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Printed & Published on behalf of the Indian Law Reports (M.P.) Committee, High Court of Madhya Pradesh, Jabalpur, Under The Authority of The Governor of Madhya Pradesh

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दाण्डिक पद्धति – संयोगी साक्षी/स्वतंत्र साक्षी – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि जब कोई घटना किसी मार्ग अथवा किसी गांव के खेत में होती है, तो घटना को देखने वाले राहगीरों के साक्ष्य को अस्वीकार नहीं किया जा सकता अथवा उन्हें संयोगी साक्षी होने के आधार पर संदेह की दृष्टि से नहीं देखा जा सकता, बल्कि उन्हें स्वतंत्र साक्षी के रूप में वर्णित किया जा सकता है। (सोहन वि. म.प्र. राज्य) **(DB)…*127**

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प्रकरणों में, ऐसा अक्सर होता है कि पीड़ित/मृतक के करीबी रिश्तेदार ने अपराध होते देखा है, जिनकी घटना स्थल पर उपस्थिति स्वाभाविक होगी – ऐसे साक्षी के साक्ष्य को ''हितबद्ध'' के रूप में वर्गीकृत करते हुए उन्हें स्वतः अस्वीकार नहीं किया जा सकता। (सोहन वि. म.प्र. राज्य) **(DB)…*127**

***Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Quantum – Considerations* – Held – A destitute lady, being a wife cannot be deprived of for obtaining maintenance from her husband only on basis that she is educated and earning lady – In order to reckon the maintenance amount, it should be kept in mind that the wife can neither be allowed to lead a luxurious life nor she can be compelled to lead a penurious life – Her dignity and status should be maintained in accordance with the status of her matrimonial family. [Chandraveer Vs. Smt. Anita Kunwar] …2120**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरणपोषण – मात्रा – विचार किया जाना – अभिनिर्धारित – एक निराश्रित महिला को, एक पत्नी होने के नाते केवल इस आधार पर अपने पति से भरणपोषण प्राप्त करने से वंचित नहीं किया जा सकता कि वह एक शिक्षित एवं कमाऊ महिला है – भरणपोषण की राशि की गणना करने के लिए, यह ध्यान में रखा जाना चाहिए कि पत्नी को न तो वैभवपूर्ण जीवन जीने की अनुज्ञा दी जा सकती है और न ही उसे निर्धनता का जीवन जीने हेतु विवश किया जा सकता है – उसकी गरिमा और स्थिति को उसके वैवाहिक परिवार की स्थिति के अनुसार बनाए रखा जाना चाहिए। (चन्द्रवीर वि. श्रीमती अनिता कंवर) **…2120**

***Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Quantum – Proof of Income* – Family Court granted Rs. 10,000 pm to wife and Rs. 5000 pm to son (till he attains majority) – Held – As per husband, wife is working as Tehsil Secretary in B.ED. College and earning handsome salary but no corroborative evidence produced by husband to establish the same, thus it cannot be said that wife is able to maintain herself – Maintenance awarded is just and proper – Revisions dismissed. [Chandraveer Vs. Smt. Anita Kunwar] …2120**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरणपोषण – मात्रा – आय का सबूत – कुटुंब न्यायालय ने पत्नी को 10,000/– रू. प्रतिमाह और पुत्र को 5000/– प्रतिमाह (उसके वयस्क होने तक) प्रदान किये – अभिनिर्धारित – पति के अनुसार, पत्नी बी. एड. महाविद्यालय में तहसील सचिव के रूप में कार्यरत है और अच्छा वेतन अर्जित कर रही है परंतु यह स्थापित करने हेतु पति द्वारा कोई संपोषक साक्ष्य प्रस्तुत नहीं किया गया, अतः यह नहीं कहा जा सकता कि पत्नी अपना भरणपोषण करने में समर्थ है – अधिनिर्णीत भरण–पोषण न्यायसंगत एवं उचित है – पुनरीक्षण खारिज। (चन्द्रवीर वि. श्रीमती अनिता कंवर) **…2120**

***Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Quantum – Income of Husband* – Apex Court concluded that 25% of the income of the**

शुद्ध वेतन प्राप्त हो रहा है – पुत्री की भरणपोषण राशि में पर्याप्त रूप से वृद्धि की गई है परंतु पत्नी की भरणपोषण राशि निम्नतर है – पत्नी भी पति के समान मानक जीवन की हकदार है – सामाजिक–आर्थिक तथ्यों और परिस्थितियों को दृष्टिगत रखते हुए, पत्नी की भरणपोषण की राशि 5000/– रू. प्रतिमाह से बढ़ाकर 7000/– रू. प्रतिमाह की गई – पुनरीक्षण अंशतः मंजूर। (नीलिमा चौरे (श्रीमती) वि. विजय चौरे) **...*119**

Criminal Procedure Code, 1973 (2 of 1974), Section 157 – See – Penal Code, 1860, Section 302 **[Sohan Vs. State of M.P.] (DB)...*127**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – देखें – दण्ड संहिता, 1860, धारा 302 (सोहन वि. म.प्र. राज्य) **(DB)...*127**

Criminal Procedure Code, 1973 (2 of 1974), Section 173(2) – Filing of Charge-Sheet – Online Filing **– Held – Provision to file charge-sheet online through CCTNS is only an enabling provision for accurate and fast delivery of challan and record but if it is not done in any case, then it has to be shown that how it has prejudiced the defence of the accused. [Anukul Mishra Vs. State of M.P.] (DB)...2131**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(2) – आरोप–पत्र प्रस्तुत किया जाना – ऑनलाइन प्रस्तुत किया जाना – अभिनिर्धारित – सीसीटीएनएस के माध्यम से ऑनलाइन आरोप–पत्र प्रस्तुत करने का उपबंध केवल चालान एवं अभिलेख के यथार्थ और शीघ्र परिदान हेतु एक सामर्थ्यकारी उपबंध है परंतु यदि किसी प्रकरण में ऐसा नहीं किया जाता है, तो यह दर्शाना होगा कि इससे अभियुक्त के बचाव पर कैसे प्रतिकूल प्रभाव कारित हुआ है। (अनुकूल मिश्रा वि. म.प्र. राज्य) **(DB)...2131**

Criminal Procedure Code, 1973 (2 of 1974), Section 173(2) and Special Police Establishment Act, M.P., (17 of 1947), Section 2(3) – Filing of Charge-Sheet – Competent Authority **– Held – Any member of the Police Establishment above the rank of Sub-Inspector can exercise powers of officer Incharge of Police Station in the area, in which he is time being discharging his duties. [Anukul Mishra Vs. State of M.P.] (DB)...2131**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(2) एवं विशेष पुलिस स्थापना अधिनियम, म.प्र. (1947 का 17), धारा 2(3) – आरोप–पत्र प्रस्तुत किया जाना – सक्षम प्राधिकारी – अभिनिर्धारित – उप–निरीक्षक की श्रेणी से ऊपर का पुलिस स्थापना का कोई भी सदस्य, उस क्षेत्र के पुलिस स्टेशन के प्रभारी अधिकारी की शक्तियों का प्रयोग कर सकता है, जिसमें वह उस समय अपने कर्तव्यों का निर्वहन कर रहा है। (अनुकूल मिश्रा वि. म.प्र. राज्य) **(DB)...2131**

Criminal Procedure Code, 1973 (2 of 1974), Section 173(2) & 227 – Filing of Charge-Sheet – Competent Authority – Online Filing **– Held – Lokayukt Inspector was not incompetent to file charge-sheet being authorized as per Special Police Establishment and similarly filing of**

समन किया जा सकता है, जब विचारण न्यायालय साक्ष्य का विश्लेषण करने के पश्चात् दृढ़ता से यह महसूस करता है कि पर्याप्त एवं अपरिहार्य साक्ष्य हैं एवं उसे अभियुक्त के रूप में समन करना न्याय के लिए समीचीन है – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि दं.प्र.सं. की धारा 319 के अंतर्गत समन करने की शक्ति का प्रयोग नियमित रूप से नहीं किया जाना चाहिए, एवं एक अतिरिक्त अभियुक्त को समन करने के लिए एक प्रथम दृष्ट्या प्रकरण से अधिक का विद्यमान होना अनिवार्य है। (ललित अग्रवाल वि. म.प्र. राज्य) **...2114**

***Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Grounds* – Held – Trial Court without assigning sufficient ground for substratum of constituting the offence has wrongly observed that the role of applicant is suspicious – Such vague and obscure finding is not sufficient to implead any person as an accused and to direct him for facing a separate trial – Findings recorded in the impugned judgment in respect of applicant and summoning him by trial Court u/S 319 is set aside – Revision allowed. [Lalit Agrawal Vs. State of M.P.] ...2114**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – आधार – अभिनिर्धारित – विचारण न्यायालय ने अपराध गठित करने हेतु पर्याप्त आधार दिये बिना गलत रूप से संप्रेक्षण किया कि आवेदक की भूमिका संदेहजनक है – ऐसा अनिश्चित एवं अस्पष्ट निष्कर्ष किसी व्यक्ति को अभियुक्त के रूप में अभियोजित करने हेतु एवं एक पृथक विचारण का सामना करने हेतु निदेशित करने के लिए पर्याप्त नहीं है – आवेदक के संबंध में आक्षेपित निर्णय में अभिलिखित निष्कर्ष एवं धारा 319 के अंतर्गत विचारण न्यायालय द्वारा उसे समन किया जाना अपास्त किया गया – पुनरीक्षण मंजूर। (ललित अग्रवाल वि. म.प्र. राज्य) **...2114**

***Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Stage of Passing the Order* – Held – It is a case of joint result, 2 accused were acquitted and 3 others were convicted – Since trial Court has passed the order u/S 319 Cr.P.C. against applicant after acquitting the accused persons rather than preceding their acquittal, the order cannot be said to be in accordance with the settled law laid down by Apex Court – Trial Court should pass the order u/S 319 Cr.P.C. before passing the order of acquittal – Impugned order not sustainable in the eyes of law. [Lalit Agrawal Vs. State of M.P.] ...2114**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – आदेश पारित करने का प्रक्रम – अभिनिर्धारित – यह संयुक्त परिणाम का प्रकरण है, दो अभियुक्त दोषमुक्त किये गये एवं तीन अन्य दोषसिद्ध किये गये – चूंकि विचारण न्यायालय ने अभियुक्तगण को दोषमुक्त करने के पश्चात् तथा न कि उनकी दोषमुक्ति के पूर्व, आवेदक के विरूद्ध दं.प्र.सं. की धारा 319 के अंतर्गत आदेश पारित किया है, इसलिए आदेश को सर्वोच्च न्यायालय द्वारा प्रतिपादित सुस्थापित विधि के अनुसार होना नहीं कहा जा सकता – विचारण न्यायालय को दोषमुक्ति का आदेश पारित करने से पूर्व दं.प्र.सं. की धारा 319 के अंतर्गत आदेश पारित करना चाहिए था – आक्षेपित आदेश विधि की दृष्टि में कायम रखे जाने योग्य नहीं। (ललित अग्रवाल वि. म.प्र. राज्य) **...2114**

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(DB)…2007

***Industrial Disputes Act (14 of 1947), Sections 2(rr), 11(9), 11(10), 33C(1) & 33C(2) – Execution of Decree – Jurisdiction of Civil Court* – Held – 11(9) and 11(10) do not take away the jurisdiction of Labour Court as provided u/S 33C(1) and 33C(2) of the Act – Section 11(9) & 11(10) merely creates a new forum for execution of decree – Section 11(9) & 11(10) confers power on civil Court to execute the award passed by Labour Court and it does not take away the power of Labour Court to execute the award – If an award is transferred to Civil Court for its execution then objection cannot be raised that since award was not passed by Civil Court, therefore it cannot execute the same. [Manager Parmali Wallace Ltd. Vs. Jamna Shah] …2035**

औद्योगिक विवाद अधिनियम (1947 का 14), धाराएँ 2(rr), 11(9), 11(10), 33C(1) व 33C(2) – डिक्री का निष्पादन – सिविल न्यायालय की अधिकारिता – अभिनिर्धारित – धारा 11(9) एवं 11(10) श्रम न्यायालय की अधिकारिता नहीं छीनती जैसा कि अधिनियम की धारा 33C(1) एवं 33C(2) के अंतर्गत उपबंधित है – धारा 11(9) व 11(10) डिक्री के निष्पादन हेतु मात्र एक नवीन न्यायालय सृजित करती है – धारा 11(9) व 11(10) श्रम न्यायालय द्वारा पारित अधिनिर्णय के निष्पादन हेतु सिविल न्यायालय को शक्ति प्रदान करती हैं तथा यह श्रम न्यायालय की अधिनिर्णय के निष्पादन की शक्ति को नहीं छीनती – यदि कोई अधिनिर्णय उसके निष्पादन के लिए सिविल न्यायालय को अंतरित किया जाता है तो यह आपत्ति नहीं उठाई जा सकती कि चूंकि अधिनिर्णय सिविल न्यायालय द्वारा पारित नहीं किया गया था, अतः वह उसका निष्पादन नहीं कर सकता। (मेनेजर परमाली वॉलेश लि. वि. जमना शाह) **…2035**

***Industrial Disputes Act (14 of 1947), Section 33C(2) – Interest – Jurisdiction of Executing Court* – Held – Labour Court while entertaining application u/S 33C(2) can award interest only if there is any statutory provision for the same – In absence of any direction in final order regarding payment of interest, Labour Court should not have directed for payment of interest on outstanding amount – Apex Court concluded that executing Court cannot go beyond the decree – Direction for payment of interest is set aside. [Manager Parmali Wallace Ltd. Vs. Jamna Shah] …2035**

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 33C(2) – ब्याज – निष्पादन न्यायालय की अधिकारिता – अभिनिर्धारित – श्रम न्यायालय धारा 33C(2) के अंतर्गत आवेदन को ग्रहण करते समय ब्याज अधिनिर्णीत केवल तभी कर सकता है जब इसके लिए कोई कानूनी उपबंध हो – ब्याज के भुगतान से संबंधित अंतिम आदेश में किसी निदेश के अभाव में, श्रम न्यायालय को बकाया राशि पर ब्याज के भुगतान हेतु निदेशित नहीं करना चाहिए था – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि निष्पादन न्यायालय डिक्री से परे नहीं जा सकता – ब्याज के भुगतान हेतु निदेश अपास्त। (मेनेजर परमाली वॉलेश लि. वि. जमना शाह) **…2035**

Industrial Disputes Act (14 of 1947), Section 33C(2) and Civil Procedure Code (5 of 1908), Order 21 & Order 41 Rule 5 – Appeal – Stay on Execution **– Held – O-41 Rule 5 CPC provides that mere filing an appeal would not operate as a stay – Mere challenge of order of Labour Court would not amount to stay of execution of order – Once this Court has not granted stay in writ petition, then there was no impediment for Labour Court to entertain application u/S 33C(2) of the Act – Order passed by Labour Court for recovery is affirmed – Petition disposed. [Manager Parmali Wallace Ltd. Vs. Jamna Shah] …2035**

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 33C(2) एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 व आदेश 41 नियम 5 – अपील – निष्पादन पर रोक – अभिनिर्धारित – सि.प्र.सं. का आदेश–41 नियम 5 यह उपबंधित करता है कि मात्र अपील प्रस्तुत करना, रोक का प्रभाव नहीं रखेगा – श्रम न्यायालय के आदेश को चुनौती मात्र, आदेश के निष्पादन पर रोक की कोटि में नहीं आएगा – एक बार जब इस न्यायालय ने रिट याचिका में रोक प्रदान नहीं की है, तो श्रम न्यायालय के लिए अधिनियम की धारा 33C(2) के अंतर्गत आवेदन को ग्रहण करने में कोई अड़चन नहीं थी – वसूली के लिए श्रम न्यायालय द्वारा पारित आदेश अभिपुष्ट – याचिका निराकृत। (मेनेजर परमाली वॉलेश लि. वि. जमना शाह) …2035

Industrial Employment (Standing Orders) Act (20 of 1946), Section 5(2) & 6 – Appeal – Alternative Remedy **– Held – Appeal can be filed u/S 6 against an order of certifying officer passed u/S 5(2) of the Act – In instant case, impugned order is not an order passed by CLC u/S 5(2) – Therefore plea of alternative remedy of appeal u/S 6 is not tenable. [South Eastern Coalfields Ltd. Vs. The Chief Labour Commissioner] …1989**

औद्योगिक नियोजन (स्थायी आदेश) अधिनियम (1946 का 20), धारा 5(2) व 6 – अपील – वैकल्पिक उपचार – अभिनिर्धारित – अधिनियम की धारा 5(2) के अंतर्गत प्रमाणकर्ता अधिकारी द्वारा पारित आदेश के विरूद्ध धारा 6 के अंतर्गत अपील प्रस्तुत की जा सकती है – वर्तमान प्रकरण में, आक्षेपित आदेश धारा 5(2) के अंतर्गत मुख्य श्रम आयुक्त द्वारा पारित आदेश नहीं है – अतः धारा 6 के अंतर्गत अपील के वैकल्पिक उपचार का अभिवाक् मान्य नहीं है। (साउथ ईस्टर्न कोलफील्डस् लि. वि. द चीफ लेबर कमिश्नर) …1989

Industrial Employment (Standing Orders) Act (20 of 1946), Section 10 & 13-A – Modification of Standing Order **– Held – Once Standing Order is finally certified then u/S 10, it can be modified before expiry of 6 months from date of its final certification that too by an agreement between employer and workmen, but thereafter it cannot be modified – Although if any difficulty arises in application/ interpretation of the Order, employer or workman can approach Labour Court u/S 13-A of the Act. [South Eastern Coalfields Ltd. Vs. The Chief Labour Commissioner] …1989**

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औद्योगिक नियोजन (स्थायी आदेश) अधिनियम (1946 का 20), धारा 10 व 13–A – स्थायी आदेश का उपांतरण – अभिनिर्धारित – एक बार स्थायी आदेश अंतिम रूप से प्रमाणित हो जाए तो धारा 10 के अंतर्गत, उसे उसके अंतिम प्रमाणीकरण की तिथि से 6 माह समाप्त होने के पूर्व उपांतरित किया जा सकता है, वह भी नियोक्ता एवं कर्मकार के मध्य एक करार द्वारा परन्तु उसके पश्चात् उसे उपांतरित नहीं किया जा सकता – यद्यपि आवेदन/आदेश के निर्वचन में यदि कोई कठिनाई उत्पन्न होती है, नियोक्ता अथवा कर्मकार अधिनियम की धारा 13–A के अंतर्गत श्रम न्यायालय के समक्ष जा सकता है। (साउथ ईस्टर्न कोलफील्डस् लि. वि. द चीफ लेबर कमिश्नर) **...1989**

Industrial Employment (Standing Orders) Act (20 of 1946), Section 10 & 13-A – Modification of Standing Order – Jurisdiction of CLC **– Held – Merely because representation was filed by R-2 before CLC and when it remained undecided, sought direction from Delhi High Court for CLC to decide representation, does not mean that CLC acquired jurisdiction to modify Standing Order which is already certified on 08.07.1991 – Order of CLC is without jurisdiction and is set aside – Aggrieved party may avail remedy u/S 13-A of the Act – Petition allowed. [South Eastern Coalfields Ltd. Vs. The Chief Labour Commissioner]** **...1989**

औद्योगिक नियोजन (स्थायी आदेश) अधिनियम (1946 का 20), धारा 10 व 13–A – स्थायी आदेश का उपांतरण – मुख्य श्रम आयुक्त की अधिकारिता – अभिनिर्धारित – मात्र क्योंकि प्रत्यर्थी क्र. 2 द्वारा मुख्य श्रम आयुक्त के समक्ष अभ्यावेदन प्रस्तुत किया गया था और जब उसका विनिश्चय नहीं किया गया, तो अभ्यावेदन विनिश्चित करने हेतु दिल्ली उच्च न्यायालय से मुख्य श्रम आयुक्त के लिए निदेश चाहा गया, इसका यह अर्थ नहीं है कि मुख्य श्रम आयुक्त ने स्थायी आदेश जो कि दिनांक 08.07.1991 को पहले से ही प्रमाणित है, को उपांतरित करने हेतु अधिकारिता अर्जित कर ली है – मुख्य श्रम आयुक्त का आदेश बिना अधिकारिता का है एवं अपास्त किया गया – व्यथित पक्षकार अधिनियम की धारा 13–A के अंतर्गत उपचार का उपभोग कर सकता है – याचिका मंजूर। (साउथ ईस्टर्न कोलफील्डस् लि. वि. द चीफ लेबर कमिश्नर) **...1989**

Industrial Employment (Standing Orders) Act (20 of 1946), Section 10 & 13-A – Territorial Jurisdiction **– Held – Standing Order which is required to be amended by CLC is also applicable to employees working in mines of State of M.P. – Writ petition can be entertained by this Court – Petition maintainable. [South Eastern Coalfields Ltd. Vs. The Chief Labour Commissioner]** **...1989**

औद्योगिक नियोजन (स्थायी आदेश) अधिनियम (1946 का 20), धारा 10 व 13–A – क्षेत्रीय अधिकारिता – अभिनिर्धारित – स्थायी आदेश जिसे मुख्य श्रम आयुक्त द्वारा संशोधित किये जाने का निदेश दिया गया है, वह म.प्र. राज्य की खान में कार्य करने वाले कर्मचारियों पर भी लागू होता है – रिट याचिका को इस न्यायालय द्वारा ग्रहण किया जा सकता है – याचिका पोषणीय है। (साउथ ईस्टर्न कोलफील्डस् लि. वि. द चीफ लेबर कमिश्नर)**...1989**

मिटाया नहीं जा सकता कि अन्य सह–अभियुक्तगण को समान साक्ष्य के आधार पर दोषमुक्त किया गया है – सूक्ति *''एक बात में मिथ्या तो सब में मिथ्या''* की भारत में कोई प्रयोज्यता नहीं है। (सोहन वि. म.प्र. राज्य) **(DB)…*127**

Limitation Act (36 of 1963), Section 14 – See – Arbitration and Conciliation Act, 1996, Section 34(3), Proviso **[Noumla Brothers (M/s.) Vs. M/s. Ruchi World Wide Ltd.] …2092**

परिसीमा अधिनियम (1963 का 36), धारा 14 – देखें – माध्यस्थम् और सुलह अधिनियम, 1996, धारा 34(3), परंतुक (नोम्ला ब्रदर्स (मे.) वि. मे. रूची वर्ल्ड वाइड लि.) **…2092**

Motor Vehicles Act (59 of 1988), Section 6 – Person Holding Two License – Liability of Insurer **– Held – Two license were produced in trial, one secured by police at the time of incident, which was later found to be fake and another produced by driver during trial which was found to be genuine – It could not be said that driver possessed two licenses in violation of Section 6 – There is no provision that all licenses of a person holding more than one license are to be treated invalid – Tribunal rightly held Insurance Company liable to pay compensation – Appeal dismissed. [National Insurance Co. Ltd. Vs. Shivram] …2075**

मोटर यान अधिनियम (1988 का 59), धारा 6 – दो अनुज्ञप्ति रखने वाला व्यक्ति – बीमाकर्ता का दायित्व – अभिनिर्धारित – विचारण में दो अनुज्ञप्ति प्रस्तुत की गई, एक जो घटना के समय पुलिस द्वारा प्राप्त किया गया था, जो बाद में फर्जी पाया गया एवं दूसरा चालक के द्वारा विचारण के दौरान प्रस्तुत किया गया जो वास्तविक पाया गया – यह नहीं कहा जा सकता कि चालक ने धारा 6 का उल्लंघन करते हुए दो अनुज्ञप्ति रखी थी – ऐसा कोई उपबंध नहीं है कि एक से अधिक अनुज्ञप्ति रखने वाले व्यक्ति की सभी अनुज्ञप्तियां अविधिमान्य मानी जाए – अधिकरण ने प्रतिकर के भुगतान हेतु बीमा कंपनी को उचित रूप से दायी ठहराया – अपील खारिज। (नेशनल इंश्योरेंस कं. लि. वि. शिवराम) **…2075**

Motor Vehicles Act (59 of 1988), Section 66(3)(p) & 163-A – Liability of Insurer **– Held – Auto was not having permit and it was not being taken for repair purpose – Auto was not empty thus Section 66(3)(p) would not apply – Driver was not having driving license – Insurance company not liable to pay compensation – Since deceased was sitting in the auto and doctrine of contributory negligence would not apply and doctrine of composite negligence would apply, the entire liability is of the owner of the vehicle. [New India Assurance Co. Ltd. Vs. Shashikala] …2051**

मोटर यान अधिनियम (1988 का 59), धारा 66(3)(p) व 163–A – बीमाकर्ता का दायित्व – अभिनिर्धारित – ऑटो का परमिट नहीं था और इसे मरम्मत के उद्देश्य से नहीं ले जाया जा रहा था – ऑटो खाली नहीं था, अतः धारा 66(3)(p) लागू नहीं होगी – चालक के पास चालन अनुज्ञप्ति नहीं थी – बीमा कंपनी प्रतिकर का भुगतान करने हेतु

दायी नहीं है – चूंकि मृतक ऑटो में बैठा था एवं योगदायी उपेक्षा का सिद्धांत लागू नहीं होगा तथा संयुक्त उपेक्षा का सिद्धांत लागू होगा, संपूर्ण दायित्व वाहन के स्वामी का है। (न्यू इंडिया एश्योरेंस कं. लि. वि. शशिकला) …2051

Motor Vehicles Act (59 of 1988), Section 166 – Consortium – **Held – Present appeal has been filed by widow, 2 children and parents of deceased – Tribunal has awarded consortium to wife (widow) only – All five persons are entitled for consortium @ Rs. 40,000. [National Insurance Co. Ltd. Vs. Smt. Ashwini Sinha]** …*118

मोटर यान अधिनियम (1988 का 59), धारा 166 – कन्सॉर्शीअम / सहायता – अभिनिर्धारित – वर्तमान अपील मृतक की विधवा, दो बच्चों और माता–पिता द्वारा प्रस्तुत की गई है – अधिकरण ने केवल पत्नी (विधवा) को कन्सॉर्शीअम / सहायता अधिनिर्णीत किया – सभी पांच व्यक्ति 40,000 / – रू. की दर से कन्सॉर्शीअम / सहायता के हकदार हैं। (नेशनल इंश्योरेंस कं. लि. वि. श्रीमती अश्वनी सिन्हा) …*118

Motor Vehicles Act (59 of 1988), Section 166 – Conventional Heads – **Held – As per the judgment of Apex Court, customary expenses should be enhanced in every 3 years – For enhancement of conventional heads by 10% in every 3 years, the date of accident is material and not the date of award passed by Tribunal – Enhancement by 10% would apply only when the accident takes place after 3 years of the judgment passed by Apex Court in the case of *Pranay Sethi*. [National Insurance Co. Ltd. Vs. Smt. Ashwini Sinha]** …*118

मोटर यान अधिनियम (1988 का 59), धारा 166 – परंपरागत मद – अभिनिर्धारित – सर्वोच्च न्यायालय के निर्णय अनुसार, हर तीन साल में रूढ़िगत व्यय में वृद्धि की जाना चाहिए – हर तीन साल में पारंपरिक मदों में 10 प्रतिशत की वृद्धि के लिए, दुर्घटना की तिथि तात्विक है तथा न कि अधिकरण द्वारा पारित अधिनिर्णय की तिथि – 10 प्रतिशत की वृद्धि केवल तभी लागू होगी जब दुर्घटना, सर्वोच्च न्यायालय द्वारा प्रणय सेठी के प्रकरण में पारित निर्णय के तीन वर्ष के पश्चात् हुई हो। (नेशनल इंश्योरेंस कं. लि. वि. श्रीमती अश्वनी सिन्हा) …*118

Motor Vehicles Act (59 of 1988), Section 166 – Future Prospects – **Held – Where the age of deceased is more than 40 years and below 50 years, then future prospects @ 30% is to be awarded – Age of deceased is 41 years, Tribunal rightly awarded future prospects @ 30%. [National Insurance Co. Ltd. Vs. Smt. Ashwini Sinha]** …*118

मोटर यान अधिनियम (1988 का 59), धारा 166 – भावी संभाव्यताएं – अभिनिर्धारित – जहां मृतक की आयु 40 वर्ष से अधिक है एवं 50 वर्ष से कम है, तो भावी संभाव्यताएं 30 प्रतिशत की दर से अधिनिर्णीत की जाएगी – मृतक की आयु 41 वर्ष है, अधिकरण ने उचित रूप से 30 प्रतिशत की दर से भावी संभाव्यताएं अधिनिर्णीत की। (नेशनल इंश्योरेंस कं. लि. वि. श्रीमती अश्वनी सिन्हा) …*118

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Regulations unless they are diluted for that particular academic year by National Commission in consultation with Central Government. [Hahnemann Homeopathic Medical College & Hospital Bhopal Vs. State of M.P.] (DB)…*115

राष्ट्रीय आयुर्विज्ञान आयोग अधिनियम (2019 का 30), धारा 14(1) – सामान्य प्रवेश परीक्षा नीट – महाविद्यालय स्तरीय काउंसलिंग – अभिनिर्धारित – धारा 14(1) पूर्व स्नातक चिकित्सीय शिक्षा में प्रवेश के लिए एक समान राष्ट्रीय पात्रता – सह–प्रवेश परीक्षा नीट उपबंधित करती है, जो इसे किसी अन्य विधि के अंतर्गत शासित सभी चिकित्सीय संस्थाओं पर लागू करती है – संस्थाएं उन छात्रों को जो नीट में उपस्थित नहीं हुए हैं तथा संबंधित विनियमों के अनुसार न्यूनतम विहित मानक प्राप्त/सुनिश्चित नहीं किये हैं, जब तक कि उन्हें केंद्र सरकार के परामर्श से राष्ट्रीय आयोग द्वारा उस विशिष्ट शैक्षणिक वर्ष के लिए तनुकृत नहीं किया जाता, प्रवेश देने की हकदार नहीं है। (हैनिमैन होम्योपेथिक मेडिकल कॉलेज एण्ड हॉस्पिटल भोपाल वि. म.प्र. राज्य) **(DB)…*115**

***National Security Act (65 of 1980), Section 3(1) & 3(2) – Non-Mentioning of Period of Detention – Effect* – Held – Apex Court concluded that since legislation does not require detaining authority to specify the period for which a detenu is required to be detained, the order of detention is not rendered illegal in absence of such specification. [Kanchan Shukla (Smt.) Vs. State of M.P.] (DB)…2017**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(1) व 3(2) – निरोध की अवधि का उल्लेख न किया जाना – प्रभाव – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि चूंकि विधान द्वारा निरोध प्राधिकारी से उस अवधि को विनिर्दिष्ट करना अपेक्षित नहीं है जिसके लिए एक निरूद्ध व्यक्ति को निरूद्ध रखना आवश्यक हो, ऐसे विनिर्देश के अभाव में निरोध का आदेश अवैध नहीं बन जाएगा। (कंचन शुक्ला (श्रीमती) वि. म.प्र. राज्य) **(DB)…2017**

***National Security Act (65 of 1980), Section 3(1) & 3(2) – Preventive Detention – Considerations* – Held – It is not the act/offence *per se* which is to be considered while taking up proceedings under NSA but it is the potentiality and the impact, which in certain circumstances may affect even tempo of the life of community thereby jeopardizing the public order – The only requirement for initiation of proceedings under NSA is the subjective satisfaction of authorities. [Kanchan Shukla (Smt.) Vs. State of M.P.] (DB)…2017**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(1) व 3(2) – निवारक निरोध – विचार किया जाना – अभिनिर्धारित – यह स्वयं कोई कृत्य/ अपराध नहीं है जिस पर राष्ट्रीय सुरक्षा कानून के अंतर्गत कार्यवाही शुरू करते समय विचार किया जाना है, बल्कि यह संभाव्यता और प्रभाव है, जो कतिपय परिस्थितियों में समुदाय के जीवन की संयत गति को प्रभावित कर सकता है जिससे लोक व्यवस्था मे संकट उत्पन्न हो सकता है – राष्ट्रीय

सुरक्षा कानून के अंतर्गत कार्यवाहियां आरंभ करने की एकमात्र आवश्यकता प्राधिकारीगण की व्यक्तिपरक संतुष्टि है। (कंचन शुक्ला (श्रीमती) वि. म.प्र. राज्य) **(DB)…2017**

***National Security Act (65 of 1980), Section 3(1) & 3(2) – Preventive Detention – Grounds* – Held – The act of detenu urinating on a man belonging to scheduled tribe has infuriated the society throughout State of M.P. and other parts of country also – A communal angle was also canvassed in social media – Just one act of detenu had threatened the peace and tranquility in the State – It created a law and order situation in entire State – It is a fit case where NSA has been invoked in order to prevent repetition of such offences. [Kanchan Shukla (Smt.) Vs. State of M.P.] (DB)…2017**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(1) व 3(2) – निवारक निरोध – आधार – अभिनिर्धारित – अनुसूचित जनजाति के एक व्यक्ति पर पेशाब करने के निरूद्ध व्यक्ति के कृत्य ने पूरे म.प्र. राज्य तथा देश के अन्य हिस्सों में भी समाज को क्रोधित किया – सोशल मीडिया पर एक सांप्रदायिक दृष्टिकोण भी प्रचारित किया गया था – निरूद्ध व्यक्ति के केवल एक कृत्य ने राज्य की शांति तथा प्रशांति को संकट में डाल दिया – इसने संपूर्ण राज्य में विधि–व्यवस्था की स्थिति उत्पन्न कर दी – यह एक उपयुक्त प्रकरण है जहां ऐसे अपराधों की पुनरावृत्ति का निवारण करने के लिए राष्ट्रीय सुरक्षा अधिनियम का अवलंब लिया गया है। (कंचन शुक्ला (श्रीमती) वि. म.प्र. राज्य) **(DB)…2017**

***National Security Act (65 of 1980), Sections 3(1), 3(2), 3(4) & 8(1) –Preventive Detention – Procedure – Contents of Detention Order* – Held – Though detention order dated 05.07.2023 does not indicate right of detenu to submit his representation before concerned authorities, however realizing the said mistake within next two days vide order dated 07.07.2023, it was rectified and same was communicated to detenu on 11.07.2023 – Order was further communicated to State Government, Advisory Body as well as Central Government – Procedure has been completed by authorities within prescribed time – Petition dismissed. [Kanchan Shukla (Smt.) Vs. State of M.P.] (DB)…2017**

राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धाराएँ 3(1), 3(2), 3(4) व 8(1) – निवारक निरोध – प्रक्रिया – निरोध आदेश की अंतर्वस्तु – अभिनिर्धारित – यद्यपि निरोध आदेश दिनांक 05.07.2023 निरूद्ध व्यक्ति का सक्षम प्राधिकारीगण के समक्ष अपना अभ्यावेदन प्रस्तुत करने का अधिकार इंगित नहीं करता है तथापि अगले दो दिन के भीतर कथित गलती को महसूस करते हुए आदेश दिनांक 07.07.2023 के द्वारा उसे सुधारा गया था तथा दिनांक 11.07.2023 को निरूद्ध व्यक्ति को इसकी सूचना दे दी गई थी – आदेश आगे राज्य सरकार सलाहकार बोर्ड साथ ही केंद्र सरकार को भी संसूचित किया गया – प्राधिकारीगण द्वारा विहित समय के भीतर प्रक्रिया को पूर्ण किया गया – याचिका खारिज। (कंचन शुक्ला (श्रीमती) वि. म.प्र. राज्य) **(DB)…2017**

***Negotiable Instruments Act (26 of 1881), Section 138 & 142(b) – Limitation – Calculation* – Held – Notice was served on applicant/accused on**

28.08.2017, cause of action for filing complaint arose from 13.09.2017 – For calculating period of one month as prescribed u/S 142(b), the period has to be reckoned by excluding the first day when cause of action arose and including the last day – Complaint was filed on 13.10.2017, i.e. within 30 days – Complaint was within limitation – Trial Court rightly took cognizance against applicant – Application dismissed. [Mohd. Arif Vs. Anil] …2148

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 व 142(b) – परिसीमा – गणना – अभिनिर्धारित – दिनांक 28.08.2017 को आवेदक/अभियुक्त को नोटिस तामील किया गया था, दिनांक 13.09.2017 से परिवाद प्रस्तुत करने के लिए वाद हेतुक उत्पन्न हुआ – धारा 142(b) के अंतर्गत विहित एक माह की अवधि की गणना करने के लिए, अवधि की गणना, पहले दिन को छोड़कर जब वाद हेतुक उत्पन्न हुआ तथा अंतिम दिन को शामिल कर की जानी चाहिए – परिवाद दिनांक 13.10.2017 को अर्थात् 30 दिनों के भीतर प्रस्तुत किया गया था – परिवाद परिसीमा के भीतर था – विचारण न्यायालय ने उचित रूप से आवेदक के विरूद्ध संज्ञान लिया – आवेदन खारिज। (मोहम्मद आरिफ वि. अनिल) **…2148**

***Penal Code (45 of 1860), Section 107 & 306 – Abetment – Ingredients* – Held – Apex Court concluded that each person's suicidability is different from others and that each person has its own idea of self esteem and self respect – To constitute abetment, there should be intention to provoke, incite or encourage the doing of an act by the accused. [Narayan Vs. State of M.P.] …2124**

दण्ड संहिता (1860 का 45), धारा 107 व 306 – दुष्प्रेरण – घटक – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि प्रत्येक व्यक्ति की आत्महत्या दूसरों से भिन्न होती है एवं प्रत्येक व्यक्ति का स्वाभिमान और आत्मसम्मान के बारे में अपना विचार है – दुष्प्रेरण गठित करने के लिए, अभियुक्त द्वारा किसी कार्य को करने के लिए उकसाने, उद्दीप्त करने अथवा प्रोत्साहित करने का आशय होना चाहिए। (नारायण वि. म.प्र. राज्य) **…2124**

***Penal Code (45 of 1860), Section 107 & 306 and Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Suicide – Abetment* – Applicant and deceased Vishnu had physical relationship which was consensual – Family members of deceased were searching a bride for deceased – Held – In absence of instigation, provocation, encouragement or suggestion on part of accused, no offence u/S 306 IPC made out – Order framing charge against applicant set aside – Revision allowed. [Narayan Vs. State of M.P.] …2124**

दण्ड संहिता (1860 का 45), धारा 107 व 306 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 – आत्महत्या – दुष्प्रेरण – आवेदक तथा मृतक विष्णु के मध्य आपसी सहमति से शारीरिक संबंध थे – मृतक के परिवार के सदस्य मृतक के लिए वधू की तलाश कर रहे थे – अभिनिर्धारित – अभियुक्त की ओर से उकसाहट, प्रकोपन,

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दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 27 – वस्तुओं की बरामदगी/तथ्यों का प्रकटीकरण –शब्द ''अन्य के लिए खुला एवं सुगम'' – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह निष्कर्षित किया है कि धारा 27 में ऐसा कुछ भी नहीं है जो अभियुक्त के कथन को अग्राहय बनाता है यदि बरामदगी किसी ऐसे स्थान से की गई हो जो ''अन्य के लिए खुला एवं सुगम हो'' – यह साक्ष्य को दूषित नहीं करेगा – तथ्य का प्रकटीकरण वह वस्तु नहीं है जिसे बरामद किया गया है, बल्कि तथ्य में बरामद की गई वस्तु का स्थान एवं इसके बारे में अभियुक्त का ज्ञान समाविष्ट है – अभियोजन ने युक्तियुक्त संदेह से परे अपना प्रकरण साबित किया – दोषसिद्धि कायम – अपील खारिज। (सोहन वि. म.प्र. राज्य) **(DB)…*127**

***Penal Code (45 of 1860), Section 302 and Evidence Act (1 of 1872), Section 106 – FSL Report* – Held – Human blood was found on the sword seized from appellant, it was the duty of appellant to disclose the fact as per Section 106 of Evidence Act as to how and why human blood was found on sword – Appellant failed to rebut this fact in defence and has not said a single word in his statement u/S 313 Cr.P.C. – Thus, even if blood group is not mentioned in FSL report, it will not help the appellant. [Sohan Vs. State of M.P.] (DB)…*127**

दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 106 – न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन – अभिनिर्धारित – अपीलार्थी से जब्त की गई तलवार पर मानव रक्त पाया गया, साक्ष्य अधिनियम की धारा 106 के अनुसार इस तथ्य को प्रकट करना अपीलार्थी का कर्तव्य था कि तलवार पर मानव रक्त कैसे और क्यों पाया गया था – अपीलार्थी बचाव में इस तथ्य का खंडन करने में असफल रहा तथा दं.प्र.सं. की धारा 313 के अंतर्गत अपने कथन में एक शब्द भी नहीं कहा – अतः, भले ही न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन में रक्त समूह उल्लिखित नहीं हो, इससे अपीलार्थी को मदद नहीं मिलेगी। (सोहन वि. म.प्र. राज्य) **(DB)…*127**

***Penal Code (45 of 1860), Section 302/149 & 342/149 – Appreciation of Evidence* – Held – FIR shows that because of previous enmity relating to land, deceased was assaulted, thus there exist a motive – Incident is an outcome of pre-meditation and not of any sudden quarrel – There are multiple injuries on person of deceased and cause of death was excessive bleeding – Prosecution established its case beyond reasonable doubt – Appeal dismissed. [Babulal Dheemer Vs. State of M.P.] (DB)…*113**

दण्ड संहिता (1860 का 45), धारा 302/149 व 342/149 – साक्ष्य का मूल्यांकन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन यह दर्शाता है कि भूमि के संबंध में पूर्व वैमनस्यता के कारण, मृतक पर हमला किया गया था, अतः एक हेतु विद्यमान है – घटना पूर्व–चिंतन का परिणाम है, न कि किसी अचानक झगड़े का – मृतक के शरीर पर अनेक चोटें थी तथा मृत्यु का कारण अत्यधिक रक्तस्त्राव था – अभियोजन ने युक्तियुक्त संदेह से परे अपना प्रकरण स्थापित किया – अपील खारिज। (बाबूलाल ढीमर वि. म.प्र. राज्य) **(DB)…*113**

and was sent to FSL laboratory with quite promptitude within a period of 24 hrs – DNA report is against appellant, it is a scientific report and conviction can be based on said DNA report – Chain of events/circumstances duly established by prosecution – Conviction upheld. [Ribu @ Akbar Khan Vs. State of M.P.] (DB)…*124

दण्ड संहिता (1860 का 45), धाराएँ 302, 376(1) व 450 – डीएनए प्रतिवेदन – रक्त नमूने का संग्रहण – अभिनिर्धारित – अभियोजन ने इस निश्चितता के साथ अपना प्रकरण स्थापित किया कि अपीलार्थी का रक्त नमूना वास्तव में 24 घंटे की अवधि के भीतर काफी तत्परता के साथ लिया गया था, सील किया गया था एवं न्यायालयिक विज्ञान प्रयोगशाला में भेजा गया था – डीएनए प्रतिवेदन अपीलार्थी के विरूद्ध है, यह एक वैज्ञानिक प्रतिवेदन है एवं दोषसिद्धि कथित डीएनए प्रतिवेदन पर आधारित हो सकती है – घटनाओं की श्रृंखला/परिस्थितियाँ अभियोजन द्वारा सम्यक् रूप से स्थापित – दोषसिद्धि कायम। (रीबू उर्फ अकबर खान वि. म.प्र. राज्य) **(DB)…*124**

***Penal Code (45 of 1860), Section 375 & 376 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR* – Held – In FIR, there is clear allegation that since inception, applicant gave false promise of marriage and on that pretext complainant developed sexual relation with applicant – Consent was taken on basis of false promise itself – It is not a case where promise initially given was *bonafide* and because of subsequent events could not be translated into reality – FIR cannot be quashed – Application dismissed. [Yogendra Singh Rajput Vs. State of M.P.] …*130**

दण्ड संहिता (1860 का 45), धारा 375 व 376 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन का अभिखंडन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन में, यह स्पष्ट अभिकथन है कि आरंभ से ही, आवेदक ने विवाह का मिथ्या वचन दिया था और उस बहाने परिवादी ने आवेदक के साथ लैंगिक संबंध बनाए – मिथ्या वचन के आधार पर ही सहमति ली गई थी – यह ऐसा प्रकरण नहीं है जहां आरंभ में दिया गया वचन सद्भावी था एवं पश्चात्वर्ती घटनाओं के कारण वास्तविकता में बदला नहीं जा सकता – प्रथम सूचना प्रतिवेदन को अभिखंडित नहीं किया जा सकता – आवेदन खारिज। (योगेन्द्र सिंह राजपूत वि. म.प्र. राज्य) **…*130**

***Police Regulations, M.P., Regulation 64(3) – Misconduct – Absence of Provision* – Held – An immoral act cannot be pleaded on ground that according to law, it is not defined – If law is silent on any issue, in that event, justice would have to be rendered on basis of righteousness or on best judgment. [State of M.P. Vs. Ram Bhagwan Pathak] (DB)…1979**

पुलिस विनियमन, म.प्र., विनियमन 64(3) – अवचार – उपबंध का अभाव – अभिनिर्धारित – एक अनैतिक कार्य का इस आधार पर अभिवाक् नहीं किया जा सकता कि विधि के अनुसार, वह परिभाषित नहीं है – यदि विधि किसी विवाद्यक पर मौन है, तो उस दशा में, न्याय परायणता अथवा सर्वोत्तम निर्णय के आधार पर न्याय प्रदान किया जाएगा। (म.प्र. राज्य वि. राम भगवान पाठक) **(DB)…1979**

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करने पर वह धारा 97 के अंतर्गत साक्ष्य प्रस्तुत करने का अधिकार खो देता है तथा प्रत्यारोप का नोटिस वस्तुतः नामंजूर हो जाता है। (सुभाष कुमार सोजतिया वि. देवीलाल धाकड़) …*128

***Representation of the People Act (43 of 1951), Sections 100(1)(d), 123(2) & 123(4) – Government Accommodation* – Held – Clause 8 of nomination form provides a disclosure of government accommodation – Petitioner neither pleaded nor proved through relevant document that the rented premise is a government accommodation – There was no need to disclose the information of the said rented premise in nomination form. [Subhash Kumar Sojatia Vs. Devilal Dhakad] …*128**

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(d), 123(2) व 123(4) – सरकारी स्थान – अभिनिर्धारित – नामांकन पत्र का खंड 8, सरकारी आवास का प्रकटन उपबंधित करता है – याची ने सुसंगत दस्तावेज के जरिये न तो अभिवाक् किया है और न ही साबित किया है कि भाड़े पर लिया परिसर, सरकारी स्थान है – उक्त भाड़े पर लिये स्थान की जानकारी, नामांकन पत्र में प्रकट करने की कोई आवश्यकता नहीं थी। (सुभाष कुमार सोजतिया वि. देवीलाल धाकड़) …*128

***Representation of the People Act (43 of 1951), Sections 100(1)(d), 123(2) & 123(4) – Non-Disclosure of Government Dues – Suppression* – Held – At the time of submission of nomination form, R-1 was not actually aware that some diversion fee was due against his property – No notice issued by revenue authorities to R-1, on the contrary revenue authorities issued No Dues Certificate in his favour – A person who is not aware of any fact, no question of its suppression arises – Non-disclosure of such government dues are not covered u/S 100(1)(d), 123(2) & 123(4) of the Act. [Subhash Kumar Sojatia Vs. Devilal Dhakad] …*128**

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(d), 123(2) व 123(4) – सरकारी देय का अप्रकटन – छिपाव – अभिनिर्धारित – नामांकन पत्र प्रस्तुत करते समय प्रत्यर्थी–1 को वास्तविक रूप से जानकारी नहीं थी कि उसकी संपत्ति के विरूद्ध कुछ अपयोजन शुल्क देय था – राजस्व प्राधिकारियों द्वारा प्रत्यर्थी–1 को कोई नोटिस जारी नहीं किया गया, इसके विपरीत राजस्व प्राधिकारियों ने उसके पक्ष में अनापत्ति प्रमाणपत्र जारी किया – एक व्यक्ति जो किसी तथ्य से अवगत नहीं है, उसके छिपाव का कोई प्रश्न उत्पन्न नहीं होता – उक्त सरकारी देय का अप्रकटन, अधिनियम की धारा 100(1)(d), 123 (2) व 123 (4) के अंतर्गत आच्छादित नहीं है। (सुभाष कुमार सोजतिया वि. देवीलाल धाकड़) …*128

***Representation of the People Act (43 of 1951), Sections 100(1)(d), 123(2) & 123(4) – Non-Disclosure of Interest on Saving Account/FDR* – Held – Interest on saving accounts and FDR is neither a source of income nor a source of livelihood, thus not required to be disclosed in nomination form –**

As per Banking Rules also, saving interest is not a source of income. [Subhash Kumar Sojatia Vs. Devilal Dhakad] …*128

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(d), 123(2) व 123(4) – बचत खाते/एफ.डी.आर. पर ब्याज का अप्रकटन – अभिनिर्धारित – बचत खातों एवं एफ.डी.आर. पर ब्याज न तो आय का स्त्रोत है न ही जीविका का स्त्रोत, अतः नामांकन पत्र में प्रकटन अपेक्षित नहीं – बैंकिंग नियमों के अनुसार भी, बचत ब्याज, आय का स्त्रोत नहीं है। (सुभाष कुमार सोजतिया वि. देवीलाल धाकड़) **…*128**

***Representation of the People Act (43 of 1951), Sections 100(1)(d), 123(2) & 123(4) – Term "Materially Affected" – Presumption* – Held – To be successful in election petition for declaration of election of returned candidate to be void, parties must plead and prove that result of election would have substantially and materially affected – Only because petitioner got second largest number of votes, Court will not presume that in case of rejection of nomination paper of R-1, all votes casted in favour of R-1 would otherwise go in favour of petitioner – Plea of Corrupt practice not proved – Election petition dismissed. [Subhash Kumar Sojatia Vs. Devilal Dhakad] …*128**

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(d), 123(2) व 123(4) – शब्द ''तात्विक रूप से प्रभावित'' – उपधारणा – अभिनिर्धारित – निर्वाचित प्रत्याशी के निर्वाचन को शून्य घोषित करने हेतु निर्वाचन याचिका में सफल होने के लिए, पक्षकारों को अभिवाक् कर साबित करना चाहिए कि निर्वाचन का परिणाम, सारवान रूप से एवं तात्विक रूप से प्रभावित होगा – केवल इसलिए कि याची को द्वितीय सर्वाधिक मत मिले है, न्यायालय उपधारणा नहीं करेगा कि प्रत्यर्थी–1 के नामांकन पत्र की अस्वीकृति की दशा में, प्रत्यर्थी–1 के पक्ष में डाले गये सभी मत याची के पक्ष में अन्यथा जायेंगे – भ्रष्ट आचरण का अभिवाक् साबित नहीं – निर्वाचन याचिका खारिज। (सुभाष कुमार सोजतिया वि. देवीलाल धाकड़) **…*128**

***Representation of the People Act (43 of 1951), Sections 100(1)(d), 123(2) & 123(4) and Constitution – Article 19(1)(a) – Non-Disclosure of Outstanding Rent – Effect on Voters* – Held – No oral or documentary evidence to prove that by virtue of non-disclosure of outstanding rent, any voter suffered to free exercise of his electoral right – Petitioner has not examined any voter and even he himself could not adduce such facts that how or in what manner the voters were unable to freely exercise their right provided under Article 19(1)(a) of Constitution – Even such type of disclosure or suppression does not come under purview of Section 123(2) & 123(4) of the Act. [Subhash Kumar Sojatia Vs. Devilal Dhakad] …*128**

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(d), 123(2) व 123(4) एवं संविधान – अनुच्छेद 19(1)(a) – बकाया भाड़े का अप्रकटन – मतदाताओं पर प्रभाव –

अभिनिर्धारित – यह साबित करने के लिए कोई मौखिक अथवा दस्तावेजी साक्ष्य नहीं कि बकाया भाड़े के अप्रकटन से कोई मतदाता उसके निर्वाचन अधिकार के स्वतंत्र प्रयोग करने के लिए ग्रसित हुआ है – याची ने किसी मतदाता का परीक्षण नहीं किया है और यहां तक कि वह स्वयं ऐसे तथ्य नहीं दे सका है कि कैसे या किस ढंग से मतदाता, संविधान के अनुच्छेद 19(1)(a) के अंतर्गत उपबंधित उनके अधिकार का स्वतंत्र रूप से प्रयोग करने के लिए असमर्थ थे – यहां तक कि इस प्रकार का अप्रकटन या छिपाव, अधिनियम की धारा 123(2) व 123(4) की परिधि के भीतर नहीं आता है। (सुभाष कुमार सोजतिया वि. देवीलाल धाकड़) …*128

***Representation of the People Act (43 of 1951), Section 123 and Evidence Act (1 of 1872), Section 3 – Corrupt Practice – Evidence & Proof* – Held – A charge of corrupt practice cannot be proved by preponderance of probabilities, it is needed to be proved beyond reasonable doubt. [Subhash Kumar Sojatia Vs. Devilal Dhakad]** …*128

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123 एवं साक्ष्य अधिनियम (1872 का 1), धारा 3 – भ्रष्ट आचरण – साक्ष्य व सबूत – अभिनिर्धारित – भ्रष्ट आचरण के आरोप को अधिसंभाव्यताओं की प्रबलता द्वारा साबित नहीं किया जा सकता, इसे युक्तियुक्त संदेह से परे साबित किया जाना आवश्यक है। (सुभाष कुमार सोजतिया वि. देवीलाल धाकड़) …*128

***Representation of the People Act (43 of 1951), Section 123 and Evidence Act (1 of 1872), Section 3 – List of Defaulters – Evidence* – Held – List of defaulter was prepared by "M" – Although R-1 filed affidavit of "M" but he has not been examined by R-1, even his name was not included in list of witnesses – In non- examination of "M", his affidavit cannot be treated as part of evidence because opponent did not get opportunity for cross-examination –Apex Court concluded that affidavit is not evidence within meaning of Section 3 of Evidence Act. [Subhash Kumar Sojatia Vs. Devilal Dhakad]** …*128

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123 एवं साक्ष्य अधिनियम (1872 का 1), धारा 3 – व्यतिक्रमियों की सूची – साक्ष्य – अभिनिर्धारित – ''**M**'' द्वारा व्यतिक्रमियों की सूची तैयार की गई थी – यद्यपि, प्रत्यर्थी–1 ने ''**M**'' का शपथपत्र प्रस्तुत किया, परंतु प्रत्यर्थी–1 द्वारा उसका परीक्षण नहीं किया गया है, यहां तक कि साक्षियों की सूची में उसका नाम भी शामिल नहीं किया गया था – ''**M**'' का परीक्षण न किये जाने से, उसके शपथपत्र को साक्ष्य का भाग नहीं माना जा सकता क्योंकि विरोधी को प्रतिपरीक्षण हेतु अवसर नहीं मिला – सर्वोच्च न्यायालय ने निष्कर्षित किया कि शपथ पत्र, साक्ष्य अधिनियम की धारा 3 के अर्थांतर्गत साक्ष्य नहीं है। (सुभाष कुमार सोजतिया वि. देवीलाल धाकड़) …*128

***Representation of the People Act (43 of 1951), Section 123 and Evidence Act (1 of 1872), Section 67 & 77 – Certified Copy of Public Document* – Held –**

Mere production of certified copy of any public record is not a proof of its contents – In list of defaulters, no date is mentioned, even there is no information about its author who prepared it – List of defaulters cannot be treated as public document and without examining its author to prove its contents, petitioner failed to prove the document as per requirement of Section 67 of Evidence Act. [Subhash Kumar Sojatia Vs. Devilal Dhakad]
…*128

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123 एवं साक्ष्य अधिनियम (1872 का 1), धारा 67 व 77 – लोक दस्तावेज की प्रमाणित प्रति – अभिनिर्धारित – मात्र किसी लोक अभिलेख की प्रमाणित प्रति प्रस्तुत करना, उसकी विषयवस्तु का सबूत नहीं है – व्यतिक्रमियों की सूची में, कोई तिथि उल्लिखित नहीं है, यहां तक कि उसके लेखक के बारे में कोई जानकारी नहीं जिसने उसे तैयार किया – व्यतिक्रमियों की सूची को लोक दस्तावेज के रूप में नहीं समझा जा सकता तथा उसकी विषय वस्तु साबित करने के लिए उसके लेखक का परीक्षण किये बिना, साक्ष्य अधिनियम की धारा 67 की अपेक्षा अनुसार दस्तावेज साबित करने में याची विफल रहा। (सुभाष कुमार सोजतिया वि. देवीलाल धाकड़) **…*128**

***Representation of the People Act (43 of 1951), Section 123 and Evidence Act (1 of 1872), Section 106 – Corrupt Practice – Burden of Proof* – Held – Petition is filed on allegation of "corrupt practice", therefore burden of proof lies upon petitioner and he is supposed to prove the facts within special knowledge by adducing best evidence as per Section 106 of Evidence Act – Burden never shifts and the standard of proof to discharge this burden is same as in criminal case – Matter requiring proof should be established beyond any reasonable doubt and in case of doubt, the benefit should go to the returned candidate. [Subhash Kumar Sojatia Vs. Devilal Dhakad]**
…*128

लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123 एवं साक्ष्य अधिनियम (1872 का 1), धारा 106 – भ्रष्ट आचरण – सबूत का भार – अभिनिर्धारित – ''भ्रष्ट आचरण'' के अभिकथन पर याचिका प्रस्तुत की गयी है अतः सबूत का भार याची पर है और उससे साक्ष्य अधिनियम की धारा 106 के अनुसार सर्वोत्तम साक्ष्य लगाकर विशेष ज्ञान के भीतर के तथ्यों को साबित करना अनुमित है – भार कभी परिवर्तित नहीं होता और इस भार के उन्मोचन हेतु सबूत का मानक उसी समान है जैसा कि एक दाण्डिक प्रकरण में होता है – मामला जिसमें सबूत अपेक्षित है, को युक्तियुक्त संदेह से परे स्थापित किया जाना चाहिए और संदेह के मामले में चयनित प्रत्याशी को लाभ जाना चाहिए। (सुभाष कुमार सोजतिया वि. देवीलाल धाकड़) **…*128**

***Representation of the People Act (43 of 1951), Section 123(3) – CD/DVD – Transcription* – Held – Petitioner did not examine the material witness who prepared the DVD – Transcription provided in election petition is not prepared by petitioner himself and he did not examine the relevant person who has prepared the transcription – Transcription is not duly verified and signed by its writer, thus it is not admissible in evidence –**

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THE INDIAN LAW REPORTS M.P. SERIES, 2023
(Vol.-4)

JOURNAL SECTION

APPOINTMENTS TO THE MADHYA PRADESH HIGH COURT

We congratulate Hon'ble Mr. Justice Raj Mohan Singh on his appointment as Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Raj Mohan Singh took oath of the High Office on 01.11.2023.

HON'BLE SHRI JUSTICE RAJ MOHAN SINGH

Born on August 18, 1962. After completing LL.B. from Kurukshetra University, started practice at Punjab and Haryana High Court. Had a diversified practice having good number of civil, criminal, service, labour law cases and cases relating to land laws arising out of miscellaneous local laws of Punjab and Haryana. Was elected thrice as a Member of Bar Council of Punjab and Haryana and also Hony. Secretary of Bar Council of Punjab and Haryana. Was holding the position of Member, Bar Council of India (BCI), representing the States of Punjab, Haryana and U.T. Chandigarh in the Bar Council of India, before elevation on 25 September 2014, as Additional Judge of the Punjab and Haryana High Court. Appointed as permanent Judge on 23 May 2016.

Transferred as Judge of the High Court of Madhya Pradesh and took oath on 01.11.2023.

We, on behalf of The Indian Law Reports (M.P. Series), wish Hon'ble Mr. Justice Raj Mohan Singh, a successful tenure on the Bench.

We congratulate Hon'ble Mr. Justice Rajendra Kumar-IV on his appointment as Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Rajendra Kumar-IV took oath of the High Office on 01.11.2023.

HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV

Born on July 1, 1962. Graduated in Law in the year 1986. Appointed in Higher Judicial Service in the year 2005. Promoted as District & Sessions Judge in the year 2016. Elevated as Additional Judge of Allahabad High Court on 22 November 2018. Appointed as Permanent Judge on 20 November 2020.

Transferred as Judge of the High Court of Madhya Pradesh and took oath on 01.11.2023.

We, on behalf of The Indian Law Reports (M.P. Series), wish Hon'ble Mr. Justice Rajendra Kumar-IV, a successful tenure on the Bench.

We congratulate Hon'ble Mr. Justice Duppala Venkata Ramana on his appointment as Additional Judge of the High Court of Madhya Pradesh. Hon'ble Mr. Justice Duppala Venkata Ramana took oath of the High Office on 01.11.2023.

HON'BLE MR. JUSTICE DUPPALA VENKATA RAMANA

Born on June 3, 1963. After completing LL.B from N.V.P. Law College Visakhapatnam in 1989 did LL.M from Acharya Nagarjuna University, Guntur. Enrolled as an Advocate in June 1989 and joined District Bar Association, Srikakulam and practiced till June 1990. Thereafter shifted practice to Visakhapatnam Bar Association and practiced till May, 1994. Selected as District Munsif in 1994 and worked in Amalapuram, Macharla, Hyderabad, Vijayawada and Tirupati. Promoted as Senior Civil Judge in January 2007 and worked in Hyderabad, Tirupati and Kakinada. Promoted as District Judge in the year 2015 and worked as VII Additional District & Sessions Judge in Kakinada. Deputed as Devasthanam Law Officer, Tirumala Tirupati Devasthanams from 2015 to 2017. Worked as X Additional District & Sessions Judge, Gurajala. Deputed as Law Secretary, Government of Andhra Pradesh from 2017 to 2019. Took initiative in repealing 140 obsolete Acts. Appointed as Registrar (Management), later as Registrar (Recruitment) and further as Registrar (Administration) from June 2019 till elevation. Elevated as Additional Judge of the High Court of Andhra Pradesh on 04.08.2022.

Transferred as Additional Judge of the High Court of Madhya Pradesh and took oath on 01.11.2023.

We, on behalf of The Indian Law Reports (M.P. Series), wish Hon'ble Mr. Justice Duppala Venkata Ramana, a successful tenure on the Bench.

OVATION TO HON'BLE MR. JUSTICE RAJ MOHAN SINGH, HON'BLE MR. JUSTICE RAJENDRA KUMAR-IV AND HON'BLE MR. JUSTICE DUPPALA VENKATA RAMANA, GIVEN ON 01-11-2023, IN THE COURT HALL NO.1, HIGH COURT OF M.P., JABALPUR

Shri Prashant Singh, Advocate General, M.P., while felicitating their Lordships, said :-

I deem it to be my proud privilege to offer felicitations to Hon'ble Shri Justice Raj Mohan Singh, Hon'ble Shri Justice Rajendra Kumar and Hon'ble Shri Justice Duppala Venkata Ramana on Your Lordship's appointment as Judges of this High Court. I welcome Your Lordships to the marvelous State of Madhya Pradesh.

HON'BLE SHRI JUSTICE RAJ MOHAN SINGH

Hon'ble Shri Justice Raj Mohan Singh was born on 18th August, 1962 at Bhiwani, Haryana, in a well-known Rajput family. The family of His Lordship is full of gentlemen having Army and BSF decorations. After completing primary and secondary education from Bhiwani His Lordship completed LL.B. from Kurukshetra University and joined the legal profession at Punjab & Haryana High Court under the able guidance of his uncle/fufaji Shri Surinder Singh Rathore, who was later elevated as Judge. His Lordship was elected thrice as a Member of Bar Council of Punjab and Haryana from 2002 to 2014. He also remained Hony. Secretary of Bar Council of Punjab and Haryana from 2004 to 2005 and Member Bar Council of India (BCI), representing the States of Punjab, Haryana and U.T. Chandigarh in the Bar Council of India. His Lordship was appointed as Judge of the High Court of Punjab & Haryana on 25th September, 2014.

HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV

Hon'ble Shri Justice Rajendra Kumar-IV was born on 1st July, 1962. After completing LL.B. in the year 1986, His Lordship was appointed in Higher Judicial Service in the year 2005 and was thereafter promoted as District & Sessions Judge in the year 2016.

Looking to His Lordship's legal acumen and deep knowledge of law, His Lordship was appointed as Additional Judge of the High Court of Judicature at Allahabad on 22nd November, 2018 and thereafter as permanent Judge on 20th November, 2020.

HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA

Hon'ble Shri Justice Duppala Venkata Ramana was born on 3rd June, 1963 in Chinna Boddepalli Hamlet, Ponduru Mandal of Srikakulam District of Andhra Pradesh. His Lordship completed Bachelor of Law from N.V.P. Law College,

Visakhapatnam in 1989 and Master of Law in Acharya Nagarjuna University, Guntur. His Lordship was enrolled as an Advocate in June, 1989 and practiced till May, 1994. His Lordship was selected as District Munsif in 1994 and was promoted as Senior Civil Judge in January, 2007, and thereafter as District Judge in the year 2015. His Lordship was deputed as Law Secretary, Government of Andhra Pradesh from 2017 to 2019. Subsequently, His Lordship was elevated as an Additional Judge on 04.08.2022.

My Lords, I welcome Your Lordships to Madhya Pradesh, often referred to as **"Bharat Ka Dil"**. It encompasses the essence of **'Bharat'** with its geographical diversity, historical significance, rich culture, natural beauty, architectural marvels and delectable cuisines. Similarly, **Jabalpur**, often referred to as **'Sanskardhani',** which is located on the banks of the Holy River **'Maa Narmada'** is the **'Heart of Madhya Pradesh'.** Being a large state, expectations of the public from the judiciary are also large.

The judiciary plays a fundamental role in preserving the principles of justice, fairness, and the rule of law. As judges Your Lordships are entrusted with the immense responsibility of upholding these principles and ensuring that justice prevails, no matter how complex or challenging the cases that come before you.

Your Lordships now have the opportunity to bring fresh perspectives, a wealth of experiences and insights to the legal system in Madhya Pradesh. I am sure that Your Lordships tenure as judges in the High Court of Madhya Pradesh shall be marked by wisdom, fairness, and an unwavering commitment to justice. With firm conviction I assure Your Lordships of our fullest co-operation in discharging your functions.

I, on my own behalf and on behalf of the State of Madhya Pradesh as well as all Law Officers of the State of Madhya Pradesh, welcome Your Lordships and your family members to this glorious state and wish Your Lordships all the very best for the future.

Thank you.

Shri Pushpendra Yadav, Deputy Solicitor General of India, said :-

Today is a momentous occasion as we gather here to witness the swearing – in ceremony of Lordships. It is a privilege and an Honour to stand before you to address this August gathering.

I would like to begin by congratulating the Lordships on their transfer and joining to this prestigious position. The addition of Lordships to this Hon'ble High Court is indeed a significant development that will further boost and enhance the wheels of justice dispensing system.

Lordships bring with them a wealth of legal expertise and experience. Their distinguished legal careers, often spanning several years, have equipped them with a deep understanding of complex legal matters. Their presence on the bench enhances the intellectual resources available to this Hon'ble High Court. Their insights and rulings can set important precedents and contribute to the development of jurisprudence, ensuring that the law evolves in a manner consistent with the changing needs of society. With their extensive experience, they are well-equipped to handle a wide range of cases, including those of exceptional complexity. Their involvement can help in expediting the legal process and reducing the backlog of cases. Timely justice is a fundamental right of every citizen, and the presence of Lordships on the bench can significantly contribute to achieving this goal.

The joining of Lordship to this Hon'ble High Court is an occasion to celebrate and look forward to a more efficient, credible, and just legal system that serves the needs of our society. Their presence will undoubtedly add three more wheels to the justice dispensing system, ensuring its smooth and efficient operation and the safeguarding of the rule of law.

In conclusion, I once again on behalf Union of India, Law Officers and on my own behalf extend my heartiest congratulations to the Lordships and their family. Let us work together to ensure that the judiciary remains the cornerstone of our democracy and the beacon of hope for all those who seek justice.

Thank you.

Shri Radhe Lal Gupta, Co-Chairman and Honorary Secretary, State Bar Council of M.P., said:-

Before this gathering, today I have the honour of introducing great legal personalities My Lords Justice Shri Raj Mohan Singh, Justice Shri Rajendra Kumar-IV and Justice Shri Duppala Venkata Ramana. It is a great pleasure for all of us to welcome to My Lords to this great temple of justice who has come from Punjab and Haryana High Court, Allahabad High Court and Andhra Pradesh High Court and is adorning the Office of MP High Court. We offer our heartiest welcome and congratulations to My Lords. Today, in the history of Hon'ble High Court once again a new chapter is about to begin when we are getting, three more, stalwart & highly experienced Judges from the land of Golden Temple, land of Maa Ganga and from the land of Devesthanam Shri Tirupati Balaji.

Prior to giving brief introduction of My Lords I would like to quote say of Harivansh Rai Bacchan,

"If you get what you desire, great; because you got what was your will !

But if you don't, then, it's the best, because it is God's will."

My Lord Justice Shri Raj Mohan Singh,

My Lord after completing law Graduation from Kurukshetra University enrolled as an advocate in the year 1982 and thereafter practiced in all sides of law and handled cases in all subjects. My Lord during his career as a lawyer, his Lordship was elected thrice as a Member of Bar Council of Punjab and Haryana (Term from 2002-2014). He also remained Hony. Secretary of Bar Council of Punjab and Haryana from 2004 to 2005. Before elevation as Additional Judge of this Hon'ble Court, his Lordship was holding the position of Member Bar Council of India (BCI), representing the States of Punjab, Haryana and U.T. Chandigarh in the Bar Council of India. His Lordship was appointed as Judge of the High Court of Punjab & Haryana on 2014. During the period My Lord was the Judge of the Hon'ble High Court of Punjab & Haryana, Your Lordship has contributed greatly by giving various important judgments on constitutional, Civil, Criminal and other branches of law.

My Lord Justice Shri Rajendra Kumar-IV,

My Lord after completing law graduation in 1986, enrolled as an advocate and thereafter practiced in all sides of law and handled cases in all subjects. His Lordship was appointed in Higher Judicial Service in the year 2005 and thereafter was promoted as District & Sessions Judge in 2016. His Lordship was appointed as Additional Judge of the High Court of Judicature at Allahabad in the year 2018 and as permanent Judge of High Court of Allahabad in the year 2020. My Lord was appreciated for his ability and fairness as a lawyer in several reported judgments. During the period My Lord was the Judge of the Hon'ble High Court of Allahabad, Your Lordship has contributed greatly by giving various important judgments on constitutional, Civil, Criminal and other branches of law.

