीड़ित की गर्दन पर किसी अन्य प्रविष्टि घाव की अनुपस्थिति में, ''सत्य'' के रूप में स्थापित हुआ है। (लालू सिंधी उर्फ दयालदास वि. म.प्र. राज्य) **(DB)…1932**

***Penal Code (45 of 1860), Section 302 and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Corroboration* – Held – There is a dying declaration against appellant but at same time statement/Story of appellant was also corroborated by two prosecution witnesses who does not appear to be planted/chanced witnesses – Appellant sustained 35% burn injuries showing his part to save the deceased – In this particular case, dying declaration requires corroboration which is lacking – Prosecution failed to prove beyond reasonable doubt that appellant doused his wife in kerosene oil and had set her ablaze – Conviction and sentence set aside – Appeal allowed. [Devkaran Vs. State of M.P.] (DB)…1920**

दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 – मृत्युकालिक कथन – संपुष्टि – अभिनिर्धारित – अपीलार्थी के विरूद्ध मृत्युकालिक कथन है परंतु साथ ही अपीलार्थी का कथन/कथानक भी दो अभियोजन साक्षियों द्वारा संपुष्ट था जो गढ़ंत/संयोगी साक्षी प्रतीत नहीं होते – अपीलार्थी ने 35% जलने की क्षतियां सहन की जो उसकी ओर से मृतिका को बचाने का प्रकट कृत्य दर्शाता है – इस विशिष्ट प्रकरण में, मृत्युकालिक कथन की संपुष्टि अपेक्षित है, जिसका कि अभाव है – अभियोजन, युक्तियुक्त संदेह से परे साबित करने में असफल रहा कि अपीलार्थी ने उसकी पत्नी पर केरोसीन तेल उड़ेला और उसे आग लगा दी थी – दोषसिद्धि एवं दण्डादेश अपास्त – अपील मंजूर। (देवकरण वि. म.प्र. राज्य) **(DB)…1920**

***Penal Code (45 of 1860), Section 302, Evidence Act (1 of 1872), Section 32 and Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 162 – Dying Declaration of Person who Survived the Injuries – Admissibility* – Held – Statement of appellant (husband) cannot be considered as dying declaration because he survived the injuries, however statement given to Naib Tehsildar and not to police, do not suffer from restrictions u/S 162 Cr.P.C. because these are not statements made to police u/S 161 Cr.P.C., thus such statements are admissible – Apex Court concluded that such statement can be used for corroborating or contradicting the testimony of such witness. [Devkaran Vs. State of M.P.] (DB)…1920**

दण्ड संहिता (1860 का 45), धारा 302, साक्ष्य अधिनियम (1872 का 1), धारा 32 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 161 व 162 – उस व्यक्ति का मृत्युकालिक कथन जो क्षतियों के बाद जीवित रहा है – ग्राह्यता – अभिनिर्धारित – अपीलार्थी (पति) के कथन को मृत्युकालिक कथन के रूप में विचार में नहीं लिया जा सकता क्योंकि वह क्षतियों के बाद जीवित रहा है, तथापि, कथन, नायब तहसीलदार को दिया गया और न कि पुलिस को, दं.प्र.सं. की धारा 162 के अंतर्गत निर्बंधनों से ग्रसित नहीं क्योंकि यह, पुलिस को धारा 161 दं.प्र.सं. के अंतर्गत दिये गये कथन नहीं है, अतः, उक्त कथन ग्राह्य हैं – सर्वोच्च न्यायालय ने निष्कर्षित किया कि उक्त कथन को ऐसे साक्षी के परिसाक्ष्य की संपुष्टि या खंडन करने हेतु उपयोग किया जा सकता है। (देवकरण वि. म.प्र. राज्य) **(DB)…1920**

***Penal Code (45 of 1860), Section 302 & 201 – Circumstantial Evidence – Last Seen Theory, Seized Weapons & Motive of Crime* – Held – Last seen theory not proved – No blood found on seized weapons allegedly used for murder – No cogent evidence to prove the motive of offence – When prosecution is based on circumstantial evidence, motive behind crime becomes important – Prosecution failed to prove each of the links in the chain of circumstances or that the proved circumstances point unmistakably to the guilt of accused – Conviction and sentence set aside – Appeal allowed. [Amar Singh Vs. State of M.P.] (DB)…2212**

दण्ड संहिता (1860 का 45), धारा 302 व 201 – परिस्थितिजन्य साक्ष्य – अंतिम बार देखे जाने का सिद्धांत, जब्तशुदा शस्त्र व अपराध का हेतु – अभिनिर्धारित – अंतिम बार देखे जाने का सिद्धांत साबित नहीं – हत्या के लिए अभिकथित रूप से प्रयुक्त जब्तशुदा शस्त्रों पर रक्त नहीं पाया गया – अपराध का हेतु सिद्ध करने के लिए कोई प्रबल साक्ष्य नहीं – जब अभियोजन परिस्थितिजन्य साक्ष्य पर आधारित हो, अपराध के पीछे का हेतु महत्वपूर्ण बन जाता है – अभियोजन, परिस्थितियों की श्रृंखला की प्रत्येक कड़ी या यह कि सिद्ध परिस्थितियां अभियुक्त की दोषिता को सुस्पष्ट रूप से इंगित करती हैं, को सिद्ध करने में असफल रहा – दोषसिद्धि एवं दण्डादेश अपास्त – अपील मंजूर। (अमर सिंह वि. म.प्र. राज्य) **(DB)…2212**

***Penal Code (45 of 1860), Section 302 & 201 – Circumstantial Evidence – Scope* – Held – There must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of accused and it must be such as to show that within all human probability the act must have been done by accused – All links in the chain of circumstances must be complete and should be proved through cogent evidence. [Amar Singh Vs. State of M.P.] (DB)…2212**

दण्ड संहिता (1860 का 45), धारा 302 व 201 – परिस्थितिजन्य साक्ष्य – व्याप्ति – अभिनिर्धारित – साक्ष्य की श्रृंखला इस तरह पूर्ण होनी चाहिए जो कि अभियुक्त की निर्दोषिता के साथ संगत किसी निष्कर्ष हेतु कोई युक्तियुक्त आधार नहीं छोड़ती और उसे ऐसा होना चाहिए जिससे यह दर्शित हो कि सभी मानवीय संभाव्यताओं के भीतर वह कृत्य, अभियुक्त द्वारा ही किया गया है – परिस्थितियों की श्रृंखला की सभी कड़ियां पूर्ण होनी चाहिए और तर्कपूर्ण साक्ष्य के जरिए सिद्ध होनी चाहिए। (अमर सिंह वि. म.प्र. राज्य) **(DB)…2212**

***Penal Code (45 of 1860), Sections 302, 366, 376-A & 201 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5(L) & 6 – Circumstantial Evidence – Ocular & Medical Evidence – DNA Report* – Held – In postmortem report, signs of forceful vaginal penetration were found – DNA profile of accused found in clothes, vaginal slide and swab of deceased – Female DNA profile of deceased was found on cloths of accused – Theory of last seen together was established – Prosecution established beyond reasonable doubt that accused committed rape on his 8 years old minor sister**

and killed her – Conviction upheld – Reference disposed. [In Reference (Suo Motu) Vs. Manoj] (DB)…2150

दण्ड संहिता (1860 का 45), धाराएँ 302, 366, 376–A व 201 एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 5(L) व 6 – परिस्थितिजन्य साक्ष्य – चाक्षुष व चिकित्सीय साक्ष्य – डी.एन.ए. रिपोर्ट – अभिनिर्धारित – शव परीक्षण प्रतिवेदन में, बलपूर्वक योनि/वेजाइनल प्रवेशन के संकेत पाये गये थे – मृतिका के कपड़ों, वेजाइनल स्लाइड और स्वैब में अभियुक्त की डी.एन.ए. प्रोफाईल पाई गई – मृतिका का महिला डी.एन.ए. प्रोफाईल अभियुक्त के कपड़ों पर पाया गया था – अंतिम बार साथ देखे जाने का सिद्धांत स्थापित किया गया था – अभियोजन ने युक्तियुक्त संदेह से परे यह स्थापित किया कि अभियुक्त ने अपनी 8 वर्षीय अवयस्क बहिन के साथ बलात्संग कारित किया एवं उसकी हत्या कर दी – दोषसिद्धि कायम – निर्देश निराकृत। (इन रेफ्रेन्स (सू मोटो) वि. मनोज) **(DB)…2150**

***Penal Code (45 of 1860), Sections 302, 366, 376-A & 201 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5(L) & 6 – Delay in Recording Statement – Effect* – Held – Every delay in recording of police statement is not fatal – If a plausible explanation is given for the same, then it would not give any dent to the prosecution story – Unless and until the IO is asked about the delay, the delayed recording of statement by itself would not make the evidence of the witnesses suspicious or unreliable. [In Reference (Suo Motu) Vs. Manoj] (DB)…2150**

दण्ड संहिता (1860 का 45), धाराएँ 302, 366, 376–A व 201 एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 5(L) व 6 – कथन अभिलिखित करने में विलंब – प्रभाव – अभिनिर्धारित – पुलिस कथन को अभिलिखित करने में हुआ प्रत्येक विलंब घातक नहीं है – यदि उक्त के लिए एक स्वीकार्य/सत्याभासी स्पष्टीकरण दिया जाता है, तो यह अभियोजन कहानी को कोई क्षति नहीं पहुंचाएगा – जब तक अन्वेषण अधिकारी से विलंब के बारे में नहीं पूछा जाता है, विलंब से कथन अभिलिखित किया जाना अपने आप में साक्षीगण के साक्ष्य को संदिग्ध या अविश्वसनीय नहीं बनाएगा। (इन रेफ्रेन्स (सू मोटो) वि. मनोज) **(DB)…2150**

***Penal Code (45 of 1860), Sections 302, 366, 376-A & 201 and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5(L) & 6 – Theory of "Last Seen Together" – Burden of Proof* – Held – Deceased was seen for the last time in company of accused and thereafter she was never seen alive – Prosecution succeeded in establishing that there was minimum gap between the time when victim was seen in company of accused for the last time and when death took place and the dead body was recovered – Thus burden shifted to accused to explain as to when he parted away with company of deceased, but the said burden has not been discharged by accused. [In Reference (Suo Motu) Vs. Manoj] (DB)…2150**

दण्ड संहिता (1860 का 45), धाराएँ 302, 366, 376–A व 201 एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 5(L) व 6 – ''अंतिम बार साथ देखे जाने'' का सिद्धांत – सबूत का भार – अभिनिर्धारित – मृतिका को अंतिम बार अभियुक्त के साथ देखा गया था एवं उसके बाद उसे कभी जीवित नहीं देखा गया – अभियोजन यह स्थापित करने में सफल रहा कि उस समय के बीच में न्यूनतम अंतर था जब पीड़िता को अंतिम बार अभियुक्त के साथ देखा गया था और जब उसकी हत्या हुई थी एवं उसका शव बरामद किया गया था – इस प्रकार यह स्पष्ट करने का भार अभियुक्त पर चला जाता है कि कब वह मृतिका के साथ से अलग हुआ, परंतु अभियुक्त द्वारा उक्त भार का उन्मोचन नहीं किया गया। (इन रेफ्रेन्स (सू मोटो) वि. मनोज) **(DB)…2150**

***Penal Code (45 of 1860), Section 346 & 364-A and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13* – Held – Fact of abduction, demand of ransom and identity of accused not established – Serious discrepancy regarding recovery of the abductee – No TIP conducted by Police – Prosecution miserably failed to prove guilt of appellants beyond reasonable doubt – Ample material on record to suggest that appellants were falsely implicated by witnesses with help of I.O. with sole intention to grind their axe – Conviction and sentence set aside – Appeals allowed. [Suresh Vs. State of M.P.] (DB)…2319**

दण्ड संहिता (1860 का 45), धारा 346 व 364–A एवं डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 – अभिनिर्धारित – अपहरण का तथ्य, फिरौती की मांग एवं अभियुक्त की पहचान स्थापित नहीं हुआ – अपहृत की बरामदगी के संबंध में गंभीर विसंगति – पुलिस द्वारा कोई पहचान परेड परीक्षा संचालित नहीं की गई – अभियोजन युक्तियुक्त संदेह से परे अपीलार्थीगण की दोषिता साबित करने में बुरी तरह असफल रहा – यह सुझाने हेतु अभिलेख पर व्यापक सामग्री है कि अपीलार्थीगण साक्षीगण द्वारा अन्वेषण अधिकारी की सहायता से अपना उल्लू सीधा करने के एकमात्र आशय से मिथ्या आलिप्त किये गये थे – दोषसिद्धि एवं दण्डादेश अपास्त – अपीलें मंजूर। (सुरेश वि. म.प्र. राज्य) **(DB)…2319**

***Penal Code (45 of 1860), Section 375 – Penetration* – Held – Mere penetration is sufficient to prove the offence – Expression "penetration" denotes ingress of male organ into the female parts, however slight it may be. [State of M.P. Vs. Mahendra @ Golu] (SC)…2231**

दण्ड संहिता (1860 का 45), धारा 375 – प्रवेशन – अभिनिर्धारित – अपराध साबित करने के लिए मात्र प्रवेशन पर्याप्त है – अभिव्यक्ति ''प्रवेशन'' महिला के अंगों में पुरूष के अंग के प्रवेश का द्योतक है, भले ही वह कितना भी मामूली हो। (म.प्र. राज्य वि. महेन्द्र उर्फ गोलू) **(SC)…2231**

***Penal Code (45 of 1860), Sections 376(2)(f) & 511 – Intention – Preparation & Attempt* – Held – Act of respondent of luring minor girls, taking them inside the room, closing doors and taking them to a room with**

motive of carnal knowledge, was the end of preparation – Following action of stripping them and himself, rubbing his genitals against those of victims was indeed an endeavour to commit sexual intercourse – Acts deliberately done with manifest intention to commit offence and since it exceeds stage of preparation and preceded actual penetration, trial Court rightly held him guilty of attempting to commit rape – Appeal allowed. [State of M.P. Vs. Mahendra @ Golu] (SC)…2231

दण्ड संहिता (1860 का 45), धारा 376(2)(f) व 511 – आशय – तैयारी व प्रयत्न – अभिनिर्धारित – अवयस्क बालिकाओं को फुसलाने, कमरे के अंदर ले जाने, दरवाजे बंद करने एवं संभोग के हेतु से उन्हें एक कमरे में ले जाने का प्रत्यर्थी का कृत्य, तैयारी का अंत था – उन्हें तथा स्वयं को नग्न करने, पीड़ितों के जननांगों से स्वयं के जननांगों को रगड़ने का उत्तरगामी कृत्य, वास्तव में मैथुन करने का एक प्रयास था – कृत्य जानबूझकर अपराध कारित करने के स्पष्ट आशय से किया गया था एवं चूंकि यह तैयारी के प्रक्रम से अधिक है एवं वास्तविक प्रवेशन से पहले है, विचारण न्यायालय ने उचित रूप से उसे बलात्संग कारित करने के प्रयत्न के लिए दोषी ठहराया – अपील मंजूर। (म.प्र. राज्य वि. महेन्द्र उर्फ गोलू) **(SC)…2231**

***Penal Code (45 of 1860), Section 392 & 397 and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13 – Identification & Seizure* – Held – Prosecution established that all 3 accused were identified by complainant – Motor cycle of complainant and broken piece of its number plate was also seized from possession of accused persons – Conviction and sentence affirmed – Appeal dismissed. [Rajesh Vs. State of M.P.] …1910**

दण्ड संहिता (1860 का 45), धारा 392 व 397 एवं डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 – पहचान व जब्ती – अभिनिर्धारित – अभियोजन ने यह स्थापित किया कि परिवादी द्वारा सभी तीन अभियुक्तों की पहचान की गई थी – परिवादी की मोटर साईकिल एवं उसकी नंबर प्लेट का टूटा टुकड़ा भी अभियुक्तगण के कब्जे से जब्त किया गया था – दोषसिद्धि एवं दण्डादेश अभिपुष्ट – अपील खारिज। (राजेश वि. म.प्र. राज्य) **…1910**

***Penal Code (45 of 1860), Section 392 & 397 and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13 – Reduction of Sentence* – Appellants praying for reduction of sentence to period already undergone – Held – Appellants held guilty for offence u/S 397 IPC where minimum sentence is 7 years – No sentence less than minimum sentence can be awarded – Appellants cannot be awarded jail sentence already undergone by them. [Rajesh Vs. State of M.P.] …1910**

दण्ड संहिता (1860 का 45), धारा 392 व 397 एवं डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 – दण्डादेश घटाया जाना – अपीलार्थीगण द्वारा दण्डादेश को पहले भुगत चुकी अवधि तक घटाये जाने हेतु प्रार्थना की जाना – अभिनिर्धारित – अपीलार्थीगण को भा.दं.सं. की धारा 397 के अंतर्गत अपराध के लिए जहाँ

न्यूनतम दण्डादेश 7 वर्ष का है, दोषी ठहराया गया – न्यूनतम दण्डादेश से कम का कोई दण्डादेश प्रदान नहीं किया जा सकता – अपीलार्थीगण को उनके द्वारा पहले से भुगता जा चुका जेल दण्डादेश प्रदान नहीं किया जा सकता। (राजेश वि. म.प्र. राज्य) **...1910**

Penal Code (45 of 1860), Section 409 & 420 – See – Essential Commodities Act, 1955 **[Pankaj Karoriya Vs. State of M.P.] ...2360**

दण्ड संहिता (1860 का 45), धारा 409 व 420 – देखें – आवश्यक वस्तु अधिनियम, 1955 (पंकज करोरिया वि. म.प्र. राज्य) **...2360**

Penal Code (45 of 1860), Section 498-A, Dowry Prohibition Act (28 of 1961), Section 3/4, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Sections 3(1)(z), 3(1)(zc) & 3(1)(s) and Criminal Procedure Code, 1973 (2 of 1974), Section 227 – Discharge – Appreciation of Evidence **– Held – Husband filed divorce suit on 07.05.2019 and wife lodged FIR on 09.01.2020 – From the date of living separately (i.e. 2016) till date of lodging FIR, no complaint filed by wife ever before police or any other authority – Statement of wife reflects that she approached police only because applicant was going to marry another lady – Lodging FIR was an afterthought only to harass applicant and his family members – Applicants discharged – Revision allowed. [Abhishek Pandey @ Ramji Pandey Vs. State of M.P.] ...1960**

दण्ड संहिता (1860 का 45), धारा 498–A, दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3/4, अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धाराएँ 3(1)(z), 3(1)(zc) व 3(1)(s) एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 – उन्मोचन – साक्ष्य का मूल्यांकन – अभिनिर्धारित – पति ने 07.05.2019 को विवाह–विच्छेद वाद प्रस्तुत किया तथा पत्नी ने 09.01.2020 को प्रथम सूचना प्रतिवेदन दर्ज किया – पृथक रूप से रहने की तिथि (अर्थात् 2016) से प्रथम सूचना प्रतिवेदन दर्ज करने की तिथि तक, पत्नी द्वारा पुलिस या किसी अन्य प्राधिकारी के समक्ष कभी भी कोई शिकायत प्रस्तुत नहीं की गई – पत्नी का कथन दर्शाता है कि वह केवल इसलिए पुलिस के पास गयी क्योंकि आवेदक अन्य महिला से विवाह करने वाला था – प्रथम सूचना प्रतिवेदन दर्ज करना, आवेदक एवं उसके परिवार के सदस्यों को उत्पीड़ित करने के लिए केवल एक पश्चात् कल्पना थी – आवेदकगण उन्मोचित किये गये – पुनरीक्षण मंजूर। (अभिषेक पाण्डे उर्फ रामजी पाण्डे वि. म.प्र. राज्य) **...1960**

Penal Code (45 of 1860), Section 511 – Preparation & Attempt – Distinction **– Held – Stage of "preparation" consist of deliberation, devising or arranging the means or measures, necessary for commission of offence whereas an "attempt" starts immediately after completion of preparation – "Attempt" is execution of *mens rea* after preparation – "Attempt" starts where "preparation" comes to an end, though it falls short of actual commission of crime. [State of M.P. Vs. Mahendra @ Golu] (SC)...2231**

दण्ड संहिता (1860 का 45), धारा 511 – तैयारी व प्रयत्न – विभेद – अभिनिर्धारित – ''तैयारी'' के प्रक्रम में विचार–विमर्श, अपराध कारित करने के लिए आवश्यक साधन अथवा उपाय को तैयार करना या व्यवस्था करना शामिल है जबकि तैयारी पूर्ण होने के तत्काल बाद ''प्रयत्न'' आरंभ होता है – ''प्रयत्न'' तैयारी के पश्चात् आपराधिक मनःस्थिति का क्रियान्वयन है – ''प्रयत्न'' वहां से आरंभ होता है जहां ''तैयारी'' खत्म हो जाती है, हालांकि यह वास्तव में अपराध कारित होने से कम है। (म.प्र. राज्य वि. महेन्द्र उर्फ गोलू) **(SC)…2231**

***Penal Code (45 of 1860), Section 511 – Preparation & Attempt* – Held – What constitutes an "attempt" is a mixed question of law and facts – "Attempt" is direct movement towards the commission of crime after preparations are over – It is essential to prove that "attempt" was with an intent to commit offence – Attempt is possible even when accused is unsuccessful in committing principal offence – If attempt to commit crime is accomplished, then crime stands committed for all intents and purposes. [State of M.P. Vs. Mahendra @ Golu] (SC)…2231**

दण्ड संहिता (1860 का 45), धारा 511 – तैयारी व प्रयत्न – अभिनिर्धारित – ''प्रयत्न'' क्या होता है, यह विधि और तथ्यों का एक मिश्रित प्रश्न है – ''प्रयत्न'' तैयारियां पूरी होने के पश्चात् अपराध कारित करने की ओर एक प्रत्यक्ष गतिविधि है – यह साबित करना आवश्यक है कि ''प्रयत्न'' अपराध कारित करने के आशय से किया गया था – प्रयत्न तब भी संभव है जब अभियुक्त मुख्य अपराध कारित करने में असफल रहा हो – यदि अपराध कारित करने का प्रयत्न पूर्ण होता है, तो सभी आशय एवं प्रयोजनों के लिए अपराध कारित होता है। (म.प्र. राज्य वि. महेन्द्र उर्फ गोलू) **(SC)…2231**

***Petroleum Retail Dealership – Letter of Intent (LOI) – Effect* – Held – LOI is only a proposal that respondents are intending to enter into an agreement – Corporation was still having its rights to decline to enter into a contract – Once the contract is not completed, Corporation cannot be directed to complete all formalities – No right has accrued in his favour on basis of issuance of LOI – Petition dismissed. [Brijesh Shrivastava (Smt.) Vs. Hindustan Petroleum Corporation Ltd.] …*13**

पेट्रोलियम की फुटकर वितरकता – आशय–पत्र (LOI) – प्रभाव – अभिनिर्धारित – आशय–पत्र केवल एक प्रस्ताव है कि प्रत्यर्थीगण करार करने का आशय रखते हैं – कॉर्पोरेशन के पास अभी भी संविदा में प्रवेश करने से इंकार करने का अधिकार था – एक बार संविदा के पूर्ण नहीं होने पर, निगम को सभी औपचारिकताओं को पूरा करने के लिए निदेशित नहीं किया जा सकता – आशय–पत्र जारी किये जाने के आधार पर उसके पक्ष में कोई अधिकार प्रोद्भूत नहीं हुआ – याचिका खारिज। (ब्रजेश श्रीवास्तव (श्रीमती) वि. हिन्दुस्तान पेट्रोलियम कारपोरेशन लि.) **…*13**

***Petroleum Retail Dealership – NOC by Collector – Title of Land* – Held – Merely NOC being issued by competent authority i.e. Collector does not amounts to its clearance of title – Apex Court concluded that while granting**

NOC, Collector is not concerned about ownership of land, he is concerned about the location of land and its suitability as a place for storage of petroleum – Petitioner failed to demonstrate clear title of land – No right accrued in favour of petitioner. [Brijesh Shrivastava (Smt.) Vs. Hindustan Petroleum Corporation Ltd.] …*13

पेट्रोलियम की फुटकर वितरकता – कलेक्टर द्वारा अनापत्ति प्रमाण–पत्र – भूमि का हक – अभिनिर्धारित – सक्षम प्राधिकारी अर्थात् कलेक्टर द्वारा मात्र अनापत्ति प्रमाण–पत्र का जारी किया जाना, उसके हक के निर्बंधन की कोटि में नहीं आता – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि अनापत्ति प्रमाण–पत्र प्रदान करते समय, कलेक्टर भूमि के स्वामित्व के बारे में, चिंतित नहीं है, वह भूमि की अवस्थिति एवं पेट्रोलियम के भण्डारण हेतु स्थान के रूप में उसकी उपयुक्तता के बारे में चिंतित है – याची भूमि का स्पष्ट हक प्रदर्शित करने में विफल रहा – याची के पक्ष में कोई अधिकार प्रोद्भूत नहीं होता। (ब्रजेश श्रीवास्तव (श्रीमती) वि. हिन्दुस्तान पेट्रोलियम कारपोरेशन लि.) **…*13**

***Police Regulations, M.P., Regulation 59 – Termination Simpliciter – Enquiry* – Held – Intermittent absence of petitioner for months together persuade the authority to take decision not to continue a dubious employee, thus it is termination simpliciter, especially when read with Regulation 59 of Police Regulations. [State of M.P. Vs. Yogesh Pathak] (DB)…2253**

पुलिस विनियमन, म.प्र., विनियम 59 – साधारणतः समाप्ति – जांच – अभिनिर्धारित – कई महीनों से याची की आंतरायिक अनुपस्थिति प्राधिकारी को एक संदेहात्मक कर्मचारी को बनाए न रखने का विनिश्चय करने के लिए प्रेरित करती है, अतः यह साधारणतः समाप्ति है, विशेषतः जब पुलिस विनियमन के विनियम 59 के साथ पढ़ा जाता है। (म.प्र. राज्य वि. योगेश पाठक) **(DB)…2253**

***Police Regulations, M.P., Regulation 59 – Termination – Suitability* – Held – When a constable did not undergo basic training course and remained absent for almost a year (on different intervals) then his commitment, loyalty as well as discipline, all come under serious doubt and renders him unsuitable. [State of M.P. Vs. Yogesh Pathak] (DB)…2253**

पुलिस विनियमन, म.प्र., विनियम 59 – समाप्ति – उपयुक्तता – अभिनिर्धारित – जब एक कांस्टेबल ने बुनियादी प्रशिक्षण कोर्स नहीं किया एवं लगभग एक वर्ष तक (भिन्न–भिन्न अंतरालों पर) अनुपस्थित रहा, तो उसकी प्रतिबद्धता, निष्ठा, साथ ही साथ अनुशासन, सभी गंभीर संदेह के घेरे में आ जाते हैं एवं उसे अनुपयुक्त बनाते हैं। (म.प्र. राज्य वि. योगेश पाठक) **(DB)…2253**

***Police Regulations, M.P., Regulation 59 and Government Servants (Temporary and Quasi-Permanent Service) Rules, M.P. 1960, Rule 12 – Termination – Unauthorized Leave* – Held – During probation (training) period, petitioner remained absent (on different intervals) for 338 days without any leave application/information – Conduct was not of desired**

standard – Several notices served on petitioner, thus sufficient opportunity was given – No departmental enquiry was required – Such termination order are not stigmatic in nature – Termination order was just and proper – Appeal allowed. [State of M.P. Vs. Yogesh Pathak] (DB)…2253

पुलिस विनियमन, म.प्र., विनियम 59 एवं शासकीय सेवक (अस्थायी एवं स्थायीवत् सेवा) नियम, म.प्र. 1960, नियम 12 – समाप्ति – अनाधिकृत छुट्टी – अभिनिर्धारित – परिवीक्षा (प्रशिक्षण) अवधि के दौरान, याची बिना किसी छुट्टी के आवेदन/सूचना के 338 दिनों तक (भिन्न–भिन्न अंतरालों पर) अनुपस्थित रहा – आचरण वांछित स्तर का नहीं था – याची को अनेक नोटिस तामील किये गये, अतः पर्याप्त अवसर प्रदान किया गया था – किसी विभागीय जांच की आवश्यकता नहीं थी – उक्त समाप्ति आदेश कलंकपूर्ण स्वरूप का नहीं है – समाप्ति का आदेश न्यायसंगत एवं उचित था – अपील मंजूर। (म.प्र. राज्य वि. योगेश पाठक) **(DB)…2253**

***Practice & Procedure – Binding Precedent* – Held – Judgments of Apex Court are not Euclid's theorem, it must be considered in the facts situation of the case and on the basis of statute which governs the field. [M.P. Bus Operator Association Vs. State of M.P.] (DB)…2242**

पद्धति व प्रक्रिया – बाध्यकारी पूर्व निर्णय – अभिनिर्धारित – सर्वोच्च न्यायालय के निर्णय यूक्लिड प्रमेय नहीं हैं, इन पर प्रकरण के तथ्यों की स्थिति एवं कार्यक्षेत्र को शासित करने वाले कानून के आधार पर विचार किया जाना चाहिए। (एम.पी. बस ऑपरेटर एसोसिएशन वि. म.प्र. राज्य) **(DB)…2242**

***Practice and Procedure – Interim Order* – Held – Apex Court concluded that as a consequence of withdrawal of petition after obtaining interim order, the said interim order stands vacated/cancelled – When litigants do not know this legal position, they should be informed by Court of the consequences so that they may take an informed decision about withdrawal or abandoning the petition as not pressed. [Atul Kumar Ben Vs. Union of India] (DB)…1899**

पद्धति एवं प्रक्रिया – अंतरिम आदेश – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि अंतरिम आदेश प्राप्त करने के पश्चात् याचिका वापस लेने के परिणामस्वरूप, उक्त अंतरिम आदेश निष्प्रभावी/ रद्द हो जाता है – जब मुकदमेबाज को इस विधिक स्थिति की जानकारी नहीं होती है, तो उन्हें न्यायालय द्वारा परिणामों के बारे में सूचित किया जाना चाहिए ताकि वे बल न दिये जाने के कारण याचिका को वापस लेने अथवा परित्याग करने के बारे में एक सूचित निर्णय ले सकें। (अतुल कुमार बेन वि. यूनियन ऑफ इंडिया) **(DB)…1899**

***Practice and Procedure – Interim Order – Scope & Jurisdiction* – Held – Apex Court concluded that no person can suffer from the act of Court and in case an interim order has been passed and petitioner takes advantage thereof and ultimately the petition stands dismissed, interest of justice requires that**

any undeserved or unfair advantage gained by a party invoking jurisdiction of Court must be neutralized. [Atul Kumar Ben Vs. Union of India] (DB)…1899

पद्धति एवं प्रक्रिया – अंतरिम आदेश – व्याप्ति व अधिकारिता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि कोई भी व्यक्ति न्यायालय के कार्य से पीड़ित नहीं हो सकता एवं यदि अंतरिम आदेश पारित किया गया है और याची उसका लाभ उठाता है एवं अंततः याचिका खारिज हो जाती है, न्याय के हित में अपेक्षित है कि न्यायालय की अधिकारिता का अवलंब लेते हुए एक पक्षकार द्वारा प्राप्त किये गये किसी भी अवांछनीय अथवा अनुचित लाभ को निष्प्रभावी किया जाना चाहिए। (अतुल कुमार बेन वि. यूनियन ऑफ इंडिया) **(DB)…1899**

***Practice & Procedure – Parawise Reply* – Held – No parawise reply has been filed – Apex Court concluded that if a categorical pleading of petition is not clearly refuted/denied, it shall be treated to be admitted. [Sapphire Institute of Nursing & Science Vs. State of M.P.] (DB)…2264**

पद्धति व प्रक्रिया – पैरावाईज उत्तर देना – अभिनिर्धारित – कोई पैरावाईज उत्तर प्रस्तुत नहीं किया गया – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यदि याचिका के स्पष्ट अभिवचन का स्पष्ट रूप से खंडन/प्रत्याख्यान नहीं किया गया है, तो इसे स्वीकृत माना जाएगा। (सफायर इंस्टीट्यूट ऑफ नर्सिंग एण्ड साइंस वि. म.प्र. राज्य) **(DB)…2264**

***Practice & Procedure – Submission of Judgments* – Held – If a party intends to rely on judgments, they should rely on them during the course of argument, so that not only Court can parallelly see their relevance, the other party can also put forth his/their point regarding the said judgment – After completion of arguments, petitioner supplied list of judgments, which do not mention relevant para numbers and proposition for which they are been relied – Judgments cannot be taken into account. [Sapphire Institute of Nursing & Science Vs. State of M.P.] (DB)…2264**

पद्धति व प्रक्रिया – निर्णयों का प्रस्तुत किया जाना – अभिनिर्धारित – यदि एक पक्षकार निर्णयों पर विश्वास करने का आशय रखता है, उन्हें तर्क के दौरान उन पर विश्वास करना चाहिए ताकि न केवल न्यायालय समानांतर रूप से उनकी सुसंगतता को देख सके, अन्य पक्ष भी उक्त निर्णय के संबंध में उसकी/उनकी बात रख सकें – तर्क समाप्त होने के पश्चात्, याची ने निर्णयों की सूची प्रदाय की जिसमें सुसंगत पैरा क्रमांकों एवं प्रतिपादना जिसके लिए उन पर विश्वास किया जाता है, का उल्लेख नहीं है – निर्णयों को विचार में नहीं लिया जा सकता। (सफायर इंस्टीट्यूट ऑफ नर्सिंग एण्ड साइंस वि. म.प्र. राज्य) **(DB)…2264**

***Precedent – Applicability* – Held – Judgment of Court cannot be read as *Euclid's* theorem – A little difference in facts or an additional fact may make a lot of difference in the precedential value of a decision. [Sonu Bairwa Vs. State of M.P.] (DB)…1832**

पूर्व निर्णय – प्रयोज्यता – अभिनिर्धारित – न्यायालय के निर्णय को यूक्लिड सिद्धांत के रूप में नहीं पढ़ा जा सकता – तथ्यों में थोड़ा अंतर या एक अतिरिक्त तथ्य विनिश्चय के पूर्ववर्ती मूल्य में बहुत अंतर पैदा कर सकता है। (सोनू बैरवा वि. म.प्र. राज्य) **(DB)…1832**

***Precedent – Principle* – Held – A judgment for the purpose of precedent can be relied upon for proposition of law that it actually decided and not for what can be logically deduced from it, for difference of a minor fact would make a lot of change in precedential value of the judgment. [Lavlesh Kumar Mishra Vs. The Madhyanchal Gramin Bank] (DB)…1818**

पूर्व निर्णय – सिद्धांत – अभिनिर्धारित – पूर्व निर्णय के प्रयोजन हेतु एक निर्णय पर उस विधि की प्रतिपादना के लिए भरोसा किया जा सकता है जो यह वास्तविक रूप से विनिश्चित करता है तथा न कि जो इससे तार्किक रूप से निकाला जा सकता है, एक मामूली तथ्य का अंतर निर्णय के पूर्ववर्ती मूल्य में बहुत परिवर्तन करेगा। (लवलेश कुमार मिश्रा वि. द मध्यांचल ग्रामीण बैंक) **(DB)…1818**

***Prevention of Corruption Act (49 of 1988), Section 19 – Sanction for Prosecution – Application of Mind* – Held – If petitioner raising issue of improper application of mind by sanctioning authority, he has the opportunity to raise the same during the trial – Order of sanction granted in present case is not a nullity – Challenge to sanction order at this stage is premature – Petition dismissed. [Sabit Khan Vs. State of M.P.] (DB)…1871**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 – अभियोजन हेतु मंजूरी – मस्तिष्क का प्रयोग – अभिनिर्धारित – यदि याची मंजूरी प्राधिकारी द्वारा मस्तिष्क के अनुचित प्रयोग का विवाद्यक उठा रहा है, तो उसके पास विचारण के दौरान उक्त को उठाने का अवसर है – वर्तमान प्रकरण में प्रदान किया गया मंजूरी का आदेश अकृतता नहीं है – इस प्रक्रम पर मंजूरी आदेश को चुनौती समयपूर्व है – याचिका खारिज। (साबित खान वि. म.प्र. राज्य) **(DB)…1871**

***Prevention of Corruption Act (49 of 1988), Section 19 and Constitution – Article 226 – Sanction for Prosecution – Scope & Jurisdiction* – Held – Apex Court concluded that grant of sanction is an administrative function – Adequacy of material placed before sanctioning authority cannot be gone into by Court as it does not sit in appeal over the sanction order – Elaborate discussion of material in the sanction order is not necessary – Order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity – Proper stage of examining the validity of a sanction is during trial. [Sabit Khan Vs. State of M.P.] (DB)…1871**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 19 एवं संविधान – अनुच्छेद 226 – अभियोजन हेतु मंजूरी – व्याप्ति व अधिकारिता – अभिनिर्धारित – सर्वोच्च

न्यायालय ने निष्कर्षित किया है कि मंजूरी प्रदान करना एक प्रशासनिक कार्य है – मंजूरी प्राधिकारी के समक्ष रखी गई सामग्री की पर्याप्तता को न्यायालय द्वारा विचार में नहीं लिया जा सकता क्योंकि यह मंजूरी आदेश पर अपील की सुनवाई नहीं करता है – मंजूरी आदेश में सामग्री की विस्तृत चर्चा आवश्यक नहीं है – मंजूरी के आदेश का अर्थ रूढ़िवादी रीति से नहीं लगाना चाहिए एवं इसकी विधिमान्यता का परीक्षण करने के लिए अति तकनीकी दृष्टिकोण नहीं होना चाहिए – मंजूरी की विधिमान्यता का परीक्षण करने का उचित प्रक्रम विचारण के दौरान है। (साबित खान वि. म.प्र. राज्य) **(DB)…1871**

Protection of Children from Sexual Offences Act, (32 of 2012), Section 5(L) & 6 – See – Penal Code, 1860, Sections 302, 366, 376-A & 201 **[In Reference (Suo Motu) Vs. Manoj] (DB)…2150**

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 5(L) व 6 – देखें – दण्ड संहिता, 1860, धाराएँ 302, 366, 376–A व 201 (इन रेफ्रेन्स (सू मोटो) वि. मनोज) **(DB)…2150**

Rules Regarding Record of Rights, Rule 24 & 32 – Adjudication of Title on Basis of Will – Competent Authority **– Held – Rule 24 & 32 do not contemplate adjudication of title by Tehsildar, it is meant for recording "consequence of adjudication" and "transfer of ownership" for mutation purpose – It is the domain of Civil Courts only to adjudicate the title of parties. [Hariprasad Bairagi Vs. Radheshyam] (DB)…*16**

अधिकार अभिलेख से संबंधित नियम, नियम 24 व 32 – वसीयत के आधार पर हक का न्यायनिर्णयन – सक्षम प्राधिकारी – अभिनिर्धारित – नियम 24 व 32 तहसीलदार द्वारा न्यायनिर्णयन अनुध्यात नहीं करता, यह नामांतरण प्रयोजन हेतु ''न्यायनिर्णयन के परिणाम'' एवं ''स्वामित्व का अंतरण'' अभिलिखित करने के लिए है – पक्षकारों के हक का न्यायनिर्णयन करना केवल सिविल न्यायालयों का अधिकार क्षेत्र है। (हरीप्रसाद बैरागी वि. राधेश्याम) **(DB)…*16**

Sand (Mining, Transportation, Storage and Trading) Rules, M.P., 2019, Rule 20 – Confiscation of Vehicle **– Held – In 2019 Sand Rules, power of confiscation is available to competent authority only in case of illegal extraction/mining and not illegal transportation or illegal storage. [Rajendra Singh Vs. State of M.P.] (DB)…1854**

रेत (खनन, परिवहन, भण्डारण एवं व्यापार) नियम, म.प्र., 2019, नियम 20 – वाहन का अधिहरण – अभिनिर्धारित – रेत नियम 2019 में, सक्षम प्राधिकारी को केवल अवैध उत्खनन/खनन के प्रकरण में अधिहरण की शक्ति उपलब्ध है तथा न कि अवैध परिवहन या अवैध भण्डारण के प्रकरण में। (राजेन्द्र सिंह वि. म.प्र. राज्य) **(DB)…1854**

Sand (Mining, Transportation, Storage and Trading) Rules, M.P., 2019, Rule 27 – See – Minor Mineral Rules, M.P. 1996, Rule 53 **[Rajendra Singh Vs. State of M.P.] (DB)…1854**

रेत (खनन, परिवहन, भण्डारण एवं व्यापार) नियम, म.प्र., 2019, नियम 27 – देखें – गौण खनिज नियम, म.प्र. 1996, नियम 53 (राजेन्द्र सिंह वि. म.प्र. राज्य) **(DB)…1854**

***Sand (Mining, Transportation, Storage and Trading) Rules, M.P., 2019, Rule 27 – Term "transgression"* – Held – To exercise power of confiscation, competent authority have to travel beyond statutory limits of 2019 Sand Rules and borrow such power from repealed Rules of 1996 or 2006 Rules or 2018 Sand Rules – This would squarely fall within the expression "transgression". [Rajendra Singh Vs. State of M.P.] (DB)…1854**

रेत (खनन, परिवहन, भण्डारण एवं व्यापार) नियम, म.प्र., 2019, नियम 27 – शब्द ''अतिक्रमण'' – अभिनिर्धारित – अधिहरण की शक्ति का प्रयोग करने के लिए सक्षम प्राधिकारी को 2019 के रेत नियमों की कानूनी सीमाओं के परे जाना होगा तथा निरसित नियम 1996 अथवा नियम 2006 अथवा रेत नियम 2018 से उक्त शक्ति लेनी होगी – यह उचित रूप से अभिव्यक्ति ''अतिक्रमण'' के भीतर आयेगा। (राजेन्द्र सिंह वि. म.प्र. राज्य) **(DB)…1854**

***Sand (Mining, Transportation, Storage and Trading) Rules, M.P., 2019, Minor Mineral Rules, M.P. 1996, Rule 53 and Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P., 2006 – Applicability* – Held – 2019 Sand Rules is a special law, thus takes precedence over 1996 Rules and 2006 Rules which fall in category of general law since both these Rules relate to all kinds of minor minerals whereas 2019 Sand Rules relates exclusively to minor mineral of sand. [Rajendra Singh Vs. State of M.P.] (DB)…1854**

रेत (खनन, परिवहन, भण्डारण एवं व्यापार) नियम, म.प्र., 2019, गौण खनिज नियम, म.प्र. 1996, नियम 53 एवं खनिज (अवैध खनन, परिवहन तथा भंडारण का निवारण) नियम, म.प्र., 2006 – प्रयोज्यता – अभिनिर्धारित – 2019 के रेत नियम एक विशेष विधि हैं, अतः 1996 के नियम एवं 2006 के नियम जो कि सामान्य विधि की श्रेणी में आते हैं, पर अग्रता रखते हैं, चूंकि ये दोनों नियम सभी प्रकार के गौण खनिजों से संबंधित हैं जबकि 2019 के रेत नियम केवल रेत के गौण खनिज से संबंधित हैं। (राजेन्द्र सिंह वि. म.प्र. राज्य) **(DB)…1854**

***Sand Rules, M.P., 2018, Rule 23(1) – See – Minor Mineral Rules, M.P. 1996, Rule 53* [Rajendra Singh Vs. State of M.P.] (DB)…1854**

रेत नियम, म.प्र., 2018, नियम 23(1) – देखें – गौण खनिज नियम, म.प्र. 1996, नियम 53 (राजेन्द्र सिंह वि. म.प्र. राज्य) **(DB)…1854**

***Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Sections 3(1)(z), 3(1)(zc) & 3(1)(s) – See – Penal Code, 1860, Section 498-A* [Abhishek Pandey @ Ramji Pandey Vs. State of M.P.] …1960**

अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धाराएँ 3(1)(z), 3(1)(zc) व 3(1)(s) – देखें – दण्ड संहिता, 1860, धारा 498–A (अभिषेक पाण्डे उर्फ रामजी पाण्डे वि. म.प्र. राज्य) **…1960**

Scheme for Appointment of Arbitrators by The Chief Justice of M.P. High Court, 1996, Scheme No. 2(a) – See – Arbitration and Conciliation Act, 1996, Section 11(6) **[Rajeev Agnihotri Vs. Ashok Jain] ...1941**

मध्यप्रदेश उच्च न्यायालय के मुख्य न्यायमूर्ति द्वारा मध्यस्थों की नियुक्ति के लिए स्कीम, 1996, स्कीम क्र. 2(a) – देखें – माध्यस्थम् और सुलह अधिनियम, 1996, धारा 11(6) (राजीव अग्निहोत्री वि. अशोक जैन) **...1941**

Service Law – Applicability of Rules **– Held – Normal rule is that vacancies which arise prior to amended Rules would be governed by unamended Rules and in exceptional circumstances, Government can take a conscious decision not to fill vacancies under old Rules – In present case, no such exceptional circumstances placed on record – Petitioners legitimate expections and right of consideration for appointment cannot be taken away. [Shailesh Kumar Sonwane Vs. State of M.P.] (DB)...2092**

सेवा विधि – नियमों की प्रयोज्यता – अभिनिर्धारित – सामान्य नियम यह है कि रिक्तियां जो संशोधित नियमों के पूर्व उत्पन्न हुई है, असंशोधित नियमों द्वारा शासित होगी तथा अपवादात्मक परिस्थितियों में, सरकार, पुराने नियमों के अंतर्गत रिक्तियों को न भरे जाने का सचेत विनिश्चय कर सकती है – वर्तमान प्रकरण में, ऐसी कोई अपवादात्मक परिस्थितियां अभिलेख पर नहीं रखी गयी – नियुक्ति हेतु विचार में लिए जाने की याचीगण की विधिसम्मत प्रत्याशा एवं अधिकार छीना नहीं जा सकता। (शैलेष कुमार सोनवाने वि. म. प्र. राज्य) **(DB)...2092**

Service Law – Appointment – Character & Integrity **– Held – Respondent who wishes to join police force must be a person of utmost rectitude and have impeccable character and integrity – A person having a criminal antecedents would not be fit in this category. [Union of India Vs. Methu Meda] (SC)...2221**

सेवा विधि – नियुक्ति – चरित्र व सत्यनिष्ठा – अभिनिर्धारित – प्रत्यर्थी जो पुलिस बल में शामिल होना चाहता है, उसे अत्यंत सदाचारी व्यक्ति एवं निर्दोष चरित्र का तथा सत्यनिष्ठ होना चाहिए – आपराधिक पूर्ववृत्त वाला व्यक्ति इस श्रेणी के लिए उपयुक्त नहीं होगा। (यूनियन ऑफ इंडिया वि. मेथु मेदा) **(SC)...2221**

Service Law – Back Wages – Entitlement **– Held – Respondents may initiate action against appellant after following principle of natural justice within 60 days failing which right to proceed against him shall stand abated – If no action is taken within time limit, respondents shall pay full back wages and other consequential benefits to appellant as if his services were never terminated. [Sanjay Jain Vs. State of M.P.] (DB)...1808**

सेवा विधि – पिछली मजदूरी – हकदारी – अभिनिर्धारित – प्रत्यर्थीगण, साठ दिनों के भीतर नैसर्गिक न्याय के सिद्धांत का पालन करने के पश्चात् अपीलार्थी के विरूद्ध

कार्रवाई आरंभ कर सकते हैं, ऐसा न करने पर उसके विरूद्ध कार्यवाही करने के अधिकार का उपशमन हो जाएगा – यदि समय सीमा के भीतर कोई कार्रवाई नहीं की गई, प्रत्यर्थीगण अपीलार्थी को पूर्ण पिछली मजदूरी एवं अन्य पारिणामिक लाभों को भुगतान करेगा मानों उसकी सेवाएं कभी समाप्त ही नहीं की गई थीं। (संजय जैन वि. म.प्र. राज्य) **(DB)…1808**

Service Law – Back Wages – Other Employment – Onus – **Held – Once employee shows that he was not employed, the onus lies on management to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments. [Chief General Manager, S.E.C.L. Vs. Chandramani Tiwari] …2307**

सेवा विधि – पिछली मजदूरी – अन्य नियोजन – भार – अभिनिर्धारित – एक बार यदि कर्मचारी यह दर्शाता है कि वह नियोजित नहीं था, यह अभिवाक् करने एवं साबित करने का भार प्रबंधन पर हो जाता है कि कर्मचारी लाभप्रद रूप से नियोजित था एवं समान या सारभूत रूप से समान उपलब्धियां प्राप्त कर रहा था। (चीफ जनरल मेनेजर, एस.ई.सी. एल. वि. चंद्रमणी तिवारी) **…2307**

Service Law – Circular/Executive Instructions – **Held – Circulars or executive instructions cannot override the statutory rules. [Swaran Vibha Pandey Vs. State of M.P.] (DB)…2259**

सेवा विधि – परिपत्र/कार्यपालक अनुदेश – अभिनिर्धारित – परिपत्र या कार्यपालक अनुदेश कानूनी नियमों पर अध्यारोही नहीं हो सकते। (स्वर्ण विभा पाण्डे वि. म. प्र. राज्य) **(DB)…2259**

Service Law – Deemed Termination – **Held – Factum of tendering resignation by appellant not established by respondents – Conclusion drawn by inquiring authority regarding petitioner's absence is not founded upon any relevant information obtained from controlling authority – Inquiry report is cryptic and contains contradictory findings about absence and could not have been a reason to invoke clause 22 of Contract, moreso when appellant was not informed about any allegations against him. [Sanjay Jain Vs. State of M.P.] (DB)…1808**

सेवा विधि – सेवा समाप्ति समझी जाना – अभिनिर्धारित – अपीलार्थी द्वारा त्यागपत्र देने के तथ्य को प्रत्यर्थीगण द्वारा स्थापित नहीं किया गया – याची की अनुपस्थिति के संबंध में जांच प्राधिकारी द्वारा निकाला गया निष्कर्ष नियंत्रण प्राधिकारी से प्राप्त किसी सुसंगत जानकारी पर आधारित नहीं है – जांच प्रतिवेदन गुप्त है एवं इसमें अनुपस्थिति के बारे में विरोधात्मक निष्कर्ष अंतर्विष्ट हैं तथा संविदा के खंड 22 का अवलंब लेने का एक कारण नहीं हो सकता था, वह भी तब जबकि अपीलार्थी को उसके विरूद्ध किसी भी अभिकथनों के बारे में सूचित नहीं किया गया था। (संजय जैन वि. म.प्र. राज्य) **(DB)…1808**

***Service Law – Deemed Termination – Principle of Natural Justice* – Held – Deemed termination without following principles of natural justice cannot be countenanced moreso in a case where consistent stand of appellant was that he made herculean efforts to join, but respondents deprived him to perform duties – Single Judge erred in dismissing the petition based on a reason which was not assigned in impugned order – Impugned order of discontinuance/deemed termination cannot sustain judicial scrutiny and hence set aside – Respondents directed to reinstate appellant – Appeal allowed. [Sanjay Jain Vs. State of M.P.] (DB)…1808**

सेवा विधि – सेवा समाप्ति समझी जाना – नैसर्गिक न्याय का सिद्धांत – अभिनिर्धारित – नैसर्गिक न्याय के सिद्धांत का पालन किये बिना सेवा समाप्ति समझे जाने का समर्थन नहीं किया जा सकता, वह भी एक ऐसे प्रकरण में जहां अपीलार्थी निरंतर इस बात पर कायम था कि उसने कार्यभार ग्रहण करने के लिए अत्यंत कठिन प्रयास किये, लेकिन प्रत्यर्थीगण द्वारा उसे कर्तव्यों का निर्वहन करने से वंचित रखा गया – एकल न्यायाधीश ने एक कारण के आधार पर जो कि आक्षेपित आदेश में नहीं दिया गया था, याचिका खारिज करने में त्रुटि की है – समाप्ति/सेवा समाप्ति समझी जाने का आक्षेपित आदेश न्यायिक छानबीन को कायम नहीं रख सकता एवं इसलिए अपास्त – प्रत्यर्थीगण को, अपीलार्थी को पुनः स्थापित करने हेतु निदेशित किया गया – अपील मंजूर। (संजय जैन वि. म.प्र. राज्य) **(DB)…1808**

***Service Law – Departmental Enquiry – Delay & Prejudice* – Held – Every delay in conducting department enquiry does not *ipso facto* lead to the enquiry being vitiated – Prejudice must be demonstrated to have been cause and cannot be a matter of surmise – Apart from submitting that R-1 was unable to proceed on deputation or to seek promotion, there is no basis to conclude that his right to defend himself stands prejudicially affected by a delay of 2 years in concluding the enquiry. [State of M.P. Vs. Akhilesh Jha] (SC)…1803**

सेवा विधि – विभागीय जांच – विलंब व प्रतिकूल प्रभाव – अभिनिर्धारित – विभागीय जांच संचालित करने में प्रत्येक विलंब, स्वयंमेव ही जांच को दूषित नहीं करता – प्रतिकूल प्रभाव कारित होना प्रदर्शित किया जाना चाहिए और यह एक अनुमान का मामला नहीं हो सकता – इस निवेदन के अलावा कि प्र. 1 प्रतिनियुक्ति पर जाने या पदोन्नति चाहने के लिए असमर्थ था, यह निष्कर्षित करने के लिए कोई आधार नहीं है कि उसका स्वयं के बचाव का अधिकार, जांच समाप्त करने में 2 वर्ष के विलंब द्वारा प्रतिकूल रूप से प्रभावित हुआ है। (म.प्र. राज्य वि. अखिलेश झा) **(SC)…1803**

***Service Law – Departmental Enquiry – Quashment of Charge-Sheet – Grounds* – Held – Charge-sheet alongwith statement of imputations, contains a detailed elaboration of allegations against R-1 and does not create any doubt or ambiguity over the nature of case which he is required to answer in departmental enquiry – Finding of Tribunal that charges are vague is palpably in error – Impugned Judgment & order set aside –**

Departmental enquiry can be proceeded and be decided expeditiously – Appeal allowed. [State of M.P. Vs. Akhilesh Jha] (SC)…1803

सेवा विधि – विभागीय जांच – आरोप पत्र को अभिखंडित किया जाना – आधार – अभिनिर्धारित – अभ्यारोपण के कथन के साथ आरोप पत्र में प्र. 1 के विरूद्ध अभिकथनों का विस्तृत विवरण अंतर्विष्ट है और प्रकरण के स्वरूप पर कोई संदेह या संदिग्धता सृजित नहीं करते जिन्हें उसे विभागीय जांच में उत्तरित करना अपेक्षित है – अधिकरण का निष्कर्ष कि आरोप अस्पष्ट हैं, स्पष्ट रूप से गलत है – आक्षेपित निर्णय व आदेश अपास्त – विभागीय जांच की कार्यवाही की जा सकती है और शीघ्रता से विनिश्चित की जाये – अपील मंजूर। (म.प्र. राज्य वि. अखिलेश झा) **(SC)…1803**

***Service Law – Dismissal – Departmental Enquiry – Procedure* – Held – Alongwith charge-sheet, petitioner was supplied with list of witnesses and list of documents – Thereafter, regular departmental inquiry was conducted, statement of witnesses were recorded and petitioner was given opportunity to cross-examine them – Thereafter, show-cause notice was issued alongwith charge-sheet proposing major penalty – Petitioner was given opportunity to file reply – Due procedure has been followed – No scope of interference – Petition dismissed. [Suraj Pal Singh Rathor Vs. M.P. High Court] (DB)…1881**

सेवा विधि – पदच्युति – विभागीय जांच – प्रक्रिया – अभिनिर्धारित – याची को आरोप पत्र के साथ गवाहों की सूची एवं दस्तावेजों की सूची प्रदाय की गयी थी – तत्पश्चात, नियमित विभागीय जांच संचालित की गयी थी, साक्षियों के कथन अभिलिखित किये गये थे और याची को उनका प्रति परीक्षण करने का अवसर दिया गया था – तत्पश्चात्, आरोप पत्र के साथ, मुख्य शास्ति प्रस्तावित करते हुए कारण बताओ नोटिस जारी किया गया था – याची को उत्तर प्रस्तुत करने का अवसर दिया गया था – सम्यक् प्रक्रिया का पालन किया गया है – हस्तक्षेप की व्याप्ति नहीं – याचिका खारिज। (सूरज पाल सिंह राठौर वि. एम.पी. हाई कोर्ट) **(DB)…1881**

