

THE INDIAN  
LAW REPORTS  
M.P. SERIES

2 years' Digest

2021  
&  
2022



# THE INDIAN LAW REPORTS M.P. SERIES

## 2 years' Digest 2021 & 2022

CONTAINING-CASES DECIDED BY THE SUPREME COURT OF INDIA AND  
THE HIGH COURT OF MADHYA PRADESH

# **The Indian Law Reports (M.P. Series)**

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Authority of the Governor of M.P., Madhya Pradesh Shasan, Bhopal.**

*Justice Ravi Malimath*  
Chief Justice  
High Court of Madhya Pradesh



18<sup>th</sup> December, 2023

## MESSAGE

The 5 years' ILR Digest 2016-2020 was released on 23.11.2023 and within a period of 26 days, I am releasing the 2 years' Digest for the years 2021-2022.

This 2 years' Digest has been given a new look and an improved getup. The systematic subject-wise arrangement with synopses will be very helpful to all lawyers.

I hope and trust that in the years to come the digests of the Indian Law Reports Madhya Pradesh Series will be well received and would serve the purpose for which they are being published.

Due to the wide coverage and prompt reporting, the ILR has assumed importance and has become very popular among lawyers, judges and persons concerned with the legal field. This digest is being offered at an affordable price to help young lawyers.

I congratulate the Indian Law Reports' team for bringing out the 2 years' Digest in such a short period of time.

(Justice Ravi Malimath)

*Justice G.S. Ahluwalia*  
JUDGE  
HIGH COURT OF MADHYA PRADESH



## *Foreword*

It is indeed my pleasure to know that the Indian Law Reports is publishing 2 years' Digest (2021-2022).

A Digest of latest pronouncements of the Courts is the need of present day when large number of cases are being decided on important law points that makes a digest to be of great importance. With the help of a Digest it becomes much easier to find a case law on a particular topic.

This Digest contains systematically arranged subject heading with synopsis wherever required and I sincerely believe that it will prove useful to Judges & Lawyers specially to all those young lawyers who wish to enrich their knowledge and update their libraries. It is quite advantageous to the law students as well.

I am sure that the publication of the Digest for the year 2021-2022 will be widely welcomed by the members of the Bar and the Bench.

I am hopeful that under the constant guidance and patronage of Hon'ble Mr. Justice Ravi Malimath, Chief Justice of High Court of Madhya Pradesh, Indian Law Reports, (M.P. Series) will continue to reach new heights.

I extend my good wishes and felicitations to all those who are associated with the Indian Law Reports, (M.P. Series) for the success of this 2 years' Digest (2021 -2022).

(Justice Gurbal Singh Ahluwalia)

**THE HIGH COURT OF MADHYA PRADESH, JABALPUR  
AS ON 30.11.2023  
CHIEF JUSTICE**

**Hon'ble Shri Justice Ravi Malimath  
Chief Justice**

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Hon'ble Shri Justice Dinesh Kumar Paliwal  
Hon'ble Shri Justice Duppala Venkata Ramana  
Hon'ble Shri Justice Roopesh Chandra Varshney**

**CONTENTS OF HEADINGS**

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# CONTENTS

---

<b>Contents of Headings</b>	...	<b>1 to 10</b>
<b>Nominal Index</b>	...	<b>11 to 28</b>
<b>Digest of Cases</b>	...	<b>1 to 320</b>
<b>Personal Notes</b>	...	<b>321-322</b>

---



## CONTENTS OF HEADINGS

*1*

**Page No.**

### **A**

Accommodation Control Act, M.P. (41 of 1961)	1
Administration of Evacuee Property Act (31 of 1950)	3
Administrative Law	4
Administrative Orders	4
Admission	4
Adverse Possession	5
Advocate	5
Advocates Act (25 of 1961)	5
Arbitration and Conciliation Act (26 of 1996)	6
Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016)	13
Arbitration Rules, M.P., 1997	13
Armed Forces Tribunal Act (55 of 2007)	13
Arms Act (54 of 1959)	13
Autonomous Medical Collegiate Education Model Service Rules, M.P., 2018	14
Ayurvigyan Vishwavidyalay (Eligibility and Enrolment of Students for under Graduate Courses) Ordinance, M.P., 2014	14

### **B**

Benami Transactions (Prohibition) Act (45 of 1988)	15
Bhandar Kray Tatha Sewa Uparjan Niyam, M.P., 2015	15
Bhoodan Yagna Adhinyam, M.P. (28 of 1968)	15
Binding Precedent	16
Building and Other Construction Workers' Welfare Cess Act (28 of 1996)	16
Building and Other Construction Workers' Welfare Cess Rules, 1998	16

### **C**

Ceiling on Agricultural Holdings Act, M.P. (20 of 1960)	16
Census Rules, 1990	17

Central Excise Act (1 of 1944)	17
Central Excise Rules, 2017	18
Central Goods and Services Tax Act (12 of 2017)	18
Central Goods and Services Tax Rules, 2017	19
Chikitsa Shiksha Pravesh Niyam, M.P., 2018	19
Civil Courts Act, M.P. (19 of 1958)	21
Civil Practice	21
Civil Procedure Code (5 of 1908)	22
Civil Services (Classification, Control and Appeal) Rules, M.P. 1966	28
Civil Services (General Conditions of Service) Rules, M.P., 1961	32
Civil Services (Leave) Rules, M.P. 1977	34
Civil Services (Pension) Rules, M.P., 1976	35
Class III (Non-Ministerial) Forest Service Recruitment Rules, M.P., 2000	37
Commercial Courts Act, 2015 (4 of 2016)	37
Companies Act (18 of 2013)	38
Companies (Appointment and Qualification of Directors) Rules, 2014	39
Constitution	39
Contempt	84
Contempt of Courts Act (70 of 1971)	84
Contract	85
Contract Act (9 of 1872)	86
Cooperative Societies Act, M.P. 1960 (17 of 1961)	86
Cooperative Societies Rules, M.P. 1962	88
Court Fees Act (7 of 1870)	88
Court Fees (M.P. Amendment) Act, 2008	89
Criminal Practice	89
Criminal Procedure Code (5 of 1898)	99
Criminal Procedure Code, 1973 (2 of 1974)	99
Criminal Trial	140

## **CONTENTS OF HEADINGS**

3

### **D**

Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981)	141
Date of Birth (Entries in the School Register) Rules, M.P., 1973	141
Designs Act (16 of 2000)	141
Disaster Management Act (53 of 2005)	142
District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2016	143
District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2019	143
District Judiciary	143
Dowry Prohibition Act (28 of 1961)	144

### **E**

Education	144
Electricity Act (36 of 2003)	144
Employee's Compensation Act (8 of 1923)	145
Entertainment Duty and Advertisements Tax Act, M.P. (30 of 1936)	145
Epidemic Diseases Act (3 of 1897)	146
Essential Commodities Act (10 of 1955)	146
Evidence Act (1 of 1872)	146
Excise Act, M.P. (2 of 1915)	153

### **F**

Food Safety and Standard Act (34 of 2006)	153
---	-----

### **G**

General Clauses Act (10 of 1897)	154
Goods and Services Tax Act, M.P. (19 of 2017)	154
Govansh Vadh Pratishedh Adhiniyam, M.P. (6 of 2004)	155
Govansh Vadh Pratishedh Rules, M.P., 2012	155
Government of India, Guidelines dated 31.03.2021	155

**CONTENTS OF HEADINGS**

Government Servants (Temporary and Quasi-Permanent Service) Rules, M.P. 1960	155
Guardians and Wards Act (8 of 1890)	156

**H**

High Court of Madhya Pradesh Rules, 2008	156
Hindu Law	157
Hindu Marriage Act (25 of 1955)	157
Hindu Succession Act (30 of 1956)	160

**I**

Income Tax Act (43 of 1961)	160
Indian Medical Council Act, (102 of 1956)	161
Industrial Disputes Act (14 of 1947)	161
Industrial Employment (Standing Orders) Rules, M.P., 1963	162
Insecticides Act (46 of 1968)	162
Insolvency and Bankruptcy Code, (31 of 2016)	162
Interpretation	163
Interpretation of Statutes	163

**J**

Judicial Discipline	165
Judicial Independence	166
Juvenile Justice (Care and Protection of Children) Act (56 of 2000)	166
Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)	166
Juvenile Justice (Care and Protection of Children) Rules, 2007	169

**L**

Land Acquisition Act (1 of 1894)	169
Land Revenue Code, M.P. (20 of 1959)	170
Law of Interpretation	175
Legal Maxim	176

<b>CONTENTS OF HEADINGS</b>	<b>5</b>
Legal Services Authorities Act (39 of 1987)	176
Letters Patent	177
Limitation Act (36 of 1963)	177
Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, M.P. (21 of 1994)	179
LPG Distributorship	179

## **M**

M.P. Online Dwara Counselling Prakriya Ke Liye Niyamavali	179
Madhya Bharat Land Revenue And Tenancy Act (66 of 1950)	180
Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983)	180
Maintenance and Welfare of Parents and Senior Citizens Act (56 of 2007)	182
Maxim	182
MCI Post Graduate Medical Education Regulations, 2000	183
Medical and Dental Post Graduate Course Admission Rules (Degree/ Diploma), M.P., 2014	183
Medical Council of India Regulation on Graduate Medical Education, 1997	184
Medical Education Admission Rules, M.P., 2018	184
Medical Termination of Pregnancy Act (34 of 1971)	185
Micro, Small and Medium Enterprises Development Act (27 of 2006)	185
Mid-day Meal Rules, 2015	186
Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006	186
Mines and Minerals (Development and Regulation) Act (67 of 1957)	186
Minimum Qualification for Teachers in Medical Institutions Regulations, 1998	187
Minimum Wages Act (11 of 1948)	187
Minor Mineral Rules, M.P. 1996	189
Motor Vehicles Act (59 of 1988)	190
Motor Vehicles Rules, M.P. 1994	191
Motoryan Karadhan Rules, M.P., 1991	191
Municipal (Achal Sampatti Antran) Rules, M.P., 2016	191

**CONTENTS OF HEADINGS**

Municipal Corporation Act, M.P. (23 of 1956)	192
Municipal Corporation (Extent of Wards) Rules, M.P., 1994	194
Municipalities Act, M.P. (37 of 1961)	194
Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994	196
Mutation	196
Mutual Partition	197

**N**

Nagar Palika (Registration of Colonizer Terms & Conditions) Rules, M.P., 1998	197
Nalsa (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015	198
Narcotic Drugs and Psychotropic Substances Act (61 of 1985)	198
National Highways Act (48 of 1956)	202
National Highways Rules, 1957	202
National Medical Commission Act (30 of 2019)	203
National Security Act (65 of 1980)	203
Negotiable Instruments Act (26 of 1881)	211
Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, M.P. (21 of 2007)	214
Notaries Act (53 of 1952)	214

**O**

Oaths Act (44 of 1969)	214
Official Language Act, M.P., 1957 (5 of 1958)	215

**P**

Panchayat Raj Evam Gram Swaraj Adhiniyam, M.P. 1993 (1 of 1994)	215
Partnership Act (9 of 1932)	215
Passports Act (15 of 1967)	215
Payment of Gratuity Act (39 of 1972)	216

<b>CONTENTS OF HEADINGS</b>	7
Penal Code (45 of 1860)	216
Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act (50 of 1962)	258
Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963	258
Petroleum Retail Dealership	258
Police Act (5 of 1861)	259
Police Executive (Non-Gazetted) Service Recruitment Rules, M.P. 1997	259
Police Regulations (M.P.)	259
Practice	260
Practice & Procedure	261
Precedent	262
Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (57 of 1994)	263
Preparation & Revision of Market Value Guideline Rules, M.P., 2018	263
Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (7 of 1980)	263
Prevention of Corruption Act (49 of 1988)	264
Prevention of Money Laundering Act, 2002 (15 of 2003)	267
Principle of Estoppel	268
Principle of Estoppel & waiver	268
Principle of Res-judicata	268
Protection of Children from Sexual Offences Act (32 of 2012)	268
Protection of Human Rights Act, 1993 (10 of 1994)	271
Public Distribution System (Control) Order, M.P., 2015	271
Public Prosecution (Gazetted) Service Recruitment Rules, M.P., 1991	272
Public Trusts Act, M.P. (30 of 1951)	272

## Q

Qawaid Muafidaran Jujve Araji Va Nakdi, Riyasat Gwalior, Samvat, 1991	273
---	-----

**CONTENTS OF HEADINGS****R**

Railway (Punitive Charges for Overloading of Wagon) Rules, 2005	273
Railways Act (24 of 1989)	273
Rajya Suraksha Adhiniyam, M.P. 1990 (4 of 1991)	274
Recruitment and Conditions of Service of Contingency Paid (District and Session Judge Establishment) Employees Rules, 1980	276
Registration Act (16 of 1908)	276
Registration of Births and Deaths Act (18 of 1969)	277
Registration of Births and Deaths Rules, M.P., 1999	278
Religious Endowments Act (20 of 1863)	278
Review Jurisdiction	279
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013)	279
Rights of Persons with Disabilities Act (49 of 2016)	281
Rules and Orders (Criminal), M.P.	281
Rules Regarding Record of Rights	282

**S**

Sand (Mining, Transportation, Storage and Trading) Rules, M.P., 2019	282
Sand Rules, M.P., 2018	283
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989)	283
Scheme for appointment of Arbitrators by the Chief Justice of M.P. High Court, 1996	285
Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act (54 of 2002)	285
Service Law	286
Shaskiya B.S.C. Nursing Mahavidyalayon Main Prashikshan Hetu Chayan Ke Niyam (Selection Rules)	308
Shram Kalyan Nidhi (Sanshodhan) (Mandal Karmcharyon Ki Bharti) Viniyam, M.P., 2021	309



<b>CONTENTS OF HEADINGS</b>	9
Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhinyam, M.P. (23 of 1999)	309
Sinchai Prabandhan Me Krishkon Ki Bhagidari (Sansodhan) Adhinyam, M.P. (23 of 2013)	309
Sinchai Prabandhan Me Krishkon Ki Bhagidari (Second Amendment) Adhinyam, M.P., 2019 (5 of 2020)	309
Specific Relief Act (47 of 1963)	310
Stamp Act, Indian (2 of 1899)	310
State Administrative Services (Classification, Recruitment and Conditions of Service) Rules, M.P., 1975	311
State Services Examination Rules, M.P., 2015 (Amended)	311
State Services Examination Rules, M.P., 2015 (Unamended)	312
Suits Valuation Act (7 of 1887)	312
Syndicate Bank Officer Employees' (Conduct) Regulations, 1976	312
<b>T</b>	
Tender	312
The Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015 (4 of 2016)	314
Title	315
Transfer of Property Act (4 of 1882)	315
Transplantation of Human Organs and Tissues Act (42 of 1994)	315
<b>U</b>	
Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, M.P. 2005 (14 of 2006)	316
Urban Land (Ceiling and Regulation) Act (33 of 1976)	316
Urban land (Ceiling and Regulation) Repeal Act (15 of 1999)	317
<b>V</b>	
Vat Act, M.P. (20 of 2002)	317
Vikas Pradhikaran Ki Sampatyon Ka Prabandhan Tatha Vyayan Niyam, M.P., 2018	317

**CONTENTS OF HEADINGS**

Vishesh Sashastra Bal Adhinyam, M.P. (29 of 1968)	318
Vishwavidyalaya Adhinyam, M.P. (22 of 1973)	318

**W**

Wakf Act (43 of 1995)	318
Will	319
Witness Protection Scheme, 2018	319
Words & Phrases	319
Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act (45 of 1955)	320
Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, 1957	320
Works of Defence Act (7 of 1903)	320

\* \* \* \* \*

## NOMINAL INDEX

11

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

### A

A.A. Abraham Vs. State of M.P., I.L.R. 2021 M.P. 78	... 30, 36, 83
Abbas Maru Vs. Union of India, I.L.R. 2022 M.P. 1833	... 38, 39
Abhay Kumar Pande Vs. State of M.P., I.L.R. 2022 M.P. *75 (DB)	... 28
Abhay Nigam Vs. Union of India, I.L.R. 2021 M.P. 1633 (DB)	... 15, 165, 267
Abhishek Kachhwah Vs. M.P. Public Service Commission, I.L.R. 2022 M.P. 862	... 67, 68
Abhishek Pandey @ Ramji Pandey Vs. State of M.P., I.L.R. 2021 M.P. 1960	... 117, 144, 256, 284
Abhishek Raghuvanshi Vs. State of M.P., I.L.R. 2022 M.P. 1370	... 295
Abhishek Wankhade Vs. Tribal Work (Welfare) Department, I.L.R. 2022 M.P. 1183	... 292
Ahmed Sayeed Vs. State of M.P., I.L.R. 2022 M.P. *24 (DB)	... 95, 105, 110, 220
Ajay Jain Vs. The Chief Election Authority, I.L.R. 2021 M.P. *1	... 67, 72, 74, 86, 88
Ajay Khateek Vs. State of M.P., I.L.R. 2021 M.P. 1986	... 135, 136, 153
Ajju alias Ajay Vs. State of M.P., I.L.R. 2022 M.P. *60 (DB)	... 225, 234, 235, 240
Akarsh Jaiswal Vs. State of M.P., I.L.R. 2022 M.P. 1374	... 52, 153
Akhilesh Anjana Vs. Kavita Anjana, I.L.R. 2022 M.P. 1643	... 25, 156
Akram Vs. State of M.P., I.L.R. 2022 M.P. 1025 (DB)	... 229, 242
All Services Global Pvt. Ltd. Vs. M.P. Madhya Kshetra Vidyut Vitran Co. Ltd., I.L.R. 2022 M.P. 1714 (DB)	... 63
Alok Kumar Choubey Vs. State of M.P., I.L.R. 2021 M.P. 88 (DB)	... 41, 54, 55, 181
Aman Ahirwal Vs. State of M.P., I.L.R. 2022 M.P. *76	... 135, 153
Aman Bachat Mahila Swa Sahaiyata Samuh Rahatgarh Vs. State of M.P., I.L.R. 2022 M.P. 851	... 163, 164, 186
Amar Singh Vs. State of M.P., I.L.R. 2021 M.P. 2212 (DB)	... 140, 232
Amit Chaurasia Vs. State of M.P., I.L.R. 2021 M.P. 2049	... 30, 66, 84
Amita Gupta (Dr.) (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 977 (DB)	... 161, 175, 187, 268
Amrit Refined Pvt. Ltd. (M/s) Vs. The Commissioner of Commercial Tax, I.L.R. 2022 M.P. 1950 (DB)	... 317
Amrutlal Sanghani Vs. State of M.P., I.L.R. 2022 M.P. *47	... 99, 106, 107, 146, 162
Anand Deep Singh Vs. State of M.P., I.L.R. 2022 M.P. 1908 (DB)	... 24, 28, 74
Anand Kumar Lowanshi Vs. Hon'ble High Court of M.P., I.L.R. 2022 M.P. 1990 (DB)	... 305, 306
Anil Patel Vs. State of M.P., I.L.R. 2021 M.P. 746	... 96, 100, 222, 283, 284
Ankit Patel Vs. State of M.P., I.L.R. 2021 M.P. 1651 (DB)	... 71, 175
Ankit Tiwari Vs. High Court of M.P., I.L.R. 2021 M.P. 1687 (DB)	... 68, 301
Anwar Khan Jilani Vs. State of M.P., I.L.R. 2022 M.P. 1862	... 274, 276

Aom Tiwari Vs. State of M.P., I.L.R. 2021 M.P. 551	...	129, 247, 269, 319
Aparna Bhat Vs. State of M.P., I.L.R. 2021 M.P. 1003 (SC)	...	47, 127, 128, 130, 247
Archana Govind Rao Bhange (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. *77 (DB)	...	184
Arun Kumar Dey Vs. State of M.P. through Special Police Establishment, I.L.R. 2022 M.P. *16 (DB)	...	119, 120, 139
Arun Narayan Hiwase Vs. State of M.P., I.L.R. 2021 M.P. 246	...	290, 305
Arun Parmar Vs. State of M.P., I.L.R. 2021 M.P. 822 (FB)	...	33, 34, 156, 165, 263, 311
Arun Sharma Vs. State of M.P., I.L.R. 2021 M.P. 384	...	45, 71, 74
Arun Singh Chouhan Vs. State of M.P., I.L.R. 2021 M.P. *12 (DB)	...	80
Aruni Sahgal Vs. State of M.P., I.L.R. 2021 M.P. 114	...	126, 135, 136
Arvind Singh Gurjar Vs. State of M.P., I.L.R. 2022 M.P. *78 (DB)	...	110, 141, 250
Asfaq Khan Vs. State of M.P., I.L.R. 2021 M.P. 343	...	46, 131, 229
Ashish Agarwal Vs. State of M.P., I.L.R. 2022 M.P. 61	...	164, 195, 197, 198
Ashok Kumar Vs. District & Sessions Judge, Betul, I.L.R. 2022 M.P. *79 (DB)	...	59, 294
Ashok Singh Vs. State of M.P., I.L.R. 2022 M.P. 1195 (DB)	...	150, 153, 218, 235, 244
Atul Kumar Ben Vs. Union of India, I.L.R. 2021 M.P. 1899 (DB)	...	82, 261
Atul Singh Vs. Indian Oil Corporation, I.L.R. 2021 M.P. *10	...	78
Awadhesh Maheshwari Vs. Union of India, I.L.R. 2022 M.P. 1355	...	258

**B**

Badri Prasad Tiwari Vs. State of M.P., I.L.R. 2022 M.P. 615 (DB)	...	79, 81, 175, 272
Bajaj Allianz General Insurance Co. Vs. Hafiza Bee, I.L.R. 2021 M.P. 100	...	24, 145
Bajranga (Dead) By LRs. Vs. State of M.P., I.L.R. 2021 M.P. 205 (SC)	...	17, 83
Balaji Chemist Vs. Indian Red Cross Society, I.L.R. 2022 M.P. *11 (DB)	...	72
Balkrishna Devda Vs. State of M.P., I.L.R. 2022 M.P. 952	...	117, 136, 144, 257
Balram Dhakar Vs. State of M.P., I.L.R. 2022 M.P. *9	...	307, 308
Balram Vs. State of M.P., I.L.R. 2022 M.P. *17	...	96, 228, 229, 283
Bapulal Vs. State of M.P., I.L.R. 2022 M.P. 1421	...	4, 5, 178
Basant Shrivaneekar Vs. State of M.P., I.L.R. 2022 M.P. 51 (DB)	...	72, 74, 194
Batsiya Vs. Ramgovind, I.L.R. 2021 M.P. 1718	...	21, 22, 25, 182
Bhagwan Singh Vs. State of M.P., I.L.R. 2022 M.P. 509 (DB)	...	149, 220, 260
Bhanwarlal Vs. Toofan Singh, I.L.R. 2022 M.P. *80	...	170
Bharat Singh Batham Vs. Life Insurance Corp. of India, I.L.R. 2021 M.P. 1096	...	290, 297
Bholeram Raikwar Vs. State of M.P., I.L.R. 2022 M.P. *81 (DB)	...	58, 59, 292
Bhopal Cooperative Central Bank Maryadit Bhopal Vs. State of M.P., I.L.R. 2021 M.P. 854 (FB)	...	86, 87

## NOMINAL INDEX

13

Bhopal Cooperative Central Bank Vs. Narayan Singh Solanki, I.L.R. 2022 M.P. *61 (DB)	... 87
Bhumika Kanojiya (Smt.) Vs. Abhishek Kanojiya, I.L.R. 2022 M.P. 1955	... 22, 158
Bhupendra Singh Thakur Vs. Umesh Sahu, I.L.R. 2022 M.P. *82	... 211, 212
Bhupendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 764 (DB)	... 95, 109, 267
Birla Corporation Ltd. (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 2015 (DB)	... 73, 187, 310
Bombay Intelligence Security (India) Ltd. Vs. State of M.P., I.L.R. 2022 M.P. 112	... 56, 312
Brijesh Shrivastava (Smt.) Vs. Hindustan Petroleum Corporation Ltd., I.L.R. 2021 M.P. *13	... 258, 259
Brilliant Institute of Professional Studies Niwari Vs. State of M.P., I.L.R. 2022 M.P. 1171 (DB)	... 318
Bundel Singh Lodhi Vs. State of M.P., I.L.R. 2021 M.P. *8	... 129, 214, 254

## C

Caparo Engineering India Ltd. Vs. Ummad Singh Lodhi, I.L.R. 2022 M.P. 10 (SC)	... 79, 161, 316
Catherin Josfin Thangadurai (Mrs.) Vs. State of M.P., I.L.R. 2021 M.P. *9 (DB)	... 14, 52, 144
Chandra Prakash @ Tinku Pandey Vs. State of M.P., I.L.R. 2022 M.P. 269	... 43, 274, 275, 276
Chandahas Namdev Vs. M.P. Power Transmission Co. Ltd., I.L.R. 2022 M.P. 1890	... 28, 78
Chandramani Mishra (Dr.) Vs. State of M.P., I.L.R. 2021 M.P. 1080	... 30, 297, 298, 299
Chandresh Marskole Vs. State of M.P., I.L.R. 2022 M.P. 1594 (DB)	... 45, 93, 121, 232, 243
Chandresh Shukla Vs. The Registrar, People's University, I.L.R. 2022 M.P. 497	... 73, 300
Chetna Dholakhandi (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 1896	... 174
Chhaya Gurjar (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 2301	... 69
Chhuna @ Chhatra Pal Singh Vs. State of M.P., I.L.R. 2022 M.P. 168 (DB)	... 148, 182, 227, 234, 237
Chief General Manager (IPC) MP Power Trading Co. Ltd. Vs. Narmada Equipments Pvt. Ltd., I.L.R. 2021 M.P. 604 (SC)	... 8, 9, 10, 144
Chief General Manager, S.E.C.L. Vs. Chandramani Tiwari, I.L.R. 2021 M.P. 2307	... 288, 289
Child in Conflict with Law Vs. State of M.P., I.L.R. 2022 M.P. 1471	... 167, 168
Chintamani (Smt.) Vs. Ajay Kumar, I.L.R. 2022 M.P. 1945	... 15, 25
Chironjilal Kushwah Vs. State of M.P., I.L.R. 2022 M.P. *1	... 130, 146, 272
Chotu @ Tinku @ Kirpal Vs. State of M.P., I.L.R. 2022 M.P. *48 (DB)	... 89, 98
Cobra-CIPL JV Vs. Chief Project Manager, I.L.R. 2021 M.P. 497 (DB)	... 82, 85, 86
Colonel Akhil Mendhe Vs. Union of India, I.L.R. 2022 M.P. 1894	... 13, 74

Community Action Through Motivation Program (CAMP) Vs. State of M.P., I.L.R. 2022 M.P. *3 (DB)	... 313
Curewin Pharmaceuticals Pvt. Ltd. Vs. Curewin Hylico Pharma Pvt. Ltd., I.L.R. 2021 M.P. 1735 (DB)	... 37, 38

**D**

D.K. Mishra Vs. Hon'ble High Court of M.P., I.L.R. 2021 M.P. 675 (DB)	... 37, 72
Dan Bahadur Singh Vs. Smt. Rama Devi, I.L.R. 2022 M.P. 686 (DB)	... 158
Dayle De'Souza Vs. Government of India Through Deputy Chief Labour Commissioner (C), I.L.R. 2022 M.P. 23 (SC)	... 188
Deenbandhu Saket Vs. State of M.P., I.L.R. 2022 M.P. 651 (DB)	... 31
Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani, I.L.R. 2021 M.P. 503	... 26, 211, 212, 213
Deepak Kalosia Vs. State of M.P., I.L.R. 2022 M.P. 993	... 195
Deepika Singh Vs. South Eastern Coalfields Ltd., I.L.R. (2022) M.P.1141 (DB)	... 59
Devendra Kumar Rai Vs. State Bank of India, I.L.R. 2022 M.P. *83 (DB)	... 55, 285, 286
Devilal Vs. State of M.P., I.L.R. 2021 M.P. 806 (SC)	... 166, 226, 239
Devkaran Vs. State of M.P., I.L.R. 2021 M.P. 1920 (DB)	... 110, 147, 149, 182, 236, 237
Dharmendra Jatav Vs. State of M.P., I.L.R. 2021 M.P. 445	... 174, 182, 315
Dharmendra Kumar Tripathi Vs. State of M.P., I.L.R. 2022 M.P. 1830 (DB)	... 291
Dharmपाल Singh Jadon Vs. State of M.P., I.L.R. 2022 M.P. 1492	... 122, 138, 139, 257
Dheeraj Gupta Vs. State of M.P., I.L.R. 2022 M.P. *62 (DB)	... 91, 92, 93, 94, 96, 110
Dhirendra Kumar Dubey Vs. State of M.P., I.L.R. 2022 M.P. 428	... 32, 35, 36, 53, 78
Dileep Kumar Sharma Vs. The Assistant General Manager, UCO Bank, Bhopal, I.L.R. 2021 M.P. *4 (DB)	... 162
Dilip Behere Vs. State of M.P., I.L.R. 2022 M.P. 2031 (DB)	... 73, 309
Dilip Kumar Vs. Laxminarayan, I.L.R. 2022 M.P. 1697	... 277, 311
Dilip Sisodia Vs. State of M.P., I.L.R. 2022 M.P. 413 (DB)	... 80, 206, 207
Dinendra Parashar Vs. State of M.P., I.L.R. 2022 M.P. *49	... 281
Dipesh Arya Vs. State of M.P., I.L.R. 2021 M.P. 251	... 83, 194, 196
Durga Pandey (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. *40 (DB)	... 183
Durgesh Singh Bhadauria Vs. State of M.P., I.L.R. 2022 M.P. 138 (DB)	... 89, 147, 148, 237

**E**

Ellora Paper Mills Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 2110	... 7, 8, 13
Elora Tobacco Co. Ltd. (M/s.) Vs. Union of India, I.L.R. 2022 M.P. 1995 (DB)	... 17, 18, 155

## NOMINAL INDEX

15

### F

Farjana (Smt.) Vs. Rashid, I.L.R. 2022 M.P. *50	... 102, 103
Firoz Khan Vs. State of M.P., I.L.R. 2022 M.P. *63	... 81

### G

G. Usha Rajsekhar (Smt.) Vs. Government of India, I.L.R. 2021 M.P. 85	... 75, 79
Ganesh Vs. Smt. Indu Bai, I.L.R. 2021 M.P. 928	... 164, 182
Gangaram Prajapati Vs. State of M.P., I.L.R. 2022 M.P. 282 (DB)	... 264
Gangashankar Dubey Vs. Smt. Sindhu Bai, I.L.R. 2022 M.P. 675	... 277, 310
Gayatri Parashar Vs. Tulsiram Kori, I.L.R. 2022 M.P. 947	... 2, 3, 25
Gayatri Project Ltd. (M/s.) Vs. M.P. Road Development Corporation Ltd., I.L.R. 2022 M.P. 1056 (DB)	... 7, 11, 12, 22, 180, 181
Ghanshyam Gupta Vs. State of M.P., I.L.R. 2022 M.P. 1389 (DB)	... 178, 202
Girraj Alias Batte Vs. State of M.P., I.L.R. 2022 M.P. 1031 (DB)	... 14, 90, 230, 233, 252
Gopal Krishna Gautam @ Pandit Vs. State of M.P., I.L.R. 2021 M.P. 1975	... 134, 199, 201
Gopal Vs. Mangalia, I.L.R. 2022 M.P. 104	... 15, 16, 173
Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., I.L.R. 2021 M.P. 557 (SC)	... 11, 12, 48, 176, 178, 314, 315
Govind Singh Yadav (Dead) Thr. L.Rs. Rammurti Yadav Vs. Dilip Singh Yadav, I.L.R. 2022 M.P. 125	... 160
Gram Panchayat Dhooma Vs. State of M.P., I.L.R. 2021 M.P. 1369 (DB)	... 70
Gudda @ Lal Sahab Vs. State of M.P., I.L.R. 2022 M.P. *25 (DB)	... 218, 234, 243
Guddi Rawat (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 1793	... 245
Guddu @ Sadique Vs. State of M.P., I.L.R. 2022 M.P. 576	... 200, 201
Gulam Hussain (Shri) Vs. Akbar Ali, I.L.R. 2022 M.P. 1947	... 2

### H

Haneef Khan Vs. State of M.P., I.L.R. 2022 M.P. 205	... 128, 129
Hardik Shah Vs. Union of India, I.L.R. 2022 M.P. 986	... 46, 216
Hariprasad Bairagi Vs. Radheshyam, I.L.R. 2021 M.P. *16 (DB)	... 170, 282
Hariprasad Lal Shrivastava (Shri) (Deceased) Through L.Rs. Vs. State of M.P., I.L.R. 2022 M.P. 2079	... 91, 93, 265, 266
Hariram Vs. State of M.P., I.L.R. 2022 M.P. *84 (DB)	... 216, 223, 226, 233, 234, 235
HCL Technologies Ltd. (M/s.) Vs. M.P. Computerization of Police Society (MPCOPS), I.L.R. 2021 M.P. 541	... 7, 8
HDFC Ergo General Insurance Co. Ltd. Vs. Smt. Bistrati Bai, I.L.R. 2022 M.P. 2075	... 191
Health Care Medical Devices Pvt. Ltd. Vs. MP Public Health Services Corp. Ltd., I.L.R. 2021 M.P. 1112 (DB)	... 61

Hemraj Suman Vs. M.P. Public Service Commission, I.L.R. 2022 M.P. 809 (DB)	... 272
Hemraj Vs. Kallu Khan, I.L.R. 2021 M.P. 1608	... 22, 23, 25, 177
Himadri Pal Vs. Rajeev Rawat, I.L.R. 2022 M.P. *4	... 3
Himanshu Gandhi Vs. State of M.P., I.L.R. 2022 M.P. 1487	... 116, 247, 270, 271
Himanshu Kuril Vs. State of M.P., I.L.R. 2021 M.P. 1140 (DB)	... 224
Hindustan Petroleum Corp. Ltd. Vs. Kailash Chandra, I.L.R. 2021 M.P. 1055 (DB)	... 54, 65, 289, 301, 308
Hirdayshay Vs. Nutanbai, I.L.R. 2022 M.P. 681 (DB)	... 158, 159, 160
Hitendra Singh Yadav (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1176 (DB)	... 35, 73
Hukum Singh Vs. State of M.P., I.L.R. 2022 M.P. *85 (DB)	... 140, 219, 221

## I

In Re. Special Judge (Electricity Act) No. 5, Indore, I.L.R. 2022 M.P. 1065 (DB)	... 145, 222
In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)	... 92, 93, 96, 118, 152, 232, 233, 234, 270
In reference (Suo Motu) Vs. State of M.P., I.L.R. 2021 M.P. 1337 (DB)	... 63, 64, 100, 168
In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 1324 (DB)	... 44
In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 698 (DB)	... 44, 45, 46, 47, 143, 146, 271
In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath, I.L.R. 2022 M.P. 722 (DB)	... 90, 92, 110, 118, 152, 232, 240, 242, 270
In Reference The State of M.P. Vs. Pankaj Mishra, I.L.R. 2022 M.P. *12 (DB)	... 85
In Reference Vs. Ravi @ Toli, I.L.R. 2022 M.P. 286 (DB)	... 90, 92, 96, 99, 123, 153, 228, 229, 238, 244, 253
Indal Singh Vs. State of M.P., I.L.R. 2021 M.P. 890	... 107, 108, 245, 319
Inderchand Jain (Died) Through LRs. Vs. Shyamlal Vyas (Died) Through LRs., I.L.R. 2021 M.P. 331	... 3
Index Medical College, Hospital & Research Centre Vs. State of M.P., I.L.R. 2021 M.P. 795 (SC)	... 20, 42
Indian Oil Corporation Ltd. Vs. M/s Krishna Gas Agency, I.L.R. 2021 M.P. 1661 (DB)	... 57, 78
Indira Chaurasia (Deceased) (Smt.) Through LRs Bipin Bihari Chaurasia Vs. Director, Krishi Upaj Mandi Board, I.L.R. 2021 M.P. 1568	... 25
Indrakala Agrawal (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 916 (DB)	... 55, 202, 281
Indu @ Indrapal Singh Vs. State of M.P., I.L.R. 2021 M.P. 1602 (DB)	... 14, 94, 216, 233, 238
Intercontinental Consultants & Technocrats Pvt. Ltd. Co. Vs. Ministry of Road Transport & Highways, I.L.R. 2022 M.P. 1705 (DB)	... 57



## NOMINAL INDEX

17

### J

J.B.S. Chandel Vs. State of M.P., I.L.R. 2022 M.P. 1074	... 114, 115
Jabalpur Development Authority Vs. Deepak Sharma, I.L.R. 2021 M.P. 215 (DB)	... 57, 58
Jagdish Chouhan (Baret) Vs. State of M.P., I.L.R. 2022 M.P. 44 (DB)	... 36, 260, 297, 298
Jagdish Singh Jatav Vs. State of M.P., I.L.R. 2021 M.P. 637	... 30, 300
Jahar Singh Gurjar Vs. State of M.P., I.L.R. 2022 M.P. *34	... 136, 160
Jai Kumar Bajpai (Dead) Through LRs. Smt. Chandrakanta Bajpai Vs. Chairman-cum-Managing Director, I.L.R. 2022 M.P. 1393	... 29, 65, 296, 297, 298
Jai Narayan Singh Vs. State of M.P., I.L.R. 2022 M.P. *41 (DB)	... 76, 215
Jasrath Vs. State of M.P., I.L.R. 2022 M.P. 690 (DB)	... 95, 241, 243, 255
Jaya Chakravarti Vs. State of M.P., I.L.R. 2021 M.P. 901	... 64, 102
Jayant Vs. State of M.P., I.L.R. 2021 M.P. 175 (SC)	... 108, 110, 186, 187, 189, 255
Jayvardhan Pandey Vs. High Court of M.P., I.L.R. 2022 M.P. 1717 (DB)	... 68
Jhabbu Vs. State of M.P., I.L.R. 2022 M.P. *26 (DB)	... 217
Jitendra Kumar Sen Vs. State of M.P., I.L.R. 2022 M.P. 1180	... 291
Jitendra Vs. State of M.P., I.L.R. 2022 M.P. 1048 (DB)	... 150, 151, 229, 231
Jitendra Vs. State of M.P., I.L.R. 2022 M.P. 1287	... 250, 270

### K

K & J Projects Pvt. Ltd. (M/s.) Vs. M.P. Road Development Corp., I.L.R. 2021 M.P. 2059 (DB)	... 313
K.C. Rajwani Vs. State of M.P., I.L.R. 2022 M.P. 1553 (DB)	... 293, 294
Kailash Vs. Arjun Singh, I.L.R. 2022 M.P. 1660	... 114, 260
Kailash Vs. Gordhan, I.L.R. 2022 M.P. 1920	... 121, 160, 219, 256
Kalawati Chaudhary (Smt.) Vs. Union Bank of India, I.L.R. 2022 M.P. *35 (DB)	... 292, 293
Kalla @ Kallu Vs. State of M.P., I.L.R. 2022 M.P. *18 (DB)	... 235
Kallu Khan Vs. State of M.P., I.L.R. 2022 M.P. 1127 (DB)	... 154, 278
Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)	... 43, 47, 153, 154, 204, 206, 208, 209, 210
Kamla @ Sarla Yadav (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 973	... 5, 134, 218, 245
Kamla Sharma (Smt.) Vs. Sukhdevlal, I.L.R. 2022 M.P. 1647	... 123, 154, 214
Kamleshwar Dixit Vs. State of M.P., I.L.R. 2021 M.P. 2035 (DB)	... 47, 206, 210
Kamni Tripathi Vs. State of M.P., I.L.R. 2022 M.P. *51 (DB)	... 53, 179, 180, 308
Kamta Prasad Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1846	... 107, 259, 260, 297, 299
Kan Singh Vs. State of M.P., I.L.R. 2021 M.P. 1306 (DB)	... 83, 194
Kaptan Singh Vs. Union of India, I.L.R. 2022 M.P. 1873	... 64, 70, 299, 300

**NOMINAL INDEX**

Karan Singh Vs. State of M.P., I.L.R. 2021 M.P. 1596 (DB)	... 126, 127, 217, 248
Kavita Dehalwar (Mrs.) Vs. Union of India, I.L.R. 2022 M.P. 1726	... 289, 290
Kewal Kumar Jaggi Vs. State of M.P., I.L.R. 2022 M.P. 657	... 169, 170, 320
Khyaliram Vs. State of M.P., I.L.R. 2021 M.P. 492	... 23, 171
Kirat Lodhi Vs. State of M.P., I.L.R. 2022 M.P. 83	... 59, 279
Kirti Sharma (Smt.) Vs. Jawaharlal Nehru Krishi Vishva Vidyalaya, Jabalpur, I.L.R. 2022 M.P. *86 (DB)	... 70, 292
Kishan Patel Vs. State of M.P., I.L.R. 2021 M.P. 297 (DB)	... 52, 309
Kishor Choudhary Vs. State of M.P., I.L.R. 2022 M.P. 1671 (DB)	... 42, 163, 179, 305, 311, 312
Krishna Kumar Anand Vs. Varun Anand, I.L.R. 2022 M.P. 2088	... 25, 178, 197
Krsnaa Diagnostics Pvt. Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 878 (DB)	... 61, 62, 312
Kuldeep Choudhary @ Kuldeep Yadav Vs. State of M.P., I.L.R. 2021 M.P. 953 (DB)	... 149, 150, 227, 228
Kuldeep Singh Rajawat Vs. State of M.P., I.L.R. 2022 M.P. *30 (DB)	... 242
Kundan Mukati Vs. State of M.P., I.L.R. 2021 M.P. 1126	... 73, 215

**L**

L.N. Medical College & Research Centre Vs. Union of India, I.L.R. 2022 M.P. 1333 (DB)	... 42, 53, 54, 72, 203
Lacchu @ Laxman Vs. State of M.P., I.L.R. 2022 M.P. *27	... 276
Laghu Udhog Nirmata Avam Vikreta Sangh Vs. State of M.P., I.L.R. 2022 M.P. 1166 (DB)	... 15, 51, 52
Lalit Kumar Jain Vs. Union of India, I.L.R. 2021 M.P. 1221 (SC)	... 86, 163
Lalu Sindhi @ Dayaldas Vs. State of M.P., I.L.R. 2021 M.P. 1932 (DB)	... 14, 140, 226, 320
Lavlesh Kumar Mishra Vs. The Madhyanchal Gramin Bank, I.L.R. 2021 M.P. 1818 (DB)	... 180, 263
Laxman Singh Baghel Vs. State of M.P., I.L.R. 2021 M.P. 1509 (DB)	... 33
Laxmi Giri Goswami Vs. State of M.P., I.L.R. 2022 M.P. 1322	... 109
Lokman Vs. State of M.P., I.L.R. 2022 M.P. *64	... 98, 246

**M**

M.L. Mittal Vs. State of M.P., I.L.R. 2022 M.P. 830	... 35, 303
M.P. Bus Operator Association Vs. State of M.P., I.L.R. 2021 M.P. 2242 (DB)	... 4, 43, 75, 143, 155, 261, 316
M.P. Housing Board, Gwalior Vs. Shanti Devi, I.L.R. 2021 M.P. 938	... 177
M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd. Vs. K.K. Mishra, I.L.R. 2022 M.P. 1815 (DB)	... 29, 72, 297
M.P. Road Development Corporation Vs. Mohd. Shahbuddin, I.L.R. 2022 M.P. 1927 (DB)	... 7, 164, 170, 202, 263, 280, 281, 311
M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H), I.L.R. 2021 M.P. 2072 (DB)	... 6, 10, 11, 12, 76, 181

## NOMINAL INDEX

19

Maan Singh Vs. State of M.P., I.L.R. 2022 M.P. 1520	... 316, 317
Madan Mohan Dwivedi Vs. State of M.P., I.L.R. 2022 M.P. 1691	... 30, 31, 65
Madan Mohan Shrivastava Vs. Additional District Magistrate (South) Bhopal, I.L.R. 2021 M.P. 683 (DB)	... 81, 285
Madhav Sharma Vs. State of M.P., I.L.R. 2022 M.P. *36 (DB)	... 184, 261
Madhav Vs. State of M.P., I.L.R. 2021 M.P. 1621 (SC)	... 49, 140, 227, 244
Madhu Morya (Ku.) Vs. State of M.P., I.L.R. 2021 M.P. 627	... 177, 287, 290, 308
Madhukar Patle Vs. State of M.P., I.L.R. 2022 M.P. *65	... 99, 124
Mahadev Pradhan (M/S) Vs. State of M.P., I.L.R. 2022 M.P. 1561	... 190
Mahant Narayan Puri (D) By LR Vs. Jagdish Chandra (D) By LRs., I.L.R. 2022 M.P. 1768	... 278, 279
Mahendra Kori Vs. State of M.P., I.L.R. 2022 M.P. *87 (DB)	... 82
Mahendra Singh Amb Vs. State of M.P., I.L.R. 2021 M.P. 235	... 78, 307, 308
Mahesh Singh Jadon Vs. Shri Radha Sharan Dubey, I.L.R. 2022 M.P. 1969	... 121, 126, 213
Mahip Kumar Rawat Vs. Shri Ashwini Kumar Rai, I.L.R. 2021 M.P. 1560 (DB)	... 50, 86, 288, 289
Mahipat Singh Vs. State of M.P., I.L.R. 2022 M.P. *66	... 131
Makhan Prajapati Vs. State of M.P., I.L.R. 2021 M.P. 761	... 135, 187, 254
Malkhan Singh Vs. State of M.P., I.L.R. 2022 M.P. *52	... 97
Manager (ER) Vs. Smt. Preeti Singh, I.L.R. 2022 M.P. 58 (DB)	... 292
Managing Director, M.P. Paschim Kshetra Vidyut Vitaran Co. Vs. Ashiq Shah, I.L.R. 2021 M.P. 1485 (DB)	... 291
Mangla Deshore (Kumari) Vs. Mst. Krishna Bai (Dead) By L.Rs., I.L.R. 2022 M.P. 2055	... 26, 177, 178
Manish Singh Malukani Vs. Hari Prasad Gupta, I.L.R. 2022 M.P. *67	... 277, 311
Manju Bai (Smt.) Vs. Dashrath, I.L.R. 2022 M.P. *53	... 27
Manmohan Singh Vs. State of M.P., I.L.R. 2022 M.P. *88	... 114, 264, 265, 267
Manoj Parmar Vs. Union of India, I.L.R. 2022 M.P. *19 (DB)	... 126
Manoj Sahu Vs. State of M.P., I.L.R. 2022 M.P. 1912	... 247, 248
Manoj Sharma (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 2015 (DB)	... 304
Manoj Singh Vs. State of M.P., I.L.R. 2022 M.P. 911 (DB)	... 97, 222, 234, 238, 246
Manoj Vishwakarma Vs. State of M.P., I.L.R. 2022 M.P. *5	... 46, 132
Manoj Yadav Vs. State of M.P., I.L.R. 2021 M.P. 777	... 46, 112, 113
Meena Devi Vs. State of M.P., I.L.R. 2022 M.P. *42	... 315
Mirza Saleem Beg Vs. Dinesh Nath Kashyap, I.L.R. 2022 M.P. *89	... 212
Mishri Bai (Smt.) Vs. Shubh Laxmi Mahila Cooperative Bank Ltd., I.L.R. 2022 M.P. 1720 (DB)	... 73, 75, 285
Mishrilal Vs. State of M.P., I.L.R. 2022 M.P. 1507 (DB)	... 66, 301
Mohamad Ibrahim Vs. R.K. Mishra, I.L.R. 2021 M.P. 1732	... 50, 85
Mohammad Afjal Vs. State of M.P., I.L.R. 2022 M.P. 1514	... 55, 81, 319

Mohanlal Patidar (Shri) Vs. Bank of Maharashtra, I.L.R. 2022 M.P. 1341 (DB)	... 39, 71
Mohbe Infrastructure A Partnership Firm (M/s.) Vs. State of M.P., I.L.R. 2021 M.P. 1300	... 173
Mohd. Azad Vs. State of M.P., I.L.R. 2021 M.P. 458 (DB)	... 83, 194, 196
Mohd. Irfan Qureshi Vs. Nayeem Khan, I.L.R. 2022 M.P. *68	... 118
Mohd. Rafiq @ Kallu Vs. State of M.P., I.L.R. 2021 M.P. 1991 (SC)	... 223
Mohd. Sakhawat Noor Vs. State of M.P., I.L.R. 2022 M.P. 866	... 169, 170
Mohd. Sultan Khan Vs. Union of India, I.L.R. 2021 M.P. 2041 (DB)	... 61, 62
Mohita Pandey (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. *69 (DB)	... 19, 20
Mold Tek Packing Pvt. Ltd. (M/s) Vs. S.D. Containers, I.L.R. 2021 M.P. 945 (DB)	... 37, 156, 177
Morari Vs. State of M.P., I.L.R. 2022 M.P. 880 (DB)	... 91, 223, 224, 230, 241
Mukesh Kumar Vs. Kulvinder Singh (dead) Through its Legal Heirs Jaspreet Kaur, I.L.R. 2021 M.P. 1131	... 310
Munnalal @ Bicholi Vs. State of M.P., I.L.R. 2021 M.P. 1739 (DB)	... 152, 252, 253, 254
Munni Bai (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 636	... 58, 304

## N

Nafees Khan Vs. State of M.P., I.L.R. 2022 M.P. 588 (DB)	... 96, 98, 147, 148, 149, 237
Nagendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 1553	... 271
Nageswar Sonkesri Vs. State of M.P., I.L.R. 2021 M.P. 265	... 49, 84, 290
Nandu Vs. State of M.P., I.L.R. 2022 M.P. *10 (DB)	... 90, 256
Narbad Ahirwar Vs. State of M.P., I.L.R. 2021 M.P. 2339 (DB)	... 94, 220, 221
Narendra Mishra Vs. State of M.P., I.L.R. 2022 M.P. 1113 (DB)	... 93, 139, 266
Naresh Soni Vs. Shankar Singh, I.L.R. 2021 M.P. *17	... 21
Naresh Vs. State of M.P., I.L.R. 2022 M.P. 157 (DB)	... 91, 153, 230
Naresh Vs. State of M.P., I.L.R. 2022 M.P. 716	... 116, 117, 245
Narmada Ginning & Pressing Factory (M/s.), Harda Vs. State of M.P., I.L.R. 2022 M.P. 442	... 79, 80, 191, 192
Narmada Transmission Pvt. Ltd. (M/s) Vs. M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., I.L.R. 2021 M.P. *2 (DB)	... 181
Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)	... 98, 149, 182, 217, 233, 237, 239, 240, 241, 242
National Health Mission Vs. Ramendra Singh Narwariya, I.L.R. 2021 M.P. 1070 (DB)	... 187, 188
Navneet Jat Vs. State of M.P., I.L.R. 2022 M.P. *54	... 199
Neena V Patel (Dr.) (Mrs.) Vs. Shravan Kumar Patel, I.L.R. 2022 M.P. 1900	... 215, 314

## NOMINAL INDEX

21

Nepal Singh Vs. Shri Nivas Jadon, I.L.R. 2022 M.P. 1015	... 23
Nikunj Shivhare Vs. State of M.P., I.L.R. 2022 M.P. 406	... 99, 110, 136, 153
Nirmala Devi (Smt.) Vs. Anil Kumar Tiwari, I.L.R. 2022 M.P. 503 (DB)	... 157
Nitin Khandelwal Vs. State of M.P., I.L.R. 2021 M.P. 1178	... 112, 256

### O

Om Prakash Sharma Vs. State of M.P., I.L.R. 2021 M.P. 984	... 42, 105, 107, 108, 109
Om Trading Co. (M/s) Vs. Deputy Commissioner of State Tax, I.L.R. 2021 M.P. 621 (DB)	... 19
Omnarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. 2025 (DB)	... 75, 176, 198
Omprakash Agrawal Vs. Sandeep Kumar Agrawal, I.L.R. 2022 M.P. 2034	... 24, 26
Omprakash Pateria (Dead) Through L.R. Vs. State of M.P., I.L.R. 2022 M.P. *43 (DB)	... 89, 97, 141, 151
Oriental College Amarwada, Main Road, Amarwada Vs. State of M.P., I.L.R. 2022 M.P. 1147 (DB)	... 16, 53, 262

### P

Pahalwan Singh @ Chimme Vs. State of M.P., I.L.R. 2022 M.P. *6 (DB)	... 45, 94, 223, 225
Pankaj Karoriya Vs. State of M.P., I.L.R. 2021 M.P. 2360	... 97, 137, 138, 146, 255
Pappu @ Dayaram Vs. State of M.P., I.L.R. 2021 M.P. 1571 (DB)	... 99, 147, 149, 230, 231, 236
Pawan Kumar Jain Vs. State of M.P., I.L.R. 2022 M.P. *55	... 13
Pawan Tamrakar (Dr.) Vs. M.P. Special Police Establishment, I.L.R. 2021 M.P. 1357 (DB)	... 76, 77, 105, 106, 107
Peethambara Granite Gwalior (M/s.) Vs. State of M.P., I.L.R. 2021 M.P. 284 (DB)	... 189
People's College of Medical Sciences and Research Centre Vs. Union of India, I.L.R. 2022 M.P. 1515 (DB)	... 203
Phiroz Vs. State of M.P., I.L.R. 2022 M.P. 1631	... 97, 248, 251, 254, 271
Pinki Vs. State of M.P., I.L.R. 2021 M.P. 1586	... 166, 169, 252, 253, 270
Piyush Kumar Sheth Vs. State of M.P., I.L.R. 2021 M.P. 1521 (DB)	... 60
Pooja Sahu (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. *56 (DB)	... 20, 262
Pradeep Kumar Arya Vs. State of M.P., I.L.R. 2022 M.P. *13	... 114, 137, 222
Pradeep Kumar Shinde Vs. State of M.P., I.L.R. 2021 M.P. 354	... 138, 139, 255
Pradeep Kumar Vs. State of M.P., I.L.R. 2021 M.P. *14	... 318
Pradeep Kumar Yadav Vs. State of M.P., I.L.R. 2022 M.P. *37 (DB)	... 302
Pradeep Raghuwanshi Vs. Central Bureau of Investigation, I.L.R. 2022 M.P. 2107 (DB)	... 101
Pramod Yadav Vs. State of M.P., I.L.R. 2021 M.P. 1151 (DB)	... 133, 248, 270, 284

Prashant Sharma Vs. State of M.P., I.L.R. 2022 M.P. *90	... 272
Prashant Singh Rajput Vs. State of M.P., I.L.R. 2021 M.P. 2000 (SC)	... 128, 228
Pratha Rajak Vs. Dr. Harisingh Gour Vishwavidyalaya, I.L.R. 2021 M.P. 1120 (DB)	... 4
Pratham National Security Vs. Union of India, I.L.R. 2022 M.P. 625 (DB)	... 40, 56
Praveen Muraka Vs. Bhama Enterprises India Pvt. Ltd., I.L.R. 2021 M.P. 737 (DB)	... 26, 142
Preeti Singh Vs. State of M.P., I.L.R. 2021 M.P. 1886 (DB)	... 46, 195
Premlal Basore (Shri) Vs. State of M.P., I.L.R. 2022 M.P. 1885 (DB)	... 295
Principal Secretary, Govt. of M.P. Vs. Ravi Shankar Sharma, I.L.R. 2022 M.P. 1411	... 315
Purushottam Bhatt Vs. State of M.P., I.L.R. 2022 M.P. 1539 (DB)	... 59, 82, 294
Pushpa Sen (Smt.) Vs. Manoj Sen, I.L.R. 2022 M.P. *20 (DB)	... 157

## R

R.K. Akhande Vs. Special Police Establishment, Lokayukt, Bhopal, I.L.R. 2021 M.P. 1613 (DB)	... 43, 95, 98
Rachna Mahawar Vs. The District Magistrate, I.L.R. 2021 M.P. 908 (DB)	... 99, 285
Radha Krishna Sharma Vs. State of M.P., I.L.R. 2021 M.P. 1641 (DB)	... 35, 36, 303
Radheshyam Kushwah Vs. State of M.P., I.L.R. 2022 M.P. 1461	... 99, 121, 140
Radheshyam Mandloi Vs. State of M.P., I.L.R. 2021 M.P. 1489 (DB)	... 306
Radheshyam Vs. Kamla Devi, I.L.R. 2021 M.P. *18	... 152
Raees Vs. State of M.P., I.L.R. 2022 M.P. 2102	... 134, 155
Rahul Kumar Vs. State of M.P., I.L.R. 2021 M.P. *19	... 130
Rahul Mittal (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. *70 (DB)	... 164, 183, 184
Rahul Vs. State of M.P., I.L.R. 2022 M.P. 941 (DB)	... 124
Raja Bhaiya Singh Vs. State of M.P., I.L.R. 2021 M.P. 119	... 111, 112, 113, 125, 199, 200
Rajabeti Sakhwar Vs. Darshanlal Sakhwar, I.L.R. 2021 M.P. 1782	... 104
Rajani Bharti Vs. Maulana Azad National Institute of Technology (MANIT), I.L.R. 2022 M.P. *38 (DB)	... 295
Rajasthan Patrika Pvt. Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 309 (DB)	... 77, 262, 320
Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan, I.L.R. 2021 M.P. 482	... 146, 150, 152, 172
Rajeev Agnihotri Vs. Ashok Jain, I.L.R. 2021 M.P. 1941	... 7, 8, 285, 310
Rajeev Kumar Jain Vs. State of M.P., I.L.R. 2021 M.P. *11 (DB)	... 264
Rajendra Kumar Gautam Vs. State of M.P., I.L.R. 2022 M.P. 603 (DB)	... 139, 163, 266
Rajendra Kumar Raikwar Vs. State of M.P., I.L.R. 2022 M.P. 278	... 293
Rajendra Singh Pawar Vs. State of M.P., I.L.R. 2021 M.P. 289	... 76, 104, 260, 261
Rajendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 1854 (DB)	... 189, 282, 283
Rajendra Vs. State of M.P., I.L.R. 2021 M.P. 1172	... 167, 169
Rajesh Kumar Rathore Vs. High Court of M.P., I.L.R. 2022 M.P. 121 (DB)	... 276, 299

## NOMINAL INDEX

23

Rajesh Vs. State of M.P., I.L.R. 2021 M.P. 1910	... 100, 119, 141, 147, 255
Rajjan Yadav Vs. State of M.P., I.L.R. 2021 M.P. 1512	... 274, 275
Rajkali Saket (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. *71 (DB)	... 55, 288
Rajkumar Goyal Vs. Municipal Corporation, Gwalior, I.L.R. 2021 M.P. 48	... 24, 54, 60, 198
Rajni Shende (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1530 (DB)	... 19, 164
Rajpal Construction Co. (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 1302 (DB)	... 181, 182
Raju @ Surendar Nath Sonkar Vs. State of M.P., I.L.R. 2021 M.P. 104	... 200, 202
Raju @ Vijay Vs. State of M.P., I.L.R. 2021 M.P. 1579	... 167, 168, 169
Rakesh Kushwaha Vs. State of M.P., I.L.R. 2022 M.P. *2 (DB)	... 115, 116
Rakesh Singh Bhadoriya Vs. Union of India, I.L.R. 2021 M.P. 222	... 42, 179, 263
Rakesh Sushil Sharma Vs. State of M.P., I.L.R. 2021 M.P. *5 (DB)	... 17, 193, 194
Ram Bharose Sharma Vs. State of M.P., I.L.R. 2021 M.P. 1345 (DB)	... 193, 194
Ram Khiladi Vs. State of M.P., I.L.R. 2022 M.P. 1428 (DB)	... 96, 176, 238, 240, 242
Raman Dubey Vs. State of M.P., I.L.R. 2021 M.P. 38	... 72, 87, 88
Raman Vs. State of M.P., I.L.R. 2022 M.P. *44	... 130, 269
Ramawatar Vs. State of M.P., I.L.R. 2022 M.P. 1 (SC)	... 49, 50, 122, 123, 284
Rambabu Vs. State of M.P., I.L.R. 2022 M.P. 1234 (DB)	... 92, 93, 95, 96, 121, 217, 221, 222
Ramcharan Patel Vs. State of M.P., I.L.R. 2021 M.P. 520 (DB)	... 90, 229, 240
Ramcharan Vs. State of M.P., I.L.R. 2022 M.P. 549 (DB)	... 14, 92, 98, 100, 141, 147, 247
Ramgopal Vs. State of M.P., I.L.R. 2022 M.P. 228 (SC)	... 50, 122, 123, 247
Ramkali (Smt.) (Dead) By L.R. Vs. Smt. Muritkumari (Dead) By L.Rs., I.L.R. 2022 M.P. 2063	... 22, 23, 150, 310
Ramkrishna Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1749	... 151, 157, 195, 273
Ramniwas Vs. State of M.P., I.L.R. 2021 M.P. 757	... 48, 132, 147, 198, 200
Ramua (Dead) Vs. Kodulal, I.L.R. 2022 M.P. 1017	... 26, 178
Ranjit @ Bhaiyu Mohite Vs. Smt. Nandita Singh, I.L.R. 2021 M.P. 727	... 82, 170, 172, 319
Rashi Gupta (Smt.) Vs. Gaurav Gupta, I.L.R. 2022 M.P. *57	... 43, 46, 103
Ratanlal Vs. State of M.P., I.L.R. 2021 M.P. 527 (DB)	... 152, 251, 254, 261
Ravi Shanker Chouksey Vs. State of M.P., I.L.R. 2021 M.P. 1557	... 58, 71, 73, 80, 320
Rekha Sengar Vs. State of M.P., I.L.R. 2021 M.P. 378 (SC)	... 132, 133, 263
Rita Gupta Vs. State of M.P., I.L.R. 2022 M.P. *7 (DB)	... 287
Rohit Sahu Vs. State of M.P., I.L.R. 2022 M.P. *58	... 107, 154
Roshan Vs. State of M.P., I.L.R. 2022 M.P. 701 (DB)	... 238, 239
Rumali (Smt.) Vs. M.P. State Election Commission Bhopal, I.L.R. 2022 M.P. *91	... 67

## S

S.D. Containers Indore Vs. M/s. Mold Tek Packaging Ltd., I.L.R. 2021 M.P. 163 (SC)	... 142, 314
S.L. Goyal Vs. State of M.P., I.L.R. 2022 M.P. 1456 (DB)	... 22, 180, 181
Sabit Khan Vs. State of M.P., I.L.R. 2021 M.P. 1871 (DB)	... 80, 266, 267
Sachin Mehra Vs. Union of India, I.L.R. 2022 M.P. 1569 (DB)	... 77, 295, 308
Sachin Pathak Vs. State of M.P., I.L.R. 2021 M.P. 1722	... 41, 42, 43
Sagar Saxena Vs. State of M.P., I.L.R. 2022 M.P. 1984 (DB)	... 69
Sai Rubber Works (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 433 (DB)	... 19, 66, 80, 154
Saisanket Enterprise (M/S) Vs. Authority For Advance Ruling, I.L.R. 2022 M.P. 1550 (DB)	... 18
Sajjan Singh Kaurav Vs. State of M.P., I.L.R. 2021 M.P. *3	... 58, 304
Sanjana Soviya Vs. State of M.P., I.L.R. 2021 M.P. 611 (DB)	... 69, 73
Sanjay Jain Vs. State of M.P., I.L.R. 2021 M.P. 1808 (DB)	... 288, 296, 303, 308
Sanjay Kumar Vs. Jitendra, I.L.R. 2022 M.P. 655	... 1
Sanjay Rawat Vs. State of M.P., I.L.R. 2022 M.P. *39	... 134, 269
Sanjay Vs. State of M.P., I.L.R. 2022 M.P. 1795 (DB)	... 89, 119, 120, 151, 228, 232, 241
Sant Ram Patel Vs. Jainul Aabdeen, I.L.R. 2022 M.P. 1190	... 89, 312
Sapphire Institute of Nursing & Science Vs. State of M.P., I.L.R. 2021 M.P. 2264 (DB)	... 14, 262
Sar Parivahan Pvt. Ltd. (M/s.) Vs. Hindustan Copper Ltd., I.L.R. 2022 M.P. 598	... 7, 11, 319
Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur, I.L.R. 2021 M.P. 2272 (DB)	... 75, 204, 205, 206, 207, 208, 210
Saroj Dehariya Vs. State of M.P., I.L.R. 2021 M.P. 1704 (DB)	... 42, 43, 281
Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council, I.L.R. 2021 M.P. 427	... 76, 81, 165, 185, 186
Satish @ Gudda Vs. State of M.P., I.L.R. 2022 M.P. 1785	... 97, 246, 247
Satishchandra Vs. Guddan @ Dashrath, I.L.R. 2022 M.P. 1742	... 27, 28
Satyam Cineplexes Ltd. (M/s) Vs. State of M.P., I.L.R. 2021 M.P. 642 (DB)	... 145, 146, 215, 260, 261
Satyanarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. *6	... 126, 156, 255
Satyendra Koshta Vs. The Registrar General, I.L.R. 2022 M.P. 1329 (DB)	... 150, 281
Sayaji Hotels Ltd. Vs. Indore Municipal Corporation, I.L.R. 2021 M.P. 72	... 193
Seema Jatav (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 1854	... 286, 288, 293, 303
Seth Trilokchand Kalyanmal Digambar Jain Vs. Sushil Kumar Kasliwal, I.L.R. 2022 M.P. *21	... 21, 82, 176, 272
Shabana Begum Vs. State of M.P., I.L.R. 2021 M.P. *7	... 295
Shailesh Kumar Sonwane Vs. State of M.P., I.L.R. 2021 M.P. 2092 (DB)	... 40, 56, 143, 182, 287, 288, 302



## NOMINAL INDEX

25

Shakila Begum (Siddiqui) Vs. Northern Coal Field Ltd., I.L.R. 2022 M.P. 855	... 40
Shanti Construction (M/s.) Vs. M/s. Aavantika Gas Ltd., I.L.R. 2022 M.P. 240 (DB)	... 39, 40, 41, 56
Shekhar Sarathe Vs. State of M.P., I.L.R. 2022 M.P. *22	... 129
Shiv Charan Verma Vs. M.P. State Co-operative Tribunal, Bhopal, I.L.R. 2022 M.P. 1186 (DB)	... 87
Shiv Kumar Sharma Vs. The Secretary, M.P. Board of Secondary Education, I.L.R. 2022 M.P. *59	... 64, 141
Shiv Shankar Thakre Vs. M.P.S.E.B. Through Its Secretary, I.L.R. 2022 M.P. *45 (DB)	... 71, 162
Shivam Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1810	... 100, 101, 124, 157
Shivcharan Vs. State of M.P., I.L.R. 2021 M.P. 317	... 91, 152, 218, 219, 256
Shivram Singh Rajawat Vs. State of M.P., I.L.R. 2022 M.P. *31 (DB)	... 239
Shramik Janta Sangh Vs. State of M.P., I.L.R. 2022 M.P. *8 (DB)	... 39
Shreeram Sharma Vs. State of M.P., I.L.R. 2021 M.P. 932	... 165, 190, 191
Shri Ram Sahu (Dead) Through LRs. Vs. Vinod Kumar Rawat, I.L.R. 2021 M.P. 4 (SC)	... 23, 24, 28
Shriram Rawat Vs. State of M.P., I.L.R. 2022 M.P. 2096	... 168, 169
Shrishti Infrastructure Development Corporation Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 1525 (DB)	... 61, 62
Shruti Patidar (Ms.) Vs. State of M.P., I.L.R. 2022 M.P. *92 (DB)	... 21, 184, 214
Shyam Kishore Tripathi Vs. Home Department Police, I.L.R. 2022 M.P. 1360	... 259
Shyam Kumar Singh Vs. State of M.P., I.L.R. 2022 M.P. 1510 (DB)	... 79, 307
Shyamlal Vyas (Dead) Through LRs. Smt. Gopi Vyas Vs. Inderchand (Dead) Through LRs. Shri Om Prakash Jain, I.L.R. 2022 M.P. 1296	... 2, 24, 268
Sikandar Singh Narvariya @ Lalu Vs. State of M.P., I.L.R. 2022 M.P. 523	... 131, 132, 133
Sinnam Singh Vs. State of M.P., I.L.R. 2021 M.P. 1317	... 33, 155, 156, 307
Siroman Singh Vs. State of M.P., I.L.R. 2022 M.P. 1777	... 105, 149
Sitaram Vs. Kanhaiyalal, I.L.R. 2022 M.P. 1480	... 124, 212
Sitaram Vs. State of M.P., I.L.R. 2022 M.P. *14 (DB)	... 121, 151, 231
Snehlata (Smt.) Vs. Vireshwar Singh, I.L.R. 2022 M.P. *72	... 115
Sohan Chouhan Vs. State of M.P., I.L.R. 2022 M.P. *23 (DB)	... 4
Somesh Chaurasia Vs. State of M.P., I.L.R. 2021 M.P. 1463 (SC)	... 47, 125, 166
Sonu Bairwa Vs. State of M.P., I.L.R. 2021 M.P. 1832 (DB)	... 163, 165, 204, 205, 207, 208, 210, 262
Sonu Jain Vs. State of M.P., I.L.R. 2021 M.P. 1373 (DB)	... 105, 218, 223, 224, 226, 227, 239, 241
Special Police Establishment Vs. Umesh Tiwari, I.L.R. 2022 M.P. 969 (DB)	... 101
State of M.P. Vs. Akhilesh Jha, I.L.R. 2021 M.P. 1803 (SC)	... 296, 299

State of M.P. Vs. Anil Sharma, I.L.R. 2021 M.P. 1755	... 113, 114, 132, 166, 255
State of M.P. Vs. Bherulal, I.L.R. 2021 M.P. 1 (SC)	... 177
State of M.P. Vs. Dinesh Singh Rajput, I.L.R. 2021 M.P. 471	... 84, 85
State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)	... 91, 92, 118, 120, 146, 248, 249, 251, 252, 253, 271
State of M.P. Vs. Mahendra @ Golu, I.L.R. 2021 M.P. 2231 (SC)	... 91, 97, 252, 253, 257
State of M.P. Vs. Nandu @ Nandkishore Gupta, I.L.R. 2021 M.P. 2122 (DB)	... 89, 117, 118, 119, 121, 124
State of M.P. Vs. Nidhi (I) Industries, I.L.R. 2022 M.P. 2043	... 6, 8, 10, 13, 180, 279
State of M.P. Vs. Pujari Utthan Avam Kalyan Samiti, I.L.R. 2022 M.P. 209 (SC)	... 171, 173, 180
State of M.P. Vs. Sanjay, I.L.R. 2022 M.P. 708	... 111, 256
State of M.P. Vs. Satya Narayan Dubey, I.L.R. 2022 M.P. 1975 (DB)	... 32, 67, 156, 306
State of M.P. Vs. Smt. Bhuri Bai, I.L.R. 2022 M.P. *32	... 131
State of M.P. Vs. U.P. State Bridge Corporation Ltd., I.L.R. 2021 M.P. 361 (SC)	... 48
State of M.P. Vs. Vishnu Prasad Maran, I.L.R. 2021 M.P. 614 (DB)	... 31, 32, 37, 46, 164, 297, 303
State of M.P. Vs. Yogesh Pathak, I.L.R. 2021 M.P. 2253 (DB)	... 155, 259, 260, 298
Sumeet Agencies (M/s.) Vs. Mrs. Sonia Meena, I.L.R. 2022 M.P. *28	... 84
Suneel Prakash Sharma Vs. Vivek Kumar Ruthiya, I.L.R. 2022 M.P. *29	... 26
Sunil Vs. Satyendra Singh, I.L.R. 2022 M.P. *93	... 176, 214
Suraj Pal Singh Rathor Vs. M.P. High Court, I.L.R. 2021 M.P. 1881 (DB)	... 65, 300
Surajmal Vs. State of M.P., I.L.R. 2021 M.P. 135	... 115, 129, 222, 265, 266
Surendra Dhakad Vs. State of M.P., I.L.R. 2022 M.P. 802	... 135, 201
Surendra Kumar Jain Vs. State of M.P., I.L.R. 2021 M.P. 230	... 58, 178, 303
Surendra Kumar Shivhare Vs. State of M.P., I.L.R. 2021 M.P. 668 (DB)	... 282, 283
Suresh Kumar Kurve Vs. State of M.P., I.L.R. 2021 M.P. *15	... 16, 306
Suresh Kumar Vs. State of M.P., I.L.R. 2022 M.P. *73 (DB)	... 66, 215
Suresh Sharma Vs. State of M.P., I.L.R. 2022 M.P. 2006	... 66, 84, 300
Suresh Vs. State of M.P., I.L.R. 2021 M.P. 2319 (DB)	... 45, 92, 141, 247
Suzlon Energy Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 1843 (DB)	... 16, 54, 57
Swaran Vibha Pandey Vs. State of M.P., I.L.R. 2021 M.P. 2259 (DB)	... 37, 290
Syed Arshad Rabbani Vs. State of M.P., I.L.R. 2022 M.P. 1888 (DB)	... 70

## T

Tarasiya (Smt.) Vs. Ramlakhan, I.L.R. 2021 M.P. 2299	... 196, 197
Tarun Kumar Mishra Vs. State of M.P., I.L.R. 2022 M.P. 261	... 29

## NOMINAL INDEX

27

The Chief Commissioner of Income Tax Vs. M/s. Sharp Infrastructure Pvt. Ltd., I.L.R. 2022 M.P. 1317 (DB)	... 160
The General Manager Canara Bank Vs. Shri Prakash N. Mandve, I.L.R. 2022 M.P. 999	... 68, 216, 312
The Prosecutrix Vs. Dr. Piyush Saxena, I.L.R. 2022 M.P. 1498	... 131, 140, 270, 271
The Prosecutrix Vs. State of M.P., I.L.R. 2022 M.P. *46	... 131, 137, 139, 269, 271
Transport Department Secretary Vs. Man Trucks India Pvt. Ltd., I.L.R. 2022 M.P. 1824 (DB)	... 190, 191
Trivikram Prasad Vs. Yashodanandan Dwivedi, I.L.R. 2022 M.P. 1688	... 27, 76

## U

UMC Technologies Pvt. Ltd. Vs. Food Corporation of India, I.L.R. 2021 M.P. 383 (SC)	... 24
UMC Technologies Pvt. Ltd. Vs. Food Corporation of India, I.L.R. 2021 M.P. 27 (SC)	... 57, 319, 320
Union of India Vs. M/s. S.R. Ferro Alloys, I.L.R. 2021 M.P. 1493 (DB)	... 273
Union of India Vs. Methu Meda, I.L.R. 2021 M.P. 2221 (SC)	... 287, 302
Upadhyay Constructions Pvt. Ltd. (M/s.) Vs. M/s. Prism Infra Projects, I.L.R. 2021 M.P. 2353	... 9, 10, 156
Upendrasingh Vs. State of M.P., I.L.R. 2022 M.P. 1365	... 289
Urmila Singh (Smt.) Vs. Saudan Singh, I.L.R. 2022 M.P. *94	... 26, 150

## V

Vatash Sharma Vs. Indore Development Authority, I.L.R. 2022 M.P. 814 (DB)	... 51, 60, 63, 164, 268, 317, 318
Ved Prakash Sharma Vs. State of M.P., I.L.R. 2022 M.P. 798	... 95, 136, 137, 222
Vibha Shukla Vs. Kailash Dwivedi, I.L.R. 2022 M.P. 1010 (DB)	... 159, 160
Vidhi Ka Ulaghan Karne Wala Balak Vs. State of M.P., I.L.R. 2022 M.P. 1305	... 127, 129, 165, 166, 167, 176
Vijay Dandotiya Vs. State of M.P., I.L.R. 2022 M.P. 1959	... 138, 139
Vijay Energy Equipments (M/s.) Vs. West Central Railway, I.L.R. 2021 M.P. 325	... 12, 13
Vijay Kumar Kushwaha Vs. State of M.P., I.L.R. 2022 M.P. 961	... 139, 244, 245
Vijendra Dhanware (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1157 (DB)	... 21, 51, 164, 183
Vikas Vs. State of M.P., I.L.R. 2021 M.P. 966	... 168
Vikram Ahirwar Vs. State of M.P., I.L.R. 2022 M.P. *74 (DB)	... 230
Vinod Kumar Vs. State of M.P., I.L.R. 2022 M.P. 1584	... 110, 148, 245
Vir Singh Vs. State of M.P., I.L.R. 2022 M.P. *15 (DB)	... 90, 93, 231
Vishal D. Remeteke Vs. State of M.P., I.L.R. 2022 M.P. 630 (DB)	... 4, 5, 53
Vishal Kushwaha Vs. Mrs. Ragini Kushwaha, I.L.R. 2022 M.P. 1573 (DB)	... 159

**NOMINAL INDEX**

Vishal Vs. State of M.P., I.L.R. 2021 M.P. 1458	... 133, 250, 251, 254, 270
Vishnu Vs. State of M.P., I.L.R. 2021 M.P. 1292 (DB)	... 72, 80, 280

**X**

XYZ Vs. State of M.P., I.L.R. 2021 M.P. 1538 (DB)	... 46, 185
---	-------------

**Y**

Yashwardhan Raghuwanshi Vs. District & Sessions Judge, I.L.R. 2021 M.P. 655 (DB)	... 9, 21, 37, 114
Yatindra Verma Vs. State of M.P., I.L.R. 2021 M.P. 1669 (DB)	... 47, 204, 205, 208, 209, 222
Yogesh Gahlot Vs. State of M.P., I.L.R. 2022 M.P. *33	... 134, 261

**Z**

Zaid Pathan Vs. State of M.P., I.L.R. 2021 M.P. 152	... 106, 222
Zarina Begum Vs. State of M.P., I.L.R. 2021 M.P. 1196	... 48, 100, 127, 129, 144, 255
Zigitza Health Care Ltd. (M/s.) Vs. Naresh Kumar Verma, I.L.R. 2022 M.P. 871 (DB)	... 188, 279, 316

\* \* \* \* \*

# 2 YEARS' DIGEST OF THE INDIAN LAW REPORTS M.P. SERIES 2021 – 2022

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

## A

### ACCOMMODATION CONTROL ACT, M.P. (41 OF 1961)

#### SYNOPSIS : Section 12 & 13

- 1. Protection against Eviction                      2. Striking Off Defence**

#### 1. Protection against Eviction

– **Section 12 & 13(1)** – Protection against Eviction – Held – Only requirement for getting protection is to deposit the rent within one month from date of filing suit or receipt of notices in a suit filed on grounds enumerated u/S 12: *Sanjay Kumar Vs. Jitendra, I.L.R. 2022 M.P. 655*

#### 2. Striking Off Defence

– **Section 12(1) & 13(1)** – Striking off the Defence – Considerations – Held – Court has only to see whether suit is filed on grounds u/S 12 and if defendant is served with a notice and has not deposited rent within 30 days, Court can proceed to strike out his defence – Pleadings/Defence made by defendant in written statement is not to be considered by Court – Defendant has not complied with conditions u/S 13(1) – Defence of defendant in respect of eviction struck down – Impugned order quashed – Petition allowed: *Sanjay Kumar Vs. Jitendra, I.L.R. 2022 M.P. 655*

#### SYNOPSIS : Section 23-A

- 1. Aims & Objects    2. Impleadment of Third Party**  
**3. Recovery of Possession**

#### 1. Aims & Objects

– **Chapter 3A** – Aims & Object – Held – Chapter 3A is a welfare legislation enacted with prime object to give relief to landlord of specified categories including government servants – Benefit of this special procedure cannot be restricted only for employees of State or Central Government rather it should be made available to

employees of companies, corporations or public undertakings of State as well as of Central Government: *Gayatri Parashar Vs. Tulsiram Kori, I.L.R. 2022 M.P. 947*

## 2. Impleadment of Third Party

– **Section 23-A** and Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Eviction Proceedings – Impleadment of Third Party – Held – Scope of eviction proceedings is very limited – All issues related to eviction can be finally and effectually decided between the landlord and tenant without impleading any third party, may be claiming title over the rented property – Intervenor being third party cannot be treated to be a necessary party – Rent Controlling Authority erred in allowing impleadment application – Impugned order set aside – Revision allowed: *Shyamlal Vyas (Dead) Through LRs. Smt. Gopi Vyas Vs. Inderchand (Dead) Through LRs. Shri Om Prakash Jain, I.L.R. 2022 M.P. 1296*

– **Section 23-A** and Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Eviction Proceedings – Question of Title – Held – To ascertain landlord-tenant relationship, issue of title or ownership over property is not to be decided by the concerned adjudicating forum – Impleadment of third party claiming title over rented property is not permissible: *Shyamlal Vyas (Dead) Through LRs. Smt. Gopi Vyas Vs. Inderchand (Dead) Through LRs. Shri Om Prakash Jain, I.L.R. 2022 M.P. 1296*

## 3. Recovery of Possession

– **Sections 23-A & 23-G(3), (4)** – Recovery of Possession – Held – Provisions of Section 23-G are attracted only when an order of eviction of tenant is made on grounds specified u/S 23-A and when landlord recovers possession of accommodation in pursuance of such an order – No order passed by RCA u/S 23-A, application u/S 23-G not maintainable – Application dismissed: *Gulam Hussain (Shri) Vs. Akbar Ali, I.L.R. 2022 M.P. 1947*

### SYNOPSIS : Section 23-C & 23-J

#### 1. Leave to Defend

#### 2. Maintainability of Revision

#### 3. Scope of Landlord

##### 1. Leave to Defend

– **Section 23-C** – Grant of Leave to Defend – Additional defence – Held – Tenant has not raised any dispute regarding landlord-tenant relationship in his application filed u/S 23-C and raised the said dispute in his written statement – After striking out of defence, in absence of any right to file written statement, RCA has to proceed on

basis of defence disclosed by tenant in his application for grant leave to defend – Any additional defence raised by tenant in written statement cannot be looked into: *Inderchand Jain (Died) Through LRs. Vs. Shyamlal Vyas (Died) Through LRs., I.L.R. 2021 M.P. 331*

– **Section 23-C** – Grant of Leave to Defend – Presumption – Held – When leave to defend is rejected or if it is not prayed then even recording of evidence of plaintiff/landlord is required and in view of the presumption u/S 23-C, statement made in eviction application is deemed to have been admitted by defendant/tenant – Plaintiff made all necessary statement in his eviction application thus entitled for order of eviction – Order of RCA upheld – Revision dismissed: *Inderchand Jain (Died) Through LRs. Vs. Shyamlal Vyas (Died) Through LRs., I.L.R. 2021 M.P. 331*

– **Section 23-C** – Grant of Leave to Defend – Strike Out of Defence – Effect – Held – Leave to defend was granted but later, defence was struck of due to non-payment of rent, thus defendant/tenant stood relegated back to position as provided u/S 23-C, as if application for leave to defend is refused: *Inderchand Jain (Died) Through LRs. Vs. Shyamlal Vyas (Died) Through LRs., I.L.R. 2021 M.P. 331*

## 2. Maintainability of Revision

– **Section 23-C, Proviso & 23-E** – Maintainability of Civil Revision – Held – Word used in proviso to Section 23-C is “*ex-parte* order” and not “*ex-parte* order of eviction” – Proviso gives power to Rent Controlling Authority to set aside “*ex-parte* order” but not final *ex-parte* order of eviction – If final order of eviction is passed and in case tenant has not filed any application for permission to defend, Civil Revision u/S 23-E will not be maintainable – Revision dismissed: *Himadri Pal Vs. Rajeev Rawat, I.L.R. 2022 M.P. \*4*

## 3. Scope of Landlord

– **Section 23-J** – Definition of “Landlord” – Scope – Held – Landlord in present case is an employee of NFL Vijaypur, a Government of India undertaking – He comes in the purview of definition of “landlord” u/S 23-J of the Act – Revision dismissed: *Gayatri Parashar Vs. Tulsiram Kori, I.L.R. 2022 M.P. 947*

## **ADMINISTRATION OF EVACUEE PROPERTY ACT (31 OF 1950)**

– **Section 2(d) & 2(j)** – Adverse Possession – Held – Original owner of suit property migrated to Pakistan in 1947 and under provisions of Act of 1950, their rights and interests in suit property were vested in custodian under the Act – Once property vested in custodian, then original owner or anybody claiming through original

owner will not have any right against such property: *Bapulal Vs. State of M.P.*, I.L.R. 2022 M.P. 1421

– **Section 2(d) & 2(j)** – Adverse Possession – Held – Since appellant/plaintiff admitted that he had no knowledge as to who is actual owner of suit property from year 1947 to onward, he cannot take a plea that his adverse possession was openly hostile to actual owner of suit property – No continuous panchsala khasra for last 30 years produced by plaintiff – No documents relating to any revenue rent produced which is crucial – Plaintiff failed to prove his title/ownership over suit land by adverse possession – Appeal dismissed: *Bapulal Vs. State of M.P.*, I.L.R. 2022 M.P. 1421

### **ADMINISTRATIVE LAW**

– **Competent Authority** – Held – If statute empowers a particular authority to take a decision, it is only that body which should take a decision and none else in the hierarchy, however higher he may be unless statute permits him to do so: *Vishal D. Remeteke Vs. State of M.P.*, I.L.R. 2022 M.P. 630 (DB)

### **ADMINISTRATIVE ORDERS**

– **Non-Quoting of Provision** – Effect – Held – If authority is equipped with an enabling provision, non-quoting of provision or quoting of wrong provision will not denude him from exercising the statutory power: *M.P. Bus Operator Association Vs. State of M.P.*, I.L.R. 2021 M.P. 2242 (DB)

### **ADMISSION**

– **Eligibility Criteria** – Medical Council of India Regulation on Graduate Medical Education, 1997 – Code 2 & Chapter II Clause 4 – Held – As per Code 2 and Chapter II Clause 4, there should be two years continuous study of Physics, Chemistry and Biology/Bio-technology at 10+2 level for all the candidates – In Class XI, petitioner never took biology as subject and later in Class XII, opted biology as subject – Requirement of clause not fulfilled – Petitioner rightly denied admission – Petition dismissed: *Sohan Chouhan Vs. State of M.P.*, I.L.R. 2022 M.P. \*23 (DB)

– **Selection Process** – Principle of Estoppel – Held – If candidate takes calculated chance and appears in selection process, without objecting the admission brochure conditions relating to sports quota then being unsuccessful, he is estopped from questioning the process on principle of estoppel – No interference warranted – Petition dismissed: *Pratha Rajak Vs. Dr. Harisingh Gour Vishwavidyalaya*, I.L.R. 2021 M.P. 1120 (DB)



## ADVERSE POSSESSION

– **Requirement** – Held – Party claiming adverse possession must prove his possession and such possession must be peaceful, open, uninterrupted and continuous – Possession must be adequate and in continuity and adverse to true owner – Possession, however so long, cannot be treated as an adverse, so to acquire title, unless there is an unanimous view or hostility on part of the person in possession, who is not the real owner: *Bapulal Vs. State of M.P., I.L.R. 2022 M.P. 1421*

## ADVOCATE

– **Duties towards Court** – Held – Lawyer should act as an Officer of Court and should not do anything which would erode his credibility – Playing fraud on Court is certainly an unfair means which cannot be ignored at any cost – Case laws discussed – Stern warning issued to counsel: *Kamla @ Sarla Yadav (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 973*

## ADVOCATES ACT (25 OF 1961)

– **Section 6 & 35** – Functions of State Bar Council – Held – Disciplinary action against an advocate is also one of the “function” of Council – It can be taken only in consonance with the legislative mandate ingrained in Section 35 of the Act: *Vishal D. Remeteke Vs. State of M.P., I.L.R. 2022 M.P. 630 (DB)*

– **Section 35** – Competent Authority – Held – No material to show that State Bar Council referred the case of petitioner to Disciplinary Committee – No material to show that Disciplinary Committee has taken up the matter before placing petitioner under suspension and petitioner and Advocate General were put to notice – Procedure adopted by Bar Council is unknown to law – Order of suspension set aside – Petition allowed: *Vishal D. Remeteke Vs. State of M.P., I.L.R. 2022 M.P. 630 (DB)*

– **Section 35 & 37** – Alternate Remedy of Appeal – Held – Order not passed by competent authority – Decision making process shows that it runs contrary to statutory and mandatory provision u/S 35 – Principle of natural justice not taken care of – Despite availability of alternate remedy, this petition can be entertained in view of Apex Court’s judgment in Whirlpool’s case: *Vishal D. Remeteke Vs. State of M.P., I.L.R. 2022 M.P. 630 (DB)*

– **Section 37** – See – Constitution – Article 226: *Vishal D. Remeteke Vs. State of M.P., I.L.R. 2022 M.P. 630 (DB)*

## **ARBITRATION AND CONCILIATION ACT (26 OF 1996)**

### **SYNOPSIS**

- |   |                                    |
|---|------------------------------------|
| <b>1. Aims &amp; Objects</b>                        | <b>2. Appeal</b>                   |
| <b>3. Appointment of Arbitrator</b>                 | <b>4. Change of Arbitrator</b>     |
| <b>5. Issuance of Proceeding/<br/>Relevant Date</b> | <b>6. Jurisdiction of Court</b>    |
| <b>7. Jurisdiction of High Court</b>                | <b>8. Jurisdiction of Tribunal</b> |
| <b>9. Limitation/Limitation Act, 1963</b>           | <b>10. Miscellaneous</b>           |

### **1. Aims & Objects**

– **Section 11(6)** – Aims & Objects – Held – This Act is a self contained code dealing with every aspect of arbitration – The legislative policy in consolidating all the laws relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards is aimed at ensuring not only speedy disposal of arbitration cases but also timely execution of awards: *M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H)*, I.L.R. 2021 M.P. 2072 (DB)

– **Section 11(6)** – Alternative Dispute Resolution Mechanism – Aims & Object – Held – ADR mechanism specially Arbitration is such device which delves more on consent than on compulsion – Parties agree to terms, procedure and person to act as Arbitrator and the very genesis of concept of arbitration is peaceful and consensual resolution of dispute – Process of appointment of arbitrator is ought to be just, fair and transparent: *State of M.P. Vs. Nidhi (I) Industries*, I.L.R. 2022 M.P. 2043

### **2. Appeal**

– **Section 16 & 37(2)** – Held – It is evident from Section 37(2) that it purposely does not provide for an appeal against an order of Arbitral Tribunal rejecting the plea referred u/S 16(2) or 16(3) – Plea of petitioner jurisdiction or that proper notice of appointment of arbitrator was not given, may only be available to it as ground of challenge to the award if eventually it is passed against it: *M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H)*, I.L.R. 2021 M.P. 2072 (DB)

– **Section 34 & 37** – Grounds – Held – Appeals/applications can be entertained if the award is found to be contrary to (i) fundamental policy of Indian

Law; (ii) the interest of India; (iii) justice or morality and (iv) if it is patently illegal: *M.P. Road Development Corporation Vs. Mohd. Shahbuddin, I.L.R. 2022 M.P. 1927 (DB)*

– **Section 34 & 37** – Maintainability of Appeal – Held – Dismissal of application u/S 34 on ground of limitation will come within purview of refusing to set aside arbitration award, thus appeal u/S 37 will be maintainable: *Sar Parivahan Pvt. Ltd. (M/s.) Vs. Hindustan Copper Ltd., I.L.R. 2022 M.P. 598*

– **Section 34(2)(b)(i)** – Objection of Jurisdiction – Duty of Court – Held – Even if a party assailing an arbitral award has not taken a ground in its petition u/S 34, and if Court finds that award is in respect of the subject matter, incapable of arbitration by operation of law, Court is duty bound to set aside the same u/S 34(2)(b)(i) of Act of 1996: *Gayatri Project Ltd. (M/s.) Vs. M.P. Road Development Corporation Ltd., I.L.R. 2022 M.P. 1056 (DB)*

### 3. Appointment of Arbitrator

– **Section 11(5) & 11(6)** – Appointment of Arbitrator – Forfeiture of Rights – Held – Since applicant vide notice, requested the President of respondent society and since it failed to refer the matter for resolution of dispute under escalation procedure as per clauses of agreement or otherwise appoint arbitrator within 30 days or even prior to filing of present application, right of respondent to appoint arbitrator stands forfeited – Application allowed: *HCL Technologies Ltd. (M/s.) Vs. M.P. Computerization of Police Society (MPCOPS), I.L.R. 2021 M.P. 541*

– **Section 11(5) & 11(6)** – Appointment of Arbitrator – Notice – Held – Sub clause (a) of Clause 1.23 of agreement is for dispute resolution with escalation procedure as per Schedule of agreement – Clause 1.23 is mentioned in caption of the notice – Merely because sub-clause (a) is not mentioned, it cannot be said that notice was not served: *HCL Technologies Ltd. (M/s.) Vs. M.P. Computerization of Police Society (MPCOPS), I.L.R. 2021 M.P. 541*

– **Section 11(6)** – Alleged Cancellation of Agreement – Held – Even assuming that the agreement has been cancelled, the arbitration clause of agreement/MOU still exists and can be pressed into service for invoking jurisdiction of this Court u/S 11(6) of 1996 Act: *Rajeev Agnihotri Vs. Ashok Jain, I.L.R. 2021 M.P. 1941*

– **Section 11(6)** – Appointment of Arbitrator by Designation – Held – Mere change of incumbents by reason of transfer or retirement would not make any difference as they were made members of Arbitral Tribunal by designation and not by name: *Ellora Paper Mills Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 2110*

– **Section 11(6)** and Arbitration Rules, M.P., 1997, Rule 4-A – Appointment of Arbitrator – Notice to Opposite Party – Held – Principle of opportunity of hearing or putting other party to notice is imperative – No notice issued to State in specific terms and case was proceeded for appointment of arbitrator – It prejudices the interest of petitioner and cause of justice – It is an error apparent on face of record – Order recalled – Arbitration case restored to its original number: *State of M.P. Vs. Nidhi (I) Industries, I.L.R. 2022 M.P. 2043*

– **Section 11(6)** and Electricity Act (36 of 2003), Section 86(1)(f) & 174 – Special/General Provision – Applicability & Jurisdiction – Held – Section 86(1)(f) of 2003 Act is a special provision which overrides general provision contained in Section 11 of 1996 Act – Section 86(1)(f) vests a statutory jurisdiction with State Electricity Commission to adjudicate disputes between licensees and generating companies – Order of High Court appointing arbitrator u/S 11 of 1996 Act is set aside – Appeal allowed: *Chief General Manager (IPC) MP Power Trading Co. Ltd. Vs. Narmada Equipments Pvt. Ltd., I.L.R. 2021 M.P. 604 (SC)*

– **Section 11(6)** and Scheme for Appointment of Arbitrators by The Chief Justice of M.P. High Court, 1996, Scheme No. 2(a) – Existence of Agreement – Notarized Copy of agreement/MOU – Held – Entire reply of respondent is in context of agreement/MOU denying either existence of disputes or allegations made in present application but there is no denial of factum of execution of agreement/MOU containing arbitration clause – Substantial requirement of Scheme No. 2(a) is fulfilled for appointment of arbitrator – Arbitrator appointed – Application allowed: *Rajeev Agnihotri Vs. Ashok Jain, I.L.R. 2021 M.P. 1941*

– **Section 12(5)** and Schedule 5 & 7 – Appointment of Arbitrator – Held – In view of mandate of Section 12(5) r/w stipulation contained in 5th and 7th Schedule, MPCOPS itself being in dispute with applicant, cannot appoint the arbitrator: *HCL Technologies Ltd. (M/s.) Vs. M.P. Computerization of Police Society (MPCOPS), I.L.R. 2021 M.P. 541*

#### 4. Change of Arbitrator

– **Sections 11(6), 12(5) & 21** and Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016), Section 26 – Change of Arbitrator – Held – Apex Court concluded that Amendment Act of 2015 cannot have retrospective operation in the arbitration proceedings which had already commenced unless parties otherwise agree – In instant case, proceedings commenced before amendment came into force – Applicant failed to produce any material to show any bias or partiality on part of any member of Arbitral Tribunal – No need to appoint another arbitrator: *Ellora Paper Mills Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 2110*

## 5. Issuance of Proceeding/Relevant Date

– **Section 11(6) & 21** and Electricity Act (36 of 2003), Section 86(1)(f) – Commencement of Arbitral Proceeding – Relevant Date – Applicability of Act – Held – Notice for initiation of arbitration issued on 30.05.2011 – Regarding commencement of arbitral proceeding, material date would be 30.05.2011 when notice was issued – If PPA and notice of termination predate the 2003 Act, it would not constitute material circumstances – Act of 2003 is applicable in present case: *Chief General Manager (IPC) MP Power Trading Co. Ltd. Vs. Narmada Equipments Pvt. Ltd.*, I.L.R. 2021 M.P. 604 (SC)

## 6. Jurisdiction of Court

– **Sections 2(1)(e), 8, 9 & 34** – Appeal – Jurisdiction of Court – Held – Word “Court” u/S 2(1)(e) means Principal Civil Court of original jurisdiction, which are Court of Additional District Judge or District Judge in M.P. – Orders passed u/S 8, 9 & 34 passed by Additional District Judge or District Judge are appealable before High Court: *Upadhyay Constructions Pvt. Ltd. (M/s.) Vs. M/s. Prism Infra Projects*, I.L.R. 2021 M.P. 2353