My Lord Justice Shri Duppala Venkata Ramana,

My Lord after completing law graduation from N.V.P. Law College, Visakhapatnam in 1989, enrolled as an Advocate in the year 1989 and also completed Masters of Law from Acharya Nagarjuna University, Guntur and joined District Bar Association, Srikakulam. My Lord has the honour of serving as District Munsif in 1994 and several places including Tirupati Devasthanams. My Lord has been deputed as Devasthanam Law Officer, Tirumala Tirupati Devasthanams from 2015 to 2017. Blessed to serve Lord Balaji in Tirumala Tirupati Devasthanams. Solved intricate legal issues in TTD and won accolades from Tirumala Tirupati Devasthanams. Functioned as X Additional District & Sessions Judge, Gurajala. Deputed as Law Secretary, Government of Andhra Pradesh from 2017 to 2019. Took initiative in repealing 140 obsolete acts. Interested in Legislative Drafting. Appointed as Registrar (Management), later as

Registrar (Recruitment) and further as Registrar (Administration) from June, 2019 till elevation as an Additional Judge in the year 2022.

During the period My Lord was the Additional Judge of the Hon'ble High Court of Andhra Pradesh. Your Lordship has contributed greatly by giving various important judgments. They are always considered to be guideline in legal fraternity.

Subsequently, Your Lordships are transferred to Madhya Pradesh High Court, to the great temple of justice is availing an opportunity to be benefited with great ability and wisdom of your Lordships.

The Journey of Your Lordships starts from a place where a holly river Narmada flows where by having a glimpse a person can have the blessings. I also wish blessing of Ma Narmada be bestowed upon your Lordship.

My Lords, the judiciary as a whole is facing numerous problems. They are complicated. They do not admit of easy solutions. There is an erosion of confidence of the ordinary public in the effectiveness of the Justice delivery system. Every institution is accountable to the public for whom it is made. The Apex Court has said in S.P. Gupta's case "That the Judges and lawyers are partners in the administration of Justice. Justice is the result of a team work though the function of Judges and lawyers are different." we offer our full co-operation to My Lords in fulfilling the great of litigant public and in maintaining the dignity and effectiveness of this great institution.

At last but not the least, I on behalf State Bar Council of Madhya Pradesh, all the members and advocates of Madhya Pradesh my own behalf, I sincerely offer my whole hearted welcome and best wishes to My Lords Justice Shri Raj Mohan Singh, Justice Shri Rajendra Kumar-IV and Justice Shri Duppala Venkata Ramana in the High Court of M.P.

Thank you.

Shri Sanjay Verma, President, M.P. High Court Bar Association, Jabalpur, said :-

Today, we have gathered here to welcome three distinguished Judges who have taken their oath after joining us from various High Courts.

As we commence this momentous occasion, we also extend our best wishes on the foundation day, marking not only the birth state of Madhya Pradesh but also the establishment of the prestigious High Court and the duly recognized Madhya Pradesh High Court Bar Association Jabalpur, having a membership of more than five thousand practicing advocates.

In this Bar Association, many stalwarts were members.

I am adopting all the achievements narrated by my previous speakers regarding the Hon'ble Judges.

Before we delve into the traditions and values that define our legal community, it's crucial to understand the procedural aspects that govern our courtrooms.

As per the rules of the Madhya Pradesh High Court, we adhere to a well-structured motion hearings list.

Cases are listed by serial numbers, and we recognize the importance of timeliness. If any Advocate is delayed in reaching the courtroom, their matter may be temporarily Passover and rescheduled for a later time, as indicated on the display board.

Additionally, it's our duty to ensure that the motion hearing list is completed within the day, in adherence to our judicial procedures. Furthermore, if a motion hearing is not completed within the day, we ensure that these cases receive priority on the following day, maintaining the integrity of our judicial process. Now, let us transition to the heart of our legal community, the traditions and values that make us a united and nurturing family.

This coming together signifies the harmonious fusion of legal wisdom and traditions from different corners of our great nation.

In the High Court of Madhya Pradesh, we uphold a time-honoured tradition where we hold our senior members of the Bar Association in high regard.

Simultaneously, this tradition extends a welcoming hand to the young lawyers who have recently embarked on their legal journeys, providing them with guidance and support. Our tradition of nurturing and supporting young lawyers is deeply ingrained in the legacy of the Jabalpur High Court.

This tradition reflects our commitment to the legal profession, ensuring that young lawyers receive the guidance and opportunities they need to excel.

It goes beyond their appearances in the courtroom; it's about recognizing their dedication to the cause of justice.

We firmly believe that when a young lawyer enters the courtroom and pleads with integrity, their efforts, even in cases that may not be in their favour, should be acknowledged with some relief.

Many of us, including myself, owe our legal journeys to the kindness of judges who were present in the High Court during our formative years.

We are grateful for the wisdom of those judges who recognized the potential in young lawyers and offered them support in their early stages. It's thanks to these compassionate judges that we remain dedicated to the legal profession.

The young lawyers who have chosen Madhya Pradesh as their legal home are the lifeblood of our legal community.

Their unwavering dedication, fresh perspectives, and commitment breathe new life into our courtrooms and legal processes. By extending a supportive hand to these budding advocates, we ensure that they continue to thrive in their chosen path, enriching the legal community and fortifying the administration of justice in our beloved stage. We must remember that treating young lawyers harshly at the outset of their careers can have lasting consequences.

A lack of support and opportunities might discourage them from the legal profession, creating a void that would be challenging to fill. Our tradition of nurturing young legal minds and recognizing their commitment is not merely a kind gesture; it's an investment in the future of our justice system.

Your Lordships, the High Court Bar Association Jabalpur and its members express our deepest gratitude to you for acknowledging the importance of this tradition and for fostering an environment where our young lawyers can flourish.

May the journey of these newly joined judges in Madhya Pradesh be marked not only by justice and wisdom but also by a commitment to mentorship, encouragement, and the preservation of this cherished tradition.

Once again, we welcome Hon'ble Justice Shri Raj Mohan Singh, Hon'ble Justice Shri Rajendra Kumar, and Hon'ble Justice Shri Duppala Venkata Ramana, to the Madhya Pradesh High Court.

Your presence strengthens the bonds of our legal community, and we eagerly anticipate the invaluable contributions you will make during your tenure.

Thank you, Your Lordships, for joining us today and becoming an integral part of our legal fraternity.

Thank you.

Shri Anil Khare, President, High Court Advocates' Bar Association, Jabalpur, said :-

I stand here on behalf of High Court Advocates' Bar Association to welcome My Lord Hon'ble Shri Justice Raj Mohan Singh, My Lord Hon'ble Shri Justice Rajendra Kumar-IV, who have been transferred as judges of Madhya

Pradesh High Court and My Lord Hon'ble Shri Justice Duppala Venkata Ramana who has been transferred as Additional Judge of Madhya Pradesh High Court.

Their transfer comes at a time when acknowledging the existence of a world of accountability and in order to earn the respect of the community, the courts have adopted and embraced the electronic platforms prevalent in the society.

In the Arthashastra, a treatise on statecraft by Kautilya, it has been mentioned that Judges used to pronounce their verdicts in public courts. The scene of justice delivery has not changed much since those ancient times. The Indian legal system is based on the principle of open courts, which means that anyone can witness the proceedings. However, this has not always been so in practice. In reality only a few people can enter and be present in the courtroom on any given day. However, with the advent of streaming of live proceedings of the court on You Tube, today the concept of open court has been given a full play. A sense of mystery which was associated with the judicial process, giving the courts an enigmatic, is being gradually dispelled What people used to read in text form on newspapers and websites has now become a vivid audio-visual spectacle.

The Supreme Court reiterated the view that open court proceedings uphold the legitimacy and effectiveness of the judicial system and enhance public confidence in the courts. However, it has to be acknowledged that the pursuit to foster public confidence, though is a noble one, has the effect of making the task of judges more arduous. Every word that is said in court, needs to be weighed and balanced, with the chances of it making it to the public realm being higher than ever. The judges today also have to stand guard against a tendency to seek accountability and legitimacy from the public rather than the law alone, with the perception of being watched being ever prevailing.

These ever evolving challenges, forces us to ask ourselves to what are the qualities desirable for a Judge. It is only an individual who possesses legal acumen and who is filled with integrity, who will be able to navigate his way through this ever-evolving terrain. At this juncture, it is worth noting the seven essential traits as identified by ancient jurist Katyayana, which judges should possess. Those seven qualities are akrurha (no ill will), madhura (politeness), snigdha (dispassionate), kshamajuto (forgiveness), bichakshana (educated, having an analytical mind), utsahabana (spirited and hard-working), and nirlobha (without greed).

The Bar has also a vital role to play in upholding the glory of this institution and can serve as a shield and a protector for the Bench. The bar and bench are the two main pillars of the legal system, which work together to uphold the rule of law and to deliver justice to the people. The mutual dependence for

serving the shared purpose of delivering justice to those who have been wronged, calls for cooperation and communication in the most respectful and courteous manner. The existence of a cordial relation would help to make this institution more robust and would deter the external forces from diminishing the respect and dignity of the Indian judicial system.

The professional profile of My Lord Hon'ble Shri Justice Raj Mohan Singh, My Lord Hon'ble Shri Justice Rajendra Kumar-IV and My Lord Hon'ble Shri Justice Duppala Venkata Ramana has already been read by earlier speakers and as such I am not repeating the same.

My Lords have adorned the high office as Judge of this court and we fervently believe that My Lords would display their legal skills innate in them by virtue of their broad and rich experience and would meet the expectations of the bar. We also hope that My Lords will uphold the highest standards of integrity and impartiality in our courts.

The courts are decorated with good judges and good lawyers together, but not the other alone. The Judiciary and the Bar are the wheels of the same chariot. The cooperation of the Bar in fulfilling your duties will always be our privilege and you would not find the members of the Bar failing in their duties.

With these words I, on behalf of High Court Advocates' Bar Association, once again warmly welcome My Lord Hon'ble Shri Justice Raj Mohan Singh, My Lord Hon'ble Shri Justice Rajendra Kumar-IV and My Lord Hon'ble Shri Justice Duppala Venkata Ramana and hope for a bright and a successful tenure with all the goodness of the almighty to be showered upon you.

Thank you.

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

I hereby, adopt the high profile of the Hon'ble transferred judges spoken of by my previous speakers so as to avoid repetition.

My Lords have just taken oath of their office today that is on 1 November 2023 and it was on 1st November 1956 that the High Court of Madhya Pradesh was established under the State Reorganization Act, 1956. This day of 1 November 2023 has thus great significance.

My Lords have a very rich judicial experience in practically all branches of law and this High Court will be benefitted by My Lords' such experience.

My Lords, the State of Madhya Pradesh is comparatively a poor state and

the people of this State come mostly from scheduled and tribal areas. Their problems are varied; I hope the people of this State will get sympathetic and humanitarian consideration in the solution of their legal problems.

This High Court as also other High Courts are facing a problem of huge pendency of cases which will be a very big task before My Lords to reduce the same. I have no doubt that My Lords will successfully solve the problems with the cooperation of the members of the Bar.

Although the tenure of My Lords is too short yet within such short period My Lords will leave no stone untouched in the speedy disposal of the cases. I assure My Lords of all possible cooperation in the dispensation of justice.

I on behalf of the Senior Advocates Council and on my own behalf do heartily welcome my Lords transfer appointments of this High Court and wish every success.

Thank you.

Reply to Ovation, by Hon'ble Mr. Justice Raj Mohan Singh :-

First of all good morning to all.

I thank all the Bar members for this warm welcome given to us. I have come to this land of Lord Shiva to perform my pious obligations and constitutional duties. I will not shirk in performing all these duties to the satisfaction of all concerned. I will definitely uphold the dignity of this great institution and dignity of the Bar as well. Very oftenly it is said that Bar and Bench are two sides of a coin but according to me Bar and Bench are on the same side of the coin. One cannot succeed without the help of other. At last I thank once again to all the Bar members for honouring me with such a great and warm welcome and the feelings which have been exhibited on record. I will try to stand up to the expectations of all concerned.

Thank you very much.

Reply to Ovation, by Hon'ble Mr. Justice Rajendra Kumar-IV :-

यद्यपि मैं आज जबलपुर प्रथम बार आया, परन्तु आज के वेलकम समारोह को देखकर मुझे आज से 35 साल पुराने हुई घटना याद आयी। इस मध्यप्रदेश से मेरा रिश्ता 35 वर्ष पुराना है। मैंने अपने जीवन की शुरूआत इसी मध्यप्रदेश से की थी और अपने जीवन के न्यायिक क्षेत्र के अंतिम सोपान को मुझे लगता है मैं यहीं से पूरा करूंगा। एज ए हाईकोर्ट जज मेरी ये प्रथम प्राथमिकता थी कि शायद कभी मुझे एम.पी. जाने का अवसर मिले और जब मेरा ट्रांसफर यहॉ के लिए प्रपोजल हुआ तो मैंने तत्काल अपनी सेंक्शन (sanction) दी कि पहले इस पर पुनर्विचार हो।

तो आज के इस फंक्शन को देखकर मुझे अपने 35 साल पुरानी वाली घटना याद आती है और जितना वार्म–वेलकम आप लोगों ने किया है इतनी ही ये घटना 35 साल पहले उसको घटना कहें या दुर्घटना क्या कहें सब लोग समझ सकते हैं, वो घटना घटित हुई थी जिसने मेरे जीवन को बदल कर रख दिया और आज मैं जहॉ पर हूँ, जिस पोजीशन में हूँ उसमें मध्यप्रदेश का एक बहुत बड़ा योगदान है।

मैं आपके मध्यप्रदेश के नजदीकी जिले महोबा से बिलॉग करता हूँ जो मेरे बॉयोडॉटा में नहीं है इसलिए आप लोगों को शायद वो चीज पता नहीं होगी। मेरे लिये तो महोबा से इलाहाबाद और महोबा से जबलपुर की दूरी बराबर ही थी। पहले मैं एक घर में था आज दूसरे घर में आ गया हूँ। मैं इन्हीं शब्दों के साथ आप लोगों को बहुत–बहुत वेलकम करने के लिए धन्यवाद देता हूँ। और मैं अपना पूरा प्रयास करूंगा कि मेरे किसी कार्य से आपको कोई असुविधा न हो।

इन्हीं शब्दों के बाद आपको पुनः धन्यवाद देता हूँ।

Reply to Ovation, by Hon'ble Mr. Justice Duppala Venkata Ramana :-

At the outset, let me express my gratitude to the President and other Members of the Bar having spoken **nice words about me.**

I am indebted to you all for welcoming me to this privileged High Court.

I am honoured to have blessed with a wonderful opportunity to serve this esteemed and historical High Court, as a Judge.

Faith and Confidence a common man repose in the Justice Delivery Mechanism, are the greatest strengths of the Judiciary.

It is said, **"the dead cannot cry out for Justice, it is a duty of the living to do so for them."**

In discharge of their duties, I noticed members of judicial fraternity are well known for their impartiality and independence. The independence of Judiciary is paramount to maintain Rule of Law and to those who knock the door of justice. A strong Judiciary is one of the estates of democracy having great bearing on the lives of people.

Senior lawyers are known to build the legal fraternity and are essential for effective dispensation of justice. At the same time, the Junior Lawyers are seekers, but their role is of immense significance for upliftment of Justice Delivery System.

On this occasion, I want to give some suggestions to the young advocates.

"There is no shortcut for success except the hard work with due commitment."

I believe and trust that Ethics, Values, Time Management and Technological Advancement would excel the Advocates to shimmer in the profession.

A temple is a place of worship. It always remains accessible to people. A temple of Justice more so must remain open to the persons seeking redressal of grievances.

The Judges and the Lawyers should remembers, first and foremost, that in weighing and balancing rights and privileges they are building together a monument in the temple of Justice.

As we all know the Bar is the best adjudicator of the Judges. I would strive to be the best adjudicator.

The Bar and the Bench are two wheels of a chariot of Justice. Both are supplementary and complimentary to each other.

The Bar and the Bench are two sides of a coin. In the administration of Justice unless the harmony prevails between the Bar and the Bench, no desired results to uphold the majesty of the institution would be achieved.

A common man has faith in the judicial system of the country. It is the role of both the Bench and the Bar to maintain and strengthen the same by its commitment and conduct.

It is proud gesture that many of Judges were elevated from the Madhya Pradesh to the Hon'ble Supreme Court and one among them Shri Justice J.K. Maheshwari has been serving as a Judge of Supreme Court of India.

“Wish me to have grace to hear patiently, to consider diligently, to understand rightly and to decide justly. Grant me due sense of humility, that I may not be misled by my willfulness, vanity, and egotism. I thank my friends and other persons, who came from different places and attended for this swearing-in-ceremony”

With these words, I sign off.

Jai Hind

FAREWELL

HON'BLE MR. JUSTICE SATYENDRA KUMAR SINGH

Born on October 24, 1961. Did B.Sc., LL.B. and joined Judicial Service as Civil Judge Class-II on November 03, 1987. Appointed as Civil Judge Class-I in the year 1994. Appointed as C.J.M./A.C.J.M., in the year 1997 and was posted as Civil Judge Class-I and A.C.J.M., at Maihar. Posted as C.J.M., Bhopal in the year 1998. Promoted as Officiating District Judge in Higher Judicial Service on June 04, 1999 and was posted as IX A.D.J., Bhopal. Posted as Deputy Secretary, Law & Legislative Affairs Deptt., Bhopal in the year 2002. Posted as Additional Legal Remembrancer & Additional Secretary, Law Deptt., Bhopal in the year 2004. Posted as IV A.D.J., Sagar in the year 2006. Posted as I A.D.J., Sagar in the year 2007. Was granted Selection Grade Scale w.e.f. 10.10.2007. Posted as O.S.D. (7) High Court of M.P., Jabalpur in April 2009. Posted as Additional Registrar (V.L.), Jabalpur in June 2009 and thereafter as Registrar (V.L.), Jabalpur in September, 2009. Posted as Special Judge, SC/ST (P.A.) Act & I Additional Judge to I A.D.J., Ujjain in the year 2013. Posted as District & Sessions Judge, Alirajpur in October 2015. Also worked as Special Judge, NDPS Act, NIA Act, Alirajpur from November 2015. Posted as District & Sessions Judge, Ujjain in April 2016. Was granted Super Time Scale w.e.f. 01.07.2016. Posted as Principal Registrar (Vigilance), Jabalpur in October 2016. Posted as Principal Secretary, Law & Legislative Affairs Department, Bhopal from May 14, 2018 till elevation. Elevated as Judge of the High Court of Madhya Pradesh on June 25, 2021 and demitted office on October 23, 2023.

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 SATYENDRA KUMAR SINGH, GIVEN ON 20.10.2023, IN THE HIGH COURT OF M.P., BENCH AT GWALIOR.

Hon'ble Mr. Justice Rohit Arya, Administrative Judge, High Court of M.P., Bench Gwalior, bids farewell to the demitting Judge :-

We have gathered here today to bid adieu to Hon'ble Shri Justice Satyendra Kumar Singh on the eve of his superannuation as the Judge of this Court.

After completing B.Sc. from Lucknow University in 1981, His Lordship did LL.B. from Allahabad University in 1984. A bright student, His Lordship was selected for and appointed as Civil Judge Class II on 03.11.1987. Blessed with a sharp legal acumen, His Lordship earned regular promotions and went on to become Civil Judge Class I in the year 1994; Chief Judicial Magistrate in the year 1998; Additional District Judge in the year 1999 and thereafter District and Sessions Judge at Alirajpur & Ujjain. He also served as Registrar (Vigilance & Litigation) and thereafter as Principal Registrar (Vigilance) at High Court of Madhya Pradesh, Jabalpur. He also held the post of Additional Secretary and Principal Secretary in Law and Legislative Affairs Department Bhopal. He was administered oath of the office of Judge of High Court on 25/06/2021.

Justice Singh embodies most desirable qualities reasonably expected of a Judge. His Lordship's fine sense of judgment and keen discernment coupled with attributes of punctuality, probity, promptness and patience in dispensation of justice, have made him win hearts of Bar and Bench alike. His Lordship has exemplified the highest standards of judicial integrity, wisdom and dedication. He has been a true beacon of justice, tirelessly upholding the principles upon which our legal system rests. His Lordship has presided over plethora of cases, demonstrating an unwavering commitment to fairness, impartiality and the rule of law; bedrock of our Constitution. He has left an indelible mark on the legal landscape, setting precedents that will guide the future generations of legal professionals in the Bar and on the Bench, thereby enriching the legal fraternity, for times to come. Behind the judicial robe, Justice Singh has always been a compassionate and empathetic human being, who understood the real impact of his decisions on the lives of those who sought justice in his Court room. Besides, he has always been giving unflinching and meaningful support and advice in the interest of Administration as well, while being member of several Administrative Committees.

Shri Nimish Singh, son of His Lordship has imbibed high ethical values of His Lordship and, with distinction, is serving as an Associate Fellow at Air Quality Research Division, The Energy Resources Institute (TERI), New Delhi.

His Lordship's daughter-in-law Ms. Kanika Singh is no less meritorious and is working as Senior Associate at Axtria Pvt. Ltd., Noida.

As His Lordship steps into next phase of life to *re-tier*, we all shall be missing him in our family of Judges.

At this juncture, I am reminded of a famous quote of – Walt Mossberg, American Journalist -

"I see retirement as just another of these reinventions, another chance to do new things and be a new version of myself."

Superannuation, in fact, is a unique and transformative phase of life, offering opportunities for relaxation, self-discovery and personal fulfillment. I am sure, Justice Singh would embrace the golden years of retirement with Madam Dr. Madhavi Singh, his better half, who is present amongst us here. She has been supportive and a guiding force for him and the family.

I, on my behalf and on behalf of my sister and brother Judges and Registry of this Court, wish Hon'ble Justice Singh and his family members, a very happy, healthy, prosperous and glorious life ahead.

May God Bestow on them choicest of His blessings for all times to come.

Thank you. God bless you.

Jai Hind

Shri Pawan Pathak, President, High Court Bar Association, Gwalior, bids farewell :-

हम आज यहां एकत्रित हुए हैं, दो माननीय न्यायमूर्तिगण को विदाई देने के लिए और दो नए माननीय न्यायमूर्तिगण का स्वागत करने के लिए। यह एक साथ ही एक दुखद और खुशियों भरा पल है।

माननीय न्यायमूर्ति श्री दीपक कुमार अग्रवाल व माननीय न्यायमूर्ति श्री सत्येंद्र कुमार सिंह जी को ग्वालियर बार की ओर से धन्यवाद करना चाहता हूँ, जिन्होंने अपने योगदान से हमारी कानूनी प्रणाली को मजबूती और न्याय को अधिक उच्च स्तर तक पहुंचाया है।

माननीय न्यायमूर्तिगण के निरंतर प्रयासों के माध्यम से समाज को न्याय मिला है। उनकी विशेष उपस्थिति और आदरणीयता हमारे लिए एक प्रेरणा स्त्रोत रहे हैं। आपके सेवानिवृत होने के इस समय पर, हम आपके आभारी हैं और हम जानते हैं कि आपके उच्च आदरणीयता और सेवा, समाज के लिए महत्वपूर्ण रहेंगे। हम आपके सुखमय और स्वस्थ जीवन की कामना करते हैं।

इसी मौके पर बशीर बद्र जी की दो पंक्ति याद आती है –

''मुसाफिर हैं हम भी मुसाफिर हो आप भी, किसी मोड़ पर फिर मुलाकात होगी''

न्यायमूर्ति श्री अमरनाथ (केशरवानी) व न्यायमूर्ति श्री अवनींद्र कुमार सिंह का हम स्वागत करते हैं। आपकी यह पदस्थापना हम सभी के लिए महत्वपूर्ण है। आपके अनुभव, विशेषज्ञता और विचारशीलता का स्वागत है।

मैं आपको विश्वास दिलाता हूँ कि न्यायदान के इस महत्वूपर्ण कार्य में हमारी बार से आपको पूर्ण सहयोग प्राप्त होगा।

इस अवसर पर दो पंक्ति और कहना चाहूंगा –

मंच रोशन हुआ जगमगाहट मिली। हर्ष आनंद की खिलखिलाहट मिली।।

आपके आगमन से श्रीमान जी। हर किसी को यहाँ मुस्कुराहट मिली।।

धन्यवाद, जय हिन्द।

Shri Rohit Mishra, Additional Advocate General, M.P., bids farewell :-

Today we have assembled here to bid farewell to My Lord Hon'ble Shri Justice Satyendra Kumar Singh, who demits the office of the Judge of this Hon'ble Court after a long and a distinguished career. My Lord Shri Justice Satyendra Kumar Singh was born on 24th of October 1961. My Lord's native place is Sawaiya Pattidari, District – Chandauli (then Varanasi) U.P. After completing primary education from Lucknow, His Lordship obtained the degree of B.Sc from Lucknow University in 1981 and thereafter, My Lord completed his LL.B. from Allahabad in 1984. My Lord Justice Singh had joined Judicial Service as a Civil Judge Class-II on 3rd of November 1987 and was subsequently promoted as a Civil Judge, Class-I on 13th of June 1994 and as CJM on 8th of June 1998.

My Lord was promoted as officiating District Judge in Higher Judicial Service in the Year 1999 and was granted Selection Grade Scale in 2007 and was granted Super Time Scale in 2016. My Lord was appointed as Special Judge (Atrocities) and as Principal District Judge at various places in the State of M.P. He also served as Registrar (Vigilance) and also as Principal Registrar (Vigilance) at the High Court of Madhya Pradesh, Jabalpur. Apart from this, My Lord also held the post of Additional Secretary and Principal Secretary in Law and Legislative Affairs Department. During his tenure, My Lord has also guided students of the National Law Institute, Bhopal, being an active member of the General Council of the institute. My Lord was elevated as a Judge of this High Court on 25.06.2021.

In his relatively short tenure as a High Court Judge, My Lord's performance was marvelous. My Lord decided and disposed of a huge number of cases which, given the short period of the tenure was a great achievement and could only have been achieved with a strong judicial commitment and a fine sense

of justice. My Lord's way of disposing the cases was unique with an element of compassion, equity and conscience.

My Lord's mostly had a mixed roster assigned to him including civil as well as criminal cases and during this time My Lord's experience as a trial was a boon to the litigants and specially while disposing criminal matters, My Lord passed balanced judgments. The members of the Bar were also benefitted from the straight forward and quick justice approach of My Lord which came as a boon to many litigants who were languishing in prison for a long time only in the hope of their matter being heard some day.

It is indeed a moment of sadness for this Bar as one of its fine Judges is demitting the office, but at the same time we are happy that My Lord has successfully crossed one stage and is ready to set sails for the next stage in life which I wish would be more fulfilling and more satisfying for My Lord.

With this I, on behalf of the Government of Madhya Pradesh and its law officers and the office of the Advocate General, would like to convey our gratitude to My Lord Shri Justice Satyendra Kumar Singh for his services to this Institution of justice. We will always fondly remember his contribution to the rule of law and to this High Court. We wish him the very best in his future pursuit and pray for a long, happy and a fulfilling life.

Thank you.

Shri Praveen Kumar Newaskar, Deputy Solicitor General, bids farewell :-

We all have assembled here today to bid a warm and affectionate farewell to My Lord Hon'ble Shri Justice Satyendra Kumar Singh on the eve of his superannuation as Judge of this Court.

Hon'ble Shri Justice Satyendra Kumar Singh was born on 24th of October 1961. His Lordship completed his school education from Lucknow and B.Sc. from Lucknow University in the year 1981, thereafter Law from Allahabad University in the year 1984. His Lordship joined the Madhya Pradesh Judicial Service as Civil Judge Class II on 3rd of November 1987 at District Satna. He was promoted as Civil Judge Class-I on 13th of June, 1994 at District Indore and as Chief Judicial Magistrate (CJM) on 8th of June 1998 at District Bhopal. He was promoted as Officiating District Judge in Higher Judicial Service on 4th of June1999 at District Bhopal. He was granted Selection Grade Scale w.e.f. 10th of October 2007 and Super Time Scale w.e.f. 1st of July 2016. His Lordship served as Special Judge (SC/ST) at District Ujjain and as District Judge (nomenclature now used as the Principal District Judge) at Districts Alirajpur and Ujjain. His

Lordship has served as Judicial Officer in different capacities at places Lakhnadon, Indore, Maihar, Sagar. His Lordship also held prominent positions while discharging his duties as Registrar (Vigilance) and as Principal Registrar (Vigilance) at High Court of Madhya Pradesh, Jabalpur; as Additional Secretary and Principal Secretary, in Law & Legislative Affairs Department, Bhopal. His Lordship was administered oath as a Judge of the High Court of Madhya Pradesh on 25th of June 2021.

Hon'ble Justice Satyendra Kumar Singh has delivered many landmark judgments in High Court of Madhya Pradesh reflecting his legal acumen and approach. The judgments would enlighten the judicial fraternity and would be of great assistance to the Bench and Bar in the time to come. He is also an outstanding and hard working Judge known for giving a patient hearing to everyone, which reflects in his landmark judgments. Various judgments given by My Lord will definitely guide us in years together.

We will miss Your Lordship immensely. We always found Your Lordship a very gentle soul and a good human being, always ready to help the needy person and treated every one with equanimity and respect.

I, on my behalf as well as on behalf of Union of India, convey good wishes to Hon'ble Shri Justice Satyendra Kumar Singh and his family members and pray to God to give him good health, happiness and peace for the days ahead.

Thank You.

Shri Jitendra Kumar Sharma, Chairman, Executive Committee, State Bar Council of M.P. bids farewell :-

We have gathered here to bid farewell to Hon'ble Justice Shri Satyendra Kumar Singh who is demitting office w.e.f. 23.10.2023 after serving a tenure of more than two years as Judge of this Hon'ble Court of M.P. But, in this short span of time, through his simplicity, he has endeared all of us. His contribution to the justice delivery system has been immense as he began his legal career in 1987, when he joined service as Civil Judge Class II at District Satna after completing LL.B. from Allahabad University in 1984. He was promoted as Civil Judge, Class-I on 13th of June 1994 at Indore and thereafter as Chief Judicial Magistrate on 8th of June, 1998 at Bhopal. His Lordship was promoted as Officiating District Judge in Higher Judicial Service on 4th of June 1999 at Bhopal and served as Special Judge (SC/ST) at Ujjain and as District Judge, Alirajpur and Ujjain. His Lordship has also served as Judicial Officer at Lakhnadon, Indore, Maihar, Sagar.

His Lordship has also held prominent positions as Registrar (Vigilance), Principal Registrar (Vigilance) at High Court of M.P., Additional Secretary and

Principal Secretary in Law & Legislative Affairs Department, Govt. of Madhya Pradesh, Bhopal (M.P.). His Lordship took oath as Judge in the High Court of M.P. on 25th of June, 2021. During this tenure, His Lordship has worked at Indore and Gwalior Bench of the M.P. High Court.

One of the most necessary attributes of a Judge is to maintain balance while pronouncing the judgments between the interpretation and application of the law.

Hon'ble Justice Shri Singh's contribution has been immense in pronouncing landmark judgments that will enlighten the fraternity for a long time to come.

Due to paucity of time, it will not be possible to refer to landmark judgments rendered by Hon'ble Shri Justice Singh, but it can be summed up that they reflect his command on law, righteousness and fierce independence.

At the last I, on my behalf and on behalf of State Bar Council of Madhya Pradesh extend best wishes to Hon'ble Shri Justice Singh and pray almighty to grant him longevity, good health, happiness and an active and fulfilling next chapter. May the almighty continue to bless him for rest of his life.

Thanking you.

Farewell Speech delivered by Hon'ble Mr. Justice Satyendra Kumar Singh :-

I pay my humble regards to the Almighty and express sincere gratitude to all of you for your kind words, praises, wishes and blessings.

Today, it's time to look back to find what I gave to the society and what I achieved. Born in Chandauli; the then Tehsil of Varanasi, now an independent district. That was the time when I developed affinity with mother soil. Strong bonding developed with family members, relatives and other villagers whom we were taught as members of a clan. Did primary education at Chandauli and thereafter, moved to Lucknow.

In Lucknow, I was under the strict guidance of my father Late Shri Shanker Singh, a Police Officer; two times Presidential Medal winner. My father was a strict disciplinarian and adhered to values. He imbibed in me characters of a human being and motivated me to focus on studies. After completing my graduation, my father advised me to move Allahabad for further studies and I took admission in LL.B. This proved to be a turning point as my father opened the doors for my present position.

With my selection as Civil Judge, Class-II in Madhya Pradesh Judiciary, my second journey started and I worked hard to achieve success. I am fortunate enough that I got an opportunity to serve under the blessings of Maa Sharda Devi at Maihar and Baba Mahakal at Ujjain. It is their blessings that I achieved this position.

My third journey started when I took oath of the office of this prestigious institution and I felt as mission accomplished. But, no mission was accomplished. A lot was required to be done. As a High Court Judge responsibilities were much more and solemn in nature. It requires a complete transformation.

Being part of such a noble institution is certainly an honour and a privilege for me. I am fortunate that I got opportunity to serve at Main Seat and all the two Benches i.e. Indore and Gwalior. I always tried to the best of my ability to deal with the work assigned to me in such a manner so that righteous interest of the people are safeguarded reposing their faith in the judiciary.

I am retiring today after performing duties as a Judge in the Madhya Pradesh District Judiciary as well as in the Madhya Pradesh High Court for about 36 years. This institution has provided me with the best working environment that helped me bring out the best in me. During these past years, I always received a lot of love and affection and a wonderful help from all of my colleagues, both past and present and the learned members of the Bar, wherever, I discharged my duties. I have learned ample things from them for which I am always going to be grateful. Today, it makes me proud to have been a part of this esteemed and pious institution.

I am sincerely thankful and indebted to my Hon'ble Chief Justice Shri Ravi Malimath Ji, Hon'ble Judges Shri Rohit Arya Ji, Shri Anand Pathak Ji and all my sister and brother Judges of this Court, who gave me ample support.

I will always be indebted to my parents, elder brother Shri Arvind Kumar Singh, sister-in-law Smt. Geeta Singh for their blessings and support for setting my career on its course. My successful career would have been impossible without my wife Dr. Mrs. Madhavi Singh. She has been of immense support to me. My son Nimish Singh and my daughter-in-law Kanika Singh have always been the source of my inner peace as well as smile on my face. They are my actual inner strength. My sisters Smt. Madhuri Singh, Smt. Meera Singh, Smt. Archana Singh and brothers-in-law and other family members and friends all are source of inspiration to me and are my assets.

I was fortunate enough to have with me number of personal staff over the years, be it Madhya Pradesh District Judiciary, Law & Legislative Department, Bhopal or the High Court of Madhya Pradesh at Principal Seat, Jabalpur and its

Benches Indore & Gwalior. I acknowledge the support and assistance given to me by all of them. They all were of immense help to me.

I would like to extend my special appreciation as well as gratitude to Shri A.K. Mishra, Principal Registrar, Shri Hitendra Dwivedi, OSD and other officers and employees of the Registry, specially to all my attached staff members presently working with me; My Secretary – Shri Arun Kumar Mishra, Senior Personal Assistants – Shri Abhishek Chaturvedi, Shri Aman Tiwari, Ms. Barkha Sharma, Personal Assistant – Shri Alok Kumar, Reader – Shri Hariom Sharma, APO – Shri Naveen Kareliya, Law Clerk – Ms. Varsha Shrivastava, Zamadar – Shri Kalicharan, Driver – Shri Mukesh and all the employees deputed in my official residence, security personnel and many more who are like my family members.

I hope that those of us who have become close over the years, will be able to remain in touch and that you will find time to do come and visit me.

I, once again express my heartfelt gratitude to all of you for your kind support and well-wishes. I wish everyone present here a successful future ahead.

Thank You.

NOTES OF CASES SECTION

Short Note

***(112)**

Before Mr. Justice Vivek Agarwal

WP No. 5668/2017 (Jabalpur) decided on 26 June, 2023

BABU LAL (DIED) THROUGH LRs. PREM NARAYAN & ors. …Petitioners

Vs.

STATE OF M.P. & ors. …Respondents

***A. Land Acquisition Act (1 of 1894), Section 3(c) & 17 and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Section 24(2) & 101 – Possession of Land – Lapse of Proceeding* – Held – Compensation paid to claimants and physical possession was taken by State in 1968 – Petitioners were keeping silent since 1968 till 2014 for long 46 years – There is no provision of return of land under 1894 Act – State after acquisition became absolute owner and land oustee has become *persona non-grata* – They have no locus to challenge the proceeding at this distance of time – There was no lapse of earlier proceedings, thus award will remain intact – Provisions of Section 24(2) not attracted – Petition dismissed.**

क. भूमि अर्जन अधिनियम (1894 का 1), धारा 3(c) व 17 एवं भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम (2013 का 30), धारा 24(2) व 101 – भूमि का कब्जा – कार्यवाही का व्यपगत होना – अभिनिर्धारित – दावेदारों को प्रतिकर का भुगतान किया गया एवं 1968 में राज्य द्वारा भौतिक कब्जा ले लिया गया था – याचीगण 1968 से 2014 तक, 46 वर्ष मौन बने रहे – 1894 के अधिनियम के अंतर्गत भूमि वापसी का कोई उपबंध नहीं है – अर्जन के पश्चात् राज्य आत्यंतिक स्वामी बन गया एवं भूमि विस्थापित अग्राह्य व्यक्ति बन गया – इतने समय के अंतराल पर कार्यवाही को चुनौती देने का उनके पास कोई अधिकार नहीं है – पूर्वतर कार्यवाहियां व्यपगत नहीं हुई थी अतः अवार्ड अविकल बना रहेगा – धारा 24(2) के उपबंध आकर्षित नहीं होते – याचिका खारिज।

***B. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Section 24(2) – Deemed Lapse of Proceeding* – Held – Deemed lapse of proceeding u/S 24(2) takes place when due to inaction of authorities for 5 years or more prior to commencement of said act, the possession of land has not been taken nor compensation paid – If possession is taken and compensation is not paid then there is no lapse of proceeding and similarly if compensation is paid and possession is not taken, then also there is no lapse of proceeding.**

ख. भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम (2013 का 30), धारा 24(2) – कार्यवाही का व्यपगत

होना समझा जाना – अभिनिर्धारित – धारा 24(2) के अंतर्गत कार्यवाही का व्यपगत होना तब समझा जाता है जब उक्त अधिनियम के प्रारंभ होने के पांच वर्ष या उससे अधिक पूर्व तक प्राधिकारीगण की निष्क्रियता के कारण, भूमि का कब्जा नहीं लिया गया और न ही प्रतिकर का भुगतान किया गया – यदि कब्जा ले लिया गया है एवं प्रतिकर का भुगतान नहीं किया गया है तो कार्यवाही व्यपगत नहीं होती तथा समान रूप से यदि प्रतिकर का भुगतान कर दिया गया है एवं कब्जा नहीं लिया गया है, तब भी कार्यवाही व्यपगत नहीं होती।

Cases referred:

(2020) 8 SCC 129, (2011) 10 SCC 608, 2012 (9) JT 260.

Ajay Pal Singh, for the petitioner.
G.P. Singh, G.A. for the State.
Sanjay K. Agrawal with *Ashish Giri,* for the respondent No. 4.

Short Note
****(113)(DB)***
Before Mr. Justice Sujoy Paul & Mr. Justice Achal Kumar Paliwal
CRA No. 2049/2012 (Jabalpur) decided on 12 June, 2023

BABULAL DHEEMER & ors. …Appellants

Vs.

STATE OF M.P. …Respondent

***A. Penal Code (45 of 1860), Section 302/149 & 342/149 – Appreciation of Evidence* – Held – FIR shows that because of previous enmity relating to land, deceased was assaulted, thus there exist a motive – Incident is an outcome of pre-meditation and not of any sudden quarrel – There are multiple injuries on person of deceased and cause of death was excessive bleeding – Prosecution established its case beyond reasonable doubt – Appeal dismissed.**

क. दण्ड संहिता (1860 का 45), धारा 302/149 व 342/149 – साक्ष्य का मूल्यांकन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन यह दर्शाता है कि भूमि के संबंध में पूर्व वैमनस्यता के कारण, मृतक पर हमला किया गया था, अतः एक हेतु विद्यमान है – घटना पूर्व–चिंतन का परिणाम है, न कि किसी अचानक झगड़े का – मृतक के शरीर पर अनेक चोटें थी तथा मृत्यु का कारण अत्यधिक रक्तस्त्राव था – अभियोजन ने युक्तियुक्त संदेह से परे अपना प्रकरण स्थापित किया – अपील खारिज।

***B. Penal Code (45 of 1860), Section 302/149 & 342/149 and Evidence Act (1 of 1872), Section 32 & 35 – FIR as Dying Declaration* – Held – person who recorded FIR expired and his evidence could not be recorded – Non-production of said witness caused no prejudice to appellant moreso when averments of FIR finds support by statement of 2 eye-witnesses who**

categorically deposed about oral dying declaration given to them by deceased – FIR cannot be disbelieved not its probative value can be questioned and must be treated as a dying declaration.

ख. दण्ड संहिता (1860 का 45), धारा 302/149 व 342/149 एवं साक्ष्य अधिनियम (1872 का 1), धारा 32 व 35 – मृत्युकालिक कथन के रूप में प्रथम सूचना प्रतिवेदन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन अभिलिखित करने वाले व्यक्ति की मृत्यु हो गई एवं उसका साक्ष्य अभिलिखित नहीं किया जा सका – कथित साक्षी को प्रस्तुत न किये जाने से अपीलार्थी को कोई प्रतिकूल प्रभाव कारित नहीं हुआ, जबकि प्रथम सूचना प्रतिवेदन के प्रकथनों को दो चक्षुदर्शी साक्षीगण के कथन से समर्थन मिला है जिन्होंने मृतक द्वारा उन्हें दिये गये मौखिक मृत्युकालिक कथन के बारे में स्पष्ट रूप से अभिसाक्ष्य दिया था – प्रथम सूचना प्रतिवेदन पर अविश्वास नहीं किया जा सकता न ही इसके प्रमाणक मूल्य पर प्रश्न उठाया जा सकता है और इसे मृत्युकालिक कथन के भांति माना जाना चाहिए।

The judgment of the Court was delivered by : **SUJOY PAUL, J.**

Cases referred:

AIR 1999 SC 3361, AIR 2006 SC 2157, AIR 1983 SC 684, AIR 1982 SC 1057, AIR 2011 SC 1691, AIR 2010 SC 2933.

R.S. Patel, for the appellants.
Arvind Singh, G.A. for the respondent.

Short Note

****(114)***

Before Mr. Justice Anand Pathak

WP No. 29521/2022 (Jabalpur) decided on 6 July, 2023

G.C. CHOURASIYA (DR.) …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

A. Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 9 – Suspension by Chief Minister – Sustainability **– Held – The CD indicates that it was the C.M. who suspended petitioner while addressing from stage – Impugned order starts with the fact that petitioner has been placed under suspension by Hon'ble Chief Minister and no other reason has been assigned whether any enquiry, criminal case/trial was pending which is *sin qua non* for placing a government employee under suspension as per Rule 9 – Whole exercise of respondents is illegal – Impugned orders set aside – Petition allowed.**

क. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 9 – मुख्यमंत्री द्वारा निलंबन – पोषणीयता – अभिनिर्धारित – सी.डी. यह उपदर्शित करती है

कि वह मुख्यमंत्री ही थे जिन्होंने मंच से संबोधित करते समय याची को निलंबित किया – आक्षेपित आदेश इस तथ्य से आरंभ होता है कि मुख्यमंत्री द्वारा याची को निलंबित रखा गया एवं कोई अन्य कारण नहीं दिया गया कि क्या कोई जांच, दाण्डिक प्रकरण/विचारण लंबित था जो नियम 9 के अनुसार एक सरकारी कर्मचारी को निलंबित करने के लिए अनिवार्य है – प्रत्यर्थीगण की संपूर्ण कार्रवाई अवैध है – आक्षेपित आदेश अपास्त – याचिका मंजूर।

***B. Constitution – Article 226 – Suspension by Chief Minister – Alternate Remedy of Appeal* – Held – Impugned order of suspension passed at the instance of higher authority who is head of the State Government – Now if petitioner is relegated for appeal then it would be an empty formality and appellate authority would not have gone contrary to the authority who placed petitioner under suspension – Alternate remedy is not an effective remedy in present set of facts – Petitioner cannot be relegated to file statutory appeal.**

ख. संविधान – अनुच्छेद 226 – मुख्यमंत्री द्वारा निलंबन – अपील का वैकल्पिक उपचार – अभिनिर्धारित – निलंबन का आक्षेपित आदेश उच्चतर प्राधिकारी जो राज्य सरकार का प्रमुख है, के कहने से पारित किया गया – अब यदि याची को अपील के लिए भेजा जाए तो वह खाली एक औपचारिकता होगी तथा अपीली प्राधिकारी याची को निलंबित करने वाले प्राधिकारी के विपरीत नहीं जाएगा – वैकल्पिक उपचार वर्तमान तथ्यों के समूह में एक प्रभावकारी उपचार नहीं है – याची को कानूनी अपील प्रस्तुत करने के लिए नहीं भेजा जा सकता।

Cases referred:

WA No. 400/2022 order passed on 27.04.2022 (DB), 2017 SCC Online MP 2170, 2022 (3) MPLJ 448, 1992 Supplementary Vol. 1 SCC 222, (2007) 8 SCC 150, (2001) 2 SCC 221, (1982) 2 SCC 463, (1990) 1 SCC 361, AIR 1952 SC 16, (1989) 2 SCC 505, (2008) 7 SCC 117, 2011 (1) MPLJ 663, AIR 1954 SC 207, AIR 1961 SC 1506, AIR 1961 SC 372, (1998) 8 SCC 1, (2015) 7 SCC 291.

D.K. Tripathi, for the petitioner.

Swapnil Ganguli, Dy. A.G. and *Rahul Deshmukh*, for the respondent No. 3.

NOTES OF CASES SECTION

Short Note
****(115)(DB)***
Before Mr. Justice Sheel Nagu & Mr. Justice Vivek Agarwal
WP No. 5626/2021 (Jabalpur) decided on 10 July, 2023

HAHNEMANN HOMEOPATHIC MEDICAL COLLEGE & HOSPITAL BHOPAL & ors. …Petitioners

Vs.

STATE OF M.P. & ors. …Respondents

(Alongwith WP Nos. 4609/2022, 6104/2022, 6199/2022, 6791/2022, 9340/2022, 10557/2022, 10965/2022, 11010/2022, 11011/2022, 11013/2022, 11098/2022, 11256/2022, 11286/2022, 11291/2022, 11579/2022, 11673/2022, 14806/2022, 1360/2023, 1730/2023, 2681/2023, 2701/2023, 4007/2023, 4187/2023, 4335/2023, 4857/2023, 4863/2023, 5041/2023, 5107/2023, 5108/2023, 5109/2023, 5289/2023, 5540/2023 & 5541/2023)

***A. National Medical Commission Act (30 of 2019), Section 14(1) – Common Entrance Examination NEET – Applicability to Ayurvedic & Homeopathic Colleges* – Held – Minimum eligibility prescribed for either taking admission in BHMS course or BAMS course is to possess Higher Secondary Certificate under 10+2 Scheme or any equivalent certificate with Physics, Chemistry and Biology as subjects – Same is the prescription for qualification to appear in MBBS or BDS courses – Prescription of common entrance examination NEET cannot be said to be arbitrary or illegal – Petitions dismissed.**

क. राष्ट्रीय आयुर्विज्ञान आयोग अधिनियम (2019 का 30), धारा 14(1) – सामान्य प्रवेश परीक्षा नीट – आयुर्वेदिक व होम्योपैथिक महाविद्यालयों के लिए प्रयोज्यता – अभिनिर्धारित – बीएचएमएस पाठ्यक्रम अथवा बीएएमएस पाठ्यक्रम में प्रवेश लेने के लिए विहित न्यूनतम पात्रता 10+2 स्कीम के अंतर्गत उच्चतर माध्यमिक प्रमाण–पत्र या भौतिक विज्ञान, रसायन विज्ञान एवं जीव विज्ञान विषयों में समतुल्य प्रमाण–पत्र होना चाहिए – एम.बी.बी.एस. अथवा बी.डी.एस. पाठ्यक्रमों में उपस्थित होने हेतु अर्हता के लिए यह ही विहित है – सामान्य प्रवेश परीक्षा नीट को विहित करना मनमाना अथवा अवैध नहीं कहा जा सकता – याचिकाएं खारिज।

***B. National Medical Commission Act (30 of 2019), Section 14(1) – Common Entrance Examination NEET – College Level Counselling* – Held – Section 14(1) provides uniform National Eligibility-cum-Entrance Test NEET for admission to undergraduate medical education making it applicable to all medical institutions governed under any other law – Institutions not entitled to admit students who have not appeared in NEET and have not secured minimum prescribed standards as per concerned**

Regulations unless they are diluted for that particular academic year by National Commission in consultation with Central Government.

ख. राष्ट्रीय आयुर्विज्ञान आयोग अधिनियम (2019 का 30), धारा 14(1) – सामान्य प्रवेश परीक्षा नीट – महाविद्यालय स्तरीय काउंसलिंग – अभिनिर्धारित – धारा 14(1) पूर्व स्नातक चिकित्सीय शिक्षा में प्रवेश के लिए एक समान राष्ट्रीय पात्रता – सह–प्रवेश परीक्षा नीट उपबंधित करती है, जो इसे किसी अन्य विधि के अंतर्गत शासित सभी चिकित्सीय संस्थाओं पर लागू करती है – संस्थाएं उन छात्रों को जो नीट में उपस्थित नहीं हुए हैं तथा संबंधित विनियमों के अनुसार न्यूनतम विहित मानक प्राप्त/सुनिश्चित नहीं किये हैं, जब तक कि उन्हें केंद्र सरकार के परामर्श से राष्ट्रीय आयोग द्वारा उस विशिष्ट शैक्षणिक वर्ष के लिए तनुकृत नहीं किया जाता, प्रवेश देने की हकदार नहीं है।

The order of the Court was passed by : **VIVEK AGARWAL, J.**

Cases referred:

WP No. 100650/2021 decided on 31.08.2021 (Karnataka High Court), Civil Appeal No. 603/2020 (arising out of SLP (C) No. 26267/2019) order passed on 20.02.2020 (Supreme Court), (2000) 1 SCC 750, AIR 1961 SC 1381, W.P. (C) No. 451/2022 decided on 25.02.2023 (Delhi High Court), 1969 (2) SCC 283=AIR 1970 SC 192, (2021) 10 SCC 657, (2005) 13 SCC 477, (2015) 13 SCC 722, WP No. 25723/2022 decided on 03.03.2023 (High Court of Karnataka), (2016) 9 SCC 412, (2016) 7 SCC 353, (2022) 6 SCC 65, Writ Petition No. 20273/2021 decided on 29.11.2021 (High Court of Judicature at Allahabad), (1999) 7 SCC 120, (2020) 1 SCC OnLine (SC) 627, WP No. 8499/2021 decided on 04.05.2022, (2020) 8 SCC 705, (2020) 12 SCC 115, Manu/TN/1428/2017, (2012) 1 SCC 10, (1993) 4 SCC 401, AIR 1986 SC 515, AIR 1974 SC 1880, AIR 1956 SC 116.

Kishore Shrivastava and *Naman Nagrath* assisted by *Nikhil Tiwari, Aditi Shrivastava, Atul Shukla* and *Devashish Sakalkar*, for the petitioners in WP Nos. 5626/2021, 4609/2022, 6104/2022, 6199/2022, 9340/2022, 10557/2022, 11098/2022, 11291/2022, 14806/2022, 1360/2023, 1730/2023, 2681/2023, 2701/2023, 4007/2023, 4335/2023, 5041/2023 & 5289/2023.

Jai Kumar Pillai, for the petitioner in WP Nos. 6791/2022, 10965/2022, 11010/2022, 11011/2022, 4187/2023, 4857/2023, 4863/2023, 5107/2023, 5108/2023, 5109/2023, 5540/2023 & 5541/2023.

Ashish Mishra, for the petitioner in WP Nos. 11013/2022, 11579/2022 & 11673/2022.

Rahul Diwakar, for the petitioner in WP No. 11256/2022 & 11286/2022.

Piyush Jain, G.A. for the respondents-State, *Vikram Singh*, for the respondents-Union of India, *Aditya Sanghi* with *Nain Jyoti* and *Aman Bajpai*, for the NCIM, *Aditya Singh Rajput*, for the NCH/CCH and *Pushpendra Yadav*, Assitant Solicitor General for the National Testing Agency in WP Nos. 5626/2021, 4609/2022, 6104/2022, 6199/2022, 6791/2022, 9340/2022,

10557/2022, 10965/2022, 11010/2022, 11011/2022, 11013/2022, 11098/2022, 11256/2022, 11286/2022, 11291/2022, 11579/2022, 11673/2022, 14806/2022, 1360/2023, 1730/2023, 2681/2023, 2701/2023, 4007/2023, 4187/2023, 4335/2023, 4857/2023, 4863/2023, 5041/2023, 5107/2023, 5108/2023, 5109/2023, 5289/2023, 5540/2023 & 5541/2023.

Short Note

****(116)***

Before Mr. Justice Vivek Rusia

WP No. 24037/2021 (Indore) decided on 6 July, 2023

HIMANSHU MISHRA …Petitioner

Vs.

HINDUSTAN PETROLEUM CORPORATION LTD. & anr. . …Respondents

Constitution – Article 226 – Selection Process – Change in Policy **– Held – Selection of petitioner started under the policy dated 31.03.2020 and same is liable to be completed under the said policy – Change in policy during pendency of selection process cannot be put into operation especially when out of 6, for 4 locations selection process has already completed – Delay was caused because of postponement of interview without any reason, otherwise for petitioner LOI would have been issued alongwith 4 others – Respondent directed to issued LOI and enter into agreement with petitioner – Petition allowed with cost of Rs. 20,000.**

संविधान – अनुच्छेद 226 – चयन प्रक्रिया – नीति में परिवर्तन – अभिनिर्धारित – याची का चयन दिनांक 31.03.2020 की नीति के अंतर्गत आरंभ हुआ और यह कथित नीति के अंतर्गत पूर्ण किये जाने योग्य है – चयन प्रक्रिया के लंबित रहने के दौरान नीति में परिवर्तन को प्रवर्तन में नहीं लाया जा सकता, विशेष रूप से तब जब 6 में से 4 स्थानों के लिए चयन प्रक्रिया पहले ही पूर्ण हो चुकी हो – बिना किसी कारण के साक्षात्कार स्थगित करने के कारण विलंब कारित हुआ था, अन्यथा याची के लिए अन्य 4 के साथ आशय–पत्र जारी किया गया होता – प्रत्यर्थीगण को आशय–पत्र जारी करने एवं याची के साथ करार करने हेतु निदेशित किया गया – याचिका 20,000/– रू. के व्यय सहित मंजूर।

Cases referred:

(1974) 4 SCC 3, CWP No. 7816/2021 (High Court of Himachal Pradesh) (DB), (2019) 8 SCC 587, (2010) 2 SCC 637, (2001) 7 SCC 708, (2011) 14 SCC 337, 2022 SCC OnLine SC 699.

Rishi Tiwari, for the petitioner.
Aniket Naik, for the respondents.
Arjun Pathak, for the intervenor.

NOTES OF CASES SECTION

Short Note

***(117)**

Before Mr. Justice Anand Pathak

AC No. 121/2017 (Jabalpur) decided on 12 June, 2023

MOHD. SUHAIL KHAN & anr. …Applicants

Vs.

M/S SAGAR AUTOMOBILES PVT. LTD. & anr. …Non-applicants

***A. Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Existence of Agreement* – Held – Respondents have categorically denied their signatures on the alleged photocopy of the agreement placed on record – There exist no arbitration agreement – In absence of any arbitration agreement, parties cannot be forced to enter into arbitration because this would come against the very concept of dispute resolution through arbitration – Application dismissed.**

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) – करार की विद्यमानता – अभिनिर्धारित – प्रत्यर्थीगण ने अभिलेख पर प्रस्तुत करार की अभिकथित छायाप्रति पर उनके हस्ताक्षर होने से स्पष्टतया इंकार किया है – माध्यस्थम् का करार विद्यमान नहीं है – माध्यस्थम् करार के अभाव में, पक्षकारों को मध्यस्थता करने के लिए मजबूर नहीं किया जा सकता क्योंकि यह मध्यस्थता के माध्यम से विवाद के समाधान की संकल्पना के विरूद्ध होगा – आवेदन खारिज।

***B. Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Eviction/Tenancy Matters – Maintainability* – Held – Apex Court concluded that the eviction or tenancy matters governed by the special statutes are disputes which are not arbitrable.**

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 11(6) – बेदखली/किराएदारी के मामले – पोषणीयता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया कि विशेष कानूनों द्वारा शासित बेदखली अथवा किराएदारी के मामले ऐसे विवाद हैं जो माध्यस्थम् योग्य नहीं है।

Cases referred :

(2021) 4 SCC 379, (2017) 9 SCC 729, (2022) 7 SCC 662, (2023) 2 SCC 539.

Satyam Agrawal, for the applicants.

Kapil Duggal, for the non-applicants.

NOTES OF CASES SECTION

Short Note

**(118)*

Before Mr. Justice G.S. Ahluwalia

MA No. 4465/2022 (Jabalpur) decided on 10 May, 2023

NATIONAL INSURANCE CO. LTD. …Appellant

Vs.

SMT. ASHWINI SINHA & ors. …Respondents

(Alongwith MA No. 5950/2022)

A. Central Motor Vehicles Rules, 1989, Rules 9, 10, 131 & 132 and Motor Vehicles Act (59 of 1988), Section 166 – Driving License – Liability of Insurer **– Held – Driver was having a license to drive transport vehicle where there is no endorsement that he is having license to drive goods carriage carrying hazardous and dangerous goods – There is nothing to show that driver was having all qualifications and training as required under Rule 9 of 1989 Rules – Insurance company not liable to pay compensation.**

क. केंद्रीय मोटर वाहन नियम, 1989, नियम 9, 10, 131 व 132 एवं मोटर यान अधिनियम (1988 का 59), धारा 166 – चालन अनुज्ञप्ति – बीमाकर्ता का दायित्व – अभिनिर्धारित – चालक के पास परिवहन वाहन चलाने की अनुज्ञप्ति थी जबकि ऐसा कोई पृष्ठांकन नहीं है कि उसके पास परिसंकटमय और खतरनाक माल वहन करने वाले माल वाहन को चलाने की अनुज्ञप्ति है – यह दर्शाने हेतु कुछ नहीं है कि चालक के पास 1989 के नियमों के नियम 9 के अंतर्गत अपेक्षित सभी अर्हताएं एवं प्रशिक्षण थे – बीमा कंपनी प्रतिकर का भुगतान करने हेतु दायी नहीं।

B. Motor Vehicles Act (59 of 1988), Section 166 – Consortium **– Held – Present appeal has been filed by widow, 2 children and parents of deceased – Tribunal has awarded consortium to wife (widow) only – All five persons are entitled for consortium @ Rs. 40,000.**

ख. मोटर यान अधिनियम (1988 का 59), धारा 166 – कन्सॉर्शीअम / सहायता – अभिनिर्धारित – वर्तमान अपील मृतक की विधवा, दो बच्चों और माता–पिता द्वारा प्रस्तुत की गई है – अधिकरण ने केवल पत्नी (विधवा) को कन्सॉर्शीअम / सहायता अधिनिर्णीत किया – सभी पांच व्यक्ति 40,000 / – रू. की दर से कन्सॉर्शीअम / सहायता के हकदार हैं।

C. Motor Vehicles Act (59 of 1988), Section 166 – Conventional Heads **– Held – As per the judgment of Apex Court, customary expenses should be enhanced in every 3 years – For enhancement of conventional heads by 10% in every 3 years, the date of accident is material and not the date of award passed by Tribunal – Enhancement by 10% would apply only when the accident takes place after 3 years of the judgment passed by Apex Court in the case of *Pranay Sethi*.**

ग. मोटर यान अधिनियम (1988 का 59), धारा 166 – परंपरागत मद – अभिनिर्धारित – सर्वोच्च न्यायालय के निर्णय अनुसार, हर तीन साल में रूढ़िगत व्यय में वृद्धि की जाना चाहिए – हर तीन साल में पारंपरिक मदों में 10 प्रतिशत की वृद्धि के लिए, दुर्घटना की तिथि तात्विक है तथा न कि अधिकरण द्वारा पारित अधिनिर्णय की तिथि – 10 प्रतिशत की वृद्धि केवल तभी लागू होगी जब दुर्घटना, सर्वोच्च न्यायालय द्वारा *प्रणय सेठी* के प्रकरण में पारित निर्णय के तीन वर्ष के पश्चात् हुई हो।

***D. Motor Vehicles Act (59 of 1988), Section 166 – Future Prospects* – Held – Where the age of deceased is more than 40 years and below 50 years, then future prospects @ 30% is to be awarded – Age of deceased is 41 years, Tribunal rightly awarded future prospects @ 30%.**

घ. मोटर यान अधिनियम (1988 का 59), धारा 166 – भावी संभाव्यताएं – अभिनिर्धारित – जहां मृतक की आयु 40 वर्ष से अधिक है एवं 50 वर्ष से कम है, तो भावी संभाव्यताएं 30 प्रतिशत की दर से अधिनिर्णीत की जाएगी – मृतक की आयु 41 वर्ष है, अधिकरण ने उचित रूप से 30 प्रतिशत की दर से भावी संभाव्यताएं अधिनिर्णीत की।

Cases referred :

(2021) 11 SCC 780, (2017) 16 SCC 680.

Amrit Kaur Ruprah, for the appellant in MA No. 4465/2022 and for the respondent No. 3 in MA No. 5950/2022.

Tirath Prasad Jaiswal, caveat for the respondents in MA No. 4465/2022 and for the appellants in MA No. 5950/2022.

Short Note

****(119)***

Before Mr. Justice Prem Narayan Singh

CRR No. 984/2011 (Indore) decided on 10 July, 2023

NEELIMA CHOURE (SMT.) & anr. …Applicants

Vs.

VIJAY CHOURE …Non-applicant

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 127 – Maintenance – Quantum – Income of Husband* – On application by wife u/S 127 Cr.P.C., Family Court enhanced maintenance amount from Rs. 3000 pm to Rs. 5000 pm for wife and from Rs. 1000 pm to Rs. 10,000 pm for daughter – Held – Husband is getting a net salary of Rs. 68,663 pm after deductions – Maintenance amount of daughter is sufficiently enhanced but that of wife is on a lower side – Wife entitled for standard life as that of husband – In view of the socio-economic facts and circumstances, maintenance amount of wife enhanced from Rs. 5000 pm to Rs. 7000 pm – Revision partly allowed.**

NOTES OF CASES SECTION

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 127 – भरण पोषण – मात्रा – पति की आय – दं.प्र.सं. की धारा 127 के अंतर्गत पत्नी द्वारा आवेदन पर, कुटुंब न्यायालय ने पत्नी के लिए भरण–पोषण राशि को 3000/– रू. प्रतिमाह से बढ़ाकर 5000/– रू. प्रतिमाह एवं पुत्री के लिए 1000/– रू. प्रतिमाह से बढ़ाकर 10,000/–रू. प्रतिमाह किया – अभिनिर्धारित – पति को कटौतियों के बाद 68,663/– रू. प्रतिमाह का शुद्ध वेतन प्राप्त हो रहा है – पुत्री की भरणपोषण राशि में पर्याप्त रूप से वृद्धि की गई है परंतु पत्नी की भरणपोषण राशि निम्नतर है – पत्नी भी पति के समान मानक जीवन की हकदार है – सामाजिक–आर्थिक तथ्यों और परिस्थितियों को दृष्टिगत रखते हुए, पत्नी की भरणपोषण की राशि 5000/– रू. प्रतिमाह से बढ़ाकर 7000/– रू. प्रतिमाह की गई – पुनरीक्षण अंशतः मंजूर।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 125 & 127 – Compromise – Maintainability of Application u/S 127 Cr.P.C. **– Held – This Court earlier concluded that even when there is stipulation regarding surrendering the rights of maintenance incorporated in compromise, wife is entitled to get modification in maintenance order u/S 127 Cr.P.C. – If any agreement is done defeating any statute then such agreement cannot be considered as valid contract – In present case, although there was a compromise between parties in case u/S 125 Cr.P.C., even then, application u/S 127 is maintainable.**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 व 127 – समझौता – दं.प्र.सं. की धारा 127 के अंतर्गत आवेदन की पोषणीयता – अभिनिर्धारित – इस न्यायालय ने पूर्व में निष्कर्षित किया है कि भले ही समझौते में भरणपोषण के अधिकारों के अभ्यर्पण के संबंध में कोई अनुबंध सम्मिलित हो, पत्नी दं.प्र.सं. की धारा 127 के अंतर्गत भरणपोषण आदेश में उपांतरण कराने की हकदार है – यदि कोई करार किसी कानून को विफल करते हुए किया जाता है, तो ऐसे करार को विधिमान्य संविदा नहीं माना जा सकता – वर्तमान प्रकरण में, भले ही दं.प्र.सं. की धारा 125 के अंतर्गत प्रकरण में पक्षकारों के मध्य समझौता हुआ था, फिर भी धारा 127 के अंतर्गत आवेदन पोषणीय है।

C. Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Quantum – Income of Husband **– Apex Court concluded that 25% of the income of the husband would be just and proper.**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – मात्रा – पति की आय – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि पति की आय का 25% न्यायसंगत एवं उचित होगा।

Cases referred:

1976 CRI LJ 47, CRR No. 235/2017 order passed on 28.03.2017, ILR (2015) MP 501, 2016 SCC Online MP 2134, AIR 2017 SC 2383, 2020 Law Suit (M.P.) 1098.

Kaustubh Fadnis, for the applicants.
Yashpal Rathore, for the non-applicant.

Short Note
****(120)***
Before Mr. Justice G.S. Ahluwalia
SA No. 329/2010 (Jabalpur) decided on 25 April, 2023

POONAMCHAND (NOW DEAD) THROUGH LRs. …Appellants

Vs.

BASANTI BAI & ors. …Respondents

***Civil Procedure Code (5 of 1908), Order 22 Rule 6 – Abatement* – Held – Order sheets of appellate Court shows that final argument were heard on 04.01.10 and case was fixed for delivery of judgment on 11.01.10 and "P" expired on 08.01.10 – Order 22 Rule 6 CPC provides that there shall not be any abatement by reason of death after hearing and the judgment in such case shall have same force and effect as if it had been pronounced before the death took place – Appeal has not abated – Second appeal dismissed.**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 22 नियम 6 – उपशमन – अभिनिर्धारित – अपीली न्यायालय की आदेश पत्रिकाएं यह दर्शाती हैं कि दिनांक 4.01.10 को अंतिम तर्क सुने गये थे एवं प्रकरण निर्णय दिये जाने हेतु दिनांक 11.01.10 को नियत किया गया था तथा दिनांक 08.01.10 को ''पी'' की मृत्यु हो गई – सि.प्र.सं. का आदेश 22 नियम 6 यह उपबंधित करता है कि सुनवाई के पश्चात् मृत्यु हो जाने के कारण कोई उपशमन नहीं होगा एवं ऐसे प्रकरण में निर्णय का बल और प्रभाव वैसा ही होगा जैसे कि वह मृत्यु होने से पूर्व सुनाया गया था – अपील का उपशमन नहीं हुआ है – द्वितीय अपील खारिज।

Cases referred :

(2017) 13 SCC 414, (2001) 5 SCC 570.

Sanjay Sarwate, for the appellants.
Arvind Soni, for the respondent Nos. 1 to 4.

NOTES OF CASES SECTION

Short Note

***(121)**

Before Mr. Justice Dinesh Kumar Paliwal

MCRC No. 45900/2022 (Jabalpur) decided on 13 June, 2023

RAJU @ RAJENDRA & ors. …Applicants

Vs.

STATE OF M.P. …Non-applicant

***Criminal Procedure Code, 1973 (2 of 1974), Section 311 & 482 – Recall of Witness – Grounds* – Held – Help of Section 311 cannot be given to accused to fill up the loopholes – Mere submission that earlier counsel could not cross-examine the witness on particular point cannot be ground to recall a witness that too after 6 years of his examination and cross-examination – Application dismissed.**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 311 व 482 – साक्षी को वापस बुलाया जाना – आधार – अभिनिर्धारित – कमियों को भरने के लिए अभियुक्त को धारा 311 की सहायता प्रदान नहीं की जा सकती – मात्र यह निवेदन कि पूर्व में अधिवक्ता किसी विशिष्ट बिंदु पर साक्षी का प्रतिपरीक्षण नहीं कर सका, किसी साक्षी को वापस बुलाने का आधार नहीं हो सकता और वह भी उसके परीक्षण एवं प्रति–परीक्षण के 6 वर्ष के पश्चात् – आवेदन खारिज।

Case referred:

2013 (14) SCC 461.

Sharad Verma, for the applicants.
Dileep Shrivastava, G.A. for the non-applicant.

Short Note

***(122)**

Before Mr. Justice G.S. Ahluwalia

SA No. 785/2023 (Jabalpur) decided on 2 May, 2023

RAKESH KESHARWANI & ors. …Appellants

Vs.

IMAM BADA SHAHEDAAN KARBALA …Respondent

***Wakf Act (43 of 1995), Section 83 & 85 – Eviction Suit – Jurisdiction of Civil Court* – Held – The change of forum vide amendment of 2013, is a procedural law – After amendment in Section 83 & 85, Civil Court lost its jurisdiction to entertain civil suits concerning Wakf property – Impugned judgment and decree set aside – Trial Court directed to return the plaint to**

plaintiff for presentation before the jurisdictional Wakf Tribunal – Appeal allowed.

वक्फ अधिनियम (1995 का 43), धारा 83 व 85 – बेदखली का वाद – सिविल न्यायालय की अधिकारिता – अभिनिर्धारित – 2013 के संशोधन द्वारा न्यायालय का परिवर्तन, एक प्रक्रियात्मक विधि है – धारा 83 व 85 में संशोधन पश्चात्, सिविल न्यायालय ने वक्फ संपत्ति से संबंधित सिविल वादों को ग्रहण करने की उसकी अधिकारिता खो दी – आक्षेपित निर्णय एवं डिक्री अपास्त – विचारण न्यायालय को, अधिकारिता वाले वक्फ अधिकरण के समक्ष प्रस्तुत करने के लिए वादी को वादपत्र लौटाने हेतु निदेशित किया गया – अपील मंजूर।

Cases referred :

(2013) 14 SCC 696, (2022) 4 SCC 414.

