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Civil Procedure Code (5 of 1908), Section 114 r/w Order 47 Rule 1 – Review – Scope & Jurisdiction **– Held – Order can be reviewed by Court only on prescribed grounds mentioned in Order 47 Rule 1 CPC – Application for review is more restricted than that of an appeal and Court has limited jurisdiction – Power of review cannot be exercised as an inherent power nor can an appellate power can be exercised in guise of power of review. [Shri Ram Sahu (Dead) Through LRs. Vs. Vinod Kumar Rawat] (SC)…4**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 114 सहपठित आदेश 47 नियम 1 – पुनर्विलोकन – व्याप्ति व अधिकारिता – अभिनिर्धारित – न्यायालय द्वारा आदेश का पुनर्विलोकन केवल आदेश 47 नियम 1 सि.प्र.सं. में उल्लिखित विहित किये गये आधारों पर किया जा सकता है – पुनर्विलोकन हेतु आवेदन, एक अपील से अधिक निर्बंधित है और न्यायालय की सीमित अधिकारिता है – पुनर्विलोकन की शक्ति का प्रयोग, अंतर्निहित शक्ति के रूप में नहीं किया जा सकता और न ही अपीली शक्ति का प्रयोग पुनर्विलोकन की शक्ति के रूप में किया जा सकता है। (श्री राम साहू (मृतक) द्वारा विधिक प्रतिनिधि वि. विनोद कुमार रावत) **(SC)…4**

Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Necessary Party – **Held – A suit cannot be dismissed on ground of non-joinder of necessary**

party, unless and until opportunity is given to plaintiff to implead necessary party – If plaintiff refuses or fails to implead necessary party and decides to move further with the suit, then he do so at his own risk and under this circumstances, he has to face adverse consequences – Work was got done by respondents in execution of a scheme formulated by State Government, thus State was a necessary party – Petition suffers from non-joinder of necessary party. [Rajkumar Goyal Vs. Municipal Corporation, Gwalior] …48

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***Civil Procedure Code (5 of 1908), Order 1 Rule 10 & Order 2 Rule 2 – Necessary and Proper Party* – Held – Comprehensive General Liability Policy taken by Respondent No. 6 from petitioner – In order to defend probable liability upon Respondent No. 6, it is for insurance company also to defend the claim – In view of provisions of Order 2 Rule 2 CPC, all issues arising out of accident are liable to be decided in one claim case – So far as terms and conditions of policy are concerned, it is a matter of evidence – Petitioner Insurance company rightly impleaded as respondents in claim case – Petition dismissed. [Bajaj Allianz General Insurance Co. Vs. Hafiza Bee] …100**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 व आदेश 2 नियम 2 – आवश्यक एवं उचित पक्षकार – अभिनिर्धारित – प्रत्यर्थी क्र. 6 द्वारा याची से कॉम्प्रीहेन्सिव जनरल लाईबिलिटी पॉलिसी ली गई – प्रत्यर्थी क्र. 6 पर संभाव्य दायित्व का बचाव किये जाने हेतु, उसके साथ–साथ यह बीमा कंपनी के लिए भी है कि वह दावे का बचाव करें – सि.प्र.सं. के आदेश–2 नियम 2 के उपबंधों को दृष्टिगत रखते हुए, दुर्घटना से उत्पन्न हुए सभी विवाद्यक एक ही दावा प्रकरण में विनिश्चित किये जाने योग्य हैं – जहां तक पॉलिसी के निबंधनों और शर्तों का संबंध है, यह साक्ष्य का विषय है – याची बीमा कंपनी को दावा

प्रकरण में उचित रूप से अनावेदक के रूप में पक्षकार बनाया गया – याचिका खारिज। (बजाज आलियांज जनरल इंश्योरेन्स कं. वि. हफीजा बी) ...100

Civil Procedure Code (5 of 1908), Order 47 Rule 1 – Review – Grounds – **Held – When observation regarding possession was made on appreciation of evidence/material on record, it cannot be said that there was an error apparent on face of proceedings and required to be reviewed in exercise of powers under Order 47 Rule 1 CPC. [Shri Ram Sahu (Dead) Through LRs. Vs. Vinod Kumar Rawat] (SC)...4**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 – पुनर्विलोकन – आधार – अभिनिर्धारित – जब अभिलेख पर साक्ष्य/सामग्री के मूल्यांकन पर कब्जे के संबंध में संप्रेक्षण दिया गया था, यह नहीं कहा जा सकता कि कार्यवाहियों में प्रकट त्रुटि थी और आदेश 47, नियम 1 सि.प्र.सं. के अंतर्गत शक्तियों के प्रयोग में पुनर्विलोकन अपेक्षित था। (श्री राम साहू (मृतक) द्वारा विधिक प्रतिनिधि वि. विनोद कुमार रावत) **(SC)...4**

Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 15 – Further Inquiry & Denovo Inquiry/Re-inquiry **– Held – Since charge-sheet remained the same, previous charge-sheet was not set aside, just because no witness was examined, disciplinary authority directed to conduct further inquiry – It cannot be termed as *denovo* inquiry/re-inquiry – Respondent directed to conclude the inquiry – Petition disposed. [A.A. Abraham Vs. State of M.P.] ...78**

सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 15 – अतिरिक्त जांच व नये सिरे से जांच/पुनः जांच – अभिनिर्धारित – चूंकि आरोप–पत्र वही था, पूर्व आरोप–पत्र को अपास्त नहीं किया गया था, मात्र क्योंकि किसी साक्षी का परीक्षण नहीं किया गया था, अनुशासनिक प्राधिकारी को अतिरिक्त जांच संचालित करने हेतु निदेशित किया गया – इसे नये सिरे से जांच/पुनः जांच नहीं कहा जा सकता – प्रत्यर्थी को जांच समाप्त करने हेतु निदेशित किया गया – याचिका निराकृत। (ए.ए. अब्राहम वि. म. प्र. राज्य) **...78**

Civil Services (Pension) Rules, M.P., 1976, Rule 9(1) & (2) – Departmental Inquiry – Retired Employee – Punishment **– Held – The initiating/disciplinary authority cannot impose punishment to retired employee indeed, he is under statutory obligation to submit his report regarding findings submitted by Inquiry Officer which is finally placed before Governor for decision under Rule 9(1) of Pension Rules. [A.A. Abraham Vs. State of M.P.] ...78**

सिविल सेवा (पेंशन) नियम, म.प्र., 1976, नियम 9(1) व (2) – विभागीय जांच – सेवानिवृत्त कर्मचारी – दण्ड – अभिनिर्धारित – आरंभ करने वाला/अनुशासनिक प्राधिकारी वास्तव में एक सेवानिवृत्त कर्मचारी पर दण्ड अधिरोपित नहीं कर सकता, वह जांच अधिकारी द्वारा प्रस्तुत किये गये निष्कर्षों के संबंध में अपना प्रतिवेदन प्रस्तुत करने

की कानूनी बाध्यता के अधीन है, जो कि पेंशन नियमों के नियम 9(1) के अंतर्गत विनिश्चय हेतु अंतिम रूप से राज्यपाल के समक्ष रखा जाता है। (ए.ए. अब्राहम वि. म.प्र. राज्य) **...78**

***Civil Services (Pension) Rules, M.P., 1976, Rule 9(2) – Departmental Inquiry – Retired Employee – Expression "shall be continued and concluded"* – Held – If inquiry is instituted before retirement of a government employee, it shall continue in the same manner and shall be deemed to be proceedings under Pension Rules – This deeming provision permits the authority who has initiated the inquiry to conclude it. [A.A. Abraham Vs. State of M.P.] ...78**

सिविल सेवा (पेंशन) नियम, म.प्र., 1976, नियम 9(2) – विभागीय जांच – सेवानिवृत्त कर्मचारी – अभिव्यक्ति ''चालू रहेंगी और समाप्त की जावेंगी'' – अभिनिर्धारित – यदि एक शासकीय कर्मचारी की सेवानिवृत्ति के पूर्व जांच संस्थित की जाती है, तो वह उसी भांति जारी रहेगी तथा पेंशन नियमों के अंतर्गत कार्यवाही मानी जावेगी – यह धारणा उपबंध जांच संस्थित करने वाले प्राधिकारी को उसे निष्कर्षित करने की अनुमति प्रदान करता है। (ए.ए. अब्राहम वि. म.प्र. राज्य) **...78**

***Civil Services (Pension) Rules, M.P., 1976, Rule 64 – Retiral Dues* – Held – In view of Rule 64, no fault can be found if department has not released full pension and gratuity and had only released anticipatory pension subject to outcome of inquiry. [A.A. Abraham Vs. State of M.P.] ...78**

सिविल सेवा (पेंशन) नियम, म.प्र., 1976, नियम 64 – सेवानिवृत्ति देयक – अभिनिर्धारित – नियम 64 को दृष्टिगत रखते हुए, कोई दोष नहीं निकाला जा सकता यदि विभाग ने पूरी पेंशन एवं उपदान जारी नहीं किया है तथा जांच के परिणाम के अधीन केवल अग्रिम पेंशन जारी की है। (ए.ए. अब्राहम वि. म.प्र. राज्य) **...78**

***Constitution – Article 14 & 226 – Contractual Matter –Forfeiture of Security Amount* – Held – Action of respondents in withholding the amount of performance guarantee (security) of petitioner was arbitrary and unreasonable being violative of Article 14 of Constitution – Respondent wrongly interpreted clauses of agreement – Respondent directed to refund the amount with interest @ 6% p.a. – Petition allowed. [Alok Kumar Choubey Vs. State of M.P.] (DB)...88**

संविधान – अनुच्छेद 14 व 226 – संविदात्मक मामला – प्रतिभूति राशि का समपहरण – अभिनिर्धारित – याची की कार्य संपादन गारंटी (प्रतिभूति) की राशि को प्रत्यर्थीगण द्वारा रोके रखने की कार्रवाई संविधान के अनुच्छेद 14 का उल्लंघन करने के कारण मनमानी एवं अनुचित थी – प्रत्यर्थी ने करार के खण्डों का गलत रूप से निर्वचन किया – प्रत्यर्थी को 6 प्रतिशत के वार्षिक ब्याज सहित राशि वापस करने हेतु निदेशित किया गया – याचिका मंजूर। (अलोक कुमार चौबे वि. म.प्र. राज्य) **(DB)...88**

***Constitution – Article 226 – Contractual Matters – Scope & Jurisdiction* – Held – Petition under Article 226 cannot be thrown straight away by holding that it has been filed for enforcement of contractual obligations – In**

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संविधान – अनुच्छेद 226 – संविदात्मक मामले – व्याप्ति व अधिकारिता – अभिनिर्धारित – अनुच्छेद 226 अंतर्गत याचिका को यह ठहराते हुए सीधे बाहर नहीं किया जा सकता कि उसे संविदात्मक बाध्यताओं के प्रवर्तन हेतु प्रस्तुत किया गया है – राशि के भुगतान के परिणामिक अनुतोष की विधि के निर्वचन के प्रकरण में अथवा जहाँ प्रत्यर्थीगण इत्यादि द्वारा दायित्व को स्वीकार किया गया है, उच्च न्यायालय, संविदात्मक मामलों में रिट याचिका ग्रहण कर सकता है। (राजकुमार गोयल वि. म्यूनिसिपल कारपोरेशन, ग्वालियर) **…48**

***Constitution – Article 226 – Delay & Laches – Maintainability* – Held – Petition has been filed after 11 long years – Successive representation and any decision on those representations would not give any fresh cause of action – Stale and dead cases cannot be reopened merely on ground that respondents had entertained one of the representation/complaint which was made on CM Helpline and to Jan Shikayat Nivaran Vibhag – Petition dismissed *in limine* on ground of delay and *laches*. [Sajjan Singh Kaurav Vs. State of M.P.] …*3**

संविधान – अनुच्छेद 226 – विलंब व अतिविलंब – पोषणीयता – अभिनिर्धारित – याचिका को 11 वर्ष लंबी अवधि के पश्चात् प्रस्तुत किया गया है – उत्तरोत्तर अभ्यावेदन एवं उन अभ्यावेदनों पर कोई विनिश्चय, कोई नया वाद हेतुक नहीं देगा – पुराने एवं मृत प्रकरणों को मात्र इस आधार पर पुनः खोला नहीं जा सकता कि प्रत्यर्थीगण ने एक अभ्यावेदन/शिकायत को ग्रहण कर लिया था जो सी.एम. हेल्पलाईन पर तथा जन शिकायत निवारण विभाग को किया गया था – याचिका को विलंब व अतिविलंब के आधार पर आरंभ में ही खारिज किया गया। (सज्जन सिंह कौरव वि. म.प्र. राज्य) **…*3**

***Constitution – Article 226 – Interim Order – Scope* – Held – Interim orders cannot be treated as a precedent. [Raman Dubey Vs. State of M.P.] …38**

संविधान – अनुच्छेद 226 – अंतरिम आदेश – व्याप्ति – अभिनिर्धारित – अंतरिम आदेश को पूर्व निर्णय के रूप में नहीं माना जा सकता। (रमन दुबे वि. म.प्र. राज्य) **…38**

***Constitution – Article 226 – Pleadings* – Held – Oral submissions in absence of pleadings cannot be accepted so as to take the respondents by surprise. [Ajay Jain Vs. The Chief Election Authority] …*1**

संविधान – अनुच्छेद 226 – अभिवचन – अभिनिर्धारित – अभिवचनों की अनुपस्थिति में मौखिक निवेदन, जो कि प्रत्यर्थीगण के लिए अप्रत्याशित हो, स्वीकार नहीं किये जा सकते। (अजय जैन वि. द चीफ इलेक्शन अथॉरिटी) **…*1**

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***Constitution – Article 226 and Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 2(i) – Scope & Jurisdiction* – Held – Whether son of proposer would be covered by definition of "family" or not, is a disputed question of fact which cannot be decided by this Court in exercise of jurisdiction under Article 226 of Constitution. [Ajay Jain Vs. The Chief Election Authority] …*1**

संविधान – अनुच्छेद 226 एवं सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 2(i) – व्याप्ति व अधिकारिता – अभिनिर्धारित – क्या प्रस्थापक का पुत्र, ''कुटुंब'' की परिभाषा द्वारा आच्छादित होगा अथवा नहीं, यह तथ्य का एक विवादित प्रश्न है जिसे इस न्यायालय द्वारा संविधान के अनुच्छेद 226 के अंतर्गत अधिकारिता के प्रयोग में विनिश्चित नहीं किया जा सकता। (अजय जैन वि. द चीफ इलेक्शन अथॉरिटी) **…*1**

***Constitution – Article 226 and Cooperative Societies Rules, M.P. 1962, Rule 49-E(5)(d) – Rejection of Nomination Papers* – Held – In absence of any challenge to decision of Returning Officer in declaring the proposer as disqualified, this Court cannot look into correctness of the order of Returning Officer – Court cannot go beyond pleadings – Mere mass rejection of nomination papers cannot be presumed to be arbitrary and *malafide* action on part of Returning Officer – Election process is not vitiated – Petition dismissed. [Ajay Jain Vs. The Chief Election Authority] …*1**

संविधान – अनुच्छेद 226 एवं सहकारी सोसायटी नियम, म.प्र. 1962, नियम 49–E(5)(d) – नामांकन पत्रों को अस्वीकार किया जाना – अभिनिर्धारित – प्रस्थापक को निर्हरित घोषित करने के निर्वाचन अधिकारी के निर्णय को किसी चुनौती की अनुपस्थिति में, यह न्यायालय, निर्वाचन अधिकारी के आदेश की शुद्धता की जांच नहीं कर सकता – न्यायालय, अभिवचनों से परे नहीं जा सकता – मात्र बड़ी संख्या में नामांकन पत्रों की अस्वीकृति से निर्वाचन अधिकारी की ओर से मनमानापन एवं असद्भाविक कार्रवाई की उपधारणा नहीं की जा सकती – निर्वाचन प्रक्रिया दूषित नहीं है – याचिका खारिज। (अजय जैन वि. द चीफ इलेक्शन अथॉरिटी) **…*1**

***Constitution – Article 226 and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 17 – Efficacious Alternate Remedy – Contractual Matters – Interim Relief* – Held – Alternate remedy of dispute resolution system by way of application to competent authority, appeal to appellate authority and thereafter to Arbitration Tribunal, in present facts cannot be taken as efficacious alternative remedy particularly when Section 17 of 1983 Act bars the Tribunal from granting any interim relief. [Alok Kumar Choubey Vs. State of M.P.] (DB)…88**

संविधान – अनुच्छेद 226 एवं माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 17 – प्रभावकारी वैकल्पिक उपचार – संविदात्मक मामले – अंतरिम अनुतोष – अभिनिर्धारित – सक्षम प्राधिकारी को आवेदन, अपीली प्राधिकारी तथा तत्पश्चात् माध्यस्थम्

अधिकरण को अपील के माध्यम से विवाद समाधान प्रणाली के वैकल्पिक उपचार को वर्तमान तथ्यों में प्रभावकारी वैकल्पिक उपचार के रूप में नहीं लिया जा सकता विशिष्टतः जब 1983 के अधिनियम की धारा 17 अधिकरण को अंतरिम अनुतोष प्रदान करने से वर्जित करती है। (अलोक कुमार चौबे वि. म.प्र. राज्य) **(DB)…88**

***Constitution – Article 226 and Nagar Palika (Registration of Colonizer Terms & Conditions) Rules, M.P., 1998, Rule 15-A (amended) – Contractual Obligations – Alternate Remedy* – Held – Contractual work was got done through petitioner – Fact shows that there exist a dispute between petitioner and respondents – Petitioner has efficacious/alternate remedy to approach Dispute Resolution System as provided under contract/agreement – Petition dismissed. [Rajkumar Goyal Vs. Municipal Corporation, Gwalior] …48**

संविधान – अनुच्छेद 226 एवं नगरपालिका (कॉलोनाइजर का रजिस्ट्रीकरण, निर्बंधन तथा शर्तें) नियम, म.प्र., 1998, नियम 15–A (संशोधित) – संविदाजात बाध्यताएं – वैकल्पिक उपचार – अभिनिर्धारित – संविदात्मक कार्य को याची के जरिए करवाया गया था – तथ्य दर्शाता है कि याची व प्रत्यर्थीगण के बीच एक विवाद विद्यमान है – याची के पास संविदा/करार अंतर्गत यथा उपबंधित विवाद समाधान प्रणाली के समक्ष जाने का प्रभावकारी/वैकल्पिक उपचार है – याचिका खारिज। (राजकुमार गोयल वि. म्यूनिसिपल कारपोरेशन, ग्वालियर) **…48**

***Constitution – Article 226/227 – Alternate Remedy – Exceptions* – Held – Despite availability of alternative remedy, writ petition can be entertained – Seven recognized exceptions are (i) when petition filed for enforcement of fundamental rights, (ii) if there is violation of principle of natural justice, (iii) where order of proceedings is wholly without jurisdiction, (iv) where *vires* of Act is challenged, (v) where availing of alternative remedy subjects a person to very lengthy proceedings and unnecessary harassment, (vi) where question raised is purely legal one, there being no dispute on facts and (vii) where State or its intermediary in a contractual matter acts against public good/interest unjustly, unfairly, unreasonably and arbitrary. [Alok Kumar Choubey Vs. State of M.P.] (DB)…88**

संविधान – अनुच्छेद 226/227 – वैकल्पिक उपचार – अपवाद – अभिनिर्धारित – वैकल्पिक उपचार की उपलब्धता के बावजूद, रिट याचिका ग्रहण की जा सकती है – सात मान्य अपवाद हैं **(i)** जब मूल अधिकारों के प्रवर्तन हेतु रिट याचिका प्रस्तुत की गई हो, **(ii)** यदि नैसर्गिक न्याय के सिद्धांत का उल्लंघन है, **(iii)** जहाँ कार्यवाहियों का आदेश पूर्ण रूप से बिना अधिकारिता का हो, **(iv)** जहां अधिनियम की शक्तिमत्ता को चुनौती दी गई हो, **(v)** जहां वैकल्पिक उपचार का लाभ लेने से व्यक्ति को बहुत लंबी कार्यवाहियां तथा अनावश्यक उत्पीड़न का सामना करना पड़ता है **(vi)** जहां उठाया गया प्रश्न पूरी तरह से एक विधिक प्रश्न है, तथ्यों पर कोई विवाद नहीं है तथा **(vii)** जहां राज्य तथा उसके मध्यवर्ती एक संविदात्मक मामले में लोकहित के विरूद्ध अन्यायपूर्ण, पक्षपाती, अनुचित और मनमाने रूप से कार्य करते हैं। (अलोक कुमार चौबे वि. म.प्र. राज्य) **(DB)…88**

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Constitution – Article 226/227 – Blacklisting – Show Cause Notice – Principle of Natural Justice – **Held – Action of blacklisting neither expressly proposed in show cause notice nor could be inferred from its language, even the relevant clause of bid document is not mentioned, so as to provide adequate and meaningful opportunity to appellant to show cause against the same – It does not fulfill requirement of a valid show cause notice for blacklisting – Such order is contrary to principle of natural justice – Order passed by High Court set aside – Order of blacklisting appellant for future tenders is quashed – Appeal allowed. [UMC Technologies Pvt. Ltd. Vs. Food Corporation of India] (SC)…27**

संविधान – अनुच्छेद 226/227 – काली सूची में नाम डालना – कारण बताओ नोटिस – नैसर्गिक न्याय का सिद्धांत – अभिनिर्धारित – कारण बताओ नोटिस में, काली सूची में नाम डालने की कार्रवाई, न तो अभिव्यक्त रूप से प्रस्तावित है न ही उसकी भाषा से निष्कर्षित की जा सकती है, यहां तक कि बोली दस्तावेज का सुसंगत खंड भी उल्लिखित नहीं जिससे कि अपीलार्थी को उक्त के विरूद्ध कारण दर्शाने के लिए पर्याप्त एवं अर्थपूर्ण अवसर उपलब्ध कराया जाता – यह, काली सूची में नाम डालने हेतु विधिमान्य कारण बताओ नोटिस की अपेक्षा को पूरा नहीं करता – उक्त आदेश नैसर्गिक न्याय के सिद्धांत के विरूद्ध है – उच्च न्यायालय द्वारा पारित आदेश अपास्त – अपीलार्थी को भविष्य की निविदाओं हेतु काली सूची में नाम डालने का आदेश अभिखंडित – अपील मंजूर। (यूएमसी टेक्नोलॉजी प्रा. लि. वि. फुड कारपोरेशन ऑफ इंडिया) **(SC)…27**

Constitution – Article 226/227 – Caste Certificate – Enquiry – Competent Authority – **Held – Adjudicating the claim of a person whether he belonged to a particular caste or not, is to be done by Scrutiny Committee but to verify whether a certificate is issued from office of competent authority or not or from the office where a person claims it to be issued, can be looked into by the in-charge person of that office – Such verification of certificate cannot be said to be an enquiry regarding claim of petitioner. [G. Usha Rajsekhar (Smt.) Vs. Government of India] …85**

संविधान – अनुच्छेद 226/227 – जाति प्रमाणपत्र – जांच – सक्षम प्राधिकारी – अभिनिर्धारित – एक व्यक्ति के दावे का न्यायनिर्णयन, कि वह एक विशिष्ट जाति का है अथवा नहीं, छानबीन समिति द्वारा किया जाना चाहिए लेकिन यह सत्यापित करने के लिए कि क्या कोई प्रमाणपत्र सक्षम प्राधिकारी के कार्यालय से जारी किया गया है या नहीं या उस कार्यालय से जहां से कोई व्यक्ति इसे जारी करने का दावा करता है, उस कार्यालय के प्रभारी व्यक्ति द्वारा देखा जा सकता है – उक्त प्रमाणपत्र के सत्यापन को याची के दावे से संबंधित एक जांच नहीं कहा जा सकता। (जी. उषा राजशेखर (श्रीमती) वि. गव्हर्मेंट ऑफ इंडिया) **…85**

Constitution – Article 226/227 – Extension of Stay Order – **Held – Apex Court has concluded that whatever stay has been granted by any Court including High Court automatically expires within a period of six months,**

and unless extension is granted for good reason, within next six months, the trial Court is, on expiry of first period of six months, to set a date for trial and go ahead with same – Present case not fit for extension of stay – I.A. dismissed. [G. Usha Rajsekhar (Smt.) Vs. Government of India] ...85

संविधान – अनुच्छेद 226/227 – रोक आदेश का विस्तार – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि उच्च न्यायालय सहित किसी भी न्यायालय द्वारा जो भी रोक आदेश जारी किया गया है, छह माह की अवधि के भीतर स्वतः समाप्त हो जाता है, तथा जब तक कि अगले छह माह के भीतर पर्याप्त कारण के लिए विस्तार प्रदान नहीं किया जाता है, तो विचारण न्यायालय प्रथम छह माह की अवधि के समाप्त होने पर, विचारण की तिथि तय करेगा और उक्त पर आगे कार्यवाही करेगा – वर्तमान प्रकरण रोक आदेश के विस्तार हेतु उचित नहीं है – अंतर्वर्ती आवेदन खारिज। (जी. उषा राजशेखर (श्रीमती) वि. गव्हर्मेंट ऑफ इंडिया) **...85**

***Constitution – Article 300A – Retiral Dues* – Held – Retiral dues of employee cannot be treated as bounty, it is his right under Article 300A of Constitution. [A.A. Abraham Vs. State of M.P.] ...78**

संविधान – अनुच्छेद 300A – सेवानिवृत्ति देयक – अभिनिर्धारित – कर्मचारी के सेवानिवृत्ति देयकों को उपहार स्वरूप नहीं माना जा सकता, संविधान के अनुच्छेद 300A के अंतर्गत यह उसका अधिकार है। (ए.ए. अब्राहम वि. म.प्र. राज्य) **...78**

***Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 2(i) – See – Constitution – Article 226* [Ajay Jain Vs. The Chief Election Authority] ...*1**

सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 2(i) – देखें – संविधान – अनुच्छेद 226 (अजय जैन वि. द चीफ इलेक्शन अथॉरिटी) **...*1**

***Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 64 & 68 – Preliminary Enquiry – Jurisdiction* – Held – Since there were several complaints in respect of Jai Kisan Rin Mafi Yojna which is a scheme of State government, functionaries of State has a right to conduct preliminary enquiry and it cannot be termed as encroachment on rights/jurisdiction of Society – Petition dismissed. [Raman Dubey Vs. State of M.P.] ...38**

सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 व 68 – प्रारंभिक जांच – अधिकारिता – अभिनिर्धारित – चूंकि जय किसान ऋण माफी योजना, जो कि राज्य सरकार की एक स्कीम है, के संबंध में कई शिकायतें थी, राज्य के कृत्यकारियों को प्रारंभिक जांच संचालित करने का अधिकार है और इसे सोसायटी के अधिकारों/अधिकारिता का अधिक्रमण नहीं कहा जा सकता – याचिका खारिज। (रमन दुबे वि. म.प्र. राज्य) **...38**

***Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 64 & 68 – Preliminary Enquiry – Scope – Opportunity of Hearing/Natural Justice* – Held – Preliminary enquiry is merely a fact finding enquiry and its findings are**

not evidence and none can be punished or condemned on such enquiry report – Such report is not a judgment nor an opinion of an expert – Rights and liabilities of parties are not decided in such enquiry – Further, petitioner could not show any provisions of law which mandates grant of opportunity of hearing in preliminary enquiry – No order passed on basis of preliminary enquiry report, taking away rights of petitioner – No violation of natural justice – Report cannot be quashed. [Raman Dubey Vs. State of M.P.] …38

सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 व 68 – प्रारंभिक जांच – व्याप्ति – सुनवाई का अवसर/नैसर्गिक न्याय – अभिनिर्धारित – प्रारंभिक जांच मात्र एक तथ्य निष्कर्षित करने की जांच है और उसके निष्कर्ष साक्ष्य नहीं हैं एवं उक्त जांच प्रतिवेदन पर किसी को दण्डित या सिद्धदोष नहीं किया जा सकता – उक्त प्रतिवेदन एक निर्णय नहीं है और न ही एक विशेषज्ञ की राय है – ऐसी जांच में पक्षकारों के अधिकार एवं दायित्व विनिश्चित नहीं होते – इसके अतिरिक्त याची, विधि के ऐसे किन्हीं उपबंधों को नहीं दर्शा सका है जिसमें प्रारंभिक जांच में सुनवाई के अवसर का प्रदान किया जाना आज्ञापक है – प्रारंभिक जांच प्रतिवेदन के आधार पर कोई आदेश पारित नहीं किया गया, याची के अधिकारों को छीना गया – नैसर्गिक न्याय का कोई उल्लंघन नहीं – प्रतिवेदन अभिखण्डित नहीं किया जा सकता। (रमन दुबे वि. म.प्र. राज्य) **…38**

Co-operative Societies Act, M.P. 1960 (17 of 1961), Sections 64, 74, 75 & 76 – Registration of FIR – Opportunity of Hearing – **Held – In absence of any bar, it cannot be said that prosecuting agency has no power to criminally prosecute a wrong doer, looking to provisions u/S 64, 74, 75 & 76 of the Act – There is no provision which gives a right of audience to suspect prior to lodging FIR. [Raman Dubey Vs. State of M.P.] …38**

सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धाराएँ 64, 74, 75 व 76 – प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जाना – सुनवाई का अवसर – अभिनिर्धारित – किसी वर्जन की अनुपस्थिति में, अधिनियम की धारा 64, 74, 75 व 76 के उपबंधों को देखते हुए यह नहीं कहा जा सकता कि अभियोजन ऐजेंसी को एक अपकृत्यकारी को दाण्डिक रूप से अभियोजित करने की शक्ति नहीं है – ऐसा कोई उपबंध नहीं है जो एक संदिग्ध को, प्रथम सूचना प्रतिवेदन दर्ज होने के पूर्व सुने जाने का अधिकार देता है। (रमन दुबे वि. म.प्र. राज्य) **…38**

Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 68 – Attachment Before Award – **Held – After filing of application u/S 68, all persons would get an opportunity to file their reply and oppose the prayer and then competent authority will decide the application in accordance with law – No one can be prevented from filing application(s) which is/are maintainable under the law – Direction to file application u/S 68 of the Act is not bad in law. [Raman Dubey Vs. State of M.P.] …38**

सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 68 – अधिनिर्णय के पूर्व कुर्की – अभिनिर्धारित – धारा 68 के अंतर्गत आवेदन प्रस्तुत करने के पश्चात्, सभी

व्यक्तियों को उनके जवाब प्रस्तुत करने का और याचना का विरोध करने का अवसर मिलेगा एवं तब सक्षम प्राधिकारी, विधि के अनुसरण में आवेदन का विनिश्चय करेगा – किसी को ऐसे आवेदन प्रस्तुत करने से निवारित नहीं किया जा सकता जो विधि अंतर्गत पोषणीय है/हैं – अधिनियम की धारा 68 के अंतर्गत आवेदन प्रस्तुत करने का निदेश, विधि में अनुचित नहीं है। (रमन दुबे वि. म.प्र. राज्य) …38

Cooperative Societies Rules, M.P. 1962, Rule 49-E(5)(d) – See – Constitution – Article 226 **[Ajay Jain Vs. The Chief Election Authority] …*1**

सहकारी सोसायटी नियम, म.प्र. 1962, नियम 49–E(5)(d) – देखें – संविधान – अनुच्छेद 226 (अजय जैन वि. द चीफ इलेक्शन अथॉरिटी) …*1

Cooperative Societies Rules, M.P. 1962, Rule 64 – Alternate Remedy – **Held – In exceptional cases, writ petition in election matter can be entertained. [Ajay Jain Vs. The Chief Election Authority] …*1**

सहकारी सोसायटी नियम, म.प्र. 1962, नियम 64 – वैकल्पिक उपचार – अभिनिर्धारित – अपवादात्मक प्रकरणों में, निर्वाचन के मामले में रिट याचिका ग्रहण की जा सकती है। (अजय जैन वि. द चीफ इलेक्शन अथॉरिटी) …*1

Criminal Procedure Code, 1973 (2 of 1974), Sections 154, 195 & 482 and Penal Code (45 of 1860), Section 188 – Quashment of FIR – **Held – There is no bar u/S 195 Cr.P.C. in respect of registration of FIR for offence u/S 188 IPC – What is barred u/S 195 Cr.P.C. is that after investigation, police officer cannot file a final report in the Court and Court cannot take cognizance on that final report – In instant case, investigation is going on – FIR cannot be quashed – Application dismissed. [Zaid Pathan Vs. State of M.P.] …152**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 154, 195 व 482 एवं दण्ड संहिता (1860 का 45), धारा 188 – प्रथम सूचना प्रतिवेदन को अभिखंडित किया जाना – अभिनिर्धारित – धारा 188 भा.दं.सं. के अंतर्गत अपराध हेतु प्रथम सूचना प्रतिवेदन पंजीबद्ध किये जाने के संबंध में, धारा 195 दं.प्र.सं. के अंतर्गत कोई वर्जन नहीं – धारा 195 दं.प्र.सं. के अंतर्गत जो वर्जित है वह यह है कि अन्वेषण पश्चात्, पुलिस अधिकारी, न्यायालय में अंतिम प्रतिवेदन प्रस्तुत नहीं कर सकता और न्यायालय उस अंतिम प्रतिवेदन पर संज्ञान नहीं ले सकता – वर्तमान प्रकरण में, अन्वेषण जारी है – प्रथम सूचना प्रतिवेदन अभिखंडित नहीं किया जा सकता – आवेदन खारिज। (ज़ैद पठान वि. म.प्र. राज्य) …152

Criminal Procedure Code, 1973 (2 of 1974), Section 154 & 195(1)(a) and Penal Code (45 of 1860), Section 188 – Registration of FIR – Cognizance of Offence – **Held – By virtue of Section 195(1)(a) Cr.P.C., power of police to register FIR for offences mentioned therein, is not curtailed but what is curtailed is the jurisdiction of Court to take cognizance of the offence without there being complaint in writing of the concerned public servant – FIR can**

be registered by police for offence u/S 188 IPC. [Zaid Pathan Vs. State of M.P.] ...152

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 व 195(1)(a) एवं दण्ड संहिता (1860 का 45), धारा 188 – प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जाना – अपराध का संज्ञान – अभिनिर्धारित – धारा 195(1)(a) दं.प्र.सं. के आधार पर, उसमें उल्लिखित अपराधों हेतु प्रथम सूचना प्रतिवेदन पंजीबद्ध करने की पुलिस की शक्ति कम नहीं की गई है अपितु जो कम किया गया है वह संबंधित लोक सेवक की लिखित में शिकायत के बिना अपराध का संज्ञान लेने के लिए न्यायालय की अधिकारिता है – धारा 188 भा.दं.सं. के अंतर्गत अपराध हेतु पुलिस द्वारा प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जा सकता है। (ज़ैद पठान वि. म.प्र. राज्य) ...152

***Criminal Procedure Code, 1973 (2 of 1974), Section 154 & 482 – Quashment of FIR* – Held – Apex Court concluded that power to quash FIR must be exercised very sparingly and with circumspection and that too in rarest of rare case – Court cannot enquire the reliability or genuineness of allegations made in FIR. [Zaid Pathan Vs. State of M.P.] ...152**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 व 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि प्रथम सूचना प्रतिवेदन अभिखंडित करने की शक्ति का प्रयोग अति विरल एवं सावधानी के साथ और वह भी विरल से विरलतम प्रकरण में करना चाहिए – न्यायालय, प्रथम सूचना प्रतिवेदन में किये गये अभिकथनों की विश्वसनीयता या सत्यता की जांच नहीं कर सकता। (ज़ैद पठान वि. म.प्र. राज्य) ...152

***Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2) – Filing of Challan – Covid Pandemic – Extension of Time – Applicability* – Held – The order dated 23.03.2020 of Supreme Court related to extension of time limit was not applicable for filing of challan within 60 days or 90 days as prescribed under Cr.P.C. [Raja Bhaiya Singh Vs. State of M.P.] ...119**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) – चालान प्रस्तुत किया जाना – कोविड महामारी – समय बढ़ाया जाना – प्रयोज्यता – अभिनिर्धारित – समय सीमा के बढ़ाये जाने से संबंधित सर्वोच्च न्यायालय का आदेश दिनांक 23.03.2020 दं.प्र.सं. के अंतर्गत विहित अनुसार साठ दिनों अथवा नब्बे दिनों के भीतर चालान प्रस्तुत करने के लिए लागू नहीं था। (राजा भैया सिंह वि. म.प्र. राज्य) ...119

***Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2) – Filing of Challan – Right of Default Bail* – Held – Right of default bail u/S 167(2) Cr.P.C. cannot be curtailed by subsequent filing of challan even on the same date. [Raja Bhaiya Singh Vs. State of M.P.] ...119**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) – चालान प्रस्तुत किया जाना – डिफॉल्ट जमानत का अधिकार – अभिनिर्धारित – दं.प्र.सं. की धारा 167(2) के

अंतर्गत डिफॉल्ट जमानत के अधिकार को उसी दिनांक को भी पश्चात्वर्ती रूप से चालान प्रस्तुत कर कम नहीं किया जा सकता। (राजा भैया सिंह वि. म.प्र. राज्य) **...119**

Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2), Proviso (a) – Filing of Challan – Computation of Period **– Held – Apex Court concluded that period of 90 days/60 days under proviso (a) begins to run only from date of order of remand and not from date of arrest – "One day" will be complete on the next day of remand – The day accused was remanded to judicial custody should be excluded and the day challan is filed in Court, should be included – Period of temporary bail shall be excluded in computation of period – Last date, if it is Sunday or Holiday will also be counted. [Raja Bhaiya Singh Vs. State of M.P.] ...119**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2), परंतुक (a) – चालान प्रस्तुत किया जाना – अवधि की संगणना – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि परंतुक (a) के अंतर्गत नब्बे दिनों/साठ दिनों की अवधि, रिमांड आदेश की तिथि से चलना आरंभ हो जाती है तथा न कि गिरफ्तारी की तिथि से – ''एक दिन'' रिमांड के अगले दिन पूर्ण हो जाएगा – अभियुक्त को न्यायिक अभिरक्षा में भेजे जाने वाले दिन को अपवर्जित किया जाना चाहिए तथा न्यायालय में चालान प्रस्तुत होने वाले दिन को शामिल किया जाना चाहिए – अवधि की संगणना में अस्थायी जमानत की अवधि अपवर्जित की जाएगी – अंतिम तिथि, अगर वह रविवार अथवा अवकाश है, की भी गणना की जायेगी। (राजा भैया सिंह वि. म.प्र. राज्य) **...119**

Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2) & 397 – Maintainability of Revision **– Held – Order on application u/S 167(2) for default bail is not an interlocutory order because it decides the valuable right of accused for default bail – Revision is maintainable. [Raja Bhaiya Singh Vs. State of M.P.] ...119**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) व 397 – पुनरीक्षण की पोषणीयता – अभिनिर्धारित – डिफॉल्ट जमानत के लिए धारा 167(2) के अंतर्गत आवेदन पर आदेश एक अंतर्वर्ती आदेश नहीं है क्योंकि यह डिफॉल्ट जमानत के लिए अभियुक्त के मूल्यवान अधिकार का विनिश्चय करता है – पुनरीक्षण पोषणीय है। (राजा भैया सिंह वि. म. प्र. राज्य) **...119**

Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2) and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8(b)/20(a)(i) – Filing of Challan – Limitation **– Held – Offence is punishable by imprisonment upto 10 years and not minimum period of 10 years or death or life imprisonment – Limitation will be 60 days and not 90 or 180 days – Challan not filed within limitation period of 60 days – Subsequent filing of challan on same date of filing of application u/S 167(2) Cr.P.C. will not fortify the right of accused – Trial Court erred in rejecting the application – Bail granted – Revision allowed. [Raja Bhaiya Singh Vs. State of M.P.] ...119**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) एवं स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8(b)/20(a)(i) – चालान प्रस्तुत किया जाना – परिसीमा – अभिनिर्धारित – अपराध दस वर्ष तक के कारावास द्वारा तथा न कि दस वर्ष की न्यूनतम अवधि के कारावास से या मृत्युदंड या आजीवन कारावास द्वारा दण्डनीय है – परिसीमा साठ दिनों की होगी तथा न कि नब्बे अथवा एक सौ अस्सी दिनों की – साठ दिनों की परिसीमा अवधि के भीतर चालान प्रस्तुत नहीं किया गया – दं.प्र.सं. की धारा 167(2) के अंतर्गत आवेदन प्रस्तुत किये जाने की तिथि को ही पश्चात्वर्ती चालान का प्रस्तुत किया जाना, अभियुक्त के अधिकार को मजबूत नहीं करेगा – विचारण न्यायालय ने आवेदन को अस्वीकार करने में त्रुटि की है – जमानत प्रदान – पुनरीक्षण मंजूर। (राजा भैया सिंह वि. म.प्र. राज्य) **...119**

***Criminal Procedure Code, 1973 (2 of 1974), Section 200 & 340 and Penal Code (45 of 1860), Section 193 & 196 – Filing Fabricated Document before Court* – Held – Fabricated affidavit filed before this Court – Applicants also stated false facts and used fabricated affidavit as genuine document – Registrar General directed to initiate proceedings u/S 340 Cr.P.C. for offence u/S 193 & 196 IPC and if found *prima facie* guilty, complaint be filed u/S 200 Cr.P.C. on behalf of High Court. [Surajmal Vs. State of M.P.] ...135**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 200 व 340 एवं दण्ड संहिता (1860 का 45), धारा 193 व 196 – न्यायालय के समक्ष कूटरचित दस्तावेज प्रस्तुत किया जाना – अभिनिर्धारित – इस न्यायालय के समक्ष कूटरचित शपथपत्र प्रस्तुत किया गया – आवेदकगण ने मिथ्या तथ्यों का भी कथन किया और कूटरचित शपथपत्र का उपयोग वास्तविक दस्तावेज के रूप में किया – रजिस्ट्रार जनरल को धारा 193 व 196 भा.दं.सं. के अंतर्गत अपराध हेतु धारा 340 दं.प्र.सं. के अंतर्गत कार्यवाहियां आरंभ करने के लिए निदेशित किया गया और यदि प्रथम दृष्ट्या दोषी पाये जाते हैं, उच्च न्यायालय की ओर से धारा 200 दं.प्र.सं. के अंतर्गत परिवाद प्रस्तुत किया जाए। (सूरजमल वि. म.प्र. राज्य) **...135**

***Criminal Procedure Code, 1973 (2 of 1974), Section 397(2) – Interlocutory Orders* – Held – Order summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of pending proceeding, amounts to interlocutory orders against which no revision would lie u/S 397(2) whereas orders which affect or adjudicate rights of accused or particular aspect of trial, are not interlocutory orders against which revision is maintainable. [Raja Bhaiya Singh Vs. State of M.P.] ...119**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397(2) – अंतर्वर्ती आदेश – अभिनिर्धारित – साक्षीगण को समन भेजने का आदेश, प्रकरणों को स्थगित करना, जमानत के आदेश पारित करना, प्रतिवेदन की मांग करना तथा लंबित कार्यवाही में सहायक ऐसे अन्य कदम, अंतर्वर्ती आदेश की कोटि में आते हैं जिनके विरूद्ध धारा 397(2) के अंतर्गत कोई पुनरीक्षण नहीं होगा जबकि ऐसे आदेश जो कि अभियुक्त के अधिकारों या विचारण के

विशिष्ट पहलू को प्रभावित अथवा न्यायनिर्णीत करते हैं, अंतर्वर्ती आदेश नहीं होते हैं जिनके विरूद्ध पुनरीक्षण पोषणीय है। (राजा भैया सिंह वि. म.प्र. राज्य) **...119**

***Criminal Procedure Code, 1973 (2 of 1974), Section 397(2) – Interlocutory Order – Meaning & Ambit* – Held – Order u/S 457 Cr.P.C. may or may not be an interlocutory order, it depends upon facts and circumstances of a case – If Magistrate passes an order touching rights of person over property then order is not an interlocutory order but if order is passed only to give possession of property during pendency of trial then such order is an interlocutory order. [Aruni Sahgal Vs. State of M.P.] ...114**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397(2) – अंतर्वर्ती आदेश – अर्थ व परिधि – अभिनिर्धारित – दं.प्र.सं. की धारा 457 के अंतर्गत आदेश एक अंतर्वर्ती आदेश हो सकता है अथवा नहीं, यह एक प्रकरण के तथ्यों तथा परिस्थितियों पर निर्भर करता है – यदि मजिस्ट्रेट संपत्ति पर व्यक्ति के अधिकारों से संबंधित कोई आदेश पारित करता है तो वह आदेश एक अंतर्वर्ती आदेश नहीं है परंतु यदि वह आदेश केवल संपत्ति का कब्जा देने के लिए, विचारण के लंबित रहने के दौरान पारित किया गया है तो वह आदेश एक अंतर्वर्ती आदेश है। (अरूणी सहगल वि. म.प्र. राज्य) **...114**

***Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Grounds* – Held – It is not established that FIR lodged by Complainant was a counterblast FIR– Applicant's contention that he did not receive a single penny from complainant is not true because bank statement shows that complainant deposited money in applicant's account – Sufficient material to create strong suspicion against applicant – Case may require custodial interrogation – Application dismissed. [Surajmal Vs. State of M.P.] ...135**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – आधार – अभिनिर्धारित – यह स्थापित नहीं है कि परिवादी द्वारा दर्ज कराया गया प्रथम सूचना प्रतिवेदन, प्रतिवाद में एक प्रथम सूचना प्रतिवेदन था – आवेदक का तर्क कि उसने परिवादी से एक पैसा भी प्राप्त नहीं किया था, सत्य नहीं है क्योंकि बैंक विवरण दर्शाता है कि परिवादी ने आवेदक के खाते में रकम जमा की थी – आवेदक के विरूद्ध प्रबल संदेह उत्पन्न करने के लिए पर्याप्त सामग्री – प्रकरण में अभिरक्षा में पूछताछ अपेक्षित हो सकती है – आवेदन खारिज। (सूरजमल वि. म.प्र. राज्य) **...135**

***Criminal Procedure Code, 1973 (2 of 1974), Section 451 – Maintainability* – Held – Once final charge-sheet is filed by police and property is said to be involved in crime then only application u/S 451 Cr.P.C. is maintainable. [Aruni Sahgal Vs. State of M.P.] ...114**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451 – पोषणीयता – अभिनिर्धारित – एक बार पुलिस द्वारा अंतिम आरोप–पत्र प्रस्तुत कर दिया गया तथा संपत्ति का अपराध में शामिल होना कहा जाता है तब केवल दं.प्र.सं. की धारा 451 के अंतर्गत आवेदन पोषणीय है। (अरूणी सहगल वि. म.प्र. राज्य) **...114**

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Criminal Procedure Code, 1973 (2 of 1974), Section 457 & 397(2) – Interlocutory Order – **Held – Order rejecting application filed u/S 457 Cr.P.C. for interim custody of articles, is not a final order or intermediate order or order of moment but is an interlocutory order – Criminal revision not maintainable due to bar u/S 397(2) Cr.P.C. – Revision dismissed. [Aruni Sahgal Vs. State of M.P.] ...114**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 457 व 397(2) – अंतर्वर्ती आदेश – अभिनिर्धारित – वस्तुओं की अंतरिम अभिरक्षा हेतु दं.प्र.सं. की धारा 457 के अंतर्गत प्रस्तुत आवेदन को नामंजूर करने वाला आदेश, एक अंतिम आदेश या मध्यवर्ती आदेश या एक क्षण का आदेश नहीं है बल्कि एक अंतर्वर्ती आदेश है – दं.प्र.सं. की धारा 397(2) के अंतर्गत वर्जन के कारण दाण्डिक पुनरीक्षण पोषणीय नहीं है – पुनरीक्षण खारिज। (अरूणी सहगल वि. म.प्र. राज्य) **...114**

Employee's Compensation Act (8 of 1923), Section 3 & 12 and Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Necessary and Proper Party – **Held – As per Section 12 where any person (principal) for purpose of his trade/business contracts with other person (contractor) for execution of work, which is part of trade/business of principal, he shall be liable to pay compensation to any employee employed in execution of that work as if that employee had been immediately employed by him – Deceased was employee of Respondent No. 7 and was engaged by Respondent No. 6 as a contractor to do its work – Being principal employer, Respondent No. 6 is necessary and proper party in claim case – Petition dismissed. [Bajaj Allianz General Insurance Co. Vs. Hafiza Bee] ...100**

कर्मचारी प्रतिकर अधिनियम (1923 का 8), धारा 3 व 12 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – आवश्यक एवं उचित पक्षकार – अभिनिर्धारित – धारा 12 के अनुसार जहां कोई व्यक्ति (स्वामी) अपने कारबार/व्यापार के प्रयोजन हेतु किसी अन्य व्यक्ति (ठेकेदार) के साथ कार्य के निष्पादन के लिए संविदा करता है, तो वह उस कार्य के निष्पादन में नियोजित किसी भी कर्मचारी को प्रतिकर का भुगतान करने का दायी होगा मानो कि वह कर्मचारी उसके द्वारा तुरंत नियोजित किया गया था – मृतक, प्रत्यर्थी क्र. 7 का कर्मचारी था तथा प्रत्यर्थी क्र. 6 द्वारा एक ठेकेदार के रूप में अपना कार्य करने हेतु लगाया गया था – प्रधान नियोक्ता होने के नाते, प्रत्यर्थी क्र. 6 दावा प्रकरण में आवश्यक एवं उचित पक्षकार है – याचिका खारिज। (बजाज आलियांज जनरल इंश्योरेन्स कं. वि. हफीजा बी) **...100**

Limitation Act (36 of 1963), Section 5 – Condonation of Delay – **Held – Supreme Court of India cannot be a place for government to walk in when they choose, ignoring the prescribed limitation period – Appeals/petitions have to be filed as per the Statutes prescribed. [State of M.P. Vs. Bherulal] (SC)...1**

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – अभिनिर्धारित – उच्चतम न्यायालय, सरकारों के लिए एक ऐसा स्थान नहीं हो सकता जहां वे विहित परिसीमा अवधि की अनदेखी कर जब चाहे आ जाये – अपीलों/याचिकाओं को विहित कानूनों के अनुसार प्रस्तुत करना होता है। (म.प्र. राज्य वि. भेरूलाल) **(SC)…1**

***Limitation Act (36 of 1963), Section 5 – Condonation of Delay* – Held – There is a delay of 663 days – Looking to the inordinate delay and casual manner in which application has been worded, Government or State authorities must pay for wastage of judicial time which has its own value – SLP dismissed with cost of Rs. 25,000 to be recovered from responsible officers. [State of M.P. Vs. Bherulal] (SC)…1**

परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – अभिनिर्धारित– 663 दिनों का विलंब है – अत्यधिक विलंब और आवेदन के शब्दों के लापरवाह ढंग को देखते हुए, सरकार या राज्य प्राधिकारीगण को न्यायिक समय जिसका स्वयं का अपना मूल्य है, की बर्बादी के लिए कीमत चुकानी चाहिए – रू. 25,000/– व्यय, जिसे उत्तरदायी अधिकारियों से वसूला जाएगा, के साथ विशेष अनुमति याचिका खारिज। (म.प्र. राज्य वि. भेरूलाल) **(SC)…1**

***Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 17 – See – Constitution – Article 226* [Alok Kumar Choubey Vs. State of M.P.] (DB)…88**

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 17 – देखें – संविधान – अनुच्छेद 226 (अलोक कुमार चौबे वि. म.प्र. राज्य) **(DB)…88**

***Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 19 – Breach of Terms & Conditions* – Held – Petitioner has not submitted the bank guarantee within stipulated period without any justified reason – Petitioner has not taken initiative for joint survey in stipulated time, thus failed to fulfill requirement of clause 11 of LOA, despite scheduled bill payments done by respondents – Petitioner was responsible for delay in completion of work – Revision dismissed. [Narmada Transmission Pvt. Ltd. (M/s) Vs. M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd.] (DB)…*2**

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 19 – निबंधनों व शर्तों का भंग – अभिनिर्धारित – याची ने बिना किसी न्यायानुमत कारण के नियत अवधि के भीतर बैंक गांरटी प्रस्तुत नहीं की है – याची ने नियत समय में संयुक्त सर्वेक्षण हेतु पहल नहीं की, इस प्रकार प्रत्यर्थीगण द्वारा निर्धारित बिल भुगतान के बावजूद वह एल.ओ.ए. के खंड 11 की अपेक्षाओं की पूर्ति करने में विफल रहा – याची कार्य के समापन में हुए विलंब हेतु उत्तरदायी था – पुनरीक्षण खारिज। (नर्मदा ट्रांसमिशन प्रा. लि. (मे.) वि. एम.पी. मध्य क्षेत्र विद्युत वितरण कं. लि.) **(DB)…*2**

***Municipal Corporation Act, M.P. (23 of 1956), Section 138(4) – Appellate Authority – Principle of Natural Justice – Opportunity of Hearing* –**

Held – If one authority, person or committee hears the appeal and the other person, Authority or Committee decides it without any further hearing, such procedure is not in consonance with principle of natural justice – Appellate authority Mayor-in-Council without hearing the parties, merely on basis of opinion of Committee, dismissed the appeal – Principle of natural justice violated – Impugned order set aside – Matter remanded back to appellate authority – Petition partly allowed. [Sayaji Hotels Ltd. Vs. Indore Municipal Corporation] …72

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 138(4) – अपीली प्राधिकारी – नैसर्गिक न्याय का सिद्धांत – सुनवाई का अवसर – अभिनिर्धारित – यदि एक प्राधिकारी, व्यक्ति या समिति, अपील सुनती है और अन्य व्यक्ति, प्राधिकारी या समिति, बिना आगे किसी सुनवाई के उसका विनिश्चय करती है, उक्त प्रक्रिया नैसर्गिक न्याय के सिद्धांत के अनुरूप नहीं है – अपीली प्राधिकारी मेयर–इन–काउंसिल ने पक्षकारों को सुने बिना, मात्र समिति की राय के आधार पर, अपील खारिज की – नैसर्गिक न्याय के सिद्धांत का उल्लंघन किया गया – आक्षेपित आदेश अपास्त – मामला, अपीली प्राधिकारी को प्रतिप्रेषित – याचिका अंशतः मंजूर। (सायाजी होटल्स् लि. वि. इंदौर म्यूनिसिपल कारपोरेशन) **…72**

