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INDIAN LAW REPORT (M.P.) COMMITTEE

MARCH 2021

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

***Accommodation Control Act, M.P. (41 of 1961), Section 23-C – Grant of Leave to Defend – Additional defence* – Held – Tenant has not raised any dispute regarding landlord-tenant relationship in his application filed u/S 23-C and raised the said dispute in his written statement – After striking out of defence, in absence of any right to file written statement, RCA has to proceed on basis of defence disclosed by tenant in his application for grant leave to defend – Any additional defence raised by tenant in written statement cannot be looked into. [Inderchand Jain (Died) Through LRs. Vs. Shyamlal Vyas (Died) Through LRs.] …331**

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–C – प्रतिरक्षा हेतु अनुमति प्रदान की जाना – अतिरिक्त प्रतिरक्षा – अभिनिर्धारित – किराएदार ने धारा 23–C के अंतर्गत प्रस्तुत उसके आवेदन में भू–स्वामी–किराएदार के नाते के संबंध में कोई विवाद नहीं उठाया है एवं उक्त विवाद को उसके लिखित कथन में उठाया है – प्रतिरक्षण को काट देने के पश्चात्, लिखित कथन प्रस्तुत करने के किसी अधिकार की अनुपस्थिति में, भाड़ा नियंत्रण प्राधिकारी को किराएदार द्वारा प्रतिरक्षा हेतु अनुमति प्रदान करने के लिए उसके आवेदन में प्रकटित प्रतिरक्षा के आधार पर कार्यवाही करनी होगी – किराएदार द्वारा लिखित कथन में उठायी गई किसी अतिरिक्त प्रतिरक्षा को विचार में नहीं लिया जा सकता। (इंदरचन्द जैन (मृतक) द्वारा विधिक प्रतिनिधि वि. श्यामलाल व्यास (मृतक) द्वारा विधिक प्रतिनिधि) …331

***Accommodation Control Act, M.P. (41 of 1961) Section 23-C – Grant of Leave to Defend – Presumption* – Held – When leave to defend is rejected or if it is not prayed then even recording of evidence of plaintiff/landlord is required and in view of the presumption u/S 23-C, statement made in eviction application is deemed to have been admitted by defendant/tenant – Plaintiff made all necessary statement in his eviction application thus entitled for order of eviction – Order of RCA upheld – Revision dismissed. [Inderchand Jain (Died) Through LRs. Vs. Shyamlal Vyas (Died) Through LRs.] …331**

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–C – प्रतिरक्षा हेतु अनुमति प्रदान की जाना – उपधारणा – अभिनिर्धारित – जब प्रतिरक्षा हेतु अनुमति नामंजूर की गई है या उसके लिए प्रार्थना नहीं की गई है तब भी, वादी/भू–स्वामी का साक्ष्य अभिलिखित किया जाना अपेक्षित नहीं है और धारा 23–C के अंतर्गत उपधारणा को दृष्टिगत रखते हुए, बेदखली के आवेदन में किये गये कथन को प्रतिवादी/किराएदार द्वारा स्वीकार करना माना गया है – वादी ने उसके बेदखली के आवेदन में सभी आवश्यक कथन किये अतः बेदखली के आदेश हेतु हकदार है – भाड़ा नियंत्रण प्राधिकारी का आदेश कायम रखा गया – पुनरीक्षण खारिज किया गया। (इंदरचन्द जैन (मृतक) द्वारा विधिक प्रतिनिधि वि. श्यामलाल व्यास (मृतक) द्वारा विधिक प्रतिनिधि) …331

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Accommodation Control Act, M.P. (41 of 1961), Section 23-C – Grant of Leave to Defend – Strike Out of Defence – Effect – **Held – Leave to defend was granted but later, defence was struck of due to non-payment of rent, thus defendant/tenant stood relegated back to position as provided u/S 23-C, as if application for leave to defend is refused. [Inderchand Jain (Died) Through LRs. Vs. Shyamlal Vyas (Died) Through LRs.] …331**

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–C – प्रतिरक्षा हेतु अनुमति प्रदान की जाना – प्रतिरक्षा को काट दिया जाना – प्रभाव – अभिनिर्धारित – प्रतिरक्षा हेतु अनुमति प्रदान की गई किंतु बाद में, भाड़े के असंदाय के कारण प्रतिरक्षण को काट दिया गया, अतः, प्रतिवादी/किराएदार वापस उस स्थिति पर आ जायेगा जैसा कि धारा 23–C के अंतर्गत उपबंधित है, मानो प्रतिरक्षा हेतु अनुमति के आवेदन को अस्वीकार किया गया हो। (इंदरचन्द जैन (मृतक) द्वारा विधिक प्रतिनिधि वि. श्यामलाल व्यास (मृतक) द्वारा विधिक प्रतिनिधि) …331

Arbitration and Conciliation Act (26 of 1996), Section 11(5) & 11(6) – Appointment of Arbitrator – Forfeiture of Rights – **Held – Since applicant vide notice, requested the President of respondent society and since it failed to refer the matter for resolution of dispute under escalation procedure as per clauses of agreement or otherwise appoint arbitrator within 30 days or even prior to filing of present application, right of respondent to appoint arbitrator stands forfeited – Application allowed. [HCL Technologies Ltd. (M/s.) Vs. M.P. Computerization of Police Society (MPCOPS)] …541**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(5) व 11(6) – मध्यस्थ की नियुक्ति – अधिकारों का समपहरण – अभिनिर्धारित – चूंकि आवेदक ने नोटिस द्वारा प्रत्यर्थी सोसाईटी के अध्यक्ष से निवेदन किया और चूंकि वह करार के खंडो के अनुसार मामला, तीव्र प्रक्रिया के अंतर्गत विवाद निवारण हेतु निर्देशित करने अथवा अन्यथा 30 दिनों के भीतर या यहां तक कि वर्तमान आवेदन प्रस्तुत करने के पूर्व मध्यस्थ नियुक्त करने में असफल रहा, मध्यस्थ नियुक्त करने का प्रत्यर्थी का अधिकार समपहृत होता है – आवेदन मंजूर। (एचसीएल टेक्नोलॉजीस् लि. (मे.) वि. एम.पी. कमप्यूटराइजेशन ऑफ पुलिस सोसायटी (एमपीसीओपीएस)) …541

Arbitration and Conciliation Act (26 of 1996), Section 11(5) & 11(6) – Appointment of Arbitrator – Notice – **Held – Sub clause (a) of Clause 1.23 of agreement is for dispute resolution with escalation procedure as per Schedule of agreement – Clause 1.23 is mentioned in caption of the notice – Merely because sub-clause (a) is not mentioned, it cannot be said that notice was not served. [HCL Technologies Ltd. (M/s.) Vs. M.P. Computerization of Police Society (MPCOPS)] …541**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(5) व 11(6) – मध्यस्थ की नियुक्ति – नोटिस – अभिनिर्धारित – करार के खंड 1.23 का उपखंड (a), करार की अनुसूची के अनुसार तीव्र प्रक्रिया के साथ विवाद निवारण के लिए है – नोटिस के शीर्षक में

खंड 1.23 उल्लिखित है – मात्र इसलिए कि उपखंड (a) उल्लिखित नहीं है, यह नहीं कहा जा सकता कि नोटिस तामील नहीं किया गया था। (एचसीएल टेक्नोलॉजीस् लि. (मे.) वि. एम.पी. कमप्यूटराइजेशन ऑफ पुलिस सोसायटी (एमपीसीओपीएस)) **…541**

Arbitration and Conciliation Act (26 of 1996), Section 11(6) – See – Arbitration and Conciliation (Amendment) Act, 2015, Section 12(5) **[Vijay Energy Equipments (M/s.) Vs. West Central Railway] …325**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) – देखें – माध्यस्थम् और सुलह अधिनियम (संशोधन) अधिनियम, 2015, धारा 12(5) (विजय एनर्जी इक्विपमेन्ट (मे.) वि. वेस्ट सेन्ट्रल रेलवे) **…325**

***Arbitration and Conciliation Act (26 of 1996), Section 12(5) and Schedule 5 & 7 – Appointment of Arbitrator* – Held – In view of mandate of Section 12(5) r/w stipulation contained in 5th and 7th Schedule, MPCOPS itself being in dispute with applicant, cannot appoint the arbitrator. [HCL Technologies Ltd. (M/s.) Vs. M.P. Computerization of Police Society (MPCOPS)] …541**

माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 12(5) एवं अनुसूची 5 व 7 – मध्यस्थ की नियुक्ति – अभिनिर्धारित – धारा 12(5) की आज्ञा सहपठित 5वीं एवं 7वीं अनुसूची में अंतर्विष्ट शर्तों को दृष्टिगत रखते हुए, **MPCOPS** स्वयं, आवेदक के साथ विवाद में होने के नाते, मध्यस्थ नियुक्त नहीं कर सकता। (एचसीएल टेक्नोलॉजीस् लि. (मे.) वि. एम.पी. कमप्यूटराइजेशन ऑफ पुलिस सोसायटी (एमपीसीओपीएस)) **…541**

Arbitration and Conciliation Act (26 of 1996), Section 21 – See – Arbitration and Conciliation (Amendment) Act, 2015, Section 26 **[Vijay Energy Equipments (M/s.) Vs. West Central Railway] …325**

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***Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016), Section 12(5) and Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Appointment of Arbitrator* – Held – As applicant failed to waive off the applicability of Section 12(5) of Amendment Act of 2015, respondent would be justified in invoking clause 64(3) (amended) of General Conditions of Contract thereby forwarding panel of 3 retired officers of railways to applicant, calling upon him to choose any 2 of them, out of which one will be chosen as nominee arbitrator of applicant – Directions issued accordingly – Application disposed. [Vijay Energy Equipments (M/s.) Vs. West Central Railway] …325**

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माध्यस्थम् और सुलह अधिनियम (संशोधन) अधिनियम, 2015 (2016 का 3), धारा 12(5) एवं माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) – मध्यस्थ की नियुक्ति – अभिनिर्धारित – चूंकि आवेदक 2015 के संशोधित अधिनियम की धारा 12(5) के प्रयोजन का अधित्यजन करने में असफल रहा, प्रत्यर्थी का संविदा की सामान्य शर्तों का खंड 64(3)(संशोधित) का अवलंब लेना न्यायानुमत होगा जिसके चलते आवेदक को रेलवे के तीन सेवानिवृत्त अधिकारियों की सूची अग्रेषित कर, उसे उनमें से किन्हीं दो का चुनाव करने को कहा गया, जिसमें से एक को आवेदक के नामनिर्देशिती मध्यस्थ के रूप में चुना जाएगा – निदेश तद्नुसार जारी किये गये – आवेदन निराकृत। (विजय एनर्जी इक्विपमेन्ट (मे.) वि. वेस्ट सेन्ट्रल रेलवे) **…325**

***Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016), Section 26 and Arbitration and Conciliation Act (26 of 1996), Section 21 – Applicability* – Held – Apex Court concluded that on conjoint reading of Section 21 of principal Act and Section 26 of Amendment Act, it is clear that provisions of 2015 Act shall not apply to such arbitral proceedings, commenced in terms of provisions of Section 21 of principal Act unless the parties otherwise agree. [Vijay Energy Equipments (M/s.) Vs. West Central Railway] …325**

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***Ceiling on Agricultural Holdings Act, M.P. (20 of 1960), Sections 7(b), 9, 11 & 46 – Surplus Land* – Decree was in favour of Jenobai, thus appellant loses the right to hold that land and thus remaining total land holding of appellant comes within ceiling limit – No surplus land with appellant – Impugned order set aside – Appeal allowed. [Bajranga (Dead) By LRs. Vs. State of M.P.] (SC)…205**

कृषि जोत अधिकतम सीमा अधिनियम, म.प्र. (1960 का 20), धाराएँ 7(b), 9, 11 व 46 – अधिशेष भूमि – डिक्री, जेनोबाई के पक्ष में थी, अतः, अपीलार्थी उस भूमि को धारण करने का अधिकार खो देता है और इस तरह अपीलार्थी की शेष संपूर्ण जोत भूमि अधिकतम सीमा के भीतर आती है – अपीलार्थी के पास कोई अधिशेष भूमि नहीं – आक्षेपित आदेश अपास्त – अपील मंजूर। (बजरंगा (मृतक) द्वारा विधिक प्रतिनिधि वि. म.प्र. राज्य) **(SC)…205**

***Ceiling on Agricultural Holdings Act, M.P. (20 of 1960), Sections 7(b), 9 & 11(3) – Principle of Natural Justice – Notice* – In terms of Section 11(3), the draft statement of land held in excess of ceiling limit is to be published and**

served on the holder, the creditor and "all other persons interested in land to which it relates" – Once a disclosure is made u/S 9 that Jenobai had filed a suit, there has to be mandatorily a notice to her otherwise any decision would be behind her back and would violate principle of natural justice. [Bajranga (Dead) By LRs. Vs. State of M.P.] (SC)…205

कृषि जोत अधिकतम सीमा अधिनियम, म.प्र. (1960 का 20), धाराएँ 7(b), 9 व 11(3) – नैसर्गिक न्याय का सिद्धांत – नोटिस – धारा 11(3) के निबंधनों में अधिकतम सीमा से अधिक धारण की गई भूमि का प्रारूप कथन प्रकाशित करना चाहिए और धारक, लेनदार एवं ''उससे संबंधित भूमि में सभी अन्य हितबद्ध व्यक्तियों'' को तामील किया जाना चाहिए – एक बार धारा 9 के अंतर्गत प्रकटन करने पर कि जेनोबाई ने एक वाद प्रस्तुत किया था, आज्ञापक रूप से उसे एक नोटिस होना चाहिए अन्यथा कोई विनिश्चय उसकी पीठ पीछे होगा और नैसर्गिक न्याय के सिद्धांत का उल्लंघन होगा। (बजरंगा (मृतक) द्वारा विधिक प्रतिनिधि वि. म.प्र. राज्य) **(SC)…205**

***Ceiling on Agricultural Holdings Act, M.P. (20 of 1960), Sections 7(b), 9, 11(4), 11(5), 11(6) & 46 – Surplus Land – Declaration in Return* – Held – Once a disclosure of pending suit was made by appellant u/S 9, matter had to be dealt with u/S 11(4) of Act – Respondent authorities should have kept the proceedings in abeyance and were required to await decision of Court – Section 11(5) & 11(6) comes into play when mandate of Section 11(4) is fulfilled, which was not done in present case – Provisions of Section 11 has to be strictly complied with – Even notice was not issued to Jenobai – Respondents breached statutory provisions. [Bajranga (Dead) By LRs. Vs. State of M.P.] (SC)…205**

कृषि जोत अधिकतम सीमा अधिनियम, म.प्र. (1960 का 20), धाराएँ 7(b), 9, 11(4), 11(5), 11(6) व 46 – अधिशेष भूमि – विवरणी में घोषणा – अभिनिर्धारित – एक बार जब धारा 9 के अंतर्गत अपीलार्थी द्वारा लंबित वाद का प्रकटन किया गया था, मामले को अधिनियम की धारा 11(4) के अंतर्गत निपटाया जाना चाहिए था – प्रत्यर्थी प्राधिकारियों को कार्यवाहियां प्रास्थगन में रखनी चाहिए थी तथा न्यायालय के विनिश्चय की प्रतीक्षा करना उनसे अपेक्षित था – धारा 11(5) व 11(6) तब प्रयोज्य होती हैं जब धारा 11(4) की आज्ञा की पूर्ति की गई हो, जो कि वर्तमान प्रकरण में नहीं किया गया था – धारा 11 के उपबंधों का कठोरता से अनुपालन किया जाना चाहिए – यहां तक कि जेनोबाई को नोटिस तक जारी नहीं किया गया था – प्रत्यर्थीगण ने कानूनी उपबंधों का भंग किया है। (बजरंगा (मृतक) द्वारा विधिक प्रतिनिधि वि. म.प्र. राज्य) **(SC)…205**

***Census Rules, 1990, Rule 8(iv) – See – Municipal Corporation Act, M.P., 1956, Sections 10(1), 10(2) & 10(3)* [Rakesh Sushil Sharma Vs. State of M.P.] (DB)…*5**

जनगणना नियम, 1990, नियम 8(iv) – देखें – नगरपालिक निगम अधिनियम, म.प्र., 1956, धाराएँ 10(1), 10(2) व 10(3) (राकेश सुशील शर्मा वि. म.प्र. राज्य) **(DB)…*5**

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Civil Procedure Code (5 of 1908), Section 100 – See – Land Revenue Code, M.P., 1959, Section 44(2)(b) & 44(3)(b) (as amended on 25.09.2018) **[Khyaliram Vs. State of M.P.] …492**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – देखें – भू राजस्व संहिता, म.प्र., 1959, धारा 44(2)(b) व 44(3)(b) (जैसा संशोधित 25.09.2018) (ख्यालीराम वि. म.प्र. राज्य) **…492**

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. [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 – 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। (श्री राम साहू (मृतक) द्वारा विधिक प्रतिनिधि वि. विनोद कुमार रावत) **(SC)…4**

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), Section 152 – Correction in Judgment **– Held – The words "including an employee of the appellant" stand deleted from para 4 of judgment dated 16.11.2020 – Application allowed. [UMC Technologies Pvt. Ltd. Vs. Food Corporation of India] (SC)…383**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 152 – निर्णय में सुधार – अभिनिर्धारित – निर्णय दिनांकित 16.11.2020 की कण्डिका 4 से शब्द ''अपीलार्थी के कर्मचारी को शामिल करते हुए'' हटा दिये गये – आवेदन मंजूर। (यूएमसी टेक्नोलॉजी प्रा. लि. वि. फुड कारपोरेशन ऑफ इंडिया) **(SC)…383**

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**

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। (राजकुमार गोयल वि. म्यूनिसिपल कारपोरेशन, ग्वालियर) **…48**

Civil Procedure Code (5 of 1908), Order 1 Rule 10 – See – Employee's Compensation Act, 1923, Section 3 & 12 **[Bajaj Allianz General Insurance Co. Vs. Hafiza Bee] …100**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 1 नियम 10 – देखें – कर्मचारी प्रतिकर अधिनियम, 1923, धारा 3 व 12 (बजाज आलियांज जनरल इंश्योरेन्स कं. वि. हफीजा बी) **…100**

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 30 Rule 1 – See – Negotiable Instruments Act, 1881, Section 138 & 141 **[Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani]** **…503**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 30 नियम 1 – देखें – परक्राम्य लिखत अधिनियम, 1881, धारा 138 व 141 (दीपक ऐडवरटाईजर्स द्वारा प्रोप्राइटर दीपक जेठवानी वि. नरेश जेठवानी) **…503**

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**

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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 & 19 – Interpretation of Statutes* – Held – If an interpretation of provision leads to an absurdity or frustrates the mandate of Article 14 & 19 of Constitution, then it must be avoided. [Rakesh Singh Bhadoriya Vs. Union of India] ...222**

संविधान – अनुच्छेद 14 व 19 – कानूनो का निर्वचन – अभिनिर्धारित – यदि उपबंध का कोई निर्वचन, अर्थहीनता की ओर ले जाता है या संविधान के अनुच्छेद 14 व 19 की आज्ञा को विफल करता है, तब उससे बचना चाहिए। (राकेश सिंह भदौरिया वि. यूनियन ऑफ इंडिया) **...222**

***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 21 – Right of Accused* – Held – This Court has quashed the provision of circular by which police was authorized to share the personal information and photographs of accused and victims (covered or uncovered) with the media – Patrolling of accused in general public was also held to be violative of Article 21 of Constitution. [Arun Sharma Vs. State of M.P.] ...384**

संविधान – अनुच्छेद 21 – अभियुक्त का अधिकार – अभिनिर्धारित – इस न्यायालय ने उस परिपत्र के उपबंध जिसके द्वारा पुलिस को अभियुक्त तथा पीड़ितों की व्यक्तिगत जानकारी और फोटो (ढकी हुई अथवा बिना ढंकी हुई) मीडिया के साथ साझा करने के लिए प्राधिकृत किया गया था, को अभिखंडित किया – अभियुक्त को आम जनता के बीच घुमाने को भी संविधान के अनुच्छेद 21 का उल्लंघन ठहराया गया था। (अरूण शर्मा वि. म.प्र. राज्य) **...384**

Constitution – Article 21 – Speedy Trial – Fundamental Right – **Held – Speedy trial is fundamental right of accused and police witnesses cannot stay away from trial Court thereby resulting in an unwarranted incarceration of the under trial without there being any progress in trial. [Asfaq Khan Vs. State of M.P.] …343**

संविधान – अनुच्छेद 21 – शीघ्र विचारण – मूलभूत अधिकार – अभिनिर्धारित – शीघ्र विचारण, अभियुक्त का मूलभूत अधिकार है और पुलिस साक्षीगण विचारण न्यायालय से दूर नहीं रह सकते जिससे विचारण में किसी प्रगति के बिना विचारणाधीन का अनावश्यक कैद परिणामित हो। (अशफाक खान वि. म.प्र. राज्य) **…343**

Constitution – Article 136 – Tender – Public Interest – **Held – Financial bid of respondent-1 is 9 crores less than that of respondent-2 – Counsel for respondent-2 accepts that if respondent-1 is disqualified and respondent-2 is awarded the tender, he will do so at the same amount as the financial bid of respondent-1 – State directed to issue LOI to respondent-2 as soon as possible. [State of M.P. Vs. U.P. State Bridge Corporation Ltd.] (SC)…361**

संविधान – अनुच्छेद 136 – निविदा – लोक हित – अभिनिर्धारित – प्रत्यर्थी–1 की वित्तीय बोली, प्रत्यर्थी–2 से 9 करोड़ कम है – प्रत्यर्थी–2 के वकील स्वीकार करते है कि यदि प्रत्यर्थी–1 निरर्हित हो जाता है और प्रत्यर्थी–2 को निविदा प्रदान की जाती है, वह ऐसा उसी राशि पर करेगा जैसा कि प्रत्यर्थी–1 की वित्तीय बोली है – प्रत्यर्थी–2 को यथाशीघ्र आशय–पत्र (लैटर ऑफ इन्टेंट) जारी करने के लिए राज्य को निदेशित किया गया। (म.प्र. राज्य वि. यू.पी. स्टेट ब्रिज कारपोरेशन लि.) **(SC)…361**

Constitution – Article 136 – Tender – Suppression of Material Fact – Fraudulent Practice – **Held – Respondent-1 indulged in fraudulent practice and has suppressed that fact that it was indicted for offences relatable to construction of bridge by it, which had collapsed – It is clearly an omission of most relevant fact and suppression of fact that an FIR had been lodged against respondent-1 in which charge sheet had been filed – Technical objection based on rejection order cannot be allowed to prevail in the face of suppression of most material fact – Impugned order set aside – Appeals disposed. [State of M.P. Vs. U.P. State Bridge Corporation Ltd.] (SC)…361**

संविधान – अनुच्छेद 136 – निविदा – तात्विक तथ्य का छिपाव – कपटपूर्ण पद्धति – अभिनिर्धारित – प्रत्यर्थी–1, कपटपूर्ण पद्धति में लिप्त हुआ और इस तथ्य का छिपाव किया कि उसे उसके द्वारा पुल के निर्माण से संबंधित अपराधों के लिए अभ्यारोपित किया गया था, जो ढह गया था – यह स्पष्ट रूप से अति सुसंगत तथ्य का लोप है तथा इस तथ्य का छिपाव किया गया कि प्रत्यर्थी–1 के विरूद्ध एक प्रथम सूचना प्रतिवेदन दर्ज किया गया था जिसमें आरोप–पत्र प्रस्तुत किया गया था – अति तात्विक तथ्य के छिपाव को सामने रखते हुए नामंजूरी आदेश पर आधारित तकनीकी आक्षेप अभिभावी नहीं होने दिया जा सकता – आक्षेपित आदेश अपास्त – अपीलें निराकृत। (म.प्र. राज्य वि. यू.पी. स्टेट ब्रिज कारपोरेशन लि.) **(SC)…361**

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Constitution – Article 142 – Cancellation of Appointment – Protection – Applicability **– Held – Apex Court concluded that even jurisdiction under Article 142 should be exercised with circumspection in such cases so that unjust and false claims of imposters are not protected – For protection under Article 142, Apex Court drawn a distinction between a student who completes professional course on basis of forged certificates and a person who obtains public employment on basis of false caste certificate. [Nageswar Sonkesri Vs. State of M.P.] …265**

संविधान – अनुच्छेद 142 – नियुक्ति का रद्दकरण – संरक्षण – प्रयोज्यता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि ऐसे प्रकरणों में अनुच्छेद 142 के अंतर्गत अधिकारिता का प्रयोग भी सावधानी के साथ किया जाना चाहिए ताकि धोखेबाजों के अनुचित और मिथ्या दावों की संरक्षा न हो – अनुच्छेद 142 के अंतर्गत संरक्षण हेतु, सर्वोच्च न्यायालय ने कूटकृत प्रमाण पत्रों के आधार पर व्यावसायिक पाठ्यक्रम को पूरा करने वाले छात्र तथा मिथ्या जाति प्रमाण–पत्र के आधार पर लोक नियोजन प्राप्त करने वाले व्यक्ति के मध्य विभेद किया है। (नागेश्वर सोनकेसरी वि. म.प्र. राज्य) **…265**

Constitution – Article 226 – Cause of Action – Delay – Representation **– Held – Even if Court or Tribunal directs for consideration of representations relating to a stale claim or dead grievance, it does not give rise to a fresh cause of action – Mere submission of representation to the competent authority does not arrest time – No right accrued in favour of petitioner – Petition suffers from delay and laches – Petition dismissed – Writ Appeal allowed. [Jabalpur Development Authority Vs. Deepak Sharma] (DB)…215**

संविधान – अनुच्छेद 226 – वाद हेतुक – विलंब – अभ्यावेदन – अभिनिर्धारित – यदि न्यायालय या अधिकरण, किसी जीर्ण दावे या निर्जीव शिकायत से संबंधित अभ्यावेदनों को विचार में लिए जाने हेतु निदेशित करता है, इससे एक नया वाद हेतुक उत्पन्न नहीं होता – सक्षम प्राधिकारी को मात्र अभ्यावेदन प्रस्तुत करना, समय को नहीं रोकता – याची के पक्ष में कोई अधिकार प्रोद्भूत नहीं हुआ है – याचिका, विलंब एवं अति–विलंब से ग्रसित है – याचिका खारिज – रिट अपील मंजूर। (जबलपुर डव्हेलपमेन्ट अथॉरिटी वि. दीपक शर्मा) **(DB)…215**

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. [Rajkumar Goyal Vs. Municipal Corporation, Gwalior] …48**

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। (राजकुमार गोयल वि. म्यूनिसिपल कारपोरेशन, ग्वालियर) **...48**

Constitution – Article 226 – Delay & Laches – Limitation **– Held – Apex Court concluded that though there is no period of limitation providing for filing a writ petition under Article 226 of Constitution yet ordinarily a writ petition should be filed within a reasonable time – Making of repeated representations is not a satisfactory explanation of delay. [Jabalpur Development Authority Vs. Deepak Sharma] (DB)...215**

संविधान – अनुच्छेद 226 – विलंब एवं अतिविलंब – परिसीमा – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि यद्यपि संविधान के अनुच्छेद 226 के अंतर्गत रिट याचिका प्रस्तुत करने हेतु परिसीमा की कोई अवधि उपबंधित नहीं है, तथापि साधारणतः एक रिट याचिका को युक्तियुक्त समय अवधि के भीतर प्रस्तुत किया जाना चाहिए – बारंबार अभ्यावेदन करना, विलंब का संतोषजनक स्पष्टीकरण नहीं है। (जबलपुर डव्हेलपमेन्ट अथॉरिटी वि. दीपक शर्मा) **(DB)...215**

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 – Forcible Eviction & Illegal Detention **– Held – Petitioner was forcibly evicted from his shop with help of police personnel (R-3 to R-5) – Later, without formal arrest, he was kept in illegal detention – Prior to verification of his identity, press note released branding him that "*accused with reward of Rs. 5000 has been arrested*" – His uncovered face photograph was got published in newspaper as well as uploaded on social media – It is a glaring example of police atrocities – Such eviction and**

illegal detention amounts to criminal Act – S.P. Lokayukt directed to file FIR against R-3 to R-5 – Petition allowed with cost of Rs. 20,000. [Arun Sharma Vs. State of M.P.] …384

संविधान – अनुच्छेद 226 – बलपूर्वक बेदखली व अवैध निरोध – अभिनिर्धारित – याची को पुलिस कर्मियों (प्र.क्र. 3 से प्र.क्र. 5) की सहायता से बलपूर्वक उसकी दुकान से बेदखल किया गया था – तत्पश्चात्, बिना किसी औपचारिक गिरफ्तारी के, उसे अवैध निरोध में रखा गया था – उसकी पहचान का सत्यापन होने के पूर्व ही, उसे कलंकित करते हुए यह प्रेस विज्ञप्ति जारी की गई कि ''रू. 5000/– की इनामी राशि के अभियुक्त को गिरफ्तार कर लिया गया है'' – उसके बिना ढके चेहरे की फोटो को समाचार–पत्र में प्रकाशित करने के साथ–साथ सोशल मीडिया पर भी अपलोड किया गया – यह पुलिस द्वारा किये गये अत्याचारों का एक स्पष्ट उदाहरण है – उक्त बेदखली तथा अवैध निरोध आपराधिक कृत्य की कोटि में आता है – एस.पी. लोकायुक्त को प्रत्यर्थी क्र. 3 से प्र.क्र. 5 के विरूद्ध प्रथम सूचना प्रतिवेदन दर्ज करने हेतु निदेशित किया गया – 20,000/– रू. के व्यय के साथ याचिका मंजूर। (अरूण शर्मा वि. म.प्र. राज्य) …384

***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

***Constitution – Article 226 – See – Criminal Procedure Code, 1973, Section 154, 154(3), 156(3), 190 & 200* [Rajendra Singh Pawar Vs. State of M.P.] …289**

संविधान – अनुच्छेद 226 – देखें – दण्ड प्रक्रिया संहिता, 1973, धाराएँ 154, 154(3), 156(3), 190 व 200 (राजेन्द्र सिंह पवार वि. म.प्र. राज्य) …289

***Constitution – Article 226 – Transfer – Judicial Review – Scope* – Held – Apex Court concluded that transfer is a part of service condition of employee which should not be interfered ordinarily by Court of law in exercise of discretionary jurisdiction under Article 226 unless Court finds that either the order is *malafide* or against service rules or passed by incompetent authority. [Mahendra Singh Amb Vs. State of M.P.] …235**

संविधान – अनुच्छेद 226 – स्थानांतरण – न्यायिक पुनर्विलोकन – विस्तार – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि स्थानांतरण, कर्मचारी की सेवा शर्त का एक भाग है जिसमें साधारणतया न्यायालय द्वारा अनुच्छेद 226 के अंतर्गत वैवेकिक अधिकारिता का प्रयोग करते हुए तब तक हस्तक्षेप नहीं किया जाना चाहिए जब तक कि न्यायालय यह न पाये कि आदेश असद्भावपूर्वक किया गया है या सेवा नियमों के विपरीत है या अक्षम प्राधिकारी द्वारा पारित है। (महेन्द्र सिंह अंब वि. म.प्र. राज्य) **...235**

***Constitution – Article 226 – Violation of Fundamental Rights – Compensation* – Held – State shall pay compensation of Rs. 5 lacs to petitioner i.e. Rs. 2 lacs for causing damage during forcible taking out of his belongings from his shop and Rs. 3 lacs for violating his fundamental rights – State to recover the compensation amount from salary of R-3 to R-5. [Arun Sharma Vs. State of M.P.] ...384**

संविधान – अनुच्छेद 226 – मूल अधिकारों का उल्लंघन – प्रतिकर – अभिनिर्धारित – राज्य, याची को 5 लाख रू. के प्रतिकर का भुगतान करेगा अर्थात् 2 लाख रू. बलपूर्वक उसकी दुकान से उसका सामान बाहर करने में कारित हुई क्षति के लिए तथा 3 लाख रू. उसके मूल अधिकारों का उल्लंघन करने के लिए – राज्य प्रत्यर्थी क्र. 3 से प्र.क्र. 5 के वेतन से प्रतिकर की राशि वसूल करेगा। (अरूण शर्मा वि. म.प्र. राज्य) **...384**

***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 Limitation Act (36 of 1963), Section 7 – Scope & Jurisdiction – Cause of Action* – Petitioner retired in 2013 and petition filed in 2020 – Held – Period of limitation u/S 7 for recovery of wages is 3 years – Although period of limitation does not apply to writ jurisdiction, but a litigant cannot wake up belatedly and claim benefits of judgments passed in other cases – Cause of action would not arise when the claim of a similarly situated litigant is allowed. [Surendra Kumar Jain Vs. State of M.P.] ...230**

संविधान – अनुच्छेद 226 एवं परिसीमा अधिनियम (1963 का 36), धारा 7 – व्याप्ति व अधिकारिता – वाद हेतुक – याची 2013 में सेवा निवृत्त हुआ एवं 2020 में याचिका प्रस्तुत की – अभिनिर्धारित – वेतन की वसूली हेतु, धारा 7 के अंतर्गत परिसीमा की अवधि 3 वर्ष है – यद्यपि रिट अधिकारिता के लिए परिसीमा की अवधि लागू नहीं होती परंतु एक मुकदमेबाज विलंबित रूप से जाग कर अन्य प्रकरणों में पारित निर्णयों के लाभों का दावा नहीं कर सकता – वाद हेतुक तब उत्पन्न नहीं होगा जब समान रूप से स्थित मुकदमेबाज का दावा मंजूर किया गया हो। (सुरेन्द्र कुमार जैन वि. म.प्र. राज्य) **...230**

***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**

***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 226/227 – Judicial/Administrative Order – Assigning of Reasons* – Held – Reasons are sacrosanct not only for judicial order but even for an administrative order. [Kishan Patel Vs. State of M.P.] (DB)...297**

संविधान – अनुच्छेद 226/227 – न्यायिक/प्रशासनिक आदेश – कारण दिये जाना – अभिनिर्धारित – कारण, न केवल न्यायिक आदेश के लिए बल्कि एक प्रशासनिक आदेश के लिए भी अतिमहत्वपूर्ण होते है। (किशन पटेल वि. म.प्र. राज्य) **(DB)...297**

***Constitution – Article 226/227 – Review – Grounds* – Held – Reasoned order passed in writ petition – Matter has been dealt with in great detail – No error apparent on face of record – Petitioner cannot be permitted to reagitate the issue in the review – Petition dismissed. [Rajasthan Patrika Pvt. Ltd. Vs. State of M.P.] (DB)...309**

संविधान – अनुच्छेद 226/227 – पुनर्विलोकन – आधार – अभिनिर्धारित – रिट याचिका में सकारण आदेश पारित किया गया – मामले पर बहुत विस्तार से विचार किया गया – अभिलेख पर प्रत्यक्ष रूप से कोई त्रुटि प्रकट नहीं होती – याची को पुनर्विलोकन में पुनः विवाद्यक उठाने की अनुमति नहीं दी जा सकती – याचिका खारिज। (राजस्थान पत्रिका प्रा.लि. वि. म.प्र. राज्य) **(DB)...309**

***Constitution – Article 226/227 – Scope of Interference* – Held – Scope of interference under Article 226/227 is very limited – If impugned orders suffer from any patent lack of inherent jurisdiction or from any manifest procedural impropriety or palpable perversity, interference can be made – Another view is possible is not a ground for interference – Court is not required to sit in appeal and reweigh/reappreciate entire material. [Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council] ...427**

संविधान – अनुच्छेद 226/227 – हस्तक्षेप की व्याप्ति – अभिनिर्धारित – अनुच्छेद 226/227 के अंतर्गत हस्तक्षेप की व्याप्ति अति सीमित है – यदि आक्षेपित आदेश, अंतर्निहित अधिकारिता के किसी प्रत्यक्ष अभाव से या किसी प्रकट प्रक्रियात्मक अनौचित्य या स्पष्ट विपर्यस्तता से ग्रसित हैं, हस्तक्षेप किया जा सकता है – अन्य दृष्टिकोण संभव है, यह हस्तक्षेप के लिए एक आधार नहीं है – न्यायालय के लिए अपील में बैठकर संपूर्ण सामग्री का पुनः तोल/पुनः मूल्यांकन करना अपेक्षित नहीं। (सासन पॉवर लि., सिंगरौली वि. एम. पी. माइक्रो एण्ड स्माल इंटरप्राइज फेसिलिटेशन काउंसिल) **...427**

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Constitution – Article 226/227 – See – Micro, Small and Medium Enterprises Development Act, 2006, Sections 8, 17 & 18 **[Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council] …427**

संविधान – अनुच्छेद 226/227 – देखें – सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम, 2006, धाराएँ 8, 17 व 18 (सासन पॉवर लि., सिंगरौली वि. एम.पी. माइक्रो एण्ड स्माल इंटरप्राइज फेसिलिटेशन काउंसिल) **…427**

***Constitution – Article 227 – Scope & Jurisdiction* – Held – Scope of interference is limited – Power can be exercised in appropriate case where there is patent perversity in impugned order or where there has been a gross and manifest failure of justice or basic principle of natural justice has been flouted – Arbitrator has passed a well reasoned order – No interference warranted – Petition dismissed. [Cobra-CIPL JV Vs. Chief Project Manager] (DB)…497**

संविधान – अनुच्छेद 227 – व्याप्ति व अधिकारिता – अभिनिर्धारित – हस्तक्षेप की व्याप्ति सीमित है – शक्ति का प्रयोग समुचित प्रकरण में किया जा सकता है जहां आक्षेपित आदेश में प्रकट विपर्यस्तता है या जहां न्याय की घोर एवं प्रकट विफलता हुई है या नैसर्गिक न्याय के मूल सिद्धांत की अवहेलना हुई है – मध्यस्थ ने भली–भांति एक सकारण आदेश पारित किया है – किसी हस्तक्षेप की आवश्यकता नहीं – याचिका खारिज। (कोबरा–सीआईपीएल जेव्ही वि. चीफ प्रोजेक्ट मेनेजर) **(DB)…497**

***Constitution – Article 243-M, 243-D & Schedule V, Municipalities Act, M.P. (37 of 1961), Section 29 & 29-A and Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3* – Held – Limit of 50% can only be breached only if it is to be given to ST of the Panchayats in Scheduled Area covered by Schedule V of Constitution – Municipal Council Dhanpuri does not fall within Schedule V of Constitution, thus upper limit cannot be breached. [Mohd. Azad Vs. State of M.P.] (DB)…458**

संविधान – अनुच्छेद 243–M, 243–D व अनुसूची V, नगरपालिका अधिनियम, म. प्र. (1961 का 37), धारा 29 व 29–A एवं नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 – अभिनिर्धारित – 50% की सीमा केवल तब भंग हो सकती है यदि उसे संविधान की अनुसूची V द्वारा आच्छादित अनुसूचित क्षेत्र में पंचायतों के अजजा के लिए दिया जाना है – नगरपालिका परिषद धनपुरी, संविधान की अनुसूची V के भीतर नहीं आती अतः उच्चतर सीमा का भंग नहीं हो सकता। (मोहम्मद आजाद वि. म.प्र. राज्य) **(DB)…458**

***Constitution – Article 243 ZG, Municipalities Act, M.P. (37 of 1961), Section 20 and Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – Maintainability of Writ Petition* – Held – In present case, validity of**

any law has not been challenged therefore bar of 243 ZG does not come to hinder the prospects of petitioner to file writ petition, similarly any nomination or election of any candidate has not been challenged so as to attract the rigours of Section 20 of Act of 1961 – Writ Petition maintainable. [Dipesh Arya Vs. State of M.P.] …251

संविधान – अनुच्छेद 243 ZG, नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 20 एवं नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 – रिट याचिका की पोषणीयता – अभिनिर्धारित – वर्तमान प्रकरण में, किसी विधि की विधिमान्यता को चुनौती नहीं दी गई है इसलिए रिट याचिका प्रस्तुत करने हेतु याची का अवसर बाधित करने के लिए 243 ZG का वर्जन नहीं आएगा, इसी प्रकार, किसी प्रत्याशी के नामांकन या निर्वाचन को चुनौती नहीं दी गई है जिससे कि 1961 के अधिनियम की धारा 20 की कठिनाईयां आकर्षित होती – रिट याचिका पोषणीय। (दीपेश आर्य वि. म.प्र. राज्य) …251

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

Constitution – Article 300A – Right to Property **– Held – Right of property is a constitutional right though not a fundamental right – Deprivation of right can only be in accordance with procedure established by law. [Bajranga (Dead) By LRs. Vs. State of M.P.] (SC)…205**

संविधान – अनुच्छेद 300A – संपत्ति का अधिकार – अभिनिर्धारित – संपत्ति का अधिकार, एक संवैधानिक अधिकार है यद्यपि एक मूलभूत अधिकार नहीं है – अधिकार से वंचित किया जाना केवल विधि द्वारा स्थापित प्रक्रिया के अनुसरण में ही हो सकता है। (बजरंगा (मृतक) द्वारा विधिक प्रतिनिधि वि. म.प्र. राज्य) **(SC)…205**

Constitution – Article 342(1) – Scheduled Caste/Scheduled Tribe – Presidential Notification **– Held – Presidential Notification specifying Schedule Tribe/Scheduled Caste can be amended only by law made by Parliament and it cannot be varied by way of administrative circular, judicial pronouncements or by State – Notification must be read as it is – "*Halba Koshti*" is not mentioned in Presidential order thus it cannot be held to be Scheduled tribe – No error in decision of Caste Scrutiny Committee – Petition dismissed. [Nageswar Sonkesri Vs. State of M.P.] …265**

संविधान – अनुच्छेद 342(1) – अनुसूचित जाति/अनुसूचित जनजाति – राष्ट्रपति की अधिसूचना – अभिनिर्धारित – अनुसूचित जाति/अनुसूचित जनजाति विनिर्दिष्ट करने वाली राष्ट्रपति की अधिसूचना को केवल संसद द्वारा बनाई गई विधि द्वारा संशोधित किया

जा सकता है तथा इसमें प्रशासनिक परिपत्र, न्यायिक निर्णय के माध्यम से या राज्य द्वारा फेरफार नहीं किया जा सकता – अधिसूचना ज्यों कि त्यों पढ़ी जानी चाहिए – राष्ट्रपति के आदेश में ''हल्बा कोष्टी'' का उल्लेख नहीं है अतः इसे अनुसूचित जनजाति नहीं माना जा सकता है – जाति छानबीन समिति के विनिश्चय में कोई त्रुटि नहीं – याचिका खारिज। (नागेश्वर सोनकेसरी वि. म.प्र. राज्य) **...265**

Constitution – Article 342(1) – See – Service Law **[Nageswar Sonkesri Vs. State of M.P.] ...265**

संविधान – अनुच्छेद 342(1) – देखें – सेवा विधि (नागेश्वर सोनकेसरी वि. म.प्र. राज्य) **...265**

Contempt of Courts Act (70 of 1971), Section 12 – Illegal Detention – Bonafide Apology – Conduct **– Held – Respondents have not shown any remorse for their actions and are mud-sledging against each other – Respondents acted as an unruly horse, taking advantage of their uniform and official position in a most disagreeable manner, which may shake confidence of general public in police department – Such act is a direct attack on very existence of humanity – Apologies tendered are not *bonafide*, hence rejected. [State of M.P. Vs. Dinesh Singh Rajput] ...471**

न्यायालय अवमान अधिनियम (1971 का 70), धारा 12 – अवैध निरोध – सद्भावपूर्वक माफी – आचरण – अभिनिर्धारित – प्रत्यर्थीगण ने अपनी कार्रवाई के लिए कोई ग्लानि प्रदर्शित नहीं की है तथा एक–दूसरे के विरूद्ध कीचड़ उछाल रहे हैं – प्रत्यर्थीगण ने अपनी वर्दी और शासकीय पद का लाभ उठाते हुए, एक बेलगाम घोड़े के रूप में अत्यंत अप्रिय ढंग से कार्य किया है, जो कि पुलिस विभाग पर आम जनता के विश्वास को डगमगा सकता है – ऐसा कृत्य मानवता के मूल अस्तित्व पर एक प्रत्यक्ष हमला है – मांगी गई माफी सद्भावपूर्वक नहीं हैं, अतः नामंजूर की गई। (म.प्र. राज्य वि. दिनेश सिंह राजपूत) **...471**

Contempt of Courts Act (70 of 1971), Section 12 – Illegal Detention – Punishment **– Held – If guilty person has realized that he has committed a mistake, Court must award one opportunity to improve their conduct as a human being in future – Instead of jail sentence, fine of Rs. 1000 is awarded. [State of M.P. Vs. Dinesh Singh Rajput] ...471**

न्यायालय अवमान अधिनियम (1971 का 70), धारा 12 – अवैध निरोध – दण्ड – अभिनिर्धारित – यदि दोषी व्यक्ति को यह अहसास हो जाता है कि उससे गलती हुई है, न्यायालय को उन्हें भविष्य में इंसान के रूप में अपने आचरण को सुधारने का एक अवसर जरूर देना चाहिए – जेल की सजा के बजाय, 1000/– रू. की शास्ति अधिनिर्णीत की गई। (म.प्र. राज्य वि. दिनेश सिंह राजपूत) **...471**

Contempt of Courts Act (70 of 1971), Section 12 – Illegal Detention – Suo Motu proceedings **– Held – Person was unlawfully taken into police custody without verifying his identity – Without formal arrest, he was kept in**

illegal detention – Prior to verification of his identity, press note was also released branding him that "*accused with reward of Rs. 5000 has been arrested*" – His uncovered face photograph was also got published in newspaper as well as uploaded on social media – Respondents violated directions of Supreme Court and hence liable for Contempt of Court. [State of M.P. Vs. Dinesh Singh Rajput] **…471**

न्यायालय अवमान अधिनियम (1971 का 70), धारा 12 – अवैध निरोध – स्वप्रेरणा से कार्यवाही – अभिनिर्धारित – व्यक्ति को, उसकी पहचान सत्यापित किये बिना विधिविरूद्ध पुलिस अभिरक्षा में लिया गया था – बिना औपचारिक गिरफ्तारी के, उसे अवैध निरोध में रखा गया – उसकी पहचान के सत्यापन पूर्व ही, यह बताते हुए प्रेस नोट भी जारी किया गया था कि *''5000/– रू. की इनामी राशि वाले अभियुक्त को गिरफ्तार कर लिया गया है''* – उसके बिना ढंके चेहरे वाली फोटो को भी समाचार पत्र में प्रकाशित कर दिया गया और साथ–साथ सोशल मीडिया पर भी अपलोड कर दिया गया – प्रत्यर्थीगण ने उच्चतम न्यायालय के निदेशों का उल्लंघन किया है तथा इसलिए न्यायालय की अवमानना हेतु दायी हैं। (म.प्र. राज्य वि. दिनेश सिंह राजपूत) **…471**

***Contract – Encashment of Unconditional Bank Guarantee – Exceptions* – Held – The general rule that bank guarantee must be honoured has two exceptions, firstly when there is clear fraud of egregious nature vitiating entire transaction and bank has notice of such fraud and, secondly when there are special equities such as irretrievable injury or irretrievable injustice in favour of injunction – Apart from these two exceptions, beneficiary has right of encashment of unconditional bank guarantee. [Cobra-CIPL JV Vs. Chief Project Manager]** **(DB)…497**

संविदा – बिना शर्त बैंक गारंटी को भुनाना – अपवाद – अभिनिर्धारित – सामान्य नियम कि बैंक गारंटी का आदरण किया जाना चाहिए, के दो अपवाद हैं, प्रथमतः, जब वहां अत्यंत बुरे स्वरूप का स्पष्ट कपट है जो संपूर्ण संव्यवहार दूषित करता है और बैंक को उक्त कपट की सूचना है तथा, द्वितीयतः, जब वहां विशेष साम्याएं है जैसे कि व्यादेश के पक्ष में अपूरणीय क्षति या अपूरणीय अन्याय – इन दो अपवादों के अलावा, हिताधिकारी को बिना शर्त बैंक गारंटी को भुनाने का अधिकार है। (कोबरा–सीआईपीएल जेव्ही वि. चीफ प्रोजेक्ट मेनेजर) **(DB)…497**

***Contract – Unconditional Bank Guarantee – Encashment of* – Held – Bank guarantee is an independent contract between bank and beneficiary thereof – Bank is always obliged to honour the guarantee, if it is unconditional and irrevocable – Dispute between beneficiary and party at whose instance bank guarantee is given is of no consequence and has no effect on the right relating to encashment of guarantee – In commercial dealing, once unconditional guarantee is given, beneficiary is entitled to realize the guarantee as per terms contained therein. [Cobra-CIPL JV Vs. Chief Project Manager]** **(DB)…497**

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संविदा – बिना शर्त बैंक गारंटी – को भुनाना – अभिनिर्धारित – बैंक गारंटी, बैंक एवं उसके हिताधिकारी के मध्य एक स्वतंत्र संविदा है – गारंटी के आदरण हेतु बैंक सदैव बाध्य है यदि वह बिना शर्त और अप्रतिसंहरणीय है – हिताधिकारी एवं पक्षकार जिसके अनुरोध पर बैंक गारंटी दी गयी है, के बीच विवाद का कोई महत्व नहीं तथा गारंटी को भुनाने से संबंधित अधिकार पर कोई प्रभाव नहीं डालता – वाणिज्यिक लेन–देन में, एक बार बिना शर्त गारंटी दिये जाने पर हिताधिकारी, उसमें अंतर्विष्ट निबंधनों के अनुसार गारंटी वसूलने के लिए हकदार है। (कोबरा–सीआईपीएल जेव्ही वि. चीफ प्रोजेक्ट मेनेजर) **(DB)…497**

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**

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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 Practice – Circumstantial Evidence – **Held – If two views are possible on evidence produced, one indicating guilt of accused and other to his innocence, the view which favours the accused must be adopted. [Ramcharan Patel Vs. State of M.P.] (DB)…520**

दाण्डिक पद्धति – परिस्थितिजन्य साक्ष्य – अभिनिर्धारित – यदि प्रस्तुत साक्ष्य पर दो दृष्टिकोण संभव हैं, एक अभियुक्त की दोषिता इंगित करने वाला तथा दूसरा उसकी निर्दोषिता, तो अभियुक्त का समर्थन करने वाला दृष्टिकोण अपनाया जाना चाहिए। (रामचरण पटेल वि. म.प्र. राज्य) **(DB)…520**

Criminal Practice – Conviction for Lesser Offence – **Held – A conviction under a lesser offence could be imposed even though the accused was not specifically charged with. [Shivcharan Vs. State of M.P.] …317**

दाण्डिक पद्धति – लघुतर अपराध हेतु दोषसिद्धि – अभिनिर्धारित – एक लघुतर अपराध के अंतर्गत दोषसिद्धि अधिरोपित की जा सकती है यद्यपि, अभियुक्त पर विनिर्दिष्ट रूप से वह आरोप नहीं लगाया गया था। (शिवचरण वि. म.प्र. राज्य) **…317**

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 154, 154(3), 156(3), 190 & 200 and Constitution – Article 226 – Complaint – Remedies – **Held – It is already concluded by Courts that in case where FIR is not registered by police, complainant has alternate remedy u/S 154(3) & 156(3) Cr.P.C. or to avail remedy u/S 190 & 200 Cr.P.C. or in exceptions as enumerated by Apex Court to *Whirphool case*, can file writ petition before High Court – Petitioners failed to demonstrate that their case falls in such exceptions – Registration of FIR cannot be directed – Police directed to consider complaint of petitioners and take appropriate action – Petition disposed. [Rajendra Singh Pawar Vs. State of M.P.] …289**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 154, 154(3), 156(3), 190 व 200 एवं संविधान – अनुच्छेद 226 – परिवाद – उपचार – अभिनिर्धारित – न्यायालयों द्वारा यह पहले ही निष्कर्षित किया गया है कि पुलिस द्वारा प्रथम सूचना प्रतिवेदन पंजीबद्ध

न किये जाने के प्रकरण में, परिवादी के पास धारा 154(3) व 156(3) दं.प्र.सं. के अंतर्गत वैकल्पिक उपचार हैं या धारा 190 व 200 दं.प्र.सं. के अंतर्गत उपचार का अवलंब ले सकता है अथवा सर्वोच्च न्यायालय द्वारा *व्हर्लपूल* प्रकरण में यथा प्रगणित अपवादों में उच्च न्यायालय के समक्ष रिट याचिका प्रस्तुत कर सकता है – याचीगण यह दर्शाने में असफल रहे कि उनका प्रकरण उक्त अपवादों में आता है – प्रथम सूचना प्रतिवेदन को पंजीबद्ध करने का निदेश नहीं दिया जा सकता – पुलिस को याचीगण के परिवाद पर विचार करने के लिए तथा समुचित कार्रवाई करने के लिए निदेशित किया गया – याचिका निराकृत। (राजेन्द्र सिंह पवार वि. म.प्र. राज्य) **...289**

***Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) and Mines and Minerals (Development and Regulation) Act (67 of 1957), Section 4/21 & 22 – Cognizance of Offence – Written Complaint by Authorised Officer* – Held – For offence under IPC, Magistrate can take cognizance without awaiting for any written complaint by authorized officer – In respect of offence under the Act of 1957 and Rules made thereunder, when Magistrate directs the police u/S 156(3) Cr.P.C. to investigate the matter and submit a report, then such report can be sent to concerned Magistrate as well as authorized officer and thereafter authorized officer may file a complaint before Magistrate and then it will be open for Magistrate to take cognizance. [Jayant Vs. State of M.P.] (SC)...175**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) एवं खान और खनिज (विकास और विनियमन) अधिनियम (1957 का 67), धारा 4/21 व 22 – अपराध का संज्ञान – प्राधिकृत अधिकारी द्वारा लिखित परिवाद – अभिनिर्धारित – भा.दं.सं. के अंतर्गत अपराध हेतु, मजिस्ट्रेट प्राधिकृत अधिकारी द्वारा किसी भी लिखित परिवाद की प्रतीक्षा किये बिना संज्ञान ले सकता है – 1957 के अधिनियम तथा उसके अधीन बनाये गये नियमों के अंतर्गत अपराध के संबंध में, जब मजिस्ट्रेट दं.प्र.सं. की धारा 156(3) के अंतर्गत मामले का अन्वेषण करने तथा प्रतिवेदन प्रस्तुत करने हेतु पुलिस को निदेशित करता है, तब उक्त प्रतिवेदन को संबंधित मजिस्ट्रेट के साथ–साथ प्राधिकृत अधिकारी को भेजा जा सकता है एवं तत्पश्चात् प्राधिकृत अधिकारी मजिस्ट्रेट के समक्ष एक परिवाद प्रस्तुत कर सकता है और तब मजिस्ट्रेट संज्ञान लेने हेतु स्वतंत्र होगा। (जयंत वि. म.प्र. राज्य) **(SC)...175**

***Criminal Procedure Code, 1973 (2 of 1974), Section 156(3) and Mines and Minerals (Development and Regulation) Act (67 of 1957), Section 22 – Suo Motu Power of Magistrate – Cognizance of Offence* – Held – U/S 156(3) Cr.P.C., Magistrate can direct/order the police to lodge FIR even for offences under the Act of 1957 and Rules made thereunder and at this stage, bar u/S 22 of Act of 1957 shall not be attracted – It will only be attracted when Magistrate takes cognizance of the offence under the Act and Rules made thereunder. [Jayant Vs. State of M.P.] (SC)...175**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 156(3) एवं खान और खनिज (विकास और विनियमन) अधिनियम (1957 का 67), धारा 22 – मजिस्ट्रेट की स्वप्रेरणा

शक्ति – अपराध का संज्ञान – अभिनिर्धारित – दण्ड प्रक्रिया संहिता की धारा 156(3) के अंतर्गत, मजिस्ट्रेट पुलिस को 1957 के अधिनियम तथा उसके अंतर्गत बनाये गये नियमों के अंतर्गत अपराधों के लिए भी प्रथम सूचना प्रतिवेदन पंजीबद्ध करने हेतु निदेशित/आदेशित कर सकता है तथा इस प्रक्रम पर, 1957 के अधिनियम की धारा 22 के अंतर्गत वर्जन आकर्षित नहीं होगा – वह केवल तब आकर्षित होगा जब मजिस्ट्रेट अधिनियम तथा उसके अधीन बनाये गये नियमों के अंतर्गत अपराध का संज्ञान लेता है। (जयंत वि. म.प्र. राज्य) **(SC)…175**

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) & 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 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 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 438 – See – Protection of Children from Sexual Offences Act, 2012, Section 7 & 8 **[Aom Tiwari Vs. State of M.P.]** **...551**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – देखें – लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012, धारा 7 व 8 (ओम तिवारी वि. म.प्र. राज्य) **...551**

Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Non-Bailable Cases – Consideration **– Held – In non-bailable cases, the primary factors, the court must consider while exercising discretion to grant bail are the nature and gravity of offence, its impact on society and whether there is a *prima facie* case against accused. [Rekha Sengar Vs. State of M.P.]** **(SC)...378**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – अजमानतीय प्रकरण – विचार – अभिनिर्धारित – अजमानतीय प्रकरणों में अपराध की प्रकृत्ति और गंभीरता, समाज पर उसका प्रभाव तथा क्या अभियुक्त के विरूद्ध कोई प्रथम दृष्ट्या प्रकरण है, ये सब जमानत प्रदान करने हेतु विवेकाधिकार का प्रयोग करते समय न्यायालय द्वारा विचार में लिये जाने वाले, मुख्य कारक हैं। (रेखा सेंगर वि. म.प्र. राज्य) **(SC)...378**

Criminal Procedure Code, 1973 (2 of 1974), Section 439 and Penal Code (45 of 1860), Sections 302, 201 & 34 – Delay In Trial – Compensation **– Held – Trial suffered a lightning stroke because of non-appearance of Town Inspector (Investigating Officer) for evidence – An undertrial cannot be kept in jail at mercy of police witnesses – As per record, case not fit for grant of**

bail, however State directed to pay compensation of Rs. 30,000 to applicant for failing in its duty to keep even the police witnesses present before trial Court – Application disposed. [Asfaq Khan Vs. State of M.P.] …343

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 एवं दण्ड संहिता (1860 का 45), धाराएँ 302, 201 व 34 – विचारण में विलंब – प्रतिकर – अभिनिर्धारित – नगर निरीक्षक (अन्वेषण अधिकारी) के साक्ष्य हेतु उपस्थित न होने से विचारण को तड़ित आघात सहना पड़ा – एक विचारणाधीन को पुलिस साक्षियों की दया पर जेल में नहीं रखा जा सकता – अभिलेख के अनुसार, जमानत प्रदान करने के लिए उपयुक्त प्रकरण नहीं तथापि राज्य को उसके कर्तव्य, यहां तक कि पुलिस साक्षियों को विचारण न्यायालय के समक्ष उपस्थित रखने की विफलता के लिए आवेदक को रू. 30,000/– का प्रतिकर अदा करने के लिए निदेशित किया गया – आवेदन निराकृत। (अशफाक खान वि. म.प्र. राज्य) **…343**

***Criminal Procedure Code, 1973 (2 of 1974), Section 439 and Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, (57 of 1994), Sections 6, 23 & 27 – Bail – Ground of Parity* – Held – Co-accused was granted bail because his alleged role was limited to merely picking up and dropping off petitioner's client whereas petitioner had more active role in conducting the procedure – No ground of parity. [Rekha Sengar Vs. State of M.P.] (SC)…378**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 एवं गर्भधारण पूर्व और प्रसव पूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम, (1994 का 57), धाराएँ 6, 23 व 27 – जमानत – समानता का अधिकार – अभिनिर्धारित – सह–अभियुक्त को जमानत प्रदान की गई थी क्योंकि उसकी अभिकथित भूमिका मात्र याची के क्लाइंट (ग्राहक) को लाने और छोड़ने तक ही सीमित थी जबकि प्रक्रिया संचालित करने में याची की ज्यादा सक्रिय भूमिका थी – समानता का कोई आधार नहीं। (रेखा सेंगर वि. म.प्र. राज्य) **(SC)…378**

***Criminal Procedure Code, 1973 (2 of 1974), Section 439 and Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (57 of 1994), Sections 6, 23 & 27 – Bail – Grounds* – Held – In a sting operation, search team seized ultrasound machine with no registration/license, adopter/gel used in sex-determination, and other medical instruments used for abortion – Sufficient evidence to hold strong *prima facie* case – It is a grave offence with serious consequences – High Court rightly denied bail – Petition dismissed. [Rekha Sengar Vs. State of M.P.] (SC)…378**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 एवं गर्भधारण पूर्व और प्रसव पूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम, (1994 का 57), धाराएँ 6, 23 व 27 – जमानत – आधार – अभिनिर्धारित – एक स्टिंग ऑपरेशन में तलाशी दल ने बिना रजिस्ट्री/अनुज्ञप्ति की अल्ट्रासाउंट मशीन, लिंग निर्धारण में उपयोग किये जाने वाले एडाप्टर/जेल तथा गर्भपात हेतु उपयोग में आने वाले अन्य चिकित्सीय उपकरणों को जब्त

किया – एक मजबूत प्रथम दृष्ट्या प्रकरण बनाने हेतु पर्याप्त साक्ष्य – यह गंभीर परिणामों से युक्त घोर अपराध है – उच्च न्यायालय ने उचित रूप से जमानत अस्वीकार की – याचिका खारिज। (रेखा सेंगर वि. म.प्र. राज्य) **(SC)…378**

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**

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**

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Interference **– Relevant parameters laid down by Apex Court enumerated. [Pradeep Kumar Shinde Vs. State of M.P.] …354**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – हस्तक्षेप – सर्वोच्च न्यायालय द्वारा प्रतिपादित सुसंगत मापदण्ड प्रगणित। (प्रदीप कुमार शिंदे वि. म.प्र. राज्य) **…354**

Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Scope & Jurisdiction **– Held – Court should not examine the facts, evidence and material on record to determine whether there is sufficient material, which may end in a conviction – U/S 482 Cr.P.C., Court cannot consider external materials given by accused to conclude that no offence was disclosed or there was possibility of acquittal. [Pradeep Kumar Shinde Vs. State of M.P.] …354**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – व्याप्ति व अधिकारिता – अभिनिर्धारित – न्यायालय को अभिलेख पर उपलब्ध तथ्यों, साक्ष्य और सामग्री का परीक्षण

यह अवधारित करने हेतु नहीं करना चाहिए कि क्या पर्याप्त सामग्री है, जिससे दोषसिद्धि हो सकती है – दं.प्र.सं. की धारा 482 के अंतर्गत, न्यायालय यह निष्कर्षित करने के लिए कि कोई अपराध प्रकट नहीं हुआ था अथवा दोषमुक्ति की संभावना थी, अभियुक्त द्वारा दी गई बाहरी सामग्री को विचार में नहीं ले सकता। (प्रदीप कुमार शिंदे वि. म.प्र. राज्य) **...354**

***Criminal Procedure Code, 1973 (2 of 1974), Section 482 and Penal Code (45 of 1860), Section 420 & 120-B – Quashment of FIR – Grounds* – Held – Truthfulness/falsehood of allegation and documents of prosecution is to be established by evidence before trial Court, it cannot be questioned by defence at this stage – From available records, it cannot be said that no offence has taken place or there is no ground to proceed with trial against applicants – Applications dismissed. [Pradeep Kumar Shinde Vs. State of M.P.] ...354**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 एवं दण्ड संहिता (1860 का 45), धारा 420 व 120–B – प्रथम सूचना प्रतिवेदन अभिखंडित किया जाना – आधार – अभिनिर्धारित – अभियोजन के अभिकथन एवं दस्तावेजों की सत्यता/झूठ को विचारण न्यायालय के समक्ष साक्ष्य द्वारा स्थापित किया जाता है, इस प्रक्रम पर बचाव पक्ष द्वारा इस पर सवाल नहीं उठाया जा सकता – उपलब्ध अभिलेखों से, यह नहीं कहा जा सकता कि कोई अपराध कारित नहीं हुआ है अथवा आवेदकगण के विरूद्ध आगे विचारण करने हेतु कोई आधार नहीं है – आवेदन खारिज। (प्रदीप कुमार शिंदे वि. म.प्र. राज्य) **...354**

***Designs Act (16 of 2000), Section 19 & 22(4) – Revocation of Registration* – Held – There are two options available to seek revocation of registration, one of them is before the Controller, appeal against which would lie before High Court and second, in a suit for infringement in a proceeding before Civil Court on basis of registration certificate, where if, defendant seeks revocation of registration, in that eventuality, suit is to be transferred to High Court in terms of Section 22(4) of the Act – Both are independent provisions giving rise to different and distinct cause of action. [S.D. Containers Indore Vs. M/s. Mold Tek Packaging Ltd.] (SC)...163**

डिजाइन अधिनियम (2000 का 16), धारा 19 व 22(4) – पंजीयन का प्रतिसंहरण – अभिनिर्धारित – पंजीयन का प्रतिसंहरण चाहने के लिए दो विकल्प उपलब्ध है, उनमें से एक, नियंत्रक के समक्ष, जिसके विरूद्ध अपील, उच्च न्यायालय के समक्ष होगी और दूसरा, पंजीयन प्रमाणपत्र के आधार पर सिविल न्यायालय के समक्ष कार्यवाही में अतिलंघन हेतु वाद में, जहां यदि प्रतिवादी, पंजीयन का प्रतिसंहरण चाहता है, उस स्थिति में, वाद को अधिनियम की धारा 22(4) के निबंधनों में उच्च न्यायालय को अंतरित करना होगा – दोनों स्वतंत्र उपबंध हैं जिनसे भिन्न एवं सुभिन्न वाद हेतुक उत्पन्न होते हैं। (एस.डी. कंटेनर्स इंदौर वि. मे. मोल्ड टेक पेकेजिंग लि.) **(SC)...163**

***Designs Act (16 of 2000), Section 19 & 22(4) and The Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015 (4 of 2016), Sections 4, 7 & 21 – Jurisdiction* – Held – Plea of**

revocation of registration was raised in suit which is required to be transferred to High Court as per Section 22(4) of 2000 Act and since no part of cause of action has arisen within jurisdiction of Kolkata, suit is liable to be transferred to M.P. High Court, Indore Bench – Order of Commercial Court at District Level was in accordance with law – Order of High Court not sustainable and set aside – Matter remitted to M.P. High Court, Indore Bench – Appeal disposed. [S.D. Containers Indore Vs. M/s. Mold Tek Packaging Ltd.] (SC)…163

डिजाइन अधिनियम (2000 का 16), धारा 19 व 22(4) एवं वाणिज्यिक न्यायालय, उच्च न्यायालय वाणिज्यिक प्रभाग और वाणिज्यिक अपील प्रभाग अधिनियम, 2015 (2016 का 4), धाराएँ 4, 7 व 21 – अधिकारिता – अभिनिर्धारित – पंजीयन के प्रतिसंहरण का अभिवाक् उस वाद में उठाया गया था जिसे, 2000 के अधिनियम की धारा 22(4) के अनुसार उच्च न्यायालय को अंतरित किया जाना अपेक्षित है और चूंकि कोलकाता की अधिकारिता के भीतर, वाद हेतुक का कोई भाग उत्पन्न नहीं हुआ है, वाद, म.प्र. उच्च न्यायालय, इंदौर खण्डपीठ को अंतरणीय है – जिला स्तर पर वाणिज्यिक न्यायालय का आदेश, विधि के अनुसरण में था – उच्च न्यायालय का आदेश कायम रखने योग्य नहीं एवं अपास्त – मामला, म.प्र. उच्च न्यायालय, इंदौर खण्डपीठ को प्रतिप्रेषित – अपील निराकृत। (एस.डी. कंटेनर्स इंदौर वि. मे. मोल्ड टेक पेकेजिंग लि.) **(SC)…163**

***Designs Act (16 of 2000), Section 22(4) – Transfer of Proceedings – Jurisdiction* – Held – In terms of Section 22(4), defendant has a right to seek cancellation of design which necessarily mandates the Courts to transfer the suit – Transfer of suit is a ministerial act if there is a prayer for cancellation of registration – If a suit is to be transferred to Commercial Division of High Court having ordinary original civil jurisdiction, then the Civil Suit in which there is plea to revoke the registered design has to be transferred to High Court where there is no ordinary original civil jurisdiction. [S.D. Containers Indore Vs. M/s. Mold Tek Packaging Ltd.] (SC)…163**

डिजाइन अधिनियम (2000 का 16), धारा 22(4) – कार्यवाहियों का अंतरण – अधिकारिता – अभिनिर्धारित – धारा 22(4) के निबंधनों में, प्रतिवादी को डिजाइन का निरस्तीकरण चाहने का अधिकार है, जो कि न्यायालयों को वाद अंतरित करने के लिए आवश्यक रूप से आज्ञा करती है – वाद का अंतरण एक लिपिकीय कार्य है यदि पंजीयन के रद्दरण हेतु प्रार्थना की गई है – यदि एक वाद को, साधारण मूल सिविल अधिकारिता के उच्च न्यायालय के वाणिज्यिक प्रभाग को अंतरित किया जाना है, तब वह सिविल वाद जिसमें पंजीकृत डिजाइन को प्रतिसंहृत करने के लिए अभिवाक् है, उसे उच्च न्यायालय को अंतरित किया जाना होगा जहां कोई साधारण मूल सिविल अधिकारिता नहीं है। (एस.डी. कंटेनर्स इंदौर वि. मे. मोल्ड टेक पेकेजिंग लि.) **(SC)…163**

***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

Evidence Act (1 of 1872), Sections 3, 32, 33, 43 & 53 – See – Land Revenue Code, M.P., 1959, Section 109 & 110 **[Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan] …482**

साक्ष्य अधिनियम (1872 का 1), धाराएँ 3, 32, 33, 43 व 53 – देखें – भू राजस्व संहिता, म.प्र., 1959, धारा 109 व 110 (राजदीप कपूर (डॉ.) वि. मोहम्मद सरवर खान) …482

Evidence Act (1 of 1872), Section 58 – Admitted Document **– Held – Admitted document is not required to be proved as per Section 58 of the Act. [Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan] …482**

साक्ष्य अधिनियम (1872 का 1), धारा 58 – स्वीकृत दस्तावेज – अभिनिर्धारित – अधिनियम की धारा 58 के अनुसार स्वीकृत दस्तावेज को साबित किया जाना अपेक्षित नहीं है। (राजदीप कपूर (डॉ.) वि. मोहम्मद सरवर खान) …482

Evidence Act (1 of 1872), Section 113-A and Penal Code (45 of 1860), Sections 107, 306 & 498-A – Presumption of Abetment – Intensity & Extent of Cruelty – Assessment **– Held – Where a slap or humiliation may constitute cruelty for purpose of Section 498-A IPC, the same would be grossly inadequate to hold husband guilty u/S 306 IPC – A hypersensitive individual may have a low breaking point and may commit suicide on account of even trivial matters. [Shivcharan Vs. State of M.P.] …317**

साक्ष्य अधिनियम (1872 का 1), धारा 113–A एवं दण्ड संहिता (1860 का 45), धाराएँ 107, 306 व 498–A – दुष्प्रेरण की उपधारणा – क्रूरता की सीमा व उग्रता – निर्धारण – अभिनिर्धारित – जहां एक थप्पड़ या अपमान, धारा 498–A भा.दं.सं. के प्रयोजन हेतु क्रूरता गठित कर सकते हैं, वहीं, धारा 306 भा.दं.सं. के अंतर्गत पति को दोषी ठहराने के लिए वह अत्यधिक रूप से अपर्याप्त होगा – एक अति–संवेदनशील व्यक्ति में तनाव सहने की कम क्षमता हो सकती है और वह तुच्छ मामलों के कारण भी आत्महत्या कर सकता है। (शिवचरण वि. म.प्र. राज्य) **…317**

Evidence Act (1 of 1872), Section 114-A (amended) – See – Penal Code, 1860, Section 376(2) (amended) & 376-D **[Ratanlal Vs. State of M.P.] (DB)…527**

साक्ष्य अधिनियम (1872 का 1), धारा 114–A (संशोधित) – देखें – दण्ड संहिता, 1860, धारा 376(2)(संशोधित) व 376–D (रतनलाल वि. म.प्र. राज्य) **(DB)…527**

Evidence Act (1 of 1872), Section 137 – See – Land Revenue Code, M.P., 1959, Section 109 & 110 **[Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan] …482**

साक्ष्य अधिनियम (1872 का 1), धारा 137 – देखें – भू राजस्व संहिता, म.प्र., 1959, धारा 109 व 110 (राजदीप कपूर (डॉ.) वि. मोहम्मद सरवर खान) **…482**

Industrial Disputes Act (14 of 1947), Section 25-F & 25-G – Reinstatement & Compensation **– Held – Apex Court concluded that if termination found to be in contravention of Section 25-F & 25-G, reinstatement is not the rule, but an exception and ordinarily, grant of compensation would meet ends of justice – Appellant, a daily wager, since worked with respondents from 1989 to 1997, compensation awarded enhanced from Rs. 2 lacs to 3 lacs – Appeal partly allowed. [Dileep Kumar Sharma Vs. The Assistant General Manager, UCO Bank, Bhopal] (DB)…*4**

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25–F व 25–G – बहाली व प्रतिकर – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि यदि सेवा समाप्ति को धारा 25–F व 25–G के उल्लंघन में होना पाया जाता है, तब बहाली एक नियम नहीं बल्कि एक अपवाद है और साधारणतः, प्रतिकर का प्रदान, न्याय के उद्देश्य को पूरा करेगा – अपीलार्थी, एक दैनिक वेतन कर्मी, चूंकि प्रतिवादीगण के साथ 1989 से 1997 तक काम किया है, प्रदान किये गये प्रतिकर को रू. 2 लाख से बढ़ाकर 3 लाख किया गया – अपील अंशतः मंजूर। (दिलीप कुमार शर्मा वि. द असिस्टेन्ट जनरल मेनेजर, यूको बैंक, भोपाल) **(DB)…*4**

Industrial Disputes Act (14 of 1947), Section 25-F & 25-G – Reinstatement **– Held – Apex Court concluded that order of reinstatement in normal course of termination, is not proper and reinstatement in every case**

cannot be ordered mechanically but in cases where workmen providing service of regular/permanent nature is terminated illegally, *malafidely* or by way of victimization, unfair labour practice etc. [Dileep Kumar Sharma Vs. The Assistant General Manager, UCO Bank, Bhopal] (DB)…*4

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25–F व 25–G – बहाली – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि सेवा समाप्ति के सामान्य क्रम में, बहाली का आदेश उचित नहीं है और प्रत्येक प्रकरण में बहाली, यांत्रिक ढंग से आदेशित नहीं की जा सकती किंतु उन प्रकरणों में की जा सकती है जहां नियमित/स्थायी स्वरूप की सेवा प्रदान करने वाले कर्मकार की अवैध रूप से, असद्भावपूर्वक अथवा पीड़ित करने, अनुचित श्रम पद्धति इत्यादि द्वारा सेवा समाप्त की गई है। (दिलीप कुमार शर्मा वि. द असिस्टेन्ट जनरल मेनेजर, यूको बैंक, भोपाल) **(DB)…*4**

***Interpretation of Statute – Text & Context* – Held – Interpretation of statute depends on the text and the context – Textual interpretation must match the contextual – It must be ascertained as to why the statute was enacted – Statute should be read as whole in its context and scheme to discover what each section, each clause, each phrase and each word is meant for. [Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council] …427**

कानून का निर्वचन – पाठ्य भाग व संदर्भ – अभिनिर्धारित – कानून का निर्वचन, पाठ्य भाग एवं संदर्भ पर आश्रित होता है – पाठ्यपरक निर्वचन का संदर्भिक के साथ मेल होना चाहिए – यह सुनिश्चित किया जाना चाहिए कि कानून को क्यों अधिनियमित किया गया था – यह खोजने के लिए कि प्रत्येक भाग, प्रत्येक खंड, प्रत्येक वाक्यांश एवं प्रत्येक शब्द किसके लिए अर्थावित है, कानून को उसके संदर्भ एवं रचना में पूर्ण रूप से पढ़ा जाना चाहिए। (सासन पॉवर लि., सिंगरौली वि. एम.पी. माइक्रो एण्ड स्माल इंटरप्राइज फेसिलिटेशन काउंसिल) …427

***Land Revenue Code, M.P. (20 of 1959), Sections 44(2)(b), 44(3)(b) (as amended on 25.09.2018) & 50 – Second Appeal* – Held – Remedy of second appeal which was otherwise available to petitioner under unamended MPLR Code prior to 25.09.2018, is not available thereafter, for reason that remedy of second appeal by its very nature is not available to litigant as vested right since institution of *lis* in court of first instance – Unamended Section 44(2)(b) and amended Section 44(3)(b), shows that scope of interference in second appeal was restricted and not as wide/open as in first appeal – Remedy of revision available to petitioner u/S 50 of Code – Petition disposed. [Khyaliram Vs. State of M.P.] …492**

भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 44(2)(b), 44(3)(b) (जैसा संशोधित 25.09.2018) व 50 – द्वितीय अपील – अभिनिर्धारित – द्वितीय अपील का उपचार, जो कि याची को असंशोधित म.प्र. भू. राजस्व संहिता के अंतर्गत 25.09.2018 के पूर्व

अन्यथा उपलब्ध था, तत्पश्चात् इस कारण उपलब्ध नहीं है क्योंकि प्रथम बार के न्यायालय में मुकदमा संस्थित किये जाने के उपरांत, मुकदमेबाज को द्वितीय अपील का उपचार, उसके स्वरूप में ही, निहित अधिकार के रूप में उपलब्ध नहीं है – असंशोधित धारा 44(2)(b) व संशोधित धारा 44(3)(b) दर्शाती है कि द्वितीय अपील में हस्तक्षेप की व्याप्ति निर्बंधित थी तथा प्रथम अपील जैसी व्यापक/खुली नहीं थी – याची को संहिता की धारा 50 के अंतर्गत पुनरीक्षण का उपचार उपलब्ध है – याचिका निराकृत। (ख्यालीराम वि. म.प्र. राज्य) **...492**

***Land Revenue Code, M.P. (20 of 1959), Section 44(2)(b) & 44(3)(b) (as amended on 25.09.2018) and Civil Procedure Code (5 of 1908), Section 100 – Second Appeal – Scope of Interference* – Held – Remedy of second appeal u/S 100 CPC is more restrictive than in a second appeal u/S 44 of Code – Second appeal under Code can be entertained when grounds of, order assailed being contrary to or having ignored material issue of law/usage or existence of substantial error/defect of procedure are made out whereas second appeal u/S 100 CPC is entertainable only on existence of substantial question of law which substantially affects rights of parties and not finally settled by any Court and is fairly arguable and is not covered by any earlier decision. [Khyaliram Vs. State of M.P.] ...492**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 44(2)(b) व 44(3)(b) (जैसा संशोधित 25.09.2018) एवं सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील – हस्तक्षेप की व्याप्ति – अभिनिर्धारित – धारा 100 सि.प्र.सं. के अंतर्गत द्वितीय अपील का उपचार, संहिता की धारा 44 के अंतर्गत द्वितीय अपील से अधिक निर्बंधात्मक है – संहिता के अंतर्गत द्वितीय अपील ग्रहण की जा सकती है जब आक्षेपित आदेश, विधि/प्रथा के विरूद्ध होने या तात्विक मुद्दे की अनदेखी होने या प्रक्रिया की सारवान गलती/त्रुटि का अस्तित्व होने के आधार बनते हैं, जबकि धारा 100 सि.प्र.सं. के अंतर्गत द्वितीय अपील केवल ऐसे विधि के सारवान प्रश्न के विद्यमान होने पर ग्रहण करने योग्य है जिससे पक्षकारों के अधिकार सारवान रूप से प्रभावित होते हैं एवं किसी न्यायालय द्वारा अंतिम रूप से निपटाये नहीं गये हैं और उचित रूप से तार्किक हैं तथा किसी पूर्वतर विनिश्चय द्वारा आच्छादित नहीं है। (ख्यालीराम वि. म.प्र. राज्य) **...492**

***Land Revenue Code, M.P. (20 of 1959), Section 109 & 110 – Mutation Proceedings – Principle of Estoppel* – Held – Principle of estoppel is applicable in Revenue Courts – Principle of estoppel is a principle of equity – Once a fact is admitted by a party before Court then in subsequent proceedings he cannot be allowed to deny the said fact by leading evidence. [Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan] ...482**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 109 व 110 – नामांतरण कार्यवाहियां – विबंध का सिद्धांत – अभिनिर्धारित – विबंध का सिद्धांत राजस्व न्यायालयों में लागू होता है – विबंध का सिद्धांत साम्या का एक सिद्धांत है – न्यायालय के समक्ष पक्षकार द्वारा एक

बार कोई तथ्य स्वीकार कर लिया जाता है तो पश्चात्वर्ती कार्यवाहियों में उसे साक्ष्य प्रस्तुत कर कथित तथ्य को अस्वीकार करने की मंजूरी नहीं दी जा सकती। (राजदीप कपूर (डॉ.) वि. मोहम्मद सरवर खान) **...482**