Atul Anand Awasthy with *Kaustubh Tiwari*, for the appellants.
Mukhtar Ahmad, for the respondent.

Short Note

***(123)(DB)**

Before Mr. Justice G.S. Ahluwalia &
Mr. Justice Avanindra Kumar Singh

WP No. 12282/2023 (Jabalpur) decided on 30 May, 2023

RATHORE AND MEHTA ASSOCIATED …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Excise Act, M.P. (2 of 1915), Section 31(1-A) – Cancellation of License – Opportunity of Hearing* – Held – Although Section 31(1-A) provides for opportunity of hearing, but when no prejudice is caused to petitioner, then the impugned order cannot be set aside merely on ground of violation of natural justice – Petitioner himself admitted that the bank guarantee submitted by him was fake and a forged document – Petition dismissed.**

क. आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 31(1–A) – अनुज्ञप्ति का रद्दकरण – सुनवाई का अवसर – अभिनिर्धारित – भले ही धारा 31(1–A) सुनवाई का अवसर उपबंधित करती है, परंतु जब याची को कोई प्रतिकूल प्रभाव कारित न हुआ हो, तब मात्र नैसर्गिक न्याय के उल्लंघन के आधार पर आक्षेपित आदेश को अपास्त नहीं किया जा सकता – याची ने स्वयं यह स्वीकार किया है कि उसके द्वारा प्रस्तुत बैंक गारंटी नकली तथा एक कूटरचित दस्तावेज था – याचिका खारिज।

***B. Constitution – Article 226 – Fraud* – Held – Fraud vitiates all solemn acts – Fraud means an intention to decive whether it is from any**

expectation of advantage to the party himself or from the ill-will towards other is immaterial – No order can be allowed to stand if it was obtained by fraud.

ख. संविधान – अनुच्छेद 226 – कपट – अभिनिर्धारित – कपट सभी सत्यनिष्ठ कृत्यों को दूषित कर देता है – कपट का अर्थ है प्रवंचना करने का आशय चाहे वह स्वयं पक्षकार को लाभ की किसी अपेक्षा से हो अथवा दूसरे के प्रति वैमनस्य से हो, तत्वहीन है – कोई भी आदेश कायम नहीं रखा जा सकता यदि वह कपट द्वारा अभिप्राप्त था।

The order of the Court was passed by : **G.S. AHLUWALIA, J.**

Cases referred:

2006 (1) M.P.L.J. 498, (2013) 8 SCC 20, (2022) 2 SCC 301, (2015) 8 SCC 519, (2003) 4 SCC 557, (2020) SCC OnLine SC 847, Civil Appeal No. 2447/2007 order passed on 16.02.2007 (Supreme Court).

Sanjay Agrawal with *Rahul Gupta,* for the petitioner.
Bramhadatt Singh, Dy. A.G. for the respondents.

Short Note
****(124)(DB)***
Before Mr. Justice Sujoy Paul & Mr. Justice Amar Nath (Kesharwani)
CRA No. 2810/2019 (Jabalpur) decided on 3 May, 2023

RIBU @ AKBAR KHAN …Appellant

Vs.

STATE OF M.P. …Respondent

(Alongwith CRRF No. 3/2019)

***A. Penal Code (45 of 1860), Sections 302, 376(1) & 450 – DNA Report – Collection of Blood Sample* – Held – Prosecution established its case with certainty that blood sample of appellant was indeed taken, sealed and was sent to FSL laboratory with quite promptitude within a period of 24 hrs – DNA report is against appellant, it is a scientific report and conviction can be based on said DNA report – Chain of events/circumstances duly established by prosecution – Conviction upheld.**

क. दण्ड संहिता (1860 का 45), धाराएँ 302, 376(1) व 450 – डीएनए प्रतिवेदन – रक्त नमूने का संग्रहण – अभिनिर्धारित – अभियोजन ने इस निश्चितता के साथ अपना प्रकरण स्थापित किया कि अपीलार्थी का रक्त नमूना वास्तव में 24 घंटे की अवधि के भीतर काफी तत्परता के साथ लिया गया था, सील किया गया था एवं न्यायालयिक विज्ञान प्रयोगशाला में भेजा गया था – डीएनए प्रतिवेदन अपीलार्थी के विरूद्ध

है, यह एक वैज्ञानिक प्रतिवेदन है एवं दोषसिद्धि कथित डीएनए प्रतिवेदन पर आधारित हो सकती है – घटनाओं की श्रृंखला/परिस्थितियाँ अभियोजन द्वारा सम्यक् रूप से स्थापित – दोषसिद्धि कायम।

***B. Penal Code (45 of 1860), Sections 302, 376(1) & 450 – Capital Punishment – Mitigating/Aggravating Circumstances* – Held – Conviction affirmed – Appellant has no criminal record, incident was not outcome of premeditation and was done in spontaneity – Crime was not committed to terrorize or harm a particular or larger section of society – No weapon was used – Appellant is a young person of 25 yrs. – Death sentence imposed u/S 302 IPC modified to sentence of imprisonment for remainder of appellant's life – Appeal partly allowed.**

ख. दण्ड संहिता (1860 का 45), धाराएँ 302, 376(1) व 450 – मृत्युदंड – कम करने वाली/गुरूतरकारी परिस्थितियाँ – अभिनिर्धारित – दोषसिद्धि अभिपुष्ट – अपीलार्थी का कोई आपराधिक रिकार्ड नहीं है, घटना पूर्व चिंतन का परिणाम नहीं थी तथा सहजता से की गई थी – अपराध समाज के किसी विशिष्ट अथवा बड़े वर्ग को आतंकित करने अथवा अपहानि पहुंचाने हेतु कारित नहीं किया गया था – किसी शस्त्र का प्रयोग नहीं किया गया – अपीलार्थी 25 वर्ष का एक युवा व्यक्ति है – भा.द.सं. की धारा 302 के अंतर्गत अधिरोपित मृत्युदंड को अपीलार्थी के शेष जीवन के लिए कारावास के दंड में उपांतरित किया गया – अपील अंशतः मंजूर।

***C. Criminal Practice – Collection of Blood Samples* – Held – In cases where the time gap between collection of blood sample and sending the same to lab is wide, the prosecution need to establish that sample was in safe custody.**

ग. दाण्डिक पद्धति – रक्त नमूने का संग्रहण – अभिनिर्धारित – उन प्रकरणों में जहां रक्त समूह के संग्रहण और उसको प्रयोगशाला में भेजने के मध्य का समय अंतराल व्यापक है, अभियोजन को यह स्थापित करने की आवश्यकता है कि नमूना सुरक्षित अभिरक्षा में था।

The judgment of the Court was delivered by : **SUJOY PAUL, J.**

Cases referred:

AIR 1980 SC 1314, 1993 Supp (3) SCC 665, CRA No. 839/2003, (2019) 4 SCC 522, 2015 SCC Online MP 357, (1984) 4 SCC 116, 2022 SCC Online SC 1007, 2009 CriLJ 2888, 2023 SCC OnLine Bom 641, (2023) 1 SCC 83, (2023) 2 SCC 353, (2013) 1 SCC 395, (1995) 5 SCC 518, (1996) 8 SCC 217, (2009) 17 SCC 208, ILR [2020] M.P. 495 (DB), 2022 SCC OnLine 480, 2015 SCC OnLine Guj 6356, 2021 SCC Online M.P. 1628, (1980) 2 SCC 684, (1983) 3 SCC 470, ILR 2023 MP 353.

Aditya Khare, for the appellant in CRA No. 2810/2019.

Yogesh Dhande, G.A. for the respondent in CRA No. 2810/2019 & for the applicant in CRRF No. 3/2019.

Manish Datt with *Nishank Pal Verma,* for the non-applicant in CRRF No. 3/2019.

Short Note

****(125)***

Before Mr. Justice Sanjay Dwivedi

WP No. 20076/2020 (Jabalpur) decided on 12 June, 2023

SHAILENDRA SINGH (DR.) …Petitioner

Vs.

UNION OF INDIA & ors. …Respondents

***A. Service Law – Appointment – Fake Mark Sheet – Burden of Proof* – Held – In each and every cases burden does not lie upon prosecution to prove the charge – If petitioner was sure about the mark-sheet produced by him, he should have called the witness/officer of institution which issued the mark-sheet, to prove himself innocent but that was not done by him neither he produced the original mark-sheet – Burden lies upon petitioner to prove that mark-sheet was not fake – No interference required – Petition dismissed.**

क. सेवा विधि – नियुक्ति – फर्जी अंक सूची – सबूत का भार – अभिनिर्धारित – प्रत्येक प्रकरण में आरोप साबित करने का भार अभियोजन पर नहीं होता – यदि याची उसके द्वारा प्रस्तुत की गई अंक सूची के बारे में आश्वस्त था, तो उसे साक्षी/अंक सूची जारी करने वाली संस्था के अधिकारी को, स्वयं को निर्दोष साबित करने हेतु बुलाना चाहिए था परंतु उसके द्वारा ऐसा नहीं किया गया और न ही मूल अंक सूची प्रस्तुत की – यह साबित करने का भार याची पर है कि अंक–सूची फर्जी नहीं थी – किसी हस्तक्षेप की आवश्यकता नहीं – याचिका खारिज।

***B. Service Law – Fraudulent Appointment – Requirement of Disciplinary Proceedings* – Held – When a person secured appointment on basis of forged mark-sheet or certificate then his appointment is considered to be a fraudulent appointment – Such appointment is illegal and *void ab initio*, therefore holding disciplinary proceedings under Article 311 of Constitution or under any disciplinary rules is not required.**

ख. सेवा विधि– कपटपूर्ण नियुक्ति – अनुशासनात्मक कार्यवाही की आवश्यकता – अभिनिर्धारित – जब किसी व्यक्ति ने कूटरचित अंकसूची अथवा प्रमाण–पत्र के आधार पर नियुक्ति प्राप्त की है तो उसकी नियुक्ति को एक कपटपूर्ण नियुक्ति माना जाता है – ऐसी नियुक्ति अवैध तथा आरंभ से ही शून्य है, अतः संविधान के अनुच्छेद 311 अथवा किसी भी अनुशासनात्मक नियमों के अंतर्गत अनुशासनात्मक कार्यवाही करना अपेक्षित नहीं है।

Cases referred:

2009 (2) SCC 570, 2008 (3) SCC 484, 2008 (8) SCC 236, 2010 (10) SCC 539, (1996) 11 SCC 600, (2004) 1 UPLBEC 170.

Manoj Sharma with *Quazi Fakhruddin,* for the petitioner.
Swapnil Ganguly, Dy. A.G. with *Ayur Jain* and *Gaurav Maheshawri*, for the respondents.

Short Note
****(126)***
Before Mr. Justice Dwarka Dhish Bansal
MCC No. 1445/2023 (Jabalpur) decided on 20 July, 2023

SHUBHA MOTORS PVT. LTD. …Applicant

Vs.

GOPALI BAIGA & ors. …Non-applicants

***Civil Procedure Code (5 of 1908), Section 16 & 24 – Transfer of Case – Grounds* – Held – Court at Jabalpur has no jurisdiction in respect of the property which is situated within the jurisdiction of Court at Shahdol – Application dismissed.**

सिविल प्रक्रिया संहिता (1908 का 5), धारा 16 व 24 – प्रकरण का अंतरण – आधार – अभिनिर्धारित – शहडोल के न्यायालय की अधिकारिता के भीतर स्थित संपत्ति के संबंध में जबलपुर के न्यायालय को कोई अधिकारिता नहीं है – आवेदन खारिज।

Cases referred:

AIR 2023 SC 1338, ILR (1988) 1 Delhi, (2005) 7 SCC 791.

Quazi Fakhruddin, for the applicant.
None, for the non-applicants.

Short Note
****(127)(DB)***
Before Mr. Justice S.A. Dharmadhikari & Mr. Justice Hirdesh
CRA No. 1971/2014 (Indore) decided on 13 September, 2023

SOHAN & anr. …Appellants

Vs

STATE OF M.P. …Respondent

A. Penal Code (45 of 1860), Section 302 and Evidence Act (1 of 1872), Section 27 – Recovery of Articles/Discovery of Facts – Term "open and

accessible to others" **– Held – Apex Court concluded that there is nothing in Section 27 which renders the statement of accused inadmissible if recovery was made from any place which is "open and accessible to others" – It would not vitiate the evidence – Discovery of fact is not the object recovered but the fact embraces the place from which object is recovered and the knowledge of accused as to it – Prosecution has proved its case beyond reasonable doubt – Conviction upheld – Appeal dismissed.**

क. दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 27 – वस्तुओं की बरामदगी/तथ्यों का प्रकटीकरण –शब्द ''अन्य के लिए खुला एवं सुगम'' – अभिनिर्धारित – सर्वोच्च न्यायालय ने यह निष्कर्षित किया है कि धारा 27 में ऐसा कुछ भी नहीं है जो अभियुक्त के कथन को अग्राहय बनाता है यदि बरामदगी किसी ऐसे स्थान से की गई हो जो ''अन्य के लिए खुला एवं सुगम हो'' – यह साक्ष्य को दूषित नहीं करेगा – तथ्य का प्रकटीकरण वह वस्तु नहीं है जिसे बरामद किया गया है, बल्कि तथ्य में बरामद की गई वस्तु का स्थान एवं इसके बारे में अभियुक्त का ज्ञान समाविष्ट है – अभियोजन ने युक्तियुक्त संदेह से परे अपना प्रकरण साबित किया – दोषसिद्धि कायम – अपील खारिज।

B. Penal Code (45 of 1860), Section 302 – Testimony of Witnesses – Contradictions and Discrepancies **– Held – Apex Court concluded that when an eye witness is examined at length, it is quite possible for him to make some discrepancies – Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant – In instant case, witnesses were examined after 8 months of incident – Some omissions and contradictions will not affect the substantial part of evidence which is well supported by medical evidence.**

ख. दण्ड संहिता (1860 का 45), धारा 302 – साक्षीगण का परिसाक्ष्य – विरोधाभास एवं विसंगतियाँ – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि जब किसी चक्षुदर्शी साक्षी का विस्तार से परीक्षण किया जाता है, तो उससे कुछ विसंगतियाँ होना काफी संभव है – संभवतः एक मिथ्या साक्षी, जिसे अच्छी तरह से सिखाया पढ़ाया गया हो, सफलतापूर्वक अपने परिसाक्ष्य को पूरी तरह से गैर–विसंगतिपूर्ण बना सकता है – वर्तमान प्रकरण में, घटना के 8 माह के पश्चात् साक्षीगण का परीक्षण किया गया – कुछ लोप एवं विरोधाभास साक्ष्य के उस सारभूत भाग को प्रभावित नहीं करेंगे जो चिकित्सीय साक्ष्य द्वारा भली भांति समर्थित हैं।

C. Penal Code (45 of 1860), Section 302 and Criminal Procedure Code, 1973 (2 of 1974), Section 157 – Compliance **– Held – Apex Court concluded that if there is no doubt about date and time in FIR, the delay in sending FIR to Magistrate is not fatal to prosecution case.**

ग. दण्ड संहिता (1860 का 45), धारा 302 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 157 – अनुपालन – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यदि प्रथम सूचना प्रतिवेदन में तिथि और समय के बारे में कोई संदेह नहीं है,

तो मजिस्ट्रेट को प्रथम सूचना प्रतिवेदन भेजने में हुआ विलंब अभियोजन प्रकरण के लिए घातक नहीं है।

***D. Penal Code (45 of 1860), Section 302 and Evidence Act (1 of 1872), Section 106 – FSL Report* – Held – Human blood was found on the sword seized from appellant, it was the duty of appellant to disclose the fact as per Section 106 of Evidence Act as to how and why human blood was found on sword – Appellant failed to rebut this fact in defence and has not said a single word in his statement u/S 313 Cr.P.C. – Thus, even if blood group is not mentioned in FSL report, it will not help the appellant.**

घ. दण्ड संहिता (1860 का 45), धारा 302 एवं साक्ष्य अधिनियम (1872 का 1), धारा 106 – न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन – अभिनिर्धारित – अपीलार्थी से जब्त की गई तलवार पर मानव रक्त पाया गया, साक्ष्य अधिनियम की धारा 106 के अनुसार इस तथ्य को प्रकट करना अपीलार्थी का कर्तव्य था कि तलवार पर मानव रक्त कैसे और क्यों पाया गया था – अपीलार्थी बचाव में इस तथ्य का खंडन करने में असफल रहा तथा दं. प्र.सं. की धारा 313 के अंतर्गत अपने कथन में एक शब्द भी नहीं कहा – अतः, भले ही न्यायालयिक विज्ञान प्रयोगशाला प्रतिवेदन में रक्त समूह उल्लिखित नहीं हो, इससे अपीलार्थी को मदद नहीं मिलेगी।

***E. Criminal Practice – Interested/Related Witness – Credibility* – Held – Apex Court concluded that a witness may be called interested only when he or she derives some benefit from the result of a litigation – He should have direct or indirect interest in seeing the accused punished due to prior enmity or other reasons and thus has a motive to falsely implicate the accused – In many cases, it is often that the offence is witnessed by close relative of victim/deceased, whose presence on spot would be natural – Evidence of such witness cannot automatically be discarded by labeling them as "interested".**

ङ दाण्डिक पद्धति – हितबद्ध/संबंधित साक्षी – विश्वसनीयता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि एक साक्षी को हितबद्ध केवल तभी कहा जा सकता है जब वह मुकदमे के परिणाम से कुछ लाभ प्राप्त करता हो – पूर्व वैमनस्यता अथवा अन्य कारणों से अभियुक्त को दण्डित होते देखने में उसका प्रत्यक्ष या अप्रत्यक्ष हित होना चाहिए और इसलिए अभियुक्त को मिथ्या आलिप्त करने का हेतु होना चाहिए – अनेक प्रकरणों में, ऐसा अक्सर होता है कि पीड़ित/मृतक के करीबी रिश्तेदार ने अपराध होते देखा है, जिनकी घटना स्थल पर उपस्थिति स्वाभाविक होगी – ऐसे साक्षी के साक्ष्य को ''हितबद्ध'' के रूप में वर्गीकृत करते हुए उन्हें स्वतः अस्वीकार नहीं किया जा सकता।

***F. Criminal Practice – Chance Witness/Independent Witness* – Held – Apex Court concluded that when an incident takes place in a street or in field in a village, evidence of passers-by who witnessed the incident cannot be discarded or viewed with suspicion on ground of they being chance witnesses, rather they can be described as independent witness.**

च. दाण्डिक पद्धति – संयोगी साक्षी/स्वतंत्र साक्षी – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि जब कोई घटना किसी मार्ग अथवा किसी गांव के खेत में होती है, तो घटना को देखने वाले राहगीरों के साक्ष्य को अस्वीकार नहीं किया जा सकता अथवा उन्हें संयोगी साक्षी होने के आधार पर संदेह की दृष्टि से नहीं देखा जा सकता, बल्कि उन्हें स्वतंत्र साक्षी के रूप में वर्णित किया जा सकता है।

***G. Criminal Practice – FIR & Statements u/S 161 Cr.P.C. – Contents* – Held – It is not necessary that each and every fact is mentioned in FIR as well as in the statements recorded u/S 161 Cr.P.C. – Because of some omissions, credibility of witness cannot be discarded.**

छ. दाण्डिक पद्धति – प्रथम सूचना प्रतिवेदन व दं.प्र.सं. की धारा 161 के अंतर्गत कथन – अंतर्वस्तु – अभिनिर्धारित – यह आवश्यक नहीं है कि प्रत्येक तथ्य का उल्लेख प्रथम सूचना प्रतिवेदन तथा दं.प्र.सं. की धारा 161 के अंतर्गत अभिलिखित कथनों में भी किया जाए – कुछ लोप के कारण, साक्षी की विश्वसनीयता को अस्वीकार नहीं किया जा सकता।

***H. Legal Maxim – "falsus in uno falsus in omnibus" – Applicability* – Held – Testimony of witnesses cannot be discredited or wiped out only on basis that other co-accused persons are acquitted on same set of evidence – The maxim "*falsus in uno falsus in omnibus*" has no application in India.**

ज. विधिक सूक्ति – ''एक बात में मिथ्या तो सब में मिथ्या'' – प्रयोज्यता – अभिनिर्धारित – साक्षीगण के परिसाक्ष्य को केवल इस आधार पर अविश्वास किया अथवा मिटाया नहीं जा सकता कि अन्य सह–अभियुक्तगण को समान साक्ष्य के आधार पर दोषमुक्त किया गया है – सूक्ति *''एक बात में मिथ्या तो सब में मिथ्या''* की भारत में कोई प्रयोज्यता नहीं है।

Cases referred:

2001 (2) MPWN 142, 1999 (2) JLJ 354, AIR 1984 SC 63, 1994 (5) SCC 188, 1995 (5) SCC 198, 1987 (3) SCC 480, 1996 MPLJ 452, 2014 Cr.L.R. (SC) 907, Criminal Appeal No. 870/1996 (Supreme Court), 2014 (2) JLJ 397, 2014 Cr.L.R. (SC) 660, 2023 SCC OnLine SC 737, 2019 ILR M.P. 471, 2017 Vol. 2 MPLJ Cr. 305, AIR (2019) SC 1058, 2004 (11) SCC 410, 1999 (4) SCC 370, AIR 2012 SC 1433, 2002 (2) JLJ 416, (2005) 7 SCC 749.

Vivek Singh, for the appellant No. 1.
Manohar Singh Chouhan, for the appellant No. 2.
K.K. Tiwari, G.A. for the respondent/State.

NOTES OF CASES SECTION

Short Note
****(128)***
Before Mr. Justice Anil Verma
EP No. 1/2019 (Indore) decided on 31 August, 2023

SUBHASH KUMAR SOJATIA …Petitioner

Vs.

DEVILAL DHAKAD & ors. …Respondents

A. Representation of the People Act (43 of 1951), Section 123 and Evidence Act (1 of 1872), Section 106 – Corrupt Practice – Burden of Proof – **Held – Petition is filed on allegation of "corrupt practice" therefore burden of proof lies upon petitioner and he is supposed to prove the facts within special knowledge by adducing best evidence as per Section 106 of Evidence Act – Burden never shifts and the standard of proof to discharge this burden is same as in criminal case – Matter requiring proof should be established beyond any reasonable doubt and in case of doubt, the benefit should go to the returned candidate.**

क. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123 एवं साक्ष्य अधिनियम (1872 का 1), धारा 106 – भ्रष्ट आचरण – सबूत का भार – अभिनिर्धारित – ''भ्रष्ट आचरण'' के अभिकथन पर याचिका प्रस्तुत की गयी है अतः सबूत का भार याची पर है और उससे साक्ष्य अधिनियम की धारा 106 के अनुसार सर्वोत्तम साक्ष्य लगाकर विशेष ज्ञान के भीतर के तथ्यों को साबित करना अनुमित है – भार कभी परिवर्तित नहीं होता और इस भार के उन्मोचन हेतु सबूत का मानक उसी समान है जैसा कि एक दाण्डिक प्रकरण में होता है – मामला जिसमें सबूत अपेक्षित है, को युक्तियुक्त संदेह से परे स्थापित किया जाना चाहिए और संदेह के मामले में चयनित प्रत्याशी को लाभ जाना चाहिए।

B. Representation of the People Act (43 of 1951), Sections 100(1)(d), 123(2) & 123(4) – Non-Disclosure of Government Dues – Suppression – **Held – At the time of submission of nomination form, R-1 was not actually aware that some diversion fee was due against his property – No notice issued by revenue authorities to R-1, on the contrary revenue authorities issued No Dues Certificate in his favour – A person who is not aware of any fact, no question of its suppression arises – Non-disclosure of such government dues are not covered u/S 100(1)(d), 123(2) & 123(4) of the Act.**

ख. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(d), 123(2) व 123(4) – सरकारी देय का अप्रकटन – छिपाव – अभिनिर्धारित – नामांकन पत्र प्रस्तुत करते समय प्रत्यर्थी–1 को वास्तविक रूप से जानकारी नहीं थी कि उसकी संपत्ति के विरूद्ध कुछ अपयोजन शुल्क देय था – राजस्व प्राधिकारियों द्वारा प्रत्यर्थी–1 को कोई नोटिस जारी नहीं किया गया, इसके विपरीत राजस्व प्राधिकारियों ने उसके पक्ष में

अनापत्ति प्रमाणपत्र जारी किया – एक व्यक्ति जो किसी तथ्य से अवगत नहीं है, उसके छिपाव का कोई प्रश्न उत्पन्न नहीं होता – उक्त सरकारी देय का अप्रकटन, अधिनियम की धारा 100(1)(d), 123 (2) व 123 (4) के अंतर्गत आच्छादित नहीं है।

***C. Representation of the People Act (43 of 1951), Sections 100(1)(d), 123(2) & 123(4) – Government Accommodation* – Held – Clause 8 of nomination form provides a disclosure of government accommodation – Petitioner neither pleaded nor proved through relevant document that the rented premise is a government accommodation – There was no need to disclose the information of the said rented premise in nomination form.**

ग. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(d), 123(2) व 123(4) – सरकारी स्थान – अभिनिर्धारित – नामांकन पत्र का खंड 8, सरकारी आवास का प्रकटन उपबंधित करता है – याची ने सुसंगत दस्तावेज के जरिये न तो अभिवाक् किया है और न ही साबित किया है कि भाड़े पर लिया परिसर, सरकारी स्थान है – उक्त भाड़े पर लिये स्थान की जानकारी, नामांकन पत्र में प्रकट करने की कोई आवश्यकता नहीं थी।

***D. Representation of the People Act (43 of 1951), Sections 100(1)(d), 123(2) & 123(4) and Constitution – Article 19(1)(a) – Non-Disclosure of Outstanding Rent – Effect on Voters* – Held – No oral or documentary evidence to prove that by virtue of non-disclosure of outstanding rent, any voter suffered to free exercise of his electoral right – Petitioner has not examined any voter and even he himself could not adduce such facts that how or in what manner the voters were unable to freely exercise their right provided under Article 19(1)(a) of Constitution – Even such type of disclosure or suppression does not come under purview of Section 123(2) & 123(4) of the Act.**

घ. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(d), 123(2) व 123(4) एवं संविधान – अनुच्छेद 19(1)(a) – बकाया भाड़े का अप्रकटन – मतदाताओं पर प्रभाव – अभिनिर्धारित – यह साबित करने के लिए कोई मौखिक अथवा दस्तावेजी साक्ष्य नहीं कि बकाया भाड़े के अप्रकटन से कोई मतदाता उसके निर्वाचन अधिकार के स्वतंत्र प्रयोग करने के लिए ग्रसित हुआ है – याची ने किसी मतदाता का परीक्षण नहीं किया है और यहां तक कि वह स्वयं ऐसे तथ्य नहीं दे सका है कि कैसे या किस ढंग से मतदाता, संविधान के अनुच्छेद 19(1)(a) के अंतर्गत उपबंधित उनके अधिकार का स्वतंत्र रूप से प्रयोग करने के लिए असमर्थ थे – यहां तक कि इस प्रकार का अप्रकटन या छिपाव, अधिनियम की धारा 123(2) व 123(4) की परिधि के भीतर नहीं आता है।

***E. Representation of the People Act (43 of 1951), Sections 100(1)(d), 123(2) & 123(4) – Non-Disclosure of Interest on Saving Account/FDR* – Held – Interest on saving accounts and FDR is neither a source of income nor a source of livelihood, thus not required to be disclosed in nomination form – As per Banking Rules also, saving interest is not a source of income.**

ङ. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(d), 123(2) व 123(4) – बचत खाते/एफ.डी.आर. पर ब्याज का अप्रकटन – अभिनिर्धारित – बचत खातों एवं एफ.डी.आर. पर ब्याज न तो आय का स्त्रोत है न ही जीविका का स्त्रोत, अतः नामांकन पत्र में प्रकटन अपेक्षित नहीं – बैंकिंग नियमों के अनुसार भी, बचत ब्याज, आय का स्त्रोत नहीं है।

***F. Representation of the People Act (43 of 1951), Sections 100(1)(d), 123(2) & 123(4) – Term " Materially Affected" – Presumption* – Held – To be successful in election petition for declaration of election of returned candidate to be void, parties must plead and prove that result of election would have substantially and materially affected – Only because petitioner got second largest number of votes, Court will not presume that in case of rejection of nomination paper of R-1, all votes casted in favour of R-1 would otherwise go in favour of petitioner – Plea of Corrupt practice not proved – Election petition dismissed.**

च. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 100(1)(d), 123(2) व 123(4) – शब्द ''तात्विक रूप से प्रभावित'' – उपधारणा – अभिनिर्धारित – निर्वाचित प्रत्याशी के निर्वाचन को शून्य घोषित करने हेतु निर्वाचन याचिका में सफल होने के लिए, पक्षकारों को अभिवाक् कर साबित करना चाहिए कि निर्वाचन का परिणाम, सारवान रूप से एवं तात्विक रूप से प्रभावित होगा – केवल इसलिए कि याची को द्वितीय सर्वाधिक मत मिले है, न्यायालय उपधारणा नहीं करेगा कि प्रत्यर्थी–1 के नामांकन पत्र की अस्वीकृति की दशा में, प्रत्यर्थी–1 के पक्ष में डाले गये सभी मत याची के पक्ष में अन्यथा जायेंगे – भ्रष्ट आचरण का अभिवाक् साबित नहीं – निर्वाचन याचिका खारिज।

***G. Representation of the People Act (43 of 1951), Section 123 and Evidence Act (1 of 1872), Section 3 – List of Defaulters – Evidence* – Held – List of defaulter was prepared by "M" – Although R-1 filed affidavit of "M" but he has not been examined by R-1, even his name was not included in list of witnesses – In non- examination of "M", his affidavit cannot be treated as part of evidence because opponent did not get opportunity for cross-examination –Apex Court concluded that affidavit is not evidence within meaning of Section 3 of Evidence Act.**

छ. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123 एवं साक्ष्य अधिनियम (1872 का 1), धारा 3 – व्यतिक्रमियों की सूची – साक्ष्य – अभिनिर्धारित – ''M'' द्वारा व्यतिक्रमियों की सूची तैयार की गई थी – यद्यपि, प्रत्यर्थी–1 ने ''M'' का शपथपत्र प्रस्तुत किया, परंतु प्रत्यर्थी–1 द्वारा उसका परीक्षण नहीं किया गया है, यहां तक कि साक्षियों की सूची में उसका नाम भी शामिल नहीं किया गया था – ''M'' का परीक्षण न किये जाने से, उसके शपथपत्र को साक्ष्य का भाग नहीं माना जा सकता क्योंकि विरोधी को प्रतिपरीक्षण हेतु अवसर नहीं मिला – सर्वोच्च न्यायालय ने निष्कर्षित किया कि शपथ पत्र, साक्ष्य अधिनियम की धारा 3 के अर्थांतर्गत साक्ष्य नहीं है।

H. Representation of the People Act (43 of 1951), Section 123 and Evidence Act (1 of 1872), Section 3 – Corrupt Practice – Evidence & Proof – **Held – A charge of corrupt practice cannot be proved by preponderance of probabilities, it is needed to be proved beyond reasonable doubt.**

ज. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123 एवं साक्ष्य अधिनियम (1872 का 1), धारा 3 – भ्रष्ट आचरण – साक्ष्य व सबूत – अभिनिर्धारित – भ्रष्ट आचरण के आरोप को अधिसंभाव्यताओं की प्रबलता द्वारा साबित नहीं किया जा सकता, इसे युक्तियुक्त संदेह से परे साबित किया जाना आवश्यक है।

I. Representation of the People Act (43 of 1951), Sections 83, 84 & 123 – Pleading & Evidence – **Held – In election petition, evidence beyond the pleadings can neither be permitted to be adduced nor can such evidence be taken into consideration – Petitioner has not pleaded regarding the List of Defaulter and the non-validity of No Dues Certificate – Petitioner not entitled to adduce evidence beyond his pleadings.**

झ. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 83, 84 व 123 – अभिवचन व साक्ष्य – अभिनिर्धारित – निर्वाचन याचिका में अभिवचनों से परे साक्ष्य को न तो देने की अनुमति दी जा सकती है न ही ऐसे साक्ष्य को विचार में लिया जाए – याची ने व्यतिक्रमी की सूची एवं कोई देय न होने के प्रमाणपत्र की विधिमान्यता न होने के संबंध में अभिवाक् नहीं किया है – याची अपने अभिवचनों से परे साक्ष्य पेश करने के लिए हकदार नहीं है।

J. Representation of the People Act (43 of 1951), Section 123 and Evidence Act (1 of 1872), Section 67 & 77 – Certified Copy of Public Document **– Held – Mere production of certified copy of any public record is not a proof of its contents – In list of defaulters, no date is mentioned, even there is no information about its author who prepared it – List of defaulters cannot be treated as public document and without examining its author to prove its contents, petitioner failed to prove the document as per requirement of Section 67 of Evidence Act.**

ञ. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123 एवं साक्ष्य अधिनियम (1872 का 1), धारा 67 व 77 – लोक दस्तावेज की प्रमाणित प्रति – अभिनिर्धारित – मात्र किसी लोक अभिलेख की प्रमाणित प्रति प्रस्तुत करना, उसकी विषयवस्तु का सबूत नहीं है – व्यतिक्रमियों की सूची में, कोई तिथि उल्लिखित नहीं है, यहां तक कि उसके लेखक के बारे में कोई जानकारी नहीं जिसने उसे तैयार किया – व्यतिक्रमियों की सूची को लोक दस्तावेज के रूप में नहीं समझा जा सकता तथा उसकी विषय वस्तु साबित करने के लिए उसके लेखक का परीक्षण किये बिना, साक्ष्य अधिनियम की धारा 67 की अपेक्षा अनुसार दस्तावेज साबित करने में याची विफल रहा।

K. Representation of the People Act (43 of 1951), Section 123(3) – CD/DVD – Transcription – **Held – Petitioner did not examine the material**

witness who prepared the DVD – Transcription provided in election petition is not prepared by petitioner himself and he did not examine the relevant person who has prepared the transcription – Transcription is not duly verified and signed by its writer, thus it is not admissible in evidence – Provisions of Section 123(3) is not attracted.

ट. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धारा 123(3) – सी.डी./डी.वी.डी. – अनुलिपि – अभिनिर्धारित – याची ने उस तात्विक साक्षी का परीक्षण नहीं किया जिसने डी.वी.डी. तैयार की – निर्वाचन याचिका में उपलब्ध अनुलिपि याची द्वारा स्वयं तैयार नहीं की गई है एवं उसने अनुलिपि तैयार करने वाले सुसंगत व्यक्ति का परीक्षण नहीं किया है – अनुलिपि को उसके लेखक द्वारा सम्यक् रूप से सत्यापित व हस्ताक्षरित नहीं किया गया है, अतः वह साक्ष्य में ग्राह्य नहीं है – धारा 123(3) के उपबंध आकर्षित नहीं होते है।

***L. Representation of the People Act (43 of 1951), Sections 97, 117 & 118 – Recrimination* – Held – Looking to the object and scheme of Section 97, it is manifest that provisions of Section 117 & 118 must be applied *mutatis mutandis* to proceeding u/S 97 – Recriminator must produce a govt. treasury receipt showing that he has deposited Rs. 2000 as cost of recrimination failing which he loses the right to lead evidence u/S 97 and notice of recrimination stands virtually rejected.**

ठ. लोक प्रतिनिधित्व अधिनियम (1951 का 43), धाराएँ 97, 117 व 118 – प्रत्यारोप – अभिनिर्धारित – धारा 97 के उद्देश्य एवं प्रणाली को देखते हुए यह प्रकट है कि धारा 117 व 118 के उपबंधों को यथावश्यक सुधार सहित, धारा 97 के अंतर्गत कार्यवाहियों को लागू किया जाना चाहिए – प्रत्यारोप करने वाले को एक सरकारी कोषालय रसीद प्रस्तुत करनी चाहिए जो दर्शाती हो कि उसने प्रत्यारोप के व्यय के रूप में रू. 2000 जमा किये है, ऐसा न करने पर वह धारा 97 के अंतर्गत साक्ष्य प्रस्तुत करने का अधिकार खो देता है तथा प्रत्यारोप का नोटिस वस्तुतः नामंजूर हो जाता है।

***M. Evidence Act (1 of 1872), Section 67 – Document – Principle of Evidence* – Held – As per principle of evidence, relevancy, admissibility and proof are different aspects which should exist before a document can be taken in evidence – Evidence of a fact and proof of a fact are not synonymous terms – Proof in strictness marks merely the effect of evidence – If the document is *per se* inadmissible then even if marked as exhibit, the same cannot be read in evidence.**

ड. साक्ष्य अधिनियम (1872 का 1), धारा 67 – दस्तावेज – साक्ष्य का सिद्धांत – अभिनिर्धारित – साक्ष्य के सिद्धांत के अनुसार, सुसंगतता, ग्राह्यता एवं सबूत भिन्न पहलू है जिन्हें एक दस्तावेज को साक्ष्य में लिए जा सकने से पूर्व विद्यमान होना चाहिए – तथ्य का साक्ष्य एवं तथ्य का सबूत समानार्थी शब्द नहीं है – सबूत, सर्वथा साक्ष्य के प्रभाव मात्र को चिन्हित करता है – यदि दस्तावेज स्वतः अग्राह्य है तब यदि प्रदर्श के रूप में चिन्हित हो तब भी उसे साक्ष्य में पढ़ा नहीं जा सकता।

***N. Representation of the People Act (43 of 1951) – Information about Candidates – Right of Voters* – Discussed and explained.**

ढ. लोक प्रतिनिधित्व अधिनियम (1951 का 43) – प्रत्याशियों के बारे में जानकारी – मतदाताओं का अधिकार – विवेचित एवं स्पष्ट किया गया।

Cases referred:

(2010) 4 SCC 329, (2000) 1 SCC 481, (1977) 1 SCC 423, (2013) 4 SCC 465, AIR 1963 SC 1633, (2010) 1 SCC 466, (1999) 4 SCC 403, AIR 2005 SC 3353, (2022) 2 SCC 573, (2015) 1 SCC 129, (2018) 7 SCC 1, (2003) 8 SCC 745, (1996) 4 SCC 596, (2010) 4 SCC 491, AIR 1983 Bombay 1, AIR 1977 Delhi 73, 2014 SCC OnLine Pat 2570, AIR 2021 SC (Supp) 439, I.L.R. [2016] M.P., 1411, (2003) 4 SCC 399, (2014) 14 SCC 162, (2015) 3 SCC 467, (2018) 4 SCC 699, 2022 SCC OnLine SC 1218, (2017) SCC Online Delhi 10249, (1997) 6 SCC 117, (2020) 7 SCC 1, AIR 2013 Chh 141, (2004) 2 SCC 277, (2014) 10 SCC 473, 2023 SC OnLine SC 310, AIR 1955 SC 183, (1985) 1 SCC 91, (1969) 3 SCC 238, 2018 SCC Online Hyd. 413, (2002) 1 SCC 160, AIR 2017 SC 2869, (2018) 14 SCC 1, (1968) 1 SCR 104 : AIR 1968 SC 300.

Ravindra Singh Chhabra with *Mudit Maheshwar* and *Aman Arora,* for the petitioner.

Rohit Kumar Mangal with *Sunil Verma, Anurodh Singh Gaud* and *Somesh Gobhuj*, for the respondent No. 1.

Short Note
****(129)***
Before Mr. Justice G.S. Ahluwalia
SA No. 571/2023 (Jabalpur) decided on 10 May, 2023

T.R. (TULSIRAM) KORI & anr. …Appellants

Vs.

RAJA SINGH & anr. …Respondents

***Registered Document* – Held – Where the document is a registered document, then a presumption can be drawn that it was validly executed and therefore, a registered document would be *prima facie* valid in law, however valid execution of a document and the proof of the contents of the same are two different aspect – Merely because a registered sale deed was executed would not mean that even the contents of the same would stands proved.**

रजिस्ट्रीकृत दस्तावेज – अभिनिर्धारित – जहां दस्तावेज एक रजिस्ट्रीकृत दस्तावेज है, तो यह उपधारणा की जा सकती है कि वह विधिमान्य रूप से निष्पादित किया गया था एवं इसलिए, एक रजिस्ट्रीकृत दस्तावेज प्रथम दृष्ट्या विधि में विधिमान्य होगा, हालांकि एक दस्तावेज का विधिमान्य निष्पादन तथा उसकी अंतर्वस्तु का प्रमाण, दो भिन्न पहलू हैं –

मात्र क्योंकि एक रजिस्ट्रीकृत विक्रय विलेख निष्पादित किया गया था, इसका अर्थ यह नहीं होगा कि उसकी अंतर्वस्तु भी साबित हो जाएगी।

Cases referred :

Civil Appeal Nos. 3681-3682/2020 decided on 16.11.2020 (Supreme Court), (2006) 5 SCC 353.

Sankalp Kochar, for the appellants.

Short Note

****(130)***

Before Mr. Justice Sujoy Paul

MCRC No. 41113/2020 (Jabalpur) decided on 28 April, 2023

YOGENDRA SINGH RAJPUT … Applicant

Vs.

STATE OF M.P. & anr. …Non-applicants

***Penal Code (45 of 1860), Section 375 & 376 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR* – Held – In FIR, there is clear allegation that since inception, applicant gave false promise of marriage and on that pretext complainant developed sexual relation with applicant – Consent was taken on basis of false promise itself – It is not a case where promise initially given was *bonafide* and because of subsequent events could not be translated into reality – FIR cannot be quashed – Application dismissed.**

दण्ड संहिता (1860 का 45), धारा 375 व 376 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन का अभिखंडन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन में, यह स्पष्ट अभिकथन है कि आरंभ से ही, आवेदक ने विवाह का मिथ्या वचन दिया था और उस बहाने परिवादी ने आवेदक के साथ लैंगिक संबंध बनाए – मिथ्या वचन के आधार पर ही सहमति ली गई थी – यह ऐसा प्रकरण नहीं है जहां आरंभ में दिया गया वचन सद्भावी था एवं पश्चात्वर्ती घटनाओं के कारण वास्तविकता में बदला नहीं जा सकता – प्रथम सूचना प्रतिवेदन को अभिखंडित नहीं किया जा सकता – आवेदन खारिज।

Cases referred:

AIR 2019 SC 4010, Cr.A. No. 629/2019 (Supreme Court), Criminal Appeal No. 3587/2013 (Karnataka High Court), M.Cr.C. No. 16161/2019 decided on 25.09.2019, (2006) 11 SCC 615.

Deepak Kumar Singh, for the applicant.
Akhilendra Singh, G.A. for the non-applicant No. 1/State.
R.S. Mehndiratta, for the non-applicant No. 2.

I.L.R. 2023 M.P. 1979 (DB)

Before Mr. Justice Ravi Malimath, Chief Justice &
Mr. Justice Vishal Mishra

WA No. 429/2022 (Jabalpur) decided on 6 July, 2023

STATE OF M.P. & ors. …Appellants

Vs.

RAM BHAGWAN PATHAK …Respondent

***A. Police Regulations, M.P., Regulation 64(3) – Misconduct* – Disciplinary Committee imposed punishment of removal from service – Appellate Authority modified the punishment to compulsory retirement – Held – Petitioner, a police officer, lived with a lady for almost 8 years as husband and wife and thereafter not taking care of her and committing various acts, itself is an immoral act committed by him – Petitioner is a Police Officer, therefore, a minimum degree of morality is called for – Petitioner is liable for higher punishment – Impugned order set aside – Matter remitted to appellate authority to reconsider quantum of punishment – Appeal allowed. (Paras 18, 20 & 22)**

क. पुलिस विनियमन, म.प्र., विनियमन 64(3) – अवचार – अनुशासनिक समिति ने सेवा से हटाये जाने का दण्ड अधिरोपित किया – अपीली प्राधिकारी ने दण्ड को अनिवार्य सेवानिवृत्ति में उपांतरित किया – अभिनिर्धारित – याची, एक पुलिस अधिकारी, एक महिला के साथ लगभग 8 वर्षों तक पति–पत्नी के रूप में रहा और तत्पश्चात् उसकी देखभाल नहीं करना एवं विभिन्न कृत्य कारित करना, अपने आप में उसके द्वारा कारित अनैतिक कार्य है – याची एक पुलिस अधिकारी है अतः न्यूनतम स्तर की नैतिकता अपेक्षित है – याची उच्चतर दण्ड हेतु दायी है – आक्षेपित आदेश अपास्त – मामला, दण्ड की मात्रा पर पुनर्विचार करने के लिए अपीली प्राधिकारी को प्रतिप्रेषित – अपील मंजूर।

***B. Police Regulations, M.P., Regulation 64(3) – Misconduct – Absence of Provision* – Held – An immoral act cannot be pleaded on ground that according to law, it is not defined – If law is silent on any issue, in that event, justice would have to be rendered on basis of righteousness or on best judgment. (Para 16)**

ख. पुलिस विनियमन, म.प्र., विनियमन 64(3) – अवचार – उपबंध का अभाव – अभिनिर्धारित – एक अनैतिक कार्य का इस आधार पर अभिवाक् नहीं किया जा सकता कि विधि के अनुसार, वह परिभाषित नहीं है – यदि विधि किसी विवाद्यक पर मौन है, तो उस दशा में, न्याय परायणता अथवा सर्वोत्तम निर्णय के आधार पर न्याय प्रदान किया जाएगा।

***C. Constitution – Article 226 – Absence of Provision – Inherent Powers of Court* – Held – Whenever there is absence of any provision in a law, the inherent power of the Court can be invoked to achieve the ends of justice provided such acts are not expressly prohibited by statute or otherwise –**

When there is a lacunae in law, it is not a dead end – Inherent power has to be invoked in order to do justice in the matter. (Para 17)

ग. संविधान – अनुच्छेद 226 – उपबंध का अभाव – न्यायालय की अंतर्निहित शक्तियां – अभिनिर्धारित – जब भी विधि में किसी उपबंध का अभाव होता है, तो न्याय के उद्देश्य को प्राप्त करने के लिए न्यायालय की अंतर्निहित शक्ति का अवलंब लिया जा सकता है परंतु ऐसे कार्य कानून द्वारा अथवा अन्यथा स्पष्ट रूप से प्रतिशिद्ध न हों – जहां विधि में कोई कमी हो, तो वह गतिरोध नहीं है – मामले में न्याय करने के लिए अंतर्निहित शक्ति का अवलंब लेना होगा।

Cases referred:

(1994) 2 SCC 481, (2012) 5 SCC 370, (1996) 9 SCC 548, (2022) SCC Online SC 478, (1995) 6 SCC 749.

B.D. Singh, Dy. A. G. for the appellants.
K.C. Ghildiyal with *Aditya Veer Singh*, for the respondent.

O R D E R

The order of the Court was Passed by:
RAVI MALIMATH CHIEF JUSTICE:- I.A. No.8256 of 2022 is an application for vacating the interim order dated 05.05.2022. In terms whereof, the impugned order passed by the learned Single Judge was stayed. However, on request of learned counsels, the matter is taken up for final disposal.

2. Assailing the order dated 02.03.2022 passed by the learned Single Judge in allowing the W. P. No.1890 of 2022, the State and its functionaries are in appeal.

3. The case of the writ petitioner is that he was working as an Assistant Sub-Inspector and posted with the 26th Battalion SAF, Guna. A complaint was made by one Smt. Sunita Sharma to the Commandant to the effect that she was a divorcee and the petitioner after marrying her at a temple had established physical relationship with her. The same lasted for almost 8 years. The petitioner was not discharging his obligations towards her. Based on the complaint, a preliminary enquiry was conducted by the Deputy Commandant. The complaint was found to be false. A similar complaint was also made to the Superintendent of Police who conducted an enquiry through the City Superintendent of Police. The report submitted on 05.11.2019, held the petitioner guilty of sending obscene messages to the complainant, chatting with her on mobile, establishing illicit relationship with her etc. On the basis of the said report, a charge sheet was issued to the petitioner and a departmental enquiry was initiated. He was found guilty of the charges except establishing intimate relations. The disciplinary authority disagreed with the finding of the enquiring officer and held that the petitioner is guilty of all the charges. The penalty of removal from service was imposed on the petitioner. Aggrieved by the same, an appeal was filed wherein the penalty of

removal from service was modified to that of compulsory retirement. Questioning the same, the instant writ petition was filed.

4. It was contended by the petitioner that the charge framed against him does not fall under the definition of 'misconduct'. Reliance was placed on Rule 64(3) of the M.P. Police Regulations to the said extent. The learned Single Judge came to the view that the conduct of the petitioner outside his normal course of duty cannot be considered to be as misconduct. Therefore, the impugned orders of the disciplinary authority and the appellate authority were set aside. The respondents were directed to reinstate the petitioner without any backwages. Aggrieved by the same, the State have filed this appeal.

5. The learned Deputy Advocate General submits that the order passed by the learned Single Judge is erroneous. The learned Single Judge misguided himself in adopting a technical view while considering the case of the petitioner based on the definition of 'misconduct'. The act committed by the petitioner is grave and obscene. He had an illicit relationship with the lady for almost 8 years. Therefore, the same amounts to 'misconduct'. The disciplinary authority has held the charges to be proved. Therefore, the finding of the learned Single Judge being erroneous requires to be set aside by dismissing the writ petition.

6. The same is disputed by Shri K.C. Ghildiyal, learned senior counsel appearing for the counsel representing the respondent/writ petitioner in the appeal. He contends that there is no error committed by the learned Single Judge that calls for any interference. The learned Single Judge has rightly appreciated the material as well as law. That the observations made by the learned Single Judge are based on the facts and circumstances involved and hence, no interference is called for.

7. Heard learned counsels.

8. We have considered the order passed by the learned Single Judge. We are rather in awe of some of the observations made therein. One of the observations made by the disciplinary authority is with regard to the exploitation of woman. The learned Single Judge holds that such observation of exploitation of woman is erroneous and perverse. We fail to understand as to how the observation made by the authority regarding exploitation of woman can be considered to be perverse. We do not accept the view expressed by the learned Single Judge on this account.

9. The finding of the learned Single Judge that matters of immorality, are only matters of personal belief, in our considered view, is also not acceptable. The question of morality is universal. A society is bound to decay if it fails to maintain standards of decency and morality. It cannot be moral for one person and immoral for another. Therefore, to hold that questions of morality are matters of personal belief are wholly out of context. We do not find any reasoning to sustain such a finding of the learned Single Judge.

10.**(a)** The entire finding of the learned Single Judge is based only on the definition of 'misconduct'. 'Misconduct' has been defined in Rule 64(3) of the Madhya Pradesh Police Regulations which reads as follows:-

> *" (3) He shall conform himself implicity to all rules which shall, from time to time, be made for the regulation and good order of the service, and shall cultivate a proper regard for its honour and respectability. "*

(b) On considering the same, we are of the view that based on the facts and circumstances involved in the case, the acts committed by the petitioner necessarily fall under the definition of misconduct. Technicalities in law cannot be resorted to in order to plead the case as sought to be pleaded herein. A misconduct is a misconduct at any point of time. Placing reliance on the rules to the contrary cannot be accepted. Rules are intended to aid the dispensation of justice. Rules, procedures and statutes have been created in order to ensure that the truth in every case is found out at the earliest point of time, inasmuch as, there can be no justice without truth. The intention of framing rules is to ensure that everybody conforms to doing that which is right and refraining from doing that which is wrong. They are intended to assist in the dispensation of justice, rather than creating a clog. The rules cannot be used to the advantage of a wrongdoer but should be interpreted in favour of what is right and what is wrong.

11. The further observation that the intention of the Rule is not based on morals or immorals of the officer, in our considered view, is also incorrect. Law cannot be devoid of morality. The question of morality is inbuilt in every human being including a government servant.

12. In times of yore when there was no written law, justice was being rendered on the basis of good conscience and best judgment. Decisions were rendered on what is right and what is wrong, what is moral or what is immoral. It is only much thereafter that laws were enacted. Various laws like the criminal law, the civil law and the other laws were all enacted for the very same purpose. The underlying object of law is to be righteous, to be good, to be just and fair. This flows from one's good conscience and best judgment. This only means that when any act is questioned, it is to be ascertained as to whether it is done in a righteous manner or not. Therefore, the source of all law is the righteous path. When the righteous path is deviated, wrong happens. Therefore, it can never ever be said that even though an act is immoral, however since the same is not defined in any law the wrongdoer goes scot free. Therefore, if there is a lacunae in a law, the benefit of it can never be extended to either one of the parties. Justice has to rendered based on righteousness. This is the underlying principle of all societies throughout the world. The path of righteousness does not belong to any country, race or religion. They are universal. They apply to mankind. An act is moral or immoral, good or bad in any part of the world. What is moral in one country

cannot become immoral in another country and vice versa. Therefore, the essence of every law is righteousness.

13. A similar sentiment was expressed by the Hon'ble Supreme Court in the case of *State of Maharashtra and others Vs. Prabhu* reported in (1994) 2 SCC 481wherein in para 5, it was stated as follows:-

> *"..... It shakes the confidence and faith of the society in the system and is prone to encouraging even the honest and sincere to deviate from their path. It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good."*

14.**(a)** Our National motto is *" Satyameva Jayate"* **(सत्यमेव जयते),** that is, Truth Alone Triumphs. The Justice Malimath Committee on *Reforms of the Criminal Justice System* has emphasized the importance of truth in the justice delivery system. The relevant extract of the Report reads as follows:

> *" 2.16.9. Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth."*

(b) The aforesaid observation of the Justice Malimath Committee has been reiterated by the Hon'ble Supreme Court in the case of *Maria Margarida Sequeira Fernandes vs. Erasmo Jack Sequeira* reported in (2012) 5 SCC 370 with reference to para 33 thereof, which reads as follows:-

> *" 33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth. "*

15.**(a)** The motto of the Hon'ble Supreme Court of India is *" Yato Dharmastato Jayah"* (यतो धर्मस्ततो जयः) which means "where there is Dharma, there will be victory". In other words, victory can only be achieved by following the path of Dharma. This rather supports the view as stated hereinabove with regard to righteous behavior. Every individual is expected to act in a right and just manner. It underlines the significance of Dharma in the Indian judicial system.

(b) The Hon'ble Supreme Court in the case of *A.S. Narayana Deekshitulu vs. State of A.P. and others* reported in (1996) 9 SCC 548 has explained the concept of Dharma, which reads as follows:

> *" 60. Therefore, dharma embraces every type of righteous conduct covering every aspect of life essential for the sustenance and welfare of the individual and the society and includes those rules which guide and enable those who believe in God and heaven to attain moksha (eternal bliss). Rules of dharma are meant to regulate the individual conduct, in such a way as to restrict the rights, liberty, interest and desires of an individual as regards all matters to the extent necessary in the interest of other individuals, i.e., the society and at the same time making it obligatory for the society to safeguard and protect the individual in all respects through its social and political institutions. Shortly put, dharma regulates the mutual obligations of individual and the society. Therefore, it was stressed that protection of dharma was in the interest of both the individual and the society. A " state of dharma " was required to be always maintained for peaceful co-existence and prosperity of all.*
>
> *61. Though dharma is a word of wide meaning as to cover the rules concerning all matters such as spiritual, moral and personal as also civil, criminal and constitutional law, it gives the precise meaning depending upon the context in which it is used. When dharma is used in the context of duties of the individual and powers of the King (the State), it means constitutional law (Rajadharma). Likewise when it is said that Dharmarajya is necessary for the peace and prosperity of the people and for establishing an egalitarian society, the word dharma in the context of the word Rajya only means law, and Dharmarajya means rule of law and not rule of religion or a theocratic State. Dharma in the context of legal and constitutional history only means Vyavaharadharma and Rajadharma evolved by the society through the ages which is binding both on the King (the ruler) and the people (the ruled)."*

16. The conduct of an individual has to be a righteous conduct. An immoral conduct cannot be pleaded on the ground that according to law, it is not defined. If

law is silent on any issue, in that event, justice would have to be rendered on the basis of righteousness or on best judgment. Best judgment again goes back to righteousness and good behavior. Therefore, when the law is silent on a particular issue what aids in the dispensation of justice is nothing else but righteousness.

17. The High Court possesses an inherent power to render justice, to do what is right and undo what is wrong. It needs to do that which are necessary to secure the ends of justice and prevent the abuse of law. The inherent power is to be used in order to achieve justice. Such power requires to be exercised based on the facts and circumstances involved in each case. Whenever there is absence of any provision in a law, the inherent power of the Court can be invoked to achieve the ends of justice provided such acts are not expressly prohibited by statute or otherwise. The exercise of such power necessarily depends on the discretion and wisdom of the Court. Therefore, when there is a lacunae in the law, it is not a dead end. The inherent power has to be invoked in order to do justice in the matter.

18. In the instant case, the petitioner is none other than a police officer serving the State. Therefore, a minimum degree of morality is called for. We say so because the purpose of law is not only to regulate the Society or run the government but also to ensure that persons possessing moral values occupy offices in all the three wings of the government to provide selfless service to the country. This is not a case where it could be disputed that the act of the particular person is moral or immoral. The petitioner having lived with the lady for almost 8 years as husband and wife and thereafter not taking care of her and committing various acts itself is an immoral act committed by him. He made her to believe that his wife is living away from him.

19. Hence, for all these reasons, we are of the considered view that the order passed by the learned Single Judge is unsustainable and liable to be set aside. The order of the disciplinary authority holding that all the charges have been proved, is upheld. The order of punishment passed by the appellate authority, modifying the punishment of removal from service to compulsory retirement, is set aside.

20. Furthermore, we are of the view that the appellate authority may not have been justified in reducing the punishment imposed on the petitioner from dismissal to that of compulsory retirement. Misplaced sympathy is uncalled for. The wrong that the victim has suffered has to be considered while imposing a punishment. In the given facts and circumstances of the case, we are of the view that the petitioner is liable for a higher punishment. However, time and again the Hon'ble Supreme Court have held that in matters of imposition of penalty it is not for the courts to determine what is the extent of penalty to be awarded. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *Anil Kumar Upadhyaya vs. The Director General, SSB and others*, reported in (2022) SCC Online SC 478 whereby the Hon'ble Supreme Court

referred to its earlier decision in *B.C. Chaturvedi vs. Union of India* reported in (1995) 6 SCC 749 wherein, with reference to para 18 it was observed and held as follows:

> *" 18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/ appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. "*

21. If at all the Court is of the view that the punishment is disproportionate, then the same requires to be reconsidered by the disciplinary authority. Hence, we are of the considered view that the appellate authority reconsiders the order of punishment.

22. For all these reasons, the appeal is allowed. The order dated 02.03.2022 passed by the learned Single Judge in W. P. No.1890 of 2022 is modified to the aforesaid extent. The matter is remitted to the appellate authority for reconsideration only with regard to the quantum of punishment awarded to the petitioner.

23. I.A. No.8256 of2022 is accordingly disposed off.

Appeal allowed

I.L.R. 2023 M.P. 1986

Before Mr. Justice Sujoy Paul

WP No. 11910/2023 (Jabalpur) decided on 8 June, 2023

M K UMARAIYA …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

A. Service Law – Transfer Policy – Word "Ordinarily" **– Held – In the clause of the transfer policy the word "ordinarily" is used – Both the**

clauses are couched in a directory language and in a given fact situation, the transfer is indeed permissible – The clauses are not mandatory in nature – Petition dismissed. (Paras 6 to 10)

क. सेवा विधि – स्थानांतरण नीति – शब्द ''साधारणतया'' – अभिनिर्धारित – स्थानांतरण नीति के खंड में ''साधारणतया'' शब्द का प्रयोग किया गया है – दोनों खंड निदेशात्मक भाषा में लिखे गये हैं और दिये गये तथ्य की स्थिति में, स्थानांतरण वास्तव में अनुज्ञेय है – खंड आज्ञापक स्वरूप के नहीं हैं – याचिका खारिज।

B. Service Law – Transfer – Scope of Interference **– Held – Transfer order can be interfered with if it runs contrary to any statutory provisions (not policy guidelines), proved to be *malafide,* changes service condition to the detriment of employee or passed by incompetent authority. (Para 7)**

ख. सेवा विधि – स्थानांतरण – हस्तक्षेप की परिधि – अभिनिर्धारित – स्थानांतरण आदेश में हस्तक्षेप किया जा सकता है यदि यह किसी कानूनी उपबंधों (न कि नीतिगत दिशानिर्देशों) के विपरीत जाता है, दुर्भावपूर्ण साबित होता है, कर्मचारी के नुकसान के लिए सेवा शर्त में परिवर्तन करता है अथवा अक्षम प्राधिकारी द्वारा पारित किया गया है।

C. Service Law – Transfer Policy **– Held – Transfer policy itself is held to be directory in nature and mere breach of transfer policy will not make the transfer order illegal. (Para 6)**

ग. सेवा विधि – स्थानांतरण नीति – अभिनिर्धारित – स्थानांतरण नीति को स्वयं निदेशात्मक स्वरूप का ठहराया गया एवं मात्र स्थानांतरण नीति का भंग स्थानांतरण आदेश को अवैध नहीं बनाएगा।

Manu V. John, for the petitioner.
None, for the respondents.

(Supplied: Paragraph numbers)

O R D E R

SUJOY PAUL, J.:- Heard on admission.

This is the second visit of petitioner to this Court against the transfer order dated 15.03.2023 (Annexure-P/2). The petitioner against the said order had previously filed W.P.No.6622/2023, which was disposed off on 21.03.2023 by directing the respondents to decide the petitioner's representation and till such time decision is taken, petitioner was given interim protection.

2. The respondents, by impugned order dated 15.05.2023, rejected his representation by contending that although petitioner is due for retirement in December, 2023, fact remains that he has been posted to his own home district (Gwalior), which has better medical facilities and his pension papers etc. can be prepared before his retirement.

3. Criticizing the impugned order, Shri Manu V. John, learned counsel for the petitioner submits that Clause-22 of Transfer Policy dated 24.06.2021 (Annexure-P/3) makes it clear that transfer of petitioner within one year from the date of retirement was impermissible. Similarly, Clause-37 of said policy is relied upon to submit that if petitioner remained posted at a particular district, he should not have been posted to the said district again.

4. No other point is pressed by learned counsel for the petitioner.

5. The Government Counsel supported the impugned order.

6. A careful reading of Clause-22 and 37 of the transfer policy, on which heavy reliance is placed by Shri John, learned counsel for the petitioner, it is clear that in both the clauses, respondents have used the word 'ordinarily' (सामान्यतः). Thus, both the clauses are couched in a directory language and in a given fact situation, the transfer is indeed permissible in the teeth of Clause-22 and 37 of the Transfer Policy. Putting it differently, the aforesaid two clauses are not mandatory in nature. Even otherwise, transfer policy itself is held to be directory in nature and mere breach of transfer policy will not make the transfer order illegal.

7. Transfer order can be interfered with if it runs contrary to any statutory provision (not policy guidelines), proved to be mala-fide, changes service condition to the detriment of employee or passed by incompetent authority. No such ingredients are available in the instant case.

8. No case is made out for interference.

9. Admission is declined.

10. Writ Petition is **dismissed.**

Petition dismissed

I.L.R. 2023 M.P. 1989

Before Mr. Justice Sanjay Dwivedi

WP No. 17086/2022 (Jabalpur) decided on 12 June, 2023

SOUTH EASTERN COALFIELDS LTD. & anr. …Petitioners

Vs.

THE CHIEF LABOUR COMMISSIONER & anr. …Respondents

***A. Industrial Employment (Standing Orders) Act (20 of 1946), Section 10 & 13-A – Modification of Standing Order* – Held – Once Standing Order is finally certified then u/S 10, it can be modified before expiry of 6 months from date of its final certification that too by an agreement between employer and workmen, but thereafter it cannot be modified – Although if any difficulty arises in application/interpretation of the Order, employer or workman can approach Labour Court u/S 13-A of the Act. (Para 15)**

क. औद्योगिक नियोजन (स्थायी आदेश) अधिनियम (1946 का 20), धारा 10 व 13–A – स्थायी आदेश का उपांतरण – अभिनिर्धारित – एक बार स्थायी आदेश अंतिम रूप से प्रमाणित हो जाए तो धारा 10 के अंतर्गत, उसे उसके अंतिम प्रमाणीकरण की तिथि से 6 माह समाप्त होने के पूर्व उपांतरित किया जा सकता है, वह भी नियोक्ता एवं कर्मकार के मध्य एक करार द्वारा परन्तु उसके पश्चात् उसे उपांतरित नहीं किया जा सकता – यद्यपि आवेदन/आदेश के निर्वचन में यदि कोई कठिनाई उत्पन्न होती है, नियोक्ता अथवा कर्मकार अधिनियम की धारा 13–A के अंतर्गत श्रम न्यायालय के समक्ष जा सकता है।

***B. Industrial Employment (Standing Orders) Act (20 of 1946), Section 10 & 13-A – Modification of Standing Order – Jurisdiction of CLC* – Held – Merely because representation was filed by R-2 before CLC and when it remained undecided, sought direction from Delhi High Court for CLC to decide representation, does not mean that CLC acquired jurisdiction to modify Standing Order which is already certified on 08.07.1991 – Order of CLC is without jurisdiction and is set aside – Aggrieved party may avail remedy u/S 13-A of the Act – Petition allowed. (Paras 15 to 17)**

ख. औद्योगिक नियोजन (स्थायी आदेश) अधिनियम (1946 का 20), धारा 10 व 13–A – स्थायी आदेश का उपांतरण – मुख्य श्रम आयुक्त की अधिकारिता – अभिनिर्धारित – मात्र क्योंकि प्रत्यर्थी क्र. 2 द्वारा मुख्य श्रम आयुक्त के समक्ष अभ्यावेदन प्रस्तुत किया गया था और जब उसका विनिश्चय नहीं किया गया, तो अभ्यावेदन विनिश्चित करने हेतु दिल्ली उच्च न्यायालय से मुख्य श्रम आयुक्त के लिए निदेश चाहा गया, इसका यह अर्थ नहीं है कि मुख्य श्रम आयुक्त ने स्थायी आदेश जो कि दिनांक 08.07.1991 को पहले से ही प्रमाणित है, को उपांतरित करने हेतु अधिकारिता अर्जित कर ली है – मुख्य श्रम आयुक्त का आदेश बिना अधिकारिता का है एवं अपास्त किया गया – व्यथित पक्षकार अधिनियम की धारा 13–A के अंतर्गत उपचार का उपभोग कर सकता है – याचिका मंजूर।

***C. Industrial Employment (Standing Orders) Act (20 of 1946), Section 5(2) & 6 – Appeal – Alternative Remedy* – Held – Appeal can be filed u/S 6 against an order of certifying officer passed u/S 5(2) of the Act – In instant case, impugned order is not an order passed by CLC u/S 5(2) – Therefore plea of alternative remedy of appeal u/S 6 is not tenable. (Para 11)**

ग. औद्योगिक नियोजन (स्थायी आदेश) अधिनियम (1946 का 20), धारा 5(2) व 6 – अपील – वैकल्पिक उपचार – अभिनिर्धारित – अधिनियम की धारा 5(2) के अंतर्गत प्रमाणकर्ता अधिकारी द्वारा पारित आदेश के विरूद्ध धारा 6 के अंतर्गत अपील प्रस्तुत की जा सकती है – वर्तमान प्रकरण में, आक्षेपित आदेश धारा 5(2) के अंतर्गत मुख्य श्रम आयुक्त द्वारा पारित आदेश नहीं है – अतः धारा 6 के अंतर्गत अपील के वैकल्पिक उपचार का अभिवाक् मान्य नहीं है।

***D. Industrial Employment (Standing Orders) Act (20 of 1946), Section 10 & 13-A – Territorial Jurisdiction* – Held – Standing Order which is directed to be amended by CLC is also applicable to employees working in mines of State of M.P. – Writ petition can be entertained by this Court – Petition maintainable.**

(Paras 8 to 10)

घ. औद्योगिक नियोजन (स्थायी आदेश) अधिनियम (1946 का 20), धारा 10 व 13–A – क्षेत्रीय अधिकारिता – अभिनिर्धारित – स्थायी आदेश जिसे मुख्य श्रम आयुक्त द्वारा संशोधित किये जाने का निदेश दिया गया है, वह म.प्र. राज्य की खान में कार्य करने वाले कर्मचारियों पर भी लागू होता है – रिट याचिका को इस न्यायालय द्वारा ग्रहण किया जा सकता है – याचिका पोषणीय है।

***E. Constitution – Article 226 – Delay* – Held – If any order passed by authority/Court is without jurisdiction, it can be assailed at any time.**

(Para 16)

ङ संविधान – अनुच्छेद 226 – विलंब – अभिनिर्धारित – यदि प्राधिकारी/न्यायालय द्वारा पारित कोई आदेश अधिकारिता के बिना है, तो उसे किसी भी समय चुनौती दी जा सकती है।

Cases referred:

(2022) 3 SCC 133, (2019) 15 SCC 633, 2013 OnLine MP 6875, WP No. 16517/2016 order passed on 21.07.2017, (2014) 9 SCC 329, (2004) 8 SCC 706, AIR 2008 SC 1315.

Brian D'Silva with *Anoop Nair*, for the petitioners.
Devesh Bhojne, for the respondent No. 1.
N.S. Ruprah, for the respondent No. 2.

ORDER

SANJAY DWIVEDI, J.:- The instant petition is pending since 2022. The

pleadings are complete and with the concurrence of learned counsel for the parties, who are ready to argue it finally, the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners are questioning the validity and correctness of the order dated 03.05.2017 (Annexure-P/1) and order dated 19.05.2022 (Annexure-P/2).

3. The facts in compendium are that the petitioner - South Eastern Coalfields Limited (SECL) is one of the subsidiary companies of the Coal India Limited which is under the administrative control of Ministry of Coal, Government of India. The Company has various mines in the State of Madhya Pradesh and State of Chhattisgarh.

The provisions of Industrial Employment (Standing Orders) Act, 1946 (for brevity "Act, 1946") is applicable to the petitioner-company. The Standing Orders were made so as to govern the service conditions of the Wage Board Employees i.e. non-executive staff or workmen of SECL. The Standing Orders were certified by the Regional Labour Commissioner (Central) Bombay way back on 08.07.1991.

