OCTOBER 2023 Vol. 4 THE INDIAN LAW REPORTS M.P. SERIES (pp. 1691 to 1978)

THE INDIAN LAW REPORTS
M.P. SERIES

CONTAINING CASES DECIDED BY
THE HIGH COURT OF MADHYA PRADESH

VOLUME - 4

OCTOBER - 2023

(pp. 1691 to 1978)

AVAILABLE AVAILABLE AVAILABLE

BACK VOLUMES OF ILR (M.P. SERIES)

We are happy to announce that Back volumes of ILR (MP Series) and also some incomplete back volumes from the year 2011 to 2013 and 2015 to 2022 are available for our valuable readers/subscribers. Sale of single copy of any issue will be subject to availability. It is great opportunity for young lawyers willing to establish their own library.

Details of complete sets given below and information relating to incomplete sets could be obtained directly from the ILR (Distribution) Section or subscribers can also subscribe at prescribed places in Districts & Tehsils to ensure their copy.

I.L.R. (M.P. Series) Complete Sets

Year	Price (₹)
2013	400=00
2016	550=00
2017	550=00
2018	600=00
2019	1200=00
2020	1500=00
2021	1500=00
2022	1200=00

Annual subscription rate for the year 2023 issues of ILR (M.P.) Series is as under :-

Year	Price (₹) (Annual Subscription)
2023	1200=00 (by book post)
	1200+645 (by registered post)

Hurry !!

Only limited sets / copies are available.

Copies can be obtained from the ILR (Distribution) Section directly or subscribers can also subscribe at prescribed places in Districts & Tehsils to ensure their copy.

INDIAN LAW REPORTS (M.P.) COMMITTEE

OCTOBER 2023

PATRON

Hon'ble Shri Justice RAVI MALIMATH
Chief Justice

– – – –

CHAIRMAN

Hon'ble Shri Justice GURPAL SINGH AHLUWALIA

– – – –

MEMBERS

Hon'ble Shri Justice Vishal Dhagat
Shri Prashant Singh, Advocate General, *(ex-officio)*
Shri Vinod Bhardwaj, Senior Advocate
Shri Aditya Adhikari, Senior Advocate
Shri Ravindra Singh Chhabra, Senior Advocate
Shri Ritesh Kumar Ghosh, Advocate, Chief Editor, *(ex-officio)*
Shri Vaibhav Mandloi, Principal Registrar (ILR), *(ex-officio)*
Shri Hemant Joshi, Principal Registrar (Judicial), *(ex-officio)*

– – – –

SECRETARY

Shri Sanjay Agrawal, Registrar (Exam)

– – – –

PUBLISHED BY

Shri Vaibhav Mandloi, Principal Registrar (ILR)

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

TABLE OF CASES REPORTED

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

* * * * * * *

INDEX

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

INDEX

INDEX

cannot be permitted to raise counter claim against co-defendant because by virtue of O-8 R-6A, it could be raised by defendant against the claim of plaintiff – Since proposed amendment is declined thus the documents filed under O-8 R-1 CPC are also not liable to be taken on record – Petition dismissed with cost. [Mohd. Shafi Vs. Chand Khan] …1803

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17, आदेश 8 नियम 1 व आदेश 8 नियम 6A – संशोधन – व्याप्ति – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि सि.प्र.सं. के आदेश–6 नियम–17 का उपबंध किसी संशोधन एवं लिखित कथन के माध्यम से एक नया प्रकरण लाना प्रतिषिद्ध करता है – एक संशोधन के माध्यम से, प्रतिवादी को सह–प्रतिवादी के विरूद्ध प्रतिदावा करने की अनुमति नहीं दी जा सकती क्योंकि आदेश–8 नियम–6A के आधार पर, इसे प्रतिवादी द्वारा वादी के दावे के विरूद्ध प्रस्तुत किया जा सकता है – चूंकि प्रस्तावित संशोधन अस्वीकार कर दिया गया है अतः सि.प्र.सं. के आदेश–8 नियम–1 के अंतर्गत प्रस्तुत दस्तावेज भी अभिलेख पर लिये जाने हेतु योग्य नहीं हैं – याचिका सव्यय खारिज। (मो. शफी वि. चांद खान) **…1803**

Civil Procedure Code (5 of 1908), Order 7 Rule 11(d) and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Section 63 – Jurisdiction of Civil Court **– Held – During pendency of suit, award was passed on 12.12.2017 – No action has been taken by plaintiff so far to challenge the final award dated 12.12.2017 – In light of the final acquisition award dated 12.12.2017, instant suit cannot proceed further and is hereby rejected as Civil Court has no jurisdiction to record any finding on the validity or otherwise of the acquisition process of suit property undertaken and completed by statutory authorities – It is fit case where powers under O-7 R-11(d) CPC can be exercised – Revision allowed. [Dilip Buildcom Ltd. Vs. Ghanshyam Das Dwivedi] …1872**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11(d) एवं भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम (2013 का 30), धारा 63 – सिविल न्यायालय की अधिकारिता – अभिनिर्धारित – वाद के लंबित रहने के दौरान दिनांक 12.12.2017 को अवार्ड पारित किया गया था – वादी द्वारा अंतिम आदेश दिनांक 12.12.2017 को चुनौती देने के लिए अब तक कोई कार्यवाही नहीं की गई है – अर्जन के अंतिम अवार्ड दिनांक 12.12.2017 के प्रकाश में, वर्तमान प्रकरण आगे नहीं बढ़ सकता तथा एतद्द्वारा खारिज किया जाता है क्योंकि कानूनी प्राधिकरणों द्वारा प्रारंभ एवं पूर्ण की गई वाद संपत्ति की अर्जन प्रक्रिया की विधिमान्यता अथवा अन्यथा पर कोई निष्कर्ष अभिलिखित करने की सिविल न्यायालय के पास कोई अधिकारिता नहीं है – यह एक उचित प्रकरण है जहां सि.प्र.सं. के आदेश–7 नियम –11(d) के अंतर्गत शक्तियों का प्रयोग किया जा सकता है – पुनरीक्षण मंजूर। (दिलीप बिल्डकॉम लि. वि. घनश्याम दास द्विवेदी) **…1872**

Civil Procedure Code (5 of 1908), Order 41 Rule 27 & Order 41 Rule 28 – Dispute of Boundaries **– Held – When dispute is in respect of the boundaries**

Petitioner convicted u/S 13(1)(a) & 13(2) of PC Act – Show cause notice was issued, opportunity of hearing was provided and thereafter considering the nature of allegation involved, integrity, moral turpitude, authority reached to the conclusion, which does not require to be dislodged under limited scope of judicial review – Petition dismissed. [Dashrath Kumar Vs. Principal Secretary to Governor] **…1760**

सिविल सेवा (पेंशन) नियम, म.प्र., 1976, नियम 8(2) एवं संविधान – अनुच्छेद 226 – दोषसिद्धि – पेंशन का समपहरण – अनुज्ञेयता – अभिनिर्धारित – याची को भ्रष्टाचार निवारण अधिनियम की धारा 13(1)(a) व 13(2) के अंतर्गत दोषसिद्ध किया गया – कारण बताओ नोटिस जारी किया गया, सुनवाई का अवसर प्रदान किया गया था एवं तत्पश्चात् अंतर्वलित अभिकथन के स्वरूप, सत्यनिष्ठा, नैतिक अधमता को विचार में लेते हुए, प्राधिकारी इस निष्कर्ष पर पहुंचे, जिसे न्यायिक पुनर्विलोकन की सीमित परिधि के अंतर्गत हटाने की आवश्यकता नहीं है – याचिका खारिज। (दशरथ कुमार वि. प्रिंसीपल सेक्रेटरी टू गवर्नर) **…1760**

***Constitution – Article 226 – Administrative Decision – Judicial Review* – Held – If decision of administrative authority is based on a policy decision, which even if, is directory in nature and view taken by them is in consonance with such policy/ draft plan mandate and is plausible in nature, same cannot be interfered within exercise of judicial review. [Commissioner, Jabalpur Division Vs. Shailendra Chowdhary]** **(DB)…1691**

संविधान – अनुच्छेद 226 – प्रशासनिक विनिश्चय – न्यायिक पुनर्विलोकन – अभिनिर्धारित – यदि प्रशासनिक प्राधिकारी का विनिश्चय नीतिगत विनिश्चय पर आधरित है, जो भले ही निदेशात्मक स्वरूप का है तथा उनके द्वारा लिया गया दृष्टिकोण ऐसी नीति/योजना प्रारूप आदेश के अनुरूप है तथा संभाव्य स्वरूप का है, तो न्यायिक पुनर्विलोकन के प्रयोग में उक्त में हस्तक्षेप नहीं किया जा सकता। (कमिश्नर, जबलपुर डिवीजन वि. शैलेन्द्र चौधरी) **(DB)…1691**

***Constitution – Article 226 – Double Jeopardy* – Held – Earlier FIR lodged against appellant for obtaining NAT caste certificate was quashed by this Court in MCRC No. 2050/2010 – Now, direction of Single Judge to register FIR against appellant for procuring such caste certificate shall subject him to go through the same ordeal and humiliation which is not warranted in the facts and circumstances as the same allegations cannot be ordered to be subject matter of another FIR – Said direction is unsustainable and is set aside. [Jajpal Singh Vs. Ladduram Kori]** **(DB)…1715**

संविधान – अनुच्छेद 226 – दोहरा संकट – अभिनिर्धारित – पूर्व में इस न्यायालय द्वारा **MCRC 2050/2010** में अपीलार्थी के विरूद्ध नट जाति प्रमाण पत्र प्राप्त करने पर दर्ज प्रथम सूचना प्रतिवेदन को अभिखंडित किया गया था – अब, एकल न्यायाधीश द्वरा ऐसा जाति प्रमाणपत्र उपाप्त करने के लिए अपीलार्थी के विरूद्ध प्रथम सूचना प्रतिवेदन दर्ज करने हेतु निदेश देना उसे उसी कठिन परीक्षा व अपमान के अध्यधीन करेगा जो तथ्यों तथा

आवश्यक रूप से मेल नहीं खाते – अत, दी गई अनुसूचित जाति अथवा जनजाति के साथ आवेदक के संबंध स्थापित करने के लिए सजातीयता परीक्षण को लिटमस परीक्षण / सत्यता का परीक्षण नहीं माना जा सकता है। (जजपाल सिंह वि. लड्डूराम कोरी) **(DB)…1715**

***Constitution – Article 226 – Scrutiny Committee – Caste Certificate – Documentary Evidence* – Held – Appellant is a first generation ever to attend the school – Availability of documentary evidence of caste certificate becomes a difficulty, but that by itself does not warrant rejection of his claim – Oral evidence of independent persons of his father's age, collected from Punjab shows and confirms that his grandfather was of NAT caste – Scrutiny Committee was fully justified in declaring that appellant belong to NAT caste. [Jajpal Singh Vs. Ladduram Kori] (DB)…1715**

संविधान – अनुच्छेद 226 – संवीक्षा समिति – जाति प्रमाण पत्र – दस्तावेजी साक्ष्य – अभिनिर्धारित – अपीलार्थी विद्यालय जाने वाली अब तक की प्रथम पीढ़ी है – जाति प्रमाणपत्र के दस्तावेजी साक्ष्य की उपलब्धता एक कठिनाई बन जाती है, परंतु वह अपने आप में उसके दावे को अस्वीकार करने के लिए आवश्यक नहीं है – उसके पिता की उम्र के स्वतंत्र व्यक्तियों का पंजाब से एकत्रित मौखिक साक्ष्य यह दर्शाता है तथा पुष्ट करता है कि उसके दादा नट जाति के थे – यह घोषित करने में कि अपीलार्थी नट जाति का है संवीक्षा समिति पूर्णतः न्यायोचित थी। (जजपाल सिंह वि. लड्डूराम कोरी) **(DB)…1715**

***Constitution – Article 226 – Scrutiny Committee – Caste Certificate – Judicial Review* – Held – Findings recorded by Committee are impeccable in nature as based on consideration of entire oral/documentary evidence and it concluded that the caste certificate was valid – Committee when considers all material facts and records a finding, though another view, as a Court of appeal may be possible, it is not a ground to reverse the finding – Writ Court has exercised appellate jurisdiction recording independent findings of fact and substituting a well considered Scrutiny Report, which is not permissible in exercise of jurisdiction under Article 226 of Constitution – Impugned judgment set aside – Appeal allowed. [Jajpal Singh Vs. Ladduram Kori] (DB)…1715**

संविधान – अनुच्छेद 226 – संवीक्षा समिति – जाति प्रमाणपत्र – न्यायिक पुनर्विलोकन – अभिनिर्धारित – समिति द्वारा अभिलिखित निष्कर्ष त्रुटिहीन प्रकृति के हैं तथा समस्त मौखिक / दस्तावेजी साक्ष्य के विचार पर आधारित हैं और यह निष्कर्ष निकाला गया कि जाति प्रमाणपत्र विधिमान्य था – जब समिति समस्त तात्विक तथ्यों पर विचार कर निष्कर्ष अभिलिखित करती है, यद्यपि अपीली न्यायालय के रूप में, एक अन्य दृष्टिकोण संभव हो सकता है, यह निष्कर्ष को उलटने का आधार नहीं है – रिट न्यायालय ने तथ्य के स्वतंत्र निष्कर्ष अभिलिखित कर अपीली अधिकारिता का प्रयोग किया है और एक सुविचारित संवीक्षा प्रतिवेदन को प्रतिस्थापित किया है, जो कि संविधान के अनुच्छेद 226 के अंतर्गत अधिकारिता के प्रयोग में अनुज्ञेय नहीं हैं – आक्षेपित निर्णय अपास्त – अपील मंजूर। (जजपाल सिंह वि. लड्डूराम कोरी) **(DB)…1715**

INDEX

State of M.P. – Clause 3 of 2005 Circular provides that those persons who have settled in M.P. after migration from other States shall be clubbed in category of inter-State migration only if they migrated after SC/ST Presidential Order, 1950 – Appellant cannot be treated as migrant in terms of the said clause. [Jajpal Singh Vs. Ladduram Kori] (DB)…1715

संविधान (अनुसूचित जाति) आदेश, 1950, कंडिका 3 एवं म.प्र. शासकीय प्रपत्र, 2005, खंड 3 – अंतर–राज्यीय प्रव्रजन – अभिनिर्धारित – अपीलार्थी के पूर्वज लगभग 1920–21 में अर्थात् आदेश 1950 के लागू होने से बहुत समय पहले पंजाब से तत्कालीन मध्यप्रदेश राज्य में प्रव्रजित हुए थे – इस प्रकार, दिनांक 10.08.1950 को अपीलार्थी के पूर्वज मध्यप्रदेश राज्य में ही रह रहे थे – परिपत्र 2005 का खंड 3 यह उपबंधित करता है कि वे व्यक्ति, जो अन्य राज्य से प्रव्रजित होकर मध्यप्रदेश में बस गये थे, को केवल तब अंतर–राज्यीय प्रव्रजन की श्रेणी में जोड़ा जाएगा यदि वे राष्ट्रपति के अनुसूचित जाति/जनजाति आदेश, 1950 के बाद प्रव्रजित हुए हो – अपीलार्थी को उक्त खंड की शर्तों में प्रवासी नहीं माना जा सकता। (जजपाल सिंह वि. लड्डूराम कोरी) **(DB)…1715**

***Contempt of Courts Act (70 of 1971), Section 19 – Appeal – Maintainability* – Held – It is not only the final order imposing punishment for contempt which is appealable but even if at an early stage, an order is passed which decides the contentions raised by alleged contemnor asking the High Court to drop proceedings, such order may be appealable – Any order which is not an interlocutory order but by which High Court proceeds to exercise its jurisdiction for contempt, which affects the substantive right of the contemnor, would be appealable – Appeal is maintainable. [Dinesh Shahra Vs. IDBI Bank Ltd.] (DB)…1781**

न्यायालय अवमान अधिनियम (1971 का 70), धारा 19 – अपील – पोषणीयता – अभिनिर्धारित – यह न केवल अवमानना के लिए दण्ड अधिरोपित करने वाला अंतिम आदेश है जो अपील योग्य है बल्कि यदि प्रारंभिक प्रक्रम पर भी एक आदेश पारित किया जाता है, जो अभिकथित अवमाननाकर्ता द्वारा उठाये गए तर्कों को विनिश्चित करते हुए उच्च न्यायालय से कार्यवाहियों को समाप्त करने हेतु कहता है, तो ऐसा आदेश भी अपील योग्य हो सकता है – कोई भी आदेश जो अंतवर्ती आदेश नहीं है परंतु जिसके द्वारा उच्च न्यायालय अवमानना की अधिकारिता का प्रयोग करता है तथा जो अवमाननाकर्ता के मौलिक अधिकार को प्रभावित करता है, अपील के योग्य होगा – अपील पोषणीय है। (दिनेश शाहरा वि. आई.डी.बी.आई. बैंक लि.) **(DB)…1781**

***Contempt of Courts Act (70 of 1971), Section 19(1) – Words "Decision" & "Order" – Interpretation* – Held – Section 19(1) clearly shows that legislature in its wisdom conferred the right to appeal not only against a decision but also against an order – When two words are used in a statute, they both have to be given separate meaning – They may be read in *ejusdem generis* but normally they cannot be treated to have same meaning. [Dinesh Shahra Vs. IDBI Bank Ltd.] (DB)…1781**

INDEX

निकाले गये थे – अभियोजन को अपने साक्षी के माध्यम से डी.एन.ए. प्रतिवेदन की सत्यता साबित करनी होगी – न्यायालय में मात्र डी.एन.ए. प्रतिवेदन को प्रस्तुत करना या दस्तावेजों को मात्र चिन्हांकित करना उसकी प्रमाणिकता का सबूत नहीं है – बचाव पक्ष के पास डी. एन.ए. प्रतिवेदन एवं अन्य दस्तावेजों के संबंध में विशेषज्ञ का प्रतिपरीक्षण करने का प्रत्येक अधिकार है। (इन रेफ्रेन्स वि. अनोखीलाल) **(DB)…1891**

***Criminal Practice – Motive* – Held – Motive is the emotion which is supposed to have led to the act – Motive is not capable of tangible proof, it can only be ascertained by inferences drawn from facts – Motive is a thing which is primary known to accused only, it is very difficult for prosecution to put forth what actually prompted or excited the accused to commit offence – It is sufficient for prosecution to establish existence of some motive, then sufficiency or adequacy of such motive which impelled the accused to commit crime, may be inferred from the attending circumstances. [Soneram Vs. State of M.P.] (DB)…*110**

दाण्डिक पद्धति – हेतु – अभिनिर्धारित – हेतु वह भावना है जिसके बारे में माना जाता है कि यह कार्य करने के लिए प्रेरित करता है – हेतु मूर्त सबूत देने के योग्य नहीं है, इसे केवल तथ्यों से निकाले गए निष्कर्षों से ही सुनिश्चित किया जा सकता है – हेतु एक ऐसी वस्तु है जो प्राथमिक रूप से केवल अभियुक्त को ही पता होती है, अभियोजन के लिए यह प्रस्तुत करना बहुत कठिन है कि अभियुक्त को अपराध कारित करने के लिए वास्तव में किस बात ने प्रेरित या उत्साहित किया – अभियोजन के लिए किसी हेतु के अस्तित्व को स्थापित करना पर्याप्त है, बाद में ऐसे हेतु की प्रचुरता अथवा पर्याप्तता जिसने अभियुक्त को अपराध कारित करने के लिए विवश किया, को उपस्थित परिस्थितियों से निष्कर्षित किया जा सकता है। (सोनेराम वि. म.प्र. राज्य) **(DB)…*110**

***Criminal Practice – Ocular & Medical Evidence – Corroboration* – Held – Ocular evidence alone can be reason to record conviction but the said evidence must be of a "sterling quality" – If there exists a serious contradiction between medical and oral evidence and the medical evidence makes the oral testimony as improbable, ocular evidence can very well be disbelieved. [Dinesh Yadav Vs. State of M.P.] (DB)…1841**

दाण्डिक पद्धति – चाक्षुष व चिकित्सीय साक्ष्य – संपुष्टि – अभिनिर्धारित – चाक्षुष साक्ष्य दोषसिद्धि अभिलिखित करने का एकमात्र कारण हो सकता है परंतु कथित साक्ष्य ''स्टर्लिंग क्वालिटी'' का होना चाहिए – यदि चिकित्सीय एवं मौखिक साक्ष्य के मध्य गंभीर विरोधाभास विद्यमान है तथा चिकित्सीय साक्ष्य मौखिक परिसाक्ष्य को अनधिसंभाव्य बनाता हो, चाक्षुष साक्ष्य पर भलीभांति अविश्वास किया जा सकता है। (दिनेश यादव वि. म.प्र. राज्य) **(DB)…1841**

***Criminal Practice – Report of Hand Writing Expert* – Held – Opinion of handwriting expert is a weak type of evidence and it will be unsafe to base conviction solely on such evidence. [P.K. Rakwal (P.S. Rakwal) Vs. Union of India] …*107**

INDEX

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 91, 202 व 482 एवं परक्राम्य लिखत अधिनियम (1881 का 26), धारा 20 – न्यायालय की शक्तियां – अभिनिर्धारित – न्यायालय दं.प्र.सं. की धारा 91 के अंतर्गत किसी भी दस्तावेज को जो कि प्रकरण की निष्पक्ष कार्यवाही के लिए आवश्यक है, को मंगाने हेतु सशक्त है – न्यायालय उन व्यक्तियों को समन जारी कर सकता है जिनके कब्जे में वांछनीय दस्तावेज रखे गये हैं – दं.प्र.सं. की धारा 91 के अंतर्गत न्यायालय को प्रदत्त की गई शक्तियां वैवेकिक स्वरूप की हैं तथा इन्हें न्यायसम्मत रूप से तथा उचित ढंग से प्रयोग किया जा सकता है – विचारण न्यायालय ने केवल अधिनियम 1881 की धारा 20 को विचार में लिया एवं आवेदन अस्वीकार किया – आक्षेपित आदेश अपास्त – आवेदन मंजूर। (संजय कुमार वि. वासुदेव) **...1948**

Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Quantum **– Held – Applicant getting salary of Rs. 24,000/- p.m. – Trial Court awarded Rs. 12,000/- p.m. as maintenance to wife – To determine quantum, judge has to figure out what is required by wife for maintaining the standard of living which is neither luxurious nor penurious but it should be in accordance with the status of the family – Amount reduced to Rs. 9000/- p.m. from date of application – Additional amount paid shall be adjusted – Revision partly allowed. [Shaleen Vs. Smt. Nikhil Sharma] ...1887**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरण पोषण – मात्रा – अभिनिर्धारित – आवेदक 24,000/– रू. प्रतिमाह का वेतन प्राप्त कर रहा है – विचारण न्यायालय ने 12000/– रू. प्रतिमाह पत्नी को भरणपोषण के रूप में अधिनिर्णीत किये – मात्रा का अवधारण करने के लिए, न्यायाधीश को यह पता लगाना होगा कि पत्नी द्वारा, ऐसे जीवनस्तर को बनाये रखने के लिए जो न तो वैभवपूर्ण हो न ही अभावग्रस्त हो बल्कि परिवार की हैसियत के अनुरूप हो, क्या अपेक्षित है – आवेदन की तिथि से राशि घटाकर 9000/– रू. प्रतिमाह की गई – भुगतान की गई अतिरिक्त राशि समायोजित की जाएगी – पुनरीक्षण अंशतः मंजूर। (शालीन वि. श्रीमती निखिल शर्मा) **...1887**

Criminal Procedure Code, 1973 (2 of 1974), Section 202(1) **– Held – It is clear from Section 202(1) Cr.P.C., subject to the exception mentioned u/S 202(1)(a) and (b), if Magistrate postpone the issue of process against the accused, he may himself inquire into the case or and direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. [Sanjay Kumar Vs. Vasudev] ...1948**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 202(1) – अभिनिर्धारित – दं.प्र.सं. की धारा 202(1) से यह स्पष्ट है कि धारा 202(1)(a) तथा (b) के अंतर्गत उल्लिखित अपवाद के अधीन, यदि मजिस्ट्रेट अभियुक्त के विरूद्ध आदेशिका का जारी किया जाना स्थगित करता है, तो यह विनिश्चित करने के प्रयोजन से कि क्या कार्यवाही हेतु पर्याप्त आधार है अथवा नहीं वह स्वयं प्रकरण की जांच कर सकता है अथवा किसी पुलिस अधिकारी या ऐसे अन्य व्यक्ति जिसे वह उचित समझता हो अन्वेषण करने का निदेश दे सकता है। (संजय कुमार वि. वासुदेव) **...1948**

INDEX

INDEX

INDEX

साक्ष्य अधिनियम (1872 का 1), धारा 7 – ''आखिरी बार देखे जाने'' का सिद्धांत – आगमनात्मक तर्क का सिद्धांत – अभिनिर्धारित – एक बार यह साबित हो जाए कि अभियुक्त पीड़ित के साथ अंतिम बार देखा गया था तथा उसके पास अपराध कारित करने का अवसर था, इसका अनुसरण नहीं करता कि वह आवश्यक रूप से दोषी है, परंतु वह निश्चित ही अभियुक्त के विरूद्ध उपधारणा को जन्म देता है तथा सबूत का भार अभियोजन से अभियुक्त पर परिवर्तित होता है क्योंकि घटनाएं तथा परिस्थितियां अभियुक्त के विशेष ज्ञान में है जब वह पीड़ित के साथ आखिरी बार देखा गया था। (सोनेराम वि. म.प्र. राज्य) **(DB)…*110**

***Evidence Act (1 of 1872), Section 32 – Multiple Dying Declaration – Effect* – There is no such absolute principle that in each and every case, dying declaration first in time should be relied upon – Apex Court held that merely because there are two/multiple dying declarations, all dying declarations are not to be rejected – When there are multiple dying declaration, case must be decided on the facts of each case – Court will not be relieved of its duty to carefully examine the entirety of the material on record as also the circumstances surrounding the making of different dying declaration. [Kushal Bhargav Vs. State of M.P.] (DB)…*102**

साक्ष्य अधिनियम (1872 का 1), धारा 32 – अनेक मृत्युकालिक कथन – प्रभाव – ऐसा कोई आत्यंतिक सिद्धांत नहीं है कि प्रत्येक प्रकरण में समय में पहले मृत्युकालिक कथन पर विश्वास किया जाना चाहिए – सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि मात्र चूंकि दो/अनेक मृत्युकालिक कथन हैं, सभी मृत्युकालिक कथनों को अस्वीकार नहीं किया जाएगा – जब अनेक मृत्युकालिक कथन हों, तो प्रकरण का विनिश्चय प्रत्येक प्रकरण के तथ्यों के आधार पर किया जाना चाहिए – न्यायालय, अभिलेख की सामग्री की संपूर्णता, साथ ही विभिन्न मृत्युकालिक कथन करने से जुड़ी परिस्थितियों का सावधानीपूर्वक परीक्षण करने के अपने कर्तव्य से मुक्त नहीं होगा। (कुशल भार्गव वि. म.प्र. राज्य) **(DB)…*102**

***Evidence Act (1 of 1872), Section 114 – Presumption* – Held – Section 114 provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case – Illustration (e) provides for presumption that judicial and official acts have been regularly performed. [Soneram Vs. State of M.P.] (DB)…*110**

साक्ष्य अधिनियम (1872 का 1), धारा 114 – उपधारणा – अभिनिर्धारित – धारा 114 यह उपबंधित करती है कि न्यायालय ऐसे किसी तथ्य का अस्तित्व उपधारित कर सकेगा जिसका घटित होना उस विशिष्ट मामले के तथ्यों के संबंध में प्राकृतिक घटनाओं, मानवीय आचरण तथा लोक और प्राइवेट कारबार के सामान्य अनुक्रम को ध्यान में रखते हुए वह सम्भाव्य समझता है – दृष्टांत (e) यह उपधारणा हेतु उपबंधित करता है कि न्यायिक और पदीय कार्य नियमित रूप से संपादित किये गये हैं। (सोनेराम वि. म.प्र. राज्य) **(DB)…*110**

INDEX

बावजूद, प्रत्यर्थीगण ने उस आदेश का पालन नहीं किया, जिसमें नमूने का केन्द्रीय प्रयोगशाला से परीक्षण कराने का निदेश दिया गया था और इस प्रकार उन्होंने याची के मूल्यवान अधिकारों का उल्लंघन किया है – याची को उपरोक्त मूल्यवान अधिकार से वंचित किया गया एवं उसे विफल किया गया – दाण्डिक कार्यवाहियां अभिखंडित – आवेदन मंजूर। (वासुदेव वि. म.प्र. राज्य) **…1967**

***Freedom of Religion Act, M.P. (5 of 2021), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Conversion – Written Complaint* – Held – Complaint has been lodged by an individual who conducted inspection – No written complaint made by person converted or their relatives or blood relatives – In absence of such written complaint, police does not have any jurisdiction to inquire or investigate into offence committed u/S 3 of 2021 Act – Anticipatory bail application allowed. [Jerald Alameda Vs. State of M.P.] …1943**

धार्मिक स्वतंत्रता अधिनियम, म.प्र. (2021 का 5), धारा 3 व 4 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – धर्मान्तरण – लिखित शिकायत – अभिनिर्धारित – शिकायत एक ऐसे व्यक्ति द्वारा दर्ज की गई है जिसने निरीक्षण किया – किसी धर्मान्तरित व्यक्ति अथवा उनके रिश्तेदारों अथवा रक्त संबंधियों द्वारा कोई लिखित शिकायत नहीं की गई – ऐसी लिखित शिकायत के अभाव में पुलिस को यह अधिकारिता नहीं है कि वह अधिनियम 2021 की धारा 3 के अंतर्गत कारित अपराध की जांच अथवा अन्वेषण करे – अंतरिम जमानत आवेदन मंजूर। (जेराल्ड अलामेडा वि. म.प्र. राज्य)**…1943**

***Guardians and Wards Act (8 of 1890), Section 12 – See – Protection of Women from Domestic Violence Act, 2005, Sections 2(d), 21 & 31* [Ashwini Pradhan Vs. Union of India] (DB)…1771**

संरक्षक और प्रतिपाल्य अधिनियम (1890 का 8), धारा 12 – देखें – घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम, 2005, धाराएँ 2(d), 21 व 31 (अश्विनी प्रधान वि. यूनियन ऑफ इंडिया) **(DB)…1771**

***High Court of Madhya Pradesh Rules, 2008, Rule 4(7), Chapter 1 – Amendment – Purpose & Object* – Held – The very purpose to amend Chapter 1 of Rule 4(7) was that "to save lot of time and expenses of advocates, parties as well as of the office particularly when it is not required to scrutinize the interlocutory applications as a main case and it also saves time of the Court, moreover, minor typographical errors, such as date, name, time etc. could be corrected by filing interlocutory application in a disposed of case and not to review/recall the entire order passed by considering merits of the case. [Dinesh Shahra Vs. IDBI Bank Ltd.] (DB)…1781**

मध्य प्रदेश उच्च न्यायालय नियम, 2008, नियम 4(7), अध्याय 1 – संशोधन – प्रयोजन व उद्देश्य – अभिनिर्धारित – नियम 4(7) के अध्याय 1 के संशोधन का मूल प्रयोजन ''अधिवक्ताओं, पक्षकारों, साथ ही साथ कार्यालय का समय व धन बचाना था,

विशेषकर तब जब अंतर्वर्ती आवेदन की मुख्य प्रकरण के रूप में संविक्षा किये जाने की आवश्यकता न हो तथा यह न्यायालय का समय भी बचाता है, इसके अतिरिक्त मामूली मुद्रण त्रुटियां जैसे दिनांक, नाम, समय इत्यादि को निराकृत प्रकरण में अंतर्वर्ती आवेदन प्रस्तुत कर सुधारा जा सकता था तथा न कि प्रकरण के गुणदोषों पर विचार करते हुए पारित संपूर्ण आदेश का पुनर्विलोकन कर/वापस बुलाकर। (दिनेश शाहरा वि. आई.डी.बी. आई. बैंक लि.) **(DB)…1781**

Hindu Succession Act (30 of 1956), Section 6 – Coparcenary Right of Female **– Held – After amendment in Section 6, even if a sole surviving coparcener is having a female child, then he cannot bequeath his property by treating himself to be a sole surviving coparcener as his daughter would also be a coparcener – If a female is born prior to amendment, still she will have coparcenery rights in the property. [Kamla Bai (Smt.) Vs. Narmada Prasad] …1815**

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 6 – महिला के सहदायिकी अधिकार – अभिनिर्धारित – धारा 6 में संशोधन के पश्चात्, भले ही एकमात्र उत्तरजीवी सहदायिक के पास एक पुत्री हो, तो वह स्वयं को एकमात्र उत्तरजीवी सहदायिक मानते हुए अपनी संपत्ति वसीयत नहीं कर सकता क्योंकि उसकी पुत्री भी एक सहदायिक होगी – यदि एक महिला संशोधन के पूर्व जन्मी है, तो भी उसके पास संपत्ति में सहदायिकी अधिकार होंगे। (कमला बाई (श्रीमती) वि. नर्मदा प्रसाद) **…1815**

Hindu Succession Act (30 of 1956), Section 6 & 6(1) proviso – Amendment – Sole Coparcener **– Held – If the ancestral property is in hands of a sole surviving coparcener then the said property turns into separate property – On date of execution of Will, Laxman was the sole surviving coparcener in respect of the property which was admitted by plaintiff to be ancestral – Laxman was competent to execute the Will in favour of plaintiff – Suit and Appeal were decided much prior to the amendment in Section 6, thus amendment shall not apply in view of the proviso to Section 6(1) of the Act – Appeal dismissed. [Kamla Bai (Smt.) Vs. Narmada Prasad] …1815**

हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 6 व 6(1) परंतुक – संशोधन – एकमात्र सहदायिक – अभिनिर्धारित – यदि पैतृक संपत्ति एकमात्र उत्तरजीवी सहदायिक के हाथ में है तब कथित संपत्ति पृथक संपत्ति में बदल जाती है – विल के निष्पादन की तिथि पर, लक्ष्मण उस संपत्ति के संबंध में एकमात्र उत्तरजीवी सहदायिक था जिसका वादी द्वारा पैतृक होना स्वीकार किया गया था – लक्ष्मण वादी के पक्ष में विल का निष्पादन करने हेतु सक्षम था – वाद एवं अपील का विनिश्चय धारा 6 में संशोधन के काफी पूर्व हो चुका था, अतः अधिनियम की धारा 6(1) के परंतुक को दृष्टिगत रखते हुए संशोधन लागू नहीं होगा – अपील खारिज। (कमला बाई (श्रीमती) वि. नर्मदा प्रसाद) **…1815**

Industrial Disputes Act (14 of 1947), Section 2(d) & 2(s) – Definition of "Workman" – Sales Promotion Officer/Medical Representative **– Held – Medical Representatives or the Sales Promotion Officer do not fall under the**

has, for that period, been in uninterrupted service on account of sickness, accident, leave, lay off, strike or lockout etc. [Malini Bai (Smt.) Vs. M/s. Hope Textile Ltd.] …*103

उपदान संदाय अधिनियम (1972 का 39), धारा 2(A) – सेवा की निरंतरता – अभिनिर्धारित – किसी कर्मचारी को एक अवधि के लिए निरंतर सेवा में बने रहना कहा जाएगा यदि वह उस अवधि के लिए बीमारी, दुर्घटना, छुट्टी, कामबंदी, हड़ताल या तालाबंदी इत्यादि के कारण अविच्छिन्न सेवा में रहा हो। (मालिनी बाई (श्रीमती) वि. मे. होप टेक्सटाईल लि.) **…*103**

***Payment of Gratuity Act (39 of 1972), Section 2(A) & 4(2) – Calculation of Gratuity – Modes* – Held – As per Section 4(2), for every completed year of service and part thereof in excess of 6 months, the employer shall pay gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by employee – Deceased husband of petitioner was paid wages by virtue of agreement also till the date of death – Wages paid at the time of death are liable to be taken into consideration for payment of gratuity – Petition allowed. [Malini Bai (Smt.) Vs. M/s. Hope Textile Ltd.] …*103**

उपदान संदाय अधिनियम (1972 का 39), धारा 2(A) व 4(2) – उपदान की गणना – रीतियां – अभिनिर्धारित – धारा 4(2) के अनुसार, सेवा के प्रत्येक पूर्ण वर्ष एवं उसके 6 माह से अधिक भाग के लिए नियोक्ता, कर्मचारी द्वारा अंतिम बार ली गई मजदूरी की दर के आधार पर कर्मचारी को 15 दिनों की मजदूरी की दर से उपदान का भुगतान करेगा – याची के मृत पति को करार के आधार पर भी मृत्यु की तिथि तक मजदूरी का भुगतान किया गया था – मृत्यु के समय भुगतान की गई मजदूरी उपदान का भुगतान करने के लिए विचार में लिये जाने योग्य है – याचिका मंजूर। (मालिनी बाई (श्रीमती) वि. मे. होप टेक्सटाईल लि.) **…*103**

***Penal Code (45 of 1860), Section 120-B – See – Prevention of Corruption Act, 1988, Section 13(1)(d) & 13(2)* [Narendra Jain Vs. Lokayukta Police Establishment] (DB)…1910**

दण्ड संहिता (1860 का 45), धारा 120–B – देखें – भ्रष्टाचार निवारण अधिनियम, 1988, धारा 13(1)(d) व 13(2) (नरेन्द्र जैन वि. लोकायुक्त पुलिस इस्टैब्लिशमेंट) **(DB)…1910**

***Penal Code (45 of 1860), Sections 302, 201 & 420 – Last Seen Together – Onus of Proof* – Held – "H" left for Salampur with "J" & "S", thereafter "H" went missing – Doctor who conducted postmortem of deceased "H" opined that he died 5 to 10 days prior to examination – Time of death opined by Doctor relates to incident of "H" leaving his home in company of "J" and "S" – In such circumstances, onus shifts on "J" and "S" to explain how, where and in what manner, they parted company with "H" – Both accused failed to**

give any explanation much less of plausible explanation. [Soneram Vs. State of M.P.] (DB)…*110

दण्ड संहिता (1860 का 45), धाराएँ 302, 201 व 420 – अंतिम बार साथ देखा जाना – सबूत का भार – अभिनिर्धारित – ''**H**'', ''**J**'' व ''**S**'' के साथ सालमपुर के लिए रवाना हुआ, तत्पश्चात् ''**H**'' लापता हो गया – चिकित्सक, जिसने मृतक ''**H**'' का शव परीक्षण किया था, ने अभिमत दिया था कि उसकी मृत्यु परीक्षण के 5 से 10 दिन पूर्व हुई थी – चिकित्सक द्वारा अभिमत मृत्यु का समय ''**H**'' द्वारा ''**J**'' व ''**S**'' के साथ घर से निकलने की घटना से संबंधित है – ऐसी परिस्थितियों में यह स्पष्ट करने का भार **J** व **S** पर परिवर्तित होता है कि कैसे, कहां व किस तरीके से, वे ''**H**'' से विलग हुए थे – दोनों अभियुक्त संभाव्य स्पष्टीकरण से बहुत दूर कोई भी स्पष्टीकरण देने में असफल रहे। (सोनेराम वि. म.प्र. राज्य) **(DB)…*110**

***Penal Code (45 of 1860), Sections 302, 201 & 420 – Motive* – Held – As per evidence of father of deceased, amount was returned by the father of accused "S" – Return of amount would not negate the existence of motive, rather, fortifies the existence of grudge against deceased and his father that they compelled father of accused "S" to return the money secured by cheating – Existence of motive is established beyond doubt. [Soneram Vs. State of M.P.] (DB)…*110**

दण्ड संहिता (1860 का 45), धाराएँ 302, 201 व 420 – हेतु – अभिनिर्धारित – मृतक के पिता की साक्ष्य के अनुसार अभियुक्त ''**S**'' के पिता द्वारा राशि लौटा दी गई थी – राशि की वापसी हेतु के अस्तित्व को निष्फल नहीं करती, बल्कि वह मृतक तथा उसके पिता के विरूद्ध द्वेष को और अधिक सुदृढ़ करती है कि उन्होंने अभियुक्त ''**S**'' के पिता को धोखाधड़ी से प्राप्त धन को वापस करने के लिए विवश किया – हेतु का अस्तित्व संदेह से परे स्थापित होता है। (सोनेराम वि. म.प्र. राज्य) **(DB)…*110**

***Penal Code (45 of 1860), Sections 302, 201 & 420 – Oral & Documentary Evidence* – Held – Accused "S" asked for Rs. 60,000 to secure job for "H" for which father of "H" gave Rs. 55,000 in 3 installments – In view of overwhelming reliable oral evidence, absence of documentary evidence with regard to transaction of money does not affect credibility of prosecution – Such transactions are generally nor recorded in documents. [Soneram Vs. State of M.P.] (DB)…*110**

दण्ड संहिता (1860 का 45), धाराएँ 302, 201 व 420 – मौखिक एवं दस्तावेजी साक्ष्य – अभिनिर्धारित – अभियुक्त ''**S**'' ने ''**H**'' को नौकरी दिलाने के लिए 60,000/– रू. मांगे जिसके लिए ''**H**'' के पिता ने 55,000/– रू. 3 किश्तों में दिये – अत्याधिक विश्वसनीय मौखिक साक्ष्य को दृष्टिगत रखते हुए धन के लेन–देन के संबंध में दस्तावेजी साक्ष्य की अनुपस्थिति अभियोजन की विश्वसनीयता को प्रभावित नहीं करती – सामान्यतः ऐसे लेन–देन दस्तावेजों में अभिलिखित नहीं किये जाते। (सोनेराम वि. म.प्र. राज्य)

(DB)…*110

INDEX

दण्ड संहिता (1860 का 45), धाराएँ 342, 376(1), 376(2)(v), अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xii) व 3(2)(v) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 3(a) सहपठित 4 – साक्ष्य का मूल्यांकन – अभिनिर्धारित – घटनास्थल की भौगोलिक स्थिति, सुबह 11 बजे आस–पास लोगों की उपलब्धता तथा पीड़िता के शरीर पर चोट के निशानों की अनुपस्थिति को ध्यान में रखते हुए, यह अभियोजन प्रकरण को अत्याधिक संदेहास्पद बनाता है – यहां तक कि घटना स्थल के दो नक्शे भी समान नहीं हैं – अपीलार्थी द्वारा पूर्व वैमनस्यता भी स्थापित – अपराध में फंसाने वाली सामग्री को आवश्यक स्पष्टता के साथ अभियुक्त के सामने नहीं लाया गया था – उक्त साक्ष्य के आधार पर दोषसिद्धि को कायम रखना पूर्ण रूप से असुरक्षित होगा – दोषसिद्धि अपास्त – अपील मंजूर। (दिनेश यादव वि. म.प्र. राज्य) **(DB)…1841**

Penal Code (45 of 1860), Sections 342, 376(1), 376(2)(v), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xii) & 3(2)(v) and Protection of Children from Sexual Offences Act (32 of 2012), Section 3(a) r/w 4 – Ocular & Medical Evidence – Corroboration **– Held – If a girl of 13-14 years was raped by forcibly throwing her on a rough and uneven surface, she would have certainly received some injuries – No external and internal injuries found on her body – Clothes recovered from victim did not have any sign of semen or any other spot – Testimony of prosecutrix is not supported by Medical evidence – It is not safe to accept statement of victim alone as a gospel truth. [Dinesh Yadav Vs. State of M.P.]** **(DB)…1841**

दण्ड संहिता (1860 का 45), धाराएँ 342, 376(1), 376(2)(v), अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xii) व 3(2)(v) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 3(a) सहपठित 4 – चाक्षुष व चिकित्सीय साक्ष्य – संपुष्टि – अभिनिर्धारित – यदि एक 13–14 वर्षीय बालिका के साथ बलपूर्वक उसे खुरदरी एवं असमतल फर्श पर पटककर, बलात्संग कारित किया गया था, तो उसे निश्चित रूप से चोटें आई होती – उसके शरीर पर कोई बाहरी और आंतरिक चोटें नहीं पाई गई – पीड़िता से बरामद कपड़ों में वीर्य अथवा किसी अन्य दाग के कोई निशान नहीं – अभियोक्त्री का परिसाक्ष्य चिकित्सीय साक्ष्य द्वारा समर्थित नहीं – केवल पीड़िता के कथन को पूर्ण सत्य के रूप में स्वीकार करना सुरक्षित नहीं। (दिनेश यादव वि. म.प्र. राज्य) **(DB)…1841**

Penal Code (45 of 1860), Sections 342, 376(1), 376(2)(v), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xii) & 3(2)(v) and Protection of Children from Sexual Offences Act (32 of 2012), Section 3(a) r/w 4 – FSL Report – Collection of Sample **– Held – Sample was collected on 26.12.2012 – Complaint was lodged on 27.12.2012 and hence on 26.12.2012 prosecution had no clue and knowledge about the incident – Collecting samples from victim a day before, is likely putting a cart before**

the horse which is an impossible act – This discrepancy creates doubt on collection process of sample. [Dinesh Yadav Vs. State of M.P.] (DB)…1841

दण्ड संहिता (1860 का 45), धाराएँ 342, 376(1), 376(2)(v), अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xii) व 3(2)(v) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 3(a) सहपठित 4 – न्यायालयिक प्रयोगशाला प्रतिवेदन – नमूने का संग्रहण – अभिनिर्धारित – दिनांक 26.12.2012 को नमूने का संग्रहण किया गया था – दिनांक 27.12.2012 को परिवाद दर्ज किया गया एवं इसलिए दिनांक 26.12.2012 को अभियोजन को घटना के बारे में कोई जानकारी एवं ज्ञान नहीं था – एक दिन पहले पीड़ित से नमूना संग्रह करना, घोड़े के आगे गाड़ी लगाने के समान है जो कि एक असंभव कार्य है – यह विसंगति नमूना संग्रह करने की प्रक्रिया पर संदेह उत्पन्न करती है। (दिनेश यादव वि. म.प्र. राज्य) **(DB)…1841**

***Penal Code (45 of 1860), Sections 342, 376(1), 376(2)(v), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xii) & 3(2)(v) and Protection of Children from Sexual Offences Act (32 of 2012), Section 3(a) r/w 4 – Ocular & Medical Evidence – Corroboration* – Held – If a girl of 13-14 years was raped by forcibly throwing her on a rough and uneven surface, she would have certainly received some injuries – No external and internal injuries found on her body – Clothes recovered from victim did not have any sign of semen or any other spot – Testimony of prosecutrix is not supported by Medical evidence – It is not safe to accept statement of victim alone as a gospel truth. [Dinesh Yadav Vs. State of M.P.] (DB)…1841**

दण्ड संहिता (1860 का 45), धाराएँ 342, 376(1), 376(2)(v), अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xii) व 3(2)(v) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 3(a) सहपठित 4 – चाक्षुष व चिकित्सीय साक्ष्य – संपुष्टि – अभिनिर्धारित – यदि एक 13–14 वर्षीय बालिका के साथ बलपूर्वक उसे खुरदरी एवं असमतल फर्श पर पटककर, बलात्संग कारित किया गया था, तो उसे निश्चित रूप से चोटें आई होती – उसके शरीर पर कोई बाहरी और आंतरिक चोटें नहीं पाई गई – पीड़िता से बरामद कपड़ों में वीर्य अथवा किसी अन्य दाग के कोई निशान नहीं – अभियोक्त्री का परिसाक्ष्य चिकित्सीय साक्ष्य द्वारा समर्थित नहीं – केवल पीड़िता के कथन को पूर्ण सत्य के रूप में स्वीकार करना सुरक्षित नहीं। (दिनेश यादव वि. म.प्र. राज्य) **(DB)…1841**

***Penal Code (45 of 1860), Sections 342, 376(1), 376(2)(v), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xii) & 3(2)(v) and Protection of Children from Sexual Offences Act (32 of 2012), Section 3(a) r/w 4 – Sensitivity of Matter* – Held – Merely because matter relates to sexual assault on a minor, appellant cannot be mechanically held guilty – Unless the legal test and requisite evidence is available, appellant**

cannot be held guilty on the basis of sensitivity of matter alone. [Dinesh Yadav Vs. State of M.P.] (DB)…1841

दण्ड संहिता (1860 का 45), धाराएँ 342, 376(1), 376(2)(v), अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xii) व 3(2)(v) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 3(a) सहपठित 4 – मामले की संवेदनशीलता – अभिनिर्धारित – मात्र क्योंकि मामला एक अवयस्क पर लैंगिक हमले से संबंधित है, अपीलार्थी को यांत्रिक रूप से दोषी नहीं ठहराया जा सकता – जब तक विधिक परीक्षण एवं अपेक्षित साक्ष्य उपलब्ध न हो, अपीलार्थी को केवल मामले की संवेदनशीलता के आधार पर दोषी नहीं ठहराया जा सकता। (दिनेश यादव वि. म.प्र. राज्य) **(DB)…1841**

***Penal Code (45 of 1860), Section 364-A – Essential Ingredient* – Held – There is nothing on record to suggest that appellant had threatened complainant or his son abductee to cause death or hurt to the abductee in order to compel the complainant to give ransom, which is an essential ingredient for an offence punishable u/S 364-A IPC. [Sughar Singh Vs. State of M.P.] (DB)…*111**

दण्ड संहिता (1860 का 45), धारा 364–A – आवश्यक घटक – अभिनिर्धारित – अभिलेख पर यह सुझाव देने के लिए कुछ नहीं है कि परिवादी को फिरौती देने के लिए बाध्य करने के लिए कि अपीलार्थी ने परिवादी को अथवा उसके अपहृत पुत्र को अपहृत की मृत्यु कारित करने अथवा उपहति कारित करने की धमकी दी थी जो भा.दं.सं. की धारा 364–A के अंतर्गत एक दण्डनीय अपराध के लिए एक आवश्यक घटक है। (सुघर सिंह वि. म.प्र. राज्य) **(DB)…*111**

***Penal Code (45 of 1860), Section 364-A – See – Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P., 1981, Section 13* [Sughar Singh Vs. State of M.P.] (DB)…*111**

दण्ड संहिता (1860 का 45), धारा 364–A – देखें – डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र., 1981, धारा 13 (सुघर सिंह वि. म.प्र. राज्य) **(DB)…*111**

***Penal Code (45 of 1860), Section 376 & 506-B – Verbal Threat* – Held – At the time of committing rape, appellant were not having any weapon – Said threat was merely a verbal threat which was not intended to be executed – Ingredients constituting offence u/S 506-B IPC are missing – Appellant acquitted of the charge u/S 506-B IPC. [Kushal Bhargav Vs. State of M.P.] (DB)…*102**

दण्ड संहिता (1860 का 45), धारा 376 व 506–B – मौखिक धमकी – अभिनिर्धारित – बलात्संग कारित करते समय, अपीलार्थी के पास कोई शस्त्र नहीं था –

से अधिक परंतु 3 वर्ष से अनधिक कारावास से दण्डनीय है – प्रस्तुत प्रकरण में पत्नी द्वारा लगभग 9 वर्ष पूर्व की घटनाओं को अभिकथित करते हुए प्रथम सूचना प्रतिवेदन दर्ज किया गया है – यह स्पष्ट रूप से एक सोच–विचार उपरांत किया गया प्रतीत होता है। (भूपेन्द्र सिंह नोटे (श्री) वि. म.प्र. राज्य) **...*100**

***Penal Code (45 of 1860), Sections 498-A, 506 & 294 r/w 34, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR & Charge-Sheet – FIR as a Counterblast* – Held – Perusal of FIR makes it clear that it has been filed after filing of divorce petition and after filing of complaint of harassment & torture against wife, by husband – FIR is as a counterblast of the divorce proceedings initiated by husband – Filing of report about some incident happened in 2007-2008, after a lapse of 9 years clearly appears to be an afterthought and abuse of process of law – Allegations are omnibus, bald and vague and are just made to implicate all family members – No specific date, time or place has been mentioned – *Prima facie* no case is made out – FIR and Charge-Sheet quashed – Application allowed. [Bhupendra Singh Notey (Sh.) Vs. State of M.P.]** **...*100**

दण्ड संहिता (1860 का 45), धाराएँ 498–A, 506 व 294 सहपठित 34, दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3 व 4 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन व आरोप–पत्र का अभिखंडन – जवाबी कार्यवाही/प्रतिवाद के रूप में प्रथम सूचना प्रतिवेदन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन का परिशीलन यह स्पष्ट करता है कि विवाह–विच्छेद याचिका प्रस्तुत करने के पश्चात् तथा पति द्वारा पत्नी के विरूद्ध उत्पीड़न तथा यातना की शिकायत करने के पश्चात् इसे प्रस्तुत किया गया है – प्रथम सूचना प्रतिवेदन पति द्वारा आरंभ की गई विवाह विच्छेद कार्यवाही का प्रतिवाद/जवाबी कार्यवाही है – 2007–2008 में घटित किसी घटना के बारे में 9 वर्ष के बाद रिपोर्ट प्रस्तुत करना स्पष्ट रूप से सोच विचार उपरांत तथा विधि की प्रक्रिया दुरूपयोग प्रतीत होता है – अभिकथन सर्वग्राही, कोरे तथा अस्पष्ट हैं तथा परिवार के सभी सदस्यों को फंसाने मात्र के लिए किए गए हैं – किसी विनिर्दिष्ट दिनांक, समय अथवा स्थान का उल्लेख नहीं किया गया है – प्रथम दृष्ट्या कोई प्रकरण नहीं बनता – प्रथम सूचना प्रतिवेदन तथा आरोप–पत्र अभिखंडित – आवेदन मंजूर। (भूपेन्द्र सिंह नोटे (श्री) वि. म.प्र. राज्य) **...*100**

***Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (7 of 1980), Sections 3(1)(a), 8 & 11 – Detention Order – Representation to State* – Held – Representation ought to have been decided immediately without waiting the opinion of Advisory Board – Representation alongwith decision should have been forwarded to Advisory Board and should have been made part of the documents which is to be placed before the Board – Representation of petitioner was misplaced by**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(d) व 13(2) एवं दण्ड संहिता (1860 का 45), धारा 120–B – अपराध के घटक – अभिनिर्धारित – याचीगण ने विवादित संपत्ति नामांतरित करने एवं आवासीय सह वाणिज्यिक भवन का निर्माण करने हेतु अनुमति लेने के लिए विभिन्न प्राधिकारीगण के समक्ष अरजिस्ट्रीकृत विक्रय विलेख की सत्य प्रतिलिपि प्रस्तुत की, यह न तो एक अवैध कार्य है न ही कोई ऐसा कार्य है जो अपने आप में तो अवैध नहीं हो परंतु अवैध साधनों द्वारा किया गया हो – भा.दं.सं. की धारा 120–B के आवश्यक घटक अनुपस्थित है – भा.दं.सं. की धारा 120–B के अंतर्गत कोई अपराध नहीं बनता – उक्त निष्कर्ष के परिणामस्वरूप, अधिनियम 1988 के अंतर्गत याचीगण के विरूद्ध गलत रूप से आरोप लगाये गये। (नरेन्द्र जैन वि. लोकायुक्त पुलिस इस्टैब्लिशमेंट) **(DB)…1910**

Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2), Penal Code (45 of 1860), Section 120-B and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Ingredients of Offence **– Held – Case is purely of civil nature where the question that whether petitioner has properly calculated and paid stamp duty and was under obligation to pay remaining stamp duty in treasury for registration of unregistered sale deed is still pending for adjudication in Writ Petition – Lokayukta wrongly registered FIR against petitioners by converting a civil wrong into a criminal one – FIR and consequential proceedings are quashed – Application allowed. [Narendra Jain Vs. Lokayukta Police Establishment] (DB)…1910**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(d) व 13(2), दण्ड संहिता (1860 का 45), धारा 120–B एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अपराध के घटक – अभिनिर्धारित – प्रकरण पूर्ण रूप से सिविल प्रकृति का है, जहां यह प्रश्न रिट याचिका में न्यायनिर्णयन के लिए अभी भी लंबित है कि क्या याची ने स्टाम्प शुल्क की उचित रूप से गणना एवं भुगतान किया है तथा अरजिस्ट्रीकृत विक्रय विलेख के रजिस्ट्रीकरण हेतु कोषागार में बकाया स्टाम्प शुल्क का भुगतान करने हेतु बाध्यताधीन था – लोकायुक्त ने एक सिविल दोष को दाण्डिक दोष में परिवर्तित करते हुए याचीगण के विरूद्ध गलत रूप से प्रथम सूचना प्रतिवेदन पंजीबद्ध किया – प्रथम सूचना प्रतिवेदन एवं पारिणामिक कार्यवाहियां अभिखंडित – आवेदन मंजूर। (नरेन्द्र जैन वि. लोकायुक्त पुलिस इस्टैब्लिशमेंट) **(DB)…1910**

Prevention of Corruption Act (49 of 1988), Section 17-A – Applicability **– Held – Allegations relate to decision taken or/and recommendation made by applicants in their capacity as Asst. Engineer and Sub-Engineer, thus by the very nature of allegation, the bar contained in Section 17-A gets attracted. [Yogesh Nayyar Vs. State of M.P.] (DB)…1974**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 17–A – प्रयोज्यता – अभिनिर्धारित – अभिकथन सहायक इंजीनियर एवं उप–इंजीनियर की हैसियत से

आवेदकगण द्वारा किये गये विनिश्चय अथवा/एवं सिफारिश से संबंधित है, अतः अभिकथन के स्वरूप से धारा 17–A में अंतर्निहित वर्जन आकर्षित हो जाता है। (योगेश नैय्यर वि. म.प्र. राज्य) **(DB)…1974**

***Prevention of Corruption Act (49 of 1988), Section 17-A – FIR – Investigation – Prior Approval* – Held – By Section 17-A what has been prohibited is conduction of investigation by police officer – Even if an FIR is lodged, investigation cannot take place without prior approval of competent authority. [Yogesh Nayyar Vs. State of M.P.] (DB)…1974**

भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 17–A – प्रथम सूचना प्रतिवेदन – अन्वेषण – पूर्व अनुमोदन – अभिनिर्धारित – धारा 17–A द्वारा जो प्रतिषिद्ध किया गया है, वह पुलिस अधिकारी द्वारा अन्वेषण का संचालन किया जाना है – भले ही प्रथम सूचना प्रतिवेदन पंजीबद्ध किया गया है, सक्षम प्राधिकारी के पूर्व अनुमोदन के बिना अन्वेषण नहीं किया जा सकता। (योगेश नैय्यर वि. म.प्र. राज्य) **(DB)…1974**

***Prevention of Food Adulteration Act (37 of 1954), Section 13(1) & 13(2) – Re-Testing of Sample – Right of Accused* – Held – Accused has a right to exercise an option of sending sample to Central Food Laboratory for re-testing by making application to Court within 10 days from the date of receipt of report – If copy of report of Public Analyst is not delivered to accused, his right u/S 13(2) will be defeated – Mere dispatch of report to accused is not a sufficient compliance of Section 13(2), report must be served on accused. [Vasudev Vs. State of M.P.] …1967**

खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(1) व 13(2) – नमूने का पुनः परीक्षण – अभियुक्त का अधिकार – अभिनिर्धारित – अभियुक्त के पास रिपोर्ट की प्राप्ति से 10 दिनों के भीतर न्यायालय में आवेदन प्रस्तुत कर नमूने को पुनः परीक्षण के लिए केन्द्रीय खाद्य प्रयोगशाला भेजने के विकल्प का प्रयोग करने का अधिकार है – यदि लोक विश्लेषक की रिपोर्ट की प्रति अभियुक्त को नहीं दी गई, धारा 13(2) के अंतर्गत उसका अधिकार विफल हो जाएगा – अभियुक्त को मात्र रिपोर्ट भेजना धारा 13(2) का पर्याप्त अनुपालन नहीं है, अभियुक्त को रिपोर्ट की तामील होनी चाहिए। (वासुदेव वि. म.प्र. राज्य) **…1967**

***Protection of Children from Sexual Offences Act (32 of 2012), (POCSO) Sections 3, 4, 5 & 6 – See – Penal Code, 1860, Sections 302, 363, 366, 376(2)(f) & 377* [In Reference Vs. Anokhilal] (DB)…1891**

लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), (पोक्सो) धाराएँ 3, 4, 5 व 6 – देखें – दण्ड संहिता, 1860, धाराएँ 302, 363, 366, 376(2)(f) व 377 (इन रेफ्रेन्स वि. अनोखीलाल) **(DB)…1891**

select list then relief claimed cannot be denied on the ground that the validity of the select list has expired during the period of litigation – Relief cannot be refused to which petitioner has been found entitled by the Court. [Ganesh Singh Thakur Vs. State of M.P.] …*101

सेवा विधि – नियुक्ति – चयन सूची का अवसान – अभिनिर्धारित – उच्चतम न्यायालय ने निष्कर्षित किया कि यदि याची चयन सूची की विधिमान्यता के दौरान न्यायालय के समक्ष आता है तब चाहा गया अनुतोष इस आधार पर नकारा नहीं जा सकता कि चयन सूची की विधिमान्यता का मुकदमेबाजी की अवधि के दौरान अवसान हो गया है – अनुतोष, जिसके लिए याची को न्यायालय ने हकदार पाया है, को मना नहीं किया जा सकता। (गनेश सिंह ठाकुर वि. म.प्र. राज्य) **…*101**

***Service Law – Minor/Major Penalty* – Held – In absence of any classification in the Certified Standing Order of respondents classifying the penalties as major or minor, the penalty of withholding of two increments with cumulative effect inflicted upon the petitioner earlier has to be treated as a major penalty and as per clause 2(g) of the ACPS Policy, petitioner is not entitled to be considered for selection to post in grade "A" by the respondents – Petition dismissed. [Ravi Kumar Rai Vs. Indian Oil Corporation Ltd.] …*109**

सेवा विधि – लघु/मुख्य शास्ति – अभिनिर्धारित – शास्तियों को मुख्य अथवा लघु के रूप में वर्गीकृत करने वाले प्रत्यर्थीगण के प्रमाणित स्थायी आदेश में किसी वर्गीकरण के अभाव में, याची पर पूर्व में अधिरोपित की गई, संचयी प्रभाव से दो वेतन वृद्धियां रोकने की शास्ति को मुख्य शास्ति समझा जाना चाहिए एवं एसीपीएस नीति के खंड 2(g) के अनुसार, याची प्रत्यर्थीगण द्वारा श्रेणी ''ए'' के पद पर चयन के लिए विचार में लिए जाने का हकदार नहीं है – याचिका खारिज। (रवि कुमार राय वि. इंडियन ऑयल कारपोरेशन लि.) **…*109**

***Succession Act, Indian (39 of 1925), Section 8 – Property of Male Hindu* – Held – Although compensation amount of death cannot be held to be a property of a male hindu, however it is clear that property of a Hindu male shall devolve firstly upon the heirs being relatives specified in class-I of Schedule and if there is no heir of Class-I, then upon the heirs being relatives specified in Class-II of Schedule. [Manoj Kumar Vs. H.D.F.C. Agro Journal Insurance Co. Ltd.] …*105**

उत्तराधिकार अधिनियम, भारतीय (1925 का 39), धारा 8 – हिन्दू पुरूष की संपत्ति – अभिनिर्धारित – यद्यपि मृत्यु की प्रतिकर राशि को एक हिन्दू पुरूष की संपत्ति अभिनिर्धारित नहीं किया जा सकता, तथापि यह स्पष्ट है कि हिन्दू पुरूष की संपत्ति सबसे पहले अनुसूची के वर्ग–I में विनिर्दिष्ट संबंधी होने वाले वारिसों को न्यागत की जाएगी एवं

यदि वर्ग–I का कोई वारिस नहीं है, तब अनुसूची के वर्ग–II में विनिर्दिष्ट संबंधी होने वाले वारिसों को जाएगी। (मनोज कुमार वि. एच.डी.एफ.सी. एग्रो जर्नल इंश्योरेंस कं. लि.)

…*105

***VAT Act, M.P. (20 of 2002), Section 37(5) and VAT Rules, M.P., 2006, Rule 48(1)(a) – Interest on Delayed Payment of Refund* – Held – If the amount of refund of tax is not made to assessee within period of 60 days from the date of passing of the order of refund, then Revenue is obliged to pay interest for the delay till the date of payment at the rate of 1% per month on the amount of refund – Despite clear mandatory provision, Revenue has delayed the payment from 30.01.2016 to 30.08.2017 – Petitioner entitled for interest for delayed payment – Petition allowed with cost. [Glory Creations (M/s.) Vs. Commercial Tax Officer] (DB)…1765**

वैट अधिनियम, म.प्र. (2002 का 20), धारा 37(5) एवं वैट नियम, म.प्र., 2006, नियम 48(1)(a) – प्रतिदाय के विलंबित भुगतान पर ब्याज – अभिनिर्धारित – यदि प्रतिदाय का आदेश पारित होने की दिनांक से 60 दिन के भीतर करदाता को कर के प्रतिदाय की राशि प्रदान नहीं की जाती है, तब विलंब के लिए प्रतिदाय की राशि पर 1% प्रतिमाह की दर से भुगतान दिनांक तक ब्याज का भुगतान करने के लिए राजस्व बाध्य है – स्पष्ट आज्ञापक उपबंध के बावजूद, राजस्व ने दिनांक 30.01.2016 से 30.08.2017 तक भुगतान में विलंब किया है – याची विलंबित भुगतान के लिए ब्याज का हकदार है – याचिका व्यय के साथ मंजूर। (ग्लोरी क्रियेशनस् (मे.) वि. कमर्शियल टैक्स ऑफिसर) **(DB)…1765**

***VAT Act, M.P. (20 of 2002), Section 37(5) and VAT Rules, M.P., 2006, Rule 48(1)(a) – Procedure* – Held – When Section 37 in mandatory terms obliges Revenue to pay interest on any delay beyond period of 60 days, then the procedural provision of Rule 48 or any Form for that matter cannot jeopardize the right of interest flowing from Section 37(5) of 2002 Act. [Glory Creations (M/s.) Vs. Commercial Tax Officer] (DB)…1765**

वैट अधिनियम, म.प्र. (2002 का 20), धारा 37(5) एवं वैट नियम, म.प्र., 2006, नियम 48(1)(a) – प्रक्रिया – अभिनिर्धारित – जब धारा 37 आज्ञापक रूप से राजस्व को 60 दिनों की अवधि से परे किसी विलंब पर ब्याज का भुगतान करने के लिए बाध्य करती है, तब धारा 48 का प्रक्रियात्मक उपबंध अथवा उस मामले के संबंध में कोई प्रारूप अधिनियम 2002 की धारा 37(5) से प्रवाहित होने वाले ब्याज के अधिकार को संकट में नहीं डाल सकता। (ग्लोरी क्रियेशनस् (मे.) वि. कमर्शियल टैक्स ऑफिसर) **(DB)…1765**

***VAT Rules, M.P., 2006, Rule 48(1)(a) – See – VAT Act, M.P., 2002, Section 37(5)* [Glory Creations (M/s.) Vs. Commercial Tax Officer] (DB)…1765**

INDEX

* * * * *

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

JOURNAL SECTION

FAREWELL

HON'BLE SMT. JUSTICE NANDITA DUBEY

Born on September 17, 1961 at Gwalior. Did B.Sc. in the year 1981and M.A. Economics in the year 1983 from Bhopal University. Did LL.B. in the year 2001 from Jiwaji University Gwalior. Practiced independently before the High Court, District Level Courts and also at various Tribunals Commissions, etc. especially in Constitutional matters, Debts-recovery related matters, Civil matters, Criminal matters, Corporate matters, Industrial and Labour matters. Was Standing Counsel for various Banks, Corporations, Financial institution. Appointed as the Hon. Secretary of "Core Consultative Group" and subsequently as Convenor of the Complaint cell for Gwalior & Chambal Divisions & worked actively as a human rights activist under the umbrella and patronage of the M.P. Human Rights Commission from year 2000 to 2004. Elevated as Additional Judge of the High Court of Madhya Pradesh, took oath on April 07, 2016. Sworn in as Judge of the Madhya Pradesh High Court on 17.03.2018 and demitted office on September 16, 2023.

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

J/140

FAREWELL OVATION TO HON'BLE SMT. JUSTICE NANDITA DUBEY, GIVEN ON 15.09.2023, IN THE COURT HALL NO.1, HIGH COURT OF M.P., JABALPUR.

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

Smt. Justice Nandita Dubey was born on 17th of September 1961 at Gwalior. After completing her schooling from Bal Vidya Mandir, Indore in 1978, she obtained her B.Sc. degree in 1981 and M.A. Economics (Regional Planning & Eco. Growth) degree in 1983 from Bhopal University. She completed her graduation in Law (LL.B.) from Jiwaji University, Gwalior in the year 2001 and was a 5th rank holder. Thereafter, she was enrolled as an Advocate on 25th of August 2001 and started practice in various branches of law, i.e. Civil, Criminal, Constitutional, Industrial, Corporate and Labour matters at the High Court of Madhya Pradesh, District level courts and also at various Tribunals/ Commissions. She was a counsel for various institutions, i.e. IFCI Ltd., M.P. Housing Board, HDFC Bank, Union Bank, Tata Motors Finance Ltd., CITI Financials, KS Oils Ltd., TVS Motors Ltd., Indiabulls Financials Ltd., Cadburys Ltd., Agro Solvent Products Ltd. etc. She worked as the Honorary Secretary of "Core Consultative Group" and subsequently as Convenor of the complaint cell for Gwalior and Chambal Divisions. She also worked actively as a human rights activist under the M.P. Human Rights Commission from 2000 to 2004.

Her grandfather-in-law late Shri P.L. Dubey was a senior Advocate and Advocate General of Madhya Pradesh. Her father-in-law Shri Justice S.K. Dubey is a former Judge of the High Court of Madhya Pradesh.

She was elevated as an Additional Judge of the High Court of Madhya Pradesh on 7th of April 2016 and thereafter as a permanent Judge on 17th of March 2018.

She has not only contributed to the development of law on the judicial side, but has also made invaluable contribution for the betterment of administration of the High Court as well. I have found her assistance on administrative matters very useful. On the administrative side, she served in different capacities with various committees. She was Chairperson of the Museum Committee, Gender Sensitisation and Internal Complaints Committee for the High Court and Family Courts and Gram Nyayalaya Committee. She was also a member of the Administrative Committee (M.P. Judicial Service), High Court Infrastructure Committee, Governing Council Madhya Pradesh State Judicial Academy, District Court Establishment Committee, Committee for Law Clerks and Intern and Permanent Vulnerable Witnesses Deposition Centers Scheme Committee.

She not only possesses vast knowledge of law but also of subjects of general importance. Her wisdom, learning, sound knowledge of law and legal acumen is manifested through her judgments.

Throughout her distinguished career as a Judge, she has delivered numerous judgments on various jurisdictions which have immensely contributed towards the growth of procedural and substantive law. During her tenure as a Judge of the High Court of Madhya Pradesh, she has disposed off 15299 cases. She has dealt with all fields of law with equal proficiency. A number of her judgments are reported in law journals. The decisions rendered by her reflect her knowledge of law.

In the case of *Kishan Singh @ Krishnapal Singh Vs. State of Madhya Pradesh*, while acquitting the accused, it was held that inferences drawn by the Courts have to be on the basis of established cases and not on conjectures. The cause of death must be established from the medical evidence that has come on record. The circumstances of last seen together cannot by itself form the basis of holding the accused guilty of the offence. In the case of circumstantial evidence, not only the various links in the chain of evidence should be clearly established but the chain must be complete as to rule out the likelihood of innocence of the accused.

In *M/s Mohanlal Hargovinddas Bidi Udyog Private Ltd. Vs. Jyotsnaben P. Patel*, the question involved was whether the power of review not specifically conferred upon the Company Law Board by the Rules/ Regulations statutorily framed, could still be exercised by the Board by restoring to the inherent powers conferred upon it under Regulation 44 of the Company Law Board Regulations, 1991. While allowing the appeal, it was held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implications. Hence, the Company Law Board, acting as a quasi-judicial authority under a statute cannot exercise a power unless conferred specifically by the statute.

In *Smt. Amrita Bhatia and others Vs. Baljeet Singh Bhatia and others,* while considering the miscellaneous petition filed against the order passed by the Additional Collector under Section 15 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, it was held that the property in question is the self-acquired property of the parents and the daughter-in-law cannot claim a right of residence against her father-in-law. A major son, whether married or unmarried, has no legal right to live in the parents' house and he can live in that house only on the mercy of his parents as long as the parents allow him to do so. The parents cannot be compelled to allow the petitioners to stay in his house.

In *M. M. Khan Vs. The State of Madhya Pradesh through Special Police Establishment, Lokayukta*, while setting aside the conviction of the appellant under the provisions of the Prevention of Corruption Act, 1988. It was observed that it is a settled proposition of law that conviction of an accused cannot be based on an inference. In cases of bribery, the demand and acceptance of bribe money should be proved against the accused beyond all reasonable doubt either by direct evidence or even by circumstantial evidence, where each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard to complete the chain duly supported by appropriate evidence.

She has successfully completed her tenure as a Judge of this Court and has contributed to the dispensation of justice to the litigants. I found her to be courteous and dedicated to the cause of justice. She is admired and respected in the judicial fraternity. She will forever be remembered for her eminence and excellence as a Judge of this Court. I am sure that even after retirement, she would always be eager to lend her helping hand, whenever the situation arises.

I, on my behalf and on behalf of my esteemed sister and brother Judges wish Smt. Justice Nandita Dubey a very happy, contented and peaceful life.

Shri Prashant Singh, Advocate General, M.P., bids farewell:-

We have gathered here today to bid a very fond farewell to a remarkable lady Judge Hon'ble Mrs. Justice Nandita Dubey and to express our gratitude for dedicating her life to the pursuit of justice. As she embarks on this new chapter in life, it is an honour to celebrate the great legacy that she leaves behind. It is after serving this sacred institution for more than 7 years that she is demitting the Office of Judge of this Court.

Born in the renowned family of Mr. B.M.N. Singh, Retired Additional Director, Industries, she got married to late Shri Aditya Dubey, a well known Chartered Accountant in Gwalior. Her father-in-law Shri S.K. Dubey was a former Judge of Hon'ble High Court of M.P. and her grandfather-in-law late Shri P.L. Dubey was former Advocate General of M.P.

After obtaining her Law Degree in the year 2001, Mrs. Justice Dubey started practicing at Gwalior. From the very beginning of her career, she believed that the best way to find yourself is to lose yourself in the service of others. Looking to her legal acumen, knowledge and hard-work, she was elevated as Additional Judge of the High Court of M.P. on 7th of April 2016. The atmosphere in Mrs. Justice Dubey's Court was very cordial, however any request for adjournments were very politely declined. Mrs. Justice Dubey has been extremely

kind to the junior lawyers and encouraged them to argue cases. It is because of her hard-work, diligence, adherence to professional ethics and her polite nature that she has gained the respect, trust and love of all the members of the Bar. Law Officers of the State, who have had the privilege to appear before her, learned a lot from Mrs. Justice Dubey. Throughout her judicial career, Mrs. Justice Dubey has maintained the highest standards of integrity, wisdom and compassion while deciding a large number of cases and her contribution in minimising the pending cases is immense.

Mrs. Justice Dubey has not only dispensed justice but has also been a mentor and source of inspiration to many in the legal community. Her guidance and unwavering dedication to the principles of justice have touched the lives of countless individuals.

As we bid farewell to Mrs. Justice Dubey, let us remember the countless cases she presided over; the wisdom she shared in her judgments, and the immense respect that she commanded in her courtroom. Her legacy will continue to influence and guide those who follow in her footsteps.

Mrs. Justice Dubey, your retirement may mark the end of your tenure on the Bench, but it certainly does not mark the end of your deep impact. Your contributions to the legal field will be remembered and cherished for decades to come. We wish Mrs. Justice Dubey a retirement filled with joy, relaxation, and new endeavours.

I, as Advocate General of State of M.P. along with all law officers of the State and also on behalf of the State of M.P. wish Hon'ble Mrs. Justice Dubey good health and hope that she will live her life with the same spirit, passion and energy as she has lived till now.

May God almighty continue to bless her and her family for all times to come.

Thank you

Shri Pushpendra Yadav, Deputy Solicitor General, bids farewell :-

Today, we gather here to bid a heartfelt farewell to one of the most distinguished and accomplished members of our legal community, Hon'ble Smt. Justice Nandita Dubey as she retires from her esteemed position as a High Court Judge.

Your Ladyship appointed as an Additional Judge of the Hon'ble High Court on 7th of April 2016 and later on made permanent Judge on 17th of March 2018.

Your Ladyship has had a remarkable career in the judiciary, spanning 8 years, during which she has made significant contributions to the legal landscape of our nation. She has served with dedication, integrity, and an unwavering commitment to justice.

In the words of Dr. B.R. Ambedkar, "Law and order are the medicine of the body politic and when the body politic gets sick, medicine must be administered." Throughout her tenure, Your Ladyship has been a tireless and dedicated healer, administering the medicine of justice to our society.

Throughout her career, Your Ladyship has demonstrated exemplary legal acumen and a deep understanding of the law. She has presided over and also part of numerous cases that have had a profound impact on our legal system, setting important precedents and upholding the principles of justice.

As Your Ladyship embarks on this new chapter of her life in retirement, she leaves behind a legacy that will continue to inspire and guide us in our pursuit of justice. Her dedication to the cause of justice and the betterment of society serves as a shining example for all of us.

As Your Ladyship begins her well-deserved retirement. I hope that she finds joy, fulfillment, and peace in the years ahead.

In the end, I, on behalf of Union of India, Law Officers and on my own behalf, I extend my heartfelt thanks to Your Ladyship for her years of dedicated service to the judiciary. We extend our warmest wishes for a happy and healthy retirement.

Thank you.

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

With a heavy heart, we all have gathered here to bid farewell to Smt. Justice Nandita Dubey, who is demitting the office on 15th of September. 2023. I am privileged to get this rare opportunity to My Lord Smt. Justice Nandita Dubey who is an embodiment of success earned through sheer hard work, sincerity, and dedication.

After completing Law graduation, My Lord, got enrolled as an advocate in M.P. State Bar Council Madhya Pradesh in the year 2001 & thereafter started practice in law in the year 2001. She practiced in various branches of law. Hon'ble Smt. Justice Nandita Dubey was standing counsel for MP Housing Board, HDFC Bank and various companies.

She was appointed as the Hon. Secretary of "Core Consultative Group" and Convener of the Complaint cell for Gwalior and Chambal Divisions & worked actively as a Human Rights activist of the M.P. Human Rights Commission.

My Lord Justice Smt. Nandita Dubey was appointed as an Additional Judge of the High Court of Madhya Pradesh in the year 2016 and as a permanent Judge in the year 2018.

My Lord's greatest achievement is her acceptability by the advocates, litigants and common man. For a Judge, if they feel and realized that before that Court they shall get justice, then, Judge has succeeded and justifies occupying the chair of high office of the said judiciary. Smt. Justice Nandita Dubey has achieved the same.

My Lord Justice Smt. Nandita Dubey has never shirked from her responsibilities, in dispensation of justice, because of her best knowledge in every branch of law, she never faced any difficulty in dealing with law.

My Lord Smt. Justice Nandita Dubey is capable to solve any serious problem in a very light and easy mood. My Lord is very prompt in reaching to the correct conclusion and solution to any problem.

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

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

Today, we gather to bid farewell to a remarkable Judge, Justice Nandita Dubey ji. It is an honour to represent the Madhya Pradesh High Court Bar Association, Jabalpur, and express our profound appreciation for Justice Dubey's substantial contributions to the field of law and justice.

Justice Dubey has consistently maintained the dignity of the Court room, employing a unique approach to preserving decorum during proceedings. Her method of directing those who disrupt proceedings to arrange tea during the lunch break serves as a gentle reminder to all about the importance of respect and decorum in legal proceedings.

Justice Dubey assumed her role as a Judge of the High Court of Madhya Pradesh on April 7, 2016. Throughout her tenure, she has gained a reputation for fairness, integrity and compassion. She has made several significant legal

decisions that exemplify her unwavering commitment to justice. Allow me to highlight a few of them.

- She held that the right to free speech by granting bail to an individual who had criticized the Chief Minister on social media.

- She also upheld a widow's entitlement to inherit her late husband's property, even after her subsequent marriage. She ruled that the second marriage was not valid and that the widow deserved support and a share of the property.

We have been fortunate to have Justice Dubey with us for over seven years. She has not only been an exceptional Judge but also a mentor to young lawyers and those seeking her guidance.

On behalf of the M.P. High Court Bar Association, I wish to express our profound gratitude to Justice Nandita Dubey Ji. We extend our warmest wishes for a joyful retirement and robust health. Her conduct in the legal profession will be eternally cherished.

Thank you.

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

As the credentials and biography of My Lord has already been talked about by Hon'ble the Chief Justice and also by my companion advocates, I would like to take this opportunity to discuss more about My Lord's work life, as the Bar has seen it.

Today, when I stand here with a heavy heart to bid adieu to My Lord Hon'ble Justice Smt. Nandita Dubey, I am reminded of the words penned by the one of the great legal luminary- Nani Palkhiwala in the book named – *The Role of the Judiciary and Legal Profession.*

" To the Romans, Justice was a Goddess whose symbols were - a throne that tempests could not shake, a pulse that passion could not stir, eyes that were blind to any feeling of favour or ill will, and the sword that fell on all offenders with equal certainty and with impartial strength"

The above phrase is felicitous as they define My Lord's commitment and faithfulness proffered towards this institution.

I am truly honoured and humbled to be given this opportunity on behalf of the High Court Advocates' Bar Association to thank My Lord for her unwavering patience, respectful demeanour, her integrity which was above-board and most importantly encouraging the Junior members of the Bar. I find it hard to describe the unstinting support that we, at the Bar, have received from you.

I am grateful that on several occasions I had the opportunity to appear before My Lord- a Judge of great intellect. I say it with conviction that the M.P. High Court has immensely benefitted from the gamut of experiences which My Lord has acquired during her voyage from one legal harbour to another.

As My Lord is parting away from us, the Bar will be missing a great gesture of being with us for a *cup of coffee* at the end of the day, where she used to have a chat and give a word of encouragement to the young lawyers.

My Lord, although your absence will most certainly be felt, we would like to wish you the fondest of farewells. This moment is a little overwhelming, but as Seneca once said, *"Every new beginning comes from another beginning's end",* I, on behalf of the High Court Advocates' Bar Association, wish you a happy and healthy life ahead, and pray that the goodness of the Almighty be showered upon you and your family.

In the end, I would like to wish you a very Happy Birthday, in advance.

Thank you.

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

We have assembled here today to bid farewell to Hon'ble Justice Dubey who shall be demitting the high office of a Judge of this High Court on 16th of September 2023.

Hon'ble Justice Dubey, after completing her education, had an exemplary career as a lawyer. I had an opportunity to work with her in a case at Jabalpur and it was very clear to me that she was a very judicious and learned advocate and had great potential in her. Looking to her exceptional performance and ability and unsurpassed judicial acumen, My Lord was elevated as a Judge of this High Court in the year 2016.

Hon'ble Justice Dubey has played a major role in increasing the disposal of cases by deciding several complicated matters. She has also decided many legal issues which shall keep on guiding the legal fraternity for all times to come.

Hon'ble Justice Dubey was always a friend and guide to the junior lawyers who have learnt a lot, thereby, making themselves efficient. She has continuously maintained a cool and calm environment in her Court. The contribution of Hon'ble Justice Dubey to the judiciary shall be remembered by one and all.

The retirement as a Judge is not the end of a professional legal career and, in fact, is an opening to new and greater responsibilities in the future. I wish Hon'ble Justice Dubey all success for the upcoming new assignments.

On behalf of the Senior Advocates' Council and on my own behalf, I wish your honour a very happy retirement, good health and all the best for future.

Thank you.

Farewell Speech delivered by Hon'ble Smt. Justice Nandita Dubey :-

I am deeply humbled and honoured for the kind words and praises showered upon me. This is a bittersweet moment. Serving as a Judge of this August Institution has been an honour of my lifetime. In my short, but eventful legal career, I have accumulated so many fond memories that are going to last me a lifetime.

I believe, every person is born for a purpose, either to fulfill his or her own destiny or to help others to achieve theirs. I was a science student with no inclination towards law. I still remember the way my late husband, Shri Aditya Dubey, gently persuaded, a very reluctant me to pursue law, the way my late grandfather-in-law, Shri P.L. Dubey, explained the intricacies of law and the support and advice of my father-in-law, Retd. Hon'ble Shri Justice S.K. Dubey.

Just as I finished Law, Shri P.L. Dubey passed away, and I was forced to take over his office at the age of 40. I was scared and totally unprepared. I would not have survived had it not been for the relentless and selfless support of my late husband and guidance of my father-in-law.

It was my late husband's dream for me to become a High Court Judge one day. Though he was not there to share the joyous moment of my elevation. When I look back, it seems that the purpose of his life was to promote and see me sitting on the bench. He was my pillar of strength till the very end, and after his untimely demise, my daughters Shreya and Stuti and my sons-in-law Sitikanth and Nakul took over that role. I have my deepest gratitude for my family for standing by me through thick and thin, for understanding and bearing with me for not giving them enough time.

So I take this opportunity to express my gratitude to my parents Shri B.N. Singh & Late Uma Singh who have taught me to be always upright, humble and compassionate. To my late husband, for envisioning that I am capable of taking up this role, my late grandfather-in-law for placing his faith in me and my father-in-law, who kept me motivated throughout this journey.

I have no words, to express my feelings, for my judicial side of family as well as to this Bar, which has become my extended family. All of you have supported and helped me, in one way or another in my short journey as a Judge.

I would like to thank Hon'ble Shri Justice A.M. Khanwilkar, Hon'ble Shri Justice J.K. Maheshwari, Hon'ble the Chief Justice Shri Ravi Malimathji with whom I have shared the Bench today and who has always guided and supported me, Hon'ble Shri Justice Hemant Gupta, Hon'ble Shri Justice Rajendra Menon, Late Hon'ble Shri Justice S.K. Seth, Hon'ble Shri Justice P.K. Jaiswal, Hon'ble Shri Justice R.S. Jha, Hon'ble Shri Justice Sanjay Yadav, Hon'ble Shri Justice Satish Chandra Sharma, Hon'ble Shri Justice Prakash Shrivastava, Hon'ble Shri Justice Sujoy Paul, Hon'ble Shri Justice Rohit Arya, Hon'ble Shri Justice Atul Sreedharan, Hon'ble Shri Justice H.P. Singh, Hon'ble Shri Justice J.P. Gupta, Hon'ble Shri Justice Vijay Kumar Shukla, Hon'ble Shri Justice Subodh Abhyankar, Hon'ble Shri Justice Sanjay Dwivedi, Hon'ble Shri Justice Rajeev Kumar Dubey, Hon'ble Shri Justice Virender Singh, Hon'ble Shri Justice S.K. Palo and Smt. Justice Anjuli Palo, Hon'ble Shri Justice Vishal Mishra, Hon'ble Shri Justice D.K. Paliwal and Hon'ble Shri Justice Arun Sharma, with whom, I have had the honour to share the bench.

I am also thankful to Hon'ble Shri Justice Sheel Nagu, the Administrative Judge and my esteemed colleagues on the Bench for their shared wisdom, their unwavering support and the lively tea club debates. The knowledge and insights, that I have gained from you all is invaluable.

And to the members of the Bar, I thank you for bearing with me patiently and for gracefully accepting the coffee penalties. My endeavour has always been to make the atmosphere in the Court room a little relaxed, especially for the young lawyers, for I know, they are always under great pressure and reluctant to argue. I have always maintained this and urge the senior members of the Bar to continue promoting the juniors to argue independently. A little push and encouragement from your end is all that is needed to enable them to go a long way.

To the Registry officers and the doctors, thank you for your valuable support during my tenure.

Thanks, to my personal staff, Ravi Shrivastava, Jitin Chourasia, Geetha Nair, Manzoor Ahmed, Bharti Gadge, Ashish Koshta, Sharanjeet Kaur, Reader Surendra Richharia, Assistant Protocol Officer Pradeep Sahu, Data Entry Operator Sourabh Sahu, Girish Wagh, Asstt. Data Base Administrator and other I.T. personnels, and my previous and present law clerks, Arvind Patel, Anil Yadav, Riya Agrawal, Shagufta Rehman and Dharmendra Kumar Sen, my PSOs, Umesh Prasad Rajak, Sushil Kumar Dwivedi and my earlier PSO Garun Sharma, my driver Dilip Gautam, and ushers Surendra Patel and Sumit Kannojia, who have given their unwavering support and worked tirelessly to ensure that I perform my duties and functions smoothly.

I also thank all the Guards of SAF, 8th Battalion, Chhindwara and 6th Battalion, Jabalpur, deputed at my residence and my entire household staff who have worked with me during my stay here.

Today, I am demitting this office with gratitude and satisfaction of having, lived by the oath I took. Each case that came before me was a reminder of the profound impact my decisions would have on the lives of individuals and on society at large. I am content that I have remained firm in my commitment to ensure that justice is served fairly, impartially and consistently.

My role as a Judge of this High Court ends today. I have to move on a new path, may be I am needed somewhere else to help others to achieve their destiny as I was helped by my late husband to achieve mine.

I again thank you all for your kind words and the warm welcome that has been extended to me.

JAI HIND

FAREWELL

HON'BLE MR. JUSTICE DEEPAK KUMAR AGARWAL

Born on September 21, 1961. Did B.Sc., LL.B. and joined Judicial Service as Civil Judge Class-II on September 01, 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 III Civil Judge Class-I & II A.C.J.M., Indore. Posted as I Civil Judge Class-I and C.J.M., Indore in the year 1999. Promoted as Officiating District Judge in Higher Judicial Service on August 07, 2000 and was posted as I A.D.J., Waraseoni. Posted as I A.D.J., Sagar in the year 2005. Was granted Selection Grade Scale w.e.f. 01.08.2008. Posted as II A.D.J., Hoshangabad on August 12, 2008. Posted as II A.D.J. & Special Judge under N.D.P.S. Act in May 2009. Posted as President, District Consumer Forum, Mandla on October 06, 2009. Posted as XII A.D.J., Indore on October 26, 2009. Posted as II A.D.J., Indore in the year 2011. Posted as Special Judge SC/ST (P.A.) Act & I Additional Judge to I A.D.J. at Bhind in the year 2012 and thereafter also as Special Judge Dacoity Act, NDPS Act in the same year. Worked also as Special Judge, NIA Act in the year 2013 and as Special Judge, Vyapam and CBI in the year 2015. Posted as District & Sessions Judge, Balaghat in April 2016 and thereafter also as Special Judge, Commercial Court in June 2016 at Balaghat. Was granted Super Time Scale w.e.f. 03.10.2016. Posted as District & Sessions Judge, Gwalior from December 01, 2018 till elevation. Elevated as Judge of the High Court of Madhya Pradesh on June 25, 2021 and demitted office on September 20, 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 DEEPAK KUMAR AGARWAL, GIVEN ON 20.09.2023, AT THE HIGH COURT OF M.P., BENCH 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 Deepak Kumar Agarwal on the eve of his superannuation as Judge of this Court, who has dedicated his life to the pursuit of justice. It is with mixed emotions that we say goodbye to him.

His Lordship has had a venerable and scintillating career. He was born on 21st of September, 1961. A bright student, he did his Graduation in Science in 1981 and Graduation in law in the year 1985. He was then selected for M.P. Judicial Services in the year 1987 and joined as Civil Judge Class II. Thereafter, he was promoted as Civil Judge Class I in the year 1994. Ascending the success ladder with ease and confidence, he went on to become CJM/ACJM in 1997, officiating District Judge in Higher Judicial Services in the year 2000. He was granted Selection Grade in 2009 and Super Time Scale in 2016. He was then appointed as District Judge and held that post till his elevation as Judge of High Court of M.P. on 25.06.2021.

I have had the privilege of acquaintance and association with His Lordship in Division Bench and otherwise. A virtuous, smiley and affable personality, His Lordship has always been gentle, savvy and sagacious. Throughout his tenure on the Bench, he has been an embodiment of all the desirable qualities reasonably expected of a Judge. His Lordship's lucid pronouncements speak of his panoramic approach in sub-serving the cause of justice. His unwavering commitment has left an indelible mark on our legal community. He has demonstrated an untiring dedication to the pursuit of justice and a remarkable ability to balance the scales of justice with compassion and empathy. Not only on judicial side, His Lordship's fine sense of discernment has been well explicit in administrative matters as well. His Lordship has always been equanimous while diligently performing his judicial duties with dignity, rectitude and aplomb. His willingness to share knowledge and guide generation of young lawyers has fostered a sense of mutual respect, trust and professional growth within our legal community.

His Lordship is full of compassion and tender heart. He has always been altruistic and instrumental in addressing the cause of hapless people on and off the dias. He is a deeply religious person, as well as, a philanthropist, who believes in bringing harmony in the society by indulging in silent charity. His Lordship has had a vast judicial career during which he has rendered several notable and conspicuous judgments of high precedential value in almost all domains of litigation.

The high ethical values of His Lordship have got imbibed in his son as well. His son Shri Utkarsh Agarwal is an IES and working as Divisional Signal & Telecommunication Engineer (Construction), DRM Office, Bhopal.

His Lordship's absence on the Bench will be deeply felt.

At this juncture, I am reminded of a famous quote of Betty Sullivan, American Scientist & Biochemist-

"There is a whole new kind of life ahead, full of experiences just waiting to happen. Some call it retirement, I call it bliss."

Superannuation, in fact, marks the unveiling of interesting vistas in life. I am sure, Justice Agarwal would make most of his time hereafter in creative pursuits, so also with respected Madam Smt. Jyotsna Agarwal, his better half, who is present amongst us here and has been a source of strength for him, and other family members.

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

My God bestow on them choicest of His blessings for all time to come.

Thank you. God bless you.