***Land Revenue Code, M.P. (20 of 1959), Section 109 & 110 – Mutation – Reporting of Acquisition – Delay* – Held – Reporting of acquisition of legal right and interest within 6 months is obligatory and not mandatory – Section 109 & 110 of Code does not bar mutation if reporting is done beyond 6 months – In matter of undisputed cases, mutation cannot be refused only on ground of delay – Additional Commissioner rightly allowed mutation application – Liberty granted to petitioner to establish title before Civil Court – Petition dismissed. [Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan] ...482**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 109 व 110 – नामांतरण – अर्जन की रिपोर्ट देना – विलंब – अभिनिर्धारित – छह माह के भीतर विधिक अधिकार और हित के अर्जन की रिपोर्ट करना बाध्यकर है तथा न कि आज्ञापक – संहिता की धारा 109 व 110 नामांतरण का वर्जन नहीं करती हैं यदि छह माह के परे रिपोर्ट की जाती है – अविवादित प्रकरणों के मामले में, केवल विलंब के आधार पर नामांतरण को अस्वीकार नहीं किया जा सकता – अतिरिक्त आयुक्त ने नामांतरण आवेदन को उचित रूप से मंजूर किया – याची को सिविल न्यायालय के समक्ष हक स्थापित करने की स्वतंत्रता प्रदान की गई – याचिका खारिज। (राजदीप कपूर (डॉ.) वि. मोहम्मद सरवर खान) **...482**

***Land Revenue Code, M.P. (20 of 1959), Section 109 & 110 and Evidence Act (1 of 1872), Sections 3, 32, 33, 43 & 53 – Applicability* – Held – Evidence Act is not applicable to proceedings under the Code of 1959. [Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan] ...482**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 109 व 110 एवं साक्ष्य अधिनियम (1872 का 1), धाराएँ 3, 32, 33, 43 व 53 – प्रयोज्यता – अभिनिर्धारित – साक्ष्य अधिनियम, 1959 की संहिता के अंतर्गत कार्यवाहियों पर लागू नहीं होता है। (राजदीप कपूर (डॉ.) वि. मोहम्मद सरवर खान) **...482**

***Land Revenue Code, M.P. (20 of 1959), Section 109 & 110 and Evidence Act (1 of 1872), Section 137 – Mutation Proceedings – Examination/Cross Examination of Witness* – Held – Mutation proceedings before revenue Courts are to be decided as per evidence adduced by parties before it – Evidence means documents and affidavits/statements submitted by parties in support of their case – Neither witness is to be examined on oath nor to be cross-examined. [Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan] ...482**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 109 व 110 एवं साक्ष्य अधिनियम (1872 का 1), धारा 137 – नामांतरण कार्यवाहियां – साक्षी का परीक्षण/प्रति–परीक्षण –

अभिनिर्धारित – राजस्व न्यायालयों के समक्ष नामांतरण कार्यवाहियों का विनिश्चय उसके समक्ष पक्षकारों द्वारा दिये गये साक्ष्य के अनुसार किया जाना है – साक्ष्य का अर्थ पक्षकारों द्वारा उनके प्रकरण के समर्थन में प्रस्तुत किये गये दस्तावेजों तथा शपथ–पत्रों/कथनों से है – न तो साक्षी का शपथ पर परीक्षण किया जाना है न ही प्रति परीक्षण किया जाना है। (राजदीप कपूर (डॉ.) वि. मोहम्मद सरवर खान) **...482**

***Land Revenue Code, M.P. (20 of 1959), Section 165(7)(b) and Transfer of Property Act (4 of 1882), Section 111(g)(2) – Unlawful Transfer of Land – Forfeiture* – Held – Conscious transfer of land by father of petitioner setting up title in third person (R-5) in violation of Section 165(7)(b) of Code – Petitioner himself was also a party (*witness for agreement to sell*), thus cancellation of mutation entry in name of R-5 shall not enure benefit to petitioner – It renders the lease liable for determination by forfeiture u/S 111(g)(2) of 1882 Act – State directed to issue notice to petitioner for termination of lease and also to initiate proceedings against R-5 for restoration of possession – Petition partly allowed. [Dharmendra Jatav Vs. State of M.P.] ...445**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(b) एवं सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 111(g)(2) – विधिविरूद्ध भूमि का अंतरण – समपहरण – अभिनिर्धारित – संहिता की धारा 165(7)(b) के उल्लंघन में याची के पिता द्वारा तृतीय व्यक्ति (प्रत्यर्थी–5) में हक स्थापित करते हुए भूमि का भानपूर्वक अंतरण – याची स्वयं भी एक पक्षकार (विक्रय के करार का साक्षी) था, अतः प्रत्यर्थी–5 के नाम पर नामांतरण प्रविष्टि का रद्दकरण, याची के फायदे के लिए प्रवृत्त नहीं होगा – यह, पट्टे को 1882 के अधिनियम की धारा 111(g)(2) के अंतर्गत समपहरण द्वारा पर्यवसान योग्य बनाता है – राज्य को पट्टा समाप्ति हेतु याची को नोटिस जारी करने के लिए तथा कब्जे के प्रत्यावर्तन हेतु प्रत्यर्थी–5 के विरूद्ध कार्यवाहियां आरंभ करने के लिए भी निदेशित किया गया – याचिका अंशतः मंजूर। (धर्मेन्द्र जाटव वि. म.प्र. राज्य) ...445

***Land Revenue Code, M.P. (20 of 1959), Section 165(7)(b) & 158(3) – Transfer of Land – Permission – Applicability* – Held – Bar or prohibition u/S 165(7)(b) of Code is with reference to date of transfer and not the date of grant of patta – Offending sale deed dated 01.03.1994 without prior permission of Collector was *void ab initio* – Impugned order set aside. [Dharmendra Jatav Vs. State of M.P.] ...445**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(b) व 158(3) – भूमि का अंतरण – अनुज्ञा – प्रयोज्यता – अभिनिर्धारित – संहिता की धारा 165(7)(b) के अंतर्गत वर्जन या प्रतिषेध, अंतरण की तिथि के संदर्भ में है और न कि पट्टा प्रदान करने की तिथि के – आक्षेपित विक्रय विलेख दिनांक 01.03.1994, कलेक्टर की पूर्वानुमति के बिना, आरंभ से शून्य था – आक्षेपित आदेश अपास्त। (धर्मेन्द्र जाटव वि. म.प्र. राज्य) ...445

***Land Revenue Code, M.P. (20 of 1959), Section 165(7)(b) & 257(1)(f) – Cancellation/Omission of Mutation Entry – Jurisdiction* – Held – SDO upon acquisition of knowledge of void transaction (sale deed), exercising power u/S 257(1)(f) has rightly cancelled/omitted the mutation entry with due notice to R-5 – Records of rights can always be corrected if prohibited in law or polluted by a void act in eyes of law. [Dharmendra Jatav Vs. State of M.P.] …445**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(b) व 257(1)(f) – नामांतरण प्रविष्टि का रद्दकरण/लोप – अधिकारिता – अभिनिर्धारित – एस.डी.ओ. ने शून्य संव्यवहार (विक्रय विलेख) के ज्ञान अर्जन पर, धारा 257(1)(f) के अंतर्गत शक्ति का प्रयोग करते हुए, प्रत्यर्थी–5 को सम्यक् नोटिस के साथ नामांतरण प्रविष्टि का उचित रूप से रद्दकरण/लोप किया है – अधिकारों के अभिलेख को सदैव सुधारा जा सकता है यदि वह विधि में प्रतिषिद्ध है अथवा विधि की दृष्टि में किसी शून्य कृत्य द्वारा प्रदूषित है। (धर्मेन्द्र जाटव वि. म.प्र. राज्य) **…445**

***Land Revenue Code, M.P. (20 of 1959), Section 165(7)(b) & 257(1)(f) – Cancellation/Omission of Mutation Entry – Jurisdiction of Revenue Authority/Civil Court* – Held – Since, ownership of land covered under the Code vests in State Government, Revenue authorities have exclusive jurisdiction in respect of matters enlisted in Section 257 of Code and jurisdiction of Civil Court is ousted in that behalf – Cancellation of entry in revenue records on complaint or otherwise in relation to unlawful transfer of land is rightly done by SDO u/S 257(1)(f) of Code. [Dharmendra Jatav Vs. State of M.P.] …445**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(b) व 257(1)(f) – नामांतरण प्रविष्टि का रद्दकरण/लोप – राजस्व प्राधिकारी/सिविल न्यायालय की अधिकारिता – अभिनिर्धारित – चूंकि संहिता के अंतर्गत आच्छादित भूमि का स्वामित्व, राज्य सरकार में निहित है, संहिता की धारा 257 में सूचीबद्ध मामलों के संबंध में राजस्व प्राधिकारियों को अनन्य अधिकारिता है तथा इस संबंध में सिविल न्यायालय की अधिकारिता से बाहर है – भूमि के विधिविरूद्ध अंतरण के संबंध में, शिकायत पर या अन्यथा, राजस्व अभिलेखों में प्रविष्टि का रद्दकरण, एस.डी.ओ. द्वारा संहिता की धारा 257(1)(f) के अंतर्गत उचित रूप से किया गया है। (धर्मेन्द्र जाटव वि. म.प्र. राज्य) **…445**

***Land Revenue Code, M.P. (20 of 1959), Section 165(7)(b) & 257(1)(f) – Limitation* – Held – Sale deed dated 01.03.1994 since held to be void for which no declaration is required from a Court of Law, the question of limitation pales into insignificance. [Dharmendra Jatav Vs. State of M.P.] …445**

भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(b) व 257(1)(f) – परिसीमा – अभिनिर्धारित – विक्रय विलेख दिनांकित 01.03.1994, चूंकि शून्य ठहराया गया है,

जिसके लिए किसी न्यायालय से कोई घोषणा अपेक्षित नहीं है, परिसीमा का प्रश्न महत्वहीन हो जाता है। (धर्मेन्द्र जाटव वि. म.प्र. राज्य) **...445**

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**

Limitation Act (36 of 1963), Section 7 – See – Constitution – Article 226 **[Surendra Kumar Jain Vs. State of M.P.] ...230**

परिसीमा अधिनियम (1963 का 36), धारा 7 – देखें – संविधान – अनुच्छेद 226 (सुरेन्द्र कुमार जैन वि. म.प्र. राज्य) **...230**

LPG Distributorship – Eligibility **– Held – Graduation certificate issued by Indian Army cannot be confined to recruitment of Ex-Army man to Class-C post only, but it applies for allotment of LPG Distributorship also – Directorate General Resettlement also certified petitioner to be eligible for allotment of LPG Distributorship – Respondents directed to reconsider educational qualification afresh in light of notification of Ministry of HRD – Petition disposed. [Rakesh Singh Bhadoriya Vs. Union of India] ...222**

एल पी जी वितरणकर्ता – पात्रता – अभिनिर्धारित – भारतीय सेना द्वारा जारी स्नातक प्रमाणपत्र को केवल भूतपूर्व सेनानी की श्रेणी–**C** के पद पर भर्ती हेतु सीमित नहीं

किया जा सकता बल्कि वह एल पी जी वितरणकर्ता के आबंटन के लिए भी लागू होता है – पुनर्व्यवस्थापन महानिदेशालय ने भी याची को एल पी जी वितरणकर्ता के आबंटन हेतु पात्र प्रमाणित किया – प्रत्यर्थीगण को मानव संसाधन विकास मंत्रालय की अधिसूचना के आलोक में शैक्षणिक अर्हता का नये सिरे से पुनः विचार करने के लिए निदेशित किया गया – याचिका निराकृत। (राकेश सिंह भदौरिया वि. यूनियन ऑफ इंडिया) **...222**

***LPG Distributorship – Guidelines, 2011 – Clause 7.1.ii – Graduation Certificate* – Held – As per clause 7.1.ii, any candidate who possesses equivalent qualification to qualifications mentioned therein, recognized by Ministry of HRD, as on date of application, he shall also be entitled for allotment of LPG Distributorship – Special category for grant of distributorship created for Ex-Army-man/Defence Personnel which certainly include an Army-man holding the lowest post upto the highest post. [Rakesh Singh Bhadoriya Vs. Union of India] ...222**

*एल पी जी वितरणकर्ता – निर्देशिका, 2011 – खंड 7.1.ii – स्नातक प्रमाणपत्र – अभिनिर्धारित – खंड 7.1.*ii के अनुसार, कोई उम्मीदवार जो आवेदन की तिथि को उसमें उल्लिखित अर्हताओं के समतुल्य, मानव संसाधन विकास मंत्रालय द्वारा मान्यताप्राप्त अर्हता धारक है, वह एल पी जी वितरणकर्ता के आबंटन हेतु भी हकदार होगा – वितरणकर्ता के प्रदान हेतु भूतपूर्व सेनानी/रक्षाकर्मी के लिए विशेष श्रेणी सृजित की गई है, जिसमें निश्चित रूप से, सबसे निचले पद से लेकर उच्चतम पद धारण करने वाला सेनानी, समाविष्ट है। (राकेश सिंह भदौरिया वि. यूनियन ऑफ इंडिया) **...222**

***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 गारंटी 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**

***Maxim "Nullus commodum capere potest de injuria sua propria"* – Held – No man can take advantage of his own wrong – Petitioner not entitled to secure assistance of Court of Law for enjoying the fruit of his own wrong. [Dharmendra Jatav Vs. State of M.P.] …445**

सूत्र ''कोई व्यक्ति उसके स्वयं के दोष का लाभ नहीं ले सकता'' – अभिनिर्धारित – कोई व्यक्ति उसके स्वयं के दोष का लाभ नहीं ले सकता – याची, उसके स्वयं के दोष के फल का उपभोग करने हेतु न्यायालय की सहायता सुनिश्चित करने के लिए हकदार नहीं। (धर्मेन्द्र जाटव वि. म.प्र. राज्य) **…445**

***Micro, Small and Medium Enterprises Development Act (27 of 2006), Sections 8, 17 & 18 and Constitution – Article 226/227 – Reference to Council* – Held – Act of 2006 provides a forum of making reference u/S 18 to "any party" in relation to any amount due – Act does not preclude an enterprise from redressal forum merely because it has not filed memorandum u/S 8 of the Act – Section 17 and sub-Sections of Section 18 must be read harmoniously and must be given wide construction taking into account the aim and object of Act – Council has taken a plausible view and has not committed any patent lack of inherent jurisdiction – No interference warranted under Article 226/227 of Constitution – Petition dismissed. [Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council] …427**

सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धाराएँ 8, 17 व 18 एवं संविधान – अनुच्छेद 226/227 – परिषद को निर्देश – अभिनिर्धारित – 2006 का अधिनियम, किसी देय राशि के संबंध में ''किसी पक्षकार'' के लिए धारा 18 के अंतर्गत निर्देश करने का एक फोरम उपबंधित करता है – अधिनियम, उद्यम को प्रतितोषण फोरम से मात्र इसलिए प्रवारित नहीं करता कि उसने अधिनियम की धारा 8 के अंतर्गत ज्ञापन प्रस्तुत नहीं किया है – धारा 17 एवं धारा 18 की उप–धाराओं को समन्वयपूर्ण ढंग से पढ़ा जाना चाहिए और अधिनियम के लक्ष्य एवं उद्देश्य को विचार में लेते हुए व्यापक अर्थान्वयन दिया जाना चाहिए – परिषद ने तर्कसंगत दृष्टिकोण लिया है और अंतर्निहित अधिकारिता का कोई प्रत्यक्ष अभाव कारित नहीं किया है – संविधान के अनुच्छेद 226/227 के अंतर्गत किसी हस्तक्षेप की आवश्यकता नहीं – याचिका खारिज। (सासन पॉवर लि., सिंगरौली वि. एम.पी. माइक्रो एण्ड स्माल इंटरप्राइज फेसिलिटेशन काउंसिल) **…427**

***Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 18 – Object* – Held – Section 18 is a remedial provision – Words of a remedial statute must be construed "to give the most complete remedy which**

the phraseology permits" so as "to secure that the relief contemplated by Statute shall not be denied to the class intended to be relieved. [Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council]
…427

सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 18 – उद्देश्य – अभिनिर्धारित – धारा 18 एक उपचारात्मक उपबंध है – उपचारात्मक कानून के शब्दों का अर्थान्वयन ''सर्वाधिक पूर्ण उपचार, जिसे पदावली अनुमति दे, दिये जाने के लिए'' निकाला जाना चाहिए, जिससे कि ''यह सुनिश्चित किया जा सके कि कानून द्वारा अनुध्यात अनुतोष से उस श्रेणी को, जिसके लिए अनुतोष आशयित है, वंचित नहीं किया जाए''। (सासन पॉवर लि., सिंगरौली वि. एम.पी. माइक्रो एण्ड स्माल इंटरप्राइज फेसिलिटेशन काउंसिल) **…427**

***Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 18(3) – Conciliator & Arbitrator* – Held – Mr. M was the conciliator in instant case – It will be open for Council to proceed with Arbitration proceedings by excluding Mr. M as a member of arbitral body or refer the matter to any other institute or centre providing alternative dispute resolution service. [Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council] …427**

सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 18(3) – सुलहकर्ता व मध्यस्थ – अभिनिर्धारित – वर्तमान प्रकरण में श्री. एम. सुलहकर्ता थे – माध्यस्थम निकाय के एक सदस्य के रूप में श्री. एम. को अपवर्जित करते हुए माध्यस्थम कार्यवाहियां जारी रखने के लिए अथवा वैकल्पिक विवाद निवारण सेवा प्रदाता किसी अन्य संस्था या केंद्र को मामला निर्दिष्ट करने के लिए, परिषद स्वतंत्र होगी। (सासन पॉवर लि., सिंगरौली वि. एम.पी. माइक्रो एण्ड स्माल इंटरप्राइज फेसिलिटेशन काउंसिल) **…427**

***Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18 – See – Mines and Minerals (Development and Regulation) Act, 1957, Sections 4/21, 23-A(1) & 23-A(2)* [Jayant Vs. State of M.P.] (SC)…175**

खनिज (अवैध खनन, परिवहन तथा भंडारण का निवारण) नियम, म.प्र., 2006, नियम 18 – देखें – खान और खनिज (विकास और विनियमन) अधिनियम, 1957, धाराएँ 4/21, 23–A (1) व 23–A (2) (जयंत वि. म.प्र. राज्य) **(SC)…175**

***Mines and Minerals (Development and Regulation) Act (67 of 1957), Section 4/21 & 22 – See – Criminal Procedure Code, 1973, Section 156(3)* [Jayant Vs. State of M.P.] (SC)…175**

खान और खनिज (विकास और विनियमन) अधिनियम (1957 का 67), धारा 4/21 व 22 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 156(3) (जयंत वि. म.प्र. राज्य) **(SC)…175**

Mines and Minerals (Development and Regulation) Act (67 of 1957), Sections 4/21, 23-A(1) & 23-A(2), Minor Mineral Rules, M.P. 1996, Rule 53 and Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18 – Compounding of Offence & Prosecution **– Held – If violator is permitted to compound the offence on payment of penalty u/S 23-A(1) of the Act then as per Section 23-A(2), there shall be no further proceedings against him for the offence so compounded – Offence under the Act has been compounded by appellants with permission of competent authority, thus the *suo motu* proceedings drawn by Magistrate under the Act quashed – Prosecution under Penal Code will continue – State appeal dismissed – Appeals by violators partly allowed. [Jayant Vs. State of M.P.] (SC)…175**

खान और खनिज (विकास और विनियमन) अधिनियम (1957 का 67), धाराएँ 4/21, 23–A(1) व 23–A(2), गौण खनिज नियम, म.प्र., 1996, नियम 53 एवं खनिज (अवैध खनन, परिवहन तथा भंडारण का निवारण) नियम, म.प्र., 2006, नियम 18 – अपराध का शमन व अभियोजन – अभिनिर्धारित – यदि उल्लंघनकर्ता को अधिनियम की धारा 23–A(1) के अंतर्गत शास्ति का भुगतान करने पर अपराध का शमन करने की अनुमति दी जाती है तब धारा 23–A(2) के अनुसार, शमन किये गये ऐसे अपराध के लिए उसके विरूद्ध आगे कोई कार्यवाहियां नहीं होगी – अधिनियम के अंतर्गत अपराध का अपीलार्थीगण द्वारा सक्षम प्राधिकारी की अनुमति से शमन किया गया, अतः अधिनियम के अंतर्गत मजिस्ट्रेट द्वारा स्वप्रेरणा से की गई कार्यवाहियां अभिखंडित – दण्ड संहिता के अंतर्गत अभियोजन जारी रहेगा – राज्य की अपील खारिज – उल्लंघनकर्ताओं की अपीलें अंशतः मंजूर। (जयंत वि. म.प्र. राज्य) **(SC)…175**

Mines and Minerals (Development and Regulation) Act (67 of 1957), Sections 4, 22 & 23-A(2) and Penal Code (45 of 1860), Section 379 & 414 – Prohibition of Prosecution – Applicability **– Held – This Court has already concluded that prohibition u/S 22 of the Act against prosecution of a person except on written complaint by authorized officer, would be attracted only when such person is prosecuted u/S 4 of the Act – Thus, there is no complete and absolute bar in prosecuting persons under Penal Code where offences are penal and cognizable – Offence under the Act of 1957 and Rules made thereunder and the offences under IPC are different and distinct – Bar u/S 23-A(2) of the Act shall not affect proceedings under the Penal Code. [Jayant Vs. State of M.P.] (SC)…175**

खान और खनिज (विकास और विनियमन) अधिनियम (1957 का 67), धाराएँ 4, 22 व 23–A(2) एवं दण्ड संहिता (1860 का 45), धारा 379 व 414 – अभियोजन का प्रतिषेध – प्रयोज्यता – अभिनिर्धारित – इस न्यायालय ने पहले ही निष्कर्षित किया है कि प्राधिकृत अधिकारी के द्वारा लिखित परिवाद के सिवाय किसी व्यक्ति के अभियोजन के विरूद्ध

अधिनियम की धारा 22 के अंतर्गत प्रतिषेध, केवल तब आकर्षित होगा जब ऐसे व्यक्ति को अधिनियम की धारा 4 के अंतर्गत अभियोजित किया जाता है – अतः दण्ड संहिता के अंतर्गत व्यक्तियों को अभियोजित करने में कोई पूर्ण और आत्यांतिक वर्जन नहीं है, जहां अपराध दण्डनीय तथा संज्ञेय हैं – 1957 के अधिनियम के अंतर्गत अपराध तथा उसके अंतर्गत बनाये गये नियम एवं भारतीय दण्ड संहिता के अंतर्गत अपराध भिन्न और सुस्पष्ट हैं – अधिनियम की धारा 23–A(2) के अंतर्गत वर्जन दण्ड संहिता के अंतर्गत कार्यवाहियों को प्रभावित नहीं करेगा। (जयंत वि. म.प्र. राज्य) **(SC)…175**

Mines and Minerals (Development and Regulation) Act (67 of 1957), Section 22 – See – Criminal Procedure Code, 1973, Section 156(3) **[Jayant Vs. State of M.P.] (SC)…175**

खान और खनिज (विकास और विनियमन) अधिनियम (1957 का 67), धारा 22 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 156(3) (जयंत वि. म.प्र. राज्य) **(SC)…175**

Minor Mineral Rules, M.P. 1996, Rule 53 – See – Mines and Minerals (Development and Regulation) Act, 1957, Sections 4/21, 23-A(1) & 23-A(2) **[Jayant Vs. State of M.P.] (SC)…175**

गौण खनिज नियम, म.प्र., 1996, नियम 53 – देखें – खान और खनिज (विकास और विनियमन) अधिनियम, 1957, धाराएँ 4/21, 23–A(1) व 23–A(2) (जयंत वि. म.प्र. राज्य) **(SC)…175**

Minor Mineral Rules, M.P. 1996, Rule 53(7) – Power of Suspension – Object – Principle of "audi alteram partem" – Held – Concept behind suspension is to arrest with immediate effect illegality/irregularity being caused by defaulting lease holder – Power of suspension can be exercised in any field be it mines & minerals, services etc. – It does not depend upon following the principle of "*audi alteram partem*" as a condition precedent. [Peethambara Granite Gwalior (M/s.) Vs. State of M.P.] (DB)…284

गौण खनिज नियम, म.प्र. 1996, नियम 53(7) – निलंबन की शक्ति – उद्देश्य – ''दूसरे पक्ष को भी सुनो'' का सिद्धांत – अभिनिर्धारित – निलंबन के पीछे की संकल्पना, व्यतिक्रमी पट्टाधृति द्वारा कारित की जा रही अवैधता/अनियमितता को तत्काल प्रभाव से रोकना है – निलंबन की शक्ति का प्रयोग किसी भी क्षेत्र में किया जा सकता है चाहे वह खान एवं खनिज हो चाहे सेवाएं इत्यादि हो – यह ''दूसरे पक्ष को भी सुनो'' के सिद्धांत का पालन एक पुरोभावी शर्त के रूप में किये जाने पर निर्भर नहीं है। (पीताम्बरा ग्रेनाईट ग्वालियर (मे.) वि. म.प्र. राज्य) **(DB)…284**

Minor Mineral Rules, M.P. 1996, Rule 53(7) – Power of Suspension – Principle of Natural Justice – Expression "by issuing show cause notice" – Held – Power of suspension of quarrying operation and obligation to issue show cause notice is exercisable simultaneously – Order of suspension can be

passed informing reasons for suspension which would satisfy the requirements of issuance of notice to defaulter under Rule 53(7) – Expression "by issuing show cause notice" does not mean that it is incumbent upon competent authority to first issue show cause notice and thereafter consider the reply of defaulter to go in for suspension – Petition dismissed. [Peethambara Granite Gwalior (M/s.) Vs. State of M.P.] (DB)…284

गौण खनिज नियम, म.प्र. 1996, नियम 53(7) – निलंबन की शक्ति – नैसर्गिक न्याय का सिद्धांत – अभिव्यक्ति ''कारण बताओ नोटिस जारी करके'' – अभिनिर्धारित – खदान क्रिया कार्यान्वयन के निलंबन की शक्ति एवं कारण बताओ नोटिस जारी करने की बाध्यता, समसामयिक रूप से प्रयोक्तव्य है – निलंबन के आदेश को निलंबन के कारण सूचित करते हुए पारित किया जा सकता है जिससे नियम 53(7) के अंतर्गत व्यतिक्रमी को नोटिस जारी किये जाने की अपेक्षाओं की संतुष्टि होगी – अभिव्यक्ति ''कारण बताओ नोटिस जारी करके'' का अर्थ यह नहीं है कि निलंबन प्राप्त करने हेतु, सक्षम प्राधिकारी के लिए यह अनिवार्य है कि पहले कारण बताओ नोटिस जारी करें और तत्पश्चात् व्यतिक्रमी के उत्तर को विचार में लें – याचिका खारिज। (पीताम्बरा ग्रेनाईट ग्वालियर (मे.) वि. म.प्र. राज्य) **(DB)…284**

***Minor Mineral Rules, M.P. 1996, Rule 53(7) – Power of Suspension & Power of Cancellation – Expression "providing opportunity of being heard"* – Held – Expression "providing opportunity of being heard" is relatable to power of cancellation and not to the power of suspension. [Peethambara Granite Gwalior (M/s.) Vs. State of M.P.] (DB)…284**

गौण खनिज नियम, म.प्र. 1996, नियम 53(7) – निलंबन की शक्ति व रद्दकरण की शक्ति – अभिव्यक्ति ''सुने जाने का अवसर प्रदान किया जाना'' – अभिनिर्धारित – अभिव्यक्ति ''सुने जाने का अवसर प्रदान किया जाना'', रद्दकरण की शक्ति से संबंधित मानी जा सकने वाली है और न कि निलंबन की शक्ति से संबंधित। (पीताम्बरा ग्रेनाईट ग्वालियर (मे.) वि. म.प्र. राज्य) **(DB)…284**

***Municipal Corporation Act, M.P. (23 of 1956), Sections 10(1), 10(2) & 10(3), Municipal Corporation (Extent of Wards) Rules, M.P., 1994, Rules 2(4), 3(1), 3(2) & 3(3) and Census Rules, 1990, Rule 8(iv) – Delimitation of Wards* – Held – In order to safeguard against any possibility of relocation/shifting of certain sections of population from one ward to another, Rule 3(2) of 1994 Rules has given a leverage to the Competent Authority to have variation upto 15% of population between one ward and another – Even if some voters have shifted from one ward to another, that would not justify to have another yardstick for division of city into Municipal wards – No interference required in order passed by Collector – Petition dismissed. [Rakesh Sushil Sharma Vs. State of M.P.] (DB)…*5**

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 10(1), 10(2) व 10(3), नगरपालिक निगम (वार्डों का विस्तार), नियम, म.प्र., 1994, नियम 2(4), 3(1), 3(2) व 3(3) एवं जनगणना नियम, 1990, नियम 8(iv) – वार्डों का परिसीमन – अभिनिर्धारित – जनसंख्या के कतिपय वर्गों को एक वार्ड से अन्य में पुनर्स्थापित/स्थानांतरित किये जाने की संभावना के विरूद्ध सुरक्षा के उद्देश्य से, 1994 के नियमों के नियम 3(2) ने सक्षम प्राधिकारी को, एक वार्ड एवं अन्य के बीच, जनसंख्या के 15% तक फेरफार करने की शक्ति दी है – यदि कुछ मतदाता एक वार्ड से अन्य में स्थानांतरित हो गये हों तब भी यह नगरपालिका वार्डों में नगर के विभाजन हेतु अन्य मानदंड लिए जाने को न्यायोचित नहीं करेगा – कलेक्टर द्वारा पारित आदेश में हस्तक्षेप अपेक्षित नहीं – याचिका खारिज। (राकेश सुशील शर्मा वि. म.प्र. राज्य) **(DB)…*5**

***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**

***Municipal Corporation (Extent of Wards) Rules, M.P., 1994, Rules 2(4), 3(1), 3(2) & 3(3) – See – Municipal Corporation Act, M.P., 1956, Sections 10(1), 10(2) & 10(3)* [Rakesh Sushil Sharma Vs. State of M.P.] (DB)…*5**

नगरपालिक निगम (वार्डों का विस्तार), नियम, म.प्र., 1994, नियम 2(4), 3(1), 3(2) व 3(3) – देखें – नगरपालिक निगम अधिनियम, म.प्र., 1956, धाराएँ 10(1), 10(2) व 10(3), (राकेश सुशील शर्मा वि. म.प्र. राज्य) **(DB)…*5**

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Municipalities Act, M.P. (37 of 1961), Section 20 – See – Constitution – Article 243 ZG **[Dipesh Arya Vs. State of M.P.] …251**

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 20 – देखें – संविधान – अनुच्छेद 243 ZG (दीपेश आर्य वि. म.प्र. राज्य) **…251**

***Municipalities Act, M.P. (37 of 1961), Section 29 & 29-A – See – Constitution – Article 243-M, 243-D & Schedule V* [Mohd. Azad Vs. State of M.P.] (DB)…458**

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 29 व 29–A – देखें – संविधान – अनुच्छेद 243–M, 243–D व अनुसूची V (मोहम्मद आजाद वि. म.प्र. राज्य) **(DB)…458**

***Municipalities Act, M.P. (37 of 1961), Section 29 & 29-A and Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – Reservation of Seats* – Held – In Municipal Council Dhanpuri out of 28 wards, 15 wards have been reserved for SC, ST and OBC – As per Section 29-A of Act of 1961, reservation cannot exceed 50% – Notification to the extent of providing reservation of 07 seats to OBC is set aside – Respondents directed to provide reservation only for 6 seats to OBC – Petition allowed. [Mohd. Azad Vs. State of M.P.] (DB)…458**

नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 29 व 29–A एवं नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 – सीटों का आरक्षण – अभिनिर्धारित – धनपुरी नगरपालिका परिषद में 28 वार्डों में से 15 वार्ड अजा, अजजा एवं अपिव हेतु आरक्षित किये गये हैं – 1961 के अधिनियम की धारा 29–A के अनुसार, आरक्षण 50 % से अधिक नहीं हो सकता – 7 सीटों पर अपिव के लिए आरक्षण उपबंधित करने की सीमा तक अधिसूचना अपास्त – प्रत्यर्थीगण को अपिव हेतु केवल 6 सीटों के लिए आरक्षण उपलब्ध कराने के लिए निदेशित किया गया – याचिका मंजूर। (मोहम्मद आजाद वि. म.प्र. राज्य)**(DB)…458**

***Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 (Explanation) – Pattern & Practice* – Held – Declaration of ward as unreserved shall be limited to that election only – If ward no. 10 has been declared unreserved and ward no. 2 is being reserved then, this pattern of reservation is confined to this election only. [Dipesh Arya Vs. State of M.P.] …251**

नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 (स्पष्टीकरण) – क्रम व

पद्धति – अभिनिर्धारित – अनारक्षित के रूप में वार्ड की घोषणा केवल उसी निर्वाचन के लिए सीमित होगी – यदि वार्ड क्र. 10 को अनारक्षित घोषित किया गया है तथा वार्ड क्र. 2 को आरक्षित किया गया है, तब आरक्षण का यह क्रम केवल इसी निर्वाचन तक के लिए सीमित है। (दीपेश आर्य वि. म.प्र. राज्य) **...251**

***Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – Grounds for Reservation* – Held – Total percentage of SC population in any particular ward is to be seen and wards having most concentrated population of SC people are to be chosen for reservation of wards for SC category candidates – Respondents rightly reserved Ward No. 2 on basis of density of SC population rather than the numbers – No case for interference – Petition dismissed. [Dipesh Arya Vs. State of M.P.] ...251**

नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 – आरक्षण हेतु आधार – अभिनिर्धारित – किसी विशिष्ट वार्ड में अनुसूचित जाति की जनसंख्या का कुल प्रतिशत देखा जाता है और अ.जा. लोगों की अधिकतम संकेन्द्रित जनसंख्या वाले वार्डों को अ.जा. श्रेणी के प्रत्याशियों हेतु वार्डों के आरक्षण के लिए चुने जाते हैं – प्रत्यर्थीगण ने उचित रूप से अ.जा. जनसंख्या के आंकड़ों की बजाए सघनता के आधार पर वार्ड क्र. 2 आरक्षित किया – हस्तक्षेप का प्रकरण नहीं – याचिका खारिज। (दीपेश आर्य वि. म.प्र. राज्य) **...251**

***Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – Legislative Intent & Purpose* – Held – Total density of SC category of people has material bearing because that way they have the feeling of representation through the candidates of their categories and new leadership would emerge amongst them. [Dipesh Arya Vs. State of M.P.] ...251**

नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 – विधायी आशय व प्रयोजन – अभिनिर्धारित – अ.जा. श्रेणी के लोगों की सघनता का तात्विक प्रभाव है क्योंकि इस तरह उनमें उनकी श्रेणी के प्रत्याशियों के जरिए प्रतिनिधित्व की भावना होती है और उनमें से नया नेतृत्व उभर सकता है। (दीपेश आर्य वि. म.प्र. राज्य) **...251**

***Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – Maintainability of Petition* – Held – Election starts with notification and culminates in declaration of returning candidate – Present proceedings are not post notification of election but constitutes preparation of election, thus scope of judicial review lies – Petition maintainable. [Dipesh Arya Vs. State of M.P.] ...251**

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नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 – याचिका की पोषणीयता – अभिनिर्धारित – निर्वाचन, अधिसूचना के साथ आरंभ होता है तथा निर्वाचित प्रत्याशी की घोषणा पर समाप्त होता है – वर्तमान कार्यवाहियां, निर्वाचन की अधिसूचना पश्चात् की नहीं बल्कि निर्वाचन की तैयारी गठित करती हैं, अतः, न्यायिक पुनर्विलोकन की व्याप्ति लागू होगी – याचिका पोषणीय। (दीपेश आर्य वि. म.प्र. राज्य) **…251**

Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – See – Constitution – Article 243 ZG **[Dipesh Arya Vs. State of M.P.] …251**

नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 – देखें – संविधान – अनुच्छेद 243 ZG (दीपेश आर्य वि. म.प्र. राज्य) **…251**

Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – See – Municipalities Act, M.P., 1961, Section 29 & 29-A **[Mohd. Azad Vs. State of M.P.] (DB)…458**

नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 – देखें – नगरपालिका अधिनियम, म.प्र., 1961, धारा 29 व 29–A (मोहम्मद आजाद वि. म.प्र. राज्य) **(DB)…458**

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–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। (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**

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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**

***Negotiable Instruments Act (26 of 1881), Section 138 – Amendment in Complaint* – In amendment application, complainant/appellant submitted that factually cheque was issued by respondent in lieu of his advertisement work done by him and mentioning this fact, statutory notice was issued but in complaint, by mistake it was averred that cheque was issued in lieu of loan taken by respondent – Held – Application filed prior to cross examination of appellant, although charge was framed – Application should have been**

allowed – Order rejecting the application is set aside. [Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani] …503

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – परिवाद में संशोधन – संशोधन आवेदन में, परिवादी/अपीलार्थी ने निवेदन किया था कि तथ्यात्मक रूप से, चैक को प्रत्यर्थी ने, उसके द्वारा किये गये विज्ञापन कार्य के बदले में जारी किया था और इस तथ्य को उल्लिखित करते हुए कानूनी नोटिस जारी किया गया था परंतु परिवाद में भूल से यह प्रकथन किया गया था कि प्रत्यर्थी द्वारा लिये गये ऋण के बदले में चैक जारी किया गया था – अभिनिर्धारित – अपीलार्थी के प्रति परीक्षण से पूर्व, आवेदन प्रस्तुत किया गया था यद्यपि आरोप विरचित किया गया था – आवेदन मंजूर किया जाना चाहिए था – आवेदन नामंजूरी का आदेश अपास्त। (दीपक ऐडवरटाईजर्स द्वारा प्रोप्राइटर दीपक जेठवानी वि. नरेश जेठवानी) **…503**

***Negotiable Instruments Act (26 of 1881), Section 138 & 139 – Presumption – Defence – Appreciation of Evidence* – Held – Respondent could not establish that his cheque was stolen, neither any FIR has been filed by him – Respondent has not disputed his signatures in cheque as well as in acknowledgement of receipt of notice – Appellant produced the bills for which cheque was issued – Further, Apex Court concluded that even a blank cheque voluntarily signed and handed over by accused would attract presumption u/S 139 – Presumption arises that cheque was issued in discharge of legally enforcement debt – Impugned order of acquittal set aside – Respondent convicted and sentenced – Appeal allowed. [Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani] …503**

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 व 139 – उपधारणा – बचाव – साक्ष्य का मूल्यांकन – अभिनिर्धारित – प्रत्यर्थी स्थापित नहीं कर सका है कि उसका चैक चोरी हुआ था और न ही उसके द्वारा कोई प्रथम सूचना प्रतिवेदन प्रस्तुत किया गया है – प्रत्यर्थी ने चैक के साथ साथ नोटिस की प्राप्ति की अभिस्वीकृति पर उसके हस्ताक्षरों को विवादित नहीं किया है – अपीलार्थी ने वे बिल प्रस्तुत किये जिनके लिए चैक जारी किया गया था – इसके अतिरिक्त, सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यहां तक कि अभियुक्त द्वारा स्वेच्छापूर्वक हस्ताक्षरित एवं हस्तांतरित कोई रिक्त चैक धारा 139 के अंतर्गत उपधारणा आकर्षित करेगा – उपधारणा उत्पन्न होती है कि चैक को वैध रूप से प्रवर्तनीय ऋण के उन्मोचन में जारी किया गया था – दोषमुक्ति का आक्षेपित आदेश अपास्त – प्रत्यर्थी को दोषसिद्ध एवं दण्डादिष्ट किया गया – अपील मंजूर। (दीपक ऐडवरटाईजर्स द्वारा प्रोप्राइटर दीपक जेठवानी वि. नरेश जेठवानी) **…503**

***Negotiable Instruments Act (26 of 1881), Section 138 & 141 and Civil Procedure Code (5 of 1908), Order 30 Rule 1 – Proprietorship Firm – Maintainability of Complaint* – Held – Proprietorship firm is neither a**

company nor a partnership firm, it is merely a business name – Even a partnership firm is not a juristic person, but in view of Order 30 Rule 1 CPC, partners can sue or be sued in the name of firm – Section 141 would not apply – Respondent alone can be prosecuted being proprietor of proprietorship firm – Trial Court erred in holding that as proprietorship firm was not arraigned as accused, complaint was not maintainable. [Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani] …503

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 व 141 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 30 नियम 1 – प्रोपराइटरशिप फर्म – परिवाद की पोषणीयता – अभिनिर्धारित – प्रोपराइटरशिप फर्म न तो एक कंपनी है न ही एक भागीदारी फर्म है, वह मात्र एक व्यवसायिक नाम है – यहां तक कि भागीदारी फर्म भी एक विधिक व्यक्ति नहीं है किंतु आदेश–30, नियम–1 सि.प्र.सं. को दृष्टिगत रखते हुए, भागीदार फर्म के नाम से वाद ला सकते है या उन पर वाद लाया जा सकता है – धारा 141 लागू नहीं होगी – प्रत्यर्थी अकेले को, प्रोपराइटरशिप फर्म का स्वत्वधारी / प्रोपराइटर होने के नाते अभियोजित किया जा सकता है – विचारण न्यायालय ने यह अभिनिर्धारित करने में गलती की कि चूंकि प्रोपराइटरशिप फर्म को अभियुक्त के रूप में दोषारोपित नहीं किया गया था, परिवाद पोषणीय नहीं था। (दीपक ऐडवरटाईजर्स द्वारा प्रोप्राइटर दीपक जेठवानी वि. नरेश जेठवानी) **…503**

***Negotiable Instruments Act (26 of 1881), Section 139 – Presumption – Burden of Proof* – Held – In view of presumption u/S 139, burden was on respondent/accused to prove that cheque was not issued in discharge of legally enforceable debt. [Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani] …503**

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 139 – उपधारणा – सबूत का भार – अभिनिर्धारित – धारा 139 के अंतर्गत उपधारणा को दृष्टिगत रखते हुए यह साबित करने का भार प्रत्यर्थी / अभियुक्त पर था कि चैक को वैध रूप से प्रवर्तनीय ऋण के उन्मोचन में जारी नहीं किया गया था। (दीपक ऐडवरटाईजर्स द्वारा प्रोप्राइटर दीपक जेठवानी वि. नरेश जेठवानी) **…503**

***Negotiable Instruments Act (26 of 1881), Section 139 & 146 – Bank Return Memo – Presumption – Seal of bank* – Held – Return memo does not bear the seal of Bank but bears signature of bank official – In evidence, bank official did not try to prove that memo was not issued by Bank – Section 146 provides for presumption but it does not provide that unless and until the return memo bears the seal of bank, it cannot be read in evidence. [Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani] …503**

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 139 व 146 – बैंक वापसी ज्ञापन – उपधारणा – बैंक की सील – अभिनिर्धारित – वापसी ज्ञापन पर बैंक की सील नहीं लगी है किंतु बैंक अधिकारी का हस्ताक्षर मौजूद है – साक्ष्य में बैंक अधिकारी ने यह साबित करने का प्रयास नहीं किया कि ज्ञापन, बैंक द्वारा जारी नहीं किया गया था – धारा 146, उपधारणा हेतु उपबंध करती है किंतु यह उपबंधित नहीं करती कि जब तक कि वापसी ज्ञापन पर बैंक की सील न लगी हो, उसे साक्ष्य में नहीं पढ़ा जा सकता। (दीपक ऐडवरटाईजर्स द्वारा प्रोप्राइटर दीपक जेठवानी वि. नरेश जेठवानी) **...503**

***Penal Code (45 of 1860), Section 107 – Criminal Jurisprudence* – Held – Offence of abetment falls in the category of "Inchoate Offences" which is a species which are also known as "incomplete" or "incipient offences". [Shivcharan Vs. State of M.P.] ...317**

दण्ड संहिता (1860 का 45), धारा 107 – दाण्डिक विधि शास्त्र – अभिनिर्धारित – दुष्प्रेरणा का अपराध ''अपूर्ण अपराधों'' की श्रेणी में आता है जो कि एक ऐसी प्रजाति है जिन्हें ''अधूरे'' या ''आरंभी अपराधों'' के रूप में भी जाना जाता है। (शिवचरण वि. म.प्र. राज्य) **...317**

***Penal Code (45 of 1860), Section 107 & 306 – Appreciation of Evidence – Suicide by married woman by consuming poison* – Held – Record does not indicate that it was appellant (husband) who purchased and gave her poison which she consumed and died – No evidence that appellant directly or indirectly instigated the deceased by action or omission to commit suicide – Evidence regarding abetment not available – Conviction u/S 306 IPC not sustainable and is set aside – Appeal partly allowed. [Shivcharan Vs. State of M.P.] ...317**

दण्ड संहिता (1860 का 45), धारा 107 व 306 – साक्ष्य का मूल्यांकन – विवाहित महिला द्वारा विष का सेवन कर आत्महत्या – अभिनिर्धारित – अभिलेख यह नहीं दर्शाता कि वह अपीलार्थी (पति) था जिसने विष क्रय किया और उसे दिया था जिसका उसने सेवन किया और उसकी मृत्यु हुई – कोई साक्ष्य नहीं कि अपीलार्थी ने मृतिका को आत्महत्या कारित करने के लिए, कार्य अथवा लोप द्वारा प्रत्यक्ष या परोक्ष रूप से उकसाया – दुष्प्रेरण के संबंध में साक्ष्य उपलब्ध नहीं – धारा 306 भा.दं.सं. के अंतर्गत दोषसिद्धि कायम रखने योग्य नहीं एवं अपास्त – अपील अंशतः मंजूर। (शिवचरण वि. म.प्र. राज्य) **...317**

***Penal Code (45 of 1860), Section 107 & 306 – Recourse to Legal Remedy – Availability* – Held – Appellant never restrained the deceased from leaving matrimonial home and going to her parental home – Parents of deceased also stated that she use to come several times – Deceased could have sought legal redressal if she wanted to – Deceased had recourse to legal remedy – Evidence do not show that deceased did not have any option before her but, to commit suicide. [Shivcharan Vs. State of M.P.] ...317**

दण्ड संहिता (1860 का 45), धारा 107 व 306 – विधिक उपचार का अवलंब – उपलब्धता – अभिनिर्धारित – अपीलार्थी ने मृतिका को दाम्पत्य निवास छोड़कर उसके पैतृक निवास जाने से कभी अवरूद्ध नहीं किया – मृतिका के माता–पिता ने भी यह कथन किया कि वह कई बार आती थी – मृतिका यदि चाहती तो विधिक निवारण के लिए यत्न कर सकती थी – मृतिका के पास विधिक उपचार का अवलंब था – साक्ष्य नहीं दर्शाता कि मृतिका के पास आत्महत्या कारित करने के अलावा उसके समक्ष कोई विकल्प नहीं था। (शिवचरण वि. म.प्र. राज्य) **...317**

Penal Code (45 of 1860), Sections 107, 306 & 498-A – See – Evidence Act, 1872, Section 113-A **[Shivcharan Vs. State of M.P.] ...317**

दण्ड संहिता (1860 का 45), धाराएँ 107, 306 व 498–A – देखें – साक्ष्य अधिनियम, 1872, धारा 113–A (शिवचरण वि. म.प्र. राज्य) **...317**

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**

Penal Code (45 of 1860), Sections 302, 201 & 34 – See – Criminal Procedure Code, 1973, Section 439 **[Asfaq Khan Vs. State of M.P.] ...343**

दण्ड संहिता (1860 का 45), धाराएँ 302, 201 व 34 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 439 (अशफाक खान वि. म.प्र. राज्य) **...343**

***Penal Code (45 of 1860), Sections 302, 364, 120-B & 201 – Circumstantial Evidence – Motive* – Held – Merely because appellants expressed their doubt about character of victim (*daughter-in-law of appellant*) that alone does not conclusively establish that they were having any "motive" to murder her – Circumstances should be in category of "must" and cannot be based on conjectures and surmises – Chain of circumstantial evidence needs to be established with accuracy and precision – Suspicion however strong cannot take place of proof – Circumstantial evidence not sufficient to establish guilt – Conviction set aside – Appeal allowed. [Ramcharan Patel Vs. State of M.P.] (DB)...520**

दण्ड संहिता (1860 का 45), धाराएँ 302, 364, 120–B व 201 – परिस्थितिजन्य साक्ष्य – हेतु – अभिनिर्धारित – मात्र क्योंकि अपीलार्थीगण ने पीड़िता (अपीलार्थी की बहू) के चरित्र के बारे में संदेह अभिव्यक्त किया, वह अकेला निश्चायक रूप से यह स्थापित नहीं कर सकता कि उनका उसकी हत्या करने का कोई ''हेतु'' था – परिस्थितियां ''अनिवार्य'' की श्रेणी में होनी चाहिए तथा न कि अनुमानों और संदेहों पर आधारित होनी चाहिए – परिस्थितिजन्य साक्ष्य की श्रृंखला यथार्थता और शुद्धता के साथ स्थापित करने की आवश्यकता है – संदेह कितना भी मजबूत हो सबूत का स्थान नहीं ले सकता – दोषिता स्थापित करने के लिए परिस्थितिजन्य साक्ष्य पर्याप्त नहीं – दोषसिद्धि अपास्त – अपील मंजूर। (रामचरण पटेल वि. म.प्र. राज्य) **(DB)...520**

***Penal Code (45 of 1860), Sections 302, 364, 120-B & 201 – Onus of Proof – Adverse Inference* – Held – Prosecution evidence not found trustworthy and was disbelieved by Court below – Principal burden was on prosecution which it failed to establish – Adverse inference can be drawn against accused only when prosecution established its case beyond reasonable doubt and appellant failed to discharge the onus shifted on them – Onus was not shifted to appellants and thus cannot be held guilty for this reason. [Ramcharan Patel Vs. State of M.P.] (DB)...520**

दण्ड संहिता (1860 का 45), धाराएँ 302, 364, 120–B व 201 – सबूत का भार – प्रतिकूल निष्कर्ष – अभिनिर्धारित – अभियोजन साक्ष्य भरोसेमंद नहीं पाया गया तथा निचले न्यायालय द्वारा अविश्वास किया गया था – प्रमुख भार अभियोजन पर था जो कि वह स्थापित करने में विफल रहा – अभियुक्त के विरूद्ध प्रतिकूल निष्कर्ष केवल तभी निकाला जा सकता है जब अभियोजन ने अपना प्रकरण युक्तियुक्त संदेह से परे स्थापित किया हो तथा अपीलार्थी उन पर आये भार का उन्मोचन करने में विफल रहा – भार अपीलार्थीगण को अंतरित नहीं हुआ था और अतः इस कारण से दोषी नहीं ठहराये जा सकते। (रामचरण पटेल वि. म.प्र. राज्य) **(DB)...520**

Penal Code (45 of 1860), Section 354 – Applicability **– Held – Holding the hand of prosecutrix with an evil eye cannot be said to have been done with an intent to outrage her modesty, as hand cannot be construed as an erogenous part of anatomy with which a woman's modesty, sexuality or sense of shame is associated with –** ***Prima facie*** **offence u/S 354 IPC is not made out. [Aom Tiwari Vs. State of M.P.] …551**

दण्ड संहिता (1860 का 45), धारा 354 – प्रयोज्यता – अभिनिर्धारित – बुरी नजर से अभियोक्त्री का हाथ पकड़ना, ऐसा उसकी लज्जा भंग करने के आशय से करना नहीं कहा जा सकता, क्योंकि हाथ का अर्थ शरीर रचना विज्ञान के एक कामोत्तेजक भाग के रूप में नहीं लगाया जा सकता है जिसके साथ एक स्त्री की लज्जा, लैंगिकता या शर्म की भावना जुड़ी हुई है – भा.दं.सं. की धारा 354 के अंतर्गत प्रथम दृष्ट्या अपराध नहीं बनता। (ओम तिवारी वि. म.प्र. राज्य) …551

Penal Code (45 of 1860), Section 354 – See – Protection of Children from Sexual Offences Act, 2012, Section 7 & 8 **[Aom Tiwari Vs. State of M.P.] …551**

दण्ड संहिता (1860 का 45), धारा 354 – देखें – लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, 2012, धारा 7 व 8 (ओम तिवारी वि. म.प्र. राज्य) …551

Penal Code (45 of 1860), Section 376-D & 506-II – Appreciation of Evidence – Statement of Prosecutrix – Credibility **– Held – Statement of prosecutrix without any corroboration, can alone result in conviction but her evidence must be creditworthy, inspiring total confidence – Statements of prosecutrix are full of contradictions and omissions – No sign of forcible intercourse/injury found on person of prosecutrix – Alleged torn clothes, broken bangles not been recovered and seized – There was animosity between families of accused and husband of prosecutrix – Divergence between statement of prosecutrix and her husband – Conviction set aside – Appeal allowed. [Ratanlal Vs. State of M.P.] (DB)…527**

दण्ड संहिता (1860 का 45), धारा 376–D व 506–II – साक्ष्य का मूल्यांकन – अभियोक्त्री के कथन – विश्वसनीयता – अभिनिर्धारित – बिना किसी संपुष्टि के अभियोक्त्री के कथन मात्र के परिणामस्वरूप दोषसिद्धि हो सकती है परंतु उसका साक्ष्य विश्वसनीय, पूरी तरह आत्मविश्वास से प्रेरित होना चाहिए – अभियोक्त्री के कथन विरोधाभासों तथा लोप से पूर्ण है – अभियोक्त्री के शरीर पर बलपूर्वक संभोग/चोट के कोई निशान नहीं पाये गये – अभिकथित फटे कपड़ों, टूटी चूड़ियों की बरामदगी तथा जब्ती नहीं हुई – अभियुक्त तथा अभियोक्त्री के पति के परिवारों के मध्य वैमनस्यता थी – अभियोक्त्री तथा उसके पति के कथन के बीच अंतर – दोषसिद्धि अपास्त – अपील मंजूर। (रतनलाल वि. म. प्र. राज्य) (DB)…527

Penal Code (45 of 1860), Section 376(2) (amended) & 376-D and Evidence Act (1 of 1872), Section 114-A (amended) – Consent – Presumption – **Held – Presumption u/S 114-A of Evidence Act is not available in case of gang rape provided u/S 376-D IPC after the amendment incorporated in Section 376(2) IPC and in Section 114-A of Evidence Act on 03.02.2013 for offence committed after 03.02.2013 – Date of incident in present case is 22.12.2013, hence amended provision would be applicable. [Ratanlal Vs. State of M.P.] (DB)…527**

दण्ड संहिता (1860 का 45), धारा 376(2)(संशोधित) व 376–D एवं साक्ष्य अधिनियम (1872 का 1), धारा 114–A (संशोधित) – सहमति – उपधारणा – अभिनिर्धारित – दिनांक 03.02.2013 को भा.दं.सं. की धारा 376(2) तथा साक्ष्य अधिनियम की धारा 114–A में संशोधन शामिल होने के बाद दिनांक 03.02.2013 के पश्चात् कारित किये गये अपराध के लिए भा.दं.सं. की धारा 376–D के अंतर्गत उपबंधित सामूहिक बलात्संग के प्रकरण में साक्ष्य अधिनियम की धारा 114–A के अंतर्गत उपधारणा उपलब्ध नहीं है – वर्तमान प्रकरण में घटना की दिनांक 22.12.2013 है, अतः संशोधित उपबंध लागू होगा। (रतनलाल वि. म.प्र. राज्य) **(DB)…527**

Penal Code (45 of 1860), Section 379 & 414 – See – Mines and Minerals (Development and Regulation) Act, 1957, Sections 4, 22 & 23-A(2) **[Jayant Vs. State of M.P.] (SC)…175**

दण्ड संहिता (1860 का 45), धारा 379 व 414 – देखें – खान और खनिज (विकास और विनियमन) अधिनियम, 1957, धाराएँ 4, 22 व 23–A (2) (जयंत वि. म.प्र. राज्य) **(SC)…175**

Penal Code (45 of 1860), Section 420 & 120-B – See – Criminal Procedure Code, 1973, Section 482 **[Pradeep Kumar Shinde Vs. State of M.P.] …354**

दण्ड संहिता (1860 का 45), धारा 420 व 120–B – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 482 (प्रदीप कुमार शिंदे वि. म.प्र. राज्य) **…354**

Penal Code 1860 (45 of 1860), Section 498-A – Hostile Witness – Credibility – **Held – Although father and mother of deceased were declared hostile but fact of violence being perpetrated upon deceased by appellant stands proved by their deposition in their examination in chief itself which remains uncontroverted in cross examination – Conviction u/S 498-A IPC upheld. [Shivcharan Vs. State of M.P.] …317**

दण्ड संहिता (1860 का 45), धारा 498–A – पक्षविरोधी साक्षी – विश्वसनीयता – अभिनिर्धारित – यद्यपि मृतिका के पिता और माता पक्षविरोधी घोषित किये गये थे किंतु

अपीलार्थी द्वारा मृतिका के साथ हिंसा कारित किये जाने का तथ्य, उनके मुख्य परीक्षण में ही उनके अभिसाक्ष्य से साबित होता है, जो कि प्रतिपरीक्षण में अविवादित रहा है – धारा 498–A भा.दं.सं. के अंतर्गत दोषसिद्धि कायम रखी गई। (शिवचरण वि. म.प्र. राज्य)...317

Police Regulations, M.P., Regulation 634 – The General Diary – Economic Offences – **Held – Every complaint received by I.O. shall be entered into General Diary as per Regulation 634 maintained at police station and entry number shall be given to complainant – Police officer shall process all complaints within 15 days and if not possible then maximum 42 days – S.P. shall keep a check that process is done within stipulated period and result is intimated to complainant and if not done, S.P. shall initiate Departmental Enquiry against delinquent officer. [Rajendra Singh Pawar Vs. State of M.P.]** ...289

पुलिस विनियमन, म.प्र., विनियम 634 – साधारण डायरी – आर्थिक अपराध – अभिनिर्धारित – अन्वेषण अधिकारी द्वारा प्राप्त प्रत्येक परिवाद की प्रविष्टि, विनियम 634 के अनुसार, पुलिस थाने में संधारित साधारण डायरी में की जाएगी और परिवाद को प्रविष्टि क्रमांक दिया जाएगा – पुलिस अधिकारी सभी परिवादों पर 15 दिनों के भीतर और यदि संभव न हो तब अधिकतम 42 दिनों के भीतर कार्यवाही करेगा – पुलिस अधीक्षक पड़ताल करेगा कि नियत अवधि के भीतर कार्यवाही की गई तथा परिवादी को परिणाम सूचित किया गया है और यदि ऐसा नहीं किया गया है, पुलिस अधीक्षक, अपचारी अधिकारी के विरूद्ध विभागीय जांच आरंभ करेगा। (राजेन्द्र सिंह पवार वि. म.प्र. राज्य) ...289

Practice & Procedure – Complaint – Procedure – **Apex Court laid down certain directions for action to be taken on receipt of complaint – Procedure discussed and enumerated. [Rajendra Singh Pawar Vs. State of M.P.]** ...289

पद्धति एवं प्रक्रिया – परिवाद – प्रक्रिया – सर्वोच्च न्यायालय ने शिकायत प्राप्त होने पर की जाने वाली कार्रवाई हेतु कतिपय निदेश अधिकथित किये – प्रक्रिया विवेचित एवं प्रगणित की गई। (राजेन्द्र सिंह पवार वि. म.प्र. राज्य) ...289

Practice & Procedure – **Held – Court cannot make modifications to amend or correct the legislative errors. [Ratanlal Vs. State of M.P.]** (DB)...527

पद्धति एवं प्रक्रिया – अभिनिर्धारित – न्यायालय, विधायी त्रुटियों को संशोधित अथवा सुधार करने के लिए उपांतरण नहीं कर सकता। (रतनलाल वि. म.प्र. राज्य) (DB)...527

Practice & Procedure – Review – Scope – **Held – Scope of review is very limited – Under the garb of review, petitioner cannot be permitted to re-argue the matter on merits, unless an error apparent on face of record is**

pointed out – No long drawn arguments can be entertained to fish out such error. [Rajasthan Patrika Pvt. Ltd. Vs. State of M.P.] (DB)…309

पद्धति व प्रक्रिया – पुनर्विलोकन – विस्तार – अभिनिर्धारित – पुनर्विलोकन का विस्तार बहुत सीमित है – पुनर्विलोकन की आड़ में, याची को गुण दोषों के आधार पर मामले पर पुनः तर्क करने की अनुमति नहीं दी जा सकती, जब तक कि अभिलेख पर प्रत्यक्ष रूप से प्रकट त्रुटि दर्शाई गई न हो – उक्त त्रुटि दर्शाने हेतु किन्हीं लंबे तर्कों को ग्रहण नहीं किया जा सकता। (राजस्थान पत्रिका प्रा.लि. वि. म.प्र. राज्य) **(DB)…309**

***Precedent* – Held – Judgment passed by highest Court of State is binding on subordinate Courts/Tribunals/Authorities of same State because of power of superintendence enjoyed by it – Judgment passed by one High Court is not binding on another High Court although it may have persuasive value. [Rakesh Singh Bhadoriya Vs. Union of India] …222**

पूर्व निर्णय – अभिनिर्धारित – राज्य के सर्वोच्च न्यायालय द्वारा पारित निर्णय उसी राज्य के अधीनस्थ न्यायालयों/अधिकरणों/प्राधिकरणों पर बाध्यकारी है क्योंकि उसके द्वारा पर्यवेक्षण की शक्ति का उपभोग किया जाता है – एक उच्च न्यायालय द्वारा पारित निर्णय अन्य उच्च न्यायालय पर बाध्यकारी नहीं है यद्यपि उसका आग्रही मूल्य हो सकता है। (राकेश सिंह भदौरिया वि. यूनियन ऑफ इंडिया) **…222**

***Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (57 of 1994), Sections 6, 23 & 27 – See – Criminal Procedure Code, 1973, Section 439* [Rekha Sengar Vs. State of M.P.] (SC)…378**

गर्भधारण पूर्व और प्रसव पूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम, (1994 का 57), धाराएँ 6, 23 व 27 – देखें – दण्ड प्रक्रिया संहिता, 1973, धारा 439 (रेखा सेंगर वि. म.प्र. राज्य) **(SC)…378**

***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**

***Protection of Children from Sexual Offences Act, (32 of 2012), Section 7 & 8 and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Grounds* – Held – Holding of hand of prosecturix can be termed as physical contact without penetration, but it will not constitute offence u/S 7 of POCSO Act – As per statement u/S 164 Cr.P.C., there has been no contact with vagina, anus or breast of prosecutrix – *Prima facie*, applicants cannot be held punishable u/S 8 of the Act – Application allowed. [Aom Tiwari Vs. State of M.P.] …551**

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 7 व 8 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – आधार – अभिनिर्धारित – अभियोक्त्री का हाथ पकड़ने को, प्रवेशन किए बिना शारीरिक संपर्क बनाना कहा जा सकता है, लेकिन यह पॉक्सो अधिनियम की धारा 7 के अंतर्गत अपराध कारित नहीं करेगा – दं.प्र.सं. की धारा 164 के अंतर्गत कथन अनुसार, अभियोक्त्री की योनि, गुदा अथवा स्तन से कोई स्पर्श नहीं हुआ – प्रथम दृष्ट्या, आवेदकगण को अधिनियम की धारा 8 के अंतर्गत दण्डनीय नहीं ठहराया जा सकता – आवेदन मंजूर। (ओम तिवारी वि. म.प्र. राज्य) **…551**

***Protection of Children from Sexual Offences Act, (32 of 2012), Section 7 & 8 and Penal Code (45 of 1860), Section 354 – Applicability* – Held – Provisions of Section 354 IPC is much wider than Section 7 of POCSO Act – Section 7 is gender neutral as regards both the victim and the offender where as offence u/S 354 IPC is a gender specific and applies only where victim is woman but offender can be man or a woman – It is not restricted to only those parts of anatomy of female which bears specific mention in Section 7 of POCSO Act. [Aom Tiwari Vs. State of M.P.] …551**

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 7 व 8 एवं दण्ड संहिता (1860 का 45), धारा 354 – प्रयोज्यता – अभिनिर्धारित – भा.दं.सं. की धारा 354 के उपबंध पॉक्सो अधिनियम की धारा 7 की तुलना में अधिक व्यापक हैं – धारा 7 पीड़ित और अपराधी दोनों के संबंध में लिंग निरपेक्ष है जबकि भा.दं.सं. की धारा 354 के

अंतर्गत अपराध लिंग विशिष्ट है और केवल वहां लागू होता है जहां पीड़ित एक स्त्री हो लेकिन अपराधी पुरूष अथवा महिला हो सकता है – यह स्त्री की शरीर रचना के केवल उन अंगों तक सीमित नहीं है जिनका पॉक्सो अधिनियम की धारा 7 में विनिर्दिष्ट उल्लेख है। (ओम तिवारी वि. म.प्र. राज्य) **...551**

***Service Law – Cancellation of Regularisation – Petitioners regularised on 20.07.1998 under the Regulation of 1988* – Vide administrative order dated 29.07.1998, Regulation of 1988 was nullified w.e.f. 13.07.1998 – Held – On date of regularization, previous regulation and instructions were in force and new regulation of 1998 was not in existence – Subsequent administrative order cannot take away the vested right – Regularisation cannot be cancelled – Petitions allowed. [Arun Narayan Hiwase Vs. State of M.P.]** **...246**

सेवा विधि – नियमितीकरण का रद्ददकरण – याचीगण 1988 के विनियम के अंतर्गत दिनांक 20.07.1998 को नियमित हुए – दिनांक 29.07.1998 के प्रशासनिक आदेश द्वारा, 1988 के विनियम को 13.07.1998 से प्रभावी रूप से अकृत किया गया था – अभिनिर्धारित – नियमितीकरण की तिथि को, पूर्व विनियम और अनुदेश प्रभावी थे तथा 1998 का नया विनियम अस्तित्व में नहीं था – पश्चात्वर्ती प्रशासनिक आदेश निहित अधिकार को नहीं छीन सकता – नियमितीकरण रद्द नहीं किया जा सकता – याचिकाएँ मंजूर। (अरूण नारायण हिवसे वि. म.प्र. राज्य) **...246**

***Service Law – Constitution – Article 342(1) – Scheduled Caste/ Scheduled Tribe – False Caste Certificate* – Held – Petitioner obtained employment against the post reserved for Scheduled Tribe – Petitioner belongs to "*Halba Koshti*" caste which is OBC in State of M.P. and not a scheduled tribe – When employment/appointment is obtained on basis of false/forged caste certificate, person concerned cannot be allowed to enjoy the benefit of wrong committed by him – Such appointment is *void ab initio* and is liable to be cancelled. [Nageswar Sonkesri Vs. State of M.P.]** **...265**

सेवा विधि – संविधान – अनुच्छेद 342(1) – अनुसूचित जाति/अनुसूचित जनजाति – मिथ्या जाति प्रमाण–पत्र – अभिनिर्धारित – याची ने अनुसूचित जनजाति हेतु आरक्षित पद पर रोजगार प्राप्त किया – याची *''हल्बा कोष्टी''* जाति का है जो कि म.प्र. राज्य में अन्य पिछड़ा वर्ग में आती है तथा न कि अनुसूचित जनजाति में आती है – जब रोजगार/नियुक्ति, मिथ्या/कूटकृत जाति प्रमाण–पत्र के आधार पर प्राप्त हुआ है, संबंधित व्यक्ति को उसके द्वारा कारित किये गये दोष का लाभ उठाने की मंजूरी नहीं दी जा सकती – उक्त नियुक्ति आरंभ से ही शून्य है तथा रद्द किये जाने योग्य है। (नागेश्वर सोनकेसरी वि. म.प्र. राज्य) **...265**

***Service Law – Executive Order – Effect* – Held – Apex Court concluded that executive order of government cannot be made operative with retrospective effect. [Arun Narayan Hiwase Vs. State of M.P.]** **...246**

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सेवा विधि – कार्यपालिक आदेश – प्रभाव – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि सरकार के कार्यपालिक आदेश को भूतलक्षी प्रभाव से प्रवर्तन में नहीं लाया जा सकता। (अरूण नारायण हिवसे वि. म.प्र. राज्य) **…246**

***Service Law – Pension – Cause of Action* – Held – Any deficiency in pension would result in recurring cause of action as in the case of petitioner – Since petition has been filed after 7 years of accrual of cause of action, petitioner would not be entitled for arrears for a period beyond 3 years – He will be entitled for arrears and interest for last 3 years only – Re-fixation of pension directed after adding increment – Petition disposed. [Surendra Kumar Jain Vs. State of M.P.] …230**

सेवा विधि – पेंशन – वाद हेतुक – अभिनिर्धारित – पेंशन में किसी कमी से आवर्ती वाद हेतुक परिणामित होगा जैसा कि याची के प्रकरण में है – चूंकि याचिका वाद हेतुक प्रोद्भूत होने के 7 वर्ष पश्चात् प्रस्तुत की गयी है, याची, 3 वर्ष से परे की अवधि के बकाया हेतु हकदार नहीं होगा – वह केवल पिछले 3 वर्ष के बकाया एवं ब्याज हेतु हकदार होगा – वेतनवृद्धि जोड़ने के पश्चात् पेंशन का पुनः निर्धारण करने के लिए निदेशित किया गया – याचिका निराकृत। (सुरेन्द्र कुमार जैन वि. म.प्र. राज्य) **…230**

***Service Law – Post of Current Charge* – Held – No relief can be extended to petitioner who was holding the post of current charge and was transferred on a vacant and regular post – Petitioner has no right to claim for holding a post of current charge. [Mahendra Singh Amb Vs. State of M.P.] …235**

सेवा विधि – वर्तमान प्रभार का पद – अभिनिर्धारित – उस याची को कोई अनुतोष नहीं दिया जा सकता जो कि वर्तमान प्रभार के पद को धारण किये हुए था तथा एक रिक्त और नियमित पद पर स्थानांतरित कर दिया गया था – याची को वर्तमान प्रभार का पद धारण करने का दावा करने का कोई अधिकार नहीं है। (महेन्द्र सिंह अंब वि. म.प्र. राज्य) **…235**

***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**

Service Law – Regulation of 1998 – Repeal & Saving Clause – **Held – The Repeal and Saving Clause of Regulation of 1998 protects such regularization/action which was taken pursuant to erstwhile Regulation and instructions. [Arun Narayan Hiwase Vs. State of M.P.] …246**

सेवा विधि – 1998 का विनियम – निरसन व व्यावृत्ति खंड – अभिनिर्धारित – 1998 के विनियम का निरसन और व्यावृत्ति खंड ऐसे नियमितीकरण/कार्रवाई को संरक्षित करता है जो कि पहले के विनियम और अनुदेशों के अनुसरण में किये गये थे। (अरूण नारायण हिवसे वि. म.प्र. राज्य) …246

Service Law – Transfer – Grounds – **Held – Transfer is a condition of service and normally Court should refrain from interfering into transfer orders until and unless it is an outcome of *malafide* or passed by incompetent authority or are changing the service conditions of employee or disturbing the seniority etc. – No such grounds available to petitioner – Petition dismissed. [Mahendra Singh Amb Vs. State of M.P.] …235**

सेवा विधि – स्थानांतरण – आधार – अभिनिर्धारित – स्थानांतरण सेवा की एक शर्त है तथा सामान्यतः न्यायालय को स्थानांतरण आदेशों में तब तक हस्तक्षेप करने से विरत रहना चाहिए जब तक कि यह असद्भावना का परिणाम न हो या अक्षम प्राधिकारी द्वारा पारित किया गया न हो या कर्मचारी की सेवा शर्तों में परिवर्तन या वरिष्ठता इत्यादि प्रभावित न करते हों – याची के पास ऐसे कोई आधार उपलब्ध नहीं – याचिका खारिज। (महेन्द्र सिंह अंब वि. म.प्र. राज्य) …235

Service Law – Transfer Policy – **Held – Division Bench of this Court has concluded that in case transfer is alleged to be contrary to policy, the appropriate remedy is to approach the authority themselves by filing a representation seeking cancellation/modification of transfer orders. [Mahendra Singh Amb Vs. State of M.P.] …235**

सेवा विधि – स्थानांतरण नीति – अभिनिर्धारित – इस न्यायालय की खंड पीठ ने निष्कर्षित किया है कि यदि स्थानांतरण का नीति के विपरीत होना अभिकथित है, तो स्थानांतरण आदेशों का रद्दकरण/उपांतरण चाहते हुए एक अभ्यावेदन प्रस्तुत कर प्राधिकारी के समक्ष जाना समुचित उपचार है। (महेन्द्र सिंह अंब वि. म.प्र. राज्य) …235

Service Law – Transfer – Recommendation by Political Person – **Held – If the work of a person is not found to be satisfactory then the recommendation can be made by political person for transferring the employee. [Mahendra Singh Amb Vs. State of M.P.] …235**

सेवा विधि – स्थानांतरण – राजनैतिक व्यक्ति द्वारा सिफारिश – अभिनिर्धारित – यदि एक व्यक्ति का कार्य संतोषजनक नहीं पाया जाता है तब राजनैतिक व्यक्ति द्वारा कर्मचारी को स्थानांतरित करने हेतु सिफारिश की जा सकती है। (महेन्द्र सिंह अंब वि. म.प्र. राज्य) …235

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***Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhiniyam, M.P. (23 of 1999), Section 4, Sinchai Prabandhan Me Krishkon Ki Bhagidari (Sansodhan) Adhiniyam, M.P. (23 of 2013), Section 4 and Sinchai Prabandhan Me Krishkon Ki Bhagidari (Second Amendment) Adhiniyam, M.P., 2019 (5 of 2020), Sections 4(6), 4(8) & 41 – Amendment – Practice* – Held – As per Section 4(6) & 4(8) of Second Amendment Act of 2019, tenure of elected President and Members of Committee could not have been abruptly reduced for period of less than 5 years without assigning/recording reasons whereas in present case, body has been dissolved before completing period of 3 years and that too without assigning any reasons – Impugned notification quashed – Petition allowed. [Kishan Patel Vs. State of M.P.] (DB)…297**

सिंचाई प्रबंधन में कृषकों की भागीदारी अधिनियम, म.प्र. (1999 का 23), धारा 4, सिंचाई प्रबंधन में कृषकों की भागीदारी (संशोधन) अधिनियम, म.प्र. (2013 का 23), धारा 4 एवं सिंचाई प्रबंधन में कृषकों की भागीदारी (द्वितीय संशोधन) अधिनियम, म.प्र., 2019 (2020 का 5), धाराएँ 4(6), 4(8) व 41 – संशोधन – पद्धति – अभिनिर्धारित – 2019 के द्वितीय संशोधन अधिनियम की धारा 4(6) व 4(8) के अनुसार, समिति के निर्वाचित अध्यक्ष एवं सदस्यों के कार्यकाल को, बिना कारण दिये/अभिलिखित किये, 5 वर्षों से कम अवधि के लिए अप्रत्याशित ढंग से घटाया नहीं जा सकता था, जबकि वर्तमान प्रकरण में, निकाय को 3 वर्षों की अवधि पूर्ण होने के पहले ही विघटित किया गया है और वह भी कोई कारण दिये बिना – आक्षेपित अधिसूचना अभिखंडित – याचिका मंजूर। (किशन पटेल वि. म.प्र. राज्य) (DB)…297

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श्रमजीवी पत्रकार (सेवा की शर्तें) और प्रकीर्ण उपबंध नियम, 1957, नियम 36 – आवेदन – विहित प्ररूप – अभिनिर्धारित – यदि आवश्यक विवरण आवेदन में अन्यथा उपलब्ध है, यद्यपि एक अलग ढंग में तथा विहित प्ररूप में नहीं, आवेदन अस्वीकार नहीं किया जा सकता – यह ''सार'' है तथा न कि ''प्ररूप'' जो कि आवेदन के ग्रहण किये जाने की योग्यता विनिश्चित करेगा। (राजस्थान पत्रिका प्रा.लि. वि. म.प्र. राज्य) **(DB)…309**

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THE INDIAN LAW REPORTS M.P. SERIES, 2021

(Vol.-1)

JOURNAL SECTION

FAREWELLS

HON'BLE MR. JUSTICE VISHNU PRATAP SINGH CHAUHAN

Born on March 15, 1959. Did M.Sc., B.Ed. & LL.B. and joined Judicial Service as Civil Judge Class-II on October 08, 1985. Appointed as Civil Judge Class-I in the year 1992 and as C.J.M./A.C.J.M., in the year 1996. Promoted as officiating District Judge in Higher Judicial Service in the year 1998 and was posted as II A.D.J., Mahasamund. Posted as Additional District Judge, Narsingarh in the year 2001. Worked as II A.D.J., Chhatarpur and thereafter as A.D.J., Mungaoli in the year 2005. Was granted Selection Grade Scale w.e.f. 26.02.2006. Posted as President, District Consumer Forum, Chhindwara in the year 2007 and at Guna in the year 2008. Worked as Special Judge (SC/ST) (P.A.) Act and I-AJ to I-ADJ at Gwalior in the year 2012 and at Bhopal in the year 2013. Posted as District & Sessions Judge, Sidhi in the year 2014. Was granted Super Time Scale w.e.f. 19.10.2014. Posted as District & Sessions Judge, Hoshangabad in the year 2017. Posted as District Judge (Inspection), High Court of M.P., Bench Gwalior on 01.08.2017 and thereafter as District Judge (Inspection)/ Incharge, Principal Registrar, High Court of M.P. at Gwalior from September 2017. Thereafter posted as District Judge (Inspection), Gwalior zone, High Court of M.P. from September 18, 2017 till elevation. Elevated as Judge of the High Court of Madhya Pradesh on November 19, 2018 and demitted Office on March 14, 2021.

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

FAREWELL OVATION TO HON'BLE MR. JUSTICE VISHNU PRATAP SINGH CHAUHAN, GIVEN ON 12.03.2021, IN THE CONFERENCE HALL OF SOUTH BLOCK, HIGH COURT OF M.P., JABALPUR.

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

We have gathered here to bid an endearing farewell to Shri Justice V.P.S. Chauhan, who is demitting office on attaining the age of superannuation after successful tenure of about 35 years.

Shri Justice Chauhan was born on 15 March 1959. He hails from a family devoted to public service. His father Shri Rampal Singh Chauhan retired as Additional Collector, Government of Madhya Pradesh. Justice Chauhan joined the Judicial Service on 8 October 1985. He was appointed as Civil Judge, Class-I on 17.07.1992 and as C.J.M./A.C.J.M. on 01.07.1996. He was promoted as officiating District Judge in Higher Judicial Service on 01.06.1998. He was granted Selection Grade Scale with effect from 26.02.2006. Later on he was granted Super Time Scale with effect from 19.10.2014. During his tenure as Judicial Officer, he remained posted at different places in the State such as Bhopal, Alirajpur, Raghogarh, Indore, Mahasamund, Baloda-Bazar, Narsinghpur, Chhatarpur, Mungaoli, Chhindwara, Guna, Gwalior, Sidhi and Hoshangabad. He also worked as President, District Consumer Forum. Before elevation as Judge of the High Court, he was posted as District Judge (Inspection), Gwalior Zone.

Considering the vast experience treasured by Shri Justice Chauhan in the District Judiciary, he, in recognition of his merit, was elevated as Judge of this High Court on 19 November 2018. Justice Chauhan's contribution on Judicial and Administrative side has been very illustrative. He is known for his soft and polite behavior and pleasant mannerism.

Shri Justice Chauhan shall always be remembered as a Judge whose actions were always just, rational and reasonable. He is hard working and soft spoken. He always encouraged younger members of the Bar. I have found his assistance in administrative matters very useful. I am sure that his vast knowledge and experience will continue to be useful to the society even after his retirement.

I, on my behalf and on behalf of my esteemed sister and brother Judges and the Registry of the High Court, wish Shri Justice Vishnu Pratap Singh Chauhan and Mrs. Shashi S. Chauhan a very happy, prosperous and glorious life ahead.