The certified Standing Orders do not contain any provision showing the disciplinary authority for taking disciplinary action against the Wage Board Employees. However, Clause 2.3 of the certified Standing Orders provides "competent authority" means an officer specially nominated by the Chairman/Managing Director concerned by an order in writing for the purpose of these standing orders. Such orders shall be put on Notice Board and copies sent to the concerned registered trade unions. In terms of the clause containing "Competent Authority" office order was issued by the-then Chairman-cum-Managing Director, SECL on 31.03.2008 and on 01.04.2008 (Annexure-P/5) mentioning various authorities to exercise the power of 'Competent Authority' for all the provisions of the certified Standing Orders of SECL.

Appointment letters of non-executive cadre i.e. Wage Board Employees is issued either by Area General Manager or Area Personnel Manager after the approval of Area General Manager and for those who are employed at Headquarters Bilaspur by General Manager (P&A).

Respondent No.2, who was employee of SECL filed an application on 16.01.2015 (Annexure-P/16) before the Chief Labour Commissioner (Central) Delhi (for short "CLC") with regard to delegation of power given to various officers of SECL for taking action against the Wage Board Employees of company. The said claim of respondent No.2 was based upon an information given under the Right to Information Act saying that the Director (P) is the appointing authority and then the CLC started the conciliation process in which the officers of the petitioner-company participated and submitted a reply.

Thereafter, vide impugned order dated 03.05.2016, the CLC directed the petitioner-company to amend the certified Standing Orders with regard to delegation of power. Subsequently, after examining the order dated 03.05.2016, the petitioner-company noticed certain discrepancies based on which the incorrect interpretation was done by the CLC.

Thereafter, the petitioner-company preferred a review application before the CLC on 25.02.2020 which was dismissed vide order dated 19.05.2022. Hence this petition.

4. The impugned order has been assailed on the ground that the authority failed to see that the Area General Manager was the appointing authority and General Manager (P&A) for those employed at SECL headquarters, but not the Director (Personnel) as held by the CLC. The Standing Order very clear describes the 'competent authority' and as per the said clause the Chairman-cum-Managing Director has legally nominated the officers to take appropriate action in the disciplinary matters. As per the petitioners, there is no material available on record to indicate that the Director (Personnel) is the appointing authority. According to the petitioners, the CLC ought to have corrected his order.

5. Shri N.S.Ruprah, learned counsel appearing for respondent No.2 raised an objection with regard to maintainability of the petition on the ground that this Court has no territorial jurisdiction to entertain the petition. He submitted that the whole case relates to an issue raised by respondent No.2 who resides at Bilaspur (Chhattisgarh) in which the order was passed by the CLC wherein the petitioners were the non-applicants whose headquarters is at Bilaspur, therefore, at the most the petition could have been filed either before the High Court of Chhattisgarh or before the Delhi High Court. He has also raised an objection saying that this petition suffers from delay and laches as the order was originally passed on 03.05.2016, but review application was filed on 25.02.2020 after delay of almost four years without explaining proper reasons as to why the review application was filed belatedly. According to him, the cause of action does not accrue on the date of dismissal of review application whereas it started from the date of passing the original order by the CLC. According to him, an alternative remedy of appeal is available to the petitioners and without availing the same, this petition cannot be entertained. According to him, Section 6 of the Standing Order clearly provides an alternative remedy of filing an appeal and without availing the same, this petition cannot be entertained. Lastly, he submitted that this petition deserves dismissal on merits too. To reinforce his contentions, he placed reliance on various decisions *in re Union of India v. Alapan Bandyopadhyay* (2022) 3 SCC 133; *Union of India v. C. Girija and others* (2019) 15 SCC 633; *Santosh Singh v. State of M.P. and others* 2013 OnLine MP 6875 and further relied upon an order dated 21.07.2017 passed by this Court in W.P.No.16517/2016 (*Koyla Udhog Kamgar Sangathan v. Chief Labour Commissioner(C)*.

6. I have patiently heard the submissions of learned counsel for the rival parties and thoroughly perused the record with vigilantism.

7. At first, I feel it apposite to deal with the objection relatable to territorial jurisdiction of this Court and about the maintainability of writ petition on that count inasmuch as if it holds the field, all else would fall apart leaving nothing on surface to adjudicate.

8. Indeed, the impugned order has been passed by CLC on an application filed by respondent No.2, who is resident of Bilaspur (Chhattisgarh). The petitioner-company was non-applicant therein having its headquarters at Bilaspur. The description of non-applicant as shown in impugned order of CLC is 'Chairman-cum-Managing Director, SECL, Seepat Road, Bilaspur (Chhattisgarh)'. As per Shri Ruprah, since there accrues no cause of action within the territorial limit of this Court's jurisdiction, therefore, the petition cannot be entertained. While fulminating about the filing of this petition, he submitted that at-best the petition should have been filed before the Delhi High Court or before the High Court of Chhattisgarh. To strengthen his contentions, he placed reliance on the decision *in re Alapan Bandyopadhyay* (supra) wherein the Principal Bench of CAT New-Delhi exercising the power provided under Section 25 of the Administrative Tribunal Act, 1985 passed an order thereby transferred the case pending before CAT Bench at Calcutta to the Principal Bench, New-Delhi and that order was assailed before the High Court of Calcutta, which got set aside. The Supreme Court observed that the Calcutta High Court usurped the jurisdiction to entertain the petition against the order passed by the Principal Bench of CAT New-Delhi and therefore the order passed by the Calcutta High Court was held 'without jurisdiction'. It is also observed by the Supreme Court that the order passed by the Principal Bench of CAT New-Delhi can be assailed only before the High Court of Delhi. According to Shri Ruprah in the case at hand also, the order passed by CLC cannot be put to test before this Court as no cause of action accrues within the territorial jurisdiction of this Court and therefore the petition becomes dismissive on this count alone.

9. In repartee Shri D'Sliva, learned senior counsel appearing for the petitioners submitted that direction issued by the CLC for amending the Standing Orders has direct implication over the petitioner-company inasmuch as it is one of the subsidiary companies of Coal India Limited and the petitioner-company has various mines in the State of Madhya Pradesh and State of Chhattisgarh. According to learned senior counsel, the provisions of Act, 1946 are applicable to the company and in pursuance to the provisions of said Act, the Standing Order has been made by the Company to govern certain aspect of service conditions of the Wage Board Employees i.e. non-executive staff or workmen of SECL. He submitted that the said Standing Orders are also applicable to the employees working in the mines of State of Madhya Pradesh and whatever direction issued by CLC in a case filed before it by

respondent No.2, has to be implemented in the State of M.P. also and since the order of CLC extricated the right of the petitioners, therefore, they filed a review application before the CLC. Although the review application was not entertained, but the same gave cause of action to the petitioners to challenge the order of CLC before this Court. Moreover, learned Senior counsel submitted that this Court has jurisdiction to entertain the petition in view of the observation made by CLC in paragraph 4, which says that it is the Regional Labour Commissioner (C) Jabalpur who was appropriate authority with proper jurisdiction to certify the model Standing Order of SECL Bilaspur. He accentuated that when the order modifying the model Standing Officer of SECL has been passed by the CLC, the company of Jabalpur SECL has jurisdiction to challenge the said order and therefore they filed review application, although unfortunately that review faced dismissal.

10. Reverently, I have examined the decision, on which respondent No.2 has placed reliance, in which the order was passed by the Principal Bench of CAT New-Delhi while exercising the power provided under Section 25 of the Act, calling the pending case from Calcutta High Court. The said original order of CAT New-Delhi, according to the Supreme Court, cannot be challenged before Calcutta High Court, but in that very judgment, the Supreme Court has also appreciated its another decision *in re Nawal Kishore Sharma v. Union of India and others* (2014) 9 SCC 329, wherein it has been held as under:-

> "16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction."

Juxtaposing the view taken by the Supreme Court *in re Nawal Kishore Sharma* (supra) with the submissions made by the learned counsel for the petitioners that the Standing Order which is directed to be amended by the CLC is also applicable to the employees working in the mines situated within the State of Madhya Pradesh and therefore the writ petition can be entertained by this Court, in my considered view, the objection about maintainability of petition before this Court for want territorial jurisdiction is not insurmountable thus, rejected.

11. Of a note, Shri Ruprah has also raised objection about the maintainability of the petition on the ground that the petitioners have not availed the alternative remedy provided under Section 6 of Act, 1946. To fathom the depth of this objection, it would be indispensable to quote Section 6, which is as follows:-

> **"6. Appeals;-** (1) Any employer, workman, trade union or other prescribed representative of the workmen aggrieved by the order of the Certifying Officer under sub-section (2) of section 5 may, within thirty days from the date on which copies are sent under sub-section (3) of that section, appeal to the appellate authority, and the appellate authority, whose decision shall be final, shall by order in writing confirm the standing orders either in the form certified by the Certifying Officer or after amending the said standing orders by making such modifications thereof or additions thereto as it thinks necessary to render the standing orders certifiable under this Act.
>
> (2) The appellate authority shall, within seven days of its order under sub-section (1), send copies thereof of the Certifying Officer, to the employer and to the trade union or other prescribed representatives of the workmen, accompanied, unless it has confirmed without amendment the standing orders as certified by the Certifying Officer, by copies of the standing orders as certified by it and authenticated in the prescribed manner."

Perusal of Section 6 clarifies that the appeal can be filed being aggrieved by the order of certifying officer passed under sub-section (2) of Section 5. However, it is clear from the order which is impugned in this petition passed by CLC is infact not an order under sub-section (2) of Section 5. For the purpose of convenience Section 5 is reproduced hereinbelow.

> **"5. Certification of standing orders;-** (1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with notice in the prescribed form requiring objections, if any, which the workmen may desire to make tot he draft standing orders to be submitted to him within fifteen days from the receipt of the notice.
>
> (2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed, an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition tot he draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.
>
> (3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order

> under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen."

Sub-section (2) of Section 5 deals with the situation when any draft Standing Order is prepared and is placed before the Trade Union and in absence of it before the workman inviting objection, if any, and after giving opportunity to the Trade Union or such other representative of workmen, the certifying officer shall decide whether any modification of or addition to the draft submitted by the employer is necessary to render the draft certifiable under this Act and then shall make an order in writing accordingly. This exercise is contemplated under Sub-section (2) of Section 5 and that order is appealable under Section 6. In the case at hand, the Standing Order indubitably got prepared and certified on 08.07.1991 and is available on record as Annexure-P/3 and P/4. Therefore, in my opinion, the objection raised by the counsel for respondent No.2 with regard to availability of statutory alternative remedy of appeal as per Section 6 of Act, 1946 is without any substance because such remedy is not applicable in the fact-situation of the case at hand as the impugned order is not an order passed under Sub-section (2) of Section 5 by the certifying officer. Of a further note, if at all, any order is passed under Sub-section (2) of Section 5, it can be assailed only within 30 days from the date when copies of the order are sent under sub-section (3) of Section 5. Thus, the impugned order is not appealable as per the requirement of Section 6. Ergo, this objection being misconceived, is hereby overruled.

12. Shri Ruprah has also tried to raise clouds over the petition on the ground of delay. According to him, the impugned order was passed on 03.05.2016 whereas the review application was filed on 25.02.2020 i.e. after almost four years and the order on review application was passed on 19.05.2022. The instant petition has been filed on 22.07.2022 without explaining the delay for not challenging the original order passed on 03.05.2016. As per the counsel, in view of the decision *in re C. Giriraj* (supra), merely because review filed and entertained although dismissed by the authority, did not give any fresh cause of action to the petitioners for challenging the original order.

13. Instinctively, I feel it insignificant here to touch the question of delay, but at the same time it is kept intact to answer at later part of this order with emerging reasons.

14. Albeit, multifarious counter submissions have been urged by rival litigators in favour/against the impugned order, but something unspoken hung in the air about the jurisdictional limit of the CLC. A deeper look to the submissions and perusal of record vis-a-vis the provisions of Act, 1946, a pivotal question drifted toward the surface is whether the impugned order passed by CLC is within or beyond its jurisdiction.

15. From perusal of the impugned order, it is clear that the authority has observed that the model Standing Order of SECL was certified on 08.07.1991 by the-then RLC (C) Bombay namely Shri S.K. Mukhopadhyay. This observation is made in paragraph 10 of the impugned order giving seal of approval by CLC to the Standing Order of SECL Bilaspur. Once it is found that the Standing Order is finally certified then under Section 10 of the Act, 1946, it can be modified before the expiry of six months from the date of its final certification, that too by an agreement between the employer and the workmen, but thereafter it cannot be modified. Glimpse of Section 10 is expedient therefore it is reproduced hereunder:-

> **"10. Duration and modification of standing orders**;-
>
> (1) Standing orders finally certified under this Act shall not, except on agreement between the employer and the workmen or a trade union or other representative body of the workmen, be liable to modification until the expiry of six months from the date on which the standing orders or the last modification thereof came into operation.
>
> (2) Subject to the provisions of sub-section (1), an employer or workman or a trade union or other representative body of the workmen may apply to the Certifying Officer to have the standing orders modified, and such application shall be accompanied by five copies of the modifications proposed to be made, and where such modifications are proposed to be made by agreement between the employer and the workmen or a trade union or other representative body of the workmen, a certified copy of that agreement shall be filed along with the application.
>
> (3) The foregoing provisions of this Act shall apply in respect of an application under sub-section (2) as they apply to the certification of the first standing orders.
>
> (4) Nothing contained in sub-section (2) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra."

The aforesaid provision makes it clear that once Standing Order is certified, where even within the expiry of six months no modification or amendment got done therein, then further there cannot be any modification made therein by any certifying officer. Once the period as has been specified under Section 10 of Act, 1946 is over and procedure prescribed therein is remained un-adopted for seeking any modification in the Standing Order, there is no other remedy available for seeking modification, although Section 13-A of Act, 1946 provides if any difficulty arises in the application or interpretation of the Standing Order then

employer or workmen can approach the Labour Court. Section 13A of Act, 1946 is quoted hereunder for ready reference;-

> **"13A Interpretation, etc., of standing orders;-** If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman or a trade union or other representative body of the workmen may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947(14 of 1947), and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties."

Considering the aforesaid provision, it crystallizes that after certifying the Standing Order finally as per Section 10 of Act, 1946, no other remedy is available under the Act, 1946 to seek modification in the Standing Order except for availing the remedy as provided under Section 13A of Act, 1946. As a matter of fact, neither employer nor workmen applied the said remedy, although a representation was made by respondent No.2 to CLC pinpointing the defect in the Standing Order, which got finally certified on 08.07.1991. The impugned order also depicts that against the said Standing Order, appeal was also preferred under Section 6, but that appeal was also decided and thereafter the order passed by the appellate authority has attained finality and was binding upon the parties as per the provisions of Section 6 of Act, 1946. Thus, in my opinion merely because representation was filed by respondent No.2 before CLC and when the representation remained undecided, sought direction from Delhi High Court for CLC to decide the representation, does not mean that CLC acquired the jurisdiction to pass an order directing employer to modify the Standing Order which is already certified on 08.07.1991. The order passed by the CLC is accordingly without any jurisdiction.

16. Astoundingly, the question of jurisdiction has not been raised by the litigators, but since it goes to the root of the matter and successively got emerged, therefore, to meet the ends of justice, such question is decided by this Court. Essentially, the consideration on the point of delay was left intact in preceding paragraph, however, in view of discourse made hereinabove, I am reluctant to deal with the point of delay inasmuch as it is a settled principle of law that if any order passed by the authority/court is without jurisdiction, it can be assailed at any time.{Reference is made from the decisions *in re Balvant N. Viswamitra and others v. Yadav Sadashiv Mule (dead) through LRs and others* (2004) 8 SCC 706 and *Chief Engineer, Hydel Project & Ors. v. Ravinder Nath & Ors.* AIR 2008 SC 1315}. Thus, on mature consideration, I find the impugned order dated 03.05.20216 (Annexure-P/1) passed by CLC as without jurisdiction and is hereby

set aside and consequent thereto, order dated 19.05.2022 (Annexure-P/2) is also set aside.

17. *Ex consequentia,* the petition is **allowed.** However, at the closing juncture, it needs to be emphasized that the aggrieved party may avail the remedy provided under Section 13A of Act, 1946. If that is done, the competent court will decide the appeal in accordance with law.

Petition allowed

I.L.R. 2023 M.P. 1999

Before Mr. Justice Pranay Verma

WP No. 24141/2022 (Indore) decided on 30 June, 2023

KIRTI BUGDE (BHAGWAT) (SMT) …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Civil Services (Leave) Rules, M.P. 1977, Rule 38(C) – Child Care Leave* – Held – Petitioner resisted her transfer order and had thereafter remained on medical leave and had applied for CCL thereafter and despites the same not having been granted remained on such leave on her own for a period of 6 months and after rejoining again made an application within a short span of time for grant of CCL to her – It is clear that for one reason or the other, petitioner is only interested in obtaining leave and has no desire to work – Petition dismissed. (Paras 14 to 21)**

क. सिविल सेवा (अवकाश) नियम, म.प्र. 1977, नियम 38(C) – संतान पालन अवकाश – अभिनिर्धारित – याची ने अपने स्थानांतरण आदेश का प्रतिरोध किया और उसके बाद चिकित्सा अवकाश पर रही एवं तत्पश्चात् संतान पालन अवकाश हेतु आवेदन किया तथा उक्त प्रदान न किये जाने के बावजूद वह 6 माह की अवधि के लिए अपने आप से ऐसे अवकाश पर रही एवं पुनः कार्य पर वापस आने के पश्चात् बहुत कम समय के भीतर उसे संतान पालन अवकाश प्रदान किये जाने के लिए पुनः आवेदन किया – यह स्पष्ट है कि किसी न किसी कारण से, याची केवल अवकाश प्राप्त करने में इच्छुक है एवं कार्य करना नहीं चाहती – याचिका खारिज।

***B. Civil Services (Leave) Rules, M.P. 1977, Rule 38(C)(4-b) – Child Care Leave – Probation Period* – Held – The leave shall ordinarily not be sanctioned during probation period – Sanctioning of leave during probation period has also been made subject to existence of special circumstances. (Para 11)**

ख. सिविल सेवा (अवकाश) नियम, म.प्र. 1977, नियम 38(C)(4–b) – संतान पालन अवकाश – परिवीक्षा अवधि – अभिनिर्धारित – परिवीक्षा अवधि के दौरान

साधारणतया अवकाश मंजूर नहीं किया जाएगा – परिवीक्षा अवधि के दौरान अवकाश की स्वीकृति को भी विशेष परिस्थितियों के विद्यमान होने के अध्यधीन बनाया गया है।

***C. Constitution – Article 226 – Child Care Leave – Entitlement* – Held – From service book, it is evident that in the year 2022 petitioner has worked only for 48 days and has availed all sorts of leave including casual leave and earned leave and has also on various occasions been absent without any leave – Conduct of petitioner shows that she used provisions of CCL only as a pretext for obtaining leave – Such conduct disentitles her for grant of any relief in exercise of extraordinary jurisdiction under Article 226 of Constitution. (Para 19 & 20)**

ग. संविधान – अनुच्छेद 226 – संतान पालन अवकाश – हकदारी – अभिनिर्धारित – सेवा पुस्तिका से, यह सुव्यक्त है कि वर्ष 2022 में याची ने केवल 48 दिन कार्य किया है एवं आकस्मिक अवकाश तथा अर्जित अवकाश समेत सभी प्रकार के अवकाशों का उपभोग कर लिया है एवं विभिन्न अवसरों पर बिना किसी अवकाश के भी अनुपस्थित रही है – याची का आचरण यह दर्शाता है कि उसने अवकाश प्राप्त करने के लिए केवल बहाने के रूप में संतान पालन अवकाश के उपबंधों का प्रयोग किया – ऐसा आचरण उसे संविधान के अनुच्छेद 226 के अंतर्गत असाधारण अधिकारिता के प्रयोग में कोई भी अनुतोष प्रदान किये जाने के हक से वंचित करता है।

Cases referred:

WP No. 828/2017 decided on 05.05.2017, WP No. 4837/2016 decided on 08.02.2017, WP No. 20592/2016 decided on 03.08.2017, WP No. 18589/2017 decided on 12.07.2018, WP No. 10451/2018 decided on 03.09.2019, CWP No. 21506/2017 decided on 10.10.2017 (Punjab and Haryan High Court), W.P. (S/B) 263/2019 decided on 24.07.2020 (Uttarakhand High Court), WPA No. 30811/2017 decided on 24.02.2022 (Calcutta High Court).

Manjula Mukati, for the petitioner.

Koustubh Pathak, G.A. for the respondents.

ORDER

PRANAY VERMA, J.:- By this petition preferred under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs:

> **a) set aside the show-cause notice dated 31.03.2022 (Annexure, P-8) issued by the respondent No. 3 regarding rejection: of petitioner's application of child care leave;**
>
> **b) set aside the show cause notice No. 2490 dated 02.06.2022 (Annexure P-10) issued by the respondent No. 2;**
>
> **c) set aside the letter dated 02. 06. 2022 (Annexure. p- 11)**

d) issued by the respondent No. 3 regarding rejection of petitioner's application of child care leave;

e) direct the respondents to sanction the Child Care Leave of the petitioner according to the law;

f) direct the respondents to release the salary of the' petitioner a since January 2022 after regularizing her ChildCare Leave from 14.03.2022 to 14.09. 2022; and

g) grant any other relief as this Hon'ble court may deem fit.

2. The facts of the case are that the petitioner was granted compassionate appointment on the post of Assistant Grade-III in Backward Classes and Minorities Welfare Department on 10.03.2017. By order dated 04.08.2021 she was transferred from District Mandsaur where she was posted at that time to District Dewas. Being aggrieved by her transfer order, the petitioner preferred Writ Petition No.14929 of 2021 before this Court which was disposed off vide order dated 12.08.2021 directing her to make a representation before the competent authority who was directed to decide the same. In pursuance of the said order, the petitioner made a representation on 16.08.2021 before respondent No.2. During pendency of her representation, she submitted an application on 22.10.2021 for her regularization on the post of Assistant Grade-III. Her representation against her transfer order was rejected by respondent No.1 on 29.12.2021 on the ground of non-availability of a typist at Dewas office. On 11.01.2022, 08.02.2022 and 24.02.2022 petitioner made applications for grant of medical leave to on ground of her illness. While petitioner was on medical leave, she was relieved from Mandsaur by order dated 21.01.2022 passed by the Joint Director. The petitioner did not join at her transferred place as she was on medical leave. After completion of her medical leave, petitioner gave her joining before respondent No.4 on 24.02.2022.

3. On 24.02.2022 itself petitioner made an application under Rule 38 (C) of M.P. Civil Services (Leave) Rules, 1966 (sic: 1977) for grant of Child Care Leave (hereinafter referred to as 'CCL') to her for a period of six months i.e. from 14.03.2022 to 14.09.2022. She did not receive any response on her application hence by letter dated 11.03.2022 to respondent No.4 she communicated that she is proceeding with her CCL awaiting confirmation of the same from the competent authority. By letter dated 14.03.2022 petitioner was communicated that as her service record was not available in the office and she had not made the application prior to three weeks (21 days) from the date leave was sought it is not possible to take a decision upon her application. Once the service record is received the application shall be considered. The petitioner however proceeded with her CCL for the duration mentioned in her application.

4. On 31.03.2022 respondent No.2 issued a show cause notice to petitioner to explain the delay of 36 days in giving her joining at her new place of posting.

Her absence from 18.01.2022 up to 23.02.2022 was treated as unauthorized absence. On 08.04.2022 petitioner submitted her reply to the show cause notice after which no action was taken in the matter. On 02.06.2022 another notice was issued to petitioner by respondent No.2 stating that her application for CCL had been rejected on 14-03-2022 since the same was not submitted three weeks prior to the leave and she had been directed to return on duty but she has not done so and has remained absent. The petitioner was directed to show cause as to why her two increments should not be stopped without cumulative effect. On 02.06.2022 itself respondent No.3 issued a letter to respondent No.5 regarding rejection of CCL to the petitioner. Respondent No.4 also thereafter directed petitioner to report for duty immediately. She did not do so and on 08.06.2022 submitted reply to the show cause notice dated 02.06.2022.

5. The petitioner continued to remain absent from duty and after completion of the period for which CCL had been sought for by her in her application, she re-joined her duties on 15.09.2022. Thereafter, on 17.10.2022 she again submitted an application before respondent No.5 for grant of CCL to her from 09.11.2022 up to 09.04.2023 stating that her younger daughter is in 12th standard and she is required to make herself available during that period. The said application was not decided by the respondents. As per the petitioner she has not been paid her salary since January, 2022 despite having submitted applications before respondents No.2 & 5 in that regard. On such contentions, the instant petition has been preferred by petitioner claiming the reliefs as aforesaid.

6. Learned counsel for the petitioner has submitted that the respondents have illegally issued the show cause notice to her for availing CCL from 14.03.2022 up to 14.09.2022. Her application for CCL was not declined expressly and on the contrary by letter dated 14.03.2022 she was communicated that it was not possible to take a decision on her application in absence of her service records. By her letter dated 11.03.2022 petitioner had categorically submitted before respondent No.5 that she is proceeding to avail CCL awaiting confirmation of her application in which there was nothing wrong. Her application for CCL has been subsequently rejected by the respondents illegally and arbitrary without any genuine reason and on the contrary show cause notice was issued to her. The petitioner is entitled to avail CCL for 730 days in her carrier to take care of her children. She has not availed the entire duration of such leave. There has not been any fault on her part. Her application for CCL made on 17.10.2022 is very much necessary to be allowed but the same has not been considered by the respondents. Reliance has been placed on the decisions of this Court in *Smt. Shalini Saxena and others vs. State of M.P. and others,* W.P. No.828 of 2017 decided on 05.05.2017, *Smt. Vimlesh Verma vs. State of M.P. and others,* W.P. No.4837 of 2016 decided on 08.02.2017, *Smt. Ratna Tripathi vs. State of M.P. and others,* W.P. No. 20592/2016 decided on 03.08.2017, *Smt. Pragati Gupta vs. State of M.P. and others* W.P. No.18589/2017 decided on 12.07.2018, *Smt. Sunita Meena vs. State of M.P. and*

others W.P. No.10451/2018 decided on 03.09.2019, of Punjab and Haryana High Court in *Dr. Kanchanbala Vs. State of Haryana and others,* CWP No. 21506 of 2017 decided on 10.10.2017, of Uttarakhand High Court in *Smt. Tanuja Toliya vs. State of Uttarakhand and another* W.P. (S/B) 263/2019 decided on 24.07.2020 and of the Calcutta High Court in *Chhabirani Sinha @ Chhabirani Sinha (Deoyan) vs. State of West Bangal and Others,* WPA No.30811/2017 decided on 24.02.2022 to submit that it is the right of petitioner to be granted CCL which cannot be denied particularly when the same is not for her benefit but is for the benefit of her child.

7. Reply has been filed by the respondents and learned counsel for the respondents has submitted that petitioner proceed on CCL without sanction from the competent authority. Taking cognizance of her act who was relieved on 18.01.2022 but assumed her duties after 36 days, notice was issued to her for withholding two increments. The petitioner resisted her transfer order which was affected on account of administrative exigency. By letter dated 02.06.2022 petitioner was again served with notice stating that she has proceeded on CCL without sanction from competent authority and should show cause as to why action of withholding of two increments be not taken against her. It is mandatory in terms of Rule 6 (1)/ 2015 dated 22.08.2015 to submit an application at least three weeks prior to proceeding on leave. By order dated 13.10.2022 the Commissioner, Backward Classes and Minorities Welfare Department, Madhya Pradesh, Bhopal has held petitioner guilty for her conduct and penalty of withholding of one annual increment without cumulative effect has been imposed upon her. Though petitioner joined on 24.02.2022 but thereafter has never been to the office and reported for duty only on 14.09.2022. She has been present only for 49 days. She is a probationary hence during probation period no CCL can be granted to her except under exceptional circumstances. It is hence submitted that petition be dismissed.

8. I have heard the learned counsel for the parties and have perused the record.

9. The grievances of the petitioner are centered around the fact of non-grant of CCL to her. The provision of CCL was introduced by the State Government by way of a notification dated 22.08.2015 by amending Madhya Pradesh Civil Services (Leave) Rules, 1977 and inserting rule 38(C) therein. The said rule is as under :

> **38 (c) Child Care Leave :- (i) Subject to the provisions of this rule, a woman Government servant may be granted child care leave by the competent authority for a maximum of 730 days during her entire service for taking care of her two eldest surviving children.**

(2) The leave cannot be claimed as a matter of right.

(3) For the purposes of sub-rule (1), "Child" means:-

(a) a child below the age of eighteen years (including legally adopted child);

or

(b) a child below age of twenty two years with a minimum disability of forty percent as specified in Notification No.16-18/97-N1.1, dated the 1st June, 2001, Government of India, Ministry of Social Justice and Empowerment.

(4) Grant of child care leave to a woman government servant under sub-rule (1) shall be subject to the following conditions namely :-

(a) it shall not be granted for more than three spells in a calendar year. The leave availed even for a day, shall be counted as one spell. If the period of leave sanctioned continues into the next calendar year also then the spell shall be counted adjacent the year in which the leave was applied or in which major part of the leave applied falls. Calendar year means the period commencing from Ist January to 31st December of the year.

(b) it shall ordinarily not be sanctioned during the probation period. However, in special circumstances, if the leave is sanctioned during the probation period, then the probation period shall be extended by the period equivalent to the period for which the leave has been granted.

(5) During the period of child care leave, the woman Government servant shall be paid leave salary equal to the pay drawn immediately before proceeding on leave.

(6) Child care leave may be combined with leave of any other kind.

(7) The leave account shall be maintained separately and entry shall be made in the service book of the concerned woman government servant.

10. Sub Rule 2 of Rule 38©) in no uncertain terms states that the leave cannot be claimed as a matter of right. As per the circular dated 17-11-2015 of the State Government it is mandatory to give reasons in the application for which leave is being sought for. Thus, though the employee is entitled for the leave but it would not mean that such leave when sought for has to be granted no matter what the circumstances may be and that the employer has no discretion in the matter as

contended by the petitioner. While granting or declining to grant the leave, various relevant factors as then existing have to be necessarily taken into consideration and if after examining the matter from all angles there does not appear any plausible reason not to grant the leave, then the same should be granted. However, if there is any justifiable reason due to which it is found that leave cannot be granted, then the same can very well be refused for reasons to be recorded. Thus, the leave should ordinarily be granted but if circumstances so warrant, the same can very well be refused.

11. Sub Rule 4 (b) of Rule 38 (C) further provides that the leave shall ordinarily not be sanctioned during probation period. This sanctioning of leave during probation period has also been made subject to existence of special circumstances. If leave is sanctioned during probation period then the probation period shall be extended by the period equivalent to the period for which the leave has been granted. Thus, if a probationer wishes to avail the leave then it has to be satisfied by him/her that there exist such special circumstances which warrant grant of leave. This is an additional factor required to be fulfilled by a probationer to entitle her for CCL.

12. The question which requires determination in this petition is as to whether in the available facts and circumstances the leave ought to have been granted to petitioner and whether she being a probationer had made out special circumstances for grant of leave to her.

13. For determination of the aforesaid questions, the overall fact situation needs to be considered. The petitioner was granted compassionate appointment on 10.03.2017 and was eventually posted at Neemuch. By order dated 04.08.2021 the petitioner was transferred to Dewas. She resisted her transfer and approached this Court which directed for decision of her representation which was rejected by the respondents for the reason of non-availability of a typist at Dewas specifically mentioning that there is no other typist at Dewas meaning thereby that petitioner was the only typist. It is hence apparent that there was administrative exigency for petitioner to be posted at Dewas. Granting leave to her would have resulted in there being no typist at all.

14. Though the petitioner was relieved from Mandsaur on 21.01.2022 but joined at Dewas only on 24.02.2022 and submitted applications for grant of medical leave to her for that period. On 24-02-2022 itself she submitted an application for grant of CCL to her for a period of six months w.e.f.14.03.2022. The same was not made prior to three weeks from the date of commencement of leave as is mandatorily required. Though three weeks since making of her application had not expired and her application was not decided but even then she unilaterally proceeded on leave on 11-03-2022 itself in anticipation of grant of leave by merely sending an intimation in that regard. Such act of proceeding on leave in anticipation

of grant of leave and without there being a specific order sanctioning leave is totally unknown to law.

15. The application of petitioner was in fact considered on 14.03.2022 i.e. within the period of three weeks for making the same and it was observed that due to non-availability of her service record the same cannot be decided specifically mentioning that the same can be considered only after receipt of record. The fact remains that leave as sought for by petitioner was not granted to her. She hence had no right to proceed on leave on her own and to herself decide that the order deferring consideration of her application was erroneous and that leave ought to have been granted to her. Her application was not allowed and leaved as prayed for by her was not granted. She could have challenged such order in accordance with law but it was incumbent upon her to have immediately returned on duty. However, she did not do so and continued with her leave.

16. On 02.06.2022 an order was passed by respondent No.3 specifically rejecting the application of petitioner for CCL and she was directed to report on duty. The petitioner did not do so and continued with her leave despite specific directions. Instead, on 08.06.2022 she made an application for reconsideration of her application. The respondents were not obliged to reconsider her application since the same already stood rejected. The petitioner eventually reported for duty on 15.09.2022 i. e. after completing the period of six months of CCL as had been sought for by her.

17. Interestingly, though petitioner rejoined on 15.09.2022 but on 17.10.2022 itself she made another application for grant of CCL to her w.e.f.09.11.2022 for a period of six months. The aforesaid conduct of petitioner unmistakably shows that she is not in any manner interested in performing her duties. She had resisted her transfer order and had thereafter remained on medical leave and had applied for CCL thereafter and despite the same not having been granted remained on such leave on her own for a period of six months and after rejoining again made an application within a short span of time for grant of CCL to her. It is clear that for one reason or the other petitioner is only interested in obtaining leave and has no desire to work.

18. Though the petitioner has challenged Annexure P/8 dated 31.03.2022 rejecting her application for CCL but said Annexure is a show cause notice issued to her. It is not an order rejecting her application for CCL. The notice dated 02.06.2022 (Annexure P/10) has also been challenged but from the order dated 13.10.2022 (Annexure R/7) filed along with the return it is seen that petitioner has been inflicted penalty of stoppage of one increment without cumulative effect. This order has been passed pursuant to the show cause notice dated 02.06.2022 and has not been challenged by petitioner hence challenge to the show cause notice does not survive for consideration. The show cause notice dated

31.03.2022 is not required to be challenged by the petitioner since as per herself after filing of reply no further proceedings in the matter were taken. The notice hence automatically lost its efficacy.

19. Various judgments relied upon by the learned counsel for the petitioner have been rendered by this Court as well as by different High Court to the effect that CCL should generally be granted since the same is not for the benefit of the employee but is for the benefit of the child. But in the present case, the conduct of petitioner unmistakably shows that she has used the provision of CCL only as a pretext for obtaining leave and has failed to demonstrate that such leave was sought for by her for benefit of her child. In her application dated 14.03.2022 she did not even mention as to for which child and for what purpose leave has been sought for by her. In her second application she has stated that her daughter is in Class XII and she is required for her studies but looking to her previous conduct such reason cannot be believed.

20. From the service book of petitioner filed by the respondents it is evident that in the year 2022 she has worked only for 48 days and has availed all sorts of leave including causal (sic: casual) leave and earned leave and has also on various occasions been absent without any leave. Such conduct of petitioner disentitles her for grant of any relief to her in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. In the facts and circumstances of the case, it has to be necessarily held that petitioner has failed to make out a case that she was/is entitled for grant of CCL to her. The order passed by the respondents rejecting her application for that purpose cannot be found fault with.

21. In view of the aforesaid discussion, I do not find any merit in the petition which is accordingly dismissed. However, it is made clear that in future if petitioner makes an application for grant of CCL to her, then the same shall be considered and decided by the respondents on its own merits. The petitioner shall also be entitled for the salary for the period which she has worked.

Petition dismissed

I.L.R. 2023 M.P. 2007

Before Mr. Justice Sheel Nagu &
Mr. Justice Amar Nath (Kesharwani)

WP No. 15244/2023 (Jabalpur) decided on 9 August, 2023

AMRIT HOMES PVT. LTD. ...Petitioner

Vs.

DEPUTY COMMISSIONER OF INCOME TAX & anr. …Respondents

A. Income Tax Act (43 of 1961), Sections 148(1), 148A(b) & 148A(d) – Escaped Assessment – Show Cause Notice – Contents – Reasonable

Opportunity **– Held – Show cause notice should contain enough information and be so reasoned to disclose the intention of the Assessing Officer as regards factum of certain income having escaped assessment and his intention to re-open assessment of such income – Notice should be precise and concise satisfying the concept of reasonable opportunity – Impugned order and consequential notice were passed/issued after following due process of law – Petition dismissed. ` (Paras 6.2, 8.8, 9, 9.4, 9.6 & 12)**

क. आयकर अधिनियम (1961 का 43), धाराएँ 148(1), 148A(b) व 148A(d) – निर्धारण से छूट जाना – कारण बताओ नोटिस – सुनवाई का अवसर – अभिनिर्धारित – कारण बताओ नोटिस में पर्याप्त जानकारी अंतर्विष्ट होनी चाहिए तथा यह इतना तर्कसंगत होना चाहिए कि कतिपय आय के निर्धारण से छूट जाने के तथ्य के संबंध में निर्धारण अधिकारी के आशय तथा ऐसी आय के निर्धारण को पुनः आरंभ करने के उसके आशय को प्रकट कर सके – नोटिस को यथावत् एवं संक्षिप्त होना चाहिए जो कि पर्याप्त अवसर की संकल्पना को संतुष्ट करता हो – आक्षेपित आदेश और पारिणामिक नोटिस विधि की सम्यक् प्रक्रिया का पालन करने के पश्चात् पारित/जारी किया गया था – याचिका खारिज।

B. Income Tax Act (43 of 1961), Section 148A(b) – Escaped Assessment – Show Cause Notice – Opportunity of Hearing **– Held – Section 148A(b) provide for affording opportunity of hearing by way of show cause notice – Requirement of law is satisfied if show cause notice contains information which persuaded Assessing Officer to form an opinion that certain income has escaped assessment. (Para 8.8)**

ख. आयकर अधिनियम (1961 का 43), धारा 148A(b) – निर्धारण से छूट जाना – कारण बताओ नोटिस – सुनवाई का अवसर – अभिनिर्धारित – धारा 148A(b) कारण बताओ नोटिस के माध्यम से सुनवाई का अवसर प्रदान करना उपबंधित करती है – विधि की अपेक्षा पूर्ण होती है यदि कारण बताओ नोटिस में ऐसी जानकारी अंतर्विष्ट है जो निर्धारण अधिकारी को यह राय बनाने हेतु प्रेरित करती है कि कतिपय आय निर्धारण से छूट गई है।

C. Income Tax Act (43 of 1961), Section 148(1) & 148A(d) – Escaped Assessment – Inquiry – Procedure **– Held – Inquiry cannot be a detailed one where assessee is given opportunity of adducing evidence in support of his defence/response – This inquiry includes the obligation of Assessing Officer to supply reasons which are suggestive of a *prima facie* case revealing income chargeable to tax having escaped assessment. (Para 6.3)**

ग. आयकर अधिनियम (1961 का 43), धारा 148(1) व 148A(d) – निर्धारण से छूट जाना – जांच – प्रक्रिया – अभिनिर्धारित – जांच विस्तृत नहीं हो सकती जहां निर्धारिती को अपने बचाव/प्रतिक्रिया के समर्थन में साक्ष्य प्रस्तुत करने का अवसर प्रदान किया गया है – इस जांच में निर्धारण अधिकारी का ऐसे कारण प्रदान करने का दायित्व अंतर्वलित है जो कि निर्धारण से छूट गई कर योग्य आय को प्रकट करने वाले प्रथम दृष्ट्या प्रकरण को इंगित करते हों।

D. ***Income Tax Act (43 of 1961), Section 148A(b) – Show Cause Notice – Supply of Relevant Material/Evidence* – Held – Statute does not oblige Assessing Officer to supply relevant material/evidence in support of show cause notice which are the foundation for him to come to the *prima facie* view that income chargeable to tax has escaped assessment – The only duty cast upon the Assessing Officer is to supply information by mentioning the same in show cause notice issued u/S 148A(b) of the Act. (Paras 6.4, 6.5, 8.1 & 9.4)**

घ. आयकर अधिनियम (1961 का 43), धारा 148A(b) – कारण बताओ नोटिस – सुसंगत सामग्री/ साक्ष्य का प्रदाय किया जाना – अभिनिर्धारित – कानून निर्धारण अधिकारी को कारण बताओ नोटिस के समर्थन में सुसंगत सामग्री / साक्ष्य प्रस्तुत करने के लिए बाध्य नहीं करता है जो कि उसके लिए इस प्रथम दृष्टया दृष्टिकोण पर आने का आधार है कि कर योग्य आय निर्धारण से छूट गई है – निर्धारण अधिकारी को दिया गया एकमात्र कर्तव्य अधिनियम की धारा 148A(b) के अंतर्गत जारी कारण बताओ नोटिस में पूर्वकथित का उल्लेख करते हुए जानकारी प्रदान करना है।

E. ***Income Tax Act (43 of 1961), Section 148A – Issue of Notice – Prerequisites* – Held – Section 148A provides an additional opportunity to the assessee of being heard before reopening case of escaped assessment – Prerequisite before issuance of notice enumerated. (Para 6 & 6.1)**

ङ आयकर अधिनियम (1961 का 43), धारा 148A – नोटिस जारी किया जाना – पूर्वापेक्षाएं – अभिनिर्धारित – धारा 148A निर्धारण छूट जाने के प्रकरण को पुनः खोलने से पूर्व निर्धारिती को सुनवाई का एक अतिरिक्त अवसर उपबंधित करती है – नोटिस जारी करने के पूर्व पूर्वापेक्षा प्रगणित की गई।

F. ***Income Tax Act (43 of 1961), Section 148A – Aims & Object* – Discussed & explained. (Para 7.2)**

च. आयकर अधिनियम (1961 का 43), धारा 148A – लक्ष्य व उद्देश्य – विवेचित व स्पष्ट किया गया।

G. ***Interpretation of Statute – Taxing Statute* – Held – Taxing statute has to be interpreted literally – There is no intendment to taxing statute – Nothing can be implied from or read into a taxing statute – The words used in taxing statutory provision are required to be given their plain meaning. (Para 8 & 8.5)**

छ कानून का निर्वचन – कर कानून – अभिनिर्धारित – कर कानून का अक्षरशः निर्वचन किया जाना चाहिए – कर कानून का कोई अर्थान्वयन नहीं है – कुछ भी कर कानून से विवक्षित नहीं हो सकता अथवा उसमें पढ़ा नहीं जा सकता – कर संबंधी कानूनी उपबंध में प्रयोग किये गये शब्दों को स्पष्ट अर्थ देना आवश्यक है।

H. ***Constitution – Article 226 & 227 – Scope & Jurisdiction* – Held – The veracity and genuineness of material/evidence forming opinion of**

Assessing Officer suggesting that income of assessee has escaped assessment, ought not to be gone into while exercising writ jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of Constitution. (Para 11)

ज. संविधान – अनुच्छेद 226 व 227 – व्याप्ति व अधिकारिता – अभिनिर्धारित – निर्धारण अधिकारी की राय बनाने वाली सामग्री / साक्ष्य की सत्यता एवं वास्तविकता जो यह इंगित करती है कि निर्धारिती की आय निर्धारण से छूट गई है, को संविधान के अनुच्छेद 226 के अंतर्गत रिट अधिकारिता अथवा संविधान के अनुच्छेद 227 के अंतर्गत पर्यवेक्षण अधिकारिता का प्रयोग करते समय विचार में नहीं लिया जाना चाहिए।

Cases referred:

2023 SCC OnLine SC 237, 2003 (1) SCC 72, L 1921 (1) KB 64, 1961 (12) STC 122, 2000 (6) SCC 550, 2004 (10) SCC 201, 2005 (1) SCC 368, 2010 (8) SCC 739, 2018 (2) SCC 158, 2018 (9) SCC 1, 2023 (6) SCC 451, (2022) 139 taxmann.com 461 (Delhi), (2018) 99 taxmann.com 409 (Delhi), (2023) 146 taxmann.com 204 (Chhattisgarh).

G.N. Purohit with *Eshan Tripathi* and *Uma Parashar*, for the petitioner.
Siddharth Sharma, for the respondents.

O R D E R

The Order of the Court was passed by :
SHEEL NAGU, J.:- Instant petition filed u/A. 226 of the Constitution assails notice dated 28.04.2023 issued u/S 148 of Income Tax on the ground that order dated 28.04.2023 passed u/S.148A(d) of Income Tax Act does not satisfy the foundational prerequisite of Section 148A(d).

2. Submission of learned Senior Counsel - Shri G.N. Purohit while attacking the impugned order passed u/S 148A(d) is as follows:-

(i) Despite absence of any information suggesting that income chargeable to tax has escaped assessment, the impugned order u/S 148A(d) has been passed resulting in issuance of notice u/S 148.

(ii) Without taking into account the reply submitted by the petitioner/assesseee, the impugned order/notice have been issued/passed.

(iii) The notice u/S 148 is untainable on the anvil of statutory bar u/S 149(b) and also because of absence of books of accounts/documents/evidence revealing a case of escaped assessment.

3. Learned counsel for petitioner has relied upon the Coordinate Bench decision of this Court in *The Principal Commissioner of Income Tax -I Vs.*

Shri Pukhraj Soni rendered on 06.02.2019 and the decision of the Apex Court in *Red Chilli International Sales Vs. Income Tax Officer andanother,* 2023 SCC OnLine SC 237.

4. It is not disputed by petitioner that opportunity of being heard as contemplated by Section 148 A (b) & (c) was afforded by way of issuance of notice by the Revenue and obtaining reply of petitioner/assessee. However, the grievance is that information/evidence categorized as foundational material is not sufficient to suggest that any income chargeable to tax has escaped assessment with regard to the assessment year 2016-17. Thus the very nature and character of this information/evidence is questioned by petitioner/assessee.

4.1 The decision of the Co-ordinate Bench in *the Principal Commissioner of Income Tax -I* (supra) may not be of assistance to petitioner since it does not relate to Section 148A which was inserted in the Income Tax Act w.e.f. 01.04.2021. As regards decision of the Supreme Court in *Red Chilli International Sales* (supra), it is seen that the Division Bench of High Court of Punjab & Haryana had dismissed similar petition u/A. 226/227 of the Constitution filed by petitioner/assessee therein by refusing to interfere in the order passed u/S 148A(d) on the ground that since proceedings are yet to be concluded, interference ought to be avoided at premature stage, especially in the absence of any jurisdictional error and in the face of alternative statutory remedy of rectification of error. Pertinently, the decision of Punjab & Haryana High Court in the case of *Red Chilli International Sales* (supra) was assailed before the Apex Court which passed the following order:

> *"1. Delay condoned.*
>
> *2. We with the petitioner that the impugned judgment rejecting the writ petition on the ground of alternative remedy does not take into consideration several judgments of this Court, on the jurisdiction of High Court, as writ petitions have been entertained to be examined whether the jurisdiction preconditions for issue of notice under Section 148 of the Income Tax Act, 1961 is satisfied. The provisions of reopening under the Income Tax Act, 1961 have undergone an amendment by the Finance Act, 2021, and consequently the matter would require a deeper and in depth consideration keeping in view the earlier case law. Accordingly, we set aside the observations made by the High Court in the impugned judgment observing that the writ petition would not be maintainable in view of the alternative remedy, clarify that this issue would be examined in depth by the High Court if and when it arise for consideration. We do deem it open to examine this issue in the present case after having examined the notice under Section 148A (b) including the annexure thereto, the reply filed by the petitioner and the order under Section 148A(d) of the Income Tax Act, 1961.*

> *3. Recording the aforesaid, the special leave petition is disposed of. We clarify that the dismissal of the special leave petition would not be construed as a findings or observations on the merits on case.*
>
> *4. Pending application(s), if any, shall stand disposed of."*

5. The Apex Court while setting aside the judgment of Punjab & Haryana High Court in *Red Chilli International Sales* (supra) found that the High Court has not dealt with the provisions of new taxing regime introduced by Finance Act, 2021 and thus held that matter deserves a deeper probe. The Apex Court as such held that the Punjab & Haryana High Court ought not to have dismissed the petition merely on the ground of non-availing of alternative remedy but should have gone into the tenability of order u/S.148A(d) within the jurisdictional contours of Article 226/227 of Constitution.

5.1. From the aforesaid, it is evident as day light that the present petition which is also against the order u/S 148A(d) and the consequential notice u/S 148 of IT Act needs to be considered on the anvil of the grounds raised in this petition and also on the anvil of foundational prerequisites u/S 148A justifying issuance of an order u/S 148A (d) followed by notice u/S 148.

5.2 Section 148A was inserted in the IT Act by Finance Act, 2021 dated 01.04.2021, primarily to give effect to the ratio laid down by Apex Court in *GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and others,* 2003 (1) SCC 72 which *inter alia* held thus:

> *" 5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years. "*

6. Section 148A on becoming a part of the Statute Book provided an additional opportunity to the assessee of being heard to the assessee before reopening case of escaped assessment.

6.1 From bare perusal of newly inserted Section 148A, it is obvious that it statutorily provides for the following prerequisite before issuance of notice in cases of escaped assessment.

A. Conduction of inquiry with prior approval of specified authority in regard to information which suggests that certain income chargeable to tax has escaped the assessment.

B. For conducting the aforesaid inquiry, a notice to show-cause is required to be served on the assessee within the prescribed time, requiring assessee to explain as to why notice u/S 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment.

C. The Assessing Officer is required to consider the reply of the assessee to the show-cause notice.

D. The nature of inquiry contemplated by Section 148A is not a detailed one. The purpose of this inquiry is to communicate to assessee that Assessing Officer is in possession of information suggesting that certain income of assessee which is chargeable to tax has escaped assessment. This communication is made by issuance of show-cause notice which should contain enough information and reasons to reveal the said intention of the Assessing Officer. Thereafter, the assessee on receiving the show-cause notice is required to file reply.

6.2 The show-cause notice thus should be reasoned enough to enable the assessee to know the mind of the Assessing Officer as regards factum of certain income having escaped assessment and his intention to re-open assessment of such income. This is possible only when the show-cause notice contains enough information to disclose the intention of the Assessing Officer so as to afford reasonable opportunity to assessee to respond. The contents of the show-cause notice thus should be precise and concise satisfying the concept of reasonable opportunity.

6.3. This Court hastens to add at this juncture that this inquiry as explained above cannot be a detailed one where assessee is given opportunity of adducing evidence in support of his defence/response. However, this inquiry includes within its ambit, the obligation of the Assessing Officer to supply reasons which are suggestive of a *prima facie* case revealing income chargeable to tax having escaped assessment.

6.4 Pertinently, the statute [See 148A(b)] does not oblige the Assessing Officer to supply the relevant material/evidence which are the foundation for the Assessing Officer to come to the *prima facie* view that income chargeable to tax has escaped assessment. This is because neither in the judgment of the Apex Court in the case of *GKN Driveshafts (India) Ltd.* (supra) nor in Section 148A any such indication can be gathered.

6.5 The only duty cast upon the Assessing Officer is to supply information by mentioning the same in the show-cause notice issued u/S 148A(b) of IT Act.

7. This Court has culled out the foundational prerequisite of Section 148A, as aforesaid, to emphasize that if the inquiry contemplated in Section 148A is interpreted to mean a detailed inquiry where both sides can seek and adduce evidence/material (documentary/ocular), then the entire object behind Section 148A would stand defeated.

7.1 The object behind Section 148A as is evident from the findings in the fountainhead decision of *GKN Driveshafts (India) Ltd.* (supra), is to enable the assessee to be informed of the reasons and information suggesting that income chargeable to tax has escaped assessment and, therefore, in turn to empower the assessee to prepare and file an effective reply and thereafter the Assessing Officer to pass an order u/S 148A(d), followed by issuance of notice u/S 148 of IT Act.

7.2 The object behind insertion of Section 148A by the Legislature w.e.f. 01.04.2021 *inter alia* appears as follows:-

> (a) to prevent rampant and casual issuance of notice u/S. 148 by the Revenue;
>
> (b) to save unnecessary harassment to the assessee of being subjected to re-opening a case under Section 148;
>
> (c) to save the Revenue of the time and energy which may be vested pursuing frivolous and fruitless proceedings u/S 148.

8. It is settled in tax jurisprudence that taxing statute is to be interpreted literally. There is no intendment to taxing statute. Nothing can be implied from or read into a taxing statute. The words used in taxing statutory provision are required to be given their plain meaning. [See: *Cape Brandy Vs. IRC,* L 1921 (1) KB 64, *State of Bombay Vs. Automobile and Agricultural Industries Corporation,* 1961 (12) STC 122 Para 5, *Federation of A.P. Chambers Vs. State of Andhra Pradesh,* 2000 (6) SCC 550 Para 7, *State of West Bangal Vs. Kesoram Industries Ltd. and others,* 2004 (10) SCC 201 Para 106, *State of Jharkhand and others Vs. Ambay Cements,* 2005 (1) SCC 368 Para 24. 25 and 26, *Ajmera Housing Corporation and others Vs. Commissioner Income Tax,* 2010 (8) SCC 739 Para 36, *Deputy Commissioner of Income Tax Vs. Ace Multi Axes System Limited,* 2018 (2) SCC 158, *Commissioner of Customs (Import) Mumbai Vs. Dilip Kumar Company and others,* 2018 (9) SCC 1 Para 24 and 25, *Checkmate Services Pvt. Ltd. Vs. Commissioner Income Tax,* 2023 (6) SCC 451 Para 55 and 56].

8.1 Applying this principle of interpretation of taxing statute, it is obvious from reading of Section 148A that it does not expressly provide for supply of any material/evidence in support of the show-cause notice u/S 148A(b). Thus this

Court has no hesitation to hold that statutory provision u/S 148A does not obligate the Assessing Officer to supply any material/evidence, provided the show-cause notice contains reasons disclosing the mind of the Assessing Officer of nursing the prima facie view suggestive of a case where income chargeable to tax has escaped assessment.

8.2 This Court would be failing in its duty by not dealing with the aspect that the concept of reasonable opportunity which can reasonably be implied from textual interpretation of Section 148A(b) of IT Act (of supply of adverse material) is available to the assessee/petitioner or not. It needs to be tested on the anvil of the trite law that taxing statute is to be strictly construed solely on the plain language employed.

8.3 No doubt, the concept of reasonable opportunity ostensibly appears to be inherent in the inquiry contemplated u/S 148A. However, it has to be seen whether this concept can be stretched to the extent of supplying of material/evidence in support of the opinion of Assessing Officer that certain income has escaped assessment.

8.4 No doubt, the concept of reasonable opportunity in non-taxing statutes is applied to it's fullest (including supply of adverse material) irrespective of presence of any express provision or not in cases where the authority concerned passes order entailing civil consequences of adverse nature.

8.5 Pertinently, the law of interpretation of taxing statute is at variance to the law of interpretation of non-taxing statute. The difference is that the taxing statute is to be understood by the plain words used in it without taking aid of other tools of interpretation of statutes e.g. intendment, implication or reading into. [See: The decision cited in Paragraph 8].

8.6 On the anvil of aforesaid time tested principle as regards interpretation of taxing statute, it is obvious that the provisions of Section 148A of IT Act so far as it relates to the nature of inquiry contemplated therein is to be understood from the plain language used by the Legislature.

8.7 The language of Section 148A(b) stipulates opportunity of being heard to the assessee by way of issuance of notice to show-cause to explain as to why notice u/S 148 be not issued on the basis of information to the AssessingOfficer suggesting that certain income chargeable to tax has escaped assessment.

8.8 The words employed by Section 148A(b) provide for affording of opportunity of being heard by way of show-cause notice. Thus, the requirement of law is satisfied if the show-cause notice contains information which has persuaded the Assessing Officer to form an opinion that certain income has escaped assessment of a particular assessment year.

8.9 The statute does not compel the Assessing Officer to supply material/evidence (documentary/oral) on the basis of which the aforesaid opinion has been formed by the Assessing Officer.

9. From the aforesaid analysis and in the backdrop of textual interpretation of Section 148A(b), it is evident that if the show-cause notice contains sufficient information revealing the opinion formed by Assessing Officer that certain income of assessee has escaped assessment with a precise but concise elaboration in the show-cause notice of the foundantional material behind the opinion, then the show-cause notice can sustain judicial scrutiny even if the fundantional (sic: foundational) evidence/material (oral/documentary) is not supplied to the assessee.

9.1 The reason for taking the aforesaid view is not far to see.

9.2 The insertion of Section 148A w.e.f. 01.04.2021 in the Income Tax Act is to ensure that the power u/S 148 is not exercised as a matter of course or without application of mind. Thus, the inquiry contemplated by Section 148A(b) is not a detailed or full-scale one, but is merely meant to offer reasonable opportunity of being heard to the assessee to avoid casual reopening assessment u/S 148.

9.3 It may not be out of place to mention that the show-cause notice u/S 148A(b) ought to be pregnant with concise and precise information revealing the information about foundational material which persuaded the Assessing Officer to come to a tentative finding that certain income has escaped assessment.

9.4 In the conspectus of aforesaid discussions, it is obvious that petitioner/assessee is not entitled to the material/evidence (oral/documentary) which are the foundation of the opinion formed by the Assessing Officer so long as a show-cause notice mentions about such foundational evidence/material and the supportive reasons to form the said opinion.

9.5 From the fact of the case, it is obvious from the show-cause notice u/S 148A(b) vide Annexure-P/3 that it is accompanied by annexure which informs the petitioner/assessee of the reasons and information which persuaded the Assessing Officer to form the tentative opinion that income pertaining to assessment year 2016-17 has escaped assessment. Moreso, the petitioner/assessee has also filed a detailed reply (Annexure-P/4) to the said notice.

9.6 From the above, it is evident that the impugned order u/S 148A(b) vide Annexure-P/5 and the consequential notice u/S 148 were issued/passed after following due process of law.

10. Certain High Courts, in particular, High Court of Delhi *[Mahashian Di Hatti Pvt. Ltd. Vs. Deputy Commissioner of Income Tax* (W.P (C) 12505/2022*, Divya Capital One (P) Ltd Vs. Assistant Commissioner of Income Tax,* (2022) 139

taxmann.com 461 (Delhi), *Sabh Infrastructure Ltd. Vs. Assistant Commissioner of Income Tax,* (2018) 99 taxmann.com 409 (Delhi)], High Court of Chhattisgarh *[Vinod Lalwani Vs. Union of India,* (2023) 146 taxmann.com 204 *(Chhattisgarh)]* and High Court of Judicature at Bombay *[Anurag Gupta Vs. Income Tax Officer and others* (W.P. No.10184/2022)] have taken a contrary view than the one taken by this Court in the present order. Pertinently, these Courts have not considered the foundational principle of interpretation of taxing statute i.e. nothing can be read into or implied and the plain meaning of the words used in the taxing statute are to be given there (sic: their) due meaning. These High Courts have been persuaded by the principle of reasonable opportunity which is ordinarily applied while interpreting non-taxing statute. Thus, in the humble considered opinion of this Court, the judgments of these High Courts do not have persuasive value.

11. Pertinently, the question of going into the veracity and genuineness of material/evidence forming the opinion of the Assessing Officer suggesting that income of petitioner/assessee has escaped assessment ought not to be gone into while exercising writ jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution. Thus the ground of reliability and tenability of the evidence/material is not considered herein.

12. Consequently, the present petition deserves to be and is hereby **dismissed** at the admission stage itself with liberty to petitioner to avail the statutory alternative remedy under the Income Tax Act in accordance with law.

Petition dismissed

I.L.R. 2023 M.P. 2017

Before Mr. Justice Ravi Malimath, Chief Justice &
Mr. Justice Vishal Mishra

WP No. 16261/2023 (Jabalpur) decided on 9 October, 2023

KANCHAN SHUKLA (SMT.) …Petitioner

Vs.

STATE OF M.P. & anr. …Respondents

***A. National Security Act (65 of 1980), Sections 3(1), 3(2), 3(4) & 8(1) –Preventive Detention – Procedure – Contents of Detention Order* – Held – Though detention order dated 05.07.2023 does not indicate right of detenu to submit his representation before concerned authorities, however realizing the said mistake within next two days vide order dated 07.07.2023, it was rectified and same was communicated to detenu on 11.07.2023 – Order was further communicated to State Government, Advisory Body as well as Central Government – Procedure has been completed by authorities within prescribed time – Petition dismissed. (Paras 14, 16, 23 & 24)**

क. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धाराएँ 3(1), 3(2), 3(4) व 8(1) – निवारक निरोध – प्रक्रिया – निरोध आदेश की अंतर्वस्तु – अभिनिर्धारित – यद्यपि निरोध आदेश दिनांक 05.07.2023 निरूद्ध व्यक्ति का सक्षम प्राधिकारीगण के समक्ष अपना अभ्यावेदन प्रस्तुत करने का अधिकार इंगित नहीं करता है तथापि अगले दो दिन के भीतर कथित गलती को महसूस करते हुए आदेश दिनांक 07.07.2023 के द्वारा उसे सुधारा गया था तथा दिनांक 11.07.2023 को निरूद्ध व्यक्ति को इसकी सूचना दे दी गई थी – आदेश आगे राज्य सरकार सलाहकार बोर्ड साथ ही केंद्र सरकार को भी संसूचित किया गया – प्राधिकारीगण द्वारा विहित समय के भीतर प्रक्रिया को पूर्ण किया गया – याचिका खारिज।

***B. National Security Act (65 of 1980), Section 3(1) & 3(2) – Preventive Detention – Grounds* – Held – The act of detenu urinating on a man belonging to scheduled tribe has infuriated the society throughout State of M.P. and other parts of country also – A communal angle was also canvassed in social media – Just one act of detenu had threatened the peace and tranquility in the State – It created a law and order situation in entire State – It is a fit case where NSA has been invoked in order to prevent repetition of such offences. (Para 27)**

ख. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(1) व 3(2) – निवारक निरोध – आधार – अभिनिर्धारित – अनुसूचित जनजाति के एक व्यक्ति पर पेशाब करने के निरूद्ध व्यक्ति के कृत्य ने पूरे म.प्र. राज्य तथा देश के अन्य हिस्सों में भी समाज को क्रोधित किया – सोशल मीडिया पर एक सांप्रदायिक दृष्टिकोण भी प्रचारित किया गया था – निरूद्ध व्यक्ति के केवल एक कृत्य ने राज्य की शांति तथा प्रशांति को संकट में डाल दिया – इसने संपूर्ण राज्य में विधि–व्यवस्था की स्थिति उत्पन्न कर दी – यह एक उपयुक्त प्रकरण है जहां ऐसे अपराधों की पुनरावृत्ति का निवारण करने के लिए राष्ट्रीय सुरक्षा अधिनियम का अवलंब लिया गया है।

***C. National Security Act (65 of 1980), Section 3(1) & 3(2) – Non-Mentioning of Period of Detention – Effect* – Held – Apex Court concluded that since legislation does not require detaining authority to specify the period for which a detenu is required to be detained, the order of detention is not rendered illegal in absence of such specification. (Para 25)**

ग. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(1) व 3(2) – निरोध की अवधि का उल्लेख न किया जाना – प्रभाव – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि चूंकि विधान द्वारा निरोध प्राधिकारी से उस अवधि को विनिर्दिष्ट करना अपेक्षित नहीं है जिसके लिए एक निरूद्ध व्यक्ति को निरूद्ध रखना आवश्यक हो, ऐसे विनिर्देश के अभाव में निरोध का आदेश अवैध नहीं बन जाएगा।

***D. National Security Act (65 of 1980), Section 3(1) & 3(2) – Preventive Detention – Considerations* – Held – It is not the act/offence *per se* which is to be considered while taking up proceedings under NSA but it is the potentiality and the impact, which in certain circumstances may affect even tempo of the life of community thereby jeopardizing the public order – The**

only requirement for initiation of proceedings under NSA is the subjective satisfaction of authorities. (Paras 9, 17 & 20)

घ. राष्ट्रीय सुरक्षा अधिनियम (1980 का 65), धारा 3(1) व 3(2) – निवारक निरोध – विचार किया जाना – अभिनिर्धारित – यह स्वयं कोई कृत्य/ अपराध नहीं है जिस पर राष्ट्रीय सुरक्षा कानून के अंतर्गत कार्यवाही शुरू करते समय विचार किया जाना है, बल्कि यह संभाव्यता और प्रभाव है, जो कतिपय परिस्थितियों में समुदाय के जीवन की संयत गति को प्रभावित कर सकता है जिससे लोक व्यवस्था मे संकट उत्पन्न हो सकता है – राष्ट्रीय सुरक्षा कानून के अंतर्गत कार्यवाहियां आरंभ करने की एकमात्र आवश्यकता प्राधिकारीगण की व्यक्तिपरक संतुष्टि है।

Cases referred:

(2021) 2 MPLJ 554, (2007) 8 SCC 150, (1970) 1 SCC 98, (1984) 4 SCC 400, (1987) 4 SCC 685, (2010) 9 SCC 618, (1990) 2 SCC 456, (2018) 5 SCC 322, 2023 SCC OnLine SC 1003.

Aniruddh K. Mishra, for the petitioner.
B.D. Singh, Dy. A.G. for the respondents.

O R D E R

The Order of the Court was passed by :
VISHAL MISHRA, J.:- The present petition has been filed by the wife of detenu namely Pravesh Shukla S/o Ramakant Shukla aged about 30 years, challenging the order of preventive detention dated 05.07.2023 passed by respondent No.2-District Magistrate Sidhi (M.P.) under sub-section (2) of Section 3 of the National Security Act, 1980.

2. When the matter was listed on 22.09.2023, the learned Deputy Advocate General sought time to counter the rejoinder filed by the petitioner. When the Court was inclined to grant time, the same was strongly objected to by the learned counsel for the petitioner. He submitted that the petition must be heard today itself. In spite of intimating to him that the reply to the rejoinder may be necessary for the determination of the case, he insisted time and again that irrespective of the same, the matter has to be heard today. It is for this reason that we have proceeded to hear the matter finally.

3. It is the case of the petitioner that on 05.07.2023, a video got viral on social media with respect to an incident of urination that took place in Sidhi district in which the detenu was urinating upon the victim namely Dashmat Rawat, a Kol tribal. The said video got viral on the news media. Thereafter, the District Magistrate, Sidhi upon the recommendations made by the Superintendent of Police District Sidhi has initiated proceedings under the National Security Act, 1980 against him.

4. The learned counsel for the petitioner contends that neither the parameters as envisaged under sub-section (1) of Section 3 of the National Security Act have

been followed nor is there any specified period of detention reflected from the impugned order. The order is violative of fundamental rights and is contrary to Article 22(5) of the Constitution of India which provides that a person detained has a right to make a representation against the order of detention not only before the Advisory Board but also before the detaining authority. Placing reliance on the decision rendered by the Full Bench of this Court in the case of *Kamal Khare and others vs the State of M.P. and others* reported in (2021) 2 MPLJ 554 with reference to paras 28 and 48 thereof, learned counsel for the petitioner has sought to quash the detention order.

5. It is further argued that no show cause notice or opportunity of hearing has been issued or provided to the detenu prior to passing of the impugned order. It is submitted that the detention order was not communicated to the detenu. He was taken into custody on the same day. The right envisaged under Section 8(1) of the National Security Act that the detenu should be informed regarding his right to make a representation even before the detaining authority has not been provided to him. He has drawn attention of this Court to the reply which has been submitted by the authorities pointing out the fact that the Superintendent of Police has found three cases which were registered against the detenu. He has brought on record the judgments passed by the trial Court to show that the detenu has been acquitted in two cases and one case for a minor offence registered in 2023 is pending consideration. Therefore, there was no reason for taking action against the detenu under the National Security Act. He has placed reliance on the provisions of sub-section (1) of Section 8 of the National Security Act and has argued that the detaining authority should communicate the order of detention immediately or ordinarily not later than five days and in exceptional circumstances and for the reasons to be recorded in writing not later than ten days from the date of detention and to communicate the grounds of detention. The same has not been done in the present case. No exceptional circumstances have been pointed out by the authorities. The detention order was passed on 05.07.2023. The same has been communicated to the detenu on 11.07.2023 i.e. on the sixth day, thus, the same is clearly violative of Section 8(1) of the National Security Act. Therefore, he prays for quashing of the detention order. No other grounds are raised by the counsel for the petitioner.

6. *Per contra,* learned counsel appearing for the respondents-State has filed a detailed reply and denied all the averments. He submits that the original record is available for perusal of the court. It is contended that so far as the main argument regarding communication of the order and his right to represent before the detaining authority and other authorities is concerned, the same is specifically denied. It is pointed out that the order of detention was passed on 05.07.2023. The same was communicated to the detenu immediately on 05.07.2023 but as his right to file a representation even to the detaining authority was not communicated by

mistake, therefore, another order was immediately communicated vide letter dated 07.07.2023 along with the detention order, the grounds of detention and the right of the detenu to file the representation before the authorities were directed to be served on him and the same was received by him on 11.07.2023 i.e. on the sixth day.

7. It is submitted that Section 8(1) of the National Security Act provides for an outer limit of ten days for communicating the order under exceptional circumstances. After passing of the detention order, the detenu was taken into custody and was confined to Central Jail Rewa. The detention order was communicated to the detenu on the same day along with the right to file representation, but as he was not communicated that he is having a right to represent to all four authorities within the prescribed time limit, the order and all relevant documents were communicated to the detenu. The original record has been produced before this Court to demonstrate the same. Therefore, the grounds raised by the petitioner with respect to non-communication of the detention order and his right to file a representation to the detaining authority and others is of no help to the petitioner.

8. It is further submitted that the second ground which has been raised regarding opportunity of hearing not being provided to the detenu is of no relevance because there is no procedure for providing the same under the National Security Act. It is based upon the recommendations made by the Superintendent of Police to the District Magistrate and upon the subjective satisfaction of the authorities, a detention order can be passed. The incident which is reported in the recommendations of the Superintendent of Police clearly shocked the conscience of the authorities and has created a huge impact upon the society at large. The act committed by the detenu got viral on the social media to a large extent and was available for viewing even on web portal, internet and was virtually viewed by everyone in the country as well as in the world. The act was talked about at large in the entire society creating a law and order situation in the State of Madhya Pradesh. The same was largely talked about and there were protests raised at various places in State of Madhya Pradesh, therefore, the action was required to be taken. The fact of the detenu having criminal antecedents was also taken note of.