***Nagar Palika (Registration of Colonizer Terms & Conditions) Rules, M.P., 1998, Rule 15-A (amended) – Publication in Official Gazette – Effect –* Held – Once the Rules are published in Official Gazette and are made available by circulation, sale etc., it is presumed that it has been made known to all citizens of Country/State – Petitioner cannot express his ignorance about provision of said Rules. [Rajkumar Goyal Vs. Municipal Corporation, Gwalior] …48**

नगरपालिका (कॉलोनाइजर का रजिस्ट्रीकरण, निर्बंधन तथा शर्तें) नियम, म.प्र., 1998, नियम 15–।(संशोधित) – शासकीय राजपत्र में प्रकाशन – प्रभाव – अभिनिर्धारित – एक बार शासकीय राजपत्र में नियम प्रकाशित किये जाने तथा परिचालन, विक्रय इत्यादि द्वारा उपलब्ध कराये जाने पर यह उपधारणा की जाएगी कि उसे देश/राज्य के सभी नागरिकों की जानकारी में लाया गया है – याची उक्त नियमों के उपबंध के बारे में उसकी अनभिज्ञता अभिव्यक्त नहीं कर सकता। (राजकुमार गोयल वि. म्यूनिसिपल कारपोरेशन, ग्वालियर) **…48**

***Nagar Palika (Registration of Colonizer Terms & Conditions) Rules, M.P., 1998, Rule 15-A (amended) – See – Constitution – Article 226* [Rajkumar Goyal Vs. Municipal Corporation, Gwalior] …48**

नगरपालिका (कॉलोनाइजर का रजिस्ट्रीकरण, निर्बंधन तथा शर्तें) नियम, म.प्र., 1998, नियम 15–A (संशोधित) – देखें – संविधान – अनुच्छेद 226 (राजकुमार गोयल वि. म्यूनिसिपल कारपोरेशन, ग्वालियर) **…48**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section

8/21 – Independent Witnesses – **Held – Search/seizure witnesses turned hostile but Police Officer made his deposition with accuracy and precision which was not demolished in cross-examination – If statement of police officer is worthy of credence, conviction can be recorded on basis of his statement, even if it is not supported by independent witness – Conviction upheld – Appeal dismissed. [Raju @ Surendar Nath Sonkar Vs. State of M.P.] …104**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8/21 – स्वतंत्र साक्षीगण – अभिनिर्धारित – तलाशी/जब्ती के साक्षीगण पक्षविरोधी हो गए किंतु पुलिस अधिकारी ने उसका अभिसाक्ष्य यथार्थता एवं सूक्ष्मता के साथ दिया जो कि प्रतिपरीक्षण में नष्ट नहीं हुआ था – यदि पुलिस अधिकारी का कथन विश्वास योग्य है, उसके कथन के आधार पर दोषसिद्धि अभिलिखित की जा सकती है भले ही वह स्वतंत्र साक्षी द्वारा समर्थित न हो – दोषसिद्धि कायम – अपील खारिज। (राजू उर्फ सुरेन्दर नाथ सोनकर वि. म.प्र. राज्य) **…104**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8(a), 8(b), 20(a)(i) & 20(b)(ii)(C) – Ingredients – **Held –** *Ganja* **plants seized from accused – Section 8(a) is not applicable because it relates to Coca plants etc. – Present case covered by Section 8(b) which prohibits cultivation of Opium, Poppy or "any Cannabis plant" – Section 20(a) prescribes punishment of cultivation – Offence u/S 8(b)/20(a) is made out. [Raja Bhaiya Singh Vs. State of M.P.] …119**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8(a), 8(b), 20(a)(i) व 20(b)(ii)(C) – घटक – अभिनिर्धारित – अभियुक्त से गांजा के पौधे जब्त किये गये – धारा 8(a) लागू नहीं होता क्योंकि वह कोका के पौधों इत्यादि से संबंधित है – वर्तमान प्रकरण धारा 8(b) द्वारा आच्छादित होता है जो कि अफीम, पोस्त या ''किसी कैनेबिस के पौधे'' की खेती निषिद्ध करती है – धारा 20(a) खेती के लिए दण्ड विहित करती है – धारा 8(b)/20(a) के अंतर्गत अपराध बनता है। (राजा भैया सिंह वि. म.प्र. राज्य) **…119**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8(b)/20(a)(i) – See – Criminal Procedure Code, 1973, Section 167 (2) **[Raja Bhaiya Singh Vs. State of M.P.] …119**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8(b)/20(a)(i) – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 167(2) (राजा भैया सिंह वि. म.प्र. राज्य) **…119**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 50 – Search & Seizure – Procedure – **Held – Accused must be apprised regarding his right to get searched before Gazetted Officer or Magistrate – Despite apprising, if accused has chosen to be searched by police officer, no**

fault can be found in the search – Further, as a rule of thumb, in all circumstances, search cannot vitiate merely because it was not conducted before Gazetted Officer or Magistrate. [Raju @ Surendar Nath Sonkar Vs. State of M.P.] ...104

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 50 – तलाशी व जब्ती – प्रक्रिया – अभिनिर्धारित – अभियुक्त को, राजपत्रित अधिकारी या मजिस्ट्रेट के समक्ष तलाशी लिये जाने के उसके अधिकार के संबंध में अवगत कराया जाना चाहिए – अवगत कराये जाने के बावजूद यदि अभियुक्त ने पुलिस अधिकारी द्वारा तलाशी लिये जाने का चुनाव किया है, तलाशी में कोई दोष नहीं निकाला जा सकता – इसके अतिरिक्त, व्यावहारिक नियम के रूप में, सभी परिस्थितियों में, मात्र इसलिए क्योंकि राजपत्रित अधिकारी या मजिस्ट्रेट के समक्ष तलाशी संचालित नहीं की गई थी, तलाशी दूषित नहीं हो सकती। (राजू उर्फ सुरेन्दर नाथ सोनकर वि. म.प्र. राज्य) **...104**

Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 50 – Words "if such person so requires" – Interpretation **– Held – The expression "if such person so requires" needs to be given due weightage and full effect – A statute must be read as a whole in its context. [Raju @ Surendar Nath Sonkar Vs. State of M.P.] ...104**

स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 50 – शब्द ''यदि ऐसा व्यक्ति ऐसी अपेक्षा करता है'' – निर्वचन – अभिनिर्धारित – अभिव्यक्ति ''यदि ऐसा व्यक्ति ऐसी अपेक्षा करता है'' को सम्यक् महत्व एवं पूर्ण प्रभाव दिये जाने की आवश्यकता है – एक कानून को उसके संदर्भ में संपूर्णतः से पढ़ा जाना चाहिए। (राजू उर्फ सुरेन्दर नाथ सोनकर वि. म.प्र. राज्य) **...104**

Penal Code (45 of 1860), Section 188 – Ingredients **– Held – For offence u/S 188, it is sufficient that violator of prohibitory order not only knows the order which he disobeys but that his disobedience produces or is likely to produce harm – Whether applicants were aware of prohibitory order or disobedience has produced or likely to produce harm, is a subject matter of investigation, which is under progress – FIR cannot be quashed. [Zaid Pathan Vs. State of M.P.] ...152**

दण्ड संहिता (1860 का 45), धारा 188 – घटक – अभिनिर्धारित – धारा 188 के अंतर्गत अपराध हेतु यह पर्याप्त है कि प्रतिषेधात्मक आदेश का उल्लंघन करने वाले को न केवल आदेश का ज्ञान होता है जिसकी उसने अवज्ञा की है बल्कि यह भी कि उसकी अवज्ञा से अपहानि निर्मित हुई अथवा निर्मित होने की संभावना है – क्या आवेदकगण, प्रतिषेधात्मक आदेश से अवगत थे अथवा अवज्ञा से अपहानि निर्मित हुई या होने की संभावना है, अन्वेषण की विषय वस्तु है जो कि प्रगति पर है – प्रथम सूचना प्रतिवेदन अभिखंडित नहीं किया जा सकता। (ज़ैद पठान वि. म.प्र. राज्य) **...152**

Penal Code (45 of 1860), Section 188 – See – Criminal Procedure Code, 1973, Sections 154, 195 & 482 **[Zaid Pathan Vs. State of M.P.] ...152**

दण्ड संहिता (1860 का 45), धारा 188 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएँ 154, 195 व 482 (ज़ैद पठान वि. म.प्र. राज्य) ...152

***Penal Code (45 of 1860), Section 193 & 196 – See – Criminal Procedure Code, 1973, Section 200 & 340* [Surajmal Vs. State of M.P.]** ...135

दण्ड संहिता (1860 का 45), धारा 193 व 196 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 200 व 340 (सूरजमल वि. म.प्र. राज्य) ...135

***Prevention of Corruption Act (49 of 1988), Section 12 – Bribe Giver –* Directions issued to State police that in every such cases of bribe, FIR shall be registered against the bribe giver u/S 12 of the Act. [Surajmal Vs. State of M.P.]** ...135

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 12 – रिश्वत देने वाला – राज्य पुलिस को निदेश जारी किए गए कि रिश्वत के ऐसे प्रत्येक प्रकरण में, अधिनियम की धारा 12 के अंतर्गत रिश्वत देने वाले के विरूद्ध प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जाएगा। (सूरजमल वि. म.प्र. राज्य) ...135

***Prevention of Corruption Act (49 of 1988), Section 12 & 24 (repealed) –* Held – Applicant and complainant both alleged that they have given bribe to each other for getting unlawful work done and are aggrieved by non return of the bribe money as the said work was not done – Vide amendment of 2018, Section 24 was repealed which accorded protection to bribe givers – In instant case, offence registered in 2019 thus applicant and complainant liable to be prosecuted u/S 12 of the Act. [Surajmal Vs. State of M.P.]** ...135

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 12 व 24 (निरसित) – अभिनिर्धारित – आवेदक एवं परिवादी, दोनों ने अभिकथित किया कि उन्होनें विधिविरूद्ध कार्य कराने के लिए एक दूसरे को रिश्वत दी है और रिश्वत की रकम न लौटाये जाने से व्यथित हैं क्योंकि उक्त कार्य नहीं किया गया था – 2018 के संशोधन द्वारा धारा 24 निरसित की गई थी जो रिश्वत देने वाले को संरक्षण प्रदान करती थी – वर्तमान प्रकरण में, अपराध 2019 में पंजीबद्ध हुआ, अतः, आवेदक एवं परिवादी, अधिनियम की धारा 12 के अंतर्गत अभियोजित किये जाने के लिए दायी हैं। (सूरजमल वि. म.प्र. राज्य) ...135

***Service Law – Promotion –* Held – No person has a vested right of promotion, at the most he can claim that he has a right for his consideration for promotion – A promotion may effect various persons and their promotion cannot be changed after a long time. [Sajjan Singh Kaurav Vs. State of M.P.]** ...*3

सेवा विधि – पदोन्नति – अभिनिर्धारित – किसी व्यक्ति को पदोन्नति का निहित अधिकार नहीं है, अधिक से अधिक वह दावा कर सकता है कि पदोन्नति हेतु उसका विचार किये जाने का उसे एक अधिकार है – एक पदोन्नति विभिन्न व्यक्तियों को प्रभावित कर सकती है और उनकी पदोन्नति को एक दीर्घ अवधि के पश्चात् बदला नहीं जा सकता। (सज्जन सिंह कौरव वि. म.प्र. राज्य) ...*3

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THE INDIAN LAW REPORTS M.P. SERIES, 2021
(Vol.-1)

JOURNAL SECTION

APPOINTMENT TO THE MADHYA PRADESH HIGH COURT

We congratulate Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice on his appointment as Chief Justice of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Mohammad Rafiq took oath as Chief Justice of the High Court of M.P. on 03/01/2021 at Bhopal.

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ,
CHIEF JUSTICE

Born on May 25, 1960 at Sujangarh, district Churu, Rajasthan. Did B.Com in 1980, LL.B in 1984 and M.Com in 1986 from University of Rajasthan. Enrolled with the Bar Council of Rajasthan on July 08, 1984. Practised in Rajasthan High Court at Jaipur in almost all branches of law. Worked as Assistant Government Advocate for the State of Rajasthan from July 15, 1986 to December 21, 1987 and as Deputy Government Advocate from December 22, 1987 to June 29, 1990. Appeared before the High Court as Panel Advocate for various Departments of the State Government. Represented the Union of India as Standing Counsel from 1992 to 2001. Also represented the Indian Railways, Rajasthan State Pollution Control Board, Rajasthan Board of Muslim Wakfs, Jaipur Development Authority, Rajasthan Housing Board and Jaipur Municipal Corporation before the Rajasthan High Court. Appointed as Additional Advocate General for the State of Rajasthan on January 07, 1999 and worked as such till elevation to the Bench.

His Lordship was appointed as Judge of the Rajasthan High Court on May 15, 2006. Also functioned as Acting Chief Justice of Rajasthan High Court twice; from April 07, 2019 to May 04, 2019 and from September 23, 2019 to October 05, 2019. Also worked as Executive Chairman of the Rajasthan State Legal Services Authority and the Administrative Judge of the Rajasthan High Court. His Lordship is Life Member of the Indian Law Institute and has also been Member of its Governing Council. Apart from being Member of various Committees, Chaired the Mediation and Arbitration Project Committee, the Steering Committee for Computerisation, the Rules Committee, the Arrears Committee, the Examination Committee, the Building Committee and the Library Committee. Was In-charge of the Mediation Centre of the High Court at Jaipur and simultaneously the Chairman of the Rajasthan High Court Legal Services Committee. Also worked as Company Court Judge as well as Designated Judge u/S 11 of the Arbitration and Conciliation Act, 1996. Presided the Commercial Appellate Division at Jaipur Bench of Rajasthan High Court.

His Lordship was appointed as the Chief Justice of the High Court of Meghalaya on November 13, 2019 and as the Chief Justice of Orissa High Court on April 27, 2020.

Sworn in as the 26th Chief Justice of the Madhya Pradesh High Court on January 03, 2021. His Lordship was accorded welcome ovation on January 04, 2021 in the Conference Hall of South Block, High Court of Madhya Pradesh, Jabalpur.

We, on behalf of The Indian Law Reports (M.P. Series) wish Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice and Patron a successful tenure on the Bench.

OVATION TO HON'BLE MR. JUSTICE MOHAMMAD RAFIQ, CHIEF JUSTICE, GIVEN ON 04-01-2021, THROUGH VIDEO CONFERENCING, IN THE CONFERENCE HALL OF SOUTH BLOCK, HIGH COURT OF M.P., JABALPUR.

Hon'ble Mr. Justice Sanjay Yadav, Administrative Judge, while felicitating the new Chief Justice, said :-

Today, we have assembled here, through this virtual mode, to welcome our new Chief Justice, Hon'ble Shri Justice Mohammad Rafiq, who took oath of office on 03 January 2021 at Bhopal. It is my proud privilege to welcome Your Lordship as Chief Justice of Madhya Pradesh High Court.

Born on 25 May 1960 in Sujangarh in Churu District of Rajasthan, Your Lordship after obtaining degree in law from University of Rajasthan was enrolled as an Advocate on 08 July 1984 with the State Bar Council of Rajasthan and practiced exclusively in Rajasthan High Court in almost all branches of law. Your Lordship worked as Assistant Government Advocate for the State from 15 July 1986 to 21 December 1987 and Deputy Government Advocate from 22 December 1987 to 29 June 1990. Your Lordship was appointed as Additional Advocate General for the State of Rajasthan on 7 January 1999 and worked as such till elevation to the Bench on 15 May 2006 as Additional Judge and was appointed as permanent Judge on 14 May 2008. His Lordship served as Acting Chief Justice of Rajasthan High Court from 07 April, 2019 upto 04 May 2019 and from 23 September 2019 to 05 October 2019. And, an Executive Chairman of Rajasthan Legal Services Authority. Your Lordship was elevated as Chief Justice of Meghalaya High Court on 13 November 2019. And, as Chief Justice of Orissa High Court on 27 April 2020.

i understand that during Your Lordship's tenure as Judge in Rajasthan High Court and as Chief Justice of Meghalaya High Court and Orissa High Court has delivered several landmark judgments, which adorn law journals.

It may be mentioned that our High Court was established as Nagpur High Court on 02 January 1936 by Letters Patent dated 02 January 1936. This Letters Patent continued in force even after the adoption of the Constitution of India on 26 January 1950. On 01st of November 1956, the States Reorganisation Act was enacted and new State of Madhya Pradesh was constituted under Section 9 thereof. The States Reorganisation Act ordained that from the appointed day i.e. 1st of November 1956, the High Court exercising jurisdiction in relation to the existing State of Madhya Pradesh i.e. Nagpur High Court shall be deemed to be the High Court for the present State of Madhya Pradesh. We have two permanent

Benches at Indore and Gwalior. My Lord, many of the Hon'ble Judges of our High Court were elevated as Judges of Supreme Court and Chief Justices of other High Courts.

The Bar at Jabalpur, Indore and Gwalior have glorious history. Since their inception, the contribution of the members of these Bar in strengthening the legal system have paved the path for smooth administration of justice.

We are confident that under the dynamic leadership of Your Lordship, our High Court will have glorious future.

On this occasion, on behalf of my sister and brother Judges and the State Judiciary and on my own behalf, i extend warm welcome and wish a successful tenure as Chief Justice.

Thank you.

Jai Hind .

Shri Purushaindra Kaurav, Advocate General, M.P., said :-

Good Morning and wishing everyone present a Happy New Year.

We start the first working day of the new decade on a wonderful note by extending a warm and cordial welcome to Hon'ble Justice Mohammad Rafiq as our 26th Chief Justice.

Hon'ble Mr. Justice Mohammad Rafiq was born on 25 May 1960 at Sujangarh in Churu district of Rajasthan. After completing B.Com in the year 1980 and LL.B in the year 1984 from the University of Rajasthan, Your Lordship enrolled with the Bar Council of Rajasthan on 08 July 1984. Your Lordship worked as an Assistant Government Advocate for the State of Rajasthan from July 15, 1986 to December 21, 1987 and then as Deputy Government Advocate from 22 December 1987 to 29 June 1990. Your Lordship also appeared before the High Court as a Panel Advocate for various organizations and Departments of the State Government and was also the Standing Counsel for the Union of India from 1992 to 2001.

Your Lordship was appointed as Additional Advocate General for the State of Rajasthan on 07 January 1999 and was appointed as Judge of the Rajasthan High Court on 15 May 2006 where Your Lordship served till 12 November 2019. During this tenure, Your Lordship also had the occasion to discharge the duties as Acting Chief Justice twice from 07 April 2019 to 04 May 2019 and from 23 September 2019 to 05 October 2019.

Subsequently, on 13 November 2019, Your Lordship was appointed as Chief Justice of the Meghalaya High Court and then as Chief Justice of the Orissa High Court on 27 April 2020 and on 03.01.2021, Your Lordship has been sworn in as Chief Justice of the MP High Court.

My Lord, since the inception of the High Court of Madhya Pradesh in the year 1956, we have been blessed to have some of distinguished and greatest Chief Justices whose contributions have been noted nationwide such as Hon'ble Justice Shri M. Hidayatullah, Justice G.P. Singh, Justice A.K. Patnaik and even our present Chief Justice of India, Shri Sharad Arvind Bobade.

It is an interesting coincidence that Your Lordship has taken oath to the office of Chief Justice on 03rd of January which coincides with the birth date of Late Hon'ble Justice G.P. Singh who was a legal stalwart and luminary and perhaps due to this reason, the members of the Bar as well as the litigants of the State have great expectations from Your Lordship.

Your Lordship has accumulated a rich and diverse experience as a Judge by initially being appointed as a Judge in the western State of Rajasthan, then as Chief Justice in the north eastern State of Meghalaya, then as Chief Justice in the eastern State of Orissa and now as Chief Justice of the central State of Madhya Pradesh. I am sure that during this period, Your lordship has experienced the varied culture and tradition of India, which will greatly aid Your lordship in leading this esteemed Institution.

It is my proud privilege to welcome Your Lordship to this Court. Our State of Madhya Pradesh is blessed richly in natural resources and is a fast developing State which has made the residents of the State more aware about their constitutional and legal rights resulting in the residents looking upon this Institution with great faith, hope and aspirations. I am sure that Your Lordship will lead this Institution proficiently to even greater heights while keeping the interest of the litigants at the forefront.

At the end, I on behalf of the State of M.P., its law officers and on my own behalf once again extend warm felicitation to Hon'ble The Chief Justice, and assure that the Law Officers of the State will extend their full assistance in the discharge of Your Lordship's arduous duties.

Jai Hind .

Shri Dr. Vijay Kumar Choudhary, Chairman, State Bar Council of M.P., said :-

मध्यप्रदेश उच्च न्यायालय में आज का दिन बेहद महत्वपूर्ण और यह क्षण बेहद मुदित करने वाले है, क्योंकि इस आयाम में हम देश के एक महान न्यायविद् का स्वागत मध्यप्रदेश उच्च न्यायालय के मुख्य न्यायाधिपति के रूप में कर रहे है। माननीय मुख्य न्यायाधिपति का जो नाम है, ''मोहम्मद रफीक'', उसका अर्थ सरल भाषा में Intimate यानी Close Friend of Mohammad समझ आता है, और लगता है कि इनके व्यक्तित्व और कृतित्व की रचना तो बचपन से ही नाम संस्कार के साथ ही शुरू हो गयी थी। माननीय मुख्य न्यायाधिपति का जन्म 25 मई 1960 को सुजानगढ़, जिला चुरू (राजस्थान प्रदेश) में हुआ था। मान्यवर, एम.कॉम. एल.एल.बी. तक शिक्षित है। माननीय ने राजस्थान उच्च न्यायालय में संविधान, सर्विस मैटर, भूमि अधिग्रहण, राजस्व, कस्टम एक्साइज, रेलवे क्लेम, टैक्स मैटर, कंपनी मैटर एवं क्रिमिनल मैटर्स के क्षेत्र में धुंआधार वकालत कर अपने नाम को विख्यात किया। आप भारत सरकार के भी सन् 1992 से 2001 तक अभिभाषक रहे। इसके अलावा भारतीय रेलवे, राजस्थान राज्य प्रदूषण निवारण बोर्ड, जयपुर डेवलपमेंट अथॉरिटी, राजस्थान हाउसिंग बोर्ड और जयपुर म्युनिसिपल कार्पोरेशन के मामलो मे आपने माननीय राजस्थान उच्च न्यायालय के समक्ष वकालत की है। माननीय राजस्थान राज्य के अतिरिक्त महाधिवक्ता जनवरी 1999 में बने, और सन् 2006 में राजस्थान उच्च न्यायालय के न्यायाधिपति बने। मान्यवर, इण्डियन लॉ इंस्टीट्यूट के आजीवन सदस्य है, और उसकी गवर्निंग काउंसिल के भी सदस्य है। राजस्थान हाईकोर्ट में रहते हुये आप वहां की अनेक प्रशासनिक समितियों, मध्यस्थता समिति, नियम निर्माण समिति, परीक्षा समिति, बिल्डिंग समिति और लाईब्रेरी समिति के भी अध्यक्ष रहे है, और राजस्थान उच्च न्यायालय में स्थित मीडिएशन सेन्टर के भी पांच साल तक लगातार इन्चार्ज रहे है, और इसी समयकाल में आप राजस्थान हाईकोर्ट के लीगल सर्विसेस कमेटी के तीन वर्ष तक अध्यक्ष रहे है। माननीय ने कंपनी कोर्ट जज के रूप में भी कार्य किया है, और कमर्शियल अपीलेट डिवीजन बेंच राजस्थान हाईकोर्ट को भी प्रिसाइड किया है। माननीय, राजस्थान उच्च न्यायालय के कार्यकारी मुख्य न्यायाधिपति रहे, और तत्पश्चात मेघालय हाईकोर्ट के मुख्य न्यायाधिपति नवम्बर 2019 में नियुक्त हुये, तथा अप्रैल 2020 में माननीय उडीसा उच्च न्यायालय के मुख्य न्यायाधिपति बने और आज दिनांक को इस गौरवशाली उच्च न्यायालय में मुख्य न्यायाधिपति के पद पर पदासीन हुये है। आपकी उक्त महती प्रतिभा, विद्वता, कर्मठता, व्यवहार कुशलता, सादगी और सरलता, हम सब लोगों के लिये आदर्श है। आपके नेतृत्व में आज से ही मध्यप्रदेश उच्च न्यायालय में कार्यकुशलता के नये आयाम रचित होंगें। मैं ईश्वर से कामना करता हूँ कि आपके योग्य नेतृत्व का लाभ प्रदेश के वकीलों को प्राप्त हो। आप समय–समय पर राज्य अधिवक्ता परिषद्, अभिभाषक संघों और वकीलों में आते रहें, और उनकी समस्याओं का निराकरण करते रहें। आपको स्टेट बार काउंसिल के चेयरमेन के रूप में 65 हजार वकीलों की ओर से साधुवाद देते हुये आपका स्वागत, वंदन, एवं अभिनंदन करता हूँ तथा अग्र पंक्तियों के साथ अपनी वाणी को विराम देता हूँ।

''जहां रहेगा वहीं रोशनी लुटायेगा, किसी चिराग का अपना मकां नहीं होता'',

किसी लेखक ने कहा है :–

''आंगन जैसे युवा हो गया, देहरी हुई जवान,

फागुन में गूंजी दीवारें, छेड़ रही हैं तान,

पीड़ायें सब हुई मूर्छित, दर्द हुये बीमार,

ऐसा पाया हमने तुमसे, जनम–जनम का प्यार।।''

जय हिन्द.

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

आदरणीय मोहम्मद रफीक सा0 माननीय म0प्र0 उच्च न्यायालय अधिवक्ता संघ के अध्यक्ष के नाते आपको सलाम करता हूँ व आपका इस न्यायालय में शोभायमान होने के लिए शुक्रिया अदा करता हूँ। सभी न्यायमूर्तिगणों को हमारा प्रणाम।

हमें आज ऐसा महसूस हो रहा है कि आज आपके आगमन पर इस न्यायालय में दीवाली एवं ईद दोनों एक साथ हो गई है।

आप न्यायिक सेवा के धनी है आपने अपने कार्यकाल में कई करिश्माई निर्णय दिये जैसे उड़ीसा के सी.जे. की हैसियत से कोरोनाकाल में पुरी का जगन्नाथ मंदिर खोले जाने के लिए चरणबद्ध व्यवस्था बनाई, इसी तरह 21 अगस्त 2019 को राजस्थान हाईकोर्ट के चीफ जस्टिस की हैसियत से स्मोकिंग जोन के बाहर हुक्का परोसने पर रोक लगाई– वकालत से सफर की शुरूआत करते हुए, आपको जस्टिस का लम्बा अनुभव है।

आप इस संस्कारधानी के 26 वें चीफ जस्टिस है।

आप 07 जनवरी 1999 को अतिरिक्त महाधिवक्ता हुए, 2006 में राजस्थान हाईकोर्ट जज, 2008 में स्थायी जज, नवम्बर, 19 में मेघालय चीफ जस्टिस, अप्रैल, 20 में उड़ीसा चीफ जस्टिस, अब हमारे चीफ जस्टिस होने का हमें सौभाग्य प्राप्त हुआ है।

आपको म0प्र0 के सभी अधिवक्ताओं की ओर से इस पद पर पदारूढ़ होने के लिए बधाई देता हूँ व आपका दिल से इस्तकबाल करता हूँ आप यथा नाम तथा गुण साबित हो यही आशा करता हूँ।

'धन्यवाद'

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

It is my profound privilege to welcome Hon'ble Shri Justice Mohammad Rafiq as the 26th Chief Justice of Madhya Pradesh High Court.

My Lord the Chief Justice was born on 25 May 1960 at Sujangarh, in district Churu, Rajasthan.

My Lord The Chief Justice received early education at Churu, Sikar and Sujangarh in the State of Rajasthan. My Lord completed his Graduation in 1980

from Sujangarh and did LL.B in 1984 and M.Com. in 1986 from University of Rajasthan, Jaipur.

My Lord The Chief Justice enrolled himself as an Advocate with the Bar Council of Rajasthan on 08 July 1984 and started practice in the Rajasthan High Court at Jaipur.

My Lord the Chief Justice practiced in almost all branches of Law, viz. Constitutional, Civil, Criminal, Revenue, Labour & Service, Corporate & Fiscal before the High Court, and within two years of his practice came to be appointed as Assistant Government Advocate in 1986 followed by appointment as Deputy Government Advocate in 1987.

My Lord The Chief Justice remained Standing Counsel for Official Liquidator of the Company Court from 1986 to 1989, besides being the Additional Standing Counsel for Central Government from 1992 to 1998.

My Lord The Chief Justice represented the Railways, being their Panel Advocate during 1993 to 2005. This besides, My Lord was a Panel Advocate for various Departments of the State of Rajasthan, viz. the Departments of Cooperative, Finance, Forest, Irrigation, Animal Husbandry and Local Self Government from 1993 and continued as such till end of 1998.

My Lord The Chief Justice was appointed as Additional Advocate General for the State of Rajasthan on 07 January 1999, and worked as such till his elevation to the Bench on 15 May 2006. His Lordship was also appointed as Senior Standing Counsel for Sales Tax Department, Government of Rajasthan in 2004 and continued as such till elevation to the Bench.

My Lord The Chief Justice represented Rajasthan High Court, Rajasthan Board of Muslim Wakfs, Central Homeopathy Council, Rajasthan State Electricity Board, Rajasthan State Pollution Control Board, Food Corporation of India and Rail India Technical and Economic Services, Jaipur Development Authority, Jaipur Municipal Corporation and various Urban Improvement Trusts and Municipal Councils of the State.

My Lord The Chief Justice was member of the Committee appointed by the State Government which prepared draft of the Rajasthan Rent Control Act, 2001. This besides My Lord is the Member of the Governing Council of the Rajasthan State Judicial Academy, Jodhpur.

My Lord The Chief Justice Shri Mohammad Rafiq was elevated as an Additional Judge of the Rajasthan High Court on 15 May 2006 and became Permanent Judge on 14 May 2008.

My Lord is Life Member of the Indian Law Institute and has also been Member of its Governing Council. On administrative side of the Rajasthan High Court, apart from being member of various Committees, His Lordship Chaired the Mediation and Arbitration Project Committee, the Steering Committee for Computerization, Rules Committee, Arrears Committee, Examination Committee, Building Committee and the Library Committee. His Lordship was In-charge of the Mediation Centre of Rajasthan High Court at Jaipur for five years and with that, was also simultaneously the Chairman of the Rajasthan High Court Legal Services Committee for three years. His Lordship also worked as Company Court Judge as well as Designated Judge u/S.11 of the Arbitration and Conciliation Act, 1996. His Lordship presided the Commercial Appellate Division for over three years at Jaipur Bench of Rajasthan High Court.

My Lord also worked as Acting Chief Justice of Rajasthan High Court twice i.e. from 07 April 2019 to 04 May 2019 and thereafter from 23 September 2019 to 05 October 2019. His Lordship was appointed as the Executive Chairman of the Rajasthan State Legal Services Authority and also remained Administrative Judge of the Rajasthan High Court.

After an outstanding career of thirteen years as a Judge, My Lord was elevated as the Chief Justice of Meghalaya High Court and took oath on 13 November 2019. My Lord was then transferred to Orissa High Court and took oath of office of the Chief Justice of that High Court on 27 April 2020.

My Lord The Chief Justice, whatever information we received about your Lordships' functioning as Judge and Chief Justice four aspects stood out distinct and tall:

Your Uncompromising Integrity;

Your Hardworking Nature;

An Overwhelming Sense of Kindness AND

God Gifted Temperament.

A bare reading of numerous decisions rendered by My Lord the Chief Justice, clearly indicate influence of Indian thinkers and philosophers as well as thinkers of modern time. There is a refreshing sense of continuous learning, besides the judgments bear the hallmark of My Lords' scholarship and justice almost invariably tempered with mercy, compassion and kindness. His sound knowledge of law is noticeable from many judgments he has authored, which clearly show with what consummate skill, remarkable intelligence and dexterity His Lordship tackles any question that comes up before him for consideration. In

his judicial career, My Lord The Chief Justice has delivered many important judgments.

My Lord The Chief Justice is an affable and unassuming person with very kind and genial disposition. He always has a charming smile, a word of appreciation and affection for everyone who meets him.

We are told that My Lord The Chief Justice, apart from above, has played a pivotal role to fulfill the vision of ensuring access to justice and providing cheap, speedy, and qualitative justice to all, especially poor, needy, marginalized, downtrodden and weaker sections of the society and to create amongst them awareness about their rights under the Constitution of India and various other laws enacted from time to time. In this perspective, My Lord The Chief Justice has laid great emphasize on the need of spreading and invoking of ADR mechanism especially Mediation and Lok Adalat.

State of Madhya Pradesh is awaiting to be showered with the bounty of My Lords' Judicial leadership in getting to it's poor and suffering masses compassionate justice; in which endeavor, My Lords' wonderful qualities and talents shall be his best guide.

My Lord, on behalf of High Court Advocates' Bar Association, Jabalpur, I Assure of fullest cooperation of all the members of the Bar, in all endeavors of My Lord as Chief Justice of Madhya Pradesh High Court.

On behalf of High Court Advocates' Bar Association, Jabalpur and on my own behalf, I wish My Lord a very fruitful and successful tenure as Chief Justice of Madhya Pradesh High Court.

I wish happy new year to every one.

God Bless The Chief Justice.

God Bless our High Court.

Jai Hind.

Shri Jinendra Kumar Jain, Asstt. Solicitor General, said :-

शपथ–ग्रहण के पश्चात् पदग्रहण के अवसर पर हम आपका संस्कारधानी जबलपुर में स्वागत करते हैं।

माननीय न्यायाधिपति ने सुजानगढ, जिला चुरू, राजस्थान से अपनी जीवन यात्रा प्रारम्भ की, प्रारंभिक शिक्षा एवं संस्कारों को ग्रहण करते हुये स्नातक, स्नातकोत्तर एवं विधि स्नातक की उपाधि अर्जित कर, जयपुर, राजस्थान उच्च न्यायालय से विधि के क्षेत्र में प्रवेश किया, अपनी योग्यता

एवं दक्षता के कारण विधि के सभी विषयों पर परिश्रम कर ज्ञान अर्जित किया, अपने अनुभव का लाभ पक्षकारों के अलावा शासकीय अधिवक्ता के रूप में शासन की ओर से पैरवी कर अपनी प्रतिभा का जौहर विधि के अनेक आयामों में प्रदर्शित किया। अपनी वकालत की अवधि के 15 वर्ष प्रदेश शासन एवं केन्द्र शासन का प्रतिनिधित्व कर राजस्थान उच्च न्यायालय के बार एवं न्यायाधिपतियों का ध्यान आकर्षित किया, फलस्वरूप वर्ष 2006 में आपका चयन राजस्थान उच्च न्यायालय में न्यायाधिपति के रूप में किया गया।

न्यायाधिपति के रूप में आपका सफर राजस्थान उच्च न्यायालय, उड़ीसा उच्च न्यायालय के अलावा मेघालय उच्च न्यायालय में मुख्य न्यायाधिपति के गरिमामय पद पर आसीन होने के पश्चात्, मॉ नर्मदा के अंचल में संस्कारधानी में म.प्र. उच्च न्यायालय के मुख्य न्यायाधिपति के रूप में पद ग्रहण करने तक पहुॅच गया है।

म.प्र. उच्च न्यायालय का गौरवशाली इतिहास रहा है, प्रदेश के प्रथम मुख्य न्यायाधिपति श्री एम. हिदायतुल्ला जिन्होंने भारत के उप–राष्ट्रपति एवं राष्ट्रपति के पद को सुशोभित किया है से प्रारम्भ होकर आज आपके पद ग्रहण करने तक आ पहुॅचा है।

म.प्र. उच्च न्यायालय के मुख्य न्यायाधिपति के रूप में पदासीन न्यायमूर्ति के सामने अनेक चुनौतियॉ हैं, लाखों लंबित मामले हैं जिन्हें कोरोनाकाल ने और बढ़ा दिया है, जनता सतत न्याय पाने का इंतजार कर रही है, न्यायाधिपति के पदों पर नियुक्तियॉ होनी बाकी है, अधिवक्ताओं की अनेक समस्यायें हैं, कई तहसीलों में सिविल न्यायालय की स्थापना होनी है समाज के गरीब, पिछड़े एवं निचले स्तर तक न्याय सहज एवं सुलभ हो इसे साकार करने का गुरूतर दायित्व न्यायिक जगत के मुखिया के समक्ष एक चुनौती है।

म.प्र. राज्य जिसमें विकास के अनेक साधन उपलब्ध हैं जिनका समुचित उपयोग कर विकास की गति को बढ़ाया जा सकता है, प्रदेश में जबलपुर मुख्य पीठ के अलावा इन्दौर एवं ग्वालियर पीठ है जिनमें संतुलन बनाते हुये सर्वांगीण विकास के रास्ते खोलने के लिये योजनापूर्वक सभी की सहभागिता से प्रयत्न होना चाहिये।

विधि जगत में आपके द्वारा अधिवक्ता के रूप में, प्रदेश शासन के अधिवक्ता के रूप में एवं केन्द्र शासन के अधिवक्ता के रूप में विभिन्न आयामों पर एवं न्यायाधिपति एवं मुख्य न्यायाधिपति के रूप में कार्य का लम्बा अनुभव है, जिसका लाभ प्रदेश को प्राप्त होगा, आपके व्यक्तित्व एवं समाज जीवन की ओर आपकी दृष्टि पर हमें विश्वास है। म.प्र., किसान, मजदूर एवं ग्रामीण परिवेश का प्रदेश है, जिनकी सीमित आवश्यकतायें होती हैं, जिन्हें थोड़े ही प्रयत्न से दूर किया जा सकता है, इसके लिये पहल करने की आवश्यकता है। हम आशा करते हैं, प्रदेश के मुख्य न्यायाधिपति के रूप में आपकी नियुक्ति भविष्य में सुनहरे सपने को साकार करने में महत्वपूर्ण रहेगी।

इस अवसर पर मैं अपनी ओर से, भारत सरकार की ओर से, केन्द्रीय विधि अधिकारियों की ओर से आपके उज्ज्वल भविष्य की कामना करते हुये पुनः एक बार आपका स्वागत अभिनन्दन करता हूँ।

''जय भारत''

Shri Aditya Adhikari, General Secretary, Senior Advocates' Council, Jabalpur, said :-

It is indeed an exceptional day for me as I have the honour of welcoming Your Lordship on being appointed as the Chief Justice of this magnificent High Court. It is now my Lord's turn to assume the high office which was in the past held by stalwart Judges like Hon'ble Justice Hidayatullah and Hon'ble Justice G.P. Singh, to name a few amongst many others.

My Lord has had a very distinguished legal career initially as an Advocate and later as a Judge and Chief Justice. My Lord has vast experience in all fields of law. My Lord with his stellar leadership qualities has been a Chief Justice of more than one High Court in different States.

I am indeed very happy that this High Court shall be presided over by an extremely able Chief Justice. I am very hopeful that my Lord's tenure in this High Court shall augur well for this Institution and taken it to new heights of eminence and excellence.

On behalf of the Senior Advocates' Council and also on my own behalf, I very heartily welcome my Lord and wish Your Lordship a very legally enriching and fulfilling tenure as the Chief Justice of this High Court.

Thank you.

Shri Lokesh Bhatnagar, President, High Court Bar Association, Indore, said :-

On this momentous occasion of Your Lordship's arrival as a Chief Justice of our State, I, on behalf of High Court Bar Association, Indore and on my own behalf, accord a very warm and cordial welcome to you and offer heartiest felicitations.

It is indeed a great pleasure to have you as our new Chief Justice.

His Lordship was born on 25 May 1960 at Sujangarh in Churu district of Rajasthan. His Lordship completed B.Com in 1980, LL.B in 1984 and M.Com in 1986 from University of Rajasthan, His Lordship later on joined the Bar and practiced as Advocate after enrollment with the Bar Council of Rajasthan on 08 July 1984. His Lordship practiced exclusively in Rajasthan High Court at Jaipur in almost all branches of law.

His Lordship worked as Assistant Government Advocate for the State of Rajasthan and Deputy Government Advocate. His Lordship appeared before the High Court as Panel Advocate for various Departments of the State Government.

His Lordship also represented the Union of India as Standing Counsel before the High Court.

His Lordship was appointed as Additional Advocate General for the State of Rajasthan and worked as such till His Lordship's elevation to the Bench.

As the Chief Justice of Meghalaya High Court and Orissa High Court, His Lordship has pronounced various Leading Judgments.

We really feel proud to welcome such a kind hearted Chief Justice to our historical High Court.

As the President of the High Court Bar Association, Indore and on behalf of our Bar Members, I assure our fullest co-operation, for the smooth functioning of the Courts to achieve speedy justice during this crucial time of Covid-19 Pandemic and even after resumption of the regular function.

I take liberty to make a request to His Lordship to issue such directions for Final Hearing of the petty matters including claim appeals on regular basis through Virtual Hearing Mode so that the pendency of cases can be reduced.

I, on Behalf of our Bar Association, also proposed its fullest cooperation for the Lok Adalats and amicable settlement through Mediation. I hope that Your Lordship will certainly do the needful.

I wish successful and healthy tenure of My Lord in Madhya Pradesh.

Once again, on behalf of the High Court Bar Association Indore, I welcome our Hon'ble Chief Justice.

Thank You, .Jai Hind and Happy New Year.

Shri Jai Prakash Mishra, Convenor, Ad-hoc Committee, High Court Bar Association, Gwalior, said :-

अत्यंत हर्ष का विषय है कि, आज म.प्र. उच्च न्यायालय के 26वे मुख्य न्यायाधिपति के रूप में माननीय न्यायमूर्ति श्री मोहम्मद रफीक जी द्वारा पदभार ग्रहण किया जा रहा है। आज का यह क्षण हम सभी के लिए गौरव एवं अभिमान से भरा है। हम माननीय मुख्य न्यायाधिपति श्री मोहम्मद रफीक जी का स्वागत व अभिनन्दन करते हैं एवं इस अवसर पर उन्हें शुभकामनाएं प्रेषित करते हैं एवं आपका सफलतम कार्यकाल हो ऐसी मंगलकामनाएं करते हैं।

J/14

माननीय न्यायमूर्ति का जन्म 25 मई 1960 को सुजानगढ़, जिला चुरू, राजस्थान में हुआ था, आपकी प्रारंभिक शिक्षा चुरू, सीकर व सुजानगढ़ राजस्थान में हुई। आपने बी.कॉम. की उपाधि वर्ष 1980, एलएल.बी. की उपाधि वर्ष 1984 तथा एम.कॉम. की उपाधि वर्ष 1986 में राजस्थान विश्वविद्यालय से प्राप्त की। आपने वर्ष 1984 से विधि व्यवसाय प्रारम्भ किया। माननीय मुख्य न्यायाधिपति द्वारा अपने कठिन परिश्रम, लगन व बौद्धिक कौशल से अल्प समय में ही अपने आप को विधि क्षेत्र में स्थापित किया व पृथक पहचान बनाई। माननीय मुख्य न्यायाधिपति द्वारा विशिष्ट रूप से राजस्थान उच्च न्यायालय में विधि के सभी क्षेत्रों में कार्य किया।

माननीय, आपकी योग्यता को दृष्टिगत रखते हुए, राजस्थान सरकार एवं केंद्र सरकार व अनेक उपक्रम द्वारा आपको पक्ष समर्थन हेतु अधिवक्ता नियुक्त किया गया। माननीय, आप वर्ष 1999 में अतिरिक्त महाधिवक्ता के रूप में नियुक्त हुए व न्यायमूर्ति का पद ग्रहण करने के पूर्व तक उक्त पद पर कार्य किया।

आपकी दक्षता को दृष्टिगत रखते हुए 15 मई 2006 को राजस्थान उच्च न्यायालय के न्यायाधिपति के रूप में नियुक्त किया गया। तब से निरंतर विधि जगत में एक प्रकाशमान कीर्तिस्तम्भ के रूप में आप न्यायदान में सत्त रूप से संलग्न रहे है। सादगी और शांति के साथ अपने कार्य क्षेत्र से जुड़े, बड़े से बड़े कार्यों को करना आपके व्यक्तित्व की उल्लेखनीय विशेषता है।

आप राजस्थान उच्च न्यायालय में दो बार कार्यवाहक मुख्य न्यायाधिपति रहे तद्उपरांत आप उच्च न्यायालय, मेद्यालय में मुख्य न्यायाधिपति के रूप में नियुक्त हुए तत्पश्चात् आपने उच्च न्यायालय, उड़ीसा में मुख्य न्यायाधिपति का कार्यभार ग्रहण किया। आपने दिनांक 03.01.2021 को म.प्र. उच्च न्यायालय के मुख्य न्यायाधिपति के रूप में शपथ ग्रहण की।

म.प्र. उच्च न्यायालय की गौरवशाली परम्पराएं रही हैं। इस प्रदेश ने भारत के विधि जगत को अनेक ख्यातिमान न्यायविद प्रदान किये हैं। आपका स्वागत करते हुए प्रदेश के समस्त अधिवक्तागण इस बात के लिए पूरी तरह आश्वस्त है कि आपका कार्यकाल न्यायदान की महान परम्पराओं में अपनी स्वयं की एक उल्लेखनीय कड़ी के रूप में जाना जायेगा।

माननीय, यह उल्लेखित करना महत्वूपर्ण है कि वर्तमान में वैश्विक महामारी कोविड–19 से विश्व, देश एवं प्रदेश सामना कर रहा है व इस कठिन समय में न्यायपालिका के समक्ष सक्षम तरीके से कार्य करना एक चुनौती रही है जिसे न्यायपालिका द्वारा नवीन प्रौद्योगिकी का प्रयोग कर पीड़ित पक्षकारों को निरंतर न्यायदान कर एक कीर्तिमान स्थापित किया है, उक्त कार्य में प्रदेश के सभी सम्माननीय अभिभाषकों द्वारा भी सहयोग प्रदान किया गया है।

माननीय, आपसे प्रदेश के अधिवक्तागण को अनेक आशाएं है व आप प्रदेश के इतिहास में नया अध्याय जोड़ेंगे। वर्तमान में उच्च न्यायालय में अनेक पद रिक्त है व हम आपसे आशा करते है कि आप शीघ्र, वर्तमान अभाव को पूर्ण करेंगे व आपसे यह भी आशा करते है कि आपके नेतृत्व में प्रदेश की न्यायपालिका सशक्त होगी एवं बार व बेंच के सम्बन्ध सुदृढ़ रहेंगे।

हम आपसे यह भी, आशा करते है कि माननीय मुख्य न्यायाधिपति, उच्च न्यायालय, जबलपुर के साथ–साथ इंदौर एवं ग्वालियर खंडपीठ में समय–समय पर प्रकरणों की सुनवाई हेतु अवसर प्रदान करेंगे।

इन्हीं भावनाओं के साथ, मैं उच्च न्यायालय अभिभाषक संघ ग्वालियर एवं अपनी ओर से आपके सफल एवं प्रभावी कार्यकाल की मंगल कामना करता हूँ एवं पुनः आपका स्वागत एवं अभिनन्दन करता हूँ।

जय हिन्द।

Reply to the ovation, by Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice:-

I am thankful to you for what you have said about me while welcoming me as the Chief Justice of this Court. I may not really deserve all the rich accolades bestowed on me; nonetheless I accept them with humility. They would surely provide me strength and inspiration in discharge of onerous responsibility as the Chief Justice of this august High Court. Having gone through the recently published history of the High Court, I came to know about many interesting aspects of the Madhya Pradesh High Court. It is the successor High Court of Nagpur High Court which was established on 02 January 1936 by the Letters Patent signed by King George-V of England. The Madhya Pradesh High Court was established on 01 November 1956 following reorganisation of the States.

This High Court has produced many eminent jurists like Justice B.P. Sinha, Justice M. Hidayatullah and Justice J.S. Verma, Justice G.P. Singh, Chief Justice of this Court for nearly six years, is revered as a Jurist for his contribution in the field of law through his book on Interpretation of Statutes. Former Chief Justices of the Supreme Court Justice R.C. Lahoti and Justice Dipak Misra have served as Judges of this Court for considerably long period of time. Justice A.P. Sen, Justice Faizanuddin, Justice D.M. Dharmadhikari, Justice P.P. Naolekar, Justice G.L. Oza, Justice R.V. Raveendran, Justice Deepak Verma, Justice A.K. Patnaik, Justice A.M. Sapre, Justice Arun Mishra who adorned the Bench of the Supreme Court, had been either Chief Justice or Judges of this Court or Chief Justice of different High Courts of the country. Mr. Justice S.A. Bobde, the present Chief Justice of India, Justice A.M. Khanwilkar, Justice Hemant Gupta, the present Judges of the Supreme Court had been Chief Justices of this Court. Though not anywhere near anyone of them, I am humbled by the very thought of occupying the seat once adorned by the galaxy of such legal stalwarts. I feel honoured to get an opportunity to serve as the Chief Justice of this Premier High Court.

I understand that the Bench and the Bar in Madhya Pradesh have established healthy traditions and practices on account of which this High Court is known as one of the best High Courts of the country. I consider myself fortunate to

have the assistance of one of the great Bars in the country, known for its learning and eruditeness, legal and forensic acumen, high professional ethics and hard work. Many eminent lawyers of this Court have earned nationwide reputation and enhanced the glory of this Court. The Bar and the Bench are equal partners in the endeavour to provide easy access to justice, in particular, to the poor, needy, socially & economically backward groups.

The real power of the Courts lies in the trust and confidence of the public in the Judiciary. We are all passing through a difficult phase of our lives following COVID-19 situation, when like any other institution, working of the Courts has also been affected. In this time of crisis, the Bar and the Bench have to ensure that trust and confidence earned by the Judiciary is not eroded. That can be done only by providing speedy, inexpensive and uniform justice to all the citizens. I shall always need your support and guidance in discharging this onerous responsibility in an effective manner.

With your cooperation, I shall try my best to ensure that timely justice is provided to the litigant people of the Madhya Pradesh so that the general public continue to repose their confidence and trust in the High Court and Subordinate Judiciary. I am sure that for this noble cause, Brother and Sister Judges, Members of the Bar, Judicial Officers of the Subordinate Judiciary, Officers and Staff of the Court will co-operate me and we will be able to fulfill the expectations of the litigating public, of fair and timely decisions of the cases.

Thanking you.

Jai Hind.

NOTES OF CASES SECTION

Short Note
**(1)*
Before Mr. Justice G.S. Ahluwalia
WP No. 4503/2020 (Gwalior) decided on 31 July, 2020

AJAY JAIN …Petitioner

Vs.

THE CHIEF ELECTION AUTHORITY & ors. …Respondents

***A. Constitution – Article 226 and Cooperative Societies Rules, M.P. 1962, Rule 49-E(5)(d) – Rejection of Nomination Papers* – Held – In absence of any challenge to decision of Returning Officer in declaring the proposer as disqualified, this Court cannot look into correctness of the order of Returning Officer – Court cannot go beyond pleadings – Mere mass rejection of nomination papers cannot be presumed to be arbitrary and *malafide* action on part of Returning Officer – Election process is not vitiated – Petition dismissed.**

क. संविधान – अनुच्छेद 226 एवं सहकारी सोसायटी नियम, म.प्र. 1962, नियम 49–E(5)(d) – नामांकन पत्रों को अस्वीकार किया जाना – अभिनिर्धारित – प्रस्थापक को निर्हरित घोषित करने के निर्वाचन अधिकारी के निर्णय को किसी चुनौती की अनुपस्थिति में, यह न्यायालय, निर्वाचन अधिकारी के आदेश की शुद्धता की जांच नहीं कर सकता – न्यायालय, अभिवचनों से परे नहीं जा सकता – मात्र बड़ी संख्या में नामांकन पत्रों की अस्वीकृति से निर्वाचन अधिकारी की ओर से मनमानापन एवं असद्भाविक कार्रवाई की उपधारणा नहीं की जा सकती – निर्वाचन प्रक्रिया दूषित नहीं है – याचिका खारिज।

***B. Constitution – Article 226 and Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 2(i) – Scope & Jurisdiction* – Held – Whether son of proposer would be covered by definition of "family" or not, is a disputed question of fact which cannot be decided by this Court in exercise of jurisdiction under Article 226 of Constitution.**

ख. संविधान – अनुच्छेद 226 एवं सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 2(i) – व्याप्ति व अधिकारिता – अभिनिर्धारित – क्या प्रस्थापक का पुत्र, ''कुटुंब'' की परिभाषा द्वारा आच्छादित होगा अथवा नहीं, यह तथ्य का एक विवादित प्रश्न है जिसे इस न्यायालय द्वारा संविधान के अनुच्छेद 226 के अंतर्गत अधिकारिता के प्रयोग में विनिश्चित नहीं किया जा सकता।

***C. Cooperative Societies Rules, M.P. 1962, Rule 64 – Alternate Remedy* – Held – In exceptional cases, writ petition in election matter can be entertained.**

ग. सहकारी सोसायटी नियम, म.प्र. 1962, नियम 64 – वैकल्पिक उपचार – अभिनिर्धारित – अपवादात्मक प्रकरणों में, निर्वाचन के मामले में रिट याचिका ग्रहण की जा सकती है।

***D. Constitution – Article 226 – Pleadings* – Held – Oral submissions in absence of pleadings cannot be accepted so as to take the respondents by surprise.**

घ. संविधान – अनुच्छेद 226 – अभिवचन – अभिनिर्धारित – अभिवचनों की अनुपस्थिति में मौखिक निवेदन, जो कि प्रत्यर्थीगण के लिए अप्रत्याशित हो, स्वीकार नहीं किये जा सकते।

Cases referred :

W.A. No. 273/2020 decided on 14.02.2020 (Gwalior Bench), AIR 1976 MP 156, W.P. No. 1968/2007 decided on 13.03.2007 (Principal Bench), W.P. No. 2020/2007 decided on 13.03.2007 (Principal Bench), 2009 (1) MPLJ 59, 2010 (3) MPLJ 407, W.P. No. 947/2013 (PIL) decided on 18.12.2013 (Gwalior Bench), W.A. No. 61/2017 decided on 22.02.2017, W.P. No. 11928/2018 decided on 25.05.2018 (Gwalior Bench), 2002 (5) MPLJ 246, (2011) 3 SCC 436.