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

माननीय न्यायमूर्ति श्री दीपक कुमार अग्रवाल, उच्च न्यायालय के न्यायाधीश पद से दिनांक 20 सितम्बर को सेवा निवृत्त होने जा रहे है। माननीय न्यायमूर्ति का जन्म 21 सितंबर 1961 को स्व. श्री कैलाश चंद्र अग्रवाल व स्व. श्रीमती शांता अग्रवाल के पुत्र के रूप में हुआ। माननीय न्यायमूर्ति द्वारा सन् 1981 में अपनी स्नातक डिग्री बी.एस.सी में प्राप्त करने उपरांत एल.एल.बी की डिग्री सन् 1985 में प्राप्त की। माननीय न्यायमूर्ति, न्यायिक सेवा में 1 सितंबर, 1987 को सिविल जज वर्ग–II के रूप में नियुक्त हुए व सन् 1994 में सिविल जज वर्ग–I के रूप में पदोन्नति प्राप्त की और सन् 1997 में सी.जे.एम. के रूप में पदोन्नति प्राप्त की। माननीय न्यायमूर्ति ने सन् 2000 में हायर ज्यूडिशियल सेवा में पदोन्नति प्राप्त की। उन्हें 2009 में सिलेक्शन ग्रेड स्केल और 2016 में सुपर टाइम स्केल प्रदान किया गया। माननीय न्यायमूर्ति न्यायिक कार्यकाल के दौरान विभिन्न पदों पर नरसिंहपुर, लखनादोन (सिवनी), रतलाम, इंदौर, वारासिवनी (बालाघाट), सागर, होशंगाबाद, मंडला, भिंड, बालाघाट और ग्वालियर में पदस्थ रहे।

25 जून, 2021 को माननीय न्यायमूर्ति ने म.प्र. उच्च न्यायालय के न्यायाधिपति के पद की शपथ ली।

एक न्यायाधीश के लिए सभी दबावों और बाधाओं को झेलना और सभी बाधाओं के खिलाफ बहादुरी से खड़े होना, यह आपका महत्वपूर्ण गुण है, जो माननीय न्यायमूर्ति में प्रतिबिंबित होता है।

माननीय आपने सम्महोनकारी व्यक्तित्व, सदगुण एवं गंभीरता से न्यायदान कर अपनी अमिट छाप छोड़ी है, जिससे हम बरसो तक आपको याद रखेंगे।

माननीय आपके द्वारा कनिष्ठ अभिभाषकों को भी प्रोत्साहित किया गया है, और नवीन अभिभाषकों के विकास में भी आपका महत्वपूर्ण योगदान रहा है एवं आपके द्वारा प्रकरणों का त्वरित निराकरण किया गया है।

माननीय आप केवल न्यायाधीश के पद से सेवा निवृत्त होने जा रहे है, शीघ्र ही आपके दूसरे कार्यकाल की शुरूआत है, आपसे आशा करता हूँ कि आप नए अभिभाषकगणों को मार्गदर्शन दे एवं समाज के विकास में महत्वूपर्ण योगदान करने हेतु आपसे निवेदन है।

मैं, आपनी ओर से एवं ग्वालियर उच्च न्यायालय अभिभाषक संघ के प्रत्येक अधिवक्ता की ओर से, ईश्वर से आपके स्वस्थ एवं उज्जवल भविष्य की कामना करता हूँ।

Shri Ankur Mody, Additional Advocate General, M.P., bids farewell :-

Today we have assembled here to bid farewell to My Lord, Hon'ble Shri Justice Deepak Kumar Agarwal, who demits the office of the Judge of this Hon'ble Court after long and distinguished career. My Lord Shri Justice Deepak Kumar Agarwal was born on 21st of September 1961. After completing primary education, His Lordship obtained the degree of B.Sc. in 1981 and thereafter, My Lord completed his LL.B in 1985. My Lord Justice Agarwal had joined Judicial Services as a Civil Judge Class-II on 1st of September 1987 and was subsequently promoted as a Civil Judge, Class-I in 1994 and as CJM/ACJM in 1997.

My Lord was promoted as officiating District Judge in Higher Judicial Service in the year 2000 and was granted selection grade scale in 2009 and was granted super time scale in 2016. He was appointed as District Judge in April 2016 and his first posting was in Balaghat. He 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 his short period of the tenure, was a great achievement and could only have been achieved with strong a judicial commitment and a fine sense of justice. My Lord's daily rate of disposal of cases was exceedingly high and all cases were decided with an element of compassion and equity.

My Lord mostly had a criminal roster assigned to him and during this time the lawyers of this Bar practicing of the criminal side exceptionally benefited 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 Deepak Kumar Agarwal for his service to this Court. 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 fulfilling life.

Thank you.

Shri Prem Singh Bhadouria, Chairman, State Bar Council of M.P., bids farewell :-

आज हम सभी यहां माननीय न्यायमूर्ति श्री दीपक कुमार अग्रवाल जी के सेवानिवृत्ति पर आयोजित विदायी समारोह में एकत्रित हुए हैं।

माननीय न्यायमूर्ति श्री दीपक कुमार अग्रवाल जी का जन्म दिनांक 21.09.1961 को स्व. श्री कैलाशचंद्र एवं स्व. श्रीमती शांता अग्रवाल के पुत्र के रूप में हुआ था। माननीय न्यायमूर्ति द्वारा वर्ष 1981 स्नातक एवं 1985 में विधि स्नातक की । उपाधि प्राप्त की माननीय जी ने वर्ष 1987 में न्यायिक सेवा में व्यवहार न्यायाधीश वर्ग–2 के रूप में सेवा प्रारंभ की । उसके उपरांत समय–समय पर पदोन्नति प्राप्त कर विभिन्न–विभिन्न न्यायिक पदों पर रहते हुए कार्य किया। माननीय को वर्ष 2000 में उच्च न्यायिक सेवा में पदोन्नत किया गया। इस दौरान आपने नरसिंगगढ़, लखनादौन, रतलाम, इंदौर, वारा सिवनी, सागर, होशंगाबाद, बालाघाट एवं ग्वालियर आदि जिलो में अपर जिला न्यायाधीश एवं प्रधान जिला एवं सत्र न्यायाधीश के रूप में अपनी सेवायें दी। माननीय न्यायाधिपति को उनकी न्यायिक सेवा एवं कर्तव्यनिष्ठा को ध्यान में रखते हुए दिनांक 25.06.2021 को इस न्याय के मंदिर के माननीय न्यायमूर्ति के रूप में नियुक्त किया गया।

माननीय न्यायाधिपति द्वारा म.प्र. उच्च न्यायालय खण्डपीठ ग्वालियर में न्यायाधीश के पद पर रहते हुए बड़ी संख्या में न्यायिक प्रकरणों का निराकरण किया गया। माननीय न्यायाधिपति द्वारा पारित न्यायदृष्टांत निश्चित ही विधि जगत के लिए मार्गदर्शी सिद्ध होंगें, सेवा निवृत्ति के उपरांत माननीय न्यायमूर्ति से आग्रह है कि नवीन अभिभाषकों को अपने ज्ञान एवं अनुभव के आधार पर उनके उत्थान के लिए एवं दीन–हीन की सेवा में अपना योगदान देंगें।

माननीय की सेवानिवृत्ति पर मैं अपनी ओर से एवं मध्यप्रदेश राज्य अधिवक्ता परिषद के प्रत्येक सदस्य की ओर से परमात्मा से उनके सुखमय जीवन एवं दीर्घायु की कामना करता हूँ।

धन्यवाद।

Farewell Speech delivered by Hon'ble Mr. Justice Deepak Kumar Agarwal :-

मेरे द्वारा अपनी न्यायिक सेवा एवं उच्च न्यायालय के न्यायाधिपति के रूप में 36 वर्ष से अधिक का कार्यकाल पूरा किया गया है। मैं ईश्वर एवं अपने माता–पिता को धन्यवाद अदा करता हूं कि उनके आशीर्वाद एवं प्रेरणा से सिविल जज द्वितीय श्रेणी के पद पर दिनांक 01.09.1987 को नियुक्त होकर सीढ़ी–दर–सीढ़ी चढ़ते हुये संघर्षमय न्यायिक जीवन पूरा करते हुये दिनांक 25.06. 2021 को इस मुकाम पर पहुंच सका। मुझे माननीय उच्च न्यायालय के न्यायाधिपति के रूप में सेवा करने का लगभग 2 वर्ष 3 माह का अवसर प्राप्त हुआ। मैंने दृढ़ निश्चय किया था कि ईश्वर ने मुझे यहां तक पहुंचाया है, इसलिये मैं ईश्वर को यह अवसर नहीं दूंगा कि उसने नॉन परफॉरमेंस असेट (NPA) को एलीवेट किया। मैंने लोगों की यह धारणा कि, न्यायमूर्ति जो जिला न्यायालय से एलीवेट होकर आते हैं, जिन्हें उच्च न्यायालय में कार्य करने का कम समय रहता है, वे अच्छा आउटपुट नहीं दे पाते, को झुठलाने का प्रयास किया है। उक्त अल्पावधि में मेरे द्वारा कुल 11,445 प्रकरणों का निराकरण किया गया है, जिनमें 882 सिविल प्रकृति, 982 रिट प्रकृति एवं 9528 आपराधिक प्रकृति के प्रकरण शामिल हैं। सिविल प्रकृति के प्रकरणों में 75 सेकेण्ड अपील, 56 फर्स्ट अपील, 468 मोटर दुर्घटना से संबंधित अपील एवं 19 सिविल रिवीजन शामिल हैं। इसी तरह आपराधिक प्रकृति के प्रकरणों में 824 क्रिमिनल अपील, 743 क्रिमिनल रिवीजन, 7961 एमसीआरसी शामिल हैं। उक्त प्रकरणों में 621 पांच वर्ष पुराने, 455 दस वर्ष पुराने, 176 पन्द्रह वर्ष पुराने, 04 बीस वर्ष पुराने, कुल 1256 प्रकरण शामिल हैं।

मैंने दिनांक 01.06.2023 को वेकेशन जज के रूप में 171 प्रकरणों का निराकरण किया, जो अपने आप में कीर्तिमान है। मैंने जिस दिन न्यायाधिपति के रूप में शपथ ली थी, उसी दिन से मेरे दिल में यह अरमान था कि मैं इस न्यायिक आसन पर बैठकर अधिक से अधिक लोगों को न्याय प्रदान करने का प्रयास करूंगा। इसी जुनून में दिनांक 23 मार्च 2023 से 28 मार्च 2023 तक, जब अधिवक्तागण कार्य से विरत थे, तब भी मैं समय से न्यायालय में बैठकर न्यायालय समय तक कार्य करता था और उक्त अवधि में मेरा न्यायालय कक्ष पक्षकारों से खचाखच भरा रहता था, उक्त पांच दिनों की अवधि में मेरे द्वारा 16 क्रिमिनल अपील, 31 क्रिमिनल रिवीजन, 192 एमसीआरसी, कुल 239 प्रकरणों का निराकरण किया गया।

उपरोक्त निराकृत प्रकरणों का श्रेय मैं अपने–आप लूं, तो यह मेरे लिये बेईमानी होगी, इसके लिये उच्च न्यायालय अभिभाषक संघ के अधिवक्तागण भी बधाई के पात्र हैं, क्योंकि उनके द्वारा उक्त प्रकरणों के निराकरण में मुझे कंधे से कंधा मिलाकर सहयोग किया गया, यहां तक कि वे न्यायालय समय समाप्त होने के बावजूद हमेशा कार्य करने के लिये तत्पर रहते थे, जिस कारण मैं उनके सहयोग को कभी नहीं भुला सकूंगा।

इस लंबी यात्रा को पूरी करने में मेरे स्वर्गीय माता–पिता श्री कैलाश चन्द्र अग्रवाल एवं श्रीमती शांता अग्रवाल, मेरी पत्नी श्रीमती ज्योत्सना अग्रवाल, पुत्र श्री उत्कर्ष अग्रवाल, मेरे ब्रदर इन लॉ

श्री अभय प्रकाश, सेवानिवृत्त अतिरिक्त महासचिव बैंगलोर (कर्नाटक), मेरी बहन बीना प्रकाश, मेरे बड़े भाई श्री विपिन अग्रवाल, मेरे भतीजे एडवोकेट श्री अनुज अग्रवाल, मेरे साले श्री राजेन्द्र गोयल सेवानिवृत्त आई0ए0एस0, श्री संजीव गोयल वरिष्ठ अधिवक्ता एवं उनके परिवार का सहयोग रहा है।

मैं न्यायाधीश के पहले पायदान से उच्च न्यायालय के न्यायाधिपति के रूप में अपना न्यायिक कार्य ईमानदारी एवं लगन से अपनी पत्नी श्रीमती ज्योत्सना अग्रवाल के त्याग और बलिदान से सम्पादित कर सका। इस अवसर पर मैं सेवानिवृत्त न्यायाधिपति श्री एम0के0 मुद्गल को भी याद करना चाहूंगा, जिनसे मेरा वर्ष 1994 से सत्त सम्पर्क रहा है। मैं उच्च न्यायालय के न्यायाधिपति के रूप में नियुक्ति तथा कार्यकाल में उनके मार्गदर्शन एवं सहयोग को कभी भुला नहीं सकूंगा। इस अवसर पर मैं अपने वरिष्ठ अधिवक्ता श्री आर0पी0 अग्रवाल को भी स्मरण करना चाहता हूं, जिनके पास मैंने लगभग एक वर्ष तक कार्य किया।

मैंने उच्च न्यायालय के न्यायाधिपति के रूप में, जो अनुभव लिया है उससे मैं एक ही निष्कर्ष पर पहुंचा हूं कि यदि न्यायाधीश की इच्छाशक्ति प्रबल हो, तो समय प्रबंधन को ध्यान में रखते हुये अधिक से अधिक नये प्रकरणों के साथ पुराने प्रकरणों का भी निराकरण किया जा सकता है। इस उच्च न्यायालय में मेरे मतानुसार 50–60 प्रतिशत प्रकरण अनावश्यक लंबित हैं, जिन्हें मात्र चिन्हित कर उनका शीघ्र निराकरण किया जा सकता है। हम देश की प्रत्येक संस्था से उम्मीद करते हैं कि हमारा कार्य समय से हो, ऐसे ही न्यायालय में पक्षकार इसी उम्मीद से आता है कि उसके प्रकरण का समय से निराकरण हो।

मेरी नियुक्ति जब न्यायाधिपति के रूप में इस न्यायालय में हुई थी, तो प्रारंभ में मैं घबरा रहा था और मुझे आशंका थी कि मैं उच्च न्यायालय में अच्छे तरीके से काम कर पाऊंगा या नहीं, परन्तु जब मैं उच्च न्यायालय में आया तो मुझे मेरे पर्सनल स्टॉफ श्री मधु सूदन प्रसाद, श्री महेन्द्र कुमार बारीक, श्री योगेन्द्र ओझा, श्री राहुल सिंह परिहार, मोहम्मद साबिर, श्री राजेश मिश्रा, श्री मधु के.सी. ने कार्य करने में बहुत सहयोग किया और इन्हीं के सहयोग से मैं इतना अधिक डिस्पोजल प्राप्त कर सका।

यह मेरे लिये सौभाग्य की बात है कि माननीय न्यायमूर्ति श्री रोहित आर्या साहब, मैं जब भिण्ड़ में विशेष न्यायाधीश के पद पर पदस्थ था, तब वर्ष 2014 से 2016 तक मेरे पोर्टफोलियो जज रहे और मैंने न्यायाधिपति की शपथ लेने के उपरांत उनके साथ जबलपुर में दो दिन सिटिंग की थी और आज मैं न्यायाधिपति के पद से उनके साथ बैठकर पदमुक्त हो रहा हूं। पिछले लगभग दो वर्षों से श्री रोहित आर्या साहब ग्वालियर खण्डपीठ के प्रशासनिक न्यायाधीश हैं। उन्होंने उच्च न्यायालय में सभी न्यायाधीशों को इतना अच्छा माहौल दिया है जिस कारण सभी न्यायाधीशगण स्वतंत्र और निर्भीक रूप से कार्य कर पा रहे हैं। वे हमसें काफी वरिष्ठ हैं, लेकिन उन्होंने हमें कभी यह एहसास नहीं होने दिया, इस कारण सभी न्यायाधीशगण अपनी बात रखने के लिये स्वतंत्र रहते हैं।

दुनिया कितनी छोटी हैं, इसका मैं एक वास्तविक उदाहरण इस अवसर पर देना उचित समझता हूं। मैं वर्ष 2012 से 2016 तक विशेष न्यायाधीश के रूप में भिण्ड में पदस्थ था। हमारे पोर्टफोलियो जज, जिस आवास में मैं अभी रह रहा हूं, उसी में निवास करते थे। शिष्टाचार के नाते दिसम्बर, 2015 में मैं अपने जिला न्यायाधीश के साथ उनसे मिलने आया। दिये गये समय से पहले पहुंचने के कारण हमें पोर्टफोलियो जज साहब का इंतजार करना पड़ा और ईश्वर की कृपा देखिये कि मैं एलीवेट होकर ग्वालियर में पदस्थ हुआ, तो उसी आवास में मैंने न्यायाधिपति के रूप में निवास किया। यह मेरे लिये बड़े गौरव का विषय है।

मैं उच्च न्यायालय में न्यायाधिपति बनने के पूर्व ग्वालियर जिला स्थापना में प्रधान जिला न्यायाधीश के रूप में ढाई वर्ष तक पदस्थ रहा। इस अवधि में मुझे सफलतापूर्वक कार्य करने में मेरे स्टेनो श्री चन्द्रकांत मिश्रा, असिस्टेंट एकाउंटेंट श्री राकेश राठौर, नायब नाजिर श्री सुरेश रजक सिस्टम ऑफिसर, श्री पीयूष देशपाण्डे और न्यायालयीन कर्मी श्री प्रमोद सविता का भरपूर सहयोग प्राप्त हुआ, जिसे कारण मैं इन्फ्रास्ट्रक्चर पर ध्यान दे पाया।

श्री विजय कुमार पाठक, स्पेशल रेलवे मजिस्ट्रेट, ग्वालियर ने भी मुझे रेल द्वारा आवागमन में भरपूर सहयोग प्रदान किया है, जिसके लिये मैं उनका आभारी हूं।

श्री विनोद, जो मेरे ए0पी0ओ0 थे, उन्होंने मेरे कार्यकाल के दौरान प्रोटोकॉल ड्यूटी निभाते हुये मेरा भरपूर सहयोग किया।

डॉ0 आर0के0 चतुर्वेदी द्वारा मेरा व मेरे परिवार के सदस्यों के स्वास्थ्य का अच्छे से ध्यान रखा गया।

मेरे सिक्योरिटी स्टॉफ श्री सतेन्द्र शर्मा, श्री संजय यादव, वाहन चालक श्री रेनू मॉझी, बंगला स्टॉफ करन, संजय, राजीव, शिवानी एवं विद्या द्वारा मेरा एवं मेरे परिवार का अच्छे से ख्याल रखा गया है।

मेरे 36 वर्ष से अधिक के कार्यकाल में मुझे सभी वरिष्ठ न्यायाधीशों ने भरपूर सहयोग प्रदान किया, जिसके लिये मैं उनका आभारी हूं।

मैं व्यवहार न्यायाधीश वर्ग–2 से पदोन्नत होते–होते यहां तक पहुंचा हूं। विचारण न्यायालय भारतीय न्याय पद्धति की रीढ़ है और दूर–दूर तक गरीबों को वही न्याय प्रदान करती है, ऐसी स्थिति में विचारण न्यायालय के न्यायाधीशों का यह दायित्व और गंभीर हो जाता है कि वह प्रकरण के तथ्य और आयी हुयी साक्ष्य के आधार पर विधि के अनुसार प्रकरण में निर्णय पारित करें, विशेषकर आपराधिक प्रकरणों के निर्णयों में, क्योंकि यदि विचारण न्यायालय द्वारा किसी अभियुक्त को गलत सजा दे दी, तो उसका भविष्य अंधकारमय हो जात है क्योंकि अपील का निराकरण कोई निश्चित अवधि में नहीं हो पाता।

आप लोगों के साथ बिताया गया समय मेरे जीवन का स्वर्णिम समय रहा है। मैं भी एक इंसान हूं, हो सकता है कि मेरे न्यायिक कार्य व मेरी कार्यशैली से किसी को वेदना पहुंची हो, तो मैं उसके लिये क्षमा चाहता हूं।

आपके द्वारा दिये गये स्नेह और सम्मान के लिये मैं आप सभी को धन्यवाद देता हूं।

NOTES OF CASES SECTION

Short Note

**(100)*

Before Mr. Justice Dinesh Kumar Paliwal

MCRC No. 11514/2017 (Jabalpur) decided on 13 June, 2023

BHUPENDRA SINGH NOTEY (SH.) & ors. …Applicants

Vs.

STATE OF M.P. & anr. …Non- applicants

***A. Penal Code (45 of 1860), Sections 498-A, 506 & 294 r/w 34, Dowry Prohibition Act (28 of 1961), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of FIR & Charge-Sheet – FIR as a Counterblast* – Held – Perusal of FIR makes it clear that it has been filed after filing of divorce petition and after filing of complaint of harassment & torture against wife, by husband – FIR is as a counterblast of the divorce proceedings initiated by husband – Filing of report about some incident happened in 2007-2008, after a lapse of 9 years clearly appears to be an afterthought and abuse of process of law – Allegations are omnibus, bald and vague and are just made to implicate all family members – No specific date, time or place has been mentioned – *Prima facie* no case is made out – FIR and Charge-Sheet quashed – Application allowed.**

क. दण्ड संहिता (1860 का 45), धाराएँ 498–A, 506 व 294 सहपठित 34, दहेज प्रतिषेध अधिनियम (1961 का 28), धारा 3 व 4 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – प्रथम सूचना प्रतिवेदन व आरोप–पत्र का अभिखंडन – जवाबी कार्यवाही / प्रतिवाद के रूप में प्रथम सूचना प्रतिवेदन – अभिनिर्धारित – प्रथम सूचना प्रतिवेदन का परिशीलन यह स्पष्ट करता है कि विवाह–विच्छेद याचिका प्रस्तुत करने के पश्चात् तथा पति द्वारा पत्नी के विरूद्ध उत्पीड़न तथा यातना की शिकायत करने के पश्चात् इसे प्रस्तुत किया गया है – प्रथम सूचना प्रतिवेदन पति द्वारा आरंभ की गई विवाह विच्छेद कार्यवाही का प्रतिवाद / जवाबी कार्यवाही है – 2007–2008 में घटित किसी घटना के बारे में 9 वर्ष के बाद रिपोर्ट प्रस्तुत करना स्पष्ट रूप से सोच विचार उपरांत तथा विधि की प्रक्रिया का दुरूपयोग प्रतीत होता है – अभिकथन सर्वग्राही, कोरे तथा अस्पष्ट हैं तथा परिवार के सभी सदस्यों को फंसाने मात्र के लिए किए गए हैं – किसी विनिर्दिष्ट दिनांक, समय अथवा स्थान का उल्लेख नहीं किया गया है – प्रथम दृष्ट्या कोई प्रकरण नहीं बनता – प्रथम सूचना प्रतिवेदन तथा आरोप–पत्र अभिखंडित – आवेदन मंजूर।

***B. Penal Code (45 of 1860), Section 498-A and Criminal Procedure Code, 1973 (2 of 1974), Section 468 & 482 – Limitation* – Held – Offence u/S 498-A IPC is punishable with imprisonment which may extend to three years – Section 468 Cr.P.C. provides the period of limitation of 3 years, if offence is punishable with imprisonment for a term exceeding one year but not exceeding three years – In instant case FIR lodged by wife alleging incidents of almost 9 years back – It clearly appears to be an afterthought.**

ख. दण्ड संहिता (1860 का 45), धारा 498–A एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 468 व 482 – परिसीमा – अभिनिर्धारित – भा.दं.सं. की धारा 498–A के अंतर्गत अपराध ऐसी अवधि के कारावास से दण्डनीय है जो तीन वर्ष तक का हो सकेगा – दं.प्र.सं. की धारा 468 3 वर्ष की परिसीमा की अवधि उपबंधित करती है, यदि अपराध 1 वर्ष से अधिक परंतु 3 वर्ष से अनधिक कारावास से दण्डनीय है – प्रस्तुत प्रकरण में पत्नी द्वारा लगभग 9 वर्ष पूर्व की घटनाओं को अभिकथित करते हुए प्रथम सूचना प्रतिवेदन दर्ज किया गया है – यह स्पष्ट रूप से एक सोच–विचार उपरांत किया गया प्रतीत होता है।

Cases referred:

2022 SCC Online SC 162, 2012 (10) SCC 741, MCRC No. 16298/2017 decided on 11.03.2022, 2023 LiveLaw (SC) 26, 2007 AIR SCW 5933, (2012) 10 SCC 741, (2010) 10 SCC 673, (2010) 9 SCC 667, (2009) 10 SCC 184, CRA No. 900/2018 (Special Leave Petition (Criminal) No. 10350/2017), (1992) Supp. 1 SCC 335, (2015) 3 SCC 424.

Sourabh Sahu, for the applicants.
Pradeep Gupta, for the non-applicant No. 1/State.
Manoj Kumar, for the non-applicant No. 2.

Short Note

****(101)***

Before Mr. Justice Sanjay Dwivedi

WP No. 15668/2017 (Jabalpur) decided on 3 May, 2023

GANESH SINGH THAKUR …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

A. Service Law – Appointment – Availability of Vacant Post – **Held – Pursuant to an advertisement, petitioner applied for the said post and got selected – Later respondents refused to accept his joining on the ground that under some misconception, the said post was advertised and there is no such post available – Held – If for any reason, the post is not vacant, then R-1 shall create a supernumerary post for accommodating the petitioner – Respondent directed to accept the joining of petitioner and grant him seniority to the said post – Petition allowed.**

क. सेवा विधि – नियुक्ति – रिक्त पद की उपलब्धता – अभिनिर्धारित – एक विज्ञापन के अनुसरण में, याची ने कथित पद के लिए आवेदन किया तथा चयनित हुआ – बाद में प्रत्यर्थीगण ने उसके पदभार ग्रहण को स्वीकार करने से इस आधार पर मना कर दिया कि किसी भ्रम के अंतर्गत कथित पद को विज्ञापित किया गया था तथा ऐसा कोई पद उपलब्ध नहीं है – अभिनिर्धारित – यदि किसी कारण से पद रिक्त नहीं है, तब याची को समायोजित करने के लिए R–1 एक अधिसंख्य पद सृजित करेगा – प्रत्यर्थी को निदेशित किया जाता है कि याची का पदभार ग्रहण को स्वीकार करे तथा उसे कथित पद पर वरिष्ठता प्रदान करे – याचिका मंजूर।

B. ***Service Law – Appointment – Expiry of Select List*** **– Held – Apex Court concluded that if petitioner approaches the Court during the validity of the select list then relief claimed cannot be denied on the ground that the validity of the select list has expired during the period of litigation – Relief cannot be refused to which petitioner has been found entitled by the Court.**

ख. *सेवा विधि – नियुक्ति – चयन सूची का अवसान* – अभिनिर्धारित – उच्चतम न्यायालय ने निष्कर्षित किया कि यदि याची चयन सूची की विधिमान्यता के दौरान न्यायालय के समक्ष आता है तब चाहा गया अनुतोष इस आधार पर नकारा नहीं जा सकता कि चयन सूची की विधिमान्यता का मुकदमेबाजी की अवधि के दौरान अवसान हो गया है – अनुतोष, जिसके लिए याची को न्यायालय ने हकदार पाया है, को मना नहीं किया जा सकता।

Cases referred:

(2000) 3 SCC 699, 2009 (1) M.P.H.T. 284 (DB).

Ashish Shroti, for the petitioner.
L.A.S. Baghel, G.A. for the respondents.

Short Note
****(102)(DB)***
Before Mr. Justice Sujoy Paul & Mr. Justice Achal Kumar Paliwal
CRA No. 769/2012 (Jabalpur) decided on 24 August, 2023

KUSHAL BHARGAV …Appellant

Vs.

STATE OF M.P. …Respondent

A. ***Penal Code (45 of 1860), Sections 306, 376 & 506-B – Dying Declaration*** **– Held – From evidence it is established that at the time of recording dying declaration, prosecutrix was physically and mentally fit to give statement and it is not established that dying declaration is not voluntary and is a result of tutoring or any kind of pressure on prosecutrix – There is nothing in cross-examination of witness which would create doubt over the veracity/truthfulness of dying declaration – Appeal against conviction u/S 376 dismissed.**

क. *दण्ड संहिता (1860 का 45), धाराएँ 306, 376 व 506–B– मृत्युकालिक कथन* – अभिनिर्धारित – साक्ष्य से यह स्थापित होता है कि मृत्युकालिक कथन अभिलिखित करते समय, अभियोक्त्री कथन देने के लिए शारीरिक एवं मानसिक रूप से स्वस्थ थी एवं यह स्थापित नहीं होता कि मृत्युकालिक कथन स्वैच्छिक नहीं है तथा यह सिखाये जाने या अभियोक्त्री पर किसी प्रकार के दबाव का परिणाम है – साक्षी के प्रति–परीक्षण में ऐसा कुछ भी नहीं है जो कि मृत्युकालिक कथन की सत्यवादिता/सत्यता पर संदेह सृजित करे – धारा 376 के अंतर्गत दोषसिद्धि के विरूद्ध अपील खारिज।

B. ***Evidence Act (1 of 1872), Section 32 – Multiple Dying Declaration – Effect*** **– There is no such absolute principle that in each and every case, dying declaration first in time should be relied upon – Apex Court held that merely because there are two/multiple dying declarations, all dying declarations are not to be rejected – When there are multiple dying declaration, case must be decided on the facts of each case – Court will not be relieved of its duty to carefully examine the entirety of the material on record as also the circumstances surrounding the making of different dying declaration.**

ख. *साक्ष्य अधिनियम (1872 का 1), धारा 32 – अनेक मृत्युकालिक कथन – प्रभाव* – ऐसा कोई आत्यंतिक सिद्धांत नहीं है कि प्रत्येक प्रकरण में समय में पहले मृत्युकालिक कथन पर विश्वास किया जाना चाहिए – सर्वोच्च न्यायालय ने अभिनिर्धारित किया है कि मात्र चूंकि दो/अनेक मृत्युकालिक कथन हैं, सभी मृत्युकालिक कथनों को अस्वीकार नहीं किया जाएगा – जब अनेक मृत्युकालिक कथन हो, तो प्रकरण का विनिश्चय प्रत्येक प्रकरण के तथ्यों के आधार पर किया जाना चाहिए – न्यायालय, अभिलेख की सामग्री की संपूर्णता, साथ ही विभिन्न मृत्युकालिक कथन करने से जुड़ी परिस्थितियों का सावधानीपूर्वक परीक्षण करने के अपने कर्तव्य से मुक्त नहीं होगा।

C. ***Penal Code (45 of 1860), Section 306 & 376 – Ingredients of Offence*** **– Held – It cannot be said that appellant abated prosecutrix to commit suicide by the said act of rape – Act of rape may be the reason to commit suicide but that by itself cannot amount to abatement – Ingredients constituting offence u/S 306 are missing – Appellant acquitted of the charge u/S 306 IPC.**

ग. *दण्ड संहिता (1860 का 45), धारा 306 व 376 – अपराध के घटक* – अभिनिर्धारित – यह नहीं कहा जा सकता कि अपीलार्थी ने बलात्संग के कथित कृत्य द्वारा अभियोक्त्री को आत्महत्या करने हेतु दुष्प्रेरित किया – बलात्संग का कृत्य आत्महत्या कारित करने का कारण हो सकता है परंतु वह अपने आप में दुष्प्रेरण की कोटि में नहीं आता – धारा 306 के अंतर्गत अपराध गठित करने वाले घटक मौजूद नहीं हैं – अपीलार्थी भा.दं.सं. की धारा 306 के अंतर्गत आरोप से दोषमुक्त।

D. ***Penal Code (45 of 1860), Section 376 & 506-B – Verbal Threat*** **– Held – At the time of committing rape, appellant were not having any weapon – Said threat was merely a verbal threat which was not intended to be executed – Ingredients constituting offence u/S 506-B IPC are missing – Appellant acquitted of the charge u/S 506-B IPC.**

घ. *दण्ड संहिता (1860 का 45), धारा 376 व 506–B – मौखिक धमकी* – अभिनिर्धारित – बलात्संग कारित करते समय, अपीलार्थी के पास कोई शस्त्र नहीं था – कथित धमकी मात्र एक मौखिक धमकी थी जिसे कार्यांवित करने का आशय नहीं था – भा.दं.सं. की धारा 506–B के अंतर्गत अपराध गठित करने वाले घटक मौजूद नहीं हैं – अपीलार्थी को भा.दं.सं. की धारा 506–B के अंतर्गत आरोप से दोषमुक्त किया गया।

***E. Criminal Practice – Shav (dead body) Supurdgi Panchnama – Contents* – Held – In *shav (dead body) supurdgi* panchnama, reason/cause of death etc. are not required to be mentioned and only facts with respect to *supurdgi* of dead body are mentioned.**

ङ दाण्डिक पद्धति – शव सुपुर्दगी पंचनामा – अंतर्वस्तु – अभिनिर्धारित – शव सुपुर्दगी पंचनामा में, मृत्यु की वजह/कारण इत्यादि का उल्लेख करना अपेक्षित नहीं है एवं केवल शव की सुपुर्दगी के संबंध में तथ्यों का उल्लेख है।

The judgment of the Court was delivered by : **ACHAL KUMAR PALIWAL, J.**

Cases referred:

(2004) 8 SCC 153, (2017) 1 SCC 433, AIR 2022 SC 2322 (3-Judge Bench)-2022 Live Law (SC) 482, AIR 2001 SC 2944, AIR 1997 SC 768, (2022) 8 SCC 576, AIR 2021 SC 1290, (2022) 4 SCC 741, (2019) 8 SCC 779, (2001) 10 SCC 63, (2001) 1 SCC 652, (2020) 10 SCC 200-(3-Judge Bench), (2009) 6 SCC 605.

Manish Mishra, for the appellant.
A.N. Gupta, G.A. for the respondent.

Short Note
****(103)***
Before Mr. Justice Vivek Rusia
WP No. 4885/2007 (Indore) decided on 26 June, 2023

MALINI BAI (SMT.) …Petitioner

Vs.

M/S HOPE TEXTILE LTD. …Respondent

***A. Payment of Gratuity Act (39 of 1972), Section 2(A) & 4(2) – Calculation of Gratuity – Modes* – Held – As per Section 4(2), for every completed year of service and part thereof in excess of 6 months, the employer shall pay gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by employee – Deceased husband of petitioner was paid wages by virtue of agreement also till the date of death – Wages paid at the time of death are liable to be taken into consideration for payment of gratuity – Petition allowed.**

क. उपदान संदाय अधिनियम (1972 का 39), धारा 2(A) व 4(2) – उपदान की गणना – रीतियां – अभिनिर्धारित – धारा 4(2) के अनुसार, सेवा के प्रत्येक पूर्ण वर्ष एवं उसके 6 माह से अधिक भाग के लिए नियोक्ता, कर्मचारी द्वारा अंतिम बार ली गई मजदूरी की दर के आधार पर कर्मचारी को 15 दिनों की मजदूरी की दर से उपदान का भुगतान करेगा – याची के मृत पति को करार के आधार पर भी मृत्यु की तिथि तक मजदूरी का

भुगतान किया गया था – मृत्यु के समय भुगतान की गई मजदूरी उपदान का भुगतान करने के लिए विचार में लिये जाने योग्य है – याचिका मंजूर।

B. ***Payment of Gratuity Act (39 of 1972), Section 2(A) – Continuation of Service*** **– Held – An employee shall be said to be in continuous service if he has, for that period, been in uninterrupted service on account of sickness, accident, leave, lay off, strike or lockout etc.**

ख. *उपदान संदाय अधिनियम (1972 का 39), धारा 2(A) – सेवा की निरंतरता* – अभिनिर्धारित – किसी कर्मचारी को एक अवधि के लिए निरंतर सेवा में बने रहना कहा जाएगा यदि वह उस अवधि के लिए बीमारी, दुर्घटना, छुट्टी, कामबंदी, हड़ताल या तालाबंदी इत्यादि के कारण अविच्छिन्न सेवा में रहा हो।

Case referred:

1992 LLR 795.

None, for the petitioner.
Rohit Saboo, for the respondent.

Short Note
****(104)***
Before Mr. Justice Prem Narayan Singh
CRR No. 2391/2023 (Indore) decided on 26 June, 2023

MANALI …Applicant

Vs.

STATE OF M.P. …Non-applicant

A. ***Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 and Penal Code (45 of 1860), Section 409 & 420 – Ingredients of Offence*** **– Held – Keeping advance money of Rs. 10 lacs for a long time without any intention to execute the sale deed creates the dishonest intention to deceive the complainant which is a vital ingredient of cheating – Applicant is working as attorney or agent of her father hence charge u/S 409 is also warranting no interference – Revision dismissed.**

क. *दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 एवं दण्ड संहिता (1860 का 45), धारा 409 व 420 – अपराध के घटक* – अभिनिर्धारित – विक्रय विलेख निष्पादित करने के किसी आशय के बिना लंबे समय तक 10 लाख रू. की अग्रिम धनराशि रखना परिवादी से प्रवंचना करने का बेईमान आशय सृजित करता है जो कि छल का महत्वपूर्ण घटक है – आवेदक अपने पिता के अटर्नी अथवा अभिकर्ता के रूप में कार्य कर रही है इसलिए धारा 409 के अंतर्गत आरोप में भी हस्तक्षेप की कोई आवश्यकता नहीं है – पुनरीक्षण खारिज।

B. ***Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Considerations*** **– Held – At the stage of framing of charge the defence of**

accused cannot be considered – Court has to *prima facie* examine whether there is sufficient ground for proceeding against the accused – Apex Court concluded that at stage of framing of charges, probative value of material on record cannot be gone into and the material brought on record by prosecution has to be accepted as true at that stage.

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 227 व 228 – विचार किया जाना – अभिनिर्धारित – आरोप विरचना के प्रक्रम पर अभियुक्त के बचाव को विचार में नहीं लिया जा सकता – न्यायालय को प्रथम दृष्ट्या यह परीक्षण करना होगा कि क्या अभियुक्त के विरूद्ध कार्यवाही के लिए पर्याप्त आधार है – सर्वोच्च न्यायालय ने निष्कर्षित किया कि आरोपों की विरचना के प्रक्रम पर अभिलेख की सामग्री के प्रमाणक मूल्य को विचार में नहीं लिया जा सकता तथा अभियोजन द्वारा अभिलेख पर लाई गई सामग्री को उस प्रक्रम पर सत्य के रूप में स्वीकार करना होगा।

Cases referred:

2004 lawsuit SC 1408, 2016 Law suit SC 111, AIR 1997 SC 2041, (2008) 10 SCC 681, (2007) 5 SCC 403, (2008) 2 SCC 561, AIR 2022 SC 4218.

Pramod C. Nair, for the applicant.
Gourav Rawat, Dy. G.A. for the non-applicant.

Short Note
****(105)***
Before Mr. Justice G.S. Ahluwalia
MA No. 155/2019 (Jabalpur) decided on 17 April, 2023

MANOJ KUMAR & ors. …Appellants

Vs.

H.D.F.C. AGRO JOURNAL INSURANCE CO. LTD. & ors. …Respondents

***A. Motor Vehicles Act (59 of 1988), Section 166 – Legal Representatives & Dependents* – Held – Appellants 1, 3 & 4 who are father, brother and grandmother of deceased are not the dependents of the deceased who was a bachelor – Since deceased was a bachelor, except mother, no other class-I heir is available – Appeal dismissed.**

क. मोटर यान अधिनियम (1988 का 59), धारा 166 – विधिक प्रतिनिधि व आश्रित – अभिनिर्धारित – अपीलार्थीगण क्र. 1, 3 व 4 जो कि मृतक के पिता, भाई एवं दादी हैं, वे उस मृतक के आश्रित नहीं हैं जो कि कुंवारा था – चूंकि मृतक कुंवारा था, माता के सिवाय कोई अन्य वर्ग–I वारिस उपलब्ध नहीं – अपील खारिज।

***B. Motor Vehicles Act (59 of 1988), Section 166 – Court Fees* – Held – Court Fees is payable at the time of presentation of the appeal.**

ख. मोटर यान अधिनियम (1988 का 59), धारा 166 – न्यायालय फीस – अभिनिर्धारित – न्यायालय फीस अपील की प्रस्तुति के समय देय है।

***C. Succession Act, Indian (39 of 1925), Section 8 – Property of Male Hindu* – Held – Although compensation amount of death cannot be held to be a property of a male hindu, however it is clear that property of a Hindu male shall devolve firstly upon the heirs being relatives specified in class-I of Schedule and if there is no heir of Class-I, then upon the heirs being relatives specified in Class-II of Schedule.**

ग. उत्तराधिकार अधिनियम, भारतीय (1925 का 39), धारा 8 – हिन्दू पुरूष की संपत्ति – अभिनिर्धारित – यद्यपि मृत्यु की प्रतिकर राशि को एक हिन्दू पुरूष की संपत्ति अभिनिर्धारित नहीं किया जा सकता, तथापि यह स्पष्ट है कि हिन्दू पुरूष की संपत्ति सबसे पहले अनुसूची के वर्ग–**I** में विनिर्दिष्ट संबंधी होने वाले वारिसों को न्यागत की जाएगी एवं यदि वर्ग–**I** का कोई वारिस नहीं है, तब अनुसूची के वर्ग–**II** में विनिर्दिष्ट संबंधी होने वाले वारिसों को जाएगी।

Cases referred:

(2017) 16 SCC 680, (2001) 8 SCC 197, 2007 (2) ACCD 863 (SC), 2014 ACJ (1) 554, 2014 ACJ (2) 1101, WP No. 2818/2015 (PIL) decided on 08.12.2015 (DB), MA No. 1058/2021 decided on 14.06.2021, 2022 (4) MPLJ 285, (2009) 6 SCC 121.

Uday Kumar, for the appellants.
Mohd. Siddeeque, for the respondents.

Short Note
**(106)*
Before Mr. Justice Amar Nath (Kesharwani)
MA No. 238/2019 (Jabalpur) decided on 28 June, 2023

NATIONAL INSURANCE CO. LTD. …Appellant

Vs.

JAMNI BAI & ors. …Respondents

***Motor Vehicles Act (59 of 1988), Section 140 & 166 – Married Daughter* – Held – Apex Court concluded that even a married daughter not dependant on deceased is entitled to file claim for the death of her father – In case of *Manjuri Bera*, claim was filed u/S 140 and in that case Apex Court has not held that multiplier system will not apply in the case in which claimant is married daughter or married son – Compensation rightly awarded – Appeal dismissed.**

मोटर यान अधिनियम (1988 का 59), धारा 140 व 166 – विवाहित पुत्री – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि एक विवाहित पुत्री जो कि

मृतक पर आश्रित नहीं है, वह भी अपने पिता की मृत्यु के लिए दावा प्रस्तुत करने की हकदार है – मंजुरी बेरा के प्रकरण में, धारा 140 के अंतर्गत दावा प्रस्तुत किया गया था एवं उस प्रकरण में सर्वोच्च न्यायालय ने यह अभिनिर्धारित नहीं किया था कि गुणक प्रणाली उस प्रकरण में लागू नहीं होगी जिसमें दावेदार विवाहित पुत्री अथवा विवाहित पुत्र है – प्रतिकर उचित रूप से अधिनिर्णीत किया गया – अपील खारिज।

Cases referred :

2007 ACJ 1279, 2020 (11) SCC 356, 2007 ACJ 1279, (2017) 16 SCC 680.

Asghari Khan, for the appellant.
None, for the respondents.

Short Note
****(107)***
Before Smt. Justice Nandita Dubey
CRA No. 29/2008 (Jabalpur) decided on 14 September, 2023

P.K. RAKWAL (P.S. RAKWAL) …Appellant

Vs.

UNION OF INDIA …Respondent

(Alongwith CRA Nos. 52/2008, 94/2008, 152/2008, 153/2008 & 154/2008)

A. Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2) – Omission and Negligence – Mens Rea – Supply of substandard oil to Army **– Held – There were some lapses by appellants, but every little omission/commission, negligence/dereliction may not lead to possibility of appellants having culpability in the matter – Some acts of omissions/ negligence by public servant may attract disciplinary proceedings and not a penal provision –** ***Mens rea*** **not established by prosecution – No evidence to establish that there was any agreement between appellants who have alleged to conspire to do an illegal act – Conviction set aside – Appeals allowed.**

क. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(d) व 13(2) – चूक तथा लापरवाही – आपराधिक मनःस्थिति – आर्मी को अवमानक तेल की आपूर्ति – अभिनिर्धारित – अपीलार्थीगण से कुछ चूक हुई थी, परंतु प्रत्येक छोटी चूक/कृत्य, लापरवाही/कर्तव्य की उपेक्षा अपीलार्थीगण के मामले में दोषी/अभियोज्यता होने की संभावना की ओर नहीं ले जा सकती – लोक सेवक द्वारा चूक/लापरवाही के कुछ कृत्य अनुशासनिक कार्यवाहियों को आकर्षित कर सकते हैं तथा न कि एक दाण्डिक उपबंध – अभियोजन द्वारा आपराधिक मनःस्थिति स्थापित नहीं – यह स्थापित करने के लिए कोई सबूत नहीं कि अपीलार्थीगण, जिनका अवैध कृत्य करने की साजिश करने का अभिकथन है, के मध्य कोई करार था – दोषसिद्धि अपास्त – अपीलें मंजूर।

B. ***Penal Code (45 of 1860), Section 420 – Cheating – Ingredients – Supply of substandard oil to Army*** **– Held – Prosecution witness admitted that after receiving complaint about oil being substandard, he informed appellant vendor and asked him to replace it – He also admitted that vendor agreed to replace the oil and assured that he will not take any charge for it – Trial Court also recorded a finding that appellants did not reap any benefit out of the transaction – Under such circumstances, no offence of cheating is made out.**

ख. दण्ड संहिता (1860 का 45), धारा 420 – छल – घटक – आर्मी को अवमानक तेल की आपूर्ति – अभिनिर्धारित – अभियोजन साक्षी ने स्वीकार किया कि तेल के अवमानक होने की शिकायत प्राप्त होने के पश्चात् उसने अपीलार्थी विक्रेता को सूचित किया तथा उसे इसे बदलने के लिए कहा – उसने यह भी स्वीकार किया कि विक्रेता तेल बदलने के लिए सहमत हुआ तथा आश्वासन दिया कि वह इसका कोई शुल्क नहीं लेगा – विचारण न्यायालय ने भी यह निष्कर्ष अभिलिखित किया कि अपीलार्थीगण ने संव्यवहार से कोई भी लाभ प्राप्त नहीं किया – ऐसी परिस्थितियों के अंतर्गत, छल का कोई अपराध नहीं बनता।

C. ***Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2) – Ingredient of Offence*** **– Held – There were some lapse by appellants, but every little omission/commission, negligence/ dereliction may not lead to possibility of appellants having culpability in the matter which is *sin qua non* for attracting provisions of P.C. Act which requires that while holing office as public servant obtains for himself or for any other person, any valuable thing or pecuniary advantage by corruption or illegal means or by abusing his position.**

ग. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(d) व 13(2) – अपराध के घटक – अभिनिर्धारित – अपीलार्थीगण से कुछ चूक हुई थी, परंतु प्रत्येक छोटी चूक/कृत्य, लापरवाही/कर्तव्य की उपेक्षा अपीलार्थीगण के मामले में दोषी होने की संभावना की ओर नहीं ले जा सकती जो भ्रष्टाचार निवारण अधिनियम के उपबंधों को आकर्षित करने के लिए अनिवार्य है जिसमें लोक सेवक का पद धारित करने के दौरान अपने लिए अथवा किसी अन्य व्यक्ति के लिए भ्रष्टाचार द्वारा या अवैध साधनों द्वारा या अपनी स्थिति का दुरूपयोग करते हुए कोई मूल्यवान वस्तु अथवा आर्थिक लाभ प्राप्त करना अपेक्षित है।

D. ***Criminal Practice – Report of Hand Writing Expert*** **– Held – Opinion of handwriting expert is a weak type of evidence and it will be unsafe to base conviction solely on such evidence.**

घ. दाण्डिक पद्धति – हस्तलिपि विशेषज्ञ का प्रतिवेदन – अभिनिर्धारित – हस्तलिपि विशेषज्ञ का मत एक कमजोर प्रकार का साक्ष्य है तथा एकमात्र ऐसे साक्ष्य पर दोषसिद्धि आधारित करना सुरक्षित नहीं होगा।

NOTES OF CASES SECTION

Cases referred:

(995) SCC OnLine Bom 483, (2010) 6 SCC 1, (2003) 4 MPLJ 243, (1977) 2 SCC 210, 2003 (4) MPLJ 243, (2012) 9 SCC 512.

Anshuman Singh, for the appellant in CRA Nos. 29/2008, 152/2008 & 154/2008.

Siddharth Datt, for the appellant in CRA No. 52/2008.

Shivendra Pandey, for the appellant in CRA No. 94/2008.

K.C. Ghildiyal with *Manoj Rajak*, for the appellant in CRA No. 153/2008.

Vikram Singh, for the respondent in CRA Nos. 29/2008, 52/2008, 94/2008, 152/2008, 153/2008 & 154/2008.

Short Note

****(108)(DB)***

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

WA No. 922/2006 (Jabalpur) decided on 21 December, 2022

PETCARE, DIVISION OF TETRAGON CHEMIE, PVT. LTD. …Appellant

Vs.

M.P. MEDICAL AND SALES REPRESENTATIVES ASSOCIATION & anr. …Respondents

(Alongwith WA No. 07/2019)

***Industrial Disputes Act (14 of 1947), Section 2(d) & 2(s) – Definition of "Workman" – Sales Promotion Officer/Medical Representative* – Held – Medical Representatives or the Sales Promotion Officer do not fall under the definition of "workman" as difined in Section 2(s) of 1947 Act – Application before the Labour Court is not maintainable – Writ appeal dismissed.**

औद्योगिक विवाद अधिनियम (1947 का 14), धारा 2(d) व 2(s) – ''कर्मकार'' की परिभाषा – विक्रय संवर्धन अधिकारी/चिकित्सा प्रतिनिधि – अभिनिर्धारित – चिकित्सा प्रतिनिधि अथवा विक्रय संवर्धन अधिकारी अधिनियम 1947 की धारा 2(s) में परिभाषित ''कर्मकार'' की परिभाषा के अंतर्गत नहीं आते – श्रम न्यायालय के समक्ष आवेदन पोषणीय नहीं – रिट अपील खारिज।

The order of the Court was passed by : **VISHAL MISHRA, J.**

Cases referred:

(1994) 5 SCC 737, AIR 2000 SC 3182, (2007) 2 SCC 616, 1981 (1) SLJ 406, 2010 MPLSR 312 (DB), 2001 (90) FLR 257, 2000 (87) FLR 563, WA No.

75/2017 order passed on 11.10.2018 (DB), 2006 (II) LLJ 8 MP, 1997 (2) JLJ 353, AIR 1967 SC 678, AIR 1964 SC 472, AIR 1971 SC 922.

Jubin Prasad, for the appellant in WA No. 922/2006 and for the respondent in WA No. 07/2019.

Uttam Kumar Pardasani, respondent No. 2 in WA No. 922/2006 and appellant No. 2 in WA No. 07/2019, party in person.

Short Note

****(109)***

Before Mr. Justice Pranay Verma

WP No. 26339/2022 (Indore) decided on 12 May, 2023

RAVI KUMAR RAI …Petitioner

Vs.

INDIAN OIL CORPORATION LTD. & anr. …Respondents

A. Service Law – Minor/Major Penalty – **Held – In absence of any classification in the Certified Standing Order of respondents classifying the penalties as major or minor, the penalty of withholding of two increments with cumulative effect inflicted upon the petitioner earlier has to be treated as a major penalty and as per clause 2(g) of the ACPS Policy, petitioner is not entitled to be considered for selection to post in grade "A" by the respondents – Petition dismissed.**

क. सेवा विधि – लघु/मुख्य शास्ति – अभिनिर्धारित – शास्तियों को मुख्य अथवा लघु के रूप में वर्गीकृत करने वाले प्रत्यर्थीगण के प्रमाणित स्थायी आदेश में किसी वर्गीकरण के अभाव में, याची पर पूर्व में अधिरोपित की गई, संचयी प्रभाव से दो वेतन वृद्धियां रोकने की शास्ति को मुख्य शास्ति समझा जाना चाहिए एवं एसीपीएस नीति के खंड 2(g) के अनुसार, याची प्रत्यर्थीगण द्वारा श्रेणी ''ए'' के पद पर चयन के लिए विचार में लिए जाने का हकदार नहीं है – याचिका खारिज।

B. Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 10(iv) – Major Penalty – **Withholding of two increments with cumulative effect is a major penalty.**

ख. सिविल सेवा (वर्गीकरण, नियंत्रण और अपील) नियम, म.प्र. 1966, नियम 10(iv) – मुख्य शास्ति – संचयी प्रभाव से दो वेतनवृद्धियों को रोकना एक मुख्य शास्ति है।

Cases referred:

(1996) 2 LLJ 727 (SC), 1991 Supp (1) SCC 504, ILR 2012 (M.P.) 2651, 1995 MPLJ Short Note 54.

Achar Prakash, for the petitioner.

Yogesh Kumar Mittal, for the respondents.

NOTES OF CASES SECTION

Short Note

****(110)(DB)***

Before Mr. Justice Rohit Arya & Mr. Justice Sanjeev S Kalgaonkar

CRA No. 244/2001 (Gwalior) decided on 16 August, 2023

SONERAM & anr. …Appellants

Vs.

STATE OF M.P. …Respondent

***A. Penal Code (45 of 1860), Sections 302, 201 & 420 – Last Seen Together – Onus of Proof* – Held – "H" left for Salampur with "J" & "S", thereafter "H" went missing – Doctor who conducted postmortem of deceased "H" opined that he died 5 to 10 days prior to examination – Time of death opined by Doctor relates to incident of "H" leaving his home in company of "J" and "S" – In such circumstances, onus shifts on "J" and "S" to explain how, where and in what manner, they parted company with "H" – Both accused failed to give any explanation much less of plausible explanation.**

क. दण्ड संहिता (1860 का 45), धाराएँ 302, 201 व 420 – अंतिम बार साथ देखा जाना – सबूत का भार – अभिनिर्धारित – ''H'', ''J'' व ''S'' के साथ सालमपुर के लिए रवाना हुआ, तत्पश्चात् ''H'' लापता हो गया – चिकित्सक, जिसने मृतक ''H'' का शव परीक्षण किया था, ने अभिमत दिया था कि उसकी मृत्यु परीक्षण के 5 से 10 दिन पूर्व हुई थी – चिकित्सक द्वारा अभिमत मृत्यु का समय ''H'' द्वारा ''J'' व ''S'' के साथ घर से निकलने की घटना से संबंधित है – ऐसी परिस्थितियों में यह स्पष्ट करने का भार J व S पर परिवर्तित होता है कि कैसे, कहां व किस तरीके से, वे ''H'' से विलग हुए थे – दोनों अभियुक्त संभाव्य स्पष्टीकरण से बहुत दूर कोई भी स्पष्टीकरण देने में असफल रहे।

***B. Penal Code (45 of 1860), Sections 302, 201 & 420 – Oral & Documentary Evidence* – Held – Accused "S" asked for Rs. 60,000 to secure job for "H" for which father of "H" gave Rs. 55,000 in 3 installments – In view of overwhelming reliable oral evidence, absence of documentary evidence with regard to transaction of money does not affect credibility of prosecution – Such transactions are generally nor recorded in documents.**

ख. दण्ड संहिता (1860 का 45), धाराएँ 302, 201 व 420 – मौखिक एवं दस्तावेजी साक्ष्य – अभिनिर्धारित – अभियुक्त ''S'' ने ''H'' को नौकरी दिलाने के लिए 60,000/– रू. मांगे जिसके लिए ''H'' के पिता ने 55,000/– रू. 3 किश्तों में दिये – अत्याधिक विश्वसनीय मौखिक साक्ष्य को दृष्टिगत रखते हुए धन के लेन–देन के संबंध में दस्तावेजी साक्ष्य की अनुपस्थिति अभियोजन की विश्वसनीयता को प्रभावित नहीं करती – सामान्यतः ऐसे लेन–देन दस्तावेजों में अभिलिखित नहीं किये जाते।

C. ***Penal Code (45 of 1860), Sections 302, 201 & 420 – Motive –*** **Held – As per evidence of father of deceased, amount was returned by the father of accused "S" – Return of amount would not negate the existence of motive, rather, fortifies the existence of grudge against deceased and his father that they compelled father of accused "S" to return the money secured by cheating – Existence of motive is established beyond doubt.**

ग. *दण्ड संहिता (1860 का 45), धाराएँ 302, 201 व 420 – हेतु –* अभिनिर्धारित – मृतक के पिता की साक्ष्य के अनुसार अभियुक्त ''S'' के पिता द्वारा राशि लौटा दी गई थी – राशि की वापसी हेतु के अस्तित्व को निष्फल नहीं करती, बल्कि वह मृतक तथा उसके पिता के विरूद्ध द्वेष को और अधिक सुदृढ़ करती है कि उन्होंने अभियुक्त ''S'' के पिता को धोखाधड़ी से प्राप्त धन को वापस करने के लिए विवश किया – हेतु का अस्तित्व संदेह से परे स्थापित होता है।

D. ***Penal Code (45 of 1860), Sections 302, 201 & 420 and Evidence Act (1 of 1872), Section 114 – Investigation – Presumption –*** **Held – Nothing on record to suggest previous animosity or bias of I.O. against accused, who was present witnesses at place of recovery of dead body, which was recovered on information given by him and from the place he pointed out – Presumption stands fortified that I.O. has duly performed his duties of investigation – Thus, in absence of specific corroboration by Panch witness, the testimony of I.O. cannot be discarded.**

घ. *दण्ड संहिता (1860 का 45), धाराएँ 302, 201 व 420 एवं साक्ष्य अधिनियम (1872 का 1), धारा 114 – अन्वेषण – उपधारणा –* अभिनिर्धारित – अभिलेख पर ऐसा कुछ नहीं है जो यह सुझाव देता हो कि अभियुक्त के विरूद्ध अन्वेषण अधिकारी की पूर्व शत्रुता थी या पक्षपात था, जो साक्षीगण के साथ शव की बरामदगी के स्थान पर मौजूद था, जो उसके द्वारा दी गई सूचना पर तथा उसके द्वारा बताए गए स्थान से बरामद हुआ – यह उपधारणा सुदृढ़ होती है कि अन्वेषण अधिकारी ने अपने अन्वेषण के कर्तव्यों का सम्यक् रूप से निर्वहन किया – अतः, पंच साक्षी द्वारा विनिर्दिष्ट संपुष्टि के अभाव में, अन्वेषण अधिकारी के परिसाक्ष्य को अमान्य नहीं किया जा सकता।

E. ***Evidence Act (1 of 1872), Section 6 – Doctrine of Res Gestae –*** **Held – Under Evidence Act, doctrine of *res gestae* is applied in wider connotation to include all their statements, acts or events need not be coincident or contemporaneous with the occurrence of principle events – However, it must be made at such time and under such circumstances as will exclude the presumption that it is a result of deliberation.**

ङ *साक्ष्य अधिनियम (1872 का 1), धारा 6 – संबंधित तथ्य और कार्य का सिद्धांत –* अभिनिर्धारित – साक्ष्य अधिनियम के अंतर्गत, संबंधित तथ्य और कार्य का सिद्धांत विस्तृत अर्थ में उनके सभी कथनों, कार्यों अथवा घटनाओं को शामिल करने के लिए लागू होता है – तथापि उसे ऐसे समय तथा ऐसी परिस्थितियों के अंतर्गत किया जाना चाहिए जिससे यह उपधारणा अपवर्जित हो कि यह विमर्श का एक परिणाम है।

F. ***Evidence Act (1 of 1872), Section 7 – Theory of "Last Seen" – Doctrine of Inductive Logic*** **– Held – Once it is proved that accused was last seen with the subject and had opportunity to commit offence, it does not follow that he is necessarily guilty, but it certainly raises a presumption against accused and shifts the onus of proof from prosecution to accused because the events and circumstances are within special knowledge of the accused after he was last seen with victim.**

च. *साक्ष्य अधिनियम (1872 का 1), धारा 7 – ''आखिरी बार देखे जाने'' का सिद्धांत – आगमनात्मक तर्क का सिद्धांत* – अभिनिर्धारित – एक बार यह साबित हो जाए कि अभियुक्त पीड़ित के साथ अंतिम बार देखा गया था तथा उसके पास अपराध कारित करने का अवसर था, इसका अनुसरण नहीं करता कि वह आवश्यक रूप से दोषी है, परंतु वह निश्चित ही अभियुक्त के विरूद्ध उपधारणा को जन्म देता है तथा सबूत का भार अभियोजन से अभियुक्त पर परिवर्तित होता है क्योंकि घटनाएं तथा परिस्थितियां अभियुक्त के विशेष ज्ञान में है जब वह पीड़ित के साथ आखिरी बार देखा गया था।

G. ***Evidence Act (1 of 1872), Section 114 – Presumption*** **– Held – Section 114 provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case – Illustration (e) provides for presumption that judicial and official acts have been regularly performed.**

छ. *साक्ष्य अधिनियम (1872 का 1), धारा 114 – उपधारणा* – अभिनिर्धारित – धारा 114 यह उपबंधित करती है कि न्यायालय ऐसे किसी तथ्य का अस्तित्व उपधारित कर सकेगा जिसका घटित होना उस विशिष्ट मामले के तथ्यों के संबंध में प्राकृतिक घटनाओं, मानवीय आचरण तथा लोक और प्राइवेट कारबार के सामान्य अनुक्रम को ध्यान में रखते हुए वह सम्भाव्य समझता है – दृष्टांत (e) यह उपधारणा हेतु उपबंधित करता है कि न्यायिक और पदीय कार्य नियमित रूप से संपादित किये गये हैं।

H. ***Evidence Act (1 of 1872), Section 3 & 27 – Expression "Fact" & "Fact Discovered"*** **– Held – Section 27 referred to a fact being discovered and Section 3 defines "fact" as meaning and including "anything", state of things capable of being perceived by the senses – The expression "fact" includes not only physical fact but also the psychological fact or mental condition of which any person is conscious – "Fact discovered" embraces the place from which the object was produced and the knowledge of the accused as to it.**

ज. *साक्ष्य अधिनियम (1872 का 1), धारा 3 व 27 – अभिव्यक्ति ''तथ्य'' व ''तथ्य का पता चलना''* – अभिनिर्धारित – धारा 27 तथ्य जो पता चले हैं को निर्दिष्ट करती है तथा धारा 3 ''तथ्य'' को अर्थ के रूप में परिभाषित करती है जिसमें ''कोई वस्तु, वस्तुओं की अवस्था जो इंद्रियों द्वारा बोधगम्य करने योग्य हो'' शामिल है – अभिव्यक्ति ''तथ्य'' में न केवल भौतिक तथ्य बल्कि मानसिक अवस्था या मनोवैज्ञानिक तथ्य भी शामिल हैं जिसके

बारे में कोई व्यक्ति सचेत है – ''पता चले'' / ''खोजे गये तथ्य'' में वह स्थान जहां से वस्तु प्रस्तुत की गई थी और इस बारे में आरोपी का ज्ञान भी शामिल है।

I. ***Criminal Practice – Motive* – Held – Motive is the emotion which is supposed to have led to the act – Motive is not capable of tangible proof, it can only be ascertained by inferences drawn from facts – Motive is a thing which is primary known to accused only, it is very difficult for prosecution to put forth what actually prompted or excited the accused to commit offence – It is sufficient for prosecution to establish existence of some motive, then sufficiency or adequacy of such motive which impelled the accused to commit crime, may be inferred from the attending circumstances.**

झ. *दाण्डिक पद्धति – हेतु* – अभिनिर्धारित – हेतु वह भावना है जिसके बारे में माना जाता है कि यह कार्य करने के लिए प्रेरित करता है – हेतु मूर्त सबूत देने के योग्य नहीं है, इसे केवल तथ्यों से निकाले गए निष्कर्षों से ही सुनिश्चित किया जा सकता है – हेतु एक ऐसी वस्तु है जो प्राथमिक रूप से केवल अभियुक्त को ही पता होती है, अभियोजन के लिए यह प्रस्तुत करना बहुत कठिन है कि अभियुक्त को अपराध कारित करने के लिए वास्तव में किस बात ने प्रेरित या उत्साहित किया – अभियोजन के लिए किसी हेतु के अस्तित्व को स्थापित करना पर्याप्त है, बाद में ऐसे हेतु की प्रचुरता अथवा पर्याप्तता जिसने अभियुक्त को अपराध कारित करने के लिए विवश किया, को उपस्थित परिस्थितियों से निष्कर्षित किया जा सकता है।

J. ***Criminal Practice – Circumstantial Evidence* – The tests to be satisfied by such evidence – Discussed and enumerated.**

ञ. *दाण्डिक पद्धति – परिस्थितिजन्य साक्ष्य* – ऐसे साक्ष्य द्वारा संतुष्ट होने वाले परीक्षण / जांच – विवेचित एवं प्रगणित।

The judgment of the Court was delivered by : **SANJEEV S KALGAONKAR, J.**

Cases referred:

AIR 2019 SC 1367, (2004) 12 SCC 521, (1990) 4 SCC 370, AIR 1995 SC 1930, 1955 CR.L.J. 586, (2017) 3 SCC 760, (2010) 2 SCC 583, 2005 (7) SCC 714, AIR 1947 PC 67, (1976) 1 SCC 828, (2005) 11 SCC 600, AIR 2000 SC 1691, (2000) 1 SCC 471, (2016) 14 SCC 640, (2013) 13 SCC 1, (2022) 8 SCC 668.

Rajkumar Singh Kushwah, for the appellants.
Anjali Gyanani, P.P. for the respondent.

NOTES OF CASES SECTION

Short Note
****(111)(DB)***

Before Mr. Justice Rohit Arya & Mr. Justice Satyendra Kumar Singh
CRA No. 1089/2014 (Gwalior) decided on 17 July, 2023

SUGHAR SINGH …Appellant

Vs.

STATE OF M.P. …Respondent

(Alongwith CRA Nos. 1190/2014, 1230/2014, 1256/2014 &11/2015)

***A. Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13 and Penal Code (45 of 1860), Section 364-A – Test Identification Parade* – Held – It is true that much evidentiary value cannot be attached to the identification of accused in the Court, where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if identification is made for the first time in Court – Position may be different when the identifying persons had seen the accused for considerable period or a number of time at different point of time and places, and in such cases Test Identification Parade is not necessary.**

क. डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 एवं दण्ड संहिता (1860 का 45), धारा 364–A – पहचान परेड – अभिनिर्धारित – यह सत्य है कि यदि न्यायालय में पहचान प्रथम बार की जा रही है जहां पहचानकर्ता साक्षी पूर्णतया अपरिचित है, जिसने पहचाने गये व्यक्ति की केवल एक क्षणिक झलक देखी थी अथवा जिसके पास संबंधित व्यक्ति को याद रखने का कोई विशिष्ट कारण नहीं था, वहां न्यायालय में अभियुक्त की पहचान को अधिक साक्ष्यिक मूल्य नहीं दिया जा सकता – स्थिति भिन्न हो सकती है जब पहचानकर्ता व्यक्तियों ने अभियुक्त को अलग–अलग समय और स्थानों पर पर्याप्त अवधि तक अथवा कई बार देखा हो, तथा ऐसे प्रकरणों में पहचान परेड आवश्यक नहीं है।

***B. Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13 and Penal Code (45 of 1860), Section 364-A – Test Identification Parade* – Held – Want of evidence of earlier identification in a TIP does not affect the admissibility of the evidence of identification in Court.**

ख. डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 एवं दण्ड संहिता (1860 का 45), धारा 364–A – पहचान परेड – अभिनिर्धारित – पहचान परेड में पूर्व की पहचान के साक्ष्य का अभाव न्यायालय में पहचान के साक्ष्य की ग्राह्यता को प्रभावित नहीं करता है।

***C. Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13 and Penal Code (45 of 1860), Section 364-A – Test Identification Parade* – Held – TIP of appellant "S" has not been conducted, therefore only on basis of inconsistent statements and his dock identification, conducted after about 3 years, it is not safe to infer his involvement in the crime – Allegations against "S" not proved beyond reasonable doubt.**

ग. डकैती और व्यपहरण प्रभावित क्षेत्र अधिनियम, म.प्र. (1981 का 36), धारा 13 एवं दण्ड संहिता (1860 का 45), धारा 364–A – पहचान परेड – अभिनिर्धारित – अपीलार्थी ''एस'' की पहचान परेड संचालित नहीं की गई है, अतः केवल असंगत कथनों तथा उसके कठघरे में पहचान जो 3 वर्ष पश्चात् की गई है, के आधार पर, अपराध में उसकी संलिप्तता का निष्कर्ष निकालना सुरक्षित नहीं है – ''एस'' के विरूद्ध अभिकथन, युक्तियुक्त संदेह से परे साबित नहीं।

***D. Penal Code (45 of 1860), Section 364-A – Essential Ingredient* – Held – There is nothing on record to suggest that appellant had threatened complainant or his son abductee to cause death or hurt to the abductee in order to compel the complainant to give ransom, which is an essential ingredient for an offence punishable u/S 364-A IPC.**

घ. दण्ड संहिता (1860 का 45), धारा 364–A – आवश्यक घटक – अभिनिर्धारित – अभिलेख पर यह सुझाव देने के लिए कुछ नहीं है कि परिवादी को फिरौती देने के लिए बाध्य करने के लिए कि अपीलार्थी ने परिवादी को अथवा उसके अपहृत पुत्र को अपहृत की मृत्यु कारित करने अथवा उपहति कारित करने की धमकी दी थी जो भा.दं.सं. की धारा 364–A के अंतर्गत एक दण्डनीय अपराध के लिए एक आवश्यक घटक है।

The judgment of the Court was delivered by : **SATYENDRA KUMAR SINGH, J.**

Cases referred:

2005 (4) MPHT 471, 2011 (5) MPHT 241, AIR 1970 SC 1321, 2023 Live Law (SC) 167, 1995 Supp (1) SCC 80, (2003) 5 SCC 746.

Amit Lahoti, for the appellant in CRA No. 1089/2014.

R.C. Bhargava & Devesh Sharma, as *amicus curiae* for the appellant No. 1 Ashok in CRA No. 1190/2014.

A.K. Jain, for the appellant No. 2- Uttam in CRA No. 1190/2014 and for the appellant in CRA No. 1230/2014.

Prashant Sharma, for the appellant in CRA No. 1256/2014.

B.K. Sharma, for the appellant in CRA No. 11/2015.

A.K. Nirankari, P.P. for the respondent in CRA Nos. 1089/2014, 1190/2014, 1230/2014, 1256/2014 & 11/2015.

I.L.R. 2023 M.P. (DB) 1691

Before Mr. Justice Sujoy Paul & Mr. Justice Amar Nath (Kesharwani)

W.A. No. 318/2018 (Jabalpur) decided on 05 April, 2023

COMMISSIONER, JABALPUR DIVISION & Anr. … Appellants

Vs.

SHAILENDRA CHOWDHARY … Respondent

(Along with W.P. No. 6880/2017)

***A. Bhumi Vikas Rules M.P., 2012, Rules 16, 18, 19 & 103 and Bhedaghat Development (Draft Plan) 2021, Clause 7.2 & 7.17 – Change of Land Use – Applicability of 2012 Rules* – Held – Combined effect of Rule 16 r/w Clause 7.2 & 7.17 of Draft Plan shows that intention of plan makers was to borrow 2012 Rules for purposes mentioned in Draft Plan and not to borrow in general for all purposes – On the date when applications were filed for change in land use, the Draft Plan came into being – Respondents rightly took a decision having regard to 2012 Rules in teeth of clause 7.17 of Draft Plan – Impugned order set aside – Appeal allowed. (Paras 47, 62, 63, 64 & 68)**

क. भूमि विकास नियम, म.प्र., 2012, नियम 16, 18, 19 व 103 एवं प्रारूप विकास योजना भेड़ाघाट, 2021, खंड 7.2 व 7.17 – भूमि उपयोग में परिवर्तन – नियम 2012 की प्रयोज्यता – अभिनिर्धारित – नियम 16 सहपठित प्रारूप योजना का खंड 7.2 व 7.17 का संयुक्त प्रभाव यह दर्शाता है कि योजना बनाने वालों का आशय प्रारूप योजना में उल्लिखित किये गये प्रयोजनों हेतु 2012 के नियमों को उधार लेने का था तथा न कि सभी प्रयोजनों के लिए सामान्य रूप से उधार लेने का – प्रारूप योजना उस तिथि को लागू हुई थी, जिस तिथि को भूमि के उपयोग में परिवर्तन के लिए आवेदन प्रस्तुत किये गये थे – प्रत्यर्थीगण ने प्रारूप योजना के खंड 7.17 के बावजूद नियम 2012 को ध्यान में रखते हुए उचित रूप से विनिश्यच किया – आक्षेपित आदेश अपास्त – अपील मंजूर।

***B. Bhumi Vikas Rules M.P., 2012, Rule 103 and Bhedaghat Development (Draft Plan) 2021, Clause 7.2 & 7.17 – Change of Land Use – Norms & Regulations* – Held – As per Rule 103, "norms" and "regulations" applicable in plan area are dependent upon the clauses prescribed in relevant development plans – Apex Court concluded that when a "Draft Scheme" is published, any sanction could only be in terms of the scheme and no independent plan in contradiction of the same could be sanctioned.**

(Paras 63 & 68)

ख. भूमि विकास नियम, म.प्र., 2012, नियम 103 एवं प्रारूप विकास योजना भेड़ाघाट, 2021, खंड 7.2 व 7.17 – भूमि उपयोग में परिवर्तन – मानक व विनियम – अभिनिर्धारित – नियम 103 के अनुसार, योजना क्षेत्र में लागू ''मानक'' व ''विनियम'' सुसंगत विकास योजनाओं में विहित खंडों पर आश्रित हैं – सर्वोच्च न्यायालय ने निष्कर्षित

किया है कि जब एक ''प्रारूप स्कीम'' प्रकाशित की जाती है, तो कोई भी मंजूरी केवल स्कीम के निबंधनों के अनुसार ही हो सकती है एवं इसके विपरीत कोई भी स्वतंत्र योजना मंजूर नहीं की जा सकती।

***C. Bhumi Vikas Rules M.P., 2012, Rules 16, 18 & 19 and Bhedaghat Development (Draft Plan) 2021, Clause 7.2 & 7.17(2) – Applicability of 2012 Rules* – Held – Although Rules of 2012 were not specifically notified by including Bhedaghat in "planning area", but it further provides that the Rules mentioned in Development Draft Plan shall be applicable and shall form part of the development plan – Clause 7.17(2) makes it obligatory on part of authorities to take a decision having regard to 2012 Rules. (Paras 47 to 49)**

ग. भूमि विकास नियम, म.प्र., 2012, नियम 16, 18, व 19 एवं प्रारूप विकास योजना भेड़ाघाट, 2021, खंड 7.2 व 7.17(2) – नियम 2012 की प्रयोज्यता – अभिनिर्धारित – यद्यपि 2012 के नियमों को, भेड़ाघाट को ''योजना क्षेत्र'' में शामिल करते हुए विनिर्दिष्ट रूप से अधिसूचित नहीं किया गया था, वह आगे यह उपबंधित करता है कि प्रारूप विकास योजना में उल्लिखित नियम लागू होगें एवं विकास योजना का हिस्सा बनेंगें – खंड 7.17(2) प्राधिकारीगण के लिए 2012 के नियमों को ध्यान में रखते हुये विनिश्चय करना बाध्यकर बनाता है।

***D. Bhumi Vikas Rules M.P., 2012, Rules 16, 18 & 19 and Bhedaghat Development (Draft Plan) 2021, Clause 7.2 & 7.17(2) – Discrimination – Theory of Negative Equality* – Held – Even assuming that some permission for change in land use were erroneously granted, it cannot become a reason to follow as per theory of negative equality. (Para 78)**

घ. भूमि विकास नियम, म.प्र., 2012, नियम 16, 18, व 19 एवं प्रारूप विकास योजना भेड़ाघाट, 2021 खंड 7.2 व 7.17(2) – विभेद – नकारात्मक समानता का सिद्धांत – अभिनिर्धारित – यह धारणा करते हुए थी कि भूमि उपयोग में परिवर्तन हेतु कुछ अनुमति गलती से प्रदान की गई थी, नकारात्मक समानता के सिद्धांत के अनुसार यह अनुकरण करने का कारण नहीं बन सकता।

***E. Constitution – Article 226 – Administrative Decision – Judicial Review* – Held – If decision of administrative authority is based on a policy decision, which even if, is directory in nature and view taken by them is in consonance with such policy/ draft plan mandate and is plausible in nature, same cannot be interfered within exercise of judicial review. (Para 64)**

ङ संविधान – अनुच्छेद 226 – प्रशासनिक विनिश्चय – न्यायिक पुनर्विलोकन – अभिनिर्धारित – यदि प्रशासनिक प्राधिकारी का विनिश्चय नीतिगत विनिश्चय पर आधरित है, जो भले ही निदेशात्मक स्वरूप का है तथा उनके द्वारा लिया गया दृष्टिकोण ऐसी नीति/योजना प्रारूप आदेश के अनुरूप है तथा संभाव्य स्वरूप का है, तो न्यायिक पुनर्विलोकन के प्रयोग में उक्त में हस्तक्षेप नहीं किया जा सकता।

F. Constitution – Article 226 – Mentioning Wrong Provision – Effect – **Held – Non-mentioning or wrong mentioning of provision will not make the order as illegal if source of power of authorities can be otherwise traced from parent statute/ enabling provision. (Para 71)**

च. संविधान – अनुच्छेद 226 – गलत उपबंध का उल्लेख करना – प्रभाव – **अभिनिर्धारित – उपबंध का उल्लेख न करना अथवा गलत उल्लेख करना आदेश को अवैध नहीं बनाएगा यदि प्राधिकारीगण की शक्ति के स्त्रोत का मूल कानून / सामर्थ्यकारी उपबंध से अन्यथा पता लगाया जा सकता है।**

Cases Referred :

2019 (2) MPLJ 668, ILR 2007 MP 474, (2000) 4 SCC 357, 2007 (2) MPHT 380, (2022) SCC Online SC 1737, (1978) 1 SCC 405, 2022 SCC Online 151, AIR 1968 SC 377, LR 1958 AC 41 : (1957) 3 WLR 663, (1977) 4 SCC 471 : (1978) 1 SCR 641, (1990) 3 SCC 223, (1994) 6 SCC 651, 2022 SCC Online MP 5387, (2005) 13 SCC 495, (2005) 5 SCC 181, (2002) 3 SCC 496, (2004) 12 SCC 278, (2007) 13 SCC 255, (2009) 9 SCC 173, ILR 2007 MP 468, (1997) 1 SCC 35, (2007) 8 SCC 249, (2011) 3 SCC 436, (2019) 8 SCC 587, (2020) 3 SCC 311.

Suyash Thakur, G.A. for the appellants in W.A. No. 318/2018 and for the respondents in W.P. No. 6880/2017.

Atul Choudhari, for the respondent in W.A. No. 318/2018 and for the petitioner in W.P. No. 6880/2017.

J U D G M E N T

The Judgement of the Court was delivered by : **SUJOY PAUL, J.:-** The *Intra* Court Appeal filed under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya Khandpeeth Ko Appeal Adhiniyam, 2005 takes exception to the order dated 15.12.2017 passed in W.P. No.1083 of 2015 (Shailendra Chowdhary Vs. Commissioner, Jabalpur Division, Jabalpur), whereby learned Single Bench has set aside the impugned orders dated 6.5.2014, 16.9.2014 and 13.1.2015 and directed the official respondents to allow the application dated 17.2.2015 seeking change of *land use* by the petitioner. W.P. No.6880 of 2017 filed by owner containing the identical issue is also decided by this common order/judgment.

Factual Background and stand of appellants :-

2. The respondent/petitioner of W.P.No.1083 of 2015 entered into an agreement with the owners of lands bearing Kh. Nos. 337/1, 337/2 and 337/3 situated at N.B.-150, PH. No. 36/25 Mouja Gunsour, RNM, Jabalpur -2, Tahsil and District Jabalpur on 21.4.2012 (Annexure R-1).

3. **Madhya Pradesh Bhumi Vikas Rules 2012** (in short **'the Rules of 2012'**) were enforced by the State Government w.e.f. 30.5.2012. On 4.1.2013, a notification was published in the gazette under Section 24(3) of the **Nagar Tatha Gram Nivesh Adhiniyam 1973** (hereinafter called as 'the **Adhiniyam**') making the Rules of 2012 applicable to various planning areas. However, in this notification, (Annexure P-5), there was no mention about the Bhedaghat Planning Area.

4. The appellants submits that the State Government notified the 'modified' **Bhedaghat Development (Draft Plan) 2021** (hereinafter called as **'Draft Plan'**) clearly mentioning in Clause 7.2 of Chapter 7 that though Rules of 2012 have not been made applicable by issuing a notification, various provisions of Chapter 7 of Draft Plan make it clear that certain rules of Rules of 2012 are indeed applicable.

5. Respondent moved an application on 17.2.2014 (Annexure P-2) before the Joint Director of Town and Country Planning, Jabalpur seeking permission under Section 16 (2) of the Adhiniyam to change the use of aforesaid lands situated in village Gunsour falling within Bhedaghat Planning Area from 'agriculture' to 'residential' to enable him to develop a residential colony.

6. The Joint Director, Town and Country Planning, Jabalpur by order dated 6.5.2014 (Annexure P-3) rejected the said application by stating that the land was earmarked for 'agricultural' purpose under the Draft Plan.

7. Aggrieved, the respondent of W.A. preferred an appeal against the order dated 6.5.2014 (Annexure P-3) before the Divisional Commissioner, Jabalpur. The said appeal preferred under Section 16 (5), r/w Section 13 of the Adhiniyam was dismissed on 16.9.2014 (Annexure P-4). The Review application filed by the respondent met the same fate and was rejected on 13.1.2015 (Annexure P-8).

8. In turn, W.P. No.1083 of 2015 was filed by respondent questioning the aforesaid orders dated 6.5.2014, 13.1.2015 and 16.9.2014.

9. Smt. Asha Bai, (owner of said lands), the petitioner of W.P. No.6880 of 2017 also preferred similar application seeking change of *land use* but the same was rejected by Joint Director, Town and Country Planning, Jabalpur on 9.2.2015 (Annexure P-1). The reason of rejection was that under the Draft Plan, no development permission contrary to the said *land use* can be granted.

10. On 2.6.2015 (Annexure P-2 in connected Writ Petition No.6880 of 2017), the Divisional Commissioner remitted the matter back to the Joint Director, Town and Country Planning, Jabalpur for fresh considering by holding that Rules of 2012 are not applicable and similar permissions have been granted.

11. The State Government by order dated 14.8.2015 took *suo moto* cognizance of the matter by invoking Section 32 of the Adhiniyam and stayed the operation of said order dated 2.6.2015 passed in favour of Asha Bai, the petitioner in connected W.P. No.6880 of 2017.

12. W.P. No.16324 of 2015 filed against the order dated 14.8.2015 had rendered infructuous because on 21.3.2017, the State Government passed final order holding that modified Bhedaghat Development (Draft Plan) mentions about applicability of various provisions of Rules of 2012 and thus, W.P. No.16324 of 2015 was withdrawn by Asha Bai on 24.4.2017 with the liberty to assail the said order dated 21.03.2017 in appropriate proceedings. Consequently, the connected writ petition, namely W.P. No.6880 of 2017 was filed challenging the order of State Government dated 21.3.2017.

13. Learned Single Judge allowed the W.P. No.1083 of 2015 and issued directions mentioned hereinabove.

14. Shri Suyash Thakur, learned counsel for the appellant - State submits that certain Sections of Adhiniyam are relevant for the purpose of adjudication of this matter. He placed reliance on certain Sections which are mentioned in the written submissions filed by the appellants.

15. After taking this Court to the relevant Sections, it is argued that learned Single Judge has erred in allowing the writ petition by erroneously holding that as per gazette notification dated 29.5.2013, whereby Bhedaghat Development (Draft Plan) was amended, the Bhumi Vikas Rules, 2012 were not made applicable to the said 'Draft Plan'. As per notification dated 29.5.2013 (Annexure P-1), the Government notified the 'Draft Plan' by mentioning that Clause 7.2 of Chapter 7 although envisages that Rules of 2012 are not applicable, various other provisions of said Chapter clearly show applicability of the Rules of 2012 amended from time to time. To bolster this, heavy reliance is placed on Clause 7.17 which provides that application for permission under the development plan shall be made as per the proforma prescribed in Rule 14 of the Rules of 2012 and needs to be dealt with in accordance with said rules only.

16. Pointed reliance is placed on Rule 103 of Rules of 2012 and it was strenuously contended that this Rule and its effect has escaped notice of learned Single Judge while deciding the Writ Petition. As per Rule 103, the norms and regulations applicable in the 'plan area' shall be as per relevant development plan and a deeming provision was created that the Rules shall be deemed to have been modified *mutatis mutandis* in so far as their application to the relevant 'plan area' is concerned.

17. To bolster this submission, reliance is placed on the Division Bench judgment in the case of *Pradeep Hinduja vs. State of Madhya Pradesh & another,* 2019(2) MPLJ 668. It is urged that in the light of this judgment, it cannot be said that Rules of 2012 were not applicable on the lands in question.

18. Shri Suyash Thakur, learned counsel for the appellants submits that the order dated 06/05/2014 (Annexure P/3) rejecting the application of respondent

seeking change of *land use* was rightly passed because the land in question was earmarked for 'agricultural' purpose as per the 1'Draft Plan'. The rejection is in consonance with Rule 14(5)(b)(i) of the Rules of 2012 (applicable w.e.f. 30/05/2012). As per Section 16 of Adhiniyam, no permission of change of land use can be granted contrary to the 'Draft Plan'. At the cost of repetition, Clause 7.17 was pressed into service.

19. The rejection orders deserve to be approved in view of law laid down by this Court in ILR 2007 MP 474 *(Center For Environment Protection, Research And Development, Indore vs. State of Madhya Pradesh & others*) is the next submission.

20. The judgment of Supreme Court in (2000) 4 SCC 357 (*Raipur Development Authority vs. Anupam Sahkari Griha Nirman Samiti and others*) was relied upon to buttress the contention that when a 'draft scheme' is published, a sanction could only be given in terms of said scheme and no independent development plan in contradiction of said could be sanctioned.

21. In 2007 (2) MPHT 380 (*M/s Pure Industrial Cock & Chemicals Ltd. vs. State of M.P. and others*), the Division Bench followed the *ratio decidendi* of judgment of *Center for Environment Protection Research and Development, Indore* (Supra). Thus, it is prayed to allow the writ appeal and dismiss the connected writ petition.

Stand of Owner/Coloniser :-

22. Shri Atul Choudhari placed reliance on the notification dated 26.12.2012 (Annexure P-5) and submits that this gazette notification emphasizes that it covers 'Planning Area' of 145 cities. 'Bhedaghat' is not included as 'Planning Area' under Jabalpur Division as per this notification.

23. During the course of argument, Shri Choudhari submits that so far 'locus' of coloniser is concerned, a conjoint reading of Section 2(n) and Section 29 of the Adhiniyam makes it clear that definition of 'owner' is very wide and includes an 'agent trustee'. For this purpose, reliance is placed on the meaning assigned to 'agent trustee' in Black Law Dictionary. Apart from this, it is argued that this point relating to 'locus' has lost its significance because challenge to similar order is also made by the owner, Asha Bai in connected writ petition, namely W.P. No.6880 of 2017.

24. The next argument is based on Section 30 of the said Adhiniyam and by placing reliance on I.A. No.14820 of 2019, it is urged by Shri Choudhari that the power of Director to take decision about change of land use was delegated to the Deputy Director, Additional Director and Joint Director. Section 30 (2) talks about 'Krishi Prayojan'.

25. Learned counsel for the owner/coloniser contended that the note-sheet dated 14.3.2014 of the proceeding before the Joint Director, which became foundation for passing of impugned order shows that the 'final plan' of Bhedaghat Development Scheme was not published. Another note- sheet (at page 135) is relied upon to submit that as per the note-sheet, it is clear that the Rules of 2012 are not published. However, during the course of hearing, it was admitted by Shri Choudhari that these note-sheets were prepared by the Clerk concerned seeking direction from the higher/competent officer. However, attempt is being made to establish that till preparation of these note-sheets, Rules of 2012 were not made applicable.

26. The order dated 16.9.2014 (Annexure P-4) was relied upon to submit that the appellants/owners were subjected to hostile discrimination. The entries mentioned in Para-13 of this order shows that one such entry relating to Surendra Singh Ghurji is about the permission of change of land use granted to him on 18.10.2012. This date is subsequent to commencement of Rules of 2012, which came into being on 13th April 2012. So far other relevant entries nos. 3, 4, 5 and 9 are concerned, these are relating to Ravi Agency, Shri Suresh Kumar Gupta, Shri Nitin Barsaiya and Shri Gulshan Rai. In all these cases, the permission to change the land use was given before 15.9.2011. This order clearly shows that it was passed under the assumption that before 2012 Rules came into being, these permissions were granted. Shri Choudhari submits that even before enforcement of Rules of 2012, these entries Nos. 3, 4, 5 and 9 were relating to an area for which there existed a 'Draft Plan' which was in force since 1977-1978. Thus, the so called distinguishing feature shown by the State is of no assistance to them. For this purpose, schedule/list annexed with IA No.14820 of 2019 is pressed into service by Shri Choudhari.

27. Document No.961 of 2020 filed by appellants is relied upon to submit that it reflects 'modified Draft Plan' of Bhedaghat. A plain reading of Clause 7.2 leaves no room for any doubt that Rules of 2012 are not applicable. So far Clause 7.17 is concerned, Shri Choudhari strenuously contended that this is a *directory* provision and, therefore not required to be scrupulously followed.

28. The conduct of the appellants is called in question by contending that when the present respondent/coloniser filed an application seeking permission to change the land use, the permission was declined by the Joint Director. Aggrieved, the coloniser filed an appeal, which was dismissed by the Commissioner on 16.9.2014 by holding that the Rules of 2012 are applicable. Interestingly, when Asha Bai/owner unsuccessfully preferred an application seeking permission to change land use and said application was dismissed by the Joint Director, she also preferred an appeal before the Commissioner and in her case, learned Commissioner opined that Rules of 2012 are not applicable and remitted the matter back before the Joint Director to decide it afresh. Pertinently, the

Commissioner, who has taken two diametrically opposite views relating to applicability of Rules 2012 in relation to same land, filed the present writ appeal as an O.I.C. and for this reason alone, his writ appeal is liable to be rejected.

29. Shri Choudhari also placed reliance on preparation of 'zonal plan', which is mentioned in Section 20 of the said Adhiniyam.

30. Furthermore, it is submitted by Shri Atul Choudhari that proviso to Section 16(1) makes it clear that if permission of change of land use is for 'agriculture' purpose, the permission cannot be declined. Section 16(1) begins with the words 'no person' which *prima facie* shows that it is mandatory in nature but a complete reading of this sub-section (1)(a) makes it clear that permission can certainly be granted by Director for change of land use. Thus, permission can be granted for land use other than agricultural. Otherwise, there was no occasion for the law makers to bring sub-section 16(1) in the said enactment. However, Rule 14(5)(b)(i) of Rules of 2012 does not permit any such change of land use. Thus, if argument of learned Government Advocate is accepted, Section 16 (1) of the main Adhiniyam will become redundant. This cannot be the intention of the legislature. In the teeth of judgment reported in *Kerala State Electricity Board and others Vs. Thomas Joseph and others* (2022 SCC Online SC 1737) rule/subordinate legislation must give way to the main enactment and cannot be an impediment for a benefit which is flowing from the main enactment.

31. Shri Atul Choudhari further submits that so far as the Division Bench judgment in the case of *Center for Environment Protection Research and Development, Indore* (Supra) is concerned, the said judgment makes it clear that it cannot be pressed into service in the instant case for twin reasons :-

Firstly, when judgment in aforesaid case was passed, sub-section 2 to 5 of Section 16 of the Adhiniyam were not there in the statute book. Thus, the Division Bench had no occasion to dwell upon the impact of sub-sections 2 to 5 of Section 16.

Secondly, the application in that case was filed after publication of 'final plan' under Section 19(5) of the Adhiniyam.

32. Shri Atul Choudhari has taken pains to submit that unless Section 19(5) notification is published, 'draft plan' cannot be a ground to reject the application seeking permission to change the land use.

33. The next contention is based on the Constitution Bench judgment of Supreme Court in the case of *Mohinder Singh Gill v. Chief Election Commr.,* (1978) 1 SCC 405. It is submitted that the validity of an order of a statutory authority needs to be judged on the basis of reasons mentioned therein and reasons cannot be substituted/supplemented by filing reply or counter- affidavit in the Court. In the rejection order, the singular reason assigned is the existence of a

'Draft Plan' and no assistance is taken from Rule 14(5)(b)(i) of Rules of 2012. Thus, citing those Rules for the first time in the Court is of no use in the light of judgment of Constitution Bench aforesaid. He also cited few more judgments on the same principle. To eschew repetition, we are not referring those judgments.

Department's rejoinder submission :-

34. Shri Suyash Thakur, learned Government Advocate for the State in his rejoinder submissions placed reliance on his written submission. It is submitted that so far conduct of appellants/OIC/Commissioner is concerned, no doubt, there exist two different orders of the Commissioner but this will make no difference because the subsequent order of Commissioner in the case of Ms. Asha Bai/owner was taken into *suo moto* revision by the State Government. The State Government reversed this order against which the W.P. No. 6880 of 2017 is pending. It is the final order dated 21/03/2017 passed by State Government in *suo moto* revision which became subject matter of challenge. The legal question in this present writ appeal and connected writ petition are same. Thus, on the ground of so called conduct of Commissioner, the appellants cannot be non suited.