9. It is a well settled proposition of law that a conviction in criminal case is not a mandatory or only factor for passing of the order of detention. It is the subjective satisfaction of the authorities which is required to be taken note of, therefore, the argument advanced is of no help to the petitioner.

10. Another ground which has been urged by the petitioner is that the action has been taken in pursuance to a tweet made by the Chief Minister of the State asking for taking stern action against the detenu even to the extent of NSA, therefore, the action is politically motivated. The Chief Minister being the head of

the State is duty bound to maintain law and order situation in the entire State. If an act so committed creates a law and order situation and creates a bad impact upon the society at large, then he being the Head of the State is duty bound to issue direction for taking stringent action against the culprit. He has placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Mohd. Masood Ahmad vs State of U.P. reported* in (2007) 8 SCC 150 wherein it is held that "it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint raised by him. It all depends on the facts and circumstances of an individual case". Meaning thereby, the elected representative is duty bound to direct for taking strong action in case any illegal activity is being reported or brought to his knowledge which shakes the conscience of the society and that has been done in the present case. Therefore, the ground is of no help to the petitioner. He has prayed for dismissal of writ petition.

11. Heard learned counsels for the parties and explained the original record.

12. The record indicates that the detention order was passed on 05.07.2023 and the same was communicated to the detenu on the same day i.e. 05.07.2023 along with information that he has a right to file a representation to the authorities. There is no dispute with respect to the same but the fact that the detenu was having a right to file representation to all the authorities could not be communicated to him. Therefore, the mistake was immediately rectified and the letter dated 07.07.2023 was issued. The same was communicated to the petitioner on 11.07.2023 i.e. within the time limit as provided under the National Security Act. The documents filed along with reply viz. Annexures R/1, R/2, R/4, R/5, R/6 and R/7 reflect the same and are the part of original record.

13. Section 8(1) of the National Security Act, 1980 reads as under :

> *" 8. Grounds of order of detention to be disclosed to persons affected by the order.—(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but* ***ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention,*** *communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government."*

14. From perusal of the aforesaid provision, it is clear that the detention order should be provided to the detenu as soon as possible, ordinarily not later than five days and in exceptional circumstances, within a ten days' period i.e. the outer limit of ten days is provided for communication of the order along with relevant documents and the information that he has a right to make a representation even to the authority who passed the detention order and to other authorities i.e. State

Government, Advisory Board and Central Government. The authorities have rectified their mistake by issuance of order dated 07.07.2023 which was communicated to the petitioner on 11.07.2023. The original record indicates that all these papers were signed by the detenu which go to show that the same were supplied to him along with the information that he has a right to file representation within the outer limit of ten days. Therefore, the argument raised by the petitioner is of no help and as such, the judgment passed in the case of *Kamal Khare* (supra) is of no assistance to the petitioner.

15. From a perusal of the record, it is seen that vide letter dated 04.07.2023, a representation was made by the Station House Officer of Police Station Bahari, Sidhi to Superintendent of Police District Sidhi for taking action against the detenu in terms of Section 3(2) of the National Security Act because he was acting in a manner prejudicial to the maintenance of the public order. The detenu is having criminal past of three cases and in one case registered as Ishtgasha No.23 of 2023 in which prohibitory action has been taken against him under Section 110 of CrPC which were taken note of by the authorities. On receipt of the said letter, the Superintendent of Police, after going through the records and observing the case with his subjective satisfaction, forwarded the recommendation to the detaining authority i.e. District Magistrate Sidhi who, in turn, passed the order of detention in terms of Section 3(2) of the National Security Act, 1980 on 05.07.2023. The relevant dates pertaining to the same are as hereunder:

S.No.	Provision of the NSA under which the action is taken	Time-limit prescribed from the date of detention order	Action/orders taken	Date of the order/action + Annexure No.
1	S. 3(2)	-	Detention order passed	05.07.2023 P-1/R-3
2	S. 3(4)	Forthwith	Reporting of the fact of detention to the State Govt.	06.07.2023 R/4 11.07.2023 R/6
3	S. 8	5 or 10 days	Communication of grounds of	11.07.2023 R/6
			detention to the detenu	
4	S. 3(4)	12 days	Approval of the detention order by the State Govt.	12.07.2023 R/9
5	S. 3(5)	7 days	Reporting of the fact by the State Govt. to Central Govt.	12.07.2023 R/10
6	S. 10	3 weeks	Reference to the Advisory Board	12.07.2023 R/11

16. The reason for taking action against the detenu is pointed out that the act which has been committed by him got viral on social media and internet which shows a person (petitioner's husband-detenu) smoking a cigarette and urinating on a person sitting in front of him who belongs to *'Kol'* a Scheduled Tribe community. Thus, it is clear that the act which has been committed by him was with an object of humiliating the said person. Immediately after the video went viral a serious law and order situation arose across the State of Madhya Pradesh. The detenu has created a polluted and antisocial atmosphere in the society. The victim was afraid of reporting the matter against the detenu because of his terror in the entire community and society and nobody from the common public dared to make a report against him. The matter came to the knowledge of the authorities when the video got viral which created a law and order situation in the State of Madhya Pradesh. Several protests were made asking to take action against the person shown in the video.

17. Further, in the criminal cases which were registered against the detenu, the same situation arose and nobody from the society dared to give a statement against him. The Superintendent of Police District Sidhi after going through the entire material has recorded his subjective satisfaction and thereafter forwarded the matter to the competent authority for initiation of proceedings under Section 3(2) of the National Security Act, 1980. The only requirement for initiation of the proceedings under the NSA is the subjective satisfaction of the authorities which has been done in the present case.

18. The record indicates that the impugned action has been taken against the detenu under Section 3(2) of the National Security Act and a perusal of the impugned order clearly shows that the detenu has been detained in order to prevent him from acting in any manner prejudicial to the maintenance of public order. Whether such act tantamounts to an act prejudicial to the maintenance of public order can be understood better after appreciating the concept of 'public order' as settled by the Hon'ble Supreme Court in the case of *Arun Ghosh vs State of West Bengal* reported in (1970) 1 SCC 98 wherein it has been held as follows:

> *" 3. ... It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which*

affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr Ram Manohar Lohia case examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another. "

19. The aforesaid concept of 'public order' has been applied by the Hon'ble Supreme Court in cases arising under the NSA (See. Para 15 of the Supreme Court decision in *Ajay Dixit vs State of U.P.* reported in (1984) 4 SCC 400). Further, in the case of *Subhas Bhandari vs D.M.* reported in (1987) 4 SCC 685, it has been held thus :

" 9. It has now been well settled by several decisions of this Court (the latest one being Gulab Mehra v. State of U.P. [(1987) 4 SCC 302] judgment which was pronounced by us on September 15, 1987) that public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order or it affects public order. It has also been observed by this Court that an act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Therefore it is the impact, reach and potentiality of the act which in certain circumstances affect the even tempo of life of the community and thereby public order is jeopardized. Such an individual act can be taken into consideration by the detaining authority while passing an order of detention against the person alleged to have committed the act. "

20. On perusal of the settled proposition of law, it is apparently clear that it is not the act/offence *per se* which is to be considered while taking up proceedings under the National Security Act but it is the potentiality and the impact, which in certain circumstances, may affect even tempo of the life of the community thereby jeopardizing the public order, which is taken note of in the present case.

21. At this juncture, it shall be apt to mention here that the Hon'ble Supreme Court in the case of *Pebam Ningol Mikoi Devi vs State of Manipur* reported in (2010) 9 SCC 618 has clearly laid down the law demarking the extent of interference in exercise of writ jurisdiction under Article 226 of the Constitution in matters relating to NSA as under:

> *" 26. What emerges from these rulings is that, there must be a reasonable basis for the detention order, and there must be material to support the same. The Court is entitled to scrutinise the material relied upon by the authority in coming to its conclusion, and accordingly determine if there is an objective basis for the subjective satisfaction. The subjective satisfaction must be twofold. The detaining authority must be satisfied that the person to be detained is likely to act in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of the public order and the authority must be further satisfied that it is necessary to detain the said person in order to prevent from so acting.*
>
> *....*
>
> *28. We are conscious of the fact that the grounds stated in the order of detention are sufficient or not, is not within the ambit of the discretion of the court and it is the subjective satisfaction of the detaining authority which is implied. .. "*

22. It is submitted that the National Security Act is an extraordinary piece of legislation. Hence, in order to ensure that the provisions thereof are not abused, adequate safeguards are provided therein including forthwith reporting of the order made by the District Magistrate to the State Government under Section 3(4) of the NSA along with the grounds thereof and approval thereof by the State Government within 12/15 days of the date of order, disclosing the grounds of detention to the affected persons within 5-10 days under Section 8 read with proviso to Section 3(4); in case of approval of the order by the State Government, reporting of the said fact to the Central Government in 7 days under Section 3(5), reference of the grounds of detention of the Advisory Board along with representation(s), if any, made by the affected party under Section 10 and consideration thereof after hearing the affected party, if required, and to submit its report to the State Government within 7 weeks from the date of detention under Section 11; in case the Advisory Board reports that there is sufficient cause for

detention of the person, the State Government is to confirm the detention order under Section 12; inform in the order of detention that the affected party has a right to make representation against the detention to the District Magistrate, the State Government, the Advisory Board as well as the Central Government etc.

23. In the present case, the fact of passing of the impugned detention order dated 05.07.2023 was forthwith communicated to the State Government vide letter dated 06.07.2023 (Annexure R/4). Vide letter dated 07.07.2023 (Annexure R/5), the grounds of detention along with the entire material relied upon by the District Magistrate in passing the impugned order were directed to be served on the detenu wherein it was clearly stated that the detenu has a right to make representation against the detention to the District Magistrate, the State Government, the Advisory Board as well as the Central Government. In compliance of the letter dated 07.07.2023, the Deputy Jail Superintendent of Central Jail Rewa wherein the detenu was lodged since 05.07.2023 pursuant to the impugned detention order, intimated vide letter dated 11.07.2023 to the District Magistrate that the grounds of detention have been served on the detenu under Section 8 of the National Security Act which was duly received by him by putting his signature. In the meantime, another communication dated 11.07.2023 (Annexure R/7) was received from the State Government which was responded to by the District Magistrate vide letter dated 11.07.2023 (Annexure R/8). Pursuant thereto, vide order dated 12.07.2023 of the State Government, the detention order was approved vide Annexure R/9. A copy of communication dated 12.07.2023 of the State Government reporting the fact to the Central Government after approving the same is filed as Annexure R/10. A copy of letter dated 12.07.2023 referring the grounds of detention to the Advisory Board is also filed as Annexure R/11.

24. It is the further contention that the detention order dated 05.07.2023 does not indicate the right of the detenu to submit his representation before the concerned authorities. However, the respondents in their reply have stated that having realized the said mistake within the next two days namely by the letter dated 07.07.2023 along with the detention order etc., it was mentioned therein that the detenu has a right of filing representation before the concerned authorities. The said communication was received by the detenu on 11.07.2023. From perusal of the impugned order dated 07.07.2023, it is clear that it has been clearly sought to be intimated to the detenu that he has a right to make representation against the detention to the District Magistrate, the State Government, the Advisory Board as well as the Central Government. The said order clearly finds mention/reference in letter dated 11.07.2023 (Annexure R/6) of the Deputy Jail Superintendent of Rewa Central Jail where the detenu was lodged, mentioning that the service has been done on the detenu. The letter dated 07.07.2023 also stands mentioned in the letter dated 11.07.2023 (Annexure R/8) to the State Government. The procedure has been completed by the authorities within prescribed time limit.

25. The other argument mentioned in the memo of petition that the detention order does not specify the period of detention is of no help to the petitioner since the matter is settled by the Hon'ble Supreme Court in the case of *T. Devaki vs Govt. of T.N.,* reported in (1990) 2 SCC 456 wherein it is held that since the legislation does not require the detaining authority to specify the period for which a detenu is required to be detained, the order of detention is not rendered illegal in the absence of such specification. Para 12 of the judgment reads as follow:-

> *" 12. Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 is identical in terms to Section 3 of the Tamil Nadu Act. Section 3 of Maharashtra Act does not require the State Government, District Magistrate or a Commissioner of Police to specify period of detention in the order made by them for detaining any person with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order. Section 3(1) which confers power on the State Government to make order directing detention of a person, does not require the State Government to specify the period of detention. Similarly, sub-sections (2) or (3) of Section 3 do not require the District Magistrate or the Commissioner of Police to specify period of detention while exercising their powers under sub-section (1) of Section 3. The observations made in Gurbux Bhiryani case [1988 Supp SCC 568 : 1988 SCC (Cri) 914] that the scheme of the Maharashtra Act was different from the provisions contained in other similar Acts and that Section 3 of the Act contemplated initial period of detention for three months at a time are not correct. The scheme as contained in other Acts providing for the detention of a person without trial, is similar. In this connection we have scrutinised, the Preventive Detention Act, 1950, the Maintenance of Internal Security Act, 1971, COFEPOSA Act, 1974,* ***National Security Act, 1980, but in none of these Acts the detaining authority is required to specify the period of detention while making the order of detention against a person."***
>
> (Emphasis added)

The aforesaid judgment was followed in the cases of *State of Tamil Nadu vs Kamala* reported in (2018) 5 SCC 322 and in *Pesala Nookaraju vs Government of Andhra Pradesh and others* reported in 2023 SCC OnLine SC 1003 decided on 16.08.2023, wherein it was held in para 42 as follows:-

> *" 42. A reading of Article 22(4)(a) would clearly indicate that no law providing for preventive detention shall authorize the detention of a person for a period beyond three months. Thus, an*

order of detention cannot be for a period longer than three months unless, the Advisory Board has reported before the expiration of the said period of three months that there is, in its opinion such sufficient cause for detention. Article 22(4)(a) clearly indicates that even if the order of detention does not prescribe any period of detention, such an order of detention cannot be in force for a period beyond three months, unless the Advisory Board before the expiration of three months opines that there is sufficient cause for detention. In other words, if the Advisory Board does not give its opinion within a period of three months from the date of detention, in such a case, the order of detention beyond the period of three months would become illegal and not otherwise. If within the period of three months, the Advisory Board opines that there was no sufficient cause for such detention then, the State Government would have to release the detenu forthwith."

Therefore, the said contention is without any merit.

26. The counsel appearing for the petitioner has contended that the detenu has already been acquitted in two cases and one is pending consideration, therefore, the case does not fall within the parameters of Section 3(1) of the National Security Act. However, the aforesaid aspect was considered in the case of *Javed Khan vs State of M.P. :* Writ Petition No.11872 of 2021 wherein it is held as follows :

" 6. The grounds of detention reflect that as many as 21 cases have been registered against the petitioner between the period October, 2006 and April, 2021. In view of the judgment of Supreme Court in the matter of Yumman Ongbi Lembi Leima vs. State of Manipur reported in (2012) 2 SCC 176, there should be live link between the detention and antecedent activities on the basis of which the detention order was passed. In the present case, even if the older cases are ignored then also it is noticed that in the recent past, the cases relating to offence of extortion under Section 384, extortion by putting a person in fear of death or grievous hurt under Section 386 of the IPC and making preparation for dacoity under Section 399 of the IPC have been registered, therefore, there is a live link between the recent offences which are registered against the petitioner with the order of detention.

7. In terms of Section 3(2) of the NSA, an order of detention can be passed to prevent a person from acting in any manner prejudicial to the maintenance of public order. The public order is a concept narrower than the concept of law and order. Public

order is the even tempo of life of the community as a whole or even a specific locality. It is the potentiality of the Act to disturb the even tempo of life of the community which make it prejudicial to the maintenance of public order [State of U.P. vs. Sanjai Pratap Gupta reported in (2004) 8 SCC 591)].

8. Having regard to the nature of offences which are registered against the petitioner specially the offence of extortion under Section 384 of the IPC, extortion by putting a person in fear of death or grievous hurt under Section 386 of the IPC and making preparation for dacoity under Section 399 of the IPC, we are of the opinion that these activities are prejudicial to public order. "

27. In the present case, the impugned action was initiated against the detenu in view of the video which got viral on the social media pointing out the act committed by him which created a law and order situation in the entire State of Madhya Pradesh. It is because the video went viral, the fact came to the knowledge of the authorities. However, nobody dared to make a report against the detenu. Substantial material has been produced by the State to indicate a serious law and order situation in the entire State of Madhya Pradesh. The photographs were also published in various electronic and other media. The act of the detenu urinating on the concerned man had infuriated the society throughout the State of Madhya Pradesh and other parts of the country also. A communal angle was also sought to be canvassed in various social media. The public had become restless and infuriated. They were likely to take law onto (sic: into) their hands. The situation was getting out of control. Immediate steps had to be taken by the State to prevent deterioration of the law and order in the State. Just one act of the detenu had threatened the peace and tranquility in the State. Therefore, we are of the view that this is a fit case where the NSA has been invoked in order to prevent the repetition of such offences. Thus, it is clearly established that having regard to the act committed by the detenu, its potentiality and the impact which has been created upon the society and community at large and which created a law and order situation in the State of Madhya Pradesh, the authorities recorded their subjective satisfaction and initiated proceedings against the detenu under the provisions of the National Security Act, 1980.

28. Thus, the arguments which have been raised by the petitioner are virtually of no help to the detenu. The authorities have fully complied with the terms and conditions as mentioned in the relevant provisions of the National Security Act, 1980. No lacunae could be pointed out by the counsel for the petitioner. Therefore, we do not find any ground to entertain this petition. There is no infraction of law by the authorities. Subjective satisfaction by the authorities are based on the facts and circumstances involved.

29. The petition *sans* merit and is accordingly dismissed. No order as to costs.

Petition dismissed

I.L.R. 2023 M.P. 2031

Before Mr. Justice Vivek Rusia

MP No. 5362/2022 (Indore) decided on 14 March, 2023

SHIVNARAYAN …Petitioner

Vs.

SHYAMLAL & ors. …Respondents

***A. Civil Procedure Code (5 of 1908), Order 26 Rule 9 – Demarcation – Appointment of Commissioner – Scope* – Held – Demarcation already done by revenue authorities and petitioner/plaintiff filed its report – If respondents are disputing the same, then burden is on the plaintiff to prove the demarcation by adducing evidence – There is no need for fresh demarcation by appointing a Commissioner – If any elucidation or clarification will be required in future at any stage of suit, then trial Court shall be competent to pass order at appropriate stage – Petition dismissed (Para 9 & 10)**

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 26 नियम 9 – सीमांकन – आयुक्त की नियुक्ति – व्याप्ति – अभिनिर्धारित – राजस्व प्राधिकारीगण द्वारा सीमांकन पहले ही किया जा चुका है तथा याची/वादी ने अपना प्रतिवेदन प्रस्तुत किया है – यदि प्रत्यर्थीगण उसका विरोध करते है, तो साक्ष्य प्रस्तुत करके सीमांकन को साबित करने का भार वादी पर है – आयुक्त की नियुक्ति कर नये सिरे से सीमांकन करने की कोई आवश्यकता नहीं है – यदि भविष्य में वाद के किसी भी प्रक्रम पर किसी विशदीकरण या स्पष्टीकरण की आवश्यकता होगी, तो विचारण न्यायालय समुचित प्रक्रम पर आदेश पारित करने के लिए सक्षम होगा – याचिका खारिज।

***B. Civil Procedure Code (5 of 1908), Order 26 Rule 9 – Demarcation – Scope* – Held – The powers conferred under O-26 R-9 CPC can be exercised at any stage but for a limited purpose – Apex Court concluded that if the controversy is regarding demarcation of land between parties, Court should direct investigation by appointing a legal commission. (Para 5 & 9)**

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 26 नियम 9 – सीमांकन – व्याप्ति – अभिनिर्धारित – सि.प्र.सं. के आदेश–26 नियम–9 के अंतर्गत शक्तियों का प्रयोग किसी भी प्रक्रम पर किया जा सकता है परंतु एक सीमित प्रयोजन हेतु – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यदि विवाद पक्षकारों के मध्य भूमि के सीमांकन के संबंध में है, तो न्यायालय को एक विधिक आयोग नियुक्त कर अन्वेषण निदेशित करना चाहिए।

Cases referred:

2004 (2) MPHT 14, (2008) 8 SCC 671, (1975) MPLJ 810, (2011) 2 MPLJ 576, WP No. 1915/2014 decided on 03.04.2018.

Manish Kumar Vijaywargiya, for the petitioner.
Sameer Saxena, for the respondent No. 3.

O R D E R

VIVEK RUSIA, J.:- Petitioner/plaintiff has filed this present petition being aggrieved by order dated 09.09.2022 whereby application filed under Order 26 Rule 9 of the CPC has been dismissed. The petitioner/plaintiff filed the suit in respect of the suit land mentioned in paragraph No.2 of the plaint. According to the plaintiff, the defendants/respondents has encroached over some part of the land of his ownership. The petitioner/plaintiff applied for demarcation which was conducted by the Tehsildar and the possession of defendant was found hence that gave the cause of action to file the suit for possession.

2. The defendants have filed a written statement denying the averment made in the plaint, they have also denied the demarcation as well as the report submitted by the revenue authorities. Before adducing the evidence, the plaintiff has filed an application under Order 26 Rule 9 C.P.C. seeking direction for demarcation of the suit land bearing survey No.201/1/2 area 1.0110 Hectare through any revenue authorities. The application was opposed by the defendants and the learned Court has dismissed the application on the ground that the said provision cannot be invoked for the collection of the evidence hence, this petition before this Court.

3. Shri Manish Kumar Vijaywargiya, learned counsel for the petitioner/plaintiff submits that the entire suit is based on the allegation of encroachment and the report of the demarcation given by the Revenue Officer but the respondents/defendants are disputing the same, therefore, the Court must appoint a Commissioner in order to adjudicate the controversy between the parties.

4. Shri Sameer Saxena, learned counsel for the respondent/defendant submits that the plaintiff has filed the suit alleging encroachment, therefore, the plaintiff must establish his case by adducing the evidence in support of the pleadings made in the plaint. The provisions of Order 26 Rule 9 of CPC cannot be invoked for collecting the evidence. In support of his contention, learned counsel has placed reliance on a judgment in the case of *Ashutosh Dubey and another v/s Tilak Grih Nirman Sahakari Samiti* [2004 (2) MPHT14] decided on 11.11.2003.

Heard both sides.

5. In the case of *Haryana WAQF Board Vs.Shanti Sarup and Ors.,* reported in (2008) 8 SCC 671*,* wherein, it has been held that if the controversy is regarding

demarcation of the land between the parties, the Court should direct the investigation by appointing a legal Commission. Para 4 and 5 of the aforesaid judgment is reproduced as under:

> *" 4. Admittedly, in this case, an application was filed under Order 26 Rule 9 of the code of Civil Procedure which was rejected by the trial Court but in view of the fact that it was a case of demarcation of the disputed land, it was appropriate for the Court to direct the investigation by appointing a Local Commissioner under Order 26 Rule 9, CPC.*
>
> *5. The appellate Court found that the trial Court did not take into consideration the pleadings of the parties when there was no specific denial on the part of the respondents regarding the allegations of unauthorized possession in respect of the suit land by them as per Para 3 of the plaint. But the only controversy between the parties was regarding demarcation of the suit land because the land of the respondents was adjacent to the suit land and the application for demarcation filed before the trial Court was wrongly rejected."*

6. A similar view was taken by the High Court that in the case of encroachment, appointing of commission is proper. In *Durga Prasad Vs. Parveen Foujdar,* reported in (1975) MPLJ 810 this Court has also considered the scope of order 26 Rule 9 and held that the Court should order the appointment of Commission when there is a dispute of encroachment. Para 25 of the said judgment is reproduced as under:

> *" 25. Point No.2: In cases where there is a dispute as to encroachment, the fact whether there is such an encroachment or not cannot be determined in the absence of an agreed map, except by the appointment of a Commissioner under Order 26, Rule 9 of the Code of Civil Procedure. On 15.09.1966 the plaintiff, accordingly, applied for the issue of a commission to the Director of Land Records for a theodolite survey of the plaintiffs leasehold area."*

7. Again this Court has taken a similar view in the case of *Jaswant S/o Kashi Ram Yadav Vs. Deen Dayal,* reported in (2011) 2 MPLJ 576 had held that the duties of the Court to issue a commission by appointing an employee of the revenue department to get the land in dispute demarcated and for which no application is required. Para 10 of the said judgment is reproduced as under:

> *" 10.The moot question to be decided in this appeal is whether the property in question is of plaintiff or defendant. Both the parties are claiming ownership right on it. According to the*

plaintiff he purchased the land vide registered sale deed Ext-P-2 from Deen Dayal and the suit property is a piece of that land but according to the defendant it is part of the property which he purchased from Sudhir Shrivastava vide registered sale deed Ext-D-3. According to me, when there is dispute about demarcation of the property in question and its identity and both the parties are claiming it to be of their own on the basis of their document of title it was incumbent upon the Court itself to issue a commission by appointing an employee of revenue department not below the rank of Revenue Inspector to get it demarcated so that it can be identified. In the instant case my attention has been drawn by learned counsel for defendants to the application filed under Order XXVI, Rule 9, Civil Procedure Code but the same has been rejected at the time of the consideration of temporary injunction application. To me learned trial Court erred in substantial error of law in rejecting the said application. The learned First Appellate Court has also committed the same error by not allowing the said application. Indeed, it was the duty of the Court itself to issue commission by appointing an employee of Revenue Department not below the rank of Revenue Inspector to get the land in dispute demarcated and for its identification no application is required for that purpose."

8. This court in the case of *Ansuiya Bai & others. Vs. Rajendra Parsai & others.* (W.P. No. 1915/2014) decided on 03.04.2018 has already held as under:-

19. The scope of Order 26 Rule 9 of C.P.C. is very limited. The trial court in any suit in which a local investigation is required or proper for purpose of elucidating any matter of dispute may appoint a Commissioner. It is settled law that the parties are required to prove their case by way of evidence, therefore, it is the duty of the plaintiff/defendant to first give evidence in support of their case. After the evidence of parties, if Court deems it proper that any issue is required to be elucidated or explained or clarified then the Court may appoint a Commissioner. The report of the Commissioner is merely a piece of evidence and not binding on the trial Court. It can be used for the purpose of appreciating the evidence on record, if the petitioners/ defendants No.1 and 2 are not satisfied with the report, they can give a better evidence in support of their case. The Court has already given an opportunity to them to adduce the evidence therefore, the defendants cannot use the Commissioner report to collect the evidence. Learned trial Court rightly rejected the application, hence, no interference is called for.

9. Being aggrieved by the above order the SLP (C) 15712 was filed before the Supreme Court of India and the same has been dismissed on 20.7.2018. In view of the above case law, the power conferred under Order 26 Rule 9 of the C.P.C. can be exercised at any stage but for a limited purpose, as decided by the learned trial court.

10. In the present case, the demarcation has already been done by the revenue authorities and the petitioner/plaintiff has filed its report. If the respondents/ defendants are disputing the said, then the burden is on the petitioner/ plaintiff to prove that demarcation by adducing evidence. Once the demarcation has already been done by the revenue authority, there would be no need for fresh demarcation by appointing a Commissioner, which would be done by the same authority. As discussed above as per the scope of Order 26 Rule 9 of CPC if any elucidation or clarification will be required in future at any stage of the suit then the trial Court shall be competent to pass the order at the appropriate stage.

In view of the above, the present petition is dismissed.

Petition dismissed

I.L.R. 2023 M.P. 2035

Before Mr. Justice G.S. Ahluwalia

MP No. 550/2021 (Jabalpur) decided on 2 May, 2023

MANAGER PARMALI WALLACE LTD. …Petitioner

Vs.

JAMNA SHAH …Respondent

(Alongwith MP Nos. 551/2021, 552/2021, 553/2021, 554/2021, 555/2021, 556/2021 & 557/2021)

***A. Industrial Disputes Act (14 of 1947), Section 33C(2) and Civil Procedure Code (5 of 1908), Order 21 & Order 41 Rule 5 – Appeal – Stay on Execution* – Held – O-41 Rule 5 CPC provides that mere filing an appeal would not operate as a stay – Mere challenge of order of Labour Court would not amount to stay of execution of order – Once this Court has not granted stay in writ petition, then there was no impediment for Labour Court to entertain application u/S 33C(2) of the Act – Order passed by Labour Court for recovery is affirmed – Petition disposed. (Para 8)**

क. औद्योगिक विवाद अधिनियम (1947 का 14), धारा 33C(2) एवं सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 व आदेश 41 नियम 5 – अपील – निष्पादन पर रोक – अभिनिर्धारित – सि.प्र.सं. का आदेश–41 नियम 5 यह उपबंधित करता है कि मात्र अपील प्रस्तुत करना, रोक का प्रभाव नहीं रखेगा – श्रम न्यायालय के आदेश को चुनौती मात्र, आदेश के निष्पादन पर रोक की कोटि में नहीं आएगा – एक बार जब इस न्यायालय ने

रिट याचिका में रोक प्रदान नहीं की है, तो श्रम न्यायालय के लिए अधिनियम की धारा 33C(2) के अंतर्गत आवेदन को ग्रहण करने में कोई अड़चन नहीं थी – वसूली के लिए श्रम न्यायालय द्वारा पारित आदेश अभिपुष्ट – याचिका निराकृत।

***B. Industrial Disputes Act (14 of 1947), Sections 2(rr), 11(9), 11(10), 33C(1) & 33C(2) – Execution of Decree – Jurisdiction of Civil Court* – Held – 11(9) and 11(10) do not take away the jurisdiction of Labour Court as provided u/S 33C(1) and 33C(2) of the Act – Section 11(9) & 11(10) merely creates a new forum for execution of decree – Section 11(9) & 11(10) confers power on civil Court to execute the award passed by Labour Court and it does not take away the power of Labour Court to execute the award – If an award is transferred to Civil Court for its execution then objection cannot be raised that since award was not passed by Civil Court, therefore it cannot execute the same. (Para 19 & 20)**

ख. औद्योगिक विवाद अधिनियम (1947 का 14), धाराएँ 2(rr), 11(9), 11(10), 33C(1) व 33C(2) – डिक्री का निष्पादन – सिविल न्यायालय की अधिकारिता – अभिनिर्धारित – धारा 11(9) एवं 11(10) श्रम न्यायालय की अधिकारिता नहीं छीनती जैसा कि अधिनियम की धारा 33C(1) एवं 33C(2) के अंतर्गत उपबंधित है – धारा 11(9) व 11(10) डिक्री के निष्पादन हेतु मात्र एक नवीन न्यायालय सृजित करती है – धारा 11(9) व 11(10) श्रम न्यायालय द्वारा पारित अधिनिर्णय के निष्पादन हेतु सिविल न्यायालय को शक्ति प्रदान करती हैं तथा यह श्रम न्यायालय की अधिनिर्णय के निष्पादन की शक्ति को नहीं छीनती – यदि कोई अधिनिर्णय उसके निष्पादन के लिए सिविल न्यायालय को अंतरित किया जाता है तो यह आपत्ति नहीं उठाई जा सकती कि चूंकि अधिनिर्णय सिविल न्यायालय द्वारा पारित नहीं किया गया था, अतः वह उसका निष्पादन नहीं कर सकता।

***C. Industrial Disputes Act (14 of 1947), Section 33C(2) – Interest – Jurisdiction of Executing Court* – Held – Labour Court while entertaining application u/S 33C(2) can award interest only if there is any statutory provision for the same – In absence of any direction in final order regarding payment of interest, Labour Court should not have directed for payment of interest on outstanding amount – Apex Court concluded that executing Court cannot go beyond the decree – Direction for payment of interest is set aside. (Paras 22 to 29)**

ग. औद्योगिक विवाद अधिनियम (1947 का 14), धारा 33C(2) – ब्याज – निष्पादन न्यायालय की अधिकारिता – अभिनिर्धारित – श्रम न्यायालय धारा 33C(2) के अंतर्गत आवेदन को ग्रहण करते समय ब्याज अधिनिर्णीत केवल तभी कर सकता है जब इसके लिए कोई कानूनी उपबंध हो – ब्याज के भुगतान से संबंधित अंतिम आदेश में किसी निदेश के अभाव में, श्रम न्यायालय को बकाया राशि पर ब्याज के भुगतान हेतु निदेशित नहीं करना चाहिए था – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि निष्पादन न्यायालय डिक्री से परे नहीं जा सकता – ब्याज के भुगतान हेतु निदेश अपास्त।

Cases referred:

AIR 1992 SC 1740, (1970) 1 SCC 670, (2007) 1 GLR 545.

Ajay Mishra with *Arpit Tiwari,* for the petitioner in MP No. 550/2021, 551/2021, 552/2021, 553/2021, 554/2021, 555/2021, 556/2021 & 557/2021.

Anurag Gohil, for the respondent in MP Nos. 550/2021, 551/2021, 552/2021, 553/2021, 554/2021, 555/2021, 556/2021, 557/2021.

O R D E R

G.S. AHLUWALIA, J.:- By this common order M.P.No.551/2021, M.P.No.552/2021, M.P.No. 553/2021, M.P.No.554/2021, M.P.No.555/2021, M.P.No.556/2021 and M.P.No.557/2021 shall also be decided.

2. For the sake of convenience, facts of M.P.No.550/2021 shall be referred.

3. Respondent Jamna Shah had filed an application under section 33C(2) of the Industrial Disputes Act (hereinafter referred to as 'the I.D.Act') for recovery of the backwages awarded by the Labour court No.1, Bhopal by order dated 1.6.2016 in Case No.34/1986-I.D. Ref. By the aforesaid order it was directed that the respondent is entitled to receive 50% of the backwages from the date of his termination, i.e. 1986 till he attains the age of superannuation. The relief for reinstatement was denied on the ground that the respondent has already attained the age of superannuation. Since backwages were awarded by the Labour Court, therefore, an application under section 33C(2) of the I.D.Act was filed for recovery of the said amount.

4. A preliminary objection was raised by the petitioner that against the order dated 1.6.2016 passed in Case No.34/1986/I.D. Ref., the petitioner has already filed a Writ Petition No.1017/2017 which is pending consideration before the High Court. However, Labour Court No.1, Bhopal by order dated 16.3.2020 passed in Case No.15/2017-I.D.Act has allowed the application filed by the respondent under section 33C(2) of the I.D.Act and has directed the petitioner to pay an amount of Rs.9,82,294.70 with 12% interest.

5. Challenging the order passed by the Labour Court No.1, Bhopal, it is submitted by the counsel for the petitioner that since W.P.No.1017/2017 which was filed against the original order dated 1.6.2016 is still pending, therefore, the Labour Court should have stayed the further proceedings awaiting the outcome of W.P.No.1017/2017. It is further submitted that no interest was awarded by the Labour Court in its original order dated 1.6.2016 and, therefore, the Labour Court should not have travelled beyond the original award and should not have awarded interest at the rate of 12% per annum. It is further submitted by counsel for the petitioner that by Amendment Act No.24/2010 which came into force on 15.9.2010 sub section (9) and (10) have been inserted in section 11 of I.D.Act and

thus every award made, order issued or settlement arrived at by or before Labour Court should be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under Order 21 of the CPC and the Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award, order or settlement to a civil court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it.

6. It is submitted that in view of section 11(10) of the I.D.Act, the Labour Court has lost its jurisdiction to execute the order/award passed by it under section 33C(2) of the I.D.Act. It is further submitted that since W.P.No.1017/2017 is pending, therefore, this petition may also be taken up along with W.P.No. 1017/2017 for analogous hearing.

7. Heard the learned counsel for the parties.

8. It is not disputed by any of the parties that there is no stay of execution of order dated 1.6.2016. Once, this Court has not granted any stay order in W.P.No.1017/2017 then it is clear that there was no impediment for the Labour Court to entertain the application filed under section 33C(2) of the I.D.Act. Order 41 Rule 5 CPC provides that mere filing an appeal would not operate as a stay. Furthermore, counsel for the petitioner could not point out any provision of law from the I.D.Act to the effect that mere challenge of the order passed by the Labour Court would amount to stay of execution of the order. Under these circumstances, the submission made by counsel for the petitioner that since W.P.No.1017/2017 is pending before this Court then the Labour Court should not have entertained the application under section 33C(2) of the I.D.Act is misconceived and is hereby **rejected.** Even counsel for the petitioner could not point out as to why no prayer was ever made in W.P.No.1017/2017 for stay of effect and operation of final order dated 1.6.2016.

9. Be that whatever it may be.

10. The next contention of counsel for the petitioner is that this writ petition may also be taken up along with W.P.No.1017/2017 for analogous hearing.

11. The said contention made by counsel for the petitioner is liable to be **rejected** for the simple reason that the controversy involved in W.P.1017/2017 is completely different from the controversy involved in the present case. The present case arises out of the execution proceedings of the final order dated 1.6.2016 which is under challenge before this court in W.P.No.1017/2017. If Writ Petition No.1017/2017 is dismissed, it will not have any adverse effect on the order in question and if W.P.No.1017/2017 is allowed then the respondent shall be under obligation to refund the amount which he would receive in execution of final order dated 1.6.2016.

12. It is submitted by counsel for the petitioner that by the final order dated 1.6.2016, the Labour Court No.1 Bhopal had held that the respondent is entitled for 50% of the backwages from the year 1986 till their age of superannuation. However, it is submitted that by the impugned award, the Labour Court No.1 has also included the gratuity, provident fund, increment, etc. which was never directed to be paid by the final order dated 1.6.2016. Therefore, the Labour Court No.1, Bhopal has travelled beyond the order which was passed in favour of the respondent.

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

14. The operative part of the order dated 1.6.2016 reads as under :-

> वर्ष 1986 से उनके द्वारा अधिवार्शिकी आयु पूर्ण किये जाने की दिनांक तक का 50 प्रतिशत पिछला वेतन प्राप्त करने के अधिकारी है।

15. Thus, the golden word is **backwages.** The word 'wages' has been defined in section 2(rr) of the I.D.Act which reads as under :-

> "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes-
>
> (I) Such allowances (including dearness allowance) as the workman is for the time being entitled to;
>
> (ii) The value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;
>
> (iii) any travelling concession;
>
> (iv) any commission payable on the promotion of sales or business or both;
>
> but does not include -
>
> (a) any bonus;
>
> (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;
>
> (c) any gratuity payable on the termination of his service;

16. Thus, whatever amount is covered under section 2(rr) of the I.D.Act would be wages of an employee. Since the direction was to pay 50% of the

backwages from the year 1986 till the date of their superannuation, therefore, the respondent is entitled for all the enhancements which must have taken place during this period, i.e. from the year 1986 till the date of his superannuation.

17. Counsel for the petitioner could not point out as to how the calculation done by the Labour Court No.1 is bad in law. In view of section 2(rr) of the I.D.Act it is held that the Labour Court did not commit any mistake by directing recovery of Rs.9,82,294.74 from the petitioner.

18. So far contention of counsel for the petitioner that after the incorporation of section 11(10) of the I.D.Act, the Labour Court has lost its power under section 33C(2) of the I.D.Act is concerned, the same is misconceived.

19. Section 11(9) and 11(10) of the I.D. Act do not take away the jurisdiction of the Labour Court as provided under section 33C(1) and C(2) of the I.D.Act. Section 11(9) and 11(10) of the I.D.Act merely creates a new forum for the execution of the decree.

20. A decree can be executed by a court which passed it or by a court to which it is sent for execution. Therefore, if an award is transferred to civil court for its execution then objection cannot be raised that since the award was not passed by the civil court, therefore, it cannot execute the same. In fact, section 11(9) and 11(10) of the I.D.Act confers power on the civil court to execute the award passed by the Labour Court and it does not take away the power of the Labour Court to execute the award.

21. Counsel for the petitioner could not point out as to how the incorporation of section 11(9) and 11(10) of the I.D.Act would make the provision of section 33C of the I.D.Act otiose.

22. So far as the contention of counsel for the petitioner that the Labour Court should not have awarded 12% interest is concerned, the same appears to have considerable force.

23. If power is conferred on the executing Court to go beyond the decree then it would amount to modification of the decree which otherwise can only be done by a superior court. Thus, by enabling the executing court to go beyond the decree, the powers of the superior court cannot be conferred on it.

24. The Supreme Court in the case of *State Bank of India v. M/s Indexport Registered and others*, reported in AIR 1992 SC 1740 has held that no executing court can go beyond the decree and all the pleas as to the rights which the petitioner had, should have been taken during the trial and not after the decree is put for execution.

25. The Supreme Court in the case of *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman,* reported in (1970) 1 SCC 670 has held that the Executing Court

cannot go beyond the decree and the executing court must take the decree according to its tenor. Even if the decree is erroneous, still it is binding between the parties.

26. Gauhati High Court in the case of *Lakheswar Hazarika Vs. Presiding Officer and ors.* Reported in (2007)1 GLR 545 has held that the executing court cannot go behind the decree nor can it add or subtract from the provisions of the decree, the same limitation can also apply to the Labour Court.

27. Thus it is clear that the Labour Court being akin to an executing court cannot go beyond the award passed by the same court.

28. Counsel for the respondent could not point out any provision of law which mandates the payment of interest on delayed payment. Since no direction with regard to accrual of interest on the delayed payment was given, therefore, the Labour Court while entertaining an appliation (sic: application) under section 33C(2) of the I.D.Act can award interest only if there is any statutory provision for the same. Since counsel for the respondent could not point out any such provision of law, therefore, this Court is of the considered opinion that in absence of any direction in the final order regarding payment of interest, the Labour Court should not have directed for payment of the outstanding amount along with interest of 12%.

29. Thus, the direction to pay the outstanding amount with 12% interest was beyond the competence of the Labour Court. Accordingly, the said direction is hereby **set aside.**

30. Accordingly, the order dated 16.3.2020 passed by Labour Court No.1 Bhopal in Case No.15/17-I.D. Act is affirmed subject to the modification mentioned above.

31. Since, the original order passed by the Labour Court is already under challenge in a writ petition filed before this court, therefore, it is observed that any payment which shall be made in compliance of the impugned order shall be subject to the outcome of W.P.No.1017/2017. The respondents are directed to furnish necessary security as well as undertaking that in case of any variation or setting aside of the original order then the amount so received by them shall be refunded without any protest.

32. With aforesaid observations, M.P.No.550/2021, M.P.No.551/2021, M.P.No.552/2021, M.P.No.553/2021, M.P.No.554/2021, M.P.No.555/2021, M.P.No.556/2021 and M.P.No.557/2021 are **disposed of.**

Order accordingly

I.L.R. 2023 M.P. 2042 (DB)

Before Mr. Justice S.A. Dharmadhikari & Mr. Justice Hirdesh

MP No. 3024/2023 (Indore) decided on 5 July, 2023

KAMAL KISHORE GAUR …Petitioner

Vs.

IDFC FIRST BANK LTD. & ors. …Respondents

***A. Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act (54 of 2002), Section 14 – Competent Authority* – Held – CJM is very much competent to deal with the application u/S 14 of 2002 Act – Order passed by CJM, Indore is not hit by any illegality or incompetency. (Para 13)**

क. वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 14 – सक्षम प्राधिकारी – अभिनिर्धारित – मुख्य न्यायिक मजिस्ट्रेट, 2002 के अधिनियम की धारा 14 के अंतर्गत आवेदन पर कार्यवाही करने हेतु अत्यधिक सक्षम है – मुख्य न्यायिक मजिस्ट्रेट, इंदौर द्वारा पारित आदेश किसी अवैधता अथवा अक्षमता द्वारा प्रभावित नहीं है।

***B. Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act (54 of 2002), Section 14 – Notice* – Held – Competent authority is not required to notice either to the borrowers or the third party, he is only required to verify from the bank/ institution whether notice u/S 13(2) of the 2002 Act has been issued/served or not – Petition dismissed. (Para 13 & 14)**

ख. वित्तीय आस्तियों का प्रतिभूतिकरण और पुनर्गठन तथा प्रतिभूति हित का प्रवर्तन (SARFAESI) अधिनियम, (2002 का 54), धारा 14 – नोटिस – अभिनिर्धारित – सक्षम प्राधिकारी को उधार लेने वालों अथवा तीसरे पक्षकार को नोटिस देने की आवश्यकता नहीं है, उसे केवल बैंक/संस्था से यह सत्यापित करना होगा कि 2002 के अधिनियम की धारा 13(2) के अंतर्गत नोटिस जारी/तामील किया गया है अथवा नहीं – याचिका खारिज।

Cases referred:

(2019) 20 SCC 47, (2013) 9 SCC 620, AIR 2018 MP 209, WP No. 10672/2023 order passed on 08.05.2023.

Rishabh Gupta, for the petitioner.
Rohit Saboo, for the respondent No. 1.

O R D E R

The Order of the Court was Passed by:
SUSHRUT ARVIND DHARMADHIKARI, J.:- Heard finally with the onsent of both the parties.

In this petition under Article 227 of the Constitution of India, the petitioner has assailed the illegality, validity and propriety of the order dated 13.05.2023 (Annexure P-7) and 30.12.2022(Annexure P-2) passed by the Chief Judicial Magistrate(referred to as 'CJM' hereinafter), Indore as per Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(referred to as 'SARFAESI Act' hereinafter).

2. The brief facts of the case are that the petitioner is the erstwhile owner of the secured assets. The petitioner sold the property forming the secured assets to the borrowers of respondent no.1 on 20.09.2020. The borrowers in this case are respondent no.2 and 3. The borrowers took loan facility from respondent no.1/ bank. When the borrowers failed to repay certain installments, the respondent no.1/bank took measures under the SARFAESI Act and ultimately, filed an application u/S 14 of the SARFAESI Act before the learned CJM, Indore to take administrative assistance for obtaining possession of the secured assets. The CJM, Indore passed the impugned order directing the respondent no.1 to take the physical possession of the secured assets. After the petitioner having sold the property is in occupation of the secured asset as a tenant. Accordingly, the instant petition is filed.

3. The petitioner in the present case is aggrieved by the actions taken by the respondent no.1/bank, in as much as, it is going to take possession of the secured asset by virtue of the order passed by the CJM, Indore.

4. The contention of learned counsel for the petitioner is that according to Section 14 of SARFAESI Act, only the Chief Metropolitan Magistrate(referred to as 'CMM hereinafter) or the District Magistrate(referred to as 'DM hereinafter), as the case may be, can assist the secured creditors for taking possession of the secured assets, therefore, the impugned order passed by the CJM in this case is without jurisdiction.

5. Learned counsel for the respondent submitted that petitioner has not filed any document to show that he is the tenant and, therefore, if the tenant has any grievance, instead of objecting under Section 14 of SARFAESI Act proceedings, he could have approached the learned Debt Recovery Tribunal (referred to as 'DRT' hereinafter) u/S 17(4A) of the SARFAESI Act, if at all there is any threat of dispossession. The DRT has powers to examine the matter and after recording of evidence, pass appropriate orders. The petitioner without availing the aforesaid remedy has approached this Court, therefore, the petition deserves to be dismissed.

6. Heard, learned counsel for the parties and perused the record.

7. The two core legal questions involved in this petition are :

(i) Whether the CJM can exercise powers u/S 14 of the SARFAESI Act?

(ii) Whether the borrower can and /or "any other person" is required to be given an opportunity of hearing before passing the order u/S 14 of the SARFAESI Act?

8. So far as the answer to the first question is concerned, this question came up for consideration before The Hon'ble Apex Court in the case of *Authorized Officer. Indian Bank Vs. D. Visalakshi and Another* reported in (2019) 20 SCC 47. The Apex Court was tasked to deal with the contrary views being taken from various High Courts in the country. The High Court of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand interpreted the said provision to mean that only the CMM in metropolitan areas and the DM in non-metropolitan areas were competent to deal with the applications u/S 14 of the SARFAESI Act whereas on the other hand High Courts of Kerela, Allahabad, Andhra Pradesh and Karnataka took a contrary view and concluded that the provision does not debar or preclude the CJM to exercise the powers u/S 14 of the Act. The Apex Court in the case of *Authorized Officer, Indian Bank* (supra) has held thus:

" 34. Notably, the powers and functions of the CMM and the CJM are equivalent and similar, in relation to matters specified in the Cr. P.C. . These expressions (CMM and CJM) are interchangeable and synonymous to each other. Moreover, Section 14 of the 2002 Act does not explicitly exclude the CJM from dealing with the request of the secured creditor made thereunder. The power to be exercised under Section 14 of the 2002 Act by the concerned authority is, by its very nature, nonjudicial or State's coercive power. Furthermore, the borrower or the persons claiming through borrower or for that matter likely to be affected by the proposed action being in possession of the subject property, have statutory remedy under Section 17 of the 2002 Act and/or judicial review under Article 226of the Constitution of India. In that sense, no prejudice is likely to be caused to the borrower/lessee; nor is it possible to suggest that they are rendered remediless in law. At the same time, the secured creditor who invokes the process under Section 14 of the 2002 Act does not get any advantage muchless added advantage. Taking totality of all these aspects, there is nothing wrong in giving expansive meaning to the expression" CMM", as inclusive of CJM concerning nonmetropolitan area, who is otherwise competent to discharge administrative as well as judicial functions as delineated in the Cr.P.C. on the same terms as CMM. That interpretation would make the provision more meaningful. Such interpretation does not militate against the legislative intent nor it would be a case of allowing an unworthy

person or authority to undertake inquiry which is limited to matters specified in Section 14 of the 2002 Act.

44. Suffice it to observe that keeping in mind the subject and object of the 2002 Act and the legislative intent and purpose underlying Section 14 of the 2002 Act, contextual and purposive construction of the said provision would further the legislative intent. In that, the power conferred on the authorised officer in Section 14 of the 2002 Act is circumscribed and is only in the nature of exercise of State's coercive power to facilitate taking over possession of the secured assets.

54. To sum up, we hold that the CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act. We accordingly, uphold and approve the view taken by the High Courts of Kerala, Karnataka, Allahabad and Andhra Pradesh and reverse the decisions of the High Courts of Bombay, Calcutta, Madras, Madhya Pradesh and Uttarakhand in that regard. Resultantly, it is unnecessary to dilate on the argument of prospective overruling pressed into service by the secured creditors (Banks)."

9. So far as the answer to Question No.2 is concerned, the maiden attempt to decide the said question was made by the Apex Court in the case of *Standard Chartered Vs. Noble Kumar & Others* reported in (2013) 9 SCC 620 wherein the Apex Court has observed thus:

" 25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking the possession of the secured asset."

10. This Court was also loathed with the similar question in the case of *Aditya Birla Finance Ltd. Vs. Shri Carnet Elias Fernandes* reported in AIR 2018 MP 209 wherein it has been held that:

" 29. Thus, the proceedings under Section 14 of the Act are not proceedings to adjudicate the rights of the parties. Therefore, no notice is contemplated to be served upon the debtor, as such proceedings are taken only after serving notice under Section 13 of the Act.

30. In view of the aforesaid, we find that the order of the learned Single Bench allowing the writ petition cannot be sustained in

law. The same is set aside and the order of the District Magistrate is restored. The present appeal stands allowed."

11. The Apex Court in the case of *Authorized Officer*, (supra) went to throw light on the operation and application of Section 14 of the SARFAESI Act. Relevant extracts of the judgment are as follows:

" .....Concededly, the nature of inquiry to be conducted by the designated authorities under the 2002 Act, is spelt out in Section 14 of the 2002 Act. The same is circumscribed and is limited to matters specified in Clauses (i) to (ix) of the first proviso in subsection (1) of Section 14 of the 2002 Act, inserted in 2013. Prior to the insertion of that proviso, it was always understood that in such inquiry, it is not open to adjudicate upon contentious pleas regarding the rights of the parties in any manner. The stated authorities could only do verification of the genuineness of the plea and upon being satisfied that it is genuine, the adjudication thereof could then be left to the Court of competent jurisdiction.

33. Suffice to observe that an inquiry conducted by the stated authority under Section 14 of the 2002 Act, is a sui generis inquiry. In that, majorly it is an administrative or executive function regarding verification of the affidavit and the relied upon documents filed by the parties. That inquiry is required to be concluded within the stipulated time frame. While undertaking such an inquiry, as is observed by this Court, the authority must display judicious approach, in considering the relevant factual position asserted by the parties. That presupposes that it is a quasijudicial inquiry though, a nonjudicial process. The inquiry does not result in adjudication of inter se rights of the parties in respect of the subject property or of the fact that the transaction is a fraudulent one or otherwise. "

12. This Court in the case of *Fullerton India Co. Ltd Vs. Additional District Magistrate* in W.P. No. 10672 of 2023 *vide order dated 8th May,* 2023 relying upon the case of *Aditya Birla Finance Ltd.* (supra) held that no opportunity of hearing is required to be given to the borrower at any stage. Also, even if the borrower appears *suo motu,* it must not be heard as proceedings u/S 14 of the SARFAESI Act as the same is not adjudicatory in nature.

13. In view of the aforesaid discussion and the various pronouncements of the Apex Court, the answer to first question would be that the CJM, is very much competent to deal with the application u/S 14 of the SARFAESI Act. In other words, the order passed by the CJM, Indore is not hit by any illegality or

incompetency. So far as opportunity of hearing to the borrower while deciding the application u/S 14 of the SARFAESI Act is concerned, in the light of the judgment passed in the case of *Standard Chartered* (supra), *Aditya Birla Finance Ltd.* (supra) & *Authorized Officer Indian Bank* (supra), the CMM/DM/CJM is not required to notice either to the borrowers or the third party, they are only required to verify from the bank/institution whether notice u/S 13(2) of the SARFAESI Act has been issued/served or not.

14. In view of the aforesaid, the present petition is bereft of merit and substance and, therefore, the same deserves to be and is hereby dismissed. No order as to cost.

15. The interim order granted by this Court on 15.06.2023 stands vacated.

Petition dismissed

I.L.R. 2023 M.P. 2047

Before Mr. Justice Vishal Dhagat

MP No. 2141/2023 (Jabalpur) decided on 2 August, 2023

VIJAY …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 451/457 and Excise Act, M.P. (2 of 1915), Sections 34, 47-A & 47(1) – Interim Custody of Seized Vehicle – Jurisdiction of Magistrate* – Held – As per Section 47(1) of 1915 Act, there is a bar on power of Magistrate to exercise its jurisdiction to release the vehicle on supurdnama, if intimation has been sent to him u/S 47-A by Executive Magistrate – He is barred from exercising the power until proceedings u/S 47-A pending before District Magistrate/Collector have been disposed of. (Para 9)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451/457 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धाराएँ 34, 47–A व 47(1) – जब्तशुदा वाहन की अंतरिम अभिरक्षा – मजिस्ट्रेट की अधिकारिता – अभिनिर्धारित – अधिनियम 1915 की धारा 47(1) के अनुसार, मजिस्ट्रेट को अपनी अधिकारिता का प्रयोग करते हुए वाहन को सुपुर्दनामा पर छोड़ने की शक्ति पर वर्जन है, यदि कार्यपालक मजिस्ट्रेट द्वारा धारा 47–A के अंतर्गत उसे सूचना भेजी गई है – जिला मजिस्ट्रेट/कलेक्टर के समक्ष लंबित धारा 47–A के अंतर्गत कार्यवाहियों के निराकृत होने तक उसे शक्ति का प्रयोग करने से वर्जित किया जाता है।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 451/457 and Excise Act, M.P. (2 of 1915), Sections 34, 47-A & 47(1) – Confiscation of Seized Vehicle – Jurisdiction of Magistrate* – Held – If Collector has passed an order of confiscation u/S 47-A, then Magistrate shall not pass any order in**

this regard – Judicial Magistrate can proceed with the trial but will not pass any order of confiscation, if intimation of the same has been given to him.
(Para 9)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451/457 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धाराएँ 34, 47–A व 47(1) – जब्तशुदा वाहन का अधिहरण – मजिस्ट्रेट की अधिकारिता – अभिनिर्धारित – यदि कलेक्टर ने धारा 47–A के अंतर्गत अधिहरण का आदेश पारित किया है, तो मजिस्ट्रेट इस संबंध में कोई आदेश पारित नहीं करेगा – न्यायिक मजिस्ट्रेट विचारण की कार्यवाही कर सकता है लेकिन अधिहरण का कोई आदेश पारित नहीं करेगा यदि उसे इसकी सूचना प्रदान कर दी गई है।

***C. Excise Act, M.P. (2 of 1915), Section 47(1) and Wild Life (Protection) Act (53 of 1972), Section 39(1)(d) – Confiscation Proceedings – Difference* – Discussed and explained.** **(Paras 5 to 10)**

ग. आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 47(1) एवं वन्य जीव (संरक्षण) अधिनियम (1972 का 53), धारा 39(1)(d) – अधिहरण कार्यवाहियां – अंतर – विवेचित एवं स्पष्ट किया गया।

Case referred:

(2008) 14 SCC 624.

Ashok Kumar Tiwari, for the petitioner.
Narendra Chourasia, G.A. for the respondents.

O R D E R

VISHAL DHAGAT, J.:- Petitioner has filed this petition under Article 227 of Constitution of India, challenging order dated 5.8.2022 passed by Additional District Magistrate, Betul i.e. respondent no.3.

2. Respondent no.3 has initiated proceedings for confiscating of Scooty vehicle bearing no.MP-MV-3221 owned by Vijay, Son of Ravi. Petitioner was proceeded exparte as he did not appear after service of notice. District Magistrate found that vehicle in question was used in transportation of 50 bulk litres of country made liquor without any licence or permit. In said circumstances vehicle was confiscated in favour of State Government.

3. Learned counsel for the petitioner has challenged impugned order on ground that vehicle in question, at the time of seizure was being driven by Mohit Mandal i.e. neighbour of petitioner. It is submitted that petitioner is not accused in the case, therefore, his vehicle cannot be confiscated. In these circumstances, prayer is made for setting aside impugned order. Learned counsel for the petitioner relied on judgment passed by Apex Court in the case of *State of M.P. vs. Madhukar Rao*, (2008) 14 SCC 624. On strength of aforesaid judgment, it was

argued that Magistrate cannot pass an order of confiscation until case has been finally decided by Magistrate.

4. Heard learned counsel for the parties.

5. Perused the order passed by the Apex Court. In aforesaid judgment passed by Apex Court question was "whether vehicle or vessel seized under section 50(1)(c) Wild Life (Protection) Act, 1972 is put beyond the power of Magistrate to direct its release during pendency of trial in exercise of power under section 451 CrPC, 1973 ?"

6. Brief facts of said case was that vehicle Tata Sumo was seized as it was carrying 206 Kg. of antlers. Vehicle was owned by Madhukar Rao and it was submitted that vehicle was borrowed by his friend and neighbour Shri Lohiya to visit his ailing father. Case is registered against him and he is an accused in the case. Madhukar Rao was neither an accused in the case nor is he connected with the offence. In these circumstances he had filed an application before the Magistrate for release of his vehicle on supurdnama which was allowed.

(i). State Government challenged order of Magistrate in revision before Sessions Judge, Raipur. Sessions Court held that Magistrate disregarded Section 39(1)(d) of Wild Life (Protection) Act and stated that court has no power to release the vehicle on supurdnama. Power under section 451 of CrPC, can be exercised only in respect of vehicle seized by police officer and order of Magistrate was set aside.

(ii). State Government challenged order before High Court in writ petition. Full Bench of High Court held that Magistrate's power to release the vehicle was not affected by the legislative changes in the Act relied upon by the State and in appropriate cases it was open to the Magistrate to pass an order of interim release of vehicle.

(iii). Order passed by High Court was challenged before Apex Court. Apex Court in its judgment held that High Court had correctly appreciated the facts of law. In the case it was held that provision under section 39(1)(d) of the Act, will come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused is true and recorded a finding that the seized vehicle was, as a matter of fact, used in commission of offence. Any attempt to operationalise Section 39(1)(d) of the Act merely on basis of seizure and accusations/allegations levelled by the department authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid.

7. Section 39(1)(d) of the Act is reproduced as under:-

> **"39. Wild animals, etc., to be Government property-** (1) Every -
>
> (d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act,
>
> shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat [derived from such animal, or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government."

8. Said section lays down that vehicle, vessel, weapon, trap or tool which has been used for committing an offence and has been seized under the provisions of this Act, will be the property of the State Government. Provision under section 39(1)(d) of the Act, is different from the provisions regarding confiscation of vehicle under Excise Act, 1915. Confiscation procedure is laid down in Section 47(1) of M.P. Excise Act, which is reproduced as under:-

> **"47. Order of confiscation.—** (1) Where in any case tried by him the Magistrate, decides that anything is liable to confiscation under Section 46, he shall order confiscation of the same :
>
> Provided that where any intimation under clause (a) of sub - section (3) of Section 47-A has beer received by the Magistrate, he shall not pass any order in regard to confiscation as aforesaid until the proceedings pending before the Collector under Section 47-A in respect of thing as aforesaid have been disposed of, and if the Collector has ordered confiscation of the same under sub-section (2) of Section 47-A, the Magistrate shall not pass any order in this regard."

9. As per aforesaid section, there is bar on power of Magistrate to exercise its jurisdiction to release the vehicle on supurdnama if intimation has been sent to him under section 47-A of M.P. Excise Act by Executive Magistrate and he is barred from exercising the power until proceedings under section 47-A of the Act which is pending before District Magistrate/Collector have been disposed of. Section 47-A lays down for confiscation of intoxicants, articles, implements, utensils, materials and conveyance if same is used for commission of offence under section 34(1)(a) & (b) of M.P. Excise Act and quantity of liquor is found to be more than 50 bulk litres and if Collector/District Magistrate has passed an order of confiscation under section 47-A of the Act, then Magistrate shall not pass any order in this regard. Section 47-A of the Act, only states that use of vehicle in commission of offence. Bar has been created only in respect of passing an order of

confiscation of vehicle and Magistrate shall not proceed to pass orders on confiscation of vehicle but Magistrate is free to proceed with trial of the case for commission of offence which means that Judicial Magistrate can proceed with trial of a case under Excise Act but will not pass on order of confiscation in regard to vehicle if intimation of same has been given to him and District Magistrate/Collector is proceeding in the case for confiscation of vehicle. If order of confiscation has been passed by Executive Magistrate then same will be final and Judicial Magistrate will not pass any order regarding confiscation.

10. Section 39(1)(d) of Wild Life (Protection) Act provides that if vehicle is used for commission of offence and seized then same will become property of State Government. No hearing, trial, etc. is provided, therefore, Supreme Court held that confiscation will take place once trial is concluded. However, under section 47(1) of M.P. Excise Act, procedure for confiscation with opportunity of hearing is provided and further aggrieved person has remedy of appeal and revision, therefore, scheme of two sections i.e. under Wild Life (Protection) Act, 1972 and M.P. Excise Act, 1915 is entirely different.

11. Trial of accused and confiscation of vehicle are proceeded parallel to each other and there is no bar for District Magistrate/Collector to wait until criminal proceedings have been finally decided by Judicial Magistrate. In these circumstances, judgment relied on by learned counsel for the petitioner in the case of *Madhukar Rao* (Supra) is not applicable in the present case.

12. In view of same, Misc. Petition filed by the petitioner is **dismissed** with liberty to petitioner to approach Appellate Authority or Revisional Court in accordance with the M.P. Excise Act.

Petition dismissed

I.L.R. 2023 M.P. 2051

Before Mr. Justice G.S. Ahluwalia

MA No. 2244/2015 (Jabalpur) decided on 10 May, 2023

NEW INDIA ASSURANCE CO. LTD. …Appellant

Vs.

SHASHIKALA & ors. …Respondents

***Motor Vehicles Act (59 of 1988), Section 66(3)(p) & 163-A – Liability of Insurer* – Held – Auto was not having permit and it was not being taken for repair purpose – Auto was not empty thus Section 66(3)(p) would not apply – Driver was not having driving license – Insurance company not liable to pay compensation – Since deceased was sitting in the auto and doctrine of contributory negligence would not apply and doctrine of composite negligence**

would apply, the entire liability is of the owner of the vehicle.

(Paras 10 to 15)

मोटर यान अधिनियम (1988 का 59), धारा 66(3)(p) व 163–A – बीमाकर्ता का दायित्व – अभिनिर्धारित – ऑटो का परमिट नहीं था और इसे मरम्मत के उद्देश्य से नहीं ले जाया जा रहा था – ऑटो खाली नहीं था, अतः धारा 66(3)(p) लागू नहीं होगी – चालक के पास चालन अनुज्ञप्ति नहीं थी – बीमा कंपनी प्रतिकर का भुगतान करने हेतु दायी नहीं है – चूंकि मृतक ऑटो में बैठा था एवं योगदायी उपेक्षा का सिद्धांत लागू नहीं होगा तथा संयुक्त उपेक्षा का सिद्धांत लागू होगा, संपूर्ण दायित्व वाहन के स्वामी का है।

Case referred :

(2020) 1 TAC 353 SC.

Dinesh Kaushal, for the appellant.
Nitya Nand Mishra, for the respondent Nos. 1 to 6.

O R D E R

G.S. AHLUWALIA, J.:- This Miscellaneous Appeal under Section 173 of Motor Vehicles Act has been filed against the award dated 18.08.2015 passed by Motor Accident Claims Tribunal, Rewa (M.P.) in MACC No.185/2012.

2. The facts necessary for disposal of the present appeal in short are that the claimants filed an application under Section 163-A of Motor Vehicles Act for compensation of Rs.10,00,000/- on the ground that the deceased Vansh Bahadur Dwivedi was driving the auto bearing registration No.MP 17 R 1141. He was taking the auto for mechanical repairs. All of a sudden there was a collision between heavy vehicle and the auto, as a result the deceased died on the spot on 22.12.2011.

3. It appears that the identity of the heavy vehicle could not be established and accordingly, the claim petition was filed against the owner of the auto as well as the Insurance Company of the auto. The Claims Tribunal by the impugned award has awarded a sum of Rs.4,84,700/-.

4. Challenging the award passed by the Claims Tribunal, it is submitted by the counsel for the appellant that since the auto was not having permit therefore, the Insurance Company is not liable to pay compensation amount. Since the deceased has stepped into the shoes of the owner of the vehicle, therefore, the claim petition under Section 163-A of the Motor Vehicles Act was not maintainable and accordingly, relied upon the judgment passed by the Supreme Court in the case of *Ramkhiladi and Another Vs. The United India Insurance Company and Another* reported in (2020) 1 TAC 353 SC.

5. *Per contra,* the counsel for the respondents No.1 to 6 has supported the findings recorded by the Claims Tribunal.

6. Heard the learned counsel for the appellant.

7. It is the case of the claimants that the deceased was taking the auto for mechanical repair purposes. Jamuna Prajapati had lodged an FIR, Exhibit P/1. In the FIR, it is mentioned that on 22.12.2011, Vansh Bahadur Dwivedi, Umashankar as well as Jamuna Prajapati were going back towards their house after admitting their relative in the hospital. The auto was being driven by Umashankar, whereas Jamuna Prajapati and Vansh Bahadur/ deceased were sitting in the auto. At about 4.00 pm, when the auto reached near the Bazar, it was dashed by unknown truck, which was coming from the side of Allahabad. Because of collision, the auto was badly damaged. Jamuna Prajapati/ complainant fell out of the auto, whereas Umashankar got trapped in the auto. The legs of Vansh Bahadur also got entangled in the auto. Umashankar and Vansh Bahadur have expired and their dead bodies are lying on the road. Thus, it is clear from the FIR that three persons were sitting in the auto and in fact auto was being driven by Umashankar, whereas it is the case of the claimants that although, Umashankar Upadhyay was the owner of the auto but Vansh Bahadur was driving the auto. In clause 16 of the claim petition, it is mentioned that since Umashankar Upadhyay has expired therefore, his wife has been impleaded as respondent but in paragraph 11 of the claim petition, it is specifically mentioned that Vansh Bahadur as well as Umashankar have expired in the accident. The claim petition is completely silent about the presence of Jamuna Prajapati. The claimants themselves have relied upon the FIR, Exhibit P/1, in which it is specifically mentioned that the complainant Jamuna Prajapati, deceased Umashankar Upadhyay and Vansh Bahadur were coming back from the hospital. It is not mentioned that the auto was being taken for mechanical repair purposes. The appellant has examined Shraddha Shrivastava (D.W.1), who has proved the certificate that the auto was not having any permit, Exhibit D/1. The appellant has also examined Ratan Kumar Ghosh (D.W.2), who has proved that the deceased was having the driving licence to drive LMV and motor cycle with gear. But one thing is clear that the claimants themselves have relied upon the FIR, Exhibit P/1, in which it was specifically mentioned that Umashankar was driving the auto. For the reasons best known to the claimants, they have twisted the facts of the case and they have claimed that in fact it was Vansh Bahadur, who was driving the auto. This twisting of facts must have been done for the simple reason that Umashankar Upadhyay must not be having any driving licence at all.

8. The claimants have also filed the photographs of the accident as Exhibits P/9 to P/12. Two persons have lost their lives but surprisingly, the correct photographs of the accident have not been placed on record. In photographs, Exhibits P/10 and P/12, the dead body of probably Vansh Bahadur is visible. Jamuna Prajapati in FIR, Exhibit P/1, had specifically mentioned that the legs of

Vansh Bahadur got entangled in the auto itself. From the photographs, Exhibit P/10 and P/12, it is clear that the legs of the deceased were entangled in the auto and the remaining body of the deceased was lying on the road. However, the dead body of Umashankar is not visible. It was the case of Jamuna Prajapati in FIR, Exhibit P/1, that Umashankar Upadhyay had got stuck in the auto but it appears that the photograph of the dead body of Vansh Bahadur was taken after removing the dead body of Umashankar from the auto. Why this manipulation was done by the claimants is not clear. But one thing is clear that they have not approached the Claims Tribunal with clean hands and they have tried to twist the facts of the case.

9. Furthermore, from the photograph, Exhibit P/11, in which the background of the place of accident is also clearly visible, it is clear that the auto was on the extreme right side of the road, whereas it should have been on the extreme left side of the road. Thus, it is clear that Umashankar Upadhyay was driving the auto on the wrong side of the road, which majorly contributed to the accident.