Shri Purushaindra Kaurav, Advocate General, M.P., bids farewell :-

आज हम माननीय न्यायमूर्ति श्री विष्णु प्रताप सिंह चौहान के अधिवर्षिता प्राप्त करने पर स्नेहपूर्ण विदाई समारोह में उपस्थित हुए हैं। माननीय न्यायमूर्ति श्री वी.पी.एस. चौहान का जन्म पन्द्रह मार्च उन्नीस सौ उन्सठ को ऐसे परिवार में हुआ था जो लोकसेवा के लिए समर्पित रहे हैं। माननीय न्यायमूर्ति श्री वी.पी.एस. चौहान का न्यायिक सेवा में प्रवेश आठ अक्टूबर उन्नीस सौ पचासी को हुआ। दिनांक सत्रह जुलाई उन्नीस सौ बानवे को माननीय न्यायमूर्ति, व्यवहार न्यायाधीश वर्ग–1 के रूप में तथा दिनांक एक जुलाई उन्नीस सौ छियानवे को वे अतिरिक्त मुख्य न्यायिक मजिस्ट्रेट/मुख्य न्यायिक मजिस्ट्रेट के रूप में पदोन्नत हुए।

माननीय न्यायमूर्ति श्री वी.पी.एस. चौहान उच्च न्यायिक सेवा में पदोन्नत हुए और दिनांक एक जून उन्नीस सौ अंठानवे को कार्यवाहक जिला न्यायाधीश का पदभार ग्रहण किया। माननीय न्यायमूर्ति श्री चौहान को छब्बीस फरवरी दो हजार छः को चयन ग्रेड तथा दिनांक उन्नीस अक्टूबर दो हजार चौदह को सुपर टाइम स्केल (अधिक समयमान) प्रदान किया गया। माननीय न्यायमूर्ति श्री वी. पी.एस.चौहान ने अपनी सेवा के दौरान भोपाल, अलीराजपुर, इंदौर, महासमुंद, बलौदा बाजार, नरसिंहपुर छतरपुर, मुंगावली, छिंदवाड़ा, गुना, सीधी, होशंगाबाद तथा ग्वालियर में कार्य किया है। इसके अतिरिक्त माननीय न्यायमूर्ति ने अध्यक्ष, जिला कंज्यूमर फोरम तथा जिला न्यायाधीश (निरीक्षण), ग्वालियर जोन का पद भी सुशोभित किया हैं।

आपने मध्यप्रदेश उच्च न्यायालय में न्यायाधिपति के रूप में उन्नीस नवम्बर दो हजार अट्ठारह को शपथ ली एवं करीब ढाई वर्ष का समय माननीय उच्च न्यायालय में न्यायाधिपति के रूप में व्यतीत किया। भले ही आपका उच्च न्यायालय में न्यायाधिपति के रूप में एक अल्प समय रहा हो किंतु आपके द्वारा 35 वर्षों से अधिक का समय एक सफल न्यायाधीश के रूप में व्यतीत किया गया है। मुझे आपके समक्ष महाधिवक्ता के रूप में शासन की ओर से पक्ष में तथा वरिष्ठ अधिवक्ता के रूप में शासन के विरूद्ध कार्य करने का सौभाग्य प्राप्त हुआ है। मैंने आपको हमेशा सौहार्दपूर्ण, मैत्रीपूर्ण, नम्र, सुशील तथा कार्य के प्रति समर्पित पाया। आपने वास्तविक एवं व्यवहारिक ज्ञान की दक्षता के कारण अपने सेवाकाल में जटिल कानूनी पहलुओं का सरलता से समाधान किया एवं महत्वपूर्ण निर्णय पारित किये हैं। हम सभी आपके कार्यकाल की सराहना करते हैं और यह कामना करते हैं कि आप न्यायिक सेवा से विरत होकर समाजसेवा में रत रहें, आपका लंबा अनुभव समाज को लाभान्वित करेगा।

मैं, माननीय न्यायमूर्ति श्री चौहान की धर्मपत्नी श्रीमती शशि सिंह, पुत्रगण श्री विवेक, श्री अखिलेश तथा ऋषि एवं उनके परिवार के अन्य सदस्यगण का विशेष उल्लेख करना चाहता हूँ कि आप सभी के निरंतर सहयोग से ही न्यायमूर्ति श्री चौहान इतने लंबे समय तक सफलतापूर्वक न्यायदान की प्रक्रिया में संलग्न रहे।

मैं, मध्यप्रदेश शासन की ओर से, सभी विधि अधिकारियों की ओर से तथा स्वयं अपनी ओर से माननीय न्यायमूर्ति श्री चौहान को शुभकामनाओं सहित भावपूर्ण विदाई देता हूँ तथा परमपिता परमेश्वर से प्रार्थना करता हूँ कि आप सपरिवार सदैव स्वस्थ, सम्पन्न एवं सुखी रहें।

धन्यवाद।

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

महानुभावगण, आज हम माननीय न्यायाधिपति श्री वी.पी.एस. चौहान साहब का विदाई समारोह आयोजित कर रहे हैं। उन्होंने अपने जीवन के लम्बे समय में न्यायिक सेवायें दी हैं। सन् 1992 में सिविल जज से लेकर आज दिनांक तक इस लम्बे अंतराल में आपके द्वारा न्याय की परिधि में व्यस्त रहना अपने आप में एक मिसाल है।

आज मुझे मेरे बार की प्रतिक्रिया व्यक्त करने के लिये कहा गया है। मैं यही कहूॅगा आप मृदुभाषी, मिलनसार और सुलझे हुये व्यक्ति हैं। जहॉ तक आपके न्यायालय के प्रति बार का चिंतन रहा है, वह कुछ कम न रहा और कुछ ज्यादा सामान्य सोच रही है। मै आज कुछ यह भी कहना चाहूॅगा, इस समय पुलिस विभाग बहुत खुश रहता है व आशावादी है। हमारी जेलों में निरूद्ध किये हुये व्यक्तियों में आधे लोग पुलिस की मेहरबानी से बेगुनाह बंद है। अतः मै आज इस सभा में यह भी प्रार्थना करूॅगा कि अंतिम निर्णय होने तक दफा 34, 149, 120(बी) इत्यादि अपराधों पर रियायत की जानी चाहिये, जैसा कि पूर्व में होता था, ताकि आरक्षी विभाग जनमानस के साथ अपनी ज्यादती पर रोक लगा सकें। अभियोजन में, जो कोई व्यक्ति सीधे अपराध में लिप्त हो, उसके प्रति सख्ती बरती जाये। किन्तु मामूली उपस्थितियों पर उस प्रकरण के अंतिम निर्णय होने तक राहत दिये जाने की अनुकंपा की जाये। आज मै समस्त अधिवक्ताओं की ओर से, आदरणीय श्री चौहान साहब को साधुवाद करता हूॅ और उम्मीद करता हूॅ कि यदाकदा हमारे बार में आते रहेंगे। हम उनका इस्तकबाल करेगें।

धन्यवाद।

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

We have assembled here to bid a fond farewell to Hon'ble Shri Justice V.P.S. Chauhan, as he would be demitting the office of Judge, High Court of Madhya Pradesh on 14th of March 2021.

My Lord Justice V.P.S. Chauhan has had an illustrious and distinguished career as a Judge for nearly 36 years. My Lord after completing studies joined Madhya Pradesh Judicial Service on 08.10.1985 and after earning promotions, was appointed to Higher Judicial Service on 01.06.1998. My Lord during his tenure as Judicial officer has been posted all across the State and also worked as President, Consumer Forum and as District Judge (Inspection), Gwalior Zone.

My Lord Justice V.P.S. Chauhan was elevated as Judge of this Hon'ble Court on 19 November 2018 and has been performing the duties, functions and responsibilities of the high office ever since.

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

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

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

I wish Hon'ble Shri Justice V.P.S. Chauhan, Mrs. Chauhan and all their family members, abundance of happiness, peace and good health.

Jai Hind.

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

With a heavy heart, we all have gathered here to bid farewell to Justice Shri Vishnu Pratap Singh Chauhan, who is demitting the office on 14 March 2021. I am privileged to get this rare opportunity to speak about My Lord Justice Shri Vishnu Pratap Singh Chauhan who is an embodiment of success earned through sheer hard work, sincerity and dedication.

My Lords' educational qualification and other analogous qualities are not a matter of repetition so let me proceed directly to other dimensions of Your Lordship's personalities.

Hon'ble Shri Justice V.P.S. Chauhan entered in Judicial Service in the year 1985 and continued up to 2018 till his elevation as Judge of the High Court.

Honb'le Shri Justice V.P.S. Chauhan was elevated as Judge of High Court of Madhya Pradesh on 19 November, 2018.

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

Though retirement is closure of one chapter, but every closure of chapter opens a new chapter. My Lord Justice Shri Vishnu Pratap Singh Chauhan is such a courageous personality that will make his new chapter of life equally lively,

pleasant and happy because My Lord knows well, that pleasure multiplies on its dissemination and sharing with others.

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

At the end I would like to express my feeling:

Some people come into our lives
And quickly go.
Some stay for a while,
Leave footprints on our hearts,
And we are never, ever the same.

Thank you.

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

आज हम न्यायमूर्ति श्री विष्णु प्रताप सिंह चौहान का स्वागत अभिनन्दन करने एवं भावभीनी विदाई समारोह हेतु एकत्रित हुये हैं। समय परिवर्तनशील है, अभी कुछ समय पूर्व नवम्बर 2018 में जब देश और संविधान की रक्षा, सत्यनिष्ठा और ईमानदारीपूर्वक पालन करने की शपथ लेकर म.प्र. उच्च न्यायालय के गरिमामय पद पर विराजमान होकर न्याय मंदिर में न्यायिक प्रक्रिया का संवहन प्रारम्भ किया था। लगभग 35 वर्ष अपने अधिकार और कर्त्तव्य की मर्यादा का पालन न्यायहित में करते हुये प्रदेश के अनेक न्यायालयों में मामलों का निराकरण अपनी सूझबूझ और विवेक के आधार पर किया होगा। आज के दिन पूरा जीवन चित्रपट के समान चित्रित होने लगता है। बाल्यकाल, जब माता पिता द्वारा संस्कार प्राप्त होते हैं, परिवार, समाज एवं मित्रों के सानिध्य में शिक्षा दीक्षा प्राप्त कर भविष्य के सुनहरे सपने संजोये जाते हैं, अनेक घटनायें ऐसी होती हैं जिन्हें भुलाया नहीं जा सकता। व्यक्ति, परिवार, समाज एवं राष्ट्र के लिये मानव कर्तव्यों का पालन हमारे द्वारा किये गये कार्यों से कितना हितकारी रहा।

विगत 28 माह में संस्कारधानी एवं मॉ नर्मदा के अंचल में न्यायिक प्रक्रिया के दौरान आपसे हुये सम्पर्क में पाया, मृदुभाषी, शांत भाव से पक्षकारों के तर्कों को श्रवण कर उचित निर्णय पारित करना, न्यायालय के बाहर पद के मद को भुलाकर सामान्य व्यवहार करना निश्चित ही श्रेष्ठ आचरण की ओर इंगित करता है।

इतिहास में अनेक न्यायाधीशों ने शपथ ग्रहण की, वे आये और चले गये लेकिन आज उन्हें याद किया जाता है जिन्होंने अपने अधिकार और कर्तव्यों की मर्यादा का पालन न्याय हित में करते हुये अपने कृतित्व की छाप सभी के हृदय पटल पर अंकित की है।

आज का दिन परिवर्तन का दिन है, पद की मर्यादा, कानून एवं संविधान का पालन, पूर्व में पारित निर्णयों का सम्मान, क्षेत्र और क्षेत्राधिकार की जंजीरों को लांघ कर खुला आसमान और पूरे संसार के क्षेत्राधिकार के अन्तर्गत, अनेक विषयों के अन्तर्गत, सेवा और तन्मयता से, बगैर किसी भय के काम करने का अवसर है। परिवर्तन ही जिंदगी है।

भविष्य के स्वागत के साथ इस अवसर पर मैं अपनी ओर से, भारत सरकार की ओर से, केन्द्रीय विधि अधिकारियों की ओर से आपके सुन्दर एवं स्वस्थ भविष्य की कामना करते हुये आपका स्वागत एवं अभिनन्दन करता हूँ।

'जय हिन्द, जय भारत'

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

My Lord, Hon'ble Justice Chauhan had a sterling tenure of almost 35 years in the Judicial Service and as a Judge of this Hon'ble Court. Hon'ble Justice Chauhan held several important assignments during his long career. Hon'ble Justice Chauhan very ably served in several districts of M.P. during his long career as a District Judge. Hon'ble Justice Chauhan decided several cases settling complex questions of law and the judgments would continue to remind us of his contribution to the legal fraternity.

We have assembled here today to bid farewell to Hon'ble Justice Chauhan on the occasion of his retirement.

I wish him all success for his new assignments. On behalf of the Senior Advocates' Council and on my behalf, I wish Your Lordship a very happy retirement and at the same time wish Your Lordship all the best for the future, good health and happiness.

Thank you.

Farewell Speech delivered by Hon'ble Mr. Justice Vishnu Pratap Singh Chauhan :-

It is an amazing feeling, seeing you all here, bidding your good wishes and expressing your respected views. Firstly, I would like to express my heartfelt gratitude for showing such overwhelming love today. I am honoured and grateful for kind and generous words spoken about me. It is hard to believe that this day has finally arrived.

It has been an amazing journey, serving this honorable institution. I am going to miss the morning hustle and bustle to prepare and reach the Court in time. I had a wonderful time here because of all the amazing people I have met here.

Coming from the sub-ordinate judiciary, I never expected to have the honor to serve at this position. I would like to mention the mixed feelings I am having today. Although I am happy and eager to look forward to future, getting around to do things that I had postponed to 'Someday' – that too at my pleasure; but I also feel sad, because of the prospect of leaving behind something that has

been a major part of my life, an important part of who I am. I realize now how fast time has flown, but with your guidance and cooperation, it has been a smooth sailing.

It was because of this caring and guidance of my fellow brothers and sisters that I was able to wade through the jitters and anxiety I had, being newly appointed to such an honorable position and being a newcomer to this institution. I would like to express my sincere gratitude to one and all, assisting me to perform my duties.

In the process of administering justice, I have been uncompromising and adamant at certain occasions, and may have been tough; but that was never with any ill will or intentions. In this process, if I had hurt any feelings inadvertently, I take this opportunity to apologize for the same.

There are many people in my life who have inspired me, including my parents, wife, children, relatives, friends and their families including the members of Registry.

I would like to thank Hon'ble Chief Justice, Hon'ble Administrative Judge and all brother and sister Judges, all Registry officers and staff and my personal staff, who have always helped me, cooperated with me and been there at the time of need. I am making a humble request to all to keep extending same help and cooperation.

In future whenever I am needed, I will be just a phone-call away.

I thank all of you for coming and celebrating this occasion. I would also like to thank all those who were unable to make it here today and those who have extended their wishes and fond sentiments over other media.

I will forever be grateful for everyone's cooperation and kindness shown towards me in all these years. I always had and will keep praying for everyone's good health and success in life. It is with this expectation, I leave here today, that you would follow the same perseverance and honesty in life that I have seen as member of this honored institution.

I would also like to reiterate on how proud and honoured I feel on having the opportunity to serve as a Judge in the High Court of Madhya Pradesh.

Finally, in the current situation of COVID 19 Pandemic, please follow all safety measures, wear mask and keep social distancing. May God bless you all and keep everyone safe.

Jai Hind.

HON'BLE MR. JUSTICE JAGDISH PRASAD GUPTA

Born on March 21, 1959. Did M.A., LL.B. and joined Judicial Service on March 05, 1983. Worked as CJ-II at Morena and Sehore. Worked as Railway Magistrate at Bhopal in the year 1986. Appointed as Civil Judge Class-I in the year 1989. Posted on deputation as Deputy Welfare Commissioner, Bhopal in the year 1993. Appointed as Chief Judicial Magistrate/Additional Chief Judicial Magistrate in the year 1994. Promoted as officiating District Judge in Higher Judicial Service in the year 1996 and was posted as ADJ at Datia. Was granted Selection Grade Scale w.e.f. 01.06.2002. Thereafter posted as Special Judge SC/ST (P.A.) Act & I AJ to I ADJ at Tikamgarh in the year 2004 and also as Special Judge NDPS Act in the year 2005. Thereafter, posted as Additional Registrar (J-1), High Court of M.P. at Jabalpur on 28.02.2005 and as Additional Registrar (Vig.), High Court of M.P. at Jabalpur in the year 2007. Posted as Director, J.O.T.R.I., High Court of M.P. at Jabalpur on June 18, 2007. Was granted Super Time Scale w.e.f. 02.01.2012 and was posted as District & Sessions Judge at Ujjain. Worked as Principal Registrar, High Court of M.P., at Gwalior in the year 2013. Posted as District & Sessions Judge at Ujjain in the year 2014. Elevated as Additional Judge of the High Court of Madhya Pradesh on April 07, 2016. Sworn in as Permanent Judge of the High Court of Madhya Pradesh on March 17, 2018 and demitted Office on March 20, 2021.

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

FAREWELL OVATION TO HON'BLE MR. JUSTICE JAGDISH PRASAD GUPTA, GIVEN ON 19.03.2021, IN THE CONFERENCE HALL OF SOUTH BLOCK, HIGH COURT OF M.P., JABALPUR.

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

We have assembled here today to bid an affectionate farewell to Shri Justice Jagdish Prasad Gupta, who is demitting office on attaining the age of superannuation.

Shri Justice J.P. Gupta was born on 21 March 1959. After obtaining degrees of B.A., M.A. and LL.B. from Jiwaji University, Gwalior, Shri Justice Gupta joined Madhya Pradesh Judicial Service on 05 March 1983, as Civil Judge, Class-II. On 17 October 1989, he was promoted as Civil Judge, Class-I and thereafter in July, 1994 as C.J.M./A.C.J.M.. He was promoted as officiating District Judge in Higher Judicial Service on 04.06.1996. Shri Justice Gupta was granted Selection Grade Scale with effect from 01.06.2002 and Super Time Scale with effect from 02.01.2012. In April, 1993, Shri Justice Gupta was posted as Deputy Welfare Commissioner, Bhopal. He held the posts of Additional Registrar (Judicial) and Additional Registrar (Vigilance) in the High Court of Madhya Pradesh at Jabalpur. Shri Justice Gupta also discharged the duties as the Director of the Judicial Officers' Training & Research Institute, Jabalpur with effect from 18.06.2007. He also worked as Principal Registrar, High Court of Madhya Pradesh, Gwalior. During his tenure as Judicial Officer, he was posted at Morena, Sehore, Bhopal, Begumganj, Guna, Chachoda, Mungaoli, Datia, Seodha, Shivpuri, Indore, Tikamgarh, Jabalpur, Ujjain and Gwalior. Before elevation as Judge of the High Court, he was posted as District Judge, Ujjain.

Recognizing his merit and considering the vast experience gained by Shri Justice Gupta in the Subordinate Judiciary, he was elevated as Additional Judge of this High Court on 07 April 2016 and thereafter as Permanent Judge on 17 March 2018. Justice Gupta's contribution on Judicial and Administrative side has been very illustrative. He is known for his soft and polite behavior and pleasant mannerism. Justice Gupta is an embodiment of the most desirable qualities reasonably expected of a Judge and indeed of a noble human being. Those who are close to Justice Gupta would certainly vouch for his multifaceted personality.

During his tenure as Judge of Madhya Pradesh High Court, Justice Gupta has disposed of large number of cases, which include Criminal Appeals, Criminal Revisions, Misc. Criminal Cases, First Appeals, Misc. Appeals, Writ Petitions etc.. He has dealt with Civil and Criminal matters with equal proficiency. The decisions rendered by him reflect his deep knowledge of law and dispassionate approach in tackling complex issues. A number of his judgments are shining the law journals.

I found Shri Justice Gupta to be one of our finest Judges, silent, modest and dedicated to the cause of justice. He is admired and respected in the Judicial fraternity. I am sure that his vast knowledge and experience will continue to be useful to the society even after his retirement.

I, on my behalf and on behalf of my esteemed sister and brother Judges and the Registry of the High Court, wish Shri Justice Jagdish Prasad Gupta and Mrs. Neeta Gupta a very happy, prosperous and glorious life ahead.

Shri Pushpendra Yadav, Additional Advocate General, M.P., bids farewell :-

Today, we are assembled for bidding a fond farewell as well as extending our best wishes to the Hon'ble Justice Shri Jagdish Prasad Gupta, upon his retirement as a Judge of this Hon'ble High Court.

My Lord was born on 21 March 1959 at Morena. Your Lordship joined the Judicial Service on 05.03.1983. My Lord was appointed as Civil Judge, Class-I on 17.10.1989 and as C.J.M. in the month of July, 1994 and thereafter he was promoted as officiating District Judge in Higher Judicial Service on 04.06.1996. Thereafter, My Lord was elevated as Judge of High Court of Madhya Pradesh on 7 April 2016. Before elevation as Judge of this esteem institution, My Lord was posted as District and Sessions Judge, Ujjain.

On Administrative side, My Lord worked as Dy. Welfare Commissioner, Bhopal. My Lord also held the posts of Additional Registrar (Judicial) and Additional Registrar (Vigilance) in the High Court of Madhya Pradesh at Jabalpur. My Lord also discharged the duties as a Director, J.O.T.R.I., Jabalpur and Principal Registrar, High Court of M.P., Gwalior Bench.

The duty of the Courts is to do justice while exhibiting fairness, respect and dignity to the people who come before it. A Judge is the fulcrum, on which our entire justice system balances. So are the qualities of Your Lordship. Your Lordship demonstrated a paramount standard of ethical conduct that has stood out.

Your Lordship is having great skills of adjudicating all types of legal disputes, it will be appropriate to say that Lordship is having full and equal command over different fields of law. Your Lordship has dealt with tedious legal issues from time to time and has delivered large number of judgments which will be very useful for the practicing advocates for times to come.

My Lord's journey from Civil Judge to District Judge and from District Judge to Judge of this esteemed High Court paves the ways for many judicial officers who joined the Judicial Service as a Civil Judge.

Your Lordship has always taken great pains to improve this institution and has built a reputation of being an extremely meticulous Judge. Your Lordship has rendered all possible assistance that the institution & litigant expects from a Judge in discharging his constitutional obligations.

As he prepares to depart from this Court, I have to say that we will miss My Lord deeply. At the end, therefore, I would only like to quote Mahatma Gandhi who said "There are no goodbyes for us. Wherever you are, you will always be in our hearts."

I, on behalf of the State Government, Law Officers and my own behalf, I convey our best wishes to Your Lordship for the future endeavours. We wish him good health and deep contentment with his accomplishments.

Thank you.

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

आज हम माननीय न्यायाधिपति श्री जे.पी.गुप्ता साहब के विदाई समारोह में उपस्थित हुए हैं।

माननीय गुप्ता जी स्वयं अपने नाम से जगत के ईश हैं। आप का हम अधिवक्ताओं से विशेषकर वरिष्ठ अधिवक्ताओं से विशेष स्नेह रहा। यह सही है कि कभी कभी वे जूनियर अधिवक्ता चाहे वे डिफेंस से हों या प्रॉसिक्यूशन से, उनकी बहस के दौरान उन्हें समझाइश देते थे। गुप्ता जी क्षण मात्र के लिये गुस्सा होते थे, पर किसी भी अधिवक्ता को निराश नही होने देते थे, रिलीफ देते थे। हमें जब जूनियर उनके गुस्से की शिकायत करते थे तो हम कह देते थे, भाई साहब देहात में कहावत है 'दुधारू गाय की लातें भी अच्छी लगती हैं' तुम्हें राहत (relief) तो मिली / बहरहाल गुप्ता जी ने अपने जीवन के लम्बे समय न्यायिक सेवायें दीं। उनके विरूद्ध इस प्रदेश की चाहे वह तहसील प्लेस या जिला या हमारी रजिस्ट्री एवं उनका हाईकोर्ट का पीरियड, कोई शिकवा शिकायत नही है। श्री गुप्ता जी दीवानी एवं फौजदारी दोनो विधियों के कुशल ज्ञाता है।

आप जहॉ भी रहें हमारे बीच आते रहें। हम सदैव उनका इस्तकबाल करेंगे। मैं उन्हें, उनकी जुबान में गर्मी एवं दिल की ठंडक के लिये सम्मान करता हूॅ व अपनी ओर व समस्त अधिवक्ता जगत की ओर से धन्यवाद देता हूॅ। श्री गुप्ता जी म.प्र. उच्च न्यायालय से विदा हो रहे हैं पर हमारे दिल से कभी विदाई नही होगी।

धन्यवाद।

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

We have assembled here to bid a fond farewell to Hon'ble Shri Justice J.P. Gupta on the eve of his demitting the office of Judge, High Court of Madhya Pradesh.

My Lord Justice J.P. Gupta has had an illustrious and distinguished career as a Judge for 38 years. My Lord after completing studies, joined Madhya Pradesh Judicial Service on 05.03.1983 and after earning promotions was appointed to Higher Judicial Service on 04.06.1996. My Lord, as a judicial officer has been posted at Morena, Sehore, Bhopal, Begumganj, Guna, Chachoda, Mungaoli, Datia, Seondha, Shivpuri, Indore, Tikamgarh, Jabalpur, Ujjain and Gwalior. My Lord held a range of offices such as Deputy Welfare Commissioner, Bhopal; Additional Registrar (Judicial) and Additional Registrar (Vigilance), High Court, Jabalpur; Director, Judicial Officers Training and Research Institute, Jabalpur; Principal Registrar, High Court, Gwalior Bench.

My Lord Justice J.P. Gupta was elevated as Judge of this Hon'ble Court on 07.04.2016 and has been performing the duties, functions and responsibilities of the high office ever since.

It has been a common experience of all the members of the Bar, that My Lord Justice J.P. Gupta has been a bold Judge, never falling short in justice delivery to it's fullest. His Lordship's appreciation of both facts and law have been remarkable and nothing escaped his sharp attention, while dealing with any cause. My Lord's abundant knowledge of grassroot reality of common man's life and his firm belief in substantial justice made his tenure as Judge High Court, truly remarkable.

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

On behalf of High Court Advocates' Bar Association and on my own behalf I wish Godspeed to Hon'ble Shri Justice J.P. Gupta in all his future endeavors.

I wish Hon'ble Shri Justice J.P. Gupta, and Mrs. Gupta and all his family members, abundance of happiness, peace and good health.

Jai Hind.

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

With a heavy heart, we all have gathered here to bid farewell to Justice Shri J.P. Gupta, who is demitting the office today on 19 March 2021. I am privileged to get this rare opportunity to speak about My Lord Justice Shri J.P. Gupta who is an embodiment of success earned through sheer hard work, sincerity, and dedication.

My Lord was born on 21 March 1959 at Morena. His Lordship joined Judicial Service on 05 March 1983. He was promoted as officiating District Judge in Higher Judicial Service on 04.06.1996. During his tenure as Judicial Officer, Hon'ble Shri Justice J.P. Gupta was posted in various cities of Madhya Pradesh. Hon'ble Shri Justice J.P. Gupta was elevated as Judge of High Court of Madhya Pradesh on 07 April 2016.

My Lord's greatest achievement is his acceptability by the advocates, litigants and common man. For a Judge, if they feel and realized that before that Court they shall get Justice, then, Judge has succeeded and justifies occupying the chair of high office of the said Judiciary. Mr. Justice Shri J.P. Gupta has achieved the same.

My Lord Justice Shri J.P. Gupta has never shirked from his responsibilities, in dispensation of Justice, because of his best knowledge in every branch of law, he never faced any difficulty in dealing with law. In his career as Judge, he believed only in performing his duties to the best of his ability and knowledge.

My Lord Justice Shri J.P. Gupta is capable to solve any serious problem in a very light and easy mood. My Lord is very prompt in reaching to the correct conclusion and solution to any problem.

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

I wish again My Lord with the following lines:-

शामों–शहर खुशियों का तराना रहे।
कुछ भी हो मुस्कुराने का बहाना रहे।।
आप जिन्दगी में इतने खुश रहें।
कि हर पल आपका दीवाना रहे।।

Thank you.

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

आज हम न्यायमूर्ति श्री जगदीश प्रसाद गुप्ता को उनके न्यायिक सेवाकाल की समाप्ति के अवसर पर, उन्हें भावभीनी विदाई समारोह हेतु एकत्रित हुये हैं। 21 मार्च सन् 1959 से मुरैना, म.प्र. से आपकी जीवन यात्रा प्रारंभ हुई। पारिवारिक संस्कार एवं सामाजिक जीवन के द्वारा प्राप्त संस्कारों से परिपूर्ण जीवन शैली के माध्यम से अपने जीवन को संसार की चकाचौंध से प्रभावित हुये बगैर, अपने व्यक्तित्व को स्कूली एवं महाविद्यालयीन शिक्षा के माध्यम से धीरे–धीरे तराशते हुये मूर्तिकार के समान

साधारण मिट्टी से भव्य प्रतिमा की अवधारणा के साथ सन् 1983 में न्यायिक सेवा में पदार्पण किया। निरंतर कड़ी मेहनत, लगन एवं पूरी निष्ठा के साथ एक एक कदम आगे बढ़ाते हुये भव्य, सुन्दर एवं आकर्षित मूर्ति को सजीवता प्रदान करते हुये योग्य मार्गदर्शन के आधार पर सीढ़ी दर सीढ़ी प्रगति के सोपान पथ पर बढ़ते हुये व्यवहार न्यायाधीश, जिला न्यायाधीश से होते हुये म0प्र0 उच्च न्यायालय के न्यायाधिपति के गौरवशाली पद पर पदासीन होने तक की प्रक्रिया में सूरज की रोशनी की तरह प्रकाश की किरणें न्यायिक सेवा के माध्यम से प्रदेश के अनेक भू भागों में गरीब की झोपड़ी एवं राजा के महल को बगैर भेदभाव एवं पूरी ईमानदारी एवं क्षमता के साथ प्रकाशित करने में महत्वूपर्ण योगदान रहा है।

आज तक की इस जीवन यात्रा में परिवारजन, सामाजिक जीवन में सम्पर्क में आये व्यक्ति, न्यायिक सेवा के दौरान पक्षकार, अधिवक्ता एवं साथी न्यायाधीश सभी को स्मरण करने का अवसर है।

परिवर्तन के इस अवसर पर हम आपके प्रयासों की सराहना करते हैं एवं आने वाले भविष्य में और भी अवसर प्रदान हों इसी आशा के साथ मैं अपनी ओर से, भारत सरकार की ओर से, एवं समस्त केन्द्रीय विधि अधिकारियों की ओर से आपका स्वागत वंदन करते हुये आपके उज्ज्वल भविष्य की कामना करता हूँ।

''जय–भारत''

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

My Lord Hon'ble Justice Gupta was sworn as a Judge of this High Court on 07.04.2016. Prior to his Lordship's elevation, My Lord very ably served the Higher Judicial Service since the year 1983. My Lord has a tenure of almost 38 years in the Judicial Service and nearly 5 years as a Judge of this Hon'ble Court. Hon'ble Justice Gupta held several important assignments during his long career. My Lord played a very major role when he was assigned the duties of Director of the Judicial Officers' Training Institute. My Lord also held the important assignments of Principal Registrar, Gwalior Bench before being elevated as a Judge of this Hon'ble Court. My Lord has passed several landmark Judgments which shall guide the Lawyers for many years to come.

We have assembled here today to bid farewell to Hon'ble Justice Gupta on the occasion of his retirement. My Lord, as one happy chapter of life comes to an end, it augurs another promising chapter which grants immense opportunities to be free from regimentation and do all those things which Your Lordship has cherished all his life.

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

Thank you.

Farewell Speech delivered by Hon'ble Mr. Justice Jagdish Prasad Gupta :-

आप सभी ने अपने प्रतिनिधियों के माध्यम से, मेरे प्रति जो स्नेह और सम्मान प्रकट कर, प्रशंसनीय भाव प्रकट किये हैं और मेरे भावी जीवन के लिए शुभकामनाएं प्रेषित की हैं, इसके लिए आप सभी का धन्यवाद एवं आभार प्रकट करता हूँ।

पूर्व वक्ताओं ने मेरी कतिपय विशेषताओं का उल्लेख किया है, उनमें सत्यता कम अतिश्योक्ति अधिक है। मैं अपनी कमजोरियों से अवगत हूं। आप लोगों का यह बड़प्पन है कि आपने उन कमियों के रहते हुए भी मुझे स्वीकार किया एवं न्यायदान का कार्य सम्पन्न करने में मुझे पूर्ण सहयोग प्रदान किया, इसके लिए भी मैं हृदय से आभारी हूं।

चम्बल अंचल के मुरैना जिले की तहसील श्योपुर के ग्राम बघरेंटा से जीवन यात्रा प्रारंभ करते हुए आज मैं इस मुकाम तक आया हूं। 38 वर्ष की न्यायिक सेवा की जीवन यात्रा में मुझे बहुत लोगों का सहयोग, मार्गदर्शन एवं संरक्षण मिला, जिनका आज के दिन स्मरण करना व उनका आभार प्रकट करना मेरा कर्तव्य है।

मेरे माता–पिता, परिवारजन, रिश्तेदार तथा मित्रों के सहयोग के साथ विधि क्षेत्र में प्रवेश कराने वाले मेरे गुरू कामरेड श्री बहादुर सिंह धाकड़, एडवोकेट एवं न्यायिक सेवा में प्रवेश के बाद मुझे स्नेह, मार्गदर्शन और संरक्षण देने वाले जस्टिस श्री एन. के. जैन, जस्टिस श्री नारायण सिंह 'आजाद' एवं श्री एम. आर. कसानिया, तत्कालीन जिला न्यायाधीश का भी बहुत आभारी हूं।

सन् 2005 फरवरी में मैं जबलपुर में न्यायिक रजिस्ट्रार के रूप में आया था एवं इस उच्च न्यायालय के क्रियाकलापों को अधिक निकटता से देखने, समझने व जानने का अवसर प्राप्त हुआ, इस दौरान मुझे तत्कालीन मुख्य न्यायाधिपति श्री रविन्द्रन साहब, श्री ए.के. पटनायक साहब, न्यायमूर्ति श्री आर.एस. गर्ग, न्यायमूर्ति श्री दीपक मिश्रा, न्यायमूर्ति श्री अरूण मिश्रा जी और न्यायमूर्ति श्री मेनन के सहयोगी के रूप में रजिस्ट्रार न्यायिक, सतर्कता, परीक्षा/आई.एल.आर. तथा संचालक, न्यायिक अधिकारी प्रशिक्षण संस्थान, जिसे वर्तमान में मध्यप्रदेश राज्य न्यायिक अकादमी के रूप में जाना जाता है, में कार्य करने का अवसर प्राप्त हुआ।

उक्त सभी न्यायमूर्तियों का मुझे कार्य संपादन में पूर्ण सहयोग एवं मार्गदर्शन मिला जिससे मेरी भावी जीवन की यात्रा आसान एवं अधिक सुनिश्चित हो सकी, उनके इस योगदान के लिए मैं उनके प्रति अपना आभार प्रकट करता हूं।

मैं आभारी हूं अपने परिवारजन, विशेषकर पत्नी डॉ0 श्रीमती नीता गुप्ता, जिन्होंने मुझे घरेलू चिंताओं से मुक्त रखते हुए एवं खुद प्राध्यापक की शासकीय सेवा करते हुए परिवार के आर्थिक बोझ को बांटा एवं मुझे न्यायिक मानदंडों के अनुरूप अपना कार्य संपादित करने में सहयोग प्रदान किया। मेरे पुत्र जयेश एवं पुत्रवधू नेहा एवं पोती आन्या, जो यहां नहीं है, वे सभी कोविड–19 पैन्डैमिक के कारण यू.एस.ए. से इस अवसर पर नहीं आ सके हैं। उन्होंने भी मुझे मेरे सेवा कार्य को अपेक्षाओं के अनुरूप संपादन करने में सहयोग प्रदान किया है, इस योगदान के लिए मैं इन सबका भी आभारी हूं।

मुझे मेरे कार्य संपादन में सदैव रजिस्ट्रार जनरल एवं रजिस्ट्री के सभी अधिकारीगण, प्रोटोकॉल सेक्शन के अधिकारी एवं कर्मचारीगण, आई.टी. सेल के अधिकारी एवं मेरे न्यायालय के स्टाफ, लॉ क्लर्क, जमादार सबका सहयोग प्राप्त हुआ, इसके लिए मैं उनका आभार प्रकट करता हूं। सहायक प्रोटोकॉल आफिसर श्री संदीप अग्रवाल, जिन्होंने मुझे हमेशा मेरे निजी कार्यों में सहयोग

प्रदान किया, उनका भी मैं आभार प्रकट करता हूं। डॉ. सोनकर का भी मैं विशेष रूप से आभारी हूं जिन्होंने मुझे हमेशा मेरी स्वास्थ्य संबंधी जरूरतों को ध्यान में रखते हुए आवश्यकतानुसार चिकित्सा सुविधा उपलब्ध कराई।

मैं आभारी हूं संचालक, म.प्र. राज्य न्यायिक अकादमी एवं अन्य न्यायिक अधिकारीगण, जिनका सहयोग भी मुझे निरंतर आवश्यकतानुसार प्राप्त हुआ। मेरे उच्च न्यायालय में न्यायाधिपति के रूप में पदस्थ होने पर मेरे न्यायिक कार्य के संपादन में मेरे वरिष्ठ साथियों से हमेशा मार्गदर्शन और सहयोग मिला, इसके लिए मैं माननीय न्यायमूर्ति श्री प्रकाश श्रीवास्तव जी, श्री शील नागू, न्यायमूर्ति श्री सुजॉय पॉल एवं न्यायमूर्ति श्री रोहित आर्या साहब का भी आभारी हूं। मुझे मेरे अन्य सभी साथी न्यायाधीशगण की ओर से भी हमेशा पूर्ण सहयोग, स्नेह एवं सम्मान मिला, इसके लिए भी मैं उनका आभार प्रकट करता हूं। इतने लंबे समय तक न्यायिक जगत में सक्रिय रहने के बाद न्यायिक व्यवस्था के संबंध में कुछ न बोलना उचित नहीं होगा।

मैं अपने सेवाकाल के प्रारंभ से यह देखता आ रहा हूं कि न्यायपालिका की सबसे बड़ी समस्या यह है, मामलों का शीघ्रता के साथ निराकरण कैसे किया जाये और उनकी संख्या में कमी कैसे लायी जाये। आज भी शीघ्र न्याय, सस्ता न्याय एवं गुणात्मक न्याय सुनिश्चित करना न्यायिक जगत से जुड़े हुए लोगों के सामने एक बड़ी चुनौती है।

इन समस्याओं के निराकरण के लिए समय–समय पर प्रयास होते रहे हैं और आज भी हो रहे हैं, लेकिन इन सुधारों के लिए मुख्य भूमिका न्यायपालिका को ही अदा करनी है। सरकार की भूमिका तो संसाधन उपलब्ध कराने तक ही हो सकती है। वर्तमान में संसाधन मिल रहे हैं, संसाधनों की उपलब्धता बढ़ी है, परंतु अपेक्षित परिणाम के लिए न्यायिक सुधारों में दीर्घकालीन योजनाओं का अभाव है। प्रायः यह देखने मे आता है कि हर स्तर पर अर्थात् उच्चतम न्यायालय एवं उच्च न्यायालयों में मुख्य न्यायाधिपति के परिवर्तन के साथ ही सुधारों की दिशा व गति बदल जाती है, जिससे समस्या का हल होता नजर नहीं आता। इसलिए जरूरत है कि न्यायिक सुधारों हेतु दीर्घकालीन रोडमेप तैयार किया जाये, जो मुख्य न्यायाधिपति के बदल जाने पर परिवर्तित न हो। दीर्घकालीन विजन डॉक्यूमेंट आगामी 25 साल की आवश्यकताओं को ध्यान में रखते हुए तैयार किया जाना चाहिए, जिसमें समय–समय पर आवश्यकतानुसार परिवर्तन किये जा सकते हैं, परंतु वह मूल स्वरूप को परिवर्तन करने वाला नहीं होना चाहिए।

आज म0प्र0 उच्च न्यायालय में लंबित मामलों की संख्या निम्नानुसार है :–

सिविल	125107
रिट	118106
क्रिमिनल	149744
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उक्त परिस्थिति में मामलों के शीघ्र निराकरण के लिये आवश्यक है कि न्यायाधीशों की संख्या में वृद्धि की जाये, निचले स्तर पर यह वृद्धि हुई है, परंतु उच्च न्यायालय के स्तर पर स्थिति चिंतनीय है क्योंकि स्वीकृत पद के आधे से अधिक रिक्त रहते हैं, किसी पद के रिक्त होने के 06 माह पूर्व ही न्यायाधीशों के पद पर नियुक्ति हेतु नाम भेज दिये जायें और प्रारंभिक छानबीन राज्य स्तर पर कर ली जाये तो बाद में आने वाली आपत्ति न के बराबर रहती है। कोशिश यह हो कि यह प्रक्रिया पारदर्शी हो, भाई भतीजावाद और पक्षकार के आरोपों से मुक्त हो एवं न्यायाधीश के पद के लिए उपयुक्तता ही एकमात्र आधार हो। एक समय ऐसा था जब इस न्यायालय के न्यायाधीशों के सभी पद

भरे हुये थे। बार से नियुक्त होने वाले न्यायाधीशों के लिए कम से कम 01 माह का संस्थागत प्रशिक्षण हो जिसमें निर्णय एवं आदेश लेखन में होने वाली सामान्य त्रुटियों से उनको अवगत कराया जाये और कैसे उनसे बचा जाये, इस ओर उनका मार्गदर्शन किया जाये। साथ ही अभिभाषक से न्यायाधीश नियुक्त होने से ही न्यायिक मर्यादाएं आत्मसात नहीं हो जाती। इसके लिए *ज्यूडिशियल एथिक्स* की जानकारी देना और उनका पालन करना क्यों आवश्यक है, इस पर उनकी सोच स्पष्ट किया जाना आवश्यक है। प्रारंभिक काल में उन्हें *सीनियर जजेस* के साथ कुछ समय डी.बी. में बैठाया जाना चाहिए ताकि *कोर्ट क्राफ्ट* और *जजमेंट रायटिंग* से परिचित हो सके।

ठीक इसी तरह से न्यायिक सेवा से आने वाले न्यायाधीशों के लिए भी 01 माह का संस्थागत प्रशिक्षण होना चाहिए जिनमें संवैधानिक मूल्यों एवं *ज्यूडिशियल रिव्यू, इंटरप्रिटेशन आफ लॉ* के बारे में उन्हें अतिरिक्त शिक्षा और ज्ञान दिया जाना चाहिए और कुछ समय उन्हें भी डी.बी. में *सीनियर जजेस* के साथ बैठाया जाना चाहिए।

ज्यूडिशियल डिसिप्लिन एंड अकाउंटबिलिटी भी सुनिश्चित की जानी चाहिए। पूर्व निर्णयों का सम्मान, *रिज़ंड आर्डर एवं जजमेंट* पर जोर होना चाहिए। नये न्यायाधीशों को *डेवलपमेंट आफ लॉ एंड डिस्ट्रक्शन आफ लॉ* का अंतर भी समझाया जाना चाहिए। *डेवलपमेंट आफ लॉ* के नाम पर अनावश्यक रूप से स्थिर, स्पष्ट कानून को अस्थिर और अपालन योग्य बनाने से बचना चाहिए। अकैडमिक रूचि के अभिभाषकों एवं न्यायाधीशों को अपने आर्टिकल्स के माध्यम से इसके प्रति ध्यान आकर्षित करना चाहिए। विभिन्न न्यायालयों द्वारा एक ही विषय पर भिन्न–भिन्न मत प्रकट करना एवं निर्णय देना एक सामान्य प्रक्रिया हो गई है। इसके होने वाले दुष्परिणामों से बचने के लिए हर 03 माह में ऐसे निर्णयों की समीक्षा करते हुए भिन्नता समाप्त कर सही कानून की स्थिति स्पष्ट करने का सतत् संस्थागत प्रयास होना चाहिए।

न्यायाधीशों एवं अभिभाषकों को एक दूसरे का सम्मान करना चाहिए, परंतु एक दूसरे को प्रसन्न करने की चिंता न्याय के ह्रास का कारण नहीं होना चाहिए।

इस समय सबसे अधिक जरूरत है न्यायालयीन कार्य में समय के प्रबंधन की, केवल न्यायाधीश के समय पर बैठने और समय पर आसंदी से उठ जाने से ही ऐसा संभव नहीं है, आवश्यकता है न्यायाधीश का 01–01 मिनिट न्यायिक मामलों के निराकरण में उपयोग हो। आज यह देखने में आ रहा है कि न्यायाधीश का केवल 1/3 समय ही वास्तविक रूप में न्यायिक मामलों के निराकरण में उपयोग आ रहा है, शेष समय मामलों के स्थगन एवं ऐसे कार्यों के संपादन में व्यतीत हो जाता है जिनमें मिनिस्ट्रीयल स्टाफ के माध्यम से या रजिस्ट्रार, जो कि एक न्यायाधीश होता है, के माध्यम से कराया जा सकता है। इसलिए जरूरत है अधिक संख्या में *कॉज लिस्ट* में मामले न लगाये जाये, अधिक संख्या में मामलों के लगाये जाने पर अभिभाषक स्थगन मांगने के लिए बाध्य हैं और न्यायाधीश भी स्थगन प्रदान करने के लिए मजबूर है, क्योंकि वह सभी प्रस्तुत किये गये मामलों में सुनवाई नहीं कर सकता। *मोशन हियरिंग* के केसेस जब अधिक संख्या में लगाया जाना प्रारंभ किया गया था तब इसका उद्देश्य केवल *मोशन हियरिंग* के केसेस में *रिर्टनेबल डेट* सुनिश्चित करना था, इस कार्य के पूर्ण होने के पश्चात पुनः *लिस्टिंग की पॉलिसी* पर विचार होना था, जो आज तक नहीं हुआ, फलतः न्यायालयीन समय का उचित प्रयोग नहीं हो रहा।

फायनल हियरिंग के लिए पुराने जो मामले हैं वे एक निश्चित संख्या में प्रत्येक न्यायाधीश को अलॉट किये जाये और उनका निराकरण एक निश्चित समयावधि में करना सुनिश्चित करें, यदि ऐसा किया जाता है तो ऐसे मामलों का निराकरण संभव हो सकेगा।

न्यायालय का समय बचाने के लिए यह भी आवश्यक है कि बार–बार विद्ड्रॉअल पर एवं अनावश्यक मामलों को रोकने के लिये प्रभावी कॉस्ट लगायी जाना चाहिये, केवल अनावश्यक स्थगन स्वीकार न किये जाये, साथ ही केस डायरी एवं अन्य रिकार्ड समय पर उपलब्ध रहे, यह भी सुनिश्चित किया जाये। पुलिस से अपेक्षित जानकारी एक बार में ही निर्धारित प्रारूप में उपलब्ध हो सके, यह सुनिश्चित किया जाये। साथ ही शासकीय अधिवक्ताओं का प्रभावी सहयोग मिल सके, इसके लिए उनका चयन मेरिट के आधार पर किया जाये एवं उनको उचित प्रशिक्षण दिया जाये।

शासन के एक ही विभाग के एक जैसे मामले एक साथ लिये जाये एवं संबंधित विभाग के साथ समन्वय कर विवादग्रस्त बिंदुओं की विधिक स्थिति स्पष्ट करते हुए उन्हें मामलों के निराकरण के निर्देश दिये जाये एवं तदनुसार हाई पावर कमेटी के द्वारा मामलों की समीक्षा कर उनका प्रशासकीय स्तर पर निराकरण सुनिश्चित कराया जाये।

न्यायालय के आदेशों की लगातार अवहेलना को गंभीरता से लिया जाये और आदेशों का समय पर पालन करना सुनिश्चित करने के लिए उदाहरण स्वरूप कठोर कार्यवाही कुछ मामलों में की जाये।

इसके साथ ही प्रक्रियात्मक सुधार भी आवश्यक है ताकि मामले बार–बार सुनवाई के लिए उपस्थित न हो।

इसमें कोई संदेह नहीं है कि अभिभाषकों के प्रभावी सहयोग के बिना न्यायिक सुधारों के कार्य पूरे नहीं हो सकते, उनके प्रभावी सहयोग के लिए यह जरूरी है कि उनका भी नियमित रूप से प्रशिक्षण हों, इसके लिए बार एवं बेंच को संयुक्त प्रयास करना आवश्यक है। इस हेतु पूर्व में अभिभाषकों के निरंतर विधिक अध्ययन हेतु प्रशिक्षण के लिए बनायी गई संस्था को पुनर्जीवित किया जाये। इसके साथ ही मेरा ऐसा मानना है कि प्रभावी आपराधिक न्याय व्यवस्था के लिए अन्वेषण का कार्य भी वैज्ञानिक ढंग से एवं कुशल अनुसंधानकर्ताओं द्वारा किया जाना चाहिए। विशेष रूप से आर्थिक अपराध और साइबर क्राईम जैसे मामलों में प्रायः ऐसा देखा गया है कि अनुसंधानकर्ता अधिकारी अपराध के अवयव एवं साक्ष्य को समझता ही नहीं है, चालान पेश करना ही अपनी सफलता मानता है। ठीक इसी तरह से मामलों के अभियोजक भी ऐसे मामलों में संचालन के लिए दक्ष नहीं है। न्यायाधीशों के स्तर पर भी ऐसे मामलों को समझने की कमी है। अतः इन मामलों के बारे में अनुसंधानकर्ता अधिकारी, लोक अभियोजक एवं न्यायाधीशों को अतिरिक्त प्रशिक्षण दिया जाना चाहिए।

जिला न्यायालयों में भी मामलों का समय पर निराकरण, उचित प्रबंधन एवं सतत् निरीक्षण द्वारा किया जा सकता है। इस संबंध में जिला न्यायाधीशों को लीडर की भूमिका अदा करनी होगी, उनकी नियुक्ति के समय उनके इस गुण पर विचार किया जाना चाहिए अन्यथा जिले की दशा शीघ्र ही दिशा विहीन हो सकती है। साथ ही अधीनस्थ न्यायाधीश को स्वतंत्र रूप से, निडर होकर कार्य करने का प्रोत्साहन मिलता रहना चाहिए। साथ ही उनके कार्य का सतत् निरीक्षण एवं आवश्यक होने पर प्रभावी अनुशासनात्मक कार्यवाही भी की जाना चाहिए तभी हम उक्त लक्ष्यों को प्राप्त कर सकते हैं।

जिला न्यायालयों मे 02 वर्ष के अंदर केवल तीन वर्ष तक के मामले लंबित रह सकते है, यदि पोर्टफोलियो जज 03 माह में एवं मुख्य न्यायाधिपति 06 माह में उनके साथ संवाद कर मार्गदर्शन दें।

हम सब सौभाग्यशाली हैं कि हमें मोहम्मद रफीक साहब जैसे मुख्य न्यायाधिपति मिले हैं, अभी हाल ही में हमने उनकी अद्भुत संगठनात्मक व प्रबंधकीय क्षमता को देखा है। न्याय जगत की

उक्त समस्याओं के समाधान में उनका बड़ा योगदान आगे देखने को मिलेगा, ऐसी मेरी उम्मीद है। उनकी अपनी सोच व नजरिया है। साथ ही प्रजातांत्रिक रूप से सबको साथ लेकर साथ कार्य करने की उनकी शैली सराहनीय एवं अनुकरणीय है। यह बात अलग है कि मध्यप्रदेश को कितने दिन तक उनकी इन क्षमताओं और योग्यताओं का लाभ मिलेगा, क्योंकि उच्च आसन भी उनकी प्रतीक्षा कर रहा है।

मैं सौभाग्यशाली हूं कि मुझे उनके मार्गदर्शन में कार्य करने का अवसर मिला जिसकी छाप सदैव मेरे शेष जीवन में रहेगी, उनका एवं आप सभी का स्नेह हमेशा बना रहे, ऐसी अभिलाषा रखता हूं। अंत में आप सभी लोगों का पुनः आभार और धन्यवाद प्रकट करता हूं, आपने मेरी बातों को धैर्यपूर्वक सुना।

जय हिंद।

NOTES OF CASES SECTION

Short Note
****(4)(DB)***
Before Mr. Justice Mohammad Rafiq, Chief Justice &
Mr. Justice Vijay Kumar Shukla
WA No. 785/2020 (Jabalpur) decided on 8 February, 2021

DILEEP KUMAR SHARMA …Appellant

Vs.

THE ASSISTANT GENERAL MANAGER, UCO BANK, BHOPAL & anr. …Respondents

***A. Industrial Disputes Act (14 of 1947), Section 25-F & 25-G – Reinstatement & Compensation* – Held – Apex Court concluded that if termination found to be in contravention of Section 25-F & 25-G, reinstatement is not the rule, but an exception and ordinarily, grant of compensation would meet ends of justice – Appellant, a daily wager, since worked with respondents from 1989 to 1997, compensation awarded enhanced from Rs. 2 lacs to 3 lacs – Appeal partly allowed.**

क. औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25–F व 25–G – बहाली व प्रतिकर – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि यदि सेवा समाप्ति को धारा 25–F व 25–G के उल्लंघन में होना पाया जाता है, तब बहाली एक नियम नहीं बल्कि एक अपवाद है और साधारणतः, प्रतिकर का प्रदान, न्याय के उद्देश्य को पूरा करेगा – अपीलार्थी, एक दैनिक वेतन कर्मी, चूंकि प्रतिवादीगण के साथ 1989 से 1997 तक काम किया है, प्रदान किये गये प्रतिकर को रू. 2 लाख से बढ़ाकर 3 लाख किया गया – अपील अंशतः मंजूर।

***B. Industrial Disputes Act (14 of 1947), Section 25-F & 25-G – Reinstatement* – Held – Apex Court concluded that order of reinstatement in normal course of termination, is not proper and reinstatement in every case cannot be ordered mechanically but in cases where workmen providing service of regular/permanent nature is terminated illegally, *malafidely* or by way of victimization, unfair labour practice etc.**

ख. औद्योगिक विवाद अधिनियम (1947 का 14), धारा 25–F व 25–G – बहाली – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि सेवा समाप्ति के सामान्य क्रम में, बहाली का आदेश उचित नहीं है और प्रत्येक प्रकरण में बहाली, यांत्रिक ढंग से आदेशित नहीं की जा सकती किंतु उन प्रकरणों में की जा सकती है जहां नियमित/स्थायी स्वरूप की सेवा प्रदान करने वाले कर्मकार की अवैध रूप से, असद्भावपूर्वक अथवा पीड़ित करने, अनुचित श्रम पद्धति इत्यादि द्वारा सेवा समाप्त की गई है।

The Judgment of the Court was delivered by : **VIJAY KUMAR SHUKLA, J.**

Cases referred:

(1979) 2 SCC 80, (2013) 10 SCC 324, (2014) 4 SCR 875, 2017 (4) MPLJ 141, (1993) MPLJ 133, (2019) 4 SCC 307, (2018) 12 SCC 294, (2018) 12 SCC 298, (2019) 11 SCC 289, (2019) 14 SCC 353, W.A. No. 11/2017 decided on 11.10.2017, (2014) 7 SCC 177, (2020) 11 SCC 710, (2020) 12 SCC 656.

Akash Choudhury, for the appellant.
Smita Verma Arora, for the respondents.

Short Note
****(5)(DB)***
Before Mr. Justice Mohammad Rafiq, Chief Justice &
Mr. Justice Vijay Kumar Shukla
WP No. 14695/2020 (Jabalpur) decided on 10 February, 2021

RAKESH SUSHIL SHARMA …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

Municipal Corporation Act, M.P. (23 of 1956), Sections 10(1), 10(2) & 10(3), Municipal Corporation (Extent of Wards) Rules, M.P., 1994, Rules 2(4), 3(1), 3(2) & 3(3) and Census Rules, 1990, Rule 8(iv) – Delimitation of Wards – **Held – In order to safeguard against any possibility of relocation/shifting of certain sections of population from one ward to another, Rule 3(2) of 1994 Rules has given a leverage to the Competent Authority to have variation upto 15% of population between one ward and another – Even if some voters have shifted from one ward to another, that would not justify to have another yardstick for division of city into Municipal wards – No interference required in order passed by Collector – Petition dismissed.**

नगरपालिक निगम अधिनियम, म.प्र. (1956 का 23), धाराएँ 10(1), 10(2) व 10(3), नगरपालिक निगम (वार्डों का विस्तार), नियम, म.प्र., 1994, नियम 2(4), 3(1), 3(2) व 3(3) एवं जनगणना नियम, 1990, नियम 8(iv) – वार्डों का परिसीमन – अभिनिर्धारित – जनसंख्या के कतिपय वर्गों को एक वार्ड से अन्य में पुनर्स्थापित/स्थानांतरित किये जाने की संभावना के विरूद्ध सुरक्षा के उद्देश्य से, 1994 के नियमों के नियम 3(2) ने सक्षम प्राधिकारी को, एक वार्ड एवं अन्य के बीच, जनसंख्या के 15% तक फेरफार करने की शक्ति दी है – यदि कुछ मतदाता एक वार्ड से अन्य में स्थानांतरित हो गये हों तब भी यह नगरपालिका वार्डों में नगर के विभाजन हेतु अन्य मानदंड लिए जाने को न्यायोचित नहीं करेगा – कलेक्टर द्वारा पारित आदेश में हस्तक्षेप अपेक्षित नहीं – याचिका खारिज।

The Order of the Court was passed by : **MOHAMMAD RAFIQ, C. J.**

Shekhar Sharma, for the petitioner.
Pushpendra Yadav, Addl. A.G. for the respondents/State.
Siddharth Seth, for the respondent No. 2.

I.L.R. [2021] M.P. 361 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Rohinton Fali Nariman & Mr. Justice K.M. Joseph

CA No. 4002/2020 decided on 8 December, 2020

STATE OF M.P. & anr. …Appellants

Vs.

U.P. STATE BRIDGE CORPORATION LTD. & ors. …Respondents

A. Constitution – Article 136 – Tender – Suppression of Material Fact – Fraudulent Practice **– Held – Respondent-1 indulged in fraudulent practice and has suppressed that fact that it was indicted for offences relatable to construction of bridge by it, which had collapsed – It is clearly an omission of most relevant fact and suppression of fact that an FIR had been lodged against respondent-1 in which charge sheet had been filed – Technical objection based on rejection order cannot be allowed to prevail in the face of suppression of most material fact – Impugned order set aside – Appeals disposed. (Paras 19 to 21)**

क. संविधान – अनुच्छेद 136 – निविदा – तात्विक तथ्य का छिपाव – कपटपूर्ण पद्धति – अभिनिर्धारित – प्रत्यर्थी–1, कपटपूर्ण पद्धति में लिप्त हुआ और इस तथ्य का छिपाव किया कि उसे उसके द्वारा पुल के निर्माण से संबंधित अपराधों के लिए अभ्यारोपित किया गया था, जो ढह गया था – यह स्पष्ट रूप से अति सुसंगत तथ्य का लोप है तथा इस तथ्य का छिपाव किया गया कि प्रत्यर्थी–1 के विरूद्ध एक प्रथम सूचना प्रतिवेदन दर्ज किया गया था जिसमें आरोप–पत्र प्रस्तुत किया गया था – अति तात्विक तथ्य के छिपाव को सामने रखते हुए नामंजूरी आदेश पर आधारित तकनीकी आक्षेप अभिभावी नहीं होने दिया जा सकता – आक्षेपित आदेश अपास्त – अपीलें निराकृत।

B. Constitution – Article 136 – Tender – Public Interest **– Held – Financial bid of respondent-1 is 9 crores less than that of respondent-2 – Counsel for respondent-2 accepts that if respondent-1 is disqualified and respondent-2 is awarded the tender, he will do so at the same amount as the financial bid of respondent-1 – State directed to issue LOI to respondent-2 as soon as possible. (Para 22 & 24)**

ख. संविधान – अनुच्छेद 136 – निविदा – लोक हित – अभिनिर्धारित – प्रत्यर्थी–1 की वित्तीय बोली, प्रत्यर्थी–2 से 9 करोड़ कम है – प्रत्यर्थी–2 के वकील स्वीकार करते है कि यदि प्रत्यर्थी–1 निरर्हित हो जाता है और प्रत्यर्थी–2 को निविदा प्रदान की जाती है, वह ऐसा उसी राशि पर करेगा जैसा कि प्रत्यर्थी–1 की वित्तीय बोली है – प्रत्यर्थी–2 को यथाशीघ्र आशय–पत्र (लैटर ऑफ इन्टेंट) जारी करने के लिए राज्य को निदेशित किया गया।

Cases referred:

(2019) 14 SCC 81, (2005) 2 SCC 746, (2009) 5 SCC 313, (1994) 6 SCC 651, (2007) 14 SCC 517, (2016) 8 SCC 622, (2016) 16 SCC 818, (2016) 15 SCC 272, (2019) 17 SCC 1.

J U D G M E N T

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

2. These appeals pertain to a notice inviting tender [**"N.I.T."]** dated 02.12.2019 by the State of Madhya Pradesh, Public Works Department **["PWD"].** The N.I.T. was for the construction of an Elevated Corridor (Flyover) from LIG Square to Navlakha Square (Old NH 3) A-B Road in Indore district in the State of Madhya Pradesh of a length of 7.473 kilometers. The work was for an estimated cost of Rs. 272.66 crores, to be completed within a period of 24 months including the rainy season. Various parts of the N.I.T. are important and are referred to hereunder:

3. Under Section - 2, entitled "INSTRUCTIONS TO BIDDERS", under clause A, entitled "GENERAL", sub-clause 2.1.4 reads as follows:

> **"2.1.4** The BID shall be furnished in the format exactly as per Appendix-I i.e. Technical Bid as per Appendix IA and Financial Bid as per Appendix IB. BID amount shall be indicated clearly in both figures and words, in Indian Rupees in prescribed format of Financial Bid and it will be signed by the Bidder's authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account."

Clause 2.2.2.2(ii) reads as follows:

> **"2.2.2.2** Technical Capacity
>
> xxx xxx xxx
>
> **(ii)** For normal Highway projects (including Major Bridges/ ROB/ Flyovers/ Tunnels):
>
> Provided that at least one similar work of 25% of Estimated Project Cost Rs. 68.17 Crores (Rs.Sixty Eight Crores Seventeen Lakhs only) shall have been completed from the Eligible Projects in Category 1 and/or Category 3 specified in Clause 2.2.2.5. For this purpose, a project shall be considered to be completed, if more than 90% of the value of work has been completed and such completed value of work is equal to or more than 25% of the estimated project cost. If any Major Bridge/ ROB /Flyover/

Tunnel is (are) part of the project, then the sole Bidder or in case the Bidder being a Joint Venture, any member of Joint Venture shall necessarily demonstrate additional experience in construction of Major Bridge / ROBs / Flyovers / Tunnel in the last 5 (Five) financial years preceding the Bid Due Date i.e. shall have completed at least one similar Major Bridge/ROB/Flyover having span equal to or greater than 50% of the longest span of the structure proposed in this project and in case of tunnel, if any, shall have completed construction of at least one tunnel consisting of single or twin tubes (including tunnel(s) for roads/ Railway/ Metro rail/ irrigation/ hydroelectric projects etc.) having at least 50% of the cross-sectional area and 25 length of the tunnel to be constructed in this project."

Clause 2.2.2.5 states as follows:

"2.2.2.5 Categories and factors for evaluation of Technical Capacity:

(i) Subject to the provisions of Clause 2.2.2 the following categories of experience would qualify as Technical Capacity and eligible experience (the "Eligible Experience") in relation to eligible projects as stipulated in Clauses 2.2.2.6(i) & (ii) (the "Eligible Projects"). In case the Bidder has experience across different categories, the experience for each category would be computed as per weight of following factors to arrive at its aggregated Eligible Experience:

Category	Project/Construction experience on Eligible Projects	Factors
1	Project in highways sector that qualify under I Clause 2.2.2.6 (i)	1
2	Project in core sector that qualify under Clause 2.2.2.6 (i)	0.70
3	Construction in highways sector that qualify under Clause 2.2.2.6(ii)	1
4	Construction in core sector that qualify under Clause 2.2.2.6(ii)	0.70

(ii) The Technical capacity in respect of an Eligible Project situated in a developed country which is a member of OECD shall be further multiplied by a factor of 0.5 (zero point five) and the product thereof shall be the Experience Score for such Eligible Project."

Under clause 2.6.2(a), the authorities reserved the right to reject any bid, *inter alia,* on the following grounds:

> **"2.6.2** The Authority reserves the right to reject any BID and appropriate the BID Security if:
>
> **(a)** at any time, a material misrepresentation is made or uncovered, or..."

Under Section - 3, entitled "EVALUATION OF TECHNICAL BIDS AND OPENING & EVALUATION OF FINANCIAL BIDS", clauses 3.1.6.1 and 3.1.6.2 state as follows:

> **"3.1.6.** Tests of responsiveness
>
> **3.1.6.1** As a first step towards evaluation of Technical BIDs, the Authority shall determine whether each Technical BID is responsive to the requirements of this RFP. Technical BID shall be considered responsive only if:
>
> **(a)** Technical BID is received online as per the format at Appendix-IA including Annexure I, IV, V and VI (Bid Capacity format);
>
> **(b)** Documents listed at clause 2.11.2 are received physically on CPPP as mentioned;
>
> **(c)** Technical Bid is accompanied by the BID Security as specified in Clause 1.2.4 and 2.20;
>
> **(d)** The Power of Attorney is uploaded on e-procurement portal as specified in Clauses 2.1.5;
>
> **(e)** Technical Bid is accompanied by Power of Attorney for Lead Member of Joint Venture and the Joint Bidding Agreement as specified in Clause 2.1.6, if so required;
>
> **(f)** Technical Bid contains all the information (complete in all respects);
>
> **(g)** Technical Bid does not contain any condition or qualification; and
>
> **(h)** Copy of online receipt towards payment of cost of Bid document of Rs 30,000.00 (Rupees Thirty thousand only) in favor of Chief Engineer PWD Bridge Const. Zone Bhopal is Received;
>
> **3.1.6.2** The Authority reserves the right to reject any Technical BID which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such BID."

Under Section - 4, entitled "FRAUD AND CORRUPT PRACTICES", clause 4.1 read with the definition clause contained in clause 4.3(b), read as follows:

> **"4.1** The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Agreement, the Authority may reject a BID, withdraw the LOA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the BID Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Agreement, or otherwise."
>
> xxx xxx xxx
>
> **"4.3** For the purpose of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
>
> xxx xxx xxx
>
> **(b)** "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process"

Appendix IA consists of the letter comprising the technical bid addressed to the Office of the Chief Engineer, Bridge Construction Zone - Bhopal, which has to be filled up in a particular format. Paragraphs 11 and 13 of this letter are important and are set out hereinbelow:

> **"11.** I/We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Joint Venture or any of our/their Joint venture member have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
>
> xxx xxx xxx
>
> **13.** I/We further certify that no investigation by a regulatory authority is pending either against us/any member of Joint Venture or against our CEO or any of our directors/ managers / employees."

Appendix IB consists of the letter comprising the financial bid, which is also in a particular format, paragraph 2 of which reads as follows:

> **"2.** I/We acknowledge that the Authority will be relying on the information provided in the BID and the documents accompanying the Bid for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals."

Annex I, entitled "Details of Bidder", contains, in clause 7, the following:

> **"7 (a)** I/We further certify that no investigation by a regulatory authority is pending either against us/any member of Joint Venture or our sister concern or against our CEO or any of our directors/managers/employees.
>
> **(b)** I/We further certify that no investigation by any investigating agency in India or outside is pending either against us/ any member of Joint Venture or our sister or against our CEO concern or any of our directors/managers/employees.
>
> A statement by the Bidder and each of the Members of its Joint Venture (where applicable) disclosing material non-performance or contractual non-compliance in current projects, as on bid due date 'is given below (attach extra sheets, if necessary) w.r.t. para 2.1.14."

4. Eleven companies bid for the aforesaid project, including U.P. State Bridge Corporation Limited **["UPSBC"],** Rajkamal Builders Infrastructure Pvt. Ltd. **["Rajkamal Builders"]** and Rachana Construction Co. Insofar as UPSBC is concerned, the State of Madhya Pradesh rejected its bid on the ground that the bidder suppressed information required under paragraph 13 of Appendix IA and clause 7(b) of Annex I. Hence, the aforesaid bid was considered to be non-responsive. Likewise, insofar as Rachana Construction Co. is concerned, it did not fulfil the criteria under clause 2.2.2.2(ii) of the N.I.T. for "one similar work" of 25% of the estimated project cost, and was also therefore considered non-responsive. Pursuant to the rejection of the technical bid of UPSBC in the Technical Evaluation Committee's meeting held on 13.03.2020, Writ Petition No. 6681 of 2020 was filed by UPSBC and by an interim order dated 17.03.2020, the financial bid of UPSBC was ordered to be opened.

5. On the opening of the financial bids, it was found that UPSBC had bid for a sum of Rs. 306.27 crores and Rajkamal had bid for Rs. 315.80 crores. Being disqualified, Rachana Construction Co.'s bid for Rs. 293.25 crores was not under consideration.

6. By the impugned judgment dated 15.06.2020 in Writ Petition No. 6681 of 2020 filed by UPSBC, it was held that as on the date of submission of the technical bid, since no investigation was pending within the meaning of clause 7(b) of Annex I, there was no suppression of facts by UPSBC, despite the fact that an FIR dated 15.05.2018 had been lodged against it in respect of a particular bridge constructed by it at Janpad, Varanasi which had collapsed, killing 15 persons and injuring 11 persons. The investigation in this case resulted in a charge sheet being filed. After the trial commenced, the High Court of Judicature at Allahabad, by an order dated 30.07.2019, stayed the trial. Despite these facts not being stated in the bid document submitted by UPSBC, the High Court found that there was no suppression of facts, as clause 7(b) of Annex I only required details as to investigations that were pending, and as "investigation" as defined under the Code of Criminal Procedure **["Cr.P.C."]** was different from inquiries and trials, there was no need to disclose the FIR and its aftermath, as there was no "investigation pending" strictly speaking, as it had culminated in a charge sheet. The High Court was also swayed by the fact that there was a difference of Rs. 9 crores between the financial bids of UPSBC and Rajkamal. Public interest therefore demanded that the rejection of UPSBC's technical bid be set aside. The State of Madhya Pradesh was therefore directed to issue a letter of intent **["LOI"]** in favour of UPSBC for the financial bid of Rs. 306.27 crores within a period of 30 days from the date of the judgment.

7. Meanwhile, Rachana Construction Co. also filed Writ Petition No. 8404 of 2020 challenging the rejection of its technical bid by the State of Madhya Pradesh. By the impugned judgment dated 02.07.2020, the High Court adverted to the judgment dated 15.06.2020 in UPSBC's writ petition and thereafter went on to examine whether Rachana Construction Co.'s bid had been rightly rejected. Insofar as Rachana Construction Co.'s bid was concerned, the High Court referred to clause 2.2.2.2(ii) in paragraph 9 of its judgment and held that there was nothing wrong with the State of Madhya Pradesh's rejection, as follows:

> "9. Even on merit also the petitioner has no case because as per Clause 2.2.2.2(ii) all the tenders as also the petitioner were required to submit the proof of completion of **one similar work** and the value of the executed work was to be at least 25% of the value of the work in the present tender. Said Clause 2.2.2.2(ii) is reproduced below:
>
> > "2.2.2.2(ii) **For normal Highway projects**
> >
> > (including Major Bridges/ ROB/ Flyovers/ Tunnels):
> >
> > Provided that at least one similar work of 25% of Estimated Project Cost Rs.68.17 Crores (Rs. Sixty Eight Crores Seventeen Lakhs only) shall have been

completed from the Eligible Projects in Category 1 and/or Category 3 specified in Clause 2.2.2.5.

For this purpose, a project shall be considered to be completed, if more than 90 % of the value of work has been completed and such completed value of work is equal to or more than 25% of the estimated project cost. If any Major Bridge/ROB/Flyover/Tunnel is (are) part of the project, then the sole Bidder or in case the Bidder being a Joint Venture, any member of Joint Venture shall necessarily demonstrate additional experience in construction of Major Bridge/ROBs/Flyovers/Tunnel in the last 5(Five) financial years preceding the Bid Due Date i.e. shall have completed at least one similar Major Bridge/ROB/Flyover having span equal to or greater than 50% of the longest span of the structure proposed in this project and in case of tunnel, if any, shall have completed construction of at least one tunnel consisting of single or twin tubes (including tunnel(s) for roads/Railway/Metro rail/irrigation/hydro-electric projects etc.) having at least 50% of the cross-sectional area and 25% length of the tunnel to be constructed in this project."

The aforesaid Clause specifically provides that for Highway projects including Major Bridges /ROB /Flyovers /Tunnels, at least **one similar work** of 25% of Estimated Project Cost Rs.68.17 Crores shall have been completed. The petitioner has place reliance on the certificate issued by DFCCIL, Ahmedabad, which reveals that the petitioner is undertaking construction work of 2 No. of road overbridges of the total contract value Rs.76,87,90,595.00, therefore, the construction of one road overbridge would be half of the total contract value. Though the petitioner might have signed one contract for two overbridges, but the cost of one overbridge would be less than 68.17 Crores which is 25% of the present work. Hence, the Evaluation Committee has not committed any error while declaring the petitioner as non-responsive. Thus, even on merits, the petitioner has no case.

10. Learned counsel appearing for the petitioner concluded his arguments by submitting that the petitioner has quoted the rates of Rs.293.25 Crores as compared to L-1 i.e. 3,06,27,00,000/- thus, Rs. 13.00 Crores can be used for other valuable projects. As held above, once the petitioner has been declared non-responsive, then its financial bid and the rates quoted by the petitioner are immaterial."

8. In addition, the High Court also held that Rachana Construction Co., despite knowing that UPSBC had filed a writ petition, neither intervened in the

said writ petition nor filed an independent writ petition on its own until much later. Considering that the UPSBC had been declared as L-1 by a judgment dated 15.06.2020, UPSBC should have been arrayed as a respondent in the writ petition and not being so arrayed, the petition also suffered from non-joinder of a necessary party and therefore had to be dismissed.

9. Shri Saurabh Mishra, Additional Advocate General, took us through the N.I.T. and relied upon several clauses thereof. His principal argument was that the expression "investigation pending" cannot be taken to be in the sense of the Cr.P.C., as otherwise the said clause would be rendered otiose. "Investigation pending" would necessarily include within its scope all subsequent steps towards criminality of an accused, as a result of which clause 7(b) of Annex I required UPSBC to disclose material facts. He also relied upon the clause dealing with "fraudulent practice" and stated that the omission of a material fact would amount to a fraudulent practice, and this being a most material fact, as a particular bridge constructed by UPSBC had collapsed resulting in an FIR being lodged against it, not being disclosed by UPSBC, would be fatal under the fraudulent practice clause also.

10. Shri Dhruv Mehta, learned Senior Advocate, appearing on behalf of UPSBC, relied heavily on the judgment in *Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.,* (2019) 14 SCC 81 ["Caratel Infotech"], for the proposition that where a tender was in a particular format, nothing beyond the information that is required by that format need be given, and since no investigation was in fact pending against his client, clause 7(b) of Annex I could not have been invoked to non-suit his client. He also relied upon the judgment in *Secy., Deptt. of Home Secy., A.P. v. B. Chinnam Naidu,* (2005) 2 SCC 746, in which case the petitioner concerned had to fill up a recruitment form in which previous convictions had to be stated. Since merely being arrested would not amount to a previous conviction, it was held that the petitioner could not be said to have suppressed the fact of his being convicted. He then argued that in any case if there is any ambiguity in the clause the rule of contra proferentem applies, as a result of which the literal interpretation, which is a possible interpretation, ought to prevail, and for this he cited *Bank of India v. K. Mohandas,* (2009) 5 SCC 313. He was at pains to point out that no ground other than clause 7(b) of Annex I could now be taken, as the ground of fraudulent practice, which was sought to be argued by the State of Madhya Pradesh in this Court, was not a ground on which UPSBC's bid was rejected. He also pointed out that public interest would require that the financial bid be accepted, being Rs. 9 crores less than that of Rajkamal.

11. Shri Anupam Lal Das, learned Senior Advocate appearing on behalf of Rachana Construction Co. assailed the impugned judgments dated 02.07.2020 and 04.08.2020 by relying upon the Contract Agreement dated 23.08.2017 between his client and the Dedicated Freight Corridor Corporation of India

Limited **["DFCCIL"]** for the work of construction of two nos. of road over bridges for an amount of Rs. 76.87 crores, 95% of which had been completed, for which a payment of Rs. 68.71 crores had been received. This being so, and this being above 25% of the estimated cost of the present tender (fixed at Rs. 68.17 crores), he stood technically qualified. It was wholly incorrect for the authorities to have bifurcated one project awarded under one tender into two, merely because two road over bridges had to be built. He also stated that non-joinder of a necessary party could not be held against him as all the facts were known and UPSBC could have intervened in Rachana Construction Co.'s matter.

12. Shri Puneet Jain, learned counsel appearing on behalf of Rajkamal, attacked the judgment in UPSBC's case and supported the judgment in Rachana Construction Co.'s case, stating that quite apart from the clauses referred to and relied upon by the State of Madhya Pradesh, it was clear that Appendix IA had not been properly read, as paragraphs 11 and 13 had to be read together. Clearly paragraph 11 indicated that if UPSBC were "indicted" in a criminal case, which would cast doubt on its ability to undertake the project, this would be sufficient to reject UPSBC's bid. Insofar as Rachana Construction Co. is concerned, he referred to and relied upon clause 2.2.2.2(ii) and in particular, the latter part of the clause, which required that the bidder would have to demonstrate additional experience in respect of the bridge to be constructed in the present tender and would have to show that it had completed at least one similar major bridge of a span equal to or greater than 50% of the longest span of the structure proposed in this project. He adverted to the two road over bridges that were constructed under the agreement dated 23.08.2017 by Rachana Construction Co. for DFCCIL, both being of a length of 2380 meters when taken together. This would fall woefully short of 50% of 7.473 kilometers, which would amount to 3.736 kilometers, and on this additional ground also, Rachana Construction Co.'s bid ought to be rejected.

13. We have heard all the learned counsel for the parties. The parameters of judicial review in matters such as the present have been well stated in many decisions of this Court, beginning with the celebrated *Tata Cellular v. Union of India,* (1994) 6 SCC 651, in which a 3 judge bench of this Court laid down the following principles:

> **"94.** The principles deducible from the above are:
>
> (1) The modern trend points to judicial restraint in administrative action.
>
> (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
>
> (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is

permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

(pages 687-688)

14. Likewise, in *Jagdish Mandal v. State of Orissa,* (2007) 14 SCC 517, this Court held:

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by

> exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:
>
> (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;
>
> or
>
> Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";
>
> (ii) Whether public interest is affected.
>
> If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites /shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."
>
> (pages 531-532)

15. In *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium),* (2016) 8 SCC 622, this Court held as follows:

> **"47.** The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] the terms of NIT cannot be ignored as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular [Tata Cellular v. Union of India, (1994) 6 SCC 651] there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision "that no responsible authority acting reasonably and in accordance with relevant law could have reached" as held in Jagdish Mandal [Jagdish Mandal v. State of Orissa, (2007) 14

SCC 517] followed in Michigan Rubber [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216] .

48. Therefore, whether a term of NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] . However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot."

(page 638)

16. *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.,* (2016) 16 SCC 818, puts the proposition extremely well when it states:

"14. We must reiterate the words of caution that this Court has stated right from the time when Ramana Dayaram Shetty v. International Airport Authority of India [Ramana

Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] was decided almost 40 years ago, namely, that the words used in the tender documents cannot be ignored or treated as redundant or superfluous — they must be given meaning and their necessary significance. In this context, the use of the word "metro" in Clause 4.2(a) of Section III of the bid documents and its connotation in ordinary parlance cannot be overlooked.

15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."

(page 825)

17. This view of the law has been subsequently reiterated and followed in *Montecarlo Ltd. v. NTPC Ltd.*. (2016) 15 SCC 272 (see paragraph 25 at page 287) and *Caratel Infotech* (supra) (see paragraphs 38-39 at pages 92-93).

18. Judged by these parameters, it is clear that this Court must defer to the understanding of clauses in tender documents by the author thereof unless, pithily put, there is perversity in the author's construction of the documents or mala fides. As against this, Shri Dhruv Mehta is also correct in drawing our attention to *Caratel Infotech* (supra), and in particular, to paragraphs 4, 9, 22 and 23, which are set out hereinbelow:

> **"4.** The appellant submitted the bid in respect of the e-tender on 19-12-2017. In terms of Clause 20 extracted aforesaid, a format had been provided for the declaration to be made, which is as under:
>
> "DECLARATION NON BLACKLISTED/NON BANNED/NON HOLIDAY LISTED PARTY
>
> We confirm that we have not been banned or blacklisted or delisted or holiday listed by any government or quasi-government agencies or public sector undertakings
>
> Date:_____ Name of Tenderer: _____
>
> Place:_____ Signature & Seal of Tenderer:_____
>
> Note: If a bidder has been banned by any government or quasi-government agencies or public sector undertakings, this fact must be clearly stated with details. If this declaration is not given along with the unpriced bid, the tender will be rejected as non-responsive."
>
> The appellant submitted the declaration in terms aforesaid i.e. stating that the appellant had not been blacklisted by any government or quasi-government agency or public sector undertakings."
>
> (page 85)
>
> **"9.** The decision of the High Court is predicated on two facts—firstly the non-disclosure of the factum of the show-cause notice issued to the appellant amounted to violation of the undertaking. Linked to this issue is that Clause *20(iii)* of the tender provided for an integrity pact "ensuring transparency and fair dealing" and that integrity pact had been duly signed and submitted by the appellant. Secondly, the Division Bench doubted the compliance, by the appellant, of Clause 8 read with Clause 10(g) of Section 4 of the tender. This controversy pertains to the clause dealing with the business continuity and the requirement of submitting a valid ISO certificate for the

purpose of securing the tender. The relevant clauses read as under:

> **"8.** ***Business continuity***
>
> OMCs currently have an agreement for inbound calls with a service provider based in different regions. The successful bidder has to submit the transition plan to migrate to new platform and facility with "zero" disruption of services with respect to the following areas:
>
> (a) Toll-free services.
>
> (b) IVRS based call handling.
>
> (c) Diversion of call traffic at the successful bidder's premises.
>
> (d) Trained operators at the time of Go-Live date.
>
> ***
>
> **10.** ***Other mandatory requirements:***
>
> ***
>
> (g) Valid ISO Certification 27001 for security and ISO 2301 for business continuity."

(page 86)

"22. It is no doubt true that Clause 20 does provide for four eventualities, as submitted by the learned counsel for Respondent 3. The present case is not one where on the date of submission of the tender the appellant had been banned, blacklisted or put on holiday list. The question before us, thus, would be the effect of an action for blacklisting and holiday listing being initiated. The declaration to be given by the bidder is specified in Clause 20 (ii), which deals with the first three aspects. The format enclosed with the tender documents also refers only to these three eventualities. It is not a case where no specific format is provided, where possibly it could have been contended that the disclosure has to be in respect of all the four aspects. The format having been provided, if initiation of blacklisting was to be specified, then that ought to have been included in the format. It cannot be said that the undertaking by the appellant made it the bounden duty of the appellant to disclose the aspect of a show-cause notice for blacklisting. We say so as there is a specific clause with the specific format provided for, requiring disclosures, as per the same.