S.S. Gautam, for the petitioner.
M.P.S. Raghuvanshi, for the respondent No. 1.
C.P. Singh, for the State.
Gaurav Mishra, for the respondent No. 7.

Short Note
**(2)(DB)*

Before Mr. Justice Sheel Nagu & Mr. Justice Rajeev Kumar Shrivastava
AR No. 3/2017 (Gwalior) decided on 11 May, 2020

NARMADA TRANSMISSION PVT. LTD. (M/S) …Applicant

Vs.

M.P. MADHYA KSHETRA VIDYUT VITARAN CO. LTD. & anr. …Non-applicants

***Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 19 – Breach of Terms & Conditions* – Held – Petitioner has not submitted the bank guarantee within stipulated period without any justified reason – Petitioner has not taken initiative for joint survey in stipulated time, thus failed to fulfill requirement of clause 11 of LOA, despite scheduled bill payments done by respondents – Petitioner was responsible for delay in completion of work – Revision dismissed.**

माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 19 – निबंधनों व शर्तों का भंग – अभिनिर्धारित – याची ने बिना किसी न्यायानुमत कारण के नियत अवधि के भीतर बैंक गांरटी प्रस्तुत नहीं की है – याची ने नियत समय में संयुक्त सर्वेक्षण हेतु पहल नहीं की, इस प्रकार प्रत्यर्थीगण द्वारा निर्धारित बिल भुगतान के बावजूद वह एल.ओ.ए. के खंड 11 की अपेक्षाओं की पूर्ति करने में विफल रहा – याची कार्य के समापन में हुए विलंब हेतु उत्तरदायी था – पुनरीक्षण खारिज।

The Order of the Court was passed by : **RAJEEV KUMAR SHRIVASTAVA, J.**

Case referred:

AIR 1963 SC 1405.

H.K. Dixit, for the applicant/revisionist.
Vivek Jain, for the non-applicant No. 1.

Short Note
****(3)***
Before Mr. Justice G.S. Ahluwalia
WP No. 9686/2020 (Gwalior) decided on 22 July, 2020

SAJJAN SINGH KAURAV …Petitioner

Vs.

STATE OF M.P. …Respondent

A. Constitution – Article 226 – Delay & Laches – Maintainability – **Held – Petition has been filed after 11 long years – Successive representation and any decision on those representations would not give any fresh cause of action – Stale and dead cases cannot be reopened merely on ground that respondents had entertained one of the representation/complaint which was made on CM Helpline and to Jan Shikayat Nivaran Vibhag – Petition dismissed *in limine* on ground of delay and *laches*.**

क. संविधान – अनुच्छेद 226 – विलंब व अतिविलंब – पोषणीयता – अभिनिर्धारित – याचिका को 11 वर्ष लंबी अवधि के पश्चात् प्रस्तुत किया गया है – उत्तरोत्तर अभ्यावेदन एवं उन अभ्यावेदनों पर कोई विनिश्चय, कोई नया वाद हेतुक नहीं देगा – पुराने एवं मृत प्रकरणों को मात्र इस आधार पर पुनः खोला नहीं जा सकता कि प्रत्यर्थीगण ने एक अभ्यावेदन/शिकायत को ग्रहण कर लिया था जो सी.एम. हेल्पलाईन पर तथा जन शिकायत निवारण विभाग को किया गया था – याचिका को विलंब व अतिविलंब के आधार पर आरंभ में ही खारिज किया गया।

B. Service Law – Promotion – **Held – No person has a vested right of promotion, at the most he can claim that he has a right for his consideration for promotion – A promotion may effect various persons and their promotion cannot be changed after a long time.**

NOTES OF CASES SECTION

ख. *सेवा विधि – पदोन्नति* – अभिनिर्धारित – किसी व्यक्ति को पदोन्नति का निहित अधिकार नहीं है, अधिक से अधिक वह दावा कर सकता है कि पदोन्नति हेतु उसका विचार किये जाने का उसे एक अधिकार है – एक पदोन्नति विभिन्न व्यक्तियों को प्रभावित कर सकती है और उनकी पदोन्नति को एक दीर्घ अवधि के पश्चात् बदला नहीं जा सकता।

Cases referred :

2006 (1) MPLJ 278, (2019) 15 SCC 633, (2015) 1 SCC 347, (2001) 1 SCC 240.

Alok Katare, for the petitioner.
Anmol Khedkar, for the State.

I.L.R. [2021] M.P. 1 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Sanjay Kishan Kaul & Mr. Justice Dinesh Maheshwari

SLP (C) Diary No. 9217/2020 decided on 15 October, 2020

STATE OF M.P. & ors. …Petitioners

Vs.

BHERULAL …Respondent

***A. Limitation Act (36 of 1963), Section 5 – Condonation of Delay* – Held – There is a delay of 663 days – Looking to the inordinate delay and casual manner in which application has been worded, Government or State authorities must pay for wastage of judicial time which has its own value – SLP dismissed with cost of Rs. 25,000 to be recovered from responsible officers. (Paras 1 & 7 to 10)**

क. परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – अभिनिर्धारित– 663 दिनों का विलंब है – अत्यधिक विलंब और आवेदन के शब्दों के लापरवाह ढंग को देखते हुए, सरकार या राज्य प्राधिकारीगण को न्यायिक समय जिसका स्वयं का अपना मूल्य है, की बर्बादी के लिए कीमत चुकानी चाहिए – रू. 25,000/– व्यय, जिसे उत्तरदायी अधिकारियों से वसूला जाएगा, के साथ विशेष अनुमति याचिका खारिज।

***B. Limitation Act (36 of 1963), Section 5 – Condonation of Delay* – Held – Supreme Court of India cannot be a place for government to walk in when they choose, ignoring the prescribed limitation period – Appeals/petitions have to be filed as per the Statutes prescribed. (Para 2)**

ख. परिसीमा अधिनियम (1963 का 36), धारा 5 – विलंब के लिए माफी – अभिनिर्धारित – उच्चतम न्यायालय, सरकारों के लिए एक ऐसा स्थान नहीं हो सकता जहां वे विहित परिसीमा अवधि की अनदेखी कर जब चाहे आ जाये – अपीलों/याचिकाओं को विहित कानूनों के अनुसार प्रस्तुत करना होता है।

Cases referred:

(1987) 2 SCC 107, (2012) 3 SCC 563.

J U D G M E N T

The Judgment of the Court was delivered by: **SANJAY KISHAN KAUL, J.:-**

IA No.62372/2020-CONDONATION OF DELAY IN FILING

1. The Special Leave Petition has been filed with a delay of 663 days! The explanation given in the application for condonation of delay is set out in paragraphs 3 and 4 .

2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence.That is not so.Till the Statute subsists, the appeals/ petitions have to be filed as per the Statues prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government *(Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors*. (1987) 2 SCC 107) . This position is more than elucidated by the judgment of this Court in *Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr.* (2012) 3 SCC 563 where the Court observed as under:

> "12) It is not in dispute that the person (s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.
>
> Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.
>
> 13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red-tape in the

> process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."
>
> Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only "*due to unavailability of the documents and the process of arranging the documents*". In paragraph 4 a reference has been made to *"bureaucratic process works, it is inadvertent that delay occurs"*.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as *"certificate cases"*. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal, it is to complete this formality and save the skin of officers who may be at default that such a process is followed.We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner-State of Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.

9. The special leave petition is dismissed as time barred in terms aforesaid.

10. We make it clear that if the aforesaid order is not complied within time, we will be constrained to initiate contempt proceedings against the Chief Secretary.

11. A copy of the order be placed before the Chief Secretary, State of Madhya Pradesh.

Petition dismissed

I.L.R. [2021] M.P. 4 (SC)
SUPREME COURT OF INDIA
Before Mr. Justice Ashok Bhushan & Mr. Justice M.R. Shah
CA No. 3601/2020 decided on 3 November, 2020

SHRI RAM SAHU (DEAD) THROUGH LRs. & ors. …Appellants

Vs.

VINOD KUMAR RAWAT & ors. …Respondents

***A. Civil Procedure Code (5 of 1908), Section 114 r/w Order 47 Rule 1 – Review – Question of Possession – Pleading & Framing of Issues* – Held – Ample material to show that defendants admitted possession of plaintiff over suit property – Necessary pleadings regarding possession present in plaint and written statement – Plaintiff led evidence in this respect – Non-framing of issue by trial Court regarding possession fades into insignificance – High Court committed grave error in allowing review application, deleting the observation made regarding possession – Impugned order set aside – Deleted portion restored – Appeal allowed. (Paras 11.1, 13, 14 & 15)**

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 114 सहपठित आदेश 47 नियम 1 – पुनर्विलोकन – कब्जे का प्रश्न – अभिवचन व विवाद्यक विरचित किये जाना – अभिनिर्धारित – यह दर्शाने के लिए पर्याप्त सामग्री है कि प्रतिवादीगण ने वाद संपत्ति पर वादी का कब्जा स्वीकार किया – कब्जे के संबंध में आवश्यक अभिवचन, वादपत्र एवं लिखित कथन में उपस्थित – वादी ने इस संबंध में साक्ष्य पेश किया – विचारण न्यायालय द्वारा कब्जे के संबंध में विवाद्यक विरचित न किया जाना महत्वहीन हो जाता है – उच्च न्यायालय ने कब्जे के संबंध में किया गया संप्रेक्षण हटाकर, पुनर्विलोकन आवेदन मंजूर

करने में घोर त्रुटि कारित की – आक्षेपित आदेश अपास्त – हटाया गया भाग पुरःस्थापित किया गया – अपील मंजूर।

***B. Civil Procedure Code (5 of 1908), Order 47 Rule 1 – Review – Grounds* – Held – When observation regarding possession was made on appreciation of evidence/material on record, it cannot be said that there was an error apparent on face of proceedings and required to be reviewed in exercise of powers under Order 47 Rule 1 CPC. (Para 10)**

***ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 47 नियम 1 – पुनर्विलोकन – आधार* – अभिनिर्धारित – जब अभिलेख पर साक्ष्य/सामग्री के मूल्यांकन पर कब्जे के संबंध में संप्रेक्षण दिया गया था, यह नहीं कहा जा सकता कि कार्यवाहियों में प्रकट त्रुटि थी और आदेश 47, नियम 1 सि.प्र.सं. के अंतर्गत शक्तियों के प्रयोग में पुनर्विलोकन अपेक्षित था।**

***C. Civil Procedure Code (5 of 1908), Section 114 r/w Order 47 Rule 1 – Review – Scope & Jurisdiction* – Held- Order can be reviewed by Court only on prescribed grounds mentioned in Order 47 Rule 1 CPC – Application for review is more restricted than that of an appeal and Court has limited jurisdiction – Power of review cannot be exercised as an inherent power nor can an appellate power can be exercised in guise of power of review. (Paras 6.2, 7 & 9)**

***ग. सिविल प्रक्रिया संहिता (1908 का 5), धारा 114 सहपठित आदेश 47 नियम 1 – पुनर्विलोकन – व्याप्ति व अधिकारिता* – अभिनिर्धारित–न्यायालय द्वारा आदेश का पुनर्विलोकन केवल आदेश 47 नियम 1 सि.प्र.सं. में उल्लिखित विहित किये गये आधारों पर किया जा सकता है – पुनर्विलोकन हेतु आवेदन, एक अपील से अधिक निर्बंधित है और न्यायालय की सीमित अधिकारिता है – पुनर्विलोकन की शक्ति का प्रयोग, अंतर्निहित शक्ति के रूप में नहीं किया जा सकता और न ही अपीली शक्ति का प्रयोग पुनर्विलोकन की शक्ति के रूप में किया जा सकता है।**

Cases referred:

(2015) 3 SCC 624, (2009) 5 SCC 136, (2003) 7 SCC 52, (2006) 4 SCC 78, (2000) 6 SC 224, AIR 1922 PC 112, AIR 1954 SC 526, (2009) 14 SCC 663, (1971) 3 SCC 844, AIR 1954 SC 440, AIR 1955 SC 233, (2008) 8 SCC 612.

J U D G M E N T

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

Feeling aggrieved and dissatisfied with the impugned order dated 14.07.2017 passed by the High Court of Madhya Pradesh at Gwalior in Review Petition No.465 of 2015 in First Appeal No.241 of 2005, by which the High Court has allowed the said review petition filed by the respondent nos. 1 and 2 herein-

original defendants nos. 1 and 2, and has reviewed the judgment and order dated 10.12.2013 passed in First Appeal No.241 of 2005 and has deleted the observations made in para 20 of the said judgment and order more particularly with respect to the observations made in para 20 as regards the possession of the disputed house, which were in favour of the appellants - the original plaintiffs, the appellants have preferred the present appeal.

2. The relevant facts leading to the present appeal in nutshell are as under:

That one Shri Ram Sahu, the predecessor of the appellants herein instituted Civil Suit No.04A of 2005 before the Learned Trial Court against the respondents herein - original defendants for declaration of registered Sale Deed dated 25.03.1995 executed by original defendant no.3 in favour of original defendant nos. 1 & 2 regarding House No.28/955 (previous House No.3/1582), situated in Sube Ki Payga, Jiwajiganj, Lashkar, as null and void and for permanent injunction against defendant nos. 1 & 2 restraining defendant nos. 1 & 2 from transferring the disputed property to any other person.

2.1. That the original plaintiff Shri Ram Sahu claimed the ownership of the disputed property on the basis of the will executed by one Chhimmabai executed in his favour on 19.10.1993. The original plaintiff also claimed that he became the sole owner on the death of the Chhimmabai and possession holder of the entire house and in the same capacity; he is in continuous possession over the same. It was the case on behalf of the defendants that the said Chhimmabai adopted defendant No.3 and later on, she got registered the Adoption Deed on 13.05.1992 and that the original defendant no.3 sold the disputed property in favour of the respondent nos. 1 & 2. The original plaintiff denied the adoption of defendant no.3 by the said Chhimmabai. The written statement was filed on behalf of the respondents. They denied that the disputed property was the Joint Hindu Family property. Defendant nos. 1 and 2 also claimed to be the *bona fide* purchasers and in possession of the suit property.

2.2. The Learned Trial Court framed the following issues:

> "1. Whether, the Disputed House No.28/95 situated in Sube Ki Payga, Jiwajiganj, Lashkar, Gwalior was purchased from the income of Joint Hindu Family of Ghasilal and Mangaliya?
>
> 2. Whether, the wife of Ghasilal namely Chhimmabai had executed Will of aforesaid House in favour of the Plaintiff on 19.10.1993?
>
> 3. Whether, Defendant No.3 was adopted by Ghasilal on 28.01.1985, which was got registered by Chhimmabai on 13.05.1992.

4. Whether, Sale Deed dated 25.03.1995 regarding the disputed house was executed by Defendant No.3 in favour of Defendant Nos. 1 & 2 without having any right?

5. Whether, the Plaintiff is entitled to get the Registered Sale Deed Dated 25.03.1995 as null and void?

6. Whether, Plaintiff is entitled to receive Permanent Injunction against the Defendant Nos. 1 & 2 for not to sell the disputed house?

7. Whether, the Defendant Nos. 1 & 2 are entitled to receive special compensation from the Plaintiff ? If Yes, then how much?

8. Relief & Costs."

2.3. Both the parties led the evidence, oral as well as documentary, in support of their respective claims.

2.4. Original Plaintiff Shri Ram Sahu - appellant herein was examined as PW1. He was also cross-examined (his deposition shall be discussed herein below). He also led the evidence in support of his claim that he is in possession of the said property. On behalf of the defendants, defendant no.1 stepped into the witness box and through him; the defendants also produced on record the documentary evidences.

2.5. On appreciation of the evidence, the Learned Trial Court dismissed the suit. The Learned Trial Court disbelieved the case on behalf of plaintiff - appellant herein that Chhimmabai executed the will in favour of the plaintiff - appellant. The Learned Trial Court held that the defence had proved that defendant No.3 was adopted by Ghasilal on 26.01.1985 which was got registered later on by Chhimmabai vide Adoption Deed dated 13.05.1992.

2.6. Feeling aggrieved and dissatisfied with the Judgment and decree passed by the Learned Trial Court dismissing the suit, the original plaintiff - appellant herein preferred First Appeal No.241 of 2005 before the High Court. That during the pendency of the said appeal, respondent no.1 herein filed an application under section 151 C.P.C. on 19.03.2012 for dismissing the appeal and for directing the appellant herein to vacate the suit property. That during the pendency of the appeal the original plaintiff - appellant herein filed an application under Order 6 Rule 17 of the CPC by which the plaintiff sought amendment in the relief clause as regards the issuance of permanent injunction and restraining defendant nos.1 and 2 from dispossessing the plaintiffs forcibly from the disputed house. However, the said application came to be dismissed by the High Court on the ground of delay and latches (I.A. No.2244 of 2012). However, while dismissing the said application the High Court granted permission to the appellants to file a separate suit for the said relief against the defendants. Thereafter on appreciation of the

evidence on record, the High Court dismissed the said appeal preferred by the original plaintiff. However, while dismissing the appeal the High Court also made observations as regards the possession of the disputed house and on analysis of the deposition of PW1 and PW2 and considering the material on record and considering the fact that during the pendency of the appeal the original defendant no.1 himself filed an application under Section 151 CPC on 02.12.2013 for getting the possession from the plaintiff of the disputed house, which was withdrawn, the High Court made observations in regards the possession of the plaintiffs of the disputed house.

2.7 Thereafter almost 2 years after the judgment of the High Court in the First Appeal, the Respondent Nos.1 & 2 herein - Original Defendant Nos. 1 & 2 filed an application before the High Court seeking review of observations in para 20 of the judgment as regards the possession of the disputed house. The said application was opposed by the appellants herein. However, by the impugned order, the High Court has allowed the review application and has ordered to delete para 20 of the Judgment and order dated 10.12.2013 passed in First Appeal No.241 of 2005, by observing that as regards the possession of the disputed property the issue of possession was neither raised before the Learned Trial Court nor before the First Appellate Court and even no issue with respect to possession was framed by the Learned Trial Court.

2.8. Feeling aggrieved and dissatisfied with the impugned order passed by the High Court in allowing the review application and deleting para 20 of the judgment and order dated 10.12.2013 passed in First Appeal No.241 of 2005, the original plaintiffs have preferred the present appeal.

3. Shri A.K. Srivastava, learned Senior Advocate appearing on behalf of the appellants has made the following submissions, while assailing the impugned order passed by the High Court passed in the review application.

(i) while passing the impugned order, the High Court has exceeded in its jurisdiction, while exercising the review jurisdiction and has acted beyond the scope and ambit of the review jurisdiction under Order 47 Rule 1 CPC;

(ii) while exercising the review jurisdiction, the High Court ought not to have set aside the specific finding given with respect to possession, which finding was based on appreciation of evidence before the learned trial Court;

(iii) the High Court has committed a grave error in deleting para 20 of the final judgment and order dated 10.12.2013 passed in First Appeal No. 241/2005, in exercise of its review jurisdiction inasmuch as, as such, there was no error apparent on the face of the record, which was required to be corrected;

(iv) merely because the specific issue with respect to possession was not framed

by the learned trial Court, cannot be a ground to set aside the finding by the High Court, when such finding with respect to possession was on merits and on appreciation of the evidence before the learned trial Court;

(v) as such, the High Court has committed a grave error in considering the issues framed in another case being Civil Suit No. 3-A/2005, which was related to House No. 28/956 and in which the parties were also different. It is submitted that the High Court has mis-directed itself, while considering the issues framed in Civil Suit No. 3 A/2005, related to House No. 28/956 and not considering the issues framed in Civil Suit No. 4-A/2005;

(vi) the High Court ought to have appreciated that the issue of possession was at large before the learned trial Court and, in fact, the parties also led evidence with respect to possession. It is submitted that the High Court ought to have appreciated that there was a specific averment in the plaint as well as in the testimony of the plaintiff that he is in possession of the suit property, i.e., House No. 28/955;

(vii) the defendants did not led any evidence with respect to possession. It is submitted therefore that when there were specific averments and pleadings in the plaint in regard to possession, and even the plaintiff led the evidence specifically on the possession, non-framing of the specific issue with respect to possession would not vitiate the finding recorded by the High Court, which was on appreciation of the material on record. In support of his submission, learned Senior Advocate appearing on behalf of the appellants has relied upon the following decisions of this Court, *Sri Gangai Vinayagar Temple v. Meenakshi Ammal* (2015) 3 SCC 624; *Bhuwan Singh v. Oriental Insurance Company Ltd.* (2009) 5 SCC 136; and *Sayeda Akhtar v. Abdul Ahad* (2003) 7 SCC 52. It is submitted that all the parties were aware of the rival cases and the issue with respect to possession was present and even the plaintiffs also led evidence on possession, non-framing of the specific issue with respect to possession would be non-significant. It is submitted that therefore the High Court has committed a grave error in deleting para 20 of the final judgment and order dated 10.12.2013 passed in First Appeal No. 241/2005 with respect to possession mainly on the ground that no issue was framed by the learned trial Court with respect to possession;

3.1 Learned Senior Advocate appearing on behalf of the appellants has also taken us to the relevant averments in the plaint as well as the written statement in regard to possession. Learned Counsel appearing on behalf of the appellants has also taken us to the testimony of the plaintiff - Shri Ram Sahu, as well as, the deposition of one J.K. Sharma examined on behalf of the plaintiff. Learned Senior Advocate has further submitted that there was no cross-examination by the

defendants on the point of the plaintiffs possession. Learned Senior Advocate has also heavily relied upon the application and affidavit dated 19.03.2012 in which the respondents in an application filed under Section 151 of the CPC specifically prayed to direct the appellants to vacate the suit property. It is submitted that therefore, in fact, the respondents admitted the possession of the appellants. It is submitted that not only that, but subsequently in the month of September, 2017, the respondents filed a suit against the appellants for decree of possession, compensation and mesne profits. It is submitted that therefore, as such, the respondents herein specifically admitted the possession of the appellants in the suit property;

3.2 It is further submitted that the High Court ought to have appreciated that the review application was filed with a malafide intention faced with the proceedings under Section 340 read with Section 195 Cr.P.C and faced with the order passed by the learned Magistrate directing to register the case against respondent nos. 1 and 2 herein and others under Sections 193, 465, 471 and 120-B of the IPC, dated 06.02.2016;

3.3 It is further submitted that, in fact, the appellants filed an application before the High Court under Order 6 Rule 17 CPC (IA No. 2244/2012) to amend the plaint by adding relief for the grant of decree of permanent injunction restraining the respondents-defendants not to dispossess them forcibly. It is submitted that the said application was opposed by the respondents herein by submitting that they are not threatening to dispossess the appellants during the pendency of the suit. Therefore, the High Court dismissed the said application under Order 6 Rule 17 CPC reserving liberty in favour of the appellants to file a separate suit for the aforesaid relief. It is submitted that therefore, as such, the issue with respect to possession was at large even before the High Court;

3.4 Learned Senior Advocate appearing on behalf of the appellants has also heavily relied upon the order passed by the learned Magistrate on an application filed under Section 340 read with Section 195 Cr.P.C., in which the learned Magistrate took note of the affidavit dated 19.03.2012 filed by the respondents and also took note of the specific observation and finding with respect to possession made in para 20 of the judgment and order dated 10.12.2013. It is submitted that there is a specific finding given by the learned Magistrate on the respondents' forging/creating/concocting the documents to show their possession. It is submitted that only thereafter the learned Magistrate directed to register the case against the respondents under Sections 193, 465, 471 and 120-B of the IPC, under the provisions of Section 340 Cr.P.C;

3.5 It is submitted that even subsequently the suit filed by the defendants-respondents herein, filed in the year 2017, has been dismissed by the High Court on the ground of limitation and the plaint has been rejected in exercise of powers

under Order 7 Rule 11 CPC;

3.6 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeal.

4. Shri Punit Jain, Learned Advocate appearing on behalf of the respondents while opposing the present appeal and supporting the impugned order passed by the High Court has vehemently submitted that in the facts and circumstances of the case the High Court has not committed an error in deleting para 20 of the judgment and order dated 10.12.2013 passed in First Appeal No.241 of 2005 in exercise of the review jurisdiction.

4.1 It is submitted that as such the original plaintiff filed the suit seeking cancellation of the sale deed dated 25.03.1995 and permanent injunction to the effect that the defendant nos. 1 & 2 (respondents herein) shall not transfer the property to any other person. It is submitted that since no injunction from dispossession was sought and only injunction against further transfer was sought no issue was framed in respect of possession. It is submitted that therefore in absence of any specific issue framed by the Learned Trial Court in respect of possession of the property and when the suit was dismissed and even thereafter the appeal also came to be dismissed, there was no reason and/or occasion for the High Court to make any observation in respect of possession and therefore the High Court has rightly deleted the observations made in para 20 in respect of possession. It is submitted that during the lifetime of Shri Ghisa Lal Sahu, he was in possession of the property. After his death, his wife Smt. Chhimmabai came into possession of the property. She continued to be in possession and after her, the adopted son - Dilip Kumar Sahu came into possession. The issue of adoption of Shri Dilip Kumar Sahu was a subject matter of litigation in Suit No.4A of 2001, where the said adoption and the adoption deed dated 13.05.1992 was challenged. The said suit was finally dismissed by the High Court by an order dated 07.09.2009 in SA No.315 of 2005. The will setup by the petitioner dated 19.10.1993 was also a subject matter of suit No.45A of 2003 filed by Dilip Kumar Sahu. The said suit was decreed by a judgment dated 07.09.2009 in SA No.946 of 2005. Some parts of the property was in possession of Tenants - (i) Om Babu Saxena and (ii) Kashmir Singh Yadav. Shri Dilip Kumar Sahu got possession from the said tenants on 30.01.1995 by entering into compromises with them. Shri Dilip Kumar Sahu executed sale deed dated 25.03.1995 in favour of the Respondents. Under the said sale, possession of the property was given to the respondents. The petitioner got possession of another portion of the property from another tenant -Parvesh Singh Jadon pursuant to a judgment and decree dated 18.10.2014. The petitioner has not shown as to how, under what capacity and when the petitioner came into possession of the property, constructive or otherwise.

4.2 So far as the withdrawal of the application dated 02.12.2013 in I.A. No.1267 of 2012 which was filed by the respondents is concerned, it is submitted that the said application was withdrawn since (i) no relief could have been claimed arising out of a suit initiated by the plaintiffs and (ii) further the portion of the property in possession of the estranged wife of the petitioner - Smt. Sheela Sahu who was not a party to the said proceedings.

4.3 It is submitted even the application submitted by the petitioner under Order 6 Rule 17 CPC to amend the prayer clause of permanent injunction restraining the defendants from dispossessing the appellants forcibly from the disputed house, came to be dismissed by the High Court, though with a permission to file a separate suit but the petitioners had not filed any instant suit for the aforesaid reliefs.

4.4 It is submitted that therefore when the issue in respect to possession was neither before the Learned Trial Court nor before the High Court and despite the same observations were made in para 20 in respect of possession, subsequently the same has been rightly deleted in exercise of the review jurisdiction. It is submitted that the Court has an inherent power to correct the error if subsequently it is bound that some of the observations were made by error.

5. By the impugned order the High Court in exercise of powers under Section 114 read with Order 47 Rule 1 CPC has allowed the review petition and has reviewed the judgment and order dated 10.12.2013 passed in First Appeal No.241 of 2005 insofar as deleting the observations made in Para 20 as regards the possession of the disputed property, which were in favour of the appellants - original plaintiffs. From the impugned order passed by the High Court, it appears that the High Court has deleted the observations made in para 20 as regards possession of the plaintiffs mainly/solely on the ground that the issue of possession was neither before the Learned Trial Court nor was it before the First Appellate Court and no such issue with respect to possession was framed by the Learned Trial Court. Therefore, the short question falls for consideration before this Court is, whether in the facts and circumstances of the case the High Court is justified in allowing the review application in exercise of powers under Section 114 read with Order 47 Rule 1 CPC on the aforesaid grounds?

6. While considering the aforesaid question, the scope and ambit of the Court's power under Section 114 read with Order 47 Rule 1 CPC is required to be considered and for that few decisions of this Court are required to be referred to.

6.1 In the case of *Haridas Das vs. Usha Rani Banik (Smt.) and Others,* (2006) 4 SCC 78 while considering the scope and ambit of Section 114 CPC read with Order 47 Rule 1 CPC it is observed and held in paragraph 14 to 18 as under:

"**14.** *In Meera Bhanja v. Nirmala Kumari Choudhury*

(1995) 1 SCC 170- it was held that:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma,* (1979) 4 SCC 389 speaking through Chinnappa Reddy, J. has made the following pertinent observations:

'It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.' "

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: *(a)* from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; *(b)* such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and *(c)* on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma,* AIR 1979 SC 1047, this Court held that there

are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p. 390, para 3)

"It is true as observed by this Court in *Shivdeo Singh v. State of Punjab,* AIR 1963 SC 1909 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

17. The judgment in Aribam case has been followed in *Meera Bhanja*. In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in *Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale*, AIR 1960 SC 137 were also noted:

"An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be

established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ."

18. It is also pertinent to mention the observations of this Court in *Parsion Devi v. Sumitri Devi,* (1997) 8 SCC 715. Relying upon the judgments in *Aribam and Meera Bhanja* it was observed as under:

> *"9.* Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

6.2 In the case of *Lily Thomas vs. Union of India*, (2000) 6 SC 224, it is observed and held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power.

It is further observed in the said decision that the words "any other sufficient reason" appearing in Order 47 Rule 1 CPC must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in *Chhajju Ram vs. Neki*, AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos vs Most Rev. Mar Poulose Athanasius,* AIR 1954 SC 526. 12.3 In the case of *Inderchand Jain vs. Motilal,* (2009) 14 SCC 663 in paragraphs 7 to 11 it is observed and held as under:

> **7.** Section 114 of the Code of Civil Procedure (for short "the Code") provides for a substantive power of review by a civil court and consequently by the appellate courts. The words "subject as aforesaid" occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations

have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

"*17*. The power of a civil court to review its judgment/ decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:

'1. *Application for review of judgment*.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the court which passed the decree or made the order.' "

8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In *Rajendra Kumar v. Rambai* this Court held: (SCC p. 514, para 6)

"6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed."

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the

order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. *In Lily Thomas v. Union of India* this Court held: (SCC p. 251, para 56)

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise."

7. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. In the case of *Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844, this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

8. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in the case of *T.C. Basappa vs. T.Nagappa*, AIR 1954 SC 440. It is held that such an error is an error which is a patent error and not a mere wrong decision. In the case of *Hari Vishnu Kamath vs. Ahmad Ishaque,* AIR 1955 SC 233, it is observed as under:

"It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated."

8.1 In the case of *Parsion Devi vs. Sumitri Devi*, (Supra) in paragraph 7 to 9 it is observed and held as under:

> **7.** It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. v. Govt. of A.P.*, AIR 1964 SC 1372 this Court opined:
>
> "What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an 'error apparent on the face of the record'). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."
>
> **8.** Again, in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 while quoting with approval a passage from *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (supra) this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.
>
> **9.** Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

8.2 In the case of *State of West Bengal and Others vs. Kamal Sengupta and Anr.* , (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be "mistake or error apparent on the face of record". In para 22 to 35 it is observed and held as under:

> **"22.** The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long

debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

23. We may now notice some of the judicial precedents in which Section 114 read with Order 47 Rule 1 CPC and/or Section 22(3)*(f)* of the Act have been interpreted and limitations on the power of the civil court/tribunal to review its judgment/decision have been identified.

24. In *Rajah Kotagiri Venkata Subbamma Rao v. Rajah Vellanki Venkatrama Rao* (1899-1900) 27 IA 197 the Privy Council interpreted Sections 206 and 623 of the Civil Procedure Code and observed: (IA p.205)

"... Section 623 enables any of the parties to apply for a review of any decree on the discovery of new and important matter and evidence, which was not within his knowledge, or could not be produced by him at the time the decree was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. It is not necessary to decide in this case whether the latter words should be confined to reasons strictly ejusdem generic with those enumerated, as was held in *Roy Meghraj v. Beejoy Gobind Burrah* ILR (1875) 1 Cal 197. *In the opinion of Their Lordships, the ground of amendment must at any rate be something which existed at the date of the decree, and the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event."*

(emphasis added)

25. In *Hari Sankar Pal v. Anath Nath Mitter,* 1949 FCR 36 a five-Judge Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to non-appealing party, whose position was similar to that of the successful appellant, held: (FCR p. 48)

"That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may

amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47 Rule 1, Civil Procedure Code."

26. In *Moran Mar Basselios Catholicos v. Mar Poulose Athanasius* (supra) this Court interpreted the provisions contained in the Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed:

"32. ... Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified grounds, namely, *(i)* discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, *(ii)* mistake or error apparent on the face of the record and *(iii)* for any other sufficient reason.

It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, least analogous to those specified in the rule'."

27. In *Thungabhadra Industries Ltd. v. Govt. of A.P.* (supra) it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.

28. In *Parsion Devi v. Sumitri Devi* (Supra) it was held as under: (SCC p. 716)

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. *An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC*. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. *There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'.*"

29. In *Haridas Das v. Usha Rani Banik,* (supra) this Court made a reference to the Explanation added to Order 47 by the Code of Civil Procedure (Amendment) Act, 1976 and held:

"13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it 'may make such order thereon as it thinks fit'. The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing 'on account of some mistake or error apparent on the face of the records or for any other sufficient reason'. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection."

30. In *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* (Supra) this Court considered the scope of the High Courts' power to review an order passed under Article 226 of the Constitution, referred to an earlier decision in *Shivdeo Singh v. State of Punjab* (Supra) and observed: (*Aribam Tuleshwar* case (Supra), SCC p. 390, para 3)

"3. ... It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* (Supra), there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate

powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

31. In *K. Ajit Babu v. Union of India,* (1997) 6 SCC 473, it was held that even though Order 47 Rule 1 is strictly not applicable to the tribunals, the principles contained therein have to be extended to them, else there would be no limitation on the power of review and there would be no certainty or finality of a decision. A slightly different view was expressed in *Gopabandhu Biswal v. Krishna Chandra Mohanty,* (1998) 4 SCC 447). In that case it was held that the power of review granted to the tribunals is similar to the power of a civil court under Order 47 Rule 1.

32. In *Ajit Kumar Rath v. State of Orissa,* (1999) 9 SCC 596, this Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a civil court and held: (SCC p. 608, paras 30-31)

"30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. *It may be pointed out that the expression 'any other sufficient reason' used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule*.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

33. In *State of Haryana v. M.P. Mohla,* (2007) 1 SCC 457 this Court held as under: (SCC pp. 465-66, para 27)

"27. A review petition filed by the appellants herein was not maintainable. There was no error apparent on the face of the record. The effect of a judgment may have to be considered afresh in a

separate proceeding having regard to the subsequent cause of action which might have arisen but the same by itself may not be a ground for filing an application for review."

34. In *Gopal Singh v. State Cadre Forest Officers' Assn.,* (2007) 9 SCC 369 this Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below: (SCC p. 387, para 40)

"40. The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Sinha, J.) that the Tribunal has travelled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

35. The principles which can be culled out from the abovenoted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)*(f)* of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)*(f)*.

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)*(f)* on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

> *(vii)* While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
>
> *(viii)* Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier."

9. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.

10. Considered in the light of the aforesaid settled position, we find that the High Court has clearly overstepped the jurisdiction vested in the Court under Order 47 Rule 1 CPC. No ground as envisaged under Order 47 Rule 1 CPC has been made out for the purpose of reviewing the observations made in para 20. It is required to be noted and as evident from para 20, the High Court made observations in para 20 with respect to possession of the plaintiffs on appreciation of evidence on record more particularly the deposition of the plaintiff (PW1) and his witness PW2 and on appreciation of the evidence, the High Court found that the plaintiff is in actual possession of the said house. Therefore, when the observation with respect to the possession of the plaintiff were made on appreciation of evidence/material on record, it cannot be said that there was an error apparent on the face of proceedings which were required to be reviewed in exercise of powers under Order 47 Rule 1 CPC. At this stage, it is required to be

noted that even High Court while making observations in para 20 with respect to plaintiff in possession also took note of the fact that the defendant nos. 1 and 2 - respondents herein themselves filed an application being I.A. No.1267 of 2012 which was filed under Section 151 CPC for getting the possession of the disputed house from the appellants and the said application was dismissed as withdrawn. Therefore, the High Court took note of the fact that even according to the defendant nos. 1 & 2 the appellants were in possession of the disputed house. Therefore, in light of the fact situation, the High Court has clearly erred in deleting para 20 in exercise of powers under Order 47 Rule 1 CPC more particularly in the light of the settled preposition of law laid down by this Court in the aforesaid decisions.

11. Now so far as the submission on behalf of the respondents -original defendant nos. 1 & 2 and the reasons given by the High Court while allowing the review application and deleting para 20 that no issue was framed by the learned Trial Court with respect to possession and/or there was no issue before the Learned Trial Court with respect to the possession and therefore the observations made in para 20 with respect to possession of the plaintiff -appellant herein was unwarranted and therefore, the same was rightly deleted is concerned first of all on the aforesaid ground the powers under Order 47 Rule 1 could not have been exercised. At the most, observations made in para 20 can be said to be erroneous decision, though for the reasons stated herein below the same cannot be said to be erroneous decision and as observed hereinabove the said observations were made on appreciation of evidence on record, the aforesaid cannot be a ground to exercise of powers under Order 47 Rule 1 CPC.

11.1 Even otherwise non-framing of the issue with respect to possession would have no bearing and/or it fades into insignificance. It is required to be noted that there were necessary pleadings with respect to possession in the plaint as well as in the written statement. Even the parties also led the evidence on the possession. The original plaintiff - appellant herein led the evidence with supporting documents to show his possession and to that, there was no cross-examination by the defendants - respondents. The defendants - respondents did not lead any evidence to show their possession. Therefore, the parties were aware of the rival cases. On a holistic and comprehensive reading of the pleadings and the deposition of PW1 and PW2, it is unescapable that the plaintiff had intendedly, directly and unequivocally raised in its pleadings the question of possession. As observed hereinabove even in the written statement, the defendants also made an averment with respect to possession. Thus neither prejudice was caused nor the proceedings can be said to have been vitiated for want of framing the issue. As observed and held by this Court in the case of *Sri Gangai Vinayagar Temple vs. Meenakshi Ammal and Others*, (Supra), if the parties are aware of the rival cases, the failure to formally formulate the issue fades into insignificance when an

extensive evidence has been recorded without any demur. Even the observations made by the High Court that there was no issue with respect to possession before the Learned Trial Court and/or even before the High Court is not correct. As observed hereinabove in the pleadings in the plaint and even in the written statement filed by the defendants, there were necessary averments with respect to possession. Even the parties also led the evidence on possession.

12. Hence, on the grounds stated in the impugned order, the High Court in exercise of review jurisdiction could not have without sufficient and just reasons reviewed its own judgment and order and deleted the observations made in para 20 with respect to possession.

13. Even otherwise there is ample material on record to suggest/show the possession of the appellants herein/original plaintiff. During the pendency of the appeal the respondents -original defendant nos. 1 and 2 filed an application under Section 151 CPC for dismissing the appeal filed by the appellant and for directing the appellant - original plaintiff to vacate the suit property. In the said application filed on 19.03.2012 the respondents -original defendant nos. 1 & 2 never stated that they are in possession of the disputed suit house. On the contrary, they prayed for an order directing the appellants - original plaintiff to vacate the suit property. The said application for whatever reasons was withdrawn. During the pendency of the appeal, the appellants filed an application under Order 6 Rule 17 of the CPC by which the appellants sought amendment in the relief clause as regards the issue of permanent injunction restraining the respondents -defendant nos. 1 and 2 from dispossessing the appellants forcibly from the disputed house. The said application was opposed by the respondents - original defendants. It was submitted that the proposed averment is not necessary at the appellate stage as no averments have been pleaded in the application as to why such a prayer is sought belatedly. It was also submitted that if during the pendency of the suit the plaintiffs have neither been threatened nor have been sought to be dispossessed of the aforesaid property such a prayer at the appellate stage may not be entertained. The High Court dismissed the said application, not on merits but on the ground that the same was submitted belatedly. However, the High Court dismissed the said application with the grant of permission to file a separate suit for the aforesaid relief against the defendants.

13.1 At this stage, it is required to be noted that after a period of approximately three years from the date of disposal of the First Appeal 16.04.2005 by the High Court and after the impugned order dated 14.07.2017 passed by the High Court in review application, the defendant nos. 1 and 2 - respondents herein in fact filed a separate suit in the Court of Learned Civil Judge, Class I, Gwalior against the appellants herein for receiving possession of the disputed house and compensation, in which the possession of the appellants has been admitted. In the

said suit, it is pleaded that the plaintiffs have sent a legal notice to the said defendants -appellants herein, through the Advocate on 09.08.2017 and demanded to vacate the disputed place but have not vacated and handed over the possession of the disputed place.

14. The sum and substance of the aforesaid discussion is that the High Court has committed a grave error in allowing the review application and deleting the observations made in para 20 of its order dated 10.12.2013 passed in First Appeal No.17.04.2005 in exercise of powers under Section 114 read with Order 47 Rule 1 CPC. Under the circumstances the impugned order is unsustainable and deserves to be quashed and set aside.

15. In view of the above and for the reasons stated hereinabove, the appeal is allowed. The above impugned order dated 14.07.2017 passed by the High Court of Madhya Pradesh at Gwalior in Review Petition No.465 of 2015 in First Appeal No.241 of 2005 is hereby quashed and set aside and consequently para 20 of the judgment and order 10.12.2013 passed in First Appeal No.241 of 2005 is hereby restored.

No costs.

Appeal allowed

I.L.R. [2021] M.P. 27 (SC)
SUPREME COURT OF INDIA
Before Mr. Justice S. Abdul Nazeer & Mr. Justice B.R. Gavai
CA No. 3687/2020 decided on 16 November, 2020

UMC TECHNOLOGIES PVT. LTD. …Appellant

Vs.

FOOD CORPORATION OF INDIA & anr. …Respondents

***A. Constitution – Article 226/227 – Blacklisting – Show Cause Notice – Principle of Natural Justice* – Held – Action of blacklisting neither expressly proposed in show cause notice nor could be inferred from its language, even the relevant clause of bid document is not mentioned, so as to provide adequate and meaningful opportunity to appellant to show cause against the same – It does not fulfill requirement of a valid show cause notice for blacklisting – Such order is contrary to principle of natural justice – Order passed by High Court set aside – Order of blacklisting appellant for future tenders is quashed – Appeal allowed. (Paras 24 to 27)**

क. संविधान – अनुच्छेद 226/227 – काली सूची में नाम डालना – कारण बताओ नोटिस – नैसर्गिक न्याय का सिद्धांत – अभिनिर्धारित – कारण बताओ नोटिस में,

काली सूची में नाम डालने की कार्रवाई, न तो अभिव्यक्त रूप से प्रस्तावित है न ही उसकी भाषा से निष्कर्षित की जा सकती है, यहां तक कि बोली दस्तावेज का सुसंगत खंड भी उल्लिखित नहीं जिससे कि अपीलार्थी को उक्त के विरूद्ध कारण दर्शाने के लिए पर्याप्त एवं अर्थपूर्ण अवसर उपलब्ध कराया जाता – यह, काली सूची में नाम डालने हेतु विधिमान्य कारण बताओ नोटिस की अपेक्षा को पूरा नहीं करता – उक्त आदेश नैसर्गिक न्याय के सिद्धांत के विरूद्ध है – उच्च न्यायालय द्वारा पारित आदेश अपास्त – अपीलार्थी को भविष्य की निविदाओं हेतु काली सूची में नाम डालने का आदेश अभिखंडित – अपील मंजूर।

***B. Words & Phrases – "Blacklisting" & "Principle of Natural Justice"* – Discussed & explained. (Paras 13 to 19)**

***ख. शब्द एवं वाक्यांश – ''काली सूची में नाम डालना'' व ''नैसर्गिक न्याय का सिद्धांत''* – विवेचित व स्पष्ट किये गये।**

***C. Words & Phrases – Show Cause Notice – Contents* – Discussed & explained. (Paras 20 to 23)**

***ग. शब्द एवं वाक्यांश – कारण बताओ नोटिस – अंतर्वस्तु* – विवेचित व स्पष्ट किये गये।**

Cases referred:

(1980) 3 SCC 1, (1975) 1 SCC 70, (1989) 1 SCC 229, (2014) 9 SCC 105.

JUDGMENT

The Judgment of the Court was delivered by : **S. ABDUL NAZEER, J. :-** Leave granted.

2. This appeal is directed against the order dated 13.02.2019 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 2778 of 2019. By the impugned order, the High Court has dismissed the writ petition and has upheld the validity of the order dated 09.01.2019 passed by respondent no.1, namely Food Corporation of India (for short 'the Corporation') through its Deputy General Manager (Personnel), who is respondent no. 2 herein, to terminate a contract of service with the appellant and to blacklist the appellant from participating in any future tenders of the Corporation for a period of 5 years.

3. The Corporation had issued a Bid Document on 25.11.2016 inviting bids for appointment of a recruitment agency to conduct the process of recruitment for hiring watchmen for the Corporation's office. The appellant submitted its bid on 21.12.2016 and was eventually declared as the successful bidder vide the Corporation's letter dated 28.03.2017. After completion of the formalities, the appellant was appointed for a period of 2 years w.e.f. 14.02.2017 for undertaking the tendered work of conducting recruitment of watchmen for the Corporation.

4. As part of its work, on 01.04.2018, the appellant conducted a written exam

for eligible aspirants for the post of watchman with the Corporation at various centres in Madhya Pradesh. On the same day, a Special Task Force of Bhopal Police arrested 50 persons in Gwalior, who were in possession of certain handwritten documents which *prima facie* appeared to be the question papers related to the examination conducted by the appellant. The police filed a charge sheet on 03.08.2018 against certain persons including an employee of the appellant. Upon receipt of the above information, the Corporation issued a show cause notice dated 10.04.2018 to the appellant informing the appellant about the said arrest and seizure of documents which appeared to contain question papers related to the examination conducted by the appellant. This notice alleged that the appellant had breached various clauses of the Bid Document dated 25.11.2016 on the ground that it was the sole responsibility of the appellant to prepare and distribute the question papers as well as conduct the examination in a highly confidential manner. Several clauses of the Bid Document were listed in the said notice dated 10.04.2018 and the Corporation alleged that the appellant had violated the same due to its abject failure and clear negligence in ensuring smooth conduct of the examination. The said notice directed the appellant to furnish an explanation within 15 days, failing which an appropriate *ex-parte* decision would be taken by the Corporation.

5. The appellant replied to the aforesaid notice vide its letter dated 12.04.2018 denying any negligence or leak of question papers from its end. In its communication, the appellant furnished several factual justifications in support of its position and also requested the Corporation to make the documents seized by the police available to the appellant for forensic analysis. These documents were provided to the appellant vide the Corporation's letter dated 18.10.2018. The Corporation addressed another letter dated 22.10.2018 calling upon the appellant to submit its final reply/explanation. Thereafter, on 27.10.2018, the appellant submitted an Observation Report-cum-Reply/Explanation which compared the seized documents with the original question papers and contended that there were many dissimilarities between the two and thus there had been no leakage or dissemination of the original question papers.

6. By its aforesaid order dated 09.01.2019, the Corporation concluded that the shortcomings/negligence on part of the appellant stood established beyond any reasonable doubt and proceeded to terminate its contract with the appellant and also blacklisted the appellant from participating in any future tenders of the corporation for a period of 5 years. Further, the appellant's security deposit with the Corporation was forfeited and the appellant was directed to execute the unexpired portion of the contract at its own cost and risk.

7. Aggrieved by the above order of the Corporation, the appellant, after issuing a legal notice, filed Writ Petition No. 2778 of 2019 before the High Court.

This petition came to be dismissed by the High Court's aforesaid order dated 13.02.2019 which is under challenge before us.

8. At the outset, it may be noted that Shri Gourab Banerji, learned senior counsel for the appellant, has submitted that the appellant only seeks to contest the issue of blacklisting and not the termination of the contract between the appellant and the Corporation. Thus, the sole issue that falls for determination before us is whether the Corporation was entitled to and justified in blacklisting the appellant for 5 years from participating in its future tenders.

9. Before delving into the contentions of the parties, it would be useful to extract some of the provisions of the Corporation's Bid Document dated 25.11.2016 which would be material to determining the validity of the blacklisting order dated 09.01.2019:

*" **INSTRUCTIONS TO BIDDERS***

XXX XXX XXX

*10.**DISQUALIFICATION CONDITIONS:** Bidder who have been blacklisted or otherwise debarred by FCI or central/state Govt. or any central/ State PSU / Statutory Corporations, wiil be ineligible during the period of such blacklisting.*

10.1 Any Bidder whose contract with FCI or central/state Govt. or any central/State PSU/Statutory Corporations has been terminated before the expiry of the contract period for breach of any terms and conditions at any point of time during the last five years, shall be ineligible.

10.2 Bidder whose Earnest Money Deposit and/or Security Deposit have been forfeited by the FCI or central/state Govt. or any central/State PSU/Statutory Corporations, during the last five years, for breach of any terms and conditions, shal be ineligible.

XXX XXX XXX

*25. **CORRUPT PRACTICES:***

...

25.4 Any corrupt practice indulged by the agency or any of its employee at any of the stages of the recruitment including preparation of the question paper, distribution of question paper, conducting of the exams, valuation of the answer sheets, declaration of results etc. shall lead to immediate cancelation of the contact and the agency shall be liable for appropriate legal action without prejudice to any other clause in the contract.

XXX XXX XXX

*42. **TERMINATION OF CONTRACT:***

42.1 By Corporation

...

(ii) The FCI shall also have, without prejudice to other rights and remedies, the right in the event of breach by the Bidder of any of the terms and conditions of the contract, or failing to observe any of the provisions, obligations governing the contract, to terminate the contract forthwith and to get the work done for the unexpired period of the contract at the risk and cost of the Agency and to forfeit the Security Deposit or any part thereof for recovery of all losses, damages, costs and expenses which may be incurred by FCI consequent to such termination and / or in completing the assignment. FCI may also effect recovery from other sums then due to the Agency or which at any time thereafter may become due under this or any other contract with FCI. In case the sum is not sufficient to cover the full amounts recoverable, the Agency shall pay FCI on demand the entire remaining balance due.

(iii) FCI may at any time without assigning any reason terminate the contract without any liability by giving 7 working days' notice to the bidder."

10. On behalf of the appellant, it was submitted by Shri Banerji that the Corporation had no power under the above quoted or any other provisions of the Bid Document dated 25.11.2016 to blacklist the appellant. It was argued that above quoted Clause 10 titled "Disqualifications Conditions", which has been relied upon by the Corporation, merely lays down eligibility criteria and does not grant any power of future blacklisting. It was further alleged that the said clause was also not mentioned in the show cause notice dated 10.04.2018 issued by the Corporation. The said show cause notice was also impinged upon by the appellant by submitting that it failed to meet the requirements of natural justice as it neither mentioned the grounds necessitating action nor specified what actions were proposed to be taken. Thus, Shri Banerji submitted that in the absence of a valid show cause notice, the consequent blacklisting order cannot be sustained. He further highlighted the outsized impact of the Corporation's impugned order on the appellant in as much as the Corporation's branches in other States as well as other government corporations have now issued as many as 5 notices to the appellant to cancel contracts or prevent the appellant from participating in their tender process and have also forfeited or withheld outstanding payments and security deposits. He argued that due to the domino effect of the Corporation's blacklisting of the appellant, the appellant has unreasonably suffered 5

punishments at the hands of the Corporation which is disproportionate and tantamounts to the civil death of the appellant.

11. On the other hand, Shri Ajit Pudussery, the learned counsel appearing on behalf of the Corporation argued that due to the negligence of the appellant, the entire recruitment process had to be scrapped and the same has deprived several applicants of employment and undermined the confidence of the public in the recruitment process of the Corporation. In relation to the issue of blacklisting, he submitted that since the appellant had breached the terms of the contract by leaking the question papers for the examination, it was not in public interest to permit it to participate in future tenders. He further submitted that the appellant must have been aware of the possibility of the punishment of blacklisting as the same was provided for in the Bid Document. Thus, it was argued that since the blacklisting order was made as per the Bid Document and after issuance of a show cause notice, to which the appellant was granted ample time to reply to, the Corporation's impugned blacklisting order dated 09.01.2019 cannot be challenged.

12. We have given our anxious consideration to the submissions made by the learned counsel at the Bar on behalf of the parties. In our opinion, the validity of the impugned order of the Corporation dated 09.01.2019, so far as the blacklisting of the appellant thereunder is concerned, would in turn be determined by the validity of the underlying show cause notice dated 10.04.2018 issued by the Corporation to the appellant.

13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad v. Assistant Custodian General, Evacuee Property, Lucknow and Anr.,*[1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

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1 (1980) 3 SCC 1.