***Service Law – Full Back Wages – Principle & Interference by Court* – Held – If the Labour Court/Industrial Tribunal finds that employee/ workman is not at all guilty of any misconduct or management has foisted a false charge, then award of full back wages is justified and superior Courts should not interfere with the award merely because there is possibility of forming a different opinion on entitlement of employee to get full back wages or management's obligation to pay the same. [Chief General Manager, S.E.C.L. Vs. Chandramani Tiwari] …2307**

सेवा विधि – पूर्ण पिछली मजदूरी – सिद्धांत व न्यायालय द्वारा हस्तक्षेप – अभिनिर्धारित – यदि श्रम न्यायालय/औद्योगिक अधिकरण यह पाता है कि कर्मचारी/कर्मकार किसी भी अवचार के लिए बिल्कुल भी दोषी नहीं है अथवा प्रबंधन ने मिथ्या आरोप थोपे हैं, तब पूर्ण पिछली मजदूरी अधिनिर्णीत करना न्यायानुमत है एवं वरिष्ठ न्यायालयों को मात्र इसलिए अधिनिर्णय में हस्तक्षेप नहीं करना चाहिए क्योंकि कर्मचारी को पूर्ण पिछली मजदूरी पाने की

हकदारी या उक्त का भुगतान करने के लिए प्रबंधन की बाध्यता पर एक भिन्न राय बनाने की संभावना है। (चीफ जनरल मेनेजर, एस.ई.सी.एल. वि. चंद्रमणी तिवारी) **...2307**

***Service Law – Honourable Acquittal* – Held – If acquittal is directed by Court on consideration of facts and material evidence on record with findings of false implication or that the guilt is not proved, accepting explanation of accused as just, it be treated as "honourable acquittal" – If prosecution fails to examine crucial witnesses or witness turned hostile, such acquittal is in purview of giving benefit of doubt and accused cannot be treated as honourably acquitted by Court. [Union of India Vs. Methu Meda] (SC)...2221**

सेवा विधि – सम्मानपूर्वक दोषमुक्ति – अभिनिर्धारित – यदि न्यायालय द्वारा, मिथ्या आलिप्त करने या दोषिता साबित नहीं होने के निष्कर्षों के साथ अभिलेख पर मौजूद तथ्यों एवं तात्विक साक्ष्य पर विचार कर, अभियुक्त के स्पष्टीकरण को न्यायसंगत स्वीकार करते हुए, दोषमुक्ति निदेशित की जाती है, तो यह ''सम्मानपूर्वक दोषमुक्ति'' मानी जाएगी – यदि अभियोजन महत्वपूर्ण साक्षीगण का परीक्षण करने में असफल रहता है अथवा साक्षी पक्षद्रोही हो जाता है, उक्त दोषमुक्ति संदेह का लाभ देने की परिधि में आती है एवं अभियुक्त को न्यायालय द्वारा सम्मानपूर्वक दोषमुक्त किया गया नहीं माना जा सकता। (यूनियन ऑफ इंडिया वि. मेथु मेदा) **(SC)...2221**

***Service Law – Honourable Acquittal – Post of Constable* – Held – If person is acquitted by Court giving him benefit of doubt from the charge of offence involving moral turpitude or because of witnesses turning hostile, it would not automatically entitle him for employment, that too in disciplined force – Mere disclosure of offence alleged and result of trial is not sufficient – Employer having a right to consider his candidature in terms of circulars of Screening Committee, he cannot be compelled to give appointment – Impugned order set aside – Appeal allowed. [Union of India Vs. Methu Meda] (SC)...2221**

सेवा विधि – सम्मानपूर्वक दोषमुक्ति – कांस्टेबल का पद – अभिनिर्धारित – यदि व्यक्ति को नैतिक अधमता से अंतर्वलित अपराध के आरोप से या साक्षीगण के पक्षद्रोही हो जाने के कारण, संदेह का लाभ देते हुए न्यायालय द्वारा दोषमुक्त किया जाता है, तो यह स्वतः उसे नियोजन के लिए पात्र नहीं बनाएगा, वह भी अनुशासित बल में – मात्र अभिकथित अपराध का प्रकटन एवं विचारण का परिणाम पर्याप्त नहीं है – नियोक्ता को छानबीन समिति के परिपत्रों के निबंधनों के अनुसार उसकी अभ्यर्थिता पर विचार करने का अधिकार है, उसे नियुक्ति देने के लिए विवश नहीं किया जा सकता – आक्षेपित आदेश अपास्त – अपील मंजूर। (यूनियन ऑफ इंडिया वि. मेथु मेदा) **(SC)...2221**

***Service Law – Illegal Termination – Back Wages* – Held – In case of wrongful/illegal termination of service, there is no justification to give premium to management of his wrongdoings by relieving him of the burden to pay to employee/workman his dues as back wages – CGIT passed a well**

reasoned award holding that termination was illegal and management failed to prove any misconduct – No perversity/jurisdiction lapse to call for interference under Article 227 – Order of reinstatement with 50% back wages is not unreasonable – Petition dismissed. [Chief General Manager, S.E.C.L. Vs. Chandramani Tiwari] ...2307

सेवा विधि – अवैध समाप्ति – पिछली मजदूरी – अभिनिर्धारित – सदोष/अवैध सेवा समाप्ति के प्रकरण में, कर्मचारी/कर्मकार को पिछली मजदूरी के रूप में उसके देय का भुगतान करने के भार से मुक्त कर प्रबंधन को उसके अनुचित कार्यों के लिए प्रीमियम देने का कोई न्यायोचित्य नहीं है – **CGIT** ने यह अभिनिर्धारित करते हुए कि समाप्ति अवैध थी एवं प्रबंधन कोई अवचार साबित करने में विफल रहा, एक सकारण आदेश पारित किया – अनुच्छेद 227 के अंतर्गत हस्तक्षेप की मांग करने हेतु कोई विपर्यस्तता/अधिकारिता की गलती नहीं है – 50% पिछली मजदूरी के साथ पुनःस्थापन का आदेश अनुचित नहीं है – याचिका खारिज। (चीफ जनरल मेनेजर, एस.ई.सी.एल. वि. चंद्रमणी तिवारी) **...2307**

***Service Law – Principle of Natural Justice* – Held – Apex Court concluded that any order which entails civil consequences should be passed only after following the principles of natural justice. [Sanjay Jain Vs. State of M.P.] (DB)...1808**

सेवा विधि – नैसर्गिक न्याय का सिद्धांत – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि कोई भी आदेश जिसके सिविल परिणाम होते हैं, को केवल नैसर्गिक न्याय के सिद्धांतों का पालन करने के पश्चात् ही पारित किया जाना चाहिए। (संजय जैन वि. म.प्र. राज्य) **(DB)...1808**

***Service Law – Purpose of Enquiry – Motive & Foundation Policy* – Held – If purpose of enquiry is not to find out truth of allegations of misconduct but to decide whether to retain employee against whom a cloud is raised on his conduct, such enquiry only serves as a motive for termination but where enquiry is held wherein on basis of evidence a definite finding is reached at the back of employee about his misconduct and forms a foundation for order of termination, such order is punitive – Therefore on touchstone of Motive & Foundation Policy also, petitioner lacks merit. [State of M.P. Vs. Yogesh Pathak] (DB)...2253**

सेवा विधि – जांच का प्रयोजन – हेतु व आधार नीति – अभिनिर्धारित – यदि जांच का प्रयोजन अवचार के अभिकथनों की सत्यता का पता लगाना नहीं है, बल्कि यह विनिश्चित करना है कि क्या उस कर्मचारी को बनाए रखा जाए जिसके विरूद्ध उसके आचरण पर प्रश्न उठे हों, तो ऐसी जांच केवल समाप्ति के लिए हेतु के रूप में कार्य करती है लेकिन जहां जांच संचालित की जाती है, जिसमें साक्ष्य के आधार पर कर्मचारी के पीठ पीछे उसके अवचार के बारे में एक निश्चित निष्कर्ष पर पहुंचा जाता है एवं समाप्ति के आदेश के लिए एक आधार बनाया जाता है, उक्त आदेश दण्डात्मक है – अतः हेतु व आधार नीति की कसौटी पर भी, याची में योग्यता का अभाव है। (म.प्र. राज्य वि. योगेश पाठक) **(DB)...2253**

Service Law – Recovery of Excess Pay – Class of Employee & Retired/ In-Service Employee – **Held – Since without specifying the class of employees, Apex court in *Jagdev Singh's* case held that recovery can be made even from retired employees then the necessary inference which can be drawn that the expression "retired employees" or "employees who are deemed to retire within one year" employed in *Rafiq Masih's* case, includes within its sweep and ambit all categories of employees irrespective of the class. [Manoj Sharma (Smt.) Vs. State of M.P.] (DB)…2015**

सेवा विधि – अतिरिक्त संदाय की वसूली – कर्मचारी का वर्ग व सेवानिवृत्त/सेवारत कर्मचारी – अभिनिर्धारित – चूंकि सर्वोच्च न्यायालय ने जगदेव सिंह के प्रकरण में कर्मचारियों के वर्ग को विनिर्दिष्ट किये बिना अभिनिर्धारित किया कि सेवा निवृत्त कर्मचारी से भी वसूली की जा सकती है, तब आवश्यक निष्कर्ष जो निकाला जा सकता है वह यह है कि अभिव्यक्ति ''सेवा निवृत्त कर्मचारी'' या ''कर्मचारी जो एक वर्ष के भीतर सेवानिवृत्त हो सकते हैं'', जिसे रफीक मसीह के प्रकरण में प्रयुक्त किया है, उसकी व्याप्ति एवं परिधि के भीतर, वर्ग को विचार में लिए बिना, सभी प्रवर्ग समाविष्ट हैं। (मनोज शर्मा (श्रीमती) वि. म.प्र. राज्य) **(DB)…2015**

Service Law – Recovery of Excess Pay – Wrong Fixation of Pay/ Increment – Petitioner, a class III employee and continue to be in service – **Held – If there is an written undertaking given by petitioner, the excess payment given to her vide wrong fixation of pay/increment deserves to be recovered – A written undertaking by an employee binds him in the future – Order of recovery of principal excess amount is upheld. [Manoj Sharma (Smt.) Vs. State of M.P.] (DB)…2015**

सेवा विधि – अतिरिक्त संदाय की वसूली – वेतन/वेतनवृद्धि का गलत नियतन – याची एक वर्ग–III कर्मचारी है और निरंतर सेवा में है – अभिनिर्धारित – यदि याची द्वारा लिखित वचनबंध दिया गया है, तब उसे वेतन/वेतनवृद्धि के गलत नियतन द्वारा किया गया अतिरिक्त संदाय वसूल किये जाने योग्य है – एक कर्मचारी द्वारा लिखित वचनबंध उसे भविष्य में आबद्ध करता है – मूल अतिरिक्त रकम की वसूली का आदेश कायम। (मनोज शर्मा (श्रीमती) वि. म.प्र. राज्य) **(DB)…2015**

Service Law – Recovery of Interest on Excess Pay – **Held – Written undertaking given by petitioner does not contain any promise to return the interest amount which may have accrued, thus, the employer is now estopped to make any recovery of interest over the excess principal amount paid in past – Order of recovery of interest is set aside – Appeal allowed in above terms. [Manoj Sharma (Smt.) Vs. State of M.P.] (DB)…2015**

सेवा विधि – अतिरिक्त संदाय पर ब्याज की वसूली – अभिनिर्धारित – याची द्वारा दिये गये लिखित वचनबंध में, ब्याज की रकम, जो कि प्रोद्भूत हुई हो, की वापसी के लिए कोई वचन नहीं है अतः, अब नियोक्ता, पूर्व में अदा की गई अतिरिक्त मूल रकम पर ब्याज

की कोई वसूली करने से विबंधित है – ब्याज की वसूली का आदेश अपास्त – उपरोक्त निबंधनों में अपील मंजूर। (मनोज शर्मा (श्रीमती) वि. म.प्र. राज्य) **(DB)…2015**

***Service Law – Select List – Rights of Candidates* – Held – Apex Court concluded that though a candidate who passed examination or whose name appeared in select list does not have any indefeasible right to be appointed yet appointment cannot be denied arbitrarily and select list cannot be cancelled without any proper justification. [Shailesh Kumar Sonwane Vs. State of M.P.] (DB)…2092**

सेवा विधि – चयन सूची – अभ्यर्थियों के अधिकार – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि यद्यपि एक अभ्यर्थी, जिसने परीक्षा उत्तीर्ण की या जिसका चयन सूची में नाम आया है, को नियुक्त किये जाने का कोई अजेय अधिकार नहीं है, तथापि, मनमाने रूप से नियुक्ति से इन्कार नहीं किया जा सकता और बिना किसी समुचित न्यायोचित्य के चयन सूची को निरस्त नहीं किया जा सकता। (शैलेष कुमार सोनवाने वि. म. प्र. राज्य) **(DB)…2092**

***Service Law – Suitability of Candidate – Right of Employer* – Held – Employer is having right to consider the suitability of candidate as per government orders/instructions/rules while taking decision for employment – Acquittal on technical ground for offences of heinous/serious nature which is not a clean acquittal, employer has a right to consider all relevant facts available as to the antecedents and take appropriate decision. [Union of India Vs. Methu Meda] (SC)…2221**

सेवा विधि – अभ्यर्थी की उपयुक्तता – नियोक्ता का अधिकार – अभिनिर्धारित – नियोक्ता को, नियोजन के लिए विनिश्चय करते समय सरकारी आदेशों/ अनुदेशों/ नियमों के अनुसार अभ्यर्थी की उपयुक्तता पर विचार करने का अधिकार है – जघन्य/गंभीर स्वरूप के अपराधों के लिए तकनीकी आधार पर दोषमुक्ति, जो एक साफ दोषमुक्ति नहीं है, नियोक्ता को पूर्ववृत्त के संबंध में उपलब्ध सभी सुसंगत तथ्यों पर विचार करने एवं समुचित विनिश्चय करने का अधिकार है। (यूनियन ऑफ इंडिया वि. मेथु मेदा) **(SC)…2221**

***Service Law – Validity of Order* – Held – Validity of an order must be examined on the grounds mentioned therein and it cannot be substituted and supported by assigning different reasons by filing counter affidavit in the Court. [Sanjay Jain Vs. State of M.P.] (DB)…1808**

सेवा विधि – आदेश की विधिमान्यता – अभिनिर्धारित – किसी आदेश की विधिमान्यता का परीक्षण उसमें उल्लिखित आधारों पर किया जाना चाहिए तथा न्यायालय में प्रति–शपथपत्र प्रस्तुत कर विभिन्न कारण देते हुए इसे प्रतिस्थापित और समर्थित नहीं किया जा सकता है। (संजय जैन वि. म.प्र. राज्य) **(DB)…1808**

***Service Law – Wait List – Rights of Candidates* – Held – A candidate in waiting list, as per his position in list, has right to be considered for appointment**

if for any reason the post falls vacant during validity period of list – Such right is not a vested right but it is only a right to be considered for appointment – Appointing authority can deny appointment for some justifiable reason to such candidate. [Shailesh Kumar Sonwane Vs. State of M.P.] (DB)…2092

सेवा विधि – प्रतीक्षा सूची – अभ्यर्थियों के अधिकार – अभिनिर्धारित – प्रतीक्षा सूची के एक अभ्यर्थी को, सूची में उसके स्थान के अनुसार नियुक्ति के लिये विचार में लिये जाने का अधिकार है यदि किसी कारणवश सूची की विधिमान्यता अवधि के दौरान पद रिक्त हो जाता है – उक्त अधिकार एक निहित अधिकार नहीं है अपितु यह केवल नियुक्ति हेतु विचार में लिये जाने का एक अधिकार है – नियुक्ति प्राधिकारी किसी न्यायोचित कारण पर उक्त अभ्यर्थी की नियुक्ति से इन्कार कर सकता है। (शैलेष कुमार सोनवाने वि. म.प्र. राज्य) **(DB)…2092**

***Service Law and Fundamental Rules, Rules 24, 26 & 54-B(1) – Withholding Increment during Suspension* – Held – Petitioner during suspension is not on duty and increments are granted for period spent on duty – No prejudice caused to petitioner if decision regarding his allowance is to be taken after conclusion of criminal trial – Non grant of increment during suspension period does not amount to penalty – Action of respondents not violative of Rules 24 and 54-B(1) – Petition dismissed. [Suresh Kumar Kurve Vs. State of M.P.] …*15**

सेवा विधि एवं मूलभूत नियम, नियम 24, 26 व 54–B(1) – निलंबन के दौरान वेतन–वृद्धि रोकना – अभिनिर्धारित – निलंबन के दौरान याची कर्तव्य पर नहीं था एवं वेतन–वृद्धियां कर्तव्य पर व्यतीत अवधि के लिए प्रदान की जाती हैं – याची को कोई प्रतिकूल प्रभाव कारित नहीं होगा यदि दाण्डिक विचारण की समाप्ति के पश्चात् उसके भत्ते के संबंध में विनिश्चिय किया जाता है – निलंबन अवधि के दौरान वेतन–वृद्धि प्रदान न की जाना, शास्ति की कोटि में नहीं आता – प्रत्यर्थीगण की कार्रवाई नियम 24 एवं 54–B(1) का उल्लंघन नहीं – याचिका खारिज। (सुरेश कुमार कुर्वे वि. म.प्र. राज्य) **…*15**

***Stamp Act, Indian (2 of 1899), Section 31 & 32 – Impounding not Endorsed in Instrument – Admissibility in Evidence* – Held – Applicant deposited the deficit stamp duty and Collector (Stamps) issued a separate certificate for the same – Merely because Collector (Stamps) has not endorsed it on the instrument, it will not render the instrument/document inadmissible in evidence. [Rajeev Agnihotri Vs. Ashok Jain] …1941**

स्टाम्प अधिनियम, भारतीय (1899 का 2), धारा 31 व 32 – परिबद्ध किया जाना लिखत में पृष्ठांकित नहीं – साक्ष्य में ग्राह्यता – अभिनिर्धारित – आवेदक ने कम स्टाम्प शुल्क जमा किया एवं कलेक्टर (स्टाम्प) ने उक्त के लिए एक पृथक प्रमाण–पत्र जारी किया – मात्र चूंकि कलेक्टर (स्टाम्प) ने लिखत पर इसका पृष्ठांकन नहीं किया है, यह लिखत/दस्तावेज को साक्ष्य में अग्राह्य नहीं बनाएगा। (राजीव अग्निहोत्री वि. अशोक जैन) **…1941**

***Stamp Act, Indian (2 of 1899), Sections 31, 32 & 56 – Review* – Held – Collector becomes *functus officio* after an order is passed by him u/S 31 and the order attains finality unless he takes recourse to Section 56(2) of Act – In instant case, order of Collector (Stamps) u/S 31 and certificate issued u/S 32 cannot be subject matter of review before Chief Controlling Revenue Authority, i.e. Board of Revenue. [Rajeev Agnihotri Vs. Ashok Jain] …1941**

स्टाम्प अधिनियम, भारतीय (1899 का 2), धाराएँ 31, 32 व 56 – पुनर्विलोकन – अभिनिर्धारित – कलेक्टर धारा 31 के अंतर्गत उसके द्वारा एक आदेश पारित करने के पश्चात् पदकार्य–निवृत्त हो जाता है एवं जब तक वह अधिनियम की धारा 56(2) का अवलंब नहीं लेता, आदेश अंतिमता प्राप्त कर लेता है – वर्तमान प्रकरण में, धारा 31 के अंतर्गत कलेक्टर (स्टाम्प) का आदेश एवं धारा 32 के अंतर्गत जारी किया गया प्रमाणपत्र मुख्य नियंत्रक राजस्व प्राधिकारी अर्थात् राजस्व बोर्ड के समक्ष पुनर्विलोकन की विषय–वस्तु नहीं हो सकता। (राजीव अग्निहोत्री वि. अशोक जैन) **…1941**

***Tender – Debarment – Disproportionate Action* – Held – As per the clause, debarment upto a period of 5 years can be taken whereas in present case debarment has been done for 2 years – Order of debarment is not disproportionate. [K & J Projects Pvt. Ltd. (M/s.) Vs. M.P. Road Development Corp.] (DB)…2059**

निविदा – विवर्जन – अननुपातिक कार्रवाई – अभिनिर्धारित – खंड के अनुसार, 5 वर्ष तक की अवधि तक विवर्जन किया जा सकता है जबकि वर्तमान प्रकरण में 2 वर्ष के लिए विवर्जन किया गया है – विवर्जन का आदेश अननुपातिक नहीं है। (के एण्ड जे प्रोजेक्टस् प्रा. लि. (मे.) वि. एम.पी. रोड डव्हेलपमेन्ट कारपोरेशन) **(DB)…2059**

***Tender – Debarment – Ground of Misrepresentation* – Held – It is admitted that petitioner have submitted CV's which had variances – Action of debarment of petitioner is in conformity with clause 3.4(iv)(b) of Request for Proposal (RFP) which specifically provided that if any information is found incorrect at any stage, action including termination and debarment from future MPRDC projects upto 5 years will be taken – Bid was annulled owing to fact that petitioner submitted false and fabricated CV – No illegality in decision making process – Petitions dismissed. [K & J Projects Pvt. Ltd. (M/s.) Vs. M.P. Road Development Corp.] (DB)…2059**

निविदा – विवर्जन – दुर्व्यपदेशन का आधार – अभिनिर्धारित – यह स्वीकृत है कि याची ने शैक्षिक अभिलेख एवं कार्य अनुभव (CV) प्रस्तुत किये है जिनमें फेरफार थे – याची के विवर्जन की कार्रवाई, प्रस्ताव हेतु निवेदन (RFP) के खंड 3.4(iv)(b) के साथ अनुरूपता में है जो विनिर्दिष्ट रूप से उपबंधित करता है कि यदि किसी प्रक्रम पर किसी जानकारी को गलत पाया जाता है, कार्रवाई, जिसमें पर्यवसान तथा 5 वर्ष तक म.प्र. सड़क विकास निगम (MPRDC) की भविष्य की परियोजनाओं से विवर्जन शामिल है, की जाएगी – इस तथ्य के चलते बोली बातिल की गई थी कि याची ने मिथ्या एवं कूटरचित शैक्षिक अभिलेख एवं कार्य

अनुभव (CV) प्रस्तुत किया – विनिश्चय करने की प्रक्रिया में कोई अवैधता नहीं – याचिकाएं खारिज। (के एण्ड जे प्रोजेक्टस् प्रा. लि. (मे.) वि. एम.पी. रोड डव्हेलपमेन्ट कारपोरेशन) (DB)…2059

***Tender – Debarment – Obligation of Bidder* – Held – As per clause of RFP, CV was required to be certified by Consultant (Bidder) – Certificate was given by petitioner stating that CV has been checked and found to be correct – Obligation to submit a correct CV was on petitioner or its minor partner. [K & J Projects Pvt. Ltd. (M/s.) Vs. M.P. Road Development Corp.] (DB)…2059**

निविदा – विवर्जन – बोली लगाने वाले की बाध्यता – अभिनिर्धारित – **RFP** के खंड के अनुसार, शैक्षिक अभिलेख एवं कार्य अनुभव (CV) को परमर्शदाता (बोली लगाने वाला) द्वारा प्रमाणित किया जाना अपेक्षित था – याची द्वारा यह कथन करते हुए प्रमाणपत्र दिया गया था कि CV की पड़ताल की गई है और सही पाया गया है – सही CV प्रस्तुत करने की बाध्यता याची पर या उसके अवयस्क भागीदार पर थी। (के एण्ड जे प्रोजेक्टस् प्रा. लि. (मे.) वि. एम.पी. रोड डव्हेलपमेन्ट कारपोरेशन) **(DB)…2059**

***Tender – Debarment – Principle of Natural Justice* – Held – Respondents issued show cause notice in clear terms of clauses of RFP to petitioner whereby they submitted their reply and after considering the same, order of debarment has been passed – No violation of principle of natural justice. [K & J Projects Pvt. Ltd. (M/s.) Vs. M.P. Road Development Corp.] (DB)…2059**

निविदा – विवर्जन – नैसर्गिक न्याय का सिद्धांत – अभिनिर्धारित – प्रत्यर्थीगण ने याची को, **RFP** के खंडों के स्पष्ट निबंधनों में, कारण बताओ नोटिस जारी किया जिस पर उन्होंने उनका जवाब प्रस्तुत किया और उक्त पर विचार करने के पश्चात्, विवर्जन का आदेश पारित किया गया है – नैसर्गिक न्याय के सिद्धांत का कोई उल्लंघन नहीं। (के एण्ड जे प्रोजेक्टस् प्रा. लि. (मे.) वि. एम.पी. रोड डव्हेलपमेन्ट कारपोरेशन) **(DB)…2059**

***Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) – See – Constitution – Article 226* [M.P. Bus Operator Association Vs. State of M.P.] (DB)…2242**

उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1) – देखें – संविधान – अनुच्छेद 226 (एम.पी. बस ऑपरेटर एसोसिएशन वि. म.प्र. राज्य) **(DB)…2242**

***Vishesh Sashastra Bal Adhiniyam, M.P. (29 of 1968), Section 3-Chapter II & 9 – Transfer – Scope & Jurisdiction* – Held – State government can divide the Special Armed Force into groups and further sub divide each group into battalions and each battalion into companies and each company into platoons – As per Section 9, State Government or Inspector General has**

powers to transfer member of Police Force to Special Armed Force and vice-versa. [Pradeep Kumar Vs. State of M.P.] …*14

विशेष सशस्त्र बल अधिनियम, म.प्र. (1968 का 29), धारा 3–अध्याय II व 9 – स्थानांतरण – व्याप्ति व अधिकारिता – अभिनिर्धारित – राज्य सरकार विशेष सशस्त्र बल को समूहों में विभाजित कर सकता है और आगे प्रत्येक समूह को बटालियनों में और प्रत्येक बटालियन को कंपनियों में और प्रत्येक कंपनी को प्लाटूनों में उपविभाजित कर सकता है – धारा 9 के अनुसार, राज्य सरकार अथवा महानिरीक्षक के पास पुलिस बल के सदस्य को विशेष सशस्त्र बल में स्थानांतरित करने तथा इसके विपर्ययेन करने की शक्तियां हैं। (प्रदीप कुमार वि. म.प्र. राज्य) **…*14**

***Vishesh Sashastra Bal Adhiniyam, M.P. (29 of 1968), Section 9 – Deputation & Transfer* – Held – Clause 9 of the appointment order of petitioner specifically provides that prior consent is not necessary for transfer – No fault can be found in transferring petitioner to another battalion which also cannot be termed as "deputation" – Petition dismissed. [Pradeep Kumar Vs. State of M.P.] …*14**

विशेष सशस्त्र बल अधिनियम, म.प्र. (1968 का 29), धारा 9 – प्रतिनियुक्ति व स्थानांतरण – अभिनिर्धारित – याची के नियुक्ति आदेश का खंड 9 विनिर्दिष्ट रूप से यह उपबंधित करता है कि स्थानांतरण के लिए पूर्व सहमति आवश्यक नहीं है – याची को दूसरी बटालियन में स्थानांतरित किये जाने में कोई त्रुटि नहीं पायी जा सकती, जिसे ''प्रतिनियुक्ति'' भी नहीं कहा जा सकता – याचिका खारिज। (प्रदीप कुमार वि. म.प्र. राज्य) **…*14**

***Words & Phrases – "Possible & Probable" – "Impossible & Improbable"* – Discussed and explained. [Lalu Sindhi @ Dayaldas Vs. State of M.P.] (DB)…1932**

शब्द एवं वाक्यांश – ''संभव व संभाव्य'' – ''असंभव व असंभाव्य'' – विवेचित एवं स्पष्ट किया गया। (लालू सिंधी उर्फ दयालदास वि. म.प्र. राज्य) **(DB)…1932**

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JOURNAL SECTION

FAREWELL

HON'BLE MR. JUSTICE RAJENDRA KUMAR SRIVASTAVA

Born on January 01, 1960. Did B.A., LL.B. and joined Judicial Service as Civil Judge Class-II on January 30, 1986. Appointed as Civil Judge Class-I in the year 1992. Appointed as C.J.M./A.C.J.M on November 08, 1995 and was posted as A.C.J.M. at Maihar. Posted as C.J.M., Sagar in the year 1996. Promoted as Officiating District Judge in Higher Judicial Service on May 26, 1997 and was posted as V A.D.J. at Sagar. Posted as II A.D.J., Raipur in the year 1999. Posted as A.D.J., Manawar in the year 2001. Posted as II A.D.J, Seoni in the year 2002, II A.D.J. & I/C District & Sessions Judge, Seoni in the year 2004. Was granted Selection Grade Scale w.e.f. 26.02.2006. Posted as I A.D.J., Chhatarpur in the year 2006. Posted as Special Judge, SC/ST (P.A.) Act & I A.J. to I A.D.J., Seoni in the year 2007 also as I/C District & Sessions Judge, Seoni in the year 2008. Thereafter, also worked as Special Judge, NDPS Act, Seoni in the year 2010. Posted as Addl. Principal Judge, Family Court, Gwalior in the year 2011. Posted as District & Sessions Judge at Raisen in the year 2012. Was granted Super Time Scale w.e.f. 24.09.2013. Posted as District & Sessions Judge at Rewa in the year 2014. Posted as District & Sessions Judge, Chhatarpur from March 2017 till elevation. Elevated as Judge of the High Court of Madhya Pradesh, took oath on June 19, 2018 and demitted Office on December 31, 2021.

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

FAREWELL OVATION TO HON'BLE MR. JUSTICE RAJENDRA KUMAR SRIVASTAVA, GIVEN ON 22.12.2021, IN THE CONFERENCE HALL OF SOUTH BLOCK, HIGH COURT OF M.P., JABALPUR.

Hon'ble Mr. Justice Ravi Malimath, Chief Justice, bids farewell to the demitting Judge :-

We have assembled here today to bid an affectionate farewell to Shri Justice Rajendra Kumar Srivastava, who is demitting office on 31st of December, 2021 on attaining the age of superannuation.

Shri Justice Srivastava was born on 1st of January 1960 at Banda (U.P.). After passing High School examination from Mahatma Gandhi Inter College, Urai Jalon (U.P.) and 12th class examination from Rajkiya Government College, Banda, he obtained bachelor degree in Arts from Pandit Jawaharlal Nehru Degree College, Banda. Thereafter, he obtained Law Degree in the year 1981 from Jhansi (U.P.).

Shri Justice Srivastava joined Madhya Pradesh Judicial Service on 30th of January 1986 while he was appointed as Civil Judge, Class-II & JMFC. On 28th of February 1992, he was promoted as Civil Judge, Class-I and thereafter on 8th of November 1995 as CJM/ACJM. He was promoted as Officiating District Judge in Higher Judicial Service on 26th of May 1997. He was granted Selection Grade Scale with effect from 26th of February 2006 and Super Time Scale with effect from 24th of September 2013.

He was elevated as Judge of this High Court on 19th of June 2018. His contribution on Judicial and Administrative side has been very illustrative. He is known for his soft and polite behavior and pleasant mannerism.

Justice Srivastava has not only contributed to the development of law on the judicial side, but has also made invaluable contribution for the betterment of administration of the High Court as well. He was Member of various Committees.

During his tenure as a Judge of Madhya Pradesh High Court, Justice Srivastava has disposed off 9059 cases. He has dealt with Civil and Criminal matters with equal proficiency. The decisions rendered by him reflect his knowledge of law. I am sure that with his vast knowledge and experience he will continue to be useful to the society even after his retirement.

I, on my behalf and on behalf of my esteemed Sister and Brother Judges and the Registry of the High Court, wish Shri Justice Rajendra Kumar Srivastava and his family members a very happy, peaceful and contented life ahead.

Shri Ashish Anand Barnard, Dy. Advocate General, M.P., bids farewell:-

In this assembly we are giving farewell to Hon'ble Shri Justice Rajendra Kumar Srivastava, who has worked in judiciary for 35 incredible years.

My Lords, Hon'ble Shri Justice Rajendra Kumar Srivastava was born on 01/01/1960 at Banda (UP). After completing school education, i.e. High School examination from Mahatma Gandhi Inter College, Urai Jalon (UP) and 12th Class Examination from Rajkiya Government College, Banda, His Lordship obtained bachelor degree in Arts from Pandit Jawaharlal Nehru Degree College, Banda. His Lordship obtained Law Degree in the year 1981 from Jhansi (UP).

Hon'ble Shri Justice Rajendra Kumar Srivastava joined Madhya Pradesh Judicial Service on 30th of January 1986, when he was appointed as Civil Judge Class II & JMFC. On 28th of February 1992, His Lordship was promoted as Civil Judge, Class-I and on 08th of November 1995 as CJM/ACJM. His Lordship was promoted as Officiating District Judge in Higher Judicial Service on 26th of May 1997.

Hon'ble Shri Justice Rajendra Kumar Srivastava was elevated as Judge of this High Court on 19th of June 2018.

As I said in my opening words, Hon'ble Shri Justice Rajendra Kumar Srivastava has worked for 35 years in the Judiciary and has acquired a varied and huge experience. He has known the expectations of a common man from the judiciary, which is reflected in the adjudication of cases by him and his intrinsic ability, magnanimity and extracting the truth with the help of law by upholding the dignity and decorum of this Hon'ble Court is unmatched.

My Lords, though Hon'ble Shri Justice Rajendra Kumar Srivastava is retiring today but he will remain in our hearts forever. We will all feel his absence in this Hon'ble Court. Retirement is the beginning of a new chapter in the life of an individual. We know Hon'ble Shri Justice Rajendra Kumar Srivastava will make the best use of his retirement and will catch up on the personal interests that he had left behind.

My Lord, I am holding the office of the Dy. Advocate General and representing the State of MP, therefore, for and on behalf of the Advocate General of Madhya Pradesh, State of Madhya Pradesh, Law Officers and on my own behalf, I wish a successful retiral life to Hon'ble Shri Justice Rajendra Kumar Srivastava and also wish for his good health and long life.

Thank you.

Shri Raman Patel, President, High Court Bar Association, Jabalpur, bids farewell :-

आज हमारा बार बहुत प्रसन्न नहीं है और बहुत दुखी है, आपके रिटायरमेंट से, उसकी वजह है कि बहुत लंबे अर्से से इस मध्यप्रदेश उच्च न्यायालय में रिलीफ ओरिऐंटेड जज हमारे पास था, सदा मुस्कान के साथ, जो हमारे प्रति अपनी न्याय की गरिमा को बनाये हुये, बार को दान देते थे और आम जनमानस भी आपसे बहुत प्रसन्न था और इसलिए हम आज सबसे पहले, जूनियर अधिवक्ताओं को आपका आशीर्वाद मिले, ये अपेक्षा करते हैं और सीनियर अधिवक्ताओं के द्वारा आपको आशीष और शुभकामनायें देते हुए अपनी बात रखते हैं।

आपने इस उच्च न्यायालय में रहते हुए, कभी किसी अधिवक्ता की गैर हाजिरी में कोई प्रकरण खारिज नहीं किये। उसकी वजह यह थी कि, हो सकता है कि वो अधिवक्ता किसी मजबूरीवश उपस्थित न हुआ हो और उसका कारण जानने के लिए आपने उसे समय दे दिया या तारीख दे दी, इसके लिए पूरा बार आपके प्रति आभारी है और हमेशा याद रखेगा। आपने न्याय की गरिमा को बनाये रखा। हमारा बार आपको, न्यायिक गरिमा की विशाल मानसिकता के लिए सदैव ही याद रखेगा। मैं एक बात और कह देना चाहता हूँ कि मध्यप्रदेश उच्च न्यायालय, प्रधान पीठ में अधिवक्ताओं की कमी है 'आई एम सॉरी' अधिवक्ताओं की कमी तो नहीं है लेकिन माननीय न्यायाधिपतियों की कमी है और उसी वजह से पेंडेंसी बढ़ती है। हो सकता है कि कुछ कारण हम भी हों, किन्हीं घटनाओं में एडवोकेट्स प्रोटेक्शन एक्ट के न रहने की वजह से वकीलों के प्रति किसी भी तरफ से कोई आरोप या प्रत्यारोप या हमारी गलती हो या सामने वाले की कुछ हड़तालें होती हैं, हम विरत होते हैं, उसके पीछे हमारी भावनायें ये नहीं हैं कि हम न्यायालय की अवमानना करना चाहते हैं, उसके पीछे हमारी भावनायें ये हैं कि हम किसी गलत कार्य का विरोध कर रहे हैं।

अब मैं ये कहना चाहूँगा कि हुजूर, आपने आपके इतने लंबे पीरियड में, ये तो बड़े भाग्य की बात होती है कि सिविल जज से होकर के उच्च न्यायालय के न्यायाधिपति तक प्रमोट होकर के यहाँ तक पहुँचने की हैसियत जिसकी हो जाये, यह उसके लिए, उसके परिवार के लिये और उनके साथियों के लिए ये भाग्य की बात होती है। हालांकि इस छोटी उम्र में रिटायर होना मेरे जैसे आदमी के लिए तो बड़ा दुखदायी होता है। 62 या 65 कोई ऐज होती है, कम से कम 75 या 72 भी हो तो चलेगा। देखिये मेरे जैसा आदमी, अब सोचिये कि हम आपके सामने इस उम्र में उपस्थित हो रहे हैं और हमारी रिटायरमेंट ऐज क्या है, 5 बजे तक आपके सामने बहस करेंगे और 7 बजे श्मशान चले जायेंगे, नो रिटायरमेंट, ऐसा हम चाहते हैं हमारे जजेस महोद्य को, माननीय मुख्य न्यायाधिपति महोद्य बैठे हुये हैं, उनसे मैं निवेदन करना चाहूंगा कि 10 साल कम से कम और मिलें क्योंकि हमारे दो भूतपूर्व न्यायाधिपति यहाँ उपस्थित हैं, उनकी एनर्जी देखिये, आते बराबर हमसे हाथ मिलाया, अपनापन दिया, हमको याराना दिखाया, हमको बहुत अच्छा लगा और आज भी उनकी स्थिति ये है कि वो किसी भी कार्य को करते हैं। आपके परिवार को अच्छा लगा होगा, शायद आपको भी लगे कि लंबे सेवाकाल के बाद अब आराम से सो सकेंगे क्योंकि न्यायाधिपति न रात भर सो पाते हैं ठीक से और फिर न सुबह अपने कार्य को निपटा पाते हैं। 12 बजे तक फाईलें पढ़ते हैं और सुबह 5 बजे से फिर उठ जाते हैं और इस तरह से उनकी जिंदगी कटती है। बहरहाल, वो आपके लिये हो सकता है, लेकिन आप जैसा अच्छा जज हमें प्राप्त हुआ, इसके लिए हम ऊपर वाले को भी धन्यवाद देते हैं, माननीय मुख्य न्यायाधिपति महोदय को भी धन्यवाद देते हैं और जिन किन्हीं लोगों ने इस तरह से अच्छे न्यायिक जजों को हमारे बीच भेजा है उन सब को, बधाई के वो पात्र होंगे।

आप हमेशा इस जाबालि ऋषि की नगरी जबलपुर में आते रहिये, जैसा स्नेह यहाँ पर देखा है, मातृभूमि तरफ जाने की स्थिति आपकी बने, वहाँ भी जायें लेकिन यहाँ भी आते रहें। ये बार आपके प्रति इतना अपनापन बनाया हुआ है, आपको इतनी मोहब्बत और इतना अपनापन देता है कि जब भी आयेंगे, आपको हम अपनी आँखों की पलकों में बिठा करके स्वागत करेंगे और इन्हीं परिस्थितियों के साथ अगर इस शहर में आपका आगमन होता रहा तो ये बार आपके लिये धन्य होगा, क्योंकि इस बार ने आपको बहुत मान्यतायें और चाहत दी है। ऐसा न हो कि, संत कबीर दास जी ने कहा है कि – पत्ता टूटा डाल से ले गई पवन उड़ाय। अब के बिछड़े न मिलें, दूर पडे हैं जाय, ये स्थिति न बन पाये, आप तो हमेशा अपनेपन के साथ आयें और इसी उम्मीद के साथ मैं उस बात को न दोहरा के कि कहाँ आपका जन्म हुआ, कहाँ आपने शिक्षा प्राप्त की है, वो हमारे माननीय मुख्य न्यायाधिपति महोद्‌य ने आप और हम लोगों के सामने यह बहुत स्पष्ट कर दिया है, लेकिन आपका ये स्नेह, ममता, अपनापन और बार के प्रति आपकी चिर मुस्कान हम अपने जीवन भर याद रखेंगे। इन्हीं शब्दों के साथ मैं पुनः अपने बार की ओर से, आपको बधाई देता हूँ और मुख्य न्यायाधिपति महोद्‌य एवं न्यायाधिपतियों को प्रणाम करते हुए अपनी बात को समाप्त करता हूँ।

जय हिंद, जय भारत।

Shri Radhe Lal Gupta, Representative, State Bar Council of M.P., bids farewell :-

With a heavy heart, we all have gathered here to bid farewell to Justice Shri Rajendra Kumar Srivastava, who is demitting the office today on 22nd of December 2021. I am privileged to get this rare opportunity. My Lord Justice Shri Rajendra Kumar Srivastava, who is an embodiment of success, earned through sheer hard work, sincerity, and dedication.

My Lord Justice Shri Rajendra Kumar Srivastava, was born on 1st of January, 1960 at Banda (UP). After completing law graduation in the year 1981, joined Judicial Service. My Lord was promoted as Officiating District Judge in the year 1997 and was granted Super Time Scale in the year 2013.

Hon'ble Shri Justice Rajendra Kumar Srivastava was posted in various cities of Madhya Pradesh. Hon'ble Shri Justice Rajendra Kumar Srivastava was elevated as Judge of the High Court of Madhya Pradesh on 19th of June 2018.

My Lord's greatest achievement is, his acceptability by the advocates, litigants and common man. For a Judge, if they feel and realize that, before that Court they shall get justice, then Judge has succeeded and justifies occupying the chair of high office of the said judiciary. Justice Shri Rajendra Kumar Srivastava achieved the same.

My Lord Justice Shri Rajendra Kumar Srivastava has never shirked from his responsibilities in dispensation of Justice, because of his best knowledge in every branch of law, he never faced any difficulty in dealing with law. In his career

as a Judge, he believed only in performing his duties to the best of his ability and knowledge.

My Lord's smiling face makes the atmosphere of the Court very congenial and friendly to the members of the Bar. We will be missing My Lord on every occasion, as My Lord is humorous who leaves no opportunity of making the Court atmosphere lighter. My Lord leads a simple life and every person who interacts with him wonders how he is not affected by the burden of professional demands. A soft-spoken person, he puts every person who interacts, whether in Court or outside, at ease and one never feels that one is talking to a luminary. My Lord is capable to solve any serious problem in a very light and easy mood. My Lord is very prompt in reaching to the correct conclusion and solution to any problem.

My Lord, I, on behalf of the State Bar Council of Madhya Pradesh, on behalf of advocates of Madhya Pradesh and my own behalf, wish Your Lordship, all the best for the days to come and wish you a very happy and healthy life.

Thank you.

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

We have assembled here to bid a fond farewell to Hon'ble Shri Justice Rajendra Kumar Srivastava, as he shall be demitting the office of Judge, High Court of Madhya Pradesh, during the winter vacations on 31.12.2021.

My Lord Justice Rajendra Kumar Srivastava has had an illustrious and distinguished career as a Judge for nearly 36 years.

My Lord was born on 1st of January 1960 at Banda, Uttar Pradesh and after completing studies, joined Madhya Pradesh Judicial Service on 30th of January 1986 and after earning promotions, was appointed to Higher Judicial Service on 26th of May 1997. My Lord has held a range of Judicial Offices throughout the State.

My Lord Justice Rajendra Kumar Srivastava was elevated as Judge of this Hon'ble Court on 19th of June 2018, and has been performing the duties, functions and responsibilities of the high office ever since.

I vividly recall that in my welcome address, I implored My Lord that the age old approach of justice tempered with mercy be your guiding light as Judge of the High Court. It is my pleasure and privilege to echo the sentiments of all the members of the Bar that we were never disappointed and that justice administered by My Lord was always and invariably tempered with mercy.

The overall atmosphere in My Lord's Court was soothing and everyone who appeared before My Lord felt comfortable and the causes heard to the fullest. It was always a pleasure to be in My Lord's Court. The gracious and smiling manner with which My Lord conducted the Court, endeared him to every lawyer and litigant appearing in his Court. It was rare to find any advocate, particularly juniors, who would not be ready and willing to argue matters before My Lord.

While demitting the high office of Judge of this Hon'ble Court, My Lord can positively look back and be satisfied of a job well done.

We are fully hopeful, though My Lord is demitting office of Judge, High Court but his guidance shall be always available to the Bar and to the society at large. Someone of My Lord's temperament, knowledge and experience is bound to utilize the retirement as a new beginning for the benefit of the society, wherein My Lord, full of zeal, commitment and energy shall be a great asset.

On this occasion, may I quote from an unknown author to convey the sentiments of the Bar:

"Goodbyes are not forever, Goodbyes are not the end.

They simply mean, We'll miss you, Until we meet again."

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

I wish Hon'ble Shri Justice Rajendra Kumar Srivastava, Mrs. Srivastava and all his family members, abundance of happiness, peace and good health.

Thank you.

Shri Jinendra Kumar Jain, Assistant Solicitor General, bids farewell :-

श्री राजेन्द्र कुमार श्रीवास्तव जी की जीवन यात्रा नया वर्ष प्रारंम्भ होने के साथ ही, वर्ष 1960 से उत्तरप्रदेश के बंडा ग्राम से हुई है। जीवन के प्रारंभिक दिन माता पिता द्वारा पल्लवित, संस्कारित एवं भावी जीवन का मुकाबला दृढ़ता से करने हेतु, शिक्षा के माध्यम से योग्यता प्राप्त की, फलस्वरूप कला एवं विधि विषय में स्नातक की उपाधि प्राप्त करने के पश्चात्, म0प्र0 विधिक सेवा में प्रवेश कर भावी जीवन में प्रगति के सोपान की ओर कदम बढ़ाना प्रारंभ किया एवं निरंतर सतत् मेहनत एवं विद्वत्ता के कारण आगे बढ़ते हुये, विभिन्न दायित्वों का निर्वहन कर, विधिक सेवा के माध्यम से प्रदेश के अनेक जिला न्यायालयों में पदस्थ होकर अनेक प्रकरणों में अपनी सूझबूझ से निर्णय पारित किये, जिससे पक्षकारों को संतुष्टि एवं लाभ प्राप्त हुआ, उनकी समस्या का निदान हुआ।

न्यायाधिपति श्री राजेन्द्र कुमार श्रीवास्तव जी का म0प्र0 उच्च न्यायालय के गरिमामय पद पर चयन होने के पश्चात् लगभग $3^{1/2}$ वर्ष का कार्यकाल निकट से देखा। आपकी कार्यक्षमता, व्यवहार,

अधिवक्ता के प्रति न्यायालय में एवं न्यायालय के बाहर हमेशा प्रसन्नचित्त एवं सरलता सभी को आकर्षित करते हैं।

समय परिवर्तनशील है, आने वाला समय आपके जीवन के स्वर्णिम दिन हो, इसी कामना से मैं अपनी ओर से, भारत सरकार की ओर से, केन्द्रीय विधि अधिकारियों की ओर से, आपके उज्ज्वल भविष्य की कामना करता हूँ।

जय भारत।

Shri R.P. Agrawal, President, Senior Advocates' Council, Jabalpur, bids farewell :-

We have assembled here today on this 22nd day of December 2021 to bid farewell to Hon'ble Shri Justice Rajendra Kumar Srivastava, who is demitting his office on 31st of December 2021.

My Lord had about 32 years of long experience in the lower judiciary and about 3 1/2 years of experience in the High Court.

My Lord has left an imprint on the minds of all the advocates, who had an occasion to appear before him. My Lord was soft, kind hearted and had a positive outlook. My Lord's behavior with the lawyers was excellent.

My Lord was relief oriented and whosoever appeared before him, came out of his Court room fully satisfied. My Lord had a very kind attitude and impressed everyone whosoever appeared before him.

I, on behalf of Senior Advocates' Council and on my own behalf, wish My Lord, a very happy and prosperous life.

Thank you.

Farewell Speech delivered by Hon'ble Mr. Justice Rajendra Kumar Srivastava :-

परमपिता परमेश्वर के प्रति कृतज्ञ भाव रखते हुए, सर्वप्रथम मैं आप सभी वक्ताओं द्वारा मेरे प्रति अभिव्यक्त विचारों के लिए हृदय से धन्यवाद देना चाहूंगा। आज मैं एक ऐसे क्षण पर खड़ा हूँ, जहाँ पर अपने भाव व्यक्त करना अत्यंत कठिन है। किसी भी न्यायाधीश के सेवाकाल में दो चरण सबसे महत्वपूर्ण होते हैं – पहला, जब एक न्यायाधीश सेवा में प्रवेश करता है और दूसरा, जब वह सेवा–निवृत्त होता है। इन दोनों चरणों के बीच का समय ही एक न्यायाधीश का साध्य जीवन है।

आरंभ से ही मुझे मेरे पिताजी श्री शिवराम दास जी एवं मेरी माँ श्रीमती मुन्नी देवी–अब स्मृतिशेष, का स्नेह और आशीर्वाद सदा से मेरे साथ रहा है। मेरे बड़े भाई श्री सुरेन्द्र कुमार श्रीवास्तव एवं मेरी भाभी श्रीमती रीता श्रीवास्तव द्वारा मुझे सतत् रूप से कर्तव्य पथ पर आगे बढ़ने की प्रेरणा दी

गयी। मेरी बहनें श्रीमती उमा श्रीवास्तव एवं श्रीमती साधना श्रीवास्तव एवं मेरे बहनोई श्री सुशील कुमार श्रीवास्तव एवं अनिल कुमार श्रीवास्तव ने मुझे निःस्वार्थ भाव से सहयोग प्रदान किया। मेरी सास एवं ससुर स्मृतिशेष श्रीमती केसर रानी एवं स्मृतिशेष श्री रमेश शंकर श्रीवास्तव का आशीर्वाद हमेशा विद्यमान रहा। सभी का स्नेह और सहयोग मेरा संबल रहा है। वर्ष 1988 में विवाह के साथ ही मेरी धर्मपत्नी श्रीमती अमिता श्रीवास्तव और फिर समय के साथ पुत्र अर्पित और अभिनव का सहयोग किसी उल्लेख की अपेक्षा नहीं रखता है। उन्होंने मुझे सदैव निष्पक्ष रूप से न्यायिक कार्य को संपादित करने में सहयोग प्रदान किया। न्यायिक सेवा के दौरान ही पुत्रवधु शिखा और पौत्री मानसी भी मेरे परिवार का हिस्सा बने एवं उनका भी स्नेह मुझे सदैव मिलता रहा।

मेरे सेवाकाल का पहला चरण सन् 1986 में मध्यप्रदेश न्यायिक सेवा में प्रवेश के साथ प्रारंभ हुआ। मेरी पहली पदस्थापना प्रशिक्षु व्यवहार न्यायाधीश के रूप में जिला नरसिंहपुर में थी। प्रथम पदस्थापना के दौरान मुझे पूर्व जिला न्यायाधीश श्री ए.एन.एस. श्रीवास्तव जी और पूर्व विशेष न्यायाधीश श्री प्रभाकांत शुक्ला जी का विशेष स्नेह और मेरे वरिष्ठ न्यायाधीशों एवं सहकर्मी न्यायाधीशों का अत्यंत सहयोग मिला। जिससे प्रशिक्षु न्यायाधीश के रूप में कार्य निर्वहन करने में अत्यंत सुगमता रही। वस्तुतः मुझे प्रथम पदस्थापना पर जो मार्गदर्शन एवं सहयोग मिला, वह मेरे संपूर्ण सेवाकाल के लिए एक आधार बन गया था।

प्रशिक्षु न्यायाधीश के रूप में प्रशिक्षण पूर्ण कर लेने के उपरांत, मेरी पहली नियमित पदस्थापना जिला सिवनी में हुई। यद्यपि बाद में जिला सिवनी में मेरी और दो बार पदस्थापना अपर जिला न्यायाधीश और विशेष न्यायाधीश के रूप में हुई एवम् लगभग दो बार कार्यकारी जिला न्यायाधीश के रूप में भी कार्यरत रहा। अपने संपूर्ण सेवाकाल में सिवनी अत्यंत महत्वपूर्ण पड़ाव रहा है। सिवनी के अधिवक्ताओं और न्यायालय के कर्मचारीगण का सहयोग अविस्मरणीय है। मैं कई बार तहसील न्यायालय में भी पदस्थ रहा एवम् मुख्य न्यायिक मजिस्ट्रेट के रूप में जिला सागर में पदस्थ रहा, जहाँ मैने न्यायिक कार्य के साथ–साथ प्रशासनिक कार्य का भी संपादन किया और जिला रायसेन, छतरपुर और रीवा में जिला न्यायाधीश के रूप में मेरी पदस्थापनाएं रहीं, जहां मैंने न्यायिक कार्य के साथ प्रशासनिक कार्य निष्पक्षतापूर्वक करने का प्रयास किया।

मेरी इन विभिन्न पदस्थापनाओं के दौरान मुझे माननीय जस्टिस एस. के. पाण्डेय, श्री जस्टिस आलोक वर्मा, श्री उल्लास बापट, पूर्व जिला न्यायाधीश, श्री जस्टिस सुरेन्द्र तिवारी, पूर्व जिला न्यायाधीश छत्तीसगढ़ सहित अनेक विद्वान और स्नेही वरिष्ठों का मार्गदर्शन मिला। आज मैं इन सभी के प्रति कृतज्ञता अनुभव कर रहा हूं।

प्रारंभिक पदस्थापनाओं के दौरान ही मैनें अनुशासनबद्ध तरीके से ही निष्पक्षतापूर्वक विधिनुसार न्यायिक प्रक्रिया संपादित करने का प्रयास किया। इस कार्य में सभी कर्मचारीगण एवं अधिवक्तागण ने भी सक्रिय रूप से सहयोग प्रदान किया। मेरी जहां भी पदस्थापना रही वहां पर मैनें पूर्णरूप से इस बात का प्रयास किया कि बार एवं बैंच के सभी सदस्य अनुशासनबद्ध तरीके से कार्य करें, जिससे न्यायिक प्रक्रिया सुगम तरीके से चलती रहे। मैंने अपनी प्रत्येक पदस्थापना पर इस आवश्यकता को समझकर कार्य करने का प्रयास किया है। मुझे इस बात की खुशी है कि मुझे वरिष्ठ एवं कनिष्ठ न्यायाधीशों एवं अधिवक्ताओं और न्यायालय के सभी कर्मचारीगण का संपूर्ण स्नेह एवं सकारात्मक सहयोग मिला। मैं इन सभी का आभारी हूँ।

जिला छतरपुर की पदस्थापना के दौरान मेरी नियुक्ति मध्यप्रदेश उच्च न्यायालय में न्यायाधिपति के रूप में वर्ष 2018 में हुई। उच्च न्यायालय की पदस्थापना के दौरान भी मुझे सभी

न्यायाधिपतिगण एवं अधिवक्ताओं का संपूर्ण सहयोग एवं स्नेह प्राप्त हुआ। उच्च न्यायालय एवं जिला न्यायालयों की कार्यप्रणाली में भिन्नता होने की वजह से यहाँ एक नया अनुभव प्राप्त हुआ।

उच्च न्यायालय के कार्यकाल के दौरान मुझे अपने स्टाफ कर्मियों का अमूल्य सहयोग प्राप्त हुआ है, जिसमें श्री अश्वनी प्रजापति, श्री अरविन्द मिश्रा, श्री ललित सिंह राणा, श्रीमती सावित्री पटेल, श्रीमती पल्लवी सिन्हा, श्रीमती रोशनी सिंग, श्री कुंदन शर्मा, श्री अभिषेक पांडेय, श्री शैलेन्द्र उइके, श्री संतोष उइके, श्री धनीराम पटेल, श्री गणेश प्रसाद केवट, श्री राजीव पटेल, श्री जितेन्द्र विश्वकर्मा, श्री राजेश मिश्रा, श्री विमल कुमार राठौर, श्री धनराज बावरिया, श्री शुभम साहू, कुमारी अनुश्री गुप्ता एवं कुमारी रिया अग्रवाल शामिल हैं।

समय–समय पर मुझे रजिस्ट्रार जनरल श्री राजेन्द्र कुमार वाणी एवं रजिस्ट्री के सभी अधिकारीगण, प्रोटोकॉल ऑफिसर एवं अन्य सभी कर्मचारीगण का सहयोग प्राप्त हुआ। इसके साथ ही राज्य न्यायिक अकादमी के डायरेक्टर श्री रामकुमार चौबे एवं उनकी टीम के सभी सदस्यों का सहयोग प्राप्त हुआ है, जिनका मैं आभार प्रकट करता हूँ। मुझे राज्य विधिक सेवा प्राधिकरण के अधिकारीगण का भी सहयोग प्राप्त हुआ। डॉ. ए.सी. सोनकर द्वारा भी मुझे समय–समय पर चिकित्सीय परामर्श एवम् सुविधा प्रदान की गयी है। मैं इन सभी को हृदय से धन्यवाद देता हूँ।

मुझे जो अनुभव हुआ, सार रूप में कहना चाहूं तो यही कहूंगा कि न्यायिक व्यवस्था का मूलभूत उद्देश्य जनता को न्याय दिलाना है, यह तभी पूरा हो सकता है, जब बार एवं बेंच के सभी सदस्य अनुशासनबद्ध होकर कार्य करें। वरिष्ठ अधिवक्तागण का यह कर्तव्य है कि वह युवा अधिवक्ताओं को समुचित प्रशिक्षण प्रदान करें, जिससे वह विनम्रतापूर्वक सुदृढ़ ढंग से न्यायालय के समक्ष अपने पक्षकार का पक्ष रख सकें। जिला न्यायालयों अथवा उच्च न्यायालय, जहां भी मुझे न्यायाधीश के रूप में न्यायिक सेवा का दायित्व मिला, मैंने पूरे मनोयोग से अपने कर्तव्य का निर्वाह करने का प्रयास किया है। इसमें सफलता का यदि कोई अंश है तब वह उन सभी वरिष्ठों, सहयोगी न्यायाधीशों, अधिवक्ताओं और सहकर्मियों का योगदान है, जिनका मुझे अपने न्यायिक जीवन में साथ मिला। आज एक बार फिर सभी के प्रति मन कृतज्ञ है।

कोटिशः धन्यवाद।

NOTES OF CASES SECTION

Short Note
****(16)(DB)***

Before Mr. Justice Sheel Nagu & Mr. Justice Anand Pathak

WA No. 535/2021 (Gwalior) decided on 31 August, 2021

HARIPRASAD BAIRAGI …Appellant

Vs.