> **23.** It may be possible to contend that the format is not correctly made. But then, that is the problem of the framing of the format by Respondent 1. It appears that Respondent 1 also, faced with the factual situation, took a considered view that since Clause 20(i) provided for the four eventualities, while the format did not provide for it, the appellant could not be penalised. May be, for future the format would require an appropriate modification!"
>
> (page 89)

19. It is clear that Shri Dhruv Mehta is right when he refers to and relies upon the aforesaid judgment for the proposition that where there is a format which had to be strictly complied with, his client was justified in going by the literal reading of the aforesaid format, which only required a disclosure of pending investigations under clause 7(b) of Annex I of the N.I.T. However, as has correctly been pointed out by Shri Saurbh Mishra and Shri Puneet Jain, clause 7(b) of Annex I, which is in terms similar to paragraph 13 of Appendix IA, must be read together with paragraph 11 thereof, which, as has been pointed out hereinabove, requires the bidder to certify that in regard to matters other than security and integrity of the country, the bidder has not been convicted by a court of law or indicted. Clearly in the facts of the present case, though the investigation is no longer pending and though there is no conviction by a court of law, UPSBC has certainly been "indicted", in that, a charge sheet has been filed against it relatable to the FIR dated 15.05.2018 in which a trial is pending, though stayed by the High Court. Also, Shri Saurabh Mishra is correct in stating that "fraudulent practice", as defined in clause 4.3(b) of the N.I.T., would include an omission of facts or disclosure of incomplete facts in order to influence the bidding process. In the facts of the present case, there is clearly an omission of a most relevant fact and suppression of the same fact, namely that an FIR had been lodged against UPSBC in respect of the construction of a bridge by it, which had collapsed, and in which a charge sheet had been lodged.

20. This being the case, *Secy., Deptt. of Home Secy., A.P. v. B. Chinnam Naidu,* (2005) 2 SCC 746 is clearly distinguishable, as in the facts of that case, the expression "convicted" could not have possibly included the factum of arrest which was pre-conviction. On the facts of the present case, we have seen as to how UPSBC has indulged in a fraudulent practice and has suppressed the fact that it was indicted for offences relatable to the construction of a bridge by it, which had collapsed. Equally, paragraphs 12 to 18 of the judgment in *Vinubhai Haribhai Malaviya v. State of Gujarat,* (2019) 17 SCC 1, which distinguish between investigation, inquiry and trial in a criminal case, are also of no avail to UPSBC in view of the finding hereinabove. Equally, the well-known rule of contra proferentem as expounded in *Bank of India v. K. Mohandas,* (2009) 5 SCC 313 (at paragraph 32) is also of no avail, given the fact that there is no ambiguity

whatsoever insofar as the fraudulent practice clause and paragraph 11 of Appendix IA are concerned.

21. Adverting to Shri Dhruv Mehta's argument that his client has been non-suited only on application of clause 7(b) of Annex I, a reference to the Technical Evaluation Committee's order dated 13.03.2020 declaring UPSBC's bid non-responsive shows that it also refers to Appendix IA comprising the technical bid and paragraph 13 thereof, in particular. We have already held that paragraph 13 has to be read along with paragraph 11, which clearly states that a person who is "indicted" for a criminal offence has to disclose the factum of indictment. A technical objection based on the rejection order cannot be allowed to prevail in the face of the suppression of a most material fact, that is of an FIR pertaining to the construction of a bridge by UPSBC, which has collapsed.

22. Coming to the public interest factor, and the fact that the financial bid of UPSBC is about Rs. 9 crores less than that of Rajkamal, the sting has been removed inasmuch as Shri Puneet Jain readily accepts that if, as a result of UPSBC being disqualified, his client is to be awarded the tender, he will do so at the same amount as the financial bid of UPSBC. For all these reasons, the impugned judgment dated 15.06.2020 is set aside.

23. We now come to Rachana Construction Co.'s case. Insofar as Rachana Construction Co. is concerned, it will not be open for a constitutional court, in accordance with all the decisions cited hereinabove, to substitute their view of the tendering authority, when it reads clause 2.2.2.2(ii) in the manner that has been done. Suffice it to say that the expression "at least one similar work" could possibly mean only one such work, namely, the construction of one such bridge and not two such bridges, even if two bridges were to be constructed under the same tender document. It is not possible, therefore, for this Court to say that the construction of the aforesaid clause by the tendering authority is an impossible one rendering it perverse. Also, Shri Puneet Jain's argument, though made here for the first time, does support the State of Madhya Pradesh, in that the two road over bridges that have been constructed under the agreement between DFCCIL and Rachana Construction Co. have a span of only 2380 meters taken together, which is certainly less than 50% of 7.473 kilometers. For these reasons, we dismiss Rachana Construction Co.'s SLP and uphold the judgment dated 02.07.2020 and the review judgment dated 04.08.2020.

24. Given the lapse of time taken in court proceedings, the State of Madhya Pradesh is directed to issue a LOI as soon as is practically possible to Rajkamal insofar as the present tender is concerned at the same financial bid as that of UPSBC. All the appeals are disposed of accordingly.

Order accordingly

I.L.R. [2021] M.P. 378 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice Mohan M. Shantanagoudar, Mr. Justice Vineet Saran & Mr. Justice Ajay Rastogi

SLP (Criminal) No. 380/2021 decided on 21 January, 2021

REKHA SENGAR …Petitioner

Vs.

STATE OF M.P. …Respondent

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 439 and Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (57 of 1994), Sections 6, 23 & 27 – Bail – Grounds* – Held – In a sting operation, search team seized ultrasound machine with no registration/ license, adopter/gel used in sex-determination, and other medical instruments used for abortion – Sufficient evidence to hold strong *prima facie* case – It is a grave offence with serious consequences – High Court rightly denied bail – Petition dismissed. (Paras 3, 4, 5 & 7)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 एवं गर्भधारण पूर्व और प्रसव पूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम (1994 का 57), धाराएँ 6, 23 व 27 – जमानत – आधार – अभिनिर्धारित – एक स्टिंग ऑपरेशन में तलाशी दल ने बिना रजिस्ट्री/अनुज्ञप्ति की अल्ट्रासाउंट मशीन, लिंग निर्धारण में उपयोग किये जाने वाले एडाप्टर/जेल तथा गर्भपात हेतु उपयोग में आने वाले अन्य चिकित्सीय उपकरणों को जब्त किया – एक मजबूत प्रथम दृष्ट्या प्रकरण बनाने हेतु पर्याप्त साक्ष्य – यह गंभीर परिणामों से युक्त घोर अपराध है – उच्च न्यायालय ने उचित रूप से जमानत अस्वीकार की – याचिका खारिज।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 439 and Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (57 of 1994), Sections 6, 23 & 27 – Bail – Ground of Parity* – Held – Co-accused was granted bail because his alleged role was limited to merely picking up and dropping off petitioner's client whereas petitioner had more active role in conducting the procedure – No ground of parity.**

(Para 6)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 एवं गर्भधारण पूर्व और प्रसव पूर्व निदान तकनीक (लिंग चयन का प्रतिषेध) अधिनियम (1994 का 57), धाराएँ 6, 23 व 27 – जमानत – समानता का अधिकार – अभिनिर्धारित – सह–अभियुक्त को जमानत प्रदान की गई थी क्योंकि उसकी अभिकथित भूमिका मात्र याची के क्लाइंट (ग्राहक) को लाने और छोड़ने तक ही सीमित थी जबकि प्रक्रिया संचालित करने में याची की ज्यादा सक्रिय भूमिका थी – समानता का कोई आधार नहीं।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Non-Bailable Cases – Consideration* – Held – In non-bailable cases, the primary factors, the court must consider while exercising discretion to grant bail are the nature and gravity of offence, its impact on society and whether there is a *prima facie* case against accused. (Para 2)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 – अजमानतीय प्रकरण – विचार – अभिनिर्धारित – अजमानतीय प्रकरणों में अपराध की प्रकृत्ति और गंभीरता, समाज पर उसका प्रभाव तथा क्या अभियुक्त के विरूद्ध कोई प्रथम दृष्ट्या प्रकरण है, ये सब जमानत प्रदान करने हेतु विवेकाधिकार का प्रयोग करते समय न्यायालय द्वारा विचार में लिये जाने वाले, मुख्य कारक हैं।

Case referred:

(2013) 4 SCC 1.

J U D G M E N T

The Judgment of the Court was delivered by : **MOHAN M. SHANTANAGOUDAR, J. :-** By the impugned order passed by the Madhya Pradesh High Court on 7.12.2020 in MCRC No. 48262 of 2020, the Petitioner's application for bail under Section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C) has been rejected.

The record shows that an FIR was registered against the Petitioner and another person on 26.9.2020 in PS City Kotwali Morena, Madhya Pradesh alleging their involvement in pre-natal sex determination and abortion of female fetuses at their residence, without the required registration or license under law. The petitioner has been in custody since September 2020. Her first application for bail (Bail Application No. 1203/2020) was rejected by the learned IV Addnl. Sessions Judge, Morena on 01.10,2020, and her subsequent bail application before the High Court (MCRC-39649-2020) was dismissed as withdrawn on 14.10.2020. Chargesheet was filed against the petitioner and the co-accused on 6.11.2020, for offences under the certain relevant provisions of Indian Penal Code, Medical Termination of Pregnancy Act, 1971 and under the provisions of the Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 ('PC&PNDT Act'). Trial is pending.

In the meanwhile, the petitioner again approached the High Court for grant of bail under Section 439, Cr.P.C. The High Court, vide impugned order dated 7.12.2020, has denied bail on facts. Aggrieved, the petitioner has approached this Court seeking bail.

2. The gravamen of the allegations against the petitioner pertain to violation of the provisions of the PC&PNDT Act. Section 6 prohibits the use of pre-natal diagnostic techniques, including ultrasonography, for determining the sex of a

fetus. Section 23 provides that any violation of the provisions of the Act constitutes a penal offence. Additionally, Section 27 stipulates that all offences under the said Act are to be non - bailable, non-compoundable and cognizable.

It is well settled that in non-bailable cases, the primary factors the court must consider while exercising the discretion to grant bail are the nature and gravity of the offence, its impact on society, and whether there is a *prima facie* case against the accused.

3. The charge sheet *prima facie* demonstrates the presence of a case against the petitioner. A sting operation was conducted upon the order of the Collector, by the member of the PC&PNDT Advisory Committee, Gwalior; the Nodal Officer, PC&PNDNT; and lady police officers. The team used the services of an anonymous pregnant woman, who approached the petitioner seeking sex-determination of the fetus and sex-selective abortion. The petitioner accepted Rs 7,000 for the same whereupon the team searched her residence. From the residence, an ultrasound machine with no registration or license, adopter and gel used in sex-determination, and other medical instruments used during abortion and sex-determination were seized. This constitutes sufficient evidence to hold that there is a *prima facie* case against the petitioner.

4. To understand the severity of the offence, it is imperative to note the legislative history of the PC&PNDT Act. Reference may be had to the Preamble; which states as follows:

> "An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and <u>for the prevention of their misuse for sex determination leading to female foeticide</u>; and, for matters connected therewith or incidental thereto."
>
> (emphasis supplied)

The passage of this Act was compelled by a cultural history of preference for the male child in India, rooted in a patriarchal web of religious, economic and social factors. This has birthed numerous social evils such as female infanticide, trafficking of young girls, and bride buying and now, with the advent of technology, sex-selection and female feticide. The pervasiveness of this preference is reflected through the census data on the skewed sex-ratio in India. Starting from the 1901 census which recorded 972 females per 1000 males; there was an overall decline to 941 females in 1961, and 930 females in 1971, going further down to 927 females in 1991. Records of Lok Sabha discussions on the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Bill,

1991 reflect various members' concern with this alarming state of affairs, which acted as a clarion call to the passage of the PC&PNDT Act. (See : Lok Sabha Debates, Tenth Series, Vol. XXXIII No.2, July 26, 1994, Eleventh Session, at pages 506-544).

The prevalence of pre-natal sex selection and feticide has also attracted international censure and provoked calls for strict regulation. In September 1995, the UN 4th World Conference on Women, adopted the Beijing Declaration and Platform for Action which *inter alia* declared female feticide and pre-natal sex-selection as forms of violence against women. {See : Beijing Declaration and Platform for Action, adopted in 16th plenary meeting of UN 4th World Conference on Women, (15th September, 1995), Article 115).

While the sex ratio has improved since after the passage of the PC&PNDT Act, rising to 933 as per the 2001 census, and then to 943 in the 2011 census, these pernicious practices still remain rampant. As per the reply filed by the then Minister of State, Health and Family Welfare in the Rajya Sabha on 27.3.2018, as of December 2017, around 3,986 court cases had been filed under the Act, resulting in only 449 convictions and 136 cases of suspension of medical licenses.

The unrelenting continuation of this immoral practice, the globally shared understanding that it constitutes a form of violence against women, and its potential lo damage the very fabric of gender equality and dignity that forms the bedrock of our Constitution are all factors that categorically establish pre-natal sex-determination as a grave offence with serious consequence's for the society as a whole.

5. We may also refer with benefit to the observations of this Court in *Voluntary Health Association of India v. State of Punjab,* (2013) 4 SCC 1, as follows:

> "6 ...Above statistics is an indication that the provisions of the Act are not properly and effectively being implemented. There has been no effective supervision or follow-up action so as to achieve the object and purpose of the Act. Mushrooming of various sonography centres, genetic clinics, genetic counselling centres, genetic laboratories, ultrasonic clinics, imaging centres in almost all parts of the country calls for more vigil and attention by the authorities under the Act. But, unfortunately, their functioning is not being properly monitored or supervised by the authorities under the Act or to find out whether they are misusing the pre-natal diagnostic techniques for determination of sex of foetus leading to foeticide.
>
> 7...Seldom, the ultrasound machines used for such sex determination in violation of the provisions of the Act are seized and, even if seized, they are being released to the violators of the

> law only to repeat the crime. Hardly few cases end in conviction. The cases booked under the Act are pending disposal for several years in many courts in the country and nobody takes any interest in their disposal and hence, seldom, those cases end in conviction and sentences, a fact well known to the violators of law..."

In the present case, contrary to the prevailing practice, the investigative team has seized the sonography machine and made out a strong *prima-facie* case against the petitioner. Therefore, we find it imperative that no leniency should be granted at this stage as the same may reinforce the notion that the PC&PNDT Act is only a paper tiger and that clinics and laboratories can carry out sex-determination and feticide with impunity. A strict approach has to be adopted if we are to eliminate the scourge of female feticide and iniquity towards girl children from our society. Though it certainly remains open to the petitioner to disprove the merits of these allegations at the stage of trial.

6. The fact that on 13.10.2020, the co-accused in the present case was released on bail by the High Court in MCRC No.39380/2020 does not alter our conclusions. The allegations in the FIR and the charge sheet, as well the disclosure statements made by the petitioner and the co-accused under Section 27 of the Indian Evidence Act, 1872, reveal that *prima facie,* the petitioner had a more active role in conducting the alleged illegal medical practices of sex determination and sex-selective abortion. Whereas the alleged role of the co-accused was limited to merely picking up and dropping off the petitioner's clients. Hence, we find no grounds for granting parity with the co-accused to the petitioner.

7. Thus, in view of the presence of *prima facie* evidence against the petitioner and other factors as referred to supra, we find ourselves compelled to uphold the impugned order of the High Court denying bail to the petitioner. However, in light of this Court's directions in *Voluntary Health Association of India* (supra) mandating speedy disposal of such cases it is open for the petitioner to request the Trial Court to expedite her trial and decide it within a period of 1 year.

8. We make it clear that the above observations on facts are made only to decide the present petition. Any of the observations made on facts will not come in the way of the Trial Court to complete the trial and decide the matter. The matter shall be decided by the Trial Court on its own merits based on facts. The Special Leave Petition is dismissed accordingly.

Petition dismissed

I.L.R. [2021] M.P. 383 (SC)
SUPREME COURT OF INDIA

Before Mr. Justice S. Abdul Nazeer & Mr. Justice Sanjiv Khanna

MA No. 175/2021 (CA No. 3687/2020) decided on 2 February, 2021

UMC TECHNOLOGIES PVT. LTD. …Appellant

Vs.

FOOD CORPORATION OF INDIA & anr. …Respondents

Civil Procedure Code (5 of 1908), Section 152 – Correction in Judgment **– Held – The words "including an employee of the appellant" stand deleted from para 4 of judgment dated 16.11.2020 – Application allowed.**

(Para 1 & 2)

सिविल प्रक्रिया संहिता (1908 का 5), धारा 152 – निर्णय में सुधार – **अभिनिर्धारित – निर्णय दिनांकित 16.11.2020 की कण्डिका 4 से शब्द ''अपीलार्थी के कर्मचारी को शामिल करते हुए'' हटा दिये गये – आवेदन मंजूर।**

(Supplied: Paragraph numbers)

O R D E R

Having heard learned counsel for the parties, we deem it appropriate to allow the prayer made by the appellant/ applicant. Accordingly, the Application is allowed.

2. The words "including an employee of the appellant" stand deleted from the paragraph 4 of the Judgment dated 16.11.2020. Rest of the order to remain as it is.

Application allowed

I.L.R. [2021] M.P. 384
WRIT PETITION

Before Mr. Justice G.S. Ahluwalia

WP No. 13057/2020 (Gwalior) decided on 2 December, 2020

ARUN SHARMA …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

A. Constitution – Article 226 – Forcible Eviction & Illegal Detention **– Held – Petitioner was forcibly evicted from his shop with help of police personnel (R-3 to R-5) – Later, without formal arrest, he was kept in illegal detention – Prior to verification of his identity, press note released branding him that "*accused with reward of Rs. 5000 has been arrested*" – His uncovered face photograph was got published in newspaper as well as uploaded on social media – It is a glaring example of police atrocities – Such eviction and illegal detention amounts to criminal Act – S.P. Lokayukt directed to file FIR against R-3 to R-5 – Petition allowed with cost of Rs. 20,000. (Paras 39, 51, 52, 58, 67 & 71)**

क. संविधान – अनुच्छेद 226 – बलपूर्वक बेदखली व अवैध निरोध – अभिनिर्धारित – याची को पुलिस कर्मियों (प्र.क्र. 3 से प्र.क्र. 5) की सहायता से बलपूर्वक उसकी दुकान से बेदखल किया गया था – तत्पश्चात्, बिना किसी औपचारिक गिरफ्तारी के, उसे अवैध निरोध में रखा गया था – उसकी पहचान का सत्यापन होने के पूर्व ही, उसे कलंकित करते हुए यह प्रेस विज्ञप्ति जारी की गई कि ''रू. 5000/– की इनामी राशि के अभियुक्त को गिरफ्तार कर लिया गया है'' – उसके बिना ढके चेहरे की फोटो को समाचार–पत्र में प्रकाशित करने के साथ–साथ सोशल मीडिया पर भी अपलोड किया गया – यह पुलिस द्वारा किये गये अत्याचारों का एक स्पष्ट उदाहरण है – उक्त बेदखली तथा अवैध निरोध आपराधिक कृत्य की कोटि में आता है – एस.पी. लोकायुक्त को प्रत्यर्थी क्र. 3 से प्र.क्र. 5 के विरूद्ध प्रथम सूचना प्रतिवेदन दर्ज करने हेतु निदेशित किया गया – 20,000 रू. के व्यय के साथ याचिका मंजूर।

B. Constitution – Article 226 – Violation of Fundamental Rights – Compensation **– Held – State shall pay compensation of Rs. 5 lacs to petitioner i.e. Rs. 2 lacs for causing damage during forcible taking out of his belongings from his shop and Rs. 3 lacs for violating his fundamental rights – State to recover the compensation amount from salary of R-3 to R-5.**

(Paras 53 to 56)

ख. संविधान – अनुच्छेद 226 – मूल अधिकारों का उल्लंघन – प्रतिकर – अभिनिर्धारित – राज्य, याची को 5 लाख रू. के प्रतिकर का भुगतान करेगा अर्थात् 2 लाख रू. बलपूर्वक उसकी दुकान से उसका सामान बाहर करने में कारित हुई क्षति के लिए तथा

3 लाख रू. उसके मूल अधिकारों का उल्लंघन करने के लिए – राज्य प्रत्यर्थी क्र. 3 से प्र.क्र. 5 के वेतन से प्रतिकर की राशि वसूल करेगा।

***C. Constitution – Article 21 – Right of Accused* – Held – This Court has quashed the provision of circular by which police was authorized to share the personal information and photographs of accused and victims (covered or uncovered) with the media – Patrolling of accused in general public was also held to be violative of Article 21 of Constitution. (Paras 68 to 70)**

ग. संविधान – अनुच्छेद 21 – अभियुक्त का अधिकार – अभिनिर्धारित – इस न्यायालय ने उस परिपत्र के उपबंध जिसके द्वारा पुलिस को अभियुक्त तथा पीड़ितों की व्यक्तिगत जानकारी और फोटो (ढकी हुई अथवा बिना ढंकी हुई) मीडिया के साथ साझा करने के लिए प्राधिकृत किया गया था, को अभिखंडित किया – अभियुक्त को आम जनता के बीच घुमाने को भी संविधान के अनुच्छेद 21 का उल्लंघन ठहराया गया था।

Cases referred :

(2012) 13 SCC 192, (1981) 1 SCC 420, (1981) 1 SCC 627, (2011) 13 SCC 621, (2014) 16 SCC 623, Cr.A. No. 742/2020 decided on 27.11.2020 (Supreme Court), AIR 1997 SC 610, (2014) 2 SCC 1.

Suresh Agrawal, for the petitioner.
M.P.S. Raghuvanshi, Addl. A. G. for the State.
Tapan Trivedi, for the respondent No. 3.
D.P. Singh, for the respondent Nos. 4 & 5.

J U D G M E N T

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

> It is, therefore, most humbly prayed that the petition filed by the Petitioner may kindly be allowed and respondent no.1 and 2 may kindly be directed to take effective action against the respondent no.3 to 5 and pass appropriate order so that the petitioner can take justice. Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper under the fact and circumstances existing in the present case.
>
> Further, compensation be granted to the petitioner from the respondents authorities.
>
> Award the cost of this writ petition in favor of the petitioner throughout.

2. The matter was taken up on 2-11-2020, and arguments on the question that whether reputation/privacy/personal liberty of a citizen of India are integral part of Article 21 of the Constitution of India or not, and whether monetary compensation can be awarded for violation of fundamental rights or not, were

heard. When the facts of this case were being considered in the light of the law of the land, then the Advocate General sought time to reconsider the action taken by the police authorities against the respondents no. 3 to 5, as according to him, the matter was handled by the police authorities in a most casual manner. Accordingly after holding that right of Privacy/reputation/dignity are integral part of Article 21 of the Constitution of India and monetary compensation can be awarded to the victim for violation of his Fundamental Rights, this Court adjourned the matter at the request of the Advocate General for further hearing on merits of the case.

3. The respondents no. 3 and 4 were posted as Sub-Inspector, whereas the respondent no.5 was posted as Constable in Police Station Bahodapur, Distt. Gwalior. The respondents no. 1 and 2 have filed their additional return. The matter is heard on merits.

4. Although the facts of this case were already mentioned in detail in the order dated 2-11-2020, but at the cost of repetition, they are being reproduced once again from order dated 2-11-2020:

> **2.** The necessary facts in short are that the petitioner is a tenant in a shop. On 25-7-2020, the landlady of the said shop, made a complaint to the respondent no. 3/S.H.O., Police Station Bahodapur, Distt. Gwalior, alleging that the petitioner is neither vacating the shop nor is making payment of rent and has also threatened that he would encroach upon the remaining house of the landlady. Thus, it was prayed that the shop be got vacated and the arrears of rent be paid to the landlady. The respondent no. 3, marked the said complaint to the respondent no. 4 for conducting an enquiry and it is alleged that thereafter, the respondents no. 4 and 5 forcibly evicted the petitioner from the shop on 25-7-2020 itself and was also beaten by the respondent no.4. The goods including the furniture of the shop was taken to the police station where the petitioner was compelled to give an undertaking that he would vacate the shop and accordingly, the goods belonging to the petitioner were returned by the respondents. Thereafter, on 14-8-2020, the respondent no. 3 and 5 took the petitioner in custody, and got his uncovered face photograph published in the newspapers as well as on social media, by projecting him as a hard core criminal. On a complaint made to the Superintendent of Police, Gwalior, an enquiry was conducted and it was found that the petitioner is an innocent person having no criminal antecedents and accordingly, he was released. It is the stand of the respondents no. 1 and 2 that one person with similar name was wanted in a criminal case which was registered in the year 2011 and a reward of Rs. 5,000/- was declared by the Superintendent of Police, Gwalior by order dated 13-8-2020

and under mistaken identity, the petitioner was wrongly taken into custody. The respondent no.3 was placed under suspension and the news with regard to his suspension was duly published in the news papers.

5. It is submitted by the Counsel for the State that in the compliance report dated 2-11-2020, the respondents no. 1 and 2 had clearly pleaded that violation of personal liberty of a citizen of India is a serious misconduct, but by mistake, the respondents no.1 and 2 were in-correct on their part to plead "that the present case is merely that of mistaken identity and is not a serious misconduct on the part of the respondents no. 3 to 5". It was prayed that this incorrect stand taken by the respondents no. 1 and 2 in their compliance report dated 2-11-2020 be ignored and may be permitted to be withdrawn.

6. It is submitted by the Counsel for the State, that in the compliance report dated 9-11-2020, it was mentioned that the respondents no. 3 to 5 have been line-attached, but looking to the seriousness of the misconduct committed by them, today, they have been placed under suspension.

7. As already pointed out, the incident took place in two phases, i.e, on 25-7-2020, the petitioner was forcibly dispossessed from his shop by the respondents no. 3 to 5 at the behest of the landlady and thereafter, on 14-8-2020, the petitioner was taken in custody (No arrest memo was prepared) on the pretext that a reward of Rs. 5,000 has been declared by S.P., Gwalior against him and his uncovered face photograph with news "An accused with reward of Rs. 5000 has been arrested" was also published in the news papers as well as was uploaded on social media by the police.

8. Shri Amit Sanghi, Superintendent of Police, Gwalior during the course of hearing through Video Conferencing, made a submission that in fact he received a telephonic call from the brother of the petitioner, informing him that his brother is an innocent person, but still he has been taken into custody, and he immediately, got an enquiry done and when it was found that the respondents no. 3 and 5 have wrongly taken the petitioner in custody, then not only he ensured that the petitioner is released, but an arrangement was also made to send him to his house. This submission made by Shri Amit Sanghi, Superintendent of Police, Gwalior also finds corroboration from the press notes released by the police, which have been filed by the respondents no. 1 and 2 along with the compliance report dated 20-10-2020, and news published in the Dainik Bhaskar dated 15-8-2020 is reproduced as under :

बहोडापुर पुलिस की एक गंभीर लापरवाही सामने आई है। पुलिस शुक्रवार को 5 हजार के इनामी बदमाश अरूण पुत्र ओमप्रकाश शर्मा को पकडने गई थी, लेकिन पकड लिया एक निर्दोष युवक अरूण को। जिस पर कोई अपराध ही पंजीबद्व नही है। युवक को पकडने के बाद तस्दीक

तक करना उचित नही समझा और बहोडापुर के थाना प्रभारी दिनेश राजपूत ने वाहवाही लूटने के लिए युवक को आरोपी की तरह बैठाकर फोटो खिंचवाया फिर प्रेस नोट भी जारी करा दिया। युवक का भाई थाने मे खडा होकर गुहार लगाता रहा लेकिन एक न सुनी। **जब मामला एसपी अमित सांधी के संज्ञान मे आया तो उन्होने एएसपी पंकज पांडे को भेजकर जांच कराई। तब पता चला कि वास्तव मे पुलिस जिसे पकड ले वह निर्दोष है।** इस गंभीर लापरवाही पर एसपी ने थाना प्रभारी दिनेश राजपूत को निलंबित कर दिया है। एसपी का कहना है कि इस तरह की लापरवाही बर्दाश्त नही की जाएगी। सभी थाना प्रभारियों को निर्देश दिए है कि आरोपी को पकडने पर तस्दीक जरूर करें।

News uploaded on Social Media reads as under :

ग्वालियर ब्रेकिंग न्यूज

ग्वालियर–

बहोडापुर थाना पुलिस की बडी लापरवाही आई सामने

एक निर्दोष व्यक्ति को 5000 का इनामी बताकर सोशल मीडिया पर पुलिस नै जारी किया फोटो सहित प्रेस नोट **परिजनो की हंगामे के बाद एसपी ने लिया मामला मे जांच के बाद एसपी ने उप निरीक्षक दिनेश राजपूत को किया सस्पेंड**

बहोडापुर थाना पुलिस ने निर्दोष व्यक्ति को चिटफंट का फरार आरोपी बताया था।

This prompt action of Shri Amit Sanghi, Superintendent of Police Gwalior was in consonance with the law of land and Shri Sanghi showed all concerns for protection of life and liberty of an innocent person, but unfortunately, the respondents no. 3 to 5 did not show any respect for the life and liberty of a citizen of India and kept the petitioner in illegal detention for 7 ½ hours. Whether this conduct of the respondents no. 3 and 5, was with an ulterior motive or was a bonafide mistake shall be considered in the following paragraphs.

9. **Incident dated 25-7-2020**

10. It is the allegation of the petitioner, that he is a tenant in a shop, and at the behest of the landlady, the respondents no. 3 to 5, forcibly evicted him from the shop and his belongings were taken to the police station, where he was forced to give an undertaking that he would vacate the shop and only thereafter, his some of the belongings were returned back and the remaining articles and money have not been returned. It is also alleged that during forcible eviction proceedings, the respondent no. 4 and 5 had also beaten him. The photographs of taking out the articles/belongings out of the shop, loading the same on a mini truck and the presence of respondent no. 5 on the spot have also been filed.

11. It is not out of place to mention here that although the respondents no. 4 and 5 have filed their detailed return, but they have not denied the allegations of beating, forcible eviction by respondents no. 4 and 5, non-return of some of the belongings and money of the petitioner as well as the correctness of the photographs filed by the petitioner.

12. The respondent no. 4, in her return, has pleaded that so far as the incident, which took place on 14-8-2020 is concerned, She was not in the town and had gone to Jhansi in connection with some other investigation. Even the petitioner has not alleged that on 14-8-2020, the respondent no. 4 was present. Thus, it is clear that the respondent no. 4 is not involved in the incident which took place on 14-8-2020.

13. So far as the incident of forcible dispossession of the petitioner from his shop by the respondents no. 3 to 5 is concerned, it is the stand of the respondent no. 4 that on 25-7-2020, the landlady made an application to the respondent no. 3 seeking dispossession of the petitioner from the shop, which was marked to her. The copy of the application made by the landlady to the respondent no. 3, with his remark is reproduced as under :

प्रति,

श्रीमान थाना प्रभारी महोदय,
थाना – बहोड़ापुर
जिला – ग्वा0 (म0प्र0)

विषय –

महोदय,

सविनय नम्र निवदेन है, कि मैं प्रार्थीया रामवती आर्य w/o स्व0 श्री नारायण प्रसाद आर्य उम्र 90 वर्ष, नि0 पागल खाना तिराहा, शब्द प्रताप आश्रम, प्रार्थीया का विनय है, कि प्रार्थीया ने अपनी दुकान किराये पर अरूण शर्मा s/o श्री ओमप्रकाश शर्मा, नि0 – 75 लक्ष्मण तलैया, शिदें की छावनी लश्कर, ग्वा0 को 11 माह का एग्रीमेंट कराकर दी थी, जिसका मासिक किराया 1400/–रु देना तय हुआ था, एवं इसका एग्रीमेंट 27.08.14 को खत्म हो गया था, इसके बाद अरूण शर्मा के द्वारा कोई एग्रीमेंट नहीं किया गया, और न ही कोई किराया दिया गया इससे कई बार दुकान खाली करने के लिए बोला गया, पर ये गाली गलौच पर उतारू हो जाता हैं, एवं दुकान न खाली करने की धमकी देता है, कहता हैं कि अभी तो दुकान पर कब्जा किया हैं, और पूरे मकान पर कब्जा कर लूँगा, सन 2014 से सन 2020 तक अरूण शर्मा के द्वारा मुझे कोई किराया नही दिया गया।

अतः श्रीमान जी से निवेदन हैं, कि प्रार्थीया की दुकान खाली कराकर, सन् 2014 से 2020 का पूरा किराया दिया जाए।

दिनांकः 25.07.20

प्रार्थीया
रामवतीवाई w/o स्व0 श्री
नारायण प्रसाद आर्य
नि0 पागल खाना, शब्द
प्रताप आश्रम (ग्वा0)
मो0 न0 9074415152 (विपिन)
8076988074 (अन्नू)
(ये मेरे दोनो पोते हैं)

Seal Police Station Bahodapur 25.7.2020

SI संगीता मिंज
जांच कर रिर्पोट देवें

14. The respondent no. 4 has also filed a copy of the undertaking given by the petitioner, at the police station, which is at Page 23 of the return of respondents no. 4 and 5, which reads as under :

श्रीमान
थाना प्रभारी महोदय,
थाना बहोडापुर,

विषय :–दुकान का जो सामान ले गये थे वो बापस रखने वावत्।

महोदय,

उपरोक्त विषय में निवेदन है कि मैं प्रार्थी अरूण बोहरे पुत्र श्री ओमप्रकाश वोहरे निवासी लक्ष्मण तलैया बहोडापुर जो कि विपिन शाक्य पुत्र स्व श्री जगदीश शाक्य उम्र 31 साल नि0 पागलखान तिराहा के मकान में मैं दुकान करता था **आज दिनांक 25.7.2020 को विपिन ने पुलिस बल के साथ दुकान को जो खाली करायी थी सामान यथा स्थित दुकान में रख रहे हैं** जव तक मेरा बडा भाई शीतल बाहर से नहीं आ जाता तव तक दिनांक 25. 8.2020 तक मेरी दुकान उसी मकान में रहेगी। शीतल के आने पर हम दोनो पक्षो का हिसाव होगा। हिसाव होने के बाद जो समझोता होगा दोनो में वह मान्य होगा।

प्रार्थी नं एक
अरूण पुत्र ओमप्रकाश बोहरे
नि0 लक्ष्मण तलैया
बहोडापुर

प्रार्थी नं दो
विपिन शाक्य पुत्र स्व0
जगदीश शाक्य
नि. पागल खाना
तिराहा बहोडापुर

15. **In the said undertaking also, the petitioner had specifically alleged that today, he has been dispossessed by Vipin Arya, with the help of police.** On the contrary, by taking advantage of the presence of the respondent no. 4 at Jhansi on 14-8-2020, She tried to project that in fact the incident which took place on 25-7-2020 is false. It is really unfortunate, that the respondent no. 4 has tried to

mislead this Court. Be that as it may be. During the course of arguments, it was admitted by the Counsel for the respondent no. 4 that on 25-7-2020, the respondent no. 4 was on duty in the Police Station Bahodapur, Distt. Gwalior, and was entrusted with the work of conducting enquiry on the application filed by the landlady (which has already been reproduced earlier).

16. Further, the respondent no. 4 has herself filed a copy of letter dated 27-7-2020, written to her by the S.H.O., Police Station Bahodapur, Distt. Gwalior, in which it is mentioned that She had inquired the matter on 25-7-2020, and a report has been called by the Senior Police Officers, therefore, She should submit her reply. Thereafter, the respondent no. 3 submitted his report to the Senior Police Officers, in which it is mentioned that on receiving an information of ruckus, the respondent no. 4 had gone to the shop of the petitioner, and brought the belongings of the petitioner to the police station and obtained an undertaking from the Petitioner (Which has already been reproduced). The copy of letter dated 27-7-2020 written by respondent no. 3 to the respondent no. 4 and the report of the respondent no.3 to the Senior Police Officers are reproduced as under :

<u>कार्यालय थाना प्रभारी बहोडापुर ग्वालियर</u>

क्र. /20 दिनांक 27.7.2020

प्रति,

उनि, संजीता मिंज
थाना बहेाडापुर ग्वा,

विषय– स्पष्टीकरण चाहने के संबंध मे।

//.....//

उपरोक्त विषयान्तर्गत लेख है कि दिनांक 25/07/2020 को आपके द्वारा आवदेक रामवती बाई पत्नि स्व. श्री नारायण प्रसाद आर्य नि. पागल खाना शब्द प्रताप आश्रम ग्वा. द्वारा आवेदन पत्र पर से अनावेदक अरूण शर्मा पुत्र श्री ओमप्रकाश शर्मा निवासी 75 लक्ष्मण तलैया शिन्दे की छावनी लश्कर ग्वा. की दुकान का सामान थाने लाया गया था उक्त संबंध में वरिष्ठ अधिकारी द्वारा प्रतिवेदन रिपोर्ट चाही गई है अतः उक्त जॉचं में आपके द्वारा क्या कार्यवाही की गई है उक्त के संबंध में स्पष्टीकरण देवे।

Report given by respondent no. 3 to S.P. Gwalior :

कार्यालय थाना प्रभारी थाना बहोडापुर ग्वालियर

क./ /20 दिनांक–

प्रति,

श्रीमान पुलिस अधीक्षक महोदय
जिला ग्वालियर (म.प्र)

द्वारा – उचित माध्यम।

विषय– आवेदक अरूण शर्मा के प्रकरण में प्रतिवेदन के संबंध में।

//.....//

महोदय,

निवेदन है कि दिनांक 25/07/2020 को आवेदक रामवती बाई पत्नि स्व. श्री नारायण प्रसाद आर्य नि. पागल खाना शब्द प्रताप आश्रम ग्वा. द्वारा अनावेदक अरूण शर्मा पुत्र श्री ओमप्रकाश शर्मा निवासी 75 लक्ष्मण तलैया शिन्दे की छावनी लश्कर ग्वा. के विरूद्ध आवेदन पत्र दिया गया था जिस पर से दिनांक 25/07/2020 को पागल खाने तिराहे पर भीड होने एवं लडाई झगडे जैसे हालात उत्पन्न होने की वजह से उनि. संजिता मिंज मय फोर्स के पागल खाना तिराहे पहुंची एवं दोनो पार्टियो से लडाई झगडे का कारण पूछा जिससे वताया गया कि विपिन आर्य द्वारा दुकान खाली करवाकर लोडिंग मे सामान भरवाया जा रहा था जिससे काफी विवाद होने की स्थिति में उनि. संजीता मिंज द्वारा दोनो पार्टियो को समझाया गया नही मानने की स्थिती को देखते हुए दोनो पार्टियो को थाना हाजा पर मय लोडिंग के लाया गया दोनो पार्टियो द्वारा मकान किराया एवं पैसै के लेन देन का विवाद होना वताया बाद दोनो पार्टियो को समझाईश दी गई एवं दोनो पार्टी के द्वारा आपस मे आपसी समझौते से राजीनामा किया गया बाद दोनो पक्षो का सामजंस्य होने से दोनो पार्टिया अपना सामान वापस ले गये।

थाना प्रभारी
थाना बहोडापुर

17. The respondent no. 3 has filed his separate return. In his return, he has stated that it is incorrect to say that no criminal case was ever registered against the petitioner. One crime No. 839/2013 was registered in Police Station Morar, Distt. Gwalior for offence under Sections 506,507,384,465,466,467,468,471 of I.P.C. and under Section 66 of I.T. Act and Sessions Trial No. 160004/2016 is pending and the next date is 25-11-2020. Another offence in Crime No. 173/2013 has been registered at Police Station Heeranagar, Indore for offence under Sections 3/4,13 of Public Gambling Act, under Section 66 of I.T. Act and under Section 420,465,466,467,468,471,120B and 188 of I.P.C. and Sessions Trial No.

1100531/2016 is pending and fixed for 8-2-2021. However, it is not the case of the respondent no.3, that the petitioner was wanted in a criminal case in which reward was declared against another person. It is further submitted that the respondent no. 3 has a brilliant service carrier of 7 years. On 25-7-2020, at about 15:30, the respondent no. 3 went back to his residence and at 16.46 he received a Whatsapp text message from Reserved Inspector, Gwalior Shri Arvind Dangi, which reads as under :

भाई साहब बहोडापुर थाने की पुलिस मेन्टल हास्पिटल चौराहे पर एक दुकानदार का सामान भर के ले गयी है, दुकानदार का नाम अरूण शर्मा, मकान मालिक और किराएदार का विवाद है **लेकिन पुलिस दुकान मालिक के संग मिलकर उसका सामान ले गयी है** थोडा देख लिये ना मामला

18. Accordingly, he went to Police Station at 16:00 and by that time, the petitioner along with bag and baggage had already returned back. The respondent no. 4 gave him a copy of application dated 25-7-2020 made by landlady and behind the back of the respondent no. 3, the respondent no. 4 had already brought the belongings to the Police Station and had already compelled the petitioner to submit an undertaking. It is further submitted that the endorsement made on the application dated 25-7-2020, made by the landlady, doesnot bear his signatures and the entire incident took place, when the respondent no. 3 was in his residence. However, the respondent no.3, has not claimed that the endorsement of entrusting enquiry to respondent no.4 is not in his handwriting. It is further pleaded in the return that the respondent no.3 is aware of the fact "that vacation of property dispute is a civil dispute and he cannot act in violation of law". So far as the incident dated 14-8-2020 is concerned, it is pleaded that on 13-8-2020, the Superintendent of Police, Gwalior had declared rewards against various persons, and reward of Rs. 5000 was declared against one Arun Sharma, son of Omprakash Sharma, resident of Sector No.02, D-97, Vinay Nagar, Police Station Bahodapur. On 14-8-2020, the respondent no. 5 informed him that the petitioner is the same person and relying on his information, the petitioner was brought to the police station and since, the person against whom reward was declared, was wanted in a criminal case registered at Police Station Gole Ka Mandir, Gwalior, therefore, the verification was done by Police of Gole ka Mandir, and when it was found that the petitioner is not the person, against whom reward has been declared by the Superintendent of Police, Gwalior, then he was allowed to go. This stand of the respondent no.3, regarding voluntary verification of identity of the petitioner by Police of Police Station Gole Ka Mandir, Gwalior is not correct in the light of the press note relied upon by the respondents no.1 and 2, which have been filed by them along with compliance report dated 20-10-2020. However, admitted that the news with regard to the arrest of the petitioner with his uncovered face got circulated among the News Paper and Social Media. It is further pleaded that since, circular dated 2-1-2014 was in existence, therefore, the news was shared. It is further submitted that a news was also published in the news paper that the

respondent no.3 has been placed under suspension on arresting an innocent person. It is further pleaded that for the fault of the newspaper, the respondent no. 3 cannot be held liable. Further it is pleaded that at the time of photo session also, the respondent no. 5 was present and is also in the photo, but even at that time, the respondent no. 5 never disclosed to the respondent no. 3, that the petitioner is not the person against whom a reward has been declared. Although the petitioner has admitted that unless and until, "a person is held guilty by a Court of competent jurisdiction, he is presumed that he is innocent", but still insisted that the petitioner is an accused in two other cases.

19. So far as the return filed by the respondent no. 5 is concerned, he has not taken any stand with regard to the incident which took place on 25-7-2020. He has also not denied the photographs filed by the petitioner, in which he is visible on the spot, when the shop was being got forcibly vacated. Thus, in absence of any denial on the part of the respondent no. 5, regarding his presence on the spot on 25-7-2020, it is held that the respondents no. 4 and 5 went to the shop of the petitioner, and got the same vacated in an illegal manner without there being any order of the Court.

20. In the undated report of the respondent no.3 (which has been filed by the respondent no.4 and has been reproduced), the respondent no.3, tried to mislead the Superintendent of Police, Gwalior, by saying that an information was received that there was some ruckus at *Pagalkhana Tiraha,* therefore, S.I. Sangeeta Minj went with force. But, the respondent no. 3, in his letter dated 27-7-2020, written to respondent no.4, had himself written that the respondent no. 4 has brought the belongings of the petitioner on the complaint made by the landlady and there is nothing in letter dated 27-7-2020, that the respondent no. 4 was sent after receiving an information of ruckus at *Pagalkhana Tiraha.* Further, it is clear from the application dated 25-7-2020 written by Landlady, the said application was marked by the respondent no.3 to respondent no. 4 for enquiry.

21. The Counsel for the State also could not point out as to how, the respondent no. 3 could have taken cognizance of the complaint made by the landlady. From the plain reading of the application, it is clear that She had prayed for recovery of arrears of rent as well as for eviction of the petitioner. By no stretch of imagination, the complaint filed made by the landlady can be said to have disclosed cognizable offence. Even a non-cognizable offence was not disclosed in the complaint. The entire complaint was beyond the jurisdiction of the police authorities but still cognizance of the same was taken.

22. When a specific question was put to Shri Amit Sanghi, Superintendent of Police, Gwalior, that whether it is the official duty of the police to get the shops vacated without there being any orders of the Court, then it was rightly admitted by Shri Amit Sanghi, Superintendent of Police, Gwalior, that the police has no

authority whatsoever under any law, to evict the tenants from the tenanted premises and the eviction can take place only under the decree of eviction issued by the Court of competent jurisdiction. However, it is submitted by Shri Sanghi, that the incident of 25-7-2020 took place prior to his posting in Gwalior. Even the respondent no.3, in his return has categorically stated that the matter of eviction is a civil matter and police has no jurisdiction.

23. Although the Counsel for the respondent no. 4 relied upon Section 23 of Police Act, but as a departmental enquiry is pending against the respondents no. 3 to 5, therefore, only undisputed facts and the stand taken by the respondents as well as the preliminary enquiry reports are being considered for deciding this petition. However, it is not out of place to mention here, that now the respondents no. 3 to 5 are involved in mud-sledging on each other, thereby placing certain documents on record, which were suppressed by the respondents no. 1 and 2.

24. It is the case of the respondent no. 4 that it was the respondent no. 3, who had directed her to enquire the complaint made by the landlady, whereas it is the case of the respondent no. 3, that the copy of the complaint was given to him by respondent no. 4, only when he returned back to the police station at 16:00 and the endorsement made on the application thereby, directing the respondent no. 4 to enquire, does not bear his signatures. However, the return of the respondent no. 3 is beautifully silent as to whether such endorsement is in his handwriting or not? In para 8 of the return, the respondent no. 3 has pleaded that as per routine procedure when any complaint is submitted in Police Station, it is registered in Complaint register and is placed by the Police Station Munshi before the respondent no.3. Although it is the contention of the respondent no. 3 that he was given the said application by the respondent no.4, only after he came back to the police station at 16:00, but his return is completely silent as to why he did not ask the respondent no. 4, that under whose authority, the endorsement of entrusting enquiry to the respondent no. 4 was written. In absence of such pleadings, an adverse inference has to be drawn against the respondent no.3, and it is held that endorsement made on the application dated 25-7-2020 made by the landlady is in the handwriting of the respondent no.3 and it was the respondent no.3 who had entrusted the enquiry to the respondent no. 4. Thus, it is clear that the respondent no. 3 has taken a completely false stand in his return, that he had not marked the application, made by landlady, to the respondent no.4. Further, the respondent no. 3, himself has placed the copy of text message received by him on *Whatsapp* from Reserved Inspector Shri Arvind Dangi **that the police of Bahodapur Police Station, in connivance with the landlord, has taken away the belongings of the tenant**. Thus, the respondent no.3, himself has proved that the petitioner was forcibly evicted by the respondents no. 4 and 5 and since, the complaint was marked by the respondent no.3, therefore, it can be safely presumed that the entire incident of forcible eviction took place on the instructions of the respondent no.3,

inspite of his admission in para 8 of his return that vacation of property is a civil dispute. The stand taken by the respondent no. 3, in para 8 of his return reads as under :

> "8 .....The respondent no.3 clearly knows that vacation of property dispute is a civil dispute and cannot act in violation of law."

25. Further, the respondent no. 3 has not placed any document on record to show that on 25-7-2020, he was at his residence till 17:00.

26. Further, a preliminary enquiry into the incident was conducted by C.S.P., Gwalior, and it was found that the respondents no. 4 to 5 are guilty of forcibly evicting the petitioner from the shop. Although the copy of the preliminary enquiry report has not been placed on record, but under the instructions of the Court, the Superintendent of Police, Gwalior, has made the same available. The preliminary enquiry report dated 28-7-2020 reads as under :

कार्यालय नगर पुलिस अधीक्षक अनुभाग ग्वालियर (म.प्र.)

क्रमांक / नपुअ / ग्वा0 / CL155 / 20
दिनांक 28 / 07 / 2020
प्रति,

अतिरिक्त पुलिस अधीक्षक महोदय
(शहर–मध्य क्षेत्र) जिला ग्वालियर

विषयः– आवेदक अरूण शर्मा निवासी लक्ष्मण तलैया बहोड़ापुर ग्वालियर द्वारा प्रस्तुत आवेदन पत्र के संबंध में।

————00————

महोदय,

उपरोक्त विषय में लेख है कि आवेदक अरूण शर्मा द्वारा कार्यालय में उपस्थित एक शिकायती आवेदन पत्र प्रस्तुत किया जिसमें उसकें द्वारा थाना बहोड़ापुर में पदस्थ उनि सजिंता मिंज, आरक्षक अचल शर्मा, मकान मालिक विपिन आर्य व उनके साथ आये अन्य लोगों द्वारा उसके साथ मारपीट कर उसकी दुकान के सामान की तोड़फोड कर उनि सजिंता मिंज व आरक्षक अचल शर्मा के द्वारा लोडिंग में दुकान का सामान भरकर बहोड़ापुर थाने पर ले जाने के संबंध में प्रस्तुत किया गया है।

आवेदक की उक्त शिकायत के संबंध में थाना प्रभारी बहोड़ापुर से तथ्यात्मक प्रतिवेदन प्राप्त किया गया एवं आवेदक का कथन लेख किया गया जिससे पाया कि–

यह कि आवेदक अरूण शर्मा ने अपने कथन में बताया कि वह पिछले करीब 7 साल से अनावेदक विपिन आर्य निवासी पागलखाना तिराहे बहोड़ापुर के यहां एक दुकान 1400 / – प्रतिमाह के किराये पर लेकर

कोल्ड ड्रिंक व नमकीन व किराने का सामान बेंचने का काम करता है अनावेदक के परिजनों द्वारा आवेदक से पूर्व में 2 लाख रूपये उधार लेना जिसके ब्याज के एबज में आवेदक को दुकान का किराया देने से मना करना इस कारण आवेदक द्वारा पिछले एक साल से दुकान का किराया नहीं देना तथा दिनांक 25.07.2020 को शाम करीब 4 बजे थाना बहोड़ापुर की उनि संजिता मिंज, आरक्षक अचल शर्मा व मकान मालिक विपिन आर्य उसका भाई अन्नू, चाचा खेरा आर्य का अन्य व्यक्तियों के साथ आना। आरक्षक अचल शर्मा के द्वारा आवेदक से पानी की बोतल व मीठी सुपारी लेना जिसके पैसे आवेदक द्वारा आरक्षक से मांगने पर आरक्षक अचल द्वारा के द्वारा विपिन का किराये न देने वाली बात उससे कहना जिस पर आवेदक द्वारा आरक्षक विपिन के घरवालों से पूर्व में इस संबंध में बात हो जाने की बात कहते हुये, अचल शर्मा के द्वारा चाटा मारना तथा मैडम मिंज के द्वारा अचल शर्मा व विपिन आर्य से कहा कि दुकान से बाहर लेकर आने व मारपीट करने की कहने पर अचल शर्मा व विपिन आर्य व उनके साथ आये सभी लोगो के द्वारा मारपीट करना व दुकान का सामान बाहर फेंकना जिससे काफी नुकसान होना तथा मैडम द्वारा सामान को लोडिंग वाहन में भरकर बहोड़ापुर थाने पर ले जाना तथा उसे झूठे हरिजन एक्ट व छेड़छाड़ के केस में फंसाने की धमकी देना बताते हुये आवेदक द्वारा उनि संजिता मिंज व अचल शर्मा द्वारा लोडिंग में भर गये सामान की फोटो भी प्रस्तुत किए गय है विस्तृत कथन संलग्न है।

थाना प्रभारी बहोड़ापुर से प्राप्त किए गए प्रतिवेदन में थाना प्रभारी द्वारा दिनांक 25.07.2020 को आवेदिका रामवती बाई के द्वारा अनावेदक अरूण शर्मा के खिलाफ आवेदन देना तथा दिनांक 25.07.2020 को पागलखाने तिराहे पर भीड़ व लडाई झगडा जैसे हालात उत्पन्न होने की वजह से उनि संजीता मिंज मय फोर्स के पागल खाना तिराहे पहुंची व लडाई झगडे का कारण पूछने पर विपिन आर्य के द्वारा दुकान खाली करवाकर लोडिंग में सामान भरवाया जाना विवाद की स्थिति देख उनि संजीता मिंज के द्वारा दोनों पाटियों समझाना नहीं मानने पर दोनों पार्टियों व लोडिंग वाहन को थाने पर लेकर आना व मकान किराये एवं पैसे के लेन–देन का विवाद होना बताया है दोनों पार्टियों को समझाइस देना, दोनों पार्टियों का आपस में आपसी समझौता से राजीनामा किया जाना बाद दोनों पक्षों का सामंजस्य होने से दोनो पार्टियो का अपना सामान वापस ले जाना लेख किया गया है।

शिकायत सम्पूर्ण जांच कथन आवेदक, स्पष्टीकरण उनि संजिता मिंज एवं आवेदक द्वरा प्रस्तुत किए गए फोटो **उनि संजीता मिंज एवं आरक्षक 1644 अचल शर्मा के द्वारा अनावेदक विपिन आर्य का सहयोग करते हुये आवेदक अरूण शर्मा की दुकान का सामान अवैध तरीके से लोडिंग में भरकर थाने पर लाना पाया गया है** जोकि उपनिरीक्षक संजीता मिंज एवं आरक्षक 1644 अचल शर्मा थाना बहोड़ापुर के द्वारा अपने पदीय अधिकारों का दुरुपयोग करते हुये पुलिस

सेवा की शर्तो का उल्लंघन किया जाकर पुलिस की छवि को धूमिल करने की कृत्य किया गया है।

प्रतिवेदन उचित कार्यवाही हेतु प्रेषित है।

संलग्न–आवेदक का आवेदन पत्र मय फोटो
थाना प्रभारी का प्रतिवेदन मय प्रपत्र

(नागेन्द्र सिंह सिकरवार)
नगर पुलिस अधीक्षक
अनुभाग ग्वालियर

27. Thus, it is clear that although the complaint/application dated 25-7-2020 did not disclose commission of any cognizable offence, but instead of directing the landlady to approach the Civil Court seeking eviction of the petitioner, the respondent no. 3, immediately usurp the powers of the Civil Court, and directed the respondent no. 4 to enquire into the allegations of non-payment of rent and non vacating of shop by the petitioner. Thereafter, without wasting even a single minute, the respondents no. 4 and 5 went to the shop of the petitioner, and after dispossessing him forcibly, his belongings were brought to the police station, where an undertaking was obtained from the petitioner, and only thereafter, he was allowed to take back his belongings from the Police Station. Thus, the manner in which the petitioner was evicted from his shop in an illegal manner, it appears that the respondents no 3 to 5 took contract from the landlady to get the shop vacated, which is an alarming situation and cannot be ignored by the Court. Even the respondent no.3 has produced a text message received from Reserved Inspector, Shri Arvind Dangi, which also says that the police of Bahodapur Police Station, in connivance with landlord has taken away the belongings of the tenant to the police station.

28. The Supreme Court in the case of *State of Maharashtra Vs. Saeed Sohail Sheikh* reported in (2012) 13 SCC192 has held as under:

> **39.** In a country governed by the rule of law police excesses whether inside or outside the jail cannot be countenanced in the name of maintaining discipline or dealing with anti-national elements. Accountability is one of the facets of the rule of law. If anyone is found to have acted in breach of law or abused his position while exercising powers that must be exercised only within the parameters of law, the breach and the abuse can be punished. That is especially so when the abuse is alleged to have been committed under the cover of authority exercised by people in uniform. Any such action is also open to critical scrutiny and examination by the courts.
>
> **40.** Having said that we cannot ignore the fact that the country today faces challenges and threats from extremist elements

> operating from within and outside India. Those dealing with such elements have at times to pay a heavy price by sacrificing their lives in the discharge of their duties. The glory of the constitutional democracy that we have adopted, however, is that whatever be the challenges posed by such dark forces, the country's commitment to the rule of law remains steadfast. Courts in this country have protected and would continue to protect the ideals of the rights of the citizen being inviolable except in accordance with the procedure established by law.
>
> (Underline supplied)

29. By no stretch of imagination, it can be said that the conduct of the respondents no. 3 to 5 was in discharge of their official duties. Under these circumstances, this Court has to deal with the matter with all seriousness and has to deal with heavily. It is also not out of place to mention here that after an undertaking was given by the petitioner in the police station, some of his belongings were returned and was permitted to keep the same in the shop. However, none of the respondents i.e., No. 3 to 5 have disputed the allegation of the petitioner, that some of his belongings and money has not been returned back.

30. **Incident dated 14-8-2020**

31. The admitted facts are that a reward of Rs. 5,000/- was declared by Superintendent of Police, Gwalior on 13-8-2020, against one Arun Sharma, son of Omprakash Sharma, resident of Section No.2, D-97, Vinaynagar, Police Station Bahodapur, Distt. Gwalior, whereas the petitioner is Arun Sharma son of Omprakash Sharma, resident of Laxman Talaiya, Near Asmani Mata Temple, Kapate Wali Gali, Bahodapur, Distt. Gwalior. **Thus, it is clear that residential address of both the persons are different.** Another undisputed fact is that the petitioner was brought to the Police Station Bahodapur, on 14-8-2020 at 13:56 and was released at 21:37. Thus, it is clear that the petitioner was kept in illegal confinement in the Police Station for 7 1/2 hours, and during this period, the respondent no.3, even did not try to verify that whether the petitioner is the same person against whom reward has been declared by the S.P., Gwalior, or not. The respondent on.3 could have verified the identity of the petitioner from his residential address also, but even that was not done. It is also mandatory under law, that after arresting a person, an information is to be given to his family members. As the brother of the petitioner had already approached the S.P., Gwalior, therefore, the respondent no.3 was aware that the residential address of the petitioner is different from that of the person, against whom reward has been declared by S.P., Gwalior.

32. Further, the respondent no. 1 in para 11 of his return has stated that after the reward of Rs. 5000 was declared by the Superintendent of Police, Gwalior, instructions were issued to the Police Station Bahodapur personals (sic: personnel)

to put the efforts to trace out Arun Sharma, son of Omprakash Sharma, wanted in crime no. 255/2011. The copy of the order by which rewards were declared by the Superintendent of Police, Gwalior has also been filed by the respondent no.1. From the said order, it is clear that reward against one more person, namely Avinash son of Ashok Upadhyay resident of Sector 3, behind Electricity Office, Vinay Nagar, Police Station Bahodapur, Distt. Gwalior, was also declared and he was also the resident of an area falling within the territorial jurisdiction of Police Station Bahodapur, then why instructions were issued to trace out Arun Sharma only and why not Avinash son of Ashok Upadhyay also? Thus, it is clear that Arun Sharma (Tenant) was unlawfully taken into custody with malice and in utter misuse of the official position.

33. Further, the return of the respondent no.3, is completely silent on the question of timing of sending press release to I.T. Cell, Superintendent of Police, Gwalior. Further, it is the stand of the respondent no.3 himself, that since, the person against whom, the reward was declared was wanted in a crime registered at Police Station Gole Ka Mandir, and after due verification by Police of Gole Ka Mandir, the petitioner was released, but has not clarified that why the respondent no. 3, released the press note and forwarded the same to the I.T. Cell, Superintendent of Police, with uncovered face of the petitioner by branding him as "An accused with reward of Rs. 5000", even prior to verification. Thus, it is clear that the respondent no. 3, did not verify the identity of the petitioner and deliberately released the press note with uncovered face of the petitioner. Further, the stand that the Police of Gole Ka Mandir, had voluntarily verified the identity of the petitioner, is contrary to the submission made by the Superintendent of Police, Gwalior. At the cost of repetition, it is once again pointed out that during the course of hearing, it was specifically stated by Superintendent of Police, Gwalior that on receiving a complaint from the brother of the petitioner, he got the enquiry done, and when it was found that the petitioner was never required by the police, then he was released. Further, it is the stand of the respondent no. 3, that the press note was released in the light of the Circular dated 14-1-2014, which has been partially quashed by this Court by its order dated 2-11-2020. However, the Counsel for the respondent no. 3, could not point out any thing from the then existing circular, to show that the police officers were given unfettered right to declare any innocent person as a "an Accused against whom reward has been declared" and release the press note with his uncovered face photograph, even without due verification. Even otherwise, the conduct of the respondent no.3 was not in accordance with the circular dated 2-1-2014, which was in existence till 2-11-2020. Thus, it is clear that now the respondents no. 3 to 5 are trying to indulge themselves in mud sledging against each other, however, the fact of the case is that while doing so, they themselves have disclosed certain inculpatory facts which were suppressed by the respondents no. 1 and 2 in their return.

34. Further, Additional Superintendent of Police, Gwalior has also conducted a preliminary enquiry. It is really surprising that all the senior police officers were somehow trying to project that the present case is that of mistaken identity. Although, the copy of the preliminary enquiry report prepared by Shri Pankaj Pandey, Add. Superintendent of Police, City (Center), Gwalior was not filed by the respondents, but on the directions of the Court, the same has been made available and the same is reproduced as under :

कार्यालय अति0 पुलिस अधीक्षक,शहर(मध्य),जिला ग्वालियर(म0प्र0)
क्रमांक/अपुअ/(मध्य)/प्रा0जांच/517—ए/2020 दिनांक 30/9/2020

शिज/45—ए/2020

प्रति,

पुलिस अधीक्षक,
ग्वालियर

विषयः— उप निरीक्षक दिनेशसिंह राजपूत, इंचार्ज, थाना प्रभारी, बहोड़ापुर के विरूद्ध प्राथमिक जांच प्रस्तुत किए जाने के संबंध में।

संदर्भः— आपके आदेश क्र/ पुअ/ ग्वा/ पीए/ निलं0/ (24/2020)/24/2020 दिनांक 14.08.2020 व 28.08.2020 एवं पृ.क्र./पुअ/ग्वा/शिज/स.उप./1336/2020 दिनांक 20.08.2020 व पृ. क्र./पुअ/ग्वा/शिज/स.उप./1711/2020 दिनांक 14.09.2020 के पालन में।

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विषयान्तर्गत संदर्भि आदेशों एवं आवेदक अरूण शर्मा निवासी लक्ष्मण तलैया, आसमानी माता के मन्दिर, थाना बहोड़ापुर, ग्वालियर का आवेदन पत्र जो कि उप निरीक्षक दिनेशसिंह राजपूत, इचार्ज थाना प्रभारी, बहोड़ापुर व आरक्षक अचल शर्मा के संदर्भ में है, का अवलोकन करने का कष्ट करें, जिसके तहत् प्राथमिक जांच प्रतिवेदन प्रस्तुत किए जाने हेतु निर्देशित किया गया है।

आवेदक अरूण शर्मा द्वारा प्रस्तुत किए गये आवेदन पत्र में उल्लेखित तथ्यों का अवलोकन किया गया, जिसमें आवेदक द्वारा उल्लेखित किया गया कि ''दिनांक 13.08.2020 को आरक्षक अचल शर्मा द्वारा प्रार्थी को थाना बहोड़ापुर बुलाया गया। जब प्रार्थी थाने पहुंचा तो उसे बिना सुने, मारपीट करते हुए बद्सलूकी की गयी व हवालात में बन्द कर दिया गया एवं तथाकथित 5000/— रूपये का इनामी घोषित कर, प्रार्थी के साथ फोटो खिंचवा कर प्रेस वार्ता की गयी एवं मीडिया में वायरल कर दिया। इस तरह आरक्षक अचल शर्मा और उप निरीक्षक दिनेशसिंह राजपूत द्वारा षड़यंत्रपूर्वक प्रार्थी को झूठा फंसाकर प्रार्थी व प्रार्थी के परिवार की छबि धूमिल की गयी।''

प्राथमिक जांचक्रम में निम्नवत साक्ष्य संकलित की गयी :

1. आवेदक अरूण शर्मा पुत्र ओमप्रकाश शर्मा नि0लक्ष्मण तलैया, ग्वालियर का कथन दर्ज.
2. उप निरीक्षक दिनेशसिंह राजपूत थाना बहोड़ापुर–हाल–पुलिस लाईन के कथन व थाना बहोड़ापुर के रो0सा0क्र. 76, 22, 74, 72, 20/14.08.2020 की सत्यापित नकलें प्राप्त
3. आरक्षक 1439 कमल वर्मा, थाना बहोड़ापुर का कथन.
4. आरक्षक 529 धर्मेन्द्रसिंह तोमर, थाना बहोड़ापुर का कथन.
5. आरक्षक 1839 अभिषेक शर्मा, थाना बहोड़ापुर का कथन.
6. आरक्षक 638 जसविन्दरसिंह, थाना बहोड़ापुर का कथन.
7. आरक्षक 2605 अनूपसिंह गुर्जर, थाना बहोड़ापुर का कथन.
8. आरक्षक 1875 सुरेन्द्र कुमार भटेले, आई.टी.सेल, पुलिस अधीक्षक कार्यालय का कथन.
9. आरक्षक 1644 अचल शर्मा, थाना बहोड़ापुर हाल–पुलिस लाईन ग्वालियर का कथन.
10. उप निरीक्षक आर0पी0गौतम, थाना गोला का मन्दिर जिला ग्वालियर का कथन

आवेदक अरूण शर्मा पुत्र श्री ओमप्रकाश शर्मा, उम्र 32 साल निवास–लक्ष्मण तलैया, आसमानी माता के मन्दिर के पास, कपाटे वाली गली, थाना बहोड़ापुर जिला ग्वालियर ने कथन में बताया कि दिनांक 25.07.2020 को शाम करीब 4 बजे मेरी दुकान पर थाना बहोड़ापुर से आरक्षक अचल शर्मा व उप निरीक्षक संगीता मिंज आये थे। अचल शर्मा ने मुझसे पानी की बोतल ली थी व एक पेकेट मीठी सुपाड़ी का लिया था। मैंने करीब 10 मिनट बाद बोतल व सुपाडीत्र के पैसे मांगे तो आरक्षक अचल शर्मा ने मुझे 2–3 थप्पड़ मार दिए और बोला कि फटाफट विपिन आर्य की दुकान खाली कर। मैंने कहा कि मेरे भाई और विपिन आर्य की आपस में बात हो गयी है। इसके बाद आरक्षक अचल शर्मा मेरी दुकान के अन्दर घुस आया और विपिन आर्य, अन्नू आर्य व 3–4 अन्य लोग आ गये और सभी मुझे मारने लगे। इसके बाद मैंने अपने भाई को मोबाइल छीन लिया और घुटने से एक ठोकर मारी व दुकान से आरक्षक अचल शर्मा, विपिन आर्य, अन्नू आर्य सहित अन्य लोगों द्वारा दुकान से किराने का सामान बाहर फेंकना शुरू कर दिया। इस दौरान ये सभी दारू के नशे में दिखाई दे रहे थे। इसके बाद तीन लॉडिंग प्रायवेट वाहन करके आये और सामान भरकर थाना बहोड़ापुर ले गये व फर्नीचर तोड़कर सड़क पर डाल गये। थाने से मैंने अपने चाचा मदनलाल शर्मा जो कि थाना इन्दरगंज में प्रधान आरक्षक हैं, को मोबाइल से फोन लगाया, जिन्होंने इस घटनाक्रम की जानकारी वरिष्ठ अधिकारियों को दी। वरिष्ठ अधिकारियों के हस्तलेप के बाद थाना बहोड़ापुर से मेरा सामान वापस दुकान पर आया। दुकान पर गल्ला चैक किए जाने पर उसमें रखे 28330/– रूपये मौजूद नहीं पाये गयें इस घटना की शिकायत मेरे द्वारा सीएसपी, सीएम हेल्पलाईन आदि दो तीन जगह पर की गयी।

दिनांक 12.08.2020 को शाम के 7 बजे मेरे मोबाइल पर आरक्षक अचल शर्मा का फोन आया था, उस समय मैं अपने गांव ईटमा थाना करहिया जिला ग्वालियर में मौजूद था। दिनांक 13.08.2020 को सुबह 11 बजे आरक्षक अचल शर्मा को पुनः फोन आया और बोला कि जो तुमने शिकायत की है, उसकी जांच के लिए सीएसपी साहब थाने पर आये हैं, आपका बयान लेना है। मैं थाने पर सुबह 11 बजे फोन पर सूचना मिलते ही थाना बहोड़ापुर पहुंचा था, जहां पर थाना प्रभारी उनि दिनेश राजपूत जी ने मेरा एड्रेस व नाम, पता पूछा। इन्हें आरक्षक अचल शर्मा व उनि संगीता मिंज द्वारा बताया गया था कि मैं विनयनगर में रहता हूं और इस पर पांच हजार रूपये का इनाम है, यह वही अरूण शर्मा है, जिस पर दिनेश राजपूत द्वारा मेरा फोटो खींचकर सोशल मीडिया पर डाल दिया और मुझे हथकड़ी लगाकर, मेरे साथ मारपीट की गयी। मैं बार–बार निवेदन करता रहा कि जिस पर इनाम घोषित है, मैं वह अरूण शर्मा नहीं हूं और न ही मेरे विरूद्ध कोई धोखाधड़ी का केस दर्ज है किन्तु उनि दिनेश राजपूत द्वारा मेरी एक बात नहीं सुनी गयी। इसके बाद मेरे भाई शीतल शर्मा द्वारा वरिष्ठ अधिकारियों से तस्दीक कराये जाने का अनुरोध गया, जिसकी तस्दीक उपरांत मुझे निर्दोष पाया जाकर छोड़ा गया। थाना गोला का मन्दिर के पुलिस अधिकारियों ने भी थाना बहोड़ापुर आकर मुझसे बातचीत की और घटनाक्रम की तस्दीक और इन्होंने भी मुझे निर्दोष पाया। इसके बाद दिनांक 13.08.2020 की रात करीब 10 बजे मुझे थाना बहोड़ापुर में रखे गये पुलिस निरोध से नये टीआई प्रशान्तसिंह यादव द्वारा तस्दीक उपरांत छोड़ दिया गया था। इसके बाद मेरे द्वारा वरिष्ठ अधिकारियों को आवेदन पत्र प्रस्तुत किए गये। मुझे अभी भी आरक्षक अचल शर्मा से डर है कि यह मुझे किसी भी झूठे केस में फंसवा सकता है।

उप निरीक्षक दिनेशसिंह राजपूत, तत्का0थाना बहोड़ापुर हाल–पुलिस लाईन ग्वालियर, ने कथन में बताया कि मैं थाना बहोड़ापुर में 02 मई 2020 से 14.08.2020 तक उप निरीक्षक पद पर एवं इंचार्ज थाना प्रभारी के रूप में पदस्थ रहा। दिनांक 13.08.2020 को श्रीमान् पुलिस अधीक्षक, ग्वालियर द्वारा अरूण पुत्र ओमप्रकाश शर्मा निवासी विनयनगर के ऊपर आदेश क्र/पुअ/ग्वा/एडी/158/2020 दिनांक 13.08.2020 में थाना गोला का मन्दिर के अपराध क्र0 255/11 धारा 420 भादवि आदि में 5000/– रू. (पांच हजार रूपये) के पुरूस्कार की घोषणा की गयी थी। इनामी का थाना बहोड़ापुर क्षेत्र का होने से आसूचना संकलन में लगे आरक्षक एवं बीट आरक्षकों को उक्त इनामी के बारे में जानकारी प्राप्त करने हेतु बताया गया था। जिसके तहत् थाने के आरक्षक अचल शर्मा द्वारा फोन पर बताया गया कि उक्त नाम का आरोपी लक्ष्मण तलैया पर रहता है, जिसका पूर्व में विनयनगर में घर था। आरक्षक के द्वारा बताया गया कि उक्त फरारी इन्दौर में भी धोखाधड़ी के केस में जेल गया था एवं क्राइम ब्रांच ग्वालियर द्वारा भी इसको धोखाधड़ी के केस में पकड़ा गया था। आरक्षक द्वारा बताया गया कि वह उक्त

आरोपी का घर जानता है, उक्त आरोपी वही है, जिस पर इनाम घोषित हुआ है। तत्पश्चात् दिनांक 14.08.2020 को आरक्षक अचल शर्मा द्वारा अरूण शर्मा को फोन पर बुलाया गया व थाने के अन्य आरक्षकों के साथ इसको तस्दीक हेतु थाने लाया गया था, जिसकी रिपोर्ट थाने के रोजनामचा सान्हा 22 दि0 14.08.2020 पर दर्ज की गयी थी एवं उक्त फरारी इनामी को पकड़ने के संबंध में थाना गोला का मन्दिर को सूचित किया गया एवं थाना प्रभारी गोला का मन्दिर से फोन पर चर्चा की गयी तो थाना गोला का मन्दिर के उप निरीक्षक आर0पी0 गौतम द्वारा अपराध सदर की केस डायरी लाकर अरूण शर्मा की तस्दीक केस डायरी से की गयी एवं अरूण शर्मा से पूछताछ की गयी तो उक्त अपराध में वांछित आरोपी अरूण शर्मा थाना बहोड़ापुर द्वारा पकड़ा गया अरूण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरूण शर्मा को उसके परिजनों के हमराज रूखसत किया गया, जिसकी रो0सा0 76 दिनांक 14.08.2020 पर प्रविष्ठि की गयी थी। इनामी अरूण शर्मा की नाम, बल्दियत, सरनेम व पता एक होने से भूलवश अन्य अरूण शर्मा पुत्र ओमप्रकाश शर्मा नि0 विनयनगर ग्वालियर को मेरे द्वारा इनामी समझकर थाने आया गया था, जिसे तस्दीक उपरांत छोड़ दिया गया था। उक्त घटनाक्रम के बारे में मीडिया में मेसेज जाने से घटना का प्रसारण हो गया। आरक्षक अचल शर्मा व अरूण शर्मा का पूर्व में भी क्या विवाद है, इसके संबंध में मुझे कोई जानकारी नहीं है। मेरे द्वारा भूलवश अरूण शर्मा को थाने लाया गया। इसको थाने लाये जाने में मेरा कोई बुरा आशय नहीं था। उक्त घटना फरारी व अरूण शर्मा के नाम, पता एक होने से हुई है।

साक्षी आरक्षक 1439 कमल वर्मा, थाना बहोड़ापुर जिला ग्वालियर ने कथन में बताया कि दिनांक 14.08.2020 को मैं व आरक्षक जसविन्दर, आरक्षक अभिषेक शर्मा, आरक्षक धर्मेन्द्र तोमर, थाना प्रभारी महोदय के साथ इलाका भ्रमण पर थे, तभी ए0टी0एम0 तिराहे पर आरक्षक अचल शर्मा मिला और बोला कि एक पांच हजार रूपये का इनामी पुलिस पेट्रोल पम्प पर खड़ा है, तब हम थाना प्रभारी बहोड़ापुर उनि दिनेशसिंह राजपूत के हमराज उसको थाना लाये थे और थाना गोला का मन्दिर को सूचित किया था। बाद में थाना गोला का मन्दिर से उप निरीक्षक आर0पी0 गौतम द्वारा अपराध सदर की केस डायरी लाकर अरूण शर्मा की तस्दीक केस डायरी से की गयी एवं अरूण शर्मा से पूछताछ की गयी तो उक्त अपराध में वांछित आरोपी अरूण शर्मा थाना बहोड़ापूर द्वारा पकड़ा गया अरूण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरूण शर्मा को उसके परिजनों के हमराज रूखसत किया गया, जिसकी रो0सा0 76 दिनांक 14.08.2020 पर प्रविष्ठि की गयी थी। इनामी अरूण शर्मा की नाम, बल्दियत, सरनेम व पता एक होने से भूलवश अन्य अरूण शर्मा पुत्र ओमप्रकाश शर्मा नि0 विनयनगर ग्वालियर को मेरे द्वारा इनामी समझकर थाने लाया गया था, जिसे तस्दीक उपरांत छोड़ दिया गया था। उक्त घटनाक्रम के बारे में मीडिया में मेसेज जाने से घटना का प्रसारण हो गया। आरक्षक अचल शर्मा व अरूण शर्मा का पूर्व

में भी क्या विवाद है, इसके संबंध में मुझे कोई जानकारी नहीं है। नाम, पता एक होने से उसे थाना लाया गया था। बाद में तस्दीक कर छोड दिया गया था।

साक्षी आरक्षक 1839 अभिषेक शर्मा, थाना बहोड़ापुर जिला ग्वालियर ने बताया कि दिनांक 14.08.2020 को मैं व आरक्षक जसविन्दर, आरक्षक धर्मेन्द्रसिंह तोमर, आरक्षक कमल वर्मा, थाना प्रभारी महोदय के साथ इलाका भ्रमण पर थे, तभी ए0टी0एम0 तिराहे पर आरक्षक अचल शर्मा मिला और बोला कि एक पांच हजार रूपये का इनामी पुलिस पेट्रोल पम्प पर खड़ा है, तब हम थाना प्रभारी बहोड़ापुर उनि दिनेशसिंह राजपूत के हमराज उसको थाना लाये थे और थाना गोला का मन्दिर को सूचित किया था। बाद में थाना गोला का मन्दिर से उप निरीक्षक आर0पी0 गौतम द्वारा अपराध सदर की केस डायरी लाकर अरूण शर्मा की तस्दीक केस डायरी से की गयी एवं अरूण शर्मा से पूछताछ की गयी तो उक्त अपराध में वांछित आरोपी अरूण शर्मा थाना बहोड़ापूर द्वारा पकड़ा गया अरूण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरूण शर्मा को उसके परिजनों के हमराज रूखसत किया गया, जिसकी रो0सा0 76 दिनांक 14.08.2020 पर प्रविष्ठि की गयी थी। इनामी अरूण शर्मा की नाम, बल्दियत, सरनेम व पता एक होने से भूलवश अन्य अरूण शर्मा पुत्र ओमप्रकाश शर्मा नि0 विनयनगर ग्वालियर को मेरे द्वारा इनामी समझकर थाने लाया गया था, जिसे तस्दीक उपरांत छोड़ दिया गया था। उक्त घटनाक्रम के बारे में मीडिया में मेसेज जाने से घटना का प्रसारण हो गया। आरक्षक अचल शर्मा व अरूण शर्मा का पूर्व में भी क्या विवाद है, इसके संबंध में मुझे कोई जानकारी नहीं है। नाम, पता एक होने से उसे थाना लाया गया था। बाद में तस्दीक कर छोड़ दिया गया था।

साक्षी आरक्षक 638 जसविन्दरसिंह, थाना बहोड़ापुर जिला ग्वालियर ने कथन में बताया कि दिनांक 14.08.2020 को मैं व आरक्षक अभिषेक शर्मा, आरक्षक धर्मेन्द्रसिंह तोमर, आरक्षक कमल वर्मा, थाना प्रभारी महोदय के साथ इलाका भ्रमण पर थे, तभी ए0टी0एम0 तिराहे पर आरक्षक अचल शर्मा मिला और बोला कि एक पांच हजार रूपये का इनामी पुलिस पेट्रोल पम्प पर खड़ा है, तब हम थाना प्रभारी बहोड़ापुर उनि दिनेशसिंह राजपूत के हमराज उसको थाना लाये थे और थाना गोला का मन्दिर को सूचित किया था। बाद में थाना गोला का मन्दिर से उप निरीक्षक आर0पी0 गौतम द्वारा अपराध सदर की केस डायरी लाकर अरूण शर्मा की तस्दीक केस डायरी से की गयी एवं अरूण शर्मा से पूछताछ की गयी तो उक्त अपराध में वांछित आरोपी अरूण शर्मा थाना बहोड़ापूर द्वारा पकड़ा गया अरूण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरूण शर्मा को उसके परिजनों के हमराज रूखसत किया गया, जिसकी रो0सा0 76 दिनांक 14.08.2020 पर प्रविष्ठि की गयी थी। इनामी अरूण शर्मा की नाम, बल्दियत, सरनेम व पता एक होने से भूलवश अन्य अरूण शर्मा पुत्र ओमप्रकाश शर्मा नि0 विनयनगर ग्वालियर

को मेरे द्वारा इनामी समझकर थाने लाया गया था, जिसे तस्दीक उपरांत छोड़ दिया गया था। उक्त घटनाक्रम के बारे में मीडिया में मेसेज जाने से घटना का प्रसारण हो गया। आरक्षक अचल शर्मा व अरूण शर्मा का पूर्व में भी क्या विवाद है, इसके संबंध में मुझे कोई जानकारी नहीं है। नाम, पता एक होने से उसे थाना लाया गया था। बाद में तस्दीक कर छोड़ दिया गया था।