– **Sections 2(1)(e), 9, 14, 34 & 36** – See – Civil Courts Act, M.P., 1958, Section 7 & 15: *Yashwardhan Raghuwanshi Vs. District & Sessions Judge*, I.L.R. 2021 M.P. 655 (DB)

– **Sections 2(1)(e), 9, 14, 34 & 36**, Civil Courts Act, M.P. (19 of 1958), Section 7 & 15, Commercial Courts Act, 2015 (4 of 2016), Section 10 & 11 and Criminal Procedure Code, 1973 (2 of 1974), Sections 194, 381(1) & 400 – Competent Court – Held – Court of District Judge as the Principal Civil Court of original jurisdiction would be competent to decide the matters/disputes u/S 9, 14, 34 & 36 of Arbitration Act and also under provisions of Commercial Courts Act regardless of the value of claim – Relevant entry in impugned order being violative of relevant provisions of law is set aside – Petition allowed: *Yashwardhan Raghuwanshi Vs. District & Sessions Judge*, I.L.R. 2021 M.P. 655 (DB)

– **Sections 2(1)(e), 16(2)(3), 17, 37(1) & 37(2)** and High Court of Madhya Pradesh Rules, 2008, Chapter II, Rule 2 – Interim Orders – Appeal – Jurisdiction of Court – Held – High Court is not a Court of original civil jurisdiction – High Court will not fall within meaning of “Court” as defined in Section 2(1)(e) – Appeal against order passed u/S 16(2), (3) & 17 will lie before Additional District Judge and District Judge of Civil Court – Arbitration Appeal filed against order passed u/S 17 is not maintainable before High Court – Appeal dismissed: *Upadhyay Constructions Pvt. Ltd. (M/s.) Vs. M/s. Prism Infra Projects*, I.L.R. 2021 M.P. 2353

## 7. Jurisdiction of High Court

– **Section 37(1) & 37(2)** and High Court of Madhya Pradesh Rules, 2008, Chapter II, Rule 2 – Jurisdiction of High Court – Clarification/Distinction – Held – Distinction to be made in Chapter II, Rule 2 of M.P. High Court Rules, 2008 between Section 37(1) & 37(2) of the Act – Chapter II, Rule 2 required to be amended that appeal arising from orders mentioned in Section 37(1) will lie before High Court – Matter directed to be placed before Rules making Committee for consideration: *Upadhyay Constructions Pvt. Ltd. (M/s.) Vs. M/s. Prism Infra Projects, I.L.R. 2021 M.P. 2353*

## 8. Jurisdiction of Tribunal

– **Section 11(6)** and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 2(1) – Jurisdiction of Arbitration Tribunal – Alternative Remedy – Held – Supply of those goods and services would come within ambit of Arbitration Tribunal which are being supplied/tendered in pursuance of works contract for construction, repair, maintenance of building or superstructure, dam, canal, reservoir, lake, road, well, bridge, culvert, factory, workshop, powerhouse, transformers etc. – In instant case, it had to supply CCTV cameras to High Court – Contention of State regarding availability of alternative remedy lacks merit: *State of M.P. Vs. Nidhi (I) Industries, I.L.R. 2022 M.P. 2043*

– **Section 11(6) & 21** and Electricity Act (36 of 2003), Section 86(1)(f) – Objection of Jurisdiction – Held – This Court earlier concluded that if there is inherent lack of jurisdiction, the plea/objection can be taken at any stage and also in collateral proceedings – Defect of jurisdiction cannot be cured even by consent of parties: *Chief General Manager (IPC) MP Power Trading Co. Ltd. Vs. Narmada Equipments Pvt. Ltd., I.L.R. 2021 M.P. 604 (SC)*

– **Section 16 & 34** – Scope & Jurisdiction – Held – Once if Arbitral Tribunal takes a decision to reject the plea referred u/S 16(2) or 16(3), it shall continue with arbitral proceedings and make an arbitral award – It cannot be said that aggrieved party has been left remediless against rejection of his objection regarding jurisdiction of Tribunal, the only thing is that its remedy has been deferred till stage of Section 34 of the Act – No infirmity in Tribunal's order – Petition dismissed: *M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H), I.L.R. 2021 M.P. 2072 (DB)*

– **Section 16(2) & 34** and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7 – Works Contract – Objection of Jurisdiction – Held – Even if an objection u/S 16(2) is not taken before the Arbitral Tribunal, the objection on lack of

jurisdiction can be taken at the stage of Section 34 before the trial Court – Court below rightly set aside the award on ground of lack of jurisdiction – Appeal dismissed: *Gayatri Project Ltd. (M/s.) Vs. M.P. Road Development Corporation Ltd., I.L.R. 2022 M.P. 1056 (DB)*

– **Sections 16(2), 34 & 37** and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 7-A – Adjudication of Dispute – Applicability of Act – Held – If despite existence of Arbitration Tribunal under the Act of 1983, parties have agreed for arbitration in accordance with ICADR Rules and Arbitration Act and consciously did not mention in agreement about existence of Arbitration Tribunal established under Act of 1983, which then was already in existence, petitioner cannot be permitted now to raise this plea: *M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H), I.L.R. 2021 M.P. 2072 (DB)*

### **9. Limitation/Limitation Act, 1963**

– **Section 33 & 34** – Appeal – Period of Limitation – Held – Application u/S 33 disposed off on 21.08.2017 – Disposed off means a final order is passed on application, thus benefit of Section 33 will be available to appellant – Limitation will start running from 21.08.2017 – Impugned order set aside – Appeal allowed: *Sar Parivahan Pvt. Ltd. (M/s.) Vs. Hindustan Copper Ltd., I.L.R. 2022 M.P. 598*

– **Section 34 & 37**, The Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015 (4 of 2016), Section 13(1A) and Limitation Act (36 of 1963), Article 116 & 117 & Section 5 – Condonation of Delay – Held – Looking to the object of speedy disposal sought to be achieved both under Arbitration Act and Commercial Courts Act, for appeals filed u/S 37 of Arbitration Act, that are governed by Articles 116 & 117 of Limitation Act, a delay beyond 90 days, 30 days or 60 days respectively, is to be condoned by way of exception and not by way of rule: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., I.L.R. 2021 M.P. 557 (SC)*

– **Section 34 & 37**, The Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015 (4 of 2016), Section 13(1A) and Limitation Act (36 of 1963), Article 116 & 117 & Section 5 – Condonation of Delay – Sufficient Cause – Held – In a fit case where a party has otherwise acted bonafide and not in negligent manner, a short delay beyond stipulated period can, in the discretion of the Court, be condoned – In CA No. 995/21, there is long delay of 131 days with no sufficient cause, thus appeal is dismissed – In CA No. 996/21 & 998/21, there is a huge delay of 227 days and a 200 day delay in refileing with no sufficient cause, thus appeals dismissed – In CA No. 999/21, there is delay of 75

days without sufficient explanation, thus condonation granted by High Court set aside and appeal is allowed – Appeals disposed: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., I.L.R. 2021 M.P. 557 (SC)*

– **Section 34 & 37**, The Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015 (4 of 2016), Section 13(1A) and Limitation Act (36 of 1963), Article 116 & 117 & Section 5 – Condonation of Delay – Sufficient cause – Right of Appellant – Held – Merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned – Similarly, merely because the government is involved, a different yardstick for condonation of delay cannot be laid down – The expression “sufficient cause” is not itself a loose panacea for the ill or pressing negligent and stale claims: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., I.L.R. 2021 M.P. 557 (SC)*

– **Section 37 & 43** and Limitation Act (36 of 1963), Section 5 & 29(2) – Applicability – Held – Section 37 of Arbitration Act when read with Section 43 thereof, makes it clear that provisions of Limitation Act will apply to appeals that are filed u/ S 37 – Section 5 of Limitation Act will apply to aforesaid appeals both by virtue of Section 43 of Arbitration Act and by virtue of Section 29(2) of Limitation Act: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., I.L.R. 2021 M.P. 557 (SC)*

## 10. Miscellaneous

– **Section 11** – See – Madhyastham Adhikaran Adhinyam, M.P., 1983, Section 7: *Gayatri Project Ltd. (M/s.) Vs. M.P. Road Development Corporation Ltd., I.L.R. 2022 M.P. 1056 (DB)*

– **Section 11(6)** – See – Arbitration and Conciliation (Amendment) Act, 2015, Section 12(5): *Vijay Energy Equipments (M/s.) Vs. West Central Railway, I.L.R. 2021 M.P. 325*

– **Section 11(6) & 37** – See – Constitution – Article 226/227: *M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H), I.L.R. 2021 M.P. 2072 (DB)*

– **Section 21** – See – Arbitration and Conciliation (Amendment) Act, 2015, Section 26: *Vijay Energy Equipments (M/s.) Vs. West Central Railway, I.L.R. 2021 M.P. 325*



**ARBITRATION AND CONCILIATION (AMENDMENT)  
ACT, 2015 (3 OF 2016)**

– **Section 12(5)** and Arbitration and Conciliation Act (26 of 1996), Section 11(6) – Appointment of Arbitrator – Held – As applicant failed to waive off the applicability of Section 12(5) of Amendment Act of 2015, respondent would be justified in invoking clause 64(3) (amended) of General Conditions of Contract thereby forwarding panel of 3 retired officers of railways to applicant, calling upon him to choose any 2 of them, out of which one will be chosen as nominee arbitrator of applicant – Directions issued accordingly – Application disposed: *Vijay Energy Equipments (M/s.) Vs. West Central Railway, I.L.R. 2021 M.P. 325*

– **Section 26** – See – Arbitration and Conciliation Act, 1996, Sections 11(6), 12(5) & 21: *Ellora Paper Mills Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 2110*

– **Section 26** and Arbitration and Conciliation Act (26 of 1996), Section 21 – Applicability – Held – Apex Court concluded that on conjoint reading of Section 21 of principal Act and Section 26 of Amendment Act, it is clear that provisions of 2015 Act shall not apply to such arbitral proceedings, commenced in terms of provisions of Section 21 of principal Act unless the parties otherwise agree: *Vijay Energy Equipments (M/s.) Vs. West Central Railway, I.L.R. 2021 M.P. 325*

**ARBITRATION RULES, M.P., 1997**

– **Rule 4-A** – See – Arbitration and Conciliation Act, 1996, Section 11(6): *State of M.P. Vs. Nidhi (I) Industries, I.L.R. 2022 M.P. 2043*

**ARMED FORCES TRIBUNAL ACT (55 OF 2007)**

– **Section 3(o) & 14** – See – Constitution – Article 226: *Colonel Akhil Mendhe Vs. Union of India, I.L.R. 2022 M.P. 1894*

– **Section 14(1)** – See – Constitution – Article 226: *Colonel Akhil Mendhe Vs. Union of India, I.L.R. 2022 M.P. 1894*

**ARMS ACT (54 OF 1959)**

– **Sections 14, 15 & 17** – Renewal of Licence – Grounds for Denial – Held – Section 14, 15 & 17 nowhere suggest that renewal of licence can be refused only on ground of registration of a criminal case – Mandate of Section 14 has to be kept in mind – Authority directed to reconsider renewal application in accordance with provisions of Arms Act, keeping in mind that petitioner has been acquitted from the said criminal case – Impugned orders set aside – Petition disposed: *Pawan Kumar Jain Vs. State of M.P., I.L.R. 2022 M.P. \*55*

– **Section 25 & 27** – See – Penal Code, 1860, Section 302: *Lalu Sindhi @ Dayaldas Vs. State of M.P., I.L.R. 2021 M.P. 1932 (DB)*

– **Section 25 & 27** – See – Penal Code, 1860, Section 302 & 307: *Indu @ Indrapal Singh Vs. State of M.P., I.L.R. 2021 M.P. 1602 (DB)*

– **Section 25(1-B)(a)** – Proof of Seizure – Held – Arms Moharir specifically stated that he had not sealed the guns as he was not having seal – Clerk of District Magistrate stated that after granting sanction for prosecution, guns were re-sealed – No explanation by prosecution as to how guns were received in Court in open condition – Prosecution failed to explain the said lapse – Seizure of guns not proved beyond reasonable doubt – Conviction u/S 25(1-B)(a) set aside: *Ramcharan Vs. State of M.P., I.L.R. 2022 M.P. 549 (DB)*

– **Section 25(1-B)(b)** – See – Penal Code, 1860, Sections 302, 376 & 511: *Girraj Alias Batte Vs. State of M.P., I.L.R. 2022 M.P. 1031 (DB)*

## **AUTONOMOUS MEDICAL COLLEGIATE EDUCATION MODEL SERVICE RULES, M.P., 2018**

– **Section 12(1)(iv)** – Applicability – Held – These rules operate in different field relating to grant of educational leave, thus, provision relating to fixing maximum age for admission in a course will not be regulated by these Rules: *Catherin Josfin Thangadurai (Mrs.) Vs. State of M.P., I.L.R. 2021 M.P. \*9 (DB)*

## **AYURVIGYAN VISHWAVIDYALAY (ELIGIBILITY AND ENROLMENT OF STUDENTS FOR UNDER GRADUATE COURSES) ORDINANCE, M.P., 2014**

– **Clause 8 & 9** – Enrollment Procedure – Held – Clause 9 is mandatory in nature and it deals with a separate enrollment, different than the exercise of admission of students and submission of their certified list as mentioned in clause 8 – It is imperative /obligatory for institution to obtain enrollment prior to submission of exam form – Students shall not be deprived to undertake examination for technical/clerical mistake of institution moreso when no prejudice will be caused to University – Cost of Rs. 50,000 imposed on petitioner allowing them to complete the necessary formalities of enrollment – Petition partly allowed: *Sapphire Institute of Nursing & Science Vs. State of M.P., I.L.R. 2021 M.P. 2264 (DB)*

## **B**

### **BENAMI TRANSACTIONS (PROHIBITION) ACT (45 OF 1988)**

– **Section 4(1)** and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Applicability – Held – If suit is filed after coming into force of Act, claiming any right, title or interest on basis of benami transaction, whether it was done prior to coming into force of Act, would be barred u/S 4(1) of Act – Suit filed by respondents/plaintiff was barred u/S 4(1) of Act – Application filed under Order 7 Rule 11 CPC allowed and suit is dismissed – Civil Revision allowed: *Chintamani (Smt.) Vs. Ajay Kumar, I.L.R. 2022 M.P. 1945*

– **Section 24(3) & 26** – Attachment Order – Held – Section 24(3) provides power of provisional attachment which needs to be confirmed by “adjudicating authority” u/S 26 of the Act: *Abhay Nigam Vs. Union of India, I.L.R. 2021 M.P. 1633 (DB)*

### **BHANDAR KRAY TATHA SEWA UPARJAN NIYAM, M.P., 2015**

– **Clause 11.3.4** – See – Constitution – Article 226: *Laghu Udhog Nirmata Avam Vikreta Sangh Vs. State of M.P., I.L.R. 2022 M.P. 1166 (DB)*

### **BHOODAN YAGNA ADHINIYAM, M.P. (28 OF 1968)**

– **Sections 30, 31 & 33** – Bhumiswami Rights – Sale of Land – Held – Even if bhoodan holder acquires Bhumiswami rights u/S 33, he cannot transfer any interest in his land except as provided u/S 30 of Adhiniyam: *Gopal Vs. Mangalia, I.L.R. 2022 M.P. 104*

– **Sections 30, 31 & 33** and Land Revenue Code, M.P. (20 of 1959), Section 165(7-a) & 165(7-b) – Applicability of Act/Code – Held – In case of any dispute between Special Statute and General Statute, provisions of Special Statute (1968 Act) shall prevail over General Statute (Code of 1959): *Gopal Vs. Mangalia, I.L.R. 2022 M.P. 104*

– **Sections 30, 31 & 33** and Land Revenue Code, M.P. (20 of 1959), Section 165(7-a) & 165(7-b) – Transfer of Interest in Land – Held – As per Section 165(7-a) of Code, without permission of Board or Collector, no Bhumiswami (as specified in Section 33 of 1968 Act) shall have the right to transfer any interest in his land – In present case, since no permission was taken by Bhumiswami (bhoodan holder) from

Collector, proceedings are void ab initio – No illegality in impugned order – Petition dismissed: *Gopal Vs. Mangalia, I.L.R. 2022 M.P. 104*

### **BINDING PRECEDENT**

– **Binding Precedent** – Held – A singular different fact may change the precedential value of a judgment: *Oriental College Amarwada, Main Road, Amarwada Vs. State of M.P., I.L.R. 2022 M.P. 1147 (DB)*

– **Binding Precedent** – Held – Observation made by Court in a judgment or order is not binding on Court – Reasons for the decision and findings of Court on an issue is binding precedent: *Suresh Kumar Kurve Vs. State of M.P., I.L.R. 2021 M.P. \*15*

### **BUILDING AND OTHER CONSTRUCTION WORKERS’ WELFARE CESS ACT (28 OF 1996)**

– **Section 3(1) & 3(1A)** and Building and Other Construction Workers’ Welfare Cess Rules, 1998, Rule 3 – Scope & Applicability – Held – The cost incurred in purchase and construction of plant and machinery and such other costs meant to be used in a factory falls within ambit of Section 3(1A) – Both the cost are related to a factory – This provision does not permit exclusion of the other costs which are not meant to be used in “factory” – Provision not applicable to petitioner establishment: *Suzlon Energy Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 1843 (DB)*

– **Section 11** – See – Constitution – Article 226: *Suzlon Energy Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 1843 (DB)*

### **BUILDING AND OTHER CONSTRUCTION WORKERS’ WELFARE CESS RULES, 1998**

– **Rule 3** – See – Building and Other Construction Workers’ Welfare Cess Act, 1996, Section 3(1) & 3(1A): *Suzlon Energy Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 1843 (DB)*

## **C**

### **CEILING ON AGRICULTURAL HOLDINGS ACT, M.P. (20 OF 1960)**

– **Sections 7(b), 9, 11 & 46** – Surplus Land – Decree was in favour of Jenobai, thus appellant loses the right to hold that land and thus remaining total land

holding of appellant comes within ceiling limit – No surplus land with appellant – Impugned order set aside – Appeal allowed: *Bajranga (Dead) By LRs. Vs. State of M.P., I.L.R. 2021 M.P. 205 (SC)*

– **Sections 7(b), 9 & 11(3)** – Principle of Natural Justice – Notice – In terms of Section 11(3), the draft statement of land held in excess of ceiling limit is to be published and served on the holder, the creditor and “all other persons interested in land to which it relates” – Once a disclosure is made u/S 9 that Jenobai had filed a suit, there has to be mandatorily a notice to her otherwise any decision would be behind her back and would violate principle of natural justice: *Bajranga (Dead) By LRs. Vs. State of M.P., I.L.R. 2021 M.P. 205 (SC)*

– **Sections 7(b), 9, 11(4), 11(5), 11(6) & 46** – Surplus Land – Declaration in Return – Held – Once a disclosure of pending suit was made by appellant u/S 9, matter had to be dealt with u/S 11(4) of Act – Respondent authorities should have kept the proceedings in abeyance and were required to await decision of Court – Section 11(5) & 11(6) comes into play when mandate of Section 11(4) is fulfilled, which was not done in present case – Provisions of Section 11 has to be strictly complied with – Even notice was not issued to Jenobai – Respondents breached statutory provisions: *Bajranga (Dead) By LRs. Vs. State of M.P., I.L.R. 2021 M.P. 205 (SC)*

### **CENSUS RULES, 1990**

– **Rule 8(iv)** – See – Municipal Corporation Act, M.P., 1956, Sections 10(1), 10(2) & 10(3): *Rakesh Sushil Sharma Vs. State of M.P., I.L.R. 2021 M.P. \*5 (DB)*

### **CENTRAL EXCISE ACT (1 OF 1944)**

– **Sections 3, 3A & 37(2)(v)** and Central Excise Rules, 2017, Rules 6, 8, 11, 13 & 34 – Illegal Sealing of Machine – Compensation – Held – For more than 2 years, machine and two DG sets were kept under seal by authorities of respondents – Petitioner was unable to do production, causing business loss not only to him but also to Central Government in respect to revenue – Impugned action was wholly without jurisdiction – Petitioner liable to be compensated and is thus granted liberty to take recourse available under law against respondents: *Elora Tobacco Co. Ltd. (M/s.) Vs. Union of India, I.L.R. 2022 M.P. 1995 (DB)*

– **Sections 3, 3A & 37(2)(v)** and Central Excise Rules, 2017, Rules 6, 8, 11, 13 & 34 – Trade Notices – Search & Sealing of Machines – Held – No mandatory provision in statute to give production as per capacity of machine – Respondent cannot compel any manufacturer to give a declaration or run factory upon 50% capacity – No provision in Excise Act and Rules and even in CGST Act, giving authority to

respondents to seal the machines of a running manufacturing unit – Clause 6.3 is wholly unreasonable and inconsistent with provisions of Act and Rules and thus struck down – Respondents directed to de-seal the machine and two DG sets – Petition allowed with cost of Rs. 50,000: *Elora Tobacco Co. Ltd. (M/s.) Vs. Union of India, I.L.R. 2022 M.P. 1995 (DB)*

– **Section 37(v)** – Regulating Production, Sale and Storage of Goods – Held – Section 37 gives power to Central Government to make rules to regulate the production or manufacturing but in this case there is no such rules notified by Central Government u/S 37(v) to regulate the production, sale and storage of goods: *Elora Tobacco Co. Ltd. (M/s.) Vs. Union of India, I.L.R. 2022 M.P. 1995 (DB)*

### **CENTRAL EXCISE RULES, 2017**

– **Rules 6, 8, 11, 13 & 34** – See – Central Excise Act, 1944, Sections 3, 3A & 37(2)(v): *Elora Tobacco Co. Ltd. (M/s.) Vs. Union of India, I.L.R. 2022 M.P. 1995 (DB)*

– **Rule 34** – Trade Notices – Jurisdiction of Excise Authority – Held – Rule 34 gives power to Board/Principal Chief Commissioner/Chief Commissioner to issue written instructions for any incidental or supplemental matters – Excise authority gets jurisdiction to issue Trade Notices under the Act and Rules but the only rider is that such written instructions in Trade Notice should be consistent with the Act and provision of Rules: *Elora Tobacco Co. Ltd. (M/s.) Vs. Union of India, I.L.R. 2022 M.P. 1995 (DB)*

### **CENTRAL GOODS AND SERVICES TAX ACT** **(12 OF 2017)**

– **Section 95(a) & 98(2)** – Advance Ruling – Entitlement – Held – Advance ruling can be granted only if question raised is not pending or decided – Petitioner approached the authority seeking advance ruling only after a search conducted and notice issued – Petitioner contested the notice therefore the issue is rightly treated to be pending – Petitioner has not approached in advance – Authorities rightly declined to grant Advance Ruling – Petition dismissed: *Saisanket Enterprise (M/S) Vs. Authority For Advance Ruling, I.L.R. 2022 M.P. 1550 (DB)*

– **Section 97** – Advance Ruling – Application – Held – Application liable to be filed u/S 97 for obtaining advance ruling in advance and not during the pendency of any issue before the authority: *Saisanket Enterprise (M/S) Vs. Authority For Advance Ruling, I.L.R. 2022 M.P. 1550 (DB)*

– **Section 129** – See – Goods and Services Tax Act, M.P., 2017, Section 107: *Sai Rubber Works (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 433 (DB)*

## **CENTRAL GOODS AND SERVICES TAX RULES, 2017**

– **Rule 21(b) & 22** – Cancellation of Registration – Notice & Enquiry – Opportunity of Hearing – Held – Appellant carrying business of milk products only on papers and goods were not physically transported – Detailed enquiry conducted where discrepancies were found – Appellant failed to prove e-way bill transaction details – Proper opportunity of hearing was also granted – No cogent documentary evidence in favour of appellant – Writ petition rightly dismissed – Appeal dismissed: *Om Trading Co. (M/s) Vs. Deputy Commissioner of State Tax, I.L.R. 2021 M.P. 621 (DB)*

## **CHIKITSA SHIKSHA PRAVESH NIYAM, M.P., 2018**

### **SYNOPSIS**

- |                                   |   |
|-----------------------------------|---|
| <b>1. Category of Reservation</b> | <b>2. In Service Candidate/<br/>Incentive Marks</b> |
| <b>3. Registration</b>            | <b>4. Test of Proportionality</b>                   |
| <b>5. Miscellaneous</b>           |   |

### **1. Category of Reservation**

– **Rules 2(r), 4(1) & 14(1) & (2)** – Category of Reservation – Applicability – Held – Intention behind bringing these provisions into statute book was to apply the category-wise reservation in the second round of counselling on the entire vacancies and not separately for “in service category” and “open category” – Respondent rightly applied the Rules to the entire set of vacancies – Petitions dismissed: *Mohita Pandey (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*69 (DB)*

### **2. In Service Candidate/Incentive Marks**

– **Rule 6 & 14(4)** – Reservation & Incentive Marks – “In Service Candidate” – Held – Only such working employee who has obtained no objection from the employer and thereafter got himself/herself registered in the portal can be treated as “in service candidate” – In absence of registration after obtaining NOC and without furnishing requisite information in proper format, petitioner cannot treat herself to be “in-service candidate” – Petitioner cannot take advantage of her own wrong – Petition dismissed: *Rajni Shende (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1530 (DB)*

– **Rule 14(1)** – Term – “Reserved” – Held – The word “reserved” is not used in the sense it is normally used when community based reservation flowing from Article 15/16 of Constitution is being given – Intention of legislature was to give separate source of entry to in-service candidates to the extent of 30% out of total vacancies: *Mohita Pandey (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*69 (DB)*

– **Rule 14(1) & (2)** – Term “Vacancies” – Held – “Vacancies” means all the vacancies and not vacancies confined to “in-service candidates” – Thus vacancy of Rule 14(1) relates to the entire set of vacancies of all subjects available in Government and Private Medical Colleges as well as in dental Hospitals – Contentions of petitioners that under Rule 14(1) & (2), “in-service candidates” and “open category candidates” belong to two separate compartments, cannot be accepted: *Mohita Pandey (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*69 (DB)*

### 3. Registration

– **Rule 6** – Registration – Amended Definition – Held – As per amended definition of “registration”, after second round of counselling and before Mop-Up round of counselling, registration will be re-opened and except previously registered candidates, other candidates can get themselves registered: *Pooja Sahu (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*56 (DB)*

– **Rule 6 & 17(3)** – Registration – Change of Category – Permissibility – Held – Conjoint reading of Rule 6 r/w 17(3) shows that rules do not prohibit petitioner from fresh registration and this course is indeed permissible – Petitioner entitled to get herself registered afresh under UR-NRI quota as per the decision of Central Government regarding lowering down of percentile of certain categories – Petition allowed: *Pooja Sahu (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*56 (DB)*

### 4. Test of Proportionality

– **Rule 12(8)(a)** and Constitution – Article 14 & 19(1)(g) – Admission Rules – Constitutional Validity – Test of Proportionality – Held – Right to admit students which is a part of management’s right to occupation under Article 19(1)(g) of Constitution stands defeated by Rule 12(8)(a) as it prevents them from filling up all the seats in medical courses – Non-filling up all medical seats is detrimental to public interest – Applying test of proportionality, the restriction imposed by Rule 12(8)(a) is unreasonable and is violative of Article 14 and 19(1)(g) of Constitution – Impugned order set aside – Appeals allowed: *Index Medical College, Hospital & Research Centre Vs. State of M.P., I.L.R. 2021 M.P. 795 (SC)*



## **5. Miscellaneous**

– **Rule 2(k)** – See – MCI Post Graduate Medical Education Regulations, 2000, Regulation 9(4): *Vijendra Dhanware (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1157 (DB)*

– **See** – Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhinyam, M.P., 2007, Sections 5, 5-A, 5-A(3), 5(7) & 7: *Shruti Patidar (Ms.) Vs. State of M.P., I.L.R. 2022 M.P. \*92 (DB)*

### **CIVIL COURTS ACT, M.P. (19 OF 1958)**

– **Section 3** – See – Public Trusts Act, M.P., 1951, Section 2 & 8: *Seth Trilokchand Kalyanmal Digambar Jain Vs. Sushil Kumar Kasliwal, I.L.R. 2022 M.P. \*21*

– **Section 7 & 15** – See – Arbitration and Conciliation Act, 1996, Sections 2(1)(e), 9, 14, 34 & 36: *Yashwardhan Raghuwanshi Vs. District & Sessions Judge, I.L.R. 2021 M.P. 655 (DB)*

– **Section 7 & 15** and Arbitration and Conciliation Act (26 of 1996), Sections 2(1)(e), 9, 14, 34 & 36 – Distribution of Cases – Held – District Judge by virtue of Section 7 & 15 of Civil Courts Act would be entitled to distribute such work amongst any of the Additional District Judges under his supervision but not to any Court of Civil Judge Class I or Senior Civil Judge or any Court of Small Causes: *Yashwardhan Raghuwanshi Vs. District & Sessions Judge, I.L.R. 2021 M.P. 655 (DB)*

### **CIVIL PRACTICE**

– **Adjudication of Nature of Sale Deed** – Jurisdiction – Held – In present case, nature of sale deed is to be decided, which is the sole domain of Civil Court and Revenue Courts are expected not to entertain such matter – In such cases, jurisdiction solely vests in Civil Court – Impugned order is perverse and is set aside – Petition disposed: *Naresh Soni Vs. Shankar Singh, I.L.R. 2021 M.P. \*17*

– **Affidavit for Examination-in-chief** – Held – Plaintiffs not only filed another affidavit for examination-in-chief but also very cleverly tried to get the earlier affidavit deleted from record which is not permissible – All affidavits shall form the part of record and other party shall have all authority and opportunity to cross-examine the witness on basis of his examination-in-chief as reflected in different affidavits filed under Order 18 Rule 4 CPC: *Batsiya Vs. Ramgovind, I.L.R. 2021 M.P. 1718*

– **Jurisdiction** – Held – When there is a challenge to lack of inherent jurisdiction, same can be raised at any stage even in execution and collateral proceeding

– Decree by a forum lacking inherent jurisdiction on the subject matter is a nullity – When a forum lacks inherent jurisdiction with regard to subject matter, then the principles of estoppel; waiver and res-judicata do not apply: *Gayatri Project Ltd. (M/s.) Vs. M.P. Road Development Corporation Ltd., I.L.R. 2022 M.P. 1056 (DB)*

– **Principle of Waiver** – Held – If plea is available, whether of facts or law, it has to be raised by the parties at appropriate stage in accordance with law – If not raised or/and given up with consent, parties would be precluded from raising such plea at later stage of the proceedings on principle of waiver – If permitted to be raised, it causes prejudice to other party: *S.L. Goyal Vs. State of M.P., I.L.R. 2022 M.P. 1456 (DB)*

– **Subsequent Affidavit for Examination-in-chief** – Held – After filing an affidavit for examination-in-chief, deponent may file subsequent affidavit to add or supplement the facts as Order 18 Rule 4 CPC does not limit itself to a single affidavit but deponent ought not be allowed to keep improving his case in routine manner: *Batsiya Vs. Ramgovind, I.L.R. 2021 M.P. 1718*

### **CIVIL PROCEDURE CODE (5 OF 1908)**

– **Section 24** – Transfer of Case – Ground – Wife pleaded personal inconvenience i.e. the distance between two places is 350 Kms and she having a young son, cannot travel – She was also subjected to violence when she appeared before Family Court, Bhopal – She is also suffering from travel sickness and doctor advised her not to travel – Held – Petition filed u/S 13 and Section 9 of Hindu Marriage Act be heard at same place so that contradictory judgment may not be passed – Matter pending at Bhopal transferred to Jabalpur – Application allowed: *Bhumika Kanojiya (Smt.) Vs. Abhishek Kanojiya, I.L.R. 2022 M.P. 1955*

– **Section 100** – Execution of Will – Burden of Proof – Scope of Interference – Held – A Will in favour of defendant is not required to be necessarily challenged by plaintiff as burden of proving the Will always lies upon the propounder – Execution of will is purely a question of fact and cannot be interfered by this Court under limited scope of Section 100 CPC: *Ramkali (Smt.) (Dead) By L.R. Vs. Smt. Muritkumari (Dead) By L.Rs., I.L.R. 2022 M.P. 2063*

– **Section 100** – Interim Orders – Held – Unless and until the second appeal is admitted, High Court has no jurisdiction to pass any interim order: *Hemraj Vs. Kallu Khan, I.L.R. 2021 M.P. 1608*

– **Section 100** – Relief Sought in Suit – Held – Plaintiff sought relief of declaration of 1/3rd share in property, therefore, relief of declaring the Will to be

forged, being smaller relief, must be deemed to be included in the relief of declaration of title – Thus, it cannot be said that prayer in the suit for declaring Will to be forged, fabricated or ab initio void, was necessary – Appeal dismissed: *Ramkali (Smt.) (Dead) By L.R. Vs. Smt. Muritkumari (Dead) By L.Rs., I.L.R. 2022 M.P. 2063*

– **Section 100** – Scope – Held – Second appeal can only be admitted when substantial question of law is involved in the matter: *Nepal Singh Vs. Shri Nivas Jadon, I.L.R. 2022 M.P. 1015*

– **Section 100** – See – Land Revenue Code, M.P., 1959, Section 44(2)(b) & 44(3)(b) (as amended on 25.09.2018): *Khyaliram Vs. State of M.P., I.L.R. 2021 M.P. 492*

– **Section 100** – Substantial Question of Law – Held – When appellant/defendant has denied the pronote, he could have examined the handwriting expert to rebut the testimony of plaintiff and his witness regarding his signatures on the pronote – Defendant has not opted such desirable course – No substantial question of law arises in the matter – Appeal dismissed: *Nepal Singh Vs. Shri Nivas Jadon, I.L.R. 2022 M.P. 1015*

– **Section 100, Order 41 Rule 11 & Order 41 Rule 3A** and Limitation Act (36 of 1963), Section 5 – Stay of Execution Proceedings – Held – When appeal is presented after expiry of limitation period, then it has to be accompanied by application for condonation of delay and Court shall not make a stay order of execution and decree, unless and until, Appellate Court decides to hear the appeal under Order 41 Rule 11 CPC: *Hemraj Vs. Kallu Khan, I.L.R. 2021 M.P. 1608*

– **Section 114 r/w Order 47 Rule 1** – Review – Question of Possession – Pleading & Framing of Issues – Held – Ample material to show that defendants admitted possession of plaintiff over suit property – Necessary pleadings regarding possession present in plaint and written statement – Plaintiff led evidence in this respect – Non-framing of issue by trial Court regarding possession fades into insignificance – High Court committed grave error in allowing review application, deleting the observation made regarding possession – Impugned order set aside – Deleted portion restored – Appeal allowed: *Shri Ram Sahu (Dead) Through LRs. Vs. Vinod Kumar Rawat, I.L.R. 2021 M.P. 4 (SC)*

– **Section 114 r/w Order 47 Rule 1** – Review – Scope & Jurisdiction – Held – Order can be reviewed by Court only on prescribed grounds mentioned in Order 47 Rule 1 CPC – Application for review is more restricted than that of an appeal and Court has limited jurisdiction – Power of review cannot be exercised as an inherent power nor can an appellate power can be exercised in guise of power of

review: *Shri Ram Sahu (Dead) Through LRs. Vs. Vinod Kumar Rawat, I.L.R. 2021 M.P. 4 (SC)*

– **Section 141 & Order 47 Rule 1 & 9** – Second Review – Maintainability – Held – Second review application is expressly barred under the Code – Second review application not maintainable and is dismissed: *Anand Deep Singh Vs. State of M.P., I.L.R. 2022 M.P. 1908 (DB)*

– **Section 151 and Order 39 Rule 1 & 2** – Scope & Jurisdiction – Held – Status quo order could not have been granted by Court exercising powers under Section 151 CPC when there is an express provision under the Code: *Omprakash Agrawal Vs. Sandeep Kumar Agrawal, I.L.R. 2022 M.P. 2034*

– **Section 152** – Correction in Judgment – Held – The words “including an employee of the appellant” stand deleted from para 4 of judgment dated 16.11.2020 – Application allowed: *UMC Technologies Pvt. Ltd. Vs. Food Corporation of India, I.L.R. 2021 M.P. 383 (SC)*

– **Order 1 Rule 10** – Necessary Party – Held – A suit cannot be dismissed on ground of non-joinder of necessary party, unless and until opportunity is given to plaintiff to implead necessary party – If plaintiff refuses or fails to implead necessary party and decides to move further with the suit, then he do so at his own risk and under this circumstances, he has to face adverse consequences – Work was got done by respondents in execution of a scheme formulated by State Government, thus State was a necessary party – Petition suffers from non-joinder of necessary party: *Rajkumar Goyal Vs. Municipal Corporation, Gwalior, I.L.R. 2021 M.P. 48*

– **Order 1 Rule 10** – See – Accommodation Control Act, M.P., 1961, Section 23-A: *Shyamlal Vyas (Dead) Through LRs. Smt. Gopi Vyas Vs. Inderchand (Dead) Through LRs. Shri Om Prakash Jain, I.L.R. 2022 M.P. 1296*

– **Order 1 Rule 10** – See – Employee’s Compensation Act, 1923, Section 3 & 12: *Bajaj Allianz General Insurance Co. Vs. Hafiza Bee, I.L.R. 2021 M.P. 100*

– **Order 1 Rule 10 & Order 2 Rule 2** – Necessary and Proper Party – Held – Comprehensive General Liability Policy taken by Respondent No. 6 from petitioner – In order to defend probable liability upon Respondent No. 6, it is for insurance company also to defend the claim – In view of provisions of Order 2 Rule 2 CPC, all issues arising out of accident are liable to be decided in one claim case – So far as terms and conditions of policy are concerned, it is a matter of evidence – Petitioner Insurance company rightly impleaded as respondents in claim case – Petition dismissed: *Bajaj Allianz General Insurance Co. Vs. Hafiza Bee, I.L.R. 2021 M.P. 100*

– **Order 1 Rule 10 and Order 6 Rule 4(a)** – Applicability – Held – Dispute exist between plaintiff and Krishi Upaj Mandi regarding boundary wall and no any agricultural land is involved, thus no relief could be sought against the State – Provisions of Order 6 Rule 4(a) CPC shall not be attracted – Petition dismissed: *Indira Chaurasia (Deceased) (Smt.) Through LRs Bipin Bihari Chaurasia Vs. Director, Krishi Upaj Mandi Board, I.L.R. 2021 M.P. 1568*

– **Order 7 Rule 11** – Scope – Held – Eviction petition cannot be dismissed on mere assertion of tenant in application under Order 7 Rule 11 CPC regarding lack of bonafide requirement of landlord: *Gayatri Parashar Vs. Tulsiram Kori, I.L.R. 2022 M.P. 947*

– **Order 7 Rule 11** – See – Benami Transactions (Prohibition) Act, 1988, Section 4(1): *Chintamani (Smt.) Vs. Ajay Kumar, I.L.R. 2022 M.P. 1945*

– **Order 7 Rule 11** – See – Guardians and Wards Act 1890, Section 7/25 & 9(1): *Akhilesh Anjana Vs. Kavita Anjana, I.L.R. 2022 M.P. 1643*

– **Order 7 Rule 11** and Limitation Act (36 of 1963), Article 59 – Challenge to Mutual Partition – Limitation – Held – After execution of mutual partition i.e. from 2006 till 2012, plaintiff has not challenged the said partition and sansodhan panji dated 30.06.2006 – Acting on the said partition, plaintiff, his mother and brother executed sale deed for same property, which was involved in partition – Earlier partition cannot be reopened – Suit is clearly time barred and is hereby dismissed – Impugned order set aside – Revision allowed: *Krishna Kumar Anand Vs. Varun Anand, I.L.R. 2022 M.P. 2088*

– **Order 18 Rule 4** – Evidence on Affidavit – Addition/Deletion of Facts – Held – Once examination-in-chief is affirmed by way of filing it before trial Court, thereafter it is not possible to withdraw the said affidavit – Filing of subsequent affidavit is permissible if facts warrants so to supplement additional grounds or factual contends but deletion of any portion of earlier affidavit is not permissible – Trial Court erred in deletion of earlier affidavit – Impugned order set aside – Petition allowed: *Batsiya Vs. Ramgovind, I.L.R. 2021 M.P. 1718*

– **Order 21 Rule 29 & Order 41, Rule 5(1)** – Stay of Execution Proceedings – Held – Appeal shall not operate as stay of proceedings unless and until, a stay order is passed by Appellate Court – Even execution of decree shall not be stayed by reason that the appeal has been preferred – No stay order in the present case, even the second appeal has not been admitted – Impugned order set aside – Executing Court directed to proceed further unless and until execution is stayed in the second appeal: *Hemraj Vs. Kallu Khan, I.L.R. 2021 M.P. 1608*

– **Order 22 Rule 3, Order 22 Rule 9 & Order 22 Rule 11** and Limitation Act (36 of 1963), Section 5 – Condonation of Delay – Sufficient Cause – Held – There is delay of 1080 days – For the delay, very vague and general explanations given by R-1 – Deceased was real brother of R-1 living in same village and no one can assume that a sibling was not aware of his brother’s death – R-1 acted irresponsibly with negligence and tried to mislead and misguide the Court by putting wrong facts – No sufficient/reasonable cause shown – Application for condonation dismissed – Consequently cross-objection/appeal also dismissed: *Ramua (Dead) Vs. Kodulal*, I.L.R. 2022 M.P. 1017

– **Order 26 Rule 9** – Powers of Court – Held – Courts can exercise powers under Order 26 Rule 9 CPC for appointment of Commissioner to ascertain the correct factual position, if the same is not ascertainable on basis of oral and documentary evidence – No jurisdictional error – Petition dismissed: *Suneel Prakash Sharma Vs. Vivek Kumar Ruthiya*, I.L.R. 2022 M.P. \*29

– **Order 26 Rule 10(A)** and Evidence Act (1 of 1872), Section 45 & 112 – Legitimacy of Child – DNA Test & Presumption – Held – It is not a case of petitioner that ‘H’ was born prior to her marriage – Presumption u/S 112 of Evidence Act is a rebuttable presumption and petitioner will get every opportunity to rebut the said presumption in the trial – Application for DNA test rightly rejected – Petition dismissed: *Urmila Singh (Smt.) Vs. Saudan Singh*, I.L.R. 2022 M.P. \*94

– **Order 30 Rule 1** – See – Negotiable Instruments Act, 1881, Section 138 & 141: *Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani*, I.L.R. 2021 M.P. 503

– **Order 39 Rule 1 & 2** – Appointment of Commissioner – Held – Court below erred in appointing Commissioner in as much as collection of evidence cannot be permitted while deciding application under Order 39 Rule 1 & 2 CPC – Application has to be decided *prima facie* on three sound principles of law – Impugned order set aside – Petition allowed: *Omprakash Agrawal Vs. Sandeep Kumar Agrawal*, I.L.R. 2022 M.P. 2034

– **Order 39 Rule 1 & 2** – Principles – Discussed & explained: *Omprakash Agrawal Vs. Sandeep Kumar Agrawal*, I.L.R. 2022 M.P. 2034

– **Order 39 Rule 1 & 2** – See – Designs Act, 2000, Section 2(d) & 4: *Praveen Muraka Vs. Bhama Enterprises India Pvt. Ltd.*, I.L.R. 2021 M.P. 737 (DB)

– **Order 41 Rule 3A, 11 & 12** – See – Limitation Act, 1963, Section 5 & 14: *Mangla Deshore (Kumari) Vs. Mst. Krishna Bai (Dead) By L.Rs.*, I.L.R. 2022 M.P. 2055

– **Order 41 Rule 5** – Stay of Injunction Order – Scope – Held – In appropriate cases inherent power can be exercised by appellate Court for suspending decree of injunction but there is no power to stay injunction order: *Trivikram Prasad Vs. Yashodanandan Dwivedi, I.L.R. 2022 M.P. 1688*

– **Order 41 Rule 5 & Order 21 Rule 32** – Stay of Injunction Order – Jurisdiction of Appellate Court – Held – Under Order 41 Rule 5, appellate Court is provided jurisdiction and power to stay execution of a decree – Order/decree of injunction cannot be executed, it is only when breach of injunction order is committed by party, application can be filed under Order 21 Rule 32 – Impugned order set aside – Petition allowed: *Trivikram Prasad Vs. Yashodanandan Dwivedi, I.L.R. 2022 M.P. 1688*

– **Order 41 Rule 23** – Power of Remand – Held – Order 41 Rule 23 applies when trial Court disposes of the entire suit by recording its finding on a preliminary issue without deciding any other issues and the finding on preliminary issue is reversed in appeal: *Satishchandra Vs. Guddan @ Dashrath, I.L.R. 2022 M.P. 1742*

– **Order 41 Rule 23, 23A & 25** – Power of Remand – Applicability – Appellants/ Plaintiffs challenging order of remand shows that they are not interested in remand and do not want any additional relief or in adding any additional party or demarcation of suit land or to adduce further evidence – Condition precedent for remanding a case as provided under Rule 23, 23A & 25 is absent – Appellate Court erred in remanding the case for re-trial – Impugned order set aside – Appeal restored to First Appellate Court – Appeal allowed: *Satishchandra Vs. Guddan @ Dashrath, I.L.R. 2022 M.P. 1742*

– **Order 41 Rule 23, 23A & 25** – Power of Remand – Held – Appellate Court can exercise the same power of remand under rule 23A of Order 41 as it is under Rule 23: *Satishchandra Vs. Guddan @ Dashrath, I.L.R. 2022 M.P. 1742*

– **Order 41 Rule 23, 23A & 25** – Power of Remand – Held – Power of remand should not be exercised by Court in a routine or casual manner and should be exercised with great circumspection – Trial Court has not considered the merit of appeal at all and remanded the case in a very casual manner – Such remand de hors statutory provisions under Order 41 Rules 23, 23A & 25 C.P.C. – Impugned order set aside – Appeal restored to original number before Appellate Court: *Manju Bai (Smt.) Vs. Dashrath, I.L.R. 2022 M.P. \*53*

– **Order 41 Rule 25** – Power of Remand – Held – Order 41 Rule 25 applies when Appellate Court notices an omission on part of trial Court to frame or try any issue or to determine any question of fact which in opinion of appellate Court is essential to the right decision of suit – Remand under Rule 25 is a limited remand in

as much as the subordinate Court can try only such issues as are referred to it for trial and having done so, the evidence recorded together with finding and reasons of trial Court are required to be returned to Appellate Court: *Satishchandra Vs. Guddan @ Dashrath, I.L.R. 2022 M.P. 1742*

– **Order 47 Rule 1** – Modifications, Directions & Clarification – Permissibility – Held – Learned Single Judge modified the order under review and passed certain directions – Virtually writ petition was re-heard on merits – Learned Single Judge exceeded his jurisdiction in passing such order – In a petition under Order 47 Rule 1 CPC, making direction, clarifications is beyond powers provided in the provision – All directions issued are set aside – Appeal allowed: *Abhay Kumar Pande Vs. State of M.P., I.L.R. 2022 M.P. \*75 (DB)*

– **Order 47 Rule 1** – Review – Grounds – Held – When observation regarding possession was made on appreciation of evidence/material on record, it cannot be said that there was an error apparent on face of proceedings and required to be reviewed in exercise of powers under Order 47 Rule 1 CPC: *Shri Ram Sahu (Dead) Through LRs. Vs. Vinod Kumar Rawat, I.L.R. 2021 M.P. 4 (SC)*

– **Order 47 Rule 1 & 9** – See – Constitution – Article 226: *Anand Deep Singh Vs. State of M.P., I.L.R. 2022 M.P. 1908 (DB)*

## **CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, M.P. 1966**

### **SYNOPSIS**

- |   |                                      |
|---|--------------------------------------|
| <b>1. Appeal</b>                                  | <b>2. Charge-Sheet</b>               |
| <b>3. Departmental Enquiry</b>                    | <b>4. Dismissal/Major Punishment</b> |
| <b>5. Inquiry Officer &amp; Defence Assistant</b> | <b>6. Minor Punishment</b>           |
| <b>7. Principle of Natural Justice</b>            | <b>8. Retired Government Servant</b> |
| <b>9. Suspension</b>                              | <b>10. Miscellaneous</b>             |

### **1. Appeal**

– **Rule 25 Proviso 2** – Delay in Appeal – Held – Appeal filed by petitioner dismissed on ground of delay – In appeal, no application for condonation of delay filed by petitioner – Opportunity granted to petitioner to file application for condonation of delay before Appellate Authority – Petition disposed: *Chandrahas Namdev Vs. M.P. Power Transmission Co. Ltd., I.L.R. 2022 M.P. 1890*



– **Rule 27** – Consideration of Appeal – Held – If appellate authority does not meet the grounds raised in appeal and without referring those grounds rejected the appeal putting seal of confirmation upon order of disciplinary authority, then, authority has failed in its duty and not discharged its obligation in a proper manner – Requirement prescribed under Rule 27 not fulfilled: *Jai Kumar Bajpai (Dead) Through LRs. Smt. Chandrakanta Bajpai Vs. Chairman-cum-Managing Director, I.L.R. 2022 M.P. 1393*

## 2. Charge-Sheet

– **Rule 14** – Charge Sheet – Approval of Competent Authority – Held – Managing Director was the competent authority and there is nothing in note-sheet which suggest that a conscious decision was taken by him by approving the draft of charge-sheet – No such draft charge-sheet was kept for approval before Managing Director – Charge-sheet was defective – Appeal No. 72/2022 & 75/2022 dismissed: *M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd. Vs. K.K. Mishra, I.L.R. 2022 M.P. 1815 (DB)*

– **Rule 14** – Defective Charge Sheet – Validity of Departmental Enquiry – Held – If no objection was raised on validity of charge-sheet during enquiry, it will not validate the departmental enquiry or a defective charge-sheet – If departmental enquiry is bad in law since inception because of defective charge-sheet, the entire edifice founded upon it needs to be axed: *M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd. Vs. K.K. Mishra, I.L.R. 2022 M.P. 1815 (DB)*

– **Rule 14(2) & (3)** – Charge Sheet – Approval of Competent Authority – Held – Approval for initiating disciplinary proceeding and approval to charge memorandum are two divisible acts, each one requiring independent application of mind on part of disciplinary authority – If there is any default in process of application of mind independently at time of issue of charge memorandum, same would not get cured by the fact that such approval was there at initial stage: *M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd. Vs. K.K. Mishra, I.L.R. 2022 M.P. 1815 (DB)*

– **Rules 14(2), 14(3) & 14(4)** – Issuance of Charge Sheet – Competent Authority – Held – Apex Court concluded that charge sheet is also required to be approved or signed by disciplinary authority and cannot be issued without it, by any other authority – Disciplinary authority in present case has only opined to initiate departmental enquiry but has not signed or approved the charge sheets issued, rendering them non-est in eyes of law – Requirement of Rule 14 not fulfilled – Charge sheets quashed – Petition allowed: *Tarun Kumar Mishra Vs. State of M.P., I.L.R. 2022 M.P. 261*

### 3. Departmental Enquiry

– **Rule 9(i)** – Departmental Enquiry – Held – Departmental enquiry can be dispensed with in case of the conduct of employee which has led to his conviction on a criminal charge: *Jagdish Singh Jatav Vs. State of M.P., I.L.R. 2021 M.P. 637*

– **Rule 10 & 16** – Recommendation of Disciplinary Authority – Held – Recommendation of enquiry officer/disciplinary authority is not binding or mandatory for appellate authority to accept: *Madan Mohan Dwivedi Vs. State of M.P., I.L.R. 2022 M.P. 1691*

– **Rule 15** – Further Inquiry & Denovo Inquiry/Re-inquiry – Held – Since charge-sheet remained the same, previous charge-sheet was not set aside, just because no witness was examined, disciplinary authority directed to conduct further inquiry – It cannot be termed as denovo inquiry/re-inquiry – Respondent directed to conclude the inquiry – Petition disposed: *A.A. Abraham Vs. State of M.P., I.L.R. 2021 M.P. 78*

### 4. Dismissal/Major Punishment

– **Rule 10 & 14** – Major Punishment – Departmental Enquiry – Held – Major punishment like dismissal from service can be inflicted after conducting a regular departmental enquiry as per provisions of Rule 14 of the Rules of 1966: *Amit Chaurasia Vs. State of M.P., I.L.R. 2021 M.P. 2049*

– **Rules 10, 14 & 15** and Constitution – Article 311(2)(b) – Punishment of Dismissal – Dispensing with Departmental Enquiry – Grounds – Lady constable lodged FIR against male constable (petitioner) u/S 452, 354, 354-Gh, 376 & 506 IPC – Petitioner dismissed from service without departmental enquiry on ground that calling prosecutrix in enquiry would tarnish her image, dignity and respect – Held – Lady constable who can file FIR and would appear before Court, there should be no hitch while appearing in enquiry that too before police officers – Reason assigned for dispensing with regular departmental enquiry is unreasonable and unjustified – Article 311(2)(b) cannot be applied – Impugned order of dismissal set aside – Petition allowed: *Amit Chaurasia Vs. State of M.P., I.L.R. 2021 M.P. 2049*

– **Rules 10, 14 & 16** – Major/Minor Penalty – Held – If enquiry is initiated by disciplinary authority under Rule 14, it does not mean that Authority has taken a decision to impose major penalty – Even after invoking Rule 14, minor penalty can also be imposed by disciplinary authority: *Chandramani Mishra (Dr.) Vs. State of M.P., I.L.R. 2021 M.P. 1080*

## 5. Inquiry Officer & Defence Assistant

– Rule 14 – Held – Inquiry Officer is not a prosecutor but an independent and impartial arbiter and umpire whose prime object is to conduct and conclude disciplinary proceedings in a fair and impartial manner following the principles of natural justice: *Deenbandhu Saket Vs. State of M.P., I.L.R. 2022 M.P. 651 (DB)*

– **Rule 14(8)** – Defence Assistant – Held – As per provisions of Rule 14, to take assistance of defence assistant, is a statutory right of delinquent employee – If delinquent employee proposes a Defence Assistant who is employed elsewhere, Inquiry Officer should request in writing to Controlling Officer of the proposed defence assistant to act as Defence Assistant, provided there is no other legal impediment – Accordingly directions issued to respondents – Petition allowed: *Deenbandhu Saket Vs. State of M.P., I.L.R. 2022 M.P. 651 (DB)*

## 6. Minor Punishment

– **Rule 16(1)(e)** – Minor Penalty – Consultation with Public Service Commission – Held – For imposing a minor penalty, consultation with Public Service Commission is not mandatory or obligatory: *Madan Mohan Dwivedi Vs. State of M.P., I.L.R. 2022 M.P. 1691*

## 7. Principle of Natural Justice

– **Rule 10 & 15** – Principle of Natural Justice – Enquiry report was in favour of employee – Held – In absence of any discordant note being prepared and supplied by disciplinary authority, requirement of principle of natural justice and Rule 15 were not satisfied – Writ Court rightly interfered with punishment – Appeal dismissed: *State of M.P. Vs. Vishnu Prasad Maran, I.L.R. 2021 M.P. 614 (DB)*

– **Rule 16(1)(a)** – Reasonable Opportunity of Hearing – Held – Interpretation of reasonable time is that it should be within the time prescribed in notice – Reasonable opportunity does not mean that petitioner could have slept over the notice for more than six/nine months whereas he was obliged to submit his reply within 15 days – Act of petitioner itself amounts to indiscipline – Rules of natural justice not by-passed – Further, petitioner was called and heard in person – Fair opportunity was given – Petitioner not entitled to get his reply considered – Petition dismissed: *Madan Mohan Dwivedi Vs. State of M.P., I.L.R. 2022 M.P. 1691*

## 8. Retired Government Servant

– **Rule 2(f) & 10** – Retired Government Servant – Punishment – Held – Definition of “government servant” does not include retired government servant –

Statutory punishment listed in Rule 10 can be imposed on existing government servant and not on a retired government servant: *State of M.P. Vs. Vishnu Prasad Maran, I.L.R. 2021 M.P. 614 (DB)*

– **Rule 2(f) & 10** and Civil Services (Pension) Rules, M.P., 1976, Rule 8(1)(b) – Retired Government Servant – Punishment of “Censure” – Held – Punishment under Rule 10 cannot be imposed on retired government servant – For imposing punishment on retired government servant, Rule 8(1) of Pension Rules is applicable which prescribes punishment of withholding or withdrawing pension – Punishment of “Censure” could not have been imposed on petitioner – Further, after retirement of a government servant, only Governor can impose the punishments under Pension Rules – Writ Court rightly interfered with the punishment – Appeal dismissed: *State of M.P. Vs. Vishnu Prasad Maran, I.L.R. 2021 M.P. 614 (DB)*

## 9. Suspension

– **Rule 9(1)(a)** – Suspension – Held – As per CCA Rules, employee can be placed under suspension during pendency of investigation, inquiry or trial – One such ingredient on strength of which suspension order can be passed is available against respondent – It cannot be said that suspension order is passed without there being any reason at all: *State of M.P. Vs. Satya Narayan Dubey, I.L.R. 2022 M.P. 1975 (DB)*

## 10. Miscellaneous

– **Rule 19** – See – Civil Services (Pension) Rules, M.P., 1976, Rule 9(1): *Dhirendra Kumar Dubey Vs. State of M.P., I.L.R. 2022 M.P. 428*

# **CIVIL SERVICES (GENERAL CONDITIONS OF SERVICE) RULES, M.P., 1961**

## SYNOPSIS

- |                         |                            |
|-------------------------|----------------------------|
| <b>1. Applicability</b> | <b>2. Disqualification</b> |
| <b>3. Probation</b>     | <b>4. Seniority</b>        |

### 1. Applicability

– **Rule 3** and State Administrative Services (Classification, Recruitment and Conditions of Service) Rules, M.P., 1975 – Applicability – Held – Rule 3 does not *stricto sensu* provide that it shall only apply to a member of service but it rather begins by providing that “the rule shall apply to every person who holds a post or is a member of a service in the State” – Rules of 1975 would govern conditions of service

of members of M.P. State Administrative Services but without prejudice to generality of 1961 Rules – Rule of 1961 shall continue to apply except in so far as special provisions have been made in Rules of 1975 – It continues to be applicable to those who hold a post: *Arun Parmar Vs. State of M.P., I.L.R. 2021 M.P. 822 (FB)*

## 2. Disqualification

– **Rule 6(6)** – Disqualification – Grounds – Held – Candidate who may not be disqualified under this provision at the time of submission of his application form or at any stage during recruitment process, but incurred disqualification on account of 3rd child born before the appointment order, would suffer disqualification under the said provision: *Laxman Singh Baghel Vs. State of M.P., I.L.R. 2021 M.P. 1509 (DB)*

– **Rule 6(6)** – Disqualification – Issuance of Appointment Order – Held – Point of incurring disqualification under Rule 6(6) is the appointment and not the last date of submission of application pursuant to advertisement – Since 3<sup>rd</sup> child was born before issuance of appointment order, petitioner rendered himself disqualified for the said appointment – Appeal dismissed: *Laxman Singh Baghel Vs. State of M.P., I.L.R. 2021 M.P. 1509 (DB)*

## 3. Probation

– **Rule 8(1)** and State Administrative Services (Classification, Recruitment and Conditions of Service) Rules, M.P., 1975, Rule 13(1) – Probation Period – Held – Rule 8(1) of 1961 Rules provide that a direct recruit shall ordinarily be placed on probation as may be prescribed whereas Rule 13(1) of 1975 Rules has specifically provided probation period of 2 years and it is this Rule which would prevail so far as the initial period of probation is concerned – This apart, there is no material difference between these two provisions under different set of Rules, they both deal with the case of probation in the same way: *Arun Parmar Vs. State of M.P., I.L.R. 2021 M.P. 822 (FB)*

– **Rule 8(7)** and Government Servants (Temporary and Quasi-Permanent Service) Rules, M.P. 1960, Rule 12 – Probation – Applicability of Rules – Held – A probationer, who has neither been confirmed, nor a certificate issued in his favour, nor discharged from service, shall be deemed to have been appointed as a temporary government servant with effect from date of expiry of probation and his service shall be governed by Rules of 1960: *Sinnam Singh Vs. State of M.P., I.L.R. 2021 M.P. 1317*

## 4. Seniority

– **Rule 8 & 12** and State Administrative Services (Classification, Recruitment and Conditions of Service) Rules, M.P., 1975, Rule 13 & 23 – Seniority – Held – Rule

23 of 1975 Rules specifically provides that seniority of persons appointed to the service shall be regulated in accordance with provisions of Rule 12 of 1961 Rules – Thus, non consideration of Rule 13 of 1975 Rules by the Full Bench (*Dr. Masood Akhtar*) would not make any material difference – This Court considered and interpreted Rule 13 of 1975 Rules and came to same conclusion as concluded by earlier Full Bench on harmonious interpretation of Rule 12(1)(a) and Rule 12(1)(f) of 1961 Rules: *Arun Parmar Vs. State of M.P., I.L.R. 2021 M.P. 822 (FB)*

– **Rules 8(1), 8(7) & 12**, State Administrative Services (Classification, Recruitment and Conditions of Service) Rules, M.P., 1975, Rule 13(1) & 13(7) and Government Servants (Temporary and Quasi-Permanent Service) Rules, M.P. 1960 – Probationers – Departmental Examination – Calculation of Seniority – Applicability of Rules – Held – Employee who is directly recruited u/R 8(1) of 1961 Rules or u/R 13(1) of 1975 Rules but is unable to qualify departmental examination even within extended period of 3 years and yet not discharged from service, his service conditions as per mandate of Rule 8(7) of 1961 Rules or Rule 13(7) of 1975 Rules would then be governed by 1960 Rules – He shall continue to be entitled to appear in departmental examination and upon passing the same, shall be confirmed in service and would become member of service and would be assigned seniority below his batchmates who have earlier qualified the examination – Once employee passed examination, he would cease to be subject to 1960 Rules and would be governed from that stage onwards by 1961 Rules or 1975 Rules as the case may be – Full Bench (*Dr. Masood Akhtar*) correctly answered the reference – No justification to refer the matter to Larger Bench: *Arun Parmar Vs. State of M.P., I.L.R. 2021 M.P. 822 (FB)*

– **Rules 12(1)(a) & 12(1)(f) (Vide amendment of 1998)** – Departmental Examination – Seniority – Held – Unlike old Rule 12, new Rule 12 governs discretion of appointing authority restricting its power to assign the lower seniority to those who qualify departmental examination some time after expiry of probation period but with a rider that he shall be assigned the bottom seniority with his own batch but shall be placed above the direct recruits from the subsequent batch – Amended Rule 12 categorically provides that persons appointed as a result of earlier selection shall always rank senior to those appointed as a result of subsequent selection: *Arun Parmar Vs. State of M.P., I.L.R. 2021 M.P. 822 (FB)*

### **CIVIL SERVICES (LEAVE) RULES, M.P. 1977**

– **Rule 32 & 43(4)(ii)** – Study Leave – Entitlement – Held – Petitioner was a probationer and was not holding the post on substantive basis – Further, he has not rendered 5 years of service – Petitioner not entitled for study leave – Competent authority has taken a plausible view, cannot be termed as irrational or contrary to

Rules – Petition dismissed: *Hitendra Singh Yadav (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1176 (DB)*

– **Rule 50** – Study Leave – Scope – Held – Rule 50 is only an enabling provision and it does not create any enforcement right in favour of a probationer to get study leave: *Hitendra Singh Yadav (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1176 (DB)*

## **CIVIL SERVICES (PENSION) RULES, M.P., 1976**

### **SYNOPSIS**

- |   |  |
|---|--|
| <b>1. Conviction/Acquittal - Appeal</b> | <b>2. Principle of Natural Justice</b> |
| <b>3. Retired Employee</b>              | <b>4. Voluntary Retirement</b>         |
| <b>5. Miscellaneous</b>                 |  |

### **1. Conviction/Acquittal - Appeal**

– **Rule 9** – Appeal against Conviction – Held – Petitioner has filed criminal appeal against his conviction which is still pending – It is well settled that appeal is a continuation of suit, thus judgment of conviction and sentence has not attained finality and the same therefore cannot be read in isolation as judicial proceedings are continued: *Dhirendra Kumar Dubey Vs. State of M.P., I.L.R. 2022 M.P. 428*

– **Rule 9 & 45A** – Acquittal of Employee – Retiral Dues – Held – Employee acquitted by trial Court for offence under Prevention of Corruption Act – Retiral dues of employee cannot be withheld merely because an appeal preferred by employer against acquittal order of employee is pending adjudication – Department has not even opted to initiate disciplinary proceedings against employee/petitioner – Action of respondent is arbitrary, illegal and contrary to law – Respondents directed to finalize and pay retiral dues – Petition allowed: *M.L. Mittal Vs. State of M.P., I.L.R. 2022 M.P. 830*

### **2. Principle of Natural Justice**

– **Rule 9(1)** – Basic Ingredients – Discussed and explained: *Radha Krishna Sharma Vs. State of M.P., I.L.R. 2021 M.P. 1641 (DB)*

– **Rule 9(1)** – Withholding/ Withdrawing Pension – Principle of Natural Justice – Opportunity of Hearing – Held – Withdrawing/withholding pension, partly or fully, permanently or temporarily, is a decision which cannot be taken without hearing the pensioner who is intended to be adversely affected – Petitioner entitled for opportunity

of hearing – Impugned order quashed – Appeal allowed: *Radha Krishna Sharma Vs. State of M.P., I.L.R. 2021 M.P. 1641 (DB)*

– **Rule 9(1)** – Withholding/ Withdrawing Pension – Summary Enquiry by Governor – Opportunity of Hearing – Held – Summary enquiry conducted by Governor under Rule 9(1) shall become illusory if delinquent pensioner is not been afforded reasonable opportunity of hearing by issuing show cause notice: *Radha Krishna Sharma Vs. State of M.P., I.L.R. 2021 M.P. 1641 (DB)*

### 3. Retired Employee

– **Rule 9(1)** and Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 19 – Termination after Retirement – Held – Petitioner retired on 31.10.2015 and was terminated vide order dated 17.12.2015 – Master and servant relation ceased to exist on date of superannuation of petitioner – Impugned order is completely without jurisdiction and thus set aside – Respondents directed to pay retiral dues to petitioner – Petition allowed: *Dhirendra Kumar Dubey Vs. State of M.P., I.L.R. 2022 M.P. 428*

– **Rule 9(1)** and Police Regulations, M.P., Regulation 226(iv) – Retired Employee – Minor/Major Punishment – Held – Appellant retired on 30.06.2017 – Rule 9 can be invoked if employee/pensioner is found guilty of grave misconduct – In present case, where minor punishment was imposed which was found to be defective, after his retirement, matter cannot be remitted back for conducting further inquiry: *Jagdish Chouhan (Baret) Vs. State of M.P., I.L.R. 2022 M.P. 44 (DB)*

– **Rule 9(1) & (2)** – Departmental Inquiry – Retired Employee – Punishment – Held – The initiating/disciplinary authority cannot impose punishment to retired employee indeed, he is under statutory obligation to submit his report regarding findings submitted by Inquiry Officer which is finally placed before Governor for decision under Rule 9(1) of Pension Rules: *A.A. Abraham Vs. State of M.P., I.L.R. 2021 M.P. 78*

– **Rule 9(2)** – Departmental Inquiry – Retired Employee – Expression “shall be continued and concluded” – Held – If inquiry is instituted before retirement of a government employee, it shall continue in the same manner and shall be deemed to be proceedings under Pension Rules – This deeming provision permits the authority who has initiated the inquiry to conclude it: *A.A. Abraham Vs. State of M.P., I.L.R. 2021 M.P. 78*

– **Rule 64** – Retiral Dues – Held – In view of Rule 64, no fault can be found if department has not released full pension and gratuity and had only released anticipatory pension subject to outcome of inquiry: *A.A. Abraham Vs. State of M.P., I.L.R. 2021 M.P. 78*



#### **4. Voluntary Retirement**

– **Rule 42** – Voluntary Retirement – Withdrawal of Application – Held – A government servant who elected for voluntary retirement can withdraw his election subsequently with specific approval of authority and no absolute right given to employee but discretion given to authority to consider circumstances of the case on objective application of mind – Authority can deny permission to withdraw the application for voluntary retirement by assigning appropriate reasons – No error with impugned order – Petition dismissed: *D.K. Mishra Vs. Hon'ble High Court of M.P., I.L.R. 2021 M.P. 675 (DB)*

#### **5. Miscellaneous**

– **Rule 8(1)(b)** – See – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rule 2(f) & 10: *State of M.P. Vs. Vishnu Prasad Maran, I.L.R. 2021 M.P. 614 (DB)*

#### **CLASS III (NON-MINISTERIAL) FOREST SERVICE RECRUITMENT RULES, M.P., 2000**

– **Rule 8(1)** – Appointment – Age Relaxation for Woman – Held – Rules do not permit relaxation of age of women candidates in recruitment of Forest Guards – Circular dated 12.05.2017 regarding age relaxation is a general circular and it would not override specific provisions of Rule 8(1) – Appeal dismissed: *Swaran Vibha Pandey Vs. State of M.P., I.L.R. 2021 M.P. 2259 (DB)*

#### **COMMERCIAL COURTS ACT, 2015 (4 OF 2016)**

– **Sections 4, 5 & 13** – See – High Court of Madhya Pradesh Rules, 2008, Chapter IV, Rule 1(8): *Mold Tek Packing Pvt. Ltd. (M/s) Vs. S.D. Containers, I.L.R. 2021 M.P. 945 (DB)*

– **Section 10 & 11** – See – Arbitration and Conciliation Act, 1996, Sections 2(1)(e), 9, 14, 34 & 36: *Yashwardhan Raghuwanshi Vs. District & Sessions Judge, I.L.R. 2021 M.P. 655 (DB)*

– **Section 12-A** – Cause of Action – Held – Regarding cause of action, appellant produced relevant documents which were not taken care of by Court below – Non-suiting a litigant has a drastic effect on his business – Commercial Court was expected to examine the entire plaint averments and documents meticulously with accuracy and precision – Case restored and Court directed to re-hear the parties and decide application afresh – Appeal disposed: *Curewin Pharmaceuticals Pvt. Ltd. Vs. Curewin Hylico Pharma Pvt. Ltd., I.L.R. 2021 M.P. 1735 (DB)*

– **Section 12-A** – Interpretation of Statute – Held – Commercial Courts Act is a procedural law – It prescribes procedure to facilitate justice, it should not be construed in a manner to strangle a litigant on hyper technical grounds: *Curewin Pharmaceuticals Pvt. Ltd. Vs. Curewin Hylico Pharma Pvt. Ltd.*, I.L.R. 2021 M.P. 1735 (DB)

– **Section 12-A** – Pre-institution Mediation – Held – A suit which does not contemplate any urgent interim relief under this Act cannot be instituted unless the plaintiff exhausts the remedy of pre-institution mediation: *Curewin Pharmaceuticals Pvt. Ltd. Vs. Curewin Hylico Pharma Pvt. Ltd.*, I.L.R. 2021 M.P. 1735 (DB)

### **COMPANIES ACT (18 OF 2013)**

– **Section 164(2) & 167** – Prospective Effect – Held – Section 164 was made applicable from 01.05.2014 and Section 167 was made applicable from 07.05.2018 – Unless the statute is made applicable retrospectively, its application would be prospective in nature – Section 164(2) can only be applied prospectively: *Abbas Maru Vs. Union of India*, I.L.R. 2022 M.P. 1833

– **Section 164(2) & 167** and Companies (Appointment and Qualification of Directors) Rules, 2014, Rule 11 – Cancellation/Deactivation of DIN – Held – Applying the grounds mentioned in Rule 11 and treating them to be available u/S 164(2) & 167(1) of the Act would lead to anomaly – Resorting to Section 164 or 167 for cancellation/ deactivation of DIN is arbitrary and illegal – Only source available for deactivation of DIN is provided under Rule 11 of the Rules of 2014 – Impugned orders set aside – Petitions allowed: *Abbas Maru Vs. Union of India*, I.L.R. 2022 M.P. 1833

– **Section 164(2) & 167** and Companies (Appointment and Qualification of Directors) Rules, 2014, Rule 11 – Cancellation/Deactivation of DIN – Show Cause Notice – Principle of Natural Justice – Held – Show cause notice issued on 12.02.2019 for violation u/S 137 but in notice, there is no mention about deactivation/cancellation of DIN – At one hand, notice does not include any trappings of Rule 11 and on other hand, order of deactivation of DIN passed u/S 164(2) & 167(1) – Disqualification was given effect from 01.11.2018 upto 30.10.2023, which shows that before issuance of notice, respondents already and impliedly deactivated DIN of petitioners, this amounts to violation of principle of natural justice: *Abbas Maru Vs. Union of India*, I.L.R. 2022 M.P. 1833

## **COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES, 2014**

– **Rule 11** – Cancellation/Deactivation of DIN – Application for – Procedure – Held – Cancellation/deactivation of DIN can be done at the instance of any person vide application alongwith fee as specified in Rules and that to after affording opportunity of hearing if cancellation/deactivation is made pursuant to Rule 11(1)(b) – In present case, *prima facie* no application filed by any person: *Abbas Maru Vs. Union of India, I.L.R. 2022 M.P. 1833*

– **Rule 11** – See – Companies Act, 2013, Section 164(2) & 167: *Abbas Maru Vs. Union of India, I.L.R. 2022 M.P. 1833*

## **CONSTITUTION**

– **Article 12** – Scope – Held – Nature of constitution of AGL (respondent), the element of financial control of Central Government, through PSUs, its public utility nature activities, the holding of senior leading posts by officer of PSUs on deputation shows that in totality, it definitely falls within ambit of Article 12 of Constitution: *Shanti Construction (M/s.) Vs. M/s. Aavantika Gas Ltd., I.L.R. 2022 M.P. 240 (DB)*

– **Article 12 & 226** – Administrative Actions – Legitimate Expectation – Held – Legitimate expectation may arise either from express promise or from consistent practice which applicant may reasonably expect to continue – This doctrine can be pressed into service where a Public Sector Bank, a 'State' within Article 12 of Constitution has given the petitioner to understand that if he accepts the offer and acts in a particular manner, he will get desired results: *Mohanlal Patidar (Shri) Vs. Bank of Maharashtra, I.L.R. 2022 M.P. 1341 (DB)*

– **Article 12 & 226** – Petition against Private Industry – Alternate Remedy – Maintainability – Held – Writ petition is not maintainable against a private industry in which government has no direct, indirect or pervasive control and has no characteristic/features, no strength of which it can said to be covered under Article 12 of Constitution – Employer is not performing any public function/duty – Petitioner having alternate remedy under Industrial Dispute Act, 1947 – Petition not maintainable – Appeal dismissed: *Shramik Janta Sangh Vs. State of M.P., I.L.R. 2022 M.P. \*8 (DB)*

– **Article 12 & 226** – Scope & Jurisdiction – Maintainability – Held – Contract was to provide gas connection to domestic, commercial and industrial consumers in furtherance of decision of government to save energy – Contract has a clear nexus with public function and public law element – Respondent is amenable to writ jurisdiction under Article 226 of Constitution – Objection regarding maintainability

rejected: *Shanti Construction (M/s.) Vs. M/s. Aavantika Gas Ltd., I.L.R. 2022 M.P. 240 (DB)*

### **SYNOPSIS: Article 14 to 16**

- |                                     |                               |
|-------------------------------------|-------------------------------|
| <b>1. Alternate Remedy</b>          | <b>2. Appointment</b>         |
| <b>3. Compassionate Appointment</b> | <b>4. Contractual Matters</b> |
| <b>5. Reservation</b>               | <b>6. Miscellaneous</b>       |

#### **1. Alternate Remedy**

– **Article 14 & 226** – Alternate Remedy – Scope & Jurisdiction – Held – In case of alternate remedy, High Court normally should not entertain petition under Article 226, however there is no complete bar in exercising such a plenary power in exceptional circumstances – If action of State or its instrumentality is arbitrary, unreasonable and violative of Article 14, High Court has jurisdiction to intervene, regardless of existence of other remedies: *Pratham National Security Vs. Union of India, I.L.R. 2022 M.P. 625 (DB)*

#### **2. Appointment**

– **Article 14** – Appointment – Rights of Selected Candidates – Held – State must give some justifiable and non-arbitrary reasons for not filling up the posts – It is not at the whims and fancies of State to keep the advertised post vacant when select list is operative, as same would run counter to the mandate of Article 14 of Constitution: *Shailesh Kumar Sonwane Vs. State of M.P., I.L.R. 2021 M.P. 2092 (DB)*

#### **3. Compassionate Appointment**

– **Articles 14, 15, 16, 39(a) & 226** – Compassionate Appointment – Entitlement of Sister – Held – As per clause 9.3.3 of agreement, if it is treated that sister is not included as dependent, it would amount to clear case of gender bias which is against the spirit of Articles 14, 15, 16 & 39(a) of Constitution – Clause 9.3.3 is declared to be unreasonable and unjustified, thus it would not come in the way of petitioner for getting compassionate appointment – impugned order set aside – Respondents directed to consider the case afresh – Petition allowed: *Shakila Begum (Siddiqui) Vs. Northern Coal Field Ltd., I.L.R. 2022 M.P. 855*

#### **4. Contractual Matters**

– **Article 14 & 226** – Blacklisting – Doctrine of Proportionality – Held – Order of blacklisting can be passed with due regard to constitutional principles under

Article 14 – Under contract, out of 1000 connections, petitioner completed 824 connections – Looking to the doctrine of proportionality, in view of quantum of work already performed, impugned order of cancellation of contract and further blacklisting is extremely disproportionate: *Shanti Construction (M/s.) Vs. M/s. Aavantika Gas Ltd.*, I.L.R. 2022 M.P. 240 (DB)

– **Article 14 & 226** – Contractual Matter – Forfeiture of Security Amount – Held – Action of respondents in withholding the amount of performance guarantee (security) of petitioner was arbitrary and unreasonable being violative of Article 14 of Constitution – Respondent wrongly interpreted clauses of agreement – Respondent directed to refund the amount with interest @ 6% p.a. – Petition allowed: *Alok Kumar Choubey Vs. State of M.P.*, I.L.R. 2021 M.P. 88 (DB)

– **Article 14 & 226** – Tender – Disclosure of Material Facts – Held – Tender submitted on December 2017 whereas order of blacklisting appellant (by other department) was passed on March 2018, thus at the time of submission of bid, there existed no order of blacklisting – Disclosure of such non-existing fact was not possible – Impugned order is without application of mind, arbitrary and violative of Article 14 of Constitution and thus set aside – Appeal allowed: *Pratham Natonal Security Vs. Union of India*, I.L.R. 2022 M.P. 625 (DB)

## 5. Reservation

– **Article 15(4) & 16(4)** – Horizontal/Vertical Reservation – Migration – Held – Concept of migration from one category to another on basis of merit may hold good in vertical reservation but in horizontal reservation, the same is not applicable – When a reservation is horizontal, then candidate selected on basis of reservation in any category has to fixed in the said category and cannot be allowed to migrate to other category: *Sachin Pathak Vs. State of M.P.*, I.L.R. 2021 M.P. 1722

– **Article 15(4) & 16(4)** – Reservation to Woman – Horizontal/Vertical Reservation – Held – In unreserved category one seat is given to woman as special reservation which has to be implemented as horizontal reservation – In merit list, Poonam Sahu has already secured her position as per her own merits, thus claim of the next woman Chhaya Dubey (petitioner in W.P. No. 20289/2019) on ground of special reservation is not tenable – Petitioner Sachin has right to be appointed – Petition filed by Sachin is allowed and the one filed by Chhaya Dubey is dismissed: *Sachin Pathak Vs. State of M.P.*, I.L.R. 2021 M.P. 1722

– **Article 15(4) & 16(4)** – Reservation to Woman – Horizontal/Vertical Reservation – Held – Reservation relating to woman is a special reservation as per Article 15(4) and is implemented as horizontal reservation and not as vertical reservation provided under Article 16(4) – If any woman candidate secures her position

on basis of her own merit and fulfills the quota of reservation, then next woman candidate cannot be given place in said list ignoring merit of other candidates merely because reservation to woman has been provided: *Sachin Pathak Vs. State of M.P.*, I.L.R. 2021 M.P. 1722

– **Article 15(4) & 16(4)** – Reservation to Woman – Horizontal/Vertical Reservation – Manner of Implementation – Discussed & explained: *Sachin Pathak Vs. State of M.P.*, I.L.R. 2021 M.P. 1722

– **Article 16(1) & 16(4)** – Horizontal & Vertical Reservation – Discussed and explained: *Saroj Dehariya Vs. State of M.P.*, I.L.R. 2021 M.P. 1704 (DB)

## 6. Miscellaneous

– **Article 14** – See – Criminal Procedure Code, 1973, Section 156(3): *Om Prakash Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. 984

– **Article 14** and National Medical Commission Act (30 of 2019), Section 28 & 29 – Discrimination – Held – CBI's self contained note contains name of petitioner college and other 5 colleges – Respondents granted benefit to 2 other colleges – Decision is discriminatory and hits Article 14 of Constitution: *L.N. Medical College & Research Centre Vs. Union of India*, I.L.R. 2022 M.P. 1333 (DB)

– **Article 14 & 16** – See – State Services Examination Rules, M.P., 2015 (amended), Rule 4(3)(d)(III): *Kishor Choudhary Vs. State of M.P.*, I.L.R. 2022 M.P. 1671 (DB)

– **Article 14 & 19** – Interpretation of Statutes – Held – If an interpretation of provision leads to an absurdity or frustrates the mandate of Article 14 & 19 of Constitution, then it must be avoided: *Rakesh Singh Bhadoriya Vs. Union of India*, I.L.R. 2021 M.P. 222

– **Article 14 & 19(1)(g)** – See – Chikitsa Shiksha Pravesh Niyam, M.P., 2018, Rule 12(8)(a): *Index Medical College, Hospital & Research Centre Vs. State of M.P.*, I.L.R. 2021 M.P. 795 (SC)

● – **Article 16(1) & 16(4)** and Rights of Persons with Disabilities Act (49 of 2016), Section 34 – Appointment of Civil Judges Class II – Reservation – Physically Handicapped Candidate (SC Category) – Held – Candidate of scheduled caste category was required to secure 45% of total marks – Petitioner secured 224 marks out of 450 marks which is more than prescribed benchmark – Not selecting petitioner for appointment on said post is declared illegal – Respondent directed to consider case of petitioner – Further held – Petitioner entitled for only notional benefit and not

actual benefit – Petition allowed: *Saroj Dehariya Vs. State of M.P., I.L.R. 2021 M.P. 1704 (DB)*

– **Article 16(4)** – Vertical Reservation – Held – Vertical reservation is a social reservation in favour of SC, ST & OBC categories and if a candidate comes under social reservation clause secured his/her position in merit list as per his/her own merit competing with open category candidates, then he/she is placed under the general category candidates and is not included in a respective category under which he/she falls: *Sachin Pathak Vs. State of M.P., I.L.R. 2021 M.P. 1722*

– **Article 19 & 21** – See – National Security Act, 1980, Section 3(2) & 3(3): *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

– **Article 19(1) & 21** – See – Rajya Suraksha Adhiniyam, M.P. 1990, Section 5(b): *Chandra Prakash @ Tinku Pandey Vs. State of M.P., I.L.R. 2022 M.P. 269*

– **Article 19(6)** – See – Disaster Management Act, 2005, Section 24: *M.P. Bus Operator Association Vs. State of M.P., I.L.R. 2021 M.P. 2242 (DB)*

– **Article 20(3)** – Scope – Voice Sample – Held – Requiring an accused to give voice sample does not mean that he is asked to testify against himself, it is only taken for comparison – It cannot be said that he has been compelled to be a witness against himself – Fundamental right under Article 20(3) of the Constitution not violated – Petition dismissed: *R.K. Akhande Vs. Special Police Establishment, Lokayukt, Bhopal, I.L.R. 2021 M.P. 1613 (DB)*

– **Article 20(3)** – See – Criminal Procedure Code, 1973, Section 125: *Rashi Gupta (Smt.) Vs. Gaurav Gupta, I.L.R. 2022 M.P. \*57*

– **Article 20(3)** – Self Incrimination – Scope – Held – Protection extended by Article 20(3) is only to the extent of being witness against himself – Article 20(3) extends protection to accused against self incrimination which means conveying information based upon personal knowledge of the person giving the information and it does not mean to include merely the mechanical process of producing document in Court which may throw a light on any point of controversy but which does not contain any statement of accused based upon his present knowledge: *R.K. Akhande Vs. Special Police Establishment, Lokayukt, Bhopal, I.L.R. 2021 M.P. 1613 (DB)*

## **SYNOPSIS : Article 21**

### **1. Covid 19 Pandemic**

### **2. False Implication/ Compensation**

**3. Right of Accused****4. Right to Speedy Trial****5. Miscellaneous****1. Covid 19 Pandemic**

– **Article 21** – Covid 19 Pandemic – Ayushman/BPL/CGHS Cardholders – Admission/Treatment of Patients – Held – Hospitals which are approved for treatment of patients covered by cashless schemes of government like Ayushman Cards, BPL Cards & CGHS Cards, shall not refuse to provide them treatment and if any complaint is received, State shall take action against such hospitals/Nursing Homes: *In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 1324 (DB)*

– **Article 21** – Covid 19 Pandemic – Private Hospitals/ Nursing Homes – Air Separation Units – State directed to consider providing soft loans through Nationalized Banks and other Financial Institutions to all private hospitals and Nursing Homes to set up their own Air Separation units so that they may become self reliant regarding their oxygen requirement – Government should also consider providing subsidy and incentive to such private hospitals: *In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 1324 (DB)*

– **Article 21** – Covid 19 Pandemic – Right to Life – Right to Health – Duty of State – Held – Right to health forms an integral component of right to life enshrined under Article 21 – State Government directed to improve availability and rationalize the distribution policy of medicines/oxygen alongwith check on its cost, ensure regular and continuous supply of oxygen to Government and Private hospitals increase sample collection from twice a day to four times a day, increase the number of technicians, scientists and lab attendants – State & PCB directed to undertake a special drive for disposal of bio-medical waste – All State Governments directed to ensure free interstate movements of LMO tankers: *In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 1324 (DB)*

– **Article 21** – Covid 19 Pandemic – Right to Life – Right to Health – Held – Right to health forms an integral component of right to life enshrined under Article 21 – Right to health can be secured to citizens only if State provides adequate measures for their treatment, healthcare and takes their care by protecting them from calamities like Corona Virus – Health has its own prerequisites of social justice and equality and it should be accessible to all – It is obligation of State to access to health facilities to citizens inflicted with disease of Corona Virus with life saving means and drugs – Directions issued to Central and State Government regarding infrastructure, medical care and treatment of Covid 19 patients: *In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 698 (DB)*



– **Article 21**, Epidemic Diseases Act, (3 of 1897) and Disaster Management Act (53 of 2005) – Right to Life – Right to Health – Duty of State – Held – Apex Court concluded that obligation to provide medical care is an obligation of welfare State – Primary duty of State is to “provide all facilities to make right of a citizen to secure his health meaningful” – Health, besides being a fundamental right, is a basic human right which no popular government can afford to negate – Efforts made by State Government should also reflect on ground can benefit thereof should reach common man, thus State needs to work hard towards that aim and goal – For said purpose, State Government can even invoke the Epidemic Diseases Act, 1897 and Disaster Management Act, 2005: *In Reference (Suo Motu) Vs. Union of India*, I.L.R. 2021 M.P. 698 (DB)

## 2. False Implication/Compensation

– **Article 21** – False Implication – Compensation – Held – Appellant suffered incarceration for almost 6 years without any justified cause – State directed to pay 2 lacs to appellant by way of compensation on account of violation of his fundamental right guaranteed under Article 21 of Constitution: *Pahalwan Singh @ Chimme Vs. State of M.P.*, I.L.R. 2022 M.P. \*6 (DB)

– **Article 21** – False Implication – Compensation – Held – Appellants were falsely and maliciously implicated in connivance with the Investigating Officer, because of which they had to remain in custody for more than 11 years for which State is responsible – State directed to pay 3 lacs to each appellant by way of compensation on account of violation of their fundamental rights guaranteed under Article 21 of Constitution: *Suresh Vs. State of M.P.*, I.L.R. 2021 M.P. 2319 (DB)

– **Article 21** – Malicious Prosecution – Compensation – Held – Appellant, a Gond tribal was in the fourth (final) year of MBBS and was on the verge of becoming a full-fledged doctor – On account of his false implication, he has spent more than 13 years in prison – His entire life has been thrown into a disarray – Appellant eligible for compensation on account of violation of his fundamental right to life under Article 21 of Constitution – Compensation of Rs. 42 lacs alongwith interest @ 9% p.a. awarded: *Chandresh Maraskole Vs. State of M.P.*, I.L.R. 2022 M.P. 1594 (DB)

## 3. Right of Accused

– **Article 21** – Right of Accused – Held – This Court has quashed the provision of circular by which police was authorized to share the personal information and photographs of accused and victims (covered or uncovered) with the media – Patrolling of accused in general public was also held to be violative of Article 21 of Constitution: *Arun Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. 384

– **Article 21** – Scope – Held – The life and liberty of a person can be deprived in accordance with procedure established by law: *Rashi Gupta (Smt.) Vs. Gaurav Gupta, I.L.R. 2022 M.P. \*57*

#### 4. Right to Speedy Trial

– **Article 21** – Right to Speedy Trial – Held – Apex Court concluded that principle relating to speedy trial are applicable for departmental enquiry – Unreasonable and unexplained delay in initiating, conducting and concluding the enquiry hits Article 21 of Constitution: *State of M.P. Vs. Vishnu Prasad Maran, I.L.R. 2021 M.P. 614 (DB)*

– **Article 21** – Speedy Trial – Fundamental Right – Held – Speedy trial is fundamental right of accused and police witnesses cannot stay away from trial Court thereby resulting in an unwarranted incarceration of the under trial without there being any progress in trial: *Asfaq Khan Vs. State of M.P., I.L.R. 2021 M.P. 343*

#### 5. Miscellaneous

– **Article 21** – Right to Environment Protection – Held – It is expected from Government authorities that in discharging obligations of planning/development of city, they should mandatorily adhere to requirements of sufficient space being left open to be used as parks, gardens, playground and recreational grounds for entertainment and health activity for local residents especially the children: *Preeti Singh Vs. State of M.P., I.L.R. 2021 M.P. 1886 (DB)*

– **Article 21** – See – Criminal Procedure Code, 1973, Section 125: *Rashi Gupta (Smt.) Vs. Gaurav Gupta, I.L.R. 2022 M.P. \*57*

– **Article 21** – See – Criminal Procedure Code, 1973, Section 167: *Manoj Yadav Vs. State of M.P., I.L.R. 2021 M.P. 777*

– **Article 21** – See – Criminal Procedure Code, 1973, Section 439: *Manoj Vishwakarma Vs. State of M.P., I.L.R. 2022 M.P. \*5*

– **Article 21** – See – Medical Termination of Pregnancy Act, 1971, Section 3(2)(i) r/w Explanation 2 & 5: *XYZ Vs. State of M.P., I.L.R. 2021 M.P. 1538 (DB)*

– **Article 21** – See – Passports Act, 1967, Section 10: *Hardik Shah Vs. Union of India, I.L.R. 2022 M.P. 986*

– **Article 21** – See – Protection of Human Rights Act, 1993, Section 2(d): *In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 698 (DB)*

– **Article 21 & 226** – Scope & Jurisdiction – Held – Despite being cognizance of its jurisdiction limitations, this Court in an extraordinary situation, when they are brought to its notice, cannot just play a silent spectator – Court has the responsibility to see that faith of people in the system is not eroded and if erosion to some extent has taken place, is restored – Court can play the role of a catalyst by reminding the State of its duties, for reassuring people to continue to have faith in the system so as to revive, their confidence: *In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 698 (DB)*

- – **Article 22** – See – National Security Act, 1980, Section 3(3): *Kamleshwar Dixit Vs. State of M.P., I.L.R. 2021 M.P. 2035 (DB)*

– **Article 22(5)** – See – National Security Act, 1980, Section 3(3) & 3(4): *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

– **Article 22(5)** – See – National Security Act, 1980, Sections 3(3), 3(4), 8(1), 10 & 14: *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

– **Article 22(5)**, Penal Code (45 of 1860), Section 188 & 420 and National Security Act (65 of 1980), Section 3(2) & 3(3) – Right of Representation before Detaining Authority – Held – Detention order does not contain any stipulation that detenu has right to prefer representation before the same detaining authority – Detenu had a valuable right to make representation to detaining authority and denial of this opportunity vitiates the impugned order – Detention order set aside – Criminal case is also pending against petitioner for which no observation required at this stage – Petition partly allowed: *Yatindra Verma Vs. State of M.P., I.L.R. 2021 M.P. 1669 (DB)*

– **Article 50** – Judicial Independence – District Judiciary – Held – Constitution specifically envisages the independence of district judiciary – Article 50 provides that State must take steps to separate judiciary from executive in public services of the State – Judicial independence of district judiciary is cardinal to the integrity of entire system – District judiciary operates under administrative supervision of High Court which must secure and enhance its independence from external influence and control – Judiciary should be immune from political pressures and consideration: *Somesh Chaurasia Vs. State of M.P., I.L.R. 2021 M.P. 1463 (SC)*

– **Article 136** – Gender Sensitization – Training Program for Judges & Lawyers – Directions issued to National Judicial Academy and Bar Council of India to form training program for gender sensitization – BCI also directed to mandatorily include the topic on sexual offences and gender sensitization in syllabus for All India Bar Examination – Each High Court directed to formulate a module on judicial sensitivity to sexual offences in Judicial Service Examination: *Aparna Bhat Vs. State of M.P., I.L.R. 2021 M.P. 1003 (SC)*

– **Article 136** – Tender – Public Interest – Held – Financial bid of respondent-1 is 9 crores less than that of respondent-2 – Counsel for respondent-2 accepts that if respondent-1 is disqualified and respondent-2 is awarded the tender, he will do so at the same amount as the financial bid of respondent-1 – State directed to issue LOI to respondent-2 as soon as possible: *State of M.P. Vs. U.P. State Bridge Corporation Ltd., I.L.R. 2021 M.P. 361 (SC)*

– **Article 136** – Tender – Suppression of Material Fact – Fraudulent Practice – Held – Respondent-1 indulged in fraudulent practice and has suppressed that fact that it was indicted for offences relating to construction of bridge by it, which had collapsed – It is clearly an omission of most relevant fact and suppression of fact that an FIR had been lodged against respondent-1 in which charge sheet had been filed – Technical objection based on rejection order cannot be allowed to prevail in the face of suppression of most material fact – Impugned order set aside – Appeals disposed: *State of M.P. Vs. U.P. State Bridge Corporation Ltd., I.L.R. 2021 M.P. 361 (SC)*

– **Article 141** – Binding Precedent – Held – Judgment of N.V. International was passed by two Judges of Supreme Court – Though, the said judgment is overruled in this case, but High Court was bound to follow it on the date of its judgment by High Court, by virtue of Article 141 of Constitution: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., I.L.R. 2021 M.P. 557 (SC)*

– **Article 141** – Binding Precedent – Retrospective/ Prospective Applicability – Apex Court conclude the matter on 29.10.2020 and incident in present case was of 12.05.2017 – Held – Apex Court has only interpreted the law which was already existing and hence judgment would be binding on all parties and it will be applicable retrospectively: *Ramniwas Vs. State of M.P., I.L.R. 2021 M.P. 757*

– **Article 141** – See – Criminal Procedure Code, 1973, Sections 41A, 160, 437, 438 & 439: *Zarina Begum Vs. State of M.P., I.L.R. 2021 M.P. 1196*

– **Article 141** – See – Criminal Procedure Code, 1973, Sections 41A, 167, 437, 438 & 439: *Zarina Begum Vs. State of M.P., I.L.R. 2021 M.P. 1196*

## **SYNOPSIS : Article 142**

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|---------------------------------------|-------------------------|
| <b>1. Cancellation of Appointment</b> | <b>2. Compromise</b>    |
| <b>3. Powers of Court</b>             | <b>4. Miscellaneous</b> |

### **1. Cancellation of Appointment**

– **Article 142** – Cancellation of Appointment – Protection – Applicability – Held – Apex Court concluded that even jurisdiction under Article 142 should be

exercised with circumspection in such cases so that unjust and false claims of imposters are not protected – For protection under Article 142, Apex Court drawn a distinction between a student who completes professional course on basis of forged certificates and a person who obtains public employment on basis of false caste certificate: *Nageswar Sonkesri Vs. State of M.P., I.L.R. 2021 M.P. 265*

## 2. Compromise

– **Article 142** and Criminal Procedure Code, 1973 (2 of 1974), Section 320 & 482 – Compromise – Stage of Appeal – Held – Powers under Article 142 or u/S 482 Cr.P.C. are exercisable in post-conviction matters only when an appeal is pending before one or the other judicial forum – Where a settlement has ensued post the attainment of all legal remedies, the annulment of proceedings on basis of compromise would be impossible: *Ramawatar Vs. State of M.P., I.L.R. 2022 M.P. 1 (SC)*