14. Specifically, in the context of blacklisting of a person or an entity by the state or a state corporation, the requirement of a valid, particularized and unambiguous show cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatization that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting takes away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

15. In the present case as well, the appellant has submitted that serious prejudice has been caused to it due to the Corporation's order of blacklisting as several other government corporations have now terminated their contracts with the appellant and/or prevented the appellant from participating in future tenders even though the impugned blacklisting order was, in fact, limited to the Corporation's Madhya Pradesh regional office. This domino effect, which can effectively lead to the civil death of a person, shows that the consequences of blacklisting travel far beyond the dealings of the blacklisted person with one particular government corporation and in view thereof, this Court has consistently prescribed strict adherence to principles of natural justice whenever an entity is sought to be blacklisted.

16. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in *Erusian Equipment & Chemicals Ltd.* v. *State of West Bengal*[2] in the following terms:

> *"12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.*
>
> *XXX XXX XXX*

2 (1975) 1 SCC 70.

15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The black lists are instruments of coercion.

XXX XXX XXX

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

17. Similarly, this Court in *Raghunath Thakur v. State of Bihar,*[3] struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgement in that case is as follows:

"4. ... [I]t is an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order."

18. This Court in *Gorkha Security Services* v. *Government (NCT of Delhi) and Ors.*[4] has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts. It has been held thus:

***"16.** It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil*

3 (1989) 1 SCC 229.
4 (2014) 9 SCC 105.

consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts."

19. In light of the above decisions, it is clear that a prior show cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto.

20. In the present case, the factum of service of the show cause notice dated 10.04.2018 by the Corporation upon the appellant is not in dispute. Rather, what Shri Banerji has argued on behalf of the appellant is that the contents of the said show cause notice were not such that the appellant could have anticipated that an order of blacklisting was being contemplated by the Corporation. *Gorkha Security Services* (supra) is a case where this Court had to decide whether the action of blacklisting could have been taken without specifically proposing/ contemplating such an action in the show-cause notice. For this purpose, this Court laid down the below guidelines as to the contents of a show cause notice pursuant to which adverse action such as blacklisting may be adopted:

"Contents of the show-cause notice

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this agent, However, it is equally

important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

21. Thus, from the above discussion, a clear legal position emerges that for a show cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

22. To test whether the above stipulations as to the contents of the show cause have been satisfied in the present case, it may be useful to extract the relevant portion of the said show cause notice dated 10.04.2018 wherein the Corporation specified the actions that it might adopt against the appellant:

" Whereas, the above cited clauses are only indicative & not exhaustive.

Whereas, it is quite evident from the sequence of events that M/s U.MC Technologies Pvt. Ltd, Kolkata has violated the condition/clauses governing the contract due to its abject failure & clear negligence in ensuring smooth conduct of examination. As it was the sole responsibility of the agency to keep the process of preparation & distribution of question paper and conducting of exam in highly confidential manner, the apparent leak point towards, acts of omission & commission on the part of M/S UMC Technologies Ltd. Kolkata.

Whereas, M/S UMC Technologies Pvt. Ltd. Kolkata is hereby provided an opportunity to explain its Position in the matter

> *before suitable decision is taken as per T&C of MTF. The explanation if any should reach this office within a period of 15 days of receipt of this notice falling which appropriate decision shall be taken. ex-parte as per terms and conditions mentioned in MTF without prejudice to any other legal rights & remedies available with the corporation."*

23. It is also necessary to highlight the order dated 09.01.2019 passed by the Corporation in pursuant to the aforesaid notice, the operative portion of which reads as under:

> *"After having examined the entire matter in detail, the shortcomings/negligence on the part of M/s UMC Technologies Pvt. Ltd. stands established beyond any reasonable doubt. Now, therefore in accordance with clause 42.1(II) of the governing MTF, the competent authority hereby terminates the contract at the risk and cost of the Agency.* ***As per Clause No. 10.1 & 10.2 the said M/s UMC Technologies Pvt. Ltd. is hereby debarred from participating in any future tenders of the corporation for a period of Five years.*** *Further, the Security Deposit too stands forfeited as per clause 15.6 of MTF. This order is issued without prejudice to any other legal remedy available with FCI to safeguard its interest."*

24. A plain reading of the notice makes it clear that the action of blacklisting was neither expressly proposed nor could it have been inferred from the language employed by the Corporation in its show cause notice. After listing 12 clauses of the "Instruction to Bidders", which were part of the Corporation's Bid Document dated 25.11.2016, the notice merely contains a vague statement that in light of the alleged leakage of question papers by the appellant, an appropriate decision will be taken by the Corporation. In fact, Clause 10 of the same Instruction to Bidders section of the Bid Document, which the Corporation has argued to be the source of its power to blacklist the appellant, is not even mentioned in the show cause notice. While the notice clarified that the 12 clauses specified in the notice were only indicative and not exhaustive, there was nothing in the notice which could have given the appellant the impression that the action of blacklisting was being proposed. This is especially true since the appellant was under the belief that the Corporation was not even empowered to take such an action against it and since the only clause which mentioned blacklisting was not referred to by the Corporation in its show cause notice. While the following paragraphs deal with whether or not the appellant's said belief was well-founded, there can be no question that it was incumbent on the part of the Corporation to clarify in the show cause notice that it intended to blacklist the appellant, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same.

25. The mere existence of a clause in the Bid Document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show cause notice to black list, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show cause notice dated 10.04.2018 does not fulfil the requirements of a valid show cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 09.01.2019 cannot be sustained.

26. In view of our conclusion that the blacklisting order dated 09.01.2019 passed by the Corporation is contrary to the principles of natural justice, it is unnecessary for us to consider the other contentions of the learned counsel for the appellant. Having regard to the peculiar facts and circumstances of the present case, we deem it appropriate not to remit the matter to the Corporation for fresh consideration.

27. For the foregoing reasons, the appeal succeeds and it is accordingly allowed. The order dated 13.02.2019 passed by the High Court is set aside. The Corporation's order dated 09.01.2019 is hereby quashed only so far as it blacklists the appellant from participating in future tenders. The parties will bear their own costs.

28. Pending application(s), if any, shall stand disposed of.

Appeal allowed

I.L.R. [2021] M.P. 38
WRIT PETITION

Before Mr. Justice G.S. Ahluwalia

WP No. 6771/2020 (Gwalior) decided on 22 July, 2020

RAMAN DUBEY …Petitioner

Vs.

STATE OF M.P. …Respondent

A. Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 64 & 68 – Preliminary Enquiry – Jurisdiction **– Held – Since there were several complaints in respect of Jai Kisan Rin Mafi Yojna which is a scheme of State government, functionaries of State has a right to conduct preliminary enquiry and it cannot be termed as encroachment on rights/jurisdiction of Society – Petition dismissed. (Para 11)**

क. सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 व 68 – प्रारंभिक जांच – अधिकारिता – अभिनिर्धारित – चूंकि जय किसान ऋण माफी योजना, जो कि राज्य सरकार की एक स्कीम है, के संबंध में कई शिकायतें थी, राज्य के कृत्यकारियों को प्रारंभिक जांच संचालित करने का अधिकार है और इसे सोसायटी के अधिकारों/अधिकारिता का अधिक्रमण नहीं कहा जा सकता – याचिका खारिज।

B. Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 64 & 68 – Preliminary Enquiry – Scope – Opportunity of Hearing/Natural Justice – **Held – Preliminary enquiry is merely a fact finding enquiry and its findings are not evidence and none can be punished or condemned on such enquiry report – Such report is not a judgment nor an opinion of an expert – Rights and liabilities of parties are not decided in such enquiry – Further, petitioner could not show any provisions of law which mandates grant of opportunity of hearing in preliminary enquiry – No order passed on basis of preliminary enquiry report, taking away rights of petitioner – No violation of natural justice – Report cannot be quashed. (Para 13 & 17)**

ख. सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 64 व 68 – प्रारंभिक जांच – व्याप्ति – सुनवाई का अवसर/नैसर्गिक न्याय – अभिनिर्धारित – प्रारंभिक जांच मात्र एक तथ्य निष्कर्षित करने की जांच है और उसके निष्कर्ष साक्ष्य नहीं हैं एवं उक्त जांच प्रतिवेदन पर किसी को दण्डित या सिद्धदोष नहीं किया जा सकता – उक्त प्रतिवेदन एक निर्णय नहीं है और न ही एक विशेषज्ञ की राय है – ऐसी जांच में पक्षकारों के अधिकार एवं दायित्व विनिश्चित नहीं होते – इसके अतिरिक्त याची, विधि के ऐसे किन्हीं उपबंधों को नहीं दर्शा सका है जिसमें प्रारंभिक जांच में सुनवाई के अवसर का प्रदान किया जाना आज्ञापक है – प्रारंभिक जांच प्रतिवेदन के आधार पर कोई आदेश पारित नहीं किया गया, याची के अधिकारों को छीना गया – नैसर्गिक न्याय का कोई उल्लंघन नहीं – प्रतिवेदन अभिखण्डित नहीं किया जा सकता।

C. Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 68 – Attachment Before Award **– Held – After filing of application u/S 68, all persons would get an opportunity to file their reply and oppose the prayer and then competent authority will decide the application in accordance with law – No one can be prevented from filing application(s) which is/are maintainable under the law – Direction to file application u/S 68 of the Act is not bad in law. (Para 18)**

ग. सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धारा 68 – अधिनिर्णय के पूर्व कुर्की – अभिनिर्धारित – धारा 68 के अंतर्गत आवेदन प्रस्तुत करने के पश्चात्, सभी व्यक्तियों को उनके जवाब प्रस्तुत करने का और याचना का विरोध करने का अवसर मिलेगा एवं तब सक्षम प्राधिकारी, विधि के अनुसरण में आवेदन का विनिश्चय करेगा – किसी को ऐसे आवेदन प्रस्तुत करने से निवारित नहीं किया जा सकता जो विधि अंतर्गत पोषणीय है/हैं – अधिनियम की धारा 68 के अंतर्गत आवेदन प्रस्तुत करने का निदेश, विधि में अनुचित नहीं है।

***D. Co-operative Societies Act, M.P. 1960 (17 of 1961), Sections 64, 74, 75 & 76 – Registration of FIR – Opportunity of Hearing* – Held – In absence of any bar, it cannot be said that prosecuting agency has no power to criminally prosecute a wrong doer, looking to provisions u/S 64, 74, 75 & 76 of the Act – There is no provision which gives a right of audience to suspect prior to lodging FIR. (Paras 22 to 24)**

घ. सहकारी सोसायटी अधिनियम, म.प्र. 1960 (1961 का 17), धाराएँ 64, 74, 75 व 76 – प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जाना – सुनवाई का अवसर – अभिनिर्धारित – किसी वर्जन की अनुपस्थिति में, अधिनियम की धारा 64, 74, 75 व 76 के उपबंधों को देखते हुए यह नहीं कहा जा सकता कि अभियोजन ऐजेंसी को एक अपकृत्यकारी को दाण्डिक रूप से अभियोजित करने की शक्ति नहीं है – ऐसा कोई उपबंध नहीं है जो एक संदिग्ध को, प्रथम सूचना प्रतिवेदन दर्ज होने के पूर्व सुने जाने का अधिकार देता है।

***E. Constitution – Article 226 – Interim Order – Scope* – Held – Interim orders cannot be treated as a precedent. (Para 8)**

ड. संविधान – अनुच्छेद 226 – अंतरिम आदेश – व्याप्ति – अभिनिर्धारित – अंतरिम आदेश को पूर्व निर्णय के रूप में नहीं माना जा सकता।

Cases referred :

W.P. No. 6774/2020 order passed on 19.03.2020, 1959 SCR 279 = AIR 1958 SC 538, (2014) 12 SCC 344, (2015) 6 SCC 557, (2009) 11 SCC 424, (2013) 6 SCC 384.

Raghvendra Dixit, for the petitioner.
Sankalp Sharma, for the respondent/State.

(*Supplied: Paragraph numbers*)

O R D E R

G.S. AHLUWALIA, J.:- Heard on the question of admission through Video Conferencing.

2. This petition under Article 226 of the Constitution of India has been filed challenging the order dated 24-2-2020 (Annexure P/1) and Preliminary Enquiry Report dated 20-2-2020 (Annexure P/2).

3. The facts necessary for the disposal of the present petition in short are that the petitioner is working on the post of Assistant Samiti Prabandhak in the establishment of respondent no.4/Primary Agriculture Credit Co-operative Society, Karahi, Tahsil Karera, Distt. Shivpuri.

4. Various complaints were received by the respondents with regard to discrepancies in Jai Kisan Rin Mafi Yojana. A preliminary enquiry was conducted by a team under the leadership of S.D.O., Karera, Distt. Shivpuri. The Committee

by its report dated 20-2-2020 (Annexure P/2) gave a finding that certain office bearers of respondent no.4, including the petitioner are responsible for the misappropriation of money. On the basis of the report dated 20-2-2020, the respondent no.3 has passed the impugned order dated 24-2-2020, thereby directing to lodge the F.I.R., to file a dispute under Section 64 of M.P. Co-operative Societies Act and to file an application for attachment before award.

5. Challenging, the enquiry report, as well as the order dated 24-2-2020, it is submitted by the Counsel for the petitioner that the M.P. Co-operative Societies Act is a complete code in itself. The revenue authorities have no say in the day to day affairs of the Co-operative Society, therefore, the preliminary enquiry conducted by the Committee is without jurisdiction. It is further submitted that no opportunity of hearing was given to the petitioner, therefore, also, the enquiry report is bad in law. It is further submitted that the direction to lodge the F.I.R., filing of dispute under Section 64 of M.P. Cooperative Societies Act, as well as to file an application for attachment before award is without jurisdiction. It is further submitted that a co-ordinate bench of this Court by order dated 19-3-2020 passed in W.P. No. 6774/2020 in the case of **Ravindra Bhargava Vs. State of M.P.** has directed that no coercive action shall be taken against the petitioner therein under the guise of the order dated 24-2-2020.

6. Per contra, the petition is opposed by the Counsel for the State. It is submitted that prior to lodging of F.I.R., the accused no right of audience. Further, the preliminary enquiry report is merely preliminary in nature. By order dated 24-2-2020, the respondent no. 3 has directed to file a dispute under Section 64 of M.P. Co-operative Societies Act as well as to file an application for attachment before award and the petitioner would get an opportunity of hearing after the dispute under Section 64 and 68 of M.P. Co-operative Societies Act is filed.

7. Heard the learned Counsel for the Parties.

8. So far as the interim order passed in W.P. No. 6774 of 2020 is concerned, it is well established principle of law that interim orders cannot be treated as a precedent.

9. The 1st contention of the petitioner is that the Revenue Authorities who are the State Functionaries have no right or jurisdiction to conduct a preliminary enquiry into the affairs of the Co-operative Society, therefore, the preliminary enquiry report dated 20-2-2020 is bad in law.

10. The contention raised by the petitioner appeared to be very attractive, but on deeper scrutiny, it is misconceived and is liable to be rejected.

11. The allegations are that various complaints were received with regard to implementation of Jai Kisan Rin Mafi Yojana as well as of misappropriation of money. It is fairly conceded by the Counsel for the petitioner, that Jai Kisan Rin

Mafi Yojana is the Scheme of the State Govt., which was to be implemented by the respondent no.4 Society. Thus, in order to verify that whether the Jai Kisan Rin Mafi Yojana is being implemented efficaciously or not and whether there is any misappropriation of money or not, the functionaries of the State always had a right to conduct a preliminary enquiry. The preliminary enquiry by a Committee headed by S.D.O., in the present matter cannot be said to be an encroachment on the rights/jurisdiction of the Society. Under these circumstances, this Court is of the considered opinion, that since, there were several complaints in respect of Jai Kisan Rin Mafi Yojana, which is a scheme of the State Govt, therefore, the functionaries of the State had a right to conduct a preliminary enquiry, and thus, the 1st contention of the petitioner is hereby rejected.

12. It is next contended by the Counsel for the petitioner, that the respondent no.3, should not have directed for filing of dispute under Section 64 of M.P. Co-operative Societies Act and the preliminary enquiry report is bad on account of violation of principle of Natural Justice.

13. The Counsel for the petitioner could not point out any provision of law, which mandates the grant of opportunity of hearing in the preliminary enquiry. The preliminary enquiry is nothing but a fact finding enquiry, so as to find out whether there is any substance in the complaints or not? The findings given by the Committee are not the evidence and no one can be punished or condemned on the basis of preliminary enquiry report. Any finding of guilt recorded by the Committee in preliminary enquiry is not final in nature and the enquiry report is neither a Judgment nor an opinion of an expert. It is merely a fact finding Committee, so that the authorities may apply their minds with regard to the further course of action. The rights and liabilities of the parties are never decided in a preliminary enquiry.

14. The Supreme Court in the case of *Ram Krishna Dalmia v. Justice S.R. Tendolkar,* reported in 1959 SCR 279=AIR 1958 SC 538 has held as under :

> 8..........the only power that the Commission has is to inquire and make a report and embody therein its recommendations. The Commission has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore.* A clear distinction must, on the authorities, be drawn, between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken. Therefore, as the Commission we are concerned with is merely to investigate and record its findings and recommendations without having any power to enforce them, the inquiry or report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called and consequently the question of usurpation by Parliament or the

Government of the powers of the judicial organs of the Union of India cannot arise on the facts of this case......

15. The Supreme Court in the case of *Subramanian Swamy v. Arun Shourie,* reported in (2014) 12 SCC 344 has held as under :

> **33.3.** The Court agreed with the following observations of the Nagpur High Court in *M.V. Rajwade: (Baliram Waman Hiray case,* SCC p. 450, para 34)
>
> > *"34.* ... 'The Commission in question was obviously appointed by the State Government "for the information of its own mind", in order that it should not act, in exercise of its executive power, "otherwise than in accordance with the dictates of justice and equity" in ordering a departmental enquiry against its officers. It was, therefore, a fact-finding body meant only to instruct the mind of the Government without producing any document of a judicial nature. The two cases are parallel, and the decision must be as in *Madhava Singh,* that the Commission was not a court. The term "court" has not been defined in the Contempt of Courts Act, 1952. Its definition in the Evidence Act, 1872, is not exhaustive and is intended only for purposes of the Act. The Contempt of Courts Act, 1952 however, does contemplate a "court of justice" which as defined in Section 20, Penal Code, 1860 denotes "a Judge who is empowered by law to act judicially". The word "Judge" is defined in Section 19 as denoting every person—
> >
> > "Who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive.."
> >
> > The minimum test of a "court of justice", in the above definition, is, therefore, the legal power to give a judgment which, if confirmed by some other authority, would be definitive. Such is the case with the Commission appointed under the Public Servants (Inquiries) Act, 1850, whose recommendations constitute a definitive judgment when confirmed by the Government. This, however, is not the case with a Commission appointed under the Commissions of Inquiry Act, 1952, whose findings are not contemplated by law as liable at any stage to confirmation by any authority so as to assume the character of a final decision.'"

> **34.** We agree with the view in *Baliram Waman Hiray* and approve the decision of the Nagpur High Court in *M.V. Rajwade.* We are also in agreement with the submission of Shri Mohan Parasaran, learned Solicitor General that a Commission appointed under the 1952 Act is in the nature of a statutory Commission and merely because a Commission of Inquiry is headed by a sitting Judge of the Supreme Court, it does not become an extended arm of this Court. The Commission constituted under the 1952 Act is a fact-finding body to enable the appropriate Government to decide as to the course of action to be followed. Such Commission is not required to adjudicate upon the rights of the parties and has no adjudicatory functions. The Government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by the Commission is of a legal character and it has the power to administer oath will not clothe it with the status of court. That being so, in our view, the Commission appointed under the 1952 Act is not a "court" for the purposes of the Contempt of Courts Act even though it is headed by a sitting Supreme Court Judge. Moreover, Section 10-A of the 1952 Act leaves no matter of doubt that the High Court has been conferred with the power to take cognizance of the complaint in respect of the acts calculated to bring the Commission or any member thereof into disrepute. Section 10-A of the 1952 Act provides the power of constructive contempt to the Commission by making a reference to the High Court with a right of appeal to this Court. Our answer to the first question is, therefore, in the negative.

16. The Supreme Court in the case of *Madhukar Sadbha Shivarkar v. State of Maharashtra,* reported in (2015) 6 SCC 557 has held as under :

> **31.** The apprehension in the mind of the appellants that their statutory, fundamental and constitutional rights guaranteed under the provisions of the Act and Articles 14, 19 and 21 read with Article 300-A of the Constitution of India are infringed at this stage is premature and misconceived. Therefore, the question of issuing notices to them by the State Government before passing the orders in appointing the Deputy Commissioner as an enquiry officer to conduct administrative enquiry in relation to the landholdings of the land of the Company, the shareholders and the appellants herein to find out whether the land revenue records of the land of the villages referred to supra are destroyed and fabricated on that basis the declarants have declared that they do not own surplus land, the State Government has not passed effective orders at this stage to take away the valuable rights of the appellants as claimed by them and therefore, the question of giving opportunity to them at this stage and conducting enquiry

> before passing the orders is wholly untenable in law, as the orders are only administrative in nature by appointing an officer to enquire into the alleged fraud on the officers, who have decided the declarations of the shareholders and sub-lessees favourably on the basis of fabricated revenue records by destroying original records of the land of villages referred to supra, with the deliberate intention to come out from the clutches of the Act. Therefore, the rights of the appellants are not affected on the date of passing of the orders by the State Government. Therefore, the contentions urged by the learned Senior Counsel on behalf of the appellants referred to supra are wholly untenable and the same are liable to be rejected and accordingly rejected.

17. Since, no order has been passed on the basis of the preliminary enquiry report thereby taking away the valuable rights of the petitioner, therefore, the report of preliminary enquiry cannot be quashed even on the ground of violation of principle of Natural Justice. Further in the present case, the respondent no.3 has directed the competent authority to file a dispute under Section 64 of M.P. Co-operative Societies Act. After the dispute is filed, then all the persons would get an opportunity to file their reply and to participate in the proceedings. Thus, it is clear that no one would be condemned without affording an opportunity of hearing. Further, the liability of each and every person would be determined in the proceedings under Section 64 of M.P. Co-operative Societies Act. Thus, the 2nd contention raised by the Counsel for the petitioner is rejected as misconceived.

18. It is next contented (sic: contended) by the Counsel for the petitioner, that the respondent no.3, should not have directed the authorities to file an application for attachment before award. The Counsel for the petitioner could not point out as to how, such a direction is bad in law. Section 68 of M.P. Co-operative Societies Act, deals with attachment before award. After an application is filed under Section 68 of M.P. Co-operative Societies Act, all the persons would get an opportunity to file their reply and to oppose the prayer for attachment before award and the competent authority shall be under obligation to decide the application in accordance with law. How a direction to file an application for attachment before award can be said to be bad in law? No one can be prevented from filing an application(s) which is/are maintainable under the law. Accordingly, this contention of the petitioner is also rejected being devoid of merits.

19. It is next contended by the Counsel for the petitioner that the respondent no. 3 cannot direct for registration of F.I.R., because the M.P. Co-operative Societies Act is a complete code in itself.

20. The submission made by the Counsel for the petitioner is no more *res integra.*

21. 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.

22. Thus in absence of any bar, it cannot be said that the prosecuting agency has no power to criminally prosecute a wrong doer in the light of the provisions of Section 64,74 to 76 of M.P. Cooperative Societies Act. Thus, this contention of the petitioner is also rejected being devoid of merits.

23. It is next contended by the Counsel for the petitioner, that since, the petitioner was not heard, therefore, the respondent no.3 could not have issued a direction to lodge the F.I.R. The Counsel for the petitioner could not point out any provision of law, which gives a right of audience to the suspect prior to lodging of F.I.R. The Supreme Court in the case of *Anju Choudhary Vs. State of U.P.* reported in (2013) 6 SCC 384 has held as under :

> **31.** The rule of audi alteram partem is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Penal Code, 1860 is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose;firstly to adequately punish the offender in accordance with law and secondly, to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the first information report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer-in-charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the

due process of law. Where the officer-in-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be predominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons: firstly, the Code does not provide for any such right at that stage, secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in *Union of India* v. *W.N. Chadha* clearly spelled out this principle in para 98 of the judgment that reads as under: (SCC p. 293)

> "*98.* If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the takingof prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

32. In *Samaj Parivartan Samudaya* v. *State of Karnataka,* a three-Judge Bench of this Court while dealing with the right of hearing to a person termed as "suspect" or "likely offender" in the report of the CEC observed that there was no right of hearing. Though the suspects were already interveners in the writ petition, they were heard. Stating the law in regard to the right of hearing, the Court held as under: (SCC p. 426, para 50)

> "*50.* There is no provision in CrPC where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or

> even as per the precedents laid down by this Court. It is only in those cases where the court directs initiation of investigation by a specialised agency or transfer investigation to such agency from another agency that the court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the court. This question is of no relevance to the present case as we have already heard the interveners."

24. In absence of any provision of hearing to the suspect before lodging of the F.I.R., this contention of the Counsel for the petitioner is also rejected as misconceived.

25. No other argument is advanced by the Counsel for the Petitioner.

26. Accordingly, this petition fails and is hereby **Dismissed *in limine.***

Petition dismissed.

I.L.R. [2021] M.P. 48
WRIT PETITION
Before Mr. Justice G. S. Ahluwalia
WP No. 10368/2020 (Gwalior) decided on 01 September 2020

RAJKUMAR GOYAL …Petitioner

Vs.

MUNICIPAL CORPORATION, GWALIOR …Respondent

***A. Constitution – Article 226 and Nagar Palika (Registration of Colonizer Terms & Conditions) Rules, M.P., 1998, Rule 15-A (amended) – Contractual Obligations – Alternate Remedy* – Held – Contractual work was got done through petitioner – Fact shows that there exist a dispute between petitioner and respondents – Petitioner has efficacious/alternate remedy to approach Dispute Resolution System as provided under contract/agreement – Petition dismissed. (Para 35 & 39)**

***क. संविधान – अनुच्छेद 226 एवं नगरपालिका (कॉलोनाइजर का रजिस्ट्रीकरण, निर्बंधन तथा शर्तें) नियम, म.प्र., 1998, नियम 15–A (संशोधित) – संविदाजात बाध्यताएं – वैकल्पिक उपचार* – अभिनिर्धारित – संविदात्मक कार्य को याची के जरिए करवाया गया था – तथ्य दर्शाता है कि याची व प्रत्यर्थीगण के बीच एक विवाद विद्यमान है – याची के पास संविदा/करार अंतर्गत यथा उपबंधित विवाद समाधान प्रणाली के समक्ष जाने का प्रभावकारी/वैकल्पिक उपचार है – याचिका खारिज।**

***B. Nagar Palika (Registration of Colonizer Terms & Conditions) Rules, M.P., 1998, Rule 15-A (amended) – Publication in Official Gazette – Effect* – Held – Once the Rules are published in Official Gazette and are made available by circulation, sale etc., it is presumed that it has been made known to all citizens of Country/State – Petitioner cannot express his ignorance about provision of said Rules. (Paras 19, 21 & 22)**

ख. नगरपालिका (कॉलोनाइजर का रजिस्ट्रीकरण, निर्बंधन तथा शर्तें) नियम, म.प्र., 1998, नियम 15–A (संशोधित) – शासकीय राजपत्र में प्रकाशन – प्रभाव – अभिनिर्धारित – एक बार शासकीय राजपत्र में नियम प्रकाशित किये जाने तथा परिचालन, विक्रय इत्यादि द्वारा उपलब्ध कराये जाने पर यह उपधारणा की जाएगी कि उसे देश/राज्य के सभी नागरिकों की जानकारी में लाया गया है – याची उक्त नियमों के उपबंध के बारे में उसकी अनभिज्ञता अभिव्यक्त नहीं कर सकता।

***C. Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Necessary Party* – Held – A suit cannot be dismissed on ground of non-joinder of necessary party, unless and until opportunity is given to plaintiff to implead necessary party – If plaintiff refuses or fails to implead necessary party and decides to move further with the suit, then he do so at his own risk and under this circumstances, he has to face adverse consequences – Work was got done by respondents in execution of a scheme formulated by State Government, thus State was a necessary party – Petition suffers from non-joinder of necessary party. (Para 25 & 26)**

ग. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – आवश्यक पक्षकार – अभिनिर्धारित – एक वाद को आवश्यक पक्षकार के असंयोजन के आधार पर खारिज नहीं किया जा सकता तब तक जब तक कि वादी को आवश्यक पक्षकार को अभियोजित करने के लिए अवसर नहीं दिया जाता – यदि वादी आवश्यक पक्षकार को अभियोजित करने से इंकार करता है या असफल होता और वाद के साथ आगे बढ़ता है तब वह ऐसा स्वयं के जोखिम पर करता है तथा इन परिस्थितियों में उसे प्रतिकूल परिणाम का सामना करना होगा – प्रत्यर्थीगण द्वारा कार्य को राज्य सरकार द्वारा विनिर्मित एक स्कीम के निष्पादन में करवाया गया था अतः, राज्य एक आवश्यक पक्षकार था – याचिका, आवश्यक पक्षकार के असंयोजन से ग्रसित है।

***D. Constitution – Article 226 – Contractual Matters – Scope & Jurisdiction* – Held – Petition under Article 226 cannot be thrown straight away by holding that it has been filed for enforcement of contractual obligations – In case of interpretation of law with consequential relief of payment of amount or where liability has been admitted by respondents etc., High Court may entertain writ petition in contractual matters. (Para 29)**

घ. संविधान – अनुच्छेद 226 – संविदात्मक मामले – व्याप्ति व अधिकारिता – अभिनिर्धारित – अनुच्छेद 226 अंतर्गत याचिका को यह ठहराते हुए सीधे बाहर नहीं

किया जा सकता कि उसे संविदात्मक बाध्यताओं के प्रवर्तन हेतु प्रस्तुत किया गया है – राशि के भुगतान के परिणामिक अनुतोष की विधि के निर्वचन के प्रकरण में अथवा जहॉ प्रत्यर्थीगण इत्यादि द्वारा दायित्व को स्वीकार किया गया है, उच्च न्यायालय, संविदात्मक मामलों में रिट याचिका ग्रहण कर सकता है।

Cases Referred :

W.P. No. 10414/2018 order dated 03.06.2019 (DB), (2019) 16 SCC 794, (2008) 5 SCC 632, (2004) 3 SCC 553, W.A. No. 1366/2018 order dated 09.10.2018 (DB), AIR 1998 MP 152, AIR 1991 Kerala 385, (1998) 8 SCC 250, (2001) 2 SCC 160, (2005) 6 SCC 657, (2015) 9 SCC 433, (2015) 7 SCC 728.

N.K. Gupta with *Sanjay Kumar Sharma*, for the petitioner.
Deepak Khot, for the respondent.

(Supplied: Paragraph numbers)

O R D E R

G.S. AHLUWALIA, J. :- Heard finally through Video Conferencing.

2. This petition under Article 226 of the Constitution of India has been filed seeking the following relief:-

> "(i) That, the Respondent-Municipal Corporation may kindly be directed to make the payment to the petitioner against the work done by him in File Nos. 269/18x3/6, 270/18x3/6 & 271/18x3/6.
>
> (ii) That, the Respondent-Municipal Corporation be further directed to pay the interest to the petitioner for wrongly withholding the amount without any reason @ 14% per annum.
>
> (iii) Any other writ, order or direction as this Hon'blc Court may deems fit in the facts and circumstances of the case be granted to the petitioner. Costs be awarded."

3. It is the case of the petitioner that the Municipal Corporation, Gwalior decided to carry out the construction work (CC floor and Drainage System) in Ward No. 65 Gokulpur, Ward No. 65, Shanti Nagar and in Indian Overseas Bank Colony, Gwalior and for that purpose, NITs were issued by the Municipal Corporation, Gwalior. The petitioner and other contractors submitted their tenders and since the tender submitted by the petitioner was the lowest, therefore, the same was accepted, An agreement was entered into between the petitioner and the Municipal Corporation, Gwalior and the work order with regard to three construction works were issued, which have been filed as Annexure P-l [Collectively]. It is the case of the petitioner that before issuance of NITs, budget was worked out by the Municipal Corporation and it was found that budget is

available for carrying out the construction work and, therefore, NITs were issued and the work order was issued. The petitioner thereafter completed his work within time frame work and the technical report was also submitted which was to the effect that work performed by the petitioner is up to the satisfaction of the authority and was in accordance with the specifications. Initially, the petitioner submitted the first bill in all the three cases and, thereafter, final bill was also submitted but it is the case of the petitioner that neither the first bill has been honoured nor the final bill has been honoured and till date, not a singly penny has been paid to the petitioner. It is further submitted that the petitioner applied for documents under the RTI to find out as to why the payment has not been made. Although the copies of the note-sheets have been supplied to the petitioner under the Right to Information Act, but no reason has been assigned as to why the payment has not been made. The note-sheet with regard to three different work orders have been placed as Annexures P-2, P-3 and P-4. By referring to the note-sheets Annexures P-2, P-3 and P-4, it is submitted by the counsel for the petitioner that in all these three cases, it is specifically mentioned that the work which was done by the petitioner was in accordance with the specifications and a recommendation was made for releasing the amount. However, the Commissioner is sitting tight over the recommendation made by the authorities and the amount has not been paid. It is further submitted, that since the budget was available with the respondent authority, therefore, they cannot withhold the amount on the ground that budget is not available. It is further submitted that the act of respondent of withholding the amount payable to the petitioner is violative of Article 19 of the Constitution of India because he has been deprived of his livelihood and due to shortage of fund, he is not in a position to take further contract.

4. The respondent has filed its return. It is submitted by the counsel for the respondent that one petition has been filed arising out of three different contracts, therefore, in the light of High Court Rules, single petition is not maintainable because provisions of Order 2 Rule 3 of CPC are applicable to writ petition also and, therefore, the petitioner should have filed three different writ petitions. Another preliminary objection of the respondent is that as per Clause 12 of the General Condition of Contract, there is a Dispute Resolution System and the petitioner was required to submit his representation before the competent authority within 45 days of its first occurrence and dispute after 45 days can not be entertained. In case, if the dispute is decided by the competent authority, then the petitioner had a right to file an appeal within 45 days of such a decision. Thereafter, the petitioner could have approached the Madhyastham Adhikaran Tribunal under the provisions of Madhyastham Adhikaran Adhiniyam, 1983. It is submitted that in spite of the availability of alternative remedy, the petitioner has not availed the same and filed the present petition in order to over come the period

of limitation and, therefore, the petition is liable to be dismissed on this ground also. It is further submitted that in the contractual matters, where the disputed question of facts are involved, then the writ petition is not maintainable. It is further submitted that the State Government had amended Rule 15-A of the M.P. Nagar Palika (Registration of Colonizer, Terms and Conditions) Rules 1998 (for brevity "Rules, 1998"), by which the provision for regularization of illegal colonies was introduced and as per the Scheme, 50% of the work was to be done out of the funds of the Institution and remaining 50% was required to be borne by the beneficiaries / inhabitants and the share of inhabitants was to be paid by the State Government. The validity of provision 15-A of the Rules, 1998 was challenged before this Court in the case of *Umesh Kumar Bohare Vs. State of Madhya Pradesh and others* (W.P. No. 10414/2018) and the Division Bench of this Court by order dated 03.06.2019 held that amended Rule 15-A of the Rules, 1998 is *ultra vires* the substantive provision of the Act, and all actions taken there upon were declared illegal and the competent authority of respective municipalities were directed to initiate action under Section 292E. read with Section 292DA of the Act, 1956 and under Section 339E read with Section 339DA of the Act, 1961. It is submitted that since the provisions of amended Rule 15-A of the Rules, 1998 were declared *ultra vires,* therefore, the State Government has not provided its share of 50% of the total cost. Thus, the respondent could not release the amount.

5. Challenging the non-payment of the amount of work done by the petitioner, it is submitted by the counsel for the petitioner that neither in the NIT/agreement/work order, there was any provision that 50% of the expenses shall be borne by the State of Madhya Pradesh. If the State of Madhya Pradesh is not releasing its share, then it is a dispute between the respondent and the State and the petitioner cannot be made to suffer because there is no deficiency in the work executed by the petitioner and, thus, it cannot be said that there is a dispute between the petitioner and the respondent.

6. At this stage, it was pointed out by the Court that looking to the controversy involved in this case, the State Government also appears to be a necessary party, therefore, the petitioner may consider of impleading the State Government as respondent. However, it was submitted by Shri N.K. Gupta, Senior Counsel that since the dispute is between the State and the respondent and the petitioner has nothing to do with the said dispute, therefore, the State Government is not a necessary party.

7. In order to substantiate his submission, counsel for the petitioner once again submitted that the fact that the State Government shall bear 50% of the cost was neither mentioned in the NIT nor in the work order, therefore, any subsequent development, which has taken place, cannot be taken note of for releasing the legitimate amount claimed by the petitioner. To buttress his contention, counsel

for the petitioner has relied upon the judgments passed by the Supreme Court in the case of *Surya Constructions Vs. State of Uttar Pradesh and others* reported in (2019) 16 SCC 794, *Rajasthan State Electricity Board Vs. Union of India and others* reported in (2008) 5 SCC 632, *ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India Ltd. and others* reported in (2004) 3 SCC 553 and order dated 09.10.2018 passed by a Division Bench of this Court in the case of *Municipal Corporation, Gwalior Vs. M/s Shree Ji Motors and another* passed in W.A. No. 1366/2018 arising out of the order dated 07.09.2018 passed by a Coordinate Bench of this Court in W.P. No. 19431/2017. It is submitted that when there is no dispute with regard to the quality of work executed by the petitioner, then it cannot be said that there is a dispute warranting the petitioner to approach the alternative resolution system and thus the contention of the respondent that as per Clause 12 of the Agreement, the petitioner should have approached the Arbitrator or any other authority including the Madhyastham Adhikaran Tribunal docs not apply to the facts of the case.

8. So far as the question of joinder of multiple causes of action is concerned, it is submitted that in the present petition, the respondent, the petitioner and the question of law is the same. There is no dispute with regard to the factual aspect of the matter. Even otherwise under Order 2 Rule 3 of CPC, a plaintiff can join multiple causes of action in a civil suit and, therefore, it cannot be said that the joinder of three different causes of action arising out of three different contract is bad in law. It is further submitted that even otherwise, if it is found that the petitioner should have filed different petition for each cause of action, then the petitioner is ready to pay additional two sets of Court Fee.

9. Per contra, counsel for the respondent has relied upon the judgment passed by a Coordinate Bench of this Court in the case of *Pahelwan Singh and others Vs. Leela Bai and others* reported in AIR 1998 MP 152 and judgment passed by the High Court of Kerala in the case of *Ebrahim Ismail Kunju and another Vs. Phasila Beevi* reported in AIR 1991 Kerala 385 to substantiate his submissions that joinder of multiple causes of action in one writ petition is bad. It is submitted by the Counsel for the respondent, that the petitioner should have approached the dispute resolution system and the writ petition for enforcement of contractual obligations is not maintainable.

10. Heard the learned counsel for the parties.

11. Before considering the question as to whether the petition is bad due to multiple joinder of causes of action or not, this Court think it appropriate to find out as to whether there is any dispute between the petitioner and the respondent and whether the petitioner has an efficacious and alternative remedy of approaching the Dispute Resolution System.

12. The respondent has filed a copy of the General Conditions of Contract and Clause 12 of the said General Conditions of Contract reads as undcr:-

> **"12. Dispute Resolution System**
>
> 12.1 No dispute can be raised except before the Competent Authority Superintending engineer of Devision in writing giving full description and grounds of dispute. It is clarified that merely recording protest while accepting measurement and/or payment shall not be taken as raising a dispute.
>
> 12.2 No dispute can be raised after 45 days of its first occurrence. Any dispute raised after expiry of 45 days of its first occurrence shall not be entertained and the Employer shall not be liable for claims arising out of such dispute.
>
> 12.3 The Competent Authority shall decide the matter within 45 days.
>
> 12.4 Appeal against the order of the Competent Authority can be preferred within 30 days to the Appellate Authority as defined in the Contract Data. The Appellate Authority shall decide the dispute within 45 days.
>
> 12.5 Appeal against the order of the Appellate Authority can be preferred before the Madhya Pradesh Arbitration Tribunal constituted under Madhya Pradesh *Madhyastham Adhikaran Adhiniyam, 1983.*
>
> 12.6 The Contractor shall have to continue execution of the Works with due diligence notwithstanding pendency of a dispute before any authority or forum."

13. Thus, one thing is clear that when there is a dispute, then the Contractor has an alternative and efficacious remedy, which is provided under the General Conditions of Contract.

14. The controversy in the present case lies in a narrow compass.

15. It is the case of the petitioner that neither in the NIT nor in the agreement nor in the work order, it was mentioned that half of the expenses shall be borne by the State Government and if the State Government has refused to release its share, then at the most, it can be a dispute between the respondent and the State and since the petitioner is a stranger / foreigner to the said dispute, therefore, the petitioner is not required to explore the Dispute Resolution System as provided under Clause 12 of the General Conditions of Contract.

16. Considered the submissions made by the counsel for the petitioner.

17. The State Government had floated the Scheme for the regularization of the illegal colonies. The said Scheme has been filed by the respondent as Annexure R-l.

18. Rule 15-A of the Rules, 1998 was amended which reads as under:-

"In Rule 15-A,-

(1) for the figure and word "31 st December, 2012", the figures and word "31st December, 2016" shall be substituted.

(2) for the word "unauthorized" wherever it occurs in this rule, the word "illegal" shall be substituted.

(3) for sub-rule (1), the following sub-rule shall be substituted, namely:-

(1) Notwithstanding anything contained in these rules, the illegal colonies that came in to existence up 31st December, 2016 on other than Government land and such land of Development Authority which is in its ownership, shall be registered subject to the following conditions".

(4) in sub-rule (1),-

(a) for clause (iii), the following clause shall be substituted, namely:-

(iii) such illegal colonics where at least 10% houses have been constructed, identifying them, action of regularization shall be taken within 30 days notifying publicly, and management of remaining unsold land shall be done in accordance with rule 15 of these rules.

On the date of publication of these amendments in the Gazette, land(s) of illegal colonies being regularized should be in private ownership as per the revenue department and a copy of notification should be availed to the concerning Revenue Officer/Development Officer/Town and Country Planning Department to give necessary opinion/objections within prescribed time limit, further action of rcgularization of illegal colonies shall not be obstructed.

(b) in clause (iv), for the words "master plan", the words "development plan" shall be substituted.

(c) for clause (v), the following clause shall be substituted, namely:-

"(v)(l) After issuance of Notification under clause (iii), the competent authority shall be cause to be prepared the

estimate and layout within 30 days for the development work including for the basic amenities of illegal colonies, on which the competent authority shall be invite a meeting within 15 days and discuss with the inhabitants concerned and colonizer providing them an opportunity, after considering their suggestion, if any, finalize the estimate and layout as per rule 7A within 15 days. The amount of expenditure to be incurred for preparing the layout shall be fixed not exceeding 10% of the development charges and the same shall be included in the development charges.

(2) For the purpose of this work, the Departmental ISSR, the Madhya Pradesh Land Development Rules, 2012, Development Plan, standard and rates of the Madhya Pradesh State Electricity Supply Company (MPSESC) and Collector Guide lines rules effective on the date of publication of amendments with upto date shall be recognized.

(3) Amount of property tax, building permission fees and composition fees etc. received from the inhabitants of the illegal colonies for the purpose of regularization shall be utilized in the development works of concerning colonies.

(4) The urban bodies, if necessary may receive the amount from the scheme financed by the Central or State Government under the terms and conditions mentioned in the schemes, development of these notified colonies and issuance or permission of the plot holder shall not be stopped because of incomplete development work and even the regularization work particularly the building permission work shall be executed by organizing the camps in zone/ward levels.

(d) for sub-clause (vi), the following sub-clause shall be substituted, namely:-

"(vi) (1) Public facilities such as water, electricity and sewage shall be regularized after receiving the service charge from the inhabitants of colonies notified under clause (iii), like other legal colonies. No additional charges shall be charged for these.

(2) Such colonies where more than 70% inhabitants of lower income group reside, 20% of development amount shall be charged from inhabitants of the colony and remaining 80% amount shall be borne by the body concerned and other than these colonies, 50% development amount shall be taken from inhabitants of the colonies and 50% amount shall be borne by the concerned body. The amount of the public participation scheme/fund of parliamentarian/legislature fund shall be

deemed to be the amount in the amount deposited by the inhabitant and the cost of the water, sewage and electricity shall not be included in the amount received from the inhabitants.

(3) As per the law, if there is no open land for public amenities in the lay out prepared for the total area of the colony, the competent authority shall make an estimate of the cost of such required open land and recover one and half times from the colonizer.

Provided that action of regularization of building/plot shall not be' affected if required amount is not recovered from colonizer or delay in recovery.

(4) The competent authority shall ensure necessary action under rule 15(c) and subclause (vi) of clause (iii) against the persons constructing illegal colonies.

(e) sub-clause (viii B) shall be omitted.

(f) in sub-clause (x) for brackets and letter "$^1/_4$ x $^1/_2$" the brackets and letter $^1/_4$ k $^1/_2$ shall be substituted.

(5) For sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) If any illegal colony is constructed after 31[sl] December, 2016 the competent authority shall take action to remove it considering it as illegal construction."

19. Rule 15-A(1)(4) provides that the work can be done from the amount received from the Schemes financed by the Central or State Government under the terms and conditions mentioned in the Scheme and Rule 15-A(D)(2) provides that the amount of public participation scheme / fund of parlimentarian (sic: Parliamentarian) /(lagislatature (sic: legislature) fund shall be deemed to be the amount in the amount deposited by the inhabitant and the cost of water, sewage and electricity shall not be included in the amount received from the inhabitants. Thereforc$_v$ it is clear that it was provided in the Rules, 1998 itself that the amount of the public participation scheme / fund of parlimentarian (sic: Parliamentarian)/ legislature fund shall be deemed to be the amount in the amount deposited by the inhabitant. Thus, it is clear that so far as the 50% share of the inhabitant is concerned, the amount of public participation scheme/fund of parlimentarian (sic: Parliamentarian)/fund shall be deemed to be the share of inhabitant. The defence of the petitioner is that since this clause was not made a part of the NIT / Agreement / Work Order, therefore, this clause is not binding on the petitioner cannot be accepted. Once the Rules are Published in the official Gazette and are made available by circulation, sale etc, then it is presumed that it has been made known to all the citizens of the country / State.

20. The Supreme Court in the case of *CCE v. New Tobacco Co.,* reported in (1998) 8 SCC 250 has held as under :

> 7. In *State of M.P.* v. *Shri Ram Ragubir Prasad Agarwal* while interpreting the word "publish" in Section 3(2) of M.P. Prathamik, Middle School Tatha Madhyamik Shiksha (Pathya Pustakon Sambandhi Vyavastha) Adhiniyam, this Court observed that: (SCC p. 695, para 21)
>
> > "In our view, the purpose of Section 3 animates the meaning of the expression 'publish'. 'Publication' is 'the act of publishing anything; offering it to public notice, or rendering it accessible to public scrutiny ... an advising of the public; a making known of something to them for a purpose'. Logomachic exercises need not detain us because the obvious legislative object is to ensure that when the Board lays down the 'syllabi' it must publish 'the same' so that when the stage of prescribing textbooks according to such syllabi arrives, both the publishers and the State Government and even the educationists among the public may have some precise conception about the relevant syllabi to enable Government to decide upon suitable textbooks from the private market or compiled under Section 5 by the State Government itself. In our view, therefore, 'publication' to the educational world is the connotation of the expression. Even the student and the teaching community may have to know what the relevant syllabus for a subject is, which means wider publicity than minimal communication to the departmental officialdom."
>
> **8.** Following this judgment the Madras High Court in *Asia Tobacco Co. Ltd.* v. *Union of India* held that in such cases the effective date is the date of knowledge and not the date of the Official Gazette. The relevant observations made in para 14 of the said judgment are as under:
>
> > "The mere printing of the Official Gazette containing the relevant notification and without making the same available for circulation and putting it on sale to the public will not amount to the 'notification' within the meaning of Rule 8(1) of the Rules. The intendment of the notification in the Official Gazette is that in the case of either grant or withdrawal of exemption the public must come to know of the same. 'Notify' even according to ordinary dictionary meaning would be 'to take note of,

> observe; to make known, publish, proclaim; to announce; to give notice to; to inform'. It would be a mockery of the rule to state that it would suffice the purpose of the notification if the notification is merely printed in the Official Gazette, without making the same available for circulation to the public or putting it on sale to the public. ... Neither the date of the notification nor the date of printing, nor the date of Gazette counts for 'notification' within the meaning of the rule, but only the date when the public gets notified in the sense, the Gazette concerned is made available to the public. The date of release of the publication is the decisive date to make the notification effective. Printing the Official Gazette and stacking them without releasing to the public would not amount to notification at all. ... The respondents are taking up a stand that the petitioner is expected to be aware of the Withdrawal Notification and that the words 'publish in Official Gazette' and the words 'put up for sale to public' are not synonymous and offering for sale to public is a subsequent step which cannot be imported into the Act, and the respondents are expressing similar stands. They could not be of any avail at all to the respondents to get out of the legal implications flowing from want of due notification, as exemplified above. Printing the notification in the Official Gazette, without making it available for circulation to the public concerned, or placing it for sale to the said public, would certainly not satisfy the idea of notification in the legal sense."

9. The same view was taken by the Bombay High Court in *GTC Industries Ltd. v. Union of India* and by the Delhi High Court in *Universal Cans and Containers Ltd. v. Union of India*.

10. The following observations made in the case of *B.K. Srinivasan v. State of Karnataka* also support the view that we are taking: (SCC p. 672, para 15)

> "Whether law is viewed from the standpoint of the 'conscientious good man' seeking to abide by the law or from the standpoint of Justice Holmes's 'unconscientious bad man' seeking to avoid the law, law must be known, that is to say, it must be so made it can be known."

11. Our attention was also drawn to the decisions of this Court in *Pankaj Jain Agencies v. Union of India and I.T.C. Ltd. v. CCE* but they are not helpful in deciding the question that arises in these cases.

> **12.** We hold that a Central Excise notification can be said to have been published, except when it is provided otherwise, when it is so issued as to make it known to the public. It would be a proper publication if it is published in such a manner that persons can, if they are so interested, acquaint themselves with its contents. If publication is through a Gazette then mere printing of it in the Gazette would not be enough. Unless the Gazette containing the notification is made available to the public, the notification cannot be said to have been duly published.

21. It is not the case of the petitioner, that although the amended Rule 15-A of Rules, 1998 were published in the official Gazette, but the Official Gazette was made not available to the general public. Thus, it is clear that after the amended provisions of Rule 15-A of Rules, 1998 were published in the Official Gazette on 19-5-1997, the petitioner is presumed to be aware of the said provisions of law.

22. Once there was a Rule i.e., Rule 15-A(D)(2) of Rules, 1998 that the amount of inhabitant would include the amount of public participation scheme / fund of parliamentarian / legislature fund then it was not necessary for the respondent to incorporate the said provision in the NIT/ Agreement/ Work Order. It is not the case of the petitioner that the work order was issued after the provision of amended Section 15-A of the Rules, 1998 were declared *ultra vires.* This Court by order dated 03.06.2019 passed in W.P. No. 10414/2018 had declared the amended Rule 15-A of the Rules 1998 as *ultra vires,* whereas the NITs were issued much prior to that and even the work was also completed prior to the judgment passed by the Division Bench of this Court.

23. It is the case of the petitioner that he had completed his work in the year 2018 itself and the Commissioner did not make the payment. At the relevant time, the amended provision of Rule 15-A of the Rules 1998 were in force and, therefore, the State Government was under obligation to comply the provision of Rule 15-A(1)(4) and Rule 15-A(D)(2) of Rules, 1998.

24. Considered the submission. Once the amended provision of Rule 15-A of the Rules, 1998 have been declared *ultra vires* and all the actions taken under this Rule have been declared illegal, then this Court cannnot compel the State Govt, to deposit its share of 50% and it cannot be said that there is no dispute between the petitioner, respondent and the State Government. Since the petitioner was already aware of the amended provisions of Rule 15-A of the Rules, 1998, therefore, he cannot express his ignorance about the provision of said Rules.

25. In view of the fact that the amended provisions of Rule 15-A of Rules, 1998 were declared ultra vires, and the work was got done by the respondents in execution of a Scheme formulated by the State Govt., then this Court is of the considered opinion, that the State Govt, is a necessary party. Because it is for the

State to come out with some modality to deal with such a situation, and no effective decree/order can be passed in absence of the State Government. Now the question for consideration is that whether this petition suffers from non-joinder of necessary party?

26. It is well settled principle of law that a suit cannot be dismissed on the ground of non-joinder of necessary party, unless and until an opportunity is given to the plaintiff to implead the necessary party. If the plaintiff refuses or fails to implead the necessary party and decides to move further with the suit, then he do so at his own risk and under this circumstance, he has to face the adverse consequences. In the present case, during the course of arguments, this Court had given an opportunity to the Petitioner's Counsel to implead the State Govt., but the Counsel for the Petitioner refused to implead the State on the ground that it is a dispute between the State and the respondents. As this Court has already come to a conclusion that in view of Section 15-A(d)(2)of Rules, 1998, , the 50% share of the total expenses was that of inhabitants and public participation scheme / fund of parlimentarian (sic: Parliamentarian)/ legislature fund was to be deemed to be the amount in the amount deposited by the inhabitant, therefore, the petitioner cannot claim that unless and until such a provision is made a part of NIT/work order/Agreement, he is not bound by the Rules, Under these circumstances, this Court is of the considered opinion, that this petition suffers from non-joinder of necessary party and is liable to be dismissed on the said ground also.

27. Under these circumstances, this Court is of the considered opinion that there is a dispute between the petitioner and the respondent.

28. Now the question for consideration is that whether a writ under Article 226 of the Constitution of India is maintainable for enforcement of contractual obligations or the party to the Contract must resort to the alternative dispute resolution system.