साक्षी आरक्षक 2605 अनूपसिंह गुर्जर,थाना बहोड़ापुर जिला ग्वालियर ने कथन में बताया कि दिनांक 14.08.2020 को मैं कामदगिरी अपार्टमेन्ट के सामने खड़ा था, तभी थाना प्रभारी बहोड़ापुर उनि दिनेश राजपूत व आरक्षक अभिषेक शर्मा, आरक्षक धर्मेन्द्रसिंह तोमर, आरक्षक कमल वर्मा, जसविन्दर इलाका भ्रमण पर थे, मिले और मुझे बताया कि आरक्षक अचल शर्मा मिला और बोला कि एक पांच हजार रूपये का इनामी पुलिस पेट्रोल पम्प पर खड़ा है, तब मैं भी थाना प्रभारी बहोड़ापुर उनि दिनेशसिंह राजपूत के हमराज उसको थाना लाये थे और थाना गोला का मन्दिर को सूचित किया था। बाद में थाना गोला का मन्दिर से उप निरीक्षक आर0पी0 गौतम द्वारा अपराध सदर की केस डायरी लाकर अरूण शर्मा की तस्दीक केस डायरी से की गयी एवं अरूण शर्मा से पूछताछ की गयी तो उक्त अपराध में वांछित आरोपी अरूण शर्मा थाना बहोड़ापूर द्वारा पकड़ा गया अरूण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरूण शर्मा को उसके परिजनों के हमराज रूखसत किया गया, जिसकी रो0सा0 76 दिनांक 14.08.2020 पर प्रविष्ठि की गयी थी। इनामी अरूण शर्मा की नाम, बल्दियत, सरनेम व पता एक होने से भूलवश अन्य अरूण शर्मा पुत्र ओमप्रकाश शर्मा नि0 विनयनगर ग्वालियर को मेरे द्वारा इनामी समझकर थाने लाया गया था, जिसे तस्दीक उपरांत छोड़ दिया गया था। उक्त घटनाक्रम के बारे में मीडिया में मेसेज जाने से घटना का प्रसारण हो गया। आरक्षक अचल शर्मा व अरूण शर्मा का पूर्व में भी क्या विवाद है, इसके संबंध में मुझे कोई जानकारी नहीं है। नाम, पता एक होने से उसे थाना लाया गया था। बाद में तस्दीक कर छोड़ दिया गया था।

साक्षी 529 धर्मेन्द्रसिंह तोमर थाना बहोड़ापुर ने कथन में बताया कि दिनांक 14.08.2020 को मैं व अन्य आरक्षकगण जसविन्दर, अभिषेक शर्मा, कमल वर्मा इंचार्ज थाना प्रभारी उनि दिनेश राजपूत के साथ इलाका भ्रमण पर थे, तभी ए0टी0एम0 तिराहे पर आरक्षक अचल शर्मा मिला और बोला कि एक पांच हजार रूपये का इनामी पुलिस पेट्रोल पम्प पर खड़ा है, तब हम सभी हमराह उनि दिनेश सिंह राजपूत के जाकर उसको थाना लाये थे और थाना गोला का मन्दिर को सूचित किया था। बाद में थाना गोला का मन्दिर उप निरीक्षक आर0पी0गौतम अपराध सदर की केस डायरी लेकर थाने पर अरूण शर्मा की तस्दीक हेतु आये व उन्होंने अरूण शर्मा से पूछताछ की, तो उक्त अपराध में वांछित आरोपी अरूण शर्मा न होकर, अन्य होना पाया गया। तस्दीक उपरांत अरूण शर्मा

को उसके परिजनों के हमराह रो0सा0क्र. 76/14. 08.2020 पर रूखसत किया गया। उक्त घटनाक्रम के बारे में मीडिया में मैसेज जाने से घटना का प्रसारण हो गया।

साक्षी उप निरीक्षक आर0पी0गौतम, थाना गोला का मन्दिर जिला ग्वालियर ने कथन में बताया कि दिनांक 14.08.2020 को मैं थाने से मय फोर्स के इन्द्रमणि तिराहे पर वाहन चैकिंग कर रहा था। दौराने वाहन चैंकिग थाना प्रभारी निरीक्षक दीपसिंह सेंगर द्वारा फोन कर मुझे बताया कि अपराध क्र0 255/11 धारा 420 भादवि,3(1) म0प्र0 निक्षेपकों के हितों का संरक्षण अधिनियम 2000, आरबीआई अधिनियम 1934 की धारा 45एस, 58बी(5–ए) में संदेही अरूण पुत्र ओमप्रकाश शर्मा नि0 लक्ष्मण तलैया का थाना बहोड़ापुर में बैठा होने की सूचनादी गयी, जिसकी तस्दीक हेतु उप निरीक्षक भगवानसिंह के साथ मैं थाना बहोड़ापुर पहुंचा और थाना प्रभारी बहोड़ापुर निरीक्षक प्रशान्त याद से जाकर मिला। बाद उनके निर्देशन में थाने पर बैठा संदेही अरूण पुत्र ओमप्रकाश शर्मा उम्र 32 साल निवासी ग्राम ईटमा थाना करहिया जिला ग्वालियर हाल–लक्ष्मण तलैया, आसमानी माता के मन्दिर के पास, ग्वालियर पूछताछ कर कथन लिया, तो उसने बताया कि मैं 11 वर्ष से पागलखाना चौराह थाना बहोड़ापुर क्षेत्र में विपिन कार्य के मकान में किराये पर दुकान लेकर किराने की दुकान करता हूं। मैंने परिवार डेयरी गोला का मन्दिर में कभी काम नहीं किया है और न ही मैं परिवार डेयरी के किसी अधिकारी/कर्मचारी को जानता हूं। मेरा परिवार डेयरी से कोई संबंध नहीं हैं, न ही पुलिस ने मुझे इस अपराध की डायरी के संबंध में कभी तलाश नहीं किया है। यदि मैं अपराध में दोषी हूं तो बुलाने पर मैं शीघ्र थाना गोला का मन्दिर में उपस्थित हो जाऊंगा। तस्दीक की, थाना प्रभारी निरी0 प्रशान्त यादव को हालात अर्ज किए, बाद संदेही अरूण शर्मा को थाना बहोड़ापुर से रूखसत किया गया। बाद तस्दीक उपरान्त थाना गोला का मन्दिर पहुंचा और तस्दीकी हालात थाना गोला का मन्दिर निरी0दीपसिंह सेंगर को विवेचना के हालात बताये। अपराध सदर में फरार आरोपियों पर 5–5 हजार रूपये का दिनांक 13.08.2020 को इनाम घोषित किया गया था।

<u>आरक्षक 1644 अंचल शर्मा, थाना बहोडापुर</u> जिला ग्वालियर ने कथन में बताया कि थाना बहोड़ापुर में तैनाती के दौरान मेरी ड्यूटी विनयनगर बीट में चल रही थी। बीट भ्रमण के दौरान जैसे ही में पागलखाने तिराहे पर आया, जहां मैने देखा कि 40–50 व्यक्ति भीड़ लगाये खड़े थे। उसमें से 10–12 लोगों के हाथों में डण्डे थे। मैं उस समय अकेला ही था, मैंने मौके पर जाकर देखा और पूछा कि क्या बात है। कुछ लोगों ने बताया कि दुकान मालिक व दुकान किरायेदार के मध्य दुकान खाली कराने का विवाद है। मौके पर जब विवाद शांत नहीं हुआ और उसी दौरान वहां से उप निरीक्षक संजीता मिंज का निकल हुआ, जिन्हे मैंने रोककर विवाद के बारे में बताया। मैडम ने दोनों पक्षों को

समझाया और जब दोनों पार्टी बात मानने को तैयार नहीं थी, तब दोनों पार्टियों को थाना बहोड़ापुर बुलाया गया। थाने पर दोनों पक्षों को सुना गया। दुकान मालिक विपिन आर्य ने बताया कि वर्ष 2013 से दुकान को किराया नहीं मिल रहा है और किरायेदार अरूण शर्मा ने इस बात से सहमत होते हुए वर्ष 2013 से किराया नहीं मिल रहा है और किरायेदार अरूण शर्मा ने इस बात से सहमत होते हुए वर्ष 2013 से किराया नहीं देना स्वीकार किया। जब अरूण शर्मा से दोनों पक्षों में हुए एग्रीमेन्ट के बारे में जानकारी ली गयी तो अरूण शर्मा ने एग्रीमेन्ट नही दिया। अरूण शर्मा के चाचा थाना इन्दरगंज में मदनलाल शर्मा प्रआर हैं, जिनके हस्तक्षेप से कोई कार्यवाही नहीं हुई और दोनों पक्षों को थाने से वापस किया गया।

इंचार्ज थाना प्रभारी बहोड़ापुर उनि दिनेश राजपूत का एक दिन मेरे पास फोन आया कि अरूण शर्मा 5000/– रू का इनामी है और इसका पता बताओ। इसके कुछ समय बाद आरक्षक अभिषेक का भी फोन आया था, तब मैंने उन्हें बताया कि अरूण शर्मा लक्ष्मण तलैया पर रहता है। अरूण शर्मा नि0 विनयनगर के नाम से 5000/–रू का इनाम घोषित हुआ था। मुझे ज्ञात हुआ कि अरूण शर्मा का बड़ा भाई शीतल शर्मा पहले विनयनगर में रहता था, जिसने वहां का मकान बेच दिया था और वर्तमान में लक्ष्मण तलैया पर रहने लगे थे, इस कारण मेरे द्वारा इंचार्ज थाना प्रभारी को अरूण शर्मा के पते की जानकारी दी गयी। मेरे द्वारा जानकारी दिए जाने के बाद इंचार्ज थाना प्रभारी द्वारा अपनी टीम के साथ अरूण शर्मा को पकड़ा गया। जब पुलिस पेट्रोल पम्पर इंचार्ज थाना प्रभारी व आरक्षक अभिषेक टीम के साथ मौजूद थे, जिन्होंने मुझे पेट्रोल पम्प पर बुलाया। मैं जैसे ही पेट्रोल पम्प पर पहुंचा तो इंचार्ज थाना प्रभारी ने मुझसे पूछा कि अरूण शर्मा यही व्यक्ति है। मैंने देखकर उन्हें बताया कि हां, अरूण शर्मा यही व्यक्ति है। इसके बाद अरूण शर्मा को थाने पर ले जाया गया और आगे की कार्यवाही की गयी। बाद में पता चला कि थान गोला का मन्दिर के जिस अपराध अरूण शर्मा इनामी आरोपी था, वह यह अरूण शर्मा न होकर अन्य अरूण शर्मा निकला, तब उसे थाने से छोड़ दिया गया।

वरिष्ठ आरक्षक 1875 सुरेन्द्रकुमार भटेले, आई0 टी0 सेल, पुलिस अधीक्षक कार्यालय, ग्वालियर ने कथन में बताया कि दिनांक 14.08.2020 को तत्का0थाना प्रभारी बहोड़ापुर उनि दिनेश सिंह राजपूत द्वारा मेरे व्हाट्सएप नम्बर पर प्रेसनोट बनवाने हेतु मैसेज भेजा था कि ''आरोपी अरूण पुत्र ओमप्रकाश शर्मा नि0विनयनगर ग्वालियर का,थाना गोला का मन्दिर के अपराध में 5000/–रूपये का इनामी था,

जिसे पुलिस पेट्रोल पम्प बहोड़ापुर से पकड़कर गिरफ्तार किया गया है इस इनामी का स्क्रीन शॉट का प्रिन्ट आउट प्रस्तुत किया, जो अवलोकनार्थ संलग्न है। आईटी सेल में प्रेसनोट को तैयार किया गया व इसका स्क्रीनशॉट व्हाट्एप पर थाना प्रभारी को देकर उनसे मीडियों को देने से पूर्व अनुमोदन लिया गया था।

जांच में आवेदक अरूण शर्मा द्वारा अपने कथन में स्पष्ट किया गया कि सर्वप्रथम उसे दिनांक 25.07.2020 को किराये की दुकान के विवाद को लेकर आरक्षक अचल शर्मा व उप निरीक्षक संजीता मिंज द्वारा थाना बहोड़ापुर लाया गया था,किन्तु इस प्रकरण में वरिष्ठ अधिकारियों के हस्तक्षेप से बिना कोई कार्यवाही किए उसे थाने से मय सामान छोड़ दिया गया था। इसके बाद उप निरीक्षक दिनेशसिंह राजपूत, इंचार्ज थाना प्रभारी बहोड़ापुर एवं आई0टी0सेल के वरिष्ठ आरक्षक 1875 सुरेन्द्र कुमार भटेले के कथनानुसार पुलिस अधीक्षक,ग्वालियर द्वारा थाना गोला का मन्दिर के अपराध क0 255/11 धारा 420 भादवि,3(1)(2)(4) म0प्र0 निक्षेपकों के हितों का संरक्षण अधिनियम 2000, 45–एस/58बी(5–ए) आर0बी.आई0 अधिनियम 1934 में फरार आरोपी अरूण पुत्र ओमप्रकाश शर्मा नि0 सेक्टर नं0–2, डी–97,विनयनगर, थाना बहोड़ापुर जिला ग्वालियर की गिरफ्तारी हेतु 5000/–रूपये का इनाम आदेश क/पुअ/ग्वा/एडी/158/2000 दिनांक 13.08.2020 के तहत् घोषित किया गया था। इंचार्ज थाना प्रभारी बहोड़ापुर उनि दिनेश राजपूत ने अपने कथन में स्पष्ट किया कि इस आरोपी के इनाम की जानकारी थाने के समस्त कर्मचारियों को दी गयी, जिस पर थाना बहोड़ापुर में तैनात आरक्षक 1644 अचल शर्मा द्वारा उन्हें 5000/–रू. के इनामी अरूण शर्मा के पुलिस पेट्रोल पम्प बहोड़ापुर पर खड़े होने की सूचना उनि दिनेशसिंह राजपूत को दिए जाने पर इन्होंने थाने के रो0सा0 22/14.08.2020 पर दर्ज की जाकर, हमराह टीम में आरक्षक 1439 कमल वर्मा, आरक्षक 638 जसविन्दरसिंह, आरक्षक 1389 अभिषेक शर्मा, आरक्षक 529 धर्मेन्द्रसिंह तोमर व आरक्षक 2605 अनूप सिंह गुर्जर को लेकर आरक्षक 1644 अचल शर्मा द्वारा दी गयी सूचना स्थल पर पहुंचकर अरूण शर्मा को दस्तयाव कर, थाना बहोड़ापुर लाया गया आरै दिनांक 14.08.2020 को ही उप निरीक्षक दिनेशसिंह राजपूत द्वारा अपने मोबाइल वाट्सएप नं0 70491–62900 पर प्रेसनोट हेतु मैसेज आई0टी0सेल के वरिष्ठ आरक्षक 1875 सुरेन्द्रकुमार भटेले को भेजकर आरोपी अरूण पुत्र ओमप्रकाश शर्मा नि0 विनयनगर को थाना गोला का मन्दिर के अपराध का 5000/–रूपये के इनामी पुलिस पेट्रोल पम्प बहोड़ापुर से गिरफतार करना बताया जाकर स्क्रीन शॉट का प्रिन्ट आउट दिया गया और बाद में प्रेसनोट में सुधार करवाया जाकर पुनः प्रेसनोट प्रसारण किए जाने की स्वीकृति उप निरीक्षक दिनेशसिंह राजपूत द्वारा आई0टी0सेल में दी गयी, जिस पर से आई0टी0सेल से प्रेसनोट ई–मेल एवं व्हाटसएप फोटो प्रेसनोट मय आरोपी अरूण शर्मा स्टॉफ के फोटो के साथ प्रसारित किया गया। बाद में थाना गोला का मन्दिर से उप निरीक्षक आर0पी0गौतम द्वारा थाना बहोड़ापुर पहुंचकर संदेही अरूण शर्मा से पूछताछ व तस्दीक उपरांत थाना प्रभारी बहोड़ापुर को अवगत कराया गया कि जो अरूण शर्मा थाना बहोड़ापुर में इनामी के रूप में लाया गया है, वह थाना गोला का मन्दिर के अपराध क्र. 255/11 में असल आरोपी नहीं है, जिस पर से थाना प्रभारी बहोड़ापुर द्वारा थाने पर पुलिस निरोध में रखे गये अरूण शर्मा को

रो0सा0क्र. 76/14.08.2020 पर रिपोर्ट दर्ज कर थाने से रूखसत किया गया।

इस तरह जांच से स्पष्ट हुआ कि संदेही अरूण शर्मा को 5000/–रूपये का इनामी होने की सूचना आरक्षक 1644 अचल शर्मा द्वारा उप निरीक्षक दिनेशसिंह राजपूत इंचार्ज थाना प्रभारी बहोड़ापुर को दिए जाने पर इनके द्वारा हमराह टीम के साथ संदेही अरूण शर्मा को थाने पर लाया गया था, जिसकी वल्दियत, सरनेम व पता होने से भूलवश इनामी समझकर थाने पर लाया जाना उनि दिनेश राजपूत द्वारा अपने कथन में स्वीकार किया गया है एवं अरूण शर्मा की गिरफ्तारी का प्रेसनोट जारी करवाये जाने से पूर्व उप निरीक्षक दिनेशसिंह राजपूत, इंचार्ज थाना प्रभारी बहोड़ापुर द्वारा आरोपी अरूण शर्मा के संदर्भ में थाना गोला का मन्दिर के अपराध में बारीकी से तस्दीक न करते/कराते हुए जल्दबाजी किया जाना एवं आरक्षक 1644 अचल शर्मा की सूचना पर विश्वास किया जाना स्पष्ट हुआ। इस तथ्य की पुष्टि उप निरीक्षक दिनेशसिंह राजपूत की हमराह टीप के आरक्षकों एवं आई0टी0सेल द्वारा की गयी है। संदेही अरूण शर्मा को 5000/–रूपये का इनामी बताते हुए इसे रो0सा0क्र.22/14.08.2020 समय 13.56 बजे में थाने लाकर रो0सा. क्र. 76/14.08.2020 समय 21:37बजे तक थाना बहोड़ापुर में बिठाकर, रखा जाकर तस्दीक उपरांत रूखसत किया जाना पाया गया। संदेही अरूण शर्मा के विरूद्ध उक्त की गयी कार्यवाही के लिए प्रथम दृष्टया उप निरीक्षक दिनेशसिंह राजपूत, इंचार्ज थाना प्रभारी बहोड़ापुर एवं आरक्षक 1644 अचल शर्मा थाना बहोड़ापुर की अपने कर्तव्य के प्रति अतिउत्साह में लापरवाही किया जाना पाया जाता है।

अतः संदर्भित पत्रों एवं निर्देशों के पालन में प्राथमिक जांच प्रतिवेदन अवलोकनार्थ सादर प्रेषित है।

संलग्न :

1. आवेदक अरूण शर्मा पुत्र ओमप्रकाश शर्मा नि0लक्ष्मण तलैया, ग्वालियर का कथन दर्ज.
2. उप निरीक्षक दिनेशसिंह राजपूत थाना बहोड़ापुर–हाल–पुलिस लाईन के कथन व थाना बहोड़ापुर के रो0सा0क्र .76, ,22, ,74, ,72, 20/14. 8. 2020 की सत्यापित नकलें प्राप्त
3. आरक्षक 1439 कमल वर्मा, थाना बहोड़ापुर का कथन.
4. आरक्षक 529 धर्मेन्द्रसिंह तोमर, थाना बहोड़ापुर का कथन.
5. आरक्षक 1839 अभिषेक शर्मा, थाना बहोड़ापुर का कथन,
6. आरक्षक 638 जसविन्दरसिंह, थाना बहोड़ापुर का कथन,
7. आरक्षक 2605 अनूपसिंह गुर्जर, थाना बहोड़ापुर का कथन,
8. आरक्षक 1875 सुरेन्द्र कुमार भटेले, आई.टी.सेल. पुलिस अधीक्षक कार्यालय का कथन, स्क्रीन शॉट, प्रेसनोट, इनाम का आदेश,
9. आरक्षक 1644 अचल शर्मा, थाना बहोड़ापुर हाल–पुलिस लाईन ग्वालियर का कथन,

10. उप निरीक्षक आर0पी0गौतम, थाना गोला का मन्दिर जिला ग्वालियर का कथन,

(पंकज पाण्डेय)
अति0 पुलिस अधीक्षक
शहर(मध्य), ग्वालियर

35. In the conclusion, it was observed by the Add. Superintendent of Police, City (Center), Gwalior that it is a case of mistaken identity done under excitement, because of similarity in name, father's name and residential address. Surprisingly, the Add. S.P., City (Center), Gwalior himself has disclosed the residential addresses of the petitioner and the wanted person in his preliminary enquiry report, but inspite of that he, for the reasons best known to him, gave a wrong finding that because the residential address of both the persons were same, therefore, the respondent no. 3 had committed mistake.

36. At the cost of repetition, it is once again clarified that during the course of hearing of the case, the S.P., Gwalior has made a statement before this Court, during the course of arguments, that in fact he had received a call on his mobile phone from the brother of the petitioner, and only on his instructions, an enquiry was conducted and the petitioner was later on released. But the Add. Superintendent of Police, City (Center), Gwalior, did not mention this fact in his Preliminary Enquiry Report, although he has recorded the statement of one Shri R.P. Gautam, Sub-Inspector, Police Station Gola ka Mandir, Gwalior, who had conducted an enquiry in order to find out the identity of the petitioner. But surprisingly, the Add. Superintendent of Police, City (Center), Gwalior, in his preliminary enquiry report, conveniently drew a conclusion that by mistaken identity the petitioner was brought to the Police Station and upon his identification he was released, but did not mention that the respondents no. 3 to 5 did not try to verify the identity of the petitioner on their own, but the identity of the petitioner was established only after the intervention of the Superintendent of Police. Further, the respondent no.3 also in his return, did not claim that after taking the petitioner in custody, he ever tried to verify his identity. Be that as it may be.

37. It is surprising, that the Additional Superintendent of Police, City (Center), Gwalior was informed by the petitioner, about the incident which had taken place on 25-7-2020, and was also aware of the fact that in both the incidents, the respondent no.3 and 5 were involved, but still did not try to find out as to whether the unlawful custody of the petitioner on 14-8-2020 by the respondent no.3 and 5 was the case of mistaken identity or it was in continuation of the incident dated 25-7-2020. As already observed that it appears, that the respondents no.3,4 and 5 had taken a contract for getting the shop vacated, and when the shop was not vacated by the petitioner inspite of the undertaking given

by him in the police station, therefore, deliberately he was apprehended on 14-8-2020. Even before the enquiry officer, the respondent no.3 had made a statement that he had blindly believed the information given by the respondent no. 5 that the present petitioner is the same person, against whom a reward of Rs. 5,000 has been declared by the Superintendent of Police.

38. Further, the Add. Superintendent of Police, City (Center), Gwalior did not even try to verify that whether the respondent no. 5 was on his duty in the police station or was on duty at somewhere else. According to the respondent no. 5, he was on duty at another point, and he doesnot know anything about the unlawful apprehension of the petitioner. However, in the preliminary enquiry, it was found that the petitioner was unlawfully apprehended by the respondent no.3, on the information given by the respondent no.5. Thus, it is clear that the respondent no. 5 was not on the point, where he was deputed, but he was roaming around here and there. However, the Add. Superintendent of Police, City (Center), Gwalior, did not observe about the conduct of respondent no. 5 of leaving his point of duty and roaming around here and there. Be that whatever it may be.

39. Further, the respondent no. 5 has admitted that in the photograph of the petitioner with uncovered face which was published in the newspaper, he is also there. It is fairly conceded by the Counsel for the respondent no.5, that as per the duty Rojnamcha Sanha, the respondent no. 5 should not have been in the police station at the time of photo session. Further, it is the stand of the respondent no.3, that it was the respondent no.5, who had given an information that the petitioner is the same person, against whom a reward of Rs. 5000 has been declared by the Superintendent of Police. Thus, it is clear that inspite of the best efforts by the respondents no. 3,4, and 5, as the petitioner had not handed over the vacant possession of the Shop to the landlady, therefore, the petitioner was taken into unlawful custody on 14-8-2020 at 13:56 and was kept in the police station unlawfully till 21:37 and was released only after the intervention of the Superintendent of Police, Gwalior and in the meanwhile, the photograph of the petitioner was circulated amongst Social Media as well as Print Media by projecting him as under :

पांच हजार रूपय का इनामी धोखाधडी का आरोपी पकडा गया।

40. Another important aspect of the matter is that according to the preliminary enquiry report prepared by the Add. Superintendent of Police, City (Center), Gwalior, the petitioner was brought to the Police Station Bahodapur, Distt. Gwalior on 14-8-2020 at 13:56 and was kept till 21:37, but for the reasons best known to the respondents no. 3 and 5, the petitioner was not formally arrested. If the respondents no. 3 and 5 were of the view that the petitioner is the same person against whom reward of Rs. 5000 has been declared by the S.P., Gwalior, then there was no impediment for arresting the petitioner formally. Further, if the

movements of the petitioner were curtailed in order to do some investigation, then the primary duty of the respondent no. 3 and 5 was to verify as to whether the petitioner is the same person, against whom the reward of Rs. 5000 was declared by the Superintendent of Police or not. Even that was not done. Further, the respondent no. 3 has tried to shred his responsibility by stating that he had acted on the information given by the respondent no.5, but the said stand of the respondent no. 3 cannot be accepted because, even if the stand of the respondent no.3 is accepted, but still it cannot be said that he had acted in good faith. The word "Good Faith" has been defined in Section 52 of I.P.C., which reads as under :

> 52. **"Good faith".**—Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.

It is not the case of the respondent no.3, that before and after taking the petitioner in custody and before releasing the press note with news "An accused with reward of Rs. 5000 has been arrested" with uncovered face of the petitioner, he had acted with due care and attention. So far as the registration of two criminal cases against the petitioner is concerned, the Counsel for the respondent no.3, could not point out that if any criminal case has been registered against a person, then the police in an illegal manner, and without there being any allegation in a particular case, can project him as a "An accused with reward of Rs. 5000" and can publish his uncovered face in the print as well as social media. The respondent no.3 has filed a copy of the charge sheet filed by the police in crime No. 173/2913 registered at Police Station Heeranagar, Indore. From this charge sheet it is clear that on 20-4-2013, an information was received that gambling is going on, therefore, the police party raided the premises, however, two persons succeeded in running away. The purse of one of the miscreant fell down and from the ID proof kept in the said purse, it was found that the said purse belongs to one Rinku. Large number of mobile sims and mobile phones were seized. During investigation one Santi@ Chandraprakash of Morena was also implicated as an accused. On verification, it was found that the mobile SIMs were purchased from the shop of the petitioner on the basis of forged documents, and accordingly, he too was made an accused. Thus, it is clear that in crime no. 173/13, the allegations against the petitioner are that mobile SIMs were purchased from his shop on the basis of forged documents. However, there is no allegation that the petitioner was involved in actual gambling. Further, the respondent no.3, has also admitted that unless and until, a person is convicted, he is presumed to be innocent, and it is not the case of the respondent no.3, that the petitioner has been convicted in any criminal case. Further, the Supreme Court in the case of *Malak Singh Vs. State of P&H* reported in (1981) 1 SCC 420 has held as under :

> 7. As we said, discreet surveillance of suspects, habitual and potential offenders, may be necessary and so the maintenance of

> history sheet and surveillance register may be necessary too, for the purpose of prevention of crime. History sheets and surveillance registers have to be and are confidential documents. Neither the person whose name is entered in the register nor any other member of the public can have access to the surveillance register.....

The Supreme Court in the case of *Bhim Singh* (Supra) has held as under :

> 2.....Police officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct.....

41. During the course of arguments, it was submitted by the Counsel for the respondent no.3 that a mistake has been committed by respondent no.3, but that was committed in excitement and now he would abide by all the judgments passed by Supreme Court as well as High Court and now he would follow all instructions. The contention made by the Counsel for the respondent no.3 cannot be accepted. The Counsel for the respondent no.3 could not point out any provision of law, which gives authority or exemption to the respondent no. 3 from deviating his duties under excitement. Further, this admission clearly establishes that the respondent no. 3 had acted in a haste under rash and reckless excitement without any due care and attention. Further, what was the need of excitement is also not known.

42. Thus, it is clear that not only the petitioner was taken in unlawful detention, but he was projected in the media that he is a "an accused with reward of Rs. 5000". Although, the respondents no. 3 and 5 had, intentionally apprehended the petitioner in an unlawful manner, but unfortunately, the police authorities have tried to project that it is a simple case of mistaken identity. Further, the respondents no. 1 and 2, in their compliance report dated 20-10-2020, have filed a copy of news published in the newspaper that the respondent no. 3 has been suspended for **arresting an innocent person.** Thus, it is the case of the respondents no. 1 and 2 also, that the petitioner was arrested but is completely silent as to why formal arrest memo was not prepared?

43. It is a well established principle of law that there is a difference between "Custody" and "Arrest". The Supreme Court in the case of *Khatri (2) v. State of Bihar,* reported in (1981) 1 SCC 627, has held as under :

> **7.** There are two other irregularities appearing from the record to which we think it is necessary to refer. In the first place in a few cases the accused persons do not appear to have been produced before the Judicial Magistrates within 24 hours of

> their arrest as required by Article 22 of the Constitution. We do not wish to express any definite opinion in regard to this irregularity which prima facie appears to have occurred in a few cases, but we would strongly urge upon the State and its police authorities to see that this constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest must be scrupulously observed. It is also clear from the particulars furnished to us from the records of the Judicial Magistrates that in some cases particularly those relating to Patel Sahu, Raman Bind, Shaligram Singh and a few others the accused persons were not produced before the Judicial Magistrate subsequent to their first production and they continued to remain in jail without any remand orders being passed by the Judicial Magistrates. This was plainly contrary to law. It is difficult to understand how the State continued to detain these accused persons in jail without any remand orders. We hope and trust that the State Government will inquire as to why this irregularity was allowed to be perpetrated and will see to it that in future no such violations of the law are permitted to be committed by the administrators of the law. The provision inhibiting detention without remand is a very healthy provision which enables the Magistrates to keep check over the police investigation and it is necessary that the Magistrates should try to enforce this requirement and where it is found to be disobeyed, come down heavily upon the police.
>
> (Underline supplied)

The Supreme Court in the case of *Mohd. Arif v. State (NCT of Delhi),* reported in (2011) 13 SCC 621 has held as under :

> **168.** Firstly speaking about the formal arrest, for the accused being in custody of the investigating agency he need not have been formally arrested. It is enough if he was in custody of the investigating agency meaning thereby his movements were under the control of the investigating agency. A formal arrest is not necessary and the fact that the accused was in effective custody of the investigating agency is enough. It has been amply proved that the accused was apprehended, searched and taken into custody. In that search the investigating agency recovered a pistol from him along with live cartridges, which articles were taken in possession of the investigating agency. This itself signifies that immediately after he was apprehended, the accused was in effective custody of the investigating agency.

The Supreme Court in the case of *Sundeep Kumar Bafna v. State of Maharashtra,* reported in (2014) 16 SCC 623 has held as under :

> **7.** Article 21 of the Constitution states that no person shall be deprived of his life or personal liberty except according to

> procedure established by law. We are immediately reminded of three sentences from the Constitution Bench decision in *P.S.R. Sadhanantham* v. *Arunachalam,* which we appreciate as poetry in prose: (SCC p. 144, para 3)
>
> > "3. Article 21, in its sublime brevity, guardians human liberty by insisting on the prescription of procedure established by law, not fiat as *sine qua non* for deprivation of personal freedom. And those procedures so established must be fair, not fanciful, nor formal nor flimsy, as laid down in *Maneka Gandhi case.* So, it is axiomatic that our constitutional jurisprudence mandates the State not to deprive a person of his personal liberty without adherence to fair procedure laid down by law."
>
> Therefore, it seems to us that constriction or curtailment of personal liberty cannot be justified by a conjectural dialectic. The only restriction allowed as a general principle of law common to all legal systems is the period of 24 hours post arrest on the expiry of which an accused must mandatorily be produced in a court so that his remand or bail can be judicially considered.

44. It is clear that after taking the petitioner in unlawful custody, the respondents no. 3 and 5 did not waste a single minute in sending the press note with photograph to I.T., Cell, Office of S.P. Gwalior. Although the Add. Superintendent of Police, City (Center), Gwalior, during preliminary enquiry has recorded the statement of Head Constable 1875 Surendra Kumar Bhatele, who has stated that on 14-8-2020, the respondent no.3 had sent a message for preparing a press note on his *Whatsapp,* but conveniently did not mention the time of sending such message.

45. All the important documents have been withheld by the Police, and even on the directions of the Court, only the file pertaining to the suspension of the respondent no. 3 and some copies of different orders were sent, some of which have been reproduced in this order. Be that as it may be.

46. From the file of suspension of the respondent no. 3, it appears that the respondent no.3 was suspended by order dated 14-8-2020. Thereafter, the respondent no.3 moved an application for revocation of his suspension on 28-8-2020, and on the very same day, his suspension order was revoked. It is not out of place to mention here, that on 14-8-2020, a report was submitted by Additional Superintendent of Police, City (Center), Gwalior, that the petitioner was unlawfully detained in police station Bahodapur. Thereafter on 3-10-2020, a show cause notice was issued to respondent no. 3. It is not out of place to mention here that the notices of this petition were issued for the first time, by this Court on 8-9-2020. Thus, it is clear that after taking an application from the respondent no.3

for revocation of his suspension, the Superintendent of Police, Gwalior revoked his suspension on the very same day and the chapter was closed. However, only after receiving the notice from this Court, the first show cause notice was given to the respondent no. 3 on 3-10-2020 and accordingly, a fine of Rs. 5000 was imposed by order dated 14-10-2020, i.e., just two days prior to filing of first compliance report. Thus, it is clear that the police department has not taken the misdeeds of the respondents no. 3 to 5 with all seriousness and took the matter as if the police has a right to tarnish the *privacy/personal liberty/reputation* of any citizen at their sweet will. ***Thus, the Advocate General of the State was right in making a statement before this Court on 2-11-2020, that the matter has been handled in a most causal manner and he may be granted time to reconsider the steps taken against the respondents no. 3 to 5. Thus, it is clear that even the Advocate General of the State was not satisfied with the manner in which the police authorities had handled the case against the respondents no. 3 to 5.*** Be that as it may.

47. The Counsel for the respondent no. 5 submitted that all the police personals (sic: personnel) which are visible in the photograph have not been proceeded against by the Superintendent of Police, Gwalior and he has deliberately adopted the policy of pick and choose, and the respondent no.5 has been made a scapegoat. In reply, it is submitted by Shri Amit Sanghi, Superintendent of Police, Gwalior, that action was taken on the basis of the Preliminary Enquiry Report in which it was concluded that the respondents no. 3 and 5 are responsible for unlawful custody.

48. Considered the submissions made by the Counsel for the respondent no. 5 and Shri Amit Sanghi, S.P., Gwalior. In the preliminary enquiry report, the enquiry officer has not considered the role played by all other team members who are visible in the photograph. Therefore, the Superintendent of Police, Gwalior is directed to conduct an enquiry with regard to the role of all other police personals (sic: personnel) who were the members of the team, which had illegally apprehended the petitioner and are visible in the Photograph and take action accordingly.

49. The Supreme Court in the case of *Arnab Manorajan Goswami Vs. State of Maharashtra,* by Judgment dated 27-11-2020 passed in **Criminal Appeal No. 742 of 2020** has held as under :

> **59.** These principles are equally applicable to the exercise of jurisdiction under Article 226 of the Constitution when the court is called upon to secure the liberty of the accused. The High Court must exercise its power with caution and circumspection, cognizant of the fact that this jurisdiction is not a ready substitute for recourse to the remedy of bail under Section 439 of the CrPC .....

60. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of the CrPC —or prevent abuse of the process of any Court or otherwise to secure the ends of justice!. Decisions of this court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one - and a significant -end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post Independence, the recognition by Parliament of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive .....Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. Equally it is the duty of courts across the spectrum - the district judiciary, the High Courts and the Supreme Court - to ensure that the criminal law does not become a weapon for the selective

> harassment of citizens. Courts should be alive to both ends of the spectrum -the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.

50. As already held in previous paragraph that even according to respondents no.1 and 2, the petitioner was arrested but still memo of arrest was not prepared. The Supreme Court in the case of *D.K. Basu Vs. State of W.B.* reported in AIR 1997 SC 610 has held under :

> **35.** We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures:*
>
> (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
>
> (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
>
> (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
>
> (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

51. Thus, it is clear that since the petitioner had not handed over the vacant possession of the shop to the landlady, as per his undertaking given by him on 25-7-2020 in police station Bahodapur, Distt. Gwalior, therefore, he was taken in unlawful custody on 14-8-2020 by the respondents no. 3 and 5 and was brought to

the police station Bahodapur at 13:56 and was released at 21:37 only after the intervention of the Superintendent of Police, Gwalior. Further, after taking him in custody, he was not formally arrested and no attempt was made by the respondents no. 3 and 5 to verify that whether the petitioner is the same person against whom a reward of Rs. 5000 has been declared by the S.P., Gwalior or not, specifically when the residential address of the petitioner is different. Further, without formally arresting him, the respondents no. 3 and 5 projected in the media (Print as well as Social) that the petitioner is a "an accused with reward of Rs. 5000" and has been arrested. Further even after release of the petitioner from the Police Station, no attempts were made to withdraw the press release from Print Media, and it was prominently published in the news paper on the next day, that the petitioner is a criminal and has been arrested. Thus, it is held that the fundamental right of the petitioner as enshrined under Article 21 of the Constitution of India has been deliberately and unfortunately with malafide intentions was grossly violated by the respondents no. 3 and 5.

52. Thus, the present case is a glaring example of police atrocities and gross violation of directions issued by the Supreme Court in the case of *D.K. Basu* (1997) (Supra). Not a single direction given by the Supreme Court in the case of *D.K. Basu* (1997) (Supra) was followed.

53. **Quantum of Compensation**

54. This Court by order dated 2-11-2020, has already held that in case of violation of fundamental right of a citizen of India, this Court can grant compensation.

55. The respondents no. 1 and 2 in their compliance report dated 9-11-2020, have submitted that the quantum of compensation may be decided by this Court.

56. The Petitioner has filed a copy of the application dated 18-8-2020, which was given to the Superintendent of Police, Gwalior in which it has been pleaded by the petitioner that because of forcible taking out his belongings from the shop, he has suffered a monetary loss of Rs. 3 Lacs. Thus, it is directed that the respondent no. 1 shall pay a compensation of Rs. 5 lacs to the petitioner i.e., Rs. 2 lacs for causing damage during forcible taking out of his belongings from his shop on 25-7-2020 and Rs. 3 lacs for grossly violating the fundamental right of the petitioner. The compensation of Rs. 5 lacs be paid by respondent no.1, within a period of one month from today. The compensation amount, so paid to the petitioner shall be recovered by the respondent no.1 from the salary/dues/suspension allowance of the respondents no. 3, 4 and 5. An amount of Rs. 3 lacs shall be recovered from the respondent no.3, an amount of Rs. 1 lacs each shall be recovered from the respondent no. 4 and 5. The respondent no. 2 is directed to ensure the compliance of payment of compensation and shall file the acknowledgment of receipt of compensation within a period of 35 days from today before the Principal Registrar of this Court. The Petitioner is

further granted liberty that if he so desires, then he can file a civil suit for recovery of more compensation, and in that case, the compensation of Rs. 2 lacs awarded towards loss shall be adjustable.

57. **Whether the act of respondents no. 3 to 5 amounts to criminal act or not and whether they are liable to be prosecuted under different provisions of Indian Penal Code, as well as Prevention of Corruption Act?**

58. It is submitted by the Superintendent of Police, that forcible eviction of a person from the tenanted premises is not the duty of the police and as per the preliminary enquiry report, it was found that the respondents no. 4 and 5 are *prima facie* guilty of forcibly evicting the petitioner from his shop. Further the respondent no.3 has also admitted in his return that vacating property is a civil dispute, and police has no jurisdiction. It is also evident from the departmental charge sheet, that a charge of forcible eviction of the petitioner from his shop has been leveled. Further, from the documents relied upon by the respondents no. 3 and 4 as well as Whatsapp text message of Reserved Inspector Shri Arvind Dangi, it is also clear that the petitioner was forcibly evicted by the landlady with the active help of the respondents no. 3 to 5. This act of respondents no. 3 to 5 would certainly amount to criminal act. Further, the unlawful detention of the petitioner on 14-8-2020 would also be a criminal act. However, it is submitted by Shri Amit Sanghi, Superintendent of Police, Gwalior that since, a deeper enquiry was required, therefore, no F.I.R. has been registered against the respondents no. 3 to 5.

59. Further, it is submitted by the Additional Advocate General, that the discretion of the Station House Officer, not to lodge the FIR cannot be taken away and this Court cannot direct for lodging the F.I.R. This submission is directly in conflict with the judgment passed by the Supreme Court in the case of *Lalita Kumari Vs. State of U.P.,* reported in (2014) 2 SCC 1.

60. The Supreme Court in the case of *Lalita Kumari* (Supra) has held that where the complaint discloses the commission of cognizable offence, then the police officer is under obligation to register the F.I.R. However, if the police officer so desires, may also conduct a preliminary enquiry before lodging the F.I.R. and preliminary enquiry should be completed within a period of seven days. In the case of *Lalita Kumari* (Supra) it has been held as under :

> **120.** In view of the aforesaid discussion, we hold:
>
> **120.1.** The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> **120.2.** If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a

preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(*a*) Matrimonial disputes/family disputes

(*b*) Commercial offences

(*c*) Medical negligence cases

(*d*) Corruption cases

(*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the

> decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

61. Thus, the stand taken by Superintendent of Police, Gwalior, that unless and until a deeper enquiry into the matter is conducted, the FIR could not have been lodged against the respondents no. 3 to 5 is incorrect. When a complaint discloses commission of cognizable offence, then in some cases, a preliminary enquiry may be conducted. In this Case, preliminary enquiries were conducted regarding incident dated 25-7-2020 and 14-8-2020 and in both the preliminary enquiries, it was found that the respondents no. 3 to 5 ***are prima facie guilty.*** Thus, in the light of the judgment passed by Supreme Court in the case of *Lalita Kumari* (Supra), nothing more was required to be done by the S.H.O., Police Station Bahodapur, Distt. Gwalior before lodging a F.I.R. against the respondents no. 3 to 5. Further more, the contention of the Counsel for the State that the discretion of the police officer, not to lodge the FIR cannot be taken away by the Court is concerned, it is palpably misconceived and contrary to the law of Land. In the case of *Lalita Kumari* (Supra) it has been held that registration of FIR under Section 154 of Cr.P.C. is mandatory, where the information discloses commission of cognizable offence.

62. It is further submitted by the Counsel for the State that so far as the incident dated 14-8-2020 is concerned, the act of the respondents no. 3 and 5 would be covered by Section 76 of Indian Penal Code, therefore, they cannot be prosecuted. By relying on illustration (b) of Section 76 of Penal Code, it is submitted that since, the respondents no. 3 and 5 had taken the petitioner in custody under a belief, that he is the same person, against whom a reward of Rs. 5000 has been declared and is wanted in a criminal case, therefore, even if they have committed a mistake, but still, it cannot be said that they have committed any offence.

63. Heard Shri M.P.S. Raghuvanshi, Additional Advocate General for the State.

64. Section 76 of Indian Penal Code reads as under :

> **76. Act done by a person bound, or by mistake of fact believing himself bound, by law.**—Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.
>
> *Illustrations*
>
> *(a) A,* a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. *A* has committed no offence.

> *(b) A,* an officer of a Court of Justice, being ordered by that court to arrest *Y*, and, after due enquiry, believing *Z* to be *Y*, arrests *Z. A* has committed no offence.

65. For application of Section 76 of Penal Code, the following circumstances must exist :

(a) The person must be an officer of a Court of Justice;

(b) There must be an order of the Court

(c) Before arresting a person, he must have conducted an enquiry;

(d) He must have bonafide belief, that he is arresting the same person, against whom an order of the Court has been issued.

66. However, if the present case is considered, then none of the above mentioned ingredients are present. Neither the respondents no. 3 and 5 are the officer of a Court of Justice, nor there is any order of the Court. Further, admittedly no enquiry was done by the respondents no. 3 and 5 before apprehending the petitioner, nor there was any bonafide belief on their part to do so.

67. The present case is a glaring example of gross misuse of police uniform. As already pointed out, that although the Superintendent of Police, Gwalior acted promptly after receiving an information of unlawful detention of the petitioner, and did every thing to protect the fundamental rights of the petitioner, but thereafter, all efforts have been made to protect the respondents no. 3 to 5, inspite of clear findings by the enquiry officers themselves, that the respondents no. 3 to 5 have acted in an illegal manner. Be that as it may. Under these compelling circumstances, this Court cannot ignore its constitutional duty by relegating the petitioner to file complaint against the respondents no. 3 to 5, therefore, the Superintendent of Police, Special Police Establishment (Lokayukt) Gwalior is directed to lodge a F.I.R. against the respondent no. 3 to 5 for their criminal acts committed in their official uniform, including offence under Sections 294,323,341,379,380,424,452,34 of I.P.C. and under Section 7,7-A of Prevention of Corruption Act, 1988. Further, the S.P.E. (Lokayukt) shall be free to implicate any other person, who appears to have committed offence, either under any provision of I.P.C. or under any provision of Prevention of Corruption Act, 1988, including under Section 12 of Prevention of Corruption Act. **Let this exercise be done within a period of fifteen days from today and the copy of the FIR should be submitted before the Principal Registrar of this Court, within a period of 16 days from today.**

68. Before concluding the order, this Court thinks it apposite to point out hostile attitude of the Police Department in protecting the life and liberty of the citizens of India. This Court by order dated 2-11-2020, had quashed a part of circular dated 2-1-2014 issued by the Director General of Police and had quashed the provisions by

which the police was authorized to share the personal information and photographs of accused and victims (covered or uncovered) with the media. Further patrolling of accused in general public was also held to be violative of Article 21 of the Constitution of India, and accordingly, the Director General of Police, Bhopal, was directed to issue necessary instructions in this regard. During the course of arguments, it was pointed by Shri M.P.S. Raghuvanshi, that circular dated 7-11-2020 has been issued, and when he was directed to point out that whether there is any direction to the police personals (sic: personnel), not to publically parade the accused persons in general public, then he prayed that since it is already 1:30 P.M., therefore, he would reply after tea break. Accordingly after tea break it was submitted by Shri M.P.S. Raghuvanshi, Add. Advocate General, that he has taken instructions, and in fact clause 7 of circular dated 7-11-2020 specifically provides that the accused persons should not be produced before the Media, and that would cover parading in General Public also.

69. Clause 7 of circular dated 7-11-2020 reads as under :

> 7. गिरफ्तार व्यक्ति को मीडिया के समक्ष किसी भी हालत मे प्रस्तुत न करे।

70. Unfortunately, the State Police, is still not ready to realize the importance of liberty of the citizen of India. When this Court had restrained the police from parading the accused persons in general public, then by no stretch of imagination, the non-parading of accused in general public would be covered by clause 7 of Circular dated 7-11-2020. Further, Shri M.P.S. Raghuvanshi, Add. Advocate General submitted that it has come to the notice of the Police Headquarters, that inspite of the fact that parading of accused persons in general public has been held to be violative of Article 21 of the Constitution, still in some cities of State of Madhya Pradesh like Ujjain etc, such incidents have taken place and accused persons were paraded in general public, and submitted that Police Headquarter will take action. Since, this submission made by Shri M.P.S. Raghuvanshi, Add. Advocate General is not the subject-matter of this Case, therefore, it is left to the wisdom of the Police Department. However, Shri M.P.S. Raghuvanshi, Additional Advocate General submitted that a specific circular restraining the police from parading the accused persons in general public shall be issued and accordingly, after the conclusion of hearing, he supplied a copy of order dated 26-11-2020 issued by the Police Headquarters, directing that no parading shall be done in general public. The said order dated 26-11-2020 is taken on record.

71. With aforesaid observations, this petition is **Allowed, with cost of Rs. 20,000/-** payable jointly by respondents no. 3 to 5 to the petitioner within 15 days from today. They shall also file a copy of acknowledgment of receipt before the Principal Registrar of this Court, within a period of 16 days from today.

Let a copy of this order be sent to Superintendent of Police, Special Police Establishment (Lokayukt), Gwalior immediately for necessary action and compliance.

Petition allowed

I.L.R. [2021] M.P. 427
WRIT PETITION

Before Mr. Justice Sujoy Paul

W.P. No. 8963/2020 (Jabalpur) decided on 31 December, 2020

SASAN POWER LTD., SINGRAULI …Petitioner

Vs.

M.P. MICRO & SMALL ENTERPRISE FACILITATION COUNCIL & anr. …Respondents

A. Micro, Small and Medium Enterprises Development Act (27 of 2006), Sections 8, 17 & 18 and Constitution – Article 226/227 – Reference to Council **– Held – Act of 2006 provides a forum of making reference u/S 18 to "any party" in relation to any amount due – Act does not preclude an enterprise from redressal forum merely because it has not filed memorandum u/S 8 of the Act – Section 17 and sub-Sections of Section 18 must be read harmoniously and must be given wide construction taking into account the aim and object of Act – Council has taken a plausible view and has not committed any patent lack of inherent jurisdiction – No interference warranted under Article 226/227 of Constitution – Petition dismissed.**

(Paras 31 to 33, 38, 42 & 43)

क. सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धाराएँ 8, 17 व 18 एवं संविधान – अनुच्छेद 226/227 – परिषद को निर्देश – अभिनिर्धारित – 2006 का अधिनियम, किसी देय राशि के संबंध में ''किसी पक्षकार'' के लिए धारा 18 के अंतर्गत निर्देश करने का एक फोरम उपबंधित करता है – अधिनियम, उद्यम को प्रतितोषण फोरम से मात्र इसलिए प्रवारित नहीं करता कि उसने अधिनियम की धारा 8 के अंतर्गत ज्ञापन प्रस्तुत नहीं किया है – धारा 17 एवं धारा 18 की उप–धाराओं को समन्वयपूर्ण ढंग से पढ़ा जाना चाहिए और अधिनियम के लक्ष्य एवं उद्देश्य को विचार में लेते हुए व्यापक अर्थान्वयन दिया जाना चाहिए – परिषद ने तर्कसंगत दृष्टिकोण लिया है और अंतर्निहित अधिकारिता का कोई प्रत्यक्ष अभाव कारित नहीं किया है – संविधान के अनुच्छेद 226/227 के अंतर्गत किसी हस्तक्षेप की आवश्यकता नहीं – याचिका खारिज।

B. Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 18 – Object **– Held – Section 18 is a remedial provision – Words of a remedial statute must be construed "to give the most complete remedy which the phraseology permits" so as "to secure that the relief contemplated by Statute shall not be denied to the class intended to be relieved. (Para 31)**

ख. सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 18 – उद्देश्य – अभिनिर्धारित – धारा 18 एक उपचारात्मक उपबंध है – उपचारात्मक कानून के शब्दों का अर्थान्वयन ''सर्वाधिक पूर्ण उपचार, जिसे पदावली अनुमति दे, दिये जाने के लिए'' निकाला जाना चाहिए, जिससे कि ''यह सुनिश्चित किया जा सके कि कानून द्वारा अनुध्यात अनुतोष से उस श्रेणी को, जिसके लिए अनुतोष आशयित है, वंचित नहीं किया जाए''।

***C. Micro, Small and Medium Enterprises Development Act (27 of 2006), Section 18(3) – Conciliator & Arbitrator* – Held – Mr. M was the conciliator in instant case – It will be open for Council to proceed with Arbitration proceedings by excluding Mr. M as a member of arbitral body or refer the matter to any other institute or centre providing alternative dispute resolution service. (Paras 39 to 42)**

ग. सूक्ष्म, लघु और मध्यम उद्यम विकास अधिनियम (2006 का 27), धारा 18(3) – सुलहकर्ता व मध्यस्थ – अभिनिर्धारित – वर्तमान प्रकरण में श्री. एम. सुलहकर्ता थे – माध्यस्थम निकाय के एक सदस्य के रूप में श्री. एम. को अपवर्जित करते हुए माध्यस्थम कार्यवाहियां जारी रखने के लिए अथवा वैकल्पिक विवाद निवारण सेवा प्रदाता किसी अन्य संस्था या केंद्र को मामला निर्दिष्ट करने के लिए, परिषद स्वतंत्र होगी।

***D. Constitution – Article 226/227 – Scope of Interference* – Held – Scope of interference under Article 226/227 is very limited – If impugned orders suffer from any patent lack of inherent jurisdiction or from any manifest procedural impropriety or palpable perversity, interference can be made – Another view is possible is not a ground for interference – Court is not required to sit in appeal and reweigh/reappreciate entire material. (Para 28)**

घ. संविधान – अनुच्छेद 226/227 – हस्तक्षेप की व्याप्ति – अभिनिर्धारित – अनुच्छेद 226/227 के अंतर्गत हस्तक्षेप की व्याप्ति अति सीमित है – यदि आक्षेपित आदेश, अंतर्निहित अधिकारिता के किसी प्रत्यक्ष अभाव से या किसी प्रकट प्रक्रियात्मक अनौचित्य या स्पष्ट विपर्यस्तता से ग्रसित हैं, हस्तक्षेप किया जा सकता है – अन्य दृष्टिकोण संभव है, यह हस्तक्षेप के लिए एक आधार नहीं है – न्यायालय के लिए अपील में बैठकर संपूर्ण सामग्री का पुनः तोल/पुनः मूल्यांकन करना अपेक्षित नहीं।

***E. Interpretation of Statute – Text & Context* – Held – Interpretation of statute depends on the text and the context – Textual interpretation must match the contextual – It must be ascertained as to why the statute was enacted – Statute should be read as whole in its context and scheme to discover what each section, each clause, each phrase and each word is meant for. (Para 31)**

ङ. कानून का निर्वचन – पाठ्य भाग व संदर्भ – अभिनिर्धारित – कानून का निर्वचन, पाठ्य भाग एवं संदर्भ पर आश्रित होता है – पाठ्यपरक निर्वचन का संदर्भिक के साथ मेल होना चाहिए – यह सुनिश्चित किया जाना चाहिए कि कानून को क्यों अधिनियमित किया गया था – यह खोजने के लिए कि प्रत्येक भाग, प्रत्येक खंड, प्रत्येक

वाक्यांश एवं प्रत्येक शब्द किसके लिए अर्थांवित है, कानून को उसके संदर्भ एवं रचना में पूर्ण रूप से पढ़ा जाना चाहिए।

Cases referred :

2018 SCC OnLine Bombay 4542, 2018 SCC OnLine SC 3147, 2018 SCC OnLine Bom. 11003, 1998 (8) SCC 1, 2019 SCC OnLine SC 1602, AIR 1962 SC 1999, 2005 (7) SCC 791, 2019 SCC OnLine Gujarat 2474, 2003 (6) SCC 564, 2005 SCC OnLine Jhar 66, 2005 (8) SCC 618, 2014 (7) SCC 255, 2019 SCC OnLine SC 1154, 2017 (2) MPLJ 77, (2003) 6 SCC 564, (2014) 7 SCC 255, 2017 (3) MPLJ 600, (2010) 8 SCC 329, (1977) 2 SCC 256, (2013) 3 SCC 489, (1987) 1 SCC 424.

Naman Nagrath assisted by *Alok Hoonka* and *Jubin Prasad*, for the petitioner.

Sanjay Agrawal, for the respondent No. 2.

O R D E R

SUJOY PAUL, J.:- This petition filed under Article 226 of the Constitution assails the order dated 17.05.2019 Annexure P/3A, order dated 09.06.2020 (Annexure P/14) and other subsequent order passed by Respondent No.1.

FACTUAL BACKGROUND :-

2. Briefly stated, the petitioner is a Company incorporated under the provisions of the Companies Act 1956. The petitioner has set up a 3,960 MW Ultra Micro Power Project **(UMPP)** alongwith an Integrated Captive Coal Mines to meet the coal requirement of the said UMPP in District Singrauli, Madhya Pradesh. The project is generating and supplying electricity to various distribution companies of various States.

3. Respondent No.1 is a statutory body constituted under the provisions of Micro Small and Medium Enterprises Development Act, 2006 (**Act of 2006)** and the respondent No.2 is a Company incorporated under the provisions of Companies Act. As per petitioner's case, respondent No.2 is having its registered office at Raipur, Chhattisgarh. This Company is primarily involved in the business of manufacturing and supplying industrial explosives.

4. The petitioner awarded certain rate contracts since November, 2011 till 2018 to respondent No.2 for supply of explosives and accessories to carry out blasting activities to extract coal from its captive coal mines which is used for generation of electricity at its power plant. The petitioner's case is that at the time of registration of respondent as Wander, the petitioner was intimated by it that respondent No.2 is neither registered as a Micro Small and Medium Enterprises **(MSME)** nor as a Small Scale Industry **(SSI).**

5. The respondent No.2 sent a legal notice dated 19.12.2018 Annexure P/1 demanding an amount of Rs.9,77,07,857/-. Petitioner was called upon to clear the said amount alongwith penal interest. The petitioner contends that while sending this legal notice, the respondent No.2 did not inform the petitioner that it is registered as a small enterprise. Had it been registered under the Act of 2006, it would not have agreed for 90 days payment terms and contractual arbitration alongwith other terms of contract with the petitioner.

6. The petitioner, in turn, replied the legal notice on 31.12.2018 Annexure P/2. The petitioner stated that respondent No.2 had committed fraud in supply of material.

7. The respondent No.1 sent a notice dated 17.05.2019 to the petitioner intimating him that a Reference Petition under Section 18 of the Act of 2006 has been preferred by respondent No.2 for recovery of an outstanding amount of Rs.32,65,71,556/- and Rs.8,28,56,525/- as interest; total amounting to Rs.40,94,28,081/-. The allegation of respondent No.2 in his claim submitted before respondent No.1 in statutory form was that he had supplied goods (explosives) to petitioner but petitioner has not made the payments.

8. Upon receiving the said notice dated 17.05.2019 from respondent No.1, petitioner entered appearance before respondent No.1 and took preliminary objection dated 30.05.2019 Annexure P/4. The petitioner raised objection regarding jurisdiction of respondent No.1.

PETITIONER'S CONTENTIONS:-

9. Shri Naman Nagrath, learned senior counsel assisted by Shri Alok Hoonka, Advocate urged that the respondent No.1 ignoring the fact that Reference Petition was not maintainable, passed the order dated 05.07.2019 Annexure P/5 wherein it was held that parties have failed to settle their dispute amicably, therefore, conciliation proceedings are closed and matter is now referred for arbitration. The respondent No.1 itself decided to act as an Arbitrator. The petitioner again submitted an objection before respondent No.1 on 10.07.2019 Annexure P/6 reiterating its stand that Reference Petition was not maintainable for want of jurisdiction. The Reference deserves to be dismissed under Rule 7 of MP Micro & Small Enterprises Rules, 2017 (**Rules of 2017).** The claim of respondent No.2 on merits was also disputed by contending that it was not covered under Chapter V of the Act of 2006.

10. The petitioner is aggrieved by yet another order dated 05.08.2019 Annexure P/7 passed by respondent No.1 whereby said respondent itself decided to act as an Arbitrator.

11. Learned senior counsel for the petitioner by placing reliance on Section 18 of the Act of 2006 urged that it is a legislation by reference whereby certain

provisions of Arbitration & Conciliation Act, 1996 **(Act of 1996)** were incorporated in Section 18 of the Act of 2006. By virtue of such incorporation, Section 80 of the Act of 1996 became part of the Act of 2006. In the teeth of Section 80(1)(a) of the Act of 1996, the respondent No.1 Council had no authority, jurisdiction and competence to act as an Arbitrator.

12. The respondent No.2 in its application itself stated that its Udyog Adhar Number is CG 14B0008056 (Annexure-P/8) which indicates that it is a company based and registered at Chhattisgarh. The respondent No.2 submitted another Udyog Adhar Memorandum (UAM) only on 30.01.2019 after expiry of all the contracts pursuant to which the respondent No.2 supplied explosives to petitioner for a period between November, 2011 to March, 2018. During this period, all the contracts, bills etc. were generated and issued in the name of Special Blast Limited based at Chhattisgarh. No work was ever given in the name of the Unit located at Singrauli (M.P.), which is part and parcel of respondent No.2 and Singrauli Unit was not a separate legal entity. The respondent No.2 misled the Authorities and fraudulently got itself registered as a small unit.

13. Reference is also made to the balance sheet of respondent No.2 for the year 2017-18 in the head of investment on 'plant and machinery' as on 31.03.2018 which is to the tune of Rs.16,16,94,429/-, which is above the specified amount i.e. Rs.5 crores for manufacturing sector for classifying as a 'small enterprise' as provided under Section 7 of the Act of 2006. The Gazette Notification dated 29.09.2006 (Annexure-P/9) is relied upon for this purpose.

14. In the 30th Annual Report 2017-18 (Annexure-P/11), the respondent No.2 mentioned with heading 'breakup of fixed assets of Note -9' which makes it clear that investment in 'plant and machinery' was to the tune mentioned hereinabove.

15. The respondent No.1 took up reference petition for hearing on 30.10.2019 and after hearing the parties, closed the matter to decide the question of maintainability of reference. The Bench of Council on 3.10.2019 was consisting of Chairman - Mr. Ashok Shah and Members - Mr. D.C. Shahu, Ms. Ananya Viswas. The petitioner contends that after a period of more than seven months from the date reference petition was reserved for order on the issue of maintainability, the respondent No.1 on 30.05.2020 informed the petitioner that the matter is now listed on 09.06.2020 and proceedings will be conducted through video conferencing. Petitioner was expecting that the issue of preliminary objection raised by the petitioner will be decided. In between, there was change in Officers/Members of the Council and, therefore, the matter will be re-heard by the Council. On 09.06.2020, the preliminary objection raised by the petitioner was rejected. Soon before that on 06.06.2020, the respondent No.1 *suo motu* sought a report from General Manager, District Industrial Centre (DIC) Singrauli. The DIC by communication dated 07.06.2020 informed that Unit of respondent-company

was found to be functional. The respondent No.1 further held that the respondent No.2 has sent its Udyog Adhar Number as **MP 11 B0013174** which was found to be registered in Signrauli (M.P.). The Council opined that as per the balance sheet of respondent No.2 for the year 2018, the investment on 'plant and machinery' was Rs.1,83,99,841/- and, therefore, the Unit falls within the definition of 'MSME'.

16. On the basis of aforesaid factual backdrop, the petitioner assailed the impugned orders by contending : -

(i) The Council has miserably failed to examine the application /reference of respondent No.2 at the preliminary stage. As per sub-rule (5), (6) & (9) of Rule 7 of the Rules of 2017, the Council ought to have examined whether (a) the reference is pregnant with UAM number, (b) the applicant is located in the same State and (c) Council has jurisdiction to entertain the reference. In absence of UAM of MP, the reference was not maintainable.

(ii) The respondent No.2 is not a 'supplier' and was not entitled to file a reference under Section 18 of the Act of 2006. The definition of 'supplier' under the previous Act of 1993 has undergone sea change if examined on the anvil of Section 2(n) of MSME Act, 2006. 'Supplier' is a unit which has filed a memorandum with the authority referred to in sub-section (1) of Section 8. Thus, it is a mandatory pre-requisite for an enterprise classified as micro/small unit to have an UAM issued by the authorities under the territorial jurisdiction of concern MSME Council. The UAM must be with the supplier before entering the contract. UAM of Madhya Pradesh was obtained in January, 2019 and for this reason alone, reference should have been rejected.

(iii) There is a clear difference between 'enterprise' and 'supplier' under the Act of 2006. Section 7 provides classification of 'enterprise' on the basis of amount of investment in 'plant and machinery' whereas Section 8 is in two parts, namely, (a) those intending to establish and (b) already established before commencement of the Act of 2006. The respondent No.2 based its application/contract on the basis of a SSI Registration of 2004. Under proviso (a) and (b) of Section 8(1), the respondent No.2 had discretion to file memorandum within 180 days of commencement of the Act if it wanted to avail the benefits of a supplier. Only upon filing a memorandum, a micro or small enterprise acquires the status of a 'supplier'. All the suppliers under the MSME Act are either micro or small enterprise but all such enterprises need not be 'suppliers' having chosen not to file a memorandum at their discretion. Micro, small and medium enterprises acquire such status as per their investment in plant and

machinery are entitled to benefit and measures of promotions under Chapter IV wherein the benefits like credit facilities, procurement reference policy, grants by government etc. were made available to such 'enterprises'. In order to avail the benefit of adjudication through Council, it is only a 'supplier' which can invoke Chapter IV dealing with recovery of amount due to a supplier and reference at the behest of a supplier. Chapter V deals with recovery and reference through Council and reference is confined to a 'supplier'. This remedy is not provided to an 'enterprise'. The respondent No.2 may be an 'enterprise' having SSI Registration of 2004 but definitely not a 'supplier' to invoke jurisdiction of Council under Chapter V aforesaid.

(iv) Udyog Adhar Number must be available with the supplier on the date of contract is another limb of argument. To bolster this contention, *2018 SCC On Line Bombay 4542, (Scigen Biopharma Pvt. Ltd. vs. Jagtap Horticulatuer Pvt. Ltd.)* is relied upon.

(v) Second UAM from MP does not make the reference as maintainable. The UAM obtained from MP cannot have any retrospective effect. The supplier can file reference only when on the date of entering into contract, as well as on the date of filing of reference, he was having an UAM of concerned State.

(vi) The contention of respondent No.2 that the Company existing prior to commencement of the Act of 2006 is not included in the definition of 'supplier' under Section 2(n)(iii) is devoid of substance. Similarly, the argument of respondent No.2 that SSI Unit existing prior to 2006 were not required to file memorandum under Clause 12 of notification (Annexure-P/16) is baseless. Section 2(n)(iii) specifically deals with a Company 'selling goods' produced by micro or small enterprises so as to be included in the definition of 'supplier'. Respondent No.2 itself is not a manufacturer/ producer and is not a company 'selling goods' produced by some other micro or small enterprises. Section 2(n) (iii) does not help the respondent No.2.

(vii) The Council is barred from acting as an Arbitrator under Section 80 of Arbitration & Conciliation Act. By virtue of Section 18(2) of the Act of 2006, the provisions of Sections 65 to 81 of the Act of 1996 became part of the Act of 2006.

As per Section 80 of the Act of 1996, the Council cannot act as an Arbitrator in respect of a dispute, which is subject matter of conciliation proceeding. MSME Council having undertaken the proceeding of conciliation and after having recorded its

failure in the order sheet, cannot act as an Arbitrator and proceed ahead in the matter.

Under Section 18(3), the dispute has to be referred to any other institution or centre providing Alternative Dispute Resolution Service. Reliance is placed on Bombay High Court judgment in the cases of ***Gujarat State Petronet Ltd. Vs. Micro and Small Enterprises Facilitation Council, 2018 SCC OnLine SC 3147 and Mazgaon Dock Ltd Vs. MSME Council, 2018 SCC OnLine Bom. 11003*** and on the judgment of Karnataka High Court passed in ***WP No.9485/2017 (M/s Pal Mohan Electronics Pvt. Ltd. vs. The Secretary Department of Small Scale Industries)***.

(viii) The balance sheet of respondent No.2 (Annexure-R/2) shows that Rs.16.16 crores were invested in the head of 'plant and machinery'. Hence, respondent No.2 is not a small enterprise under the Act of 2006.

(ix) This petition is very much maintainable because there is an inherent lack of jurisdiction of the Council. The petitioner cannot be compelled to go through the cumbersome alternative redressal mechanism. Reliance is placed on ***1998 (8) SCC 1 (Whirlpool Corporation Vs. Registrar of Trade marks), 2019 SCC OnLine SC 1602 (Deep Industries Vs. ONGC), AIR 1962 SC 1999 (Hiralal Patni Vs. Kali Nath), 2005 (7) SCC 791 (Harshad Chimanlal Vs. DLF), 2019 SCC OnLine Gujarat 2474 (Easun Reyrolle Limited Vs. Nik San Engineer Co. Ltd.)***.

STAND OF RESPONDENT NO.2:-

17. Shri Sanjay Agrawal, learned counsel for the respondent No.2 on the other hand urged that the respondent No.2 is registered as SSI Unit in District Singrauli (Annexure-R/1) in the year 2004. Factory of respondent No.2 is situated at Singrauli (M.P.), but UAM of Chhattisgarh was issued based on office address of Raipur (Chhattisgarh). Subsequently, the office address of respondent No.2 was shifted to factory site and accordingly earlier UAM was cancelled and fresh UAM of MP No.11B0013174 was issued. The DIC Singrauli in its report dated 07.06.2020 opined that Unit is functional and existing at Singrauli within the territorial jurisdiction of respondent No.1. It is strenuously contended that having SSI Registration or UAM is not a mandatory condition for filing a reference.

18. The petitioner did not raise objection regarding the maintainability of reference under Section 18 before the Council. The petitioner agreed for resolution of dispute amicably. When efforts to amicably settle the dispute failed, Facilitation Council in its order dated 05.07.2019 recorded such failure and posted the matter for arbitral proceeding. There is no error in such procedure adopted by the Council.

Moreso, when conciliation proceeding did not take place with the intervention of Facilitation Council. The parties had tried to resolve their dispute amicably but since efforts went in vain, the parties gave information of such failure to the Council.

19. Shri Agrawal further pointed out that petitioner filed another application on 10.07.2019 (Annexure-P/6) for dismissal of reference but no objection regarding jurisdiction of the Council was taken. Yet another objection dated 28.10.2019 was rejected after hearing both the parties through video conferencing. There is no procedural impropriety in the procedure adopted by the Council. Emphasis is laid on the order sheet dated 28.10.2019 in respect of contention that although a Member of the Council was changed before this date of hearing, the fact remains that parties were given rehearing through video conference before the new body. Thus, argument of Shri Nagrath that at the time of hearing Bench was consisting of different Members whereas it was decided by different set of Members is factually incorrect.

20. At this interlocutory stage, when main reference is pending, the petition is not maintainable is the next contention of learned counsel for the respondent No.2. If final award goes against the petitioner, they may assail it under Section 34 of the Act of 1996. In view of 2003 (6) SCC 564 *(Food Corporation of India Vs. Indian Council of Arbitration and others),* Arbitral Tribunal needs to decide the question relating to scope, meaning purport and effect of arbitration clause between the parties. The whole attempt is to minimize the interference by Superior Courts. Same view is taken in 2005 SCC OnLine Jhar 66 *(State of Jharkhand Vs. M/s Himachal Construction Co. Pvt. Ltd.)* by the High Court. In 2005 (8) SCC 618 *(SBP & Company Vs. Patel Engineering Ltd.),* the Apex Court disapproved the practice adopted by some High Courts permitting to challenge the interlocutory orders passed by the Tribunal in a proceeding filed under Article 227 of the Constitution. The only course open to the petitioner is to assail the outcome of the reference in appropriate proceedings, namely Section 34/37 of the Act of 1996. The *ratio decidendi* of said cases is followed in 2014 (7) SCC 255 *(Lalit Kumar Vs. Sanghavi)* and 2019 SCC OnLine SC 1154 *(Sterling Industries Vs. Jai Prakash Association),* 2017 (2) MPLJ 77 *(Ellora Papaer Mills Ltd. Vs. State of M.P. and others).*

21. Further more, Shri Agrawal contended that a conjoint reading of Section 2(e), 2(m) and Section 7(a)(ii) of the Act of 2006 shows that respondent No.2 falls within the ambit of 'Small Enterprise'. 'Enterprise' and 'Supplier' has no serious distinction as per Act of 2006 which could have deprived the respondent No.2 to file the instant reference. By taking this Court to the language employed in Section 8 of the Act of 2006, it is urged that the law makers cautiously used the expression 'intend to establish'. The filing of memorandum by the small enterprise is discretionary. The only requirement must be 'located' within the jurisdiction of

Council. Reference is also made to Section 18(3) and (4) of the Act of 2006. The respondent No.2 is a scheduled industry as per First Schedule (Item 19) to the Industries (Development and Regulation) Act, 1951.

22. In support of the aforesaid contention, Shri Agrawal placed reliance on the judgments of *Food Corporation of India vs. Indian Council of Arbitration and others,* (2003) 6 SCC 564, *State of Jharkhand vs. M/s Himachal Construction Co. Pvt. Ltd.,* 2005 SCC OnLine Jhar 66, *Lalitkumar vs. Sanghavi vs. Dharamdas V. Sanghavi and others,* (2014) 7 SCC 255, *Sterling Industries vs. Jayprakash Associates Ltd. and others,* 2019 SCC OnLine SC 1154, *Ellora Paper Mills Ltd. vs. State of M.P. and others,* 2017 (2) MPLJ 77, *Shivhare Road Lines, Gwalior vs. Container Corporation of India Ltd., Noida and another,* 2017 (3) MPLJ 600, *M/s Ramky Infrastructure Private Limited vs. Micro and Small Enterprises Facilitation Council and another* (WP(c) No.5004/ 2017 & CM No.21615/2017 of Delhi High Court), *M/s Equipment Conductor & Cable Ltd., New Delhi vs. Transmission Corporation of Andhra Pradesh Ltd.* (Award dated 21.06.2010 passed by HMSEFC), *The Indur District Cooperative vs. M/s Microplex (India)* (WP No.35872/2012 of Andhra Pradesh High Court), *Punjab State Power Corporation Ltd. vs. Emta Coal Ltd. and another* (SLP(C)No.8482/2020) and *Deep Industries Limited vs. Oil and Natural Gas Corporation Limited and another,* 2019 SCC OnLine SC 1602.

23. Lastly, Shri Agrawal placed reliance on the relevant balance-sheet (page 61) which shows that in the head of plant & machinery, amount of Rs.1,83,99,841/- is shown which is well within the prescribed limit for treating the respondent No.2 as a small enterprise. The total balance as on 31.03.2018 as per this balance-sheet is Rs.2,06,80,168/-. This amount is duly certified by a Chartered Accountant by its certificate dated 12.11.2019.

24. The Reserve Bank of India (RBI) Memorandum dated 13.07.2017 is relied upon to contend that a certificate issued by a Chartered Accountant regarding purchase price of plant & machinery is sufficient to satisfy the purpose of classification under the Act of 2006. Shri Agrawal further contend that the RBI circular dated 06.12.2010 Annexure 2 makes it clear that the Act of 2006, in the opinion of RBI, does not provide for clubbing of two or more enterprises. Hence, previous notification on this subject dated 01.01.1993 was rescinded. Point was clarified by another memorandum by the Office of Development Commissioner, MSME on 29.09.2015 Annexure A/3. It was decided that the investment in plant & machinery of all enterprises under same ownership shall be clubbed together while assessing the status of MSME as per the Act of 2006. This circular stood withdrawn pursuant to another circular dated 03.03.2016 issued by Office of Development Commissioner, MSME. In view of these circulars, it is clear that the petitioner falls within the ambit of small enterprise.

25. Both the parties filed their written submissions.

26. Parties confined their arguments to the extent indicated *hereinabove.*

FINDINGS:-

27. I have bestowed my anxious consideration on the rival contentions and perused the record. In view of rival contentions advanced at the bar, broadly following issues emerged for determination:

(A) Whether respondent No.2 committed any jurisdictional error or illegality which warrants interference by this Court under Article 226/227 of the Constitution ?

(B) Whether Council committed any error in acting as an Arbitrator after failure of conciliation proceedings ?

Issue (A):-

28. Before dealing with this issue in sufficient detail, it is apposite to mention that scope of interference under Article 226/227 of the Constitution is limited. If orders impugned suffer from any patent lack of inherent jurisdiction or suffer from any manifest procedural impropriety or palpable perverseity, interference can be made. Another view is possible, is not a ground for interference. This Court is not required to sit in appeal and reweigh/reappreciate the entire material at this stage. In other words, this Court is not obliged to act as a bull in a china shop to disturb the finding unless the aforesaid litmus test is satisfied (See: *Shalini Shyam Shetty & another vs. Rajendra Shankar Patil,* (2010) 8 SCC 329).

29. The jurisdiction of Council is called in question by contending that respondent No.2 did not have UAD Memo of MP at the time of entering into contract. This aspect ought to have been examined at the threshhold as mandated in Rule 7 of Rules of 2017. Merely because respondent No.2 is 'located' in M.P. will not bestow jurisdiction to the Council in M.P.

30. Section 2(e) of the Act of 2006 reads as under:

> *"(e) 'enterprise' means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services."*

Section 7(1)(a) & (ii) of the Act of 2006 reads as under:

> *"(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the*

First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951),as--

(ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees."

31. Indisputably, the registration of respondent No.2 is of 2004 which is prior to the commencement of the Act of 2006. In view of this statutory provision, the question raised is whether the Council has committed any patent lack of inherent jurisdiction in entertaining the reference. The jurisdiction of Council can be traced from Section 18 which reads thus :-

"18. ***Reference to Micro and Small Enterprises Facilitation Council.-***

(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, ***with regard to any amount due*** *under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.*

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

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

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

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

[Emphasis Supplied]

The Act of 2006 has a scheme designed to provide for facilitating the promotion, development and enhancement of competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto. The said Act, in the considered opinion of this Court is a beneficent legislation introduced in order to promote the said enterprises. A statute of this nature must be given liberal and wide construction.

Sub-section (1) of Section 18 is pregnant with an expression "any party to a dispute may, with regard to any amount due". The use of words 'any party' makes it very wide which shows that any effected party "in relation to any amount due" may make a reference to the Council. The restricted view canvassed by learned senior counsel Mr. Nagrath which confines this right to only for a supplier to file a reference is based upon literal reading of sub-section (4) of Section 18. In sub-section (4), the expression used is 'in a dispute between the supplier located within its jurisdiction and buyer'. This literal and narrow interpretation deserves acceptance if said expression is read in isolation and totally divorced from Section 18 (1) and the object and scheme of the Act of 2006. The said Act does not intend to deprive a small enterprise from the benefit of filing reference.

The Act of 2006 was brought into force in order to promote and develop the micro, small and medium enterprises. Sub-section (1) of Section 18 permits 'any party' to a dispute to file a reference with regard to any amount due under Section 17 of the Act of 2006. The conjoint and careful reading of Section 17 & 18 of the Act of 2006 shows that 'any party' means a party in whose favour amount based on goods supplied or services rendered is due. Thus, 'any party' is relatable to the said dues and cannot be restricted to a party who has filed memorandum under Section 8 of the Act of 2006. Section 17 and sub-sections of Section 18 must be read harmoniously and must be given wide construction taking into account the aim and object of the Act. It cannot be forgotten that adopting the principle of literal construction of the statute alone, in all circumstances without examining the context and scheme of the statute, may not subserve the purpose of the statute. In the words of V.R. Krishna Iyer, J., *such approach would be "to see the skin and miss the soul". Whereas, "the judicial key to construction is the composite perception of* ***Deha*** *and* ***Dehi*** *of the provision." (See: Board of Mining Examination vs. Ramjee* (1977) 2 SCC 256). *This principle was followed by Supreme Court in* (2013) 3 SCC 489 *(Ajay Maken vs. Adesh Kumar Gupta vs. Another)*.Thus, text and context both are equally important.

In other words, the interpretation of a statute depends on the text and the context. The textual interpretation must match the contextual. First it must be ascertained as to why the statute was enacted. Keeping in mind this aspect the statute should be read as whole, in its context and scheme, to discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire act (See: (1987) 1 SCC 424, *[RBI vs. Peerless General Finance & Investment Company Ltd.])*. Section 18 of the Act of 2006 is a remedial provision. The general principle in construing a remedial statute the Courts ought to give to it "the widest operation which its language will permit. They have only to see that the particular case is within the mischief to be remedied and falls within the language of the enactment." The words of such a statute must be so construed as "to give the most complete remedy which the phraseology will permit," so as "to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved." (See: *Principles of Statutory Interpretation, 12th Edition 2010 Page-870, by Justice G.P. Singh)*.

32. Applying the said acid test in the present matter, in my view the Act of 2006 provides a forum of making reference under Section 18 to 'any party' in relation to any amount due. Scheme of the Act does not preclude an enterprise from a redressel (sic: redressal) forum merely because said enterprise has not filed memorandum under Section 8 of the said Act. I find support in my view from the judgment of Andhra Pradesh High Court in the following case- *The Indur District Cooperative vs. M/s Microplex (India)* (Supra), wherein it was opined as under:

> "It *would be anomalous to interpret the definition to mean that for a micro or small enterprise to be a supplier, it must mandatorily file a memorandum under Section 8(1), but any company, co-operative society, trust or body, which either sells goods or renders services of a micro or small enterprise, would automatically qualify as a supplier, irrespective of whether or not such micro or small enterprise has itself filed a memorandum under Section 8(1) Given the totality of the definition and the scheme and import of the enactment, this Court is inclined to accept the submission of Sri Ashok Anand Kumar, learned counsel, that the phrase which has filed a memorandum with the authority in Section 2(n) is only qualifying and does not curtail the scope of the definition.*
>
> *Therefore, filing of a memorandum under Section 8(1) of the Act of 2006 is not a condition precedent for a micro or small enterprise, which otherwise satisfies such description under the Act of 2006, to be included within the ambit of a supplier as defined under Section 2(n). The first respondent company in each of these cases would therefore qualify as a supplier under the said definition and their claims before the Council did not stand invalidated on this ground'"*
>
> *[Emphasis Supplied]*

It was further held that:

> "As *long as these companies were suppliers within the meaning of Section 2(n) of the Act of 2006 and were located within the jurisdiction of the Council, as required by Section 18(4). the Council had jurisdiction to deal with their claims. In this regard it is relevant to note that what is required is only that they are located within the jurisdiction of the Council and not that they should be registered or have their registered office within such jurisdiction.*"
>
> *[Emphasis Supplied]*

33. In view of this judgment, in the considered opinion of this Court, the Council has taken a plausible view. In other words, if the view taken by the Council matches with the view taken by the Andhra Pradesh High Court, by no stretch of imagination, the said view can be treated as a view not plausible at all. Such a plausibe view cannot be subject matter of challenge under Article 226/227 of the Constitution.