– **Article 142**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x) and Criminal Procedure Code, 1973 (2 of 1974), Section 320 – Compromise – Scope & Jurisdiction – Conviction by trial Court which was upheld by High Court – In appeal before Supreme Court, compromise application filed – Held – Appellant and complainant are residents of same village having adjoining houses – No doubt that parties voluntarily settled their differences – In order to avoid revival of healed wounds, to advance peace and harmony and to do complete justice between parties, invoking powers under Article 142, criminal proceedings quashed – Appeal allowed in terms of compromise: *Ramawatar Vs. State of M.P., I.L.R. 2022 M.P. 1 (SC)*

## 3. Powers of Court

– **Article 142** and Penal Code (45 of 1860), Section 302/34 – Powers of Court – Held – It is a case where this court has completely disbelieved the story of prosecution – Although appellant No. 1 has not filed appeal before this Court, benefit cannot be denied to Appellant No. 1 – Such denial merely on ground of a technicality that he is not on appeal would be to close our eyes to a gross injustice, especially when we are empowered under Article 142 to do complete justice – Conviction of Appellant No. 1 also set aside: *Madhav Vs. State of M.P., I.L.R. 2021 M.P. 1621 (SC)*

– **Article 142**, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(x) and Criminal Procedure Code, 1973 (2 of 1974), Section 320 & 482 – Powers of Court – Scope – Held – While considering prayer for quashment on basis of compromise, if Court is satisfied that underlying objectives of Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that offence is covered under a “special statute”

would not refrain this Court or the High Court from exercising their respective powers under Article 142 or u/S 482 Cr.P.C: *Ramawatar Vs. State of M.P., I.L.R. 2022 M.P. 1 (SC)*

#### 4. Miscellaneous

– **Article 142** – See – Criminal Procedure Code, 1973, Section 320 & 482: *Ramgopal Vs. State of M.P., I.L.R. 2022 M.P. 228 (SC)*

– **Article 142** – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 3(1)(x): *Ramawatar Vs. State of M.P., I.L.R. 2022 M.P. 1 (SC)*

● – **Article 215** and Contempt of Courts Act (70 of 1971), Section 20 – Jurisdiction of Court – Held – Jurisdiction under Article 215 of Constitution shall not be exercised to make provision of Section 20 of the Act otiose nor Section 20 be interpreted strictly to render power under Article 215 of Constitution nugatory – Section 20 is to be construed harmoniously and only in exceptional or blatant case of contempt, High Court shall exercise power beyond period of one year limitation period: *Mohamad Ibrahim Vs. R.K. Mishra, I.L.R. 2021 M.P. 1732*

– **Article 215** and Contempt of Courts Act (70 of 1971), Section 20 – Limitation – Held – For breach of order dated 11.05.2017, contempt petition filed on 16.02.2021 – Limitation for filing contempt u/S 20 is one year but in exceptional circumstances, High Court can exercise its power for initiating contempt beyond the period of one year under Article 215 of Constitution r/w Section 20 of the Act – No exceptional or extraordinary circumstances made out – Petition dismissed: *Mohamad Ibrahim Vs. R.K. Mishra, I.L.R. 2021 M.P. 1732*

– **Article 215 & 226** – Scope & Jurisdiction – Held – Court cannot travel beyond four corners of the order but such directions which are explicit in a judgment or order or are plainly self evident, ought to be taken care of – This Court in present contempt petition invokes inherent power under Article 226 to clarify the anomaly which had inadvertently crept into the direction issued in writ petition: *Mahip Kumar Rawat Vs. Shri Ashwini Kumar Rai, I.L.R. 2021 M.P. 1560 (DB)*

#### SYNOPSIS : Article 226

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|---------------------------------|---------------------|
| 1. Administrative Action/ Order | 2. Admission        |
| 3. Affiliation                  | 4. Alternate Remedy |
| 5. Appointment/Select List      | 6. Blacklisting     |

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| <b>7. Cause of Action/Delay/Representation</b> | <b>8. Compassionate Appointment</b>   |
| <b>9. Compulsory Retirement</b>                | <b>10. Contractual/Tender Matters</b> |
| <b>11. Covid 19 Pandemic</b>                   | <b>12. Custody of Children</b>        |
| <b>13. Date of Birth</b>                       | <b>14. Departmental Enquiry</b>       |
| <b>15. Dismissal/Suspension</b>                | <b>16. Election Process</b>           |
| <b>17. Examination</b>                         | <b>18. Gratuity</b>                   |
| <b>19. Habeas Corpus</b>                       | <b>20. Illegal Encroachments</b>      |
| <b>21. Powers/Scope/Jurisdiction of Court</b>  | <b>22. Quashment of FIR</b>           |
| <b>23. Review</b>                              | <b>24. Termination of Dealership</b>  |
| <b>25. Territorial Jurisdiction</b>            | <b>26. Transfer</b>                   |
| <b>27. Validity of Stay Order</b>              | <b>28. Writ Appeal</b>                |
| <b>29. Writ of Mandamus/Quo Warranto</b>       | <b>30. Miscellaneous</b>              |

### **1. Administrative Action/Order**

– **Article 226** – Administrative Action – Judicial Review – Held – Apex Court concluded that judicial review of administrative action is permissible where decision maker acts contrary to regulatory decision making power and where its decision is irrational and suffers from procedural impropriety: *Vatash Sharma Vs. Indore Development Authority*, I.L.R. 2022 M.P. 814 (DB)

– **Article 226** – Administrative Action – Scope of Judicial Review – Held – Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias or malafide – Constitutional Court can certainly interfere in any action if it is found that the same is misuse of statutory power or there is perversity in the understanding or appreciation: *Laghu Udhyog Nirmata Avam Vikreta Sangh Vs. State of M.P.*, I.L.R. 2022 M.P. 1166 (DB)

– **Article 226** – Policy Decision of Government – Scope of Interference – Held – State Government is best suited to take policy decision and this Court has no expertise to re-write or insert something in it which is not there in their policy decision – Policy decision can be interfered with on limited grounds and cannot be lightly disturbed – In present case, policy decision is not even challenged, thus it has to be read as such: *Vijendra Dhanware (Dr.) Vs. State of M.P.*, I.L.R. 2022 M.P. 1157 (DB)

– **Article 226** and Bhandar Kray Tatha Sewa Uparjan Niyam, M.P., 2015, Clause 11.3.4 – Administrative Action – Reasoning – Held – Committee consisting of experts are best judge for requirement of department – For purchasing furnitures, comparative analysis was made, reasoning was recorded and then finally a decision was taken – Requirement of Rules of 2015 is fulfilled – In absence of any allegation of malafide or favoritism, interference under Article 226 of Constitution not warranted – Petition dismissed: *Laghu Udhog Nirmata Avam Vikreta Sangh Vs. State of M.P.*, I.L.R. 2022 M.P. 1166 (DB)

– **Article 226** and Excise Act, M.P. (2 of 1915), Section 24 – Shifting of Liquor Shop – Complaints by local residents of the area wherein liquor shop is situated – Held – No illegality committed by Collector, who is competent authority to pass order of shifting of liquor shop at a non-objectionable place, owing to public agitation – Competent authority is having powers to pass an order considering the situation of law and order and public interest – Petition dismissed: *Akarsh Jaiswal Vs. State of M.P.*, I.L.R. 2022 M.P. 1374

– **Article 226** and Excise Act, M.P. (2 of 1915), Section 24 – Shifting of Liquor Shop – Principle of Natural Justice – Held – No person is having any fundamental right to trade or carry on the business of liquor – Where element of public interest is involved, there is no requirement for following principle of natural justice: *Akarsh Jaiswal Vs. State of M.P.*, I.L.R. 2022 M.P. 1374

– **Article 226/227** – Judicial/Administrative Order – Assigning of Reasons – Held – Reasons are sacrosanct not only for judicial order but even for an administrative order: *Kishan Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 297 (DB)

## 2. Admission

– **Article 226** – Admission Process – Fixation of Age – Scope of Interference – Held – Fixation of minimum or maximum age for admission in a course or making a provision for relaxation thereof is essentially a policy matter and same is not open to interference unless it is pointed out that the same is in violation of any statutory provision or is per se arbitrary and discriminatory: *Catherin Josfin Thangadurai (Mrs.) Vs. State of M.P.*, I.L.R. 2021 M.P. \*9 (DB)

– **Article 226** – Cancellation of Second Counselling & Admission – Principle of Natural Justice – After becoming successful in examination and counselling process, seats were allotted to petitioners and they started their studies in concerned Colleges – Second Counselling was cancelled vide impugned orders which entails civil consequences and takes away a right already created in favour of petitioner to their detriment – Principle of natural justice if ignored, great prejudice will be caused to



petitioners – Impugned order is unreasonable, unfair and arbitrary and cannot sustain judicial scrutiny, thus set aside – Petition allowed: *Kamni Tripathi Vs. State of M.P.*, I.L.R. 2022 M.P. \*51 (DB)

– **Article 226** – Cancellation of Second Counselling & Admission – Theory of Useless Formality – Held – The theory of useless formality cannot be pressed into service in these cases because it cannot be said that if petitioners would have been put to notice before passing the order, they would not have any defence at all and secondly the impugned order causes serious prejudice to petitioners: *Kamni Tripathi Vs. State of M.P.*, I.L.R. 2022 M.P. \*51 (DB)

### 3. Affiliation

– **Article 226** – Affiliation – Held – For petitioner college, obtaining affiliation before last date of admission/cut off date (02.03.2020) was an impossible act because online portal was opened for affiliation on 04.03.2020 – Institution is not expected to perform an impossibility – University cannot take advantage of its own wrong – 40 other similarly situated colleges were given affiliation after cut-off date – Discriminatory/ stepmotherly treatment given to petitioner – Respondents directed to consider affiliation application afresh – Petition allowed: *Oriental College Amarwada, Main Road, Amarwada Vs. State of M.P.*, I.L.R. 2022 M.P. 1147 (DB)

### 4. Alternate Remedy

– **Article 226** – Alternate Remedy – Held – Statutory remedy is not a bar for exercising of jurisdiction under Article 226 of Constitution – If order is passed against principle of natural justice, it hits any fundamental right, passed by incompetent authority or constitutionality of a provision is called in question, despite availability of alternative remedy, writ petition can be entertained: *L.N. Medical College & Research Centre Vs. Union of India*, I.L.R. 2022 M.P. 1333 (DB)

– **Article 226** – Alternative Remedy – Held – Termination order passed after retirement of petitioner – Respondents completely exceeded their jurisdiction in invoking provisions of said Rules and thus for this reason itself, availability of alternative remedy, if any, would not operate as a bar: *Dhirendra Kumar Dubey Vs. State of M.P.*, I.L.R. 2022 M.P. 428

– **Article 226** and Advocates Act (25 of 1961), Section 37 – Alternate Remedy of Appeal – Held – Remedy of appeal to Bar Council of India u/S 37 is available only when order is passed by the Disciplinary Committee – In instant case, Disciplinary Committee has not taken a decision to suspend the petitioner – Remedy of appeal is not available to petitioner: *Vishal D. Remeteke Vs. State of M.P.*, I.L.R. 2022 M.P. 630 (DB)

– **Article 226** and Building and Other Construction Workers' Welfare Cess Act (28 of 1996), Section 11 – Alternate Remedy of Appeal – Held – Competence of authority who passed the order is not under doubt – If impugned order is erroneous, it can be corrected in appeal – Merely because appellant is required to deposit 25% of disputed amount before filing appeal, it would not cause palpable injustice to petitioner – No reason to permit petitioner to bypass statutory remedy of appeal – If petitioner files an appeal, authority shall not dismiss it on ground of delay but shall decide on merits – Petition disposed: *Suzlon Energy Ltd. Vs. State of M.P.*, I.L.R. 2021 M.P. 1843 (DB)

– **Article 226** and Industrial Disputes Act (14 of 1947) & Service Law – Punishment of Dismissal – Maintainability of Writ Petition – Alternate Remedy – Held – No disputed question of facts involved as there is no quarrel regarding genuineness of record of departmental enquiry – Petitions were filed way back in 2009-10, thus at this stage, it is not proper to relegate the respondents to avail alternate remedy under Industrial Disputes Act, 1947: *Hindustan Petroleum Corp. Ltd. Vs. Kailash Chandra*, I.L.R. 2021 M.P. 1055 (DB)

– **Article 226** and Madhyastham Adhikaran Adhiniyam, M.P. (29 of 1983), Section 17 – Efficacious Alternate Remedy – Contractual Matters – Interim Relief – Held – Alternate remedy of dispute resolution system by way of application to competent authority, appeal to appellate authority and thereafter to Arbitration Tribunal, in present facts cannot be taken as efficacious alternative remedy particularly when Section 17 of 1983 Act bars the Tribunal from granting any interim relief: *Alok Kumar Choubey Vs. State of M.P.*, I.L.R. 2021 M.P. 88 (DB)

– **Article 226** and Nagar Palika (Registration of Colonizer Terms & Conditions) Rules, M.P., 1998, Rule 15-A (amended) – Contractual Obligations – Alternate Remedy – Held – Contractual work was got done through petitioner – Fact shows that there exist a dispute between petitioner and respondents – Petitioner has efficacious/alternate remedy to approach Dispute Resolution System as provided under contract/agreement – Petition dismissed: *Rajkumar Goyal Vs. Municipal Corporation, Gwalior*, I.L.R. 2021 M.P. 48

– **Article 226** and National Medical Commission Act (30 of 2019), Section 28(5) – Alternate Remedy – Held – Impugned order of disapproval passed beyond scope and ambit of Section 28 & 29 of NMC Act – There is no disputed question of facts – Next counselling is starting shortly – For these cumulative reasons, petitioner cannot be relegated to avail alternate remedy of appeal: *L.N. Medical College & Research Centre Vs. Union of India*, I.L.R. 2022 M.P. 1333 (DB)

– **Article 226** and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 18 – Alternative Remedy – Held – There is nothing which makes it obligatory for this Court to entertain writ petition when efficacious alternative remedy is available to petitioner – DRT is best suited to examine the factual aspect of the case – Petition disposed with liberty to avail alternative remedy of appeal: *Devendra Kumar Rai Vs. State Bank of India, I.L.R. 2022 M.P. \*83 (DB)*

– **Article 226**, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (30 of 2013), Section 64 and National Highways Act (48 of 1956), Section 3G(5) – Alternate Remedy – Judicial Review – Maintainability of Petition – Held – When a challenge to an order is primarily on ground of jurisdiction and competence of authority, Writ Court can entertain a writ petition under Article 226 of Constitution exercising its power of judicial review, even if there is provision of appeal provided in Statute – Petition maintainable: *Indrakala Agrawal (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 916 (DB)*

– **Article 226/227** – Alternate Remedy – Exceptions – Held – Despite availability of alternative remedy, writ petition can be entertained – Seven recognized exceptions are (i) when petition filed for enforcement of fundamental rights, (ii) if there is violation of principle of natural justice, (iii) where order of proceedings is wholly without jurisdiction, (iv) where vires of Act is challenged, (v) where availing of alternative remedy subjects a person to very lengthy proceedings and unnecessary harassment, (vi) where question raised is purely legal one, there being no dispute on facts and (vii) where State or its intermediary in a contractual matter acts against public good/interest unjustly, unfairly, unreasonably and arbitrary: *Alok Kumar Choubey Vs. State of M.P., I.L.R. 2021 M.P. 88 (DB)*

– **Article 226/227** – Alternate Remedy – Maintainability of Petition – Held – Availability of alternative remedy and approaching High Court without exhausting it will not make the writ petition non-maintainable and it is discretion of High Court on basis of settled principles to entertain it or not: *Mohammad Afjal Vs. State of M.P., I.L.R. 2022 M.P. 1514*

## 5. Appointment/Select List

– **Article 226** – Select List & Appointment – Held – There cannot be any appointment unless there exist clear vacant post – Since on the date of advertisement, no posts were available and appointment process inadvertently processed therefore merely because name of appellant finds place in select list, no mandamus can be issued to direct respondents to issue appointment order – Appeals dismissed: *Rajkali Saket (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. \*71 (DB)*

– **Article 226** and District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2016, Rule 17(3) – Validity Period of Select List – Exclusion of Litigation Period – Held – Validity period of 18 months was to expire on 20.03.2020 and writ petition was filed on 20.02.2020, thus right of petitioners were existing on date of filing petition – Act of Court shall prejudice no one – Respondent directed to exclude the period from date of filing petition till date of judgment, for calculating validity period: *Shailesh Kumar Sonwane Vs. State of M.P., I.L.R. 2021 M.P. 2092 (DB)*

## 6. Blacklisting

– **Article 226** – Blacklisting – Judicial Review – Scope – Held – Apex Court concluded that the decision to blacklist a contractor is open to judicial review by Court on touchstone of proportionality and natural justice – Writ petition under Article 226 is maintainable: *Bombay Intelligence Security (India) Ltd. Vs. State of M.P., I.L.R. 2022 M.P. 112*

– **Article 226** – Blacklisting – Locus of Complainant – Held – On complaint made by intervenor, cognizance was taken by authorities and impugned order was passed – In such circumstances, now complainant/ intervenor has no locus to intervene in the matter – Application of intervention rejected: *Bombay Intelligence Security (India) Ltd. Vs. State of M.P., I.L.R. 2022 M.P. 112*

– **Article 226** – Blacklisting – Principle – Held – ‘Blacklisting’ has severe effect on contractor, he cannot be crucified without following principle of natural justice and due process – Order of blacklisting/holiday listing can be called in question mainly on decision making process adopted by employer on touch stone of principles of natural justice and on aspect of proportionality: *Shanti Construction (M/s.) Vs. M/s. Aavantika Gas Ltd., I.L.R. 2022 M.P. 240 (DB)*

– **Article 226** – Blacklisting – Principle of Natural Justice – Held – Before cancelling the contract and blacklisting petitioner, respondent has not considered averments of its reply to show cause notice – No reasons assigned for not accepting the reply – Decision making process adopted by respondents is bad in law and runs contrary to principle of natural justice – Impugned order set aside – Petition allowed: *Shanti Construction (M/s.) Vs. M/s. Aavantika Gas Ltd., I.L.R. 2022 M.P. 240 (DB)*

– **Article 226** – Blacklisting – Principle of Natural Justice – Held – No notice issued to appellant regarding proposal of its blacklisting – Any order having civil consequences should be passed only after following principles of natural justice – Impugned order of blacklisting and forfeiture of security deposit quashed: *Pratham National Security Vs. Union of India, I.L.R. 2022 M.P. 625 (DB)*

– **Article 226** – Blacklisting – Show Cause Notice – Contents – Held – Apex Court concluded that in a show cause notice, it is mandatory requirement to mention that action of blacklisting is proposed or it should be possible to draw inference to this effect from notice – It is incumbent on part of department to state in show cause notice that it intended to impose a penalty of blacklisting: *Indian Oil Corporation Ltd. Vs. M/s Krishna Gas Agency, I.L.R. 2021 M.P. 1661 (DB)*

– **Article 226** – Blacklisting – Show Cause Notice – Contents – Held – In case respondents intend to blacklist petitioner, then a show cause notice to that effect would have to be issued – If show cause notice is otherwise, then respondents not entitled to resort to blacklisting the petitioner – In present show cause notice, there is not even a whisper that respondents intend to debar petitioner – Impugned communication set aside – Petition allowed: *Intercontinental Consultants & Technocrats Pvt. Ltd. Co. Vs. Ministry of Road Transport & Highways, I.L.R. 2022 M.P. 1705 (DB)*

– **Article 226/227** – Blacklisting – Show Cause Notice – Principle of Natural Justice – Held – Action of blacklisting neither expressly proposed in show cause notice nor could be inferred from its language, even the relevant clause of bid document is not mentioned, so as to provide adequate and meaningful opportunity to appellant to show cause against the same – It does not fulfill requirement of a valid show cause notice for blacklisting – Such order is contrary to principle of natural justice – Order passed by High Court set aside – Order of blacklisting appellant for future tenders is quashed – Appeal allowed: *UMC Technologies Pvt. Ltd. Vs. Food Corporation of India, I.L.R. 2021 M.P. 27 (SC)*

## 7. Cause of Action/Delay/Representation

– **Article 226** – Cause of Action – Delay – Representation – Held – Even if Court or Tribunal directs for consideration of representations relating to a stale claim or dead grievance, it does not give rise to a fresh cause of action – Mere submission of representation to the competent authority does not arrest time – No right accrued in favour of petitioner – Petition suffers from delay and laches – Petition dismissed – Writ Appeal allowed: *Jabalpur Development Authority Vs. Deepak Sharma, I.L.R. 2021 M.P. 215 (DB)*

– **Article 226** – Delay – Held – Since no third party right is created in favour of anybody because of belated approach to this Court, we are not inclined to dismiss the petition on ground of delay: *Suzlon Energy Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 1843 (DB)*

– **Article 226** – Delay & Laches – Limitation – Held – Apex Court concluded that though there is no period of limitation providing for filing a writ petition under

Article 226 of Constitution yet ordinarily a writ petition should be filed within a reasonable time – Making of repeated representations is not a satisfactory explanation of delay: *Jabalpur Development Authority Vs. Deepak Sharma, I.L.R. 2021 M.P. 215 (DB)*

– **Article 226** – Delay and Laches – Held – Order of 2007 challenged in 2020 – Held – No specific pleading when and how petitioner learnt about the order of 2007 – Petitioner fails to explain delay and laches: *Ravi Shanker Chouksey Vs. State of M.P., I.L.R. 2021 M.P. 1557*

– **Article 226** – Delay & Laches – Maintainability – Held – Petition has been filed after 11 long years – Successive representation and any decision on those representations would not give any fresh cause of action – Stale and dead cases cannot be reopened merely on ground that respondents had entertained one of the representation/complaint which was made on CM Helpline and to Jan Shikayat Nivaran Vibhag – Petition dismissed in limine on ground of delay and laches: *Sajjan Singh Kaurav Vs. State of M.P., I.L.R. 2021 M.P. \*3*

– **Article 226** – Limitation – Repeated Representation – Held – Apex Court concluded that where the initial representation is rejected, the subsequent representations on the same subject would not extend the period of limitation for filing the writ petition: *Bholeram Raikwar Vs. State of M.P., I.L.R. 2022 M.P. \*81 (DB)*

– **Article 226** – Representation – Cause of Action – Held – Mere direction of Court to decide representation in stale, old and dead cases would not give rise to any fresh cause of action – Cause of action has to be considered from the date on which it arose for the first time – Repeated representations do not extend the period of limitation: *Munni Bai (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 636*

– **Article 226** and Limitation Act (36 of 1963), Section 7 – Scope & Jurisdiction – Cause of Action – Petitioner retired in 2013 and petition filed in 2020 – Held – Period of limitation u/S 7 for recovery of wages is 3 years – Although period of limitation does not apply to writ jurisdiction, but a litigant cannot wake up belatedly and claim benefits of judgments passed in other cases – Cause of action would not arise when the claim of a similarly situated litigant is allowed: *Surendra Kumar Jain Vs. State of M.P., I.L.R. 2021 M.P. 230*

– **Article 226** and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, (30 of 2013), Sections 11, 19 & 21 – Challenge to Acquisition Proceedings – Delay & Laches – Held – Apex Court has observed that challenging acquisition proceedings by filing writ petition even with delay of few months is fatal and cannot be entertained – Notification issued in 2018

and award was passed on 05.03.2020 but petition was filed in August 2021 – Petition filed after lapse of almost 3 years from initiation of proceedings on vague grounds – Petition suffers from delay and laches: *Kirat Lodhi Vs. State of M.P., I.L.R. 2022 M.P. 83*

## 8. Compassionate Appointment

– **Article 226** – Compassionate Appointment – Delay – Held – Father of appellant died on 19.04.2002 – On 26.07.2011, on attaining majority, appellant filed application for compassionate appointment which bore no results – Appellant filed writ petition in the year 2020 – Appellant ought to have approached this Court within reasonable time: *Bholeram Raikwar Vs. State of M.P., I.L.R. 2022 M.P. \*81 (DB)*

– **Article 226** – Compassionate Appointment – Entitlement of Married Daughter – Held – As per clause 9.5.0 (ii) of agreement, if female dependent is below 45 years of age, she will have option either to accept monetary compensation or employment – When appellant has refused for monetary option, respondent was duty bound to offer employment – Agreement does not exclude a married daughter – Application was wrongly rejected on the ground that she was a married daughter – Appellant entitled to be considered for compassionate appointment – Impugned order set aside – Writ appeal allowed: *Deepika Singh Vs. South Eastern Coalfields Ltd., I.L.R. 2022 M.P. 1141 (DB)*

## 9. Compulsory Retirement

– **Article 226** – Compulsory Retirement – Grounds – Held – Scrutiny Committee considered entire service record of petitioner and found that he remained absent unauthorizedly – He was alcoholic, was lacking in honesty and integrity and was found to be inefficient to discharge his official duties – His work was categorized as “ordinary” – Action of respondents was in public interest – Petition dismissed: *Ashok Kumar Vs. District & Sessions Judge, Betul, I.L.R. 2022 M.P. \*79 (DB)*

– **Article 226** – Compulsory Retirement – Judicial Review – Held – There is a limited scope of judicial review in a case of compulsory retirement – It is permissible only on grounds of non-application of mind, malafides or want of material particulars: *Ashok Kumar Vs. District & Sessions Judge, Betul, I.L.R. 2022 M.P. \*79 (DB)*

– **Article 226** – Compulsory Retirement – Scope of Judicial Review – Held – Apex Court concluded that there is limited scope of judicial review in case of compulsory retirement – It is permissible only on grounds of non-application of mind, malafides or want of material particulars: *Purushottam Bhatt Vs. State of M.P., I.L.R. 2022 M.P. 1539 (DB)*

## 10. Contractual/Tender Matters

– **Article 226** – Contractual Matters – Cancellation of Tender – Held – Administration is best suited to take decision in matters of contract – No legal vested or constitutional right was crystallized in favour of the petitioner before cancellation of tender – No enforceable right was created in favour of petitioner – Further, cancellation of single tender and resultant issuance of N.I.T. will encourage competition and may fetch better rates/results – It cannot be said that cancellation of tender is wholly impermissible – No interference required – Petition dismissed: *Piyush Kumar Sheth Vs. State of M.P.*, I.L.R. 2021 M.P. 1521 (DB)

– **Article 226** – Contractual Matters – Judicial Review – Scope of Interference – Held – In matters of contract, scope of interference by this Court is limited – Court cannot sit in appeal on the decision of department unless such a decision is shown to be arbitrary, capricious or malicious in nature or it attracts wednesbury principles – Interference can also be made if decision runs contrary to public interest: *Piyush Kumar Sheth Vs. State of M.P.*, I.L.R. 2021 M.P. 1521 (DB)

– **Article 226** – Contractual Matter – Scope of Interference – Held – Apex Court concluded that in contractual matters, interference is possible if action impugned is shown to be arbitrary – If decision making process is capricious, unreasonable or discriminatory, interference can be made in contractual matters: *Vatash Sharma Vs. Indore Development Authority*, I.L.R. 2022 M.P. 814 (DB)

– **Article 226** – Contractual Matters – Scope & Jurisdiction – Held – Petition under Article 226 cannot be thrown straight away by holding that it has been filed for enforcement of contractual obligations – In case of interpretation of law with consequential relief of payment of amount or where liability has been admitted by respondents etc., High Court may entertain writ petition in contractual matters: *Rajkumar Goyal Vs. Municipal Corporation, Gwalior*, I.L.R. 2021 M.P. 48

– **Article 226** – Disposal of Public Property – Principle – Held – Apex Court concluded that disposal of public property by State or its instrumentality partakes the character of a Trust – Methods adopted for such disposal must be fair and transparent – Authority has a right not to accept highest bid and prefer a tender other than highest bidder, if there exists good and sufficient reasons, however, action of authority in not accepting or refusing the bid must be free from arbitrariness and favouritism: *Vatash Sharma Vs. Indore Development Authority*, I.L.R. 2022 M.P. 814 (DB)



– **Article 226** – Interference in Contractual Matter – Scope & Jurisdiction – Held – Interference can be made in contract matters if decision making process is arbitrary, capricious and hits Wednesbury principles: *Mohd. Sultan Khan Vs. Union of India*, I.L.R. 2021 M.P. 2041 (DB)

– **Article 226** – Scrapping of Tender – Held – Introduction of revised tender clauses by R-2 which are in variance with existing tender clause issued by R-3 has made the entire process vulnerable – Decision to scrap the entire tender/contract cannot be said to be arbitrary, unreasonable or against public interest – Petition dismissed: *Krsnaa Diagnostics Pvt. Ltd. Vs. State of M.P.*, I.L.R. 2021 M.P. 878 (DB)

– **Article 226** – Tender – Blacklisting – Procedure – Held – Blacklisting has a drastic impact on contractor – Such action shall be taken after following “due process” – Issuance of specific notice by which contractor can gather nature of allegation and intended action to be taken is a must – Contractor cannot be blacklisted or debarred if such an action is not proposed in show cause notice: *Health Care Medical Devices Pvt. Ltd. Vs. MP Public Health Services Corp. Ltd.*, I.L.R. 2021 M.P. 1112 (DB)

– **Article 226** – Tender – Blacklisting – Show Cause Notice – Principle of Natural Justice – Held – In show cause notice, it was made clear that petitioner has not supplied entire quantity of gloves as per contract – Factual foundation of intended action by department was well communicated – Reply by petitioner shows that petitioner clearly understood the nature of fault/deficiency pointed out in notice – It cannot be said that show cause notice falls short of requirement of principles of natural justice – No procedural impropriety – Petition dismissed: *Health Care Medical Devices Pvt. Ltd. Vs. MP Public Health Services Corp. Ltd.*, I.L.R. 2021 M.P. 1112 (DB)

– **Article 226** – Tender – Interpretation of Terms & Conditions – Judicial Review – Held – Employer who issued the tender is best judge to interpret the conditions of eligibility contained therein – Unless interpretation of employer is found to be so arbitrary, perverse and erroneous that no reasonable person of ordinary prudence would take that interpretation, Courts under the power of judicial review would not be justified to interfere therewith: *Shrishti Infrastructure Development Corporation Ltd. Vs. State of M.P.*, I.L.R. 2021 M.P. 1525 (DB)

– **Article 226** – Tender – Judicial Review – Scope & Jurisdiction – Held – In Contractual matter, judicial review is permissible on aspect of arbitrariness, unreasonableness and on the touchstone of Wednesbury principle – Public interest is also essential element to be looked into while exercising power of judicial review: *Krsnaa Diagnostics Pvt. Ltd. Vs. State of M.P.*, I.L.R. 2021 M.P. 878 (DB)

– **Article 226** – Tender – Language of Terms & Conditions – Interpretation – Held – Words used in terms and conditions have to be construed in the way, employer has used them while formulating them – Court cannot substitute the opinion of employer by its own unless interpretation of such conditions suffers from malafides or perversity or it is so obnoxious that it defies reason and logic and is not a possible interpretation – Decision of employer has to be respected by Court unless it is shown to be ex-facie arbitrary, outrageous and highly unreasonable: *Shrishti Infrastructure Development Corporation Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 1525 (DB)*

– **Article 226** – Tender – Pre-requisite Conditions – Held – It was the pre-requisite condition of NIT that bidder was required to have experience of having successfully (i) executed (ii) completed and (iii) commissioned, one similar work – Partially completed work even if its value exceeds the total value of the work for which tenders are being invited, cannot be treated as completed work – Treating the bid of petitioner as technically non-responsive cannot be said to be malafide nor it was done to favour someone – Petition dismissed: *Shrishti Infrastructure Development Corporation Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 1525 (DB)*

– **Article 226** – Tender – Review of Decision – Decision of disqualification of Respondent No. 4 was reviewed by Committee and his bid was accepted – Held – In absence of enabling provision, decision to review the previous decision was wholly impermissible – No reasons assigned in minutes as to what compelled the committee to review the decision – Such decision to review is arbitrary, unjust, unreasonable and attracts Wednesbury Principles – Contract given to Respondent No. 4 set aside – Respondents directed to consider claim of petitioner – Petition allowed: *Mohd. Sultan Khan Vs. Union of India, I.L.R. 2021 M.P. 2041 (DB)*

– **Article 226** – Tender Clauses – Judicial Review – Scope – Held – Although clause 17 provides that no reasons are required to be given for invoking the said clause, it does not mean that without any reason or justifiable reasons, powers under clause 17 can be invoked – Clause 17 does not insulate the process and impugned order from judicial review: *Krsnaa Diagnostics Pvt. Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 878 (DB)*

– **Article 226** – Termination of Contract – Grounds – Out of four lots, contract of Lot No. 2 awarded to petitioner – Dispute arose in respect of Lot No. 1, 3 & 4 – Respondents terminated contracts of all four lots – Held – Termination order does not indicate any issue so far as petitioner is concerned for Lot No. 2, entire narration is for Lot no. 1, 3 & 4 – Even though, the lots are interlinked, such interlinking is with regard to eligibility and not on any other issue – Cancellation of contract is not justified – Order of termination of Lot No. 2 of petitioner is set aside – Petition

allowed: *All Services Global Pvt. Ltd. Vs. M.P. Madhya Kshetra Vidyut Vitran Co. Ltd.*, I.L.R. 2022 M.P. 1714 (DB)

– **Article 226** and *Vikas Pradhikaran Ki Sampatiyon Ka Prabandhan Tatha Vyayan Niyam*, M.P., 2018, Rule 6 – Disposal of Property – Discretion of Authority – Held – When method of disposal of property by inviting tender is prescribed by Statutory Rules such as Rules of 2018, the IDA is bound to invite bids and take decision thereupon strictly in consonance with those Rules: *Vatash Sharma Vs. Indore Development Authority*, I.L.R. 2022 M.P. 814 (DB)

## 11. Covid 19 Pandemic

– **Article 226** – Covid 19 Pandemic (Second Wave) – Overcrowded Jails – Arrest & Bail – Registrar General of High Court directed to circulate copy of judgment of Apex Court in *Arnesh Kumar's* case alongwith copy of this order to all District Judges for being served upon Judicial Magistrates – Director, State Judicial Academy directed to organize online/virtual programme for sensitizing not only Judicial Magistrates but also Police Officers – Director, M.P. Police Academy shall also work out modalities for sensitizing police officers of State – DGP shall also be responsible for compliance of this direction: *In reference (Suo Motu) Vs. State of M.P.*, I.L.R. 2021 M.P. 1337 (DB)

– **Article 226** – Covid 19 Pandemic (Second Wave) – Overcrowded Jails – Release of Prisoners – Held – On 07.05.2021, Supreme Court directed that all those inmates who were granted parole in pursuance to its earlier order, should be again released on parole for a period of 90 days in order to tide over the pandemic: *In reference (Suo Motu) Vs. State of M.P.*, I.L.R. 2021 M.P. 1337 (DB)

– **Article 226** and Criminal Procedure Code, 1973 (2 of 1974), Section 41 & 41A – Covid 19 Pandemic (Second Wave) – Overcrowded Jails – Directions to DGP & Judicial Magistrates – DGP directed to issue instructions to all police stations to strictly adhere to guidelines issued by Apex Court in *Arnesh Kumar's* case – Judicial Magistrate, on production of accused before them by police, for authorizing further detention, shall mandatorily examine whether stipulation u/S 41 & 41A Cr.P.C. have been followed or not – If any arrest has been made without following guidelines, accused would be entitled to directly apply to competent court for regular bail on this ground alone: *In reference (Suo Motu) Vs. State of M.P.*, I.L.R. 2021 M.P. 1337 (DB)

– **Article 226** and Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016) Section 12 proviso – Covid 19 Pandemic (Second Wave) – Juveniles in Conflict with Law – Release from Observation Homes – Member Secretary, M.P. State Legal Services Authority, Jabalpur directed to require Member Secretaries of

respective District Legal Services Authorities to move appropriate application through their legal aid counsels before respective Juvenile Justice Boards on behalf of children in conflict with law for their release from Observation Homes across the State, who shall decide application within 3 days considering proviso to Section 12 of Juvenile Justice Act: *In reference (Suo Motu) Vs. State of M.P., I.L.R. 2021 M.P. 1337 (DB)*

## 12. Custody of Children

– **Article 226** – Custody of Children – Remedy – Held – Apex Court concluded that in child custody matters, the ordinary remedy lies wholly under the Hindu Minority and Guardianship Act or the Guardian and Wards Act, as the case may be: *Jaya Chakravarti Vs. State of M.P., I.L.R. 2021 M.P. 901*

## 13. Date of Birth

– **Article 226** and Date of Birth (Entries in the School Register) Rules, M.P., 1973, Rule 7 & 8 – Applicability – Held – Date of birth of petitioner is correctly recorded in the school when he had taken admission for first time – Even his school leaving certificate records the correct date of birth – Thus, Rules of 1973 would not be applicable: *Shiv Kumar Sharma Vs. The Secretary, M.P. Board of Secondary Education, I.L.R. 2022 M.P. \*59*

– **Article 226** and Date of Birth (Entries in the School Register) Rules, M.P., 1973, Rule 7 & 8 – Correction in Date of Birth – Limitation – Held – Petitioner was minor when Class 10th mark sheet was issued – Board should not have rejected his application on ground that it was filed after expiry of 3 years from date of declaration of result – The 3 years bar is not a statutory bar – Respondent directed to issue fresh corrected mark sheet to petitioner – Petition allowed: *Shiv Kumar Sharma Vs. The Secretary, M.P. Board of Secondary Education, I.L.R. 2022 M.P. \*59*

## 14. Departmental Enquiry

– **Article 226** – Departmental Enquiry – Scope of Interference – Held – High Court under Article 226 cannot act as an Appellate Authority – Proceedings of departmental enquiry can be quashed only when the order of punishment is passed on the basis of no evidence or on ground of violation of principle of natural justice or on ground of incompetence: *Kaptan Singh Vs. Union of India, I.L.R. 2022 M.P. 1873*

– **Article 226** – Departmental Enquiry – Scope of Judicial Review – Held – Scope of interference in matter of departmental enquiry is very limited but at same time Court cannot shut its eyes if Disciplinary Authority and Appellate Authority failed to discharge their obligation and acted arbitrarily showing total perversity while passing

orders – Interference can be made if decision making process is defective and contrary to principle of natural justice – If punishment shocks the conscience of Court or it is wholly impermissible interference can be made: *Jai Kumar Bajpai (Dead) Through LRs. Smt. Chandrakanta Bajpai Vs. Chairman-cum-Managing Director, I.L.R. 2022 M.P. 1393*

– **Article 226** – Disciplinary Proceedings – Scope of Interference – Held – In such cases, scope of writ jurisdiction of High Court is very limited – Interference can be done if it is found that domestic enquiry is vitiated for violation of principle of natural justice, denial of reasonable opportunity, findings based on no evidence and/or punishment is totally disproportionate to the proved misconduct of employer: *Madan Mohan Dwivedi Vs. State of M.P., I.L.R. 2022 M.P. 1691*

– **Article 226** – Punishment in Departmental Enquiry – Scope of Judicial Review – Held – Scope of interference in writ petition against order of punishment passed in departmental enquiry is limited – Court does not sit in appeal against order passed in departmental inquiry – Power of judicial review is not directed against decision but confined to decision making process – Interference can be done if inquiry has not been conducted as per prescribed procedure/rules or if there is violation of principles of natural justice or if the findings are based on no evidence or conclusions have been drawn extraneous to evidence: *Suraj Pal Singh Rathor Vs. M.P. High Court, I.L.R. 2021 M.P. 1881 (DB)*

– **Article 226** and Service Law – Departmental Enquiry – Judicial Review – Scope – Held – Judicial review of disciplinary proceeding is related to legality of decision making process and not to the decision – If enquiry suffers from serious procedural impropriety or findings of enquiry officers are perverse, interference can be made – Writ court not obliged to sit as an appellate court to reweigh or re-appreciate evidence but if punishment is shockingly disproportionate, interference can be made: *Hindustan Petroleum Corp. Ltd. Vs. Kailash Chandra, I.L.R. 2021 M.P. 1055 (DB)*

– **Article 226** and Service Law – Disproportionate Punishment – Judicial Review – Scope – Held – If charges against delinquent employees are similar and some of them are inflicted with severe punishment of dismissal from service whereas others were put to a comparatively advantageous position, it will be a fit case for interference by this Court in exercise of power under Article 226 of Constitution: *Hindustan Petroleum Corp. Ltd. Vs. Kailash Chandra, I.L.R. 2021 M.P. 1055 (DB)*

– **Article 226/227** – Nature of Inquiry – Principle of Natural Justice – Held – Inquiry proceedings conducted by Committee was inquisitorial in nature with an object to find out whether there was enough material to proceed against appellant – Inquiry/investigation by Committee by itself does not prejudice the appellant – Show

cause notice was given to appellant and he did file his reply – No violation of principle of natural justice: *Suresh Kumar Vs. State of M.P.*, I.L.R. 2022 M.P. \*73 (DB)

– **Article 226/227** – Principle of Natural Justice – Held – Apex Court concluded that personal hearing in every situation is not necessary and there can be compliance with the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof: *Sai Rubber Works (M/s.) Vs. State of M.P.*, I.L.R. 2022 M.P. 433 (DB)

– **Article 226/227** – Proportionality of Punishment – Scope & Jurisdiction – Held – Apex Court concluded that High Court in exercise of its jurisdiction under Article 226/227 of Constitution should not go into the proportionality of punishment unless punishment imposed shocks the conscience of Court – Imposition of penalty in disciplinary proceeding lies in sole domain of employer – Unless penalty is found shockingly disproportionate, element of discretion attributed to employer cannot be interfered with: *Mishrilal Vs. State of M.P.*, I.L.R. 2022 M.P. 1507 (DB)

– **Article 226 & 311(2)(b)** – Dispensing with Enquiry – Valid Reasons – Held – Reasons assigned for dispensing with enquiry are based on extraneous considerations and political pressure and are insufficient for dispensing with regular department enquiry – If a preliminary enquiry could be conducted, there is no reason why a formal departmental enquiry was not conducted – Enquiry dispensed with without any valid reason: *Suresh Sharma Vs. State of M.P.*, I.L.R. 2022 M.P. 2006

## 15. Dismissal/Suspension

– **Article 226** – Dismissal – Judicial Review – Scope – Held – Apex Court concluded that dismissal without conducting a departmental enquiry on the ground of being not reasonably practicable, is open for judicial review – Petition maintainable: *Amit Chaurasia Vs. State of M.P.*, I.L.R. 2021 M.P. 2049

– **Article 226** – Dismissal – Scope of Judicial Review – Held – Apex Court concluded that dismissal without conducting departmental enquiry on ground of being not reasonably practicable is open for judicial review: *Suresh Sharma Vs. State of M.P.*, I.L.R. 2022 M.P. 2006

– **Article 226** – Suspension Order – Scope of Interference – Held – In imputation of charges, it is clearly mentioned that respondent's involvement cannot be ruled out – Whether or not employer will be able to establish it in the inquiry is not the subject matter of adjudication at this stage – If respondent, a senior officer, is reinstated by staying suspension order, he can scuttle the inquiry or investigation or can win over the witnesses – Single Judge erred in staying the suspension order – Impugned

order set aside – Appeal allowed: *State of M.P. Vs. Satya Narayan Dubey, I.L.R. 2022 M.P. 1975 (DB)*

– **Article 226** – Suspension Order – Validity – Held – Whether charges are baseless, malicious or vindictive, cannot be gone into at the stage of examining the validity of suspension order – This Court earlier concluded that at the stage of suspension the correctness of allegations are not required to be looked into: *State of M.P. Vs. Satya Narayan Dubey, I.L.R. 2022 M.P. 1975 (DB)*

– **Article 226** and High Court of Madhya Pradesh Rules, 2008, Chapter XIII, Rule 39 (2) – Stay of Suspension Order – Maintainability of Writ Appeal – Held – Writ appeal at the behest of State Government against an interim order staying suspension order is maintainable: *State of M.P. Vs. Satya Narayan Dubey, I.L.R. 2022 M.P. 1975 (DB)*

## 16. Election Process

– **Article 226** and Cooperative Societies Rules, M.P. 1962, Rule 49-E(5)(d) – Rejection of Nomination Papers – Held – In absence of any challenge to decision of Returning Officer in declaring the proposer as disqualified, this Court cannot look into correctness of the order of Returning Officer – Court cannot go beyond pleadings – Mere mass rejection of nomination papers cannot be presumed to be arbitrary and malafide action on part of Returning Officer – Election process is not vitiated – Petition dismissed: *Ajay Jain Vs. The Chief Election Authority, I.L.R. 2021 M.P. \*1*

– **Article 226 & 243-O** – Election Process – Maintainability of Petition – Held – Writ petition challenging the election process is not maintainable – Liberty granted to petitioner to file election petition, if so advised, after result is declared – Petition dismissed: *Rumali (Smt.) Vs. M.P. State Election Commission Bhopal, I.L.R. 2022 M.P. \*91*

## 17. Examination

– **Article 226** – Examination – Judicial Review – Held – Courts play very limited role in matter of examination conducted by Public Service Commission – Power of judicial review not to be exercised in respect of decisions of experts but only with the decision making process: *Abhishek Kachhwah Vs. M.P. Public Service Commission, I.L.R. 2022 M.P. 862*

– **Article 226** – Examination – Re-evaluation – Jurisdiction of Court – Held – Even if Rules do not permit re-evaluation, Court may permit the same only if it is demonstrated very clearly without any inferential process of reasoning or by process of rationalization, in rare or exceptional cases when material error has been committed

– Committee of two retired judges of High Court appointed to examine the disputed model key answers: *Ankit Tiwari Vs. High Court of M.P., I.L.R. 2021 M.P. 1687 (DB)*

– **Article 226** – Examination – Re-evaluation – Scope – Held – In competitive examination, candidates cannot be made to suffer on account of errors committed by examining body and to avoid such gross injustice, re-evaluation can be directed – Such re-evaluation and revision on ground of incorrect model answer key should not be limited only to those candidates who approached the Court but should be extended to all candidates because fault did not lie with the candidate but with the examining body: *Ankit Tiwari Vs. High Court of M.P., I.L.R. 2021 M.P. 1687 (DB)*

– **Article 226** – Examination – Scope of Interference – Held – In respect of final answer key published by respondents, objections were invited – Record of Subject Expert Committee shows that objections raised by petitioner was duly considered by Committee and was later rejected – Model answer key prepared by Committee of experts – In absence of any allegations of malafide against experts, Court should not refer matter to Court appointed experts – Petition dismissed: *Abhishek Kachhwah Vs. M.P. Public Service Commission, I.L.R. 2022 M.P. 862*

– **Article 226** – Re-evaluation – Permissibility – Held – Apex Court concluded that if the rules do not permit re-evaluation then the re-evaluation is not permissible even in exercise of powers under Article 226 – Petitioner admitted that the concern Rules do not permit re-evaluation – In absence of any such specific provision, no relief can be granted – Petition dismissed: *Jayvardhan Pandey Vs. High Court of M.P., I.L.R. 2022 M.P. 1717 (DB)*

## 18. Gratuity

– **Article 226** and Payment of Gratuity Act (39 of 1972), Section 4 – Gratuity – Held – Pension and gratuity are not bounties and are hard earned properties of employee by rendering his services to the department and are declared to be a constitutional right: *The General Manager Canara Bank Vs. Shri Prakash N. Mandve, I.L.R. 2022 M.P. 999*

– **Article 226** and Payment of Gratuity Act (39 of 1972), Section 4(6) – Withholding of Gratuity – Held – Amount of gratuity can be withheld pending enquiry against an employee, if proceedings were initiated while he was in service: *The General Manager Canara Bank Vs. Shri Prakash N. Mandve, I.L.R. 2022 M.P. 999*

## 19. Habeas Corpus

– **Article 226** – Habeas Corpus – Custody of Child – Grounds – Held – By interim order, petitioner was permitted visitation rights and there is no complaint that



petitioner ever harassed her or daughter declined to meet her father – Further, petitioner got himself transferred to Shajapur with intention to keep his daughter with him – It cannot be said that future of child will not be secured in his custody: *Sagar Saxena Vs. State of M.P., I.L.R. 2022 M.P. 1984 (DB)*

– **Article 226** – Habeas Corpus – Custody of Child – Held – Adoptive mother seeking custody from natural mother – Respondent No. 4 (natural mother) disputing the genuineness of adoption deed – In such disputed question of fact, writ of habeas corpus cannot be issued against natural mother – Liberty granted to appellant to avail remedy before any other appropriate Court – Appeal dismissed: *Sanjana Soviya Vs. State of M.P., I.L.R. 2021 M.P. 611 (DB)*

– **Article 226** – Habeas Corpus – Custody of Child – Held – Wife committed suicide – Minor child living with father-in-law of petitioner – Husband facing trial u/ S 306 & 304-B IPC, seeking custody of child – Held – Petitioner is biological father, a natural guardian and belongs to well educated and reputed family and himself working in Punjab National Bank and is living in a joint family – He is not a habitual offender or known criminal as on today – His father is a gazetted officer – It cannot be said that future of child will not be secured in his custody – Custody granted to petitioner – Petition allowed: *Sagar Saxena Vs. State of M.P., I.L.R. 2022 M.P. 1984 (DB)*

– **Article 226** – Habeas Corpus – Custody of Child – Maintainability of Petition – Held – Division Bench of this Court held that habeas corpus under Article 226 is maintainable in matter of custody of a child: *Sagar Saxena Vs. State of M.P., I.L.R. 2022 M.P. 1984 (DB)*

– **Article 226** – Habeas Corpus – Scope & Conditions – Held – Condition precedent for instituting a petition seeking writ of habeas corpus is that the person for whose release, writ is sought must be in detention by either authorities or by any private individual – Such writ is available only against any person who is suspected of detaining another unlawfully: *Chhaya Gurjar (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 2301*

– **Article 226** – Habeas Corpus – Scope & Jurisdiction – Held – Petitioner has not arrayed any of the suspects as party respondent – There is no allegation of illegal confinement by any of private individual – Only assertion that corpus have been abducted by some unknown miscreants, is not sufficient to invoke extraordinary jurisdiction of this Court for issuance of writ of habeas corpus, which though a writ of right, is not a writ of course – Petition dismissed: *Chhaya Gurjar (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 2301*

– **Article 226** – Habeas Corpus – Territorial Jurisdiction – Held – Lady living in State of Chhattisgarh, even assuming that she made complaints to concerned

police, it is for the concerned police therein to react to the same – Petitioner cannot be allowed to invoke the jurisdiction within territories of State of M.P. for making the grievance which arise in State of Chhattisgarh – Petition dismissed: *Syed Arshad Rabbani Vs. State of M.P., I.L.R. 2022 M.P. 1888 (DB)*

## 20. Illegal Encroachments

– **Article 226** – Encroachments and Regularization – Held – Apex Court concluded that long duration of illegal encroachment/ occupation of land or huge expenditure in making constructions thereon or political connections of trespassers are no justification for regularizing such illegal occupation – Removal of encroachment on such land is a rule and regularization an exception and that too in extremely limited cases which only the government can do by appropriate notification and no other authority: *Gram Panchayat Dhooma Vs. State of M.P., I.L.R. 2021 M.P. 1369 (DB)*

– **Article 226** – Protection of Public Land – Illegal Encroachments – Chief Secretary, Government of M.P. directed to issue necessary notification for notifying a permanent body designated as Public Land Protection Cell (PLPC) in every district with Collector as its head and a Tehsildar as its Member Secretary and other revenue officers as its Members and it shall be as per guidelines issued by Apex Court – Complaint regarding encroachment over public land in rural area can be made to such authorities, which shall be responsible for causing enquiry and taking expeditious action for removal of encroachments so as to protect public land and appropriate penal action be also taken against trespassers: *Gram Panchayat Dhooma Vs. State of M.P., I.L.R. 2021 M.P. 1369 (DB)*

## 21. Powers/Scope/Jurisdiction of Court

– **Article 226** – Applicability of Decision of Court – Held – Every decision of Court applies retrospectively from the date on which the provision came in statute book unless Court directs that judgment would apply prospectively – Court only declares and not make law and thus declaration of law can never be prospective – Only exception is that Apex Court under Article 142 may prospectively either overrule its own judgment or give effect to its own judgment: *Kirti Sharma (Smt.) Vs. Jawaharlal Nehru Krishi Vishva Vidyalaya, Jabalpur, I.L.R. 2022 M.P. \*86 (DB)*

– **Article 226** – Appreciation of Evidence – Scope – Held – Appreciation of evidence is not permissible in exercise of power under Article 226 of Constitution: *Kaptan Singh Vs. Union of India, I.L.R. 2022 M.P. 1873*

– **Article 226** – Bank Loan – One Time Settlement (OTS) – Held – Quantified Rs. 36,50,000 as per formula of scheme – Bank unilaterally enhanced the amount to Rs. 50,50,000 – No justifiable reason, formula or enabling provision shown – There cannot be any one-sided presumption of acceptance, petitioners were not a party to this decision nor there was any acceptance ever given by them – Such unilateral stand by Bank is contrary to OTS scheme and is arbitrary and against principle of natural justice – Petitioner deposited Rs. 35,00,000, bank is bound to issue 'sanction letter' – Impugned orders/letters set aside – OTS proposal of petitioners be accepted by Bank and 'sanction letters' be issued – Petitions allowed: *Mohanlal Patidar (Shri) Vs. Bank of Maharashtra, I.L.R. 2022 M.P. 1341 (DB)*

– **Article 226** – Concurrent Findings – Scope of Interference – Held – There is limited scope of interference at this appellate stage when there are concurrent findings of facts by disciplinary authorities, Labour Court and which is affirmed by learned Single Judge in a petition under Article 226: *Shiv Shankar Thakre Vs. M.P.S.E.B. Through Its Secretary, I.L.R. 2022 M.P. \*45 (DB)*

– **Article 226** – Exemption Notification – Held – Notification specifically provides that 90% discount on payable amount of motor vehicle tax and penalty “shall be given” “subject to following terms and conditions” – Use of words “terms” and “conditions” clearly denotes plural of the conditions and not singular – All four conditions have not been disjuncted by use of the word “or” – Case of petitioner does not fulfill the very first condition – Petitioner not eligible to avail 90% discount – Appeal dismissed: *Ankit Patel Vs. State of M.P., I.L.R. 2021 M.P. 1651 (DB)*

– **Article 226** – Forcible Eviction & Illegal Detention – Held – Petitioner was forcibly evicted from his shop with help of police personnel (R-3 to R-5) – Later, without formal arrest, he was kept in illegal detention – Prior to verification of his identity, press note released branding him that “accused with reward of Rs. 5000 has been arrested” – His uncovered face photograph was got published in newspaper as well as uploaded on social media – It is a glaring example of police atrocities – Such eviction and illegal detention amounts to criminal Act – S.P. Lokayukt directed to file FIR against R-3 to R-5 – Petition allowed with cost of Rs. 20,000: *Arun Sharma Vs. State of M.P., I.L.R. 2021 M.P. 384*

– **Article 226** – Locus Standi – Held – Petitioner has no direct and substantial interest in challenging compassionate appointment of R-5 – Only incidental or indirect interest will not give locus to petitioner to file writ petition: *Ravi Shanker Chouksey Vs. State of M.P., I.L.R. 2021 M.P. 1557*

– **Article 226** – New Plea in Rejoinder – Maintainability – Held – No new plea ordinarily could have been permitted by way of rejoinder – A new case cannot

be set up by rejoinder, more so, when factual matrix of case is within the knowledge of petitioner – Apex Court concluded that if a point is not pleaded, High Court should not allow it to be urged during arguments: *Vishnu Vs. State of M.P.*, I.L.R. 2021 M.P. 1292 (DB)

– **Article 226** – Penalty – Scope – Held – Penalty can be imposed by a statutory authority provided there exists an enabling provision in the governing statute – In absence thereof, punishment cannot sustain judicial scrutiny: *L.N. Medical College & Research Centre Vs. Union of India*, I.L.R. 2022 M.P. 1333 (DB)

– **Article 226** – Pleadings – Held – Oral submissions in absence of pleadings cannot be accepted so as to take the respondents by surprise: *Ajay Jain Vs. The Chief Election Authority*, I.L.R. 2021 M.P. \*1

– **Article 226** – Interim Order – Scope – Held – Interim orders cannot be treated as a precedent: *Raman Dubey Vs. State of M.P.*, I.L.R. 2021 M.P. 38

– **Article 226** – Judicial Review – Scope & Jurisdiction – Held – While exercising power of judicial review under Article 226, Court does not exercise appellate power against impugned order – Judicial review is directed not against the decision but is confined to examining the correctness of decision making process: *D.K. Mishra Vs. Hon'ble High Court of M.P.*, I.L.R. 2021 M.P. 675 (DB)

– **Article 226** – Practice & Procedure – Held – Learned Single Judge in one case interfered with charge-sheet and entire disciplinary proceedings whereas in another similar case, relegated the employee to approach appellate authority – Similarly situated litigants deserves similar treatment atleast in the hands of Court – W.A. No. 286 allowed: *M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd. Vs. K.K. Mishra*, I.L.R. 2022 M.P. 1815 (DB)

– **Article 226** – Scope – Held – Grant of relief in the nature of specific performance is not permissible in Writ Jurisdiction: *Balaji Chemist Vs. Indian Red Cross Society*, I.L.R. 2022 M.P. \*11 (DB)

– **Article 226** – Scope – Held – Writ Court was required to examine the decision making process adopted by Collector – Validity of order was required to be adjudged on basis of reasons mentioned therein and Writ Court was under no obligation to assign a reason, which did not find place in impugned order – Reason assigned by Single Judge for not following Full Bench Judgment cannot be countenanced: *Basant Shrivaneekar Vs. State of M.P.*, I.L.R. 2022 M.P. 51 (DB)

– **Article 226** – Scope & Jurisdiction – Allegation of obtaining compassionate appointment by suppression/fraud – Held – Court must strike at illegality and injustice wherever it is found – R-2 directed to look into the matter and if any fraud/suppression

is found practiced by R-5, action be taken in accordance with law after giving opportunity of hearing – Petition disposed: *Ravi Shanker Chouksey Vs. State of M.P.*, I.L.R. 2021 M.P. 1557

– **Article 226** – Scope & Jurisdiction – Held – Disputed question of fact cannot be adjudicated in writ jurisdiction under Article 226 of Constitution: *Sanjana Soviya Vs. State of M.P.*, I.L.R. 2021 M.P. 611 (DB)

– **Article 226** – Scope & Jurisdiction – Held – Respondent university is imparting education, thus performing a public duty – Writ petition against university under Article 226 is maintainable: *Chandresh Shukla Vs. The Registrar, People's University*, I.L.R. 2022 M.P. 497

– **Article 226** – Scope & Jurisdiction – Principle of Natural Justice – Held – Petitioner was served with show cause notice, he filed reply and his statement was recorded by prescribed authority – There is substantial compliance of natural justice – No scope of interference under Article 226 of Constitution: *Kundan Mukati Vs. State of M.P.*, I.L.R. 2021 M.P. 1126

– **Article 226** – Scope of Interference – Held – This Court can interfere provided the decision so taken by employer runs contrary to the Rules or infringes any statutory, vested or constitutional right of petitioner – Another view is possible is not a ground for interference: *Hitendra Singh Yadav (Dr.) Vs. State of M.P.*, I.L.R. 2022 M.P. 1176 (DB)

– **Article 226** – Ultra Vires – Held – Provision cannot be declared ultra vires owing to personal inconvenience – It is the basic intention of the legislature which is required to be seen: *Birla Corporation Ltd. (M/s.) Vs. State of M.P.*, I.L.R. 2022 M.P. 2015 (DB)

– **Article 226** – Validity of Enactment – Scope of Interference – Held – A challenge to the validity of an enactment can be entertained only if the same is either arbitrary, unreasonable or irrational and if legislature lacks competence to make the law or if it affects fundamental rights of petitioners: *Dilip Behere Vs. State of M.P.*, I.L.R. 2022 M.P. 2031 (DB)

– **Article 226** – Validity of Order – Held – Any order passed by Authority, quasi-judicial authority or the Court or Tribunal remains valid unless reviewed, recalled, cancelled by the same authority or Court or set aside by higher Court/Tribunal: *Mishri Bai (Smt.) Vs. Shubh Laxmi Mahila Cooperative Bank Ltd.*, I.L.R. 2022 M.P. 1720 (DB)

– **Article 226** – Violation of Fundamental Rights – Compensation – Held – State shall pay compensation of Rs. 5 lacs to petitioner i.e. Rs. 2 lacs for causing

damage during forcible taking out of his belongings from his shop and Rs. 3 lacs for violating his fundamental rights – State to recover the compensation amount from salary of R-3 to R-5: *Arun Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. 384

– **Article 226** and Armed Forces Tribunal Act (55 of 2007), Section 3(o) & 14 – Service Matter – Writ Jurisdiction – Held – Section 14 vests in the Armed Forces Tribunal, all the jurisdiction, powers and authority exercisable immediately prior to setting up thereof, by all Courts in relation to all service matters – Thus, in present case, jurisdiction lies with the Armed Forces Tribunal u/S 14(1) of the 2007 Act – Petition being not maintainable is dismissed: *Colonel Akhil Mendhe Vs. Union of India*, I.L.R. 2022 M.P. 1894

– **Article 226** and Armed Forces Tribunal Act (55 of 2007), Section 14(1) – Service Matter – Writ Jurisdiction – Held – Merely because jurisdiction of this Court under Article 226 of Constitution has been expressly saved by Section 14(1) of 2007 Act, would not entitle this Court to keep on entertaining petitions under Article 226 in service matters notwithstanding the creation of a specialist Tribunal by the Act: *Colonel Akhil Mendhe Vs. Union of India*, I.L.R. 2022 M.P. 1894

– **Article 226** and Civil Procedure Code (5 of 1908), Order 47 Rule 1 & 9 – Applicability – Held – Instant petition is a petition filed under Order 47 Rule 1 CPC therefore provisions of Article 226 of Constitution cannot be imported into this Order: *Anand Deep Singh Vs. State of M.P.*, I.L.R. 2022 M.P. 1908 (DB)

– **Article 226** and Co-operative Societies Act, M.P. 1960 (17 of 1961), Section 2(i) – Scope & Jurisdiction – Held – Whether son of proposer would be covered by definition of “family” or not, is a disputed question of fact which cannot be decided by this Court in exercise of jurisdiction under Article 226 of Constitution: *Ajay Jain Vs. The Chief Election Authority*, I.L.R. 2021 M.P. \*1

– **Article 226** and Municipalities Act, M.P. (37 of 1961), Section 47 – Maintainability of Petition – Held – U/S 47, verification of signatures of councillors by Collector is material and not impleadment before this Court as petitioners – Merely because all the councillors who have allegedly signed the proposal/resolution have not joined this petition, it cannot be a reason to dismiss the petition: *Basant Shrivaneekar Vs. State of M.P.*, I.L.R. 2022 M.P. 51 (DB)

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

requires so by way of a Public Interest Litigation under Article 226 of Constitution: *Omnarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. 2025 (DB)*

– **Article 226** and NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015, Clause 10(3) – Swachh Bharat Mission – Constructions of Toilets – Held – Allegations of irregularities/ corruption and siphoning off money of beneficiaries in respect of construction of toilets are prima facie serious in nature – Collector and CEO, Zila Panchayat directed to look into the allegations with utmost promptitude and role of concerned persons be enquired expeditiously: *Omnarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. 2025 (DB)*

– **Article 226** and National Security Act (65 of 1980), Section 3(2) – Detention Order – Scope of Judicial Review – Held – The correctness and sufficiency of evidence is beyond the scope of judicial review: *Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur, I.L.R. 2021 M.P. 2272 (DB)*

– **Article 226** and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, (54 of 2002), Section 13 & 14 – Repayment of Loan – Bonafide Litigant – Held – Cheques given by petitioner were dishonored, they also tried to sell the secured assets – Intention of petitioners not bonafide, they are not intending to repay the amount to bank – They cannot be permitted to take technical objections to avoid their liability – Writ remedy is not available to such litigants whose intentions are not bonafide: *Mishri Bai (Smt.) Vs. Shubh Laxmi Mahila Cooperative Bank Ltd., I.L.R. 2022 M.P. 1720 (DB)*

– **Article 226** and Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, M.P. 2005 (14 of 2006), Section 2(1) – Writ Appeal – Pleadings at Appellate Stage – Held – In writ petition, no pleadings regarding aspect of competency of authority – Competency of authority was a mixed question of facts and law, which should have been specifically pleaded in writ petition with accuracy and precision – In absence of any such pleadings and foundation, at appellate stage, no interference warranted: *M.P. Bus Operator Association Vs. State of M.P., I.L.R. 2021 M.P. 2242 (DB)*

– **Article 226/227** – Caste Certificate – Enquiry – Competent Authority – Held – Adjudicating the claim of a person whether he belonged to a particular caste or not, is to be done by Scrutiny Committee but to verify whether a certificate is issued from office of competent authority or not or from the office where a person claims it to be issued, can be looked into by the in-charge person of that office – Such verification of certificate cannot be said to be an enquiry regarding claim of petitioner: *G. Usha Rajsekhar (Smt.) Vs. Government of India, I.L.R. 2021 M.P. 85*

– **Article 226/227** – Scope of Interference – Held – Scope of interference under Article 226/227 is very limited – If impugned orders suffer from any patent lack of inherent jurisdiction or from any manifest procedural impropriety or palpable perversity, interference can be made – Another view is possible is not a ground for interference – Court is not required to sit in appeal and reweigh/reappreciate entire material: *Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council*, I.L.R. 2021 M.P. 427

– **Article 226/227** – Scope of Jurisdiction – Held – Since petitioner has challenged granting of stay by appellate Court over decree of permanent injunction, he ought to have filed petition under Article 227 and not a petition under Article 226 of Constitution: *Trivikram Prasad Vs. Yashodanandan Dwivedi*, I.L.R. 2022 M.P. 1688

– **Article 226/227** and Arbitration and Conciliation Act (26 of 1996), Section 11(6) & 37 – Scope of Interference – Apex Court concluded that the legislative object of enacting the consolidated Act is to minimize judicial intervention while the matter is in process of arbitration – Once arbitration has commenced in Arbitral Tribunal, parties have to wait until award is pronounced, however right of appeal is available to them u/S 37 even at an early stage: *M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H)*, I.L.R. 2021 M.P. 2072 (DB)

## 22. Quashment of FIR

– **Article 226** – Quashment of FIR – Scope & Jurisdiction – Held – Criminal proceedings ought not to be scattered at the initial stage – Withholding or quashing of a complaint/FIR should be an exceptional rather than an ordinary rule – Ordinarily, Courts are barred from usurping jurisdiction of police: *Jai Narayan Singh Vs. State of M.P.*, I.L.R. 2022 M.P. \*41 (DB)

– **Article 226** – See – Criminal Procedure Code, 1973, Section 154, 154(3), 156(3), 190 & 200: *Rajendra Singh Pawar Vs. State of M.P.*, I.L.R. 2021 M.P. 289

– **Article 226** and Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Second FIR – Duty of Court – Held – Court is required to see the circumstances of a given case indicating proximity of time, unity or proximity of case, continuity of action, commonality of purpose of crime, to ascertain if more than one FIR can be allowed to stand: *Pawan Tamrakar (Dr.) Vs. M.P. Special Police Establishment*, I.L.R. 2021 M.P. 1357 (DB)



– **Article 226** and Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Second FIR & Clubbing of FIRs – Held – Different FIRs registered for different category of students and for different courses – No repeat FIR for same category of student with same course – Defalcation of amount in respect of each course and category of person has given separate cause of action, even witnesses in each case are different – Subsequent FIRs do not arise as a consequence of allegations made in first FIR – Test of 'sameness' and test of 'consequence' is not satisfied – Petition dismissed: *Pawan Tamrakar (Dr.) Vs. M.P. Special Police Establishment, I.L.R. 2021 M.P. 1357 (DB)*

– **Article 226** and Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Second FIR & Clubbing of FIRs – Interference by Court – Held – Second or successive FIR for same or connected cognizable offence alleged to have been committed in course of same transaction for which earlier FIR is already registered, may furnish a ground for interference by Court but where FIRs are based upon separate incident or similar or different offences or subsequent crime is of such magnitude that it does not fall within ambit and scope of earlier FIR then second FIR can be registered: *Pawan Tamrakar (Dr.) Vs. M.P. Special Police Establishment, I.L.R. 2021 M.P. 1357 (DB)*

– **Article 226** and Criminal Procedure Code, 1973 (2 of 1974), Section 154 & 220 – Clubbing of FIRs – Delay & Latches – Held – Both FIRs registered in 2015 whereas petitioners approached this Court at a belated stage in 2021 – There is an unexplained delay and latches, thus at this stage petitioners not entitled for any relief in this petition – They may pray before trial Court for common trial u/S 220 Cr.P.C., if case for the same is made out – Petition dismissed: *Pawan Tamrakar (Dr.) Vs. M.P. Special Police Establishment, I.L.R. 2021 M.P. 1357 (DB)*

### 23. Review

– **Article 226/227** – Review – Grounds – Held – Reasoned order passed in writ petition – Matter has been dealt with in great detail – No error apparent on face of record – Petitioner cannot be permitted to reargue the issue in the review – Petition dismissed: *Rajasthan Patrika Pvt. Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 309 (DB)*

– **Article 226/227** – Review Jurisdiction – Doctrine of Merger – Held – Order under review was assailed in Apex Court which was dismissed in limine by observing that Apex Court is not inclined to entertain SLP – Since SLP was dismissed in limine, the merger of order under review did not take place with order of Apex Court – Review petition seeking review of order passed by this Court, is maintainable: *Sachin Mehra Vs. Union of India, I.L.R. 2022 M.P. 1569 (DB)*

## 24. Termination of Dealership

– **Article 226** – Termination of LPG Distributorship – Show Cause Notice – Contents – Held – Show cause notice lacks substantial material to propose termination of dealership – Notice was not clear and specific as it did not contain the details of consumers, which deprived the respondent to furnish her explanation and affidavits of consumers – Such notice is vague, resulting in denial of proper opportunity to defend – Decision making process was violative of principle of natural justice – Appeal dismissed: *Indian Oil Corporation Ltd. Vs. M/s Krishna Gas Agency, I.L.R. 2021 M.P. 1661 (DB)*

– **Article 226** – Termination of Petroleum Dealership – Grounds – On ground of conviction u/S 138 Negotiable Instruments Act, 1881, dealership was terminated – Held – Proceedings under Negotiable Instruments Act are basically civil in nature having criminal colour – Impugned order of termination of dealership is quashed – Respondent directed to allow petitioner to run petroleum outlet – Petition allowed: *Atul Singh Vs. Indian Oil Corporation, I.L.R. 2021 M.P. \*10*

## 25. Territorial Jurisdiction

– **Article 226** – Territorial Jurisdiction – Cause of Action – Held – For constituting cause of action, it is not only the place where order is made, but also at place where consequences fall on person concern – Impugned order and appellate order communicated to petitioner in the district which is within territorial jurisdiction of this Court – Petition maintainable: *Chandras Namdev Vs. M.P. Power Transmission Co. Ltd., I.L.R. 2022 M.P. 1890*

– **Article 226** – Territorial Jurisdiction – Held – For a retired employee, convenience is to prosecute his case at the place where he belongs to and is getting pension – After retirement petitioner settled at Gwalior – Petition maintainable before this Court: *Dhirendra Kumar Dubey Vs. State of M.P., I.L.R. 2022 M.P. 428*

## 26. Transfer

– **Article 226** – Transfer – Judicial Review – Scope – Held – Apex Court concluded that transfer is a part of service condition of employee which should not be interfered ordinarily by Court of law in exercise of discretionary jurisdiction under Article 226 unless Court finds that either the order is malafide or against service rules or passed by incompetent authority: *Mahendra Singh Amb Vs. State of M.P., I.L.R. 2021 M.P. 235*

– **Article 226** – Transfer – Scope of Judicial Review – Held – If transfer order is made on extraneous or unacceptable reasons, then judicial review of such

order is permissible and it can be interfered by the Court – Court is duty bound to find out as to whether the transfer is bonafide or for extraneous consideration or as a measure of punishment or otherwise: *Shyam Kumar Singh Vs. State of M.P.*, I.L.R. 2022 M.P. 1510 (DB)

## 27. Validity of Stay Order

– **Article 226/227** – Extension of Stay Order – Held – Apex Court has concluded that whatever stay has been granted by any Court including High Court automatically expires within a period of six months, and unless extension is granted for good reason, within next six months, the trial Court is, on expiry of first period of six months, to set a date for trial and go ahead with same – Present case not fit for extension of stay – I.A. dismissed: *G. Usha Rajsekhar (Smt.) Vs. Government of India*, I.L.R. 2021 M.P. 85

## 28. Writ Appeal

– **Article 226 & 227** – Maintainability of Appeal – Held – Registrar, Public Trust is not a Court or Tribunal, thus question of exercising jurisdiction under Article 227 over his order does not arise – Merely because in impugned order, Single Judge mentioned Article 227 of Constitution on more than one occasion, it will not become an order passed under Article 227 – Appeal filed against order of Registrar is maintainable: *Badri Prasad Tiwari Vs. State of M.P.*, I.L.R. 2022 M.P. 615 (DB)

– **Article 226 & 227** and Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, M.P. 2005 (14 of 2006), Section 2(1) – Writ Appeal – Maintainability – Held – Before learned Single Judge, High Court, in the cause title specifically Article 227 has been mentioned, even in prayer clause, no writ of certiorari is sought – Prayer was simply to quash and set aside judgment/award passed by Labour Court – In the fact situation, Division Bench rightly dismissed the writ appeals as not maintainable: *Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi*, I.L.R. 2022 M.P. 10 (SC)

## 29. Writ of Mandamus/Quo Warranto

– **Article 226** – Writ of Mandamus – Scope – Held – High Court in exercise of power under Article 226 can issue mandamus in appropriate case and give directions to compel performance in appropriate /lawful manner, to prevent injustice to party and can mould the relief to meet requirements of the case – Court may itself pass orders or give directions which the Government or Public Authority should have passed, had it properly and lawfully exercised its discretion: *Narmada Ginning & Pressing Factory (M/s.), Harda Vs. State of M.P.*, I.L.R. 2022 M.P. 442

– **Article 226** – Quo Warranto – Public Office – Held – Petitioner challenging appointment of R-5 on compassionate ground on Class IV post – Said office cannot be held to be a public office – Petition for issuance of writ of quo warranto for that office is not maintainable: *Ravi Shanker Chouksey Vs. State of M.P., I.L.R. 2021 M.P. 1557*

– **Article 226** – Writ of Quo Warranto – Locus Standi – Held – For issuance of writ of quo warranto, locus standi is insignificant but to maintain a regular writ petition, petitioner must show that he is a “person aggrieved”: *Arun Singh Chouhan Vs. State of M.P., I.L.R. 2021 M.P. \*12 (DB)*

– **Article 226** – Writ of Quo Warranto – Maintainability – Held – Writ of quo warranto can be issued against a person and related to a post which he is substantively holding – Appointment of R-4 not challenged nor his appointment order has been filed – Posting and working of R-4 cannot be a reason for issuing writ of quo warranto – Petition filed to either settle personal score or gain publicity and cannot be treated as PIL – Petition not maintainable and dismissed with cost of Rs. 10,000: *Arun Singh Chouhan Vs. State of M.P., I.L.R. 2021 M.P. \*12 (DB)*

– **Article 226** – Writ of Quo Warranto – Necessary Party – Apex Court concluded that the person against whom the writ of quo warranto is prayed for is a necessary party: *Arun Singh Chouhan Vs. State of M.P., I.L.R. 2021 M.P. \*12 (DB)*

### 30. Miscellaneous

– **Article 226** – See – Municipal (Achal Sampatti Antran) Rules, M.P., 2016, Rule 20: *Narmada Ginning & Pressing Factory (M/s.), Harda Vs. State of M.P., I.L.R. 2022 M.P. 442*

– **Article 226** – See – National Security Act, 1980, Section 3(2): *Dilip Sisodia Vs. State of M.P., I.L.R. 2022 M.P. 413 (DB)*

– **Article 226** – See – Prevention of Corruption Act, 1988, Section 19: *Sabit Khan Vs. State of M.P., I.L.R. 2021 M.P. 1871 (DB)*

– **Article 226** – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, Section 24(2): *Vishnu Vs. State of M.P., I.L.R. 2021 M.P. 1292 (DB)*

– **Article 226/227** – See – Goods and Services Tax Act, M.P., 2017, Section 107: *Sai Rubber Works (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 433 (DB)*

– **Article 226/227** – See – Micro, Small and Medium Enterprises Development Act, 2006, Sections 8, 17 & 18: *Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council, I.L.R. 2021 M.P. 427*

– **Article 226/227** – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Sections 13(4), 14 & 17: *Madan Mohan Shrivastava Vs. Additional District Magistrate (South) Bhopal, I.L.R. 2021 M.P. 683 (DB)*

– **Article 226/227** – See – Wakf Act 1995, Section 67(4): *Mohammad Afjal Vs. State of M.P., I.L.R. 2022 M.P. 1514*

### SYNOPSIS : Article 227

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|------------------------------------|-----------------------|
| <b>1. Alternate Remedy</b>         | <b>2. Mutation</b>    |
| <b>3. Scope &amp; Jurisdiction</b> | <b>4. Termination</b> |

#### 1. Alternate Remedy

– **Article 227** – Alternate Remedy – Held – If more than one remedy is available to litigant, it is his choice as to which remedy he would like to avail: *Badri Prasad Tiwari Vs. State of M.P., I.L.R. 2022 M.P. 615 (DB)*

– **Article 227** – Maintainability – Alternate Remedy – Held – Since orders are passed by Government authorities i.e. Registrar, Public Trust, SDO and Tehsildar and challenge is made on ground of their competence coupled with ground of malice in law, writ petition is maintainable – Lack of inherent jurisdiction can always be a subject matter of judicial review – Merely because some other litigants approached Civil Court, petitioner cannot be compelled to do the same: *Badri Prasad Tiwari Vs. State of M.P., I.L.R. 2022 M.P. 615 (DB)*

#### 2. Mutation

– **Article 227** – Mutation – Jurisdiction of Revenue Authorities – Held – Revenue authorities are precluded to entertain application for mutation on basis of *Hiba* when authenticity is objected by other side – SDO does not have any jurisdiction to examine the authenticity of *Hiba* – Petitioner should approach Civil Court for appropriate relief – Petition dismissed: *Firoz Khan Vs. State of M.P., I.L.R. 2022 M.P. \*63*

#### 3. Scope & Jurisdiction

– **Article 227** – Interim Relief – Held – When interim order is read in juxtaposition with main relief and interim relief prayer, it is manifest that Tribunal

virtually granted final relief to original applicants at *ex-parte* stage even without affording any opportunity of hearing to petitioners – Later Tribunal disposed original application holding the same to have rendered infructuous whereas respondent Railway contested the matter on merits – Tribunal abdicated its duty of deciding the matter on merits – Petition allowed – Matter remanded back to Tribunal: *Atul Kumar Ben Vs. Union of India, I.L.R. 2021 M.P. 1899 (DB)*

– **Article 227** – Scope – Held – In absence of any violation of law, palpable procedural impropriety or perversity, interference declined: *Seth Trilokchand Kalyanmal Digambar Jain Vs. Sushil Kumar Kasliwal, I.L.R. 2022 M.P. \*21*

– **Article 227** – Scope & Jurisdiction – Held – Scope of interference is limited – Power can be exercised in appropriate case where there is patent perversity in impugned order or where there has been a gross and manifest failure of justice or basic principle of natural justice has been flouted – Arbitrator has passed a well reasoned order – No interference warranted – Petition dismissed: *Cobra-CIPL JV Vs. Chief Project Manager, I.L.R. 2021 M.P. 497 (DB)*

– **Article 227** and Land Revenue Code, M.P. (20 of 1959), Section 110 – Scope & Jurisdiction – Held – If revenue authorities have passed orders beyond jurisdiction, this Court will have jurisdiction to set aside the same under Article 227 of Constitution – Further, order passed by Tehsildar was without jurisdiction and thus a nullity – Any order which is a nullity can be challenged in collateral proceedings: *Ranjit @ Bhaiyu Mohite Vs. Smt. Nandita Singh, I.L.R. 2021 M.P. 727*

#### 4. Termination

– **Article 227** – Contractual Appointment – Termination – Scope of Interference – Held – Contract was terminated on basis of non-obtaining requisite marks in ACR – Such orders cannot be termed as stigmatic – Further, relationship between employer and employee are purely contractual – Original contract clearly stipulates that employer on satisfaction of services of the employee would decide as to whether further extension of services can be given – Court cannot give a finding on the sufficiency or otherwise, of the criteria or reason for non-extension of services of appellant – Appeal dismissed: *Mahendra Kori Vs. State of M.P., I.L.R. 2022 M.P. \*87 (DB)*

● – **Article 235** – Compulsory Retirement – Judicial Officer – Held – Under Article 235 of Constitution, High Court can assess the performance of any judicial officer with a view to discipline the black shed or weed out the dead wood: *Purushottam Bhatt Vs. State of M.P., I.L.R. 2022 M.P. 1539 (DB)*

– **Article 243-M, 243-D** & Schedule V, Municipalities Act, M.P. (37 of 1961), Section 29 & 29-A and Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – Held – Limit of 50% can only be breached only if it is to be given to ST of the Panchayats in Scheduled Area covered by Schedule V of Constitution – Municipal Council Dhanpuri does not fall within Schedule V of Constitution, thus upper limit cannot be breached: *Mohd. Azad Vs. State of M.P.*, I.L.R. 2021 M.P. 458 (DB)

– **Article 243Q** and Municipalities Act, M.P. (37 of 1961), Section 5(2) & 6 – Transitional Area – Notification – Legislative Intent – Held – Conjoint reading of Article 243Q(2) of Constitution and Section 5 & 6 of Act of 1961 concludes that the legislative intent behind said provisions was to apply the required parameters in relation to a “particular transitional area” and issue notification in relation to the said area and circulate it in the said area as per procedure prescribed: *Kan Singh Vs. State of M.P.*, I.L.R. 2021 M.P. 1306 (DB)

– **Article 243Q** and Municipalities Act, M.P. (37 of 1961), Section 5(2) & 6 – Transitional Area – Notification – Statutory Requirement – Held – Notification dated 27.11.2011 is only a general notification whereby basic parameters have been laid down for establishing a “transitional area” – Constitutional/Statutory requirement is to issue an area specific notification – Notification of 27.11.2011 is not area specific and thus does not fulfill requirement of law and it cannot be a reason to sustain the impugned notifications – All impugned notifications set aside – State at liberty to follow due process and proceed – Petitions disposed: *Kan Singh Vs. State of M.P.*, I.L.R. 2021 M.P. 1306 (DB)

– **Article 243 ZG**, Municipalities Act, M.P. (37 of 1961), Section 20 and Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – Maintainability of Writ Petition – Held – In present case, validity of any law has not been challenged therefore bar of 243 ZG does not come to hinder the prospects of petitioner to file writ petition, similarly any nomination or election of any candidate has not been challenged so as to attract the rigours of Section 20 of Act of 1961 – Writ Petition maintainable: *Dipesh Arya Vs. State of M.P.*, I.L.R. 2021 M.P. 251

– **Article 300A** – Retiral Dues – Held – Retiral dues of employee cannot be treated as bounty, it is his right under Article 300A of Constitution: *A.A. Abraham Vs. State of M.P.*, I.L.R. 2021 M.P. 78

– **Article 300A** – Right to Property – Held – Right of property is a constitutional right though not a fundamental right – Deprivation of right can only be in accordance with procedure established by law: *Bajranga (Dead) By LRs. Vs. State of M.P.*, I.L.R. 2021 M.P. 205 (SC)

– **Article 311(2)(b)** – Dispensing with Enquiry – Specific Reasons – Held – The authority to invoke power under Article 311(2)(b) to dispense with departmental enquiry, must record a specific finding/reason as to why such an enquiry cannot be conducted: *Suresh Sharma Vs. State of M.P.*, I.L.R. 2022 M.P. 2006

– **Article 311(2)(b)** – See – Civil Services (Classification, Control and Appeal) Rules, M.P. 1966, Rules 10, 14 & 15: *Amit Chaurasia Vs. State of M.P.*, I.L.R. 2021 M.P. 2049

– **Article 342(1)** – Scheduled Caste/Scheduled Tribe – Presidential Notification – Held – Presidential Notification specifying Schedule Tribe/Scheduled Caste can be amended only by law made by Parliament and it cannot be varied by way of administrative circular, judicial pronouncements or by State – Notification must be read as it is – “Halba Koshti” is not mentioned in Presidential order thus it cannot be held to be Scheduled tribe – No error in decision of Caste Scrutiny Committee – Petition dismissed: *Nageswar Sonkesri Vs. State of M.P.*, I.L.R. 2021 M.P. 265

– **Article 342(1)** – See – Service Law: *Nageswar Sonkesri Vs. State of M.P.*, I.L.R. 2021 M.P. 265

## **CONTEMPT**

– **Principle & Jurisdiction** – Held – An error of judgment or decision is not contempt but ex-facie disobedience of the order amounts to contumacious conduct, which attracts contempt proceedings against concerned party: *Sumeet Agencies (M/s.) Vs. Mrs. Sonia Meena*, I.L.R. 2022 M.P. \*28

## **CONTEMPT OF COURTS ACT (70 OF 1971)**

– **Section 12** – Illegal Detention – Bonafide Apology – Conduct – Held – Respondents have not shown any remorse for their actions and are mud-sledging against each other – Respondents acted as an unruly horse, taking advantage of their uniform and official position in a most disagreeable manner, which may shake confidence of general public in police department – Such act is a direct attack on very existence of humanity – Apologies tendered are not bonafide, hence rejected: *State of M.P. Vs. Dinesh Singh Rajput*, I.L.R. 2021 M.P. 471

– **Section 12** – Illegal Detention – Punishment – Held – If guilty person has realized that he has committed a mistake, Court must award one opportunity to improve their conduct as a human being in future – Instead of jail sentence, fine of Rs. 1000 is awarded: *State of M.P. Vs. Dinesh Singh Rajput*, I.L.R. 2021 M.P. 471



– **Section 12** – Illegal Detention – Suo Motu proceedings – Held – Person was unlawfully taken into police custody without verifying his identity – Without formal arrest, he was kept in illegal detention – Prior to verification of his identity, press note was also released branding him that “*accused with reward of Rs. 5000 has been arrested*” – His uncovered face photograph was also got published in newspaper as well as uploaded on social media – Respondents violated directions of Supreme Court and hence liable for Contempt of Court: *State of M.P. Vs. Dinesh Singh Rajput, I.L.R. 2021 M.P. 471*

– **Section 15(2)** – Bar & Bench Relationship – Sensitivity – Held – It is the senior bar members of the Bar and/or Bar Association of that District to guide members of Bar about the nobility attached to the profession – Bar & Bench relationship discussed and explained: *In Reference The State of M.P. Vs. Pankaj Mishra, I.L.R. 2022 M.P. \*12 (DB)*

– **Section 15(2)** – Contemptuous Statement by Advocate against Magistrate – Held – To err is human and to forgive is divine, keeping the said spirit as well as the fact that respondent apologized in categorical terms, it is in the interest of justice that bonhomie be revived so that matter may proceed without causing delay and friction – Contempt petition disposed with direction to respondent to plant 20 saplings and take care of them till they grow into full fledged trees: *In Reference The State of M.P. Vs. Pankaj Mishra, I.L.R. 2022 M.P. \*12 (DB)*

– **Section 20** – See – Constitution – Article 215: *Mohamad Ibrahim Vs. R.K. Mishra, I.L.R. 2021 M.P. 1732*

## **CONTRACT**

– **Encashment of Unconditional Bank Guarantee** – Exceptions – Held – The general rule that bank guarantee must be honoured has two exceptions, firstly when there is clear fraud of egregious nature vitiating entire transaction and bank has notice of such fraud and, secondly when there are special equities such as irretrievable injury or irretrievable injustice in favour of injunction – Apart from these two exceptions, beneficiary has right of encashment of unconditional bank guarantee: *Cobra-CIPL JV Vs. Chief Project Manager, I.L.R. 2021 M.P. 497 (DB)*

– **Unconditional Bank Guarantee** – Encashment of – Held – Bank guarantee is an independent contract between bank and beneficiary thereof – Bank is always obliged to honour the guarantee, if it is unconditional and irrevocable – Dispute between beneficiary and party at whose instance bank guarantee is given is of no consequence and has no effect on the right relating to encashment of guarantee – In commercial dealing, once unconditional guarantee is given, beneficiary is entitled

to realize the guarantee as per terms contained therein: *Cobra-CIPL JV Vs. Chief Project Manager, I.L.R. 2021 M.P. 497 (DB)*

### **CONTRACT ACT (9 OF 1872)**

– **Section 23** – Concept of Back Wages – Public Policy – Held – If back wages are related to last wages drawn, it would not only be prejudicial to the concept of back wages after re-instatement but would also be contrary to principle of public policy as per Chapter II of Contract Act especially u/S 23 of the Act: *Mahip Kumar Rawat Vs. Shri Ashwini Kumar Rai, I.L.R. 2021 M.P. 1560 (DB)*

– **Sections 128, 133 & 140** – See – Insolvency and Bankruptcy Code, 2016, Section 1(3) & 31: *Lalit Kumar Jain Vs. Union of India, I.L.R. 2021 M.P. 1221 (SC)*

### **COOPERATIVE SOCIETIES ACT, M.P. 1960 (17 OF 1961)**

– **Section 2(i)** – See – Constitution – Article 226: *Ajay Jain Vs. The Chief Election Authority, I.L.R. 2021 M.P. \*1*

– **Section 48-AA & 50-A** – Conflict between Judgments – Held – Analysis of two Division Bench judgments i.e. one in Brij Kumar Chanpuriya (W.P. No. 6913/2017) and another in Anter Singh (W.A. No. 551/2019) which formed the basis of present reference thus clearly shows that there was actually no conflict between these two judgments: *Bhopal Cooperative Central Bank Maryadit Bhopal Vs. State of M.P., I.L.R. 2021 M.P. 854 (FB)*

– **Section 48-AA & 50-A** – Principle of Natural Justice – Reasonable Opportunity of Hearing – Held – Unlike Section 48-AA, Section 50-A does not specifically envisage for giving reasonable opportunity of being heard to person who is sought to be disqualified to continue as member of Board of Directors, but adherence to principle of natural justice must be read into the statute as there is no clear mandate to the contrary – Unless a statutory provision, either specifically or by necessary implication excludes application of principle of natural justice, requirement of providing reasonable opportunity of hearing before passing an order having civil consequences, has to be read into a statute, be it an administrative or quasi-judicial order: *Bhopal Cooperative Central Bank Maryadit Bhopal Vs. State of M.P., I.L.R. 2021 M.P. 854 (FB)*

– **Section 48-AA & 50-A(2) proviso** – Applicability – Held – Provisions of Section 48-AA to be applied in both situation i.e. at the time of election (pre-election stage) or if any person is disqualified after election (post election stage) – Proviso to Section 50-A(2) stipulates that an elected person shall cease to hold the

office, if such society commits default for any loan/advance, for a period exceeding 12 months, thus it would apply to post election stage: *Bhopal Cooperative Central Bank Maryadit Bhopal Vs. State of M.P., I.L.R. 2021 M.P. 854 (FB)*

– **Section 50-A** – Removal of Director – Deemed Provision – Held – There cannot be an automatic removal/disqualification of Director/member of Board of Directors – Since Section 50-A cannot be held to be a deemed provision, there cannot be deemed vacation of his seat in office of Board of Directors – Competent authority after due application of mind would in any case be required to give opportunity of hearing to member of Board of Directors, pass a specific order for removing/unseating him from such office: *Bhopal Cooperative Central Bank Maryadit Bhopal Vs. State of M.P., I.L.R. 2021 M.P. 854 (FB)*

– **Section 50-A(3)** – Applicability – Held – Section 50-A(3) envisages a situation where representative/delegate of society is debarred from voting, if he is in default for a period exceeding 12 months to the society or any other society for any loan/advance taken by him, thus it would apply to pre-election stage: *Bhopal Cooperative Central Bank Maryadit Bhopal Vs. State of M.P., I.L.R. 2021 M.P. 854 (FB)*

– **Section 53(3)** – Termination – Prior Approval – Held – Statute does not provide or indicate any prior approval – Further, manager in his evidence stated that Assistant Registrar accorded approval to order to termination – This statement was not countered by workman and was accepted – Statement with regard to grant of ex post facto permission requires to be accepted – Approval has been obtained – Petition dismissed: *Shiv Charan Verma Vs. M.P. State Co-operative Tribunal, Bhopal, I.L.R. 2022 M.P. 1186 (DB)*

– **Section 55** – Age of Superannuation – Amendment – Date of Enforcement – Held – Right of respondent to continue in employment till 62 years of age accrued on 03.01.2014 when applicable rule was amended enhancing the age of superannuation – Subsequent resolution of appellant Bank dated 08.09.2015 cannot defer the enforceability of amended rules with effect from the date on which such Rule has been framed by Registrar and it would not defeat the right of respondent to retire at age of 62 years – Single Judge rightly directed payment of consequential benefits to Respondent No. 1 – Appeal dismissed: *Bhopal Cooperative Central Bank Vs. Narayan Singh Solanki, I.L.R. 2022 M.P. \*61 (DB)*

– **Section 64 & 68** – Preliminary Enquiry – Jurisdiction – Held – Since there were several complaints in respect of Jai Kisan Rin Mafi Yojna which is a scheme of State government, functionaries of State has a right to conduct preliminary enquiry and it cannot be termed as encroachment on rights/jurisdiction of Society – Petition dismissed: *Raman Dubey Vs. State of M.P., I.L.R. 2021 M.P. 38*

– **Section 64 & 68** – Preliminary Enquiry – Scope – Opportunity of Hearing/ Natural Justice – Held – Preliminary enquiry is merely a fact finding enquiry and its findings are not evidence and none can be punished or condemned on such enquiry report – Such report is not a judgment nor an opinion of an expert – Rights and liabilities of parties are not decided in such enquiry – Further, petitioner could not show any provisions of law which mandates grant of opportunity of hearing in preliminary enquiry – No order passed on basis of preliminary enquiry report, taking away rights of petitioner – No violation of natural justice – Report cannot be quashed: *Raman Dubey Vs. State of M.P., I.L.R. 2021 M.P. 38*

– **Sections 64, 74, 75 & 76** – Registration of FIR – Opportunity of Hearing – Held – In absence of any bar, it cannot be said that prosecuting agency has no power to criminally prosecute a wrong doer, looking to provisions u/S 64, 74, 75 & 76 of the Act – There is no provision which gives a right of audience to suspect prior to lodging FIR: *Raman Dubey Vs. State of M.P., I.L.R. 2021 M.P. 38*

– **Section 68** – Attachment Before Award – Held – After filing of application u/S 68, all persons would get an opportunity to file their reply and oppose the prayer and then competent authority will decide the application in accordance with law – No one can be prevented from filing application(s) which is/are maintainable under the law – Direction to file application u/S 68 of the Act is not bad in law: *Raman Dubey Vs. State of M.P., I.L.R. 2021 M.P. 38*

## **COOPERATIVE SOCIETIES RULES, M.P. 1962**

– **Rule 49-E(5)(d)** – See – Constitution – Article 226: *Ajay Jain Vs. The Chief Election Authority, I.L.R. 2021 M.P. \*1*

– **Rule 64** – Alternate Remedy – Held – In exceptional cases, writ petition in election matter can be entertained: *Ajay Jain Vs. The Chief Election Authority, I.L.R. 2021 M.P. \*1*

## **COURT FEES ACT (7 OF 1870)**

– **Section 7(iv)(c) & Schedule 1, Article 1-A (amended)** and Suits Valuation Act (7 of 1887), Section 8 and Court Fees (M.P. Amendment) Act, 2008, Section 3 – Ad Valorem Court Fees – Consequential Relief – Held – Petitioner beside seeking relief of declaration also seeks a consequential relief of possession and permanent injunction and also relief of declaring sale deed as *null and void* – Case of petitioner rightly held to be covered u/S 7(iv)(c) of Court Fees Act – But vide amendment Act of 2008, upper limit has been fixed to Rs. 1,50,000 as *ad valorem* court fees as value of subject matter exceeds 10 lacs – Impugned order set aside –

Petitioner directed to pay Rs. 1,50,000 as *ad valorem* court fess – Petition allowed: *Sant Ram Patel Vs. Jainul Aabdeen, I.L.R. 2022 M.P. 1190*

### **COURT FEES (M.P. AMENDMENT) ACT, 2008**

– **Section 3** – See – Court Fees Act, 1870, Section 7(iv)(c) & Schedule 1, Article 1-A (amended): *Sant Ram Patel Vs. Jainul Aabdeen, I.L.R. 2022 M.P. 1190*

### **CRIMINAL PRACTICE**

– **Abscondence** – Held – Abscondence after incident is not a very conclusive proof to indicate the guilt of accused – An innocent person may abscond under an apprehension – But if the entire circumstances are considered together, then abscondence of accused immediately after incident could assume importance: *Omprakash Pateria (Dead) Through L.R. Vs. State of M.P., I.L.R. 2022 M.P. \*43 (DB)*