10. From the contents of FIR, Exhibit P/1, it is clear that in fact it was Umashankar Upadhyay, who was driving the auto and not Vansh Bahadur as claimed by the claimants. It is not out place to mention here that the present claim petition was filed by the legal representatives of Vansh Bahadur. Since Vansh Bahadur was sitting in the auto, therefore, the principle of contributory negligence would not apply and the principle of composite negligence would apply and the claimants of the such victim can file a claim petition against the owner, driver and Insurance Company of both the offending vehicles or against the owner, driver and Insurance Company of one of the vehicle. Since the whereabouts of the heavy vehicle, which collided with the auto, could not be traced, therefore, the claim petition was filed against the owner and Insurance Company of the auto. Since, it is the case of composite negligence, therefore, the claim petition was maintainable against the owner and the Insurance Company of the auto.

11. The appellant has successfully proved that the auto was not having permit. Now the only question for consideration is as to whether the provisions of Section 66(3)(p) of the Motor Vehicles Act would apply or not?

12. Section 66(3)(p) of the Motor Vehicles Act reads as under:

> "(p) to any transport vehicle while proceeding empty to any place for purpose of repair."

13. It is clear from the abovementioned provision that if a transport vehicle is proceeding for repair purposes and is completely empty, then the requirement of permit would not apply. However, in the present case, undisputedly three persons were travelling, out of whom two lost their lives. From *Naksha Panchayatnama,* Exhibit P/2, it is clear that the name of the deceased was mentioned as

Umashankar alias Kallu and in *Naksha Panchayatnama,* Exhibit P/3, the name of the deceased was mentioned as Vansh Bahadur. In the Merg intimation, Exhibit P/4, which was lodged by Jamuna Prajapati, the names of the deceased were mentioned as Umashankar Upadhyay and Vansh Bahadur. Vinod Kumar Dwivedi (A.W.4) has also stated that after the accident when he reached on the spot, he found that the dead bodies of two persons were lying there. Thus, it is clear that in fact, the auto was not empty and accordingly, Section 66(3)(p) of the Motor Vehicles Act would not apply.

14. Since the auto was being driving by Umashankar Upadhyay and it is not the case of the claimants that Umashankar Upadhyay was having any licence to drive the auto. On the contrary, the claimants with a malafide intention have twisted the facts and claimed that Vansh Bahadur was driving the auto. Even the auto was not having permit coupled with the fact that auto was not being taken for repair purposes. Thus, this Court is of the considered opinion that the driver of the auto Umashankar was not having any driving licence at all. Accordingly, the Insurance Company is not liable to pay the compensation. Under the facts and circumstances of the case, specifically when the claimants have not approached with clean hands, even the doctrine of pay and recover would not apply.

15. So far as the question of quantum is concerned, although the claimants had filed a claim petition under Section 163-A of the Motor Vehicles Act but this Court has already come to a conclusion that in fact Umashankar Upadhyay was driving the auto and the claimants have wrongly twisted the fact. Since the deceased Vansh Bahadur was sitting in the auto and the doctrine of contributory negligence would not apply and the doctrine of composite negligence would apply, therefore, it is directed that the entire liability is of the owner of the offending vehicle i.e. respondent No.7 and the Insurance Company is exonerated from its liability in its entirety.

16. With aforesaid modification, the award dated 18.08.2015 passed by Motor Accident Claims Tribunal, Rewa (M.P.) in MACC No.185/2012 is hereby **affirmed.**

17. The appeal succeeds and is hereby **allowed** to the extent mentioned above.

Appeal allowed

I.L.R. 2023 M.P. 2056

Before Mr. Justice Vijay Kumar Shukla

MA No. 1434/2006 (Indore) decided on 5 July, 2023

KAMLA BAI (SMT.) & ors. …Appellants

Vs.

BABULAL & ors. …Respondents

***Civil Procedure Code (5 of 1908), Order 41 Rule 23-A – Remand* – Held – Application under O-16 R-1 CPC was rejected by trial Court and suit was dismissed as barred by limitation – Appellate Court allowed the application and remanded the matter – Order of remand cannot be passed merely for purpose of allowing a party to fill up lacuna in the case and further, the appellate Court while remanding the case did not decide the issue relating to limitation – Order of remand is erroneous and thus cannot be sustained.**

(Para 10 & 12)

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 23–A – प्रतिप्रेषण – अभिनिर्धारित – विचारण न्यायालय द्वारा सि.प्र.सं. के आदेश–16 नियम–1 के अंतर्गत आवेदन को नामंजूर किया गया था तथा परिसीमा द्वारा वर्जित होने के कारण वाद को खारिज किया गया था – अपील न्यायालय ने आवेदन मंजूर किया तथा मामले को प्रतिप्रेषित किया – प्रतिप्रेषण का आदेश प्रकरण की कमी को पूरा करने हेतु पक्षकार को मंजूरी देने के मात्र प्रयोजन से पारित नहीं किया जा सकता एवं इसके अतिरिक्त, अपील न्यायालय ने प्रकरण प्रतिप्रेषित करते समय परिसीमा से संबंधित विवाद्यक का विनिश्चय नहीं किया – प्रतिप्रेषण का आदेश त्रुटिपूर्ण है एवं इसलिए कायम नहीं रखा जा सकता।

Cases referred :

AIR 2008 SC 2579, AIR 2020 SC 3102.

A.S. Kutumbale with *B.S. Gandhi*, for the appellants.
Rasik Sugandhi, for the respondents/defendants No. 4 & 6.

O R D E R

VIJAY KUMAR SHUKLA, J.:- The present appeal is filed under Order 41 Rule 23 of CPC against the order dated 31.3.2006 passed by I ADJ, Ujjain in Civil Appeal No.31A/2005 whereby the case has been remanded back to the trial court.

2. Facts of the case are that plaintiff/respondent filed a suit for declaration and permanent injunction stating that the plaintiff had a house in village Lekoda, district Ujjain. Adjacent to the hosue (sic: house) of the plaintiff, the house of the defendant-appellant No. 1 is situated. On the right side of the plaintiff, the house of it open land (Bada) of the ownership of the plaintiff is situated. Size of that land

is 45 x 22 ft. This disputed land has been shown in the map in red line. Boundaries of the land is described in para No.1 of the plaint. It is further pleaded that appellant/ defendant Nos.1,2 and 3 tried to forcibly take possession of the land and the defendant/appellant Nos.4,5 and 6 opened a door and on raising objection by the plaintiff the door was closed but they are challenging the title of the plaintiff, hence they were made parties in the suit.

3. The plaintiff claimed that he has got this land from his father which he had purchased 40-45 years ago from Babulal Lohar in Rs.10/- and since then the plaintiff is in possession of the suit land. Earlier the plaintiff using that land for throwing garbage of the house. Lateron on father of the plaintiff was growing vegetables on it. Plaintiff got permission from Panchayat to construct a house and the defendants raised objection and the fact was admitted that the land was of the possession of the plaintiff but on lapse of time price of the land has been rised, therefore, the defendants are trying to show that the land in dispute is of their ownership and attempting to use the same. The defendants are trying to take possession of the land on which proceedings under section 145 Cr.P.C. and case No. 1488/89 was registered. The court did not decide the dispute and dismissed the case. Taking advantage of the decision of the court the defendants are trying to take possession of the land in dispute and using the same, therefore the suit was filed

4. The defendant Nos.1 to 3/appellants and defendant Nos.4 to 6 filed their separate written statements.

5. The defendant Nos. 1 to 3 denied the plaint allegations. Plaintiff filed an application for permission to construct the house. Ramprasad raised objection. Plaintiff had agreed to sell the land dispute in Rs.10,000/- with one Ambaram and when Ambaram tried to wire fencing the land in dispute the defendants raised objection and report was lodged. Upon this the police started proceedings under section 145 Cr.P.C.. Plaintiff did not make valuation of the suit and did not pay court fees.

6. In both the written statements it is pleaded that their ancester Chhiterji had two sons - Jagannath and Kashiram. Jagannath had two sons defendant Nos. 2 and 3 and Ramprasad was son of Jagannath and defendant Nos. 4 to 6 are their heirs. There was a partition between Jagannath and Ramprasad, according to which the defendants are using and enjoying the land. Ramprasad was ordered by Panchayat to close the door, against which an appeal was preferred before the SDO, Ujjain which was decided on 31.12.1975 and matter was remanded back to Panchayat for decision on merits which has not been heard till date. Against the order of SDO, a revision was filed by the Gram Panchayat which has also been dismissed. The land in dispute is in possession and ownership of the defendants. The defendants are in possession of the land since more than 50 years in the knowledge of the

plaintiff, hence on the basis of adverse possession also the defendants have perfected their title. Suit is time barred and prayed to dismiss the suit. Learned trial court after recording the evidence of the parties dismissed the suit, against which plaintiff preferred an appeal which was allowed and the case has been remanded for fresh decision.

7. Counsel for the appellants submits that the suit was dismissed mainly on the ground that plaintiff/respondent has failed to prove his title over the suit land and the suit was barred by limitation. The appellate court has remanded the case for fresh decision mainly on the ground that plaintiff's application under Order 16 Rule 1 CPC was not considered properly by which the respondent-plaintiff has sought to produce documentary evidence to prove his ownership. The appellate court did not consider the issue of limitation. It is further argued that appellate court has failed to consider that the issues were framed in the year 1993 and plaintiff filed application under Order 16 Rule 1 CPC after 7 years and the plaintiff has made an attempt to fill up the lacunas by the said application as he has no evidence to prove his title over the suit land. Counsel for the appellant further argued that application filed by the respondent-plaintiff under Order 16 Rule 1 CPC was rejected by order dated 16.8.2000. Against the said order, the plaintiff preferred revision before this Court which was registered as Civil Revision No. 952/2000 and the same was not entertained on the ground that same was filed against an interlocutory order and plaintiff was granted liberty to file review application by order dated 16.8.2000. Thereafter the plaintiff/respondent filed a review application before the trial court which was dismissed. The same was not challenged by the plaintiff and the said order attained finality. Thereafter the plaintiff also filed an application under section 65 of the Evidence Act for leading secondary evidence which was also rejected and the said order attained finality. On the basis of aforesaid submission, it is argued that by the impugned order, the appellate court has erred in directing for remanding of the case by allowing the application under Order 16 Rule 1 CPC with the cost of Rs.500/- and giving him opportunity to summon the documents from Gram Panchayat and the trial court has been directed to give opportunity to adduce evidence and thereafter to decide the suit. The impugned order of remand is nothing but an order to fill up the lacuna of the plaintiff. The plaintiff has not filed any document to show ownership of his ancestors. Even Exhibit P/1 to P/18 filed by the plaintiff donot indicate the title over the land in question. They are the documents which simply indicate filing of the application for permission to construct the house which is not in dispute and the same does not relate to the disputed vacant portion of the land. Apart from that, no revenue record has been filed to show the name of ancestors recorded in the revenue record or their possession on the vacant land.

8. The trial court has framed as many as 10 issues and the issue No.4 was relating to the issue that whether the plaintiff had inherited the land in question

from his ancestors and after appreciation of evidence the trial court recorded a finding that the same was not proved by the plaintiff and the issue No.7 was relating to the limitation and same was considered in para-33 of the order of the trial court that according to the plaintiff, the dispute had arisen in the year 1976 and therefore, the suit was barred by limitation. The appellate court has not dealt with second issue of limitation and therefore, the order of remand is bad in law. In support of his submission, he has placed reliance on the judgment passed by the Apex Court in the case of *Municipal Corporation, Hyderabad VS. Sunder Singh,* AIR 2008 SC 2579. In the said case, the application for adducing secondary evidence was rejected. The appeal was allowed and the matter was remanded back to the trial court by High Court, suit not decided on preliminary issue, the Apex Court held that order 41 Rule 23A in such cases is not available. He also referred to the judgment passed by the Apex Court in the case of *Shivkumar and others VS. Sharanabasappa and others,* AIR 2020 SC 3102. In the said case also the Apex Court held that where the parties had adduced all their evidence, whatever they wished to; and it had not been the case of the plaintiffs-appellants that they were denied any opportunity to produce any particular evidence or if the trial was vitiated because of any alike reason. The High Court has meticulously examined the same evidence and the same circumstances and has come to a different conclusion that appears to be sound and plausible, and does not appear suffering from any infirmity. There was no reason or occasion for the High Court to consider remanding the case to the trial court.

9. Counsel for the respondents supported the order of remand and submitted that court has rightly remanded the matter as the plaintiff's application under Order 16 Rule 1 CPC to summon the record from Pancahyat regarding title was wrongly denied. He submits that plaintiff could prove his title through the documents which were sought to be summoned from the Pancahayat.

10. I have heard learned counsel for the parties at length.

11. I find that the order of remand passed by the appellate court is erroneous and not justified. The order of remand cannot be passed to fill up the lacuna. The plaintiff has filed a suit for declaration of title and permanent injunction but he has failed to adduce any evidence to prove his title. The documents exhibited from Annx.P/1 to P/18 do not indicate any title of his ancestors. The plaintiffs application under Order 16 Rule 1 CPC was dismissed. Against the said order, the review was also dismissed, which was not challenged and the same attained finality. From going through the application under Order 16 Rule 1 CPC, this Court does not find any averment that what type of record of title of plaintiff's ancestors are available with the Panchayat. The documents only indicate that application was filed before Panchayat for permission to construct the house which is not in dispute. The dispute is in relation to adjacent land for which no document was exhibited. The

Apex Court in the case of *Shivkumar* (supra) in para No.25.4 has held as under

> 25.4. A conjoint reading of Rules 23, 23A and 24 of Order XLI brings forth the scope as also contours of the powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an Appellate Court is to follow the mandate of Rule 24 of Order XLI CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a retrial is considered necessary that the Appellate Court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the Trial Court may not be considered proper in a given case because the First Appellate Court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.
>
> 25.4.1. The decision cited by the learned Counsel for the appellants in the case of Mohan Kumar (supra) is an apt illustration as to when the Appellate Court ought to exercise the power of remand. In the said case, the appellant and his mother had filed the civil suit against the Government and local body seeking declaration of title, perpetual injunction and for recovery of possession in respect of the land in question. The Trial Court partly decreed the suit while holding that the plaintiffs were the owners of the land in dispute on which trespass was committed by the respondents and they were entitled to get the encroachment removed; and it was also held that the Government should acquire the land and pay the market value of the land to the appellant. Such part of the decree of the Trial Court was not challenged by the defendants but as against the part of the decision of the Trial Court which resulted in rejection of the claim of the appellant for allotment of an alternative land, the appellant preferred an appeal before the High Court. The High Court not only dismissed the appeal so filed by the appellant but proceeded to dismiss the entire suit with the finding that the plaintiff-appellant had failed to prove his ownership over the suit land inasmuch as he did not examine the vendor of his sale deed. In the given circumstances, this Court observed that when the High Court held that the appellant was not able to prove his title to the suit land due to non-

> examination of his vendor, the proper course for the High Court was to remand the case to the Trial Court by affording an opportunity to the appellant to prove his title by adducing proper evidence in addition to what had already been adduced. Obviously, this Court found that for the conclusion reached by the High Court, a case for re-trial was made out particularly when the Trial Court had otherwise held that the appellant was owner of the land in dispute and was entitled to get the encroachment removed as also to get the market value of the land. Such cases where re- trial is considered necessary because of any particular reason and more particularly for the reason that adequate opportunity of leading sufficient evidence to a party is requisite, stand at entirely different footings than the cases where evidence has already been adduced and decision is to be rendered on appreciation of evidence. It also remains trite that an order of remand is not to be passed merely for the purpose of allowing a party to fill- up the lacuna in its case.

12. In the light of the aforesaid facts and the law laid down by the Apex Court, the order of remand cannot be sustained. The order of remand cannot be passed merely for the purpose of allowing a party to fil up lacuna in the case and further, the appellate court while remanding the case did not decide the issue relating to limitation. In view of aforesaid, the appeal is allowed and impugned order is set aside.

Appeal allowed

I.L.R. 2023 M.P. 2061

Before Mr. Justice Dwarka Dhish Bansal

FA No. 918/2006 (Jabalpur) decided on 19 July, 2023

VIJENDRA SINGH YADAV …Appellant

Vs.

LIEUT. COL. MAHENDRA SINGH YADAV …Respondent

A. Registration Act (16 of 1908), Section 17(1)(e) – Written Panch Faisla – Registration of – **Held – Panch faisla merely sets out the arrangement arrived at between brothers – It was a mere record of past transaction – It did not create or extinguish any right over immovable property – It did not attract Section 17(1)(e) of Registration Act and law did not mandate its registration. (Para 20)**

क. रजिस्ट्रीकरण अधिनियम (1908 का 16), धारा 17(1)(e) – लिखित पंच फैसला – का रजिस्ट्रीकरण – अभिनिर्धारित – पंच फैसला मात्र भाईयों के मध्य हुई व्यवस्था को उपवर्णित करता है – यह पूर्व संव्यवहार का मात्र एक अभिलेख था – यह

स्थावर संपत्ति पर कोई अधिकार सृजित अथवा निर्वापित नहीं करता है – यह रजिस्ट्रीकरण अधिनियम की धारा 17(1)(e) को आकर्षित नहीं करता एवं विधि इसके रजिस्ट्रीकरण को आज्ञापक नहीं बनाता।

B. ***Civil Practice – Partition of Joint Family Property*** **– Held – Merely because of separate living, separation of joint family property cannot be presumed. (Para 21)**

ख. *सिविल पद्धति – अविभक्त कुटुंब की संपत्ति का विभाजन* – अभिनिर्धारित – मात्र पृथक निर्वाह करने के कारण, अविभक्त कुटुंब की संपत्ति का पृथक्करण उपधारित नहीं किया जा सकता।

C. ***Civil Practice – Admitted Fact*** **– Held – An admission is a best piece of evidence and a fact which is admitted, need not be proved. (Para 16)**

ग. *सिविल पद्धति – स्वीकृत तथ्य* – अभिनिर्धारित – स्वीकृति साक्ष्य का एक सर्वोत्तम भाग है एवं एक तथ्य जिसे स्वीकार किया गया है, उसे साबित करने की आवश्यकता नहीं है।

D. ***Civil Practice – Original Documents – Possession of*** **– Held – If a party possesses original document but does not produce before the Court, an adverse inference shall be drawn against him. (Para 14)**

घ. *सिविल पद्धति – मूल दस्तावेज – का कब्जा* – अभिनिर्धारित – यदि एक पक्षकार के पास मूल दस्तावेज हैं परंतु वह उसे न्यायालय के समक्ष प्रस्तुत नहीं करता, तो उसके विरूद्ध प्रतिकूल निष्कर्ष निकाला जाएगा।

Cases referred :

2021 (11) SCALE 596, (2022) 3 SCC 757, (2019) 8 SCC 729, (2010) 5 SCC 401, 2022 (14) SCALE 148, AIR 2008 P & H 27, (2010) 5 SCC 274, (2013) 9 SCC 152, AIR 1976 SC 807, AIR 1969 SC 1076, AIR 1965 SC 289.

Ankit Saxena, for the appellant.
Amit Khatri, for the respondent.

J U D G M E N T

DWARKA DHISH BANSAL, J.:- This first appeal has been preferred by the appellant/plaintiff challenging the judgment and decree dated 31.08.2006 passed by Additional Judge to the Court of 10th Additional District Judge (Fast Track), Bhopal in civil suit no.47-A/2005, whereby appellant/plaintiff's suit for declaration of title and joint possession over ½ share and permanent injunction has been dismissed filed in respect of plot no.132-C, situated in Scheme no.13, M.P. Nagar, Bhopal.

2. The plaintiff filed the suit with the averments that the suit plot was developed by the Bhopal Development Authority (in short 'the BDA'). In the year

1980, the plaintiff/appellant was engaged in the business but the defendant/respondent though completed M.B.B.S., was doing house job and was getting only stipend. Father of the parties namely Shri Datar Singh (D.S. Yadav) got the suit plot allotted in the name of Shri Munnasingh vide order dated 22.05.1980 (Ex.P/1) by the BDA and in pursuance thereof, a sum of Rs.2000/- and Rs.8348/- was paid to the BDA vide receipt dated 16.05.1980 & 31.05.1980 (Ex. P/2 & P/3) by father Shri D.S. Yadav as well the plaintiff. Father was Karta of joint Hindu family and was in Government Service. Smt. Raj Kumari is mother of the parties and her brother's son Munna Singh was also living with the family.

Thereafter, on 05.08.1980, upon application of Munna Singh, who had no source of income and as per letter dated 19.08.1980 (Ex.P/4) the name of respondent was also jointly recorded and later on lease deed (Ex.P/5) was also executed on 18.06.1982 in their joint names. Since the amount was paid by Shri D.S.Yadav and the plaintiff, hence Shri Munna Singh after obtaining permission from the BDA vide (Ex.P/6) executed the deed relinquishing his rights in the plot in favour of the respondent without any consideration, as mentioned in the said deed dated 15.10.1984 (Ex.P/7) and as a consequence name of Shri Munna Singh was deleted. The suit property was always treated as property of the family and a panch faisla (Ex.P/9) was reduced in writing on 06.11.1996 with consent of plaintiff and defendant, acknowledging the said plot to be their joint property. All these documents were given to the plaintiff by the father, who expired on 06.04.1998. On coming to know that the respondent has declined to follow the terms of panch faisla and is claiming himself to be exclusive owner of the plot, the plaintiff instituted the suit for declaration of title and joint possession over ½ share and permanent injunction.

3. The respondent/defendant appeared and filed written statement claiming himself to be exclusive owner of the plot, however admitted execution of the panch faisla dated 06.11.1996 (Ex.P/9) but denied that funds were provided by the father or the plaintiff. It is also contended that as the plaintiff had threatened to commit suicide, in case he is not given half share in the suit plot, the deed (Ex.P/9) was got executed by the father, who later on had given him a writing dated 21.11.1996 (Ex.D/1) disagreeing the panch faisla (Ex.P/9). It is also contended that in the year 1980 he was M.B.B.S. and was earning and the plot was acquired by him out of his own earnings and not by the funds allegedly provided by the father and the plaintiff. On inter alia contentions the suit was prayed to be dismissed.

4. On the basis of pleadings of the parties, learned trial Court framed as many as 8 issues and recorded evidence of the parties. The plaintiff-Vijendra Singh Yadav (PW1) examined himself and the witnesses Shashibhan (PW2), Ranveer Singh Bhadoriya (PW3), Ramesh Singh Bhadoriya (PW4) were examined and

also produced documents (Ex.P/1 toP/9). The defendant-Mahendra Singh (DW1) examined himself and witnesses Smt. Shashi Singh (DW2), Dr. Satendra Singh (DW3), Smt. Rajkumari (DW4) were also examined and also produced documents (Ex.D/1 to D/8).

5. Upon consideration of oral and documentary evidence available on record, learned trial Court vide its judgment and decree dated 31.08.2006 dismissed the suit holding the panch faisla (Ex.P/9) to be inadmissible in evidence, against which instant appeal has been filed by the plaintiff/appellant. An application u/o 41 rule 27 CPC has also been filed by the plaintiff annexing certified copies of a notarized Will dtd. 28.03.1998 and a judgement dtd. 30.11.2006 passed by 1st Addl. District Judge, Gwalior in Civil Suit no. 16 A/2003, which has been opposed by the respondent by filing reply.

6. It is pertinent to mention here and as has been observed by this Court in its order dated 10.08.2022, the original documents (Ex.P/8 and P/9) are missing from the record and as has been observed in the interim order dated 13.02.2023, the photocopies of the aforesaid documents have been filed, out of which, main dispute is in respect of the panch faisla (Ex.P/9) and with a view to understand real nature of the document, the same is reproduced as under:-

श्री

'' / / पंचफैसला / /

प्रथम पक्षकार :– :: महेन्द्र सिंह यादव पुत्र श्री डी.एस. यादव उम्र 40 वर्ष निवासी : पूना हाल मुकाम ई–7 / 730 शाहपुरा, भोपाल

द्वितीय पक्षकार :– :: विजेन्द्र सिंह यादव पुत्र श्री डी.एस. यादव उम्र 44 वर्ष निवासी : एच. 31 बघीरा अपार्टमेन्ट अरेरा कालोनी भोपाल ।

दोनों पक्ष आपस में सगे भाई हैं तथा अभी तक अपने माता पिता के साथ सम्मिलित परिवार में निवास करते आ रहे हैं। दोनों पक्ष के पिता श्री ने एक प्लाट क्रं0 132 सी जोन एक महाराणा प्रताप नगर भोपाल में भोपाल विकास प्राधिकरण से तीस वर्ष की लीज पर प्राप्त किया जिसका पंजीयन उप पंजीयक भोपाल के पु0 क्रं0 अ–1 ग्रंथ क्रं0 3230 के पंजीयन क्रं0 2690 दिनांक 12.07.92 पर किया गया है। उक्त प्लाट क्रय करते समय एक अन्य व्यक्ति भी भागीदार था किनतु उक्त भागीदार ने उसका भाग प्रथम पक्ष के हक में त्याग दिया तथा त्याग पत्र का पंजीयन भी उसने प्रथम पक्ष के हक में उप पंजीयक भोपाल के पु0 क्रं0 अ–1 ग्रंथ क्रं0 4028 के पंजीयन क्रं0 256 (क) पर कराया गया है। **इस प्रकार उक्त वर्णित प्लाट प्रथम पक्ष के नाम पर है चूँकि उक्त प्लाट दोनों पक्षकारों के पिता ने प्रथम पक्ष के नाम से क्रय किया है। और उक्त प्लाट पर दोनों पक्षकारों का आधा–आधा हक है।** दोनों पक्षकारों के अभी तक मधुर संबंध है भविष्य में उक्त प्लाट को लेकर दोनों पक्षों के या उनके वारसानों आदि के मध्य कोई मन मुटाव या

विवाद उत्पन्न न हो इस कारण दोनों पक्षकारों ने हम पंचों के समक्ष प्रस्ताव रखा कि हम पंच गण उक्त वर्णित प्लाट की ऐसी व्यवस्था करा देवें कि दोनों पक्षों की सुख शांति बनी रहे इसे दृष्टिगत करते हुए हम पंच गणों ने सर्व सम्मति से निम्न बिन्दु तय कर पंच फैसला कर दिया है। जिनका पालन दोनों पक्षकारों को नैतिक रूप से एवं पूर्ण ईमानदारी से करना होगा।

यह कि उक्त वर्णित प्लाट क्रं0 132 सी जोन एक महाराणा प्रताप नगर भोपाल जिसका कुल क्षेत्रफल 1920 वर्गफिट है। आधा–आधा दोनों पक्षों का रहेगा। यह कि उक्त वर्णित प्लाट का दोनों पक्षकार संयुक्त रूप से निर्माण करावेगे और उसमे लगने वाली समस्त राशि दोनों पक्षकार आधी आधी देवेंगे।

यह कि उक्त प्लाट पर निर्मित दुकानें बनाने के बाद एक–एक दुकान दोनों पक्षकार रखेंगे तथा शेष सभी दुकाने विक्रय कर देंगें विक्रय राशि से ऊपर की मंजिलों का निर्माण कराया जावेगा प्रत्येक मंजिल का निर्माण एक समान होगा और निर्माण उपरान्त दोनों पक्षकार एक–एक मंजिल अपने पास रखेगें। कौन सा पक्षकार कौनसी मंजिल रखेगा यह मंजिल बनने के बाद लाटरी पद्धति से तय किया जावेगा।

यह कि उक्त निर्माण कार्य चार वर्ष की अवधि में अर्थात् सन् 2000 के अन्त तक पूर्ण कराया जावेगा।

यह कि उक्त चार वर्ष की अवधि में दोनों पक्षकार समय–समय पर राशि की व्यवस्था समान रूप से करते रहेगे। और यदि कोई पक्षकार राशि न देवे या आनाकानी करे या किसी कारण से न दे सके तो उस पक्षकार की पूर्ण जिम्मेदारी होगी और वह बैंक में प्रचलित व्यवसायिक दर से ब्याज दूसरे पक्षकार को देने का भागी होगा।

यह कि उक्त वर्णित निर्माण कार्य यदि चार वर्ष में पूर्ण नहीं किया जाता तो प्रथम पक्षकार को यह अधिकार होगा कि वह उक्त निर्मित मकान विक्रय कर द्वितीय पक्ष को सम्पूर्ण राशि मय ब्याज (बैंक में प्रचलित व्यवसायिक दर से ब्याज) के दे देवे।

यह कि उक्त वर्णित प्लाट का स्ट्रेक्चर खड़ा करने के लिये दोनों पक्षकार प्रारंभिक रूप से दो–दो लाख रूपये लगावेगे तथा दोनों पक्षकारों की पैतृक सम्पत्ति जो ग्वालियर में है उसको विक्रय करने के उपरान्त उक्त राशि भी उक्त वर्णित निर्माण कार्य में लगाई जावेगी।

यह कि उक्त प्रारंभिक राशि रूपये दो–दो लाख दोनों पक्षकार पिता श्री को सौंप देगे और जैसे–जैसे निर्माण कार्य में राशि की आवश्यकता होगी द्वितीय पक्ष पिता श्री से राशि लेते रहेगे।

यह कि इसके उपरान्त दुकानों का विक्रय किया जावेगा और यदि दुकान नहीं बिकी तो ऐसी स्थिति में आगे के निर्माण कार्य के लिए जो भी पक्षकार पैसा लगायेगा उसे दूसरा पक्षकार बैंक मे प्रचलित व्यवसायिक दर का ब्याज देवेगा।

यह कि उक्त निर्माण कार्य हेतु बैंक से ऋण प्राप्त किया जा सकेगा।

यह कि उक्त वर्णित प्लाट पर निर्माण कार्य करने का लेखा जोखा द्वितीय पक्षकार स्वच्छ व स्पष्ट रखेगे ताकि प्रथम पक्षकार व्यय की गई राशि का ब्यौरा अपने आयकर रिर्टन में दर्शा सके।

अतएव यह पंच फैसला हम पंचगणों ने दोनों पक्षकारों के अनुरोध पर दोनों पक्षों की सुख शांति एवं समृद्धि के लिये कर दिया और दोनों पक्षकारों ने इस फैसले को मान्य कर सभी पक्षों एवं पंचों ने हस्ताक्षर कर दिये कि सनद रहे व वक्त जरूरत काम आवे। इति दिनांकः 6/11/96''

हस्ताक्षर–पंचगण हस्ताक्षर–प्रथम पक्षकार

(1) (D.S.Yadav)
(2) (R.S.Bhadoria) हस्ताक्षर–द्वितीय पक्षकार
(3) (Rajkumari Singh)
(4) (Satyendra Singh)
(5) हस्ता

7. Learned counsel for the appellant/plaintiff submits that although the suit property is standing in the name of defendant, but at the relevant point of time, father of the parties namely Datar Singh was President of the BDA, who firstly got the plot allotted in the name of Munna Singh S/o Munendra Singh vide document dated 22.05.1980 (Ex.P/1) on payment of installments, which in fact were paid to the BDA in the name of Munna Singh under the signature of appellant/plaintiff vide receipts dated 16.05.1980 and 31.05.1980 (Ex.P/2 and P/3), thereafter upon issuance of a letter dated 19.08.1980 in the name of Munna Singh, the lease deed was executed and as a matter of caution, the name of defendant-Mahendra Singh was got mentioned along with Munna Singh in the lease deed dated 18.06.1982 (Ex.P/5) and with this background Mahendra Singh and Munna Singh became joint owner of the plot in question. Thereafter, vide regd. deed dated 15.10.1984 (Ex.P/7), Munna Singh relinquished his share in the name of defendant-Mahendra Singh without making any payment, as a result of which, the defendant became owner of the plot. He submits that as this plot was acquired by father of the plaintiff and defendant, therefore, in his life time a document 'panch faisla' (Ex.P/9) was executed under the signatures of plaintiff and defendant both, whereby it was acknowledged that the plot in question is of the joint ownership of the plaintiff and defendant having 1/2-1/2 share each. He submits that mother Smt. Rajkumari (DW-4) has clearly stated that the funds were provided by father Datar Singh and nothing was paid by Munna Singh, who is her brother's son. By placing reliance on the decisions of Supreme Court in the case of *Korukonda Chalapathi Rao & anr. vs. Korukonda Annapurna Sampath Kumar* 2021(11) SCALE 596; *K. Arumuga Velaiah vs. P.R. Ramasamy and another* (2022) 3 SCC 757; and *Ravinder Kaur Grewal and others vs. Manjit Kaur and others* (2019) 8

SCC 729, learned counsel for the appellant submits that panch faisla (Ex.P/9) is admissible in evidence and being an admitted document ought to have been taken into consideration by learned trial Court, which has wrongly been ignored for want of registration. With the aforesaid submissions, he prays for allowing the first appeal.

8. Learned counsel appearing for the respondent/defendant submits that the defendant is exclusive owner and in possession of the plot which is clear from the documentary evidence existing in his favour and he himself paid the requisite amount mentioned in the documents. He submits that panch faisla (Ex.P/9) was got executed under pressure and upon threatening of committing suicide given by the plaintiff, therefore, the same cannot be considered and further it being unregistered, is not admissible in evidence, which also does not confer any title on the plaintiff, because a document whereby title has been created, is compulsorily registrable. In support of his submissions, he placed reliance on the decisions of Supreme Court in the case of *Korukonda Chalapathi Rao* (supra); *S. Kaladevi vs. V.R. Somasundaram and others* (2010) 5 SCC 401, *Balram Singh vs. Kelo Devi* 2022(14) SCALE 148 and decision of a coordinate Bench of Punjab & Haryana High Court in the case of *Jagdish vs. Rajwanti* AIR 2008 P&H 27. With the aforesaid submissions he prays for dismissal of the first appeal.

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

10. Following points for determination are arising in this appeal for consideration of this Court :

> i) Whether panch faisla dtd. 06.11.1996 (Ex.P/9) acknowledging previous rights and being an admitted document, could be ignored for want of registration ?
>
> ii) Whether the additional documents filed along with application under order 41 rule 27 CPC are relevant and necessary for deciding the controversy involved in the case ?
>
> iii) Whether on the available evidence, the plaintiff is entitled for declaration of title and joint possession over ½ share ?

11. It has been specifically admitted by mother of parties to the suit, Smt. Rajkumari (DW-4) that Datar Singh had purchased the plot of Maharana Pratap Nagar in the name of Munna Singh. The respondent/defendant with a view to support the plea to the effect that he was earning, filed documents (Ex.D/2 to D/8) but the mother of the parties Smt. Rajkumari (DW4) who knew everything, has deposed against the defendant. Smt. Shashi Singh (DW-2) and her husband Shri Satendra Singh (DW-3) also have not deposed that the funds were provided by respondent himself and not by the father. Apparently, learned trial Court while deciding the issue no. 1 & 2, has not considered the statement of mother of parties

namely Rajkumari (PW4) and placing the entire burden on the shoulders of the plaintiff, decided issue no. 1 & 2 in negative and against the plaintiff. In my considered opinion the defendant being beneficiary in the lease deed (Ex.P/5) and relinquishment deed (Ex.P/7), it was for him to prove these documents by producing Munna Singh in evidence and not by the plaintiff. Fact remains that even the originals of all the documents of title of the defendant, have been produced by the plaintiff, which is also one of the circumstance, to draw inference in favour of the plaintiff.

12. It is also apparent that while deciding the issue no. 1 & 2 learned Court below in presence of documentary evidence, has not considered oral evidence, which looking to the case of both the parties was admissible in evidence, especially in the circumstances when all the original title documents were produced by the plaintiff himself, which has not been given any weightage by learned trial Court while considering this aspect in para 14 of the impugned judgment, whereas the said fact further proves jointness of the family and its properties.

13. The defendant has tried to discard the panch faisla (Ex.P/9) saying that it was got executed by the father under pressure, and the father had later on given him a writing dated 21.11.1996 (Ex.D/1) (photocopy of which has been filed on record). Upon due consideration, the said writing dtd. 21.11.1996 has been discarded by learned Court below for want of proof. Further, while deciding issue no.4(b) learned Court below has discussed evidence of the parties and clearly held that the defendant has failed to establish that the deed (Ex.P/9) was executed under pressure due to threatening of committing suicide given by the plaintiff and decided this issue as not proved. However, at the same time learned trial Court has without recording any finding regarding proof of the panch faisla (Ex.P/9) held the issue no.4(a) not proved, whereas the findings recorded in para 22 shows that learned trial Court has impliedly held the panch faisla (Ex.P/9) to be a proven document, which has been discarded only on the basis of it being unregistered. Just contrary to discussion made in para 19 to 22, learned trial Court in half sentence of next paragraph 23, has held that panch faisla is not proved, whereas the issue no.5 was not in relation to proof of panch faisla (Ex.P/9).

14. The defendant Mahendra Singh who is a doctor and retired from Army service, in para 25 of his statement admitted that the document (Ex.P/1) bears signature of his father, as a president of BDA. Further, in para 27 he admits that all the original documents are not in his possession, because they were in possession of his father. In para 29 he says that he became separate when his father was in service, who had a house in Gwalior, 7-8 acres land in Bhind and agriculture land near Bhopal. In para 31 he says that application dtd. 05.08.1980 was filed by Munna Singh with the contention that because of non-availability of fund for

construction of house, he wants to make Mahendra Singh his partner. In para 33 he has categorically admitted execution of panch faisla (Ex.P/9) and also admitted that he never made any complaint to the police. In para 34 he admits possession of original of Ex.D/1 with him, however, the same has been discarded by learned trial Court from the evidence. In para 34 he admits his signature on the reverse of stamp of document (Ex.P/9) regarding its purchase. It is well settled that if a party possesses original document but does not produce before the Court, an adverse inference shall be drawn against him. If photocopy of Ex.D/1 is considered as it exists, then it further proves the execution of panch faisla (Ex.P/9).

15. Although, in para 14 of the statement of plaintiff - Vijendra Singh, to some extent cross-examination has been done in respect of the panch faisla (Ex.P/9) but no cross-examination has been done with respect to the contention of the defendant about its execution under pressure and because of threatening of committing suicide given by the plaintiff-Vijendra Singh.

16. Admittedly, panch faisla was executed on 06.11.1996 and father of the parties to the suit, died in the year 1998 and in his life time, the defendant neither objected to panch faisla nor made any complaint to the police and now in the Court's statement has admitted execution of panch faisla and further failed to prove execution of the document (Ex.D/1). It is well settled that an admission is a best piece of evidence and a fact which is admitted, need not be proved.

17. The Supreme Court in the case of *S.R. Srinivasa & Ors. Vs. S. Padmavathamma* (2010) 5 SCC 274, has held as under :

> "44. It is undoubtedly correct that a true and clear admission would provide the best proof of the facts admitted. It may prove to be decisive unless successfully withdrawn or proved to be erroneous. The legal position with regard to admissions and their evidentiary value has been dilated upon by this Court in many cases. We may notice some of them.
>
> 45. In the case of Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi (1960) 1 SCR 773 it was observed as follows:
>
> > "An admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous."
>
> 46. In the case of Nagindas Ramdas v. Dalpatram Ichharam, (1974) 1 SCC 242, it has been observed:
>
> > "Admissions, if true and clear are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the

> Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

47. The aforesaid two judgments along with some other earlier judgments of this Court were considered by this Court in the case of Gautam Sarup v. Leela Jetly,(2008) 7 SCC 85 wherein it was observed as follows:

> "16.A thing admitted in view of Section 58 of the Evidence Act need not be proved. Order 8 Rule 5 of the Code of Civil Procedure provides that even a vague or evasive denial may be treated to be an admission in which event the court may pass a decree in favour of the plaintiff. Relying on or on the basis thereof a suit, having regard to the provisions of Order 12 Rule 6 of the Code of Civil Procedure may also be decreed on admission. It is one thing to say that without resiling from an admission, it would be permissible to explain under what circumstances the same had been made or it was made under a mistaken belief or to clarify one's stand inter alia in regard to the extent or effect of such admission, but it is another thing to say that a person can be permitted to totally resile there from."
>
> *******
>
> "28. What, therefore, emerges from the discussions made hereinbefore is that a categorical admission cannot be resiled from but, in a given case, it may be explained or clarified. Offering explanation in regard to an admission or explaining away the same, however, would depend upon the nature and character thereof. It may be that a defendant is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other."

18. Further, in the case of *Vathsala Manickavasagam & Ors.Vs. N. Ganesan & Anr.* (2013) 9 SCC 152, the Supreme Court has held as under :

> "24. While examining the contents of the said letter, the Trial

Court concluded that the three house properties, referred to therein, only related to the suit scheduled properties. Going by the statements made by the first respondent himself in the said letter Ex.A-17, it was explicit and apparent that the first respondent was fully aware that even though the properties were in his name, he was not responsible for purchasing the same in his name and that he was not interested in having all the three properties for himself.

25. When we examine the said document, we find that the conclusions arrived at by the trial Court based on the contents of Ex.A-17, cannot be found fault with. In fact, Ex.A-17, came into existence only on 24.06.1974. It is not as if the first respondent disowned the said document. The contents of the said document were also not disputed by the first respondent. It is not the case of the first respondent that the three houses referred to in the said document, related to any other properties other than the suit-scheduled properties. It is also not his case that the name and persons mentioned therein, related to somebody else other than his own brother, the second plaintiff and his mother. The first respondent had also not lead any evidence to disprove Ex.A-17.

26. Keeping the above factors in mind, when we apply Section 17 of the Evidence Act, we find that Ex.A-17 is a statement and the details contained therein, which pertains to the suit scheduled properties, constituted a tacit admission at the instance of the first respondent. If after Ex.A- 3, release deed of 1959 and the partition deed, Ex.A-28 of 1973, in 1974, the first respondent on his own, came forward with the said letter to the third plaintiff admitting in so many words as to the status of the suit scheduled properties, vis-a-vis the concerned parties themselves, we fail to understand as to what wrong was committed by the Trial Court in placing reliance upon the same to decree the suit. If in reality, the first respondent had his own reservations as to the ownership of the suit scheduled properties, in particular items 1 and 2, no one prevented him from stating so in uncontroverted terms, while communicating the same in the form of writing, to one of his own brothers. In fact, the grievance of the second plaintiff Sara-vanamurthi, was that since the properties were purchased in the name of the first respondent and he being the eldest son of the family, was having an upper hand over all the others and was trying to snatch away the properties. The tone and tenor of the letter viz., Ex.A- 17, authored by the first respondent, discloses that he too was not very keen to grab all the three properties, simply because those properties were purchased in his name. He went to the extent of stating that he was not responsible for purchasing all the three house properties in his name. He went

one step further and stated that he did not want to possess all the three properties all time to come. If, such a clear-cut mindset was expressed by the first respondent though Ex.A-17, it was futile on his part to have come forward with any other story after the suit came to be filed by the plaintiffs.

****

35. Having regard to such a prevaricating stand taken by the first respondent, as compared to his tacit admission made in Ex.A-17, we are of the considered view that the Trial Court was fully justified in holding that all the three items of the suit scheduled properties, were joint family properties, in which the plaintiffs and the first respondent were entitled for equal share."

19. The supreme court in its recent decision in the case of *Korukonda Chalapathi Rao* (supra) has followed its earlier decision in the case of *Kale Vs. Dy. Director of Consolidation* AIR 1976 SC 807 and held as under :

"14. There is a long line of judgments of this court dealing with the question as to whether a family arrangement is compulsorily registrable. We need only refer to the case of Kale v. Dy. Director of Consolidation, AIR 1976 SC 807. This Court has summed up the essentials of the family settlement in the following proposition:

"10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

"(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not

> create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;
>
> (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;
>
> (6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement." (Emphasis supplied)

20. In view of the aforesaid settled legal position and in the facts of this case, contention of the appellant to the effect that panch faisla (Ex.P/9) dated 06.11.1996 merely sets out the arrangement arrived at between the brothers, which is the family arrangement and it was a mere record of the past transaction and therefore by itself it did not create or extinguish any right over immovable property, appears to be correct. Resultantly, since the document is only a record of what had already happened in the past, it did not attract Section 17(1)(e) of the Registration Act and the law did not mandate registration.

21. While deciding issue no.3 learned Court below has taken into consideration the evidence about separate living of the parties but has not considered that till now there is no partition of the joint family properties and accordingly held that the plaintiff and defendant are not in possession of the suit plot as members of the joint family. Admittedly, the parties are still in possession of the joint family property, which has not been partitioned till now. It is well settled that merely because of separate living, separation of joint family property cannot be presumed.

22. It has been observed long back by the Apex Court in the case of *Mudigowda Gowdappa Sankh and Ors. v. Ramchandra Revgowda Sankh* (dead) *by his legal representatives and Anr*. AIR 1969 SC 1076 :

> ".....6. The law on this aspect of the case is well settled. Of course there is no presumption that a Hindu family merely

> because it is joint, possesses any joint property. The burden of proving that any particular property is joint family property, is, therefore, in the first instance upon the person who claims it a coparcenery property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate.

23. In presence of oral and documentary evidence available on record, it is apparent that the suit plot was acquired by the funds provided by the father and the panch faisla (Ex.P/9) came in existence with consent of all concerned. The Apex Court in the case of *K.V. Narayanaswami Iyer v. K.V. Ramakrishna Iyer and Ors.* AIR 1965 SC 289, has held as under :

> "15. The legal position is well settled that if in fact at the date of acquisition of a particular property the joint family had sufficient nucleus for acquiring it, the property in the name of any member of the joint family should be presumed to be acquired from out of family funds and so to form part of the joint family property, unless the contrary is shown."

Therefore, in my considered opinion the suit property is joint property of the plaintiff and defendant, but learned trial Court has by ignoring the admissible evidence and on wrong assumptions held that the issues are not proved and dismissed the suit wrongly.

24. For the simple reason that the veracity of judgment and decree dtd. 30.11.2006 and will dtd. 28.03.1998, is under consideration in another pending appeal, in which subject matter is also different, therefore, the documents filed along with the application u/order 41 rule 27 CPC do not appear to be relevant or necessary for deciding real controversy involved in this appeal, as such the application under order 41 rule 27 CPC stands dismissed.

25. Resultantly, by setting aside the impugned judgement and decree of trial Court, the suit filed for declaration of title and joint possession over ½ share of the suit plot stands decreed. However, the plaintiff is not entitled for decree of permanent injunction as prayed for in the suit.

26. Both the parties shall bear their own cost.

27. Registry is directed to prepare decree accordingly.

Order accordingly

I.L.R. 2023 M.P. 2075

Before Mr. Justice Hirdesh

MA No. 2558/2010 (Indore) decided on 21 August, 2023

NATIONAL INSURANCE CO. LTD. …Appellant

Vs.

SHIVRAM & ors. …Respondents

***Motor Vehicles Act (59 of 1988), Section 6 – Person Holding Two License – Liability of Insurer* – Held – Two license were produced in trial, one secured by police at the time of incident, which was later found to be fake and another produced by driver during trial which was found to be genuine – It could not be said that driver possessed two licenses in violation of Section 6 – There is no provision that all licenses of a person holding more than one license are to be treated invalid – Tribunal rightly held Insurance Company liable to pay compensation – Appeal dismissed. (Para 12 & 13)**

मोटर यान अधिनियम (1988 का 59), धारा 6 – दो अनुज्ञप्ति रखने वाला व्यक्ति – बीमाकर्ता का दायित्व – अभिनिर्धारित – विचारण में दो अनुज्ञप्ति प्रस्तुत की गई, एक जो घटना के समय पुलिस द्वारा प्राप्त किया गया था, जो बाद में फर्जी पाया गया एवं दूसरा चालक के द्वारा विचारण के दौरान प्रस्तुत किया गया जो वास्तविक पाया गया – यह नहीं कहा जा सकता कि चालक ने धारा 6 का उल्लंघन करते हुए दो अनुज्ञप्ति रखी थी – ऐसा कोई उपबंध नहीं है कि एक से अधिक अनुज्ञप्ति रखने वाले व्यक्ति की सभी अनुज्ञप्तियां अविधिमान्य मानी जाए – अधिकरण ने प्रतिकर के भुगतान हेतु बीमा कंपनी को उचित रूप से दायी ठहराया – अपील खारिज।

Case referred :

2015 ACJ 761 (Delhi).

Sudhir Vasant Dandwate, for the appellant.
None, for the respondents.

O R D E R

HIRDESH, J.:- This appeal has been filed by the appellant - Insurance Company under Section 173(1) of **Motor Vehicles Act, 1988,** against the award dated 27.01.2010 passed by Member, AMACT, Sendhwa, District - Barwani (MP) in Claim Case No.147/2007, whereby the Tribunal held the liability of Insurance Company to pay the compensation to the claimants.

2. The brief facts of the case in nutshell is that the respondents No.1 to 5 are the legal heirs of the deceased - Bheemsingh. It was alleged that on 21.05.2007

when he was going with his brother on motorcycle the truck bearing registration No.RJ11GA-1634 insured with the appellant - Insurance Company dashed him in rash and negligent manner due to which he sustained grievous injuries and later on he died. It is stated that alleging the deceased to be an agriculturist, compensation was claimed on various grounds.

3. Counsel for the appellant submitted that the owner and driver (respondents No.6 and 7) denied the allegations on behalf of the *appellant - Insurance Company,* the case was contested on the ground that the driver was having the forged driving licence and, therefore the appellant are not liable. The Tribunal framed the issues and after recording the evidence passed an award in favour of respondents No.1 to 5 and against the appellant respondent Nos.7 and 8 jointly and severally. Being aggrieved by the same, the appellant - Insurance Company is filing this appeal on the ground that the learned Tribunal erred in holding the appellant liable for payment of compensation inspite of the fact that appellant proved before the Tribunal that the licence held by the driver, which was seized by the police was found fake on its verification. He also submitted that Tribunal erred in not considering the fact that after the evidence about the fakeness of the driving licence held by the driver was adduced by the appellant and the report to that effect was produced before the Tribunal. The respondents No.6 and 7 filed a photocopy of the licence allegedly issued by RTO Bhind and the said RTO was examined on commission. The conduct of respondents No.6 and 7 clearly shows that the licence from RTO Bhind was got manipulated.

4. Counsel has submitted that the Tribunal erred in not considering the anomalies in the licence issued by the Bhind RTO and relied upon the statements without considering the discrepancies in the alleged licence of Bhind RTO. He also submits that if the driver had the licence issued from Bhind RTO, then there was no reason for him not to have carried the same when the accident took place or even could have filed the same before the Tribunal at the earliest. Filing of the same after the evidence adduced by the appellant showing the licence issued from Agra RTO as fake in itself speaks volume, the Tribunal erred in not considering this aspect of the matter. He also submits that Tribunal has further erred in not considering that as per Section 6 of the Motor Vehicles Act, no person can hold two licenses at one time and as per Section 11 of the Act, any additions on the driving license can be made on the license already held by the driver, as there being a clear bar for holding two licenses, the driver could not have two licenses. So he prays for exoneration of his liability for paying the compensation.

5. Heard counsel for the appellant at length and perused the record.

6. On perusal of the record, it was found that the offending vehicle was insured with the appellant - Insurance Company and at the time of arrest the driver of offending vehicle had produced his licence having No.3675/Agra/1996 before

the Police and as per information received under RTO Agra, it was revealed that the said licence had neither been issued by the authority Ex.D/2 and Ex.D/3 and hence it was found to be fake. Later on, the driver had put the second driving licence and the photocopy of the same numbered as MP30R-2009-0017040 got issued from the RTO Bhind. The respondents No.6 and 7 had examined the licensing authority as a witness who has proved that RTO Bhind had issued the licence to the driver of offending vehicle.

7. Counsel for the appellant submitted that the licence issued by the RTO Bhind was also fake and the learned Tribunal has not considered the fact that if driver had the licence issued by the RTO Bhind then there is no reason for him not to carry the same when the accident took place. On perusal of the record of Tribunal, the Chief Clerk of RTO Bhind, examined before the Tribunal and he stated that driving licence (D/4) was issued by the RTO Bhind and he denied all the suggestions given by the Insurance Company in cross-examination and on perusal of the evidence of Bhind RTO Clerk Mr. R.S. Jadaon, it was found that he was intact in his evidence and according to the evidence of RTO Clerk, the driving licence (D/4) was issued to the driver of offending vehicle. He further submits that a person have no right to hold two driving licences at a time and he wants to cite Section 6 of Motor Vehicles Act to bolster his submission. Section 6 of Motor Vehicles Act, reads as under:-

> ***Section 6: No person shall, while he holds any driving licence for the time being in force, hold any other driving licence except a learner's licence or a driving licence issued in accordance with the provisions of section 18 or a document authorising, in accordance with the rules made under section 139, the person specified therein to drive a motor vehicle.***

8. On perusal of the record, it was found that at the time of arrest of driver of offending vehicle (respondent No.7) had produced the driving licence, D/2 and D/3 before the police which was found to be fake by the evidence of RTO Agra and during the trial the driver produced the driving licence issued to him by RTO Bhind which was found to be genuine.

9. Now the question arises that whether the driving licence produced by the driver was genuine to secure the benefit of a full indemnity from the insurer. At the time of trial, two licences were produced, one said to have been secured by the police on the basis of which a verification and evidence was given and it revealed that it was fake. In another licence produced at the trial by the driver was with the verification that it was a genuine one. The court rejected the licence verified to be genuine produced by the driver and preferred the verification obtained by the insurer as regards the licence secured by the police.

10. It is not clearly comprehensible as to how the same person possessed two sets of licences, one fake and another genuine. However, I reckon that the issue of breach of terms of policy invariably shall be cast on the insurer and hence, even if they had secured verification for copy of the licence produced by the police, they were bound to make verification and offer evidence against the licence produced by the driver at the time of trial. In this case, the licence produced before the police was found to be fake but the trial Court has found the licence produced by the driver is genuine after considering the evidence. Hence now the question arises whether one person can held two licences at a time according to Section 6 of Motor Vehicles Act, 1988.

11. In this regard, as one licence was held to be fake it could not be said that driver possessed two licences in violation of Section 6 of Motor Vehciles (sic: Vehicles)Act, 1988. It has been held that in *Tara Sharma's* case 2015 ACJ 761 (Delhi), para 11 is relevant which reads as under :-

> **"(11)** ***Thus, the insurance company failed to prove any willful or conscious breach of terms and conditions of the policy. It may also be noted that Section 6 of the Act puts restrictions on a person holding a second driving licence while he holds any driving licence which is in force. A fake driving licence cannot be said to be a driving licence for the time being in force. Thus, even if it is assumed that the owner was aware of the driving licence issued by the licensing authority, if the same was found to be fake then the said driving licence shall be deemed to be not in force, therefore, the Claims Tribunal's order making the insurance company liable to pay the compensation cannot be faulted."***

12. Still further, though in terms of Section 6 of Motor Vehicles Act, there is restriction on holding more than one licence, but no provision was pointed as per which all the licences of a person holding more than one licence are to be treated as invalid. A perusal of Section 6 of Motor Vehicles Act states that violation of provisions of Section 6 of MV Act may entail punishment under Section 177 of the MV Act which is as under:-

> ***" Section 177 of MV Act. General provisions for punishment of offences.- Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence, be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees."***

13. But in the absence of any specific provision to that effect it may not be possible to take a view that where a person holds more than one licence, all of

them have to be treated as invalid. However, this situation does not arise in the present case, as one of the licences was found to be fake and it could not be considered to be a case of a person holding more than one licence.

14. In view of the above facts, it was found that driving licence produced before the police was a fake licence and it shall deemed to be not in force, so fake licence cannot be termed to be come in a category of any valid licence. Hence in this case it was found at the time of accident, the driver of offending vehicle holding only one driving licence which has been issued by the RTO Bhind and which is valid and genuine.

15. With the aforesaid discussion, the finding of the Tribunal against the appellant - Insurance Company need not to be interfered with in the eyes of law. Accordingly, the appeal filed by the appellant - Insurance Company under Section 173 (1) of Motor Vehicles Act, stands dismissed.

Appeal dismissed

I.L.R. 2023 M.P. 2079

Before Mr. Justice Amar Nath (Kesharwani)

MA No. 1187/2011 (Jabalpur) decided on 13 September, 2023

IFFCO TOKIYO GENERAL INSURANCE CO. LTD. …Appellant

Vs.

RAM SINGH KEER & ors. …Respondents

A. Motor Vehicles Act (59 of 1988), Section 166 & 173 – False Implication of Vehicle **– Held – FIR lodged by eye-witness of incident, he was examined before the Tribunal and he supported the pleadings of the petition regarding incident – Site map was prepared on second day of incident where vehicle number was disclosed – Insurance company has not adduced any evidence to prove his pleadings regarding false implication of the alleged vehicle – Fact regarding false implication of vehicle not established. (Para 12)**

क. मोटर यान अधिनियम (1988 का 59), धारा 166 व 173 – वाहन को मिथ्या आलिप्त करना – अभिनिर्धारित – घटना के चक्षुदर्शी साक्षी द्वारा प्रथम सूचना प्रतिवेदन पंजीबद्ध किया गया, अधिकरण के समक्ष उसका परीक्षण किया गया एवं उसने घटना के संबंध में याचिका के अभिवचनों का समर्थन किया – घटना के दूसरे दिन घटनास्थल का नक्शा तैयार किया गया था जिस पर वाहन क्रमांक प्रकट किया गया था – बीमा कंपनी ने अभिकथित वाहन को मिथ्या आलिप्त करने के संबंध में अपने अभिवचनों को साबित करने हेतु कोई साक्ष्य प्रस्तुत नहीं किया – वाहन को मिथ्या आलिप्त करने के संबंध में तथ्य स्थापित नहीं होता।

B. Motor Vehicles Act (59 of 1988), Section 166 & 173 – Driving License **– Held – Mere absence of endorsement on the driving license is not a sufficient circumstance to exonerate the insurance company. (Para 14)**

ख. मोटर यान अधिनियम (1988 का 59), धारा 166 व 173 – चालन अनुज्ञप्ति – अभिनिर्धारित – चालन अनुज्ञप्ति में मात्र पृष्ठांकन का अभाव, बीमा कंपनी को विमुक्त करने हेतु पर्याप्त परिस्थिति नहीं है।

***C. Motor Vehicles Act (59 of 1988), Section 166 & 173 – Opportunity of Hearing* – Held – As per order sheet, on the date fixed for evidence, no witness was present on behalf of the insurance company and counsel for insurance company declared his evidence as closed – It cannot be said that no opportunity was given to appellant insurance company to adduce evidence in support of their pleadings. (Para 15)**

ग. मोटर यान अधिनियम (1988 का 59), धारा 166 व 173 – सुनवाई का अवसर – अभिनिर्धारित – आदेश–पत्रिका के अनुसार, साक्ष्य हेतु नियत की गई तिथि पर, बीमा कंपनी की ओर से कोई साक्षी उपस्थित नहीं था एवं बीमा कंपनी के अधिवक्ता ने अपने साक्ष्य की समाप्ति घोषित कर दी – यह नहीं कहा जा सकता कि अपीलार्थी बीमा कंपनी को उसके अभिवचन के समर्थन में साक्ष्य प्रस्तुत करने हेतु सुनवाई का कोई अवसर प्रदान नहीं किया गया।

***D. Motor Vehicles Act (59 of 1988), Section 166 & 173 – Compensation – Quantum* – Held – Deceased boy was aged about 8 years and Tribunal awarded Rs. 2,50,000 which is neither excessive nor at a higher side. (Paras 16 to 20)**

घ. मोटर यान अधिनियम (1988 का 59), धारा 166 व 173 – प्रतिकर – मात्रा – अभिनिर्धारित – मृत बालक की आयु लगभग 8 वर्ष थी एवं अधिकरण ने 2,50,000/– रू. अधिनिर्णीत किये जो न तो अत्याधिक है न ही उच्चतर स्तर पर है।

Cases referred :

(2011) 3 SCC 646, Civil Appeal No. 1665/2019 decided on 14.02.2019 (Supreme Court), SLP (Civil) No. 5345/2019 decided on 13.10.2022 (Supreme Court), 2006 (III) MP Weekly Notes 117, (2020) 13 SCC 486, Civil Appeal No. 1665/2019 - SLP (Civil No. 33757/2018 decided on 14.02.2019) (Supreme Court), (2017) 14 SCC 663, (2023) 1 SCC 204, (2014) 1 SCC 244, (2022) 1 SCC 317.

Amrit Kaur Ruprah, for the appellant/non-applicant No. 3.
Priyank Khandelwal, for the respondent No. 1 & 2.
Mohan Singh, for the respondent No. 3 & 4.

O R D E R

AMAR NATH (KESHARWANI),J.:- Appellant-Insurance Company has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 being aggrieved by the award dated 22.12.2010 passed by learned Motor Accidents Claims Tribunal, Hoshangabad (M.P.) in MACC No.16/2010, whereby learned

Tribunal has awarded Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only) with interest of 6% per annum from the date of filing of claim petition and thereafter, if the payment is not made within two months then the insurance company shall be liable to pay interest @7% per annum.

2. Brief facts of the case are that the son of respondent Nos. 1 and 2 namely Raja aged about 8 years had died in an accident dated 28.09.2009 by a vehicle (Jeep) bearing Registration No.MP-49-0438. The offending vehicle was being driven in rash and negligent manner by respondent No.4 as a result of which Raja was died on the spot. Report of the incident was lodged at Police Station - Hoshangabad. After investigation, challan was filed against the respondent No.4 under Section 304-A of the Indian Penal Code and a criminal case was registered before the Court of Chief Judicial Magistrate, Hoshangabad (M.P.) having jurisdiction of the case. Being legal representatives of deceased Raja, respondent Nos.1 and 2 have filed the claim petition under Section 166 read with Section 140 of the Motor Vehicle Act before the Motor Accident Claims Tribunal, Hoshangabad claiming Rs.16,50,000/- (Rupees Sixteen Lakh Fifty Thousand) as a compensation where it was alleged that at the time of accident the deceased was a healthy and intelligent child who after his education could have helped in upbringing the financial condition of his family in the future, hence, prayed for award as claimed in the petition.

3. Respondent Nos.3 and 4 have appeared before the Claim Tribunal and denied the pleadings mentioned in the claim petition and submitted that offending vehicle was insured with the appellant and pleaded that driver was not driving the offending vehicle in a rash and negligent manner and accident did not occur due to his act or action and the offending vehicle was falsely implicated in the case. It is also pleaded that in the First Information Report which was lodged on the same day, registration number of offending vehicle was not mentioned in the FIR. Hence, respondent Nos.3 and 4 are not liable to pay any compensation to the respondent Nos.1 and 2. It is further pleaded that the respondent No.3 is the registered owner of the offending vehicle which was insured with the appellant-Insurance Company and respondent No.4 was holding a valid driving license at the time of incident and if the learned Claims Tribunal has come to the conclusion that the alleged accident took place with the vehicle bearing registration No. MP-49-0438 and was driven by the respondent No.4, and awarded the compensation amount in favour of the claimants then appellant-Insurance Company will be liable to satisfy the award.

4. Appellant-Insurance Company in their written statement has denied the averments mentioned in the claim petition and pleaded that the information regarding accident was not provided by the owner of offending vehicle respondent No.3 to the Insurance Company and at the time of incident respondent

No.4 had no valid and effective driving license to drive the offending vehicle. Claimants have falsely implicated the offending vehicle in the case in conspiracy with respondent Nos.3 & 4. Hence, Insurance Company is not liable to pay any compensation.

5. Learned Claims Tribunal has framed the issue and recorded the statement of witnesses. Respondent No.1/claimant No.1 Ram Singh examined himself as AW-1 and Laxman Singh was examined as AW-2 in support of the claim petition.

6. After considering the evidence placed on record and considering the arguments of learned counsel for the parties, the learned Tribunal has awarded the compensation as mentioned in para-1, being aggrieved by the impugned award, appellant-Insurance Company has preferred this miscellaneous appeal.

7. Learned counsel for the appellant submits that FIR was lodged against the unknown vehicle. No eye-witness of the incident was examined in the case. Tribunal has passed the impugned award in a very hasty manner without affording an opportunity to the appellant-Insurance Company to adduce the evidence. Application was moved before the Tribunal for giving the opportunity to record the statement of witnesses and for taking the document on record but learned Tribunal has dismissed the application vide orders dated 15.12.2010 and 21.12.2010. Learned counsel for the appellant further submitted that it is the duty of the claimants to prove his case. The claimants have failed to prove the involvement of vehicle (Jeep) bearing registration No.MP-49- 0438 in the alleged accident. The deposition regarding involvement of vehicle number is based on the information given by the police personal (sic: Personnel). Statement of Laxman Singh (AW-2) is based on the hearsay evidence without disclosing the name of person who gave him the information. Hence, impugned award has been passed by the Claims Tribunal on the conjecture and surmises and has based on no evidence, hence, prayed to set aside the impugned award. It is further submitted that the compensation amount awarded by the Tribunal is also at higher side. At the most maximum Rs.1,50,000/- (One Lakh Fifty Thousand) may be awarded for a child of aged about 8 years. Learned counsel for the appellant has not cited any case law in support of her arguments.

8. Learned counsel for the respondent Nos.1 and 2/claimants has submitted that FIR was lodged on the same day without any inordinate delay. Offending vehicle was seized during the investigation of the criminal case. Hence, it is denied that offending vehicle has been falsely implicated in the case and claim petition was filed with the conspiracy of respondent Nos.3 and 4 and submits that learned Tribunal has passed the impugned award after proper appreciation of the evidence on the record. Appellant has not proved the collusion between the claimants and respondent Nos.3 and 4. Insurance Company has not proved his defence by adducing cogent oral and documentary evidence. It is not proved in the

case that the offending vehicle was falsely implicated in the case. Appellant-Insurance Company could call the driver of offending vehicle to prove his pleading but Insurance Company has failed to prove the same. Hence, prays for dismissal of the appeal.

9. Learned counsel for the claimants/respondent Nos.1 & 2 in support of his arguments placed reliance on *Kusum Lata and others vs. Satbir and others* reported in (2011) 3 SCC 646, *Sunita & ors. vs. Rajasthan State Road Transport Corporation & Anr.* passed in Civil Appeal No.1665 of 2019 judgment dated 14.02.2019, *Meena Devi vs. Nunu Chand Mahto @ Nemchand Mahto & ors.* passed in SLP (Civil) No.5345 of 2019 judgment dated 13.10.2022 and *Daulatram and others vs. Akhlesh Kumar and others* reported in 2006(III) MP Weekly Notes 117.

10. I have considered the arguments advanced by the learned counsel for the parties, gone through the record and citations placed reliance by the learned counsel for the respondent Nos.1 and 2.

11. Appellant-Insurance Company has challenged the impugned order on the following grounds :-

i- The driver of the alleged vehicle did not have a valid and effective driving license to drive the offending vehicle on the date of incident.

ii- The FIR was lodged against an unknown vehicle and alleged vehicle was falsely implicated in the case with conspiracy of respondent Nos.3 and 4 i.e. owner and driver of the alleged vehicle.

iii- Tribunal has passed the impugned award in hasty manner without affording an opportunity to appellant to adduce the evidence in support of his pleadings.

iv- Amount of award is at higher side.

12. Firstly I dealt with the arguments regarding false implication of the alleged vehicle in the case. It reveals from the certified copy of the FIR (Ex.P-1) that date and time of the incident was 28.09.2009 at 5:45 am and FIR was lodged on the same day at 10:40 am, hence, it is clear that in lodging the FIR, inordinate delay has not been caused. It is also reveals that the FIR (Ex.P-1) was lodged by eye-witness of incident i.e. Laxman Singh Thakur, S/o Mannu Singh Thakur who has been examined before the Tribunal as AW-2. AW-2 has supported the pleadings of the petition regarding incident. FIR (Ex.P-1) was lodged against the driver of White colour Pick-Up vehicle. In page-2 of the Postmortem report (Ex.P-2), it is mentioned that death was occurred due to accident from Pick-Up vehicle. Site map was prepared on 30.09.2009 i.e. the second day of incident and

in the site map (Ex.P-2) vehicle number was disclosed. Appellant-Insurance Company has not adduced any evidence to prove his pleadings regarding false implications of the alleged vehicle in the case. Hence, the facts regarding false implication of vehicle No. MP-49-0438 are not proved. {Relied on *Kusumlata and Others Vs. Satbir and others* (2011) 3 SCC 646 and *Sunita and Others Vs. Rajasthan State Road Transport Corporation and another* (2020) 13 SCC 486 para Nos.21 & 23 {Civil Appeal No.1665/2019 - SLP (Civil No.33757 of 2018 judgment dated 14.02.2019) }.

13. Now I have considered the arguments that on the date of incident respondent No.2 had no valid and effective driving license to drive the offending vehicle. Certified copy of charge-sheet (Ex.P-4) shows that copy of Registration Certificate, Insurance Policy, Permit of seized vehicle and Driving license were seized but those are not enclosed with the record of Tribunal. Appellant-Insurance Company has filed the chief-examination of his Officer namely Raghavendra Singh Tomar on affidavit under Order 18 Rule 4 of CPC in support of his pleadings on 21.12.2010 but he was not cross examined on behalf of opposite party because appellant-Insurance Company has closed his evidence on previous date i.e. 15.12.2010. Despite that if statement of Raghavendra Singh Tomar is taken into consideration then also it is of no use to the appellant-Insurance Company because it is not disputed by the Insurance Company, that on the date of incident, non-applicant No.2/respondent No.2 had a driving license to drive the Light Motor Vehicle (LMV). It is not contended in the case by the appellant-Insurance Company that offending vehicle is not under the category of LMV and it is not the argument of learned counsel for the appellant that unladen weight of alleged Pick-Up was more than 7500 kg.

14. Light motor vehicle is defined in Section 2(21) of the Motor Vehicles Act, 1988, according to which 'light motor vehicles' means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms. The submissions of learned counsel for the appellant regarding driving license is no more relevant in the light of law as laid down by Hon'ble Apex Court in the case of *National Insurance Co. Ltd. Vs. Mukund Devangan,* (2017) 14 SCC 663 and therefore, mere absence of endorsement on the driving license is not a sufficient circumstance to exonerate the insurance company.

15. So far as the arguments of learned counsel for appellant-Insurance Company on the point that Tribunal has passed the award in a hasty manner and not afforded appellant-Insurance Company proper opportunity to adduce the evidence Company is taken into consideration, and it is found that claimants have closed their evidence on 09.12.2010 and fixed the case for non-applicant's evidence for 15.12.2010. It reveals from the record of Tribunal that on the date fixed for evidence, no witnesses were present on behalf of appellant-Insurance

Company. As per order-sheet dated 15.12.2010 an application under Order 16 Rule 1 and under Order 26 Rule 1 read with Section 151 of CPC was filed before the Tribunal for issuance of a summon to call the employee of R.T.O. Office, Narsinghpur, are for issuance of a commission for recording the statement of employee of R.T.O. Office, Narsinghpur, but that application was dismissed on the same day, after hearing of the rival parties. As per the order-sheet dated 15.12.2010, no witnesses were present on behalf of Insurance Company and counsel for non-applicant/ Insurance Company declared his evidence as closed. Hence, it cannot be said that no opportunity was given to appellant-Insurance Company to adduce the evidence in support of their pleadings.