RADHESHYAM & ors. …Respondents

A. *Rules Regarding Record of Rights, Rule 24 & 32 – Adjudication of Title on Basis of Will – Competent Authority* – **Held – Rule 24 & 32 do not contemplate adjudication of title by Tehsildar, it is meant for recording "consequence of adjudication" and "transfer of ownership" for mutation purpose – It is the domain of Civil Courts only to adjudicate the title of parties.**

क. *अधिकार अभिलेख से संबंधित नियम, नियम 24 व 32 – वसीयत के आधार पर हक का न्यायनिर्णयन – सक्षम प्राधिकारी* – अभिनिर्धारित – नियम 24 व 32 तहसीलदार द्वारा न्यायनिर्णयन अनुध्यात नहीं करता, यह नामांतरण प्रयोजन हेतु ''न्यायनिर्णयन के परिणाम'' एवं ''स्वामित्व का अंतरण'' अभिलिखित करने के लिए है – पक्षकारों के हक का न्यायनिर्णयन करना केवल सिविल न्यायालयों का अधिकार क्षेत्र है।

B. *Land Revenue Code, M.P. (20 of 1959), Section 31 – Adjudication of Title* – **Held – Any proceedings between parties as contemplated u/S 31 of Code does not take into its ambit the question of adjudication of title of parties on the basis of Will – It does not contemplate adjudication of title – Writ Court rightly relegated the parties to the Civil Court – Appeal dismissed.**

ख. *भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 31 – हक का न्यायनिर्णयन* – अभिनिर्धारित – पक्षकारों के मध्य कोई भी कार्यवाहियां, जैसा कि संहिता की धारा 31 के अंतर्गत अनुध्यात है, वसीयत के आधार पर पक्षकारों के हक के न्यायनिर्णयन के प्रश्न को अपनी परिधि में नहीं लेती हैं – यह हक का न्यायनिर्णयन अनुध्यात नहीं करती – रिट न्यायालय ने उचित रूप से पक्षकारों को सिविल न्यायालय के समक्ष भेजा – अपील खारिज।

The judgment of the Court was delivered by : **ANAND PATHAK, J.**

Cases referred:

AIR 1976 MP 160, AIR 2000 SC 1283, 2020 (4) MPLJ 139.

Santosh Agrawal, for the appellant.

NOTES OF CASES SECTION

Short Note

****(17)***

Before Mr. Justice Rajeev Kumar Shrivastava

MP No. 1333/2021 (Gwalior) decided on 31 July, 2021

NARESH SONI …Petitioner

Vs.

SHANKAR SINGH …Respondent

Civil Practice – Adjudication of Nature of Sale Deed – Jurisdiction – **Held – In present case, nature of sale deed is to be decided, which is the sole domain of Civil Court and Revenue Courts are expected not to entertain such matter – In such cases, jurisdiction solely vests in Civil Court – Impugned order is perverse and is set aside – Petition disposed.**

सिविल पद्धति – विक्रय विलेख के स्वरूप का न्यायनिर्णयन – अधिकारिता – अभिनिर्धारित – वर्तमान प्रकरण में, विक्रय विलेख के स्वरूप का विनिश्चय किया जाना है, जो कि एकमात्र सिविल न्यायालय का अधिकार क्षेत्र है एवं राजस्व न्यायालयों से ऐसे मामले पर विचार न करने की अपेक्षा की जाती है – ऐसे प्रकरणों में, अधिकारिता एकमात्र सिविल न्यायालय में निहित है – आक्षेपित आदेश विपर्यस्त है एवं अपास्त किया जाता है – याचिका निराकृत।

Nirmal Sharma, for the petitioner.
Manas Dubey, for the respondent/caveator.

Short Note

****(18)***

Before Mr. Justice Rajeev Kumar Shrivastava

MP No. 630/2020 (Gwalior) decided on 31 July, 2021

RADHESHYAM …Petitioner

Vs.

KAMLA DEVI & ors. …Respondents

Evidence Act (1 of 1872), Section 112 – DNA Test – Permissibility – **Held – Matter relates to inheritance of property of Hindu Undivided Family – Petitioner denying Respondent No. 1 to be his real sister – It is true that u/S 112, birth during marriage is conclusive proof of legitimacy, therefore, bars DNA testing but when blood relations of siblings is challenged, there shall be no bar u/S 112 – Trial Court rightly permitted for DNA test – Petition dismissed.**

साक्ष्य अधिनियम (1872 का 1), धारा 112 – DNA परीक्षण – अनुज्ञेयता – अभिनिर्धारित – मामला हिन्दू अविभक्त कुटुंब की संपत्ति के उत्तराधिकार से संबंधित है –

याची, प्रत्यर्थी क्र. 1 को उसकी सगी बहन होने से इंकार कर रहा है – यह सत्य है कि धारा 112 के अंतर्गत, विवाहित स्थिति के दौरान जन्म, धर्मजता का निश्चयात्मक सबूत है इसलिए, **DNA** परीक्षण वर्जित करती है किंतु जब भाई–बहनों के रक्त संबंधों को चुनौती दी गई है, धारा 112 के अंतर्गत कोई वर्जन नहीं होगा – विचारण न्यायालय ने उचित रूप से **DNA** परीक्षण की अनुमति दी – याचिका खारिज।

Cases referred :

S.L.P. (C) No. 17427/2004 decided on 27.04.2005 (Supreme Court), (1993) 3 SCC 418, AIR 2012 DELHI 151.

H.K. Shukla, for the petitioner.
S.K. Shrivastava, for the respondent No. 1.
R.P. Singh, G.A. for the State.

Short Note
****(19)***
Before Mr. Justice G.S. Ahluwalia
MCRC No. 38747/2021 (Gwalior) decided on 9 August, 2021

RAHUL KUMAR ...Applicant

Vs.

STATE OF M.P. …Non-applicant

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Accused on Parole – Maintainability of Application* – Held – Since applicant has been released on parole in the wake of Covid-19 pandemic, therefore it cannot be said that he is in custody and accordingly application u/S 439 is not maintainable unless and until he surrenders before trial Court – Bail and parole are two different connotation.**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – अभियुक्त पैरोल पर – आवेदन की पोषणीयता – अभिनिर्धारित – चूंकि आवेदक को कोविड–19 महामारी के परिणामस्वरूप पैरोल पर छोड़ा गया है, अतः यह नहीं कहा जा सकता कि वह अभिरक्षा में है एवं तद्नुसार धारा 439 के अंतर्गत आवेदन तब तक पोषणीय नहीं है जब तक कि वह विचारण न्यायालय के समक्ष अभ्यर्पण नहीं करता – जमानत एवं पैरोल दो भिन्न लक्ष्यार्थ हैं।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Accused on Parole* – Held – Whenever an application u/S 439 Cr.P.C. is filed, applicant(s) must declare that he/they are not on parole.**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – अभियुक्त पैरोल पर – अभिनिर्धारित – जब भी दं.प्र.सं. की धारा 439 के अंतर्गत एक आवेदन प्रस्तुत किया जाता है, आवेदक/आवेदकों को यह घोषित करना चाहिए कि वह/वे पैरोल पर नहीं है।

NOTES OF CASES SECTION

Cases referred:

(2008) 3 SCC 222, (2014) 16 SCC 623, (2006) 9 SCC 540, (2000) 3 SCC 409, AIR 1980 SC 785, (2005) 1 SCC 608, (2000) 3 SCC 394, MCRC No. 18164/2020 order passed on 23.07.2020.

Prashant Sharma, for the applicant.
Vivek Khedkar, for the non-applicant.

I.L.R. [2021] M.P. 2221 (SC)
SUPREME COURT OF INDIA

Before Ms. Justice Indira Banerjee & Mr. Justice J.K. Maheshwari

CA No. 6238/2021 decided on 6 October, 2021

UNION OF INDIA & ors. …Appellants

Vs.

METHU MEDA …Respondent

A. Service Law – Honourable Acquittal – Post of Constable – **Held – If person is acquitted by Court giving him benefit of doubt from the charge of offence involving moral turpitude or because of witnesses turning hostile, it would not automatically entitle him for employment, that too in disciplined force – Mere disclosure of offence alleged and result of trial is not sufficient – Employer having a right to consider his candidature in terms of circulars of Screening Committee, he cannot be compelled to give appointment – Impugned order set aside – Appeal allowed. (Para 14 & 22)**

क. सेवा विधि – सम्मानपूर्वक दोषमुक्ति – कांस्टेबल का पद – अभिनिर्धारित – यदि व्यक्ति को नैतिक अधमता से अंतर्वलित अपराध के आरोप से या साक्षीगण के पक्षद्रोही हो जाने के कारण, संदेह का लाभ देते हुए न्यायालय द्वारा दोषमुक्त किया जाता है, तो यह स्वतः उसे नियोजन के लिए पात्र नहीं बनाएगा, वह भी अनुशासित बल में – मात्र अभिकथित अपराध का प्रकटन एवं विचारण का परिणाम पर्याप्त नहीं है – नियोक्ता को छानबीन समिति के परिपत्रों के निबंधनों के अनुसार उसकी अभ्यर्थिता पर विचार करने का अधिकार है, उसे नियुक्ति देने के लिए विवश नहीं किया जा सकता – आक्षेपित आदेश अपास्त – अपील मंजूर।

B. Service Law – Appointment – Character & Integrity – **Held – Respondent who wishes to join police force must be a person of utmost rectitude and have impeccable character and integrity – A person having a criminal antecedents would not be fit in this category. (Para 21)**

ख. सेवा विधि – नियुक्ति – चरित्र व सत्यनिष्ठा – अभिनिर्धारित – प्रत्यर्थी जो पुलिस बल में शामिल होना चाहता है, उसे अत्यंत सदाचारी व्यक्ति एवं निर्दोष चरित्र का तथा सत्यनिष्ठ होना चाहिए – आपराधिक पूर्ववृत्त वाला व्यक्ति इस श्रेणी के लिए उपयुक्त नहीं होगा।

C. Service Law – Suitability of Candidate – Right of Employer – **Held – Employer is having right to consider the suitability of candidate as per government orders/instructions/rules while taking decision for employment – Acquittal on technical ground for offences of heinous/serious nature which is not a clean acquittal, employer has a right to consider all relevant facts available as to the antecedents and take appropriate decision. (Para 18)**

ग. सेवा विधि – अभ्यर्थी की उपयुक्तता – नियोक्ता का अधिकार – अभिनिर्धारित – नियोक्ता को, नियोजन के लिए विनिश्चय करते समय सरकारी आदेशों/अनुदेशों/नियमों के अनुसार अभ्यर्थी की उपयुक्तता पर विचार करने का अधिकार है – जघन्य/गंभीर स्वरूप के अपराधों के लिए तकनीकी आधार पर दोषमुक्ति, जो एक साफ दोषमुक्ति नहीं है, नियोक्ता को पूर्ववृत्त के संबंध में उपलब्ध सभी सुसंगत तथ्यों पर विचार करने एवं समुचित विनिश्चय करने का अधिकार है।

***D. Service Law – Honourable Acquittal* – Held – If acquittal is directed by Court on consideration of facts and material evidence on record with findings of false implication or that the guilt is not proved, accepting explanation of accused as just, it be treated as "honourable acquittal" – If prosecution fails to examine crucial witnesses or witness turned hostile, such acquittal is in purview of giving benefit of doubt and accused cannot be treated as honourably acquitted by Court. (Para 13 & 14)**

घ. सेवा विधि – सम्मानपूर्वक दोषमुक्ति – अभिनिर्धारित – यदि न्यायालय द्वारा, मिथ्या आलिप्त करने या दोषिता साबित नहीं होने के निष्कर्षों के साथ अभिलेख पर मौजूद तथ्यों एवं तात्विक साक्ष्य पर विचार कर, अभियुक्त के स्पष्टीकरण को न्यायसंगत स्वीकार करते हुए, दोषमुक्ति निदेशित की जाती है, तो यह ''सम्मानपूर्वक दोषमुक्ति'' मानी जाएगी – यदि अभियोजन महत्वपूर्ण साक्षीगण का परीक्षण करने में असफल रहता है अथवा साक्षी पक्षद्रोही हो जाता है, उक्त दोषमुक्ति संदेह का लाभ देने की परिधि में आती है एवं अभियुक्त को न्यायालय द्वारा सम्मानपूर्वक दोषमुक्त किया गया नहीं माना जा सकता।

Cases referred:

(2013) 1 SCC 598, (2016) 8 SCC 471, (2013) 7 SCC 685, (2018) 18 SCC 733, 2021 (4) SCALE 634, 2021 (9) SCALE 713, 178 (2011) DLT 263, (2002) 4 M.P.H.T. 226, (1972) 7 SLR 44, (1934) 61 ILR Cal. 168, AIR 1964 SC 787, (1994) 1 SCC 541, (2018) 1 SCC 797.

JUDGMENT

The Judgment of the Court was delivered by : **J.K. MAHESHWARI, J. :-** Leave granted.

2. Questioning the validity of the order passed in Writ Appeal No. 1090 of 2013 on 20.12.2013 upholding the order of the learned Single Judge passed on 27.09.2013 in Writ Petition No. 3897 of 2013, this appeal has been preferred.

3. The facts unfolded in the present case are that the respondent was found involved in an offence of kidnapping of Nilesh for demand of ransom. An FIR was registered against him on 22.8.2009. After investigation challan was filed, and he was tried before the Sessions Court, Jhabua, Madhya Pradesh in Sessions Case Serial No. 1 of 2010 for the charge framed against him under Sections 347/327/323/506 (Part-II) and 364A IPC. The Sessions Court acquitted him for the said

charge because the complainant, who was abducted, turned hostile in the Court. Thereafter, respondent applied for the post of Constable in Central Industrial Security Force (for short "CISF") and got selected through the Staff Selection Commission (for short "SSC"). An offer of appointment for provisional selection to the post of Constable/GD was issued to the respondent on 30.3.2012, subject to the conditions given in the agreement form. The respondent was required to furnish the documents including attestation forms, certificate of character, character and antecedent certificate from local Station House Officer. The respondent, while submitting the attestation form, specified the registration of above-said criminal case and acquittal from the charges in a trial by the competent court.

4. As the offer of appointment was conditional, therefore, in terms of the CISF Circular No. E- EG7023/TRG.SEC/ADM.I/CIRCULARS/2010-1157 dated 31.03.2010, he was not allowed to join training. The Ministry of Home Affairs vide letter No. I-45020/6/2010-Pers.II issued the guidelines on 01.02.2012 for consideration of the cases of the candidates against whom criminal cases were registered or tried by the courts.

5. In furtherance to the said guidelines, the case of the respondent was referred to AIG(L&R), CISF Hqrs, New Delhi with an information to IG/TS, CISF(TS) NISA, Hyderabad vide letter No. F37023/CISF/ RTC(D)/ Trg./ CBG/ 2012/2656 dated 04.05.2012. The Standing Screening Committee assembled on 27.07.2012 and examined the cases of 89 candidates including the respondent and on 15.10.2012 passed an order that respondent was not eligible for appointment.

6. Questioning the validity of the said action and asking for consequential reliefs, Writ Petition No. 3897 of 2013 was filed before the High Court of Madhya Pradesh, Indore Bench. The learned Single Judge, vide order dated 27.09.2013, allowed the Writ Petition directing the respondents therein to issue an order for sending the respondent herein on training commencing with effect from 21.10.2013. The Court further held that he would be entitled for all consequential benefits including seniority, notional fixation of salary etc. but back wages were denied. The said order was assailed before the Division Bench by filing Writ Appeal, but it was also dismissed, which led to filing the present appeal through the department.

7. The validity of the order passed by the learned Single Judge and also by the Division Bench have been assailed, inter alia, contending, until the respondent is honourably acquitted from the charge involving moral turpitude and the decision of the Screening Committee is not passed mala fide, interference in such decision is not warranted. Reliance is placed on the decision of this Court in *Inspector General of Police & Another vs. S. Samuthiram* (2013) 1 SCC 598 to clarify the meaning of 'honourable acquittal'.

8. It is argued that merely making a disclosure of the criminal case in the attestation form is not sufficient. As per the Policy Guidelines dated 01.02.2012, in view of involvement of the respondent in heinous offences including the offences under Sections 327/347/364A IPC, he would not be entitled for appointment until honourably acquitted. Even though, the respondent has been provisionally selected vide letter dated 30.03.2012, issued by the Chairman of the Recruitment Board, but mere acquittal giving benefit of doubt, as the witnesses have turned hostile, would not make the candidate suitable for appointment. The impugned orders passed by the High Court of Madhya Pradesh are contrary to the law laid down in the case of *Avtar Singh vs. Union of India and Others* (2016)8 SCC 471, *Commissioner of Police, New Delhi and Another vs. Mehar Singh* (2013)7 SCC 685, *State of Madhya Pradesh and Others vs. Abhijit Singh Pawar* (2018) 18 SCC 733, *State of Rajasthan and Others vs. Love Kush Meena* 2021(4) SCALE 634 and *Commissioner of Police vs. Raj Kumar* 2021(9) SCALE 713. It is urged that acquittal in a criminal case is not conclusive for suitability of the candidate for appointment. Thus, unless the respondent is honourably acquitted in a criminal case, it would not automatically entitle him for appointment to the post.

9. Per contra, learned counsel for the respondent contended that the Single Judge as well as the Division Bench of the High Court of Madhya Pradesh have considered the judgment of Delhi High Court in the case of *Rahul Yadav vs CISF and another,* 178(2011) DLT 263, where the High Court observed that the situation and background of the candidates hailing from the rural areas were relevant factors for consideration. Mere registration of a criminal case and acquittal from the said charges, would not disentitle him from appointment. The special leave petition preferred against the said judgment has been dismissed by this Court on 05.10.2012. On the point of defining the 'acquittal', the judgment in *Panna Mehta vs. State of M.P.* (2002) 4 M.P.H.T. 226 has been relied and urged that if the respondent has not concealed the material fact and specified details in the attestation form regarding the criminal case, trial and its result, it would not disentitle him from appointment to the post, in particular when in Bombay High Court, in the case of similarly situated person Ramesh has been sent on training. It is urged that the impugned order passed by the High Court is in conformity to law. The judgment in *Panna Mehta* (supra) is, however, distinguishable on facts in that a similarly situated person had been sent on training.

10. After having heard learned counsel for the parties at length, the question which arises in the present appeal is whether the decision of the Screening Committee rejecting the candidature of the respondent, when there was no allegation of malice against the Screening Committee and the respondent-writ petitioner had been acquitted of serious charges, inter alia, of kidnapping for ransom as some prosecution witnesses had turned hostile, ought to have been interfered with.

11. While addressing the question, as argued the meaning of expression 'acquittal' is required to be looked into. The expressions 'honourable acquittal', 'acquitted of blame' and 'fully acquitted' are unknown to the Code of Criminal Procedure or the Indian Penal Code. It has been developed by judicial pronouncements. In the case of *State of Assam & Another vs. Raghava Rajgopalachari,* (1972) 7 SLR 44, the effect of the word 'honourably acquitted' has been considered in the context of the Assam Fundament Rules (FR) 54 (a) for entitlement of full pay and allowance if the employee is not dismissed. The Court has referred the judgment of *Robert Stuart Wauchope vs. Emperor* reported in (1934) 61 ILR Cal. 168, in the context of expression 'honourably acquitted', Lord Williams, J. observed as thus:

> "The expression "honourably acquitted" is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extra judicial tribunals. We said in our judgment that we accepted the explanation given by the Appellant believed it to be true and considered that it ought to have been accepted by the Government authorities and by the magistrate. Further we decided that the Appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the Appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what Government authorities term "honourably acquitted". "

12. In the case of *R.P. Kapur vs. Union of India* AIR 1964 SC 787, it is observed and held by Wanchoo, J., as thus:

> "Even in case of acquittal, proceedings may follow where the acquittal is other than honourable."

13. In view of the above, if the acquittal is directed by the court on consideration of facts and material evidence on record with the finding of false implication or the finding that the guilt had not been proved, accepting the explanation of accused as just, it be treated as honourable acquittal. In other words, if prosecution could not prove the guilt for other reasons and not 'honourably' acquitted by the Court, it be treated other than 'honourable', and proceedings may follow.

14. The expression 'honourable acquittal' has been considered in the case of *S. Samuthiram* (supra) after considering the judgments of *Reserve Bank of India vs.Bhopal Singh Panchal* (1994)1 SCC 541*, R.P. Kapur* (supra), *Raghava Rajagopalachari* (supra); this Court observed that the standard of proof required for holding a person guilty by a criminal court and enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of

establishing guilt of the accused is on the prosecution, until proved beyond reasonable doubt. In case, the prosecution failed to take steps to examine crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honourably acquitted by the criminal court. While, in a case of departmental proceedings, the guilt may be proved on the basis of preponderance and probabilities, it is thus observed that acquittal giving benefit of doubt would not automatically lead to reinstatement of candidate unless the rules provide so.

15. Recently, this Court in *Union Territory, Chandigarh Administration and Ors. vs. Pradeep Kumar and Anr.* (2018) 1 SCC 797, relying upon the judgment of *S. Samuthiram* (supra) said that acquittal in a criminal case is not conclusive of the suitability of the candidates on the post concerned. It is observed, acquittal or discharge of a person cannot always be inferred that he was falsely involved or he had no criminal antecedent. The said issue has further been considered in *Mehar Singh* (supra) holding non-examination of key witnesses leading to acquittal is not honourable acquittal, in fact, it is by giving benefit of doubt. The Court said nature of acquittal is necessary for core consideration. If acquittal is not honourable, the candidates are not suitable for government service and are to be avoided. The relevant factors and the nature of offence, extent of his involvement, propensity of such person to indulge in similar activities in future, are the relevant aspects for consideration by the Screening Committee, which is competent to decide all these issues.

16. In the present case, the charges were framed against the respondent for the offences punishable under Sections 347/327/323/506(Part-II) and 364A IPC. He was acquitted after trial vide judgment dated 19.03.2010 by the Sessions Judge, Jhabua because the person kidnapped Nilesh and also his wife have not supported the case of prosecution. As per prosecution, the complainant was beaten by the respondent and the said fact found support from the evidence of doctor. Therefore, it appears that the Committee was of the view that acquittal of the respondent, in the facts of the present case, cannot be termed as 'honourable acquittal' and the said acquittal may be treated by giving benefit of doubt.

17. The law with regard to the effect and consequence of the acquittal, concealment of criminal case on appointments etc. has been settled in the case of *Avtar Singh* (supra), wherein a three-Judge Bench of this Court decided, as thus:

> "**38.** We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarize our conclusion thus:
>
> "**38.1** Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and

there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/ verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted :

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a 3 case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will

> assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a 4 person against whom multiple criminal cases were pending may not be proper.
>
> **38.8.** If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.
>
> **38.9.** In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.
>
> **38.10.** For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or 5 submitting false information as to a fact which was not even asked for.
>
> **38.11.** Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

18. In view of the above, in the facts of the present case, as per paras 38.3, 38.4.3 and 38.5, it is clear that the employer is having right to consider the suitability of the candidate as per government orders/instructions/rules at the time of taking the decision for induction of the candidate in employment. Acquittal on technical ground in respect of the offences of heinous/serious nature, which is not a clean acquittal, the employer may have a right to consider all relevant facts available as to the antecedents, and may take appropriate decision as to the continuance of the employee. Even in case, truthful declaration regarding concluded trial has been made by the employee, still the employer has the right to consider antecedents and cannot be compelled to appoint the candidate.

19. If we look into the facts of the present case, the instructions of the Home Department dated 1.02.2012, prevalent at the time of selection and appointment specify such candidate would not be considered for recruitment. In Circular No. 2/2010 dated 31.03.2010, issued by the Office of the Training Sector, National Industrial Security Academy, Central Industrial Security Force (Ministry of Home Affairs), it is clarified if a candidate is found involved in any criminal case, whether it is finalized or pending, the candidate may not be allowed to join

without further instructions from the headquarter. After seeking instructions from the headquarter, the Standing Committee has taken the decision on 15.10.2012 that because of acquittal giving benefit of doubt, the respondent-writ petitioner was not considered eligible for appointment in CISF.

20. In the aforesaid fact, guidance can further be taken from the judgment of *Mehar Singh* (supra), in paras 23, 34, 35, this Court observed, as thus:

> 23. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.
>
> 34. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such

> person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.
>
> 35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand.

21. In view of the aforesaid, it is clear the respondent who wishes to join the police force must be a person of utmost rectitude and have impeccable character and integrity. A person having a criminal antecedents would not be fit in this category. The employer is having right to consider the nature of acquittal or decide until he is completely exonerated because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee and the decision of the Committee would be final unless mala fide. In the case of *Pradeep Kumar* (supra), this Court has taken the same view, as reiterated in the case of *Mehar Singh* (supra). The same view has again been reiterated by this Court in the case of *Raj Kumar* (supra).

22. As discussed hereinabove, the law is well-settled. If a person is acquitted giving him the benefit of doubt, from the charge of an offence involving moral

turpitude or because the witnesses turned hostile, it would not automatically entitle him for the employment, that too in disciplined force. The employer is having a right to consider his candidature in terms of the circulars issued by the Screening Committee. The mere disclosure of the offences alleged and the result of the trial is not sufficient. In the said situation, the employer cannot be compelled to give appointment to the candidate. Both the Single Bench and the Division Bench of the High Court have not considered the said legal position, as discussed above in the orders impugned. Therefore, the impugned orders passed by the learned Single Judge of the High Court in Writ Petition No. 3897 of 2013 and Division Bench in Writ Appeal No. 1090 of 2013 are not sustainable in law, as discussed hereinabove.

23. Accordingly, this appeal is hereby allowed and the impugned orders are set-aside. No order as to costs.

Appeal allowed

I.L.R. [2021] M.P. 2231 (SC)
SUPREME COURT OF INDIA
Before Mr. Justice Surya Kant & Ms. Justice Hima Kohli
CRA No. 1827/2011 decided on 25 October, 2021

STATE OF M.P. …Appellant

Vs.

MAHENDRA @ GOLU …Respondent

A. Penal Code (45 of 1860), Sections 376(2)(f) & 511 – Intention – Preparation & Attempt **– Held – Act of respondent of luring minor girls, taking them inside the room, closing doors and taking them to a room with motive of carnal knowledge, was the end of preparation – Following action of stripping them and himself, rubbing his genitals against those of victims was indeed an endeavour to commit sexual intercourse – Acts deliberately done with manifest intention to commit offence and since it exceeds stage of preparation and preceded actual penetration, trial Court rightly held him guilty of attempting to commit rape – Appeal allowed.**

(Paras 21, 22, 24 & 25)

क. दण्ड संहिता (1860 का 45), धारा 376(2)(f) व 511 – आशय – तैयारी व प्रयत्न – अभिनिर्धारित – अवयस्क बालिकाओं को फुसलाने, कमरे के अंदर ले जाने, दरवाजे बंद करने एवं संभोग के हेतु से उन्हें एक कमरे में ले जाने का प्रत्यर्थी का कृत्य, तैयारी का अंत था – उन्हें तथा स्वयं को नग्न करने, पीड़ितों के जननांगों से स्वयं के जननांगों को रगड़ने का उत्तरगामी कृत्य, वास्तव में मैथुन करने का एक प्रयास था – कृत्य जानबूझकर अपराध कारित करने के स्पष्ट आशय से किया गया था एवं चूंकि यह तैयारी के

प्रक्रम से अधिक है एवं वास्तविक प्रवेशन से पहले है, विचारण न्यायालय ने उचित रूप से उसे बलात्संग कारित करने के प्रयत्न के लिए दोषी ठहराया – अपील मंजूर।

***B. Penal Code (45 of 1860), Section 511 – Preparation & Attempt – Distinction* – Held – Stage of "preparation" consist of deliberation, devising or arranging the means or measures, necessary for commission of offence whereas an "attempt" starts immediately after completion of preparation – "Attempt" is execution of *mens rea* after preparation – "Attempt" starts where "preparation" comes to an end, though it falls short of actual commission of crime. (Paras 11 to 13)**

ख. दण्ड संहिता (1860 का 45), धारा 511 – तैयारी व प्रयत्न – विभेद – अभिनिर्धारित – ''तैयारी'' के प्रक्रम में विचार–विमर्श, अपराध कारित करने के लिए आवश्यक साधन अथवा उपाय को तैयार करना या व्यवस्था करना शामिल है जबकि तैयारी पूर्ण होने के तत्काल बाद ''प्रयत्न'' आरंभ होता है – ''प्रयत्न'' तैयारी के पश्चात् आपराधिक मनःस्थिति का क्रियान्वयन है – ''प्रयत्न'' वहां से आरंभ होता है जहां ''तैयारी'' खत्म हो जाती है, हालांकि यह वास्तव में अपराध कारित होने से कम है।

***C. Penal Code (45 of 1860), Section 511 – Preparation & Attempt* – Held – What constitutes an "attempt" is a mixed question of law and facts – "Attempt" is direct movement towards the commission of crime after preparations are over – It is essential to prove that "attempt" was with an intent to commit offence – Attempt is possible even when accused is unsuccessful in committing principal offence – If attempt to commit crime is accomplished, then crime stands committed for all intents and purposes. (Para 20)**

ग. दण्ड संहिता (1860 का 45), धारा 511 – तैयारी व प्रयत्न – अभिनिर्धारित – ''प्रयत्न'' क्या होता है, यह विधि और तथ्यों का एक मिश्रित प्रश्न है – ''प्रयत्न'' तैयारियां पूरी होने के पश्चात् अपराध कारित करने की ओर एक प्रत्यक्ष गतिविधि है – यह साबित करना आवश्यक है कि ''प्रयत्न'' अपराध कारित करने के आशय से किया गया था – प्रयत्न तब भी संभव है जब अभियुक्त मुख्य अपराध कारित करने में असफल रहा हो – यदि अपराध कारित करने का प्रयत्न पूर्ण होता है, तो सभी आशय एवं प्रयोजनों के लिए अपराध कारित होता है।

***D. Penal Code (45 of 1860), Section 375 – Penetration* – Held – Mere penetration is sufficient to prove the offence – Expression "penetration" denotes ingress of male organ into the female parts, however slight it may be. (Para 16)**

घ. दण्ड संहिता (1860 का 45), धारा 375 – प्रवेशन – अभिनिर्धारित – अपराध साबित करने के लिए मात्र प्रवेशन पर्याप्त है – अभिव्यक्ति ''प्रवेशन'' महिला के अंगों में पुरूष के अंग के प्रवेश का द्योतक है, भले ही वह कितना भी मामूली हो।

***E. Criminal Practice – Sole Evidence of Prosecutrix* – Held – Victim's deposition even on a standalone basis is sufficient for conviction unless cogent reasons for corroboration exist. (Para 23)**

ड. दाण्डिक पद्धति – अभियोक्त्री का एकमात्र साक्ष्य – अभिनिर्धारित – यहाँ तक कि खुद को साबित करने के /स्वाश्रयी आधार पर पीड़ित के कथन भी दोषसिद्धि के लिए पर्याप्त है जब तक संपुष्टि के लिए प्रबल कारण विद्यमान न हों।

***F. Criminal Practice – Child Witness – Credibility* – Held – The perceived contradiction in testimony can at best be seen as a mere exaggeration on behalf of a child witness whose remaining testimony completely supports the prosecution – Courts are obliged not to discard entire testimony on basis of a minor exaggeration. (Para 23)**

च. दाण्डिक पद्धति – बाल साक्षी – विश्वसनीयता – अभिनिर्धारित – परिसाक्ष्य में बोधगम्य विरोधाभास को ज्यादा से ज्यादा बाल साक्षी की ओर से मात्र एक अतिशयोक्ति के रूप में देखा जा सकता है, जिसका शेष परिसाक्ष्य पूर्णतः अभियोजन का समर्थन करता है – न्यायालय, एक छोटी अतिशयोक्ति के आधार पर संपूर्ण परिसाक्ष्य को त्यक्त न करने के लिए बाध्य हैं।

Cases referred:

(2004) 4 SCC 379, (1997) 7 SCC 677, (2004) 3 SCC 602.

J U D G M E N T

The Judgment of the Court was delivered by : **SURYA KANT, J. :-** State of Madhya Pradesh (hereinafter referred to as "Appellant") is in appeal against the impugned judgment dated 08.10.2009 passed by the High Court of Madhya Pradesh, Principal Bench at Jabalpur whereby the respondent's conviction under Section 376(2)(f) read with Section 511 of Indian Penal Code (for short, "IPC") has been set aside and instead he has been held guilty under Section 354 IPC and consequently his sentence has been reduced from 5 years to 2 years Rigorous imprisonment.

BRIEF FACTS:

2. The prosecution case is that, about a fortnight prior to 20.12.2005 (date of registration of FIR), the two victim-prosecutrix who are named as 'X' (PW-1) and 'Y' (PW-2), aged about 9 years and 8 years respectively, were playing 'gilli-danda' in the street located near the respondent's house. The respondent who was known to both the victims by virtue of living in the same locality, called them with the inducement that he will give them money. Lured by the promise of getting money, both victims went along with the respondent to his house which was totally empty at the time of the incident. Taking advantage of this opportune moment, the respondent closed all the doors of the house from inside. He then led the victims to

one of the rooms in the house and declared that he would marry them. It is stated that the respondent thereafter undressed PW-1 and made her lie down on the cotton cot which was kept in the room. Meanwhile, he also took off his clothes and started rubbing his genitals against the genitals of PW-1. Further, in the same identical manner, the above-mentioned act was repeated with PW-2.

3. Both the minor victims, as an obvious reaction to the respondent's acts must have felt scared and shocked because of which they allegedly started crying. The respondent apprehending that the neighbours could possibly hear the victims' voices, told them not to disclose anything about this incident and silenced them by threatening them with physical harm. However, after a few days, both victims revealed the details of the incident to their friend who is named as 'Z' (PW-8). Fortunately, the incident which could have remained buried forever, surfaced because of the fateful and inadvertent intervention of PW-8. It is stated that on the occasion of a religious gathering at PW-2's house, PW-8 started teasing PW-2 by calling her as 'respondent's wife', which led to PW-6 (PW-2's mother) inquiring the reasons behind the same. This chance probe spiralled into the victims revealing the incident's details to their mothers. On the same day of the gathering, PW-2 confided in PW-6 when the latter prodded her to share the details of the incident. Similarly, PW-1 confided in PW-3 (PWl's mother) on the same day in the evening. The mothers (PW-3 and PW-6) then communicated the same to their respective husbands. After a lapse of 15 days of the incident, the present FIR was thus filed.

4. The Trial Court convicted the respondent for the offence under Section 376(2)(f) read with Section 511 IPC though acquitted him under Sections 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The respondent was sentenced to undergo rigorous imprisonment of 5 years and fine of Rs. 5000/-.

5. The respondent laid challenge to his conviction before the Principal Bench of Madhya Pradesh High Court and vide impugned judgment dated 08.10.2009, the High Court modified the judgment of the Trial Court; set aside the conviction under Section 376(2)(f) read with Section 511 IPC and convicted the respondent under Section 354 IPC and sentenced him to undergo 2 years of rigorous imprisonment and fine of Rs. 5000/-. The High Court was of the opinion that:

> *"17. On going through the evidence on record particularly allegations in FIR Ex.P/1,* ***I am of the view that the appellant did not make all efforts to attempt to commit rape with both prosecutrix, he had not gone beyond the stage of preparation and he did not intend to do so at all events****. It is well settled principle of law that preparation of any offence cannot be*

> *termed as attempt to commit the same offence, I am of the considered view that the strength of evidence on record the offence of indecent assault by the appellant on both the prosecutrix* ***u/s 354 IPC*** *is made out beyond reasonable doubt ...... Consequently the appellant is acquitted of charge* ***376 (2)-(f)*** *read with* ***Section 511 IPC*** *two counts. The Appellant is convicted u/s* ***354*** *of* ***IPC***."
>
> ***[Emphasis applied]***

6. The aforestated modification and resultant reduction in sentence are assailed before us at the instance of the Prosecution.

CONTENTIONS OF PARTIES:

7. Mr. Mukul Singh, learned Counsel for the State vehemently contended that there are explicit allegations of 'attempt to commit rape' against the respondent. Both the prosecutrices have deposed as 'X' (PW-1) and 'Y' (PW-2) and supported the prosecution case. They unshakably faced the grilling cross-examination and have minutely explained how the diabolic offence was committed. Both the victims have admirably withstood the pressure of a humiliating and unnerving cross-examination. Their depositions have been duly corroborated by 'Z' (PW-8)—a chance witness of the circumstances. He urged that the Trial Court had rightly convicted the respondent for the commission of offence under Section 376 (2)(f) read with Section 511 IPC which has been unjustifiably modified by the High Court overlooking the soul of the Statute or the settled principles attracted to the facts and circumstances of the case. Learned Counsel further argued that the High Court miserably failed to appreciate the ingredients of 'attempt' to commit rape and has lightened it as a case of mere 'preparation' in a cavalier and insensitive manner.

8. Contrarily, learned Counsel for the respondent submitted that even if the prosecution case is accepted as gospel truth, nothing beyond the 'preparation' to commit rape has been proved. He emphasised that the Trial Court failed to draw the distinction between 'attempt' to commit an offence or mere 'preparation' thereof and erringly convicted the respondent for the offence of 'attempt' to commit rape. He passionately argued that the High Court has rightly rectified the patent error and modified the conviction from 'attempt to commit rape' to an offence of 'outraging the modesty' of a woman, as defined under Section 354 of IPC. Further, learned Counsel for the respondent has also urged that there was a material contradiction in the testimony of PW-8 vis-à-vis both the victims regarding the former's presence near the place of occurrence which makes the prosecution story highly doubtful.

9. In all fairness, Mr. Praveen Chaturvedi, learned Counsel for the respondent has heavily relied upon the decision of this Court in *Aman Kumar vs.*

State of Haryana[1] to buttress his contention of distinct features of mere 'preparation' to commit an offence, as compared to an actual 'attempt' to commit it. He, in specific, relied upon the following paragraphs of the cited decision:

> *"**9.** A culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. The word "attempt" is not itself defined, and must, therefore, be taken in its ordinary meaning. This is exactly what the provisions of Section 511 require. An attempt to commit a crime is to be distinguished from an intention to commit it; and from preparation made for its commission. Mere intention to commit an offence, not followed by any act, cannot constitute an offence. The will is not to be taken for the deed unless there be some external act which shows that progress has been made in the direction of it, or towards maturing and effecting it. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs widely from attempt which is the direct movement towards the commission after preparations are made. Preparation to commit an offence is punishable only when the preparation is to commit offences under Section 122 (waging war against the Government of India) and Section 399 (preparation to commit dacoity). The dividing line between a mere preparation and an attempt is sometimes thin and has to be decided on the facts of each case. There is a greater degree of determination in attempt as compared with preparation.*
>
> ***10**. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime. In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission. It may consequently be defined as that which if not prevented would have resulted in the full*

1 (2004) 4 SCC 379

consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt."

QUESTIONS FOR DETERMINATION:

10. In this factual backdrop, the question which falls for our consideration is whether the offence proved to have been committed by the respondent amounts to 'attempt' to commit rape within the meaning of Section 376(2)(f) read with Section 511 IPC or was it a mere 'preparation' which led to outraging the modesty of the victims?

ANALYSIS:

Distinction between 'Preparation' and 'Attempt' to commit rape

11. It is a settled preposition of Criminal Jurisprudence that in every crime, there is first, *Mens Rea* (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, 'attempt' is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act. 'Attempt' is punishable because even an unsuccessful commission of offence is preceded by *mens rea,* moral guilt, and its depraving impact on the societal values is no less than the actual commission.

12. There is a visible distinction between 'preparation' and 'attempt' to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of 'preparation' consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an 'attempt' to commit the offence, starts immediately after the completion of preparation. 'Attempt' is the execution of *mens rea* after preparation. 'Attempt' starts where 'preparation' comes to an end, though it falls short of actual commission of the crime.

13. However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an 'attempt' to commit the principal offence and such 'attempt' in itself is a punishable offence in view of Section 511 IPC. The 'preparation' or 'attempt' to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between 'preparation' and 'attempt'. If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws.

14. Section 511 IPC is a general provision dealing with attempts to commit offences which are not made punishable by other specific sections of the Code and it provides, inter alia, that, **"whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both".**

15. It is extremely relevant at this stage to brush up the elementary components of the offence of 'Rape' under Section 375 IPC, as was in force at the time when the occurrence took place in the instant case. The definition of 'Rape', before the 2013 Amendment, used to provide that **"A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—**

> ***First.*—Against her will.**
>
> ***Secondly.*—Without her consent.**
>
> ***Thirdly.*—xxx xxx xxx**
>
> ***Fourthly.*— xxx xxx xxx**
>
> ***Fifthly.*— xxx xxx xxx**
>
> ***Sixthly.*—With or without her consent, when she is under sixteen years of age.**
>
> ***Explanation.*—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.**
>
> ***Exception.*—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."**

16. A plain reading of the above provision spells out that sexual intercourse with a woman below sixteen years, with or without her consent, amounted to 'Rape' and mere penetration was sufficient to prove such offence. The expression 'penetration' denotes ingress of male organ into the female parts, however slight it may be. This Court has on numerous occasions explained what 'penetration' conveys under the unamended Penal Code which was in force at the relevant time. In *Aman Kumar* (supra), it was summarised that:-

"7. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (see Joseph Lines, IC&K 893)."

17. Even prior thereto, this Court in *Madan Lal vs. State of J&K*[2] opined that the degree of the act of an accused is notably decisive to differentiate between 'preparation' and 'attempt' to commit rape. It was held thus:

"12. The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove for an offence of an attempt to commit rape has been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her lie flat on the ground undresses himself and then forcibly rubs his erected penis on the private parts of the girl but fails to penetrate the same into the vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354 IPC and not an attempt to commit rape under Section 376 read with Section 511 IPC. In the facts and circumstances of the present case the offence of an attempt to commit rape by the accused has been clearly established and the High Court rightly convicted him under Section 376 read with Section 511 IPC."

18. The difference between 'attempt' and 'preparation' in a rape case was again elicited by this Court in *Koppula Venkat Rao vs. State of A.P.*[3], laying down that:-

"10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. ***An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime.*** *In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/ completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.*

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2 (1997) 7 SCC 677
3 (2004) 3 SCC 602

> *11. In order to find* ***an accused guilty of an attempt with intent to commit rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part.*** *Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect."*
>
> ***[Emphasis applied]***

19. In light of the statutory provisions as construed by this Court from time to time in the cited decisions, let us examine whether the respondent attempted to commit rape of the prosecutrices or there was only preparation on his behalf?

20. We may at the outset explain that what constitutes an 'attempt' is a mixed question of law and facts. 'Attempt' is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes.

21. There is overwhelming evidence on record to prove the respondent's deliberate overt steps to take the minor girls inside his house; closing the door(s); undressing the victims and rubbing his genitals on those of the prosecutrices. As the victims started crying, the respondent could not succeed in his penultimate act and there was a sheer providential escape from actual penetration. Had the respondent succeeded in penetration, even partially, his act would have fallen within the contours of 'Rape' as it stood conservatively defined under Section 375 IPC at that time.

22. The deposition by the victims (PW-1 and PW-2) are impeccable. Both have unequivocally stated as to how the respondent allured them and indulged in all those traumatic acts which have already been narrated in the preceding paragraphs. The statements of both the victim-children inspire full confidence, establish their innocence and evince a natural version without any remote possibility of tutoring.

23. Additionally, the feeble contention regarding the contradiction between the testimonies of PW-8 vis-a-vis both the victims is equally untenable. The perceived contradiction is not adequate to unsettle the narrative on which the case of the prosecution is based. Even otherwise, this contradiction can at best be seen

as a mere 'exaggeration' on behalf of a child witness whose remaining testimony completely supports the prosecution. As correctly pointed out by the Trial Court, the pivotal fact that the details of the incident were shared by the victims with PW-8 remains undisputed and as such the Courts are obliged not to discard the entire testimony on the basis of a minor exaggeration. Furthermore, this Court has time and again reiterated that the victim's deposition even on a standalone basis is sufficient for conviction unless cogent reasons for corroboration exist.

24. In our considered opinion, the act of the respondent of luring the minor girls, taking them inside the room, closing the doors and taking the victims to a room with the motive of carnal knowledge, was the end of 'preparation' to commit the offence. His following action of stripping the prosecutrices and himself, and rubbing his genitals against those of the victims was indeed an endeavour to commit sexual intercourse. These acts of the respondent were deliberately done with manifest intention to commit the offence aimed and were reasonably proximate to the consummation of the offence. Since the acts of the respondent exceeded the stage beyond preparation and preceded the actual penetration, the Trial Court rightly held him guilty of attempting to commit rape as punishable within the ambit and scope of Section 511 read with Section 375 IPC as it stood in force at the time of occurrence.

CONCLUSION:

25. The findings given contrarily by the High Court in ignorance of the material evidence on record, are perverse and untenable in the eyes of law. We, thus, allow the appeal, set aside the judgment of the High Court and restore that of the Trial Court. The respondent is directed to surrender within two weeks and serve the remainder of his sentence as awarded by the Trial Court. In case the respondent fails to surrender, the Police Authorities are directed to arrest him and send a compliance report.

26. The appeal stands disposed of in the above terms.

Appeal allowed

I.L.R. [2021] M.P. 2242 (DB)
WRIT APPEAL
Before Mr. Justice Sujoy Paul & Mr. Justice Anil Verma
WA No. 653/2021 (Indore) decided on 9 August, 2021

M.P. BUS OPERATOR ASSOCIATION …Appellant

Vs.

STATE OF M.P. …Respondent

***A. Disaster Management Act (53 of 2005), Section 24 and Constitution – Article 19(6) – Ban on Interstate Bus Operation* – Held – Section 24 gives ample power to "Control and Restrict vehicular traffic" and provision is wide enough to impose complete ban on vehicular movement – Prohibition on vehicular movement falls within ambit of reasonable restriction as per Article 19(6) of Constitution – Petitioner failed to establish that impugned order is illegal, irrational and outcome of any procedural impropriety – Appeal dismissed. (Paras 24, 26, 28 & 31)**

क. आपदा प्रबंधन अधिनियम (2005 का 53), धारा 24 एवं संविधान – अनुच्छेद 19(6) – अंतरराज्यीय बस परिचालन पर रोक – अभिनिर्धारित – धारा 24 ''वाहन यातायात को नियंत्रित और निर्बन्धित'' करने हेतु व्यापक शक्ति प्रदान करती है एवं वाहनों की गतिविधि पर पूर्ण प्रतिबंध लगाने हेतु उपबंध पर्याप्त विस्तृत है – वाहनों की आवाजाही पर प्रतिषेध संविधान के अनुच्छेद 19(6) के अनुसार युक्तियुक्त निर्बंधन की परिधि में आता है – याची यह स्थापित करने में विफल रहा कि आक्षेपित आदेश अवैध, तर्कहीन एवं किसी प्रक्रियात्मक अनौचित्य का परिणाम है – अपील खारिज।

***B. Disaster Management Act (53 of 2005), Section 24 and Government of India, Guidelines dated 31.03.2021, Clause 12 & 19 – Administrative Instructions & Statutory Provisions* – Held – Guidelines are issued in executive fiat – No executive instructions can prevail over statutory provision – Administrative instructions can supplement statutory provisions but cannot supplant it. (Para 26)**

ख. आपदा प्रबंधन अधिनियम (2005 का 53), धारा 24 एवं भारत सरकार, दिशा निर्देश दिनांक 31.03.2021, खंड 12 व 19 – प्रशासनिक अनुदेश व कानूनी उपबंध – अभिनिर्धारित – दिशानिर्देश, कार्यपालक आदेश में जारी किये गये हैं – कोई भी कार्यपालक अनुदेश कानूनी उपबंध पर अभिभावी नहीं हो सकते – प्रशासनिक अनुदेश कानूनी उपबंधों के अनुपूरक हो सकते है परंतु उनका स्थान नहीं ले सकते।

***C. Administrative Orders – Non-Quoting of Provision – Effect* – Held – If authority is equipped with an enabling provision, non-quoting of provision or quoting of wrong provision will not denude him from exercising the statutory power. (Para 19)**

ग. प्रशासनिक आदेश – उपबंध का हवाला न देना – प्रभाव – अभिनिर्धारित – यदि प्राधिकारी एक सामर्थ्यकारी उपबंध से सुसज्जित है, उपबंध का हवाला नहीं देना या गलत उपबंध का हवाला देना उसे कानूनी शक्ति का प्रयोग करने से वंचित नहीं करेगा।

D. Practice & Procedure – Binding Precedent **– Held – Judgments of Apex Court are not Euclid's theorem, it must be considered in the facts situation of the case and on the basis of statute which governs the field.**

(Para 23)

घ. पद्धति व प्रक्रिया – बाध्यकारी पूर्व निर्णय – अभिनिर्धारित – सर्वोच्च न्यायालय के निर्णय यूक्लिड प्रमेय नहीं हैं, इन पर प्रकरण के तथ्यों की स्थिति एवं कार्यक्षेत्र को शासित करने वाले कानून के आधार पर विचार किया जाना चाहिए।

E. Constitution – Article 226 and Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) – Writ Appeal – Pleadings at Appellate Stage **– Held – In writ petition, no pleadings regarding aspect of competency of authority – Competency of authority was a mixed question of facts and law, which should have been specifically pleaded in writ petition with accuracy and precision – In absence of any such pleadings and foundation, at appellate stage, no interference warranted.**

(Para 21)

ड. संविधान – अनुच्छेद 226 एवं उच्च न्यायालय (खण्ड न्यायपीठ को अपील) अधिनियम, म.प्र., 2005 (2006 का 14), धारा 2(1) – रिट अपील – अपीली प्रक्रम पर अभिवचन – अभिनिर्धारित – रिट याचिका में, प्राधिकारी की सक्षमता के पहलू के संबंध में कोई अभिवचन नहीं – प्राधिकारी की सक्षमता तथ्यों एवं विधि का मिश्रित प्रश्न था, जिसका रिट याचिका में यथार्थता एवं सूक्ष्मता के साथ विनिर्दिष्ट रूप से अभिवाक् किया जाना चाहिए था – ऐसे किसी भी अभिकथनों और आधार के अभाव में, अपीली प्रक्रम पर, किसी हस्तक्षेप की आवश्यकता नहीं।

Cases referred :

(1978) 1 SCC 405, AIR 1951 SC 118, AIR 1954 SC 728, (2012) 5 SCC 1, (2014) 8 SCC 682, 2004 12 SCC 278, AIR 1977 SC 854, (2001) 3 SCC 482, (2003) 6 SCC 545, (2004) 1 SCC 453, (2006) 5 SCC 789, (1991) 2 SCC 708, (2001) 3 SCC 117, (2016) 3 SCC 340.

Manu Maheshwari, for the appellant.
Pushyamitra Bhargava, A.A.G. for the respondents/State.

O R D E R

The Order of the Court was passed by :
SUJOY PAUL, J.:- The appellant-M.P. Bus Operator Association has filed this writ appeal in representative capacity against the order of learned Single Judge

dated 29/06/2021 passed in W.P. No.8597/2021, whereby the Writ Court declined interference on the orders dated 18/03/2021, 01/03/2021, 31/03/2021 & 22/06/2021 whereby inter-state bus transportation between State of MP and Maharashtra was restricted during different periods.

2. Since all the orders are similarly worded, one such order dated 18/03/2021 (Page 72) is reproduced for ready reference:-

कार्यालय परिवहन आयुक्त मध्य प्रदेश, ग्वालियर

क्रमांक / 1905 / प्रशा. / टीसी / 21 ग्वालियर दिनांक 18 / 03 / 2021

प्रति,

1— क्षेत्रीय उप परिवहन आयुक्त,
.... (समस्त), मध्यप्रदेश
2— क्षेत्रीय / अतिरिक्त क्षेत्रीय / जिला परिवहन अधिकारी

.... (समस्त), मध्यप्रदेश

विषय :— कोरोना वायरस (covid-19) से बचाव को दृष्टिगत रखते हुये महाराष्ट्र राज्य एवं मध्य प्रदेश राज्य के बीच अन्तर्राज्जीय बस परिवहन सेवा को स्थगित रखने के संबंध में।

विषयान्तर्गत कोरोना वायरस (covid-19) के व्यापक संक्रमण पर प्रभावी रोकथाम को दृष्टिगत रखते हुये **लोकहित में** यह आवश्यक है कि, मध्य प्रदेश राज्य में महाराष्ट्र राज्य से आने तथा जाने वाले बस परिवहन संचालन को स्थगित किया जावे।

अतः अन्तर्राज्जीय अनुज्ञाओं एवं अखिल भारतीय पर्यटक अनुज्ञाओं से अच्छादित क्रमशः मध्य प्रदेश राज्य की समस्त यात्री बस वाहनों का महाराष्ट्र राज्य की सीमा मे प्रवेश तथा महाराष्ट्र राज्य की समस्त यात्री बस वाहनों का मध्य प्रदेश राज्य की सीमा में प्रवेश दिनांक 21 मार्च 2021 से 31 मार्च 2021 तक की अवधि के लिये स्थगित किया जाता है।

अपर परिवहन आयुक्त एवं सचिव
राज्य परिवहन प्राधिकार
मध्य प्रदेश

(Emphasis Supplied)

3. The parties are at loggerheads on the validity of said notification/orders. The State took a stand that orders are passed for disaster management whereas stand of appellant is that it is disastrous management on the part of the state. On this aspect, they fought the battle before the learned Single Judge, but by order dated 29/06/2021, learned Single Judge dismissed the writ petition by holding that the State is empowered under Section 24 of the Disaster Management Act, 2005 (Act of 2005) to issue such restrictions. The learned Single Judge also

declined interference on the ground of alleged discrimination with railway and air traffic.