34. The 'plant & machinery' head contains an amount of Rs.2,06,80,168/-which is within prescribed limit (which does not exceed Rs.5.00 crore) as per Section 7(1)(a)(ii) of the Act of 2006. The balacne sheet is duly certified by a Chartared Accountant.

35. True it is that the matter was heard by the Council on the question of jurisdiction and it was reserved for orders. However, the matter was reheard on 09.06.2020 through Video Conferencing whereby both the objections of petitioner Annexure P/6 and Annexure P/10 were decided by the Council. Although the constitution of Council has undergone a change after the matter was reserved for order and before the impugned orders were passed. However, after such change had taken place in the constitution of Council, the parties were duly heard on 09.06.2020. Thus, the argument of petitioner that reference was heard by one set of Members and decided by another is factually incorrect and does not require any interference.

36. The Courts in catena of judgments opined that in arbitration matters and matters of this nature, the interference of Courts should be minimal at interlocutory stage. In *Food Corporation of India Vs. Indian Council of Arbitration and others* (Supra), the Apex Court opined as under:

> *"Adverting to Section 16 of the 1996 Act the Constitution Bench also held that questions relating to the improper constitution of Arbitral Tribunal or its want of jurisdiction or objections with respect to the existence or validity of the arbitration agreement are matters which should be canvassed before the Arbitral Tribunal itself which has been specifically empowered to rule*

> *on such issues and on its own jurisdiction, as well. Unfortunately, the High Court in this case seems to have proceeded to adopt an adjudicatory role and returned a verdict recording reasons as to the very existence or otherwise of the agreement as well as the tenability and legality or otherwise of making a reference to an arbitrator."*
>
> *[Emphasis Supplied]*

This judgment was followed by Jharkhand High Court in the case of *State of Jharkhand Vs. M/s Himachal Construction Co. Pvt. Ltd.* (Supra). In the case of *Lalitkumar vs. Sanghavi vs. Dharamdas V. Sanghavi and* others (Supra), the Apex Court placed reliance on its judgment of seven Judges' Bench in the case of *SBP & Company vs. Patel Engineering Ltd.* (Supra) wherein Apex Court disapproved the stand adopted by various High Courts against the interlocutory orders passed by Arbitral Tribunal. This ratio of *SBP & Company Ltd.* (Supra) is followed in the case of *Sterling Industries Vs. Jai Prakash Association* (Supra). The same view is followed by this Court in the cases of *Ellora Papaer Mills Ltd. Vs. State of M.P. and others* (Supra) and *Shivhare Road Lines, Gwalior vs. Container Corporation of India Ltd., Noida and* another (Supra).

37. In a recent order passed in *Punjab State Power Corporation Ltd. vs. Emta Coal Ltd. and another* (Supra), the Supreme Court opined that in absence of any patent lack of inherent jurisdiction as explained in the case of *Deep Industries Vs. ONGC* (Supra), interference under Article 226/227 of the Constitution is not proper.

38. As analysed above, I am unable to hold that the Council committed any patent lack of inherent jurisdiction which warrants interference at this stage in exercise of power under Article 226/227 of the Constitution.

Issue (B):

39. On one factual aspect, the petitioner and the respondent No.2 had taken a diametrically opposite stand before this Court. The aspect was whether the conciliation was conducted by the Council itself or it was conducted by any other independent person. In order to separate the wheat from the chaff, this Court issued direction to the Council to furnish information in this regard. In turn, by communication dated 09.11.2020, the Council informed that the conciliation proceedings were conducted by Council itself. The Government Member, Shri C.K. Minj was appointed as Conciliator.

40. The argument of petitioner was that as per Section 18(3) of the Act of 2006 since conciliation was conducted by the Council, it was no more open to the Council to undertake the exercise of arbitration. The petitioner placed reliance on various judgments on this aspect. True it is that Bombay High Court in the case of *Gujarat State Petronet Ltd.* (supra) has taken this view, which was followed in the

case of *Mazgaon Dock Ltd.* (supra). The same view is taken by Karnataka High Court in the case of *M/s. Pal Mohan Electronics Pvt. Ltd. (supra)*.

41. Another set of judgments on which reliance is placed includes the judgment of Patna High Court in the case of *Reliance Communications Limited* (supra). The High Court distinguished the aspect of jurisdiction between: (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction & (iii) jurisdiction over the subject matter. It is opined that if an authority inherently lacks jurisdiction, the resultant order can be challenged at any stage before a higher forum. Interestingly, the Division Bench of Madras High Court in the case of *Ved Prakash* (supra) considered certain judgments of Bombay High Court and opined that constitutionality of Section 18 of the Act of 2006 has already been upheld. The proceedings under Section 18 of the Act of 2006 by way of arbitration shall not be conducted by the very same person, who had acted as Conciliator. The Gujarat High Court in the case of *M/s. Easun Reyrolle Lmited* (supra) opined that as long as a party is a supplier "within the meaning of the Act of 2006 and is located within the jurisdiction of Council", the Council has jurisdiction to deal with the claim. The Division Bench of Patna High Court in the case of *Best Towers Pvt. Ltd.* (supra) has taken a different view. The relevant portion reads as under:

> *"20. ..... The question raised before us by the learned counsel for the respondent petitioner is that if the Facilitation Council acts as a Conciliator then the Council cannot act as an Arbitrator as in the present case when after having attempted conciliation proceedings and its termination in failure, the Council itself has proceeded to arbitrate which it could not have done in terms of Section 80 of the 1996 Act read with Section 18(2) of the 2006 Act. This argument on behalf of the respondent petitioner has been accepted by the learned Single Judge that has been questioned by the appellant contending that Section 24 of the 2006 Act clearly provides that Sections 15 to 23 thereof shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. What we find is that sub-section (2) of Section 18 only refers to conciliation and the procedure to be followed in terms of Part-III of the 1996 Act to the extent of Section 65 to Section 81 thereof. Immediately thereafter, subsection (3) of Section 18 introduces an absolutely novel procedure allowing the commencement of arbitration proceedings with a mandate on the Council that in the event conciliation ends in failure, the Council shall "either itself" take up the dispute for arbitration or refer it to any Institution or Centre providing alternate dispute resolution services for such arbitration and* ***the provisions of the 1996 Act "shall then" apply to the disputes as*** *if the arbitration was in pursuance of an agreement. The overriding effect given to this provision in terms of Section 24 of*

the 2006 Act, in our opinion, clearly overrides any bar as suggested by the learned counsel for the respondent petitioner under Section 80 of the 1996 Act. It is trite law that the meanings assigned and the purpose for which an enactment has been made should be construed to give full effect to the legislative intent and we have no doubt in our mind that the provisions of Section 18(3) mandates the institution of arbitration proceedings under the 2006 Act itself and it is "then" that the provisions of the Arbitration and Conciliation Act, 1996 shall apply. The institution of arbitration proceedings would be governed by sub-section (3) of Section 18 of the 2006 Act which having an overriding effect cannot debar the Facilitation Council from acting as an Arbitrator after the conciliation efforts have failed under sub-section (2) of Section 18 of the Act. A combined reading of sub-section (2) and sub-section (3) of Section 18 of the 2006 Act read with the overriding effect under Section 24 thereof leaves no room for doubt that any inconsistency that can possibly be read keeping in view Section 80 of the 1996 Act stands overridden and the Facilitation Council can act as an Arbitrator by virtue of the force of the overriding strength of sub-section (3) of Section 18 of the 2006 Act over Section 80 of the 1996 Act. The conclusion of the learned Single Judge that there is a prohibition on the Council to act in a dual capacity is, therefore, contrary to the clear intention of the legislature and, therefore, the verdict that the Facilitation Council lacked inherent jurisdiction does not appear to be a correct inference. Thus, on a comparative study of the provisions referred to hereinabove, there is no scope for any doubt with regard to the overriding effect of the provisions of the 2006 Act that empowers the Facilitation Council to act as an Arbitrator upon the failure of conciliation proceedings. The cloud of suspicion and doubt about the role of the Facilitation Council, therefore, stands clarified on the basis of the analysis made by us hereinabove."

[Emphasis Supplied]

The different High Courts have taken different views on the interpretation of Section 18 of the Act of 2006. The Bombay High Court in certain cases opined that the Council cannot act as conciliator as well as arbitrator. The Madras High Court opined that the same person, who has acted as conciliator cannot act as an arbitrator. The Division Bench of Patna High Court in *Best Towers Pvt. Ltd. (supra)* has given a totally different interpretation to Section 18 aforesaid and clarified that the Council can act as an arbitrator upon the failure of conciliation proceedings.

42. At the cost of repetition, it is apposite to mention that if a plausible view is taken by the Council, it does not warrant interference by this Court. The impugned decision taken by the Council is in consonance with the view taken by certain

High Courts. Thus, no interference can be made by this Court at this stage under Article 226/227 of the Constitution. However, it will be open for the Council to proceed with arbitration proceedings by excluding Shri C.K. Minj as a Member of arbitral body or refer the matter to any other institute or center providing alternative dispute resolution service.

43. In view of foregoing analysis, no case is made for interference under Article 226/227 of the Constitution of India. Thus, with aforesaid observation, petition is **dismissed.**

Petition dismissed

I.L.R. [2021] M.P. 445
WRIT PETITION

Before Mr. Justice Rohit Arya

WP No. 15591/2020 (Indore) decided on 19 January, 2021

DHARMENDRA JATAV …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Land Revenue Code, M.P. (20 of 1959), Section 165(7)(b) & 158(3) – Transfer of Land – Permission – Applicability* – Held – Bar or prohibition u/S 165(7)(b) of Code is with reference to date of transfer and not the date of grant of patta – Offending sale deed dated 01.03.1994 without prior permission of Collector was *void ab initio* – Impugned order set aside. (Paras 8, 10 & 16)**

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(b) व 158(3) – भूमि का अंतरण – अनुज्ञा – प्रयोज्यता – अभिनिर्धारित – संहिता की धारा 165(7)(b) के अंतर्गत वर्जन या प्रतिषेध, अंतरण की तिथि के संदर्भ में है और न कि पट्टा प्रदान करने की तिथि के – आक्षेपित विक्रय विलेख दिनांक 01.03.1994, कलेक्टर की पूर्वानुमति के बिना, आरंभ से शून्य था – आक्षेपित आदेश अपास्त।

***B. Land Revenue Code, M.P. (20 of 1959), Section 165(7)(b) and Transfer of Property Act (4 of 1882), Section 111(g)(2) – Unlawful Transfer of Land – Forfeiture* – Held – Conscious transfer of land by father of petitioner setting up title in third person (R-5) in violation of Section 165(7)(b) of Code – Petitioner himself was also a party (*witness for agreement to sell*), thus cancellation of mutation entry in name of R-5 shall not enure benefit to petitioner – It renders the lease liable for determination by forfeiture u/S 111(g)(2) of 1882 Act – State directed to issue notice to petitioner for termination of lease and also to initiate proceedings against R-5 for restoration of possession – Petition partly allowed. (Paras 12, 14 & 15)**

ख. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(b) एवं सम्पत्ति अन्तरण अधिनियम (1882 का 4), धारा 111(g)(2) – विधिविरूद्ध भूमि का अंतरण – समपहरण – अभिनिर्धारित – संहिता की धारा 165(7)(b) के उल्लंघन में याची के पिता द्वारा तृतीय व्यक्ति (प्रत्यर्थी–5) में हक स्थापित करते हुए भूमि का भानपूर्वक अंतरण – याची स्वयं भी एक पक्षकार (विक्रय के करार का साक्षी) था, अतः प्रत्यर्थी–5 के नाम पर नामांतरण प्रविष्टि का रद्दकरण, याची के फायदे के लिए प्रवृत्त नहीं होगा – यह, पट्टे को 1882 के अधिनियम की धारा 111(g)(2) के अंतर्गत समपहरण द्वारा पर्यवसान योग्य बनाता है – राज्य को पट्टा समाप्ति हेतु याची को नोटिस जारी करने के लिए तथा कब्जे के प्रत्यावर्तन हेतु प्रत्यर्थी–5 के विरूद्ध कार्यवाहियां आरंभ करने के लिए भी निदेशित किया गया – याचिका अंशतः मंजूर।

***C. Land Revenue Code, M.P. (20 of 1959), Section 165(7)(b) & 257(1)(f) – Cancellation/Omission of Mutation Entry – Jurisdiction* – Held – SDO upon acquisition of knowledge of void transaction (sale deed), exercising power u/S 257(1)(f) has rightly cancelled/omitted the mutation entry with due notice to R-5 – Records of rights can always be corrected if prohibited in law or polluted by a void act in eyes of law. (Para 10)**

ग. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(b) व 257(1)(f) – नामांतरण प्रविष्टि का रद्दकरण/लोप – अधिकारिता – अभिनिर्धारित – एस.डी.ओ. ने शून्य संव्यवहार (विक्रय विलेख) के ज्ञान अर्जन पर, धारा 257(1)(f) के अंतर्गत शक्ति का प्रयोग करते हुए, प्रत्यर्थी–5 को सम्यक् नोटिस के साथ नामांतरण प्रविष्टि का उचित रूप से रद्दकरण/लोप किया है – अधिकारों के अभिलेख को सदैव सुधारा जा सकता है यदि वह विधि में प्रतिषिद्ध है अथवा विधि की दृष्टि में किसी शून्य कृत्य द्वारा प्रदूषित है।

***D. Land Revenue Code, M.P. (20 of 1959), Section 165(7)(b) & 257(1)(f) – Cancellation/Omission of Mutation Entry – Jurisdiction of Revenue Authority/Civil Court* – Held – Since, ownership of land covered under the Code vests in State Government, Revenue authorities have exclusive jurisdiction in respect of matters enlisted in Section 257 of Code and jurisdiction of Civil Court is ousted in that behalf – Cancellation of entry in revenue records on complaint or otherwise in relation to unlawful transfer of land is rightly done by SDO u/S 257(1)(f) of Code. (Para 10)**

घ. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(b) व 257(1)(f) – नामांतरण प्रविष्टि का रद्दकरण/लोप – राजस्व प्राधिकारी/सिविल न्यायालय की अधिकारिता – अभिनिर्धारित – चूंकि संहिता के अंतर्गत आच्छादित भूमि का स्वामित्व, राज्य सरकार में निहित है, संहिता की धारा 257 में सूचीबद्ध मामलों के संबंध में राजस्व प्राधिकारियों को अनन्य अधिकारिता है तथा इस संबंध में सिविल न्यायालय की अधिकारिता से बाहर है – भूमि के विधिविरूद्ध अंतरण के संबंध में, शिकायत पर या अन्यथा, राजस्व अभिलेखों में प्रविष्टि का रद्दकरण, एस.डी.ओ. द्वारा संहिता की धारा 257(1)(f) के अंतर्गत उचित रूप से किया गया है।

***E. Land Revenue Code, M.P. (20 of 1959), Section 165(7)(b) & 257(1)(f) – Limitation* – Held – Sale deed dated 01.03.1994 since held to be void for which no declaration is required from a Court of Law, the question of limitation pales into insignificance. (Para 10)**

ङ. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 165(7)(b) व 257(1)(f) – परिसीमा – अभिनिर्धारित – विक्रय विलेख दिनांकित 01.03.1994, चूंकि शून्य ठहराया गया है, जिसके लिए किसी न्यायालय से कोई घोषणा अपेक्षित नहीं है, परिसीमा का प्रश्न महत्वहीन हो जाता है।

***F. Maxim "Nullus commodum capere potest de injuria sua propria"* – Held – No man can take advantage of his own wrong – Petitioner not entitled to secure assistance of Court of Law for enjoying the fruit of his own wrong. (Para 15)**

च. सूत्र ''कोई व्यक्ति उसके स्वयं के दोष का लाभ नहीं ले सकता'' – अभिनिर्धारित – कोई व्यक्ति उसके स्वयं के दोष का लाभ नहीं ले सकता – याची, उसके स्वयं के दोष के फल का उपभोग करने हेतु न्यायालय की सहायता सुनिश्चित करने के लिए हकदार नहीं।

Cases referred:

2002 (2) MPLJ 480 (DB), W.A. No. 345/2020 decided on 11.05.2020 (DB), 2002 (1) MPLJ Note 2, (2012) 2 MPLJ 363, W.A. No. 23/2017 decided on 22.04.2017, 2010 (45) MPLJ 178, (2001) 6 SCC 534, (1996) 7 SCC 765, AIR 1976 MP 160, (2000) 3 SCC 668, (2005) 10 SCC 124, AIR 1947 Mad. 68, AIR 1951 Bom. 283, AIR 1964 And. Pra. 539, (1996) 6 SCC 342, (2010) 6 SCC 193.

A.S. Garg assisted by *Arpit Oswal*, for the petitioner.
Ankit Premchandani, P.L. for the respondent Nos. 1 to 4/State.
A.K. Sethi assisted by *Manoj Manav*, for the respondent No. 5.

O R D E R

ROHIT ARYA, J. :- The controversy involved in this writ petition under Article 226 / 227 of the Constitution of India revolves around the scope, limit and dimensions of the provision contained under section 165(7-b) of the Madhya Pradesh Land Revenue Code, 1959 (for short, 'the Code'). For ready reference the provision is quoted below:

> **"165. Rights of transfer.-** (1) subject to the other provisions of this section and the provision of section 168 a bhumiswami may transfer any interest in his land
>
> ....
>
> (7-b) Notwithstanding anything contained in sub-section (1), a person who holds land from the State Government or a person

who holds land in bhumiswami rights under sub-section (3) of Section 158 or whom right to occupy land is granted by the State Government or the Collector as a Government lessee and who subsequently becomes bhumiswami of such land, shall not transfer such land without the permission of a Revenue Officer, not below the rank of a Collector, given for reasons to be recorded in writing."

(Emphasis supplied)

and collaterally section 158(3) of the Code. The relevant provision is quoted below:

> **"158. Bhumiswami.** (1) Every person who at the time of coming into force of this Code, belongs to any of the following classes shall be called a bhumiswami and shall have all the rights and be subject to all the liabilities conferred or imposed upon a bhumiswami by or under this Code, namely
>
> ... ...
>
> **(3) Every person-**
>
> (i) **who is holding land in bhumiswami right by virtue of a lease granted to him by the State Government or the Collector or the Allotment Officer on or before the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1992 from the date of such commencement,** and
>
> (ii) to whom land is allotted in bhumiswami right by the State Government or the Collector or the Allotment Officer after the commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1992 from the date of such allotment,
>
> ***shall be deemed to be a bhumiswami in respect of such land and shall be subject to all the rights and liabilities conferred and imposed upon a bhumiswami by or under this Code*** :
>
> Provided that no such person shall transfer such land within a period of ten years from the date of lease or allotment and thereafter may transfer such land with the permission obtained under sub-section (7-b) of section 165.
>
> *Explanation.*-In this section, the expression "Ruler" and "Indian State" shall have the same meanings as are assigned to these expressions in clauses (22) and (15) respectively by Article 366 of the Constitution of India."

2. Agricultural land falling in survey No.465/40 admeasuring 2.023 hectare village Khilchipur, tehsil Khilchipur, District Rajgarh was leased out / *patta* to

late Kishanlal s/o Nathulal Jatav in the year 1966-67 (for short, 'agricultural land') by the State Government. After his demise, the name of his son Narayan Jatav was mutated in the revenue record vide entry No.40/93-94 dated 30/12/1993. The mutation record suggests that on 10/01/1994, bhumiswami rights were conferred upon him. Vide registered sale deed dated 01/03/1994; the agricultural land was transferred by Narayan Jatav in favour of Jai Prakash (respondent No.5). However, the statutory prior permission as contemplated under section 165(7-b) of the Code was not obtained from the Collector.

Pursuant to the aforesaid sale, the name of respondent No.5 was recorded in the revenue record at sl.No.74 on 02/04/1994.

The Collector, Rajgarh had issued an order on 13/01/2012 directing the competent revenue authorities to check and verify such transaction of transfer of agricultural lands without obtaining prior permission under section 165(7-b) of the Code.

3. Petitioner is heir / successor of Narayan Jatav. On 02/11/2012, he submitted a complaint before the Sub Divisional Officer that the mutation / entry dated 02/04/1994 in favour of respondent No.5 be cancelled as the sale deed dated 02/04/1994 was in violation of the provision contained under section 165(7-b) of the Code.

Upon receipt of the complainant (sic complaint), the report of the Tehsildar was called. Thereafter, the Sub Divisional Officer after notice to respondent No.5 had passed an order on 07/08/2014 (Annexure P/3) cancelling the entry in revenue record at sl.No.74 dated 02/04/1994 for the reason that the sale of agricultural land vide registered sale deed dated 02/04/1994 since was without obtaining prior permission of the Collector as contemplated under section 165 (7-b) of the Code is *null* and *void.* Therefore, the consequential revenue entry is also liable to be cancelled.

4. The respondent No.5 preferred an appeal before the Collector under section 44 of the Code. The appeal was held to be not maintainable as the order passed by the respondent No.4 was not the original order vide order dated 24/12/2018 (Annexure P/2).

The second appeal preferred by respondent No.5 before the Commissioner has been allowed vide order dated 09/09/2020 (Annexure P/1). The second appellate authority was of the view that the lease / *patta* was granted to late Kishanlal in the year 1966-67, therefore, the bar against transfer of land without permission of the revenue authority not below the rank of Collector incorporated by Act No.15 of 1980 shall have no application.

This is the impugned order in this writ petition.

5. Shri A.S.Garg, learned senior counsel contends that the applicability of bar against transfer of land / agricultural land, the relevant date shall be the date of transfer and not the date of grant of *patta* / lease by Government to the lessee. The lease was granted in the year 1966-67 in favour of late Kishanlal and bhumiswami rights were conferred upon his heir Narayan Jatav on 30/12/1993. Therefore, the transfer of agricultural land in favour of respondent No.5 vide registered sale deed dated 01/03/1994 without obtaining prior permission from the Collector under section 165(7-b) of the Code is bad in law. Therefore, the second appellate authority has committed serious illegality by allowing the appeal. As such, the impugned order is not sustainable in the eyes of law.

Further elaborating his submissions, learned senior counsel referring to sub-section (3) of section 158 of the Code contends that bhumiswami rights by virtue of lease / *patta* granted to Kishanlal in the year 1966-67 by State Government is covered under section 165(7-b) of the Code. Hence, the date of grant of *patta* / lease is irrelevant and has no bearing over the controversy since the sale deed dated 01/03/1994 is in contravention of mandatory provision contained under section 165(7-b) of the Code, the same was *null* and *void.*

To bolster the submissions, he has relied upon two division Bench judgments passed by this Court in the cases of *Mulayam Singh and others Vs. Budhawa Chamar and others,* 2002(2) MPLJ 480 and *Saroj Chand Vs. Premwati and others,* Writ Appeal No.345/2020 decided on 11/05/2020 at Gwalior Bench.

Learned senior counsel referring to the judgment of division Bench in the case of *Budhuwa Chamar Vs. Board of Revenue, M.P., and others,* 2002(1) MPLJ Note 2 contends that the transfer or alienation of leased land / *patta* by State Government even after acquisition bhumiswami rights shall be *void* in the absence of prior permission of the revenue authority or the Collector as provided for under section 165(7-b) of the Code. The same proposition was followed by another division Bench of this Court in the case of *Savina Park Resorts and Tours Pvt., Ltd., Vs. State of M.P., and others,* (2012) 2 MPLJ 363.

Lastly, he submits that the claim for omission of entry made in favour of respondent No.5 in the revenue record was well within the jurisdiction of the Sub Divisional Officer and subject matter covered under clause (f) of sub-section (1) of section 257 of the Code; an exclusive jurisdiction of the revenue authority.

With the aforesaid submissions, learned senior counsel prays that the impugned order deserves to be set aside.

6. *Per contra,* Shri A.K.Sethi, learned senior counsel for the respondent No.5 submits that the jurisdiction under Article 226 and 227 of the Constitution of India predominantly is an equitable jurisdiction. Therefore, a person seeking judicial intervention through this jurisdiction must come with clean hands.

In the instant case, the petitioner is son of late Narayan Jatav. In the agreement to sell dated 30/12/1993 between Narayan Jatav and Jai Prakash (respondent No.5); the petitioner appeared and signed as a witness to the said agreement. Narayan Jatav being recorded bhumiswami of the agricultural land has executed a registered sale deed dated 01/03/1994 in favour of the respondent No.5 with clear stipulation thereunder that there was no bar for the said sale under section 165(7-b) of the Code.

Based upon the aforesaid sale deed dated 01/03/1994, the land was recorded in the name of respondent No.5 by the revenue authorities as bhumiswami on 02/04/1994. Almost after 19 years on 02/11/2012, the petitioner has taken a somersault and complained against the sale seeking amendment in the revenue entry purportedly on the ground that the aforesaid sale deed executed by his father in favour of respondent No.5 was *null* and *void* for want of prior permission of the Collector as required under section 165(7-b) of the Code.

Learned senior counsel further contends that the Sub Divisional Officer had no jurisdiction to amend or omit the entry recorded in favour of respondent No.5, otherwise than in an appeal against the entry. Hence, the order passed by the Sub Divisional Officer on 07/08/2014 was bad in law. The appeal preferred by petitioner could not have been dismissed by the Collector vide order dated 24/12/2018 as not maintainable purportedly on the ground that the impugned order is not the original order. According to the learned senior counsel, the Sub Divisional Officer had exercised the original jurisdiction while ordering to omit the entry. The appeal arising therefrom under section 44 of the Code ought to have been entertained by the Collector. That was not done.

In the alternate, it is submitted that in any case, neither the complaint nor the appeal could have been entertained by the Sub Divisional Officer after 19 years of the transaction to the grave prejudice of the respondent No.5 and that too at the instance of the petitioner who had full knowledge of the transaction. Moreso, there was no application for condonation of delay in view of section 47 of the Code providing period of limitation for preferring an appeal.

Learned senior counsel also contends that the mutation / revenue entry recorded on 02/04/1994 in favour of respondent No.5 could not have been omitted, unless; the sale deed dated 01/03/1994 executed in favour of respondent No.5 was set aside by the Court of competent jurisdiction since by virtue of the registered sale deed, the rights transferred in favour of respondent No.5 are crystallized and protected under section 54 of the Transfer of Property Act. He submits that even otherwise, the dispute / claim in respect to the record of rights as raised by the petitioner could have been addressed only by the civil Court of competent jurisdiction as provided for under section 111 of the Code. To bolster his submissions relied upon the following judgments:

(i) A bunch of writ appeal and writ petitions, lead case being *The State of M.P., and another Vs. Chaitanya Realcon Pvt. Ltd.,* WA No.23/2017 decided on 22/04/2017;

(ii) Full Bench judgment reported in 2010(45) MPLJ 178, *Ranveer Singh Vs. State of M.P.,*

7. Heard.

8. The Madhya Pradesh Revenue Code is a social welfare legislation made for protection of ownership rights of landless persons, particularly; various classes of weaker section; a constitutional obligation under Article 39(b) and 46 of the Constitution of India. Economic empowerment of such class of persons in fact is a step to achieve economic democracy, as agricultural land gives economic status to the tiller. The prevention of their exploitation due to ignorance or indigency is a constitutional duty of the State under section 46 of the Constitution of India.

Sub-section (7-b) of section 165 of the Code was inserted vide Act No.15 of 1980 which contemplates that a 'government lessee' who subsequently becomes *bhumiswami* of such land shall not transfer such land without the permission of a revenue officer not below the rank of Collector as quoted above.

The said section is further amended vide amending Act No.17 of 1992 with effect from 28/10/1992 and a corresponding amendment is incorporated as section 158(3) quoted above.

A joint reading of both the provisions do suggest that a *'bhumiswami'* who holds the right by virtue of lease granted to him by the State Government or the Collector under section 158 of the Code shall not transfer the land so leased or allotted without prior permission of a revenue officer not below the rank of Collector.

9. The primary question emerging from rival contentions advanced by learned senior counsels is to determine the character of sale dated 01/03/1994 in the eyes of law; void or voidable?.

10. The expressions "*void*" and *"voidable"* have been subject matter of consideration on innumerable occasions by Courts.

Law is now well settled.

A transaction from its very inception being in violation of law is a nullity and, therefore, *void ab initio.* As a matter of fact, a declaration in that behalf is not required by a Court of law; whereas in contrast, a transaction which otherwise is good act in the eyes of law, unless; avoided is a voidable act, i.e., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated and a party who alleges so is obliged to prove it; seeking a declaration in that behalf in a Court of law.

In other words, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be *void* but would obviously be voidable [Judgments of Hon'ble Supreme Court in the cases of *Dhurandhar Prasad Singh Vs. Jai Prakash University and others,* (2001) 6 SCC 534 relied upon].

De Smith, Woolf and Jewell in their treatise Judicial Review of Administrative Action, fifth edition, paragraph 5-044, has summarised the concept of void and voidable as follows:

> "Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is *ultra vires* in the sense of outside jurisdiction, it was said to be invalid, or null and void. If it is *intra vires* it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by certiorari for error of law on the face of the record."

In the instant case, the lease was originally granted to Kishanlal in the year 1966-67 after coming into force of the Code and after his death, the name of his heir Narayan Jatav was entered by way of succession vide entry No.40/93-94 on 30/12/1993. *Bhumiswami* right was recorded on 10/01/1994 in favour of Narayan Jatav the father of the present petitioner. The sale deed in favour of respondent No.5 was executed on 01/03/1994.

In the considered opinion of this Court, the bar or prohibition as contained under sub-section 7(b) of section 165 of the Code is with reference to the date of transfer and not the date of grant of *patta.* The contention advanced to the contrary and as concluded by the Commissioner in the impugned order dated 09/09/2020 (Annexure P/1) is misconceived and misdirected. Hence, rejected. Therefore, the offending sale deed dated 01/03/1994 without prior permission of the Collector was *void ab initio.*

The sale deed dated 01/03/1994 since has been held to be void for which no declaration in that behalf is required from a Court of law, the question of limitation as raised by learned senor (sic : senior) counsel for the respondent No.5 is of no consequence and pales into insignificance. Hence, rejected.

In the judgment reported in 2002(2) MPLJ 480 *Mulayam Singh and another Vs. Budhawa Chamar and others;* a division Bench in an authoritative pronouncement of law has ruled as under:

> "It is not in dispute that no permission from the Collector was obtained and the sale was made without the permission of

> Collector. The respondent cannot transfer his land even though he is declared Bhumiswami, without the permission of the Collector. Transfer was made without such permission, so the appellants will not get any legal rights. In the circumstances, the Additional Collector has rightly held that the sale was in contravention of the provisions of section 165(7-B) of the Code and is *void.* Mutation effected on the basis of sale was set aside and the land was directed to be recorded in the name of the respondent No.1."

The view of this Court in the matter of alienation of land without permission under section 165(7-b) of the Code finds support from the judgment of the Hon'ble Supreme Court in the case of *Keshabo and another Vs. State of M.P., and others,* (1996) 7 SCC 765 and a division Bench of this Court in the case of *Mulayam Singh and another* (supra).

At this stage it is appropriate to reiterate the legal connotation of word **"bhumiswami"** as perceived by a Full Bench of this Court in the case of *Ramgopal Kanhaiyalal Vs. Chetu Batte* AIR 1976 MP 160 and held as under:

> "14. It must be remembered that a Bhumiswami has a title though he is not the "Swami" of the "Bhumi" which he holds, in the sense of absolute ownership of land vests in the State Government, yet, he is a Bhumiswami. He is not a mere lessee. His rights are higher and superior. They are akin to those of a proprietor in the sense that they are transferable and heritable, and he cannot be deprived of his possession, except by due process of law and under statutory provisions, and his rights cannot be curtailed except by legislation."

as affirmed by Hon'ble Supreme Court in (2000) 3 SCC 668 *Rohini Prasad and others Vs. Kasturchand and another* & (2005) 10 SCC 124 *Hukum Singh (Dead) by LR., and others Vs. State of M.P.,* as well as by a division Bench of this Court reported in 2012(2) MPLJ 363 *Savina Park Resorts and Tours Pvt. Limited Vs. State of M.P., and others.*

Since, the ownership of land covered under the Code vests in the State Government, the revenue authorities under the Code have exclusive jurisdiction in respect of matters enlisted in section 257 of the Code and the jurisdiction of the civil Court is ousted in that behalf.

The cancellation of an entry in the revenue record on a complaint or otherwise in relation to transfer of land without permission of the Collector under sub-section 7(b) of section 165 of the Code cannot be construed substitution of name in revenue record arising out of *inter se* competitive claims of two parties over a entry / **claim.** This exercise, therefore, has rightly been carried out by a revenue officer under section 257(1)(f) of the Code.

Section 111 of the Code provides jurisdiction of the civil Court to decide a dispute *inter se* between two private parties relating to any right recorded in the record of rights, where the State government is not a party. This provision has no application in the facts and circumstances of the case.

The Sub Divisional Officer on a complaint by the petitioner has cancelled / omitted the entry No.74 dated 02/04/1994 recorded in favour of respondent No.5 by order dated 07/08/2014 (Annexure P/3) on the premise that the sale in favour of respondent No.5 vide sale deed dated 01/03/1994 was contrary to section 165 (7-b) of the Code and also bearing in mind the general directions issued by the Collector on 13/01/2012.

The contention of learned senior counsel for the respondent No.5 is that unless; appeal was preferred against the entry made in revenue record on 02/04/1994 (supra), the Sub Divisional Officer had no jurisdiction to cancel or omit the entry vide order dated 07/08/2014 is held to be misconceived for the reason that the Sub Divisional Officer upon acquisition of knowledge of *void* transaction, viz., sale deed dated 01/03/1994 has cancelled / omitted the entry with due notice to the respondent No.5. Records of rights can always be corrected if prohibited in law or polluted by a void act in the eyes of law.

Consequently, there was no illegality in the order of the Sub Divisional Officer dated 07/08/2014 (Anneuxre (sic : Annexure) P/3) amending / omitting the entry at sl. No. 74 on 02/04/1994 made pursuant to the sale deed dated 01/03/1994 in favour of respondent No.5 while exercising the power under section 257(1)(f) of the Code.

11. Now the following two questions arise for consideration:

> (i) Whether on the facts and in the circumstances of the case, the name of petitioner should be continued in the revenue record?; and
>
> (ii) Whether, he is entitled for restoration of possession of the land in question?

12. The demeanour and conduct of the petitioner is relevant to answer these questions. The petitioner is a witness to the agreement to sell dated 30/12/1993 between Narayan Jatav and Jai Prakash (respondent No.5). The sale deed executed on 01/03/1994 by Narayan Jatav in favour of respondent No.5 was well within the knowledge of the petitioner. Thereafter, in the year 2012, a complaint was made by the petitioner with an ulterior motive to achieve the collateral purpose for his own benefit. Nevertheless, the cacellation or omission of entry in favour of respondent No.5 based on void sale deed dated 01/03/1994 by the Sub Divisional Officer shall not enure benefit to the petitioner.

13. Though the provisions of Transfer of Property Act (for short, 'the T.P.Act") under Chapter V are not applicable in absence of notification by the State Government in the official gazette to the contrary as provided under section 117 of the T.P. Act, however, principles underlying provisions of T.P. Act have been made applicable for agricultural leases on touchstone of justice, equity and good conscience. In particular, the provision as to the 'forfeiture' contained under section 111(g)(2) of T.P.Act has been so applied by various High Courts.

The Madras High Court in the case of *Umar Pulavar Vs. Dawood Rowther,* AIR 1947 Mad. 68 has held as under:

> "It is for the purpose of attenuating the rigour of the law as thus interpreted and applied in such decisions that Section 111(g) was amended in 1929 and it was made clear that even in the case of forfeiture by denial of the landlord's title a notice in writing determining the lease must be given. The principle so embodied in the section as a result of this amendment becomes, so to say, a principal of justice, equity and good conscience which must be held to govern even agricultural leases, though under Section 117 of the Act they are exempt from the operation of the chapter. To hold that with reference to agricultural leases previous notice determining the tenancy is not necessary is to ignore the policy of the Act as disclosed by the amendment which was intended to afford all tenants greater protection than what was afforded by the decisions which interpreted Section 111(g) as it originally stood. It is reasonably clear that if notice is necessary with reference to non-agricultural leases it is still more necessary in the case of agricultural leases where larger interests are at stake, generally speaking, and where in the absence of a proper notice to quit the right to the standing crops raised by the tenants might itself become a subject of dispute as between them and the landlord."

Relied upon by Bombay High Court in the case of *Tatya Savla And Ors. vs Yeshwant Kondiba And Ors.,* AIR 1951 Bom. 283 & *Andhra Pradesh High Court* in the case of *Cheekati Kuriminaidu & Ors vs. Karri Padmanabham Bhukta and othrs,* AIR 1964 And. Pra. 539.

14. A lease / *patta* was granted to late Kishanlal in the year 1966-67 for providing means of livelihood; a landless person for his economic empowerment through ploughing and cultivating the field. To ensure protection against exploitation due to ignorance or indigency, section 165(7-b) was inserted in the year 1980 with further amendment vide amending Act No.17 of 1992 with effect from 28/10/1992. Therefore, conscious transfer of land on 01/03/1994 by Narayan Jatav in favour of respondent No.5 to which petitioner is also party (witness for agreement to sell dated 30/12/1993) setting up title in a third person in violation of section 165(7-b) of the Code; renders the lease liable for

determination by forfeiture, in view of sub-clause (2) of clause (g) of section 111 of the T.P.Act. For ready reference the said clause is quoted below :

> **111. Determination of lease. A lease of immovable property determines.-**
>
> ... ...
>
> **(g) by forfeiture:-**
>
> ... ...
>
> (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself;
>
> ... ...

15. In the obtaining facts and circumstances, the petitioner has lost the status of landless person. The technical objection / contention of the learned senior counsel for the petitioner is that the *lis* between the parties does not embrace such eventuality and after setting aside the impugned order, the consequences flowing therefrom shall enure benefit to the petitioner. The argument advanced is in despair and devoid of substance.

The conduct and demeanour of the petitioner & obtaining facts and circumstances do attract the maxim; ***"Nullus commodum capere ptest (sic : potest) de injuria sua propria"*** (No man can take advantage of his own wrong), it is one of the salient tenets of equity. Hence, the petitioner is not held entitled to secure the assistance of the Court of law for enjoying the fruit of his own wrong.

The Hon'ble Supreme Court in the case of *Ashok Kapil Vs. Sana Ullah (Dead) and others,* (1996) 6 SCC 342 held in paragraphs 7 and 12 as under:

> "7. If the crucial date is the date of allotment order, the structure was not a building as defined in the Act. But can the respondent be assisted by a court of law to take advantage of the mischief committed by him? The maxim ***""Nullus commodum capere ptest de injuria sua propria"*** (No man can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, the respondent cannot secure the assistance of a court of law for enjoying the fruit of his own wrong.
>
> 12. The upshot is, if the District Magistrate has commenced exercising jurisdiction under Section 16 of the U.P.Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, in respect of a building which answered the description given in the definition in Section 3(i), he would well be within his jurisdiction to proceed further notwithstanding the intervening development that the building became roofless. We are inclined to afford such a liberal interpretation to prevent a wrongdoer from taking advantage of his own wrong."

The Hon'ble Supreme Court in the case of *Eureka Forbes Limited Vs. Allahabad Bank and others,* (2010) 6 SCC 193 has observed as under:

> "66. The maxim ***"Nullus commodum capere ptest de injuria sua propria"*** has a clear mandate of law that, a person who by manipulation of a process frustrates the legal right of others, should not be permitted to take advantage of his wrong or manipulations. In the present case, Respondents 2 and 3 and the appellant have acted together while disposing off the hypothecated goods, and now, they cannot be permitted to turn back to argue, that since the goods have been sold, liability cannot be fastened upon Respondents 2 and 3 and in any case on the appellant. .... "

Therefore, in exercise of the equitable jurisdiction under Article 226 of the Constitution of India and regard being had to the concept of justice, equity and good conscience, it is considered apposite to direct the respondent / State to issue notice to the petitioner as against termination of lease drawing analogy under sub-clause (2) of clause (g) of section 111 of the T.P.Act. For restoration of possession, the State is also directed to initiate the action against respondent No.5 by due process of law. Let the entire exercise be completed within a period of six months from today.

16. Resultantly, the order passed by the Commissioner dated 09/09/2020 (Annexure P/1) is set aside.

Writ petition stands allowed in part with the aforesaid directions. No order as to cost.

Petition partly allowed

I.L.R. [2021] M.P. 458 (DB)
WRIT PETITION

Before Mr. Justice Mohammad Rafiq, Chief Justice &
Mr. Justice Vijay Kumar Shukla

WP No. 1302/2021 (Jabalpur) decided on 24 February, 2021

MOHAMMAD AZAD …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Municipalities Act, M.P. (37 of 1961), Section 29 & 29-A and Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – Reservation of Seats* – Held – In Municipal Council Dhanpuri out of 28 wards, 15 wards have been reserved for SC, ST and OBC – As per Section 29-A of Act of 1961,**

reservation cannot exceed 50% – Notification to the extent of providing reservation of 07 seats to OBC is set aside – Respondents directed to provide reservation only for 6 seats to OBC – Petition allowed. (Paras 13 to 15)

क. नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 29 व 29–A एवं नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 – सीटों का आरक्षण – अभिनिर्धारित – धनपुरी नगरपालिका परिषद में 28 वार्डों में से 15 वार्ड अजा, अजजा एवं अपिव हेतु आरक्षित किये गये हैं – 1961 के अधिनियम की धारा 29–A के अनुसार, आरक्षण 50% से अधिक नहीं हो सकता – 7 सीटों पर अपिव के लिए आरक्षण उपबंधित करने की सीमा तक अधिसूचना अपास्त – प्रत्यर्थीगण को अपिव हेतु केवल 6 सीटों के लिए आरक्षण उपलब्ध कराने के लिए निदेशित किया गया – याचिका मंजूर।

***B. Constitution – Article 243-M, 243-D & Schedule V, Municipalities Act, M.P. (37 of 1961), Section 29 & 29-A and Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3* – Held – Limit of 50% can only be breached only if it is to be given to ST of the Panchayats in Scheduled Area covered by Schedule V of Constitution – Municipal Council Dhanpuri does not fall within Schedule V of Constitution, thus upper limit cannot be breached. (Paras 10, 11 & 14)**

ख. संविधान – अनुच्छेद 243–M, 243–D व अनुसूची V, नगरपालिका अधिनियम, म.प्र. (1961 का 37), धारा 29 व 29–A एवं नगरपालिका (अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग एवं महिलाओं के लिए वार्डों का आरक्षण), नियम, म.प्र., 1994, नियम 3 – अभिनिर्धारित – 50% की सीमा केवल तब भंग हो सकती है यदि उसे संविधान की अनुसूची V द्वारा आच्छादित अनुसूचित क्षेत्र में पंचायतों के अजजा के लिए दिया जाना है – नगरपालिका परिषद धनपुरी, संविधान की अनुसूची V के भीतर नहीं आती अतः उच्चतर सीमा का भंग नहीं हो सकता।

Cases referred:

(2010) 7 SCC 202, (2010) 4 SCC 50, 1992 Supp (3) SCC 217.

Prabhakar Galaw, for the petitioner.
Pushpendra Yadav, Addl. A.G. for the respondent Nos. 1 & 3/State.
Siddharth Seth, for the respondent No. 2.

O R D E R

The Order of the Court was passed by :
MOHAMMAD RAFIQ, CHIEF JUSTICE :- This writ petition has been filed by the petitioner praying for grant of following reliefs:

> "1) Summon the entire relevant record from the possession of the respondents for kind perusal of this Hon'ble Court.

2) This Hon'ble Court be pleased to set-aside the impugned order dated 28.11.2020 (Annexure P-1) passed by the respondent No.1.

3) This Hon'ble Court be pleased to set-aside the impugned Gazette Notification dated 10.12.2020 (Annexure P-2) passed by the respondent No.1.

4) This Hon'ble court be pleased to set-aside the impugned Gazette Notification dated 10.12.2020 (Annexure P-10) passed by the respondent No.1.

5) Further, this Hon'ble Court be pleased to direct the respondents to recategorize/ undertake the process to declare the reservation seats.

6) Any other relief which this Hon'ble court deems fit and proper may kindly be granted."

2. Shri Prabhakar Galaw, learned counsel for the petitioner argued that the petitioner belongs to Other Backward Classes (OBC) and is a resident of Ram Manohar Lohiya Ward. He is desirous of contesting election for the post of Councillor, Municipal Council, Dhanpuri, District Shahdol from that Ward, which is mentioned at Sl. No. 17 in the New Ward List. Learned counsel for the petitioner has placed reliance on Rule 3 of the Madhya Pradesh Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, 1994 (hereinafter referred to as the "Rules of 1994") and contended that Section 29 of the Madhya Pradesh Municipalities Act, 1961 (for short "the Act of 1961") talks about determination of number and extent of Wards and conduct of election. Section 29-A of the Act of 1961 provides for reservation of seats and clearly states that the seat in the Municipal Council shall be reserved for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women but ratio of such reservation in no event can exceed 50% of the total number of Wards. The learned counsel for the petitioner in support of his arguments, has relied on the judgments of the Supreme Court passed in the cases of *K. Krishna Murthy (Dr.) and Others Vs. Union of India and another;* (2010) 7 SCC 202 and *Union of India and Others Vs. Rakesh Kumar and others;* (2010) 4 SCC 50 and argued that as per the law laid down by the Apex Court in these cases the reservation of Scheduled Castes, Scheduled Tribes and Other Backward Classes can, in no case, exceed more than 50% of the total seats available. Referring to the Notification dated 10.12.2020 (Annexure P-2), the learned counsel for the petitioner submitted that out of total 28 Wards in the Municipal Council Dhanpuri, 3 have been reserved for Scheduled Castes, 5 for Scheduled Tribes and 7 for Other Backward Classes. Thus total 15 Wards have been reserved, which is exceeding 50% i.e. 14 number of Wards.

3. Learned counsel for the petitioner vehemently argued that issuance of the impugned notification dated 10.12.2020 (Annexure P-2) is contrary to law, because as per Section 29-A of the Act of 1961 the reserved seats cannot exceed more than 50%. He also invited attention of this Court towards the proceedings of the process of reservation carried out by the Collector and the minutes of meeting dated 26.11.2020 (Annexure P-7).

4. Shri Pushpendra Yadav, learned Additional Advocate General for the respondents/State contested the aforesaid contentions and submitted that the instant writ petition is liable to be dismissed, because though the petitioner has assailed the validity of notification dated 10.12.2020, but he has not challenged the vires of either Section 29-A of the Act of 1961 or Rule 3 of the Rules of 1994. He submitted that the respondents have carried out the mandate of Section 29-A of the Act of 1961 and Rule 3 of the Rules of 1994 and have acted strictly in conformity therewith. It is contended that the communication dated 29.08.2019 (Annexure P-6) was issued earlier than issuance of the Notification under Rule 7 of the Rules of 1994 and, therefore, cannot now be of any help to the petitioner.

5. Sections 29 and 29-A of the Act of 1961 and Rule 3 of the Rules 1994, which are relevant for the purpose of deciding the present matter, read as under:

Madhya Pradesh Municipalities Act, 1961

> **"29. Determination of number and extent of wards and conduct of elections. - (1)** The State Government shall from time to time, by notification in the official gazette, determine the number and extent of wards to be constituted for each Municipality:
>
> Provided that the total number of wards shall not be more than forty and not less than fifteen.
>
> **(2)** Only one Councillor shall be elected from each ward.
>
> **(3)** The formation of the wards shall be made in such a way that the population of each of the wards shall, so far as practicable be the same throughout the Municipal area and the area included in the ward is compact.
>
> **(4)** As soon as the formation of wards of a Municipality is completed, the same shall be reported by the State Government to the State Election Commission:
>
> Provided that the process of inclusion or exclusion of area or reformation of wards inevitably be completed before six months of completion of tenure of any Municipal Council otherwise the State Election Commission shall start electoral process on the basis of preset and prevailing delimitation:
>
> Provided further that inclusion or exclusion of such area or reformation of wards shall apply for upcoming election process.

29-A. Reservation of seats. -

(1) Out of the total number of wards determined under sub-section (1) of Section 29, such number of seats shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipality as bears as may be, the same proportion to the total number of seats to be filled by direct election in the Municipality as the population of the Scheduled Castes or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such wards shall be those in which the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, is most concentrated.

(2) As nearly as possible twenty-five percent of the total number of wards shall be reserved for Other Backward Classes in such Municipalities where fifty per cent or less seats are reserved for Scheduled Castes and Schedules Tribes, and such seats shall be allotted by rotation to different wards in such manner as may be prescribed:

Provided that if from any ward so reserved, no nomination paper is filed for election, as a Councillor by any member of the Other Backward Classes then the Collector shall be competent to declare it as unreserved.

(3) As nearly as possible fifty percent of the total number of seals reserved under sub-sections (1) and (2), shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes or Other Backward Classes, as the case may be.

(4) As nearly as possible fifty percent (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes), of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats shall be allotted by rotation to different wards in a Municipality in such manner as may be prescribed.

(5) The reservation of seats under sub-sections (1), (2) and (3)shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.

Explanation. - In this section 'Other Backward Classes' means category of persons belonging to Backward Classes as notified by the State Government."

M.P. Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, 1994

"3. First time reservation of wards. - (1) Out of the total number of wards determined under sub-section (1) of Section

10 of the Madhya Pradesh Municipal Corporation Act, 1956 and sub-section (1) of Section 29 of the Madhya Pradesh Municipalities Act, 1961 such number of wards shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipality the proportion of which in the total number of wards determined for that municipality may be, as nearly as may be, the same which is to the Population of the Scheduled Castes or of the Scheduled Tribes in that municipality bears to the total population of that municipality and such wards shall be those in a descending order in which the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, is most concentrated.

(2) As nearly as possible, twenty-five per cent of the total number of wards shall be reserved for other backward classes in such Municipalities, where out of the total number of wards fifty percent or less in number wards are reserved for Scheduled Castes and Scheduled Tribes, and such wards shall be reserved by lot from the remaining wards excluding the ward's, reserved for Scheduled Castes and Scheduled Tribes.

(3) Out of the wards reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes, as above, as nearly as possible fifty percent wards for the women of the aforesaid castes, as the case may be, shall be reserved, by lot:

Provided that where only one ward is reserved for the Scheduled Castes or Scheduled Tribes as the case may be, then in that case, such ward shall not be reserved for woman of Scheduled Castes or Scheduled Tribes, as the case may be.

Explanation. - When the Collector declares any ward as unreserved under sub-section (2) of Section 11 of the Madhya Pradesh Municipal Corporation Act, 1956 or sub-section (2) of Section 29-A of the Madhya Pradesh Municipalities Act, 1961, then such unreservation shall be limited to that election only.

(4) At the time of calculation under sub-rules (1), (2) and (3) fraction less than half shall be ignored and fraction equal to half or more shall be counted as one.

(5) Reservation of wards for ladies shall be made by deriving lot of unreserved wards, in such number that comes after subtracting the number of wards reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes under sub-rule (3) from as nearly as possible fifty percent in number of the total number of wards:

Provided that the number of wards reserved for women, including the wards reserved for the women of Scheduled Castes, Scheduled Tribes and Other Backward Classes shall be as nearly as possible fifty percent of the total number of wards.

> **(6)** The reservation made as aforesaid shall remain in force for the whole period of five years of Municipality including casual vacancies.
>
> **(7)** In the context of Section 11 of the Madhya Pradesh Municipal Corporation Act, 1956 (No.25 of 1956) and Section 29-A of the Madhya Pradesh Municipalities Act, 1961 (No.37 of 1961), it is further clarified that the provision of fifty percent reservation for women shall be done horizontally in all categories, so that the overall reservation shall not exceed fifty percent."

6. As would be seen from aforequoted provisions, process of inclusion and exclusion of the area of Wards shall be completed prior to six months of the date of completion of tenure of a Municipal Council. Otherwise, the Election Commission can start on the electoral process on the basis of number of seats prevailing within the municipal limit. Section 29-A of the Act of 1961, which is relevant for the purpose of deciding the present petition *inter alia* provides in Sub-section (1) that out of the total number of wards determined under sub-section (1) of Section 29, such number of seats shall be reserved for Scheduled Castes and Scheduled Tribes in every Municipality as bears as may be, the same proportion to the total number of seats to be filled by direct election in the Municipality as the population of the Scheduled Castes or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such wards shall be those in which the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, is most concentrated. It is noticed from the minutes of the proceedings of the Collector, Shahdol (Annexure P-7) that total population of Dhanpuri Town as per the Census of 2011 is 45156, out of which 4261 are the members of Scheduled castes, percentage of which comes to 9.44% of the total population. When computed against all 28 wards, ratio of population of the Scheduled Castes comes to 2.64%. According to sub-rule (4) of Rule 3 of the Rules of 1994, at the time of calculation under sub-rules (1), (2) and (3) of Rule 3 thereof, fraction less than half shall be ignored but fraction equal to half or more shall be computed as one. Therefore, 03 seats have been reserved for Scheduled castes. Similarly, population of Scheduled Tribes as per the census figure of 2011 is 8390, which comes to 18.58% of the total population of 45156 and when computed against total number of 28 wards, their ratio comes to 5.20%. Since fraction of 0.20 is less than half, 5 Wards have been reserved for Scheduled Tribes.

7. There is no problem so far as the action of the respondents to the extent of providing reservation to Scheduled Castes and Scheduled Tribes is concerned. However, the difficulty arises at the stage of applying sub-section (2) of Section 29-A of the Act of 1961, which *inter alia* provides that as nearly as possible twenty-five percent of the total number of Wards shall be reserved for Other Backward Classes in such Municipalities where fifty percent or less seats are

reserved for Scheduled Castes and Schedules (sic: Scheduled) Tribes, and such seats shall be allotted by rotation to different Wards in such manner as may be prescribed, provided that if from any ward so reserved, no nomination paper is filed for election, as a Councillor by any member of the Other Backward Classes, then the Collector shall be competent to declare it as unreserved. Sub-Rule (2) of Rule 3 of the Rules of 1994 is also identically worded, which provides that as nearly as possible, 25% of the total number of wards shall be reserved for Other Backward Classes in such Municipalities, where out of the total number of wards, 50% or less in number wards are reserved for Scheduled Castes and Scheduled Tribes, and such wards shall be reserved by lot from the remaining wards excluding the wards, reserved for Scheduled Castes and Scheduled Tribes (underlining ours).

8. At this stage, it is also to be noted that Sub-section (3) of Section 29-A of the Act, 1961 provides that as nearly as possible 50% of the total number of seats reserved under sub-sections (1) and (2), shall be reserved for women belonging to the Scheduled Castes or the Scheduled Tribes or Other Backward Classes, as the case may be. Sub-section (4) provides that as nearly as possible 50% (including the number of seats reserved for women belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes), of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats shall be allotted by rotation to different wards in a Municipality in such manner as may be prescribed. Sub-section (5) of Section 29-A of the Act of 1961 stipulates that the reservation of seats under sub-sections (1), (2) and (3) shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution of India.

9. The Constitution Bench of the Supreme Court in *K. Krishna Murthy* (supra) had the occasion to examine this question in the context of reservation provided in local self-government institutions. Their Lordships held that the nature and purpose of such reservation provided under Articles 243-D and 243-T of the Constitution of India, are a measure different from reservation provided under Articles 15(4) and 16(4) of the Constitution of India. Reservation in local self-government institutions is a measure of protective discrimination to weaker sections of society at the local level, intended to afford them adequate representation in local self-government, and to give them a chance to play leadership role. Vertical reservation provided in favour of SCs, STs and OBCs however, when taken together, in any case, cannot exceed upper limit of 50%. However, the upper ceiling limit of 50% can, in exceptional circumstances, be breached to provide reservation to Scheduled Tribes in Schedule-V areas but this cannot be invoked for reservation in favour of backward classes for the purpose of local bodies located in general areas. The relevant paras 64 to 67 and 82 of the judgment are reproduced hereunder:

"64. In the absence of explicit constitutional guidance as to the quantum of reservation in favour of backward classes in local self-government, the rule of thumb is that of proportionate reservation. However, we must lay stress on the fact that the upper ceiling of 50% (quantitative limitation) with respect to vertical reservations in favour of SCs/STs/OBCs should not be breached. On the question of breaching this upper ceiling, the arguments made by the petitioners were a little misconceived since they had accounted for vertical reservations in favour of SCs/STs/OBCs as well as horizontal reservations in favour of women to assert that the 50% ceiling had been breached in some of the States. This was clearly a misunderstanding of the position since the horizontal reservations in favour of women are meant to intersect with the vertical reservations in favour of SCs/STs/OBCs, since one-third of the seats reserved for the latter categories are to be reserved for women belonging to the same. This means that seats earmarked for women belonging to the general category are not accounted for if one has to gauge whether the upper ceiling of 50% has been breached.

65. Shri Rajeev Dhavan had contended that since the context of local self-government is different from education and employment, the 50% ceiling for vertical reservations which was prescribed in *Indra Sawhney vs. Union of India, 1992 Supp (3) SCC 217,* cannot be blindly imported since that case dealt with reservations in government jobs. It was further contended that the same decision had recognised the need for exceptional treatment in some circumstances, which is evident from the following words (SCC, p. 735, paras 809-10):

> "809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in Clause (4) of Article 16 should not exceed 50%.
>
> 810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being put of the mainstream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

66. Admittedly, reservations in excess of 50% do exist in some exceptional cases, when it comes to the domain of political representation. For instance, the Legislative Assemblies of the States of Arunachal Pradesh, Nagaland, Meghalaya, Mizoram and Sikkim have reservations that are far in excess of the 50% limit. However, such a position is the outcome of exceptional considerations in relation to these areas. Similarly, vertical reservations in excess of 50% are permissible in the composition of local self-government institutions located in the Fifth Schedule Areas.

67. In the recent decision reported as Union of India Vs. Rakesh Kumar, (2010) 1 SCALE 281, this Court has explained why it may be necessary to provide reservations in favour of Scheduled Tribes that exceed 50% of the seats in panchayats located in Scheduled Areas. However, such exceptional considerations cannot be invoked when we are examining the quantum of reservations in favour of backward classes for the purpose of local bodies located in general areas. In such circumstances, the vertical reservations in favour of SC/ST/OBCs cannot exceed the upper limit of 50% when taken together. It is obvious that in order to adhere to this upper ceiling, some of the States may have to modify their legislation so as to reduce the quantum of the existing quotas in favour of OBCs.

*** *** ***

82. In view of the above, our conclusions are:-

(i) The nature and purpose of reservations in the context of local self-government is considerably different from that of higher education and public employment. In this sense, Articles 243-D and Article 243-T form a distinct and independent constitutional basis for affirmative action and the principles that have been evolved in relation to the reservation policies enabled by Articles 15(4) and 16(4) cannot be readily applied in the context of local self-government. Even when made, they need not be for a period corresponding to the period of reservation for purposes of Articles 15(4) and 16(4), but can be much shorter.

(ii) Article 243-D(6) and Article 243-T(6) are constitutionally valid since they are in the nature of provisions which merely enable the State Legislatures to reserve seats and chairperson posts in favour of backward classes. Concerns about disproportionate reservations should be raised by way of specific challenges against the State Legislations.

(iii) We are not in a position to examine the claims about over breadth in the quantum of reservations provided for OBCs under the impugned State Legislations since there is no contemporaneous empirical data. The onus is on the executive to conduct a rigorous investigation into the patterns of backwardness that act as barriers to political participation which are indeed quite different from the patterns of disadvantages in the matter of access to education and employment. As we have considered and decided only the constitutional validity of Articles 243-D(6) and 243-T(6), it will be open to the petitioners or any aggrieved party to challenge any State legislation enacted in pursuance of the said constitutional provisions before the High Court. We are of the view that the identification of 'backward classes' under Article 243- D(6) and Article 243-T(6) should be distinct from the identification of SEBCs for the purpose of Article 15(4) and that of backward classes for the purpose of Article 16(4).

(iv) The upper ceiling of 50% vertical reservations in favour of SC/ST/OBCs should not be breached in the context of local self-government. Exceptions can only be made in order to safeguard the interests of Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas.

(v) The reservation of chairperson posts in the manner contemplated by Article 243-D(4) and 243-T(4) is constitutionally valid. These chairperson posts cannot be equated with solitary posts in the context of public employment.

10. In *Rakesh Kumar* (supra), the Supreme Court while examining the provisions of Article 243-M and 243-D and Schedule-V of the Constitution of India, in the context of extension of provisions of its Part-IX (Panchayati Raj System) to Scheduled Areas, held that the object and policy is to preserve protection already granted to Scheduled Areas under Schedule-V and simultaneously to extend Panchayati Raj System to those areas. But, while extending Panchayati Raj System, Scheduled Tribes cannot be put to a disadvantageous position, compared to protection already afforded to them under Schedule-V. Exceptional treatment has been given to Scheduled Tribes in Scheduled Areas in view of peculiar conditions of those areas. The Supreme Court in that case held that limit of 50% maximum reservation as prescribed in *Indra Sawhney and others vs. Union of India and others,* 1992 Supp (3) SCC 217, applies to reservation of seats for Scheduled Castes and Scheduled Tribes in Panchayats under Article 243-D of the Constitution of India. Article 243-D envisages proportionate representation and is distinct and an independent constitutional basis of reservation in Panchayati Raj institutions. Reservation under Article 243-D cannot be compared with affirmative action measures and merit. However, even if the law laid down in

Indra Sawhney (supra) were to be applied, it does not recognize exceptions where reservation can exceed 50% in certain circumstances. It was however, held that reservation in Panchayats in Scheduled Areas is a fit case where exception can be applied, for the reason that there is compelling need in scheduled areas to safeguard interest of tribal communities by giving them effective voice in local self-government.

11. Applying the ratio of the aforesaid judgments however, it cannot be held that present case would fall in an exceptional category. Limit of 50% can be breached only if it is to be given to Schedule (sic: Scheduled) Tribes of the Panchayats in Scheduled Areas covered by Schedule-V of the Constitution. There is no such case here.

12. In the present case, in para 5.9 of the writ petition the petitioner has categorically pleaded as under:

> "5.9 That after the resolution of the meeting was prepared the same was sent to the office of the respondent No.1. On receipt of resolution dated 30.05.2018, the respondent No.1 vide letter dated 29.08.2019 which was issued to the Collector very categorically stated that since the seat have been reserved as per the provisions of Rule 7 of Rules 1994, However, as there are 28 seats, 15 seats have been reserved and the same is a clear violation of Section 29 A of the Act of 1961 as the same reserved seats exceed 50% of the total seats available. It is hereby clarified that Municipal Council Dhanpuri has 28 wards and each ward has 1 seat therefore, total number of wards comes to 28 and as per the provision of Section 29A, the maximum number of reservation viz 50% should be only 14 seats and not 15 seats. Therefore, as stated supra vide letter dated 29.08.2019 the respondent No.1 directed the Collector to re-initiate the process of reservation".

13. It is evident from the letter dated 29.08.2019 (Annexure P-6) that the Government taking note of the fact that out of 28 Wards in the Municipal Council Dhanpuri, 15 Wards have been reserved for Scheduled Castes, Scheduled Tribes and Other Backward Classes which is in excess of 50%, directed the Collector, Shahdol that as per Section 29-A of the Act of 1961, reservation cannot exceed the limit of 50%. The Collector was required to re-submit the proposal for reservation in the Municipal Council, Dhanpuri in conformity with the Rules. The respondents in their counter affidavit have not denied the factum of the said direction of the Government to the Collector. However, the learned counsel for the respondents orally argued that the aforesaid communication was issued much prior to issuance of notice under Rule 7 of the Rules of 1994 and no interference can be made therewith now at this stage. It is thus evident that the State Government had already directed the Collector for making fresh proposal of

reservation in the Municipality, intending to adhere to the upper limit of 50% in terms of Section 29-A of the Act, which was in conformity with ratio of the judgment rendered by the Constitution Bench of the Supreme Court in the case of *K. Krishna Murthy* (supra).

14. Indubitably, the Municipal Council Dhanpuri does not fall within the Schedule-V areas and therefore, the upper limit of 50% for providing reservation in favour of Scheduled Tribes cannot be breached in this case. The Supreme Court clarified this aspect in *Rakesh Kumar* (supra) as to why it may be necessary to provide reservation in favour of the Scheduled Tribes that exceeds 50% of the seats in Panchayats located in Scheduled Areas. The Constitution Bench of Supreme Court therefore, in the case of *K. Krishna Murthy* (supra) categorically held that such exceptional considerations cannot be invoked while examining the quantum of reservation in favour of the Backward Classes for the purpose of local bodies located in general areas. It was held that in such circumstances, the vertical reservation in favour of SCs/STs/OBCs, when taken together, cannot exceed the upper limit of 50%. Their Lordships held that it is obvious that in order to adhere to this upper ceiling, some of the States may have to modify their legislation so as to reduce the quantum of existing quotas in favour of OBCs. No doubt, sub-section (2) of Section 29-A of the Act of 1961 provides that twenty-five percent of the total number of Wards shall be reserved for Other Backward Classes in Municipality but this provision is subject to two riders, firstly, that twenty-five percent need not be rigidly applied as it is preceded by the expression "as nearly as possible"; and secondly, it prescribes that such 25% of total number of Wards shall be reserved for OBC where 50% or less seats are reserved for Scheduled Castes and Scheduled Tribes. In other words, the rider of upper ceiling of 50% is implicit even in sub-section (2) of Section 29-A of the Act of 1961.

15. In view of our preceding analysis of law, the writ petition deserves to succeed. The notification dated 28.11.2020 (Annexure P-1) to the extent of providing reservation of 07 seats to Other Backward Classes (OBC) is set-aside with a direction to the respondents to provide reservation only for 06 (six) seats to the OBC so as to implement the direction of the Government dated 29.08.2019 and undertake a fresh exercise to provide such reservation by rotation in terms of Rule 3(3) of the Rules of 1994. Entire exercise shall be undertaken and completed at the earliest but not later than 15 days.

16. Accordingly, the writ petition is **allowed.** There shall no order as to costs.

Petition allowed

I.L.R. [2021] M.P. 471
CONTEMPT PETITION CIVIL
Before Mr. Justice G.S. Ahluwalia

CONC No. 1868/2020 (Gwalior) decided on 2 December, 2020

STATE OF M.P. …Petitioner

Vs.

DINESH SINGH RAJPUT & anr. …Respondents

***A. Contempt of Courts Act (70 of 1971), Section 12 – Illegal Detention – Suo Motu proceedings* – Held – Person was unlawfully taken into police custody without verifying his identity – Without formal arrest, he was kept in illegal detention – Prior to verification of his identity, press note was also released branding him that "*accused with reward of Rs. 5000 has been arrested*" – His uncovered face photograph was also got published in newspaper as well as uploaded on social media – Respondents violated directions of Supreme Court and hence liable for Contempt of Court.**

(Paras 7, 8 & 10 to 14)

क. न्यायालय अवमान अधिनियम (1971 का 70), धारा 12 – अवैध निरोध – स्वप्रेरणा से कार्यवाही – अभिनिर्धारित – व्यक्ति को, उसकी पहचान सत्यापित किये बिना विधिविरूद्ध पुलिस अभिरक्षा में लिया गया था – बिना औपचारिक गिरफ्तारी के, उसे अवैध निरोध में रखा गया – उसकी पहचान के सत्यापन पूर्व ही, यह बताते हुए प्रेस नोट भी जारी किया गया था कि *''5000/– रू. की इनामी राशि वाले अभियुक्त को गिरफ्तार कर लिया गया है''* – उसके बिना ढंके चेहरे वाली फोटो को भी समाचार पत्र में प्रकाशित कर दिया गया और साथ–साथ सोशल मीडिया पर भी अपलोड कर दिया गया – प्रत्यर्थीगण ने उच्चतम न्यायालय के निदेशों का उल्लंघन किया है तथा इसलिए न्यायालय की अवमानना हेतु दायी हैं।

***B. Contempt of Courts Act (70 of 1971), Section 12 – Illegal Detention – Bonafide Apology – Conduct* – Held – Respondents have not shown any remorse for their actions and are mud-sledging against each other – Respondents acted as an unruly horse, taking advantage of their uniform and official position in a most disagreeable manner, which may shake confidence of general public in police department – Such act is a direct attack on very existence of humanity – Apologies tendered are not *bonafide*, hence rejected.**

(Paras 15, 16, 22 & 27)

ख. न्यायालय अवमान अधिनियम (1971 का 70), धारा 12 – अवैध निरोध – सद्भावपूर्वक माफी – आचरण – अभिनिर्धारित – प्रत्यर्थीगण ने अपनी कार्रवाई के लिए कोई ग्लानि प्रदर्शित नहीं की है तथा एक–दूसरे के विरूद्ध कीचड़ उछाल रहे हैं – प्रत्यर्थीगण ने अपनी वर्दी और शासकीय पद का लाभ उठाते हुए, एक बेलगाम घोड़े के रूप में अत्यंत अप्रिय ढंग से कार्य किया है, जो कि पुलिस विभाग पर आम जनता के विश्वास को

डगमगा सकता है – ऐसा कृत्य मानवता के मूल अस्तित्व पर एक प्रत्यक्ष हमला है – मांगी गई माफी सद्भावपूर्वक नहीं हैं, अतः नामंजूर की गई।

***C. Contempt of Courts Act (70 of 1971), Section 12 – Illegal Detention – Punishment* – Held – If guilty person has realized that he has committed a mistake, Court must award one opportunity to improve their conduct as a human being in future – Instead of jail sentence, fine of Rs. 1000 is awarded. (Para 27 & 28)**

ग. न्यायालय अवमान अधिनियम (1971 का 70), धारा 12 – अवैध निरोध – दण्ड – अभिनिर्धारित – यदि दोषी व्यक्ति को यह अहसास हो जाता है कि उससे गलती हुई है, न्यायालय को उन्हें भविष्य में इंसान के रूप में अपने आचरण को सुधारने का एक अवसर जरूर देना चाहिए – जेल की सजा के बजाय, 1000/– रू. की शास्ति अधिनिर्णीत की गई।

Cases referred:

AIR 1997 SC 610, (1995) 6 SCC 249.

M.P.S. Raghuvanshi, Addl. A. G. for the State.
Tapan Trivedi, for the respondent No. 1.
D.P. Singh, for the respondent No. 2.

(Supplied: Paragraph numbers)

J U D G M E N T

G.S. AHLUWALIA, J.:- This Contempt proceeding has been initiated Suo Moto (sic: Motu) against the respondents, by this Court by order dated 2-11-2020. The respondent no. 1 is posted as Sub-Inspector and at the relevant time, he was the S.H.O., Police Station Bahodapur, Gwalior and respondent no. 2 is working as Constable and at the relevant time, he was posted in Police Station Bahodapur, Gwalior.

2. The facts leading to initiation of this suo-moto (sic : motu) Contempt Petition in short are that one Arun Sharma, [in short shall be referred as Arun Sharma (Tenant)], Writ Petitioner in W.P. No. 13057 of 2020, is a tenant in a shop, and the landlady of the said shop, filed an application before the respondent no.1 that Arun Sharma (Tenant) is neither making payment of rent, nor is vacating the shop. The said complaint was marked by the respondent no.1 to S.I. Sangita Minj, and immediately thereafter, the S.I. Sangita Minj and respondent no.2, forcibly got the shop vacated from Arun Sharma (Tenant) and brought his belongings to the Police Station Bahodapur, where Arun Sharma (Tenant) was compelled to give an undertaking that he would vacate the shop and thereafter, he was allowed to take his belongings back. Thereafter, it appears that Arun Sharma (Tenant), did not vacate the shop. On 13-8-2020, the Superintendent of Police, Gwalior, issued an order, declaring rewards against ten persons, including one Arun Sharma, son of

Omprakash Sharma, resident of Sector No.2, D-97, Vinay Nagar, Police Station Bahodapur, Gwalior. Thereafter, Arun Sharma (Tenant), was taken in unlawful custody on the pretext that he is the same person, against whom the Superintendent of Police, Gwalior has declared a reward. A press note with caption that "accused with reward of Rs. 5000/- has been arrested" with photograph of uncovered face of Arun Sharma (Tenant) was also circulated by the respondent no.1, to the print media and social media by releasing press note through I.T. Cell, Office of Superintendent of Police, Gwalior. However, on the complaint made by the brother of Arun Sharma (Tenant), the Superintendent of Police, Gwalior, directed for an enquiry and it was found that the Arun Sharma (Tenant) is not the same person, against whom reward was declared and after unlawful detention of Arun Sharma (Tenant) for 7 ½ hours in the police station Bahodapur, he was released. This Court by order dated 2-11-2020, found that although Arun Sharma (Tenant) was taken in custody, but he was not formally arrested as well as the directions given by the Supreme Court in the case of *D.K. Basu Vs. State of W.B.,* reported in AIR 1997 SC 610 were blatantly flouted, therefore, in the light of the directions given by the Supreme Court in para 36 of the judgment, suo moto (sic: motu) contempt proceedings have been initiated.

3. The respondent no.1 has filed his return and submitted that the respondent no.1 has absolutely no willful intention to disobey or flout the directions of the Hon'ble Supreme Court in the case of *D.K. Basu* (1997)(Supra). He has a service career of 7 years and recently has been awarded one certificate of appreciation. It is claimed that on 13-8-2020, the Superintendent of Police, Gwalior issued an order under Para 80(1) of M.P. Police Regulations and a reward of Rs. 5000 was declared against one Arun Sharma, son of Omprakash Sharma, resident of Sector No.2, D-97, Vinay Nagar, Police Station Bahodapur, Gwalior. Therefore, instructions were issued to the Police Station Bahodapur personals (sic: personnel) to put efforts to trace whereabouts of accused Arun Sharma, son of Omprakash Sharma, resident of Sector No.2, D-97, Vinay Nagar, Police Station Bahodapur, Gwalior. The respondent no.2 informed that Arun Sharma, son of Omprakash, against whom a reward of Rs. 5000 has been declared has now changed his address and at present he is residing in Laxman Talaiya, Near Asmani Temple, Kapate Wali Gali, Shinde Ki Chhawani, Gwalior, and he knows him personally. On the specific information given by respondent no.2, Arun Sharma (Tenant) was brought to the police station at 13:56 on 14-8-2020, for verification and investigation to be carried out by the investigator of crime no. 255/2011 registered at Police Station Gole Ka Mandir, Gwalior i.e., a different police station. It is claimed by the respondent no.1, that prior to 14-8-2020, he had never seen Arun Sharma (Tenant). Thereafter on verification done by the Police of Police Station Gole Ka Mandir, it was found that Arun Sharma (Tenant) is not the same person against whom a reward of Rs. 5000 was declared therefore at 21:37 he was allowed to go. It is submitted that Arun Sharma (Tenant), was taken in

custody on the incorrect but specific information given by respondent no.2, therefore, a mistake was committed by the answering respondent. It is further submitted that the press note regarding "arrest of Arun Sharma (Tenant) an accused against whom reward of Rs. 5000 was declared" with his photograph of uncovered face was shared with media on the basis of the departmental circular dated 2-1-2014, which has been partially quashed by this Court by order dated 2-11-2020, however, the quashed part of the circular dated 2-1-2014 was in existence on 14-8-2020. It is submitted that the respondent no. 1 has committed a mistake out of enthusiasm.

4. The respondent no. 2 has filed his return and has taken a completely different stand from that of respondent no.1. It is pleaded by him that he is a poor Class-3 employee holding the post of Constable in Police Department. Arun Sharma (Tenant) was arrested by respondent no.1 on 14-8-2020. The respondent no.2 was not the member of the team which was led by respondent no.1. Further, the respondent no.2 at the relevant point of time was performing his duties over Dial 100 Eagle 62-B-24 at Bahodpur Tiraha from 10:17 till 17:52. The respondent no.2 was not the active member of the arrest team and has not violated any direction given by the Supreme Court in the case of *D.K. Basu* (1997)(Supra). It is further submitted that when the respondent no.2 came back to the police station, he found that one Arun Sharma (Tenant) was arrested and Constable Abhishek Sharma, intimated him about the arrest of Arun Sharma (Tenant). It is submitted that the respondent no.2 had no power and authority to intervene in the matter. It is further pleaded that when he was on duty on Dial 100, one Constable Abhishek Sharma, Batch No. 1839 had made a call from his mobile no. 9340349605 and intimated that the team has arrested on Arun Sharma.

5. Thus, from the return filed by the respondent no.1, it is clear that he has claimed that in fact it was the respondent no.2, who gave a specific information, that he knows Arun Sharma (Tenant) personally, and he is the same person, against whom reward of Rs. 5000 has been declared, whereas the respondent no.2 has stated that he was not the member of the arrest team and his duty was on Bahodapur Tiraha on Dial 100 and he does not know anything about the arrest of Arun Sharma (Tenant).

6. However, during the course of arguments, it was admitted by the Counsel for the respondent no.2, that he is in the photograph with uncovered face of Arun Sharma (Tenant), but could not explain as to when his duty was not in the police station, then why he was present at the time of photo session and why he actively participated in photo session.

7. Although the respondent no.1 has claimed that Arun Sharma (Tenant) was taken in custody due to mistaken identity and was released after due verification, but has not explained that why his photograph with uncovered face of Arun

Sharma (Tenant) with caption "Accused with reward of Rs. 5000/- has been arrested" was released by him, even prior to verification. From the return filed by the respondent no.1, it is clear that the respondent no.1 did not conduct any verification as to whether the person who has been taken in custody is the same person against whom reward of Rs. 5000 has been declared or not?

8. During the course of arguments, Shri Amit Sanghi, Superintendent of Police, Gwalior who had joined the Court proceedings through Video Conferencing in W.P. No. 13057/2020 and was present during the hearing of this case also, submitted that in fact he was informed by the brother of Arun Sharma (Tenant) that his brother is an innocent person, and has been wrongly taken into custody and on his directions, verification was done and accordingly it was found that Arun Sharma (Tenant) is not the person, against whom, reward of Rs. 5000 has been declared and accordingly, he was released. Thus, it is clear that the stand taken by the respondent no.1, that the verification was done by Police of Police Station Gole Ka Mandir, on its own is incorrect, and infact only after the intervention of the Superintendent of Police, Gwalior, an enquiry was conducted regarding the identify of Arun Sharma (Tenant) and after finding that Arun Sharma (Tenant) is not the same person, against whom a reward of Rs. 5000 has been declared, Arun Sharma (Tenant) was allowed to go. Further, the respondent no. 1 in para 6 of his return has stated that after the reward of Rs. 5000 was declared by the Superintendent of Police, Gwalior, instructions were issued to the Police Station Bahodapur personals (sic: personnel) to put the efforts to trace out Arun Sharma, son of Omprakash Sharma, wanted in crime no. 255/2011. The copy of the order by which rewards were declared by the Superintendent of Police, Gwalior has been filed by the respondent no.1. From the said order, it is clear that reward against one more person, namely Avinash son of Ashok Upadhyay resident of Sector 3, behind Electricity Office, Vinay Nagar, Police Station Bahodapur, Distt. Gwalior, was also declared and he was also the resident of an area falling within the territorial jurisdiction of Police Station Bahodapur, then why instructions were issued to trace out Arun Sharma only and why not Avinash son of Ashok Upadhyay also? Thus, it is clear that Arun Sharma (Tenant) was unlawfully taken into custody with malice and in utter misuse of the official position. Further, it is not the case of the respondent no.1 that before releasing the press note, he had ever tried to verify the identity of Arun Sharma (Tenant). The contention of the respondent no.1 is that he had blindly relied upon the information given by respondent no.2. This conduct of respondent no.1 is not in accordance with law. "Good Faith" has been defined under Section 52 of Penal Code, according to which "due care and attention" is must. However, it is not the case of the respondent no.1 that he had acted with due care and attention.

9. It is further submitted by Shri M.P.S. Raghuvanshi, Additional Advocate General, that a preliminary enquiry was conducted by the Superintendent of

Police, Gwalior, and it was found that the respondents no. 1 and 2 were responsible for the illegal detention of Arun Sharma (Tenant) and accordingly, a charge sheet has been issued against them and earlier they were line-attached, however, considering the seriousness of the matter, today they have been placed under suspension.

10. Thus, it is clear that not only Arun Sharma (Tenant) was unlawfully taken into custody by the respondents no. 1 and 2 but without formally arresting him, he was kept in the police station in illegal detention for 7 ½ hours and only after the intervention of the Superintendent of Police, Gwalior, Arun Sharma (Tenant) was released from the Police Station Bahodapur, Gwalior. Not only that a press note was also released to the effect that Arun Sharma "Accused with reward of Rs. 5000/- has been arrested" and his photograph of uncovered face was also published in the news papers as well as was also uploaded on Social Media, through I.T. Cell, Superintendent of Police, Gwalior. Further, the State of M.P., and Superintendent of Police, Gwalior, in their compliance report dated 20-10-2020, filed in W.P. No. 13057/2020 have filed a copy of news published in the newspaper that the respondent no. 3 has been suspended for **arresting an innocent person. Thus, it is the case of the State of M.P., and Superintendent of Police, Gwalior also, that Arun Sharma (Tenant) was arrested without preparing an arrest memo. None of the respondents have prayed for leading evidence in support of their defence.**

11. The Supreme Court in the case of *D.K. Basu* (1997) (Supra) has held as under :

> **35.** We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures:*
>
> (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
>
> (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
>
> (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or

other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

12. Undisputedly, Arun Sharma (Tenant) was detained by the respondents no. 1 and 2, but he was not formally arrested and was kept in police station for 7½ hours and the directions no. 2 to 10 given by the Supreme Court in the case of *D.K. Basu* (1997) (Supra) were completely flouted. The verification of identity of Arun Sharma (Tenant) was got done by Superintendent of Police, Gwalior, on a complaint made by the brother of Arun Sharma (Tenant) and only after his intervention, Arun Sharma (Tenant) was released from Police Station. The most unfortunate part of the matter is that the respondent no.1,2 and S.I. Sangita Minj, posted in Police Station Bahodapur, Gwalior were involved in forcible eviction of Arun Sharma (Tenant) without there being any order of the Court and the belongings of Arun Sharma (Tenant) were brought to the Police Station Bahodapur, where Arun Sharma (Tenant) was forced to give an undertaking and only thereafter he was allowed to go back and retain the shop as per his undertaking. Further, when Arun Sharma (Tenant) did not vacate the shop inspite of his undertaking, therefore, he was taken in illegal custody by projecting that he is an accused against whom award of Rs.5000 has been declared, but admittedly, that was incorrect.