– **Adjudication of Objections of Accused** – Held – Where life and liberty of a person is involved, objections of accused should be decided by assigning reasons and should not be decided by holding the same to be “*non-effective*” – Trial Court is expected to at-least mention the nature of objections raised by accused – Rejection of objection to DNA report by terming as “non-effective objection” was not in accordance with law: *State of M.P. Vs. Nandu @ Nandkishore Gupta, I.L.R. 2021 M.P. 2122 (DB)*

– **Adverse Inference** – Held – Adverse inference can be drawn against accused only when prosecution has established its case beyond reasonable doubt and in turn, accused/defence has failed to discharge the onus shifted on him: *Chotu @ Tinku @ Kirpal Vs. State of M.P., I.L.R. 2022 M.P. \*48 (DB)*

– **Burn Cases** – “Rule of Nine” – In burn cases, the “Rule of Nine” as defined in Modi’s Medical Jurisprudence, enumerated, discussed and explained: *Durgesh Singh Bhadauria Vs. State of M.P., I.L.R. 2022 M.P. 138 (DB)*

– **Circumstantial Evidence** – Factors to be considered, discussed: *Sanjay Vs. State of M.P., I.L.R. 2022 M.P. 1795 (DB)*

– **Circumstantial Evidence** – Held – Conclusion of guilt/conviction must be fully based on reliable evidence – Circumstances concerned should be in category of “must” and cannot be based on surmises and conjectures – Suspicion however strong cannot take the place of proof: *Chotu @ Tinku @ Kirpal Vs. State of M.P., I.L.R. 2022 M.P. \*48 (DB)*

– **Circumstantial Evidence** – Held – If two views are possible on evidence produced, one indicating guilt of accused and other to his innocence, the view which favours the accused must be adopted: *Ramcharan Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 520 (DB)

– **Circumstantial Evidence** – Held – In case of circumstantial Evidence, prosecution must prove that it was the accused and the accused only who has committed the offence – However strong the suspicion may be, it cannot take place of proof: *Vir Singh Vs. State of M.P.*, I.L.R. 2022 M.P. \*15 (DB)

– **Circumstantial Evidence** – Held – Suspicion howsoever may be grave, but it cannot take the place of proof – Circumstances should be of conclusive nature and tendency and should exclude every possible hypothesis – There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with innocence of accused and must show that in all human probability, act must have been done by accused: *Girraj Alias Batte Vs. State of M.P.*, I.L.R. 2022 M.P. 1031 (DB)

– **Circumstantial Evidence** – Held – When case fully rests upon circumstantial evidence, then it is settled principle of law that all circumstances available against accused should be so connecting that inference can be drawn that it is only the accused who is the author of crime concerned: *Nandu Vs. State of M.P.*, I.L.R. 2022 M.P. \*10 (DB)

– **Circumstantial Evidence** – Held – When case fully rest upon circumstantial evidence, then it is settled principle of law that all circumstances available against accused should be so connecting that inference can be drawn that it is only the accused who is the author of crime concerned: *In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath*, I.L.R. 2022 M.P. 722 (DB)

– **Chance Witness** – Held – If a chance witness fails to explain his presence on the place of occurrence and deposes like a parrot, as well as he does not disclose the fact to anybody including police, then he should be discarded – Evidence of chance witnesses cannot be brushed aside provided his evidence is found trustworthy – Such evidence should be examined very carefully and cautiously: *In Reference Vs. Ravi @ Toli*, I.L.R. 2022 M.P. 286 (DB)

– **Child Witness** – Credibility – Held – If it is found that there is no infirmity or contradiction in evidence of a child, then there is no impediment in accepting the same – Normally Court should look for corroboration in such cases but that is more by way of caution and prudence than as a rule of law – Evidence of child witness is not required to be discarded per se but considering the quality of such evidence and

reliability, Court can record conviction: *Naresh Vs. State of M.P., I.L.R. 2022 M.P. 157 (DB)*

– **Child Witness** – Credibility – Held – The perceived contradiction in testimony can at best be seen as a mere exaggeration on behalf of a child witness whose remaining testimony completely supports the prosecution – Courts are obliged not to discard entire testimony on basis of a minor exaggeration: *State of M.P. Vs. Mahendra @ Golu, I.L.R. 2021 M.P. 2231 (SC)*

– **Child Witness** – Factors to be Considered – Held – At the time of recording evidence of child witness, certain factors must be considered – Relevant factors enumerated: *Naresh Vs. State of M.P., I.L.R. 2022 M.P. 157 (DB)*

– **Child Witness** – Held – Evidence of child witness is not to be discarded per se, but as a rule of prudence, Court can consider such evidence with close scrutiny and only on being satisfied about the quality thereof and reliability, can record conviction based thereon – Child witness is very important in cases of domestic violence and other offences which takes place within four walls of a home: *Morari Vs. State of M.P., I.L.R. 2022 M.P. 880 (DB)*

– **Commutation of Sentence** – Grounds – Held – Apex Court concluded that fact of imposition of sentence on the same day, when order of conviction was pronounced, cannot by itself be a ground to commute death sentence to life imprisonment: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Conviction for Lesser Offence** – Held – A conviction under a lesser offence could be imposed even though the accused was not specifically charged with: *Shivcharan Vs. State of M.P., I.L.R. 2021 M.P. 317*

– **Defective Investigation** – Held – Apex Court concluded that defective investigation by itself cannot be made a ground for acquitting the accused – Prosecution case cannot be disbelieved on account of any lacuna on part of investigating officer: *Dheeraj Gupta Vs. State of M.P., I.L.R. 2022 M.P. \*62 (DB)*

– **Defence** – Credibility – Held – If defence is found probable, due weightage should be given to it – Standard of proof should not be compared with that of prosecution where it is obliged to prove its case beyond all reasonable doubts – Credential value of defence witness is similar to that of prosecution witness and his evidence should not be thrown out merely because he has been examined in defence: *Hariprasad Lal Shrivastava (Shri) (Deceased) Through L.Rs. Vs. State of M.P., I.L.R. 2022 M.P. 2079*

– **Discrepancy in Prosecution Documents** – Typographical Error – Held – When there is any discrepancy which does not go to the root of the matter thereby

making it inadmissible or unreliable, then prosecution witness should also get opportunity to explain such discrepancy – Without asking any question, prosecution cannot be thrown overboard on account of some typographical error: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

– **DNA Profiling** – Its origin and scientific analysis as per seized articles in present case – Discussed & explained: *In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath, I.L.R. 2022 M.P. 722 (DB)*

– **DNA Profiling** – Uprooted Hair & Shaved Hair – Held – It is baseless defence of appellant that hair shaved from pubic area does not contain DNA – The upper shaft of hair contains comparatively less DNA but one cannot say that hair shaft contains no DNA: *In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath, I.L.R. 2022 M.P. 722 (DB)*

– **Dock Identification** – Credibility – Held – Even if dock identification is not preceded by TIP by police, then also it is admissible as it is substantive evidence and can be relied upon only if witness is found reliable – Such dock identification should be appreciated meticulously: *In Reference Vs. Ravi @ Toli, I.L.R. 2022 M.P. 286 (DB)*

– **Dock Identification** – Held – Although dock identification is the substantive evidence, but the value of dock identification has to be considered alongwith surrounding circumstances: *Ramcharan Vs. State of M.P., I.L.R. 2022 M.P. 549 (DB)*

– **Dock Identification** – Held – Dock Identification is the substantive piece of evidence and even in absence of Test Identification Parade, it can be relied – Since appellants were already shown to the witnesses in the police station, Dock Identification of appellants cannot be relied upon: *Suresh Vs. State of M.P., I.L.R. 2021 M.P. 2319 (DB)*

– **Enmity** – Held – Enmity is a double edged weapon – If enmity provides a reason to falsely implicate a person, then it also provides a motive for committing offence: *Rambabu Vs. State of M.P., I.L.R. 2022 M.P. 1234 (DB)*

– **Evidence** – Held – In police investigations, the spot map, seizure memo, still photographs etc. are generally considered sufficient pieces of evidence – There is no statutory requirement as such to exhibit each and every piece of investigative material by prosecution: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Evidence of Police Officers** – Held – Evidence of prosecution witnesses cannot be disbelieved merely on ground that the said witnesses are police officers: *Dheeraj Gupta Vs. State of M.P., I.L.R. 2022 M.P. \*62 (DB)*



– **Extra Judicial Confession** – Held – Extra Judicial confession is a weak type of evidence but if it is proved that it was made voluntarily and is truthful, then it can be a sole ground for recording conviction: *Vir Singh Vs. State of M.P., I.L.R. 2022 M.P. \*15 (DB)*

– **Faulty Investigation** – Held – Every faulty investigation would not make the prosecution unreliable but the faulty investigation must lead to an inference that investigation was been done with a preconceived notions – If prosecution established the guilt of accused beyond reasonable doubt, then some minor omission on part of IO would not give dent to the prosecution case: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

– **FIR** – Held – FIR is not an encyclopedia and each and every minute details is not expected – If someone is killed in presence of a witness, then it cannot be said that all persons would react in an uniform manner – Few witnesses would certainly get frightened – Mental agony of complainant is an important aspect to be kept in mind while appreciating FIR: *Rambabu Vs. State of M.P., I.L.R. 2022 M.P. 1234 (DB)*

– **FIR & Charge-Sheet** – Held – For an FIR to mature into charge-sheet/ final report u/S 173(2) CrPC, there should be implicative evidence to be collected during investigation in support of FIR: *Narendra Mishra Vs. State of M.P., I.L.R. 2022 M.P. 1113 (DB)*

– **Hostile Witness** – Effect – Held – Merely on ground that prosecution witnesses have turned hostile does not impact the entire prosecution version, if it is corroborated by a trustworthy witness: *Dheeraj Gupta Vs. State of M.P., I.L.R. 2022 M.P. \*62 (DB)*

– **Hostile Witness** – Held – Evidence of witness declared hostile is not wholly effaced from record and that part of his evidence which is otherwise acceptable can be acted upon: *Hariprasad Lal Shrivastava (Shri) (Deceased) Through L.Rs. Vs. State of M.P., I.L.R. 2022 M.P. 2079*

– **Identification of Accused** – Held – Villagers have the ability of identifying the things even in poor light – Villages have limited number of inhabitants and are closely watched by each and every resident of the village – Evidence of witness that he identified accused from his back, style of walking and body buildup, cannot be said to be unreliable: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

– **Investigation & Interrogation** – Discussed & explained: *Chandresh Marskole Vs. State of M.P., I.L.R. 2022 M.P. 1594 (DB)*

– **Irregularity/Illegality by Investigation Officer** – Effect – Held – Apex Court concluded that mere fact that the Investigation Officer committed irregularity or illegality during course of investigation would not and does not cast doubt on prosecution case nor trustworthy and reliable evidence can be set aside to record acquittal on that account – If prosecution case is established by evidence, any failure or omission on part of Investigation Officer cannot render the case of prosecution doubtful: *Indu @ Indrapal Singh Vs. State of M.P., I.L.R. 2021 M.P. 1602 (DB)*

– **Medical Opinion** – Held – Opinion given by medical witness need not be the last word on subject – Opinion shall be tested by Court – Value of medical evidence is only corroborative, it proves that the injuries could have been caused in the manner as alleged and nothing more: *Dheeraj Gupta Vs. State of M.P., I.L.R. 2022 M.P. \*62 (DB)*

– **Motive** – Held – Motive is a thing which is primarily known to accused himself and it may not be possible for prosecution to explain what actually prompted or excited him to commit a particular crime: *Narbad Ahirwar Vs. State of M.P., I.L.R. 2021 M.P. 2339 (DB)*

– **Need of Software Based Investigation System** – Discussed & explained: *Pahalwan Singh @ Chimme Vs. State of M.P., I.L.R. 2022 M.P. \*6 (DB)*

– (i) **Non-Recovery of Weapon** – Effect – Held – Non-recovery of weapon of offence would not make the ocular evidence unreliable – If accused destroys or conceals the weapon of offence, then he cannot take advantage of his own misdeed and this would not give any dent to prosecution case. (ii) Evidence of Injured Witnesses – Nature of Evidence – Held – Evidence of witnesses examined by prosecution cannot be discarded only on ground that some of the other injured witnesses were not examined – It is the quality and not quantity of witnesses which decides the fate of trial – Further, even if a part of evidence of a witness has been found to be incorrect, but still his remaining evidence can be relied. (iii) Tutored/Natural Witnesses – Held – Minor omissions and contradictions in evidence of witness is indicative of fact that they were not tutored – Minor embellishments is natural conduct of witnesses – Where indiscriminate firing took place and people were running helter-skelter for saving their lives, 3 died and 10 injured, then minute description of incident would certainly create a doubt that whether parrot like evidence is outcome of tutoring or not. (iv) Injured Witness – Credibility – Held – Injured witnesses enjoys a special status as the injury sustained by them is a guarantee of their presence on the spot of incident. (v) Right of Private Defence – Held – Right of private defence is not an absolute defence – If a person has acted in a cruel manner or has exceeded his right of private defence, then he cannot take advantage of the right of private defence. (vi) Abscondence – Held – Subject to surrounding circumstances, abscondence of accused

immediately after incident is also one of the circumstances to show his guilty mind – Sometimes an innocent person, under false apprehension may also run away from spot. (vii) Cross-Cases – Held – Cross cases should be decided by one Court – Evidence led in one case cannot be read in another case – Both cases are to be decided on their own merits – Basic purpose behind trial of cross case by one Court is to avoid conflicting judgments. (viii) Givenup Witness – Held – Givenup means that although a party has summoned a witness but does not wish to examine him – Witness can be givenup without examining him – After the examination-in-chief begins, no witness can be givenup. (ix) Medical & Ocular Evidence – Held – Medical evidence is merely a corroborative piece of evidence – In case of conflict between medical and ocular evidence, ocular evidence has to be preferred unless and until medical evidence completely rules out the oral evidence: *Ahmed Sayeed Vs. State of M.P.*, *I.L.R. 2022 M.P. \*24 (DB)*

– **Ocular & Medical Evidence** – Held – Court is not bound by opinion of Doctor – Unless and until the medical evidence completely rules out the ocular evidence, preference has to be given to ocular evidence – Medical evidence is merely a corroborative piece of evidence whereas the eye-witnesses are eyes and ears of Court: *Rambabu Vs. State of M.P.*, *I.L.R. 2022 M.P. 1234 (DB)*

– **Opportunity of Hearing** – Magistrate ordered accused to give his voice sample – Held – Matter is at investigation stage where prosecution is only collecting evidence – No prejudice has been caused to accused – No error by trial Court in passing the impugned order without giving opportunity of hearing: *R.K. Akhande Vs. Special Police Establishment, Lokayukt, Bhopal*, *I.L.R. 2021 M.P. 1613 (DB)*

– **Penology** – Held – Sentence should be proportionate to gravity of offence and should have deterrent effect and Court should exercise its discretion in awarding sentence in the larger interest of the society: *Ved Prakash Sharma Vs. State of M.P.*, *I.L.R. 2022 M.P. 798*

– **Plea of Alibi** – Held – Accused is not required to prove the defence under the general exceptions beyond reasonable doubt, it only needs to raise a slight doubt – Once the doubt is raised, then defence has established the “plea of alibi” and it requires to go no further: *Jasrath Vs. State of M.P.*, *I.L.R. 2022 M.P. 690 (DB)*

– **Police Closure Report** – Further Investigation – Held – If Special Judge was not satisfied with finding of investigating agency, he should have directed for further investigation instead of giving direction to place material before sanctioning authority for granting sanction: *Bhupendra Singh Vs. State of M.P.*, *I.L.R. 2021 M.P. 764 (DB)*

– **Postmortem Application** – Contents – Held – There is no mandatory provision which provides mentioning of details of incident or crime number in the application for postmortem – Mere non-mentioning of crime number or details about alleged incident in the said application does not discredit the prosecution case: *Dheeraj Gupta Vs. State of M.P., I.L.R. 2022 M.P. \*62 (DB)*

– **Prosecution Evidence** – Held – Court can make overall assessment to reach to a conclusion and is not bound by the evidence of prosecution: *Ram Khiladi Vs. State of M.P., I.L.R. 2022 M.P. 1428 (DB)*

– **Prosecution of IO & Witnesses for giving False Evidence** – Opportunity of Hearing – Held – Direction for prosecution of IO and witnesses for giving false evidence can be given without any opportunity of hearing to them: *In Reference Vs. Ravi @ Toli, I.L.R. 2022 M.P. 286 (DB)*

– **Prosecution Witness** – Quality & Quantity – Held – Evidence is to be weighed and not counted – It is the quality and not the quantity of witnesses which decided the fate of trial – Each and every possible witness is not required to be examined – If prosecution witnesses, so examined are trustworthy and reliable then their evidence cannot be discarded only on ground that some more witnesses should have been examined to corroborate the prosecution witnesses: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

– **Prosecution Witnesses** – Held – Court can make overall assessment to reach to a conclusion and is not bound by evidence by prosecution: *Rambabu Vs. State of M.P., I.L.R. 2022 M.P. 1234 (DB)*

– **Punishment** – Special Enactment – Held – If special enactment is silent regarding punishment, Schedule of IPC will be applicable: *Anil Patel Vs. State of M.P., I.L.R. 2021 M.P. 746*

– **Rape Case** – Injury on Genital Organ of Accused – Held – Presence of injuries on male organ is not necessary in all cases – As per Modi's Jurisprudence, it is not necessary that there should always be mark of injuries on the penis of accused – Absence of any injury on penis of accused would not belie the prosecution case: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

– **Ratio Decidendi/Obiter Dicta** – Held – The decision of facts, howsoever similar, does not constitute a ratio or even an obiter: *Nafees Khan Vs. State of M.P., I.L.R. 2022 M.P. 588 (DB)*

– **Recusation** – Held – No judge should succumb to pressure put by the parties for recusing themselves: *Balram Vs. State of M.P., I.L.R. 2022 M.P. \*17*

– **Related Witness** – Credibility – Held – Although the evidence of related witnesses cannot be discarded on this sole ground but their evidence must be examined very carefully and all infirmities must be taken into consideration: *Manoj Singh Vs. State of M.P., I.L.R. 2022 M.P. 911 (DB)*

– **Related/Interested Witnesses** – Held – There is a difference between “related witness” and “interested witness” – Interested witness is a witness who is vitally interested in conviction of a person due to previous enmity – Thus, evidence of a witness cannot be discarded merely on the ground that he is “related witness” unless and until it is proved that he is “interested witness” – Why a “related witness” would spare the real culprit in order to falsely implicate some innocent person: *Omprakash Pateria (Dead) Through L.R. Vs. State of M.P., I.L.R. 2022 M.P. \*43 (DB)*

– **Sensational/Non-Sensational Case** – Investigation – Held – All criminal cases whether “sensational” or “non-sensational” require a similar kind of investigation without drawing any distinction – Prosecution cannot draw a distinction on its own by saying that a particular case would be treated as a “sensational case” and an extra and vigilant investigation shall be done and another case of similar nature can be investigated in a most casual manner: *Malkhan Singh Vs. State of M.P., I.L.R. 2022 M.P. \*52*

– **Sole Evidence of Prosecutrix** – Held – Victim’s deposition even on a standalone basis is sufficient for conviction unless cogent reasons for corroboration exist: *State of M.P. Vs. Mahendra @ Golu, I.L.R. 2021 M.P. 2231 (SC)*

– **Sole Testimony of Victim** – Held – Solitary testimony of victim is sufficient for conviction provided the testimony is unimpeachable and trustworthy: *Phiroz Vs. State of M.P., I.L.R. 2022 M.P. 1631*

– **Statement u/S 161 Cr.P.C. and Deposition before Court** – Held – Apex Court concluded that otherwise creditworthy and reliable evidence of an eyewitness would not be rejected merely because of a particular statement made by witness before Court does not find place in statement recorded u/S 161 Cr.P.C: *Satish @ Gudda Vs. State of M.P., I.L.R. 2022 M.P. 1785*

– **Suppression of Facts** – Effect – Held – If Court finds suppression of material fact, then case may be dismissed on this ground, however if suppression is not of material fact and does not have any effect on outcome of the case, then such suppression cannot be made basis for dismissing the case: *Pankaj Karoriya Vs. State of M.P., I.L.R. 2021 M.P. 2360*

– **Testimony of Injured Witness** – Held – Testimony of injured witness stand on a higher pedestal than other witnesses and is considered reliable with a built-in- guarantee of his presence at the scene of occurrence: *Lokman Vs. State of M.P.*, I.L.R. 2022 M.P. \*64

– **Two Possible View** – Effect – Held – When two views are possible and trial Court has taken the view favouring the accused, then the same should not be disturbed only on the ground that another view was possible: *Ramcharan Vs. State of M.P.*, I.L.R. 2022 M.P. 549 (DB)

– **Two Possible Views** – Held – If two views are possible on evidence produced in a case, one indicating guilt of accused and other to his innocences, the view which favours the accused must be adopted: *Chotu @ Tinku @ Kirpal Vs. State of M.P.*, I.L.R. 2022 M.P. \*48 (DB)

– **Unexhibited Prosecution Document** – Held – Only the defence is entitled to use a prosecution document although unproved or unexhibited: *Nafees Khan Vs. State of M.P.*, I.L.R. 2022 M.P. 588 (DB)

– **Voice Sample** – Power of Magistrate – Held – Magistrate has the power to order a person to give his voice sample for purpose of investigation of a crime: *R.K. Akhande Vs. Special Police Establishment, Lokayukt, Bhopal*, I.L.R. 2021 M.P. 1613 (DB)

– **(i). Witness** – Credibility – Held – It is the quality of a witness which counts and not quantity of witnesses – Merely because a witness has been disbelieved on some part of his evidence, would not result in discarding of his entire evidence – Court must try to remove grain from the chaff. (ii). Site Plan – Held – Site plan is an important document – Part of Site Plan, prepared by Investigating Officer, on basis of what he had seen and observed would be a substantive evidence and part of Site Plan prepared on the information given by witness, would be admissible, if witness giving such information is also examined. (iii). Abscondence – Held – Abscondence by itself cannot be said to be an incriminating circumstances to indicate the guilty mind of a suspect – An innocent person, under an apprehension of false implication may also abscond. (iv). Evidence of Police – Held – Evidence of Police personnel cannot be discarded only because he is an investigating officer or his evidence is not corroborated by independent witnesses. (v). Evidence – Discrepancies – Held – Unless and until contradictions is pointed out to the witness, the defence cannot take advantage of such discrepancies: *Nathu Singh Vs. State of M.P.*, I.L.R. 2021 M.P. 1388 (DB)

– **Witness – Held** – If a witness is not declared hostile by prosecution, benefit of such evidence should go to accused and not to prosecution: *Pappu @ Dayaram Vs. State of M.P., I.L.R. 2021 M.P. 1571 (DB)*

– **Witness Examined Twice – Effect** – Witness examined on 20.04.2016 and later on 18.07.2018 – Trial Court held that evidence recorded on 18.07.2018 will not be read – Held – It is true that evidence of witness was recorded twice but defence counsel can always take advantage of the facts which have come on record in cross-examination done on 18.07.2018 – Thus, evidence recorded on 18.07.2018 shall also be read: *In Reference Vs. Ravi @ Toli, I.L.R. 2022 M.P. 286 (DB)*

### **CRIMINAL PROCEDURE CODE (5 OF 1898)**

– **Section 537** and Criminal Procedure Code, 1973 (2 of 1974), Section 465 – Scope – Held – Section 537 of Cr.P.C. 1898 was rephrased and reframed as Section 465 Cr.P.C. 1973 whereby scope has been enlarged and sufficient discretion and subjective satisfaction has been given to Court – Therefore, in absence of any failure of justice occasioned to parties, any error, omission/irregularity in complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings under this Code cannot be the usual ground for reversal/ alteration of any finding, sentence or order passed by a Court of competent jurisdiction except as provided u/S 465 Cr.P.C: *Nikunj Shivhare Vs. State of M.P., I.L.R. 2022 M.P. 406*

### **CRIMINAL PROCEDURE CODE, 1973 (2 OF 1974)**

– **Section 2(d) & 378(4)** – Appeal against Acquittal – Jurisdiction of Court – Victim is not required to file appeal u/S 378(4) before High Court – Such appeal lie to the Court to which an appeal ordinarily lies against order of conviction i.e. Court of Session and not High Court – Only in case of complaint defined in Section 2(d) Cr.P.C., where allegations were made orally or in writing to Magistrate, in case of acquittal, appeal shall lie before High Court u/S 378(4) Cr.P.C: *Madhukar Patle Vs. State of M.P., I.L.R. 2022 M.P. \*65*

– **Section 2(l) & 154** – See – Insecticides Act, 1968, Section 29: *Amrutlal Sanghani Vs. State of M.P., I.L.R. 2022 M.P. \*47*

– **Section 20** – See – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act (54 of 2002), Sections 14, 17 & 37: *Rachna Mahawar Vs. The District Magistrate, I.L.R. 2021 M.P. 908 (DB)*

– **Section 36** – Parallel Investigation – Held – During pendency of the investigation, a parallel enquiry by the Senior Police Officer is not permissible: *Radheshyam Kushwah Vs. State of M.P., I.L.R. 2022 M.P. 1461*

– **Section 41 & 41A** – See – Constitution – Article 226: *In reference (Suo Motu) Vs. State of M.P., I.L.R. 2021 M.P. 1337 (DB)*

– **Section 41(1)(b)(ii)** – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 3(1)(r), 3(1)(s), 18 & 18-A: *Anil Patel Vs. State of M.P., I.L.R. 2021 M.P. 746*

– **Sections 41A, 160, 437, 438 & 439** and Constitution – Article 141 – Arrest & Bail – Practice & Procedure – To ensure strict implementation of directions of Apex Court in *Arnesh Kumar*’s case, exhaustive directions issued for Police & District Judiciary – In case of non-compliance, if found after 01-07-2021, Court shall proceed to try the policemen for contempt of Court and Judicial Magistrate be proceeded on the administrative side: *Zarina Begum Vs. State of M.P., I.L.R. 2021 M.P. 1196*

– **Sections 41A, 167, 437, 438 & 439** and Constitution – Article 141 – Personal liberty and Freedom of Individual – Held – Apex Court held that basic principle of bail jurisprudence is “bail and not jail” – Court must remember that presumption is always of innocence and that the denial of bail must be for exceptional reasons, justifiable on facts and circumstances of each case – Personal liberty and freedom of individual, discussed and explained: *Zarina Begum Vs. State of M.P., I.L.R. 2021 M.P. 1196*

– **Section 54-A** – See – Evidence Act, 1872, Section 9: *Rajesh Vs. State of M.P., I.L.R. 2021 M.P. 1910*

– **Section 54-A** – See – Evidence Act, 1872, Section 9: *Ramcharan Vs. State of M.P., I.L.R. 2022 M.P. 549 (DB)*

– **Section 64** – Service of Summons – Held – U/S 64 Cr.P.C., notice is to be served over an adult male member of the family – Applicant specifically submitted that he is unmarried thus, factum of service of summons to his wife by police officers appears to be misplaced: *Shivam Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1810*

– **Section 64** and High Court of Madhya Pradesh Rules, 2008, Chapter XV, Rule 11 – Service of Summons – Held – Rule 11 of 2008 Rules is in respect of service of summons/notice issued in writ jurisdiction because of original nature of litigation and summons/ notice in other cases arising out of Court proceedings of District Court are to be served through the mechanism provided in CPC, Cr.P.C., Civil Court Manual or Criminal Court Manual as the case may be: *Shivam Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1810*



– **Section 64 & 439(2)** – Cancellation of Bail – Service of Summons – Held – Endorsement over envelope/registered AD shows that because of incomplete address, notice could not be served – Summons in respect of application of cancellation of bail was not duly served on applicant/accused – Since his personal liberty was involved, it was imperative that he should have been given a chance to canvass his case – Order of cancellation of bail is recalled – Application for cancellation of bail is restored – Application allowed: *Shivam Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1810*

– **Section 91** – Invocation by Accused pending Investigation – Held – Trial Court permitting the accused to invoke Section 91 during pendency of investigation is impermissible since the process of investigation is unilateral and out of bounds for accused – Impugned order set aside – Application allowed: *Special Police Establishment Vs. Umesh Tiwari, I.L.R. 2022 M.P. 969 (DB)*

– **Section 91** – Object – Discussed and explained: *Special Police Establishment Vs. Umesh Tiwari, I.L.R. 2022 M.P. 969 (DB)*

– **Section 91** – Production of Call Records – Right to Privacy – Held – Calling for production of call details of victim/complainant may breach the right to his privacy but if the same can assist the Court in discovering truth and rendering justice, then Court has to adopt due process of law before invoking Section 91 by affording opportunity of hearing to the person whose right to privacy is likely to be breached: *Special Police Establishment Vs. Umesh Tiwari, I.L.R. 2022 M.P. 969 (DB)*

– **Section 91** – Who can Invoke – Held – Invocation of Section 91 during pendency of investigation remains open for Court, police or victim whereas accused can invoke Section 91 on and after filing of charge-sheet, the stage from which proceedings becomes multilateral bringing to the fore the other stakeholders besides prosecution – Court can also invoke Section 91 suo motu considering necessity and desirability of document to the process of investigation, inquiry, trial or other proceedings: *Special Police Establishment Vs. Umesh Tiwari, I.L.R. 2022 M.P. 969 (DB)*

– **Sections 91, 207 & 482** – Scope – Held – Accused is only entitled to that material which the prosecution relies upon in Court – Accused cannot be entitled to all material or all matter of investigation done by prosecution which does not have a bearing on the case or is not related to accused in any manner whatsoever – Application dismissed: *Pradeep Raghuwanshi Vs. Central Bureau of Investigation, I.L.R. 2022 M.P. 2107 (DB)*

– **Section 97 & 98** – Custody of Minor Children – Illegal/Wrongful Confinement – Held – Children were in custody of mother, a natural guardian, thus no reasons to believe that they were under wrongful confinement or it amounts to an

offence – On application by father/husband, production of minor children (16 years) through search warrant was uncalled for – Impugned order is absolute abuse of process of Court, thus set aside – Petition allowed with cost of Rs. 25,000/- to be paid by husband to petitioner wife: *Jaya Chakravarti Vs. State of M.P., I.L.R. 2021 M.P. 901*

– **Section 97 & 98** – Custody of Minor Children – Principle of Natural Justice – Held – SDM did not issue notice to petitioner/mother and called the children through police, recorded their statement behind the back of petitioner without there being any cross-examination etc. and passed the order – Principle of natural justice not followed by Magistrate: *Jaya Chakravarti Vs. State of M.P., I.L.R. 2021 M.P. 901*

– **Section 97 & 98** – Custody of Minor Children – Statement of Child – Effect – While recording of statements, children stated their willingness to live with father – Allegation of cruelty against mother are vague in nature, no specific instances quoted in their statements about ill-treatment by mother – Children spent most of their time with mother and sometimes do not like the strictness/control of mother, but that cannot be termed as an offence or illegal confinement – Father directed not to force children to live with him, they are free to live with their mother: *Jaya Chakravarti Vs. State of M.P., I.L.R. 2021 M.P. 901*

– **Section 98** – Custody of Minor Male Children – Jurisdiction of Sub-Divisional Magistrate – Held – Provision of Section 98 Cr.P.C. does not apply because it deals with a woman or female child below age of 18 years whereas respondent No. 5 and respondent No. 6 are male children – Impugned order is per se illegal and without jurisdiction: *Jaya Chakravarti Vs. State of M.P., I.L.R. 2021 M.P. 901*

### **SYNOPSIS : Section 125**

- |  |                                     |
|--|-------------------------------------|
| <b>1. Adjustment of Amount</b>         | <b>2. Cruelty</b>                   |
| <b>3. Income of Husband &amp; Wife</b> | <b>4. Production of Salary Slip</b> |

#### **1. Adjustment of Amount**

– **Section 125** – Adjustment of Amount – Held – Apex Court concluded that if applications are filed under different statutes, then while calculating amount of compensation, Court can always adjust and take into consideration the maintenance amount awarded under different Acts: *Farjana (Smt.) Vs. Rashid, I.L.R. 2022 M.P. \*50*

## 2. Cruelty

– **Section 125** – Cruelty – Held – Merely because wife has instituted cases under other provisions of law, it cannot be said to be a cruel act on her part – No Court can restrain a person from filing legally permissible remedies: *Farjana (Smt.) Vs. Rashid, I.L.R. 2022 M.P. \*50*

## 3. Income of Husband & Wife

– **Section 125** – Entitlement – Income of Husband & Wife – Held – Merely because wife is literate and more qualified than husband, merely on the said ground, it cannot be expected that wife must earn her livelihood because it is the prime duty of husband to maintain her wife – Fact of wife living separately without any reasonable cause not established – Maintenance to wife granted from date of application – Application allowed: *Farjana (Smt.) Vs. Rashid, I.L.R. 2022 M.P. \*50*

– **Section 125** – Entitlement – Quantum – Held – Apex Court concluded that if husband is an able bodied person, he cannot run away from liability of making payment of maintenance only on ground of meager salary – Considering price index, requirement of minor child as well as price of goods of daily needs, wife and minor child granted Rs. 5000 pm and Rs. 3000 pm as maintenance from date of application: *Farjana (Smt.) Vs. Rashid, I.L.R. 2022 M.P. \*50*

## 4. Production of Salary Slip

– **Section 125 and Constitution** – Article 20(3) – Production of Salary Slip – Witness against Himself – Held – Present case relates to Section 125 Cr.P.C., husband is not an accused and there is no question of his conviction – Protection granted under Article 20(3) does not apply to husband: *Rashi Gupta (Smt.) Vs. Gaurav Gupta, I.L.R. 2022 M.P. \*57*

– **Section 125 and Constitution** – Article 21 – Production of Salary Slip – Right to Privacy – Held – Wife cannot be held to be a stranger, she is entitled to know salary of husband – Where financial status of parties is one of the relevant consideration for adjudication of quantum of maintenance, then asking husband to produce his salary slip cannot be termed as violation of his privacy – It cannot be said to be depriving husband of his life and personal liberty: *Rashi Gupta (Smt.) Vs. Gaurav Gupta, I.L.R. 2022 M.P. \*57*

● – **Section 145 & 146** – Practice & Procedure – Held – Once proceeding u/ S 145 were already registered and notices were issued to applicants, then no order on administrative side regarding appointment of receiver or seizure of crop could have been made by SDM – If any application is made by any of parties alongwith an

application for urgent hearing, SDM should have taken the same on order sheets and should have passed an order – SDM traveled beyond jurisdiction and dealt the case on administrative side rather on judicial side – Administrative directions quashed: *Rajabeti Sakhwar Vs. Darshanlal Sakhwar, I.L.R. 2021 M.P. 1782*

– **Section 145 & 146** – Procedure & Jurisdiction – Held – During pendency of proceedings u/S 145 Cr.P.C., SDM issued letter on administrative ground without there being any order on judicial side – Proceedings u/S 145 initiated with malafide intention in most arbitrary manner – Seizure memo of mustard crops by police and proceedings either u/S 145 or on the administrative side by SDM is sheer misuse of power and thus set aside – Application allowed with cost of Rs. 20,000/- – SDM directed to ensure return of seized crops to applicant and if crops suffered any loss, he will be personally liable to pay the cost of same to applicant: *Rajabeti Sakhwar Vs. Darshanlal Sakhwar, I.L.R. 2021 M.P. 1782*

### SYNOPSIS : Section 154

- |                             |                             |
|-----------------------------|-----------------------------|
| 1. Alternate Remedy         | 2. Clubbing of FIR          |
| 3. Contents                 | 4. FIR as Dying Declaration |
| 5. Not a Substantive Proof  | 6. Scope/Bar/Quashment      |
| 7. Scope of Judicial Review | 8. Second FIR               |
| 9. Miscellaneous            |                             |

#### 1. Alternate Remedy

– **Section 154, 154(3), 156(3), 190 & 200** and Constitution – Article 226 – Complaint – Remedies – Held – It is already concluded by Courts that in case where FIR is not registered by police, complainant has alternate remedy u/S 154(3) & 156(3) Cr.P.C. or to avail remedy u/S 190 & 200 Cr.P.C. or in exceptions as enumerated by Apex Court to Whirphool case, can file writ petition before High Court – Petitioners failed to demonstrate that their case falls in such exceptions – Registration of FIR cannot be directed – Police directed to consider complaint of petitioners and take appropriate action – Petition disposed: *Rajendra Singh Pawar Vs. State of M.P., I.L.R. 2021 M.P. 289*

– **Sections 154, 156(3), 200 & 482** – Police failed to register cognizable offence of theft – Applicant filed application u/S 156(3) alongwith a complaint u/S 200 Cr.P.C. – Magistrate called for police report and kept complaint case u/S 200 Cr.P.C. in abeyance as unregistered – Several opportunities sought by police to submit report – Neither FIR was registered nor police report was filed – Guiding principle

laid down on cases of simultaneous filing of application u/S 156(3) and complaint u/S 200 Cr.P.C. – Magistrate directed to proceed accordingly: *Om Prakash Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. 984

## 2. Clubbing of FIR

– **Section 154** – Clubbing of FIRs – Held – There can be no straightjacket formula for consolidating or clubbing the FIR and Courts are required to examine the facts of each case: *Pawan Tamrakar (Dr.) Vs. M.P. Special Police Establishment*, I.L.R. 2021 M.P. 1357 (DB)

## 3. Contents

– **Section 154** – Contents of FIR – Held – FIR is not an encyclopedia – Each and every minute detail is not expected in the FIR: *Ahmed Sayeed Vs. State of M.P.*, I.L.R. 2022 M.P. \*24 (DB)

– **Section 154** – FIR – Contents – Held – Every omission is not a contradiction – Minor details which are not indicative in FIR are later on elaborated in Court and which do not in any way introduces a new facet of the case, is not fatal for prosecution – Variation in dehati nalishi/FIR and Court statement are not so grave which makes prosecution evidence brittle and untrustworthy: *Sonu Jain Vs. State of M.P.*, I.L.R. 2021 M.P. 1373 (DB)

## 4. FIR as Dying Declaration

– **Section 154 & 161** and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Held – Case lodged u/S 307 IPC – After 1 year 3 months of incident, victim expired due to Diarrhea (natural death), she expired prior to her evidence before Court – Held – Victim not expired due to injuries sustained in incident, therefore trial Court erred in treating FIR & statement of victim u/S 161 Cr.P.C. as dying declaration – Accused could not get opportunity to cross-examine the victim – No substantive evidence in the case – Conviction set aside – Appeal allowed: *Siroman Singh Vs. State of M.P.*, I.L.R. 2022 M.P. 1777

## 5. Not a Substantive Proof

– **Section 154** – Scope – Held – FIR is not a substantive piece of evidence – Prosecution cannot base its case solely on FIR – It can only be viewed as previous statement for purpose of either corroborating by its maker or for contradicting him: *Siroman Singh Vs. State of M.P.*, I.L.R. 2022 M.P. 1777

## 6. Scope/Bar/Quashment

– **Sections 154, 195 & 482** and Penal Code (45 of 1860), Section 188 – Quashment of FIR – Held – There is no bar u/S 195 Cr.P.C. in respect of registration of FIR for offence u/S 188 IPC – What is barred u/S 195 Cr.P.C. is that after investigation, police officer cannot file a final report in the Court and Court cannot take cognizance on that final report – In instant case, investigation is going on – FIR cannot be quashed – Application dismissed: *Zaid Pathan Vs. State of M.P., I.L.R. 2021 M.P. 152*

– **Section 154 & 195(1)(a)** and Penal Code (45 of 1860), Section 188 – Registration of FIR – Cognizance of Offence – Held – By virtue of Section 195(1)(a) Cr.P.C., power of police to register FIR for offences mentioned therein, is not curtailed but what is curtailed is the jurisdiction of Court to take cognizance of the offence without there being complaint in writing of the concerned public servant – FIR can be registered by police for offence u/S 188 IPC: *Zaid Pathan Vs. State of M.P., I.L.R. 2021 M.P. 152*

– **Section 154 & 482** – Quashment of FIR – Held – Apex Court concluded that power to quash FIR must be exercised very sparingly and with circumspection and that too in rarest of rare case – Court cannot enquire the reliability or genuineness of allegations made in FIR: *Zaid Pathan Vs. State of M.P., I.L.R. 2021 M.P. 152*

## 7. Scope of Judicial Review

– **Section 154 & 482** – FIR – Scope of Judicial Review – Held – Scope of judicial review at the stage of FIR is very limited – Court cannot examine the correctness of allegations – If allegations do not prima facie constitute any offence or make out a case against accused, FIR can be interfered with – Apex Court concluded that FIR can be interfered with if it does not disclose a cognizable offence: *Amrutlal Sanghani Vs. State of M.P., I.L.R. 2022 M.P. \*47*

## 8. Second FIR

– **Section 154** – Second FIR – Held – Second FIR in respect of same offence or different offences committed in course of same transaction is not permissible – Second FIR on basis of receipt of information for same cognizable offence or same occurrence or incident giving rise to one or more cognizable offences is not permissible – Where two incidents took place at different point of time or involve different person or there is no commonality and purpose thereof is different and circumstances are also different then there can be more than one FIR: *Pawan Tamrakar (Dr.) Vs. M.P. Special Police Establishment, I.L.R. 2021 M.P. 1357 (DB)*

## 9. Miscellaneous

– **Section 154** – See – Constitution – Article 226: *Pawan Tamrakar (Dr.) Vs. M.P. Special Police Establishment, I.L.R. 2021 M.P. 1357 (DB)*

– **Section 154** – See – Essential Commodities Act, 1955, Sections 2(A), 3 & 7: *Amrutlal Sanghani Vs. State of M.P., I.L.R. 2022 M.P. \*47*

– **Section 154 & 155** – See – Police Regulations, M.P., Regulation 583 & 634: *Kamta Prasad Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1846*

– **Section 154 & 220** – See – Constitution – Article 226: *Pawan Tamrakar (Dr.) Vs. M.P. Special Police Establishment, I.L.R. 2021 M.P. 1357 (DB)*

– **Section 154 & 482** – See – Food Safety and Standard Act, 2006, Sections 42, 51 & 68: *Rohit Sahu Vs. State of M.P., I.L.R. 2022 M.P. \*58*

● – **Sections 156, 157 & 173** and Penal Code (45 of 1860), Section 304-B & 498-A/34 – Delay in Investigation – Duties of Investigation Officer – Held – Police authorities on receipt of information of cognizable offence has to conclude investigation without any delay and submit report to concerned Magistrate – They are duty bound to follow prescribed procedure without any undue delay – FIR registered on 30.01.2021 and investigation not completed yet – Authorities directed to conclude investigation and produce report before Magistrate at the earliest – Petition disposed: *Indal Singh Vs. State of M.P., I.L.R. 2021 M.P. 890*

### SYNOPSIS : Section 156(3)

- |                                      |                                  |
|--------------------------------------|----------------------------------|
| 1. <b>Calling Report from Police</b> | 2. <b>Delay in Investigation</b> |
| 3. <b>Duty/Power of Magistrate</b>   | 4. <b>Police Closure Report</b>  |
| 5. <b>Scope &amp; Jurisdiction</b>   |                                  |

### 1. Calling Report from Police

– **Section 156(3)** – Calling Report from Police & Registration of FIR – Held – On application u/S 156(3), whenever Magistrate seeks report from police station, it necessarily means that if application reveals commission of cognizable offence and no offence is yet registered, then police is obliged to register offence and thereafter submit report – In such case, direction to register cognizable offence ought to be treated to be implicit in order to Magistrate calling for report: *Om Prakash Sharma Vs. State of M.P., I.L.R. 2021 M.P. 984*

## 2. Delay in Investigation

– **Section 156(3)** – Delay in Investigation – Remedy – Held – In case of delay/improper investigation, petitioner is having remedy to approach concerning Magistrate u/S 156(3) by filing appropriate application – Petitioner praying arrest of accused persons and providing him protection as he is a witness – Such relief cannot be granted to petitioner – He may file application before concerning Magistrate: *Indal Singh Vs. State of M.P., I.L.R. 2021 M.P. 890*

– **Section 156(3)** and Constitution – Article 14 – Investigation – Delay & Uncertainty – Held – On being asked by Magistrate to submit report, if police delays the investigation, it ultimately leads to arbitrariness in functioning of State which directly offends Article 14 of Constitution – Right of victim to seek justice cannot be sacrificed at the alter of omissions, commissions and inaction of investigating agency: *Om Prakash Sharma Vs. State of M.P., I.L.R. 2021 M.P. 984*

– **Sections 156(3), 167 & 173** – Conclusion of Investigation – Reasonable Time – Held – If not in express term but impliedly it can be gathered that law-makers prescribed a maximum period of 60/90 days within which police is expected to complete investigation starting from stage of Section 154 to Section 169 or Section 173 Cr.P.C.: *Om Prakash Sharma Vs. State of M.P., I.L.R. 2021 M.P. 984*

## 3. Duty/Power of Magistrate

– **Section 156(3)** – Investigation – Role/Duty of Magistrate – Scope – Held – Magistrate vested with limited role of supervision, to be sparingly exercised on occasion where police either fails to register FIR or conducts investigation in improper manner – It is incumbent upon Magistrate u/S 156(3) to not only direct for registration of cognizable offence wherever it is found to be not registered by police but also to ensure that investigation is fair, expeditious and without prejudice: *Om Prakash Sharma Vs. State of M.P., I.L.R. 2021 M.P. 984*

– **Section 156(3)** and Mines and Minerals (Development and Regulation) Act (67 of 1957), Section 22 – Suo Motu Power of Magistrate – Cognizance of Offence – Held – U/S 156(3) Cr.P.C., Magistrate can direct/order the police to lodge FIR even for offences under the Act of 1957 and Rules made thereunder and at this stage, bar u/S 22 of Act of 1957 shall not be attracted – It will only be attracted when Magistrate takes cognizance of the offence under the Act and Rules made thereunder: *Jayant Vs. State of M.P., I.L.R. 2021 M.P. 175 (SC)*

– **Sections 156(3), 200 & 210** – Non-Registration of Cognizable Offence or Improper/Delayed Investigation – Duties & Functions of Magistrate – Held – In case police fails to submit report within 60/90 days or any longer period of time



statutorily prescribed, Magistrate shall proceed with complaint u/S 200 Cr.P.C. in accordance with Chapter XV & XVI Cr.P.C. notwithstanding the bar u/S 210 Cr.P.C. – Factors to be considered, enumerated – Guidelines laid down: *Om Prakash Sharma Vs. State of M.P., I.L.R. 2021 M.P. 984*

#### 4. Police Closure Report

– **Section 156(3) & 173 (3)** – Police Closure Report – Jurisdiction of Magistrate – Held – Order rejecting the closure report must be a speaking order and should contain and indicate shortcoming of investigation including suggestions and guidelines with regard to further investigation – Merely saying that *prima facie* there is suspicion of commission of offence is not sufficient to reject the closure report – Impugned order set aside – Matter sent back to Special Judge to pass a speaking order – Application disposed: *Bhupendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 764 (DB)*

– **Section 156(3) & 173(3)** and Prevention of Corruption Act (49 of 1988), Sections 13(1)(e), 13(2) & 19 – Police Closure Report – Sanction for Prosecution – Jurisdiction of Magistrate – Held – If investigation agency files closure report, Magistrate or Special Judge has jurisdiction to accept it or reject it and if material is not sufficient and further investigation is desirable, investigation agency can be directed to make further investigation or complainant may be directed to produce material in support of complaint – If magistrate/Special Judge is of opinion that cognizance can be taken but if there is need of sanction order for prosecution then cognizance cannot be taken and matter would be left on investigation agency for getting sanction for prosecution – Special Judge has not committed any jurisdictional error: *Bhupendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 764 (DB)*

#### 5. Scope & Jurisdiction

– **Section 156(3)** – Fabricated Caste Certificate – Held – It is only the High Power Committee which can come to a finding regarding both its genuineness and/or the propriety of the caste certificate issued – It would have been another thing if CJM has relied upon a final order passed by High Power Committee giving its opinion on caste certificate issued to petitioner but that not being the case in hand, impugned order directing registration of FIR against petitioner is not sustainable in eyes of law – Impugned order quashed – Petition disposed: *Laxmi Giri Goswami Vs. State of M.P., I.L.R. 2022 M.P. 1322*

– **Section 156(3)** – Word “May” – Held – Use of expression “may” reveals the intention of legislature to vest discretionary power upon Magistrate to either direct for investigation or to refuse from doing so: *Om Prakash Sharma Vs. State of M.P., I.L.R. 2021 M.P. 984*

– **Section 156(3)** and Mines and Minerals (Development and Regulation) Act (67 of 1957), Section 4/21 & 22 – Cognizance of Offence – Written Complaint by Authorised Officer – Held – For offence under IPC, Magistrate can take cognizance without awaiting for any written complaint by authorized officer – In respect of offence under the Act of 1957 and Rules made thereunder, when Magistrate directs the police u/S 156(3) Cr.P.C. to investigate the matter and submit a report, then such report can be sent to concerned Magistrate as well as authorized officer and thereafter authorized officer may file a complaint before Magistrate and then it will be open for Magistrate to take cognizance: *Jayant Vs. State of M.P., I.L.R. 2021 M.P. 175 (SC)*

● – **Section 157** – Compliance – Held – In present case, there is no delay in filing the FIR, therefore mere non-compliance of Section 157 is of no consequence: *Dheeraj Gupta Vs. State of M.P., I.L.R. 2022 M.P. \*62 (DB)*

– **Section 157** – Delayed Compliance – Held – Although FIR was dispatched belatedly, but Court had concluded that FIR was lodged promptly and investigation also started immediately after lodging of FIR – Delay in dispatching copy of FIR to Magistrate would be a mere irregularity without adversely effecting the authenticity of prosecution case: *Ahmed Sayeed Vs. State of M.P., I.L.R. 2022 M.P. \*24 (DB)*

– **Section 161** – Delay in Recording Statement – Held – Merely on ground of delay in recording police statement, the entire prosecution story cannot be disbelieved: *Dheeraj Gupta Vs. State of M.P., I.L.R. 2022 M.P. \*62 (DB)*

– **Section 161** – See – Evidence Act, 1872, Section 32: *Vinod Kumar Vs. State of M.P., I.L.R. 2022 M.P. 1584*

– **Section 161** – See – Evidence Act, 1872, Section 145: *In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath, I.L.R. 2022 M.P. 722 (DB)*

– **Section 161** – Statement of Witnesses – Delay – Held – Apex Court concluded that delay in recording of statements of witnesses although they were or could be available for examination when IO visited scene of occurrence or soon thereafter, would cast a doubt upon prosecution – In present case, statements recorded after 2 months of lodging FIR – No explanation by prosecution for such inordinate delay: *Arvind Singh Gurjar Vs. State of M.P., I.L.R. 2022 M.P. \*78 (DB)*

– **Section 161 & 162** – See – Penal Code, 1860, Section 302: *Devkaran Vs. State of M.P., I.L.R. 2021 M.P. 1920 (DB)*

– **Section 161 & 482** – See – Excise Act, M.P., 1915, Section 34(2): *Nikunj Shivhare Vs. State of M.P., I.L.R. 2022 M.P. 406*

**SYNOPSIS : Section 167**

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|--------------------------------|---|
| <b>1. Challan - Limitation</b> | <b>2. Default Bail – Duty of Magistrate</b> |
| <b>3. Extension of Remand</b>  | <b>4. Illegal Detention</b>                 |
| <b>5. Revision</b>             | <b>6. Scope &amp; Jurisdiction</b>          |

**1. Challan - Limitation**

– **Section 167(2)** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 8(b)/20(a)(i) – Filing of Challan – Limitation – Held – Offence is punishable by imprisonment upto 10 years and not minimum period of 10 years or death or life imprisonment – Limitation will be 60 days and not 90 or 180 days – Challan not filed within limitation period of 60 days – Subsequent filing of challan on same date of filing of application u/S 167(2) Cr.P.C. will not fortify the right of accused – Trial Court erred in rejecting the application – Bail granted – Revision allowed: *Raja Bhaiya Singh Vs. State of M.P., I.L.R. 2021 M.P. 119*

– **Section 167(2), Proviso (a)** – Filing of Challan – Computation of Period – Held – Apex Court concluded that period of 90 days/60 days under proviso (a) begins to run only from date of order of remand and not from date of arrest – “One day” will be complete on the next day of remand – The day accused was remanded to judicial custody should be excluded and the day challan is filed in Court, should be included – Period of temporary bail shall be excluded in computation of period – Last date, if it is Sunday or Holiday will also be counted: *Raja Bhaiya Singh Vs. State of M.P., I.L.R. 2021 M.P. 119*

– **Section 167(2)(a)(i) & 167(2)(a)(ii)** and Penal Code (45 of 1860), Section 467 – Default Bail – Period for Filing Charge-sheet – Held – As per Section 167(2)(a)(i) Cr.P.C., the period of filing charge-sheet where the offence is punishable with life imprisonment and any lower sentence would be 90 days – Where minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and accused will be entitled for “default bail” after 60 days in case charge-sheet is not filed: *State of M.P. Vs. Sanjay, I.L.R. 2022 M.P. 708*

– **Section 167(2)(a)(i) & 167(2)(a)(ii)** and Penal Code (45 of 1860), Section 467 – Default Bail – Since maximum sentence provided u/S 467 IPC is life imprisonment, regardless that minimum sentence is less than 10 years, the period of filing charge-sheet is 90 days – Prosecution filed challan within 72 days – Trial Court erred in granting “default bail” – Impugned order set aside – Revision allowed: *State of M.P. Vs. Sanjay, I.L.R. 2022 M.P. 708*

– **Section 167(2)(a)(ii)** and Penal Code (45 of 1860), Section 467 – Default Bail – Period for Filing of Charge-Sheet – Held – Period of filing of charge-sheet in a case where offence is punishable with life imprisonment and any lower sentence, would be 90 days – Where minimum sentence is less than 10 years but maximum sentence is not death or life imprisonment and if charge-sheet is not filed within 60 days, Section 167(2)(a)(ii) will apply and accused will be entitled for default bail: *Nitin Khandelwal Vs. State of M.P., I.L.R. 2021 M.P. 1178*

## 2. Default Bail – Duty of Magistrate

– **Section 167(2)** – Application for Default Bail – Duty of Magistrate – Held – After expiry of period of 60/90 days, even if any formal application is not filed by accused claiming default bail, it is duty of Magistrate to ask the accused if he wants to exercise his right to get bail and if he exercises his right, then he shall be granted bail, otherwise he can remain in custody: *Nitin Khandelwal Vs. State of M.P., I.L.R. 2021 M.P. 1178*

– **Section 167(2)** – Filing of Challan – Right of Default Bail – Held – Right of default bail u/S 167(2) Cr.P.C. cannot be curtailed by subsequent filing of challan even on the same date: *Raja Bhaiya Singh Vs. State of M.P., I.L.R. 2021 M.P. 119*

– **Section 167(2)(a)(ii)** and Penal Code (45 of 1860), Section 467 – Default Bail – Held – Offence punishable with maximum life imprisonment – Charge-sheet was admittedly filed after 90 days from arrest, petitioners held entitled to be released on default bail u/S 167(2)(a)(i): *Nitin Khandelwal Vs. State of M.P., I.L.R. 2021 M.P. 1178*

## 3. Extension of Remand

– **Section 167** – Extension of Remand – Power of Magistrate – Held – Even in absence of an application or request by Investigating Officer seeking further remand, Magistrate can grant further remand of accused u/S 167 Cr.P.C: *Manoj Yadav Vs. State of M.P., I.L.R. 2021 M.P. 777*

## 4. Illegal Detention

– **Section 167** and Constitution – Article 21 – Illegal Detention/Custody – Personal Liberty – Habeas Corpus – Held – Apex Court concluded that detaining a person without there being a valid order of remand is considered to be illegal detention and is contrary to the personal liberty guaranteed by Constitution under Article 21 and as such, direction for release can be granted but Writ of habeas corpus is the only remedy in such cases: *Manoj Yadav Vs. State of M.P., I.L.R. 2021 M.P. 777*

– **Section 167(1) & 167(2)** – Illegal Detention/Custody – Grant of Bail – Power of Magistrate – Held – Though right to be released accrues in favour of applicant if he is found to be in illegal detention but application u/S 167(1) Cr.P.C. is not proper remedy for claiming bail from Magistrate – Power can be exercised by Magistrate only u/S 167(2) Cr.P.C. in case of default of not filing charge sheet within prescribed limit of 90 days – Court below rightly dismissed application of bail filed u/S 167(1) as Court do not have power to do so – Application dismissed: *Manoj Yadav Vs. State of M.P., I.L.R. 2021 M.P. 777*

## 5. Revision

– **Section 167 (2) & 397** – Maintainability of Revision – Held – Order on application u/S 167(2) for default bail is not an interlocutory order because it decides the valuable right of accused for default bail – Revision is maintainable: *Raja Bhaiya Singh Vs. State of M.P., I.L.R. 2021 M.P. 119*

## 6. Scope & Jurisdiction

– **Section 167(2)** – Filing of Challan – Covid Pandemic – Extension of Time – Applicability – Held – The order dated 23.03.2020 of Supreme Court related to extension of time limit was not applicable for filing of challan within 60 days or 90 days as prescribed under Cr.P.C: *Raja Bhaiya Singh Vs. State of M.P., I.L.R. 2021 M.P. 119*

- – **Section 173(8)** – Further Investigation – Grounds – Held – Where the investigating officer has deliberately conducted a faulty investigation and certain lapses were left deliberately, a direction for further investigation can be given – Courts cannot become a part of illegality committed by investigating officer, by refusing to grant permission for further investigation: *State of M.P. Vs. Anil Sharma, I.L.R. 2021 M.P. 1755*

– **Section 173(8)** – Further Investigation – Power of Police – Held – Fair investigation is the basic requirement of criminal law – Fair trial and fair investigation is also a fundamental right of victim – Even if charge-sheet has already been filed, but still prosecution can conduct further investigation – Police is always having a power to conduct further examination which was totally ignored by trial Court – Impugned order set aside – Application by prosecution u/S 173(8) Cr.P.C. allowed – Application allowed: *State of M.P. Vs. Anil Sharma, I.L.R. 2021 M.P. 1755*

– **Section 173(8) & 311** – Recall of Witness – Held – On further investigation, if any further examination of prosecution witness is required, trial Court shall suo motu recall them by exercising its power u/S 311 Cr.P.C: *State of M.P. Vs. Anil Sharma, I.L.R. 2021 M.P. 1755*

– **Section 173(8) & 482** – Further Investigation – Held – Even after the charge-sheet is filed, High Court in exercise of its power u/S 482 Cr.P.C. can always direct for further investigation: *State of M.P. Vs. Anil Sharma, I.L.R. 2021 M.P. 1755*

– **Sections 194, 381(1) & 400** – See – Arbitration and Conciliation Act, 1996, Sections 2(1)(e), 9, 14, 34 & 36: *Yashwardhan Raghuwanshi Vs. District & Sessions Judge, I.L.R. 2021 M.P. 655 (DB)*

– **Section 195 & 200** – Complaint – Maintainability – Held – It is a case of filing of a forged document before Court which was not manipulated while it was in custodia legis, therefore bar contained u/S 195 Cr.P.C. not applicable – FIR or complaint u/S 200 Cr.P.C. is maintainable – Impugned order set aside – Matter remanded back to trial Court – Application allowed: *Kailash Vs. Arjun Singh, I.L.R. 2022 M.P. 1660*

– **Section 195 & 340** – Preliminary Enquiry – Held – By proceeding u/S 340 Cr.P.C., Court does not record guilt of accused, but it is merely a prima facie opinion that it is expedient in interest of justice that an inquiry should be made into the alleged offence – Where Court is otherwise in a position to form an opinion regarding making of complaint, then Court may dispense with preliminary inquiry: *Manmohan Singh Vs. State of M.P., I.L.R. 2022 M.P. \*88*

– **Sections 195(1)(b), 340 & 482** and Penal Code (45 of 1860), Section 193 & 196 – Enquiry & Prosecution – Grounds – Held – Respondent, in earlier litigation, produced certified copy of document, certified by labour officer, having specified document number – No forged document produced by respondents – Petitioner and his son themselves are absconders and have filed an incomplete document in present case – No prima facie case against respondents – Application dismissed: *Pradeep Kumar Arya Vs. State of M.P., I.L.R. 2022 M.P. \*13*

– **Section 195(1)(b)(i) & 340** – Prosecution – Grounds – Held – Apex Court has concluded that prosecution should be ordered u/S 340 r/w Section 195(1)(b)(i) Cr.P.C. when it is considered expedient in interest of justice to punish the delinquent and there must be prima facie case of deliberate falsehood on the matter of substance and Court should be satisfied that there is a reasonable foundation for the charge: *Pradeep Kumar Arya Vs. State of M.P., I.L.R. 2022 M.P. \*13*

– **Section 197** – Sanction – Intent of Legislature – Aims & Objects – Held – Object of Section 197 Cr.P.C. is to save officials from vexatious proceedings against judges, magistrates and public servant and to protect them from needless harassment and to provide them protection so that they may perform public duty honestly and to the best of their abilities because threat of prosecution demoralizes honest officers: *J.B.S. Chandel Vs. State of M.P., I.L.R. 2022 M.P. 1074*

– **Section 197** – Scope – Held – Provision of Section 197 Cr.P.C. is mandatory requirement to initiate prosecution against a public servant if it is found that alleged act was performed by him while discharging his official duties – Even if alleged offence committed by public servant, is in excess of his powers or found illegal, then also, the umbrella provided u/S 197 Cr.P.C. will be available to him: *J.B.S. Chandel Vs. State of M.P., I.L.R. 2022 M.P. 1074*

– **Section 197 & 482** – Sanction – Encounter by Police – Nexus – Held – Deceased was convicted for life imprisonment for offence u/S 302 and was otherwise having record of 36 cases of heinous crimes, was released on parole – He did not surrender back and was declared proclaimed absconder – Police in discharge of their official duties was trying to arrest him – Required nexus fully established – Compliance u/S 197 Cr.P.C. before taking cognizance was mandatory – Proceedings set aside – *Application allowed: J.B.S. Chandel Vs. State of M.P., I.L.R. 2022 M.P. 1074*

– **Section 200 & 202** – Enquiry – Scope – Held – Enquiry u/S 202 Cr.P.C. is of a limited nature to find out as to whether there is a prima facie case to issue process against the person accused of the offence or not – Evidence is not required to be meticulously appreciated – Revisional Court exceeded its jurisdiction by meticulously appreciating the evidence/material available on record – Impugned order quashed – Complaint restored – Revision allowed: *Snehlata (Smt.) Vs. Vireshwar Singh, I.L.R. 2022 M.P. \*72*

– **Section 200 & 203** – Delay – Held – When cognizance is not barred by limitation, complaint cannot be dismissed u/S 203 Cr.P.C. on ground that it was filed belatedly – If Court after recording evidence, concludes that plausible explanation for delay has been given, then the delay in filing complaint would be of no importance: *Snehlata (Smt.) Vs. Vireshwar Singh, I.L.R. 2022 M.P. \*72*

– **Section 200 & 340** and Penal Code (45 of 1860), Section 193 & 196 – Filing Fabricated Document before Court – Held – Fabricated affidavit filed before this Court – Applicants also stated false facts and used fabricated affidavit as genuine document – Registrar General directed to initiate proceedings u/S 340 Cr.P.C. for offence u/S 193 & 196 IPC and if found prima facie guilty, complaint be filed u/S 200 Cr.P.C. on behalf of High Court: *Surajmal Vs. State of M.P., I.L.R. 2021 M.P. 135*

– **Section 216** – Fair Trial – Held – It is compulsory for Court to check that no prejudice is caused to accused and he is allowed to have a fair trial – Accused must always be made aware of the charges framed against him so that he can properly lead his evidence: *Rakesh Kushwaha Vs. State of M.P., I.L.R. 2022 M.P. \*2 (DB)*

– **Section 217** – Additional Charges – Held – Trial Court ignored the mandatory provision of Section 217 Cr.P.C. by not giving the accused an opportunity

to further cross-examine the prosecution witnesses with reference to additional charges framed – Trial Court has not recorded any reason in writing for not recalling the prosecution witnesses for additional charges framed – Impugned judgment set aside – Matter remanded back to trial Court – Appeal disposed: *Rakesh Kushwaha Vs. State of M.P., I.L.R. 2022 M.P. \*2 (DB)*

### **SYNOPSIS : Section 227 & 228**

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|-----------------------------------|------------------------------------|
| <b>1. Defence of Accused</b>      | <b>2. Factors to be Considered</b> |
| <b>3. Revisional Jurisdiction</b> | <b>4. Scope of Enquiry</b>         |
| <b>5. Miscellaneous</b>           |                                    |

#### **1. Defence of Accused**

– **Section 227 & 228**, Penal Code (45 of 1860), Section 354 & 354(D) and Protection of Children from Sexual Offences Act, (32 of 2012)(POCSO), Section 9(1)(m)/10 – Framing of Charge – Grounds – Held – Grounds of false implication due to previous enmity because of neighbourhood disputes are matter of evidence which can be availed by accused at the time of his defence in trial – No illegality or infirmity in order framing charge against applicant – Revision dismissed: *Himanshu Gandhi Vs. State of M.P., I.L.R. 2022 M.P. 1487*

#### **2. Factors to be Considered**

– **Section 227 & 228** – Framing of Charge – Factors to be Considered – Held – At the time of framing of charge, Court is not to examine and assess meticulously the material placed by prosecution nor to consider the sufficiency of materials to establish offence against accused – Only prima facie case is to be seen – Probative value of material on record cannot be gone into – Whether the case is beyond reasonable doubt is not to be seen: *Himanshu Gandhi Vs. State of M.P., I.L.R. 2022 M.P. 1487*

– **Section 228** – Framing of Charge – Considerations – Held – At the time of framing charges, meticulous appreciation of evidence is not required, strong suspicion is sufficient – Court has to prima facie consider whether there is sufficient ground to proceed against accused – At this stage, Court is not required to appreciate the evidence to conclude whether such material is sufficient or not to convict the accused: *Naresh Vs. State of M.P., I.L.R. 2022 M.P. 716*

#### **3. Revisional Jurisdiction**

– **Section 228** – Framing of Charge – Revisional Jurisdiction – Held –



Revisional jurisdiction does not empower the Court to intervene at an interlocutory stage – At the stage of framing of charge it is only to be seen that whether there exist any prima facie case – Material and quality of evidence cannot be gone into: *Naresh Vs. State of M.P., I.L.R. 2022 M.P. 716*

#### 4. Scope of Enquiry

– **Section 227 & 228** – Scope of Enquiry – Held – Roving and detailed enquiry at the stage of framing of charge is not permissible: *Balkrishna Devda Vs. State of M.P., I.L.R. 2022 M.P. 952*

#### 5. Miscellaneous

– **Section 227** – See – Penal Code, 1860, Section 498-A: *Abhishek Pandey @ Ramji Pandey Vs. State of M.P., I.L.R. 2021 M.P. 1960*

– **Section 227 & 228** – See – Penal Code, 1860, Sections 498-A, 294, 323/34 & 506 (Part II): *Balkrishna Devda Vs. State of M.P., I.L.R. 2022 M.P. 952*

– **Section 228** – See – Penal Code, 1860, Section 306: *Naresh Vs. State of M.P., I.L.R. 2022 M.P. 716*

● – **Section 230 & 231** – Prosecution Evidence & Cross-examination – Expeditious Trial – Held – If trial Court has proceeded expeditiously by examining the witnesses on the date so fixed, no fault can be found on part of trial Court – No objection raised by counsel for accused that witnesses are appearing on their first date of appearance, therefore he is not in a position to cross-examine them effectively – No application of recall of witness filed by accused on ground that certain questions could not be put to them as the evidence is being recorded expeditiously – Objection rejected: *State of M.P. Vs. Nandu @ Nandkishore Gupta, I.L.R. 2021 M.P. 2122 (DB)*

– **Sections 233, 234 & 273** – Fair opportunity to Accused – Held – Evidence of PW-15 & PW-16 recorded in absence of accused – Procedures adopted by trial Court certainly prejudiced the accused – Matter remanded back to trial Court to record evidence of above witnesses afresh in presence of accused and proceed further from stage of filing of DNA report – Accused shall be granted opportunity to file written objection/lead evidence in defence to DNA report and if application for cross-examination of Scientific Officer is filed, same shall be decided – After following provisions of Section 233 Cr.P.C., case be fixed for final hearing giving atleast one week time to prepare and argue the case – Impugned judgment set aside – Reference & appeal disposed: *State of M.P. Vs. Nandu @ Nandkishore Gupta, I.L.R. 2021 M.P. 2122 (DB)*

– **Section 234** – Final Arguments – Held – Final argument is Final Sum up of the case – Court must give patient hearing to both parties, so that they can effectively present their case – Order rejecting the objection to DNA report and fixing the case for final arguments on the same day and hearing the final arguments on same day is held to be bad in law – DNA report be exhibited afresh after deciding the objections or after examining the Scientific Officer: *State of M.P. Vs. Nandu @ Nandkishore Gupta, I.L.R. 2021 M.P. 2122 (DB)*

– **Section 235(2)** – Question of Sentence – Opportunity of Hearing – Held – Appellant convicted on 16.09.2020 and on same day after hearing the counsel, awarded death sentence – No sufficient opportunity given to appellant for placing relevant mitigating circumstances supported by affidavit – Age of appellant is 25 years, trial Court has not considered alternative punishment and there is no any finding that in absence of death sentence, he would continue to be a threat to society – Sentence modified to life imprisonment till natural death and he will not be entitled for any remission – Appeal partly allowed: *In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath, I.L.R. 2022 M.P. 722 (DB)*

– **Section 235(2)** – Question of Sentence – Opportunity of Hearing – Held – Appellants must be afforded adequate and sufficient opportunity to place all relevant materials on record while arguing before appellate Court on question of sentence – Adequate hearing on sentencing has been given to appellants at appellate stage as well: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Section 235(2)** – Question of Sentence – Opportunity of Hearing – Held – No opportunity of effective hearing on the question of sentence as required u/S 235(2) Cr.P.C. was given to accused – No suggestion was given to accused that Court is intending to award death sentence so as to give opportunity to accused to argue in light of “Aggravating” and “Mitigating circumstances” – Even trial Court has not considered the “Mitigating” circumstances – Sentence modified to life imprisonment till natural death – Appeal partly allowed: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

– **Section 256** – Absence of Complainant – Dismissal of Case – Held – In complaint case, matter was fixed for consideration of compromise application – Person whom hurt has been caused can compound the offence u/S 323 IPC without permission of Court – On singular absence of complainant, Court ought to have adjourn the case instead of dismissing it and acquitting accused persons – It was obligatory for Magistrate to decide the compromise application – Trial Court has not exercised its discretion properly and judicially – Impugned order set aside – Appeal allowed: *Mohd. Irfan Qureshi Vs. Nayeem Khan, I.L.R. 2022 M.P. \*68*

– **Section 273** – Evidence in Presence of Accused – Held – Accused was in jail and was not produced by prosecution, thus there was no question of disturbing the proceedings in Court – Any Undertaking or No Objection given by counsel for accused without instructions of accused cannot be said to be given on behalf of accused and it would not bind him – He was not responsible for his absence but it was the prosecution who failed to keep him present in Court – Case remanded back to record evidence of PW-15 & PW-16 in presence of accused: *State of M.P. Vs. Nandu @ Nandkishore Gupta, I.L.R. 2021 M.P. 2122 (DB)*

– **Section 273** – Evidence of Complainant in absence of Accused – Held – Appellants in their application gave an undertaking that their counsel will cross-examine the witness in their absence – Trial Court mentioned in the order that counsel expressed no objection regarding identification of accused persons nor they dispute the same, thus examination of complainant in absence of appellants cannot be said to be violative of Section 273 Cr.P.C.: *Rajesh Vs. State of M.P., I.L.R. 2021 M.P. 1910*

– **Section 273 & 317** – Absence of Accused during Evidence – Held – If personal attendance of accused has been dispensed with, then the evidence in presence of his pleader can be taken on any condition which may be imposed by the Court: *Rajesh Vs. State of M.P., I.L.R. 2021 M.P. 1910*

– **Section 293** – Deposition of Scientific Expert – Held – Apex Court concluded that in view of Section 293, it is not obligatory that an expert who furnished his opinion on scientific issue should be necessarily made party to depose in proceedings before Court: *Arun Kumar Dey Vs. State of M.P. through Special Police Establishment, I.L.R. 2022 M.P. \*16 (DB)*

– **Section 307** – See – Penal Code, 1860, Sections 302, 364 & 201: *Sanjay Vs. State of M.P., I.L.R. 2022 M.P. 1795 (DB)*

– **Section 311** – Recall of Witness – Grounds – Held – Application contains irrelevant, vague and ambiguous averments and it does not contain sufficient pleadings and reasons on strength of which powers u/S 311 Cr.P.C. could have been exercised – Party seeking attendance of new witness needs to plead with accuracy and precision – Applicant failed to establish as to why Scientific Officer needs to be summoned – Application dismissed: *Arun Kumar Dey Vs. State of M.P. through Special Police Establishment, I.L.R. 2022 M.P. \*16 (DB)*

– **Section 311** – Recall of Witness – Scope – Held – Power flowing from second part of Section 311 cannot be exercised on mere asking – Merely because it is pleaded that “in the interest of justice” and “for lawful adjudication of matter”, scientific expert should be summoned, it was not obligatory on part of Special Judge to summon the said witness unless the requirement is established with accuracy and

precision: *Arun Kumar Dey Vs. State of M.P. through Special Police Establishment, I.L.R. 2022 M.P. \*16 (DB)*

### **SYNOPSIS : Section 313**

- |                               |                              |
|-------------------------------|------------------------------|
| <b>1. Additional Evidence</b> | <b>2. Adverse Inference</b>  |
| <b>3. Burden of Proof</b>     | <b>4. Defence of Accused</b> |
| <b>5. Questionnaire</b>       | <b>6. Miscellaneous</b>      |

#### **1. Additional Evidence**

– **Section 313 & 367** – Additional Evidence – Grounds – Held – In statements u/S 313 Cr.P.C., appellants have not stated that they were elsewhere and not present at the spot of incident – They could have proved their defence by examining network company’s officer to prove their alibi, which was not done by them – Prosecution has already exhibited still photo prints – No case for leading additional evidence in respect of mobile location and video footage made out – Application u/S 367 Cr.P.C. rejected: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

#### **2. Adverse Inference**

– **Section 313** – Adverse Inference – Held – Apex Court concluded that when accused gives evasive answer in his cross examination, an adverse inference can be drawn against him – Appellants in statement u/S 313 Cr.P.C. has not given any explanation or clarification for any of the circumstances – Most of the answers have been given as “do not know” – Adverse inference can be drawn: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

#### **3. Burden of Proof**

– **Section 313** and Evidence Act (1 of 1872), Section 106 – Burden of Proof – Held – Appellant neither in his statement u/S 313 Cr.P.C. nor anywhere gave explanation as to when, where and how he parted the company of deceased – As he fails to offer any explanation on basis of facts within his special knowledge, he fails to discharge the burden cast upon him u/S 106 of Evidence Act: *Sanjay Vs. State of M.P., I.L.R. 2022 M.P. 1795 (DB)*

#### **4. Defence of Accused**

– **Section 313** – Defence of Accused – Considerations – Held – Apex Court concluded that it is necessary for trial Court to deal with a parallel hypotheses set up by accused – Trial Court has not even fleetingly dealt with the version put forth by appellant in his statement u/S 313 Cr.P.C. – Factors to be considered by the trial

Court, discussed & explained: *Chandresh Maraskole Vs. State of M.P., I.L.R. 2022 M.P. 1594 (DB)*

## 5. Questionnaire

– **Section 313** – Questionnaire – Held – If a circumstance is not put to accused in his statement u/S 313 CrPC, then it has to be excluded from consideration – If no prejudice is caused to accused then non putting of that circumstance u/S 313 may not have any adverse effect but otherwise if a circumstance is not put to the accused in his statement u/S 313 then the said circumstance cannot be considered against him: *Rambabu Vs. State of M.P., I.L.R. 2022 M.P. 1234 (DB)*

## 6. Miscellaneous

– **Section 313** – See – Penal Code, 1860, Section 143 & 494: *Kailash Vs. Gordhan, I.L.R. 2022 M.P. 1920*

– **Section 313** – See – Penal Code, 1860, Section 302: *Sitaram Vs. State of M.P., I.L.R. 2022 M.P. \*14 (DB)*

● – **Section 317 & 273** – Presence of Accused – Held – Only when an application u/S 317 is filed and a statement made by accused that his presence through his counsel may be accepted and he don't have any objection regarding question of identity or recording of evidence of witness in his absence, then the effect of such declaration can be considered – In present case, accused was in jail, thus provisions of Section 317 are not applicable: *State of M.P. Vs. Nandu @ Nandkishore Gupta, I.L.R. 2021 M.P. 2122 (DB)*

– **Section 319** – Despite name in FIR, applicant was not chargesheeted by police – Held – Applicant cited as mastermind in FIR, his active role specifically mentioned in statements u/S 161 Cr.P.C. and also alleged in evidence recorded in trial – Degree of satisfaction of IO with regard to plea of alibi of applicant recorded in a parallel enquiry conducted by CSP during pendency of investigation, is not sufficient to hold that applicant was not present on spot of incident – Applicant rightly summoned u/S 319 Cr.P.C. – Revision dismissed: *Radheshyam Kushwah Vs. State of M.P., I.L.R. 2022 M.P. 1461*

– **Section 319** – See – Negotiable Instruments Act, 1881, Section 138 & 141: *Mahesh Singh Jadon Vs. Shri Radha Sharan Dubey, I.L.R. 2022 M.P. 1969*

## SYNOPSIS : Section 320

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|--|---|
| <p><b>1. Heinous Offence</b></p> <p><b>3. Scope &amp; Jurisdiction</b></p> | <p><b>2. Non-Compoundable Offence</b></p> |
|--|---|

### 1. Heinous Offence

– **Section 320 & 482** and Penal Code (45 of 1860), Sections 498-A, 307 & 34 – Compounding of Offence – Ground – Compromise application filed by parties – Held – Apex Court concluded that offence u/S 307 IPC falls in category of heinous and serious offences – Such offences are not private in nature and have a serious impact on society – Allegations in present case is serious in nature and offence u/S 307, 498-A & 34 IPC are non-compoundable u/S 320 Cr.P.C., it would not be appropriate to quash the FIR – Trial Court directed to continue the trial – Application dismissed: *Dharmpal Singh Jadon Vs. State of M.P.*, I.L.R. 2022 M.P. 1492

– **Section 320** – See – Constitution – Article 142: *Ramawatar Vs. State of M.P.*, I.L.R. 2022 M.P. 1 (SC)

### 2. Non-Compoundable Offence

– **Section 320 & 482** – Scope & Jurisdiction – Held – Powers u/S 482 Cr.P.C. to quash criminal proceedings for non-compoundable offences u/S 320 Cr.P.C. can be exercised, having overwhelming and predominantly the civil character, particularly those arising out of commercial transactions and when parties have resolved the entire dispute but such power is not to be exercised where offences are heinous in nature and are against the society: *Dharmpal Singh Jadon Vs. State of M.P.*, I.L.R. 2022 M.P. 1492

– **Section 320 & 482**, Penal Code (45 of 1860), Section 326 and Constitution – Article 142 – Non-Compoundable Offence – Compromise at Stage of Appeal – Held – Limited jurisdiction to compound an offence within framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by High Court vested in it u/S 482 Cr.P.C. – Looking to nature of offence and voluntary compromise, High Court can quash such proceedings u/S 482 Cr.P.C. even if offences are non-compoundable – Looking to the parameters laid down by this Court and invoking powers vested under Article 142, impugned orders quashed – Conviction set aside – Appeal disposed: *Ramgopal Vs. State of M.P.*, I.L.R. 2022 M.P. 228 (SC)

– **Section 320 & 482**, Penal Code (45 of 1860), Section 326 and Constitution – Article 142 – Non-Compoundable Offence – Quashment on ground of Compromise – Parameters – Held – While quashing criminal proceedings, powers ought to be exercised bearing in mind (i) nature & effect of offence on conscious of society; (ii)

seriousness of injury; (iii) voluntary nature of compromise and (iv) conduct of accused prior to and after the occurrence of offence: *Ramgopal Vs. State of M.P.*, I.L.R. 2022 M.P. 228 (SC)

### 3. Scope & Jurisdiction

– **Section 320 & 482** – See – Constitution – Article 142: *Ramawatar Vs. State of M.P.*, I.L.R. 2022 M.P. 1 (SC)

– **Section 320 & 482**, Penal Code (45 of 1860), Section 326 and Constitution – Article 142 – Non-Compoundable Offence – Scope & Jurisdiction – Held – As opposed to Section 320 Cr.P.C., where Court is squarely guided by the compromise between parties in respect of offences 'compoundable' within statutory framework, the extra-ordinary power enjoined upon High Court u/S 482 Cr.P.C. or vested in Apex Court under Article 142 of Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C: *Ramgopal Vs. State of M.P.*, I.L.R. 2022 M.P. 228 (SC)

- – **Section 340** – Grounds – Held – By creating false evidence, witnesses compelled appellant to remain in jail for almost 6 years for the offence not committed by him – This Court can presume his mental condition after he was awarded death sentence – Fit case for prosecution of the IO and witnesses: *In Reference Vs. Ravi @ Toli*, I.L.R. 2022 M.P. 286 (DB)

– **Section 340** – Grounds – Held – One of the criteria for proceeding u/S 340 Cr.P.C. may be that only due to false statement one party has succeeded in getting favourable order which otherwise he would not have got, therefore, if false statement affects the very nature of the order passed by Court, then that can be one of the circumstances where proceedings u/S 340 can be initiated: *Kamla Sharma (Smt.) Vs. Sukhdevlal*, I.L.R. 2022 M.P. 1647

– **Section 340** – Preliminary Enquiry – Held – Since only purpose of enquiry is to find out as to whether *prima facie* offence has been made or not, therefore after meticulous examination of witnesses and forming such a *prima facie* opinion against IO and prosecution witnesses, it is not necessary to conduct any further enquiry: *In Reference Vs. Ravi @ Toli*, I.L.R. 2022 M.P. 286 (DB)

– **Section 340 & 482** – Grounds – Held – Although application was filed by respondents in a most casual manner without realizing the sanctity attached to an affidavit, but since the false statement made in application did not have impact on outcome of the said application, it is not a fit case to proceed against respondents u/S 340 Cr.P.C: *Kamla Sharma (Smt.) Vs. Sukhdevlal*, I.L.R. 2022 M.P. 1647

– **Section 357(3) & 357(1)(b)** – See – Negotiable Instruments Act, 1881, Section 138: *Sitaram Vs. Kanhaiyalal*, I.L.R. 2022 M.P. 1480

– **Sections 362, 439(2) & 482** – Cancellation of Bail – Opportunity of Hearing – Held – If any party intend to seek recalling of order earlier passed by this Court in criminal jurisdiction on pretext of non-opportunity of hearing then bar created u/S 362 Cr.P.C. does not come: *Shivam Sharma Vs. State of M.P.*, I.L.R. 2022 M.P. 1810

– **Section 366** – Fair Procedure – Held – Reference u/S 366 is a continuation of trial, thus it is obligatory on High Court to ensure that persons who are facing trial for murder are provided fair procedure and no prejudice should be caused to them due to procedural lapse: *State of M.P. Vs. Nandu @ Nandkishore Gupta*, I.L.R. 2021 M.P. 2122 (DB)

– **Section 372 & 378(1) & (2)** – Appeal against Acquittal – Maintainability – Jurisdiction of Court – Held – No leave to appeal can be granted to State Government or victim to file appeal u/S 378(1) & (2) Cr.P.C. before High Court against acquittal order passed by Magistrate in cognizable and non-bailable offence – Appeal filed by victim and State before High Court not maintainable and thus dismissed: *Madhukar Patle Vs. State of M.P.*, I.L.R. 2022 M.P. \*65

– **Section 378(1) & (2)** [Amended vide Act No. 25 of 2005] – Appeal by Public Prosecutor – Held – As per direction of District Magistrate, Public Prosecutor may present an appeal before Court of Session against an order of acquittal passed by Magistrate in respect of cognizable and non-bailable offence: *Madhukar Patle Vs. State of M.P.*, I.L.R. 2022 M.P. \*65

– **Section 389** – Suspension of Sentence – Period of Custody – Held – No straight jacket formula can be applied in all cases that after completion of half of sentence awarded, convict is entitled for suspension in each and every case – Suspension cannot be granted by simply observing that applicant has completed half of the sentence or any particular term of sentence: *Rahul Vs. State of M.P.*, I.L.R. 2022 M.P. 941 (DB)

– **Section 389** – Suspension of Sentence – Successive Bail Application – Held – Though successive bail/suspension application is maintainable, but it is not open to aggrieved person to file it on ground already rejected by the Court earlier without any fresh material, factual or legal – Granting bail by reconsidering the same grounds is not permissible – Except period of custody, no other material change in facts and circumstances pointed out – Application dismissed: *Rahul Vs. State of M.P.*, I.L.R. 2022 M.P. 941 (DB)



– **Section 389(1)** – Revocation of Suspension of Sentence & Grant of Bail – Held – Respondent No. 2 was implicated for offence u/S 302 during the period when his sentence was suspended and despite order u/S 319 Cr.P.C. Respondent No. 2 evaded arrest in contravention of the warrant of arrest issued by ASJ – Police have been complicit in shielding Respondent No. 2 – Criminal antecedent of Respondent No. 2 and prior conviction for murder u/S 302 IPC was on record – High Court erred in dismissing the application for revocation of suspension of sentence and grant of bail – Respondent No. 2, whose spouse was an MLA, was provided security by State – A clear case of cancellation of bail was established – Bail granted to Respondent No. 2 is cancelled – Applications filed by State and appellant is allowed – Respondent No. 2 directed to be shifted to another jail in M.P. to ensure fair course of criminal proceedings – Appeal disposed: *Somesh Chaurasia Vs. State of M.P., I.L.R. 2021 M.P. 1463 (SC)*

– **Section 389(1)** – Suspension of Sentence – Grounds – Apex Court concluded that in cases involving conviction u/S 302 IPC, the sentence should be suspended only in exceptional circumstances – Mere fact that accused who were on bail during period of trial, did not misuse their liberty is not a sufficient reason for grant of suspension of sentence post conviction – If accused misuse their liberty by committing other offences during suspension on sentence u/S 389(1) Cr.P.C. they are not entitled to be released on bail: *Somesh Chaurasia Vs. State of M.P., I.L.R. 2021 M.P. 1463 (SC)*

## **SYNOPSIS : Section 397**

1. **Interlocutory Orders**
2. **Maintainability of Revision**
3. **Quashment of Complaint**

### **1. Interlocutory Orders**

– **Section 397(2)** – Interlocutory Orders – Held – Order summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of pending proceeding, amounts to interlocutory orders against which no revision would lie u/S 397(2) whereas orders which affect or adjudicate rights of accused or particular aspect of trial, are not interlocutory orders against which revision is maintainable: *Raja Bhaiya Singh Vs. State of M.P., I.L.R. 2021 M.P. 119*

– **Section 397(2)** – Interlocutory Order – Meaning & Ambit – Held – Order u/S 457 Cr.P.C. may or may not be an interlocutory order, it depends upon facts and circumstances of a case – If Magistrate passes an order touching rights of person over property then order is not an interlocutory order but if order is passed only to

give possession of property during pendency of trial then such order is an interlocutory order: *Aruni Sahgal Vs. State of M.P., I.L.R. 2021 M.P. 114*

## 2. Maintainability of Revision

– **Section 397 & 401**, Penal Code (45 of 1860), Section 420 & 421 and High Court of Madhya Pradesh Rules, 2008, Chapter X, Rule 48 – Maintainability of Revision – Trial Court convicted applicant for offence u/S 420 & 421 IPC – Appeal was also dismissed – Held – On date of judgment by Appellate Court, applicants were not present before Court and are still absconding – As per Rule 48 of 2008 Rules, it is necessary/obligation for applicants to surrender after their conviction before filing revision and thus, this revision is dismissed as not maintainable: *Satyanarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. \*6*

## 3. Quashment of Complaint

– **Section 397 & 482** – Quashment of Complaint – Scope of Interference – Held – While exercising inherent jurisdiction u/S 482 or revisional jurisdiction u/S 397 Cr.P.C. where complaint is sought to be quashed, it is not proper for High Court to consider the defence of accused or embark upon an inquiry in respect of merits of the accusation: *Mahesh Singh Jadon Vs. Shri Radha Sharan Dubey, I.L.R. 2022 M.P. 1969*

● – **Section 407** – Transfer of Case – Grounds – Held – It is noticed that accused and witnesses in both trials are not common and are different – No legal or valid ground to exercise power u/S 407 Cr.P.C. – Application rejected: *Manoj Parmar Vs. Union of India, I.L.R. 2022 M.P. \*19 (DB)*

– **Section 407** – Transfer of Case – Principle – Held – Assurance of fair trial is the main criteria for exercise of power u/S 407 Cr.P.C. – A litigant cannot choose a Bench of his choice – It is only on exceptional circumstances, where existence of “bias” or “likelihood of bias” is apparent on facts and circumstances of the case, High Court can invoke its discretionary power u/S 407 Cr.P.C. – In absence of any allegation of pre-existing bias, such power should normally not be invoked: *Manoj Parmar Vs. Union of India, I.L.R. 2022 M.P. \*19 (DB)*

– **Sections 432, 433 & 433-A** – Power of Remission – Competent Authority – Jurisdiction of High Court – Held – Power to grant remission lies with State Government – Such exercise of power is an executive discretion and the same is not available to the High Court in exercise of review jurisdiction: *Karan Singh Vs. State of M.P., I.L.R. 2021 M.P. 1596 (DB)*

– **Section 433-A** – Power of Remission – Held – Power of remission is restricted and a convict with sentence of imprisonment of life for an offence for which death is one of the punishment, cannot be released before completion of at least 14 years of imprisonment: *Karan Singh Vs. State of M.P.*, I.L.R. 2021 M.P. 1596 (DB)

– **Section 436A** – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Sections 1(4), 3 & 12: *Vidhi Ka Ulaghan Karne Wala Balak Vs. State of M.P.*, I.L.R. 2022 M.P. 1305

– **Sections 437, 438 & 439** – Bail – Considerations – Factors to be considered while deciding bail application enumerated: *Zarina Begum Vs. State of M.P.*, I.L.R. 2021 M.P. 1196

– **Sections 437, 438 & 439** – Bail – Delay in Trial – Held – No undertrial ought to be kept in judicial custody inordinately – There may be several factors delaying trial not attributable to accused – Delay is maximum in production and examination of prosecution witnesses – In such conditions also bail applications may still be considered by placing stringent condition like higher quantum of personal bond and surety, registering periodical presence of accused before police and in extreme cases even asking accused to move outside municipal limits of the district where trial is taking place and witnesses are situated – Though, no rule of thumb can ever be applied for every case of bail, discretion must be left to the Court: *Zarina Begum Vs. State of M.P.*, I.L.R. 2021 M.P. 1196

– **Sections 437, 438 & 439** – Bail – Heinous Offence – Social, Print & Electronic Media & Public Perception – Held – Bail cannot be denied merely because allegations relate to commission of heinous offence – Nature of evidence, antecedents of offender, circumstances in which offence was committed etc. are also to be considered – Courts must consciously exclude cacophony of hyper opinionated and unmoderated voices on social, print & electronic media – Public perception must never be a factor while deciding bail application: *Zarina Begum Vs. State of M.P.*, I.L.R. 2021 M.P. 1196

– **Sections 437, 438 & 439** – Bail Orders – Gender Stereotyping – Role of Judge – Held – Judges can play a significant role in ridding the justice system of harmful stereotypes – They have important responsibility to base their decisions on law and facts in evidence and not engage in gender stereotyping – Stereotyping might compromise the impartiality of a Judge's decision and affect his or her view about witness credibility or culpability of accused person – Gender stereotypes which Court should desist from expressing, enumerated: *Aparna Bhat Vs. State of M.P.*, I.L.R. 2021 M.P. 1003 (SC)

– **Section 437(3)(c) & 438(2)(iv)** and Penal Code (45 of 1860), Sections 323, 354A, 452 & 506 – Bail Orders – Power to Impose Conditions – Held – Act perpetrated on survivor constitutes an offence in law and is not a minor transgression that can be remedied by way of an apology, rendering community service, tying a Rakhi or presenting a gift to survivor or even promising to marry her as the case may be – Granting bail subject to such conditions renders the Court susceptible to the charge of re-negotiating and mediating justice between confronting parties in a criminal offence and perpetuating gender stereotypes: *Aparna Bhat Vs. State of M.P.*, I.L.R. 2021 M.P. 1003 (SC)

### SYNOPSIS : Section 438

- |                                |                                 |
|--------------------------------|---------------------------------|
| <b>1. Cancellation of Bail</b> | <b>2. Changed Circumstances</b> |
| <b>3. Grounds</b>              | <b>4. Maintainability</b>       |
| <b>5. Miscellaneous</b>        |                                 |

#### 1. Cancellation of Bail

– **Section 438** – Cancellation of Anticipatory Bail – Factors to be Considered – Discussed and explained: *Prashant Singh Rajput Vs. State of M.P.*, I.L.R. 2021 M.P. 2000 (SC)

– **Section 438** and Penal Code (45 of 1860), Section 302 – Anticipatory Bail – Cancellation – Counter FIR by Parties – R-2 in both appeals (accused persons) were granted anticipatory bail by High Court – Held – The offence is of serious nature in which a person was murdered – FIR and statements u/S 161 & 164 Cr.P.C. indicates a specific role of accused persons in the crime – Fact of previous enmity also exists – Order granting anticipatory bail has ignored material aspects, including the nature and gravity of offence and specific allegations – Sufficient case made out for cancelling the anticipatory bail – Orders granting anticipatory bail to R-2 in both appeals set aside – Appeals allowed: *Prashant Singh Rajput Vs. State of M.P.*, I.L.R. 2021 M.P. 2000 (SC)

#### 2. Changed Circumstances

– **Section 438** – Repeated Application – Change in Circumstances – Held – In earlier bail rejection order on merits, Court was aware of fact that applicant was made accused on basis of memorandum and also about fact of personal enmity – No incorrect facts mentioned in earlier order – Court rejected application since applicant was not cooperating in investigation and is at large since 2016 in serious offences – No changed circumstances – Repeat application on same facts not maintainable – Application dismissed: *Haneef Khan Vs. State of M.P.*, I.L.R. 2022 M.P. 205

– **Section 438** – Repeated Application – Earlier Order on Incorrect Facts – Held – If incorrect facts are relied by Court for rejecting anticipatory bail application on merits, then repeat bail application on correct facts is maintainable – Such reconsideration will not amount to review or to re-appreciate facts as sitting in appeal: *Haneef Khan Vs. State of M.P., I.L.R. 2022 M.P. 205*

### 3. Grounds

– **Section 438** – Anticipatory Bail – Grounds – Held – It is not established that FIR lodged by Complainant was a counterblast FIR – Applicant’s contention that he did not receive a single penny from complainant is not true because bank statement shows that complainant deposited money in applicant’s account – Sufficient material to create strong suspicion against applicant – Case may require custodial interrogation – Application dismissed: *Surajmal Vs. State of M.P., I.L.R. 2021 M.P. 135*

– **Section 438** and Penal Code (45 of 1860), Section 375, Fourthly & 376(2)(n) – Held – In Hindu Law, marriages cannot be performed by execution of marriage affidavit – Applicant obtained affidavits of marriage and divorce thereby playing fraud on prosecutrix – Her consent was obtained which is hit by Section 375, fourthly IPC – No case of anticipatory bail – Application dismissed: *Bundel Singh Lodhi Vs. State of M.P., I.L.R. 2021 M.P. \*8*

– **Section 438** and Penal Code (45 of 1860), Sections 420, 467, 468, 471, 472, 474 & 120-B – Anticipatory Bail – Grounds – Held – Applicant 58 years of age suffering from various ailments including sleep apnoea – Alleged offence committed 31 years ago – FIR registered in 2020 – Application allowed: *Zarina Begum Vs. State of M.P., I.L.R. 2021 M.P. 1196*

### 4. Maintainability

– **Section 438 & 439(2)** – Maintainability – Held – Anticipatory bail application filed by applicant is not maintainable when regular bail granted to him is cancelled u/S 439(2) Cr.P.C. – Application dismissed: *Shekhar Sarathe Vs. State of M.P., I.L.R. 2022 M.P. \*22*

### 5. Miscellaneous

– **Section 438** – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Sections 1(4), 3 & 12: *Vidhi Ka Ulaghan Karne Wala Balak Vs. State of M.P., I.L.R. 2022 M.P. 1305*

– **Section 438** – See – Protection of Children from Sexual Offences Act, 2012, Section 7 & 8: *Aom Tiwari Vs. State of M.P., I.L.R. 2021 M.P. 551*

– **Section 438** – See – Protection of Children from Sexual Offences Act, 2012, (POCSO), Section 22(2): *Raman Vs. State of M.P., I.L.R. 2022 M.P. \*44*