35. Shri Suyash Thakur, learned counsel for the State, at the cost of repetition, placed heavy reliance on Clauses 7.2 and 7.17 of the Draft Plan filed with document No. 961/2020. It is submitted that if this 'Draft Plan' is read with the order passed in *suo moto* revision dated 21.03.2017, it will be clear like noonday as to why Government has mentioned in Clause 7.2 regarding non-applicability of Rules of 2012. Bhedaghat is a special area having special features and therefore Government intended to make it clear that Rules of 2012 are generally not applicable. However, the Rules were made applicable to the extent mentioned in Clause 7.17 of the said Plan. Thus, learned Single Judge was not correct in holding that Rules of 2012 are not applicable at all. More so, when learned Single Judge has not considered the effect and impact of Clause 7.17 of the Draft Plan and Rule 103 of Rules of 2012.

36. The judgment of *Center for Environment Protection Research and Development, Indore* (Supra) is pressed into service to counter the argument of Shri Choudhari. It is submitted that the factual backdrop of this judgment shows that the application was indeed preferred before publication of final plan even in this matter. So far sub-section (2) to (5) of Section 16 are concerned, the said sub-Sections were inserted in order to enforce the Division Bench Judgment in *Center for Environment Protection Research and Development, Indore* (Supra). The said sub-Sections do not improve the case of the owner/coloniser. Thus, this Division Bench judgment cannot be read in the manner suggested by Shri Atul Choudhari.

37. Rule 14(5)(b)(i) of Rules 2012 talks about 'draft development plan,' once in 'draft development plan' it is made clear that Rules of 2012 have to be taken into account while taking a decision, no fault can be found in the order/action of

competent authorities declining permission contrary to the land use mentioned in the 'draft development plan'.

38. 2022 SCC Online 151 (*Mutukumar and Others Vs. Chairman and Managing Director TANGEDCO and Others*) is relied upon to submit that even assuming certain permissions have been granted to certain persons as mentioned herein-above, contrary to the draft plan/Rules of 2012, the said permissions not supported by law cannot become a reason or an example to follow. The examples cited by the owner/ coloniser comes within the ambit of 'negative equality' which is not founded upon the equality Clause enshrined in Article 14 of the Constitution of India.

39. Lastly, it is submitted that in the Writ Petition No.1083 of 2015, there was no pleading about parity/discrimination. To elaborate, it is submitted that in this writ appeal, for the first time by filing I.A. No. 14820/2019, it is urged that owner/coloniser were subjected to discrimination. In absence of any pleading and foundation in the W.P. and in absence of any consideration on this aspect by learned Single Judge, said example cannot be a reason to affirm the order of learned Single Judge.

40. The parties confined their arguments to the extent indicated above. Both the parties filed their written submissions.

41. We have heard the parties at length and perused the record.

FINDINGS

Locus Standi :

42. The respondent in W.A. No.318 of 2018 is a coloniser. However, petitioner in the connected writ petition is admittedly the owner of the land. There is no quarrel about 'locus' of petitioner of the connected writ petition. Admittedly, legal questions involved in the writ appeal and writ petition are common. Considering the aforesaid, on a specific query from the Bench, learned Government Advocate fairly submitted that he is abandoning his objection regarding 'locus' of the coloniser. Thus, we need not deal with this aspect any further.

Conduct of appellant/O.I.C :

43. Since in the appeal filed by the coloniser and in the appeal filed by land owner, the learned Commissioner has passed different orders, eyebrows were raised by the respondent of writ appeal regarding his said conduct and it was submitted that writ appeal deserves to be dismissed on this score alone. We do not see any merit in this contention for the simple reason that Commissioner was not the final authority in the case. His subsequent and different order passed in the case of land owner became subject matter of revision by the State Government in exercise of *suo moto* powers. The final order of the State Government dated

21.3.2017 is called in question in the connected writ petition. Thus, different view taken by Commissioner fades into insignificance in the teeth of order of apex authority/State Government dated 21.03.2017. For this reason, we are not inclined to throw the writ appeal to winds.

Applicability of Rules of 2012 and validity of rejection orders :

44. The parties are at loggerheads on the question of applicability of Rules of 2012 in the present cases. The bone of contention of learned counsel for the owner and coloniser is that clause 7.2 of Draft Plan leaves to room for any doubt that said Rules are not applicable whereas appellant has taken a diametrically opposite stand by taking assistance of clause 7.17 of the said plan. It is apposite to quote the same :-

> ''**7.2 क्षेत्राधिकार**
>
> 1. इस अध्याय में वर्णित विकास नियमन राज्य शासन द्वारा मध्यप्रदेश नगर तथा ग्राम निवेश अधिनियम, 1973 (क्रमांक–23–1973) की धारा 13 के अंतर्गत गठित निवेश क्षेत्र पर लागू होंगे। मध्यपदेश भूमि विकास नियम 2012 भेड़ाघाट निवेश क्षेत्र पर अधिसूचित कर लागू नहीं किया गया है, **किन्तु इस अध्याय में कई नियमन म.प्र. भूमि विकास नियम 2012 के प्रावधान अनुसार होने का उल्लेख किया गया है। अतः केवल उल्लेखित नियम की प्रभावशील होंगे, तथा उन नियमों में समय–समय पर होने वाले संशोधन विकास योजना का भाग माना जावेगा।**
>
> **7.17 विकास / निवेश अनुज्ञा प्राप्ति की प्रकिया**
>
> विकास योजना प्रस्तावों के अंतर्गत आवेदनकर्ता को अनुज्ञा प्राप्त करने हेतु अपने आवेदन पत्र के साथ म.प्र. नगर तथा ग्राम निवेश अधिनियम, 1973 के प्रावधानानुसार निम्न दस्तावेज / जानकारी संलग्नित किया जाना आवश्यक है।
>
> 1. म.प्र. भूमि विकास निगम 2012 के नियम 14 में निर्धारित प्रपत्र में अनुज्ञा आवेदन पत्र प्रस्तुत करना चाहिए। जिसमें समस्त जानकारी का समावेश हो।
>
> 1. आवेदक द्वारा प्रस्तुत योजना **प्रस्ताव के परीक्षण करते समय** राज्य शासन द्वारा समय–समय पर अधिनियम के प्रावधानों के अंतर्गत प्रसारित निर्देश एवं मार्ग दर्शन का कड़ाई से पालन किया जाएगा।
>
> 2. **भूमि विकास / निवेश अनुज्ञा म.प्र. भूमि विकास नियम–2012 के प्रावधानों को भी ध्यान में रखना होगा।**''
>
> **(Emphasis Supplied)**

45. In addition, Rule 103 of Rules of 2012 reads thus :-

> **"103. Provisions of development plan to take precedence.-** The norms and regulations applicable in the plan area shall be such as prescribed in the relevant development plan :
>
> Provided that if the norms and regulation as provided in the development plan are different or contrary to these rules, the Director shall examine and send his proposal to the Government. The decision taken by the Government in this regard shall be final and shall be integrated part of Development plan."
>
> **(Emphasis Supplied)**

46. Pausing here for a moment, it is worth remembering that learned counsel for both the parties during the course of hearing fairly admitted that impugned order of learned writ court dated 15.12.2017 is founded upon the finding that in the Bhedaghat Development (Draft) Plan, Bhumi Vikas Rules, 2012 were not made applicable (para-9 of the impugned judgment). In addition, learned Single Judge opined that Rules of 2012 were made applicable to 145 cities, in which, Jabalpur Division has also been included but it does not include Bhedaghat. The parties also agreed that learned Single Judge has not considered clause 7.17 of Bhedaghat Development (Draft) Plan and Rule 103 of Rules of 2012. Thus, pivotal question is whether in the teeth of these provisions, it can be said that Rules of 2012 are not applicable. In order to address this *conundrum,* it is apt to consider the intention of policy/draft plan makers and the purpose for which same were introduced and also the language employed therein.

47. The notification dated 26.12.2012 envisages that notification is applicable to certain 'planning areas' of 145 cities. The main stand of owner/coloniser is that since Bhedaghat is not included in those 145 'planning areas', the Rules of 2012 cannot be made applicable and cannot be an impediment for granting permission to change the land use. To examine this carefully, it is apposite to remember that Bhedaghat Development (Draft) Plan came into being on 19.4.2013. Thus, admittedly on the day applications were preferred by the owner/coloniser seeking change of land use, the 'draft plan' was in vogue. The State Government in the impugned order dated 21.3.2017 impugned in the writ petition made it clear that the purpose of enacting a 'Draft Plan' for Bhedaghat is to promote sustainable development by protecting the environment and to ensure that natural resources are not extracted in an irresponsible manner. Considering the special features of Bhedaghat (which is a destination of international tourist attraction because of its marble rocks and river Narmada flowing there), in general, made it clear that Rules of 2012 were not made applicable. In order to take care of special features of Bhedaghat, clause 7.17 was inserted in the Bhedaghat Development (Draft) Plan. As noticed above, learned Single Judge has based its order solely on clause 7.2 of the Draft Plan. A careful reading of clause 7.2 also shows that although Rules of

2012 were not specifically notified by including Bhedaghat in the 'planning area', it further provides that the Rules mentioned in the Development Draft Plan shall be applicable and shall form part of the development plan.

48. A conjoint reading of clause 7.2 and 7.17 is necessary considering the language employed in clause 7.2. Putting it differently, clause 7.2 leaves no room for any doubt that certain provisions of Rules of 2012 needs to be looked into which are mentioned elsewhere in the 'draft plan' and same shall form part of the Development Plan including the Rules amended from time to time.

49. As per sub-clause 1 of clause 7.17 of Draft Plan, the applicant must file application as per format prescribed under Rule 14 of Rules of 2012. Application so preferred in prescribed format must be pregnant with all necessary informations. Sub-clause 2 of clause 7.17 makes it obligatory on the part of the authorities to take a decision *having regard to* Rules of 2012. Thus, sub-clause 1 of clause 7.17 is an obligation on the part of the applicant whereas sub-clause 2 binds the authorities for the purpose of taking a decision on such application.

50. As per shorter **Oxford Dictionary,** the phrase *'have regard to'* is used *'when reference to a person or thing'* is intended. The exact significance of this phrase will depend on the context and the setting in which it is used. The Judicial Committee of Privy Council observed that the expression 'have regard to' or expression very close to this were scattered throughout this Act but exact force of each phrase must be considered in relation to its context and to its own subject matter. This observation of Judicial Committee was considered by the Apex Court in AIR 1968 SC 377 *(Union of India Vs. Kamlabhai Harjiwandas Parekh).* It is profitable to consider certain other judgments dealing with the expression 'having/have regard to'.

51. The Judicial Committee in *CIT* v. *Williamson Diamonds Ltd.* [LR 1958 AC 41, 49 : (1957) 3 WLR 663] observed with reference to the expression "having regard to" : (AC p. 49)

> "The form of words used no doubt lends itself to the suggestion that regard should be paid only to the two matters mentioned, but it appears to their Lordships that it is impossible to arrive at a conclusion as to reasonableness by considering the two matters mentioned isolated from other relevant factors. Moreover, the statute does not say "having regard only" to losses previously incurred by the company and to the smallness of the profits made. No answer, which can be said to be in any measure adequate, can be given to the question of "unreasonableness" by considering these two matters alone."
>
> See also *CIT* v. *Gungadhar Banerjee and Co. (P) Ltd.* [(1965) 3 SCR 439, 444-45 : AIR 1965 SC 1977 : 57 ITR 176] See also *Saraswati Industrial Syndicate Ltd.* V. *Union of India* [(1974) 2 SCC 630, 633 : (1975) 1 SCR 956, 959].

52. In *State of Karnataka v. Ranganatha Reddy* [(1977) 4 SCC 471, 488 : (1978) 1 SCR 641, 657-58] Apex Court stated :

> "The content and purport of the expressions "having regard to" and "shall have regard to" have been the subject matter of consideration in various decisions of the courts in England as also in this country. We may refer only to a few. In *Illingworth* v. *Walmsley* [(1900) 2 QB 142 : 16 TLR 281] it was held by the Court of Appeal, to quote a few words from the judgment of Romer C.J. at page 144:
>
> > "All that clause 2 means is that the tribunal assessing the compensation is to bear in mind and have regard to the average weekly wages earned before and after the accident respectively. Bearing that in mind, a limit is placed on the amount of compensation that may be awarded ...."
>
> In another decision of the Court of Appeal in *Perry* v. *Wright* [(1908) 1 KB 441 : 77 LJ KB 236] Cozens -Hardy, M.R. observed at page 451:
>
> > "No mandatory words are there used; the phrase is simply "regard may be had". The sentence is not grammatical, but I think the meaning is this : Where you cannot compute you must estimate, as best as you can, the rate per week at which the workman was being remunerated, and to assist you in making an estimate you may have regard to analogous cases."

53. In *Shri Sitaram Sugar Co. Ltd. v. Union of India,* (1990) 3 SCC 223, it was poignantly held as under :-

> "30. The words "having regard to" in the sub-section are the legislative instruction for the general guidance of the government in determining the price of sugar. They are not strictly mandatory, but in essence directory. The reasonableness of the order made by the government in exercise of its power under sub-section (3-C) will, of course, be tested by asking the question whether or not the matters mentioned in clauses *(a)* to *(d)* have been generally considered by the government in making its estimate of the price, **but the court will not strictly scrutinized the extent to which those matters or any other matters have been taken into account.** There is sufficient compliance with the sub-section, if the government has addressed its mind to the factors mentioned in clauses *(a)* to *(d)*, amongst other factors which the government may reasonably consider to be relevant, **and has come to a conclusion, which**

> **any reasonable person, placed in the position of the government, would have come to.**
>
> **49**..... Where it is a finding of fact, the court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the court would have come to as a trier of fact."
>
> **(Emphasis Supplied)**

The Apex Court applied *Wednesbury* principle in this judgment.

54. Irrationality, illegality and procedural impropriety are the parameters on the anvil of which an administrative decision can be examined. **Lord Diplock, L.J.** in *Council of Civil Service Unions vs. Minister for the Civil Service* applied the said text as under :

> **(i) 'Illegality'** which means that the "decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it".
>
> It means that the decision-maker must keep within the scope of his legal power. Illegality means that the decision-maker has made an error of law; it represents infidelity of an official action to a statutory purpose. Such grounds as excess of jurisdiction, patent error of law, etc. fall under the head of "illegality".
>
> **(ii) 'Irrationality'** denotes unreasonableness in the sence of *Wednesbury* unreasonableness.
>
> **(iii) Procedural Impropriety** — The expression includes failure to observe procedural rules including the rules of natural justice or fairness wherever these are applicable.

55. This principle was followed by the Apex Court in (1994) 6 SCC 651 *Tata Cellular v. Union of India* and by this Court in *Mohanlal Patidar v. Bank of Maharashtra* 2022 SCC OnLine MP 5387.

56. If impugned orders before the Writ Court are examined on the anvil of these decisions, there will be no cavil of doubt that there exist 'no illegality' because the decision maker has clearly understood the law governing his decision making power and has given effect to it. In other words, it cannot be said that decision maker has taken the decision beyond the powers vested in him. The order cannot be said to be 'irrational' because it is based on the mandate of 'Draft Plan',

Clause 7.2 r/w 7.17 of the Plan coupled with Rule 14(5)(b)(i) of Rules of 2012. No 'procedural impropriety' is shown by learned counsel for the owner/coloniser in the entire decision making process.

57. In *State of Orissa v. Gopinath Dash,* (2005) 13 SCC 495, the Apex Court opined as under **:-**

> "7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government."
>
> **(Emphasis Supplied)**

58. In our considered opinion, the intention of 'Draft Plan' makers must be gathered by taking into account the legislative intent behind Sections 16, 18 and 19 of the Adhiniyam as well as the nature of 'Draft Plan' specially introduced for Bhedaghat.

59. To minutely examine the aforesaid, it is apposite to consider the following Sections :-

> **Section 16** : **Freezing of land use : (1)** On the publication of the existing land use map under Section 15-
>
> (a) no person shall institute or change the use of any land or carry out any development of land for any purpose other than that indicated in the existing land use map without the permission in writing of the Director :
>
> Provided that the Director shall not refuse permission if the change is for the purpose of agriculture;
>
> (b) no local authority or any officer or other authority shall, notwithstanding anything contained in any other law for the time being in force, grant permission for the change in use of land otherwise than as indicated in the existing land use map without the permission in writing of the Director.
>
> (2) The permission under sub-section (1) may be granted in such cases and subject to such conditions as may be prescribed.

(3) An application under sub-section (1) shall be made in writing to the Director in such form, accompanied by such fees and documents as may be prescribed,

(4) The provisions of Section 30 for the grant or refusal of permission to an application under Section 29 shall *mutatis mutandis* apply to an application for permission under sub-section (1),

(5) The provision of modification, appeal, revision and lapse of permission under sub-section (3) of Section 29, Section 31, Section 32 and Section 33 respectively, which are applicable to an order granting or refusing permission under section 30 shall mutatis mutandis apply to an order made under sub-section (1).

18. **Publication of draft development Plan.** - (1) [The Director shall publish the draft development plan prepared under Section 14 in such manner as may be prescribed together with a notice of the preparation of the draft development plan and the place or the places where the copies may be inspected, inviting objections and suggestions in writing from any person with respect thereto, within thirty days from the date of communication of such notice, such notice shall specify in regard to the draft development plan, the following particulars, namely,-]

(i) the existing land use maps;

[(i-a) the natural hazard prone areas with the description of natural hazards;]

(ii) a narrative report, supported by maps and charts, explaining the provisions of the draft development plan;

(iii) the phasing of implementation of the draft development plan as suggested by the Director;

(iv) the provisions for enforcing the draft development plan and stating the manner in which permission for development may be obtained;

(v) approximate cost of land acquisition for public purposes and the cost of works involved in the implementation of the plan.

(2) The committee constituted under sub-section (1) of Section 17-A shall not later than ninety days after the publication of the notice under sub-section (1), consider all the objections and suggestions as may be received within the period specified in the notice under sub-section

(1) and shall, after giving reasonable opportunity to all persons affected thereby of being heard, suggest such modifications in the draft development plan as it may consider necessary, and submit, not later than six months after the publication of the draft development plan, the plan as so modified, to the Director together with all connected documents plans, maps and charts.

(3) The Director shall, within 30 days of the receipt of the plan and other documents from the committee submit all the documents and plans so received alongwith his comments, to the State Government.]

19. Sanction of development plans.- (1) As soon as may be after the submission of the development plan under Section 18 the State Government may either approve the development plan or may approve it with such modifications as it may consider necessary or may return it to the Director to modify the same or to prepare a. fresh plan in accordance with such directions as the State Government may deem appropriate.

(2) Where the State Government approves the development plan with modifications, the State Government shall, by a notice published in the Gazette, invite objections and suggestions in respect of such modifications within a period of not less than thirty days from the date of publication of the notice in the Gazette.

(3) After considering objections and suggestions and after giving a hearing to the persons desirous of being heard, the State Government may confirm the modification in the development plan.

[(4) The State Government shall publish a public notice in the Gazette and in such other manner as may be prescribed of the approval of the development plan approved under the foregoing provisions and the place or places where the copies of the approved development plan may be inspected.

(5) The development plan shall come into operation from the date of publication of the said notice in the Gazette under sub- section (4) and as from such date shall be binding on all Development Authorities constituted under this Act and all local authorities functioning with the planning area.]

(Emphasis Supplied)

60. Section 16 mandates that upon publication of 'existing land use map' under Section 15 of Adhiniyam, no person will be entitled to seek and get benefit of change of use of any land without written permission of the Director. As per the proviso to clause(a), such permission cannot be refused when change is for the purpose of agriculture. This proviso is of no assistance to the owner / coloniser because change sought for in the instant case is not for the purpose of 'agriculture'. The Division Bench in the case of *Center for Environment Protection Research* (supra) opined as under :-

> "14. Sections 25 to 32 of the Adhiniyam to which reference was made by Mr. Mathur apply only after the development plan comes into force as would be clear from the language of Sections 25 to 32 of the Adhiniyam. Subsection (5) of Section 19 of the Adhiniyam states that the development plan comes into operation from the date of publication of the notice in the Gazette of the development plan as finally approved by the State Government under Section 19. Hence, the provisions of Sections 25 to 32 of the Adhiniyam do not lay down the procedure for grant of permission by the Director under Section 16(1) of the Adhiniyam when the development plan is under preparation and is in a draft stage and has not been finalized and published by the State Government under Section 19 of the Adhiniyam. We have therefore to look into the other provisions of the Adhiniyam to ascertain whether the power of the Director under Section 16 of the Adhiniyam to grant or refuse permission in writing for any change in use of land or for carrying out any development of land for any purpose other than that indicated in the existing land use map, is controlled or guided by any policy laid down by the legislature."

61. In *M/s. Pure Industrial Cock & Chemicals Ltd.* (supra) this Court opined as under :-

> **"25.** We therefore hold that "town development scheme" in Section 50 of the Adhiniyam means a scheme to implement the provisions of a development plan and until a development plan for an area is published and comes into operation, a draft town development scheme cannot be published by the Town and Country Development Authority under Section 50(2) of the Adhiniyam and such a town development scheme cannot by itself without a development plan for the area restrict the right of a person to use his property within the area of the scheme in the manner he likes, but the Director in exercise of his powers under Section 16 of the Adhiniyam can refuse permission to a person to change the use of his property within the planning area if the change proposed is contrary to the development plan **under preparation** . "
>
> **(Emphasis Supplied)**

62. The combined effect of Rule 16 read with Clause 7.2 and 7.17 of Bhedaghat Development (Draft) Plan shows that the intention of plan makers was to borrow the Rules of 2012 for the purposes mentioned in the 'Draft Plan' and the policy makers decided not to borrow the said Rules in general for all purposes. This practice followed by the authorities is not unknown to law. Thus, no eyebrows can be raised on this aspect. Indisputably, learned Single Judge has not considered the effect and impact of clause 7.17 and therefore, we find substance in the argument of learned Govt. Advocate that this clause is relevant for the purpose of examining the legality, validity and propriety of the order dated 21.3.2017 which became subject matter of challenge before the Writ Court. In addition, Rule 103 of Rules of 2012 is also significant.

63. Rule 103, in no uncertain terms, makes it clear that 'norms' and 'regulations' applicable in the plan area are dependent upon the clauses prescribed in the relevant development plan. The Rules of 2012 as a fiction, deemed to have been modified *mutatis mutandis* in so far as their application to the plan area is concerned. The wholesome reading of clause 7.2, 7.17 of Draft Plan and Rule 103 of Rules of 2012 shows that the argument of learned Govt. Advocate has substantial force that the decision to reject the applications seeking change of land use were on these parameters and all these parameters escaped notice of the learned Writ Court.

64. The another limb of argument of Shri Atul Choudhari was that the language employed in clause 7.17 of draft plan is clearly directory in nature. Suffice it to say that even assuming it to be 'directory' in nature, if respondents have taken a decision *having regard to* the Rules of 2012, in the teeth of clause 7.17, no fault can be found in the said exercise of respondents. This is trite that if decision of administrative authority is based on a policy decision which, even if, is directory in nature and view taken by them is in consonance with such policy/draft plan mandate and is plausible in nature, the same cannot be interfered with in exercise of judicial review. The Apex Court in *State of Orissa v. Gopinath Dash* (2005) 13 SCC 495 ruled thus :-

> "7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown the courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government."
>
> **(Emphasis Supplied)**

65. Similar view is taken by the Supreme Court in catena of judgments [See : (2005) 5 SCC 181 (*State of NCT of Delhi v. Sanjeev*), (2002) 3 SCC 496 (*Haryana Financial Corpn. v. Jagdamba Oil Mills*)].

66. In other words, if orders before the Writ Court declining permission to change land use were in consonance with the 'Draft Plan' and Rules of 2012, this Court is under no obligation to disturb the same. The learned Writ Court, in our opinion, committed an error while interfering with the impugned orders therein solely for the reason that Rules of 2012 are generally not applicable as per clause 7.2. The area of Bhedaghat may not be part of the notification dated 26.12.2012, fact remains that the 'Draft Plan' for Bhedaghat came into being as per Sections 15 and 16 of the Adhiniyam. The legislative mandate ingrained in Section 16 is for the purpose of 'freezing of land use' cannot be ignored. This aspect was dealt with by Division Bench in *Center for Environment Protection Research* (supra) by holding thus :

> **"15**. ..... Accordingly, whenever permission is sought from the Director or his subordinates for change of the use of any land or for development of land **for any purpose other than as indicated in the existing land use map, the Director or his subordinates has to refuse such permission where such change in the use of any land or development of land would be inconsistent with the proposed land use in the development plans under preparation.** On the other hand, the Director or his subordinates may defer the grant of permission where the change in the use of any land or development of any land for any purpose other than as indicated in the existing land use map is consistent with the proposed land use in the development plan under preparation until the development plan is finalized, approved and published by the State Government under Section 19 of the Adhiniyam."
>
> **(Emphasis Supplied)**

67. We will be failing in our duty if the argument of Shri Choudhari is not considered that 'Draft Plan' and Rules of 2012 can be made applicable only when a final plan under Section 19(5) of Adhiniyam is published. The curtains on this aspect are also drawn by the Division Bench in *Center for Environment Protection Research* (supra). The above quoted para of said judgment is the complete answer to this argument of Shri Choudhari. Para-15 of judgment deals with 'existing land use map' and hence this argument deserves rejection.

68. It is apposite to remember that the Apex Court in *Raipur Development Authority vs. Anupam Sahkari Griha Nirman Samiti and others* 2000 (4) SCC 357 held that when a 'draft scheme' is published, any sanction could only be in terms of the said scheme and no independent development plan in contradiction of the same could be sanctioned.

To sum up, it is clear like cloudless sky that on the date owner/coloniser preferred applications seeking change of land use, 'Draft Plan' came into being. As per the 'Draft Plan', it was open to the Director/Competent Authority to take into account the Bhumi Vikas Rules or putting it differently, take a decision ***having regard to*** the said 'Draft Plan'. The language employed is 'भूमि विकास/निवेश अनुज्ञा म.प्र. भूमि विकास नियम-2012 के प्रावधानों को भी ध्यान में रखना होगा।' The decision so taken was by taking into account and *having regard to* the Draft Plan. Thus, the decision so taken in consonance with 'Draft Plan' is a plausible decision taken by the authorities. Another view is possible, is not a ground for judicial review. After applying the *litmus test* to examine the validity of an administrative order, we have already held that there is no illegality, irrationality and procedural impropriety in the decision and in the decision making process. Thus, the impugned orders before the Writ Court deserve a stamp of approval from this Court and order of Writ Court impugned herein deserves to be jettisoned.

69. So far argument relating to insertion of sub-section 2 to 5 of Section 16 are concerned, we are only inclined to observe that said sub-sections advance the purpose of Section 16 and in no way make the claim of owner / coloniser better.

Validity of Orders / Reasons :

70. The argument of Shri Choudhari on the strength of Constitution Bench Judgment in *Mohinder Singh Gill* (supra) on the first blush appears to be attractive but lost much of its shine when examined minutely. In the impugned orders of rejection, the authorities have taken assistance of the reason of applicability of 'Draft Plan'. The relevant portion of order of Joint Director dated 06.5.2014 and appellate order dated 16.9.2014 reads thus :-

> ''उपरोक्त विषयान्तर्गत संदर्भित पत्र के परिपेक्ष्य में लेख है कि ग्राम धुन्सौर न.ब. 150 प.ह.न 36/25 राजस्व निरीक्षक मंडल जबलपुर– 2 तहसील व जिला जबलपुर स्थित खसरा क्रमांक 337/1, 337/2, 337/3 रकबा –6.69 हेक्टेयर भूमि पर आवासीय प्रयोजन हेतु अनुमति के लिए प्रस्तुत आवेदन पर एतद द्वारा मध्य प्रदेश नगर तथा ग्राम निवेश अधिनियम 1973 की धारा 16 (1) में निहित प्रावधानों के अन्तर्गत निम्न कारणों से अनुमति देने से इंकार किया जाता है :–
>
> आवेदित भूमि भेड़ाघाट प्रारूप विकास योजना 2021 में कृषि प्रयोजन हेतु प्रस्तावित होने के कारण।''
>
> (06/05/2014)
>
> ''12. भेड़ाघाट विकास योजना प्रारूप जो अधिनियम की धारा 18 (1) के तहत अधिसूचना जारी होने से उसके प्रावधान उसी प्रकार लागू है, जैसे कि वे विकास योजना के प्रावधान हों। विकास योजना प्रारूप में आवेदित भूमि जो मौजा घुन्सौर की है, का प्रयोजन कृषि विनिर्दिष्ट है। चूंकि इस प्रकरण के विचारण में मध्यप्रदेश भूमि विकास के नियम 2012 लागू होंगे,

अतः विकास अनुज्ञा का विचारण इन नियमों के नियम 16 (1) के प्रावधान के तहत होगा। नियम 14 (5) के प्रावधान है कि यदि भूमि ऐसे क्षेत्र में स्थित है, जहा आवेदन में प्रस्वावित कियाकलाप प्रकाशित प्रारूप विकास रेखांक में प्रस्तावित नहीं है, तो नियम 16 के तहत विकास अनुज्ञा नहीं दी जायेगी। चूंकि भेड़ाघाट विकास योजना प्रारूप में आवेदित भूमि का प्रयोजन कृषि विनिर्दिष्ट है, अतः कृषि भिन्न प्रयोजन के लिये विकास अनुज्ञा नहीं दी जा सकती थी। परिणामतः प्राधिकृत अधिकारी / उत्तरवादी द्वारा आलोच्य आदेश से जिस आधार पर अपीलार्थी / आवेदक का आवेदन निरस्त किया गया है, वह विधिसम्मत है।''

(16 / 9 / 2014)

71. No doubt, the provisions (Clause 7.2 & 7.14) on the strength of which said reason was shown were not mentioned, the fact remains that clause 7.2, 7.17 of 'Draft Plan' and Rule 103 of Rules of 2012 put together permits the authorities to take such decision. This is equally settled that non-mentioning or wrong mentioning of provision will not make the order as illegal if source of power of authorities can be otherwise traced from the parent statute / enabling provision. (*See : N. Mani Vs. Sangeetha Theatre* reported in (2004) 12 SCC 278, *Ram Sunder Ram Vs. Union of India* reported in (2007) 13 SCC 255, *P.K. Palanisamy Vs. N. Arumugham* reported in (2009) 9 SCC 173).

Section 16 of Adhiniyam & Rule 14(5)(b)(I) :

72. Another augment forcefully advanced was on the basis of judgment of Supreme Court in the case of *Kerala State Electricity Board* (Supra). It was argued that Rule 14(5)(b)(i) of Rules of 2012 makes Section 16(1)(a) as redundant. We are unable to persuade ourselves with this line of argument. Section 16(1)(a) provides discretion to the competent authorities to grant permission whereas Rule 14(5)(b)(i) takes care of a situation where permission cannot be granted. There is no 'head on' between the said two provisions and therefore, aforesaid Supreme Court judgment is of no assistance to the respondent / petitioner. The argument of owner/coloniser that Rule 14(5)(b)(i) of the Rules of 2012 makes Section 16 (1) (a) as redundant deserves to be rejected for yet another reason. A careful reading of Section 16(1)(a) shows that it talks about 'freezing land use' in relation to an *exiting land use map* whereas Rule 14(5)(b)(i) of the Rules of 2012 talks about activity in published *Draft Development Plan.* Section 16 deals with freezing of land use as per exiting land use map and Section 18 of the Adhiniyam deals with *Draft Development Plan.* The scheme and object behind insertion of Section 16 aforesaid in the statute book is to ensure that on publication of existing land use map under Section 15, the change of use of any land can take place only with the express permission of the Director/competent authority.

73. Section 14 of the Adhiniyam makes it obligatory for the Director to:-

(a) prepare an existing land use map.

(b) prepare a development plan.

74. In addition, the competent authority can carry out surveys, inspections and perform supplementary duties incidental and consequential for preparation of said map/plan. Section 15 of the Adhiniyam prescribes the procedure for preparation of existing land use map. Section 16 of the Adhiniyam deals with 'freezing of land use'. Section 17 of the Adhiniyam talks about the contents of the 'Development Plan'. Section 17-A of the Adhiniyam deals with constitution of a committee by the State Government. Section 18 prescribes the procedure for publication of 'draft development plan', which requires a sanction under Section 19 of the Adhiniyam from the State Government as per the procedure prescribed therein.

75. The Director/competent authority to whom powers are delegated is equipped to take a decision for grant of permission of change of land use in consonance with the provision of Adhiniyam and Rules made thereunder.

76. In *M/s Pure Industrial Cock & Chemicals Ltd. Vs. State of M.P. and others* 2007 (2) M.P.H.T., 380 (DB) in which it was held as under :-

> **"23**....Instead, the restrictions on the right of a person to change the use of his property located in the area of the town development scheme is because of the development plan under preparation or the development plan published for the area. Since the Director is aware of the details of the development plan under preparation and the development plan published by the State Government for the area, power has been vested by the Adhiniyam on the Director to grant or to withhold permission to a person to change the use of his property located in the area of town development scheme **so that such use is consistent with the development plan under preparation** or the development plan published for the area.
>
> **(Emphasis Supplied)**

77. The constitutionality of certain provisions of the Adhiniyam were tested before the Division Bench in *Center For Environment Protection, Research* (supra) and in *Madan Parmaliya Vs. State of M.P***.** reported ILR 2007, M.P. 468 and those provisions of Adhiniyam got stamp of approval from the Division Bench of this Court.

Discrimination / Parity :

78. The owner / coloniser has raised the question of discrimination by citing certain examples **(See : Para-26).** This argument also cannot cut any ice for the simple reason that there is no foundation laid in the writ petition regarding the aforesaid discrimination. Admittedly, for the first time, by filing an interlocutory application, the aspect of discrimination was sought to be highlighted. Learned Single Judge had no occasion to consider this aspect in absence of any foundation

before the Writ Court. The impugned order of Writ Court is also not based on the ground of discrimination. Apart from this, the land use was permitted to be changed in favour of certain persons for different reasons. Even assuming for the sake of argument that such permissions were erroneously granted, it cannot become a reason to follow as per theory of negative equality. An example which is not in consonance with law cannot be a reason to be repeated. The judgment of *R. Muthukumar* (Supra) deals with this aspect. Apart from this the Apex Court has taken similar view in *Jaipur Development Authority v. Daulat Mal Jain* (1997) 1 SCC 35; *State of Jharkhand v. Manshu Kumbhkar* (2007) 8 SCC 249; *State of Orissa v. Mamata Mohanty* (2011) 3 SCC 436; *Bank of India v. Aarya K. Babu* (2019) 8 SCC 587 and *Atma Ram v. Charanjit Singh* (2020) 3 SCC 311.

79. In view of foregoing analysis, we are unable to countenance the order of learned Single Judge dated 15.12.2017 passed in W.P. No. 1083 of 2015. For the same reason, no relief is due in W.P. No. 6880 of 2017. As a consequence, the order dated 15.12.2017 passed in W.P. No.1083 of 2015 is set aside. W.P. No.6880/2017 is **dismissed.** W.A. is **allowed.**

Order accordingly

I.L.R. 2023 M.P. 1715 (DB)

Before Mr. Justice Rohit Arya & Mr. Justice Sanjeev S Kalgaonkar

WA No. 1668/2022 (Gwalior) decided on 9 August, 2023

JAJPAL SINGH …Appellant

Vs.

LADDURAM KORI & ors. …Respondents

(Along with WA No. 1675/2022)

***A. Constitution – Article 226 – Scrutiny Committee – Caste Certificate – Judicial Review* – Held – Findings recorded by Committee are impeccable in nature as based on consideration of entire oral/documentary evidence and it concluded that the caste certificate was valid – Committee when considers all material facts and records a finding, though another view, as a Court of appeal may be possible, it is not a ground to reverse the finding – Writ Court has exercised appellate jurisdiction recording independent findings of fact and substituting a well considered Scrutiny Report, which is not permissible in exercise of jurisdiction under Article 226 of Constitution – Impugned judgment set aside – Appeal allowed. (Paras 12, 13, 17, 19, 20, 31 & 32)**

क. संविधान – अनुच्छेद 226 – संवीक्षा समिति – जाति प्रमाणपत्र – न्यायिक पुनर्विलोकन – अभिनिर्धारित – समिति द्वारा अभिलिखित निष्कर्ष त्रुटिहीन प्रकृति के हैं तथा समस्त मौखिक / दस्तावेजी साक्ष्य के विचार पर आधारित हैं और यह निष्कर्ष निकाला गया कि जाति प्रमाणपत्र विधिमान्य था – जब समिति समस्त तात्विक तथ्यों पर विचार कर

निष्कर्ष अभिलिखित करती है, यद्यपि अपीली न्यायालय के रूप में, एक अन्य दृष्टिकोण संभव हो सकता है, यह निष्कर्ष को उलटने का आधार नहीं है – रिट न्यायालय ने तथ्य के स्वतंत्र निष्कर्ष अभिलिखित कर अपीली अधिकारिता का प्रयोग किया है और एक सुविचारित संवीक्षा प्रतिवेदन को प्रतिस्थापित किया है, जो कि संविधान के अनुच्छेद 226 के अंतर्गत अधिकारिता के प्रयोग में अनुज्ञेय नहीं हैं – आक्षेपित निर्णय अपास्त – अपील मंजूर।

***B. Constitution – Article 226 – Double Jeopardy* – Held – Earlier FIR lodged against appellant for obtaining NAT caste certificate was quashed by this Court in MCRC No. 2050/2010 – Now, direction of Single Judge to register FIR against appellant for procuring such caste certificate shall subject him to go through the same ordeal and humiliation which is not warranted in the facts and circumstances as the same allegations cannot be ordered to be subject matter of another FIR – Said direction is unsustainable and is set aside. (Para 29)**

ख. संविधान – अनुच्छेद 226 – दोहरा संकट – अभिनिर्धारित – पूर्व में इस न्यायालय द्वारा MCRC 2050/2010 में अपीलार्थी के विरूद्ध नट जाति प्रमाण पत्र प्राप्त करने पर दर्ज प्रथम सूचना प्रतिवेदन को अभिखंडित किया गया था – अब, एकल न्यायाधीश द्वारा ऐसा जाति प्रमाणपत्र उपाप्त करने के लिए अपीलार्थी के विरूद्ध प्रथम सूचना प्रतिवेदन दर्ज करने हेतु निदेश देना उसे उसी कठिन परीक्षा व अपमान के अध्यधीन करेगा जो तथ्यों तथा परिस्थितियों में अपेक्षित नहीं हैं क्योंकि समान अभिकथनों को अन्य प्रथम सूचना प्रतिवेदन की विषय वस्तु बनाने का आदेश नहीं दिया जा सकता – उक्त निदेश कायम रखे जाने योग्य नहीं है तथा अपास्त किया जाता है।

***C. Constitution – Article 226 – Scrutiny Committee – Caste Certificate – Documentary Evidence* – Held – Appellant is a first generation ever to attend the school – Availability of documentary evidence of caste certificate becomes a difficulty, but that by itself does not warrant rejection of his claim – Oral evidence of independent persons of his father's age, collected from Punjab shows and confirms that his grandfather was of NAT caste – Scrutiny Committee was fully justified in declaring that appellant belong to NAT caste. (Para 14 & 19)**

ग. संविधान – अनुच्छेद 226 – संवीक्षा समिति – जाति प्रमाण पत्र – दस्तावेजी साक्ष्य – अभिनिर्धारित – अपीलार्थी विद्यालय जाने वाली अब तक की प्रथम पीढ़ी है – जाति प्रमाणपत्र के दस्तावेजी साक्ष्य की उपलब्धता एक कठिनाई बन जाती है, परंतु वह अपने आप में उसके दावे को अस्वीकार करने के लिए आवश्यक नहीं है – उसके पिता की उम्र के स्वतंत्र व्यक्तियों का पंजाब से एकत्रित मौखिक साक्ष्य यह दर्शाता है तथा पुष्ट करता है कि उसके दादा नट जाति के थे – यह घोषित करने में कि अपीलार्थी नट जाति का है संवीक्षा समिति पूर्णतः न्यायोचित थी।

***D. Constitution – Article 226 – Scrutiny Committee – Caste Certificate – Application of Affinity Test* – Held – Claim of applicant belonging**

to a particular scheduled caste or tribe cannot *per se* be disregarded on ground that his present traits do not match his tribe's peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. for the reason that with modernization, migration and contact with other communities, the communities tend to develop and adopt new traits which may not essentially match with traditional characteristics of particular caste or tribe – Hence, affinity test cannot be regarded as a litmus test for establishing the link of applicant with given scheduled caste or tribe. (Para 14)

घ. संविधान – अनुच्छेद 226 – संवीक्षा समिति – जाति प्रमाण पत्र – सजातीयता परीक्षण का प्रयोग – अभिनिर्धारित – आवेदक के किसी विशिष्ट अनुसूचित जाति अथवा जनजाति के होने के दावे को स्वतः इस आधार पर खारिज नहीं किया जा सकता कि उसके वर्तमान लक्षण उसकी जनजाति के विशिष्ट मानव–विज्ञान संबंधी तथा नृ–विज्ञान संबंधी लक्षण, देवी/देवता, अनुष्ठान, रीति–रिवाज, विवाह के तरीके, मृत्यु संस्कार, शव को दफनाने के तरीके इत्यादि से मेल इसलिए नहीं खाते क्योंकि आधुनिकता, प्रव्रजन तथा अन्य समुदायों के साथ संपर्क के कारण समुदायों में नए लक्षण विकसित करने और अपनाने की प्रवृत्ति होती हैं जो विशिष्ट जाति अथवा जनजाति की पारंपरिक विशेषताओं से आवश्यक रूप से मेल नहीं खाते – अत, दी गई अनुसूचित जाति अथवा जनजाति के साथ आवेदक के संबंध स्थापित करने के लिए सजातीयता परीक्षण को लिटमस परीक्षण/ सत्यता का परीक्षण नहीं माना जा सकता है।

***E. Constitution – Article 226 – Scrutiny Committee – Powers, Duties & Functions* – Held – Approach of Scrutiny Committee should be inquisitorial and not adversarial – It should not deal with the matter as if it is a Court trying a criminal case where prosecution is required to prove its case beyond reasonable doubt – It's duty is to ascertain the truth and in doing so it can record evidence and procure relevant, documents – It has to deal with the material including reports of Police, Revenue and Vigilance Authorities objectively and dispassionately. (Para 13 & 28)**

ङ संविधान – अनुच्छेद 226 – संवीक्षा समिति – शक्तियां, कर्तव्य तथा कार्य – अभिनिर्धारित – संवीक्षा समिति का दृष्टिकोण जिज्ञासु होना चाहिए न कि विरोधात्मक/प्रतिकूल – उसे मामले से इस प्रकार नहीं निपटना चाहिए जैसे कि वह एक न्यायालय है जो एक आपराधिक प्रकरण का विचारण कर रहा है जहां अभियोजन से यह अपेक्षित है कि वह अपना प्रकरण युक्तियुक्त संदेह से परे साबित करे – इसका कर्तव्य है कि वह सत्य का पता लगाए/सुनिश्चित करे तथा ऐसा करते समय वह साक्ष्य अभिलिखित कर सकती है तथा सुसंगत दस्तावेज उपाप्त कर सकती है – उसे पुलिस, राजस्व तथा सतर्कता प्राधिकरणों के प्रतिवेदनों सहित सामग्री के साथ वस्तुनिष्ठ रूप से तथा से निष्पक्षतापूर्ण रूप से निपटना होगा।

***F. Constitution (Scheduled Castes) Order, 1950, Para 3 – Term "Sikh"* – Held – "Sikh" is a religion and not caste, as is evident from para 3 of the 1950 Order – Therefore, merely for the reason that in Revenue**

documents, "Sikh" is written in column of caste, it would not lead to conclusion that appellant did not belong to NAT caste. (Para 25)

च. संविधान (अनुसूचित जाति) आदेश, 1950, कंडिका 3 – शब्द ''सिख'' – अभिनिर्धारित – ''सिख'' एक धर्म है तथा न कि जाति, जैसा कि आदेश 1950 की कंडिका 3 से स्पष्ट है – अतः मात्र इस कारण कि राजस्व दस्तावेजों में, जाति के स्तम्भ में ''सिख'' लिखा है, यह इस निष्कर्ष की ओर नहीं ले जाएगा कि अपीलार्थी नट जाति का नहीं था।

***G. Constitution (Scheduled Castes) Order, 1950, Para 3 and M.P. Government Circular, 2005, Clause 3 – Inter-State Migration* – Held – Forefathers of appellant migrated from Punjab to erstwhile State of M.P. somewhere in 1920-21 i.e. much prior to coming into force of 1950 Order – Thus, as on 10.08.1950, forefathers of appellant were very much residing in State of M.P. – Clause 3 of 2005 Circular provides that those persons who have settled in M.P. after migration from other States shall be clubbed in category of inter-State migration only if they migrated after SC/ST Presidential Order, 1950 – Appellant cannot be treated as migrant in terms of the said clause. (Para 21)**

छ. संविधान (अनुसूचित जाति) आदेश, 1950, कंडिका 3 एवं म.प्र. शासकीय प्रपत्र, 2005, खंड 3 – अंतर–राज्यीय प्रव्रजन – अभिनिर्धारित – अपीलार्थी के पूर्वज लगभग 1920–21 में अर्थात् आदेश 1950 के लागू होने से बहुत समय पहले पंजाब से तत्कालीन मध्यप्रदेश राज्य में प्रव्रजित हुए – इस प्रकार, दिनांक 10.08.1950 को अपीलार्थी के पूर्वज मध्यप्रदेश राज्य में ही रह रहे थे – परिपत्र 2005 का खंड 3 यह उपबंधित करता है कि वे व्यक्ति, जो अन्य राज्य से प्रव्रजित होकर मध्यप्रदेश में बस गये थे, को केवल तब अंतर–राज्यीय प्रव्रजन की श्रेणी में जोड़ा जाएगा यदि वे राष्ट्रपति के अनुसूचित जाति/जनजाति आदेश, 1950 के बाद प्रव्रजित हुए हो – अपीलार्थी को उक्त खंड की शर्तों में प्रवासी नहीं माना जा सकता।

***H. Constitution – Article 226 – Scope of Judicial Review* – Discussed and explained. (Para 12)**

ज. संविधान – अनुच्छेद 226 – न्यायिक पुनर्विलोकन की व्याप्ति – विवेचित एवं स्पष्ट की गयी।

Cases referred:

(1994) 6 SCC 241, (2012) 1 SCC 333, (2012) 1 SCC 113, (2018) 6 SCC 162, (2018) 10 SCC 312, (1990) 3 SCC 130, AIR 2000 SC 3751, AIR 1966 SC 605.

Sanjay Agrawal with *S.S. Gautam, Rahul Gupta* and *R.S. Chauhan,* for the appellant in WA No. 1668/2022 and for the respondent No. 2 in WA No. 1675/2022.

Ankur Mody, Addl. A.G. for the appellants/State in WA No. 1675/2022 and for the respondent/State in WA No. 1668/2022.

R.D. Jain with *Sangam Jain, Ajay Bhargava, Mayank Pathak* and *Divyansh Jain,* for the respondent No. 1 in WA No. 1668/2022 and WA No. 1675/2022.

J U D G M E N T

The Judgment of the Court was delivered by:

ROHIT ARYA, J.:- These appeals, under section 2(1) of the Madhya Pradesh (Uchcha Nyayalaya Ki Khand Peeth Ko Appeal) Adhiniyam, 2005, are directed against the impugned judgment dated 12/12/2022 passed in W.P. No.4794/2020 and, thus are being decided by this common judgment.

For the sake of convenience, reference to parties is in accordance with title of W.A. No.1668/2022.

2. The subject matter at issue relates to verification of caste certificate of appellant/respondent no.5 Jajpal Singh, a sitting MLA, who has been issued a certificate of Scheduled Caste treating his caste as "NAT" on 6.11.2008 i.e. about fifteen years ago. The NAT caste appears at S.No.41 in Madhya Pradesh as per The Constitution (Scheduled Castes) Order, 1950.

The factual matrix of the case may be summarized thus:

(i) The appellant had obtained a caste certificate dated 2/12/1999 of "Keer" caste ; OBC in State of Madhya Pradesh and contested the election of Municipal Council, Ashoknagar.

(ii) One Baijnath Sahu filed W.P. No. 1330/2002 challenging the said caste certificate dated 2/12/1999. The writ Court disposed of the petition vide order dated 12/8/2002 with liberty to the petitioner to approach the competent forum.

(iii) Complainant Baijnath then approached High Power Caste Scrutiny Committee, *inter alia* stating that the certificate of OBC treating him to be of "Keer" caste was suspicious and deserved to be cancelled as the appellant had filed his nomination for Member, Jila Panchayat, on 13/5/1999 showing himself as "NAT (Bazigar")/SC.

(iv) On 25/2/2004,the High Level Caste Scrutiny Committee cancelled the caste certificate dated 2/12/1999 of OBC category ("Keer" caste) on the premise that he had obtained a certificate of NAT SC caste which was used by him as Member of Jila Panchayat.

(v) The said decision dated 25/2/2004 was challenged by appellant Jajpal Singh before this Court through W. P. No. 520/ 2004. On 3/9/2004, the order dated 25.2.2004 was set aside as the same was found to have been passed by the Committee of 4 members instead of 6 members and the case was remanded with direction to decide it in accordance with law.

(vi) On 11/11/2004, the re-constituted Committee maintained the decision cancelling the caste certificate dated 2/12/1999.

(viii) It further appears that an FIR was registered against the appellant at Crime No. 161/10 at Police Station Ashoknagar under sections 420, 467, 468, 471, 477 and 120B of the IPC alleging fraud and mis-representation. However, the FIR was quashed by the High Court in M.Cr.C. No. 2050/2010 (Jajpal Singh Vs. State of M.P.) vide order dated 4/2/2022.

(ix) The appellant obtained caste certificate of Scheduled Caste from the Office of SDO, Ashoknagar, where his caste has been mentioned as "NAT" on 3.11.2008/6.11.2008.

(x) One Ramesh Kumar Itoriya challenged the caste certificate of appellant before the High Power Caste Scrutiny Committee (for brevity *" Scrutiny Committee"*. The aforesaid Committee appears to have conducted an enquiry through Collector and Superintendent of Police, Ashoknagar without due notice to the appellant. On 16/9/2013, the High Level Committee found that in the land records since appellant's caste was mentioned as "Sikh", therefore "Nat" caste certificate was cancelled.

(xi) The aforesaid decision was challenged by the appellant by filing W.P. No.7047/2013 on the premise that the findings recorded are lopsided to his prejudice. Besides, neither any notice was issued nor opportunity of hearing was afforded to him to contest the challenge to his caste certificate and adduce evidence. Further, the Committee was not properly constituted as out of 4 members only 3 members had put their signatures in the order dated 16/9/2013. During pendency of writ petition, prayer for interim relief was rejected, against which appellant preferred W.A. No. 502/2013, wherein vide order dated 25/10/2013, the impugned order dated 16/9/2013 passed by the Scrutiny Committee was stayed upto final decision of writ peittion (sic : petition).

(xii) In 2018, the appellant was a candidate from Congress Party to contest elections from Ashoknagar on a seat reserved for SC candidate and writ petitioner Laddu Ram Kori contested the election as candidate of BJP party. The appellant was declared elected. The writ petitioner/respondent also filed an application for intervention in W.P. No. 7047/2013.

(xiii) On 1/5/2019, the writ Court in W.P. No.7047/2013 set aside the order dated 16/9/2013 upholding the challenge thereto on twin grounds as aforesaid and remanded the subject matter of enquiry to the Scrutiny Committee to decide afresh in accordance with the procedure laid down in the case of *Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and Others ((1994)6 SCC 241)* and on the basis of evidence collected after affording due opportunity to the

> appellant. Besides, learned Single Judge vide order dated 25/4/2019 had also framed ten questions in paragraph 70 of the order which were required to be answered by the appellant before the Committee. That apart, it was also ordered that by way of abundant caution, High Power Scrutiny Committee was directed not to get prejudiced by any of the observations made by the writ Court in the said order.

3. Before adverting to the merits of the Scrutiny Committee report dated 13/12/2019 and the order passed thereupon on 18/12/2019, it would be expedient to reiterate the law as propounded in *Madhuri Patil's* case (Supra) by Hon'ble Apex Court.

Para 13 of the said judgment deals with procedure for issuance of social status certificates, their scrutiny and approval by way of clauses 1 to 15. These directions (1-15) have been confirmed by a Bench of three Judges in the case of *Dayaram v. Sudhir Batham* ((2012) 1 SCC 333), except direction no.13 which provided that where writ petition against order of Caste Scrutiny Committee is disposed of by a Single Judge of High Court no further appeal would lie against the said order (even if there existed a vested right to file such intra Court appeal or Letter Patents Appeal) and will only be subject to Special Leave Petition under Article 136; the same has been held to be unsustainable to that extent and it has been ruled that right to file appeal either in the form of intra Court appeal or Letters Patent Appeal shall be maintained.

Under clause 4, para 13 of *Madhuri Patil's* case (Supra), all State Governments are required to constitute a Committee for the aforesaid purpose. Clause 5 provides that there should be a vigilance cell to investigate into the social status claims and further provides scope for enquiry. The same is relevant for the purpose of this appeal and is, thus, reproduced as under:

> 5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma.....
>
> *(Emphasis supplied)*

Para 15 of the said judgment deals with scope, dimension, limit and extent of jurisdiction of the High Court under Article 226 of the Constitution while addressing a challenge made to report and recommendations of High Power Caste Scrutiny Committee. The same is also relevant for the purpose of this appeal and is reproduced as under:-

> "15. The question then is whether the approach adopted by the High Court in not elaborately considering the case is vitiated by an error of law. High Court is not a court of appeal to appreciate the evidence. The Committee which is empowered to evaluate the evidence placed before it when records a finding of fact, it ought to prevail unless found vitiated by judicial review of any High Court subject to limitations of interference with findings of fact. The Committee when considers all the material facts and records a finding, though another view, as a court of appeal may be possible, it is not a ground to reverse the findings. The court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts which have led the Committee ultimately record the finding. Each case must be considered in the backdrop of its own facts. "
>
> *(Emphasis supplied)*

With regard to status of Committee and scope of enquiry, the Apex Court in the case of *Dayaram Vs. Sudhir Batham and Others* (Supra), has ruled as under:-

> "34. Each scrutiny committee has a vigilance cell which acts as the investigating wing of the committee. The core function of the scrutiny committee, in verification of caste certificates, is the investigation carried on by its vigilance cell. When an application for verification of the caste certificate is received by the scrutiny committee, its vigilance cell investigates into the claim, collects the facts, examines the records, examines the relations or friend and persons who have knowledge about the social status of the candidate and submits a report to the committee. If the report supports the claim for caste status, there is no hearing and the caste claim is confirmed. If the report of the vigilance cell discloses that the claim for the social status claimed by the candidate was doubtful or not genuine, a show-cause notice is issued by the committee to the candidate. After giving due opportunity to the candidate to place any material in support of his claim, and after making such enquiry as it deems expedient, the scrutiny committee considers the claim for caste status and the vigilance cell report, as also any objections that may be raised by any opponent to the claim of the candidate for caste status, and passes appropriate orders.

> 35. The scrutiny committee is not an adjudicating authority like a Court or Tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. Like any other decisions of administrative authorities, the orders of the scrutiny committee are also open to challenge in proceedings under Article 226 of the Constitution. Permitting civil suits with provisions for appeals and further appeals would defeat the very scheme and will encourage the very evils which this court wanted to eradicate. As this Court found that a large number of seats or posts reserved for scheduled castes and scheduled tribes were being taken away by bogus candidates claiming to belong to scheduled castes and scheduled tribes, this Court directed constitution of such scrutiny committees, to provide an expeditious, effective and efficacious remedy, in the absence of any statute or a legal framework for proper verification of false claims regarding SCs/STs status. This entire scheme in Madhuri Patil will only continue till the concerned legislature makes appropriate legislation in regard to verification of claims for caste status as SC/ST and issue of caste certificates, or in regard to verification of caste certificates already obtained by candidates who seek the benefit of reservation, relying upon such caste certificates."
>
> *(Emphasis supplied)*

These observations are with reference to paragraph 13.7 of *Madhuri Patil's case* (Supra).

In the case of *Anand Vs. Committee for Scrutiny And Verification Of Tribe Claims and Others* ((2012)1 SCC 113), the Hon'ble Supreme Court has held, in para 22, as under:

> 22. It is manifest from the afore-extracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:
>
> (i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to post-Independence documents. In case the applicant is the

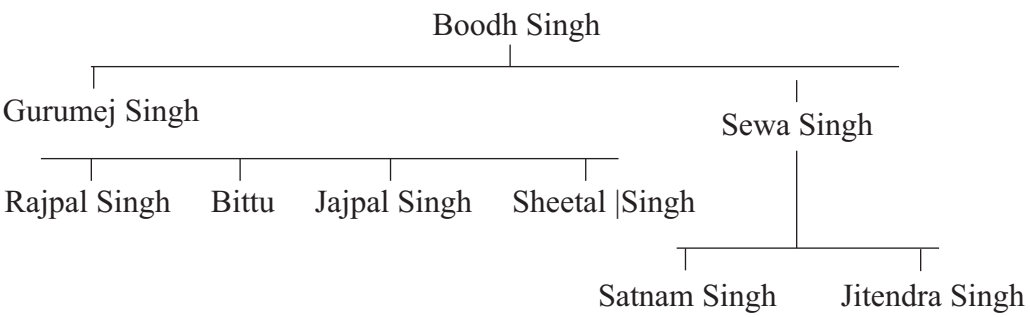
first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant;

(ii) While applying the affinity test, which focuses on the ethnological connections with the Scheduled Tribe, a cautious approach has to be adopted. A few decades ago, when the tribes were somewhat immune to the cultural development happening around them, the affinity test could serve as a determinative factor. However, with the migrations, modernisation and contact with other communities, these communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the tribe. Hence, the affinity test may not be regarded as a litmus test for establishing the link of the applicant with a Scheduled Tribe. Nevertheless, the claim by an applicant that he is a part of a Scheduled Tribe and is entitled to the benefit extended to that tribe, cannot per se be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. Thus, the affinity test may be used to corroborate the documentary evidence and should not be the sole criteria to reject a claim."

(Emphasis supplied)

4. At this stage, it is also appropriate to unfold undisputed factual details related to appellant's lineage and his background.

Admittedly, the family tree of appellant is as under:



In this regard, the statement of Singh, father of appellant, aged about 85 years, recorded by Vigilance Officer (SDO(P) Ashoknagar) is relevant and is reproduced thus:

ने बयान मे बताया कि मै उक्त पते पर रहता हूं। आज से करीबन 90–100 साल पहले हमारा परिवार पंजाब से अशोकनगर आया था। महाराज सिंधिया का राज था। मेरे ताउजी सूबेदार सिंह एवं पिताजी बूढ सिंह ग्राम सिंधाडा अमृतसर के पास से ग्राम सिंधाडा मे आये थे । ग्राम सिंधाडा हमारे पिताजी ने कुछ जमीन खरीदी तथा कुछ जमीन हमे राजा ने दी थी। मेरा एवं मेरे भाई सेवा सिंह का जन्म ग्राम सिंधाडा मे ही हुआ था। मै सन् 1983 मे ग्राम सावन मे अपने परिवार सहित रह रहा हूं। छोटा भाई सेवा सिंह अपने परिवार के साथ ग्राम सिंधाडा मे रहते है। मरे यहां चार लडके एवं पांच लडकियां है। बडा लडका स्व राजपाल सिंह, जजपाल सिंह, शीतल सिंह एवं हरपाल सिह है। हमारे पूर्वज ग्राम खारा पिण्ड अमृतसर (पंजाब) के रहने वाले है। हमारी जाति नट बाजीगर है। अमृत चखने के बाद गुरद्वारे से संधु उपनाम मिला है। मेरे दादाजी स्व श्री नत्था सिहं ने गुरूद्वारे मे अमृत चखा था गुरूद्वारे से ही हमारे परिवार को संधु उपनाम मिला था। हमारे परिवार मे कोई भी व्यक्ति सरकारी नौकरी मे नही है। दिनांक 10.8.1950 को हमारा परिवार ग्राम सिंधाडा तहसील मुगावली जिला गना मे निवास करता था। मै कभी किसी स्कूल मे नही पढा हूँ।

Thus, from the above, it is clear that grandfather of appellant, though resident of Punjab, had migrated to Ashoknagar about 90-100 years ago on the offer of the then Ruler of Scindia State to provide agricultural land. As such, appellant's grandfather was a resident of Ashoknagar more than 90 years back preceding the date of enquiry. Appellant's father Singh was also born in the State of Madhya Pradesh. Thus, prior to Presidential Order of 1950 both his grand father and father were residents of State of Madhya Pradesh. The appellant was born on 5/1/1963. As such, there cannot be any dispute about residential status of forefathers and father of appellant as on 10/8/1950 in Gwalior State falling within erstwhile Central Provinces and Berar and then re-organized as State of Madhya Pradesh. As a matter of fact, the learned Single Judge has also returned the finding as regards residential status of forefathers of appellant in the State of Madhya Pradesh much prior to 1950 (paragraph 41).

It is also matter of record that grandfather and father of appellant were illiterate villagers and engaged in agricultural activities to earn their livelihood since the time they migrated to Gwalior State about 90-100 years ago and were not in any kind of service either in Gwalior State or State of Madhya Pradesh. Under the circumstances, they appear to have not obtained caste certificate.

5. In the aforesaid factual matrix, now, the following questions arise for consideration:-

(i) Whether the enquiry conducted and procedure followed by the High Power Caste Scrutiny Committee was in accordance

with the guidelines laid down in ***Madhuri Patil's case (Supra)*** *and directions issued by the State Government in this behalf?*

(ii) *Whether the impugned judgment is in excess to the scope of jurisdiction under Article 226 of the Constitution of India, as explained in paragraph 15 of* ***Madhuri Patil's case (Supra)*** *and;*

(iii) *Whether the impugned judgment is substitution of findings and recommendations recorded by High Power Caste Scrutiny Committee based upon critical evaluation of evidence/ deliberations ?*

6. With regard to Question No.(I) above, the report of High Power Scrutiny Committee dated 18/12/2019 pursuant to its deliberations/meeting dated 13/12/2019 deserves careful perusal.

The Scrutiny Committee consisted of four persons viz. (I) Principal Secretary, Anusuchit Jaati Kalyan Vibhaag, Bhopal as its Chairperson; (ii) Commissioner, Anusuchit Jaati Vikas as Member Secretary; (iii) Director, Aadim Jaati Anusandhan Sanstha as Member (Caste specialist) and; (iv) Secretary, M.P.Rajya Anusuchit Jati Aayog as Member.

In pursuance of the directions of learned Single Judge issued vide order dated 1/5/2019 not to get prejudiced by any observations made in the said order and decide strictly in accordance with the evidence on record, the Scrutiny Committee, while preparing its report, has taken into consideration the following evidence which came on record:

(i) The Inspection report dated 25/7/2019 of Sub Divisional Officer, Ashoknagar filed along with communication received from Superintendent of Police, Ashoknagar dated 27/7/2019 which included statements recorded during investigation, information culled out from revenue records, School and investigation conducted at Village Tara, District Taran Taran Punjab.

(ii) Complaints made by Ramesh Kumar Itoriya, Anand Dohare, Devendra Tamrakar and respondent Ladduram Kori.

(iii) Reply of appellant to the communication of Superintendent of Police and aforesaid complaints

(iv) Reply of appellant to the ten questions formulated by learned Single Judge in his order dated 25/4/2019 (W.P. No.7047/2013).

(v) Statement of appellant with cross-examination by complainants Ramesh Kumar Itoriya, Devendra Tamrakar, Engineer Ladduram Kori, Roshanraj Singh Yadav, Gopilal Jatav, as well as, by Scrutiny Committee;

(vi) Statements of Hardeep Singh, Mahendra Singh and Balvir Singh, independent witnesses, who are residents of native place of appellant's forefathers

viz. Village Khara, District Tarantaran, Punjab; and thereafter came to the conclusion that the caste certificate dated 6/11/2008 mentioning the appellant's caste as "Nat" was a valid certificate.

(I) The points contained in the **Inspection report of SDO dated 25/7/2019 filed along with communication of SP dated 27/7/2019** are briefly stated thus:

(1) As per information furnished by SDO (Revenue) in his letter dated 19/7/2019, the competent Authority to issue caste certificate is Sub Divisional Officer Revenue. The caste certificate in favour of Jajpal Singh Jajji has been issued by the competent Authority viz. SDO Ashoknagar.

(2) During investigation, land records of Shri Boodh Singh, grandfather of non-applicant Jajpal Singh Jajji from village Singhada, as well as, admission and school leaving records of Jajpal Singh Jajji were procured. In the column of caste in School Records and Revenue records, "Sikh" is mentioned. In Patwari Halka No.302, Village Khara, Tahsil Patti, District Tarantarn, Punjab, caste of Boodh Singh, grandfather of appellant is mentioned as "NAT". As per communication dated 4/7/2019 received from Tahsildar, Piprai, name of Boodh Singh, grandfather of Jajpal Singh is mentioned in the revenue records of 1950. In the column of caste therein, "Sikh" is mentioned.

(3) The certified copy of land record pertaining to PH No.28 was obtained and statements of Headmaster and Principal, Sarpanch Village Khara Balvir Singh and an elderly person of Village Khara Shri Mahendra Singh, aged about 85 years were recorded. Verification certificate has been given by Sarpanch Balvir Singh, Nambardar Kahsmir Singh, Panchayat Members Randhir Singh, Birsa Singh and Daya Singh that they are well acquainted with Jajpal Sigh S/o Gurumej Singh S/o Boodh Singh S/o Natha Singh. Their ancestors being residents of Village Khara were of "NAT" caste, who used to earn their livelihood by showing plays and acrobatic skills in villages.

(4) In the primary school entrance register 1969 of Government Middle School Singhada, Sikh is mentioned in the column of caste against the name of appellant.

(5) Shri Gurumej Singh, father of appellant stated that he has never studied in any school, but only learnt to read at home. He only knows how to sign. Therefore, no school record of Gurumej Singh is available.

(6) Shri Gurumej Singh, father of appellant and his uncle Seva Singh's statements were recorded. They stated that they and their father never obtained caste certificate as there was no such need. Gurumej Singh also stated that grandfather, brother, sister or any other family member of appellant is not in Government Service.

(7) As per information received from Dy.Collector, District Ashoknagar vide his letter dated 10/7/2019, Shri Jajpal Singh was elected as President, Municipal Council in 2009 from reserve seat. The nomination form and affidavit filed by Jajpal Singh and original record of Crime No.161/10 from PS Kotwali, Ashoknagar was seized. Jajpal Singh was elected as Member of Legilative (sic: Legislative) Assembly from Congress Party from Ward NO. 32, Ashoknagar (SC) on 11/12/2018.

On examining the authenticity of caste certificate of Jajpal Singh Jajji, it was found that as per letter of Tahsildar, Piprai dated 4/7/2019 name of Boodh Singh S/o Natha Singh is mentioned as Bhumiswami as on 10/8/1950. As per said revenue record, on 10/8/1950, Boodh Singh, grandfather of Jajpal singh was residing at Village Singhara, Tahsil Piprai, District Ashoknagar. As per letter of Sub Divisional Officer, Ashoknagar dated 19/7/2019, the competent Authority to grant caste certificate is Sub Divisional Officer (Revenue). The caste certificate of Jajpal Singh Jajji has been validly issued by competent authority SDO, Ashoknagar in Case No.6/Appeal/08-09, Ashoknagar dated 3/11/2008.

No definite opinion was given by the Superintendent of Police on the aforesaid Inspection report, which was sought for vide letters dated 31/7/2019, 19/8/2019 and 11/9/2019, in response whereto the SP replied that in terms of guidelines issued in Madhuri Patil's case, the inspection report dated 27/9/2019 of SSP has been forwarded to the Committee.

(ii) Complaints were made by complainants Ramesh Kumar Itoriya, Anand Dohare, Devendra Tamrakar and Ladduram Kori against the appellant. The complaints, in essence, were to the effect that a forged SC caste certificate has been issued in favour of appellant, who has also been gaining benefit by changing his caste time and again. He had contested the last Legislative Assembly election as "NAT" SC candidate by procuring the said certificate knowing fully well that Ashoknagar seat is reserved for only SC candidates. In fact, he is a member of General category. Complainant Devendra Tamrakar, through is written statement, averred that:

(a) In 1994, appellant had filed the nomination form of Member, Janpad Panchayat, Ashoknagar as General category candidate.

(b) On 20/4/1999, he had filed nomination of Krishi Mandi, Ashoknagar as General Candidate.

(c) On 13/5/1999, he had filed nomination for Member, Jila Panchayat, Guna as "NAT" SC caste candidate.

(d) On 2/12/1999, he filed nomination for Municipal Council, Ashoknagar as "Keer" OBC caste candidate and also won the election and was elected as President, Municipal Council.

(e) In the year 2009, he won the election of President, Municipal Coucil (sic: Council), Ashoknagar as "NAT" SC candidate, which was a general category seat.

(f) In 2013, he filed nomination for Ashoknagar legislative assembly as "NAT" SC candidate, though lost.

(g) In 2018, he again filed nomnination for Ashoknagar Legislative Assembly as "NAT" SC candidate and won.

Similar allegations have been levelled by other complainants. Besides, complainant Ladduram Kori also alleged that the Investigating Officer had found the ancestors of Jajpal Singh to be resident of Village Khara, Tahsil Patti, District Tarantaran Punjab. In the Inspection report of Collector District Ashoknagar, there is no evidence with regard to staying prior to 1967. The report received from Patwari, Village Khara is incomplete, which is of the year 1967. The Investigating Officer ought to have contacted the relatives of Jajpal Singh who are still residing in Punjab and recorded their statements and produced their caste certificates, which has not been done. Mere mentioning of "NAT" as Surname in Khasra is not sufficient to hold that the caste was "NAT". The statements of Mahendra Singh and Balvir Singh, residents of Village Khara, are incomplete. They have not informed about relatives and family members of Jajpal Singh, contacting whom, caste certificates could have been procured. Besides, one more caste certificate of Jajpal Singh from Tarantaran, District Amritsar is in existence. Therefore, he is not entitled to reservation in the State of Madhya Pradesh.

(iii) Countering the aforesaid allegations, appellant Jajpal Singh averred that he was born on 5/1/1963 at Village Singhara,Tahsil Mungawali, District Ashoknagar and by birth is residing in State of Madhya Pradesh. The said fact is evident from his school records and statement of Shri Jagdish Prasad Sharma, Principal Middle School Singhara. He is a domicile of District Ashoknagar, Madhya Pradesh.

He further stated that his ancestors, being of SC community, were looked down upon in the Society and to maintain respect in Society, they started writing "Sikh" instead of "NAT". Sikh is a religion and not caste.

He further stated that he has not used any other caste certificate during the period 11/11/2004 to 6/11/2008. He was granted "NAT" SC caste certificate by the competent Authority on 6/11/2008 after due verification and investigation. During the period 2008 to 2013 he did not contest any election on the basis of "NAT" caste certificate. In the year 2009 he had contested Municipal Council, Ashoknagar elections from an unreserved seat and for the first time in 2013 had contested Ashoknagar elections on a reserved seat, which he lost.

Appellant further averred that his OBC caste certificate has already been cancelled in 11/11/2004 by the Scrutiny Committee after considering entire evidence brought on record and the said order has attained finality. A person

cannot be penalized again for the same offence. The complainants have made allegations on the same set of evidence which have been considered by the Scrutiny Committee in its order dated 11/11/2004. They have not been able to point out as to why the appellant does not belong to "NAT" SC caste.

His ancestors were residents of Village Khara, Patwari Halka No. 302, Tahsil Patti, District Tarantaran. Around 90-100 years ago, his grand father Boodh Singh had migrated from Punjab and settled in Singhara, District Ashoknagar. The said fact also finds support from Patwari report of Village Singhara, which contains description of a land recorded in the name of his grandfather in the year 1950 at Village Singhara. This proves that his ancestors have been residing since prior to 1950 in the State of M.P.

Shri Hardeep Singh (Patwari Halka No. 302, Tahsil Patti, District Tarantarn) has stated that as per land records of Village Khara, Boodh Singh S/o Shri Natha Singh was owner of land falling in Survey No. 155, admeasuring 13.13 at Village Khara. As per records, the caste of Boodh Singh S/o Shri Natha Singh is "NAT". The relevant Khasra was annexed for perusal.

Shri Mahendra Singh, aged about 85 years, R/o Village Khara, P.S. Sarahali, District Tarantaran, Punjab stated that Shri Boodh Singh belonged to "NAT" Bazigar community, who used to show their acrobatic skills at villages.

Shri Balvir Singh, aged about 75 years, Sarpanch Village Khara stated that about 50-60 years ago Boodh Singh and Natha Singh had come to Village Khara for selling their land. Natha Singh, father of Boodh Singh, who was resident of Village Khara, belonged to "NAT" Bazigar family. About 90-100 years ago they migrated to Madhya Pradesh. They used to earn their livelihood by orchestrating shows.

Shri Ranjit Singh is the brother-in-law of appellant. He stated that his caste is NAT and had migrated prior to 1947.

Shri Chiddrapal Singh is cousin of appellant as appellant's father is his maternal uncle. He has stated that his caste is "Bazigar" (Madari) which is Scheduled Caste in Punjab. Their caste is Bazigar (NAT).

In his statement, appellant stated that his ancestors were original residents of Village Khara, Punjab. About 90-100 years ago, they had migrated and started living at Village Singhara, Ashoknagar. His grandfather Late Shri Boodh Singh was rehabilitated during Scindia Kingdom. His ancestors used to show play/acrobatic activities in Villages for earning their livelihood. The caste of his ancestors is "NAT" Bazigar. He never stayed in any hostel during his schooling nor obtained any scholarship. His grandfather, father, brother, and sister were never in Government job. Baba Boodh Singh was issued "NAT" SC caste certificate by Gram Panchayat Khara which is an important piece of evidence.

Appellant further stated that complainant Ladduram Kori has nowhere stated as to why appellant is not of "NAT" caste nor any evidence has been adduced by him in this regard. Since he is a political rival, therefore, he is harassing him in all manner, whereas all his allegations have already been decided vide Scrutiny Committee order dated 11/11/2004. Similarly complainants Roshan Yadav and Gopilal Jatav are also political rivals who would directly get benefited by unsettling his caste certificate. Likewise complainant Devendra Tamrakar, who is a Journalist, has also been Mayor of Municipal Council and Leader of Opposition during the period 2009 to 2014.

In his cross-examination conducted by complainant Ramesh Kumar Itoriya, appellant admitted that he had been President, Municipal Council Ashoknagar as OBC candidate and has obtained the benefit of OBC category. He further admitted that he had mentioned his caste as "General" in the column of caste while filing nomination for Mandi Elections, Ashoknagar. He further stated that he had filled the form as this seat was for un-reserved category, therefore, candidates belonging to all castes/religion could contest on that seat, though he did not contest the election.

In his cross-examination conducted by complainant Devendra Tamrakar, appellant admitted that in 1994 he had contested the election of Janpad Panchayat, Ashoknagar from general category. He further stated that person belonging to any caste/category can contest election on general category seat. Hence, he had contested the election.

In his cross-examination conducted by complainant Ladduram Kori, he stated that in the revenue records, the caste of his ancestors is mentioned as "NAT". He further admitted that during his education from Class 1 to LL.B. he never used the NAT caste certificate as there was no need.

No cross-examination was conducted by Roshanraj Singh and Gopilal Jatav.

In his cross-examination conducted by the Scrutiny Committee, appellant stated that the then Ruler of Gwalior State had given his ancestors sufficient land for agriculture, therefore, their financial condition was good. In reply to question as to why he took "Keer" caste certificate, he replied that his maternal grandfather was a resident of Village Hinoda and appellant stayed with him since his childhood. His entire education was arranged for by his maternal grandfather. Family members of his maternal grandfather stayed at Amritsar District. Everyone in the family knew that his family belonged to Scheduled Caste. The "Keer" SC caste certificate issued from Amritsar has been obtained from his maternal grandfather side. By mistake "Keer" caste has been mentioned therein. He never went to Punjab, nor applied or gave any affidavit for such certificate. He

is not aware as to how the same was obtained by his maternal grandfather. However, as "Keer" is a Scheduled Caste in Punjab, the certificate was of Scheduled Caste and since he was not aware of the sub-castes of "NAT" caste, he thought that "Keer" must be some sub-caste of "NAT" and on this basis he had applied for getting certificate in Ashoknagar. But since "Keer" caste is registered as "OBC" in Ashoknagar, he was given OBC certificate. This confusion got created owing to his lack of knowledge about "NAT" caste and its sub-castes and the certificate of "Keer" SC obtained by his maternal grandfather. There was no malafide intention behind this. He further stated that his ancestors had come to MP prior to 1950 in Madhya Pradesh and that in Punjab they used to earn their livelihood by orchestrating plays, rope-walking, singing etc. They had small lands, but when the then Ruler of Gwalior declared that free land would be provided to anyone who would like to come from Punjab and do agriculture in Madya Pradesh, his ancestors settled in Madhya Pradesh.

(iii) Reply of appellant to ten questions

1. Whether the petitioner ever contested any election for the post of Member Janpad Panchayat in the year 1994, as a "General Category Candidate" or not and whether he was elected or not?

Answer - Yes, the non-applicant had contested and won the election of Member, Janpad Panchayat in the year 1994 on General seat. Since, the said election was not for any reserved category, therefore, being general, it was open for candidates from all categories. Therefore, the non-applicant had contested the election and won. The said question/charge has been decided by the Scrutiny Committee on 11/11/2004.

2. Whether in the year 1999, the petitioner had contested the election for the post of Member Zila Panchayat as a candidate of "Scheduled Caste" or not and when the certificate of "Scheduled Caste" was obtained by him?

Answer - The non-applicant/respondent had not contested the election of Member, Zila Panchayat as a Scheduled Caste candidate. Non-applicant/respondent had obtained the Scheduled Caste Certificate of " Nat" caste on 6/11/2008. The said question/charge has also been decided by the Scrutiny Committee on 11/11/2004.

3. Whether the petitioner had contested the election for the post of President, Municipal Council Ashoknagar as a candidate of "OBC" and under what circumstances, the "OBC" certificate dated 2-12-1999 was issued to him and what happened to his earlier certificate of "SC"?

Answer - Non-applicant/respondent, by birth, comes under Scheduled

Caste. The non-applicant/respondent had contested the election of President, Municipal Council on the basis of " Keer"- OBC caste certificate. Previously, he was not issued Scheduled Caste Certificate. The members of Society/family had always been telling that our ancestors were of Scheduled Caste. But, without obtaining correct information about caste, the non-applicant/ respondent had applied for "Keer" Scheduled Caste certificate. However, the complainants brought this fact before the Scrutiny Committee that non-applicant/respondent came under "Nat" Scheduled Caste and not "Keer." On the basis of aforesaid, the scrutiny committee cancelled the "Keer" caste certificate while affirming the fact that non applicant/ respondent belongs to "Nat" Scheduled Caste. The non-applicant/respondent, in absence of knowledge as to caste framework of society, had obtained said certificate. Non-applicant/respondent did not have any mens rea. Non-applicant/respondent since childhood has been hearing from older people of his Society that his ancestors being natives of Punjab came under Scheduled Caste. The scrutiny Committee has cancelled the "Keer" caste certificate on 11/11/2004 and an FIR at Crime No. 161/2010 has been registered against the non-applicant/respondent at PS Kotwali, Ashoknagar and the matter is pending in Court of law. Prior to this, no other caste certificate was ever obtained by the non-applicant.

4. Why the certificate of "OBC" was obtained by the petitioner, just few days prior to the elections for the post of President, Municipal Council, Ashoknagar?

Answer - The answer to this question be also read on the basis of facts mentioned in point no.3. The non-applicant/respondent has not done it deliberately and it was merely by co-incidence that "Keer"caste certificate came to be issued prior to elections of President, Municipal Council. The non-applicant/ respondent did not have any mens rea. Since "Keer"caste is notified in Ashoknagar district of Madhya Pradesh under "OBC" category and in other districts of Madhya Pradesh under SC/ST category, the " Keer"caste certificate was issued to the non-applicant/respondent by the competent Authority. The said question/charge has been decided by the Scrutiny Committee vide order dated 11/11/2004 and for this lapse on the part of non-applicant, Crime No. 161/10 has been registered against him.

5. Whether any certificate of "SC" was ever issued in favour

of the petitioner prior to 6-11-2008 and if so, then on what date, and when the said certificate was surrendered by him and why?

Answer - The non-applicant/respondent was never issued "NAT" SC caste certificate prior to 6/11/2008 by the competent Authority. Non-applicant/respondent has been issued "NAT" SC caste certificate on 6/11/20008 by Sub Divisional Officer (Revenue), Ashoknagar, which is still in force. Non-applicant/ respondent has not surrendered the said certificate before the competent Authority.

6. Why the petitioner did not obtain the "SC" certificate from 11-11-2004 ("OBC" certificate was cancelled by order dated 11-11-2004 by the High Power Caste Scrutiny Committee) till 6-11-2008?

Answer - The reason for delay from 2004-2008 in applying for certificate is the time elapsed in getting information about paternal place of ancestors situated in Punjab for verifying my "Nat"caste, as well as in obtaining information about "Nat"caste and relevant documents. There was no other intention. The delay is bonafide.

7. The election for M.P. State Legislative Assembly were held on 27-11-2008, then why the petitioner had obtained his "SC" certificate just prior to holding of election ?

Answer - Non-applicant/respondent had obtained the SC caste certificate of "NAT" in the year 2008 just prior to Vidhansabha elections for the reasons mentioned in point no.6. This was a mere co-incidence. Since non-applicant had neither contested any election in 2008 nor filed any nomination, therefore, it is totally false to say that the certificate was obtained due to the elections of 2008.

8. Why the petitioner was obtaining different caste certificates, just few days prior to the elections?

Answer - The non-applicant/respondent had not obtained caste certificates of different castes. On 2/12/1999,"Keer"caste certificate was obtained. He had applied for certificate of "Keer"- Scheduled Caste, but the State of Madhya Pradesh, except for Bhopal, Sehore, Raisen etc. districts, has declared the "Keer" caste as OBC. Due to this reason, the competent Authority had issued "Keer"- OBC caste certificate to the non-applicant/respondent. The said "Keer"- OBC caste certificate has been cancelled by the High Power Scrutiny Committee vide

order dated 11/11/2004. The Scrutiny Committee after considering the investigation report and other documents, while treating the non-applicant/respondent to be of "NAT" SC caste, has cancelled the "Keer" OBC caste certificate on 11/11/2004. Besides this, no other caste certificate has been obtained by the non-applicant. Since, after cancellation of " Keer" caste certificate on the basis of proved facts "NAT"- SC caste certificate was obtained in the year 2008 and no election was contested by the non-applicant at that time, therefore, it is baseless to say that the certificate has been obtained for political gains.

9. Whether the surname of the petitioner has been recorded in some of the documents as "Sandhu" or not?

Answer - Non-applicant/respondent belongs to "NAT" scheduled caste. The ancestors of non-applicant/respondent had taken holy water in Gurudwara. Thereafter "Sandhu" title was provided by the Granthi/Gyani, which is not a caste but a social respect. Non-applicant/respondent was never issued caste certificate of the said caste by the competent Authority. The said question/charge has also been decided by the honorable scrutiny committee in its order dated 11/11/2004.

10. If the earlier "SC" certificate was still in force, then why the petitioner obtained a fresh "SC" certificate on 6-11-2008?

Answer - Previously the non-applicant/respondent was never issued SC certificate, nor it was in force. Respondent was issued "NAT" caste certificate by the competent Authority on 6/11/2008, which is still in force. The non-applicant has not obtained again or fresh SC certificate. The non-applicant/respondent has only one "NAT" SC caste certificate, which is in force since 6/11/2008. Prior to this, no SC certificate was issued in favour of the non applicant.

On the basis of the aforesaid, the Committee framed two questions viz.

(1) Whether non-applicant or his ancestors had migrated to Madhya Pradesh from Punjab prior to 1950 ? and;

(2) Whether non-applicant or his ancestors are of "NAT" caste in Punjab ?

As to question no.1, the Committee noted that as per record of Patwari Halka No. 28, Tahsil Piprai, District Ashoknagar, it is apparent that name of Shri Boodh Singh, grandfather of appellant is mentioned in Khasra of 1950.

Superintendent of Police, Ashoknagar has also mentioned about this in his report. This proves that ancestors of appellant had come to Madhya Pradesh prior to 1950. No evidence has been adduced by the complainants that ancestors of appellant had not migrated to Ashoknagar prior to 1950.

With regard to question no.2, the Committee observed that the complainants have again and again impressed upon appellant's OBC caste certificate. However, this certificate has been cancelled by the Scrutiny Committee vide order dated 11/11/2004 on the basis of the fact that the appellant belonged to "NAT" caste. Therefore, for determining his caste, there is no relevance of that OBC caste certificate. In this regard the appellant has clarified that in Punjab both "NAT" and "Keer" caste come under Scheduled Caste, therefore, under confusion he got "Keer" caste certificate made, which has been cancelled by the Scrutiny Committee. The Committee has cancelled his OBC Caste certificate treating him to be of NAT caste.

From the above and in view of the facts that name of grandfather of appellant i.e. Boodh Singh is mentioned in the Khasra of the year 1950 of PH No.28, Tahsil Piprai, District Ashoknagar as surfaced in the investigation conducted by SP, Ashoknagar and that the ancestors of appellant were residents of Village Khara, Tahsil Patta, Punjab where in revenue records of PH No.302, the caste of Boodh Singh S/o Natha Singh is mentioned as "NAT", as well as the oral evidence of Hardeep Singh, Mahendra Singh and Balvir Singh, residents of Village Khara, Punjab, the Committee concluded that the forefathers of appellant had migrated from Punjab prior to 1950 and there was no reason to disbelieve that appellant is of "NAT" caste and, accordingly, the "NAT" SC caste certificate dated 6/11/2008 issued in favour of appellant by Sub Divisional Officer, Ashoknagar was found to be valid.

7. The aforesaid order has been set aside by the learned Single Judge for the reasons mentioned in the impugned judgment, against which the present writ appeals have come to be filed.

8. Learned counsel for the appellant while taking exception to the impugned judgment *inter alia* has made following submissions :-

(1) That, on 10.07.2008, appellant had applied for issuance of NAT SC caste certificate before Tahsildar, Ashok Nagar, whereupon proceedings were initiated. Along with the application, the appellant had also furnished an affidavit stating his caste to be NAT (Bazigar), nomination form of Member, Jila Panchayat mentioning his caste as NAT, which had been accepted by the returning officer, Jila Panchayat, Guna. The Tahsildar noted that in WP. No.1330/2002 (PIL), this

Court had directed to take action on the complaint of petitioner - Baijnath Sahu in terms of Circular dated 01.08.1996 which provided for enquiry and taking action in respect of forged caste certificate, in pursuance whereof, meeting of high caste scrutiny committee was convened which found that since the appellant had used the certificate of NAT (Bazigar) Scheduled Caste as Member, Jila Panchayat therefore the subsequent caste certificate dated 02.12.1999 of Keer caste was invalid. The said decision was reaffirmed by the High Power Caste Scrutiny Committee dated 11.11.2004 passed in the meeting convened pursuant to the directions issued by this Court in W.P.520/2004 vide order dated 03.09.2004. In wake of the aforesaid i.e. mentioning of caste by appellant as NAT (Bazigar) in his nomination form of Member, Jila Pachayat approved by the Returning Officer, Jila Panchayat Guna and the decision of the committee dated 25.02.2004 as well as 11.11.2004 to treat the appellant as NAT the application of the appellant was allowed and he was granted a temporary NAT (Bazigar) caste certificate. He further noted that the appellant had shown his address as village Singhada, Tahsil Mungaoli, District Guna as on 10.08.1950 and for confirmation thereof he was directed to file relevant documents, failing which the caste certificate was liable to be cancelled. On 08.10.2008, the matter was again taken up and the appellant produced the Khasra of 1950-51 and 2008, 2009 of village Singhada. The Tahsildar observed that no appeal or revision had been filed against the order dated 11.11.2004 in any court of law and therefore the same had attained finality, on the basis whereof the caste of appellant was proved to be NAT (Bazigar). He also found that in the Khatauni of 1950-51 at Khata No.370 name of Boodh Singh S/o Natthu Singh was entered as Bhumiswami, who is the grandfather of appellant which proves the fact that the appellant was the resident of Guna (presently Ashok Nagar) as on 10.08.1950 and accordingly his temporary certificate was confirmed. On 15.10.2008, Balveer Singh Kushwah filed objection before the SDO, Ashok Nagar regarding issuance of said caste certificate on which the SDO directed the Tahsildar Ashok Nagar to enquire the matter and submit the report. On 01.11.2008, the Tahsildar, Ashok Nagar examined the documents including revenue records and found that the caste of the appellant registered in the revenue record as Sikh. The Tahsildar, Ashok Nagar after detailed discussion submitted his report indicating that on the basis of implied intent of decision of committee, it could be said that the appellant was of scheduled caste. Consequently, on 06.11.2008 the SDO (Revenue) Ashok Ngar had issued NAT caste certificate to the appellant.

(2) That learned Single Judge has exceeded jurisdiction under Article 226 of the Constitution of India by exercising his power of judicial review over the deliberations dated 13.12.2019 and the order dated 18.12.2019 passed by the

Scrutiny Committee. The same runs contrary to para 15 of the *Madhuri Patil's* case (supra). The Writ Court substituted its findings for that of the Scrutiny Committee in excess to the findings recorded by the Scrutiny Committee not only as an appellate authority but also an investigating officer, inasmuch as the Court has evaluated in its own way the entire evidence on record to justify its findings, as such, the impugned judgment deserves to be set aside.

(3) That the impugned judgment is beyond the pleading of the respondent/ writ petitioner. The findings so recorded are self styled and based on misconstrued facts. The impugned judgment suffers from perversity of approach.

(4) That the jurisdiction of the High Court is subject to the limitation of interference with the findings of facts recorded by the Scrutiny Committee and the court is only required to see whether the committee has considered all the relevant material placed before it or has not applied its mind to the relevant facts while recording the finding. In other words, in exercise of the power of judicial review, the court is concerned with the decision making process and not the decision itself. If the committee was found to have not considered relevant facts or not conducted the proceeding in accordance with the procedure prescribed under the statute or relevant government circulars, it ought to have remitted the case back to the committee instead of substituting its decision based upon the finding recorded by it. [(2018) 6 SCC 162 - *Bharti Reddy Vs. State of Karnataka*]. Learned Single Judge failed to point out non consideration of relevant facts or any procedural lapse in the enquiry conducted by the Scrutiny Committee. On the contrary, learned Single Judge in his own way appreciated facts and substituted its finding. Such recourse runs counter to law laid down by the Apex Court.

(5) That the Scrutiny Committee has not only considered the entire material placed before it but also afforded full opportunity to the complainants and others to lead evidence and cross examine the appellant during the course of deliberations keeping in mind the principle of natural justice as well.

(6) That since the complainant approached the Scrutiny Committee challenging the caste certificate issued to the appellant by the competent authority, the burden of proof was upon the complainant to prove that the appellant did not belong to NAT SC caste and therefore the certificate was illegally procured. Only thereafter onus would shift to the appellant to disprove the allegation. Learned Single Judge in para 115 of the impugned judgment erroneously shifted the burden of proof on the present appellant.

(7) That the findings of the learned Single Judge in para 114 and 115 of the impugned judgment are self contradictory. On one hand learned Single Judge has set aside the decision of the Scrutiny Committee based upon Jamabandi (Khasra) and at the same time, in para 117 of the impugned judgment, the Superintendent of

Police, Ashoknagar was directed to personally investigate the matter in respect of same Jamabandi (khasra).

(8) That the learned Single Judge has quashed the caste certificate issued in favour of the appellant and has set aside the decision of the Scrutiny Committee on the ground that the forefathers of the appellant have renounced the profession attached with their caste after migration from the State of Punjab to State of Madhya Pradesh as referred from para 76 to 99 of the impugned judgment. It is settled law that caste is decided by birth in the family and caste will not be decided on the basis of marriage or migration or from profession or employment of the person. Every citizen of the country has right to carry on trade or profession of his choice under Article 19 of the Constitution within the territory of India. The trade or profession or employment cannot be guiding factor for deciding the caste status of any citizen which is explained by following examples :-

(i) Cobbler belonging to Scheduled Caste after obtaining Government Service does not loose caste status of Scheduled Caste (SC).

(ii) A Brahmin does not lose his caste status by opening any merchant shop or general merchant because they are not performing their traditional work of Pooja Archana attached to Brahmin Caste.

The essence of submissions is that any citizen belonging to any caste can adopt any trade or business without affecting or without changing of his caste status. Therefore, the impugned judgment being arbitrary, unreasonable and in ignorance of Article 19 of the Constitution of India deserves to be set aside.

(9) That the learned Writ Court has relied on circular dated 13.01.2014 and circular dated 11.7.2005 from para 62 to para 75 of the impugned judgment to hold that the appellant shall not be entitled for the benefit of caste certificate issued from the State of Punjab. It is submitted that the circular of the year 2005 clause 3 itself provides that "those persons who have settled in Madhya Pradesh after migration from other states shall be clubbed in the category of interstate migration only if they have migrated after SC/ST Presidential Order 1950 [The Constitution Schedule Caste (sic: Scheduled Castes) Order 1950]. Learned Writ Court from para 36 to 41 has held that forefathers of the appellant had already migrated much prior to 1950. Therefore, in view of Clause 3 of circular reproduced at page 39 of the impugned judgment so also finding in para 40 and 41 of the judgment, it is clear that the appellant will not fall under the category of interstate migration and therefore it is submitted that the appellant shall be entitled to obtain caste certificate from state of Madhya Pradesh and to avail all the benefits or reservation provided by the State of Madhya Pradesh.