4. Shri Manu Maheshwari, learned counsel for the appellant submits that a conjoint reading of all the impugned orders makes it clear that no enabling provision or source of power is mentioned in the said orders. In absence thereof, the reason cannot be furnished by way of filing counter affidavit. Reliance is placed on a constitution bench judgment reported in (1978) 1 SCC 405 *(Mohinder Singh Gill vs. Chief Election Commissioner)* which was recently followed by this bench in WA No.478/2021 *(Sanjay Jain vs. State of M.P.)*. The next contention is that the Govt. of India Guideline dated 23/03/2021 makes it clear that the State is authorized to 'regulate travel' and 'regulation', by no stretch of imagination can be equated with 'restriction'. The reliance is placed on Clause-12, 14 & 19 of these Guidelines dated 23/03/2021. Emphasis is laid on Clause-19, wherein it is mentioned that there shall be no restriction on inter-State and intra-State movement of persons and goods, which reads as under:-

> "19. There shall be no restriction on inter-State and intra-State movement of persons and goods including those for cross land-border trade under Treaties with neighbouring countries. No separate permission/approval/e-permit will be required for such movements."
>
> ***(Emphasis Supplied)***

5. The ancillary argument of Shri Maheshwari is that such restriction infringes fundamental right of the petitioner enshrined in Article 19(1)(g) of the Constitution of India. There is no reasonable classification or object sought to be achieved by putting restriction on vehicular transport only whereas through railways and air movement sizable number of passengers are traveling from Maharashtra to Madhya Pradesh on regular basis. For example, it is contended that one train carries about 1500 passengers, whereas an aircraft depending upon its size and capacity, carries approximately 160-220 passengers. Thus, in absence of any reasonable classification, the ban on the movement of vehicular transport is bad-in-law. The govt. guideline nowhere permits the State to stop complete movement of buses.

6. The competence of authority in issuing the orders impugned is also assailed by contending that Section 20 of the Disaster Management Act, 2005 makes it clear that it is only State Executive Committee which can exercise this power and issue consequential orders. At best, it can be delegated to a sub-committee by the State Executive Committee in exercise of power under Section 21 of the said Act. The impugned orders show that the same were issued by respondent No.3/Joint Transport Commissioner and Secretary, State Transport Authority, Madhya Pradesh. Thus, impugned orders are passed by an incompetent authority. Furthermore, it is submitted that a plain reading of Section 24 shows

that complete ban on transport movement is impermissible. The regulation can be done "from and within" the vulnerable area. The movement of buses is still permissible from Maharashtra to Gujarat. It is only State of Madhya Pradesh which has imposed such a ban. To bolster this, reliance is placed on a document (Annexure P/10) which shows movement of transport between Ahmedabad and Mumbai.

7. In a situation like this, when almost every institution including schools are open, it is not justifiable to stop the bus transport indefinitely.

8. The order of Writ Court is assailed by contending that certain judgments, which were cited and mentioned in para-3 of impugned order have not been considered by learned writ Court. By taking this Court to those judgments, Shri Manu Maheshwari, learned counsel for the appellant submits that as per the constitution bench judgment of Supreme Court in AIR 1951 SC 118 *(Chintaman Rao vs. State of M.P),* the purpose of an action is important in order to examine the question of classification and discrimination and in order to see whether it takes care of the object sought to be achieved. The judgment of AIR 1954 SC 728 *(Saghir Ahmad vs. State of U.P. & Ors.)* is relied upon to contend that the fundamental rights flowing from Article 19 of the Constitution cannot be taken away by placing an unreasonable restriction. (2012) 5 SCC 1 *(Ramlila Maidan Incident vs. Home Secretary & Ors.)* is relied upon to submit that before issuing the orders impugned, no exercise has been taken. No data collected and mechanically on the basis of likelihood or apprehension, the vehicular movement is stopped. This runs contrary to the judgment of *Ramlila Maidan Incident* (supra).

9. The judgment of Supreme Court in (2014) 8 SCC 682 *Subramaniam Swamy vs. Director, Central Bureau of Investigation and Anr.)* is relied upon to raise same point that for putting a restriction, there must be some nexus with the object sought to be achieved. Otherwise, it infringes the fundamental rights guaranteed under Article 14 & 19 of Constitution.

10. On the other hand, Shri Pushyamitra Bhargav, learned AAG submits that the appellant has challenged the impugned orders before the learned writ Court mainly on four points:-

1. On the point of competence of the authority.
2. On the point of discrimination,
3. Alleging breach of fundamental right
4. Arbitrariness because the State has not undertaken any exercise to collect data before stopping vehicular movement.

11. Learned AAG submits that merely because in the impugned order, the enabling provision is not mentioned, the impugned order will not become vulnerable in view of *N.Mani Vs. Sangeetha Theatre and Others* reported in 2004 12 SCC 278 (para 9).

12. Learned AAG further submits that the question of discrimination is dealt with by learned Single Judge in sufficient details in para 7 and 8 of the impugned order, which finding is in consonance with the law.

13. By placing reliance on Article 19 (6) of the Constitution of India and on the same para of *Subramanian Swamy* (supra) on which learned counsel for the appellant placed reliance, learned AAG submits that the reason behind issuing the impugned orders has a nexus with the objects sought to be achieved and therefore, it cannot be said to be *de-horse* (sic: *de-hors*)the enabling provision or *ultra vires* the provision. He placed reliance on the number of Corona patients in neighbouring states to show that number of Corona patients in Maharashtra is alarmingly high in comparison to the other state. This necessitated the issuance of impugned orders. The impugned orders were rightly issued in consonance with the guideline dated 23.03.2021 and section 24 of the Disaster Management Act, 2005. Learned AAG placed reliance on clause 9, 10,11 and 12 of the same guideline to bolster his submission that Covid appropriate behaviour was required to be ensured by the State Government. Thus, in exercise of its executive power flowing from the said guideline and section 24, the Government has issued the impugned orders.

14. The parties confined their arguments to the extent indicated above.

15. We have bestowed our anxious consideration on rival contentions and perused the record.

16. Before dealing with the rival contention, it is apposite to mention relevant portion of section 24 of the Disaster Management Act, 2005 :-

> "24. **Powers and functions of State Executive Committee in the event of threatening disaster situation.**—For the purpose of, assisting and protecting the community affected by disaster or providing relief to such community or, **preventing** or combating disruption or dealing with the effects of any threatening disaster situation, the State Executive Committee may-
>
> (a) **control and restrict,** vehicular traffic to, **from or within,** the vulnerable or affected area; (b) control and restrict the entry of any person into, his movement within and departure from, a vulnerable or affected area; "
>
> (emphasis supplied)

17. The following clauses of guideline dated 23.03.2021 are relevant.

"COVID appropriate behavior:-

9. State/UT Governments shall take all necessary measures to promote COVID-19 appropriate behavior, strict enforcement of wearing of face masks, hand hygiene and social distancing must be ensured.

10. Wearing of face masks is an essential preventive measure. In order to enforce this core requirement, State and UTs may consider administrative actions, including imposition of appropriate fines, on persons not wearing face masks in pubic and work spaces.

11. Observance of social distancing in crowded places, especially in markets, weekly bazaars and public transport is also critical for containing the spread of the infection. SOP issued by Ministry of Health and Family Welfare (MoHFW) to regulate crowds in market places, shall be strictly enforced by States and Uts.

12. SOPs for regulating travel in aircrafts, trains and metro rails are already in place, which shall be strictly enforced. State and UTs shall issue necessary guidelines for regulating travel in other modes of public transport, e.g buses, boats etc and ensure that these are strictly complied with.

......

Strict Adherence to the prescribed SOPs:-

14. All activities have been permitted outside Containment Zones and SOPs have been prescribed for various activities. These includes: movement by passenger trains; air travel; metro trains' schools; higher educational institutions; hotels and restaurants; shopping malls, multiplexes and entertainment parks; yoga centres and gymnasiums; exhibitions, assemblies and congregations etc.

......

Local Restrictions:-

......

19. There shall be no restrictions on inter-state and intra-state movement of persons and goods including those for cross land-borders trade under Treaties with neighbourting countries. No separate permission/approval/e-permit will be required for such movement. "

(emphasis supplied)

18. The first contention of petitioner was regarding non-mentioning of the source of power in the impugned order. For this purpose, judgment of constitution bench in *Mohinder Singh Gill* (supra) was relied upon.

19. In *Mohinder Singh Gill* (supra), the Apex Court clearly held that the validity of an order of a statutory authority is to be judged on the basis of reasons assigned therein and it cannot be supplemented by filling (sic: filing) a counter affidavit in the Court. All the impugned orders are based on singular reason and said reasons were not changed, modified or supplemented by filling (sic: filing) reply. The reason is Covid-19 related pandemic because of which restrictions were directed to be imposed. *Mohinder Singh Gill* (supra), in our opinion, is not an authority on the question whether enabling provision should find place in the impugned order and whether in absence thereof, the source of power can be shown by filling (sic: filing) counter reply. On the contrary, there are catena of judgments, holding that if the authority is equipped with an enabling provision, non-quoting of provision or quoting of wrong provision will not denude him from exercising the statutory power. (See:- AIR 1977 SC 854 *(P. Radhakrishan Naidu and Ors Vs. Government of Andra Pradesh and Ors.),* (2001) 3 SCC 482 *(B.S.E Brokers Forum Vs. Securities and Exchange Board of India and Ors),* (2003) 6 SCC 545 *(Chandra Singh and Ors Vs. State of Rajasthan and Anr),* (2004) 1 SCC 453 *(Challamane Huchha Gowda Vs. M.r. Tirumala and Anr),* (2006) 5 SCC 789 *(K.K. Parmar and Ors Vs. H.C of Gujarat))*

20. Learned AAG also cited judgment of the Apex Court in *N.Mani* (supra) which is in the same line. In view of common string of principle laid down in these judgments, the first contention of learned counsel for the appellant must fail.

21. The next contention is based on the aspect of competency of the authority. The order impugned shows that it is issued by respondent no.3. The order is silent whether it is based on a decision of a committee under section 22 or not. On a specific query from the bench, learned counsel for the appellant fairly submitted that in the writ petition, there was no pleading in relation of aspect of competence in as much as it is argued before us that no committee constituted under section 20 of the Act of 2005 has issued the impugned orders. In absence of any such pleading and foundation, at appellate stage, no interference is warranted. In our considered view, in the writ petition the appellant/petitioner should have pleaded the aspect of competence with accuracy and precision. In that case, the respondent/State would have been in a position to address the question of competence. By perusal of impugned order alone it cannot be said with certainty that it was not issued pursuant to decision taken by the competent committee. It is not unknown government practice where decisions are taken by competent authority/committee and it is communicated by any other officer. The officer communicating the decision may not be competent to take such decision. Thus, it was a mixed question of facts and law which should have been specifically pleaded in the writ petition.

22. The power exercised under section 24 is assailed on the basis of a judgment of the Apex Court which relates to interpretation of section 144 of the Cr.P.C. Interestingly, in para 225 of the said judgment of *Ramlila Maidan* (supra), the Apex Court emphasized about the existence of actual likelihood or tendency for the purpose of invoking section 144 of the Cr.P.C.

23. This is trite that the judgments of the Apex Court are not Euclid's theorem. The judgments must be considered in the facts situation of the case and on the basis of the statute which governs the field. Section 144 of Cr.P.C indisputably, has no application in so far present matter is concerned.

24. Section 24 of Act of 2005 is differently worded. The expression used is for the purpose ...... "preventing or combating, disruption or dealing with the effects of any threatening the disaster situations......". The law makers were conscious of the fact that in order to achieve the object and scheme of the Disaster Management Act, the authorities must be equipped to take necessary action for preventing from disaster. Thus, it is not necessary that only when the disaster actually affects the people, such a power can be exercised. Section 24 aforesaid permits 'control' and 'restriction' of vehicular traffic to, *from* or *within* vulnerable area or affected area. The language employed in sub-clause (a) is wide enough to restrict traffic movement *from* vulnerable or pandemic affected area.

25. The data supplied by learned AAG shows that number of COVID patients in Maharashtra is alarmingly high in comparison to the patients in other states. The data of last seven days of Covid patients is as under :-

	मध्यप्रदेश	महाराष्ट्र	गुजरात	छत्तीसगढ़	राजस्थान	उत्तरप्रदेश
4 अगस्त	10	7242	27	135	18	31
3 अगस्त	18	6600	21	142	11	37
2 अगस्त	22	2959	27	236	27	61
1 अगस्त	17	6479	23	214	10	62
31 जुलाई	17	4869	22	102	17	24
30 जुलाई	28	6005	17	125	28	35
29 जुलाई	18	6126	15	130	17	60
योग	130	44280	152	1084	128	310

Thus, the question is whether the State was justified and competent under the guidelines and the Act to impose complete ban.

26. The argument of learned counsel for the appellant is mainly based on the guidelines dated 31.03.2021, which contains clause 19. Heavy reliance was placed on clause 12 also, in which the word "regulating" is used. Thus, on the basis of judgments of the Apex Court wherein the word "regulation" is interpreted, the learned counsel for the appellant strenuously contended that under the garb of "regulation" the complete ban on the transport movement is impermissible. The argument on first blush appears to be attractive but lost much of its shine when examine in the teeth of statutory provision namely section 24 of the Act, 2005. Section 24 (a) and (b) leaves no room for any doubt that it gives ample power to "Control and Restrict vehicular traffic". In our view, the statutory provision is wide enough to impose complete ban or completely control or restrict the vehicular movement. The guidelines dated 31.03.2021 is issued in executive fiat. This is settled that no executive instructions can prevail over the statutory provision. The administrative instructions can supplement the statutory provisions but it cannot be supplant it. Thus, the clauses of the executive instructions/guidelines dated 31.03.2021 are even otherwise of no assistance to the appellant. *(See:* (1991) 2 SCC 708 *(Ex.Capt. K.Balasubramanian and Ors Vs. State of Tamil Nadu and Anr),* (2001) 3 SCC 117 *(H.F Sangati Vs. Registrar General, High Court of Karnataka and Ors)*

27. So far question of discrimination is concerned, the learned single Judge has given its finding as under:-

> "7. It is not in dispute that the second wave of Covid-19 started from the State of Maharashtra and being a neighboring State there is a frequent movement of public between MP and Maharashtra by all means of transport. Accordingly, to the petitioner there is no restrictions on transportation by railways and airways. The railways and airways are under the domain of the Central Government and on which the State Government cannot put any restrictions. The transport by stage carriages is under the control of the State Government, therefore, the State Govt. is competent to put restrictions of conditions in which there is no discrimination by the State Government.
>
> 8. Even otherwise, in transportation through airways and railways the entry and exit points of passengers are fixed and known from where the passengers can be checked about their health conditions but it is not possible in the transportation by buses. The buses can be stopped anywhere and collect the passengers which is not possible in the railways and airways, therefore, both are different classes of transportation. The State Government has put restrictions only for the

> limited period subject to the reduction of cases of Covid. There is no permanent restrictions for transportation through buses from Madhya Pradesh to Maharashtra and vice versa. The Government is reviewing the situation after the interval of 10-15 days and extending the restrictions for limited period. Except Maharashtra the petitioners are permitted to ply the buses in other part of the country, therefore, there is no 100% restrictions on the right of trade and business. In the larger public interest, the individuals interest is bound to suffer."
>
> (emphasis supplied)

28. The learned Single Judge has considered the question of discrimination in sufficient details. We are in agreement with the view taken by the learned Single Judge. The learned Single Judge has taken a plausible view which does not warrant interference by this bench. (See: (2016) 3 SCC 340 (*Management of Narendra and Company Pvt. Ltd. Vs. Workmen of Narendra and Co.*)). The writ court rightly declined interference on the policy decision of the government.

29. The learned Single Judge in para 10 of the judgment has taken care of the appellant's grievance and therefore, directed Government to be vigilant and pass the orders with due application of mind.

30. The other judgments cited by learned counsel for the appellant are related with matters where constitutional validity of a statutory provision was called in question. Indisputably, in this case, no enabling provision was under challenge. Thus, provisions are to be read as such.

31. The appellant could not establish that impugned orders are illegal, irrational or outcome of any procedural impropriety. The prohibition on vehicular movement falls within the ambit of reasonable restriction as per Article 19(6) of the Constitution. Hence, we find no reason to interfere in this writ appeal.

32. The writ appeal stands **dismissed.**

Appeal dismissed

I.L.R. [2021] M.P. 2253 (DB)
WRIT APPEAL
Before Mr. Justice Sheel Nagu & Mr. Justice Anand Pathak
WA No. 285/2021 (Gwalior) decided on 31 August, 2021

STATE OF M.P. & ors. …Appellants

Vs.

YOGESH PATHAK …Respondent

***A. Police Regulations, M.P., Regulation 59 and Government Servants (Temporary and Quasi-Permanent Service) Rules, M.P. 1960, Rule 12 – Termination – Unauthorized Leave* – Held – During probation (training) period, petitioner remained absent (on different intervals) for 338 days without any leave application/information – Conduct was not of desired standard – Several notices served on petitioner, thus sufficient opportunity was given – No departmental enquiry was required – Such termination order are not stigmatic in nature – Termination order was just and proper – Appeal allowed. (Paras 13, 14, 20 & 21)**

क. पुलिस विनियमन, म.प्र., विनियम 59 एवं शासकीय सेवक (अस्थायी एवं स्थायीवत् सेवा) नियम, म.प्र. 1960, नियम 12 – समाप्ति – अनाधिकृत छुट्‌टी – अभिनिर्धारित – परिवीक्षा (प्रशिक्षण) अवधि के दौरान, याची बिना किसी छुट्‌टी के आवेदन/सूचना के 338 दिनों तक (भिन्न–भिन्न अंतरालों पर) अनुपस्थित रहा – आचरण वांछित स्तर का नहीं था – याची को अनेक नोटिस तामील किये गये, अतः पर्याप्त अवसर प्रदान किया गया था – किसी विभागीय जांच की आवश्यकता नहीं थी – उक्त समाप्ति आदेश कलंकपूर्ण स्वरूप का नहीं है – समाप्ति का आदेश न्यायसंगत एवं उचित था – अपील मंजूर।

***B. Police Regulations, M.P., Regulation 59 – Termination – Suitability* – Held – When a constable did not undergo basic training course and remained absent for almost a year (on different intervals) then his commitment, loyalty as well as discipline, all come under serious doubt and renders him unsuitable. (Para 15)**

ख. पुलिस विनियमन, म.प्र., विनियम 59 – समाप्ति – उपयुक्तता – अभिनिर्धारित – जब एक कांस्टेबल ने बुनियादी प्रशिक्षण कोर्स नहीं किया एवं लगभग एक वर्ष तक (भिन्न–भिन्न अंतरालों पर) अनुपस्थित रहा, तो उसकी प्रतिबद्धता, निष्ठा, साथ ही साथ अनुशासन, सभी गंभीर संदेह के घेरे में आ जाते हैं एवं उसे अनुपयुक्त बनाते हैं।

***C. Police Regulations, M.P., Regulation 59 – Termination Simpliciter – Enquiry* – Held – Intermittent absence of petitioner for months together persuade the authority to take decision not to continue a dubious employee, thus it is termination simpliciter, especially when read with Regulation 59 of Police Regulations. (Para 18)**

ग. पुलिस विनियमन, म.प्र., विनियम 59 – साधारणतः समाप्ति – जांच – **अभिनिर्धारित – कई महीनों से याची की आंतरायिक अनुपस्थिति प्राधिकारी को एक संदेहात्मक कर्मचारी को बनाए न रखने का विनिश्चय करने के लिए प्रेरित करती है, अतः यह साधारणतः समाप्ति है, विशेषतः जब पुलिस विनियमन के विनियम 59 के साथ पढ़ा जाता है।**

***D. Service Law – Purpose of Enquiry – Motive & Foundation Policy* – Held – If purpose of enquiry is not to find out truth of allegations of misconduct but to decide whether to retain employee against whom a cloud is raised on his conduct, such enquiry only serves as a motive for termination but where enquiry is held wherein on basis of evidence a definite finding is reached at the back of employee about his misconduct and forms a foundation for order of termination, such order is punitive – Therefore on touchstone of Motive & Foundation Policy also, petitioner lacks merit.**

(Para 17 & 18)

घ. सेवा विधि – जांच का प्रयोजन – हेतु व आधार नीति – अभिनिर्धारित – यदि जांच का प्रयोजन अवचार के अभिकथनों की सत्यता का पता लगाना नहीं है, बल्कि यह विनिश्चित करना है कि क्या उस कर्मचारी को बनाए रखा जाए जिसके विरूद्ध उसके आचरण पर प्रश्न उठे हों, तो ऐसी जांच केवल समाप्ति के लिए हेतु के रूप में कार्य करती है लेकिन जहां जांच संचालित की जाती है, जिसमें साक्ष्य के आधार पर कर्मचारी के पीठ पीछे उसके अवचार के बारे में एक निश्चित निष्कर्ष पर पहुंचा जाता है एवं समाप्ति के आदेश के लिए एक आधार बनाया जाता है, उक्त आदेश दण्डात्मक है – अतः हेतु व आधार नीति की कसौटी पर भी, याची में योग्यता का अभाव है।

Cases referred :

(1993) 3 SCC 259, (2002) 1 SCC 520, AIR 1974 SC 2192, (1999) 2 SCC 21, (2003) 3 SCC 263, (2005) 13 SCC 652, (2015) 15 SCC 151.

MPS Raghuvanshi, Addl. A.G. for the appellants/State.
Prashant Sharma, for the respondent.

JUDGMENT

The Judgment of the Court was passed by : **ANAND PATHAK, J. :-** Appellants/State has filed this appeal under Section 2 (1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005 assailing the order dated 10/12/2020 passed by learned writ Court in W.P. No.1621/2016; whereby, learned writ Court allowed the writ petitioner (sic: petition) preferred by respondent/petitioner and directed reinstatement of respondent in service with all consequential benefits.

2. Precisely stated facts of the case are that respondent (hereinafter shall be referred as "petitioner") preferred a petition with the submissions that petitioner

was selected on the post of Constable in year 2013 and after selection, petitioner was sent for training. Character verification of the petitioner was conducted. It appears that, petitioner remained absent for about 330 days on the pretext of ailment of his mother and thereafter his poor health, therefore, he did not join the training and despite the fact that information was given to him. In-charge, Training Centre, did not permit the petitioner to join after coming back from unauhorised (sic: unauthorised) leave and on 3/8/2015, his services were terminated on the ground of Regulation 59 of M.P. Police Regulation.

3. Petitioner preferred writ petition against the said order of termination and raised the ground of stigma attached to the said order and while relying upon judgments of Apex Court in the case of *D.K.Yadav Vs. JMA Industries Ltd.,* (1993) 3 SCC 259 and *Pavanendra Narayan Verma Vs. Sanjay Gandi PGI of Medical Sciences and Anr.*, (2002) 1 SCC 520, he raised the submission that termination order so passed without opportunity of hearing and conducting enquiry is bad in law.

4. Learned writ Court while passing impugned order quashed the termination order dated 3/8/2015 and order dated 8/2/2016 and directed reinstatement of petitioner with all consequential benefits.

5. Taking exception to the said order appellants/State are in writ appeal.

6. It is the submission of learned Additional Advocate General appearing on behalf of appellants/State that petitioner was on probation and without successful completion of probation period, he does not come under the purview of government employee/servant and it is not mandatory for the State Authority to conduct a full fledged enquiry of such employee before terminating his services. Petitioner was in probation of two years and he remained absent in training for 338 days without intimation the authority and in the uniform department where discipline is paramount, absence without intimation makes him unsuitable for the job. Various notices (Vide R/2 of reply in writ petition) were issued to the petitioner (when he remained absent) calling him to join the duty but he did not prefer to join the same. Such casualness of high magnitude has been considered by the departmental authority and thereafter passed the impugned order.

7. Learned Additional Advocate General referred M.P. Government Servants (Temporary and Quasi Permanent Service) Rules, 1960 and Regulation 59 of M.P. Police Regulation to bring home the fact that petitioner was a fugitive and because of long absence and his attitude of casualness, he was found unsuitable for the job.

8. Learned counsel for the respondent/petitioner supported the impugned order and prayed for dismissal of the appeal. He relied upon the decision of Apex

Court in the matter of *Shamsher Singh & Anr. Vs. State of Punjab*, AIR 1974 SC 2192.

9. Heard learned counsel for the parties and perused the record.

10. This is a case, where, petitioner is taking exception to the order of termination dated 3/8/2015 (Annexure P/2 of writ petition). The said impugned order is reproduced for ready reference as under:-

//आदेश //

वाहिनी में पदस्थ नवआर0 803 योगेश पाठक पुत्र श्री सतीशचन्द्र पाठक, दिनांक 17.02.14 को नवआर0 (जीडी) के पद पर भर्ती हुआ है। परिवीक्षाधीन अवधि में उसकी कार्यप्रणाली को देखते हुयें उसका संतोषप्रद पुलिस अधिकारी बनना असंभावित है। पुलिस रेग्यूलेशन के पैरा 59 में दिये गये प्रावधानानुसार नवआर0 802 योगेश पाठक की आज दि0 03/08/2015 पूर्वान्ह से सेवा समाप्त की जाती है ।

(डॉ0 हिमानी खन्ना)
कमाण्डेंट
05वीं वाहिनी विसबल, मुरैना''

11. Since the competent authority has taken resort to Regulation 59 of M.P. Police Regulation, therefore, same also deserves reproduction for ready reference:-

''**59.** परिवीक्षा–प्रत्येक रंगरूट दो वर्षो के लिये परिवीक्षा पर होगा जो कि प्रत्येक छः माहो की दो अवधियों का हो सकता है यदि अधीक्षक इसे उचित समझे। इस परिवीक्षाधीन अवधि के दौरान यदि अधीक्षक की राय में उसका संतोषप्रद पुलिस अधिकारी बनना असंभावित है तो उसकी सेवा किसी भी समय समाप्त की जा सकती है ।''

12. Since, the relevant service conditions of petitioner are governed by M.P. Police Regulation, therefore, Police Regulation 59 is clear and categorical in its terms, wherein, without casting stigma, it contemplates termination of service of police personnel who in the opinion of Superintendent of Police cannot become satisfactory police officer.

13. If this position is seen from the perspective of present case then it appears that petitioner joined the services on 17/2/2014 and during the period of probation remained absent for the following spells:-

From 06/03/2014 to 26/03/2014	21 days
From 29/05/2014 to 11/09/2014	94 days
From 18/10/2014 to 17/11/2014	31 days
From 19/12/2014 to 09/01/2015	22 days
From 12/02/2015 to 16/03/2015	33 days
From 18/03/2015 to 09/06/2015	84 days
From 11/06/2015 to 03/08/2015	53 days
Total (Seven times)	**338 days**

From the above chart, it appears that petitioner was a habitual absentee during probation (training) and his absence aggravates the situation because he remained absent without any leave application and information. Therefore, his conduct during the probation period was not of the desired standard. In a disciplined force like Police, if a person remains absent for months together without any information to the higher Authority, it is disastrous to the moral and discipline of the force and by any standards his conduct cannot be termed as satisfactory. His conduct not only makes him vulnerable but if not handled sternly then it may have a cascading effect and may adversely affect morale of other police personnel. Therefore, by all parameters, his conduct was not of desired standard.

14. It further appears that for initial abstention his conduct was ignored but thereafter repeatedly he was given notice to remain present over his duty and such notices have been referred as Annexure R/2 collectively with the return and this fact indicates that he was given sufficient opportunities to make himself available on duty.

15. Interestingly, petitioner did not file any document that he intimated his absence regularly to the authorities. He not only remained absent but he remained absent without any intimation, which makes his conduct more perceptible towards unsuitability. When a Constable did not undergo basic training course in any Police Training School and remained absent for almost a year (on different intervals) then his commitment, loyalty as well as discipline; all come under serious doubt and renders him unsuitable.

16. Apex Court in the case of *Radheshyam Gupta Vs. U.P.State Agro Industries Corporation Ltd.,* (1999) 2 SCC 21, *Mathew P. Thomas Vs. Kerala State Civil Supply Corporation Limited and Ors.,* (2003) 3 SCC 263, *State of Uttar Pradesh & Ors. Vs. Ashok Kumar,* (2005) 13 SCC 652 and *Ratnesh Kumar Chaudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and*

Ors., (2015) 15 SCC 151 discussed such exigencies on the basis of **Motive and Foundation Policy** and held that where termination is based or founded upon misconduct it would be punitive but it would be termination simpliciter and may be based on some prima facie facts without going into veracity to decide merely not to continue the employee where his conduct was apparent and therefore, it is a termination simpliciter when it is read with Regulation 59 of M.P. Police Regulation. Therefore, on the touchstone of Motive and Foundation Policy also, petitioner lacks merits.

17. In the case of *Radheshyam Gupta Vs. U.P.State Agro Industris Corporation Ltd.,* (1999) 2 SCC 21 the guidance given by Apex Court reads as under:-

> "In other words, it will be a case of motive if the master, after gathering some prima facie facts, does not really wish to go into their truth but decides merely not to continue a dubious employee. The master does not want to decide or direct a decision about the truth of the allegations. But if he conducts an enquiry only for the purpose of proving the misconduct and the employee is not heard, it is a case where the enquiry is the foundation and the termination will be bad."
>
> From perusal of judgment referred above, it appears that if the purpose of the enquiry is not to find out the truth of the allegations of misconduct but to decide whether to retain the employee against whom a cloud is raised on his conduct such enquiry only serves as a motive for the termination. But where the enquiry is held wherein on the basis of the evidence a definite finding is reached at the back of the employee about his misconduct and such finding forms the basis or foundation of the order of termination, such order would be punitive.

18. Here in the present case, intermittent absence of petitioner for months together persuade the authority to take decision not to continue a dubious employee. Therefore, it is a termination simpliciter, especially when it is read with Regulation 59 of M.P. Police Regulation. Therefore, on the touchstone of Motive and Foundation Policy also, petitioner lacs (sic: lacks) merits.

19. When case of petitioner is seen from the perspective of Rule 12 of Rules of 1960, Police Regulation 59 and Foundation and Motive Policy then it appears that his unsuitability for the post was writ large and without casting any stigma, he has been removed from the service. Police Authorities have not caused any illegality or arbitrariness in not continuing the service of petitioner and not making him permanent. During probation period itself his services were found to be unsatisfactory.

20. Learned writ Court glossed over the said aspects and erred in holding that departmental enquiry was required before removal of petitioner; whereas, the case did not require holding of departmental enquiry.

21. On the basis of cumulative discussion, casae (sic : case) of appellants/ State succeeds and appeal is hereby allowed. Impugned order dated 10/12/2020 passed by learned writ Court is hereby set aside and orders dated 3/8/2015 and 5/2/2016 passed by the departmental Authority; whereby, services of petitioner were terminated are held to be just and proper. However, it is made clear that such orders are not stigmatic in nature and carry termination simpliciter.

22. Appeal stands allowed and disposed of in above terms.

Appeal allowed

I.L.R. [2021] M.P. 2259 (DB)
WRIT APPEAL
Before Mr. Justice Mohammad Rafiq, Chief Justice &
Mr. Justice Vijay Kumar Shukla
WA No. 382/2020 (Jabalpur) decided on 14 September, 2021

SWARAN VIBHA PANDEY …Appellant

Vs.

STATE OF M.P. & ors. …Respondents

***A. Class III (Non-Ministerial) Forest Service Recruitment Rules, M.P., 2000, Rule 8(1) – Appointment – Age Relaxation for Woman* – Held – Rules do not permit relaxation of age of women candidates in recruitment of Forest Guards – Circular dated 12.05.2017 regarding age relaxation is a general circular and it would not override specific provisions of Rule 8(1) – Appeal dismissed. (Paras 8, 13 & 14)**

***क. तृतीय श्रेणी (अलिपिक वर्गीय) वन सेवा भर्ती नियम, म.प्र., 2000, नियम 8(1) – नियुक्ति – महिला के लिए आयु में छूट* – अभिनिर्धारित – नियम, वन रक्षकों की भर्ती में महिला अभ्यर्थीगण की आयु में छूट की अनुमति नहीं देते हैं – आयु में छूट के संबंध में परिपत्र दिनांक 12.05.2017 एक साधारण परिपत्र है एवं यह नियम 8(1) के विनिर्दिष्ट उपबंधों पर अध्यारोही नहीं होगा – अपील खारिज।**

***B. Service Law – Circular/Executive Instructions* – Held – Circulars or executive instructions cannot override the statutory rules. (Paras 8 to 12)**

***ख. सेवा विधि – परिपत्र/कार्यपालक अनुदेश* – अभिनिर्धारित – परिपत्र या कार्यपालक अनुदेश कानूनी नियमों पर अध्यारोही नहीं हो सकते।**

Cases referred:

(2014) 15 SCC 753, AIR 1965 SC 1196, (2004) 2 SCC 297, (2007) 2 SCC 491, (2007) 15 SCC 129, AIR 2020 Ori 150.

K.C. Ghildiyal, for the appellant.
Ashish Anand Barnad, Dy.A.G. for the respondents/State.

J U D G M E N T

(Hearing convened through virtual/physical mode)

The Judgment of the Court was delivered by : **VIJAY KUMAR SHUKLA, J. -** The present intra-court appeal has been filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam, 2005 being aggrieved by the order dated 17-01-2020 passed by the learned Single Judge in WP-7265-2018 *[Swaran Vibha Pandey vs. State of M.P. and others],* whereby the writ petition filed by the writ-petitioner/appellant [hereinafter referred to as "the appellant"] has been dismissed. The appellant has challenged the order dated 23-01-2018 passed by the Selection Committee and further sought for a direction to the respondents to appoint the appellant on the post of Forest Guard.

2. In pursuance to the advertisement issued by the respondents No.6, the appellant submitted her candidature for appointment on the post of Kshetrarakshak Seoni and Vanrakshak Hoshangabad in Jail Vibhag, Karyalaya Pradhan Mukhya Van Sanrakshak and Rajya Van Vikas Nigam Limited Bhopal Combined Recruitment Test, 2017. The petitioner passed the written examination and she was declared qualified for second phase. After declaration of the result of the written examination, the letter dated 9-01-2018 was issued by the respondent No.4, asking the appellant to appear for Biometric Examination, documents verification and physical measurement on 23-01-2018 and for walking test on 24-01-2018.

3. The appellant appeared on the said date as directed for appointment on the post of Kshetrarakshak, Seoni. During course of documents verification the Selection Committee declared the appellant disqualified on the ground that she had crossed the upper age limit of 30 years as fixed by the respondent No.6. The appellant submitted a representation to the respondent No.4 taking the plea that vide Circular dated 12-5-2017 issued by the respondent No.2, relaxation of age upto 45 years has been extended to the women candidates, but the said representation was rejected.

4. The respondents filed their reply taking the stand that since the appellant has crossed the maximum age limit prescribed under the Madhya Pradesh Class-III (Non-Ministerial) Forest Service Recruitment Rules, 2000 [hereinafter

referred to as "the Recruitment Rules"], therefore, she is not eligible for consideration. The respondents placed reliance on Rule 8(1) of the Recruitment Rules which provides for the minimum age and the post for which relaxation in age can be granted. The said rule being useful to refer, is extracted hereunder :

> **"8. Condition of Eligibility of Direct Recruitment.-**
>
> In order to be eligible for selection/competitive examination, the candidate must satisfy the following conditions, namely -
>
> (1) **Age** : (a) He must have attained the age as prescribed in Column (3) of Schedule III, and not attained the age as mentioned in Column (4) of the said Schedule on the first day of January next following the date of commencement of selection.
>
> (b) The upper age limit shall be relaxable upto a maximum of 5 years if a candidate belongs to Scheduled Caste, Scheduled Tribe and Other Backward Classes.
>
> (c) The upper age limit shall be relaxable upto maximum of 10 years to a woman candidate in accordance with the provision of Rule 4 of the Madhya Pradesh Civil Services (Special Provisions for Appointment of Women) Rules, 1997:
>
> [Provided that the above provision shall not be applicable for the recruitment on the post of Forest Guards.]
>
> (d) The upper age limit shall also be relaxable in respect of candidates who are or have been employees of the Madhya Pradesh Government to the extent and subject to the conditions specified below :
>
> (i) A candidate who is a permanent Government Servant should not be more than 38 years of age.
>
> (ii) A candidate holding post and applying for another post should not be more than 38 years of age. This concession shall also be admissible to contingency paid employees, workcharged employees and employees working in the Project Implementing Committee.
>
> (iii) A candidate who is a retrenched Government Servant shall be allowed to deduct from his age the period of all temporary services previously rendered by him up to maximum limit of 7 years even if it represents more than one spell provided that the resultant age does not exceed the upper age limit by more than 3 years."

5. The learned counsel appearing for the appellant heavily relied on the Circular dated 12-5-2017 and submitted that the maximum age limit has been relaxed for women candidates upto 45 years and, therefore, the appellant is

entitled to the benefit of the said Circular. It is further submitted that if the Jail Department followed the GAD Circular without any amendment in the Recruitment Rules, why it could not have been done in the case of the Forest Department, as both are the Departments of the same Government. It is further argued that the State Government cannot take a stand that the Circular dated 12-5-2017 is contrary to the statutory provisions. Hence, it should not have been given effect to and it cannot override the statutory provisions. Can the said Circular be declared illegal at the instance of the State Government. The State cannot be permitted to plead before the Court that their Circular be declared illegal by a judicial pronouncement. In this regard reliance is placed on the decision of the Apex Court rendered in the case of *Pune Municipal Corporation and another vs. Kausarbag Co-operative Housing Society Limited and another,* (2014) 15 SCC 753.

6. The respondents have taken a specific stand in the return that the M.P. Rajay Van Vikas Nigam Limited has adopted the Recruitment Rules. It is strenuously urged that the nature of duties, functions and responsibilities of a Field Man is similar/akin to that of a Forest Guard. As per the Recruitment Rules the minimum age limit for appointment on the post of Forest Guard is 18 years and the maximum age limit is 30 years.

7. From a perusal of the Rule 8 it is luminescent that age relaxation of 10 years granted to the female candidates is not applicable in the case of women candidates for being appointed as a Forest Guard/Field Man of the M.P. Rajya Van Vikas Nigam. In regard to the Circular issued by the General Administration Department dated 12-5-2017, it is putforth that the maximum age limit for direct recruitment in case of female candidates is 45 years, but the said Circular would not be applicable in the case of the appellant, as there is no amendment in the Recruitment Rules. It is submitted that after issuance of the said Circular a clarification was issued by the Jail Department on 25-5-2017 in which it is stipulated that the maximum age limit for a female candidate would be 45 years in view of the Circular dated 12-5-2017 but, no such clarification was issued either by the respondents or by the Forest Department.

8. The respondents have further canvassed that a general circular cannot override the Recruitment Rules. Unless the Recruitment Rules are amended the benefit of relaxation of upper age limit cannot be granted to the appellant. It is well settled law that Circulars or Executive Instructions cannot override the statutory rules. We are examining the issue that whether the appellant is entitled for relaxation of age as per Recruitment Rules or not. Apparently, the Rules do not permit relaxation of age of women candidates in the case recruitment on the post of Forest Guards. Therefore, there is no merit in the contention of the learned counsel for the appellant that the State cannot take a stand that the Circular is

contrary to the Recruitment Rules. The factual position is that the relaxation of age to female candidates is not applicable in the case of female candidates for being appointed as Forest Guard/Field Man in the Madhya Prajya Van Vikas Nigam. The judgment relied upon by the learned counsel for the appellant in *Pune Municipal Corporation and another* (supra) would not apply in the facts of the present case where the statutory rules are specific and unequivocally provides that benefit of relaxation of upper age limit cannot be granted to the recruitment to the post of Forest Guards. The Circular dated 12-5-2017 would not be applicable in the case of the appellant herein.

9. A five Judges Bench of the Apex Court in the case of *The State of Assam and another vs. Ajit Kumar Sarma and others,* AIR 1965 SC 1196, held that the Rules in nature of administrative instructions without any statutory force, cannot be said to be enforced by maintaining a writ petition under Article 226 of the Constitution of India.

10. In another decision rendered in the case of *DDA and others vs. Joginder S. Monga and others,* (2004) 2 SCC 297 the Supreme Court ruled that Administrative action - Executive Instructions, if are in conflict with statutory provisions, the later will prevail. But in absence of any conflict, both will prevail.

11. The Apex Court in the case of *Punjab Water Supply & Sewerage Board vs. Ranjodh Singh and others,* (2007) 2 SCC 491 in para 19 of the judgment held that any departmental letter or executive instruction cannot prevail over statutory rule and constitutional provisions.

12. In this connection, we may usefully refer to the judgment of the Supreme Court in *State of Orissa vs. Prasana Kumar Sahoo,* (2007) 15 SCC 129. Their Lordships of the Apex Court, while dealing with a similar situation of conflict between executive instructions and statutory rules, in para - 12 of the report, held as under :

> "12. Even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative act or the proviso appended to Article 309 of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions."

Similar view has been taken by the High Court of Orissa at Cuttack in the case of *Gopinath Sahu vs. State of Orissa and others,* AIR 2020 Ori 150.

13. In the present case, the Circular dated 12-5-2017, which is a general circular regarding grant of age-relaxation to the candidates, would not override the specific provisions of the Rule 8(1) of the Recruitment Rules.

14. In the conspectus of the aforesaid enunciation of law, we do not perceive any illegality in the impugned order passed by the learned Single Judge, warranting any interference in the present intra-court appeal. Accordingly, the **writ appeal being sans merit, is dismissed** without any order as to costs.

Appeal dismissed

I.L.R. [2021] M.P. 2264 (DB)
WRIT PETITION
Before Mr. Justice Sujoy Paul & Mr. Justice Anil Verma
WP No. 12502/2021 (Indore) decided on 12 August, 2021

SAPPHIRE INSTITUTE OF NURSING & SCIENCE …Petitioner

Vs.

STATE OF M.P. & anr. …Respondents

***A. Ayurvigyan Vishwavidyalay (Eligibility and Enrolment of Students for Under Graduate Courses) Ordinance, M.P., 2014, Clause 8 & 9 – Enrollment Procedure* – Held – Clause 9 is mandatory in nature and it deals with a separate enrollment, different than the exercise of admission of students and submission of their certified list as mentioned in clause 8 – It is imperative /obligatory for institution to obtain enrollment prior to submission of exam form – Students shall not be deprived to undertake examination for technical/clerical mistake of institution moreso when no prejudice will be caused to University – Cost of Rs. 50,000 imposed on petitioner allowing them to complete the necessary formalities of enrollment – Petition partly allowed. (Paras 14 to 16 & 21 to 24)**

क. आयुर्विज्ञान विश्वविद्यालय (पूर्वस्नातक पाठ्यक्रमों के लिए छात्रों की पात्रता तथा नामांकन) अध्यादेश, म.प्र., 2014, खंड 8 व 9 – नामांकन प्रक्रिया – अभिनिर्धारित – खंड 9 आज्ञापक स्वरूप का है एवं यह एक पृथक नामांकन से संबंधित है, जो छात्रों के प्रवेश एवं उनकी प्रमाणित सूची को प्रस्तुत करने की कवायद से भिन्न है जैसा खण्ड 8 में उल्लिखित है – परीक्षा फॉर्म जमा किये जाने से पूर्व नामांकन प्राप्त करना संस्था के लिए अनिवार्य/बाध्यकर है – संस्था की तकनीकी/लिपिकीय त्रुटि के लिए छात्रों को परीक्षा देने से वंचित नहीं किया जाएगा वह भी तब जबकि विश्वविद्यालय को कोई प्रतिकूल प्रभाव कारित नहीं होगा – याची को नामांकन की आवश्यक औपचारिकताएं पूर्ण करने की मंजूरी देते हुए, उन पर 50,000/– रू. का व्यय अधिरोपित किया गया – याचिका अंशतः मंजूर।

***B. Practice & Procedure – Parawise Reply* – Held – No parawise reply has been filed – Apex Court concluded that if a categorical pleading of petition is not clearly refuted/denied, it shall be treated to be admitted. (Para 22)**

ख. पद्धति व प्रक्रिया – पैरावाईज उत्तर देना – अभिनिर्धारित – कोई पैरावाईज उत्तर प्रस्तुत नहीं किया गया – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यदि याचिका के स्पष्ट अभिवचन का स्पष्ट रूप से खंडन/प्रत्याख्यान नहीं किया गया है, तो इसे स्वीकृत माना जाएगा।

***C. Practice & Procedure – Submission of Judgments* – Held – If a party intends to rely on judgments, they should rely on them during the course of argument, so that not only Court can parallelly see their relevance, the other party can also put forth his/their point regarding the said judgment – After completion of arguments, petitioner supplied list of judgments, which do not mention relevant para numbers and proposition for which they are been relied – Judgments cannot be taken into account. (Para 11)**

ग. पद्धति व प्रक्रिया – निर्णयों का प्रस्तुत किया जाना – अभिनिर्धारित – यदि एक पक्षकार निर्णयों पर विश्वास करने का आशय रखता है, उन्हें तर्क के दौरान उन पर विश्वास करना चाहिए ताकि न केवल न्यायालय समानांतर रूप से उनकी सुसंगतता को देख सके, अन्य पक्ष भी उक्त निर्णय के संबंध में उसकी/उनकी बात रख सकें – तर्क समाप्त होने के पश्चात्, याची ने निर्णयों की सूची प्रदाय की जिसमें सुसंगत पैरा क्रमांकों एवं प्रतिपादना जिसके लिए उन पर विश्वास किया जाता है, का उल्लेख नहीं है – निर्णयों को विचार में नहीं लिया जा सकता।

Cases referred:

AIR 1959 SC 93, (2001) 4 SCC 9, (2002) 1 SCC 633, (2011) 2 MPLJ 690, (1992) 4 SCC 711, 1993 Supp (4) SCC 46.

Siddharth Gupta, for the petitioner.
Aditya Garg, G.A. for the respondent No. 1/State.
Sunil Jain with *Kushagra Jain*, for the respondent No. 2.

O R D E R

The Order of the Court was passed by : **SUJOY PAUL, J. :-** This petition filed by a nursing institute seeks a writ of mandamus for respondent No.2 to enroll the students studying in 1st Year batch (2019-20) of B.Sc. Nursing Programme within a time frame. In turn, said students be permitted to appear in the examination of the said course.

2. Briefly stated, the case of the petitioner is that the petitioner is admittedly a recognized and affiliated nursing college with the respondent No.2. The students of 1st Year of B.Sc. Nursing Programme (2019-20) were admitted and registered

with the nursing college before the last date of admission i.e. 31/10/2020. Shri Siddharth Gupta, learned counsel for the petitioner by placing heavy reliance on the web portal of respondent No.2 (Annexure P/3) submits that the enrollment/admission/registration for the session of 2019-20 shows that all such students were duly enrolled by respondent No.2 and accordingly their names were reflected in the web portal.

3. The Madhya Pradesh Ayurvigyan Vishwavidyalay (Eligibility and Enrollment of Students for Under Graduate Courses) Ordinance, 2014 (hereinafter called "ordinance") is referred to contend that a conjoint reading of various clauses of said ordinance shows that it contemplates only one registration/enrollment. After having registered the students aforesaid, which is reflected in the web portal (Annexure P/3), it was no more open to respondent No.2 to ask for a further enrollment as per Clause-9 of the said Ordinance. To bolster this point, reliance is placed on Clause-3, 4, 5 & 6 of the said Ordinance. In Clause-5, it is mentioned that the *"student shall pay the registration/enrollment and various other fees as prescribed ... ."* Thus, enrollment and registration is one and the same. Once students are registered and their names are reflected in the web portal (Annexure P/3), the students cannot be deprived to participate in the examination for want of application of the college for enrolment of said students. The second point raised by Shri Gupta is that on the one hand the students of the petitioner-college were not permitted to be enrolled after 30/10/2020 and on the other hand, students of three medical colleges were permitted to get themselves enrolled through their colleges. The attention of this Court is drawn on the aspect of parity and on the point of alleged discrimination by pointing out the averments of para-5.11 of the petition.

4. Shri Siddharth Gupta, learned counsel for the petitioner urged that the alternative submission without prejudice to the legal submission is that the concern officer of petitioner-college who was obliged to submit application for enrollment online could not undertake the said exercise because she suffered from corona virus twice. The representation dated 17/03/2021 and 28/06/2021 were relied upon for this purpose.

5. Furthermore, it is submitted that Clause-9 is a procedural provision and, therefore, must be treated as directory in nature. This provision cannot take away the substantive right of the petitioner/students.

6. Lastly, it is submitted that exams which were previously scheduled from 07/08/2021 are now postponed and likely to take place from 09/9/2021. When admission of students in question is not in dispute, the students cannot be made to suffer for any mistake of the petitioner-college. No prejudice will be caused to the respondents if enrollment still takes place. The respondents have permitted three medical colleges who were governed by the same ordinance to complete the

formality of enrollment after the cut-off date. The petitioner may be treated similarly. Petitioner is willing to pay the fine/cost for the same.

7. Shri Sunil Jain, learned Senior Counsel for the respondent No.2 opposed the prayer by contending that the Ordinance cannot be read in the manner suggested by Shri Gupta. The Clauses of the Ordinance are differently worded and deals with different situations. The enrollment is a separate activity than the admission of students. Petitioner's representations are clear and candid which shows that it was a fault on the part of the petitioner in not undertaking the exercise of filling up the enrollment form in time.

8. On the question of discrimination, it is submitted that no doubt certain medical colleges were permitted to complete the formality of enrollment after the cut-off date, but same was done as per the orders of Director, Medical Education (D.M.E.). It is a case of negligence on the part of the college. Learned Senior Counsel has not disputed that now exams are rescheduled and likely to take place w.e.f. 09/09/2021. He did not dispute that if petitioner is permitted to fulfill the formality of enrollment, it will not cause any prejudice to respondent No.2. He urged that it is the discrimination of this Court to decide as to what should be the fine/cost in the event Court permits the college to fill up the enrollment form.

9. No other point is pressed by the parties.

10. We have heard the learned counsel for the parties at length and perused the record.

11. After completion of arguments, learned counsel for petitioner supplied a list of judgments on whatsapp number of Reader of the Court. List of judgments does not include relevant paragraph numbers and the proposition for which the judgments are sought to be relied upon. Thus, the judgments cannot be taken into account. Apart from this, in our opinion, if a party intends to rely on judgments, they should rely on them during the course of argument, so that not only Court can parallelly see the relevance of the judgment, the other side can also put forth his/their point regarding the said judgment.

12. Before dealing with the rival contention, it is apposite to reproduce the relevant Clauses of the Ordinance.

> "3. The student passing (10+2) Higher Secondary School Certificate Examination with Physics, Chemistry. Biology and English subject conducted by the Board of Higher Secondary of Madhya Pradesh State or Equivalent Examination from outside Madhya Pradesh State, recognized by the appropriate Authority of Central Government or the Council or Board of School Examination in India shall be eligible for admission to the first year of Undergraduate courses as per eligibility rules framed

from time to time by the University and by the respective Central Councils.

4. The candidates, who have passed the Examination as given in aforesaid Ordinance shall be required to appear at Common Entrance Test (CET) Examination if any, conducted by the Government of Madhya Pradesh or Authorised Competent Authority, to be eligible to seek admission. The Non-CET candidate shall also be eligible for admission as per norms of respective Apex Council.

5. The student who has been admitted to the Undergraduate course by the College / Institution shall apply in the prescribed form to the University through the Dean / Principal of the respective College / Institution for eligibility and registration on or before the prescribed date, relevant original documents and a set of attested photo copies of the documents to be submitted to the University. The student shall pay the Registration/ Enrollment and various other fees as prescribed from time to time by the University. Enrollment and Eligibility fee once paid shall not be transferable or refundable.

6. It shall be the responsibility of the Dean/Principal of the college / Institution to report, the status of the enrollment before the end of the first term to the University.

7. It shall be the responsibility of the Dean / Principal of the College / Institution, to ensure that, no student is admitted after the cut-off-date declared by the concerned Competent Authority /Apex Council. The enrollment and eligibility shall not be granted by the University to such students, if any, admitted after the cut-off-date.

8. It shall be the responsibility of the Dean / Principal of the college/Institution, to submit the certified list of admitted students on the cut-off-date up to 5.00 PM to the Registrar of the University by Fax or by E-mail or through a Special Messenger of the College / Institution.

9. It shall be the responsibility of the Dean /Principal / Director to obtain the enrollment, prior to the submission of examination form. The student shall not be allowed to appear for the examination unless the menthol is issued to him/ her by the University."

(Emphasis Supplied)

13. In Clause-5 of the Ordinance, the word registration/enrollment is employed. However, a careful reading of this Clause makes it clear that the

students, who have been admitted to the institution are required to apply in prescribed form to the University through the institution for registration. The students of the petitioner-institution have admittedly done it on or before 27/10/2021. Thus, they were treated to be admitted/registered and consequently their names were reflected in the web portal of University (Annexure P/3).

14. Clause-8 makes it obligatory on the part of the institution to submit certified list of admitted students before the cut-off-date up to 5 pm through permissible mode. A conjoint reading of Clause-7 & 8 leaves no room for any doubt that students are required to be admitted before the cut-off-date declared by Competent Authority. Certified list of such admitted students were required to be supplied before cut-off-date to the Registrar of the University as per Clause-8 of the Ordinance.

15. A bare perusal of Clause-9 makes it clear that it is couched in a mandatory language and makes it imperative/obligatory for the institution to obtain enrollment prior to the submission of exam form. Clause-9 is independent to other clauses and conjoint reading of all these clauses do not lead us to the consequence suggested by Shri Gupta. Putting it differently, Clause-9 deals with a separate enrollment which is different than the exercise of admission of students and submission of certified list of such admitted students mentioned in Clause-8.

16. We are unable to hold that Clause-9 is directory in nature. On the contrary, Clause-9 in no uncertain terms makes it obligatory for the institution to obtain enrollment prior to submission of examination form. Thus, on the strength of registration of students/admission list which is mentioned in Annexure P/3, petitioner cannot be permitted to escape from the responsibility of completing the formality of enrollment.

17. This is trite if a statute prescribes a thing to be done in a particular manner it has to be done in the same manner. (See: AIR 1959 SC 93 *(Baru Ram (Shri) vs. Shrimati Prasanni & Ors),* (2001) 4 SCC 9 *(Dhanajaya Reddy vs. State of Karnataka),* (2002) 1 SCC 633 *(Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala & Ors.),* (2011) 2 MPLJ 690 *(Satyanjay Tripathi & Anr. Vs. Banarsi Devi).*

18. Clause-9 of the Ordinance is clear and unambiguous in nature. The Apex Court in (1992) 4 SCC 711 *(Nelson Motis vs. Union of India & Anr.)* opined that if language of a statute is clear, it should be given effect irrespective of consequences. Thus, we find no merit in the contention that petitioner was not required to fulfill the formality of enrollment.