– **Section 438** – See – Public Distribution System (Control) Order, M.P., 2015, Clause 16: *Chironjilal Kushwah Vs. State of M.P., I.L.R. 2022 M.P. \*1*

### SYNOPSIS : Section 439

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|--|---|
| <b>1. Accused on Parole</b>              | <b>2. Bail Conditions</b>                       |
| <b>3. Cancellation of Bail</b>           | <b>4. Delay in Trial</b>                        |
| <b>5. Discretionary Power</b>            | <b>6. Factors to be Considered/<br/>Grounds</b> |
| <b>7. Ground of Parity</b>               | <b>8. Jurisdiction of Court</b>                 |
| <b>9. Non-Bailable Cases</b>             | <b>10. Principle of Res-Judicata</b>            |
| <b>11. Suppression of Material Facts</b> | <b>12. Miscellaneous</b>                        |

#### 1. Accused on Parole

– **Section 439** – Accused on Parole – Held – Whenever an application u/S 439 Cr.P.C. is filed, applicant(s) must declare that he/they are not on parole: *Rahul Kumar Vs. State of M.P., I.L.R. 2021 M.P. \*19*

– **Section 439** – Accused on Parole – Maintainability of Application – Held – Since applicant has been released on parole in the wake of Covid-19 pandemic, therefore it cannot be said that he is in custody and accordingly application u/S 439 is not maintainable unless and until he surrenders before trial Court – Bail and parole are two different connotation: *Rahul Kumar Vs. State of M.P., I.L.R. 2021 M.P. \*19*

#### 2. Bail Conditions

– **Section 439** and Penal Code (45 of 1860), Sections 323, 354A, 452 & 506 – Bail Orders – Conditions – Bail granted to accused on condition that he will visit the victim and request her to tie Rakhi Band to him and will also give her Rs. 15,000 as a customary ritual – Held – Using Rakhi tying as a condition for bail, transforms a molester into a brother, by a judicial mandate – It is wholly unacceptable and has the effect of diluting and eroding the offence of sexual harassment – Bail condition set aside – In respect of power to impose conditions, directions issued: *Aparna Bhat Vs. State of M.P., I.L.R. 2021 M.P. 1003 (SC)*

### 3. Cancellation of Bail

– **Section 439 & 439(2)** – Cancellation of Bail – Held – Except mentioning the facts, nothing has been mentioned about the reasons for abscondence as well as why the respondent is entitled for bail – Order granting bail suffers from non-application of mind and thus cannot be given a stamp of judicial approval – Order set aside – Bail cancelled – Application allowed: *State of M.P. Vs. Smt. Bhuri Bai, I.L.R. 2022 M.P. \*32*

– **Section 439(2)** and Protection of Children from Sexual Offences Act, (32 of 2012) (POCSO), Section 31(1) & 35(2) – Delay in Trial – Rape on minor girl – Held – Accused on the pretext or the other deliberately delayed the trial – This is secondary victimization of the victim/complainant which is not permissible – Accused after getting bail, trying to harass prosecutrix incessantly by opening restaurant/hospital in front of house of victim – Conduct of accused renders himself vulnerable for cancellation of bail – Bail cancelled – Application allowed: *The Prosecutrix Vs. Dr. Piyush Saxena, I.L.R. 2022 M.P. 1498*

– **Section 439(2)** – See – Protection of Children from Sexual Offences Act, 2012, (POCSO), Section 31(1) & 35(2): *The Prosecutrix Vs. State of M.P., I.L.R. 2022 M.P. \*46*

### 4. Delay in Trial

– **Section 439** – Delay in Trial – Held – Accused shall be treated as innocent until proved guilty – Speedy trial is fundamental right of accused – He cannot be kept behind bar for indefinite period – Applicant is in custody since around 1 year, 4 months – Only two prosecution witness examined – No progress in trial – Bail application allowed: *Mahipat Singh Vs. State of M.P., I.L.R. 2022 M.P. \*66*

– **Section 439** and Penal Code (45 of 1860), Sections 302, 201 & 34 – Delay In Trial – Compensation – Held – Trial suffered a lightning stroke because of non-appearance of Town Inspector (Investigating Officer) for evidence – An undertrial cannot be kept in jail at mercy of police witnesses – As per record, case not fit for grant of bail, however State directed to pay compensation of Rs. 30,000 to applicant for failing in its duty to keep even the police witnesses present before trial Court – Application disposed: *Asfaq Khan Vs. State of M.P., I.L.R. 2021 M.P. 343*

### 5. Discretionary Power

– **Section 439** – Discretionary Power – Held – Power to grant bail u/S 439 Cr.P.C. is discretionary but the said discretion has to be exercised judiciously: *Sikandar Singh Narvariya @ Lulu Vs. State of M.P., I.L.R. 2022 M.P. 523*

## 6. Factors to be Considered/Grounds

– **Section 439** – Factors to be Considered – Held – The nature and gravity of accusation, whether there is any *prima facie* or reasonable ground to believe that accused had committed offence, likelihood of offence being repeated, danger of accused absconding or fleeing, character behaviour, position/standing of accused, reasonable apprehension of witness being influenced and of justice being thwarted by grant of bail are some of the factors to be kept in mind while deciding bail applications: *Sikandar Singh Narvariya @ Lulu Vs. State of M.P., I.L.R. 2022 M.P. 523*

– **Section 439** – Specific Allegations – Held – There are specific allegations against appellant that he not only assaulted the deceased, but he got him admitted in hospital by fake name and also got fake death certificate – Not a fit case for grant of bail – Appeal dismissed: *Sikandar Singh Narvariya @ Lulu Vs. State of M.P., I.L.R. 2022 M.P. 523*

– **Section 439** and Constitution – Article 21 – Held – While considering bail application, apart from other conditions, gravity of offence should also be considered – It is incorrect to say that irrespective of the gravity of offence, Court must grant bail to accused merely because Article 21 of Constitution guarantees him the right of life and liberty – Application dismissed: *Manoj Vishwakarma Vs. State of M.P., I.L.R. 2022 M.P. \*5*

– **Section 439** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Sections 8, 15 & 29 – Bail – Entitlement – Held – Applicant arrested solely on basis of statement made by co-accused and his own confessional statement, is entitled to be released on bail – Bail granted – Application allowed: *Ramniwas Vs. State of M.P., I.L.R. 2021 M.P. 757*

– **Section 439** and Penal Code (45 of 1860), Sections 406, 419, 420, 467, 468, 471 & 120-B – Bail – Grounds – Held – Entire manipulation was done by police officers in order to protect and give undue advantage to the applicant – It is clear that applicant had earlier manipulated the investigation and under these circumstances, it is not a fit case for grant of bail – Bail application dismissed: *State of M.P. Vs. Anil Sharma, I.L.R. 2021 M.P. 1755*

– **Section 439** and Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (57 of 1994), Sections 6, 23 & 27 – Bail – Grounds – Held – In a sting operation, search team seized ultrasound machine with no registration/license, adoper/gel used in sex-determination, and other medical instruments used for abortion – Sufficient evidence to hold strong *prima facie* case – It is a grave offence with serious consequences – High Court rightly denied bail – Petition dismissed: *Rekha Sengar Vs. State of M.P., I.L.R. 2021 M.P. 378 (SC)*



– **Section 439**, Penal Code (45 of 1860), Sections 363, 366-A & 375, Exception 2 & 376(2)(n) and Protection of Children from Sexual Offences Act (32 of 2012), Section 5/6 & 16/17 – Bail – Grounds – Age & Consent of Prosecutrix – Held – Applicant married prosecutrix aged about 16 years and one month – Held – Marriageable age of girl in our country is 18 years and marriage below that age is *void ab initio* – Now age of consent is also fixed at 18 years – Applicant not entitled for bail taking benefit of Exception 2 of Section 375 IPC – Application dismissed: *Vishal Vs. State of M.P., I.L.R. 2021 M.P. 1458*

## 7. Ground of Parity

– **Section 439** – Ground of Parity – Held – Whenever accused seeks bail on ground of parity, Court must focus upon role of accused in order to find out as to whether the case of aspirant who is seeking bail is identical to that co-accused, who has already been granted bail, or not – It is always expected that Court shall determine whether reasons of parity are made out or not: *Sikandar Singh Narvariya @ Lulu Vs. State of M.P., I.L.R. 2022 M.P. 523*

– **Section 439** and Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, (57 of 1994), Sections 6, 23 & 27 – Bail – Ground of Parity – Held – Co-accused was granted bail because his alleged role was limited to merely picking up and dropping off petitioner’s client whereas petitioner had more active role in conducting the procedure – No ground of parity: *Rekha Sengar Vs. State of M.P., I.L.R. 2021 M.P. 378 (SC)*

## 8. Jurisdiction of Court

– **Section 439** and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 14-A(1) – Bail Application – Held – Case involving trial of accused for offences under both the Atrocities Act and POCSO Act shall be conducted by Special Court constituted u/S 28 of the POCSO Act and remedy of the accused against order of rejection of bail u/S 439 of Cr.P.C. by the such Special Judge, would be by filing bail application u/S 439 of Cr.P.C. before the High Court – Reference answered: *Pramod Yadav Vs. State of M.P., I.L.R. 2021 M.P. 1151 (DB)*

## 9. Non-Bailable Cases

– **Section 439** – Non-Bailable Cases – Consideration – Held – In non-bailable cases, the primary factors, the court must consider while exercising discretion to grant bail are the nature and gravity of offence, its impact on society and whether there is a prima facie case against accused: *Rekha Sengar Vs. State of M.P., I.L.R. 2021 M.P. 378 (SC)*

## 10. Principle of Res-Judicata

– **Section 439** – Grounds – Principle of Res-Judicata – Held – Applicant also filed a habeas corpus petition in which corpus/prosecutrix appeared and stated that she is not in illegal confinement of her father and thus petition was withdrawn – Applicant, now cannot re-agitate the question of illegal confinement in bail application – Applicant has raped a minor girl – No case for bail made out – Application dismissed: *Yogesh Gahlot Vs. State of M.P., I.L.R. 2022 M.P. \*33*

## 11. Suppression of Material Facts

– **Section 439** and Penal Code (45 of 1860), Sections 304-B, 498-A & 34 – Suppression of Material Fact – Effect – Held – Applicant tried to obtain bail order by deliberately suppressing the factum of dismissal of SLP by Supreme Court – Counsel was aware of said fact thus it is not a bonafide mistake – Act of counsel is glaring example of unfair means – Application dismissed with cost of Rs. 5000/-: *Kamla @ Sarla Yadav (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 973*

## 12. Miscellaneous

– **Section 439** – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 8/18(c) & 29: *Gopal Krishna Gautam @ Pandit Vs. State of M.P., I.L.R. 2021 M.P. 1975*

– **Section 439** – See – Protection of Children from Sexual Offences Act, 2012, Section 22(2): *Sanjay Rawat Vs. State of M.P., I.L.R. 2022 M.P. \*39*

### SYNOPSIS : Section 451 & 457

- |                               |                    |
|-------------------------------|--------------------|
| 1. Jurisdiction of Magistrate | 2. Maintainability |
| 3. Provision for Confiscation | 4. Revision        |
| 5. Seized Currency            |                    |

### 1. Jurisdiction of Magistrate

– **Section 451 & 457** and Govansh Vadh Pratishedh Adhinyam, M.P. (6 of 2004), Sections 4, 6, 9 & 11 – Illegal Transportation of Cattles – Jurisdiction of Magistrate – Held – Jurisdiction of JMFC not ousted from releasing the seized vehicle on interim custody as there is no rider in 2004 Act – Applicant not been convicted by any court for any offences under 2004 Act – No sufficient ground to dismiss application for interim custody of vehicle – Custody granted to petitioner with conditions: *Raees Vs. State of M.P., I.L.R. 2022 M.P. 2102*

## 2. Maintainability

– **Section 451** – Maintainability – Held – Once final charge-sheet is filed by police and property is said to be involved in crime then only application u/S 451 Cr.P.C. is maintainable: *Aruni Sahgal Vs. State of M.P., I.L.R. 2021 M.P. 114*

## 3. Provision for Confiscation

– **Section 451 & 457** – See – Mines and Minerals (Development and Regulation) Act, 1957, Section 4(1) & 21(1): *Makhan Prajapati Vs. State of M.P., I.L.R. 2021 M.P. 761*

– **Section 451/457** and Excise Act, M.P. (2 of 1915), Sections 34(1), 47-A(3) & 47-D – Interim Custody of Vehicle – Jurisdiction – Held – Court having jurisdiction to try offences u/S 34(1)(a) or 34(1)(b), shall not make any order about disposal, custody etc. of seized vehicle after it has received intimation about initiation of confiscation proceedings from Collector – On 20.10.2020, Magistrate had no jurisdiction to grant interim custody of seized vehicle as it has already received intimation of confiscation proceedings on 10.10.2020 from Collector – Application dismissed: *Aman Ahirwal Vs. State of M.P., I.L.R. 2022 M.P. \*76*

– **Section 451/457** and Narcotic Drugs and Psychotropic Substances Act (61 of 1985), Section 36-C & 60 – Interim Custody of Seized Vehicle – Held – Provisions of Cr.P.C. including Section 451/457 have been expressly made applicable by virtue of Section 36-C of NDPS Act to the proceedings before Special Judge (NDPS) – There is no express bar contained in Act for grant of interim custody – Merely on ground that vehicle is liable to confiscation u/S 60, it cannot be held that once vehicle is seized for commission of offence under NDPS Act, interim custody cannot be granted – Vehicle directed to be released on interim custody with conditions – Application allowed: *Surendra Dhakad Vs. State of M.P., I.L.R. 2022 M.P. 802*

– **Section 457** and Excise Act, M.P. (2 of 1915), Sections 34(2), 47-A(3)(a) & 47-D – Jurisdiction of Trial Court – Held – The cut-off point for jurisdiction of trial Court is not commencement of confiscation proceedings but intimation thereof received by Magistrate: *Ajay Khateek Vs. State of M.P., I.L.R. 2021 M.P. 1986*

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

release of vehicle directed – Application disposed of: *Ajay Khateek Vs. State of M.P., I.L.R. 2021 M.P. 1986*

#### 4. Revision

– **Section 457 & 397(2)** – Interlocutory Order – Held – Order rejecting application filed u/S 457 Cr.P.C. for interim custody of articles, is not a final order or intermediate order or order of moment but is an interlocutory order – Criminal revision not maintainable due to bar u/S 397(2) Cr.P.C. – Revision dismissed: *Aruni Sahgal Vs. State of M.P., I.L.R. 2021 M.P. 114*

#### 5. Seized Currency

– **Section 457 & 482** and Income Tax Act (43 of 1961), Section 132A(1)(c) – Release of Seized Property – Seized Currency – Cash seized from accused persons allegedly looted from petitioner – Held – No documents produced by petitioner to demonstrate that Income Tax Return discloses his income of such magnitude at any point of time to Income Tax Authority – Income Tax Department has remedy u/S 132A(1)(c) – Release of seized cash may hamper effective implementation of relevant provisions of Income Tax Act – It is apposite that seized cash be deposited with Income Tax Authority – Application dismissed: *Jahar Singh Gurjar Vs. State of M.P., I.L.R. 2022 M.P. \*34*

● – **Section 465** – See – Criminal Procedure Code, 1898, Section 537: *Nikunj Shivhare Vs. State of M.P., I.L.R. 2022 M.P. 406*

– **Section 468** – See – Penal Code, 1860, Sections 498-A, 294, 323/34 & 506 (Part II): *Balkrishna Devda Vs. State of M.P., I.L.R. 2022 M.P. 952*

#### SYNOPSIS : Section 482

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|----------------------------------|---|
| 1. Compromise                    | 2. Delay in Trial                       |
| 3. Investigation                 | 4. Powers of High Court                 |
| 5. Quashment of FIR/ Proceedings | 6. Scope of Interference/<br>Parameters |
| 7. Miscellaneous                 |   |

#### 1. Compromise

– **Section 482** – Quashment on Ground of Compromise – Inherent Powers of Court – Discussed and explained: *Ved Prakash Sharma Vs. State of M.P., I.L.R. 2022 M.P. 798*

– **Section 482** and Penal Code (45 of 1860), Section 279 & 304-A – Quashment on Ground of Compromise – Held – Offence is not in private domain and cannot be said to be one having predominantly civil flavor – Victim in present case is not alive to make a compromise as well as offence is not compoundable – Petitioner is already convicted by the trial Court – In such case, if compromise allowed, that would mean that those who have money to pay can escape the clutches of law – No ground for accepting compromise application – Application dismissed: *Ved Prakash Sharma Vs. State of M.P., I.L.R. 2022 M.P. 798*

## 2. Delay in Trial

– **Section 482** and Protection of Children from Sexual Offences Act, (32 of 2012)(POCSO), Section 31(1) & 35(2) – Delay in Trial – Rape on minor girl – Held – After lapse of almost 4 years and on exhausting 13 adjournments, only prosecutrix has been examined by accused – Section 35(1) & (2) mandates recording of statement of child/prosecutrix within one month and conclusion of trial within one year from date of cognizance of offence – It is imperative that trial be conducted as expeditiously as possible on day to day basis – Application allowed and disposed: *The Prosecutrix Vs. State of M.P., I.L.R. 2022 M.P. \*46*

## 3. Investigation

– **Section 482** – Investigation – Scope of Interference – Applicant seeking direction for authorities for not taking any coercive step against him – Held – In present matter, not only anticipatory bail application has been dismissed earlier by this Court but it is never desirable to pass such a blanket order thereby hampering investigation – *Prayer rejected: Pankaj Karoriya Vs. State of M.P., I.L.R. 2021 M.P. 2360*

## 4. Powers of High Court

– **Section 482** – Powers of High Court – Nature, Scope & Jurisdiction – Held – Powers of High Court u/S 482 Cr.P.C. are partly administrative and partly judicial – Jurisdiction u/S 482 is discretionary – Court can always take note of any miscarriage of justice and prevent the same by exercising its powers u/S 482 Cr.P.C. – Powers are neither limited nor curtailed by any other provisions of Code, but such inherent powers are to be exercised sparingly and with caution: *Pradeep Kumar Arya Vs. State of M.P., I.L.R. 2022 M.P. \*13*

– **Section 482** – Powers of Court – Scope – Held – Powers of High Court u/S 482 Cr.P.C. are partly administrative and partly judicial – Such inherent powers has to be exercised for the ends of justice and should not be arbitrarily exercised to cut short the normal process of a criminal trial – Their powers are neither limited nor

curtailed by any other provisions of Code, however such powers are to be exercised sparingly and with caution: *Dharmpal Singh Jadon Vs. State of M.P.*, I.L.R. 2022 M.P. 1492

## 5. Quashment of FIR/Proceedings

– **Section 482** – Quashment of FIR – Demanding Gratification – Held – The authority of a person/ delinquent officer demanding gratification is not important, but the impression in the mind of bribe-giver is important: *Pankaj Karoriya Vs. State of M.P.*, I.L.R. 2021 M.P. 2360

– **Section 482** – Quashment of FIR – Held – After a long lapse of 20 years of execution of sale deed, complainant filed a private complaint alleging fraud, where JMFC directed to lodge FIR against applicants – It appears that complainant maliciously instituted criminal proceedings with ulterior motive – Permitting such criminal proceedings is nothing but a clear abuse of process of law – Impugned order and FIR quashed – Application allowed: *Vijay Dandotiya Vs. State of M.P.*, I.L.R. 2022 M.P. 1959

– **Section 482** – Quashment of FIR – Preliminary Enquiry – Held – Holding of preliminary enquiry prior to lodging of FIR is desirable and not mandatory – FIR cannot be quashed on the ground that FIR is not preceded by a preliminary enquiry: *Pankaj Karoriya Vs. State of M.P.*, I.L.R. 2021 M.P. 2360

– **Section 482** – Quashment of FIR – Scope – Held – FIR not lodged by police directly on complaint by shopkeepers rather complaint was made by the office of Collector – Although this Court cannot make a roving enquiry at this stage, but if un-controverted allegations do not make out a *prima facie* offence, only then this Court can quash FIR – Since allegations made in FIR *prima facie* discloses commission of cognizable offence, therefore legitimate investigation cannot be stifled in the midway – Application dismissed: *Pankaj Karoriya Vs. State of M.P.*, I.L.R. 2021 M.P. 2360

– **Section 482** and Penal Code (45 of 1860), Section 420 & 120-B – Quashment of FIR – Grounds – Held – Truthfulness/falsehood of allegation and documents of prosecution is to be established by evidence before trial Court, it cannot be questioned by defence at this stage – From available records, it cannot be said that no offence has taken place or there is no ground to proceed with trial against applicants – Applications dismissed: *Pradeep Kumar Shinde Vs. State of M.P.*, I.L.R. 2021 M.P. 354

– **Section 482** and Prevention of Corruption Act (49 of 1988), Sections 7, 13(1)(d), 13(2) & 20 – Quashment of FIR – Departmental proceedings and FIR

against petitioner on same facts/incident – Held – Exoneration/finding in departmental enquiry cannot foreclose the right of prosecution to proceed with the FIRs and criminal cases against petitioners – Application dismissed: *Rajendra Kumar Gautam Vs. State of M.P.*, I.L.R. 2022 M.P. 603 (DB)

## 6. Scope of Interference/Parameters

– **Section 482** – Interference – Relevant parameters laid down by Apex Court enumerated: *Pradeep Kumar Shinde Vs. State of M.P.*, I.L.R. 2021 M.P. 354

– **Section 482** – Protection to Prosecutrix – Duty of Police – Held – It is the duty of police to give protection to prosecutrix and her family members as and when situation requires especially when they attend the Court proceedings as prosecution witnesses so that the accused or other persons on his behalf may not intimidate, coerce or threaten them: *The Prosecutrix Vs. State of M.P.*, I.L.R. 2022 M.P. \*46

– **Section 482** – Scope & Jurisdiction – Held – Court should not examine the facts, evidence and material on record to determine whether there is sufficient material, which may end in a conviction – U/S 482 Cr.P.C., Court cannot consider external materials given by accused to conclude that no offence was disclosed or there was possibility of acquittal: *Pradeep Kumar Shinde Vs. State of M.P.*, I.L.R. 2021 M.P. 354

– **Section 482** – Scope & Jurisdiction – Held – “Another view is possible” cannot be a ground to interfere u/S 482 Cr.P.C: *Arun Kumar Dey Vs. State of M.P. through Special Police Establishment*, I.L.R. 2022 M.P. \*16 (DB)

– **Section 482** – Scope & Jurisdiction – Held – Jurisdiction u/S 482 is discretionary – Court may depend upon facts of a given case – Court can always take note of any miscarriage of justice and prevent the same by exercising its powers u/S 482 Cr.P.C: *Dharmpal Singh Jadon Vs. State of M.P.*, I.L.R. 2022 M.P. 1492

– **Section 482** – Scope of Interference – Held – Apex Court concluded that High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of Court or that the ends of justice require that proceedings ought to be quashed: *Vijay Dandotiya Vs. State of M.P.*, I.L.R. 2022 M.P. 1959

## 7. Miscellaneous

– **Section 482** – See – Penal Code, 1860, Section 304-A: *Vijay Kumar Kushwaha Vs. State of M.P.*, I.L.R. 2022 M.P. 961

– **Section 482** – See – Prevention of Corruption Act, 1988, Section 7: *Narendra Mishra Vs. State of M.P.*, I.L.R. 2022 M.P. 1113 (DB)

## CRIMINAL TRIAL

– **Administration of Justice & Dispensation of Justice** – Discussed & explained: *The Prosecutrix Vs. Dr. Piyush Saxena, I.L.R. 2022 M.P. 1498*

– **Appreciation of Evidence** – Held – Appreciation of evidence in criminal trial is a deductive process by which the Court eliminates the “possibilities” in a given case to arrive at the most “probable” inference, in the sum totality of the evidence on record and therein lies the truth, beyond reasonable doubt: *Lalu Sindhi @ Dayaldas Vs. State of M.P., I.L.R. 2021 M.P. 1932 (DB)*

– **Country Made Firearms & Branded Firearms** – Barrel Marks – Discussed & explained: *Lalu Sindhi @ Dayaldas Vs. State of M.P., I.L.R. 2021 M.P. 1932 (DB)*

– **Non-Examination of Independent Witness** – Held – Apex Court concluded that mere non-examination of independent witness would not be fatal to prosecution case – Failure to examine any available independent witness is inconsequential – It is the quality of evidence and not the number of witnesses, that is relevant: *Hukum Singh Vs. State of M.P., I.L.R. 2022 M.P. \*85 (DB)*

– **Plea of Alibi** – Mobile Location – Plea of applicant that he was not present on spot and went for medical treatment – Held – Mobile location cannot be a conclusive evidence to show that holder of the mobile was also at that particular place – Further, no medical prescription, hospital admission register, discharge ticket etc. have been collected by police – It is also not pointed out that which part of applicant’s body suffered paralytic stroke: *Radheshyam Kushwah Vs. State of M.P., I.L.R. 2022 M.P. 1461*

– **Seizure of Weapon & Matching of Blood Groups** – Held – Apex Court concluded that once recovery is made in pursuance of disclosure statement of accused, the matching or non matching of blood groups loses significance – There cannot be any fixed formula that prosecution has to prove or need not prove that the blood group matches, but judicial conscience of Court should be satisfied both about recovery and about origin of human blood: *Madhav Vs. State of M.P., I.L.R. 2021 M.P. 1621 (SC)*

– **Standard of Proof** – Held – Standard of proof in a criminal trial is proof beyond reasonable doubt because the right to personal liberty of a citizen can never be taken away by the standard of preponderance of probability – Apex Court concluded that suspicion, however strong, cannot take place of legal proof: *Amar Singh Vs. State of M.P., I.L.R. 2021 M.P. 2212 (DB)*



– **Testimony of Witnesses** – Held – It is not the quantity of witness but the quality of witness which is important – Entire evidence of a witness should be read and one stray line from here and there should not be picked up for discarding his testimony – Evidence of witnesses cannot be discarded on basis of minor omissions and contradictions: *Omprakash Pateria (Dead) Through L.R. Vs. State of M.P.*, I.L.R. 2022 M.P. \*43 (DB)

## **D**

### **DAKAITIAUR VYAPHARAN PRABHAVIT KSHETRA ADHINIYAM, M.P. (36 OF 1981)**

– **Section 11/13** and Penal Code (45 of 1860), Section 364A – Identity of Accused – Held – Abductee admits of not having seen appellant either in day or at night during captivity and he named appellant on basis of his letter head (ransom letter) – Letter not sent to hand writing expert – No TIP conducted – Identity of appellant not established beyond reasonable doubt – Demand and acceptance of ransom by appellant also not proved – Conviction set aside – Appeal allowed: *Arvind Singh Gurjar Vs. State of M.P.*, I.L.R. 2022 M.P. \*78 (DB)

– **Section 11/13** – See – Penal Code, 1860, Section 323 & 364-A: *Ramcharan Vs. State of M.P.*, I.L.R. 2022 M.P. 549 (DB)

– **Section 13** – See – Penal Code, 1860, Section 346 & 364-A: *Suresh Vs. State of M.P.*, I.L.R. 2021 M.P. 2319 (DB)

– **Section 13** – See – Penal Code, 1860, Section 392 & 397: *Rajesh Vs. State of M.P.*, I.L.R. 2021 M.P. 1910

### **DATE OF BIRTH (ENTRIES IN THE SCHOOL REGISTER) RULES, M.P., 1973**

– **Rule 7 & 8** – See – Constitution – Article 226: *Shiv Kumar Sharma Vs. The Secretary, M.P. Board of Secondary Education*, I.L.R. 2022 M.P. \*59

### **DESIGNS ACT (16 OF 2000)**

– **Section 2(d) & 4** and Civil Procedure Code (5 of 1908), Order 39 Rule 1 & 2 – Design & Trademark – Determination – Held – Court below erred in relying on different “Trademarks” when matter was essentially related to “Design” – Real test is based on “look alike” factor – Simple test to determine the design is to keep both products side by side to see if those appear to be similar or different – Applying the parameter of “exact similitude” or “exclusivity” is not correct – Similarity of

design found – Injunction granted – Appeal allowed: *Praveen Muraka Vs. Bhama Enterprises India Pvt. Ltd.*, I.L.R. 2021 M.P. 737 (DB)

– **Section 4** – Comparison of Designs – Held – No provision of Act or Rule produced before Court that Controller/ Examiner is under an obligation to examine the design for which registration is applied with all previous designs of same product which have already been registered: *Praveen Muraka Vs. Bhama Enterprises India Pvt. Ltd.*, I.L.R. 2021 M.P. 737 (DB)

– **Section 19 & 22(4)** – Revocation of Registration – Held – There are two options available to seek revocation of registration, one of them is before the Controller, appeal against which would lie before High Court and second, in a suit for infringement in a proceeding before Civil Court on basis of registration certificate, where if, defendant seeks revocation of registration, in that eventuality, suit is to be transferred to High Court in terms of Section 22(4) of the Act – Both are independent provisions giving rise to different and distinct cause of action: *S.D. Containers Indore Vs. M/s. Mold Tek Packaging Ltd.*, I.L.R. 2021 M.P. 163 (SC)

– **Section 19 & 22(4)** and The Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015 (4 of 2016), Sections 4, 7 & 21 – Jurisdiction – Held – Plea of revocation of registration was raised in suit which is required to be transferred to High Court as per Section 22(4) of 2000 Act and since no part of cause of action has arisen within jurisdiction of Kolkata, suit is liable to be transferred to M.P. High Court, Indore Bench – Order of Commercial Court at District Level was in accordance with law – Order of High Court not sustainable and set aside – Matter remitted to M.P. High Court, Indore Bench – Appeal disposed: *S.D. Containers Indore Vs. M/s. Mold Tek Packaging Ltd.*, I.L.R. 2021 M.P. 163 (SC)

– **Section 22(4)** – Transfer of Proceedings – Jurisdiction – Held – In terms of Section 22(4), defendant has a right to seek cancellation of design which necessarily mandates the Courts to transfer the suit – Transfer of suit is a ministerial act if there is a prayer for cancellation of registration – If a suit is to be transferred to Commercial Division of High Court having ordinary original civil jurisdiction, then the Civil Suit in which there is plea to revoke the registered design has to be transferred to High Court where there is no ordinary original civil jurisdiction: *S.D. Containers Indore Vs. M/s. Mold Tek Packaging Ltd.*, I.L.R. 2021 M.P. 163 (SC)

### **DISASTER MANAGEMENT ACT (53 OF 2005)**

– **Section 24** and Constitution – Article 19(6) – Ban on Interstate Bus Operation – Held – Section 24 gives ample power to “Control and Restrict vehicular traffic” and provision is wide enough to impose complete ban on vehicular movement – Prohibition on vehicular movement falls within ambit of reasonable restriction as

per Article 19(6) of Constitution – Petitioner failed to establish that impugned order is illegal, irrational and outcome of any procedural impropriety – Appeal dismissed: *M.P. Bus Operator Association Vs. State of M.P., I.L.R. 2021 M.P. 2242 (DB)*

– **Section 24** and Government of India, Guidelines dated 31.03.2021, Clause 12 & 19 – Administrative Instructions & Statutory Provisions – Held – Guidelines are issued in executive fiat – No executive instructions can prevail over statutory provision – Administrative instructions can supplement statutory provisions but cannot supplant it: *M.P. Bus Operator Association Vs. State of M.P., I.L.R. 2021 M.P. 2242 (DB)*

– **See** – Constitution – Article 21: *In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 698 (DB)*

### **DISTRICT COURT ESTABLISHMENT (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, M.P., 2016**

– **Rule 17(3)** and District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2019, Rule 17(3) – Select List/Wait List Candidates – Validity Period of Select/Wait List – Applicability of Rules – Though posts were lying vacant, petitioners (wait list candidates) were denied appointment on ground that as per Rules of 2019, validity period of select list was reduced from 18 months to 12 months and accordingly the list has lapsed – Held – Norms of process of selection cannot be changed by changing Rules in middle of selection process – Selection process commenced as per 2016 Rules, wherein as per Rule 17(3), validity period will be 18 months – 2019 Rules have not been made retrospective by any express provision – Decision of respondents set aside – Petitioners have right to be considered for appointment on unfilled posts – Respondents directed accordingly – Petitions disposed: *Shailesh Kumar Sonwane Vs. State of M.P., I.L.R. 2021 M.P. 2092 (DB)*

– **Rule 17(3)** – See – Constitution – Article 226: *Shailesh Kumar Sonwane Vs. State of M.P., I.L.R. 2021 M.P. 2092 (DB)*

### **DISTRICT COURT ESTABLISHMENT (RECRUITMENT AND CONDITIONS OF SERVICE) RULES, M.P., 2019**

– **Rule 17(3)** – See – District Court Establishment (Recruitment and Conditions of Service) Rules, M.P., 2016, Rule 17(3): *Shailesh Kumar Sonwane Vs. State of M.P., I.L.R. 2021 M.P. 2092 (DB)*

## **DISTRICT JUDICIARY**

– **Independence** – Post of District Judge (Vigilance & Inspection) – Held – If judges of District Judiciary is proceeded against by High Court on administrative

side for discretion exercised in bail matters, it would demoralize other judges who would consider it safest to dismiss bail applications as proof of his integrity and being safe from imputations of dishonesty and associated enquiry from vigilance – Office of District Judge (V & I) have a debilitating effect on independence and individuality of judges of District Judiciary – This post is a surplus appendage, akin to a vestigial organ in body of judiciary in State of M.P. – High Court on administrative side may re-assess the necessity for the post of District Judge (V & I): *Zarina Begum Vs. State of M.P.*, I.L.R. 2021 M.P. 1196

### **DOWRY PROHIBITION ACT (28 OF 1961)**

– **Section 3/4** – See – Penal Code, 1860, Section 498-A: *Abhishek Pandey @ Ramji Pandey Vs. State of M.P.*, I.L.R. 2021 M.P. 1960

– **Section 3/4** – See – Penal Code, 1860, Sections 498-A, 294, 323/34 & 506 (Part II): *Balkrishna Devda Vs. State of M.P.*, I.L.R. 2022 M.P. 952

## **E**

### **EDUCATION**

– **Admission Process** – Fixation of Age – Held – Merely because in earlier advertisement, maximum age for admission was fixed at 48 years, it cannot be concluded that fixing maximum age of 45 years in subsequent advertisement is discriminatory – It is not in violation of any statutory provision – Petition dismissed: *Catherin Josfin Thangadurai (Mrs.) Vs. State of M.P.*, I.L.R. 2021 M.P. \*9 (DB)

### **ELECTRICITY ACT (36 OF 2003)**

– **Section 86(1)(f)** – See – Arbitration and Conciliation Act, 1996, Section 11(6) & 21: *Chief General Manager (IPC) MP Power Trading Co. Ltd. Vs. Narmada Equipments Pvt. Ltd.*, I.L.R. 2021 M.P. 604 (SC)

– **Section 86(1)(f) & 174** – See – Arbitration and Conciliation Act, 1996, Section 11(6): *Chief General Manager (IPC) MP Power Trading Co. Ltd. Vs. Narmada Equipments Pvt. Ltd.*, I.L.R. 2021 M.P. 604 (SC)

– **Sections 139, 151, 153 & 155** and Penal Code (45 of 1860), Section 279 & 427 – Cognizance of Offence – Jurisdiction of Special Court – Police filed single charge sheet for offence u/S 139 of 2003 Act and for offence u/S 279 & 427 IPC – Held – Special Court is also having powers of Session Court by virtue of Section 155 of 2003 Act – Co-joint reading of second proviso to section 151 r/w Section 155 shows that apart from offences under 2003 Act, Special Court can take direct

cognizance for other offences also, if they are included in the complaint as well as in police report – Reference answered accordingly: *In Re. Special Judge (Electricity Act) No. 5, Indore, I.L.R. 2022 M.P. 1065 (DB)*

– **Section 151**, First & Second Proviso – Term “Offence” & “Offence under the Act” – Held – Second proviso provides that a Special Court constituted u/ S 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial – In second proviso, the only word “offence” is used and not the words “offence punishable under this Act” as used in first proviso as well in main part of Section 151 – Thus, Special Court has power to take cognizance under the Electricity Act and also under the IPC: *In Re. Special Judge (Electricity Act) No. 5, Indore, I.L.R. 2022 M.P. 1065 (DB)*

### **EMPLOYEE’S COMPENSATION ACT (8 OF 1923)**

– **Section 3 & 12** and Civil Procedure Code (5 of 1908), Order 1 Rule 10 – Necessary and Proper Party – Held – As per Section 12 where any person (principal) for purpose of his trade/business contracts with other person (contractor) for execution of work, which is part of trade/business of principal, he shall be liable to pay compensation to any employee employed in execution of that work as if that employee had been immediately employed by him – Deceased was employee of Respondent No. 7 and was engaged by Respondent No. 6 as a contractor to do its work – Being principal employer, Respondent No. 6 is necessary and proper party in claim case – Petition dismissed: *Bajaj Allianz General Insurance Co. Vs. Hafiza Bee, I.L.R. 2021 M.P. 100*

### **ENTERTAINMENT DUTY AND ADVERTISEMENTS TAX ACT, M.P. (30 OF 1936)**

– **Section 2(f)** – Proprietor – Executive Instructions – Held – In absence of any definition of “proprietor/swami” in executive directions/policy, the definition must be traced from main enactment – Definition contained in parent Act of 1936 must be the basis for determination – No executive instructions can prevail or assign a different meaning than the meaning provided in parent Act: *Satyam Cineplexes Ltd. (M/s) Vs. State of M.P., I.L.R. 2021 M.P. 642 (DB)*

– **Section 2(f)** – Proprietor – Exemption of Tax – Entitlement – Held – Definition of “proprietor” covers a person responsible for the time being or an incharge of management of the entertainment – Petitioner/lessee entitled to get benefit of exemption of Entertainment Tax – Impugned order set aside – Petition allowed: *Satyam Cineplexes Ltd. (M/s) Vs. State of M.P., I.L.R. 2021 M.P. 642 (DB)*

– **Section 2(f) & 7** – Exemption of Tax – Criteria – Held – Section 7 which empowers government to exercise power of exemption is related to “any entertainment” or “clause of entertainment” and is not aimed towards the “owner” or “applicant” who preferred application for construction of shopping mall or multiplex: *Satyam Cineplexes Ltd. (M/s) Vs. State of M.P., I.L.R. 2021 M.P. 642 (DB)*

### **EPIDEMIC DISEASES ACT (3 OF 1897)**

– **See** – Constitution – Article 21: *In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 698 (DB)*

### **ESSENTIAL COMMODITIES ACT (10 OF 1955)**

– **and Penal Code (45 of 1860)**, Section 409 & 420 – Applicability of Act/ Code – Held – In absence of any bar to the applicability of provisions of IPC, it cannot be said that since a separate procedure has been provided under Special Act, therefore invocation of provisions of IPC is unwarranted – Prayer rejected: *Pankaj Karoriya Vs. State of M.P., I.L.R. 2021 M.P. 2360*

– **Sections 2(A), 3 & 7** and Criminal Procedure Code, 1973 (2 of 1974), Section 154 – Misbranded Insecticide – Held – As per Section 2(A) of 1955 Act, ‘essential commodity’ means ‘specified in the Schedule’ – Insecticide is not mentioned in Schedule – No offence under 1955 Act made out – FIR set aside – Application allowed: *Amrutlal Sanghani Vs. State of M.P., I.L.R. 2022 M.P. \*47*

– **Sections 2(ia), 3 & 5** and Public Distribution System (Control) Order, M.P., 2015 – Competent Authority – Held – Section 2(ia) refers to definition of Collector which includes Additional Collector and such other officers not below the rank of Sub-Divisional Officer – For purpose of the Control Order 2015, Collector includes Sub-Divisional Officer also, thus he is competent to refer the matter for registration of FIR: *Chironjilal Kushwah Vs. State of M.P., I.L.R. 2022 M.P. \*1*

### **EVIDENCE ACT (1 OF 1872)**

– **Sections 3, 32, 33, 43 & 53** – See – Land Revenue Code, M.P., 1959, Section 109 & 110: *Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan, I.L.R. 2021 M.P. 482*

– **Section 8** – Relevant factors – Held – Switching off the mobile by accused at the time of incident and selling of the recently purchased mobile at low rates is also relevant piece of evidence u/S 8 of Evidence Act: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Section 9** and Criminal Procedure Code, 1973 (2 of 1974), Section 54-A – Identification – Held – Identification of accused is a relevant fact and has to be given importance: *Rajesh Vs. State of M.P., I.L.R. 2021 M.P. 1910*

– **Section 9** and Criminal Procedure Code, 1973 (2 of 1974), Section 54-A – Identification of Accused – Held – Identification of accused is a relevant fact u/S 9 of Evidence Act and Court can direct the accused to submit himself for identification u/S 54-A Cr.P.C. – Identification of accused in Court establishes identity of accused, but to seek conviction, prosecution has to prove other allegations either by leading direct or circumstantial evidence – Mere identification of a person would not establish his guilt: *Ramcharan Vs. State of M.P., I.L.R. 2022 M.P. 549 (DB)*

– **Section 25** – See – Narcotic Drugs and Psychotropic Substances Act, 1985, Section 53 & 67: *Ramniwas Vs. State of M.P., I.L.R. 2021 M.P. 757*

### SYNOPSIS : Section 32

- |                                       |   |
|---------------------------------------|---|
| <b>1. Due Caution &amp; Care</b>      | <b>2. Factors to be Considered/<br/>Principle</b> |
| <b>3. Multiple Dying Declarations</b> | <b>4. Oral Dying Declaration</b>                  |
| <b>5. Procedure</b>                   | <b>6. Miscellaneous</b>                           |

#### 1. Due Caution & Care

– **Section 32** – Dying Declaration – Apex Court concluded that before convicting the accused only on basis of dying declaration, Court must act with prudence and due caution and care: *Devkaran Vs. State of M.P., I.L.R. 2021 M.P. 1920 (DB)*

#### 2. Factors to be Considered/Principle

– **Section 32** – Dying Declaration – Factors to be considered while evaluating the dying declaration, enumerated: *Durgesh Singh Bhadauria Vs. State of M.P., I.L.R. 2022 M.P. 138 (DB)*

– **Section 32** – Dying Declaration – Principle – Held – It is a qualitative worth of a declaration and not plurality of declaration which matters – Dying declaration is to be examined very carefully with utmost care and caution because the maker of statement is not alive and cannot be put to cross examination: *Pappu @ Dayaram Vs. State of M.P., I.L.R. 2021 M.P. 1571 (DB)*

– **Section 32** – Dying Declaration – Principles laid down by Apex Court enumerated: *Nafees Khan Vs. State of M.P., I.L.R. 2022 M.P. 588 (DB)*

– **Section 32** – Maxim “Nemo Moriturus Praesumitur Mentire” – Held – The principle of dying declaration is based on the maxim “*nemo moriturus praesumitur mentire*” which means, a man will not meet his maker with a lie in his mouth, thus if dying declaration is found to be voluntary without any tutoring or animosity and maker of it was in a fit state of mind, then it can be a sole basis for conviction: *Chhuna @ Chhatra Pal Singh Vs. State of M.P., I.L.R. 2022 M.P. 168 (DB)*

– **Section 32** – Maxim “*Nemo Moriturus Praesumitur Mentire*” – Held – When a declaration is made by a person whose death is imminent, the principle attributed to Matthew Arnold that “truth sits upon the lip of a dying man” will come into play – Whole idea of accepting a statement in name of dying declaration comes from a maxim “*nemo moriturus praesumitur mentire*” which means, a man will not meet his maker with a lie in his mouth: *Durgesh Singh Bhadauria Vs. State of M.P., I.L.R. 2022 M.P. 138 (DB)*

### 3. Multiple Dying Declarations

– **Section 32** and Criminal Procedure Code, 1973 (2 of 1974), Section 161 – Two Dying Declarations – Creditibility – Held – Tehsildar recorded dying declaration after taking fitness certificate from doctor where deceased stated that she was burnt accidentally by stove whereas subsequent dying declaration recorded u/S 161 Cr.P.C. by police without taking any prior certification of fitness, where it was alleged that on account of harassment by appellant, she poured kerosene and immolated herself – Prosecution witnesses did not support subsequent dying declaration, the same being suspicious and doubtful, is not reliable: *Vinod Kumar Vs. State of M.P., I.L.R. 2022 M.P. 1584*

### 4. Oral Dying Declaration

– **Section 32** – Dying Declaration – Explaining the Declaration to Deceased – Held – Dying declaration can be oral as well as written – In case of oral dying declaration, the question of existence or insistence upon reading over and explaining the declaration to deceased does not arise – On this ground, dying declaration cannot be discarded – Section 32(1) does not prescribe any particular format in which a dying declaration is to be recorded: *Nafees Khan Vs. State of M.P., I.L.R. 2022 M.P. 588 (DB)*

– **Section 32** – Oral Dying Declaration – Corroboration – Held – Oral dying declaration can be sole basis for holding appellants guilty – If dying declaration is suspicious, then corroboration is required, it is not essential if declaration is truthful and voluntary – Requirement of doctor’s endorsement as to mental fitness of deceased is merely a rule of prudence – No straight jacket formula that in every case, declaration



must be corroborated and mental state of deceased be certified by doctor: *Kuldeep Choudhary @ Kuldeep Yadav Vs. State of M.P., I.L.R. 2021 M.P. 953 (DB)*

– **Section 32(1)** – Oral Dying Declaration – Nature of Injuries & Cause of Death – Held – If statement of deceased relates to cause of his death, it was admissible in evidence u/S 32(1) of the Act – In instant case, dying declaration is within purview of Section 32(1) of Evidence Act: *Kuldeep Choudhary @ Kuldeep Yadav Vs. State of M.P., I.L.R. 2021 M.P. 953 (DB)*

## 5. Procedure

– **Section 32** and Police Regulations, M.P., Regulation No. 742 – Dying Declaration – Procedure – Held – While recording dying declaration, no remark was made that whether deceased was in a fit condition to make statements – Time of dying declaration was shown but it was not mentioned that till what time it was recorded – Dying declaration does not bear presence of any doctor or Magistrate – I.O. has not followed the procedural norms as stipulated in Police Regulation: *Bhagwan Singh Vs. State of M.P., I.L.R. 2022 M.P. 509 (DB)*

## 6. Miscellaneous

– **Section 32** – See – Criminal Procedure Code, 1973, Section 154 & 161: *Siroman Singh Vs. State of M.P., I.L.R. 2022 M.P. 1777*

– **Section 32** – See – Penal Code, 1860, Section 302: *Devkaran Vs. State of M.P., I.L.R. 2021 M.P. 1920 (DB)*

– **Section 32** – See – Penal Code, 1860, Section 302: *Pappu @ Dayaram Vs. State of M.P., I.L.R. 2021 M.P. 1571 (DB)*

– **Section 32** – See – Penal Code, 1860, Section 302 & 307/34: *Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)*

– **Section 32** – See – Penal Code, 1860, Section 302 & 498-A: *Nafees Khan Vs. State of M.P., I.L.R. 2022 M.P. 588 (DB)*

● – **Section 45** – See – Penal Code, 1860, Sections 302, 201, 147 & 149: *Kuldeep Choudhary @ Kuldeep Yadav Vs. State of M.P., I.L.R. 2021 M.P. 953 (DB)*

– **Section 45 & 112** – Legitimacy of Child – DNA/Blood Test & Presumption – Held – Apex Court concluded that Courts in India cannot order blood test as a matter of course – There must be a strong *prima facie* case that husband had no access in order to dispel the presumption – Court must carefully examine as to what would be the effect of branding a child as illegitimate or mother as an unchaste

woman – Directions for conducting DNA test is also violative of privacy of individual: *Urmila Singh (Smt.) Vs. Saudan Singh, I.L.R. 2022 M.P. \*94*

– **Section 45 & 112** – See – Civil Procedure Code, 1908, Order 26 Rule 10(A): *Urmila Singh (Smt.) Vs. Saudan Singh, I.L.R. 2022 M.P. \*94*

– **Section 58** – Admitted Document – Held – Admitted document is not required to be proved as per Section 58 of the Act: *Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan, I.L.R. 2021 M.P. 482*

– **Section 65** – Secondary Evidence – Photocopy of Document – Held – A photocopy can be treated as secondary evidence provided one of the clauses/conditions of Section 65 are satisfied – In absence thereof, a photocopy cannot be treated as secondary evidence: *Kuldeep Choudhary @ Kuldeep Yadav Vs. State of M.P., I.L.R. 2021 M.P. 953 (DB)*

– **Section 68** – Will – Held – Provision of Section 68 distinguishes Will from other documents by putting a proviso which has the effect that admission of execution of other documents has the effect of proving of said documents but Will is unaffected by any admission: *Ramkali (Smt.) (Dead) By L.R. Vs. Smt. Muritkumari (Dead) By L.Rs., I.L.R. 2022 M.P. 2063*

– **Section 80** – Whenever any document is produced before any Court, purporting to be a record or memorandum of evidence or any part of evidence, given by a witness in judicial proceeding, or before any officer authorized by law to take such evidence, taken in accordance with law, and purported to be signed by any judge or magistrate or by any such officer as aforesaid, Court shall presume that the document is genuine – Section 80 recognizes that when a deposition is taken by public officer, there is degree of publicity and solemnity, which affords a sufficient guarantee for presumption that everything was formally, correctly and honestly done: *Satyendra Koshta Vs. The Registrar General, I.L.R. 2022 M.P. 1329 (DB)*

– **Section 105** – Burden of Proof – Held – U/S 105, the burden of proving the existence of circumstances bringing the case within said exception lies on the accused though the requisite standard of proof is not the same as expected from prosecution: *Ashok Singh Vs. State of M.P., I.L.R. 2022 M.P. 1195 (DB)*

– **Section 106** – Burden of Proof – Held – Section 106 apply to those cases where prosecution succeeded in establishing the fact from which a reasonable inference can be drawn regarding existence of certain other facts within the special knowledge of accused – When accused fails to offer proper explanation of existence of such other facts, Court can always draw an appropriate inference: *Jitendra Vs. State of M.P., I.L.R. 2022 M.P. 1048 (DB)*

– **Section 106** – Circumstantial Evidence – Last Seen Together – Burden of Proof – Held – Since deceased was taken by appellants on 12.05.2008 at 7-8 am and she died on 12.05.2008 itself as per PM report and her dead body was found in morning of 13.05.2008, thus, time gap between last seen together and time of death is very short – Burden was on appellants to explain as to how deceased dies a homicidal death – In absence of any such explanation by appellants it is held that prosecution has succeeded in establishing guilt of appellants: *Omprakash Pateria (Dead) Through L.R. Vs. State of M.P., I.L.R. 2022 M.P. \*43 (DB)*

– **Section 106** – See – Criminal Procedure Code, 1973, Section 313: *Sanjay Vs. State of M.P., I.L.R. 2022 M.P. 1795 (DB)*

– **Section 106** – See – Penal Code, 1860, Section 302: *Sitaram Vs. State of M.P., I.L.R. 2022 M.P. \*14 (DB)*

– **Section 106** – See – Penal Code, 1860, Sections 302, 304-B & 498-A: *Jitendra Vs. State of M.P., I.L.R. 2022 M.P. 1048 (DB)*

– **Section 110** – Presumption – Applicability – Held – Possession is prima facie evidence of title – A long, peaceful and lawful possession of plaintiff lends presumption of title – Presumption u/S 110 would apply only if two conditions are specified viz. that possession of plaintiff is not prima facie wrongful and secondary title of defendants is not proved – This presumption can be availed of even against government: *Ramkrishna Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1749*

– **Section 110** – Private Temple & Public/ Government Temple – Held – In a private temple, if public offers pooja and come for darshan of deities then also nature of property does not alter and it remains private property: *Ramkrishna Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1749*

– **Section 110** – Private Temple & Public/ Government Temple – Proof of Ownership – Held – If ancestors of appellant are managing temple/offering pooja for more than 100 years and are discharging duties and sharing responsibility of Shebait uninterruptedly in lawful possession, then State which has no title cannot invade his possession – State nowhere pleaded and proved or discharged the presumption that temple was a Government temple – Appellant directed to maintain temple with utmost care and no commercial use/sale/mortgage is permitted – Proclamation by respondents for taking temple into trust quashed and they are injuncted to interfere into peaceful possession of appellant – Judgment of trial Court set aside – Appeal allowed: *Ramkrishna Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1749*

– **Section 112** – DNA Test – Permissibility – Held – Matter relates to inheritance of property of Hindu Undivided Family – Petitioner denying Respondent

No. 1 to be his real sister – It is true that u/S 112, birth during marriage is conclusive proof of legitimacy, therefore, bars DNA testing but when blood relations of siblings is challenged, there shall be no bar u/S 112 – Trial Court rightly permitted for DNA test – Petition dismissed: *Radheshyam Vs. Kamla Devi, I.L.R. 2021 M.P. \*18*

– **Section 113-A** and Penal Code (45 of 1860), Sections 107, 306 & 498-A – Presumption of Abetment – Intensity & Extent of Cruelty – Assessment – Held – Where a slap or humiliation may constitute cruelty for purpose of Section 498-A IPC, the same would be grossly inadequate to hold husband guilty u/S 306 IPC – A hypersensitive individual may have a low breaking point and may commit suicide on account of even trivial matters: *Shivcharan Vs. State of M.P., I.L.R. 2021 M.P. 317*

– **Section 114-A (amended)** – See – Penal Code, 1860, Section 376(2) (amended) & 376-D: *Ratanlal Vs. State of M.P., I.L.R. 2021 M.P. 527 (DB)*

– **Section 114-A** and Penal Code (45 of 1860), Section 376(2)(g) – Presumption – Applicability – Held – As per Section 114 A of Evidence Act, it is not merely to be seen that sexual intercourse with prosecutrix needs to be proved but sexual intercourse by accused needs to be proved – Prosecution failed to prove that appellants committed sexual intercourse with prosecutrix, thus presumption u/S 114 A of Evidence Act is not available against appellants: *Munnalal @ Bicholi Vs. State of M.P., I.L.R. 2021 M.P. 1739 (DB)*

– **Section 137** – See – Land Revenue Code, M.P., 1959, Section 109 & 110: *Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan, I.L.R. 2021 M.P. 482*

– **Section 145** – Omission & Contradictions – Held – If the attention of the witness is not drawn towards the omissions in his previous statement, then the accused cannot take advantage of such omission and contradictions – If a party intends to contradict a witness, then his attention must be called to those parts of it which are to be used for purpose of contradicting him: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

– **Section 145** and Criminal Procedure Code, 1973 (2 of 1974), Section 161 – Omissions & Contradictions – Held – Section 145 specifically provides that former statement u/S 161 Cr.P.C. has to put to the witnesses in his cross-examination and if attention is not drawn regarding omissions and contradictions, veracity of witness could not be impeached – As testimony not challenged at stage of cross-examination, prosecution case is not adversely affected: *In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath, I.L.R. 2022 M.P. 722 (DB)*

– **Section 154** – Applicability – Held – Section 154 does not limit the application of said provision only to the stage of Examination-in-chief and it applies to all the 3 stages i.e. Examination-in-chief, Cross-examination and Re-examination: *In Reference Vs. Ravi @ Toli, I.L.R. 2022 M.P. 286 (DB)*

– **Section 165** – Judicial Process – Adversarial System & Inquisitorial System – Discussed and explained: *Naresh Vs. State of M.P., I.L.R. 2022 M.P. 157 (DB)*

– **Section 165** – See – Penal Code, 1860, Section 302 & 84: *Ashok Singh Vs. State of M.P., I.L.R. 2022 M.P. 1195 (DB)*

### **EXCISE ACT, M.P. (2 OF 1915)**

– **Sections 2(7), 34(2) & 61** – Compliance – Competent Authority – Held – Charge-sheet has not been filed by any police officer but it appears to be a complaint filed by Assistant District Excise Officer who happens to be an “Excise Officer” as per Section 2(7) of the Act – Substantial compliance of Section 61 has been made – Prima Facie no injustice caused to petitioner: *Nikunj Shivhare Vs. State of M.P., I.L.R. 2022 M.P. 406*

– **Section 24** – See – Constitution – Article 226: *Akarsh Jaiswal Vs. State of M.P., I.L.R. 2022 M.P. 1374*

– **Sections 34(1), 47-A(3) & 47-D** – See – Criminal Procedure Code, 1973, Section 451/457: *Aman Ahirwal Vs. State of M.P., I.L.R. 2022 M.P. \*76*

– **Section 34(2)** and Criminal Procedure Code, 1973 (2 of 1974), Section 161 & 482 – Quashment – Held – Statements of witnesses u/S 161 Cr.P.C. indicates that petitioner stocked liquor without permit and legal sanction – To what extent license given to petitioner has been breached is to be ascertained and same is subject matter of evidence and trial – Application dismissed: *Nikunj Shivhare Vs. State of M.P., I.L.R. 2022 M.P. 406*

– **Sections 34(2), 47-A(3)(a) & 47-D** – See – Criminal Procedure Code, 1973, Section 457: *Ajay Khateek Vs. State of M.P., I.L.R. 2021 M.P. 1986*

## **F**

### **FOOD SAFETY AND STANDARD ACT (34 OF 2006)**

– **Section 26(2)(ii) & 52** – See – National Security Act, 1980, Section 3(3) & 3(4): *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

– **Sections 42, 51 & 68** – Penalty & Fine – Double Jeopardy – Held – Penalty cannot be equated with fine – Penalty is provided for effective implementation

of different provisions, whereas fine/imprisonment is provided for the offence committed by the wrong doer – It cannot be said that proceedings for imposition of penalty as well as proceedings for prosecution is not permissible simultaneously – It cannot be held that applicant would be a victim of double jeopardy: *Rohit Sahu Vs. State of M.P., I.L.R. 2022 M.P. \*58*

– **Sections 42, 51 & 68** and Criminal Procedure Code, 1973 (2 of 1974), Section 154 & 482 – Quashment of FIR – Held – Proceedings for imposition of penalty as well as proceedings for prosecution of applicant is simultaneously permissible – No provision in Act of 2006 pointed out which bars the applicability of provisions of IPC – No interference warranted – Application dismissed: *Rohit Sahu Vs. State of M.P., I.L.R. 2022 M.P. \*58*

## G

### GENERAL CLAUSES ACT (10 OF 1897)

– **Section 3(3)** – See – Oaths Act, 1969, Section 3 & 4: *Kamla Sharma (Smt.) Vs. Sukhdevlal, I.L.R. 2022 M.P. 1647*

– **Section 20** – See – Registration of Births and Deaths Act, 1969, Section 13(3) & 30: *Kallu Khan Vs. State of M.P., I.L.R. 2022 M.P. 1127 (DB)*

– **Section 21** – See – National Security Act, 1980, Sections 3(3), 3(4), 8(1), 10 & 14: *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

### GOODS AND SERVICES TAX ACT, M.P. (19 OF 2017)

– **Section 107**, Central Goods and Services Tax Act (12 of 2017), Section 129 and Constitution – Article 226/227 – Principle of Natural Justice – Opportunity of Hearing – Appeal dismissed on merits as well as on ground of limitation – Held – Petitioner duly represented its cause before appellate authority through e-mails and written submissions, thus pre-decisional hearing was afforded to petitioner – On merits also, appellate authority delved upon and thereafter ensure passing of order – No interference warranted under Article 226/227 of Constitution – Petition dismissed: *Sai Rubber Works (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 433 (DB)*

– **Section 107(1) & 107(4)** – Appeal – Limitation – Held – GST is also a fiscal statute and therefore strict compliance is expected from all authorities concerned – Period of limitation shall also be considered accordingly – Appeal was filed beyond the outer limit of four months – Appeal was barred by limitation: *Sai Rubber Works (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 433 (DB)*

– **Section 145** – Opinion of Expert – Permissibility – Held – Section 145 of 2017 Act gives the authority to seek opinion from an expert – Petitioner’s challenge to the action of respondents by which they called Chartered Engineer to assess capacity of machine, is rejected – W.P. No. 23624/2021 dismissed: *Elora Tobacco Co. Ltd. (M/s.) Vs. Union of India, I.L.R. 2022 M.P. 1995 (DB)*

**GOVANSH VADH PRATISHEDH ADHINIYAM,  
M.P. (6 OF 2004)**

– **Sections 4, 6, 9 & 11** – See – Criminal Procedure Code, 1973, Section 451 & 457: *Raees Vs. State of M.P., I.L.R. 2022 M.P. 2102*

– **Section 11(5)** and Govansh Vadh Pratishedh Rules, M.P., 2012, Rule 5 & 6 – Seized Vehicle – Confiscation/Release on Interim Custody – Held – District Magistrate is having power to confiscate seized property but no procedure prescribed under 2004 Act for confiscation and no Rules have been framed under the Act – There is no provision to restrict jurisdiction of JMFC to release seized property on interim custody during pendency of investigation or trial – In absence of provision, jurisdiction of JMFC cannot be deemed to be ousted: *Raees Vs. State of M.P., I.L.R. 2022 M.P. 2102*

**GOVANSH VADH PRATISHEDH RULES, M.P., 2012**

– **Rule 5 & 6** – See – Govansh Vadh Pratishedh Adhiniyam, M.P., 2004, Section 11(5): *Raees Vs. State of M.P., I.L.R. 2022 M.P. 2102*

**GOVERNMENT OF INDIA, GUIDELINES DATED  
31.03.2021**

– **Clause 12 & 19** – See – Disaster Management Act, 2005, Section 24: *M.P. Bus Operator Association Vs. State of M.P., I.L.R. 2021 M.P. 2242 (DB)*

**GOVERNMENT SERVANTS (TEMPORARY AND  
QUASI-PERMANENT SERVICE) RULES, M.P. 1960**

– **Rule 12** – See – Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 8(7): *Sinnam Singh Vs. State of M.P., I.L.R. 2021 M.P. 1317*

– **Rule 12** – See – Police Regulations, M.P., Regulation 59: *State of M.P. Vs. Yogesh Pathak, I.L.R. 2021 M.P. 2253 (DB)*

– **Rule 12(b)** – Termination – Held – Services of temporary employee can be terminated by issuing one month’s notice or by making payment of one month’s

advance salary in lieu of notice, which was not done in present case – Impugned order of termination is modified and respondents directed to pay one month's salary to petitioner in lieu of one month's notice – Petition disposed: *Sinnam Singh Vs. State of M.P.*, I.L.R. 2021 M.P. 1317

– **See** – Civil Services (General Conditions of Service) Rules, M.P., 1961, Rules 8(1), 8(7) & 12: *Arun Parmar Vs. State of M.P.*, I.L.R. 2021 M.P. 822 (FB)

### **GUARDIANS AND WARDS ACT (8 OF 1890)**

– **Section 7/25 & 9(1)** and Civil Procedure Code (5 of 1908), Order 7 Rule 11 – Territorial Jurisdiction – Word “Ordinarily Resides” – Held – Minor was forcibly removed by applicant from custody of mother prior to filing of application for guardianship by respondent mother – Word “ordinarily resides” for minor would be the place where local guardian is residing – Minor is aged 3 years, mother would be his natural guardian – No error committed by trial Court in rejecting application under Order 7 Rule 11 CPC filed by father – Revision dismissed: *Akhilesh Anjana Vs. Kavita Anjana*, I.L.R. 2022 M.P. 1643

## **H**

### **HIGH COURT OF MADHYA PRADESH RULES, 2008**

– **Chapter II, Rule 2** – See – Arbitration and Conciliation Act, 1996, Sections 2(1)(e), 16(2)(3), 17, 37(1) & 37(2): *Upadhyay Constructions Pvt. Ltd. (M/s.) Vs. M/s. Prism Infra Projects*, I.L.R. 2021 M.P. 2353

– **Chapter IV, Rule 1(8)**, Commercial Courts Act, 2015 (4 of 2016), Sections 4, 5 & 13 & Letters Patent, Clause 9 – Trial of Civil Suit – Jurisdiction of Court – Held – High Court of M.P. does not exercise ordinary original civil jurisdiction – Civil Suit cannot be tried by Commercial Division of High Court as the same has not been constituted in High Court of M.P. – Commercial Appellate Division, which is in existence in M.P. High Court, being an appellate forum also cannot try the civil suit – Civil suit can only be tried under clause 9 of Letters Patent r/w Rule 1(8) of Chapter V of M.P. High Court Rules 2008 – Registry directed to list before appropriate Single Bench: *Mold Tek Packing Pvt. Ltd. (M/s) Vs. S.D. Containers*, I.L.R. 2021 M.P. 945 (DB)

– **Chapter X, Rule 48** – See – Criminal Procedure Code, 1973, Section 397 & 401: *Satyanarayan Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. \*6

– **Chapter XIII, Rule 39 (2)** – See – Constitution – Article 226: *State of M.P. Vs. Satya Narayan Dubey*, I.L.R. 2022 M.P. 1975 (DB)



– **Chapter XV, Rule 11** – See – Criminal Procedure Code, 1973, Section 64: *Shivam Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1810*

## HINDU LAW

– **Shebaitship** – Principle & Concept – Held – Shebaitship is like immovable property, it is hereditary and heritable office and at the same time Shebaitship is having no right to sale the office nor it can be mortgage or leased – Debutter and Shebait relationship, discussed and explained: *Ramkrishna Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1749*

## HINDU MARRIAGE ACT (25 OF 1955)

– **Sections 5 & 11, 12 & 18** – Validity of Marriage – Contravention – Held – Section 11 only prescribes marriages which are solemnized after commencement of Act as null and void if such marriages contravene any of the conditions specified in clause (i), (iv) & (v) – Section 11 does not envisage that contravention of Section 5(iii) would entail the marriage to be void – Section 12 also do not envisage such marriages to be voidable: *Nirmala Devi (Smt.) Vs. Anil Kumar Tiwari, I.L.R. 2022 M.P. 503 (DB)*

– **Section 5(i) & 11** – Validity of Marriage – Held – If either party has a spouse living at the time of marriage and if such marriage is solemnized after commencement of Act of 1955, the same is void ipso-jure – The fact that other party had the knowledge of existing spouse living at the time of marriage is immaterial – Appeal dismissed: *Nirmala Devi (Smt.) Vs. Anil Kumar Tiwari, I.L.R. 2022 M.P. 503 (DB)*

– **Sections 5(iii), 11 & 18** – Validity of Marriage – Void/Voidable Marriage – Held – In 1984, although appellant was not of a marriageable age as per Section 5(iii) but when the law does not provide for any consequences except the one prescribed u/S 18, it cannot be presumed that such marriage is a nullity – Earlier marriage of appellant was neither void nor voidable and would remain valid, enforceable and recognized: *Nirmala Devi (Smt.) Vs. Anil Kumar Tiwari, I.L.R. 2022 M.P. 503 (DB)*

– **Section 9** – Restitution of Conjugal Rights – Reasonable Excuse – Held – Wife filed 3 different cases against husband and his family members and thereafter filed application u/S 9 of the Act – There are unbridgeable matrimonial differences between parties, it would be very difficult for husband to rejoin the company of wife – Husband has proved a reasonable excuse to withdraw from company of wife – Appeal dismissed: *Pushpa Sen (Smt.) Vs. Manoj Sen, I.L.R. 2022 M.P. \*20 (DB)*

– **Sections 9, 10, 13 & 21-A** – Transfer of Case – Scope – Held – Apex Court concluded that u/S 21-A, when a petition earlier filed u/S 10 or 13 is pending before a Civil Court and a subsequent petition is filed by other party u/S 10 or 13, the petitions shall be heard together but when subsequent petition is a petition u/S 9, provisions of Section 21-A are not attracted – MCC 1023/2021 filed by husband dismissed: *Bhumika Kanojiya (Smt.) Vs. Abhishek Kanojiya, I.L.R. 2022 M.P. 1955*

### SYNOPSIS : Section 13

- |                            |   |
|----------------------------|---|
| <b>1. Alternate Relief</b> | <b>2. Irretrievable Breakdown of Marriage</b> |
| <b>3. Mutual Consent</b>   | <b>4. Cruelty/Adultery/Desertion</b>          |

#### 1. Alternate Relief

– **Sections 13A, 13(1)(i), 13(1)(ia) & 13(1)(ib)** – Alternate Relief – Grounds – Held – It is true that husband failed to establish cruelty, desertion and adultery but still, looking to discord between parties, grant of decree of judicial separation would serve 2 purposes, (i) parties will have sufficient opportunity to resolve their dispute and (ii) if attempt of resolving dispute fails within one year of passing decree of judicial separation, husband can very well seek divorce u/S 13(1A)(i) of Act: *Dan Bahadur Singh Vs. Smt. Rama Devi, I.L.R. 2022 M.P. 686 (DB)*

– **Sections 13A, 13(1)(i), 13(1)(ia) & 13(1)(ib)** – Alternate Relief – Held – Although evidence produced by husband during trial fell short of satisfying ground of cruelty, desertion and adultery but allegation of adultery has polluted the relationship and would be a serious obstacle for parties henceforth to even think of cohabitation – Looking to the environment of discord between rival parties, case for decree of judicial separation u/S 13A is made out – Decree of judicial separation granted – Appeal allowed to that extent: *Dan Bahadur Singh Vs. Smt. Rama Devi, I.L.R. 2022 M.P. 686 (DB)*

#### 2. Irretrievable Breakdown of Marriage

– **Section 13** – Irretrievable Breakdown of Marriage – Held – “Irretrievable breakdown of marriage” is although not a ground for divorce, but where marriage is beyond repair on account of bitterness, Court can always take into consideration the said fact as a very weighty circumstance amongst other: *Hirdayshay Vs. Nutanbai, I.L.R. 2022 M.P. 681 (DB)*

– **Section 13(1)(ia) & 13(1)(ib)** – Cruelty & Desertion – Irretrievable Breakdown of Marriage – Held – Parties living separately since last 17 years and have not lived together even for once, thus for all practical purposes, marriage has

become dead – Although “irretrievable breakdown of marriage” is not a ground for divorce, but this can always be taken into consideration while deciding such cases – Trial Court considered the evidence in right perspective and granted decree of divorce – Appeal dismissed: *Vibha Shukla Vs. Kailash Dwivedi, I.L.R. 2022 M.P. 1010 (DB)*

### 3. Mutual Consent

– **Section 13B & 14** – Applicability – Held – As per the scheme of Act, Section 13(B) cannot be read along with Section 14 and the proviso to Section 14 by no stretch of imagination will be applicable in matter of divorce by mutual consent: *Vishal Kushwaha Vs. Mrs. Ragini Kushwaha, I.L.R. 2022 M.P. 1573 (DB)*

– **Section 13B(1) & 14** – One Year Separation Period – Held – The mandate envisaged u/S 13(B)(1) providing a period of one year separation before presentation of petition of divorce by mutual consent cannot be waived under proviso of Section 14 of the Act either on application of parties or suo motu by Court – Separation of one year is prerequisite for invoking Section 13(B)(1) of the Act – Condition of living separately for one year is not directory but mandatory: *Vishal Kushwaha Vs. Mrs. Ragini Kushwaha, I.L.R. 2022 M.P. 1573 (DB)*

– **Section 13B(2)** – Waiting Period – Held – Statutory waiting period of at least 6 months u/S 13B(2) is not mandatory but directory and it would be open to Court to exercise its discretion to waive the same having regard to facts and circumstances of case, if there was no possibility of reconciliation between spouses and waiting period would serve no purpose except to prolong their agony: *Vishal Kushwaha Vs. Mrs. Ragini Kushwaha, I.L.R. 2022 M.P. 1573 (DB)*

### 4. Cruelty/Adultery/Desertion

– **Section 13(1)(i) & 13(1)(i-a)** – Adultery & Cruelty – Held – Filing of a case for maintenance or a private complainant for offence u/S 498-A & 294 IPC, by wife, in itself would not amount to cruelty – No evidence or cruelty also – No decree can be granted on ground of cruelty and adultery – Appeal partly allowed: *Hirdayshay Vs. Nutanbai, I.L.R. 2022 M.P. 681 (DB)*

– **Section 13(1)(ia)** – Cruelty – Filing False Case against Husband – Held – Wife filed a false case of domestic violence against husband and his mother which was rejected – Filing of case alone would not amount to cruelty however, if allegations are false, just to cause mental harassment, then such act amounts to cruelty: *Vibha Shukla Vs. Kailash Dwivedi, I.L.R. 2022 M.P. 1010 (DB)*

– **Section 13(1)(ia)** – Mental Cruelty – Proof – Held – Cruelty can be physical or mental or both – Mental cruelty is difficult to establish by direct evidence

– It is necessarily a matter of inference to be drawn from facts and circumstances of the case: *Vibha Shukla Vs. Kailash Dwivedi, I.L.R. 2022 M.P. 1010 (DB)*

– **Section 13(1)(i-b)** – Desertion – Held – Marriage in 1988 and since then parties remained together intermittently for only 2 years – During initial years of marriage also, appellant had either to sent a notice for calling the wife or sent a search warrant through SDM – Persistent efforts made by husband, his parents and village peoples to convince wife and her father to send the wife back for discharge of marital relationship – To avoid company of husband, wife filed 2 cases against husband which appears to be an afterthought and both have resulted in dismissal – Husband has proved desertion by wife without any reasonable cause – Suit for divorce decreed on ground of desertion: *Hirdayshay Vs. Nutanbai, I.L.R. 2022 M.P. 681 (DB)*

● – **Section 17** – See – Penal Code, 1860, Section 143 & 494: *Kailash Vs. Gordhan, I.L.R. 2022 M.P. 1920*

– **Section 25** – Permanent Alimony – Income of Husband – Quantum – Held – However there is no material regarding earning of husband on record, but he is admittedly working as Agent in Life Insurance Corporation – Husband directed to pay Rs. 3 lacs as permanent alimony to wife: *Vibha Shukla Vs. Kailash Dwivedi, I.L.R. 2022 M.P. 1010 (DB)*

## **HINDU SUCCESSION ACT (30 OF 1956)**

– **Section 6 & 8** – Self Acquired Property – Held – When the property is self acquired and the owner died intestate, that property would devolve in Class I heirs equally as per Section 8 and not as per Section 6 of Hindu Succession Act, 1956 for the reason that Section 6 relates to co-parcenary property – Decree modified – Appeal allowed to above terms: *Govind Singh Yadav (Dead) Thr. L.Rs. Rammurti Yadav Vs. Dilip Singh Yadav, I.L.R. 2022 M.P. 125*

# I

## **INCOME TAX ACT (43 OF 1961)**

– **Section 132A(1)(c)** – See – Criminal Procedure Code, 1973, Section 457 & 482: *Jahar Singh Gurjar Vs. State of M.P., I.L.R. 2022 M.P. \*34*

– **Section 148** – Reopening of Assessment – Notice – Held – Notice u/S 148 issued after four years from end of assessment year – Notice nowhere says that it is issued based on Revenue Audit Objection – Case does not fall under exception 10(c) of Circular No. 03/2018 – ITAT not committed any error of law by dismissing the MA filed for recalling of the consolidated order – Appeal dismissed: *The Chief*

*Commissioner of Income Tax Vs. M/s. Sharp Infrastructure Pvt. Ltd., I.L.R. 2022 M.P. 1317 (DB)*

### **INDIAN MEDICAL COUNCIL ACT, 1956 (102 OF 1956)**

– **Section 10A & 11** and Minimum Qualification for Teachers in Medical Institutions Regulations, 1998 – Recognized Medical Qualification – Held – Notification and corrigendum issued in 2019 concludes that petitioner’s qualification is treated as “recognized” by MCI from 2017, thus, petitioner was having recognized qualification much before the cut off date – Delay in issuing notification and corrigendum is attributable to MCI and appellant cannot be made to suffer for the same – Respondents directed to proceed with selection and issue appointment order of petitioner – Appeal allowed: *Amita Gupta (Dr.) (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 977 (DB)*

### **INDUSTRIAL DISPUTES ACT (14 OF 1947)**

– **Section 9A** – Transfer – Change of Nature of Work – Held – Order of transferring the workman to a place which is about 900 kms from the place they were working, that too at fag end of their service career, is illegal, malafide and in violation of Section 9A r/w Schedule IV of the Act – There is a change in the nature of work – Appellant failed to justify the transfers – Appeals dismissed with cost of Rs. 25,000 to be paid to each workman – Workman also entitled for all consequential benefits including arrears of salary/wages, retirement benefits etc: *Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi, I.L.R. 2022 M.P. 10 (SC)*

– **Section 9A** and Schedule IV – Applicability – Transfer Case – Held – Workmen transferred to another State which is about 900 kms from the place they were working – Question is not about transfer only but about the consequence of transfer – In present case, nature of work would be changed and consequence of transfer would result in change of service conditions and reduction of employees – Section 9A and Schedule IV shall be attracted: *Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi, I.L.R. 2022 M.P. 10 (SC)*

– **Section 9A and Schedule IV** – Nature of Service Conditions – Held – By such transfer, their status as “workman” would be changed to that of “supervisor” and they will be deprived of the beneficial provisions of the Act and therefore the nature of service conditions/service would be changed: *Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi, I.L.R. 2022 M.P. 10 (SC)*

– **Section 25-F & 25-G** – Reinstatement & Compensation – Held – Apex Court concluded that if termination found to be in contravention of Section 25-F & 25-G, reinstatement is not the rule, but an exception and ordinarily, grant of

compensation would meet ends of justice – Appellant, a daily wager, since worked with respondents from 1989 to 1997, compensation awarded enhanced from Rs. 2 lacs to 3 lacs – Appeal partly allowed: *Dileep Kumar Sharma Vs. The Assistant General Manager, UCO Bank, Bhopal, I.L.R. 2021 M.P. \*4 (DB)*

– **Section 25-F & 25-G** – Reinstatement – Held – Apex Court concluded that order of reinstatement in normal course of termination, is not proper and reinstatement in every case cannot be ordered mechanically but in cases where workmen providing service of regular/permanent nature is terminated illegally, malafidely or by way of victimization, unfair labour practice etc: *Dileep Kumar Sharma Vs. The Assistant General Manager, UCO Bank, Bhopal, I.L.R. 2021 M.P. \*4 (DB)*

### **INDUSTRIAL EMPLOYMENT (STANDING ORDERS)** **RULES, M.P., 1963**

– **Rule 12(6)** – Departmental Enquiry – Period – Held – Appellant appointed on 27.11.1995 and he joined service on 04.12.1995 on probation of 2 years – Charge-sheet served on 08.08.1996 is well within a period of one year – No violation of Rule 12(6) of Rules of 1963 – Full opportunity of hearing given to appellant – No perversity in impugned order – Appeal dismissed: *Shiv Shankar Thakre Vs. M.P.S.E.B. Through Its Secretary, I.L.R. 2022 M.P. \*45 (DB)*

### **INSECTICIDES ACT (46 OF 1968)**

– **Section 29** and Criminal Procedure Code, 1973 (2 of 1974), Section 2(1) & 154 – Cognizable & Non-Cognizable Offences – Held – Schedule I Cr.P.C. deals with classification of offences against other laws and provides that if offence is punishable with imprisonment for less than 3 years or with fine only, it is non-cognizable offence – Since offence u/S 29 of 1968 Act is punishable with imprisonment upto 2 years, it is a non-cognizable offence – Section 154 Cr.P.C. relates to cognizable offences – FIR set aside: *Amrutal Sanghani Vs. State of M.P., I.L.R. 2022 M.P. \*47*

### **INSOLVENCY AND BANKRUPTCY CODE,** **2016 (31 OF 2016)**

– **Section 1(3)** – Vires of Notification – Powers of Central Government – Personal Guarantor of Corporate Debtors – Held – Notification is not an instance of legislative exercise, or amounting to impermissible and selective application of provisions of Code – No compulsion in Code that it should, at the same time, be made applicable to all individuals (including personal guarantors) or not at all – Notification *inter alia* makes provisions of Code applicable in respect of personal guarantors to

corporate debtors as another such category of persons to whom Code has been extended – Notification issued u/S 1(3) was within the power granted by Parliament and in valid exercise of it and is thus not ultra vires – Petitions dismissed: *Lalit Kumar Jain Vs. Union of India, I.L.R. 2021 M.P. 1221 (SC)*

– **Section 1(3) & 31** and Contract Act (9 of 1872), Sections 128, 133 & 140 – Approval of Resolution Plan – Liability of Personal Guarantor – Held – Approval of resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under contract of guarantee – Release or discharge of principal borrower from debt owed by it to its creditors by an involuntary process i.e. by operation of law, or due to liquidation or insolvency proceedings, does not absolve the surety/guarantor of his or her liability – Petitions dismissed: *Lalit Kumar Jain Vs. Union of India, I.L.R. 2021 M.P. 1221 (SC)*

### **INTERPRETATION**

– **Judgment/Binding Precedent** – Held – Judgment of a Court must be treated as a precedent for the principle which has been actually decided by it and not for something which logically flows from it – Precedential value of a judgment depends upon factual matrix of case as well as statutory provision governing the field – Judgment of Courts should not be read as Euclid’s Theorem: *Kishor Choudhary Vs. State of M.P., I.L.R. 2022 M.P. 1671 (DB)*

– **Precedent** – Held – It is settled that a little difference in facts, an additional fact or a different statute applicable in a given case may make a lot of difference in the precedential value of a decision – Decision of Supreme Court should be understood by keeping into account the factual context in mind – Judgment of Supreme Court cannot be read as a statute: *Rajendra Kumar Gautam Vs. State of M.P., I.L.R. 2022 M.P. 603 (DB)*

### **INTERPRETATION OF STATUTES**

– **Administrative Instructions** – Held – Administrative Instructions will not supersede the statutory provisions: *Aman Bachat Mahila Swa Sahaiyata Samuh Rahatgarh Vs. State of M.P., I.L.R. 2022 M.P. 851*

– **“Explanation” in Statute** – Held – Use of “explanation” in a statute is an internal aid to construction – An “explanation” may be added to include something within or to exclude something from the ambit of main enactment or the connotation of some word occurring in it – Objects of an “explanation” to a statutory provision, discussed and explained: *Sonu Bairwa Vs. State of M.P., I.L.R. 2021 M.P. 1832 (DB)*

– **General Act & Special Act** – Effect – Held – If a provision of Special Act is inconsistent with provision of General Act, provision of Special Act will override the provision of General Act: *Ganesh Vs. Smt. Indu Bai, I.L.R. 2021 M.P. 928*

– **General/Specific Provision** – Held – Apex Court concluded that where a statute contains both a general provision as well as specific provision, the later must prevail – Where a general statute and a specific statute relating to same subject matter cannot be reconciled, the special or specific statute ordinarily will control: *Aman Bachat Mahila Swa Sahaiyata Samuh Rahatgarh Vs. State of M.P., I.L.R. 2022 M.P. 851*

– **Language** – Held – Endeavour should be made to assign meaning to each word, term and expression used in the statute – It will not be proper to brush aside words of a statute as being inapposite surplusage: *M.P. Road Development Corporation Vs. Mohd. Shahbuddin, I.L.R. 2022 M.P. 1927 (DB)*

– **Language** – Held – When language of Rule is plain and unambiguous, it has to be given effect to irrespective of consequences: *Rahul Mittal (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*70 (DB)*

– **Language** – Held – When language of a statute is clear and unambiguous, it has to be given effect to, irrespective of its consequence: *Vijendra Dhanware (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1157 (DB)*

– **Principle** – Held – Apex Court concluded that if a statute requires a thing to be done in a particular manner, it has to be done in the same manner and other methods cannot be accepted – If language of statute is plain and unambiguous, it should be given effect to irrespective of its consequences: *Vatash Sharma Vs. Indore Development Authority, I.L.R. 2022 M.P. 814 (DB)*

– **Principle** – Held – If a statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are forbidden: *State of M.P. Vs. Vishnu Prasad Maran, I.L.R. 2021 M.P. 614 (DB)*

– **Principle** – Held – If statute prescribes a thing to be done in a particular manner, it has to be done in the same manner and other methods are unknown to law – When language of statute is clear and unambiguous, it has to be given effect to irrespective of consequences: *Rajni Shende (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1530 (DB)*

– **Principle** – Held – While interpreting any provision of law, Court can supply the lacuna to achieve the object – Court must give purposive interpretation – Any interpretation which leads to absurdity should be avoided: *Ashish Agarwal Vs. State of M.P., I.L.R. 2022 M.P. 61*



– **Provision of Statute** – Held – A particular provision which is to be constructed/interpreted shall not be done in isolation, rather it is the entire scheme of the Act which is to be taken into consideration as a whole – Statute has to be seen in toto and a conjoint look of other relevant provisions of statute are to be seen: *Vidhi Ka Ulaghan Karne Wala Balak Vs. State of M.P.*, I.L.R. 2022 M.P. 1305

– **Rule of Harmonious Construction** – Held – While interpreting a statute, different parts of a section or the rule have to be harmoniously constructed so as to give effect to the purpose and intention of legislature: *Arun Parmar Vs. State of M.P.*, I.L.R. 2021 M.P. 822 (FB)

– **Text & Context** – Held – Interpretation must depend upon the text and the context – Neither can be ignored, both are important – Interpretation is best which makes the textual interpretation match the contextual – A statute is best interpreted when we know why it was enacted: *Abhay Nigam Vs. Union of India*, I.L.R. 2021 M.P. 1633 (DB)

– **Text & Context** – Held – Interpretation of statute depends on the text and the context – Textual interpretation must match the contextual – It must be ascertained as to why the statute was enacted – Statute should be read as whole in its context and scheme to discover what each section, each clause, each phrase and each word is meant for: *Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council*, I.L.R. 2021 M.P. 427

– **Text & Context** – Held – Interpretation of statute must depend on the text and the context – Neither can be ignored, both are important – That interpretation is best which makes the textual interpretation match the contextual – A statute is best interpreted when you know why it was enacted: *Sonu Bairwa Vs. State of M.P.*, I.L.R. 2021 M.P. 1832 (DB)

## J

### JUDICIAL DISCIPLINE

– **Judgement of Higher Courts** – Held – STAT shockingly refused to rely on judgments of High Court on ground that same were unreported judgments – It has given a complete go bye to Judicial Discipline in making distinction in unreported and reported judgments – Such observation is contrary to law: *Shreeram Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. 932

– **Pending Cases** – Held – Trial Court was aware of the orders passed by this Court in MCRC and that the matter is still pending before this Court – Trial Court must have waited for the outcome of MCRC but by rejecting application u/S 173(8)

Cr.P.C. tried to nullify the various orders passed by this Court – This act of trial Court is clear example of violation of judicial discipline: *State of M.P. Vs. Anil Sharma*, I.L.R. 2021 M.P. 1755

### **JUDICIAL INDEPENDENCE**

– **Complaint against ASJ** – Held – ASJ expressed his apprehensions that accused persons are highly influential political persons and he has been targeted with false charges and that in future any unpleasant incident could happen with him – SDOP also made complaint against ASJ before Registrar General – The complaint made by SDOP and order passed by ASJ be placed before the Chief Justice, who is requested to cause an enquiry into the matter: *Somesh Chaurasia Vs. State of M.P.*, I.L.R. 2021 M.P. 1463 (SC)

### **JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT (56 OF 2000)**

– **Section 7A** and Juvenile Justice (Care and Protection of children) Rules, 2007, Rule 12(3) – Determination of Age – Held – When school record of prosecutrix is available, then it is not necessary to look into her ossification Test report – Ossification test is merely a medical opinion which is subject to margin of error of two years on either side: *Pinki Vs. State of M.P.*, I.L.R. 2021 M.P. 1586

– **Section 20** – See – Penal Code, 1860, Section 302/34: *Devilal Vs. State of M.P.*, I.L.R. 2021 M.P. 806 (SC)

### **JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 (2 OF 2016)**

– **Sections 1(4), 3 & 12** and Criminal Procedure Code, 1973 (2 of 1974), Section 436A – Child in Conflict with Law – Benefits u/S 436A Cr.P.C. – Held – Confinement of child in remand home cannot be construed just like confinement of under trial in jails /prisons, thus such child cannot be treated as under trial prisoners as contemplated u/S 436A Cr.P.C. – When juvenile is not arrested under Act of 2015, then Section 436A Cr.P.C. does not come into play – No benefits can be given to such child u/S 436A and he cannot be released after completing half of total period of detention – Revision dismissed: *Vidhi Ka Ulaghan Karne Wala Balak Vs. State of M.P.*, I.L.R. 2022 M.P. 1305

– **Sections 1(4), 3 & 12** and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Held – Juvenile is never under confinement by way of arrest (pre or post trial) – Child in conflict with law can never be arrested or

apprehended and therefore valuable right of anticipatory bail is not even contemplated in the Act of 2015: *Vidhi Ka Ulaghan Karne Wala Balak Vs. State of M.P.*, I.L.R. 2022 M.P. 1305

– **Sections 7-A, 9 & 94(2)** and Juvenile Justice (Care and Protection of children) Rules, 2007, Rule 12 – Determination of Age – Ossification Test – Held – In absence of birth certificate or mark sheet issued by Board, birth certificate given by corporation or municipal authority or panchayat is admissible – In absence of these two documents, age is to be determined by ossification test – Appellant produced mark sheets of Class 5 & 6 and the Scholar register – No error while assessing the age of appellant as 18 years on basis of report of Medical Board – Appeal dismissed: *Raju @ Vijay Vs. State of M.P.*, I.L.R. 2021 M.P. 1579

– **Sections 7-A, 94(2)(i) & 94(2)(ii)** – Determination of Age – Ossification Test – Held – Where date of birth certificate issued by School is not reliable in the light of evidence of father of Respondent No. 2 and as birth certificate of Municipal Corporation is not available, trial Court erred in holding Respondent No. 2 as minor based on school certificate – Court should have directed for ossification test or any other latest medical age determination test for ascertaining age of Respondent No. 2 – Impugned order set aside – Matter remanded back for fresh adjudication of age after ossification test: *Rajendra Vs. State of M.P.*, I.L.R. 2021 M.P. 1172

– **Section 8(2)** – Word “otherwise” – Rule of “ejusdem generis” – Held – Rule of “ejusdem generis” is attracted where a restricted meaning is given to general word accompanying the specific word, only when intended by legislature – Word “otherwise” used by legislature is having other proceeding apart from appeal or revision which can also include suo motu cognizance and even deciding petition/application as a Court of first instance: *Child in Conflict with Law Vs. State of M.P.*, I.L.R. 2022 M.P. 1471

– **Section 8(2) & 12** – Word “or otherwise” – Sua Motu cognizance – Bail – Held – High Court (and Children’s Court) are given powers of suo motu cognizance also by inserting the word “or otherwise” in Section 8(2) – The words “or otherwise” would include the bail plea filed before High Court as a proceeding of first instance, otherwise than as an appeal or a revision from an order of Juvenile Justice Board (or Children’s Court) denying bail: *Child in Conflict with Law Vs. State of M.P.*, I.L.R. 2022 M.P. 1471

– **Sections 8(2), 12 & 102** – Bail – Grounds – Held – After petitioner was granted bail, he misused the liberty and was involved in an another offence – Petitioner must involve in reparative and reformative mode and must come out as a better citizen – For course correction, bail application for time being is rejected with liberty

to renew the prayer after some time – Revision dismissed: *Child in Conflict with Law Vs. State of M.P., I.L.R. 2022 M.P. 1471*

– **Sections 8(2), 12 & 102** – Bail – Jurisdiction & Powers of High Court – Held – Once an order has been passed rejecting bail application by the Board and by appellate authority and even by High Court under revisional jurisdiction, then another revision by way of repeat bail application can be considered by High Court under revisional jurisdiction without coming through the hierarchical set up again and again – High Court may entertain a bail plea as if it is a proceeding of first instance, however it would be considered on parameters of Section 12 of Act – Revision before High Court against order of rejection of bail by Children’s Court is maintainable: *Child in Conflict with Law Vs. State of M.P., I.L.R. 2022 M.P. 1471*

– **Section 9(2) & 94(2)** – Enquiry – Held – Provisions of Section 94(2) about the date of birth recorded in birth certificate or matriculation or equivalent certificate from the concerned board cannot be ignored by Magistrate/Sessions Court while conducting enquiry as contemplated u/S 9(2) of the Act: *Raju @ Vijay Vs. State of M.P., I.L.R. 2021 M.P. 1579*

– **Section 9(2) & 94(2)** – Transfer of Case – Delay in Claim of Juvenility – Held – Claim of juvenility can be raised at any stage of criminal proceeding, even after final disposal of case – Delay in raising the claim cannot be a ground for rejection of such claim – If application is filed claiming juvenility, provision of Section 94(2) would have to be applied or read alongwith Section 9(2) so as to seek evidence for determination of age: *Shriram Rawat Vs. State of M.P., I.L.R. 2022 M.P. 2096*

– **Section 12 proviso** – See – Constitution – Article 226: *In reference (Suo Motu) Vs. State of M.P., I.L.R. 2021 M.P. 1337 (DB)*

– **Section 12(1)** – Bail – Exception – Held – Bail cannot be claimed as a matter of right and cannot be granted to a juvenile without considering gravity of offence and nature of crime: *Vikas Vs. State of M.P., I.L.R. 2021 M.P. 966*

– **Section 12(1)** – Bail – Heinous Crime – Applicant, aged 17 years murdered his father, mother and brother for money – Held – Offence is heinous in nature which shakes the conscience of society, infact a threat to society – No guardian of applicant to take care of him thus every possibility for him to get associated with hardcore criminals – Release of applicant on bail would defeat the “ends of justice” – *Revision dismissed: Vikas Vs. State of M.P., I.L.R. 2021 M.P. 966*

– **Section 94(2)(i) & 94(2)(ii)** – Determination of Age – Ossification Test – Held – If documents mentioned in Section 94(2)(i) & (ii) are not available, then age shall be determined by an ossification test or any other latest medical age determination

test conducted on the orders of the Committee or Board: *Rajendra Vs. State of M.P., I.L.R. 2021 M.P. 1172*

– **Section 94(2)** – Determination of Age – Degree of Proof – Held – Degree of proof required in a proceeding before Juvenile Board is higher than the inquiry made by criminal court – In case of inquiry, Court records a prima facie conclusion but when there is determination of age as per Section 94(2), a declaration is made on basis of evidence: *Shriram Rawat Vs. State of M.P., I.L.R. 2022 M.P. 2096*

– **Section 94(2)** – Determination of Age – Presumption & Rebuttal – Burden of Proof – Held – Applicant produced birth certificate, scholar register and mark sheets – Presumption of juvenility may be applied – Applicant discharged his initial burden about his juvenility – In absence of any rebuttal evidence, no reason to doubt the documents – Reliance upon entry of Aadhar Card in preference to School records was erroneous – Impugned order set aside – Petition allowed: *Shriram Rawat Vs. State of M.P., I.L.R. 2022 M.P. 2096*

### **JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES, 2007**

– **Rule 12** – See – Juvenile Justice (Care and Protection of Children) Act, 2015, Sections 7-A, 9 & 94(2): *Raju @ Vijay Vs. State of M.P., I.L.R. 2021 M.P. 1579*

– **Rule 12(3)** – See – Juvenile Justice (Care and Protection of Children) Act, 2000, Section 7A: *Pinki Vs. State of M.P., I.L.R. 2021 M.P. 1586*

## **L**

### **LAND ACQUISITION ACT (1 OF 1894)**

– **Section 3(b) & 18** and Works of Defence Act, (7 of 1903), Section 2(b) & 18 – Term “Person Interested” – Held – In terms of Section 18 of 1894 Act, the “person interested” does not mean who can raise a reference, but being a proper party, the authority or the company, who has a right to be heard at the time of determining compensation by competent authority i.e. Collector or even by Reference Court: *Kewal Kumar Jaggi Vs. State of M.P., I.L.R. 2022 M.P. 657*

– **Section 18** – Reference – Delay – Impugned order passed in 2006 and petition filed in 2019 – Held – It is submitted that no information was sent to petitioner by his counsel that the case has been dismissed for want of prosecution – Thus, for fault of counsel, party should not suffer, as held by Apex Court: *Mohd. Sakhawat Noor Vs. State of M.P., I.L.R. 2022 M.P. 866*

– **Section 18** – Reference – Dismissal for want of Prosecution – Held – A reference cannot be dismissed for want of prosecution – Non-participation of any party could not confer jurisdiction on Civil Court to dismiss the reference for default – Impugned order is a non-speaking order and does not reflect application of mind, no reasons assigned while rejecting the reference, thus is unsustainable and hereby set aside – Matter remanded back to District Judge for reconsideration on merits – Petition disposed: *Mohd. Sakhawat Noor Vs. State of M.P., I.L.R. 2022 M.P. 866*

– **Sections 18, 25 & 50** and Works of Defence Act, (7 of 1903), Section 18 – Maintainability of Reference – Held – Apex Court concluded that reference at the instance of local authority/ Company for whose benefit, the land is acquired, is not maintainable except on ground of fraud, corruption and collusion – Reference at instance of respondent/authorities is not tenable and is dismissed as not maintainable – Petition allowed: *Kewal Kumar Jaggi Vs. State of M.P., I.L.R. 2022 M.P. 657*

– **Section 23** – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 26(1)(a): *M.P. Road Development Corporation Vs. Mohd. Shahbuddin, I.L.R. 2022 M.P. 1927 (DB)*