16. Learned counsel for the appellant submits that since deceased was a child aged about 8 years, hence, maximum Rs.1,50,000/- (One Lakh Fifty Thousand) may be awarded in the case, whereas Tribunal has awarded Rs.2,50,000/- (Two Lakh Fifty Thousand) which is at higher side.

17. Learned counsel for respondent Nos.1 and 2 submitted that awarded amount is neither excessive nor at higher side.

18. I have considered the arguments of learned counsel for the parties and perused the citations placed by counsel for respondent Nos.1 and 2.

19. Hon'ble Apex Court in a recent case *Meena Devi Vs. Nunu Chand Mahto @ Nemchand Mahto and Others* (2023) 1 SCC 204, in a case of death of a child aged about 12 years in road accident who was studying in Class-5 at Private School, has awarded Rs.5,00,000/- (Five Lakhs) as compensation. In another case of *Kishan Gopal and Another Vs. Lala and Others* (2014) 1 SCC 244, in a case of death of 10 years old child, Hon'ble Apex Court has awarded Rs.5,00,000/- (Five Lakhs) as compensation. In case of *Kurvan Ansari @ Kurvan Ali and another Vs. Shyam Kishor Murmu and another* (2022) 1 SCC 317, in case of death of 7 years old child Hon'ble Apex Court has awarded a sum of Rs.4,70,000/- (Four Lakhs Seventy Thousand).

20. Whereas in the present case, the deceased was aged about 8 years and Tribunal has awarded only Rs.2,50,000/- (Two Lakhs Fifty Thousand) which is neither found excessive nor at higher side. Hence, contention of learned counsel for appellant is not acceptable that awarded amount is at higher side.

21. Accordingly, there is no substance in the appeal, hence, appeal sans merit and is hereby dismissed.

22. Let the record of Tribunal be sent back to the concerned Claim Tribunal along with copy of this order for information and necessary action.

No order as to costs.

Appeal dismissed

I.L.R. 2023 M.P. 2086 (DB)

Before Mr. Justice S.A. Dharmadhikari & Mr. Justice Hirdesh

AA No. 16/2023 (Indore) decided on 6 July, 2023

MP ENTERTAINMENT & DEVELOPERS PVT. LTD. …Appellant

Vs.

CARNIVAL FILMS ENTERTAINMENT PVT. LTD. …Respondent

***A. Arbitration and Conciliation Act (26 of 1996), Section 9 – Maintainability* – Held – Trial Court rightly exercised its jurisdiction u/S 9 of the Act because on 09.12.2022, when the application u/S 9 was filed, neither arbitral tribunal proceedings were initiated nor arbitrator was appointed or approached to settle the dispute – Sole arbitrator was appointed and arbitral tribunal was constituted after trial Court applied its mind and entertained the application u/S 9 and at that time, respondents did not have any other efficacious remedy – Appeal dismissed. (Paras 12 to 15)**

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 9 – पोषणीयता – अभिनिर्धारित – विचारण न्यायालय ने अधिनियम की धारा 9 के अंतर्गत उचित रूप से अपनी अधिकारिता का प्रयोग किया क्योंकि दिनांक 09.12.2022 को, जब धारा 9 के अंतर्गत आवेदन प्रस्तुत किया गया था तो विवाद निपटाने के लिए न तो माध्यस्थम् अधिकरण की कार्यवाहियां आरंभ की गई थी और न ही मध्यस्थ नियुक्त किया गया था अथवा उसके समक्ष जाया गया था – विचारण न्यायालय द्वारा मस्तिष्क का प्रयोग किये जाने एवं धारा 9 के अंतर्गत आवेदन को ग्रहण करने के पश्चात् एकमात्र मध्यस्थ को नियुक्त किया गया एवं माध्यस्थम् अधिकरण गठित किया गया एवं उस समय, प्रत्यर्थीगण के पास कोई अन्य प्रभावकारी उपचार नहीं था – अपील खारिज।

***B. Arbitration and Conciliation Act (26 of 1996), Section 9(1) & 17 – Maintainability* – Held – As per Section 17 of 1996 Act, the arbitral tribunal has the same power to grant interim relief as the Court and thus remedy u/S 17 is as efficacious as the remedy u/S 9(1) of the Act. (Para 11)**

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 9(1) व 17 – पोषणीयता – अभिनिर्धारित – 1996 के अधिनियम की धारा 17 के अनुसार, माध्यस्थम् अधिकरण के पास न्यायालय के समान अंतरिम अनुतोष प्रदान करने की शक्ति है एवं इसलिए धारा 17 के अंतर्गत उपचार, अधिनियम की धारा 9(1) के अंतर्गत उपचार के समान प्रभावकारी है।

***C. Arbitration and Conciliation Act (26 of 1996), Sections 9(1), 9(3) & 17 – Jurisdiction of Trial Court* – Held – Once the arbitral tribunal has been constituted, the Court shall not entertain as application u/S 9(1) unless the Court finds that the circumstances exist which may not render the remedy provided u/S 17 of the Act efficacious. (Para 10)**

ग. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धाराएँ 9(1), 9(3) व 17 – विचारण न्यायालय की अधिकारिता – अभिनिर्धारित – एक बार माध्यस्थम् अधिकरण के गठित हो जाने पर न्यायालय धारा 9(1) के अंतर्गत आवेदन को तब तक ग्रहण नहीं करेगा जब तक न्यायालय यह नहीं पाता कि ऐसी परिस्थितियां विद्यमान हैं जो अधिनियम की धारा 17 के अंतर्गत उपबंधित किये गये उपचार को प्रभावकारी नहीं बना सकती।

Case referred :

2022 (1) SCC 712.

Vijay Kumar Asudani, for the appellant.
Gunjan Chowksey, for the respondent.

O R D E R

The order of the Court was passed by :
SUSHRUT ARVIND DHARMADHIKARI, J.:- The instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter shall be referred as 'Act') has been preferred by the appellant being aggrieved by the impugned order dated 19.01.2023 passed by the learned Commercial Court, Indore in Case No. MJC AV No. 98/2022, whereby the application of respondent filed under Section 9 of the Act was partially allowed and the appellant was restrained from alienating rights in respect of Cinema/multiplex (disputed premises), pending the commencement of and during the arbitration proceeding and making of the final award therein and enforcement thereof.

2. The facts in nutshell are, that the respondent is involved in the operation and management of multiplexes under the brand name "Kulraj Broadway Cinemas" whereas the appellant is a company involved in the business of Real Estate Development and is the owner of Cineplex in Malhar Mall at Indore. The appellant (in capacity of the lessor) and the Company HDIL Entertainment Pvt. Ltd (in capacity of the lessee) had entered into an agreement dated 28.07.2011 for leasing out the premises situated at 2nd 3rd and 4th Floor at Malhar Mall, Indore.

3. That in year 2020, some disagreements between the parties led to the disputes between them, which led to the commencement of multiple litigation between the parties. On 09.11.2022, appellant along with the personal guards entered in the leased out premises of the respondent and illegally locked the premises and refused the access of the cinema for the representative of the respondent. Against the said act, the respondent had filed a criminal complaint for illegally trespassing the property and obstructing the access in cinema hall. Due to the said act the respondent on 03.12.2022 sent a letter to the appellant for appointing arbitrator to settle their dispute. The appellant in his reply dated 19.12.2022 has stated that as per possession document dated 09.05.2022, it is settled that all disputes between both the parties shall be resolved by sole

arbitrator Mr. (Arpit Oswal) and by the same reply the respondent also corresponded with the arbitrator to resolve their dispute. The sole arbitrator upon the appellant's reply dated 19.12.2022 issued notice dated 28.12.2022 informing the respondent that on the basis of possession document dated 09.05.2022, the arbitral proceedings shall commence w.e.f. 03.01.2023. However, the respondent disputed the appointment of arbitrator by challenging such proceedings before this Court.

4. Being aggrieved by the appellant's act of 09.11.2022 (trespassing in property) the respondent filed an application under Section 9 of the Act before the learned trial Court to remove the obstruction to the access of the appellant in the cinema hall and to pass an order of mandatory injunction for restraining the appellant and/or its agents from interfering with the respondent's sole and exclusive possession, occupation and usage of the multiplexes, to allow the operation and management of the multiplexes, restrain the appellant from alienating rights in respect of cinema/multiplexes and other reliefs. The learned trial Court by impugned order dated 19.01.2022 partially allowed the respondent's application and has restrained the appellant from alienating rights in respect of cinema/multiplexes, pending the commencement of and during the arbitration proceedings and making of the final award therein and enforcement thereof, rest of the reliefs were declined. Being aggrieved by the impugned order the appellant has filed the present appeal before this Court.

5. Learned counsel for the appellant submits that both the parties had invoked the arbitration clause of the said agreement and in consequence of the said proceedings, the Arbitrator Mr. Arpit Oswal had duly been appointed before whom both the parties were present and have initiated legal proceedings to carve out the differences between them. It is indisputed that arbitration proceedings has already been going on and while the proceedings of Arbitrator were in continuance, the respondent had filed an application under Section 9 of the Act before the learned trial Court and the learned trial Court without taking into consideration the fact that arbitral proceedings were initiated has passed the impugned order, which is full of adversity and is contrary to the existing provisions of the Act.

6. Learned counsel for the appellant laid special emphasis on Section 9(3) of the Act, which provides that once the arbitral tribunal has been constituted, the Court shall not entertain an application under Section 9 Sub-clause 1 and to buttress his contention, he placed reliance on the judgment of the Apex Court in (*Arcelor Mittal Nippon Steel India Ltd. vs. Essar Bulk Terminal Ltd.*) reported in 2022 (1) SCC 712.

7. Per contra, learned counsel for the respondent submits that though arbitration proceedings have been initiated before the Arbitrator Mr. Arpit Oswal, the respondent has challenged the appointment of said Arbitrator under Section

11(5) of the Act before this Court. The counsel for the respondent further submits that the Arbitrator was appointed after the order dated 09.12.2022 passed by the learned trial Court, whereby the *status quo* was ordered to be maintained. The counsel for the respondent further submits that the Arbitrator has been appointed on the basis of a non-notarized possession document dated 09.05.2023, which is contrary to the provisions of law. In such circumstances the respondent only had an efficacious remedy under Section 9 to approach the learned Trial Court for seeking interim relief. Therefore, the learned trial Court has rightly passed the impugned order which does not contain any infirmity or adversity and in light of the said fact the respondent prays for dismissal of the appeal.

8. We have heard learned counsel for both the parties and perused the record. The moot questions which arise for consideration in this appeal are as under:-

> *(l)" Whether the respondent had efficacious remedy to approach the arbitrator for seeking interim relief under section 17 of the Act prior to filing application under section 9 of the Act before the Learned Trial Court ?*
>
> *(2) "whether the learned trial Court was entitled to pass the impugned order and entertain the respondent's application filed under Section 9 of the Act, in light of the fact that the Arbitrator was appointed by the parties and arbitral proceedings had been initiated to settle their disputes?"*

9. Before proceeding further for examining the facts of the case to answer the above-mentioned questions, it is pertinent to reproduce Section 9 of the Act, which is as follows:-

> **9. Interim measures, etc. by Court.**—A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—
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> (i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or
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> (ii) for an interim measure of protection in respect of any of the following matters, namely:—
>
> (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
>
> (b) securing the amount in dispute in the arbitration;
>
> (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land

> or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
>
> (d) interim injunction or the appointment of a receiver;
>
> (e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.
>
> [2] Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of nincety days from the date of such order or within such further time as the Court may determine.]
>
> [3] Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.

10. It is trite that as per Section 9(3) of the Act, once the arbitral tribunal has been constituted, the Court shall not entertain an application under Section 9(1) of the Act, unless the Court finds that the circumstances exist which may not render the remedy provided under Section 17 of the Act efficacious. Recently, the Supreme Court in the case of *(Arcelor Mittal)* (supra) has dealt with the quandary over interplay of Section 9 and Section 17 of the Act and has answered this question whether the Court can entertain an application for interim measure after arbitral tribunal has been constituted. The Apex Court while dealing with the said case has held that Section 9(3) of the Act has two limbs, the first limb prohibits an application under Section 9(1) from being entertained once an arbitral tribunal has been constituted. The second limb carves out an exception to that prohibition, if the Court finds that circumstances exist, which may not render the remedy provided under Section 17 of the Act efficacious.

11. As per Section 17 of the Act, the arbitral tribunal has the same power to grant interim relief as the Court and thus, remedy under Section 17 is as efficacious as the remedy under Section 9(1) of the Act.

12. In the present case, it is apparent from the record that the respondent had approached the learned trial Court on 09.12.2022, by filing an application under Section 9 of the Act praying for the interim relief along with an application under Section 151 for maintaining the status quo. Taking cognizance upon the said application filed under Section 151, the learned trial Court by its application of

mind and by considering the facts of the case has ordered to maintain the status quo till the next date of hearing. This fact clearly shows that the learned trial Court had applied its mind and had entertained the application filed by the respondent.

13. As per the records, it is also apparent that the arbitrator was appointed and had initiated the arbitral proceedings on 03.01.2023 which is under challenge before this Court. Howsoever, the respondent has filed an application under Section 9 on 09.12.2022 and the said application was entertained by the learned trial Court which passed an ex-parte interim order of status quo till the next date of hearing. This fact shows that the learned trial Court before constitution of arbitral tribunal had entertained the respondent's application, had it been the case where the parties have summoned only it could not have been observed that the learned trial Court had applied its mind therefore, this Court is of the view that the respondent did not had any efficacious remedy before the constitution of the arbitral tribunal and had rightly approached the learned trial Court for seeking an interim relief by filing an application under Section 9 of the Act.

14. This Court is also of the opinion that the learned trial Court has rightly exercised its jurisdiction under Section 9 of the Act because on 09.12.2022 neither arbitral tribunal proceedings were initiated nor arbitrator was appointed or approached to settle the dispute, howsoever it is also apparent from the record that the appointment of arbitrator is also challenged before this Court. The Hon'ble Apex Court in the case of *Arcelor Mittal* (supra) in paragraph No. 84, 90 and 91 has held that:

> *" 84. It is now well settled that the expression **" entertain"** means to consider by application of mind to the issues raised. The Court entertains a case when it takes a matter up for consideration. The process of consideration could continue till the pronouncement of judgment as argued by Khambata. Once an Arbitral Tribunal is constituted the Court cannot take up an application under Section 9 for consideration, unless the remedy under Section 17 is inefficacious. However, once an application is entertained in the sense it is taken up for consideration, and the Court has applied its mind to the Court can certainly proceed to adjudicate the application.*
>
> ***90. It could, therefore, never have been the legislative intent that even after an application under Section 9 is finally heard relief would have to be declined and the parties be remitted to their remedy under Section 17.***
>
> *91. When an application has already been taken up for consideration and is in the process of consideration or has already been considered, the question of examining whether remedy under Section 17 is efficacious or not would not arise.*

> *The requirement to conduct the exercise arises only when the application is being entertained and/or taken up for consideration. As observed above, there could be numerous reasons which render the remedy under Section 17 inefficacious. To cite an example, the different Arbitrators constituting an Arbitral Tribunal could be located at far away places and not in a position to assemble immediately. In such a case an application for urgent interim relief may have to be entertained by the Court under Section 9(1)"*

15. In light of the aforesaid facts and law laid down by the Hon'ble Supreme Court, this Court is of the view that the learned trial Court was right in exercising its jurisdiction under Section 9 of the Act, considering the fact that the sole arbitrator was appointed and arbitral tribunal was constituted after the learned trial Court had applied its mind and had entertained the application filed under Section 9 and at that time, the respondent did not had any other efficacious remedy. Similarly redirecting the respondent to file an interim application for seeking the same relief as sought under Section 9 before the arbitrator under Section 17 would defeat the cause of justice.

16. Accordingly, this appeal being bereft of merits and substance is hereby, **dismissed.**

Appeal dismissed

I.L.R. 2023 M.P. 2092
Before Mr. Justice Vivek Rusia
AA No. 36/2023 (Indore) decided on 6 July, 2023

NOUMLA BROTHERS (M/S) …Appellant

Vs.

M/S RUCHI WORLD WIDE LTD. & anr. …Respondents

A. Arbitration and Conciliation Act (26 of 1996), Section 34(3), Proviso and Limitation Act (36 of 1963), Section 14 – Limitation **– Held – As per proviso to Section 34(3), for granting an extension of time for 30 days from 3 months, an application is liable to be filed – Appellant was required to file two applications, first u/S 14 of Limitation Act for exclusion of time spent in the proceedings *bonafide* in the Court without jurisdiction and another application under proviso to Section 38(3) for further extension of one month – Whether copy of award has been sent earlier to appellant, this issue is also liable to be considered by learned District Judge – Impugned order quashed – Matter remitted back to District Judge for fresh adjudication of the issue of limitation after recording evidence – Appeal allowed. (Para 10 & 11)**

क. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34(3), परंतुक एवं परिसीमा अधिनियम (1963 का 36), धारा 14 – परिसीमा – अभिनिर्धारित – धारा 34(3) के परंतुक के अनुसार, 3 माह से अतिरिक्त 30 दिन का समय विस्तार प्रदान करने के लिए, आवेदन प्रस्तुत किये जाने योग्य – अपीलार्थी द्वारा दो आवेदन प्रस्तुत किया जाना अपेक्षित था, पहला परिसीमा अधिनियम की धारा 14 के अंतर्गत बिना अधिकारिता के न्यायालय में सद्भाविक कार्यवाहियों में व्यतीत हुए समय को अपवर्जित करने के लिए और दूसरा आवेदन धारा 38(3) के परंतुक के अंतर्गत एक माह के अतिरिक्त विस्तार के लिए – क्या अवार्ड की प्रति अपीलार्थी को पूर्व में भेजी गई है, यह विवाद्यक भी विद्वान जिला न्यायाधीश द्वारा विचार में लिये जाने योग्य है – आक्षेपित आदेश अभिखंडित – मामला साक्ष्य अभिलिखित करने के पश्चात् परिसीमा के विवाद्यक को नये सिरे से न्यायनिर्णीत करने हेतु जिला न्यायाधीश को प्रतिप्रेषित किया गया – अपील मंजूर।

***B. Arbitration and Conciliation Act (26 of 1996), Section 34(1), (2) & (3) – Limitation* – Held – The arbitral award is liable to be set aside only by way of an application in accordance with Section 34(2) and Section 34(3) – As per Section 34(3), an application for setting aside may not be made after three months (not 90 days) have elapsed from date on which the party making application has received the arbitral award. (Para 10)**

ख. माध्यस्थम् और सुलह अधिनियम (1996 का 26), धारा 34(1), (2) व (3) – परिसीमा – अभिनिर्धारित – माध्यस्थम् अवार्ड धारा 34(2) एवं धारा 34(3) के अनुसार केवल आवेदन के माध्यम द्वारा अपास्त किये जाने योग्य है – धारा 34(3) के अनुसार, आवेदन करने वाले पक्षकार को माध्यस्थम् अवार्ड प्राप्त होने की तिथि से 3 माह (90 दिन नहीं) बीत जाने के पश्चात् उसे अपास्त किये जाने हेतु आवेदन प्रस्तुत नहीं किया जा सकता।

Cases referred :

(2017) 7 SCC 678, AIR 2019 SC 3658, AIR 2005 SC 214, (2003) 4 SCC 147, AIR 2021 SC 2493, (2010) 12 SCC 210, (2008) 7 SCC 169, WP No. 28896/2022 decided on 15.12.2022, 2009 (3) GCD 2143; 2009 (0) Supreme (Guj.) 93, 2023 SCC OnLine SC 382.

Chetan Jain, for the appellant.
Kshitij Vyas, for the respondent No. 1.
Romesh Dave, for the respondent No. 2.

O R D E R

VIVEK RUSIA, J.:- The appellant has filed the present arbitration appeal being aggrieved by the award dated 23.1.2013 passed by 22nd District Judge, Indore in MJC AV No.14/2018 whereby the application filed u/s. 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996" for short) has been dismissed as time-barred.

2. Facts of the case, in short, are as under :

2.1 The appellant is a proprietorship firm engaged in the business of supply of cotton bales and other materials having its registered office at 111, Sri Kanyaka Parameswari Enclave, Etukuru Road, Guntur. Respondent No.1 contacted the appellant for the purchase of cotton bales and placed a purchase order dated 30.9.2010 for a suply of 600 cotton bales. The purchase order contains an arbitration clause and according to which, all the disputes will be settled amicably or will be referred to arbitration in accordance with the Rules and By-laws of **the Cotton Association of India** and the contract shall be subject to Indore jurisdiction. Since the specified quantity of cotton bales could not be supplied within the agreed time by the appellant, respondent No.1 issued a debit-note on 8.2.2011 to the appellant but the payment was not made. Respondent No.1 approached the Cotton Association of India for settlement of the dispute by way of arbitration. Shri Pankaj D. Mepani was appointed as a sole Arbitrator who registered the claim of respondent No.1 as Arbitration Case No. 19/2012-13. The appellant did not participate in the arbitration proceedings and proceeded *ex-parte*. The Arbitrator passed the final award dated 24.8.2012 for sum of Rs.18,89,677/- with interest @ 15% per annum.

2.2 The appellant received notice of Execution Case No.128/2014 from the Court of 3rd District & Sessions Judge, District Guntur, Andhra Pradesh. Thereafter, the appellant inquired and came to know that an ex-parte award dated 24.8.2012 had been passed against it in Arbitration Case No. 19/2012-13. The appellant further came to know that respondent No.1 had approached the High Court of Bombay by filing an application for transfer of the Execution Case from Mumbai to Guntur, Andhra Pradesh as the properties of the appellant are situated there. The said application was allowed vide order dated 19.9.2013.

2.3 The appellant filed Notice of Motion No.254/2015 challenging the *ex-parte* award and also for setting aside the order of transfer of execution case. The High Court of Bombay vide order dated 26.2.2015 held that the appellant should file an arbitration petition u/s. 34 of the Act of 1996 before the Single Judge of the High Court of Bombay. In compliance of the said order, the appellant filed the petition u/s. 34 of the Act challenging award dated 24.8.2012, according the appellant filed and same was registered as Arbitration Petition No.1635/015. Respondent No.1 appeared and opposed the petition on the ground of territorial jurisdiction. The High Court of Bombay vide order dated 20.7.2016 dismissed the said Arbitration Petition on the ground of lack of territorial jurisdiction.

2.4 The appellant challenged the aforesaid order of the learned Single Judge by way of an appeal (Appeal (L) No.402/2016 before the Division Bench of the High Court of Bombay which too was dismissed vide order dated

6.2.017. Thereafter, the appellant approached the apex Court by way of a Special Leave Petition (SLP) which was also dismissed after condoning the delay vide order dated 4.10.2017.

3. According to the appellant, the fact regarding the dismissal of the SLP came to its knowledge on 28.11.017 when notice of the Execution Case No.153/2017 was received for appearance. Then, the appellant preferred application 34 of the Act of 1996 before the District Court, Indore challenging the award dated 4.8.2012. Since there was a delay in applying, therefore, an application u/s. 14 of the Limitation Act was also filed . Respondent No.1 opposed the application by submitting that the limitation beyond 120 days cannot be condoned, hence, the application u/s. 34 of the Act of 1996 is not maintainable and liable to be dismissed.

4. Learned District Judge, Indore has held that the limitation for filing an application u/s. 34 of the Act of 1996 started on 4.10.017 i.e. the date of dismissal of the SLP, thus, there is a delay of 4 days in filing the application u/s. 34 of the Act of 1996, which cannot be condoned due to the reger of proviso of section 34 , therefore, dismissed the application u/s. 14 of the Limitation Act as well as the appeal. Hence, the present arbitration appeal before this Court.

5. Shri Jain learned counsel for the appellant submitted that the learned District Judge has wrongly calculated the period of limitation from the date of dismissal of the SLP, whereas the appellant came to know about the dismissal of the SLP on 28.11.2017 and if the period of limitation is counted from the said date, then the application filed u/s. 34 of the Act of 1996 was well within limitation. Learned counsel further submitted that the appellant did not receive any notice from the Arbitrator and an *ex-parte* award had wrongly been obtained by respondent No.1. Even the copy of the *ex-parte* award was not communicated to the appellant immediately after the passing of the award. The appellant was served with the certified copy of the award by the Arbitrator on 22.1.2018. In support of his contention, learned counsel for the appellant has placed reliance on the decision of the apex Court in the case of *Indus Mobile Distribution Pvt. Ltd. V/s. Datawind Innovations Pvt. Ltd. :* (2017) 7 SCC 678; *Brahmani River Pellets Ltd. V/s. Kamachi Industries Ltd. :* AIR 2019 SC 3658; *Dharma Prathisthanam V/s. Madhok Construction Pvt. Ltd. :* AIR 2005 SC 214; *Sarwan Kumar V/s. Madan Lal Aggarwal:* (2003) 4 SCC 147; *Dakshin Haryana Bijli Vitran Nigam Ltd. V/s. M/s. Navigant Technolgies Pvt. Ltd.* : AIR 2021 SC 2493; *State of Himachal Pradesh V/s. Himachal Techno Engineers:* (2010) 12 SCC 210; *Consolidated Engineering Enterprises V/s. Principal Secretary, Irrigation Department:* (2008) 7 SCC 169; order passed by this Court in the case of *Bennet Pharmaceuticals Ltd. V/s. State of M.P.* (W.P. No.28896/2022 decided on 15.12.2022); order passed by the Gujarat High Court in the case of *GSRTC V/s.*

Anwar Husain Mamhad Bhai Kadri: 2009 (3) GCD 2143; 2009 (0) Supreme (Guj.) 93.

6. On the other hand, learned counsel appearing for respondent No.1 contended that the application was filed with the delay of 22 days and in view of the law laid down by the apex Court in the case of *Bhimashankar Sahakari Sakkare Karkhane Niyamita V/s. Walchandnagar Industries Ltd.* reported in 2023 SCC OnLine SC 382, has held that an application for setting aside an arbitral award under Section 34 of the Arbitration Act has to be made within the time prescribed under sub-section (3) of Section 34 i.e. within three months and a further period of 30 days on sufficient cause being shown and not thereafter. The appellant has also admitted that the application u/s. 34 of the Act of 1996 was barred by 2 days and in view of the above ruling, even the delay of one day cannot be condoned. Hence, this arbitration appeal is liable to be dismissed without entering into the merits of the case.

I have heard the learned counsel for the parties and perused the material available on record.

7. The dates and events up to the dismissal of the SLP are not in dispute. The only issue for consideration by this Court is, whether the period of limitation is liable to be counted from the date of dismissal of the SLP i.e. 4.10.2017 or the date 28.11.2017 when the appellant came to know about the dismissal of the SLP. The Copy of order dated 4.10.2017 passed in the SLP is on record and according to which, the SLP was dismissed on the very first day of its listing. The apex Court after condoning the delay has declined to grant leave and dismissed the SLP. On the said date, counsel for the appellant Shri Judy James and Mr. Prasad Rao were present. whether the representative of the appellant was present in the court is a matter of the evidence. It is also to be decided whether the learned counsel who appeared in SC informed the appellant about the dismissal of the SLP. In the memo of application u/s. 34 of the Act of 1996 as well as in the application filed u/s. 14 of the Limitation Act, the appellant pleaded that the fact of the dismissal of the SLP came to its knowledge when the notice of the Execution Case was served upon it.

8. The appellant filed an application u/s. 34 of the Act of 1996 on 6.2.2018 along with an application u/s. 14 of the Limitation Act. The learned court below has condoned the period which was spent in filing application 34 of the Act of 1996 and the SLP. In the appeal as well as in an application u/s. 34 of the Act of 1996, the appeal has pleaded that the fact of dismissal of the SLP came to its knowledge on 28.11.2017. It is settled law that the issue of limitation is a blended question of fact and law. Respondent No.1 filed the reply opposing the issue of limitation, but the learned court below did not frame any issue for adjudication on the disputed date of knowledge of SLP . According to the appellant upon service of notice from the Executing Court they came to know about the dismissal of SLP hence the appellant

ought to have been given an opportunity to lead evidence on this limited issue. If it is held that from the date of knowledge, the application under section 34 is not filed within 3 months, then an additional application is also liable to be filed for condonation of delay or to seek leave of the Court to apply within the next 30 days as per proviso.

9. Section 34 of the Act of 1996 is reproduced below :

> **"34.** Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
>
> (2) An arbitral award may be set aside by the Court only if—
>
> (a) the party making the application furnishes proof that—
>
> (i) a party was under some incapacity, or
>
> (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
>
> (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
>
> (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
>
> (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
>
> (b) the Court finds that—
>
> (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
>
> (ii) the arbitral award is in conflict with the public

policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such

application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party."

10. As per sub-section (1) of Section 34, the arbitral award is liable to be set aside only by way of an application in accordance with sub-section (2) and sub-section (3) of Section 34. As per sub-section (3), an application for setting aside may not be made after three months (not 90 days) have elapsed from the date on which the party making that application had received the arbitral award. As per Proviso, if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months, it may entertain the application within a further period of thirty days, but not thereafter. As per Proviso to sub-section (3), for granting an extension of time for thirty days from three months, an application is liable to be filed. Thus, in the present case, the appellant was required to file two applications, first u/s. 14 of the Limitation Act for exclusion of time spent in the proceedings *bona fide* in the Court without jurisdiction; and another application under the Proviso to sub-section (3) of Section 34 of the Act of 1996 for further extension of one month. The appellant has filed the certified copy of the award which was sent by the Secretary of the Cotton Association of India along with a letter dated 22.1.2018 by speed post. According to the appellant, in this letter, nothing has been disclosed as to whether the copy of the award had earlier been sent to the appellant. Therefore, this issue is also liable to be considered by the learned District Judge while deciding the issue of limitation. In the considered opinion of this Court, the impugned order deserves to be quashed.

11. Accordingly, this arbitration appeal is allowed. The impugned order 23.1.2023 is hereby set aside and the matter is remitted back to the learned District Judge for fresh adjudication of the issue of limitation after recording evidence.

The learned Arbitrator has unnecessarily been made respondent No. 2 in these proceedings, hence the appellant shall pay Rs. 10,000.00 as the cost of litigation to him.

Appeal allowed

I.L.R. 2023 M.P. 2100

Before Mr. Justice Pranay Verma

CR No. 383/2022 (Indore) decided on 30 June, 2023

SUCHITRA DUBEY (SMT.) …Applicant

Vs.

SATTAR & ors. …Non-applicants

***A. Civil Procedure Code (5 of 1908), Order 6 Rule 17 & Order 7 Rule 11 – Practice & Procedure* – Held – Trial Court ought to have first decided the application under O-6 R-17 CPC filed by plaintiffs and thereafter only should have proceeded to decide application under O-7 R-11 CPC filed by D-6 – Court exercised its jurisdiction with material irregularity – Impugned order set aside – Trial Court directed to consider application under O-6 R-17 CPC and thereafter reconsider application under O-7 R-11 CPC – Revision disposed. (Paras 10, 14, 16 & 17)**

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17 व आदेश 7 नियम 11 – पद्धति व प्रक्रिया – अभिनिर्धारित – विचारण न्यायालय को वादीगण द्वारा सि. प्र.सं. के आदेश–6 नियम–17 के अंतर्गत प्रस्तुत आवेदन का पहले विनिश्चय करना चाहिए था एवं तत्पश्चात् ही केवल प्रतिवादी क्र. 6 द्वारा सि.प्र.सं. के आदेश–7 नियम–11 के अंतर्गत प्रस्तुत आवेदन को विनिश्चित करने हेतु आगे कार्यवाही करना चाहिए था – न्यायालय ने तात्विक अनियमितता के साथ अपनी अधिकारिता का प्रयोग किया – आक्षेपित आदेश अपास्त – विचारण न्यायालय को सि.प्र.सं. के आदेश–6 नियम–17 के अंतर्गत आवेदन पर विचार करने एवं तत्पश्चात् सि.प्र.सं. के आदेश–7 नियम–11 के अंतर्गत आवेदन पर पुनः विचार करने हेतु निदेशित किया गया – पुनरीक्षण निराकृत।

***B. Civil Procedure Code (5 of 1908), Order 6 Rule 17, Order 7 Rule 11 & Order 7 Rule 13 – Practice & Procedure* – Trial Court before deciding the application under O-6 R-17 decided the application under O-7 Rule 11 CPC – Held – Where a plaint is rejected under O-7 R-11 CPC then plaintiff is not precluded from presenting a fresh plaint in respect of same cause of action – It would be still permissible for plaintiff to file fresh plaint including the proposed amendment in the pleadings – This would result in prolongation of proceedings and unnecessary delay and expenditure for both parties – Thus, it would be proper to permit amendment so as to remove the defect therein. (Para 14 & 15)**

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17, आदेश 7 नियम 11 व आदेश 7 नियम 13 – पद्धति व प्रक्रिया – विचारण न्यायालय ने आदेश–6 नियम 17 के अंतर्गत आवेदन विनिश्चित करने से पूर्व सि.प्र.सं. के आदेश–7 नियम–11 के अंतर्गत आवेदन का विनिश्चय किया – अभिनिर्धारित – जहां सि.प्र.सं. के आदेश–7 नियम–11 के अंतर्गत एक वाद–पत्र नामंजूर किया गया है तो वादी समान वाद हेतुक के संबंध में एक

नया वाद–पत्र प्रस्तुत करने से प्रवारित नहीं है – वादी के लिए तब भी अभिवचनों में प्रस्तावित संशोधन सहित नया वाद–पत्र प्रस्तुत करना अनुज्ञेय होगा – इसके परिणामस्वरूप कार्यवाही लंबी हो जाएगी एवं दोनों पक्षों को अनावश्यक विलंब एवं व्यय होगा – अतः, उसके दोष को दूर करने हेतु संशोधन की अनुज्ञा देना उचित होगा।

Cases referred:

(2020) 7 SCC 366, (2011) 9 SCC 126, (2001) 6 SCC 534, (1977) 4 SCC 467, 2017 SCC OnLine Del 9645, 2020 SCC OnLine P & H 1625, AIR 1950 Bom 345, DRJ 1991 (Supp) 483, 2017 (3) Mh.L.J. 223.

Veer Kumar Jain with *Devasheesh Dubey*, for the applicant.

Sunil Kumar Jain with *Rishi Paliwal*, for the non-applicant Nos. 1, 2 & 4 to 14.

Kamal Nayan Airen, for the non-applicant No. 3.

Yashwardhan Tiwari, for the non-applicant No. 17.

O R D E R

PRANAY VERMA, J.:- This Revision under Section 115 of the CPC has been preferred by defendant No.6/petitioner being aggrieved by order dated 05.07.2022 passed by 4th Additional District Judge, Indore in Civil Suit No.31-A/2016 whereby her application under Order 7 Rule 11 read with Section 151 of the CPC for rejection of the plaint has been rejected.

2. The plaintiffs/respondents No.1 to 3 have instituted an action on 11-03-2016 for declaration of their title to the suit lands, for declaration that mutation in favour of defendants 1 and 2 and the sale deed dated 24-05-2006 executed in favour of defendant No.3 is null and void and for permanent injunction restraining the defendants from interfering with their possession over the suit lands.

3. On 06.05.2022 defendant No.6 filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint on the ground that the same is barred by time as per Article 58 of the Limitation Act, 1963. There has been gross suppression of material facts, fraud and malice on part of plaintiffs. Two suits instituted by them earlier have already been dismissed as withdrawn in 2008 and 2009 respectively which fact has been concealed by them. The plaintiffs had instituted various proceedings before the Revenue Courts with respect to the suit lands which have already been decided in the year 2008-2009 itself. The plaintiffs are neither in possession nor have any title to the suit lands. The plaint is hence liable to be rejected. The plaintiffs contested the application by filing their reply to the same.

4. By the impugned order the trial Court has rejected the application by holding that the grounds which have taken by defendant No.6 for rejection of the plaint are not sufficient. Plaintiffs are challenging a void sale deed and mutation is

not proof of title. They have claimed to be in possession of the suit lands hence the plaint is not liable to be rejected.

5. Learned Senior Counsel for defendant No.6 has submitted that the impugned order is illegal and contrary to law. The suit as per the plaint averments themselves is barred under Article 58 of the Limitation Act, 1963 and does not require any evidence to be led. The plaintiffs were always aware of the sale deed and the mutation entries in favour of defendants. The plaint is vexatious, mischievous and is an abuse of process of law and deserves to be rejected at this stage itself. Various public documents which have been filed by defendant No.6 in this revision clearly demonstrate that the suit is barred by law. The plaint has to be read as a whole and not in isolation and when read in its entirety it leaves no room for doubt that the same is frivolous and vexatious. Reliance has been placed on the decision of the Supreme Court in *Dahiben V/s. Arvindbhai Kalyanji Bhanusali (Gajra) (dead) through LRs and others* (2020) 7 SCC 366, *Khatri Hotels Private Limited and Another V/s. Union of India and Another* (2011) 9 SCC 126, *Howrah Daw Mangla Hat B.B. Samity V/s. Pranab Kumar Daw* (2001) 6 SCC 534, *T. Arivandandam V/s. T.V.Satyapal and Another* (1977) 4 SCC 467 and various other decisions of the Supreme Court and of this Court on the same lines.

6. Per contra learned counsel for plaintiffs have submitted that the impugned order is perfectly just and legal and needs no interference. The claim is well within time which is even otherwise a mixed question of facts and law. The plaintiffs are in possession of the suit lands. The grounds raised by defendant No.6 in her application under Order 7 Rule 11 of the CPC can be considered only at the appropriate stage and not at this stage. In the alternate, it is also submitted that an application under Order 6 Rule 17 of the CPC was filed by plaintiffs before the trial Court on 02.07.2022 which is still pending and the same ought to have been decided prior to deciding the application under Order 7 Rule 11 of the CPC. In this regard, reliance has been placed on the decision of the Delhi High Court in *Rajesh Kumar Mehlawat V/s. Naresh Gupta* 2017 SCC OnLine Del 9645, of the *Punjab and Haryana High Court in Dera Baba Bhumman Shah Sangar Sarista V/s. Dr. Subhash Narula* 2020 SCC OnLine P & H 1625, and *Gaganmal Ramchand V/s. Hongkong and Shanghai Banking Corporation* AIR 1950 Bom 345.

7. Learned counsel for defendant No.3 has supported defendant No. 6 and has submitted that the trial Court has erred in rejecting the application filed by her. Reliance has been placed by him on the decisions which have been relied upon by the contesting parties.

8. I have considered the submissions of learned counsel for the parties and have perused the record.

9. Though various submissions have been made by learned counsel for the parties on merits of the impugned order, but the record shows that on filing of application under Order 7 Rule 11 of the CPC by defendant No.6 on 06.05.2022, the plaintiffs filed an application under Order 6 Rule 17 of the CPC on 27.07.2022. That application was admittedly not decided by the trial Court prior to passing of the impugned order deciding the application under Order 7 Rule 11 of the CPC. The question which thus arises is as to whether the trial Court ought to have first decided the application under Order 6 Rule 17 of the CPC filed by plaintiffs and only thereafter should have proceeded to consider the application under Order 7 Rule 11 of the CPC.

10. In *Dera Baba Bhumman Shah Sangar Sarista* (supra) it was categorically held that the application under Order 6 Rule 17 of the CPC has to be decided before the decision of the application under Order 7 Rule 11 of the CPC. The order on application under Order 7 Rule 11 prior to decision of pending application under Order 6 Rule 17 is an illegality and that pending application ought to have been decided prior to decision on the application under Order 7 Rule 11. In *Rajesh Kumar Mehlawat* (supra) also it was held, though on the basis of concession, that the settled principle of law is that an application under Order 6 Rule 17 of the CPC even if filed after filing of an application under Order 7 Rule 11 of the CPC or before the order on such an application is pronounced, has to be considered first.

11. In *Gaganmal Ramchand* (supra) it was held that the power of the Court to allow amendment of pleadings should not in any manner be restricted or controlled by the provisions contained in Order 7 Rule 11 of the CPC. Though it is incumbent upon the Court to reject the plaint that does not disclose a cause of action but it does not follow that it is not open to the Court to allow a plaint to be amended so that it should disclose a cause of action. The Court may prevent the operation of Order 7 Rule 11 of the CPC and save the plaint from being rejected by exercising its power under Order 6 Rule 17. It was held as under :-

> *" Mr. Seervai's argument is that when a plaint comes before the Court and that plaint does not disclose a cause of action, it is mandatory upon the Court to reject that plaint and dismiss the suit and the Court has no power to permit the plaint to be amended. In other words, Mr. Seervai's contention is that O. VI, r. 17, is controlled by O. VII, r. 11, and in cases falling under O. VII, r. 11, the Court has no jurisdiction to order the amendment of the plaint. I am unable to accept that contention. I see no reason whatever why the power of the Court to allow amendment of pleadings should be in any way restricted or controlled by the provisions contained in O. VII, r. 11. It is perfectly true that it is incumbent upon the Court to reject a plaint that does not disclose a cause of action, but it does not follow that it is not open*

to the Court to allow a plaint to be amended so that it should disclose a cause of action. It is only when a plaint does not disclose a cause of action that the Court is called upon to exercise its power under O. VII, r. 11. But the Court may prevent the operation of O. VII, r. 11, and may save the plaint being rejected by exercising its power under O. VI, r. 17, and allowing the plaint to be amended. It would indeed be an extraordinary proposition to lay down that if various averments had to be made in the plaint which would go to constitute a cause of action, and by some oversight or some mistake the plaintiff failed to make one of the averments, then in that case the plaint must be dismissed and the plaintiff could not apply for an amendment and make the necessary averment.

12. In *Wasudhir Foundation V/s. C. Lal & Sons* DRJ 1991 (Supp) 483 it was held by the High Court of Delhi that Order 6 Rule 17 is neither restricted nor controlled by Order 7 Rule 11 of the CPC. It was held in paragraph No.5, 7 and 9 as under :-

"5. This is the righteous path and, if this be so is it not necessary, in the ends of justice, to extend the beneficial legal principles ensconced in Order 6 rule 17 More so, when one hardly discerns any-thing in Order 7 rule 11 which may lead one to take the view that it takes away the power of the court to allow amendment or places hurdles in performance of its duty? After all what is the effect of Order 7 rule 11? It is, if I understand correctly, that the plaintiff would not be precluded from filing a fresh suit in respect of the same cause of action if he so desires. See Order 7 Rule 13. If such be the effect, why not permit the amendment of the plaint so as to remove the defect and prevent the operation of the Rule? Why make him first invite the rejection of the plaint, then allow him to file a fresh suit at the expense of delay and heavy costs? Why not straightaway allow him to amend the plaint, remove the defect and permit him, thereby, to proceed with the same suit? Why this rigmarole? After all, procedural law is intended to facilitate and not to obstruct the course of justice.

7. The ouster of Order 6 rule 17 will throttle the very life line of Order 7 rule 11. Instead of promoting, it would defeat the ends of justice. I refuse to be a party to such an approach.

9. Order 6 rule 17 is thus held to be neither restricted nor controlled by Order 7 rule 11."

13. Further more in *Pramod V/s. Shantaram Balkrushna Dhok* 2017 (3) Mh.L.J 223 it was held that application for amendment of plaint should be

considered on its own merits before consideration of application for rejection of the plaint. It was held in paragraph No. 5 as under :-

> **"5.** After considering the submissions made by the learned Advocates for the respective parties, I am of the view that the learned trial Judge has committed an error in rejecting the application (Exhibit No. 27) and refusing to consider the application (Exhibit No. 22) before considering the application (Exhibit No. 18). The provisions of Order VII, Rule 13 of the Code of Civil Procedure lay down that if the plaint is rejected under Order VII, Rule 11 of the Code of Civil Procedure, then the plaintiff is not precluded from presenting a fresh plaint in respect of the same cause of action. Thus if the application (Exhibit No. 18) is decided first and the trial Court finds favour with the defendant, then the plaint shall be rejected and it would be permissible for the plaintiff to file fresh plaint including the proposed amendment in the pleadings. Thus, in my view, it will not serve any purpose by not considering the application (Exhibit No. 22) before considering the application (Exhibit No. 18). Of course the application (Exhibit No. 22) will have to be considered on its own merits according to law."

14. The position which hence emerges is that the provisions of Order 6 Rule 17 of the CPC are not restricted or controlled by provisions of Order 7 Rule 11 of the CPC. Where an application under Order 6 Rule 17 is filed and is pending then the same ought to be decided first prior to decision on the application under Order 7 Rule 11. The same would be more so when the application under Order 6 Rule 17 is filed pursuant to filing of an application under Order 7 Rule 11 and intends to remedy the defects as pointed out in the said application. Such consideration of an application under Order 6 Rule 17 would be in the interest of justice. If there is some objection as regards maintainability of the claim and that objection is sought to be remedied by plaintiff by appropriately amending the plaint, then such amendment application needs to be considered first.

15. As per Order 7 Rule 13 of the CPC where a plaint is rejected under Order 7 Rule 11 then plaintiff is not precluded from presenting a fresh plaint in respect of the same cause of action. Thus, if the application under Order 7 Rule 11 of the CPC is decided first and the plaint is rejected it would still be permissible for plaintiff to file a fresh plaint and including therein the proposed amendment in the pleadings. That would not serve any purpose but would only be a prolongation of the proceedings and shall result in unnecessary expenditure and delay for both the parties. It would be proper to permit amendment of the plaint so as to remove the defect therein.

16. The Trial Court hence ought to have first decided the application Under Order 6 rule 17 of the CPC filed by plaintiffs and thereafter only should have proceeded to decide the application Under Order 7 Rule 11 filed by defendant No.6. In not doing so it has exercised its jurisdiction with material irregularity.

17. Thus, in view of the aforesaid discussion, the impugned order is set aside. The trial Court is directed to consider the application under Order 6 Rule 17 of the CPC filed by plaintiffs and after lawful decision of the said application to reconsider the application under Order 7 Rule 11 of the CPC in accordance with law. It is made clear that this Court has not expressed any opinion on merits of the case and the trial Court shall decide both the applications under legal parameters.

18. The Revision is accordingly disposed off.

Order accordingly

I.L.R. 2023 M.P. 2106

Before Smt. Justice Sunita Yadav

CR No. 177/2021 (Gwalior) decided on 8 August, 2023

DINESH SAXENA & ors. …Applicants

Vs.

SMT. REENA DEVI & ors. …Non-applicants

***A. Civil Procedure Code (5 of 1908), Order 21 Rule 97 & Order 7 Rule 11 – Execution of Decree – Possession of Third Party – Objection* – Held – Suit is barred by law because plaintiff being a third party claiming to be in possession of property which is subject matter of decree, in his own right can resist delivery of possession by filing objection under O-21 R-97 CPC in executing Court itself – Application under O-7 R-11 CPC filed by defendants is allowed – Suit is dismissed – Revision allowed. (Paras 18 to 20)**

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97 व आदेश 7 नियम 11 – डिक्री का निष्पादन – तीसरे पक्षकार का कब्जा – आपत्ति – अभिनिर्धारित – वाद विधि द्वारा वर्जित है क्योंकि वादी उस संपत्ति पर जो कि डिक्री की विषय–वस्तु है, कब्जे का दावा करने वाला तीसरा पक्षकार होने के नाते, अपने अधिकार में स्वतः निष्पादन न्यायालय में सि.प्र.सं. के आदेश–21 नियम–97 के अन्तर्गत आपत्ति प्रस्तुत कर कब्जा सौंपे जाने का प्रतिरोध कर सकता है – प्रतिवादीगण द्वारा सि.प्र.सं. के आदेश–7 नियम–11 के अन्तर्गत प्रस्तुत आवेदन मंजूर – वाद खारिज किया गया – पुनरीक्षण मंजूर।

***B. Civil Procedure Code (5 of 1908), Order 21 Rule 97 & Order 7 Rule 11 – Execution of Decree – Illusory Cause of Action* – Held – Pleadings of suit reveals that before filing civil suit, plaintiff had knowledge about the decree in favour of appellant and they knew that, execution proceedings are going on – In place of filing application under O-21 R-97, present suit was**

filed by clever drafting and creating illusory cause of action, that there is an apprehension of disturbance in their possession – Suit is dismissed. (Para 14)

ख. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97 व आदेश 7 नियम 11 – डिक्री का निष्पादन – भ्रामक वाद हेतुक – अभिनिर्धारित – वाद के अभिवचन यह प्रकट करते हैं कि सिविल वाद प्रस्तुत करने से पूर्व, वादी को अपीलार्थी के पक्ष में डिक्री के बारे में ज्ञान था तथा उन्हें ज्ञात था कि निष्पादन की कार्यवाही चल रही है – आदेश–21 नियम–97 के अंतर्गत आवेदन प्रस्तुत करने के बजाय, चालाकी से प्रारूपण कर तथा भ्रामक वाद हेतुक सृजित कर, कि उनके कब्जे में विघ्न की आशंका है, वर्तमान वाद प्रस्तुत किया गया था – वाद खारिज किया गया।

***C. Civil Procedure Code (5 of 1908), Order 21 Rule 97 – Execution of Decree – Objection – Locus* – Held – O-21 R-97 CPC conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person" – This may be either by the person bound by the decree, claiming title through the judgment debtor or claiming independent right of his own including a tenant not party to the suit or even a stranger. (Para 17)**

ग. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97 – डिक्री का निष्पादन – आपत्ति – अधिकार – अभिनिर्धारित – सि.प्र.सं. का आदेश–21 नियम–97 किसी व्यक्ति द्वारा डिक्री के निष्पादन में किये गये स्थावर संपत्ति के कब्जे में प्रतिरोध अथवा बाधा की कल्पना करता है – यह या तो डिक्री से बाध्य व्यक्ति के द्वारा, जो निर्णीत ऋणी के माध्यम से हक का दावा कर रहा है या अपने स्वयं के अधिकार का दावा कर रहा है जिसमें किरायेदार जो कि वाद में पक्षकार नहीं है अथवा कोई पर–व्यक्ति भी शामिल है, किया जा सकता है।

***D. Civil Procedure Code (5 of 1908), Order 21 Rule 97 & Order 21 Rule 101 – Execution of Decree – Objection* – Held – Apex Court concluded that where obstruction to execution of decree is being caused, it is for decree holder to take appropriate steps under O-21 R-97 CPC for removal of obstruction and to have the rights of parties including the obstructionist adjudicated under O-21 R-101 CPC. (Para 17)**

घ. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97 व आदेश 21 नियम 101 – डिक्री का निष्पादन – आपत्ति – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि जहां डिक्री के निष्पादन में बाधा डाली जा रही है, वहां डिक्री धारक बाधा दूर करने के लिए सि.प्र.सं. के आदेश–21 नियम–97 के अंतर्गत उचित कदम उठाएगा तथा सि.प्र.सं. के आदेश–21 नियम–101 के अंतर्गत बाधा डालने वाले सहित पक्षकारों के अधिकारों का न्यायनिर्णयन कराएगा।

***E. Civil Procedure Code (5 of 1908), Order 21 Rule 97 & Order 21 Rule 101 – Execution of Decree – Jurisdiction of Executing Court* – Held – Apex Court concluded that executing Court has jurisdiction to decide all**

questions raised by such complainant, including questions regarding right, title or interest in the property, notwithstanding provisions of any other law to the contrary – Aim of enacting Rule 101 is to remove technical objections to applications filed by aggrieved party, whether he is decree holder or any other person in possession. (Para 17)

ङ सिविल प्रक्रिया संहिता (1908 का 5), आदेश 21 नियम 97 व आदेश 21 नियम 101 – डिक्री का निष्पादन – निष्पादन न्यायालय की अधिकारिता – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि निष्पादन न्यायालय के पास किसी अन्य विधि के उपबंधों के विपरीत होते हुये भी, ऐसे परिवादी द्वारा उठाये गये सभी प्रश्नों को जिसमें संपत्ति में अधिकार, हक अथवा हित से संबंधित प्रश्न भी शामिल हैं, विनिश्चित करने की अधिकारिता है – नियम 101 को अधिनियमित करने का उद्देश्य व्यथित पक्षकार चाहे वह डिक्रीधारक हो या कब्जा रखने वाला कोई अन्य व्यक्ति, द्वारा प्रस्तुत आवेदनों पर तकनीकी आपत्तियों को दूर करना है।

***F. Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Scope & Jurisdiction* – Held – The ground for rejection can only be determined on basis of averments in plaint itself – At this stage, defence of defendants is not required to be considered – While deciding application under O-7 R-11 CPC, it is to be seen whether on basis of averments made in plaint, the suit is barred by law or having no cause of action. (Para 11 & 12)**

च. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11 – व्याप्ति व अधिकारिता – अभिनिर्धारित – अस्वीकृति का आधार केवल वाद–पत्र में दिये गये प्रकथनों के आधार पर ही अवधारित किया जा सकता है – इस प्रक्रम पर, प्रतिवादीगण के बचाव को विचार में लिया जाना अपेक्षित नहीं है – सि.प्र.सं. के आदेश–7 नियम–11 के अंतर्गत आवेदन का विनिश्चय करते समय, यह देखा जाना चाहिए कि क्या वाद–पत्र में किये गये प्रकथनों के आधार पर, वाद विधि द्वारा वर्जित है अथवा कोई वाद हेतुक नहीं है।

Cases referred:

(2020) 7 SCC 366, (2000) 10 SCC 405, (2002) 1 SCC 662, (2011) 15 SCC 377, (1998) 4 SCC 543.

N.K. Gupta with *Rashi Kushwah*, for the applicants.
B.D. Jain, for the non-applicant No. 1.
K.S. Tomar with *J.S. Kaurav*, for the non-applicant Nos. 2 to 4.

O R D E R

SUNITA YADAV, J.:- This Civil Revision under Section 115 of Civil Procedure Code (for brevity, CPC) arising out of the order dated 27/03/2021

passed by learned 3rd Civil Judge, Class-I, District Gwalior in civil suit No. 750-A/2019, whereby, the application filed by the petitioners under Order VII Rule 11 of CPC has been rejected.

2. The necessary facts for disposal of the present petition are that the respondents No.1 to 6/plaintiffs have filed a civil suit for declaration and permanent injunction on the ground of adverse possession over the disputed property.

3. The petitioners/defendants filed an application under Order VII Rule 11 of CPC, wherein, it has been mentioned that their Aunt (Taee/elder mother) and grand mother Late Smt. Ajjudaya Bai were the owners of the land bearing Survey No. 298, 299, 300, 301 and 302 (for brevity, 'land in question'). Till the year 1956, Ramsingh used to cultivate the land in question on behalf of Ajjudaya Bai. Ajjudaya Bai died in the year 1961 and thereafter Nandram took possession of the land in question on the basis of false, fabricated and concocted documents.

4. In the year 1964, the defendants' mother and grandmother namely Ramkali Devi had filed a civil suit against Nandram for declaration of title and getting back possession of the land in question. During pendency of the said civil suit, land bearing survey Nos. 203, 204 was sold by Nandram vide registered sale deed dated 03/07/1976 to the plaintiffs' numbers 1 & 2/husband and father Kailash Kumar, plaintiff's number 3/husband namely Jagdish Kumar, plaintiffs' number 4 & 5/husband and father namely Hotchand @ Hemant Kumar and plaintiffs' number 6 & 7/husband and father namely Shivkumar. Thereafter, land bearing survey Nos. 298 min and 299 min was sold by Nandram to the plaintiffs' number 4 & 5/husband and father namely Hotchand @ Hemant Kumar vide registered sale deed dated 15/03/1980. Kailash Kumar, Jagdish Kumar, Hotchand @ Hemant Kumar and Shivkumar had filed an application for making them party in the said case, in which, the court below has passed the order dated 28/04/1 983, wherein, it has been stated that whatever decision delivered in the case, the plaintiffs' husband and father namely Kailash Kumar, Jagdish Kumar, Hotchand and Shivkumar are bound by the same.

5. The final decision in the said case has been delivered on 17/02/1995 and Nandram, his legal representatives and plaintiffs' husband and father namely Kailash Kumar, Jagdish Kumar, Hotchand and Shivkumar are bound by the same. The appeal bearing No. 27-A/1995 filed against the said order has been finally decided vide judgment dated 07/04/1997, in which, the order passed by 6th Civil Judge, Class-2 has been affirmed. Nandram has filed an appeal bearing No. 310/1997 before this Court, which, stood dismissed vide order dated 10/05/2018. It has further been submitted that proceedings of the said case has been started. It has further been stated that the plaintiffs have filed the civil suit by hiding the material documents and facts of the case. No balance of convenience lies in favour of the plaintiffs'. The plaintiffs can resolve the objection raised by the defendants

in the present case. On the basis of aforesaid, prayed to dismiss the civil suit filed by the plaintiffs.

6. The plaintiffs/respondents have filed reply against the application stating therein that the application is filed just to delay the disposal of the case. The objection raised by the defendants are elementary which does not come under the purview of order VII Rule 11 of CPC.

7. The learned trial court after hearing learned counsel for the rival parties and after appreciating the documents available on record vide order dated 27/03/2021 has dismissed the application under Order VII Rule 11 of CPC filed by the defendants/petitioners. Hence, this civil revision.

8. Learned counsel for the petitioners/defendants submits that the plaintiffs themselves in the application pleaded that the judgment and decree passed by learned trial court has been confirmed in Second appeal No. 310/1997 by this Court vide order dated 10-05-2018, hence, the suit filed by the plaintiffs is not maintainable which was based on malafide and the property was purchased by plaintiffs' ancestors from the defendant of the suit which has lost up to the Apex Court and now when the decree was put to execution, the suit was filed which is not maintainable in view of principle of estoppel and provisions of section 52 of transfer of property Act as no cause of action accrued to plaintiffs. It is further argued that in place of filing application u/O 21 Rule 97, 100 of C.P.C., which is the appropriate step, this separate suit is filed which is not maintainable and bared (sic: barred) by law. The order impugned is non-speaking and without taking into consideration the judgment and decree dated 17-02-1995 which was affirmed by this Court in Second Appeal No 310/190 vide judgment and decree dated 10/05/2018. The learned trial court failed to take into consideration the fact that cleverly drafted plaint and as no cause of action accrued to the plaintiffs further fact that the mutation in diversion of land by this Court's order in case No. Miscellaneous Petition No. 238/1990 in favour of plaintiffs predecessor was made on the basis of sale deed dated 09.03-1976 and 15-03-1980. The application filed by plaintiffs' ancestors was rejected by the trial court on the ground that they are lis-pendence purchaser and they are bound by the decree, hence, now the legal representatives cannot take different plea and time taken in decision of suit will not provide any ground to them much less plea of adverse possession.

9. On the other hand, learned counsel for the respondents/plaintiffs supported the impugned order passed by the court below and prayed for dismissal of the instant petition being bereft of merit and substance.

10. Heard learned counsel for the rival parties and perused the material available on record.

11. It is settled principle of law that the ground for rejection can only be determined on the basis of averments in the plaint itself, at this stage, the defence of the defendants is not required to be considered.

12. In view of the above settled principle of law while deciding the application under Order VII Rule 11 of CPC, it is to be seen whether on the basis of averments made in the plaint, the suit is barred by law or having no cause of action.

13. For ready reference provisions of Order 7 Rule 11 are being reproduced herein below:-

> **"11. Rejection of plaint.-** The plaint shall be rejected in the following cases:—
>
> (a) where it does not disclose a cause of action;
>
> (b) **********
>
> (c) **********
>
> (d) where the suit appears from the statement in the plaint to be barred by any law;
>
> (e) **********
>
> (f) **********
>
> Provided that **********"

14. A bare reading of plaint indicates that at para 17, the plaintiffs have pleaded that from 10-10-2019 to 20-10-2019 the disputed property (factory) was closed and when the factory was re-opened they came to know that Nazir of District Court had visited the property and had taken some photographs. Thereafter, they came to the Court and gathered some information that petitioners/defendants are trying to take possession of the disputed property. The above pleadings reveals that before filing of civil suit plaintiffs had knowledge about the decree in favour of the appellants/defendant and they knew the fact that execution proceedings are going on to execute the decree for which the District Court Nazir visited the disputed property. However, in place of filing an application U/o 21 Rule 97 of C. P. C. the present civil suit is filed by cleaver (sic: clever) drafting and creating an illusory cause of action that there is an apprehension of disturbance in their possession because District Court Nazir visited the spot and prepared some papers. Therefore, on the basis of averments in the plaint itself, it is apparant that the respondents/plaintiffs are trying to creat an illusory cause of action.

15. In the case of *Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead through Lrs and Ors.* reported in (2020) 7 SCC 366, the Apex Court has held that while exercising power under Order 7 Rule 11 (a), the Court has to determine whether plaint prima facie discloses cause of action. It is further held that provisions under Order 7 Rule 11 are mandatory in nature. If any of the grounds

specified in cls. (a) to (e) are made out, the court is bound to reject the plaint. It has further held that the Court has to find whether plaint discloses real cause of action or illusory cause of action created by clever drafting. The Court must be vigilant against camouflage or suppression and if suit found to be vexatious and an abuse of process of court, it should exercise its drastic power under Rule 11 to reject the plaint.

16. At this juncture, the provisions of Order XXI Rule 97 and 101 of CPC are relevant for consideration which reads as under :-

> "**Order XXI Rule 97 - Resistance or obstruction to possession of immovable property :-**
>
> (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.
>
> (2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate the upon the application in accordance with the provisions herein contained**.**
>
> **Rule 98 to 100 xxxxxxxxxxxxxxxxxxxxx**
>
> **101. Question to be determined.-** All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with the application, and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

17. The Apex Court in the case of *Anwarbi vs. Pramod D.A. Joshi and Ors.* reported in (2000) 10 SCC 405 has held that where obstruction to execution of decree is being caused, it is for the decree holder to take appropriate steps under Order 21 Rule 97 of CPC for removal of obstruction and to have the rights of the parties including the obstructionist ajudicated (sic: adjudicated) under Order 21 Rule 101 of CPC. In the case of *N.S.S. Narayana Sarma and Ors. vs. Goldstone Exports (P) Limited and Ors.* reported in (2002) 1 SCC 662, the Apex Court held that executing court has jurisdiction to decide all questions raised by such complainant, including questions regarding right, title or interest in the property, notwithstanding provisions of any other law to the contrary. The aim of enacting Rule 101 is to remove technical objections to applications filed by aggrieved

party, whether he is the decree holder or any other person in possession. In the case of *Har Vilas vs. Mahendra Nath and Ors.* reported in (2011) 15 SCC 377, the Apex Court has held that third party claiming to be in possession of property forming subject matter of decree in his own right can resist delivery of possession even by filing an objection under Order 21 Rule 97 of CPC in executing Court itself. The objection shall have to be determined by executing court itself. In the case of *Shreenath and Anr. vs. Rajesh and Ors.* reported in (1998) 4 SCC 543, the Apex Court held that under Order 21 Rule 35(1) of CPC, the executing court delivers actual physical possession of the disputed property to the decree holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. Under Rule 36, the decree holder gets the symbolic possession. Order 21 Rule 97 of CPC conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". This may be either by the person bound by the decree, claiming title through the judgment-debtor or claiming independent right of his own including a tenant not party to the suit or even a stranger.

18. In view of the aforesaid provisions and the law settled by the Apex Court, the present civil suit is found to be barred by law because the respondents/ plaintiffs being a third party claiming to be in possession of property forming subject matter of decree in his own right can resist delivery of possession by filing an objection under Order 21 Rule 97 of CPC in executing Court itself. The objection shall have to be determined by executing court itself.

19. The plain reading of impugned order shows that the learned trial court has not considered the aforesaid legal aspects and passed a non-speaking order against the settled principls (sic: principles) and provisions of law.

20. Consequently, this petition is allowed. The application filed by petitioners/ defendants under Order VII Rule 11 of C. P. C. is also allowed and the present civil suit filed by the respondents/plaintiffs is hereby dismissed under Order VII Rule 11 of C.P.C.

There shall be no order as to costs.

Certified copy as per rules.

Revision allowed

I.L.R. 2023 M.P. 2114

Before Mr. Justice Prem Narayan Singh

CRR No. 2034/2023 (Indore) decided on 28 June, 2023

LALIT AGRAWAL ...Applicant

Vs.

STATE OF M.P. …Non-applicant

A. Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Grounds **– Held – Trial Court without assigning sufficient ground for substratum of constituting the offence has wrongly observed that the role of applicant is suspicious – Such vague and obscure finding is not sufficient to implead any person as an accused and to direct him for facing a separate trial – Findings recorded in the impugned judgment in respect of applicant and summoning him by trial Court u/S 319 is set aside – Revision allowed.**

(Paras 18 to 20)

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – आधार – अभिनिर्धारित – विचारण न्यायालय ने अपराध गठित करने हेतु पर्याप्त आधार दिये बिना गलत रूप से संप्रेक्षण किया कि आवेदक की भूमिका संदेहजनक है – ऐसा अनिश्चित एवं अस्पष्ट निष्कर्ष किसी व्यक्ति को अभियुक्त के रूप में अभियोजित करने हेतु एवं एक पृथक विचारण का सामना करने हेतु निदेशित करने के लिए पर्याप्त नहीं है – आवेदक के संबंध में आक्षेपित निर्णय में अभिलिखित निष्कर्ष एवं धारा 319 के अंतर्गत विचारण न्यायालय द्वारा उसे समन किया जाना अपास्त किया गया – पुनरीक्षण मंजूर।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Stage of Passing the Order **– Held – It is a case of joint result, 2 accused were acquitted and 3 others were convicted – Since trial Court has passed the order u/S 319 Cr.P.C. against applicant after acquitting the accused persons rather than preceding their acquittal, the order cannot be said to be in accordance with the settled law laid down by Apex Court – Trial Court should pass the order u/S 319 Cr.P.C. before passing the order of acquittal – Impugned order not sustainable in the eyes of law. (Para 10 & 11)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – आदेश पारित करने का प्रक्रम – अभिनिर्धारित – यह संयुक्त परिणाम का प्रकरण है, दो अभियुक्त दोषमुक्त किये गये एवं तीन अन्य दोषसिद्ध किये गये – चूंकि विचारण न्यायालय ने अभियुक्तगण को दोषमुक्त करने के पश्चात् तथा न कि उनकी दोषमुक्ति के पूर्व, आवेदक के विरूद्ध दं.प्र.सं. की धारा 319 के अंतर्गत आदेश पारित किया है, इसलिए आदेश को सर्वोच्च न्यायालय द्वारा प्रतिपादित सुस्थापित विधि के अनुसार होना नहीं कहा जा सकता – विचारण न्यायालय को दोषमुक्ति का आदेश पारित करने से पूर्व दं.प्र.सं. की धारा 319 के अंतर्गत आदेश पारित करना चाहिए था – आक्षेपित आदेश विधि की दृष्टि में कायम रखे जाने योग्य नहीं।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Considerations – Powers of Court* – Held – A person can only be summoned as accused, when the trial Court after analyzing evidence strongly feels that there is sufficient and overwhelming evidence and it is expedient for justice to summon him as accused – Apex Court concluded that power of summoning u/S 319 Cr.P.C. should not be exercised routinely, and the existence of more than a *prima facie* case is *sin qua non* for summoning an additional accused. (Para 16 & 17)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – विचार किया जाना – न्यायालय की शक्तियाँ – अभिनिर्धारित – एक व्यक्ति को अभियुक्त के रूप में केवल तब समन किया जा सकता है, जब विचारण न्यायालय साक्ष्य का विश्लेषण करने के पश्चात् दृढ़ता से यह महसूस करता है कि पर्याप्त एवं अपरिहार्य साक्ष्य हैं एवं उसे अभियुक्त के रूप में समन करना न्याय के लिए समीचीन है – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि दं. प्र.सं. की धारा 319 के अंतर्गत समन करने की शक्ति का प्रयोग नियमित रूप से नहीं किया जाना चाहिए, एवं एक अतिरिक्त अभियुक्त को समन करने के लिए एक प्रथम दृष्ट्या प्रकरण से अधिक का विद्यमान होना अनिवार्य है।

***D. Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Stage of Trial* – Held – When a person is emerged as an accused at belated stage of trial, a separate trial can be initiated. (Para 10)**

घ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 319 – विचारण का प्रक्रम – अभिनिर्धारित – जब कोई व्यक्ति विचारण के विलंबित प्रक्रम पर अभियुक्त के रूप में उभर कर आता है, तो पृथक विचारण आरंभ किया जा सकता है।

Cases referred:

(2023) 1 SCC 289, (2009) 3 SCC 329, (2014) 3 SCC 92, 2017 Law Suit (SC) 2839, AIR 2023 SCC 1160.

Vivek Singh, for the applicant.
Santosh Singh Thakur, G.A. for the non-applicant.

O R D E R

PREM NARAYAN SINGH, J.: With consent of the parties heard finally.

This criminal revision under Section 397/401 of Cr.P.C.has been filed by the petitioner being crestfallen by the order under Section 319 of Cr.P.C. delivered in judgment dated 29.03.2023, passed by the learned 7th Additional Sessions Judge, Mandsaur District Mandsaur in ST No.88/2017 whereby the learned trial Court has made the petitioner accused alongwith other co-accused persons under Section 319 of Cr.P.C. and issued notice for separate trial against the petitioner.

2. At the time of passing the impugned judgement, the learned trial Court has sentenced the accused persons as under:

> Appellants Sandeep, Mohammad Farukh, Mohammad Aslam, Mohammad Nizammudin were convicted under Sections 467/120-B, 468/120-B, 471/120-B & 201 of IPC, in addition appellant Sandeep was also convicted under Section 409 of IPC and the appellants namely Abdul, Aneesh and Madhusudan were acquitted from all the charges except Madhusudan was convicted under Section 409 of IPC.

3. In this regard, the learned trial Court, passing the impugned judgment, mentioned in para nos.98 to 100 that the petitioner alongwith two other persons namely Mahendra Singh Tomar and Mohit have played important roles in the said offence. It is also disclosed that the petitioner and Mahendra Singh Tomar were made accused at early stage, however, the prosecution has filed the final report under Section 173(8) of Cr.P.C. to the effect that they have no role in the crime. In this regard, the learned trial Court has also observed that the role of the petitioner is found suspicious, hence, he is required to be prosecuted. It is also commented that the police administration has tried to save the petitioner alongwith Mohit and Mahendra from being impleaded in the criminal case as accused. As such, after observing as aforesaid, in view of the judgement of Hon'ble Apex Court rendered in the case of *Sukhpal Singh Khaira vs. State of Punjab* (2023) 1 SCC 289, the learned trial Court has adjudicated that separate trial should be initiated against the petitioners Lalit, Mohit and Mahendra and therefore, a notice for separate trial should be issued against them.