13. It is not out of place to mention here, that today, this Court by a detailed order passed in W.P. No. 13057/2020 filed by Arun Sharma (Tenant) has held that the respondents no. 1 and 2 have grossly violated the fundamental rights of Arun Sharma (Tenant). The conduct of the respondents substantially interferes with the due course of justice.

14. Under these circumstances, it is held that the respondents no. 1 and 2 are guilty of committing Contempt of Supreme Court by flouting the directions given in the case of *D.K. Basu* (1997) (Supra) and accordingly they are held liable for committing Contempt of Court.

15. **Whether apology tendered by respondents is bonafide or not?**

Although, the respondents have tendered their conditional apology but the same does not appear to be bonafide. The respondent no.1 has taken a stand that he had acted on the specific information given by the respondent no.2, whereas it is the case of the respondent no.2, that he has nothing to do with detention of Arun Sharma (Tenant) because at the relevant time, he was posted at different place. However, in the preliminary enquiry conducted by Add. Superintendent of Police, City (Center), Gwalior, which has been reproduced in order passed today in W.P.

No. 13057/2020, it has come on record that in fact, on the information given by the respondent no.2, the respondent no.1, had taken Arun Sharma (Tenant) in custody. However, the respondent no.1, without verifying the identity of Arun Sharma (Tenant), released a press note thereby branding Arun Sharma (Tenant) as an accused with reward of Rs. 5000 and his uncovered face photograph and the news regarding his arrest was uploaded on social platform and was also published in the newspapers. Further, the contention of respondent no.1 that he had blinding (sic : blindly) relied upon the information given by respondent no.2 cannot be accepted because in view of Section 52 of Indian Penal Code, it cannot be said that the respondent no.1 had acted in Good Faith, because even according to respondent no.1, he did not take any due care or attention in the matter. Both the respondents have not shown any remorse for their actions and are now involved in mud-sledging against each other. Arun Sharma (Tenant) was kept in illegal detention in utter violation of directions given by the Supreme Court in the case of *D.K. Basu* (1997) (Supra) out of sheer malice, as Arun Sharma (Tenant) had not vacated the shop inspite of undertaking given by him to the police. In fact the conduct of the respondents is a direct attack on the Fundamental Rights of the citizens of India and is a glaring example of atrocities committed by misusing their official position.

16. Under these circumstances, this Court is of the considered opinion, that the Apologies tendered by the respondents cannot be said to be bonafide and therefore, the same cannot be accepted. Accordingly, the apologies tendered by both the respondents are not accepted and hereby rejected.

17. Office is directed to keep a copy of order passed today in W.P. No. 13057/2020, in the file of this case.

18. Call after some time for hearing on the question of sentence.

G.S. Ahluwalia
Judge

Later on :

19. Heard the Counsel for the respondents as well as respondents on the question of punishment. It is submitted that the respondents are young persons, having committed a mistake, therefore, while imposing punishment, mercy may be shown by the Court.

20. Heard the learned Counsel for the respondents.

21. The Supreme Court in the case of *J. Vasudevan v. T.R. Dhananjaya* reported in (1995) 6 SCC 249, has held as under :

> **14.** Coming to the mercy jurisdiction, let it be first stated that while awarding sentence on a contemner the Court does so to uphold the majesty of law, and not with any idea of vindicating the prestige of the Court or to uphold its dignity. It is really to see that unflinching faith of the people in the courts remains intact. But, if the order of even the highest Court of the land is allowed to be wilfully disobeyed and a person found guilty of contempt is let off by remitting sentence on plea of mercy, that would send wrong signals to everybody in the country. It has been a sad experience that due regard is not always shown even to the order of the highest Court of the country. Now, if such orders are disobeyed, the effect would be that people would lose faith in the system of administration of justice and would desist from approaching the Court, by spending time, money and energy to fight their legal battle. If in such a situation mercy is shown, the effect would be that people would not knock the door of the courts to seek justice, but would settle score on the streets, where muscle power and money power would win, and the weak and the meek would suffer. That would be a death-knell to the rule of law and social justice would receive a fatal blow. This Court cannot be a party to it and, harsh though it may look, it is duty-bound to award proper punishment to uphold the rule of law, how so high a person may be. It may be stated, though it is trite, that nobody is above the law. The fact that the petitioner is an IAS officer is of no consequence, so far as the sentence is concerned. We would indeed think that if a high officer indulges in an act of contempt, he deserves to be punished more rigorously, so that nobody would take to his head to violate the Court's order. May we also say that a public officer, being a part of the Government, owes higher obligation than an ordinary citizen to advance the cause of public interest, which requires maintenance of rule of law, to protect which contemners are punished.

22. If the facts of this case are considered, then it is clear that the respondents no. 1 and 2, have acted as an unruly horse, by misusing their official position. The respondents, being police officers, had duty to maintain the law and order, but it appears that taking advantage of their Uniform and official position, the respondents have acted in a most disagreeable manner, which may shake the confidence of the general public in Police Department. The Police is the guardian of the citizens of India and is also an eye and ears of the Judiciary. If the police officers are allowed to misuse their office, in utter violation of directions of the Supreme Court, then this Court will be failing in discharging its Constitutional duty.

23. At this stage, it is once again submitted by Shri Tapan Trivedi, and Shri D.P. Singh, Counsels for the respondents no. 1 and 2 that, this Court may shower its mercy on the respondents by not awarding jail sentence, however, fine may be imposed. It is further submitted that the respondents no. 1 and 2 have realised their mistake and they may be awarded lesser punishment, so that they may improve their conduct has (sic : as) a human being in future.

24. The respondent no. 1 Dinesh Rajput, S.I., the then S.H.O., Police Station Bahodapur, Gwalior who is present through V.C. from the S.P. Office, Gwalior, also submitted that he may be awarded some lesser punishment and now he has realised the emotions of a comman (sic: common) man. However, he further admitted that branding Arun Sharma (Tenant) as "an accused with reward of Rs. 5000 has been arrested" and his uncovered face photograph uploaded on social platform as well as to print media, was an act of his recklessness and should not have been done without verifying the identity of Arun Sharma (Tenant).

25. The respondent no.2 Achal Sharma, Constable, Police Station Bahodapur, Distt. Gwalior, also prayed for lesser punishment.

26. Considered the submissions made by the respondents no.1 and 2 and their Counsels.

27. The Courts must award sentence proportionate to the guilty act and in the present case, the respondents no.1 and 2 have violated the fundamental rights of Arun Sharma (Tenant) by branding him as an accused with reward of Rs. 5000, and keeping him in illegal detention in utter violation of directions issued by the Supreme Court in the case of *D.K. Basu* (1997) (Supra) and thus the act of the respondents is a direct attack on the very existence of humanity, however, this Court also cannot lose sight of the fact, that if the guilty person, has realized that he has committed a mistake, which should not have been committed, then this Court must award one opportunity to them to improve their conduct as a human being in future.

28. Therefore, instead of awarding jail sentence, a punishment of fine of Rs. 1000/- is awarded. The fine amount be deposited within a period of 15 days from today, failing which the respondents no. 1 and 2 shall undergo the simple imprisonment of 15 days.

29. Accordingly, the Contempt Petition is finally disposed of.

Order accordingly

I.L.R. [2021] M.P. 482
MISCELLANEOUS PETITION
Before Mr. Justice Vishal Dhagat
MP No. 6597/2019 (Jabalpur) decided on 6 January, 2021

RAJDEEP KAPOOR (DR.) …Petitioner

Vs.

MOHD. SARWAR KHAN & anr. …Respondents

***A. Land Revenue Code, M.P. (20 of 1959), Section 109 & 110 – Mutation – Reporting of Acquisition – Delay* – Held – Reporting of acquisition of legal right and interest within 6 months is obligatory and not mandatory – Section 109 & 110 of Code does not bar mutation if reporting is done beyond 6 months – In matter of undisputed cases, mutation cannot be refused only on ground of delay – Additional Commissioner rightly allowed mutation application – Liberty granted to petitioner to establish title before Civil Court – Petition dismissed. (Paras 8, 17 &19)**

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 109 व 110 – नामांतरण – अर्जन की रिपोर्ट देना – विलंब – अभिनिर्धारित – छह माह के भीतर विधिक अधिकार और हित के अर्जन की रिपोर्ट करना बाध्यकर है तथा न कि आज्ञापक – संहिता की धारा 109 व 110 नामांतरण का वर्जन नहीं करती हैं यदि छह माह के परे रिपोर्ट की जाती है – अविवादित प्रकरणों के मामले में, केवल विलंब के आधार पर नामांतरण को अस्वीकार नहीं किया जा सकता – अतिरिक्त आयुक्त ने नामांतरण आवेदन को उचित रूप से मंजूर किया – याची को सिविल न्यायालय के समक्ष हक स्थापित करने की स्वतंत्रता प्रदान की गई – याचिका खारिज।

***B. Land Revenue Code, M.P. (20 of 1959), Section 109 & 110 – Mutation Proceedings – Principle of Estoppel* – Held – Principle of estoppel is applicable in Revenue Courts – Principle of estoppel is a principle of equity – Once a fact is admitted by a party before Court then in subsequent proceedings he cannot be allowed to deny the said fact by leading evidence. (Para 9 & 17)**

ख. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 109 व 110 – नामांतरण कार्यवाहियां – विबंध का सिद्धांत – अभिनिर्धारित – विबंध का सिद्धांत राजस्व न्यायालयों में लागू होता है – विबंध का सिद्धांत साम्या का एक सिद्धांत है – न्यायालय के समक्ष पक्षकार द्वारा एक बार कोई तथ्य स्वीकार कर लिया जाता है तो पश्चात्वर्ती कार्यवाहियों में उसे साक्ष्य प्रस्तुत कर कथित तथ्य को अस्वीकार करने की मंजूरी नहीं दी जा सकती।

***C. Land Revenue Code, M.P. (20 of 1959), Section 109 & 110 and Evidence Act (1 of 1872), Sections 3, 32, 33, 43 & 53 – Applicability* – Held – Evidence Act is not applicable to proceedings under the Code of 1959. (Para 13)**

ग. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 109 व 110 एवं साक्ष्य अधिनियम (1872 का 1), धाराएँ 3, 32, 33, 43 व 53 – प्रयोज्यता – अभिनिर्धारित – साक्ष्य अधिनियम, 1959 की संहिता के अंतर्गत कार्यवाहियों पर लागू नहीं होता है।

***D. Land Revenue Code, M.P. (20 of 1959), Section 109 & 110 and Evidence Act (1 of 1872), Section 137 – Mutation Proceedings – Examination/Cross Examination of Witness* – Held – Mutation proceedings before revenue Courts are to be decided as per evidence adduced by parties before it – Evidence means documents and affidavits/statements submitted by parties in support of their case – Neither witness is to be examined on oath nor to be cross-examined. (Para 10 & 16)**

घ. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 109 व 110 एवं साक्ष्य अधिनियम (1872 का 1), धारा 137 – नामांतरण कार्यवाहियां – साक्षी का परीक्षण/प्रति–परीक्षण – अभिनिर्धारित – राजस्व न्यायालयों के समक्ष नामांतरण कार्यवाहियों का विनिश्चय उसके समक्ष पक्षकारों द्वारा दिये गये साक्ष्य के अनुसार किया जाना है – साक्ष्य का अर्थ पक्षकारों द्वारा उनके प्रकरण के समर्थन में प्रस्तुत किये गये दस्तावेजों तथा शपथ–पत्रों/कथनों से है – न तो साक्षी का शपथ पर परीक्षण किया जाना है न ही प्रति परीक्षण किया जाना है।

***E. Evidence Act (1 of 1872), Section 58 – Admitted Document* – Held – Admitted document is not required to be proved as per Section 58 of the Act. (Para 2)**

ङ. साक्ष्य अधिनियम (1872 का 1), धारा 58 – स्वीकृत दस्तावेज – अभिनिर्धारित – अधिनियम की धारा 58 के अनुसार स्वीकृत दस्तावेज को साबित किया जाना अपेक्षित नहीं है।

Case referred :

(2018) 3 SCC 303.

Anurag Gohil, for the petitioner.
Arvind Kumar Chouksey, for the respondents.

O R D E R

VISHAL DHAGAT, J. :- Petitioner has filed this misc. petition calling in question order passed by Additional Commissioner, Bhopal dated 27.11.2019 by which order passed by SDO and Naib Tehsildar dated 15.02.2019 and 15.01.2018 was set aside and application for mutation filed by Mohd. Sarwar Khan was allowed.

2. Brief facts of the case are as under: -

Respondent Mohd. Sarwar Khan filed an application under sections 109 and 110 of M.P. Land Revenue Code, for mutation of his name on land bearing Survey

number 288, measuring 7.350 Ha. situated in Village Sagoni Kalan, Tehsil Hazur, District Bhopal, M.P. Application for mutation was filed on the ground that late Dr. Harwant Singh Kapoor had executed a 'Will' on 13.05.1988 in favour of respondent Mohd. Sarwar Khan. On the basis of said 'Will' respondent Mohd. Sarwar Khan is in possession over the land and is doing agriculture over it. Since testator had died, therefore, land may be mutated in the name of legatee. Learned Naib Tehsildar by order dated 15.01.2018 dismissed the application for mutation on the ground of delay. Naib Tehsildar held that 'Will' was executed on 13.05.1988 and thereafter testator had died on 29.06.2012. Application for mutation has been filed after delay of five years.

Respondent has challenged the order passed by Naib Tehsildar before Sub Divisional Officer. Before appellate court petitioner filed an application under Order 1 Rule 10 of C.P.C. and filed its objection to mutation proceedings. Learned Sub Divisional Officer, considering the evidence available on record, held that there is dispute of title over the land in question, therefore, mutation cannot be ordered in favour of respondent. Sub Divisional Officer refused to interfere in the matter and dismissed the appeal by order dated 15.02.2019.

Respondent challenged the order passed by SDO before Additional Commissioner, Bhopal. Additional Commissioner, Bhopal vide order dated 27.11.2019 set aside the orders passed by Sub Divisional Officer and Naib Tehsildar and allowed the application filed by respondent on the basis of 'Will' executed by late Dr. Harvant Kapoor. Additional Commissioner held that petitioner, Dr. Rajdeep Kapoor had admitted the 'Will' before Naib Tehsildar. He had made a statement that the land was given to respondent by his father out of affection. Petitioner's father Dr. Harvant Kapoor was running a clinic in the shop given to him by father of respondent i.e. Anwar Khan out of affection and friendly relationship. No rent was charged for the said shop. Witnesses of the 'Will' had also been examined and they had stated that Dr. Harwant Singh Kapoor and Anwar Khan were good friends. Anwar Khan had given his shop without any charge to Dr. Harvant Kapoor for running his clinic. Later on petitioner i.e. Dr. Rajdeep Kapoor was also running his clinic from the same shop. 'Will' dated 13.05.1988 is a notarized document. Admitted document is not required to be proved as per Section 58 of the Evidence Act. Second 'Will' which has been produced by petitioner is not worthy of credit in view of apex court judgment in case of *H. V. Nirmala vs. R. Sharmila,* (2018) 3 SCC 303. On the basis of such finding and law, Additional Commissioner allowed the appeal filed by respondent.

3. Counsel appearing for petitioner has challenged the order passed by Additional Commissioner on the ground that Commissioner has no jurisdiction to decide the validity of the 'Will'. It is within the jurisdiction of civil court to decide the genuineness and validity of a 'Will'. There was delay in filing the application

for mutation and findings of Commissioner are perverse. 'Will' presented by respondent in the court of Tehsildar has been counterfeited and forged. On aforesaid grounds petitioner made a prayer for setting aside order passed by Additional Commissioner.

4. Counsel appearing for respondent supported the order passed by Additional Commissioner. He submitted that admitted facts need not be proved as per section 58 of the Evidence Act. Second 'Will' filed by the petitioner before court of SDO cannot be believed. He relied on the judgment passed by apex court in case of *H. V. Nirmala* (supra). It was argued that 'Will' was not filed before Naib Tehsildar and was only produced in appellate court which cannot be believed. Additional Commissioner has rightly decided the issue and he rightly set aside the orders passed by Naib Tehsildar and SDO.

5. Heard the counsel appearing for the parties.

6. Three questions before this Court are as under:-

(i) Whether Naib Tehsildar rightly dismissed application to do mutation on ground of delay ?

(ii) Whether S.D.O rightly held that there was dispute of title between the parties ?

(iii) Whether Additional Commissioner was within his jurisdiction to allow the appeal and setting aside the orders passed by Sub Divisional Officer and Naib Tehsildar ?

Answer to question no.(i):-

7. Naib Tehsildar had not doubted the 'Will'. He had given a finding that petitioner had admitted the 'Will' as well as signature of Dr. Harvant Kapoor. Two attesting witnesses of the 'Will' has also stated that 'Will' was executed out of love and affection in favour of respondent. Application for mutation was rejected only on the ground of delay. Naib Tehsildar failed to consider the fact that when 'Will' was executed when respondent was only 5 years old. Testator died on 29.06.2012. Respondent was in possession of land and was doing agriculture on it.

8. As per Section 109(1) of the M.P. Land Revenue Code, any person lawfully acquiring any right or interest in land shall report acquisition of right within six months to Patwari, Nagar Sewak or Naib Tehsildar/Tehsildar. In case of minor acquisition of right and title be reported by Guardian to aforesaid Revenue authorities. After receiving report Tehsildar, within 15 days shall register the case in his court. Issue notice to all interested person and after giving reasonable opportunity of hearing to interested person, pass order of mutation in 30 days in undisputed cases and within six (6) months in disputed cases. Reporting of acquisition of legal right and interest within 6 months is obligatory and not

mandatory. Sections 109 or 110 of the M.P. Land Revenue Code, does not bar mutation if reporting of acquisition of right or title is beyond 6 months. Revenue Officer doing mutation beyond period of 6 months has to be more circumspect in passing order of mutation but only on ground of delay cannot refuse to do mutation in matter of undisputed cases. In view of same Naib Tehsildar committed an error in dismissing application only on ground of delay.

Answer to question no.(ii):-

9. Sub Divisional Officer gave a finding that there was dispute of title, therefore, Revenue Court could not pass an order for mutation. Learned Sub Divisional Officer failed to consider the fact that there was no dispute regarding execution of 'Will' by petitioner before the court of Naib Tehsildar. 'Will' was admitted by son of testator to have been signed and inked by his father. Attesting witnesses of 'Will' also gave evidence that 'Will' is executed by testator. There was no dispute of title between the parties before the Tehsildar. Dispute of title was for the first time raised before the appellate authority by filing objection to mutation by petitioner. There was no dispute of title before Naib Tehsildar and once the facts of execution of 'Will' has been admitted in evidence by petitioner he cannot be allowed to take a U-turn and dispute the 'Will'. The Principle of estoppel is arising out of doctrine of equity. Principle of estoppel is a principle of equity and once a fact is admitted by a party before the court then in subsequent proceedings he cannot be allowed to deny the said fact by leading evidence. Therefore S.D.O wrongly held that there was dispute between the parties on basis of inadmissible evidence.

Answer to question no.(iii):-

10. Mutation proceedings before revenue courts are to be decided as per evidence adduced by the parties before it. Evidence means documents and affidavits /statements submitted by parties in support of their case. Procedure to be adopted by revenue courts and their power is described in sections 32, 33, 34, 43 and 53 of MP Land Revenue Code. The said sections are quoted as under: -

> **"32. Inherent power of Revenue Courts.** - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Revenue Court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court.
>
> **33. Powers of Revenue Officers to require attendance of persons and production of documents and to receive evidence.** - (1) Subject to the provisions of Sections 132 and 133 of the Code of Civil Procedure, 1908 (V of 1908) and to rules made under Section 41, every Revenue Officer acting as a Revenue Court shall have power to take evidence, to summon any person whose

attendance he considers necessary either to be examined as a party or to give evidence as a witness or to produce any document for the purposes of any inquiry or case arising under this Code or any other enactment for the time being in force.

(2) No person shall be ordered to attend in person, unless he resides -

(a) within the limits of the tahsil if the Revenue Officer acting as a Revenue Officer is a Naib-Tahsildar and in the case of any other Revenue Officer, within the local limits of his jurisdiction; or

(b) without such limits but at a place less than fifty, or where there is a railway communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where he is summoned to attend, less than two hundred miles distant from such place.

(3) Any person present may be required by any such Revenue Officer to give evidence or to produce any document then and there in his possession or power.

(4) Every such Revenue Officer shall have power to issue a commission to examine any person who is exempted from attending Court or who cannot be ordered to attend in person or is unable to attend on account of sickness or infirmity.

34. Compelling attendance of witness. - If any person on whom a summons to attend as witness or to produce any document has been served fails to comply with the summons, the officer by whom the summons has been, issued under Section 33 may -

(a) issue a bailable warrant of arrest;

(b) order him to furnish security for appearance; or

(c) impose upon him a fine not exceeding rupees fifty.

35. to 42. xxx xxx xxx

43. Code of Civil Procedure to apply when no express provision made in this Code. - Unless otherwise expressly provided in this Code, the procedure laid down in the Code of Civil Procedure, 1908 (V of 1908) shall, so far as may be, be followed in all proceedings under this Code.

44. to 52. xxx xxx xxx

53. Application of Limitation Act. - Subject to any express provision contained in this Code the provision of the [Indian

Limitation Act, 1908] (IX of 1908), shall apply to all appeals and applications for review under this Code."

11. Mutation is to be done by Tehsildar under Section 110 of the M.P. Land Revenue Code. Section 110 of the Land Revenue Code, is quoted as under:-

"110. Mutation of acquisition of right in land records. -
(1) The Patwari or Nagar Sarvekshak or person authorised under section 109 shall enter into a register prescribed for the purpose every acquisition of right reported to him under section 109 or which comes to his notice from any other source.

(2) The Patwari or Nagar Sarvekshak or person authorised, as the case may be, shall intimate to the Tahsildar, all reports regarding acquisition of right received by him under sub-section (1) in such manner and in such Form as may be prescribed, within thirty days of the receipt thereof by him.

(3) On receipt of intimation under section 109 or on receipt of intimation of such acquisition of right from any other source, the Tahsildar shall within fifteen days, -

(a) register the case in his Court;

(b) issue a notice to all persons interested and to such other persons and authorities as may be prescribed, in such Form and manner as may be prescribed; and

(c) display a notice relating to the proposed mutation on the notice board of his office, and publish it in the concerned village or sector in such manner as may be prescribed;

(4) The Tahsildar shall, after affording reasonable opportunity of being heard to the persons interested and after making such further enquiry as he may deem necessary, pass orders relating to mutation within thirty days of registration of case, in case of undisputed matter, and within five months, in case of disputed matter, and make necessary entry in the village khasra or sector khasra, as the case may be, and in other land records.

(5) The Tahsildar shall supply a certified copy of the order passed under sub-section (4) and updated land records free of cost to the parties within thirty days, in the manner prescribed and only thereafter close the case :

Provided that if the required copies are not supplied within the period specified, the Tahsildar shall record the reasons and report to the Sub-Divisional Officer.

> **(6)** Notwithstanding anything contained in section 35, no case under this section shall be dismissed due to the absence of a party and shall be disposed of on merits.
>
> **(7)** All proceedings under this section shall be completed within two months in respect of undisputed case and within six months in respect of disputed case from the date of registration of the case. In case the proceedings are not disposed of within the specified period, the Tahsildar shall report the information of pending cases to the Collector in such Form and manner as may be prescribed."

12. Code of Civil Procedure is to be followed by Revenue Courts for smooth functioning when there is no express provision made in M.P. Land Revenue Code or Rules made thereunder. C.P.C is not to be followed when there is express provision under M.P. Land Revenue Code or Rules made thereunder.

13. Evidence Act, 1872 is also not applicable to proceedings under M.P. Land Revenue Code. Section 3 of Evidence Act, 1872 defines court as under:-

> "3. **Interpretation clause.** - In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:-
>
> **"Court".-** "Courts" includes all Judges and Magistrates, and all persons except arbitrators, legally authorized to take evidence."

14. Summary recommendation of 185th report of Law Commission of India in respect of definition of Court is as under:-

> "It is not necessary to include all Revenue Courts within the definition of "Court" for purpose of the Evidence Act. The question whether one provision of Evidence Act apply or not, would depend upon nature of Tribunal. One nature of inquiry contemplated or other special characteristic of each such 'Revenue Court'. We are, therefore, not in favour of applying Evidence Act to all 'Revenue Courts'.

15. Rules notified regarding record of rights, Notification No.2498-VII-N dated 10th June 1965, published in Gazette dated 2.7.1965 as amended by No.1351-VII-NI dated 16.4.1968 and No.2764-2953-VII-N-I dated 26.7.1968 R-32 for mutation are as under:-

> **"IV-Mutations in the Khasra**
>
> 24. The Patwari shall maintain a register in Form E in which he shall enter villagewise every change in ownership of land due to transfers by registered deeds, inheritance, survivourship, bequest or lease reported to him under Section 109 or which come to his notice from intimations received from Gram Panchayat or from any other source.

25. A copy of the entries made in the register during a month shall be sent by the Patwari at the end of each month to the Tahsildar. If no entry is made in any month in the register blank report shall be sent by the Patwari to the Tahsildar.

26. Certification of the entries in the mutation register shall be made at the Headquarters of the Gram Panchayat or at any other convenient centre in the Gram Panchayat area fixed for this purpose by the Tahsildar.

27. On receipt of the intimations from the Patwaris, or from the Registering Officers under Section 112, the Tahsildar shall have the intimations duly published by beat of drum in the village to which they relate and shall get a copy of the intimation posted at the chaupal, gudi or any other place of public resort in the village and shall also send a copy thereof to the Gram Panchayat of the village. He shall also give written intimation of the same to all persons appearing to him to be interested in the mutation.

28. On a date and place to be specified in the intimation the Tahsildar shall hear the parties concerned and certify the mutation entry, provided that, where a party remains absent after having been duly served with a notice, the entry will be certified ex parte.

29. The Tahsildar shall read out the entry in the presence of the parties interested, and where the correctness of the entry is admitted, shall record such admission in the mutation register, and add an endorsement under his signature that the entry has been duly certified and also indicate the modified entry that will be made in the khasra as a result of the certification.

30. All original documents produced before the Tahsildar shall be endorsed by him and returned to the parties as soon as orders have been passed.

31. The changes shall first be entered in the register of mutations villagewise. Where there are no disputes, the mutations shall be certified in the register itself by the Tahsildar, and suitable entries made in the Rasid Bahis. If there are disputes, separate cases shall be started for each person after taking extract from the register for starting cases separately. The Tahsildar shall give a certificate in the mutation register that entries in the Rasid Bahi have been made according to mutations sanctioned in undisputed cases and separate cases have been started for disputed entries.

32. Disputes shall be decided summarily by the Tahsildar on the basis of title and not possession. Any transfer by a person whose name is not recorded in the Khasra shall not be admitted in mutation by the Tahsildar. The order shall contain the names of the parties and witnesses and a brief summary of the evidence produced by either side together with the Tahsildar findings thereon.

> 33. When the disputed cases are decided, the entries in the khasra and the Rasid Bahi shall be got corrected by the Tahsildar. The Tahsildar shall give a certificate in the mutation register that entries in the Rasid Bahi and khasra have been made according to the decisions in the disputed cases.
>
> 34. Intimation of transactions of land which registering officers are required to send under Section 112, shall be in Form F. A separate form shall be prepared for each village in the first week of each month, for the transaction of the past month, and shall be despatched to the Tahsildar.
>
> 35. The acknowledgment to be given of the report of acquisition of right received under Section 109 shall be in Form G."

16. In view of above and considering Section 110(4) of M.P. Land Revenue Code, it is clear that parties have to lead evidence before the revenue court. Evidence means document and affidavits of witnesses. Neither witness is to be examined on oath or to be cross-examined in revenue courts in mutation proceedings. Tehsildar is required to do further enquiry as he may deem necessary. Thus, he is required to reach his satisfaction in respect of evidence adduced before him by parties. Examination-in-chief or cross-examination as done under section 137 of the Evidence Act, is not to be done by parties as in practice prevailing before Naib Tehsildar in mutation proceedings. This is not envisaged under M.P. Land Revenue Code. Naib Tehsildar is required to receive evidence, hear interested parties and to do enquiry for satisfaction regarding acquisition of rights by a party/parties and pass order on mutation.

17. Additional Commissioner has considered the documentary evidence as well as statement of witnesses and has come to the conclusion that 'Will' is genuine and there is no dispute about the 'Will'. Principle of estoppel is applicable in revenue courts. Petitioner is stopped from leading the evidence contrary to his admission before court of Tehsildar. Additional Commissioner has acted legally and within his jurisdiction to set aside the order passed by Tehsildar and SDO and allowing the application for mutation.

18. A copy of this order be sent to Principle (sic: Principal) Secretary (Revenue) for compliance and guiding Tehsildar/Naib Tehsildar to follow proper procedure and not to conduct trials in mutation proceedings so that applicants are not involved in tedious, long-drawn and unnecessary technicalities and orders in mutation proceedings so passed within time frame as laid down in M.P. Lok Seva Guarantee Adhiniyam, 2010.

19. In view of aforesaid miscellaneous petition filed by the petitioner is dismissed. Petitioner is at liberty to establish his title before Civil Court.

Petition dismissed

I.L.R. [2021] M.P. 492
MISCELLANEOUS PETITION
Before Mr. Justice Sheel Nagu

MP No. 3237/2020 (Gwalior) decided on 20 January, 2021

KHYALIRAM …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Land Revenue Code, M.P. (20 of 1959), Sections 44(2)(b), 44(3)(b) (as amended on 25.09.2018)& 50 – Second Appeal* – Held – Remedy of second appeal which was otherwise available to petitioner under unamended MPLR Code prior to 25.09.2018, is not available thereafter, for reason that remedy of second appeal by its very nature is not available to litigant as vested right since institution of *lis* in court of first instance – Unamended Section 44(2)(b) and amended Section 44(3)(b), shows that scope of interference in second appeal was restricted and not as wide/open as in first appeal – Remedy of revision available to petitioner u/S 50 of Code – Petition disposed. (Paras 3, 5, 6, 10 & 12)**

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धाराएँ 44(2)(b), 44(3)(b) (जैसा संशोधित 25.09.2018) व 50 – द्वितीय अपील – अभिनिर्धारित – द्वितीय अपील का उपचार, जो कि याची को असंशोधित म.प्र. भू. राजस्व संहिता के अंतर्गत 25.09.2018 के पूर्व अन्यथा उपलब्ध था, तत्पश्चात् इस कारण उपलब्ध नहीं है क्योंकि प्रथम बार के न्यायालय में मुकदमा संस्थित किये जाने के उपरांत, मुकदमेबाज को द्वितीय अपील का उपचार, उसके स्वरूप में ही, निहित अधिकार के रूप में उपलब्ध नहीं है – असंशोधित धारा 44(2)(b) व संशोधित धारा 44(3)(b) दर्शाती है कि द्वितीय अपील में हस्तक्षेप की व्याप्ति निर्बंधित थी तथा प्रथम अपील जैसी व्यापक/खुली नहीं थी – याची को संहिता की धारा 50 के अंतर्गत पुनरीक्षण का उपचार उपलब्ध है – याचिका निराकृत।

***B. Land Revenue Code, M.P. (20 of 1959), Section 44(2)(b) & 44(3)(b) (as amended on 25.09.2018) and Civil Procedure Code (5 of 1908), Section 100 – Second Appeal – Scope of Interference* – Held – Remedy of second appeal u/S 100 CPC is more restrictive than in a second appeal u/S 44 of Code – Second appeal under Code can be entertained when grounds of, order assailed being contrary to or having ignored material issue of law/usage or existence of substantial error/defect of procedure are made out whereas second appeal u/S 100 CPC is entertainable only on existence of substantial question of law which substantially affects rights of parties and not finally settled by any Court and is fairly arguable and is not covered by any earlier decision. (Para 8)**

ख. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 44(2)(b) व 44(3)(b) (जैसा संशोधित 25.09.2018) एवं सिविल प्रक्रिया संहिता (1908 का 5), धारा 100 – द्वितीय अपील – हस्तक्षेप की व्याप्ति – अभिनिर्धारित – धारा 100 सि.प्र.सं. के अंतर्गत द्वितीय अपील का उपचार, संहिता की धारा 44 के अंतर्गत द्वितीय अपील से अधिक निर्बंधात्मक है – संहिता के अंतर्गत द्वितीय अपील ग्रहण की जा सकती है जब आक्षेपित आदेश, विधि/प्रथा के विरूद्ध होने या तात्विक मुद्दे की अनदेखी होने या प्रक्रिया की सारवान गलती/त्रुटि का अस्तित्व होने के आधार बनते हैं, जबकि धारा 100 सि.प्र.सं. के अंतर्गत द्वितीय अपील केवल ऐसे विधि के सारवान प्रश्न के विद्यमान होने पर ग्रहण करने योग्य है जिससे पक्षकारों के अधिकार सारवान रूप से प्रभावित होते हैं एवं किसी न्यायालय द्वारा अंतिम रूप से निपटाये नहीं गये हैं और उचित रूप से तार्किक हैं तथा किसी पूर्वतर विनिश्चय द्वारा आच्छादित नहीं है।

Case referred :

2020 SCC Online SC 676.

Amit Lahoti, for the petitioner.
Abhishek Singh Bhadoriya, for the respondent/State.

O R D E R

SHEEL NAGU, J. :- Learned counsel for the rival parties are heard through video conferencing.

Present petition filed u/Art.227 of the Constitution of India invoking supervisory jurisdiction of this Court assails the final order dated 03.10.2020 passed by the Additional Commissioner Revenue, Gwalior rejecting the second appeal preferred by the petitioner against the order of SDO passed in first appeal on the ground that the amended M.P. Land Revenue Code does not recognize the concept of second appeal since 25.09.2018.

2. Learned counsel submits that the right to second appeal is a vested right which emanates and continues to be available to the litigant since the institution of the suit/original case and therefore the amendment in the M.P. Land Revenue Code with effect from 25.09.2018 cannot take away this right which had accrued prior thereto.

3. Learned counsel for petitioner has not been able to cite any judicial pronouncement in his favour and this Court is of the considered view that the remedy of second appeal which was otherwise available to petitioner having lost in the first appeal under the unamended MPLR Code prior to 25.09.2018, would not be available thereafter for the reason that remedy of second appeal by it's very nature is not available to a litigant as a vested right since the institution of the *lis* in the court of first instance.

4. For ready reference and convenience, the unamended Section 44(2)(b) and amended Sec.44(3)(b) are reproduced below:

Unamended Section 44(2)(b):

"44. Appeal and appellate authorities. -

(1) XX XX XX

(2) Save as otherwise provided a second appeal shall lie against every order passed in first appeal under this Code or the rules made thereunder-

(i) XX XX XX
(ii) XX XX XX
(iii) XX XX XX

(a) XX XX XX

(b) on any of the following grounds and no other, namely :-

(i) that the order is contrary to law or, usage having the force of law; or

(ii) that the order has failed to determine some material issue of law, or usage having force of law; or

(iii) that there has been a substantial error or defect in the procedure as prescribed by this Code, which may have produced error or defect in the decision of the case upon merits."

Amended Sec.44(3)(b):

44. Appeal and appellate authorities.-

(1) xx xx xx

(2) xx xx xx

(3) The second appeal shall lie only-

(a) xx xx xx

(b) on any of the following grounds and no other, namely-

(i) that the order is contrary to law or, usage having the force of law; or

(ii) that the order has failed to determine some material issue of law, or usage having force of law; or

(iii) that there has been a substantial error or defect in the procedure as prescribed

> by this Code, which may have produced error or defect in the decision of the case upon merits."

5. From perusal of the unamended Section 44(2)(b) and amended Sec.44(3)(b), it is evident that the scope of interference in a second appeal was restricted and not as wide and open as in a first appeal.

6. First Appeal is available to a litigant as a matter of vested right and this proposition cannot be doubted. However, Second Appeal having restrictive scope of interference and being somewhat akin to the scope available in revision or Second Appeal u/S.100 CPC cannot and ought not to be available to a litigant as a matter of vested right since the beginning of the original proceedings. This Court is bolstered in its view by the decision of the Apex Court in the case of *"Nazir Mohamed Vs. J. Kamala & Ors* [2020 SCC Online SC 676]".

7. The principles applicable to entertainment and admissibility of a second appeal can be taken note of from the said decisions of the Apex Court rendered to explain Section 100 CPC pertaining to Second Appeal. After analyzing various previous decisions, the Apex Court in the said case of *Nazir Mohamed* (supra) has laid down the following principles on the anvil of which it can be gathered as to whether a substantial question of law in a Second Appeal is made out or not:

> *"37. The principles relating to Section 100 CPC relevant for this case may be summarised thus :*
>
> *(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.*
>
> *(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.*
>
> *(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or*

acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

8. Admittedly, the scope of interference in a Second Appeal u/S.44 of the M.P. Land Revenue Code is not the same as u/S.100 of CPC. The remedy of Second Appeal u/Sec.100 CPC is more restrictive than in a Second Appeal u/S.44 of the M.P. Land Revenue Code. However, bare perusal of the unamended Section 44(2)(b) and amended Section 44(3) (b) of MPLRC reveals that a Second Appeal under the MPLRC can be entertained when the grounds of the order assailed being contrary to law/usage or having ignored material issue of law/usage or existence of substantial error/defect of procedure are made out. On the other hand, a Second Appeal u/S.100 CPC is entertainable only on existence of a substantial question of law which concept is though not defined in CPC but involves question which substantially affects the rights of the parties and is an open one i.e. not finally settled by any court and is fairly arguable and is not covered by any earlier decision.

9. From the textual and contextual comparative interpretation of Section 100 CPC and Section 44 of M.P. Land Revenue Code *qua* the aspect of Second Appeal, it appears that both the provisions, if not substantially, are fairly similar in respect of scope of interference. Therefore, the principle laid down in the aforesaid decision of the Apex Court in *Nazir Mohamed* (supra) can very well be borrowed for the purpose of analyzing the scope of interference of Second Appeal u/S.44 of M.P. Land Revenue Code.

10. Going by the abovesaid discussion, this Court has no manner of doubt that there is no vested right available to any party to file a Second Appeal u/S.44 of the M.P. Land Revenue Code, for the obvious reason as aforesaid and that interference in Second Appeal is not open on questions of fact. As such the petitioner neither under the unamended nor under amended Section 44 of the MPLRC has any vested right to prefer a Second Appeal.

11. In view of above discussion, the decision of learned Additional Commissioner passed in Annexure P-1 cannot be found fault with.

12. The petitioner is still not remedyless (sic : remediless) in view of remedy of revision available to him in the amended Section 50 before the appropriate forum.

13. This Court, therefore, without commenting upon merits of the matter, declines interference and disposes of the present petition with the aforesaid liberty which as and when and if availed, the Revisional Authority may consider deducting the period spent by petitioner in pursuing the present litigation while dealing with the aspect of limitation.

Order accordingly

I.L.R [2021] M.P. 497 (DB)
MISCELLANEOUS PETITION

Before Mr. Justice Prakash Shrivastava & Mr. Justice Virender Singh

MP No. 1383/2020 (Jabalpur) decided on 23 March, 2021

COBRA-CIPL JV …Petitioner

Vs.

CHIEF PROJECT MANAGER …Respondent

A. Contract – Unconditional Bank Guarantee – Encashment of – **Held – Bank guarantee is an independent contract between bank and beneficiary thereof – Bank is always obliged to honour the guarantee, if it is unconditional and irrevocable – Dispute between beneficiary and party at whose instance bank guarantee is given is of no consequence and has no effect on the right relating to encashment of guarantee – In commercial dealing, once unconditional guarantee is given, beneficiary is entitled to realize the guarantee as per terms contained therein. (Para 7 & 8)**

क. संविदा – बिना शर्त बैंक गारंटी – को भुनाना – अभिनिर्धारित – बैंक गारंटी, बैंक एवं उसके हिताधिकारी के मध्य एक स्वतंत्र संविदा है – गारंटी के आदरण हेतु बैंक सदैव बाध्य है यदि वह बिना शर्त और अप्रतिसंहरणीय है – हिताधिकारी एवं पक्षकार जिसके अनुरोध पर बैंक गारंटी दी गयी है, के बीच विवाद का कोई महत्व नहीं तथा गारंटी को भुनाने से संबंधित अधिकार पर कोई प्रभाव नहीं डालता – वाणिज्यिक लेन–देन में, एक बार बिना शर्त गारंटी दिये जाने पर हिताधिकारी, उसमें अंतर्विष्ट निबंधनों के अनुसार गारंटी वसूलने के लिए हकदार है।

B. Contract – Encashment of Unconditional Bank Guarantee – Exceptions – **Held – The general rule that bank guarantee must be honoured has two exceptions, firstly when there is clear fraud of egregious nature vitiating entire transaction and bank has notice of such fraud and, secondly when there are special equities such as irretrievable injury or irretrievable**

injustice in favour of injunction – Apart from these two exceptions, beneficiary has right of encashment of unconditional bank guarantee.

(Para 7 & 8)

ख. संविदा – बिना शर्त बैंक गारंटी को भुनाना – अपवाद – अभिनिर्धारित – सामान्य नियम कि बैंक गारंटी का आदरण किया जाना चाहिए, के दो अपवाद हैं, प्रथमतः, जब वहां अत्यंत बुरे स्वरूप का स्पष्ट कपट है जो संपूर्ण संव्यवहार दूषित करता है और बैंक को उक्त कपट की सूचना है तथा, द्वितीयतः, जब वहां विशेष साम्याएं है जैसे कि व्यादेश के पक्ष में अपूरणीय क्षति या अपूरणीय अन्याय – इन दो अपवादों के अलावा, हिताधिकारी को बिना शर्त बैंक गारंटी को भुनाने का अधिकार है।

C. Constitution – Article 227 – Scope & Jurisdiction **– Held – Scope of interference is limited – Power can be exercised in appropriate case where there is patent perversity in impugned order or where there has been a gross and manifest failure of justice or basic principle of natural justice has been flouted – Arbitrator has passed a well reasoned order – No interference warranted – Petition dismissed. (Paras 10 to 12)**

ग. संविधान – अनुच्छेद 227 – व्याप्ति व अधिकारिता – अभिनिर्धारित – हस्तक्षेप की व्याप्ति सीमित है – शक्ति का प्रयोग समुचित प्रकरण में किया जा सकता है जहां आक्षेपित आदेश में प्रकट विपर्यस्तता है या जहां न्याय की घोर एवं प्रकट विफलता हुई है या नैसर्गिक न्याय के मूल सिद्धांत की अवहेलना हुई है – मध्यस्थ ने भली–भांति एक सकारण आदेश पारित किया है – किसी हस्तक्षेप की आवश्यकता नहीं – याचिका खारिज।

Cases referred :

(1999) 8 SCC 436, (1974) 2 SCC 231, (1983) 4 SCC 417, (1987) 2 SCC 160, (2016) 11 SCC 720, (2020) 2 SCC 540, (2006) 2 SCC 728, (2007) 8 SCC 110, (2008) 1 SCC 544, (1985) 1 SCC 260, (2006) 13 SCC 599, (1997) 6 SCC 450, (2016) 4 MPLJ 716, 2015 (4) MPLJ 424, (2016) 3 MPLJ 689, 1997 (1) SCC 568, 2010 (9) SCC 385.

Kishore Shrivastava with *Shashank Verma*, for the petitioner.
Atul Choudhary, for the respondent.

O R D E R

The Order of the Court was passed by :

PRAKASH SHRIVASTAVA, J. :- By this miscellaneous petition under Article 227 of the Constitution, the petitioner has challenged the order dated 29.02.2020 whereby the appeal preferred by the petitioner under Section 37(2) of the Arbitration and Conciliation Act, 1996 *(hereinafter referred to as **'the Act')*** has been dismissed by the Commercial Judge, Jabalpur.

2. The case of the petitioner is that the petitioner was awarded the contract for the composite electrical work for design, supply, erection, testing and commissioning of single phase overhead equipment including THS and SPADA works in Manikpur(Excl) - Satna(Incl) and Satna to Rewa station of Jabalpur Division of West Central Railway. The total contract value was Rs.60,42,06,825.25 and the work was to be completed within a period of 30 months from the date of issuance of Letter of Acceptance. The Letter of Acceptance was issued on 14.07.2016. The petitioner had executed as many as nine performance guarantee. According to the petitioner, the progress of the work at the site had suffered on account of the surprise check done by the CBI alongwith the Vigilance Officers of the Railway. The case of the petitioner is that the petitioner was asked by the railway to recast all foundation constructed by that time at its own cost. The time for execution of the work was extended upto 30th of September, 2016. On 17.12.2016, the petitioner had agreed to recast all the foundation which were cast prior to CBI-Railway Vigilance joint surprise check. Finally, the CBI had found that only ten out of 3553 foundation were defective but by that time petitioner had already recasted 983 foundation as on 06.06.2017. Respondent had issued the notice to make good the progress or else the action was proposed in terms of clause 62 of the Central General Conditions of Contract for termination of a contract and getting the balance work done without the petitioner's certification. Thereafter, the notice dated 27.06.2017 was given by granting further 48 hours time on the same terms and also informing that failure to do the work will result in forfeiture of the security deposit and encashment of performance guarantee. Thereafter, the respondent had issued fresh tender notice for the remaining work. On 17.7.2017 the contract of the petitioner was terminated and steps were taken for encashment of the bank guarantee. The petitioner had filed application under Section 9 of the Act of 1996 and the Commercial Court by order dated 04.07.2017 had stayed the encashment of bank guarantee. During the pendency of the application under Section 9 of the Act, the arbitration proceedings had commenced, therefore, the Commercial Court by order dated 21.8.2019 under Section 9(2) & (3) of the Act had restrained the encashment of the bank guarantee by further permitting the petitioner to file stay application under Section 17 of the Act before the Arbitral Tribunal. The interim order was made operative for a period of 45 days and the proceedings under Section 9 of the Act were terminated. The petitioner thereafter had filed an application under Section 17 of the Act before the Arbitrator with a prayer to restrain the respondent from encashing the nine bank guarantees. The learned Arbitrator after hearing both the parties by order dated 08.10.2019 had rejected the application under Section 17 of the Act. This order of the learned Arbitrator was subject matter of challenge before the Commercial Judge at the instance of the petitioner under Section 37(2) of the Act and by the impugned order dated 29.02.2020, the Commercial Court has dismissed the appeal.

3. Learned counsel appearing for the petitioner submits that the delay in execution of the contract is not attributable to the petitioner, therefore, termination of contract with a short notice of 7 days and 48 hours is arbitrary. He further submits that the bank guarantee cannot be encashed because in terms of the contract between the parties, the amount can be recovered only if the liability is determined as per the provisions. He further submits that the bank guaranttee (sic : guarantee) is conditional bank guarantee and in terms of the conditions of the guarantee, they could be encashed only after assessment of loss or damages and to the extent of amount found due thereafter. He has also submitted that the interim injunction is operating since 2017 and no prejudice has been caused to the other side, therefore, the same should be allowed to continue till the arbitration proceedings are concluded and that if the bank guarantee is encashed, the petitioner will have to amend the claim and agitate the issue in this regard which will delay the proceedings. In support of his submissions, he has placed reliance from the judgment of Supreme Court in the matter of *Hindustan Construction Co. Ltd. v. State of Bihar,* (1999) 8 SCC 436, *Union of India v. Raman Iron Foundry,* (1974) 2 SCC 231, *H.M. Kamaluddin Ansari & Co. v. Union of India,* (1983) 4 SCC 417, *State of Karnataka v. Shree Rameshwara Rice Mills,* (1987) 2 SCC 160, *Gangotri Enterprises Ltd. v. Union of India,* (2016) 11 SCC 720 and *State of Gujarat v. Amber Builders,* (2020) 2 SCC 540.

4. Learned counsel for the respondent opposing the prayer has submitted that the petitioner was required to lay the foundation for erection work and the foundation work done by the petitioner was defective, therefore, he was asked to recast the foundation and since the work was not completed within time, therefore, the contract was rescinded. He has further submitted that the bank guarantees are unconditional bank guarantees and any condition prescribed in the contract between the petitioner and the respondent have no effect on the bank guarantee which is a separate contract. In support of his submission, he has placed reliance upon the judgment of Supreme Court in the matter of *BSES Ltd. v. Fenner India Ltd.,* (2006) 2 SCC 728, *Himadri Chemicals Industries Ltd. v. Coal Tar Refining Co.,* (2007) 8 SCC 110, *Vinitec Electronics (P) Ltd. v. HCL Infosystems Ltd.,* (2008) 1 SCC 544, *CCE v. Dunlop India Ltd.,* (1985) 1 SCC 260, *Reliance Salt Ltd. v. Cosmos Enterprises,* (2006) 13 SCC 599, *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd.*, (1997) 6 SCC 450 and the judgment of this Court in the matter of *Madhya Pradesh Poorv Kshetra Vidyut Vitran Co. Ltd. v. Easun Reyrolle Ltd.* reported in (2016) 4 MP LJ 716. He has also submitted that the scope of interference in a miscellaneous petition filed under Article 227 of the Constitution is very limited and in this regard he has placed reliance upon the judgment of Supreme Court in the matter of *Haji Mohd. Yusuf Ansari and others vs. Salim,* 2015 (4) MPLJ 424 and *Suryadeep Garg v. Neha Garg,* (2016) 3 MPLJ 689

5. Having heard the learned counsel for the parties and perusal of the record, it is noticed that the contract which was awarded to the petitioner has already been terminated and fresh tender has been issued for the remaining work. The issue relating to the legality, validity and correctness of the termination of the contract is pending for decision before the learned Arbitrator. The main issue which is involved in the present case is in respect of the right of the respondent to get the bank guarantee encashed during the pendency of the proceedings before the Arbitrator.

6. The bank guarantee executed by the State Bank of India contains the following clause which has been relied upon by counsel for both the parties:

> *"2. We State Bank of India, Corporate Accounts Group Branch, 11th Floor, 1, Tolstoy Marg, Jawahar Vayopar Bhawan, New Delhi-110001, A Bank constituted/registered under the SBI Act, 1955 having our Corporate Center at Madame Cama Road, Nariman Point, Mumbai, India, do hereby undertake to pay the amount due and payable under this guarantee without any demur, merely on a demand from the government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said contractor(s) of any of the terms or conditions contained in the said agreement or by reason of the contractor (s) failure to perform the said agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs.3,32,31,400,00 (RUPEES Three Crores Thirty Two Lakhs Thirty One Thousand Four Hundred Only).*
>
> *3. We State Bank Of India, Corporate Accounts Group Branch, 11th Floor, 1, Tolstoy Marg, Jawahar Vayopar Bhawan, New Delhi-110001, A Bank constituted/registered under the SBI Act, 1955 having our Corporate Center at Madame Cama Road, Nariman Point, Mumbai, India, undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the contractor(s)/supplier(s) in any suit for proceeding pending before any Court or Tribunal relating thereto our liability under this present contract being absolute and unequivocal. the payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the contractor(s)/supplier(s) shall have no claim against us for making such payment."*

A perusal of the clause (2) reveals that the bank had undertaken to pay the amount due and payable under the guarantee without any demur merely on a demand from the government stating the reason assigned for the encashment of bank guarantee. Clause (3) makes it clear that on making the demand under Clause (2), the bank had undertaken to pay the government any money so demanded notwithstanding

any disputes raised by the contractor. The aforesaid clause makes it clear that the bank guarantee was unconditional bank guarantee.

7. It is settled that bank guarantee is an independent contract between the bank and the beneficiary thereof, therefore, bank is always obliged to honour the guarantee if it is unconditional and irrevocable. The dispute between the beneficiary and the party at whose instance bank guarantee is given is of no consequence and has no effect on the right relating to the encashment of the bank guarantee. It is also settled that the bank guarantee which provides that the amount is payable by the guarantor on demand is considered to be the unconditional bank guarantee and that once the unconditional guarantee in course of commercial dealing is given, the beneficiary is entitled to realize the bank guarantee as per the terms contained therein. [See 2008 (1) SCC 544 *(Vinitec Electronis Private Ltd. Vs. HCL Infosystems Ltd.)*, 1997 (1) SCC 568 *(U.P. State Sugar Corporation vs. Sumac International Ltd.)]*. The general rule that bank guarantee must be honoured in accordance with its terms has two exceptions; firstly when there is clear fraud of egregious nature vitiating the entire transaction and the bank has notice of such a fraud and; secondly when there are special equities such as irretrievable injury or irretrievable injustice in favour of injunction. Leaving aside the above two exceptions, the beneficiary has right of encashment of unconditional bank guarantee. [See 2006 (2) SCC 728 *(BSES Ltd. (Now Reliance Energy Ltd. vs. Fenner India Ltd. And another),* 2007 (8) SCC 110 *(Himadri Chemicals Industries Ltd. vs. Coal Tar Refining Co.),* 2006 (13) SCC 599 *(Reliance Salt Ltd. vs. Cosmos Enterprises and another)* and 1997 (6) SCC 450 *(Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. and another)].*

8. Having regard to the aforesaid pronouncements and considering the relevant clauses of the bank guarantee, we are of the opinion that it is a case of unconditional bank guarantee and the beneficiary has a right of its encashment.

9. Counsel for the petitioner has placed reliance upon the judgment in the case of *Union of India vs. Raman Iron Foundary* (supra) but that is not a case of bank guarantee but it is a case of entitlement to recover the amount from the pending bills in respect of another contract and interpretation of clause 18 of that contract. He has also placed reliance upon the judgment of the Supreme Court in the case of *M/s H.M. Kamaluddin Ansari and Company* (supra) but that was a case of grant of injunction against purchaser restraining it from withholding payment to the suppliers under other contracts which were not the subject matter of arbitration proceedings before the Court. It was also not a case of encashment of bank guarantee. He has also placed reliance upon the judgment in the matter of *State of Karnataka vs. Shri Rameshwara Rice Mills* (supra). In that case, the issue relating to government's right under the contract to recover damages as arrears of land revenue was involved. In the matter of *Gangotri Enterprises Ltd.* (supra)

relied upon by counsel for the petitioner, the issue relating to encashment of bank guarantee furnished in an unrelated contract between the same parties was involved. That is not so in the present case. So far as the judgment in the case of *Amber Builders* (supra) is concerned, the issue involved was in respect of the jurisdiction of the statutory Tribunal to grant interim injunction. Hence, these judgments are distinguishable and the petitioner is not entitled to the benefit of these judgments.

10. Record further reflects that the learned Arbitrator by a well-reasoned order has rejected the petitioner's application under Section 17 of the Act for grant of restrained order about the encashment of nine bank guarantees. The Commercial Court has also dismissed the statutory appeal by assigning due reason. These orders do not suffer from any patent illegality.

11. This petition has been filed under Article 227 of the Constitution wherein the scope of interference is limited. This power can be exercised in appropriate case where there is a patent perversity in the order of the Tribunal or the Subordinate Court or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. (See: 2015 (4) MPLJ 424 *(Haji Mohd. Yusuf Ansari vs. Mohd. Salim)*. The Supreme Court in the matter of *Jai Singh and others Vs. Municipal Corporation of Delhi and another* reported in 2010 (9) SCC 385 while considering the scope of interference under Article 227 of the Constitution, has held that the jurisdiction under Article 227 cannot be exercised to correct all errors of judgment of a court, or tribunal acting within the limits of its jurisdiction. Correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

12. In view of the aforesaid factual and legal position, no case for exercise of limited supervisory jurisdiction is made out. Hence, petition is dismissed.

Petition dismissed

I.L.R. [2021] M.P. 503
APPELLATE CRIMINAL

Before Mr. Justice G.S. Ahluwalia

CRA No. 5504/2020 (Gwalior) decided on 7 December, 2020

DEEPAK ADVERTISERS THROUGH PROPRIETOR DEEPAK JETHWANI …Appellant

Vs.

NARESH JETHWANI …Respondent

***A. Negotiable Instruments Act (26 of 1881), Section 138 & 139 – Presumption – Defence – Appreciation of Evidence* – Held – Respondent could**

not establish that his cheque was stolen, neither any FIR has been filed by him – Respondent has not disputed his signatures in cheque as well as in acknowledgement of receipt of notice – Appellant produced the bills for which cheque was issued – Further, Apex Court concluded that even a blank cheque voluntarily signed and handed over by accused would attract presumption u/S 139 – Presumption arises that cheque was issued in discharge of legally enforcement debt – Impugned order of acquittal set aside – Respondent convicted and sentenced – Appeal allowed.

(Paras 27 to 33 & 37 to 40)

क. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 व 139 – उपधारणा – बचाव – साक्ष्य का मूल्यांकन – अभिनिर्धारित – प्रत्यर्थी स्थापित नहीं कर सका है कि उसका चैक चोरी हुआ था और न ही उसके द्वारा कोई प्रथम सूचना प्रतिवेदन प्रस्तुत किया गया है – प्रत्यर्थी ने चैक के साथ साथ नोटिस की प्राप्ति की अभिस्वीकृति पर उसके हस्ताक्षरों को विवादित नहीं किया है – अपीलार्थी ने वे बिल प्रस्तुत किये जिनके लिए चैक जारी किया गया था – इसके अतिरिक्त, सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यहां तक कि अभियुक्त द्वारा स्वेच्छापूर्वक हस्ताक्षरित एवं हस्तांतरित कोई रिक्त चैक धारा 139 के अंतर्गत उपधारणा आकर्षित करेगा – उपधारणा उत्पन्न होती है कि चैक को वैध रूप से प्रवर्तनीय ऋण के उन्मोचन में जारी किया गया था – दोषमुक्ति का आक्षेपित आदेश अपास्त – प्रत्यर्थी को दोषसिद्ध एवं दण्डादिष्ट किया गया – अपील मंजूर।

***B. Negotiable Instruments Act (26 of 1881), Section 138 & 141 and Civil Procedure Code (5 of 1908), Order 30 Rule 1 – Proprietorship Firm – Maintainability of Complaint* – Held – Proprietorship firm is neither a company nor a partnership firm, it is merely a business name – Even a partnership firm is not a juristic person, but in view of Order 30 Rule 1 CPC, partners can sue or be sued in the name of firm – Section 141 would not apply – Respondent alone can be prosecuted being proprietor of proprietorship firm – Trial Court erred in holding that as proprietorship firm was not arraigned as accused, complaint was not maintainable. (Para 22)**

ख. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 व 141 एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 30 नियम 1 – प्रोपराइटरशिप फर्म – परिवाद की पोषणीयता – अभिनिर्धारित – प्रोपराइटरशिप फर्म न तो एक कंपनी है न ही एक भागीदारी फर्म है, वह मात्र एक व्यवसायिक नाम है – यहां तक कि भागीदारी फर्म भी एक विधिक व्यक्ति नहीं है किंतु आदेश–30, नियम–1 सि.प्र.सं. को दृष्टिगत रखते हुए, भागीदार फर्म के नाम से वाद ला सकते है या उन पर वाद लाया जा सकता है – धारा 141 लागू नहीं होगी – प्रत्यर्थी अकेले को, प्रोपराइटरशिप फर्म का स्वत्वधारी/प्रोपराइटर होने के नाते अभियोजित किया जा सकता है – विचारण न्यायालय ने यह अभिनिर्धारित करने में गलती की कि चूंकि प्रोपराइटरशिप फर्म को अभियुक्त के रूप में दोषारोपित नहीं किया गया था, परिवाद पोषणीय नहीं था।

***C. Negotiable Instruments Act (26 of 1881), Section 138 – Amendment in Complaint* – In amendment application, complainant/**

appellant submitted that factually cheque was issued by respondent in lieu of his advertisement work done by him and mentioning this fact, statutory notice was issued but in complaint, by mistake it was averred that cheque was issued in lieu of loan taken by respondent – Held – Application filed prior to cross examination of appellant, although charge was framed – Application should have been allowed – Order rejecting the application is set aside.

(Paras 5, 9, 15 & 16)

ग. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 – परिवाद में संशोधन – संशोधन आवेदन में, परिवादी/अपीलार्थी ने निवेदन किया था कि तथ्यात्मक रूप से, चैक को प्रत्यर्थी ने, उसके द्वारा किये गये विज्ञापन कार्य के बदले में जारी किया था और इस तथ्य को उल्लिखित करते हुए कानूनी नोटिस जारी किया गया था परंतु परिवाद में भूल से यह प्रकथन किया गया था कि प्रत्यर्थी द्वारा लिये गये ऋण के बदले में चैक जारी किया गया था – अभिनिर्धारित – अपीलार्थी के प्रति परीक्षण से पूर्व, आवेदन प्रस्तुत किया गया था यद्यपि आरोप विरचित किया गया था – आवेदन मंजूर किया जाना चाहिए था – आवेदन नामंजूरी का आदेश अपास्त।

D. Negotiable Instruments Act (26 of 1881), Section 139 – Presumption – Burden of Proof **– Held – In view of presumption u/S 139, burden was on respondent/accused to prove that cheque was not issued in discharge of legally enforceable debt. (Para 27)**

घ. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 139 – उपधारणा – सबूत का भार – अभिनिर्धारित – धारा 139 के अंतर्गत उपधारणा को दृष्टिगत रखते हुए यह साबित करने का भार प्रत्यर्थी/अभियुक्त पर था कि चैक को वैध रूप से प्रवर्तनीय ऋण के उन्मोचन में जारी नहीं किया गया था।

E. Negotiable Instruments Act (26 of 1881), Section 139 & 146 – Bank Return Memo – Presumption – Seal of bank **– Held – Return memo does not bear the seal of Bank but bears signature of bank official – In evidence, bank official did not try to prove that memo was not issued by Bank – Section 146 provides for presumption but it does not provide that unless and until the return memo bears the seal of bank, it cannot be read in evidence. (Para 36)**

ङ. परक्राम्य लिखत अधिनियम (1881 का 26), धारा 139 व 146 – बैंक वापसी ज्ञापन – उपधारणा – बैंक की सील – अभिनिर्धारित – वापसी ज्ञापन पर बैंक की सील नहीं लगी है किंतु बैंक अधिकारी का हस्ताक्षर मौजूद है – साक्ष्य में बैंक अधिकारी ने यह साबित करने का प्रयास नहीं किया कि ज्ञापन, बैंक द्वारा जारी नहीं किया गया था – धारा 146, उपधारणा हेतु उपबंध करती है किंतु यह उपबंधित नहीं करती कि जब तक कि वापसी ज्ञापन पर बैंक की सील न लगी हो, उसे साक्ष्य में नहीं पढ़ा जा सकता।

Cases referred:

(2007) 5 SCC 103, (2008) 8 SCC 536, (2019) 4 SCC 197, (2019) 16 SCC 83.

Arun Dudawat, for the appellant.
BD Mahour, for the respondent.

(Supplied: Paragraph numbers)

J U D G M E N T

G.S. AHLUWALIA, J.:- Record of the Court below received and has been uploaded by the office.

2. With the consent of the parties, case is heard finally through Video Conferencing.

3. This Criminal Appeal under Section 372 of CrPC has been filed against the judgment dated 13/10/2017 passed by Additional Chief Judicial Magistrate, Gwalior in Criminal Case No.14094/2010, thereby acquitting the respondent by dismissing the complaint filed by the appellant under Section 138 of Negotiable Instruments Act.

4. The necessary facts for disposal of present appeal in short are that on 09/08/2010, the appellant filed a complaint on the allegation that Proprietor of the appellant firm, namely, Deepak Jethwani and the respondent are good friends and are known to each other for the last several years. The respondent had demanded Rs.3 lac from the appellant on the pretext of meeting out his domestic expenses and accordingly, an amount of Rs.3 lac was paid by way of loan and it was assured by the respondent that he would repay the same within a period of one month. When the appellant demanded his money back, then the respondent gave a cheque no.297843, dated 10th March, 2010 of Rs.3 lac of ICICI Bank, Gwalior after signing the same and assured that the cheque would get encashed. When the complainant deposited the cheque in Madhya Pradesh Rajya Sahakari Bank Maryadit, Branch Gwalior, then it was returned back on 29/06/2010 with an endorsement that 'Funds are insufficient'. Thereafter, the appellant informed the respondent, however, he did not give any satisfactory reply. Accordingly, the complainant sent a statutory notice dated 05/07/2010 by registered post with acknowledgment due as well as by UPC. The registered notice was received by the respondent on 07/07/2010. When the respondent did not repay the amount, then the complaint was filed.

5. It appears that before the evidence could be recorded, the appellant filed an application for amendment of complaint on the ground that by mistake, it has been mentioned that an amount of Rs.3 lac was paid to meet out the domestic requirements of the respondent but in fact, the respondent had got the advertisement of his shop done by the appellant and in lieu of that advertisement, he had given the cheque of Rs. 3 lacs to the appellant and by mistake, incorrect averments were made in the complaint. However, the said application was rejected.

6. During the course of trial, the appellant also sought liberty to lead secondary evidence by filing the photo copy of the bills. The said application was allowed by order dated 28/02/2017 and the photo copies of the bills were permitted to be exhibited. However, it was also observed that the permission to lead the secondary evidence shall be subject to adjudication of admissibility and genuineness of the bills at the time of final hearing.

7. After recording the evidence of the appellant and his witnesses, the statement of respondent under Section 313 of CrPC was recorded. The respondent thereafter, examined himself and one Ajay Jadon in his defence.

8. The Trial Court by the impugned judgment dismissed the complaint and the respondent was acquitted.

9. Challenging the judgment passed by the Court below, it is submitted by the Counsel for the appellant that the Court below has failed to see that in the notice, Ex.P3, the appellant has specifically mentioned that the amount of Rs. 3 lac was payable to the appellant on account of advertisement of shop of the respondent. Thus, the original case of the appellant is that the respondent had given a cheque of Rs.3 lacs towards cost of advertisement of his shop, however, by mistake of the Counsel, incorrect fact was mentioned in the complaint that the loan amount was given by the appellant for meeting out the domestic expenses of the respondent. It is further submitted that the application which was filed for amendment of complaint should have been allowed because the application was moved prior to examination of witnesses of the complainant. Further, it is submitted that the appellant had examined his counsel, who had drafted the complaint and Sanjay Singh (PW3) has specifically stated that since he was not well, therefore, he had not read the complaint very minutely and on account of his mistake, wrong fact was mentioned that an amount of Rs.3 lac was paid for meeting out the domestic requirements of the respondent. It is further submitted that it is incorrect to say that the cheque was issued by Prapti Collection. It is submitted that Prapti Collection was not the primary accused and since the cheque was issued by the respondent, therefore, not only the notice was issued to the respondent but the complaint was also filed against the respondent.

10. Further, it is submitted that the Court below has wrongly disbelieved the version of the appellant by saying that the appellant has failed to produce any agreement executed between him and the respondent. It is further submitted that merely because the return memo Ex.P2 does not contain seal of the Bank would not make it doubtful because the respondent himself had examined one Ajay Jadon (DW2), an employee of ICICI Bank and even that witness has not stated that the return memo Ex.P2 was not issued by his Bank. The genuineness of return memo Ex.P2 has not been denied by Ajay Jadon (DW2), then it is incorrect to say that the return memo was not issued by ICICI Bank. Even otherwise, Section 146

of Negotiable Instruments Act, merely provides, that if the bank's slip contains official mark, then a presumption can be drawn, but that does not mean, that in case the bank slip does not contain an official mark or seal, then it cannot be proved by the complainant. Further, it is not the case of the respondent that his account had "Sufficient Funds". It is further submitted that since the respondent has not denied his signature on the disputed cheque Ex.P1, therefore, his evidence that he had kept the cheques in his drawer, and the same were stolen, cannot be accepted. It is the case of the respondent himself that he did not try to lodge any report about theft of his cheques prior to filing of the complaint and even otherwise, there is nothing on record to show that any police complaint was ever lodged with regard to theft of cheques. Further, the respondent has admitted that the photographs showing the advertisement of the shop of the respondent are correct. Under these circumstances, it is submitted that the Court below has committed a glaring mistake in dismissing the complaint.

11. *Per contra,* the counsel for the complainant has supported the reasons assigned by the Trial Court.

12. Heard the learned counsel for the parties.

13. The appellant, in support of his case, has examined himself as PW1 (Deepak Jethwani), Pankaj Ingele (PW2) and Sanjay Singh (PW3), whereas the respondent has examined himself (Naresh Jethwani)as (DW1) and Ajay Jadon (DW2).

14. The appellant filed the disputed cheque Ex.P1, return memo issued by ICICI Bank Ex.P2, notice ExP3, postal receipt Ex.P4, Deposit Slip Ex.P6, Acknowledgment of receipt of notice, Ex. P.5, Deposit slip of Cheque, Ex. P.6, UPC certificate Ex.P7, photographs of advertisement Ex.P.8 and P.9 and bills Ex.P.10 and Ex.P.11, whereas the respondent has relied upon his Bank Account Statement Ex.D1.

15. It is the case of the appellant, that the respondent had got the advertisement of his shop done by it, and therefore, an amount of Rs. 3,00,000 was outstanding and accordingly, the disputed cheque was issued. In the notice, Ex. P.3, the above mentioned stand was taken, however, it appears that in the complaint, the stand of the appellant was that since, the respondent was in need of money in order to meet out his domestic requirements, therefore, a sum of Rs. 3 lac was given. However, the appellant, thereafter, filed an application for amendment of complaint. The said application was filed on 15-2-2012 and was dismissed on 8-10-2012 on the ground that not only the application has been filed belatedly, but it would also change the nature of the complaint.

16. From the ordersheets of the Trial Court, it is clear that the application for amendment was filed prior to cross-examination of complainant, although charge

was already framed. Further, in the statutory notice Ex. P3, it was the stand of the appellant, that an amount of Rs. 3 lac was due as the respondent had got the advertisement of his shop. Thus, this Court is of the considered opinion, that the Trial Court, committed material illegality by rejecting the application filed by the appellant for amendment of the complaint and accordingly, the order dated 8-10-2012 passed by the Trial Court is hereby set aside, and the amendment in the complaint is allowed.

17. Now, the next question for consideration is that whether the cheque was issued by a proprietorship firm or by respondent, and whether the complaint filed against the respondent is maintainable or not?

18. It is the case of the appellant, that the advertisement of the shop was got done through the appellant, therefore, a cheque of Rs. 3 lac was given. It is clear from disputed cheque Ex. P.1, that the cheque was issued by the respondent in the capacity of proprietor of Prapti Collection.

19. Undisputedly, the cheque was issued by the proprietorship firm, however, neither the statutory notice was sent to the proprietorship firm nor has been arraigned as an accused.

20. Now the next question for consideration is that whether the complaint filed by the appellant against the respondent alone was maintainable, because undisputedly, neither any statutory notice was issued to the proprietorship firm nor the said firm has been arraigned as an accused.

21. The Supreme Court in the case of *Raghu Lakshminarayanan v. Fine Tubes* reported in (2007) 5 SCC 103 has held as under :

> **9.** The description of the accused in the complaint petition is absolutely vague. A juristic person can be a company within the meaning of the provisions of the Companies Act, 1956 or a partnership within the meaning of the provisions of the Partnership Act, 1932 or an association of persons which ordinarily would mean a body of persons which is not incorporated under any statute. A proprietary concern, however, stands absolutely on a different footing. A person may carry on business in the name of a business concern, but he being proprietor thereof, would be solely responsible for conduct of its affairs. A proprietary concern is not a company. Company in terms of the Explanation appended to Section 141 of the Negotiable Instruments Act, means any body corporate and includes a firm or other association of individuals. Director has been defined to mean in relation to a firm, a partner in the firm. Thus, whereas in relation to a company, incorporated and registered under the Companies Act, 1956 or any other statute, a

person as a Director must come within the purview of the said description, so far as a firm is concerned, the same would carry the same meaning as contained in the Partnership Act.

* * * *

13. The distinction between partnership firm and a proprietary concern is well known. It is evident from Order 30 Rule 1 and Order 30 Rule 10 of the Code of Civil Procedure. The question came up for consideration also before this Court in *Ashok Transport Agency* v. *Awadhesh Kumar* wherein this Court stated the law in the following terms: (SCC pp. 569-70, para 6)

> *"6*. A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Partnership Act, 1932. Though a partnership is not a juristic person but Order 30 Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business. The provisions of Rule 10 of Order 30 which make applicable the provisions of Order 30 to a proprietary concern, enable the proprietor of a proprietary business to be sued in the business names of his proprietary concern. The real party who is being sued is the proprietor of the said business. The said provision does not have the effect of converting the proprietary business into a partnership firm. The provisions of Rule 4 of Order 30 have no application to such a suit as by virtue of Order 30 Rule 10 the other provisions of Order 30 are applicable to a suit against the proprietor of proprietary business 'insofar as the nature of such case permits'. This means that only those provisions of Order 30 can be made applicable to proprietary concern which can be so made applicable keeping in view the nature of the case."

22. A proprietorship firm is neither a Company, nor a partnership firm. It is merely a business name. Although even a partnership firm is not a juristic person, but in view of Order 30 Rule 1 CPC, the partners can sue or be sued in the name of firm. A suit by a proprietorship firm is only by its proprietor. Therefore, Section 141 of Negotiable Instruments Act, would not apply. Thus, the respondent alone

can be prosecuted being the proprietor of the proprietorship firm. Accordingly, it is held, that the Trial Court, committed mistake by holding that since, the proprietorship firm was not arraigned as an accused, therefore, the complaint is not maintainable.

23. The next question for consideration is that whether the complaint filed by the proprietorship firm is maintainable or not?

24. The disputed cheque, Ex. P.1 was issued in favor of the appellant.

Thus, the complainant is the payee. Section 142 of Negotiable Instruments Act reads as under :

> **142. Cognizance of offences.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
>
> *(a)* no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
>
> *(b)* such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:
>
> Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.
>
> *(c)* no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.
>
> (2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction, —
>
> *(a)* if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or
>
> *(b)* if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.
>
> *Explanation.*—For the purposes of clause *(a)*, where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the

> branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

From the plain reading of the above Section, it is clear that the complaint has to be filed by the payee and in the present case, the payee is the Deepak Advertisers and accordingly, the complaint should have been filed by the proprietorship firm only through its proprietor. The Supreme Court in the case of *Shankar Finance & Investments v. State of A.P.* reported in (2008) 8 SCC 536 has held as under :

> **9.** Section 142*(a)* of the Act requires that no court shall take cognizance of any offence punishable under Section 138 except upon a *complaint made in writing by the payee.* Thus the two requirements are that *(a)* the complaint should be made in writing (in contradistinction from an oral complaint); and *(b)* the complainant should be the payee (or the holder in due course, where the payee has endorsed the cheque in favour of someone else). The payee, as noticed above, is M/s Shankar Finance & Investments. Once the complaint is in the name of the "payee" and is in writing, the requirements of Section 142 are fulfilled. Who should represent the payee where the payee is a company, or how the payee should be represented where payee is a sole proprietary concern, is not a matter that is governed by Section 142, but by the general law.
>
> **10.** As contrasted from a company incorporated under the Companies Act, 1956 which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law where an individual carries on business in a name or style other than his own name, he cannot sue in the trading name but must sue in his own name, though others can sue him in the trading name. Therefore, if the appellant in this case had to file a civil suit, the proper description of the plaintiff should be "Atmakuri Sankara Rao carrying on business under the name and style of M/s Shankar Finance & Investments, a sole proprietary concern". But we are not dealing with a civil suit. We are dealing with a criminal complaint to which the special requirements of Section 142 of the Act apply. Section 142 requires that the complainant should be payee. The payee is M/s Shankar Finance & Investments. Therefore, in a criminal complaint relating to an offence under Section 138 of the Act, it is permissible to lodge the complaint in the name of the proprietary concern itself.

25. Thus, it is held that the complaint filed by the appellant against the respondent is maintainable.

26. So far as the merits of the case are concerned, Deepak Jethwani (PW1) was cross-examined by the respondent in detail. The respondent in paragraph 12 of his cross-examination has merely put a question that the acknowledgment of receipt of registered notice Ex.P.5 does not bear signature of the respondent, however, in the entire cross-examination of Deepak Jethwani (PW1), the respondent has not put a single question thereby disputing the signature of the respondent on the disputed cheque Ex.P.1. Even Naresh Jethwani (DW1/ respondent) had entered in the witness box but he also did not dispute his signature on the disputed cheque Ex.P.1. Even in his statement under Section 313 of CrPC the respondent had taken the following defence:-

> मैं निर्दोष हूँ। उक्त प्रकरण झूठा है। परिवादी का 5–6 लोगों का सिंडीकेट है, जो चैक हथिया लेते है व न्यायालय में झूठा प्रकरण प्रस्तुत कर देते हैं।

27. It is not out of place to mention here that once the accused enters into a witness box, then his status becomes that of like any other witness and accordingly, the respondent was under obligation to explain each and every circumstance which was against him. Further, in view of the presumption as provided under Section 139 of Negotiable Instruments Act, the burden was on the respondent to prove that the cheque was not issued in discharge of legally enforceable debt. The respondent in his evidence has stated that Deepak Jethwani (PW1) is his friend and he used to come to his shop very frequently. All papers including the cheques were kept by the respondent in his drawer. When he was in need of cheques, then he checked his drawer and found that three cheques bearing Serial Nos.297841, 297842 & 297843 of ICICI Bank were missing. Therefore, he went to Kotwali Police Station for lodging the FIR but the FIR was not lodged and he was suggested that the respondent may search the cheques, otherwise, FIR would be lodged in the evening. Thereafter, he could not go to the Police Station and only when the appellant filed the complaint, then he went to ICICI Bank and obtained the bank statement Ex.D1. In para 3 of his cross-examination, he admitted that in advertisement photographs Ex.P.8 and P.9, the photograph of his shop and number of respondent is mentioned. He further stated that after looking at the photographs, he came to know about the advertisement but even thereafter, he did not lodge any complaint to anybody. However, he tried to explain that as the complaint is already pending, therefore, he did not think it proper to make a complaint to any officer as the Court is the Supreme. He further stated that he never made a complaint to the police or any institution with regard to bills Ex.P10 and Ex.P11. In paragraph 4 of his cross-examination, he could not clarify that on which date he realized that the cheques were missing from his drawer. He further admitted that even after receipt of statutory notice, he did not lodge any complaint with the Bank. However, he gave an explanation that since his cheque was not dishonored, therefore, he did not lodge the complaint. He further stated that the

return memo does not bear the seal of the Bank and blank memos are easily available and he can also produce the same. In the entire cross-examination, and even in the examination-in-chief, he did not dispute his signature on the cheque, although from the return memo issued by Bank Ex.P2, it appears that the cheque was returned on two counts; (i) Funds Insufficient (ii) Drawer's signatures incomplete/ Differs/ Required. Although the respondent had given suggestion to Deepak Jethwani that the acknowledgment of receipt of notice Ex.P.5 does not bear his signature which was duly denied by Deepak Jethwani (PW1) but the respondent in his evidence did not dispute his signature on the acknowledgment of receipt of notice Ex.P.5, although in paragraph 4 of his cross-examination, he has stated that since he did not receive any notice, therefore, he did not reply. Further, the respondent never filed any application for getting his signatures on the disputed cheque compared with his admitted signatures. Thus, it is clear that the respondent did not dispute his signature on the disputed cheque Ex.P1.

28. So far as the defence of the respondent, that he had kept cheques in the drawer from where they were stolen is concerned, the same cannot be accepted. Why a person would keep blank signed cheques in his drawer, specifically when he is the sole proprietor of a proprietorship firm? Further, no FIR or police report was ever lodged by the respondent regarding theft of his cheques. Further, the respondent could not disclose the date on which he came to know that his three cheques are missing and also could not disclose the date on which, he had gone to the police station for the first time, to lodge the report regarding missing cheques.

29. The respondent has tried to project that the ink of other entries on the disputed cheque is different from the ink of the signatures. The respondent has also tried to establish that other entries are not in his handwriting. The question for consideration is that where the signatures of the drawer of the cheque, are admitted or are proved, then whether the drawer of the cheque would be absolved from his liability only on the ground that the other entries are not in his handwriting? The question is no more *res integra.* The Supreme Court in the case of *Bir Singh Vs. Mukesh Kumar* reported in (2019) 4 SCC 197 has held as under :

> **32.** The proposition of law which emerges from the judgments referred to above is that the onus to rebut the presumption under Section 139 that the cheque has been issued in discharge of a debt or liability is on the accused and the fact that the cheque might be post-dated does not absolve the drawer of a cheque of the penal consequences of Section 138 of the Negotiable Instruments Act.
>
> **33.** A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces

> evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
>
> **34.** If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.
>
> **35.** It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.
>
> **36.** Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

30. Further, this Court has already held that the disputed cheque, Ex.P.1 bears the signatures of the respondent. Section 139 of Negotiable Instruments Act, 1988 provides for presumption that the disputed instrument was issued in discharge of legally enforceable debt. The Supreme Court in the case of *Shree Daneshwari Traders Vs. Sanjay Jain* reported in (2019) 16 SCC 83 has held as under :

> **17.** Under Section 138 of the Negotiable Instruments Act, once the cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act in favour of the holder would be attracted. Section 139 creates a statutory presumption that a cheque received in the nature referred to under Section 138 of the Negotiable Instruments Act is for the discharge in whole or in part of any debt or other liability. The initial burden lies upon the complainant to prove the circumstances under which the cheque was issued in his favour and that the same was issued in discharge of a legally enforceable debt.