29. It is well established principle of law that a writ filed under Article 226 of the Constitution of India cannot be thrown straight away by holding that it has been filed for enforcement of contractual obligations. In a case of interpretation of law with consequential relief of payment of amount, or where the liability has been specifically admitted by the respondents, etc. the High Court may entertain the writ petition in contractual matters

30. The Supreme Court in the case of *LIC of India v. Asha Coel*, reported in (2001) 2 SCC 160, has held as under :

> 10. Article 226 of the Constitution confers extraordinary jurisdiction on the High Court to issue high prerogative writs for enforcement of the fundamental rights or for any other purpose. It is wide and expansive. The Constitution does not place any

fetter on exercise of the extraordinary jurisdiction. It is left to the discretion of the High Court. Therefore, it cannot be laid down as a general proposition of law that in no case the High Court can entertain a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy. It is neither possible nor proper to enumerate exhaustively the circumstances in which such a claim can or cannot be enforced by filing a writ petition. The determination of the question depends on consideration of several factors like, whether a writ petitioner is merely attempting to enforce his/her contractual rights or the case raises important questions of law and constitutional issues, the nature of the dispute raised; the nature of inquiry necessary for determination of the dispute etc. The matter is to be considered in the facts and circumstances of each case. While the jurisdiction of the High Court to entertain a writ petition under Article 226 of the Constitution cannot be denied altogether, courts must bear in mind the self-imposed restriction consistently followed by High Courts all these years after the constitutional power came into existence in not entertaining writ petitions filed for enforcement of purely contractual rights and obligations which involve disputed questions of facts. The courts have consistently taken the view that in a case where for determination of the dispute raised, it is necessary to inquire into facts for determination of which it may become necessary to record oral evidence a proceeding under Article 226 of the Constitution, is not the appropriate forum. The position is also well settled that if the contract entered between the parties provide an alternate forum for resolution of disputes arising from the contract, then the parties should approach the forum agreed by them and the High Court in writ jurisdiction should not permit them to bypass the agreed forum of dispute resolution. At the cost of repetition it may be stated that in the above discussions we have only indicated some of the circumstances in which the High Court have declined to entertain petitions filed under Article 226 of the Constitution for enforcement of contractual rights and obligation; the discussions are not intended to be exhaustive. This Court from time to time disapproved of a High Court entertaining a petition under Article 226 of the Constitution in matters of enforcement of contractual rights and obligation particularly where the claim by one party is contested by the other and adjudication of the dispute requires inquiry into facts. We may notice a few such cases; *Mohd. Hanif* v. *State of Assam; Banchhanidhi Rath* v. *State of Orissa; Rukmanibai Gupta* v. *Collector, Jabalpur; Food Corpn. of India* v. *Jagannath Dutta* and *State of H. P.* v. *Raja Mahendra Pal.*

31. The Supreme Court in the case of *Binny Ltd. v. V. Sadasivan* reported in (2005) 6 SCC 657 has held as under :

> **10.** The writ of mandamus lies to secure the performance of a public or a statutory duty. The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities. Originally, the writ of mandamus was merely an administrative order from the Sovereign to subordinates. In England, in early times, it was made generally available through the Court of King's Bench, when the Central Government had little administrative machinery of its own. Early decisions show that there was free use of the writ for the enforcement of public duties of all kinds, for instance against inferior tribunals which refused to exercise their jurisdiction or against municipal corporations which did not duly hold elections, meetings, and so forth. In modern times, the mandamus is used to enforce statutory duties of public authorities. The courts always retained the discretion to withhold the remedy where it would not be in the interest of justice to grant it. It is also to be noticed that the statutory duty imposed on the public authorities may not be of discretionary character. A distinction had always been drawn between the public duties enforceable by mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. In the *Administrative Law* (9th Edn.) by Sir William Wade and Christopher Forsyth (Oxford University Press) at p. 621, the following opinion is expressed:
>
> > "A distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus, which in the first place is confined to public duties and secondly is not granted where there are other adequate remedies. This difference is brought out by the relief granted in cases of ultra vires. If for example a minister or a licensing authority acts contrary to the principles of natural justice, certiorari and mandamus are standard remedies. But if a trade union disciplinary committee acts in the same way, these remedies are inapplicable: the rights of its

members depend upon their contract of membership, and arc to be protected by declaration and injunction, which accordingly arc the remedies employed in such cases."

32. The Supreme Court in the case of *State of Kerala Vs. M.K. Jose* reported in (2015) 9 SCC 433 has held as under :

13. A writ court should ordinarily not entertain a writ petition, if there is a breach of contract involving disputed questions of fact. The present case clearly indicates that the factual disputes are involved.

14. In *State of Bihar* v. *Jain Plastics and Chemicals Ltd.,* a two-Judge Bench reiterating the exercise of power under Article 226 of the Constitution in respect of enforcement of contractual obligations has stated: (SCC p. 217, para 3)

"*3.* ... It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudicating such disputes. Under the law, it was open to the respondent to approach the court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226."

In the said case, it has been further observed: (SCC p. 218, para 7)

"*7.* ... It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs."

15. In *National Highways Authority of India* v. *Ganga Enterprises,* the respondent therein had filed a writ petition before the High Court for refund of the amount. The High Court posed two questions, namely, *(a)* whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act; and *(b)* whether the writ petition is maintainable in a claim arising out of breach of contract. While dealing with the said issue, this Court opined that: (SCC p. 415, para 6)

> *"6. ...* It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in *Kerala SEB* v. *Kurien E. Kalathil, State of U.P.* v. *Bridge & Roof Co. (India) Ltd.* and *Bareilly Development Authority* v. *Ajai Pal Singh.* This is settled law. The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr Dave, however, relied upon the cases of *Verigamto Naveen* v. *State of A. P.* and *Harminder Singh Arora* v. *Union of India.* These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed."

16. Having referred to the aforesaid decisions, it is obligatory on our part to refer to two other authorities of this Court where it has been opined that under what circumstances a disputed question of fact can be gone into. In *Gunwant Kaur* v. *Municipal Committee, Bhatinda,* it has been held thus: (SCC p. 774, paras 14-16)

> *"14.* The High Court observed that they will not determine disputed question of fact in a writ petition. *But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State.* The High Court, however, proceeded to dismiss the petition in limine. *The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined.* In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. *Exercise of the jurisdiction is, it is true,*

> *discretionary, but the discretion must be exercised on sound judicial principles.* When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.
>
> *15.* from the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.
>
> 16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they arc in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit." (emphasis supplied)

17. In *ABL International Ltd.* v. *Export Credit Guarantee Corpn. of India Ltd.,* a two-Judge Bench after referring to various judgments as well as the pronouncement in *Gunwant Kaur* and *Century Spg. and Mfg. Co. Ltd.* v. *Ulhasnagar Municipal Council,* has held thus: *{ABL International case,* SCC pp. 568-69 & 572, paras 19 & 27)

> *"19.* Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate

> the parties to a suit. In the above case of *Gunwant Kaur* this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.
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> * * *

27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

> (*a*) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
>
> (*b*) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.
>
> (*c*) A writ petition involving a consequential relief of monetary claim is also maintainable."

While laying down the principle, the Court sounded a word of caution as under: *(ABL International case*, SCC p. 572, para 28)

> "28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (Sec *Whirlpool Corpn. v. Registrar of Trade Marks*.) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

33. The Supreme Court in the case of *Joshi Technologies International Inc. v. Union of India* reported in (2015) 7 SCC 728 has held as under :

> **69.** The position thus summarised in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, "normally", the Court would not exercise such a discretion:
>
> **69.1.** The Court may not examine the issue unless the action has some public law character attached to it.
>
> **69.2.** Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.
>
> **69.3.** If there are very serious disputed questions of fact which arc of complex nature and require oral evidence for their determination.
>
> **69.4.** Money claims *per se* particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.
>
> **70**. further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:
>
> **70.1.** At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.
>
> **70.2.** State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.
>
> **70.3.** Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the

correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State /instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable.

The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors arc taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.

71. Keeping in mind the aforesaid principles and after considering the arguments of the respective parties, we are of the view that on the facts of the present case, it is not a fit case where the High Court should have exercised discretionary jurisdiction under Article 226 of the Constitution. - First, the matter is in the realm of pure contract. It is not a case where any statutory contract is awarded.

34. The Supreme Court in the case of *Surya Construction* (Supra) has held as under :

3. It is clear, therefore, from the aforesaid order dated 22-3-2014 that there is no dispute as to the amount that has to be paid to the appellant. Despite this, when the appellant knocked at the doors of the High Court in a writ petition being Writ Civil No. 25216 of 2014, the impugned judgment dated 2-5-2014 *[Surya Construction v. State of U.P.,* 2014 SCC OnLine All 6071] dismissed the writ petition stating that disputed questions of fact arise and that the amount due arises out of a contract. We are afraid the High Court was wholly incorrect inasmuch as there

> was no disputed question of fact. On the contrary, the amount payable to the appellant is wholly undisputed. Equally, it is well settled that where the State behaves arbitrarily, even in the realm of contract, the High Court could interfere under Article 226 of the Constitution of India *(ABL International Ltd.* v. *Export Credit Guarantee Corpn. of India Ltd. [ABL International Ltd.* v. *Export Credit Guarantee Corpn. of India Ltd.,* (2004) 3 SCC 553])

35. If the facts and circumstancs of the present case are considered, then it is clear that in view of the amended provisions of Rule 15-A of Rules, 1998, a Scheme was floated by the State Govt, for regularization of illegal colonies and accordingly, the respondents were asked to carry on the development work in the illegal colonies resulting in invitation of NIT's. As already pointed out, the respondent was also required to arrange 50% of the total expenses and the rest of the 50% expenses were to be borne by the inhabitants and the amount of the public participation scheme / fund of parlimentarian (sic: Parliamentarian)/ legislature fund was deemed to be the amount in the amount deposited by the inhabitant. However, after the declaration of amended provisions of Rule 15-A of Rules, 1998 as *ultra vires,* the State Govt. also could not release its share. Under these circumstances, this Court is of the considered opinion, that there exists a dispute between the Petitioner and the respondent and accordingly he should have approached the Dispute Resolution System as provided in Clause 12 of the General Conditions of Contract.

36. It is next contended by the counsel for the petitioner that so far as the question of limitation is concerned, the petitioner was never informed about the reasons for not making the payment, therefore, no cause of action had arisen, thus, the petitioner could not approach the Dispute Resolution System as provided under Clause 12 of the General Conditions of Contract.

37. Considered the submissions made by the counsel for the petitioner.

38. The petitioner has filed the copies of the note-sheet prepared by the respondent in all three different cases. The relevant part of note-sheet which was prepared in Case No. 271/18x3/6 is at page 59 of the writ petition. This document has been filed by the petitioner after obtaining under the Right to Information Act and the relevant part of this note-sheet reads as under:-

> ''50% राशि कालोनी रहवासियों से जमा कराये। (कार्यवाही – जानकारी शाखा)
>
> नस्ती RAD परीक्षणार्थ।
>
> हस्ताक्षर
>
> 8 / 10 / 18

उपरोक्त टीप अनुसार निराकरण पश्चात प्रकरण प्रस्तुत किया जावे।

हस्ताक्षर

9/10/19''

39. After the note-sheet was obtained by the petitioner under the Right to Information Act, he had come to know that there is an audit objection that 50% of the share of inhabitant should be deposited and only thereafter the further proceedings for releasing the amount can be taken. Although the date of receipt of this note-sheet under the Right to Information Act is not clear but this petition was filed on 27.03.2020, therefore, it is clear that atleast on 23.07.2020, the petitioner was aware of the reason due to which his payment has been withheld but instead of approaching the Dispute Resolution System, he has approached this Court. Whether the dispute of the petitioner has become barred by limitation or not is a disputed question of fact, which cannot be decided by this Court while exercising power under Article 226 of the Constitution of India. Since this Court has already come to a conclusion that there is a dispute between the petitioner and respondent and the petitioner has an efficacious remedy of approaching the Dispute Resolution System as provided under Clause 12 of the General Conditions of Contract, therefore, this petition is dismissed with liberty to the petitioner that if he so desires, then he can avail the alternative remedy, which is available to him. If any dispute is raised by the petitioner as provided under Clause 12 of the General Conditions of Contract, then the authority shall be well within its right to consider the question of limitation after taking into consideration, the date of supply of documents under the Right to Information Act.

40. With aforesaid observations, the petition fails and is hereby **dismissed.**

Petition dismissed

I.L.R. [2021] M.P. 72
WRIT PETITION
Before Mr. Justice Prakash Shrivastava
WP No. 15521/2020 (Indore) decided on 11 November, 2020

SAYAJI HOTELS LTD. …Petitioner

Vs.

INDORE MUNICIPAL CORPORATION & ors. …Respondents

Municipal Corporation Act, M.P. (23 of 1956), Section 138(4) – Appellate Authority – Principle of Natural Justice – Opportunity of Hearing – **Held – If one authority, person or committee hears the appeal and the other person, Authority or Committee decides it without any further hearing, such procedure is not in consonance with principle of natural justice – Appellate**

authority Mayor-in-Council without hearing the parties, merely on basis of opinion of Committee, dismissed the appeal – Principle of natural justice violated – Impugned order set aside – Matter remanded back to appellate authority – Petition partly allowed. (Paras 6, 11, 12 & 15)

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धारा 138(4) – अपीली प्राधिकारी – नैसर्गिक न्याय का सिद्धांत – सुनवाई का अवसर – अभिनिर्धारित – यदि एक प्राधिकारी, व्यक्ति या समिति, अपील सुनती है और अन्य व्यक्ति, प्राधिकारी या समिति, बिना आगे किसी सुनवाई के उसका विनिश्चय करती है, उक्त प्रक्रिया नैसर्गिक न्याय के सिद्धांत के अनुरूप नहीं है–अपीली प्राधिकारी मेयर–इन–काउंसिल ने पक्षकारों को सुने बिना, मात्र समिति की राय के आधार पर, अपील खारिज की – नैसर्गिक न्याय के सिद्धांत का उल्लंघन किया गया–आक्षेपित आदेश अपास्त–मामला, अपीली प्राधिकारी को प्रतिप्रेषित–याचिका अंशतः मंजूर।

Cases referred:

AIR 1959 SC 308, (2011) 2 SCC 258, (2017) 15 SCC 702.

Vijay Asudani, for the petitioner.
Rishi Tiwari, for the respondent Nos. 1 to 4.

O R D E R

PRAKASH SHRIVASTAVA, J. :- By this writ petition, the petitioner has challenged the order dated 9/2/2016 in respect of the levy of penalty and the appellate order dated 4/2/2020 as also the order passed by the respondent No.3 dated 5/2/2018.

2. The case of the petitioner is that in the proceeding relating to the property tax, the order dated 9/2/2016 was passed whereby penalty of five times on account of more than 10% difference in the measurement of the area was maintained. Against this order petitioner had preferred appeal before the Mayor-in-Council u/S.138(4) of the Municipal Corporation Act, 1956 (for short "the Act") and the Committee constituted by the Mayor-in-Council had heard the petitioner and passed the impugned order dated 5/2/2018 and whereupon the Mayor-in-Council had passed the consequential order dated 4/2/2020.

3. Though, in the writ petition various grounds have been raised, but counsel for petitioner has mainly argued the ground that the Committee constituted by the Mayor-in-Council had heard the petitioner whereas the final order was passed by the Mayor-in-Council without giving any opportunity of hearing, therefore, the order of the Mayor-in-Council suffers for the defect of non compliance of principles of natural justice.

4. The stand of the counsel for respondents is that the Committee was constituted by the Mayor-in-Council in accordance with the provisions of the Act

and the said Committee had given an opportunity of hearing to the petitioner and thereafter had passed the order dated 5/2/2018 which was followed by the order of the Mayor-in-Council dated 4/2/2020, therefore, the principles of natural justice has been adequately followed.

5. Having heard the learned counsel for parties and on perusal of the record, it is noticed that the appeal was preferred by the petitioner against the penalty order dated 9/2/2016 before the Mayor-in-Council u/S.138(4) of the Act. The relevant provisions contained in sub section (3) and (4) of Sec.138 are reproduced below:-

> "138(3) The variation up to ten percent on either side in the assessment made under sub-section (2) shall be ignored. In cases where the variation is more than ten percent, the owner of land or building, as the case may be, shall be liable to pay penalty equal to five times the difference of self assessment made by him and the assessment made by the Corporation.
>
> (4) An appeal shall lie to the Mayor-in-Council against the orders passed under sub-section (3)."

6. Sub-section (4) clearly provides that the appeal lies before the Mayor-in-Council . Rule 11 of the Madhya Pradesh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 also provides for the limitation and hearing of the appeal against the order of penalty and reads as under:-

> "11- **Scrutiny of the return.--** If on the scrutiny of return received under [Rule 10], it is found by the Municipal Officer that any information mentioned therein is not correct or is doubtful or he deems it necessary to reassess the annual letting value due to any reasons, then the Municipal Officer may take action for the reassessment of the annual letting value under the provisions of the Act.
>
> Provided that in the reassessment, the variation up to ten percent on either side shall be ignored but where the variation is more than ten per cent, the owner of land or building, as the case may be, shall be liable to pay such penalty which will be equal to five times of the amount of difference of self assessment made by such owner and the reassessment made by the Municipality.
>
> Provided further that against the order passed by the Municipal Officer under the first provision, an appeal may be filed before the Mayor-in-Council in case of a Municipal Corporation and President-in-Council, in case of a Municipal Council or Nagar Panchayat within thirty days from the date of passing the orders, on which the Mayor-in-Council or President-in-Council, as the

case may be, after hearing the parties concerned, shall give its decision, which shall be final."

7. In terms of the aforesaid Rule, the Mayor-in-Council is required to give its decision in appeal after hearing the concerned parties.

8. The reliance of the counsel for Municipal Corporation is on Sec.45 of the Act which reads as under:-

> "45. **Power of Mayor-in-Council to appoint sub-committees.--** The Mayor-in-Council may appoint one or more sub-committees from amongst its members, which shall consist of such number of members as it may fix and may refer to it any matter pending before it for enquiry and report or opinion."

9. In terms of Sec.45, the Mayor-in-Council is empowered to appoint a Committee and refer any matter pending before it to the Committee for "enquiry and report or opinion". In the present case, record reflects that the appeal was preferred by the petitioner before the Mayor-in-Council and the Mayor-in-Council had referred the matter to the Three Member Committee and Three Member Committee had given the hearing to the petitioner and thereafter by Annexure P/9 dated 5/2/2018 had formed the opinion against the petitioner and sent back the matter to the Mayor-in-Council for decision.

10. It is not in dispute that no opportunity of hearing was given by the Mayor-in-Council to the petitioner and Mayor-in-Council vide order dated 4/2/2020 on the basis of the opinion of the Committee has dismissed the appeal.

11. The aforesaid facts clearly reveals two important aspects of the matter. Firstly though the opportunity was given to the parties before the Committee constituted by the Mayor-in-Council, but no opportunity was given to the parties before the Mayor-in-Council which was the appellate authority and secondly the Committee was only empowered to give its opinion which the Committee had forwarded and the Mayor-in-Council had mechanically agreed with the opinion and dismissed the appeal.

12. If one Authority, person or Committee hears the appeal and the other person, Authority or Committee decides it without any further hearing, then such a procedure and decision is violative of the fundamental principles of natural justice. Such a decision cannot be approved and held to be in consonance with the principles of *audi alteram partem.* The Constitution Bench of the Supreme Court in the matter of *Gullapalli Nageshwara Rao and others Vs. Andhra Pradesh State Road Transport Corporation & another* AIR 1959 SC 308 considering the similar issue has held:-

> "31- The second objection is that while the Act and the Rules framed thereunder impose a duty on the State

> Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes and empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

13. In the matter of *Automotive Tyre Manufacturers Association Vs. Designated Authority and Others* (2011) 2 SCC 258 in a case where designated authority had conducted the proceedings and thereafter successor designated authority had passed the order without giving an opportunity of hearing, the Hon'ble Supreme Court has found such an order to be vitiated on account of non compliance of the basic principles of *audi alteram partem* by holding that if one person hears and another decides, then personal hearing becomes an empty formality. In the above case Hon'ble Supreme Court has held that:-

> "83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in *Gullapalli,* if one person hears and other decides, then personal hearing becomes an empty formality.
>
> 84. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly."

14. Similarly in the matter of *Kanachur Islamic Education Trust (R) Vs. Union of India and Another* (2017) 15 SCC 702 the Supreme Court taking note of the Rule of fair hearing has held that this rule castes an obligation on the adjudicator to ensure fairness in procedure and action. In this regard it has been held that:-

> In the predominant factual setting, noted hereinabove, the approach of the respondents is markedly incompatible with the essence and import of the proviso to Section 10 A (4) mandating against disapproval by the Central Government of any scheme for establishment of a college except after giving the person or the college concerned a reasonable opportunity of being heard. Reasonable opportunity of hearing which is synonymous to "fair hearing", it is not longer res integra is an important ingredient of audi alteram partem rule and embraces almost every facet of fair procedure. The rule of "fair hearing" requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by reasons and rationale. Reasonable opportunity of hearing or right to "fair hearing" casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done."

15. In the present case the appellate authority Mayor-in-Council was required to hear the parties and decide the appeal, but the Mayor-in-Council without hearing the parties merely on the basis of the opinion of the Committee constituted u/S.45 has dismissed the appeal, therefore, the principles of natural justice has been clearly violated. The Rules requiring hearing has also been given a go by, therefore, the order of the Mayor-in-Council dated 4/2/2020 cannot be sustained and is hereby set aside. The appellate authority is now required to hear the concerned parties and pass a fresh order in the appeal in accordance with law. It is pointed out that in the mean while the Mayor-in-Council has been superseded by the Administrator. Counsel for parties have no objection if the appeal is heard by the Administrator.

16. Having regard to the above analysis, the **writ petition is partly allowed** to the extent indicated above.

Petition partly allowed

I.L.R. [2021] M.P. 78
WRIT PETITION
Before Mr. Justice Sujoy Paul

WP (S) No. 12216/2004 (Jabalpur) decided on 3 December, 2020

A.A. ABRAHAM …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

A. Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 15 – Further Inquiry & Denovo Inquiry/Re-inquiry **– Held – Since charge-sheet remained the same, previous charge-sheet was not set aside, just because no witness was examined, disciplinary authority directed to conduct further inquiry – It cannot be termed as *denovo* inquiry/re-inquiry – Respondent directed to conclude the inquiry – Petition disposed. (Para 10)**

क. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 15 – अतिरिक्त जांच व नये सिरे से जांच/पुनः जांच – अभिनिर्धारित – चूंकि आरोप–पत्र वही था, पूर्व आरोप–पत्र को अपास्त नहीं किया गया था, मात्र क्योंकि किसी साक्षी का परीक्षण नहीं किया गया था, अनुशासनिक प्राधिकारी को अतिरिक्त जांच संचालित करने हेतु निदेशित किया गया – इसे नये सिरे से जांच/पुनः जांच नहीं कहा जा सकता – प्रत्यर्थी को जांच समाप्त करने हेतु निदेशित किया गया – याचिका निराकृत।

B. Civil Services (Pension) Rules, M.P., 1976, Rule 9(2) – Departmental Inquiry – Retired Employee – Expression "shall be continued and concluded" **– Held – If inquiry is instituted before retirement of a government employee, it shall continue in the same manner and shall be deemed to be proceedings under Pension Rules – This deeming provision permits the authority who has initiated the inquiry to conclude it. (Para 11)**

ख. सिविल सेवा (पेंशन) नियम, म.प्र., 1976, नियम 9(2) – विभागीय जांच – सेवानिवृत्त कर्मचारी – अभिव्यक्ति ''चालू रहेंगी और समाप्त की जावेंगी'' – अभिनिर्धारित – यदि एक शासकीय कर्मचारी की सेवानिवृत्ति के पूर्व जांच संस्थित की जाती है, तो वह उसी भांति जारी रहेगी तथा पेंशन नियमों के अंतर्गत कार्यवाही मानी जावेगी – यह धारणा उपबंध जांच संस्थित करने वाले प्राधिकारी को उसे निष्कर्षित करने की अनुमति प्रदान करता है।

C. Civil Services (Pension) Rules, M.P., 1976, Rule 9(1) & (2) – Departmental Inquiry – Retired Employee – Punishment **– Held – The initiating/disciplinary authority cannot impose punishment to retired employee indeed, he is under statutory obligation to submit his report regarding findings submitted by Inquiry Officer which is finally placed before Governor for decision under Rule 9(1) of Pension Rules. (Para 12)**

ग. सिविल सेवा (पेंशन) नियम, म.प्र., 1976, नियम 9(1) व (2) – विभागीय जांच – सेवानिवृत्त कर्मचारी – दण्ड – अभिनिर्धारित – आरंभ करने वाला/अनुशासनिक प्राधिकारी वास्तव में एक सेवानिवृत्त कर्मचारी पर दण्ड अधिरोपित नहीं कर सकता, वह जांच अधिकारी द्वारा प्रस्तुत किये गये निष्कर्षों के संबंध में अपना प्रतिवेदन प्रस्तुत करने की कानूनी बाध्यता के अधीन है, जो कि पेंशन नियमों के नियम 9(1) के अंतर्गत विनिश्चय हेतु अंतिम रूप से राज्यपाल के समक्ष रखा जाता है।

***D. Civil Services (Pension) Rules, M.P., 1976, Rule 64 – Retiral Dues* – Held – In view of Rule 64, no fault can be found if department has not released full pension and gratuity and had only released anticipatory pension subject to outcome of inquiry. (Para 13)**

घ. सिविल सेवा (पेंशन) नियम, म.प्र., 1976, नियम 64 – सेवानिवृत्ति देयक – अभिनिर्धारित – नियम 64 को दृष्टिगत रखते हुए, कोई दोष नहीं निकाला जा सकता यदि विभाग ने पूरी पेंशन एवं उपदान जारी नहीं किया है तथा जांच के परिणाम के अधीन केवल अग्रिम पेंशन जारी की है।

***E. Constitution – Article 300A – Retiral Dues* – Held – Retiral dues of employee cannot be treated as bounty, it is his right under Article 300A of Constitution. (Para 13)**

ङ. संविधान – अनुच्छेद 300A – सेवानिवृत्ति देयक – अभिनिर्धारित – कर्मचारी के सेवानिवृत्ति देयकों को उपहार स्वरूप नहीं माना जा सकता, संविधान के अनुच्छेद 300A के अंतर्गत यह उसका अधिकार है।

Cases referred :

1971 (2) SCC 102, 2014 (10) SCC 589, 2013 (12) SCC 210, AIR 1991 SC 2010.

R.N. Roy, for the petitioner.
Rahul Deshmukh, P.L. for the respondent/State.

O R D E R

SUJOY PAUL, J.:-In this petition filed under Article 226 of the Constitution, the petitioner has called in question the legality, validity and propriety of order dated 02.09.2004 whereby the Commissioner, Health Services, M.P. directed to conduct a reinquiry against the petitioner. In addition, petitioner has prayed for a direction to release his retiral dues.

2. Draped in brevity, the relevant facts are that the petitioner was working as District Maleria (sic : Malaria) Officer at Betul. In the year 2000, some persons died in District Hospital, Betul due to maleria (sic : malaria). A question was raised in the State Legislative Assembly regarding death of citizens. Thereafter, a major penalty charge-sheet dated 24.02.2001 was issued to the petitioner. The petitioner submitted his reply. Since department was not satisfied with the reply, a

departmental enquiry was instituted by appointing Presiding Officer and Inquiry Officer. The petitioner retired on attaining the age of superannuation on 29.12.2001 whereas first Inquiry Officer was appointed on 28.08.2001. The first Inquiry Officer could not complete the inquiry and; therefore, another Inquiry Officer was appointed by order dated 05.11.2003 Annexure R/1. The petitioner was placed under suspension during his service. The suspension order was revoked by order dated 30.05.2002 (Annexure P/7).

3. Shri R.N. Roy, learned counsel for the petitioner submits that the Inquiry Officer conducted and completed the inquiry and submitted his report dated 19.06.2004 (Annexure P/12). Five charges levelled against the petitioner were not found to be proved. The inquiry report was placed before the Commissioner, Health Services, M.P. who, in turn, passed the impugned order dated 02.09.2004 (Annexure P/14). Criticising this order, learned counsel for the petitioner urged that - **(i)** learned Commissioner has set aside the conclusion drawn by the Inquiry Officer and directed to conduct 'reinquiry'. This runs contrary to Rule 15 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 *(hereinafter referred to as **'CCA Rules')**.* Under the said Rule, disciplinary authority is only empowered to conduct a 'further inquiry' and not a 'denovo inquiry' or 'reinquiry'. In supprot (sic: support) of this contention, he placed reliance on judgments of Supreme Court reported in 1971 (2) SCC 102 *(K.R. Deb vs. The Collector of Central Excise, Shillong)* and 2014 (10) SCC 589 *(Vijay Shankar Pandey vs. Union of India and another*); **(ii)** after the retirement of petitioner, inquiry could have been continued only under Rule 9(2) of the Madhya Pradesh Civil Services (Pension) Rules, 1976 (for short ***'Pension Rules')*** and not under the CCA Rules. By placing heavy reliance on the proviso to Rule 9(2) of the Pension Rules, Shri Roy urged that the disciplinary authority/ Commissioner has no authority, jurisdiction and competence to pass the order dated 02.09.2004; **(iii)** the respondents committed error in not releasing the entire pension and gratuity to the petitioner. Their action is erroneous whereby they only granted anticipatory /provisional pension to the petitioner. By placing reliance on 2013 (12) SCC 210 *(State of Jharkhand and others vs. Jitendra Kumar Srivastava and another),* Shri Roy urged that in the light of this judgment, the petitioner is entitled to get entire retiral dues including pension and gratuity.

4. *Per contra,* Shri Rahul Deshmukh, learned Panel Lawyer for the State supported the impugned order by contending that under Rule 9(2)(a) of the Pension Rules, the authority who instituted the departmental enquiry against the petitioner when he was admittedly in service, has every right to continue and conclude the inquiry against the petitioner. In exercise of that power, the disciplinary authority/authority who instituted the inquiry found that the Inquiry Officer's report is cryptic in nature because petitioner was facing five grave charges and no prosecution witness entered the witness box nor any documents

were placed against the petitioner. Considering the aforesaid, the disciplinary authority directed 'reinquiry/further inquiry' which by no stretch of imagination can be treated to be 'denovo inquiry' or 'reinquiry'. He urged that the disciplinary proceeding begins with issuance of charge-sheet and in the instant case, the charge-sheet was not cancelled which shows that inquiry will proceed on the basis of same charge-sheet. Hence, this 'further inquiry' ordered is in consonance with Rule 15 of CCA Rules.

5. Shri Deshmukh urged that in the teeth of proviso to Rule 9(2), it is clear that after obtaining the finding regarding inquiry, the authority who initiated the inquiry shall submit his report before the Governor thereupon the Governor is obliged to take a decision as per Rule 9(1) of the Pension Rules. The department has followed the said procedure and hence order is neither without jurisdiction nor it suffers from any procedual (sic: procedural) impropriety which warrants interference by this Court. Countering the argument regarding grant of release of full pension and gratuity, Shri Deshmukh placed reliance on Rule 64 of the Pension Rules.

6. No other point is pressed by learned counsel for the parties.

7. I have bestowed my anxtious (sic: anxious) consideration on the rival contentions of parties and perused the record.

8. There are three core issues involved in this matter - **(i)** whether the direction contained in the impugned order dated 02.09.2004 (Annexure P/14) amounts to holding a 'denovo/reinquiry'?; **(ii)** whether under Rule 9(2) of the Pension Rules, the disciplinary authority was empowered to continue with the inquiry after petitioner's retirement and pass the impugned order of 'reinquiry'? and **(iii)** whether department was justified in only granting anticipatory/ provisional pension to the petitioner ?

Issue No.(i) and (ii):

9. Both the issues are interrelated and; therefore, I deem it proper to decide these issues jointly.

10. Before dealing with the factual aspects, reference may be made to Rule 15 of CCA Rules which makes it clear that disciplinary authority is empowered to direct a further inquiry. Thus, the pivotal question is whether the direction so contained in order dated 02.09.2004 amounts to directing a 'further inquiry' or 'denovo inquiry/reinquiry'. It is apt to reproduced the relevant portion of the order which reads as under:

आदेश

संचालनालय के आदेश क्र./4/शिका. 2/03/3212 दिनांक 05/11/03 द्वारा श्री ए.ए. अब्राहम सेवा निवृत्त जिला मले. अधिकारी बैतूल

के विरूद्ध संस्थित विभागीय जांच प्रकरण में श्री जी.एल.सोनी, निश्चेतना विशेजिला चिकित्सालय बैतूल को जांच अधिकारी नियुक्त किया गया था। जांच अधिकारी द्वारा प्रकरण की जांच कर जांच प्रतिवेदन मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी, बैतूल द्वारा दिनांक 7.7.2004 को प्रस्तुत किया गया। जांच प्रतिवेदन में जांच अधिकारी ने यह निष्कर्ष दिया है कि शासकीय पक्ष का समर्थन करने हेतु शासकीय गवाह उपस्थित नहीं हुये, इस कारण लगाये गये आरोप प्रमाणित नहीं पाये गये। प्राप्त जांच प्रतिवेदन का परीक्षण किया गया, प्रकरण में आरोप गंभीर प्रवृत्ति के थे अतः इस प्रकरण में पूर्ण जांच कराया जाना आवश्यक है।

अतः मैं मनोज झालानी, आयुक्त स्वास्थ्य सेवाऐ, मध्यप्रदेश जांच अधिकारी द्वारा प्रस्तुत जांच प्रतिवेदन के निष्कर्षो को अमान्य करते हुए ***पूर्व में भी जारी आरोप पत्रों के बिन्दुओं पर*** *पुनः जांच आदेशित करता हूँ।*

श्री ए.ए. अब्राहम सेवा निवृत्त जिला मलेरिया अधिकारी बैतूल के विरूद्ध संस्थित इस विभागीय जांच प्रकरण में श्री के.एल. साहू, संयुक्त संचालक स्वास्थ्य सेवायें संचालनालय को जांच अधिकारी एवं मुख्य चिकित्सा एवं स्वास्थ्य अधिकारी बैतूल को प्रस्तुतकर्ता अधिकारी नियुक्त किया जाता है। तथा जांच अधिकारी को निर्देशित किया जाता है कि प्रकरण की जांच एक माह में पूर्ण कर जांच प्रतिवेदन प्रस्तुत करें।

हस्ता./–
(मनोज झलानी)
आयुक्त स्वास्थ्य सेवायें, मध्यप्रदेश
पृष्ठ क्र./4/शिका./डी.ई.2/2004/3829 भोपाल, दिनांक 02/09/04

(Emphasis supplied)

A careful reading of this order makes it clear that initiating authority came to hold that the Inquiry Officer has submmitted a report which shows that no departmental/prosecution witnesses entered the witness box and; therefore, charges could not be proved. He further opined that since charges are serious in nature, a complete inquiry needs to be conducted in the present matter. On this basis, he disallowed the conclusion drawn by Inquiry Officer and directed to reinquire the matter *on the basis of the charge-sheet already in existence i.e. 24.02.2001 (Annexure P/2).* The Apex Court in AIR 1991 SC 2010 *(Union of India vs. K.V. Jankiraman and others*) opined that a disciplinary proceeding is initiated/begins with the issuance of the charge-sheet. In the instant case, I find substance in the argument of Shri Deshmukh that since charge-sheet remained the same and previous charge-sheet is not set aside by directing issuance of fresh charge-sheet, the impugned order does not contain direction of conducting 'denovo inquiry' or 'reinquiry'. Learned counsel for the petitioner placed heavy reliance on the judgment of Supreme Court in *K.R. Deb* (Supra) which is followed in the case of *Vijay Shankar Pandey* (Supra). Para 12 of the judgment of *K.R. Deb*(Supra) reads as under:

> *"12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9. "*

The Apex Court opined that if serious defect has crept in into the inquiry or witnesses were not available when inquiry was held, disciplinary authority may direct the Inquiry Officer to record further evidence. This is exactly what had happened in the instant case. No witness on the side of prosecution was examined and; therefore, considering the gravity of charges, the disciplinary authority directed to conduct a further inquiry. Thus, the decision of disciplinary authority is infirmity with Rule 15 of the CCA Rules and the law laid down in *K.R. Deb*(Supra) and *Vijay Shankar Pandey*(Supra). The said judgments are of no assistance to the petitioner.

11. So far anciliary (sic: ancillary) argument that after retirment of petitioner with effect from 29.12.2001, the inquiry under the CCA Rules could not have continued is concerned, suffice it to say that Rule 9(2) of the Pension Rules provides that if inquiry is instituted before retirement of a government employee, it shall continue in the same manner and shall be deemed to be proceedings under the Pension Rules. This deeming provision/fiction permits the authority who has initiated the inquiry to conclude it. Rule 9(1) and (2)(a) of the Pension Rules needs reproduction:

> **"9. *Right of Governor to withhold or withdraw pension-***
>
> *(2)(a) The departmental proceedings [xxx], if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be **deemed to be proceedings under this rule** and shall be **continued and concluded by the authority by which they were commenced,** in the same manner as if the Government servant had continued in service :*
>
> *Provided that where the departmental proceedings are instituted by an authority subordinate to the Governor, **that authority shall submit a report regarding its findings to the Governor.** "*
>
> *(Emphasis supplied)*

A plain reading of Rule 9(2)(a) of the Pension Rules leaves no room for any doubt

that disciplinary authority/authority who initiated/commenced the inquiry is empowered to conclude it in the same manner as if the Government employee had continued in service. The expression "shall be continued and concluded" by the authority by which they were commenced are of paramount importance which bestows power to the initiating authority to conclude the inquiry. Needless to emphasise that inquiry is concluded with imposition of punishment. This power of imposition of punishment is cut down by inserting proviso to sub-rule (2) of Rule 9 of the Pension Rules.

12. A holistic reading of Rule 9 of the Pension Rules shows that the ultimate decision to punish a retired employee is within the province of the Governor. In the case of a retired employee, as noticed above, the departmental enquiry so instituted before his retirement shall continue in the same manner and the disciplinary authority/authority instituted the proceedings is required to submit a report regarding Enquiry Officer's findings to the Governor. To elaborate, in case of retired employee the inquiry will proceed in the same manner as if employee was in service, inquiry officer will submit his findings and disciplinary authority will submit his report regarding the said findings to the Governor. Thus, as per Rule 9 of the Pension Rules, the initiating/disciplinary authority cannot impose the punishment, indeed, he is under a statutory obligation to submit his report regarding the findings submitted by the Inquiry Officer. His report alongwith the findings of Inquiry Officer needs to be placed before the Governor who, in turn, will take a decision as per sub-rule (1) of Rule 9 of the Pension Rules.

Issue No.(iii):

13. In view of catena of judgments of Supreme Court including the judgment of *Jitendra Kumar Shrivastava* (Supra), it is clear that the retiral dues of an employee cannot be treated as bounty. The same are his right under Article 300A of the Consitution (sic: Constitution). However, a minute reading of this judgment in *Jitendra Kumar Shrivastava* (Supra) makes it clear that in the said case, the State Government had withheld the retiral dues on the basis of an executive instruction. The Supreme Court after considering the scope and ambit of Article 300A of the Constituion (sic: Constitution) came to hold that such retiral dues can be withheld only by an enabling provision which has force of law and not on the basis of executive fiat. In the present case, as pointed out, Rule 64 of the Pension Rules (issued in exercise of power proviso to Article 309 of the Constituion (sic: Constitution)) empowers the Government to release anticipatory pension pending completion of departmental enquiry/ criminal case. In view of this rule, no fault can be found if department has not released the full pension and gratuity to the petitioner and decided to release anticipatory pension subject to outcome of the inquiry. Pertinently, in the present case, inquiry could not be concluded during the pendency of this case because ex-parte ad interim order was passed by this Court.

14. In view of foregoing analysis, I am unable to hold that impugned order suffers from any illegality which warrants interference by this Court. However, considering the fact that impugned order was issued on 02.09.2004 and a long passage of time is there in between, this petition is disposed of by directing the respondent No.2 **(i)** to conclude the further inquiry within six months from the date of production of copy of this order (subject to cooperation of the petitioner), failing which the departmental enquiry shall stand abated automatically; **(ii)** after conclusion of inquiry, appropriate order be passed within aforesaid time regarding retiral dues of petitioner. In case petitioner is found entitled for any retiral dues, retiral dues shall be settled within two months from the date final order is passed under Rule 9 of the Pension Rules. Needless to mention that if inquiry stands abated after six months as mentioned above, the petitioner shall get all consequential benefits as if instant disciplinary proceeding was never instituted against him.

15. With the aforesaid and without expressing any opinion on merits of the case, petition is **disposed of.**

Order accordingly

I.L.R. [2021] M.P. 85
WRIT PETITION
Before Mr. Justice Vishal Dhagat
WP No. 5450/2013 (Jabalpur) order passed on 5 December, 2020

G. USHA RAJSEKHAR (SMT.) …Petitioner

Vs.

GOVERNMENT OF INDIA & ors. ….Respondents

A. Constitution – Article 226/227 – Extension of Stay Order – **Held – Apex Court has concluded that whatever stay has been granted by any Court including High Court automatically expires within a period of six months, and unless extension is granted for good reason, within next six months, the trial Court is, on expiry of first period of six months, to set a date for trial and go ahead with same – Present case not fit for extension of stay – I.A. dismissed. (Paras 6, 8 & 9)**

क. संविधान – अनुच्छेद 226/227 – रोक आदेश का विस्तार – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि उच्च न्यायालय सहित किसी भी न्यायालय द्वारा जो भी रोक आदेश जारी किया गया है, छह माह की अवधि के भीतर स्वतः समाप्त हो जाता है, तथा जब तक कि अगले छह माह के भीतर पर्याप्त कारण के लिए विस्तार प्रदान नहीं किया जाता है, तो विचारण न्यायालय प्रथम छह माह की अवधि के समाप्त होने पर, विचारण की तिथि तय करेगा और उक्त पर आगे कार्यवाही करेगा – वर्तमान प्रकरण रोक आदेश के विस्तार हेतु उचित नहीं है – अंतर्वर्ती आवेदन खारिज।

B. Constitution – Article 226/227 – Caste Certificate – Enquiry – Competent Authority **– Held – Adjudicating the claim of a person whether he belonged to a particular caste or not, is to be done by Scrutiny Committee but to verify whether a certificate is issued from office of competent authority or not or from the office where a person claims it to be issued, can be looked into by the in-charge person of that office – Such verification of certificate cannot be said to be an enquiry regarding claim of petitioner. (Para 8)**

ख. संविधान – अनुच्छेद 226/227 – जाति प्रमाणपत्र – जांच – सक्षम प्राधिकारी **– अभिनिर्धारित – एक व्यक्ति के दावे का न्यायनिर्णयन, कि वह एक विशिष्ट जाति का है अथवा नहीं, छानबीन समिति द्वारा किया जाना चाहिए लेकिन यह सत्यापित करने के लिए कि क्या कोई प्रमाणपत्र सक्षम प्राधिकारी के कार्यालय से जारी किया गया है या नहीं या उस कार्यालय से जहां से कोई व्यक्ति इसे जारी करने का दावा करता है, उस कार्यालय के प्रभारी व्यक्ति द्वारा देखा जा सकता है – उक्त प्रमाणपत्र के सत्यापन को याची के दावे से संबंधित एक जांच नहीं कहा जा सकता।**

Cases referred:

Misc. Application No. 1577/2020 order passed on 15.10.2020 (Supreme Court), (1994) 6 SCC 241.

Shobha Menon with *Rahul Choubey*, for the petitioner.
J.K. Jain, Asstt. Solicitor General for the respondent No. 2.

O R D E R
(Hearing Through Video Conferencing)

VISHAL DHAGAT, J. :- Petitioner has filed **I.A No.8273/2020.**

2. It is prayed by learned Senior Counsel appearing for the petitioner to extend the period of stay order granted by this Court vide order dated 01.04.2013 and pass appropriate order to the respondents, particularly respondent no.2, for not proceeding further with lodging of FIR in view of the facts and circumstances of the case. It is submitted that the Apex Court has clarified the order passed in *Asian Resurfacing of Road Agency Private Ltd. and another vs Central Bureau of Investigation* (Misc. Application No.1577/2020) and held that stay order granted by any Court shall automatically expire within a period of six months unless extended.

3. It is submitted by learned Senior Counsel for the petitioner to extend the stay order on the ground that it was beyond the domain of either Tehsildar or Naib Tahsildar to conduct any enquiry into caste certificate and held it fake. Certificate of petitioner is to be scrutinized by scrutiny committee as per directives of Apex Court in case of *Kumari Madhuri Patil and Another vs. Additional Commissioner* reported in (1994) 6 SCC 241.

4. Counsel appearing for respondents opposed the application for extension of stay order.

5. Heard learned Senior Counsel for petitioner as well as respondents.

6. The Apex court, in the order dated 15.10.2020 in *Asian Resurfacing of Road Agency Private Ltd.* (supra) has held that " *whatever stay has been granted by any Court including High Court automatically expires within a period of six months, and unless extension is granted for good reason, as per our judgment, within next six months, the trial court is, on the expiry of first period of six months, to set a date for trial and go ahead with same*."

7. In view of the aforesaid law laid down by Three-Judges Bench of Apex Court presided by Hon'ble Justice Shri R.F. Nariman, it is to be seen whether there is any good reason for extending the stay order dated 01.04.2013.

8. Deputy Collector, Jabalpur vide its letter dated 07.06.06, has informed Director Vigilance of Defence Ministry that caste certificate of petitioner is not found to be entered in Register, where record of issuance of caste certificate is entered. Investigation was done by Tehsildar to ascertain the fact whether caste certificate of petitioner was issued by concerned authority or not. Tehsildar did not conduct enquiry adjudicating the claims of petitioner of belonging to a particular caste, therefore, there is no substance in the argument of Senior Counsel appearing for the petitioner that it is not within the domain of Tehsildar or Naib Tehsildar to enquire into caste certificate of petitioner and hold it fake. Caste certificate of petitioner was never issued by the Authority and same was counterfeited and forged document. In case of *Madhuri Patil* (supra) procedure was streamlined for issuance of social status certificates of Scheduled Castes and Scheduled Tribes, scrutiny of caste certificate and approval. Adjudicating the claims of a person whether he belonged to a particular caste or not is to be done by Scrutiny Committee as laid down in said case. However, whether a certificate is issued from the office of competent authority or not or from the office where a person claims it to be issued can be looked into by the In-charge person of that office. Such a verification of certificate cannot be said to be an enquiry regarding claims of petitioner. After issuance of letter dated 07.06.06, petitioner did not submit any fresh certificate issued by Competent Authority before respondents. Nothing is available on record to show that petitioner has filed any application for issuance of fresh caste certificate. So no claim of petitioner is pending before Competent Authority or Scrutiny Committee for belonging to a particular caste.

9. In view of above, I do not find it a case for extension of stay order granted on 01.04.2013. **I.A. 8273/2020,** for extension of stay order is **dismissed.**

10. Registry to list the case **at the next stage of hearing.**

Order accordingly

I.L.R. [2021] M.P. 88 (DB)
WRIT PETITION
Before Mr. Justice Mohammad Rafiq, Chief Justice & Mr. Justice Prakash Shrivastava
WP No. 1874/2019 (Jabalpur) decided on 5 January, 2021

ALOK KUMAR CHOUBEY …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

A. Constitution – Article 14 & 226 – Contractual Matter –Forfeiture of Security Amount **– Held – Action of respondents in withholding the amount of performance guarantee (security) of petitioner was arbitrary and unreasonable being violative of Article 14 of Constitution – Respondent wrongly interpreted clauses of agreement – Respondent directed to refund the amount with interest @ 6% p.a. – Petition allowed. (Paras 19, 21 & 22)**

क. संविधान – अनुच्छेद 14 व 226 – संविदात्मक मामला – प्रतिभूति राशि का समपहरण – अभिनिर्धारित – याची की कार्य संपादन गारंटी (प्रतिभूति) की राशि को प्रत्यर्थीगण द्वारा रोके रखने की कार्रवाई संविधान के अनुच्छेद 14 का उल्लंघन करने के कारण मनमानी एवं अनुचित थी – प्रत्यर्थी ने करार के खण्डों का गलत रूप से निर्वचन किया – प्रत्यर्थी को 6 प्रतिशत के वार्षिक ब्याज सहित राशि वापस करने हेतु निदेशित किया गया – याचिका मंजूर।

B. Constitution – Article 226 and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 17 – Efficacious Alternate Remedy – Contractual Matters – Interim Relief **– Held – Alternate remedy of dispute resolution system by way of application to competent authority, appeal to appellate authority and thereafter to Arbitration Tribunal, in present facts cannot be taken as efficacious alternative remedy particularly when Section 17 of 1983 Act bars the Tribunal from granting any interim relief. (Para 21)**

ख. संविधान – अनुच्छेद 226 एवं माध्यस्थम् अधिकरण अधिनियम, म.प्र. (1983 का 29), धारा 17 – प्रभावकारी वैकल्पिक उपचार – संविदात्मक मामले – अंतरिम अनुतोष – अभिनिर्धारित – सक्षम प्राधिकारी को आवेदन, अपीली प्राधिकारी तथा तत्पश्चात् माध्यस्थम् अधिकरण को अपील के माध्यम से विवाद समाधान प्रणाली के वैकल्पिक उपचार को वर्तमान तथ्यों में प्रभावकारी वैकल्पिक उपचार के रूप में नहीं लिया जा सकता विशिष्टतः जब 1983 के अधिनियम की धारा 17 अधिकरण को अंतरिम अनुतोष प्रदान करने से वर्जित करती है।

C. Constitution – Article 226/227 – Alternate Remedy – Exceptions **– Held – Despite availability of alternative remedy, writ petition can be entertained – Seven recognized exceptions are (i) when petition filed for enforcement of fundamental rights, (ii) if there is violation of principle of**

natural justice, (iii) where order of proceedings is wholly without jurisdiction, (iv) where *vires* of Act is challenged, (v) where availing of alternative remedy subjects a person to very lengthy proceedings and unnecessary harassment, (vi) where question raised is purely legal one, there being no dispute on facts and (vii) where State or its intermediary in a contractual matter acts against public good/interest unjustly, unfairly, unreasonably and arbitrary. (Para 16 & 17)

ग. संविधान – अनुच्छेद 226/227 – वैकल्पिक उपचार – अपवाद – अभिनिर्धारित – वैकल्पिक उपचार की उपलब्धता के बावजूद, रिट याचिका ग्रहण की जा सकती है – सात मान्य अपवाद हैं **(i)** जब मूल अधिकारों के प्रवर्तन हेतु रिट याचिका प्रस्तुत की गई हो, **(ii)** यदि नैसर्गिक न्याय के सिद्धांत का उल्लंघन है, **(iii)** जहाँ कार्यवाहियों का आदेश पूर्ण रूप से बिना अधिकारिता का हो, **(iv)** जहां अधिनियम की शक्तिमत्ता को चुनौती दी गई हो, **(v)** जहां वैकल्पिक उपचार का लाभ लेने से व्यक्ति को बहुत लंबी कार्यवाहियां तथा अनावश्यक उत्पीड़न का सामना करना पड़ता है **(vi)** जहां उठाया गया प्रश्न पूरी तरह से एक विधिक प्रश्न है, तथ्यों पर कोई विवाद नहीं है तथा **(vii)** जहां राज्य तथा उसके मध्यवर्ती एक संविदात्मक मामले में लोकहित के विरूद्ध अन्यायपूर्ण, पक्षपाती, अनुचित और मनमाने रूप से कार्य करते हैं।

Cases referred:

AIR 1981 Gau. 15, AIR 1967 SC 1081, AIR 1968 SC 1186, (1988) 1 SCC 401, (2011) 2 SCC 439, (1998) 8 SCC 1, AIR 1961 SC 1506, AIR 1961 SC 372, (2000) 10 SCC 482, (2001) 8 SCC 344, (2001) 10 SCC 740, AIR 2005 SC 3936, (2010) 11 SCC 186, (2015) 7 SCC 728, (2019) 19 SCC 9.

Shekhar Sharma, for the petitioner.
Swapnil Ganguly, Dy. A.G. for the respondents/State.

O R D E R

(Hearing convened through Video Conferencing)

The Order of the Court was passed by : **MOHAMMAD RAFIQ, C.J**. :- This writ petition has been filed by Alok Kumar Choubey challenging validity of the order dated 22.12.2018 (Annexure-P/11), passed by the respondent No.5- Divisional Project Engineer, Public Works Department, Project Implementation Unit, Division Seoni, Seoni (M.P.), whereby the amount of performance guarantee (security) submitted by the petitioner for the work of construction of 100 Seater Chhatravas Building at Lakhnadon, District Seoni including water supply, sanitary fittings and electrification etc. was forfeited.