19. It is apposite to quote the relevant portion of representation of petitioner dated 17/03/2021.

''महोदय,

उपरोक्त विषय में निवेदन है की, हमारे महाविद्यालय सफायर इंस्टिटयूट ऑफ नर्सिंग एंड साइंस, ग्राम बोरखेडी पोस्ट हरसोला तहसील महू जिला इंदौर में अध्यनरत सत्र 2019–20 के विद्यार्थियों का <u>महाविद्यालय बंद होने के कारण त्रुटिवश</u> हमारे महाविद्यालय के कर्मचारी द्वारा सत्र 2019–20 के विद्यार्थियों के नामांकन नहीं करा पाए। अतः महोदय से निवेदन है की विद्यार्थियों के भविष्य को देखते हुए नामांकन (Enrollment) फॉर्म भरने हेतु की लिंक ओपन कराने की कृपा करे।

महोदय हम आपको अस्वस्त करते है की भविष्य में इस प्रकार की त्रुटी नहीं दोहराई जावेगी। कृप्या हमारा निवेदन स्वीकार कर नामांकन (Enrollment) फॉर्म भरने की लिंक ओपन कराने की कृपा करे।

धन्यवाद

प्रचार्य
सफायर इंस्टिटयूट ऑफ नर्सिंग एंड साइंस
महू–इंदौर''

20. Yet another representation (relevant portion) of petitioner's representation reads as under:-

"Respected Sir/Madam

With reference to above subject, on behalf of Sapphire Institute of Nursing and Science, Mhow, Indore (M.P.) would like to inform you that Institute had made registration of B.Sc. Nursing 1st Year (2019-20) on 27/10/2020 for enrollment process. <u>Due to COVID positive because of which institute was unable to complete the enrollment process at that time which has not completed till present.</u> We have already informed the issue earlier by mail dated 24th March 2021 & 4th May 2021. We were assured on phone it will be done once lockdown is opened & meeting is done but it hasn't been done yet.

Take students future into consideration. Again, this is to bring to your kind notice these are not new enrolments we have already registered them on 27/10/2020 (list is enclosed). You are requested to kindly reopen the enrollment portal link for us to complete the Enrollment process for B.Sc. Nursing 2019-20 batch and oblige us for the same. We assure you that this kind of mistake will never happen again. Registration report is attached with this letter.

Thanking you

Principal
Sapphire Institute of Nursing and Science
Indore M.P."

(Emphasis Supplied)

21. The representations make it clear that petitioner was fully aware that enrollment is a necessary formality, but failed to do it in time for certain reasons.

22. Indisputably, the respondent No.2 permitted certain medical colleges to fulfill the enrollment forms after the cut-off-date. It was not disputed that said medical colleges were also governed with same Ordinance and same parameters. No para-wise reply was filed to rebut clause para 5.11 of the petition. In 1993 Supp (4) SCC 46 *(Naseem Bano (Smt) vs. State of U.P. & Ors.),* it was held that if a categorical pleading of petition is not clearly refuted/denied, it shall be treated to be admitted. Thus, ancillary question is whether the students studying in 1st Year batch (2019-20) of B.Sc. Nursing Programme should be deprived to undertake the examination. Moreso, when admittedly their admissions and registrations have taken place in accordance with law before the cut-off-date and their names were duly reflected in the web portal of respondent No.2 (Annexure P/3). In our opinion, this will be a travesty of justice if they are deprived to undertake the examination for a technical/clerical fault of the institution/petitioner. Moreso, when examinations are now rescheduled from 9.9.2021 and no prejudice will be caused to the respondent No.2 if such enrollment takes place.

23. Considering the aforesaid and by taking into account the impediment faced by petitioner-institution because of Covid-19 related problem, in the peculiar factual backdrop of this case, we deem it proper to direct the respondent No.2 to permit the petitioner to fulfill the formality of enrollment within 10 working days from today. However, in view of lethargy/negligence on the part of the petitioner, we deem it proper to impose cost on the petitioner. The petitioner in addition to enrollment fees, shall deposit **Rs.50,000/- (Rs. Fifty Thousand)** as cost before the respondent No.2 within same time. The respondent No.2 shall utilize that amount of cost in welfare activities of the students. If aforesaid exercise is completed by petitioner within aforesaid time, the concern students be permitted to participate in the examination. The direction contained in this para is issued in the peculiar factual situation of this matter and, therefore, shall not be treated as a precedent in future.

24. The petition is **partly allowed.**

Petition partly allowed

I.L.R. [2021] M.P. 2272 (DB)
WRIT PETITION
Before Mr. Justice Sujoy Paul & Mr. Justice Anil Verma
WP No. 10085/2021 (Indore) decided on 24 August, 2021

SARABJEET SINGH MOKHA …Petitioner

Vs.

THE DISTRICT MAGISTRATE, JABALPUR & ors. …Respondents

A. National Security Act (65 of 1980), Section 3(2) – Detention Order for Singular Act – **Held – Order of detention on a solitary act can be passed keeping in view the conduct of person in view of facts and circumstances prevailing at relevant time – In pandemic situation where people were dying for want of essential drugs, treatment and other facilities, singular act of blackmarketing of Remedesivir injections is sufficient to maintain detention order, moreso when allegation is that such injections were fake/duplicate – It is such hard and ugly fact which make application of detention law imperative – No flaw in decision making process – Petition dismissed. (Paras 26, 29, 47 & 48)**

क. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – एकल कृत्य के लिए निरोध आदेश – अभिनिर्धारित – सुसंगत समय पर अभिभावी तथ्यों और परिस्थितियों को दृष्टिगत रख व्यक्ति के आचरण को ध्यान में रखते हुए एकल कृत्य पर निरोध का आदेश पारित किया जा सकता है – महामारी की स्थिति में जहां लोग आवश्यक औषधियों, उपचार एवं अन्य सुविधाओं के अभाव में मर रहे थे, रेमडेसिविर इंजेक्शनों की चोरबाजारी का एकल कृत्य निरोध आदेश को कायम रखने के लिए पर्याप्त है, वह भी तब जब अभिकथन यह है कि उक्त इंजेक्शन फर्जी/नकली थे – यह एक ऐसा कठोर एवं घिनौना तथ्य है जो निरोध कानून को लागू करना अनिवार्य बनाता है – विनिश्चय करने की प्रक्रिया में कोई दोष नहीं – याचिका खारिज।

B. National Security Act (65 of 1980), Section 3(2) – Public Order – **Held – Allegation against petitioner is relating to blackmarketing and using fake injections in hospital, which certainly falls within ambit and scope of "public order". (Para 23)**

ख. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – लोक व्यवस्था – अभिनिर्धारित – याची के विरूद्ध अभिकथन चोरबाजारी एवं अस्पताल में नकली इंजेक्शनों का उपयोग करने से संबंधित है, जो निश्चित रूप से ''लोक व्यवस्था'' की परिधि एवं व्याप्ति के भीतर आता है।

C. National Security Act (65 of 1980), Section 3(2) – Applicability – **Held – Apex Court concluded that there is no straight jacket/static formula for applying /invoking NSA because it varies according to the** ***pressures of the***

day **and according to** ***intensity of imperatives*** **– Its depends on factual backdrop of each case. (Para 29)**

ग. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – प्रयोज्यता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि राष्ट्रीय सुरक्षा कानून लागू करने/का अवलंब लेने हेतु कोई निश्चित/स्थिर सूत्र नहीं है यह समय के दबाव और अनिवार्यताओं की तीव्रता के अनुसार परिवर्तित होता रहता है – यह प्रत्येक प्रकरण की तथ्यात्मक पृष्ठभूमि पर निर्भर करता है।

D. Constitution – Article 226 and National Security Act (65 of 1980), Section 3(2) – Detention Order – Scope of Judicial Review **– Held – The correctness and sufficiency of evidence is beyond the scope of judicial review. (Para 32)**

घ. संविधान – अनुच्छेद 226 एवं राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निरोध आदेश – न्यायिक पुनर्विलोकन की परिधि – अभिनिर्धारित – साक्ष्य की सत्यता एवं पर्याप्तता न्यायिक पुनर्विलोकन की परिधि से परे है।

E. National Security Act (65 of 1980), Section 3(2) – Detention Order – Statements u/S 161 Cr.P.C. **– Held – Impugned detention order cannot be said to be irrational or illegal because statement of witnesses recorded during investigation were relied upon – There definitely exists some probative material sufficient for passing detention order – Statement recorded u/S 161 Cr.P.C. can become basis for passing detention order. (Paras 32 to 34)**

ङ. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निरोध आदेश – दं.प्र.सं. की धारा 161 के अंतर्गत कथन – अभिनिर्धारित – आक्षेपित निरोध आदेश को अतार्किक या अवैध नहीं कहा जा सकता क्योंकि अन्वेषण के दौरान अभिलिखित किये गये साक्षीगण के कथन पर विश्वास किया गया था – निरोध आदेश पारित करने के लिए पर्याप्त, कुछ प्रमाणक सामग्री निश्चित रूप से विद्यमान है – दं.प्र.सं. की धारा 161 के अंतर्गत अभिलिखित कथन निरोध आदेश पारित करने के लिए आधार बन सकते हैं।

F. National Security Act (65 of 1980), Section 3(2) – Detenu already in Custody **– Held – It is submitted that offences mentioned in FIR are trivial in nature and are triable by Magistrate – District Magistrate rightly formed opinion that there is likelihood of petitioner's release on bail – Necessary ingredients for detaining a person, who is already arrested are satisfied. (Para 36)**

च. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निरूद्ध व्यक्ति का पहले से ही अभिरक्षा में होना – अभिनिर्धारित – यह निवेदित किया जाता है कि प्रथम सूचना प्रतिवेदन में उल्लिखित अपराध तुच्छ प्रकृति के हैं एवं मजिस्ट्रेट द्वारा विचारणीय हैं – जिला मजिस्ट्रेट ने उचित रूप से राय बनाई कि याची को जमानत पर छोड़े जाने की

संभावना है – पहले से ही गिरफ्तार व्यक्ति को निरूद्ध करने के लिए आवश्यक घटक संतुष्ट हैं।

***G. National Security Act (65 of 1980), Section 3(2) & 5A – Detention Order – Doctrine of Severability* – Held – If order to the extent it refers to incident of 2004 is treated as invalid, after excision of this invalid part, remaining part is found to be self-contained, it can be a reason to uphold invocation of power u/S 3(2) of Act – Two parts of order are severable – The invalid part will not eclipse the entire order of detention.**

(Paras 41 to 43)

छ. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) व 5A – निरोध आदेश – पृथक्करणीयता का सिद्धांत – अभिनिर्धारित – यदि आदेश, जहां तक यह 2004 की घटना को निर्दिष्ट करता है, अविधिमान्य माना जाता है, इस अविधिमान्य भाग की काट–छांट के पश्चात्, शेष भाग स्वतः पूर्ण पाया जाता है, यह अधिनियम की धारा 3(2) के अंतर्गत शक्ति के अवलंब लेने को मान्य ठहराने का एक कारण हो सकता है – आदेश के दोनों भाग पृथक्करणीय हैं – अविधिमान्य भाग निरोध के संपूर्ण आदेश का ग्रसन नहीं करेगा।

***H. National Security Act (65 of 1980), Section 3(2) – Detention Order – Principles* – Discussed and enumerated. (Para 31)**

ज. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(2) – निरोध आदेश – सिद्धांत – विवेचित एवं प्रगणित।

Cases referred:

(2018) 9 SCC 562, (2018) 12 SCC 150, (2020) 13 SCC 632, (2010) 9 SCC 618, (2019) 20 SCC 740, (2011) 5 SCC 244, (2012) 2 SCC 386, (1978) 1 SCC 405, (1982) 3 SCC 10, (1981) 2 SCC 710, (2013) 4 SCC 435, (1981) 4 SCC 428, (1987) Cr.L.J. 893, AIR 1951 SC 157, AIR 1964 SC 334, (1991) 1 SCC 476, (1976) 2 SCC 521, (1975) 4 SCC Page 47, 1975 (Supp.) SCC 1, (1989) 1 SCC 374, (1986) 4 SCC 407, (1974) 4 SCC 135, (1975) 3 SCC 292, (1986) 1 SCC 404, (1991) 1 SCC 144, (1992) 4 SCC 154, (2009) 5 SCC 296, (2010) 1 SCC 609, 2021 (2) MPLJ 554 (FB), (2012) 2 SCC 176, (1975) 3 SCC 845, 1960 2 SCR 146, 1966 2 SCR 204, (1976) 2 SCC 495, 2014 (12) SCC 106, 1974 (3) SCC 601, 2015 SCC OnLine ALL 8706, 1975 (3) SCC 858.

Sidharth Luthra with *Pankaj Dubey,* for the petitioner.
Vivek Dalal, Addl. A.G. assisted by *Palak Joshi,* for the respondents/State.
Milind Phadke, for the respondent/Union of India.

ORDER

The Order of the Court was passed by :
SUJOY PAUL, J:- This petition filed under Article 226 of the Constitution assails the detention order dated 11/5/2021 (Annexure P/1) passed under National Security Act, 1980 (NSA), its extension by order dated 5/7/2021 (Annexure P/1A) and also the order dated 5/7/2021 passed by Central Government whereby the representation of petitioner was rejected. This matter was analogously heard with WP No.10177/2021 (Devesh Chourasia vs. State of MP). The petitioner was running a hospital whereas Devesh Chourasia was working in the pharmaceutical wing of the said hospital.

2. The stand of petitioner as canvassed by learned Senior Counsel is that he is running a hospital. As per the detention order, police received certain informations regarding blacklisting and misuse of Remdesivir injections on 8/5/2021. Consequently, an FIR was registered against the petitioner on 10/5/2021. The petitioner was detained pursuant to order dated 11/5/2021 on 12/5/2021. On 13/5/2021 (Annexure R/2), the State government approved the order of detention and send necessary information to the Central Government. The petitioner preferred detailed representation under the NSA on 18/5/2021. The Advisory Board affirmed the order of detention on 29/6/2021. The present writ petition was filed on 3/7/2021. After getting the rejection order of Central Government dated 5/7/2021, the petition was duly amended by assailing the order of extension and the rejection order.

3. Shri Sidharth Luthra, learned Sr.Counsel assisted by Shri Pankaj Dubey contended that the detention order is passed without there being any cogent material. A stale incident of 2004 became reason for passing the order of detention. The petitioner stood acquitted on merits in the said case of 2004 mentioned in the detention order. For the reasons best known to the learned District Magistrate, he gave a strange and unacceptable finding that it is because of petitioner's financial influence that he got a judgment in his favour in the said case of 2004. By placing reliance on (2018) 9 SCC 562 *[Hetchin Haokip Vs. State of Manipur & Ors.)*, (2018) 12 SCC 150 *[Sama Aruna Vs. State of Telangana & another]* and (2020) 13 SCC 632 *[Khaja Bilai Ahmed Vs. State of Telangana & Ors.],* learned Sr. Counsel contended that the past record must have a live and proximate link with the reason of detention. Otherwise, such stale material/case cannot be a basis for passing the detention order. The reference is made to the judgment of *Hetchin Haokip* (supra) for yet another reason. It is submitted that there exists an unexplained delay in reporting the detention order to the State Government. The language of Sec.3(4) and 8 of NSA shows that the law makers have used the word "forthwith" with an intention that order of detention must be communicated to the State government with quite promptitude. For the same

purpose, a division bench judgment of this Court in WP No.1118/2021 *(Anshul Jain Vs. State)* is relied upon. In the instant case, there is an unexplained delay in communicating the detention order to the government which vitiates the order of detention.

4. The statement of certain witnesses recorded u/S.161 of Cr.P.C are relied upon to bolster the submission that as per those statements no case is made out against the petitioner for black marketing or selling fake/duplicate Remdesivir injections. Heavy reliance is placed on the statements of Shri Vijay Sehajvani, Devesh Chourasia, Kshitij Rai and Yash Meindiratta. (2010) 9 SCC 618 *(Pebam Ningol Mikoi Devi Vs.State of Manipur & Ors.)* is relied upon to show that the statement recorded u/S.161 of Cr.P.C are not sufficient for invoking power u/S.3 of the NSA. In the instant case, the whole action is founded upon the statements recorded u/S.161 Cr.P.C which makes the detention order as illegal.

5. The petitioner had no knowledge that injections were fake and there exists no material to show that any such fake injections were ever administered to the patients admitted in the hospital of the petitioner.

6. The petitioner's conduct by no stretch of imagination can create public outrage or agitation because at Jabalpur the administration had already imposed restrictions by invoking Sec.144 of Cr.P.C. The offences are not serious and, therefore, there was no need to detain the petitioner under the NSA. Furthermore, it is argued that in view of (2019) 20 SCC 740 *(PP. Rukhiya Vs. Joint Secretary, Government and another),* person who is already in jail should not be detained under the NSA unless it is shown that (i) Authority is aware about his arrest, (ii) there is likelihood of his getting bail by the court and (iii) indulging in same activity.

7. The next contention of Shri Luthra is based on explanation to Sec.3 of the NSA which excludes certain activities from the purview of Sec.3 and attracts Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (Blackmarketing Act). To elaborate, it is contended that if the allegation against the petitioner is that he was black marketing the Remdisivir injections, the act which can be invoked is the Black Marketing Act and not the NSA. There is a marked difference between 'public order' and 'law and order'. If ordinary penal law can take care of the alleged offences committed by the petitioner, there was no justification in using drastic power under the NSA against the petitioner. For this purpose, heavy reliance is placed on (2011) 5 SCC 244 *(Rekha Vs. State of Tamil Nadu & another)* followed in (2012) 2 SCC 386 *(Munagala Yadamma Vs. State of Andhra Pradesh & Ors.)*

8. The validity of an order of a statutory authority needs to be judged on the grounds mentioned in the detention order and it cannot be supplemented by filing

counter affidavit before this Court is the next submission of Shri Luthra, Sr.Counsel based on the Constitution bench judgment of Supreme Court in the case of (1978) 1 SCC 405 *[Mohinder Singh Gill & another Vs. Chief Election Commissioner, New Delhi & Ors.].*

9. In rejoinder submissions, Shri Siddharth Luthra, learned Senior Counsel contended that representation of petitioner was dispatched on 19/05/2021. The State Govt. received it on 24/05/2021. The decision on the representation was belatedly taken by State Govt. on 05/08/2021. In the rejection order, it is mentioned that detenu failed to show any new justifiable reason and hence, interference is declined. This cryptic reason is sufficient to jettison the rejection order. The rejection order was supplied to the petitioner along with return filed in the instant case.

By placing reliance on (1982) 3 SCC 10 *(Raj Kishore Prasad vs. State of Bihar & Ors.),* (1981) 2 SCC 710 *(Harish Pahwa vs. State of U.P. & Ors.),* (2013) 4 SCC 435 *(Abdul Nasar Adam Ismail vs. State of Maharashtra & Ors.),* (2010) 9 SCC 618 *(Pebam Ningol Mikoi Devi vs. State of Manipur & Ors.),* it is urged that in these matters the time consumed in taking the decision on the representation was between 7 days to 28 days. In absence of explaining each day's delay, the orders impugned became vulnerable.

(2020) 13 SCC 632 *(Khaja Bilal Ahmed vs. State of Telengana & Ors.)* was relied upon to show that there is no finding in the detention order that in all probabilities, the petitioner upon his release may indulge in similar activity. For the same purpose (1981) 4 SCC 428 *(Aidal Singh vs. State of M.P. & Anr.)* and (1987) Cr.L.J. 893 (Allahabad High Court) *(Santosh Kumar Mehotra vs. Superintendent, Central Jail, Allahabad & Ors.)* were relied upon.

<u>Stand of Govt.:</u>

10. Shri Vivek Dalal, learned AAG assisted by Ms. Palak Joshi, learned counsel urged that in view of judgment of Supreme Court reported in AIR 1951 SC 157 *(State of Bombay vs. Atma Ram Sridhar Vaidya),* AIR 1964 SC 334 *(Rameshwar Shaw vs. District Magistrate, Burdwan & Anr.)* and constitution bench judgment in *K.M. Abdulla Kunhi vs. Union of India* (1991) 1 SCC 476, the order of detention can be passed on the basis of information and materials which may not be strictly admissible under Evidence Act. It depends on the needs and exigencies of administration to take into account some evidence to proceed against the detenu. The judgment of *Atma Ram* (supra) was followed in *Rameshwar Shaw* (supra) and it was ruled that scope of interference by High Court on a detention order is limited. The detention order can be assailed if it is based on malafides and if there is nothing to rationally support the conclusion drawn by the District Magistrate. For the same purpose, the judgment of *K.M.*

Abdulla Kunhi (supra) was pressed into service. It is for the government to consider the representation to ascertain whether the order is in-conformity with the power under the law. The Advisory Board considers the representation and the case of detenu to examine whether there is sufficient case for detention. Based on these judgments, it is contended that detention order is not assailed by alleging malafide. It cannot be said that detention order is without there being any rational basis at all.

11. Countering the argument that representation was required to be decided immediately, the learned AAG relied on the expression used in Clause-5 of Article 22 of the Constitution i.e. "as soon as may be". Reference is made to the judgment of *K.M. Abdulla Kunhi* (supra) to contend that representation should be expeditiously considered and disposed of with a sense of urgency without an avoidable delay. However, there is no hard and fast rule in this regard. It depends upon the facts and circumstances of each case. No statutory period is prescribed either under the Constitution or under the relevant detention law within which representation was required to be decided. Thus, it depends on the factual basis of each case whether representation is decided within reasonable time. As per para-16 of aforesaid judgment of Supreme Court, till the decision of Advisory Board, there was no occasion and question for the State Govt. to take a decision on the representation. There is no unreasonable delay in taking decision by the State Govt. after the decision of the Advisory Board.

12. Lastly, it is submitted that in view of judgment of this Court in *Manikant Asati vs. State of MP* (W.P. No.9846/2021) and *Nitin Vishwakarma vs. State of MP* (WP No.11571/2021), the interference on the ground of delay is not warranted. There is no flaw in decision making process. The singular incident can become a reason to invoke detention law. One singular incident of grave nature is sufficient to detain a person. In pandemic like situation, even if some delay is caused in deciding the representation, it is not fatal because the authorities were working day and night to combat the corona pandemic situation.

13. Parties confined their arguments to the extent indicated above.

14. We have heard the parties at length and perused the record.

Preventive Detention : Background :

15. Our constitutional scheme duly recognised the need and power of preventive detention. The Constituent Assembly composed of politicians, statesman, lawyers and social workers, who had attained a high status in their respective specialties and many of them had experienced the travails of incarceration owing solely to their political beliefs, resolved to put Article 22, Clause (3) to (7) in the Constitution, may be as a necessary evil. [See: (1976) 2

SCC 521 *(Additional District Magistrate, Jabalpur vs. SS Shukla).* Pertinently, this finding of Supreme Court has not been overruled in the subsequent judgment.

16. In *Ram Bali Rajbhar vs. State of W.B.* (1975) 4 SCC Page 47, the Apex Court opined as under:-

> "The law of preventive detention, (.....) is authorised by our Constitution presumably because it was foreseen by the Constitution-makers that there may arise occasions in the life of the nation when the need to prevent citizens from acting in ways which unlawfully subvert or disrupt the bases of an established order may outweigh the claims of personal liberty."
>
> ***(Emphasis supplied)***

17. The interesting and challenging quagmire before the Courts relating to liberty of citizen and aspects of misuse of liberty was wonderfully explained by ***Chief Justice Earl Warren*** as under:

> "Our judges are not monks or scientists, but participants in the living stream of our national life, steering the law between the dangers of rigidity on the one hand and of formlessness on the other. Our system faces no theoretical dilemma but a single continuous problem; how to apply to ever changing conditions on the never changing principles of freedom."
>
> ***(Emphasis Supplied)***

18. The same principle is also wonderfully explained by *Justice KK Mathew* in 1975 (Supp.) SCC 1, Para-318 *(Smt. Indira Nehru Gandhi vs. Raj Narain)* as under:

> "318. The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes licence; and the difficulty has been to discover the practical means of achieving this grand objective and to find the opportunity for applying these means in the ever shifting tangle of human affairs."
>
> ***(Emphasis Supplied)***

19. Justice *M.N. Venkatchaliah* in (1989)1 SCC 374 *(Ayya @ Ayub vs. State of UP)* held as under:-

> "14.......the actual manner of administration of the law of preventive detention is of utmost importance. **The law has to be justified by the genius of its administration so as to strike the right balance between individual liberty on the one hand and the needs of an orderly society on the other......** The

> paradigms and value judgments of the maintenance of a right balance are not static **but vary according as the 'pressures of the day' and according as the intensity of the imperatives that justify both the need for and the extent of the curtailment of individual liberty.** Adjustments and readjustments are constantly to be made and reviewed. No law is an end in itself. The 'inn that shelters for the night is not journey's end and the law, like the traveller, must be ready for the morrow."
>
> ***(Emphasis supplied)***

20. Justice *Savyasachi Mukherjee* in (1986) 4 SCC 407 *(Raj Kumar Singh vs. State of Bihar)* held as under:-

> "22. Preventive detention as reiterated as hard law and must be applied with circumspection rationally, reasonably and on relevant materials. **Hard and ugly facts make application of harsh laws imperative."**
>
> ***(Emphasis supplied)***

In the light of these guiding principles, it is to be seen whether the impugned detention order, its extension and rejection of representation deserves interference by this Court.

<u>Detention based on past record:</u>

21. The detention order is pregnant with a criminal incident of 2004 from which petitioner has been admittedly acquitted. There is no live nexus between the incident of 2004 and the alleged incident of blackmarketing/using fake remedesivir injections. Thus, in view of principles laid down by Apex Court in *Sama Aruna* (supra) and *Hetchin Haokip* (supra), the said incident of 2004 could not have been a reason to detain the petitioner.

<u>Delay in sending Detention Order to State:</u>

22. The impugned detention order was passed on 11/05/2021. It was sent to the State Govt. by the District Magistrate and in turn, on 13/05/2021 the State Govt. approved it. There is no undue and unexplained delay in sending the detention order to the State Govt. .Thus, the judgment of Supreme Court in the case of *Hetchin Haokip* (supra) and of this Court in *Anshul Jain* (supra) are of no assistance to the petitioner.

<u>Blackmarketing of injections: NSA NOT ATTRACTED.</u>

23. The another point raised by Shri Luthra, learned Senior Counsel that alleged action of blackmarketing of remedesivir injections does not fall within the ambit of Section 3 of NSA Act. Indeed, Blackmarketing Act takes care of such conduct

was recently decided by this Court in WP No.9878/2021 *(Sonu Bairwa vs. State of MP & Ors.)*. This Court opined as under:-

> **"20.** ***Section 3(2) of NSA Act*** and 'explanation' reads as under:-
>
> "The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.
>
> **Explanation.—**For the purposes of this sub-section, "acting in any manner prejudicial to the maintenance of supplies and services essential to the community" does not include "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" as defined in the Explanation to sub-section (1) of section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (7 of 1980), and accordingly, no order of detention shall be made under this Act on any ground on which an order of detention may be made under that Act."
>
> ***(Emphasis supplied)***
>
> **21.** The use of "explanation" in a statute is an internal aid to construction. Fazal Ali J in (1985)1 SCC 591 ***(S. Sundaram Pillai & Ors. vs. V.R. Pattabiraman & Ors.)*** culled out from various judgments of Supreme Court the following as objects of an explanation to a statutory provision:-
>
> (a) to explain the meaning and intendment of the Act itself;
>
> (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,
>
> (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful;
>
> (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment; and

(e) it cannot, however, take away a statutory right with which any person, under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

This principle is consistently followed by Supreme Court in ***(2004) 2 SCC 249 (M.P. Cement Manufacturers Association vs. State of MP & Ors.)*** and ***(2004) 11 SCC 64 (Swedish Match AB vs. Securities & Exchange Board of India).***

22. These examples are illustrative in nature and not exhaustive. An "explanation" may be added to include something within or to exclude something from the ambit of the main enactment or the connotation of some word occurring in it **(See: *Controller of Estate Duty, Gujarat Vs. Shri Kantilal Trikamlal AIR 1976 SC 1935).*** Similarly a negative explanation which excludes certain types of category from the ambit of enactment may have the effect of showing that the category leaving aside the excepted types is included within it **(See *First Income Tax Officer, Salem Vs. Short Brothers (P) Ltd. AIR 1967 SC* 81).** Thus, the explanation in the instant case, has a limited impact on main provision i.e. sub-section (2) of Section 3 of NSA Act. It does not dilute or take away the right of detaining authority under the NSA Act regarding eventualities relating to maintenance of 'public order' or security of the State.

23. A microscopic reading of Section 3(2) with 'Explanation' leaves no room for any doubt that Sub-Section (2) is wide enough and deals with three contingencies when a citizen can be detained:

i) for preventing him from acting in any manner prejudicial to the **security of State.**

ii) for preventing him from acting in any manner prejudicial to the maintenance of **public order.**

iii) for preventing him from acting in any manner prejudicial to the **maintenance of supplies and services essential to the community.**

24. The 'explanation' is limited to the contingency (iii) aforesaid only. The argument of Shri Maheshwari that since remedesivir is an essential drug/commodity, therefore, obstruction to its supply or blackmarketing can be a reason to invoke the blackmarketing act, but NSA Act cannot be invoked, is liable to be discarded for the simple reason that Sub-Section (2) of Section 3 is wide enough which contains and deals with

three contingencies, whereas 'explanation' takes only one beyond the purview of the NSA Act if it is covered by Blackmarketing Act.

25. We find force in the argument of learned Additional Advocate General that blackmarketing of remedesivir creates a threat to "public order". We have taken this view recently in the case of ***Yatindra Verma (supra)*** also. If 'public order' is breached or threatened, in order to maintain 'public order', NSA Act can very well be invoked. Thus, "explanation" appended to Sub-Section 2 of Section 3 of NSA Act will not exclude the operation of NSA Act in a case of this nature where 'public order' is breached, threatened and put to jeopardy.

26. Interpretation of a statute must depend on the text and the context. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. (See: ***1987(1) SCC 424- RBI vs. Peerless General Finance and Investment Co. Ltd.)***

27. The Apex Court in ***(2013) 3 SCC 489 (Ajay Maken vs. Adesh Kumar Gupta & Anr.)*** held as under:-

"Adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. In the words of V.R. Krishna Iyer, J., such an approach would be *"to see the skin and miss the soul"*. Whereas, *"The judicial key to construction is the composite perception of the deha and the dehi of the provision."* ***(Board of Mining Examination v. Ramjee (1977) 2 SCC 256,*** Para-9)"

28. Sub-Section 2 of Section 3 is very wide and as noticed above, deals with three eventualities ***(See: Para-23).***

"Explanation" to Sub-Section 2 deals with a small part of it. The intention of law makers in inserting the 'explanation' is to take out cases of blackmarketing from NSA Act to some extent, to the extent it is covered by the Black Marketing Act. 'Explanation', by no stretch of imagination can eclipse the entire main provision namely, Sub-Section 2 of Section 3. The plain and unambiguous language of Sub-Section 2 of Section 3 makes it clear that the Competent Authority/Govt. can pass order of detention if one of the eventuality out of said three is satisfied. In the instant case, the District Magistrate has taken a plausible view that 'public order' is being threatened by petitioner. Thus, we are unable to

> hold that order of detention is beyond the purview of Sub-Section 2 of Section 3 of NSA Act."
>
> ***(Emphasis Supplied)***

In view of this finding in *Sonu Bairwa* (supra), this argument cannot cut any ice. Apart from this, allegation against petitioner is relating to blackmarketing and using fake injections in the hospital which certainly falls within the ambit and scope of 'public order'.

Ordinary penal law is sufficient : NSA can't be invoked and no past record

24. The judgment of *Rekha* (supra) was pressed into service to contend that when ordinary penal law is sufficient to punish the petitioner, there was no justification in detaining the petitioner. The argument in the first blush appears to be attractive, but lost its complete shine on closure (sic: closer) scrutiny. This argument was advanced coupled with another argument that single incident was not sufficient to invoke Section 3 of NSA Act. It is profitable to examine the legal journey on this aspect. In (1974) 4 SCC 135 *(Debu Mahto vs. State of West Bengal),* the Supreme Court opined thus:-

> "2. ....We must, of course, make it clear that it is not our view that in no case can a single solitary act attributed to a person form the basis for reaching a satisfaction that he might repeat such acts in future and in order to prevent him from doing so, it is necessary to detain him. The nature of the act and the attendant circumstances may, in a given case be such as to reasonably justify an inference that the person concerned, if not detained, would be likely to indulge in commission of such acts in future. The order of detention is essentially a precautionary measure and it is based on a reasonable prognosis of the future behaviour of a person based on his past conduct judged in the light of the surrounding circumstances."
>
> ***(Emphasis Supplied)***

25. The *ratio decidendi* of this case was consistently followed by Supreme Court in catena of judgments including (1975) 3 SCC 292 *(Israil Sk. vs. Distt. Magistrate of West Dinajpur),* (1986) 1 SCC 404 *(Shiv Ratan Makim vs. Union of India,* (1991) 1 SCC 144 *(M. Mohd. Sulthan vs. Jt. Secy. to Govt. of India)* (1992) 4 SCC 154 *(David Patrick Ward vs. Union of India),* (2009) 5 SCC 296 *(Pooja Batra vs. Union of India)* and (2010) 1 SCC 609 *(Gimik Piotr vs. State of T.N.)***.** A Full Bench of this Court recently considered this aspect by taking note of Supreme Court judgments in WP No.22290/2019 *(Kamal Khare vs. State of MP)* 2021(2) MPLJ 554 and opined as under:-

> "44. What can therefore be culled out from all the afore-discussed judgments is that whether an act would constitute simple breach of law and order, or breach of public order, would solely depend on the degree and extent of its reach and effect upon the society. Public order is even tempo of the life of the community of an area or even a locality, as a whole. Degree of disturbance upon the life of the community would determine whether it affects public order. An act by itself may not be a determinative factor of its gravity, but it is potentiality of its effect on the even tempo of the life of community that makes it prejudicial to the maintenance of public order. If the effect of act is restricted to certain individuals or a group of individuals, it merely creates a law and order problem but if the effect, reach and potentiality of the act is so deep and pervasive that it affects the community at large and disturbs the even tempo of the community that it becomes a breach of the public order. It therefore cannot be said that a single act would in all and every circumstances not be sufficient to affect public order or even tempo of the society. What is material is the effect of the act and not the number of acts and therefore what has to be seen is the effect of the act on even tempo of life of the people and the extent of its reach upon society and its impact."
>
> ***(Emphasis Supplied)***

26. In view of these authoritative pronouncements, it cannot be said that a singular act cannot be a reason to attract Section 3 of NSA. Order of detention on a solitary act can be passed keeping in view the conduct of person concern in view of the facts and circumstances prevailing at the relevant time.

27. In *Yatindar Verma* (supra), this Court opined that the act of blackmarketing remedesivir injections in the era of extreme crisis of pandemic is sufficient to invoke the preventive law.

28. The judgment of *Rekha* (supra) was again considered by Supreme Court in (2012) 2 SCC 176 *(Yumman Ongbi Lembi Leima vs. State of Manipur & Ors.).* The Apex Court by taking note of factual position and activities of detenu violating the provisions of IPC, the A.P. Act and Rules opined that he was damaging the wealth of the nation. In the instant case, the reason mentioned in the detention order has a relation with the health of the nation. The full bench of this Court in *Kamal Khare* (supra) considered the judgment of *Rekha* (supra) and dealt with the question of invoking detention law when ordinary penal law is also applicable. It was held:

> "18. Before embarking on the examination of the arguments advanced by learned counsel for both the sides on the referred questions, we must clarify that the invocation of the principle

generalia specialibus nonderogant by one of the learned Judges (Mr. Justice Atul Sreedharan) in paragraph No.8 of the dissenting order that the general law shall not prevail over the provisions of the special law, on the basis of what was held in paragraph No.19 of the judgment of **Sudeep Jain Vs. State of Madhya Pradesh and others** (W. P. No.21768/2019) decided on 8.11.2019, does not stand on sound legal foundation and has no relevance to the question that we are dealing with. That principle, in our considered opinion, would not be attracted to the facts of the present case. The order of preventive detention under NSA does not overlap with the panel provisions under the FSSA as it is not in lieu of that but is rather in addition to that. The preventive detention law can operate side by side the law which makes the offences punishable under the substantive offences under the IPC or the FSSA. The preventive detention under the NSA is only anticipatory action and is not a punitive measure. The law that is generally applied to the cases of preventive detention is that if an offence committed by an offender, which merely effect the law and order situation, can be dealt with under ordinary penal laws, the extraordinary provisions of preventive detention ought not to be invoked, but it cannot deduced from this that the ordinary penal laws, would for that purpose, be considered general law and the relevant laws of the preventive detention, which in this case would be NSA, would be considered as a special law or vice versa. While FSSA only provides for penalty for the offence made out under the provisions of the said Act, the NSA provides for the preventive detention if parameter enumerated in sub-Section (2) of Section 3 are attracted. These two Acts have been enacted to achieve different object and for difference purpose. The provisions which makes the offence punishable under the FSSA is intended to punish the offender for the offence committed by him, but the object which the NSA seeks to achieve is to put the person concerned in detention so as to prevent him from doing an act but not to punish him for something which he has done. While the former is based on the act already done by him, the latter is based on the likelihood of his acting in a manner similar to his past acts and preventing him for repeating the same.

(Emphasis Supplied)

29. It is a matter of common knowledge that during second wave of pandemic, there was severe scarcity of essential medicines, hospital beds, oxygen etc. This kind of pandemic broke up almost after 100 years from the previous pandemic of 'Spanish flu' which threatened the humanity during 1918-1920. The Supreme Court in *Ayya @ Ayub* (supra) made it clear that there is no straight jacket formula

for applying the NSA. It depends on the factual backdrop of each case. There cannot be any static formula for invoking NSA because it varies according to the *pressures of the day* and according to the *intensity of imperatives.* In a pandemic like situation, where people were dying for want of essential drugs, treatment and other facilities, singular act of blackmarketing of remedesivir injections is sufficient to maintain the detention order. Moreso, when allegation is that the remedesivir injections were fake/duplicate. The respondents by filing reply have rightly explained the basis for passing the detention order. The necessary ingredients on the strength of which a detention order can be passed are very much available in the impugned detention order and in the counter affidavit. Pertinently, in *Yumman Ongbi Lembi Leima* (supra), it was held that in a matter of detention, the law is clear that as far as subjective satisfaction is concerned, it should either be reflected in the detention order or in the affidavit justifying the detention order. In this view of the matter, the judgment of Supreme Court in *Mohinder Singh Gill (supra)* cannot be pressed into service.

Scope of judicial review of detention order:

30. In the connected matter, in the case of employee of petitioner's hospital namely, *Devesh Chourasiya* (WP No.10177/2021), this Court has dealt with this aspect in sufficient detail. It is apposite to reproduce the same.

> "24. The learned Senior Counsel for the petitioner placed reliance on certain judgments to submit that subjective satisfaction of detaining authority must be based on legally admissible cogent material. It is apposite to examine the legal journey in this regard. In ***1951 SCR 167, (State of Bombay v. Atma Ram Sridhar Vaidya)*** a six judges Bench of Supreme Court held thus:-
>
> "6 ......By its very nature, preventive detention is aimed at preventing the commission of an offence or preventing the detained person from achieving a certain end. **The authority making the order therefore cannot always be in possession of full detailed information when it passes the order and the information in its possession may fall far short of legal proof of any specific offence,** although it may be indicative of strong probability of the impending commission of a prejudicial act...."
>
> ***(Emphasis Supplied)***
>
> 25. *B.K. Mukherjea, J.* in ***1954 SCR 418 (Shibban Lal Saksena vs. State of U.P.)*** followed the said principle and opined as under:-
>
> "8 ....It has been repeatedly held by this Court that the power to issue a detention order under Section 3 of the

Preventive Detention Act depends entirely upon the satisfaction of the appropriate authority specified in that section. The sufficiency of the grounds upon which such satisfaction purports to be based, provided they have a rational probative value and are not extraneous to the scope or purpose of the legislative provision cannot be challenged in a court of law, **except on the ground of malafides** [Vide *The State of Bombay* v. *Atma Ram Sridhar Vaidya*, 1951 SCR 167]. **A court of law is not even competent to enquire into the truth or otherwise of the facts which are mentioned as grounds of detention in the communication to the detenue under Section 7 of the Act.**............ The detaining authority gave here two grounds for detaining the petitioner. **We can neither decide whether these grounds are good or bad, nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made.** To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute ......"

(Emphasis supplied)

26. A constitution Bench of Apex Court ***(1964)4 SCR 921 (Rameshwar Shaw vs. District Magistrate)*** ruled that:-

"8. It is, however, necessary to emphasise in this connection that though the satisfaction of the detaining authority contemplated by Section 3(1)*(a)* is the subjective satisfaction of the said authority, cases may arise where the detenu may challenge the validity of his detention **on the ground of mala fides** and in support of the said plea urge that along with other facts which show mala fides the Court may also consider his grievance that the grounds served on him cannot possibly or rationally support the conclusion drawn against him by the detaining authority. **It is only in this incidental manner** and in support of the plea of mala fides that this question can become justiciable; **otherwise the reasonableness or propriety of the said satisfaction contemplated by Section 3(1)*(a)* cannot be questioned before the Courts.**"

(Emphasis supplied)

27. A three judges Bench in ***(1973) 3 SCC 250 (Mohd. Subrati vs. State of West Bengal)*** held as under:-

"3 **......This jurisdiction is different from that of judicial trial in courts for offences and of judicial orders for prevention of offences.** Even unsuccessful judicial trial or proceeding would, therefore, not operate as a bar to a detention order, or render it mala fide. The matter is also not res integra."

(Emphasis supplied)

28. Reference may be made to ***1988 (1) SCC 296 (K. Aruna Kumari vs. Govt. of A.P.)*** wherein the Court held that :-

"8.......**It is true that it may not be a legally recorded confession which can be used as substantive evidence** against the accused in the criminal case, but it cannot be completely brushed aside on that ground for the purpose of his preventive detention..... "

(Emphasis supplied)

29. In ***(1990) 1 SCC 35 (State of Punjab vs. Sukhpal Singh),*** it was again held that:-

"9. ...... The High Court under Article 226 and Supreme Court under Article 32 or 136 do not sit in appeal from the order of preventive detention. But the court is only to see whether the **formality as** enjoined by Article 22(5) had been complied with by the detaining authority, and if so done, **the court cannot examine the materials before it and find that the detaining authority should not have been satisfied on the materials before it and detain the detenu. In other words, the court cannot question the sufficiency of the grounds of detention for the subjective satisfaction of the authority as pointed out** in *Ashok Kumar* v. *Delhi Administration* [(1982) 2 SCC 437 : 1982 SCC (Cri) 466 : AIR 1982 SC 1143 : (1982) 3 SCR 707] . Those who are responsible for the national security or for the maintenance of public order must be the judges of what the national security or public order requires. Preventive detention is devised to afford protection to society. The object is not to punish a man for having done something but to intercept before he does it and to prevent him from so doing. The justification for such detention is **suspicion** or **reasonable probability** and **not criminal conviction which can only be warranted by legal evidence.** Thus, any preventive measures even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the State. There is no reason why executive cannot take recourse to its powers of preventive detention in those cases where the executive is genuinely satisfied that no prosecution can possibly succeed against the

detenu because he has influence over witnesses and against him no one is prepared to depose...."

(Emphasis supplied)

30. In ***Ram Bali Rajbhar (supra),*** *M.H. Beg, J.* expressed the view on behalf of the bench :-

"13. We think that the High Court of Calcutta, while dismissing the writ petition, need not have expressed any opinion about the worth of the affidavit sworn by Lal Mohan Jadav, the tea shop owner. That, we think, is the function of authorities constituted under the Act for deciding questions of fact. On a habeas corpus petition, what has to be considered by the Court is whether the detention is prima facie legal or not, and not whether the detaining authorities have wrongly or rightly reached a satisfaction on every question of fact...."

(Emphasis supplied)

31. Before dealing with aforesaid judgments of Supreme Court, it is apposite to mention that an order of detention was treated to be an administrative order by Supreme Court in ***1975(2) SCC 81 (Khudiram Das vs. State of West Bengal).*** This principle was followed by Full Bench of Allahabad High Court in ***1985 SCC Online 608 (Mannilal vs. Superintendent of Central Jail, Naini, Allahabad).*** This Court in ***1989 CRLJ 978 (Brajraj vs. District Magistrate, Gwalior & Anr.)*** followed the dicta aforesaid and opined that order of detaining authority is an administrative order".

(Emphasis Supplied)

31. In view of aforesaid judgments of Supreme Court, we may cull out the principles as under:-

[1] It is not necessary that authority passing the detention order must always be in possession of complete information at the time of passing the order.

[2] The information on the strength of which detention order is passed may fall far short of legal proof of any specific offence. If order indicates strong probability of impending commission of a prejudicial act, it is sufficient for passing a detention order.

[3] The Court is not obliged to enquire into the correctness/truth of facts which are mentioned as grounds of detention.

[4] Whether grounds of detention mentioned in the order are good or bad is within the domain of competent authority.

[5] The satisfaction of competent authority in passing the detention order can be assailed on limited grounds including the ground of mala-fide and no evidence at all.

[6] The jurisdiction under the NSA is different from that of judicial trial in courts for offence and of judicial orders for prevention of offence. Even unsuccessful judicial trial would not operate as a bar to a detention order or make it mala-fide.

[7] An improperly recorded confession u/S.161 of Cr.P.C cannot be used as substantive evidence against the accused in criminal case but it cannot be completely brushed aside on that ground for the purpose of preventive detention.

[8] The Court cannot examine the materials before it and give finding that detaining authority should not have been satisfied on the material before it. The sufficiency of ground of detention can not be subject matter of judicial review.

[9] The justification for detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence. Thus, it is called as **'suspicious jurisdiction'.**

[10] In a habeas corpus petition, Court needs to examine whether detention is prima-facie legal or not and is not required to examine whether subjective satisfaction on a question of fact is rightly reached or not.

[11] The statements/evidence gathered during investigation falls within the ambit of "some evidence" which can form basis for detaining a person.

[12] The detention order is an administrative order.

32. We have carefully examined the statements of the persons recorded by the administration. We are unable to hold that there is no probative value of the statements and on the strength of those statements the detention order could not have been passed. There definitely exists some probative material sufficient for passing the detention order. The correctness and sufficiency of evidence is beyond the scope of judicial review. Thus, the impugned detention order cannot be said to be irrational or illegal because statements of witnesses recorded during investigation were relied upon.

Basis for Detention Order - Whether Section 161 of Cr.P.C. statement can form basis.

33. This point raised in the present petition was also raised in the connected matter *(Devesh Chourasia's case).* This Court opined as under:-

> "39. By placing heavy reliance on the judgment of ***Pebam Ningol Mikoi Devi (supra),*** it was contended that confessional statement of petitioner or any other statement of other persons

recorded under Section 161 of Cr.P.C. cannot form basis for issuance of detention order. No doubt, in para-30 and 31 of said judgment, the Apex Court has taken note of certain documents including a confessional statement of petitioner therein recorded under Section 161 of Cr.P.C. and opined that such documents do not provide any reasonable basis for passing of detention order. It was further held that Section 161 statements are not considered substantive evidence, but can only be used to contradict the witness in the course of a trial. It is noteworthy that in the said case, after examining these documents, a finding was given by Apex Court on merits that the documents do not substantiate the involvement of detenu in any unlawful activity.

40. As noticed above, a six judge Bench of Supreme Court in ***Atma Ram Sridhar Vaidya (supra),*** poignantly held that the detaining authority while passing the detention order cannot always be in possession of complete information. The information so gathered may fall short of legal proof of any specific offence, although it may be indicative of strong probability of impending commission of a prejudicial act. It was further held in the said case that the material on the basis of which detention order was passed may not be strictly admissible as evidence under the Evidence Act in a Court, but said material can very well be considered sufficient for forming subjective decision of the government. Similarly, in ***K. Aruna Kumari (supra),*** a Division Bench made it clear that even a confessional statement under Section 161 of Cr.P.C. which may not be admissible in a criminal case can be a reason for passing an order of detention. In ***Pebam Ningol Mikoi Devi (supra),*** the previous judgment of Division Bench of Supreme Court in ***K. Aruna Kumari (supra)*** and judgment of six judge bench in case of ***Atma Ram Sridhar Vaidya (supra)*** were not brought to the notice of the Division Bench. A special bench (five judges) of this Court in ***(2003) 1 MPLJ 513 (Jabalpur Bus Operators Association & Ors. vs. State of MP & Ors.)*** opined that if two different views are taken by different Benches of Supreme Court, the view taken by a Bench of larger strength will prevail. If Bench strength is same and previous judgment is not taken into account by subsequent bench, the previous judgment will prevail. In view whereof, we are unable to hold that statements recorded under Section 161 of Cr.P.C. cannot form basis for passing the detention order. The inevitable consequence of this finding is that the argument of Shri Dutt, learned Senior Counsel that detention order is passed

> without cogent material or there existed no objective material for recording subjective satisfaction cannot be accepted."

(Emphasis Supplied)

34. Apart from this, reference may be made to (1975) 3 SCC 845 *(Tulshi Rabidas vs. State of West Bengal)* (3 Judge bench) which makes it clear that some evidence gathered during investigation can very well become basis for passing the detention order. It needs no emphasis that statements recorded under Section 161 Cr.P.C. can certainly provide "some evidence/material" collected during investigation. Thus, we are unable to agree with the contention that Section 161 statement cannot become basis for passing the detention order.

Further Detention of Petitioner, already arrested

35. This point is also similar to what has been decided in *Devesh Chourasia* (supra). Para-39 reads thus:-

> "39. Shri Dutt, learned Senior Counsel has rightly pointed out catena of judgments to contend that a person already arrested under any penal law can still be detained under NSA Act if certain parameters are satisfied which are rightly pointed out as i) the detaining authority must be aware that detenu is already in custody, ii) there is likelihood of his getting bail, iii) there is possibility of his indulging into similar activity. If on these parameters, the present matter is tested, it will be clear from plain reading of detention order that detaining authority was aware that petitioner is already under detention. He has duly recorded his apprehension which is not unfounded that there exists a likelihood of petitioner's getting bail. The District Magistrate recorded his satisfaction that if petitioner is not detained, there is every likelihood of misusing the liberty. Thus, we are of the opinion that necessary ingredients for detaining a person, who was already under arrest were satisfied. The detention order is not in the breach of principles laid down in the judgments cited by the petitioner."

36. During the course of hearing in this matter and in various similar matters, the learned counsel for the petitioners argued that the offence mentioned in the FIR are trivial in nature and such offences are triable by a Magistrate. For example, reference is made to Section 420 & 188 of IPC, Section 3 of Epidemic Disease Act, 1897 and Section 3 & 7 of Essential Commodities Act. Suffice it to say that if this argument is accepted, no fault can be found in the opinion formed by District Magistrate that there is a likelihood of petitioner's release on bail. Thus, necessary ingredients for detaining a person, who is already arrested are satisfied.

D.M.'s order solely based on SP's recommendation: Mechanical Action:

37. The contention that District Magistrate has mechanically and without application of mind relied upon SP's report is also dealt with in *Devesh Chourasia* (supra). This Court opined that:

> "37. By placing reliance on the language employed by Superintendent of Police in his recommendation and the order of detention and its extension etc., it was argued that there was no independent application of mind by District Magistrate and he has mechanically reproduced the language employed by S.P. We do not see much merit in this contention. It is not the form which is decisive for examining the validity of detention order. Indeed, whether contents of detention order are sufficient and satisfy the necessary ingredients for invoking detention law is material and important. *V.R. Krishna Iyer, J.* speaking for a 3 judges bench of Supreme Court in (1975) 3 SCC 845 *(Tulshi Rabidas vs. State of West Bengal)* opined as under:-
>
> "7.......Even so, we are unable to void the order on this score, especially **because the District Magistrate may well have acted on the police report. Whether the investigation was conducted properly or not, whether the District Magistrate should have pinned his faith on the result of the investigation and like questions, are not for the Court to consider.** But the minimum which must be placed before the Court is that there was *some* evidence **gathered during investigation** which, in *some* manner, roped in the petitioner. We are prepared to hold that there is some evidence for the District Magistrate to act and there we pause."
>
> ***(Emphasis Supplied)***
>
> 38. The principle laid down in the said judgment is i) the defect in the investigation cannot be a reason to disturb a detention order. ii) It is subjective satisfaction and faith of District Magistrate on the investigation which matters and it is not for the Court to sit in an appeal and reweigh it. iii) If some evidence is gathered during investigation in some manner, it is sufficient to invoke detention law. Thus, merely because language of detention order matches with that of recommendation, detention order cannot be jettisoned."
>
> ***(Emphasis Supplied)***

38. It is noteworthy that in the case of *Tulshi Rabidas* (supra), one of the main ground to assail the detention order was that it is "psycho styled" and mechanically passed on the recommendation of inferior authority. As noticed

above, *V.R. Krishna Iyer, J.* speaking for the bench, did not agree with this contention because it is not the form which matters, indeed it is the substance and existence of necessary ingredients which will determine the validity of a detention order. Thus, we are unable to persuade ourselves with this line of argument of the petitioner.

Detention order deserves interference because stale matter is relied upon?

39. As noticed in para 17 of this order, this Court opined that criminal antecedent of 2004 has no live nexus with the reasons of detention and, therefore, said incident could not have been a reason to issue detention order. However, it is noteworthy that merely because said unjustifiable reason finds place in the detention order, the whole detention order will not become vulnerable. If minus the incident of 2004, the other portion of detention order is in-consonance with the requirement of NSA, by applying doctrine of severability, the detention order deserves to be upheld.

40. Section **5A of the NSA** reads as under:-

> "**5A. Grounds of detention severable.**—Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984] under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly-
>
> (a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are
>
> (i) vague,
>
> (ii) non-existent,
>
> (iii) not relevant,
>
> (iv) not connected or not proximately connected with such person, or
>
> (v) invalid for any other reason whatsoever, and it is not, therefore, possible to hold that the Government or officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;
>
> (vi) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as

provided in that section with reference to the remaining ground or grounds."

(Emphasis Supplied)

41. This provision was inserted by Act 60 of 1984 w.e.f. 21/06/1984. The law makers by inserting Section 5A aforesaid made it clear that the order of detention cannot be axed or declared void for the reasons/grounds mentioned in Clause (i) to (v). There is no cavil of doubt that on the ground of vagueness, irrelevancy, absence of proximity with person etc cannot be a ground to set aside the entire order of detention. Thus, in our view, the doctrine of severability is given statutory recognition and shape by inserting Section 5A.

42. The Apex Court laid down the Doctrine of Severability on the anvil of which the impugned order can be tested. In 1960 2 SCR 146 *(Y.Mahaboob Sheriff Vs. Mysore State Transport Authority),* the Apex Court held that it is open to sever the illegal part of the order from the part which is legal. This principle was followed in 1966 2 SCR 204 *(R. Jeevarantnam Vs. State of Madras)*. It was held that two parts of composite order are separable. The first part of the order operates as a dismissal of the appellants as from October 17, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service. The same principle was followed in (1976) 2 SCC 495 *(State of Mysore Vs. K. Chandrasekhara Adiga)*. It was clearly held that where valid and invalid portion of the order are severable, the test is whether after excision of the invalid part, the rest remains viable and self-contained. The deletion cannot render rest of the order illegal or ineffective if it can survive independently and found to be valid. In 2014 (12) SCC 106 *(State Bank of Patiala Vs. Ram Niwas Bansal),* it was again held that two parts of the order are clearly severable assuming that second part of the order is invalid. There is no reason that the first part of the order should not be given the fullest effect. Reliance can be placed on another judgment of Apex Court in the case of *Gujarat Mineral Development Corporation Vs. P.H Brahmbhatt* reported in 1974 (3) SCC 601. Pertinently, Allahabad High Court in *Gajendra Prasad Saxena, VS. State of UP* reported in 2015 SCC OnLine ALL 8706 applied the Doctrine of "Partial Quashing" and opined that the principle of unconstitution (sic: unconstitutional) provision of a statue (sic: statute) being severed and struck down leaving other parts untouched is well known. The said principle of severability has been extended to administrative orders also.

43. If the Doctrine of Severability duly recognised in S.5A above is applied on the impugned order, it will be clear that even if ground related to the incident of 2004 is deleted or treated as invalid, the contents of rest of the order will be

sufficient to uphold the action under the NSA. In other words, if order to the extent it refers to incident of 2004 is treated as invalid, after excision of this invalid part, the remaining part is found to be self-contained and can be a reason to uphold the invocation of power under section 3(2) of the NSA. Thus, two parts of the order are severable. The invalid part will not eclipse the entire order of detention dated 11.05.2021.