### **LAND REVENUE CODE, M.P. (20 OF 1959)**

– **Section 31** – Adjudication of Title – Held – Any proceedings between parties as contemplated u/S 31 of Code does not take into its ambit the question of adjudication of title of parties on the basis of Will – It does not contemplate adjudication of title – Writ Court rightly relegated the parties to the Civil Court – Appeal dismissed: *Hari Prasad Bairagi Vs. Radheshyam, I.L.R. 2021 M.P. \*16 (DB)*

– **Section 31 & 178(1)** – “Any Proceedings” – Interpretation – Held – Words “any proceedings” in Section 31 would not include any proceedings involving the question of title of parties: *Ranjit @ Bhaiyu Mohite Vs. Smt. Nandita Singh, I.L.R. 2021 M.P. 727*

– **Section 44(2)** – Scope & Jurisdiction – Held – First appeal not decided on merits and was dismissed on ground of limitation only – Second appellate authority has no jurisdiction to enter into the merits of case – If second appellate authority concludes to condone the delay, matter should have been sent back to first appellate authority for decision on merits – Impugned order set aside – Matter remanded back to second appellate authority to decide afresh – Petition allowed: *Bhanwarlal Vs. Toofan Singh, I.L.R. 2022 M.P. \*80*

– **Section 44(2)(b) & 44(3)(b) (as amended on 25.09.2018)** and Civil Procedure Code (5 of 1908), Section 100 – Second Appeal – Scope of Interference – Held – Remedy of second appeal u/S 100 CPC is more restrictive than in a second

appeal u/S 44 of Code – Second appeal under Code can be entertained when grounds of, order assailed being contrary to or having ignored material issue of law/usage or existence of substantial error/defect of procedure are made out whereas second appeal u/S 100 CPC is entertainable only on existence of substantial question of law which substantially affects rights of parties and not finally settled by any Court and is fairly arguable and is not covered by any earlier decision: *Khyaliram Vs. State of M.P.*, I.L.R. 2021 M.P. 492

– **Sections 44(2)(b), 44(3)(b) (as amended on 25.09.2018) & 50** – Second Appeal – Held – Remedy of second appeal which was otherwise available to petitioner under unamended MPLR Code prior to 25.09.2018, is not available thereafter, for reason that remedy of second appeal by its very nature is not available to litigant as vested right since institution of lis in court of first instance – Unamended Section 44(2)(b) and amended Section 44(3)(b), shows that scope of interference in second appeal was restricted and not as wide/open as in first appeal – Remedy of revision available to petitioner u/S 50 of Code – Petition disposed: *Khyaliram Vs. State of M.P.*, I.L.R. 2021 M.P. 492

– **Section 108** – Land Records – Executive Instructions of State – Validity – Circular directing deletion of name of pujari from revenue record and insertion of name of Collector as manager of temple land – Held – In absence of any prohibition either in statute or in rules, the executive instruction can be issued to supplement the statute and the rules framed thereunder – Such instructions do not contravene any provision of Code or rules, thus cannot be said to be illegal or in excess of authority vested in State Government – Order of High Court set aside – Appeal allowed: *State of M.P. Vs. Pujari Utthan Avam Kalyan Samiti*, I.L.R. 2022 M.P. 209 (SC)

– **Section 108** – Temple Land – Khasra Entries – Held – The deity being a juristic person is the owner of land – In ownership column, name of deity alone is required to be mentioned – Occupation of land is also by the deity which is carried out by servant or managers on behalf of deity, thus name of manager or priest is not required to be mentioned in column of occupier as well – Name of pujari cannot be mandated to be recorded either in column of ownership or occupancy but may be recorded in the remark's column: *State of M.P. Vs. Pujari Utthan Avam Kalyan Samiti*, I.L.R. 2022 M.P. 209 (SC)

– **Section 108** – Temple Land Records – Public/Private Temple – Held – Collector cannot be a manager of all temples unless it is a temple vested with State – Circular is applicable to all temples unless a particular temple is able to satisfy the competent forum of it being a private temple: *State of M.P. Vs. Pujari Utthan Avam Kalyan Samiti*, I.L.R. 2022 M.P. 209 (SC)

– **Section 109 & 110** – Mutation – Reporting of Acquisition – Delay – Held – Reporting of acquisition of legal right and interest within 6 months is obligatory and not mandatory – Section 109 & 110 of Code does not bar mutation if reporting is done beyond 6 months – In matter of undisputed cases, mutation cannot be refused only on ground of delay – Additional Commissioner rightly allowed mutation application – Liberty granted to petitioner to establish title before Civil Court – Petition dismissed: *Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan, I.L.R. 2021 M.P. 482*

– **Section 109 & 110** – Mutation Proceedings – Principle of Estoppel – Held – Principle of estoppel is applicable in Revenue Courts – Principle of estoppel is a principle of equity – Once a fact is admitted by a party before Court then in subsequent proceedings he cannot be allowed to deny the said fact by leading evidence: *Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan, I.L.R. 2021 M.P. 482*

– **Section 109 & 110** and Evidence Act (1 of 1872), Sections 3, 32, 33, 43 & 53 – Applicability – Held – Evidence Act is not applicable to proceedings under the Code of 1959: *Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan, I.L.R. 2021 M.P. 482*

– **Section 109 & 110** and Evidence Act (1 of 1872), Section 137 – Mutation Proceedings – Examination/Cross Examination of Witness – Held – Mutation proceedings before revenue Courts are to be decided as per evidence adduced by parties before it – Evidence means documents and affidavits/statements submitted by parties in support of their case – Neither witness is to be examined on oath nor to be cross-examined: *Rajdeep Kapoor (Dr.) Vs. Mohd. Sarwar Khan, I.L.R. 2021 M.P. 482*

– **Section 110** – See – Constitution – Article 227: *Ranjit @ Bhaiyu Mohite Vs. Smt. Nandita Singh, I.L.R. 2021 M.P. 727*

– **Section 110 & 178(1)** – Mutation on Ground of “Will” – Acquisition of Right & Question of Title – Jurisdiction – Held – “Acquisition of right” is a crucial aspect to be kept in mind while deciding application u/S 110 of Code – Question of determination of title and adjudication of correctness and genuineness of “Will” is beyond jurisdiction of revenue authorities – It has to be adjudicated by Civil Court – Impugned orders set aside – Petition disposed: *Ranjit @ Bhaiyu Mohite Vs. Smt. Nandita Singh, I.L.R. 2021 M.P. 727*

– **Section 158(1)(b)** and Madhya Bharat Land Revenue and Tenancy Act (66 of 1950) – Temple Land Records – Bhumiswami – Held – Priest does not fall in any of the clauses u/S 158(1)(b) of Code – Priest cannot be treated to be either a Maufidar or Inamdard under the Act of 1950 – Priest cannot be treated as Bhumiswami and his status is only that of a manager – They have no right which could be protected



under any provision of 1959 Code: *State of M.P. Vs. Pujari Utthan Avam Kalyan Samiti, I.L.R. 2022 M.P. 209 (SC)*

– **Section 165(6)** – Lease of Tribal Land – Word “otherwise” – Jurisdiction of Collector – Held – Explanation of Section 165(6) carves out an exception that word “otherwise” mentioned in sub-Section shall not include lease – This means that in notified scheduled areas or in non-notified rural areas, there is no bar for entering into lease between tribals and non-tribals and permission of Collector is not required: *Mohbe Infrastructure A Partnership Firm (M/s.) Vs. State of M.P., I.L.R. 2021 M.P. 1300*

– **Section 165(6) & 165(6-a)** – Purchase of Land by Tribals – Jurisdiction of Collector – Held – There is no bar to purchase a land by tribal – A tribal can purchase a land from another tribal and also from a non-tribal and permission of Collector for such transactions are not required: *Mohbe Infrastructure A Partnership Firm (M/s.) Vs. State of M.P., I.L.R. 2021 M.P. 1300*

– **Section 165(6) & 165(6-a)** – Transfer of Tribal Land – Jurisdiction of Collector – Held – Land of tribal in notified scheduled area shall not be transferred or transferable by way of sale or otherwise or as consequence of loan transaction to a non-tribal – Collector has no jurisdiction to grant permission for such transfers – In non-notified areas, i.e. rural areas and villages, tribal can transfer his land to a non-tribal after seeking written permission of Collector: *Mohbe Infrastructure A Partnership Firm (M/s.) Vs. State of M.P., I.L.R. 2021 M.P. 1300*

– **Section 165(6-a)** – Lease/ Transfer of Tribal Land – Word “otherwise” – Jurisdiction of Collector – Held – Section 165(6-a) does not carves out an explanation for word “otherwise” for leases which means any land located in notified scheduled areas, non-tribal cannot execute a lease in favour of another non-tribal without written permission of Collector – Diverted land of non-tribals cannot be transferred to other non-tribals without permission of Collector, if located in notified scheduled areas: *Mohbe Infrastructure A Partnership Firm (M/s.) Vs. State of M.P., I.L.R. 2021 M.P. 1300*

– **Section 165(7-a) & 165(7-b)** – See – Bhoodan Yagna Adhinyam, M.P., 1968, Sections 30, 31 & 33: *Gopal Vs. Mangalia, I.L.R. 2022 M.P. 104*

– **Section 165(7)(b)** and Transfer of Property Act (4 of 1882), Section 111(g)(2) – Unlawful Transfer of Land – Forfeiture – Held – Conscious transfer of land by father of petitioner setting up title in third person (R-5) in violation of Section 165(7)(b) of Code – Petitioner himself was also a party (witness for agreement to sell), thus cancellation of mutation entry in name of R-5 shall not enure benefit to petitioner – It renders the lease liable for determination by forfeiture u/S 111(g)(2) of

1882 Act – State directed to issue notice to petitioner for termination of lease and also to initiate proceedings against R-5 for restoration of possession – Petition partly allowed: *Dharmendra Jatav Vs. State of M.P., I.L.R. 2021 M.P. 445*

– **Section 165(7)(b) & 158(3)** – Transfer of Land – Permission – Applicability – Held – Bar or prohibition u/S 165(7)(b) of Code is with reference to date of transfer and not the date of grant of patta – Offending sale deed dated 01.03.1994 without prior permission of Collector was void ab initio – Impugned order set aside: *Dharmendra Jatav Vs. State of M.P., I.L.R. 2021 M.P. 445*

– **Section 165(7)(b) & 257(1)(f)** – Cancellation/Omission of Mutation Entry – Jurisdiction – Held – SDO upon acquisition of knowledge of void transaction (sale deed), exercising power u/S 257(1)(f) has rightly cancelled/omitted the mutation entry with due notice to R-5 – Records of rights can always be corrected if prohibited in law or polluted by a void act in eyes of law: *Dharmendra Jatav Vs. State of M.P., I.L.R. 2021 M.P. 445*

– **Section 165(7)(b) & 257(1)(f)** – Cancellation/Omission of Mutation Entry – Jurisdiction of Revenue Authority/Civil Court – Held – Since, ownership of land covered under the Code vests in State Government, Revenue authorities have exclusive jurisdiction in respect of matters enlisted in Section 257 of Code and jurisdiction of Civil Court is ousted in that behalf – Cancellation of entry in revenue records on complaint or otherwise in relation to unlawful transfer of land is rightly done by SDO u/S 257(1)(f) of Code: *Dharmendra Jatav Vs. State of M.P., I.L.R. 2021 M.P. 445*

– **Section 165(7)(b) & 257(1)(f)** – Limitation – Held – Sale deed dated 01.03.1994 since held to be void for which no declaration is required from a Court of Law, the question of limitation pales into insignificance: *Dharmendra Jatav Vs. State of M.P., I.L.R. 2021 M.P. 445*

– **Section 178** – Partition Suit – Jurisdiction of Revenue Authorities – Held – Partition suit cannot be decided by Revenue Authorities, whole jurisdiction vests with the Civil Court – Impugned order passed by Tehsildar is set aside – Petition allowed: *Chetna Dholakhandi (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 1896*

– **Section 178** – Title Dispute – Held – In all pending litigation u/S 178, Revenue Authorities shall direct parties to submit their affidavit stating therein that no title dispute is pending regarding land in question – If any title dispute is found directly or indirectly, Revenue Authorities shall immediately stop the proceeding and direct parties to approach Civil Court: *Chetna Dholakhandi (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 1896*

– **Section 250** – Powers of Registrar & Tehsildar – Held – Section 250 empowers Tehsildar to take appropriate action to remove encroachment, no such power is vested with Registrar, Public Trust – No other authority may usurp that power in absence of enabling provision – Registrar was not competent to pass the impugned order, it suffers from lack of inherent jurisdiction and is thus set aside – Appeal allowed: *Badri Prasad Tiwari Vs. State of M.P.*, I.L.R. 2022 M.P. 615 (DB)

## **LAW OF INTERPRETATION**

– **Beneficiary Exemptions** – Held – Although exemptions should generally be interpreted strictly but the expressions regarding beneficiary exemptions have to be interpreted differently, keeping in view the purpose of encouragement of industrial activities, encouraging capital investment, promoting development of industry and trade etc. which exemptions provisions may be interpreted liberally: *Ankit Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 1651 (DB)

– **Exemption Notification** – Ambiguity – Held – Apex Court concluded that when there is ambiguity in exemption notification, benefit of such ambiguity cannot be claimed by assessee and it must be interpreted in favour of Revenue: *Ankit Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 1651 (DB)

– **Exemption Notification** – Applicability – Burden of Proof – Held – Apex Court concluded that burden of proving applicability would be on the assessee to show that his case comes within parameters of the exemption clause: *Ankit Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 1651 (DB)

– **Exemption Notification** – Conditions – Held – Exception provisions are to be strictly interpreted in fiscal statute – In construing an exemption notification, question of equity does not arise – Nothing can be added or subtracted from what has been stated in notification – Apex Court concluded that if exemption is available on complying with certain conditions, the conditions have to be strictly complied with: *Ankit Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 1651 (DB)

– **Principle** – Held – It is the golden rule of interpretation that hardship, inconvenience, injustice, absurdity and anomaly to be avoided – Even if grammatical construction leads to any absurdity or inconsistency, it may be departed from, so as to avoid that absurdity and inconsistency: *Amita Gupta (Dr.) (Smt.) Vs. State of M.P.*, I.L.R. 2022 M.P. 977 (DB)

– **Principle** – Held – The golden principle of interpretation is that legislature has used every word consciously and for a purpose – Attempt should be made to give meaning to each word, term and expression used in a statute – As on the one hand, it

is not permissible to add words or to fill in a gap or lacuna, on the other hand effort should be made to give meaning to each and every word used by Legislature: *Seth Trilokchand Kalyanmal Digambar Jain Vs. Sushil Kumar Kasliwal, I.L.R. 2022 M.P. \*21*

### LEGAL MAXIM

– **“Falsus in uno falsus in omnibus”** – Held – The latin maxim “falsus in uno falsus in omnibus” has no application in India: *Ram Khiladi Vs. State of M.P., I.L.R. 2022 M.P. 1428 (DB)*

– **“Generalia specialibus non derogant”** – Held – It means “special things derogate from general things” – If a special provision is made on a certain matter, the matter is excluded from the general provisions: *Vidhi Ka Ulaghan Karne Wala Balak Vs. State of M.P., I.L.R. 2022 M.P. 1305*

– **“Us res magis valeat quam pereat”** – Discussed and explained: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., I.L.R. 2021 M.P. 557 (SC)*

### LEGAL SERVICES AUTHORITIES ACT (39 OF 1987)

– and NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015, Clause 9, 10 & 11 – Complaint of Corruption – Held – If any complaint is received regarding inaction, inappropriate execution, corruption or any matter related thereto which comes under purview of the Act of 1987 and Scheme of 2015, then District Legal Services Authority (DLSA) shall proactively take care of situation by proceeding as per clause 9, 10 & 11 of the Scheme 2015: *Omnarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. 2025 (DB)*

– **Section 21** – See – Negotiable Instruments Act, 1881, Section 138: *Sunil Vs. Satyendra Singh, I.L.R. 2022 M.P. \*93*

– **Section 29-A** and NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015 – Framing Regulations – Held – State authority is requested to contemplate for framing suitable regulations as per provisions of Act of 1987, especially u/S 29-A for effective implementation of different schemes of Government of India/State Government falling under the Scheme of 2015 – It is also requested to contemplate about preparation of a software/Mobile Application for keeping a tab over the complaints received and their outcome: *Omnarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. 2025 (DB)*

## **LETTERS PATENT**

– **Clause 9** – See – High Court of Madhya Pradesh Rules, 2008, Chapter IV, Rule 1(8): *Mold Tek Packing Pvt. Ltd. (M/s) Vs. S.D. Containers, I.L.R. 2021 M.P. 945 (DB)*

## **LIMITATION ACT (36 OF 1963)**

– **Section 3(1)** – Bar of Limitation – Held – It is for Court to find out as to whether appeal is within limitation or not – There is no law that in case if question of limitation is not raised at the earliest, then it cannot be considered at a later stage: *Madhu Morya (Ku.) Vs. State of M.P., I.L.R. 2021 M.P. 627*

– **Section 5** – Condonation of Delay – Grounds – Delay of 6972 days – Condonation sought on ground that appellant's counsel never advised to file second appeal before High Court and as OIC of case was regularly being transferred from Gwalior to other places and record was being kept by dealing clerk who subsequently died due to long illness and thus present appeal could not be filed – Held – No case for condonation made out – Appeal dismissed as time barred – Appellant being instrumentality of State must pay for wastage of judicial time – Cost imposed: *M.P. Housing Board, Gwalior Vs. Shanti Devi, I.L.R. 2021 M.P. 938*

– **Section 5** – Condonation of Delay – Held – In application u/S 5 of Limitation Act, nothing mentioned about non-compliance of order of trial Court – No date of filing application under Order 9 Rule 13 mentioned, which was filed after more than 13 months which is clear negligence on their part – No explanation submitted – Delay was not condonable: *Mangla Deshore (Kumari) Vs. Mst. Krishna Bai (Dead) By L.Rs., I.L.R. 2022 M.P. 2055*

– **Section 5** – Condonation of Delay – Held – Supreme Court of India cannot be a place for government to walk in when they choose, ignoring the prescribed limitation period – Appeals/petitions have to be filed as per the Statutes prescribed: *State of M.P. Vs. Bherulal, I.L.R. 2021 M.P. 1 (SC)*

– **Section 5** – Condonation of Delay – Held – There is a delay of 663 days – Looking to the inordinate delay and casual manner in which application has been worded, Government or State authorities must pay for wastage of judicial time which has its own value – SLP dismissed with cost of Rs. 25,000 to be recovered from responsible officers: *State of M.P. Vs. Bherulal, I.L.R. 2021 M.P. 1 (SC)*

– **Section 5** – See – Civil Procedure Code, 1908, Section 100, Order 41 Rule 11 & Order 41 Rule 3A: *Hemraj Vs. Kallu Khan, I.L.R. 2021 M.P. 1608*

– **Section 5** – See – Civil Procedure Code, 1908, Order 22 Rule 3, Order 22 Rule 9 & Order 22 Rule 11: *Ramua (Dead) Vs. Kodulal*, I.L.R. 2022 M.P. 1017

– **Section 5 & 14** – Condonation of Delay – Held – After recording negative findings on same set of facts with regard to Section 14, there was no occasion available with first appellate Court to consider question of condonation of delay again on same set of facts in view of Section 5 of the Act: *Mangla Deshore (Kumari) Vs. Mst. Krishna Bai (Dead) By L.Rs.*, I.L.R. 2022 M.P. 2055

– **Section 5 & 14** and Civil Procedure Code (5 of 1908), Order 41 Rule 3A, 11 & 12 – Practice & Procedure – Held – Unless delay in filing appeal is condoned, there is no appeal in eyes of law – After condoning delay of a long period under Order 41 Rule 3A, it was duty of appellate Court to admit appeal as provided under Rule 11 and then to hear final arguments as per Rule 12 of Order 41, but nothing was followed and on same date appeal was allowed – As delay was not condonable, there was no question of deciding appeal on merits – Second appeal allowed: *Mangla Deshore (Kumari) Vs. Mst. Krishna Bai (Dead) By L.Rs.*, I.L.R. 2022 M.P. 2055

– **Section 5 & 29(2)** – See – Arbitration and Conciliation Act, 1996, Section 37 & 43: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.*, I.L.R. 2021 M.P. 557 (SC)

– **Section 7** – See – Constitution – Article 226: *Surendra Kumar Jain Vs. State of M.P.*, I.L.R. 2021 M.P. 230

– **Article 59** – See – Civil Procedure Code, 1908, Order 7 Rule 11: *Krishna Kumar Anand Vs. Varun Anand*, I.L.R. 2022 M.P. 2088

– **Article 64 & 65** – Adverse Possession – Held – Plaintiff admitted that he knew that suit land was mutated in name of State Government – Since 1973, land was mutated in name of State Government but suit was filed belatedly in 2015 and not within 12 years of said mutation – Suit was rightly held to be barred by time as per Article 64 & 65 of Limitation Act: *Bapulal Vs. State of M.P.*, I.L.R. 2022 M.P. 1421

– **Article 116 & 117 & Section 5** – See – Arbitration and Conciliation Act, 1996, Section 34 & 37: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.*, I.L.R. 2021 M.P. 557 (SC)

– **Article 137 & Section 5** – See – National Highways Act, 1956, Section 3G(5): *Ghanshyam Gupta Vs. State of M.P.*, I.L.R. 2022 M.P. 1389 (DB)

**LOK SEVA (ANUSUCHIT JATIYON, ANUSUCHIT JAN  
JATIYON AUR ANYA PICHHADE VARGON KE LIYE  
ARAKSHAN) ADHINIYAM, M.P. (21 OF 1994)**

– **Section 4(4)** and State Services Examination Rules, M.P., 2015 (unamended), Rule 4 – Constitutional Validity – Held – Section 4(4) r/w unamended Rules of 2015 makes it obligatory for respondents to apply principle desired by petitioner i.e. in all stages of selection, the reserved category candidate received more or equal marks qua UR candidate are entitled to secure a berth in UR Category – Thus impugned provision of Adhinyam cannot be struck down being unconstitutional – Constitutionality of Section 4(4) is upheld: *Kishor Choudhary Vs. State of M.P., I.L.R. 2022 M.P. 1671 (DB)*

**LPG DISTRIBUTORSHIP**

– **Eligibility** – Held – Graduation certificate issued by Indian Army cannot be confined to recruitment of Ex-Army man to Class-C post only, but it applies for allotment of LPG Distributorship also – Directorate General Resettlement also certified petitioner to be eligible for allotment of LPG Distributorship – Respondents directed to reconsider educational qualification afresh in light of notification of Ministry of HRD – Petition disposed: *Rakesh Singh Bhadoriya Vs. Union of India, I.L.R. 2021 M.P. 222*

– **Guidelines, 2011 – Clause 7.1.ii** – Graduation Certificate – Held – As per clause 7.1.ii, any candidate who possesses equivalent qualification to qualifications mentioned therein, recognized by Ministry of HRD, as on date of application, he shall also be entitled for allotment of LPG Distributorship – Special category for grant of distributorship created for Ex-Army-man/Defence Personnel which certainly include an Army-man holding the lowest post upto the highest post: *Rakesh Singh Bhadoriya Vs. Union of India, I.L.R. 2021 M.P. 222*

**M**

**M.P. ONLINE DWARA COUNSELLING PRAKRIYA KE  
LIYE NIYAMAVALI**

– **Rule 10** – See – Shaskiya B.S.C. Nursing Mahavidyalayon Main Prashikshan Hetu Chayan Ke Niyam (Selection Rules), Rule 17: *Kamni Tripathi Vs. State of M.P., I.L.R. 2022 M.P. \*51 (DB)*

– **Rule 10** – Validity of Order – Held – Validity of an order is to be tested for the reasons stated therein and as per the Rule/legal position prevailing at that point of time – Rule 10 was followed by the respondents which was not deleted when impugned order was passed – Any subsequent deletion cannot have retrospective effect: *Kamni Tripathi Vs. State of M.P., I.L.R. 2022 M.P. \*51 (DB)*

### **MADHYA BHARAT LAND REVENUE AND TENANCY ACT (66 OF 1950)**

– **Rule 10(1)(a)** – Seeking Cancellation of Resignation – Held – There was reiteration of intention of appellant to consciously resign from service by submitting letter of resignation with notice of 3 months, mentioning the Rules and requesting for its acceptance after 3 months – No application for withdrawal of resignation letter within 3 months notice period rather on last date of expiry of notice period submitted fresh application stating that notice period has ended and now his resignation may be accepted – Letter of resignation was unconditional one and without any reservation – Impugned judgment upheld – Appeal dismissed: *Lavlesh Kumar Mishra Vs. The Madhyanchal Gramin Bank, I.L.R. 2021 M.P. 1818 (DB)*

– **See** – Land Revenue Code, M.P., 1959, Section 158(1)(b): *State of M.P. Vs. Pujari Utthan Avam Kalyan Samiti, I.L.R. 2022 M.P. 209 (SC)*

### **MADHYASTHAM ADHIKARAN ADHINIYAM, M.P. (29 OF 1983)**

– **Section 2(1)** – See – Arbitration and Conciliation Act, 1996, Section 11(6): *State of M.P. Vs. Nidhi (I) Industries, I.L.R. 2022 M.P. 2043*

– **Section 7** – See – Arbitration and Conciliation Act, 1996, Section 16(2) & 34: *Gayatri Project Ltd. (M/s.) Vs. M.P. Road Development Corporation Ltd., I.L.R. 2022 M.P. 1056 (DB)*

– **Section 7** – Works Contract – Adjustment of Amount/Counter Claim – Held – Applicants did not deny the fact of getting the work completed from debit agency, thus, it cannot be said that there was any dispute for same – When there is no “dispute or difference” with respect of payment made to debit agency, then such plea cannot be raised for the first time in revisional stage – Further, such claim of adjustment cannot be treated as counter claim as the same was not denied by applicant – Revision dismissed: *S.L. Goyal Vs. State of M.P., I.L.R. 2022 M.P. 1456 (DB)*



– **Section 7** and Arbitration and Conciliation Act (26 of 1996), Section 11 – Works Contract – Jurisdiction – Held – Under the scheme of Act of 1983, notwithstanding, there is a written arbitration agreement between parties, the dispute of “works contract” could be raised before Tribunal alone – Arbitration under the Act of 1996 is barred – Act of 1983 therefore mandates exclusive jurisdiction to Tribunal: *Gayatri Project Ltd. (M/s.) Vs. M.P. Road Development Corporation Ltd., I.L.R. 2022 M.P. 1056 (DB)*

– **Section 7-A** – See – Arbitration and Conciliation Act, 1996, Sections 16(2), 34 & 37: *M.P. Road Development Corporation Vs. The Ministry of Road, Transport and Highways (MORT & H), I.L.R. 2021 M.P. 2072 (DB)*

– **Section 7-B** – Agreement – Held – Agreement in question is not on record – The issue of adjustment of debit charges as barred by Section 7-B of the Act cannot be decided in absence of agreement: *S.L. Goyal Vs. State of M.P., I.L.R. 2022 M.P. 1456 (DB)*

– **Section 17** – See – Constitution – Article 226: *Alok Kumar Choubey Vs. State of M.P., I.L.R. 2021 M.P. 88 (DB)*

– **Section 19** – Breach of Terms & Conditions – Held – Petitioner has not submitted the bank guarantee within stipulated period without any justified reason – Petitioner has not taken initiative for joint survey in stipulated time, thus failed to fulfill requirement of clause 11 of LOA, despite scheduled bill payments done by respondents – Petitioner was responsible for delay in completion of work – Revision dismissed: *Narmada Transmission Pvt. Ltd. (M/s) Vs. M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd., I.L.R. 2021 M.P. \*2 (DB)*

– **Section 19(2)** – Jurisdiction – Held – This Court’s jurisdiction u/S 19 is limited to the grounds mentioned in section 19(2) of the Act – Perusal of award do not show that it fall under any category of Section 19(2) of the Act – No interference warranted: *S.L. Goyal Vs. State of M.P., I.L.R. 2022 M.P. 1456 (DB)*

– **Section 19(2)** – Jurisdiction of High Court – Held – Jurisdiction of this Court u/S 19 is limited to the grounds mentioned in Section 19(2) of the Act – Award in question do not fall under any category of Section 19(2) of the Act warranting interference: *Rajpal Construction Co. (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 1302 (DB)*

– **Section 19(2)** – Revisional Jurisdiction – Scope – Held – The agreement in question is not on record, it is not possible to determine whether parties had any obligation to first approach the final authority under works contract or not – Further, in absence of any challenge by applicant on this issue before the Tribunal and non-

availability of works contract, same cannot be allowed to be agitated in a revisional jurisdiction of this Court – Revision dismissed: *Rajpal Construction Co. (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 1302 (DB)*

## **MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT (56 OF 2007)**

– **Sections 2(b), 21, 22 & 23** – Order of Eviction – Right of Parents – Held – Giving right of residence or evicting a person from house who had forcefully occupied the house without recourse to law does not deprive him of his title or interest in the property – It only safeguards right of senior citizen and parents in the property: *Ganesh Vs. Smt. Indu Bai, I.L.R. 2021 M.P. 928*

– **Sections 2(b), 21, 22 & 23** – Relief of Residence – Order of Eviction – Jurisdiction – Held – Relief of residence is implicit in the Act and it cannot be granted to senior citizen and parents unless and until there is an order of eviction of persons who have forcefully occupied premises/residential area of such parents and senior citizens – Maintenance includes residence, thus to give them substantial justice, Tribunal has power to order eviction – Petition dismissed: *Ganesh Vs. Smt. Indu Bai, I.L.R. 2021 M.P. 928*

### **MAXIM**

– **“Actus curiae neminem gravabit”** – Discussed: *Shailesh Kumar Sonwane Vs. State of M.P., I.L.R. 2021 M.P. 2092 (DB)*

– **“Falsus in Uno Falsus in Omnibus”** – Held – “Falsus in uno falsus in omnibus” has no application in India, therefore the Court must try to remove the grain from chaff: *Chhuna @ Chhatra Pal Singh Vs. State of M.P., I.L.R. 2022 M.P. 168 (DB)*

– **“Falsus in uno falsus in omnibus”** – Held – Has no application in India: *Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)*

– **“Nemo moriturus praesumitur mentire”** – Discussed: *Devkaran Vs. State of M.P., I.L.R. 2021 M.P. 1920 (DB)*

– **“Nullus commodum capere potest de injuria sua propria”** – Discussed: *Batsiya Vs. Ramgovind, I.L.R. 2021 M.P. 1718*

– **“Nullus commodum capere potest de injuria sua propria”** – Held – No man can take advantage of his own wrong – Petitioner not entitled to secure assistance of Court of Law for enjoying the fruit of his own wrong: *Dharmendra Jatav Vs. State of M.P., I.L.R. 2021 M.P. 445*

## **MCI POST GRADUATE MEDICAL EDUCATION REGULATIONS, 2000**

– **Regulation 9(4)** and Chikitsa Shiksha Pravesh Niyam, M.P., 2018, Rule 2(k) – Reservation – “In Service Candidate” – Held – Definition of “in service candidate” is wide enough to include Medical Officers – Petitioners working as Medical Officers in District Hospitals – There is nothing which deprives petitioners from right of consideration in Post Graduate Degree Course as a separate channel of entry – Respondents directed to treat petitioners as “in service candidates” – Petition partly allowed: *Vijendra Dhanware (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1157 (DB)*

– **Regulation 9(8)** – Incentive Marks – “Difficult Area” – Applicability – Held – Rule 9(8) is applicable to Post Graduate Diploma Course and not to the course in question i.e. Post Graduate Degree Courses – Further, “difficult area” does not include “difficult services” rendered in District Hospital Indore and Harda, where petitioners are posted – Petitioners not entitled for incentive marks: *Vijendra Dhanware (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. 1157 (DB)*

– **Regulation 9(8)** – Incentive Marks – Scheduled List of Places – Held – Petitioner working in PHC Dagdiha, Satna – She with eyes open, without any demur/objection regarding non-inclusion of PHC, Dagdiha in the governing order, participated in selection process/counselling, now cannot be permitted to raise eye brows against such non-inclusion or against its validity – Petitioner bound by principle of estoppel/waiver – Petition dismissed: *Durga Pandey (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*40 (DB)*

## **MEDICAL AND DENTAL POST GRADUATE COURSE ADMISSION RULES (DEGREE/ DIPLOMA), M.P., 2014**

– **Rule 11** – Applicability – Held – Question of rendering rural service would arise provided petitioner was given appointment within stipulated time and since Government has not given any such appointment, the bond conditions automatically stood cancelled because of breach of Rule 11, thus said condition cannot be enforced against petitioner – Respondents are bound to and are directed to return original documents and furnish NOC to petitioner – Petition allowed: *Rahul Mittal (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*70 (DB)*

– **Rule 11** – Bond Conditions – Applicability – Held – Although posting/appointment order was issued to petitioner, same was not in accordance with Rule 11 because it was issued before completion of his qualification – Thereafter no fresh appointment order or modified order was passed – Petitioner’s non-joining will not create any right in favour of State – Bond conditions cannot be enforced against him

– Respondents bound to return his original educational qualification documents –  
Petition partly allowed: *Archana Govind Rao Bhange (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*77 (DB)*

– **Rule 11** – Cancellation of Bond Conditions – Held – 3 months period is prescribed in Rule 11 to ensure that appointment order is issued with quite promptitude – If appointment order is not issued to successful candidates within 3 months, bond conditions will be treated to be cancelled: *Archana Govind Rao Bhange (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*77 (DB)*

– **Rule 11** – Deeming Provision – Held – As per automatic/deeming clause in Rule 11, if Commissioner failed to issue an appointment order within 3 months, the bond conditions pales into insignificance and cannot be enforced against petitioner – The shelf life of bond was dependent upon issuance of appointment orders within stipulated time which was not done by government: *Rahul Mittal (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*70 (DB)*

– **Rule 11** – Purpose – Held – Purpose of Rule 11 is to ensure that soon after the candidate has passed, Dean must send the list of successful candidates to Commissioner, and in turn, Commissioner will appoint them within 3 months therefrom: *Archana Govind Rao Bhange (Dr.) Vs. State of M.P., I.L.R. 2022 M.P. \*77 (DB)*

### **MEDICAL COUNCIL OF INDIA REGULATION ON GRADUATE MEDICAL EDUCATION, 1997**

– **See** – Niji Vyavsayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhinyam, M.P., 2007, Sections 5, 5-A, 5-A(3), 5(7) & 7: *Shruti Patidar (Ms.) Vs. State of M.P., I.L.R. 2022 M.P. \*92 (DB)*

### **MEDICAL EDUCATION ADMISSION RULES, M.P., 2018**

– **Rule 6** – Change in Entries – Scope – Petitioner seeking change in entry column of “Domicile” saying it to be an inadvertent mistake – Held – Language of Rule 6 is plain, clear and unambiguous, thus it should be given effect to inspite of any consequences – Rule 6 is inserted with a conscious view that if position or factual aspects are permitted to be changed, it will create chaos for the examining authorities – No interference warranted – Petition dismissed: *Madhav Sharma Vs. State of M.P., I.L.R. 2022 M.P. \*36 (DB)*

**MEDICAL TERMINATION OF PREGNANCY ACT**  
**(34 OF 1971)**

– **Section 3(2)(i) r/w Explanation 2 & 5** and Constitution – Article 21 – Rape Victim – Held – A rape victim, 23 years of age, carrying fetus of 25 weeks 5 days (+/-2 weeks) – As per medical opinion, she is suffering from severe mental retardation with behavioral problems – Her mental age is 6 years, her hygiene and intellectual abilities are poor and is unable to take care of herself and fetus, it would be hazardous to allow her to continue with pregnancy – Looking to the psychological trauma and intellectual deficiency, continuance of pregnancy would be violative of her bodily integrity which would also cause grave injury to her mental health – Permission for termination of pregnancy granted – Petition disposed: *XYZ Vs. State of M.P., I.L.R. 2021 M.P. 1538 (DB)*

– **Section 3(2)(i) & 5(1)** – Grave Injury to Mental Health – Expression “life” – Held – If expression “life” in Section 5(1) is not to be confined to mere physical existence or survival, then, permission will have to be granted u/S 5(1) for medical termination of pregnancy which may have exceeded 24 weeks, if continuance of such pregnancy would involve grave injury to mental health of pregnant women: *XYZ Vs. State of M.P., I.L.R. 2021 M.P. 1538 (DB)*

**MICRO, SMALL AND MEDIUM ENTERPRISES**  
**DEVELOPMENT ACT (27 OF 2006)**

– **Sections 8, 17 & 18** and Constitution – Article 226/227 – Reference to Council – Held – Act of 2006 provides a forum of making reference u/S 18 to “any party” in relation to any amount due – Act does not preclude an enterprise from redressal forum merely because it has not filed memorandum u/S 8 of the Act – Section 17 and sub-Sections of Section 18 must be read harmoniously and must be given wide construction taking into account the aim and object of Act – Council has taken a plausible view and has not committed any patent lack of inherent jurisdiction – No interference warranted under Article 226/227 of Constitution – Petition dismissed: *Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council, I.L.R. 2021 M.P. 427*

– **Section 18** – Object – Held – Section 18 is a remedial provision – Words of a remedial statute must be construed “to give the most complete remedy which the phraseology permits” so as “to secure that the relief contemplated by Statute shall not be denied to the class intended to be relieved: *Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council, I.L.R. 2021 M.P. 427*

– **Section 18(3)** – Conciliator & Arbitrator – Held – Mr. M was the conciliator in instant case – It will be open for Council to proceed with Arbitration proceedings by excluding Mr. M as a member of arbitral body or refer the matter to any other institute or centre providing alternative dispute resolution service: *Sasan Power Ltd., Singrauli Vs. M.P. Micro & Small Enterprise Facilitation Council, I.L.R. 2021 M.P. 427*

### **MID-DAY MEAL RULES, 2015**

– **Rule 5(2)** – Employment to Women Self Help Groups – Held – There is statutory provision in Rule 5(2) for establishment of centralized kitchens for cooking meals in urban areas – No statutory provision for providing work exclusively to women self help groups to provide Mid-Day Meals – Ancillary purpose of providing employment to marginalized women cannot overtake the main purpose and object of Mid Day Meal Programme – Petitions dismissed: *Aman Bachat Mahila Swa Sahaiyata Samuh Rahatgarh Vs. State of M.P., I.L.R. 2022 M.P. 851*

### **MINERAL (PREVENTION OF ILLEGAL MINING, TRANSPORTATION AND STORAGE) RULES, M.P. 2006**

– **Rule 18** – See – Mines and Minerals (Development and Regulation) Act, 1957, Sections 4/21, 23-A(1) & 23-A(2): *Jayant Vs. State of M.P., I.L.R. 2021 M.P. 175 (SC)*

### **MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT (67 OF 1957)**

– **Section 4/21 & 22** – See – Criminal Procedure Code, 1973, Section 156(3): *Jayant Vs. State of M.P., I.L.R. 2021 M.P. 175 (SC)*

– **Sections 4/21, 23-A(1) & 23-A(2)**, Minor Mineral Rules, M.P. 1996, Rule 53 and Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P. 2006, Rule 18 – Compounding of Offence & Prosecution – Held – If violator is permitted to compound the offence on payment of penalty u/S 23-A(1) of the Act then as per Section 23-A(2), there shall be no further proceedings against him for the offence so compounded – Offence under the Act has been compounded by appellants with permission of competent authority, thus the suo motu proceedings drawn by Magistrate under the Act quashed – Prosecution under Penal Code will continue – State appeal dismissed – Appeals by violators partly allowed: *Jayant Vs. State of M.P., I.L.R. 2021 M.P. 175 (SC)*

– **Sections 4, 22 & 23-A(2)** and Penal Code (45 of 1860), Section 379 & 414 – Prohibition of Prosecution – Applicability – Held – This Court has already concluded that prohibition u/S 22 of the Act against prosecution of a person except on written complaint by authorized officer, would be attracted only when such person is prosecuted u/S 4 of the Act – Thus, there is no complete and absolute bar in prosecuting persons under Penal Code where offences are penal and cognizable – Offence under the Act of 1957 and Rules made thereunder and the offences under IPC are different and distinct – Bar u/S 23-A(2) of the Act shall not affect proceedings under the Penal Code: *Jayant Vs. State of M.P., I.L.R. 2021 M.P. 175 (SC)*

– **Section 4(1) & 21(1)**, Penal Code (45 of 1860), Section 379 and Criminal Procedure Code, 1973 (2 of 1974), Section 451 & 457 – Release of Seized Vehicle – Held – Unless owner of vehicle permits, no driver can transport sand by owner's vehicle – Petitioner (registered owner of vehicle) deposited penalty which prima facie reflects his consent rather non-rebuttal by him shows implied consent – Mere submission of royalty cannot absolve petitioner from his liability – Courts below rightly rejected application filed u/S 451 & 457 Cr.P.C. – Application dismissed: *Makhan Prajapati Vs. State of M.P., I.L.R. 2021 M.P. 761*

– **Section 9A** – See – Stamp Act, Indian, 1899, Section 26, proviso: *Birla Corporation Ltd. (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 2015 (DB)*

– **Section 22** – See – Criminal Procedure Code, 1973, Section 156(3): *Jayant Vs. State of M.P., I.L.R. 2021 M.P. 175 (SC)*

### **MINIMUM QUALIFICATION FOR TEACHERS IN MEDICAL INSTITUTIONS REGULATIONS, 1998**

– **See** – Indian Medical Council Act, 1956, Section 10A & 11: *Amita Gupta (Dr.) (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 977 (DB)*

### **MINIMUM WAGES ACT (11 OF 1948)**

– **Section 20** – Employer-Employee Relationship – Evidence – Held – Employee in his cross-examination admitted that he never had any contract with appellant nor he received any salary from it and all work related issues including work hours and time were supervised by respondent No. 2 – Thus, there was no employer-employee relationship between appellant and respondent No. 1(employee): *National Health Mission Vs. Ramendra Singh Narwariya, I.L.R. 2021 M.P. 1070 (DB)*

– **Section 20** – Payment of Wages/ Overtime – Employer-Employee Relationship – Held – Perusal of clauses of agreement shows that Respondent No. 1

is employee of Respondent No. 2 – No employer-employee relationship existed between Respondent No. 1 and appellant – Respondent No. 2 is duty bound to pay overtime amount to employees, alternatively, appellant directed to pay the same and they be entitled to recover it from Respondent No. 2 – Findings of Labour Court and Writ Court quashed – Appeals allowed: *National Health Mission Vs. Ramendra Singh Narwariya*, I.L.R. 2021 M.P. 1070 (DB)

– **Section 20** – See – Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, M.P., 2005, Section 2(2): *Zigitza Health Care Ltd. (M/s.) Vs. Naresh Kumar Verma*, I.L.R. 2022 M.P. 871 (DB)

– **Section 22A** – Complaint – Maintainability – Held – Company has not been made an accused or even summoned to be tried for the offence – Company being a juristic person cannot be imprisoned but it can be subjected to fine which itself is a punishment, thus prosecution of company is mandatory – Exception would possibly be when company itself ceased to exist or cannot be prosecuted due to a statutory bar – Present prosecution must fail for this reason – Proceedings quashed – Appeal allowed: *Dayle De'Souza Vs. Government of India Through Deputy Chief Labour Commissioner (C)*, I.L.R. 2022 M.P. 23 (SC)

– **Section 22C(1) & 22C(2)** – Complaint – Mandate & Requirements – Held – Complaint does not satisfy the mandate of Section 22C(1) as there are no assertions or averments that appellant was in-charge of and responsible to the company – Proviso to Section 22C(1) would not apply, it is an exception that would be applicable when conditions of Section 22C(1) are satisfied – In absence of any specific averment, present prosecution does not and cannot rely on Section 22C(2): *Dayle De'Souza Vs. Government of India Through Deputy Chief Labour Commissioner (C)*, I.L.R. 2022 M.P. 23 (SC)

– **Section 22C(1) & 22C(2)** – Vicarious Liability – Held – Necessities of Section 22C(2) are different from Section 22C(1) – Vicarious liability u/S 22C(2) can arise because of the director, manager, secretary, or other officer's personal conduct, functional or transactional role, notwithstanding that the person was not in overall control of day to day business of company – Vicarious liability is attracted when offence is committed with consent, connivance, or is attributable to the neglect on part of a director, manager, secretary or other officer of company – Onus u/S 22C(2) is on prosecution and not on the person being prosecuted: *Dayle De'Souza Vs. Government of India Through Deputy Chief Labour Commissioner (C)*, I.L.R. 2022 M.P. 23 (SC)



### **MINOR MINERAL RULES, M.P. 1996**

– **Rule 53** – See – Mines and Minerals (Development and Regulation) Act, 1957, Sections 4/21, 23-A(1) & 23-A(2): *Jayant Vs. State of M.P., I.L.R. 2021 M.P. 175 (SC)*

– **Rule 53** – See – Sand (Mining, Transportation, Storage and Trading) Rules, M.P., 2019: *Rajendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 1854 (DB)*

– **Rule 53**, Sand (Mining, Transportation, Storage and Trading) Rules, M.P., 2019, Rule 27 and Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P., 2006 and Sand Rules, M.P., 2018, Rule 23(1) – Confiscation of Vehicle – Illegal transportation of Sand – Held – Repealing clause under Rule 27 of 2019 Sand Rules eclipse 1996 Rules, 2006 and 2018 Sand Rules qua minor mineral of sand, therefore, an eclipse provision is not available to be borrowed – Confiscation entails serious adverse consequences of penal nature, Competent Authority cannot assume the said power of confiscation unless it is expressly provided in Statute – Impugned orders quashed – Petitions allowed: *Rajendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 1854 (DB)*

– **Rule 53(7)** – Power of Suspension – Object – Principle of “*audi alteram partem*” – Held – Concept behind suspension is to arrest with immediate effect illegality/irregularity being caused by defaulting lease holder – Power of suspension can be exercised in any field be it mines & minerals, services etc. – It does not depend upon following the principle of “*audi alteram partem*” as a condition precedent: *Peethambara Granite Gwalior (M/s.) Vs. State of M.P., I.L.R. 2021 M.P. 284 (DB)*

– **Rule 53(7)** – Power of Suspension – Principle of Natural Justice – Expression “by issuing show cause notice” – Held – Power of suspension of quarrying operation and obligation to issue show cause notice is exercisable simultaneously – Order of suspension can be passed informing reasons for suspension which would satisfy the requirements of issuance of notice to defaulter under Rule 53(7) – Expression “by issuing show cause notice” does not mean that it is incumbent upon competent authority to first issue show cause notice and thereafter consider the reply of defaulter to go in for suspension – Petition dismissed: *Peethambara Granite Gwalior (M/s.) Vs. State of M.P., I.L.R. 2021 M.P. 284 (DB)*

– **Rule 53(7)** – Power of Suspension & Power of Cancellation – Expression “providing opportunity of being heard” – Held – Expression “providing opportunity of being heard” is relatable to power of cancellation and not to the power of suspension: *Peethambara Granite Gwalior (M/s.) Vs. State of M.P., I.L.R. 2021 M.P. 284 (DB)*

## **MOTOR VEHICLES ACT (59 OF 1988)**

– **Section 43**, Motor Vehicles Rules, M.P., 1994, Rule 45 and Motoryan Karadhan Rules, M.P., 1991, Rule 2(e) – Temporary Registration – Expression “period of a month” – Held – Period of a month in a particular month is always 30 to 31 days – U/S 43 r/w Rule 45 of 1994 Rules, if authority issues certificate of temporary registration mentioning the last date of validity, it shall be valid for 30 or 31 days as the case may be depending on the month on which it is issued – There is no provision for issuance of certificate for 2 months thus authorities cannot recover taxes for more than a month: *Transport Department Secretary Vs. Man Trucks India Pvt. Ltd., I.L.R. 2022 M.P. 1824 (DB)*

– **Section 72** – Regional Transport Authority – Power & Jurisdiction – Held – Section 72 does not authorise Regional Transport Authority (RTA) to amend the Rules – If Rules are silent on any aspect, RTA by incorporating some conditions can grant or review the permit but Section 72 does not confers unfettered right on him to amend the Rules itself: *Shreeram Sharma Vs. State of M.P., I.L.R. 2021 M.P. 932*

– **Section 80 & 81** – Renewal of Permit & Grant of Fresh Permit – Simultaneous Consideration – Petitioner filed application for renewal of permit whereas Respondent No. 3 filed application for grant of fresh permit and also submitted objections regarding renewal – Held – It was obligatory for the Authority to consider not only renewal application but also the objections raised against it and also to consider fresh application for grant of permit for the same route and even for the same timing, simultaneously – There is no bar in the Act itself that authority cannot decide both applications simultaneously: *Mahadev Pradhan (M/S) Vs. State of M.P., I.L.R. 2022 M.P. 1561*

– **Sections 80, 81 & 89** – Appeal – Maintainability – Held – Regional Transport Authority while considering petitioner’s application for renewal of permit had neither considered the application of Respondent No. 3 for grant of fresh permit nor considered the objections raised by him regarding renewal application – Authority failed to discharge its obligations and duties in proper manner – Appellate authority did not erred in entertaining appeal filed by Respondent No. 3 – Order of Appellate Authority is well within jurisdiction – Appeal was maintainable – Petition dismissed: *Mahadev Pradhan (M/S) Vs. State of M.P., I.L.R. 2022 M.P. 1561*

– **Section 166** – Tractor & Thresher – Held – Apex Court concluded that thresher being energized and being operated through tractor, same is to be considered to be a motor vehicle as power of propulsion to thresher is transmitted from an external source namely a tractor – This Court has also concluded that when accident is caused by thresher attached with tractor, insurance company is held liable when it is admitted

that tractor was insured for agricultural purpose: *HDFC Ergo General Insurance Co. Ltd. Vs. Smt. Bisrati Bai, I.L.R. 2022 M.P. 2075*

### **MOTOR VEHICLES RULES, M.P. 1994**

– **Rule 45** – See – Motor Vehicles Act, 1988, Section 43: *Transport Department Secretary Vs. Man Trucks India Pvt. Ltd., I.L.R. 2022 M.P. 1824 (DB)*

– **Rule 77(1a) & 77(1b)** – Registration of Vehicle – Renewal – Held – According to amended Rules, amended Rule 77(1a) would not be applicable to stage carriage which was registered before coming into force of amended Rules i.e. from 28.12.2015 – Vehicle was registered prior to coming into force of amended Rule 77(1a) – Under Rule 77(1b), outer limit of 15 years is not applicable to vehicle in question – Respondents directed to decide application of renewal of registration of vehicle – Petition allowed with cost of Rs. 20,000: *Shreeram Sharma Vs. State of M.P., I.L.R. 2021 M.P. 932*

### **MOTORYAN KARADHAN RULES, M.P., 1991**

– **Rule 2(e)** – See – Motor Vehicles Act, 1988, Section 43: *Transport Department Secretary Vs. Man Trucks India Pvt. Ltd., I.L.R. 2022 M.P. 1824 (DB)*

– **Rule 2(e)** – Term “month” – Amendment – Held – State Government has realized that the period of month denotes only complete one month, hence the expression “a part thereof” has been added to the definition – Looking to amendment, present appeal rendered infructuous and is dismissed: *Transport Department Secretary Vs. Man Trucks India Pvt. Ltd., I.L.R. 2022 M.P. 1824 (DB)*

### **MUNICIPAL (ACHAL SAMPATTI ANTRAN) RULES, M.P., 2016**

– **Rule 2(d) & 20(4)** – Conversion of Leasehold Land into Freehold Land – Competent Authority – Held – C.E.O. is only competent authority to take final decision, who already expressed his opinion in favour of petitioner – No necessity to make any recommendation and to seek approval from State Government – State not taking any decision on recommendation till expiry of lease period and later refused to consider application on ground that lease has expired, is totally illegal exercise of power – Authorities acted arbitrarily and without jurisdiction – Impugned orders set aside – Respondent directed to pass order allowing petitioner’s application for conversion and restore possession of land: *Narmada Ginning & Pressing Factory (M/s.), Harda Vs. State of M.P., I.L.R. 2022 M.P. 442*

– **Rule 5 & 20** – Transfer & Conversion – Held – Rule 5 and Rule 20 are two distinct provisions and operate in different fields – Rule 5 deals with transfer of immovable properties and Rule 20 deals with conversion of land from leasehold to freehold: *Narmada Ginning & Pressing Factory (M/s.), Harda Vs. State of M.P., I.L.R. 2022 M.P. 442*

– **Rule 17 & 20** – Conversion of Leasehold Land into Freehold Land – Held – Merely because lease has expired, the possession of petitioner does not become illegal – Impugned communication asking possession of land from petitioner is without any authority since petitioner could still apply for renewal of lease pursuant to Rule 17: *Narmada Ginning & Pressing Factory (M/s.), Harda Vs. State of M.P., I.L.R. 2022 M.P. 442*

– **Rule 20** – Conversion of Leasehold Land into Freehold Land – Role of State Government – Held – C.E.O. Municipal Council is the only competent authority to take decision on application for conversion of leasehold land into freehold land – State Government and Municipal Council has no role for deciding such application – Resolution passed is without jurisdiction and is void ab initio: *Narmada Ginning & Pressing Factory (M/s.), Harda Vs. State of M.P., I.L.R. 2022 M.P. 442*

– **Rule 20** – Enquiry Report – Principle of Natural Justice – Held – Report prepared by respondents without giving any opportunity of hearing to petitioner – Adverse decision taken by Authority on basis of said report – Any order, report or action which prejudices interest/right of party and is prepared behind his back, is an arbitrary exercise and has no legal sanctity – Order vitiates being contrary to principle of natural justice: *Narmada Ginning & Pressing Factory (M/s.), Harda Vs. State of M.P., I.L.R. 2022 M.P. 442*

– **Rule 20 and Constitution** – Article 226 – Writ of Mandamus – Power of Court – Held – A writ of mandamus can be issued by High Court exercising jurisdiction under Article 226 with a positive direction to authority to allow application for conversion of leasehold land into freehold land: *Narmada Ginning & Pressing Factory (M/s.), Harda Vs. State of M.P., I.L.R. 2022 M.P. 442*

## **MUNICIPAL CORPORATION ACT, M.P. (23 OF 1956)**

– **Sections 10(1), 10(2) & 10(3)**, Municipal Corporation (Extent of Wards) Rules, M.P., 1994, Rules 2(4), 3(1), 3(2) & 3(3) and Census Rules, 1990, Rule 8(iv) – Delimitation of Wards – Held – In order to safeguard against any possibility of relocation/shifting of certain sections of population from one ward to another, Rule 3(2) of 1994 Rules has given a leverage to the Competent Authority to have variation upto 15% of population between one ward and another – Even if some voters have

shifted from one ward to another, that would not justify to have another yardstick for division of city into Municipal wards – No interference required in order passed by Collector – Petition dismissed: *Rakesh Sushil Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. \*5 (DB)

– **Section 138(4)** – Appellate Authority – Principle of Natural Justice – Opportunity of Hearing – Held – If one authority, person or committee hears the appeal and the other person, Authority or Committee decides it without any further hearing, such procedure is not in consonance with principle of natural justice – Appellate authority Mayor-in-Council without hearing the parties, merely on basis of opinion of Committee, dismissed the appeal – Principle of natural justice violated – Impugned order set aside – Matter remanded back to appellate authority – Petition partly allowed: *Sayaji Hotels Ltd. Vs. Indore Municipal Corporation*, I.L.R. 2021 M.P. 72

– **Sections 148, 153 & 167** – Purpose and Scope – Held – Purpose and scope of Section 148/153 is totally different vis-à-vis Section 167 which falls under supplemental provision and not under other two sub-division which are Taxation and Property Tax – Section 148 & 153 are for imposition of property tax and the rate at which it is to be charged – It's concept is altogether different than “Mutation”, where indeterminate class of persons may have right, title or interest in property: *Ram Bharose Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. 1345 (DB)

– **Section 167 & 371** – Public Notice – Principle – Issuance of public notice by way of publication in newspaper for mutation purpose is as per principles of Public Policy and Public Welfare – Concept of Public Policy, discussed & explained: *Ram Bharose Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. 1345 (DB)

– **Sections 167, 378, 379 & 421** – Mutation Proceedings – Public Notice – Publication Charges – Held – Corporation can direct the applicants to cause notice to be published in widely circulated newspapers at their own expenses: *Ram Bharose Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. 1345 (DB)

– **Sections 167, 378, 379 & 421** – Mutation Proceedings – Public Notice – Publication Charges – Held – Publication of notice brings transparency, fair play and clarity in mutation proceedings and any intended/prospective mischief can be avoided – Asking for publication cost by Municipal Corporation, from an individual is not an element of quid pro quo or a device to fill-up its treasury – It is a regulatory and a facilitating measure – Corporation is just and right in its approach to avoid future litigation and complication – Petition disposed: *Ram Bharose Sharma Vs. State of M.P.*, I.L.R. 2021 M.P. 1345 (DB)

– **Section 371 & 378** – Issuance of Public Notice – Power of Commissioner – Held – Provisions of issuance of public notice and authority to impose improvement

charges lie with Commissioner u/S 371 and 378 respectively – Commissioner has power to declare certain expenses to be improvement expenses u/S 378 and said expenses are recoverable and payable by the owner/occupier of the premises u/S 379 of Act: *Ram Bharose Sharma Vs. State of M.P., I.L.R. 2021 M.P. 1345 (DB)*

## **MUNICIPAL CORPORATION (EXTENT OF WARDS)** **RULES, M.P., 1994**

– **Rules 2(4), 3(1), 3(2) & 3(3)** – See – Municipal Corporation Act, M.P., 1956, Sections 10(1), 10(2) & 10(3): *Rakesh Sushil Sharma Vs. State of M.P., I.L.R. 2021 M.P. \*5 (DB)*

## **MUNICIPALITIES ACT, M.P. (37 OF 1961)**

– **Section 5(2) & 6** – See – Constitution – Article 243Q: *Kan Singh Vs. State of M.P., I.L.R. 2021 M.P. 1306 (DB)*

– **Section 20** – See – Constitution – Article 243 ZG: *Dipesh Arya Vs. State of M.P., I.L.R. 2021 M.P. 251*

– **Section 29 & 29-A** – See – Constitution – Article 243-M, 243-D & Schedule V: *Mohd. Azad Vs. State of M.P., I.L.R. 2021 M.P. 458 (DB)*

– **Section 29 & 29-A** and Municipalities (Reservation of Wards for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women) Rules, M.P., 1994, Rule 3 – Reservation of Seats – Held – In Municipal Council Dhanpuri out of 28 wards, 15 wards have been reserved for SC, ST and OBC – As per Section 29-A of Act of 1961, reservation cannot exceed 50% – Notification to the extent of providing reservation of 07 seats to OBC is set aside – Respondents directed to provide reservation only for 6 seats to OBC – Petition allowed: *Mohd. Azad Vs. State of M.P., I.L.R. 2021 M.P. 458 (DB)*

– **Section 47** – See – Constitution – Article 226: *Basant Shrivaneekar Vs. State of M.P., I.L.R. 2022 M.P. 51 (DB)*

– **Section 47(2)** – Recall of President – “Signing” & “Presentation” of Proposal – Held – There is no statutory requirement of personal presence of the Councillors, who have presented proposal for purpose of verification before Collector: *Basant Shrivaneekar Vs. State of M.P., I.L.R. 2022 M.P. 51 (DB)*

– **Section 94(4) & 50** – Regularization – “Safai Karamchari” – Held – Municipal Govt. vest in the Council, thus decision taken by the president-in-Council is final – State Govt. has no power to cancel the resolution of President-in-Council whereby petitioner was regularized – Impugned order set aside – Respondent-4

directed to regularize/grant regular pay scale to petitioner – Petition allowed: *Deepak Kalosia Vs. State of M.P., I.L.R. 2022 M.P. 993*

– **Section 94(4) & 94(5)** – Regularization – Sanction of State Government – Held – No sanction from the State Govt. is necessary for appointment on post of class III & IV employee: *Deepak Kalosia Vs. State of M.P., I.L.R. 2022 M.P. 993*

– **Section 136** – Private Temple & Public/Government Temple – Tax Exemption – Held – Counsel for appellant submitted that u/S 136 of 1961 Act, Government properties are exempted from taxation – Appellant produced different receipts and explained that every year he is paying property tax and house tax over the temple: *Ramkrishna Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1749*

– **Section 279 & 282** – Construction of Community Hall in Public Park Space – Held – Once a public park is dedicated to citizens/residents, it is held by Municipality in trust on behalf of public at large and cannot be put to any other use – Change of its use for any other purpose would tantamount to breach of trust – Hall constructed in park directed to be demolished – Relevant area shall always be maintained only as a park and shall not be used for any other purpose – Petition disposed: *Preeti Singh Vs. State of M.P., I.L.R. 2021 M.P. 1886 (DB)*

– **Section 313(1)(iii), proviso (i) & 339-C** – Prosecution – Limitation – Held – As per proviso (i) to Section 313(1)(iii), prosecution shall be instituted within 12 months from the date of commission of offence – Notice dated 06.07.1996 merely informs petitioner that he must obtain a license if he is intending to develop a colony – Notice do not mention that petitioner has committed any act which invites his prosecution u/S 339-C – It cannot be said that period of 12 months started from 06.07.1996 – No period of limitation applies to the impugned order: *Ashish Agarwal Vs. State of M.P., I.L.R. 2022 M.P. 61*

– **Section 339-A(a)** – See – Nagar Palika (Registration of Colonizer Terms & Conditions) Rules, M.P., 1998, Rule 12: *Ashish Agarwal Vs. State of M.P., I.L.R. 2022 M.P. 61*

– **Section 339-C** – Compensation – Held – Apart from imposing jail sentence, Court may order the accused to pay to Council such amount of compensation, after considering the amount required for development of such illegal colony – Further, assessment of compensation payable to Municipal Council u/S 339-C, would not curtail the powers of Municipal Council to develop the under-developed colony left by the colonizer: *Ashish Agarwal Vs. State of M.P., I.L.R. 2022 M.P. 61*

## **MUNICIPALITIES (RESERVATION OF WARDS FOR SCHEDULED CASTES, SCHEDULED TRIBES, OTHER BACKWARD CLASSES AND WOMEN) RULES, M.P., 1994**

– **Rule 3 (Explanation)** – Pattern & Practice – Held – Declaration of ward as unreserved shall be limited to that election only – If ward no. 10 has been declared unreserved and ward no. 2 is being reserved then, this pattern of reservation is confined to this election only: *Dipesh Arya Vs. State of M.P., I.L.R. 2021 M.P. 251*

– **Rule 3** – Grounds for Reservation – Held – Total percentage of SC population in any particular ward is to be seen and wards having most concentrated population of SC people are to be chosen for reservation of wards for SC category candidates – Respondents rightly reserved Ward No. 2 on basis of density of SC population rather than the numbers – No case for interference – Petition dismissed: *Dipesh Arya Vs. State of M.P., I.L.R. 2021 M.P. 251*

– **Rule 3** – Legislative Intent & Purpose – Held – Total density of SC category of people has material bearing because that way they have the feeling of representation through the candidates of their categories and new leadership would emerge amongst them: *Dipesh Arya Vs. State of M.P., I.L.R. 2021 M.P. 251*

– **Rule 3** – Maintainability of Petition – Held – Election starts with notification and culminates in declaration of returning candidate – Present proceedings are not post notification of election but constitutes preparation of election, thus scope of judicial review lies – Petition maintainable: *Dipesh Arya Vs. State of M.P., I.L.R. 2021 M.P. 251*

– **Rule 3** – See – Constitution – Article 243 ZG: *Dipesh Arya Vs. State of M.P., I.L.R. 2021 M.P. 251*

– **Rule 3** – See – Municipalities Act, M.P., 1961, Section 29 & 29-A: *Mohd. Azad Vs. State of M.P., I.L.R. 2021 M.P. 458 (DB)*

## **MUTATION**

– **Jurisdiction of Civil Court** – Held – Apex Court concluded that party who is claiming title/right on basis of a Will, has to approach appropriate Civil Court and get his right crystallized and only thereafter on basis of the decision of Civil Court, necessary mutation entry can be made: *Tarasiya (Smt.) Vs. Ramlakhan, I.L.R. 2021 M.P. 2299*

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



are to be determined by Civil Court and not by Revenue Courts – Impugned order quashed – Petition allowed: *Tarasiya (Smt.) Vs. Ramlakhan, I.L.R. 2021 M.P. 2299*

### **MUTUAL PARTITION**

– **Hindu Undivided Family** – Held – Apex Court concluded that a partition effected between members of Hindu undivided family by their own volition and with their consent cannot be reopened unless it is shown that same is obtained by fraud, coercion, misrepresentation or undue influence – Court should require strict proof of facts because an act inter vivos cannot be lightly set aside: *Krishna Kumar Anand Vs. Varun Anand, I.L.R. 2022 M.P. 2088*

## N

### **NAGAR PALIKA (REGISTRATION OF COLONIZER TERMS & CONDITIONS) RULES, M.P., 1998**

– **Rule 12** – Interpretation – Held – Rule 12 is neither a taxing provision nor a penal provision, therefore principle of strict interpretation would not apply: *Ashish Agarwal Vs. State of M.P., I.L.R. 2022 M.P. 61*

– **Rule 12** and Municipalities Act, M.P. (37 of 1961), Section 339-A(a) – Registered/Unregistered Colonizers – Applicability – Held – Rule 12 is not confined to only “Registered Colonizers” – If it is held that Rule 12 would be applicable to only registered colonizers and not to other colonizers who have acted in complete disregard to provisions of law by not obtaining registration under the Rules, such interpretation would put the wrongdoer in a more advantageous position: *Ashish Agarwal Vs. State of M.P., I.L.R. 2022 M.P. 61*

– **Rule 12(v)** – Principle of Natural Justice – Held – Power under Rule 12(v) is subject to principle of natural justice – Before proceeding further under Rule 12(v), Competent Authority has to give full opportunity of hearing to the colonizers and purchasers – An ex-parte assessment of amount of unfinished work cannot be done: *Ashish Agarwal Vs. State of M.P., I.L.R. 2022 M.P. 61*

– **Rule 12(v) & 15-C** – Assessment & Recovery – Held – Rule 12(v) authorizes the Council to make assessment of internal development carried out by any Colonizer, whether registered or not and can calculate the amount required for development in such colony – Municipal Council may recover such amount by auctioning mortgaged plots/houses/flats and no civil suit would be required – Recovery may also be done taking recourse to Rule 15-C of 1998 Rules – Petitions dismissed: *Ashish Agarwal Vs. State of M.P., I.L.R. 2022 M.P. 61*

– **Rule 15-A (amended)** – Publication in Official Gazette – Effect – Held – Once the Rules are published in Official Gazette and are made available by circulation, sale etc., it is presumed that it has been made known to all citizens of Country/State – Petitioner cannot express his ignorance about provision of said Rules: *Rajkumar Goyal Vs. Municipal Corporation, Gwalior, I.L.R. 2021 M.P. 48*

– **Rule 15-A (amended)** – See – Constitution – Article 226: *Rajkumar Goyal Vs. Municipal Corporation, Gwalior, I.L.R. 2021 M.P. 48*

– **Rule 15-C** – Assessment/Levy & Recovery – Scope – Held – “Assessment/Levy” are quite different from “Recovery” – Rule 15-C does not speak about adjudication or assessment or levy but it merely speaks about recovery – Administrator/Council/Competent Authority cannot make assessment of cost of unfinished development work under Rule 15-C: *Ashish Agarwal Vs. State of M.P., I.L.R. 2022 M.P. 61*

### **NALSA (EFFECTIVE IMPLEMENTATION OF POVERTY ALLEVIATION SCHEMES) SCHEME, 2015**

– **Clause 9, 10 & 11** – See – Legal Services Authorities Act, 1987: *Omnarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. 2025 (DB)*

– **Clause 10(3)** – See – Constitution – Article 226: *Omnarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. 2025 (DB)*

– **See** – Legal Services Authorities Act, 1987, Section 29-A: *Omnarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. 2025 (DB)*

### **NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT (61 OF 1985)**

#### **SYNOPSIS**

- |                                |  |
|--------------------------------|--|
| <b>1. Bail</b>                 | <b>2. Burden/Standard of Proof</b>         |
| <b>3. Collection of Sample</b> | <b>4. Confessional Statement</b>           |
| <b>5. Cultivation</b>          | <b>6. FSL Report</b>                       |
| <b>7. Independent Witness</b>  | <b>8. Intimation to Higher Officials</b>   |
| <b>9. Presumption</b>          | <b>10. Search &amp; Seizure/Compliance</b> |

#### **1. Bail**

– **Sections 8, 15 & 29** – See – Criminal Procedure Code, 1973, Section 439: *Ramniwas Vs. State of M.P., I.L.R. 2021 M.P. 757*

– **Section 8/18(c) & 29** and Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Bail – Grounds – Held – Applicant 52 years old having no previous criminal record and is a land owner and a family man, thus chance of absconson is remote – Many witnesses are government employees, chance of tampering with evidence/witness is also remote – Applicant suffered more than 3 months of incarceration which amounts to pretrial detention – Applicant expressed his intention to perform community services to reform himself – Bail granted imposing conditions – Application allowed: *Gopal Krishna Gautam @ Pandit Vs. State of M.P., I.L.R. 2021 M.P. 1975*

– **Section 8(b)/20(a)(i)** – See – Criminal Procedure Code, 1973, Section 167 (2): *Raja Bhaiya Singh Vs. State of M.P., I.L.R. 2021 M.P. 119*

## 2. Burden/Standard of Proof

– **Section 35 & 54** – Burden of Proof – Held – Initial burden exist upon prosecution and when it stands satisfied, legal burden would shift over accused to lead evidence or establish his case for innocence as per standard proof required – Accused cannot wriggle out from such liability and trial Court must weigh this aspect of “presumptions” while appreciating evidence – Even implications of Section 27 of Evidence Act are available to trial Court to reach the truth: *Gopal Krishna Gautam @ Pandit Vs. State of M.P., I.L.R. 2021 M.P. 1975*

– **Section 35 & 54** – Standard of Proof – “Preponderance of Probability” – Held – Because of Section 35 and 54, standard of proof required for accused to proof innocence is “Preponderance of Probability” at least which accused shall have to establish – “Presumption of culpable mental state” u/S 35 and “presumption from possession of illicit articles” u/S 54(b) are to be countered by accused on touchstone of preponderance of probability, at least: *Gopal Krishna Gautam @ Pandit Vs. State of M.P., I.L.R. 2021 M.P. 1975*

## 3. Collection of Sample

– **Section 8/20** – Collection of Sample – Procedure – Held – Contraband kept in 12 packets (70 kgs.) were seized – Investigating agency before taking samples of each packets mixed the contraband of 12 packets – Sample from each packet was not collected – Standing Orders issued by the Narcotics Control Bureau not complied/ followed – Bail granted – Application allowed: *Navneet Jat Vs. State of M.P., I.L.R. 2022 M.P. \*54*

#### 4. Confessional Statement

– **Section 53 & 67** and Evidence Act (1 of 1872), Section 25 – “Officers” – Confessional Statement of Accused – Held – Apex Court concluded that “Officers” u/S 53 are “Police Officers” within meaning of Section 25 of Evidence Act – Confessional statement made to them would be barred u/S 25 of Evidence Act – Statement recorded u/S 67 cannot be used as confessional statement in the trial under the 1985 Act: *Ramniwas Vs. State of M.P., I.L.R. 2021 M.P. 757*

– **Section 67** – Confessional Statement – Held – Statement made by co-accused and confessional statement of accused are not admissible in law and cannot be taken into account to convict an accused under NDPS Act: *Ramniwas Vs. State of M.P., I.L.R. 2021 M.P. 757*

#### 5. Cultivation

– **Sections 8(a), 8(b), 20(a)(i) & 20(b)(ii)(C)** – Ingredients – Held – Ganja plants seized from accused – Section 8(a) is not applicable because it relates to Coca plants etc. – Present case covered by Section 8(b) which prohibits cultivation of Opium, Poppy or “any Cannabis plant” – Section 20(a) prescribes punishment of cultivation – Offence u/S 8(b)/20(a) is made out: *Raja Bhaiya Singh Vs. State of M.P., I.L.R. 2021 M.P. 119*

#### 6. FSL Report

– **Section 8/20 & 57** – FSL Report – Credibility – Held – Evidence shows that FSL report was given in pursuance of the memo of S.P. and seal of sample was found intact – Nothing to disbelieve the FSL report: *Guddu @ Sadique Vs. State of M.P., I.L.R. 2022 M.P. 576*

#### 7. Independent Witness

– **Section 8/21** – Independent Witnesses – Held – Search/seizure witnesses turned hostile but Police Officer made his deposition with accuracy and precision which was not demolished in cross-examination – If statement of police officer is worthy of credence, conviction can be recorded on basis of his statement, even if it is not supported by independent witness – Conviction upheld – Appeal dismissed: *Raju @ Surendar Nath Sonkar Vs. State of M.P., I.L.R. 2021 M.P. 104*

#### 8. Intimation to Higher Officials

– **Section 8/20 & 42** – Intimation to Higher Officials – Held – Intimation was given to CSP, there was a receipt of information dispatched by S.I. – Merely

because dispatch number was not mentioned, that would not corrode the credibility of the evidence of witness to establish that information was conveyed to higher officials – Requirements of Section 42 was complied: *Guddu @ Sadique Vs. State of M.P., I.L.R. 2022 M.P. 576*

## 9. Presumption

– **Sections 35, 54 & 66** – Presumption – Held – Presumption is rule of evidence which has evolved and is essentially invoked to plug certain gaps or remove lacuna in the evidence – Section 35 and 54 raises presumption with regard to culpable mental state on part of accused and these provisions carry reverse burden of proof on the accused: *Gopal Krishna Gautam @ Pandit Vs. State of M.P., I.L.R. 2021 M.P. 1975*

## 10. Search & Seizure/Compliance

– **Sections 8/20, 21 & 50** – Search & Seizure – Requirement – Held – To secure a conviction u/S 21, the possession of illicit article is sine qua non – Such contraband article should be recovered in accordance with provisions of Section 50, otherwise the recovery itself shall stand vitiated in law: *Guddu @ Sadique Vs. State of M.P., I.L.R. 2022 M.P. 576*

– **Section 8/20 & 50** – Compliance – Held – Appellant was informed that he would like to be searched by Gazetted Officer or Magistrate or by S.I. (himself) – It was improper on part of SI to give a third option of search which is not available in Section 50 – Appellant not informed of his right to be searched before Gazetted Officer or Magistrate – There should be strict compliance of Section 50 and there is non-compliance of such mandatory provision – Search conducted is vitiated – Appellant entitled for benefit of such lapse of prosecution – Conviction and sentence set aside – Appeal allowed: *Guddu @ Sadique Vs. State of M.P., I.L.R. 2022 M.P. 576*

– **Section 8/20 & 50** – Theory of “Substantial Compliance” – Held – The theory of substantial compliance would not be applicable to such situations, particularly where the punishment provided is very harsh and is likely to cause serious prejudice against the suspect: *Guddu @ Sadique Vs. State of M.P., I.L.R. 2022 M.P. 576*

– **Section 36-C & 60** – See – Criminal Procedure Code, 1973, Section 451/457: *Surendra Dhakad Vs. State of M.P., I.L.R. 2022 M.P. 802*

– **Section 50** – Search & Seizure – Procedure – Held – Accused must be apprised regarding his right to get searched before Gazetted Officer or Magistrate – Despite apprising, if accused has chosen to be searched by police officer, no fault can be found in the search – Further, as a rule of thumb, in all circumstances, search

cannot vitiate merely because it was not conducted before Gazetted Officer or Magistrate: *Raju @ Surendar Nath Sonkar Vs. State of M.P., I.L.R. 2021 M.P. 104*

– **Section 50** – Words “if such person so requires” – Interpretation – Held – The expression “if such person so requires” needs to be given due weightage and full effect – A statute must be read as a whole in its context: *Raju @ Surendar Nath Sonkar Vs. State of M.P., I.L.R. 2021 M.P. 104*

### **NATIONAL HIGHWAYS ACT (48 OF 1956)**

– **Section 3G(5)** – See – Constitution – Article 226: *Indrakala Agrawal (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 916 (DB)*

– **Section 3G(5)** – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 26(1)(a): *M.P. Road Development Corporation Vs. Mohd. Shahbuddin, I.L.R. 2022 M.P. 1927 (DB)*

– **Section 3G(5)** and Limitation Act (36 of 1963), Article 137 & Section 5 – Appeal – Delay – Held – Appeal filed after 4 years, 4 months and 4 days from date of award – If Article 137 of Limitation Act is applied, there is only delay of 1 year, 4 months and 4 days – Petitioner (villager) stated that he was not aware that he is entitled to file appeal against award – Sufficient cause for condoning the delay – Respondents to consider the appeal on merits – Petition allowed: *Ghanshyam Gupta Vs. State of M.P., I.L.R. 2022 M.P. 1389 (DB)*

– **Section 3G(5)** and Limitation Act (36 of 1963), Article 137 & Section 5 – Land Acquisition – Appeal – Limitation – Held – No limitation is provided for filing appeal u/s 3G(5) of Act, thus Article 137 of Limitation Act would be applicable to such cases and limitation to file appeal would be 3 years – In that case, Section 5 of Limitation Act will come into play and delay in filing appeal would be considered based on facts and circumstances involved and sufficiency of cause: *Ghanshyam Gupta Vs. State of M.P., I.L.R. 2022 M.P. 1389 (DB)*

### **NATIONAL HIGHWAYS RULES, 1957**

– **Power of Review** – Held – The entire provision of Rules of 1957 does not provide for a power of review to competent authority so far as award under the National Highways Act, 1956 is concerned: *Indrakala Agrawal (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 916 (DB)*

## **NATIONAL MEDICAL COMMISSION ACT (30 OF 2019)**

– **Sections 26, 28(5) & 28(6)** – Increase of M.S. (Orthopedics) Seats – Powers of Appellate Authority – Medical Assessment and Rating Board (MARB), the statutory authority under NMC Act approved seats from 1 to 7 – Appeal filed by college for enhancement of seats from 7 to 9 – Appellate Authority reduced seats from 7 to 5 – Held – Appellate Authority adopted a unique procedure unknown to law – When appeal was confined for enhancement of 2 seats, nothing pointed out which enables it to take away the benefit of enhancement of seats already granted by MARB and go beyond the prayer of appeal memo – This runs contrary to scheme and object of Act – Minutes to the extent seats were reduced from 7 to 5 and subsequent orders set aside – Decision of MARB enhancing seats from 1 to 7 restored – Petition allowed: *People’s College of Medical Sciences and Research Centre Vs. Union of India, I.L.R. 2022 M.P. 1515 (DB)*

– **Section 28 & 29** – Application for increase of MBBS Seats – Grounds – Held – Decision of NMC declining increase of seats based on CBI’s self contained note, is beyond scope of Section 28 & 29 – CBI’s self contained note cannot be a reason for approving/disapproving the scheme or to disallow an application – Impugned order based on extraneous reason and also hits Wednesbury principles and is thus set aside – NMC directed to take decision on petitioners application within four corners of Section 28 & 29 – Petition allowed to the extent above: *L.N. Medical College & Research Centre Vs. Union of India, I.L.R. 2022 M.P. 1333 (DB)*

– **Section 28 & 29** – See – Constitution – Article 14: *L.N. Medical College & Research Centre Vs. Union of India, I.L.R. 2022 M.P. 1333 (DB)*

– **Section 28(5)** – See – Constitution – Article 226: *L.N. Medical College & Research Centre Vs. Union of India, I.L.R. 2022 M.P. 1333 (DB)*

## **NATIONAL SECURITY ACT (65 OF 1980)**

### **SYNOPSIS : Section 3(2) & 3(3)**

- |                                    |  |
|------------------------------------|--|
| <b>1. Applicability</b>            | <b>2. “Area Specific” &amp; “Authority Specific”</b> |
| <b>3. Communication</b>            | <b>4. Detenue already in Custody</b>                 |
| <b>5. Doctrine of Severability</b> | <b>6. General/Special Law</b>                        |
| <b>7. Grounds/Contingencies</b>    | <b>8. Interference at Pre-Execution Stage</b>        |

**9. Principles/Scope****10. Revocation of Order****11. Right of Detenuue****12. Singular Act****13. Social Media Post****14. Statement u/s 161 CrPC****1. Applicability**

– **Section 3(2)** – Applicability – Held – Apex Court concluded that there is no straight jacket/static formula for applying /invoking NSA because it varies according to the pressures of the day and according to intensity of imperatives – Its depends on factual backdrop of each case: *Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur, I.L.R. 2021 M.P. 2272 (DB)*

– **Section 3(3) & 3(4)** and Food Safety and Standard Act, (34 of 2006), Section 26(2)(ii) & 52 – Preventive Detention – Overlapping Feature – Applicability – Held – Order of preventive detention under NSA does not overlap with penal provisions under FSSA as it is not in lieu of that but is rather in addition to that – Preventive detention law can operate side by side with substantive offences under IPC or FSSA – If offence committed under FSSA which is prejudicial to maintenance of public order, accused can be detained under NSA, it however depends upon facts of a given case: *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

**2. “Area Specific” & “Authority Specific”**

– **Section 3(3)** – Detention Order – “Area Specific” & Authority Specific” – Held – Use of word “a” cannot be divorced from remaining part of the provision – If “any area” covers entire State in situation like Covid-19 pandemic, ‘any area’ may be the entire State and in that situation, it is not necessary to issue ‘area specific’ and ‘authority specific’ order – No such requirement in Section 3(3) for issuance of ‘area specific’ or ‘authority specific’ order: *Yatindra Verma Vs. State of M.P., I.L.R. 2021 M.P. 1669 (DB)*

**3. Communication**

– **Section 3(2) & 3(3)** – Communication of Detention Order – Held – Detention order was communicated to uncle of petitioner – No prejudice caused to petitioner, indeed he filed the present petition and had taken legal recourse with quite promptitude – In absence of showing any prejudice, no interference warranted: *Sonu Bairwa Vs. State of M.P., I.L.R. 2021 M.P. 1832 (DB)*



#### 4. Detenu already in Custody

– **Section 3(2)** – Detenu already in Custody – Held – It is submitted that offences mentioned in FIR are trivial in nature and are triable by Magistrate – District Magistrate rightly formed opinion that there is likelihood of petitioner’s release on bail – Necessary ingredients for detaining a person, who is already arrested are satisfied: *Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur, I.L.R. 2021 M.P. 2272 (DB)*

– **Section 3(2) & 3(3)** – Custody of Corpus – Application of Mind – Held – Despite recording a finding in impugned detention order that Corpus was already in custody, State Government repeatedly mentioned that he is “absconding” – If State Government and Central Government carry an impression that detenu is absconding, this may have an adverse impact on their decision, thus, utmost care and caution must be taken while giving a finding whether the person concern is really absconding or not – This is an example of non-application of mind or acting in a mechanical manner: *Yatindra Verma Vs. State of M.P., I.L.R. 2021 M.P. 1669 (DB)*

– **Section 3(2) & 3(3)** – Scope – Held – A person who is already arrested can still be detained under the NSA Act: *Yatindra Verma Vs. State of M.P., I.L.R. 2021 M.P. 1669 (DB)*

– **Section 3(2) & 3(3)** – Scope & Jurisdiction – Detenu already in Custody – Held – Person who is already in custody can still be detained under NSA if (i) detaining authority had knowledge about detenu’s custody, (ii) there exists real possibility of detenu’s release on bail and (iii) necessity of preventing him from indulging in activities prejudicial to the security of State or maintenance of public order upon his release on bail – All ingredients/parameters were satisfied in present case – No interference required: *Sonu Bairwa Vs. State of M.P., I.L.R. 2021 M.P. 1832 (DB)*

#### 5. Doctrine of Severability

– **Section 3(2) & 5A** – Detention Order – Doctrine of Severability – Held – If order to the extent it refers to incident of 2004 is treated as invalid, after excision of this invalid part, remaining part is found to be self-contained, it can be a reason to uphold invocation of power u/S 3(2) of Act – Two parts of order are severable – The invalid part will not eclipse the entire order of detention: *Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur, I.L.R. 2021 M.P. 2272 (DB)*

– **Section 3(3)** – Doctrine of Severability – Held – Para 4 of detention order, even if it is erroneous and is deleted or treated as invalid, contents of rest of the order will be sufficient to uphold the invocation of power u/S 3(2) of the Act – The invalid

para 4 will not eclipse the entire order: *Kamleshwar Dixit Vs. State of M.P., I.L.R. 2021 M.P. 2035 (DB)*

## 6. General/Special Law

– **Section 3(2)** and Food Safety and Standard Act, (34 of 2006), Section 26(2)(ii) & 52 – General Law & Special Law – Concept – Held – If an offence committed by offender which merely effect law and order situation, can be dealt with under ordinary penal laws and extraordinary provisions of preventive detention ought not to be invoked but it cannot be deduced from this that ordinary laws to be considered as general law and law of preventive detention under NSA be considered as special law or vice versa: *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

## 7. Grounds/Contingencies

– **Section 3(2)** – Detention Orders – Grounds – Held – Detaining authority has taken note of several incidents of land grabbing by detenu (land mafia), which is not confined to one colony – Allegation of land grabbing is of wide and serious magnitude – Apart from 6 FIRs, overall conduct of detenu and impact of public tempo was considered by District Magistrate – Order has not been passed for wrong purpose or on vague, extraneous or irrelevant grounds – Central Government also approved the order – Petition dismissed: *Dilip Sisodia Vs. State of M.P., I.L.R. 2022 M.P. 413 (DB)*

– **Section 3(2)** – Detention Orders – Scope – Held – Nature, scale/magnitude and gravity of an act and its impact on public order is relevant factor to determine whether the detention law is to be invoked – An isolated act or cheating or land grabbing may not be sufficient to invoke such detention law but when such act takes place with frequency and is of severe magnitude, detention law can very well be invoked: *Dilip Sisodia Vs. State of M.P., I.L.R. 2022 M.P. 413 (DB)*

– **Section 3(2)** – Public Order – Held – Allegation against petitioner is relating to blackmarketing and using fake injections in hospital, which certainly falls within ambit and scope of “public order”: *Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur, I.L.R. 2021 M.P. 2272 (DB)*

– **Section 3(2)** and Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act (7 of 1980) – Contingencies – Explanation – Scope – Held – Section 3(2) with explanation shows that sub-Section (2) is wide enough and deals with 3 contingencies when a citizen can be detained (i) for preventing him from acting in any manner prejudicial to security of State (ii) for preventing him from acting in any manner prejudicial to maintenance of public order (iii) for preventing him from acting in any manner prejudicial to maintenance of supplies and services

essential to community – “Explanation” of Section 3(2) is limited to and takes only contingency (iii) beyond the purview of NSA if it is covered by Blackmarketing Act: *Sonu Bairwa Vs. State of M.P., I.L.R. 2021 M.P. 1832 (DB)*

– **Section 3(2) & 3(3)** – Detention Orders – Blackmarketing of Essential Drug – Held – Blackmarketing of drug like remdisivir in days of extreme crises is certainly an ugly act and fact which can very well be a reason for District Magistrate to invoke Section 3 of the Act against petitioner – Blackmarketing of remdisivir has direct impact and creates a threat to “public order” – If “public order” is breached or threatened, NSA can be invoked – Petitioner failed to show any flaw in decision making process adopted by District Magistrate – Petition dismissed: *Sonu Bairwa Vs. State of M.P., I.L.R. 2021 M.P. 1832 (DB)*

## 8. Interference at Pre-Execution Stage

– **Section 3(2)** and Constitution – Article 226 – Detention Order – Interference at Pre-execution Stage – Scope – Held – Petitioner is declared as absconder and a proclamation u/S 82 Cr.P.C. is issued – Detenu cannot ordinarily seek a writ from this Court without surrendering and without obtaining the order of detention and grounds thereof – Exception to this ordinary procedure laid down by Apex Court in Alka’s case not available in instant case – Necessary ingredients for interference at pre-execution stage not available: *Dilip Sisodia Vs. State of M.P., I.L.R. 2022 M.P. 413 (DB)*

## 9. Principles/Scope

– **Section 3(2)** – Detention Order – Principles – Discussed and enumerated: *Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur, I.L.R. 2021 M.P. 2272 (DB)*

– **Section 3(2)** – Detention Order – Principles laid down: *Dilip Sisodia Vs. State of M.P., I.L.R. 2022 M.P. 413 (DB)*

– **Section 3(2)** – Detention Order & Judicial Trial – Held – Scope of NSA is different than that of judicial trial in Courts for offence and all judicial orders for prevention of offences – Unsuccessful judicial trial/order of acquittal would not operate as bar for detaining authority to detain a person nor any such detention order can be termed as malafide – Final report of Lokayukt and two anticipatory bail orders, in favour of petitioner, do not mean that detaining authority passed the detention order on any extraneous or irrelevant grounds: *Dilip Sisodia Vs. State of M.P., I.L.R. 2022 M.P. 413 (DB)*

– **Section 3(2)** – Explanation – Blackmarketing of Essential Drug – Held – The “explanation” appended to Section 3(2) will not exclude the operation of NSA in a case of this nature where public order is breached, threatened and put to jeopardy – The “explanation” in instant case has a limited impact on main provision of Section 3(2) – It does not dilute or take away the right of detaining authority under NSA regarding eventualities relating to maintenance of public order or security of State: *Sonu Bairwa Vs. State of M.P., I.L.R. 2021 M.P. 1832 (DB)*

– **Section 3(2)** – See – Constitution – Article 226: *Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur, I.L.R. 2021 M.P. 2272 (DB)*

– **Section 3(2)** and Food Safety and Standard Act, (34 of 2006), Section 26(2)(ii) & 52 – Object & Purpose – Distinctions – Held – Preventive detention under NSA is only anticipatory action and is not punitive measure – Provisions of FSSA is intended to punish offender for offence already committed by him whereas provisions of NSA is to put the person in detention so as to prevent him from doing an act but not to punish him – While former is based on act already done by him, the latter is based on likelihood of his acting in a manner similar to his past acts and preventing him for repeating the same – In this regard, view taken in WP No. 2168/2019 (Sudeep’s case) overruled: *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

– **Section 3(2) & 3(3)** – Detention Order – Considerations – Held – Apex Court concluded that while detaining a person, who was already arrested, due care should be taken and it must be shown (i) regarding knowledge of detaining authority about detenu custody, (ii) real possibility of detenu’s release on bail and (iii) necessity of preventing him from indulging in activities prejudicial to security of State maintenance of public order upon his release on bail – In view of aforesaid 3 requirements, there was no material before District Magistrate to believe that Corpus will again indulge in similar activity of black-marketing: *Yatindra Verma Vs. State of M.P., I.L.R. 2021 M.P. 1669 (DB)*

– **Section 3(2) & 3(3)** – Expression ‘Public Order’ – Held – The expression ‘public order’ is wide enough which includes the aspect of black-marketing of an essential drug namely Remdesivir: *Yatindra Verma Vs. State of M.P., I.L.R. 2021 M.P. 1669 (DB)*

– **Section 3(2) & 3(3)** – See – Constitution – Article 22(5): *Yatindra Verma Vs. State of M.P., I.L.R. 2021 M.P. 1669 (DB)*

– **Section 3(2) & 3(3)** – Term “Public Order”, “Law & Order” & “Security of State” – Discussed and explained: *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

– **Section 3(2) & 3(3)** and Constitution – Article 19 & 21 – Term “Personal Liberty” – Discussed and explained: *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

– **Section 3(3)** – Detention Order – Mentioning Reasons – Held – Section 3(3) does not mandate that reasons for issuance of such order must be mentioned – In order to maintain fairness, it is a good practice of mentioning reason for issuance of such administrative orders – Impugned order shows that apart from an anticipated threatening communal harmony, yet another reason for issuance of order was mentioned i.e. ‘commit act prejudicial to the maintenance of public order’ – No ground for interference: *Yatindra Verma Vs. State of M.P., I.L.R. 2021 M.P. 1669 (DB)*

## 10. Revocation of Order

– **Sections 3(3), 3(4), 8(1), 10 & 14**, Constitution – Article 22(5) and General Clauses Act (10 of 1897), Section 21 – Detaining Authority – Power to Revoke Detention Order – Held – So long as detenu remains under preventive detention as per order passed by detaining authority i.e. District Magistrate/Commissioner of Police i.e. for period of 12 days or till approval by State Government whichever is earlier, such District Magistrate/Police Commissioner continue to be detaining authority and he retains authority to revoke the order made by him by virtue of Section 21 of General Clauses Act as envisaged by Section 14 of NSA – When detention order is approved by order of State Government, then onwards it is the State Government which becomes detaining authority: *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

## 11. Right of Detenu

– **Section 3(3) & 3(4)** and Constitution – Article 22(5) – Detention Order – Representation – Right of Detenu – Held – Constitutional bench of Apex Court concluded that if detenu is not informed about his right to make representation to detaining authority itself, this results in denial of his rights under Article 22(5) of Constitution and renders the detention illegal: *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

## 12. Singular Act

– **Section 3(2)** – Detention Order for Singular Act – Held – Order of detention on a solitary act can be passed keeping in view the conduct of person in view of facts and circumstances prevailing at relevant time – In pandemic situation where people were dying for want of essential drugs, treatment and other facilities, singular act of blackmarketing of remdesivir injections is sufficient to maintain detention order,

moreso when allegation is that such injections were fake/duplicate – It is such hard and ugly fact which make application of detention law imperative – No flaw in decision making process – Petition dismissed: *Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur, I.L.R. 2021 M.P. 2272 (DB)*

– **Section 3(2) & 3(3)** and Food Safety and Standard Act, (34 of 2006), Section 26(2)(ii) & 52 – Solitary Incident – Subjective Satisfaction – Held – Sub-standard quality of Paneer seized from accused, offence was registered under FSSA – Although it may be a solitary incident, it is for detaining authority to arrive at subjective satisfaction whether activities of accused are prejudicial to maintenance of public order – It cannot be said that a single act would in all and every circumstances not be sufficient to affect public order or even tempo of society – What is material is effect of act and not number of acts: *Kamal Khare Vs. State of M.P., I.L.R. 2021 M.P. 1024 (FB)*

– **Section 3(3)** and Constitution – Article 22 – Covid-19 Pandemic – Blackmarketing of Essential Drug – Held – In the days of extreme crises, a single act of blackmarketing of essential drug like Remedesivir is sufficient to detain a person under NSA – Whether a detenu is a social worker or an advocate is insignificant if his conduct is a threat to “public order” – Petitioner failed to establish any flaw in decision making process – Petition dismissed: *Kamleshwar Dixit Vs. State of M.P., I.L.R. 2021 M.P. 2035 (DB)*

### 13. Social Media Post

– **Section 3(2) & 3(3)** – Social Media Post & “Acting under Dictate” – Held – Unless a clear nexus is established between the social media post and detention order, it cannot be said that District Magistrate has acted under dictate – Social media post cannot be equated with administrative order/instructions – It is not necessary that every social media post of a government functionary is seen/read out and followed in administrative hierarchy: *Sonu Bairwa Vs. State of M.P., I.L.R. 2021 M.P. 1832 (DB)*

### 14. Statement u/s 161 CrPC

– **Section 3(2)** – Detention Order – Statements u/S 161 Cr.P.C. – Held – Impugned detention order cannot be said to be irrational or illegal because statement of witnesses recorded during investigation were relied upon – There definitely exists some probative material sufficient for passing detention order – Statement recorded u/S 161 Cr.P.C. can become basis for passing detention order: *Sarabjeet Singh Mokha Vs. The District Magistrate, Jabalpur, I.L.R. 2021 M.P. 2272 (DB)*

## NEGOTIABLE INSTRUMENTS ACT (26 OF 1881)

### SYNOPSIS : Section 138 to 143(1)

- |                           |                                  |
|---------------------------|----------------------------------|
| 1. Amendment in Complaint | 2. Applicability/Maintainability |
| 3. Fine & Compensation    | 4. Necessary Party               |
| 5. Presumption            | 6. Second Complaint              |

### 1. Amendment in Complaint

– **Section 138** – Amendment in Complaint – In amendment application, complainant/appellant submitted that factually cheque was issued by respondent in lieu of his advertisement work done by him and mentioning this fact, statutory notice was issued but in complaint, by mistake it was averred that cheque was issued in lieu of loan taken by respondent – Held – Application filed prior to cross examination of appellant, although charge was framed – Application should have been allowed – Order rejecting the application is set aside: *Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani, I.L.R. 2021 M.P. 503*

– **Section 138** – Amendment in Complaint – Provision in Cr.P.C. – Held – There is no provision in Cr.P.C. for amendment in complaint but at same time there is also no bar for permitting an amendment – If amendment sought relates to simple infirmity, curable by means of amendment and where no prejudice is caused to other side, Court may permit such amendment: *Bhupendra Singh Thakur Vs. Umesh Sahu, I.L.R. 2022 M.P. \*82*

– **Section 138** – Amendment in Complaint – Scope – Mentioning Wrong Cheque Number – Held – Coordinate bench of this Court concluded that if wrong cheque number is mentioned in complaint which is a typographical error, can be corrected by filing application, even when the case is fixed for final arguments: *Bhupendra Singh Thakur Vs. Umesh Sahu, I.L.R. 2022 M.P. \*82*