(10) That the finding recorded by the learned Writ Court in para 110 and 111 of the impugned judgment are perverse and deserve to be set aside. It is submitted that once OBC Caste Certificate was cancelled by the decision of the Scrutiny Committee dt.11.11.2004 and the same has never been subject matter of challenge before any forum, which had attained finality due to no further challenge to the decision by any of the parties and when the Scrutiny Committee itself has concluded that the appellant belongs to Nat Community, therefore, while dealing with the challenge to Schedule Caste "Nat" caste certificate, the Scrutiny Committee was confined to examine the validity of only Nat Scheduled caste certificate. It was not permissible in law for the Scrutiny Committee to reopen the issues related to OBC caste certificate which controversy was already settled in the year 2004. Therefore, after 15 years, it was not open and prudent for the Scrutiny Committee to review or reopen the issue of OBC caste certificate while deciding the validity of Scheduled Caste Certificate in the year 2019. Thus, the observations in para 109, 110 and 111 of the impugned judgment deserve to be set aside.

(11) That previously an FIR bearing Crime No.161/2010 had been registered against the present appellant under Section 420, 467, 468, 471, 477A and 120B of IPC with flimsy allegations. This Court had granted anticipatory bail to the appellant. The FIR containing false and fabricated allegations could not withstand the judicial scrutiny, as a result, FIR bearing Crime No.161/2010 as well as consequential proceedings were quashed by this Court on 04.02.2002 allowing M.Cr.C.No.2050/2010.

In the face of the aforesaid decision of the Scrutiny Committee dated 11.11.2004 and order dated 04.02.2022 passed in M.Cr.C.No.2050/2010, the directions of the learned Single Judge for fresh FIR based on previous allegations of OBC and Scheduled Caste certificate tantamounts to **double jeopardy** as prohibited under Article 20 of the Constitution of India.

(12) That the learned Single Judge though on one hand has recorded a finding that father and forefathers of the appellant had settled down in Madhya Pradesh prior to 1950 but on the other hand has held that the appellant being a migrant from Punjab can not get the benefit of 'Nat' caste, a scheduled caste in Punjab under the Presidential Order issued on 10.08.1950, though the same caste is also a Scheduled Caste in Madhya Pradesh in the Presidential Order dated 10/8/1950. The findings of the learned Single Judge from para 42 to 61 of the impugned judgment is absolutely perverse and patently illegal, inasmuch Boodh Singh, grandfather of the appellant had migrated from Punjab to Gwalior State about 90-100 years ago, much prior to issuance of Presidential Order 1950, therefore, the appellant, who is grandson of late Boodh Singh and born in the Madhya Pradesh can not be treated as migrant person particularly as per Clause 3 of the Madhya

Pradesh Government Circular of 2005. Once the father of the appellant namely Gurumej Singh and the appellant himself both were born in the State of Madhya Pradesh, therefore, they became domicile of the State of Madhya Pradesh. They can not be treated as migrant persons to deny the benefit of reservation in the State of M.P.

(13) That reliance on the judgments by the learned Single Judge in the case of *Bir Singh Vs. Delhi Jal Board* reported in (2018) 10 SCC 312 and *Marri Chandra Shekhar Rao Vs. Seth G.S. Medical College* reported in (1990) 3 SCC 130 is misplaced, inasmuch as the judgments so relied upon were involving the facts where claimants of caste certificates were not domicile and had not taken birth in the State where caste certificate was claimed or were not residents of State on or before 10/8/1950 i.e. the date of Presidential Order. Even otherwise, once the Single Judge has returned the finding that forefather of the appellant had shifted to the State of Madhya Pradesh prior to 1950, the finding as regards dis-entitlement of the appellant for caste certificates from paras 40-61 are perverse and unsustainable in law.

(14) That learned Single Judge has committed grave illegality having held in para 55 that any document or evidence relatable to State of Punjab has no relevance. In fact, this finding is in ignorance of Clause 13.5 of the judgment of the Supreme court in *Madhuri Patil's* case (supra), wherein it is prescribed that Vigilance Officer/ Investigation Officer shall go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from and thereafter shall verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He shall also examine the school records, birth registration, if any. **He shall also examine the parent, guardian or the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars.**

The Scrutiny Committee strictly adhered to the guidelines of the State of M.P. and in conformity with the mandate under Clause 13.5 of the *Madhuri Patil's* case (supra) had directed the Vigilance Officer to visit the native place of the appellant i.e. Punjab and examine the persons who had the knowledge of the social status of the appellant. The Vigilance cell had recorded the statement not only that of father, uncle and grandfather of the appellant but also the statements of the residents of Punjab i.e. Hardeep Singh, Mahendra Singh and Balbeer Singh. Shri Hardeep Singh (Patwari Halka No. 302, Tahsil Patti, District Tarantarn) has stated that as per land records of Village Khara, Boodh Singh S/o Shri Natha Singh was owner of land falling in Survey No. 155, admeasuring 13.13 at Village Khara. As per records, the caste of Boodh Singh S/o Shri Natha Singh is "NAT". The relevant Khasra was annexed for perusal.

Shri Mahendra Singh, aged about 85 years, R/o Village Khara, P.S. Sarahali, District Tarantaran, Punjab stated that Shri Boodh Singh belonged to "NAT" Bazigar community, who used to show their acrobatic skills at villages.

Shri Balvir Singh, aged about 75 years, Sarpanch Village Khara stated that about 50-60 years ago Boodh Singh and Natha Singh had come to Village Khara for selling their land. Natha Singh, father of Boodh Singh, who was resident of Village Khara, belonged to "NAT" Bazigar family. About 90-100 years ago they migrated to Madhya Pradesh. They used to earn their livelihood by orchestrating shows. Verification certificate has been given by Sarpanch Balvir Singh, Nambardar Kahsmir Singh, Panchat Members Randhir Singh, Birsa Singh and Daya Singh that they are well acquainted with Jajpal Sigh S/o Gurumej Singh S/o Boodh Singh S/o Natha Singh. Their ancestors being residents of Village Khara were of "NAT" caste, who used to earn their livelihood by showing plays and acrobatic skills in villages. The statements of these witnesses were taken into consideration by the Scrutiny Committee while justifying the caste certificate of the appellant. **However, the learned Single Judge consciously did not consider** the statements of the aforesaid independent persons, which otherwise had direct bearing on the caste/social status of the appellant and has a probative value in the light of the mandate under clause 13.5 of the *Madhuri Patil's* case (supra). Hence, the impugned judgment deserves to be set aside.

(15) That the findings of the learned Single Judge in para 56 and 57 of the impugned judgment that once the forefather of the appellant had shifted from State of Punjab to the State of Madhya Pradesh long ago, there can not be justification to hold some parcels of agricultural land in Punjab is queer in nature. There is no law prohibiting the persons to hold the property in the State wherefrom they have shifted to another State much prior to 1950 or otherwise. The aforesaid finding is patently illegal and only to ignore the revenue records of 1964-65 in respect of agricultural land held by the grandfather of the appellant wherein his caste was mentioned as 'Nat'. Learned counsel has cited the example that if the finding of the learned Single Judge is upheld it shall lead to an absurd consequence; if an industrialist having an industrial plant in 'A' State to which he originally belong shifted or migrated to 'B' State, he shall not be entitled to set up another industrial plant in State 'A' or other States like Punjab, Bihar or Chhattisgarh. Such finding is perverse. Every citizen of this country has a right to hold property in a State where he resides or in the State wherefrom he was shifted or migrated or other State unless prohibited by law.

With the aforesaid submissions, learned counsel for the appellant prays for setting aside the impugned judgment.

9. *Per contra,* Shri R.D. Jain, learned Senior counsel assisted by Shri Ajay Bhargava, learned counsel for respondent No.1 contended that:

(1) There is no illegality or infirmity in the order of the learned Single Judge warranting interference in the intra-court appellate jurisdiction.

(2) That the appellant, his father and grandfather since are migrated from Punjab, they are not entitled for Scheduled Caste Certificate as 'Nat' Caste only for the reason that 'Nat' caste is also indicated as Scheduled Caste in the State of Punjab in the Presidential order 1950.

(3) That the revenue record in respect of agricultural land of Bhumiswami rights of the grandfather and father of the appellant indicates their caste as 'Sikh'. There is no mention of 'Nat' caste. Likewise in the school and college record, where the appellant had studied, his caste is shown as 'Sikh'.

(4) That the appellant is in public life and has contested elections of local bodies and Member of Legislative Assembly. Appellant had obtained a caste certificate of "Keer" caste (OBC) on 2.12.1999 and was elected as President of Municipal Council, Ashoknagar in OBC category on 27.12.1999. One Baijnath Sahu had approached the Caste Scrutiny Committee challenging the said "Keer" caste certificate. On 25.2.2004, the Scrutiny Committee has found that the appellant since had used "Nat" Scheduled Caste Certificate on 13.5.1999, therefore, 'Keer' caste certificate obtained by him on 02.12.1999 was not valid and the certificate of 'Nat' caste was valid. However, the same was set aside by the High Court in W.P.No.520/2004 vide order dt.03.09.2004 holding that for want of coram of six persons, the impugned order of the caste scrutiny committee dt.25.02.2004 was bad in law; the case was remanded to the Scrutiny Committee for the decision afresh by the required forum. The committee was reconstituted and vide its recommendation dt.11.11.2004 has reiterated its earlier view that as the appellant belongs to 'Nat' community, therefore, the OBC certificate of 'Keer' caste was not valid.

(5) That one Ramesh Kumar Itoriya had made a complaint to the Scrutiny Committee for verification of 'Nat' Scheduled Caste certificate of the appellant. The scrutiny committee had cancelled the 'Nat' Scheduled Caste Certificate of the appellant on 16.09.2013. The Scrutiny Committee had taken into consideration the report of the revenue authority of Ashoknagar while reaching the conclusion. However, the said order was set aside by the High court in W.P.No.7047/2013 on 01.05.2019 at the instance of the appellant as it was found that he was not issued notice and afforded opportunity. The case was remitted back to the Caste Scrutiny Committee for decision afresh. The

> Caste Scrutiny Committee after remand ought to have considered the material already collected by the Committee particular report of the Collector in the light of the order of the learned Single Judge which also contains 10 questions to be answered by the appellant and also ought to have held that the appellant did not belong to 'Nat' community. The deliberations and decision of the committee are not in accordance with the directives/ guidelines as contained in *Madhuri Patil's case* (supra). Learned Single Judge was justified having found the decisions of the Scrutiny Committee as perverse and illegal.

With the aforesaid submissions, learned counsel prayed for dismissal of the Writ Appeal.

10. Heard learned counsel for the parties.

11. Power of judicial review enshrined under Article 226 of the Constitution of India is an extraordinary constitutional power for the purpose of enforcement of legal and fundamental rights of citizens of India with self imposed limitations in the context of manner of exercise of jurisdiction. Indeed, the jurisdiction is equitable in nature and is liable to be exercised with circumspection on the touchstone of justice, equity and good conscience. It is sacrosanct and fundamental, to protect democratic polity governed by rule of law. In *Narmada Bachao Aandalon Vs. Union of India* (AIR 2000 SC 3751), the Hon'ble Supreme Court has held that role of constitutional Court under the Constitution casts on them a great obligation to defend the values of the Constitution and rights of the people. The Court must, therefore, act within the judicially permissible limitations to uphold the rule of law.

12. The Constitutional Court may examine the legality, validity and propriety of administrative action on the ground viz. (i) violation of fundamental rights in Part III of Constitution; (ii) want or excess of authority or jurisdiction *(coram non judice);* (iii) violation of principles of natural justice; (iv) bias and malafides and (v) colorable exercise of power. The power of judicial review under Article 226 in the context of recommendation of the Scrutiny Committee is further circumscribed in view of Para 15 of the judgment of Hon'ble Supreme Court in *Madhuri Patil's* case (Supra) wherein, it is laid down that the Committee when considers all the material facts and records a finding, though another view, as a Court of appeal may be possible, it is not a ground to reverse the finding. The Court has to see whether the Committee considered all the relevant material placed before it or has not applied its mind to relevant facts, which have led the Committee to ultimately record the finding.

13. The High Power Caste Scrutiny Committee constituted by the State is under the directions of Hon'ble Supreme Court in *Madhuri Patil's* case (Supra). In

the State of Madhya Pradesh, the Committee regulates its procedure as per the guidelines framed by the State vide Circular No. F7-42/2012/Aa.Pra/One dated 13/1/2014, as well as, Circular dated 8/9/1997 which provides for the procedure to be adopted by the High Power Caste Scrutiny Committee. However, the caste certificate in question relates to the year 2008 and at that time the Circular No. F7-13/2004/Aa.Pra/one dated 11/7/2005 was in vogue detailing the procedure to be followed by the High Power Caste Scrutiny Committee. The Scrutiny Committee is not an adjudicating Authority like a Court or a Tribunal, but an administrative body which verifies the facts, investigates into specific claims of caste status and ascertains whether the caste/tribal status claimed is correct or not *(Dayaram Vs. Sudhir Batham and others* ((2012)1 SCC 333), referred to). As such, the scope of judicial review over the deliberations and decisions of the Scrutiny Committee under Article 226 of the Constitution, is limited in nature. The Court is required to ensure that various clauses in paragraph 13 of *Madhuri Patil's* case (Supra) are adhered to, the findings are based on relevant facts brought on record and the conclusions do not suffer from perversity of approach. This view is reinforced by the dictum of Hon'ble Supreme Court in Paragraph 15 of *Madhuri Patil's* case (Supra) wherein it has been held if the Committee considers all material facts and records a finding, though another view as a Court of appeal may be possible, but it cannot be a ground to reverse the findings of the Scrutiny Committee in exercise of power of judicial review under Article 226 of the Constitution.

14. In the case of *Anand* (Supra), the Hon'ble Supreme Court in paragraph 22 (i & ii) has further laid down some broad parameters to be kept in view by the Scrutiny Committee while dealing with caste claim, wherein it has been held that in case the applicant is a first generation ever to attend school, the availability of any documentary evidence becomes difficult, but that *ipso facto* does not warrant rejection of his claim. Such applicants deserve to be extended benefit of doubt and it has been further ruled that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence for which an opportunity has to be afforded to the applicant.

Another parameter is application of affinity test which focuses on the ethnological connection of a given scheduled caste or tribe. However, a note of caution is appended to such test with the observation that the claim of an applicant belonging to a particular scheduled caste or tribe cannot *per se* be disregarded on the ground that his present traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc, for the reason that with modernization, migration and contact with other communities, the communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the particular caste or tribe. Hence, the affinity test cannot be regarded as a litmus test for establishing the link of the applicant with the given scheduled caste or tribe.

15. Appellant Jajpal Singh applied for obtaining NAT SC caste certificate on 10/7/2008. Tahsildar, Ashonagar had issued a temporary/provisional certificate of NAT Scheduled Caste to the appellant for six months on 29/7/2008 (Page 160-165 of the Writ Petition), Objections were raised by political rivals of the appellant viz. Ex MLA Balbir Singh Kushwah on 24/10/2008 (Pages 152-158 of writ petition). The Sub Divisional Officer (Revenue) decided all the objections raised on 3/11/2008. Thereafter the SDO has isued NAT SC caste certificate to the appellant on 6/11/2008 (Page 221 of the petition). The writ Court, while deciding the W.P. No.7047/2013, wherein decision of Scrutiny Committee dated 16/9/2013 invalidating the aforesaid caste certificate of the appellant was under challenge, quashed the said decision in paragraph 76 of the impugned order and in paragraph 73, the writ Court had remanded the case to the Caste Scrutiny Committee for adjudication of Scheduled Caste certificate dated 6/11/2008 *afresh* after issuing notice to the appellant as prescribed under the guidelines. In paragraph 74, the Scrutiny Committee was further directed by way of abundant caution that the Committee shall not be prejudiced by any of the observations made by the writ Court in the order of remand. *Besides, it was also directed that the matter should be decided strictly in accordance with the evidence which would come on record.*

16. This Court has carefully perused the Scrutiny Committee report dated 18/12/2019 pursuant to its meeting dated 13/12/2019. The Scrutiny Committee called for -

(i) The report of Superintendent of Police, Ashoknagar dated 27/7/2019 which included information culled out from revenue records of appellant and his forefathers, School and Village Tara, District Taran Taran Punjab.

(ii) Complaints made by Ramesh Kumar Itoriya, Anand Dohare, Devendra Tamrakar and respondent Ladduram Kori.

(iii) Reply of appellant to the communication of Superintendent of Police and aforesaid complaints

(iv) Reply of appellant to the ten questions formulated by learned Single Judge in his order dated 25/4/2019 (W.P.No.7047/2013).

(v) Statement of appellant with cross-examination by complainants Ramesh Kumar Itoriya, Devendra Tamrakar, Engineer Ladduram Kori, Roshanraj Singh Yadav, Gopilal Jatav, as well as, by High Power Committee;

(vi) That apart, the Scrutiny Committee also ensured recording of statements of residents from native place of appellant's father i.e. Village Khara, PH 302, Tahsil Patti, District Tarn Taran Punjab in compliance of guidelines in clause 13.5 of *Madhuri Patil's* case (Supra) namely Balvir Singh, Mahendra

Singh and Hardeep Singh, besides collecting of documents such as copy of Khasra entries (Jamabandi) of the year 1964-1965 and copy of certificate issued by Sarpanch, Gram Panchayat Khara. Shri Balvir Singh, aged about 75 years, Sarpanch Village Khara stated that Natha Singh, father of Boodh Singh, who was resident of Village Khara, belonged to "NAT" Bazigar community. About 90-100 years ago they had migrated to Madhya Pradesh. Likewise, Mahendra Singh, aged about 85 years, R/o Village Khara, P.S. Sarahali, District Tarantaran, Punjab stated that Shri Boodh Singh belonged to "NAT" Bazigar community. Shri Hardeep Singh (Patwari Halka No. 302, Tahsil Patti, District Tarantarn) has stated that as per land records of Village Khara, Boodh Singh S/o Shri Natha Singh was owner of land falling in Survey No. 155, admeasuring 13.13 at Village Khara. As per records, the caste of Boodh Singh S/o Shri Natha Singh is "NAT". **All these persons are independent bonafide residents of Village Khara, District Tarantarn, Punjab and have no relation with the appellant.**

Besides, the Vigilance Officer also recorded statements of appellant, his father Gurumej Singh, his uncle Seva Singh, daughter-in-law Harvinder Kaur, Independent witnesses Jagdish Prasad Sharma, Anil Kathwal, brother-in-law Ranjeet Singh, cousin Chhindrapal Singh and political rivals Ladduram Kori, Roshan Yadav, Gopial Jatav and Devendra Tamrakar.

17. It is pertinent to mention that learned Single Judge **has not considered the statements of Hardeep, Mahendra and Balvir, who, as indicated above, are independent witnesses from Punjab.** The Scrutiny Committee has also considered the Jamabandi (Khasra) of 1964-1965, wherein the caste of appellant's forefathers is recorded as NAT. The Committee has also considered the reply furnished by the appellant to the ten questions formulated by learned Single Judge in his remand order. The appellant has also been subjected to cross-examination by the complainant and others who became party to the proceedings before the Scrutiny Committee. However, the complainants have not adduced any evidence, much less cogent evidence to prove that appellant is not NAT by caste. The appellant has also explained the circumstances under which the KEER caste certificate was issued to him, as has been quoted above in paragraph 6 (reply to cross-examination by Scrutiny Committee). As such, the Committee has considered entire material placed before it while it concluded that the appellant belonged to NAT caste and declared that the certificate dated 2/11/2008 was a valid one.

18. Respondents have laid great emphasis on the point that appellant since once claimed to be of Keer Caste and was given an OBC certificate in the year 1999, he could not have been issued SC caste certificate of NAT caste. The submission is in ignorance of certain relevant facts. The Scrutiny Committee, vide its order dated 11.11.2004, while examining the veracity of caste certificate dated

02.12.1999 has reached the conclusion that the appellant is of NAT caste and not of Keer caste, which remained unchallenged. Therefore, in view of the aforesaid, as well as, answer of appellant in his cross-examination conducted by the Scrutiny Committee as to why he took Keer Caste certificate (quoted in para 6 above), the contention cannot be countenanced and is, accordingly, rejected.

19. We also cannot lose sight of the fact that the appellant's grandfather had migrated from Punjab to Gwalior State about 90-100 years ago. His father Gurumej Singh was born in Gwalior. They did not go to any School and were illiterate. None of the family members of appellant have been in public employment and with agricultural income, the family survived. Therefore, the statement of the appellant that there was no need to obtain caste certificate for his forefathers cannot be brushed aside and in fact is plausible. The appellant is a first generation ever to attend the school. Availability of documentary evidence of caste certificate becomes a difficulty, but that by itself does not warrant rejection of his claim. Upon consideration of his claim with the oral evidence collected by the Scrutiny Committee from Punjab through Vigilance Officer as discussed above confirming the fact that his grandfather was of NAT caste, the Scrutiny Committee was fully justified in declaring that the appellant belonged to NAT caste. Even if there is some doubt about the caste certificate of the appellant, its veracity was decided on the strength of oral evidence led by the appellant of independent persons from Punjab of the age of his father i.e. 85-90 years. The view taken by this Court is fortified by the decision of the Hon'ble Supreme Court in the case of *Anand* (Supra), para 22.

20. Learned counsel for the respondent also contended that the record produced before the earlier screening committee which had declared the appellant's caste certificate of Nat caste as illegal vide its order dated 16.09.2013, ought to have been considered by the scrutiny committee in its deliberations/order dated 13.12.2019/18.12.2019.

The argument so advanced has no force for the reason that the Scrutiny Committee has considered the complete record produced before it by the Police and Revenue authorities including oral and documentary evidence as discussed above. Further, the earlier Scrutiny Committee was found to have not issued notices to the appellant and allowed him to lead evidence. As such its decision was not only contrary to the principles of natural justice but also against the guidelines issued in the case of *Madhuri Patil* (supra) and therefore rightly been quashed by the learned Single Judge, who had further ordered the scrutiny committee to decide the complaint against caste certificate of NAT caste issued to the appellant dated 06.11.2008 afresh on the basis of evidence which would come on record.

21. We have carefully perused the impugned order and the findings recorded by the learned Single Judge while setting aside the order dated 18.12.2019 passed

by the Scrutiny Committee. The learned Single Judge in paragraphs 42 to 49 has dealt with the question as to whether the castes certificate issued by the State of Punjab is valid in the State of Madhya Pradesh and while relying on the decisions *inter alia* in the cases of *Delhi Jal Board* (supra), *Marri Chandrashekhar Rao* (supra), *Action Committee* (supra), has come to the conclusion in paragraph 50 that the appellant cannot take advantage of any caste certificate/revenue entry issued by Punjab. Similarly, in para 61, learned Single Judge has held that after migration of his forefathers from Punjab, respondent No.5 cannot take advantage of any caste which might have been declared as Scheduled Caste in the State of Punjab and the scrutiny committee illegally relied upon the Jambandi (Khasra) of village Khara, Tahsil Tarantaran, District Amritsar (Punjab).

Although the law laid down in the aforesaid dicta is beyond any cavil of doubt and well settled, yet the learned Single Judge has lost sight of a crucial fact that the forefathers of the appellant had migrated from Punjab to the erstwhile State of Madhya Pradesh somewhere in 1920-21 i.e. much prior to coming into force of the Constitution (Scheduled Castes) Order, 1950 as has been noted by him in paragraph 41 of the impugned order. Thus, as on 10.08.1950, the forefathers of appellant were very much residing in the State of Madhya Pradesh. Clause 3 of M.P. Government Circular, 2005 provides that those persons who have settled in Madhya Pradesh after migration from other states shall be clubbed in the category of inter-state migration only if they have migrated after the SC/ST Presidential Order, 1950. Therefore, the appellant cannot be treated as migrant in terms of the said clause. Hence, the aforesaid judgments which are in context of migrants have no bearing to the factual matrix in hand. Thus, the Scrutiny Committee was only required to ascertain their caste in terms of guidelines laid down in the case of *Madhuri Patil* (supra). Caste is acquired by birth. Once the learned Judge has returned the finding in paragraph 41 that appellant's forefathers had migrated from Punjab to the erstwhile State of Madhya Pradesh much prior to 1950, then in terms of paragraph 13(5) of the decision in *Madhuri Patil's* case, the scrutiny committee was fully justified in ascertaining appellant's lineage from Punjab by collecting necessary evidence in this behalf such as recording of statements of natives of appellant's parental village at Punjab and copy of revenue records including Jamabandi (Khasra) of village Khara, Tahsil Tarantaran, District Amritsar (Punjab) as indicated above. The Jamabandi of 1964-1965 reflects name of family members of Boodh Singh and caste as NAT. This feature is common in Jamabandi of 1964-1965 contained in envelope 3, as well as, that filed along with the counter-affidavit of respondent nos. 1 to 4. Besides, the verification certificate issued by Gram Panchayat Khara indicates that forefathers of appellant were of NAT caste. It is well settled that if a state of affairs is shown to exist, the presumption of its continuity backward and forward can be drawn (*Ambika Vs. Ram Ekabal* AIR 1966 SC 605, referred to). As such, the said certificate and Jamabandi were relevant documents.

22. In paragraph 56, learned Judge has raised the question that if the forefathers of appellant were already having agricultural land in Punjab, then what was the need for migrating to the State of Madhya Pradesh. In para 57, he has raised another question that when in 1964-65 Boodh Singh was not the resident of Punjab then how his caste could be recorded in the revenue records. In the opinion of this Court, the learned Judge has taken a tangential approach as the said questions are neither relevant nor germane to the point in issue, for having land in a State does not prevent anyone to migrate to some other State. Article 19(1)(g) of the Constitution guarantees fundamental right to practise any profession, or to carry on any occupation, trade or business within the territory of India . Moreover, the revenue records are maintained in perpetuity and are altered only pursuant to any mutation order by the competent court, in absence whereof the name of a person normally continues to remain in the revenue record.

23. The learned Judge, in para 79, has held that the appellant had clearly admitted that neither he adopted the original profession of his forefathers (if any), nor his forefathers continued their original profession of playing drama and walking on rope (if any).

The aforesaid finding of the learned Single Judge is in stark ignorance of the law laid down by the Apex Court in the case of *Anand* (supra) wherein while laying the parameter for affinity test which focuses on ethnological connection of a given scheduled caste or tribe, the note of caution has been appended to such test by the Apex Court stating that the claim of an applicant cannot be washed away merely on the ground that his traits do not match his tribes' peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc, for the reason that with modernization, migration and contact with other communities, the communities tend to develop and adopt new traits which may not essentially match with the traditional characteristics of the particular caste or tribe. Hence, the affinity test cannot be regarded as a litmus test for establishing the link of the applicant with the given scheduled caste or tribe.

24. The learned Single Judge, in paragraphs 80 to 84 of the impugned order, has considered the statements of some witnesses, including Ranjeet Singh and Chhindrapal Singh. Ranjeet Singh is the brother in law of the appellant while Chhindrapal Singh is his cousin. However, the learned Single Judge has not taken into account the statement of independent witnesses which were relevant having substantial bearing on the issue of caste certificate, namely Hardeep Singh, Patwari of Patwari Halka No.302, Tahsil Patti, District Tarantaran, Punjab, who has deposed that the land falling in survey no.155 admeasuring 13.13 was in the name of Boodh Singh S/o Nattha Singh. As per revenue records, his caste was NAT. Similarly, the learned Single Judge has ignored the statement of Mahendra Singh, aged about 85 years, resident of village Khara, who has deposed that

Boodh Singh belonged to NAT (Bazigar) community. Likewise, the statement of Balveer Singh, aged about 75 years, Sarpanch of village Khara, has not been considered who has also deposed that Nattha Singh father of Boodh Singh was resident of village Khara and belonged to NAT (Bazigar) community. All the aforesaid persons were independent witnesses whose statements have not been taken into consideration by the learned Single Judge.

25. In paragraphs 92 to 94, after considering various revenue documents, the learned Judge in para 94 opined that in all the revenue documents issued by the authority of State of Madhya Pradesh, caste NAT has not been mentioned. However, a plausible explanation has been given by the appellant in this regard that as his forefathers belonged to scheduled caste, they were being looked down upon and therefore to maintain social respect, they started writing Sikh. It is pertinent to note that Sikh is a religion and not caste, as is also evident from para 3 of the Constitution (Scheduled Castes) Order, 1950. Therefore, merely for the reason that in the said revenue documents, "Sikh" is written in the column of caste, it would not lead to the conclusion that the appellant did not belong to NAT caste.

26. In paragraph 97, learned Single Judge has observed that even if none of the family members of appellant was in government job but still they could have obtained the caste certificate for taking benefits of the schemes. The said observation of the learned Single Judge is again uncalled for and in despair, inasmuch as if forefathers of the appellant being illiterate and rustic villagers did not obtain caste certificate, that in itself would not create any legal bar for the coming generations to obtain caste certificate. Besides, as held in the case of *Anand* (supra), a benefit of doubt operates in favour of an applicant who is the first generation to attend school and mere non-availability of any documentary evidence in that regard *ipso facto* does not warrant rejection of his claim.

27. In paragraphs 100 & 101, the learned Single Judge has disregarded the certificate issued by Gram Panchayat Khara, Tahsil Taran Taran, District Amritsar on the ground that the same did not bear any date or despatch number. However, this certificate has to be read in conjunction with other evidence including oral evidence of natives of Punjab recorded by the Vigilance Officer, as provided for in para 22.1 of the decision of Apex Court in the case of *Anand* (Supra).

28. In paragraphs 102 to 110, the learned Single Judge has highlighted the conduct of the appellant in contesting elections of 1999 with Keer OBC certificate filing nomination paper of Jila Panchyat as member of Scheduled Caste belonging to NAT community, filing nomination of Krishi Upaj Mandi on 20.04.1999 as unreserved candidate through did not contest the election and remaining as Member of Janpad Panchayat during the period 1994-99 as a candidate of unreserved category. Similarly in paragraphs 111, the learned Single Judge has

held that the caste Scrutiny Committee did not consider as to why appellant took advantage of OBC certificate by adorning the seat of President, Municipal Council, Ashok Nagar for five years.

The conduct of the appellant has certainly not been above board, but that should not haunt him for all times to come. However, it is noteworthy that the OBC caste certificate of Keer caste was already cancelled by the Scrutiny Committee vide order dated 25.02.2004 on the premise that the appellant belonged to NAT caste, affirmed by the subsequent Scrutiny Committee's order dated 11/11/2004. The said decision of the Committee has remained un-challenged.. The issue before the subsequent Scrutiny Committee has been to ascertain as to whether the appellant was of NAT caste or not, to be adjudicated strictly in accordance with the guidelines laid down in *Madhuri Patil's* (supra) case and the evidence which would come on record after issuing notice to the appellant as held by the learned Single Judge in his remand order dated 01.05.2019 passed in WP. No.7047 of 2013. The Scrutiny Committee has to act in accordance with the guidelines laid down in *Madhuri Patil's* (supra). It is well settled that the approach of the Scrutiny Committee keeping in view of its object and the constitution should be inquisitorial and not adversarial. It should not deal with the matter as if it is a court trying a criminal case where the prosecution is required to prove its case beyond reasonable doubt. It's duty is to ascertain the truth and in doing so it can record the evidence and procure relevant documents. It has to deal with the material including the reports of the Police, Revenue and Vigilance Authorities objectively and dispassionately *(WP. No.2074 of 2002 order dated 09.05.2003 (affirmed by Division Bench in W.A. No. 407 of 2012), referred to).*

29. It is noteworthy that the FIR bearing Crime No.161/2010 registered against the appellant for the offences punishable under sections 420, 467, 468, 471, 477 and 120B of IPC for obtaining NAT caste certificate, was quashed by learned Single Judge of this Court in M.Cr.C. No.2050/2010 vide order dated 4/2/2022. In view of aforesaid, this Court finds substantial force in the submissions of learned counsel for the appellant that direction of learned Single Judge to register FIR against him for allegedly procuring such caste certificate shall subject him to go through the same ordeal and humiliation which otherwise is not warranted in the obtaining facts and circumstances as the same allegations cannot be ordered to be subject matter of another FIR. As such, the said direction is unsustainable and liable to be set aside.

30. Learned counsel for the appellant/State while taking exception to paragraphs 51 to 54 submits that the learned Single Judge has expressed some doubt and suspicion about the envelopes and the documents contained therein viz. Jamabandi (Khasra) of 1964-65 of Tahsil Taran Taran, Amritsar. He further submits that if the court had some doubt about the documents and envelopes

containing the documents, the court ought to have afforded an opportunity to the State to explain the same. That has not been done and the learned Judge has formed opinion on his own. Therefore the impugned observations are wholly unwarranted. Learned counsel submits that the documents so produced were genuine documents without any interpolation or otherwise.

We find substantial force in the arguments advanced by learned counsel for the appellant/State in this behalf. Besides, we have already dealt with this issue in earlier part (para 21) of this order.

31. In wake of the aforesaid conspectus and regard being had to the nature and scope of enquiry for caste verification as settled by law, we are of the considered view that the findings/deliberations recorded by the Scrutiny Committee on 18/12/2019 are impeccable in nature and the conclusion drawn is sustainable in law.

32. The upshot of the above discussion leads to the inevitable conclusion that the impugned judgment suffers from vice of excessive jurisdiction. In fact and in effect the impugned judgment is as if the writ Court has exercised appellate jurisdiction recording independent findings of facts substituting a well considered Scrutiny Committee report; not permissible in exercise of jurisdiction under Article 226 of the Constitution. The findings of learned Single Judge are vulnerable on facts and in law. Therefore, the impugned judgment is unsustainable and is, accordingly, set aside. The questions formulated in para 5 above are answered in affirmative.

The appeals stand allowed to the extent indicated above.

Reader of the Court is directed to re-seal the six envelopes containing original record of the High Level Committee and return them to Shri Ankur Mody, Additional Advocate General.

A copy of this judgment be retained in the connected appeal.

Appeal allowed

I.L.R. 2023 M.P. 1754

Before Mr. Justice Vijay Kumar Shukla

WP No. 3866/2023 (Indore) decided on 1 May, 2023

RANJEET SINGH …Petitioner

Vs.

STATE OF M.P. & ors. …Respondents

***Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (7 of 1980), Sections 3(1)(a), 8 & 11 – Detention Order – Representation to State* – Held – Representation ought to have been decided immediately without waiting the opinion of Advisory Board – Representation alongwith decision should have been forwarded to Advisory Board and should have been made part of the documents which is to be placed before the Board – Representation of petitioner was misplaced by concerned clerk and was not decided and the same was not placed before Advisory Board – Impugned orders quashed – Petition allowed. (Paras 8 to 13)**

चोरबाजारी निवारण और आवश्यक वस्तु प्रदाय अधिनियम (1980 का 7), धाराएँ 3(1)(a), 8 व 11 – निरोध आदेश – राज्य को अभ्यावेदन दिया जाना – अभिनिर्धारित – सलाहकार मंडल के मत की प्रतीक्षा किए बिना अभ्यावेदन को तत्काल विनिश्चित किया जाना चाहिए था – निर्णय के साथ अभ्यावेदन को सलाहकार मंडल को प्रेषित किया जाना चाहिए था तथा दस्तावेजों का भाग बनाया जाना चाहिए था जिसे मंडल के सामने रखा जाना है – याची का अभ्यावेदन संबंधित लिपिक द्वारा गुमा दिया गया था तथा विनिश्चित नहीं किया गया था तथा उक्त को सलाहकार मंडल के समक्ष नहीं रखा गया था – आक्षेपित आदेश अभिखंडित – याचिका मंजूर।

Cases referred:

2021 SCC Online SC 1019, (2020) 16 SCC 127, (1990) 1 SCC 35, 2022 (3) M.P.L.J. 539.

Makbool Ahmad Mansoori, for the petitioner.
Tarun Pagare, G.A. for the respondents/State.

O R D E R

VIJAY KUMAR SHUKLA, J.:-The present petition is filed under Article 226 of the Constitution of India on behalf of detenu Ranjeet Singh through his wife seeking quashment of the detention order dated 24.01.2023 passed by the District Magistrate, Mandsaur under Section 3(1)(a) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short **the Act**).

2. Facts of the case are that Police Station Garoth, Dist. Mandsaur registered a criminal case against the petitioner and others on 05.11.2022 under Sections 420, 467, 468, 471, 212, 201 & 34 of IPC and Section 3 & 7 of Essential Commodities Act bearing Crime No. 470/2022. The petitioner was arrested in the aforesaid crime on 14.12.2022. The Superintendent of Police, Mandsaur forwarded a report on 24.01.2023 to the District Magistrate making a request to detain the petitioner under the Act. On 24.01.2023, the District Magistrate passed a detention order under Section 3(1)(a) of the Act against the petitioner. The petitioner was detained in Central Jail, Indore on 26.01.2023. The said order was approved by the State Govt. in terms of Section 3(3) of the Act on 01.02.2023. On 06.02.2023, a representation on behalf of the detenue was made to the District Magistrate, State Govt. and Union Govt. as per the provisions of Section 8 of the Act. On 03.03.2023, the case of the petitioner was placed by the State Govt. before the Advisory Board without any decision on the representation constituted under Section 9 of the Act. On 03.03.2023, the Advisory Board considered the material on record placed before it and opined that there exists sufficient cause for detention of the petitioner. On 09.03.2023, the State Govt. in purported exercise of powers conferred under Section 12(1) of the Act confirmed the detention order for the period of six months. While assailing the order of detention dated 24.01.2023 and the order of approval dated 09.03.2023 passed by the State Govt. under Section 12(1) of the Act, counsel for the petitioner submitted that a representation was submitted to the appropriate government in terms of the provisions of Sub-Section (1) of Section 8, but the said representation was not decided by the State Government and the representation along with the decision on the same was not forwarded to and placed before the Advisory Board. He argued that in terms of the provisions of Section 8, the State Government is bound to decide the representation expeditiously without any delay and to place the same before the Advisory Board. In support of his submissions, he has placed reliance on the following judgments:-

i) *Sarabjeet Singh Mokha vs. District Magistrate*
[2021 SCC Online SC 1019]

ii) *Ankit Ashok Jalon vs. Union of India & Ors.*
(2020) 16 SCC 127

iii) *State of Punjab vs. Sukhpal Singh*

(1990) 1 SCC 35

iv) *Aslam vs. The State of M.P. & Others*
2022 (3) M.P.L.J. 539

3. Considering the aforesaid submissions, this Court passed an order on 20.04.2023 and granted time to the State Govt. to file additional reply because the record was not indicating that whether any decision was taken on the representation of the petitioner before referring the matter to the Advisory Board and whether the representation of the petitioner alongwith decision on the same was referred to the Advisory Board. In pursuant to the said order, the State Government filed an additional reply and in para-4 of the reply stated that so far the representation sent to the Collector by the petitioner's wife by speed post dated 06.02.2023 is concerned, the same was received in the office of Collector, Inward Department on 08.02.2023, however, the same was misplaced and in this regard a show cause notice dated 25.04.2023 was issued to the concerned Clerk of Inward Department. After passing of order by this Court on 20.04.2023, the State Govt. rejected the representation of the petitioner by order dated 25.04.2023 after filing of the writ petition with delay of 76 days.

4. Counsel for the State supports the order of detention and submits that the representation submitted on 06.02.2023 was misplaced and, therefore, the same could not be decided and a show cause notice has already been issued against the concerned Clerk. He further submits that on 25.04.2023, the State Govt. has rejected the representation of the petitioner which has been filed as Annexure A/3 along with the additional reply.

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

6. To appreciate the rival submissions the relevant provisions of Section 8 & 11 of the Act are reproduced as under :-

> **8. Grounds of order of detention to be disclosed to person 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.
>
> (2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.
>
> **11. Procedure of Advisory Boards. -** (1) The Advisory Board shall, after considering the materials placed before it and, after

> calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.
>
> (2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.
>
> (3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.
>
> (4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board, and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

7. The provisions of the Act, 1980 is *pari materia* with the provisions of National Security Act, 1980. The Apex Court in the case of *Sarabjeet Singh Mokha* (supra) while considering the provisions relating to consideration of representation in the context of reference to the Advisory Board held as under:-

> 43. Justice UU Lalit categorized the different stages for when a representation is received and disposed, with the underlying principle that the representation must be expeditiously disposed of, at every stage:
>
> "17. In terms of these principles, the matter of consideration of representation in the context of reference to the Advisory Board, can be put in the following four categories:
>
> 17.1. If the representation is received well before the reference is made to the Advisory Board and can be considered by the appropriate Government, the representation must be considered with expedition. Thereafter the representation along with the decision taken on the representation shall be forwarded to and must form part of the documents to be placed before the

Advisory Board.

17.2. If the representation is received just before the reference is made to the Advisory Board and there is not sufficient time to decide the representation, in terms of law laid down in Jayanarayan Sukul [Jayanarayan Sukul v. State of W.B., (1970) 1 SCC 219 : 1970 SCC (Cri) 92] and Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816] the representation must be decided first and thereafter the representation and the decision must be sent to the Advisory Board. This is premised on the principle that the consideration by the appropriate Government is completely independent and also that there ought not to be any delay in consideration of the representation.

17.3. If the representation is received after the referenceis made but before the matter is decided by the Advisory Board, according to the principles laid down in Haradhan Saha [Haradhan Saha v. State of W.B., (1975) 3 SCC 198 : 1974 SCC (Cri) 816] , the representation must be decided. The decision as well as the representation must thereafter be immediately sent to the Advisory Board.

17.4. If the representation is received after the decision of the Advisory Board, the decisions are clear that in such cases there is no requirement to send the representation to the PART D Advisory Board. The representation in such cases must be considered with expedition.

18. [Ã¢ÂÂ¦] it is well accepted that the representation must be considered with utmost expedition; and the power of the Government is completely independent of the power of the Advisory Board; and the scope of consideration is also qualitatively different, there is no reason why the consideration by the Government must await the decision by the Advisory Board. None of the aforesaid cases even remotely suggested that the consideration must await till the report was received from the Advisory Board."

8. The Apex Court in para-17.1 held that if the representation is received well before the reference is made to the Advisory Board and the representation must be considered with expedition by the appropriate Court. Thereafter the representation along with the decision taken on the representation shall be

forwarded to and must form part of the documents to be placed before the Advisory Board.

9. In the case of *Ankit Ashok Jalon* (supra), the Apex Court held that the State Government is not bound to wait on the Advisory Board's report before deciding the representation and must do so as expeditiously as possible. In para-50 of *Sarabjeet Singh Mokha* case, the Apex Court held by delaying its decision on the representation, the State Government deprived the detenu of the valuable right which emanates from the provisions of Section 8(1) having the representation being considered expeditiously.

10. In the case of *Sukhpal Singh* (supra) in para-17 of the judgment, the Apex Court considered that Article 22(5) of the Constitution enjoins that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

11. A Division Bench of this Court in the case of *Aslam s/o Haji Kasam* (supra) after referring to the judgment passed in the case of *Sarabjeet Singh Mokha* in para-8 held that non-consideration of representation of the detenu would vitiate the orders of detenu.

12. From the facts of the present case and as per the additional reply filed by the State Government, it is crystal clear that the representation submitted on behalf of the detenue by speed post dated 06.02.2023 was received in the Office of Collector on 08.02.2023, but the same was not decided and the said representation was also not placed before the Advisory Board. The respondents have admitted that the said representation was misplaced and a show cause notice has been issued to the concerned Clerk of the Department. After passing of order by this Court on 20.04.2023 making a query from the Government Advocate that the record does not indicate that the representation made on behalf of the petitioner was decided and the same was forwarded to the Advisory Board then the State Government passed an order on 25.04.2023 rejecting the representation with delay of 76 days. The representation ought to have been decided immediately without waiting the opinion of the Advisory Board and as per para-43 of the judgment of the *Sarabjeet Singh Mokha* (supra), the representation ought to have been considered with expedition and the representation along with the decision should have been forwarded to the Advisory Board and should have been made part of the documents which were placed before the Advisory Board.

13. From the record and the additional reply, it is crystal clear that the representation of the petitioner was not decided and the same was not placed before the Advisory Board. The representation of the petitioner was taken casually by the respondents as it is stated that the same was misplaced by the concerned Clerk. A casual approach was adopted by the authorities in such a sensitive matter of detention, this Court highly deprecates the conduct and manner of the respondents in dealing the present case of detention. Consequently, the petition is allowed. The order of detention dated 24.01.2023 and order of State Government dated 09.03.2023 are quashed. The petitioner detenu is directed to be released from custody forthwith if he is not required in any other case.

CC as per rules.

Petition allowed

I.L.R. 2023 M.P. 1760

Before Mr. Justice Anand Pathak

WP No. 17790/2020 (Jabalpur) decided on 13 June, 2023

DASHRATH KUMAR …Petitioner

Vs.

PRINCIPAL SECRETARY TO GOVERNOR & ors. …Respondents

***A. Civil Services (Pension) Rules, M.P., 1976, Rule 8(2) and Constitution – Article 226 – Conviction – Forfeiture of Pension – Permissibility* – Held – Petitioner convicted u/S 13(1)(a) & 13(2) of PC Act – Show cause notice was issued, opportunity of hearing was provided and thereafter considering the nature of allegation involved, integrity, moral turpitude, authority reached to the conclusion, which does not require to be dislodged under limited scope of judicial review – Petition dismissed.**

(Para 12)

क. सिविल सेवा (पेंशन) नियम, म.प्र., 1976, नियम 8(2) एवं संविधान – अनुच्छेद 226 – दोषसिद्धि – पेंशन का समपहरण – अनुज्ञेयता – अभिनिर्धारित – याची को भ्रष्टाचार निवारण अधिनियम की धारा 13(1)(a) व 13(2) के अंतर्गत दोषसिद्ध किया गया – कारण बताओ नोटिस जारी किया गया, सुनवाई का अवसर प्रदान किया गया था एवं तत्पश्चात् अंतर्वलित अभिकथन के स्वरूप, सत्यनिष्ठा, नैतिक अधमता को विचार में लेते हुए, प्राधिकारी इस निष्कर्ष पर पहुंचे, जिसे न्यायिक पुनर्विलोकन की सीमित परिधि के अंतर्गत हटाने की आवश्यकता नहीं है – याचिका खारिज।

***B. Civil Services (Pension) Rules, M.P., 1976, Rule 8(2) – Conviction – Forfeiture of Pension – Opportunity of Hearing* – Held – Full Bench of this Court concluded that while invoking Rule 8(2), no opportunity of hearing is required to be given – However, power of authority to take**

action under Pension Rules would be subject to guidelines stated by the Apex Court. (Para 11)

ख. सिविल सेवा (पेंशन) नियम, म.प्र., 1976, नियम 8(2) – दोषसिद्धि – पेंशन का समपहरण – सुनवाई का अवसर – अभिनिर्धारित – इस न्यायालय की पूर्ण न्यायपीठ द्वारा यह निष्कर्षित किया गया है कि नियम 8(2) का अवलंब लेते समय, सुनवाई का कोई अवसर प्रदान करने की आवश्यकता नहीं है – हालांकि, पेंशन नियमों के अंतर्गत कार्रवाई करने की प्राधिकारी की शक्ति सर्वोच्च न्यायालय द्वारा वर्णित दिशा–निर्देशों के अधीन होगी।

Cases referred:

AIR 1985 SC 772, (2013) 12 SCC 210, 2020 (2) MPLJ 551, AIR 1985 SC 1416, 2004 (4) MPLJ (FB) 555.

Om Shankar Pandey, for the petitioner.
Lalit Joglekar, G.A. for the respondents.

O R D E R

ANAND PATHAK, J.:- The present petition is preferred under Article 226 of the Constitution of India seeking following reliefs:

> *"(A) Calling the relevant records along with note sheets pertaining to issuance of show cause notice impugned order dated 27-05-2019 and pertaining dated 26-05-2020* ***(Annexure P/1)*** *and dated 13-10-2020* ***(Annexure P/2)*** *and appeal dated 21-08-2020.*
>
> *(B) Quashing the impugned order dated 26-05-2020 Annexure P/1 and order dated 13-10-2020 (Annexure P/2) as they are illegal, arbitrary and void ab initio; AND*
>
> *(C) Directing the respondent No.3 to grant full pension regularly after fixation of pay in 7th pay commission with all consequential benefits, including all pensionary benefits i.e. gratuity etc and arrears of dues with 18 percent interest.*
>
> *(D) Any other relief which this Honble Court may deem fit; also be granted to the petitioner along with costs. "*

2. Petitioner is aggrieved by the order dated 26-05-2020 (Annexure P/1) passed by respondent No. 1 whereby the representations dated 07-06-2019, 10-06-2019 and 11-07-2019 were considered and rejected and final order dated 13-10-2020 (Annexure P/2) was passed forfeiting the pension of the petitioner permanently purportedly under the provisions of M.P. Civil Services (Pension) Rules, 1976 (in short 'the Pension Rules').

3. Precisely stated facts of the case are that petitioner was appointed to the post of LDC in the Madhya Pradesh Secretariat in August, 1966 and step up the

ladder to the post of Deputy Secretary in December, 2011. He was superannuated from the services after attaining the age of superannuation from the post of Deputy Secretary, Government of Madhya Pradesh on 31-10-2016. It appears that on the complaint of Smt. Shaifali Tiwari, Jail Superintendent, Indore, case was registered by Special Police Lokayukt, Indore under Sections 13(1)(a) and 13(2) of the Prevention of Corruption Act, 1988 (in short 'the PC Act') in which after investigation charge-sheet was filed and trial conducted. Special Court, Indore convicted the petitioner for offence under Section 13(1)(a) and 13(2) of the PC Act and awarded jail sentence of 4 years' RI with fine of Rs.1,000/- with default stipulation. Allegations against the petitioner were that he visited Indore as Deputy Secretary, Jail Department for grading ACR in Madhya Pradesh PSC and stayed at Hotel Balwas International at the instance of said Jail Superintendent.

4. After conviction recorded by the Special Court vide judgment dated 27-02-2019, a show cause notice was issued by the GAD, Mantralaya, Bhopal on 27-05-2019 to the petitioner under rule 8 of the Pension Rules and solicited reply.

5. Petitioner submitted detailed reply to the show cause notice vide reply dated 07-06-2019, 10-06-2019 and 11-07-2019. After considering replies, impugned order dated 26-05-2020 (Annexure P/1) has been passed. After decision of Cabinet taken on 13-10-2020, petitioner preferred this petition taking exception to both the orders.

6. It is the submission of learned counsel for the petitioner that the respondents did not consider the case in detail and pass the impugned order which is arbitrary and illegal. Petitioner was not convicted for a serious crime or was not found guilty of grave misconduct. It is further submitted that authority to withdraw or withhold the pension lies with the Governor of Madhya Pradesh and to no other authority. Here, without application of mind, decision has been taken by the incompetent authority. No serious crime or grave misconduct has been committed by the petitioner so as to attract such punishment of withdrawal of pension. Learned counsel for the petitioner relied upon judgment of Apex Court in the case of *Shanker Dass Vs. Union of India & Anr.,* AIR 1985 SC 772 and in case of *State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.* (2013) 12 SCC 210 and seeks parity.

7. Learned counsel for the respondents/State opposed the prayer and contested the case by way of filing reply. It is submitted by learned counsel for the respondents that authorities have rightly considered the aspect of integrity and moral turpitude and thereafter invoked Rule 8(2) of the Pension Rules and in view of the Full Bench decision of this Court in the case of *Lal Sahab Bairagi vs. State of M.P. and Others reported* in 2020 (2) MPLJ 551, even opportunity of hearing is not required to be given. Since rules prescribes said withholding therefore, the impugned order is within the legal bounds. He prayed for dismissal of petition.

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

9. This is a case where petitioner who suffered trial wherein trial Court recorded the conviction against him vide judgment dated 27-02-2019 for the alleged offence under Section 13(1)(a) and 13(2) of the PC Act and sentenced the petitioner.

10. So far as withdrawal of pension is concerned rule 8 is very luculent in this regard. Rule 8 is reproduced for ready reference:-

> ***" 8. Pension subject to future good conduct.*** *- (1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules.*
>
> *(b) The pension sanctioning authority may, by order in writing withhold or withdraw a pension or part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct:*
>
> *Provided that no such order shall be passed by an authority subordinate to the authority competent at the time of retirement of the pensioner, to make an appointment to the post held by him immediately before his retirement from service :*
>
> *Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below [the minimum pension as determined by the Government from time to time].*
>
> *(2) Where a pensioner is convicted of a serious crime by a Court of law, action under clause (b) of sub-rule (1) shall be taken in the light of the judgment of the Court relating to such conviction.*
>
> *(3) In a case not falling under sub-rule (2), if the authority referred to in sub-rule (1) considers that the pensioner is prima facie guilty of grave misconduct, it shall before passing an order under sub-rule (1)-*
>
> *(a) serve upon the pensioner a notice specifying the action proposed to be taken against him and the ground on which it is proposed to be taken and calling upon him to submit, within fifteen days of the receipt of the notice or such further time not exceeding fifteen days as may be allowed by the pension sanctioning authority, such representation as he may wish to make against the proposal; and*
>
> *(b) take into consideration the representation, if any, submitted by the pensioner under clause (a).*

(4) Where the authority competent to pass an order under sub-rule (1) is the Governor, the State Public Service Commission shall be consulted before the order is passed.

(5) An appeal against an order under sub-rule (1); passed by any authority other than the Governor, shall lie to the Governor and the Governor shall in consultation with the State Public Service Commission pass such order on the appeal as he deems fit.

Explanation. - In this rule,-

(a) the expression "serious crime" includes a crime involving an offence under the Official Secrets Act 1923 (No. 19 of1923);

(b) the expression "grave misconduct" includes the communication or disclosure of any secret official code or pass word or any sketch, plan, model, article, note, document or information such as is mentioned in Section 5 of the Official Secrets Act, while holding office under the government so as to prejudicially affect the interests of the general public, or the security of the country.

[Note - The Provisions of this rule shall also be applicable to family pension payable under Rules 47 and 48. The authority competent to make an appointment to the post held by the deceased Government servant/ pensioner immediately before the death or retirement from the service, as the case may be, shall be the competent authority to withhold or withdraw any part of family pension."

11. While interpreting scope and ambit of Rule 8 of the Pension Rules, Full Bench of this Court in the case of *Lal Sahab Bairagi* (supra) has held that while invoking rule 8(2) of the Pension Rules, no opportunity of hearing is required to be given. However, power of the authority to take action under the Pension Rules would be subject to the guidelines as stated by the Supreme Court in the case of *Union of India and another Vs. Tulsiram Patel and others*, AIR 1985 SC 1416.

12. Here in instance case, opportunity of hearing was provided to the petitioner and thereafter, considering the nature of allegation involved, integrity, moral turpitude, authority reached to the conclusion which does not required to be dislodged under the limited scope of judicial review by issuance of writ which is discretionary in nature. Even otherwise, order has been passed in the name of Governor and whole Cabinet has considered this aspect and thereafter passed the impugned order and incidentally show cause notice was issued to the petitioner before reaching to the conclusion. Therefore, no ground exists in favour of the petitioner seeking interference in the writ jurisdiction. Earlier Full Bench in the

case of *Laxmi Narayan Hayaran Vs. State of M.P.* 2004(4) MPLJ (FB) 555 held that no prior hearing is required before the passing the order under rule 8(2) of the Pension Rules, consequent upon the conviction.

13. Perusal of the impugned order dated 13-10-2020 indicates that due consideration over the facts and circumstances as well as nature of allegations were made and thereafter authorities reached to the conclusion. Once the respondents considered all pros and cons and duly vetted the reasons for arriving to such conclusion therefore, interference declines and petition being sans merits and is hereby **dismissed.**

Petition dismissed

I.L.R. 2023 M.P. 1765 (DB)

Before Mr. Justice Sheel Nagu & Mr. Justice Avanindra Kumar Singh

WP No. 13970/2017 (Jabalpur) decided on 6 July, 2023

GLORY CREATIONS (M/S) …Petitioner

Vs.

COMMERCIAL TAX OFFICER & anr. …Respondents

***A. VAT Act, M.P. (20 of 2002), Section 37(5) and VAT Rules, M.P., 2006, Rule 48(1)(a) – Interest on Delayed Payment of Refund* – Held – If the amount of refund of tax is not made to assessee within period of 60 days from the date of passing of the order of refund, then Revenue is obliged to pay interest for the delay till the date of payment at the rate of 1% per month on the amount of refund – Despite clear mandatory provision, Revenue has delayed the payment from 30.01.2016 to 30.08.2017 – Petitioner entitled for interest for delayed payment – Petition allowed with cost. (Paras 6, 7 & 9)**

क. वैट अधिनियम, म.प्र. (2002 का 20), धारा 37(5) एवं वैट नियम, म.प्र., 2006, नियम 48(1)(a) – प्रतिदाय के विलंबित भुगतान पर ब्याज – अभिनिर्धारित – यदि प्रतिदाय का आदेश पारित होने की दिनांक से 60 दिन के भीतर करदाता को कर के प्रतिदाय की राशि प्रदान नहीं की जाती है, तब विलंब के लिए प्रतिदाय की राशि पर 1% प्रतिमाह की दर से भुगतान दिनांक तक ब्याज का भुगतान करने के लिए राजस्व बाध्य है – स्पष्ट आज्ञापक उपबंध के बावजूद, राजस्व ने दिनांक 30.01.2016 से 30.08.2017 तक भुगतान में विलंब किया है – याची विलंबित भुगतान के लिए ब्याज का हकदार है – याचिका व्यय के साथ मंजूर।

***B. VAT Act, M.P. (20 of 2002), Section 37(5) and VAT Rules, M.P., 2006, Rule 48(1)(a) – Procedure* – Held – When Section 37 in mandatory terms obliges Revenue to pay interest on any delay beyond period of 60 days, then the procedural provision of Rule 48 or any Form for that matter cannot**

jeopardize the right of interest flowing from Section 37(5) of 2002 Act.

(Para 6.3)

ख. वैट अधिनियम, म.प्र. (2002 का 20), धारा 37(5) एवं वैट नियम, म.प्र., 2006, नियम 48(1)(a) – प्रक्रिया – अभिनिर्धारित – जब धारा 37 आज्ञापक रूप से राजस्व को 60 दिनों की अवधि से परे किसी विलंब पर ब्याज का भुगतान करने के लिए बाध्य करती है, तब धारा 48 का प्रक्रियात्मक उपबंध अथवा उस मामले के संबंध में कोई प्रारूप अधिनियम 2002 की धारा 37(5) से प्रवाहित होने वाले ब्याज के अधिकार को संकट में नहीं डाल सकता।

K.K. Dubey with *Abhijeet Shrivastava,* for the petitioner.
A.D. Bajpai, G.A. for the respondents.

O R D E R

The Order of the Court was passed by:
SHEEL NAGU, J.:- The short prayer made in this petition preferred by an assessee is that despite passing of an order of refund on 30.11.2015 (Annexure P/1), the amount of refund was credited in the account of petitioner as late as on 30/08/2017.

2. Pertinently, this is second round of litigation after exhausting the first one in shape of W.P. No.7366/2017 which was disposed of vide order dated 17.05.2017 (Annexure P/3) extending liberty to the petitioner to make a representation before the Revenue with corresponding direction to the Revenue to decide the same in accordance with law. Thereafter, petitioner made representations on 04.07.2017, 04.08.2017 and 17.08.2017 vide Annexure P/5.

2.1 Eventually, the Commercial Tax Officer, Jabalpur Circle-3, issued Form-39 on 30.08.2017 (Annexure P/6) directing the Treasury Officer to release an amount of Rs.4,99,130/- (amount of refund) in favour of petitioner.

3. In the aforesaid given facts and circumstances, the petitioner claims interest for delayed payment of refund in terms of sub-section (5) of Section 37, which for ready reference and convenience is reproduced below :

"Sec.37 : Refund

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) Where a refund of any amount under subsection (1) or sub-

section (3) is not made or is not applied for the purposes mentioned in sub-section (4) within sixty days from the date of passing of the order for refund, the dealer shall be entitled and be paid interest at the rate of one percent per month on the amount of refund for the period commencing from the date of expiry of the said period of sixty days and ending with the day on which the refund is made to him under sub-section (1) or sub-section (3) or is applied for the purposes mentioned in sub-section (4), as the case may be."

Explanation -

(i) Under this sub-section where the period for which interest is payable covers a period less than a month, the interest payable in respect of such period shall be computed proportionately.

(ii) For the purpose of this sub-section "month" shall mean thirty days."

4. The contention of learned counsel for State is that the period of 60 days mentioned in Section 37(5) starts to run from the date of issuance of the order of refund in Form-39 which was issued to petitioner on 30.08.2017, and, therefore, there was no delay and thus the question of interest accruing to petitioner does not arise.

5. A bare perusal of Section 37(5) reveals that when a refund entitled to an assessee under sub-section (1)/(3) of the said Section is not made within sixty days from the date of passing of the order for refund, the dealer shall be entitled to interest at the rate of one percent per month on the amount of refund for the period commencing from the date of expiry of prescribed 60 days and ending when the refund is actually made.

5.1 The contention of learned counsel for Revenue is that the expression "passing of the order for refund" is in fact issuance of Form-39 vide Annexure P/6 and not the order of Assessment Officer made on 30/11/2015 (Annexure P/1). State counsel has urged for a conjunctive reading of Section 37(5) and Rule 48(1)(a) of the M.P. VAT Rules, 2006.

5.2 For ready reference and convenience, the entire Section 37 as well as Rule 48 is reproduced below :

"37: Refund

(1) *If the Commissioner is satisfied that the tax or penalty or both or interest paid by or on behalf of a dealer for any year exceeds the amount of the tax to which he has been assessed or*

the penalty imposed or the interest payable under this Act for that year or that a registered dealer [or person other than a registered dealer] is entitled to the refund of rebate under of Section 14, he shall, in the prescribed manner, refund any amount found to have been paid in excess in cash or by adjustment of such excess towards the amount of tax due in respect of any other year from him.

(1A) *Notwithstanding anything contained in sub-section (1), if the refund is due to input tax rebate pertaining to sales of canteen stores, the refund shall be adjusted towards any other tax liability of the Canteen Stores Department and on an application by the Canteen Stores Department, the balance of refund may be adjusted towards the tax liability of any other registered dealer.*

(2) *If the Commissioner is satisfied that due to an error committed by the [dealer or person] while crediting any amount payable under this Act or the Act repealed by this Act or the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (No.52 of 1976) or the Central Sales Tax Act, 1956 (No.74 of 1956), into Government treasury the amount so paid cannot be accounted for the purpose for which it is credited, he shall subject to the provisions of sub-section (4) refund that amount in the manner prescribed either in cash or by adjustment towards the amount of tax due in respect of any other year from him.*

(3) If the appellate authority or the Commissioner is satisfied to the like effect it shall cause refund to be made of any amount found to have been wrongly paid or paid in excess.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2) or sub-section (3) the authority empowered to grant refund shall apply the refundable amount in respect of any year towards the recovery of any tax, penalty, interest or part thereof due under this Act or under the Act repealed by this Act or under the Central Sales Tax Act, 1956 (No.74 of 50 1956) or under the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (No.52 of 1976) and shall then refund the balance remaining, if any.

(5) Where a refund of any amount under sub-section (1) or sub-section (3) is not made or is not applied for the purposes mentioned in sub-section (4) within sixty days from the date of passing of the order for refund, the dealer shall be entitled and be paid interest at the rate of one per cent per month on the amount of refund for the period commencing from the date of

expiry of the said period of sixty days and ending with the day on which the refund is made to him under sub-section (1) or sub-section (3) or is applied for the purposes mentioned in sub-section (4), as the case may be.

Explanation -

(i) Under this sub-section where the period for which interest is payable covers a period less than a month, the interest payable in respect of such period shall be computed proportionately.

(ii) For the purpose of this sub-section "month"shall mean thirty days."

"Rule 48: Refund payment order

(1)(a) *When an order directing the refund of any amount has been made by an Assistant Commercial Tax Officer or a Commercial Tax Officer, the Commercial Tax Officer and when such order is made by an Assistant Commissioner, the Assistant Commissioner shall, if the dealer desires payment in cash, issue to him a refund payment order in* ***Form 39*** *for such amount as may remain after deducting any amount in respect of which a notice under sub-section (5) of Section 24 has been issued or which has to be adjusted under Rule 49.*

(b) *where the amount for which the refund payment order is issued exceeds rupees five thousand, such refund payment order shall be crossed and made "Account Payee."*

(2) *The refund payment order shall be delivered to the dealer and a copy thereof shall be forwarded to the Treasury Officer concerned."*

(emphasis supplied)

6. A bare reading of Section 37(5) reveals that if the amount of refund of tax is not made to the assessee within a period of sixty days from the date of passing of the order of refund, then Revenue is obliged to pay interest for the delay that takes place after expiry of sixty days till the date of payment at the rate of one per cent per month on the amount of refund.

6.1 Thus, it is obvious that after the order of refund was passed on 30.11.2015 (Annexure P/1), it was obligatory on the Revenue to have paid the amount of refund within sixty days without the assessee asking for the same.

6.2 In the instant case, it is not disputed that the refund of payment was actually made as late as on 30.08.2017 and, therefore, the delay that has taken

place from 30.01.2016 (30.11.2015 + 60 days) till 30.08.2017 (date of payment), the Revenue is duty bound under the statute to pay interest at the aforesaid rate which it has failed to do thereby compelling the petitioner-assessee to approach this court.

6.3 The argument of learned counsel for the Revenue that the interest has to be calculated after the issuance of Form-39 (Annexure P/6) is untenable since Form-39 finds mention in Rule 48(1)(a) which is subservient to the statutory provision of the Act. When, Section 37 in mandatory terms obliges Revenue to pay interest on any delay beyond the period of sixty days, then the procedural provision of Rule 48 or any form for that matter cannot jeopardize the right of interest flowing from Section 37(5).

7. From the aforesaid, it is evident that despite clear mandatory provision of payment of interest on tax refund if paid after expiry of sixty days, the Revenue has delayed the payment from 30.01.2016 to 30.08.2017 thereby entitling the assessee to interest at the prescribed rate.

7.1 It is also surprising to note that the Revenue has even opposed this genuine cause of the assessee which should have been redressed without compelling the assessee to come to this Court and wait for more than 5-6 years for relief.

8. In view of above, the Revenue has acted *dehors* the litigation policy of the State, which in clear terms discourages frivolous litigation.

9. Consequently, present petition stands **allowed** with the following directions:

(i) The Revenue, by way of writ of mandamus is directed to pay interest to the petitioner-assessee from 30.01.2016 till 30.08.2017 on the delayed payment of refund of tax as mentioned in Annexure P/6 at the rate prescribed in Section 37(5).

(ii) Since the Revenue has compelled the petitioner-assessee to file this avoidable piece of litigation, which has consumed enough precious time of this Court which could have been utilized in deciding more pressing matters, the Revenue is obliged to pay cost of this litigation to petitioner-assessee as well as to pay exemplary cost. Accordingly, the Revenue is directed to pay cost of **Rs.10,000/- (Rupees Ten Thousand only)** which shall be credited to the bank account of petitioner through digital transfer and the Revenue is further directed to pay an amount of **Rs.10,000/- (Rupees Ten Thousand only)** in favour of Secretary, M.P. State Legal Services Authority, Jabalpur for wasting precious time of this Court in adjudicating this avoidable piece of litigation. The MPSLSA shall donate this

amount to the Permanent Artificial Organ Transplantation Centre, Netaji Subhash Chandra Bose Medical College, Jabalpur.

(iii) The aforesaid directions be complied with within a period of sixty days and compliance report be filed latest by 18.09.2023, failing which the Registry is directed to list this matter as PUD for compliance.

Petition allowed

I.L.R. 2023 M.P. 1771 (DB)

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

WP No. 18589/2023 (Jabalpur) decided on 8 August, 2023

ASHWINI PRADHAN …Petitioner

Vs.

UNION OF INDIA & anr. …Respondents

***A. Protection of Women from Domestic Violence Act (43 of 2005), Sections 2(d), 21 & 31 and Guardians and Wards Act (8 of 1890), Section 12 – Custody Orders* – Held – Under the 1890 Act, not only the mother can claim temporary custody of minor child but the father can also apply for the same – However, under the 2005 Act only a woman who is subjected to domestic violence or a person making an application on her behalf can apply for the temporary custody of child – Section 21 & 31 of 2005 Act are not *ultra vires* – Petition dismissed. (Paras 11, 13 & 23)**

क. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धाराएँ 2(d), 21 व 31 एवं संरक्षक और प्रतिपाल्य अधिनियम (1890 का 8), धारा 12 – अभिरक्षा के आदेश – अभिनिर्धारित – अधिनियम 1890 के अंतर्गत, न केवल माता अवयस्क बालक की अस्थायी अभिरक्षा का दावा कर सकती है, बल्कि पिता भी उक्त के लिए आवेदन कर सकता है – तथापि, अधिनियम 2005 के अंतर्गत केवल एक महिला जो घरेलू हिंसा से पीड़ित है अथवा एक व्यक्ति जो उसकी ओर से आवेदन कर रहा है, बालक की अस्थायी अभिरक्षा के लिए आवेदन कर सकता है – अधिनियम 2005 की धारा 21 व 31 अधिकारातीत नहीं हैं – याचिका खारिज।

***B. Protection of Women from Domestic Violence Act (43 of 2005), Sections 2(d), 21 & 26 and Guardians and Wards Act (8 of 1890), Section 12 – Relief in Other Proceedings* – Held – As illustrated in Section 26 of the 2005 Act itself, that any such relief could also be initiated in any other Court of law, therefore, only because a wrong order is passed by concerned authority, it would not render the statute itself to be unconstitutional. (Para 22)**

ख. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धाराएँ 2(d), 21 व 26 एवं संरक्षक और प्रतिपाल्य अधिनियम (1890 का 8), धारा 12 – अन्य

कार्यवाहियों में अनुतोष – अभिनिर्धारित – जैसा कि अधिनियम 2005 की धारा 26 में निदर्शित है, कि ऐसा कोई भी अनुतोष विधि के किसी अन्य न्यायालय में भी प्रारंभ किया जा सकता था, अतः केवल इस कारण कि संबंधित प्राधिकारी द्वारा गलत आदेश पारित किया गया है, वह कानून को अपने आप में असंवैधानिक नहीं बना देगा।

***C. Protection of Women from Domestic Violence Act (43 of 2005), Section 21 & 31 and Guardians and Wards Act (8 of 1890), Section 12 – Objects and Reasons* – Held – Domestic Violence Act is enacted with solemn purpose to secure and protect certain rights of women which are constitutionally guaranteed and also to protect them from domestic violence – However the 1890 Act is enacted with the object to secure interest of minor particularly in matters of appointment of guardians and protection of minor's property etc. (Para 8)**

ग. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धारा 21 व 31 एवं संरक्षक और प्रतिपाल्य अधिनियम (1890 का 8), धारा 12 – उद्देश्य तथा कारण – अभिनिर्धारित – घरेलू हिंसा अधिनियम महिलाओं के कतिपय अधिकार, जो संवैधानिक रूप से प्रत्याभूत है, को सुरक्षित और संरक्षित करने के सत्यनिष्ठ प्रयोजन से तथा साथ ही उन्हें घरेलू हिंसा से बचाने के लिए भी अधिनियमित किया गया है– तथापि, अधिनियम 1890 अवयस्क के हित को सुरक्षित रखने के उद्देश्य से अधिनियमित किया गया है विशिष्ट रूप से संरक्षकों की नियुक्ति तथा अवयस्क की संपत्ति इत्यादि के संरक्षण के मामलों में।

***D. Protection of Women from Domestic Violence Act (43 of 2005), Sections 21, 31 & 36 – Anomalies* – Held – Even if the plea of petitioner were to be accepted that there are certain anomalies in the 2005 Act, the same would stand covered by Section 36 to the extent that all provisions of the Act are in addition to and not in derogation of the provisions of any other law. (Para 16 & 17)**

घ. घरेलू हिंसा से महिलाओं का संरक्षण अधिनियम (2005 का 43), धाराएँ 21, 31 व 36 – असंगति – अभिनिर्धारित – यद्यपि, याची का अभिवाक् कि अधिनियम 2005 में कुछ असंगतियां है, स्वीकार्य किया जाना था, उक्त अभिवाक् धारा 36 के अंतर्गत उस सीमा तक आच्छादित है कि अधिनियम के समस्त उपबंध किसी अन्य विधि के उपबंधों का परिवर्धन है तथा न कि अल्पीकरण।

***E. Interpretation of Statutes – Doctrine of Harmonious Construction* – Held – This doctrine lays down that in order to avoid conflict, statutes must be interpreted harmoniously – It is a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonize with the object of statute and which effectuate the object of legislature. (Para 18 & 19)**

ङ. कानूनों का निर्वचन – समन्वयपूर्ण अर्थान्वयन का सिद्धांत – अभिनिर्धारित – यह सिद्धांत यह प्रतिपादित करता है कि अंतर्विरोध से बचने के लिए कानूनों का सामंजस्यपूर्ण निर्वचन किया जाना चाहिए – कानूनों के निर्वचन का यह

मान्यताप्राप्त नियम है कि उसमें प्रयोग की गई अभिव्यक्तियां सामान्य रूप से उस अर्थ में समझी जानी चाहिए जिसमें वह कानून के उद्देश्य से अधिक से अधिक सामंजस्य बैठा सके तथा जो विधायिका के उद्देश्य को कार्यान्वित कर सके।

Cases referred:

(2016) 10 SCC 165, (2016) 11 SCC 774, (2017) 14 SCC 373, 2016 SCC OnLine Bom 10047, 1960 SCC OnLine SC 16, (1989) 4 SCC 378, (2002) 4 SCC 297.

Ashok Kumar Jain, for the petitioner.
Pushpendra Yadav, Dy. Solicitor General for the respondent No. 1.

O R D E R

The Order of the Court was passed by :

RAVI MALIMATH, CHIEF JUSTICE:- This petition is filed seeking for a writ of certiorari to quash Sections 21 and 31 of the Protection of Women from Domestic Violence Act, 2005 (for short "the DV Act") as being ultra vires the Constitution.

2. The learned counsel for the petitioner submits that the provisions of Section 21 and 31 of the DV Act are unconstitutional. So far as Section 21 of the DV Act is concerned, the same would refer to the custody of the child being given by the orders of the Magistrate. Section 21 of the DV Act which reads as follows:-

> *"21. Custody orders - Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:*
>
> *Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit."*

3. It is further pleaded that in terms of Section 12 of the Guardian and Wards Act, 1890 (for short "the Guardians and Wards Act") the provisions are quite different. The same reads as follows:-

> *"12. Power to make interlocutory order for production of minor and interim protection of person and property.*
>
> *1. The Court may direct that the person, if any, having the custody of the minor, shall produce him or cause him to be produced at such place and time and before such person as it*

appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

2. If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

3. Nothing in this section shall authorise-

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property."

4. Therefore, the Guardian and Wards Act would apply for a manner in which an order could be passed. That recording of evidence is necessary before an order could be passed by the Court. That a child is required to be produced at such place and time and before such person as the Court deems appropriate for the purposes of granting temporary custody. None of this is present in Section 21 of the DV Act. Therefore, this provision is ultra vires the Constitution.

5. Reference is also made to Section 31 of the DV Act with regard to penalty for breach of protection order by the respondent. That in the absence of any opportunity being given, a person can be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to Rs.20,000/-, or with both.

6. However, on considering the contentions, we do not find that any of the pleas of the petitioner could be accepted.

7. It is apposite to mention herein the Statements of Objects and Reasons of the DV Act, which reads as follows:

"Statement of Objects and Reasons.—Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to

protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression " domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented

by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill."

8. The objects and reasons of the Domestic Violence Act mentioned hereinabove indicate that it is enacted with the solemn purpose to secure and protect certain rights of women which are constitutionally guaranteed and also to protect them from domestic violence. The Magistrate, therefore, under the Act has to pass appropriate orders in favour of the aggrieved person in accordance with the provisions of the Act. However, the Guardians and Wards Act is enacted with the object to secure interests of minors particularly in matters of appointment of guardians and protection of minor's property etc. Further, the Preamble of the Act is also significant to understand the full purport of the Act. The same reads as follows:

"An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. "

Therefore, the Act provides for protection of women from violence of any kind occurring within the family. As per Section 3 of the DV Act, the violence may be physical, sexual, verbal, emotional or economic. The upshot, as observed by the Hon'ble Supreme Court in *Hiral P. Harsora vs. Kusum Narottamdas Harsora reported* in (2016) 10 SCC 165, is to provide various innovative remedies in favour of women who suffer from domestic violence against the perpetrators of such violence.

9. The Hon'ble Supreme Court in the case of *Kunapareddy vs. Kunapareddy Swarna Kumari reported* in (2016) 11 SCC 774, has explained the object of the DV Act, which reads as follows:

" 12. In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e. aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498-A of the Penal Code, 1860. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women

from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the scheme of the Act provides that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated, it assumes the character of criminality..."

10. Further, the Hon'ble Supreme Court in the case of *Vaishali Abhimanyu Joshi v. Nanasaheb Gopal Joshi reported* in (2017) 14 SCC 373 has held as follows:

"21. The Protection of Women from Domestic Violence Act, 2005 has been enacted to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto ....."

11. Custody order is defined under Section 2(d) of the DV Act as an order granted in terms of Section 21. Section 2(a) thereof further defines 'aggrieved person' as any woman who is, or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Section 21 of the Act empowers the Magistrate to grant temporary custody of child to the aggrieved person or the person making an application on her behalf and if necessary, may also make arrangements for visit of such child by the respondent. However, the Magistrate may refuse to permit visit to such child if he is of the opinion that any of such visit by the respondent may be harmful.

12. Section 28 of the DV Act provides for procedure to be adopted by the Magistrate for disposal of applications. The same reads as follows:

'28. Procedure.—(1) Save as otherwise provided in this Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23."

Therefore, Section 28(1) directs that save as otherwise provided, proceedings under Section 21 shall be governed by the provisions of the Code of Criminal Procedure, 1973.

13. Section 12 of the Guardians and Wards Act empowers the Court to make orders for temporary custody and protection of the person or property of the minor. Under the Guardians and Wards Act not only the mother can claim temporary custody of a minor child but the father can also apply for the same. However, under the DV Act only a woman who is subjected to domestic violence

or the person making an application on her behalf can apply for the temporary custody of child.

14. By enacting Section 21 of the DV Act the legislature has taken care of a situation where domestic violence is committed against the woman and where she is in constant fear or apprehension of being separated from her child. In such circumstances, the DV Act provides some respite to such woman by giving her right to ask for temporary custody of her child.

15. In the case of *Parijat Vinod Kanetkar (Dr.) v. Malika Paruat Kanetkar reported* in 2016 SCC OnLine Bom 10047, the issue before the Bombay High Court was as to whether an interim custody order under Section 21 of the DV Act could have been passed by the Magistrate when the matter was already pending before the Family Court. It was argued therein that the provisions of the Family Courts Act, 1984, namely, Sections 7, 8 and 20 oust the jurisdiction of Magistrate to grant interim custody under Section 21 of the DV Act. The Court after considering the Objects and Reasons of the DV Act held as follows:

> *"14.....when one considers the non-obstante clause contained in section 21 of the DV Act, the purpose that it seeks to achieve and the nature of power it confers upon the Magistrate. The non-obstante clause unbounds the Magistrate from similar powers of other courts in other enactments and regardless of those powers, he can go about the issue of interim custody on his own. The purpose that this section seeks to achieve is protection of the aggrieved person, for the time being from domestic violence, which is discernible from the condition prescribed for exercise of the interim custody power under section 21 of the DV Act. Pendency or filing of an application for protection order or any other relief under the DV Act is must and in such proceeding the issue of interim custody can be raised. The reason being that it is also an issue of domestic violence as it harms the mental health of an aggrieved person who maintains a perception and is capable of demonstrating at least in a prima facie manner, that welfare of the child is being undermined. The nature of the power is temporary and coterminous with the main application filed for protection or any other relief. It begins with filing of such main application and comes to an end with disposal of the main application or may merge with the final decision rendered in the proceeding. Such being the nature and purpose of power of the Magistrate under section 21 of the DV Act, it would have to be said that it is separate and independent from and not covered by either of the parts of section 7 of the Act, 1984. If such interpretation is not given to section 21, DV Act power, the section itself can be rendered otiose in a given case and the*

Magistrate will be divested of his power to adjudicate upon that species of domestic violence issue which arises from jeopardising the welfare of the child. Such is, however, not the intention of the legislature, rather, the interpretation made earlier is in consonance with the intention of the legislature and object of the DV Act to protect women from domestic violence."

16. Even otherwise, what is provided under Section 36 of the Act is that the said Act would not be in derogation of any other law. The same reads as follows:-

"36. Act not in derogation of any other law—The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force."

17. Therefore, even if the plea of the petitioner were to be accepted that there are certain anomalies in the instant Act, the same would stand covered by Section 36 of the Act to the extent that all provisions of the said Act are in addition to and not in derogation of the provisions of any other law.

18. The doctrine of harmonious construction lays down that in order to avoid conflict, statutes must be interpreted harmoniously. It is a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature.

19. The Hon'ble Supreme Court in the case of *J.K. Cotton Spinning and Weaving Mills Co. Ltd. vs. State of U.P.,* reported in 1960 SCC OnLine SC 16 has held that in the interpretation of the statutes the Court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. Therefore, a provision of a statute cannot be used to defeat another unless it is impossible to effect reconciliation between them. Hence, the interpretation which involves conflict, must be avoided.

20. The Hon'ble Supreme Court in the case of *Aphali Pharmaceuticals Ltd. v. State of Maharashtra*, (1989) 4 SCC 378 has explained the principles of interpretation of statutes. It has been held as follows:

"39....The best interpretation is made from the context. Injustum est nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere. It is unjust to decide or respond as to any particular part of a law without examining the whole of the law. Interpretare et concordare leges legibus est optimus interpretandi modus. To interpret and in such a way as to harmonise laws with laws, is the best mode of interpretation "

21. In the case of *Grasim Industries Ltd. v. Collector of Customs*, reported in (2002) 4 SCC 297, the Hon'ble Supreme Court held as follows:

> *"10 .....Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating (sic altering) the statutory provisions....."*

22. At this stage, it would also be apt to take note of Section 26 of the DV Act reads as follows:-

> *"26. Relief in other suits and legal proceedings.—(1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.*
>
> *(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.*
>
> *(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief."*

Therefore, as illustrated in Section 26 of the Act itself, any such relief could also be initiated in any other court of law. Therefore, only because a wrong order is passed by the concerned authority, would not render the statute itself to be unconstitutional.

23. Under these circumstances, when the remedies have already been provided for proceeding under any other law for the time being in force and also the provisions of the said Act are in addition to and not in derogation of the provisions of any other law for the time being in force, we do not find that either Section 21 or 31 of the Protection of Women from Domestic Violence Act, 2005 could be quashed as being ultra vires the Constitution. Hence, we are of the view that the same is in tune with the Constitution and does not call for any interference.

24. For the aforesaid reasons, the writ petition being devoid of merit, is dismissed.

Petition dismissed

I.L.R. 2023 M.P. 1781 (DB)

Before Mr. Justice S.A. Dharmadhikari &
Mr. Justice Prakash Chandra Gupta

CONA No. 2/2023 (Indore) decided on 14 June, 2023

DINESH SHAHRA …Appellant

Vs.

IDBI BANK LTD. …Respondent

***A. Contempt of Courts Act (70 of 1971), Section 19 – Appeal – Maintainability* – Held – It is not only the final order imposing punishment for contempt which is appealable but even if at an early stage, an order is passed which decides the contentions raised by alleged contemnor asking the High Court to drop proceedings, such order may be appealable – Any order which is not an interlocutory order but by which High Court proceeds to exercise its jurisdiction for contempt, which affects the substantive right of the contemnor, would be appealable – Appeal is maintainable.**

(Paras 24, 33 & 34)

क. न्यायालय अवमान अधिनियम (1971 का 70), धारा 19 – अपील – पोषणीयता – अभिनिर्धारित – यह न केवल अवमानना के लिए दण्ड अधिरोपित करने वाला अंतिम आदेश है जो अपील योग्य है बल्कि यदि प्रारंभिक प्रक्रम पर भी एक आदेश पारित किया जाता है, जो अभिकथित अवमाननाकर्ता द्वारा उठाये गए तर्कों को विनिश्चित करते हुए उच्च न्यायालय से कार्यवाहियों को समाप्त करने हेतु कहता है, तो ऐसा आदेश भी अपील योग्य हो सकता है – कोई भी आदेश जो अंतवर्ती आदेश नहीं है परंतु जिसके द्वारा उच्च न्यायालय अवमानना की अधिकारिता का प्रयोग करता है तथा जो अवमाननाकर्ता के मौलिक अधिकार को प्रभावित करता है, अपील के योग्य होगा – अपील पोषणीय है।

***B. Contempt of Courts Act (70 of 1971), Section 19(1) – Words "Decision" & "Order" – Interpretation* – Held – Section 19(1) clearly shows that legislature in its wisdom conferred the right to appeal not only against a decision but also against an order – When two words are used in a statute, they both have to be given separate meaning – They may be read in *ejusdem generis* but normally they cannot be treated to have same meaning. (Para 21)**

ख. न्यायालय अवमान अधिनियम (1971 का 70), धारा 19(1) – शब्द ''निर्णय'' व ''आदेश'' – निर्वचन – अभिनिर्धारित – धारा 19(1) स्पष्टतया दर्शाती है कि विधायिका ने अपने विवेक से अपील का अधिकार न केवल एक निर्णय के विरूद्ध अपितु एक आदेश के विरूद्ध भी प्रदत्त किया है – जब दो शब्द एक कानून में प्रयोग किये जाते हैं, उन दोनों को भिन्न अर्थ दिये जाने होंगे – उन्हें एक ही प्रकार से पढ़ा जा सकता है परंतु सामान्यतः उनका एक ही अर्थ नहीं माना जाना चाहिए।

***C. High Court of Madhya Pradesh Rules, 2008, Rule 4(7), Chapter 1 – Amendment – Purpose & Object* – Held – The very purpose to amend**

Chapter 1 of Rule 4(7) was that "to save lot of time and expenses of advocates, parties as well as of the office particularly when it is not required to scrutinize the interlocutory applications as a main case and it also saves time of the Court, moreover, minor typographical errors, such as date, name, time etc. could be corrected by filing interlocutory application in a disposed of case and not to review/recall the entire order passed by considering merits of the case. (Paras 35 to 38)

ग. मध्य प्रदेश उच्च न्यायालय नियम, 2008, नियम 4(7), अध्याय 1 – संशोधन – प्रयोजन व उद्देश्य – अभिनिर्धारित – नियम 4(7) के अध्याय 1 के संशोधन का मूल प्रयोजन ''अधिवक्ताओं, पक्षकारों, साथ ही साथ कार्यालय का समय व धन बचाना था, विशेषकर तब जब अंतर्वर्ती आवेदन की मुख्य प्रकरण के रूप में संविक्षा किये जाने की आवश्यकता न हो तथा यह न्यायालय का समय भी बचाता है, इसके अतिरिक्त मामूली मुद्रण त्रुटियां जैसे दिनांक, नाम, समय इत्यादि को निराकृत प्रकरण में अंतर्वर्ती आवेदन प्रस्तुत कर सुधारा जा सकता था तथा न कि प्रकरण के गुणदोषों पर विचार करते हुए पारित संपूर्ण आदेश का पुनर्विलोकन कर/वापस बुलाकर।

Cases referred:

(2006) 5 SCC 399, (2018) 13 SCC 142, S.L.P. (Cri) No. 1510/2023 (Supreme Court), 2007 (3) MPLJ 565 (FB), AIR 2017 CHH (45) FB, 2014 (3) M.P.L.J. 168, AIR 1978 SC 1014, (1988) 3 SCC 26, (1996) 4 SCC 411, (2000) 4 SCC 400, (2005) 7 SCC 40, (2009) 2 SCC 784, 2017 SCC Online Chh 95, CONA No. 5/2018:MANU/UP/3287/2018.

Vivek Tankha and *Veer Kumar Jain* with *Jerry Lopez*, for the appellant.
Amit Agrawal with *Aditya Goyal*, for the respondent.

J U D G M E N T

The Judgment of the Court was delivered by:
SUSHRUT ARVIND DHARMADHIKARI, J.:- The present appeal under Section 19 of the Contempt of Courts Act, 1971(hereinafter referred to as "the Act of 1971") has been filed challenging the legality, validity and propriety of the order dated 14/11/2022, passed in Contempt Case No.1153/2021 whereby the Interlocutory Application No.7268/2022 seeking recalling/reviewing of the order dated 13/06/2022, passed in Contempt Petition disposing it as being infructuous and further to restore the contempt petition to its original number, has been allowed.

2. Brief facts of the case are that the appellant herein had filed W.P. No.25995/2018 (Dinesh Shahra Vs. IDBI & Others) seeking quashment of Special Audit Report dated 23/03/2017, Forensic Audit Report dated 07/02/2018 and Addendum Report dated 07/03/2018 on the ground that the first Forensic Audit was finalized behind his back and contrary to the principles of natural justice.

3. The aforesaid Writ Petition No.25995/2018 was finally disposed of vide order dated 05/12/2019 with a direction to the Bank to conduct a fresh Forensic Audit by an independent auditor at the petitioner's expenses, so that the entire matter can be examined afresh. Till the Forensic Auditor gives its report, no action either penal or otherwise can be taken by the Banks or the law enforcement agencies.

4. Order dated **5/12/2019** is reproduced as under :-

Shri Vivek Tankha, learned senior counsel with Shri

Jerry Lopaz, learned counsel for the petitioner.

Shri Nikhil Pandey, learned counsel for the respondents/Bank.

Heard finally with the consent of both parties.

ORDER

The petitioner has filed the present petition seeking relief for quashment of Special Audit dated 23/03/2017, Forensic Audit Report dated 07/02/2018 and Addendum dated 07/03/2018.

2. These orders are challenged on the ground that the same has been passed without considering the master circular dated 01/07/2016 issued by Reserve Bank of India.

3. This Court vide order dated 01/11/2018 has granted interim relief in favour of the petitioner and the matter was thereafter list for further hearing on 01/11/2019. On that date, learned senior counsel for the petitioner submitted that a copy of draft report was supplied to the petitioner after the final report was prepared and Addendum was issued whereas in terms of the decision taken in the JLF meeting on 02/08/2017 and 23/11/2017, the petitioner had right to submit comments/ objection to the said draft report.

4. In light of the aforesaid submissions, learned senior counsel suggested that a fresh independent Forensic Auditor be appointed and the petitioner is ready to bear the expenses of the same, so that the entire matter can be examined properly. He further submitted that this offer was communicated to the respondent/Bank vide letter dated 01/06/2019.

5. Learned counsel appearing on behalf of the Bank, therefore, granted time to seek instructions in this regard.

6. Today, when the matter was listed for hearing, learned counsel for the Bank has produced a letter dated 29/10/2019 stating that as the matter is sub judice before this Court, therefore, they have regretted the request made by the petitioner.

7. Learned counsel for the Bank submits that if this Court issues any such direction, then, they will abide by this.

8. In view of the submissions made by learned counsel for the parties, the present writ petition is disposed of with a direction to the respondent/Bank to conduct a fresh Forensic Audit by independent Auditor at the petitioner's expenses, so that the entire matter can be examined afresh.

9. Till the said Forensic Auditor shall give its report, no action either penal or otherwise can be taken by the Banks or law enforcement agencies, on the basis of Draft Report dated 13/10/2017, Final Report dated 07/02/2018 and Addendum dated 07/03/2018.

10. With the aforesaid direction, petition stands disposed of finally.

C.C. as per rules.

5. Despite of the Bank's communication dated 09/06/2021, asking the New Forensic Auditor namely, National Haribhakti Business Services(LLP) to proceed with the new Forensic Audit based on the available documents, the respondent/Bank filed a Contempt Case No.1153/2021 alleging contempt on account of non-compliance and non-furnishing of documents.

6. The aforesaid contempt petition was disposed of having rendered infructuous vide order dated 13/06/2022. The learned Single Judge passed the following order :-

13/06/2022

*This **CONTEMPT CASE** coming on for orders this day, the court passed the following:*

ORDER

This contempt petition under Sections 12 and 15 of the Contempt of Court Act, 1971 read with Article 215 of the Constitution of India has been filed by the petitioner for non-compliance of order dated 05.12.2019 (Annexure C/1) passed by this Court in Writ Petition No.25995/2018, alleging non-cooperation on the part of the respondent.

2. Although, counsel for the petitioner, at the outset, has submitted that in the present case, Forensic Audit Report has already been finalized and is proposed to be submitted in the

case; and thus, nothing survives to be decided in the present matter.

3. Shri Vivek Tankha, learned Senior Counsel appearing for the respondent / contemnor has also submitted that the present contempt petition has rendered infructuous on account of finalization of the Forensic Auditor's Report; and the same is proposed to be filed soon.

4. In view of the aforesaid submissions, Miscellaneous Criminal Case No.1153/2021 stands disposed of as having rendered infructuous.

All the other pending interlocutory applications, if any, shall stand disposed of.

7. In furtherance thereof, the respondent/Bank on 30/03/2020 appointed a new Forensic Auditor NHBS LLP to undertake fresh audit. Further, the respondent/Bank has also, called upon the appellant to deposit an audit fee of **Rs.30,00,000/- (Rupees Thirty Lakhs Only)** for the purpose of conducting fresh Forensic Audit.

8. Thereafter, the respondent/Bank filed an application I.A. No.5235/2022, an application for correction in final order dated 13/06/2022, passed in Contempt Case No.1153/2021. At the same time, the respondent/Bank preferred another I.A. No.7268/2022 which is an application under Section 151 of CPC, 1908 *inter alia* seeking review/recalling of order dated 13/06/2022, passed in Contempt Case No.1153/2021. The aforesaid application in its prayer clause also contain the prayer for withdrawal of I.A. No.5235/2022.