2. Mr. Shekhar Sharma, learned counsel for the petitioner submits that the petitioner is a proprietorship Firm and is registered as a "C" class contractor with

the respondent-Department. Being the successful bidder, the petitioner was awarded the work for construction of the aforesaid building and Letter of Acceptance (for short "LOA") was issued in his favour on 02.06.2014. According to the terms of LOA, the petitioner was required to execute the entire work within 13 months excluding the rainy season. The cost of work was Rs.129.50 Lac. An agreement was executed between the petitioner and the respondents. The time period for maintenance of the constructed work prescribed in the said agreement was two years from the date of completion of the work. Reference is made to Clause 18 of the agreement, Clause 18.1 whereof stipulates that the defect liability period of work in the contract shall be as per the contract data. It is contended that as per the stipulation contained in the contract data, the defect liability period in accordance with Clause 18.3 (GCC) read with its corresponding clause in contract data shall be of two years. The respondents have wrongly relied on Clause 29 of the agreement and the corresponding clause of the contract data and have treated the additional period of three months, beyond the period of two years, also as part of the defect liability period/maintenance guarantee period. Learned counsel argued that the period of two years would start from the date of completion of the work. In the present case, petitioner completed said work on 08.03.2016 and the respondent No.4- Divisional Project Engineer, PWD had issued a completion certificate in that behalf to the petitioner on 30.05.2016. No defect whatsoever was pointed out in the work executed by the petitioner during the aforesaid period of two years. As per the terms of the contract, the petitioner would be entitled to refund of the performance guarantee furnished for the maintenance of the work. When the petitioner vide letter dated 03.05.2018 requested the respondent No.5- Divisional Project Engineer, PWD for refund of the amount deposited towards the security and performance guarantee, the respondents by communication dated 25.05.2018 (Annexure-R/2) required the petitioner to rectify the mistake in the work as per the inspection report dated 24.05.2018 submitted by the concerned Project Engineer. Learned counsel submitted that the respondents have misinterpreted the stipulation given in the contract data in respect of Clause 29 of the agreement, which only provides that the performance guarantee (security) shall be valid up to three months beyond the completion of the defect liability period. That however does not have the effect of extending the defect liability period by additional three months over and above the period of two years.

3. Mr. Swapnil Ganguly, learned Deputy Advocate General appearing for the respondents-State opposed the petition by contending that the writ petition should not be entertained as the petitioner has got efficacious alternative remedy in view of Clause 12 of the agreement, which provides for a dispute resolution system. The petitioner has to first approach the competent authority and, if the matter is not decided within 45 days, he can file appeal before the competent appellate authority within 30 days. If the grievance is still not redressed, he can

approach Madhya Pradesh Arbitration Tribunal constituted under the provisions of Madhya Pradesh Madhaystam Adhikaran Adhiniyam, 1983 (for short "the Adhiniyam of 1983"). Learned Deputy Advocate General submitted that the petitioner does not automatically become entitle to get refund of the performance guarantee and security on expiry of maintenance period on 07.03.2018. Though the defect liability period/maintenance guarantee period for building work was two years after completion of work on 08.03.2016, but Clause 29 of the contract data makes it abundantly clear that the performance guarantee (security) shall be valid for a period of three months beyond the completion of defect liability period. Therefore, the performance guarantee/security, in this case shall remain valid till 07.06.2018 i.e., beyond three months from 07.03.2018. As the petitioner was duly communicated by letter dated 23.05.2018 to complete the maintenance work and rectify the mistake on the basis of the inspection report dated 24.05.2018, the respondents were not obliged to refund the performance guarantee/security to the petitioner.

4. We have given our anxious consideration to the rival contentions of the parties and perused the record.

5. It is significant to note here that the respondents by way of an application for taking subsequent events on record dated 05.11.2020 have stated that the petitioner has deposited two FDRs bearing Nos. 736049 & 736031, amounting to Rs.6,30,000/- & Rs. 6,65,000/- on 07.12.2016 & 18.07.2018 respectively. The repair work amounting to Rs.3,01,055/- was done through Maa Narmada Construction and, therefore, the aforesaid amount was adjusted against the security/performance guarantee submitted by the petitioner. An amount of Rs.3,63,945/- has been disbursed to the petitioner vide Cheque No.523333 dated 23.01.2020 and the amount of Rs.6,30,000/- of the FDR No.736049 has already been refunded to the petitioner on 22.01.2020.

6. Dealing first of all the preliminary objection of the respondents that since the petitioner has got an efficacious alternative remedy in view of dispute resolution system provided under Clause 12 of the agreement, the writ petition ought not to be entertained, what is to be seen is whether such remedy can indeed said to be 'efficacious'. The word 'efficacious' is adjective according to grammar and its noun is 'efficacy', which is derived from Latin word *'efficacie'* which means capacity to produce results. Accordingly, the word 'efficacious' means able to produce the intended effect or result. The Gauhati High Court in *Abdul Sammad vs. Executive Committee of the Marigaon Mahkuma Parishad,* AIR 1981 Gau. 15, held that it is well-known that the meaning of the term "efficacious" is "able to produce the intended result". The High Court negatived the preliminary objection raised by the respondents with regard to maintainability of the writ petition, as its view was that the alternative remedy provided in that case was not likely to produce the intended result.

7. In *Raja Anand v. State of Uttar Pradesh*, AIR 1967 SC 1081, relying upon the judgment in *White and Collins v. Minister of Health* (1939) 2 KB 838, the Supreme Court held that where the jurisdiction of an administrative authority depends upon a preliminary findings of facts, the High Court is entitled in a writ proceeding to determine upon its independent judgment whether or not the finding of facts is correct. In *State of Madhya Pradesh v. D.K. Jadav*, AIR 1968 SC 1186, the apex Court again held that when the jurisdiction of an administrative authority depends on preliminary findings of fact, the High Court can go into the correctness of the same under Article 226.

8. The Supreme Court in *Salonah Tea Co. Ltd. and Others v. Superintendent of Taxes, Nowgong and Others* - (1988) 1 SCC 401, held that normally in a case where tax or money has been realized without the authority of law, there is in such cases concomitant duty to refund the realization as a corollary of the constitutional inhibition that should be respected unless it causes injustice or loss in any specific case or violates any specific provision of law. If the tax was collected without authority of law, the respondents had no authority to retain the money and were liable to refund the same, held the Supreme Court. It held that in an application under Article 226 of the Constitution, the Court has power to direct refund, however, courts have made a distinction between those cases where a claimant approaches a High Court seeking relief of obtaining refund only and those where refund is sought as a consequential relief after striking down of the order of assessment etc. A petition solely praying for issue of a writ of mandamus directing the State to refund the money allegedly collected by the State of tax is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against authority which had illegally collected the money as a tax. In *Godavari Sugar Mills Limited vs. State of Maharashtra & others* reported in (2011) 2 SCC 439, also it was held by the Supreme Court that there is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment.

9. The judgment of the Supreme Court in *Whirlpool Corporation vs. Registrar of Trade Marks,* reported in (1998) 8 SCC 1, is the landmark decision on the question of maintainability of writ petition despite availability of alternative remedy. In that case too, it was held by the Supreme Court that under Article 226 of the Constitution, the High Court having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. The High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction, but the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least four contingencies, namely, where the writ

petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or where the vires of an Act is challenged.

In *Whirlpools Corporation* (supra), the Supreme Court followed its earlier two Constitution Bench judgments in *A.V. Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani*- AIR 1961 SC 1506 and *Calcutta Discount Co. Ltd. v. ITO, Companies Distt.* - AIR 1961 SC 372.

In *A.V. Venkateswaran, Collector of Customs* (supra), the Supreme Court held as under :-

> "The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual fact which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus preeminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

In *Calcutta Discount Co. Ltd.* (supra), the Supreme Court held as under:

> "Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."

10. The Supreme Court in *Union of India and Another v. State of Haryana and Another* - (2000) 10 SCC 482, has added one more exception to the rule of alternative remedy, namely, the writ petition can be entertained despite alternative remedy if the question raised is purely legal one, there being no dispute on facts.

11. In *Verigamto Naveen vs. Govt. of A.P. and others,* reported in (2001) 8 SCC 344, the Supreme Court held that the freedom of the Government to enter into business with anybody it likes is subject to the condition of reasonableness and fair play as well as public interest. It was further held that after entering into a contract, in cancelling the contract, which is subject to terms of the statutory provisions, it cannot be said that the matter falls purely in a contractual field and therefore, it cannot be held that since the matter arises purely on contract, interference under Article 226 of the Constitution is not called for.

12. In *State of Tripura v. Manoranjan Chakraborty,* (2001) 10 SCC 740, the Apex Court held that if gross injustice is done and it can be shown that for good reason the Court should interfere, then notwithstanding the alternative remedy which may be available by way of appeal or revision, a Writ Court can in an appropriate case exercise its jurisdiction to do substantial justice.

13. In *State of H.P. And Others v. Gujarat Ambuja Cement Limited and Another* - AIR 2005 SC 3936, the Supreme Court while considering the objection of alternative remedy to filing of writ petition under Article 226 of the Constitution, held that despite existence of alternative remedy, it is within the discretion of the High Court to grant relief under Article 226 of the Constitution. But normally the High Court should not interfere if there is efficacious alternative remedy is available. If somebody approaches the High Court without availing alternative remedy provided, the High Court should ensure that he has made out a strong case that there exists good ground to invoke the extraordinary jurisdiction. Following observations of the Supreme Court are reproduced herein for the facility of reference :-

> "Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. Income Tax Officer, Bareilly, AIR (1971) SC 33 that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition."

14. In *Zonal Manager, Central Bank of India vs. Devi Ispat Limited,* (2010) 11 SCC 186, the Supreme Court held that writ of mandamus can be issued even in contractual matters and in paragraph- 28 of the said judgment, the apex Court held as under:-

> "28. It is clear that (a) in the contract if there is a clause for arbitration, normally, a writ court should not invoke its jurisdiction; (b) the existence of effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Article 226; and (c) if the instrumentality of the State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition would be maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power. In the light of the legal position, writ petition is maintainable even in contractual matters, in the circumstances mentioned in the earlier paragraphs."

15. In *Joshi Technologies International Inc. v. Union of India and Others,* reported in (2015) 7 SCC 728, the Supreme Court held that the State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discrimination. If the facts of such case are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, Involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution.

16. Seven well recognized exceptions to the rule of alternative remedy, which can be culled out from the afore-discussed judgments of the Supreme Court for entertaining a writ petition under Article 226/227 of the Constitution, can be summarized thus: **(i)** where the writ petition has been filed for enforcement of fundamental rights; **(ii)** where there has been violation of principle of natural justice; **(iii)** where the order of proceedings is wholly without jurisdiction; **(iv)** where the *vires* of any Act is under challenge; **(v)** where availing of alternative remedy subjects a person to very lengthy proceedings and unnecessary harassment; **(vi)** where the writ petition can be entertained despite alternative remedy if the question raised is purely legal one, there being no dispute on facts; and **(vii)** where State or its intermediary in a contractual matter acts against public good/interest unjustly, unfairly, unreasonably and arbitrarily. Despite afore-noted exceptions, especially fifth and seventh of the above, whether or not in a particular case the writ court should entertain a petition under Article 226/227 of the Constitution of India rather than requiring the petitioner to avail alternative remedy, would always depend on the facts situation of a given case, upon the petitioner making out a strong case. If it is shown that the facts of the case are not

disputed and the Government or its instrumentality has been found acting unjustly, unfairly and unreasonably even in regard to its contractual obligations, the High Court would be justified in entertaining the writ petition despite availability of alternative remedy.

17. In view of what has been discussed above, the question is no longer *res integra* that if instrumentality of the State acts contrary to the public good, public interest unfairly, unjustly, unreasonably, discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, the writ petition would be maintainable.

18. It is not in dispute that the defect liability period/maintenance guarantee period is two years from the date of completion of the work. This period shall commence on 08.03.2016 and come to end on 07.03.2018. The question that arises for consideration in the present case is whether by virtue of what has been stated in the contract data in respect of Clause 29, the defect liability period/maintenance guarantee period shall stand extended by further three months? In order to correctly appreciate the stipulation contained in relevant clauses of the agreement and the corresponding clauses of the contract data, it would be appropriate to reproduce Clauses 18 and 29 of the agreement and the contract data, which read as under:

"**CLAUSE 18 OF THE AGREEMENT**

18. Correction of Defects noticed during the Defect Liability Period

18.1 The Defect Liability Period of work in the contract shall be as per the Contract Data.

18.2 The Contractor shall promptly rectify all defects pointed out by the Engineer well before the end of the Defect Liability Period. The Defect Liability Period shall automatically stand extended until the defect is rectified.

18.3 If the Contractor has not corrected a Defect pertaining to the Defect Liability Period to the satisfaction of the Engineer, within the time specified by the Engineer, the Engineer will assess the cost of having the Defect corrected, and the cost of correction of the Defect shall be recovered from the Performance Security or any amount due or that may become due to the contractor and other available securities.

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CLAUSE 29 OF THE AGREEMENT

29. Performance Security

The Contractor shall have to submit performance security and additional performance security, if any, as specified in the Bid Data Sheet at the time of signing of the contract. The contractor shall have to ensure that such performance security and additional performance security, if any, remains valid for the period as specified in the Contract Data.

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CONTRACT DATA

GCC Clause	Particulars	Data
18	Defect Liability Period	(C) For **Building** works - 2 years To execute, complete and maintain works in accordance with agreement and special conditions of contract (SGC) after issue of physical completion certificate as per "Annexure-U" **Note:** in accordance with clause 18.3 (GCC), the Engineer in Charge shall intimate the contractor about the cost assessed for making good the defects and if the contractor has not corrected defects, action for correction of defects shall be taken by the Engineer in Charge as below : (a) Deploy departmental labour and material or (b) Engage a contractor by issuing a work order at contract rate/SOR rate or (c) Sanction supplementary work in an existing agreement to a contractor for zonal works or similar other work or (d) Invite open tender or (e) Combination of above
29	Performance guarantee (Security) shall be valid up to	**Three months beyond** the completion of Defect Liability period (Maintenance Guarantee Period)"

19. Clause 18.1 of the agreement provides that the defect liability period of work in the contract shall be as per the contract data. The corresponding Clause 18 in the contract data provides that the defect liability period would be of two years. It is not disputed even by the respondents that the defect liability period is only of two years from the date of completion of the work. Clause 18.2 of the agreement provides that the Contractor shall promptly rectify all defects pointed out by the Engineer well before the end of the defect liability period. However, additionally it provides that the defect liability period shall automatically stand extended until the defect is rectified. It is in this context that the contract data in respect of Clause 29 has provided that performance guarantee/security shall be valid up to three months beyond the completion of the defect liability period. This is because that if any defect has been pointed out during the currency of the defect liability period and if despite that, the Contractor has not removed the defect, the defect liability period shall automatically extended until the defect is rectified. In order to safeguard against such an eventuality, Clause 29 in contract data provides that the performance guarantee/security shall extended for further three months, beyond the competition of the defect liability period. The very fact that the contract data in the relevant Clause 29 has provided that the performance guarantee/security shall be valid up to three months **beyond the completion of the defect liability period (maintenance guarantee period),** implies that the period of two years has been accepted as a defect liability period and it is only after this period that the performance guarantee/security has been taken to be extended for a further period of three months. Given the fact that there is no dispute about the defect liability period being of two years, the respondents on the basis of what has been stated in the contract data are not justified to claim that the additional period of three months would also be part of the defect liability period.

20. The Supreme Court in *Adani Power (Mundra) Limited vs. Gujarat Electricity Regulatory Commission and others,* reported in (2019) 19 SCC 9, after considering the plethora of case-laws, held that the contract between the parties is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, howsoever reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without any outside aid. The term of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely.

21. In the facts of the case, action of the respondents in withholding the amount of the performance guarantee (security) of the petitioner is held to be arbitrary and unreasonable, being violative of Article 14 of the Constitution of India. The respondents are therefore not justified in withholding the amount of performance guarantee (security) deposited by the petitioner and then insisting

upon the petitioner to invoke arbitration clause rather than invoking writ jurisdiction of this Court under Article 226 of the Constitution of India. When the facts are not in dispute and it has been established to the satisfaction of this Court that the respondents have acted arbitrarily and contrary to the relevant stipulations in the agreement and the contract data, the availability of alternative remedy, in the facts of the present case, cannot justify rejection of the present writ petition on the spacious plea of alternative remedy. The alternative remedy of dispute resolution system by way of an application to the competent authority and thereafter to the appellate authority and then thereafter to the Arbitration Tribunal, in the facts of the present case, cannot be taken as an efficacious alternative remedy, particularly when Section 17 of the Adhiniyam of 1983 bars the Tribunal from granting any interim relief. In the facts of the present case, requiring the petitioner to go through the process of dispute resolution system provided for under Clause 12 of the agreement, would amount to subjecting him to lengthy proceedings without there being any remedy of interim relief, inasmuch as the question raised in the present writ petition is purely legal one, based on interpretation of Clause 29 of the Contract Data and the impugned action of the respondent is totally against the public good, being highly unjust, unfair, unreasonable and arbitrary. Clauses v, vi & vii of the exceptions to the rule of alternative remedy, as enumerated in Para-16 above, are therefore clearly attracted in the present case.

22. In view of the above, the present writ petition deserves to succeed and is hereby **allowed.** The respondents are directed to refund the entire amount of performance guarantee (security), after adjusting the amount already paid to the petitioner, together with interest @ 6% per annum from the date petitioner first demanded the refund i.e. from 03.05.2018, till the date of actual refund, both on the amount already paid and now due to be paid, for the period such amount was unduly withheld by the respondents. The compliance of the present order shall be made within three months from the date of production of copy of this order before the respondents.

Petition allowed

I.L.R. [2021] M.P. 100
MISCELLANEOUS PETITION
Before Mr. Justice Vivek Rusia
MP No. 3019/2020 (Indore) decided on 2 December, 2020

BAJAJ ALLIANZ GENERAL INSURANCE CO. …Petitioner

Vs.

HAFIZA BEE & ors. …Respondents

***A. Employee's Compensation Act (8 of 1923), Section 3 & 12 and Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Necessary and Proper Party* – Held – As per Section 12 where any person (principal) for purpose of his trade/business contracts with other person (contractor) for execution of work, which is part of trade/business of principal, he shall be liable to pay compensation to any employee employed in execution of that work as if that employee had been immediately employed by him – Deceased was employee of Respondent No. 7 and was engaged by Respondent No. 6 as a contractor to do its work – Being principal employer, Respondent No. 6 is necessary and proper party in claim case – Petition dismissed. (Para 5 & 6)**

क. कर्मचारी प्रतिकर अधिनियम (1923 का 8), धारा 3 व 12 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – आवश्यक एवं उचित पक्षकार – अभिनिर्धारित – धारा 12 के अनुसार जहां कोई व्यक्ति (स्वामी) अपने कारबार/व्यापार के प्रयोजन हेतु किसी अन्य व्यक्ति (ठेकेदार) के साथ कार्य के निष्पादन के लिए संविदा करता है, तो वह उस कार्य के निष्पादन में नियोजित किसी भी कर्मचारी को प्रतिकर का भुगतान करने का दायी होगा मानो कि वह कर्मचारी उसके द्वारा तुरंत नियोजित किया गया था – मृतक, प्रत्यर्थी क्र. 7 का कर्मचारी था तथा प्रत्यर्थी क्र. 6 द्वारा एक ठेकेदार के रूप में अपना कार्य करने हेतु लगाया गया था – प्रधान नियोक्ता होने के नाते, प्रत्यर्थी क्र. 6 दावा प्रकरण में आवश्यक एवं उचित पक्षकार है – याचिका खारिज।

***B. Civil Procedure Code (5 of 1908), Order 1 Rule 10 & Order 2 Rule 2 – Necessary and Proper Party* – Held – Comprehensive General Liability Policy taken by Respondent No. 6 from petitioner – In order to defend probable liability upon Respondent No. 6, it is for insurance company also to defend the claim – In view of provisions of Order 2 Rule 2 CPC, all issues arising out of accident are liable to be decided in one claim case – So far as terms and conditions of policy are concerned, it is a matter of evidence – Petitioner Insurance company rightly impleaded as respondents in claim case – Petition dismissed. (Para 7 & 9)**

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 व आदेश 2 नियम 2 – आवश्यक एवं उचित पक्षकार – अभिनिर्धारित – प्रत्यर्थी क्र. 6 द्वारा याची से कॉम्प्रीहेन्सिव जनरल लाईबिलिटी पॉलिसी ली गई – प्रत्यर्थी क्र. 6 पर संभाव्य दायित्व का

बचाव किये जाने हेतु, उसके साथ–साथ यह बीमा कंपनी के लिए भी है कि वह दावे का बचाव करें – सि.प्र.सं. के आदेश–2 नियम 2 के उपबंधों को दृष्टिगत रखते हुए, दुर्घटना से उत्पन्न हुए सभी विवाद्यक एक ही दावा प्रकरण में विनिश्चित किये जाने योग्य हैं – जहां तक पॉलिसी के निबंधनों और शर्तों का संबंध है, यह साक्ष्य का विषय है – याची बीमा कंपनी को दावा प्रकरण में उचित रूप से अनावेदक के रूप में पक्षकार बनाया गया – याचिका खारिज।

Monesh Jindal, for the petitioner.

O R D E R

(Heard on the question of admission through Video Conferencing)

VIVEK RUSIA, J. :- Petitioner - Insurance Co. has filed the present petition being aggrieved by the order dated 26.2.2020 whereby Commissioner under Employees' Compensation Act cum Labour Court, Pithampur Camp (Dhar) has rejected the application filed under Order 1 Rule 10 read with Section 151 of the C.P.C.

2. Facts of the case, in short, are as under :

Respondents No.1 to 5 being dependents of Late Rais have filed an application u/s. 4 of the Workman Compensation Act (now Employee's Compensation Act) before the Labour Court, Dhar claiming compensation of Rs.20.00 Lakhs from respondents No.6, 7 and the present petitioner.

As per averments made in the claim case, Late Rais being an employee of respondent No.7 was working in the site of respondent No.6. On 14.1.2018, in the course of employment on the site, he fell and succumbed to the injury. A report was lodged in the Police Station. According to the claimants, deceased used to earn Rs.9,000/- per month by way of wages, therefore, they are entitled to compensation. The petitioner being insurer has been arrayed as one of the non-applicant because respondent No.6 has taken Comprehensive General Policy from the petitioner.

The petitioner filed an application under Order 1 Rule 10 read with Section 151 of the C.P.C. seeking deletion of its name from the array of opponents on the ground that the deceased was not the employee of respondent No.6 who took the insurance policy and even otherwise in the insurance policy, no coverage was given in respect of employees/workers by virtue of Exclusion Clause 1.3, under a workers' compensation, disability benefits or unemployment compensation law or any similar law. Therefore, the name of the petitioner - Insurance Co. is liable to be deleted from the array of non-applicant in the claim case.

The aforesaid application was opposed by respondents/claimants and vide impugned order dated 26.2.2020, learned Commissioner has rejected the

application, hence the present petition before this Court.

3. Shri Monesh Jindal, learned counsel appearing for the petitioner, Insurance Co. submits that the petitioner Insurance Co. has unnecessarily been impleaded as non-applicant in the claim case because there is no contract between the petitioner and respondent No.6 and admittedly, the deceased was an employee of respondent No.7. The Insurance Co. gave the coverage to respondent No.6 who was not the employer of the deceased at the time of the accident. Even otherwise, the compensation payable under the Employees' Compensation Act has been excluded from the policy. Hence, the impugned order is liable to be set aside and the application filed by the petitioner be allowed by deleting the name of petitioner from the array of non-applicant.

I have heard the learned counsel for the petitioner and examined the provisions of the law and record of the case.

4. Section 2(dd) defines the word "employee" and Section 2(e) defines the word "employer". Section 3 says that employer is liable to pay compensation in accordance with the provisions of Chapter II in case of disablement and death of an employee by accident arising out of and in the course of his employment. The mode of fixation of compensation is given in Section 4 and the calculation is provided in Section 5. In the present case, according to the claimants, the deceased was an employee of respondent No.7 who was doing the work of respondent No.6 at the time of the accident hence , respondent No.6 became a principal employer.

5. Section 12 of the Employee's Compensation Act specifically provides that where any person (referred as principal) in the course of or for the purposes of his trade or business contracts with any other person (who is referred as a contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay any employee employed in the execution of the work any compensation which he would have been liable to pay if that employee had been immediately employed by him. Section 12 (1) is reproduced below :

> **"12. Contracting.—***(1)* Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any 1[employee] employed in the execution of the work any compensation which he would have been liable to pay if that 1[employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if

> references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the 1[employee] under the employer by whom he is immediately employed."

Therefore, in view of the aforesaid provision, being a principal employer i.e. respondent No.6 is a necessary and proper party in the claim case.

6. So far as the terms and conditions of the policy are concerned, it is a matter of evidence. As per averments made in the claim case, the deceased was an employee of respondent No.7 who was engaged by respondent No.6 as a contractor to do its work. *Prima facie,* the claimants have rightly made respondent No.6 and 7 as non-applicant in the claim case.

7. So far as impleading of petitioner - Insurance Co. as non-applicant in the claim case is concerned, admittedly, Comprehensive General Liability Policy had been taken by respondent No.6 from the present petitioner. All the issues arising out of accident are liable to be decided in one claim case in view of the provisions of Order 2-Rule 2 of the Civil Procedure Code.

8. Shri Jindal, learned counsel for the petitioner submits that in the case of Motor Vehicle Act, insurance of the motor vehicle is a mandatory requirement, but in the Employees' Compensation Act, there is no such statutory requirement of having an insurance policy by the employer for the employee. If the respondent No.6, is held liable to pay compensation then the petitioner may reimburse the claim but the petitioner can not said to be a necessary party to contest the claim case on merit.

9. The aforesaid argument has no substance because there is a relationship of insurer and insured between the petitioner and respondent No.6. In order to defend the probable liability upon the respondent No.6, it is for the Insurance Co. also to defend along with him. At the time of recovery of the amount by respondent No.6 from the petitioner, it would not be open for the petitioner to challenge the accident, amount of compensation and liability to pay respondent No.6 for payment of compensation. Whether the Insurance Co. is liable to indemnify the respondent no.6 or not, is one of the issues liable to be decided based on evidence by the learned Commissioner? In view, of the provisions of Order 2-Rule 2 of the Civil Procedure Code, all the issues are liable to be decided in one claim case for which Insurance Co. is a necessary party and proper party. Hence, I do not find any illegality in the impugned order.

Accordingly, this petition is hereby dismissed.

No order as to costs.

Petition dismissed

I.L.R. [2021] M.P. 104
APPELLATE CRIMINAL
Before Mr. Justice Sujoy Paul
CRA No. 5610/2019 (Jabalpur) decided on 8 December, 2020

RAJU @ SURENDAR NATH SONKAR …Appellant

Vs.

STATE OF M.P. …Respondent

A. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8/21 – Independent Witnesses **– Held – Search/seizure witnesses turned hostile but Police Officer made his deposition with accuracy and precision which was not demolished in cross-examination – If statement of police officer is worthy of credence, conviction can be recorded on basis of his statement, even if it is not supported by independent witness – Conviction upheld – Appeal dismissed. (Paras 13 to 15 & 26)**

क. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8/21 – स्वतंत्र साक्षीगण – अभिनिर्धारित – तलाशी/जब्ती के साक्षीगण पक्षविरोधी हो गए किंतु पुलिस अधिकारी ने उसका अभिसाक्ष्य यथार्थता एवं सूक्ष्मता के साथ दिया जो कि प्रतिपरीक्षण में नष्ट नहीं हुआ था – यदि पुलिस अधिकारी का कथन विश्वास योग्य है, उसके कथन के आधार पर दोषसिद्धि अभिलिखित की जा सकती है भले ही वह स्वतंत्र साक्षी द्वारा समर्थित न हो – दोषसिद्धि कायम – अपील खारिज।

B. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 50 – Search & Seizure – Procedure **– Held – Accused must be apprised regarding his right to get searched before Gazetted Officer or Magistrate – Despite apprising, if accused has chosen to be searched by police officer, no fault can be found in the search – Further, as a rule of thumb, in all circumstances, search cannot vitiate merely because it was not conducted before Gazetted Officer or Magistrate. (Paras 20 to 25)**

ख. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 50 – तलाशी व जब्ती – प्रक्रिया – अभिनिर्धारित – अभियुक्त को, राजपत्रित अधिकारी या मजिस्ट्रेट के समक्ष तलाशी लिये जाने के उसके अधिकार के संबंध में अवगत कराया जाना चाहिए – अवगत कराये जाने के बावजूद यदि अभियुक्त ने पुलिस अधिकारी द्वारा तलाशी लिये जाने का चुनाव किया है, तलाशी में कोई दोष नहीं निकाला जा सकता – इसके अतिरिक्त, व्यावहारिक नियम के रूप में, सभी परिस्थितियों में, मात्र इसलिए क्योंकि राजपत्रित अधिकारी या मजिस्ट्रेट के समक्ष तलाशी संचालित नहीं की गई थी, तलाशी दूषित नहीं हो सकती।

C. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 50 – Words "if such person so requires" – Interpretation **– Held – The**

expression "if such person so requires" needs to be given due weightage and full effect – A statute must be read as a whole in its context. (Paras 16 to 19)

ग. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 50 – शब्द ''यदि ऐसा व्यक्ति ऐसी अपेक्षा करता है'' – निर्वचन – **अभिनिर्धारित – अभिव्यक्ति ''यदि ऐसा व्यक्ति ऐसी अपेक्षा करता है'' को सम्यक् महत्व एवं पूर्ण प्रभाव दिये जाने की आवश्यकता है – एक कानून को उसके संदर्भ में संपूर्णतः से पढ़ा जाना चाहिए।**

Cases referred:

2018 AIR (SC) 2123, 2013 (2) SCC 67, 2001 (9) SCC 571, 2020 SCC Online SC 730, (2001) 1 SCC 652, (2020) 2 SCC 563, (1957) 1 All ER 49, AIR 1953 SC 274 : 1953 SCR 677 1953 Cri LJ 1105, AIR 1952 SC 369 : 1953 SCR 1, AIR 2002 SC 3240 : (2002) 7 SCC 273, AIR 2004 SC 1039 : (2004) 9 SCC 278, (1992) 4 SCC 711, AIR 1953 SC 394 : 1953 SCR 1188, AIR 1961 SC 1170 : (1962) 1 SCJ 417 : (1961) 1 LLJ 540, AIR 1997 SC 1165 : (1997) 3 SCC 511, AIR 2002 SC 564 : (2002) 2 SCC 135, AIR 1920 PC 181 : 1920 AC 662, (1949) 2 All ER 452 (HL), AIR 1975 SC 43 : (1975) 1 SCC 76, (2011) 1 SCC 609, (1999) 6 SCC 172, 2020 SCC Online Del 136, Cr.A. No. 676/2017 decided on 16.10.2018 (Delhi High Court), (2004) 5 SCC 128.

Nitin Dubey, for the appellant.
J.S. Hora, P.L. for the respondent-State.

J U D G M E N T

SUJOY PAUL, J. :- This appeal filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (Cr.P.C.) assails the judgment dated 21.06.2019 passed by Special Judge, Narcotic Drugs and Psychotropic Substances, Jabalpur in Sessions Trial No.15/2017 whereby the appellant is convicted for committing the offence punishable under Section 8/21 (b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) and directed to undergo sentence of RI for 3 years with fine of Rs.25,000/- and default stipulation in the event of non-payment of fine.

2. Briefly stated, the story of prosecution is that on 20.01.2017, the police received an information that the appellant is standing near Pan Bazar Gurandi, Jabalpur and is carrying objectionable substance namely "smack". After recording the information in the *"rojnamcha",* the Constable Bhupendra along with two independent witnesses reached the spot where the appellant was standing. The appellant was informed that an information is received regarding possession of "smack" by him and, therefore, he has an option either to get himself searched by the Gazetted Officer or Magistrate or he may permit the Police Authority to undertake the exercise of search. As per prosecution story, Sub-Inspector Rajendra Prasad Ahirwar (PW-4) got himself checked in the presence of

two witnesses and no objectionable substance was found in his possession. Thereafter, he searched the appellant and found 51 gm. of objectionable substance from the appellant. Panchnamas Ex.P/4 and Ex.P/5 were prepared at the spot.

3. As per the prosecution case, a conjoint reading of these exhibits makes it clear that the requirements of Section 50 of NDPS Act were satisfied. The objectionable substance so seized was sent for examination to RFSL, Bhopal. As per the examination report, the substance was found to be diacety lmorphine (heroin). The appellant who was arrested was tried by the Court below. The appellant abjured the guilt. After recording the evidence of the parties, the Court below opined that the procedural formalities as per NDPS Act were fulfilled by the prosecution. The Court below opined that the prosecution has succeeded to prove its case beyond reasonable doubt and accordingly convicted and sentenced the appellant as mentioned above.

Argument of Appellant

4. Shri Nitin Dubey, learned counsel for the appellant raised two fold submissions to assail the impugned judgment. **Firstly,** it is argued that the two independent witnesses in whose presence the search was allegedly made by PW/4 turned hostile and did not support the prosecution story. In absence of any independent witness, the conviction of appellant solely based on the statement of Shri Ahirwar (PW/4) is liable to be interfered with. **Secondly,** it is submitted that Section 50 of NDPS Act is mandatory in nature. In the manner, Ex.P/4 and P/5 are prepared, if the same are read with the statement of P.W. 4 (Rajendra Prasad Ahirwar), it will be clear like noon day that the mandatory requirement of Section 50 of NDPS Act is not satisfied. In absence of complying with this provision, the entire case of the prosecution is vitiated and appellant deserves exoneration on this count alone. To elaborate, it is contended that the search and seizure of objectionable substance from the appellant was not made before the Gazetted Officer or the Magistrate. Thus, the mandatory requirement of Section 50 of NDPS Act was not fulfilled. In support of aforesaid, learned counsel for the appellant has placed reliance on three Division Bench judgments of Supreme Court reported in *Arif Khan @ Agha Khan Vs. State of Uttarakhand* (2018 AIR (SC) 2123), *Ashok Kumar Sharma Vs. State of Rajasthan,* (2013 (2) SCC 67) and *Suresh and others Vs. State of Madhya Pradesh* (Criminal Appeal No.300 of 2009).

5. In alternatively, Shri Nitin Dubey, learned counsel for the appellant submits that in the event this Court is not satisfied with the argument of the appellant and is not inclined to interfere with the conviction, this Court may take into account the period already undergone in custody by the appellant between 21.01.2017 to 26.05.2017 and from the date of judgment till today and release him by reducing the period of sentence already undergone.

Argument of State

6. Countering the aforesaid argument, Shri Hora, learned P.L. for the State placed heavy reliance on Ex.P/5. It is submitted that the appellant was made aware about his valuable right flowing from Section 50 of NDPS Act, yet he has chosen to be searched by police officer. The expression " *if such persons so require"* is very important in Section 50 of NDPS Act and should be given full meaning.

7. The question of search by Magistrate or by a Gazetted Officer would arise only when such person has shown/expressed his desire for such search. Having not done so despite giving information about his right, it is no more open to the appellant to contend that the requirement of Section 50 of NDPS Act is not fulfilled. He placed reliance on the statement of PW-4 (Rajendra Prasad Ahirwar) and stated that no amount of cross-examination has demolished his case and, therefore, there is no reason to disbelieve that (i) an option was given to the appellant to get himself checked before the Magistrate or Gazetted Officer; (ii) appellant himself gave consent to get checked before PW-4 (Rajendra Prasad Ahirwar). Thus, no fault can be found in the procedure adopted by the prosecution.

8. It is further urged that the merely because two seizure witnesses namely Iqbal Ansari (PW 1) and Lakhan Choudhary (PW 2) have not supported the prosecution story, statement of PW-4 will not pale into insignificance. The law is well settled that if statement of Police Officer is trustworthy, there is no rule that the Police Authorities' statement must be discarded. He placed reliance on three Judge Bench judgment of Supreme Court reported in 2001 (9) SCC 571 *(P.P. Beeran Vs. State of Kerala)* in support of his aforesaid contention. He straneously contended that this judgment makes it clear that in the manner appellant was informed about his right, it fulfills the requirement of Section 50 of NDPS Act and almost in the similar circumstances, the Apex Court did not interfere in the matter.

9. Shri Hora, learned P.L. for the State also placed reliance on a recent judgment of Supreme Court reported in 2020 SCC Online SC 730 *(Rizwan Khan Vs. State of Chhattisgarh)* to bolster the same submission that IO's statement is trustworthy and conviction is rightly recorded by Court below.

10. No other point is pressed by learned counsel for the parties.

11. I have heard learned counsel for the parties at length and perused the record.

Findings

12. In the instant case, before the Court below seven witnesses entered the witness box and deposed their statements. PW/1 Iqbal Ansari and PW/2 Lakhan Choudhari were independent witnesses of seizure. However, both of them

turned hostile and did not support the prosecution story. A.S.I. Rajendra Prasad Ahirwar (PW/4) is the star witness of the prosecution. The search of the appellant was conducted by this officer. Remaining prosecution witnesses are the employees of police department, who have supported the prosecution story and proved the relevant documents.

First submission of Appellant

13. As noticed above, the impugned judgment was criticized by contending that statement of PW/4 is not worthy of credence because both the independent witnesses in whose presence objectionable substance was allegedly recovered from the appellant did not support the prosecution story and hence statement of PW/4 does not inspire confidence. It is noteworthy that PW/4 deposed with accuracy and precision regarding entire process of seizure of Heroin from the appellant. He candidly deposed that the appellant was informed about his constitutional/legal right to get himself searched before Gazetted Officer/ Magistrate but he did not opt for a search before them. Indeed, he clearly gave consent to be searched by PW/4. This statement of PW/4 could not be demolished during his lengthy cross examination. Hence, the question arises whether the story of prosecution can be disbelieved merely because it is mainly founded upon the statement of a police officer (PW/4).

14. This point is no more *res integra.* The Apex Court in *State (NCT of Delhi) vs. Sunil* (2001) 1 SCC 652 held as under:-

> "*It is an archaic notion that actions of the police officer should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law, the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature.* "

Similarly, in the case of *Surinder Kumar v. State of Punjab* (2020) 2 SCC 563, the Apex Court observed as under:-

> "*15. The judgment in* Jarnail Singh *v.* State of Punjab *(2011) 3 SCC 521, relied on by the counsel for the respondent State also supports the case of the prosecution. In the aforesaid judgment, this Court has held that merely because prosecution did not examine any independent witness, would not necessarily lead to conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status.* "

In ***Rizwan Khan*** (supra), it was opined as under:-

> ***"23.** It is settled law that the <u>testimony of the official witnesses cannot be rejected on the ground of non-corroboration by independent witness</u>. As observed and held by this Court in catena of decisions, examination of independent witnesses is not an indispensable requirement and such non-examination is not necessarily fatal to the prosecution case."*
>
> *(Emphasis Supplied)*

15. In view of principles laid down in the aforesaid judgments, it cannot be said as a rule of thumb that the statement of police officer to be discarded in all circumstances or such statement can be relied upon only when it is corroborated by statement of independent witness. If the statement of police officer is worthy of credence, the conviction can be recorded on the basis of statement of police officer even if such statement is not supported by independent witness. Thus, first submission of appellant deserves rejection.

<u>Second submission of appellant</u>

16. It is apposite to quote relevant portion of Section 50 of NDPS Act, which reads as under:-

> ***"50. Conditions under which search of persons shall be conducted.***
>
> *(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, **<u>if such person so requires,</u>** take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.*
>
> *(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1)."*
>
> *(Emphasis Supplied)*

17. The expression "if such person so requires" contained in Sub-section (1) of Section 50 of NDPS Act needs to be read with remaining portion of the provision and must be given full effect. This is trite that a statute must be read as a whole in its context. This rule is referred to as an 'elementary rule' by **Viscount Simonds**[1] a 'compelling rule' by **Lord Somervell** of Harrow and a 'settled rule' by **B.K. Mukherje**[2]**, J. Lord Halsbury** agreed with the said preposition advanced by Mukherjee, J.

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1 AG v. HRH Prince Ernest Augustus, (1957) 1 All ER 49, P.55 (HL)

2 Poppatlal Shah v. State of Madras AIR 1953 SC 274 P 276: 1953 SCR 677 1953Cri LJ 1105

18. It is equally settled that "it is not a sound principle of construction", "to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute[3].

Jagannathdas, J. pointed out that "it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application[4].

Das Gupta, J. observed that "the courts always presumed that Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect[5]

The Legislature is deemed not to waste its words or to say anything in vain[6].

"The rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is good reason to the contrary, the words add something which would not be there if the words were left out[7].

19. Taking into account the aforesaid principles laid down by the Supreme Court, I find substance in the argument of Shri Hora that the expression *"if such person so requires"* needs to be given due weightage and full effect. If it is held that in every case a search is required to be conducted before Magistrate or by Gazetted Officer, the expression "if such person so requires" will vanish in thin air. Putting it differently, if the aforesaid phrase is ignored then only option left with the prosecution is to take the accused to nearest Gazetted Officer or to the nearest Magistrate. This was not the legislative intent because of the phrase i.e. *"if such person so requires"* in Section 50 of NDPS Act. Thus, this phrase must be given its full meaning and effect. In *Nelson Motis vs. Union of India* (1992) 4 SCC 711, it was held that if plain language of statute is clear and unambiguous, it has to be given effect to, irrespective of the consequences.

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3 Aswini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369 P 377:1953 SCR 1 [See further Union of India vs. Hansoli Devi AIR 2002 SC 3240 P 3246:(2002) 7 SCC 273, State of Orissa v. Joginder Patjoshi AIR 2004 SC 1039 P 1142:(2004) 9 SCC 278

4 Rao Shiv Bahadur Singh vs. State of U.P. AIR 1953 SC 394 P 397:1953 SCR 1188

5 J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. AIR 1961 SC 1170 P 1174:(1962) 1 SCJ 417: (1961) 1 LLJ 540; Shri Mohammad Alikhan v. Commissioner of Wealth Tax, AIR 1997 SC 1165 P 1167:(1997) 3 SCC 511; Dilawar Balu Kurane v. State of Maharashtra AIR 2002 SC 564 P 566:(2002) 2 SCC 135; Ramphal Kundu v. Kamal Sharma AIR 2004 SC 1039 P 1042:(2004) 9 SCC 278

6 Quebec Railway, Light, Heat & Power Co. v. Vandry AIR 1920 PC 181 P 186:1920 AC 662 [See further Union of India vs. Hansoli Devi AIR 2002 SC 3240 P 3246:(2002) 7 SCC 273

7 Hill v. Williams Hill (Park Lane) Ltd., (1949) 2 All ER 452 (HL) P 461; referred to in Umed v. Raj. Singh AIR 1975 SC 43 P 63:(1975) 1 SCC 76

20. In view of foregoing analysis, this Court is of the opinion that as per Section 50 of NDPS Act, the accused must be apprised by the person concerned regarding his right to get searched before Gazetted Officer or Magistrate. Despite apprising him about this said right, if the accused person has chosen to be searched by the police officer, no fault can be found in the search. Pertinently, a Constitution Bench of Supreme Court in *Vijaysinh Chandubha Jadeja vs. State of Gujarat* (2011) 1 SCC 609 observed that *"thereafter the suspect may or may not choose to exercise the right provided to him under the said proviso."* Similarly, another Constitution Bench in *State of Punjab vs. Baldev Singh* (1999) 6 SCC 172 held that a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a Gazetted Officer or a Magistrate for search and in case he so opts, failure to conduct his search before a Gazetted Officer or a Magistrate, may not vitiate the trial, but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of illicit article, the recovery from his person, during a search conducted in violation of provisions of Section 50 of the NDPS Act.

21. *Baldev Singh* (supra) contains an important finding- "in case he was apprised." Thus, as a rule of thumb, in all circumstances, the search can not vitiate merely because it was not conducted before the Gazetted Officer or Magistrate. I find support in my view by a recent judgment of Delhi High Court reported in 2020 SCC Online Del 136 *(Innocent Ozoma vs. State)*. Para 32 of this judgment reads as under:-

> *"32. In terms of Section 50(1) of the NDPS Act where an officer is about to search a person under the provisions of Sections 41, 42 or 43 of the NDPS Act, he shall,* ***if such person requires,*** *take such person without unnecessarily delay to the nearest Gazetted Officer or the nearest Magistrate. Whilst it is clear that the authorized officer is required to take the person concerned to the nearest Magistrate/Gazetted Officer if the person so requires;* ***it is difficult to interpret Section 50(1) of the NDPS Act to read that it is mandatory that in all cases, search must be conducted before a Gazetted Officer or a Magistrate. Clearly,*** *<u>if Section 50(1) of NDPS Act is read to mean that it is necessary in all cases that a search be conducted before a Magistrate or a Gazetted Officer, there would be no purpose in informing the suspect of his right to be searched before such officers</u>. The entire object of informing the suspect, who is proposed to be searched, about his/her right is to enable him to exercise this right - the right to be searched before a Magistrate or a Gazette Officer. In Vijaysinh Chandubha Jadeja (supra), the Supreme Court had also observed that the obligations of the authorized officer under Section 50(1) of the NDPS Act is mandatory and requires strict*

*compliance. Failure to comply with the said provision would render the recovery of the illicit article suspect and vitiate the conviction. However, the Court had also observed that "Thereafter, the **suspect may or may not choose** to exercise the right provided to him under the said proviso".*

(Emphasis Supplied)

22. In the case of *Innocent Ozoma* (supra), Delhi High Court has considered the judgment of Supreme Court in the case of *Arif Khan and Ashok Kumar Sharma* (supra). The Delhi High Court considered its previous judgment delivered in Criminal Appeal No.676/17 *(Ramgopal vs. State)* decided on 16.10.2018. It was held that in *Arif Khan* (supra) on the facts of that case, the Court found that mandatory procedure under Section 50 of the Act had not been satisfied. The said case was peculiar on its facts and, therefore, is distinguishable from the facts of the present case. Since in the case in hand, the prosecution was able to establish its case through the testimony of the witnesses and documents, no benefit of *Arif Khan* (supra) was given. The Delhi High Court referred this previous judgment with profit in *Innocent Ozoma* (supra). Hence, *Innocent Ozoma* was not found to be innocent and his appeal was dismissed.

23. Relevant portion of 'Sehmati Sandehi Panchnama' (Ex.P/5) reads as under:-

''आपकी तलाशी ली जानी है एवं आपको कानूनन संवैधानिक अधिकार है कि यदि आप चाहे तो आपकी तलाशी अधिकृत राजपत्रित अधिकारी या मजिस्ट्रेट के समक्ष ली जा सकती है यदि आप चाहे तो आप अपनी तलाशी मुझे दे सकते है जो सन्देही राजू उर्फ सुरेन्द्र नाथ सोनकर ने मुझ सहा. उप निरी. राजेन्द्र प्रसाद अहिरवार से अपनी तलाशी कराने के लिए मौखिक तथा लिखित में सहमति प्रदान किया सन्देही द्वारा अपनी तलाशी मुझ ASI राजेन्द्र प्रसाद अहिरवार से तलाशी सहमति दी जाने पर सहमति पंचनामा तैयार किया गया।''

मैं अपनी तालासी अहिरवार साहब से कराना चाहता हूँ तालासी की सहमति दिया

राजू सोनकर

(Emphasis Supplied)

24. A plain reading of contents of Ex.P/5, in the considered opinion of this Court, shows that the appellant was apprised by PW/4 about his legal right to be searched before the Magistrate or Gazetted Officer, yet he had chosen to give option/consent to be searched by PW/4. The Apex Court in *P.P. Beeran* (supra) poignantly held as under :-

*"**4.** Learned Senior Counsel then contended that there was factually no compliance with Section 50 of the NDPS Act inasmuch as the search was not conducted in the presence of a gazetted officer or a Magistrate. That point also seems to be very fragile for the appellant as the concurrent finding shows that PW 2 in fact put it to the appellant whether he*

required the search to be conducted in the presence of a gazetted officer or a Magistrate and the answer was in the negative. This was communicated in the form of a written record as is evidenced by Exhibit P-2. Hence, we are not disposed to interfere with conviction of the appellant on the ground of non-compliance with Section 50 of the Act."

(Emphasis Supplied)

Similarly, in the case of *T.T. Haneefa v. State of Kerala,* (2004) 5 SCC 128, the Apex Court held as under:-

*"**7.** … … … … … ..... In this case the appellant was given an option to be searched in the presence of the Magistrate, he did not exercise that right. … … … … … .....*

In the instant case, we do not think there is any violation of Section 50 of the NDPS Act, as the accused was given the right to be searched in the presence of a Magistrate and as he failed to opt for that, we do not think that there was any procedural illegality."

(Emphasis Supplied)

25. Pertinently, the judgments cited by learned counsel for the appellant were delivered by Division Benches whereas judgment of *P.P. Beeran* (supra) is decided by a three Judge Bench. If the consent given by the appellant is tested on the anvil of Sub-section (1) of Section 50 of NDPS Act, it can be safely held that the police officer has clearly informed the appellant about his legal right and with eyes open the appellant opted to be searched by the PW/4. Hence, I am unable to hold that the search was held in utter violation of Section 50 of NDPS Act. Thus, this argument of appellant also could not cut any ice.

26. This Court will be failing in its duty if the last submission of counsel for the appellant regarding quantum of sentence is not considered. In view of foregoing analysis, it can be safely concluded that the prosecution has established its case beyond reasonable doubt before the Court below and no fault can be found in the impugned judgment whereby the appellant has been convicted. So far sentence is concerned, the Court below has already dealt with the appellant in a very lenient manner. The Court below could have imposed a much higher punishment but has not chosen to do so. The Court below has exercised its discretion in a judicious manner which does not warrant any interference by this Court. More so, when the menace of offence of this nature cannot be taken lightly. For these cumulative reasons, I find no reason to interfere in the impugned judgment.

27. Resultantly, the appeal fails and is hereby dismissed.

Appeal dismissed

I.L.R. [2021] M.P. 114
CRIMINAL REVISION
Before Mr. Justice Vishal Dhagat
CRR No. 2179/2020 (Jabalpur) decided on 17 December, 2020

ARUNI SAHGAL …Applicant

Vs.

STATE OF M.P. …Non-applicant

A. Criminal Procedure Code, 1973 (2 of 1974), Section 457 & 397(2) – Interlocutory Order **– Held – Order rejecting application filed u/S 457 Cr.P.C. for interim custody of articles, is not a final order or intermediate order or order of moment but is an interlocutory order – Criminal revision not maintainable due to bar u/S 397(2) Cr.P.C. – Revision dismissed.**
(Para 14 & 15)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 457 व 397(2) – अंतर्वर्ती आदेश – अभिनिर्धारित – वस्तुओं की अंतरिम अभिरक्षा हेतु दं.प्र.सं. की धारा 457 के अंतर्गत प्रस्तुत आवेदन को नामंजूर करने वाला आदेश, एक अंतिम आदेश या मध्यवर्ती आदेश या एक क्षण का आदेश नहीं है बल्कि एक अंतर्वर्ती आदेश है – दं.प्र.सं. की धारा 397(2) के अंतर्गत वर्जन के कारण दाण्डिक पुनरीक्षण पोषणीय नहीं है – पुनरीक्षण खारिज।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 397(2) – Interlocutory Order – Meaning & Ambit **– Held – Order u/S 457 Cr.P.C. may or may not be an interlocutory order, it depends upon facts and circumstances of a case – If Magistrate passes an order touching rights of person over property then order is not an interlocutory order but if order is passed only to give possession of property during pendency of trial then such order is an interlocutory order. (Para 12)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397(2) – अंतर्वर्ती आदेश – अर्थ व परिधि – अभिनिर्धारित – दं.प्र.सं. की धारा 457 के अंतर्गत आदेश एक अंतर्वर्ती आदेश हो सकता है अथवा नहीं, यह एक प्रकरण के तथ्यों तथा परिस्थितियों पर निर्भर करता है – यदि मजिस्ट्रेट संपत्ति पर व्यक्ति के अधिकारों से संबंधित कोई आदेश पारित करता है तो वह आदेश एक अंतर्वर्ती आदेश नहीं है परंतु यदि वह आदेश केवल संपत्ति का कब्जा देने के लिए, विचारण के लंबित रहने के दौरान पारित किया गया है तो वह आदेश एक अंतर्वर्ती आदेश है।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 451 – Maintainability **– Held – Once final charge-sheet is filed by police and property is said to be involved in crime then only application u/S 451 Cr.P.C. is maintainable. (Para 13)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451 – पोषणीयता – **अभिनिर्धारित – एक बार पुलिस द्वारा अंतिम आरोप–पत्र प्रस्तुत कर दिया गया तथा संपत्ति का अपराध में शामिल होना कहा जाता है तब केवल दं.प्र.सं. की धारा 451 के अंतर्गत आवेदन पोषणीय है।**

Cases referred:

1988 Cr.L.J. 475, AIR 1977 SC 403.

Prakash Gupta, for the applicant.
Aman Pandey, P.L. for the non-applicant/State.

ORDER

(Hearing Through Video Conferencing)

VISHAL DHAGAT, J. :- Applicant has filed this criminal revision challenging order dated 28.9.2020, by which application filed by applicant under Section 457 of the Code of Criminal Procedure was rejected by Special Judge, NDPS Act District Rewa.

2. Counsel appearing for the applicant submitted that Honda Activa Scooter 4G bearing registration No. UP70EC7781 was seized by the Police in Crime No. 203/2020 under Sections 8, 21, 22, 25 and 29 of the NDPS Act and Section 5/13 of Drug Control Act. Applicant is registered owner of the vehicle and he was falsely implicated in the criminal case. He had given the scooter to one Rahul Mishra to ferry his ailing father to hospital. Applicant has no role in the crime committed by the co-accused persons. Police had also seized one Redmi mobile phone having his Jio Sim and Idea Sim. It is submitted that said articles may be damaged if they are allowed to remain in custody of the police.

3. Applicant has filed an application under Section 457 of the Code of Criminal Procedure for giving the seized articles on superdginama during pendency of trial. Counsel appearing for the applicant had relied on the judgment of **Rajasthan High Court** reported in 1988 Cr.L.J. 475- *Ganesh Vs. State and another*. Counsel for the applicant relied on para-7 of the said judgment. It was held that order passed under Section 457 of the Code of Criminal Procedure is a final order and not merely an interlocutory order. On basis of said order, it was argued by counsel appearing for the applicant that criminal revision against the impugned order dated 28.9.2020 filed by the applicant is maintainable.

4. Counsel for the State has opposed the prayer of applicant for releasing the articles on superdginama on merits of the case. It is submitted by him there there is possibility that applicant may use vehicle again for committing offence, therefore, application has rightly been rejected by the Court of Sessions.

5. Before hearing the parties on merits of the case, it is to be examined whether impugned order is an interlocutory order or a final order against which revision filed by the applicant is maintainable.