44. Another limb of argument of petitioner is that by the time period of detention order was extended, the crisis of corona related risk was substantively reduced and there was no justification in extending the period of detention. A three judges bench of Supreme Court in 1975 (3) SCC 858 *(Sheoraj Prasad Yadav vs. State of Bihar & Ors.)* held as under:-

> "7. Coming to the third submission made on behalf of the petitioner we would like to observe that there seems to be justification in the petitioner's grievance that he is being unnecessarily detained **even after the agitation had been withdrawn** and there is no likelihood of his indulging in acts prejudicial to the maintenance of supplies and services essential to the Community. But this is a matter which is not within our domain to decide. It is for the State Government to consider the question as to whether the continuance of detention of the petitioner is necessary or not. In the facts and circumstances of the case, however, we think it desirable that the State Government should as soon as possible review the case of the petitioner to find out whether any further detention in his case is necessary or not."
>
> ***(Emphasis Supplied)***

45. In view of this judgment, this Court is not inclined to interfere on the detention or extension order. We are only inclined to observe that it will be open to the government to review the case of the petitioner in accordance with the law.

If the salt has lost its savour, wherewith shall it be salted.

46. A conjoint reading of statement of witnesses recorded under Section 161 of Cr.P.C. and detention order shows that background story is that a drug/injection manufacturer at Surat indulged in manufacturing fake remedesivir injections in order to earn undue profit. In turn, said injections were sold to a person at Indore. The said drug dealer of Indore supplied it to the distributor, the petitioner (hospital owner) and petitioner of connected matter (Devesh Chourasia) who was an administrator of the hospital. Covid pandemic created a compete (sic: complete) chaos which became a serious threat to normal life. At the cost of repetition it is apt to remember that the people were struggling for getting oxygen, hospital beds, necessary drugs etc. This kind of crisis is faced by humanity after almost 100

years from the *Spanish flu* which broke out in 1918-1920. The administration across the nation has worked tirelessly during this period. Multi tasking was a routine those days. The administration was required to take care of law and order situation, ensure supply of electricity, oxygen and other amenities to the people. There are other factors on which they were required to devote their time. If drug manufacturer, supplier, distributor, hospital owner and administrator indulge into such activity of blackmarketing remedesivir or using fake remedesivir, it was necessary to prevent them to maintain 'public order' because as per famous adage *"if salt has lost its savour, wherewith shall it be salted"*. We make it clear that this observation of ours should not be treated as finding against the petitioner on the merits of the case. The trial Court is best suited to decide the matter on merits.

47. We are unable to hold that there was no material at all to invoke detention law. The Court cannot interfere if there was some evidence before the detaining authority upon which a reasonable man could have formed the satisfaction which is the *sine qua non* for the detention. (See: *Ram Bali Rajbhar vs. State of W.B.* (1975) 4 SCC 47) There is no flaw in the decision making process. Delay in taking decision on representation cannot be measured by taking a stop watch in the hand. The explanation of delay depends on the factual background in which delay occasioned. Pertinently, in *Ayya Ayub* (supra), the Apex Court considered this aspect and poignantly held that the Court should not be oblivious of the *"pressures of the day"* and according to the intensity of imperatives which may justify the need and extent of curtailment of individual liberty. Similarly, in *Raj Kumar Singh* (supra), the Court ruled that hard and ugly facts make application of harsh laws imperative. The blackmarketing and use of fake remedesivir injections in pandemic crisis, in our opinion is such hard and ugly fact which makes application of detention law imperative.

48. In view of foregoing analysis, we find no reason to interfere in the impugned orders. Petition fails and is hereby **dismissed.**

Petition dismissed

I.L.R. [2021] M.P. 2299
WRIT PETITION
Before Mr. Justice Vishal Dhagat
WP No. 3653/2019 (Jabalpur) decided on 9 September, 2021

TARASIYA (SMT.) & ors. …Petitioners

Vs.

RAMLAKHAN & ors. …Respondents

***A. Mutation – Jurisdiction of Revenue Court* – Held – Revenue Court does not have any jurisdiction to dwell upon the question of title of a party – Civil rights of the party are to be determined by Civil Court and not by Revenue Courts – Impugned order quashed – Petition allowed. (Para 8)**

क. नामांतरण – राजस्व न्यायालय की अधिकारिता – अभिनिर्धारित – राजस्व न्यायालय को पक्षकार के हक के प्रश्न पर ध्यान केंद्रित करने की कोई अधिकारिता नहीं – पक्षकार के सिविल अधिकारों का निर्धारण सिविल न्यायालय द्वारा किया जाना है, ना कि राजस्व न्यायालय द्वारा – आक्षेपित आदेश अभिखंडित – याचिका मंजूर।

***B. Mutation – Jurisdiction of Civil Court* – Held – Apex Court concluded that party who is claiming title/right on basis of a Will, has to approach appropriate Civil Court and get his right crystallized and only thereafter on basis of the decision of Civil Court, necessary mutation entry can be made. (Para 9)**

ख. नामांतरण – सिविल न्यायालय की अधिकारिता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि पक्षकार जो एक वसीयत के आधार पर हक/अधिकार का दावा कर रहा है, उसे समुचित सिविल न्यायालय के समक्ष जाना होगा तथा अपना अधिकार स्पष्ट करना होगा तथा उसी के उपरांत सिविल न्यायालय के निर्णय के आधार पर, आवश्यक नामांतरण प्रविष्टि की जा सकेगी।

Case referred:

SLP (C) No. 13146/2021 order passed on 06.09.2021 (Supreme Court).

Ashok Kumar Jain, for the petitioners.
Rakesh Dwivedi, for the respondents.

O R D E R

VISHAL DHAGAT, J. :- Learned counsel appearing for respondents submitted that respondent No.2 has died.

2. Learned counsel appearing for petitioner submitted that no relief is claimed against respondent No.2 and he does not want to bring on record Legal Representatives of respondent No.2 in the writ petition.

3. Considering the said submission, writ petition against respondent No.2 and other LRs of respondent No.2/Thakurdeen except Ramrakhan is abated.

4. Petitioner has filed this writ petition challenging order dated 07.02.2019 contained in Annexure-P/10 passed by Additional Commissioner Linc (sic : Link) Court-Satna/Sidhi, Rewa Devision, Rewa (MP).

5. Learned counsel for the petitioners submitted that Tehsildar has passed an order of mutation on basis of Will dated 14.10.2009 in favour of respondent No.1. Thereafter, non-applicants before Tehsildar preferred an appeal before Sub Divisional Officer. Sub Divisional Officer set aside the order of mutation dated 30.06.2017. Respondent No.1 preferred an appeal before Additional Commissioner which was allowed and order passed by S.D.O. was set aside. Learned counsel for the petitioner further submitted that Additional Commissioner committed an error of law in setting aside the well reasoned order passed by S.D.O. Tehsildar does not have any jurisdiction to consider a disputed Will and pass order of mutation. He relied upon order dated 06.09.2021 passed in Special Leave Petition (C) No.13146/2021*{Jitendra Singh Vs. State of Madhya Pradesh & Others}*.

6. Learned counsel for respondents opposed the said contention of counsel for petitioner and submitted that Additional Commissioner has considered all the issues and evidences available on record and has passed a reasonable and proper order. There is no error in the order of Additional Commissioner.

7. Heard the counsel for the parties.

8. Revenue Court does not have any jurisdiction to dwell upon the question of title of a party. Civil rights of the party are to be determined by Civil Court and not by Revenue Courts.

9. In case of *Jitendra* (supra) Apex Court in paragraph-5 held as under:-

> *"...As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the Will, the party who is claiming title/right on the basis of the Will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made."*

10. Additional Commissioner, Rewa Division, Rewa committed an error of law in quashing the order passed by S.D.O. Hence, order passed by Additional Commissioner, Rewa Division, Rewa is quashed and writ petition filed by petitioner is ***allowed.***

Petition allowed

I.L.R. [2021] M.P. 2301
WRIT PETITION
Before Mr. Justice S.A. Dharmadhikari
WP No. 18472/2021 (Gwalior) decided on 4 October, 2021

CHHAYA GURJAR (SMT.) …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

A. Constitution – Article 226 – Habeas Corpus – Scope & Jurisdiction – **Held – Petitioner has not arrayed any of the suspects as party respondent – There is no allegation of illegal confinement by any of private individual – Only assertion that *corpus* have been abducted by some unknown miscreants, is not sufficient to invoke extraordinary jurisdiction of this Court for issuance of writ of *habeas corpus*, which though a writ of right, is not a writ of course – Petition dismissed. (Para 5 & 13)**

क. संविधान – अनुच्छेद 226 – बंदी प्रत्यक्षीकरण – व्याप्ति व अधिकारिता – अभिनिर्धारित – याची ने किसी भी संदिग्ध को प्रत्यर्थी पक्षकार के रूप में शामिल नहीं किया है – किसी भी निजी व्यक्ति द्वारा अवैध परिरोध का कोई अभिकथन नहीं है – मात्र यह प्राख्यान कि कुछ अज्ञात बदमाशों द्वारा बंदी का अपहरण किया गया है, बंदी प्रत्यक्षीकरण की रिट जारी करने के लिए इस न्यायालय की असाधारण अधिकारिता का अवलंब लेने के लिए पर्याप्त नहीं है, जो यद्यपि अधिकार की एक रिट है, एक सामान्य अनुक्रम की रिट नहीं है – याचिका खारिज।

B. Constitution – Article 226 – Habeas Corpus – Scope & Conditions **– Held – Condition precedent for instituting a petition seeking writ of *habeas corpus* is that the person for whose release, writ is sought must be in detention by either authorities or by any private individual – Such writ is available only against any person who is suspected of detaining another unlawfully. (Para 13)**

ख. संविधान – अनुच्छेद 226 – बंदी प्रत्यक्षीकरण – व्याप्ति व शर्तें – अभिनिर्धारित – बंदी प्रत्यक्षीकरण की रिट चाहते हुए याचिका दायर करने के लिए एक पुरोभाव्य शर्त यह है कि जिस व्यक्ति को छोड़े जाने के लिए, रिट चाही गई है, उसे या तो प्राधिकारीगण द्वारा या किसी निजी व्यक्ति द्वारा निरोध में रखा जाना चाहिए – ऐसी रिट केवल किसी ऐसे व्यक्ति के विरूद्ध उपलब्ध है जिस पर किसी अन्य को विधिविरूद्धतया निरूद्ध रखने का संदेह हो।

Cases referred:

(1973) 2 SCC 674, (2007) 10 SCC 190, (1981) 2 SCC 277, ILR 2014 Kar 3312, ILR 2016 KAR 731, W.P. No. 17965(W)/2013 decided on 28.06.2013 (High Court of Calcutta).

Anil Mishra, for the petitioner.
Jitesh Sharma, G.A. for the respondents/State.

O R D E R

S. A. DHARMADHIKARI, J. :- This petition, under Article 226, of the Constitution of India has been filed seeking issuance of writ in the nature of *habeas corpus* or any other suitable writ/order or direction for the following reliefs:-

> *"(I) The, respondent authorities may kindly be directed to produce the corpus persons i.e. sister-in-law (Nanad) Aarti and niece Kajal (Aarti's daughter) before the Hon'ble High Court, furthermore, the direction for higher authorities to take punitive action against the abductee may kindly be issued in the interest of justice.*
>
> *(II) That, the Investigation Officer of the Crime No.241/2021 registered at Police Station Civil Line, Morena may kindly be changed or the investigation may kindly be conducted by any of the superior authorities in the interest of justice.*
>
> *(III) That, the order of declaring absconder and Reward of Rs.5000/- issued against the present petitioner's husband may kindly be set aside in the interest of justice.*
>
> *(IV) That, the respondent authorities may kindly be directed to provide Police Protection Or Personal Guard to the petitioner to ensure the safety of the life and liberty of the petitioner and her family members in the interest of justice.*
>
> *(V) That, the respondent authorities may kindly be directed to take the medical documents of the petitioner's husband on record in the interest of justice.*
>
> *(VI) That, the respondent authorities may kindly be directed to act upon the complaints may by the petitioner's mother- in-law as early as possible in the interest of justice.*
>
> *(VII) That, the respondent authorities may kindly be directed to provide the compensation of the destroyed crop of the petitioner in the interest of justice.*
>
> *(VIII) That, the respondent authorities may kindly be directed to take punitive action against the responsible*

> *officer, who are in due collusion of the accused persons of the Crime No.241/2021 in the interest of justice.*
>
> *(IX) That, cost of the petition may kindly be awarded to the petitioner."*

2. Learned counsel for the petitioner submitted that certain miscreants have abducted sister-in-law of the petitioner namely Aarti, as well as, Aarti's daughter Kajal from the campus of High Court. It is alleged that the respondent-Authorities are having all the information in respect of both of them, but are not providing any information. It is contended that when mother-in-law of corpus Aarti had come to High Court in connection with some case, the accused persons abducted Aarti and her daughter Kajal. Thereafter, mother-in-law of the corpus lodged a missing person report at Police Station University, Gwalior, but till date no action has been taken in that behalf. Hence, this petition.

3. Shri Sharma, learned Government Advocate raised a preliminary objection with regard to maintainability of this petition contending that the writ of *habeas corpus* cannot be issued in this matter as there is no allegation that the corpus and her daughter are in illegal confinement of any private respondent. Petitioner has not impleaded any suspect as party respondent. Besides, multiple reliefs, which are not at all incongruence, with the subject matter of this petition have been claimed. As such, on this count alone the petition is liable to be rejected at the threshold.

4. Having heard the learned counsel for the parties, the question that is germane to the controversy in hand is as to whether a writ of habeas corpus can be issued against an unknown abductor in respect of a missing person?

5. On perusal of the pleadings which are on affidavit, it can be seen that there is no allegation of illegal confinement by any of the private respondents. It is a condition precedent that there must be an illegal detention or at least there must be some substantiated grounds regarding suspicion. In the absence of any such contention, no *habeas corpus* petition can be entertained under Article 226 of the Constitution of India. *Habeas Corpus* is a writ in the nature of an order calling upon the person who has detained another to produce the latter before the Court, in order to let the Court know on what ground he has been confined and to set him free if there is no legal jurisdiction for the imprisonment. The special nature of a *habeas corpus* petition is to produce the body or person, for that purpose it must be established that a person is in illegal detention. The fundamental right and liberty is to be protected, only if there is an illegal detention, either by State or by a private individual.

6. A Constitution Bench judgment of the Supreme Court in the matter of *Kanu Sanyal v. District Magistrate, Darjeeling and others* ((1973) 2 SCC 674), traced the history, nature and scope of the writ of *habeas corpus.* It has been held by Their Lordships that it is a writ of immemorial antiquity whose first threads are woven deeply "within the seamless web of history and untraceable among countless incidents that constituted a total historical pattern of Anglo-Saxon jurisprudence". Their Lordships further held that the primary object of this writ is the immediate determination of the right of the applicant's freedom and that was its substance and its end. Their Lordships further explaining the nature and scope of a writ of *habeas corpus* holding as under: -

> "The writ of habeas corpus is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the Court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, "in the order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restrain". But the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint. The most characteristic element of the writ is its peremptoriness. The essential and leading theory of the whole procedure is the immediate determination of the right to the applicant's freedom and his release, if the detention is found to be unlawful. That is the primary purpose of the writ, that is its substance and end. The production of the body of the person alleged to be wrongfully detained is ancillary to this main purpose of the writ. It is merely a means for achieving the end which is to secure the liberty of the subject illegally detained."

7. In the matter of *Union of India v. Yumnam Anand M. alias Bocha alias Kora alias Suraj and another* ((2007) 10 SCC 190), while explaining the nature of writ of *habeas corpus,* Their Lordships of the Supreme Court held that though it is a writ of right, it is not a writ of course and the applicant must show a *prima facie* case of his unlawful detention. Paragraph 7 of the report states as under: -

> "7. Article 21 of the Constitution having declared that no person shall be deprived of life and liberty except in accordance with the procedure established by law, a machinery was definitely

> needed to examine the question of illegal detention with utmost promptitude. The writ of habeas corpus is a device of this nature. Blackstone called it "the great and efficacious writ in all manner of illegal confinement". The writ has been described as a writ of right which is grantable *ex debito justitiae.* Though a writ of right, it is not a writ of course. The applicant must show a prima facie case of his unlawful detention. Once, however, he shows such a cause and the return is not good and sufficient, he is entitled to this writ as of right."

8. A writ of *habeas corpus* is not to be issued as a matter of course. Clear grounds must be made out for issuance of such writ. *(Dushyant Somal v. Sushma Somal* ((1981) 2 SCC 277), referred to).

9. In the matter of *Usharani v. The Commissioner of Police, Bangalore and others* (ILR 2014 Kar 3312), the writ of *habeas corpus* has been defined very lucidly as under: -

> "The claim (for habeas corpus) has been expressed and pressed in terms of concrete legal standards and procedures. Most notably, the right of personal liberty is connected in both the legal and popular sense with procedures upon the Writ of habeas corpus. The writ is simply a judicial command directed to a specific jailer directing him or her to produce the named prisoner together with the legal cause of detention in order that the legal warrant of detention might be examined. The said detention may be legal or illegal. The right which is sought to be enforced by such a writ is a fundamental right of a citizen conferred under Article 21 of the Constitution of India.
>
> 11. The ancient prerogative writ of habeas corpus takes its name from the two mandatory words "habeas" and "corpus". "Habeas Corpus" literally means "have his body". The general purpose of these writs as their name indicates was to obtain the production of the individual before a Court or a Judge. This is a prerogative process for securing the liberty of the subject by affording an effective relief of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody. This is a writ of such a sovereign and transcendent authority that no privilege of power or place can stand against it. It is a very powerful safeguard of the subject against arbitrary acts not only of private individuals but also of the executive, the greatest safeguard for personal liberty, according to all constitutional jurists. The writ is a prerogative one obtainable by its own procedure. ... In our country, it is this prerogative writ which has been given a constitutional status under Articles 32 and 226 of the Constitution. Therefore, it is an extraordinary

> remedy available to a citizen of this country, which he can enforce under Article 226 or under Article 32 of the Constitution of India."

10. Thus, the writ of *habeas corpus* is a process by which a person who is confined without legal justification may secure a release from his confinement. The writ is, in form, an order issued by the High Court calling upon the person by whom a person is alleged to be kept in confinement to bring such person before the court and to let the court know on what ground the person is confined. If there is no legal justification for the detention, the person is ordered to be released {See *Kanu Sanyal (supra).}*

11. The High Court of Karnataka, Gulbarga Bench in the case of *Sudharani Vs. The State of Karnataka* (ILR 2016 KAR 731) has held as under :-

> 5. We find there is absolutely no occasion to issue a writ of habeas corpus, as the writ petitioners do not allege or aver in the petition that the police or any third party has held the missing person in illegal custody.
>
> 6. A writ of habeas corpus cannot be issued in respect of any and every missing person more so when no named person is alleged to be responsible for the illegal detention of the person for whose production before the Court a writ is to be issued.
>
> *(Emphasis supplied)*

12. The High Court of Calcutta, in the case of *Swapan Das vs. The State of West Bengal & others,* in W.P.No.17965(W) of 2013 dated 28.06.2013, made an observation, which reads as follows:

> "A habeas corpus writ is to be issued only when the person concerning whose liberty the petition has been filed is illegally detained by a respondent in the petition. On the basis of a habeas corpus petition the power under art.226 is not to be exercised for tracing a missing person engaging an investigating agency empowered to investigate a case under the Code of Criminal Procedure, 1973. The investigation, if in progress, is to be overseen by the criminal court. Here the petitioner is asking this court to direct the police to track down his missing son.
>
> For these reasons, we dismiss the WP. No costs. Certified xerox.
>
> *(Emphasis supplied)*

13. In the backdrop of the aforesaid legal conspectus on the point in issue, it transpires that the condition precedent for instituting a petition seeking writ of *habeas corpus* is that the person for whose release, the writ of *habeas corpus* is sought must be in detention and he must be under detention by the Authorities or

by any private individual. Such writ is available only against any person who is suspected of detaining another unlawfully. In the present case, the petitioner has not arrayed any of the suspects as party respondent. The only assertion that the corpus have been abducted by some unknown miscreants, is not sufficient to invoke the extraordinary jurisdiction of this Court for issuance of writ of *habeas corpus,* which though a writ of right, is not a writ of course. Needless to reiterate that the criminal law has already been triggered in motion by lodging of missing person report. Accordingly, the question formulated above is answered in the negative.

14. Now, adverting to the multifarious reliefs claimed in the petition, it can easily be discerned that they are completely tangential and incongruous with the subject matter of this *habeas corpus* petition and cannot be acceded to.

15. The petition *sans* merit and is, accordingly, dismissed. However, this Court comprehends the flummoxed state of the petitioner due to abduction of her sister-in-law and, accordingly, directs the respondents/Police Authorities to bring the investigation pursuant to missing persons report lodged by mother-in-law of Aarti, to its logical end, as expeditiously as possible.

Petition dismissed

I.L.R. [2021] M.P. 2307
WRIT PETITION

Before Mr. Justice Purushaindra Kumar Kaurav

WP No. 4982/2015 (Jabalpur) decided on 17 November, 2021

CHIEF GENERAL MANAGER, S.E.C.L. …Petitioner

Vs.

CHANDRAMANI TIWARI …Respondent

***A. Service Law – Illegal Termination – Back Wages* – Held – In case of wrongful/illegal termination of service, there is no justification to give premium to management of his wrongdoings by relieving him of the burden to pay to employee/workman his dues as back wages – CGIT passed a well reasoned award holding that termination was illegal and management failed to prove any misconduct – No perversity/jurisdiction lapse to call for interference under Article 227 – Order of reinstatement with 50% back wages is not unreasonable – Petition dismissed. (Paras 6, 9, 15, 20 & 21)**

क. सेवा विधि – अवैध समाप्ति – पिछली मजदूरी – अभिनिर्धारित – सदोष/अवैध सेवा समाप्ति के प्रकरण में, कर्मचारी/कर्मकार को पिछली मजदूरी के रूप में उसके देय का भुगतान करने के भार से मुक्त कर प्रबंधन को उसके अनुचित कार्यों के लिए प्रीमियम देने का कोई न्यायोचित्य नहीं है – **CGIT** ने यह अभिनिर्धारित करते हुए कि

समाप्ति अवैध थी एवं प्रबंधन कोई अवचार साबित करने में विफल रहा, एक सकारण आदेश पारित किया – अनुच्छेद 227 के अंतर्गत हस्तक्षेप की मांग करने हेतु कोई विपर्यस्तता/अधिकारिता की गलती नहीं है – 50% पिछली मजदूरी के साथ पुनःस्थापन का आदेश अनुचित नहीं है – याचिका खारिज।

***B. Service Law – Full Back Wages – Principle & Interference by Court* – Held – If the Labour Court/Industrial Tribunal finds that employee/workman is not at all guilty of any misconduct or management has foisted a false charge, then award of full back wages is justified and superior Courts should not interfere with the award merely because there is possibility of forming a different opinion on entitlement of employee to get full back wages or management's obligation to pay the same. (Para 19)**

ख. सेवा विधि – पूर्ण पिछली मजदूरी – सिद्धांत व न्यायालय द्वारा हस्तक्षेप – अभिनिर्धारित – यदि श्रम न्यायालय/औद्योगिक अधिकरण यह पाता है कि कर्मचारी/कर्मकार किसी भी अवचार के लिए बिल्कुल भी दोषी नहीं है अथवा प्रबंधन ने मिथ्या आरोप थोपे हैं, तब पूर्ण पिछली मजदूरी अधिनिर्णीत करना न्यायानुमत है एवं वरिष्ठ न्यायालयों को मात्र इसलिए अधिनिर्णय में हस्तक्षेप नहीं करना चाहिए क्योंकि कर्मचारी को पूर्ण पिछली मजदूरी पाने की हकदारी या उक्त का भुगतान करने के लिए प्रबंधन की बाध्यता पर एक भिन्न राय बनाने की संभावना है।

***C. Service Law – Back Wages – Other Employment – Onus* – Held – Once employee shows that he was not employed, the onus lies on management to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments. (Para 19)**

ग. सेवा विधि – पिछली मजदूरी – अन्य नियोजन – भार – अभिनिर्धारित – एक बार यदि कर्मचारी यह दर्शाता है कि वह नियोजित नहीं था, यह अभिवाक् करने एवं साबित करने का भार प्रबंधन पर हो जाता है कि कर्मचारी लाभप्रद रूप से नियोजित था एवं समान या सारभूत रूप से समान उपलब्धियां प्राप्त कर रहा था।

Cases referred:

(2013) 10 SCC 324, 1963 AIR 1723, (2020) 3 SCC 423, 1999 Supp (4) SCR 205, (2011) 4 SCC 584, Service Single No. 18642/2018 decided on 20.02.2019 (High Court of Allahabad), (2014) 6 SCC 434, (2015) 2 SCC 610, (2016) 15 SCC 701, (2003) 6 SCC 141.

Vikram Singh, for the petitioner.
Respondent in person.

O R D E R

PURUSHAINDRA KUMAR KAURAV, J. :- This petition under Article 227 of the Constitution of India, is directed against an award dated 20.10.2014, passed by the Central Government Industrial Tribunal-cum-Labour, Jabalpur (hereinafter referred to as **"CGIT").** The CGIT vide impugned award has held that the action of Management of South Eastern Coalfields Ltd. (in short hereinafter referred to as "Management"), Johila Area, in terminating the services of the respondent (in short hereinafter referred to as "Workman"), is illegal and hence, the management was directed to reinstate the workman with continuity of service and 50% back wages.

2. Brief facts necessary for the decision of the petition are as under:-

> (i) The management is one of the subsidiaries company of Coal India Ltd. (A Government of India undertaking) under the Ministry of Coal. The workman was appointed as General Mazdoor, Category-I on 23.8.1983 by the management. The workman was the President of Trade union and had been raising various grievances relating to Union from time to time.
>
> (ii) On 17.2.2000, on account of one incident at mine, two workmen lost their lives. The issue was taken-up at the higher level and complaints were made against some of the responsible officers of the management. Thereupon, the cognizance was taken by the Executive Magistrate, Pali, District-Umaria.
>
> (iii) On 28.11.2000, charge-sheet was given to the workman alleging therein that he was habitual absentee and during September, 1999 to November, 2000, he attended the work only for 46 days and including EL/CL etc., his total presence was 109 days, which is violative under Clauses 26.24 and 26.30 of the Standing Order and, therefore, the same falls within the definition of "Misconduct".
>
> (iv) The workman replied to the charge-sheet on 28.11.2000/ 9.12.2000 denying all the allegations and he had stated that the attendance shown in the charge-sheet was incorrect. According to him, if the attendance is compared or verified from register Form 'C', the same would make it clear that the allegations in the charge-sheet were incorrect. According to him, on account of his wife's and his own illness, he sought certain leaves without pay and was availing medical facilities. He denied that there was any violation of the Standing Order as alleged in the charge-sheet.

(v) Vide memorandum dated 16.12.2000, the management did not find the explanation of the workman as satisfactory and took a decision to proceed with the regular departmental enquiry. On 16.12.2000, Shri K.D. Jain, Mines Superintendent, Pali was appointed as Enquiry Officer and Shri Rizwan, Time Keeper, Birsinghpur Colliery was appointed as Management Representative.

(vi) After an enquiry, on 7.9.2002, the Enquiry officer submitted his report. He concluded that between 6.9.1999 to 26.11.2000, the workman attended the office only for 49 days and has availed 22 days CL/Rest and he could not satisfactorily explain his absence from duty, therefore, the charges were found proved.

(vii) On 10.10.2002, the management supplied copy of the enquiry report to the workman and sought for his explanation. On 19.10.2002, the workman submitted his explanation. He has alleged certain malafides against S.R. Mishra, Manager and Enquiry Officer on account of some complaints lodged against the said officer. He stated that the enquiry is vitiated on account of not following the principles of natural justice and non production/supply of relevant register etc. and, therefore, the entire matter was required to be re-enquired by the independent enquiry officer.

(viii) Vide order dated 7.12.2002, the management terminated the services of the workman w.e.f. 7.12.2002.

(ix) The workman preferred an appeal before the appellate authority, which was also dismissed vide order dated 22.8.2003.

(x) Eventually on account of the labour dispute, the Government of India, Ministry of Labour vide order dated 13.5.2004 found that an industrial dispute exists between the management and its workmen. The Government of India considered it desirable to refer the said dispute for adjudication and hence, in exercise of power conferred by Clause (d) subsection (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as **"Act of 1947"),** the following dispute was referred for adjudication to the CGIT:-

"The Schedule

Whether the action of the management of SECL, Johilla Area in terminating from services of Sh. Chandramani Tiwari S/o Sh. B.P. Tiwari, General Mazdoor w.e.f. 7.12.2002 is legal and justified? If not, to what relief he is entitled to.'"

(xi) The parties submitted their statement of claims and adduced the evidence before the CGIT.

(xii) On 25.3.2013, the CGIT had decided the preliminary issue against the employer holding that the departmental enquiry conducted by the management against the workman was illegal and improper. However, liberty was given to the management for adducing evidence to prove misconduct of the delinquent workman. Thereafter, the final award has been passed which is under challenge in this petition.

3. Learned counsel appearing for the management has vehemently argued that the impugned award is illegal and perverse. From perusal of para 10 of the impugned award, it is seen that the evidence of Management witness Shri Mundra clearly proved the absence from duty from July, 2000 to November, 2000 and, therefore, there was no occasion for the CGIT to interfere into the order of termination. It has also been stated that entries in the Form 'G' register wherein month-wise attendance of each workman is available and Form 'H' register where the leave balance and leave availed by the workmen are mentioned, were filed before the CGIT which were wrongly ignored. It is the stand of the management that the management provides all best medical facilities at the colliery level itself and the Central hospital is also functioning at area level and in case of any emergency, the workmen are referred to specialized hospital situated at metropolitan city and the entire expenditure is borne by the management, therefore, there was no occasion for the workman to avail unauthorized leave. The petitioner has also criticized the award on the ground that grant of 50% back wages is not warranted in view of the law laid down by the Hon'ble Supreme Court in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyala (D.Ed) & Others*[1].

4. The workman while appearing in person has supported the impugned award and has submitted that the order of termination was issued with malafide intent and with an object to teach him a lesson as he was raising voice against the management on behalf of the trade union. According to him, the issue of death of

1 (2013) 10 SCC 324

two workmen was pending before the Executive Magistrate, Pali, District Umaria, where the complaint was being examined. He has also stated that on account of his pro-activeness he was threatened by the Enquiry Officer of taking revenge to see that he would be dismissed from service. He made a request for change of the Enquiry Officer but the same was not adhered to. According to him, his signature was forged about the attendance and he was not given fair opportunity of his defence. Original attendance register has neither been produced before the Enquiry Officer nor before the Tribunal. There is violation of principles of natural justice. He has already suffered immense mental agony being out of job since 7.12.2002 and the entire action of management was arbitrary.

5. This Court has heard the parties at length and has also carefully perused the record.

6. The CGIT vide order dated 25.3.2013 had already decided the question about the legality of the departmental enquiry conducted by the management as a preliminary issue. The enquiry was held to be illegal. It was recorded in para 5 of that order that the enquiry was conducted in absence of co-worker against the workman and he was not given fair and proper opportunity. Management witnesses have admitted that in Form 'C' in which attendance or the workmen are maintained for the relevant period was not produced in original. It is apposite to reproduce para 5 and 6 of the aforesaid order dated 25.3.2013, which is as under:-

> **"5.** Workman has examined witness Shri Hiralal Sharma and to support the grievance of Ist party workman that on complaint of Ist party workman about accident, the proceeding was initiated. The Ist party workman filed affidavit of his evidence. He was cross-examined at length. He had denied suggestions of the management in the crossexamination. Management has filed affidavit of his witness Shri S.J.Mukherjee and witness was also cross-examined at length. Only zerox copies of the Enquiry proceedings are produced. The entire record of Enquiry proceedings is not produced in Court, reasons not understood. In cross-examination of management's witness by workman, it is noticed that in Form "C" in which attendance of employee is maintained, for period of November 2000 was not produced. The cross-examination of management's witness further shows that entire Form "C" about attendance during the relevant period is not produced. During recording statement of management witness in cross-examination, it was told by Enquiry Officer that the same shall be produced lateron. When the charge against the delinquent workman was about his unauthorized absence, Ist party workman was alleging that his attendance was scored out from the register and the bonus documents were prepared. Under such facts, it would have been proper to

produce the register of attendance in Form "C" maintained by the management. The documents on record shows that Form "C" for November 2000 is not produced. The original attendance record is not produced. Therefore the enquiry conducted against Ist party workman cannot be said proper. Proper procedure was not followed while recording evidence of management's witness. Though the workman expressed his desire to be represented by a co-worker , the co-worker was not present at the time of cross-examination of management's witness. The reason is not understood. The enquiry was conducted in absence of co-worker. For the above reasons I hold that enquiry conducted against the workman is not fair and proper.

6. The management in Para-15 of its Written Statement has requested permission to prove misconduct of delinquent workman adducing evidence. The legal position in this regard is settled that when enquiry is vitiated , permission cannot be refused for proving the misconduct in the Court by management. For above reasons, management is permitted to adduce evidence to prove charges against the delinquent workman."

7. The aforesaid order remained unchallenged till date, therefore, the finding to the effect that the enquiry was illegal, has attained finality.

8. Coming to the legality of the impugned award dated 20.10.2014, it is seen that in para 9 of the said award, a categorical finding is recorded that the management's witness Shri P.S. Mundra in his cross-examination has stated that register for the period September, 1999 to 2000 is not available. It has also been recorded that the evidence of management's witness discussed above only covers unauthorized leave of workman during the period July, 2000 to November, 2000 for 24 days and rest of the period of unauthorized absence of workman was not covered by any of the witnesses of management as well as documents *Ex.M/19* to *Ex.M/21.* In para 10, it has been clearly held that it was difficult to hold that the absence of the workman from duty was unauthorized. Para 9 and 10 of the impugned award are reproduced as under:-

"9. After enquiry against workman was found vitiated, management of IInd party has to prove the charges against workman. Management has filed affidavit of evidence of Shri G.S.Parihar, the attendance of workman is shown 5 days during the period 16-7-00 to 22-7-00. Removal of workman is shown from 6-12-02. The charges against workman are restricted to unauthorized absence for the period Sept 99 to Nov-2000. Thus affidavit of G.S.Parihar shown 5 days working during 16-7-00 to 22-7-00, 1 day working during 13-7-00 to 5-8-00. Rest of the period of

unauthorized absence is not covered by chargesheet issued to workman. The affidavit of management's witness Shri P.S.Mundra is filed covering same period. It is surprise to say that evidence of Shri P.S.Mundra covers attendance of workman during Sept 99 to November 2000 for 46 days. From evidence of witness of management, document Exhibit M-19 to M-33 are proved. Management's witness Shri P.S. Mundra in his cross-examination says that register for the period Sept 99 to Nov-2000 is not available. Only register for the period 5 year was available, register for remaining period are destroyed. That Form C register for 9-7-00, November 07 was brought, its copies are produced. Entries dated 29-10-00, 4-11-00 shows workman was on EL. The form C register for onwards period was not available. The termination order of Ist party workman was issued by Shri Sarkar Sub Area Manager. The termination order was not issued by Lallan Giri. He was not posted in the mine during said period. Rest of cross examination of witness of management is devoted on the point whether order bears signature of General Manager or not, whether witness was given intimation. Workman had passed Data Entry Exam and workman was released for said examination. Said part of evidence in cross-examination has no direct bearing to the unauthorized absence of workman. The evidence of management's witness discussed above only covers unauthorized absence of workman during the period July 2000 to November 2000 for 24 days, rest of the period of unauthorized absence of workman is not covered in evidence of above witness of management as well documents Exhibit M-19 to M-21. Document Exhibit M-30 relates to transfer of workman from Pinoura Project to Birsinghpur Project. M-31 relates to request of workman for light duty was not accepted. Exhibit M-32 relates to treatment of workman in hospital. He should approach Doctor in hospital.

10. Documents also do not relate to alleged unauthorized absence of workman form duty. Thus it is clear that from evidence of management's witness Shri Mundra only his absence from duty from July 2000 to November 2000 is covered. The unauthorised absence of Workman from September 99 to June 00 cannot be proved from evidence of witness as Form C register of above period was not available. The management's witness Shri G.S. Parihar was not produced for cross-examination. His evidence cannot be considered. To conclude, evidence adduced by

> management about unauthorized absence from July 2000 could not be proved for want of record i.e. Form C register. Thus charges alleged against workman cannot be proved. Rather as per documents corroborating evidence of management's witness Shri P.S.Mundra, workman was on duty only for 24 days during July to October 2000, he was absent from duty. From his evidence, it is difficult to hold that the absence of workman from duty was unauthorized as said witness in his cross-examination says workman was on EL during 29-10-00 to 4-11-2000 and medical bill register was not brought by him therefore evidence adduced by management is not sufficient to prove charges against workman. Therefore I record Point No. 1 in Negative."

9. Even at the time of hearing of this petition also, no material is shown, no specific perversity is pointed out so as to contradict the findings of facts recorded by the CGIT.

10. Learned counsel for the petitioner, however, relied upon the judgments of the Supreme Court in the cases of *State of Andhra Pradesh Vs. S. Sree Rama Rao*[2]*; The State of Karnataka Vs. N. Gangaraj*[3]*; High Court of Judicature at Bombay Through its Registrar Vs. Shashikant S. Patil and another*[4]*; State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya*[5] as also on the judgment passed by the High Court of Allahabad, Lucknow Bench in the case of *Rakesh Kumar Pandey Vs. State of U.P. through Principal Secretary, Department of Revenue LKO and others*[6] and urged that the writ petition be allowed and the order passed by the CGIT be set aside.

11. It is settled law that the High Court normally should not exercise its power under Article 227 of the Constitution of India as an appellate Court or re-appreciate evidence and record its findings on the contentious points. It is only if there is a serious error of law or the findings recorded suffer from error apparent on record, the High Court can certainly quash such an order. The power of interference under Article 227 is to be kept to the minimum to ensure public confidence in the functioning of the Tribunals and Courts subordinate to the High Court. (See : *Ishwar Lal Mohanlal Thakkar Vs. Paschim Gujarat Vij Company Limited and another*[7].

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2 1963 AIR 1723

3 (2020) 3 SCC 423

4 1999 Supp (4) SCR 205

5 (2011) 4 SCC 584

6 Service Single No. 18642/2018 dated 20.2.2019

7 (2014) 6 SCC 434

12. Under Articles 226 and 227 of Constitution of India, the High Court should not venture into reappreciation of evidence or interfere with conclusions in enquiry proceedings if the same are conducted in accordance with law, or go into reliability/adequacy of evidence, or interfere if there is some legal evidence on which findings are based, or correct error of fact however grave it may be, or go into proportionality of punishment unless it shocks conscience of Court. (See : *Union of India and others Vs. P. Gunasekaran*[8])

13. The High Court can interfere in its writ jurisdiction only if jurisdictional error is committed by the Labour Court/CGIT. Besides, it must proceed on the basis that Industrial Disputes Act is a social welfare legislation. (See : *Naresh Kumar Thakur and others Vs. Principal/ Executive Director, Civil Aviation Training College, Allahabad*[9])

14. So far as the judgments relied upon by the learned counsel for the petitioner are concerned, they are also in the same line. None of the judgments takes any different view as has been stated above.

15. In the instant case, the CGIT has considered the entire evidence and material available on record and has passed a well reasoned award giving full opportunity of hearing to the Management to prove the misconduct. The findings as reproduced in preceding paragraphs clearly show that there is no perversity or jurisdictional lapse which can be said to be so grave so as to call for interference under Article 227 of Constitution of India and hence, any interference is declined.

16. So far as the grant of back wages is concerned, a perusal of the record shows that employee in his affidavits dated 12.8.2004 and 20.10.2014 before CGIT has stated that he was not employed elsewhere. The Management has not taken any stand in its statement of claim that the workman was gainfully employed elsewhere and in this regard, neither any document has been produced nor any evidence is laid.

17. The law on the question of award of back wages has taken some shift. It is now ruled in cases that when the dismissal/removal order is set aside/withdrawn by the Courts or otherwise, as the case may be, directing employee's reinstatement in service, the employee does not become entitled to claim back wages as of right unless the order of reinstatement itself in express terms directs payment of back wages and other benefits. (See *M.P. State Electricity Board Vs. Jarina Bee (Smt.)*[10]).

8 (2015) 2 SCC 610
9 (2016) 15 SCC 701
10 (2003) 6 SCC 141

18. The Supreme Court in the case of *Deepali Gundu Surwase* (supra), has laid down certain propositions from its earlier judgments while deciding the issue of back wages. It has been held that wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule, however, the said rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct found proved against the workman, the financial condition of the management and similar other factors. Para 22 of the aforesaid judgment is reproduced hereunder:-

> "**22.** The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."

19. In the case of *Deepali Gundu Surwase* (supra), the Supreme Court has further held that an employee who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on

lesser wages. If the management wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. Once the employee shows that he was not employed, the onus lies on the management to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments. *If the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the management had foisted a false charge, then there will be ample justification for award of full back wages. In such a case, the superior Courts should not interfere with the award so passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the management's obligation to pay the same.*

20. In the instant case, the CGIT has awarded 50% back wages on the basis of the facts and circumstances of the case. The enquiry which was conducted against the employee was held to be illegal by the CGIT vide its order dated 25.3.2013 and even after giving opportunity to the management to prove the misconduct, the management has failed to establish during the proceedings before the CGIT and therefore, this is a clear case of wrongful termination of service. In the case of wrongful/illegal termination of service, the wrongdoer is the management and sufferer is the employee/workman and there is no justification to give premium to the management of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages. Since the reinstatement itself is ordered with 50% back wages, therefore, the same cannot be considered to be unreasonable. The CGIT has found that the employee's termination was wrongful and has directed for reinstatement and therefore, it is quite reasonable that the employee, who by now, has been superannuated, should get 50% back wages and the same is the order of the CGIT, therefore, the same is also not interfered with.

21. In view of the aforesaid analysis, I do not find any merit in the instant petition and the same is accordingly dismissed. No orders as to cost.

Petition dismissed

I.L.R. [2021] M.P. 2319 (DB)
APPELLATE CRIMINAL
Before Mr. Justice G.S. Ahluwalia
& Mr. Justice Rajeev Kumar Shrivastava
CRA No. 463/2008 (Gwalior) decided on 17 August, 2021

SURESH …Appellant

Vs.

STATE OF M.P. …Respondent

(Alongwith CRA Nos. 466/2008 & 482/2008)

***A. Penal Code (45 of 1860), Section 346 & 364-A and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13* – Held – Fact of abduction, demand of ransom and identity of accused not established – Serious discrepancy regarding recovery of the abductee – No TIP conducted by Police – Prosecution miserably failed to prove guilt of appellants beyond reasonable doubt – Ample material on record to suggest that appellants were falsely implicated by witnesses with help of I.O. with sole intention to grind their axe – Conviction and sentence set aside – Appeals allowed. (Paras 22 to 25)**

क. दण्ड संहिता (1860 का 45), धारा 346 व 364–A एवं डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 – अभिनिर्धारित – अपहरण का तथ्य, फिरौती की मांग एवं अभियुक्त की पहचान स्थापित नहीं हुआ – अपहृत की बरामदगी के संबंध में गंभीर विसंगति – पुलिस द्वारा कोई पहचान परेड परीक्षा संचालित नहीं की गई – अभियोजन युक्तियुक्त संदेह से परे अपीलार्थीगण की दोषिता साबित करने में बुरी तरह असफल रहा – यह सुझाने हेतु अभिलेख पर व्यापक सामग्री है कि अपीलार्थीगण साक्षीगण द्वारा अन्वेषण अधिकारी की सहायता से अपना उल्लू सीधा करने के एकमात्र आशय से मिथ्या आलिप्त किये गये थे – दोषसिद्धि एवं दण्डादेश अपास्त – अपीलें मंजूर।

***B. Criminal Practice – Dock Identification* – Held – Dock Identification is the substantive piece of evidence and even in absence of Test Identification Parade, it can be relied – Since appellants were already shown to the witnesses in the police station, Dock Identification of appellants cannot be relied upon. (Para 22(xi))**

ख. दाण्डिक पद्धति – कठघरे में पहचान – अभिनिर्धारित – कठघरे में पहचान, साक्ष्य का सारभूत भाग है एवं पहचान परेड परीक्षा के अभाव में भी इस पर विश्वास किया जा सकता है – चूंकि अपीलार्थीगण पहले ही पुलिस थाने में साक्षीगण को दिखाये जा चुके थे, अपीलार्थीगण की कठघरे में पहचान करे जाने पर विश्वास नहीं किया जा सकता।

***C. Constitution – Article 21 – False Implication – Compensation –* Held – Appellants were falsely and maliciously implicated in connivance with the Investigating Officer, because of which they had to remain in custody for more than 11 years for which State is responsible – State directed to pay 3 lacs to each appellant by way of compensation on account of violation of their fundamental rights guaranteed under Article 21 of Constitution.**

(Paras 29 to 36)

ग. संविधान – अनुच्छेद 21 – मिथ्या आलिप्त किया जाना – प्रतिकर – अभिनिर्धारित – अपीलार्थीगण को अन्वेषण अधिकारी की मौनानुकूलता से मिथ्या एवं द्वेषपूर्ण रूप से आलिप्त किया गया था, जिसकी वजह से उन्हें 11 वर्षों से अधिक समय तक अभिरक्षा में रहना पड़ा जिसके लिए राज्य जिम्मेदार है – संविधान के अनुच्छेद 21 के अंतर्गत प्रत्याभूत अपीलार्थीगण के मूलभूत अधिकारों का उल्लंघन होने के कारण राज्य को, प्रतिकर के रूप में प्रत्येक अपीलार्थी को तीन लाख रूपये का भुगतान करने हेतु निदेशित किया गया।

Cases referred:

(1991) 3 SCC 627, (2017) 6 SCC 1, (2011) 7 SCC 130, (2019) 15 SCC 470, (2018) 13 SCC 687, (2018) 10 SCC 804.

S.K. Tiwari, for the appellant in CRA No. 463/2008, through video conferencing.

Anoop Nigam (Legal Aid), for the appellant No. 1 in CRA No. 466/2008.
R.K.S. Kushwaha, for the appellant No. 2 in CRA No. 466/2008.
Dharmendra Rishishwar, for the appellants in CRA No. 482/2008.
C.P. Singh, for the State.

J U D G M E N T

The Judgment of the Court was delivered by: **G.S. AHLUWALIA, J.:-** By this Common Judgment, Cr.A. No.s 463/2008, 466/2008 and 482/2008 shall be decided.

2. All the three Criminal Appeals have been filed against the judgment and sentence dated 26-4-2008 passed by Special Judge, Datia in Special Sessions Trial No.58/2005 by which the appellants have been convicted and sentenced for the following offences :

Appellants	Conviction under Section	Sentence
All Appellants	364-A IPC read with Section 13 of M.P.D.V.P.K. Act	Life Imprisonment and fine of Rs.10,000/ -in default 2 years R.I.
All Appellants	346 of IPC	1 year R.I. (All sentences to run concurrently)

3. According to prosecution story, on 22-7-2005 at about 23:30, the complainant Manohar Singh, lodged a missing person report that at about 7 P.M., his elder brother Ram Prakash Rajput had gone to see his cattle. At about 19:30, the cattle came back to the house, but his elder brother did not return. He tried to search for him, but could not get his whereabouts.

4. Although, the police had received the gum insaan report on 22-7-2005, but the F.I.R. was registered on 9-8-2005 at 12:30.

5. Thereafter, the abductee Ram Prakash Rajput, returned back on his own. The police after recording statements of witnesses, arrested the appellants and after completing the investigation, filed the charge sheet against the appellants, namely, Bhaggu, Kailash, Ramcharan and Suresh for offence under Section 364-A/34 of IPC and under Section 11,13 of M.P.D.V.P.K. Act and supplementary charge-sheet was filed against appellant-Rajesh alias Babba for offence under Section 364-A/34 of IPC, under Section 11, 13 of M.P.D.V.P.K. Act and under Section 25, 27 of the Arms Act.

6. The Trial Court by order dated 28-11-2006, framed charges under Sections 364-A of IPC read with 13 of M.P.D.V.P.K, Act and under Section 346 of IPC against appellants Bhaggu, Kailash, Ramcharan, Suresh and by order dated 15/12/2006 against appellant Rajesh alias Babba.

7. The appellants abjured their guilt and pleaded not guilty.

8. The prosecution in order to prove its case, examined Ram Prakash (P.W.1), Manohar Singh (P.W.2), Om Prakash (P.W.3), Dr. M.M. Shakya (P.W.4) and Raghvendra Singh (P.W.5).

9. The appellants did not examine any witness in their defence.

10. The Trial Court by the impugned judgment and sentence, convicted and sentenced the appellants for the offences mentioned above.

11. Challenging the judgment and sentence passed by the Court below, it is submitted that the appellants have been falsely implicated. There is nothing on record that any ransom was demanded or it was paid. Even the prosecution has failed to prove abduction for demand of ransom.

12. Per contra, the Counsel for the State has supported the findings recorded by the Court below.

13. Heard the learned Counsel for the parties.

14. Ram Prakash (P.W.1) has stated that on 22-7-2005 at about 7:30 P.M., he was going towards *Bhitari Har* (भिटारी हार) for walking and on the way he saw his cattle. Therefore, he was coming back along with his cattle. He met with three

persons. One was Rajesh Brar, another was Nandu and the third was unknown. They stopped this witness and Rajesh enquired as to whether he has any relative in Imaliya or not and when it was accepted by this witness by saying that his sister is married to Meharban Secretary, then he was stopped by them for smoking purposes. Thereafter, Babba Brar caught hold of his hand, whereas Nandu caught hold of his another hand, and third person pointed his gun towards him and took him towards *Chhan Ke haar* (छान के हार). After crossing 1-2 fields, the hands of this witness were tied. Thereafter, they took towards village *Kui.* Thereafter, he was taken to Ratangarh forest area, where he was kept in captivity for 13 days and from thereafter, they shifted him to another place, where he was kept in captivity for 8 days. They demanded Rs.10 lakh for his release. On one day, when the appellants were sleeping, he ran away. While talking to each other, the appellants were calling them by name Kailash, Chandu, Ramcharan, Suresh, Rajesh Babba. Ramcharan had brought food for them and he had accompanied the appellants as a guide. The appellants were identified by this witness in the dock.

15. In cross-examination, this witness admitted that Kailash (Appellant no.1 in Cr.A. No.482/2008) was not known to him. While giving statements to the police, he had disclosed the descriptions of all the accused persons. However, could not give an explanation as to why the description of the accused persons has not been mentioned in his police statement. He accepted that when he had gone in search of his cattle, it was already dark and he was not able to see the road. He was taken to Ratangarh Forest Area in the night. However, denied that the accused persons used to keep him in Ratangarh Forest Area by keeping his hand tied. He further stated that Nandu and Rajesh used to demand Ransom. He admitted that when he was being taken to forest area, he had seen a police vehicle at a distance of 200 steps, however, he did not try to invite the attention of police by raising alarm. However, he clarified that he did not do so, because the accused persons, might have killed him, as one person had kept on gun pointed towards him. However, he could not explain as to why this fact is not mentioned in his police statement, Ex.D.1. He further stated that when they reached near Sindh River, he was blind folded therefore, he was not able to see anything. But clarified that some times, the accused persons used to open the blindfold. He further admitted that he had identified the accused persons in the police station. After Kailash was arrested, he was got identified in the police station. He was called for identification after 2 days of his escape from the captivity of the accused persons. However, he denied that the police had tutored him to identify the accused persons in Court and to disclose their names. He further admitted that he came to know about the names of the appellants, only when they were got identified from him in the police station. He denied that there is a dispute between Rajesh Babba and Meharban Singh (brother-in-law of this witness), therefore, he has been falsely implicated. He further stated that after running away from the captivity of the accused persons, he directly came to the house of his brother-in-law and from there, he went to Police

Station Tharet. He further admitted that there is a police station in Bhaguvapura, but he did not inform them. He further admitted that on the information given by Police Station Tharet, the police from Police Station Godan had also reached there. He further stated that he had informed the police that he was beaten by the accused persons, but could not explain as to why said fact is not mentioned in his police statement, Ex.D.1. He further admitted that it is true that he was always kept by the accused persons at a distance of 25-30 ft.s from them and he was not able to hear the conversation of the accused persons. He further admitted that the accused persons used to call them by their code names, and they never called each other by their names. He further admitted that he had not disclosed in the police statement, that the accused persons used to call each other by the name Kailash, Nandu, Ramcharan, Suresh and Kailash Babba. He further admitted that he has disclosed the above mentioned names for the first time in the Court. He further admitted that when he had given his police statement, he was not aware of the names of the accused persons.

16. Manohar Singh (P.W.2) has stated that his brother Ramprakash had gone to see his cattle. Although the buffaloes came back but Ramprakash did not return. He tried to search for Ramprakash and when could not trace out his whereabouts, then he lodged a missing person report. When he was searching for Ramprakash, then late in the night, he came to know that his brother has been abducted by Nandu Kadera, Rajesh Babba and others for ransom. His relative Karan Singh Rajput had talked with the accused persons in relation to ransom. The accused persons had said that they would release Ramprakash after taking ransom of Rs.1 lacs. He further stated that confessional statement of Rajesh @ Babba, Ex. P.1 was recorded by the police in his presence and one .12 bore gun was seized and photo copy of the seizure memo has been filed in the case.

17. In cross-examination, this witness claimed that he had informed the police that the accused persons have demanded Rs.1 lakh (One Lakh) from Karan Singh, but could not explain as to why, said fact is not mentioned in his police statement, Ex.D.2. He further stated that on the next day of abduction, he was told by Man Singh Rajput, Bharat Singh Rajput, Ram Singh Rajput and others that his brother has been abducted by Nandu and Rajesh. On 23-7-2005, he had informed Kamta Prasad Sharma, Incharge Police outpost that his brother has been abducted by Nandu and Rajesh. After 10 days, his relative Karan Singh Rajput, had informed that the accused persons are demanding Rs.1 Lakh (One Lakh). However, Karan Singh did not disclose him that on what date and at which place, he had met with Nandu and Rajesh. He denied that any criminal case is pending against the father of Meharban for assaulting father of Rajesh. He further admitted that the incident of abduction was not seen by any villager. He further claimed that he had received a letter demanding ransom, but did not give it to the police. He further claimed he could not decide as to whether he should give the said letter to police or not.

18. Omprakash (P.W.3) has stated that he had come to know that Ram Prakash has been abducted for demand of Ransom. In cross-examination, he claimed that some outsider had given above information, but could not disclose the name and identity of said outsider. He further claimed that he had informed the police that an amount of Rs.1 lakh (One Lakh) has been demanded, but could not explain as to why such fact is not mentioned in his police statement. He further stated that after 7-8 days of abduction, he had come to know that Ramprakash has been abducted by Babba and had also informed the family members of Ramprakash. He further admitted that there is an enmity between him and Babba, however, denied that on account of enmity, he has falsely implicated him.

19. Dr. M.M. Shakya (P.W.4) has stated that he had examined Ramprakash on 15-8-2005 and had found following injuries on his body :

(i) One contusion with swelling and septic boil over right ankle.

(ii) Contusion with inflammation along with tennis elbow.

(iii) There is no any injury seen around the anal pore or inner side except Haemorrhoide moles present.

20. Raghvendra Singh (P.W. 5) has investigated the matter. He has stated that *gum insaan* report was lodged by Manohar Singh on 22-7-2005 which was recorded in Rojnamcha No.4/05, Ex. P.3. On 9-8-2005, he had recorded the F.I.R., Ex.P.4 for offence under Sections 364-A of IPC and Sections 11,13 of M.P.D.V.P.K. Act. During the course of investigation, he recorded the statements of Omprakash, Manohar Singh on 10-8-2005 and on 11-8-2005, he recorded the statements of Kamal Singh and Uttam Singh. On 14-8-2005, the recovery panchnama of abductee, Ex.P.5 was prepared. The statements of Ramprakash were recorded. Spot map, Ex. P.6 was prepared. On 16-8-2005, the Appellants Bhaggu Dheemer and Kailash Dheemer were arrested vide arrest memo Ex.P.7 and Ex.P.8. On 10-2-2006, he had arrested Rajesh Brar, vide arrest memo Ex.P.9. The confessional statement of Rajesh Brar, Ex. P.1 was recorded and on the basis of confessional statement, gun was seized in another offence, i.e., crime no.20/ 2005 registered in police station Godan.