9. The learned Single Judge vide order dated 14/11/2022 permitted I.A. No.5235/2022 to be dismissed as withdrawn. In addition, allowed the I.A. No.7268/2022 for recalling/reviewing of the order dated 13/06/2022 and passed the following orders :-

*This **CONTEMPT CASE** coming on for orders this day,the court passed the following:*

ORDER

Heard on IA No.7268/2022, which is an application filed in disposed of Contempt Case No.1153/2021, seeking the following relief:

" PRAYER

In view of the afore-stated facts and circumstances, this Hon'ble Court may be pleased to:

a. Allow the present Application permitting the Applicant to unconditionally withdraw the Rectification Application being I.A. No.5235 of 2022 for the reasons stated above:

b. Appropriately review / recall the Order dated 13th June, 2022 passed by this Hon'ble Court in the Contempt Petition vide which the Contempt Petition came to be disposed of as being infructuous.

c. Consequently, restore the Contempt Petition on the case file.

d. Pass any other such order as this Hon'ble Court may deem fit and proper in the facts of the case."

2. Shri Akshay Sapre, learned counsel appearing for the applicant has submitted that although the present contempt case was disposed of by this Court on 13.06.2022 with the consent of the bank (applicant herein), however, the aforesaid order was passed on an erroneous / inadvertent concession made by the counsel for the petitioner, that Forensic Audit Report has already been finalized and is proposed to be submitted in the case.

3. Counsel has submitted that the Forensic Audit Report has not been finalized.

4. Counsel has submitted that although earlier, IA No.5235/2022, an application for correction in final order dated 13.06.2022 passed in Contempt Case No.1153/2021 was also filed by the applicant therein, but in the aforesaid application also incorrect statements were made; and hence, the applicant seeks to withdraw the said application and would like to press the present application.

5. Counsel has submitted that the applicant is a public sector bank and Forensic Report is sought to be prepared in respect of the accounts of the respondent / defaulter, but the respondent has not cooperated in preparation of the same and certain documents (sought from the respondent) have not been furnished by them. Thus, it is submitted that the order passed by this Court on 13.06.2022 may be recalled.

6. On the other hand, Shri Vivek Tankha, learned Senior Counsel appearing for the respondent has opposed the prayer and it is submitted that no case for recalling the order dated 13.06.2022 is made out, as the aforesaid order was passed on the admission made by the counsel for the applicant, that the Forensic Audit Report has already been finalized and is proposed to be submitted in the case.

7. Learned Senior Counsel has submitted that the respondent have cooperated with the Bank and have also informed them that they do not have documents with them,

which the bank requires them to submit; and in such circumstances, it cannot be said that the respondent has in any manner, not cooperated with the bank.

8. Senior Counsel has also submitted that in compliance of the order passed by this Court on 05.12.2019 in Writ Petition No.25995/2018, a sum of Rs.30,00,000/- (rupees thirty lakhs) has also been deposited by the respondent towards the Fees of Forensic Audit. Thus, even otherwise, no case for admission was made out against the petitioner.

9. It is also submitted that the respondent herein is no longer in-charge and in management of the company and Writ Petition No.25995/2018 (from which Contempt Case No.1153/2021 arise) was filed by the respondent in his personal capacity. Thus, it is submitted that in such circumstances, no case for recall of order is made out and the application deserves to be dismissed.

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

11. On due consideration of the submissions, and perusal of the documents filed on record, this Court is of the considered opinion that if under some misconception, the petitioner, a public sector bank, has given a wrong statement before the Court which has led the contempt petition being disposed of, the same needs to be restored to its original number, as this Court is required to see if the order passed by this Court is complied with or not.

12. In view of the same, IA No.7268/2022 is hereby allowed; and the order passed by this Court on 13.06.2022 is hereby recalled; and Contempt Case No.1153/2021 is restored to its original number. And, as prayed, IA No.5235/2022 stands dismissed as withdrawn.

13. Registry is directed to list the contempt case on 20.01.2023.

10. The order dated 13/06/2022 was recalled after a period of eight months from finalization of the second Forensic Audit Report. Being aggrieved by the order dated 14/11/2022, passed in Contempt Case No.1153/2021, the appellant preferred the instant contempt appeal under Section 19(1) of the Act of 1971.

11. In the meanwhile, the respondent/Bank also preferred I.A. No.8281/2021, which is an application on behalf of respondent/IDBI Bank Ltd. seeking recalling/modification of order dated 05/12/2019, passed in W.P. No.25995/2018. The learned Single Judge vide its order dated **08/12/2022** noted the submissions of the rival parties and passed the following order :

Dated: 08-12-2022

Shri Anand Sharma, learned counsel for the petitioner.

Shri Akshay Sapre, learned counsel for the Respondent.

The Writ Petitioner filed the Contempt Petition No.1153/2021 alleging non-compliance of order dated 05.12.2019 which is being sought to be reviewed by way of an application filed by the IDBI Bank.

Shri Sapre, learned counsel for the respondent submits that the aforesaid Contempt Petition which was earlier disposed of, now has been restored vide order dated 14.11.2022 and directed to be listed on 20.01.2023. If impugned order dated 05.12.2019 is modified, then nothing will survive in the Contempt Petition. Hence, both the matters are liable to be heard analogously.

Meanwhile, if so advised, petitioner may file reply of I.A.

List on 20.01.2023 alongwith Contempt Case No.1153/2021.

12. Shri Vivek Tankha, learned Senior Counsel appearing for the appellant made the following submissions :-

(i) It is a well settled legal position that after a judgment is rendered and attained finality, the review of the same cannot be sought in the garb of modification /clarification.

(ii) There was no occasion for the learned Single Judge to recall the order dated 13/06/2022, since the second Forensic Audit was already finalized eight months before.

(iii) The application for recalling itself was not maintainable.

(iv) The order allowing I.A. No.7268/2022 restoring the Contempt Petition No.1153/2021 is contrary to the principles of natural justice. The procedure adopted in passing the impugned order on the very first day of its listing without affording any opportunity to the appellant to file affidavit/reply, has caused serious prejudice to the appellant. Since the contentions of the respondent has been accepted at face value thereby leading to passing of the impugned order.

(v) The learned Single Judge did not consider the fact that the new Forensic Auditor was appointed by the respondent/Bank on 30/03/2020.

(vi) The learned Single Judge ought not to have entertained I.A. No.7268/2022 in a disposed of contempt case since where the entire order cannot be reviewed/recalled merely on the basis of an interlocutory application

purportedly filed by invoking the amended rule i.e., Chapter-I Sub-rule 7 of Rule 4 of M.P. High Court Rules, 2008,(hereinafter referred to as "Rules of 2008") "interlocutory application" wherein the following amendment has been inserted. "in Chapter-1, in Sub-rule (7) of Rule 4, between words "pending" and "main case" the words "or disposed" shall be inserted. The substantive and express provision in the Rules of 2008 as of provision for filing a review petition under Chapter-2 Rule-11, is available to the respondent which would be termed as an application under Order 47 Rule 1 of CPC, 1908 and the same shall be registered as a review petition. The Contempt Petition No.1153/2021 could not have been filed by the respondent/IDBI Bank Limited.

13. Per Contra Shri Amit Agrawal, learned Senior Counsel for the respondent raised a preliminary objection to the effect that an appeal under Section 19(1) of the Act of 1971 lies only against an order whereby the High Court has exercised its jurisdiction to punish for contempt. Infact, the learned Single Judge has not exercised its jurisdiction to punish for contempt and instead has only restored the original contempt case to its original number, which was earlier wrongly disposed of as infructuous. The contemner shall have to be heard wherein the appellant will get opportunity to file its reply.

14. Learned Senior Counsel for the respondent placed reliance on the following judgments of the Apex Court in support of his contention-

(i) *Midnapore People's Cooperative Bank Ltd. v. Chunilal Nanda* [(2006)5 SCC 399) wherein the Apex Court has held that an appeal under Section 19 of the Contempt of Courts Act, 1971 shall not lie against an order initiating proceedings for contempt.

(ii) The Apex Court in the case of *ECL Finance Ltd. v. Harikishan Shankarji Gudipati & Ors.,* [(2018) 13 SCC 142; have stated that even an order issuing notice in a contempt petition is not appealable under Section 19 of the Act of 1971.

(iii) Recently the Apex Court in *S.L.P. (Cri) No.1510/2023 State of Bihar & Ors Vs. Mohd. Allaudin Ansari & Ors.* has held that no interference can be made against an order issuing show cause notice of contempt as the concerned contemnor can always appear before the concerned court and file a response.

15. The Full Bench of this Court in the case of *Arvind Kumar Jain & Ors. v. State of M.P. & Ors.* [2007(3) MPLJ 565] has come to one of the conclusion that the guidelines in the cases of *Shah Babulal Khimji* (Supra), *Central Mine Planning and Design Institute Ltd.* (supra), *Deoraj* (supra), *Liverpool & London S.P. & I. Association Ltd.* (supra), *Subal Paul* (supra) and *Midnapore Peoples' Cooperative Bank Ltd.* (supra) are to be kept in view while deciding the maintainability of an appeal. The judgment of *Arvind Kumar Jain*

(Supra) was followed and explained by the Full Bench of the High Court of Chhahtisgarh in *Ajay Jagarnath Gupta Vs. State of Chhattisgarh* [AIR 2017 CHH (45) FB wherein it has been held that unless an order has some irreversible effect, it cannot be termed as interlocutory order having some flavour of "finality of issue".

16. Lastly, the judgment of *Arvind Kumar Jain* (supra) was further followed in *Hindustan Copper Limited Vs. State of M.P. & Ors.* 2014(3) M.P.L.J. 168 wherein the writ appeal was dismissed since .the same was not maintainable against interlocutory order.

17. In the light of the above, learned counsel for the respondent contended that the impugned order does not decide any matter finally. It is only a routine order passed to facilitate the progress of the case. All objections which have been taken by the appellant in this case can very well be taken at the appropriate stage. The contempt appeal being not maintainable deserves to be dismissed.

18. In response to the contentions of the learned counsel for the respondent/Bank on the question of maintainability of contempt appeal, Shri Tankha, learned Senior Counsel for the appellant submitted that a plain reading of Section 19(1) of the Act of 1971 would indicate that an appeal shall lie as of right from any "order" or "decision" of High Court in the exercise of its jurisdiction to punish for contempt. It is well settled in law that the exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt. Against such order, an appeal would not be maintainable.

19. In view of the aforesaid facts and circumstances, the following questions crop up for consideration before this Court:-

(i) "Whether a appeal under Section 19 of the Act is maintainable against an order passed by the learned Single Judge recalling the order of dismissal and restoring the contempt case to its original number ?

(ii) Whether an application under Chapter-1 sub-rule 7 of Rule 4 of M.P. High Court Rules, 2008 for recalling/reviewing of an order is maintainable ?"

20. To appreciate the scope and ambit of Section 19 of the Act of 1971, it would be, apposite to reproduce the same :-

> ***19. Appeals.—***
>
> *(i) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt - (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—"*

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) *Pending any appeal, the appellate Court may order that—*

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) *Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).*

(4) *An appeal under sub-section (1) shall be filed—*

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against.

21. Section 19 give a right to a party to appeal against "any order or decision of High Court in exercise of its jurisdiction to punish for contempt". Section 19(1) of the Act of 1971 clearly shows that the legislature in its wisdom conferred the right of appeal not only against a decision but also against an order. When two words are used in a statute, they both have to be given separate meaning. They may be read in *ejusdem generis* but normally they cannot be treated to have the same meaning.

22. Section 19 of the Act of 1971 has been the subject-matter of discussion in a large number of cases. Even before us, learned counsel for the parties have cited a number of judgments. We may, therefore, refer to the same.

23. In the case of *Purushottam Dass Goel v. Hon'ble Mr. Justice B.S. Dhillon* (AIR 1978 SC 1014), contempt proceedings were initiated against Purushottam Das Goel and he challenged the initiation of the contempt proceedings against him befoe the Apex Court. After referring to Section 19(1) of the Act, 1971, the Apex Court held as follows:-

"3.....It would appear from a plain reading of the section that an appeal shall lie to this Court as a matter of right from any order or decision of a bench of the High Court if the order has been made in the exercise of its jurisdiction to punish for contempt. No appeal can lie as a matter of right from any kind of order made by the High Court in the proceeding for contempt: The proceeding is initiated under s.17 *by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to this Court as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance, of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question. This Court, for the first time, cannot be asked in such an appeal to decide whether the; person proceeded against has committed contempt of the High Court or not. The matter has to be decided either finally or, may be. even at an earlier stage an order is made, which does decide a contention raised by the alleged contemner asking the, High Court to drop the, proceeding. It is neither possible, nor advisable, to make an exhaustive list of the: typo of orders which may be appealable to this Court under* S.19 *."*

(Emphasis supplied)

24. This decision clearly indicates that it is not only final order imposing punishment for contempt which are appealable but even if at an earlier stage, an order is passed which decides the contentions raised by the alleged contemnor asking the High Court to drop the proceedings, such order may be appealable. The Apex Court refrained from making an exhaustive list of such orders, which may be appealable.

25. In *D.N. Taneja v. Bhajan Lal* [(1988) 3 SCC 26], the appellant had filed a petition before the Punjab & Haryana High Court for initiation of contempt proceedings against Shri Bhajan Lal, the then Chief Minister of the State. The application for contempt was admitted and *rule nisi* was issued. Thereafter, the respondent-Bhajan Lal appeared and opposed the same and filed an affidavit denying all the allegations made against him. The High Court thereafter dismissed the application for initiation of contempt proceedings and discharged *rule nisi.* An appeal was filed by D.N. Taneja before the Apex Court. A preliminary objection was raised by the Respondent that no appeal would lie under Section 19(1) of the Act, 1971.

The Apex Court, while dealing with this preliminary objection held as follows :-

> *"10....When the High Court acquits a contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution..."*

26. The view taken in *D.N. Taneja* (supra) was reiterated by the Apex Court in *State of Maharashtra v. Mahbood S. Allibhay*_ [(1996) 4 SCC 411] wherein the Apex Court held as follows:-

> *" 3.....On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. 'Any order' is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision'. In either case, it must be in the nature of punishment for contempt. If the expression 'any order' is read independently of the 'decision' then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result...."*
>
> *(emphasis supplied)*

27. It would however, again be pertinent to mention that the Apex Court was again dealing with an order where the High Court had dropped the contempt proceedings and the party aggrieved had filed an appeal against dropping of the contempt proceedings.

28. In *R.N. Dey v. Bhagyabati Pramanik* [(2000) 4 SCC 400] the Apex Court took a different view relying on the observations made in *Purushottam Dass Goel* (supra). The Apex Court held as follows:-

> *"10....In our view the aforesaid contention of the learned counsel for the respondents requires to be rejected on the ground that after receipt of the notice, concerned officers tendered unconditional apology and after accepting the same, the High Court rejected the prayer for discharge of the Rule issued for contempt action. When the Court either suo moto or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the Rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable."*
>
> *(Emphasis supplied)*

29. Thereafter, in *Modi Telefibres Ltd. v. Sujit Kumar Choudhary* [(2005) 7 SCC 40), the Apex Court held that an appeal was maintainable against an order where the appellant has been held guilty of the contempt even though no punishment was imposed upon him, but he by the impugned order was given an opportunity to purge himself of the contempt. The Apex Court held that such order of the learned Single could not be treated to be an interlocutory order and the right of appeal could not be denied to the appellant.

30. In *Tamilnad Mercantile Bank Shareholders Welfare Association (2) vs. S.C. Sekar and others,* (2009) 2 SCC 784 (Para 39 to 40), the Hon'ble Supreme Court held as under :-

> *"30. It may be a different matter if the court while passing an order decided some disputes raised before it by the contemnor asking it to drop the proceedings on one ground or the other. Thus, in a given situation, an appeal would be maintainable even against a notice to show cause. Here even such a notice has not been issued and thus the question of satisfying the court by showing cause that the contemnors/respondents had not committed any contempt did not arise. Allegations had not been made against the Chairman of the meeting. The contempt proceedings had been initiated only against the Managing Director of the Bank.*
>
> *40. Although we need not go into the larger question of maintainability of the appeal in view of the fact that the matter has been referred to the Three Judge Bench in Dharam Singh v. Gulzari Lal and others (SLP (Civil) No. 18852 of 2005), but prima facie, in view of the decision of this Court in Purshottam Das (supra) there cannot be any doubt that in a situation where*

order has been passed adverse to the interest of the alleged contemnor an appeal would be maintainable particularly where a judgment has been passed by a court which is beyond its jurisdiction.

31. Some judgments of other High Courts have also been cited before us. In *Anil Kumar Dubey v. Pradeep Kumar Shukla* [2017 SCC Online Chh 95] (Para 48, 49 and 51), Full Bench decision of the Hon'ble High Court of Chhattisgarh held as under :-

" 48.....In view of the above principles of statutory interpretation, normally an attempt has to be made to give all the words used in the statute a meaning in the context of the Act. In our view, the words "any order or decision" are wide enough to include and take within their ambit all orders passed in the direction and in exercise of the jurisdiction to punish for contempt.

49. Similarly, the phrase " In exercise of the jurisdiction to punish for contempt" not only includes an order actually imposing any punishment but also any order or direction which may be prejudicial to the contemnor and which, if not passed, may terminate the proceedings. As held by the Bombay High Court, these may not be actually orders punishing the contemnor for contempt but may be a direction prejudicial to the contemnor and passed in exercise of contempt jurisdiction. Supposing a contemnor files an application that the contempt petition itself has been initiated beyond the period of limitation. As held by the Apex Court, if order passed on this application is only that this issue shall be decided at the time of final hearing, no appeal may lie. However, if the Court hears the application and decides the matter against the contemnor and holds that the contempt petition is within limitation, that will vitally affect his rights. In our view, an appeal under Section 19 of the Act, 1971 would lie against such an order as it is passed in exercise of the jurisdiction to punish for contempt. As held by the Apex Court, it would not be appropriate to make a list of such orders. Each case will have to be decided on its own facts.

51. In view of the above discussion, we answer the question referred to this Court by holding that an appeal shall lie under Section 19 of the Contempt of Courts Act, 1971 against an order framing charge in contempt proceeding."

32. In *Suhas L.Y. v. Taulan Singh* CONA No. 5/2018:MANU/UP/3287/2018 (Para 24), the Hon'ble the Allahabad High Court has held as under :-

"24 First of all, we would like to take up the position of law as regards the maintainability of the present appeal. It is evident from the law relied upon by the learned counsel for the respondent cited above in Mednapur Peoples Cooperative Bank Limited Case (Supra) wherein it is held that in Contempt Proceedings, it is not appropriate to adjudicate or decide any issue relating to merits of the dispute between the parties because if the High Court decides an issue or makes a direction relating to the merits of the dispute in contempt proceedings, the aggrieved person would be left with no remedy and in that case such an order would be open to challenge in an intra-court appeal. Therefore, in view of the law which has been relied upon by the learned counsel for the respondent himself, it is absolutely clear that in the case at hand by the impugned order, it is clearly apparent that the learned Single Judge was not satisfied by the impugned orders passed by the appellant whereby the representation of the respondent had been disposed of, for want of the supporting evidence being placed before the learned Single Judge and despite this fact having been brought to the knowledge of the learned Single Judge, he has chosen to direct the appellant to file his personal affidavit by the impugned order as to why further action be not taken against him, which clearly suggests that the merit of the impugned order has been touched upon by the learned Single Judge which does not appear to be the domain in a contempt proceedings and, therefore, the appeal under Section 19 would be admissible/ maintainable."

(Emphasis supplied)

33. A close analysis of the law laid down by the Apex Court and the High Courts as well the provisions of Section 19 of the Act, 1971, we are clearly of the view that any order which is not an interlocutory order but by which the High Court proceeds to exercise its jurisdiction for contempt, would be appealable. In the present case, the appellant/Contemnor was clearly discharged from the clutches of the provisions of the Act, 1971 as the process of the issuance of the contempt became infructuous upon the submission of the Audit Report to the respondent/Bank and the same has been recorded by the Learned Single Bench of this Court vide order dated 14/11/2022.

34. In view of the the facts and circumstances of the case as well as looking to the various pronunciation of the Apex Court and High Courts, this Court is of the considered opinion that an appeal under Section 19(1) of the Act of 1971 is maintainable where some bone of contention is decided and adverse finding is recorded by the High Court in exercise of jurisdiction to punish for contempt and it affects the substantive right of the contemnor.

35. So far as answer to the second question is concerned, as per amendment in Chapter-1 Sub-rule (7) of Rule 4 of Rules of 2008 "disposed of word has been inserted" under which the respondent invoking the aforesaid provision has filed I.A. No.7268/2022 seeking reviewing/recalling of order dated 13/06/2022 in Contempt Case No.1153/2021.

36. The very purpose to amend the Chapter-1 of Sub-Rule(7) of Rule 4 of Rules of 2008 was that "to save lot of time and expenses of advocates, parties as well as of the office particularly when its not required to scrutinize the interlocutory applications as a main case and it also saves time of the Hon'ble Court, moreover, minor typographical errors such as date, name, time etc. could be corrected by filing interlocutory application in a disposed of case and not to review/recall the entire order passed by considering the merits of the case.

37. The amended provision cannot overside the express and substantive provisions of Chapter-2, Rule 11 of Rules of 2008 **"Review"** as reproduced under :-

> ***11."Review Petition*** **-** *An application under order 47 Rule 1 of the Code of Civil Procedure, 1908 or an application for the review/recall/modification/clarification of [any][...] order or judgment passed in any proceeding [or an application for enlargement of time] shall be registered as a Review Petition"*

38. In the present case, therefore, in view of the aforesaid provision/ order/judgment cannot be allowed to be reviewed/recalled merely on the basis of an interlocutory application even without considering the question of limitation.

39. Accordingly, the order impugned dated 14/11/2022, passed in Contempt Case No.1153/2021 is hereby set-aside. As a consequence, the order dated 13/06/2022, passed in Contempt Case No.1153/2021 stands revived.

40. With the aforesaid, the present contempt appeal is allowed. No order as to costs.

Appeal allowed

I.L.R. 2023 M.P. 1797

Before Mr. Justice G.S. Ahluwalia

MP No. 1571/2023 (Jabalpur) decided on 29 March, 2023

SANT KUMAR …Petitioner

Vs.

GAURISANKAR & ors. …Respondents

A. Land Revenue Code, M.P. (20 of 1959), Section 250 – Requirement **– Held – After amendment, now there is not limitation of 2 years**

– The only requirement is that if a Bhoomiswami has been improperly dispossessed then the order u/S 250 of the Code can be passed – Tehsildar was wrong in holding that since petitioner is in possession for last 40-50 years, therefore he has no jurisdiction to pass orders u/S 250 of the Code – Order of SDO and Addl. Commissioner are affirmed – Petition dismissed.

(Paras 7, 17 & 18)

क. भू राजस्व संहिता, म.प्र. (1959 का 20), धारा 250 – अपेक्षा – अभिनिर्धारित – संशोधन के पश्चात्, अब 2 वर्ष की परिसीमा नहीं है – एकमात्र अपेक्षा है कि यदि भूमिस्वामी को अनुचित रूप से बेकब्जा किया गया है तो संहिता की धारा 250 के अंतर्गत आदेश पारित किया जा सकता है – तहसीलदार का यह ठहराना गलत था कि चूंकि याची पिछले 40–50 वर्षों से कब्जे में है, अतः उसे संहिता की धारा 250 के अंतर्गत आदेश पारित करने की कोई अधिकारिता नहीं है – उपखंड अधिकारी एवं अतिरिक्त आयुक्त के आदेश की अभिपुष्टि – याचिका खारिज।

B. ***Adverse Possession*** **– Held – Adverse possession does not mean long possession – It means open, hostile and adverse even to the knowledge of the true owner – Unless and until the basic ingredients that petitioner was in possession which was open, hostile and animus to the knowledge of the true owner, are established, he cannot claim that he has perfected his title by way of adverse possession. (Para 17)**

ख. प्रतिकूल कब्जा – अभिनिर्धारित – प्रतिकूल कब्जे का अर्थ लंबे समय से कब्जा नहीं है – इसका अर्थ वास्तविक स्वामी के ज्ञान में भी स्पष्ट, पक्षविरोधी तथा प्रतिकूल है – जब तक यह मूलभूत घटक कि याची ऐसे कब्जे में था जो कि वास्तविक स्वामी के ज्ञान में स्पष्ट, पक्षविरोधी तथा आशयित था, स्थापित नहीं होते, वह यह दावा नहीं कर सकता कि उसने प्रतिकूल कब्जे के माध्यम से अपना हक सिद्ध कर लिया है।

Cases referred:

(2006) 7 SCC 470, (2016) 9 SCC 44, FA No. 12/1994 decided on 25.01.2023.

Sachin Jain, for the petitioner.
Shanti Tiwari, P.L. for the respondent/State.
Nand Kishore, for the respondent No. 1.

O R D E R

G.S. AHLUWALIA, J.:- This petition under Article 227 of the Constitution of India has been filed against the order 22.02.2023 passed by Additional Commissioner, Jabalpur, District Jabalpur (M.P) in case No.0046/Appeal/2022-23 against the order passed under section 250 of the M.P Land Revenue Code, whereby evicting the petitioner from the land in dispute.

2. The facts of the case, in short are that an application for demarcation was filed by the respondent under section 129 of the M.P.L.R. Code and after the demarcation, the demarcation report was accepted. In the demarcation report, the petitioner was found to be an encroacher. On the basis of the demarcation report, the respondent preferred an application under section 250 of M.PLR Code. The said application was decided by the Tehsildar by order dated 08.12.2021 passed in RCA No.0369(RCMS)/B-121/2020-21, and rejected the same on the ground that it appears that the petitioner (in this petition) is in possession of the land in dispute for last 40-50 years. Therefore, the revenue authorities have no jurisdiction to pass an order under section 250 of M.PLR Code.

3. Being aggrieved by the order passed by the Tehsildar, the respondent preferred an appeal, which was allowed by the SDO (Revenue) Ghansore District Seoni in Appeal No.40/Appeal/2021-22 by order dated 30.03.2022 and on the basis of the demarcation report directed for eviction of the petitioner from the 0.07 hectares of land forming part of the Khasra No. 27. The second appeal filed by the petitioner has been dismissed by the Additional Commissioner, Jabalpur, Division Jabalpur by order dated 22.02.2023 passed in Case No.0046/Appeal/2022-23.

4. It is submitted by the counsel for the petitioner that initially the petitioner had not assailed the order of the demarcation passed by the Tehsildar under section 129 of the M.PLR Code but day before yesterday an appeal has been filed along with application under section 5 of the Limitation Act. The petitioner has also filed a civil suit and by order dated 25.01.2023 passed by the Civil Judge, Junior Division, Ghansore District Seoni in RCSA No.08/2022 a temporary injunction order has been issued in respect of Khasra No.26, 28 and 29. However it is fairly considered by the counsel for the petitioner that the disputed property is Khasra No. 27.

5. Per Contra, it is submitted by the counsel for the respondent that the civil suit which has been filed petitioner is in respect of Khasra No. 26, 28 and 29 and the respondent has no concern with the aforesaid khasras numbers. The respondent is the owner of Khasra No.27. The petitioner was found to have encroached upon 0.07 hectares of land forming part of Khasra No. 27. Therefore, temporary injunction order issued in civil suit filed by the petitioner has no relevance so far as disputed property in question is concerned.

6. Heard learned counsel for the parties.

7. Section 250 of M.P.L.R. Code, which stood before 25.09.2018 provided that if a bhoomi swami not covered by Clause-A of Clause 1(a) of Sub-section 1 of Section 250 M.P.L.R. Code, is dispossessed within 2 years then the order under

section 250 can be passed. Thus in order to avail the remedy under section 250 of M.PLR Code, the bhoomi swami was required to prove that he has been dispossessed within 2 years from the date of application. However, the limitation of 2 years has been deleted by Act No.23 of 2018 and now there is no period of limitation. On the contrary, the only requirement is that if a Bhoomi Swami has been improperly dispossessed then the order under section 250 of M.P.L.R. Code can be passed. Therefore, the Tehsildar was wrong in holding that since the petitioner is in possession for last 40-50 years, therefore, he has no jurisdiction to pass an order under section 250 of M.P.L.R. Code.

8. Undisputedly, the SDO (Revenue) Ghansore and the Additional Commissioner, Jabalpur, Division Jabalpur have passed an order on the basis of a demarcation report in which the petitioner was found to have encroached upon 0.07 hectares of land forming part of Khasra No.27.

9. The case was taken up for hearing on 20.03.2023 and a singular question was put to the counsel for the petitioner, that in absence of any challenge to the demarcation order, then how the order passed by the SDO (Revenue) Ghansore and the Additional Commissioner, Jabalpur, Division Jabalpur can be said to be bad in law? Accordingly, the counsel for the petitioner had sought a day's time to verify as to whether order under section 129 of MPLR Code was challenged or not. However, it appears that taking clue from the observation made by this Court, the petitioner has filed an application under section 129 (5) of M.PLR Code. Now it is submitted that on 27.03.2023 the petitioner has filed an application under section 129(5) of M.PLR Code before the SDO (Revenue).

10. Now the question for consideration is that what would be effect of the filing of an application under section 129(5) of M.P.LR Code before the SDO (Revenue) on 27.03.2023. The application under section 250 of M.PLR Code was filed on 30th September, 2019, which is evident from the affidavit annexed with the application under section 250 of M.PLR Code filed as Annexure P-4. Thereafter the matter was decided by the Tehsildar and went upto the Additional Commissioner, Jabalpur. Thus, it is clear that till the matter was decided by the Additional Commissioner, there was no application under section 129(5) of M.P.L.R. Code before the SDO. This Court under Article 227 of Constitution of India, is required to exercise the supervisory power to consider as to whether the tribunals below have acted within the four corners of their jurisdiction or not ? Admittedly, there was no application under section 129(5) of M.P.L.R. Code till the matter was decided by the Additional Commissioner, Jabalpur. Even on the date of filing of this petition, there was no application under section 129(5) of M.PLR Code. Even on the date of first hearing i.e 20.03.2023 there was no application under section 129(5) of M.PLR Code. Thus, in exercise of powers under Article 227 of Constitution of India, this Court cannot hold that

since now the petitioner has filed an application under section 129(5) of M.PLR Code on 27.03.2023, therefore the orders passed by the SDO (Revenue) Ghansore and the Additional Commissioner, Jabalpur, Division Jabalpur are bad.

11. It is further submitted by counsel for the petitioner that the demarcation was done behind his back and therefore, the said order is annulity because in a judicial as well as quasi judicial proceedings the principle of *audi alterum partem* should be followed in its strict sense and in that case adversely effected litigant is not supposed to point out the prejudice.

12. The submissions made by the counsel for the petitioner is convincing but unless and until the petitioner succeeds in establishing that he was not served with the notice and he was proceeded ex parte contrary to the principle of natural justice, he will not be in a position to claim that the order under section 129(4) of M.P.L.R. Code was passed behind his back. It is well settled principle of law that even an illegal order is required to be set aside and so long as it remains on the file of the case, it is binding on the parties. The Supreme Court in the case of *M. Meenakshi & Others Vs. Metadin Agarwal (Dead) By LRS. & Others* (2006) 7 SCC 470, has held-

> "17. The competent authority under the 1976 Act was not impleaded as a party in the suit. The orders passed by the competent authority therein could not have been the subject-matter thereof. The plaintiff although being a person aggrieved could have questioned the validity of the said orders, did not chose to do so. Even if the orders passed by the competent authorities were bad in law, they were required to be set aside in an appropriate proceeding. They were not the subject-matter of the said suit and the validity or otherwise of the said proceeding could not have been gone into therein and in any event for the first time in the letters patent appeal."

13. The Supreme Court in the case of *Anita International Vs. Tungabadra Sugar Works Mazdoor Sangh & Others* (2016) 9 SCC 44, has held-

> "54. We are also of the considered view, as held by the Court in Krishnadevi Malchand Kamathia Vs. Bombay Environment Action Group (2011) 3 SCC 363, that it is not open either to parties to a lis or to any third parties to determine at their own that an order passed by a court is valid or void. A party to the lis or a third party who considers an order passed by a court as void or non est, must approach a court of competent jurisdiction to have the said order set aside on such grounds as may be available in law. However, till an order passed by a competent court is set aside as was also held by this Court in Official Liquidator Vs. Allahabad Bank (2013) 4 SCC 381 and

> Jehal Tanti Vs. Nageshwar Singh (2013) 14 SCC 689, the same would have the force of law, and any act/action carried out in violation thereof would be liable to be set aside. We endorse the opinion expressed by this Court in Jehal Tanti case (supra). In the above case, an earlier order of a court was found to be without jurisdiction after six years. In other words, an order passed by a court having no jurisdiction had subsisted for six years. This Court held that the said order could not have been violated while it subsisted. And further that the violation of the order before it is set aside is liable to entail punishment for its disobedience. For us to conclude otherwise may have disastrous consequences. In the above situation, every cantankerous and quarrelsome litigant would be entitled to canvass that in his wisdom the judicial order detrimental to his interests was void, voidable, or patently erroneous. And based on such plea, to avoid or disregard or even disobey the same. This course can never be permitted."

14. This Court in the case of *New Education Society Vs. K.K. Nagariya* passed on 25.01.2023 in F.A. No.12 of 1994, has held as under-

> "12. Thus, it is clear that if a litigant is of the view that the order which has been passed is an illegal order then he has to challenge the same and unless and until the said order is set aside, no-one can claim that he would not follow the same or the same is not binding on him. It is not the case of appellants that the orders passed by Administrator were void and nullity. Their contention is that the orders passed by Administrator were illegal."

15. It is further submitted by the counsel for the petitioner that once the Tehsildar had rejected application filed under section 250 of MPLR Code by holding that he has no jurisdiction then the SDO instead of deciding the appeal on merit should have remanded the matter back to the Tehsildar.

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

17. The Tehsildar had rejected the application under misconception of law that he has no jurisdiction in the matter and the limitation for filing an application under section 250 of M.PLR Code is 2 years, whereas, the application under section 250 of M.PLR Code was filed sometime in the month of September, 2019 and the amendment was already incorporated by Amendment Act No. 23 of 2018 and limitation of 2 years was already deleted. So far as the finding given by the Tehsildar that the petitioner is in possession of the land for last 40-50 years is concerned, the said finding is based on no evidence at all. Further more whether the petitioner had perfected his title by way of adverse possession or not is beyond

the scope of jurisdiction of the revenue authorities. Adverse possession does not mean long possession. Adverse possession means open, hostile and adverse even to the knowledge of the true owner. Unless and until the basic ingredients that the petitioner was in possession which was open, hostile and annimus to the knowledge of the true owner, are established, he cannot claim that he has perfected his title by way of adverse possession. Therefore, such finding cannot be given by the Tehsildar. Under these circumstances, there was no need for the SDO to remand the matter back.

18. Accordingly, the order dated 30.03.2023 passed by the SDO (Revenue) Ghansore and order dated 22.02.2023 passed by Additional Commissioner, Jabalpur, are hereby **affirmed.** However it is made clear that in case if the application filed by the petitioner under section 129(5) of M.PLR Code is allowed and if it is found that he has not encroached upon 0.07 hectares of land forming part of Khasra No.27 then the petitioner shall be free to seek reversion of the said encroached land.

19. It is made clear that there is no stay on the execution of the orders passed by the SDO (Revenue) Ghansore and the Additional Commissioner, Jabalpur, Division Jabalpur.

20. Petition fails and is hereby **dismissed.**

Petition dismissed

I.L.R. 2023 M.P. 1803

Before Mr. Justice Vivek Rusia

MP No. 300/2023 (Indore) decided on 9 May, 2023

MOHD. SHAFI & ors. …Petitioners

Vs.

CHAND KHAN & ors. …Respondents

***Civil Procedure Code (5 of 1908), Order 6 Rule 17, Order 8 Rule 1 & Order 8 Rule 6A – Amendment – Scope* – Held – Apex Court concluded that provision of O-6 R-17 CPC prohibits for bringing a new case by way of an amendment and written statement – By way of an amendment, defendant cannot be permitted to raise counter claim against co-defendant because by virtue of O-8 R-6A, it could be raised by defendant against the claim of plaintiff – Since proposed amendment is declined thus the documents filed under O-8 R-1 CPC are also not liable to be taken on record – Petition dismissed with cost. (Paras 7 to 9)**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 6 नियम 17, आदेश 8 नियम 1 व आदेश 8 नियम 6A – संशोधन – व्याप्ति – अभिनिर्धारित – सर्वोच्च न्यायालय ने

निष्कर्षित किया है कि सि.प्र.सं. के आदेश–6 नियम–17 का उपबंध किसी संशोधन एवं लिखित कथन के माध्यम से एक नया प्रकरण लाना प्रतिषिद्ध करता है – एक संशोधन के माध्यम से, प्रतिवादी को सह–प्रतिवादी के विरूद्ध प्रतिदावा करने की अनुमति नहीं दी जा सकती क्योंकि आदेश–8 नियम–6A के आधार पर, इसे प्रतिवादी द्वारा वादी के दावे के विरूद्ध प्रस्तुत किया जा सकता है – चूंकि प्रस्तावित संशोधन अस्वीकार कर दिया गया है अतः सि.प्र.सं. के आदेश–8 नियम–1 के अंतर्गत प्रस्तुत दस्तावेज भी अभिलेख पर लिये जाने हेतु योग्य नहीं हैं – याचिका सव्यय खारिज।

Cases referred:

(1976) 4 SCC 320, (1991) 11 SCC 690, 2023 SCC Online SC 566.

Manish Kumar Joshi, for the petitioners.
Yogesh Saxena, for the respondent No. 1 & 2.
Veer Kumar Jain alongwith *Vaibhav Jain*, for the respondent.

O R D E R

VIVEK RUSIA, J.:- Petitioners/defendants have filed this petition under Article 227 of the Constitution of India challenging the validity of order dated 10.01.2023 passed in R.C.S.A/2/2014 whereby application filed under order 6 Rule 17 of C.P.C. seeking amendment in the written statement and application under order 8 Rule1 of C.P.C. seeking permission to file document has been rejected.

Facts of the case in short are as under:-

2. Respondent Nos. 1 and 2 being plaintiff filed suit for declaration and permanent injunction for the land survey No.641 area 3.20 hectare and 643/1 area 2.06 situated at Village Matanakala, Tehsil & District Ujjain in order to challenge the validity of sale deed dated 13.01.2014 executed by defendant Nos.1 to 3 (petitioners) in favour of defendant No.4 (respondent No.3). The Civil Suit is pending since 2014. According to the plaintiff, the suit land was purchased by Kareem Khan who died in the year 1980. His wife Jawa Bai had no issue. Father of the plaintiff used to live in Kareem Khan's house. The mother of plaintiff Faizanbai and Jawa Bai were real sister. After the death of Kareem Khan, the name of Jawa Bai was mutated in the revenue record as owner who died in the year 1996. During her life time, she declared the plaintiffs her legal heirs and executed a oral Hiba in their favour. After the death of Jawa Bai, the plaintiff moved an application for mutating their name and case was registered by the Naib Tehsildar and after recording the evidence, the order was passed on 07.08.1996 in favour of the plaintiff. Thereafter, the plaintiffs sold the land survey No.643 area 0.13 RA to Shantabai on 26.06.2000. The plaintiffs also received compensation for Gas Pipeline for the said land. According to the plaintiff in the month of January 2014, some miscreants tried to take possession of the land. They

disclosed that the defendant No.4 has purchased the land from the defendant No.1 to 3. They further enquired and found that the defendant No.1 to 3 filed an appeal before the SDO against the order dated 07.08.1996 and on the basis of forge service report the order of mutation got set aside and got recorded their name in the revenue record vide order dated 19.08.2013. Thereafter, they filed an appeal before the SDO, where stay has been granted. Therefore, sale deed dated 13.01.2014 is void and not binding on the plaintiffs.

3. The defendant No.1 to 3 i.e. petitioners appeared and filed the written statement admitting the execution of sale deed 13.01.2014 in favour of defendant No.4. According to the defendants their grand father Nathu Kha was real brother of Kareem Khan who died without issue and they are the son of Mohhamad Khan therefore, they had inherited the property of Kareem Khan after the death of Jawa Bai. They have denied the execution of oral Hiba. The defendant No.4 also filed written statement and prayed for dismissal of suit. They also filed cross appeal seeking declaration that they have become owner of the suit and the plaintiffs be restrained not to interfere in their peaceful possession.

4. Thereafter issues were framed and plaintiffs gave evidence and witnesses were cross examined.

5. On 09.01.2023, the defendant No.1 to 3 moved an application under Order 6 Rule 17 of C.P.C. proposing the amendment to the effect that on the basis of sale deed dated 13.01.2014, the defendant No.4 has illegally got mutated its name in the revenue record and against which an appeal has been filed. The defendants are also seeking amendment in the written statement to the effect that the defendant No.1 to 3 executed the sale deed without any sale consideration and forgery was committed with them, therefore, the sale deed is not binding on them. They also filed an application under Order 8 Rule 1 of CPC for taking the documents on record specially the an order dated 14.07.2022 passed by Sub Divisional Officer (Rural) under provision of Madhya Pradesh Kuchakra of Parigraha and Mukti Adhiniyam.

6. However, by the aforesaid order dated 14.07.2022, the Sub Divisional Officer did not find any ground to interfere with the sale deed and dismissed as not maintainable. The defendants have failed to prove that the amount given by defendant No.4 was not as a loan and the sale deed was executed as security. The application was opposed by the petitioner as well as defendant No.4. The learned District Judge vide impugned order dated 10.01.2023 has dismissed the application, hence, this petition before this Court.

I have heard learned counsel for the parties.

7. The plaintiffs filed the suit in the year 2014 challenging the sale deed executed by defendant No.1 to 3 in favour of respondent No.4 on the basis of

oral Hiba. The defendant No.1 to 3 filed written statement specifically admitting the sale of land to the defendant No.4 by way of registered sale deed and receipt of Rs.3,43,73,000/-. The written statement was filed in the year 2014-15.Thereafter, the issues were framed, the plaintiffs have examined their witnesses and they were cross examined. At the stage of defendants' evidence, now the present application under Order 6 Rule 17 of CPC has been filed virtually withdrawing the admission of execution of sale deed and receipt of sale consideration. The learned Civil Court has rightly placed reliance upon the judgment passed by Apex Court in case of *Modi Spinning & Weaving Mills Co vs Ladha Ram & Co* (1976) 4 SCC 320 that the provision Order 6 Rule 17 of CPC prohibits for bringing a new case by way of amendment and written statement. The learned Court has also rightly placed reliance upon the judgment *Shiromani Gurdwara Prabhandak vs Jaswant Singh* (1991) 11 SCC 690 that at the belated stage the defendant cannot be permitted for inconsisting and contrary averment.

8. Shri Jain, learned Senior counsel appearing for the respondent No.3 submits that now by way of amendment, the present petitioners are trying to create controversy with defendant No.4 and virtually a counter claim against the defendant No.4 in suit filed by the respondent No.1 and 2 plaintiffs. The Apex Court in its recent judgment passed in case of *Damodhar Narayan Sawale (d) through LRs Vs. Tejrao Bajirao Mhaske reported* 2023 SCC Online SC 566 has held that the defendant could not be permitted to raise counter-claim against the co-defendant because by virtue of Order VIII Rule 6A, it could be raised by defendant against the claim of the plaintiff. Relevant portion of the judgment is reproduced below:

> 31 Thus, a careful scanning of the impugned judgment would reveal that virtually, the High Court considered the validity of the sale deed dated 04.07.1978 executed by the second defendant in favour of the first defendant Civil Appeal No.930 of 2023 under the Fragmentation Act, without directly framing an issue precisely on the same and then, decided the validity of the sale deed dated 21.04.1979 executed by the second defendant in favour of the plaintiff. We have already taken note of the decision of this Court in Rohit Singh's case (supra), wherein it is observed that a defendant could not be permitted to raise counter-claim against co-defendant because by virtue of Order VIII Rule 6A, CPC it could be raised by a defendant against the claim of the plaintiff. Be that as it may, in the instant case, no such counter-claim, which can be treated as a plaint in terms of the said provision and thereby, enabling the court to pronounce a final judgment in the same suit, both on the original claim and on the counter- claim, was filed by the second defendant. That apart, indisputably, the second defendant did not

dispute the execution of the registered sale deed dated 04.07.1978 by him in favour of the first defendant and in his written statement the second defendant had only stated that according to the provisions of the Fragmentation Act the plaintiff was not entitled to any relief. When that be so, legally how can the High Court hold the sale deed dated 04.07.1978 executed by the second defendant in favour of the first defendant, void under the provisions of the Civil Appeal No.930 of 2023 Fragmentation Act without precisely framing an issue and then, based on it, going on to consider the validity of Ext. 128 sale deed dated 21.04.1979 executed by the second defendant in favour of the plaintiff, even-after noting the finding of the First Appellate Court that as relates the sale of one acre of land under Ext.128 sale deed the second defendant did not have any grievance and then, observing, in tune with the same, that the second defendant did not dispute that he sold one acre of land to the plaintiff as per Ext.128 sale deed for the consideration of Rs. 3000/- and had shown readiness and willingness to deliver the possession of it to the plaintiff. To make matters worse, the High Court has failed to consider the crucial issue whether the plaintiff is entitled to possession of the suit land on the strength of the registered Ext.128 sale deed executed by the defendants.

32. The long and short of this long discussion is that for all the reasons mentioned above, the decision of the High Court on the validity of the sale transaction covered under the sale deed dated 04.07.1978 executed by the second defendant in favour of the first defendant, in terms of the provisions under the Fragmentation Act (when that question was not legally available to be Civil Appeal No.930 of 2023 considered in the subject suit) and the virtual declaration of the said sale as void, are absolutely unsustainable. It is the product of erroneous assumption of jurisdiction and also erroneous and perverse appreciation of evidence. It being the foundation for holding the registered sale deed dated 21.04.1979 (Ext.128) as void under Sub-section (1) of Section 9 of the Fragmentation Act, it is unsustainable. The various reasons mentioned above would support our conclusion as above.

36. Now, what remains to be looked into is the grievance of the second respondent with respect to the balance extent of 2 acres and 20 guntas involved in the transaction. In the context of the contentions raised by the second defendant viz., the first respondent in this appeal, what is relevant and crucial is not only the factum of registration of Ext.128 and its execution by the second defendant but also the admission of execution of sale

> deed dated 04.07.1978 by him in favour of the first defendant. True that the second defendant contended that it was executed as a collateral security for a money lending transaction. We have noted earlier, by referring to the decision in Rohit Singh's Case (supra) that a defendant could not be permitted to raise counter-claim against a co- defendant as by virtue of Order VIII Rule 6A, CPC, it could be raised by a defendant only against the claim of the plaintiff. Evidently, the High Court did not frame the validity of the sale deed dated 04.07.1978 executed by the second defendant in favour of the first defendant as a question of law though the trial Court also arrived at a finding on this issue without framing it as a Civil Appeal No.930 of 2023 specific issue. The indisputable fact is that the said sale deed dated 04.07.1978 was admittedly, executed and registered about nine (9) months prior to the execution and registration of Ext. 128 sale deed. Ext. 128 would reveal that it involves the entire extent of 3 acres 20 guntas in Survey No. 20/2 of Gangalgaon village and the first defendant is also an executant of the same. The observation and finding of the High Court in the first limb of paragraph 24 of the impugned judgment that the second defendant did not dispute the sale of one acre of land to the plaintiff as per Ext. 128 for the consideration of Rs. 3000/- would indicate that the balance amount of Rs. 7000/- was the consideration for the balance extent of land covered under Ext. 128. Since the validity of the sale deed dated 04.07.1978 was not an issue/question that could be raised by the second defendant against the first defendant in the subject suit and was rightly, not raised as an issue, the first defendant not only did not dispute the sale of such extent to the plaintiff but admitted the joint execution of Ext. 128 and receipt of sale consideration, as incorporated in Ext. 128 and since the second defendant got no case that he had assailed the validity of the sale deed dated 04.07.1978 either before any competent authority or competent Civil Court Civil Appeal No.930 of 2023 this question needs no further elaboration. An inter-se dispute on the validity of the sale deed dated 04.07.1978, if at all between the second and first defendants, could not have been considered in the subject-suit, for the reasons already mentioned as it would amount to adjudication of right or a claim, by way of counter-claim by one defendant against his co-defendant. Finding on its voidness under the Fragmentation Act was already held as unsustainable by us."

9. Thus, Shri Jain, learned Senior counsel has rightly submitted that by way of amendment now the defendant No.1 to 3 have submitted a counter claim against the defendant No.4 by disputing the execution of sale deed and receipt of

sale consideration. Such amendment cannot be permitted to be brought on record. The document filed alongwith an application under Order 8 Rule 1 of CPC to support the propose amendment. Since the proposed amendment have been declined, therefore, said documents are also not liable to be taken on record.

In view of above, Misc. Petition is dismissed with cost of Rs. 5000/- to be deposited Legal Service Authority, Ujjain.

Petition dismissed

I.L.R. 2023 M.P 1809

Before Mr. Justice Vivek Agarwal

MP No. 3505/2018 (Jabalpur) decided on 22 June, 2023

SHOBARANI (SMT.) …Petitioner

Vs.

SMT. MALTI BAI …Respondent

(Alongwith M.P. No. 4173/2018)

***A. Civil Procedure Code (5 of 1908), Section 30 & Order 11 Rule 1 – Discovery by Interrogatories* – Held – Purpose of administering interrogatories to opponent is to obtain admission from him with object of facilitating proof of his case as also to save the cost which may otherwise be incurred in adducing evidence to prove necessary facts – In instant case, all proposed interrogatories are the once which could be put to plaintiff in cross-examination – Application was rightly dismissed by trial Court – Petition dismissed. (Paras 4, 5 & 7)**

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 30 व आदेश 11 नियम 1 – परिप्रश्नों द्वारा प्रकटीकरण – अभिनिर्धारित – विरोधी से परिप्रश्न करने का प्रयोजन उसके प्रकरण के सबूत को सुकर बनाने के उद्देश्य से उससे स्वीकृति प्राप्त करना है और साथ ही आवश्यक तथ्यों को साबित करने के लिए साक्ष्य पेश करने में अन्यथा उपगत होने वाले व्यय को बचाना है – वर्तमान प्रकरण में, सभी प्रस्तावित परिप्रश्न ऐसे हैं जिन्हें प्रति–परीक्षण में वादी के समक्ष रखा जा सकता है – विचारण न्यायालय द्वारा आवेदन उचित रूप से खारिज किया गया था – याचिका खारिज।

***B. Civil Procedure Code (5 of 1908), Section 30 & Order 11 Rule 1 – Interrogatories* – Held – Apex Court concluded that the interrogatories which are in the nature of cross-examination, such as questions put only to test credibility of the party interrogated, will not be allowed. (Para 6)**

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 30 व आदेश 11 नियम 1 – परिप्रश्न – अभिनिर्धारित – सर्वोच्च न्यायालय ने निष्कर्षित किया है कि वे परिप्रश्न जो प्रतिपरीक्षण के स्वरूप में हैं, जैसे कि परिप्रश्न किये गये पक्षकार की केवल विश्वसनीयता का परीक्षण करने के लिए पूछे गये प्रश्न, को मंजूरी नहीं दी जाएगी।

Cases referred:

I.L.R. (2016) M.P. 2999, AIR 1972 SC 1302.

Avinash Zargar, for the petitioner in MP No. 3505/2018 & MP No. 4173/2018.

Ashish Shroti, for the respondent in MP No. 3505/2018 & M.P. No. 4173/2018.

O R D E R

VIVEK AGARWAL, J.:- These Miscellaneous Petitions are filed by the defendant, being aggrieved of order dated 03.07.2018 and 13.03.2018, respectively, passed by learned II Civil Judge, Class-II, Khandwa (M.P.), in Civil Suit No.258-A/2016 & Civil Suit No.259-A/2016, whereby, application under Order 11 Rule 1 of Code of Civil Procedure (hereinafter referred to as 'CPC' for short), moved by the defendant was rejected by the trial Court observing that since case was already fixed for evidence of the plaintiff and her affidavit in lieu of oral evidence was already filed, thus, there was no justification in filing application under Order 11 Rule 1 CPC after ten months of filing of the affidavit of examination-in-chief, without cross-examining the plaintiff. Thus, recording a finding that since cross-examination of the plaintiff is pending, rejected the application under Order 11Rule 1 CPC.

2. Reliance is placed by Shri Zargar on the judgment of a Coordinate Bench in *Poonam Mansharamani (Smt.) Vs. Ajit Mansharamani* [I.L.R. (2016) MP 2999], wherein it is held that issues can be framed on the basis of interrogatories and trial Court was required to examine whether the interrogatories have reasonable close connection with "matter in question". Thus, Coordinate Bench remanded the matter to the trial Court.

3. Shri Ashish Shroti, Advocate, for respondents supports the impugned order.

4. After hearing learned counsel for the parties and going through the record, there is a scheme of procedure which is to be followed starting from institution of suits. Section 30 CPC provides that subject to such conditions and limitations as may be prescribed, the Court may, at any time either of its own motion or on the application of any party, - (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and necessary of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of document or other material objects produceable as evidence.

5. When this is read with Order 11 Rule 1 CPC, which provides for discovery by interrogatories, then it is abundantly clear that the purpose of administering

interrogatories to the opponent to obtain admission from him with the object of facilitating proof of his case as also to save the cost which may otherwise be incurred in adducing evidence to prove the necessary facts, then Order 10 Rule 1 CPC deals with admission or denial. After that stage Order 11 Rule 1 CPC provides for administration of interrogatories.

6. In *RajNarain Vs. Smt. Indira Nehru Gandhi and another* (AIR 1972 SC 1302), Supreme Court has held that the interrogatories which are in the nature of cross-examination, such as questions put only to test the credibility of the party interrogated, will not be allowed.

7. In the present case, perusal of Annx.P/4, application under Order 11 Rule 1 CPC reveals that all the proposed interrogatories are the once which could be put to the plaintiff in cross-examination and, therefore, keeping in mind the law laid down by Hon'ble Supreme Court in *Raj Narain* (supra), there is no illegality in the impugned order calling for interference. In fact, the judgment rendered by Coordinate Bench in *Poonam Mansharamani* (supra), is distinguishable on its own facts, inasmuch, as prior to framing of the issues interrogatories were delivered to the trial Court and that was not the stage when the party was already available for cross-examination and these facts of that case being distinguishable, are not applicable to the present case.

8. Accordingly, petitions fail and are dismissed.

Petition dismissed

I.L.R. 2023 M.P. 1811

Before Mr. Justice Hirdesh

MP No. 4686/2022 (Indore) decided on 7 August, 2023

ESPIC CONSULTING PVT. LTD. (M/S) …Petitioner

Vs.

NEERAJ PANJWANI & anr. …Respondents

Accommodation Control Act, M.P. (41 of 1961), Section 13(2) – Scope – **Held – Only the dispute relating to rate of rent is covered u/S 13(2) and the dispute relating to arrears, quantum and adjustment are outside the scope of Section 13(2) of 1961 Act – Application was rightly dismissed – Petition dismissed. (Para 8 & 9)**

स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 13(2) – व्याप्ति – **अभिनिर्धारित – धारा 13(2) के अंतर्गत केवल भाड़े की दर से संबंधित विवाद आता है तथा बकाया, मात्रा एवं समायोजन से संबंधित विवाद अधिनियम 1961 की धारा 13(2) की परिधि से बाहर है – आवेदन उचित रूप से खारिज किया गया था – याचिका खारिज।**

Cases referred:

2000 (4) SCC 380, 2010 (1) MPLJ 438.

Ajay Kumar Assudani, for the petitioner.
V.K. Jain with *Arpit Kumar Oswal*, for the respondent [Caveat].

O R D E R

HIRDESH, J. :- This miscellaneous petition under Article 227 of the Constitution of India has been filed by the petitioner being aggrieved by the order dated 01.09.2022 passed by XVI Additional District Judge, Indore in COS No.243-A/2021 by which the application under Section 13(2) of Accommodation Control Act, 1961 has been dismissed.

2. Learned counsel for the petitioner submits that the trial court has failed to appreciate the true import and purpose of the application filed under Section 13(2) of the Accommodation Control Act, 1961 (hereinafter referred to as "the Act"). He further submits that the trial court has not considered whether there has been an oral agreement entered between the parties and whether the parties had reached a conclusion that the amount of Rs.5 Crore needs to be adjusted against the monthly rent, is the matter of trial which would only be decided after the evidence but the trial court has given finding in favour of the respondent No.1. The trial court has gone beyond the prayer made by the petitioner and has granted relief in favour of respondent which the respondent has never prayed for, hence, the order passed by the trial court deserves to be quashed.

3. Heard the learned counsel appearing on behalf of the parties and perused the record.

4. On perusal of the impugned order, it is found that the petitioner is tenant and the respondent No.1 is landlord. The tenancy originally commenced since 01.02.2007 for a period of 5 years and thereafter, it was renewed for further 5 years. The petitioner filed a lease deed executed on 01.02.2017. On perusal of the application under Section 13 (2) of M.P. Accommodation Control Act, 1961 filed before the trial court, it seems that the petitioner is claiming adjustment of the alleged expenditure.

Section 13 (2) of M.P. Accommodation Control Act, 1961 reads as under**:-**

> "(2) If in any suit or proceeding referred to in sub-Section (1), there is any dispute as to the amount of rent payable by the tenant, the Court shall, on a plea made either by landlord or tenant in that behalf which shall be taken at the earliest opportunity during such suit or proceeding, fix a reasonable

> provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provisions of sub-Section (1) and no Court shall, save for reasons to be recorded in writing, entertain any plea on this account at any subsequent stage."

5. In the present petition, the legal question to be considered is that what is covered by the dispute under Section 13(2) of M.P. Accommodation Control Act. Whether the alleged claim of adjustment of which there is no stipulation in any of the lease deeds either with regard to providing such facilities or for adjustment of any alleged expenditure, is covered under Section 13(2) of the Act.

6. Paragraph No.1 (a) of the Lease Agreement dated 01.02.2017 reads as under:-

> **"That the LESSEE shall pay to the LESSOR (Second Floor Rent is Rs.2,15,000/- & Third Floor & fourth Floor Rent is 3,33,801/-) Rs.5,48,801/- (Rupees Five Lacs Forty Eight Thousand Eight Hundred One Only) per month from the demised premises towards rent fro the lease period. The rent shall be paid by the LESSEE monthly, in advance by the 10th day of every month, deducting TDS and other levies, as may be applicable at the relevant time. The LESSEE shall forward the relevant TDS certificate to the LESSOR at the end of financial year."**

7. Learned counsel for the respondent has placed reliance upon judgments delivered by the Apex Court in the cases of *Jamnalal Vs. Radheshyam,* 2000 (4) SCC, 380 and *Ajeeta Vs. State of M.P.,* 2010 (1) MPLJ, 438.

The Apex Court in the case of *Jamnalal* (supra) in paragraph No.16 and 17 has held as under:-

> **15.** A careful reading of the sub-section shows that the Court is enjoined to fix a reasonable provisional rent, in relation to the accommodation, to be deposited or paid in accordance with the provision of sub-section (1) if there is a dispute as to the amount of rent payable by the tenant. The clause the court shall fix a reasonable provisional rent in relation to the accommodation clearly indicates that any dispute as to the amount of rent is confined to a dispute which depends on the rate of rent of the accommodation either because no rate of rent is fixed between the parties or because each of them pleads a different sum. Where the dispute as to the amount of rent payable by the tenant has no nexus with the rate of rent, the determination of such dispute in a summary inquiry is not contemplated under sub-section (2) of Section 13. Such a dispute has to be resolved after

trial of the case. Consequently, it is only when the obligations imposed in Section 13 (1) cannot be complied with without resolving the dispute under sub-section (2) of that Section, that Section 13 (1) will become inoperative till such time the dispute is resolved by the Court by fixing a reasonable provisional rent in relation to the accommodation. It follows that where the rate of rent and the quantum of arrears of rent are disputed the whole of Section 13 (1) becomes inoperative till provisional fixation of monthly rent by the Court under sub-section (2) of Section 13, which will govern compliance of Section 13(1) of the Act. But where rate of rent is admitted and the quantum of the arrears of rent is disputed, (on the plea that the rent for the period in question or part thereof has been paid or otherwise adjusted), sub-section (2) of Section 13 is not attracted as determination of such a dispute is not postulated thereunder. Therefore, the obligation to pay/ deposit the rent for the second and the third period aforementioned, referred to in Section 13 (1), namely, to deposit rent for the period subsequent to the notice of demand and for the period in which the suit/proceedings will be pending that is (future rent) does not become inoperative for the simple reason that Section 13 (2) does not contemplate provisional determination of amount of rent payable by the tenant. As resolution of that category of dispute does not fall under Section 13(2) the tenant has to take the consequence of non payment/ deposit of rents for the said periods. If he fails in his plea that no arrears are due and the Court finds that the arrears of rent for the period in question were not paid, it has to pass an order of eviction against the tenant as no provision of Section 13 of the Act protects him.

17. Where the rate of rent payable by the tenant for the accommodation is not in dispute and the quantum of arrears of rent is not paid/deposited either because the tenant pleads that he has paid the arrears of rent or adjusted the same towards the amounts payable by the landlord or in the discharge of his liability, the tenant succeeds or fails on his plea being accepted or rejected in that behalf by the court. In such a case sub- section (2) is not attracted because the plea taken by the tenant has to be adjudicated by full fledged trial and not in a summary inquiry postulated for fixing a reasonable provisional rent in relation to the accommodation in question. This being the position a tenant takes the risk of suffering an order of eviction by raising a dispute in regard to the amount of rent payable by him while admitting the rate of rent and not making payment or deposit under sub-section (1) because where the dispute raised by the tenant is outside the ambit of sub-section (2), sub-section (1) of Section 13 of the Act does not become inoperative.

8. In the opinion of this Court, the monthly rent on the disputed property is not in dispute in view of para No.1 (a) of the agreement and in view of the settled position of law as held by the Apex Court in the case of *Jamnalal Vs. Radheshyam,* 2000 (4) SCC, 380 and further in the case of *Ajeeta Vs. State of M.P.,* 2010 (1) MPLJ, 438 that only the dispute relating to rate of rent is covered by the dispute prescribed in Section 13 (2) of the Accommodation Control Act, 1961 and the dispute related to arrears, quantum and adjustment are outside of the scope of Section 13 (2) of the Act.

9. In view of the aforesaid discussion, this Court is of the considered opinion that the order passed by the trial court is correct in the eye of law and does not warrant any interference by this Court in the present petition filed under Article 227 of the Constitution of India. Accordingly, the present petition is dismissed.

No orders as to cost.

Petition dismissed

I.L.R. 2023 M.P. 1815

Before Mr. Justice G.S. Ahluwalia

SA No. 734/1994 (Jabalpur) decided on 18 April, 2023

KAMLA BAI (SMT.) & ors. …Appellants

Vs.

NARMADA PRASAD & ors. …Respondents

***A. Hindu Succession Act (30 of 1956), Section 6 & 6(1) proviso – Amendment – Sole Coparcener* – Held – If the ancestral property is in hands of a sole surviving coparcener then the said property turns into separate property – On date of execution of Will, Laxman was the sole surviving coparcener in respect of the property which was admitted by plaintiff to be ancestral – Laxman was competent to execute the Will in favour of plaintiff – Suit and Appeal were decided much prior to the amendment in Section 6, thus amendment shall not apply in view of the proviso to Section 6(1) of the Act – Appeal dismissed. (Paras 14, 17, 22 to 28)**

क. हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 6 व 6(1) परंतुक – संशोधन – एकमात्र सहदायिक – अभिनिर्धारित – यदि पैतृक संपत्ति एकमात्र उत्तरजीवी सहदायिक के हाथ में है तब कथित संपत्ति पृथक संपत्ति में बदल जाती है – विल के निष्पादन की तिथि पर, लक्ष्मण उस संपत्ति के संबंध में एकमात्र उत्तरजीवी सहदायिक था जिसका वादी द्वारा पैतृक होना स्वीकार किया गया था – लक्ष्मण वादी के पक्ष में विल का निष्पादन करने हेतु सक्षम था – वाद एवं अपील का विनिश्चय धारा 6 में संशोधन के काफी पूर्व हो चुका था, अतः अधिनियम की धारा 6(1) के परंतुक को दृष्टिगत रखते हुए संशोधन लागू नहीं होगा – अपील खारिज।

***B. Hindu Succession Act (30 of 1956), Section 6 – Coparcenary Right of Female* – Held – After amendment in Section 6, even if a sole surviving coparcener is having a female child, then he cannot bequeath his property by treating himself to be a sole surviving coparcener as his daughter would also be a coparcener – If a female is born prior to amendment, still she will have coparcenery rights in the property. (Para 18 & 19)**

ख. हिन्दू उत्तराधिकार अधिनियम (1956 का 30), धारा 6 – महिला के सहदायिकी अधिकार – अभिनिर्धारित – धारा 6 में संशोधन के पश्चात्, भले ही एकमात्र उत्तरजीवी सहदायिक के पास एक पुत्री हो, तो वह स्वयं को एकमात्र उत्तरजीवी सहदायिक मानते हुए अपनी संपत्ति वसीयत नहीं कर सकता क्योंकि उसकी पुत्री भी एक सहदायिक होगी – यदि एक महिला संशोधन के पूर्व जन्मी है, तो भी उसके पास संपत्ति में सहदायिकी अधिकार होंगे।

Cases referred :

(2013) 9 SCC 419, (2020) 9 SCC 1.

Monesh Sahu, for the appellant No. 1.
Sanjay Patel, for the appellant No. 2.
Ravish Agarwal with *Sanjana Sahni*, for the respondent No. 1.

J U D G M E N T

G.S. AHLUWALIA, J.:- This Second Appeal under Section 100 of CPC has been filed against the Judgment and Decree dated 10-10-1994 passed by 4th Additional District Judge to the Court of District Judge, Sagar in Civil Appeal No. 22-A/1992, thereby reversing the Judgment and Decree dated 9-4-1992 passed by 2nd Civil Judge Class 2, Sagar in Civil Suit No. 87-A/1991.

2. The Appeal was admitted on the following Substantial Question of Law :

> "Was the original holder Laxman not competent to execute the Will Ex. P.5, regarding the property alleged to be ancestral."

3. I.A. No. 12009 of 2011 has been filed under Section 100(5) of CPC, whereas I.A. No. 10367 of 2017 has been filed under Order 41 Rule 27 of CPC.

4. The Counsel for the Appellant didnot refer to these applications at all. Thus, it is clear that Counsel for the Appellants was not interested in pressing I.A. No. 12009 of 2011 and I.A. No. 10367 of 2017, accordingly, the same are **dismissed as not pressed.**

5. The facts of the present case in short are that Narmada Prasad filed a suit for declaration of title by pleading *interalia* that Laxman S/o Ram Prasad Patel was the owner of Kh. No 89 and 92. Laxman was the exclusive owner of Kh. No. 158/2

area 1.113, 158/3 area .101 total 1.214 and in Kh. No. 8/2 area .073, 8/5 area .081, 156/1 area .133, 156/5 area .997, 159/5 area .56 157/2 area .324, 147/6 area .340 total area 1.504, Laxman was owner and in possession of .534 hectares. Thus, Laxman had total area of 1.748 hectares. Laxman had no sons. The defendants no.1 (a) and (b) were his daughters. The Plaintiff is the son of younger daughter of Laxman. He was residing with Laxman from the very beginning. He served Laxman and helped him in agricultural activities, whereas the elder daughter of Laxman was residing in her matrimonial house and was not taking care of Laxman. Accordingly, Laxman executed a Will on 27-6-1978 and gave 1/3rd share in the properties mentioned in para 1 of the plaint to his wife Indrani, and bequeathed 2/3rd properties to the plaintiff. Laxman died in the year 1980. The plaintiff performed his last rites. Thereafter, Indrani also executed a sale deed in favour of plaintiff in respect of 1/3rd share which was given to her by Laxman by Will. Thus, it was claimed that the plaintiff became the owner and in possession of the entire lands mentioned in para 3 of the plaint. In the month of August 1984, when the plaintiff enquired from the Patwari as he was intending to purchase more lands, then he came to know that without the knowledge and notice to the plaintiff, the names of the Wd/o of Laxman, Kamla (Elder daughter) and Jamuna (Younger daughter/mother of plaintiff) have been mutated in the revenue records, whereas they donot have any right or title in the properties. It was further pleaded that Kamla has executed a gift deed in favour of defendant no.3 during the pendency of the suit. Thus, it was prayed that the registered gift deed is null and void to the interest of the plaintiff and for declaration that the plaintiff is the owner and in possession of the properties in dispute.

6. The defendants no. 1(a) and 3 filed their joint written statement and admitted that Laxman was the owner and in possession of the lands in dispute. He didnot have any son. Kamla and Jamuna were his two daughters. But it was denied that the plaintiff had resided with Laxman from very beginning. It was also denied that he had taken care of Laxman. It was claimed that the plaintiff had never helped Laxman in agricultural activities. It was denied that any Will was executed by Laxman thereby bequeathing 1/3rd Share to his wife Indrani and remaining 2/3rd to plaintiff. During the life time of Laxman, Indrani had only 1/4th share therefore, Laxman had no right or title to give 1/3rd share to his wife Indrani. The sale deed dated 30-6-1984 is a sham document. The Will is a forged and concocted document. If there was any Will, then the plaintiff would have certainly produced the same at the time of mutation of names of widow and two daughters of Laxman. The mutation of names of Widow and two daughters of Laxman was rightly done in accordance with succession law. Kamla had 1/3rd share which She has gifted to defendant no.3 Ramesh who is in possession of the same. The plaintiff has not given the details of all the properties. It was further pleaded that at the time of mutation of names of Widow and two daughters of Laxman namely Kamla and

Jamuna, the plaintiff himself had signed as a witness. It was further pleaded that in the mutation register, the plaintiff had signed as a witness on 30-5-1984 and didnot produce any Will and didnot pray for mutation of his name. Even when Kamla and Jamuna had taken loan from the Bank, no objection was raised by the plaintiff. Which clearly means that the so called Will was not in existence till that time. The Plaintiff had signed the loan documents as a witness and the loan amount has not been repayed and the properties are still mortgaged with the bank.

7. Ms. Indrani and Jamuna filed their joint written statement and admitted the plaint averments. After the death of Laxman, the Patwari didnot give any notice to anybody and didnot enquire. The plaintiff is the owner of the entire land.

8. The defendant no.2 denied the plaint averments for want of knowledge.

9. The Trial Court after framing issues and recording evidence, dismissed the suit.

10. Being aggrieved by the Judgment and Decree passed by the Trial Court, the plaintiff preferred an appeal, which has been allowed by the impugned Judgment and Decree.

11. Challenging the Judgment and Decree passed by the First Appellate Court, it is submitted by the Counsel for the Appellants that since, the land in dispute was the ancestral properties of Laxman, therefore, he had no right or authority to execute the Will.

12. Per contra, it is submitted by the Counsel for the Respondent, that it was not the case of anybody that the properties in dispute were the ancestral properties of Laxman S/o Ram Prasad Patel. Even otherwise, Laxman was the sole coparcener and he was competent to execute the Will.

13. Heard the learned Counsel for the parties.

14. The Plaintiff had not pleaded that the properties in dispute were the ancestral properties of Laxman. Even it was not pleaded by the defendants that the properties in dispute were the ancestral properties of Laxman. However, the Counsel for the Appellants by referring to para 17 of the cross-examination of Narmada Prasad (P.W.1) submitted that the plaintiff himself had admitted that some of the properties are ancestral properties of Laxman and some were purchased by him. Narmada Prasad (P.W.1) had claimed that 3 acres of land was purchased by Laxman.

15. Even assuming that most of the lands in dispute were ancestral properties of Laxman, but neither of the parties have given details of any other coparcener. Thus it can be held that Laxman was the sole coparcener.

16. Now the question for consideration is that whether a sole surviving coparcener can execute a Will or not?

17. If the ancestral property is in the hands of a sole surviving coparcener, then the said property turns into separate property. The Supreme Court in the case of *Rohit Chauhan Vs. Surinder Singh and others* reported in (2013) 9 SCC 419 has held as under :

> **11.** We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.

18. Before the amendment in Section 6 of Hindu Succession Act, if the sole surviving coparcener had a male child then he cannot claim himself to be a sole surviving coparcener. However, after the amendment in Section 6 of Hindu Succession Act, even if a sole surviving coparcener is having a female child, then he cannot bequeath his property, by treating himself to be a sole surviving coparcener as his daughter would also be a coparcener.

19. Thus, if a female is born prior to amendment in Section 6 of Hindu Succession Act, still She will have coparcenary rights in the property. In the present case, admittedly Laxman had two daughters namely Kamla and Jamuna. Now the only question for consideration is that whether Laxman can be treated as a sole surviving coparcener under the facts and circumstances of the case or not?

20. Section 6 of Hindu Succession Act (as amended in the year 2005) reads as under :

6. Devolution of interest in coparcenary property.—(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu Family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survisorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.—For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the

share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great grandson for the recovery of any debt due from his father, grandfather or great grandfather solely on the ground of the pious obligation under the Hindu law, or such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall effect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted. *Explanation.*—For the purposes of clause *(a)*, the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.—For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.

21. The Supreme Court in the case of *Vineeta Sharma Vs. Rakesh Sharma* reported in (2020) 9 SCC 1 has held as under :

137. Resultantly, we answer the reference as under:

137.1. The provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after the amendment in the same manner as son with same rights and liabilities.

> **137.2.** The rights can be claimed by the daughter born earlier with effect from 9-9-2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before the 20th day of December, 2004.
>
> **137.3.** Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9-9.2005.
>
> **137.4.** The statutory fiction of partition created by the proviso to Section 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class I as specified in the Schedule to the 1956 Act or male relative of such female. The provisions of the substituted Section 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed, the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.
>
> **137.5.** In view of the rigour of provisions of the Explanation to Section 6(5) of the 1956 Act, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected *(sic* effected) by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly.

22. In the present case, the Civil Suit as well as the Regular Civil Appeal were already decided much prior to the amendment in Section 6 of Hindu Succession Act, therefore, the amendment in Section 6 of Hindu Succession shall not apply, in the light of proviso to Section 6(1) of Hindu Succession Act.

23. Thus, it is clear that on the date of execution of Will, Laxman was the sole surviving Coparcener in respect of the property which was admitted by the plaintiff to be ancestral property.

24. Accordingly, Laxman was competent to execute the Will in favour of the plaintiff.

25. Thus, the Substantial Question of Law is answered in **Negative.**

26. No other argument is advanced by the Counsel for the parties.

27. *Ex consequenti,* the Judgment and Decree dated 10-10-1994 passed by 4th Additional District Judge to the Court of District Judge, Sagar in Civil Appeal No. 22-A/1992 is hereby **affirmed.**

28. The Appeal fails and is hereby **dismissed.**

Appeal dismissed

I.L.R. 2023 M.P. 1823
Before Mr. Justice G.S. Ahluwalia
SA No. 510/2000 (Jabalpur) decided on 20 April, 2023

KRISHNA GOPAL KHANDELWAL …Appellant

Vs.

POONAMCHAND PAHARIA & ors. …Respondents

***A. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) – Bonafide Requirement – Date of Consideration – Subsequent Events* – Held – The crucial date for ascertaining the *bonafide* need is the date of institution of suit – Civil Appeal was already decided in the year 2000 and this appeal is pending for last 23 years – Act of Court should not prejudice anyone – Appellant tenant himself pleaded that family of plaintiff consist of 6 members – Respondent specifically stated that subsequently purchased 2 duplexes are in possession of his other two major sons – *Bonafide* need is still subsisting – Appeal dismissed. (Paras 11 & 17)**

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(f) – वास्तविक आवश्यकता – विचार किये जाने की तिथि – पश्चात्वर्ती घटनाएं – अभिनिर्धारित – वाद संस्थित किये जाने की तिथि ही वास्तविक आवश्यकता अभिनिश्चित करने के लिए निर्णायक तिथि है – सिविल अपील का विनिश्चय पूर्व में ही वर्ष 2000 में हो चुका था एवं यह अपील पिछले 23 वर्षों से लंबित है – न्यायालय के कार्य से किसी पर प्रतिकूल प्रभाव नहीं पड़ना चाहिए – अपीलार्थी किराएदार ने स्वयं यह अभिवाक् किया है कि वादी के परिवार में 6 सदस्य हैं – प्रत्यर्थी ने विनिर्दिष्ट रूप से यह कथन किया है कि पश्चात्वर्ती रूप से क्रय किये गये दो डुप्लेक्स पर उसके अन्य दो वयस्क पुत्रों का कब्जा है – वास्तविक आवश्यकता अभी भी विद्यमान है – अपील खारिज।

***B. Accommodation Control Act, M.P. (41 of 1961), Section 12(1)(f) – Bonafide Requirement – Subsequent Events* – Held – Subsequent events should be such which may overshadow the *bonafide* need. (Para 17)**

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 12(1)(f) – वास्तविक आवश्यकता – पश्चात्वर्ती घटनाएं – अभिनिर्धारित – पश्चात्वर्ती घटनाएं ऐसी होनी चाहिए जो वास्तविक आवश्यकता पर भारी पड़ सकती हों।

Cases referred :

(2004) 5 SCC 772, (2002) 1 SCC 610, (2001) 2 SCC 604, (1997) 4 SCC 413.

Sanjay Agrawal with *Neerja Agrawal*, for the appellant.
Naval Gupta, for the respondents.

J U D G M E N T

G.S. AHLUWALIA, J.:- This Second Appeal under Section 100 of CPC has been filed against the Judgment and Decree dated 26-2-2000 passed by 8th Additional District Judge, Jabalpur in C.A. No. 172A/1999, arising out of Judgment and Decree dated 18-7-1999 passed by 6th Civil Judge Class 1 Jabalpur in C.S. No. 110/1998.

2. The facts necessary for disposal of present appeal in short are that the respondent filed a suit for eviction on the ground that the plaintiff is the owner of House No. 429 and 430 situated in Kotwali Ward, Jabalpur which he had got in family partition on 21-12-1984. The Appellant is a tenant on monthly rent of Rs. 35/-. The Appellant is irregular in payment of rent. The son of the plaintiff Dr. Rakesh Pahadiya got married on 30-1-1990 and does not have any alternative and suitable accommodation in city of Jabalpur. Accordingly, the suit for eviction was filed on the ground of bonafide requirement for residential purposes.

3. The Appellant filed his written statement and denied the ownership of the plaintiff. He claimed that father of the defendant/appellant, namely Ambika Prasad Khandelwal was the tenant of father of the plaintiff namely Mohanlal. After the death of Ambika Prasad Khandelwal, his sons namely Vishnu Gopal, Madan Gopal, Govind Das and the defendant became the tenant. Similarly after the death of owner namely Shri Mohanlal all his children i.e., five sons and daughters became the owner. The defendant is a tenant of 2 rooms, one hall and 2 roofs and monthly rent is Rs. 38/-. There are total 6 members in the family of the plaintiff and at present are residing in three storey building. The ground floors have been let out to Ankit Traders and Sapna Garments who are carrying on business. All the necessary parties have not been impleaded and accordingly, it was prayed that the suit be dismissed.

4. The Trial Court after framing issues and recording evidence decreed the suit and it was held that the plaintiff is in bonafide requirement for residential purpose and has no alternative and suitable accommodation in the city of Jabalpur.

5. Being aggrieved by the Judgment and Decree passed by the Trial Court, the Appellant preferred an appeal which was dismissed by the impugned Judgment and Decree.

6. The appeal has been admitted on the following Substantial Question of Law :

> "Whether the contract of tenancy being a single and individual contract, a decree for eviction of only portion of the tenancy, fell in the share of the plaintiff during the partition or family arrangements, can legally be passed?"

7. The Counsel for the Appellant could not point out any thing from the record to show that the suit was filed only in respect of a part of tenanted premises. It is the case of the plaintiff that he is the exclusive owner of the suit property, i.e., House No. 429 and 430 situated in Kotwali Ward, Jabalpur which he had got in the family partition. In fact the plaintiff has claimed himself to be the exclusive owner of the tenanted premises and the appellant/defendant had claimed that he is in possession of 2 rooms, one hall and two roofs as a tenant. It was the case of the defendant that the house in question went to all the legal heirs of Mohanlal, but the plaintiff has produced the partition deed, Ex. P1C. According to this partition deed Ex. P.1C, one part of house no. 429,430 situated in Kotwali Ward was given to the plaintiff. Thus, it is clear that the plaintiff had got a part of the house no. 429,430 and the defendant is the tenant in the part of the house which went to the share of the plaintiff. It is not the case of the defendant that half portion of the tenanted premises went to the share of plaintiff and remaining part of the tenanted premises went to the share of some other brother. Even as per the evidence, the case of defendant Krishna Gopal (D.W.1) is that after the death of Mohanlal, all the legal heirs of Mohanlal became owner of the house in question. It is not his case that his tenanted portion has fallen to the share of different persons. Thus, in absence of any evidence that the tenanted premises fell to the share of more than one successor of Mohanlal, no further consideration is required. Therefore, the Substantial Question of Law is answered in **Negative.**

8. The appellant has filed I.A. No. 2514 of 2015, an application under Order 6 Rule 17 CPC for amendment in the written statement thereby pleading *interalia* that during the pendency of the Appeal, the son of the plaintiff has purchased two different duplexes for his residence, therefore, the bonafide requirement for residential purposes of his son has come to an end. Similarly, I.A. No. 2515 of 2015 has been filed for taking subsequent events on record.

9. The respondent has filed his reply to the application for taking subsequent events on record and submitted that two duplexes have been purchased in the names of Dr. Rakesh Pahadiya and Smt. Prabha Pahadiya, therefore, Smt. Prabha Pahadiya is the joint owner. In fact Dr. Rakesh Pahadiya and Smt. Prabha Pahadiya are still residing in the house in question and other two major sons of the plaintiff namely Sidhant Pahadiya and Vedansh Pahadiya are residing in the duplexes. Sidhant Pahadiya is of marriageable age.

10. The next question for consideration is that whether the application filed under Order 6 Rule 17 CPC is liable to be allowed or not?

11. The basic averment behind the filing of application for amendment is that during the pendency of this appeal, the bonafide requirement of the plaintiff has come to an end as his son Dr. Rakesh Pahadiya has already purchased two duplexes. Whereas the plaintiff, by pointing out that his two other major sons are residing in the duplexes and Dr. Rakesh Pahadiya and his wife Smt. Prabha Pahadiya are still residing in the house in question. Thus, the plaintiff has successfully pointed out that the bonafide need for residential purposes is still subsisting. Further, the appellant in his written statement had specifically stated that the family of the plaintiff consists of 6 members. Therefore, even if two duplexes have been purchased, still it would not have any impact on the merits of the case.

12. Now the question for consideration is that whether the bonafide requirement should subsist till the passing of final decree i.e., by the Appellate Court or not?

13. The Supreme Court in the case of *Shakuntala Bai v. Narayan Das,* reported in (2004) 5 SCC 772 has held as under :

> 10.1.....Even otherwise, this appears to be quite logical.In normal circumstances after passing of the decree by the trial court, the original landlord would have got possession of the premises. But if he does not and the tenant continues to remain in occupation of the premises it can only be on account of the stay order passed by the appellate court. In such a situation, the well-known maxim *"actus curiae neminem gravabit"* that "an act of the court shall prejudice no man" shall come into operation.....
>
> * * * *
>
> **14.** Sub-section (1) of Section 12 of the Act says "no suit shall be filed in any civil court against a tenant for his eviction....". The language employed does not say "no decree shall be passed ..." So the bar created is against filing of the suit except on one of the grounds enumerated in clauses *(a)* to *(p)* of the sub-section. Therefore what is to be seen is whether the suit was validly filed i.e. whether on the date of filing of the suit one of the grounds was made out. A suit validly filed cannot be scuttled or held no longer maintainable in absence of any specific provision to that effect. Therefore the principle that "the need of the landlord must exist till the decree for eviction is passed by the last court and attains finality" can even otherwise have no application here in view of the express language used in the section.
>
> **15.** As the preamble shows, the Madhya Pradesh Accommodation Control Act, 1961 has been enacted for expeditious trial of eviction cases on the ground of bona fide

> requirement of landlords and generally to regulate and control eviction of tenants. If the subsequent event like the death of the landlord is to be taken note of at every stage till the decree attains finality, there will be no end to litigation. By the time a second appeal gets decided by the High Court, generally a long period elapses and on such a principle if during this period the landlord who instituted the proceedings dies, the suit will have to be dismissed without going into merits. The same thing may happen in a fresh suit filed by the heirs and it may become an unending process. Taking into consideration the subsequent events may, at times, lead to rendering the whole proceedings taken infructuous and colossal waste of public time. There is no warrant for interpreting a rent control legislation in such a manner, the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the owners of their properties for all times to come.

14. The Supreme Court in the case of *G.C. Kapoor v. Nand Kumar Bhasin,* reported in (2002) 1 SCC 610 has held as under :

> **12.** Regarding the second finding of the withdrawal of the letter for franchise by BITS of the courts below, we find from the record that there is a clear averment made by the appellant that his son wanted to open a computer consultancy centre on his own and only to make the business viable, he made an application for franchise after the eviction suit was filed. Merely because the franchise was withdrawn by BITS, it will be incorrect to come to the conclusion that the son of the appellant would not be able to start the business when he has the requisite qualification being a holder of postgraduate diploma in Computer Science and has the capacity to arrange funds. It was not the case of the appellant that his son would be able to start the business only after obtaining franchise. It has also been urged on behalf of the appellant that letter from BITS was produced before the court only to show the requirement of 2000 sq ft of space for the purpose of running the business in question. We are, therefore, of the opinion that the findings of the courts below are erroneous. Courts below have taken adverse note, as Rohit did not file any affidavit to show his technical know-how and inclination to run the business. Such an affidavit is not necessary as regards technical know-how, a copy of the diploma of Rohit has been filed and his father has made a categorical statement that his son would run the business in the suit premises.
>
> **13.** Another reasoning of the courts below is that as Rohit did not start the business between the years 1992 and 1997 by taking

any property on rent, it could not be said that the appellant needed the suit premises to run the business. There is a categorical averment by the appellant that the business was to be started in the suit premises and the appellant would not be able to take any other premises on rent. Not starting the business in a rented premises during the abovementioned period, cannot be a ground to deny decree for eviction of the suit premises. This Court in *Gaya Prasad* v. *Pradeep Srivastava* relying on early decisions of this Court held that the crucial date for deciding as to bona fides of requirement of landlord is the date of his application for eviction. It was a case of bona fide requirement of the premises in question for starting a clinic by the son of the landlord. The litigation continued for 23 years and during that period the son of the landlord joined Provincial Medical Service and was posted at different places. The Court refused to take notice of the subsequent event holding that the crucial date was the date of filing of the eviction petition.

15. The Supreme Court in the case of *Gaya Prasad v. Pradeep Srivastava,* reported in (2001) 2 SCC 604 has held as under :

11. We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of petition. In *Ramesh Kumar* v. *Kesho Ram* a two-Judge Bench of this Court (M.N. Venkatachaliah, J., as he then was, and N.M. Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this: (SCC pp. 626-27, para 6)

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

12. This Court reiterated the same principle in *Kamleshwar Prasad* v. *Pradumanju Agarwal* that the crucial date normally is the date of filing the petition. In that case, a two-Judge Bench (K. Ramaswamy and G.B. Pattanaik, JJ.) has held that even the subsequent event of death of the landlord

who wanted to start a business in the tenanted premises is not sufficient to dislodge the bona fide need established by him earlier. This is what Pattanaik J. has observed for the Bench: (SCC p. 415, para 3)

"That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of the law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son."

13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events. A three-Judge Bench of this Court in *Pasupuleti Venkateswarlu* v. *Motor and General Traders* which pointed to the need for remoulding the reliefs on the strength of subsequent events affecting the cause of action in the field of rent control litigation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then: (SCC pp. 772- 73, para 4)

"We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

14. The next three-Judge Bench of this Court, which approved and followed the above decision, in *Hasmat Rai* v. *Raghunath Prasad* has taken care to emphasise that the subsequent events should have "wholly satisfied" the requirement of the party who petitioned for eviction on the ground of personal requirement. The relevant passage is extracted below: (SCC pp. 113-14, para 14)

"Therefore, it is now incontrovertible that where possession is sought for personal requirement it would be correct to say that the requirement pleaded by the landlord must not only exist on the date of the action but must subsist till the final decree or an

order for eviction is made. *If in the meantime events have cropped up which would show that the landlord's requirement is wholly satisfied then in that case his action must fail and in such a situation it is incorrect to say that as decree or order for eviction is passed against the tenant he cannot invite the court to take into consideration subsequent events."*

(emphasis supplied)

15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of the malady of the system it shatters the confidence of the litigant, despite the impairment already caused.

16. Of course a two-Judge Bench (K. Ramaswamy and D.P. Wadhwa, JJ.) pointed out in another case *Ansuyaben Kantilal Bhatt* v. *Rashiklal Manilal Shah* that the pendency of a lis for a record period of thirty-one years has transformed a middle-aged landlord to an advanced stage of gerenry *(sic* geriatry) and at that stage he could not start a new business venture. After lamenting over the system which caused a whopping delay of thirty-one years the Bench made two directions. The first was that the son of the landlord who by that time had four-and-a-half years more to go for reaching the superannuation age could consider starting the business in the tenanted premises after retirement. The second was that in the meanwhile the rent for the building would stand enhanced from Rs 101 to Rs 3500 per month.

17. Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to overshadow the bona fide need concurrently found by the fact-finding courts.

16. The Supreme Court in the case of *Kamleshwar Prasad v. Pradumanju Agarwal,* reported in (1997) 4 SCC 413 has held as under :

3.....Under the Act the order of the appellate authority is final and the said order is a decree of the civil court and a decree of a competent court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Articles 226 and 227 of the Constitution by taking into

> account any subsequent event which might have happened. That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder *(sic* other) son.....

17. Thus, the crucial date for ascertaining the bonafide need is the date of institution of suit. However, the subsequent events should be such which may overshadow the bonafide need. Further this Court should not forget that the Civil Appeal was already decided in the year 2000 and this appeal is pending for the last 23 years. This Court cannot loose sight of the fact that **act of Court should not prejudice any one.** It was the appellant who approached this Court and prayed for stay on execution of the Judgment and Decree. It is not the case of the appellant, that the plaintiff has only one son namely Dr. Rakesh Pahadia, on the contrary, the appellant himself has pleaded in the written statement that the family of the plaintiff consists of 6 members. The respondent in reply to application for taking subsequent events on record has specifically stated that the subsequently purchased two duplexes are in possession of his other two major sons. The plaintiff/landlord cannot be compelled to squeeze in a small accommodation along with his children and he cannot be compelled to wait for decision by spending his life in such a pathetic condition. If the plaintiff is compelled to make certain arrangements for the settlement of his family, then he cannot be non-suited for the same.

18. Under these circumstances, it is held that the application filed under Order 6 Rule 17 CPC is unwarranted. Accordingly, the same is rejected.

19. No other argument is advanced by the Counsel for the parties.

20. Ex consequenti, the Judgment and Decree dated 26-2-2000 passed by 8th Additional District Judge, Jabalpur in C.A. No. 172A/1999, and Judgment and Decree dated 18-7-1999 passed by 6th Civil Judge Class 1 Jabalpur in C.S. No. 110/1998 are hereby **affirmed.**

21. The Appeal fails and is hereby **Dismissed.**

Appeal dismissed

I.L.R. 2023 M.P. 1832

Before Mr. Justice Pranay Verma

SA No. 2692/2022 (Indore) decided on 24 April, 2023

RAMESH & anr. …Appellants

Vs.

DECEASED SAJJAN BAI THR. LRs. & ors. …Respondents

***A. Civil Procedure Code (5 of 1908), Section 11 & 96 – Res-Judicata – Applicability* – Held – Primary requirement of applicability of *res-judicata* is that the issue raised must have been heard and finally decided by the Court in the former suit – Hence, a defendant succeeding on one point has no chance to appeal against adverse findings recorded against him on another points – Those adverse findings on another points do not operate as *res-judicata* against him in a subsequent suit. (Para 9 & 11)**

क. सिविल प्रक्रिया संहिता (1908 का 5), धारा 11 व 96 – पूर्व–न्याय – प्रयोज्यता – अभिनिर्धारित – पूर्व–न्याय के प्रयोज्यता की प्राथमिक अपेक्षा यह है कि पूर्वतर वाद में उठाया गया विवाद्यक न्यायालय द्वारा सुना तथा अंतिम रूप से विनिश्चित किया जाना चाहिए – अतः, एक बिंदु पर सफल होने वाले प्रतिवादी के पास उसके विरूद्ध अन्य बिंदुओं पर प्रतिकूल निष्कर्ष अभिलिखित किये जाने के विरूद्ध अपील करने का कोई अवसर नहीं होता – अन्य बिंदुओं पर वे प्रतिकूल निष्कर्ष पश्चात्वर्ती वाद में उसके विरूद्ध पूर्व–न्याय के रूप में लागू नहीं होते।

***B. Civil Procedure Code (5 of 1908), Section 96 – Appeal against Decree/Findings of Court – Maintainability* – Held – Appeal can be preferred only against a decree and not against any adverse finding recorded by the Court – First appeal ought to have been dismissed by lower appellate Court as not maintainable – Judgment passed by lower appellate Court on merits is wholly without jurisdiction – Second Appeal dismissed. (Paras 3, 5 & 12)**

ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 96 – डिक्री/न्यायालय के निष्कर्षों के विरूद्ध अपील – पोषणीयता – अभिनिर्धारित – अपील केवल डिक्री के विरूद्ध प्रस्तुत की जा सकती है तथा न कि न्यायालय द्वारा अभिलिखित किसी प्रतिकूल निष्कर्ष के विरूद्ध – प्रथम अपील निचले अपीली न्यायालय द्वारा पोषणीय नहीं होने के कारण खारिज की जानी चाहिए – निचले अपीली न्यायालय द्वारा गुणदोषों पर निर्णय पारित करना पूर्णतः अधिकारिता विहीन है – द्वितीय अपील खारिज।

Cases referred :

2003 (9) SCC 606, AIR 1951 P&H 444, AIR 1961 Calcutta 39 (FB), AIR 1973 Patna 22, AIR 1974 Rajasthan 21, AIR 1977 Madras 25, AIR 1922 Privy Council 241, 1961 JLJ 238, 1971 MPLJ 837 (DB), AIR 1977 Orissa 59.