6. Before examining the said issue, Sections 457 and 397 of Code of Criminal Procedure is to be considered.

Section 397 (2) lays down as under:

> **"(2):** The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding".

Section 457 (1) of the Code of Criminal Procedure lays down as under:

> **"(1)** Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property."

7. The meaning and ambit of the expression "interlocutory order" as used in Section 397(2) has been considered by the Supreme Court in several decisions. In *Smt. Parmeshwari Devi v.The State and another*, AIR 1977 SC 403, petitioner-Smt. Parmeshwari Devi had in response to an order under Section 94 of the Old Code filed a reply expressing her inability to produce the documents stating the circumstances pertaining thereto. She was not a party to the trial, but even then the Magistrate issued order on 8th August 1974 i.e. after coming into force of the new Code, directing her to attend court so as to enable it to put her a few questions for satisfying itself regarding whereabouts of the documents. The said order was challenged in revision invoking the bar of Section 397 (2) of the Code. The Supreme Court observed:- "The Code does not define an interlocutory order, but it obviously is an intermediate order, made during the preliminary stages of an enquiry or trial. The purpose of Sub-section (2) of Section 397 is to keep such an order outside the purview of the power of revision so that the enquiry or trial may proceed without delay. This is not likely to prejudice the aggrieved party for it can always challenge it in due course if the final order goes against it. But it does not follow that if the order is directed against a person who is not a party to the enquiry or trial, and he will have no opportunity to challenge it after a final order is made affecting the parties concerned, he cannot apply for its revision even if it is directed against him and adversely affects his rights."

8. The Supreme Court made the following observations in case of *Mohan Lal Magan Lal Thacker Vs State of Gujarat,*: "An interlocutory order though not

conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals."It may thus be conclusive with reference to the stage at which it is made, and it may also be conclusive as to a person, who is not a party to the enquiry or trial, against whom it is directed."

9. In *Amar Nath & Others Vs. State of Haryana & Ors.*, the Supreme Court was dealing with an order summoning the appellants in a complaint case, the appellants having been earlier exonerated by the police in their report under Section 173 of the Code. A question arose whether the order of summoning was an interlocutory order within the meaning of Section 397 (2) of the Code. The Supreme Court observed:-"Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" on Section 397 (2) of the 1973 Code has been used in a restricted sense and not in *Devi Ram Vs. State* (Crl. Revision No. 39/18) Page No. 20 of 33 any broad of artistic sense. It merely denote orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the Code of Criminal Procedure. Thus for instance orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such order steps in aid of the pending proceedings may no doubt amount to interlocutory orders against which no revision would lie under Section 397 (2) of the Code of Criminal Procedure. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

10. Supreme Court in *Madhu Limaye Vs. State of Maharastra* and on an examination of several decisions both of Indian and English Courts including the decision of the Federal Court in *S. Kuppuswami Rao v. The King the Supreme Court* held that: "But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power of the Sessions Court or the High Court conferred on it by Section 397 (1) of the Code............... In such a situation it appears to us that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in *Kuppuswami's Devi Ram Vs. State* (Crl. Revision No. 39/18) Page No. 21 of 33 (supra), but, yet it may not be an interlocutory order-pure or simple. Some

kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in Sub-section (2) of Section 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purposes of Article 134 of the Constitution, yet it would not be correct to characterize them as merely interlocutory orders within the meaning of Section 397 (2)." The Court concluded by saying that :- "We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of Sub" section (2) of Section 397. In our opinion, it must be taken to be an order of the type falling in the middle course."

11. In view of above law and citations, it is to be considered whether order dated 24.9.2020 stands the test to interlocutory order or an intermediate or order of moment.

12. Applicant is an accused in the case and offences under Sections 8, 21, 22, 25 of the NDPS Act and Section 5/13 of the Drug Control Act are registered against the applicant and others. Order passed under Section 457 may or may not be an interlocutory order and it depends upon the facts of circumstances of the case. Judicial Magistrate acquires jurisdiction to entertain an application under Section 457 of the Code of Criminal Procedure when Police Officer seizes a property and matter is under investigation before the Police but before property is produced before a criminal Court during inquiry or trial. In such condition, Magistrate may make an order for disposal of such property or delivery of such property entitled to possession thereof. If Magistrate passes an order touching the rights of person over the property then order will not be an interlocutory order but if order is passed only to give possession of property during pendency of trial then such order will be an interlocutory order and criminal revision shall not be maintainable due to bar created under Section 397(2) of the Code of Criminal Procedure.

13. Once final charge sheet is filed by the Police and property is said to be involved in the crime then only application under Section 451 of the Code of Criminal Procedure is maintainable. In case of *Ganesh Vs. State* (supra), relied upon by applicant, police has filed final report of no occurrence of crime and solicited the order of Judicial Magistrate for handing over possession of pair of bullocks seized. In said case, Magistrate has decided the issue of title/ownership of the bullocks and has passed an order in respect of disposal of property or delivery of such property. Such an order is a final order, but in the present case application is made only for interim custody of the vehicle during trial.

14. Prayer is made by applicant for interim custody of vehicle and cell phone before learned Special Judge NDPS Act, Rewa and learned Special Judge passed an order rejecting the application to give interim custody of the articles. Said order

is not a final order or intermediate order or order of moment but only an interlocutory order. Even if order is passed to release the vehicle Court continues to remain *custodia legis* and article is liable to be produced when directed by the Court and Court may also recall entrustment for reasons, Court may deem fit, therefore, order impugned is interlocutory order and criminal revision filed by the applicant is not maintainable due to bar under Section 397 (2) of the Code of Criminal Procedure, 1973.

15. Criminal Revision filed by the applicant is **dismissed** as not maintainable under Section 397(2) of the Code of Criminal Procedure. Applicant is at liberty to take recourse to appropriate remedy available to him.

Revision dismissed

I.L.R. [2021] M.P. 119
CRIMINAL REVISION
Before Mr. Justice B.K. Shrivastava
CRR No. 1813/2020 (Jabalpur) decided on 8 January, 2021

RAJA BHAIYA SINGH …Applicant

Vs.

STATE OF M.P. …Non-applicant

A. Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2) and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8(b)/20(a)(i) – Filing of Challan – Limitation – **Held – Offence is punishable by imprisonment upto 10 years and not minimum period of 10 years or death or life imprisonment – Limitation will be 60 days and not 90 or 180 days – Challan not filed within limitation period of 60 days – Subsequent filing of challan on same date of filing of application u/S 167(2) Cr.P.C. will not fortify the right of accused – Trial Court erred in rejecting the application – Bail granted – Revision allowed. (Paras 26 to 28 & 40 to 42)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) एवं स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धारा 8(b)/20(a)(i) – चालान प्रस्तुत किया जाना – परिसीमा – अभिनिर्धारित – अपराध दस वर्ष तक के कारावास द्वारा तथा न कि दस वर्ष की न्यूनतम अवधि के कारावास से या मृत्युदंड या आजीवन कारावास द्वारा दण्डनीय है – परिसीमा साठ दिनों की होगी तथा न कि नब्बे अथवा एक सौ अस्सी दिनों की – साठ दिनों की परिसीमा अवधि के भीतर चालान प्रस्तुत नहीं किया गया – दं.प्र.सं. की धारा 167(2) के अंतर्गत आवेदन प्रस्तुत किये जाने की तिथि को ही पश्चात्वर्ती चालान का प्रस्तुत किया जाना, अभियुक्त के अधिकार को मजबूत नहीं करेगा – विचारण न्यायालय ने आवेदन को अस्वीकार करने में त्रुटि की है – जमानत प्रदान – पुनरीक्षण मंजूर।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2) – Filing of Challan – Right of Default Bail **– Held – Right of default bail u/S 167(2) Cr.P.C. cannot be curtailed by subsequent filing of challan even on the same date. (Para 39 & 40)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) – चालान प्रस्तुत किया जाना – डिफॉल्ट जमानत का अधिकार – अभिनिर्धारित – दं.प्र.सं. की धारा 167(2) के अंतर्गत डिफॉल्ट जमानत के अधिकार को उसी दिनांक को भी पश्चात्वर्ती रूप से चालान प्रस्तुत कर कम नहीं किया जा सकता।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2) – Filing of Challan – Covid Pandemic – Extension of Time – Applicability **– Held – The order dated 23.03.2020 of Supreme Court related to extension of time limit was not applicable for filing of challan within 60 days or 90 days as prescribed under Cr.P.C. (Para 7)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) – चालान प्रस्तुत किया जाना – कोविड महामारी – समय बढ़ाया जाना – प्रयोज्यता – अभिनिर्धारित – समय सीमा के बढ़ाये जाने से संबंधित सर्वोच्च न्यायालय का आदेश दिनांक 23.03.2020 दं.प्र.सं. के अंतर्गत विहित अनुसार साठ दिनों अथवा नब्बे दिनों के भीतर चालान प्रस्तुत करने के लिए लागू नहीं था।

D. Criminal Procedure Code, 1973 (2 of 1974), Section 397(2) – Interlocutory Orders **– Held – Order summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of pending proceeding, amounts to interlocutory orders against which no revision would lie u/S 397(2) whereas orders which affect or adjudicate rights of accused or particular aspect of trial, are not interlocutory orders against which revision is maintainable. (Para 9)**

घ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 397(2) – अंतर्वर्ती आदेश – अभिनिर्धारित – साक्षीगण को समन भेजने का आदेश, प्रकरणों को स्थगित करना, जमानत के आदेश पारित करना, प्रतिवेदन की मांग करना तथा लंबित कार्यवाही में सहायक ऐसे अन्य कदम, अंतर्वर्ती आदेश की कोटि में आते हैं जिनके विरूद्ध धारा 397(2) के अंतर्गत कोई पुनरीक्षण नहीं होगा जबकि ऐसे आदेश जो कि अभियुक्त के अधिकारों या विचारण के विशिष्ट पहलू को प्रभावित अथवा न्यायनिर्णीत करते हैं, अंतर्वर्ती आदेश नहीं होते हैं जिनके विरूद्ध पुनरीक्षण पोषणीय है।

E. Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2) & 397 – Maintainability of Revision **– Held – Order on application u/S 167(2) for default bail is not an interlocutory order because it decides the valuable right of accused for default bail – Revision is maintainable. (Para 11)**

ड. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2) व 397 – पुनरीक्षण की पोषणीयता – अभिनिर्धारित – डिफॉल्ट जमानत के लिए धारा 167(2) के

अंतर्गत आवेदन पर आदेश एक अंतर्वर्ती आदेश नहीं है क्योंकि यह डिफॉल्ट जमानत के लिए अभियुक्त के मूल्यवान अधिकार का विनिश्चय करता है – पुनरीक्षण पोषणीय है।

***F. Criminal Procedure Code, 1973 (2 of 1974), Section 167 (2), Proviso (a) – Filing of Challan – Computation of Period* – Held – Apex Court concluded that period of 90 days/60 days under proviso (a) begins to run only from date of order of remand and not from date of arrest – "One day" will be complete on the next day of remand – The day accused was remanded to judicial custody should be excluded and the day challan is filed in Court, should be included – Period of temporary bail shall be excluded in computation of period – Last date, if it is Sunday or Holiday will also be counted. (Paras 14 to 20)**

च. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 167(2), परंतुक (a) – चालान प्रस्तुत किया जाना – अवधि की संगणना – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि परंतुक (a) के अंतर्गत नब्बे दिनों/साठ दिनों की अवधि, रिमांड आदेश की तिथि से चलना आरंभ हो जाती है तथा न कि गिरफ्तारी की तिथि से – "एक दिन" रिमांड के अगले दिन पूर्ण हो जाएगा – अभियुक्त को न्यायिक अभिरक्षा में भेजे जाने वाले दिन को अपवर्जित किया जाना चाहिए तथा न्यायालय में चालान प्रस्तुत होने वाले दिन को शामिल किया जाना चाहिए – अवधि की संगणना में अस्थायी जमानत की अवधि अपवर्जित की जाएगी – अंतिम तिथि, अगर वह रविवार अथवा अवकाश है, की भी गणना की जायेगी।

***G. Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8(a), 8(b), 20(a)(i) & 20(b)(ii)(C) – Ingredients* – Held – *Ganja* plants seized from accused – Section 8(a) is not applicable because it relates to Coca plants etc. – Present case covered by Section 8(b) which prohibits cultivation of Opium, Poppy or "any Cannabis plant" – Section 20(a) prescribes punishment of cultivation – Offence u/S 8(b)/20(a) is made out. (Para 24)**

छ. स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम (1985 का 61), धाराएँ 8(a), 8(b), 20(a)(i) व 20(b)(ii)(C) – घटक – अभिनिर्धारित – अभियुक्त से गांजा के पौधे जब्त किये गये – धारा 8(a) लागू नहीं होता क्योंकि वह कोका के पौधों इत्यादि से संबंधित है – वर्तमान प्रकरण धारा 8(b) द्वारा आच्छादित होता है जो कि अफीम, पोस्त या "किसी कैनेबिस के पौधे" की खेती निषिद्ध करती है – धारा 20(a) खेती के लिए दण्ड विहित करती है – धारा 8(b)/20(a) के अंतर्गत अपराध बनता है।

Cases referred:

2020 SCC Online SC 521, AIR 1977 S.C. 2185 = 1977 CRI.L.J. 1891 = (1978) 1 SCR 222, (1978) 1 SCR 749 : (AIR 1978 SC 47) , (1980) 2 SCR 380 : (AIR 1980 SC 962), 1984 CRI. L. J. 79 [M.P.], AIR 1986 S.C. 2130 = [1986] 3 SCC 141 = 1986 Cri.L.R. 256, (1992) 3 SCC 141 : (AIR 1992 SC 1768 : 1992 AIR

SCW 1976), (1996) 1 SCC 432, (1996 AIR SCW 237), (2002) 2 SCC 121 (AIR 2002 SC 285 : 2001 AIR SCW 5003), 1995 Supp. (3) SCC 221, 2011 AIR SCW 5551, (2011) 10 SCC 445, AIR 1996 S.C. 2980 = 1996 AIR SCW 1216 = 1996 CRI.L.J. 1876, 2004 [2] MPHT 215, 2015 CRI. L.J. 1666, 2005 [3] MPLJ 306, I.L.R. 2016 M.P. 2837, 1992 CRI.L.J. 1730 = 1991 [2] MPJR 338 [M.P.], 1993 JLJ 99, AIR 2017 S.C. 3948 = 2018 Cri.L.J. 155, 1995 CRI.L.J. 477 [S.C.] = [1994] 5 SCC 410 = AIR 1994 SCW 3857, 1995 Supp (3) SCC 221 = 1995 SCC [Cri.] 830, (1994) 5 SCC 410 = 1994 SCC (Cri) 1433, 1996 CRI.L.J. 1652 [AIR 1996 S.C. 2897 = 1996 AIR SCW 734 = 1996 CRI.L.J. 1652 = 1996 (1) SCC 718 = 1996 CRI.L.J. 1652], (1994) 5 SCC 410 : (1994 AIR SCW 3857), AIR 2008 S.C. 78 = [2007] 8 SCC 770 = 2007 AIR SCW 6112, 2011 AIR SCW 5551 = 2011 CRI.L.J. (Supp) 265, (2001) 5 SCC 453 : (AIR 2001 SC 1910 : 2001 AIR SCW 1500), (1994) 5 SCC 410 = 1994 AIR SCW 3857, 2020 SCC Online 867, (1994) 4 SCC 602, (1994) 5 SCC 410, (2001) 5 SCC 453, (2017) 15 SCC 67, (1996) 1 SCC 718, (1996) 1 SCC 722, (2014) 9 SCC 457, 2020 SCC online SC 824.

Shreyas Pandit, for the applicant.
Sanjeev Kumar Singh, P.L. for the non-applicant/State.

O R D E R

B.K. SHRIVASTAVA, J. :- This criminal revision has been preferred on 24.7.2020 by applicant Raja Bhaiya Singh against the order dated 25.4.2020 passed by the Special Judge, NDPS, Panna, District Panna in connection with Crime No.270/2019, registered at Police Station Simariya, District Panna under section 8/20 of Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "the Act").

2. By the impugned order the learned trial court dismissed the application filed under section 167(2) of CrPC on behalf of accused for default bail upon the ground that challan has not been filed within 60 days from the arrest of accused/applicant.

3. It appears from the record that the petitioner was arrested on 13.2.2020 and on the same date he was produced before the concerned Court, by which he was sent to judicial custody. The applicant moved an application under section 167(2) of CrPC on 21.4.2020 and the challan was also filed by the police on the same date. It appears from the impugned order that the trial court received the aforesaid application for default bail on 2:32 p.m. through whatsapp message upon the personal mobile number of concerned judicial officer (as per Circular No.P-33 dated 20.4.2020 issued by the District Judge, Panna). It is also mentioned in the impugned order that the challan was filed at 3:50 p.m on the same date i.e. 21.4.2020.

4. The trial court dismissed the aforesaid application in the light of order dated 23.3.2020 passed by Hon'ble the Supreme Court in Writ Petition No.3/2020. The trial court mentioned the following observation of Supreme Court :-

> "this court has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of covid-19 virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/ suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special law (both central and/or state)."

Upon the basis of aforesaid observation, the trial court came to the conclusion that the prescribed time limit of 60 days for filing the challan has already been extended by the aforesaid order of Hon'ble the Supreme Court. Therefore, the application is not tenable.

5. It is submitted by the counsel for applicant that the trial court committed mistake by mentioning that the time limit for default bail has been extended. On the other side, the Sate (sic: State) supported the view of the trial court and it is submitted by the State that the challan has been filed within the period of limitation because the limitation was extended by the Supreme Court.

6. In reference to the aforesaid controversy, it will be useful to refer the judgment dated 19.6.2020 passed by the three Judges Bench of Hon'ble the Supreme Court in *S.Kasi Vs. Through the Inspector of Police,* reported in 2020 SCC Online SC 521. In the aforesaid case, the Hon'ble Supreme Court observed that :-

> "The indefeasible right to default bail under section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasized that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a chargesheet."

The Supreme Court considered the aforesaid extension of time and finally came to the conclusion as under :-

> "We, thus, are of the view that neither this Court in its order dated 23.3.2020 can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his

indefeasible right to get a default bail on non-submission of chargesheet within the time prescribed."

7. Therefore, it appears that the order dated 23.3.2020 of Supreme Court related to extension of time limit, was not applicable for filing the challan within 60 days or 90 days as prescribed under CrPC. Therefore, the trial court committed mistake in this regard.

8. The counsel for State submitted that the revision is not tenable against the order passed under section 167(2) of CrPC because the order is in the nature of "interlocutory order". As per section 397 of CrPC, no revision is tenable against the interim order/interlocutory order.

9. The expression 'interlocutory order' has not been defined in the Code. In *Amar Nath v. State of Haryana In Amar Nath and others v. State of Haryana and others,* AIR 1977 S.C. 2185 = 1977 CRI. L. J. 1891 = (1978) 1 SCR 222, the Apex Court said that the term **"interlocutory order"** in S. 397 (2) has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in S. 397. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397 (2). But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High court.

10. In *Madhu Limaye v. State of Maharashtra* (1978) 1 SCR 749 : (AIR 1978 SC 47), a Three Judge Bench of Apex Court has held an order rejecting the plea of the accused on a point which when accepted will conclude the particular proceeding cannot be held to be an interlocutory order. In *V. C. Shukla v. State* (1980) 2 SCR 380 : (AIR 1980 SC 962), this Court has held that the term 'interlocutory order' used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final.

11. Therefore, as per aforesaid law, the order upon the application filed for default bail under section 167(2) of CrPC is not an interlocutory order because it decided the valuable right of default bail finally at that stage. Hence, the revision is tenable against the aforesaid order.

12. The second question raised by the counsel for State that the limitation period was 90 days; while the counsel for applicant argued that looking to the offence, the limitation period will be 60 days. The trial court also accepted that the limitation period was 60 days.

13. It will be useful to refer section 167(2) of CrPC, which provides :-

> **"167- Procedure when investigation cannot be completed in twenty-four hours.**
>
> **(1)** ....
>
> **(2)** The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-
>
> **(a)** the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding-
>
> **(i)** ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
>
> **(ii)** sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail, if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;
>
> **(b)** no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;
>
> **(c)** No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police."

14. As for (sic: far) as computation of period of 90 or 60 days is concerned, the law has been settled. It was held in *Jagdish and others, v. State of M. P.,* 1984 CRI. L. J. 79 [M.P.] that date of arrest is to be excluded. Further in the case of *Chaganti Satyanarayana v. State of A.P.,* AIR 1986 S.C. 2130 = [1986] 3 SCC 141 = 1986 Cri.L.R. 256 the Apex Court said that Period **of 90 days / 60 days** envisaged by Proviso (a) begins to **run from date of order of remand and not from earlier date when accused was arrested.** The court observed that detention can be authorized by the Magistrate only when the order of remand is passed. The earlier period when the accused is in the custody of a public officer in exercise of his powers under S.57 cannot constitute detention pursuant to an authorization issued by the Magistrate. It, therefore, stands to reason that the total period of 90 days or 60 days can begin to run only from the date of order of remand. This case has been **subsequently followed in** *Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni,* (1992) 3 SCC 141 : (AIR 1992 SC 1768 : 1992 AIR SCW 1976), *State through CBI v. Mohd. Ashraft Bhat and another,* (1996) 1 SCC 432, (1996 AIR SCW 237). *State of Maharashtra v. Bharati Chandmal Varma (Mrs)* (2002) 2 SCC 121 (AIR 2002 SC 285 : 2001 AIR SCW 5003), *State of Madhya Pradesh v. Rustom and others,* 1995 Supp. (3) SCC 221, *Sadhwi Pragyna Singh Thakur v. State of Maharashtra,* 2011 AIR SCW 5551 [23.09.2011] [(2011)10SCC445].

15. In *Central Bureau of Investigation v. Nazir Ahmed Sheikh,* AIR 1996 S.C. 2980 = 1996 AIR SCW 1216 = 1996 CRI. L. J. 1876 also said that limitation for filing of charge sheet would be to run and be counted from next date of arrest. In *Pop Singh vs. State of M.P.* 2004 [2] MPHT 215 [25.11.03] Accused who was produced before JMFC in another case, after taking the permission from Magistrate was formally arrested on 26.06.2003 and produced before CJM on 01.07.2003 in compliance of Production warrant. High Court held that period of 90 days will be counted from the date on which accused was produced before CJM [i.e. 01.07.2003] and not from the date of formal arrest [i.e. 26.03.2003].

16. In *State of M.P. v. Rustam and others,* 1995 Supp (3) SCC 221**,** Apex Court has laid down the law that while computing period of ninety days, <u>the day on which the accused was remanded to the judicial custody should be excluded, and the day on which challan is filed in the court, should be included</u>. This case has been followed in *Ravi Prakash Singh alias Arvind Singh v. State of Bihar,* 2015 CRI. L. J. 1666. In the case of *Ajay Singh Vs. Surendra etc.* 2005 [3] MPLJ 306, accused was produced before Magistrate on 27.05.2004 and challan was filed on 25.08.2004. High Court held that the **day on which accused was produced before the Magistrate [i.e. 27.05.04] will not include in 90 days but the date of filing the challan [i.e. 25.08.04] will be include**. Therefore counting

of 90 days will start from 28.05.04. This court again explained the position in *Meharazuddin vs. State of M.P.,* I.L.R. 2016 M.P. 2837 and said that first day would complete after passage of 24 hours from the date of remand.

17. If an accused was released on temporary bail for some period during 90 or 60 days, than (sic: then) aforesaid period will not be counted at the time of calculation. In *Devendra Kumar v. State of M.P* 1992 CRI. L. J. 1730 = 1991 [2] MPJR 338 [M.P.] it has been held that **period of temporary bail for few days shall be excluded in computing said 90 days.**

18. In *Ashok Sharma vs. State of M.P.* 1993 JLJ 99, it has been held that last date, which is **Sunday or Holiday will also be counted** in 90th day because Sec. 10 of General Clauses Act 1897 will not be applicable. The court said that Word "Magistrate" used in section 56, 57 and 167 not mean the "Court of Magistrate". If the last date of remand is Holiday, the accused will be produced before the Magistrate.

19. Therefore it is the settled position of law that: -

(i) Period for filing the challan will run from date of order of remand and "one day" will be complete on the next day of the remand. Therefore first date of remand will exclude but last date will be in included.

(ii) Period of temporary bail for few days shall be excluded in computing said 90 days.

(iii) Last date, which is Sunday or Holiday will also be counted in 90 th day.

20. In this case, the applicant was arrested on 13.2.2020 and was produced before the concerned Court on the same date and he was remanded to the judicial custody. Excluding the date of remand and including the date of filing the challan, 15 days in the month of February, 31 days in the month of March and 21 days in the month of April will be counted. Then it can be said that the challan was filed on 67th day. On the same date i.e. 21.4.2020 the application for default bail was filed at 2:32 p.m. After filing the aforesaid application, challan was filed at 3:50 p.m.

21. Now we see what will be the limitation for filing the challan in this case. The police filed the challan under section 8/20 of the Act. As per the prosecution case, 36 green, small and big plants of *Ganja* were seized from the *Baadi* of the accused. As per the allegation of the prosecution, the accused cultivated the aforesaid *Ganja* plants. The Investigation Agency seized the aforesaid plants and the weight of the aforesaid plants was found one quintal and 15 kgs.

22. As per objection raised by State that the quantity is the "commercial quantity", therefore, as per section 8 read with section 20 (b)(ii)(C) of the Act, the

punishment will be extended 20 years with fine and the limitation period will be 90 days; while the challan was filed on 67th day. The aforesaid contention raised by the State strongly opposed by the counsel for applicant. It is submitted that the limitation period will be 60 days. The counsel also draws attention towards the section 36(4) of the Act.

23. It will be useful to refer the relevant parts of sections 2, 8, 20 and 36 of NDPS Act:-

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

[(i) ....

(ii) ....

(iii) "cannabis (hemp)" means--

(a) *charas,* that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;

(b) *ganja,* that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and

(c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any rink prepared therefrom;

(iv) "cannabis plant" means any plant of the genus cannabis;"

" 8. Prohibition of certain operations.-No person shall -

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) **cultivate the opium poppy or any cannabis plant;** or

(c).."

"20. Punishment for contravention in relation to cannabis plant and cannabis.-

Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder,-

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable -

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),-

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.]"

" 36A. Offences triable by Special Courts.-

(1) ....

(2)................

(3)................

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days": Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5).............."

24. Therefore, it appears from the aforesaid provisions that section 8(a) of the Act is not applicable in this case because the aforesaid provision is related to the Coca plant etc. The present case is covered by Section 8(b) of the Act, which prohibits the cultivation of Opium, Poppy or any "Cannabis plant". Definition of "Cannabis plant" has been given in sections 2(iii) and (iv) of the Act. As per the aforesaid definition, the plant of *Ganja* is also included in the Cannabis plant. Section 20(a) of Act prescribes the punishment for cultivation of any Cannabis plant. As per section 20(a)(i) of the Act, the punishment provided for contravention related to Clause(a) of the section 20 is imprisonment for a term which may extent to 10 years and shall also be liable to fine of Rs.One Lac. It is clearly transpired from the challan that the matter does not cover by section 20(b)(ii)(C) of the Act because the matter is related only to the "cultivation of" Cannabis plant. The notification relating to commercial quantity does not cover

the cultivation. Therefore, the offence under section 8(b) read with section 20(a)(i) of the Act is made out, for which the imprisonment may be upto 10 years. No any minimum sentence is prescribed.

25. At this stage, counsel for State also contended that because the punishment is prescribed for 10 years, therefore, the limitation for filing the challan will be 90 days and not 60 days; while the counsel for applicant strongly opposed the aforesaid contention and submitted that the offence is not punishable with the penalty of death, life imprisonment or sentence more than 10 years. Minimum sentence of 10 years is not prescribed for the aforesaid offence. Therefore, the limitation period for filing challan will be 60 days.

26. In *Rakesh Kumar Paul vs. State of Assam,* AIR 2017 S.C. 3948 = 2018 Cri.L.J.155, **Three judges Bench by 2-1 majority** held that a bare reading of S. 167 of Code clearly indicates that if offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then S. 167(2) (a)(i) will apply and accused can apply of 'default bail' only if investigating agency does not file charge-sheet within 90 days. However, in all cases where minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment then S. 167(2)(a)(i) will apply and accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed. **Section 167(2)(a) (i) of Code is applicable only in cases where** accused is charged with **(i) offences punishable with death and any lower sentence; (ii) offences punishable with life imprisonment and any lower sentence** and,**(iii) offences punishable with minimum sentence is not less than 10 years. In all cases where minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment then S. 167(2)(a)(ii) will apply and accused will be entitled to grant of 'default bail' after 60 days** in case charge-sheet is not filed.

27. Apex Court observed that while it is true that merely because a minimum sentence is provided for in statute it does not mean only minimum sentence is imposable. Equally, there is also nothing to suggest that only maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for court to decide what sentence should be imposed given range available. Undoubtedly, the Legislature can bind sentencing court by laying down minimum sentence (not less than) and it can also lay down maximum sentence. If minimum is laid down, sentencing Judge has no option but to give a sentence 'not less than' that sentence provided for. Therefore, words **'not less than'** occurring in **Clause (i) to proviso (a) of S. 167(2)** of the Cr. P. C. (and in other provisions) must be given their natural and obvious meaning which is to say, not below a minimum threshold and in case of S. 167 of Cr. P. C. these words must relate to an offence punishable with a minimum of 10 years imprisonment.

28. Because the offence under section 8(b)/20(a)(i) is punishable by imprisonment upto 10 years, not minimum period of 10 years or death or life imprisonment, therefore, limitation for filing the challan will be 60 days and not 90 days or 180 days.

29. The State also raised the contention that when the application for default bail was considered by the trial court, at that time, the challan was also filed. The counsel for State draws attention towards the law laid down by the various authorities and submitted that when the challan was filed, then the right of default bail does not arise and the matter should be considered on its own merit.

30. On the other side, the counsel for applicant opposed the aforesaid contention and submitted that the right of bail was available to the accused at the moment when he filed the application before the Court. The subsequent filing of challan does not defeat the aforesaid valuable right of the accused.

31. "Indefeasible right" of the accused under section 167(2) of CrPC was considered by Hon'ble the Supreme Court and the High Court in various cases. The counsel for State placed reliance upon the law laid down in various authorities.

32. **Full Bench of five judges** in *Sanjay Dutt v. State through C.B.I., Bombay,* 1995 CRI. L. J. 477 [S.C.] = [1994] 5 SCC 410 = AIR 1994 SCW 3857 considered the **'indefeasible right'** of accused and held that right does not survive or remain enforceable on challan being filed. The court observed that the 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) read with S. 167(2), Cr.P.C. in default of completion of the investigation and filing of the challan within the time allowed is a right which insures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, withstanding the default in filing it within the time allowed is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage. The court again said that **if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(bb), both of them should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also**

subject to refusal of the prayer for extension of time, if such a prayer is made.

33. In the case of *State of M.P. Vs. Rustam,* 1995 Supp (3) SCC 221 = 1995 SCC [Cri.] 830, the Apex court referred the *Sanjay Dutt v. State,* (1994) 5 SCC 410 = 1994 SCC (Cri) 1433, and held that the **court is required to examine the availability of the right of compulsive bail on the date it is considering the question of bail and not barely on the date of the presentation of the petition for bail.** Court said in para 4 :-

> **"4.** We may also observe that the High Court's view in entertaining the bail petition after the challan was filed was erroneous. The matter now stands settled in ***Sanjay Dutt v. State [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433]*** in which case ***Hitendra Vishnu Thakur v. State of Maharashtra [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087]*** has aptly been explained away. **The court is required to examine the availability of the right of compulsive bail on the date it is considering the question of bail and not barely on the date of the presentation of the petition for bail. This well-settled principle has been noticed in** Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] **on the strength of three Constitution Bench** cases Naranjan Singh Nathawan v. State of Punjab [1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656], Ram Narayan Singh v. State of Delhi [1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] and A.K. Gopalan v. Govt. of India [(1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602] **On the dates when the High Court entertained the petition for bail and granted it to the accused-respondents, undeniably the challan stood filed in court, and then the right as such was not available".**

34. In *"Dr.Bipin Shantilal Panchal, v. State of Gujarat",* 1996 CRI. L. J. 1652 [AIR 1996 S.C. 2897= 1996 AIR SCW 734 = 1996 CRI. L. J. 1652 = 1996(1) SCC 718 =1996 CRI. L. J. 1652], **Three judges bench** of Apex court referred the case of *Sanjay Dutt v. State through C.B.I. Bombay (II),* (1994) 5 SCC 410 : (1994 AIR SCW 3857) and said that S. 167 (2) does not create indefeasible right on accused to exercise it at any time. **If charge sheet filed and accused in custody on basis of order of remand than (sic: then) he cannot be released on bail on ground that charge-sheet was not submitted within statutory period.**

35. In the case of *Dinesh Dalmia v. C. B. I .,* AIR 2008 S.C. 78 = [2007] 8 SCC 770 = 2007 AIR SCW 6112 the court said that right to be released on Statutory bail available only, till investigation remains pending **and the right is lost once charge-sheet is filed.** The right does not get revived only because further investigation is pending. In para 29 The Court observed:-

> **"29.** The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of

Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender; once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code."

36. In the case of *Sadhwi Pragyna Singh Thakur v. State of Maharashtra,* 2011 AIR SCW 5551 = 2011 CRI. L. J. (Supp) 265, the court considered the *Uday Mohanlal Acharya v. State of Maharashtra* (2001) 5 SCC 453 : (AIR 2001 SC 1910 : 2001 AIR SCW 1500) **[Three Judge Bench]** and followed the *Sanjay Dutt v. State* (1994) 5 SCC 410 = 1994 AIR SCW3857 and said **if the application filed for default bail on grounds that charge-sheet is not filed within 90 days and before consideration of the same and before being released on bail, charge-sheet is filed, than (sic: then) said right to be released on bail, can be only on merits.**

37. In reference to the aforesaid subject, it can be said that the law has been settled by Hon'ble the Three Judges Bench of Supreme Court on 26.10.2020 in the case of *M.Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence,* reported in 2020 SCC Online 867**,** wherein the Supreme Court mentioned the following two points for consideration :-

"9. Thus the points to be decided in this case are:

(a) Whether the indefeasible right accruing to the appellant under Section 167(2) CrPC gets extinguished by subsequent filing of an additional complaint by the investigating agency;

(b) Whether the Court should take into consideration the time of filing of the application for bail, based on default of the investigating agency or the time of disposal of the application for bail while answering (a)."

38. In the aforesaid case, the Apex Court considered the cases of *Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others* (1994) 4 SCC 602, *Sanjay Dutt Vs.State of Maharashtra* (1994) 5 SCC 410, *Uday Mohan Lal Acharya Vs.State of Maharashtra* (2001) 5 SCC 453, *Rakesh Kumar Paul Vs. State of Assam* (2017) 15 SCC 67, *Bipin Shantilal Panchal Vs. State of Gujarat* (1996) 1 SCC 718, *Mohd. Iqbal Madar Sheikh Vs.State of Maharashtra* (1996) 1 SCC 722, *Union of India Vs. Nirala Yadav* (2014) 9 SCC 457, *Pragya Singh Thakur Vs. State of Maharashtra* (2011) 10 SCC 445, *Bikramjit Singh Vs. State of Punjab* 2020 SCC online SC 824 and observed as under -

"It appears that the term 'if not already availed of' mentioned supra has become a bone of contention as Court have differed in their opinions as to whether the right to default bail is

availed of and enforced as soon as the application for bail is filed; or when the bail petition is finally disposed of by the Court; or only when the accused actually furnishes bail as directed by the Court and is released from custody."

39. After taking into consideration the aforesaid authorities, Hon'ble the Supreme Court settled the law in Para 18 as under:-

> "18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have 'availed of ' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2), CrPc read with Section 36A (4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.
>
> 18.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.
>
> 18.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPc.
>
> 18.4 Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid."

40. Therefore, it appears that the right of default bail under section 167(2)

of CrPC cannot be curtailed by subsequent filing of challan even on the same date. In the aforesaid case, the bail application was filed on 10:30 a.m. on 1.2.2019 and challan was filed at 4:25 p.m. on the same date. At that time, the application was not considered but the Hon'ble Supreme Court held that the right of accused to get the default bail will be available.

41. Hence, it appears that the limitation period was 60 days. Challan was not filed within the prescribed limit of 60 days and before filing the challan, the applicant moved the application for default bail. Therefore, the trial court was having no any discretion to dismiss the aforesaid application by saying that the time was extended for filing the challan. By subsequent filing of challan, the right of accused was not forfeited.

42. In view of aforesaid, the revision is **allowed.** The impugned order passed by the Special Judge, NDPS, Panna on 25.4.2020 is set aside. It is ordered that the applicant **Raja Bhaiya Singh** be released on bail upon his furnishing a bail bond worth **Rs.50,000/-(Rupees Fifty Thousand)** and a personal bond of the same amount to the satisfaction of the trial court.

At the time of releasing the applicant from custody, all the instructions issued by the Government related to COVID-19 shall also be followed by the concerned authorities.

Revision allowed

I.L.R. [2021] M.P. 135
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Atul Sreedharan

MCRC No. 52490/2019 (Jabalpur) order passed on 15 December, 2020

SURAJMAL & ors. ...Applicants

Vs.

STATE OF M.P. …Non-applicant

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Grounds* – Held – It is not established that FIR lodged by Complainant was a counterblast FIR– Applicant's contention that he did not receive a single penny from complainant is not true because bank statement shows that complainant deposited money in applicant's account – Sufficient material to create strong suspicion against applicant – Case may require custodial interrogation – Application dismissed. (Paras 18, 19 & 27)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – आधार – अभिनिर्धारित – यह स्थापित नहीं है कि परिवादी द्वारा दर्ज कराया गया प्रथम

सूचना प्रतिवेदन, प्रतिवाद में एक प्रथम सूचना प्रतिवेदन था – आवेदक का तर्क कि उसने परिवादी से एक पैसा भी प्राप्त नहीं किया था, सत्य नहीं है क्योंकि बैंक विवरण दर्शाता है कि परिवादी ने आवेदक के खाते में रकम जमा की थी – आवेदक के विरूद्ध प्रबल संदेह उत्पन्न करने के लिए पर्याप्त सामग्री – प्रकरण में अभिरक्षा में पूछताछ अपेक्षित हो सकती है – आवेदन खारिज।

***B. Prevention of Corruption Act (49 of 1988), Section 12 & 24 (repealed)* – Held – Applicant and complainant both alleged that they have given bribe to each other for getting unlawful work done and are aggrieved by non return of the bribe money as the said work was not done – Vide amendment of 2018, Section 24 was repealed which accorded protection to bribe givers – In instant case, offence registered in 2019 thus applicant and complainant liable to be prosecuted u/S 12 of the Act. (Paras 30 to 33)**

ख. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 12 व 24 (निरसित) – अभिनिर्धारित – आवेदक एवं परिवादी, दोनों ने अभिकथित किया कि उन्होनें विधिविरूद्ध कार्य कराने के लिए एक दूसरे को रिश्वत दी है और रिश्वत की रकम न लौटाये जाने से व्यथित हैं क्योंकि उक्त कार्य नहीं किया गया था – 2018 के संशोधन द्वारा धारा 24 निरसित की गई थी जो रिश्वत देने वाले को संरक्षण प्रदान करती थी – वर्तमान प्रकरण में, अपराध 2019 में पंजीबद्ध हुआ, अतः, आवेदक एवं परिवादी, अधिनियम की धारा 12 के अंतर्गत अभियोजित किये जाने के लिए दायी हैं।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 200 & 340 and Penal Code (45 of 1860), Section 193 & 196 – Filing Fabricated Document before Court* – Held – Fabricated affidavit filed before this Court – Applicants also stated false facts and used fabricated affidavit as genuine document – Registrar General directed to initiate proceedings u/S 340 Cr.P.C. for offence u/S 193 & 196 IPC and if found *prima facie* guilty, complaint be filed u/S 200 Cr.P.C. on behalf of High Court. (Para 34 & 39)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 200 व 340 एवं दण्ड संहिता (1860 का 45), धारा 193 व 196 – न्यायालय के समक्ष कूटरचित दस्तावेज प्रस्तुत किया जाना – अभिनिर्धारित – इस न्यायालय के समक्ष कूटरचित शपथपत्र प्रस्तुत किया गया – आवेदकगण ने मिथ्या तथ्यों का भी कथन किया और कूटरचित शपथपत्र का उपयोग वास्तविक दस्तावेज के रूप में किया – रजिस्ट्रार जनरल को धारा 193 व 196 भा.दं.सं. के अंतर्गत अपराध हेतु धारा 340 दं.प्र.सं. के अंतर्गत कार्यवाहियां आरंभ करने के लिए निदेशित किया गया और यदि प्रथम दृष्ट्या दोषी पाये जाते हैं, उच्च न्यायालय की ओर से धारा 200 दं.प्र.सं. के अंतर्गत परिवाद प्रस्तुत किया जाए।

***D. Prevention of Corruption Act (49 of 1988), Section 12 – Bribe Giver* – Directions issued to State police that in every such cases of bribe, FIR shall be registered against the bribe giver u/S 12 of the Act. (Para 36)**

घ. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 12 – रिश्वत देने वाला

– राज्य पुलिस को निदेश जारी किए गए कि रिश्वत के ऐसे प्रत्येक प्रकरण में, अधिनियम की धारा 12 के अंतर्गत रिश्वत देने वाले के विरूद्ध प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जाएगा।

Cases referred:

AIR 1980 SC 1632, 2016 (1) SC 152.

Manish Datt with *Siddharth Datt*, for the applicant.
Utkarsh Agarwal, for the State.
Abhinav Shrivastava, for the Objector/Complainant.

O R D E R

(Heard through Video Conferencing)

ATUL SREEDHARAN, J. :- This is an application for anticipatory bail. Elaborate arguments have been forwarded by the respective parties and therefore, it would be essential to record the facts of this case and the ensuing discussion in some detail. The FIR, being Crime No. 382/2019, was registered against the Applicants herein for having committed offences under sections 420 and 120-B of IPC.

2. Briefly, the allegations in the FIR are to the effect that the Complainant's son is an undertrial in a criminal case registered under sections 376, 377 and 305 of IPC along with sections 4 and 6 of the POCSO Act and the relevant provisions of the Scheduled Castes and Scheduled Tribes Act.

3. The Applicant No. 1 is alleged to have told the Complainant that he can arrange for bail being granted in favour of the son of the Complainant upon payment of Rs. 10,00,000/-(Rupees ten lakhs). It is further alleged in the FIR that the Complainant made several payments to the Applicant No.1 amounting to Rs.8, 50, 000/- (Rupees eight lakhs fifty thousand). However, things did not go as planned and the son of the Complainant was not granted the benefit of bail and so the Complainant asked the Applicants to return the bribe money given by the Complainant to unlawfully influence the judicial process and secure a bail order. However, as the Applicants refused to refund the bribe money given to them by the Complainant, the FIR has been registered.

4. The Applicant No.1, on the other hand submits that he is a businessman who participated in a tender floated by the Northern Coal Field Ltd. (hereinafter referred to as the "NCL"). Ld. Senior Counsel appearing for the Applicant No. 1 submitted that the Complainant contacted Applicant No. 1 and assured him that he would get the tender cleared in favour of the Applicant No. 1. On 26/04/2018, the Applicant No.1 alleges that he paid the Complainant Rs.6, 50, 000/- (Rupees six lakhs and fifty thousand) as bribe money to influence the officials of NCL, to get

the tender in his favour. The Applicant No.1 further alleges that he was later informed by the Complainant that another company was ready to pay Rs.10,00,000/- (Rupees ten lakhs) as bribe and that the Applicant No.1 would now have to pay Rs.10,00,000/- or loose the tender. On 26/04/2018 itself, that the Applicant No. 1's tender was rejected. The Applicant No. 1 asked the Complainant to return the bribe money and the Complainant agrees, and enters into an alleged written agreement with the Applicants to return the bribe money taken by him for securing the tender in favour of the Applicant No.1, within a period of six months, without interest. The agreement is annexed as Annexure-A/2 at page-20. The relevant portion of the said annexure is being reproduced hereunder: -

> मैं दिलीप कुमार श्रीवास्तव प्रथम पक्ष ने द्वितीय पक्ष श्री सुरजमल अम्बेडकर पुत्र श्री जीउत राम उम्र लगभग 48 वर्ष ग्राम मानिकपुर कोटे पो. व थाना करण्डा, जिला–गॉजीपुर (उ.प्र.) से दिनांक 06.02.2018 को कृष्णषीला परियोजना एन. सी.एल. सिंगरौली (म.प्र.) में टेन्डर दिलाने के काम से सुरजमल अम्बेडकर जी की कम्पनी एस.एस. अम्बेडकर डेपल्पर्स एण्ड कंस्ट्रक्शन प्राइवेट लिमिटेड के डायरेक्टर (मालिक) हैं। इनके निजी ड्राईवर बुद्धसेन पटेल के हाथों से 51,000 रू. (इंकावन हजार रू.) तथा 2,50000 रू. (दो लाख पचास हजार रू.) 17.02. 2018 तक एवं 3,00000 रू. (तीन लाख रू.) 22.02.2018 को तथा 1,00000 रू. (एक लाख रू.) 28.02.2018 को नगद कैष में लिया हूँ। जो कि कुल टोटल रू. 701000/– रू. (सात लाख एक हजार रू.) लिया हूँ। जो कि मैं दिलीप कुमार श्रीवास्तव पुत्र बिजेन्द्र लाल श्रीवास्तव प्रथम पक्ष, ने द्वितीय पक्ष श्री सुरजमल अम्बेडकर पुत्र जीउत राम से नगद 701000/– रू.(सात लाख एक हजार रू.) लिया हूँ। मैं दिलीप कुमार श्रीवास्तव पैसा अपने करीबी जय प्रकाष पटेल तथा एच.आर. मैंनेजर संतोष कुमार पनिका तथा ड्राईवर बुद्धसेन पटेल के सामने नगद कैष लिया हूँ। जो कि इन्हीं गवाहों के समक्ष हम छः माह के भीतर पुरा पैसा बिना ब्याज के वापस दे दूंगा।

5. Ld. Counsel for the Applicants has referred to I.A.No.23762/2019, which is an application for taking additional documents on record filed on 23/12/2019. For the reasons stated therein, the same is allowed and the documents filed therewith are taken on record and are being considered. Annexure-A/4 at page-4 of I.A.No.23762/2019 is a complaint made to the Superintendent of Police, Singrauli. It would be essential to reproduce the contents of the said complaint which reads as follows: -

> निवेदन है कि मैं प्रार्थी सूरजमल अम्बेडकर पुत्र स्वं जीउत राम ग्राम मानिककपुर कोटे थाना करण्डा जिला गाजीपुर का निवासी हूँ। मैं प्रार्थी पिछले वर्ष फरवरी 2018 में एनसीएल जयन्त सिंगरौली म.प्र. परियोजना के तहत कृष्णषिला परियोजना एन.सी.एल. जयन्त सिंगरौली में दिनांक 6 फरवरी 2018 को कोल माइन्ष के टेण्डर लेने हेतु एक टेण्डर डाला था। उसकी काम को दिलाने के लिये जयन्त परियोजना के जी.एम. कार्यालय में कार्यरत् बड़े बाबू फाइनेन्ष श्री दिलीप कुमार श्रीवास्तव जी को नहीं दे रहे है। मांगे जाने पर कह

> रहे है कि हम तीन माह बाद देंगे। और कह रहे हैं कि मैने पेसा लेने का एग्रीमेंट लिख कर दे दिया है। हम बेईमानी नहीं करेंगे। अभी दो माह का समय लगेगा हम अपने ऑफिस से लेकर और कुछ व्यवस्था अपने सर्विस से एडवान्स लेकर आप को देंगे। महोदय आप को अवगत कराना है कि दिलीप कुमार श्रीवास्तव जी ने हम पिछले कई महिनों से दौड़ा रहे हैं। और हर बार बुलाकर पैसा नहीं देते है। कहते हैं कि हम पैसा लेकर अपने टेण्डर से संबंधित बड़े साहब को दिया हूँ, जब हम उन से लेंगे तभी न देंगे। और देते नहीं है। हमको पिछले 6 माह से दौड़ा रहे हैं आज मैंने कहा है कि आप पैसा दीजिये नही तो आप अपने बड़े साहब जिसको आप ने हमसे लेकर पैसा दिया है, उस साहब से मिलवाईये तो दिलीप कुमार श्रीवास्तव हमें उल्टी सीधी गालियां दे रहे है। और कह रहे हैं, कि अगर तुम दुबारा पैसे आवोगे तो यही के कुछ लोगों से ही हम तुम को गोली मारवा देंगे।

6. Thereafter, it is submitted by the Ld. Counsel for the Applicants that they started pressurizing the Complainant to return the bribe money. Ld. Counsel for the Applicants refers to Annexure-4A at page-40 in the main petition. The document is an FIR being Crime No.174/2019, registered on 30/11/2019 at Police Station Karanda, District Gazipur, Uttar Pradesh, for offences under sections 419, 420, 504 and 506 of IPC along with the provisions under the SC/ST Act. It was registered by the Applicant No. 1 against the Complainant and one other person. The facts relate to an alleged incident of 26/10/2019 wherein, the Applicant No. 1 alleges that the Complainant along with 5 to 7 persons came to his house and threatened him with dire consequences if he did not withdraw the complaint made by him to the officials of NCL, Singrauli, against the Complainant. It is further alleged in the FIR that the Complainant also threatened to implicate the Applicants in a false criminal case in Singrauli. The relevant portion of the FIR reads as follows: -

> महोदय आपको अवगत कराना है कि हम प्रार्थी सुरजमल अम्बेडकर जी कम्पनी एस.एम. अम्बेडकर डेवल्पर्स कंस्ट्रक्शसप प्राइ.लि. का डायरेक्टर (मालिक) हूँ, और संतोष पनिका हमारे कपंनी का एच.आर मैंनेजर तथा बुद्धसेन पटेल हमारे निजी ड्रायवर है जो कि पिछले 10 वर्षो से हमारे यहां कार्यरत् है। हम प्रार्थी ने पिछले फरवरी 2018 में एनसीएण्ल के कृष्णषिला परिषद में आर्टिकल्चरल एवं आफिसियल साफ–सफाई एवं रख–रखाव के लिए टेंडर डाला था, उसी टेंडर के पूछताछ में टेन्डर डालने समय हमारी मुलाकात दिलीप कुमार श्रीवास्तव से हुई थी, उन्होंने अपने आप को सीजीएम एनसीएल का बड़े बाबू बताये थे और कहे कि हम सीजीएम का बड़े बाबू और फाइनेन्सियल बोर्ड का पूरा काम हम देखते हैं और यह कहा जो भी यहां टेडर होता है वो सब हम मैंनेज करते है, और यह से लेके सीएमडी एनसीएल हेड क्वाटर तक हम पूरा कार्य टेंन्डर से सम्बन्धित करते हैं और टेन्डर कराने के लिए हम ही बातचीत करते है, और ऊपर से साहब लोगों को डील फायनल कराते हैं। दिलीप कुमार श्रीवास्तव ने हम प्रार्थी हमारे एच.आर.संतोष पनिका और ड्रायवर बुद्धसेन पटेल के सामने ही टेन्डर दिलाने के लिए 6,50,000/– (छः लाख पचास हजार) रू. मांगे थे और कहे कि इस टेंडर को पिछले 3–3