4. Counsel for the petitioner in this revision petition as well as in arguments submits that on the basis of written complaint of Branch Manager of the Society, an enquiry report was prepared, wherein it is mentioned that the society has received cheque of Rs.5.85 Lakhs in the account of Bhulibai, the said cheque was signed cheque, but in the enquiry report, it was found that Bhulibai is an illiterate person. During enquiry, it was found that the cheque was received in the account of Bhulibai. It is further **unearthed** that cheque nos.494676 to 49700 were missing and Sandeep, Mohammad Farooq and Madhusudan were responsible for the alleged offence. It is further submitted that on the basis of the statement of co-accused Mohammad Farooq recorded under Section 27 of the Evidence Act, cognizance under Section 319 of Cr.P.C. has been taken against the petitioner whereas such type of evidence is not admissible. It is further submitted that the petitioner has been foisted as accused only on the ground of suspicion, therefore, the order of learned trial Court regarding taking cognizance against the petitioner under Section 319 of Cr.P.C be set aside.

5. In course of arguments, it is further contended by learned counsel for the petitioner that the learned trial Court has made the petitioner as accused, in view

of the guidelines enumerated by the Hon'ble Apex Court in the case of *Sukhpal Singh* (supra), however, the learned trial Court has not passed the impugned order in accordance with the law laid down by Hon'ble Apex Court. It is further submitted that the order of summoning the petitioner as accused should be passed before pronouncement of the order of acquittal in such type of cases where the order of acquittal and conviction both are recorded.

6. With regard to merits of the case, it is demurred by learned counsel for the petitioner that the petitioner Lalit has also been produced as prosecution witness in the case as PW-8 and during his statements, he has supported the prosecution case and the prosecution has not declared him hostile. Hence, only on the basis of suspicion, he cannot be impleaded in this case. Therefore, the order of learned trial Court is not in conformity with law and therefore, it is entreated that the impugned order regarding the petitioner, deserves to be set aside.

7. Learned counsel for the State has remonstrated the contentions of the petitioner and submitted that the findings of the learned trial Court regarding issuance of notice to the petitioner is based on correct assumptions. Therefore, the said finding does not warrant any interference. Learned counsel for the State has also submitted that if the petitioner has not played any active role in the said crime, he will surely be acquitted after completion of trial, but anyway, he should not be eschewed to face the regular trial. Hence, revision petition may be dismissed.

8. In view of the aforesaid submissions and arguments advanced by counsels for the parties, the following points are required to be considered:-

> (i) Whether the learned trial Court has correctly used the power of summoning the additional accused on the date of judgement or not?
>
> (ii) Whether in view of the facts of the case the learned trial court has arrayed the petitioner as accused by summoning him corretly or not?

9. At the outset, the technical arguments of learned counsel for the petitioner is required to be ruminated. In the course of any enquiry or trial of an offence, if it appears to the Court from the evidence that any person, not being the accused of the case, has committed any offence for which, such person can be tried together with the accused persons, the Court may proceed against such person in the offence which he appears to have committed and if such person is not attending the Court, he may be summoned or arrested. In this way, Section 319 of Cr.P.C. emphasizes the principle of trying together with the other accused persons.

10. So far as the separate trial is concerned, nevertheless, when a person is emerged as an accused at belated stage of trial, a separate trial can be initiated. The

learned trial Court while relying upon the judgment passed by a Constitutional Bench of Hon'ble the Apex court in the case of *Sukhpal Singh* (supra), passed this order under Section 319 of Cr.P.C. In this regard, following extracts of the aforesaid judgment be reads as under:

> "The power under Section 319 is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction.If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable."

11. Now, the question is whether the learned trial Court has applied the aforesaid law in passing the impugned order under Section 319 of Cr.P.C. In this case, two of the accused have been acquitted and remaining three have been convicted. As such, this is a case of joint result; i.e. acquittal and conviction, both. Hence, in my considered opinion, the learned trial Court should pass the order under Section 319 of Cr.P.C. before passing the order of acquittal of Aneesh and Abdul Saleem. Since, the learned trial court has passed the impugned order under Section 319 of Cr.P.C. against the petitioner after acquitting the accused persons rather than preceding their acquittal, the order passed by the learned trial Court cannot be said to be in accordance with the settled law laid down by Hon'ble Apex Court in the case of *Sukhpal Singh* (supra). Therefore, on the basis of this sole reason, this order of learned trial Court is not sustainable in the eyes of law.

12. Now, turning to merits of the case, I have gone through the record and it is found that the petitioner has been produced by the prosecution as PW-8 and he has also backed the prosecution case in his examination in chief. However, in his statements, during cross-examination, he acceded that he has not seen Sandeep indulged in the working of cheque collection, and further conceded that he is stating about forged withdrawal on the basis of hearsay. Certainly, this witness did not stick with his statements recorded in his examination in chief. Nevertheless only on the basis of this statements, the role of the petitioner cannot be ascertained to be suspicious. It has to kept in mind that neither this witness has been declared hostile by the prosecution during his examination nor any application, with regard to him for making false evidence, has been filed.

13. Now, the question whether any person can be impleaded as accused only on the basis of suspicion, in this regarding, the view of Hon'ble Apex Court in the *Brindaban das & others vs. State of West Bengal:* (2009) 3 SCC 329; is as under:

> "25. The common thread in most matters where the use of discretion is in issue is the in the exercise of such discretion each case has to be considered on its own set of facts and circumstances. In matters relating to invocation of powers under Section 319, the Court is not merely required to take note of the fact that the name of a person who has not been named as an accused in the FIR has surfaced during the trial, but the court is also required to consider **whether such evidence would be sufficient to convict the person being summoned.** Since issuance of summons under Section 319 of Cr.P.C entails a *de novo* trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay in the trial, the trial Court has to exercise such discretion with great care and perspicacity.

14. Further, Hon'ble the Apex Court in the case of *Hardeep Singh vs. State of Punajab* reported in (2014) 3 SCC 92, in para no.12 has held as under:

> "Section 319 of Cr.P.C springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C".

15. Further, Hon'ble the Apex Court in the case of *Vikas vs. State of Rajasthan* [2017 Law Suit (SC) 2839], has ordained as under:

> "105. Power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant."

16. In a recent judgment in the case of *Juhru and others vs. Karim and Another* AIR 2023 SCC 1160, Hon'ble the Apex court has further reiterated that the power of summoning under Section 319 of Cr.P.C. should not be exercised routinely, **and the existence of more than a *prima facie* case** is *sine qua non* for summoning an additional accused.

17. In view of the aforesaid facts and settled propositions of law, this Court is of the considered opinion that a person can only be summoned as an accused, when the trial Court, after analyzing the evidence available on record strongly feels that there is sufficient and overwhelming evidence available on record and it is expedient for justice to summon him as accused. Only in such situation, the trial Court, using its extraordinary jurisdiction, may summon a person as an accused in the interest of justice.

18. In the case at hand, the learned trial Court, without assigning sufficient ground for substratum of constituting the said offence, has wrongly observed that the role of the petitioner is suspicious. Virtually, such type of vague and obscure finding is not sufficient to implead any person as an accused and to direct him for facing a separate trial.

19. In conspectus of the aforesaid analysis and settled proposition of law, the finding of the learned trial Court to summon the petitioner under Section 319 of Cr.P.C. cannot be sustained in the eyes of law, therefore, the petition is allowed and the finding recorded in para nos.98 to 100 of the impugned judgement being incorrect and improper qua the petitioner, is liable to be and is hereby set aside.

20. The criminal revision is allowed and disposed off.

Certified copy, as per rules.

Revision allowed

I.L.R. 2023 M.P. 2120

Before Mr. Justice Prem Narayan Singh

CRR No. 2229/2022 (Indore) decided on 6 July, 2023

CHANDRAVEER ...Applicant

Vs.

SMT. ANITA KUNWAR & anr. …Non-applicants

(Alongwith CRR No. 2244/2022)

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Quantum – Proof of Income* – Family Court granted Rs. 10,000 pm to wife and Rs. 5000 pm to son (till he attains majority) – Held – As per husband, wife is working as Tehsil Secretary in B.ED. College and earning handsome salary but no corroborative evidence produced by husband to establish the same, thus it cannot be said that wife is able to maintain herself – Maintenance awarded is just and proper – Revisions dismissed. (Paras 4 & 9 to 12)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरणपोषण – मात्रा – आय का सबूत – कुटुंब न्यायालय ने पत्नी को 10,000/– रू. प्रतिमाह और पुत्र को 5000/– प्रतिमाह (उसके वयस्क होने तक) प्रदान किये – अभिनिर्धारित – पति के अनुसार, पत्नी बी.एड. महाविद्यालय में तहसील सचिव के रूप में कार्यरत है और अच्छा वेतन अर्जित कर रही है परंतु यह स्थापित करने हेतु पति द्वारा कोई संपोषक साक्ष्य प्रस्तुत नहीं किया गया, अतः यह नहीं कहा जा सकता कि पत्नी अपना भरणपोषण करने में समर्थ है – अधिनिर्णीत भरण–पोषण न्यायसंगत एवं उचित है – पुनरीक्षण खारिज।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Quantum – Considerations* – Held – A destitute lady, being a wife cannot be deprived of for obtaining maintenance from her husband only on basis that she is educated and earning lady – In order to reckon the maintenance amount, it should be kept in mind that the wife can neither be allowed to lead a luxurious life nor she can be compelled to lead a penurious life – Her dignity and status should be maintained in accordance with the status of her matrimonial family. (Para 11)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरणपोषण – मात्रा – विचार किया जाना – अभिनिर्धारित – एक निराश्रित महिला को, एक पत्नी होने के नाते केवल इस आधार पर अपने पति से भरणपोषण प्राप्त करने से वंचित नहीं किया जा सकता कि वह एक शिक्षित एवं कमाऊ महिला है – भरणपोषण की राशि की गणना करने के लिए, यह ध्यान में रखा जाना चाहिए कि पत्नी को न तो वैभवपूर्ण जीवन जीने की अनुज्ञा दी जा सकती है और न ही उसे निर्धनता का जीवन जीने हेतु विवश किया जा सकता है – उसकी गरिमा और स्थिति को उसके वैवाहिक परिवार की स्थिति के अनुसार बनाए रखा जाना चाहिए।

Cases referred:

2008 (2) JLJ 70, 1991 Cri.L.J. 2357, (2021) 2 SCC 324.

Arpit Singh, for the applicant in CRR No. 2229/2022 and for the non-applicant in CRR No. 2244/2022.

Tushar Bhedasgaonkar, for the non-applicants in CRR No. 2229/2022 and for the applicants in CRR No. 2244/2022.

O R D E R

PREM NARAYAN SINGH, J.:- Both the Criminal Revisions are arising out of the same order and both are being heard and are being decided with this common order analogously.

These criminal revisions have been preferred under Section 397 read with Section 401 of Cr.P.C. by the petitioners i.e. the Husband and Wife respectively being aggrieved by the order dated 14.05.2022 passed by the learned Principal Judge, Family Court, Ratlam in MJCR No.214/2017 whereby learned Principal Judge allowed the application under Section 125 of Cr.P.C. filed by the respondents and directed the petitioner/husband to pay Rs.10,000/-and Rs.5000/- to respondent no.1 & 2 (wife and son) respectively, per month as maintenance.

2. Brief facts of the case are that, the respondents (wife and son) filed an application under Section 125 of Cr.P.C. before the Family Court, Ratlam seeking maintenance from the petitioner/husband. As per her application, she got married with the respondent by Hindu rights and rituals on 27.04.2003. She stayed in her

matrimonial house for almost four years, wherein her husband along with his family members started harassing and torturing her therefore, she started residing separately in a rented house along with her son however, her husband and his family members continued to torture her physically and mentally. On one such occasion, when her husband physically assaulted her, then she called for police, thereafter he was arrested, however the matter was mutually settled between the parties and she shifted to a rented house in Pratapgarh. It is further averred in the application that her husband and his family members attempted to set her ablaze therefore, she came back to her maternal house to live with her father. Hence she filed an application under Section 125 of Cr.P.C seeking Rs.35,000/- as maintenance for herself and her son.

3. The aforesaid facts were denied by the husband in his reply to the application by stating that after 3 to 4 months of the marriage the respondent no.1(wife) shifted to Ratlam for further studies and after completing her studies, she returned back to village Gardodhi. As she wanted to work, the petitioner/husband took her to Pratapgarh where they lived in a rented house, however the respondent no.1/wife used to quarrel with the petitioner/husband on petty issues and she was reluctant to stay with him in the Village therefore, she started implicating him in false cases, however, no such case was registered. Due to the aforesaid act by the respondent/wife and on account of the accident met by the petitioner/husband, he was expelled from his work on 30.08.2017, since then he is unemployed and has no source of income. The respondent no.1/wife was working and earning her source of income.

4. Learned trial Court, on due consideration of the evidence adduced by the parties, allowed the application vide the impugned order and awarded monthly maintenance of Rs.10000/- per month to the respondent no.1(wife) and Rs.5000/- per month to the respondent no.2(son) (till he attains majority) from the date of the application.

5. Learned counsel for the petitioner has submitted that the learned trial Court has failed to consider the fact that the respondent no.1 is a well qualified lady and is working in Gram Panchayat earlier and thereafter after completing her M.Ed after marriage, she continued working and at present she is earning a handsome salary and she is residing separately from the petitioner without any cogent reason. The petitioner was regularly discharging his liabilities with regard to education expenses of his son which has been admitted by the respondent no.1 also in her cross examination. It is further submitted that the respondent has filed the false complaint against the respondent and harassed the petitioner every time. Further the respondent no.1 has failed to prove her contentions that the petitioner earns handsome salary so also she failed to produce any documents regarding assets of the petitioner. On the contrary the petitioner has admitted his earnings

before the Court below but at present he was relieved from his job due to not being in a condition to work due to an accident. The amount of maintenance has been granted by the learned Court below by ignoring the fact that the petitioner is jobless and the properties in question as alleged by the respondent no.1/wife does not belong to the petitioner. Hence, counsel prayed for setting aside the impugned order or reduction of the maintenance amount.

6. Learned counsel for the respondent has vehemently opposed the aforesaid by submitting that the petitioner is working in a cloth shop at Prathapgarh and is earning Rs.20,000/- as monthly income. Apart this the petitioner is having agriculture land getting an income of Rs.50,000/- from the same. Further the respondent no.1 was subjected to harassment and on one such occasion the petitioner attempted to set her ablaze. The petitioner has failed to fulfill his responsibility towards respondent no.2. Further allegation is that the petitioner has not disclosed the correct details of salary and property.

7. In support of his contentions learned counsel relied upon the judgment of Hon'ble Supreme Court in the case of *Chaturbhuj vs. Sita Bai* reported as 2008(2) JLJ 70, *Major Ashok Kumar Singh vs. Vlth Additional Sessions Judge, Varnasi and Ors.* reported as 1991 Cri.L.J. 2357. The respondent/wife along with her son are dependent on her father and hence, in view of the averments made and earning of the petitioner, respondents are entitled to get Rs.35,000/- per month. Therefore, prays for enhancement of the interim maintenance in favour of the respondents.

8. I have heard learned counsel for the parties and perused the record.

9. From the face of record, it is evident that in compliance of the Hon'ble Apex Court judgment in *Rajensh v. Neha & Anr.* (2021)2 SCC 324 both the parties filed their respective affidavits of assets and liabilities. Respondent /Wife has specifically stated that her husband is a earning about Rs.20000/- and having income from agricultural land, however, no such document regarding income from agricultural land has been produced, even, from para 30 of the impugned order it is clear that the husband has transferred the right of his agricultural land to his brother on 22.06.2017 without a single penny and reason for the same has been assigned that he was having debt due which he has transferred the land in favour of his brother. Further husband has not produced any evidence or medical documents before the trial court to prove that he has been relieved from his work due to his disability on account of an accident met by him. On appreciation of the evidence and on considering the ancestral property, family status and the statutory liability, the learned family court has rightly awarded maintenance to wife and child as mentioned in para no.1 of this order.

10. So far as the question whether the wife is able to maintain herself or not, as per husband, she is working as Tehsil Secretary, in B.Ed. College, Gram Panchayat

Kalyapur and earning handsome amount, but there is no corroborative evidence produced by the husband proving that she is earning. So it cannot be said that the wife is able to maintain herself or her child.

11. Be that at (sic: as) it may, a destitute lady, being a wife cannot be deprived of for obtaining maintenance from her husband only on the basis that she is educated and earning lady. On the basis of earning some thing for her livelihood along with her child, the wife cannot be debarred from receiving maintenance from her husband. In order to reckon the maintenance amount, it should be kept in mind that the wife can neither be allowed to lead a luxurious life, nor she can be compelled to lead a penurious life. Nevertheless, her dignity and status should be maintained in accordance with the status of her matrimonial family.

12. In view of the foregoing observations and discussions and after perusal of the impugned order passed by learned Court below, this Court is of the considered opinion that the impugned order is just and proper and there is no infirmity, illegality or incorrectness found in the same. The maintenance so awarded is justified and proper in view of the income of husband as per the record, Hence, the learned Court below has not erred in considering the evidence available on record while passing the impugned order.

13. In view of the aforesaid, both the petitions filed on behalf of the husband as well as on behalf of wife, are dismissed.

14. A copy of this order be sent to the Court below concerned for information.

15. A copy of this order be placed in the record of CRR No.2244/2022.

Revision dismissed

I.L.R. 2023 M.P. 2124

Before Mr. Justice Prakash Chandra Gupta

CRR No. 615/2019 (Indore) decided on 13 July, 2023

NARAYAN ...Applicant

Vs.

STATE OF M.P. …Non-applicant

A. Penal Code (45 of 1860), Section 107 & 306 and Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Suicide – Abetment – **Applicant and deceased Vishnu had physical relationship which was consensual – Family members of deceased were searching a bride for deceased – Held – In absence of instigation, provocation, encouragement or suggestion on part of accused, no offence u/S 306 IPC made out – Order framing charge against applicant set aside – Revision allowed. (Paras 2 & 17 to 20)**

क. दण्ड संहिता (1860 का 45), धारा 107 व 306 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 – आत्महत्या – दुष्प्रेरण – आवेदक तथा मृतक विष्णु के मध्य आपसी सहमति से शारीरिक संबंध थे – मृतक के परिवार के सदस्य मृतक के लिए वधू की तलाश कर रहे थे – अभिनिर्धारित – अभियुक्त की ओर से उकसाहट, प्रकोपन, प्रोत्साहन अथवा सुझाव के अभाव में, भा.दं.सं. की धारा 306 के अंतर्गत कोई अपराध नहीं बनता – आवेदक के विरूद्ध आरोप विरचित करने का आदेश अपास्त – पुनरीक्षण मंजूर।

***B. Penal Code (45 of 1860), Section 107 & 306 – Abetment – Ingredients* – Held – Apex Court concluded that each person's suicidability is different from others and that each person has its own idea of self esteem and self respect – To constitute abetment, there should be intention to provoke, incite or encourage the doing of an act by the accused. (Para 13)**

ख. दण्ड संहिता (1860 का 45), धारा 107 व 306 – दुष्प्रेरण – घटक – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि प्रत्येक व्यक्ति की आत्महत्या दूसरों से भिन्न होती है एवं प्रत्येक व्यक्ति का स्वाभिमान और आत्मसम्मान के बारे में अपना विचार है – दुष्प्रेरण गठित करने के लिए, अभियुक्त द्वारा किसी कार्य को करने के लिए उकसाने, उद्दीप्त करने अथवा प्रोत्साहित करने का आशय होना चाहिए।

Cases referred:

AIR 2018 SC 4321, (2021) 13 SCC 806, (2009) 16 SCC 605, (2001) 9 SCC 618, 2011 Cri.L.J. 1900 (SC), 2010 (Suppl.) CR.L.R. (SC) 261, (1995) (Supp.) 3 SCC 731, (2009) 7 SCC 495.

Sanjay Kumar Sharma, for the applicant.
Sudhanshu Vyas, P.L. for the non-applicant/State.

O R D E R

PRAKASH CHANDRA GUPTA, J.:- The petitioner/ accused has preferred this revision petition u/s 397 r/w 401 of Cr.P.C. being aggrieved by the order dated 08/01/2019 passed by Vth Additional Sessions Judge, Ratlam in S.T. No.157/2018 whereby the learned trial court has passed order for framing of charges u/s 306 of IPC against the petitioner.

2. Prosecution case in brief is that the deceased Vishnu Rathore has committed suicide on 21/09/2018 in the intervening night of 20-21 September, 2018, by hanging in his house. On the same day after receiving intimation from father of the deceased Bhawarlal, a Merg Intimation No.49/2018 was lodged at Police Station- Industrial Area, Ratlam. After conducting post-mortem of the dead body, statement of father of deceased Bhawarlal, brother Rakesh and cousin brother Dharmendra was recorded and it was found that the deceased was having friendship with the petitioner since last 3 years. The deceased and the petitioner were seen in objectionable position by sister-in-law of the deceased, Pooja.

Further it is said that whenever, petitioner came to drop the deceased at his house, then he used to kiss the deceased, on that doubt arose and the family members of the deceased started searching a bride for marriage of deceased Vishnu. It is also alleged that, for 3 days before the incident, the deceased was worried and when his family members asked him the reason, he disclosed them that petitioner loves him and wants to marry him and further the petitioner gave threat that if the deceased marries any girl, he will either kill the deceased or will commit suicide himself and implicate the deceased through his suicide letter. The family of the deceased tried to convince the deceased Vishnu and the petitioner-Narayan. On 28/09/2018, the deceased went to meet the petitioner in evening and returned in night at about 11:00 PM, being worried and upset, told his family members that he is being bothered by the petitioner and the petitioner wants to marry the deceased and they had a quarrel as well due to which he sustained injuries on his right hand and lips. However, at night he committed suicide.

3. The learned trial court, after perusal of the chargesheet and evidence on record, by the impugned order came to the conclusion that *prima facie* charge u/s 306 of IPC is made out against the petitioner and ordered for framing of the aforesaid charge. Feeling aggrieved by which the petitioner has preferred this revision.

4. It is submitted by the learned counsel for the petitioner that it is not disputed that there was friendship between the deceased and the petitioner. As alleged that there was physical relationship between the deceased and petitioner but that relationship was consensual, relying upon the judgment dated 06/09/2018 passed by the Apex Court in the case of *Navtej Singh Johar Vs. Union Of India* [AIR 2018 SC 4321], whereby it has been held with regard to Section 377 of IPC that the "law is unconstitutional, in so far as it criminalises consensual sexual conduct between adults of the same sex".

5. It has further been submitted that, as alleged by the prosecution that father and other family members of the deceased wanted to get him married immediately and had started searching bride for him, therefore, possibility that because of the said pressure, built by his family members he committed suicide, cannot be ruled out. Further submitted that even if the case of prosecution is assumed as gospel truth then too at the most it may be a cause to commit suicide and same cannot be equated with the abetment as defined u/s 107 of IPC.

6. Learned counsel has stated that there is nothing in record to indicate that the petitioner at any point of time has instigated/ incited, suggested, encouraged the deceased to commit suicide. It is further submitted that to constitute abetment, within the meaning of Section 107 and with Section 306 of IPC, there should be instigation, provocation, goading, suggestion or persuasion by the accused to the deceased to commit suicide, and that the accused must be intended that the

deceased commits suicide. placed reliance in the case of *Kanchan Sharma V State Of Uttar Pradesh And Anr.* [(2021) 13 SCC 806]; *Chitresh Kumar Chopra V State* (Government Of Nct Of Delhi) [(2009) 16 SCC 605] and *Bittu alias Girriraj V State Of Madhya Pradesh* [MCRC no.1742/2016, order dated 08/03/2017].

7. On other hand it is submitted by the learned panel lawyer that the deceased was being subjected to harassment and humiliation by the petitioner, therefore, the alleged act is covered by Section 306 of IPC.

8. Heard learned counsel for the parties and perused the records.

9. In the case of *Kanchan Sharma* (Supra) the Apex Court observed in paragraph 13 as under:-

> "13. In Amalendu Pal V State Of W.B. [3] in order to bring a case within the purview of Section 306, IPC this Court has held as under: (SCC p.712, paras 12-13)
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> "12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.
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> 13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

10. In the case of *Chitresh Kumar Chopra* (Supra) the Hon'ble apex court discussing the ingredients of offence u/s 306 of IPC and revisional power of High court against charge, in paragraph 19 and 25 held has under:-

> "19. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other

option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. (See: Niranjan Singh Karam Singh Punjabi & Ors. Vs. Jitendra Bhimraj Bijjaya[5]).

11. In the case of *Bittu alias Girriraj* (Supra) wherein the legal position has been considered by this High Court in the light of various pronouncements of the apex court, relevant paragraphs where of run as under:-

"09. *Abetment to commit suicide'* is an offence under Section 306 of IPC punishable with imprisonment for a term which may extend to 10 years and fine. Expression 'Abetment' has been defined in Section 107 of IPC which runs as under :-

"107. Abetment of a thing.-- A person abets the doing of a thing, who- First.- Instigates any person to do that thing; or Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.-A person who, by willful misrepresentation, or by willful concealment

> of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".
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> 10. In the State of Punjab Vs. Iqbal Singh, AIR 1991 SC 1532, the apex Court explaining the meaning and expanse of word 'abetment' as used in Section 107 of IPC, has held as under:
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> "Abetment" as defined by Section 107 of the IPC comprises (i) instigation to do that thing which is an offence, (ii) engaging in any conspiracy for the doing of that thing, and (iii) intentionally aiding by any act or illegal omission, the doing of that thing. Section 108 defines an abettor as a person who abets an offence or who abets either the commission of an offence or the commission of an act which would be an offence. The word "instigate" in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. The dictionary meaning of the word "aid" is to give assistance, help etc.

12. In *Ramesh Kumar Vs. State Of Chattisgarh* [(2001) 9 SCC 618] a 3 judge bench of the Apex court explaining the meaning and connotation of word "Instigation" has held in paragraph 20 as under:-

> “20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect. or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. the present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

13. Taking note of the fact that each person's suicidability is different from others and that each person has his own idea of self esteem and self respect, the Apex Court in *M. Mohan V State represented by the Deputy Superintendent Of Police,* [2011 Cri. L.J. 1900 (SC)], referring to its earlier decision in *Chitresh Kumar (Supra)* held that to constitute abetment, there should be intention to provoke, incite or encourage the doing of an act by the accused.

14. The Apex court in the case of *Gangula Mohan Reddy V State Of Andhra Pradesh* [2010 (Suppl.) CR.L.R. (SC) 261] wherein the allegation was that the deceased was beaten by the accused and was also subjected to harassment, due to which he committed suicide, by consuming poisonous substance. The Apex court referring to its earlier decision in *Mahendra Singh And ANR. V State Of M.P.* [(1995) (Supp.) 3 SCC 731] and *Ramesh Kumar V State Of Chattisgarh* [(2001) 9 SCC 618], holding that offence of abetment to commit suicide u/s 306 of IPC is not made out observed as under:-

> "Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained."

15. From the aforesaid pronouncements of the Apex court, it flows that to constitute abetment to commit suicide, there must be material, prima-facie indicating that accused with a positive act on his part instigated, incited, aided or provoked the person to commit suicide.

16. In the case of *Devendra And Ors. V State Of Uttar Pradesh And Anr.* [(2009) 7 SCC 495] it has been held as under-

> "when the allegation made in the first information report or the evidence collected during the investigation do not satisfy the ingredients of an offence, the superior court would not encourage harassment of a person in a criminal court for nothing."

17. From the aforesaid, it is clear that in absence of instigation, provocation or suggestion on the part of the accused, no offence u/s 306 of IPC can be made out.

18. Even if the allegation discussed above made against the petitioner is accepted at its face value, it may not by itself constitute an offence of abetment, because there is nothing that indicates that the petitioner had instigated, incited, suggested or encouraged the deceased to commit suicide. Therefore, it is clear that there is no material in the case to frame charge u/s 306 of IPC against the petitioner.

19. The learned trial court while framing the charge has not considered the aforesaid factual and legal aspect of the matter and has mechanically framed the charge. Therefore, the charge u/s 306 of IPC against the petitioner cannot be sustained.

20. Accordingly, this petition deserves to be and is hereby, **allowed.** The charge framed by the trial court is set aside and the petitioner is discharged from section 306 of IPC.

C.C. as per rule.

Revision allowed

I.L.R. 2023 M.P. 2131 (DB)

Before Mr. Justice Sheel Nagu & Mr. Justice Avanindra Kumar Singh

CRR No. 2257/2023 (Jabalpur) decided on 3 August, 2023

ANUKUL MISHRA ...Applicant

Vs.

STATE OF M.P. …Non-applicant

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 173(2) & 227 – Filing of Charge-Sheet – Competent Authority – Online Filing* – Held – Lokayukt Inspector was not incompetent to file charge-sheet being authorized as per Special Police Establishment and similarly filing of charge-sheet through off-line mode is not prohibited neither filing of charge-sheet through online mode through CCTNS is mandatory – By filing charge-sheet through off-line mode (hard copy), no prejudice caused to applicant – Revision dismissed. (Para 18)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(2) व 227 – आरोप–पत्र प्रस्तुत किया जाना – सक्षम प्राधिकारी – ऑनलाइन प्रस्तुत किया जाना – अभिनिर्धारित – लोकायुक्त निरीक्षक विशेष पुलिस स्थापना के अनुसार प्राधिकृत होने के कारण आरोप–पत्र प्रस्तुत करने के लिए अक्षम नहीं था तथा उसी प्रकार ऑफलाइन प्रणाली के माध्यम से आरोप–पत्र का प्रस्तुत किया जाना प्रतिषिद्ध नहीं था और न ही सी.सी.टी.एन. एस. के द्वारा ऑनलाइन प्रणाली के माध्यम से आरोप–पत्र का प्रस्तुत किया जाना आज्ञापक है – ऑफ–लाइन प्रणाली (हार्ड कॉपी) के माध्यम से आरोप–पत्र प्रस्तुत करने से, आवेदक को कोई प्रतिकूल प्रभाव कारित नहीं होता – पुनरीक्षण खारिज।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 173(2) and Special Police Establishment Act, M.P., (17 of 1947), Section 2(3) – Filing of Charge-Sheet – Competent Authority* – Held – Any member of the Police Establishment above the rank of Sub-Inspector can exercise powers of officer Incharge of Police Station in the area, in which he is time being discharging his duties. (Para 13)**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(2) एवं विशेष पुलिस स्थापना अधिनियम, म.प्र. (1947 का 17), धारा 2(3) – आरोप–पत्र प्रस्तुत किया जाना – सक्षम प्राधिकारी – अभिनिर्धारित – उप–निरीक्षक की श्रेणी से ऊपर का पुलिस स्थापना का कोई भी सदस्य, उस क्षेत्र के पुलिस स्टेशन के प्रभारी अधिकारी की शक्तियों का प्रयोग कर सकता है, जिसमें वह उस समय अपने कर्तव्यों का निर्वहन कर रहा है।

***C. Criminal Procedure Code, 1973 (2 of 1974), Section 173(2) – Filing of Charge-Sheet – Online Filing* – Held – Provision to file charge-sheet online through CCTNS is only an enabling provision for accurate and fast delivery of challan and record but if it is not done in any case, then it has to be shown that how it has prejudiced the defence of the accused. (Para 10)**

ग. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 173(2) – आरोप–पत्र प्रस्तुत किया जाना – ऑनलाइन प्रस्तुत किया जाना – अभिनिर्धारित – सीसीटीएनएस के माध्यम से ऑनलाइन आरोप–पत्र प्रस्तुत करने का उपबंध केवल चालान एवं अभिलेख के यथार्थ और शीघ्र परिदान हेतु एक सामर्थ्यकारी उपबंध है परंतु यदि किसी प्रकरण में ऐसा नहीं किया जाता है, तो यह दर्शाना होगा कि इससे अभियुक्त के बचाव पर कैसे प्रतिकूल प्रभाव कारित हुआ है।

***D. Criminal Practice – Defective Investigation* – Held – Apex Court has concluded that if there is defect in investigation it does not itself vitiate the trial based on such defective investigation. (Para 14)**

घ. दाण्डिक पद्धति – त्रुटिपूर्ण अन्वेषण – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि यदि अन्वेषण में त्रुटि है तो यह ऐसे त्रुटिपूर्ण अन्वेषण पर आधारित विचारण को अपने आप में दूषित नहीं करेगा।

Cases referred:

(2017) 14 SCC 663, (2012) 2 SCC 584, (2011) 8 SCC 300, (1997) 9 SCC 132, (2007) 13 SCC 530, (2014) 1 SCC 663, AIR 1956 SC 116, (2019) 6 SCC 357.

Pranay Shukla, for the applicant.
Satyam Agrawal, for the non-applicant.

O R D E R

The Order of the Court ws passed by :-
AVANINDRA KUMAR SINGH, J.:- This revision has been filed by the applicant under section 397 read with section 401 of the Code of Criminal Procedure (for short "Cr.P.C.") against order dated 06.5.2023 passed by the Special Judge (Lokayukt), Jabalpur in Special Case No.07/2022 whereby his application under section 227 of Cr.P.C. has been dismissed.

2. As per prosecution case the applicant/accused was caught in trap for accepting bribe of Rs.10,000/- on 13.5.2019 and a consequence thereof Crime No.93/2019 was registered against him. Charges for offences under sections 7(A), 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "Act") have been framed against the applicant. It is further averred that case of the prosecution is false and it has carelessly and negligently investigated the matter. On 13.9.2022 the applicant has filed an application (Annexure-A/2) under section 227 of the Cr.P.C. for being discharged of the charges under sections 13(1)(b) and 13(2) of the Act on the ground that mandatory procedure as prescribed under the Cr.PC. has not been followed while submitting final charge-sheet. It is stated that as per section 173(2) of Cr.P.C. it the Officer Incharge of the Police Station who shall forward the charge-sheet in prescribed format to the concerned Magistrate who is empowered to take cognizance of the

offence. But, in this case the Investigation Officer-Inspector Oscar Kindo has filed the charge-sheet. The second ground of objection in filing of charge-sheet is that challan has not been generated and submitted before the court through CCTNS (online mode). Accordingly, the applicant prayed that on aforesaid grounds he be discharged of above offences. The trial Court dismissed the aforesaid application under section 227 of Cr.P.C. by impugned order dated 06.5.2023.

3. Learned counsel for the applicant submitted that the trial Court has passed the impugned order mechanically and without properly appreciating the objections raised by the applicant. The mandatory provisions enshrined under section 173(2) of Cr.P.C. have not been complied with. The challan has been submitted manually without following the guidelines/circulars regarding CCTNS. The trial Court erroneously observed that challan can be submitted manually if there is any technical error or default in the CCTNS portal. Hence, prayer has been made to set aside the impugned order dated 06.5.2023 and direct the respondent to investigate and final report by complying with the mandatory provisions of law.

4. Learned counsel for the respondent/Lokayukt submits that revision is devoid of merit because on the technical grounds the charge-sheet cannot be returned and whatever legal objections are there, the same can be taken in cross-examination of the concerned witness, who can answer the said objections.

5. The question before this Court is whether the impugned order passed by the trial Court on 06.5.2023 is patently erroneous or perverse.

6. Heard the learned counsel for the rival parties and perused the record.

7. A perusal of the impugned order would reflect that the trial Court while rejecting the application under section 227 of Cr.P.C. has specifically mentioned in paragraphs 10, 11 & 12 that charge-sheet was submitted against the applicant/accused on 27.6.2022 and no objection was taken to the same; at that time no objection was taken that it was not filed through CCTNS .

8. As regards objection that challan has not been filed through on-line mode of CCTNS it is observed that learned counsel for the applicant has failed to demonstrate during the course of arguments that filing of challan through CCTNS mode is mandatory and if instead of same it is filed in hard-copy, then cognizance of challan cannot be taken. Therefore, this ground is untenable and cannot be accepted. As far as the second ground which has been urged that Investigation Officer has submitted the charge-sheet, and not the Incharge of the Police Station, it can be said that answer of this question can also be elicited from the deposition of Investigating Officer during cross-examination in the trial. Besides this,

learned counsel for the applicant has failed to point out that applicant has been prejudiced in any manner in his defence, if the charge-sheet is filed in hard-copy by the Investigating Officer.

9. In the case of *Mukund Dewangan Vs. Oriental Insurance Company Limited,* (2017) 14 SCC 663 a three-Judge Bench of the Apex Court while dealing with an issue relating to motor vehicle accident case in paragraphs 31 & 32 observed as under:-

> *" 31. It is a settled proposition of law that while interpreting a legislative provision, the intention of the legislature, motive and the philosophy of the relevant provisions, the goals to be achieved by enacting the same, have to be taken into consideration.*
>
> *32. In Principles of Statutory Interpretation by Justice G.P. Singh, it has been observed that a statute is an edict of a legislature and the conventional way of interpreting or construing a statute is to seek the intention of its maker. The duty of the judicature is to act upon the true intention of the legislature men's or sentential logic. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which furthers the intention of the legislature as laid down in R. Venkataswami Naidu v. Narasram Naraindas [R. Venkataswami Naidu v. Narasram Naraindas, AIR 1966 SC 361] and District Mining Officer v. Tisco [District Mining Officer v. Tisco, (2001) 7 SCC 358] . Lord Cranworth, L.C. in Boyse v. Rossborough [Boyse v. Rossborough, (1856-57) 6 HLC 2 : 10 ER 1192] has observed: (ER p. 1210)*
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> *" ... There is no possibility of mistaking midnight for noon; but at what precise moment twilight becomes darkness is hard to determine."*
>
> *As observed in Murray v. Foyle Meats Ltd. [Murray v. Foyle Meats Ltd., (2000) 1 AC 51 : (1999) 3 WLR 356 : (1999) 3 All ER 769 (HL)], faced with such problems, the court is also conscious of a dividing line, but court has to be conscious not to divert its attention from the language used in the statutory provision and encourage an approach not intended by the legislature. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself, as held in Kanai Lal Sur v. Paramnidhi Sadhukhan [Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907] . Each word, phrase or sentence is to be construed in the light of the general purpose of the Act itself as held in Poppatlal Shah v. State of Madras [Poppatlal Shah v. State of Madras, AIR 1953*

SC 274 : 1953 Cri LJ1105], Girdhari Lal & Sons v. Balbir Nath Mathur [Girdhari Lal & Sons v. Balbir Nath Mathur, (1986) 2 SCC 237] and Atma Ram Mittal v. Ishwar Singh Punia [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284]"

10. The above judgment of the Apex Court clearly lays down the golden rule of interpretation of statute. The intent of Legislature has to be interpreted. It has to be seen why a particular provision was enacted and the Court should try to interpret the law on those basis and in that context. If we see the present objection in this revision it is amply clear that provision to file the charge-sheet through CCTNS is only an enabling provision for accurate and fast delivery of challan and record, but if it is not done in any case, then unless shown, this Court fails to understand as to how it has prejudiced the defence of the accused/applicant.

11. In the case of *Mohd. Hussain alias Zulfikar Ali Vs. State (Government of NCT of Delhi),* (2012) 2 SCC 584 the Apex Court in paragraph 27 has referred to the decision reported in *Rafiq Ahmad Vs. State of M.P.,* (2011) 8 SCC 300 wherein the Apex Court has held as under:-

" 27. It is worth noticing the observations made by this Court in Rafiq Ahmad v. State of U.P. [(2011) 8 SCC 300 : (2011) 3 SCC (Cri) 498] wherein it is observed: (SCCpp. 320-21, paras 35-37)

" 35. When we speak of prejudice to an accused, it has to be shown that the accused has suffered some disability or detriment in the protections available to him under the Indian criminal jurisprudence. It is also a settled canon of criminal law that this has occasioned the accused with failure of justice. One of the other cardinal principles of criminal justice administration is that the courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable. With the development of law, Indian courts have accepted the following protections to and rights of the accused during investigation and trial:

(a) the accused has the freedom to maintain silence during investigation as well as before the court. The accused may choose to maintain silence or make complete denial even when his statement under Section 313 of the Code of Criminal Procedure is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law;

(b) right to fair trial;

(c) presumption of innocence (not guilty);

(d) prosecution must prove its case beyond reasonable doubt.

36. Prejudice to an accused or failure of justice, thus, has to be examined with reference to these aspects. That alone, probably, is the method to determine with some element of certainty and discernment whether there has been actual failure of justice. 'Prejudice' is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there is serious prejudice to either of these aspects and that the same has defeated the rights available to him under the criminal jurisprudence, then the accused can seek benefit under the orders of the court.

37. Right to fair trial, presumption of innocence until pronouncement of guilt and the standards of proof i.e. the prosecution must prove its case beyond reasonable doubt are the basic and crucial tenets of our criminal jurisprudence. The courts are required to examine both the contents of the allegation of prejudice as well as its extent in relation to these aspects of the case of the accused. It will neither be possible nor appropriate to state such principle with exactitude as it will always depend on the facts and circumstances of a given case. Therefore, the court has to ensure that the ends of justice are met as that alone is the goal of criminal adjudication."

12. In the case *Mohan Singh and others Vs. International Airport Authority of India and others,* (1997) 9 SCC 132 the Apex Court in paragraphs 17 to 19 observed thus:-

" 17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word 'shall' or 'may' depends on conferment of power. In the present context, 'may' does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In Craies on Statute Law (7th Edn.), it is stated that the court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply General rule of law is that where a general obligation is created by statute

and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that the legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word 'shall' is not always decisive. Regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration. As stated earlier, the question as to whether the statute is mandatory or directory depends upon the intent of the legislature and not always upon the language in which the intent is couched. The meaning and intention of the legislature would govern design and purpose the Act seeks to achieve. In Sutherland's Statutory Construction, (3rd Edn.) Vol. 1 at p. 81 in para 316, it is stated that although the problem of mandatory and directory legislation is a hazard to all governmental activity, it is peculiarly hazardous to administrative agencies because the validity of their action depends upon exercise of authority in accordance with their charter of existence — the statute. If the directions of the statute are mandatory, then strict compliance with the statutory terms is essential to the validity of administrative action. But if the language of the statute is directory only, then variation from its direction does not invalidate the administrative action. Conversely, if the statutory direction is discretionary only, it may not provide an adequate standard for legislative action and the delegation. In Crawford on the Construction of Statutes, at p. 516, it is stated that:

" The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.. "

18. In Maxwell on the Interpretation of Statutes, 10th Edn. at p. 381, it is stated thus:

" On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them. "

19. The two quotations were approved by this Court in Babu Ram Upadhya case [(1961) 2 SCR 679 : AIR 1961 SC 751] and law was laid down thus:

" When a statute uses the word 'shall', prima facie, it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered. "

13. In this regard it is worth referring to section 2(3) of the Madhya Pradesh Special Police Establishment Act, 1947 which stipulates as under:-

"(3) Any members of the said Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the State Government may make in this behalf, exercise any of the pwoers of an officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid be deemed to be an officer in-charge of a police station discharging the function of such officer within the limits of his station. "

A perusal of aforesaid provision makes it clear that any member of the Police Establishment above the rank of Sub Inspector can exercise powers of

Officer Incharge of the Police Station in the area, in which, he is time being discharging his duties. Hence, on this ground also the objection raised in this revision is unsustainable.

14. Even otherwise, section 461 of the Cr.P.C. provides for irregularities which vitiate proceedings and the objections which have been raised by the revisionist in this case, as mentioned above, do not find place in the categories (a) to (q) of section 461. The Apex Court in the case of *Paramjit Singh alias Mithu Singh Vs. State of Punjab through Secretary,* (2007) 13 SCC 530 while dealing with effect of sections 155 to 168 of Cr.P.C. held that if there is defect in investigation it does not itself vitiate the trial based on such defective investigation.

15. In the case of *State of Bihar and another Vs. Lallu Singh,* (2014) 1 SCC 663 the Apex Court has held that Officer Incharge of the Police Station and superior of Police Officer have authority to file the charge-sheet. Further more, in *Lallu Singh* (supra) the Inspector of CID after investigation had filed the charge-sheet, which was upheld by the Apex Court.

16. In the case of *Willie (William) Slaney Vs. State of M.P.,* AIR 1956 SC 116 Constitution Bench of the Apex Court in paragraph 6 has observed thus:-

> *"6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based."*

17. The Supreme Court in paragraph 8 of the decision rendered in the case of *State represented by Inspector of Police, Central Bureau of Investigation Vs. M. Subrahmanyam,* (2019) 6 SCC 357 has observed as under:-

> *"8. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed on a par with what is or may be substantive violation of the law."*

18. Accordingly, after considering the factual as well as legal position, it is found that Lokayukt Inspector was not incompetent to file the charge-sheet being authorised as per Special Police Establishment and similarly filing of charge-sheet through off-line mode is not prohibited neither filing of charge-sheet is mandatory by on-line mode through CCTNS, even though permission may not have been taken for filing charge-sheet in offline mode as no prejudice has been shown to have been caused to the revisionist on this ground. Accordingly, the revision against impugned order dated 06.5.2023, being devoid of merit, stands dismissed.

Revision dismissed

I.L.R. 2023 M.P. 2140

Before Mr. Justice Anand Pathak

MCRC No. 10886/2023 (Gwalior) decided on 15 June, 2023

NADEEM KHAN ...Applicant

Vs.

STATE OF M.P. …Non-applicant

***A. Evidence Act (1 of 1872), Section 27 – Statement, Custody & Recovery – Chronology* – Held – It is not necessary that chronology of statement of Section 27 of Evidence Act, recovery in pursuance thereof and arrest of accused may come in same fashion – Chronology may change also without disturbing the effect and potency of seizure and recovery. (Para 11 & 12)**

क. साक्ष्य अधिनियम (1872 का 1), धारा 27 – कथन, अभिरक्षा व बरामदगी – कालानुक्रम – अभिनिर्धारित – यह आवश्यक नहीं है कि साक्ष्य अधिनियम की धारा 27 के कथन, उसके अनुसरण में वसूली और अभियुक्त की गिरफ्तारी का कालानुक्रम एक ही तरीके से हो सकता है – जब्ती एवं बरामदगी के प्रभाव और क्षमता में विघ्न डाले बिना भी कालानुक्रम परिवर्तित किया जा सकता है।

***B. Evidence Act (1 of 1872), Section 27 – Custody* – Held – Custody as contemplated u/S 27 does not mean formal custody only but includes such state of affair/activities whereby accused can be under the surveillance of police officers or within their range so that they can keep an effective tab or control over him. (Para 7)**

ख. साक्ष्य अधिनियम (1872 का 1), धारा 27 – अभिरक्षा – अभिनिर्धारित – धारा 27 के अंतर्गत अनुध्यात अभिरक्षा का अर्थ केवल प्ररूपिक अभिरक्षा नहीं है, बल्कि इसमें ऐसी स्थिति/क्रियाकलाप शामिल हैं जिससे अभियुक्त पुलिस अधिकारियों की निगरानी अथवा उनकी सीमा के भीतर रह सके ताकि वे उस पर प्रभावी नजर अथवा नियंत्रण बनाए रख सके।

Cases referred:

1998 CriLJ 1553, (1997) 1 SCC 272, (2014) 5 SCC 509, 2022 SCC OnLine MP 3667.

Padam Singh, for the applicant.

Ravindra Singh, Dy. A.G. and *Sameer Kumar Shrivastava*, for the complainant.

O R D E R

ANAND PATHAK, J.:- The applicant has filed this first bail application u/S.439 Cr.P.C for grant of bail. Applicant has been arrested on 26-02-2022 by Police Station Sironj District Vidisha in connection with Crime No.92/2022 registered for offence under Sections 147, 148, 149 and 302 of IPC.

2. It is the submission of learned counsel for the applicant that he is suffering confinement since 26-02-2022 on false pretext and suffers for over implication. No role of the applicant can be assigned in specific terms in commission of offence.

3. Learned counsel for the applicant raised the point that incident is dated 24-02-2022 and memo under Section 27 of the Evidence Act of applicant was taken on 26-02-2022 at 7:10 pm. Weapon (stick) was seized from the applicant same day at 8:15 pm which is reflected from the property seizure memo, whereas applicant was arrested at 8:45 pm which is clear from the arrest memo of the

applicant. According to learned counsel, it is improbable to take memo under Section 27 of the Evidence Act and to seize weapon used in the crime at the instance of applicant prior to his Arrest. It appears that false case has been registered against the applicant. He relied upon the judgment of Division Bench of this Court in the matter of *Bibhacha alias Baibachha Vs. State of Orissa,* 1998 CriLJ 1553. Thus, prayed for grant of bail.

4. Learned counsel for the respondent/State opposed the prayer and submits that name of the applicant figures in FIR and statements of witnesses. During investigation, weapon has been seized from the possession of the applicant and his role is clear in commission of offence, therefore, counsel for the respondent/ State prayed for dismissal of bail application.

5. Learned counsel for the complainant also opposed the prayer and submits that even if the applicant was not taken in formal custody, even then memo under Section 27 of the Evidence Act can be prepared and thereafter he can be arrested. He relied upon the judgment of Apex Court in the case of *State of A.P. Vs. Gangula Satya Murthy,* (1997) 1 SCC 272 and *Dharam Deo Yadav Vs. State of Uttar Pradesh,* (2014) 5 SCC 509. He prayed for dismissal of the bail application.

6. Heard learned counsel for the parties and perused the case diary.

7. This is a case where name of applicant figures in FIR and statements of witnesses. So far as argument advanced in respect of custody is concerned, it appears from the charge-sheet that applicant was arrested on 26-02-2022 at 8:45 pm, arrest memo indicates such date and time. It is also true that prior to his formal arrest, as per arrest memo, weapon used in commission of offence was seized at 8:15 pm which is prior in time. It is also true that his memo under Section 27 of the Evidence Act has been taken at 7:10 pm. Meaning thereby, his memo was taken first and then weapon was seized, then he was arrested. There appears nothing wrong apparently in the case because custody as contemplated under Section 27 of the Evidence Act does not mean formal custody only but includes such state of affair/activities whereby accused can be under the surveillance of police officers or within the range of police officers so that they can keep an effective tab or control over him.

8. The Apex Court in the case of *Gangula Satya Murthy* (supra) in para 19 has discussed the import of custody in the following manner:

> **"19.** *The other reasoning based on Section 26 of the Evidence Act is also fallacious. It is true any confession made to a police officer is inadmissible under Section 25 of the Act and that ban*

is further stretched through Section 26 to the confession made to any other person also if the confessor was then in police custody. Such"custody"need not necessarily be post arrest custody. The word "custody" used in Section 26 is to be understood in pragmatic sense. If any accused is within the ken of surveillance of the police during which his movements are restricted then it can be regarded as custodial surveillance for the purpose of the Section. If he makes any confession during that period to any person be he not a police officer, such confession would also be hedged within the banned contours outlined in Section 26 of the Evidence Act."

9. Later on, in the case of *Dharam Deo Yadav* (supra), the Supreme Court again reiterated in the following manner:

21. *Section 27 of the Evidence Act explains how much of information received from the accused may be proved. Section 27 reads as follows:*

> ***"27. How much of information received from accused may be proved.-*** *Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.*

22. *The expression "custody" which appears in Section 27 did not mean formal custody, which includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time when the accused gave the information, the accused was, for all practical purposes, in the custody of the police. This Court in State of Andhra Pradesh Vs. Gangula Satya Murthy (1997) 1 SCC 272 held that if the accused is within the ken of surveillance of the police during which his movements are restricted, then it can be regarded as custodial surveillance. Consequently, so much of information given by the accused in " custody," in consequence of which a fact is discovered, is admissible in evidence, whether such information amounts to a confession or not. Reference may also be made to the Judgment of this Court in A.N. Venkatesh Vs. State of Karnataka (2005) 7 SCC 714. In Sandeep v. State of Uttar Pradesh (2012) 6 SCC 107, this Court held that: (SCC pp. 128 -29, para 52)*

> *52 ....It is quite common that based on admissible portion of the statement of the accused, whenever and wherever recoveries are made, the same are admissible in evidence and it is for the accused in those situations to explain to the satisfaction of the Court as to nature of recoveries and as to how they came into the possession or for planting the same at the place from where they were recovered.*
>
> *Reference can also be made to the Judgment of this Court in State of Maharashtra v. Suresh (2000) 1 SCC 471, in support of the principle. Assuming that the recovery of skeleton was not in terms of Section 27 of the Evidence Act, on the premise that the accused was not in the custody of the police by the time he made the statement, the statement so made by him would be admissible as " conduct" under Section 8 of the Evidence Act. In the instant case, there is absolutely no explanation by the accused as to how the skeleton of Diana was concealed in his house, especially when the statement made by him to PW14 is admissible in evidence."*

10. The Division Bench of this Court in the case of *Manish Vs. State of Madhya Pradesh,* 2022 SCC OnLine MP 3667 discussed in the same line.

11. It is not necessary that chronology of statement of Section 27 of the Evidence Act, recovery in pursuance thereof and arrest of accused may come in same fashion. Chronology may change also without disturbing the effect and potency of the seizure and recovery because if an accused tries to escape from the scene of crime and throws weapon of offence midway which is recovered by the police while chasing him and thereafter he is arrested and memo is prepared then said memo and recovery would not automatically be treated a nullity because of jumbled chronology. Said memo has legal sanctity.

12. Therefore, contention of learned counsel for the applicant that his arrest at 8:45 pm after recording of statement under Section 27 of the Evidence Act at 7:10 pm and seizure of weapon at 8:15 pm is bad in law, has no legal sanctity. Thus, rejected.

13. At this juncture, learned counsel for the applicant seeks withdrawal of this application with liberty to renew the prayer after recording the evidence of material prosecution witnesses/reasonable period of custody.

14. Prayer noted.

15. Considering the submissions/prayer, application is **dismissed** as withdrawn with the aforesaid liberty.

Application dismissed

I.L.R 2023 M.P. 2145

Before Mr. Justice Vishal Dhagat

MCRC No. 23717/2023 (Jabalpur) decided on 23 June, 2023

PAVAN GOUR ...Applicant

Vs.

STATE OF M.P. …Non-applicant

***Criminal Procedure Code, 1973 (2 of 1974), Section 439 and Excise Act, M.P. (2 of 1915), Section 34(1)(a)(b) & 34(2) – Word "or" & "and"* – Held – The word "and" used in Section 34(2) cannot be read as "or" – Word "and" in Section 34(2) is to be read in its normal sense of conjunctive – Requirement of making out case u/S 34(2) is (i) conviction u/S 34(1)(a)(b) and (ii) subsequent offence is in relation to liquor exceeding 50 bulk liters – Since applicant had not been convicted earlier u/S 34(1)(a)(b), no offence u/S 34(2) made out – Bail application allowed. (Paras 9 to 12)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 439 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 34(1)(a)(b) व 34(2) – शब्द ''अथवा'' व ''एवं'' – अभिनिर्धारित – धारा 34(2) में प्रयोग किये गये शब्द ''एवं'' को ''अथवा'' नहीं पढ़ा जा सकता – धारा 34(2) में शब्द ''एवं'' को संयोजक के सामान्य अर्थ में पढ़ा जाना चाहिए – धारा 34(2) के अंतर्गत प्रकरण बनाने की यह आवश्यकता है (i) धारा 34(1)(a)(b) के अंतर्गत दोषसिद्धि तथा (ii) पश्चात्वर्ती अपराध 50 लीटर परिमाण से अधिक मदिरा के संबंध में हो – चूंकि आवेदक को पूर्व में धारा 34(1)(a)(b) के अंतर्गत दोषसिद्ध नहीं किया गया था, धारा 34(2) के अंतर्गत अपराध नहीं बनता – जमानत आवेदन मंजूर।

Ajay Kumar Jain, for the applicant.
Sweta Yadav, G.A. for the non-applicant.

O R D E R

VISHAL DHAGAT, J.:- This is the ***first*** application filed by the applicant under Section 439 of the Code of Criminal Procedure for grant of regular bail relating to FIR No. 52/2023, registered at Police Station Crime Branch Bhopal, District Bhopal (M.P.) for the offence punishable under Section 34(2) of M.P.

Excise Act.

2. Learned counsel appearing for the applicant submitted that no offence under Section 34(2) of M.P. Excise Act, 1915 is made out against applicant. It is submitted that as per Section 34(2), two conditions are mandatory (i) accused must have been convicted for an offence under clause (a) or (b) of sub-section (1) of Section 34 and (ii) applicant has committed an offence in respect of Excise Act, wherein liquor exceeds 50 bulk liters. Unless these two conditions are there, offence under Section 34(2) of M.P. Excise Act, 1915 will not made out.

3. Learned Government Advocate appearing for the State has opposed the application for grant of bail. It is submitted by her that word 'and' mentioned in Section 34(2) is to be read as 'or' and therefore, offence is made out. In these circumstances, prayer is made that application be dismissed.

4. Heard learned counsel for the parties.

5. Section 34(1)(a)(b) and Section 34 (2) of the MP Excise Act, 1915 are quoted as under:-

> ***" 34 Penalty for unlawful manufacture, transport, possession, sale etc.—*** *(i) Whoever, in contravention of any provisions of this Act, or of any rule, notification or order made or issued thereunder, or of any condition of a licence, permit or pass granted under this Act,—*
>
> *(a) manufactures, transports, imports, exports. collects or possesses any intoxicant;*
>
> *(b) save in the cases provided for in Section 38, sell any intoxicant.**"***
>
> ***" Section 34(2)*** *Notwithstanding anything contained in sub -section (1), if a person is convicted for an offence covered by clause (a) or clause (b) of sub -section (1)* ***and*** *the quantity of the intoxicant being liquor found at the time or in the course of detection of the offence exceeds fifty bulk litre, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than twenty five thousand rupees but may extend to one lac rupees:*
>
> *Provided that when any person is convicted under this section for an offence for second or subsequent time, he shall be punishable for every such offence with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than fifty*

thousand rupees but may extend to two lac rupees."

6. Word used in Section 34(2) of the Act is 'and' and not 'or' on basis of which counsel appearing for applicant has argued that there has to be both ingredients of Section 34(2) i.e. quantity of liquor exceeding fifty bulk litres and accused is convicted of an offence covered under Clauses-(a) and (b) of Section 34(1) only then offence under Section 34(2) will be made out.

7. Justice G.P. Singh in Principles of Statutory Interpretation has mentioned that word 'or' is disjunctive and word 'and' is normally conjunctive but at times they are read *vice versa* to give effect to manifest intention of the Legislature as disclosed from the context. Now it is to be looked into Section to find out the intent of the Legislature whether word 'and' used in Section 34(2) of MP Excise Act, 1915 is to be read as 'or' or word 'and' it is to be read as 'and' in its normal sense of conjunctive.

8. On reading of Section 34(1) of the MP Excise Act, it is found that quantity of liquor in respect of which there is violation is not prescribed in said Section, therefore, any amount of liquor which is manufactured, transported, imported, collected, possessed without any license will be covered under Section 34 even liquor more than fifty bulk litre will also be covered under Section 34 of the Act of 1915.

9. On reading of Section 34(2), it is found that offence covered in this Section provides with more harsh penalty which shows that offence covered under Section 34(2) is more serious in nature. Illicit possession, manufacturing or sale of fifty bulk liter is covered under Section 34(2) of the MP Excise Act, 1915 with addition that offender must have been convicted under Section 34(1)(a)(b) also. No quantity of liquor is prescribed in Section 34(1), therefore, possessing more than fifty bulk liter will also be covered under Section 34(1)(a). Only distinguishing feature between under Section 34(1)(a) and Section 34(2) is that there is also requirement of earlier conviction under Section 34(1)(a) of MP Excise Act, therefore word 'and' used in Section 34(2) cannot be read as 'or' and requirement of Section 34(2) is fulfilling both the requirements as laid down in said Sections.

10. In these circumstances, Legislature cannot have intention that word 'and' used in Section 34(2) is to be read as 'or'. Word 'and' in Section 34(2) is to be read in its normal sense of conjunctive. In view of same, requirement for making out case under Section 34(2) is conviction under Section 34(1)(a)(b) and subsequent

offence is in relation to liquor exceeding fifty bulk liter.

11. In view of aforesaid, no offence under Section 34(2) is made out against the applicant as applicant had not been convicted for offence under Section 34(1)(a)(b). Resultantly, bail application filed by applicant is ***allowed.***

12. It is directed that applicant shall be released on bail on his furnishing personal bond in the sum of ***Rs.50,000/- (Rupees Fifty Thousand only)*** with one solvent surety in the like amount to the satisfaction of the trial court for his appearance before the trial court on the dates to be fixed by the trial court.

13. The applicant shall abide by the conditions enumerated under Section 437(3) of Cr.P.C.

14. C.C as per rules.

Application allowed

I.L.R. 2023 M.P. 2148

Before Mr. Justice Prakash Chandra Gupta

MCRC No. 55612/2021 (Indore) decided on 3 July, 2023

MOHD. ARIF ...Applicant

Vs.

ANIL …Non-applicant

Negotiable Instruments Act (26 of 1881), Section 138 & 142(b) – Limitation – Calculation **– Held – Notice was served on applicant/accused on 28.08.2017, cause of action for filing complaint arose from 13.09.2017 – For calculating period of one month as prescribed u/S 142(b), the period has to be reckoned by excluding the first day when cause of action arose and including the last day – Complaint was filed on 13.10.2017, i.e. within 30 days – Complaint was within limitation – Trial Court rightly took cognizance against applicant – Application dismissed. (Para 10)**

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 व 142(b) – परिसीमा – गणना – अभिनिर्धारित – दिनांक 28.08.2017 को आवेदक/अभियुक्त को नोटिस तामील किया गया था, दिनांक 13.09.2017 से परिवाद प्रस्तुत करने के लिए वाद हेतुक उत्पन्न हुआ – धारा 142(b) के अंतर्गत विहित एक माह की अवधि की गणना करने के लिए, अवधि की गणना, पहले दिन को छोड़कर जब वाद हेतुक उत्पन्न हुआ तथा अंतिम दिन को शामिल कर की जानी चाहिए – परिवाद दिनांक 13.10.2017 को अर्थात् 30 दिनों के भीतर प्रस्तुत किया गया था – परिवाद परिसीमा के भीतर था – विचारण न्यायालय ने उचित रूप

से आवेदक के विरूद्ध संज्ञान लिया – आवेदन खारिज।

Cases referred:

AIR 1999 SC 1090, AIR 2013 SC 3283.

Ravindra Upadhyay, for the applicant.
Omprakash Solanki, for the non-applicant.

O R D E R

PRAKASH CHANDRA GUPTA, J.:- This petition u/S 482 of Code Of Criminal Procedure, 1973 filed against the impugned order dated 27.07.2018 passed by Additional Chief Judicial Magistrate, Indore in criminal case No.3347/2018 whereby, the learned trial Court has taken cognizance against the petitioner for the offence u/S 138 of the Negotiable Instrument Act, 1881 (hereinafter as NI Act).

2. The respondent/complainant filed a complaint (Annexure P-2) u/S 138 of the NI Act against the petitioner/accused stating that there was friendship between both the parties. The petitioner had taken loan of Rs.4,00,000/- from the respondent and had issued a cheque (Annexure P-3). The complainant produced the cheque in the concerning bank but the cheque was bounced with bank endorsement "funds insufficient". Notice was served on the petitioner/accused on 28.08.2017, but thereafter, the petitioner has not made payment of the said amount of money within 15 days. The accused failed to pay the said amount, hence respondent/complainant filed the complaint u/S 138 of the NI Act on 13.10.2017. The trial Court on 27.07.2018 has prima facie found that the respondent/complainant has filed the complaint within limitation and has taken cognizance in the aforementioned offence. Accordingly, the impugned order has been passed.

3. Learned counsel for the petitioner submits that as per Section 138(c) of the NI Act, petitioner/accused was required to make the payment of the said amount of the money within 15 days. The notice which was served to the petitioner on 28.08.2017 therefore, cause of action for filing the complaint arose on 13.09.2017, hence, the complaint should have been produced till 12.10.2017, but the complainant has filed the complaint delayed by one day on 13.10.2017. Though the complainant had filed an application u/S 5 of The Limitation Act, 1963 r/w S. 142(b), but the same was withdrawn by him. Hence, the trial Court has committed error in law by taking cognizance on the complaint which was delayed by 1 day. Therefore, the impugned order is not sustainable and liable to be set

aside.

4. On the other hand, the learned counsel for the respondent/complainant has supported the impugned order and prayed for rejection of the petition. The learned counsel has placed reliance on the case of *M/S Saketh India Ltd. And Ors. Vs M/S India Securities Ltd.* [AIR 1999 SC 1090] and *Econ Antri Ltd. Vs Rom Industries Ltd. And Anr.* [AIR 2013 SC 3283]

5. I have heard learned counsel for the parties.

6. For appreciating the contention raised by the learned counsel for the parties, it appears that the sought question is involved in this petition that whether the complaint filed by the respondent u/S 138 of the NI Act, is within a period of limitation or not. In this respect it would be necessary to reproduce Sections 138 and 142 of the NI Act, which are as under:-

> *"138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4 [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless—*
>
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, 5 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*

(c) *the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

Explanation.—For the purposes of this section,"debt of other liability "means a legally enforceable debt or other liability.

142. Cognizance of offences.—l [(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.]"

7. On plain reading of Section 138 of the NI Act, it is clear that where any cheque drawn by a person is returned by the bank unpaid, such person shall be deemed to have committed an offence, however, it will apply, if conditions mentioned u/S 138 of the NI Act are satisfied as well as within the limitation period prescribed u/S 142 of the NI Act.

8. In the case of *M/S Saketh India Ltd. And Ors.* (Supra), the Apex Court has observed in Para 6 as under:

> *Similar contention was considered by this Court in the case of* ***Haru Das Gupta vs. State of West Bengal*** **(1972) 1 SCC 639** *wherein it was held that the rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that day is to be excluded; the effect of defining period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. In the context of that case, the Court held that in computing the period of three months from the date of detention, which was February 5th, 1971, before the expiration of which the order or decision for confirming the detention order and continuing the detention thereunder had to be made, the date of the commencement of detention, namely, February 5th has to be excluded; so done, the order of confirmation dated May 5th, 1971 was made before the expiration of the period of three months from the date of detention. The Court held that there is no reason why the aforesaid rule of construction followed consistently and for so long should not be applied. For the aforesaid principle Court referred to the principle followed in English Courts. The relevant discussion is hereunder :-*
>
> *" These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. (See Goldsmith Company vs. The West Metropolitan Railway Company : 1904 KB 1 at 5) This rule was followed in Cartwrright vs. Maccormack: (1963) 1 All ER 11 at 13 where the expression "fifteen days from the commencement of the policy" in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in Marren v. Dawson Bentley &*

> *Co. Ltd., (1961) 2 QB 135 a case for compensatioin for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. (See also Stewart v. Chadman (1951) 2 KB 792 and In re North, Ex parte Wasluck (1895) 2 QB 264.) Thus, as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. (See Halllsbury's Laws of England, (3rd ed.), Vol.37, pp.92 and 95.) There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."*

9. In the case of *Econ Antri Ltd.*(Supra), the Apex Court in Para 25 has held as under:-

> *25. Having considered the question of law involved in this case in proper perspective, in light of relevant judgments, we are of the opinion that Saketh lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142 (b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import USA does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly.*

10. Admittedly, in the instant case, notice served to the petitioner on 28.08.2017. As per Section 138(c) of the NI Act, the petitioner was required to make payment of the said amount of money within 15 days. The petitioner failed to pay the said amount hence, the cause of action for filing the complaint arose from 13.09.2017. The principle laid down in the aforementioned case laws by the Apex Court that for the purpose of calculating the period of one month which is prescribed u/S 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose, which means in computing the time, the rule observed is to exclude the first day and to include the last. The complainant filed a complaint before the trial Court on 13.10.2017. Therefore, it is clear that cause of action arose on 13.09.2017 and the instant complaint was filed within 30 days i.e., on 13.10.2017. Therefore, learned trial Court has rightly

found that petition is within limitation and the trial Court has not committed any illegality or irregularity in passing the impugned order.

Accordingly, the present petition filed under Section 482 of Cr.P.C. sans merit and is hereby dismissed.

Application dismissed

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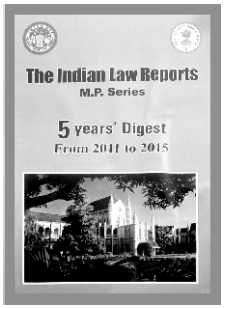

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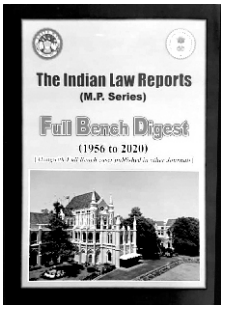

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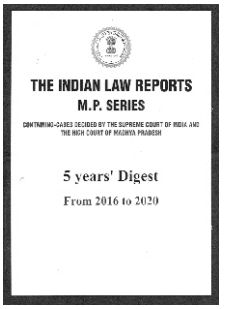

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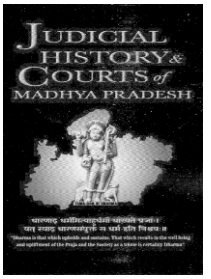

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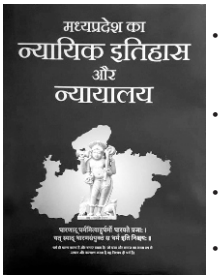

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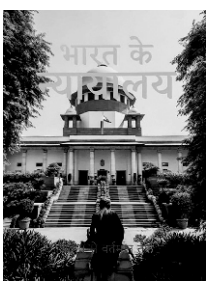

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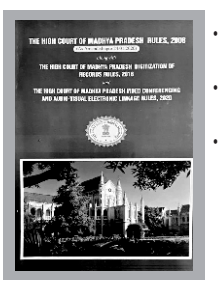

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On behalf of	**:**	ILR (M.P.) Committee High Court of M.P., Jabalpur Under The Authority of The Governor of Madhya Pradesh
Published at	:	Administrative Block, High Court of M.P., Jabalpur, 482001 (M.P.)
Printed at	:	Grenadiers Welfare Co-operative Consumer Stores Ltd. C/o The Grenadiers Regimental Centre, Jabalpur
Edited by	:	Ritesh Kumar Ghosh, Advocate, Chief Editor *(Part Time)*