V.K. Katkani, for the appellants.

O R D E R

PRANAY VERMA, J.:- This appeal under Section 100 of the CPC has been preferred by legal representatives of deceased defendant No.2 Mahila Sajjanbai against the judgment and decree dated 26.08.2022 passed in RCA No.2400018/2015 by the IInd District Judge, District - Ratlam arising out of the judgment and decree dated 10.02.2011 passed in Civil Suit No.147-A/2008 by the IVth Civil Judge, Class-I, District Ratlam.

2. The plaintiffs/respondents No.1 to 4 instituted an action against the defendants for declaration of their title to the suit lands and for possession. The defendants including defendant No.2 contested the plaintiffs claim by filing their written statement. By judgment and decree dated 10.02.2011 the trial Court answered all the issues in favour of plaintiffs but upon recording a finding to the effect that the suit is barred by time, dismissed the same. The plaintiffs did not prefer any appeal against the judgment and decree passed by the trial Court. The legal representatives of deceased defendant No.2 however preferred an appeal under Section 96 of the CPC before the lower appellate Court to challenge the findings recorded by the trial Court against defendant No.2. By the impugned judgment and decree the appeal has been dismissed by the lower appellate Court on merits.

3. The appellants have challenged the aforesaid judgment and decree dismissing their appeal and affirming the findings recorded by the trial Court against them. However, it is observed that though findings had been recorded by the trial Court in favour of plaintiffs and against defendant No. 2 on merits but the claim was ultimately dismissed by it. There was hence no decree against defendant No.2. She or her legal representatives had no right to prefer an appeal under Section 96 of the C.P.C. against the said decree as it is well settled that an appeal can be preferred only against a decree and not against any adverse finding recorded by the Court below. Since the ultimate decree was in favour of defendant No.2, no appeal could have been preferred by her legal representatives, the appellants. The appeal preferred by them before the lower appellate Court was hence itself not maintainable and ought to have been dismissed as such by it which has however illegally proceeded to dismiss the same on merits. The judgment passed by the lower appellate Court is hence wholly without jurisdiction.

4. In *Banarsi and others vs. Ram Phal* 2003(9) SCC 606, it has been held in paragraph 8 as under :

> **"8.** Sections 96 and 100 CPC make provision for an appeal being preferred from every original decree or from every decree passed in appeal respectively; none of the provisions enumerates the *person who can file an appeal.* However, it is settled by a long catena of decisions that to be entitled to file an

> appeal the person must be one *aggrieved* by the decree. Unless a person is prejudicially or adversely affected by the decree he is not entitled to file an appeal. (See *Phoolchand* v. *Gopal Lal* [AIR 1967 SC 1470 : (1967) 3 SCR 153] , *Jatan Kumar Golcha* v. *Golcha Properties (P) Ltd.* [(1970) 3 SCC 573] and *Ganga Bai* v. *Vijay Kumar* [(1974) 2 SCC 393] .) No appeal lies against a mere finding. It is significant to note that both Sections 96 and 100 CPC provide for an appeal against *decree* and not against *judgment."*

5. In AIR 1951 P&H 444 *Ali Ahmad vs. Amarnath* it was held that where a decree is absolutely in favour of party but some issues are found against him, he has no right of appeal against the findings because he is, firstly not adversely effected thereby secondly because such findings are not embodied in and do not form part of the decree. In AIR 1961 Calcutta 39 (FB) *The Commissioner for the Port of Calcutta vs. Bhairadinram Durga Prosad,* it was held that the decree of the lower appellate Court was entirely in favour of the appellants/tenant hence the appellants could not have any right of appeal against the finding when that finding does not effect the decree. In AIR 1973 *Patna 22 Jugal Kishore Singh and others vs. Sheonandan,* it was held that a party aggrieved by certain findings of the Court does not have a right of appeal against those findings when the ultimate decision is in favour of such party and the decree is not based on those findings but is made in spite of those findings. In AIR 1974 *Rajasthan 21 Tarasingh vs. Smt. Shakuntla,* it was held that a party in whose favour goes the ultimate result of the case is not bound by any finding adverse against him in the judgment and as such the party cannot go in appeal against that judgment. In AIR 1977 *Madras 25 Corporation of Madras vs P.R. Ramachandran and others,* it was held that a party not aggrieved by a decree is not competent to appeal against the decree on the ground that an issue is found against him.

6. Learned counsel for the appellants has submitted that since the trial Court has recorded specific findings against the appellants on various issues, it is necessary for the appellants to challenge those findings else the same would remain to be binding against them and shall operate as res-judicate at a subsequent stage. The aforesaid contention of learned counsel for the appellants is wholly misconceived.

7. In AIR 1922 Privy Council 241 *Midnapur Zamindari Company Limited v. Naresh Narayan Roy*, it was held that the findings recorded against the defendants by the Court below will not form an actual plea of res-judicata, for the defendants, having succeeded on the other plea, had no occasion to go further as to the findings against them. In 1961 JLJ 238 *Draboo vs. Bansilal,* it was held that defendant succeeding on one point has no chance to appeal against an adverse finding on other point and the other point does not operate as res-judicata in a

subsequent suit. In *State of M.P. and others vs. Gajrajsingh,* 1971 MPLJ, 837 (DB), it was held that parts of order of dismissal cannot be used against winning party since it could not go in appeal against them.

8. In *Tara Singh* (supra), it was held that a party in whose favour goes the ultimate result of the case is not bound by any finding adverse to him in the judgment. In AIR 1977 Orissa 59, *Bhima Jally and others vs. Nata Jally and others,* it was held that where the original suit has been dismissed though there was a finding against the defendants, the defendants had no opportunity to appeal because the ultimate decree was in their favour and in such circumstances, the same could not operate as res-judicata.

9. Thus in all the aforesaid decisions, it has been emphatically held that a defendant succeeding on one point has no chance to appeal against adverse findings recorded against him on another points. Those adverse findings on other points hence do not operate as res-judicata against him in a subsequent suit.

10. The relevant part of Section 11 of the CPC for the purpose of the present case is as under:

> **"11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.**

11. The primary requirement of applicability of res-judicata is that the issue raised must have been heard and finally decided by the Court in the former suit. Finally decided would mean that the issue or finding which is against a party is challenged by him before the higher Court and the challenge is decided against him. Since in case of dismissal of a suit of plaintiff on one point, the issue or finding recorded against the defendant cannot be challenged by him by preferring an appeal, it cannot be said that such issue and finding has been finally decided against him as for there to be final adjudication on the same, the defendant ought to have a right to challenge them before the higher Court. Since he has no such right and cannot challenge them, they cannot be held to be operative as res-judicate against him.

12. Thus, in view of the aforesaid discussion, the lower appellate Court has committed an illegality in entertaining the appeal preferred by the appellants despite the same not being maintainable and dismissing the same on merits. It ought to have dismissed the appeal as not maintainable. Since in either case the

result of the appeal would be its dismissal, I do not find involvement of any substantial question of law in this appeal which is accordingly dismissed in *limine.*

Appeal dismissed

I.L.R. 2023 M.P. 1836

Before Smt. Justice Sunita Yadav

MA No. 471/2017 (Gwalior) decided on 18 July, 2023

MAYA DEVI (SMT.) …Appellant

Vs.

AMIT KHAN & ors. …Respondents

***Civil Procedure Code (5 of 1908), Order 41 Rule 27 & Order 41 Rule 28 – Dispute of Boundaries* – Held – When dispute is in respect of the boundaries of disputed land, first appellate Court rightly remanded the case to trial Court for demarcation of disputed land from competent revenue authority – It will not cause any prejudice to appellant as the Court has directed that appellant shall be given an opportunity of rebuttal – Appellate Court has discretion under O-41 R-28 CPC to send the matter to trial Court for recording of evidence – No jurisdictional error done by first appellate Court – Appeal dismissed. (Paras 13 to 15)**

सिविल प्रक्रिया संहिता (1908 का 5), आदेश 41 नियम 27 व आदेश 41 नियम 28 – सीमाओं का विवाद – अभिनिर्धारित – यदि विवादित भूमि की सीमाओं के संबंध में विवाद है, तो प्रथम अपीली न्यायालय ने उचित रूप से प्रकरण को विचारण न्यायालय के पास सक्षम राजस्व प्राधिकारी से विवादित भूमि का सीमांकन कराने हेतु प्रतिप्रेषित किया – इससे अपीलार्थी पर कोई प्रतिकूल प्रभाव नहीं पड़ेगा क्योंकि न्यायालय ने निदेशित किया कि अपीलार्थी को खंडन करने का अवसर प्रदान किया जाएगा – सि.प्र.सं. के आदेश–41 नियम 28 के अंतर्गत अपीली न्यायालय को साक्ष्य अभिलिखित करने के लिए मामला विचारण न्यायालय को भेजने का विवेकाधिकार है – प्रथम अपीली न्यायालय द्वारा अधिकारिता की कोई त्रुटि नहीं की गई – अपील खारिज।

Cases referred:

2020 0 Supreme (SC) 329, 2018 0 Supreme (SC) 938, 2015 (1) MPLJ 243, 2019 (1) MPWN 65, AIR 1989 (Orissa) Page 29, 2000 (40) (SC) Allahabad Law Reporter Page 534.

Santosh Agrawal, for the appellant.

N.K. Gupta with *S.D.S. Bhadoriya*, for the respondents.

J U D G M E N T

Sunita Yadav, J.:- The appellant has filed this Misc. Appeal under Order 43 Rule 1 (u) of CPC arising out of judgment dated 15/03/2017 passed by District Judge, Datia (M.P.) in Civil Appeal Nos. 200009/2016 and 200010/2016, whereby, the learned court below has remanded the matter to the trial Court for fresh adjudication.

2. Brief facts of the case giving rise to filing of this appeal are that the plaintiff/appellant herein Smt. Mayadevi filed a civil suit stating therein that land bearing survey No. 1604/1/3-A admeasuring area 0.32/0.129 hectares situated in ward No. 13 new ward No. 23, Dist. Datia was owned by one Mithla Devi and her minor sons and out of total area, a part of said land, admeasuring area 0.042 hectare was purchased by the plaintiff/appellant Mayadevi along with defendant Vandana Devi (since dead and substituted by LRS), Kanchan Sharma, Ravindra Sundarani and Kamla Devi from Mitladevi having equal share and thereafter they partitioned the property as under :

Maya Devi Plaintiff	Survey No. 1604/1/3A	Area 0.32/0.129 Hectares.
Ravindra Sundarani	1604/1/3B	0.32/0.129
Kamla Devi	1604/1/3C	0.32/0.129
Vandana Devi	1604/1/3D	0.32/0.129
Kanchan Devi	1604/1/3E	0.32/0.129

3. An area admeasuring 0.056 hectare of land was left for road. The land bearing survey No. 1604/1/3A fell in the share of plaintiff, which is the disputed land and hereinafter the same is addressed as "disputed property". On 20.08.2011 defendant Nos. 1 to 4 with an intention to encroach the property tried to dig the foundation, at that time, plaintiff's son Vinod took objection, thereafter, the defendants by threatening that they will come again for digging the said land went away. Thereafter, on 28.08.2011, defendants No. 1 to 4 again came on the disputed property with some persons to take possession and started to dig the foundation then on objection by son of plaintiff they started quarrelling with him. Thereafter, this suit is filed. During pendency of suit, defendant No. 1 encroached upon the land admeasuring area 30 x 30 sq. feet towards western side. Defendants have full knowledge that plaintiff is owner of the land on which Vandana Devi has no concerned, hence the sale deed executed by Vandana Devi on 25.03.2010 in favour of defendant No.1 and sale deed dated 08.02.2010 in favour of defendant No.2 and sale deed dated 25.03.2010 in favor of defendant No.3 and sale deed dated 26.03.2010 in favour of defendant No.4 executed by Vandana Devi are void.

4. The defendant Nos.1 to 4 filed written statement and denied the averments made in the plaint. It is submitted by them that the disputed land is not in ownership as well as in the possession of the plaintiff. It is further submitted that when the partition of the land bearing survey No. 1604 was done, at that time, the land bearing survey No. 1604/1/1-D area 0.32/0.12 came in the share of Vandana Devi and the same was in ownership and in possession of Vandana Devi who sold it to them. It is further submitted that defendants Nos.1 to 4 have neither dug any foundation over the the disputed property nor threatened the plaintiff's son because the construction was already done on the land which they have purchased from Vandana Devi. During pendency of the present case, the defendants Nos.1 to 4 have not raised any construction over the disputed property. Vandana Devi had handed over the possession of the land to the defendants No. 1 to 4 on the date of execution of sale deed and till then the defendants No. 1 to 4 are in continuous possession over the said land. The plaintiff was never in possession and ownership of the said land purchased by the defendants No. 1 to 4 from Vandana Devi. The defendants No. 1 to 4 in their written statement had filed a map and shown the actual position of the land. The plaintiff and her son along with land mafia had tried to take possession of land of the defendants No. 1 to 4, against which, Vandana Devi had made a complaint dated 24/09/2009 to the Tahsildar, Datia. On the basis of aforesaid, prayed to dismiss the suit filed by the plaintiff.

5. The defendant No. 6 Smt. Vandana Devi had filed a written statement and submitted that the land bearing survey No. 1604/1/3-D which was received by her as her share in the partition proceedings was sold by her to the defendants No. 1 to 4 and has adopted the written statement filed by the defendants No. 1 to 4.

6. On the basis of pleadings, learned trial court farmed (sic : framed) the issues and after recording the evidence decreed the suit vide judgment and decree dated 30.03.2016 holding that plaintiff got the disputed land in partition and the disputed land is the same land which was allotted to plaintiff and defendant No.1 has encroached upon the land admeasuring area 30 x 30 Sq. feet and during pendency of suit granted decree that plaintiff is entitled to get possession of land and after possession granted permanent injunction against defendant No.1 to 4 so also the sale deed executed by Vandana in respect of disputed property has been held to be ineffective against plaintiff.

7. Being aggrieved by judgment and decree dated 30.03.2016 two separate appeals were filed by defendants, defendant No.1 to 4 filed first appeal bearing No. 200009/2016 and defendant No.5 Vandana filed appeal bearing No. 200010/2016 and in the appeal an application under order 41 rule 27 C.P.C. was filed by respondents and the same was allowed and learned first appellate court remanded the matter after setting aside the judgment and decree passed by trial court. Hence, the instant Misc. Appeal is being filed before this Court.

8. Learned counsel for the appellant submits that learned first appellate court has failed to consider that wholesale remand is bad in law and it is the duty of the appellate court to decide the matter on the basis of evidence available record, but appellate having failed to follow the settled principle of law. It is further submitted that it is well settled law that after allowing application under order 41 rule 27 C.P.C., appellate court has two options under order 41 rule 28 C.P.C. wherein appellate court either record evidence itself or call the findings, but said provision does not suggest to remand the matter to the trial court after setting aside the judgment. It is further submitted that learned appellate court has considered that boundary dispute should have been decided by calling commissioner report, but has failed to understand that when sufficient material is available then in view of section 107 of the C.P.C. appellate court itself could have called the commissioner report rather to remand the matter as the remand is bad in law. It is further submitted that identity of property is not in dispute looking to the Map attached with plaint and written statement then remand of the matter only for commissioner record is totally illegal. On these grounds, prayer is made to set aside the impugned judgment dated 15/03/2017 passed by the District Judge, Datia (M.P.) and further direction to first appellate court to reconsider the appeal and decide it on merits. Learned counsel for the appellant, placed his reliance upon the judgment of the Apex Court delivered in the cases of *Shivakumar vs. Sharanabasappa* reported in 2020 0 Supreme (SC) 329, *Uttaradi Mutt vs. Raghavendra Swamy Mutt* reported in 2018 0 Supreme (SC) 938, *Murari Lal vs. Ram Kumar Ojha and Anr.* reported in 2015 (1) MPLJ 243 & *Harveer Singh vs. Raghuveer* reported in 2019 (1) MPWN 65 to buttress his arguments.

9. On the other hand, learned counsel for the respondents supported the impugned judgment passed by the court below and prayed for dismissal of the instant appeal being bereft of merit and substance.

1 0. Heard learned counsel for the rival parties and perused the material available on record.

11. Learned first appellate court allowed the application filed by respondents/defendants under Order 41 Rule 27 of CPC for filing the the sale deeds which were executed by appellant /plaintiff Mayadevi in favour of Uma Devi, Shyamlal, Manohar Lal Gupta and Jagdish Batham respectively with regard to part of the land bearing survey No. 1604/1/3- to prove that the disputed land is different from the land sold to defendants no. 1-4 by defendant no.-1. The provisions of Order 41 Rule 27 (b) of CPC are relevant to be seen at this juncture which provides that :-

"27. Production of additional evidence in Appellate Court.-

(1), (a), (aa) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause."

12. In view of the above provision, the order allowing the said application is found to be in accordance with law as these are admitted documents and are required for just and proper adjudication of this case in view of the nature of dispute between the parties because these sale deeds are showing the boundaries of lands sold by the appellant which was the part of the same land purchased by her and was partitioned with defendant no.-6. The record also reveals that while deciding the said application U/o 41 Rule 27 of CPC that learned counsel for the appellant /plaintiff expressed no objection if application is allowed and the sale deeds is taken on record during course of the arguments. Thus learned first appellate court rightly allowed the application.

13. The plain reading of the plaint and written statements shows that the dispute between the plaintiff /appellant and respondents / defendants in respect to boundaries of disputed property. As per pleadings of the plaint the disputed property is situated in survey No. 1604/1/3-A which after partition fell in the share of the plaintiff who owned and possessed the same plot as described in the plaint map. On the other hand the defendants claimed that the disputed property is situated in the land bearing survey No. 1604/1/1-D area 0.32/0.12 which came in the share of Vandana Devi (defendant no.-6) and the same was in ownership and in possession of Vandana Devi who sold it to defendants no 1-4. The boundaries in plaint map and other evidence adduced by the appellant -plaintiff are at variance with the sale deeds executed by her. In these circumstances, when the dispute is in respect to the boundaries of the disputed land, the learned first appellate court has rightly remanded the case to the learned trial Court with a direction for demarcation of the disputed land from the competent revenue authority. The judgement of learned first appellate court does not cause any prejudice to appellant-plaintiff as the court has also directed that the appellant / plaintiff shall be given an opportunity of rebuttal. The appellate court has discretion under order 41 rule 28 C.P.C. to send the matter to trial court for recording of evidence and the discretion is rightly applied in view of the facts and circumstances of the case.

14. No jurisdictional error is done by learned first appellate court while passing the impugned judgment in the light of judgment delivered in the cases of *Shanku Rangarao vs. Devi Prasad Sahu* reported in AIR 1989 (Orissa) Page 29 & *Shripat vs. Rajendra Prasad* reported in 2000 (40) (SC) Allahabad Law Reporter Page 534, in which, it has been held that in the case of demarcation and possession if there is a dispute in respect to identity of the disputed property and the suit was decreed without proper identification of the disputed property, it should be identified through a commission.

15. Consequently, the instant appeal filed by the appellant sans merit and the same is hereby dismissed.

There shall be no order as to costs.

Certified copy as per rules.

Appeal dismissed

I.L.R. 2023 M.P. 1841 (DB)
Before Mr. Justice Sujoy Paul &
Mr. Justice Amar Nath (Kesharwani)
CRA No. 728/2019 (Jabalpur) decided on 12 April, 2023

DINESH YADAV …Appellant

Vs.

STATE OF M.P. & anr. …Respondents

***A. Penal Code (45 of 1860), Sections 342, 376(1), 376(2)(v), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xii) & 3(2)(v) and Protection of Children from Sexual Offences Act (32 of 2012), Section 3(a) r/w 4 – Appreciation of Evidence* – Held – Considering the geographical location of the place of incident, the availability of people all around at 11.00 am and absence of injury marks on body of victim, makes the prosecution case highly doubtful – Even the two spot maps of place of incident are not identical – Previous enmity also established by appellant – Incriminating material was not confronted to accused with necessary clarity – It would be totally unsafe to uphold conviction on basis of such evidence – Conviction set aside – Appeal allowed.**
(Paras 53, 55, 57, 59 & 64)

क. दण्ड संहिता (1860 का 45), धाराएँ 342, 376(1), 376(2)(v), अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xii) व 3(2)(v) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 3(a) सहपठित 4 – साक्ष्य का मूल्यांकन – अभिनिर्धारित – घटनास्थल की भौगोलिक स्थिति, सुबह 11 बजे आस–पास लोगों की उपलब्धता तथा पीड़िता के शरीर पर चोट के निशानों की अनुपस्थिति को ध्यान में रखते हुए, यह अभियोजन प्रकरण को अत्याधिक संदेहास्पद बनाता है – यहां तक कि घटना स्थल के दो नक्शे भी समान नहीं हैं – अपीलार्थी द्वारा पूर्व वैमनस्यता भी स्थापित – अपराध में फंसाने वाली सामग्री को आवश्यक स्पष्टता के साथ अभियुक्त के सामने नहीं लाया गया था – उक्त साक्ष्य के आधार पर दोषसिद्धि को कायम रखना पूर्ण रूप से असुरक्षित होगा – दोषसिद्धि अपास्त – अपील मंजूर।

B. Penal Code (45 of 1860), Sections 342, 376(1), 376(2)(v), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of

***1989), Section 3(1)(xii) & 3(2)(v) and Protection of Children from Sexual Offences Act (32 of 2012), Section 3(a) r/w 4 – Ocular & Medical Evidence – Corroboration* – Held – If a girl of 13-14 years was raped by forcibly throwing her on a rough and uneven surface, she would have certainly received some injuries – No external and internal injuries found on her body – Clothes recovered from victim did not have any sign of semen or any other spot – Testimony of prosecutrix is not supported by Medical evidence – It is not safe to accept statement of victim alone as a gospel truth. (Paras 46, 48 & 50)**

ख. दण्ड संहिता (1860 का 45), धाराएँ 342, 376(1), 376(2)(v), अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xii) व 3(2)(v) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 3(a) सहपठित 4 – चाक्षुष व चिकित्सीय साक्ष्य – संपुष्टि – अभिनिर्धारित – यदि एक 13–14 वर्षीय बालिका के साथ बलपूर्वक उसे खुरदरी एवं असमतल फर्श पर पटककर, बलात्संग कारित किया गया था, तो उसे निश्चित रूप से चोटें आई होती – उसके शरीर पर कोई बाहरी और आंतरिक चोटें नहीं पाई गई – पीड़िता से बरामद कपड़ों में वीर्य अथवा किसी अन्य दाग के कोई निशान नहीं – अभियोक्त्री का परिसाक्ष्य चिकित्सीय साक्ष्य द्वारा समर्थित नहीं – केवल पीड़िता के कथन को पूर्ण सत्य के रूप में स्वीकार करना सुरक्षित नहीं।

***C. Penal Code (45 of 1860), Sections 342, 376(1), 376(2)(v), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xii) & 3(2)(v) and Protection of Children from Sexual Offences Act (32 of 2012), Section 3(a) r/w 4 – Delay in FIR – Explanation* – Held – In most cases of sexual assault, the family does not lodge the report instantaneously – The family discuss among themselves about the impact of such incident as also the consequence if matter is taken to police – They sometimes consult the friends and well wishers etc. – This process consumes time and is not fatal to prosecution when delay is not enormous and it is based on justifiable and *bonafide* reasons. (Para 43 & 44)**

ग. दण्ड संहिता (1860 का 45), धाराएँ 342, 376(1), 376(2)(v), अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xii) व 3(2)(v) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 3(a) सहपठित 4 – प्रथम सूचना प्रतिवेदन में विलंब – स्पष्टीकरण – अभिनिर्धारित – लैंगिक हमले के अधिकांश प्रकरणों में, परिवार तत्काल रिपोर्ट दर्ज नहीं कराता है – परिवार ऐसी घटना के प्रभाव तथा यदि मामले को पुलिस के पास ले जाया गया है तो उसके परिणाम के बारे में आपस में चर्चा करता है – वे कभी–कभी दोस्तों और शुभचिंतकों इत्यादि से परामर्श करते हैं – इस प्रक्रिया में समय लगता है तथा यह अभियोजन के लिए घातक नहीं है जब विलंब असाधारण न हो एवं यह न्यायसंगत और वास्तविक कारणों पर आधारित हो।

D. ***Criminal Procedure Code, 1973 (2 of 1974), Section 53-A & 164-A and Evidence Act (1 of 1872), Section 114(g) – DNA Test*** **– Held – Section 53-A and 164-A Cr.P.C. makes it obligatory for prosecution to undertake the exercise of DNA examination – However it cannot be said that non-conduction of DNA examination will vitiate the prosecution case in all circumstances – It cannot be held that combined reading of Section 114(g) of Evidence Act and Section 53-A Cr.P.C. should lead the Court to draw adverse inference against the prosecution. (Para 66)**

घ. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 53–A व 164–A एवं साक्ष्य अधिनियम (1872 का 1), धारा 114(g) – डीएनए जांच – अभिनिर्धारित – दं.प्र.सं. की धारा 53–A एवं 164–A अभियोजन के लिए डीएनए परीक्षण कराना बाध्यकर बनाती है – हालांकि यह नहीं कहा जा सकता कि डी.एन.ए. परीक्षण का संचालन न किया जाना सभी परिस्थितियों में अभियोजन प्रकरण को दूषित करेगा – यह अभिनिर्धारित नहीं किया जा सकता कि साक्ष्य अधिनियम की धारा 114(g) एवं दं.प्र.सं. की धारा 53–A को संयुक्त रूप से पढ़ने पर न्यायालय को अभियोजन के विरूद्ध प्रतिकूल निष्कर्ष निकालना चाहिए।

E. ***Penal Code (45 of 1860), Sections 342, 376(1), 376(2)(v), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xii) & 3(2)(v) and Protection of Children from Sexual Offences Act (32 of 2012), Section 3(a) r/w 4 – FSL Report – Collection of Sample*** **– Held – Sample was collected on 26.12.2012 – Complaint was lodged on 27.12.2012 and hence on 26.12.2012 prosecution had no clue and knowledge about the incident – Collecting samples from victim a day before, is likely putting a cart before the horse which is an impossible act – This discrepancy creates doubt on collection process of sample. (Para 65)**

ङ. दण्ड संहिता (1860 का 45), धाराएँ 342, 376(1), 376(2)(v), अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xii) व 3(2)(v) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 3(a) सहपठित 4 – न्यायालयिक प्रयोगशाला प्रतिवेदन – नमूने का संग्रहण – अभिनिर्धारित – दिनांक 26.12.2012 को नमूने का संग्रहण किया गया था – दिनांक 27.12.2012 को परिवाद दर्ज किया गया एवं इसलिए दिनांक 26.12.2012 को अभियोजन को घटना के बारे में कोई जानकारी एवं ज्ञान नहीं था – एक दिन पहले पीड़ित से नमूना संग्रह करना, घोड़े के आगे गाड़ी लगाने के समान है जो कि एक असंभव कार्य है – यह विसंगति नमूना संग्रह करने की प्रक्रिया पर संदेह उत्पन्न करती है।

F. ***Penal Code (45 of 1860), Sections 342, 376(1), 376(2)(v), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(xii) & 3(2)(v) and Protection of Children from Sexual Offences Act (32 of 2012), Section 3(a) r/w 4 – Sensitivity of Matter*** **– Held – Merely because matter relates to sexual assault on a minor, appellant cannot**

be mechanically held guilty – Unless the legal test and requisite evidence is available, appellant cannot be held guilty on the basis of sensitivity of matter alone. (Para 42)

च. दण्ड संहिता (1860 का 45), धाराएँ 342, 376(1), 376(2)(v), अनुसूचित जाति और अनुसूचित जनजाति (अत्याचार निवारण) अधिनियम (1989 का 33), धारा 3(1)(xii) व 3(2)(v) एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 3(a) सहपठित 4 – मामले की संवेदनशीलता – अभिनिर्धारित – मात्र क्योंकि मामला एक अवयस्क पर लैंगिक हमले से संबंधित है, अपीलार्थी को यांत्रिक रूप से दोषी नहीं ठहराया जा सकता – जब तक विधिक परीक्षण एवं अपेक्षित साक्ष्य उपलब्ध न हो, अपीलार्थी को केवल मामले की संवेदनशीलता के आधार पर दोषी नहीं ठहराया जा सकता।

***G. Protection of Children from Sexual Offences Act (32 of 2012), Section 29(2) & 30 – Presumption* – Held – Section 29 & 30 creates a presumption, such presumption depends on the ability of prosecution to establish the foundational facts – When no foundational facts could be established by prosecution, by taking aid of presumption u/S 29 & 30, an accused cannot be held guilty. (Para 73)**

छ. लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), धारा 29(2) व 30 – उपधारणा – अभिनिर्धारित – धारा 29 व 30 उपधारणा सृजित करती है, ऐसी उपधारणा आधारभूत तथ्यों को स्थापित करने की अभियोजन की क्षमता पर निर्भर होती है – जब अभियोजन द्वारा कोई भी आधारभूत तथ्य स्थापित नहीं किये जा सके, धारा 29 व 30 के अंतर्गत उपधारणा की सहायता लेकर, किसी अभियुक्त को दोषी नहीं ठहराया जा सकता।

***H. Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Questions – Incriminating Material* – Held – The question so put to accused must be specific and pregnant with necessary clarity and elaboration – The root cause and basic purpose for putting incriminating material to the accused is to provide him an adequate, sufficient and reasonable opportunity to give explanation – No cryptic question or a question framed for namesake can substitute the requirement of principle of natural justice. (Para 64)**

ज. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 – प्रश्न – अपराध में फंसाने वाली सामग्री – अभिनिर्धारित – अभियुक्त से पूछे जाने वाले प्रश्न आवश्यक स्पष्टता एवं विस्तारण के साथ विनिर्दिष्ट तथा अर्थपूर्ण होने चाहिए – अपराध में फंसाने वाली सामग्री को अभियुक्त के समक्ष रखने का मूल कारण एवं मूल प्रयोजन उसे स्पष्टीकरण देने हेतु यथोचित, पर्याप्त एवं युक्तियुक्त अवसर प्रदान करना है – कोई भी गूढ़ प्रश्न अथवा नाम मात्र के लिए विरचित किया गया प्रश्न नैसर्गिक न्याय के सिद्धांत की आवश्यकता को प्रतिस्थापित नहीं कर सकता।

***I. Criminal Practice – Ocular & Medical Evidence – Corroboration* – Held – Ocular evidence alone can be reason to record conviction but the**

said evidence must be of a "sterling quality" – If there exists a serious contradiction between medical and oral evidence and the medical evidence makes the oral testimony as improbable, ocular evidence can very well be disbelieved. (Para 52)

झ. दाण्डिक पद्धति – चाक्षुष व चिकित्सीय साक्ष्य – संपुष्टि – अभिनिर्धारित – चाक्षुष साक्ष्य दोषसिद्धि अभिलिखित करने का एकमात्र कारण हो सकता है परंतु कथित साक्ष्य ''स्टर्लिंग क्वालिटी'' का होना चाहिए – यदि चिकित्सीय एवं मौखिक साक्ष्य के मध्य गंभीर विरोधाभास विद्यमान है तथा चिकित्सीय साक्ष्य मौखिक परिसाक्ष्य को अनधिसंभाव्य बनाता हो, चाक्षुष साक्ष्य पर भलीभांति अविश्वास किया जा सकता है।

***J. Criminal Practice – Cross-Examination – Duty of Court* – Held – Even in criminal prosecution when a witness is cross-examined and contradicted by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether – It is for the Judge to consider the facts in each case whether as a result of such cross examination and contradiction the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. (Para 58)**

ञ. दाण्डिक पद्धति – प्रतिपरीक्षण – न्यायालय का कर्तव्य – अभिनिर्धारित – यहां तक कि दाण्डिक अभियोजन में भी जब किसी साक्षी का उसे बुलाने वाले पक्ष द्वारा प्रतिपरीक्षण एवं खंडन किया जाता है, तो उसके साक्ष्य को, विधि के मामले के रूप में, अभिलेख से पूर्ण रूप से मिटाया हुआ नहीं माना जा सकता – यह न्यायाधीश का कार्य है कि वह प्रत्येक प्रकरण में तथ्यों पर विचार करे कि क्या ऐसे प्रतिपरीक्षण एवं खंडन के परिणामस्वरूप साक्षी पूर्ण रूप में अविश्वसनीय हो गया है या उसके परिसाक्ष्य के किसी भाग पर अभी भी विश्वास किया जा सकता है।

Cases referred:

2021 SCC OnLine SC 1233, 2008 (15) SCC 133, 1996 (10) SCC 360, 2011 (7) SCC 130, 2007 (12) SCC 341, 2020 (3) SCC 443, (2012) 8 SCC 21, (2009) 15 SCC 566, (2018) 18 SCC 695, (2007) 6 SCC 465, (2007) 2 SCC 170, (2000) 2 SCC 513, (1975) 4 SCC 761, 2021 SCC Online Cal 2007, 2018 SCC Online Bom 1315, 2019 SCC Online Gau 5947, 2020 SCC Online Ker. 4956, (2022) 10 SCC 321, (2010) 5 SCC 445, 1920 SCC OnLine Oudh JC 125, (1996) 2 SCC 384, (2010) 1 SCC 68, 2021 SCC OnLine SC 493, (1976) 1 SCC 727, AIR 1992 SC 2100, AIR 2010 SC 2839, AIR 2010 SC 3570, AIR 2005 SC 3114, 2007 Cr.L.J. 3395, AIR 2004 SC 124, AIR 1962 SC 399, (2022) 5 SCC 419.

Vishal R. Daniel, for the appellant.
Ajay Shukla, G.A. for the respondent.

J U D G M E N T

The Judgement of the Court was delivered by: **SUJOY PAUL, J. :-** This Criminal Appeal is filed under Section 374 of Criminal Procedure Code (Cr.P.C.) questioning the judgment dated 12/01/2019 passed in SCATR No.07/2013 by learned Special Judge under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereby the appellant was convicted and sentenced as under :-

Convicted under Sections	Sentenced to undergo
452 of IPC	R.I. for 5 years with fine of Rs. 1000/- and in default R.I. for three months.
342 of IPC	R.I. for 1 year.
376(1) of IPC	R.I. for Life with fine of Rs.2000/- and in default R.I. for six months.
3(2)(v) of SC/ST Act	R.I. for Life with fine of Rs.2000/-and in default R.I. for six months.
3(1)(xii) of SC/ST Act	R.I. for 5 years with fine of Rs. 1000/ - and in default R.I. for three months.
3(a) r/w 4 of POCSO Act	R.I. for 7 years with fine of Rs. 1000/ - and in default R.I. for three months.
All sentences to run concurrently	

2. As per the prosecution case, the prosecutrix lodged a written report on 27/12/2012 in Police Station Bandol District Seoni that she is resident of village Singhodi and a student of Class-VI. The father of victim is an agricultural worker in the farm of Sanat Mishra. Sanat Mishra and his family resides at Seoni. Sanat Mishra visits Singhodi to look after his agricultural activities on Sunday and some times on other days. The mother of complainant is engaged in the house of Sanat Mishra to clean cow dung. The complainant also used to clean cow dung at Sanat Mishra's house as and when required.

3. On 26/12/2012 at around 11:00 A.M., the parents of complainant went elsewhere to perform their work and complainant in the meantime reached the house of Sanat Mishra in order to clean the cow dung. She entered the room called as *Kotha* which is used to keep cows/bulls. While she was cleaning the *Kotha* and clearing the cow dung, the appellant entered the *Kotha* and locked the *Kotha* from inside. He forcibly thrown the complainant to the floor and raped her. After committing rape, the appellant opened the door and fled away. The complainant reached her house weeping and crying. Her brother (PW-5) came there and she informed about the incident to him with sufficient detail. The said narration was in

the presence of brother-in-law Kamal, Chhutaniya and Suresh Master who resides just in front of the *Kotha.* In turn, brother (PW-5) apprised the parents about the said incident.

4. The complaint of victim was registered as Crime No.243/2012 for committing offence under Sections 376, 450 and 342 of the Indian Penal Code. During investigation, the victim was medically examined on 27/12/2012. The seizure memos Ex.P/6 and Ex.P/26 were prepared. Investigating Officer Shri Siddharth Bahuguna (PW-16) reached the place of incident and prepared the site map (Ex.P/7).

5. During the investigation, the appellant was arrested on 28/12/2012 (Ex.P/24) and he was medically examined through Ex.P/25. The Constable 186 Ashish Shukla obtained the sealed packet containing slide and undergarment of appellant and in turn, the said material was sent to Forensic Science Laboratory (FSL). During the course of investigation, other relevant materials including school register of victim and her caste certificate were also seized.

6. The FSL report (Ex.P/27) was obtained and after completion of investigation, *challan* was filed. In turn, matter came for trial before the Special Court. The appellant abjured the guilt and prayed for a complete trial.

7. The Court below framed six questions for its determination, recorded evidence and after hearing the parties passed the impugned judgment convicting and sentencing the appellant as mentioned above.

Contention of appellant :-

8. Learned counsel for the appellant at the outset submits that he is beginning his argument in an unusual manner. Before taking this Court to the evidence and factual aspects of the matter, it is strenuously contended that in the impugned judgment, on more than one occasion, the Court below used the phrase *'in these type of matters*'. By placing reliance on 2021 SCC OnLine SC 1233 *(Mohan alias Shrinivas alias Seena alias Tailor Seena vs. State of Karnataka)* and 2008 (15) SCC 133 *(Raju and others vs. State of Madhya Pradesh),* it is urged that despite sensitivity of a matter, the legal requirement and the requirement of evidence as per law cannot be diluted. False implications in criminal matters are not unknown to legal fraternity. Thus, over emphasis on '*in these type of matters'* by Court below cannot be appreciated.

9. Shri Vishal Daniel, learned counsel for the appellant at the outset further urged that appellant is assailing the impugned judgment on the ground that appellant has been falsely arraigned and no such offence has been committed by him. Thus, he is not addressing on the aspect of determination of age/juvenility of the victim.

10. The statement of victim (PW-3) was referred to show that incident had taken place in broad daylight at 11:00 A.M. on 26/12/2012. As per her complaint/deposition, the door of *Kotha* was locked by appellant from inside. After the incident, victim narrated the incident to parents and neighbours immediately. The report in the Police Station could not be lodged on the same day on the pretext that complainant/family members did not have any conveyance. The report was admittedly lodged after one day i.e. on 27/12/2012.

11. Inconsistency in the statements of prosecution witnesses were highlighted by taking this Court to the testimony of mother of victim (PW-4). She deposed that the bulls used to go for grazing early in the morning and work of clearing the cow dung in *Kotha* takes place at around 7-8 A.M. By 10-11 A.M. the bulls used to come back in the *Kotha* and before they come back to *Kotha,* it is necessary to clean the *Kotha.*

12. Mother of victim (PW-4) further deposed that her son Jitendra at around 12 O'clock on the date of incident informed her about the incident at an agricultural field. On the same day, she with her husband and victim went to the house of Sanat Mishra at Seoni. They informed about the incident to Sanat Mishra and on the same night, they went to village Kamta to inform about the incident to son-in-law Govardhan. After informing Govardhan from village Kamta itself, they went to Police Station on the next day.

13. The statement of father of victim (PW-8) was highlighted to bolster similar point that as per his statement also, the bulls were released early in the morning and bulls come back to *Kotha* at around 10-11 A.M. Father of victim clearly admitted that adjacent to *Kotha,* there is a water spring *(Jhiriya).* In the said spring, since morning till evening, the movement of people and cattle continues. People believe that water of *Jhiriya* is pure and mental diseases can be cured by taking bath in the *Jhiriya.* Thus, people from nearby villages also used to come to *Jhiriya* and take bath. It is pointed out that mother of victim (PW-4) deposed in the same line in para-10 of her statement.

14. Shri Vishal Daniel, learned counsel for the appellant by taking this Court to para-10 of statement of mother (PW-4) and para-7 of statement of father (PW-8) urged that both the statements are candid clear and unambiguous that near the *Kotha* where incident had taken place, there exists a Shiv temple. From Shiv temple, even inside portion of *Kotha* is clearly visible. Both the parents of victim clearly deposed that if *Kotha* is viewed from said Shiv temple, it is totally open and every corner of *Kotha* is visible. Both of them also clearly deposed that there is no door in the *Kotha* from the side of Shiv Temple. Thus, the story of prosecution that door of *Kotha* was locked from inside by appellant and he committed rape is without any basis.

15. On the basis of aforesaid evidence of parents, it is urged that the incident had taken place on 26.12.2012 at 11:00 AM and FIR was registered on 27.12.2012 at 15 O'clock. The reason for delay in lodging the FIR is mentioned as non-availability of conveyance which is apparently incorrect in view of movement of victim and family members to Seoni and from there to village Kamta. Thus, delay in lodging FIR is fatal in the instance case.

16. The statement of mother (PW-4) and father (PW-8) were also relied upon to show that the incident had taken place in *'Kotha'* and adjacent to the same, there exists a *Kirana* shop, a *'Pulia'* in which people used to sit for whole day and enter into gossips. Father (PW-8) clearly stated that any conversation inside the *Kotha* can be heard in shiv temple and in *'Jhiriya'*. Shri Daniel, Advocate submits that the aforesaid statements make it clear that *Kotha* is surrounded by house, kirana shop, temple, *Jhiriya* and it is not an isolated place. Thus, the story of prosecution is totally improbable.

17. As per the statement of father (PW-8), the floor of *Kotha* is uneven and is made of 'muram' and stones. He, in para-8 of his deposition admitted that if somebody is thrown on the floor, he will be injured and even blood may come out of such injury. The prosecutrix in para-12 also clearly admitted about the uneven floor of *Kotha* and accepted the suggestion that if somebody is thrown on the floor he will receive injury. In para-13 of her deposition, she deposed that when appellant thrown her to the floor of *Kotha,* she suffered injuries and this was informed to the doctor during her MLC. Her back and buttocks were injured and because of sexual assault, she suffered injury even on her private part.

18. Learned counsel for the appellant then placed heavy reliance on the statement of Dr. Chetna Bandre (PW-11). The doctor deposed that she examined the victim on 27.12.2012 at around 7:20 PM. She was walking in a normal way and was fully alert and conscious. During external examination, no injuries were found on the person of the victim including her face. In internal examination also no injuries were found by the said doctor. In para-8 of the cross-examination, she deposed that there were no swelling or bleeding on any body part of the victim. Para-9 of the statement of Dr. Chetna Bandre (PW-11) was highlighted to show that the clothes of victim were sealed by her and in those clothes also there were no sign of any semen or any other spot.

19. Ordinarily, the ocular evidence takes precedence over medical evidence submits Shri Daniel but the exception is that when medical evidence clearly proves that ocular evidence is not trustworthy, it deserves to be discarded. So far delay in lodging the FIR is concerned, it is submitted that independent persons gathered knowledge about the incident immediately after the incident. Thus, it cannot be presumed that family delayed the lodging of FIR because they were

either shy or hesitant that society will come to know about the incident. This plea ordinarily available in such cases, is totally unavailable in the instant case where neighbour and friends came to know about the incident almost instantaneously. The distance between the victim's village and Seoni is 30 Km. from Seoni to *Kamta* the family of the victim travelled about 15 Kms. and from *Kamta* they came to their own village from where they again travelled 25 Kms. to reach Police Station Bandol. Thus, they had some conveyance and the singular excuse put forth for delay in lodging FIR cannot be accepted.

20. The geographical location of *Kotha* and aforesaid evidence makes it clear that the story of prosecution has no legs to stand submits Shri Danial. It is argued that if that being the position and incident has not taken place, the ancillary question would be why appellant was falsely implicated. It is urged that in order to show false implication, the appellant could establish before the Court below by cross-examination of several prosecution witnesses that there existed factional and personal animosity which became the operative reason to arraign the appellant.

21. To elaborate, it is submitted that the appellant was at the time of incident, employee of Yal Singh Kurmi who belongs to *'Kurmi'* community whereas Sanat Mishra hails from '*Brahmin'* community. Victim (PW-3) her mother and father (PW-8) admitted these facts and candidly deposed that there had been animosity between '*Brahmin'* and *'Kurmi'* community. Pertinently, the victim (PW-3) and Surensh Master (PW-9) admitted that at the relevant time, the appellant was employee of Arvind Sanodya. In the house of Arvind Sanodya, the nephew of victim's parents namely Kholu used to work. Kholu, the nephew of PW-4 committed a theft in the house of Arvind Sanodya and present appellant caught him red handed. Arvind Sanodya and appellant had beaten him because of the theft committed by him. This incident had taken place in near past which is admitted by PW-3 and PW-8. The aforesaid witnesses clearly admitted that there was a clear animosity between appellant and parents of the victim. This factional dispute and personal animosity became the foundation to arraign the appellant submits learned counsel for the appellant.

22. In order to substantiate the argument that appellant has been falsely implicated, heavy reliance is placed on the statement of Suresh Master (PW-9). This witness resides right in front of *Kotha* where incident had taken place. He being an Assistant Teacher in Government Primary School, Singhodi made it clear that the villagers normally informs him about any incident which takes place in the village. On the date of incident, the mother of victim (PW-4) informed him that Dinesh assaulted his daughter and, therefore, she is going to lodge a report in Police Station. The victim and her father were also accompanying the mother (PW-4). Para-11 of his deposition is pressed into service wherein he stated that

Dinesh Yadav was working with Yal Singh Kurmi. Victim and her mother informed him that when victim took her goat for grazing to Yal Singh's farm, the appellant abused the victim because her goat was grazing in the ground of his employer. The parents of victim were annoyed because of such abuse and assault by the appellant. Suresh Master (PW-9) stated that he tried to explain that such incidents are normal and must be ignored but when parents of prosecutrix did not agree with him, he said that report may be lodged. The statement of this independent witness clearly shows that a trivial incident of abuse and assault took an ugly shape when it was given the color of rape by victim and her family members.

23. The statements of mother (PW-4), father (PW-8) of victim and the statement of Suresh Master (PW-9) are relied upon to submit that the father and victim were not ready to lodge the report but under the pressure and threat of mother and brother of victim, the report/complaint was ultimately lodged. Suresh Master (PW-9) further deposed that any conversation which takes place inside *Kotha* can be heard by him at his house situated in front of *Kotha.*

24. To bolster the aforesaid, Para-12 of statement of father (PW-8) of victim is relied upon where he in clear terms, admitted that he was not inclined to lodge a report but her wife was very keen to lodge the FIR. The wife and son threatened and even assaulted the victim in order to pressurize her to lodge the report. This backdrop clearly shows that appellant has been falsely arraigned. The statement of Chutniya Bai (PW-6) and Kamal Singh (PW-7) are also relied upon. The said witnesses turned hostile. However, statement of Kamal Singh (PW-7), husband of Chutniya Bai throws light and is in tune with the statement of other prosecution witnesses that nephew of victim's mother namely Kholu was caught red handed while stealing soyabean by appellant and he was beaten by Arvind Sanodya and the present appellant. This statement was used for another purpose that victim was not inclined to lodge police report and it was threatening and beating by her mother and brother which resulted into lodging of such report. This witness also deposed about animosity between *'Brahmin'* and '*Kurmi'* community. The judgment of Supreme Court in 1996 (10) SCC 360 *State of U.P. vs. Ramesh Prasad Mishra & another* is referred to show that evidence of hostile witness can be used by the defence.

25. The FSL report (Ex.P/27) although *prima facie* appears to be against appellant, a minute scrutiny of the entire process shows that the sample collection process is polluted and untrustworthy. The incident had taken place on 26.12.2012 and FIR was admittedly lodged on 27.12.2012. However, sample of victim is shown to have been collected on 26.12.2012 whereas the I.O. Shri Bahuguna collected the sample of appellant on 27.12.2012 which is evident from the document (Ex.P/20) dated 31.12.2012. This document (Ex.P/20) shows that opinion asked from FSL was whether in articles A, B, C, D, E and F there are

spermatozoa. It is submitted that the seizure of victim's articles/samples a day before lodging report makes the collection of sample and entire process based thereupon as highly doubtful.

26. By placing reliance on Sections 53-A and Section 164-A of Cr.P.C., it is submitted that these provisions came into being on 23.06.2006. Section 53-A is for the accused whereas Section 164-A is for the victim. The purpose of insertion of these provisions is to make the DNA test as mandatory. If samples were collected by the prosecution, nothing prevented them to send the sample for DNA profiling/examination. Non-conduct of DNA test creates dent on the prosecution story as par 2011 (7) SCC 130 *Krishan Kumar Malik vs. State of Haryana.*

27. The FSL report cannot be relied upon for yet another reason submits Shri Danial on the strength of question No.72 asked under Section 313 of Cr.P.C. to the accused. It is submitted that question is ambiguous, lacks material details and particulars and therefore, cannot pass the test laid down by Supreme Court in 2007 (12) SCC 341 (*Ajay Singh vs. State of Maharashtra*).

28. Lastly, by placing reliance on 2020 (3) SCC 443 (*Santosh Prasad alias Santosh Kumar vs. State of Bihar*), Shri Daniel submits that on facts also instant case has great similarity and appellant was erroneously held guilty by the Court below.

29. Section 114(g) of Indian Evidence Act and Section 53-A of the Cr.P.C. were conjointly read and projected to show that when DNA report could have been obtained but respondents failed to obtain and produce such material, an adverse inference may be drawn against them.

30. The conviction can certainly be recorded solely on the basis of statement of victim or of a solitary witness but such statement must be of a sterling witness, submits learned counsel for the appellant on the strength of *Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21. It is submitted that the victim in the instant case cannot be said to be such a sterling witness and, therefore, conviction based on such statement deserves to be jettisoned. *Tameezuddin v. State (NCT of Delhi),* (2009) 15 SCC 566 is relied upon to submit that improbable story which belies the logic must be discarded.

31. Another judgment of Supreme Court in *Dola v. State of Odisha,* (2018) 18 SCC 695 is relied upon to show that the improbable story cannot become reason to convict an accused. The nature of medical evidence discussed in this judgment is also pressed into service.

32. The need of supporting evidence and corroboration is projected on the strength of *Narayan v. State of Rajasthan,* (2007) 6 SCC 465. The delay in lodging

the FIR is hit by the principles laid down in (2007) 2 SCC 170 *(Ramdas and others vs. State of Maharashtra)*.

33. Shri Danial submits that he will be failing in his duty, if he does not deal with the effect and impact of Section 29 and Section 30 of the Protection of Children from Sexual Offence Act 2012. It is submitted that Section 30 (2) is almost *pari materia* to Section 35 of Narcotic Drugs and Psychotropic Substance Act, 1985. It is submitted that such presumptions statutorily created needs to be carefully examined. Reliance is placed on *Abdul Rashid Ibrahim Mansuri v. State of Gujarat,* (2000) 2 SCC 513 and *Trilok Chand Jain v. State of Delhi,* (1975) 4 SCC 761. Furthermore, it is submitted that there cannot be any legal presumption without establishing the foundational fact.

It is submitted that since foundational facts could not be established by the prosecution and this aspect was clearly exposed by the appellant while cross examining the prosecution witnesses, the presumption created under Section 29 and 30 of the Protection of Children from Sexual Offence Act 2012 is of no assistance to the prosecution. He placed reliance on the Division Bench Judgments of Calcutta High Court reported in 2021 SCC Online Cal 2007, *(Swapan Mondal Vs. State),* Single Bench Judgment of High Court of Bombay (at Nagpur) reported in 2018 SCC Online Bom 1315, *(Ramprasad Vs. State of Maharashtra),* Division Bench judgment of Gauhati High Court reported in 2019 SCC Online Gau 5947 *(Latu Das Vs. State of Assam)* and Single Bench Judgment of Kerala High Court reported in 2020 SCC Online Ker. 4956, *(Justin Vs. Union of India, Represented by the Secretary, Ministry of Law And Justice and others)* Shri Danial submits that said judgment of Kerala High Court was considered by the Supreme Court in (2022) 10 SCC 321 .

34. In the light of aforesaid arguments and judgments, it is contended that the Court below has committed an error of facts and law in convicting the appellant.

Contention of State :-

35. Shri Ajay Shukla, learned Government Advocate for the State supported the impugned judgment and placed reliance on the site map (Ex.P/8). By taking this Court to the said site map, it is submitted that place of incident was a covered area which is evident from the map which indicates that there were two doors marked as 'D-1' and 'D-2' in the *Kotha.* Thus, statement of prosecutrix (PW-3) is trustworthy that appellant closed the *Kotha* from inside by taking assistance from one of the door.

36. Shri Shukla, learned Government Advocate placed reliance on the statement of victim (PW-3), her brother (PW-5) and parents (PW-4 & PW-8) respectively. It is submitted that all the witnesses in one voice deposed about the nature of rape. The only embellishment in the statement of father (PW-8) is that

brother of victim (PW-5) witnessed the incident of sexual assault. Even if that portion is disbelieved and ignored, the rest of their statements inspire confidence.

37. The F.I.R. was lodged on the next day of incident but the delay is properly explained by the victim and her family members. In cases of sexual assault related to POCSO Act, the Supreme Court has taken a different view regarding delay in lodging the FIR. He placed reliance on (2010) 5 SCC 445 *(Santhosh Moolya v. State of Karnataka)*.

38. Lastly, learned Government Advocate placed reliance on the findings of Court below from para-42 onwards and urged that the appreciation of evidence by the Court below is correct and does not warrant any interference from this Court. The Patwari (PW-10) also supported the spot map (Ex.P/8) prepared by him. Thus, incident of rape which has taken place in a covered area cannot be doubted merely because medical evidence does not support the case of the prosecution.

Rejoinder Submissions :-

39. Shri Daniel, learned counsel for the appellant submits that site map (Ex.P/8) prepared by Patwari is not the only site map. Indeed, another site map (Ex.P/7) prepared by Police, needs to be examined and compared with the other site map Ex.P/8. Interestingly, both the site maps were proved by victim and his brother (PW-5). Shri Daniel further submits that in this site map, the position of Shiv Temple and residence in-front of *Kotha* are different. In Patwari map, just in front of *Kotha,* the house of Sharad S/o Bhagwan Prasad is mentioned. As per the map prepared by police, Sanat Mishra's house is adjacent to Shiv temple and in front of *Kotha.* In the site map prepared by the police, no door in the *Kotha* is visible. The site maps, at best, are known as non-substantive piece of evidence which by no stretch of imagination can override or dilute the substantive piece of evidence i.e. the statement of PW-4 and PW-8, who in clear terms admitted that there exist no door in the *Kotha* if viewed from the Shiv Temple. He placed reliance on 1920 SCC OnLine Oudh JC 125 (*Barkau Singh and others vs. Emperor)* and urged that site maps can be treated to be a fringed or embroidery to the story and cannot replace and substitute the substantive evidence.

40. Parties confined their arguments to the extent indicated above. The Government counsel has filed written submissions as well.

41. We have heard the parties at length and perused the record.

Findings :

Sensitivity of matter/test :

42. The first and foremost contention of learned counsel for the appellant was that merely because the matter relates to sexual assault on a minor, the appellant

cannot be mechanically held guilty. Unless the legal test and requisite evidence is available, appellant cannot be held guilty on the basis of sensitivity of matter alone. We find no difficulty in accepting this argument which is based on the judgment of Supreme Court in the case of *Raju and others* (supra). Similarly, in *Tameezuddin* (supra) the Apex Court opined as under :

> "9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that the story is indeed improbable."
>
> **(Emphasis Supplied)**

Delay in lodging F.I.R :

43. The incident had taken place at around 11:00 AM on 26.12.2012 whereas F.I.R was lodged on 27.12.2012 at 3:00 PM. Learned counsel for the appellant placed reliance on the judgment of Supreme Court in *Ramdas and others* (supra) whereas the Government counsel placed reliance on the written submissions and on the judgments of Apex Court in (1996) 2 SCC 384 (*State of Punjab v. Gurmit Singh*), (2010) 1 SCC 68 (*Sohan Singh v. State of Bihar*) and (2010) 5 SCC 445 (*Santhosh Moolya v. State of Karnataka*).

44. We have carefully gone through the aforesaid judgments of theApex Court. There is no conflict of view in the said judgments delivered by different Benches. Indeed, the common thread of principle running through the said cases is that in most of the cases of sexual assault, the family does not lodge the report instantaneously. The family discuss among themselves about the impact of such incident as also the consequences if matter is taken to the Police and criminal action is set into motion. In this process, they sometime consult the family, friends, well-wishers etc. This process consumes time and is not fatal to the prosecution when delay is not enormous and it is based on justifiable and *bonafide* reasons. In the instant case, the victim alongwith her parents went to the house of Sanat Mishra and from there went to another village i.e. Kanta to meet another family member in order to decide whether they should move forward for lodging report or not. The delay is neither inordinate nor unjustifiable. Thus, we are unable to persuade ourselves that FIR was lodged with an unexplained and inordinate delay. Thus, this argument deserves to be rejected.

Improbability of the incident :

45. The eyebrows are raised on the nature of incident by projecting that the incident of sexual assault has taken place in the broad day light at 11:00 AM in *'Kotha'* which is in a densely populated area. By showing the statements of mother and father of victim, (PW-4) and (PW-8) respectively, it was established that- (a) adjacent to ' *Kotha'* there exists a kirana shop, (b) a '*Pulia'* in which people used to sit for whole day and gossip amongst themselves, (c) a ' *Jhiriya'* where people of same village and other nearby villages continuously come and take bath, (d) a 'Shiv Mandir' from where as per testimony of both the parents the entire *'Kotha*' was visible and both the witnesses deposed that from the side of 'Shiv Mandir', there was no door in the ' *Kotha',* (e) it was also admitted by parents of the victim that the cattle were taken for grazing during early morning and by 7-8 AM, (f) the *'Kotha'* needs to be cleaned by removing the cow dung. The cattle come back to *'Kotha'* by 10-11 AM. The cumulative effect of these is that '*Kotha'* is situated adjacent to aforesaid places where movement of public continues for whole day.

46. The testimony of prosecutrix was questioned on yet another ground by contending that she deposed that she suffered injuries because she was thrown on the rough floor of '*Kotha'* by the appellant. However, there no corresponding injuries were found on the body of the victim. In fact, no internal injuries were found on her body. The probability factor is certainly important and it is not safe to accept the statement of victim alone as a gospel truth, unless her statement is of 'sterling quality'.

Sterling witness :-

47. The Apex Court in *Rai Sandeep* (supra) opined about the quality of sterling witness and held as under :

> **"22.** In our considered opinion, the **"sterling witness"** should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to

> the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness."
>
> **(Emphasis Supplied)**

48. If the statement of victim is carefully and minutely examined, it will be clear that her testimony could not be supported by medical evidence. If a girl of 13-14 years was raped by forcibly throwing her on a rough and uneven surface, she would have certainly received some injuries. In a case of this nature, there should be some medical evidence forthcoming to establish the case of the prosecution. The Apex Court in *Dola alias Dolagobinda Pradhan and another* (supra) held as under:

> "If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, **there is no reason to insist on corroboration, except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming."**
>
> **(Emphasis Supplied)**

In the same judgment in Para 13, it was held thus :

> **13.** From the aforementioned admissions of the victim, it is clear that the scene of offence is a busy area wherein a number of buses ply, many shops and residential houses exist, and a school is also situated. The scene of offence is near a circle wherein buses pass through frequently. The business in that area generally ends only at 10.00 p.m., which means that the area in question is a very busy area till 10.00 p.m. According to the prosecution, both the accused persons lifted the victim forcibly from the road, sometime between 7.00 and 8.00 p.m. and took her from that busy area and committed the offence of rape on her. Such a story put forth by the prosecution which prima facie appears to be improbable needs to be proved by the prosecution beyond reasonable doubt. Though both the courts concurrently concluded against the accused persons, we, in order to satisfy our conscience, have gone through the evidence on record.
>
> **(Emphasis Supplied)**

The Apex Court disbelieved the story of prosecution because area where incident had allegedly taken place was a busy area and it could not be established by credible evidence that incident had actually taken place.

49. Interestingly, in below mentioned paras of same judgment, the Apex Court again considered the medical evidence and injury marks on the victim. The relevant paras are reproduced as under :

> **"15.** Curiously, the victim has not sustained any injury except some bruises on her cheeks. Her clothes were not even soiled with mud. In her cross-examination, she admitted that there was a tussle at the time of the alleged incident, and that she tried to save herself. She also stated that both the accused persons physically lifted her from the spot, and her bangles had been broken, by which she had sustained bleeding injuries on her hands. Furthermore, she said that she also sustained marks of violence on her hands. She did not sustain any injury on her knee, breasts and buttocks. She stated that she has no acquaintance with the accused persons and she did not have any kind of dealings with them. She further admitted that she had worn eight bangles on each of her hands and all her bangles on the right hand were broken and only one bangle of the left hand remained unbroken, and that all the bangles were broken at the spot of offence.
>
> **16.** Although the prosecutrix admitted that she sustained bleeding injuries on her hand because of the shattering of eight bangles worn by her on her right hand and seven bangles on her left hand, and had marks of violence present on her body, the medical records do not support the said version. The report of the medical examination is at Ext. 4. It is clearly mentioned in the said report that there is a bruise mark measuring half a centimetre, which can be caused by a hard and sharp object, on the right cheek. No other mark of injury was seen anywhere on the body. There is no injury on the breasts, there is no internal injury on any part of the body and no injury was found on the vulva, pelvis and vagina. There are no signs of injury on the thighs as well. Except for one bruise on cheek which measures half a centimetre, no other injury was found on the victim and the same is clear from the medical report (Ext. 4).
>
> **17.** Thus, medical evidence does not support the case of the prosecution. The doctor (PW 4), who examined the victim, however, has deposed that there were four bruises, each measuring half a centimetre on the left cheek and four bruises each measuring half a centimetre on the right cheek. The doctor opined that the injuries are simple in nature and might have been

> caused by a hard and sharp object. The doctor did not find any other injury on the body of the victim. There was no injury on the back side of the body of the victim. Although the doctor has deposed in the examination-in-chief that the injuries could have been caused by human bite, he has admitted in his cross-examination that he has not mentioned the shape of the injuries in his report. He further admitted that a bruise can be caused by a blunt object like stone, wood, fist-blow, etc. and can also be caused by a fall. While a bruise is always accompanied by swelling, an abrasion caused by a human bite is elliptical or circular in form, and is represented by separated marks corresponding to the teeth of the upper and lower jaw. If we were to believe that the abrasion was caused by a bite, the same should have been elliptical or circular in form. The said material is not forthcoming from the records.
>
> **(Emphasis Supplied)**

50. Dr. Chetna Bandre (PW-11) examined the prosecutrix on 27.12.2012 and clearly opined that there was no injury whatsoever as per internal and external examination of the prosecutrix. She also deposed that the clothes recovered from the victim did not have any sign of any semen or any other spot.

51. A cumulative reading of statement of father (PW-8), victim (PW-3) and mother (PW-4) leaves no room for any doubt that floor of *'Kotha'* was made of *'Muram'* and stones. All the above witnesses candidly admitted that if somebody is thrown on such floor, he will undoubtedly receive injuries. No injury marks were found on the person of the victim.

52. We are not oblivious of legal position that ocular evidence alone can be reason to record conviction. However, as noticed above, the said evidence must be of unimpeachable quality or in other words of a 'sterling quality'. If there exists a serious contradiction between medical evidence and oral evidence and medical evidence makes oral testimony as improbable, ocular evidence can very well be disbelieved. The Apex Court in 2021 SCC OnLine SC 493 (*Pruthiviraj Jayantibhai Vanol vs. Dinesh Dayabhai Vala and Others*) held as under :

> **"18. Ocular evidence is considered the best evidence unless there are reasons to doubt it. The evidence of PW-2 and PW-10 is unimpeachable. It is only in a case where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved."**
>
> **(Emphasis Supplied)**

53. To summarize, we are inclined to hold that considering the geographical location of *'Kotha',* the availability of people all around at 11:00 AM and absence of injury marks on the body of victim makes the case of prosecution highly doubtful and it is totally unsafe to give stamp of approval to the conviction in absence of any corroboration in the facts and circumstances of the present case. In other words, the statement of prosecutrix alone does not make the case of prosecution as a foolproof case. We are unable to countenance the judgment of conviction based on the statements of victim (PW-3), mother (PW-4) and father (PW-8).

Rivalry/Animosity :

54. Learned counsel for the appellant argued that there were 'factional' as well as 'personal' animosity against the appellant. Pertinently, the Court below disbelieved it by holding that so far personal animosity is concerned, it is not shown to be of proximate past. We deem it proper to dwell with this aspect.

55. So far factional dispute/enmity is concerned, victim (PW-3), mother (PW-4) and father (PW-8) admitted that there has been factional enmity between *'Brahmin'* and *'Kurmi'* community. Most importantly, the victim (PW-3) and independent witness Suresh Master (PW-9) admitted that at the relevant time, appellant was employee of Yal Singh Kurmi. A conjoint reading of statements of aforesaid witnesses shows that there existed a factional dispute between said two communities and appellant was working with a person who belongs to one such community i.e. *'Kurmi'* community.

56. So far personal enmity of appellant with the family of victim is concerned, it needs to be unfolded. Firstly, a suggestion was given that the appellant was taking care of agricultural field of his employer Yal Singh Kurmi. The victim's goat entered the agricultural field of Yal Singh Kurmi and started grazing the field. The appellant objected to it and in the course of said process, abused and assaulted the victim. This incident triggered the entire matter and a false report, as an afterthought, relating to sexual assault was lodged. The suggestion so given to the victim and her parents was not accepted. However, an independent witness Suresh Master (PW-9) deposed that when he met with the family of victim they informed that appellant misbehaved with the victim due to the said incident of grazing by the goat of victim. Suresh Master (PW-9) tried to explain that the incident is trivial in nature and no report needs to be lodged but victim's mother (PW-4) and brother (PW-5) did not agree. This statement of prosecution witness cannot be discarded.

57. We find substance in the argument of learned counsel for the appellant that the statement of Suresh Master (PW-9) casts a shadow of doubt on the story of prosecution because parents of victim i.e mother (PW-4) and father (PW-8)

admitted that the nephew of (PW-4) was working with erstwhile employer of appellant i.e. Arvind Sanodya and appellant caught him red-handed while stealing some material and assaulted him. This incident as per victim (PW-3) and father (PW-8) had taken place. Thus, the appellant by cross-examining the prosecution witnesses could establish with utmost clarity that there existed a dispute / animosity between him and mother / family of victim. The Court below, in our considered opinion, has not properly appreciated the said evidence. The enmity, no doubt is a double edged sword. In cases where factum of enmity is established with utmost clarity and precision, it cannot be ignored. In the instant case, the appellant could establish it with necessary accuracy and precision that there existed an animosity between him and family of the victim. In this backdrop, the appellant could not have been held guilty unless the statement of prosecutrix is of 'sterling quality'. At the cost of repetition, in our opinion, the medical evidence did not support the story of prosecution. The father of victim (PW-8) also admitted that he was not inclined to lodge the Police report but his wife and son compelled him to lodge the report.

Statements of PW-7 and PW-8 :

58. This couple can be called as independent witness. Kamal Singh (PW-7)'s statement corroborates the same story that Kholu nephew of (PW-4) (mother of victim) was caught red-handed while stealing *Soyabean* by appellant and he was beaten for such theft by Arvind Sanodya and present appellant. In view of this corroboration, a serious dent is caused to the story of prosecution. Shri Daniel rightly relied on the judgment of Supreme Court in the case of *Ramesh Prasad Mishra* (supra) to show that the evidence of hostile witness can be used for some purpose. It is apt to consider another judgment on this point wherein it was held that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge to consider the facts in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be credit-worthy and act upon. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto. (See: (1976) 1 SCC 727 (*Sat Paul Vs. Delhi Administration*). We are inclined to hold that animosity relating to incident of theft by Kholu which was noticed by appellant is duly established by testimony of PW-7 and PW-8.

FSL Report:

59. The criticism on the findings based on FSL report by the appellant has substantial force. The said FSL report cannot be a reason to hold the appellant as guilty because (a) as per question No. 72 of the statement recorded under Section 313 of Cr.P.C., the incriminating material was not confronted with necessary clarity. Reference may be made to the judgment of Supreme Court in *Ajay Singh* (supra), the relevant portion reads as under :-

> **"11.** So far as the prosecution case that kerosene was found on the accused's dress is concerned, it is to be noted that no question in this regard was put to the accused while he was examined under Section 313 of the Code.
>
> **12.** The purpose of Section 313 of the Code is set out in its opening words — "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him". In *Hate Singh Bhagat Singh* v. *State of Madhya Bharat* [1951 SCC 1060 : AIR 1953 SC 468] it has been laid down by Bose, J. (AIR p. 469, para 8) that the statements of the accused persons recorded under Section 313 of the Code "are among the most important matters to be considered at the trial". It was pointed out that : (AIR p. 470, para 8)
>
> > "*8*. ... The statements of the accused recorded by the committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box [and that] they have to be received in evidence and treated as evidence and be duly considered at the trial."
>
> This position remains unaltered even after the insertion of Section 315 in the Code and any statement under Section 313 has to be considered in the same way as if Section 315 is not there.
>
> **13.** The object of examination under this section is to give the accused an opportunity to explain the case made against him. This statement can be taken into consideration in judging his innocence or guilt. Where there is an onus on the accused to discharge, it depends on the facts and circumstances of the case if such statement discharges the onus.
>
> **14.** The word "generally" in sub-section (1)*(b)* does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be

> framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.
>
> **(Emphasis Supplied)**

60. The same *ratio decidendi* is followed in AIR 1992 SC 2100 (*State of Maharashtra Vs. Sukhdev Singh*), AIR 2010 SC 2839 (*Ashok Kumar Vs. State of Haryana*) and AIR 2010 SC 3570 (*Sanatan Naskar Vs. State of W.B.*).

61. In AIR 2005 SC 3114 (*State of Punjab vs. Sawaran Singh*), it was held as under:

> "Generally, composite questions shall not be asked to accused bundling so many facts together. **Questions must be such that any reasonable person in the position of the accused may be in a position to give rational explanation to the questions as had been asked.** There shall not be failure of justice on account of an unfair trial."
>
> **(Emphasis Supplied)**

62. A Division Bench of Gauhati High Court in 2007 Cr.L.J. 3395 *State of Nagaland Vs. Lipok Ao and others* opined that Section 313 of Cr.P.C. is statutory provision which embodies the fundamental principle of a fair trial based on the maxim *audi alteram partem.*

63. The question No.72 asked under Section 313 of Cr.P.C. reads as under :

> ''प्र. 12– इसी साक्षी का कहना है कि एफ0एस0एल0 सागर से प्राप्त रिपोर्ट प्रा0पी027 है?''

64. The question is ambiguous and does not throw sufficient light so that accused can understand about incriminating portion of the said report. We are constraint to observe that this question was framed in a very stereotype and mechanical manner. Section 313 of Cr.P.C. is codification of principles of natural justice in a procedural statute. The court should eschew the practice of preparing

questions in a cursory and mechanical manner. The question so put to the accused must be specific and pregnant with necessary clarity and elaboration. It cannot be forgotten that the root cause and basic purpose for putting incriminating material to the accused is to provide him an adequate, sufficient and reasonable opportunity to give explanation. No cryptic question or a question framed for namesake can substitute the requirement of principles of natural justice. We are, therefore, of the opinion that the Court below has failed to confront the incriminating portion of FSL report to the appellant with necessary clarity.

65. The FSL report can be disbelieved for yet another reason. As rightly pointed out by learned counsel for the appellant that Shri Siddharth Bahuguna (I.O.) (PW-16) collected the sample of appellant on 27.12.2012 whereas the samples of victim were shown to have been collected on 26.12.2012. Indisputably, the complaint in police station was lodged on 27.12.2012 and hence on 26.12.2012 the prosecution had no clue and knowledge about the incident. Collecting the samples from victim a day before it is like putting a cart before the horse which is an impossible act. This discrepancy also creates doubt on the collection process of sample and for this reason also, we are unable to countenance the impugned judgment.

DNA sample :

66. Section 53-A and 164-A of Cr.P.C. makes it obligatory for the prosecution to undertake the exercise of DNA examination. However, we are unable to hold that if the DNA test was not conducted, as a rule of thumb the prosecution story stands vitiated. It depends on the facts and circumstances of each case. In the case of *Krishan Kumar Malik* (supra), no such principle of law was laid down that non-conduction of DNA examination will vitiate the case of prosecution in all circumstances. For the same reason, we are unable to hold that combined reading of Section 114(g) of Evidence Act and Section 53(A) Cr.P.C. should lead us to draw adverse inference against the prosecution.

Multiple site maps :

67. In the instant case, two site maps were prepared, one by Patwari (Ex.P-8) and another by the Investigating Officer (Ex.P-7). In AIR 2004 SC 124 (*Shingara Singh Vs. State of Haryana*), it was held that the essential features should be shown in the site plan and omission to show them in the site plan cannot be said to be a mere lapse on the part of investigating agency.

68. In the instant case, if both the aforesaid site maps are examined in *juxtaposition,* it will be crystal clear that both are not identical. Interestingly, both the site maps were prepared at the instance of victim (PW-3) and her brother (PW-5). For example, location of '*Jhiriya'* is important in the instant case because

indisputably the large number of people of same and other villages used to visit that '*Jhiriya*' for medicinal purpose and case of defence is that '*Jhiriya*' is adjacent to the *'Kotha'* where incident had taken place. However, in Ex.P-7 prepared by prosecution, there is no mention about '*Jhiriya'* The location of *Shiv Temple* is also not in similar place if both the maps are compared. The site map cannot be treated as a substantive piece of evidence. In view of clear provision of Section 162 of Cr.P.C., the site map is nothing more than a statement made to the police during investigation. (See: AIR 1962 SC 399 (*Tori Singh Vs. State of Uttar Pradesh*). We have already discussed in sufficient detail about the geographical proximity of *'Jhiriya' Shiv Temple, Kirana Store, Pulia* and houses of Sanat Mishra and Suresh Master. Both the maps do not reflect similar position of these places and considering the marked difference or absence of certain particulars, site maps in our opinion, will not improve the case of the prosecution.

Sections 29 & 30 of POCSO Act:

69. Before dealing with the argument of Shri Daniel relating to effect and impact of presumption clause ingrained in Sections 29 and 30 of POCSO Act, it is profitable to quote relevant portion of judgments of various High Courts on this point. The Division Bench of Calcutta High Court in *Swapan Mondal* (supra) held as under :

> **"102.** The common thread running through these high authorities is that a persuasive burden of proof under a statute requires the accused *to prove the facts necessary to be proved to rebut the presumption under that statute (and not merely lead evidence).* It is important to note also that the provisions that have been construed and interpreted in the aforementioned cases *required the prosecution to prove a certain fact before a presumption can kick in and the burden of proof is reversed.* This only makes sense for if the mere factum of a person being charged or prosecuted could be deemed as requiring the court to presume his commission of an offence, then Viscount Sankey's golden thread of presuming innocence before guilt in criminal jurisprudence would certainly be lost. Finally, it is also seen that a presumption under the aforesaid statutes is a *presumption by operation of law and not a presumption of fact,* for the presumption kicks in not as a matter of logic or a normal understanding of cause and effect in human nature, but as a consequence of the law deeming that proof of one fact shall make the court presume the existence of another.
>
> **103.** However, the standard of proof required, as revealed by the authorities referred to above to prove the necessary facts when the persuasive onus of proof is on the accused is on a balance of probabilities. It is not the same as that of the prosecution, unless

the statute states as such, for example, the clarification in Section 35(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 explicitly states that the reverse burden of proof contained therein has to be discharged by the accused beyond reasonable doubt, just like the prosecution in a criminal case:

> ***"35. Presumption of culpable mental state.-*** *(1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.*
>
> *Explanation-In this section 'culpable mental state' includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.*
>
> *(2) For the purpose of this section, a fact is said to be proved only when the Court believe it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability."*

104. However, even then the Supreme Court has blunted the full force of this clarification in *Abdul Rashid Ibrahim Mansuri* v. *State of Gujarat,* reported in (2000) 2 SCC 513 : AIR 2000 SC 821, where Thomas, J. (giving the judgment of a three-Judge Bench of the Supreme Court) stated (at paragraph 22 of the report):

> "22. *The burden of proof cast on the accused under Section 35 can be discharged through different modes.* ***One*** *is that, he can rely on the materials available in the prosecution evidence. Next is, in addition to that he can elicit answers from prosecution witnesses through cross-examination to dispel any such doubt. He may also adduce other evidence when he is called upon to enter on his defence."*
>
> *In other words, if circumstances appearing in prosecution case or in the prosecution evidence are such as to give reasonable assurance to the Court that appellant could not have had the knowledge or the required intention, the burden cast on him under Section 35 of the Act would stand discharged even if he has not adduced any other evidence of his own when he is called upon to enter on his defence."*

> **105.** On the conspectus of authorities, it is clear to me that Sections 29 and 30 of the POCSO Act certainly place a persuasive burden on the accused to show that he did not possess the requisite culpable mental state for the offence for which he is prosecuted. The accused, once such presumption bites, cannot merely adduce evidence to raise an issue that he may not have had the culpable mental state, he has to prove that he did not have the culpable mental state in accordance with the clear words of the statute. The presumption is not the natural or logical consequence of the conduct of human affairs, but a declaration made by law. Moreover, sub-section 2 of Section 30 much like the Explanation found in Section 35(2) of the N.D.P.S. Act states that the standard of proof required to rebut the presumption therein is required to be beyond reasonable doubt.
>
> **106.** But to construe such a statute strictly by interpreting Section 30 to truly require proof beyond reasonable doubt in a manner that is exactly like the prosecution in a normal criminal case on the part of the accused would certainly fall foul of the presumption of innocence that is ingrained in our legal system. This would be so because requiring proof that a person is not of guilty mind from that person itself would be presuming guilt rather than innocence. This would be violative of the nearly-sacrosanct cannon of construction which states that Parliament is presumed to respect the rule of law and the human rights of individuals especially in light of *Noor Aga* (supra).
>
> **107.** The same point would apply to the fact that Sections 29 and 30 do not require establishment of a prior fact by the prosecution for the presumption under it to kick in. To construe this literally would be violative of the presumption that Parliament respects individual rights."
>
> **(Emphasis Supplied)**

70. The Single Bench of Bombay High Court (at Nagpur) in the case of *Ramprasad* (supra) held thus:

> **"18.** Once such a conclusion is arrived at, the presumption under Section 29 of the POCSO Act comes into operation and it has to be presumed that the acts alleged against the appellant (accused) were indeed committed by him until the contrary stood proved. Therefore, the burden becomes heavier on the defence in such cases. It is required to be examined whether the evidence on record indicated that the appellant (accused) was able to rebut the presumption to demonstrate that the prosecution case was not made out. The presumption can be

rebutted by showing that on preponderance of probabilities the defence raised by the accused was made out.

20. The abovequoted provision mandates that unless the accused proves to the contrary, it would be presumed that he has committed offences under the POCSO Act for which he is prosecuted. But, there can be no doubt about the proposition that no presumption is absolute and that every presumption is rebuttable. A statutory presumption of this nature can be rebutted by the accused on the touchstone of preponderance of probabilities. In the case of *Babu* v. *State of Kerala* [(2010) 9 SCC 189], the Hon'ble Supreme Court, while examining as to in what manner presumption under a statute could operate against the accused has held as follows:—

> *27. Every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. However, subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence. For this purpose, the nature of the offence, its seriousness and gravity thereof has to be taken into consideration. The courts must be on guard to see that merely on the application of the presumption, the same may not lead to any injustice or mistaken conviction. Statutes like Negotiable Instruments Act, 1881; Prevention of Corruption Act, 1988; and Terrorist and Disruptive Activities (Prevention) Act, 1987, provide for presumption of guilt if the circumstances provided in those Statutes are found to be fulfilled and shift the burden of proof of innocence on the accused.* ***However, such a presumption can also be raised only when certain foundational facts are established by the prosecution. There may be difficulty in proving a negative fact.***

21. In a recent judgment also, in the face of presumption under Section 29 of the POCSO Act, this Court in *Amol Dudhram Barsagade* v. *State of Maharashtra,* **[Criminal Appeal No. 600/2017 Decided on 23.04.2018]** (Nagpur Bench), held as follows:—

> "5. *The learned Additional Public Prosecutor Shri. S.S. Doifode would strenuously contend that the statutory presumption under Section 29 of the POCSO Act is absolute. The date of birth of the victim 12.10.2001 is duly proved, and is indeed not challenged by the accused, and the victim, therefore, was a child within the meaning of*

Section 2(d) of the POCSO Act, is the submission. The submission that the statutory presumption under Section 29 of the POCSO Act is absolute, must be rejected, if the suggestion is that even if foundational facts are not established, the prosecution can invoke the statutory presumption. Such an interpretation of Section 29 of the POCSO Act would render the said provision vulnerable to the vice of unconstitutionality. ***The statutory presumption would stand activated only if the prosecution proves the foundational facts and then, even if the statutory presumption is activated, the burden on the accused is not to rebut the presumption beyond reasonable doubt. Suffice it if the accused is in a position to create a serious doubt about the veracity of the prosecution case or the accused brings on record material to render the prosecution version highly improbable."***

(Emphasis Supplied)

71. The Division Bench of Gauhati High Court in *Latu Das* (supra) ruled that :

> **25.** However, one must bear in mind that presumption is not in itself evidence, it is only inference of fact drawn from other known or proved facts; and as such, in order to draw a presumption, statutory or otherwise, **there must be existence of proved facts,** from which a presumption can be raised. Therefore, **presumption under section 29 of the POCSO Act, does not absolve the prosecution from its usual burden to prove the guilt of the accused beyond reasonable doubt. It only lessen its burden to some extent and put a corresponding burden on the accused. Initial burden in a criminal case is always on the prosecution to bring on record reasonable evidence and materials to prove that the accusation brought against the accused is true. Once such evidence or materials are brought on record prima facie establishing the case of the prosecution, then only the court is obliged to raise presumption under section 29 of the POCSO Act and in that situation only the burden stands shifted to the accused to rebut the presumption. If the accused fails to rebut the presumption, Court is justified to hold the accused guilty of offence under sections 3, 5, 7 and 9 of the POCSO Act.**
>
> **(Emphasis Supplied)**

72. Another Single Bench of Kerala High Court in *Justin* (supra) opined as under :

"76. Hence the presumptions under sections 29 and 30 of the POCSO Act have to be examined on the anvil of tests laid down in *Kathi Kalu Oghad's case* (supra). While considering similar statutory provisions, Supreme Court, in *Veeraswami's case, Ramachandra Kaidalwar's case, Noor Agas case, Kumar Export's case and Abdul Rashid Ibrahim's case* has **consistently held that the presumptions considered therein, which are similar to sections 29 and 30 of the POCSO Act do not take away the primary duty of prosecution to establish the foundational facts. This duty is always on the prosecution and never shifts to the accused. POCSO Act is also not different. Parliament is competent to place burden on certain aspects on the accused, especially those which are within his exclusive knowledge.** It is justified on the ground that, prosecution cannot, in the very nature of things be expected to know the affairs of the accused. This is specifically so in the case of sexual offences, where there may not be any eye witness to the incident. Even the burden on accused is also a partial one and is justifiable on larger public interest.

77. In *Noor Aga's case* (supra) it was held that, presumption of innocence is a human right and cannot per se be equated with the Fundamental Right under Art.21 of the Constitution of India. It was held that, subject to the establishment of foundational facts and burden of proof to a certain extent can be placed on the accused. However, Supreme Court in various decisions referred above has held that, **provisions imposing reverse burden must not only be required to be strictly complied with but also may be subject to proof of some basic facts as envisaged under the Statute. Hence, prosecution has to establish a prima facie case beyond reasonable doubt. Only when the foundational facts are established by the prosecution, the accused will be under an obligation to rebut the presumption that arise, that too, by adducing evidence with standard of proof of preponderance of probability.** The insistence on establishment of foundational facts by prosecution acts as a safety guard against misapplication of statutory presumptions.

78. Foundational facts in a POCSO case include the proof that the victim is a child, that alleged incident has taken place, that the accused has committed the offence and whenever physical injury is caused, to establish it with supporting medical evidence. If the foundational facts of the prosecution case is laid by the prosecution by leading legally admissible evidence, the duty of the accused is to rebut it, by establishing from the evidence on record that he has not committed the offence. This can be achieved by eliciting patent absurdities or inherent

> infirmities in the version of prosecution or in the oral testimony of witnesses or **the existence of enmity between the accused and victim or bring out the peculiar features of the particular case that a man of ordinary prudence would most probably draw an inference of innocence in his favour, or bring out material contradictions and omissions in the evidence of witnesses, or to establish that the victim and witnesses are unreliable or that there is considerable and unexplained delay in lodging the complaint or that the victim is not a child.** Accused may reach that end by discrediting and demolishing prosecution witnesses by effective cross examination. Only if he is not fully able to do so, he needs only to rebut the presumption by leading defence evidence. Still, whether to offer himself as a witness is the choice of the accused. Fundamentally, the process of adducing evidence in a POCSO case does not substantially differ from any other criminal trial; **except that in a trial under the POCSO Act, the prosecution is additionally armed with the presumptions and the corresponding obligation on the accused to rebut the presumption."**
>
> **(Emphasis Supplied)**

73. The common string running through these judgments is that Section 29(2) of POCSO Act is almost *pari-materia* to Section 35(2) of NDPS Act. No doubt, Sections 29 and 30 of POCSO Act are couched in a particular way and creates a presumption, such presumption depends on the ability of prosecution to establish the foundational facts. When no foundational facts could be established by the prosecution, by taking aid of presumption flowing from Sections 29 and 30 of POCSO Act, an accused cannot be held guilty. We are in respectful agreement with the view taken by the aforesaid High Courts. As noticed above, prosecution in the instant case, could not establish the foundational facts with necessary clarity and beyond reasonable doubt. On the contrary, the accused by cross-examining the prosecution witnesses could establish about the improbability of the incident, lack of medical evidence, serious procedural flaws in sample collection and questioning the appellant in the Court under Section 313 of Cr.P.C. and conjoint effect of all such factors is that it cannot be said that prosecution could establish its case beyond reasonable doubt before the Court below. Thus, presumption clause of the statute will not improve the case of the prosecution.

74. The learned Govt. counsel in his written submission has relied on the judgment of Supreme Court in the case of *Nawabuddin Vs.State of Uttarakhand* (2022) 5 SCC 419, this judgment of Apex Court is based on certain previous judgments. In our opinion, as per these judgments also, the prosecution needs to establish its case beyond reasonable doubt. The said test is never diluted and therefore, cannot be marginalized. Since, prosecution could not establish its case

with necessary clarity on legal parameters, the said judgments cited in the written submission are of no help to the prosecution.

75. In view of the foregoing analysis, we are unable to give our stamp of approval to the impugned judgment. Resultantly, the impugned judgment dated 12.01.2019 passed in SCATR No. 7/2013 is set aside. The appellant is acquitted. If his presence in the custody is not required in any other case, he be released forthwith. The appeal is **allowed.**

Appeal allowed

I.L.R. 2023 M.P. 1872

Before Mr. Justice Dwarka Dhish Bansal

CR No. 852/2019 (Jabalpur) decided on 26 June, 2023

DILIP BUILDCOM LTD. … Applicant

Vs.

GHANSHYAM DAS DWIVEDI …Non-applicant

A. Civil Procedure Code (5 of 1908), Order 7 Rule 11(d) and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Section 63 – Jurisdiction of Civil Court – **Held – During pendency of suit, award was passed on 12.12.2017 – No action has been taken by plaintiff so far to challenge the final award dated 12.12.2017 – In light of the final acquisition award dated 12.12.2017, instant suit cannot proceed further and is hereby rejected as Civil Court has no jurisdiction to record any finding on the validity or otherwise of the acquisition process of suit property undertaken and completed by statutory authorities – It is fit case where powers under O-7 R-11(d) CPC can be exercised – Revision allowed. (Paras 5, 10 & 11)**

क. सिविल प्रक्रिया संहिता (1908 का 5), आदेश 7 नियम 11(d) एवं भूमि अर्जन, पुनर्वासन और पुनर्व्यवस्थापन में उचित प्रतिकर और पारदर्शिता का अधिकार अधिनियम (2013 का 30), धारा 63 – सिविल न्यायालय की अधिकारिता – अभिनिर्धारित – वाद के लंबित रहने के दौरान दिनांक 12.12.2017 को अवार्ड पारित किया गया था – वादी द्वारा अंतिम आदेश दिनांक 12.12.2017 को चुनौती देने के लिए अब तक कोई कार्यवाही नहीं की गई है – अर्जन के अंतिम अवार्ड दिनांक 12.12.2017 के प्रकाश में, वर्तमान प्रकरण आगे नहीं बढ़ सकता तथा एतद्द्वारा खारिज किया जाता है क्योंकि कानूनी प्राधिकरणों द्वारा प्रारंभ एवं पूर्ण की गई वाद संपत्ति की अर्जन प्रक्रिया की विधिमान्यता अथवा अन्यथा पर कोई निष्कर्ष अभिलिखित करने की सिविल न्यायालय के पास कोई अधिकारिता नहीं है – यह एक उचित प्रकरण है जहां सि.प्र.सं. के आदेश–7 नियम –11(d) के अंतर्गत शक्तियों का प्रयोग किया जा सकता है – पुनरीक्षण मंजूर।

***B. Civil Procedure Code (5 of 1908), Section 151 & Order 7 Rule 11(d) – Subsequent Events* – Held – If due to subsequent events original proceedings have become infructuous, then such events can be and should be taken into consideration by Courts even u/S 151 CPC. (Para 9)**

***ख. सिविल प्रक्रिया संहिता (1908 का 5), धारा 151 व आदेश 7 नियम 11(d) – पश्चात्वर्ती घटनाएं* – अभिनिर्धारित – यदि पश्चात्वर्ती घटनाओं के कारण मूल कार्यवाहियां निष्फल हो गई हैं, तब ऐसी घटनाओं को न्यायालयों द्वारा सि.प्र.सं. की धारा 151 के अंतर्गत भी विचारण में लिया जा सकता है तथा लिया जाना चाहिए**

Cases referred:

(2020) 16 SCC 601, (2004) 11 SCC 168, (2002) 4 SCC 68, ILR 2013 Karnataka 3629, 2012 (4) MPLJ 481.

Prashant Singh with *Shreyash Dubey* and *Anvesh Shrivastava,* for the applicant.

Anoop Saxena, for the non-applicant.

O R D E R

DWARKA DHISH BANSAL, J.:- This civil revision has been preferred by the defendant challenging the order dated 30/10/2019 passed by 3rd Civil Judge Class-I, Chhatarpur in Civil Suit No.57-A/2019, whereby learned trial Court has dismissed the defendant's application under Order 7 Rule 11 CPC filed for rejection of the plaint, on the ground that in view of Section 63 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'LARR Act, 2013'), the Civil Court has no jurisdiction in relation to the proceedings of land acquisition.

2. Learned counsel for the applicant submits that the land/property in question bearing in Survey No.594/4/E area 0.01 hectare owned and possessed by the respondent-Ghanshyam has already been acquired vide final award dated 12/12/2017 and this fact is in the knowledge of the applicant but till now, the plaintiff/respondent has not challenged the award merely because of issuance of temporary injunction in the pending suit by learned trial Court in respect of the same property, which is coming in the way of raising construction of a bridge. He submits that in the light of Section 63 of the LARR Act, 2013, the Civil Court has no jurisdiction to record any finding on the validity or otherwise of the acquisition process of the suit property undertaken and completed by the statutory authorities and even no temporary injunction can be granted by the Court. He submits that if the respondent/plaintiff is aggrieved by the award dated 12/12/2017, he is having right to challenge the same before the Writ Court under Article 226 of the

Constitution of India. In support of his submissions, he placed reliance on the decisions in the case of *Raghwendra Sharan Singh Vs. Ram Prasanna Singh (Dead) By Legal Representatives* (2020) 16 SCC 601; *Shipping Corporation of India Ltd. Vs. Machado Brothers and Others* (2004) 11 SCC 168; *J.M. Biswas Vs. N.K. Bhattacharjee and others* (2002) 4 SCC 68; and *The Chairman, The State Government Employees Shikshana Sangha Vs. Hanumantasa Tulajansa Pawar and Others* ILR 2013 Karnataka 3629.

3. Learned counsel for the respondent/plaintiff supports the impugned order and submits that on the date of filing of the suit, no acquisition proceeding was started and even the notifications under Sections 4 & 11 of the Act were not published indicating the acquisition of plaintiff's land and directly while passing the final award, the plaintiff's property has been shown under acquisition. Accordingly, he submits that the land acquisition proceedings which were started and completed during pendency of suit, cannot be considered as a bar provided under Order 7 Rule 11(d) of the CPC, because at the stage of Order 7 Rule 11 of the CPC, only the plaint averments are required to be seen. In support of his submissions, by placing reliance on the decision in the case of *Bhau Ram Vs. Janak Singh and others* 2012(4) MPLJ 481, he prays for dismissal of the civil revision.

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

5. Although, in the original plaint, there is no averment in respect of starting or conclusion of the land acquisition proceeding and only averment in the plaint is to the effect that the defendant without acquiring the land of the plaintiff, is going to raise construction over the plaintiff's land. But during pendency of the suit, an award was passed on 12/12/2017 against the plaintiff, whereby a part of the suit land has been acquired, as has been shown against the entry No.4 of the award, which has also been placed on record of the Court below and as per information given by learned counsel for the respondent/plaintiff, no action has been taken by the plaintiff so far to challenge the final award dtd. 12/12/2017.

6. In the case of *Shipping Corporation of India Ltd. Vs. Machado Brothers and Others* (2004) 11 SCC 168, the Supreme Court has held as under:

> **"25.** Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice, which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course,

> when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.
>
> **31.** For the reasons stated above, we are of the opinion that continuation of a suit which has become infructuous by disappearance of the cause of action would amount to an abuse of the process of the court, and interest of justice requires that such suit should be disposed of as having become infructuous. The application under Section 151 CPC in this regard is maintainable."