वर्षो से जो कम्पनी कर रही है, उसके कार्याकलापों से हमारे सीजीएम साहब काफी नाराज है। और हमारे साहब ने कहा कि इस बार टेन्डर किसी दूसरी कंपनी को देना है मैंनेज करो हम लोगों ने दिलीप कुमार श्रीवास्तव के द्वारा ऐसा बताये जाने पर उनकी बात मानकर टेन्डर किसी दूसरे कंपनी को देना है, मैनेज करो हम लोगों ने दिलीप कुमार श्रीवास्तव के द्वारा ऐसा बताये जाने पर उनकी बात मानकर टेंडर लेने को तैयार हो गये, और हमारी कंपनी आई.एस. एम. अम्बेडकर डेवल्पर्स कंस्ट्रक्शन प्राइ.लि. के नाम से कृष्ण षिला परियोजना सिंगरौली में टेंडर डालने के दिन संतोष पनिका एवं अपने ड्रायवर बुद्धसेन पटेल को वाराणसी से सिंगरौली भेजा दिलीप कुमार श्रीवास्तव ने फोन करके कहा था कि टेन्डर डालने के लिए जो धनराशि सिक्यूरिटी मनी जमा कराना है। उसे ऑन लाईन जमा कर दिया जाए एनसीएल के खाते में और 51,000/– (इक्यावन हजार रू.) नगद रूपये दिया गया क्योंकि ऊपर मैंनेज करके हम टेन्डर स्वीकृत करा देंगे और बाकी धनराशि 6,50,000 (छ लाख पचास हजार) रू. कैश में चाहिए, टेन्डर फार्म जमा करने के 3 दिन के भीतर हमें नगद कैश चाहिए, तभी टेन्डर मैनेज हो पायेगा। महोदय हमने दिलीप कुमार श्रीवास्तव जी की बात मानकर फरवरी 2018 में दिलीप कुमार श्रीवास्तव जी के करीबी जय प्रकाश पटेल के सामने टेन्डर ऑनलाइन जमा कर दिया। और टेंडर की सीक्यूरिटी मनी रू. 64,000/– एनसीएल के खाते में ऑनलाइन जमा कर दिया तथा दिलीप कुमार श्रीवास्तव जी को 51,000/– नगद रू. कैश अपने एच.आर मैनेजर संतोष पनिका एवं ड्रायवर बुद्धसेन पटेल के हाथों नगद कैश दिलीप कुमार श्रीवास्तव जी को दिया, उस समय जय प्रकाश पटेल जी मौके पर मौजूद थे। और पैसा लेकर के दिलीप कुमार श्रीवास्तव जी ने कहा कि आज ही टेन्डर का आखिरी दिन है आप लोग जमा करके चले जाओ हम बहुत बिजी है आपका काम हो जायेगा। बाकी धनराशि 6,50,000/– (छः लाख पचास हजार) रू. नगद पैसा तीन दिन के भीतर आप लोग हमें दीजियेगा आपका ही टेंडर होगा। महोदय दिलीप कुमार श्रीवास्तव जी के बताने के अनुसार धनराशि 6,50,000/– (छः लाख पचास हजार रू.) नगद रूपये तीन बार में जयप्रकाश पटेल एवं संतोष पनिका तथा बुद्धसेन पटेल के सामने नगद कैश दे दिया और टेन्डर बीड खुलने के दिन तक इंतजार करने को कहा गया, दिलीप कुमार श्रीवास्तव जी द्वारा और हम लोग पैसा देकर वापस देकर चले आए। महोदय हम प्रार्थी सूरजमल अम्बेडकर ने जयप्रकाश पटेल, संतोष पनिका एवं बुद्धसेन पटेल के सामने इनकी ही द्वारा दिलीप कुमार श्रीवास्तव को कुल 7,00,000/– (सात लाख रूपये) दियागया। और अगले सप्ताह दिलीप कुमार श्रीवास्तव जी ने फोन कर के बताया कि दूसरी पार्टी हमें 10,00,000/– (दस लाख रू.) दे रही है क्योंकि पिछली पार्टी तीन वर्षो से कार्यरत् है कि वो किसी भी कीमत पर काम लेना चाहती है। तो आप आज ही 10,00,000/– (दस लाख रू.) की रकम पूरा कर दीजिये जो बाकी का पैसा 3,00,000/– शेष है। जो कि आज ही उपलब्ध कराये नही तो टेंडर दूसरे को चला जायेगा। तब मैंने दिलीप कुमार श्रीवास्तव जी को बोला की आप तो कहे थे कि सीजीएम साहब से सीएमडी साहब से टेंडर की मीटिंग करा दुंगा। मगर आप अभी तक मीटींग नहीं कराये। और कहा कि पहले मीटिंग कराइए तब हम बाकी का शेष राशि रू. 3,00,000/– आपको देंगे। उसी बात पर दिलीप कुमार श्रीवास्तव जी हमारे ऊपर भड़क गये। और उस दिन टेन्डर का अन्तिम दिन था। बाकी उस दिन बिना किसी सूचना व प्रचार से कराये है, टेन्डर के अन्तिम तारिक एक

दिन के लिए आगे बकर दूसरी पार्टी को 10,00,000/— (दस लाख रू.) लेकर हमारी कंपनी का टेंडर जो पड़ा था उसे 1 प्रतिशत बिलो कराकर दूसरी पार्टी को टेंडर दे दिया मुझे एल2 करा दिये और दूसरे पार्टी को एल1 कराकर उसे ही टेन्डर फयनल कर दिये।

7. Thereafter, Ld. Counsel for the Applicants has referred to the FIR that was registered against him in which the present application for anticipatory bail has been filed. The FIR is Annexure-A/3 to the main petition at page 21. The said FIR bears Crime No.382/2019 registered on 12/10/2019 at Police Station Vindhyanagar, District-Singrauli for offences under sections 420 read with 120-B of IPC. The relevant portion of the said FIR are reproduced hereunder: -

फरियादी दिलीप कुमार श्रीवास्तव पिता स्व0 विजेन्द्र लाल श्रीवास्तव उम्र 25 वर्ष निवासी बी—81 सेक्टर बी दुधीचुआ कॉलोनी के एक किता टाइपसुदा स्वयं का हस्ताक्षरित लिखित आवेदन पत्र पेश किये जो आरोपीगण सूरजमल अम्बेडकर निवासी निकपुर कोटे थानाकरण्डा जिला गाजीपुर (उ0प्र), बुद्धसेनपटेल पिता जयसवन्त प्रसाद पटेल निवासी करकोसा थाना बैढ़न, संतोष कुमार पनिका पिता सीताराम पनिका निवासी शासन टूसा थाना बैंढ़न, जय प्रकाश पटेल पिता राजेन्द्र प्रसाद पटेल निवासी एम क्यू 377 सेक्टर एदुधीचुआके द्वारा फरियादी से छलकपटपूर्वक बेईमानी से लड़के की जमानत कराने के नाम पर 8,50,000 रूपये नगदी एवं ऑनलाइन एवं पे.टी.एम. से प्राप्त कर न तो जमानत कराना एवं ना ही पैसा वापस कर ना पत्र से अपराध धारा 420, 120 बीताहिका घटित कर ना पाये जाने से अपराध सदर कायम कर विवेचना में लिया गया नकल आवेदन पत्र की अक्षरशः जैल है।

सेवा में श्रीमान चौकी प्रभारी महोदय चौकी जयंत जिला सिंगरौली (म.प्र.) विषय छलकपटपूर्वक बेईमानी से 850000 रूपये नगद एवं ऑनलाइन एवं पेटीएम से प्राप्त कर लेने के संबंध में महोदय निवेदन है प्रार्थी दिलीप कुमार श्रीवास्तव पिता स्व. विजेन्द्रलाल श्रीवास्तव उम्र 52 वर्ष निवासी ग्राम नई बस्ती वार्ड क्रमांक 19 राबर्ट्सगंज सोनभद्र (उ.प्र.) अस्थायी पता बी—81 सेक्टर बीदुधीचुआ कॉलोनी थाना विन्ध्यनगर जिला सिंगरौली (म.प्र.) का निवासी है प्रार्थी उच्च श्रेणी लिपिक के पद पर महाप्रबंधक कार्यालय धीचुआ में पदस्थ है प्रार्थी का पुत्र राहुल श्रीवास्तव उम्र 23 वर्ष का अपराध क्रमांक 99/16 धारा 305, 376, 4/6 पास्को एक्ट की धारा 3 (i)(v)(ii), 3(2)(i) अनुचित एसटी, एससी एक्ट के प्रकरण में केन्द्रीये कारगार रीवा में बन्द है प्रार्थी बच्चे की जमानत के लिये काफी परेशान था किन्तु जमानत न ही मिलने के कारण परिचित सहकर्मी राजेन्द्र प्रसाद पटेल डोजर ऑपरेटर निवासी सेक्टर एदुधीचुआके लड़के जय प्रकाश पटेल को बतलाया कि हमारे लड़के की जमानत नही हो रही है तब जय प्रकाश पटेल ने कहा कि यदि आप 10,00000 (दस लाख) रूपये खर्च करोगे तो आपका लड़का जैल से बाहर आ जायेगा तीन दिन बाद राजेन्द्र प्रसाद पटेल का बेटा जय प्रकाश पटेल मेरे कमरे में आया और बोला कि आपके लड़के की जमानत करवा दुंगा तब मैं पुत्र मोह के कारण पैसे की व्यवस्था करने के लिए रमाशंकर तिवारी ग्राम मडवास सीधी (म.प्र.) सकील अहमद खान कृष्णशीला, श्रीमती शिल्पी सिंह दुधीचुआसेक्टर, अजीत सिंह ईस्ट एवं संतोष कुमार सिंह पिता श्री चित्रसेन सिंह बी 384 सेक्टर बी, रानू

श्रीवास्तव वावतपुर, श्रीमती सुधा श्रीवास्तव सेक्टर–ए के पास गये और पैसे की व्यवस्था किये इस के बाद जय प्रकाश पटेल एवं संतोष कुमार पनिका निवासी शासन टूसा एवं बुद्धसेन पटेल ड्राइवर से मिलवाया और बताये की सूरजमल अम्बेडकर ग्राम गाजीपुर (उ.प्र.) हालपता दिल्ली की जान पहचान सुप्रीम के जज एवं बड़े –बड़े वकीलो से है सूरजमल अम्बेडकर को आप रूपये 10,00000 (दस लाख) दे दिजिये तब मैंने तीन लोगों के बहकावे में आकर और कहने पर दिनांक 07.09.2018 को जय प्रकाश पटेल संतोष कुमार पनिका, बुद्धसेन पटेल के साथ में जाकर बनारस में सूरजमल को उनके फ्लैट पर मिलकर बातचीत करवायें और बोले की साहब को पैसा दे दीजिये आपका काम दिल्ली सुप्रीम कोर्ट सेकरा देंगे तब मैंने दिनांक 07.09.2018 को रूपये 45,0000 (चार लाख पचास हजार रूपये) सूरजमल के हाथ में श्रीमती पुष्पा श्रीवास्तव, दिलीप कुमार श्रीवास्तव, जय प्रकाश पटेल, संतोष कुमार पनिका एवं जय प्रकाश के ड्राईवर के साथ नगद पैसा दिया तब सूरजमल अम्बेडकर ने बोला कि आपका टोटल 10,00000 (दस लाख रूपये) देना होगा। तब मैंने कहा कि अभी मेरे पास इतना ही पैसा है वापस घर जाकर जय प्रकाश पटेल एवं संतोष कुमार पनिका के हाथ में दे दुंगा तथा पैसे की व्यवस्था हो जायेगी आप अपना खाता नम्बर दे दीजिये जैसे पैसों की व्यवस्था होती जायेगी वैसे वैसे आपके खाते में डाल दुंगा तब सूरजमल अम्बेडकर ने कहा कि मेरा खाना नम्बर जय प्रकाश एवं संतोष कुमार आपको दे देंगे तब मैं बनारस वापस घर आया और उसी दिन दिनांक 07.09.2018 को ही पैसे की व्यवस्था कर 1,60,000 (एक लाख साठ हजार) रूपये नगद सूरजमल अम्बेडकर को देने के लिये जय प्रकाश पटेल के घर जाकर के दिया इसके बाद दिनांक 28.09.2018 को संतोष कुमार पनिका को मैने अपने क्वाटर में औरत पुष्पा श्रीवास्तव के सामने 50,000 रूपये नगद सूरजमल अम्बेडकर देने को दिया था इसके बाज जय प्रकाश पटेल, संतोष कुमार पनिका एवं बुद्धसेन पटेल के द्वारा मेरे घर आकर कहा था कि साहब का फोन आया था कि जब तक आप पूरा पैसा नहीं देंगे तब तक आपके लड़के की जमानत नही होगी तब मैंने पुनः पैसे की व्यवस्था कर रिस्तोदारों से कर्ज लेकर दिनांक 01.10.19 को 50000 रूपये बुद्धसेन पटेल के खाता क्रमांक 30780201087680 मे यूबीआई धीचुआ से ट्रांसफर कर दिया था तथा दिनांक 28.09.2018 को 52,000 रूपया सूरजमल अम्बेडकर के खाता क्रमांक 380202010009437 में तथा दिनांक 28.09.2018 को 18000 रूपये एवं 18.10.18 को 25000 रूपया सूरजमल अम्बेडकर के उक्त खाते में यूबीआई बैंक दुधीचुओ से ट्रांसफल किया था इसके बाद पुनः पैसे की व्यवस्था कर दिनांक 22.10.18 को 45000 रूपये श्री मुकेश कुमार को देकर उन्हीं के मोबाइल द्वारा सूरजमल अम्बेडकर के खाते में पी.टी.एम. द्वारा ट्रांसफर किया गया उसके बाद 25.10.18 को जयप्रकाश पटेल मेरे क्वाटर पर आकर बोले कि आपके लड़के की जमानत हो गई है कुछ कागजात में हास्ताक्षर चाहिये तब जय प्रकाश पटेल ने तीन नया कोरास्टाम्प पेपर में मुझसे हस्ताक्षर करवाये और इसके बाद मेरे द्वारा दिये गये कुल नगदी 66,00,000 रूपये एवं ऑनलाइन पे.टी.एम. से ट्रांसफर किये गये 190,000 रूपये कुल 8,50,000 (आठ लाख पचास हजार) देने के बाद मैंने सूरजमल अम्बेडकर को मोबाइल नम्बर 9506112302 एवं 971859449 पर सम्पर्क कर मैंने कहा कि मुझे सी.आर.ए. नम्बर दे दीजिये परन्तु सी.आर.ए. नम्बर देकर पैसे का बार बार मांग करते रहे तब मैंने कहा कि अभी तक मैंने आप लोगो कुल रकम 8,50,000 (आठ लाख दस हजार) रू.

दिया है किन्तु अभी तक हमारे लड़के का जमानत नही करवा पाये हैं।

8. Having read out the relevant portions of the FIR registered by the Complainant against the Applicants, the Ld. Counsel for the Applicants has submitted that in the FIR, it is falsely alleged that the Applicants had taken Rs.8,50,000/- from the Complainant for arranging the bail of the son of the Complainant who is in judicial custody for offences under section 377, 376 and 305 of IPC and section 4 and 6 of POCSO Act and relevant provisions of the SC/ST Act, by influencing the judicial process. The Complainant states that despite having given the bribe money to the Applicants, the son of the Complainant did not get bail and the money was also not returned by the Applicants.

9. As regards the alleged payments stated to have been made by the Complainant to the Applicants and to the co-accused persons, the same has vehemently been denied. In this regard, the Ld. Counsel for the Applicants has drawn the attention of this Court to documents filed with memo No.95/2020, filed on 28/07/2020. The documents filed along with covering memo are taken on record and are being considered by this Court. The said documents are affidavits of Santosh Panika, Buddhsen Patel and the Applicant No.1 Surajmal Ambedkar. They have denied having received any money from the Complainant. Thereafter, the attention of this Court has been drawn to Annexure-9, filed along with I.A.No.26732/2019. On page 5, is the statement of account of the Applicant No.1 Surajmal Ambedkar. Ld. Counsel for the Applicants has drawn the attention of this Court to an entry dated 28/09/2019, whereby cash has been deposited into the account of Applicant No.1 amounting to Rs.52,000/-deposited at Dudhichua Jayant, by the Complainant. It is argued on behalf of the Applicants that the said amount was not deposited by the Complainant but instead, it was deposited by one Sanjeev Sharma, an employee of Applicant No.1. To establish the same, the Applicants have referred to document filed with memo No.2809/2020 on 04/03/2020, which is a covering memo bringing the affidavit of Mr. Sanjeev Sharma on record. The affidavit was executed on 20/01/2020, in which the deponent Sanjeev Sharma stated in paragraph 2 that "यह कि मैं शपथकर्ता दिनांक 28.09. 2018 को 52,00,000/– रूपये'' ; अंकन बावन हजार रूपयेद्ध खाता संख्या 380202010009437 यूनियन बैंक ऑफ इंडिया, शाखा दुधिचुआ, सिंगरौली में स्वयं जमा किया जिसका जमा पर्चा/पावती कहीं खो गया है।"

10. To buttress his contention, the Ld. Counsel for the Applicants has drawn the attention of this Court to the pay in slip of the Union Bank of India, Jayant Branch, showing a deposit of Rs.52,000/- into the account of Applicant No. 1 on 28/09/2018. The copy of the pay in slip, certified by the Union Bank of India, was sent to the Applicant No. 1 along with a covering letter of the Union Bank of India dated 14/01/2020, pursuant to an application by the Applicant No. 1 under the Right to Information Act. The photocopy of the pay in slip shows that the

counterfoil has been detached, as is common in banking practice, where the counterfoil of the pay in slip is endorsed by the teller by signing it and affixing the seal of the bank and given to the depositor, who preserves the same as proof of deposit. However, it is necessary to reiterate here that Mr. Sanjeev Sharma, in his affidavit dated 20/01/2020 while swearing on oath that he was the person who was deposited Rs.52, 000/- in the Union Bank of India, Dudhichua, states in para-2 of his affidavit that he has lost the counterfoil. If Sanjeev Sharma was the person who was deposited the cash amount of Rs. 52,000/- into the bank account of the Applicant No. 1 and has lost the counterfoil, then logically it means that the same cannot be recovered or produced on a later date.

11. Ld. Counsel for the Applicants has stated that the FIR registered by the Complainant against the Applicants is a counterblast to the FIR registered by the Applicant No. 1, against the Complainant at Ghazipur in Uttar Pradesh in which the charge-sheet has been filed against the Complainant herein. He further states that no monies (sic:money) were ever received by the Applicants from the Complainant whereas, it was the Complainant who has received bribe money from the Applicant No.1 for the purpose of "managing" the bid in his favour and, thereafter, not returning the money after the Applicant No.1 failed to bag the bid.

12. The Applicant No. 1 complained against the Complainant to the General Manager, Vigilance of NCL. In this regard, the Ld. Counsel for the Applicants has referred to document filed along with Memo No.74/2020 on 06/01/2020. The document is allowed and taken on record and considered by this Court. By the said document, a letter dated 13/11/2019 of General Manager, Vigilance NCL has been read out to this Court whereby, the Applicant No.1 is asked to verify if he has made a complaint against the Complainant, so that further action can be taken. Ld. Counsel for the Applicants says that the reply to this letter was given in the affirmative by the Applicant No.1 vide his letter dated 24/12/2018. Thereafter, Ld. Counsel for the Applicants states that the case against them was registered one year thereafter as a counterblast against steps taken by the Applicant No.1 to recover the bribe money given by him to the Complainant for bribing officials of the NCL, to manage the tender process in his favour.

13. Ld. Counsel for the Objector and the Ld. Panel Advocate for the State have in one voice objected to anticipatory bail being granted to the Applicants herein. As per the Ld. Panel Advocate, the allegations disclose that the Complainant paid Rs.4,50,000/- by cash to the Applicant No.1 on 07/09/2019. On the same day, an additional Rs.1,60,000/- was handed over to the accused No.4 Jaiprakash (not an Applicant herein), which was given by Jaiprakash to the Applicant No.1. Thereafter, the Complainant has stated that he had given Rs.50,000/- in cash on 28/09/2018 to Santosh, the Applicant No.3 herein, which was to be given to Applicant No.1. On 01/10/2018, an amount of Rs.50,000/- is stated to have been deposited into the account of Applicant No.2, Budhsen Patel. However, the

Complainant, in his 161 statement states that the correct date on which Rs.50,000/- was made by way of online transaction into the account of Budhsen was 10/09/2018 and not 01/10/2018. Ld. Counsel for the State refers to the statement of account of Budhsen Patel, which has been annexed along with I.A.No.23762/2019, which commences from 02/09/2019 and, the entry relating to Rs.50,000/- on 10/09/2018 obviously cannot be seen in the document annexed by the Applicants.

14. Ld. Counsel for the State submits that this is a deliberate act of concealing the transactions into the account of Budhsen Patel for, if the account statement pertaining to 10/09/2018 was filed by the Applicants, the said entry of Rs.50,000/- would have been seen in credit column of the Applicant No.2's bank statement.

15. The next payment was made on 28/09/2018 whereby Rs.52,000/- in cash was deposited into the account of Surajmal Ambedkar, the Applicant No.1 herein, by the Complainant. Thereafter, Rs.25,000/- was deposited in cash by the Complainant into the account of the Applicant No. 1 on 22/10/2018. Rs.45,000/- was paid into the account of Surajmal Ambedkar by the Complainant through mobile based Universal Payment Interface (UPI) through nine instalments. However, a perusal of the said entries on 22/10/2018 reflect only 7 entries of Rs.5000/- each into the account of the Applicant No.1 amounting to Rs.35,000/- made through UPI.

16. Besides this, the Ld. Counsel for the State has drawn attention of this Court to several WhatsApp chats, alleged to taken place between the Applicant No.1 and the Complainant in relation to the payments made by the Complainant to the Applicant No.1 to unlawfully influence judicial proceedings, for securing the bail of the son of the Complainant. The copies of the WhatsApp chats are a part of the case diary.

17. In his rejoinder arguments, the Ld. Counsel for the Applicants has largely reiterated his arguments made earlier. Once again, he reiterates that not a single penny has been paid to the Applicant. Ld. Counsel for the Applicant, thereafter, has relied upon the following judgements: - *Gurbaksh Singh Vs. State of Punjab,* AIR 1980 SC 1632 (Paragraphs-35, 38, 40 and 41), *Bhadresh Bipinbhai Sheth Vs. State of Gujrat and Another,* 2016 (1) SC 152 (Paragraphs- 17, 19, 20 and 26). He has also relied upon the judgments of the Hon'ble Supreme Court in *Arnesh Kumar* and *Joginder Kumar's* cases.

18. Heard, the Ld. Counsels for the Applicants, the State, and the Objector. Perused the documents filed along with the application and the case diary. Firstly, it is the case of the Applicants that the case against them is a counterblast, lodged as an act of vengeance by the Complainant on account of the Applicant No.1 having registered an FIR against the Complainant at Ghazipur in Uttar Pradesh.

However, the records of the case reveal that the FIR against the Applicants has been registered on 12/10/2019 while, the FIR by the Applicant No.1 against the Complainant has been registered at Ghazipur on 30/11/2019. Thus, the FIR registered against the Applicants at Singrauli precedes the FIR registered by the Applicant No.1, against the Complainant at Ghazipur. Effectively, this would make the FIR registered by the Applicant No.1, against the Complainant as the counterblast FIR, rather than one against the Applicants herein.

19. The complaint made by the Applicant No.1 to the Superintendent of Police, Singrauli, bears the date 3rd June 2019 but signed by the Applicant on 4th June 2019. There is no seal, sign, or date of receipt by the SP office to show the same having been received by it and neither is there any proof of dispatch. This could well be a document that was prepared subsequently to show that the FIR by the Complainant was a counterblast. Under the circumstances, the argument of the Applicants that the FIR by the Complainant is a counterblast, is rejected.

20. The facts of this case would reveal the abysmal lows to which the society has fallen. The Complainant in his FIR has the temerity to confesses (sic:confess) that out of love for his son who was languishing in judicial custody, he paid Rs.8,50,000/- to the Applicant No. 1 to unlawfully influence judicial proceedings to secure bail for his son. The Complainant is aggrieved as the Applicant No.1 did not return the money allegedly taken by him to influence the judicial proceedings.

21. The Applicant No.1 on the other hand has audacious courage of admitting before this Court of having paid a bribe of Rs.7,00,000/- to the Complainant, to influence the outcome of the bidding process at NCL, in favour. He is aggrieved by the fact that the Objector/Complainant, despite having been paid the bribe amount, could not influence the bidding process, and failed to secure the bid in favour of the Applicant No.1 and that the money given as bribe was never returned by the Complainant.

22. The affidavit to which the attention has been drawn by the Ld. Counsel for the Applicants which is Annexure-A2 at page 20 of the main petition, is an agreement allegedly executed by the Complainant in favour of the Applicant No. 1, acknowledging that he had taken Rs.7,01,000/- as bribe money in order manipulate the tender process in favour of the Applicant No.1 and that he would return the bribe amount of Rs..7,01000/- taken by him within six months without interest. It is relevant to observe here that the said agreement, though on stamp paper, has not been attested. The document purportedly bears the signature of the Complainant. However, it is also relevant to state here that the Ld. Counsel for the Objector/Complainant has never made any arguments relating to the genuineness, or the lack of it, of this agreement dated 26/11/2018. Once again, the Applicant No.1 himself has admitted of having paid Rs.7,00,000/- as bribe money to the Complainant to get the tender in his favour, as is seen from Annexure 8

accompanying I.A. No. 23762/2019, which is a letter addressed to the Superintendent of Police, Singrauli. The agreement alleged to have been executed between the Applicant No. 1 and the Complainant and the letter alleged to have been written by the Applicant No. 1 to the SP Singrauli being documents filed and relied upon by the Applicant No.1 himself, can be accepted as true as against the Applicant No. 1.

23. As regards the payment of Rs.52,000/- stated to have been made by the Complainant into the account of the Applicant No.1 on 28/09/2018. Ld. Counsel for the Applicants submits that the said cash was deposited not by the Complainant but by a business associate of the Applicant No. 1 named Sanjeev Sharma, who had purportedly deposited this amount into the account of Applicant No. 1 on 28/09/2018 towards hire of a *Poclain* machine belonging to the Applicant No. 1, used by Sanjeev Sharma for the excavation of a drain.

24. As stated hereinabove earlier, Sanjeev Sharma has executed an affidavit which has been filed before this Court and relied upon by the Applicants. The deponent submits that he has lost the counterfoil of the pay in slip of which the Applicant No. 1 has filed a photocopy after getting the same from the Bank under the Right to Information Act. The photocopy of the said pay in slip is filed by the applicants along with document No.814/2020. It clearly shows that the counterfoil has been removed from the main body of the pay in slip. The signature of the depositor, according to the Applicant No. 1 is that of Sanjeev Sharma who has given his affidavit dated 20/01/2020 affirming the same.

25. It is a notorious fact that the pay in slip of any bank has a main body into which the details pertaining to the account of the person to whom the amount is being paid and the counterfoil on which the same details regarding payments of the amounts is made. on which the bank acknowledges receipt and hands over to the depositor. If what has been stated by Mr. Sanjeev Sharma in his affidavit dated 20/01/2020 is true, the counterfoil is lost for good.

26. However, a perusal of the case diary reveals a seizure memo dated 11/10/2019, by which the Complainant has handed over three counterfoils of pay in slips, relating to payments made into the account of the Applicant No.1 and the Applicant No.2. The counterfoil relating to 52,000/- which figures in the credit entry of the Applicant No. 1's statement of account shows that it was deposited on 28/09/2018. The counterfoil bears the seal of the Bank and signature of the teller, acknowledging receipt of this amount which has been deposited into the account of Applicant No.1. The fact that the counterfoil to the pay in slip disclosing payment of Rs. 52,000/-, which Sanjeev Sharma in his affidavit before this Court states has been made by him and the counterfoil of which was lost, is a brazen lie which makes the affidavit filed before this Court a false document as, if the counterfoil was lost as stated by Sanjeev Sharma in his affidavit, there is no

explanation as to how it reached the hands of the Complainant who got the same seized by the police and which is now a part of the case diary and has been seen by this Court. In the affidavit of Sanjeev Sharma, there is no mention that the said counterfoil was either taken away by the Complainant by force, by theft or that it was subsequently found by the Complainant. Thus, there is a strong *prima facie* proof that Sanjeev Sharma is guilty of filing a false affidavit before this Court and the Applicants herein are guilty of using a fabricated document as genuine in the court proceedings and that too, in proceedings before this Court.

27. As regards the other two counterfoils of the pay in slip seized by the police from the Complainant, one is of Rs. 25,000/- dated 11/10/2018, paid into the account of Applicant No.1. A corresponding credit entry dated 11/10/2018 for Rs.25,000/- is reflected in the statement of account of the Applicant No. 1, there are six entries in the statement of the accounts for the date 11/10/2018, out of which, there are only two credits. One is for Rs. 800 and the other is Rs. 25,000/-. Therefore, it is clear that Rs. 25,000/- which is reflected in credit account of the Applicant No.1 on 11/10/2018, was made by the Complainant. Thus, the contention of the Applicant No. 1 that he did not receive a single penny from the Complainant, does not appear to be true. There is sufficient material on record to create a strong suspicion that the Applicants may have committed the offence as alleged by the Complainant and that this case may qualify to be one necessitating custodial interrogation. **Under the circumstances, this application is dismissed**.

28. While hearing and deciding this case, one question that came to the mind of this Court that was begging an answer was, how an abjectly dishonest person, who has paid bribe to another for the purpose of influencing a public servant, can dare to approach the criminal justice system for redressal, where the work for which the bribe was paid for is not done and the bribe money is not returned? Or, in other words, that it is unfathomable that a dishonest person could have the gumption of using the criminal justice system to recover bribe money from the person to whom it was given for influencing the exercise of power by a public servant?

29. While the law enforcement agencies spring into action under Prevention of Corruption Act, 1988 (hereinafter referred to as the "PC Act"), every time a public servant is suspected of taking bribe or for criminal misconduct, its apathetic inertia in indicting the bribe giver is confounding.

30. In cases like the present one, where the complainant seeks the registration of an FIR, disclosing therein that he has given a bribe and that the bribe taker has not done the work for which the bribe was given and refuses to return the bribe money, the Complainant projects himself as the victim of an offence and not its perpetrator therefore, his complaint to the police disclosing a payment of bribe by him is not an inculpation of the bribe giver in an offence and so, does not come

under the definition of a confession and thus, the same is not hit by section 25 of the Indian Evidence Act. Yet, the police and the justice administration system mollycoddles him, completely closing its eyes to the fact that the bribe giver is just as insidious and guilty as the bribe taker for which he ought to have been proceeded against under section 12 of the PC Act. It is also relevant to mention here that the amendment to the PC Act in the year 2018, has repealed section 24 of the PC Act which accorded protection to bribe givers and so, the Complainant in this case was liable to be proceeded against for having committed an offence u/s. 12 of the PC Act, as the offence was registered in the year 2019 by the Complainant, after s. 24 of the PC Act was repealed. It is time that the bribe giver is no longer given any protection but is proceeded against in such cases, more so the self-declared ones.

31. It is however cautioned that a bribe giver must be distinguished from a person from whom a bribe is demanded and where such person, without paying the bribe, seeks to trap the person demanding the bribe and approaches the police or the Lok Ayukta, to set a trap for the bribe taker. Such a person is not a bribe giver, but a genuine victim of a dishonest public servant or his agent and needs to be protected. He is to be distinguished from the person who pays the bribe money and approaches the police later, being aggrieved by the non-return of the bribe money as the work for which it was paid was not done.

32. In this case, Mr. Dilip Kumar Shrivastava, the Complainant in Crime No. 382/19 of P.S Vindhyanagar, District Singrauli is liable to be proceed against u/s. 12 of the PC Act for his admitted stand of having attempted to unlawfully influence the judicial process with the assistance of the Applicant No. 1, to secure the bail of his son. The WhatsApp conversation between the Complainant and the Applicant No. 1 reveals that the Complainant was aware that the money (Rs. 8, 50, 000/-) allegedly paid by him to the Applicant No.1 was for unlawfully influencing the judicial process. The WhatsApp conversation between the Complainant and the Applicant No. 1 is a part of the case diary and the same has been seen and examined by this Court in detail. The Complainant/Objector has not filed any written objections in this case but was represented by his counsel. The Complainant knew very well that the money that was allegedly paid to the Applicant No. 1, was not for paying the legitimate fees of any lawyer as such fees is never paid subject to the outcome of the case.

33. As regards the Applicant No. 1, he has unequivocally stated in the bail application, representation to the SP Singrauli dated 04/06/2019 (Annexure 8 filed along with I.A 23762/2019), Representation to SP Ghazipur (Annexure 4 from page 32 to 36 of the main application), the purported agreement entered into between the Applicant No. 1 and the Complainant dated 26/11/18 (Annexure 2 at page 20 of the main application) and the FIR registered by the Applicant No. 1 at

Ghazipur, that he gave the bribe money to the Complainant to influence the outcome of the bidding process in his favour. All these documents have been filed and relied upon by the Applicant No. 1 himself. Therefore, the Applicant No. 1 is liable to be proceeded against by the Central Bureau of Investigation, as the facts in this case reveal that the Applicant No.1 had tried to bribe the officials of the NCL, an undertaking of the Central Government and *prima facie* guilty of an offence u/s. 12 of the PC Act.

34. As regards Mr. Sanjeev Sharma, he executed an affidavit stating that the amount of Rs. 52, 000/- was deposited by him into the account of the Applicant No. 1 and that he has lost the counterfoil of the deposit slip. The Ld. Counsel for the Applicants has also argued that the pay in slip (filed along with covering memo 814/2020 on 23/01/2020) bears the signature of Mr. Sanjeev Sharma as the depositor of that amount. However, on comparing the signature on the pay in slip with the signature of Mr. Sanjeev Sharma in the affidavit executed by him, *prima facie* there is complete variance between the signatures. However, the signature on the pay in slip and the signature purported to be that of the Complainant on the agreement between the Complainant and the Applicant No. 1 for the return of bribe money allegedly received by the Complainant from the Applicant No. 1, match perfectly. Further, the counter foil of the pay in slip in question that Mr. Sanjeev Sharma states in his affidavit, that he has lost, has actually being seized by the police from the Complainant vide seizure memo dated 02/11/19 and is at page 17 of the case diary. This clearly reflects that Mr. Sanjeev Sharma has filed a fabricated affidavit before this Court and the Applicants stating false facts, and the Applicants have used this fabricated affidavit as a genuine document.

35. Under the circumstances, this Court feels the need to issue certain directions as hereunder.

36. **Directions to the State Police to be implemented under the supervision of the Director General of Police, Madhya Pradesh.**

I. For the reasons stated in paragraphs 28 to 30 *supra,* in every case where the Complainant alleges the payment of bribe money by him to a public servant or his agent in order to influence the decision of such public servant in favour of the Complainant and where, the Complainant is aggrieved by the non-performance on the part of the public servant and is further aggrieved by the non-return of the bribe money by the public servant or his agent, the police shall register an offence under s. 12 of the PC Act against such Complainant/Bribe Giver and proceed against him in accordance with law.

II. The Director General of Police is requested to disseminate the direction (I) to all the Superintendents of Police in the Districts and,

III. The Superintendents of Police of the Districts shall ensure that every police station in their respective jurisdiction is made aware of direction (I).

37. **Directions to the Superintendent of Police, District Singrauli.**

For the reasons stated in paragraph 32 *supra,* the SP Singrauli is requested to direct the SHO of P.S. Vindhyanagar to register an FIR against Dilip Kumar Shrivastava, the Complainant in Crime No. 382/2019 of P.S. Vindhyanagar, for abetting an offence u/s. 12 of the PC Act by allegedly paying Rs. 8, 50, 000/- (rupees eight lakhs fifty thousand) to the accused Surajmal Ambedkar, for trying to unlawfully influence judicial proceedings and secure bail for his son, an accused in Crime No. 99/2016 u/s. 305, 376 IPC, 4 and 5 of the POCSO and relevant provisions of the SC/ST Act, though the act of influencing the judicial process did not attain fruition.

38. **Directions to the Central Bureau of Investigation.**

For the reasons stated in paragraph 4 and 33 *supra,* the Central Bureau of Investigation is requested to register an FIR against the Applicant No. 1 Surajmal Ambedkar, for an offence u/s. 12 of the PC Act and proceed against him in accordance with law.

39. **Directions to the Registrar General of the Madhya Pradesh High Court.**

I. For the reasons given in paragraphs 23 to 26 and 34 *supra,* the Registrar General is requested to initiate proceedings u/s. 340 Cr.P.C against Mr. Sanjeev Sharma, S/o. Mr. Ramesh Sharma for an offence u/s. 193 IPC. If he is found *prima facie* guilty of the said offence, then an appropriate complaint u/s. 200 Cr.P.C be filed against him, on behalf of the High Court, before the Court of competent jurisdiction

II. For the reasons given in paragraphs 23 to 26 and 34 *supra,* the Registrar General is requested to initiate proceedings u/s. 340 Cr.P.C against Mr. Surajmal Ambedkar, S/o. Jiyutram Ambedkar, Mr. Buddhsen Patel, S/o. Jaswant Prasad Patel and Mr. Santosh Panika, S/o. Sitaram Panika, all applicants in M.Cr.C No. 52490/2019 for an offence u/s. 196 IPC. If they are found *prima facie* guilty of the said offence, then an appropriate complaint u/s. 200 Cr.P.C be filed against them, on behalf of the High Court, before the Court of competent jurisdiction.

40. A typed copy of the order be given to the AG Office for necessary compliance of directions in paragraph 36 and 37 of this order.

41. A typed copy of the order be given to Mr. J.K. Jain, Ld. Assistant Solicitor General for necessary compliance of directions in paragraph 38 of this order.

42. A typed copy of the order be given to the Registrar General of the High Court for necessary compliance of directions in paragraph 39 of this order.

43. **List this case for compliance on 09/02/2021.**

Order accordingly

I.L.R. [2021] M.P. 152
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Prakash Shrivastava
MCRC No. 32779/2020 (Indore) decided on 22 December, 2020

ZAID PATHAN & ors. ...Applicants

Vs.

STATE OF M.P. …Non-applicant

(Alongwith MCRC Nos. 22907/2020, 29043/2020, 31816/2020, 31827/2020, 31933/2020, 36823/2020, 37695/2020, 39474/2020 & 39757/2020)

A. Criminal Procedure Code, 1973 (2 of 1974), Sections 154, 195 & 482 and Penal Code (45 of 1860), Section 188 – Quashment of FIR **– Held – There is no bar u/S 195 Cr.P.C. in respect of registration of FIR for offence u/S 188 IPC – What is barred u/S 195 Cr.P.C. is that after investigation, police officer cannot file a final report in the Court and Court cannot take cognizance on that final report – In instant case, investigation is going on – FIR cannot be quashed – Application dismissed. (Paras 16 & 22 to 25)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 154, 195 व 482 एवं दण्ड संहिता (1860 का 45), धारा 188– प्रथम सूचना प्रतिवेदन को अभिखंडित किया जाना – अभिनिर्धारित – धारा 188 भा.दं.सं. के अंतर्गत अपराध हेतु प्रथम सूचना प्रतिवेदन पंजीबद्ध किये जाने के संबंध में, धारा 195 दं.प्र.सं. के अंतर्गत कोई वर्जन नहीं – धारा 195 दं.प्र.सं. के अंतर्गत जो वर्जित है वह यह है कि अन्वेषण पश्चात्, पुलिस अधिकारी, न्यायालय में अंतिम प्रतिवेदन प्रस्तुत नहीं कर सकता और न्यायालय उस अंतिम प्रतिवेदन पर संज्ञान नहीं ले सकता – वर्तमान प्रकरण में, अन्वेषण जारी है – प्रथम सूचना प्रतिवेदन अभिखंडित नहीं किया जा सकता – आवेदन खारिज।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 154 & 195(1)(a) and Penal Code (45 of 1860), Section 188 – Registration of FIR – Cognizance of Offence **– Held – By virtue of Section 195(1)(a) Cr.P.C., power of police to register FIR for offences mentioned therein, is not curtailed but what is curtailed is the jurisdiction of Court to take cognizance of the offence**

without there being complaint in writing of the concerned public servant – FIR can be registered by police for offence u/S 188 IPC. (Paras 16, 20 & 22)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 व 195(1)(a) एवं दण्ड संहिता (1860 का 45), धारा 188 – प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जाना – अपराध का संज्ञान – अभिनिर्धारित– धारा 195(1)(a) दं.प्र.सं. के आधार पर, उसमें उल्लिखित अपराधों हेतु प्रथम सूचना प्रतिवेदन पंजीबद्ध करने की पुलिस की शक्ति कम नहीं की गई है अपितु जो कम किया गया है वह संबंधित लोक सेवक की लिखित में शिकायत के बिना अपराध का संज्ञान लेने के लिए न्यायालय की अधिकारिता है – धारा 188 भा.दं.सं. के अंतर्गत अपराध हेतु पुलिस द्वारा प्रथम सूचना प्रतिवेदन पंजीबद्ध किया जा सकता है।

***C. Penal Code (45 of 1860), Section 188 – Ingredients* – Held – For offence u/S 188, it is sufficient that violator of prohibitory order not only knows the order which he disobeys but that his disobedience produces or is likely to produce harm – Whether applicants were aware of prohibitory order or disobedience has produced or likely to produce harm, is a subject matter of investigation, which is under progress – FIR cannot be quashed. (Para 24)**

ग. दण्ड संहिता (1860 का 45), धारा 188 – घटक – अभिनिर्धारित – धारा 188 के अंतर्गत अपराध हेतु यह पर्याप्त है कि प्रतिषेधात्मक आदेश का उल्लंघन करने वाले को न केवल आदेश का ज्ञान होता है जिसकी उसने अवज्ञा की है बल्कि यह भी कि उसकी अवज्ञा से अपहानि निर्मित हुई अथवा निर्मित होने की संभावना है – क्या आवेदकगण, प्रतिषेधात्मक आदेश से अवगत थे अथवा अवज्ञा से अपहानि निर्मित हुई या होने की संभावना है, अन्वेषण की विषय वस्तु है जो कि प्रगति पर है – प्रथम सूचना प्रतिवेदन अभिखंडित नहीं किया जा सकता।

***D. Criminal Procedure Code, 1973 (2 of 1974), Section 154 & 482 – Quashment of FIR* – Held – Apex Court concluded that power to quash FIR must be exercised very sparingly and with circumspection and that too in rarest of rare case – Court cannot enquire the reliability or genuineness of allegations made in FIR. (Para 24)**

घ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 154 व 482 – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि प्रथम सूचना प्रतिवेदन अभिखंडित करने की शक्ति का प्रयोग अति विरल एवं सावधानी के साथ और वह भी विरल से विरलतम प्रकरण में करना चाहिए – न्यायालय, प्रथम सूचना प्रतिवेदन में किये गये अभिकथनों की विश्वसनीयता या सत्यता की जांच नहीं कर सकता।

Cases referred:

Cr. Application No. 6265/2016 decided on 23.02.2017 (Bombay High Court), Cr. OP No. 1356/2018 decided on 20.09.2018 (Madras High Court), 2020

SCC Online Mad 1298, (2016) 15 SCC 525, M.Cr.C. No. 44006/2019 decided on 02.11.2020, W.A. No. 888/2013 decided on 07.02.2014, (2010) 9 SCC 567, 1998 (2) SCC 391, 2003 (11) SCC 251, (2014) 3 SCC 696.

Pratyush Mishra, for the applicants in M.Cr.C. No. 32779/2020.
Anshuman Shrivastava, for the applicants in M.Cr.C. Nos. 22907/2020, 31816/2020, 31827/2020 & 31933/2020.
S.A. Warsi, for the applicants in M.Cr.C. Nos. 36823/2020, 37695/2020 & 39757/2020.
Neeraj Kumar Soni, for the applicant in M.Cr.C. No. 29043/2020.
Manish Yadav, for the applicant in M.Cr.C. No. 39474/2020.
Pushyamitra Bhargava, Addl. A. G. with *Aniruddha Gokhale*, for the non-applicant/State.

O R D E R

Prakash Shrivastava, J.:-This order will govern the disposal of MCRC Nos.32779/20, 22907/20, 31816/20, 31827/20, 31933/20, 36823/20, 37695/20, 39757/20, 29043/20 & 39474/20 as it is jointly submitted by counsel for the parties that all these MCRCs involve the same issue on the identical fact situation.

2. These MCRCs have been filed for quashing the FIR registered by the police for offence under Section 188 of the IPC.

3. For convenience the facts are noted from MCRC No.32779/20.

4. This MCRC has been filed under Section 482 of the Cr.P.C. for quashing the FIR No.5/2020 registered at Police Station Sarafa, Indore. FIR has been registered against the petitioners for commission of offence under Section 188 & 34 of the IPC with the allegation that on 15.1.2020 the petitioners had staged a demonstration against CAA and NRC without giving any intimation or taking prior permission from the competent authority, whereas the District Magistrate in order to maintain peace and tranquillity had issued the order No./ 2322/ R.A.D.M./ 2019, and Order No./2323/R.A.D.M./2019 dated 10.12.2019 prohibiting any demonstration, procession, public meeting etc. in any place without permission. It is further alleged that in addition to the petitioners, there were other 200 persons who had violated the order of the District Magistrate and, therefore, committed the offence under Section 188 of the IPC.

5. The submission of learned counsel for the petitioners is that in terms of Section 195(1)(a)(i) there is a bar for taking cognizance of offence under Section 188 of the IPC and for that purpose a complaint under Section 200 of the Cr.P.C. is required to be filed and FIR cannot be registered. They further submit that for

registering the FIR obstruction, annoyance, injury or threat to life and safety is necessary and that the order of the District Magistrate was not communicated to the petitioners. They further submit that right of demonstration is a fundamental right. In support of their submission they have relied upon the judgment of the Bombay High Court dated 23.2.2017 in Criminal Application No.6265/2016 *(Shrinath Gangadhar Giram Vs. State of Maharashtra and Another)***,** judgment of Madras High Court dated 20.9.2018 in Criminal OP No.1356/2018 and connected petitions in the case of *Jeevanandham and others Vs. State and Another***,** as also the judgment of the Madras High Court in Criminal OP No.9487/2020 dated 26.6.2020 in the case of *Shamsul Huda Bakavi Vs. State* reported in 2020 SCC Online Mad 1298, judgment of the Supreme Court in the matter of *Anita Thakur and others Vs. Government of Jammu and Kashmir and others* reported in (2016) 15 SCC 525, the judgment of coordinate Bench of this Court dated 2.11.2020 passed in M.Cr.C. No.44006/2019 in the case of *Gopal Bhargava Vs. State of M.P.* and the judgment of this Court in the case of *State of M.P. and Another Vs. Jyotiraditya Scindia* dated 7/2/2014 passed in W.A. No.888/2013 and the judgment of the Supreme Court in the matter of *C. Muniappan and others Vs. State of Tamil Nadu* reported in (2010) 9 SCC 567.

6. Learned counsel for the State has opposed the petition and has submitted that there is no bar under Section 195 of the Cr.P.C. in registering the FIR for offence under Section 188 of the IPC and the bar under Section 195 comes into operation at the stage of taking cognizance. He has further submitted that the offence under Section 188 of the IPC is a cognizable offence and in the State of M.P. it is non bailable offence, therefore, the police officer is competent to register the FIR. In support of his submission he has placed reliance upon the judgment of the Supreme Court in the matter of *State of Punjab Vs Raj Singh and Another* reported in 1998 (2) SCC 391, in the matter of *M. Narayandas Vs. State of Karnataka and others* reported in 2003(11) SCC 251 and in the matter of *Vishal Agrawal and Another Vs Chhattisgarh State Electricity Board and another* reported in (2014) 3 SCC 696.

7. I have heard the learned counsel for the parties and perused the record.

8. The offence registered against the petitioners is under Section 188 of the IPC, which reads as under:-

> **"Section 188. Disobedience to order duly promulgated by public servant**.--Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act,

> or to take certain order with certain property in his possession or under his management, disobeys such direction,
>
> shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;
>
> and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
>
> *Explanation.*—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

9. The necessary ingredients of Section 188 of the IPC is that there should be a prohibitory order promulgated by a competent public servant, which should be known to the person concerned and there should be disobedience which should cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person, or such disobedience should cause or tend to cause danger to human life, health and safety, riot or affray. The explanation to this Section makes it clear that for making out the offence it is sufficient that there was knowledge of the order and its disobedience and that the disobedience produces or likely to produce harm.

10. Under the Cr.P.C. the offence under Section 188 of the IPC is cognizable and bailable. By virtue of the local amendment made by the State of M.P. vide Notification No.33207-F-No.6-59-74-B-XXI dated 19.11.1975 the said offence is made non bailable.

11. Section 154 of the Cr.P.C. provides for registration of FIR by the police in case of cognizable offence and reads as under:-

> **"S.154. Information in cognizable cases**.-(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant; and every such information, whether

given in writing or reduced to writing as aforesaid, shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf."

12. Therefore, in terms of the aforesaid, the police officer is competent to register the FIR in case of commission of offence under Section 188 of the IPC.

13. In the present case it is not in dispute that there were prohibitory orders of the District Magistrate No./2322/R.A.D.M./2019 and No./2323/R.A.D.M./2019 dated 10.12.2019 completely prohibiting any kind of procession, rally, public meeting, demonstration without permission within the limits of Indore. These prohibitory orders were issued by the District Magistrate under Section 144 of the Cr.P.C.

14. The main argument which is advanced is that in view of the bar contained under Section 195 of the Cr.P.C., the police could not have registered the FIR for offence under Section 188 of the IPC. Section 195(1) of the Cr.P.C. which is relevant for the present purposes reads as under:-

"S.195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed

in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, of the abetment of, any offence specified in sub-clause (i) or sub- clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]"

15. The submission of counsel for the petitioners is that as per the procedure prescribed in Section 195 of the Cr.P.C., for the purpose of the offence under Section 188 of the IPC a public servant is required to file a complaint before the competent court and, therefore, the FIR cannot be registered.

16. Such an argument advanced by counsel for the petitioners is devoid of any merit. A bare reading of Section 195(1) Cr.P.C. reveals that the provisions contained in the sub-section are attracted at the stage of taking cognizance. There is no bar under Section 195 of the Cr.P.C. in respect of registration of FIR, therefore, FIR for an offence under Section 188 of the IPC can be registered by the police and after investigation on the basis of the FIR and the material collected during the course of investigation, a competent public servant can file the complaint before the concerned court. What is barred under Section 195 of the Cr.P.C. is that after investigating the offence under Section 188 of the IPC, the police officer cannot file a final report in the Court and the Court cannot take cognizance on that final report, as at that stage the bar contained in Section 195 of the Cr.P.C. comes into operation.

17. The Supreme Court in the matter of *Raj Singh* (supra) wherein the similar issue had arisen, has held that the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. In that judgment Hon'ble Supreme Court has held as under:-

"2. We are unable to sustain the impugned order of the High Court quashing the F.I.R. lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195 (1)(b)(ii)Cr.P.C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 Cr.P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Cr.P.C.; and it

> has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) Cr.P.C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr.P.C. The judgment of this Court in Gopalakrishna Menon Vs. D. Raja Reddy [AIR 1983 SC 1053] on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the Court could not take cognizance on such a complaint in view of Section 195 Cr.P.C."

18. The law laid down in the case of *Raj Singh* (supra) has subsequently been approved by the Supreme Court in the matter of *M. Narayandas* (supra). The Hon'ble Supreme Court after taking note of the judgment in the matter of *Raj Singh* (supra) has held as under:-

> "8...Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate under the Criminal procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340 of the Criminal Procedure Code is followed. Thus no right of the Respondents, much less the right to file an appeal under Section 341, is affected."

19. In the matter of *Vishal Agrawal* (supra) similar issue came up in reference to the provisions of Section 151 of the Electricity Act, 2003 which also restricts

any Court from taking cognizance of an offence punishable under the Electricity Act, except upon an application in writing made by the competent person. The Hon'ble Supreme Court has held that:-

> "23. Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance when a complaint is filed before it, that would not mean that no other avenue is open and the complaint/FIR cannot be lodged with the police. It is stated at the cost of repetition that the offences under the Electricity Act are also to be tried by applying the procedure contained in the Code. Thus, it cannot be said that a complete machinery is provided under the Electricity Act as to how such offences are to be dealt with. In view thereof, we are of the opinion that the respondent's counsel is right in his submission that if the offence under the Code is cognizable, provisions of Chapter XII containing Section 154 Cr.P.C. and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same. Sections 135 and 138 only prescribe that certain acts relating to theft of electricity etc. would also be offences. It also enables certain persons/parties, as mentioned in Section 151, to become complainant in such cases and file complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act are also to be governed by the Code of Criminal Procedure."

20. The above judicial pronouncements make it clear that by virtue of the provisions contained in Section 195(1)(a) of the Cr.P.C. the power of the police to register the FIR for offences mentioned therein is not curtailed but what is curtailed is the jurisdiction of the Court to take cognizance of these offences without there being complaint in writing of the concerned public servant.

21. The aforesaid judicial pronouncements of Hon'ble Supreme Court are binding on this Court under Article 141 of the Constitution, therefore, the contrary view which has been taken by the Bombay High Court in the case of *Shrinath Gangadhar Giram* (supra) and of Madras High Court in the case of *Jeevanandham* (supra) & *Shamsul Huda Bakavi* (supra) and of this Court in the case of *Gopal Bhargava* (supra) and *Jyotiraditya Scindia* (supra) is of no help to petitioners. The Bombay High Court, Madras High Court and coordinate Bench

of this Court while taking the contrary view have failed to take note of the law which has been laid down by the Hon'ble Supreme Court in the judgments noted above.

22. Counsel for the petitioners have also placed reliance upon the judgment in the case of *Anita Thakur* (supra), which relates to the issue of freedom of speech but in that judgment itself it has been clarified that the right is subject to the reasonable restriction. Counsel for the petitioners have also placed reliance upon the judgment of the Supreme Court in the matter of *C. Muniappan* (Supra) but that case only lays down that the provisions of Section 195 of the Code is mandatory in nature and that Section 195(1)(a)(i) of the Code bars the Court from taking cognizance of any offence punishable under Section 188 of the IPC, unless there is a written complaint by the public servant concerned but it does not lay down that for such an offence there is a bar for registering the FIR. In that case the trial Court had framed the charge under Section 188 of the IPC without there being a complaint, therefore, the same was quashed.

23. Having regard to the aforesaid, I am of the opinion that no case is made out for quashing the FIR registered against the petitioners for offence under Section 188 of the IPC on the ground that the police does not have power to register the FIR for that offence. The petitioners will have liberty to raise the issue of violation of the provisions of Section 195(1)(a) of the Cr.P.C. in case if after the investigation instead of filing the complaint a final report is filed and the Court concerned takes the cognizance without filing the complaint.

24. Counsel for the petitioners have also raised the ground that on the basis of the FIR allegation the offence is not made out. For offence under Section 188 IPC it is sufficient that the violator of the prohibitory order not only knows the order which he disobeys and that his disobedience produces or is likely to produce harm. Whether the petitioners were aware of the prohibitory order or their disobedience had produced or likely to produce harm, is subject matter of investigation. It has been pointed out that the investigation is under progress. The concerned public servant is expected to file the complaint against the petitioners only if relevant material making out an offence under Section 188 IPC is collected during the course of investigation. The Supreme Court in the matter of *M. Narayandas* (supra) has reiterated the settled position in law that power to quash the FIR must be exercised very sparingly and with circumspection and that too in the rarest of rare case and that the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR and the Court cannot inquire whether the allegations in the complaint

are likely to be established or not.

25. Having regard to the aforesaid, I do not find any merit in these petitions. No case for exercising the inherent power under Section 482 of the Cr.P.C. is made out. The petitions are accordingly dismissed.

26. Signed order be kept in the file of MCRC No.32779/20 and a copy thereof be kept in the file of connected MCRC Nos. 22907/20, 31816/20, 31827/20, 31933/20, 36823/20, 37695/20, 39757/20, 29043/20 & 39474/20.

Application dismissed