– **Section 138** – Amendment in Complaint – Scope – Mentioning Wrong Cheque Number in Notice – Held – Apex Court concluded that if notice is issued mentioning wrong cheque number, then the entire foundation will fall and complaint cannot be maintained on basis of wrong cheque number: *Bhupendra Singh Thakur Vs. Umesh Sahu, I.L.R. 2022 M.P. \*82*

– **Section 138** – Amendment in Complaint – Scope – Mentioning Wrong Name of Bank – Held – If due to inadvertence of complainant, name of bank is wrongly mentioned in complaint, same is formal and curable infirmity and can be cured by amendment at any stage before pronouncement of judgment – No dispute

about cheque number or amount of cheque – It will not result into any prejudice to accused and will also not change nature of complaint – No error in impugned order – Application dismissed: *Bhupendra Singh Thakur Vs. Umesh Sahu, I.L.R. 2022 M.P. \*82*

– **Section 138** – Amendment in Complaint – Scope – Wrong Name of Accused – Held – It is not a case of accused that cheque was not drawn by him, or is not of his account or it was stolen or missed otherwise – Offence u/S 138 is person specific – During entire trial accused took no objection – Even at a stage where case is fixed for final arguments and written arguments are submitted by parties, amendment application rightly allowed as it was related to a simple infirmity curable by formal amendment – Application dismissed: *Mirza Saleem Beg Vs. Dinesh Nath Kashyap, I.L.R. 2022 M.P. \*89*

## 2. Applicability/Maintainability

– **Section 138 & 141** and Civil Procedure Code (5 of 1908), Order 30 Rule 1 – Proprietorship Firm – Maintainability of Complaint – Held – Proprietorship firm is neither a company nor a partnership firm, it is merely a business name – Even a partnership firm is not a juristic person, but in view of Order 30 Rule 1 CPC, partners can sue or be sued in the name of firm – Section 141 would not apply – Respondent alone can be prosecuted being proprietor of proprietorship firm – Trial Court erred in holding that as proprietorship firm was not arraigned as accused, complaint was not maintainable: *Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani, I.L.R. 2021 M.P. 503*

## 3. Fine & Compensation

– **Section 138** and Criminal Procedure Code, 1973 (2 of 1974), Section 357(3) & 357(1)(b) – Fine & Compensation – Held – In Act of 1881, there is no separate provision of Compensation – In cases u/S 138 of 1881 Act, compensation can be granted only u/S 357(1)(b) Cr.P.C. – Provision of Section 357(3) Cr.P.C. will come into force only when Court imposes a sentence of which fine does not form a part – Magistrate has not sentenced the applicant and has only imposed fine – Conversion of fine into compensation u/S 357(3) is illegal and beyond jurisdiction – Impugned order set aside – Revision disposed: *Sitaram Vs. Kanhaiyalal, I.L.R. 2022 M.P. 1480*

– **Section 138 & 143(1)** – Fine – Held – In Section 143(1), another proviso is added that if summary trial is not possible, accused will be tried by way of summons trial and Magistrate will rehear the case in the manner provided in Code – There is no bar that if trial is conducted in summons manner, Magistrate cannot impose fine twice the cheque amount: *Sitaram Vs. Kanhaiyalal, I.L.R. 2022 M.P. 1480*



#### 4. Necessary Party

– **Section 138 & 141** and Criminal Procedure Code, 1973 (2 of 1974), Section 319 – Offence by Firm – Vicarious Liability – Necessary Party – Held – Cheque issued by firm but complaint filed without any averments with reference to firm – Held – The factum that accused signed the cheque in capacity of director or person in-charge of affairs of firm can be determined during stage of trial – Court can array the firm as accused in the course of trial invoking powers u/S 319 Cr.P.C. – Trial is in its early stage, it is still open for Complainant/Court to array the firm as accused – Cognizance taken by trial Court cannot be quashed – Application dismissed: *Mahesh Singh Jadon Vs. Shri Radha Sharan Dubey, I.L.R. 2022 M.P. 1969*

#### 5. Presumption

– **Section 138 & 139** – Presumption – Defence – Appreciation of Evidence – Held – Respondent could not establish that his cheque was stolen, neither any FIR has been filed by him – Respondent has not disputed his signatures in cheque as well as in acknowledgement of receipt of notice – Appellant produced the bills for which cheque was issued – Further, Apex Court concluded that even a blank cheque voluntarily signed and handed over by accused would attract presumption u/S 139 – Presumption arises that cheque was issued in discharge of legally enforceable debt – Impugned order of acquittal set aside – Respondent convicted and sentenced – Appeal allowed: *Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani, I.L.R. 2021 M.P. 503*

– **Section 139** – Presumption – Burden of Proof – Held – In view of presumption u/S 139, burden was on respondent/accused to prove that cheque was not issued in discharge of legally enforceable debt: *Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani, I.L.R. 2021 M.P. 503*

– **Section 139 & 146** – Bank Return Memo – Presumption – Seal of bank – Held – Return memo does not bear the seal of Bank but bears signature of bank official – In evidence, bank official did not try to prove that memo was not issued by Bank – Section 146 provides for presumption but it does not provide that unless and until the return memo bears the seal of bank, it cannot be read in evidence: *Deepak Advertisers Through Proprietor Deepak Jethwani Vs. Naresh Jethwani, I.L.R. 2021 M.P. 503*

#### 6. Second Complaint

– **Section 138** and Legal Services Authorities Act (39 of 1987), Section 21 – Settlement in Lok Adalat at Appellate Stage – Second Complaint – Maintainability – Held – If criminal case referred by Magistrate/Session Judge to Lok Adalat, is settled

by parties and award is passed, it is deemed to be a decree of Civil Court u/S 21 of 1987 Act – Cheque given in settlement before Lok Adalat will be held as issued against legally enforceable debt/liability – Complaint u/S 138 for dishonour of such cheque shall be maintainable and it cannot be termed as second complaint – Application dismissed: *Sunil Vs. Satyendra Singh, I.L.R. 2022 M.P. \*93*

**NIJIVYAVSAYIK SHIKSHAN SANSTHA (PRAVESH KA  
VINIYAMAN AVAM SHULK KA NIRDHARAN)  
ADHINIYAM, M.P. (21 OF 2007)**

– **Sections 5, 5-A, 5-A(3), 5(7) & 7**, Chikitsa Shiksha Pravesh Niyam, M.P., 2018 and Medical Council of India Regulation on Graduate Medical Education, 1997 – Admission – Held – Petitioner did not participate in any authorized counselling conducted by State – Even for college level counselling, procedure prescribed in Regulations, Admission Rules and Adhiniyam of 2007 are required to be followed – Colleges cannot give admission to candidates on their own – She is not even the most meritorious candidate in her category – Admission granted to petitioner runs contrary to mandatory provisions of law – University rightly did not provide enrollment number to petitioner – Petition dismissed: *Shruti Patidar (Ms.) Vs. State of M.P., I.L.R. 2022 M.P. \*92 (DB)*

**NOTARIES ACT (53 OF 1952)**

– **Section 8 & 10** – Affidavit of Marriage & Divorce – Functions of Notary – Held – Notaries have never been appointed as Marriage Officers, they cannot notarize an affidavit of marriage or divorce – Competent authority directed to initiate proceedings u/S 10 against the said Notary: *Bundel Singh Lodhi Vs. State of M.P., I.L.R. 2021 M.P. \*8*

**O**

**OATHS ACT (44 OF 1969)**

– **Section 3 & 4** and General Clauses Act (10 of 1897), Section 3(3) – False Affidavit – Held – Filing a false affidavit also amounts to contempt of Court – A false affidavit which is executed deliberately knowing the fact that the declaration given on oath is false, has to be viewed with all seriousness and this practice has to be deprecated: *Kamla Sharma (Smt.) Vs. Sukhdevlal, I.L.R. 2022 M.P. 1647*

### **OFFICIAL LANGUAGE ACT, M.P., 1957 (5 OF 1958)**

– **Hindi Version** – Held – After enactment of M.P. Official Language Act, 1957, the Hindi version published must be relied upon in case of any doubt: *Satyam Cineplexes Ltd. (M/s) Vs. State of M.P., I.L.R. 2021 M.P. 642 (DB)*

## **P**

### **PANCHAYAT RAJ EVAM GRAM SWARAJ ADHINIYAM, M.P. 1993 (1 OF 1994)**

– **Section 40 & 87(3)(b)** – Removal of “Pradhan” – Term “Office Bearers” – Held – Any appointment u/S 87(3)(b) is not an appointment of an “office bearer” of panchayat – In instant case, appellant’s 5 years term was already expired and thus he was no longer an “office bearer” and hence provision of Section 40 is not applicable – Section 40 is applicable only to “office bearers” of panchayat – Appeal dismissed: *Suresh Kumar Vs. State of M.P., I.L.R. 2022 M.P. \*73 (DB)*

– **Section 89 & 92** – Recovery – Enquiry – Held – Entire allegations have been proved by documentary evidence – Notice was issued u/S 89 and a detailed enquiry was conducted by CEO – Requirement of Section 89 & 92 were fulfilled – No interference warranted – Petition dismissed: *Kundan Mukati Vs. State of M.P., I.L.R. 2021 M.P. 1126*

– **Section 89 & 92** – Recovery & Criminal Prosecution – Held – This Court earlier concluded that payment or non-payment of money is of no consequence and Court cannot direct authorities not to register FIR against accused – It is only when FIR is lodged then its validity may be questioned – Lodging of FIR cannot be preempted – Court cannot embark upon an enquiry as to the reliability, genuineness or otherwise of allegations made in complaint – Appeal dismissed: *Jai Narayan Singh Vs. State of M.P., I.L.R. 2022 M.P. \*41 (DB)*

### **PARTNERSHIP ACT (9 OF 1932)**

– **Section 4 & 5** – See – The Commercial Courts, Commercial Division, Commercial Appellate Division of High Courts Act, 2015, Section 2(1)(c)(xv) & 15(2): *Neena V Patel (Dr.) (Mrs.) Vs. Shravan Kumar Patel, I.L.R. 2022 M.P. 1900*

### **PASSPORTS ACT (15 OF 1967)**

– **Section 10** – Impounding of Passport – Held – Petitioner was not afforded any pre or post decisional hearing before impounding his passport – Pendency of

criminal/matrimonial case alone cannot be a ground to decline renewal of passport – Gazette notification is also not an impediment for renewing passport for period of 10 years – In absence of any report of I.O. to the contrary and in absence of any other legal impediment, impugned action/order cannot sustain judicial scrutiny – Impugned order set aside – Petition allowed: *Hardik Shah Vs. Union of India, I.L.R. 2022 M.P. 986*

– **Section 10** and Constitution – Article 21 – Right to Livelihood – Held – Without affording any opportunity of hearing, without any report of I.O. to the contrary any without any other legal impediment, petitioner’s passport was impounded/cancelled – Pendency of criminal/matrimonial case cannot be ground to deny passport – Action of respondents certainly affects the right of livelihood of a travel blogger who keeps body and soul together by traveling abroad and earning his livelihood therefrom: *Hardik Shah Vs. Union of India, I.L.R. 2022 M.P. 986*

### **PAYMENT OF GRATUITY ACT (39 OF 1972)**

– **Section 4** – See – Constitution – Article 226: *The General Manager Canara Bank Vs. Shri Prakash N. Mandve, I.L.R. 2022 M.P. 999*

– **Section 4(6)** – See – Constitution – Article 226: *The General Manager Canara Bank Vs. Shri Prakash N. Mandve, I.L.R. 2022 M.P. 999*

– **Section 4(6) & 7(7)** and Syndicate Bank Officer Employees’ (Conduct) Regulations, 1976, Regulation 3(1) & 24 – Interest on Delayed Payment of Gratuity – Held – Criminal as well as departmental proceedings were initiated against employee while he was in service – His termination was quashed by this Court on 06.04.2018 and employer/petitioner deposited the gratuity amount on 17.07.2018 – No delay in making payment towards gratuity – Employee not entitled for any interest – Petition allowed: *The General Manager Canara Bank Vs. Shri Prakash N. Mandve, I.L.R. 2022 M.P. 999*

### **PENAL CODE (45 OF 1860)**

– **Section 34** – Common Intention – Held – Common intention implies pre-plan and acting in concert pursuant to pre-arranged plan – Essence of liability u/S 34 IPC is simultaneous conscious mind of persons participating in criminal action to bring about a particular result – Minds regarding sharing of common intention gets satisfied when an overt act is established qua each of the accused: *Indu @ Indrapal Singh Vs. State of M.P., I.L.R. 2021 M.P. 1602 (DB)*

– **Section 34** – Fundamental Principles – Discussed & enumerated: *Hariram Vs. State of M.P., I.L.R. 2022 M.P. \*84 (DB)*

– **Section 34** – Ingredients – Held – Section 34 recognizes the principle of vicarious liability in criminal jurisprudence – It is intended to meet a situation wherein all co-accused have also done something to constitute the commission of a criminal act – Even the concept of presence of co-accused at the scene is not a necessary requirements, co-accused can remain a little away and supply weapons to the participating accused to inflict injuries to the targeted person: *Jhabbu Vs. State of M.P., I.L.R. 2022 M.P. \*26 (DB)*

– **Section 34** – Scope – Held – The act mentioned in Section 34 need not be an overt act, even an illegal omission to do a certain act in a certain situation can amount to an act – But if no such act is done by a person, even if he has common intention with others for accomplishment of crime, Section 34 cannot be invoked for convicting that person: *Jhabbu Vs. State of M.P., I.L.R. 2022 M.P. \*26 (DB)*

– **Section 34 & 149** – Common Intention – Framing of Charge – Principle of Conviction – Held – If charge u/S 149 has been framed and if it is found that some of accused persons were not guilty and some of accused persons have participated in the occurrence and were sharing common intention, then they can be convicted with the aid of Section 34 IPC – Non-framing of charge u/S 34 would not cause any prejudice to them: *Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)*

– **Section 34 & 149** – Common Intention & Common Object – Held – There is a basic difference between common intention and common object – Common intention requires pre-oriented minds and concerted plans whereas, common object has no such requirement of meeting of minds of the members of unlawfull assembly before commission of offence – Since some of elements of common intention and common object overlap each other, therefore due to acquittal of remaining accused persons, appellants can be convicted with aid of Section 34 IPC: *Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)*

– **Section 34 & 149** – Unlawful Assembly – Number of Members – Held – If charge u/S 149 was framed and if it is found that in fact less than 5 persons were involved in the offence, then still the accused persons can be punished with aid of Section 34 IPC: *Rambabu Vs. State of M.P., I.L.R. 2022 M.P. 1234 (DB)*

– **Section 45 & 53** – Life Imprisonment – Term of Sentence – Remission – Held – A sentence of imprisonment for life will run for the entire life of convict unless remission is granted in accordance with law – Appellant served actual sentence of 20 years, 4 months and 11 days and has also earned remission of 9 years, 5 months and 15 days – Competent authority of State directed to consider release of appellant in accordance with law by granting benefit of remission: *Karan Singh Vs. State of M.P., I.L.R. 2021 M.P. 1596 (DB)*

– **Section 52** – Good Faith – Held – Counsel was aware of the fact of dismissal of SLP by Supreme Court thus he cannot claim that he could not discover information inspite of his due attention and care: *Kamla @ Sarla Yadav (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 973*

– **Section 84** – Unsoundness of Mind – Considerations – Held – Mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection u/S 84 IPC – It is very difficult to prove precise state of offender’s mind at the time of commission of offence but some indication thereof is often furnished by conduct of offender while committing it or immediately after commission of crime: *Ashok Singh Vs. State of M.P., I.L.R. 2022 M.P. 1195 (DB)*

– **Sections 85, 86 & 302** – Influence of Liquor – Burden of Proof – Held – Defence failed to establish that degree of intoxication was such because of which they could not prevent themselves from committing the said crime – Drinking is purely their own act and they cannot be permitted to take advantage of their own wrong: *Sonu Jain Vs. State of M.P., I.L.R. 2021 M.P. 1373 (DB)*

– **Section 97** – Right to Private Defence – Held – The burden lies on accused to show that there were circumstances giving rise to reasonable apprehension that death or grievous hurt would otherwise be likely to be caused to him – Plea of right of private defence cannot be based on surmises and conjectures: *Gudda @ Lal Sahab Vs. State of M.P., I.L.R. 2022 M.P. \*25 (DB)*

– **Section 107** – Criminal Jurisprudence – Held – Offence of abetment falls in the category of “Inchoate Offences” which is a species which are also known as “incomplete” or “incipient offences”: *Shivcharan Vs. State of M.P., I.L.R. 2021 M.P. 317*

– **Section 107 & 306** – Appreciation of Evidence – Suicide by married woman by consuming poison – Held – Record does not indicate that it was appellant (husband) who purchased and gave her poison which she consumed and died – No evidence that appellant directly or indirectly instigated the deceased by action or omission to commit suicide – Evidence regarding abetment not available – Conviction u/S 306 IPC not sustainable and is set aside – Appeal partly allowed: *Shivcharan Vs. State of M.P., I.L.R. 2021 M.P. 317*

– **Section 107 & 306** – Recourse to Legal Remedy – Availability – Held – Appellant never restrained the deceased from leaving matrimonial home and going to her parental home – Parents of deceased also stated that she use to come several times – Deceased could have sought legal redressal if she wanted to – Deceased had recourse to legal remedy – Evidence do not show that deceased did not have any

option before her but, to commit suicide: *Shivcharan Vs. State of M.P., I.L.R. 2021 M.P. 317*

– **Sections 107, 306 & 498-A** – See – Evidence Act, 1872, Section 113-A: *Shivcharan Vs. State of M.P., I.L.R. 2021 M.P. 317*

– **Section 141 & 149** – Identity of Members – Held – For concluding that a person is guilty for offence u/S 149, it must be proved that such person is member of “unlawful assembly” consisting of not less than 5 members irrespective of the fact whether identity of each one of them is proved or not – If that fact is proved, next step of inquiry is whether common object of unlawful assembly in one of the five enumerated objects specified u/S 141 IPC: *Hukum Singh Vs. State of M.P., I.L.R. 2022 M.P. \*85 (DB)*

– **Section 143 & 494** – Independent/Interested Witnesses – Held – PW-4 is father of appellant, he is interested witness – No independent witness or documentary evidence available – In absence of material, substantive and independent evidence, marriage of appellant with respondent No. 2 not proved – Apex Court concluded that if first marriage is not valid, the question of second marriage being legally performed or not would not arise: *Kailash Vs. Gordhan, I.L.R. 2022 M.P. 1920*

– **Section 143 & 494** – Strict Proof of Marriage – Held – Appellant claiming to be first husband of Respondent No. 2 – No independent witnesses or documentary evidence (Voter list/Ration Card) available to establish that respondent No. 2 is wife of appellant – No family members or relatives examined to prove the rites and rituals performed – Adverse inference can be drawn against appellant – There is a lack of strict proof of Bigamy – Respondents rightly acquitted – Appeal dismissed: *Kailash Vs. Gordhan, I.L.R. 2022 M.P. 1920*

– **Section 143 & 494** and Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Admission of Accused – Held – Admission of accused u/S 313 Cr.P.C. that she is legally wedded wife of respondent No. 1 cannot amount to confession and do not relieve the burden on prosecution to prove legality of second marriage in strict form: *Kailash Vs. Gordhan, I.L.R. 2022 M.P. 1920*

– **Section 143 & 494** and Hindu Marriage Act (25 of 1955), Section 17 – Rites, Rituals & Ceremonies – Held – Appellant and his father speaks about ceremonies of second marriage but also admitted that both were not personally present – No independent witness examined – Appellant, respondent No. 1 and respondent No. 2 belongs to Hindu religion, saptpadi are essential rites of marriage – No evidence that these essentials have been performed in second marriage – Appellant failed to prove performance of proper ceremonies in a due form u/S 17 of Hindu Marriage Act: *Kailash Vs. Gordhan, I.L.R. 2022 M.P. 1920*

– **Sections 147, 148 & 149** – Common Object – Held – Continues exhortation by appellants Samim and Anees clearly indicates that right from the very beginning they were aware of the offence which was going to be committed – Shakeel also played prominent role by carrying a belt of cartridges – Appellants were members of unlawful assembly and were sharing common object – Concept of unlawful assembly and common object discussed and explained: *Ahmed Sayeed Vs. State of M.P., I.L.R. 2022 M.P. \*24 (DB)*

– **Section 148 & 302/149** – Appreciation of Evidence – Held – Neither the eye witness were found reliable nor complete chain of circumstantial evidence established to prove guilt of appellants – Seized weapons not sent to FSL and no explanation for the same by I.O. – Dying declaration is also not reliable – There are indications of actually concocted dying declaration – False case was foisted against appellants – Initiation of proceedings under Civil Services Rules recommended against I.O. – Conviction and sentence set aside – Appeals allowed: *Bhagwan Singh Vs. State of M.P., I.L.R. 2022 M.P. 509 (DB)*

– **Section 148 & 302/149** – Appreciation of Evidence – Held – Ocular evidence is corroborated by medical evidence – Evidence of eye witness is found to be trustworthy and natural – No grave or sudden provocation from victims – Prompt registration of dehati nalishi and FIR – Prosecution proved its case beyond reasonable doubt – Appeals dismissed: *Narbad Ahirwar Vs. State of M.P., I.L.R. 2021 M.P. 2339 (DB)*

– **Section 148 & 302/149** – Defective Investigation – Effect – Held – Apex Court concluded that defective investigation by itself cannot be a ground for disbelieving eye witnesses and acquitting the accused if their testimony is found trustworthy – Mere on the ground that there is some defect in investigation, does not create doubt over statements of eye witnesses: *Narbad Ahirwar Vs. State of M.P., I.L.R. 2021 M.P. 2339 (DB)*

– **Section 148 & 302/149** – Dying Declaration – Credibility – Held – Deceased received 24 injuries including 9 fractures – Incident occurred at about 7.30 am to 8.00 am and dying declaration recorded 4 hrs. later – With such multiple fractures, collapsed lung, serious injuries on skull, it cannot be expected that deceased was still in a position to not only record Dehati Nalishi but also record his dying declaration thereafter – Such injured person is most likely to be unconscious if not already dead in 4 hrs. duration – Witnesses of dying declaration also turned hostile – Dying declaration not reliable: *Bhagwan Singh Vs. State of M.P., I.L.R. 2022 M.P. 509 (DB)*

– **Section 148 & 302/149** – Eye Witnesses – Credibility – Held – Eye witnesses in the case were natural and probable, their presence at the place of



occurrence is expected being close relatives: *Narbad Ahirwar Vs. State of M.P., I.L.R. 2021 M.P. 2339 (DB)*

– **Section 148 & 302/149** – Interested/Related Witness – Held – Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person – Interestedness of witness has to be considered and not just that he is interested: *Narbad Ahirwar Vs. State of M.P., I.L.R. 2021 M.P. 2339 (DB)*

– **Section 148 & 302/149** – Motive – Held – Case is based on ocular evidence and issue of motive becomes irrelevant when there is direct evidence of trustworthy witnesses regarding commission of crime – If motive is not established, it does not mean that evidence of eye witnesses will be untrustworthy: *Narbad Ahirwar Vs. State of M.P., I.L.R. 2021 M.P. 2339 (DB)*

– **Section 148 & 302/149** – Omissions & Contradictions – Held – Where a crowd of assailants who are member of unlawful assembly proceed to commit an offence with common object, it is not possible for witnesses to describe accurately the part played by each assailants or to remember each and every blow delivered to the victim – Eye witnesses are rustic villagers, some omissions and contradictions are normal considering the lapse of time and their state of trauma and shock: *Narbad Ahirwar Vs. State of M.P., I.L.R. 2021 M.P. 2339 (DB)*

– **Section 149** – Common Object – Assessment – Held – Common object of assembly is normally to be gathered from circumstances of each case such as time and place of gathering of assembly – Conduct of gathering as distinguished from conduct of individual members are indicative of common object – Assessing common object only on basis of overt acts of any individual member is not permissible: *Hukum Singh Vs. State of M.P., I.L.R. 2022 M.P. \*85 (DB)*

– **Section 149** – Common Object – Held – Common object is in minds of participants, thus the said mental attitude is to be deciphered from overall circumstances – A silent presence may be an innocent presence and in some case, a silent presence may be an unlawful assembly with common object – Allegations made against members of unlawful assembly are to be considered independently to find out whether they were sharing common object or not: *Rambabu Vs. State of M.P., I.L.R. 2022 M.P. 1234 (DB)*

– **Section 149** – Liability of Each Member – Held – If all necessary ingredients are present in a case where charge is framed u/S 149, each member of unlawful assembly shall be held liable, the condition precedent is that prosecution proves existence of unlawful assembly with a common object: *Hukum Singh Vs. State of M.P., I.L.R. 2022 M.P. \*85 (DB)*

– **Section 149** – Unlawful Assembly – Held – It is not necessary that each and every member of Unlawful assembly must play some overt act in commission of offence – In order to find out whether assembly was unlawful or not, the role played by an individual coupled with language used, arms carried by members and their behaviour prior to, during and after the incident alongwith surrounding circumstances, plays an important role – An assembly which was not unlawful at the very inception, may become unlawful at the later stage: *Rambabu Vs. State of M.P., I.L.R. 2022 M.P. 1234 (DB)*

– **Section 149** – Unlawful Assembly – Ingredients – Discussed & explained: *Manoj Singh Vs. State of M.P., I.L.R. 2022 M.P. 911 (DB)*

– **Section 188** – Ingredients – Held – For offence u/S 188, it is sufficient that violator of prohibitory order not only knows the order which he disobeys but that his disobedience produces or is likely to produce harm – Whether applicants were aware of prohibitory order or disobedience has produced or likely to produce harm, is a subject matter of investigation, which is under progress – FIR cannot be quashed: *Zaid Pathan Vs. State of M.P., I.L.R. 2021 M.P. 152*

– **Section 188** – See – Criminal Procedure Code, 1973, Sections 154, 195 & 482: *Zaid Pathan Vs. State of M.P., I.L.R. 2021 M.P. 152*

– **Section 188 & 420** – See – Constitution – Article 22(5): *Yatindra Verma Vs. State of M.P., I.L.R. 2021 M.P. 1669 (DB)*

– **Section 193 & 196** – See – Criminal Procedure Code, 1973, Sections 195(1)(b), 340 & 482: *Pradeep Kumar Arya Vs. State of M.P., I.L.R. 2022 M.P. \*13*

– **Section 193 & 196** – See – Criminal Procedure Code, 1973, Section 200 & 340: *Surajmal Vs. State of M.P., I.L.R. 2021 M.P. 135*

– **Section 279 & 304-A** – See – Criminal Procedure Code, 1973, Section 482: *Ved Prakash Sharma Vs. State of M.P., I.L.R. 2022 M.P. 798*

– **Section 279 & 427** – See – Electricity Act, 2003, Sections 139, 151, 153 & 155: *In Re. Special Judge (Electricity Act) No. 5, Indore, I.L.R. 2022 M.P. 1065 (DB)*

– **Sections 294, 323 & 506/34** – See – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 3(2)(va), 18 & 18-A: *Anil Patel Vs. State of M.P., I.L.R. 2021 M.P. 746*

– **Sections 299, 300, 302 & 304 Part I** – Culpable Homicide & Murder – Held – It is often difficult to distinguish between culpable homicide and murder as both involve death, yet there is subtle distinction of intention and knowledge involved

in both the crimes – This difference lies in the degree of act – There is very wide variance of degree of intention and knowledge among both the crimes: *Mohd. Rafiq @ Kallu Vs. State of M.P., I.L.R. 2021 M.P. 1991 (SC)*

– **Sections 299, 300, 302 & 304 Part I** – Culpable Homicide Not Amounting to Murder – Intention & Knowledge – Held – No previous quarrel with deceased, thus there was lack of animus – No motive or pre-meditation proved – Act of throwing off the deceased from truck and driving on without pausing appears to have been in the heat of passion or rage – It is not proved that appellant with deliberate intention drove over the deceased and he knew that deceased would have fallen inside, so that truck's rear tyre would have gone over him – Conviction u/S 302 altered to one u/S 304 Part I, IPC – Appeal allowed accordingly: *Mohd. Rafiq @ Kallu Vs. State of M.P., I.L.R. 2021 M.P. 1991 (SC)*

– **Sections 299, 300, 302 & 304 Part I & II** – Culpable Homicide – Intent & Knowledge – Discussed and explained: *Morari Vs. State of M.P., I.L.R. 2022 M.P. 880 (DB)*

– **Sections 299, 300 & 304** – Culpable Homicide & Murder – Discussed & explained: *Pahalwan Singh @ Chimme Vs. State of M.P., I.L.R. 2022 M.P. \*6 (DB)*

– **Section 299, 300, Clauses (Firstly to Fourthly) & 304 Part I** – Culpable Homicide, Murder, Intention & Knowledge discussed and explained: *Hariram Vs. State of M.P., I.L.R. 2022 M.P. \*84 (DB)*

– **Section 300, Exceptions** – Doctrine of Provocation – Held – Application of doctrine of provocation shows that exception to Section 300 is available to the normal person behaving normally in a given situation – There was no such altercation where a normal man can lose his ordinary sense – Knife blow after half an hour from altercation do not attract any of exceptions mentioned u/S 300 IPC: *Sonu Jain Vs. State of M.P., I.L.R. 2021 M.P. 1373 (DB)*

– **Section 300, Exception 1** – Grave & Sudden Provocation – Held – What would constitute grave and sudden provocation, which would be enough to prevent the offence from amounting to murder, is a question of fact – Provocation is an external stimulus which can result into loss of self control – Provocation must be such as will upset not merely a hasty, hot tempered and hyper sensitive person but also a person with calm nature and ordinary sense: *Sonu Jain Vs. State of M.P., I.L.R. 2021 M.P. 1373 (DB)*

– **Section 300, Exception 4** – Requirements – Sudden Provocation – Held – Apex Court concluded that to invoke this exception, four requirements must be

satisfied namely (i) there was a sudden fight, (ii) there was no premeditation, (iii) act was done in heat of passion and, (iv) assailant had not taken any undue advantage or acted in cruel manner – No sudden provocation in present case, appellants acted in a cruel manner depriving them from taking shelter of Exception 4 to Section 300 IPC – It is immaterial whether appellant Santosh gave single blow or multiple blow: *Sonu Jain Vs. State of M.P., I.L.R. 2021 M.P. 1373 (DB)*

– **Section 300 Firstly & Secondly, 302 & 304 Part I** – Intention – Held – Despite having opportunity to cause injuries on vital parts, appellant repeatedly gave knife blows on thigh of deceased which is non-vital part of body, thus there was no intention to cause death – Ingredients of Section 300 firstly and secondly are missing – Appellant caused death of deceased with intention of causing such bodily injury as was likely to cause death – Appellant liable to be convicted and sentenced u/S 304 Part I and not u/S 302 IPC: *Himanshu Kuril Vs. State of M.P., I.L.R. 2021 M.P. 1140 (DB)*

– **Section 300 Thirdly & Fourthly** – Intention – Held – Doctor stated that injuries on leg would not have resulted in death, if timely treatment was made available, thus provisions of Section 300 thirdly is not applicable – As all injuries were inflicted on non-vital part of body, it cannot be said that appellant had knowledge that injuries were so dangerous that in all probabilities would have resulted into death, thus provisions of Section 300 fourthly is also not applicable: *Himanshu Kuril Vs. State of M.P., I.L.R. 2021 M.P. 1140 (DB)*

– **Section 300 & 302** – Spoken Words – Effect – Held – Before attack, appellant said “.....”, it would mean that “today I will settle the score with you” – It does not show that settling score would only mean that he would kill him, it may also relate to such harm which would amount to appropriate retribution – After inflicting injuries, appellant said on mobile “.....”, it may mean that he has finished the injured or he has done away with the injured or that he has dealt with the injured – Usage of such words does not show that appellant had intention to cause death or to cause such injury which he knew to be likely to cause death: *Himanshu Kuril Vs. State of M.P., I.L.R. 2021 M.P. 1140 (DB)*

– **Section 300 & 304 Part I & II** – Ingredients – Intent & Knowledge – Held – Evidence on record establishes that injuries caused on body of deceased were, in all probabilities, sufficient to cause death or likely to cause her death – No evidence that incident took place on spur of a moment or during the heat of exchange of words – Ingredients of murder u/S 300 IPC are fully established: *Morari Vs. State of M.P., I.L.R. 2022 M.P. 880 (DB)*

**SYNOPSIS : Section 302**

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|---|---|
| <b>1. Appreciation of Evidence</b>          | <b>2. Bail</b>                              |
| <b>3. Burden of Proof</b>                   | <b>4. Chance Witness</b>                    |
| <b>5. Child Witness</b>                     | <b>6. Circumstantial Evidence</b>           |
| <b>7. Common Intention</b>                  | <b>8. Contents of FIR</b>                   |
| <b>9. Delay in FIR/Recording Statements</b> | <b>10. Duty of Judges</b>                   |
| <b>11. Dying Declaration</b>                | <b>12. Eye-Witness</b>                      |
| <b>13. Identification of Victim</b>         | <b>14. Juvenile</b>                         |
| <b>15. Medical Evidence</b>                 | <b>16. Minor Discrepancies</b>              |
| <b>17. Motive/Intention</b>                 | <b>18. Non-Recovery of Weapon</b>           |
| <b>19. Plea of Alibi</b>                    | <b>20. Plea of Intoxication</b>             |
| <b>21. Plea of Single Blow</b>              | <b>22. Previous Enmity</b>                  |
| <b>23. Recovery of Dead Body</b>            | <b>24. Related &amp; Interested Witness</b> |
| <b>25. Right to Private Defence</b>         | <b>26. Unfair Investigation</b>             |
| <b>27. Unsoundness of Mind</b>              |   |

**1. Appreciation of Evidence**

– **Section 302** – Appreciation of Evidence – Held – FIR lodged against 'S' and 'B' – Investigating Officer moulded the investigation and implicated appellant who is the son of one deceased and father of another deceased – Doctor (postmortem) opined that injuries caused by 'lathi' but no lathi was seized from appellant – Prosecution also failed to prove motive of crime rather motive of 'S' and 'B' is reflected – Conviction and sentence set aside – Investigation u/S 173(8) is directed to be done against 'S' and 'B' – Appeal allowed: *Pahalwan Singh @ Chimme Vs. State of M.P., I.L.R. 2022 M.P. \*6 (DB)*

– **Section 302** – Medical Negligence – Held – Deceased was burnt alive where she suffered 100% burns – Injuries were sufficient in ordinary course of nature to cause death – Intention and knowledge behind burning the deceased alive is writ large – Plea that deceased died of septicemia due to improper treatment cannot be accepted – Accused cannot take defence of medical negligence: *Ajju alias Ajay Vs. State of M.P., I.L.R. 2022 M.P. \*60 (DB)*

– **Section 302** – Nature of Injury, Weapon of Crime & Cause of Death – Held – The nature of injury, the gravity and dimension shows that knife was a deadly weapon otherwise the rib of deceased could not have been cut and injury could not have been so deep to reach upper portion of right lung – Injury was sufficient in ordinary course of nature to cause death: *Sonu Jain Vs. State of M.P., I.L.R. 2021 M.P. 1373 (DB)*

– **Section 302** – Prosecution Witnesses – Credibility – Held – It is not the quantity of witnesses but the quality of evidence which is important – Although material witnesses have turned hostile, but statement given by wife of deceased is fully corroborated by FIR lodged by deceased himself which appears to have emerged as Dying Declaration – Weapon of offence was recovered from possession of accused – Appellants rightly convicted – Appeal dismissed: *Hariram Vs. State of M.P., I.L.R. 2022 M.P. \*84 (DB)*

– **Section 302** and Arms Act (54 of 1959), Section 25 & 27 – Appreciation of Evidence – Held – PW-1 (son of deceased), the eye witness, has been consistent on material particulars relating to manner in which murder was committed – FIR registered within 1/2 an hour of incident – No major contradictions brought out by defence in cross-examination – Prosecution proved its case beyond reasonable doubt – Appeal dismissed: *Lalu Sindhi @ Dayaldas Vs. State of M.P., I.L.R. 2021 M.P. 1932 (DB)*

– **Section 302** and Arms Act (54 of 1959), Section 25 & 27 – Appreciation of Evidence – Held – Reason given by trial Court while acquitting co-accused persons that accompanying the appellant to scene of crime and going away from there together, does not show common intention – No evidence by prosecution that there was prior meeting of minds between appellant and co-accused persons – Co-accused persons rightly acquitted – Appeal by State is dismissed: *Lalu Sindhi @ Dayaldas Vs. State of M.P., I.L.R. 2021 M.P. 1932 (DB)*

– **Section 302** and Arms Act (54 of 1959), Section 25 & 27 – Firearms & Wounds – Held – The “Trident” shaped entry wound though improbable of being caused by a 315 bore bore bullet, when seen in conjunction with the blackening and tattooing around the trident shaped wound and recovery of bullet lodged in the brain of deceased and absence of any other entry wound on nape of victim, established as “True”: *Lalu Sindhi @ Dayaldas Vs. State of M.P., I.L.R. 2021 M.P. 1932 (DB)*

– **Section 302/34** – Appreciation of Evidence – Held – Courts below rightly relied on FIR as dying declaration – Testimonies of witnesses and recovery of weapons clearly discloses that appellants opened an assault on deceased which led to his death – Conviction and sentence affirmed – Appeal of appellant No. 1 & appellant No. 2 dismissed: *Devilal Vs. State of M.P., I.L.R. 2021 M.P. 806 (SC)*

– **Section 302/34** – Appreciation of Evidence – Held – Investigation was designed to turn the informant and her family members as accused and allow real culprits named in FIR to escape – Prosecution attempted to shield culprits on account of political pressure as admitted by PW-9 & 14, which was totally overlooked by Courts below – Seizure witness has also turned hostile – It was also not proved that blood stains found in knife and lathi were that of deceased – Conviction set aside – Appeals allowed: *Madhav Vs. State of M.P., I.L.R. 2021 M.P. 1621 (SC)*

– **Section 302/34 & 294** – Appreciation of Evidence – Held – Single blow by knife – Injury caused to vital organ namely right lung and the rib, sufficient to cause death – It shows the intention of appellant to cause death – No explanation given by appellants about human blood found on their clothes – No grave or sudden provocation established – Prosecution established its case beyond reasonable doubt – Conviction upheld – Appeals dismissed: *Sonu Jain Vs. State of M.P., I.L.R. 2021 M.P. 1373 (DB)*

– **Sections 302/149, 324/149 & 148** – Appreciation of Evidence – Held – Accused Chandramohan fired both the gun shots which is duly corroborated by FSL report – Recovery of gun from him also duly established – Regarding other appellants, that they being member of unlawful assembly and having common object is not established by prosecution, even seizure of any weapon from them was also not proved, thus their appeals allowed – Chandramohan acquitted of charge u/S 148, 302/149 & 324/149 and his conviction u/S 302 & 324 is upheld and his appeal is dismissed: *Chhuna @ Chhatra Pal Singh Vs. State of M.P., I.L.R. 2022 M.P. 168 (DB)*

– **Sections 302/149, 324/149 & 148** – Seizure Memo – Held – Merely because seizure memo does not contain the impression of specimen seal, would not make the seizure invalid specifically when the seizure witnesses have supported the prosecution case – Even no question was put to the seizure witnesses regarding seizure of articles from spot: *Chhuna @ Chhatra Pal Singh Vs. State of M.P., I.L.R. 2022 M.P. 168 (DB)*

– **Sections 302, 201, 147 & 149** – Appreciation of Evidence – Nature of Injury & Cause of Death – Held – Existence of a grievous injury on vital part of body (brain) of deceased shows that it could have been a reason for his death – No delay in hospitalization – Oral dying declaration by deceased to his brother, wife and son regarding assault by appellants, cannot be doubted – Prosecution established its case beyond reasonable doubt – Appeal dismissed: *Kuldeep Choudhary @ Kuldeep Yadav Vs. State of M.P., I.L.R. 2021 M.P. 953 (DB)*

– **Sections 302, 201, 147 & 149** and Evidence Act (1 of 1872), Section 45 – Appreciation of Evidence – Opinion of Doctor/ Expert – Held – Expert opinion is not like gospel truth which needs to be swallowed without examining its truthfulness and veracity – Doctor in his Court statement assigned singular reason of death i.e. cardio vascular failure but in his report he specifically mentioned another reason of death i.e. injuries on person of deceased by hard and blunt object – Court below rightly disbelieved the statement of doctor regarding reason of death: *Kuldeep Choudhary @ Kuldeep Yadav Vs. State of M.P., I.L.R. 2021 M.P. 953 (DB)*

– **Sections 302, 363, 364, 366A, 376(2)(i), 376(2)(j), 376(2)(k) & 201** – Appreciation of Evidence – Held – Material variance in evidence of witnesses – Theory of last seen together not established – No blood of deceased found on cloths of accused – Extra-judicial confession not proved – Videographed proceedings were pre-planned – CCTV footage not verified and seized – DNA of accused not found in vaginal/anal slide of deceased – Entire case based on fabricated and concocted evidence – Police has not collected evidence but has created false evidence – Conviction and sentence set aside – Appeal allowed: *In Reference Vs. Ravi @ Toli, I.L.R. 2022 M.P. 286 (DB)*

– **Sections 302, 364 & 201** and Criminal Procedure Code, 1973 (2 of 1974), Section 307 – Accomplice Witness – Credibility – Held – Co-accused himself filed applications for making him approver in the case and made statements u/S 307 Cr.P.C. – His inconsistent statements and silence during examination by Court in itself sufficient to draw inference that he changed his earlier version and was probably win over by appellant – In these circumstances, his earlier whole statement cannot be washed up and can very well be taken into consideration as corroborative piece of evidence: *Sanjay Vs. State of M.P., I.L.R. 2022 M.P. 1795 (DB)*

## 2. Bail

– **Section 302** – See – Criminal Procedure Code, 1973, Section 438: *Prashant Singh Rajput Vs. State of M.P., I.L.R. 2021 M.P. 2000 (SC)*

– **Sections 302, 307, 294, 147, 148, 149** and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(r) & 3(1)(s) – Bail – Held – Presence of appellant is specifically mentioned in FIR as well as in statements of witnesses – *Prima facie*, appellant was the member of unlawful assembly and was sharing common object – In the incident father of complainant was killed, other victims were also assaulted and house of complainant was set on fire – Bail application dismissed: *Balram Vs. State of M.P., I.L.R. 2022 M.P. \*17*

– **Sections 302, 307, 294, 147, 148, 149** and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Section 3(1)(r) & 3(1)(s)



– Period of Custody – Held – Apex Court concluded that the custody period of one year in a case of murder cannot be said to be an excessive one: *Balram Vs. State of M.P.*, I.L.R. 2022 M.P. \*17

– **Sections 302, 201 & 34** – See – Criminal Procedure Code, 1973, Section 439: *Asfaq Khan Vs. State of M.P.*, I.L.R. 2021 M.P. 343

### 3. Burden of Proof

– **Sections 302, 304-B & 498-A** and Evidence Act (1 of 1872), Section 106 – Burden of Proof – Held – Appellants were tried for offence u/S 304-B and 498-A IPC but were convicted u/S 302 IPC, thus there was no occasion for appellants to give an explanation or evidence as required u/S 106 of Evidence Act – Appellants wrongly convicted with aid of Section 106 of Evidence Act: *Jitendra Vs. State of M.P.*, I.L.R. 2022 M.P. 1048 (DB)

– **Sections 302, 364, 120-B & 201** – Onus of Proof – Adverse Inference – Held – Prosecution evidence not found trustworthy and was disbelieved by Court below – Principal burden was on prosecution which it failed to establish – Adverse inference can be drawn against accused only when prosecution established its case beyond reasonable doubt and appellant failed to discharge the onus shifted on them – Onus was not shifted to appellants and thus cannot be held guilty for this reason: *Ramcharan Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 520 (DB)

### 4. Chance Witness

– **Section 302/34** – Chance Witness – Held – Statement of PW-1 shows that he assigned justifiable reason for witnessing the incident – It was lunch time and he was returning back from his shop to his house to take lunch – Witness cannot be treated as “chance witness” and his statement cannot be disbelieved for this reason – Apex Court concluded that if presence of witness is satisfactorily established, his statement cannot be discarded by treating him a mere “chance witness” – Conviction and sentence upheld – Appeal dismissed: *Akram Vs. State of M.P.*, I.L.R. 2022 M.P. 1025 (DB)

– **Sections 302, 363, 364, 366A, 376(2)(i), 376(2)(j), 376(2)(k) & 201** – Chance Witnesses – Held – All the five witnesses can be termed as chance witnesses as their presence or meeting with accused is not under normal conditions – On appreciation of these witnesses they were found to be tutored, unreliable and untrustworthy, thus their evidence is rejected: *In Reference Vs. Ravi @ Toli*, I.L.R. 2022 M.P. 286 (DB)

## 5. Child Witness

– **Section 302** – Child Witness – Credibility – Held – Child witness stated that her father crushed the head of her mother by stone – Her statement is totally natural and remained unrebutted in cross-examination and was further corroborated by medical evidence – Prosecution established its case beyond reasonable doubt – Conviction and sentence affirmed – Appeal dismissed: *Naresh Vs. State of M.P., I.L.R. 2022 M.P. 157 (DB)*

– **Section 302** – Child Witness – Credibility – Held – Wife killed by appellant husband – Minor daughter specifically stated that her father committed murder of her mother with help of scarf – Her statement remained unchanged during cross-examination and further corroborated by other prosecution witnesses – Statement of such witness cannot be discarded – Appellant remained absconded till the date of his arrest – Conviction affirmed – Appeal dismissed: *Morari Vs. State of M.P., I.L.R. 2022 M.P. 880 (DB)*

– **Section 302** – Child Witness – Factors to be considered while recording evidence of child witness, enumerated: *Morari Vs. State of M.P., I.L.R. 2022 M.P. 880 (DB)*

## 6. Circumstantial Evidence

– **Section 302** – Circumstantial Evidence – Held – Blood group of appellant is not known – The solitary circumstance of presence of human blood of “A” group in blood stained earth, blood stained stone, salwar, kurta and sweater not sufficient to hold the appellant guilty of murder of deceased: *Girraj Alias Batte Vs. State of M.P., I.L.R. 2022 M.P. 1031 (DB)*

– **Section 302** – Circumstantial Evidence – Theory of Last Seen Together – Held – Deposition of father of deceased that he saw appellant with his deceased daughter just prior to incident, remained unrebutted in cross-examination – Burden/onus was on appellant to prove that neither he caused any injury nor committed murder of his wife, but on this aspect, defence remained silent – Act of appellant points towards his guilt – Conviction affirmed – Appeal dismissed: *Vikram Ahirwar Vs. State of M.P., I.L.R. 2022 M.P. \*74 (DB)*

– **Section 302** – Last Seen Theory – Held – Apex Court concluded that last seen together itself would not be sufficient, prosecution has to complete the chain of circumstances to bring home the guilt of accused – It is not prudent to base conviction solely on “last seen theory”: *Pappu @ Dayaram Vs. State of M.P., I.L.R. 2021 M.P. 1571 (DB)*

– **Section 302** – Last Seen Theory – Held – As per evidence, appellant took deceased with him on 26.04.2011 and later deceased was found injured in a well on 28.04.2011 – No iota of material to show what happened during these two days – On basis of this theory alone, appellant cannot be convicted – Benefit of doubt given to appellant: *Pappu @ Dayaram Vs. State of M.P., I.L.R. 2021 M.P. 1571 (DB)*

– **Section 302** and Evidence Act (1 of 1872), Section 106 – Circumstantial Evidence – Burden of Proof – Held – Wife found dead in matrimonial house – Burden is on prosecution to establish that appellants were present in house at the time of incident and then only appellants ought to have been called upon to explain the cause of death – Their presence cannot be presumed – Incident took place in daytime and normally elder members go out to earn livelihood – Prosecution also failed to establish the motive of crime – Appellants wrongly convicted with aid of Section 106 of Evidence Act – Conviction set aside – Appeal allowed: *Jitendra Vs. State of M.P., I.L.R. 2022 M.P. 1048 (DB)*

– **Section 302**, Evidence Act (1 of 1872), Section 106 and Criminal Procedure Code, 1973 (2 of 1974), Section 313 – Circumstantial Evidence – Held – Prosecution established beyond reasonable doubt that appellant was residing with deceased wife under same roof and on date of incident she was with appellant and died a homicidal death in house of appellant – Appellant immediately absconded and was arrested after 8 days of incident – Appellant failed to explain how his wife died a homicidal death and further offered false explanation in his statement u/S 313 Cr.P.C. – Chain of circumstances proved by prosecution is complete – Conviction affirmed – Appeal dismissed: *Sitaram Vs. State of M.P., I.L.R. 2022 M.P. \*14 (DB)*

– **Section 302 & 201** – Circumstantial Evidence – Appreciation of Evidence – Held – Case based on circumstantial evidence and all other circumstances have been found 'not proved' – Although human blood was found on seized clothes and weapons but it was not ascertained whether it was of the same blood group of deceased – Mere presence of human blood on articles are not sufficient to hold appellants guilty – Extra Judicial Confession also not established – Prosecution failed to establish the guilt beyond reasonable doubt – Conviction set aside – Appeal allowed: *Vir Singh Vs. State of M.P., I.L.R. 2022 M.P. \*15 (DB)*

– **Section 302 & 201** – Circumstantial Evidence – Last Seen Theory, Seized Weapons & Motive of Crime – Held – Last seen theory not proved – No blood found on seized weapons allegedly used for murder – No cogent evidence to prove the motive of offence – When prosecution is based on circumstantial evidence, motive behind crime becomes important – Prosecution failed to prove each of the links in the chain of circumstances or that the proved circumstances point unmistakably to the

guilt of accused – Conviction and sentence set aside – Appeal allowed: *Amar Singh Vs. State of M.P., I.L.R. 2021 M.P. 2212 (DB)*

– **Section 302 & 201** – Circumstantial Evidence – Police Investigation – Held – Police must never commence an investigation with presuppositions as then, it would only gather the evidence in order to support its hypotheses more so, in a case to be proved by circumstantial evidence: *Chandresh Maraskole Vs. State of M.P., I.L.R. 2022 M.P. 1594 (DB)*

– **Section 302 & 201** – Circumstantial Evidence – Scope – Held – There must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of accused and it must be such as to show that within all human probability the act must have been done by accused – All links in the chain of circumstances must be complete and should be proved through cogent evidence: *Amar Singh Vs. State of M.P., I.L.R. 2021 M.P. 2212 (DB)*

– **Sections 302, 363, 377 & 201** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3 & 4 – Circumstantial Evidence – Ocular & Medical Evidence – DNA Report – Held – There is evidence of penetrative anal assault – DNA profile of accused matched with DNA profile of deceased – Statements of witnesses relating to last seen theory is corroborated by scientific evidence – Prosecution established beyond reasonable doubt that accused initially committed unnatural offence and later killed him – Conviction upheld – Reference disposed: *In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath, I.L.R. 2022 M.P. 722 (DB)*

– **Sections 302, 364 & 201** – Circumstantial Evidence – Last Seen Together – Held – On date of incident, deceased was last seen together alive with appellant and thereafter deceased was not seen – Fact relevant to missing of deceased being known only to appellant and yet he did not give any explanation and chose not to disclose anything, thus a very strong presumption is made against appellant that deceased was murdered by him – Motive also established by prosecution – Appellant rightly convicted – Appeal dismissed: *Sanjay Vs. State of M.P., I.L.R. 2022 M.P. 1795 (DB)*

– **Sections 302, 366, 376-A & 201** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5(L) & 6 – Circumstantial Evidence – Ocular & Medical Evidence – DNA Report – Held – In postmortem report, signs of forceful vaginal penetration were found – DNA profile of accused found in clothes, vaginal slide and swab of deceased – Female DNA profile of deceased was found on cloths of accused – Theory of last seen together was established – Prosecution established beyond reasonable doubt that accused committed rape on his 8 years old minor sister and killed her – Conviction upheld – Reference disposed: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

– **Sections 302, 366, 376-A & 201** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5(L) & 6 – Theory of “Last Seen Together” – Burden of Proof – Held – Deceased was seen for the last time in company of accused and thereafter she was never seen alive – Prosecution succeeded in establishing that there was minimum gap between the time when victim was seen in company of accused for the last time and when death took place and the dead body was recovered – Thus burden shifted to accused to explain as to when he parted away with company of deceased, but the said burden has not been discharged by accused: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

– **Sections 302, 376 & 511** and Arms Act (54 of 1959), Section 25(1-B)(b) – Circumstantial Evidence – Held – Doctor stated that there might have been an attempt to commit rape, but rape was not committed – Circumstance of last seen together not established nor it was proved that prosecutrix was carrying the lota which was allegedly seized from spot – Merely because thumb impression of appellant was found on lota, it is not proved that appellant was involved in offence – Recovery of knife is also doubtful – Conviction set aside – Appeal allowed: *Girraj Alias Batte Vs. State of M.P., I.L.R. 2022 M.P. 1031 (DB)*

## 7. Common Intention

– **Section 302/34** – Constructive Liability – Held – If common intention leads to commission of criminal offence charged, each one of the persons sharing common intention is constructively liable for criminal act done by one of them: *Hariram Vs. State of M.P., I.L.R. 2022 M.P. \*84 (DB)*

– **Section 302/34 & 307/34** – Common Intention – Held – A-2 carrying an axe, but did not participated in any manner to cause injuries to deceased – Eye witness also did not attributed any act against A-2 – Seizure of axe not proved – No previous enmity between A-2 and deceased – No instigation by A-2 towards A-1 to fire at deceased – Common intention and pre-arranged plan not proved – Conviction of A-2 set aside and appeal filed by him is allowed: *Indu @ Indrapal Singh Vs. State of M.P., I.L.R. 2021 M.P. 1602 (DB)*

– **Sections 302, 307/34 & 149** – Common Intention – Held – Common intention can develop during the course of occurrence also, provided there is clear proof and cogent evidence to prove it – Accused persons coming to the place of occurrence with their .12 bore or .315 bore guns and fired indiscriminately thereby causing death of deceased persons, clearly establishes that all 3 appellants were sharing common intention: *Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)*

## 8. Contents of FIR

– **Section 302** – FIR – Contents – Held – The condition of deceased was very critical and in such a situation, FIR was lodged, therefore it would not have been possible to narrate the entire sequence of incident – Such omissions are not fatal to prosecution: *Gudda @ Lal Sahab Vs. State of M.P., I.L.R. 2022 M.P. \*25 (DB)*

– **Sections 302/149, 324/149 & 148** – FIR – Contents – Held – It is well established principle of law that FIR is not an encyclopedia – Informant was injured having gun shot injuries, it is not expected that he would give each and every minute details of the offence: *Chhuna @ Chhatra Pal Singh Vs. State of M.P., I.L.R. 2022 M.P. 168 (DB)*

## 9. Delay in FIR/Recording Statements

– **Section 302** – Delay in FIR – Held – Apex Court concluded that mere delay in lodging report is not by itself necessarily fatal to prosecution case – Delay has to be considered in background of facts and circumstances of each case – The time of occurrence, distance to police station, mode of conveyance available are all relevant factors to be considered: *Hariram Vs. State of M.P., I.L.R. 2022 M.P. \*84 (DB)*

– **Section 302** – Delayed FIR & Investigation – FIR lodged after one year of incident – Held – Case is not based on evidence of any witness but primarily based on dying declaration, which was recorded promptly – Omissions and contaminated conduct of police cannot be a ground for acquittal, specifically when guilt of accused is otherwise proved beyond reasonable doubt: *Ajju alias Ajay Vs. State of M.P., I.L.R. 2022 M.P. \*60 (DB)*

– **Section 302/34** – Delay in FIR – Held – Due to fear, complainant party initially went to Raja Saheb of Machhand and thereafter, after returning back of father of deceased, report was lodged – Delay of near about 3 hours in lodging report is not fatal to prosecution: *Manoj Singh Vs. State of M.P., I.L.R. 2022 M.P. 911 (DB)*

– **Sections 302, 366, 376-A & 201** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5(L) & 6 – Delay in Recording Statement – Effect – Held – Every delay in recording of police statement is not fatal – If a plausible explanation is given for the same, then it would not give any dent to the prosecution story – Unless and until the IO is asked about the delay, the delayed recording of statement by itself would not make the evidence of the witnesses suspicious or unreliable: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

## 10. Duty of Judges

– **Section 302 & 84** and Evidence Act (1 of 1872), Section 165 – Duty of Judges – Held – The intent of Section 165 of Evidence Act should also be taken by Judge to achieve the ends of justice – Judges should not sit as a silent spectator during trial – They are supposed to utilize their authority to discover or to obtain facts relevant for implementation of real justice: *Ashok Singh Vs. State of M.P., I.L.R. 2022 M.P. 1195 (DB)*

## 11. Dying Declaration

– **Section 302** – Dying Declaration – Credibility – Held – After incident deceased requested her husband to call her parents, thus she was in a position to speak – Doctor gave fitness certificate – Dying declaration is corroborated by medical as well as forensic evidence – If dying declaration inspires confidence, then it can be the sole basis for conviction – Prosecution has proved the dying declaration beyond reasonable doubt – Conviction upheld – Appeal dismissed: *Kalla @ Kallu Vs. State of M.P., I.L.R. 2022 M.P. \*18 (DB)*

– **Section 302** – Dying Declaration – Credibility – Held – It is not the extent of superficial burn which effects state of mind of patient but it is the degree of burn which effects the state of mind – It cannot be held that merely because person sustained 100% burn injuries, he cannot make a dying declaration – Dying declaration recorded by Tehsildar, Oral dying declaration given to husband and motive of offence established by prosecution – Degree of burns, discussed and explained – Appeal dismissed: *Ajju alias Ajay Vs. State of M.P., I.L.R. 2022 M.P. \*60 (DB)*

– **Section 302** – Dying Declaration – Sole evidence – Held – If person recording dying declaration is satisfied with regard to mental fitness of its maker and the declaration qualifies all standards to rule out tutoring or unfitness of mind, then such dying declaration can be sole evidence for recording conviction: *Ajju alias Ajay Vs. State of M.P., I.L.R. 2022 M.P. \*60 (DB)*

– **Section 302** – Dying Declaration – Victim's State of Mind – Held – It is not the extent of superficial burn which effects the state of mind of the patient but it is the degree of burn which effects the state of mind of patient – All internal organs of deceased were found normal and congested, thus cannot be said to have suffered deep burns and was not in a fit state of mind: *Kalla @ Kallu Vs. State of M.P., I.L.R. 2022 M.P. \*18 (DB)*

– **Section 302** – FIR & Dying Declaration – Held – FIR lodged by deceased himself on the following day of incident – FIR shall be treated as dying declaration: *Hariram Vs. State of M.P., I.L.R. 2022 M.P. \*84 (DB)*

– **Section 302** – Multiple Oral Dying Declaration – Effect – Held – First dying declaration given to PW-1 who is independent witness and was not declared hostile – Second dying declaration given to PW-2, who is real brother of deceased – Serious and glaring inconsistencies and contradiction in two dying declarations, making the second one doubtful – First dying declaration was worthy of credence and could not have been ignored and discharged – Court below erred in convicting appellant on basis of such second dying declaration – Fit case for giving benefit of doubt to appellant – Conviction set aside – Appeal allowed: *Pappu @ Dayaram Vs. State of M.P.*, I.L.R. 2021 M.P. 1571 (DB)

– **Section 302** and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Corroboration – Held – There is a dying declaration against appellant but at same time statement/Story of appellant was also corroborated by two prosecution witnesses who does not appear to be planted/chanced witnesses – Appellant sustained 35% burn injuries showing his part to save the deceased – In this particular case, dying declaration requires corroboration which is lacking – Prosecution failed to prove beyond reasonable doubt that appellant doused his wife in kerosene oil and had set her ablaze – Conviction and sentence set aside – Appeal allowed: *Devkaran Vs. State of M.P.*, I.L.R. 2021 M.P. 1920 (DB)

– **Section 302** and Evidence Act (1 of 1872), Section 32 – Multiple Oral Dying Declaration – Held – If there are multiple dying declarations, trial Court was under obligation to examine each one with accuracy and precision – Adequate reasons were required to be given if any dying declaration is given preference over the other, which was not done in present case – Trial Court miserably failed to undertake aforesaid exercise and mechanically relied on second dying declaration: *Pappu @ Dayaram Vs. State of M.P.*, I.L.R. 2021 M.P. 1571 (DB)

– **Section 302** and Evidence Act (1 of 1872), Section 32 – Oral Dying Declaration – Held – Conviction can be recorded solely on basis of dying declaration or even on basis of oral dying declaration, provided it should be free from any doubt and must pass scrutiny of reliability: *Pappu @ Dayaram Vs. State of M.P.*, I.L.R. 2021 M.P. 1571 (DB)

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



for corroborating or contradicting the testimony of such witness: *Devkaran Vs. State of M.P., I.L.R. 2021 M.P. 1920 (DB)*

– **Section 302/34** – Dying Declaration – Held – Deceased (wife) died due to burn injuries within 1½ years of marriage – It is settled principle that dying declaration may be the sole basis for conviction – It is apparent that deceased had given dying declaration voluntarily and statement given is trustworthy and needs no corroboration – Deceased stated that appellant alongwith other co-accused were demanding dowry and their behaviour was not good – Conviction and sentence affirmed – Appeal dismissed: *Durgesh Singh Bhadauria Vs. State of M.P., I.L.R. 2022 M.P. 138 (DB)*

– **Sections 302/149, 324/149 & 148** – FIR to be treated as Dying Declaration – Held – Victim was in an injured condition and he lodged FIR – Since victim died due to injuries sustained by him, therefore the FIR lodged by him would be admissible as dying declaration, provided the prosecution establishes that he was in a fit state of mind and was conscious: *Chhuna @ Chhatra Pal Singh Vs. State of M.P., I.L.R. 2022 M.P. 168 (DB)*

– **Section 302 & 307/34** and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Admissibility – Held – Dying declaration recorded by Doctor but later declarant survived – Doctor who recorded dying declaration was not examined, therefore so called dying declaration is not admissible u/S 32 of Evidence Act – Court evidence cannot be discarded in light of the statement which was recorded as dying declaration: *Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)*

– **Section 302 & 498-A** and Evidence Act (1 of 1872), Section 32 – Dying Declaration – Credibility – Held – Fact of physical and mental cruelty established by prosecution witnesses – Duty doctor corroborated the fact that deceased was admitted in hospital and executive magistrate recorded her dying declaration after his certification about her fit mental condition – Even if the letter sent to magistrate requiring him to record dying declaration is not been exhibited/proved, evidence of executive Magistrate cannot be discarded – Dying declaration is credible and cogent – Appeal dismissed: *Nafees Khan Vs. State of M.P., I.L.R. 2022 M.P. 588 (DB)*

## 12. Eye-Witness

– **Section 302** – Eye Witness – Credibility – Held – Witnesses satisfactorily explained their presence on the spot of incident – Their names were mentioned in FIR as eye witness – No delay in recording of police statement – Their evidence duly corroborated by other eye witnesses as well as by medical evidence – They are independent and reliable witnesses – No previous enmity established between accused

and witnesses – No contradiction in ocular and medical evidence – Conviction upheld – Appeal dismissed: *Ram Khiladi Vs. State of M.P., I.L.R. 2022 M.P. 1428 (DB)*

– **Section 302/34** – Eye Witness/Related Witnesses – Held – Although eye witnesses are related witnesses but their evidence is fully corroborated by medical evidence and other circumstantial evidence, thus cannot be disbelieved – Common object also established – Minor contradiction and omission in statement of witnesses, not fatal to prosecution – Conviction upheld – Appeals dismissed: *Manoj Singh Vs. State of M.P., I.L.R. 2022 M.P. 911 (DB)*

– **Section 302 & 307** and Arms Act (54 of 1959), Section 25 & 27 – Eye Witness Turning Hostile – Effect – Appreciation of Evidence – Held – Direct evidence of eye witness found reliable – Seizure of weapon from A-1 duly proved by evidence – It was also established that A-1 used the fire arm to commit the crime – Medical evidence corroborated the ocular evidence – FIR within half an hour from incident – Offence by A-1 proved beyond reasonable doubt – Conviction of A-1 affirmed – Appeal filed by A-1 dismissed: *Indu @ Indrapal Singh Vs. State of M.P., I.L.R. 2021 M.P. 1602 (DB)*

– **Sections 302, 307, 324 & 34** – Injured Eye Witness turning Hostile – Effect – Held – Prosecution case based on direct evidence – Only on account of injured witnesses being hostile, the entire prosecution case cannot be disbelieved – Evidence is to be weighed and not counted – The number of witnesses is not counted but the quality of evidence is taken note of – Testimony of sole witness is sufficient to convict the accused provided he is wholly reliable – Sole testimony of eye witness established the guilt of appellants – Conviction affirmed – Appeal dismissed: *Roshan Vs. State of M.P., I.L.R. 2022 M.P. 701 (DB)*

### **13. Identification of Victim**

– **Sections 302, 363, 364, 366A, 376(2)(i), 376(2)(j), 376(2)(k) & 201** – Identification of Victim – Dead body of deceased minor girl was buried but later when PW-23 claimed to be her mother, body was not dugged out for identification – Aadhar Card of deceased not seized and produced – Blood of deceased was preserved but police did not go for DNA Test – Prosecution miserably failed in establishing that dead body of a girl which was recovered from a well was that of the daughter of PW-23: *In Reference Vs. Ravi @ Toli, I.L.R. 2022 M.P. 286 (DB)*

### **14. Juvenile**

– **Section 302/34** and Juvenile Justice (Care and Protection of Children) Act (56 of 2000), Section 20 – Held – Incident occurred in 1998, on that date, age of appellant No. 3 was 16 years 11 months and 26 days – As per Section 20 of Act of

2000, age of appellant No. 3 was less than 18 years on date of incident, thus benefit of provisions of Act of 2000 will be extended to appellant No. 3 – Sentence of life imprisonment set aside and matter remitted to jurisdictional Juvenile Justice Board for determining appropriate quantum of fine to be levied on appellant No. 3 – Appeal disposed: *Devilal Vs. State of M.P., I.L.R. 2021 M.P. 806 (SC)*

### 15. Medical Evidence

– **Sections 302, 307, 324 & 34** – Medical Evidence – Effect – Held – Opinion given by medical witness need not be the last word on the subject, such opinion shall be tested by Court – Value of medical evidence is only corroborative, it proves that injuries could have been caused in the manner as alleged and nothing more – Connection between injuries and death of deceased is established by medical evidence: *Roshan Vs. State of M.P., I.L.R. 2022 M.P. 701 (DB)*

### 16. Minor Discrepancies

– **Section 302** – Appreciation of Evidence – Held – There are only minor discrepancies in statements of witnesses and their evidence is firm on material aspects – While appreciating the evidence of witnesses, minor discrepancies on trivial matters which do not affect the core of prosecution case should not be made a ground to reject the evidence in its entirety: *Shivram Singh Rajawat Vs. State of M.P., I.L.R. 2022 M.P. \*31 (DB)*

– **Section 302 & 307/34** – Direct Evidence – Held – Prosecution case based on direct evidence – Minor omissions, contradictions, embellishment in evidence of prosecution witnesses would not make them unreliable – Ocular evidence supported by post mortem report and ballistic evidence – Appeals dismissed: *Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)*

### 17. Motive/Intention

– **Section 302** – Absence of Motive/Intention – Effect – Held – Where the case is based on direct evidence and evidence led by prosecution is worth reliance, then same cannot be discarded merely on ground of absence of motive or intention of accused: *Shivram Singh Rajawat Vs. State of M.P., I.L.R. 2022 M.P. \*31 (DB)*

– **Section 302** – “Spur of Moment” – Held – Hot altercation between deceased and appellants – Deceased slapped appellant Santosh – Appellants left the place and after almost half an hour, appellants rushed back and Santosh with the aid of other appellants, gave single knife blow to deceased – Assault did not take place during hot altercation, thus, such single knife blow is not outcome of “spur of moment”: *Sonu Jain Vs. State of M.P., I.L.R. 2021 M.P. 1373 (DB)*

– **Section 302 & 307/34** – Direct Evidence & Motive – Held – Where a case is based on direct evidence, absence of motive is immaterial – Motive always remains in mind of wrongdoer, thus, merely because witnesses have not alleged any motive, would not make their evidence unreliable: *Nathu Singh Vs. State of M.P.*, I.L.R. 2021 M.P. 1388 (DB)

– **Sections 302, 363, 377 & 201** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3 & 4 – Motive – Held – Lack of motive would not be fatal to prosecution as sometimes a person behaves irrationally and at the spur of moment commits the offence – Looking to evidence on record which is supported by DNA report, definite determination of motive is not required: *In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath*, I.L.R. 2022 M.P. 722 (DB)

– **Sections 302, 364, 120-B & 201** – Circumstantial Evidence – Motive – Held – Merely because appellants expressed their doubt about character of victim (*daughter-in-law of appellant*) that alone does not conclusively establish that they were having any “motive” to murder her – Circumstances should be in category of “must” and cannot be based on conjectures and surmises – Chain of circumstantial evidence needs to be established with accuracy and precision – Suspicion however strong cannot take place of proof – Circumstantial evidence not sufficient to establish guilt – Conviction set aside – Appeal allowed: *Ramcharan Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 520 (DB)

## 18. Non-Recovery of Weapon

– **Section 302** – Non-Recovery of Weapon – Effect – Held – In absence of any comparison of firing marks, prosecution failed to prove that the gun seized from appellant was used in the offence, but it would not mean that direct ocular evidence would render worthless – Credible evidence of witnesses cannot be discarded merely on ground that weapon of offence could not be recovered: *Ram Khiladi Vs. State of M.P.*, I.L.R. 2022 M.P. 1428 (DB)

## 19. Plea of Alibi

– **Section 302** – Plea of Alibi – Held – Burden heavily lies upon accused to prove his plea of alibi to exclude direct evidence regarding his presence on place of incident – Plea of alibi is required to be proved by leading cogent evidence: *Ajju alias Ajay Vs. State of M.P.*, I.L.R. 2022 M.P. \*60 (DB)

– **Sections 302/149, 99 & 103** – Plea of Alibi – Held – Evidence and documents shows that at the time of incident A-3 gone to attend LL.M. Examination at Jhansi – Probability of him being at scene of occurrence around the same time is highly improbable – Further he was arrested after 4 months for which no reasonable

cause given by prosecution – No weapons seized from A-3 – Plea of *alibi* duly established – Conviction of A-3 set aside and his appeal is allowed: *Jasrath Vs. State of M.P., I.L.R. 2022 M.P. 690 (DB)*

– **Section 302 & 307/34** – Plea of Alibi – Held – Taking a false plea of alibi would also be an additional link to the circumstances, although false plea of alibi cannot be a sole criteria to record conviction – Plea of *alibi* is required to be proved by accused by leading cogent evidence – Defence/accused failed to prove his plea of alibi: *Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)*

## 20. Plea of Intoxication

– **Section 302 & 85** – Plea of Intoxication – Held – Voluntary drunkenness is no excuse for commission of crime – No evidence that any intoxication was administered to appellant by any other person – No benefit can be granted u/S 85 IPC: *Morari Vs. State of M.P., I.L.R. 2022 M.P. 880 (DB)*

## 21. Plea of Single Blow

– **Section 302 & 304 Part II** – Single Blow – Held – As a rule of thumb it cannot be said that in no case of single blow or injury, accused can be convicted u/S 302 IPC – In cases of single injury, facts and circumstances of each case have to be considered to conclude whether accused be convicted u/S 302 or u/S 304 Part II – Relevant factors to be considered as laid down by Apex Court, enumerated – Further held, these factors are illustrative and not exhaustive in nature – Other relevant factors can also be taken into consideration: *Sonu Jain Vs. State of M.P., I.L.R. 2021 M.P. 1373 (DB)*

## 22. Previous Enmity

– **Section 302 & 307/34** – Previous Enmity – Held – Enmity is a double edged weapon – If appellants claim that there was an enmity between them and complainant party, then such enmity may also provide motive to commit offence – From facts, it would be incorrect to say that appellants were falsely implicated due to previous enmity: *Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)*

## 23. Recovery of Dead Body

– **Sections 302, 364 & 201** – Recovery of Dead Body – Held – Apex Court concluded that it is not necessary that dead body of victim should be found and identified i.e. conviction for offence of murder does not necessarily depend upon corpus delicti being found: *Sanjay Vs. State of M.P., I.L.R. 2022 M.P. 1795 (DB)*

## 24. Related & Interested Witness

– **Section 302** – Related & Interested Witnesses – Credibility – Held – “Interested witness” is a witness who is vitally interested in conviction of a person due to previous enmity – There is difference between “related witness” and “interested witness” – Why a “related witness” would spare the real culprit in order to falsely implicate some innocent person – Evidence of “related witness” cannot be discarded only on ground of relationship: *Ram Khiladi Vs. State of M.P., I.L.R. 2022 M.P. 1428 (DB)*

– **Section 302** – Related/Interested Witnesses – Credibility – Held – Merely because witness is related to victim/deceased, their testimony may not be rejected on this ground – No legal canon that only unrelated witnesses shall be considered credible – It is not natural for related witnesses to implicate a person falsely leaving aside the actual culprit – Only interested witness want to see that real culprit is brought to the books – Evidence of related witnesses corroborated by medical evidence – Conviction upheld – Appeal dismissed: *Kuldeep Singh Rajawat Vs. State of M.P., I.L.R. 2022 M.P. \*30 (DB)*

– **Section 302/34** – Related/Interested Witness – Held – “Related” is not equivalent to “interested” – A witness may be called “interested” only when he or she derives some benefit from the result of a litigation or in seeing an accused person punished – PW-1 is trustworthy and nothing could be established from his cross examination that he is an interested witness – Conviction can be recorded on singular witness: *Akram Vs. State of M.P., I.L.R. 2022 M.P. 1025 (DB)*

– **Section 302 & 307/34** – Related Witness & Interested Witness – Held – Evidence of “related witness” cannot be discarded only on ground of relationship – There is a difference between “related witness” and “interested witness” – Interested witness is a witness who is vitally interested in conviction of a person due to previous enmity: *Nathu Singh Vs. State of M.P., I.L.R. 2021 M.P. 1388 (DB)*

– **Sections 302, 363, 377 & 201** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3 & 4 – Related/Interested Witnesses – Held – Merely because witnesses are related to victim or the complainant, their testimonies cannot be rejected – There is no legal canon that only unrelated witnesses shall be considered reliable – Further, it is not natural for related witnesses to implicate a person falsely leaving aside the actual culprit: *In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath, I.L.R. 2022 M.P. 722 (DB)*

## 25. Right to Private Defence

– **Section 302 & 97** – Right to Private Defence – Injuries of Accused – Held – It is not the universal rule that whenever the injuries are found over the body of accused person, a presumption must necessarily be raised that accused persons had sustained injuries in exercise of the right of private defence – Injuries found on person of accused were minor and superficial, not required to be explained by prosecution – Conviction upheld – Appeal dismissed: *Gudda @ Lal Sahab Vs. State of M.P., I.L.R. 2022 M.P. \*25 (DB)*

– **Sections 302/149, 99 & 103** – Right of Private Defence of Property – Held – Complainants were trespassers on the property of appellants, that by itself did not give a reasonable apprehension to appellants that act of complainant ploughing the field would cause any grievous hurt or probable death to appellants – Prosecution established that appellants came to scene of occurrence with fire arms and complainant were unarmed – Right to private defence not available to appellants – Conviction affirmed – Appeal dismissed: *Jasrath Vs. State of M.P., I.L.R. 2022 M.P. 690 (DB)*

– **Sections 302/149, 99 & 103** – Right of Private Defence of Property – Recourse to Protection – Held – Though complainant party trespassed on to field of appellants, there was no necessity to attack them with firearms – Appellants had enough opportunity to take recourse to police or Court to seek their eviction – Where there is a recourse to protection of public authorities, right of private defence does not exist – Right of private defence discussed and explained: *Jasrath Vs. State of M.P., I.L.R. 2022 M.P. 690 (DB)*

## 26. Unfair Investigation

– **Section 302 & 201** – Fair Investigation – DNA Analysis – Held – Human sperm was found in the panties worn by deceased and in blanket in which her dead body was wrapped, however the police do not send the same for a DNA analysis as it ought to have: *Chandresh Maraskole Vs. State of M.P., I.L.R. 2022 M.P. 1594 (DB)*

– **Section 302 & 201** – False Implication & Unfair Investigation – Held – Bias is reflected from prosecution documents where appellant was made to confess to his crime before witnesses on 22.09.2008 even before FIR was registered on 24.09.2008 and before appellant was arrested on 25.09.2008 – Appellant was in custody of police since 20.09.2008 – Conduct of police is malicious and investigation intentionally done to secure conviction of appellant – No motive established – Case deliberately botched up and appellant falsely implicated to protect perhaps the actual perpetrators of offence – Conviction set aside – Appeal allowed: *Chandresh Maraskole Vs. State of M.P., I.L.R. 2022 M.P. 1594 (DB)*

– **Sections 302, 363, 364, 366A, 376(2)(i), 376(2)(j), 376(2)(k) & 201**  
 – Determination of Age of Victim – Held – Age of the daughter of PW-23 did not match with the age of the dead body recovered from the well – Prosecution did not verify the age of victim – Ossification test was also not conducted by police – It was deliberately omitted by the prosecution: *In Reference Vs. Ravi @ Toli, I.L.R. 2022 M.P. 286 (DB)*

– **Section 302/34** – See – Constitution – Article 142: *Madhav Vs. State of M.P., I.L.R. 2021 M.P. 1621 (SC)*

## 27. Unsoundness of Mind

– **Section 302 & 84** – Unsoundness of Mind – Held – Doctor deposed that appellant suffering from Mental disorder – *Modes operandi* of commission of offence and his behaviour after commission of offence reflects that he was not in state of soundness of mind and was not knowing the nature of the act – At the time of incident, appellant was not having any motive or *mens rea* – Accused was entitled to benefit of Section 84 – Appellant exonerated from charges – Conviction set aside – Appeal allowed: *Ashok Singh Vs. State of M.P., I.L.R. 2022 M.P. 1195 (DB)*

● – **Section 304-A** – “Actus reus non facit reum nisi mens sit rea” – Concept & Principle – Held – In criminal law the basic dicta is “*actus reus non facit reum nisi mens sit rea*” or the act and intent must happen together for offence to be committed – However Section 304-A IPC is an exception to this general rule – It requires only negligence or recklessness without a malicious mind – Negligence is a state of existence, act or omission to take due care expected from a reasonable man, as required by law: *Vijay Kumar Kushwaha Vs. State of M.P., I.L.R. 2022 M.P. 961*

– **Section 304-A** – Maxim “*causa proxima non remota jura spectator*” – Proximate & Remote Cause – Held – While assessing negligence u/S 304-A IPC, Court must consider the most proximate cause which led to accidental death – Law shall take cognizance of the proximate cause and not the remote cause: *Vijay Kumar Kushwaha Vs. State of M.P., I.L.R. 2022 M.P. 961*

– **Section 304-A** – Vicarious Liability & Constructive Liability – Discussed and explained: *Vijay Kumar Kushwaha Vs. State of M.P., I.L.R. 2022 M.P. 961*

– **Section 304-A** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Proceedings – Death by Electrocutation – Vicarious Liability – Held – The established procedure expected to be followed by contractor was not followed by him on date of accident because of which the deceased labour died – Non-adherence to procedure reduces liability and involvement of petitioner and place



him remotely in chain of causation – He cannot even be held remotely liable for accident – No prima facie case made out – Proceedings quashed – Application allowed: *Vijay Kumar Kushwaha Vs. State of M.P., I.L.R. 2022 M.P. 961*

– **Section 304-B & 498-A/34** – See – Criminal Procedure Code, 1973, Sections 156, 157 & 173: *Indal Singh Vs. State of M.P., I.L.R. 2021 M.P. 890*

– **Sections 304-B, 498-A & 34** – See – Criminal Procedure Code, 1973, Section 439: *Kamla @ Sarla Yadav (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 973*

– **Section 306** – Appreciation of Evidence – Ground of Harassment – Afterthought – Held – Prosecution not able to establish any proximate direct or indirect cause attributable to appellant that could drive deceased to take extreme step of self immolation – Merely on basis of afterthought omnibus allegation of harassment, conviction cannot be sustained – Evidence of prosecution witnesses are full of improvements, contradictions, discrepancies and infirmities – Conviction set aside – Appeal allowed: *Vinod Kumar Vs. State of M.P., I.L.R. 2022 M.P. 1584*

– **Section 306** and Criminal Procedure Code, 1973 (2 of 1974), Section 228 – Framing of Charge – Grounds – Held – In suicide note, it was specifically mentioned that petitioners harassed him very badly and they should be held responsible for his death – In this respect, deceased regularly made complaints to CM and other Ministers of State but could not get any relief – Prima facie sufficient material to frame charge u/S 306 IPC against petitioners – No infirmity /irregularity in impugned order – Revisions dismissed: *Naresh Vs. State of M.P., I.L.R. 2022 M.P. 716*

– **Section 306/34 & 107** – Instigation – Concept – Held – A person can be said to have instigated another person, when he actively suggests or stimulates him by means of language, direct or indirect – Instigate means to goad or urge forward or to provoke, incite, urge or encourage to do an act – No prima facie material to show that applicants in any manner had abetted the deceased to commit suicide – FIR and all consequential proceedings quashed – Petition allowed: *Guddi Rawat (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 1793*

– **Section 306 & 107** – Ingredients – Held – For making a person liable for offence punishable u/S 306 IPC, it is duty of prosecution to establish that such person has abetted the commission of suicide – For determining the act of accused it is necessary to see that his act must fall in any of 3 categories as enumerated u/S 107 IPC – It is necessary to prove that accused has instigated the person to commit suicide or must have engaged with one or more other persons in any conspiracy for seeing that the deceased commits suicide or he must intentionally act by any act or illegal omission, of the commission of suicide by deceased: *Guddi Rawat (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 1793*

– **Section 307** – Intention & Knowledge – Held – Intent is state of mind which can never be precisely proved by direct evidence and is to be gathered from all circumstances and not merely from consequences that ensue – Nature of weapon used, manner in which it is used, motive for crime, severity of the blow, part of the body where injury is inflicted are some of the factors to be considered to determine intention – It does not require that the hurt should be grievous or of any particular degree: *Manoj Singh Vs. State of M.P., I.L.R. 2022 M.P. 911 (DB)*

– **Section 307** – Nature of Injury – Held – Single blow injury caused on vital part of body though it was caused on back but it reached to the chest – Doctor stated that injury was grievous and was sufficient to cause death in ordinary course of nature as it was caused by sharp cutting weapon (big knife) – Appellant rightly convicted u/S 307 IPC – As only single injury was caused and appellant did not attempt to hurt further, sentence reduced from 5 years to 4 years – Appeal partly allowed: *Lokman Vs. State of M.P., I.L.R. 2022 M.P. \*64*

– **Section 307** – Term “Hurt” & “Grievous Hurt” – Held – U/S 307 the term “hurt” has been used which is explained in Section 319 IPC and not “grievous hurt” which is explained in Section 320 IPC – If a person causes hurt with intention or knowledge that it may cause death, it would attract Section 307 IPC – Merely causing hurt is sufficient to apply Section 307 IPC: *Satish @ Gudda Vs. State of M.P., I.L.R. 2022 M.P. 1785*

– **Section 307 & 324** – Nature of Injury – Intention/Knowledge – Held – Injury inflicted was simple or minor will not by itself rule out application of Section 307 IPC – Determinative question is intention or knowledge and not the nature of injury – Accused stabbed with knife in abdomen of the victim, although a single blow, but on vital part of body and was dangerous to life – Appellant rightly convicted u/S 307 & 324 IPC – Appeal dismissed: *Satish @ Gudda Vs. State of M.P., I.L.R. 2022 M.P. 1785*

– **Section 307 & 324** – Non-examination of Informant – Effect – Held – Apex Court concluded that even if FIR is not proved, it would not be ground for acquittal, but the case would depend upon evidence lead by prosecution – Non examination of informant cannot in any manner affect the prosecution case: *Satish @ Gudda Vs. State of M.P., I.L.R. 2022 M.P. 1785*

– **Section 307 & 324** – Non-examination of Injured Witness – Effect – Injured witness not examined due to mental illness – Held – If on basis of facts and circumstances, it is found that due to some reason, injured witness is not examined, it would not create a dent in prosecution case – Court is required to assess evidence of other prosecution witnesses adduced – In such circumstances, there cannot be a

mathematical formula for discarding the weight of testimony of other injured witness and eye witness: *Satish @ Gudda Vs. State of M.P., I.L.R. 2022 M.P. 1785*

– **Sections 323, 354A, 452 & 506** – See – Criminal Procedure Code, 1973, Section 439: *Aparna Bhat Vs. State of M.P., I.L.R. 2021 M.P. 1003 (SC)*

– **Section 323 & 364-A** and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 11/13 – Appreciation of Evidence – Held – As per evidence on record, prosecution failed to prove that victims were ever abducted, beaten or any ransom was demanded and paid to accused persons – Mere identification in TIP or in dock would not lead to inference that accused persons committed the offence – There was a delay of more than 24 hrs. in sending copy of FIR to Special Judge – Suspicion however strong may be, cannot take place of proof – Conviction set aside – Appeal allowed: *Ramcharan Vs. State of M.P., I.L.R. 2022 M.P. 549 (DB)*

– **Section 326** – See – Criminal Procedure Code, 1973, Section 320 & 482: *Ramgopal Vs. State of M.P., I.L.R. 2022 M.P. 228 (SC)*

– **Section 346 & 364-A** and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, M.P. (36 of 1981), Section 13 – Held – Fact of abduction, demand of ransom and identity of accused not established – Serious discrepancy regarding recovery of the abductee – No TIP conducted by Police – Prosecution miserably failed to prove guilt of appellants beyond reasonable doubt – Ample material on record to suggest that appellants were falsely implicated by witnesses with help of I.O. with sole intention to grind their axe – Conviction and sentence set aside – Appeals allowed: *Suresh Vs. State of M.P., I.L.R. 2021 M.P. 2319 (DB)*

– **Section 354** – Applicability – Held – Holding the hand of prosecutrix with an evil eye cannot be said to have been done with an intent to outrage her modesty, as hand cannot be construed as an erogenous part of anatomy with which a woman's modesty, sexuality or sense of shame is associated with – Prima facie offence u/S 354 IPC is not made out: *Aom Tiwari Vs. State of M.P., I.L.R. 2021 M.P. 551*

– **Section 354** – See – Protection of Children from Sexual Offences Act, 2012, Section 7 & 8: *Aom Tiwari Vs. State of M.P., I.L.R. 2021 M.P. 551*

– **Section 354 & 354(D)** – See – Criminal Procedure Code, 1973, Section 227 & 228: *Himanshu Gandhi Vs. State of M.P., I.L.R. 2022 M.P. 1487*

– **Section 363** – Age of Prosecutrix – Duty of Court – Held – It is obligatory for the Court to test the authenticity of an entry regarding the date of birth of a person in public document: *Manoj Sahu Vs. State of M.P., I.L.R. 2022 M.P. 1912*

– **Section 363** – Age of Prosecutrix – Held – Prosecution failed to establish that at the time of commission of offence, age of prosecutrix was below 18 years – Prosecutrix herself stated that she voluntarily went with appellant on her free will – No evidence to show that she was taken forcibly or was induced by appellant – Where prosecutrix at the age of discretion leaves her parental home and accused simply facilitates her in fulfillment of her desire, it is not kidnapping or abduction – Conviction set aside – Appeal allowed: *Manoj Sahu Vs. State of M.P., I.L.R. 2022 M.P. 1912*

– **Section 363** – Age of Prosecutrix – Proof – Held – Prosecutrix herself and her father, mother and brother does not know the exact date of birth – Entries in Pragati Patrak of school was not proved by evidence of any school authority – Prosecution not able to prove that at the time of incident prosecutrix was below 18 years of age: *Manoj Sahu Vs. State of M.P., I.L.R. 2022 M.P. 1912*

– **Section 363 & 366** – Grounds – Held – Unless prosecution proves that abduction is for the purposes mentioned in Section 366 IPC, Court cannot hold the accused guilty and punish him – Mere finding that a woman was abducted is not enough – Offence u/S 363 established but conviction u/S 366 is not sustainable – Appellant rightly convicted for offence u/S 363 IPC: *Phiroz Vs. State of M.P., I.L.R. 2022 M.P. 1631*

– **Sections 363, 366 & 376** – Appreciation of Evidence – Held – Doctors who examined the prosecutrix and the X-Ray report, concluded that prosecutrix was subjected to sexual intercourse – Statement of prosecutrix duly corroborated by other witnesses – Trial Court rightly convicted the appellant – Appeal dismissed: *Karan Singh Vs. State of M.P., I.L.R. 2021 M.P. 1596 (DB)*

– **Sections 363, 366, 376(2)(n), 376(3)**, Protection of Children from Sexual Offences Act (32 of 2012), Section 5(L) & 6 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Sections 3(1)(w)(i), 3(2)(va) & 3(2)(v) – Jurisdiction of Special Court for Trial – Held – The trial of a case instituted under the provisions of two special Acts viz. Atrocities Act and POCSO Act, shall be conducted by the Special Courts constituted under the POCSO Act: *Pramod Yadav Vs. State of M.P., I.L.R. 2021 M.P. 1151 (DB)*

– **Sections 363, 366(A), 307/34 & 376(DB)** – Appreciation of Evidence – Held – Ocular evidence and CCTV footage shows that it was A-1 who kidnapped and took the prosecutrix to the jungle, thus A-2 is acquitted of the charge u/S 363 & 366(A) IPC – Appeal of A-2 partly allowed: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Sections 363, 366(A), 307/34 & 376(DB)** – Appreciation of Evidence – Medical Evidence – Held – Ocular evidence duly established by Medical evidence – Kidnapping and presence of accused persons on spot established by prosecution witnesses – In DNA analysis, female profile found on jeans, shirt and banyan of accused (A-1) matched with profile of prosecutrix and hairs found on spot matched with that of accused – Pubic hair of accused contained traces of source of prosecutrix – Finger prints found on seized beer bottle matched with finger prints of accused – DNA report conclusively proves guilt of appellants: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Sections 363, 366(A), 307/34 & 376(DB)** – DNA Test & Finger Print Analysis – Credibility – Held – Finger print analysis is scientific analysis, credibility of which is not liable to be questioned without there being any extraordinary reasons – Apex Court concluded that DNA matching due to its scientific character, conclusively nails the culprit: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Sections 363, 366(A), 307/34 & 376(DB)** – Dock Identification & Test Identification Parade – Credibility – Held – Dock identification conducted just a month after incident – Looking to short gap, dock identification is a strong piece of evidence – Dock identification document is a substantive piece of evidence contrary to test identification parade document, which can be used for corroborative purpose only – There is no rule of law that in absence of test identification, prosecution story will be rendered unreliable leading to acquittal: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Sections 363, 366(A), 307/34 & 376(DB)** – Identification of Accused – Process – Held – Identification of accused was done by photo albums – In the circumstances in which prosecutrix was hospitalized in serious condition, investigating agency appropriately considered this method for identification of accused: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Sections 363, 366(A), 307/34 & 376(DB)** – Injury of Accused – Held – Redness on male organ of accused is a corroborative piece of evidence showing that he had recently committed forceful sexual intercourse – Nail marks and scratches found on chest of accused and teeth bite depict resistance on part of victim – Non mentioning of reasons of redness in expert report does not weaken the evidence made by witness: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Sections 363, 366(A), 307/34 & 376(DB)** – Seizure Witness – Held – Just because of not minutely observing the number of rooms, positioning of staircases or colour of almirah from where clothes were seized does not tend to discredit the witness – I.O. was not required to minutely examine the non-consequential details: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Sections 363, 366-A & 375, Exception 2 & 376(2)(n)** – See – Criminal Procedure Code, 1973, Section 439: *Vishal Vs. State of M.P., I.L.R. 2021 M.P. 1458*

– **Section 364A** – See – Dakaiti Aur Vyapharan Prabhavit Kshetra Adhinyam, M.P., 1981, Section 11/13: *Arvind Singh Gurjar Vs. State of M.P., I.L.R. 2022 M.P. \*78 (DB)*

### SYNOPSIS : Section 375 & 376

- |                                       |                               |
|---------------------------------------|-------------------------------|
| 1. Age of Prosecutrix/Consent         | 2. Circumstantial Evidence    |
| 3. Death Sentence/Rarest of Rare Case | 4. Intention                  |
| 5. Medical Evidence/DNA Test          | 6. Penetration                |
| 7. Sentence                           | 8. Test Identification Parade |
| 9. Testimony of Prosecutrix           | 10. Miscellaneous             |

#### 1. Age of Prosecutrix/Consent

– **Section 375, Clause 6, 376(1) & 376(2)(i)** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/6 – Age of Prosecutrix – Consent – Held – Prosecution failed to prove beyond reasonable doubt that victim’s age at the time of incident was below 16 but vide medical evidence (MLC Report) it was proved that she was below 17 years of age – Since prosecutrix was below 18 years of age, it is clear that she was not competent to give her consent at the time of incident – Appellant’s conviction u/S 376(2)(i) converted to one u/S 376(1) – Appeal partly allowed: *Jitendra Vs. State of M.P., I.L.R. 2022 M.P. 1287*

– **Section 375, Clause 6, 376(1) & 376(2)(i)** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 3/6 – Age of Prosecutrix – Scholar Register Entry – Probative Value – Held – Prosecution has not produced Scholar Register Entry of that School on basis of whose school leaving certificate, date of birth of prosecutrix was written in the exhibited Scholar Register – Mother and father admitted that they are not aware about date of birth of prosecutrix – Father admitted that at the time of admission, he mentioned prosecutrix’s age on basis of his assumption – Scholar Register Entry although admissible in evidence but in such circumstances, it cannot be taken to be the best piece of evidence as the Apex Court Judgment: *Jitendra Vs. State of M.P., I.L.R. 2022 M.P. 1287*

– **Section 375, Exception 2** and Protection of Children from Sexual Offences Act (32 of 2012), Section 5/6 & 16/17 – Age & Consent of Prosecutrix – Held –

When minimum age of marriage is fixed at 18 years and age of consent is also fixed at 18 years, fixing a lower age of 15 years in Exception 2 to Section 375 is totally irrational, unjust and not fair, infact it is oppressive to the girl child: *Vishal Vs. State of M.P., I.L.R. 2021 M.P. 1458*

– **Section 376(2) (amended) & 376-D** and Evidence Act (1 of 1872), Section 114-A (amended) – Consent – Presumption – Held – Presumption u/S 114-A of Evidence Act is not available in case of gang rape provided u/S 376-D IPC after the amendment incorporated in Section 376(2) IPC and in Section 114-A of Evidence Act on 03.02.2013 for offence committed after 03.02.2013 – Date of incident in present case is 22.12.2013, hence amended provision would be applicable: *Ratanlal Vs. State of M.P., I.L.R. 2021 M.P. 527 (DB)*

– **Section 376(2)(I) & 376(2)(N)** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5L/6 – Age of Prosecutrix – Consent – Held – Prosecution produced Municipal Corporation Birth Register Entry which was duly proved by the employee of the corporation – No reason to disbelieve the authenticity of entry – It is established that victim was below 18 years of age at the time of incident and was not competent to give her consent: *Phiroz Vs. State of M.P., I.L.R. 2022 M.P. 1631*

## 2. Circumstantial Evidence

– **Section 376(DB)** – Circumstantial Evidence – Theory of “Residual Doubt” – Held – Although case is based on ocular evidence of prosecutrix, however there are circumstantial corroborative pieces of evidence available against appellants, which themselves forms a complete chain – Ocular evidence of prosecutrix supported with medical evidence is in itself sufficient to prove charge u/S 376(DB) IPC – Theory of “residual doubt” would not arise for awarding extreme penalty: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

## 3. Death Sentence/Rarest of Rare Case

– **Section 376(DB)** – Death Sentence – Injuries on Victim – Held – As per medical evidence, there were serious injuries on private part of the girl – She was subjected to perineal as well as anal injury – There was a complete perineal tear – Stab injuries were also present – It was proved that the victim minor girl child was subjected to barbarous and violent act of rape: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Section 376(DB)** – Death Sentence – Rarest of Rare Case – Held – Appellants committed forceful aggravated penetrative sexual assault in most ruthless manner on minor girl child of 7-8 years – She was assaulted mercilessly – They acted

in a cold blooded manner and have not shown any remorse and followed their natural routine after committing such ghastly act – They had done all they could do to ebb out life of prosecutrix and left her for dead in jungle – Rights of victim cannot take a back seat while considering rights of accused – Death sentence of appellants affirmed – Appellants directed to be hanged by neck till their death – Appeal of A-1 dismissed: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

#### 4. Intention

– **Sections 376(2)(f) & 511** – Intention – Preparation & Attempt – Held – Act of respondent of luring minor girls, taking them inside the room, closing doors and taking them to a room with motive of carnal knowledge, was the end of preparation – Following action of stripping them and himself, rubbing his genitals against those of victims was indeed an endeavour to commit sexual intercourse – Acts deliberately done with manifest intention to commit offence and since it exceeds stage of preparation and preceded actual penetration, trial Court rightly held him guilty of attempting to commit rape – Appeal allowed: *State of M.P. Vs. Mahendra @ Golu, I.L.R. 2021 M.P. 2231 (SC)*