7. In the case of *J.M. Biswas Vs. N.K. Bhattacharjee and others* (2002) 4 SCC 68, the Supreme Court has held as under:

> "10. From the narration of facts and the contentions raised on behalf of the parties, it is clear that the dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. As noted earlier, the dispute in the case relates to election of office bearers of the South Eastern Railway Mens' Union. The dispute arose at a point of time when both the appellant and the respondent No.l were members of the said Union. Now both have ceased to be members of the Union. Further, successive elections have been held to elect office bearers and the office bearers so elected have been recognized by the management. In the circumstances, continuing this litigation will be like flogging the dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interest of the Union. Accepting the contentions raised on behalf of respondent No.l that the successive elections held in the meantime were invalid because he was not permitted to participate in it and to quash all such elections and direct holding of fresh elections under the supervision of the Court, will be contrary to democratic functioning of the employees Union. Furthermore, Courts in the present situation of exploding dockets can ill afford to stand time in such an exercise."

8. A coordinate Bench of Karnataka High Court has, in the case of *The Chairman, The State Government Employees Shikshana Sangha Vs. Hanumantasa Tulajansa Pawar and Others* ILR 2013 Karnataka 3629, held as under:

> **"8.** Sri V.M. Sheelavanth, learned Advocate appearing for the appellant contended that the suit agreement-Ex.Pl having become incapable of specific performance on account of the fact that during the pendency of the suit the State Government initiated the proceedings for compulsory acquisition of suit

> property, acquired the entire suit property and also delivered the possession of the same to the defendant No. 3, there being frustration of the contract entered into between the plaintiff and the defendant No. 1, the decree passed by the Trial Court and confirmed by the First Appellate Court are illegal and are liable to be set aside. He submitted that the Trial Court has failed to raise the relevant issues and determine the same and that the First Appellate Court has failed to raise the relevant points for consideration and answer the same. He further submitted that on account of the misdirection adopted by both the Courts below an illegal decree for specific performance of a contract, which has become impossible of performance has been passed. He contended that the Civil Court has no jurisdiction to record any finding on the validity or otherwise of the acquisition process of the suit property undertaken and completed by the statutory authorities and the impugned decrees being illegal are liable to be set aside.
>
> **20.** From the said decisions it is clear that a civil suit in respect of matters relating to acquisition proceedings is not maintainable and by implication, cognizance under S. 9 of Civil Procedure Code is barred. The suit property having been acquired during the pendency of the suit, the findings recorded by both the Courts below with regard to the invalidity of the acquisition of the suit property is without jurisdiction and illegal."

9. In view of the law laid down by the Supreme Court in the aforesaid decisions, it is clear that if due to subsequent events original proceedings have become infructuous, then such events can be and should be taken into consideration by Courts even under section 151 CPC.

10. As such taking into consideration the ratio of the aforesaid decisions and in view of Section 63 of the LARR Act, 2013, the present is a fit case where the powers under Order 7 Rule 11(d) of the CPC can be exercised. Section 63 of the LARR Act, 2013 is quoted as under:

> **"63. Jurisdiction of civil courts barred.**
>
> No civil court (other than High Court under Article 226 or Article 227 of the Constitution or the Supreme Court) shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered by or under this Act, and no injunction shall be granted by any court in respect of any such matter."

11. Resultantly in the light of final acquisition award dtd.12/12/2017, the instant suit cannot proceed further and is hereby rejected as the Civil Court has no jurisdiction to record any finding on the validity or otherwise of the acquisition

process of the suit property undertaken and completed by the statutory authorities.

12. Consequently, temporary injunction, if any, granted by Civil Court in the instant civil suit, shall stand vacated.

13. However, the respondent/plaintiff is free to approach the appropriate forum to challenge the award passed on 12/12/2017 in accordance with the law.

14. Interim application(s), if any, shall stand disposed off.

Order accordingly

I.L.R. 2023 M.P. 1877

Before Mr. Justice Dwarka Dhish Bansal

CR No. 285/2018 (Jabalpur) decided on 13 July, 2023

ASHOK KUMAR AGRAWAL ...Applicant

Vs.

SMT. SARITA SAXENA …Non-applicant

(Along with CR Nos. 287/2018, 288/2018, 289/2018 & 290/2018)

***A. Accommodation Control Act, M.P. (41 of 1961), Section 23-A(b) – Bonafide Requirement* – Held – Shop no. 6 & 7 are still under the ownership of respondent/landlord and these shops have not been sold – It cannot be said that after sale of shop no. 1, 2 & 10, need of landlord has come to an end – 6 months time granted to applicants for vacating the shops – Revision dismissed. (Para 14)**

क. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–A(b) – वास्तविक आवश्यकता – अभिनिर्धारित – दुकान क्र. 6 व 7 अभी भी प्रत्यर्थी/भू–स्वामी के स्वामित्व में है एवं यह दुकाने विक्रय नहीं की गई हैं – यह नहीं कहा जा सकता कि दुकान क्र. 1, 2 व 10 के विक्रय पश्चात्, भू–स्वामी की आवश्यकता समाप्त हो चुकी है – आवेदक गण को दुकाने खाली करने के लिए 6 माह का समय प्रदान किया गया – पुनरीक्षण खारिज।

***B. Accommodation Control Act, M.P. (41 of 1961), Section 23-A(b) & 23-G – Bonafide Requirement – Recovery of Possession* – Held – If after obtaining possession of rented shops, landlord's son does not start the requisite business, tenant shall be at liberty to invoke provisions of Section 23-G for recovery of possession for occupation and re-entry in rented shops.**

(Para 27)

ख. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धारा 23–A(b) व 23–G – वास्तविक आवश्यकता – कब्जा वापस लिया जाना – अभिनिर्धारित – यदि किराए पर दी गई दुकानों का कब्जा प्राप्त होने के पश्चात्, भू–स्वामी का पुत्र अपेक्षित व्यवसाय आरंभ

नहीं करता है, तो किराएदार किराए की दुकानों में व्यवसाय तथा पुनः प्रवेश के लिए कब्जा वापस लेने हेतु धारा 23–G के उपबंधों का अवलंब लेने के लिए स्वतंत्र होगा।

***C. Accommodation Control Act, M.P. (41 of 1961), Sections 3, 23-A(b) & 23-E – Jurisdiction of RCA* – Held – No dispute of relationship of landlord and tenant between parties – Provisions of Section 3 cannot be pressed into service, even though the said property was leased out by State Government to landlord – RCA cannot go beyond pleadings and evidence adduced by parties – Question of jurisdiction was not raised by tenant before RCA, therefore same cannot be permitted to be raised in present revision – Even otherwise, scope of revision u/S 23-E is limited.**

(Paras 16, 18, 19, 23 & 24)

ग. स्थान नियंत्रण अधिनियम, म.प्र. (1961 का 41), धाराएँ 3, 23–A(b) व 23–E – भाड़ा नियंत्रण प्राधिकारी की अधिकारिता – अभिनिर्धारित – पक्षकारों के मध्य भू–स्वामी एवं किराएदार के संबंध का कोई विवाद नहीं है – धारा 3 के उपबंधों को लागू नहीं किया जा सकता, भले ही कथित संपत्ति राज्य सरकार द्वारा भू–स्वामी को पट्टे पर दी गई थी – भाड़ा नियंत्रण प्राधिकारी, पक्षकारों द्वारा प्रस्तुत अभिवचनों एवं साक्ष्य के परे नहीं जा सकता – किराएदार द्वारा भाड़ा नियंत्रण प्राधिकारी के समक्ष अधिकारिता का प्रश्न नहीं उठाया गया था, अतः वर्तमान पुनरीक्षण में उक्त प्रश्न को उठाने की अनुमति नहीं दी जा सकती – अन्यथा भी, धारा 23–E के अंतर्गत पुनरीक्षण का विस्तार सीमित है।

Cases referred:

(2003) 12 SCC 551, (2001) 2 SCC 762, 1977 MPLJ 335, 2004 (4) MPLJ 185, AIR 2005 SC 4446=(2005) 7 SCC 791, AIR 1992 SC 1590, 2002 (2) JLJ 312 (SC), 2008 (2) MPLJ 365, AIR 1993 MP 90.

Amit Sahni, for the applicant in CR Nos. 285/2018, 287/2018, 288/2018, 289/2018 & 290/2018.

None, for the non-applicant in CR Nos. 285/2018, 287/2018, 288/2018, 289/2018 & 290/2018.

O R D E R

DWARKA DHISH BANSAL, J.:- All the five Civil Revisions are analogously heard and decided by this common order. In all the revisions the landlord (landlady) is common but the tenants are different who are in occupation of 5 shops as follows :

(i)	CR 285/2018 -Ashok Kumar Agrawal	-	Shop no. 6.
(ii)	CR 290/2018 -Sanjay Kumar Pandey	-	Shop no. 7.
(iii)	CR 287/2018 -Vasudeo Chawla	-	Shop no. 8.
(iv)	CR 289/2018 -Brajendra Kumar Chourasiya	-	Shop no. 11.
(v)	CR 288/2018 -Mahesh Ramani	-	Shop no. 12.

2. Aforementioned civil revisions under Section 23-E of the M.P. Accommodation Control Act, 1961 (in short 'the MPAC Act') have been filed by petitioners/non-applicants/tenants challenging the order of eviction dtd. 16.04.2018 passed by SDO/RCA, Maihar, Distt. Satna, whereby respondent/applicant/landlord's application under Section 23-A(b) of the MPAC Act filed for bonafide requirement of her son-Siddharth to start business of hardware/sanitary, has been allowed.

3. Facts in short are that the application for eviction on the ground of bonafide requirement of the shop in question, along with other shops, was filed with the averments that the respondent/applicant is landlord and the petitioner/non-applicant is her tenant and she being widow is covered under the definition of landlord of special category. The shop was given on rent by mother-in-law (Saas) of the respondent/applicant namely Premwati and after her death the petitioner/non-applicant is paying rent to the respondent/applicant, treating her to be owner and landlord of the shop(s). The son of respondent/applicant, after completing his education is unemployed and requires the rented shop for starting his business. It is stated in the application that on the ground floor of the building there were several shops but the respondent/landlord being in need of the money for treatment of her husband, some shops have been sold and only 8 shops (nos. 2 & 6 to 12) are remaining, which are required for the business of son-Siddharth, who after removing partition wall in between the shop no.6 & 7, shall build a showroom and other shops shall be used as godowns for keeping the business' goods and there is no other alternative accommodation available with the respondent/applicant in the township. On inter alia allegations the application was filed.

4. The petitioner/non-applicant appeared and filed reply admitting himself to be tenant of the respondent/applicant. In paragraph 1 of the reply, it is admitted that previously Premwati was owner and landlord of the house known as Siddharth Complex and after her death the respondent/applicant is owner and he is making payment of rent to her. However, he alleged that the applicant/landlord does not require the rented shop for the need of her son because he wants to do hotel business and for that purpose construction of first floor is in progress and also contended that the applicant is having several other alternative accommodations, which are sufficient to satisfy the need of respondent/applicant's son. It is also contended that the respondent/applicant wants to sell the rented shops after getting vacated the same. On inter alia submissions the application was prayed to be dismissed.

5. After framing issues and after recording evidence of the parties, learned RCA vide its impugned order, found that the respondent/applicant is in need of the

rented shop(s) for the requirement of her son and there is no other alternative accommodation available in the township and allowed the application(s).

6. Learned counsel appearing for the petitioner/non-applicant submits that the property in which the rented shops are situated belongs to the State Government, plot of which was allotted to the landlord vide lease deed, therefore, in view of provisions contained in section 3 of the MPAC Act, the provisions of the MPAC Act are not applicable to the instant case and the application filed under Section 23-A(b) of the MPAC Act was not maintainable before the RCA. He further submits that the application was filed with the allegations that respondent/applicant's son would start his business after removing partition wall of all the shops, but during pendency of the application for eviction, the respondent/applicant has sold shop No.10 to tenant-Manoj Kuamr Agarwal and Shop no. 1-2 to tenant-Ganesh Chourasiya, therefore, in absence of any amendment in the pleadings regarding the existing need, the impugned order of eviction is not sustainable. In support of his submissions, he placed reliance on the decisions in the case of *Parwati Bai vs. Radhika* (2003)12 SCC 551, *Lekh Raj Vs. Muni Lal and others* (2001) 2 SCC 762 and *Radheylal Somsingh vs. Ratansingh Kishansingh* 1977 MPLJ 335. With support of decision of a coordinate Bench of this *Court in Life Insurance Corporation of India vs. Santosh Kumar Sharma and another* 2004 (4) MPLJ 185 (pr.13&14), he submits that although the question of jurisdiction was not raised in defence/reply, but the same being a pure question of law, can be raised in the civil revision.

7. The Supreme Court in the case of *Parwati Bai vs. Radhika* (2003)12 SCC 551, has held as under :

> "4. It is well-settled by a decision of this Court in Bhatia Cooperative Housing Society Ltd. v. D.C. Patel, 1953(4) SCR 185 wherein pari materia provisions contained in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 came up for consideration of this Court. It was held that the exemption is not conferred on the relationship of landlord and tenant but on the premises itself making it immune from the operation of the Act. In identical facts, as the present case is, the decision of this Court was followed by the High Court of Madhya Pradesh in Radheylal Somsingh v. Ratansingh Kishansingh, 1977 MPLJ, 335 and it was held that the immunity from operation of the Madhya Pradesh Accommodation Control Act, 1961 is in respect of the premises and not with respect to the parties. If a tenant in municipal premises lets out the premises to another, a suit by the tenant for ejectment of his tenant and arrears of rent would not be governed by the Act as the premises are exempt under Section 3(1) (b) of Act though the suit is not between the municipality as landlord and against its tenant. We find

> ourselves in agreement with the view taken by the High Court of Madhya Pradesh in Radheylal's case. It is unfortunate that this decision binding in the State of Madhya Pradesh was not taken note of by the courts below as also by the High Court."

8. A coordinate Bench of this Court in the case Life Insurance *Corporation of India vs. Santosh Kumar Sharma and another* 2004 (4) MPLJ 185 (pr.13 & 14), has held as under :

> "14. Thus, in the present case, when there is inherent lack of jurisdiction, merely such an objection was not raised before the Tribunal would not disentitle petitioner/non-applicant to raise the said objection. Since there is inherent lack of jurisdiction, the Award passed by the Tribunal is without jurisdiction and, therefore, it cannot be allowed to stand."

9. During pendency of the civil revision the petitioners/non- applicants/ tenants filed different IAs, out of which following IAs. were **allowed** :

i) Application seeking amendment in Civil Revision, whereby the petitioners/non-applicants have raised additional grounds in the civil revision to the effect that the respondent/applicant is not landlord of the special category; RCA had no jurisdiction; the respondent/applicant has not filed any document of title/ownership; proposed business is not permissible in the area; if partition wall is removed, the building itself would fall down; in the application the respondent/applicant pleaded requirement for her son but in the evidence she stated that the shops are required for herself and her son; and there are major contradictions in the testimony of the PW1 and PW2;

ii) Application seeking amendment in Civil Revision, whereby the petitioners/non-applicants have raised another additional ground to the effect that the respondent/applicant is govt. lessee of the property which was sub-leased to the petitioner/non-applicant, as such in view of section 3 of the MPAC Act, the RCA had no jurisdiction under the MPAC Act, as such entire proceedings are void being without jurisdiction;

iii) Application for taking document on record, whereby documents showing renewal of lease deed in the name of respondent/applicant-Sarita Saxena (after death of Premwati Saxena) have been filed.

AND, following IAs are **still pending :**

i) Application for taking document on record, whereby an agreement of sale executed in respect of shop no.10 in favour of Manoj Kumar Agrawal has been prayed to be taken on record;

ii) Application seeking amendment in written statement to the effect that the respondent/applicant has entered into an agreement on 2.11.2020 and

is trying to sell the shops and that she has suppressed the factum of govt. lease from the Court and that the respondent/applicant is not landlord for the purpose of section 23-J of the MPAC Act;

iii) Application for taking document on record, whereby the sale deed dtd. 05/01/2022 in favour Manoj Kumar Agrawal (shop no. 10) and sale deed dtd. 17.11.2022 in favour of Ganesh Chourasiya (shop no.1-2), have been prayed to be taken on record.

10. Despite service of notice, none is appearing on behalf of the respondent/ applicant/landlord.

11. Heard learned counsel for the petitioners/non-applicants/tenants and perused the record.

12. The application for eviction has been filed with the allegations that the respondent/applicant being landlord of special category and being in need of the rented shops for the requirement of her son, is entitled for order of eviction against the petitioner/non-applicant. In reply to the application, the tenant has admitted relationship of landlord and tenant in between the parties. As such there is no dispute in the present case about relationship of landlord and tenant.

13. Apparently, the respondent/applicant filed the application for eviction alleging that her son after removing the wall existing in between the shops No.6-7 shall build his office/showroom and the other shops, which are in possession of other tenants, shall be used as godown to store the goods of the required business.

14. Admittedly the shops no.6-7 are still under the ownership of the respondent/applicant and these shops have not been sold, therefore, it cannot be said that after sale of shop Nos. 1, 2 and 10, the need of the respondent/applicant has come to an end. It is undisputed fact on record that the shops which have been sold by the respondent/applicant were in possession of other tenants and none of the shops was in vacant possession of the respondent/applicant, therefore, it cannot be said that after sale of some shops, the need proposed by the respondent/ applicant has vanished/come to an end.

15. So far as the question of sale of other shops is concerned, since beginning, need of these shops was alleged for the purpose of godown and even after sale of some shops, the shop Nos. 6 & 7 are under the ownership of the respondent/ landlord, therefore, remaining shops can very well be used for the purpose of godowns, which appear to be sufficient also for satisfying the need of the respondent/landlord.

16. As far as the question of jurisdiction of the RCA is concerned, in the present case there is no dispute of relationship of landlord and tenant between the respondent/applicant and petitioner/non-applicant, therefore, in my considered

opinion the provisions contained in section 3 of the MPAC Act cannot be pressed into service, even though the plot of the property was leased out by the State Government to the applicant/landlord.

17. The Supreme Court in the case of *Harshad Chiman Lal Modi Vs. DLF Universal Ltd. and another* AIR 2005 SC 4446 = (2005)7 SCC 791, has held as under :

> "30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."

18. In the case of *Parwati Bai* (supra), since beginning it was a case of landlord that the suit premises belongs to the Municipality, therefore, the provisions of the MPAC Act are not applicable. In such circumstances, the Supreme Court held that the Courts below erred in not treating the suit under general Act. But here in the present case, it is nobody's case before the Court/Authority of first instance that the suit premises belongs to the State Govt. and the RCA had no jurisdiction to entertain the application for eviction. On the contrary, the petitioner/non-applicant has in clear words, not only admitted relationship of landlord and tenant but also admitted ownership of deceased Premwati and thereafter of the respondent/applicant also.

19. However, the photocopies of the documents produced by the petitioner/non-applicant along with the application for taking documents on record, show that originally the permanent lease of a plot was granted on 1.4.1977 for 30 years, over which a house was got constructed by previous owner Premwati or her husband Laxminarayan and after its renewal it is effective up to 31.03.2024. As such in the given facts and on the subject matter available before the RCA, it had jurisdiction to entertain and decide the application for eviction, hence the petitioner/non-applicant does not get any benefit of the judgment in the case of *Parwati Bai* (supra).

20. In the similar set of facts, the Supreme Court in the case of *Swadesh Ranjan Sinha Vs. Hardeb Banerjee* AIR 1992 SC 1590, has held as under :

> "4. It is important to note that the defendant in his written statement did not question the plaintiff's title or claim of ownership. NO issue regarding ownership had been framed as it was never questioned by the defendant at any stage of the proceedings in the trial court. On appeal by the defendant, the Ist appellate Court examined the laintiffs title and held that, since he was only a lessee under a 99 years lease granted by the Society, which itself was a lessee holding a 99 years lease from the Metropolitan Development Authority, he was not an 'owner' within the meaning of Section 13(1)(ff) of the Act and was, therefore, not entitled to seek eviction under that provision, Accordingly, the merits of the plaintiff's claim were not examined by the Ist appellate Court. This finding was affirmed by the High Court, and, like the Ist appellate Court, it also did not consider the merits of the plaintiffs case for eviction.
>
> 10. The plaintiff is an allottee in terms of the West Bengal Co-operative Societies Act, 1983: (See Sections 87 and 89). He has a right to possess the premises for a period of 99 years as a heritable and transferable property. During that period he has a right to let out the premises and enjoy the rental income therefrom, subject to the statutory terms and conditions of allotment. The certificate of allotment is the conclusive evidence of his title or interest. It is true that he has to obtain the written consent of the Society before letting out the premises. But once let out in accordance with the terms of allotment specified in the statute, he is entitled to enjoy the income from the property. Although he is a lessee in relation to the society, and his rights and interests are subject to the terms and conditions of allotment, he is the owner of the property having a superior right in relation to the defendant. As far as the defendant 'ISI concerned, the plaintiff is his landlord and the owner of the premises for all purposes dealt with under the provisions of the Act.
>
> 11. In view of what we have stated above, the High Court and the Ist appellate Court were wrong in setting aside the decree of the trial Court solely on the question of the appellant's title. The appellant's title was never an issue at any stage of the trial. There was no plea to that effect and no issue was, therefore, framed on the question. This being the position, the appellant's claim has to be decided on the basis of the pleadings, i.e., on the basis that he is the owner of the premises in question."

21. Placing reliance on para 16 of the decision of Supreme Court in the case of *Sheela V. Firm Prahlad Rai Prem Prakash* 2002 (2) JLJ 312 (SC), a

coordinate Bench of this Court in the case of *Karan Lal Kesharwani Vs. The Sardar House, Jabalpur and others* 2008 (2) MPLJ 365, has held as under :

> "15. There is sufficient force in the submission of Shri R.S. Tiwari, learned counsel for the applicant, that the degree of proving ownership in the matter between landlord and tenant under the proceedings of eviction as envisaged under Section 23-A(b) of the Act cannot be equated and would not be that much higher as required to be proved in a suit for establishing title. There is much substance in the submission of Shri Tiwari, learned counsel for the applicant, that continuously for last 23 years the tenants/respondents were paying rent to the applicant and during this long period of 23 years, they never challenged or disowned the ownership of the applicant. Indeed, in his cross-examination the tenant has admitted that he is paying rent to the applicant and has paid rent to him up to the year 2001. Thus, I am of the view that since for a considerable long period for more than 23 years, without any hindrance, the respondents were paying rent to the applicant and they never raised any objection in respect of his ownership during a very long period of 23 years and has raised this objection only when the present proceedings for eviction was filed by the landlord, by his conduct he is estopped from raising the dispute of title of the landlord and principle of estoppel would apply against the tenants under Section 116 of the Indian Evidence Act, 1872."

22. An another coordinate Bench of this Court in the case of *Smt. Ramdularibai and others Vs. Chhatrapal Singh Punjabi* AIR 1993 MP 90, has also held as under :

> "10. In this case, the tenant himself has admitted that the plot was leased to the applicant No. 1 Smt. Ramdularibai, who is a widow, by the Municipal Council, on which she has constructed two shops and one of them is in occupation of the a non-applicant. Merely because the non-applicant has filed a suit for injunction against the applicants for not to sell this plot or that applicant No. 1 itself is a lessee of the plot on which she has constructed the suit shop, will not debar the Rent Controlling Authority to decide the eviction application under S. 23A of the Act, in which the only question to be decided by the Rent Controlling Authority is whether there is previty of contract between the parties and whether relationship of landlord and tenant between them exists. The Rent Controlling Authority has not to enter into upon the question of title. The question of title is incidental in ejectment suit or proceedings between the landlord and tenant which is based on tenancy contract only. Admittedly

> the premises were constructed by the applicant-landlady and let out to the non-applicant. Merely because the plot on which the landlady had constructed the suit shop is on lease in favour of landlady will not debar her from claiming eviction of her tenant.
>
> 11. In the instant cases where the plot of land is taken on lease the structure is built by I the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term 'owner' as is contemplated under this Section. (Please see : Shanti Sharma v. Ved-prabha, AIR 1987 SC 2028.)"

23. Further, the aforesaid question of jurisdiction was not raised by the petitioner/non-applicant/tenant before the RCA, therefore, the same cannot be permitted to be raised in the present civil revision. However, the decision in the case of *Life Insurance Corporation of India* (supra) is distinguishable on facts. Resultantly, the aforesaid pending interim applications are liable to be and hereby dismissed.

24. Even otherwise, the scope of civil revision under section 23-E of the MPAC Act is limited and the RCA cannot go beyond the pleadings raised and evidence adduced by the parties.

25. As such in my considered opinion learned RCA does not appear to have committed any illegality in passing the impugned order of eviction. Resultantly, all the five civil revisions fail and are hereby dismissed.

26. However, as prayed by learned Counsel for the petitioner/tenant, looking to the period and nature of tenancy, in the interest of justice about six months' time is granted to the petitioner/non-applicant/tenant for vacating the rented shop(s) on the following conditions:-

> *(i) The petitioner/non-applicant/tenant shall vacate the rented shop on or before* ***31.12.2023.***
>
> *(ii) The petitioner/non-applicant/tenant shall regularly pay rent to respondent/applicant/landlord and shall also clear all the dues, if any, including the costs of the litigation, if any, imposed by the learned RCA within a period of 30 days from today.*
>
> *(iii) The petitioner/non-applicant/tenant shall not part with the rented shop to anybody and shall not change nature of the premises.*
>
> *(iv) The petitioner/non-applicant shall furnish an undertaking with regard to the aforesaid conditions within a period of three*

weeks before the learned RCA.

(v) If the petitioner/non-applicant/tenant fails to comply with any of the aforesaid conditions, the respondent/applicant shall be free to execute the eviction order forthwith.

*(vi) If after filing of the undertaking, the petitioner/non-applicant/tenant does not vacate the rented shop on or before **31.12.2023** and creates any obstruction, he shall be liable to pay mesne profits of Rs.500/- (Rs. five hundred) per day, so also contempt of order of this Court.*

*(vii) It is made clear that petitioner/non-applicant/tenant shall not be entitled for further extension of time after **31.12.2023.***

27. It is also pertinent to mention here that if after obtaining possession of the rented shop(s), the respondent/applicant/landlord's son does not start the requisite business, the petitioner/non-applicant/tenant shall be at liberty to invoke the provisions contained in section 23-G of the MPAC Act for recovery of possession for occupation and re-entry in the rented shop(s).

28. With the aforesaid observations, the civil revisions are hereby **dismissed and disposed off.**

29. Pending interim applications, if any, shall stand disposed off.

Revision dismissed

I.L.R. 2023 M.P. 1887

Before Mr. Justice Prem Narayan Singh

CRR No. 2962/2022 (Indore) decided on 4 July, 2023

SHALEEN …Applicant

Vs.

SMT. NIKHIL SHARMA …Non-applicant

***Criminal Procedure Code, 1973 (2 of 1974), Section 125 – Maintenance – Quantum* – Held – Applicant getting salary of Rs. 24,000/- p.m. – Trial Court awarded Rs. 12,000/- p.m. as maintenance to wife – To determine quantum, judge has to figure out what is required by wife for maintaining the standard of living which is neither luxurious nor penurious but it should be in accordance with the status of the family – Amount reduced to Rs. 9000/- p.m. from date of application – Additional amount paid shall be adjusted – Revision partly allowed. (Para 14 & 15)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 125 – भरण पोषण – मात्रा – अभिनिर्धारित – आवेदक 24,000/– रू. प्रतिमाह का वेतन प्राप्त कर रहा है – विचारण न्यायालय ने 12000/– रू. प्रतिमाह पत्नी को भरणपोषण के रूप में अधिनिर्णीत किये – मात्रा का अवधारण करने के लिए, न्यायाधीश को यह पता लगाना होगा कि पत्नी द्वारा, ऐसे जीवनस्तर को बनाये

रखने के लिए जो न तो वैभवपूर्ण हो न ही अभावग्रस्त हो बल्कि परिवार की हैसियत के अनुरूप हो, क्या अपेक्षित है – आवेदन की तिथि से राशि घटाकर 9000/– रू. प्रतिमाह की गई – भुगतान की गई अतिरिक्त राशि समायोजित की जाएगी – पुनरीक्षण अंशतः मंजूर।

Cases referred:

AIR 2017 SC 2383, 2020 Law Suit (M.P.) 1098.

Manish Yadav, for the applicant.
Ashutosh Sharma, for the non-applicant.

O R D E R

PREM NARAYAN SINGH, J.:- Petitioner has preferred this criminal revision under Section 19(4) of the Family Court Act 1984 read with Section 397/401 Cr.P.C. to set aside the order dated 12.07.2022 passed by the learned Principal Judge, Family Court, Ratlam in MJCR No.49/2017 whereby learned Principal Judge allowed the application under Section 125 of Cr.P.C. filed by the respondent/applicant and directed the petitioner/non-applicant to pay Rs.12,000/- per month as maintenance.

2. Regarding this revision petition, it is undisputed that the marriage between the petitioner/non-applicant and respondent/applicant was solemnized on 27.11.2015.

3. Succinctly, the case of the applicant is that just after marriage the petitioner and his family members started to demand dowry from the applicant. The petitioner has also threatened her to expel her from the house, if she fails to fulfill their demand of dowry. Further it is alleged that suddenly on one day, petitioner/non-applicant has forced the respondent/applicant to sit in a train for Ratlam. Even after this incident, the respondent, in order to save her home, went to her matrimonial house four times, i.e. on 28.03.2016, 30.04.2016, 09.08.2016 and 09.09.2016, however, she was humiliated and thrown out from her matrimonial house. In this way, she has been renounced and maltreated by her husband/petitioner. She further articulated that her husband is employed as Senior Sales Executive in Vijay Sales, Mumbai, Maharashtra and used to get salary of Rs.70,000/- per month. Hence she prayed for monthly maintenance of Rs.20,000/- and Rs.4,500/- as monthly rent for her house.

4. In reply, the petitioner/non-applicant, while denying the contentions of the application submitted that the respondent has made false allegations against the petitioner and his family members. It was alleged that she was voluntarily residing with her parents. The petitioner/non-applicant is working only as a clerk in a private company, while the respondent/ applicant herself is earning Rs.10,000/- by way of stitching clothes and Rs.5000/- from tuition, hence her application deserves to be dismissed.

5. In respect of the aforesaid averments, learned Principal Judge, Family Court has farmed (sic : framed) two points for determination:

i. Whether the respondent is entitled for maintenance from the petitioner?

ii. What would be the approximate amount of maintenance?

6. In this case, the respondent/applicant Smt. Nikhil Sharma deposed in her favour and petitioner/non-applicant Shaleen Nagar has deposed in his favour. After appreciating the evidence of both the parties, learned Principal Judge has awarded Rs.12,000/- as monthly maintenance to respondent.

7. In the course of arguments and revision petition, the impugned order has been challenged on behalf of the petitioner on various grounds. It is highly remonstrated that learned Court below itself admitted that the monthly income of the petitioner is only Rs.24,000/-and in spite of that an amount of Rs.12,000/- has been awarded as monthly maintenance. It is also contended that learned Family Court did not considered the fact that petitioner/non-applicant has the liability of his mother too and the respondent/applicant is earning her income. Learned Court below has also noticed the fact that the respondent/applicant is voluntarily not residing with the petitioner/non-applicant. It is also expostulated that the respondent/applicant has failed to prove her pleadings, even then the Court below has committed error in its findings.

8 . During the course of arguments Shri Yadav, mainly submitted on the point of quantum of maintenance and exposited that learned trial Court has wrongly awarded maintenance on the higher side, therefore, maintenance amount be modified/reduced from Rs.12,000/- to Rs.6,000/-.

9. I have heard the learned counsel for the petitioners and perused the record.

10. So far as the finding as to awarding maintenance is concerned, looking to the evidence available on record, it manifestly emerges that the petitioner himself has relinquished his wife without any reason. In this regard the testimony of applicant Smt. Nikhil Sharma has not been controverted by the evidence of petitioner Shaleen Nagar. As the allegations regarding the fact that she is residing voluntarily with her parents is found baseless in the eye of facts and circumstances of the case.

11. Now coming to the point of maintenance amount, learned trial Court in para-32 of the impugned judgment expressed that the petitioner/non-applicant is working as sales executive in Mumbai and thereby getting a salary of Rs.24,000/- per month. In spite of that learned trial Court has awarded half of the total amount as maintenance. However, in as much as 5 years has been elapsed since 2018, the

salary of the petitioner would be enhanced to Rs.40,000/- per month. This fact is also posited by petitioner during his arguments.

12. In this regard counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of *Kalyan Dey Chowdhury vs. Rita Dey Chowdhury Nee Nandy* reported as AIR 2017 SC 2383, in this case, the net salary of the husband was Rs.95,000/- per month and in appeal before the High Court, the maintenance was enhanced to Rs.23,000-. Further in appeal before the Hon'ble Supreme Court, it was reduced to Rs.20,000/- per month, which is less than 1/4th of the total salary of non-applicant in that case.

13. On this point, Co-ordinate Bench of this Court in the case of *Amit Pandey vs. Manisha Pandey* reported as 2020 Law Suit (M.P) 1098, by endorsing the aforesaid proposition has enunciated as under:-

> "The Hon'ble Apex Court in the case of Kalyan Dey Chowdhary Vs. Rita Dey Chowdhary Nee Nandy (AIR 2017 SC 2383), has held that 25% of the income of the husband would be just and proper and not more than that. So, apart from that when ex-parte order was passed in favour of the respondent/ wife, then learned trial Court should have awarded 25% of the net income of the petitioner/non-applicant as maintenance and not more than that. So, it is appropriate to reduce the awarded maintenance amount of Rs.10,000/- per month to Rs.7,000/- per month which would be paid by the petitioner/non-applicant to the respondent/wife. The decisions in Deb Narayan Halder Vs. Smt. Anushree Haldar (AIR 2003 SC 3174) and Chandrakalabai Vs. Bhagwan Singh (2002 Cr.L.J. 3970) are not at all applicable in the case of petitioner/non- applicant."

14. Virtually Section 125 of Cr.P.C is a piece of socialistic legislation in order to improve the status of a destitute lady in society. Inherent and immanent idea behind the Section 125 of Cr.P.C is to ameliorate the agony, anguish and financial suffering of a woman, who left her matrimonial home. In order to determine the quantum, the Judge has to figure out what is required by the wife for maintaining the standard of living which is neither luxurious nor penurious, but it should be in accordance with the status of family.

15. In view of the aforesaid discussions, the criminal revision is partly allowed. The impugned order dated 12.07.2022 passed by the learned Principal Judge, Family Court, Ratlam in MJCR No.49/2017 be modified to the extent that the maintenance amount of Rs. Rs.12,000/- per month, awarded to the respondent/non-applicant is reduced to Rs.9,000/- per month from the date of filing of application under Section 125 of Cr.P.C before the Family Court from the date of filing of application under Section 125 of Cr.P.C before the Family Court.

The additional amount already deposited by the petitioner shall be adjusted.

16. Rest of the conditions, if any, of the impugned order, stands affirmed.

17. With the aforesaid observations and directions, the revision petition stands **disposed of.**

18. A copy of this order be sent to the concerned Family Court for necessary information.

Certified copy, as per Rules.

Revision partly allowed

I.L.R. 2023 M.P. 1891 (DB)

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

CRRFC No. 6/2022 (Jabalpur) decided on 11 September, 2023

IN REFERENCE … Applicant
Vs.
ANOKHILAL … Non-applicant

(Alongwith Cr.A. No. 11421/2022)

***A. Penal Code (45 of 1860), Sections 302, 363, 366, 376(2)(f) & 377 and Protection of Children from Sexual Offences Act (32 of 2012), (POCSO) Sections 3, 4, 5 & 6 – Death Sentence – DNA Report – Evidence of Expert Witness* – Held – Evidence of the expert witness requires to be recorded by Trial Court and if necessary, relevant questions may also be framed u/S 313 CrPC – This would render complete justice not only to accused but also to prosecution – Failure to do so would probably leave a gaping hole in case of prosecution – Impugned order set aside – Matter remanded to trial Court with direction to summon and examine the expert witness and also to examine the accused u/S 313 CrPC on such additional evidence – Reference disposed. (Paras 14 (c), 19, 22 & 23)**

क. दण्ड संहिता (1860 का 45), धाराएँ 302, 363, 366, 376(2)(f) व 377 एवं लैंगिक अपराधों से बालकों का संरक्षण अधिनियम (2012 का 32), (पोक्सो) धाराएँ 3, 4, 5 व 6 – मृत्यु दण्ड – डी.एन.ए. रिपोर्ट – विशेषज्ञ साक्षी का साक्ष्य – अभिनिर्धारित – विशेषज्ञ साक्षी का साक्ष्य विचारण न्यायालय द्वारा अभिलिखित किया जाना अपेक्षित है तथा यदि आवश्यक हो, तो दं.प्र.सं. की धारा 313 के अंतर्गत भी सुसंगत प्रश्न विरचित किये जा सकते हैं – इससे न केवल अभियुक्त को बल्कि अभियोजन को भी पूर्ण न्याय मिलेगा – ऐसा करने में असफलता संभवतः अभियोजन प्रकरण में एक बड़ा अंतर छोड़ देगी – आक्षेपित आदेश अपास्त – मामला, विशेषज्ञ साक्षी को समन करने एवं उसका परीक्षण

करने तथा साथ ही ऐसे अतिरिक्त साक्ष्य पर दं.प्र.सं. की धारा 313 के अंतर्गत अभियुक्त का परीक्षण करने के निदेश के साथ विचारण न्यायालय को प्रतिप्रेषित – निर्देश निराकृत।

***B. Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Opportunity to Accused* – Held – All the incriminating circumstances appearing against accused in the evidence produced by prosecution shall be put to him in his statement u/S 313 CrPC so that he may have an opportunity to explain such circumstances. (Para 17 (a))**

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 313 – अभियुक्त को अवसर – अभिनिर्धारित – अभियोजन द्वारा साक्ष्य में प्रस्तुत अपराध में फंसाने वाली सभी परिस्थितियों को जो अभियुक्त के विरूद्ध प्रतीत होती है दं.प्र.सं. की धारा 313 के अंतर्गत उसके कथन में उसके समक्ष रखा जाएगा ताकि उसे उक्त परिस्थितियों को स्पष्ट करने का अवसर प्राप्त हो सके।

***C. Criminal Practice – DNA Report – Evidence of Expert Witness* – Held – Credibility of expert evidence in case of DNA report depends upon data, material or the basis on which conclusions were drawn in DNA report – Prosecution would have to prove through its witness the truthfulness of DNA report – Mere production of DNA report in Court or mere marking of the document is no proof of its authenticity – Defence has every right to cross-examine the expert with regard to DNA report and other documents. (Paras 13 (a), (d), (e) & (f))**

ग. दाण्डिक पद्धति – डी.एन.ए. प्रतिवेदन – विशेषज्ञ साक्षी का साक्ष्य – अभिनिर्धारित – डी.एन.ए. प्रतिवेदन के प्रकरण में विशेषज्ञ के साक्ष्य की विश्वसनीयता डेटा, सामग्री अथवा उस आधार पर निर्भर करती है जिस आधार पर डी.एन.ए. प्रतिवेदन में निष्कर्ष निकाले गये थे – अभियोजन को अपने साक्षी के माध्यम से डी.एन.ए. प्रतिवेदन की सत्यता साबित करनी होगी – न्यायालय में मात्र डी.एन.ए. प्रतिवेदन को प्रस्तुत करना या दस्तावेजों को मात्र चिन्हांकित करना उसकी प्रमाणिकता का सबूत नहीं है – बचाव पक्ष के पास डी.एन.ए. प्रतिवेदन एवं अन्य दस्तावेजों के संबंध में विशेषज्ञ का प्रतिपरीक्षण करने का प्रत्येक अधिकार है।

Cases referred:

(2023) 1 SCC 83, (2009) 9 SCC 709, (2022) 12 SCC 657, (2019) 4 SCC 771, ILR 2008 KAR 1840, (2004) 4 SCC 158, 1951 SCC 903, 2023 SCC OnLine SC 609, (2011) 4 SCC 402.

S.S. Chauhan, PP, for the applicant in CRRFC No. 6/2022 and for the respondent in CRA 11421/2022.

Anil Khare, as *amicus curiae* with *Shreya Rastogi, Yagyavalk Shukla and Sakshi Jain,* for the non-applicant in CRRFC No. 6/2022 and for the appellant in CRA No. 11421/2022.

O R D E R

The Order of the Court was passed by: **RAVI MALIMATH, CHIEF JUSTICE:-** This criminal reference as well as the criminal appeal arise out of the impugned judgment of conviction dated 29.08.2022 and order of sentence dated 30.08.2022 passed by the learned Special Judge, POCSO Act, Khandwa, District Khandwa (M.P.) in Sessions Case No.100053 of 2013.

2. The case of the prosecution is that on 30.01.2013 a missing report was lodged by one Ramlal stating that his daughter, aged about 9 years, went missing from about 6 p.m. on that day. That the accused, who is the neighbour, had sent the victim to get a *'bidi'* from a shop but the victim never returned. Thereafter, an FIR in Crime No.38 of 2013 was registered on the next day i.e. on 31.01.2013 with the Police Station Chhaigaon Makhan, District Khandwa for the offences punishable under Sections 363 and 366 of the Indian Penal Code, 1860 (for short "the IPC"). During the course of investigation, the body of the victim was found in an open field on 01.02.2013. The accused was arrested on 04.02.2013. On investigation being completed, a charge-sheet was filed on 13.02.2013. Charges were framed against the accused for the offences punishable under Sections 302, 363, 366, 376(2)(f) and 377 of the IPC as well as under Sections 3, 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act"). Thereafter, vide judgment of conviction and order of sentence dated 04.03.2013 passed by the Sessions Judge & Special Judge (POCSO), Khandwa in Sessions Case No.53 of 2013, the accused was convicted and sentenced as follows:

Sr. No.	Offence	Sentence	Fine (in ₹)	Sentence in default of fine
1.	302 IPC	Death sentence		
2.	363 IPC	7 years' RI	1,000/-	1 month's additional RI
3.	366 IPC	7 years' RI	1,000/-	1 month's additional RI
4.	377 IPC	7 years' RI	1,000/-	1 month's additional RI
5.	376(2)(f) IPC	Life Imprisonment	1,000/-	1 month's additional RI

(all sentences to run concurrently)

3. Thereafter, the case was referred to the High Court under Section 366 of the Code of Criminal Procedure, 1973 (for short "the CrPC") and Criminal Reference No.4 of 2013 was registered before the High Court. The accused also filed Criminal Appeal No.748 of 2013. By the judgment and order dated 27.06.2013 passed by a Division Bench of this Court, the appeal filed by the accused was dismissed and the reference was accepted thereby affirming the sentence passed by the Trial Court. Questioning the same, the accused filed Criminal Appeal Nos.62-63 of 2014 (Anokhilal vs. State of Madhya Pradesh)

before the Hon'ble Supreme Court of India. By the order dated 18.12.2019, it was held in para 20 to 24, as follows:-

> *"20. We, therefore, have no hesitation in setting aside the judgments of conviction and orders of sentence passed by the Trial Court and the High Court against the appellant and directing de novo consideration. It shall be open to the learned counsel representing the appellant in the Trial Court to make any submissions touching upon the issues (i) whether the charges framed by the Trial Court are required to be amended or not; (ii) whether any of the prosecution witnesses need to be recalled for further cross-examination; and (iii) whether any expert evidence is required to be led in response to the FSL report and DNA report. The matter shall, thereafter, be considered on the basis of available material on record in accordance with law.*
>
> *21. It must be stated that the discussion by this Court was purely confined to the issue whether, while granting free Legal Aid, the appellant was extended real and meaningful assistance or not. The discussion in the matter shall not be taken to be a reflection on the merits of the matter, which shall be considered and gone into, uninfluenced by any observations made by us.*
>
> *22. Before we part, we must lay down certain norms so that the infirmities that we have noticed in the present matter are not repeated:-*
>
> *i) In all cases where there is a possibility of life sentence or death sentence, learned Advocates who have put in minimum of 10 years practice at the Bar alone be considered to be appointed as Amicus Curiae or through legal services to represent an accused.*
>
> *ii) In all matters dealt with by the High Court concerning confirmation of death sentence, Senior Advocates of the Court must first be considered to be appointed as Amicus Curiae.*
>
> *iii) Whenever any learned counsel is appointed as Amicus Curiae, some reasonable time may be provided to enable the counsel to prepare the matter. There cannot be any hard and fast rule in that behalf. However, a minimum of seven days' time may normally be considered to be appropriate and adequate.*
>
> *iv) Any learned counsel, who is appointed as Amicus Curiae on behalf of the accused must normally be granted to have meetings and discussion with the concerned accused. Such*

interactions may prove to be helpful as was noticed in Imtiyaz Ramzan Khan vs. State of Maharashtra, (2018) 9 SCC 160.

23. In the end, we express our appreciation and gratitude for the assistance given by Mr. Luthra, the learned Amicus Curiae and request him to assist this Court for deciding other issues as noted in the Orders dated 12.12.2018 and 10.12.2019 passed by this Court, for which purpose these matters be listed on 18.02.2020 before the appropriate Bench.

24. With the aforesaid observations, the substantive appeals stand disposed of, but the matter be listed on 18.02.2020 as directed."

4. Thereafter, the Trial Court by the judgment of conviction dated 29.08.2022 and the order of sentence dated 30.08.2022 passed in Sessions Case No.100053 of 2013, convicted and sentenced the accused, as follows:

Sr. No.	Offence	Sentence	Fine (in ₹)	Sentence in default of fine
1.	302 IPC	Death sentence		
2.	363 IPC	7 years' RI	2,000/-	1 month's additional RI
3.	366 IPC	7 years' RI	2,000/-	1 month's additional RI
4.	376(2)(f)(j) & (m) IPC	Life Imprisonment	2,000/-	1 month's additional RI
5.	377 IPC	7 years' RI	2,000/-	1 month's additional RI

(all sentences to run concurrently)

5. Questioning the same, the accused has filed Criminal Appeal No.11421 of 2022 and the Trial Court made a reference, which is registered as Criminal Reference No.6 of 2022.

6. By the order dated 10.07.2023, Shri Anil Khare, learned Senior Counsel was requested to assist the Court as *amicus curiae* in Criminal Reference No.6 of 2022.

7. During the pendency of these proceedings, the accused has filed an application (IA No.6640 of 2023) under Section 367 read with Section 391 of the CrPC seeking complete laboratory documents and examination of the expert witness etc. By the instant application it was prayed as follows:

"In the light of the aforesaid submissions made hereinabove, it is most humbly prayed that this Hon 'ble Court may kindly be pleased to:

A. Direct the Respondent to call for complete laboratory documentation in relation to the DNA Report of SFSL Sagar

dated 01.03.2013 bearing no. FSL/DNA/122 including but not limited to copies of the following documents in the present case.

a. All laboratory documentation including worksheets, bench notes and equipment logbooks related to the tests conducted and methods used for extraction, quantification, amplification, electrophoresis and interpretation for all the articles received;

b. Electropherograms for DNA profiles and electronic raw data (.fsa) obtained from all articles received, allelic ladders and control samples used:

c. Working procedure manuals for Biology, Serology and DNA Divisions which were used in examination of all exhibits received;

d. Details of kits and softwares used in for DNA extraction, quantification, amplification, electrophoresis and interpretation in the case along with manuals of such kits and softwares;

e. Complete documentation of chain of custody of all the Articles sent for examination to SFSL Sagar with details of the packaging seals and sample seals used.

B. Direct the respondent to call for complete laboratory documentation in relation to the report dated 23.02.2013 bearing no. RFSL/ BI/149/13 of RFSL, Indore, including but not limited to copies of the following documents in the present case:

a. All laboratory documentation including bench notes and photographs relating to evidence and any reference samples for detection of blood and semen in the articles received;

b. Details of tests conducted and techniques used for examination of the articles received as well as the results of these tests;

c. Working procedure manuals for Biology, Serology and DNA Divisions which were used in examination of all exhibits received;

d. Complete documentation of chain of custody of all the Articles sent for examination to RFSL Indore with details of the packaging seals and sample seals used.

C. Direct the Ld. Special Judge (POCSO), Khandwa to summon and allow examination in chief, as well as allow cross examination by counsel for the Appellant, of Dr.

Pankaj Shrivastava, Scientific Officer Assistant Chemical Examiner, Govt. of MP, DNA Fingerprinting Unit, State Forensic Science Laboratory, Sagar, and Dr. S K Verma, Assistant Chemical Examiner, Regional Forensic Science Laboratory, Indore.

D. *Direct the Ld. Special Judge (POCSO), Khandwa to examine the Appellant under Section 313 CrPC in respect of such additional evidence.*

E. *Pass such further and other orders as this Hon'ble Court may deem fit and proper, in the interest of justice."*

8. It is contended by the learned counsel for the accused that the Hon'ble Supreme Court in its order dated 18.12.2019, in para 20, have clearly directed that it shall be open to the learned counsel appearing for the accused to make submissions touching upon the issues, which included: whether any of the prosecution witnesses need to be recalled for further cross-examination and whether any expert evidence is required to be led, in response to the FSL report and DNA report etc. That the same having not been done, the application requires to be allowed. That despite the observations made by the Hon'ble Supreme Court, the Trial Court has failed to examine the expert, who conducted the DNA examination and prepared the DNA report. That even though summons were issued to Dr. Pankaj Shrivastava, the Assistant Chemical Examiner, DNA Fingerprinting Unit, FSL, Sagar, who is the author of the DNA report, the same was cancelled by the order dated 04.07.2022. The same should not have been done. Earlier, summons were issued to him on 11.04.2022 and by relying on Section 293 of the CrPC, shifted the burden on the defence to show as to why an expert should be summoned. The application having been rejected, has led to miscarriage of justice. That the examination of the expert and consideration of the various documents goes to the very root of the case. The DNA report forms an important piece of evidence, which has been relied upon against the accused by the Trial Court. Therefore, non-examining the expert has led to gross miscarriage of justice vitiating the entire trial. That even the relevant questions regarding the same were not put to the accused when his statement was recorded under Section 313 of the CrPC, which has led to failure of justice. That the judgment of conviction and the order of sentence passed by the Trial Court is not in compliance of the directions of the Hon'ble Supreme Court. Hence, it is pleaded that the appeal be allowed and the matter be set down for retrial. In support of his case, he relies on the judgment of the Hon'ble Supreme Court in the case of *Rahul etc. etc. vs. State of Delhi, Ministry of Home Affairs and Another, etc.* reported in (2023) 1 SCC 83.

9. The same is disputed by the learned Public Prosecutor. He submits that there is absolutely no necessity to examine the expert. That the DNA report which

has been marked is sufficient to arrive at a just and fair conclusion. That the examination of the expert would only be a mere formality in view of his report being accepted by the Court. Therefore, he pleads that the application be rejected.

10. Heard learned counsels.

11. In the application filed under Sections 367 and 391 of the CrPC various facts and circumstances have been narrated by the accused. In effect, he has stated that the DNA report and other documents are key pieces of evidence which go to the root of the case. He has pointed out the various anomalies in the DNA report and other documents which require to be considered appropriately on the evidence being led. That the failure to lead evidence in support of the DNA report and other documents has led to gross miscarriage of justice. On the contrary, the reliance placed by the Trial Court on the DNA report and other documents without the supporting evidence is also bad in law and liable to be set aside.

12. Sections 367 and 391 of the CrPC, reads as follows:

> *"367. Power to direct further inquiry to be made or additional evidence to be taken.*
>
> *(1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.*
>
> *(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.*
>
> *(3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court.*
>
> *** *** ***
>
> *391. Appellate Court may take further evidence or direct it to be taken.*
>
> *(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.*
>
> *(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to*

the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

13. **(a)** The judgment of the Hon'ble Supreme Court in the case of *Anokhilal vs. State of Madhya Pradesh* rendered in Criminal Appeal No.62-63 of 2014 dated 18.12.2019 clearly indicates the factum as to whether any of the prosecution witnesses need to be recalled for further cross-examination and whether any expert evidence is required to be led, in response to the FSL and the DNA reports. The case of the accused has been consistent with regard to the DNA report. He has stated that no opportunity was given to him to examine the expert witness, since his evidence was not recorded. One of the key issues of evidence is that of the expert witness. That merely marking of a document is not sufficient. The same has to be proved through the evidence of the witness. It is very unfortunate that in the instant case the same has not been done.

(b) The Hon'ble Supreme Court in the case of *Ramesh Chandra Agrawal vs. Regency Hospital Limited and others* reported in (2009) 9 SCC 709 explained the role of expert evidence rendering expert opinion, with reference to para 16, which reads as follows:

"16. The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the layperson. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's knowledge. Thus cases where the science involved, is highly specialised and perhaps even esoteric, the central role of an expert cannot be disputed....."

(c) Further, a three-Judge Bench of the Hon'ble Supreme Court in the case of *Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey and others,* (2022) 12 SCC 657 stressed on the importance of expert evidence in the field of medicine. The Court with reference to para 31 held as follows:

"31...A medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which

induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the court."

(d) The Hon'ble Supreme Court in the case of *Pattu Rajan vs. State of T.N. and others* reported in (2019) 4 SCC 771 considered the probative value attached to DNA report with reference to para 52, which reads as follows:

"52. Like all other opinion evidence, the probative value accorded to DNA evidence also varies from case to case, depending on the facts and circumstances and the weight accorded to other evidence on record, whether contrary or corroborative. This is all the more important to remember, given that even though the accuracy of DNA evidence may be increasing with the advancement of science and technology with every passing day, thereby making it more and more reliable, we have not yet reached a juncture where it may be said to be infallible....."

Therefore, the credibility of expert evidence in case of a DNA report depends upon the data, material, or the basis on which conclusions were drawn in DNA report.

(e) In a case where the prosecution relies on the expert evidence to prove the charge against an accused, then mere production of a DNA report in the Court may not be sufficient. Therefore, where the prosecution relies upon the DNA report of the expert to bring home the guilt against an accused, then merely by relying upon the DNA report it cannot establish the said medical evidence beyond all reasonable doubt. In such circumstances, it is all the more imperative that not only the report is produced, but the expert witness is also examined before the Court on oath and sufficient opportunity is given to the accused to cross-examine him on the correctness of the report. Reliance is placed on a decision of the Karnataka High Court in the case of *Parappa and others vs. Bhimappa and another* reported in ILR 2008 KAR 1840 with reference to para 20, wherein, the Court observed as follows:-

"20. This provision should not be confused with the general law governing the admissibility of an expert's evidence. In a criminal case when the prosecution relies on the expert's evidence to prove the charges against the accused mere production of the said expert's report into Court is not sufficient. It does not become a part of the Court record on mere production. If the prosecution relies on a report of the expert, not only the report is to be produced, the author of the report is also to be examined in the Court on oath and an opportunity should

be given to the accused to cross-examine the said expert on the correctness of the report. It is only then the said evidence becomes admissible and not otherwise"

(f) Thus, we are of the view that the prosecution would have to prove through its witness the truthfulness of the DNA report and other documents which have been marked. If they do not do so the mere marking of the document is no proof of its authenticity. The defence has every right to cross-examine the expert with regard to the DNA report and other documents.

14.**(a)** In the instant case, pursuant to the directions issued by the Hon'ble Supreme Court, summons were issued to the expert witness on 11.04.2022. The expert failed to receive the summons and was repeatedly absent. By placing reliance on Section 293 of the CrPC, the Trial Court incorrectly shifted the burden on the defence to show why an expert should be summoned. This, we feel, is rather erroneous. Furthermore, by the order dated 04.07.2022, the summons issued to the expert witness was cancelled.

(b) The Hon'ble Supreme Court in the case of *Zahira Habibulla H. Sheikh vs. State of Gujarat (Best Bakery case),* reported in (2004) 4 SCC 158 laid great emphasis on the concept of a fair trial and observed that it does not only mean that the accused should be convicted and punished, but it also entails that a just and fair procedure is followed in the trial. It has also been emphasised that the Courts have an overriding duty to maintain public confidence in the administration of justice so that the majesty of law is maintained. The Hon'ble Supreme Court in para 35 thereof, further held as follows:-

"35..... Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves.

Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators."

(c) By cancelling the summons issued to the expert witness, not only has the prosecution not established its case beyond all reasonable doubt but the accused

has not had the opportunity to cross-examine the witness. Thus, the cancellation of the summons issued to the witness was wholly uncalled for. Not only has it led to gross miscarriage of justice, but is also in violation of the directions issued by the Hon'ble Supreme Court in the case of *Anokhilal* (supra) decided on 18.12.2019. Therefore, we are of the view that this error committed by the Trial Court becomes fatal.

(d) The Hon'ble Supreme Court in the case of *Rahul vs. State (NCT of Delhi)* reported in (2023) 1 SCC 83 held in para 38 as follows:

> *"38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, however mere exhibiting a document, would not prove its contents. The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27-2-2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion. "*

Here also the Hon'ble Supreme Court came to the view that in the absence of expert evidence the reports with regard to the DNA profiling become vulnerable affecting the case of the prosecution. Therefore, we are of the considered view that the application requires to be allowed. In the absence of the application being the allowed, the evidence placed by the prosecution may not be sufficient to prove their case beyond all reasonable doubt. Therefore, in the interest of the prosecution also, the examination of the expert witness by the Trial Court becomes imminent.

15. At this juncture, the learned Public Prosecutor, by placing reliance on Section 391 of the CrPC, submits that it is not necessary for the Trial Court alone to examine the witness. The Appellate Court is entitled to take further evidence as it deems appropriate in terms of Section 391 of the CrPC. Therefore, he pleads that while allowing the application there is no necessity to remand the matter to the Trial Court for a fresh consideration.

16. However, on hearing learned counsels, we are of the view that the ends of justice would not be met by the mere recording of the evidence by this Court. It is only just and necessary that the evidence of the expert be recorded by the Trial Court and if necessary, relevant questions may also be framed under Section 313 of the CrPC.

17. **(a)** The law regarding Section 313 of the CrPC is no longer *res integra.* It is well established in law that all the incriminating circumstances appearing against the accused in the evidence produced by the prosecution shall be put to him in his statement under Section 313 of the CrPC so that he may have an opportunity to explain such circumstances.

(b) The Hon'ble Supreme Court in the case of *Tara Singh vs. State* reported in 1951 SCC 903 with reference to para 18 observed as follows:

> *"18....if a point in the evidence is considered important against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and I cannot permit it to be slurred over....."*

(c) The aforesaid principle has been reiterated by the Hon'ble Supreme Court in the case of *Raj Kumar vs. State (NCT of Delhi)* reported in 2023 SCC OnLine SC 609 with reference to para 23 observed as follows:-

> *"23. In many criminal trials, a large number of witnesses are examined, and evidence is voluminous. It is true that the Judicial Officers have to understand the importance of Section 313. But now the Court is empowered to take the help of the prosecutor and the defence counsel in preparing relevant questions. Therefore, when the Trial Judge prepares questions to be put to the accused under Section 313, before putting the questions to the accused, the Judge can always provide copies of the said questions to the learned Public Prosecutor as well as the learned defence Counsel and seek their assistance for ensuring that every relevant material circumstance appearing against the accused is put to him. When the Judge seeks the assistance of the prosecutor and the defence lawyer, the lawyers must act as the officers of the Court and not as mouthpieces of their respective clients. While recording the statement under Section 313 of CrPC in cases involving a large number of prosecution witnesses, the Judicial Officers will be well advised to take benefit of subsection (5) of Section 313 of CrPC, which will ensure that the chances of committing errors and omissions are minimized. "*

18. Furthermore, the Hon'ble Supreme Court in *Anokhilal's* case (supra) has already directed for a *de novo* consideration. They have also indicated the procedure to be followed, namely, with regard to the adequacy of the charges and as to whether any of the prosecution witnesses need to be recalled for further examination and whether any expert evidence is required etc. The matter was directed for a *de novo* consideration to the Trial Court but it is the Trial Court which has failed to comply with the direction of the Hon'ble Supreme Court. Therefore, on this ground also, we are of the view that it would not be proper for this Court to answer the said issues in view of the fact that the direction has already been issued by the Hon'ble Supreme Court to the Trial Court to do the necessary.

19. In view of the aforesaid discussion, the evidence of the expert requires to be recorded by the Trial Court and if necessary, relevant questions may also be framed under Section 313 of the CrPC. This, we feel, would render complete justice not only to the accused but also to the prosecution. Failure to do so would probably leave a gaping hole in the case of the prosecution. Therefore, we do not find that the judgment of conviction and order of sentence as rendered by the Trial Court would become sustainable. The Trial Court would be expected to record the evidence of the expert witness along with the cross-examination by the accused, if any. Thus, we are of the considered view that the Trial Court can also frame those questions which are relatable to the DNA report but also with regard to the various other documents relatable to the issue pertaining to the DNA.

20. We are aware of the repercussions of the instant order. In terms whereof, the matter would be remanded to the Trial Court to comply with the directions of the Hon'ble Supreme Court in *Anokhilal's* case (supra) as well as the directions in this order. Even though the matter was remanded on the earlier occasion to the Trial Court, we are not able to find any good or reasonable ground to retain the appeal before this Court. It would not be appropriate for the Appellate Court to record the evidence under Section 391 of the CrPC and all other relevant issues that arise for consideration. It is not a simple case of a solitary evidence that is required. If that were to be so, we would have not hesitated in recording the evidence of DNA expert and the statement of the accused under Section 313 of the CrPC before this Court. In fact, the Hon'ble Supreme Court in the case of *Ashok Tshering Bhutia vs. State of Sikkim*, (2011) 4 SCC 402 have considered the power of the Appellate Court to take additional evidence under Section 391 of the CrPC. In para-28, it was held as follows:

> *" 28. Additional evidence at the appellate stage is permissible, in case of a failure of justice. However, such power must be exercised sparingly and only in exceptional suitable cases where the court is satisfied that directing additional evidence would serve the interests of justice. It would depend upon the*

facts and circumstances of an individual case as to whether such permission should be granted having due regard to the concepts of fair play, justice and the well-being of society. ...."

Therefore, even though the Appellate Court is entitled to take the additional evidence under Section 391 of the CrPC and record the statement of the accused under Section 313 of the CrPC, in the given facts and circumstances of this case, it would be more appropriate and ends of justice would be met, if the said exercise is conducted only by the Trial Court. Furthermore the Hon'ble Supreme Court had directed the matter to be considered by the Trial Court. In case the Hon'ble Supreme Court was of the view that it is for the Appellate Court to do so, then we would have certainly done so. In view of the specific direction to the Trial Court alone to comply with the direction of the Hon'ble Supreme Court, it may appear to be an infraction of the direction of the Hon'ble Supreme Court. Hence, we are of the view that the matter requires to be considered by the Trial Court.

21. So far as the evidence of the other witnesses is concerned, we do not find that any change is called for. The evidence has already been recorded and cross-examination, if any, has already been conducted by the accused. Therefore, those evidences will remain undisturbed. The Trial Court would record the evidence of the expert and the accused will have his right to have a say with regard to the documents to be produced by the prosecution. After this exercise is done, the matter may be listed for final arguments and the judgment be pronounced by the Trial Court. Therefore, directing the Trial Court to hold a *de novo* trial may not be appropriate.

22. Hence, for all these reasons, the application (I.A. No.6640 of 2023) is allowed on the following terms:

(i) The Trial Court to summon and examine the expert, namely, Dr. Pankaj Shrivastava, who was the then Scientific Officer Assistant Chemical Examiner, Government of Madhya Pradesh, DNA Fingerprinting Unit, State Forensic Science Laboratory, Sagar (M.P.) and Dr. S.K. Verma, Assistant Chemical Examiner, Regional Forensic Science Laboratory, Indore (M.P.);

(ii) The Trial Court to examine the accused under Section 313 of the CrPC with respect to such additional evidence;

(iii) The Trial Court, thereafter, to consider the new evidence and material and by considering the other evidence already on record, pronounce its judgment.

23. Consequently, Criminal Reference (CRRFC No.6 of 2022) is disposed off. Criminal Appeal (CRA No. 11421 of 2022) is allowed. The judgment of conviction dated 29.08.2022 and the order of sentence dated 30.08.2022 passed

by the learned Special Judge (POCSO), Khandwa in Sessions Case No.100053 of 2013 are set aside. The matter is remanded to the Trial Court for consideration, as directed hereinabove. The parties to appear before the Trial Court on 25.09.2023. In view of the long passage of time, the Trial Court is directed to complete the exercise within a period of three months, if necessary, then on a day-to-day basis.

24. The reference and the appeal are accordingly disposed off.

Order accordingly

I.L.R. 2023 M.P. 1906
Before Mr. Justice Vijay Kumar Shukla
MCRC No. 14200/2023 (Indore) decided on 9 May, 2023

KARANSINGH ...Applicant

Vs.

STATE OF M.P. & anr. …Non-applicants

***A. Criminal Procedure Code, 1973 (2 of 1974), Section 451 & 457 and Excise Act, M.P. (2 of 1915), Section 47(D) – Bar – Applicability* – Held – On the date of application for interim custody of vehicle, there was no intimation received by the Court from the Collector regarding initiation of proceedings for confiscation and therefore the bar u/S 47-D of 1915 Act would not attract – Application filed by applicant u/S 451 is allowed with conditions. (Paras 10 to 12)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 451 व 457 एवं आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 47(D) – वर्जन – प्रयोज्यता – अभिनिर्धारित – वाहन की अंतरिम अभिरक्षा के लिए आवेदन की तिथि पर, अधिहरण की कार्यवाहियां आरंभ करने के संबंध में कलेक्टर से न्यायालय को कोई सूचना प्राप्त नहीं हुई थी एवं इसलिए अधिनियम 1915 की धारा 47–D के अंतर्गत वर्जन आकर्षित नहीं होगा – धारा 451 के अंतर्गत आवेदक द्वारा प्रस्तुत आवेदन सशर्त मंजूर।

***B. Excise Act, M.P. (2 of 1915), Section 47(A)(3)(a) – Jurisdiction of Criminal Court* – Held – If criminal Court has been given intimation u/S 47(A)(3)(a) about initiation of confiscation proceedings by the Collector, then criminal Court is ceased of the matter and has no jurisdiction to pass any order for interim custody of vehicle. (Paras 7 to 9)**

ख. आबकारी अधिनियम, म.प्र. (1915 का 2), धारा 47(A)(3)(a) – दाण्डिक न्यायालय की अधिकारिता – अभिनिर्धारित – यदि दाण्डिक न्यायालय को कलेक्टर द्वारा अधिहरण कार्यवाहियां आरंभ किये जाने के बारे में धारा 47(A)(3)(a) के अंतर्गत सूचना प्रदान की गई है, तो दाण्डिक न्यायालय इस मामले से प्रविरत हो जाता है तथा उसे वाहन की अंतरिम अभिरक्षा के लिए कोई आदेश पारित करने की अधिकारिता नहीं है।

Cases referred:

MCRC No. 32547/2019 decided on 29.04.2022, MCRC No. 37250/2022 order passed on 17.03.2023, MCRC No. 6500/2018 order passed on 05.07.2018, 2003 (1) MPHT 439, 2010 (1) MPLJ (Cri) 205.

Bharat Yadav, for the applicant.
Vinod Thakur, G.A. for the non-applicant No. 1/State.
Manoj Kumar Sahani, for the non-applicant No. 2.

O R D E R

VIJAY KUMAR SHUKLA, J.:- The present petition is filed under Section 482 of the Code of Criminal Procedure, being aggrieved by the order dated 1/3/2023 passed by the Ist ASJ, Rajgarh, District - Rajgarh(M.P.) in Criminal Revision No.21/2023 arising out of the order dated 2/2/2023 passed by Judicial Magistrate, Rajgarh in criminal case No.174/2023 arising out of crime No. 17/2023 registered at P.S. - Biaora Dehat, District - Rajgarh (M.P.) whereby the Courts below rejected the application filed by the petitioner under Section 451 of Cr.P.C for interim custody of the vehicle No. MP-45-H-0341.

2. The facts of the case are that the petitioner is a registered owner of mini truck bearing registration No.MP-45-H-0341. The petitioner entered into an agreement on 10/10/2022 for rent of the aforesaid vehicle to the respondent No. 2 namely Bhaskar Hihor and against whom the aforesaid case is registered by the respondent No.1. On secret information received on 18/1/2023, the respondent No. 2 was arrested by the respondent No. 1 and it is alleged that the respondent No. 2 was carrying 725.76 bulk litre of foreign liquor in the said vehicle without possessing any valid permit/license. The vehicle was seized on the spot. After completion of the investigation, charge-sheet has been filed on 21/2/2023. The petitioner being owner of the said vehicle filed an application for interim custody of the aforesaid vehicle before the Trial Court which was rejected by order dated 2/2/2023. The petitioner filed a Revision Petition against the said order. The said Revision has also been dismissed by impugned order dated 1/3/2023. Being aggrieved by the aforesaid the petitioner has invoked the jurisdiction under Section 482 of the Code of Criminal Procedure.

3. Counsel for the applicant submits that the Trial Court has rejected the application under Section 451 of Cr.P.C read with Section 457 of Cr.P.C. considering the bar under Section 47(D) of the M.P. Excise Act (in short referred to as "the Act"). It is submitted that the application for interim custody of the vehicle was filed on 25/1/2023. The arguments were heard on 28/1/2023 and on the same day the Trial Court issued a letter to the District Magistrate/Collector, Rajgarh seeking an information regarding initiation of confiscation proceedings and by letter dated 2/2/2023, the Collector informed the Court that the

proceedings for confiscation have been initiated. He has drawn attention of this Court to Annexure P-6 dated 28/1/2023 and Annexure P-7 dated 2/2/2023. It is argued that on the date of application, there was no communication by the Collector, Rajgarh regarding initiation of proceedings of confiscation of seized property under Section 47(A)(2) of the Act and, therefore, the bar under Section 47(D) of the Act would not apply. In support of his submissions, he has placed reliance on the judgment of a co-ordinate Bench of this Court dated 29/4/2022 in the case of *Kishore Vs. State of M.P.* passed in M.Cr.CNo. 32547/2019 and also order passed by this Court dated 17/3/2023 in the case of *Narendra Vs. State of M.P.* passed in M.Cr.C no.37250/2022 whereby it has been held that if there is no communication received about initiation of the proceedings of confiscation on the date of application, the bar under Section 47(A) of the Act would not apply.

4. Counsel for the State supports the impugned orders and placed reliance on an order by a co-ordinate Bench of this Court dated 5/7/2018 passed in the case of *Anil Dhakad Vs. State of M.P.* (M.Cr.C No.6500/2018) and other connected petitions, wherein it has been held that the bar under Section 47(D) of the Act would not apply in the cases where the intimation regarding initiation of proceedings for confiscation have been received by the Court before passing the order for interim custody of vehicle.

5. I have heard learned counsel for the parties.

6. To appreciate the rival submissions, it is apposite to refer to the relevant provisions of Section 47(D) of the Act which is reproduced as under:-

> 47-D. **Bar of jurisdiction of the Court under certain circumstances.-** Notwithstanding anything to the contrary contained in the Act, or any other law for the time being in force, the Court having jurisdiction to try offences covered by the clauses (a) or (b) of sub Section (1) of the Section 34 on account of which such seizure has been made, shall not make any order about the disposal, custody etc. of the intoxicants, articles, implements, utensils, materials, conveyance etc. seized after it has received from the Collector an intimation under Clause (a) of sub-Section (3) of Section 47-A about the initiation of the proceedings for confiscation of seized property..

7. On bare reading of the aforesaid provision, it is apparent that if the Criminal Court has been given intimation as per provision under section 47(A)(3)(a) of the Act about initiation of confiscation proceedings by the Collector regarding confiscation then the criminal court is ceased of the matter and has no jurisdiction to pass any order for interim custody of vehicle as held by this Court in the order dated 03/01/2003 passed in the case of *Suresh R. Dave Vs. State of Madhya Pradesh* (M.Cr.C.No.4390/2002) reported in 2003(1) MPHT 439 and

order dated 20/07/2009 passed in the case of *Pratik Parik Vs. State of Madhya Pradesh* (M.Cr.C.No.4244/2009) reported in 2010 (1) MPLJ (Cri) 205.

8. Further elaborating his submission, learned counsel for the petitioner contends that unless intimation under Clause (a) of sub-section (3) of Section 47-A of the Act is received by the Court, the Court has full jurisdiction to deal with the application for 'supurdagi' on merits. That has not been done.

9. Upon hearing counsel for the parties, at the outset, it is expedient to observe that if law requires a particular act to be done in a particular manner, it can be done in the same manner and not otherwise. Conjoint reading of Section 47-A and 47-D of the Act suggests that jurisdiction of the Court is barred, if intimation of initiation of confiscation proceedings of seized property is received under clause (a) of sub-section (3) of Section 47-A of the Act.

10. In the case of *Suresh R. Dave, Prateek Parik* (supra) and in the case of *Kishore and Narendra* (supra) it has been held that if there is no communication regarding initiation of proceedings of confiscation by the Collector to the Court prior to filing of application for "Supurdaginama", the bar under Section 47(D) of the Act would not come in the way while deciding the application under Section 451/457 of the Code of Criminal Procedure. The petition was allowed and the orders were set aside.The law laid down in the case of *Suresh R. Dave and Prateek Parik* (supra) has not been considered in the judgment passed in the case of *Anil Dhakad* (supra) which has been relied upon by the respondents and, therefore, it is held that the law laid down in the case of *Anil Dhakad* (supra) is *per incuriam.*

11. In the facts of the present case, it is evident that the application for interim custody of the vehicle was moved on 25/1/2023 and the matter was heard on 28/1/2023. Thereafter, the Court sought information from the Collector regarding initiation of proceedings for confiscation. In turn, on 2/2/2023 intimation was sent by the Collector to the Court regarding initiation of confiscation proceedings. Thus, on the date of the application, there was no intimation received by the Court from the Collector, Rajgarh regarding initiation of proceedings for confiscation and, therefore, the bar under Section 47(D) of the Act would not attract.

12. In view of the aforesaid, the present petition is allowed. The impugned order dated 1/3/2023 passed by Ist ASJ, Rajgarh District - Rajgarh (M.P.) in Criminal Revision No.21/2023 and order dated 2/2/2023 passed by Chief Judicial Magistrate, Rajgarh in Criminal Case No.174/2023 rejecting the application for interim custody of the said vehicle are set aside. The application filed by the applicant under Section 451 of Cr.P.C is allowed. The vehicle in question shall be released subject to the following conditions:-

(i) The applicant shall not change the original nature/colour of the vehicle.

(ii) The applicant shall not alienate or transfer the said vehicle to any third party or shall not create any interest of third party.

(iii) The applicant shall produce the said vehicle before the Court as and when directed by the Court during trial at his own risk and cost.

(iv) In case, in the opinion of the court the applicant does not produce the vehicle in the condition in which it was given in his possession, the applicant shall pay the amount which would be determined by the court.

(v) In case of confiscation of the vehicle by the Competent Authority, the applicant shall produce the vehicle in the same condition in which it was given in his possession and if the Competent Authority found that the vehicle is not found in the same condition, then he shall pay the cost in lieu thereof as determined by the Competent Authority.

Application allowed

I.L.R. 2023 M.P. 1910 (DB)

Before Mr. Justice S.A. Dharmadhikari &
Mr. Justice Prakash Chandra Gupta

MCRC No. 32331/2021 (Indore) decided on 16 June, 2023

NARENDRA JAIN & anr. ...Applicants
Vs.
LOKAYUKTA POLICE ESTABLISHMENT & ors. …Non-applicants

A. Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2), Penal Code (45 of 1860), Section 120-B and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Ingredients of Offence – **Held – Case is purely of civil nature where the question that whether petitioner has properly calculated and paid stamp duty and was under obligation to pay remaining stamp duty in treasury for registration of unregistered sale deed is still pending for adjudication in Writ Petition – Lokayukta wrongly registered FIR against petitioners by converting a civil wrong into a criminal one – FIR and consequential proceedings are quashed – Application allowed. (Paras 31 to 33)**

क. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(d) व 13(2), दण्ड संहिता (1860 का 45), धारा 120–B एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अपराध के घटक – **अभिनिर्धारित – प्रकरण पूर्ण रूप से सिविल प्रकृति का है, जहां यह प्रश्न रिट याचिका में न्यायनिर्णयन के लिए अभी भी लंबित है कि क्या याची ने स्टाम्प शुल्क की उचित रूप से गणना एवं भुगतान किया है तथा अरजिस्ट्रीकृत विक्रय विलेख के रजिस्ट्रीकरण हेतु कोषागार में बकाया स्टाम्प शुल्क का भुगतान करने हेतु बाध्यताधीन था – लोकायुक्त ने एक सिविल दोष को दाण्डिक दोष में परिवर्तित करते हुए**

याचीगण के विरूद्ध गलत रूप से प्रथम सूचना प्रतिवेदन पंजीबद्ध किया – प्रथम सूचना प्रतिवेदन एवं पारिणामिक कार्यवाहियां अभिखंडित – आवेदन मंजूर।

***B. Prevention of Corruption Act (49 of 1988), Section 13(1)(d) & 13(2) and Penal Code (45 of 1860), Section 120-B – Ingredients of Offence* – Held – Petitioners produced true copy of unregistered sale deed before various authorities to mutate disputed property and to take permission for constructing residential cum commercial complex, it is neither an illegal act nor an act which is not illegal in itself but is done by illegal means – Essential ingredients of Section 120-B IPC is absent – No offence u/S 120-B IPC made out – In consequence of such finding, charges under the 1988 Act are wrongly leveled against petitioners. (Para 30)**

ख. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 13(1)(d) व 13(2) एवं दण्ड संहिता (1860 का 45), धारा 120–B – अपराध के घटक – अभिनिर्धारित – याचीगण ने विवादित संपत्ति नामांतरित करने एवं आवासीय सह वाणिज्यिक भवन का निर्माण करने हेतु अनुमति लेने के लिए विभिन्न प्राधिकारीगण के समक्ष अरजिस्ट्रीकृत विक्रय विलेख की सत्य प्रतिलिपि प्रस्तुत की, यह न तो एक अवैध कार्य है न ही कोई ऐसा कार्य है जो अपने आप में तो अवैध नहीं हो परंतु अवैध साधनों द्वारा किया गया हो – भा.दं.सं. की धारा 120–B के आवश्यक घटक अनुपस्थित है – भा.दं.सं. की धारा 120–B के अंतर्गत कोई अपराध नहीं बनता – उक्त निष्कर्ष के परिणामस्वरूप, अधिनियम 1988 के अंतर्गत याचीगण के विरूद्ध गलत रूप से आरोप लगाये गये।

Cases referred:

(2018) 5 SCC 678, (2014) 15 SCC 221, (2012) 4 SCC 547, (2019) 10 SCC 337, (2010) 5 SCC 600, (2019) 2 SCC 336, (2012) 9 SCC 460, (2011) 12 SCC 319, (2019) 13 SCC 350, (2010) 11 SCC 226, (2012) 12 SCC 437, (2019) 10 SCC 373, (2009) 9 SCC 682, (2019) 10 SCC 686, 2023 liveLaw (SC) 67, 2022 Live Law (SC) 110, 2022 LiveLaw (SC) 1033, (2009) 11 SCC 737, 2012 LiveLaw (SC) 709, 2022 LiveLaw (SC) 106.

Vivek Dalal, for the applicants.
Raghvendra Singh Raghuvanshi, for the non-applicants.

O R D E R

The Order of the Court was passed by :
SUSHRUT ARVIND DHARMADHIKARI, J.:- The petitioners have filed the present petition under section 482 of The Criminal Procedure Code for quashing the first information report bearing crime number 141/2012 dated 21/07/2012 registered by Special police establishment office of lokayukt Ujjain and to quash all other consequential proceedings arising out of the same FIR.

2. Before evaluating the merits of the case, the facts of the present case as per FIR, in nutshell are-

(i) The petitioners had purchased a plot bearing Municipal number 96 and 96 admeasuring 1050 square metres or 11298 square feet situated at Lal Bahadur Shastri Marg sanver Road District Ujjain (hereinafter referred as disputed property) from Jitendra bhai son of late Shri Shiv bhai Patel for a consideration of Rs. 1 crore on 11th January 2010. In order to get the same sale as a registered contract, petitioners booked a registration slot at the Sub Registrar Office, District Ujjain M.P by paying a stamp duty of rupees 7.5 lakh, Municipal duty of rupees 1 lakh, Panchayat duty of rupees 1 lakh, registration fee of rupees 37,450/-, Consent fee of rupees 10, total rupees 9,87,500/- was deposited by the petitioners for the registration of sale deed.

(ii) The police while investigating has recorded the statement of sub registrar Mr. Girish Chaurasia who in his statement has stated that, "the petitioner paid the duty of Rs 9,87,500/- to get the sale deed registered but on the contrary when Mr. Girish Chaurasiya did the inspection of the disputed property he found out that the disputed property is of commercial nature and the petitioners while booking the slot has neither calculated the stamp duty properly nor paid the proper stamp duty according to the collector guidelines of year 2009-2010. Mr. Girish Chaurasiya asked petitioners to pay the adequate stamp duty as per the Collector Guidelines but the petitioners refused to pay the extra stamp duty therefore the sale deed was not registered and Mr. Girish Chaurasiya vide his letter no. 21 dated 04/02/2010 brought this matter to the knowledge of Senior District Registrar and Collector of Stamps, District, Ujjain.

(iii) The Office of Senior District Registrar and Collector of Stamps District Ujjain by taking cognizance upon the above mentioned letter has filed a case number 45/V/105-2009-10 against the petitioners and in the same case the Court of Senior District Registrar and Collector of Stamps District Ujjain vide order dated 21-05- 2012 it was directed to the petitioner to deposit the amount of Rs. 21,76,250 in the district treasury within next 30 days for the registration of unregistered sale deed.

(iv) The petitioners, being aggrieved by the order dated 21/05/2012 passed by the Court of Senior District Registrar and Collector of Stamps District Ujjain filed an appeal No. 202/2011-12/Appeal before the Court of Divisional Commissioner, Ujjain Division, District Ujjain. The Court of Divisional Commissioner, Ujjain Division, District Ujjain, rejected the said appeal and affirmed the order dated 22/10/2012 passed by the Court of Senior District Registrar and Collector of Stamps, District Ujjain.

(v) The petitioner being aggrieved by the order dated 22/10/2012 passed by the Court of Commissioner Ujjain Division District Ujjain, filed an appeal No. 4100/PBR/2012 before The Revenue Board of Madhya Pradesh at Gwalior, which was rejected vide order dated 25/06/2013 and the Order dated

22/10/2012 passed by the Court of Commissioner Ujjain Division District Ujjain was affirmed. However, the petitioner being aggrieved by the order dated 25/06/2013 passed by the Revenue Board, Gwalior has filed a WP/10530/2013 which is still pending for the final disposal before this Court.

(vi) During the ongoing process of litigation before various quasi-judicial courts, the Petitioner approached his advocate Shri Umesh R Chaurasia to get the true copy of the unregistered sale deed. Deputy Registrar Shree M.L. Patel who is the head of the copying section of the District Registrar office, District Ujjain upon the application of petitioner's advocate to provide the true copy of the sale deed, provided the copy of the unregistered sale deed as per the existing provisions of law although no such tip or instruction was made upon the true copy of the sale deed that it was unregistered document.

(vii) It is alleged that the petitioners after obtaining the true copy of the unregistered sale deed from the office of Sub-Registrar District Ujjain filed an application before the municipal corporation for mutating the said disputed property in their name by engaging in the criminal conspiracy with the other co accused namely Ramkumar Sarvan and Ramesh Chandra Raghuvanshi. It is further alleged that, the co accused Ramkumar Sarwan and Mr Ramesh Chandra Raghuvanshi without examining the true copy of the sale deed, whether it was registered or not had mutated the disputed property in name of the petitioners and made the relevant revenue entries in the municipal records.

(viii) It is further alleged that the petitioners upon the basis of the unregistered sale deed had filed an application in the Office of Municipal Corporation, Ujjain dated 23-11-2010 with challan No. 11 of Rs 44,03,000/- for granting permission to construct a Commercial Complex upon the disputed property. Acting upon the said application, co-accused in the present case Ramkumar Sarwan and Mr Ramesh Chandra Raghuvanshi without examining the sale deed that whether it is registered or not, had called for the site plan from the Directorate of Town and Country Planning District Ujjain vide its letter dated 20-12-2010.

(ix) It is further alleged that acting upon the letter dated 20-12-2010 and upon the petitioner's application dated 30-11-2010 to provide no objection for raising residential cum commercial complex upon the disputed property, the co-accused (Darshan Lal) i.e. Director of Directorate of Town and Country Planning District Ujjain, with the aid of his office employees forwarded the letter dated 26/11/2010 No. 972 to the office of Ujjain Municipal Corporation by which it was expressed that the office of Directorate of Town and Country Planning District Ujjain has no objection if petitioner construct residential cum commercial complex over the disputed property. Thereafter, the co-accused Arun Jain i.e. Incharge of Department of Colony Cell Ujjain Municipal Corporation granted the

permission to petitioner to construct a residential cum commercial complex upon the disputed property vide his letter 11/02/2011. In consequence of which, the petitioner is on verge of completing the construction of the said residential cum commercial complex.

(x) The Special Police Establishment District Bhopal registered the FIR No. 141/2012 dated 21/07/2012 against the petitioners and other co-accused under Section 13(1)(D) and Section 13(2) of the Prevention of Corruption Act & Section 120-B of the Indian Penal Code. The Special Police Lokayukt, District Ujjain has also produced the charge sheet dated 25-08-2022 against the petitioners and other co-accused before the Special Court constituted under Prevention of Corruption Act, District Ujjain (hereinafter referred as the Trial Court). The Learned Trial Court has also framed the charges against the petitioner and co-accused on 15/09/2022 under Section 13(1)(D) and Section 13(2) of the Prevention of Corruption Act & Section 120-B of the Indian Penal Code and being aggrieved by the same, the petitioners have filed the present petition to quash the FIR and the consequential proceedings arising thereby.

3. The learned counsel for the petitioner has categorically argued that the impugned FIR is lodged after the delay of approximately two years by Special Police Lokayukt upon a complaint of a private individual i.e. Mr Ajay Gupta who is in the habit of filing frivolous petitions/complaints to harass the officers/ employees of state government and municipal corporation. To buttress the submission, the counsel for the petitioner relied upon the order dated 06/04/2016 passed in WP/6610/2015 and order dated 14/01/2015 passed in WP/5107/2013 in which this Court has formed the opinion that Mr Ajay Gupta who is a practicing lawyer at Ujjain Civil Court is in habit of filing complaints against the officers/employees of state government and municipal corporation to harass them. Therefore the impugned FIR is lodged with a malicious intention to harass the petitioners and other co-accused which deserves to be quashed.

4. The counsel for the petitioners also submitted that the present case is of purely civil in nature and has travelled to various courts for the adjudication over the issue and currently the same civil issue is pending for adjudication before this Court in WP/10530/2013. In the present case, a matter of civil wrong which is subjudice and is pending for final adjudication is being given a criminial color with an ulterior motive to harass and torture the petitioner. The counsel for the petitioner further brought to the notice of this Court that the petitioner in compliance of order dated 12/08/2014 passed in WP/10530/2013 by this Court, has deposited the amount of Rs 21,76,300/- in District Treasury and in the same order dated 12/08/2014, this Court has directed the state to register the unregistered sale deed if the petitioners successfully deposits the amount of Rs 21,76,300/- which is subject to the final outcome of WP/10530/2013. The counsel

of the petitioner further submitted that the public exchequer has incurred no loss therefore also no offence is made out against the petitioner.

5. The learned counsel for the petitioners submits that the petitioners are private persons and are not public servants. The petitioners have been implicated in the present case because the Special Police Lokayukta has leveled charge of Section 120-B of IPC against the petitioners alleging that the petitioners with an ulterior motive to get benefitted by the illegal gains has conspired with other co-accused but on the contrary in the present case essential ingredients of the Section 120 -B of I.PC & Section offence 13(1)(d) and 13(2) of the Prevention of Corruption Act are direly missing and despite of it, the Special Police Lokayukta lodged impugned FIR against the petitioners and even the Learned Trial Court framed charges against the petitioners. Therefore the impugned FIR needs to be quashed as it is the abuse of process of the Court.

6. That the counsel for the state has vehemently argued that there is no adversity in the FIR and the Special Police Lokayukta has rightly presented the charge sheet against the petitioners under Section 120 -B of I.PC & Section offence 13(1)(d) and 13(2) of the Prevention of Corruption Act and placing reliance upon the same, the Learned Trial Court also has rightly framed charges against the petitioners. Therefore the present petition deserves to be dismissed with the heavy cost.

Analysis of the case

7. Before considering the allegations against the petitioner, this Court would like to consider the law laid down by the Supreme Court, governing the powers of the High Court to quash the F.I.R.

8. The Supreme Court in the case of *Munshiram v. State of Rajasthan,* reported in (2018) 5 SCC 678 has held as under :

> 10. Having heard the learned counsel for both the parties and perusing the material available on record we are of the opinion that the High Court has prematurely quashed the FIR without proper investigation being conducted by the police. Further, it is no more res integra that Section 482 CrPC has to be utilised cautiously while quashing the FIR. This Court in a catena of cases has quashed FIR only after it comes to a conclusion that continuing investigation in such cases would only amount to abuse of the process.

9. The Supreme Court in the case of *Teeja Devi v. State of Rajasthan* reported in (2014) 15 SCC 221 has held as under :

> **5.** It has been rightly submitted by the learned counsel for the appellant that ordinarily power under Section 482 CrPC should not be used to quash an FIR because that amounts to interfering

with the statutory power of the police to investigate a cognizable offence in accordance with the provisions of CrPC. As per law settled by a catena of judgments, if the allegations made in the FIR prima facie disclose a cognizable offence, interference with the investigation is not proper and it can be done only in the rarest of rare cases where the court is satisfied that the prosecution is malicious and vexatious.

10. The Supreme Court in the case of *State of Orissa v. Ujjal Kumar Burdhan*, reported in (2012) 4 SCC 547 has held as under :

9. In State of W.B. v. Swapan Kumar Guha, emphasising that the Court will not normally interfere with an investigation and will permit the inquiry into the alleged offence, to be completed, this Court highlighted the necessity of a proper investigation observing thus: (SCC pp. 597-98, paras 65-66)

"65. ..... An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interests of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the court normally does not interfere with the investigation of a case where an offence has been disclosed.....

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. *... If on a consideration of the relevant materials, the court is satisfied that an offence is disclosed, the court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence."*

(emphasis supplied)

10. On a similar issue under consideration, in Jeffrey J. Diermeier v. State of W.B., while explaining the scope and

ambit of the inherent powers of the High Court under Section 482 of the Code, one of us *(D.K. Jain, J.)* speaking for the Bench, has observed as follows: (SCC p. 251, para 20)

"20. ... The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

11. The Supreme Court in the case of *XYZ v. State of Gujarat* reported in (2019) 10 SCC 337 has held as under :

14. Having heard the learned counsel for the parties and after perusing the impugned order and other material placed on record, we are of the view that the High Court exceeded the scope of its jurisdiction conferred under Section 482 CrPC, and quashed the proceedings. Even before the investigation is completed by the investigating agency, the High Court entertained the writ petition, and by virtue of interim order granted by the High Court, further investigation was stalled. Having regard to the allegations made by the appellant/ informant, whether the 2nd respondent by clicking inappropriate pictures of the appellant has blackmailed her or not, and further the 2nd respondent has continued to interfere by calling Shoukin Malik or not are the matters for investigation. In view of the serious allegations made in the complaint, we are of the view that the High Court should not have made a roving inquiry while considering the application filed under Section 482 CrPC. Though the learned counsel have made elaborate submissions on various contentious issues, as we are of the view that any observation or findings by this Court, will affect the investigation and trial, we refrain from recording any findings on such issues. From a perusal of the order of the High Court, it is evident that the High Court has got carried away by the agreement/settlement arrived at, between the parties, and recorded a finding that the physical relationship of the appellant with the 2nd respondent was consensual. When it is the

allegation of the appellant, that such document itself is obtained under threat and coercion, it is a matter to be investigated. Further, the complaint of the appellant about interference by the 2nd respondent by calling Shoukin Malik and further interference is also a matter for investigation. By looking at the contents of the complaint and the serious allegations made against 2nd respondent, we are of the view that the High Court has committed error in quashing the proceedings.

(Underline supplied)

12. The Supreme Court in the case of *S. Martin* (Supra) has held as under :

7 . In our view the assessment made by the High Court at a stage when the investigation was yet to be completed, is completely incorrect and uncalled for.....

13. The Supreme Court in the case of *S. Khushboo v. Kanniammal* reported in (2010) 5 SCC 600 has held as under :

17. In the past, this Court has even laid down some guidelines for the exercise of inherent power by the High Courts to quash criminal proceedings in such exceptional cases. We can refer to the decision in *State of Haryana v. Bhajan Lal* to take note of two such guidelines which are relevant for the present case: (SCC pp. 378-79, para 102)

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

* * *

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18. It is of course a settled legal proposition that in a case where there is sufficient evidence against the accused, which may establish the charge against him/her, the proceedings cannot be quashed. In *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* this Court observed that a criminal complaint or a charge-sheet can only be quashed by superior courts in exceptional circumstances, such as when the allegations

in a complaint do not support a prima facie case for an offence.

19.

Similarly, in **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque** this Court has held that criminal proceedings can be quashed but such a power is to be exercised sparingly and only when such an exercise is justified by the tests that have been specifically laid down in the statutory provisions themselves. It was further observed that superior courts "may examine the questions of fact" when the use of the criminal law machinery could be in the nature of an abuse of authority or when it could result in injustice.