18. It is for the accused to adduce evidence of such facts and circumstances to rebut the presumption that such debt does not exist or that the cheques are not supported by consideration.

19. Considering the scope of the presumption to be raised under Section 139 of the Act and the nature of evidence to be adduced by the accused to rebut the presumption, in *Kumar Exports* v. *Sharma Carpets,* the Supreme Court in paras 14-15 and paras 18-20 held as under: (SCC pp. 519-21)

> *"14. Section 139 of the Act provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.*
>
> *15.* Presumptions are devices by use of which the courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence. Under the Evidence Act all presumptions must come under one or the other class of the three classes mentioned in the Act, namely, (1) "may presume" (rebuttable), (2) "shall presume" (rebuttable), and (3) "conclusive presumptions" (irrebuttable). The term "presumption" is used to designate an inference, affirmative or disaffirmative of the existence of a fact, conveniently called the "presumed fact" drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact, either judicially noticed or admitted or established by legal evidence to the satisfaction of the tribunal. Presumption literally means 'taking as true without examination or proof'.
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> * * *
>
> *18.* Applying the definition of the word "proved" in Section 3 of the Evidence Act to the provisions of Sections 118 and 139 of the Act, it becomes evident that in a trial under Section 138 of the Act a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumptions under Sections 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive

and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima facie case for a party for whose benefit it exists.

19. The use of the phrase "until the contrary is proved" in Section 118 of the Act and use of the words "unless the contrary is proved" in Section 139 of the Act read with definitions of "may presume" and "shall presume" as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. [91] When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. *To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial.* The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. *To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would*

> *under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant.* The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act."
>
> (emphasis supplied)

31. It is next contended by the Counsel for the respondent that the appellant has failed to prove that the cheque was issued in discharge of legally enforceable debt.

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

33. It is the case of the appellant, that the respondent had given a contract for advertisment of his shop and accordingly, hoardings and pamphlets on the body as well as seats of a bus were affixed. The photographs Ex P8 and P.9 have been filed by the appellant. The respondent has also admitted that the photographs contain his number and photo of the shop. He also admitted that he never made any complaint with regard to the advertisement. The bills Ex. P. 10 and P.11 have also been produced by the appellant. Further, the respondent has taken a false stand that the cheques were stolen from his drawer. Under these circumstances, it is held that the respondent had issued the cheque in discharge of legally enforceable debt.

34. It is next contended by the Counsel for the respondent that the return memo Ex. P2 is not proved. Considered the submissions made by the Counsel for the parties.

35. As per the return memo Ex.P2, issued by ICICI Bank, the cheque was returned on two counts; (i) Funds Insufficient (ii) Drawer's signatures incomplete/Differs/ Required.

36. So far as insufficiency of funds is concerned, it is not the case of the respondent that he had sufficient funds in his account. So far as the drawer's signature incomplete is concerned, it is not the case of the respondent that the disputed cheque Ex.P1 does not bear his signature. So far as the stand of the respondent that since the return memo Ex.P2 issued by ICICI Bank does not bear the seal of the Bank and, therefore, the same cannot be relied upon is concerned, the said submission of the counsel for the respondent cannot be accepted. The return memo Ex. P2 bears signature of an officer of ICICI Bank. The respondent

has examined Ajay Jadaon (DW2), an employee of ICICI Bank, who did not try to prove that the return memo Ex.P2 was never issued by the Bank. On the contrary, it appears that when the counsel for the appellant tried to put a question to Ajay Jadon (DW2) with regard to return memo Ex.P2, then it was objected by the respondent's counsel. Further, Section 146 of N.I.Act provides for presumption, but it does not provide that unless and until, the return memo bears the seal of the bank, it cannot be read in evidence. In the present case, the appellant has proved beyond reasonable doubt that the return memo, Ex. P.2 was duly issued by ICICI Bank.

37. Thus, this Court is of the considered opinion, that the appellant has successfully established that the disputed cheque, Ex. P.1 was issued by the respondent in discharge of his legally enforceable debt, which stood bounced due to in-sufficient funds. Accordingly, the judgment dated 13/10/2017 passed by Additional Chief Judicial Magistrate, Gwalior in Criminal Case No.14094/2010 is hereby set aside and the respondent is hereby convicted under Section 138 of Negotiable Instruments Act.

38. So far as the question of sentence is concerned, as per Section 138 of Negotiable Instruments Act, the imprisonment for a term which may extend to 2 years and fine which may extend twice the amount of the cheque can be imposed. However, as this Court is not intending to impose jail sentence of more than 1 year, therefore, in the light of Section 143 of Negotiable Instruments Act, it is not necessary to hear the respondent on the question of sentence.

39. Considering the totality of the facts and circumstances of the case, the respondent is awarded jail sentence of rigorous imprisonment of 1 year and is also directed to pay compensation of Rs. 5 lacs which shall be payable to the appellant.

40. The compensation amount be deposited within a period of one month from today, failing which the respondent shall undergo the jail sentence of 3 months.

41. The respondent is directed to surrender before the Trial Court, on or before 31st of December 2020.

42. The appeal is **Allowed.**

Appeal allowed

I.L.R. [2021] M.P. 520 (DB)
APPELLATE CRIMINAL

Before Mr. Justice Sujoy Paul & Mr. Justice Rajendra Kumar Srivastava

CRA No. 1066/1998 (Jabalpur) decided on 7 January, 2021

RAMCHARAN PATEL …Appellant

Vs.

STATE OF M.P. …Respondent

***A. Penal Code (45 of 1860), Sections 302, 364, 120-B & 201 – Circumstantial Evidence – Motive* – Held – Merely because appellants expressed their doubt about character of victim (*daughter-in-law of appellant*) that alone does not conclusively establish that they were having any "motive" to murder her – Circumstances should be in category of "must" and cannot be based on conjectures and surmises – Chain of circumstantial evidence needs to be established with accuracy and precision – Suspicion however strong cannot take place of proof – Circumstantial evidence not sufficient to establish guilt – Conviction set aside – Appeal allowed. (Paras 15, 18 & 19)**

क. दण्ड संहिता (1860 का 45), धाराएँ 302, 364, 120–B व 201 – परिस्थितिजन्य साक्ष्य – हेतु – अभिनिर्धारित – मात्र क्योंकि अपीलार्थीगण ने पीड़िता (*अपीलार्थी की बहू*) के चरित्र के बारे में संदेह अभिव्यक्त किया, वह अकेला निश्चायक रूप से यह स्थापित नहीं कर सकता कि उनका उसकी हत्या करने का कोई ''हेतु'' था – परिस्थितियां ''अनिवार्य'' की श्रेणी में होनी चाहिए तथा न कि अनुमानों और संदेहों पर आधारित होनी चाहिए – परिस्थितिजन्य साक्ष्य की श्रृंखला यथार्थता और शुद्धता के साथ स्थापित करने की आवश्यकता है – संदेह कितना भी मजबूत हो सबूत का स्थान नहीं ले सकता – दोषिता स्थापित करने के लिए परिस्थितिजन्य साक्ष्य पर्याप्त नहीं – दोषसिद्धि अपास्त – अपील मंजूर।

***B. Penal Code (45 of 1860), Sections 302, 364, 120-B & 201 – Onus of Proof – Adverse Inference* – Held – Prosecution evidence not found trustworthy and was disbelieved by Court below – Principal burden was on prosecution which it failed to establish – Adverse inference can be drawn against accused only when prosecution established its case beyond reasonable doubt and appellant failed to discharge the onus shifted on them – Onus was not shifted to appellants and thus cannot be held guilty for this reason. (Para 17)**

ख. दण्ड संहिता (1860 का 45), धाराएँ 302, 364, 120–B व 201 – सबूत का भार – प्रतिकूल निष्कर्ष – अभिनिर्धारित – अभियोजन साक्ष्य भरोसेमंद नहीं पाया गया तथा निचले न्यायालय द्वारा अविश्वास किया गया था – प्रमुख भार अभियोजन पर था जो

कि वह स्थापित करने में विफल रहा – अभियुक्त के विरूद्ध प्रतिकूल निष्कर्ष केवल तभी निकाला जा सकता है जब अभियोजन ने अपना प्रकरण युक्तियुक्त संदेह से परे स्थापित किया हो तथा अपीलार्थी उन पर आये भार का उन्मोचन करने में विफल रहा – भार अपीलार्थीगण को अंतरित नहीं हुआ था और अतः इस कारण से दोषी नहीं ठहराये जा सकते।

***C. Criminal Practice – Circumstantial Evidence* – Held – If two views are possible on evidence produced, one indicating guilt of accused and other to his innocence, the view which favours the accused must be adopted. (Para 16)**

ग. दाण्डिक पद्धति – परिस्थितिजन्य साक्ष्य – अभिनिर्धारित – यदि प्रस्तुत साक्ष्य पर दो दृष्टिकोण संभव हैं, एक अभियुक्त की दोषिता इंगित करने वाला तथा दूसरा उसकी निर्दोषिता, तो अभियुक्त का समर्थन करने वाला दृष्टिकोण अपनाया जाना चाहिए।

Cases referred:

AIR 2019 SC 3571, AIR 2020 SC 1057, AIR 1991 SC 1224, AIR 1992 SC 1689, (1995) 3 SCC 228, (2013) 5 SCC-722, (2013) 12 SCC-406, (2019) 4 SCC-522, (1973) 2 SCC-808.

Shobhitaditya, for the appellant.
J.S. Hora, P.L. for the State.
None, for the Objector despite service.

J U D G M E N T

The Judgment of the Court was delivered by :
SUJOY PAUL, J. :- This appeal filed under Section 374 (2) of the Code of Criminal Procedure takes exception to the judgment dated 30.4.1998 passed in Sessions Trial No.134/1990 whereby appellant No.1 was convicted for committing offences under Sections 302, 364 and 201 of IPC whereas appellant No.2 was convicted under Sections 302,120B, 364,120B and Section 201 of IPC. Both were sentenced to undergo R.I. for life with fine of Rs.1000/- in the first count, R.I. for five years with fine of Rs.500/-in the second count while R.I. for three years with fine of Rs.500/- in the third count with default stipulation.

2. Indisputably, the appellant no.1, Dinesh Patel died during the pendency of this case and accordingly this appeal stood abated for appellant no.1. The interesting conundrum in this case is whether the appellant no.2 was rightly convicted and directed to undergo sentence on the basis of circumstantial evidence ?

3. Briefly stated, relevant facts are that the present appellant is father-in-law of deceased Vikki Bai. Dinesh was husband of Vikki Bai and son of appellant no.2. In the year 1984, Dinesh solemnized marriage with Vikki Bai. After marriage,

their matrimonial relations were not very cordial and on more than one occasion, Vikki Bai compelled to go to her parents' house and stay there for considerably long time. She even remained there for about two years. Dinesh's uncle Ramlakhan took her with an undertaking that proper care of Vikki Bai will be taken. On the intervening night between 27.8.1989 and 28.8.1989, Vikki Bai became untraceable from her matrimonial house. The appellant no.2 Ramcharan lodged "Gum Insaan" Report in Police Station -Rampur Baghelan. The father of Vikki Bai, namely Madhav Singh also lodged a report on 29.8.1989 in the same police station stating that his daughter Vikki Bai has been murdered by the appellants. Since no action was taken on his report, Madhav Singh lodged the complaint before the Collector, Satna, DIG and IG, Rewa. Since his complaints aforesaid could not fetch any result, he filed a complaint before the Court below. In turn, the investigation was conducted and Crime No.100/1990 was registered. After investigation, Challan was filed and in due course the matter was committed before the Sessions Court. The charges were framed. The appellants abjured their guilt and hence evidence was recorded and parties were heard by the court below.

4. Total 14 witnesses entered into the witness box on behalf of prosecution and deposed their statements. This includes two chance witnesses, namely, Gopika Prasad (PW/3) and Amritlal (PW/12). Indisputably, in the instant case, the body of Vikki Bai could not be found. As per prosecution story, Vikki Bai was burnt alive in a brick furnace. However, no remains of Vikki Bai were found from the said furnace. On the basis of statements of aforesaid chance witnesses, namely, Gopika Prasad (PW/3) and Amritlal (PW/12), the prosecution intended to establish that Vikki Bai was last seen with appellants and appellants ultimately murdered her.

5. Shri Shobhitaditya, learned counsel for appellants urged that the said story of prosecution and evidence led in support thereof were found to be not trustworthy by the court below.

6. By taking this court to para 30 & 31 of the impugned judgment, learned counsel for appellants urged that the Court below clearly opined that statements of chance witnesses aforesaid are unbelievable. In para-36 of the judgment, the Court below opined that the story and evidence led by prosecution is untrustworthy, but charges are proved on the basis of circumstantial evidence. Thus, it is to be seen whether circumstantial evidence are sufficient to hold the present appellant as guilty. By criticizing the findings given from paras 37 to 43 of the judgment, Shri Shobhitaditya argued that the Apex Court in *Sunita Vs. State of Haryana* (AIR 2019 SC 3571) and *Mohd. Yunus Ali Tarafdar Vs. State of West Bengal* (AIR 2020 SC 1057), laid down the principles on the strength of which the degree and quality of circumstantial evidence needs to be tested. If the circumstantial evidence of present case is tested on the anvil of said principles, it

will be clear that the necessary test laid down by Supreme Court could not be satisfied and Court below has committed an error in holding the appellant as guilty.

7. The counsel for appellants urged that appellant No.1-Dinesh was an employee of Armed Force. Merely because, he was on leave during the period when Vikki Bai became untraceable, does not mean that he took leave for the purpose of murdering Vikki Bai. The appellant No.1-Dinesh took a defence that between 20.8.1989 to 25.8.1989, he was taking treatment from Dr. J.P. Tiwari of Community Health Centre, Nowgong, District Chhatarpur. Merely because said doctor has not entered into the witness box along with his brother Ramlal Singh, no inference can be drawn that appellant No.1-Dinesh or appellant No.2-Ramcharan Patel were guilty of committing murder. The burden was on the prosecution to establish their case with accuracy and precision. Only when said burden is discharged by the prosecution, onus can be shifted on the present appellants. The Court below has committed an error in drawing adverse inference and holding that the circumstantial evidence are sufficient.

8. The findings regarding motive are also perverse, is the next contention of Shri Shobhitaditya. He submits that the findings given in para 37 are also based on surmises and conjunctures. Reliance is placed on *Kedarnath & others Vs. State of Madhva Pradesh* (AIR 1991 SC1224).

9. Lastly, it is argued that Court below has wrongly placed reliance on *Bhagwan Singh & Anr. Vs. State of Punjab* AIR 1992 SC 1689. Although the said case was also pregnant with a similar fact that body of deceased was not found, the other evidences adduced in the said case were totally different. The concerned person was tortured in police custody and other persons in the custody were eye-witnesses who deposed their statements in favour of the prosecution story whereas in the instant case neither body of Vikky Bai was recovered nor any remains of her could be traced. The statement of chance witnesses were disbelieved. Thus, there is no iota of legal evidence on the strength of which appellants could have been held guilty.

10. Countering the aforesaid arguments, Shri Hora submits that although chance witnesses were disbelieved and their statements are full of contradictions, this Court may reappriciate (sic: reappreciate) those statements to examine the correctness of the judgment of the Court below. "Motive is the foundational material on the strength of which prosecution case needs to be examined" is the next contention of Shri Hora which is based on *Prem Kumar & Anr. Vs. State of Bihar* (1995) 3 SCC 228. He supported the impugned judgment and the findings given in para 37 thereof.

11. No other point is pressed by counsel for the parties.

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

13. By a bare perusal of paras 32 and 36 to the judgment, it is clear that the Court below has considered the statements of chance witnesses (PW-3 and PW-12). After considering the statement of other witnesses, the Court below also came to hold in para 36 of the judgment that the evidence led in support of complaint is not untrustworthy. But circumstantial evidence is sufficient to establish the guilt. The following circumstances were found against the appellant:-

> 1. Appellant No. 1 took the defence that he was unwell and getting treatment from Dr. Tiwari while staying with his brother Ram Lal Singh was artificial and this defence could not be established because neither Ram Lal Singh nor Dr. J.P. Tiwari were examined by him.
>
> 2. The aforesaid conduct and artificial defence of Dinesh shows that he took Vikki Bai to some place and murdered her. He destroyed the dead body in such a manner that no evidence could be traced.
>
> 3. In support of finding regarding motive, the Court below opined that as per the evidence led by prosecution and admission of Dinesh and Ram Charan that they had doubt about the character of Vikky Bai, motive of murder is conclusively established on the basis of these circumstantial evidence. The appellants were accordingly held guilty.

14. The relevant factors needs to be taken into account while adjudicating the circumstantial evidence are mentioned by the Supreme Court in the case of *Yunus Ali Tarafdar* (supra). The parameters are as under :-

> "(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established; (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (3) the circumstances should be of a conclusive nature and tendency; (4) they should exclude every possible hypothesis except the one to be proved; and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. (See *Sharad Birdhichand Sarda* v. *State of Maharashtra [Sharad Birdhichand Sarda* v. *State of Maharashtra,* (1984) 4 SCC 116 : 1984 SCC (Cri) 487], SCC p. 185, para 153; *M.G. Agarwal* v.

State of Maharashtra [M.G. Agarwal v. *State of Maharashtra,* AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , AIR p. 206, para 18.)"

15. The parameter No.1 leaves no room for any doubt that conclusion of guilt must be fully based on reliable evidence. The circumstances concerned should be in the category of "must" and cannot be based on surmises and conjectures. This is trite law that suspicion however strong cannot take the place of proof . *(See : Raj Kumar Singh Vs. State of Rajasthan-* (2013) 5 SCC-722). The relevant para (Para-21) of this judgment reads as under :-

> **21.** Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that "may be" proved and "will be proved". In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between "may be" true and "must be" true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide *Hanumant Govind Nargundkar* v. *State of M.P.* [AIR 1952 SC 343 : 1953 Cri LJ 129] , *Shivaji Sahabrao Bobade* v. *State of Maharashtra* [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : AIR 1973 SC 2622] , *Sharad Birdhichand Sarda* v. *State of Maharashtra [Sharad Birdhichand Sarda* v. *State of Maharashtra,* (1984) 4 SCC 116 : 1984 SCC (Cri) 487 : AIR 1984 SC 1622] , *Subhash Chand* v. *State of Rajasthan* [(2002) 1 SCC 702 : 2002 SCC (Cri) 256] , *Ashish Batham* v. *State of M.P.* [(2002) 7 SCC 317 : 2002 SCC (Cri) 1718 : AIR 2002 SC 3206] , *Narendra Singh* v. *State of M.P.* [(2004) 10 SCC 699 : 2004 SCC (Cri) 1893 : AIR 2004 SC

3249] , *State* v. *Mahender Singh Dahiya* [(2011) 3 SCC 109 : (2011) 1 SCC (Cri) 821 : AIR 2011 SC 1017] and *Ramesh Harijan* v. *State of U.P.*

Same view is followed by Supreme Court in *Sujit Biswas Vs. State of Assam*-(2013) 12 SCC-406 and recently in *Digamber Vaishnav And Another Vs. State of Chhattisgarh*-(2019) 4 SCC-522. In the case of *Digamber Vaishnav* (Supra), it was further held that fundamental principle of criminal jurisprudence is that burden of proof squarely rests on prosecution and that general burden never shifts. No conviction can be recorded on the basis of conjectures and surmises.

16. The matter may be viewed from another angle. This is trite that if two views are possible on the evidence produced in a case, one indicating guilt of accused and other to his innocence, the view which favours the accused must be adopted. *(See: Kali Ram Vs. State of Himachal Pradesh***-** (1973) 2 SCC-808) which was followed with profit in the case of *Raj Kumar Singh* (supra).

17. As noticed, in the present case, the prosecution evidence was not found to be trustworthy and, therefore, the court below gave a specific finding in para-36 of the judgment and disbelieved it. Thus the principal burden which was on the shoulders of the prosecution, could not be discharged by the prosecution. In this backdrop, onus was not shifted on the appellants to disprove the case of the other side. In other words, adverse inference can be drawn against the appellants only when the prosecution has established its case beyond reasonable doubt and, in turn, the appellants/ defence has failed to discharge the onus shifted on them. Hence appellants could not have been held guilty for the reason they have not examined Dr. J.P.Tiwari and Ramlal Singh.

18. As per second parameter laid down by the Supreme court, the prosecution was required to establish the guilt in such a manner that no other conclusion can be drawn. One cannot be held guilty on the basis of surmises and conjectures. No doubt, motive can be an important link in the chain of circumstantial evidence, that link needs to be established with accuracy and precision. Pertinently, in para-36 of the impugned judgment, the court below has disbelieved the entire evidence of the complainant/ prosecution whereas in para-37 gave contradictory finding that motive is established based on the evidence led by prosecution and as per admission of both the appellants. In our opinion, merely because appellants expressed their doubt about character of Vikki Bai, that alone does not conclusively establish that they were having any "motive" to murder her. The court below has not given any other circumstances on the strength of which the appellant could have been held guilty.

19. In view of foregoing analysis, we are unable to hold that circumstantial evidence mentioned by the court below were sufficient to establish the guilt. The court below, in our opinion, has passed the judgment on surmises and conjectures.

There was no legal evidence on the strength of which appellants could have been held guilty.

20. Resultantly, the impugned judgment dated 30.4.1998 passed in Sessions Trial No.134/1990 is set aside. Appeal is **allowed.**

Appeal allowed

I.L.R. [2021] M.P. 527 (DB)
APPELLATE CRIMINAL

Before Mr. Justice Sujoy Paul & Mr. Justice Shailendra Shukla

CRA No. 333/2015 (Indore) decided on 28 January, 2021

RATANLAL & anr. …Appellants

Vs.

STATE OF M.P. …Respondent

***A. Penal Code (45 of 1860), Section 376-D & 506-II – Appreciation of Evidence – Statement of Prosecutrix – Credibility* – Held – Statement of prosecutrix without any corroboration, can alone result in conviction but her evidence must be creditworthy, inspiring total confidence – Statements of prosecutrix are full of contradictions and omissions – No sign of forcible intercourse/injury found on person of prosecutrix – Alleged torn clothes, broken bangles not been recovered and seized – There was animosity between families of accused and husband of prosecutrix – Divergence between statement of prosecutrix and her husband – Conviction set aside – Appeal allowed. (Paras 15 to 31 & 43)**

क. दण्ड संहिता (1860 का 45), धारा 376–D व 506–II – साक्ष्य का मूल्यांकन – अभियोक्त्री के कथन – विश्वसनीयता – अभिनिर्धारित – बिना किसी संपुष्टि के अभियोक्त्री के कथन मात्र के परिणामस्वरूप दोषसिद्धि हो सकती है परंतु उसका साक्ष्य विश्वसनीय, पूरी तरह आत्मविश्वास से प्रेरित होना चाहिए – अभियोक्त्री के कथन विरोधाभासों तथा लोप से पूर्ण है – अभियोक्त्री के शरीर पर बलपूर्वक संभोग/चोट के कोई निशान नहीं पाये गये – अभिकथित फटे कपड़ों, टूटी चूड़ियों की बरामदगी तथा जब्ती नहीं हुई – अभियुक्त तथा अभियोक्त्री के पति के परिवारों के मध्य वैमनस्यता थी – अभियोक्त्री तथा उसके पति के कथन के बीच अंतर – दोषसिद्धि अपास्त – अपील मंजूर।

***B. Penal Code (45 of 1860), Section 376(2) (amended) & 376-D and Evidence Act (1 of 1872), Section 114-A (amended) – Consent – Presumption* – Held – Presumption u/S 114-A of Evidence Act is not available in case of gang rape provided u/S 376-D IPC after the amendment incorporated in Section 376(2) IPC and in Section 114-A of Evidence Act on**

03.02.2013 for offence committed after 03.02.2013 – Date of incident in present case is 22.12.2013, hence amended provision would be applicable.
(Para 40 & 41)

ख. दण्ड संहिता (1860 का 45), धारा 376(2)(संशोधित) व 376–D एवं साक्ष्य अधिनियम (1872 का 1), धारा 114–A (संशोधित) – सहमति – उपधारणा – अभिनिर्धारित – दिनांक 03.02.2013 को भा.दं.सं. की धारा 376(2) तथा साक्ष्य अधिनियम की धारा 114–A में संशोधन शामिल होने के बाद दिनांक 03.02.2013 के पश्चात् कारित किये गये अपराध के लिए भा.दं.सं. की धारा 376–D के अंतर्गत उपबंधित सामूहिक बलात्संग के प्रकरण में साक्ष्य अधिनियम की धारा 114–A के अंतर्गत उपधारणा उपलब्ध नहीं है – वर्तमान प्रकरण में घटना की दिनांक 22.12.2013 है, अतः संशोधित उपबंध लागू होगा।

C. Practice & Procedure **– Held – Court cannot make modifications to amend or correct the legislative errors. (Para 42)**

ग. पद्धति एवं प्रक्रिया – अभिनिर्धारित – न्यायालय, विधायी त्रुटियों को संशोधित अथवा सुधार करने के लिए उपांतरण नहीं कर सकता।

Cases referred:

(2014) Volume 2 SCC 476, (2013) 8 SCC 789.

Santosh Kumar Meena, for the appellants.
Shrey Raj Saxena, Dy. A. G. for the respondent/State.

J U D G M E N T

The Judgment of the Court was delivered by:
SHAILENDRA SHUKLA, J. :- The present appeal has been preferred under Section 374 of Cr.P.C. by the appellants seeking to set aside the judgment of conviction and sentence dated 18.02.2015 pronounced against them by the First Additional Sessions Judge, Biaora, District Rajgarh in S.T. No.33/2014; whereby they have been convicted as under :-

S.No.	Under Section	Conviction	Fine	In default of payment of fine
1	376(D) of IPC	Life Imprisonment	Rs.5,000/-	One year's Additional R.I.
2	506 Part-II of IPC	Three years' imprisonment	Rs.1,000/-	Six months' Additional R.I.

2. Admitted facts are that the appellant Ratanlal is the real brother of the husband of the prosecutrix namely Nandlal and it is also admitted that prior to marriage of prosecutrix with Nandlal she had been engaged to be married to appellant Ratanlal.

3. Prosecution story in short is that, the prosecutrix lodged a report on 26.12.2013 at Police Station Biaora, District Rajgarh to the effect that while she was feeding the cattle in the night of 20.12.2013, Ratanlal, her brother-in-law (elder brother of her husband) came from behind and caught hold of her hand and when she tried to shout, her mouth was pressed and tried to drag her out. When prosecutrix tried to free herself, appellant Tarvarsingh also came and both of them pressed her mouth so that she may not protest and they dragged her to bamboo grove situated near a well and tried to force themselves upon her. When she protested, Ratanlal threw her on the ground and rapped (sic: raped) her and the same act was committed by Tarvarsingh. Thereafter both of them threatened her that she would be done to death, if she narrated the incident to anyone. The prosecutrix returned to her house and narrated the incident to her husband in the next morning, who was not present at home at the time of incident, however, her husband did not believe her and sent her to her parental house. However, prosecutrix was ultimately brought to the Police Station by her husband Nandlal.

4. After lodging of FIR investigation ensued and charge-sheet was filed under Section 376(D) and 506 of IPC against both the appellants. Charges were read out under same provisions of IPC and appellant Ratanlal took a defence that there is a dispute between him and his brother Nandlal (husband of prosecutrix) over money and land and, hence, he has been falsely implicated. Appellants have produced two defence witnesses namely Bane Singh and Suresh Sharma. After examination of prosecution evidence and recording of defence evidence the appellants have been convicted and sentenced as described earlier.

5. In the present appeal it has been submitted that the FIR has been lodged very belatedly, that although prosecutrix has stated that her bangles had got broken, the Investigating Officer has not seized any broken bangles, that the appellant has been implicated due to previous enmity on account of land dispute, that no injury has been found on the person of prosecutrix, that the prosecutrix has not been supported by any other witness and there are number of omissions/ contradictions in the statements of prosecutrix and other witnesses and on these grounds appellants have requested that they be acquitted.

6. That question of consideration is whether the grounds contained in the appeal is liable to be allowed and the appellants deserve to be acquitted.

7. The Trial Court has held that the evidence of prosecutrix is reliable and the contradiction between the court statements of prosecutrix and statement made under Section 164 of Cr.P.C. is explainable.

8. It would be appropriate to revisit the evidence of the prosecutrix and other witnesses while considering the present appeal. The prosecution has examined 12 witnesses in all. The prosecutrix-X is PW-9, her husband Nandlal is PW-10.

Another important relevant witness is Mangilal (PW-4), whose name comes up in FIR and court statements. The Police officials engaged in the investigation are Sinia Singar (PW-2), Radhakishan (PW-6), Rajkumar Tiwari (PW-7) and Surendra Singh (PW-3) (Investigating Officer). The medical experts, who have been examined are Dr. Sudha Sharma (PW-5), who has examined the prosecutrix and Shri Sharad Sharma (PW-1), who has examined appellant.

9. It would be appropriate in the first place to consider the evidence of prosecutrix and whether there are any material contradictions/omissions in her evidence vis-a-vis other witnesses.

10. The prosecutrix-X (PW-9) states that on the date of the incident at around 2.00 a.m., in the night, the witness had been laying fodder before her buffalows (sic: buffaloes) and her husband had gone to the agriculture field for irrigating the field and her three children including two daughters and a son had also gone to other field for irrigation and her two other children both girls aged 9 years and 7 years were sleeping inside the house and at that point of time accused Ratanlal came and caught hold of her hands. When she shouted, he cupped her mouth with his hands and took her to bamboo grove situated near a well belonging to Vijay Singh, MLA. Witness state that when she started shouting the other accused Tarvarsingh told Ratanlal that if the prosecutrix protests much then she should be hung in the well. Thereafter Ratanlal removed the petticoat of the prosecutrix and raped her, which was followed by Tarvarsingh. After raping her, both of them fled away and she came back and when her husband came in the morning, the prosecutrix narrated incident to him. However, on hearing such narration husband of prosecutrix did not believe her and instead, accused her for falsely implicating his brother appellant (Ratanlal). He also assaulted her and called up Mangilal, the brother of prosecutrix, who came over and took her away. As per prosecutrix, she told the incident to Mangilal, and also to her brother-in-law namely Bapulal. Witness states that Mangilal later on brought her back to her matrimonial home and she asked her brother to lodge FIR but Mangilal and her brother-in-law did not agree and, therefore, she came by herself and when she set out to go to the Police Station by herself but was then accompanied by her husband and both of them lodged the report. She admits to have appended her thumb impression on report Ex.P/2. She has also stated that after lodging of report, her court statements (under Section 164 of Cr.P.C.) were recorded before the Presiding Officer, but when she came for recording her statements, the near relatives of the appellants pressurized her in the court premises not to divulge the incident and threatened that if she divulges, then they would cause hindrance in the marriages of the daughters of the prosecutrix. Hence under pressure she did not divulge the incident before the Presiding Officer but instead gave false narration to the Presiding Officer stating that she had come to appellant Ratanlal for demanding Rs.5,000/- from him but she was abused by Ratanlal and Tarvarsingh and, hence, she lodged the report.

11. Thus the witness herself admits that contrary to allegations of rape made by her against the appellants, she did not accuse the appellants in her 164 Cr.P.C. statements for raping her but instead had given the statements pertaining to dispute relating to money matters.

12. Evidently, what has been narrated by prosecutrix in deposition and also in her FIR differs from what has been stated by her in her statements under Section 164 Cr.P.C.. The reliability of prosecutrix has to be tested under such contraindicatory statements. The prosecutrix-X (PW-9) has stated that when she had come to report for recording statements (under Section 164 Cr.P.C), she was accompanied by Police personnel (Para 6 of cross-examination).

13. In the same paragraph she admits that her statements were recorded in a closed room and there was no one apart from the Presiding Officer of the Court and Clerk and she further admits that the Presiding Officer had asked her as to whether she is giving the evidence voluntarily and she had answered in affirmative. She states in Para 7 that the pressure tactics had been applied by the relatives of the appellants in the Court premises and this was done by taking her aside and threatening her. She states that she was accompanied by her husband on that day but she did not narrate the incident to her husband on that day and neither did she complain to the Presiding Officer about such threat meted out to her.

14. It would be appropriate to consider the statements of Nandlal (PW-10) regarding his version of such threat as narrated by the prosecutrix. This witness states that when he along with his wife -the prosecutrix came to the Court for recording statements of wife, the relatives of appellants surrounded both of them in the Court premises and threatened them that if the prosecutrix divulges the incident, these people would take away the unmarried daughters of the witness and could spoil their life. This witness states in Para 8 that he could not do much because had he tried to move, he would have been killed by those persons.

15. Thus, one can see that there is divergence between the statements of prosecutrix-X (PW-9) and her husband Nandlal (PW-10) in the sense that whereas the prosecutrix has stated that she was taken aside by persons and was threatened, her husband Nandlal (PW-10) stated that persons had surrounded him as well as the prosecutrix and had threatened both of them. The prosecutrix states that she did not narrate the incident of threat to her husband on that day; whereas her husband Nandlal (PW-10) states that threatening occurred before him only. It also appears unnatural that threat was meted out to prosecutrix before the Police personnel and further that she did not narrate such incident to the Presiding Officer and also did not lodge the report in the Police Station regarding such threat. If she could lodge report against the appellant for committing rape upon her, then what could have prevented her from complaining to the authorities

regarding such threat meted out to her later on. Statements recorded under Section 164 of Cr.P.C. have much more sanctity then (sic: than) the statements recorded under Section 161 of Cr.P.C. and such statements recorded before the Magistrate cannot be discredited until very valid and reliable version is put forth before the Court. As already seen, there is divergence between the statements of prosecutrix (PW-9) and that of her husband Nandlal (PW-10) regarding the manner in which the threat was meted out.

16. Thus, the prosecutrix has not been able to assign a believable explanation for the deposition made under Section 164 of Cr.P.C.

17. Prosecutrix-X (PW-9) has stated that the incident occurred at around 2.00 a.m. in the night while she was laying fodder before the buffaloes. This itself is unnatural as to why the cattle would be fed at such strange hours. She further states that her husband and three children were not present in the house and had gone to irrigate the fields and that her husband had come only in the morning. It also appears to be unnatural that her two daughters would go to agriculture field for irrigation and would remain there through out the night. It also appears strange that she would wait till the morning for her husband to arrive and then complain. Such ghastly incident could at least have been reported to the neighbours. In Para 26 the prosecutrix states that her sister-in-law and brother-in-law both are her neighbours but she did not woke them up and narrated the incident to them. She in fact states that she is mother of five children, having four daughters and one son; whereas her husband Nandlal (PW-10) states that he has seven children which includes six daughters and one son. Dr. Sudha Sharma (PW-5) has also stated that prosecutrix is having told her that she is having seven children. Thus, the prosecutrix has inexplicably withheld the fact about the number of children that she had given birth to.

18. Prosecutrix has admitted in Para 25 that in the course of the act of rape, her clothes had got torn. She also admits that the Police Officer investigating the matter had asked her to produce the torn clothes but she did not do so. In this matter, such torn clothes have not been seized by the Police.

19. The prosecutrix (PW-9) in Para 18 has stated that as a result of resistance with appellants, her bangles and the necklaces worn by her had got broken. However, in Para 21 she states that one of her bangles had come out of her wrist and another bangle had lost its shape. However, she states that she did not narrate this fact to the Police and she did not hand over her such bangles to the Police. Incidentally no bangles have been recovered by the Police. Nandlal (PW-10) has stated in Para 4 that he had found broken bangles and the necklaces of his wife in the bamboo grove, however, he also has not handed over such pieces to the Police.

20. Prosecutrix-X (PW-9) states that when she narrated the incident to her husband, her husband did not believe her and called her brother Mangilal to take her away and later on when her brother brought her back and prosecutrix asked him to report, her brother and brother-in-law both declined to report. However, in Para 27 the prosecutrix states that when her brother came to fetch her, he had asked the prosecutrix to lodge report but she did not do so and came with her brother to Biaora, where her brother resides. While the prosecutrix (PW-9) states that after 3-4 days her brother brought her back to her matrimonial home, Nandlal (PW-10) states in Para 5 that he himself went to Biaora and fetched his wife back to his village Bhatpura. Thus, there is divergence in the statements of prosecutrix and her husband in this respect as well.

21. Nandlal (PW-10) admits that after bringing her back to village Bhatpura he again came along with his wife to Police Station Biaora for lodging report. In Para 21 he admits that Police Station at Biaora is merely a half kilometer from the house of his brother-in-law. It is strange that instead of directly proceeding to Police Station Biaora, the prosecutrix was brought back to Bhatpura and then they set out again for lodging report at Police Station Biaora on the day. The witness Nandlal (PW-10) in Para 21 has stated that he and prosecutrix had reached the Police Station at about 8 to 9 a.m. for lodging the report but some politicians were causing hindrance and were wanting them to enter into compromise and the report was ultimately lodged at 3 to 4 p.m.. However, the prosecutrix herself does not make any statement regarding any such hindrance caused by politicians etc. and consequential delay in lodging of the FIR. The prosecutrix (PW-9) in Para 22 has stated that when appellants were dragging her, she had sat down placing her hands on the ground and her hands developed signs of friction due to such dragging. Her husband Nandlal (PW-10) in Para 17 also states that the hands of the prosecutrix got injured. However, Dr. Sudha Sharma (PW-5) has stated that she did not find any sign of injury on the person of prosecutrix. Her report is Ex.P/3A and she submits that no sign of forcible intercourse were also found on the persons of prosecutrix.

22. While Nandlal (PW-10) states in Para 17 that he had seen the injuries on the hands of his wife but in the very next para i.e. Para 18 he states that he was so shocked to hear about the incident that he did not see any sign of injury on the person of prosecutrix. In the same paragraph the witness states that he had come to believe about the correctness of the wife's version of the incident at about 7 to 8 a.m. of the day of the incident only, but in the examination in chief in Para 4 he states that he did not believe the version of his wife. The witness Nandlal (PW-10) although admits in Para 18 that he had come to know about the correctness of the incident on the day of incident only but still states that report was lodged by him 4 -5 days later on. A review of the deposition of prosecutrix (PW-9) would show that

as per the witness, the incident occurred at 2.00 a.m., in the night, when she had put fodder before her buffaloes. It is strange that the appellants, one of whom was her brother-in-law would be waiting for her to come out at 2.00 a.m., in the night, so that they can drag her and subsequently rape her. Other contradictions and unnatural statements of prosecutrix have already been narrated earlier.

23. The prosecutrix (PW-9) and her husband (PW-10) have been given suggestions regarding rivalry between the appellant Ratanlal and Nandlal (PW-10), who is his real brother. As per the suggestion, husband of the prosecutrix namely Nandlal (PW-10) had taken the thrasher machine of appellant Ratanlal and had not returned the same and further after partition of agriculture land between the brothers, the appellant Ratanlal had paid off the loan of Nandlal (PW-10) and was demanding the money back from Nandlal, which Nandlal had refused to return and a Panchayat was summoned, which had taken cognizance about the dispute between the brothers. The suggestions regarding such dispute have been given both to prosecutrix and Nandlal (PW-10).

24. The prosecutrix in her cross-examination in Para 9 has admitted that the thrasher machine belonging to Ratanlal had been kept by her husband Nandlal. However, she claims ignorance regarding such dispute raised before the Panchayat. She has further been given suggestion that her husband further sold off the thrasher machine to another person namely Suresh. In Para 10 the witness states that the machine had been purchased by her husband and that this machine had taken by one Suresh but Suresh sold off this machine to another person instead of returning the same. Thus, the witness declines that the machine had been sold by her husband to Suresh and states that the machine was taken away by Suresh and later on Suresh sold it off to another person. In Para 11 this witness admits that no report was lodged against Suresh by her husband for disposing of the machine belonging to her husband.

25. Contrary to the admission of prosecutrix (PW-9) that Nandlal had taken the thrasher machine of appellant Ratanlal, Nandlal (PW-10), in Para 10 declines the suggestion that he had taken the machine from Ratanlal. He also declines that such dispute was raised before the Panchayat. Prosecutrix (PW-9) only claims of ignorance of such Panchayat.

26. Further another suggestion has been given to the prosecutrix and her husband Nandlal (PW-10) regarding the dispute also occurring because of refusal of Nandlal to pay back Rs.9,500/- to Ratanlal, which Ratanlal had spent for clearing the loan dues of Nandlal. Prosecutrix in Para 11 has claimed ignorance regarding any such dispute. She also claims her ignorance regarding her husband being taken to the Police Station by MLA Vijay Singh and lodging of report against her husband by Ratanlal. Nandlal (PW-10) on the other hand admits that there was a

loan on his land by land development Bank but states that he had paid off the loan himself and denies the suggestion that Ratanlal had paid of his loan.

27. The defence witness Bane Singh (DW-1) and Suresh (DW-2) have stated that there was a standing dispute between brothers and a Panchayat had been called and written document has been executed, which is Ex.D/6, in which it has been mentioned that both brothers shall not quarrel with each other in future and whoever initiates quarrel would have to pay Rs.551/- as fine. This witness has been given suggestion in Para 9 of cross-examination that no fine was imposed on either of the brothers. Another suggestion has been given to the witness that after the execution of the document Ex.D/6 on 13.08.2008, no dispute arose between the brothers thereafter. Witness states that despite the aforesaid execution of document, the brothers continues to quarrel with each other. Such suggestion itself shows the admission on the part of prosecutrix that there was indeed a dispute between the appellant and her brother Nandlal (husband of prosecutrix). Suresh Sharma (DW-2), who is a witness to Ex.D/6 states that he had appended his signatures on Ex.D/6 from E to E part and both brothers had signed the document on B to B and C to C parts. Witness categorically states that the dispute did not end after the execution of the document and both brothers remained at loggerheads with each other.

28. There is no reason to disbelieve both the defence witnesses and it is quite substantially clear that there was animosity between the families of Nandlal and appellant Ratanlal.

29. Ramkaran Sharma (PW-12), who is nephew of Nandlal is hostile and admits in cross-examination that the relations between Ratanlal and Nandlal have turned sour.

30. Nandlal (PW-10) makes exaggerated statements that his wife had told him that she was hung in the well and that she was forced to consume liquor by Ratanlal. Prosecutrix (PW-9) however has made no such statements that she was hung in the well and was forced to consume liquor. Nandlal (PW-10) states that he had found broken bangles etc. of prosecutrix in the bamboo grove but such statements are not contained in his statement Ex.D/3. This witness states that when he became 100% sure that his wife was speaking truth then he went with his wife to lodge the report. However, such statements are not contained in Ex.D/3.

31. Thus one can see that the statements of prosecutrix (PW-9) are full of contradictions and omissions and contrary to her statements, no injury has been found on her person, her clothes alleged to be torn have not been seized and allegedly broken bangles and necklaces have not been recovered. The aspect of mutual rivalry has already been proven. Although as has been mentioned by the Trial Court, the statements of prosecutrix can alone result in conviction and there

is no need for corroboration but it is also true that in such case the evidence of prosecutrix must be found to be credible and inspiring total confidence, which is not the case here.

32. The Trial Court has also taken recourse to applicability of Section 114-A of Evidence Act submitting that if the sexual intercourse is found to be proved and the prosecutrix denies her consent then it shall be presumed that she did not consent. A Supreme Court citation of *State of Rajasthan V/s. Roshan Khan and Other* reported in (2014) Volume 2 SCC 476 has been cited in this connection by the Trial Court.

33. However, a perusal of Section 114-A of Evidence Act shows that prior to the amendment carried out in Section 114-A of Evidence Act on 03.02.2013 the presumption was applicable in case of gang rape. However, after incorporation of the amendment clause pertaining to gang rape has been omitted from the earlier provision of Section 376(2) of IPC in which this provision applies. It would be appropriate to clarify the aforesaid position by reproducing Section 114-A of the Evidence Act as it is stood prior to the amendment and as it stands now.

34. The original Section 114-A was incorporated by Act No.43 of the year 1983, which is reproduced as under :-

> **"114A. Presumption as to absence of consent in certain prosecutions for rape.**—In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent."

Subsequently earlier Section 114-A was substituted by the Act 13 of 2013, which is reproduced as under :-

> **"114-A. Presumption as to absence of consent in certain prosecution for rape.** '114A. In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court. That she did not consent, the court shall presume that she did not consent.

Explanation.- In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code."

35. The aforesaid presumption under Section 114-A is applicable only in respect of such classes of rape which are mentioned in Section 376 (2) of the IPC. This provision of IPC has also been amended by the Act 13 of 2013. Prior to this date Section 376 (2) read as under :-

"Section 376(2) in The Indian Penal Code

(2) Whoever,—

(a) being a police officer commits rape—

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) **commits gang rape,** shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine;

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine;

36. After amendment the new Section 376 (2) of IPC reads as under :-

Section 376. Punishment for rape.

(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

(g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

* * * * *

(j) commits rape, on a woman incapable of giving consent; or

(k) being in a position of control or dominance over a woman, commits rape on such woman; or

(l) commits rape on a woman suffering from mental or physical disability; or

(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

37. The new provision of Section 376(2) of the IPC leaves out the offence of gang rape and the offence of gang rape has been mentioned separately under Section 376-D as under :-

376-D. Gang rape :-

Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine;

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim;

Provided further that any fine imposed under this section shall be paid to the victim.

38. The aforesaid Section 376-D has also been incorporated by the Act 13 of 2013.

39. Along with the incorporation of aforesaid offence under Section 376-D, number of other offences pertaining to rape have also been incorporated which are reflected as Section 376-A, 376-AB, 376-B, 376-C, 376-DA, 376-DB and 376-E of IPC.

40. However, the presumption clause under Section 114-A of the Evidence Act is attracted only in case of offences reflected in Section 376 (2) of IPC which incidentally now does not contain gang rape. At the cost of repetition, in an offence of gang rape, the presumption clause under Section 114-A was attracted prior to 03.02.2013, but has ceased to apply in case of gang rape after 03.02.2013. It may be an oversight on the part of legislature in not mentioning the applicability

of this presumption clause in an offence of gang rape which is much more serious offence than an offence under Section 376 simplicitor.

41. In the present case the incident had occurred after 03.02.2013 and the date of incident was 22.12.2013, hence, the newly amended provision under Section 114-A of Evidence Act would be attracted which misses out on applicability of presumption clause in case of gang rape.

42. Assuming that the aforesaid anomaly is result of oversight of the legislature, the question would be whether this Court can pass an order to the effect that the presumption clause shall be read in a matter pertaining to gang rape as well? In the treatise on "Principles of Statutory Interpretation", Hon'ble Justice Shri G.P.Singh (the author) has referred to number of citations of Apex Court at Page 72 of the 14th edition and the crux of the citations have been noted down as under :-

> "It is an application of the same principle that a matter which should have been, but has not been provided for in a statute cannot be supplied by courts, as to do so will be legislation and not construction."

Again in Page No.73 the following excerpts of Apex Court judgment of *Singareni Collieries Co. Ltd. V/s. Vemuganti Ramakrishan Rao & Ors.* reported in (2013) 8 SCC 789 has been mentioned in which following observations have been made :-

> "While interpreting section 11-A of the Land Acquisition Act, 1984, the Supreme Court held that there is no apparent omissions therein to justify application of the doctrine of casus omissus and, by that route, to rewrite section 11-A by providing for exclusion of time taken for obtaining a copy of the order, which exclusion is not provided for in the said section."

Thus it is clear that the Courts cannot make modifications to amend or correct the legislative errors.

43. After due consideration, in view of the appreciation of evidence of the prosecutrix, it has been made clear that the prosecutrix does not inspire confidence and is not creditworthy. Further, there are contradictions between her statements and the statements of her husband Nandlal (PW-10). After due consideration we are of the opinion that the Presiding Officer of the Trial Court failed to consider the consequence of omissions and contradictions as arising in the statements of prosecutrix and failure on the part of prosecution to credibly corroborate her statements with other pieces of evidence. Consequently, we are of the view that the prosecution has failed to prove the offence under Section 376-D

and Section 506 Part-2 of the IPC against the appellants. Consequentially this appeal filed under Section 374 of Cr.P.C. stands allowed. Appellants stands acquitted from the charges framed under Section 376-D and 506 Part-2 of IPC. They are directed to be released from jail forthwith and the amount of fine if deposited by them is directed to be returned to them. The seized property shall be disposed of in accordance with Para 106 of the judgment pronounced by the Trial Court.

44. A copy of this judgment along with original record of this case be sent to the Trial Court for compliance.

45. The petition is accordingly **disposed of.**

Appeal allowed

I.L.R. [2021] M.P. 541
ARBITRATION CASE

Before Mr. Justice Mohammad Rafiq, Chief Justice

AC No. 38/2020 (Jabalpur) order passed on 26 February, 2021

HCL TECHNOLOGIES LTD. (M/S.) …Applicant

Vs.

M.P. COMPUTERIZATION OF POLICE SOCIETY (MPCOPS) …Non-applicant

A. Arbitration and Conciliation Act (26 of 1996), Section 11(5) & 11(6) – Appointment of Arbitrator – Forfeiture of Rights **– Held – Since applicant vide notice, requested the President of respondent society and since it failed to refer the matter for resolution of dispute under escalation procedure as per clauses of agreement or otherwise appoint arbitrator within 30 days or even prior to filing of present application, right of respondent to appoint arbitrator stands forfeited – Application allowed.**

(Paras 10, 11 & 13)

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(5) व 11(6) – मध्यस्थ की नियुक्ति – अधिकारों का समपहरण **– अभिनिर्धारित – चूंकि आवेदक ने नोटिस द्वारा प्रत्यर्थी सोसाईटी के अध्यक्ष से निवेदन किया और चूंकि वह करार के खंडो के अनुसार मामला, तीव्र प्रक्रिया के अंतर्गत विवाद निवारण हेतु निर्देशित करने अथवा अन्यथा 30 दिनों के भीतर या यहां तक कि वर्तमान आवेदन प्रस्तुत करने के पूर्व मध्यस्थ नियुक्त करने में असफल रहा, मध्यस्थ नियुक्त करने का प्रत्यर्थी का अधिकार समपहृत होता है – आवेदन मंजूर।**

B. Arbitration and Conciliation Act (26 of 1996), Section 12(5) and Schedule 5 & 7 – Appointment of Arbitrator **– Held – In view of mandate of**

Section 12(5) r/w stipulation contained in 5th and 7th Schedule, MPCOPS itself being in dispute with applicant, cannot appoint the arbitrator.

(Para 12 & 13)

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 12(5) एवं अनुसूची 5 व 7 – मध्यस्थ की नियुक्ति – अभिनिर्धारित – धारा 12(5) की आज्ञा सहपठित 5वीं एवं 7वीं अनुसूची में अंतर्विष्ट शर्तों को दृष्टिगत रखते हुए, **MPCOPS** स्वयं, आवेदक के साथ विवाद में होने के नाते, मध्यस्थ नियुक्त नहीं कर सकता।

***C. Arbitration and Conciliation Act (26 of 1996), Section 11(5) & 11(6) – Appointment of Arbitrator – Notice* – Held - Sub clause (a) of Clause 1.23 of agreement is for dispute resolution with escalation procedure as per Schedule of agreement – Clause 1.23 is mentioned in caption of the notice – Merely because sub-clause (a) is not mentioned, it cannot be said that notice was not served.** **(Para 10)**

ग. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(5) व 11(6) – मध्यस्थ की नियुक्ति – नोटिस – अभिनिर्धारित – करार के खंड 1.23 का उपखंड (a), करार की अनुसूची के अनुसार तीव्र प्रक्रिया के साथ विवाद निवारण के लिए है – नोटिस के शीर्षक में खंड 1.23 उल्लिखित है – मात्र इसलिए कि उपखंड (a) उल्लिखित नहीं है, यह नहीं कहा जा सकता कि नोटिस तामील नहीं किया गया था।

Cases referred:

(2017) 8 SCC 377, (2019) SCC Online SC 1517, (2000) 8 SCC 151, (2013) 4 SCC 35.

Akshay Sapre, for the applicant.
Bramhadatt Singh, G.A. for the non-applicant.

O R D E R

MOHAMMAD RAFIQ, C. J.:- This application under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act of 1996") has been filed by the applicant- M/s. HCL Technologies Limited, praying for appointment of sole arbitrator to adjudicate the disputes between the applicant and the non-applicant, arising out of an agreement dated 27 th September, 2012 (Annexure-A/4).

2. The applicant is a Company incorporated under the provisions of Companies Act, 1956, having its registered office at 806 Siddharth, 96, Nehru Place, New Delhi. The applicant-Company claims to have done research and development work and have innovation labs and delivery centers. It claims to be working in 46 different countries. It offers an integrated portfolio of products, solutions, services etc. to help enterprises re-imagine their businesses for the

digital age. The non-applicant- Madhya Pradesh Computerization of Police Society, State Crime Record Bureau, Bhopal was desirous to implement the Mission Mode Project Crime and Criminal Tracking Network and Systems (for short "CCTNS") which is an initiative of National Crime Record Bureau under the Ministry of Home Affairs, Government of India. This was intended to create a comprehensive and integrated system for enhancing efficiency and effectiveness of policing at all levels, especially at the Police Stations level, through the principles of e-governance (hereinafter be called as "Project"). In order to implement the Project, the non-applicant issued a comprehensive Request for Proposal (for short "RFP") dated 20th December, 2011. The non-applicant therein prescribed the technical and commercial terms and conditions for undertaking the Project. The applicant submitted its technical and financial proposals in response thereto. The applicant quoted Rs.86,46,41,753/- (Rupees Eighty-Six Crores Forty-Six Lakhs Forty-One Thousand Seven Hundred Fifty-Three Only), inclusive of all taxes and dues etc., for the entire implementation and maintenance in response to the RFP. Subsequently, after applying "error correction" method as stated in Clause 4.2 Volume II of the RFP, the said amount was corrected and considered as Rs.86,45,88,236/- (Rupees Eighty-Six Crores Forty-Five Lakhs Eighty-Eight Thousand Two Hundred Thirty-Six Only). Since the applicant obtained the highest techno-commercial score, it was awarded the work of the Project by the non-applicant vide Letter of Intent dated 16th July 2012. The parties entered into the agreement on 27th September, 2012, according to which the applicant was to undertake the development and implementation of the Project, its roll out and sustain the operations of the Project. The State-wide Go-live activities were to be completed by the applicant before 30th June 2016. Additionally, as per the agreement the applicant was to provide necessary operations and maintenance support post the Go-live date for a period of five (5) years from the Go-live date. The applicant in terms of the agreement furnished an advance bank guarantee and performance security.

3. According to the applicant, it successfully prepared furniture, creation of LAN, electrical works etc. during the phase after verification and approval by the non-applicant. The applicant also provided support in deployment and commissioning of networking equipment and provisioning of desired connectivity required to support the functioning of the Core Application Software (for short "CAS") modules. Subsequently, parties executed an amendment to the agreement on 24th February, 2016, which was limited to the changes in the existing payment terms, timeliness associated with minimum deliverables, project implementation period and service level agreement for implementation of the Project, in the light of the decision of the State Cabinet, Government of Madhya Pradesh. According to the amended agreement, "State-wide Go-live" was

required to be completed by the applicant by 30th June, 2016, which the applicant claims to achieved before that date. The Project went live on 01st July, 2016. The non-applicant required the applicant to show outstanding invoices since the Project was given "Go-live" by the State Apex Committee and approved by the State Cabinet. The non-applicant vide letter dated 22nd October, 2018 reiterated that as per the directions of the State Government, 01st July, 2016 will be taken to be the "Go-Live" date of the CCTNS Project in addition to considering the hand-holding support as completed after waiving off the same for the balance 163 Police Stations against a pro rata deduction in payment for the milestone. According to the applicant it has duly performed all its functions and obligations under the agreement and abided by the timeliness as envisaged in the agreement. The applicant thereafter issued invoices dated 30th November, 2018; 30th April, 2019; 26th September, 2019 and 26th September, 2019 for a total sum of Rs.9,06,05,419.72/- (Rupees Nine Crores Six Lakhs Five Thousand Four Hundred Nineteen and Seventy-Two Paise Only). In addition to this, invoices for a sum of Rs.58,20,861.84/- (Rupees Fifty-Eight Lakhs Twenty Thousand Eight Hundred Sixty-One and Eighty-Four Paise Only) also remained outstanding towards various bills which were pending since May, 2013. The applicant vide communications dated 13th September, 2019 and 14th October, 2019 requested the non-applicant to release the payment for 3½ year periods i.e. July-December, 2016; January-June, 2017 and July-December, 2017 for the aforementioned O&M invoices, which were against the milestones of "Other Project Team for the Entire Project" and "O&M". On being demanded the applicant also produced documents on 16th August, 2019.

4. Mr. Akshay Sapre, learned counsel for the applicant contended that the applicant pleaded before the non-applicant several times to clear the outstanding dues, as it has spent nearly 1.5 times the Project cost and may have to bear the cost for the next two years. The applicant also highlighted that the extended period implies extended costs towards various heads including but not limited to manpower, costs, license renewals. The applicant has time and again incorporated the changes at the request of the non-applicant and has solely borne the burden of the extension of the Project beyond the originally contracted end date. The applicant in order to maintain continuity of the Project requested the non-applicant to have dialogue and settle the underlying disputes between the parties by letter dated 04th January, 2020. The applicant thereafter pursuant to the discussion between the parties in its letter dated 27 th January, 2020 provided points for consideration regarding its request for Operation and Management payment for 3½ years periods, which were not considered by the non-applicant, as would be evident from their letter dated 04th April, 2020. It is contended that even after multiple meetings, amicable discussions between the parties did not fructify

in any positive outcome. The applicant was once again constrained to issue a communication reiterating that it was waiting for the requisite outstanding payments and has been unilaterally sustaining the Project ever since. In fact, the applicant renewed the performance security twice i.e. on 27th February, 2019 and 29th February, 2020 respectively, which is valid till 01st of March, 2021. The non-applicant ought to have paid a sum of Rs.9,64,26,282/- (Rupees Nine Crores Sixty-Four Lakhs Twenty-Six Thousand Two Hundred Eighty Two Only) to the applicant on a running account basis, which continues to be due till date alongwith an amount of approximately Rs.1,32,12,844/- (Rupees One Crore Thirty-Two Lakhs Twelve Thousand Eight Hundred Forty-Four Only) towards services provided for O&M, DC Manpower and Other Project Team from 01st July, 2019 to 31st December, 2019. The payment of outstanding dues is still not made to the applicant.

5. It is further contended that since the non-applicant failed to address the issue and release the outstanding amount, the applicant served a notice dated 16th June, 2020 on the non-applicant invoking the arbitration clause contained in Clause 1.23 of the agreement proposing to nominate the name of a Retired Acting Chief Justice of this Court as the sole arbitrator to resolve the dispute between the parties. However, the non-applicant failed to respond to the request of the applicant or otherwise also failed to appoint anybody else as an arbitrator. Learned counsel for the applicant submitted that the stipulation contained in Clause 1.23 of the agreement requiring the applicant to first exhaust the inhouse mechanism of dispute resolution is bad in law inasmuch as the power given to the MPCOPS to appoint the sole arbitrator therein is opposed to the provisions of Sections 12(1)(b) & 12(5) and stipulations contained in Schedules Fifth & Seventh of the Act of 1996. In support of his arguments, the learned counsel placed reliance on the judgments of Supreme Court in *TRF Limited vs. Energo Engineering Projects Ltd.* reported in (2017) 8 SCC 377 and *Perkins Eastman Architects DPC vs. HSCC (India) Ltd.* reported in (2019) SCC Online SC 1517. Since the non-applicant failed to give reply to the notice invoking arbitration clause or otherwise appoint arbitrator within 30 days of the service of notice or even prior to filing of the present application, its right to appoint such arbitrator stands forfeited. The prayer is therefore made to appoint an independent arbitrator to resolve the dispute between the parties.

6. Mr. Bramhadatt Singh, learned Government Advocate for the non-applicant opposed the application and submitted that as per Clause 1.23 of the agreement filing of the present application is premature and is therefore, not maintainable for the simple reason that the procedure prescribed in the agreement for appointment of arbitrator has not been followed. Referring to sub-clause (a) of Clause 1.23 of the agreement, learned Government Advocate submitted that

according to the procedure contained therein any dispute shall be first dealt in accordance with the escalation procedure as set out in the Governance Schedule mentioned in Schedule V of the agreement, which provides that each party shall appoint his Project Manager as per Clause 2.5.2 of Schedule V and, thereafter, as per Clauses 2.5.2 and 2.5.3 of the agreement the Project Managers and the parties shall at first seek to amicably resolve the matter through negotiation and discussion. As per Clause 2.5.3 of Schedule V of the agreement, a disputed matter can also be submitted by one party to another for negotiation, discussion and resolution. This process was mandatorily required to be followed, which the applicant failed to do. It is contended that the present application can only be maintained after exhausting inhouse mechanism provided in sub-clause (a) of Clause 1.23 of the agreement. Even though the applicant has served the notice on the non-applicant on 16th June, 2020, but he did not therein specifically mention about sub-clause (a) of Clause 1.23 of the agreement. The respondents therefore rightly did not agree for appointment of the arbitrator on the name proposed by the petitioner. Therefore, the present application is liable to be dismissed.

7. I have given my anxious consideration on the rival contentions of the parties and perused the record.

8. Clause 1.23 of the agreement, which is required to be interpreted in the present case, reads as under:

> **"1.23. Dispute Resolution**
>
> a) Any dispute arising out of or in connection with this Agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule set out as Schedule V of this Agreement.
>
> b) Any dispute or difference whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach thereof shall be referred to a sole Arbitrator to be appointed by MPCOPS only. If the System Integrator cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the ultimate arbitrator shall be designated authority by MP Police. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or

re-enactments thereof. The Arbitration proceedings will be held at Bhopal, India.

c) Any legal dispute will come under Bhopal (Madhya Pradesh) jurisdiction."

9. The objection of the non-applicant is that unless the inhouse mechanism for amicable settlement of the dispute as per the escalation procedure as set out in Governance Schedule as Schedule V of the agreement was not followed, the present application is to be treated as premature. The applicant served a notice invoking Clause 1.23 of the agreement on the non-applicant on 16th June, 2020. After detailing out the entire case, it was stated in the notice by the applicant that under dispute resolution provided under Clause 1.23 of the agreement, MPCOPS is the sole authority to appoint an arbitrator to try and adjudicate the dispute between the parties. However, in view of judgment of the Supreme Court in *Perkins Eastman Architects DPC* (supra), a person or a party who has an interest in the outcome of the dispute shall not have the power to appoint a sole arbitrator. The applicant therefore proposed the name of a Retired Acting Chief Justice of this Court but also simultaneously proposed that in case non-applicant is not agreeable to his appointment as a sole arbitrator, they may nominate any other reputed person as the sole arbitrator within a period of five days from the receipt of said notice.

10. The applicant by aforesaid notice dated 16th June, 2020 reserved its right to make any additional or further claim in the arbitration proceedings as may come to its knowledge. Even if the applicant did not mention about sub-clause (a) of Clause 1.23 of the agreement in its notice, which the respondents are relying yet it simplicitor mentioned Clause 1.23 therein. Therefore, it could not be a reason to hold that no notice was served by the applicant on the non-applicant for invoking arbitration i.e. Clause 1.23 of the agreement, which was mentioned under the caption of the notice dated 16th June 2020 (Annexure-A/19) served by the applicant on the non-applicant. Sub-clause (a) of Clause 1.23 of the agreement *inter-alia* provides that any dispute arising out of or in connection with the agreement or the SLA shall in the first instance be dealt with in accordance with the escalation procedure as set out in the Governance Schedule as Schedule V. A perusal of Schedule V of the agreement would show that it contains Governance Procedure in Clause 2.5.3 thereof. Sub-clause (e) thereof would be relevant for the present purpose, which reads as under:

"2.5.3 Governance Procedure

a) xxxxx

b) xxxxx

> c) xxxxx
>
> d) xxxxx
>
> e) In order formally to submit a Disputed Matter to the aforesaid for a, one Party ("Claimant") shall give a written notice ("Dispute Notice") to the other Party. The Dispute Notice shall be accompanied by (a) a statement by the Claimant describing the Disputed Matter in reasonable detail and (b) documentation, if any, supporting the Claimant's position on the Disputed Matter."

The aforesaid sub-clause (e) requires that in order to formally submit a disputed matter, one party (claimant) shall give a written notice (disputed notice) to the other party. The disputed notice shall be accompanied by a statement by the claimant describing the disputed matter in reasonable details and documentation, if any, supporting the claimant's position on the disputed matter. It has not been provided that the disputed notice shall be given in a particular format. In fact, the notice which was served by the applicant on the non-applicant categorically mentioned that it was invoking arbitration clause contained in Clause 1.23 of the agreement dated 27th September, 2012. Nothing prevented the non-applicant if they wanted to first exhaust inhouse mechanism while dealing this matter as per the escalation procedure according to the stipulation contained in Governance Schedule set out as Schedule V of the agreement. The applicant served notice on the non-applicant on 16th June, 2020 and when the non-applicant failed to respond to notice and failed to act within a reasonable time, the applicant filed present application under Sections 11 (5) & (6) of the Act of 1996 before this Court on 29th July, 2020. Since the non-applicant failed to act within 30 days from the date of service of notice by the applicant, either by referring the dispute to the escalation procedure or otherwise appointing the arbitrator, the non-applicant forfeited its right to appoint the sole arbitrator in view of ratio of the judgment of the Supreme Court in *Datar Switchgears Ltd. vs. Tata Finance Ltd.* reported in (2000) 8 SCC 151.

11. The Supreme Court in *Deep Trading Company vs. Indian Oil Corporation & others* reported in (2013) 4 SCC 35 held that Section 11(6) of the Act of 1996 makes provision for making an application to the Chief Justice of appointment of an arbitrator in three circumstances: (a) a party fails to act as required under the agreed procedure or (b) the parties or the two appointed arbitrators fail to reach an agreement expected of them under that procedure or (c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure. If one of the three circumstances is satisfied, the Chief Justice may exercise the jurisdiction vested in him under Section 11(6) of the Act of 1996 and appoint the arbitrator. The Supreme Court in aforesaid judgment reiterated the

law laid down by its earlier judgment in *Datar Switchgears Ltd.* (supra) and held that the dealer called upon the Corporation on 09.08.2004 to appoint the arbitrator in accordance with the terms of Clause 29 of the agreement but that was not done till the dealer had made application under Section 11 (6) to the Chief Justice of the Allahabad High Court for appointment of the arbitrator. The appointment was made by the Corporation only during the pendency of the proceedings under Section 11(6) of the Act of 1996. Such appointment by the Corporation after forfeiture of its right is of no consequence and has not disentitled the dealer to seek appointment of the arbitrator by the Chief Justice under Section 11(6) of the Act of 1996. In view of aforesaid, it must be held that the non-applicant forfeited its right to appoint arbitrator in the present case.

12. A three Judges Bench of the Supreme Court in *TRF Limited* (supra) was called upon to consider whether the appointment of the arbitrator made by the Managing Director of the respondents therein was valid one and at that stage an application moved under Section 11(6) of the Act of 1996 could be entertained by the Court. The relevant clause of arbitration therein provides that any dispute or difference between the parties in connection with the agreement shall be referred to sole arbitrator of the Managing Director of Buyer or his nominee. The aforesaid agreement was entered into between the parties prior to the Arbitration and Conciliation (Amendment) Act, 2015 (No.3 of 2016) which came into force w.e.f. 23.10.2015, by which sub-section (5) of Section 12 was amended and Fifth and Seventh Schedules were inserted in the Act of 1996. It was held that the Managing Director of the respondent would be the person directly having interest in the dispute and therefore he could not act as an arbitrator. Moreover, since the Managing Director himself was disqualified and disentitled to act as an arbitrator, he could not nominate any other person to act as an arbitrator. The ratio of aforesaid judgment has been followed and reiterated in a recent judgment by the Supreme Court in *Perkins Eastman Architects DPC* (supra), in Para-20 of which it was held as under:

> "20. We thus have two categories of cases. The first, similar to the one dealt with in TRF Limited (supra) where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from

> the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in TRF Limited (supra), all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an Arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an Arbitrator."

13. In view of the above analysis of law, it must be held that since the request for dispute resolution was made to the President, Madhya Pradesh Computerisation of Police Society (MPCOPS), State Crime Record Bureau (SCRB) vide notice dated 16th June, 2020 (Annexure-A/19) and since it failed to refer the matter for resolution of dispute under the escalation procedure or otherwise appoint the arbitrator within 30 days or even prior to filing of the present application before this Court, the right of the respondent to appoint arbitrator stands forfeited. The MPCOPS itself being in dispute with the applicant, therefore, in view of mandate of Section 12(5) read with the stipulations contained in Fifth and Seventh Schedules of the Act of 1996, it cannot now appoint the arbitrator. As the non-applicant not only failed to act on the notice served by the applicant but also failed to give consent for appointment of arbitrator as proposed by the applicant, this Court is persuaded to allow the present application. Accordingly, I deem it appropriate to appoint **Hon'ble Shri Justice Amitava Roy, Former Judge of the Supreme Court of India, presently residing at A-9, Second Floor, Defence Colony, New Delhi - 110024,** having Mobile No.**9667300346** as provisional arbitrator in the present case to arbitrate the dispute between the parties. The Registry of this Court is directed to obtain consent/declaration from the learned provisional arbitrator as per sub-section (8) of Section 11 of the Act of 1996 and place the matter before this Court on **26th March, 2021.** Needless to mention that the learned arbitrator shall be entitled to fees only and strictly as per the stipulation contained in Fourth Schedule of the Act of 1996.

Application allowed

I.L.R. [2021] M.P. 551
MISCELLANEOUS CRIMINAL CASE
Before Mr. Justice Atul Sreedharan

MCRC No. 6849/2021 (Jabalpur) decided on 15 February, 2021

AOM TIWARI ...Applicant

Vs.

STATE OF M.P. …Non-applicant

(Alongwith MCRC No. 8408/2021)

***A. Protection of Children from Sexual Offences Act, (32 of 2012), Section 7 & 8 and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Grounds* – Held – Holding of hand of Prosecutrix can be termed as physical contact without penetration, but it will not constitute offence u/S 7 of POCSO Act – As per statement u/S 164 Cr.P.C., there has been no contact with vagina, anus or breast of prosecutrix – *Prima facie*, applicants cannot be held punishable u/S 8 of the Act – Application allowed. (Paras 7, 8 & 11)**

क. लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 7 व 8 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – अग्रिम जमानत – आधार – अभिनिर्धारित – अभियोक्त्री का हाथ पकड़ने को, प्रवेशन किए बिना शारीरिक संपर्क बनाना कहा जा सकता है, लेकिन यह पॉक्सो अधिनियम की धारा 7 के अंतर्गत अपराध कारित नहीं करेगा – दं.प्र.सं. की धारा 164 के अंतर्गत कथन अनुसार, अभियोक्त्री की योनि, गुदा अथवा स्तन से कोई स्पर्श नहीं हुआ – प्रथम दृष्ट्या, आवेदकगण को अधिनियम की धारा 8 के अंतर्गत दण्डनीय नहीं ठहराया जा सकता – आवेदन मंजूर।

***B. Penal Code (45 of 1860), Section 354 – Applicability* – Held – Holding the hand of prosecutrix with an evil eye cannot be said to have been done with an intent to outrage her modesty, as hand cannot be construed as an erogenous part of anatomy with which a woman's modesty, sexuality or sense of shame is associated with – *Prima facie* offence u/S 354 IPC is not made out. (Para 9)**

ख. दण्ड संहिता (1860 का 45), धारा 354 – प्रयोज्यता – अभिनिर्धारित – बुरी नजर से अभियोक्त्री का हाथ पकड़ना, ऐसा उसकी लज्जा भंग करने के आशय से करना नहीं कहा जा सकता, क्योंकि हाथ का अर्थ शरीर रचना विज्ञान के एक कामोत्तेजक भाग के रूप में नहीं लगाया जा सकता है जिसके साथ एक स्त्री की लज्जा, लैंगिकता या शर्म की भावना जुड़ी हुई है – भा.दं.सं. की धारा 354 के अंतर्गत प्रथम दृष्ट्या अपराध नहीं बनता।

***C. Protection of Children from Sexual Offences Act, (32 of 2012), Section 7 & 8 and Penal Code (45 of 1860), Section 354 – Applicability* – Held – Provisions of Section 354 IPC is much wider than Section 7 of POCSO Act – Section 7 is gender neutral as regards both the victim and the offender where as offence u/S 354 IPC is a gender specific and applies only where victim is woman but offender can be man or a woman – It is not restricted to only those parts of anatomy of female which bears specific mention in Section 7 of POCSO Act. (Para 9)**

ग. लैंगिक अपराधों से बालकों का संरक्षण अधिनियम, (2012 का 32), धारा 7 व 8 एवं दण्ड संहिता (1860 का 45), धारा 354 – प्रयोज्यता – अभिनिर्धारित – भा.दं.सं. की धारा 354 के उपबंध पॉक्सो अधिनियम की धारा 7 की तुलना में अधिक व्यापक हैं – धारा 7 पीड़ित और अपराधी दोनों के संबंध में लिंग निरपेक्ष है जबकि भा.दं.सं. की धारा 354 के अंतर्गत अपराध लिंग विशिष्ट है और केवल वहां लागू होता है जहां पीड़ित एक स्त्री हो लेकिन अपराधी पुरूष अथवा महिला हो सकता है – यह स्त्री की शरीर रचना के केवल उन अंगों तक सीमित नहीं है जिनका पॉक्सो अधिनियम की धारा 7 में विनिर्दिष्ट उल्लेख है।

***D. Words & Phrases – "ejusdem generis" – Principle of* – Discussed and explained. (Para 7)**

घ. शब्द व वाक्यांश – ''सजाति'' – का सिद्धांत – विवेचित एवं स्पष्ट किया गया।

Madan Singh, for the applicant in MCRC No. 6849/2021.
Sharad Verma, for the applicants in MCRC No. 8408/2021.
Jasneet Singh Hora, P.L. for the State.

O R D E R

ATUL SREEDHARAN, J.:- With consent of the parties, the matter is heard finally. For the sake of brevity, the facts stated in M.Cr.C. No.6849/2021 are being taken into consideration for deciding both these anticipatory bail applications, as both the cases arises out from the same crime number registered at the same Police Station for the same offences.

2. The applicants are apprehending their arrest in connection with Crime No.52/2021 for offences punishable under sections 452, 354, 354-A, 354-D, 294, 506/34 of the I.P.C. as also U/s.7/8 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO"), registered at Police Station-Kotwali, District-Damoh.

3. The applicants are seeking anticipatory bail in the aforesaid case. Offences U/s.294, 354A, 354D and 506 of the I.P.C. are bailable offences.

However, the offences U/s.452 and 354 of the I.P.C. as also Section 8 of the POCSO Act, are non-bailable offences.

4. Learned counsel for the State while opposing the applications for grant of anticipatory bail to the applicants has read out from the 164 statement of the prosecutrix. The date of incident is 19.01.2021. In the 164 statement, the prosecutrix states that the applicant Aom Tiwari used to pursue her along with the other co- accused persons, whose names she came to know on account of the applicant Aom Tiwari calling out the co-accused persons by their names. She says that the accused persons use to harass her and seek her phone number. On 19.01.2021, she says that the applicant Aom Tiwari (in M.Cr.C. No.6849/2021) along with other accused persons Sushobhit Jain and Samarpit Jain (applicants in M.Cr.C. No.8408/2021) entered her house and applicant Aom Tiwari caught her hand with an evil intent (not elaborated) and abused her. At that juncture, her parents came and objected to their behaviour when the applicants verbally abused the parents of the prosecutrix and thereafter went awayfrom there.

5. As regards the offence sexual assault u/s. 7 of the POCSO, it is made punishable u/s. 8. The substantive section laying down the *actus reus* requirement for the offence of sexual assault on children is Section 7. Section 7 of the POCSO reads as under.

> **Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.**

Section 7 is in two parts. The **first part** mandatorily requires physical contact/touch with sexual intent, of the vagina, penis, anus or breast of the child. It is also committed when the offender makes the child touch the vagina, penis, anus or breast of such person or any other person. It is gender neutral as regards the victim and the offender and age of the victim is the essence (where the victim must be below eighteen years of age). There is no difficulty in interpreting the same and the mere physical contact with any of the parts of the anatomy of the child specified therein, results in the commission of the offence, subject to proof of sexual intent. The **second part** is where the offender does any act with sexual intent which involves physical contact without penetration, there also the offence of sexual assault is committed. In both the parts, the requirement of *mens rea* is essential.

6. There is a question that the second part of section 7 raises and the same is with regard to **"any other act with sexual intent which involves physical**

contact without penetration". Would the mere holding of the hand of a child, which is "Physical Contact without Penetration", result in the commission of an offence defined under section 7 of the POCSO? If it is so interpreted, it would imperil many a young person with loss of liberty in times where courtships may involve at the least, the holding of hands. With increasing intermingling of genders and diminishing prudishness in society, many in their later teens are having physical contact with the opposite gender. In such a situation, sending to prison u/s. 8 of the POCSO, a young adult, barely out of his or her teens, merely for holding the hands of the child, with or without his or her consent, is a dilemma that courts encounter.

7. The principle of *ejusdem generis* requires that words and phrases of wider and general import, following the specific, precise and restrictive words of the statute, be given the same restrictive meaning of the words and phrases, which precedes them. **"The Latin words *ejusdem generis* (of the same kind or nature), have been attached to a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matter of the same limited character. The principle may apply whatever the form of the association, but the most usual form is a list or string of genus-describing terms followed by wider residuary or sweeping-up words"[1].** The touching of the vagina, penis, breasts, or anus of a child, as used in the first part of section 7, are the genus describing terms, precise and restrictive. The use of "any other act with sexual intent which involves physical contact without penetration" are the wider residuary words which follow the first part of section 7. Therefore, the principle of ejusdem generis requires that the second part of section 7 of the POCSO of wider and general import must mean only those parts of the anatomy which have been specified in the first part of section 7. Thus, the latter part of section 7 which reads "any other act with sexual intent which involves physical contact without penetration" is restricted to non-penetrative physical contact with the vagina, penis, anus or breasts and not with any other part of the anatomy which escapes mention in the first part of section 7of the POCSO.

8. In this case, undoubtedly, there has been no contact with the vagina, anus or breast of the prosecutrix as per the 164 statement of the prosecutrix. Though, holding of the hand of the prosecutrix can be termed as physical contact without

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1 Bennion on Statutory Interpretation - Sixth Edition - Francis Bennion - Page 1105 - Section 379.

penetration, it will not constitute an offence u/s. 7 of the POCSO in view of the discussion hereinabove and therefore, *prima-facie* the applicants cannot be held punishable U/s. 8 of the POCSO Act.

9. As regards Section 354 of the I.P.C. is concerned, the provision is much wider than Section 7 of the POCSO Act. While section 7 of the POCSO is gender neutral as regards both the victim and the offender, the offence u/s. 354 IPC is gender specific and applies only where the victim is woman but the offender can be man or a woman. It is not restricted to only those parts of the anatomy of the female which bears specific mention in Section 7 of the POCSO Act. Section 354 of the I.P.C. only requires an assault or criminal force on a woman, with intent to outrage her modesty. Under Section 354 of the I.P.C., forcible physical contact against the will or consent of the woman on such erogenous parts of the anatomy which are intimately associated with her modesty and/or sexuality thereby causing shame to the woman, will constitute the offence U/s.354 of the I.P.C. In this particular case, the allegation of holding the hand of the prosecutrix with an evil eye, cannot by any stretch of imagination be said to have been done with an intent to outrage the modesty of the prosecutrix, as the hand cannot be construed as an erogenous part of the anatomy with which a woman's modesty, sexuality or sense of shame is associated with. Under the circumstances, the offence U/s. 354 of I.P.C also *prima-facie* does not appear to have been committed.

10. As regards the offence u/s. 452 IPC (house trespass) is concerned, the Ld. Counsel for the applicants submit that the same has been included only to ensure the arrest as the same is also non-bailable.

11. In view of what has been stated by the prosecutrix in her statement u/s. 164 Cr.P.C, which has been referred to and discussed hereinabove, the applications are allowed and it is directed that if the applicants are arrested, they shall be enlarged on bail upon their furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) each with one solvent surety each in the like amount to the satisfaction of the Arresting Officer.

12. They are directed to appear before the SHO of Police Station Kotwali, Damoh, once every ten days and mark their attendance. The applicants shall appear for the first time on 25.02.2021 and thereafter, on such dates assigned by the Town Inspector, which shall not be more than 10 days from the date of their previous appearance. This shall continue till the statement of the prosecutrix is recorded before the learned trial Court. Further, the applicants shall not make any attempts to contact the prosecutrix directly or indirectly or by way of telephone calls or message on social media and social messages and if the aforesaid conditions imposed by this Court is violated, the prosecutrix or the State shall be

at liberty to move an appropriate application for cancellation of this order. A typed copy of this order be given to the Ld. Panel Advocate for the State for necessary action. With the aforesaid, the applications are finally disposed of.

C.C. as per rules.

Application allowed