21. In cross-examination, this witness has stated that names of Nandu and Babba were mentioned in the F.I.R., on the information given by Manohar Singh. He further admitted that F.I.R. was lodged on 9-8-2005, whereas the statement of Manohar Singh was recorded on 10-8-2005. However, he explained that the names were mentioned on the basis of statement of Manohar Singh given in *gum insaan* enquiry. However, could not specify the names of those witnesses, whose statements were recorded in *missing person* enquiry. He further admitted that he has not filed the copies of the statements of those witnesses, who had informed about the incident. He further admitted that he cannot say that on what basis he

had recorded the names of the accused persons in the F.I.R., but again clarified that he had mentioned on the basis of statement of Manohar Singh. He further admitted that Manohar Singh had not disclosed the source of information and had said that he would disclose the source of information in the Court only. He admitted that brother-in-law of abductee Ramprakash is a Secretary, Gram Panhayat Imaliya but expressed his ignorance about any enmity between Meharban Singh and Babba. He further admitted that he did not held Test Identification Parade of the appellants. He further stated that it is incorrect to say that abductee initially went to Police Station Tharet and then information was given by Police Station Tharet. He denied that the abductee was not recovered from Bhaguvapura. He further stated that he had not recorded the statement of abductee Ramprakash in Bhaguvapura. He further admitted that by mistake he could not mention in the police statement of Ramprakash that he was also beaten by the accused persons. However, clarified that he had got the abductee medically examined. He further stated that Ramprakash had not informed him that the accused persons used to call them by their code names. He further admitted that Manohar Singh had not disclosed to him, that a demand of ransom of Rs.1 lakh (one lakh) has been made from his relative. He further admitted that no letter of ransom was given to him. He admitted that he had shown the accused persons in police station and they were identified by the witnesses.

22. Upon appreciation of evidence, the following are the discrepancies in the prosecution case :

(i) Ramprakash (P.W.1) has stated that ransom of Rs.10 Lakh (Ten Lakh) was demanded, whereas Manohar Singh (P.W.2) and Raghvendra Singh (P.W. 5) say that ransom of Rs.One lakh was demanded.

(ii) Ramprakash (P.W.1) has not stated that how and in what manner, the demand of Rs.10 lakh was communicated to his family members.

(iii) Manohar Singh (P.W.2) has stated that his relative Karan Singh Rajput had a talk with appellants with regard to demand of Rs.1 Lakh, but Karan Singh Rajput was not examined by the prosecution.

(iv) Manohar Singh (P.W.2) has stated that Karan Singh Rajput had not disclosed that on what date and at which place he had a talk withNandu and Rajesh with regard to ransom.

(v) None of the witnesses has stated that any ransom amount was paid.

(vi) Manohar Singh (P.W.2) has stated that he had received a letter of ransom but admitted that he did not hand it over to the police. Said letter was not filed in the Trial also.

(vii) Manohar Singh (P.W.2) has not clarified that who had given him the letter of ransom.

(viii) Ramprakash (P.W.1) has admitted that the accused persons used to keep him 25-30 feets away from them and was not able to hear their conversations.

(ix) Ramprakash (P.W.1) has given self contradictory evidence with regard to identity of appellants. In examination-in-chief, it is stated by him that the accused persons were calling each other by their names, but in para 18 of the cross-examination, this witness has stated that the accused persons were calling them by their code words.

(x) It is submitted by the Counsel for the State that although a part of cross-examination of this witness was done on the same day on which his examination-in-chief was recorded, but cross-examination which is in para 18 and 19 was done on a subsequent date, therefore, it appears that this witness might have been won over, and in the light of the judgment passed by the Supreme Court in the case of *Khujji Vs. State of M.P.,* reported in (1991) 3 SCC 627, paras 18 and 19 may be ignored.

Considered the submission made by the Counsel for the State.

The Supreme Court in the case of *Khujji* (Supra) has held as under :

> 7......On the basis of this statement Mr Lalit submitted that the evidence regarding the identity of the appellant is rendered highly doubtful and it would be hazardous to convict the appellant solely on the basis of identification by such a wavering witness. The High Court came to the conclusion and, in our opinion rightly, that during the one month period that elapsed since the recording of his examination-in-chief something transpired which made him shift his evidence on the question of identity to help the appellant. We are satisfied on a reading of his entire evidence that his statement in cross-examination on the question of identity of the appellant and his companion is a clear attempt to wriggle out of what he had stated earlier in his examination-in-chief.

On the face of the argument advanced by the Counsel for the State, it appeared to be very attractive, but on deeper scrutiny, it is found to be misconceived and is liable to be rejected for the reason that examination-in-chief of this witness was recorded on 15-6-2007 and he was partially cross-examined on the very same day and in the said cross-examination, he had admitted that he came to know about the names of the appellants, only after the appellants were shown in the police station. It appears that thereafter, since one lawyer was unwell, therefore, the cross-examination was deferred and this witness was further cross-examined

on 24-7-2007. If para 18 (cross-examined on 24-7-2007) is read along with para 13 (cross-examined on 15-6-2007), then it is clear that this witness had already admitted that he was not aware of the names of the appellants before they were shown in the police station. Therefore, it cannot be said that this witness had taken complete somersault on 24-7-2007. Thus, in the light of cross-examination already done on 15-6-2007, the cross-examination done on 24-7-2007, can be relied upon and it cannot be said that whatever was stated by this witness on 24-7-2007 was an attempt to wriggle out what was stated by him on 15-6-2007.

(xi) Undisputedly, no Test Identification Parade was conducted by the Police.

It is a trite law that substantive piece of evidence is Dock Identification.

Test Identification Parade is conducted by police, to ascertain as to whether the investigation is moving in right direction or not.

The Supreme Court in the case of *Mukesh Vs. State (NCT of Delhi)* reported in (2017) 6 SCC 1 has held as under :

> **142.** Criticising the TIP, it is urged by the learned counsel for the appellants and Mr Hegde, learned Amicus Curiae, that refusal to participate may be considered as circumstance but it cannot by itself lead to an inference of guilt. It is also argued that there is material on record to show that the informant had the opportunity to see the accused persons after they were arrested. It is necessary to state here that TIP does not constitute substantive evidence. It has been held in *Matru* v. *State of U.P.* that identification test is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines.
>
> **143.** In *Santokh Singh* v. *Izhar Hussain,* it has been observed that the identification can only be used as corroborative of the statement in court.
>
> **144.** In *Malkhansingh* v. *State of M.P.,* it has been held thus: (SCC pp. 751-52, para 7)
>
> > "7. ... The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade

> would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. ..."

And again: (SCC p. 755, para 16)

> "*16*. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. ..."

145. In this context, reference to a passage from *Visveswaran* v. *State* would be apt. It is as follows: (SCC p. 78, para 11)

> "*11*. ... The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. ..."

146. In *Manu Sharma* v. *State (NCT of Delhi),* the Court, after referring to *Munshi Singh Gautam* v. *State of M.P., Harbajan Singh* v. *State of J&K* and *Malkhansingh,* came to hold that the proposition of law is quite clear that even if there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive.

Thus, it is clear that Dock Identification is the substantive piece of evidence, and even in absence of Test Identification Parade, it can be relied upon. However, the pivotal question is that in view of admission made by Ramprakash (P.W.1) that the appellants were shown to him in the police station, whether the Dock Identification can be relied upon or not?

The Supreme Court in the case of *Krishna Kumar Malik Vs. State of Haryana* reported in (2011) 7 SCC 130 has held as under :

> 26. Admittedly, no identification parade was conducted to identify the appellant as the description given by the prosecutrix about the details did not match with his appearance. All through, she has been describing the appellant as gitta (short-statured) man with beard, whereas a statement before the Bench has been

> made by the learned counsel for the appellant, after verification from the appellant's wife, that he is 5' 6? tall. This fact has been independently corroborated by the jailor's report on this specific query. Even though a man having a height of 5' 6? cannot be said to be tall but by no stretch of imagination, could he be called a gitta (short-statured) man. Admittedly, she was already shown the appellant and the other accused at the police station, after they were arrested. Thus, her dock identification in the court had become meaningless.

Thus, it is held that since, the appellants/accused persons were already shown to the witnesses in the police station, therefore, it is held that the Dock Identification of the appellants, cannot be relied upon.

(xii) The investigating officer has not prepared the spot map of the place where Ramprakash (P.W.1) was kept in captivity.

(xiii) Ramprakash (P.W.1) has claimed that he had run away from the captivity of the accused persons on his own, whereas Raghvendra Singh (P.W.5) has claimed that he had recovered Ramprakash (P.W.1).

(xiv) Ramprakash (P.W.1) has stated that after escaping from the captivity of the appellants, he went to Police Station Tharet, who in its turn informed the police of Police Station Godan, whereas Raghvendra Singh (PW. 5) has denied that he was ever informed by Police Station Tharet. On the contrary, he stated that in fact he had recovered the abductee from Bhaguvapura. Thus, there is a serious discrepancy as to whether Ramprakash (P.W.1) was recovered by the police or he had run away from the captivity on his own.

(xv) Further, the most important aspect of the matter is that Missing Person report was lodged on 22-7-2005. The F.I.R., Ex. P.4 was registered on 9-8-2005 and without there being any material to show that Ramprakash (P.W.1) was abducted by Nandu and Rajesh, the names of Nandu and Rajesh were mentioned in the F.I.R.

(xvi) Manohar Singh (P.W.2) has stated that he was informed by Man Singh Rajput, Bharat Singh Rajput, Ram Singh Rajput and other persons, that Ramprakash (P.W.1) has been abducted by Nandu and Rajesh. However, the police has not examined Man Singh Rajput, Bharat Singh Rajput and Ram Singh Rajput, but examined one Omprakash (P.W.3) in this regard. However, Omprakash (P.W.3) has also stated that he was informed by one outsider that Ramprakash (P.W.1) has been abducted by Babba. He further admitted that he doesnot know the outsider. Omprakash (P.W.3) has also admitted that there is an enmity between himself and Babba Karar. Thus, it is clear that Omprakash (P.W.3) is not reliable witness for the following reasons:

(a) He claims himself to be a hearsay witness, but could not disclose the

identity of the person, who had informed him about abduction.

(b) The prosecution has not examined anybody to prove that he had seen Ramprakash (P.W.1) in the captivity of Nandu, Rajesh and others and also that Omprakash (P.W.3) was ever informed about abduction.

(c) Omprakash (P.W.3) has a motive to falsely implicate Babba (Rajesh) as he himself has admitted that he has an enmity with Rajesh Babba.

(xvii) Raghvendra Singh (P.W.5) has admitted in para 8 of his cross-examination, that he was not aware that on what basis, the names of Nandu and Rajesh were mentioned in the F.I.R., because according to the prosecution case, Ramprakash (P.W.1) succeeded in running away from the captivity on 14-8-2005, whereas F.I.R. was registered on 9-8-2005. However, the explanation given by Raghvendra Singh (P.W.1) that he was informed by Manohar Singh (P.W.2) in this regard cannot be accepted for the reason, that the prosecution has not filed a copy of any statement which was allegedly recorded during *missing person* enquiry. Further, Raghvendra Singh (P.W.5) has admitted that Manohar Singh (P.W.2) had not disclosed the source of information on the ground that he would disclose the same in the Court only.

(xviii) It is clear that Raghvendra Singh (P.W.5) in connivance with the prosecution witnesses, Ramprakash (P.W.1) and Manohar Singh (P.W.2) prepared a false case and without there being any evidence/ material registered false F.I.R. against Nandu, Rajesh and others. There is nothing on record to show that how Raghvendra Singh (P.W.5) had recovered Ramprakash (P.W.1), specifically when Ramprakash (P.W.1) had stated that he had escaped from the captivity of the accused persons on his own. Raghvendra Singh (P.W.5) did not conduct Test Identification Parade. On the contrary, admittedly allowed the witnesses to see the appellants in the police station. Thus, it is held that the conduct of Raghvendra Singh was not in accordance with the duties attached to a police personal (sic: Personnel) exercising its powers under Criminal Procedure Code. He had acted in connivance with Ramprakash (P.W.1), Manohar Singh (P.W.2) and Omprakash (P.W.3).

23. Thus, it is clear that the prosecution has failed to prove that any ransom was ever demanded by the appellants. The prosecution has failed to prove, that the appellants had abducted Ramprakash (P.W.1). In fact, the prosecution has failed to prove that Ramprakash (P.W.1) was ever abducted. There is no evidence to show that any ransom was demanded. It is not the case of the prosecution that any ransom amount was paid. From the evidence of Omprakash (P.W.3), it is clear that he had a strong motive to falsely implicate Rajesh. Further, the appellants had also taken a stand by suggesting to Ramprakash (P.W.1) and Manohar Singh (P.W.2) that Nandu and Rajesh have been falsely implicated on account of enmity.

24. Accordingly, it is held that the prosecution has miserably failed to prove the guilt of the appellants beyond reasonable doubt. On the contrary, there is an ample material on record to suggest that the appellants were falsely implicated by the witnesses, with the help of Raghvendra Singh (P.W.5) with a sole intention to grind their axe. Therefore, all the Appellants are acquitted of charges under Section 364-A of IPC read with Section 13 of M.P.D.V.P.K. Act and under Section 346 of IPC.

25. *Ex consequenti,* the judgment and sentence dated 26-4-2008 passed by Special Judge, Datia in Special Sessions Trial No.58/2005 is hereby **Set aside.**

26. The appellant Rajesh @ Babba (Criminal Appeal No.466 of 2008) is in jail. He be released immediately, if not warranted in any other case.

27. All other appellants are on bail. Their bail bonds are discharged. They are no more required to mark their presence before the Registry of this Court.

28. Before parting with this judgment, this Court is of the considered opinion, that this Court would be failing in discharging its Constitutional duties, if the disturbing facts are not taken note of.

29. The Appellant Suresh (Cr.A. No.463 of 2008) was arrested on 20-12-2005 and was released on bail by order dated 26-5-2017, i.e., after 11 years and 9 months (Approximately) of actual custody. Similarly, Appellant Bhaggu Dheemer (Cr.A. No. 466 of 2008) was arrested on 16-8-2005 and was released on bail by order dated 9-11-2016 i.e., after 11 years and 3 months (Approximately) of actual custody. Appellant Rajesh @ Babba (Cr.A. No.466 of 2008) was arrested on 10-2-2006 and has never been released on bail either during trial nor in this appeal. Appellant Kailash (Cr.A. No.482 of 2008), was arrested on 16-8-2005 and was released on bail by order dated 31-7-2017 i.e., after 11 years and 11 months (Approximately) of actual custody and Ramcharan (Cr.A. No.482/2008) was arrested on 26-10-2005 and was released by order dated 31-7-2017 i.e., after 11 years and 9 months (Approximately) of actual custody.

30. Thus, it is clear that all the appellants have spent more than 11 years in actual custody on account of their false implications. Now the question for consideration is as to whether their honorable acquittal is sufficient or their illegal custody on account of false evidence is liable to be compensated?

31. There is no provision in Cr.P.C. for grant of compensation to an accused, who was apparently implicated falsely due to ill designs of the witnesses. However, Article 21 of the Constitution of India provides as under :

> **21. Protection of life and personal liberty.**—No person shall be deprived of his life or personal liberty except according to procedure established by law.

32. The Supreme Court in exercise of its power under Article 142 of Constitution of India has awarded compensation to the accused persons who were falsely implicated and had suffered jail sentence on account of their false implication. In the case of *Ankush Maruti Shinde Vs. State of Maharashtra* reported in (2019) 15 SCC 470 the Supreme Court has held as under :

> 15..... Their family members have also suffered. Therefore, in the facts and circumstances of the case, and in exercise of our powers under Article 142 of the Constitution of India, we direct the State of Maharashtra to pay a sum of Rs 5,00,000 to each of the accused by way of compensation, to be deposited by the State with the learned Sessions Court within a period of four weeks from today and on such deposit, the same be paid to the accused concerned on proper identification. The learned Sessions Court is directed to see that the said amount shall be used for their rehabilitation. At the cost of the repetition, it is observed that the aforesaid compensation is awarded to the accused and in the peculiar facts and circumstances of the case and in exercise of powers under Article 142 of the Constitution of India.

33. In case of violation of Fundamental Rights, the Constitutional Courts can award monetary compensation. The Supreme Court in the case of *State of Gujarat v. Islamic Relief Committee of Gujarat,* reported in (2018) 13 SCC 687 has held as under :

> **28.** In *Hindustan Paper Corpn. Ltd.,* the Court was considering whether the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India could have directed payment of interest by way of compensation. The issue before the Court pertained to an order by which the Division Bench of the Calcutta High Court directed the appellant before this Court to refund the amount advanced to it with 12% p.a. interest to the respondents. The factual matrix in the said case was that the Ministry of Human Resource Development, Department of Education, Government of India floated a scheme purported to be for securing equitable distribution of white printing paper. The said scheme had certain relevant features. Pursuant to the scheme, the respondents allegedly placed orders for supply of white paper upon the appellant therein which the appellant Corporation could not supply. The learned Single Judge by ex parte order had directed the Corporation to take immediate steps for release of white concessional paper to the respondents wherefor allegedly the advance money had already been accepted by them. The application for recall was dismissed. In appeal, the Division Bench noted the contention of the appellant and took

into account that the appellant had already refunded the large amount to the allottees without any interest subsequent to the discontinuation of the scheme. However, it held that by such act it could not absolve the Corporation from the liability to compensate the respondents in cash if not in kind in consideration of their default and accordingly it directed for payment of interest at 12% p.a. The three-Judge Bench observed that the scheme in question did not have the force of law and even if it did, a writ of mandamus could not have been issued by directing grant of compensation. In that context, the Court ruled: (SCC p. 216, para 8)

> *"8. ...* Public law remedy for the purpose of grant of compensation can be resorted to only when the fundamental right of a citizen under Article 21 of the Constitution is violated and not otherwise. It is not every violation of the provisions of the Constitution or a statute which would enable the court to direct grant of compensation. The power of the court of judicial review to grant compensation in public law remedy is limited. The instant case is not one which would attract invocation of the said rule. It is not the case of the respondents herein that by reason of acts of commission and omission on the part of the appellant herein the fundamental right of the respondents under Article 21 of the Constitution has been violated."

29. On a perusal of the judgment in its entirety, we find the case hinges on its own facts regarding grant of compensation. The power of the court of judicial review to grant compensation in public law is limited. There cannot be any quarrel about the said proposition of law.

30. In *Rabindra Nath Ghosal,* the assail was to the order of the learned Single Judge whereby he had directed the University of Calcutta to pay to the appellant before him Rs 60,000 as monetary compensation and damages. The Division Bench overturned the same by holding that in the facts of the case compensation should have been awarded but the proper course should have been to leave the parties to agitate their grievances before the civil court. This Court referred to the decision in *Common Cause* and adverted to the concept of public law remedy and opined: *(Rabindra Nath Ghosal case,* SCC p. 483, para 8)

> *"8. ...* A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution

is undoubtedly an acknowledged remedy for protection and enforcement of such right and such a claim based on strict liability made by resorting to a constitutional remedy, provided for the enforcement of fundamental right is distinct from, and in addition to the remedy in private law for damages for the tort, as was held by this Court in *Nilabati Behera*"

And again: (SCC p. 483, para 9)

"*9*. The courts having the obligation to satisfy the social aspiration of the citizens have to apply the tool and grant compensation as damages in public law proceedings. Consequently when the court moulds the relief in proceedings under Articles 32 and 226 of the Constitution seeking enforcement or protection of fundamental rights and grants compensation, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizens. But it would not be correct to assume that every minor infraction of public duty by every public officer would commend the court to grant compensation in a petition under Articles 226 and 32 by applying the principle of public law proceeding. The court in exercise of extraordinary power under Articles 226 and 32 of the Constitution, therefore, would not award damages against public authorities merely because they have made some order which turns out to be ultra vires, or there has been some inaction in the performance of the duties unless there is malice or conscious abuse. Before exemplary damages can be awarded it must be shown that some fundamental right under Article 21 has been infringed by arbitrary or capricious action on the part of the public functionaries and that the sufferer was a helpless victim of that act."

The Supreme Court in the case of *S. Nambi Narayanan Vs. Siby Mathews* reported in (2018) 10 SCC 804 has held as under :

34. As stated earlier, the entire prosecution initiated by the State Police was malicious and it has caused tremendous harassment and immeasurable anguish to the appellant. It is not a case where the accused is kept under custody and, eventually, after trial, he is found not guilty. The State Police was dealing with an extremely sensitive case and after arresting the appellant and some others, the State, on its own, transferred the case to the Central Bureau of Investigation. After comprehensive enquiry, the

closure report was filed. An argument has been advanced by the learned counsel for the State of Kerala as well as by the other respondents that the fault should be found with CBI but not with the State Police, for it had transferred the case to CBI. The said submission is to be noted only to be rejected. The criminal law was set in motion without any basis. It was initiated, if one is allowed to say, on some kind of fancy or notion. The liberty and dignity of the appellant which are basic to his human rights were jeopardised as he was taken into custody and, eventually, despite all the glory of the past, he was compelled to face cynical abhorrence. This situation invites the public law remedy for grant of compensation for violation of the fundamental right envisaged under Article 21 of the Constitution. In such a situation, it springs to life with immediacy. It is because life commands self-respect and dignity.

35. There has been some argument that there has been no complaint with regard to custodial torture. When such an argument is advanced, the concept of torture is viewed from a narrow perspective. What really matters is what has been stated in *D.K. Basu* v. *State of W.B.* The Court in the said case, while dealing with the aspect of torture, held: (SCCpp. 424-25, paras 10-12)

> "*10*. "Torture" has not been defined in the Constitution or in other penal laws. "Torture" of a human being by another human being is essentially an instrument to impose the will of the "strong" over the "weak" by suffering. The word *torture* today has become synonymous with the darker side of human civilisation.
>
> 'Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralysing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.'
>
> — Adriana P. Bartow
>
> *11*. No violation of any one of the human rights has been the subject of so many Conventions and Declarations as "torture" — all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. "Custodial torture" is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward — flag of humanity must on each such occasion fly half-mast.

> *12*. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law."

36. From the aforesaid, it is quite vivid that emphasis has been laid on mental agony when a person is confined within the four walls of a police station or lock-up. There may not be infliction of physical pain but definitely there is mental torment. In *Joginder Kumar* v. *State of U.P.,* the Court ruled: (SCC pp. 263-64, paras 8-9)

> "*8*. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?
>
> *9*. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider...."

37. In *Kiran Bedi* v. *Committee of Inquiry,* this Court reproduced an observation from the decision in *D.F. Marion* v. *Davis:* (SCC pp. 515, para 25)

> "*25*. ... 'The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property.'"

38. Reputation of an individual is an insegregable facet of his right to life with dignity. In a different context, a two- Judge Bench of this Court in *Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal* has observed: (SCC pp. 307, para 55)

> "*55*. ... reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the

posterity."

39. From the aforesaid analysis, it can be stated with certitude that the fundamental right of the appellant under Article 21 has been gravely affected. In this context, we may refer with profit how this Court had condemned the excessive use of force by the police. In *Delhi Judicial Service Assn.* v. *State of Gujarat,* it said: (SCC pp. 454-55, para 39)

> "*39*. ... The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police ... [and it] must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated."

40. If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State Police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant.

41. In *Sube Singh* v. *State of Haryana,* the three-Judge Bench, after referring to the earlier decisions, has opined: (SCC pp. 198-99, para 38)

> "*38*. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right

> under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure."

> **42.** In *Hardeep Singh* v. *State of M.P.,* the Court was dealing with the issue of delayed trial and the humiliation faced by the appellant therein. A Division Bench of the High Court in intra-court appeal had granted compensation of Rs 70,000. This Court, while dealing with the quantum of compensation, highlighted the suffering and humiliation caused to the appellant and enhanced the compensation.

34. This Court has already come to a conclusion that in fact, the appellants were falsely and maliciously framed in connivance with Raghvendra Singh (P.W.5). Thus, the State is responsible for the acts of Raghvendra Singh (P.W.5), i.e., investigating officer.

35. Accordingly, the State Govt. is directed to pay Rs.3 lakh to each of the appellant by way of compensation on account of violation of their fundamental right guaranteed under Article 21 of Constitution of India. The compensation amount shall be paid within a period of one month from today and the State shall file the receipt of payment of compensation amount before the Principal Registrar of this Court within a period of 45 days from today. The State Govt. shall be free to recover the compensation amount from the salary/pension of Raghvendra Singh (P.W.5). The State may also recover from Ramprakash (P.W.1) and Manohar Singh (P.W.2) as arrears of land revenue.

36. Further, the appellants shall be free to institute civil suit against Ramprakash (P.W.1), Manohar Singh (P.W.2) and Raghvendra Singh (P.W.5) for further compensation. If the civil suit is filed, then the compensation awarded by this Court shall **not** be liable to be adjusted.

37. With aforesaid observations, the Cr.A. No.s 463 of 2008, 466 of 2008 and 482 of 2008 are **Allowed.**

Appeal allowed

I.L.R. [2021] M.P. 2339 (DB)
APPELLATE CRIMINAL
Before Mr. Justice Atul Sreedharan & Smt. Justice Sunita Yadav
CRA No. 763/2006 (Jabalpur) decided on 25 October, 2021

NARBAD AHIRWAR & anr. …Appellants

Vs.

STATE OF M.P. …Respondent

(Alongwith CRA Nos. 899/2006, 929/2006, 1144/2006 & 592/2009)

***A. Penal Code (45 of 1860), Section 148 & 302/149 – Appreciation of Evidence* – Held – Ocular evidence is corroborated by medical evidence – Evidence of eye witness is found to be trustworthy and natural – No grave or sudden provocation from victims – Prompt registration of *dehati nalishi* and FIR – Prosecution proved its case beyond reasonable doubt – Appeals dismissed. (Paras 16, 19, 33, 40, 42 & 43)**

क. दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – साक्ष्य का मूल्यांकन – अभिनिर्धारित – चाक्षुष साक्ष्य की चिकित्सीय साक्ष्य द्वारा संपुष्टि – चक्षुदर्शी साक्षी का साक्ष्य भरोसेमंद एवं स्वाभाविक पाया गया – पीड़ितों द्वारा कोई गंभीर और अचानक प्रकोपन नहीं – देहाती नालिशी एवं प्रथम सूचना प्रतिवेदन का तत्परता से रजिस्ट्रीकरण – अभियोजन ने अपना प्रकरण युक्तियुक्त संदेह से परे साबित किया – अपीलें खारिज।

***B. Penal Code (45 of 1860), Section 148 & 302/149 – Eye Witnesses – Credibility* – Held – Eye witnesses in the case were natural and probable, their presence at the place of occurrence is expected being close relatives. (Para 26)**

ख. दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – चक्षुदर्शी साक्षीगण – विश्वसनीयता – अभिनिर्धारित – प्रकरण में चक्षुदर्शी साक्षीगण स्वाभाविक और अधिसंभाव्य थे, करीबी रिश्तेदार होने के नाते घटनास्थल पर उनकी उपस्थिति अपेक्षित है।

***C. Penal Code (45 of 1860), Section 148 & 302/149 – Omissions & Contradictions* – Held – Where a crowd of assailants who are member of unlawful assembly proceed to commit an offence with common object, it is not possible for witnesses to describe accurately the part played by each assailants or to remember each and every blow delivered to the victim – Eye witnesses are rustic villagers, some omissions and contradictions are normal considering the lapse of time and their state of trauma and shock. (Para 26)**

ग. दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – लोप व विरोधाभास – अभिनिर्धारित – जहां हमलावर जो कि विधिविरूद्ध जमाव के सदस्य हैं का एक जनसमूह सामान्य उद्देश्य के साथ अपराध कारित करने के लिए अग्रसर होता है,

साक्षीगण के लिए प्रत्येक हमलावर के द्वारा निभाई गई भूमिका का यथार्थतः से वर्णन करना अथवा पीड़ित पर किये गये प्रत्येक प्रहार को याद रखना संभव नहीं है – चक्षुदर्शी साक्षीगण देहाती ग्रामीण हैं, समय के बीतने एवं उनके आघात और सदमें की स्थिति को ध्यान में रखते हुए कुछ लोप एवं विरोधाभास सामान्य हैं।

***D. Penal Code (45 of 1860), Section 148 & 302/149 – Interested /Related Witness* – Held – Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person – Interestedness of witness has to be considered and not just that he is interested.**

(Para 25)

घ. दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – हितबद्ध/संबंधित साक्षी – अभिनिर्धारित – साधारणतया, वास्तविक अपराधी को बचाने एवं एक निर्दोष व्यक्ति को मिथ्या आलिप्त करने के लिए करीबी रिश्तेदार अंतिम होगा – साक्षी की हितबद्धता पर विचार किया जाना चाहिए एवं न कि केवल वह हितबद्ध है।

***E. Penal Code (45 of 1860), Section 148 & 302/149 – Motive* – Held – Case is based on ocular evidence and issue of motive becomes irrelevant when there is direct evidence of trustworthy witnesses regarding commission of crime – If motive is not established, it does not mean that evidence of eye witnesses will be untrustworthy. (Para 40)**

ङ. दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – हेतु – अभिनिर्धारित – प्रकरण चाक्षुष साक्ष्य पर आधारित है एवं हेतु का विवाद्यक असंगत बन जाता है जब अपराध कारित किये जाने के संबंध में विश्वसनीय साक्षीगण का प्रत्यक्ष साक्ष्य है – यदि हेतु स्थापित नहीं हुआ है, तो इसका यह अर्थ नहीं है कि चक्षुदर्शी साक्षीगण का साक्ष्य अविश्वसनीय होगा।

***F. Penal Code (45 of 1860), Section 148 & 302/149 – Defective Investigation – Effect* – Held – Apex Court concluded that defective investigation by itself cannot be a ground for disbelieving eye witnesses and acquitting the accused if their testimony is found trustworthy – Mere on the ground that there is some defect in investigation, does not create doubt over statements of eye witnesses. (Para 39)**

च. दण्ड संहिता (1860 का 45), धारा 148 व 302/149 – त्रुटिपूर्ण अन्वेषण – प्रभाव – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि त्रुटिपूर्ण अन्वेषण चक्षुदर्शी साक्षीगण पर अविश्वास करने एवं यदि उनका परिसाक्ष्य विश्वसनीय पाया जाता है तो अभियुक्त को दोषमुक्त करने के लिए अपने आप में एक आधार नहीं हो सकता – मात्र इस आधार पर कि अन्वेषण में कुछ त्रुटि है, चक्षुदर्शी साक्षीगण के कथनों पर संदेह उत्पन्न नहीं करता।

***G. Criminal Practice – Motive* – Held – Motive is a thing which is primarily known to accused himself and it may not be possible for prosecution to explain what actually prompted or excited him to commit a particular crime.**

(Para 40)

छ. दाण्डिक पद्धति – हेतु – **अभिनिर्धारित – हेतु एक ऐसी वस्तु है जो प्राथमिक रूप से स्वयं अभियुक्त को ज्ञात होती है एवं एक विशिष्ट अपराध को कारित करने के लिए उसे वास्तव में किसने प्रेरित या प्रदीप्त किया यह स्पष्ट करना अभियोजन के लिए संभव नहीं हो सकता।**

Cases referred:

AIR 1962 SC 399, AIR 1956 SC 526, 1996 (8) SCC 199, 2003 (11) SCC 280, (2002) 3 SCC 57 : 2002 SCC (Cri) 519, AIR 1973 SC 55.

Aseem Dixit, assisted with *S.D. Mishra*, as *Amicus Curiae* for the appellants in CRA Nos. 763/2006 & 899/2006.

A. Usmani, as *Amicus Curiae* for the appellants in CRA Nos. 929/2006, 1144/2006 & 592/2009.

Manhar Dixit, P.L. for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by : **SUNITA YADAV, J. :-** The appellants have filed these appeals being aggrieved by the judgment and order dated 12.04.2006 passed in Sessions Trial No.394/2004 by the learned Additional Sessions Judge, Khurai Distt. Sagar (M.P.) whereby each appellant has been convicted for the offence punishable under Sections 302/149 of the Indian Penal Code (three counts) for committing the murder of Shribai, Ram Singh and Pratham Singh and sentenced to undergo life imprisonment and a fine of Rs.1,000/-(three counts), failing to pay fine, additional rigorous imprisonment for one year and also committing the offence under Section 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 1 year and a fine of Rs.500/-, in default of payment of fine, to undergo further six months additional imprisonment.

2. As per letter dated 25.08.2021, the Office Of SHO, Khurai District Sagar and postmortem report dated 09/09/2019 it appears that appellant no.1 Narbad Ahirwar S/o Ganesh Ahirwar (Criminal Appeal No.763/2006) and appellant no.2 Kammod Ahirwar S/o Munna Ahirwar (Criminal Appeal No.899/2006) have died during the pendency of appeals on 24.10.2014 and 09/9/2019 respectively. Therefore, these appeals so far it relate to appellant no.1 Narbad Ahirwar S/o Ganesh Ahirwar and appellant no.2 Kammod Ahirwar S/o Munna Ahirwar, stand abated.

3. The prosecution case in nutshell is that a civil case regarding the Patta of a piece of land was running between deceased Ram Singh and the accused persons/ appellants at Tehsil Court, Khurai. Deceased Shribai was the mother and deceased Pratham Singh was the father of Ram Singh. On 30/06/2004 Ram Singh was returning home after attending the court hearing of the said civil case. The complainant Janki (PW-1) along with her family members was sitting in front of

their house and waiting for Ram Singh to come home. At about 9:30 PM the complainant saw her brother coming towards their house. At that very moment accused Veer Singh came and hit Ram Singh with an axe on his neck. Co-accused Bhuvani Singh also gave a blow of axe over Ram Singh's chest. When Ram Singh raised an alarm, his parents Shribai and Pratham Singh rushed to rescue him. Immediately thereafter other accused persons armed with axes and lathis arrived and started hitting Shri Bai, Pratham Singh and Ram Singh. With the blows of lathis and axes injured Ram Singh, Shri Bai and Pratham Singh fell down dead on the spot.

4. The further story of the prosecution is that one Kunjan Singh (PW-13) went to the Police Station Khurai and informed the SHO J.D. Bhosle (PW-16) about the incident. PW-16 J.D. Bhosle arrived at the place of occurrence and registered the Dehati Nalishi Exhibit-P/1 at the instance of the complainant Janki Bai who is the daughter of Shribai and Pratham Singh and sister of Ram Singh and thereafter registered the FIR Exhibit-P/9 on the basis of Dehati Nalishi. After conclusion of the investigation a charge sheet under Sections 147,148,149,302 of IPC was filed against the appellants.

5. The trial Court framed charges under Sections 148, 302, 302/149 of IPC. The appellants denied the charges and claimed to be tried. Trial was conducted and evidence were led by the parties. Trial Court convicted the appellants for the offences under Sections 302/149 (three counts) and 148 of the IPC and sentenced them as referred therefore.

6. The learned counsel for the appellants submitted that the trial Court grossly erred in holding the appellants guilty for committing the murder of Ram Singh, Shribai and Pratham Singh. Learned trial Court should have seen that the evidence of prosecution witnesses Janki (PW-1), Savitri bai (PW-2), Onkar (PW-7) and Girwar (PW-10) ought not to have been believed because they are interested witnesses being the family members of the deceased persons. Investigation is faulty and the conviction based on such faulty investigation as well as evidence of interested witnesses is perverse and liable to be set aside. The learned counsel for the appellants further submitted that the trial Court has also erred in relying upon the testimony of Kunjan (PW-13) and Puran Singh (PW-14) as they are not the eye witnesses of the incident.

7. On the contrary, learned Panel Lawyer for the State submitted that the impugned judgment and order is just and proper. Learned trial Court has not erred in holding the appellants guilty for the offences as mentioned above because the evidence of eye witnesses Janki (PW-1), Savitri bai (PW-2), Onkar (PW-7) and Santosh (PW-8) is natural and trustworthy and is also supported by the medical evidence. He further submitted that the prosecution has successfully proved the motive behind the crime and therefore no error is committed by the trial court in

convicting the appellants for the offences under Sections 148, 302/149 of the Indian Penal Code.

8. We have heard the counsels for the parties and perused the record.

9. The first and foremost question for consideration in the case in hand is about the nature of death of deceased persons namely Ram Singh, Pratham Singh and Shri Bai. Postmortem report Exhibit-P/11, P/12 and P/13 coupled with the testimony of Dr. Yatnesh Tripathi indicate that the cause of death was of homicidal in nature because of the injuries sustained by the deceased persons as referred in the report. Now the question for consideration is the involvement of the appellants in murder of the deceased persons.

10. According to the prosecution story, complainant Janki (PW-1), (PW-2) Savitri Bai, (PW-7) Omkar, (PW-8) Santosh, (PW-10) Girwar Singh, (PW-13) Kunjan Singh and (PW-14) Puran Singh are the eye witnesses to the incident.

11. PW-1 Janki has deposed that Ram Singh was her brother, Pratham Singh was her father and Shribai was her mother. Savitri Bai (PW-2) is the wife of Ram Singh. Her father had a piece of land in village Giltora. Patta of the said land was allotted to accused Veer Singh and Hardas, and for the aforesaid land dispute, a case was pending in Khurai. About 8 months ago, his brother Ram Singh went to Khurai to attend the hearing of that case. She along with her parents and other family members was sitting outside the house and waiting for Ram Singh to come back. At about 9 PM she saw her brother Ram Singh coming toward their house. At that moment Veer Singh inflicted a blow of an axe on the neck of Ram Singh upon which her brother cried for help. After that, all the accused persons namely Pancham, Ramma, Bhuvani, Hardas, Natthau, Narwar, Kammod, Santosh and Gorelal, armed with sticks and axes, arrived and ran behind Ram Singh. When her father and mother rushed towards Ram Singh to save him, all the accused persons started inflicting blows of axes and sticks upon them. Accused Veer Singh hit her mother on her neck with an axe. Her father also received injury on his chest by an axe blow. Her brother, mother and father fell on the ground and died after receiving such injuries. This witness has further stated that her sister-in-law Savitri Bai (PW-2), brothers Onkar (PW-7) and Santosh (PW-8), were also present at the time of incident and saw the entire incident. Girwar (PW-10) and Kunjan (PW-13) arrived on the spot to rescue her brother and parents and saw the whole incident.

12. PW-1 Janki has further deposed that the police arrived on the spot after half an hour and noted down her report and registered Dehati Merg Intimation Ex.P/2 as well as Merg Intimation (inquest report) Ex.P/10 regarding the death of her brother and parents. Next day, the police prepared spot map Ex.P/3. Patwari has also prepared spot map as per Ex.P/4.

13. PW-16 J.D. Bhosle, the Investigating Officer, has deposed that on 30/06/ 2004 one Kunjan Singh came to the police station and informed that in village Giltora, Ram Singh, Shribai and Pratham Singh were assaulted by Gajju, Veer Singh, Bhuvani Singh, Narbad, Kammod and Raja etc with the axes. Ram Singh was lying injured on the spot. At about 22:10 PM the said information was registered in Roznamcha Sanha (daily diary) at No.1868. PW-16 J.D. Bhosle has further stated that he immediately informed the SDOP about the intimation he had received and recorded the same in Sanha No.1870. Thereafter he left for village Giltora along with the police force to verify the intimation received. Upon reaching the place of incident, he had registered Dehati Naleshi Ex.P/1 and Merg Intimation on the basis of the report of Janki (PW-1).

14. PW-5 Asharam Chourasiya has corroborated the statement of PW-16 J. D. Bhosle and deposed that on 01/07/2004 he was posted as Head Constable at Police Station Khurai. He received Dehati Naleshi Ex.P/1 and Dehati Merg Intimation Ex.P/2 and on the basis of it, First Information Report Ex.P/9 and Merg Intimation Ex.P/10 were registered.

15. Upon joint perusal of the statements of Janki Bai (PW-1), J D Bhosle (PW-16) and Santosh (PW-8), it is proved that soon after the incident, Merg Intimation, Dehati Nalishi and First Information Report were registered on the basis of the report of Janki Bai (PW-1).

16. After going through the Dehati Naleshi Ex.P/1 which was registered at about 11:30 PM on 30/06/2004 it reveals that the names of all the accused persons are mentioned on it. The time gap between the incident and registration of Dehati Nalishi (Ex.P/1) is too short to concoct a false story against the accused persons, especially when the complainant Janki Bai (PW-1) was just a 16 year old rustic villager at the time of incident. In Dehati Nalishi (Ex.P/1), the involvement of accused persons for inflicting injuries to Ram Singh, Shribai and Pratham Singh is mentioned and names of Savitri Bai (PW-2), Onkar (PW-7) and Santosh (PW-8) as eye witnesses is also mentioned. Therefore, the presence of above witnesses on the spot at the time of incident cannot be disbelieved.

17. Savitri Bai (PW-2) has stated in her Court evidence that around 8 months ago, her husband Ram Singh went to Khurai to attend the case regarding Patta of land. She and other family members were at their home in Giltora and were waiting for Ram Singh to come back. She further stated that her sister-in-law Janki Bai, mother-in-law Shribai, father-in-law Pratham Singh and brothers-in-law Onkar and Santosh were sitting in their courtyard. At about 9 PM, her husband Ram Singh arrived at the door of house shouting that Veer Singh had inflicted an axe on his shoulder. Upon which her mother-in-law reached near Ram Singh who was about 7-8 meter away from the house. Thereafter accused Hardas caught hold of her mother-in-law and accused Veer Singh inflicted an axe blow on her neck.

After that, Veer Singh, Hardas, Gajju, Bhuvani, son-in-law of Bhuvani, Pancham, Narbad, Gorelal, Kammod and Rama started beating her husband Ram Singh with axes and sticks. This witness has further stated that when her father-in-law rushed to save Ram Singh all accused persons started hitting her husband Ram Singh, father-in-law (Pratham Singh) and mother-in-law (Shri Bai). Her husband and in-laws fell down dead on account of injuries.

18. Eye witnesses, Onkar (PW-7) and Santosh (PW-8) have also supported the case of the prosecution in their Court statements and deposed in the same line as Janki Bai (PW-1) and Savitri Bai (PW-2) stating that accused persons who were armed with axes and sticks, assaulted Ram Singh, Pratham Singh and Shri Bai who died on the spot.

19. During the cross-examination of above mentioned witnesses nothing significant had transpired that goes to the root of the prosecution story. They all are family members of the deceased Ram Singh, Pratham Singh and Shribai and were residing jointly in the house near the place on incident. Therefore, their presence in the scene of occurence is normal. Involvement of all the accused persons is also mentioned in promptly registered Dehati Nalishi which corroborates their statements.

20. Puran Singh (PW-14) has not fully supported the case of the prosecution. According to this witness at about 8 PM when he was having dinner at his home, Girwar Singh came to his house and told that Ram Singh and his parents were being assaulted by Veer Singh, Gajju, Hardas and Bhuvani. On arrival at the place of incident, he saw that Ram Singh, Pratham Singh and Shribai were lying dead on the ground. He only saw Veer Singh, Hardas Singh, Bhuvani, Gajju and Narwar on the spot armed with sticks, axes and *ballams*. This witness has further stated that the incident took place near the house of Bhuvani. and the quarrel between the parties was due to some land dispute. He saw the injuries inflicted upon the bodies of dead persons.

21. Girwar Singh (PW-10) has deposed that around one year ago at about 8 PM he was standing near the place of occurrence.At that moment Veer Singh, Hardas, Gajju who were wielding sticks and axes with them, started assaulting Ram Singh, Pratham Singh and Shribai. Veer Singh inflicted an axe blow on the neck of Ram Singh. Due to darkness, he could not recognize the other persons. Veer Singh, Hardas and Gajju also assaulted Pratham Singh and Shribai with sticks and axes. All the injured persons died on the spot.

22. Kunjan Singh (PW-13) who said to have informed the police about the incident has deposed that about one year ago at about 7:30 PM he was sleeping at his home. Upon hearing some noise he went to the place of occurence and saw that Pradeep Singh and Gajju Singh were assaulting Ram Singh. Veer Singh was wielding an axe in his hand and Gajju was wielding some sharp cutting weapon which he could not recognize properly. Due to darkness, he could not see who are

the other persons. This witness has further stated that parents of Ram Singh were already dead when he arrived. According to this witness there was a land dispute between the two parties.

23. Kunjan Singh (PW-13) was declared as hostile by the prosecution, but during his cross-examination, he did not support the case of the prosecution that along with Pradeep Singh, Veer Singh and Gajju Singh other accused persons were also present on the spot and participated to commit the crime.

24. Learned counsel for the appellants have challenged the evidence of the prosecution witnesses Janki Bai (PW-1), Savitri Bai (PW-2), Onkar (PW-7) and Santosh (PW-8) on the ground that they are interested witnesses being the family members of the deceased and independent witnesses PW-10 Girwar Singh, PW-13 Kunjan Singh and PW-14 Puran Singh, have not completely corroborated the prosecution version.

25. The above argument has no weight because ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. The relationship or the partisan nature of the evidence only puts the court on its guards to scrutinize the evidence more carefully. Interestedness of the witness has to be considered and not just that he is interested.

26. Learned counsel for the appellants have further argued that the statements of Janki Bai (PW-1), Savitri Bai (PW-2), Onkar (PW-7) and Santosh (PW-8) are not reliable as there are contradictions and omissions regarding the part played by each one of the appellant. Aforesaid argument again is not well-founded. Where a crowd of several assailants who are members of unlawful assembly proceed to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailant or to remember each and every blow delivered to victim. Eye witness namely Janki Bai (PW-1), Savitri Bai (PW-2), Onkar (PW-7) and Santosh (PW-8) are rustic villagers; therefore, some omissions and contradictions are normal considering the lapse of time, their state of trauma and shock while watching their brother/husband and parents being killed. The above witnesses were natural and most probable and their presence at the place of occurrence is expected being close relatives.

27. The medical evidence adduced by the prosecution has great corroborative value to asses the veracity of prosecution witnesses. In this case the prosecution has examined PW-6 Dr. Yatnesh Tripathi who is the writer of post-mortem report of deceased Shribai, Pratham Singh and Ram Singh to prove its case. This witness has stated that on 01/07/2004 he conducted the post-mortem of deceased Shribai and found following *ante-mortem* injuries on her body.

"1. A large chop laceration wound present over right side of face and neck, directed downwards and medially size-10cm x 3cm x 5.5cm.

2. Extending from right side mastoid process, anteriorly and forwards and slightly upwards open with clean and sharp massive destruction of underlying tissue seen.

3. From right side mandible showing slice fracture over inferior border extensive bruising seen around the surrounding tissues vessels in neck on right side namely common carotid artery and external & internal jugular veins are cut.

28. This witness has further stated that the cause of death of Shri Bai is shock due to external hemorrhage as a result of chop lacerated wound which appears to be caused by heavy weapon with sharp cutting edge. Injury is homicidal in nature and duration of death is within 12 to 24 hours from postmortem examination.

29. According to PW-6 Dr. Yatnesh Tripathi while conducting the post-mortem of deceased Pratham Singh following injuries are found on his body.

"1. Lacerated wound size 4.5cm x 1cm bone deep present over posterior aspect of scalp, appears to be cause by hard and blunt object underlying bone intact.

2. Lacerated wound size 5 cm x 2 cm seen over from right side temporal region of scalp, bone deep, obliquely placed dried stains of blood is present underlying bone is showing hair line fracture in temporal bone caused by hard and blunt object.

3. A chop laceration wound sized 8cm x 3cm is present transversely over the anterior aspect of chest, over the lower sternum and from right side of chestwall, depth is about 9cm marked destructive of underlying soft tissues. Stain of blood present around the wound with vomiting material seen in wound. Trachea exposed, lacerated with right from branches filled with vomiting.

4. Trachea of body of sternum seen hole body cut fracture split of Rib No.3rd from right side seen dividing Rib to upper and lower portion.

5. Laceration of Ascending Aorta seen complete laceration.

6. Heart intact small amount of blood + in both chambers right lung chopped off. Wound is diverted posteriorly and slightly upward caused by hard and sharp and heavy object homicidal in nature.

30. This witness has further stated that the cause of death of Pratham Singh is due to shock as a result of injury to vital organs of body caused by hard and sharp and heavy object. Injury is homicidal in nature and duration of death is within 12 to 24 hours from time of postmortem examination.

31. According to this witness he has also conducted postmortem of deceased Ram Singh and found the following injuries on his body.

> "1. Chop lacerated wound seen over fronto parietal region of scalp on right side. Size 10cm x 1.5cm x 4cm up to the cranial cavity within brain matter exposed to exterior margins clean and sharp fracture seen over frontal and parietal bones of scalp. Direction of wounds is inferiorly and laterally.
>
> 2. Chop laceration wound present over occipital region from right side of scalp transversely placed size 8cm x 2cm x 4cm penetrating x cranial cavity, directed anteriorly and slightly inferiorly brain matter exposed to exterior, fracture seen over right from occipital bone scalp.
>
> 3. Chop lacerated wound present over post aspect of neck obliquely blade at lower neck level, size 6.5cm x 3cm x 3cm bone deep. Bone exposed, fracture seen over C5 and C6 pedicles with bone pieces hanging with soft tissue attaching spinal cord visible direction of wound is anteriorly and medially located over from left side of neck.
>
> 4. Lacerated wound size 5cm x 2cm x 3cm deep located over upper back 1cm below inferior angle of left scapula longitudinally placed soft tissue deep diverted forwards and laterally margin sharp.
>
> 5. Chop lacerated wound present over from left side of face size 4.5cm x 1.5cm x 2cm bone deep margin sharp extending from 1cm below medial canthus of left eye obliquely up to 2cm above and lateral to left corner of mouth. Bones exposed nasal cavity and maxillary sinus visible.
>
> 6. Lacerated wound 2cm x 1cm soft tissue deep present over from right forearm, lower 3rd, radial border. No fracture of underlying bone seen.
>
> 7. Incised wound 2cm x 1cm is present over left specular region superficial skin deep.
>
> 8. Incised wound 1cm x 1cm skin deep present over post surface of shoulder.

32. The cause of death of Ram Singh is as a result of injury to vital organs of body which are caused by heavy weapon with sharp cutting edge. Injuries are homicidal in nature. Duration of death is within 12 to 24 hours from time of

postmortem.

33. The above statement of Dr. Yatnesh Tripathi (PW-6) which remained unchallenged in his cross examination proves the statements of the eye witnesses (PW-1) Janki Bai, (PW-2) Savitri Bai, (PW-7) Onkar, (PW-8) Santosh being truthful that the injuries have been caused in the manner alleged by them and the deaths of deceased persons could have been caused by such injuries.

34. Learned counsel for the appellants further argued that the site plan prepared by the Investigating Officer does not indicate the places where accused persons and eye witnesses were standing and from where the eye witnesses saw the incident, therefore, the statements of eye witnesses cannot be relied upon. But the above argument is not tenable in the light of the principle laid down by Supreme Court in the case of *Tori Singh and Another Vs. State of Uttar Pradesh* reported in AIR 1962 SC 399 in which it is held that the marking of the spot on the sketch- map would not be admissible in view of the provisions of Section 162 of the Cr.P.C. The relevant para of the judgment is as below:

> "7 ....In the second place, the mark on the sketch-map was put by the Sub-Inspector who was obviously not an eye-witness to the incident. He could only have put it there after taking the statements of the eye witnesses. The marking of the spot on the sketch-map is really bringing on record the conclusion of the Sub-Inspector on the basis of the statements made by the witnesses to him. This in our opinion would not be admissible in view of the provisions of S. 162 of the Code of Criminal Procedure, for it is in effect nothing more than the statement of the Sub-Inspector that the eye-witnesses told him that the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would be inadmissible in view of the clear provisions of S. 162 of the Code of Criminal Procedure as it will be no more than a statement made to the Police during investigation......"

35. In the case of *Santa Singh Vs. The State of Punjab* as reported in AIR 1956 SC 526 it was held as under:

> The sketch-map in the present case has been prepared by the Sub-inspector and the place where the deceased was hit and also the places where the witnesses were at the time of the incident were obviously marked by him on the map on the basis of the statements made to him by the witnesses. In the circumstances these marks on the map based on the statements made to the Sub-inspector are inadmissible under S. 162 of the Code of Criminal Procedure and cannot

> be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch-map."

36. The same view has been adopted in the case of *Jagdish Narain & Anr. Vs. State of U.P.* reported in 1996 (8) SCC 199. In the light of above we do not find that omission of giving the distance or even the place where the witnesses were standing in the site plan would create doubt on the presence of eye witnesses after they have been examined by the prosecution on oath in the Court.

37. Learned counsel for the appellants also argued that the incident occurred at about 9 to 9:30 in the night therefore it was not possible for the witnesses to see the assailants. The said argument does not carry any weight as PW-1 Janki at para 37 of her statement has specifically deposed that a bulb was burning in the house of one Harising Adiwasi near the place of occurrence and they saw the incident in the light of that bulb.

38. The learned counsel for the appellants further argued that the bulb is not shown in the site plan; therefore, the evidence of eye witnesses are not trustworthy that they saw the accused persons assaulting the deceased persons in the light of a bulb. But the above argument again has no substance as in the case of *State of UP Vs. Babu and Ors.* reported in 2003 (11) SCC 280, the Supreme Court in paragraph 5 has observed that:

> "A bare perusal of the High Court's Judgment goes to show that its approach was rather casual and no effort was made to analyse the evidence. It is to be noted that the High Court did not examine the evidence of PWs. 1 and 3 with the required care. Great emphasis was laid by the High Court on the fact that in the site plan place where gaslight was found had not been indicated. The site plan is not substantive evidence. The High Court seems to have proceeded on the basis that omission to indicate the location gaslight in the site plan was fatal. *This Court in Shakti Patra and another v. State of West Bengal 1981CriLJ645* held that where prosecution witness testified that he had identified the accused in the light of the torch, held by him, the presence of torch would not be said to be not proved on the ground that there was no mention of the torch in the FIR or in the statement of the witness before the police, when there was testimony of other witnesses that when they reached the spot they found the torch burning. To similar effect is the conclusion in *Aher Pitha Vajshi and Ors. v. State of Gujarat 1983 CriLJ 1049*. It would be proper to take note of what was stated by this Court in *George and Ors. v. State of Kerala and Anr. 1998 CriLJ 2034* regarding statements contained in an inquest report. The statements

> contained in an inquest report, to the extent they relate to what the Investigation Officer saw and found are admissible but any statement made therein on the basis of what he heard from others, would be hit by Section 162 of Code of Criminal Procedure, 1973 (in short 'Cr. P.C.'). The position is no different in case of site plan."

39. Learned counsels for the appellants have further argued that the prosecution story becomes doubtful as the FIR was not registered immediately after receiving the information about the incident. However, the above argument is not acceptable in the light of the statement of Investigating Officer, PW-16 J. D. Bhosle at para 12 where he has deposed that the informer described the state of victims being very critical and he wanted to provide medical aid to the victims at the earliest; therefore, he considered it proper to leave the police station immediately after receiving the information. Moreover in the case of *Allarakha K. Mansuri Vs. State of Gujarat* reported in [(2002) 3 SCC 57:2002 SCC (Cri) 519], it is observed by the Supreme Court that defective investigation by itself cannot be a ground for disbelieving the eye witnesses and acquitting the accused if their testimony is found trustworthy. In this case, the evidence of eye witnesses is found to be trustworthy and natural, therefore, merely on the ground that there is some defect in investigation, does not create doubt over the statements of eye witnesses.