In **Shakson Belthissor v. State of Kerala** this Court relied on earlier precedents to clarify that a High Court while exercising its inherent jurisdiction should not interfere with a genuine complaint but it should certainly not hesitate to intervene in appropriate cases. In fact it was observed: (SCC pp. 478, para 25)

"25. ... '16. ... One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

14. The Supreme Court in the case of *Sangeeta Agrawal v. State of U.P.,* reported in (2019) 2 SCC 336 has held as under :

8. In our view, the Single Judge ought to have first set out the brief facts of the case with a view to understand the factual matrix of the case and then examined the challenge made to the proceedings in the light of the principles of law laid down by this Court and then recorded his finding as to on what basis and reasons, a case is made out for any interference or not.

9.

15. The Supreme Court in the case of *Amit Kapoor v. Ramesh Chander* reported in (2012) 9 SCC 460 has held as under :

27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is

inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction **to frame a charge.**

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. State of W.B. v. Swapan Kumar GuhaMadhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre; Janata Dal v. H.S. Chowdhary; Rupan Deol Bajaj v. Kanwar Pal Singh Gill; G. Sagar Suri v. State of U.P.; Ajay Mitra v. State of M.P.; Pepsi Foods Ltd. v. Special Judicial Magistrate; State of U.P. v. O.P. Sharma; Ganesh Narayan Hegde v. S. Bangarappa; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.; Shakson Belthissor v. State of Kerala; V.V.S. Rama Sharma v. State of U.P.; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu; Sheonandan Paswan v. State of Bihar; State of Bihar v. P.P. Sharma; Lalmuni Devi v.State of Bihar; M. Krishnan v. Vijay Singh; Savita v. State of Rajasthan and S.M. Datta v. State of Gujarat.]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

28. At this stage, we may also notice that the principle stated by this Court in Madhavrao Jiwajirao Scindia was reconsidered and explained in two subsequent judgments

> of this Court in State of Bihar v. P.P. Sharma and M.N. Damani v. S.K. Sinha. In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent.
>
> **29.**

16. The Supreme Court in the case of *Ajay Kumar Das v. State of Jharkhand,* reported in (2011) 12 SCC 319 has held as under :

> **12.** The counsel appearing for the appellant also drew our attention to the same decision which is relied upon in the impugned judgment by the High Court i.e. *State of Haryana v. Bhajan Lal.* In the said decision, this Court held that it may not be possible to lay down any specific guidelines or watertight compartment as to when the power under Section 482 CrPC could be or is to be exercised. This Court, however, gave an exhaustive list of various kinds of cases wherein such power could be exercised. In para 103 of the said judgment, this Court, however, hastened to add that as a note of caution it must be stated that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases for the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or in the complaint and that the extraordinary or the inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

17. The Supreme Court in the case of *Mohd. Akram Siddiqui v. State of Bihar* reported in (2019) 13 SCC 350 has held as under :

> **5.** Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in *Yin Cheng Hsiung v. Essem Chemical Industries; State of Haryana v. Bhajan Lal and Harshendra Kumar D. v. Rebatilata Koley* to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered.

18. The Supreme Court in the case of *State of A.P. v. Gourishetty Mahesh* reported in (2010) 11 SCC 226 has held as under :

18. While exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.

19. Though the High Court may exercise its power relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in.

20. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/ caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482.

19. The Supreme Court in the case of *Padal Venkata Rama Reddy Vs. Kovuri Satyanarayana Reddy* reported in (2012) 12 SCC 437 hasheld as under :

11. Though the High Court has inherent power and its scope is very wide, it is a rule of practice that it will only be exercised in exceptional cases. Section 482 is a sort of reminder to the High Courts that they are not merely courts of law, but also courts of justice and possess inherent powers to remove injustice. The inherent power of the High Court is an inalienable attribute of

the position it holds with respect to the courts subordinate to it. These powers are partly administrative and partly judicial. They are necessarily judicial when they are exercisable with respect to a judicial order and for securing the ends of justice. The jurisdiction under Section 482 is discretionary, therefore the High Court may refuse to exercise the discretion if a party has not approached it with clean hands.

12. In a proceeding under Section 482, the High Court will not enter into any finding of facts, particularly, when the matter has been concluded by concurrent finding of facts of the two courts below. Inherent powers under Section 482 include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any court subordinate to it and are of wide magnitude and ramification. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as may be necessary to give effect to any order under this Code, depending upon the facts of a given case. The Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under Section 482 of the Code. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly, carefully and with caution.

13. It is well settled that the inherent powers under Section 482 can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (vide *Kavita v. State* and *B.S. Joshi v. State of Haryana).* If an effective alternative remedy is available, the High Court will not exercise its powers under this section, specially when the applicant may not have availed of that remedy.

14. The inherent power is to be exercised ex debito justitiae, to do real and substantial justice, for administration of which alone courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. *(Vide Dhanalakshmi v. R. Prasanna Kumar; Ganesh Narayan Hegde v. S. Bangarappa and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque.)*

15. It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But

some attempts have been made in that behalf in some of the decisions of this Court vide State of Haryana v. Bhajan Lal, Janata Dal v. H.S. Chowdhary, Rupan Deol Bajaj v. Kanwar Pal Singh Gill and Indian Oil Corpn.v. NEPC India Ltd.

16. In the landmark case of *State of Haryana v. Bhajan Lal* this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. This Court summarised the legal position by laying down the following guidelines to be followed by the High Courts in exercise of their inherent powers to quash a criminal complaint: (SCC pp. 378-79, para 102)

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. *In Indian Oil Corpn.v. NEPC India Ltd.* a petition under Section 482 was filed to quash two criminal complaints. The High Court by a common judgment allowed the petition and quashed both the complaints. The order was challenged in appeal to this Court. While deciding the appeal, this Court laid down the following principles: (SCC p. 748, para 12)

1. The High Courts should not exercise their inherent powers to repress a legitimate prosecution. The power to quash criminal complaints should be used sparingly and with abundant caution.

2. The criminal complaint is not required to verbatim reproduce the legal ingredients of the alleged offence. If the necessary factual foundation is laid in the criminal complaint, merely on the ground that a few ingredients have not been stated in detail, the criminal proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is bereft of even the basic facts which are absolutely necessary for making out the alleged offence.

3. It was held that a given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence.

18. In *State of Orissa v. Saroj Kumar Sahoo* it has been held that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance.

The relevant passage reads thus: (SCC p. 550, para 11)
"11. ... It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with."

19. In *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre this Court held as under: (SCC p. 695, para 7)*

> "7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

20. This Court, while reconsidering the judgment in *Madhavrao Jiwajirao Scindia,* has consistently observed that where matters are also of civil nature i.e. matrimonial, family disputes, etc., the Court may consider "special facts", "special features" and quash the criminal proceedings to encourage genuine settlement of disputes between the parties.

21. The said judgment in *Madhavrao* case was reconsidered and explained by this Court in *State of Bihar v. P.P. Sharma* which reads as under: (SCC p. 271, para 70)

> "70. *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* also does not help the respondents. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC which the High Court refused to quash under Section 482. This Court allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. On those facts and also due to the relation of the settler, the mother, the appellant and his wife, as the son and daughter-in-law, this Court interfered and allowed the appeal. ....

> Therefore, the ratio therein is of no assistance to the facts in this case. It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet."
>
> **22.** Thus, the judgment in *Madhavrao Jiwajirao Scindia* does not lay down a law of universal application. Even as per the law laid down therein, the Court cannot examine the facts/evidence, etc. in every case to find out as to whether there is sufficient material on the basis of which the case would end in conviction. The ratio of Madhavrao Jiwajirao Scindia is applicable in cases where the Court finds that the dispute involved therein is predominantly civil in nature and that the parties should be given a chance to reach a compromise e.g. matrimonial, property and family disputes, etc. etc. The superior courts have been given inherent powers to prevent the abuse of the process of court; where the Court finds that the ends of justice may be met by quashing the proceedings, it may quash the proceedings, as the end of achieving justice is higher than the end of merely following the law. It is not necessary for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal.

20. The Supreme Court in the case of *M. Srikanth v. State of Telangana,* reported in (2019) 10 SCC 373 has held as under :

> **17.** It could thus be seen, that this Court has held, that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute a case against the accused, the High Court would be justified in quashing the proceedings. Further, it has been held that where the uncontroverted allegations in the FIR and the evidence collected in support of the same do not disclose any offence and make out a case against the accused, the Court would be justified in quashing the proceedings.

21. The Supreme Court in the case of *M.N. Ojha v. Alok Kumar Srivastav* reported in (2009) 9 SCC 682 has held as under :

> **30.** Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by

> the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.
>
> **31.** It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. [If such power is not conceded, it may even lead to injustice.] (See State of Karnataka v. L. Muniswamy, SCC p. 703, para 7.)
>
> **32.** We are conscious that "inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases".
>
> (See *Kurukshetra University v. State of Haryana, SCC p. 451, para 2.)*

22. The Supreme Court in the case of *CBI v. Arvind Khanna* reported in (2019) 10 SCC 686 has held as under :

> 17. After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 CrPC, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 CrPC.
>
> **18.** In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for.

19.

Thus, it is clear that although this Court cannot make a roving enquiry at this stage, but if the uncontroverted allegations do not make out any offence, then this Court can quash the F.I.R.

23. The Supreme Court in the case of *Usha Chakraborty & Anr. versus State of West Bengal & Anr* reported in 2023 live Law (SC) 67 has held that

4. Before adverting to the rival contentions with reference to application under Section 156(3), Cr.P.C. within the parameters, we think it only appropriate to refer to the following decisions of this Court in respect to the scope of exercise of power under Section 482, Cr.P.C.

5.1 In Paramjeet Batra v. State of Uttarakhand & Ors.1, this Court held:- "12. Whil()e exercising its jurisdiction under Section 482 of the Code of the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

*5.2- In **Vesa Holdings Private Limited and Anr. v. State of Kerala and Ors.** , it was held that: - "13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in*

refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings. "

5.3 ***In Kapil Aggarwal and Ors. v. Sanjay Sharma and Ors.*** *, this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.*

5.4- In the decision in ***State of Haryana v. Bhajan Lal****, a two Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under: -*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. 1 (2013) 11 SCC 673 2 (2015) 8 SCC 293 3 (2021) 5 SCC 524 4 AIR 1992 SC 604 7

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

*5.5- In **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others** , a three Judge Bench of this Court laid down the following principles of law:- "*

57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping; 2021 SCC OnLine SC 315 8

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/ FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/ summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/ complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/ police to investigate the allegations in the FIR."

24. The Supreme Court in the case of *Veena Mittal Vs State of Uttar Pradesh* reported in 2022 LiveLaw (SC) 110 has held that,

> "*At the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the Cr.P.C, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash.*"

25. The Supreme Court in the case of *Hasmukhlal D. Vora v. State of Tamil Nadu* reported in 2022 liveLaw (SC) 1033 has held that,

> **28.** *It must be noted that the High Court while passing the impugned judgment, has failed to take into consideration to the facts and circumstances of the case. While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice. The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law.*
>
> **29.**

26. In light of the above mentioned judgments, this court has to view whether the contents as stated in FIR constitutes the crime of Section 13(2)(d) and 13(2) of Prevention of Corruption Act and Section 120-B of Indian Penal Code against the petitioners. Therefore it is pertinent to reproduce section 13(2)(d) and 13(2) of Prevention of Corruption Act which is as follows-

> **13. Criminal misconduct by a public servant.—**
>
> (1) A public servant is said to commit the offence of criminal misconduct,—
>
> (a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or
>
> (b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or
>
> (c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or
>
> (d) if he,—
>
> (I) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.—For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

27. In the present case, the Police has produced the charge-sheet against the petitioner under Section 13(2)(d) and 13(2) of Prevention of Corruption Act and Section 120-B of Indian Penal Code and the Learned Trial Court also framed the charges against the petitioners under the same sections. It is undisputed that the petitioners are not public servant and are implicated in the present case because of the charge of Criminial Conspiracy committed by them. It is alleged that the petitioners with an intent to get benefitted by illegal gains has conspired with other co-accused so that the petitioner could construct residential cum residential complex on the disputed property. Therefore it is sine qua non to come on a finding whether the act of petitioners as stated in the FIR constitutes a crime of Section 120-B or not?

28. The Supreme Court in the case of *R.VENKATKRISHNAN v. CBI* - reported in (2009)11 SCC 737 has held that:-

" *criminal conspiracy in terms of Section 120B of the Code is an independent offence. It is punishable separately. Prosecution, therefore, must prove the same by applying the legal principles which are applicable for the purpose of proving a criminal misconduct on the part of an accused. A criminal conspiracy must be put to action and so long a crime is merely generated in the mind of the criminal, it does not become punishable. Thoughts, even criminal in character, often involuntary, are not crimes but 49 when they take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal but by*

illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.

The ingredients of the offence of criminal conspiracy are:

(i) an agreement between two or more persons;

(ii) the agreement must relate to doing or causing to be done either (a) an illegal act; (b) an act which is not illegal in itself but is done by illegal means.

Condition precedent, therefore, for holding accused persons guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of a fact which must be established by the prosecution, viz., meeting point of two or more persons for doing or causing to be done an illegal act or an act by illegal means. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that 50 a conspiracy is hatched in secrecy and it is, thus, difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the level of involvement of the accused persons therein are relevant factors. For the said purpose, it is necessary to prove that the propounders had expressly agreed to or caused to be done the illegal act but it may also be proved otherwise by adduction of circumstantial evidence and/or by necessary implication. [MohammadUsman Mohammad Hussain Maniyar & Ors. v. State of Maharashtra (1981) 2 SCC 443]"

29. The Supreme Court in the case of *Ram Sharan Chaturvedi Versus The State Of Madhya Pradesh* reported in 2012 LiveLaw (SC) 709 has held that- *RAM SHARAN CHAHYA PRADESH* reported in 2022 LiveLaw (SC) 709 has held that -

22. the principal ingredient of the offence of criminal conspiracy under Section 10 of the IPC is an agreement to commit an offence. Such an agreement must be proved through direct or circumstantial evidence. Court has to necessarily ascertain whether there was an agreement between the Appellant and A-1 and A-2. In the decision of State of Kerala v. P. Sugathan and Anr.2, this Court noted that an agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation:

"12. ...As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. ...A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy...

13. ...The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient..." (emphasis supplied)

23. The charge of conspiracy alleged by the prosecution against the Appellant must evidence explicit acts or conduct on his part, manifesting conscious and apparent concurrence of a common design with A-1 and A-2. In State (NCT of Delhi) v. Navjot Sandhu3, this Court held:

"101. One more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances should be proved beyond reasonable doubt. Lastly, in regard to the appreciation of evidence relating to the conspiracy, the Court must take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution." (emphasis supplied)

24. In accepting the story of the prosecution, the Trial Court, as well as the High Court, proceeded on the basis of mere suspicion against the Appellant, which is precisely what this Court in Tanviben Pankajkumar Divetia v. State of Gujarat, had cautioned against:

"45. The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events have been established

> clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt.

30. In the light of above-said judgments of the Hon'ble Apex Court as well as in the light of allegations made in the complaint/FIR, it appears that no ingredients of alleged offence are made out against the petitioners. If the contents made in the FIR are assumed to be true in its true perspective, it does not appear that the petitioners have committed any illegal act as alleged in FIR. If in the present case, even it is presumed that the petitioners deliberately or fraudulently produced the true copy of unregistered sale deed to mutate the disputed property and to take permission for constructing the residential cum commercial complex upon the disputed property does not constitute an offence under Section 120-B of Indian Penal Code. The act of petitioners where they produced the true copy of the unregistered sale deed before various authorities to mutate the disputed property and to take permission for constructing the residential cum commercial complex upon the disputed property is neither an illegal act nor an act which is not illegal in itself but is done by illegal means. Therefore, in absence of, the essential ingredients of Section 120-B of the penal code, this Court is of the view that no offence under Section 120-B of the penal code constitutes against the petitioners and in consequence of such finding, the charges under Section 13(2)(d) and 13(2) of Prevention of Corruption Act are wrongly leveled by the Special Police Lokayukta and the Learned Trial Court against the petitioners.

31. Similarly, the Hon'ble Apex Court in case of *Jayahari vs. State of kerala,* reported in 2022 LiveLaw (SC) 106 has *Jayahari v. State of Kerala,* reported in 2022 LiveLaw (SC) 106 held that:-

> *" When the dispute in question is purely civil in nature, the adoption of remedy in a criminal court would amount to abuse of the process of Court."*

32. Upon perusal of the facts and documents annexed with the petition, it is apparent that this case is of purely civil in nature where the question that whether the petitioner has properly calculated and paid the stamp duty and was under obligation to pay the remaining stamp duty of Rs 21,76,250 in the district treasury for the registration of unregistered sale deed is still pending for adjudication in WP/10530/2013 before this Court. However the petitioner has already deposited the amount of Rs 21,76,250 in the district treasury though the said deposit is subject to the final disposal of the said writ petition. The controversy in the present case would be finalised after the disposal of the WP/10530/2013. Therefore, this Court is of the view that Special Police Lokayukta has wrongly registered the

impugned FIR against the petitioners by converting a civil wrong into a criminal one.

33. In view of the forgoing conspectus of the matter, the petition filed by the petitioners namely Narendra Jain and Neeraj Jain deserves to be and is hereby allowed. The continuation of prosecution of the petitioners would be nothing but an abuse of process of Court, calling for exercise of inherent powers under Section 482 of the Code. Resultantly, the FIR registered at Crime No. 141 of 2012 dated 21.07.2012 registered at Special Police Establishment, Lokayukt Ujjain, and all consequential proceedings, so far as they relates to the petitioners, are hereby quashed. However, it is made clear that in respect of other accused persons, the trial shall continue.

The petition, accordingly, stands **allowed.**

Application allowed

I.L.R. 2023 M.P. 1940

Before Mr. Justice Prakash Chandra Gupta

MCRC No. 60202/2021 (Indore) decided on 19 June, 2023

AFSA KHAN (SMT.) ...Applicant

Vs.

MOHD. TAREEK …Non-applicant

***Negotiable Instruments Act (26 of 1881), Section 138 and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment – Signatory of Cheque* – Held – Questioned cheque was not issued by petitioner/accused No. 1 and also not signed by her – Although complainant transferred loan amount in account of applicant through RTGS but cheque was issued by accused No. 2 (husband of applicant) – Petitioner cannot be prosecuted u/S 138 N.I. Act – Proceeding against applicant is quashed – Application allowed. (Para 10 & 11)**

परक्राम्य लिखत अधिनियम (1881 का 26), धारा 138 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – अभिखंडन – चैक का हस्ताक्षरकर्ता – अभिनिर्धारित – याची/अभियुक्त क्र. 1 द्वारा प्रश्नगत चैक जारी नहीं किया गया था तथा उसके द्वारा हस्ताक्षरित भी नहीं था – यद्यपि परिवादी ने आवेदिका के खाते में **RTGS** के माध्यम से ऋण की राशि हस्तांतरित की थी परंतु चैक अभियुक्त क्र. 2 (आवेदक का पति) द्वारा जारी किया गया था – याची को परक्राम्य लिखत अधिनियम की धारा 138 के अंतर्गत अभियोजित नहीं किया जा सकता – आवेदिका के विरूद्ध कार्यवाही अभिखंडित – आवेदन मंजूर।

Case referred:

AIR 2013 SC 1230.

Raghvendra Singh Raghuvanshi, for the applicant.
Arvind Kumar Sharma, for the non-applicant

O R D E R

PRAKASH CHANDRA GUPTA, J.:- With the consent of learned counsels for both the parties, the matter has been heard finally.

2. This petition filed under Section 482 of the Code Of Criminal Procedure, 1973, by the petitioner/accused No.1 challenging the impugned summons (Annexure - P1) issued by Court of Judicial Magistrate First Class, Indore in case No.UNCR 3589/ 2020, impugned criminal complaint dated 11/09/2020 (Annexure - P2) filed against her and her husband/accused No.2 by the respondent/complainant under Section *(hereinafter as u/S)* 138 of the Negotiable Instruments Act, 1881 *(hereinafter as NI Act)* and all the consequent entire criminal proceedings therein.

3. Facts of the case in short are that accused persons are wife and husband amongst and both the parties are known to each other. Accused persons were in need of loan, thus on their request the complainant had given Rs.5,00,000/- in Bank A/c of petitioner/accused No.1 on 26/06/2020 through RTGS. The complainant had also given Rs.2,00,000/- to accused No.2 in presence of accused No.1. The accused No.2 had issued a cheque of Rs.7,00,000/- on 17/06/2020 to repay the loan amount in favour of the complainant, but the aforesaid cheque was dishonoured on 20/06/2020. The complainant had given notice to the accused persons despite of that they had not repaid the loan amount. Therefore, he filed a complaint against the accused persons.

4. Learned counsel for the petitioner/accused No.1 has submitted that she had not signed and issued any cheque in favour of the complainant/respondent. The questioned cheque was issued only by her husband/accused No.2. Therefore, complaint u/S 138 of the NI Act, against the petitioner is nothing but abuse of process of law. Therefore, she has prayed for quashing of private complaint registered against her. Learned counsel has placed reliance on the case of *Mrs. Aparna A. Shah V M/S Seth Developers Pvt. Ltd. And Ors.* [Reported in AIR 2013 SC 1230] and *Smt. Archana Kanthed VM/S Shree Vinayak Sales Through Smt. Rakhi Kocheta* [Order Dated 20/02/2019 passed in MCRC no. 8520/ 2017].

5. Learned counsel for the respondent supported the impugned order and prays for rejection of the petition.

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

7. For deciding the matter it is apposite to reproduce Section 138 of NI Act, which runs 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. "*

8. In the case of *Mrs. Aparna A. Shah (Supra)* the Apex Court in Paragraph 22 has held as under:-

> *(22) In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in- chief of the complainant and a bare*

look at the cheque would show that the appellant has not signed the cheque. "

9. In the case of *Smt. Archana Kanthed (Supra),* coordinate bench of this Court relying upon the judgment of *Mrs. Aparna A. Shah (Supra)* has held that having regard to the aforesaid, no ground to prosecute the petitioner exists, therefore, prosecution initiated against her deserves to be quashed.

10. From the perusal of the instant case, it appears that the questioned cheque was not issued by the petitioner/accused No.1 and also not signed by her. The aforesaid cheque is issued only by the accused No.2 and also signed by him. Therefore, the petitioner cannot be prosecuted u/S 138 of the NI act. Though it appears that the complainant/ respondent had given Rs.5,00,000/- to the petitioner in her bank account through RTGS on 26/06/2019 but, she has not issued any cheque of the aforesaid amount in favour of the complainant. Therefore, on the basis of aforesaid ground, she cannot be prosecuted u/S 138 of the NI Act. Therefore, prosecution initiated against the petitioner/accused No.1 is liable to be quashed.

11. Consequently, the petition is allowed. Proceeding pending before the Court of JMFC, Indore in case No.UNCR 3589/2020, u/S 138 of the NI Act against the petition, is hereby quashed.

With the aforesaid, the petition stands **allowed** and disposed off.

Application allowed

I.L.R. 2023 M.P. 1943

Before Mr. Justice Vishal Dhagat

MCRC No. 24589/2023 (Jabalpur) decided on 19 June, 2023

JERALD ALAMEDA & anr. ...Applicants

Vs.

STATE OF M.P. …Non-applicant

***A. Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), Sections 53, 54 & 75 – Religious Education – Permissibility* – Held – It is for the State Government to see that religious education is not imparted in shelter homes to children but they are imparted modern education as laid down in Section 53 of 2015 Act – Asha Kiran Institute which is registered under 2015 Act shall not provide religious education to orphans or children admitted therein. (Para 7)**

***क. किशोर न्याय (बालकों की देखरेख और संरक्षण) अधिनियम, 2015 (2016 का 2), धाराएँ 53, 54 व 75 – धार्मिक शिक्षा – अनुज्ञेयता* – अभिनिर्धारित – यह राज्य शासन को देखना है कि आश्रय गृहों में बच्चों को धार्मिक शिक्षा प्रदान नहीं की जा रही है**

वरन् उन्हें आधुनिक शिक्षा प्रदान की जा रही है जैसा कि अधिनियम 2015 की धारा 53 में अधिकथित है – आशा किरण संस्थान, जो अधिनियम 2015 के अंतर्गत पंजीकृत है, वहां प्रवेश दिये गये अनाथ बच्चों अथवा बालकों को धार्मिक शिक्षा प्रदान नहीं करेगा।

***B. Freedom of Religion Act, M.P. (5 of 2021), Section 3 & 4 and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Conversion – Written Complaint* – Held – Complaint has been lodged by an individual who conducted inspection – No written complaint made by person converted or their relatives or blood relatives – In absence of such written complaint, police does not have any jurisdiction to inquire or investigate into offence committed u/S 3 of 2021 Act – Anticipatory bail application allowed.**

(Para 8 & 9)

ख. धार्मिक स्वतंत्रता अधिनियम, म.प्र. (2021 का 5), धारा 3 व 4 एवं दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 438 – धर्मान्तरण – लिखित शिकायत – अभिनिर्धारित – शिकायत एक ऐसे व्यक्ति द्वारा दर्ज की गई है जिसने निरीक्षण किया – किसी धर्मान्तरित व्यक्ति अथवा उनके रिश्तेदारों अथवा रक्त संबंधियों द्वारा कोई लिखित शिकायत नहीं की गई – ऐसी लिखित शिकायत के अभाव में पुलिस को यह अधिकारिता नहीं है कि वह अधिनियम 2021 की धारा 3 के अंतर्गत कारित अपराध की जांच अथवा अन्वेषण करे – अंतरिम जमानत आवेदन मंजूर।

Case referred:

2021 SCC OnLine SC 315.

Brian D'Silva with *Ishan Soni*, for the applicants.
H.S. Ruprah, Addl. A.G. and *S.K. Shrivastava*, G.A. for the non-applicant.

O R D E R

VISHAL DHAGAT, J.:- This is ***first*** application filed by the applicants under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail relating to FIR No. 461/2023, registered at Police Station-Madhavnagar, District Katni (MP) for the offence under Sections 75 of Juvenile Justice (Care and Protection of Children) Act, 2015. and Section 3 and 5 of M.P. Freedom of Religion Act, 2021.

2. Learned Senior Counsel appearing for applicants submitted that applicants are innocent and falsely being implicated in the case. Applicant No. 1 is Arch Bishop of Roman Catholic Church, Diocese of Jabalpur and District Katni falls within his territorial jurisdiction. Applicant No. 2 is Sister of Convent. Asha Kiran Institute was established in year 2005 in District Katni by Roman Catholic Church. Infrastructure, building and space was provided by Railways. It is submitted that management of institute is done as per statutory provisions. It is submitted that Section 54 of Juvenile Justice (Care and Protection of Children) Act, 2015 provides for inspection of Child Care institute through Inspection

Committee comprised of not less than three members, of whom at least one should be woman and one Medical Officer. Inspection is to be done once in three months. It is submitted that contrary to the provisions of Act, complainant Shri Prank Kanungo carried out inspection of Asha Kiran institute on 29.05.2023 in individual capacity. On basis of said inspection, FIR is registered against applicants under Section 7 of Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 3 and 5 of M.P. Freedom of Religion Act, 2021. During inspection, it was found that Hindu children were forced to read Bible and visit church. Allegations are also made that children are not allowed to celebrate Diwali and forced to do christian prayer. It is submitted that FIR cannot be registered by police on complaint of Shri Prank Kanungo. Section 4 of M.P. Freedom to Religion Act, 2021 provides that police officer shall not inquire or investigate a complaint unless written complaint is submitted by person converted or his parents or siblings or with the leave of the Court by any person who is related by blood, marriage or adoption, guardianship or custodianship to the person aggrieved. Police had committed an error in registering FIR and investigating the case. No offence has been committed by applicants under Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015. If children are found with Bible or were making prayer in Church, same cannot be said to be religious conversion. In these circumstances, applicants be released on anticipatory bail.

3. Learned Additional Advocate General appearing for State opposed the prayer for grant of anticipatory bail. It is submitted that act of applicants is squarely covered under Section 3 of M.P. Freedom of Religion Act, 2021. Section 3 of Act of 2021 makes offence of conversion or attempt to convert punishable under Section 5. Act of conversion is punishable with imprisonment not less than 1 year and may extend to 5 years and if aggrieved person or victim is minor women or person belonging to SC/ST, imprisonment shall not be less than 2 years, which may be extended to 10 years and liable to fine of Rs. 50,000/- and in case of mass conversion, punishment shall not be less than 5 years but may be extended to 10 years and shall also be liable to fine of Rs. 1 lac. It is submitted that this is a case of mass conversion as more than two children in Child Care Home are forced to read Bible, visit Church and offer prayer forcefully, therefore, offence is serious in nature. It is submitted that on going through statement of children of Asha Kiran Institute, it is clear that attempt was made to convert the children. They were forced to read Bible and make prayers in Church, therefore, attempt to convert as defined in Section 3(1) (a) is made out and applicant No.1 and 2 are abeting offence and conspiring for conversion, therefore, their act is punishable under Section 5 of M.P. Freedom of Region Act. In these circumstances, application filed by applicants for grant of anticipatory bail be dismissed.

4. Additional Advocate General further placed reliance on judgment passed by Apex Court in case of *P. Chidambram vs Directorate of Enforcement* in

Criminal Appeal and submitted that anticipatory bail has to be granted in exceptional circumstances and not as a matter of rule. Further, reliance is placed on 2021 SCC OnLine SC 315, *Niharika Infrastructure Pvt. Ltd. vs State of Maharashtra and others* and argued that whenever interim order of no coercive action is passed by High Court then same may be specific and High Court must clarify what does it mean by no coercive steps to be adopted. In view of aforesaid facts and circumstances, Additional Advocate General appearing for State prays for dismissal of application for grant of anticipatory bail.

5. Heard the counsel for the parties.

6. Section 53 of Juvenile Justice (Care and Protection of Children Act, 2015) lays down the services to be provided by institutions registered under Juvenile Justice (Care and Protection of Children) Act, 2015, which are reproduced as under :

> *" (i) basic requirements such as food, shelter, clothing and medical attention as per the prescribed standards;*
>
> *(ii) equipment such as wheel-chairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances as required, for children with special needs;*
>
> *(iii) appropriate education, including supplementary education, special education, and appropriate education for children with special needs:*
>
> *Provided that for children between the age of six to fourteen years, the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) shall apply;*
>
> *(iv) skill development;*
>
> *(v) occupational therapy and life skill education;*
>
> *(vi) mental health interventions, including counselling specific to the need of the child;*
>
> *(vii) recreational activities including sports and cultural activities;*
>
> *(viii) legal aid where required;*
>
> *(ix) referral services for education, vocational training, de-addiction, treatment o f diseases where required;*
>
> *(x) case management including preparation and follow up of individual care plan;*
>
> *(xi) birth registration;*

(xii) assistance for obtaining the proof of identity, where required; and

(xiii) any other service that may reasonably be provided in order to ensure the well-being of the child, either directly by the State Government, registered or fit individuals or institutions or through referral services."

7. Education which has been described in Section 53(1)(iii) does not mean religious education. Management of shelter homes is to be provide secular education to students, which will result in their growth. Education means modern education which will be helpful in growth of children and will also help them in earning livelihood in later part of their life. It is also provided that children between 6 to 14 years has right to get free and compulsory education under Free and Compulsory Education Act, 2009. They are to be taught skill development, occupational therapy and life skill education but, said Section does not provide for religious education. Therefore, Asha Kiran Institute, Katni, which is registered under Juvenile Justice (Care and Protection of Children) Act, 2015 shall not provide religious education to orphans or children admitted therein. They are required to provide education as defined in Section 53 of Juvenile Justice (Care and Protection of Children) Act, 2015. Therefore, ***it is for the State Government to see that religious education is not imparted in shelter homes to children but they are imparted modern education, as laid down in Section 53 of Juvenile Justice (Care and Protection of Children) Act, 2015.*** As per Section 53, State Government is free to take action in accordance with Juvenile Justice (Care and Protection of Children) Act, 2015 against Asha Kiran Care Institute if there is violation of Section 53 and sectarian education is provided to children.

8. Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 provides for punishment and sentence of three years only. Police Officer shall not inquire or investigate a compliant under Section 3 of M.P. Freedom of Religion Act, 2021 unless said complaint is a written complaint by a person aggrieved, who has been converted or attempt has been made for his conversion or by person who are parents or siblings or with leave of the Court by any person who is related by blood, marriage or adoption, guardianship or custodianship, as may be applicable. In the present case, **complaint has been lodged by an individual who conducted inspection. No complaint has been made by person converted or person aggrieved or against whom attempt is made for conversion or by their relatives or blood relatives. In absence of such written complaint, police does not have any jurisdiction to inquire or investigate into offence committed under Section 3 of Act of 2021.**

9. In view of aforesaid facts and circumstances of the case, anticipatory bail application filed by the applicants are **allowed.**

10. It is directed that in the event of arrest of applicants by the police in the aforesaid FIR, applicant**s** shall be released on anticipatory bail on their furnishing a personal bond in the sum of ***Rs.1,00,000/- (Rupees One Lac only)*** each with two solvent sureties in the like amount to the satisfaction of the Arresting officer (Investigating Officer)/trial Court for his regular appearance before the Police during the investigation or before the Court during trial.

11. It is directed that applicants shall abide by the conditions enumerated in sub-section (2) of Section 438 of the Cr.P.C.

12. Certified copy as per rules

Application allowed

I.L.R. 2023 M.P. 1948
Before Mr. Justice Prakash Chandra Gupta
MCRC No. 37462/2022 (Indore) decided on 23 June, 2023

SANJAY KUMAR ...Applicant

Vs.

VASUDEV & anr. …Non-applicants

A. Criminal Procedure Code, 1973 (2 of 1974), Sections 91, 202 & 482 and Negotiable Instruments Act (26 of 1881), Section 20 – Powers of Court **– Held – Court is empowered to call any documents u/S 91 Cr.P.C. which are necessary for fair proceeding of the case – Court can issue summons to persons in whose possession the desirable documents are kept – Powers given to Court u/S 91 Cr.P.C. is discretionary in nature and same can be exercised judiciously and in proper manner – Trial Court has considered only Section 20 of 1881 Act and rejected the application – Impugned order set aside – Application allowed. (Paras 8, 11 & 12)**

क. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धाराएँ 91, 202 व 482 एवं परक्राम्य लिखत अधिनियम (1881 का 26), धारा 20 – न्यायालय की शक्तियां – अभिनिर्धारित – न्यायालय दं.प्र.सं. की धारा 91 के अंतर्गत किसी भी दस्तावेज को जो कि प्रकरण की निष्पक्ष कार्यवाही के लिए आवश्यक है, को मंगाने हेतु सशक्त है – न्यायालय उन व्यक्तियों को समन जारी कर सकता है जिनके कब्जे में वांछनीय दस्तावेज रखे गये हैं – दं.प्र.सं. की धारा 91 के अंतर्गत न्यायालय को प्रदत्त की गई शक्तियां वैवेकिक स्वरूप की हैं तथा इन्हें न्यायसम्मत रूप से तथा उचित ढंग से प्रयोग किया जा सकता है – विचारण न्यायालय ने केवल अधिनियम 1881 की धारा 20 को विचार में लिया एवं आवेदन अस्वीकार किया – आक्षेपित आदेश अपास्त – आवेदन मंजूर।

B. Criminal Procedure Code, 1973 (2 of 1974), Section 202(1) **– Held – It is clear from Section 202(1) Cr.P.C., subject to the exception mentioned u/S 202(1)(a) and (b), if Magistrate postpone the issue of process against the accused, he may himself inquire into the case or and direct an**

investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. (Para 10)

ख. दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 202(1) – अभिनिर्धारित – दं.प्र.सं. की धारा 202(1) से यह स्पष्ट है कि धारा 202(1)(a) तथा (b) के अंतर्गत उल्लिखित अपवाद के अधीन, यदि मजिस्ट्रेट अभियुक्त के विरूद्ध आदेशिका का जारी किया जाना स्थगित करता है, तो यह विनिश्चित करने के प्रयोजन से कि क्या कार्यवाही हेतु पर्याप्त आधार है अथवा नहीं वह स्वयं प्रकरण की जांच कर सकता है अथवा किसी पुलिस अधिकारी या ऐसे अन्य व्यक्ति जिसे वह उचित समझता हो अन्वेषण करने का निदेश दे सकता है।

Case referred:

Criminal Appeal No. 1158/2010 order passed on 06.07.2010 (Supreme Court).

Shantanu Naik, for the applicant.
None, for the non-applicants.

O R D E R

PRAKASH CHANDRA GUPTA, J. :- This petition has been filed under Section *(hereinafter as u/S)* 482 of the Code Of Criminal Procedure, 1973 *(hereinafter as Cr.P.C)* being aggrieved by the order dated 01.07.2022 in unregistered complaint case No.45/2021 passed by Judicial Magistrate First Class, Dr. Ambedkar Nagar, Distt. Indore (M.P.), whereby the learned trial Court has rejected the application u/S 91 and 202 of Cr.P.C, filed by the petitioner/ complainant.

2. According to the case, the petitioner/complainant has filed a private complaint u/S 200 of Cr.P.C against the respondents/accused persons for the offence punishable u/S 420, 467, 468, 471, 408, 409 and 120-B of the Indian Penal Code, 1860 *(hereinafter as IPC)* contending that the petitioner being the chairman of *Infantry School Vetan Bhogi Sahkari Sankh Sanstha (hereinafter as Institution)* took a loan of Rs.4,00,000/- on 07.07.2015 and had issued a signed and blank cheque (cheque No.119270) in favour of the institution as a loan security. The respondent No.1 and respondent No.2 are chairman and accountant of institution respectively. The respondents, without the consent of the petitioner/complainant misused their power, committed forgery of the aforesaid cheque and illegally withdrew Rs.34,650/- from the bank account of the petitioner and deposited in the account of the institution. Thereafter, on 07.07.2016, the respondents deposited Rs.12,900/- in loan account of the petitioner and remaining amount Rs.7,850/-, Rs.7,750/- and Rs.7,650/- was illegally deposited in the account of Suresh, Ashok Kumar and Sachin Sharma. Thereby, the respondents have misused the aforesaid cheque and have illegally received the aforesaid amount.

3. The petitioner filed an application (Annexure P-9) u/S 91 and 202 of Cr.P.C to produce aforementioned cheque and concerning bank statement from manager/authorized officers of Indore Premium Cooperative bank, Branch Mhow, Ambedkar Nagar and to examine handwriting of the cheque from the handwriting expert.

4. Learned trial Court considering provision of Section 20 of the Negotiable Instrument Act, 1881 has rejected the application.

5. Learned counsel for the petitioner submits that the complaint is based on the aforesaid cheque and the cheque is in possession of Indore Premium Cooperative bank, Branch Mhow, Ambedkar Nagar. Therefore, the production of the cheque is the most essential element of the case, but the trial Court without considering Section 91 and Section 202 of Cr.P.C has rejected the application. Therefore, impugned order is perverse and is also against the settled principle of law.

6. I have heard learned counsel for the petitioner and perused the record.

7. For deciding the issue, in the present case, it is apposite to reproduce here Sections 91 and 202 of Cr.P.C which run as under:-

"91. Summons to produce document or other thing.—

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable forthe purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

> ***202. Postponement of issue of process.***— *(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1 [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*
>
> *Provided that no such direction for investigation shall be made,—*
>
> *(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*
>
> *(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*
>
> *(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:*
>
> *Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*
>
> *(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant."*

8. Bare reading of the aforementioned provisions, it is reflected that the Court is empowered to call any documents u/S 91 of Cr.P.C, which are necessary to fair proceeding of the case. The Court can issue summons to the persons in whose possession the desirable documents are kept. The powers which have been given to the Court u/S 91 of Cr.P.C is discretionary in nature and same can be exercised judiciously and in proper manner. It also shows that the power to issue summon for the production of a document are a thing is to be exercised whenever the Court considers that its production is necessary or desirable for the purpose of investigation, inquiry, trial or other proceeding.

9. In the case of *Shivjee Singh V Nagendra Tiwari And Ors.* **[order dated 06.07.2010, passed in Criminal Appeal No.1158/2010],** Hon'ble the Supreme Court has opined in Paragraph 8 as under:-

> *"8. The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complaint and determine*

whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence then he is required to issue process. Section 202 empowers the Magistrate to postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he may think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 203, the Magistrate can dismiss the complaint if, after taking into consideration the statements of the complainant and his witnesses and the result of the inquiry/investigation, if any, done under Section 202, he is of the view that there does not exist sufficient ground for proceeding. On the other hand, Section 204 provides for issue of process if the Magistrate is satisfied that there is sufficient ground for doing so. The expression "sufficient ground"used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI of Cr.P.C. finds adequate support from the judgments of this Court in R.C. Ruia v. State of Bombay, 1958 SCR 618, Vadilal Panchal v. Duttatraya Dulaji Ghadigaonkar (1961) 1 SCR 1, Chandra Deo Singh v. Prokash Chandra Bose (1964) 1 SCR 639, Nirmaljit Singh Hoon v. State of West Bengal (1973) 3 SCC 753, Kewal Krishan v. Suraj Bhan (1980) Supp SCC 499, Mohinder Singh v. Gulwant Singh (1992) 2 SCC 213 and Chief Enforcement Officer v. Videocon International Ltd. (2008) 2 SCC 492. "

10. Therefore, it is clear from Section 202(1) Cr.P.C., subject to the exception mentioned u/S 202(1)(a) and (b), if the magistrate postpone the issue of process against the accused he may himself inquire into the case or and direct an investigation to be made by a Police Officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.

11. It appears from the impugned order that the trial Court has not considered the aforementioned provision of law while deciding the application (Annexure P-9) and passing the impugned order. It also appears that the trial Court has considered only Section 20 of the Negotiable Instrument Act, 1881 and rejected the application (Annexure P-9), therefore, it is apparent that the trial Court has failed to exercise its power judiciously as provided u/S 91 and 202 of Cr.P.C and has erred by rejecting the application. Therefore, the impugned order is perverse in law and is not sustainable.

12. Resultantly, the petition is **allowed** and impugned order dated 01.07.2022 passed by the trial Court is set aside. The trial Court is directed to re-hear the petitioner on the application (Annexure P-9) and decide it in accordance with the law.

Application allowed

I.L.R. 2023 M.P. 1953 (DB)

Before Mr. Justice Sheel Nagu & Mr. Justice Avanindra Kumar Singh

MCRC No. 10203/2023 (Jabalpur) decided on 7 July, 2023

RAJENDRA KUMAR BATHAM ...Applicant

Vs.

STATE OF M.P. …Non-applicant

***Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Second FIR on Same Facts – Quashment* – Held – Quashment of FIR No. 89/2021 registered at P.S. EOW Bhopal cannot be allowed as this FIR fails to satisfy the test of "sameness" and "consequences" because the complainant, accused and nature of allegations in Crime No. 435/2017 registered at P.S. Industrial Area, Dewas and FIR No. 89/2021 are not same – Application dismissed. (Paras 14, 17 & 18)**

दण्ड प्रक्रिया संहिता, 1973 (1974 का 2), धारा 482 – समान तथ्यों पर द्वितीय प्रथम सूचना प्रतिवेदन – अभिखंडन – अभिनिर्धारित – पुलिस थाना आर्थिक अपराध प्रकोष्ठ में दर्ज प्रथम सूचना प्रतिवेदन क्र. 89/2021 के अभिखंडन को मंजूरी नहीं दी जा सकती क्योंकि यह प्रथम सूचना प्रतिवेदन ''समानता'' तथा ''परिणाम'' की कसौटी पर खरा नहीं उतरता क्योंकि पुलिस थाना औद्योगिक क्षेत्र देवास में दर्ज अपराध क्र. 435/2017 तथा प्रथम सूचना प्रतिवेदन क्र. 89/2021 में परिवादी, अभियुक्त तथा अभिकथनों की प्रकृति समान नहीं हैं – आवेदन खारिज।

Cases referred:

(2001) 6 SCC 181, (2013) 6 SCC 348 = AIR 2013 SC 3794, (2018) 4 SCC 579, 2018 SCC Online MP 1769.

Alok Vagrecha and *S.D. Mishra*, for the applicant.
Madhur Shukla, for the non-applicant.

O R D E R

The Order of the Court was passed by :

AVANINDRA KUMAR SINGH, J. :- Though this matter is listed today for orders on admission, however, with the consent of learned counsel for the parties it is heard finally.

2. Petitioner-Rajendra Kumar Batham, a Retired Judicial Officer, has filed this petition under Section 482 of the Code of Criminal Procedure (for brevity "**Cr.P.C.**") for quashing of F.I.R. No.89/2021 dated 29.12.2021 registered at Police Station, Economic Offences Wing, Bhopal for offences under sections 420, 467, 468, 471, 406, 409 & 120-B of the Indian Penal Code (hereinafter referred to as the "**IPC**") and sections 7, 13(1)(a) & 13(2) of the Prevention of Corruption Act,1988.

3. As per prosecution case, the petitioner was a member of Madhya Pradesh Judiciary and was posted in different Districts. Between period 01.04.2012 to 30.03.2013, he was posted in Dewas on deputation in the Labour Court and thereafter he was relieved from the post and was posted at CJM Rajgarh Biaora. He stood retired from the service on 24.04.2014.

4. In the year 2017, the petitioner was informed by the Labour Court Dewas in 2014-15 that by playing fraud a bank account was opened, in which, Government money has been misappropriated. On this information the petitioner informed the Bank, Treasury and Police by letters Annxures (sic : Annexures) P/2 to P/4 respectively. On 08.07.2017 the petitioner by Annexure-P/04 informed the Police Station Dewas that in his name on the basis forged document an account has been opened, thereby causing loss to public exchequer, and further revealed that unknown person on the basis of photocopy of the documents of the complainant and photocopy of Identity Card Account opened on 22.04.2015, withdrew Government money.

5. On the basis of report police lodged an FIR No. 435/2017 against Narshing Baghel and Rajendra Bahadur Tamrakar for offences under Sections 409, 419, 420, 468, 467, 471 and 120-B of IPC and after investigation filed charge-sheet, in which, trial is underway. It is alleged that after four years of lodging Annexure P/4 the economic Offence (EOW) Bhopal without any basis lodged FIR against the petitioner. Besides this, the Labour Court Dewas has also sent an intimation to the petitioner to deposit Rs. 1,91,62,942/- which are alleged to be embezzled during petitioner's tenure, in that matter petitioner has filed a separate Writ Petition No. 7317/2022, which is now pending in the High Court at Jabalpur (as per CMIS report).

6. The second FIR has been lodged without any basis. It is also submitted that successor of the petitioner in Dewas Labour Court Shri Sachin Vijaywargiya by letter dated 20.09.2014, Letter No. 686 had requested the DDO login password in the name of Rajendra Bahadur Tamrakar for which the petitioner is not responsible. The petitioner was informed of the embezzlement on 07.07.2017 by the then Labour Judge, Dewas Shri Atmaram Ji Kheria that unknown person by opening an account in the Bank of India, Industrial Branch, Dewas, in the

petitioner's name and has made transaction between 22.04.2015 to 30.06.2017 and on the said information the petitioner has lodged a complaint (Annexure P/4). The charge-sheet on the basis of Annexure-P/4 is Annexure-P/6. It is submitted that after his retirement the petitioner never visited Dewas, therefore, there is no question of his opening bank account in Dewas. On the basis of report lodged by the petitioner, Sessions Trial No.374/2018 [State Vs.Rajendra Bahadur Tamrakar] is pending in the Court, in which, the petitioner has made deposition on 06.1.2023 as is evident from Annexure-P/7.

7. Regarding withdrawal/embezzlement of government money Ms.Veena Jain, Joint Director (Treasury & Accounts), Indore and Shri J. K.Sharma, Additional Director, (Treasury & Accounts), Bhopal have given separate enquiry reports, wherein the petitioner was not found responsible. It is submitted that when on the same set of facts earlier case has already been registered, then on the same basis second F.I.R. cannot be lodged. The Economic Offence Wing, Bhopal has failed to investigate that documents produced for opening of account and signature were forged so also the nomination in the account, name of Sushma as wife of account holder is mentioned, whereas Sushma is not the wife of petitioner. Similarly, wrong phone number has been mentioned. The pass-book, ATM and cheque book have not been seized to enquire as to who is operating the account. The CCTV Footages have not been confiscated and, therefore, prayer has been made to quash the FIR No.89/2021 registered at Police Station, EOW, Bhopal for offences under sections 420, 467, 468, 471, 406, 409 & 120-B of IPC and 7, 13(1)(a) & 13(2) of Prevention of Corruption Act.

8. On the other hand the counsel for the respondent-EOW has stated that the matter is under investigation. There are strong leads in suspicion against the present petitioner. Hence, prayed for dismissed of instant petition.

9. We have heard the rival parties and perused the record including FIR No.89/2021.

The question before this Court is whether second FIR can be quashed on the basis of submissions made by the petitioner.

10. As per case diary of Crime No.89/2021 it is evident that FIR has been lodged against Bherusingh Chouhan, Narsingh Baghel (daily waged peon), Rajendra Bahadur Tamrakar (Assistant Grade-II) and all staff of Labour Court, Dewas, Rajendra Kumar Batham, the then Presiding Officer, Labour Court, Dewas (since Retired), Jai Ram Dabar, Peon, Industrial Court, Indore, Sachin Kumar Vijayvargiya, the then Presiding Officer, Labour Court, Dewas (now Retired), Noor Singh and other persons.

11. Learned counsel for the petitioner has placed reliance on the decision in the cases of *T.T.Antony Vs. State of Kerala and others*, (2001) 6 SCC 181 and

Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another, (2013) 6 SCC 348=AIR 2013 SC 3794. The Supreme Court in paragraphs 20 & 27 of *T.T.Antony* (supra) has held as under:-

> *" 20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.*
>
> ***27.*** *A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the*

first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."

12. In the case of *Amitbhai Anilchandra Shah* (supra) in paragraphs 45, 46, 48, 52 & 53 the Supreme Court observed thus:

> *"45 .Ram Lal Narang [Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322 : 1979 SCC (Cri) 479] was cited to be an authority carving out an exception to the general rule that there cannot be a second FIR in respect of the same offence. This Court, in the said decision, held that a second FIR would lie in an event when pursuant to the investigation in the first FIR, a larger conspiracy is disclosed, which was not part of the first FIR. In the case on hand, while entrusting the investigation of the case relating to the killing of Sohrabuddin and Kausarbi to CBI, this Court, by order dated 12-1-2010 [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1 006] , expressed a suspicion that Tulsiram Prajapati could have been killed because he was an eyewitness to the killings of Sohrabuddin and Kausarbi.*
>
> *46. CBI also filed an FIR on 1-2-2010 based upon the aforesaid judgment dated 12-1-2010 [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] and conducted the investigation reaching to a conclusion that conspiracy to kill Sohrabuddin and Kausarbi and conspiracy to kill Tulsiram Prajapati were part of the same transaction inasmuch as both these conspiracies were entered into from the very outset in November 2005. Based upon its investigation, CBI filed a status report(s) before this Court and an affidavit in Writ Petition (Crl.) No. 115 of 2007 bringing to the notice of this Court that killing of Tulsiram Prajapati was also a part of the same transaction and the very same conspiracy in which killings of Sohrabuddin and Kausarbi took place and unless CBI is entrusted with the investigation of Tulsiram case, it will not be able to unearth the larger conspiracy covered in the first FIR. The fact that even as per CBI, the scope of conspiracy included alleged killing of Sohrabuddin and Kausarbi and alleged offence of killing of Tulsiram Prajapati and the same is unequivocally established by the order passed by this Court on 12-8-2010 in Rubabbuddin Sheikh v. State of Gujarat [Rubabbuddin Sheikh v. State of Gujarat, WP (Crl.) No. 6 of 2007, order dated 12-8-2010 (SC). For the text of the order see para 27 below.] which is*

fortified by the status report dated 11-11-2011 filed by CBI has already been extracted in paragraphs supra.

48. Upkar Singh [(2004) 13 SCC 292 : 2005 SCC (Cri) 211] also carves out a second exception to the rule prohibiting lodging of second FIR for the same offence or different offences committed in the course of the transaction disclosed in the first FIR. The only exception to the law declared in T.T. Antony [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] , which is carved out in Upkar Singh [(2004) 13 SCC 292 : 2005 SCC (Cri) 211] is to the effect that when the second FIR consists of alleged offences which are in the nature of the cross-case/cross-complaint or a counter-complaint, such cross-complaint would not (sic) be permitted as second FIR. In the case on hand, it is not the case of CBI that the FIR in Tulsiram Prajapati's case is a cross-FIR or a counter-complaint to the FIR filed in Sohrabuddin and Kausarbi's case being FIR dated 1-2-2010.

***52.** This Court accepting the plea of CBI in Narmada Bai [(2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] that killing of Tulsiram Prajapati is part of the same series of cognizable offence forming part of the first FIR directed CBI to " take over" the investigation and did not grant the relief prayed for i.e. registration of a fresh FIR. Accordingly, filing of a fresh FIR by CBI is contrary to various decisions of this Court.*

a). The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the first information report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of the evidence collected, the investigating officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the Magistrate concerned under Section 173(2) of the Code.

b) The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the first information report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of the evidence collected, the

investigating officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the Magistrate concerned under Section 173(2) of the Code.

c) Even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

d) Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the station house diary, the officer in charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code. Sub- section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.

e) The first information report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the

investigating agency, it is always in furtherance of the first FIR.

f) In the case on hand, as explained in the earlier paragraphs, in our opinion, the second FIR was nothing but a consequence of the event which had taken place on 25-11-2005/26-11-2005. We have already concluded that this Court having reposed faith in CBI accepted their contention that Tulsiram Prajapati encounter is a part of the same chain of events in which Sohrabuddin and Kausarbi were killed and directed CBI to "take up" the investigation.

g) For vivid understanding, let us consider a situation in which Mr A having killed B with the aid of C, informs the police that unknown persons killed B. During investigation, it revealed that A was the real culprit and D abetted A to commit the murder. As a result, the police officer files the charge-sheet under Section 173(2) of the Code with the Magistrate. Although, in due course, it was discovered through further investigation that the person who abetted Mr A was C and not D as mentioned in the charge-sheet filed under Section 173 of the Code. In such a scenario, uncovering of the later fact that C is the real abettor will not demand a second FIR rather a supplementary charge-sheet under Section 173(8) of the Code will serve the purpose.

h) Likewise, in the case on hand, initially CBI took a stand that the third person accompanying Sohrabuddin and Kausarbi was Kalimuddin. However, with the aid of further investigation, it unveiled that the third person was Tulsiram Prajapati. Therefore, only as a result of further investigation, CBI has gathered the information that the third person was Tulsiram Prajapati. Thus a second FIR in the given facts and circumstances is unwarranted : instead filing of a supplementary charge-sheet in this regard will suffice the issue.

i) Administering criminal justice is a two- end process, where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, the sweeping power of

investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences. As a consequence, in our view this is a fit case for quashing the second FIR to meet the ends of justice.

j) The investigating officers are the kingpins in the criminal justice system. Their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence they are bestowed with dual duties i.e. to investigate the matter exhaustively and subsequently collect reliable evidences to establish the same.

53. In the light of the specific stand taken by CBI before this Court in the earlier proceedings by way of assertion in the form of counter-affidavit, status reports, etc. we are of the view that filing of the second FIR and fresh charge-sheet is violative of fundamental rights under Articles 14, 20 and 21 of the Constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance. This Court categorically accepted CBI's plea that killing of Tulsiram Prajapati is a part of the same series of cognizable offence forming part of the first FIR and in spite of the fact that this Court directed CBI to " take over" the investigation and did not grant the relief as prayed, namely, registration of fresh FIR, the present action of CBI filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment."

13. The Inquiry Reports submitted by Team of Ms.Veena Jain, Joint Director (Treasury & Accounts), Indore as also Shri J.K.Sharma, Additional Director in the matter are on record. Page 57 of the first report is important, in which, Treasury Officer as well as Staff has been found liable. As regards report of Shri J.K.Sharma is concerned, in paragraphs 66 & 67 the Officers/employees alongwith Staff of Treasury have been found liable. The details have also been given as to the amount credited into 08 accounts.

14. In the charge-sheet filed on the basis of Crime No.435/2017 the Police Station, Industrial Area, Dewas it has been mentioned that partial charge-sheet being filed against the accused persons, namely, Rajendra Bahadur Tamrarkar, which is not complete. However, regarding other accused persons the investigation continued. It is clearly mentioned that the investigation is incomplete. It is also mentioned that the ATM Card, cheque book is dispatched by post on the address of the account holder. In the circumstances, it is alleged that why the Presiding Officer did not take any action, if the previous Presiding Officer was not at the given address. It is also mentioned that the charge-sheet is being

produced because if it is not filed, then Rajendra Bahadur would get benefit of section 167(2) Cr.P.C. It is also evident from the copy of Court statement filed by the petitioner that only evidence of PW.1-Rajendra Batham (petitioner) was recorded on 06.1.2023.

15. In the case of *P.Sreekumar Vs. State of Kerala and others*, (2018) 4 SCC 579 in paragraphs 23 to 37 it has been held as under:

> *"23. Having heard the learned counsel for the appellant and Respondent 2, who appeared in person, we are inclined to allow the appeal and set aside the impugned order passed in P. Sreekumar v. Mohan Prasad [P. Sreekumar v. Mohan Prasad, 2014 SCC OnLine Ker 8926] .*
>
> *24. The question, which fell for consideration before the High Court, was that if two FIRs are filed in relation to the same offence and against the same accused, whether the subsequent FIR was liable to be quashed or not.*
>
> *25. The Single Judge placed reliance on three decisions of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Madhu Limaye v. State of Maharashtra [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] and R.P. Kapur v. State of Punjab [R.P. Kapur v. State of Punjab, AIR 1960 SC 866 : 1960 Cri LJ 1239] and quashed the second FIR/charge-sheet under Section 482 of the Code.*
>
> *26. In our view, the High Court had committed jurisdictional error in quashing the subsequent FIR/ charge-sheet, which was filed at the instance of the appellant against Respondent 3 without adverting to the law on the subject.*
>
> *27. In our opinion, the law on the subject which governs the controversy involved in the appeal is no more res integra and settled by the decision of this Court (three-Judge Bench) in Upkar Singh v. Ved Prakash [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] and also by the subsequent decisions.*

28. Their Lordships after examining all the previous case-laws on the subject laid down the following proposition of law in the following words speaking through N. Santosh Hegde, J.: (Upkar Singh case [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , SCC pp. 299-300, paras 2325)

"23. Be that as it may, if the law laid down by this Court in T.T. Antony case [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in T.T. Antony case [T.T. Antony v. State of Kerala, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048] this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.

25. In the instant case, it is seen in regard to the incident which took place on 20-5-1995, the appellant and the first respondent herein have lodged separate complaints giving different versions but while the complaint of the respondent was registered by the police concerned, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit

by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value.

"29. The aforesaid principle was reiterated by this Court (two-Judge Bench) in Surender Kaushik v. State of U.P. [Surender Kaushik v. State of U.P., (2013) 5 SCC 148 : (2013) 2 SCC (Cri) 953] in the following words: (SCC p. 158, para 24)

" 24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible. "

30. Keeping the aforesaid principle of law in mind when we examine the facts of the case at hand, we find that the second FIR filed by the appellant against Respondent 3 though related to the same incident for which the first FIR was filed by Respondent 2 against the appellant-Respondent 3 and three bank officials, yet the second FIR being in the nature of a counter-complaint against Respondent 3 was legally maintainable and could be entertained for being tried on its merits.

31. In other words, there is no prohibition in law to file the second FIR and once it is filed, such FIR is capable of being taken note of and tried on merits in accordance with law.

32. It is for the reasons that firstly, the second FIR was not filed by the same person, who had filed the first FIR. Had it been so, then the situation would have been somewhat different. Such was not the case here; second, it was filed by the appellant as a counter-complaint against Respondent 3; third, the first FIR was against five persons based on one set of allegations whereas the second FIR was based on the allegations different from the allegations made in the first FIR; and lastly, the High Court while quashing the second FIR/charge-sheet did not examine the issue arising in the case in the light of law laid down by this Court in the two aforementioned decisions of this Court in Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] and Surender Kaushik [Surender Kaushik v. State of U.P., (2013) 5 SCC 148 : (2013) 2 SCC (Cri) 953] and simply referred the three decisions of this Court mentioned above wherein this Court has laid down general principle of law relating to exercise of inherent powers under Section 482 of the Code.

33. In the light of the foregoing discussion and the four reasons mentioned above, we are unable to agree with the reasoning and the conclusion of the High Court and are, therefore, inclined to set aside the impugned order.

34. The Magistrate will now proceed to try and decide the case on merits and while doing so, he will be free to examine all the issues arising in the case from all the angles in the light of the evidence that will be adduced by the parties.

35. If the Magistrate finds that the material brought on record against any person(s) including the appellant herein in the evidence indicating the involvement of any such person(s) in commission of the alleged offences, he will be free to proceed against any such person(s) in accordance with law and bring the proceedings to its logical end uninfluenced by any of our observations.

36. Let the trial before the Magistrate concerned be over, as directed above, within a year as an outer limit.

37. With these observations and directions, the appeal succeeds and is accordingly allowed. The impugned order passed in P. Sreekumar v. Mohan Prasad [P. Sreekumar v. Mohan Prasad, 2014 SCC OnLine Ker 8926] is set aside. As a result, CC No. 2682 of 2002 on the file of JMFC II,

Ernakulum is restored to its file for being tried on merits in accordance with law."

16. In the case of *Taranjeet Singh Hora Vs. State of M.P.*, 2018 SCC Online MP 1769 it has been held by this Court in paragraphs 15 & 16, which is reproduced below:-

"15. The position of law which emerges from the aforesaid judgments is that subsequent FIR for different offences committed in the same transaction or offence arising as a consequence of prior offence is not permissible but the second complaint in regard to same incident filed as a counter complaint is permitted under the Cr.P.C. and the second FIR for the same nature of offence against same accused person lodged by a different person or containing the different allegations is maintainable.

16. Examining the present case in the light of the aforesaid judgment, it is found that though all the three FIRs contain the same allegation against same accused persons but they have been lodged at the instance of the different persons and these three FIRs relate to the different transaction in respect of 3 different colonies. Therefore, test of "sameness" and "consequence" is not satisfied in the present case and no error is found in registering the three different FIRs."

17. Resultantly, looking to the facts of the present case as well as the law on the point, as discussed in the preceding paragraphs, this Court is of the view that quashment of the F.I.R. No.89/2021 registered at Police Station, EOW, Bhopal cannot be allowed as this FIR fails to satisfy the test of "sameness" and "consequences", because the complainant, accused and nature of allegations in Crime No.435/2017 registered at Police Station, Industrial Area, Dewas and FIR No.89/2021 by Police Station, EOW, Bhopal are not the same. This Court has deliberately not gone deep into the matter by way of dealing with every transaction of embezzled money date by date, lest it may prejudice the case of either party during pending trial/further investigation in Crime No.435/2017.

18. Consequently, there is no merit in this petition and hence, it stands dismissed. It is made clear that the Investigating Agency is free to investigate the matter in free and fair manner without being influenced by the observations made in this order.

Application dismissed

I.L.R. 2023 M.P. 1967
Before Mr. Justice Anil Verma
MCRC No. 51940/2021 (Indore) decided on 11 July, 2023

VASUDEV ...Applicant

Vs.

STATE OF M.P. …Non-applicant

***A. Food Safety and Standard Act (34 of 2006), Section 46 & 47 – Re-Testing of Sample* – Held – Petitioner preferred application before trial Court for re-testing of sample – Despite repeated orders issued by Courts below, respondents did not comply the order directing to get the sample tested from Central Laboratory and thus they have violated the valuable rights of petitioner – Aforesaid valuable right of the petitioner has been deprived and defeated – Criminal proceedings quashed – Application allowed. (Paras 11, 16 & 17)**

क. खाद्य सुरक्षा और मानक अधिनियम (2006 का 34), धारा 46 व 47 – नमूने का पुनः परीक्षण – अभिनिर्धारित – याची ने नमूने के पुनः परीक्षण हेतु विचारण न्यायालय के समक्ष आवेदन प्रस्तुत किया – निचले न्यायालयों द्वारा बारंबार जारी किये गये आदेशों के बावजूद, प्रत्यर्थीगण ने उस आदेश का पालन नहीं किया, जिसमें नमूने का केन्द्रीय प्रयोगशाला से परीक्षण कराने का निदेश दिया गया था और इस प्रकार उन्होंने याची के मूल्यवान अधिकारों का उल्लंघन किया है – याची को उपरोक्त मूल्यवान अधिकार से वंचित किया गया एवं उसे विफल किया गया – दाण्डिक कार्यवाहियां अभिखंडित – आवेदन मंजूर।

***B. Prevention of Food Adulteration Act (37 of 1954), Section 13(1) & 13(2) – Re-Testing of Sample – Right of Accused* – Held – Accused has a right to exercise an option of sending sample to Central Food Laboratory for re-testing by making application to Court within 10 days from the date of receipt of report – If copy of report of Public Analyst is not delivered to accused, his right u/S 13(2) will be defeated – Mere dispatch of report to accused is not a sufficient compliance of Section 13(2), report must be served on accused. (Para 8 & 9)**

ख. खाद्य अपमिश्रण निवारण अधिनियम (1954 का 37), धारा 13(1) व 13(2) – नमूने का पुनः परीक्षण – अभियुक्त का अधिकार – अभिनिर्धारित – अभियुक्त के पास रिपोर्ट की प्राप्ति से 10 दिनों के भीतर न्यायालय में आवेदन प्रस्तुत कर नमूने को पुनः परीक्षण के लिए केन्द्रीय खाद्य प्रयोगशाला भेजने के विकल्प का प्रयोग करने का अधिकार है – यदि लोक विश्लेषक की रिपोर्ट की प्रति अभियुक्त को नहीं दी गई, धारा 13(2) के अंतर्गत उसका अधिकार विफल हो जाएगा – अभियुक्त को मात्र रिपोर्ट भेजना धारा 13(2) का पर्याप्त अनुपालन नहीं है, अभियुक्त को रिपोर्ट की तामील होनी चाहिए।

Cases referred:

AIR 1967 SC 970, SLP (Cr.) No. 3995/2018 decided on 29.11.2019 (Supreme Court), Cr.M.P. No. 1050/2019 decided on 23.11.2020, MCRC No. 629/2012 order passed on 21.09.2015.

Akshat Pahadia, for the applicant.
H.S. Rathore, G.A. for the non-applicant.

O R D E R

ANIL VERMA, J. :- The petitioner has preferred this petition under Section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") for quashment of Criminal Case No.192/2015 pending before the Judicial Magistrate First Class, Shajapur.

2. Brief facts of the case are that on 16.10.2014 Food Safety Officer, Shajapur along with his team visited the shop of the petitioner and had purchased Soyabean Oil 2 Litre, 4 packs of Chana Dal, Besan 500 grams of Silver Coin brand and 4 packs of Vimal Pan Masala containing 30 pouches in each packet for the purpose of sending them for testing to the Food Analyst, State Food Laboratory. On 16.10.2014 Food Safety Officer issued an intimation to the designated officer, Food Safety Administration, Shajapur for despatching the sample of Premium Vimal Pan Masala to the food analyst and to deposit remaining 3 parts of the said sample with 3 memorandum to Form No.VI in safe custody. Then the sample was sent to the Food Analyst, State Food Laboratory for its analysis. Vide report dated 3.11.2014 the Food Analyst declared that the aforesaid sample is unsafe under Section 3(zz)(xi)(Mgco3) of the Food Safety and Standards Act, 2006. Petitioner was not satisfied with the aforesaid report and intimated his willingness to get the disputed sample re-tested. Then he sent a letter to the designated officer along with the Demand Draft of Rs.1,000/- requesting to get the disputed sample tested from the Central Laboratory. Thereafter, respondent sent a letter to the designated officer for grant of sanction and written sanction was granted on 2.2.2015. Then complaint has been filed before the CJM, Shajapur which was registered as Criminal Case No.192/2015.

3. Petitioner has filed an application under Section 46 and 47 of the Food Safety and Standards Act. Vide order dated 26.2.2015 his application was allowed and the trial Court has ordered to issue letter to the respondent directing to get the sample tested from the Central Laboratory. Then respondent has filed Criminal Revision No.49/2015 before the 1st Addl. Sessions Judge, Shajapur but the same was dismissed vide order dated 1.10.2015. Then on 12.2.2021 trial Court has issued a letter to the respondent asking for reasonable answer as to why the sample has not been sent to the Central Laboratory, but the respondent has not given any justification for not complying the order, nor they sent the sample to the Central Laboratory for its testing.

4. Learned counsel for the petitioner submits that the petitioner has a valuable right of appeal and a valuable right to get the sample reanalysed from the Central Laboratory, which was not made available by the respondents, therefore, in absence of the same no offence is made out against him. Despite of the repeated orders passed by the trial Court and the first appellate court, respondent did not comply with the aforesaid orders and disputed sample has not been sent to the Central Laboratory. Therefore, there is no conclusive proof about the unsafeness of the disputed sample, for which the petitioner can be prosecuted. The shelf life of the disputed sample was of 6 months from the date of its packing and it was expired in March, 2015 and the respondents have not taken any steps for re-testing by the Central Laboratory. The aforesaid valuable right of the petitioner has been deprived of and defeated. Petitioner is innocent and he has been falsely implicated in this matter. The entire case is based upon the Analyst's report, therefore, in absence of the Analyst's report of the Central Laboratory, no offence is made out against the petitioner. Hence, he prays that all the proceedings of Criminal Case No.192/15 pending before the trial Court be quashed.

5. Per contra, learned counsel for the respondent/State opposes the prayer and prays for its rejection by submitting that as per the provisions of Section 46(4) of the Food Safety and Standards Act, 2006, petitioner did not file application for re-testing the sample within the scheduled period and the designated officer has no jurisdiction to send the sample after lapse of the scheduled time period of 30 days. Therefore, the petition filed by the petitioner is liable to be dismissed.

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

7. Sub-sections (1) & (2) of Section 13 of the Prevention of Food Adulteration, 1954 (in short "the Act of 1954") reads thus:-

> **"13. Report of public analyst.**—(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.
>
> (2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the persons from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory".

8. Under sub-section (2) of Section 13, it is mandatory for the Local (Health) Authority to forward a copy of the report of the Public Analyst to the person from whom the sample of the food has been taken in such a manner as may be prescribed. Further mandate of sub-section 5 (2) of Section 13 is that a person to whom the report is forwarded should be informed that if it is so desired, he can make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample analysed by Central Food Laboratory. The report is required to be forwarded after institution of prosecution against the person from whom the sample of the article of food was taken. Apart from the right of the accused to contend that the report is not correct, he has right to exercise an option of sending the sample to Central Food Laboratory for analysis by making an application to the Court within ten days from the date of receipt of the report. If a copy of the report of the Public Analyst is not delivered to the accused, his right under sub-section (2) of Section 13 of praying for sending the sample to the Central Food Laboratory will be defeated. Consequently, his right to challenge the report will be defeated. His right to defend himself will be adversely affected. This Court in the case of *Vijendra* (supra) held that mere dispatch of the report to the accused is not a sufficient compliance with the requirement of sub-section (2) of Section 13 and the report must be served on the accused.

9. Therefore, the purpose of Section 13 of the Act of 1954 is to give second opportunity to the accused persons against whom the prosecution is initiated under the Act of 1954, based on the Public Analyst's report, to get the sample tested again by the Central Laboratory since the Central Laboratory's report will have precedence over the Public Analyst. This is a valuable opportunity to the accused persons to claim exoneration from the criminal proceedings on account of non compliance of the same.

10. It is settled by Hon'ble Supreme Court in *Municipal Corporation of Delhi v. Ghisa Ram, AIR 1967 SC 970,* that where inordinate delay in instituting prosecution has resulted in denial of the right under Section 13(2), it is deemed to have caused serious prejudice to the accused such that their conviction on the basis of the Public Analyst's report cannot be upheld. The Hon'ble Supreme Court in para 9 has held as under:-

> "9. In the present case, the sample was taken on the 20th September, 1961. Ordinarily, it should have been possible for the prosecution to obtain the report of the Public Analyst and institute the prosecution within 17 days of the taking of the sample. It, however, appears that delay took place even in obtaining the report of the Public Analyst, because the Public Analyst actually analysed the sample on 3rd October, 1961 and sent his report on 23rd October, 1961. It may be presumed that some delay in the analysis by the Public Analyst and in his sending his report to the prose- cution is bound

> to occur. Such delay could always be envisaged by the prosecution, and consequently, the elementary precaution of adding a preservative to the sample which- was given to the respondent should necessarily have been taken by the Food Inspector. If such a precaution had been taken, the sample with the respondent would have been available for analysis by the Director of the Central Food Laboratory for a period of four months which would have expired about the 20th of January, 1962. The report of the Public Analyst having been sent on 23rd October, 1961 to the prosecution, the prosecution could have been launched well in time to enable -the respondent to exercise his right under s. 13(2) of the Act without being handicapped by the deterioration of his sample. The prosecution, on the other hand, committed inordinate delay in launching 12 the prosecution when they filed the complaint on 23rd May, 1962, and no explanation is forthcoming why the complaint in Court was filed about seven months after' the report of the Public Analyst had been issued by him This, is, therefore, clearly a case where the respondent was deprived of the opportunity of exercising his right to have his sample examined by the Director of the Central Food Laboratory by the conduct of the prosecution. In such a case, we think that the respondent is entitled to claim that his conviction is vitiated by this circumstance of denial of this valuable right guaranteed by the Act, as a result of the conduct of the prosecution."

11. In the instant case, petitioner had conveyed his intention on 12.11.2014 that he is not satisfied with the report dated 3.11.2014 of the Public Analyst and disputed sample be re-tested. Even he has sent a letter to the designated officer along with the DD of Rs.1,000/-, but designated officer did not send the second sample to the Central Laboratory. Then petitioner preferred an application before the trial Court, the same was allowed on 19.2.2015 and also upheld by the revisional court, but despite of the repeated orders issued by both the courts below, respondents did not comply the aforesaid orders directing to get the sample tested from the Central Laboratory and thus they have violated the valuable rights of the petitioner. Therefore, the aforesaid valuable right of the petitioner has been deprived of and defeated.

12. Hon'ble Supreme Court in the matter of *M/s Alkem Laboratories Ltd. v. State of Madhya Pradesh* SLP (Cr.) No.3995 of 2018 decided on 29.11.2019 has held as under:-

> "Applying the abovementioned test to the present case, it has to be seen whether first, the Appellant was entitled to apply for testing of the Jelly by the Central Laboratory under Section 13(2); second, whether the denial of the right was the Respondents' fault and third, whether such denial is prejudicial to the Appellant's case. With respect to the first point, the Respondents have relied upon the Public Analyst's Report

which states that the Jelly contains 'sugar/sucrose', so as to institute a complaint for misbranding under Section 2(ix) (g) of the 1954 Act. This is because the label on the packaging claims that the Jelly is 16 S.L.P. (Cr.) No. 3995 of 2018 decided on 29.11.2019 14 'sugarless'. Hence, the Public Analyst's finding on whether 'sugar' as an ingredient is present in the Jelly sample is crucial to proving the offence of 'misbranding' against the Appellant. Thus, the Appellant ought to have had the opportunity to make an application under Section 13(2) for a second opinion from the Central Laboratory on the contents of the Jelly sample."

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

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

13. This Court in the matter of *Sandeep Tiwari v. State of Chhattisgarh* in Cr.M.P. No.1050 of 2019 decided on 23.11.2020 has held in paragraph 30 as under :-

"30. Finally, reverting the facts of the present case in light of the aforesaid principles of law laid down by Their Lordships of the Supreme Court, it is quite vivid that the valuable right of the petitioner under Section 13(2) of the Act of 1954 to get the second sample analysed by the Central Food Laboratory is lost as the product in question 17 Cr.M.P. No.

> 1050 of 2019, decided on 2311.2020 15 'Bru Instant Cofee Chicory Misture' was manufactured in March, 2008 and it was best before 18 months from the date of packaging and thereafter the product in question had lost its shelf life as it was to be used before September, 2009, and the complaint was filed before the jurisdictional criminal court on 27/04/2010, as such, the petitioner has been deprived of his valuable and indefeasible right to get the second sample of the product reanalyzed from the Central Food Laboratory under Section 13(2) of the Act of 1954 as the report from the Director of the Central Food Laboratory supersedes the report of the Public analyst by virtue of Section 13(3) of the Act of 1954 and consequently, the petitioner has suffered great prejudice in defending himself in the prosecution launched against him, as such, the entire prosecution against the petitioner deserves to be quashed on this short ground alone."

14. The Various High Courts have reiterated the same view that it is necessary on the part of the prosecution to afford an opportunity to the accused for sending the sample under Section 13 (2) of the PFA Act, 1954 to the Central Food Laboratory during the shelf life of the product in question, if no such opportunity is granted to the accused, the petitioner has suffered great prejudice in defending himself in the prosecution launched against him and on this count alone, the entire prosecution launched against the petitioner deserves to be quashed.

15. The Gwalior Bench of this Court in the case of *Sri Prakash Desai and another Vs. State of M.P.* vide order dated 21.9.2015 passed in MCRC No.629/2012 has held as under:-

> "12 .....The Bombay High Court after considering AIR 1967 SC 970 (Municipal Corporation of Delhi vs. Ghisa Ram); (1999) 8 SCC 190 (State of Haryana v. Unique Farmaid (P) Ltd.); 2008 (3) Scale 563 (Medicamen Biotech Ltd. v. Rubina Bose), opined that the valuable right of accused persons under Section 13(2) of the PFA Act is violated because the complaint was filed after shelf life of the product. The justification of delay on the basis of administrative reasons and limitation of three years for filing complaint was not accepted by the High Court. For this reason also, the impugned order cannot sustain judicial scrutiny. This judgment of Bombay High Court was put to test before Supreme Court in State of Maharashtra vs. Shivkumar @ Shiwalamal N. Chugwani, reported in 2011 (1) FAC 41 (Special Leave to Appeal (Cri) No. 6332/2010). The said SLP was dismissed on merits by Supreme Court on 13th September, 2010. Suffice it to say that after shelf life of a product is over, remedy under Section 13(2) of the PFA Act is of no use to the accused. Even if by order dated 11.8.2011, the court below rejected similar contention of the petitioner, it is of no help to the respondent. In view of the law laid down in Shivkumar @ Shiwalamal N. Chugwani (supra) and affirmed by Supreme Court, the said objection pales into insignificance."

16. From the return filed by the State, it is quite clear that respondents are not disputing that the shelf life of the product has already been expired on the date of filing of the complaint, therefore, it is a fit case for quashing of the proceedings against the petitioner on account of denial of his valuable right to get the second sample of the product analysed from the Central Food Laboratory under Section 13(2) of the Act, 1954.

17. In view of the aforesaid legal analysis, I have no hesitation to hold that the prosecution case against the petitioner deserves to be quashed in exercise of jurisdiction conferred under Section 482 of Cr.P.C. Consequently, the Criminal Case No.192/2015 pending before the Judicial Magistrate First Class, Shajapur is hereby quashed.

18. Accordingly, this petition filed under Section 482 of Cr.P.C. is allowed to the extent sketched hereinabove.

Certified copy as per rules.

Application allowed

I.L.R. 2023 M.P. 1974 (DB)

Before Mr. Justice Sheel Nagu & Mr. Justice Avanindra Kumar Singh

MCRC No. 42558/2020 (Jabalpur) decided on 13 July, 2023

YOGESH NAYYAR & anr. ...Applicants

Vs.

STATE OF M.P. & anr. …Non-applicants

***A. Prevention of Corruption Act (49 of 1988), Section 13(1)(a), 13(2) & 17-A – Investigation – Prior Approval* – Held – Section 17-A not only bars an enquiry/inquiry but also investigation in regard to offence without prior approval of competent authority – Even if enquiry was pending since prior to coming into effect of Section 17-A, investigation could not have been conducted pursuant to FIR which was lodged subsequent to coming into effect of Section 17-A vide amendment Act of 2018 – No prior approval was taken before initiating investigation – Thus, investigation stands vitiated and is set aside – Application allowed. (Paras 4.1 & 7 to 9)**

***क. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धाराएँ 13(1)(a), 13(2) व 17–A – अन्वेषण – पूर्व अनुमोदन* – अभिनिर्धारित – धारा 17–A सक्षम प्राधिकारी के पूर्व अनुमोदन के बिना अपराध के संबंध में न केवल जांच बल्कि अन्वेषण भी वर्जित करती है – यद्यपि धारा 17–A के प्रभाव में आने के पूर्व से जांच लंबित थी, 2018 के संशोधन अधिनियम द्वारा धारा 17–A के प्रभाव में आने के पश्चात् पंजीबद्ध किये गये प्रथम सूचना प्रतिवेदन के अनुसरण में अन्वेषण नहीं किया जा सकता था – अन्वेषण प्रारंभ करने से पहले कोई पूर्व अनुमोदन नहीं लिया गया था – अतः अन्वेषण दूषित हो जाता है एवं अपास्त किया गया – आवेदन मंजूर।**

***B. Prevention of Corruption Act (49 of 1988), Section 17-A – FIR – Investigation – Prior Approval* – Held – By Section 17-A what has been prohibited is conduction of investigation by police officer – Even if an FIR is lodged, investigation cannot take place without prior approval of competent authority. (Para 5.2 & 6)**

ख. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 17–A – प्रथम सूचना प्रतिवेदन – अन्वेषण – पूर्व अनुमोदन – अभिनिर्धारित – धारा 17–A द्वारा जो प्रतिषिद्ध किया गया है, वह पुलिस अधिकारी द्वारा अन्वेषण का संचालन किया जाना है – भले ही प्रथम सूचना प्रतिवेदन पंजीबद्ध किया गया है, सक्षम प्राधिकारी के पूर्व अनुमोदन के बिना अन्वेषण नहीं किया जा सकता।

***C. Prevention of Corruption Act (49 of 1988), Section 17-A – Applicability* – Held – Allegations relate to decision taken or/and recommendation made by applicants in their capacity as Asst. Engineer and Sub-Engineer, thus by the very nature of allegation, the bar contained in Section 17-A gets attracted. (Para 5 & 5.1)**

ग. भ्रष्टाचार निवारण अधिनियम (1988 का 49), धारा 17–A – प्रयोज्यता – अभिनिर्धारित – अभिकथन सहायक इंजीनियर एवं उप–इंजीनियर की हैसियत से आवेदकगण द्वारा किये गये विनिश्चय अथवा/एवं सिफारिश से संबंधित है, अतः अभिकथन के स्वरूप से धारा 17–A में अंतर्निहित वर्जन आकर्षित हो जाता है।

Case referred:

Criminal Appeal No. 1649/2021 (Supreme Court).

Sanjay K. Agrawal, for the applicants.
Madhur Shukla, for the non-applicants.

O R D E R

The Order of the Court was passed by :
SHEEL NAGU, J. :- Petitioners, who are two in number and are one of the two accused among four accused in Crime No.37/2018 alleging offences punishable u/S 420, 120-B of IPC and Sec. 7(C), 13(1)A, 13(2) of Prevention of Corruption Act, 1988 (Amended Act 2018) (for brevity "PC Act") registered at Police Station -E.O.W., Bhopal, assail the FIR primarily on the ground that the prior approval as contemplated by Section 17-A of Prevention of Corruption Act, 1988 (Amended Act 2018) was not obtained before conducting investigation.

2. Learned counsel for rival parties are heard on the short question as to whether the investigation triggered by the impugned FIR offends Sec. 17-A of PC Act.

3. Learned counsel for rival parties both rely upon the decision of the Apex Court in the case of *State of Rajasthan Vs. Tejmal Choudhary* (Criminal Appeal No.1649 of 2021). Before the Apex Court in *Tejmal* (supra), final order of

Rajasthan High Court was under challenge whereby, the High Court had quashed an FIR registered in January, 2018, by invoking the provision of Section 17-A of PC Act. The Apex Court in *Tejmal* (supra) allowed the appeal of State of Rajasthan by setting aside the order of High Court of Rajasthan by *inter alia* holding thus :

> *"10. In **State of Telangana v. Managipet alias Managipet Sarveshwar Reddy reported (2019) 19 SCC 87,** this Court rejected the arguments that amended provisions of the PC Act would be applicable to an FIR, registered before the said amendment came into force and found that the High Court had rightly held that no grounds had made out for quashing the proceedings.*
>
> *11. It is a well settled principle of interpretation that the legislative intent in the enactment of a statute is to be gathered from the express words used in the statue unless the plain words literally construed give rise to absurd results. This Court has to go by the plain words of the statute to construe the legislative intent, as very rightly argued by Mr. Roy. It could not possibly have been the intent of the legislature that all pending investigations upto July, 2018 should be rendered infructuous. Such an interpretation could not possibly have been intended.*
>
> *12.In his usual fairness, learned Senior Counsel appearing on behalf of the respondent does not seriously dispute the proposition of law that Section 17A does not have retrospective operation. Learned Senior Counsel, however, argues that the Court might have looked into the merits and, in particular, the fact that investigation had ultimately been closed. We need not go into that aspect since the High Court has quashed the proceedings only on the ground of permission not having been obtained under Section 17A of the PC Act.*
>
> *13. The appeals are, accordingly, allowed and the impugned judgment and order is accordingly set aside."*

4. Learned counsel for prosecution also submits that an inquiry was conducted vide Preliminary Enquiry 257/15 since 04.11.2015 as mentioned in the impugned FIR and, therefore, it cannot be said that the bar contained in Section 17-A can come in way of Prosecuting Agency to investigate.

4.1 In regard to the aforesaid contention of learned counsel for prosecution, it is profitable to refer to the expressions used in Section 17-A which not only bars an enquiry/inquiry but also investigation in regard to offence alleging allegations of recommendations made or decision taken without prior approval of competent authority. Thus, even if enquiry or inquiry was pending since prior to coming into effect of Section 17-A, investigation could not have been conducted pursuant to FIR which was lodged subsequent to coming into effect of Section 17-A. Thus, the contention of counsel for Prosecuting Agency deserves to be and is therefore rejected.

5. A bare perusal of Section 17-A reveals that prior to insertion of said provision in PC Act, the only provision giving protection of prior sanction to prosecution was Section 19 which is applicable at the stage of taking cognizance of offence, but not from any prior date. On 26.07.2018, the Prevention of Corruption Act, 1988 (Amended Act 2018) under went wide spread amendments including the insertion of Section 17-A which gave an added umbrella of protection to the public servant at the stage of enquiry / inquiry / investigation. The police officer was prohibited from conducting enquiry / inquiry / investigation into any offence alleged under the PC Act when allegations related to recommendation made or decision taken are as follows :

5.1 In the instant case, learned counsel for prosecution does not dispute that the allegations relate to decision taken or/and recommendation made by petitioners in their capacity as Assistant Engineer and Sub-Engineer. Thus, by the very nature of allegation, the bar contained in Section 17-A gets attracted.

5.2 The prohibition for a police officer is to conduct inquiry or investigation. An investigation is conducted only after an FIR is lodged and since in the instant case, the FIR was lodged on 10.12.2018 which was after Section 17-A of Prevention of Corruption Act, 1988 (Amended Act 2018) came on the statute book w.e.f. 26.07.2018, police was prohibited from conducting investigation pursuant to the impugned FIR, in the absence of any previous approval of authority competent to remove the petitioners from office at the time when offence was alleged to have been committed.

5.3 Learned counsel for prosecution however, submits that Section 17-A does not prohibit registration of offence / lodging of FIR but only investigation enquiry / inquiry.

6. Learned counsel for the Prosecuting Agency may be correct in his submission that lodging of an FIR in absence of approval is not expressly barred by Section 17-A of PC Act. However, what has been prohibited is conduction of investigation by a Police Officer and since lodging of an FIR is the triggering point of investigation, it is obvious that even if an FIR is lodged, investigation cannot take place without approval of competent authority.

7. In the instant case, after registration of impugned FIR, the investigation is being conducted but no charge-sheet has been filed yet and it is not disputed by learned counsel for prosecution that no prior approval of competent authority has been taken before initiating and conducting investigation.

8. Therefore, the investigation conducted pursuant to impugned FIR stands vitiated on the anvil of Section 17-A of PC Act.

9. Accordingly, the petition stands **allowed** to the following extent :

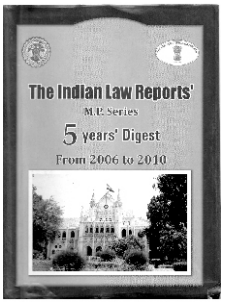
1. The investigation conducted subsequent to filing of FIR stands vitiated and is set aside.

2. Liberty, however, is extended to Prosecuting Agency to obtain prior approval or conducting investigation from the competent authority in terms of Section 17-A of PC Act.

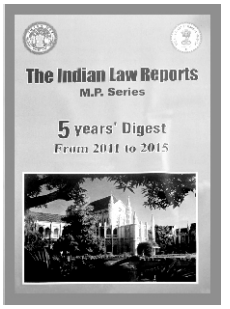
3. It is made clear that this Court has left the FIR bearing Crime No.37/2018 at Police Station E.O.W. Bhopal intact.

Application allowed

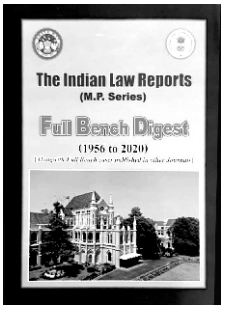
ILR DIGEST



5 Year's Digest
(2006 to 2010)
Price - ₹ 300/-

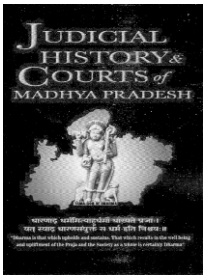


5 Year's Digest
(2011 to 2015)
Price - ₹ 250/-



Full Bench Digest
(1956 to 2020)
Price - ₹ 250/-

JUDICIAL HISTORY & COURTS OF MADHYA PRADESH

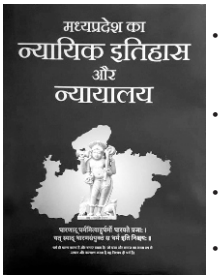


 # Price - ₹ 2500/-*

Contains

- Rich & complex heritage of Courts of Madhya Pradesh from ancient origin, through colonial period till present.
- Compact overview of indigenous judicial system of different tribes of M. P.
- Brief profiles of stalwarts of law : renowned Judges and lawyers.
- Scholastic articles and reminiscence written by knowledgeable authorities and experts,
- Replete with interesting anecdotes.
- Illustrative representation of heritage/ historic articles, building and orders.

e/;in'kdkU;kf;dbfrgkl vkjU;k;ky;

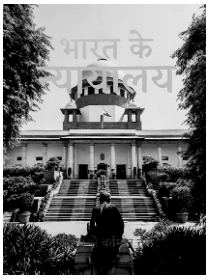


 # मूल्य - ₹ 2000/-*

fo"k;oLrq

- औपनिवेशिक काल से वर्तमान तक मध्यप्रदेश के न्यायालयों की समृद्ध और जटिल विरासत।
- मध्यप्रदेश के विभिन्न जनजातियों की अनूठी न्यायिक प्रणाली का संक्षिप्त संकलन।
- कानून के दिग्गजों के संक्षिप्त जीवन परिचय।
- विधिविज्ञों और विशेषज्ञों के द्वारा लिखित गए शोधपूर्ण आलेख और संस्मरण।
- रोचक उपख्यान।
- विरासत/ऐतिहासिक निर्माण, वस्तुओं और आदेशों का सचित्र समायोजन।

Hkkjr dh U;k;ky; ¼vrhr ls orZeku rd½

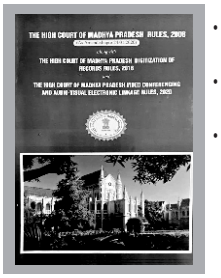


मूल्य - ₹ 508/-*

fo"k;oLrq

- स्वदेशी न्यायिक संरचनाओं का आरंभ।
- चार्टर ट्रिनिटी कोर्ट की स्थापना।
- भारत में आधुनिक कानून की शुरूआत।
- किंग इन काउंसिल, प्रिवी काउंसिल एवं फेडरल कोर्ट से संबंधित जानकारियां।
- सर्वोच्च न्यायालय एवं उच्च न्यायालयों का सचित्र विवरण।
- प्रसिद्ध अभियोग।

The High Court of MP Rules, 2008



Price - ₹ 100/-

Contains

- The High Court of Madhya Pradesh Rules, 2008 (as Amended upto 24.01.2020)
- The High Court of Madhya Pradesh Digitization of Records Rules, 2018
- The High Court of Madhya Pradesh Video Conferencing and Audio-Visual Electronic Linkage Rules, 2020

*** Please send request with details viz., Name, address, contact details along with DD/Cheque/Money Order of price of the book with postal charges ₹120 extra addressed to Registrar General, High Court of Madhya Pradesh.**

For More Details Contact : EPABX No. 0761-2620380 (Extn. No. 819)

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

RNI Regn. No. MPBIL/2009/32366
Postal Regn. No. L4/N.P./2022-24
Jabalpur

BOOK-POST

To,

.....

.....

.....

NOTE

- Delivery of ILR books sent by ordinary posts is at subscriber's risk.
- No copy will be sent again to the subscribers who opt for delivery by ordinary post, except on payment of price of the issue and subject to the availability of the extra in the stock.
- Subscribers are requested to avail facility of delivery through Bench Registries/District Courts/Tehsil Courts to avoid inconvenience.

Annual Subscription : ₹ 1200/- for the year 2023 (Including Book Post Charges)
Registered Postal Charges ₹ 645/- Extra.

Every effort has been made to avoid any mistake or omission. The Publisher, Editor or Printer shall not be liable in any manner to any person by reason of any mistake or omission in this publication.

If undelivered please return to -
PRINCIPAL REGISTRAR (ILR)
Administrative Block,
High Court of M.P.
Jabalpur - 482001 (M.P.)
✆ **: EPABX No. 0761-2620380**

If any issue is not received,
Please contact -
✆ **: EPABX No. 0761-2620380**

(Single Copy ₹100)
(Subject to Availability)

Printed & Published by	**:**	**Vaibhav Mandloi, Principal Registrar (ILR)**
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)*