40. The learned Counsel for the appellants have further argued that since the prosecution has failed to produce the documents of the civil case allegedly pending between the parties; therefore, motive behind the crime is not proved. We don't agree with the above contention because this case is based on ocular evidence and the issue of motive becomes totally irrelevant when there is direct evidence of trustworthy witnesses regarding the commission of the crime. In fact, motive is a thing which is primarily known to the accused himself and it may not be possible for the prosecution to explain what actually prompted or excited him to commit a particular crime. In *Shivji Genu Mohite Vs. State of Maharashtra,* AIR 1973 SC 55, the Supreme Court held that in a case where the prosecution is not able to discover an impelling motive, that could not reflect upon the credibility of a witness proved to be a reliable eye-witness. Evidence as to motive would, no doubt, go a long way in cases wholly dependent on circumstantial evidence. Such evidence would form one of the links in the chain of circumstantial evidence in such a case. But that would not be so in cases where there are eye-witnesses of credibility, though even in such cases if a motive is properly proved, such proof would strengthen the prosecution case and fortify the court in its ultimate conclusion. But that does not mean that if motive is not established, the evidence of an eye-witness is rendered untrustworthy. In the instant case, the ocular evidence which is also corroborated by the medical evidence is found to be trustworthy; therefore, merely on the ground that the document relating to the civil case has not been produced, the statements of eyewitnesses can not be disbelieved.

41. Learned counsel for the appellants have further argued that the prosecution story is unreliable for the simple reason that one has to cross the jungle and fields to reach Giltora from Khurai and had the accused persons wanted to kill Ram Singh they would have killed him on way while coming back from Khurai to Giltora after attending the hearing in the civil matter. In the light of above submission when we see the prosecution evidence, it reveals that the appellants had a better plan to kill Ram Singh that is why Ram Singh was assaulted near the houses of appellants in a lane. The appellants waited for the night to fall so they could easily hide in their houses while waiting for the deceased to come and after completing the task.

42. In the light of discussion above, the case of the prosecution is found to be proved beyond reasonable doubts. There is nothing on record to show that the appellants had received any grave or sudden provocation from the victims or that the appellants had lost their power of self control from any action of the victims. Therefore, the impugned judgment and order by which the appellants are convicted for the offences under Sections 148, 302/149 is found to be in accordance with facts and law.

43. Consequently, the appeals are found to be without substance, hence, **dismissed** and appellants' conviction and sentence under Sections 148, 302/149 of the Indian Penal Code is affirmed.

44. As per Jail report dated 28/03/2021 it appears that appellant Veer Singh has completed 24 years, 7 months and 2 days, appellant Gajju has completed 24 years, 4 months and 21 days, appellant Hardas has completed 24 years, 8 months and 28 days and appellant Santosh has completed 25 years and 1 month of imprisonment on the said date and they are still in jail.

45. The appellants Gorelal Ahirwar, Pancham, Ramma @ Rama and Bhuwani are on bail. Their bail bonds stand cancelled. They are directed to surrender forth with before the trial court on **29/11/2021** and the trial Court shall send them to jail for serving out remaining part of their jail sentence, in accordance with law. The appellants who are on bail are directed to surrender forth with before the trial court on 29/11/2021 and the trial Court shall send them to jail for serving out remaining part of their jail sentence, in accordance with law. In case the appellants do not surrender on the aforesaid date, the trial Court shall take appropriate steps for securing their presence in compliance of this order.

46. However, we make it clear that dismissal of this appeal shall not come in the way of State Government to exercise its discretion for granting remission to the appellants as and when the State feels it just and proper.

47. Before parting with this case, we would like to record our appreciation to Shri Aseem Dixit, Shri S.D. Mishra, and Shri A. Usmani, Advocates, who have appeared as *Amicus Curiae* in these cases and have amply assisted this Court.

Order accordingly

I.L.R. [2021] M.P 2353
ARBITRATION APPEAL
Before Mr. Justice Vishal Dhagat
AA No. 56/2020 (Jabalpur) decided on 9 September, 2021

UPADHYAY CONSTRUCTIONS PVT. LTD. (M/S.) & ors. …Appellants

Vs.

M/S PRISM INFRA PROJECTS & ors. …Respondents

A. Arbitration and Conciliation Act (26 of 1996), Sections 2(1)(e), 16(2)(3), 17, 37(1) & 37(2) and High Court of Madhya Pradesh Rules, 2008, Chapter II, Rule 2 – Interim Orders – Appeal – Jurisdiction of Court **– Held – High Court is not a Court of original civil jurisdiction – High Court will not fall within meaning of "Court" as defined in Section 2(1)(e) – Appeal against order passed u/S 16(2), (3) & 17 will lie before Additional District Judge and District Judge of Civil Court – Arbitration Appeal filed against order passed u/S 17 is not maintainable before High Court – Appeal dismissed.**

(Paras 9 to 11 & 14)

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 2(1)(e), 16(2)(3), 17, 37(1) व 37(2) एवं मध्य प्रदेश उच्च न्यायालय नियम, 2008, अध्याय II, नियम 2 – अंतरिम आदेश – अपील – न्यायालय की अधिकारिता **– अभिनिर्धारित – उच्च न्यायालय, एक मूल सिविल अधिकारिता का न्यायालय नहीं है – उच्च न्यायालय, धारा 2(1)(e) में यथा परिभाषित ''न्यायालय'' के अर्थ के भीतर नहीं आयेगा – धारा 16(2), (3) व 17 के अंतर्गत पारित आदेश के विरूद्ध अपील, सिविल न्यायालय के अतिरिक्त जिला न्यायाधीश एवं जिला न्यायाधीश के समक्ष प्रस्तुत होगी – धारा 17 के अंतर्गत पारित आदेश के विरूद्ध प्रस्तुत की गई माध्यस्थम् अपील, उच्च न्यायालय के समक्ष पोषणीय नहीं है – अपील खारिज।**

B. Arbitration and Conciliation Act (26 of 1996), Sections 2(1)(e), 8, 9 & 34 – Appeal – Jurisdiction of Court **– Held – Word "Court" u/S 2(1)(e) means Principal Civil Court of original jurisdiction, which are Court of Additional District Judge or District Judge in M.P. – Orders passed u/S 8, 9 & 34 passed by Additional District Judge or District Judge are appealable before High Court. (Para 9)**

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 2(1)(e), 8, 9 व 34 – अपील – न्यायालय की अधिकारिता – अभिनिर्धारित – धारा 2(1)(e) के अंतर्गत शब्द ''न्यायालय'' का अर्थ मूल अधिकारिता का प्रधान सिविल न्यायालय है, जो कि म.प्र. में अतिरिक्त जिला न्यायाधीश या जिला न्यायाधीश के न्यायालय हैं – धारा 8, 9 व 34 के अंतर्गत, अतिरिक्त जिला न्यायाधीश अथवा जिला न्यायाधीश द्वारा पारित आदेश, उच्च न्यायालय के समक्ष अपीलीय हैं।

***C. Arbitration and Conciliation Act (26 of 1996), Section 37(1) & 37(2) and High Court of Madhya Pradesh Rules, 2008, Chapter II, Rule 2 – Jurisdiction of High Court – Clarification/Distinction* – Held – Distinction to be made in Chapter II, Rule 2 of M.P. High Court Rules, 2008 between Section 37(1) & 37(2) of the Act – Chapter II, Rule 2 required to be amended that appeal arising from orders mentioned in Section 37(1) will lie before High Court – Matter directed to be placed before Rules making Committee for consideration. (Para 12 & 13)**

ग. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 37(1) व 37(2) एवं मध्य प्रदेश उच्च न्यायालय नियम, 2008, अध्याय II, नियम 2 – उच्च न्यायालय की अधिकारिता – स्पष्टीकरण/विभेद – अभिनिर्धारित – म.प्र. उच्च न्यायालय नियम, 2008 के अध्याय II, नियम 2 में, अधिनियम की धारा 37(1) व 37(2) के बीच विभेद किया जाए – अध्याय II, नियम 2 को संशोधित किया जाना अपेक्षित है कि धारा 37(1) में उल्लिखित आदेशों से उत्पन्न अपील, उच्च न्यायालय के समक्ष प्रस्तुत होगी – मामले को नियम बनाने वाली समिति (रूल मेकिंग कमेटी) के समक्ष विचार करने हेतु रखने के लिए निदेशित किया गया।

Cases referred :

1988 MPLJ 435 (DB), AIR 1999 MP 57, 2003 (1) MPHT 558, 2007 (3) ARBLR 22 MP.

Akshay Sapre and *Dhruv Verma*, for the appellants.
Amit Seth, for the respondent Nos. 1 & 2.
Rahul Rawat, for the respondent No. 3.

J U D G M E N T

VISHAL DHAGAT, J.:- Appellants have filed arbitration appeal against order dated 20.06.2020 passed by sole Arbitrator in Arbitration Case No. 119/2018.

2. The appellants, who were respondents No.2 and 3 before sole Arbitrator, moved an application under Section 17 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996' for brevity). Appellants in their application made a prayer that they executed work for which they have not received any payment, therefore, B.S.N.L.-respondent No.3 may be directed to pay remaining amount to appellants after retaining claim amount of Rs. 1,25,94,574/-. Sole

Arbitrator held that further payment by BSNL to appellants will complicate the matter and payment to be made by BSNL to appellants is crux of the issue. It was ordered that payment shall be made to appellants according to the outcome of the proceedings.

3. Appellants filed an appeal under Section 37 of the Act of 1996 before this Court challenging the aforesaid order. Notices were issued in this appeal and respondents on receiving notice, appeared and filed I.A. No. 2836/2021 for dismissal of arbitration appeal.

4. Counsel appearing for the respondents submitted that an order granting or refusing to grant interim relief under Section 17 is appelable (sic: appealable) to a 'Court'. 'Court' has been defined in Section 2 (1) (e) of the Act of 1996. As per definition of 'Court' under Section 2 (1) (e), 'Court' means Principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction. It is further submitted that Court does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes. It is further submitted that MP High Court does not exercise original jurisdiction in civil cases. From perusal of Section 37 of the Act of 1996, it is clear that appeal before High Court will lie only against an order passed under Sections 8, 9 and 34 of the Act of 1996. No appeal will lie to a High Court from an order which has been passed by a sole Arbitrator. There is no remedy to directly file an appeal before High Court. Remedy available to the appellants is to challenge the order before Principal Civil Court of original jurisdiction. Counsel appearing for the respondents relied on judgment passed by this Court in Arbitration Case No. 03/2007, *Lalit Oswal vs A.K. Trivedi and another.* In said judgment, this Court held that Madhya Pradesh High Court does not exercise any original civil jurisdiction. It would not be a 'Court' for the purposes of Section 2(1)(e) of the Act of 1996. Counsel for respondents also relied on judgments reported in 1988 MPLJ 435 (DB), *Union Carbide Corp. vs Union of India and others,* AIR 1999 MP 57, *Nepa Ltd. vs Manoj Kumar,* 2003(1) MPHT 558, *The Industrial Gases Ltd. vs Kusum Ignots and Alloys Ltd.* and 2007 (3) ARBLR 22 MP, *Asian Electronics Ltd. vs M.P. State.* Relying on strength of aforesaid judgments, respondents argued that in said decision, it was held that High Court of Madhya Pradesh is not a Court of original civil jurisdiction. M.P. High Court has not been vested with any power of any original civil jurisdiction under the High Court of Madhya Pradesh Rules, 2008. It is submitted that in view of same, appeal preferred by appellants be dismissed as not maintainable before this Court.

5. Counsel appearing for the appellants submitted that 'Court' has been defined under Section 2 (1) (e) of the Act of 1996 as Principal Civil Court of original jurisdiction in district and includes High Court in exercise of original civil

jurisdiction. He laid emphasis on word 'includes' in said definition and submitted that wherever word 'include' is used in definition, Legislature does not intend to restrict the definition of that word. Definition of 'Court' is not exhaustive as the word 'includes High Court' is used in Section 2 (1) (e) of Act of 1996, therefore, High Court will be a Court within definition of Section 2 (1) (e) of the Act of 1996. It is submitted that word 'includes' widens the scope of definition and it is inclusive in nature. A restrictive approach cannot be taken of definition of word 'Court'. Counsel appearing for the appellants also relied on the High Court of Madhya Pradesh Rules, 2008. It is submitted by him that arbitration appeal has been classified in Chapter II of Rules of 2008. As per Rule 2, appeal under Section 39 of Arbitration Act, 1940 and appeal under Section 37, 50 or 59 of the Act of 1996 is to be registered as an arbitration appeal. High Court Rules and Orders does not draw a distinction between Section 37(1) and Section 37(2) of Arbitration and Conciliation Act, 1996 and orders passed whether under Sections 8, 9 and 34 of Act of 1996 as mentioned in Section 37 (1) or under Section 16 (2) (3), 17 mentioned in Section 37(2) is to be registered as Arbitration Appeal under High Court of Madhya Pradesh Rules, 2008. Since no distinction is drawn between Section 37(1) and 37(2) of Act of 1996 in Rule 2 Chapter II in the Madhya Pradesh High Court Rules, 2008, therefore, an appeal filed against an order of Arbitration Tribunal under Sections 16 (2), 16 (3) and 17 is also to be registered as arbitration appeal under High Court of Madhya Pradesh Rules, 2008 and arbitration appeal before High Court is maintainable. He further submitted that Madhya Pradesh High Court exercises original civil jurisdiction in many cases and therefore, it cannot be said that Madhya Pradesh High Court is not a Principal Civil Court of original jurisdiction. In view of aforesaid, he made a prayer for dismissal of I.A. No.2836/2021.

6. Heard the counsel for the appellants as well as respondents on I.A. No. 2836/2021 regarding maintainability of arbitration appeal against an order passed by Arbitration Tribunal under Section 17 of the Act of 1996.

7. Relevant provisions of Arbitration and Conciliation Act, 1996 which are under consideration for deciding the issue raised in interlocutory application are quoted as under:-

> **"Section 2 (1) (e)** "Court" means-
>
> (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;

Section 37. Appealable orders.—(1)

[Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.—

(a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

8. Relevant provisions of High Court of Madhya Pradesh Rules, 2008 are given in Chapter-II, Rule 1 (2), Rule 2, Rule 14 and Rule 22- are quoted as under:-

"**1.** Cases shall ordinarily be classified and abbreviated as follows-

(2) Civil

(a) Civil Revision..CR

(b) Contempt Appeal ....CONA

(c) Contempt Petition Civil..........................CONC

(d) First Appeal..FA

(e) Miscellaneous Appeal............................MA

(f) Miscellaneous Civil Case.........................MCC

(g) Review Petition.......................................RP

(h) Second Appeal.......................................SA

2. Arbitration Appeal- Ordinarily, following appeals shall be registered as an Arbitration Appeal-

(1) An appeal under section 39 of the ArbitrationAct, 1940;

(2) An appeal under section 37, 50 or 50 of the Arbitration and Conciliation Act, 1996.

14. Company Petition- Ordinarily following petitions or references shall be registered as a Company Petition-

(1) a reference under section 20 of the Sick Industrial Companies (Special Provision) Act, 1985; or

(2) petitions under section 101, 391, 394, 439, 583 or 584 of the Companies Act, 1956.

22. Election Petition- A petition under section 81 of the Representation of [the People] Act, 1951, shall be registered as an Election Petition."

9. Section 37 of Arbitration and Conciliation Act, 1996 will determine the forum before which an appeal will lie against the appealable orders. For determination of forum catchwords in Section 37 of Arbitration and Conciliation Act, 1996 is "appeal shall lie from following orders to Court authorized by law to hear appeals from original decrees of the Court passing the order". Order under Sections 8, 9 and 34 of Arbitration and Conciliation Act, 1996 are passed by Court. Word "Court" as per Section 2 (1) (e) of Act of 1996 means Principal Civil Court of original jurisdiction. Principal Civil Court of original jurisdiction is the Court of Additional District Judge or District Judge in Madhya Pradesh. Court subordinate to Court of District Judge and Additional Sessions Judge is not empowered to entertain any application under Arbitration and Conciliation Act, 1996. Since Principal Civil Court of original jurisdiction is Court of District Judge and Additional District Judge and as per law appeals from decree of such Court will lie to High Court, therefore, orders passed under Sections 8, 9 and 34 passed by District Judge or Additional District Judge are appealable before High Court.

10. Now, the question before the Court is whether an appeal against an order passed by Arbitration Tribunal under Section 16 (2) (3) and Section 17 of Arbitration and Conciliation Act, 1996 will also lie to a High Court. For the purposes of Section 37(2) of Arbitration and Conciliation Act, 1996, an appeal against order under Section 16(2) (3) and Section 17 will lie to a Court from an order of Arbitration Tribunal. Catchword in Section 37 (2) is word "Court". Court has been

defined in Section 2 (1) (e) as Principal Court of original civil jurisdiction. Whether High Court of M.P. is also Principal Civil Court of original jurisdiction as per Section 2 (1) (e) of Arbitration and Conciliation Act, 1996. High Court has framed The High Court of Madhya Pradesh Rules, 2008 in exercise of power conferred under Article 225 of the Constitution of India, Section 54 of States Reorganisation Act, 1956 and Clauses 27 and 28 of Letters Patent and Section 3 of Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005. As per Chapter II, Rule 2 of Rules of 2008, Civil Cases are classified as Civil Revision, Contempt Appeal, Contempt Petition Civil, First Appeal, Miscellaneous Appeal, Miscellaneous Civil Case, Review Petition and Second Appeal. Jurisdiction of High Court in civil cases is of Revision, Appeal, Miscellaneous Appeal, Review Petition, Second Appeal and Miscellaneous Civil Case. Original jurisdiction of civil side has not been conferred on High Court of Madhya Pradesh as per Rules of 2008. High Court of Madhya Pradesh has original jurisdiction to entertain petitions under Article 226 and 227 of the Constitution of India and to hear election petition and company petition. No original jurisdiction of civil side is conferred on High Court for entertaining civil suits or of cases which are arising from the Arbitration and Conciliation Act, 1996. Reading Section 2 (1) (e) of Act of 1996 along with High Court of Madhya Pradesh Rules, 2008 and also considering the previous judgments which have been passed by this Court, it has been held that High Court is not a Court of original civil jurisdiction. In view of same, High Court will not fall within the meaning of "Court" as defined in Section 2 (1) (e) in Arbitration and Conciliation Act, 1996. In view of same, Court of District Judge and Additional District Judge are Principal Civil Courts of original civil jurisdiction and therefore an appeal against an order passed under Section 16 (2) (3) and Section 17 of Arbitration and Conciliation Act 1996 will lie before Court of Additional District Judge and District Judge of Civil Court.

11. In view of aforesaid discussion, arbitration appeal filed by appellants against order passed under Section 17 of the Arbitration and Conciliation Act, 1996 is not maintainable before High Court.

12. Counsel for appellants had raised the issue that there is no distinction drawn between Section 37 (1) and Section 37 (2) in Chapter II, Rule 2 of High Court of Madhya Pradesh Rules, 2008. As per classification made in Rule 2, appeal against orders passed under Section 16 (2) (3) and Section 17 will also lie to a High Court. In considered opinion of this Court, distinction is to be made in Chapter II, Rule 2 of High Court of Madhya Pradesh Rules, 2008 between 37 (1) and 37 (2) of Arbitration and Conciliation Act, 1996. In considered view of this Court, Chapter II, Rule 2 (Arbitration Appeal) is required to be amended that appeal arising from orders mentioned in Section 37(1) of the Arbitration and Conciliation Act will lie before High Court.

13. In view of same, copy of this judgment be placed before Rule Making Committee of the High Court for considering clarification/ amendment of Chapter-II, Rule 2 of the High Court of Madhya Pradesh Rules, 2008.

14. Arbitration appeal filed by appellants is **dismissed** with liberty to them to approach appropriate forum.

Appeal dismissed

I.L.R. [2021] M.P. 2360
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice G.S. Ahluwalia
MCRC No. 40229/2021 (Gwalior) decided on 12 August, 2021

PANKAJ KARORIYA ...Applicant

Vs.

STATE OF M.P. & ors. …Non-applicants

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Scope* – Held – FIR not lodged by police directly on complaint by shopkeepers rather complaint was made by the office of Collector – Although this Court cannot make a roving enquiry at this stage, but if un-controverted allegations do not make out a *prima facie* offence, only then this Court can quash FIR – Since allegations made in FIR *prima facie* discloses commission of cognizable offence, therefore legitimate investigation cannot be stifled in the midway – Application dismissed.**
(Paras 8, 24, 27, 32, 36, 49 & 50)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – व्याप्ति – अभिनिर्धारित – दुकानदारों की शिकायत पर पुलिस द्वारा प्रत्यक्ष रूप से प्रथम सूचना प्रतिवेदन दर्ज नहीं किया गया बल्कि कलेक्टर कार्यालय द्वारा शिकायत की गई थी – यद्यपि यह न्यायालय इस प्रक्रम पर अतिगामी जांच नहीं कर सकता, लेकिन यदि अविवादित अभिकथन प्रथम दृष्ट्या अपराध नहीं बनाते हैं, केवल तब यह न्यायालय प्रथम सूचना प्रतिवेदन को अभिखंडित कर सकता है – चूंकि प्रथम सूचना प्रतिवेदन में किये गये अभिकथन प्रथम दृष्ट्या संज्ञेय अपराध का किया जाना प्रकट करते हैं, अतः विधिसम्मत अन्वेषण को बीच में दबाया नहीं जा सकता – आवेदन खारिज।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Preliminary Enquiry* – Held – Holding of preliminary enquiry prior to lodging of FIR is desirable and not mandatory – FIR cannot be quashed on the ground that FIR is not preceded by a preliminary enquiry.**
(Para 26 & 46)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – प्रारंभिक जांच – अभिनिर्धारित – प्रथम सूचना

प्रतिवेदन दर्ज करने से पहले प्रारंभिक जांच करना वांछनीय है तथा आज्ञापक नहीं – प्रथम सूचना प्रतिवेदन इस आधार पर अभिखंडित नहीं किया जा सकता कि प्रथम सूचना प्रतिवेदन से पहले प्रारंभिक जांच नहीं की गई है।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR – Demanding Gratification* – Held – The authority of a person/delinquent officer demanding gratification is not important, but the impression in the mind of bribe-giver is important. (Para 39)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – परितोषण की मांग – अभिनिर्धारित – परितोषण की मांग करने वाले व्यक्ति/अपचारी अधिकारी का प्राधिकार महत्वपूर्ण नहीं है, बल्कि रिश्वत देने वाले व्यक्ति के मस्तिष्क पर प्रभाव आवश्यक है।

***D. Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Investigation – Scope of Interference* – Applicant seeking direction for authorities for not taking any coercive step against him – Held – In present matter, not only anticipatory bail application has been dismissed earlier by this Court but it is never desirable to pass such a blanket order thereby hampering investigation – Prayer rejected. (Para 47)**

घ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अन्वेषण – हस्तक्षेप की व्याप्ति – आवेदक द्वारा उसके विरूद्ध कोई प्रपीड़क कदम न उठाने हेतु प्राधिकारियों के लिए निदेश चाहा जाना – अभिनिर्धारित – वर्तमान मामले में, पूर्व में इस न्यायालय द्वारा न केवल अग्रिम जमानत का आवेदन खारिज किया गया है बल्कि इस तरह का व्यापक आदेश पारित करना कदापि वांछनीय नहीं है जिससे अन्वेषण में बाधा उत्पन्न हो – प्रार्थना नामंजूर।

***E. Essential Commodities Act (10 of 1955) and Penal Code (45 of 1860), Section 409 & 420 – Applicability of Act/Code* – Held – In absence of any bar to the applicability of provisions of IPC, it cannot be said that since a separate procedure has been provided under Special Act, therefore invocation of provisions of IPC is unwarranted – Prayer rejected. (Paras 28 to 30)**

ङ. आवश्यक वस्तु अधिनियम (1955 का 10) एवं दण्ड संहिता (1860 का 45), धारा 409 व 420 – अधिनियम/संहिता की प्रयोज्यता – अभिनिर्धारित – भा.दं.सं. के उपबंधों की प्रयोज्यता पर किसी वर्जन के अभाव में, यह नहीं कहा जा सकता कि चूंकि विशेष अधिनियम के अंतर्गत एक पृथक प्रक्रिया उपबंधित की गई है, अतः भा.दं.सं. के उपबंधों का अवलंब अनपेक्षित है – प्रार्थना नामंजूर।

***F. Criminal Practice – Suppression of Facts – Effect* – Held – If Court finds suppression of material fact, then case may be dismissed on this ground, however if suppression is not of material fact and does not have any**

effect on outcome of the case, then such suppression cannot be made basis for dismissing the case. (Para 44)

च. दाण्डिक पद्धति – तथ्यों का छिपाव – प्रभाव – अभिनिर्धारित – यदि न्यायालय तात्विक तथ्य का छिपाव पाता है, तो प्रकरण को इस आधार पर खारिज किया जा सकता है, हालांकि यदि छिपाव तात्विक तथ्य का नहीं है एवं प्रकरण के परिणाम पर इसका कोई प्रभाव नहीं पड़ता है, तो उक्त छिपाव को प्रकरण खारिज करने का आधार नहीं बनाया जा सकता।

Cases referred:

(2018) 5 SCC 678, (2014) 15 SCC 221, (2012) 4 SCC 547, (2019) 10 SCC 337, (2010) 5 SCC 600, (2019) 2 SCC 336, (2012) 9 SCC 460, (2011) 12 SCC 319, (2019) 13 SCC 350, (2010) 11 SCC 226, (2012) 12 SCC 437, (2019) 10 SCC 373, (2009) 9 SCC 682, (2019) 10 SCC 686, CRA No. 709/2021 order passed on 30.07.2021 (Supreme Court), (2014) 2 SCC 1, (2009) 11 SCC 424, (2004) 7 SCC 166, CA No. 4555-4559/2021 order passed on 02.08.2021 (Supreme Court), CRA No. 330/2021 order passed on 13.04.2021 (Supreme Court).

DPS Bhadoriya, for the applicant.
MPS Raghuvanshi, Addl. A.G. with *Ravi Ballabh Tripathi*, P.L. for the non-applicants/State.

(Supplied: Paragraph numbers)

O R D E R

G.S. AHLUWALIA, J.:- This application under Section 482 of Cr.P.C. has been filed for quashment of FIR in Crime No.251/2021 registered at Police Station University Gwalior for offence under Sections 420 and 409 of IPC.

2. According to the prosecution case, complainant-Chandrabhan Singh Jadon submitted a written report issued by the office of Collector, Gwalior (Food Department) alleging that the Salesmen of fair price shops functioning in Dabra informed the Collector that the co-accused Sushri Surbhi Jain, Junior Supply Officer had taken her own decision and had directed the shopkeepers to distribute the foodgrains issued under the PMGKA scheme on offline basis and had assured that such quantity would be reduced from the POS closing balance. Therefore, on the instructions of Sushri Surbhi Jain, foodgrains received under PMGKA scheme were distributed by them on offline basis, but the closing balance on POS portal was not reduced, therefore, the said officer is threatening that the FIR would be lodged against the Salesmen. Thereafter, the applicant and Sushri Surbhi Jain came to their shop on 9/3/2021 and instructed that the shopkeepers must pay 50% of the market value of the short stock, otherwise the FIR would be lodged. When this fact came to the knowledge of the Collector, Sushri Surbhi Jain has been

placed under suspension and the applicant at present is posted as Junior Supply Officer, District Tikamgarh.

3. Challenging the FIR, it is submitted by the counsel for the applicant that since the applicant is a government employee, therefore, a preliminary enquiry should have been conducted into the allegations made against the applicant, but without conducting any preliminary enquiry, the FIR has been lodged, therefore, the FIR is bad and vitiated. It is further submitted that even if the allegations made against the applicant are treated as true, but since the misconduct has been committed under the Special Act or scheme, therefore, preliminary enquiry was desirable and invocation of the provisions of IPC is unwarranted. It is further submitted that without verifying as to whether any actual loss or gain was caused or whether there is any shortfall in the stock or not, the FIR has been lodged, whereas except by physical verification, it cannot be said that there is any shortage in the stock. It is further submitted that there is no allegation that the applicant had ever taken any money. It is further submitted that there is no discrepancy in the record of POS machine because there is no difference in allotment / distribution as well as closing stock/balance on the POS portal. PMGKA scheme was introduced in the month of April, 2020 and the applicant had remained at Dabra only upto 30/4/2020. It is further submitted that although this Court has already rejected the application for grant of anticipatory bail and the said order has not been challenged before the Supreme Court so far, however, the Court should have granted anticipatory bail and accordingly, it is prayed that this Court should issue notice, and interim order not to take any coercive action against the applicant should also be issued. Even otherwise, it was further submitted that in case if the petition is dismissed, still if protection from coercive action is given, then the applicant would not have any grievance and shall participate in the investigation.

4. *Per contra,* the application is vehemently opposed by the counsel for the State. It is submitted by Shri Raghuvanshi that the allegation against the applicant is that he alongwith Sushri Surbhi Jain had threatened the shopkeepers that they would lodge the FIR, otherwise they should pay 50% of the market value of the short balance. It is submitted that the applicant is unnecessarily relying upon the closing balance reflected on POS portal. As per PMGKA Scheme, the foodgrain was to be distributed on ONLINE BASIS only. However, the allegations are that the shopkeepers were instructed to distribute the foodgrains on offline basis also and the shopkeepers were assured that the quantity of foodgrains distributed on offline basis will be reduced from the stock which will be reflected on POS portal, therefore, merely because the closing balance reflected on POS portal is in accordance with the allotment and the distribution which was done on ONLINE basis is not the crux of the matter, but the pivotal question is that when the shopkeepers were directed to supply the foodgrains on OFFLINE basis with an

assurance that the quantity of the said distribution shall be reduced from closing balance reflected on POS portal. Although the foodgrains were distributed on OFFLINE basis, but the closing balance was not corrected by deducting the quantity of foodgrain distributed on OFFLINE basis. On the contrary, by extending a threat of lodging F.I.R., Sushri Surbhi Jain and the applicant demanded 50% of the market value of the short stock. Therefore, it is submitted that *prima facie* offence has been made out warranting investigation. It is further submitted that receipt of illegal gratification by itself is not sufficient to make out an offence and even if there is a demand of illegal gratification, then such demand itself would be an offence. It is submitted that in the FIR it has been specifically alleged against the applicant that he alongwith the co-accused Sushri Surbhi Jain had demanded 50% of the market value of the short stock and thus, it cannot be said that no offence is made out. It is further submitted that so far as the contention of the applicant that he was relieved from Dabra on 1/5/2020 and the PMGKA scheme was floated in the month of April, 2020 is concerned, it is clear that when the said scheme came into existence, the applicant was posted in Dabra. Therefore, whether the applicant is actually involved or not, is the subject matter of investigation and the investigation is still at the initial stage and it is well established principle of law that the legitimate prosecution should not be stiffled in the midway.

5. In reply, it is submitted by Shri Bhadoriya that it is incorrect to say that any instruction was given to the shopkeepers to distribute the foodgrains on offline basis. It is submitted that in the month of May, 2020 an order was issued thereby directing the shopkeepers to distribute the foodgrains on offline basis also and, therefore, it cannot be said that any foodgrain was permitted to be distributed on offline basis during the tenure of the applicant at Dabra. It is further submitted that by order dated 13/4/2020 the applicant and Sushri Surbhi Jain were appointed as Nodal Officer and no complaint was received by the applicant during stay in Dabra.

6. Heard learned counsel for the parties.

7. Before adverting to the merits of the case, this Court would like to consider the scope of interference under Section 482 of Cr.P.C.

8. It is well established principle of law that the prosecution/FIR can be quashed, only when the un-controverted allegations do not make out a prima facie offence. The Supreme Court in the case of *Munshiram v. State of Rajasthan,* reported in (2018) 5 SCC 678 has held as under :

> **10.** 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 CrPC has to be utilised

> 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...........

9. The Supreme Court in the case of *Teeja Devi v. State of Rajasthan* reported in (2014) 15 SCC 221 has held as under :

> **5.** It has been rightly submitted by the learned counsel for the appellant that ordinarily power under Section 482 CrPC should not be used to quash an FIR because that amounts to interfering with the statutory power of the police to investigate a cognizable offence in accordance with the provisions of CrPC. As per law settled by a catena of judgments, if the allegations made in the FIR prima facie disclose a cognizable offence, interference with the investigation is not proper and it can be done only in the rarest of rare cases where the court is satisfied that the prosecution is malicious and vexatious.

10. The Supreme Court in the case of *State of Orissa v. Ujjal Kumar Burdhan*, reported in (2012) 4 SCC 547 has held as under :

> **9.** In *State of W.B.* v. *Swapan Kumar Guha,* emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)
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> > "65. *...An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large.* Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. *If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed... .*

> *66.* Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case.... *If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence."*
>
> (emphasis supplied)

> **10.** On a similar issue under consideration, in *Jeffrey J. Diermeier* v. *State of W.B.,* while explaining the scope and ambit of the inherent powers of the High Court under Section 482 of the Code, one of us (D.K. Jain, J.) speaking for the Bench, has observed as follows: (SCC p. 251, para 20)
>
> "*20.* ... The section itself 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. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

11. The Supreme Court in the case of *XYZ v. State of Gujarat* reported in (2019) 10 SCC 337 has held as under :

> **14.** Having heard the learned counsel for the parties and after perusing the impugned order and other material placed on record, we are of the view that the High Court exceeded the scope of its jurisdiction conferred under Section 482 CrPC, and quashed the proceedings. Even before the investigation is completed by the investigating agency, the High Court entertained the writ petition, and by virtue of interim order granted by the High Court, further investigation was stalled. Having regard to the allegations made by the appellant/ informant, whether the 2nd respondent by clicking inappropriate

> pictures of the appellant has blackmailed her or not, and further the 2nd respondent has continued to interfere by calling Shoukin Malik or not are the matters for investigation. In view of the serious allegations made in the complaint, we are of the view that the High Court should not have made a roving inquiry while considering the application filed under Section 482 CrPC. Though the learned counsel have made elaborate submissions on various contentious issues, as we are of the view that any observation or findings by this Court, will affect the investigation and trial, we refrain from recording any findings on such issues. From a perusal of the order of the High Court, it is evident that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the 2nd respondent was consensual. When it is the allegation of the appellant, that such document itself is obtained under threat and coercion, it is a matter to be investigated. Further, the complaint of the appellant about interference by the 2nd respondent by calling Shoukin Malik and further interference is also a matter for investigation. By looking at the contents of the complaint and the serious allegations made against 2nd respondent, we are of the view that the High Court has committed error in quashing the proceedings.
>
> (Underline supplied)

12. The Supreme Court in the case of *S. Martin* (Supra) has held as under :

> **7.** In our view the assessment made by the High Court at a stage when the investigation was yet to be completed, is completely incorrect and uncalled for..........

13. The Supreme Court in the case of *S. Khushboo v. Kanniammal* reported in (2010) 5 SCC 600 has held as under :

> **17.** In the past, this Court has even laid down some guidelines for the exercise of inherent power by the High Courts to quash criminal proceedings in such exceptional cases. We can refer to the decision in *State of Haryana* v. *Bhajan Lal* to take note of two such guidelines which are relevant for the present case: (SCC pp. 378-79, para 102)
>
> > "*(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.
>
> ***

(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."

18. It is of course a settled legal proposition that in a case where there is sufficient evidence against the accused, which may establish the charge against him/ her, the proceedings cannot be quashed. In *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.* this Court observed that a criminal complaint or a charge-sheet can only be quashed by superior courts in exceptional circumstances, such as when the allegations in a complaint do not support a prima facie case for an offence.

19. Similarly, in *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque* this Court has held that criminal proceedings can be quashed but such a power is to be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves. It was further observed that superior courts *"may examine the questions of fact"* when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice.

20. In *Shakson Belthissor* v. *State of Kerala* this Court relied on earlier precedents to clarify that a High Court while exercising its inherent jurisdiction should not interfere with a genuine complaint but it should certainly not hesitate to intervene in appropriate cases. In fact it was observed: (SCC pp. 478, para 25)

> "*25. ... '16. ...* One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint. '*"

14. The Supreme Court in the case of *Sangeeta Agrawal v. State of U.P.,* reported in (2019) 2 SCC 336 has held as under :

8. In our view, the Single Judge ought to have first set out the brief facts of the case with a view to understand the factual matrix of the case and then examined the challenge made to the proceedings in the light of the principles of law laid down by this Court and then recorded his finding as to on what basis and reasons, a case is made out for any interference or not.

15. The Supreme Court in the case of *Amit Kapoor v. Ramesh Chander* reported in (2012) 9 SCC 460 has held as under :

> **27.** Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:
>
> **27.1.** Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
>
> **27.2.** The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.
>
> **27.3.** The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.
>
> **27.4.** Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.
>
> **27.5.** Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of W.B.* v. *Swapan Kumar Guha Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre; Janata Dal* v. *H.S. Chowdhary; Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill; G. Sagar Suri* v. *State of U.P.*; *Ajay Mitra* v. *State of M.P.*; *Pepsi Foods Ltd.* v. *Special Judicial Magistrate; State of U.P.* v. *O.P. Sharma; Ganesh Narayan Hegde* v. *S. Bangarappa; Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque; Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.; Shakson Belthissor* v. *State of Kerala; V.V.S. Rama Sharma* v. *State of U.P.; Chunduru Siva Ram Krishna* v. *Peddi Ravindra Babu; Sheonandan Paswan* v. *State of Bihar; State of Bihar* v. *P.P. Sharma; Lalmuni Devi* v. *State of Bihar; M. Krishnan* v. *Vijay Singh; Savita* v. *State of Rajasthan* and *S.M. Datta* v. *State of Gujarat.*]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

28. At this stage, we may also notice that the principle stated by this Court in *Madhavrao Jiwajirao Scindia* was reconsidered and explained in two subsequent judgments of this Court in *State of Bihar* v. *P.P. Sharma* and *M.N. Damani* v. *S.K. Sinha.* In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent.

16. The Supreme Court in the case of *Ajay Kumar Das v. State of Jharkhand,* reported in (2011) 12 SCC 319 has held as under :

12. The counsel appearing for the appellant also drew our attention to the same decision which is relied upon in the

> impugned judgment by the High Court i.e. *State of Haryana* v. *Bhajan Lal.* In the said decision, this Court held that it may not be possible to lay down any specific guidelines or watertight compartment as to when the power under Section 482 CrPC could be or is to be exercised. This Court, however, gave an exhaustive list of various kinds of cases wherein such power could be exercised. In para 103 of the said judgment, this Court, however, hastened to add that as a note of caution it must be stated 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 for the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or in the complaint and that the extraordinary or the inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

17. The Supreme Court in the case of *Mohd. Akram Siddiqui v. State of Bihar* reported in (2019) 13 SCC 350 has held as under :

> **5.** Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in *Yin Cheng Hsiung* v. *Essem Chemical Industries; State of Haryana* v. *Bhajan Lal* and *Harshendra Kumar D.* v. *Rebatilata Koley* to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.

18. The Supreme Court in the case of *State of A.P. v. Gourishetty Mahesh* reported in (2010) 11 SCC 226 has held as under :

> **18.** While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry 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/Court. It is true that the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.

19. Though the High Court may exercise its power relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or 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 or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in.

20. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/ caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear 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 open to the High Court to quash the same in exercise of inherent powers under Section 482.

19. The Supreme Court in the case of *Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy* reported in (2012) 12 SCC 437 has held as under :

11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include

powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita* v. *State* and *B.S. Joshi* v. *State of Haryana).* If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised *ex debito justitiae,* to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide *Dhanalakshmi* v. *R. Prasanna Kumar; Ganesh Narayan Hegde* v. *S. Bangarappa* and *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque.)*

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions of this Court vide *State of Haryana* v. *Bhajan Lal, Janata Dal* v. *H.S. Chowdhary, Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* and *Indian Oil Corpn.* v. *NEPC India Ltd.*

16. In the landmark case of *State of Haryana* v. *Bhajan Lal* this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarised the legal position by laying down the following guidelines to be followed by the High Courts in

exercise of their inherent powers to quash a criminal complaint: (SCC pp. 378-79, para 102)

> "(*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 FIR 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 uncontroverted 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 FIR 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 FIR 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 Act concerned (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 Act concerned, 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."

17. In *Indian Oil Corpn.* v. *NEPC India Ltd.* a petition under Section 482 was filed to quash two criminal complaints. The

High Court by a common judgment allowed the petition and quashed both the complaints. The order was challenged in appeal to this Court. While deciding the appeal, this Court laid down the following principles: (SCC p. 748, para 12)

> *1*. The High Courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.
>
> *2.* The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.
>
> *3.* It was held that a given set of facts may make out: *(a)* purely a civil wrong; or *(b)* purely a criminal offence; or *(c)* a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.

18. In *State of Orissa* v. *Saroj Kumar Sahoo* 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: (SCC p. 550, para 11)

> "*11*. ... 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."

19. In *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre* this Court held as under: (SCC p. 695, para 7)

> "*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 utilised 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."

20. This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia,* has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in *Madhavrao case* was reconsidered and explained by this Court in *State of Bihar* v. *P.P. Sharma* which reads as under: (SCC p. 271, para 70)

"70. Madhavrao Jiwajirao Scindia v. *Sambhajirao Chandrojirao Angre* also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. ...Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet."

> **22.** Thus, the judgment in *Madhavrao Jiwajirao Scindia* does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine the facts/ evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of *Madhavrao Jiwajirao Scindia* is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal.

20. The Supreme Court in the case of *M. Srikanth v. State of Telangana,* reported in (2019) 10 SCC 373 has held as under :

> 17. It could thus be seen, that this Court has held, that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute a case against the accused, the High Court would be justified in quashing the proceedings. Further, it has been held that where the uncontroverted allegations in the FIR and the evidence collected in support of the same do not disclose any offence and make out a case against the accused, the Court would be justified in quashing the proceedings.

21. The Supreme Court in the case of *M.N. Ojha v. Alok Kumar Srivastav* reported in (2009) 9 SCC 682 has held as under :

> **30.** Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for

proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.

31. It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended 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. [If such power is not conceded, it may even lead to injustice.]"
>
> (See *State of Karnataka* v. *L. Muniswamy,* SCC p. 703, para 7.)

32. We are conscious that

> "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".
>
> (See *Kurukshetra University* v. *State of Haryana,* SCC p. 451, para 2.)

22. The Supreme Court in the case of *CBI v. Arvind Khanna* reported in (2019) 10 SCC 686 has held as under :

> **17.** After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 CrPC, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 CrPC.
>
> **18.** In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for.

23. The Supreme Court in the case of *State of Madhya Pradesh Vs. Kunwar Singh* by order dated 30-7-2021 passed in Cr.A. No. 709 of 2021 has held as under :

> 8. Having heard the submissions of the learned Counsel appearing on behalf of the appellant and the respondent, we are of the view tht the High Court has transgressed the limits of its jurisdiction under Section 482 of CrPC by enquiring into the merits of the allegations at the present stage. .... , the High Court ought not to be scrutinizing the material in the manner in which the trial court would do in the course of the criminal act after evidence is adduced. In doing so, the High Court has exceeded the well-settled limits on the exercise of the jurisdiction under Section 482 of CrPC. A detailed enquiry into the merits of the allegations was not warranted. The FIR is not expected to be an encyclopedia, particularly, in a matter involving financial irregularities in the course of the administration of a public scheme.....

24. Thus, it is clear that although this Court cannot make a roving enquiry at this stage, but if the un-controverted allegations do not make out any offence, only then this Court can quash the F.I.R.

Whether Preliminary Enquiry is mandatory?

25. The Supreme Court in the case of *Lalita Kumari Vs. Government of U.P. & Ors*. 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.

26. In the case of *Lalita Kumari* (Supra) the Supreme Court has held that where the information discloses commission of cognizable offence, then FIR is to be lodged. Preliminary enquiry is to be conducted or not shall depend upon the facts and circumstances of every case. It has not been held that in case of a complaint against a public officer, a preliminary enquiry is mandatory and violation of such mandatory provision would make the FIR vitiated and bad in law. In case of a public servant, a preliminary enquiry is desirable. Accordingly, when a preliminary enquiry is desirable, then the FIR cannot be quashed only on the ground that since the FIR is not preceded by a preliminary enquiry. Under these circumstances, the first contention of the applicant that the FIR is bad as no preliminary enquiry was conducted is hereby rejected.

27. Furthermore, the FIR has not been lodged on the complaint of the shopkeepers, but it has been lodged on the basis of complaint by office of Collector (Food Branch) i.e., by Head of District Department.

28. The next contention of the applicant is that since this offence has been committed under the Special Act, i.e. EC Act or under a scheme, therefore, invocation of provisions of IPC is unwarranted as well as the preliminary enquiry was desirable.

29. So far as the registration of offence in respect of offence committed under the Special Act is concerned, the question is no more *res integra.* The Supreme Court in the case of *State of M.P. Vs. Rameshwar* reported in (2009) 11 SCC 424 has held as under:-

> **48.** Mr Tankha's submissions, which were echoed by Mr Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved.

30. Thus, in absence of any bar to the applicability of provisions of IPC, it cannot be said that since a separate procedure has been provided under the Special Act, therefore, invocation of provisions of IPC is unwarranted. Accordingly, the second submission made by the counsel for the applicant that when a separate procedure has been provided under the Special Act, then invocation of provisions of IPC is hereby rejected being misconceived.

31. The next submission of the counsel for the applicant is that the allegation made by the shopkeepers is that they were compelled to distribute foodgrain on offline basis on the assurance that such stock would be reduced from the stock reflected on POS portal, but that was not done and now they are being extended threat that either they should pay 50% of the market value of the lesser stock, otherwise FIR would be lodged against them.

32. It is undisputed fact that the foodgrain allotted under the PMGKA Scheme is to be distributed on ONLINE basis and every transaction would be reflected on POS machine/portal and the closing balance would also be reflected. The allegations are that in view of the peculiar situation on account of covid-19 pandemic, the shopkeepers were directed to distribute the foodgrains on OFFLINE basis, as the migrating people were not within the category of beneficiaries and ONLINE distribution was not possible. Whether there was any such instructions by the officials or not, is a matter of investigation. If the shopkeepers had distributed the

foodgrains allotted under PMGKA Scheme on the assurance by the officers that the foodgrains so distributed on offline basis, would be reduced from their POS closing balance and now taking advantage of shortage in stock due to distribution of some of the stock on offline basis on the instructions of officers, if they are demanding 50% of value of shortage in closing balance, then prima facie offence would be made out warranting investigation. Without understanding the real controversy involved in the case, the counsel for the applicant was again and again trying to impress upon the Court by saying that the record of POS machine clearly shows that after reducing the quantity of foodgrain distributed on ONLINE basis, the closing balance is in accordance with the total quantity of foodgrains allotted to a particular shopkeeper. It is always expected that before starting the arguments, the Lawyer must understand the real controversy involved in the case.

33. Be that whatever it may.

34. During the course of arguments, the counsel for the applicant again started submitting that this Court should have granted anticipatory bail. Again and again he was informed that if the applicant is aggrieved by the rejection of his application for grant of anticipatory bail, then he can assail the said order before the Supreme Court, however, in a petition under Section 482 of Cr.P.C, he cannot say that the application for anticipatory bail has been wrongly rejected. When the counsel for the applicant did not stop from arguing on that issue also, then this Court was left with no other option but to hear the arguments silently without any cross question.

35. Be that whatever it may.

36. The fact of the case is that the application for grant of anticipatory bail has been rejected and in a petition under Section 482 of Cr.P.C for quashing of FIR, the arguments advanced by the applicant in respect of anticipatory bail cannot be considered. Furthermore, this Court had already come to a conclusion that the applicant is projecting different facts but in fact the controversy is that on the instructions of the officials, foodgrains were distributed on offline basis on the assurance that said distributed quantity on OFFLINE basis would be reduced from the closing balance which is being reflected on POS portal and now after extending threat for lodging FIR on account of such difference in closing balance, the applicant has demanded 50% of the value of the shortage in closing balance. Once again it is held that the allegation so made against the applicant *prima facie* make out an offence warranting investigation. Further, the FIR has not been lodged by the Police directly on the complaint made by the shopkeepers. In the FIR itself, it has been mentioned that the Collector has already placed Sushri Surbhi Jain under suspension and the complaint has been made by the office of Collector Gwalior.

37. Be that whatever it may.

38. So far as the contention of the applicant that before lodging the FIR, the complainant should have verified as to whether there is a shortage in the closing balance of the shopkeepers or not is concerned, the same is misconceived. As already pointed out, the complaint has been made by the Collector Gwalior against his Junior Supply Officers. It is a matter of investigation which shall certainly be conducted by the investigating officer.

39. At this stage, it is submitted by Shri D.P.S. Bhadoriya that the applicant or the co-accused Sushri Surbhi Jain were incompetent to issue any directions on their own to the shopkeepers thereby asking them to distribute the foodgrains on offline basis and in fact said written directions were received in the month of May, 2020 and by that time, the applicant was already transferred to Gwalior is concerned, it is well established principle of law that the authority of a person demanding gratification is not important, but the impression in the mind of the bribe-giver is important. Undisputedly, the Junior Supply Officers are the Officers who come in direct contact with the salesman. Furthermore, according to the applicant himself, he was appointed as a Nodal Officer. If the shopkeepers were under a *bonafide* belief that the instruction given by the Officers to distribute the foodgrains on offline basis is an instruction by a competent person, then the impression in the mind of the bribe-giver is important and not the actual authority of the delinquent officer/accused.

40. It is next contended by the counsel for the applicant that during the course of arguments of application for grant of anticipatory bail, the Government Advocate as well as the counsel for the complainant had made false statement that a preliminary enquiry was conducted and that incorrect statement has not been mentioned by this Court in the order by which his application for grant of anticipatory bail, has been rejected.

41. Further, Shri M.P.S. Raghuvanshi also submitted that every *bonafide* mistake does not require any adverse remark from the court. If a Lawyer is guilty of suppression of fact(s) which goes to the root of the case and has obtained or is trying to obtain a favorable order by misleading the court, then his conduct can be reflected in the order, but each and every minor mistake should not be taken note of.

42. Heard learned counsel for the parties on this issue.

43. The Counsel for the applicant was again and again pressing hard that his application for grant of anticipatory bail has been wrongly rejected. Again and again, it was pointed out to Shri Bhadoriya that once an order on the application

for grant of anticipatory bail has been passed, then this Court has become *functus officio* and in every case it is not desirable that the court should pass adverse remarks against the Advocates. The Supreme Court in the case of *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar* reported in (2004) 7 SCC 166 has held as under :

> **13.** As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken.

44. Thus, the suppression must be of material fact. If the Court comes to a conclusion that there is a suppression of a material fact, then the case can be dismissed on the ground of suppression of material fact. However, if the suppression is not of material fact and does not any effect on the outcome of the case, then such suppression cannot be made a basis for dismissing the case.

45. In the present case, it is the objection of the Counsel for the applicant that the State counsel as well as the counsel for complainant, while arguing the application for grant of anticipatory bail, had made a misleading statement before this Court that preliminary enquiry was made.

46. As already pointed out, holding of preliminary enquiry prior to lodging of FIR is desirable and not mandatory. Without entering into the controversy, as to whether the arguments made by the Government Advocate as well as the counsel for the complainant in the application for anticipatory bail were misleading or not, it is sufficient to hold that even after coming to a conclusion that no preliminary enquiry was conducted, still this Court could not have held that registration of FIR is bad. Under these circumstances, a minor mistake which may be *bonafide* in nature should not be made a basis for criticizing a lawyer and that too at the instance of counsel for the opposite party. Further, the Supreme Court in the case of *Neeraj Garg Vs. Sarita Rani* by order dated 02-Aug-2021 passed in Civil Appeal No. 4555-4559 of 2021 has held as under :

> 15. While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel <u>which may have no bearing on the adjudication of the</u>

dispute before the Court.

(Underline supplied)

47. So far as the submission with regard to giving a direction for not taking any coercive step against the applicant is concerned, it is sufficient to hold that not only the application for grant of anticipatory bail has been rejected, but it is never desirable to pass such a blanket order thereby hampering the investigation. The Supreme Court in the case of *M/s Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra* by order dated 13-4-2021 passed in Cr.A. No. 330/2021 has held as under :

> 18. This Court in the case of Habib Abdullah Jeelani (supra), as such, deprecated such practice/orders passed by the High Courts, directing police not to arrest, even while declining to interfere with the quashing petition in exercise of powers under Section 482 Cr.P.C. In the aforesaid case before this Court, the High Court dismissed the petition filed under Section 482 Cr.P.C. for quashing the FIR. However, while dismissing the quashing petition, the High Court directed the police not to arrest the petitioners during the pendency of the investigation. While setting aside such order, it is observed by this Court that such direction amounts to an order under Section 438 Cr.P.C., albeit without satisfaction of the conditions of the said provision and the same is legally unacceptable. In the aforesaid decision, it is specifically observed and held by this Court that "it is absolutely inconceivable and unthinkable to pass an order directing the police not to arrest till the investigation is completed while declining to interfere or expressing opinion that it is not appropriate to stay the investigation". It is further observed that this kind of order is really inappropriate and unseemly and it has no sanction in law. It is further observed that the courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of 49 a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is further observed that it is the obligation of the court to keep such unprincipled and unethical litigants at bay.
>
> In the aforesaid decision, this Court has further deprecated the orders passed by the High Courts, while dismissing the applications under Section 482 Cr.P.C. to the effect that if the petitioner-accused surrenders before the trial Magistrate, he shall be admitted to bail on such terms and conditions as deemed fit and appropriate to be imposed by the Magistrate concerned. It is observed that such orders are de hors the powers conferred under Section 438 Cr.P.C. That thereafter, this Court in paragraph

25 has observed as under:

> "25. Having reminded the same, presently we can only say that the types of orders like the present one, are totally unsustainable, for it is contrary to the aforesaid settled principles and judicial precedents. It is intellectual truancy to avoid the precedents and issue directions which are not in consonance with law. It is the duty of a Judge to sustain the judicial balance and not to think of an order which can cause trauma to the process of adjudication. It should be borne in mid that the culture of adjudication is stabilised when intellectual discipline is maintained and further when such discipline constantly keeps guard on the mind."
>
> 19. We are at pains to note that despite the law laid down by this Court in the case of Habib Abdullah Jeelani (supra), deprecating such orders passed by the High Courts of not to arrest during the pendency of the investigation, even when the quashing petitions under Section 482 50 Cr.P.C. or Article 226 of the Constitution of India are dismissed, even thereafter also, many High Courts are passing such orders. The law declared/laid down by this Court is binding on all the High Courts and not following the law laid down by this Court would have a very serious implications in the administration of justice.
>
> 20. In the recent decision of this Court in the case of Ravuri Krishna Murthy (supra), this bench set aside the similar order passed by the Andhra Pradesh High Court of granting a blanket order of protection from arrest, even after coming to the conclusion that no case for quashing was established. The High Court while disposing of the quashing petition and while refusing to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C. directed to complete the investigation into the crime without arresting the second petitioner - A2 and file a final report, if any, in accordance with law. The High Court also further passed an order that the second petitioner - A2 to appear before the investigating agency as and when required and cooperate with the investigating agency. After considering the decision of this Court in the case of Habib Abdullah Jeelani (supra), this Court set aside the order passed by the High Court restraining the investigating officer from arresting the second accused.

> Thus, it has been found that despite absolute proposition of law laid down by this Court in the case of Habib Abdullah Jeelani (supra) that such a blanket order of not to arrest till the investigation is completed and the final report is filed, passed while declining to quash the criminal proceedings in exercise of powers under Section 482 Cr.P.C, as observed hereinabove, the High Courts have continued to pass such orders. Therefore, we again reiterate the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and we direct all the High Courts to scrupulously follow the law laid down by this Court in the case of Habib Abdullah Jeelani (supra) and the law laid down by this Court in the present case, which otherwise the High Courts are bound to follow. We caution the High Courts again against passing such orders of not to arrest or "no coercive steps to be taken" till the investigation is completed and the final report is filed, while not entertaining quashing petitions under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India.

48. No other argument on merits is advanced by the counsel for the applicant.

49. Considering the totality of facts and circumstances of the case, this Court is of the considered opinion that since the allegations made in the FIR discloses commission of cognizable offence, therefore, legitimate investigation cannot be stiffled in the midway and unborn baby cannot be killed.

50. Accordingly, the application fails and is hereby **dismissed.**

Application dismissed