#### 5. Medical Evidence/DNA Test

– **Section 376 & 511** – Medical Evidence – DNA Test – Held – No injury found on genitals of prosecutrix – Doctor ruled out the possibility of rape, he stated that there might have been an attempt to commit rape – In respect of human semen and sperms found on clothes, DNA test should have been conducted – Mere presence of sperms and semen on vaginal slide, salwar and underwear of prosecutrix is not sufficient to hold that appellant had made attempt to commit rape: *Girraj Alias Batte Vs. State of M.P., I.L.R. 2022 M.P. 1031 (DB)*

– **Section 376(1)** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 4 – Ocular & Medical Evidence – Held – Ocular evidence duly corroborated by medical evidence – Presence of human semen and sperms in vaginal slide corroborate the evidence of prosecutrix – MLC and FSL report corroborates the version of prosecutrix – Prosecution has proved the case beyond reasonable doubt – Conviction affirmed – Appeal dismissed: *Pinki Vs. State of M.P., I.L.R. 2021 M.P. 1586*

– **Section 376(2)(g)** – Medical Evidence – Held – As per evidence of doctor, no external injury was found – In cross examination it was also admitted that there was no healed mark in vagina of prosecutrix – It was also admitted that just because hymen is absent with no other symptoms, it cannot be definitely be opined that rape was committed: *Munnalal @ Bicholi Vs. State of M.P., I.L.R. 2021 M.P. 1739 (DB)*



## 6. Penetration

– **Section 375** – Penetration – Held – Mere penetration is sufficient to prove the offence – Expression “penetration” denotes ingress of male organ into the female parts, however slight it may be: *State of M.P. Vs. Mahendra @ Golu, I.L.R. 2021 M.P. 2231 (SC)*

## 7. Sentence

– **Section 376(DB)** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 42 – Aims & Objects – Provisions of Sentencing – Discussed and explained: *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

– **Section 376(1)** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 4 – Reduction of Sentence – Appellant undergone jail sentence of 7 years with remission, praying for reduction of sentence to period already undergone – Appellant found guilty u/S 376(1) IPC and u/S 4 POCSO Act and considering Section 42 of the Act, he was sentenced u/S 4 of the Act – Held – On date of conviction, minimum sentence u/S 4 of POCSO Act was 7 years but minimum sentence u/S 376(1) IPC was 10 years – Anomaly was rectified in 2019 by amending POCSO Act – Sentence cannot be reduced to period already undergone by appellant: *Pinki Vs. State of M.P., I.L.R. 2021 M.P. 1586*

– **Section 376(3)** – Sentence – Life Imprisonment – Powers of Trial Court – Held – Only Supreme Court and High Court can award life sentence for remainder of life and trial Court cannot award such sentence: *In Reference Vs. Ravi @ Toli, I.L.R. 2022 M.P. 286 (DB)*

## 8. Test Identification Parade

– **Section 376(2)(g)** – Test Identification Parade – Held – If prosecutrix had seen the accused in police station, then identification proceedings in jail subsequently would lose its sanctity – Prosecutrix also admitted that during identification proceedings, police personnels were present – Presence of police during identification proceedings also breaches the sanctity of such proceedings: *Munnalal @ Bicholi Vs. State of M.P., I.L.R. 2021 M.P. 1739 (DB)*

## 9. Testimony of Prosecutrix

– **Section 376-D & 506-II** – Appreciation of Evidence – Statement of Prosecutrix – Credibility – Held – Statement of prosecutrix without any corroboration, can alone result in conviction but her evidence must be creditworthy, inspiring total confidence – Statements of prosecutrix are full of contradictions and omissions – No

sign of forcible intercourse/injury found on person of prosecutrix – Alleged torn clothes, broken bangles not been recovered and seized – There was animosity between families of accused and husband of prosecutrix – Divergence between statement of prosecutrix and her husband – Conviction set aside – Appeal allowed: *Ratanlal Vs. State of M.P.*, I.L.R. 2021 M.P. 527 (DB)

– **Section 376(2)(g)** – Evidence of Prosecutrix – Credibility – Held – Evidence of prosecutrix is replete with serious contradictions and omissions and her version is not supported by other witnesses – She has not been found to be a “sterling witness” on whose evidence alone, prosecution case could have been proved – Evidence also shows previous enmity – Appellants implicated by mother of prosecutrix – Conviction set aside – Appeals allowed: *Munnalal @ Bicholi Vs. State of M.P.*, I.L.R. 2021 M.P. 1739 (DB)

– **Section 376(2)(g)** – Sole Evidence of Prosecutrix – Held – Apex Court concluded that accused can be convicted only on basis of solitary evidence of prosecutrix provided the same inspires confidence and appears to be trustworthy, unblemished and should be of sterling quality: *Munnalal @ Bicholi Vs. State of M.P.*, I.L.R. 2021 M.P. 1739 (DB)

– **Section 376(2)(I) & 376(2)(N)** and Protection of Children from Sexual Offences Act, (32 of 2012), Section 5L/6 – Sole Testimony of Prosecutrix – Corroboration – Held – Prosecutrix’s statement is not consistent as recorded u/S 161, 164, during her examination in chief and her cross examination – As per MLC, no external or internal injury found in genital region – Hymen was found torn with old scar – Nothing on record to corroborate her statement, thus not safe to rely on the same – Conviction not sustainable – Appeal partly allowed: *Phiroz Vs. State of M.P.*, I.L.R. 2022 M.P. 1631

## 10. Miscellaneous

– **Section 375, Exception 2** – See – Protection of Children from Sexual Offences Act, 2012, Section 42-A: *Vishal Vs. State of M.P.*, I.L.R. 2021 M.P. 1458

– **Section 375, Fourthly & 376(2)(n)** – See – Criminal Procedure Code, 1973, Section 438: *Bundel Singh Lodhi Vs. State of M.P.*, I.L.R. 2021 M.P. \*8

– **Section 376(2)(g)** – See – Evidence Act, 1872, Section 114A: *Munnalal @ Bicholi Vs. State of M.P.*, I.L.R. 2021 M.P. 1739 (DB)

● – **Section 379** – See – Mines and Minerals (Development and Regulation) Act, 1957, Section 4(1) & 21(1): *Makhan Prajapati Vs. State of M.P.*, I.L.R. 2021 M.P. 761

– **Section 379 & 414** – See – Mines and Minerals (Development and Regulation) Act, 1957, Sections 4, 22 & 23-A(2): *Jayant Vs. State of M.P., I.L.R. 2021 M.P. 175 (SC)*

– **Section 392 & 397** and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhinyam, M.P. (36 of 1981), Section 13 – Identification & Seizure – Held – Prosecution established that all 3 accused were identified by complainant – Motor cycle of complainant and broken piece of its number plate was also seized from possession of accused persons – Conviction and sentence affirmed – Appeal dismissed: *Rajesh Vs. State of M.P., I.L.R. 2021 M.P. 1910*

– **Section 392 & 397** and Dakaiti Aur Vyapharan Prabhavit Kshetra Adhinyam, M.P. (36 of 1981), Section 13 – Reduction of Sentence – Appellants praying for reduction of sentence to period already undergone – Held – Appellants held guilty for offence u/S 397 IPC where minimum sentence is 7 years – No sentence less than minimum sentence can be awarded – Appellants cannot be awarded jail sentence already undergone by them: *Rajesh Vs. State of M.P., I.L.R. 2021 M.P. 1910*

– **Sections 406, 419, 420, 467, 468, 471 & 120-B** – See – Criminal Procedure Code, 1973, Section 439: *State of M.P. Vs. Anil Sharma, I.L.R. 2021 M.P. 1755*

– **Section 409 & 420** – See – Essential Commodities Act, 1955: *Pankaj Karoriya Vs. State of M.P., I.L.R. 2021 M.P. 2360*

– **Section 420 & 120-B** – See – Criminal Procedure Code, 1973, Section 482: *Pradeep Kumar Shinde Vs. State of M.P., I.L.R. 2021 M.P. 354*

– **Section 420 & 421** – See – Criminal Procedure Code, 1973, Section 397 & 401: *Satyanarayan Sharma Vs. State of M.P., I.L.R. 2021 M.P. \*6*

– **Sections 420, 467, 468, 471, 472, 474 & 120-B** – See – Criminal Procedure Code, 1973, Section 438: *Zarina Begum Vs. State of M.P., I.L.R. 2021 M.P. 1196*

– **Section 442** – House-trespass – Held – Definition u/S 442 is restrictive – It only extends to those category of places mentioned in the Section – Complainant entering into an open field purportedly in possession of appellants cannot be a case of house-trespass: *Jasrath Vs. State of M.P., I.L.R. 2022 M.P. 690 (DB)*

– **Section 460** – Circumstantial Evidence – Appreciation of Evidence – Held – Vital contradictions between statements of prosecution witnesses – Finger prints of accused were taken but no examination conducted – Motorcycle seized from accused

was neither having keys nor any ownership documents seized – Prosecution failed to prove the chain of circumstances available – Conviction and sentence set aside – Appeal allowed: *Nandu Vs. State of M.P., I.L.R. 2022 M.P. \*10 (DB)*

– **Section 460** – Ingredients – Discussed & explained: *Nandu Vs. State of M.P., I.L.R. 2022 M.P. \*10 (DB)*

– **Section 467** – See – Criminal Procedure Code, 1973, Section 167(2)(a)(i) & 167(2)(a)(ii): *State of M.P. Vs. Sanjay, I.L.R. 2022 M.P. 708*

– **Section 467** – See – Criminal Procedure Code, 1973, Section 167(2)(a)(ii): *Nitin Khandelwal Vs. State of M.P., I.L.R. 2021 M.P. 1178*

– **Section 494** – Ingredients – Held – Essential ingredients of offence u/S 494 are (i) accused must have contracted first marriage, (ii) she must have married again, (iii) first marriage must be subsisting and no divorce has taken place, and (iv) first spouse must be living: *Kailash Vs. Gordhan, I.L.R. 2022 M.P. 1920*

– **Section 498-A** – Hostile Witness – Credibility – Held – Although father and mother of deceased were declared hostile but fact of violence being perpetrated upon deceased by appellant stands proved by their deposition in their examination in chief itself which remains uncontroverted in cross examination – Conviction u/S 498-A IPC upheld: *Shivcharan Vs. State of M.P., I.L.R. 2021 M.P. 317*

– **Section 498-A**, Dowry Prohibition Act (28 of 1961), Section 3/4, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (33 of 1989), Sections 3(1)(z), 3(1)(zc) & 3(1)(s) and Criminal Procedure Code, 1973 (2 of 1974), Section 227 – Discharge – Appreciation of Evidence – Held – Husband filed divorce suit on 07.05.2019 and wife lodged FIR on 09.01.2020 – From the date of living separately (i.e. 2016) till date of lodging FIR, no complaint filed by wife ever before police or any other authority – Statement of wife reflects that she approached police only because applicant was going to marry another lady – Lodging FIR was an afterthought only to harass applicant and his family members – Applicants discharged – Revision allowed: *Abhishek Pandey @ Ramji Pandey Vs. State of M.P., I.L.R. 2021 M.P. 1960*

– **Sections 498-A, 294, 323/34 & 506 (Part II)** and Dowry Prohibition Act, (28 of 1961), Section 3/4 – FIR as a Counterblast – Applicants pleaded that FIR lodged by wife after receiving notice of divorce petition filed by husband and thus it is a counterblast – Held – If wife, in order to save her matrimonial life did not lodge the FIR immediately and when she realized that now there is no possibility to reconciliation and lodged FIR, it cannot be said that FIR was a counterblast of divorce petition – Further, divorce petition has to be decided on its own merits and findings of Civil

Court are not binding on Criminal Court – Revision dismissed: *Balkrishna Devda Vs. State of M.P., I.L.R. 2022 M.P. 952*

– **Sections 498-A, 294, 323/34 & 506 (Part II)**, Dowry Prohibition Act, (28 of 1961), Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Section 227 & 228 – Framing of Charge – Plea of Alibi – A-3 submitted that she is living in Indore and not with the family of A-1 & A-2 – Held – Plea of *alibi* is to be proved by applicant by leading cogent and reliable evidence and same cannot be considered at the state of framing of charge – Further, it is specifically alleged in FIR that A-3 used to beat complainant – Revision dismissed: *Balkrishna Devda Vs. State of M.P., I.L.R. 2022 M.P. 952*

– **Sections 498-A, 294, 323/34 & 506 (Part II)**, Dowry Prohibition Act, (28 of 1961), Section 3/4 and Criminal Procedure Code, 1973 (2 of 1974), Section 468 – Delayed FIR – Limitation – Held – U/S 468 Cr.P.C., period of limitation is 3 years – Marriage performed on 17.04.2019 and FIR lodged on 02.11.2020, thus period of 3 years has not expired – Merely because wife chose not to lodge FIR immediately under hope that her marital life may improve, it cannot be said that allegations in FIR are belated: *Balkrishna Devda Vs. State of M.P., I.L.R. 2022 M.P. 952*

– **Sections 498-A, 307 & 34** – See – Criminal Procedure Code, 1973, Section 320 & 482: *Dharmpal Singh Jadon Vs. State of M.P., I.L.R. 2022 M.P. 1492*

– **Section 511** – Preparation & Attempt – Distinction – Held – Stage of “preparation” consist of deliberation, devising or arranging the means or measures, necessary for commission of offence whereas an “attempt” starts immediately after completion of preparation – “Attempt” is execution of mens rea after preparation – “Attempt” starts where “preparation” comes to an end, though it falls short of actual commission of crime: *State of M.P. Vs. Mahendra @ Golu, I.L.R. 2021 M.P. 2231 (SC)*

– **Section 511** – Preparation & Attempt – Held – What constitutes an “attempt” is a mixed question of law and facts – “Attempt” is direct movement towards the commission of crime after preparations are over – It is essential to prove that “attempt” was with an intent to commit offence – Attempt is possible even when accused is unsuccessful in committing principal offence – If attempt to commit crime is accomplished, then crime stands committed for all intents and purposes: *State of M.P. Vs. Mahendra @ Golu, I.L.R. 2021 M.P. 2231 (SC)*

**PETROLEUM AND MINERALS PIPELINES**  
**(ACQUISITION OF RIGHT OF USER IN LAND)**  
**ACT (50 OF 1962)**

– **Section 2(b)** – “Corporation” – Held – Apex Court concluded that definition of “Corporation” is wide enough to include entities in the private sector as well: *Awadhesh Maheshwari Vs. Union of India, I.L.R. 2022 M.P. 1355*

– **Sections 3(1), 5, 6 & 10** and Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963, Rules 3(2)(a), 3(2)(b) & 8 – Procedure of Acquisition – Held – Petitioners did not submit any objection after issuance of notification – After expiry of period provided u/S 3, notification u/S 6 issued – Petitioners residing at Bhopal whereas land situated at Indore, therefore, proceedings were not in the knowledge of petitioners – It cannot be said that proceedings were not done under the Rules and thus liable to be quashed or declared to be void – Time for submitting objections expired long back – Only remedy available to petitioners is to submit claim for compensation u/S 10 – Petition dismissed: *Awadhesh Maheshwari Vs. Union of India, I.L.R. 2022 M.P. 1355*

**PETROLEUM AND MINERALS PIPELINES**  
**(ACQUISITION OF RIGHT OF USER IN LAND)**  
**RULES, 1963**

– **Rules 3(2)(a), 3(2)(b) & 8** – See – Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, Sections 3(1), 5, 6 & 10: *Awadhesh Maheshwari Vs. Union of India, I.L.R. 2022 M.P. 1355*

**PETROLEUM RETAIL DEALERSHIP**

– **Letter of Intent (LOI)** – Effect – Held – LOI is only a proposal that respondents are intending to enter into an agreement – Corporation was still having its rights to decline to enter into a contract – Once the contract is not completed, Corporation cannot be directed to complete all formalities – No right has accrued in his favour on basis of issuance of LOI – Petition dismissed: *Brijesh Shrivastava (Smt.) Vs. Hindustan Petroleum Corporation Ltd., I.L.R. 2021 M.P. \*13*

– **NOC by Collector** – Title of Land – Held – Merely NOC being issued by competent authority i.e. Collector does not amounts to its clearance of title – Apex Court concluded that while granting NOC, Collector is not concerned about ownership of land, he is concerned about the location of land and its suitability as a place for storage of petroleum – Petitioner failed to demonstrate clear title of land – No right

accrued in favour of petitioner: *Brijesh Shrivastava (Smt.) Vs. Hindustan Petroleum Corporation Ltd., I.L.R. 2021 M.P. \*13*

### **POLICE ACT (5 OF 1861)**

– **Section 44** – See – Police Regulations, M.P., Regulation 583 & 634: *Kamta Prasad Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1846*

### **POLICE EXECUTIVE (NON-GAZETTED) SERVICE RECRUITMENT RULES, M.P. 1997**

– **Rule 3** – Seniority – Direct Recruitment Employee – Held – After completion of probation, direct recruited employee is liable to be confirmed but his seniority is liable to be counted from date of initial appointment i.e. initial date of selection – In gradation list, direct recruited Sub-Inspectors has rightly been placed from date of selection which is prior to date of promotion to the petitioner – Petitions dismissed: *Shyam Kishore Tripathi Vs. Home Department Police, I.L.R. 2022 M.P. 1360*

### **POLICE REGULATIONS (M.P.)**

– **Regulation 10 & 72** – Promotion & Officiation to higher post – Held – In the circular, it was made clear that after taking charge of higher post on officiation, none shall have the right to promotion in future by virtue of seniority, therefore, this is not a promotion but only an officiation to higher post till the regular promotion is made: *Shyam Kishore Tripathi Vs. Home Department Police, I.L.R. 2022 M.P. 1360*

– **Regulation 59** – Termination – Suitability – Held – When a constable did not undergo basic training course and remained absent for almost a year (on different intervals) then his commitment, loyalty as well as discipline, all come under serious doubt and renders him unsuitable: *State of M.P. Vs. Yogesh Pathak, I.L.R. 2021 M.P. 2253 (DB)*

– **Regulation 59** – Termination Simpliciter – Enquiry – Held – Intermittent absence of petitioner for months together persuade the authority to take decision not to continue a dubious employee, thus it is termination simpliciter, especially when read with Regulation 59 of Police Regulations: *State of M.P. Vs. Yogesh Pathak, I.L.R. 2021 M.P. 2253 (DB)*

– **Regulation 59** and Government Servants (Temporary and Quasi-Permanent Service) Rules, M.P. 1960, Rule 12 – Termination – Unauthorized Leave – Held – During probation (training) period, petitioner remained absent (on different intervals)

for 338 days without any leave application/information – Conduct was not of desired standard – Several notices served on petitioner, thus sufficient opportunity was given – No departmental enquiry was required – Such termination order are not stigmatic in nature – Termination order was just and proper – Appeal allowed: *State of M.P. Vs. Yogesh Pathak, I.L.R. 2021 M.P. 2253 (DB)*

– **Regulation 226(iv)** – See – Civil Services (Pension) Rules, M.P., 1976, Rule 9(1): *Jagdish Chouhan (Baret) Vs. State of M.P., I.L.R. 2022 M.P. 44 (DB)*

– **Regulation 583 & 634**, Police Act (5 of 1861), Section 44 and Criminal Procedure Code, 1973 (2 of 1974), Section 154 & 155 – General Diary – Held – The Station-in-charge is responsible for the correct maintenance of the General Diary: *Kamta Prasad Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1846*

– **Regulation 634** – The General Diary – Economic Offences – Held – Every complaint received by I.O. shall be entered into General Diary as per Regulation 634 maintained at police station and entry number shall be given to complainant – Police officer shall process all complaints within 15 days and if not possible then maximum 42 days – S.P. shall keep a check that process is done within stipulated period and result is intimated to complainant and if not done, S.P. shall initiate Departmental Enquiry against delinquent officer: *Rajendra Singh Pawar Vs. State of M.P., I.L.R. 2021 M.P. 289*

– **Regulation No. 742** – See – Evidence Act, 1872, Section 32: *Bhagwan Singh Vs. State of M.P., I.L.R. 2022 M.P. 509 (DB)*

## PRACTICE

– **Act/Rules/Executive instructions** – Conflict – Held – If there exists any conflict between provisions of Act and the provisions of Rules or executive instructions, the former will prevail: *Satyam Cineplexes Ltd. (M/s) Vs. State of M.P., I.L.R. 2021 M.P. 642 (DB)*

– **Civil & Criminal Proceedings** – Held – Civil suit as well as criminal proceedings can proceed simultaneously and criminal case cannot be quashed or dismissed merely on ground of pendency of a civil suit even before a higher Court – Further, findings recorded by civil Court are not binding on criminal Court and vice-versa: *Kailash Vs. Arjun Singh, I.L.R. 2022 M.P. 1660*

– **Public Orders** – Object & Validity – Held – Validity of order of statutory authority must be judged on basis of grounds mentioned therein and it cannot be supported by assigning different reasons in the Court by filing counter affidavit – Public orders made by public authorities are meant to have public effect and are



intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to language used in the order itself: *Satyam Cineplexes Ltd. (M/s) Vs. State of M.P., I.L.R. 2021 M.P. 642 (DB)*

– **Suppression of Facts** – Held – Lawyer and litigants must appear before Court with clean hands without making any attempt to mislead the Court by suppressing material facts and documents: *Yogesh Gahlot Vs. State of M.P., I.L.R. 2022 M.P. \*33*

## PRACTICE & PROCEDURE

– **Binding Precedent** – Held – Judgments of Apex Court are not Euclid’s theorem, it must be considered in the facts situation of the case and on the basis of statute which governs the field: *M.P. Bus Operator Association Vs. State of M.P., I.L.R. 2021 M.P. 2242 (DB)*

– **Complaint** – Procedure – Apex Court laid down certain directions for action to be taken on receipt of complaint – Procedure discussed and enumerated: *Rajendra Singh Pawar Vs. State of M.P., I.L.R. 2021 M.P. 289*

– **Legislative Errors** – Held – Court cannot make modifications to amend or correct the legislative errors: *Ratanlal Vs. State of M.P., I.L.R. 2021 M.P. 527 (DB)*

– **Interim Order** – Held – Apex Court concluded that as a consequence of withdrawal of petition after obtaining interim order, the said interim order stands vacated/cancelled – When litigants do not know this legal position, they should be informed by Court of the consequences so that they may take an informed decision about withdrawal or abandoning the petition as not pressed: *Atul Kumar Ben Vs. Union of India, I.L.R. 2021 M.P. 1899 (DB)*

– **Interim Order** – Scope & Jurisdiction – Held – Apex Court concluded that no person can suffer from the act of Court and in case an interim order has been passed and petitioner takes advantage thereof and ultimately the petition stands dismissed, interest of justice requires that any undeserved or unfair advantage gained by a party invoking jurisdiction of Court must be neutralized: *Atul Kumar Ben Vs. Union of India, I.L.R. 2021 M.P. 1899 (DB)*

– **Interpretation of Rules** – Powers of Court – Held – If constitutionality of a Rule is not called in question, by adopting an interpretative process, Court cannot defeat the plain language and purpose of the Rule: *Madhav Sharma Vs. State of M.P., I.L.R. 2022 M.P. \*36 (DB)*

– **Parawise Reply** – Held – No parawise reply has been filed – Apex Court concluded that if a categorical pleading of petition is not clearly refuted/denied, it shall be treated to be admitted: *Sapphire Institute of Nursing & Science Vs. State of M.P.*, I.L.R. 2021 M.P. 2264 (DB)

– **Pleadings** – Held – Apex Court opined that if categorical averments/pleadings are not denied, same shall be treated to be admitted: *Oriental College Amarwada, Main Road, Amarwada Vs. State of M.P.*, I.L.R. 2022 M.P. 1147 (DB)

– **Review** – Scope – Held – Scope of review is very limited – Under the garb of review, petitioner cannot be permitted to re-argue the matter on merits, unless an error apparent on face of record is pointed out – No long drawn arguments can be entertained to fish out such error: *Rajasthan Patrika Pvt. Ltd. Vs. State of M.P.*, I.L.R. 2021 M.P. 309 (DB)

– **Submission of Judgments** – Held – If a party intends to rely on judgments, they should rely on them during the course of argument, so that not only Court can parallelly see their relevance, the other party can also put forth his/their point regarding the said judgment – After completion of arguments, petitioner supplied list of judgments, which do not mention relevant para numbers and proposition for which they are been relied – Judgments cannot be taken into account: *Sapphire Institute of Nursing & Science Vs. State of M.P.*, I.L.R. 2021 M.P. 2264 (DB)

– **Validity of Order** – Held – Validity of an order must be seen on basis of reasons assigned in impugned order and not on the basis of return or additional return filed in Court: *Oriental College Amarwada, Main Road, Amarwada Vs. State of M.P.*, I.L.R. 2022 M.P. 1147 (DB)

## **PRECEDENT**

– **Applicability** – Held – Judgment of Court cannot be read as Euclid's theorem – A little difference in facts or an additional fact may make a lot of difference in the precedential value of a decision: *Sonu Bairwa Vs. State of M.P.*, I.L.R. 2021 M.P. 1832 (DB)

– **Different Fact** – Held – A different singular fact of subsequent case can change the precedential value of a previous judgment: *Pooja Sahu (Dr.) Vs. State of M.P.*, I.L.R. 2022 M.P. \*56 (DB)

– **Different Fact** – Held – A judgment for purpose of precedent can be relied upon for the proposition of law that is actually decided and not for what can be logically deduced from it, for difference of a minor fact would make a lot of change

in the precedential value of the judgment: *Arun Parmar Vs. State of M.P.*, I.L.R. 2021 M.P. 822 (FB)

– **Different Fact** – Held – A singular different fact may change the precedential value of previous judgments – While considering a judgment, the facts and circumstances of that case as well as governing statutory provision must be taken into account: *M.P. Road Development Corporation Vs. Mohd. Shahbuddin*, I.L.R. 2022 M.P. 1927 (DB)

– **Binding** – Held – Judgment passed by highest Court of State is binding on subordinate Courts/Tribunals/Authorities of same State because of power of superintendence enjoyed by it – Judgment passed by one High Court is not binding on another High Court although it may have persuasive value: *Rakesh Singh Bhadoriya Vs. Union of India*, I.L.R. 2021 M.P. 222

– **Principle** – Held – A judgment for the purpose of precedent can be relied upon for proposition of law that it actually decided and not for what can be logically deduced from it, for difference of a minor fact would make a lot of change in precedential value of the judgment: *Lavlesh Kumar Mishra Vs. The Madhyanchal Gramin Bank*, I.L.R. 2021 M.P. 1818 (DB)

### **PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (PROHIBITION OF SEX SELECTION) ACT (57 OF 1994)**

– **Sections 6, 23 & 27** – See – Criminal Procedure Code, 1973, Section 439: *Rekha Sengar Vs. State of M.P.*, I.L.R. 2021 M.P. 378 (SC)

### **PREPARATION & REVISION OF MARKET VALUE GUIDELINE RULES, M.P., 2018**

– **Rules 5, 6 & 7** – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 26(1)(a): *M.P. Road Development Corporation Vs. Mohd. Shahbuddin*, I.L.R. 2022 M.P. 1927 (DB)

### **PREVENTION OF BLACK MARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT (7 OF 1980)**

– **Section 3(1)** – Detention Orders – Non-application of Mind – Held – Detention order do not mention the fact that petitioner was already in custody – If

detenu is in custody, detaining authority shall mention this fact in detention order and also consider the prospects of his release on bail and apprehension that he would indulge in prejudicial activities in case of his release on bail – Order vitiated as it suffers from non-application of mind – Impugned orders set aside – Petition allowed: *Rajeev Kumar Jain Vs. State of M.P., I.L.R. 2021 M.P. \*11 (DB)*

– **Section 3(3)** – Expression “Forthwith” – Obligation of District Magistrate – Held – Expression “forthwith” obliges District Magistrate passing the order to report the fact of having passed the order of preventive detention to State immediately without unnecessary delay – This obligation is in regard to order of preventive detention but not in regard to act of physical arrest of detenu – State Government is required to approve decision of detention and not the detention per se: *Gangaram Prajapati Vs. State of M.P., I.L.R. 2022 M.P. 282 (DB)*

– **Section 3(3)** – Forwarding the Case for Approval of State Government – Delay – District Magistrate forwarded the case for approval of State Government after nearly 10/11 days of passing the order – No explanation for delay communicated – District magistrate failed to discharge his obligation to forward the case to State without unnecessary delay – Order vitiated and is thus quashed – Petition allowed: *Gangaram Prajapati Vs. State of M.P., I.L.R. 2022 M.P. 282 (DB)*

## **PREVENTION OF CORRUPTION ACT (49 OF 1988)**

### **SYNOPSIS**

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Adverse Inference</li> <li>3. Complainant turning Hostile</li> <li>5. FIR against Bribe Giver</li> <li>7. Recovery of Tainted Money</li> <li>9. Miscellaneous</li> </ol> | <ol style="list-style-type: none"> <li>2. Competence of Accused</li> <li>4. Demand &amp; Acceptance</li> <li>6. Quashment</li> <li>8. Sanction/Sanctioning Authority</li> </ol> |
|--|---|

### **1. Adverse Inference**

– **Section 20** – Voice Sample – Adverse Inference – Held – An adverse inference can be drawn against appellant on his refusal to give sample of his voice: *Manmohan Singh Vs. State of M.P., I.L.R. 2022 M.P. \*88*

### **2. Competence of Accused**

– **Sections 7, 13(1)(d) & 13(2)** – Competence of Accused – Held – Whether accused had a competence or not cannot be an important aspect – The impression in

the mind of bribe-giver that the accused would be of some help, is sufficient: *Manmohan Singh Vs. State of M.P., I.L.R. 2022 M.P. \*88*

### 3. Complainant turning Hostile

– **Sections 7, 13(1)(d) & 13(2)** – Complainant turning Hostile – Effect – Held – The entire evidence of a hostile witness would not stand wiped out – Relevant part of evidence of hostile witness which is admissible can be read either in favour of prosecution or defence, provided the same is corroborated from other evidence on record – Even if complainant turned hostile still accused can be held guilty on basis of surrounding circumstances: *Manmohan Singh Vs. State of M.P., I.L.R. 2022 M.P. \*88*

### 4. Demand & Acceptance

– **Section 7** – Demand & Acceptance – Held – Demand of illegal gratification is sine qua non to constitute the offence – Mere recovery of currency notes cannot constitute offence u/S 7, unless it is proved beyond all reasonable doubt that accused voluntarily accepted money knowing it to be bribe: *Hariprasad Lal Shrivastava (Shri) (Deceased) Through L.Rs. Vs. State of M.P., I.L.R. 2022 M.P. 2079*

– **Sections 7, 13(1)(d)(i) & 13(2)** – Demand – Reason/Motive – Held – Evidence shows that salary of complainant had already been sanctioned by appellant much prior to date of complaint – Appellant had no occasion or reason to make the alleged demand – Evidence also shows that complainant was annoyed with appellant – In absence of any independent corroboration, it is highly unsafe to rely on testimony of complainant – Conviction set aside – Appeal allowed: *Hariprasad Lal Shrivastava (Shri) (Deceased) Through L.Rs. Vs. State of M.P., I.L.R. 2022 M.P. 2079*

– **Sections 7, 13(1)(d)(i) & 13(2)** – Demand & Acceptance – Held – Complainant went alone to house of appellant and immediately came out within a minute – None of the members of trap party who were at a far distance could hear the demand or see the money being handed over to appellant to prove that same was pursuant to any demand – No evidence to show that appellant made any demand of bribe: *Hariprasad Lal Shrivastava (Shri) (Deceased) Through L.Rs. Vs. State of M.P., I.L.R. 2022 M.P. 2079*

### 5. FIR against Bribe Giver

– **Section 12** – Bribe Giver – Directions issued to State police that in every such cases of bribe, FIR shall be registered against the bribe giver u/S 12 of the Act: *Surajmal Vs. State of M.P., I.L.R. 2021 M.P. 135*

– **Section 12 & 24 (repealed)** – Held – Applicant and complainant both alleged that they have given bribe to each other for getting unlawful work done and are aggrieved by non return of the bribe money as the said work was not done – Vide amendment of 2018, Section 24 was repealed which accorded protection to bribe givers – In instant case, offence registered in 2019 thus applicant and complainant liable to be prosecuted u/S 12 of the Act: *Surajmal Vs. State of M.P., I.L.R. 2021 M.P. 135*

## 6. Quashment

– **Section 7** and Criminal Procedure Code, 1973 (2 of 1974), Section 482 – Quashment of Charge-Sheet – Insufficient Evidence – Held – The only evidence is written FIR, statement of shadow witness who had not even heard the conversation of accused and complainant and FSL Report which opines that voice sample collected does not match the recorded voice – Allowing to proceed trial on basis of uncorroborated complaint would be an exercise in futility leading to no fruitful result except wasting precious time of Court – Charge-sheet and consequential proceedings quashed – Application allowed: *Narendra Mishra Vs. State of M.P., I.L.R. 2022 M.P. 1113 (DB)*

– **Sections 7, 13(1)(d), 13(2) & 20** – See – Criminal Procedure Code, 1973, Section 482: *Rajendra Kumar Gautam Vs. State of M.P., I.L.R. 2022 M.P. 603 (DB)*

## 7. Recovery of Tainted Money

– **Sections 7, 13(1)(d)(i) & 13(2)** – Recovery of Tainted Money – Held – Possession of bribe money was denied by appellant and he showed ignorance – Appellant was slapped and forced to pick up notes from place pointed by complainant – Thereafter if his hands were subjected to phenolphthaline powder test, certainly colour of chemical would turn pink: *Hariprasad Lal Shrivastava (Shri) (Deceased) Through L.Rs. Vs. State of M.P., I.L.R. 2022 M.P. 2079*

## 8. Sanction/Sanctioning Authority

– **Section 19** – Sanction for Prosecution – Application of Mind – Held – If petitioner raising issue of improper application of mind by sanctioning authority, he has the opportunity to raise the same during the trial – Order of sanction granted in present case is not a nullity – Challenge to sanction order at this stage is premature – Petition dismissed: *Sabit Khan Vs. State of M.P., I.L.R. 2021 M.P. 1871 (DB)*

– **Section 19 and Constitution** – Article 226 – Sanction for Prosecution – Scope & Jurisdiction – Held – Apex Court concluded that grant of sanction is an

administrative function – Adequacy of material placed before sanctioning authority cannot be gone into by Court as it does not sit in appeal over the sanction order – Elaborate discussion of material in the sanction order is not necessary – Order of sanction should not be construed in a pedantic manner and there should not be a hypertechnical approach to test its validity – Proper stage of examining the validity of a sanction is during trial: *Sabit Khan Vs. State of M.P., I.L.R. 2021 M.P. 1871 (DB)*

– **Section 19(3) & (4)** – Non-examination of Sanctioning Authority – Held – Witness proved the signature of sanctioning authority, he brought the record also – He denied that sanctioning authority issued sanction without going through the papers – Sanction order is a detailed order – Appellant never raised any objection at the earliest stage regarding non-examination of sanctioning authority before trial Court – It cannot be said that sanction was issued without due application of mind: *Manmohan Singh Vs. State of M.P., I.L.R. 2022 M.P. \*88*

## 9. Miscellaneous

– **Sections 13(1)(e), 13(2) & 19** – See – Criminal Procedure Code, 1973, Section 156(3) & 173(3): *Bhupendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 764 (DB)*

## **PREVENTION OF MONEY LAUNDERING ACT, 2002** **(15 OF 2003)**

– **Section 5 & 8** – Attachment of Property – Nature of Order – Held – Orders of attachment issued by invoking Section 5 is 'provisional' in nature and not a final order – Attachment order passed by competent authority and "reason to believe" therefor is also tentative/provisional in nature subject to confirmation by adjudicating authority – Appellants have remedy to raise all the pleas including jurisdiction of attaching authority and discrimination before adjudicating authority – Appeal disposed: *Abhay Nigam Vs. Union of India, I.L.R. 2021 M.P. 1633 (DB)*

– **Sections 5, 8 & 49** – Attachment of Property – Redressal Mechanism – Held – Act provides three tiers of redressal mechanism – Order passed u/S 5(1) of the Act of 2002 needs to be confirmed by adjudicating authority – In that event, a further appeal is provided before the Appellate Tribunal and Section 49 again provides further appeal to the High Court: *Abhay Nigam Vs. Union of India, I.L.R. 2021 M.P. 1633 (DB)*

## **PRINCIPLE OF ESTOPPEL**

– **Principle of Estoppel** – Held – None can claim 'estoppel' against a statutory provision: *Vatash Sharma Vs. Indore Development Authority*, I.L.R. 2022 M.P. 814 (DB)

## **PRINCIPLE OF ESTOPPEL & WAIVER**

– **Principle of Estoppel & Waiver** – Held – Appellant promptly challenged the inaction of respondents during the life time of panel and therefore litigation cannot be rejected on the ground that life of select list has expired during the pendency of writ petition – Neither principle of estoppel nor waiver can be a reason to deprive appellant to get the fruits of litigation: *Amita Gupta (Dr.) (Smt.) Vs. State of M.P.*, I.L.R. 2022 M.P. 977 (DB)

## **PRINCIPLE OF RES-JUDICATA**

– **Principle of Res-Judicata** – Held – Since issue of impleadment of same party was finally adjudicated between the same parties, hence, present subsequent application for same purpose is hit by principle of constructive *res-judicata* – Further, reviewing and recalling the earlier order is not permissible under law: *Shyamlal Vyas (Dead) Through LRs. Smt. Gopi Vyas Vs. Inderchand (Dead) Through LRs. Shri Om Prakash Jain*, I.L.R. 2022 M.P. 1296

## **PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (32 OF 2012)**

### **SYNOPSIS**

- |                                       |   |
|---------------------------------------|---|
| 1. <b>Anticipatory/Regular Bail</b>   | 2. <b>Applicability of Act</b>              |
| 3. <b>Cancellation of Bail</b>        | 4. <b>Delay in Trial/Duty of Court</b>      |
| 5. <b>Inconsistency Regarding Age</b> | 6. <b>Sexual Intent &amp; Any Other Act</b> |
| 7. <b>Miscellaneous</b>               |   |

### **1. Anticipatory/Regular Bail**

– **Section 7 & 8** and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Grounds – Held – Holding of hand of prosecutrix can be termed as physical contact without penetration, but it will not constitute offence u/S 7 of POCSO Act – As per statement u/S 164 Cr.P.C., there has been no contact with vagina, anus or breast of prosecutrix – *Prima facie*, applicants cannot be held



punishable u/S 8 of the Act – Application allowed: *Aom Tiwari Vs. State of M.P.*, I.L.R. 2021 M.P. 551

– **Section 22(2)** and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Anticipatory Bail – Protection – Held – Prosecutrix resiled from her complaint and it is not the case of applicant that complaint lodged by prosecutrix was false – Giving false evidence before Court is not covered u/S 22(2) – Applicant not entitled for protection u/S 22(2) of the Act – Application dismissed: *Raman Vs. State of M.P.*, I.L.R. 2022 M.P. \*44

– **Section 22(2)** and Criminal Procedure Code, 1973 (2 of 1974), Section 439 – Prosecutrix Turning Hostile – Bail – Held – Prosecutrix turned hostile – DNA profile of A-1 not found in any of the incriminating articles of prosecutrix whereas DNA profile of A-2 was found – Prosecutrix has not deposed truth before trial Court, thus it is not a case of false complaint or giving false information – False complaint or false information would necessarily mean the information given to police and not the evidence given in trial Court – Section 22(2) of 2012 Act not applicable – Bail granted to A-1: *Sanjay Rawat Vs. State of M.P.*, I.L.R. 2022 M.P. \*39

## 2. Applicability of Act

– **Section 7 & 8** and Penal Code (45 of 1860), Section 354 – Applicability – Held – Provisions of Section 354 IPC is much wider than Section 7 of POCSO Act – Section 7 is gender neutral as regards both the victim and the offender where as offence u/S 354 IPC is a gender specific and applies only where victim is woman but offender can be man or a woman – It is not restricted to only those parts of anatomy of female which bears specific mention in Section 7 of POCSO Act: *Aom Tiwari Vs. State of M.P.*, I.L.R. 2021 M.P. 551

## 3. Cancellation of Bail

– **Section 31(1) & 35(2)** and Criminal Procedure Code, 1973 (2 of 1974), Section 439(2) – Non-Cooperation in Trial by Accused – Cancellation of Bail – Held – If any accused delays trial deliberately and does not cooperate in following the mandate of Section 35(1) & (2) of the Act or even otherwise, then he renders himself liable for cancellation of bail and/or other stringent measures which can be adopted by trial Court for ensuring speedy trial: *The Prosecutrix Vs. State of M.P.*, I.L.R. 2022 M.P. \*46

## 4. Delay in Trial/Duty of Court

– **Section 31(1) & 35(2)** – Delay in Trial – Duty of Court – Held – Section 35(1) & (2) mandates concluding the trial within one year and recording of statement

of prosecutrix within one month from the date of cognizance of offence – When case bears such serious allegations of rape on minor girl, then it is the duty of Court to complete the trial as expeditiously as possible to avoid secondary victimization of complainant side: *The Prosecutrix Vs. Dr. Piyush Saxena, I.L.R. 2022 M.P. 1498*

### 5. Inconsistency Regarding Age

– **Section 42-A** and Penal Code (45 of 1860), Section 375, Exception 2 – Inconsistency regarding Age – Overriding Effect – Held – Section 42-A inserted in POCSO Act vide amendment on 03.02.2013 and in consequence of such amendment, POCSO Act will override provisions of any other law including IPC to the extent of any inconsistency – Apex Court concluded that Exception 2 to Section 375 is arbitrary and needs to be struck down: *Vishal Vs. State of M.P., I.L.R. 2021 M.P. 1458*

### 6. Sexual Intent & Any Other Act

– **Section 7** – Expression “Sexual Intent” & “Any Other Act” – Held – Most important ingredient for constituting offence u/S 7 is the “sexual intent” and not the “skin to skin” contact with the child – Whoever does any other act with sexual intent which involves physical contact without penetration, would also be committing the offence of “sexual assault” u/S 7 of the Act: *Himanshu Gandhi Vs. State of M.P., I.L.R. 2022 M.P. 1487*

### 7. Miscellaneous

– **Section 3 & 4** – See – Penal Code, 1860, Sections 302, 363, 377 & 201: *In Reference (Suo Motu) Vs. Yogesh Nath @ Jogesh Nath, I.L.R. 2022 M.P. 722 (DB)*

– **Section 3/6** – See – Penal Code, 1860, Section 375, Clause 6, 376(1) & 376(2)(i): *Jitendra Vs. State of M.P., I.L.R. 2022 M.P. 1287*

– **Section 4** – See – Penal Code, 1860, Section 376(1): *Pinki Vs. State of M.P., I.L.R. 2021 M.P. 1586*

– **Section 5/6 & 16/17** – See – Penal Code, 1860, Section 375, Exception 2: *Vishal Vs. State of M.P., I.L.R. 2021 M.P. 1458*

– **Section 5(L) & 6** – See – Penal Code, 1860, Sections 302, 366, 376-A & 201: *In Reference (Suo Motu) Vs. Manoj, I.L.R. 2021 M.P. 2150 (DB)*

– **Section 5(L) & 6** – See – Penal Code, 1860, Sections 363, 366, 376(2)(n), 376(3): *Pramod Yadav Vs. State of M.P., I.L.R. 2021 M.P. 1151 (DB)*

– **Section 5L/6** – See – Penal Code, 1860, Section 376(2)(I) & 376(2)(N): *Phiroz Vs. State of M.P., I.L.R. 2022 M.P. 1631*

– **Section 9(1)(m)/10** – See – Criminal Procedure Code, 1973, Section 227 & 228: *Himanshu Gandhi Vs. State of M.P., I.L.R. 2022 M.P. 1487*

– **Section 31(1) & 35(2)** – See – Criminal Procedure Code, 1973, Section 439(2): *The Prosecutrix Vs. Dr. Piyush Saxena, I.L.R. 2022 M.P. 1498*

– **Section 31(1) & 35(2)** – See – Criminal Procedure Code, 1973, Section 482: *The Prosecutrix Vs. State of M.P., I.L.R. 2022 M.P. \*46*

– **Section 42** – See – Penal Code, 1860, Section 376(DB): *State of M.P. Vs. Irfan, I.L.R. 2022 M.P. 350 (DB)*

## **PROTECTION OF HUMAN RIGHTS ACT, 1993** **(10 OF 1994)**

– **Section 2(d)** and Constitution – Article 21 – Human Rights – Held – Section 2(d) defines “human rights” to mean “the rights relating to life, liberty, equality and dignity of individual guaranteed by Constitution or embodied in International Covenants and enforceable by Courts in India” – Right to health and medical care is one of the facets enshrined under Article 21 of Constitution: *In Reference (Suo Motu) Vs. Union of India, I.L.R. 2021 M.P. 698 (DB)*

## **PUBLIC DISTRIBUTION SYSTEM (CONTROL)** **ORDER, M.P., 2015**

– **Clause 2(c) & 16(8)** – Appellate Authority/Collector – Held – When there is irregularity in operation of fair price shop then Collector has to form an opinion for prosecution – Collector in Clause 16(8) does not mean appellate authority as he has to form its independent opinion regarding lodging of prosecution – Collector is to act as authority exercising original jurisdiction under Clause 16(8): *Nagendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 1553*

– **Clause 2(c) & 16(8)** – Appellate Authority – Powers of Collector & SDO – Held – Occurrence of word ‘Collector’ wherever it occurs in Food Control Order, 2015 does not mean that he is appellate authority – Whether Collector is appellate authority or not is to be construed in reference to context – Appellate authority means Collector of concerned district unless context otherwise requires – Action under Clause 16 for suspension of fair price shop and cancellation of license is to be taken by shop allotment authority, which is SDO: *Nagendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 1553*

– **Clause 16** and Criminal Procedure Code, 1973 (2 of 1974), Section 438 – Opportunity of Hearing – Held – Clause 16 does not contemplate opportunity of hearing before registration of FIR to police – It contemplates opportunity of hearing before proceeding for suspension or revocation of shop allotment – At this stage no miscarriage of justice has been cause to applicant – Application dismissed: *Chironjilal Kushwah Vs. State of M.P., I.L.R. 2022 M.P. \*1*

### **PUBLIC PROSECUTION (GAZETTED) SERVICE RECRUITMENT RULES, M.P., 1991**

– **Rule 12** – Waiting List – Validity – Held – Rule 12 of 1991 Rules is applicable to appellant which does not postulate preparation of waiting list and only one merit list to be prepared as per rules – Appellant cannot derive any legal right from being in waiting list – Rules of 1991 do not grant any power to Commission or State with regard to waiting list – Preparation of such waiting list is contrary to 1991 Rules and is bad in law – Appeal dismissed: *Hemraj Suman Vs. M.P. Public Service Commission, I.L.R. 2022 M.P. 809 (DB)*

### **PUBLIC TRUSTS ACT, M.P. (30 OF 1951)**

– **Section 2 & 8** and Civil Courts Act, M.P. (19 of 1958), Section 3 – Term “Court” & “A Civil Court” – Held – Since the words “a Civil Court” are used in Section 8 of the Trust Act, District Judge was justified in transferring the suit before a Civil Court as per Section 3 of the M.P. Civil Courts Act, 1958 – Petition dismissed: *Seth Trilokchand Kalyanmal Digambar Jain Vs. Sushil Kumar Kasliwal, I.L.R. 2022 M.P. \*21*

– **Sections 2(1), 5, 26 & 28** – Powers of Registrar – Scope & Jurisdiction – Held – Section 5 & 28 concludes that powers of Court which are flowing from CPC are given to Registrar for limited purpose of holding inquiry and not for any kind of adjudication – Section 2(1) & 26 concludes that legislature never intended to empower Registrar as a “Court” – Registrar under the Act of 1951 is not a “Court”: *Badri Prasad Tiwari Vs. State of M.P., I.L.R. 2022 M.P. 615 (DB)*

– **Section 3 & 34-A** – Powers of Registrar – Delegation of Power – Held – Unless and until a separate notification u/S 34-A of the Act is issued, the powers of registrar cannot be delegated to SDO by work distribution memo – SDO has no authority to exercise powers of Registrar Public Trust – Impugned order being without jurisdiction is quashed: *Prashant Sharma Vs. State of M.P., I.L.R. 2022 M.P. \*90*

## Q

### **QAWAID MUAFIDARAN JUVVE ARAJI VANAKDI, RIYASAT GWALIOR, SAMVAT, 1991**

– **Section 3(1) & 4(4)** – “Muafi” – Grant of “Nemnuk” – Held – Muafi means cash or land (आराजी) – Instant case is a case of Muafi cash (nemnuk) which was given to ancestors of appellant for offering prayer and to serve deities, therefore it cannot be assumed through Act of Samvat 1991 that by way of grant of Muafi Devsthani or nemnuk, intention of the Act or native State was to call the temple as Government Temple: Ramkrishna Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1749

## R

### **RAILWAY (PUNITIVE CHARGES FOR OVERLOADING OF WAGON) RULES, 2005**

– **Rule 3** – See – Railways Act, 1989, Section 73: *Union of India Vs. M/s. S.R. Ferro Alloys, I.L.R. 2021 M.P. 1493 (DB)*

### **RAILWAYS ACT (24 OF 1989)**

– **Section 73** and Railway (Punitive Charges for Overloading of Wagon) Rules, 2005 – Rule 3 – Punitive Charge – Opportunity of Hearing/Notice – Held – Contention that Railways should have provided opportunity of hearing to writ petitioner before re-weighment at New Katni Junction and at least, before levying of punitive charges, was categorically considered and repelled by Division Bench in its judgment in S. Goenka Lime & Chemicals Ltd. – It was held that giving prior notice before taking such surprise action, would be counterproductive: *Union of India Vs. M/s. S.R. Ferro Alloys, I.L.R. 2021 M.P. 1493 (DB)*

– **Section 73** and Railway (Punitive Charges for Overloading of Wagon) Rules, 2005 – Rule 3 – Punitive Charge for Overloading – Held – Representative of writ petitioner was intimated to unload excess material from overloaded wagons and shift it in underloaded wagons – Writ petitioner arranged two labourers for shifting goods in underweight wagons – Material was accordingly adjusted and thereafter only train could depart and for this reason of overloading and detention of train, Station Manager imposed penalty upon him u/S 73 of Railways Act – Impugned order set aside – Appeal allowed: *Union of India Vs. M/s. S.R. Ferro Alloys, I.L.R. 2021 M.P. 1493 (DB)*

**RAJYA SURAKSHA ADHINIYAM, M.P. 1990 (4 OF 1991)****SYNOPSIS**

- |  |  |
|--|--|
| <b>1. Cross-Examination</b>                    | <b>2. Fundamental Rights</b>           |
| <b>3. Old &amp; Stale Cases/Records</b>        | <b>4. Principle of Natural Justice</b> |
| <b>5. Reasoning</b>                            | <b>6. Requirements</b>                 |
| <b>7. Subjective Satisfaction of Authority</b> |  |

**1. Cross-Examination**

– **Sections 4, 5 & 6** – Externment Orders – Cross Examination – Held – Cross-examination is the only important tool in the hands of wrongdoer to prove his innocence – Cross examination of witness is not a mere formality: *Rajjan Yadav Vs. State of M.P., I.L.R. 2021 M.P. 1512*

**2. Fundamental Rights**

– **Section 5(b)** and Constitution – Article 19(1) & 21 – Fundamental Rights – Held – A matter involving valuable fundamental rights i.e. right to freedom or right to personal liberty needs to be considered seriously – Unless the conditions mentioned u/S 5(b) are strictly satisfied, an order of externment cannot be justified: *Chandra Prakash @ Tinku Pandey Vs. State of M.P., I.L.R. 2022 M.P. 269*

**3. Old & Stale Cases/Records**

– **Section 5** – Externment Orders – Old & Stale Cases – Test of Reasonableness – Held – Unless and until there is live link between the cases with necessity of externment order, old and stale cases cannot be taken into consideration – No finding by District Magistrate that act of petitioner is causing or calculated to cause alarm, danger or harm to person or property and the witnesses are not coming forward to give evidence in public by reason of apprehension regarding safety of their person or property – Test of reasonableness not satisfied – Impugned order set aside – Petition allowed: *Anwar Khan Jilani Vs. State of M.P., I.L.R. 2022 M.P. 1862*

– **Section 5(b)** – Grounds – Held – Rojnamcha dated 03.11.2020 indicates that name of petitioner was removed from Gunda list way back in year 2004 and he was helping police in many ways and surprisingly Rojnamcha dated 11.11.2020 records that he is involved in continuous criminal activities and is a threat to common man: *Chandra Prakash @ Tinku Pandey Vs. State of M.P., I.L.R. 2022 M.P. 269*

#### 4. Principle of Natural Justice

– **Sections 4, 5 & 6** – Externment Orders – Principle of Natural Justice – Held – Compelling petitioner’s counsel to argue finally before cross-examination of witness and thereafter not giving him any opportunity to argue in light of cross-examination, is a complete go by to principles of natural justice – District Magistrate acted in a haste – No reasoning mentioned in the order – Procedure adopted by District Magistrate shows that he acted malafidely and arbitrarily – Impugned order set aside – Petition allowed with cost of Rs. 20,000: *Rajjan Yadav Vs. State of M.P., I.L.R. 2021 M.P. 1512*

#### 5. Reasoning

– **Sections 4, 5 & 6** – Externment Orders – Reasoning – Held – Nothing has been discussed in the order as to why activities of petitioner are detrimental to law and order requiring him to remove him from the District of Jabalpur and its neighboring District – Reasons are heartbeat of an order – Order passed without application of mind: *Rajjan Yadav Vs. State of M.P., I.L.R. 2021 M.P. 1512*

#### 6. Requirements

– **Sections 4, 5 & 6** – Externment Orders – Requirement – Held – Two conditions are required to be satisfied for passing an order of externment, firstly, alleged offence should have close proximity to the order of externment; and, secondly, there has to be some material to show that witnesses were not coming forward to give statement against the proposed externnee: *Rajjan Yadav Vs. State of M.P., I.L.R. 2021 M.P. 1512*

– **Section 5(b)** – Existence of “Some Material” – Held – An order directing externment should show existence of “some material” warranting such a course – Reference is to be made to “some material” on record and if it is done, requirement of law are met – It is not the “sufficiency of material” but the “existence of material” which is sine qua non for passing such an order: *Chandra Prakash @ Tinku Pandey Vs. State of M.P., I.L.R. 2022 M.P. 269*

– **Section 5(b)** – Requirements – Held – Order does not show any objectivity – No satisfaction of “immediate engagement” or possibility of his engagement in commission of offence as mentioned in Section 5(b) – Order passed without “application of mind” – Requirements of Section 5(b) not satisfied – It is a case of “no material” at all to exercise power u/S 5(b) – Impugned orders set aside – Petition allowed: *Chandra Prakash @ Tinku Pandey Vs. State of M.P., I.L.R. 2022 M.P. 269*

## **7. Subjective Satisfaction of Authority**

– **Section 5** – Externment Orders – Subjective Satisfaction – Held – Competent authority must record its subjective satisfaction of the existence of the ground mentioned in Section 5 of the Act: *Anwar Khan Jilani Vs. State of M.P.*, I.L.R. 2022 M.P. 1862

– **Section 5(b)** – Duty/Satisfaction of District Magistrate – Held – Only long list of registration of criminal cases does not ipso facto give right to District Magistrate to exercise power u/S 5(b) unless he is satisfied on basis of “some material” that such person is engaged or is about to engage in commission of crime involving force or violence or an offence under Chapter, XII, XVI & XVII or u/S 506 or 509 IPC or in abetment – Further, District Magistrate has to form an opinion that witnesses are not coming to give evidence in public against such person by reason of apprehension regarding safety of their person and property: *Chandra Prakash @ Tinku Pandey Vs. State of M.P.*, I.L.R. 2022 M.P. 269

– **Section 5(b)(i) & (ii)** – Externment Orders – Held – District Magistrate has not recorded his satisfaction on basis of materials that witnesses are not coming forward to give evidence in public against petitioner by reasons of apprehension to their safety – Second requirement to Section 5(b) not fulfilled – Most of cases are old and stale – There has to be sufficient material for passing externment order as fundamental right of freedom of a person is involved – Impugned orders are in violation of requirements of 1990 Act and is thus quashed – Petition allowed: *Lacchu @ Laxman Vs. State of M.P.*, I.L.R. 2022 M.P. \*27

### **RECRUITMENT AND CONDITIONS OF SERVICE OF CONTINGENCY PAID (DISTRICT AND SESSION JUDGE ESTABLISHMENT) EMPLOYEES RULES, 1980**

– **Rule 9** – Termination – Held – Normally when services of temporary employee or probationer or contingency paid employee is brought to end by passing innocuous order due to unsatisfactory nature of service or on account of an act for which an action is taken, but termination is made in a simplicitor manner without conducting of inquiry or without casting any stigma on employee, the provisions of Rule 9 can be taken aid of: *Rajesh Kumar Rathore Vs. High Court of M.P.*, I.L.R. 2022 M.P. 121 (DB)

### **REGISTRATION ACT (16 OF 1908)**

– **Section 17** and Stamp Act, Indian (2 of 1899), Section 35 – Document of Family Settlement – Admissibility in Evidence – Held – The document is a family



settlement indicating creation of right in favour of parties over immovable property, on date of execution thus it needs registration u/S 17 of 1908 Act and further it is required to be duly stamped u/S 35 of Stamp Act, otherwise the document will be inadmissible in evidence – Impugned order set aside – Petition allowed: *Dilip Kumar Vs. Laxminarayan, I.L.R. 2022 M.P. 1697*

– **Section 17** and Stamp Act, Indian (2 of 1899), Section 35 – Nature of Document – Held – Nature of document is determined not from the heading thereto, but from its recital and therefore it is necessary to go through the recital: *Dilip Kumar Vs. Laxminarayan, I.L.R. 2022 M.P. 1697*

– **Section 17 & 49** and Stamp Act, Indian (2 of 1899), Section 35 – Unstamped & Unregistered Document – Collateral Purpose – Held – Agreement to sale was a notarized document – Held – If any document is unstamped or unregistered, same is inadmissible and cannot be used even for collateral purpose – No error in impugned order – Petition dismissed: *Manish Singh Malukani Vs. Hari Prasad Gupta, I.L.R. 2022 M.P. \*67*

– **Section 17(1)(b) & 49** and Stamp Act, Indian (2 of 1899) – Relinquish Deed – Admissibility in Evidence – Held – Document is unregistered relinquish deed which is compulsorily registerable u/S 17 of Registration Act, thus as per Section 49, same cannot be admitted in evidence to establish right, title and interest of suit property – Such relinquish deed cannot be admitted in evidence for said collateral purpose, even if it was duly stamped as it was not “independent of” or “divisible from” the very object and purpose of such document for which it was executed – No illegality in impugned order – Petition dismissed: *Gangashankar Dubey Vs. Smt. Sindhu Bai, I.L.R. 2022 M.P. 675*

– **Section 17(1)(b) & 49** and Stamp Act, Indian (2 of 1899) – Unstamped/ Insufficient Stamped Document – Admissibility in Evidence – Held – It cannot be disputed that an unstamped or insufficiently stamped document can be admitted in evidence on taking deficit stamp duty and penalty as adjudicated under the Stamp Act, but the pre-condition is that such document should be admissible in evidence as per provision to Section 49 of Registration Act: *Gangashankar Dubey Vs. Smt. Sindhu Bai, I.L.R. 2022 M.P. 675*

## **REGISTRATION OF BIRTHS AND DEATHS ACT** **(18 OF 1969)**

– **Section 13(3)** and Registration of Births and Deaths Rules, M.P., 1999, Rule 9 – Held – Tehsildar conducted summary enquiry on basis of application, affidavit of father of corpus, panchnama of witnesses and school leaving certificate of different

schools – It is a sham proceeding and nonest in eyes of law – CMO issued birth certificate on basis of directions given by Tehsildar in capacity of Executive Magistrate – Birth certificate cannot be treated as valid in the eyes of law and is thus quashed – Appeal fails and is disposed of: *Kallu Khan Vs. State of M.P., I.L.R. 2022 M.P. 1127 (DB)*

– **Section 13(3) & 30** and Registration of Births and Deaths Rules, M.P., 1999, Rule 9 – Judicial Magistrate First Class & Executive Magistrate – Jurisdiction – Held – Delayed registration of births and deaths can only be verified before JMFC of concerned jurisdiction in a judicial proceeding – Executive Magistrate in State Government shall not exercise any jurisdiction nor shall entertain any application in cases u/S 13(3) of 1969 Act for adjudicating authenticity of delayed registration of births and deaths beyond one year of its occurrence – Inclusion of Executive Magistrate in Rule 9 of Rules of 1999 struck down: *Kallu Khan Vs. State of M.P., I.L.R. 2022 M.P. 1127 (DB)*

– **Section 13(3) & 30**, Registration of Births and Deaths Rules, M.P., 1999, Rule 9 and General Clauses Act (10 of 1897), Section 20 – Framing of Rules – Held – Legislative intent u/S 13(3) was to confer jurisdiction over JMFC only and not otherwise – State Government in Rules of 1999 included jurisdiction to Executive Magistrate – State Government could not have framed Rules contrary to directions contained in Section 30 of 1969 Act: *Kallu Khan Vs. State of M.P., I.L.R. 2022 M.P. 1127 (DB)*

### **REGISTRATION OF BIRTHS AND DEATHS RULES, M.P., 1999**

– **Rule 9** – See – Registration of Births and Deaths Act, 1969, Section 13(3) & 30: *Kallu Khan Vs. State of M.P., I.L.R. 2022 M.P. 1127 (DB)*

### **RELIGIOUS ENDOWMENTS ACT (20 OF 1863)**

– **Deity** – Held – The idol as representing and embodying the spiritual purpose of the donor is the juristic person recognized by law and in this juristic person the dedicated property vests: *Mahant Narayan Puri (D) By LR Vs. Jagdish Chandra (D) By LRs., I.L.R. 2022 M.P. 1768*

– **Land of Temple** – Held – Plaintiffs and defendant failed to prove their ownership over the disputed lands – Also remained failed to prove ownership on basis of Maurishi Krishak or adverse possession – Land belongs to Deity of Kali Mai Temple who is the juristic person – Collector directed to take over possession of land and proceed for fresh appointment of Mahant and Pujari as per provisions of Act of

1863 – Suit dismissed – Appeal disposed of: *Mahant Narayan Puri (D) By LR Vs. Jagdish Chandra (D) By LRs.*, I.L.R. 2022 M.P. 1768

### **REVIEW JURISDICTION**

– **Mistake & Error** – Held – Apex Court concluded that mistake or error apparent on face of record means that mistake or error which is prima facie visible and does not require any detail examination – Erroneous view of law is not a ground for review – Review cannot partake the category of appeal – Principles regarding maintainability of review petition enumerated: *Zigitza Health Care Ltd. (M/s.) Vs. Naresh Kumar Verma*, I.L.R. 2022 M.P. 871 (DB)

– **Mistake & Error** – Held – Apex Court concluded that mistake or error apparent on the face of record means mistake or error which is prima facie visible and does not require any detail examination – Erroneous view of law is not a ground for review – Review cannot partake the category of appeal – Scope & principle of review enumerated: *State of M.P. Vs. Nidhi (I) Industries*, I.L.R. 2022 M.P. 2043

### **RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT (30 OF 2013)**

– **Sections 11, 19 & 21** – Acquisition Proceedings – Principle of Legitimate Expectations – Held – Apex Court concluded that doctrine cannot be pressed into service where public interest is likely to suffer against personal interest of a party – Private interest would stand subordinate to the public good: *Kirat Lodhi Vs. State of M.P.*, I.L.R. 2022 M.P. 83

– **Sections 11, 19 & 21** – Land Acquisition Proceedings – Mandatory Requirements – Held – Documents filed by respondents shows that notification was got published in two daily newspapers, notice u/S 21 was got published to individuals including petitioner – Mandatory requirements have not been violated and acquisition proceedings has been completed after following due procedure of law – Petitions dismissed: *Kirat Lodhi Vs. State of M.P.*, I.L.R. 2022 M.P. 83

– **Sections 11, 19 & 21** – See – Constitution – Article 226: *Kirat Lodhi Vs. State of M.P.*, I.L.R. 2022 M.P. 83

– **Section 24(2)** – Lapse of Proceedings – Deeming Provision – Held – Award passed on 07.03.2009, not prior to 5 years from date of commencement of Act of 2013, thus deeming provision of lapsation of acquisition proceedings cannot be

pressed into service – No infirmity in impugned order – Appeals dismissed: *Vishnu Vs. State of M.P.*, I.L.R. 2021 M.P. 1292 (DB)

– **Section 24(2)** – Non-payment of Compensation – Lapse of Proceedings – Held – Apex Court opined that if attempts were made to deliver compensation and claimants failed to receive it, acquisition proceedings will not fail or vanish in thin air: *Vishnu Vs. State of M.P.*, I.L.R. 2021 M.P. 1292 (DB)

– **Section 24(2)** and Constitution – Article 226 – Reliefs Claimed & Pleadings – Held – Apex Court concluded that relief claimed beyond pleadings should not be granted – Entire edifice of petition and relief is founded on Section 24(2), no challenge was made to acquisition proceedings, thus in absence of pleadings, the same cannot be called in question by way of oral/written arguments – Single Judge rightly did not interfere: *Vishnu Vs. State of M.P.*, I.L.R. 2021 M.P. 1292 (DB)

– **Section 26(1)(a)** and Land Acquisition Act (1 of 1894), Section 23 – “Market Value” – Held – There is marked difference in the language employed and in formula prescribed for determination of market value of land in the previous Act and Subsequent Act – Act of 2013 gives statutory recognition to “market value” specified in Stamp Act: *M.P. Road Development Corporation Vs. Mohd. Shahbuddin*, I.L.R. 2022 M.P. 1927 (DB)

– **Section 26(1)(a)** and Land Acquisition Act (1 of 1894), Section 23 – Theory of Deduction – Held – No provision under 2013 Act which mandates reduction of 50% compensation for initial 1000 sqm – Compensation needs to be determined as per relevant Land Acquisition Act which is in vogue – Theory of deduction is alien in view of Section 26(1)(a) of 2013 Act – Compensation of appellant be determined by applying Collector guidelines without any deductions – Appeals filed by Corporations dismissed – Appeals filed by claimants allowed: *M.P. Road Development Corporation Vs. Mohd. Shahbuddin*, I.L.R. 2022 M.P. 1927 (DB)

– **Section 26(1)(a)** and Stamp Act, Indian (2 of 1899), Section 75 – Expression “Market Value” – Held – The new expression employed in Section 26(1)(a) must be given full meaning and effect – The expression “market value” specified in the Stamp Act is not such a dull and lifeless expression which can be ignored: *M.P. Road Development Corporation Vs. Mohd. Shahbuddin*, I.L.R. 2022 M.P. 1927 (DB)

– **Section 26(1)(a)**, Stamp Act, Indian (2 of 1899), Section 75, Preparation & Revision of Market Value Guideline Rules, M.P., 2018, Rules 5, 6 & 7 and National Highways Act (48 of 1956), Section 3G(5) – Collector Guidelines – Held – Collector guidelines provides determining factors for calculation of market value of land and compensation u/S 26(1)(a) – Collector guidelines having received statutory colour if r/w Section 75 of Stamp Act and provisions of Guideline Rules, 2018, it can certainly

become basis for determination of compensation for land acquisition under Highways Act as well: *M.P. Road Development Corporation Vs. Mohd. Shahbuddin, I.L.R. 2022 M.P. 1927 (DB)*

– **Section 33** – Modification/ Correction/Review of Award – Scope & Powers – Held – Land Acquisition Officer has no power to review original award – Section 33 only empowers Collector to correct any clerical /arithmetical mistakes in the award or errors arising therein, either on his own motion or on application of any interested person or local authority, subject to compliance of other conditions of Section 33 – Proportion of share, determined in original award cannot be corrected u/S 33 – Impugned order has an effect of modifying the original award and is thus set aside – Petition allowed: *Dinendra Parashar Vs. State of M.P., I.L.R. 2022 M.P. \*49*

– **Section 33** – Review of Award – Jurisdiction – Held – Unless Statute provides for power of review, an award once passed in itself becomes final – Power of Review is not an inherent power, it must be conferred by law either specifically or by necessary implication – Respondent by reviewing its award, acted beyond jurisdiction – Impugned order quashed – Petition allowed: *Indrakala Agrawal (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 916 (DB)*

– **Section 64** – Challenge to Award – Held – If determination of entitlement of compensation is not acceptable to any person interested, remedy is to take recourse of Section 64 wherein determination can be made regarding measurement of land, amount of compensation, person to whom compensation is payable, rights under Chapter V & VI or apportionment of compensation among concerned persons: *Dinendra Parashar Vs. State of M.P., I.L.R. 2022 M.P. \*49*

– **Section 64** – See – Constitution – Article 226: *Indrakala Agrawal (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 916 (DB)*

## **RIGHTS OF PERSONS WITH DISABILITIES ACT** **(49 OF 2016)**

– **Section 34** – See – Constitution – Article 16(1) & 16(4): *Saroj Dehariya Vs. State of M.P., I.L.R. 2021 M.P. 1704 (DB)*

## **RULES AND ORDERS (CRIMINAL), M.P.**

– **Rule 458** – Held – As per Rule 458, a document put on the record shall be marked with the endorsement of case no., Exhibit No., proved by witness concerned, the date on which it was proved and the endorsement shall be signed by the Presiding Officer: *Satyendra Koshta Vs. The Registrar General, I.L.R. 2022 M.P. 1329 (DB)*

## **RULES REGARDING RECORD OF RIGHTS**

– **Rule 24 & 32** – Adjudication of Title on Basis of Will – Competent Authority – Held – Rule 24 & 32 do not contemplate adjudication of title by Tehsildar, it is meant for recording “consequence of adjudication” and “transfer of ownership” for mutation purpose – It is the domain of Civil Courts only to adjudicate the title of parties: *Hariprasad Bairagi Vs. Radheshyam, I.L.R. 2021 M.P. \*16 (DB)*

## **S**

### **SAND (MINING, TRANSPORTATION, STORAGE AND TRADING) RULES, M.P., 2019**

– **Rule 20** – Confiscation of Vehicle – Held – In 2019 Sand Rules, power of confiscation is available to competent authority only in case of illegal extraction/mining and not illegal transportation or illegal storage: *Rajendra Singh Vs. State of M.P., I.L.R. 2021 M.P. 1854 (DB)*

– **Rule 20(2)** – Enquiry – Opportunity of Hearing – Held – Enquiry under Rule 20(2) is necessary with regard to three factors, i.e. mineral being sand or not, whether alleged offender holds valid ETP and quantity transported is more than quantity mentioned in ETP or not – Enquiry cannot be unilateral and reasonable opportunity of hearing has to be afforded regarding above three aspects – Impugned order passed without affording reasonable opportunity of hearing to petitioner, hence quashed – Collector directed to pass a fresh order after affording reasonable opportunity of hearing – Petition allowed: *Surendra Kumar Shivhare Vs. State of M.P., I.L.R. 2021 M.P. 668 (DB)*

– **Rule 20(2) & 20(3), Proviso** – Compounding & Penalty – Powers of Collector – Held – If illegal transporter fails to come forward to seek compounding, despite being intimated about his right to compound the offence, Collector is left with no option but to impose penalty in terms of table in Rule 20 – If illegal transporter comes forward seeking compounding then Collector has to pass a compounding order as per table in Rule 20, without any discretion to refuse compound or to reduce/enhance the compounding fee prescribed: *Surendra Kumar Shivhare Vs. State of M.P., I.L.R. 2021 M.P. 668 (DB)*

– **Rule 20(2) & 20(3), Proviso** – Opportunity of Hearing – Concept – Discussed and explained: *Surendra Kumar Shivhare Vs. State of M.P., I.L.R. 2021 M.P. 668 (DB)*

– **Rule 20(2) & 20(3), Proviso** – Opportunity of Hearing – Held – Concept of reasonable opportunity contained in proviso placed at the end of Rule 20(3) is squarely applicable to Rule 20(2) also: *Surendra Kumar Shivhare Vs. State of M.P.*, I.L.R. 2021 M.P. 668 (DB)

– **Rule 27** – See – Minor Mineral Rules, M.P. 1996, Rule 53: *Rajendra Singh Vs. State of M.P.*, I.L.R. 2021 M.P. 1854 (DB)

– **Rule 27** – Term “transgression” – Held – To exercise power of confiscation, competent authority have to travel beyond statutory limits of 2019 Sand Rules and borrow such power from repealed Rules of 1996 or 2006 Rules or 2018 Sand Rules – This would squarely fall within the expression “transgression”: *Rajendra Singh Vs. State of M.P.*, I.L.R. 2021 M.P. 1854 (DB)

– **and Minor Mineral Rules, M.P. 1996, Rule 53** and Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, M.P., 2006 – Applicability – Held – 2019 Sand Rules is a special law, thus takes precedence over 1996 Rules and 2006 Rules which fall in category of general law since both these Rules relate to all kinds of minor minerals whereas 2019 Sand Rules relates exclusively to minor mineral of sand: *Rajendra Singh Vs. State of M.P.*, I.L.R. 2021 M.P. 1854 (DB)

### **SAND RULES, M.P., 2018**

– **Rule 23(1)** – See – Minor Mineral Rules, M.P. 1996, Rule 53: *Rajendra Singh Vs. State of M.P.*, I.L.R. 2021 M.P. 1854 (DB)

### **SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT (33 OF 1989)**

– **Section 3(1)(r) & 3(1)(s)** – Expression “Public Place” & “Public View” – Discussed and Explained: *Anil Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 746

– **Section 3(1)(r) & 3(1)(s)** – Intention – Held – Apex Court concluded that under 1989 Act, offence is not established merely on fact that informant is a member of SC/ST unless there is an intention to humiliate a member of such community – Even for offence u/S 3(1)(s), condition precedent is intention of accused to commit offence against person of SC/ST community: *Anil Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 746

– **Section 3(1)(r) & 3(1)(s)** – See – Penal Code, 1860, Sections 302, 307, 294, 147, 148, 149: *Balram Vs. State of M.P.*, I.L.R. 2022 M.P. \*17

– **Sections 3(1)(r), 3(1)(s), 18 & 18-A** and Criminal Procedure Code, 1973 (2 of 1974), Section 41(1)(b)(ii) – Anticipatory Bail Application – Maintainability –

Held – As per FIR, incident alleged to be happened at open farm in public view – Appellants intentionally insulted complainant abusing on his caste – Accused and complainant live in same village, accused were well aware of caste of complainant – Prima facie, intention of appellant is to humiliate/insult the complainant – Bar u/S 18 and 18-A is attracted – Anticipatory bail application not maintainable – Direction regarding procedure of arrest enumerated – Appeal disposed: *Anil Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 746

– **Section 3(1)(x)** and Constitution – Article 142 – Compromise – Objectives of the Act – Grounds – Held – There was an undeniable pre-existing civil dispute between parties – Incident was one being overwhelmingly private in nature having only subtle undertone of criminality – No untoward incident between parties after compromise – Appellant although do not belong to same caste as of victim, but he too belongs to relatively weaker/backward Section of society and not in any better economic/social position – Overriding objectives of Act would not be overwhelmed if present proceedings are quashed: *Ramawatar Vs. State of M.P.*, I.L.R. 2022 M.P. 1 (SC)

– **Sections 3(1)(w)(i), 3(2)(va) & 3(2)(v)** – See – Penal Code, 1860, Sections 363, 366, 376(2)(n), 376(3): *Pramod Yadav Vs. State of M.P.*, I.L.R. 2021 M.P. 1151 (DB)

– **Sections 3(1)(z), 3(1)(zc) & 3(1)(s)** – See – Penal Code, 1860, Section 498-A: *Abhishek Pandey @ Ramji Pandey Vs. State of M.P.*, I.L.R. 2021 M.P. 1960

– **Sections 3(2)(va), 18 & 18-A** and Penal Code (45 of 1860), Sections 294, 323 & 506/34 – Bailable Offences – Held – Offence u/S 3(2)(va) of 1989 Act is punishable with same punishment for offence under IPC – Appellants facing allegation u/S 323 and 506 which are specified in Schedule of offence u/S 3(2)(va) of 1989 Act and which are not having punishment of more than 3 years in IPC, same be treated as bailable in nature – When offences are bailable in nature and need for anticipatory bail does not arise, Section 18 and 18-A is not applicable: *Anil Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 746

– **Section 14-A(1)** – See – Criminal Procedure Code, 1973, Section 439: *Pramod Yadav Vs. State of M.P.*, I.L.R. 2021 M.P. 1151 (DB)

– **Section 18 & 18-A** – Anticipatory Bail Application – Maintainability – Held – Apex Court concluded that if complaint does not make out prima facie case for applicability of provisions of 1989 Act, bar created by Section 18 and 18-A shall not be applied: *Anil Patel Vs. State of M.P.*, I.L.R. 2021 M.P. 746



**SCHEME FOR APPOINTMENT OF ARBITRATORS BY  
THE CHIEF JUSTICE OF M.P. HIGH COURT, 1996**

– **Scheme No. 2(a)** – See – Arbitration and Conciliation Act, 1996, Section 11(6): *Rajeev Agnihotri Vs. Ashok Jain, I.L.R. 2021 M.P. 1941*

**SECURITIZATION AND RECONSTRUCTION OF  
FINANCIAL ASSETS AND ENFORCEMENT OF  
SECURITY INTEREST (SARFAESI) ACT (54 OF 2002)**

– **Section 13 & 14** – See – Constitution – Article 226: *Mishri Bai (Smt.) Vs. Shubh Laxmi Mahila Cooperative Bank Ltd., I.L.R. 2022 M.P. 1720 (DB)*

– **Section 13 & 14** – Validity of Order – Held – Secured creditor is not required to approach again and again before District Magistrate of DRT for recovery, once order has been passed u/S 14 – Until and unless entire amount is recovered, order remains valid – Cheques given by petitioner under settlement were dishonored – Impugned notice rightly issued by Tehsildar – Petition dismissed: *Mishri Bai (Smt.) Vs. Shubh Laxmi Mahila Cooperative Bank Ltd., I.L.R. 2022 M.P. 1720 (DB)*

– **Sections 13(4), 14 & 17** and Constitution – Article 226/227 – Alternate Remedy of Appeal – Maintainability of Petition – Held – Section 14 is one of the mode of taking over possession of secured asset – Action u/S 14 constitutes an action taken after the stage of Section 13(4) thus, against such action, remedy of appeal u/S 17 before DRT is available – Petition dismissed: *Madan Mohan Shrivastava Vs. Additional District Magistrate (South) Bhopal, I.L.R. 2021 M.P. 683 (DB)*

– **Sections 14, 17 & 37** and Criminal Procedure Code, 1973 (2 of 1974), Section 20 – Scope & Jurisdiction – Competent Authority – Held – District Magistrate while passing order u/S 14 exercises only administrative/executive functions – As per Section 20 Cr.P.C. Additional District magistrate also exercises same power as are exercisable by District Magistrate as per directions of State Government – Hence, power u/S 14 of Act of 2002 can be exercised by Additional District Magistrate also – Impugned order not beyond jurisdiction – Petition dismissed: *Rachna Mahawar Vs. The District Magistrate, I.L.R. 2021 M.P. 908 (DB)*

– **Section 18** – See – Constitution – Article 226: *Devendra Kumar Rai Vs. State Bank of India, I.L.R. 2022 M.P. \*83 (DB)*

– **Section 18** – Words “any order” – Held – In the appellate provision u/S 18, the expression “any order” is wide enough to include interlocutory order – Several High Courts opined that even interlocutory order passed by DRT can be challenged

before Appellate Tribunal by filing appeal u/S 18 of the Act: *Devendra Kumar Rai Vs. State Bank of India, I.L.R. 2022 M.P. \*83 (DB)*

## **SERVICE LAW**

### **SYNOPSIS**

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|--|--|
| <b>1. Alternate Remedy</b>               | <b>2. Appointment</b>                                  |
| <b>3. Back Wages</b>                     | <b>4. Cancellation of Appointment</b>                  |
| <b>5. Caste Certificate</b>              | <b>6. Circular/Executive Instructions</b>              |
| <b>7. Compassionate Appointment</b>      | <b>8. Competent Authority</b>                          |
| <b>9. Compulsory Retirement</b>          | <b>10. Conditional Promotion Order &amp; Reversion</b> |
| <b>11. Contractual Appointment</b>       | <b>12. Criminal Antecedent Report</b>                  |
| <b>13. Deemed Termination</b>            | <b>14. Departmental Enquiry</b>                        |
| <b>15. Dismissal/Termination</b>         | <b>16. Disproportionate Punishment</b>                 |
| <b>17. Examination</b>                   | <b>18. Guest Teachers</b>                              |
| <b>19. Honourable Acquittal</b>          | <b>20. Legitimate Expectations</b>                     |
| <b>21. Pension/Retiral Dues</b>          | <b>22. Principle of Natural Justice</b>                |
| <b>23. Promotion</b>                     | <b>24. Recovery</b>                                    |
| <b>25. Regularisation / Cancellation</b> | <b>26. Selection Process</b>                           |
| <b>27. Suspension</b>                    | <b>28. Transfer</b>                                    |
| <b>29. Unauthorized Absence</b>          | <b>30. Miscellaneous</b>                               |

### **1. Alternate Remedy**

– **Appeal** – Held – Petitioner removed from service on directions of Commissioner – First appeal would go before Collector who is subordinate to Commissioner and second appeal would go before Commissioner, the person at whose behest impugned order was passed – Thus, where from the facts, it is revealed that appeal would be an empty formality then bar of alternative remedy does not haunt the petitioner – Three contingencies where alternative remedy would not operate as a bar, enumerated: *Seema Jatav (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 1854*

## 2. Appointment

– **Character & Integrity** – Held – Respondent who wishes to join police force must be a person of utmost rectitude and have impeccable character and integrity – A person having a criminal antecedents would not be fit in this category: *Union of India Vs. Methu Meda, I.L.R. 2021 M.P. 2221 (SC)*

– **Ground of Merit** – Held – Petitioner, though less meritorious was appointed in post of “Guruji” – When her initial appointment was cancelled on that very year in which it was made, petitioner continued only by virtue of interim orders passed by authorities, thus she cannot claim equity with regard to the same – All authorities have held that appointment was bad in law – Appeal dismissed: *Rita Gupta Vs. State of M.P., I.L.R. 2022 M.P. \*7 (DB)*

– **Preference** – Held – If all candidates were having similar qualification, respondents should have looked into provisions for giving preference – As petitioner was entitled for preference being a spinster of 30 years, respondents should not have looked into the marks obtained by them in Higher Secondary/Inter examination – Appointment of petitioner wrongly cancelled – Impugned order set aside – Petition allowed: *Madhu Morya (Ku.) Vs. State of M.P., I.L.R. 2021 M.P. 627*

– **Policy Guidelines** – Applicability – Held – Petitioner appointed on 12.06.2007 when policy dated 27.05.2006 was in force – New policy came on 10.07.2007 – Since appointment of petitioner was made prior to coming into force of new policy dated 10.07.2007, case of petitioner has to be considered as per guidelines dated 27.05.2006: *Madhu Morya (Ku.) Vs. State of M.P., I.L.R. 2021 M.P. 627*

– **Appointment & Regularization** – Held – Post of “Guruji” was regularized to the post of “Samvida Shala Shikshak” – Appellant was not holding a valid post of “Guruji” as on the date of appointment as “Samvida Shala Shikshak”, but was continuing on basis of interim orders – Since, in final order, appointment of appellant on post of “Guruji” has been set aside, consequently her appointment as Samvida Shala Shikshak also would not survive for consideration: *Rita Gupta Vs. State of M.P., I.L.R. 2022 M.P. \*7 (DB)*

– **Select List** – Rights of Candidates – Held – Apex Court concluded that though a candidate who passed examination or whose name appeared in select list does not have any indefeasible right to be appointed yet appointment cannot be denied arbitrarily and select list cannot be cancelled without any proper justification: *Shailesh Kumar Sonwane Vs. State of M.P., I.L.R. 2021 M.P. 2092 (DB)*

– **Select List & Appointment** – Held – Unless an order of appointment is issued, no vested rights are conferred on candidate simply because his/her name

appears in the select list: *Rajkali Saket (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. \*71 (DB)*

– **Resultant Vacancy** – Held – Apex Court concluded that if a person is appointed on resultant vacancy of another employee whose case is pending before Court then natural consequence of the order of termination being set aside is that the new incumbent has to make way for him: *Seema Jatav (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 1854*

– **Wait List** – Rights of Candidates – Held – A candidate in waiting list, as per his position in list, has right to be considered for appointment if for any reason the post falls vacant during validity period of list – Such right is not a vested right but it is only a right to be considered for appointment – Appointing authority can deny appointment for some justifiable reason to such candidate: *Shailesh Kumar Sonwane Vs. State of M.P., I.L.R. 2021 M.P. 2092 (DB)*

### 3. Back Wages

– **Concept of Calculation** – Held – Back wages have to be worked out based on wages which would have been drawn by workman during period he was on termination till he was actually re-instated with all corresponding increase in wages from time to time – Back wages are never relatable to the concept of last wages drawn: *Mahip Kumar Rawat Vs. Shri Ashwini Kumar Rai, I.L.R. 2021 M.P. 1560 (DB)*

– **Entitlement** – Held – Respondents may initiate action against appellant after following principle of natural justice within 60 days failing which right to proceed against him shall stand abated – If no action is taken within time limit, respondents shall pay full back wages and other consequential benefits to appellant as if his services were never terminated: *Sanjay Jain Vs. State of M.P., I.L.R. 2021 M.P. 1808 (DB)*

– **Full Back Wages** – Principle & Interference by Court – Held – If the Labour Court/Industrial Tribunal finds that employee/ workman is not at all guilty of any misconduct or management has foisted a false charge, then award of full back wages is justified and superior Courts should not interfere with the award merely because there is possibility of forming a different opinion on entitlement of employee to get full back wages or management's obligation to pay the same: *Chief General Manager, S.E.C.L. Vs. Chandramani Tiwari, I.L.R. 2021 M.P. 2307*

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

illegal and management failed to prove any misconduct – No perversity/jurisdiction lapse to call for interference under Article 227 – Order of reinstatement with 50% back wages is not unreasonable – Petition dismissed: *Chief General Manager, S.E.C.L. Vs. Chandramani Tiwari, I.L.R. 2021 M.P. 2307*

– **Other Employment** – Onus – Held – Once employee shows that he was not employed, the onus lies on management to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments: *Chief General Manager, S.E.C.L. Vs. Chandramani Tiwari, I.L.R. 2021 M.P. 2307*

– **Principle** – Held – Concept of back wages is based on fundamental principle of compensating workman for the period he remained unemployed owing to termination which was found to be unlawful at subsequent point of time: *Mahip Kumar Rawat Vs. Shri Ashwini Kumar Rai, I.L.R. 2021 M.P. 1560 (DB)*

– **Principle of “No Work No Pay”** – Held – Since petitioner involved himself in a crime, though he was later acquitted, he had disabled himself from rendering service on account of conviction and incarceration in jail – Petitioner not entitled for payment of back wages – Petition dismissed: *Upendrasingh Vs. State of M.P., I.L.R. 2022 M.P. 1365*

– **Reinstatement with Back Wages** – Held – While setting aside punishment of dismissal and remanding the matter to disciplinary authority, Single Judge gone wrong in granting reinstatement with salary, increments and other benefits – It will be the substituted punishment imposed by authority which will govern the financial and other benefits to respondent employees from due date – Order granting back wages and other consequential benefits is set aside – Appeals partly allowed: *Hindustan Petroleum Corp. Ltd. Vs. Kailash Chandra, I.L.R. 2021 M.P. 1055 (DB)*

#### 4. Cancellation of Appointment

– **Opportunity of Hearing** – Held – No opportunity of hearing was granted to petitioner before holding her appointment as void ab initio – Had she been issued notice or given an opportunity, she could have brought the correct facts and the corrigendum and the modified/amended Table E-5 to the notice of committee: *Kavita Dehalwar (Mrs.) Vs. Union of India, I.L.R. 2022 M.P. 1726*

– **Qualification** – Held – Despite possessing requisite qualification, petitioner’s appointment was cancelled relying on a superseded Table E-5 – Petitioner was holding Bachelor degree and as per amended Table E-5, she was qualified for post of Lecturer – Respondents directed to reinstate petitioner in service – As she was wrongly

terminated, she would be entitled for 50% salary – Petition allowed: *Kavita Dehalwar (Mrs.) Vs. Union of India, I.L.R. 2022 M.P. 1726*

## 5. Caste Certificate

– **Competent Authority** – Held – A judicial officer cannot issue a caste certificate – Issuance of caste certificate is purely an executive function and has nothing to do with the judicial functions of Judicial officer – Additional C.J.M. has no authority to issue caste certificate: *Bharat Singh Batham Vs. Life Insurance Corp. of India, I.L.R. 2021 M.P. 1096*

– **False & Forged** – Difference – Held – False certificate would mean that by representing or giving false information to competent authority, aspirant obtained a certificate from him whereas forged certificate would mean that it was never issued by any competent authority but was created by aspirant himself with sole intention to use it as genuine certificate: *Bharat Singh Batham Vs. Life Insurance Corp. of India, I.L.R. 2021 M.P. 1096*

– **Constitution** – Article 342(1) – Scheduled Caste/ Scheduled Tribe – False Caste Certificate – Held – Petitioner obtained employment against the post reserved for Scheduled Tribe – Petitioner belongs to “Halba Koshti” caste which is OBC in State of M.P. and not a scheduled tribe – When employment/appointment is obtained on basis of false/forged caste certificate, person concerned cannot be allowed to enjoy the benefit of wrong committed by him – Such appointment is void ab initio and is liable to be cancelled: *Nageswar Sonkesri Vs. State of M.P., I.L.R. 2021 M.P. 265*

## 6. Circular/Executive Instructions

– **Executive Order** – Effect – Held – Apex Court concluded that executive order of government cannot be made operative with retrospective effect: *Arun Narayan Hiwase Vs. State of M.P., I.L.R. 2021 M.P. 246*

– **Statutory Rules** – Held – Circulars or executive instructions cannot override the statutory rules: *Swaran Vibha Pandey Vs. State of M.P., I.L.R. 2021 M.P. 2259 (DB)*

– **Policy Guidelines** – Retrospective Operation – Held – Guidelines are executive instructions and are always prospective in operation until and unless they are made retrospective specifically – Nothing in the new guidelines to indicate that they were made retrospective in operation: *Madhu Morya (Ku.) Vs. State of M.P., I.L.R. 2021 M.P. 627*

## 7. Compassionate Appointment

– **Adopted Child** – Entitlement – Held – An adopted child, to be considered for compassionate appointment, must be legally adopted by deceased employee during his life time and a child adopted later on by the widow of deceased, is not eligible for purpose of compassionate appointment in view of clause 2.5 of policy – Petitioner was adopted by widow of deceased employee after his death – Not entitled for consideration for compassionate appointment under the policy – Petition dismissed: *Jitendra Kumar Sen Vs. State of M.P., I.L.R. 2022 M.P. 1180*

– **Belated Claim** – Held – Compassionate appointment is carved out as exception to general rule – Its basic purpose is to provide immediate helping hand to the family in distress – Appointment cannot given after more than two decades – There cannot be a reservation of vacancy till a candidate becomes major after number of years – Writ Court wrongly directed consideration of R-1 on compassionate ground after almost 24 years from date of death of his father – Impugned order set aside – Appeal allowed: *Managing Director, M.P. Paschim Kshetra Vidyut Vitaran Co. Vs. Ashiq Shah, I.L.R. 2021 M.P. 1485 (DB)*

– **Compassionate/Contractual Appointment** – Delay & Latches – Held – Instead of compassionate appointment, petitioner was granted contractual appointment – It does not mean that application for compassionate appointment is satisfied – In law, appellant's application continues to remain – Respondents neither granted compassionate appointment nor have rejected his application – Delay if any is to be held against respondents and not against petitioner – Respondent directed to grant compassionate appointment to appellant – Appeal allowed with cost of Rs. 1 lakh: *Dharmendra Kumar Tripathi Vs. State of M.P., I.L.R. 2022 M.P. 1830 (DB)*

– **Compassionate/Contractual Appointment** – Held – An appointment on compassionate ground is an appointment to a regular post – Rules do not permit substitution of an appointment on compassionate ground through contractual appointment – Even assuming that posts were not available that does not give right to respondents to convert an appointment on compassionate ground on contractual basis: *Dharmendra Kumar Tripathi Vs. State of M.P., I.L.R. 2022 M.P. 1830 (DB)*

– **Contingency** – Held – Two recognized contingency for grant of compassionate appointment are – (i) appointment on compassionate ground to meet sudden crisis occurring in a family on account of death of bread winner while in service and (ii) appointment on compassionate ground to meet crisis in family on account of medical invalidation of bread winner: *Managing Director, M.P. Paschim Kshetra Vidyut Vitaran Co. Vs. Ashiq Shah, I.L.R. 2021 M.P. 1485 (DB)*

– **Entitlement** – Held – Harmonious reading of preamble to Memorandum of Settlement goes to indicate that same would necessarily include not only dependent son and daughter but also widow or widower – It is only by an error or omission that female or male spouse has been left out in Option No. 3 – Reading of word “female or male spouse” would not alter the terms of agreement – Appeal disposed: *Manager (ER) Vs. Smt. Preeti Singh, I.L.R. 2022 M.P. 58 (DB)*

– **Ex-gratia Compensation** – Held – Petitioner availed *ex-gratia* compensation of Rs. 7 lacs in lieu of compassionate appointment, as per policy prevailing at the time of death of deceased – She also submitted affidavit that now she would have no future claims – Petitioner’s submission that she is ready to refund the said amount cannot be accepted at this stage in absence of any such provision under the policy – No interference warranted – Appeal dismissed: *Kalawati Chaudhary (Smt.) Vs. Union Bank of India, I.L.R. 2022 M.P. \*35 (DB)*

– **Language of Policy** – Held – Main provision provides for making application within 7 years from date of death – Appended explanation contemplates a situation where after death, even after completion of 7 years therefrom, if his first child is still a minor, then from date of him attaining majority, he can make application within one year – Employee died on 12.07.2013 and application made on 21.07.2017, well within period of 7 years – Rejection of application on ground that same was filed beyond one year from date of him attaining majority is erroneous – Petition allowed: *Abhishek Wankhade Vs. Tribal Work (Welfare) Department, I.L.R. 2022 M.P. 1183*

– **Marital Status** – Concealment – Held – When there is no requirement for disclosing marital status in the application form prescribed by University itself, it cannot be said that there was any concealment on part of the appellant: *Kirti Sharma (Smt.) Vs. Jawaharlal Nehru Krishi Vishva Vidyalaya, Jabalpur, I.L.R. 2022 M.P. \*86 (DB)*

– **Married Daughter** – Entitlement – Held – Policy denying compassionate appointment to married daughters have been declared unconstitutional by the Full Bench of this Court – Apex Court had also quashed such rules – No reason to deny the benefit of compassionate appointment to appellant – Respondent directed to reinstate appellant with all consequential benefits – Appeal allowed: *Kirti Sharma (Smt.) Vs. Jawaharlal Nehru Krishi Vishva Vidyalaya, Jabalpur, I.L.R. 2022 M.P. \*86 (DB)*

– **Policy** – Held – Nothing on record to show that on date of death of deceased employee there was any policy applicable which provides for compassionate appointment to dependent of deceased employee who was working under Contingency Paid Establishment – Appeal dismissed: *Bholeram Raikwar Vs. State of M.P., I.L.R. 2022 M.P. \*81 (DB)*



– **Principle** – Held – Compassionate appointment is not an alternate method of employment but the same is given solely on humanitarian grounds with sole object to provide immediate relief to employee's family to tide over sudden financial crisis, thus same cannot be claimed as a matter of right: *Rajendra Kumar Raikwar Vs. State of M.P., I.L.R. 2022 M.P. 278*

– **Principle & Object** – Held – Compassionate appointment cannot be claimed as a matter of right as it is not a vested right and policy prevailing at the time of death of deceased is relevant – Apex Court concluded that such appointment cannot be granted after a lapse of long period – Its object was to enable the family of deceased to get over financial crisis at the time of death of sole bread earner: *Kalawati Chaudhary (Smt.) Vs. Union Bank of India, I.L.R. 2022 M.P. \*35 (DB)*

– **Relevant Policy** – Held – Apex Court concluded that for compassionate appointment, the policy/circular prevalent at the time of death of deceased employee is only to be considered and not the subsequent policy – Circular of 31.08.2016 not applicable to cases where death occurred on 20.01.2015 – Petition dismissed: *Rajendra Kumar Raikwar Vs. State of M.P., I.L.R. 2022 M.P. 278*

## 8. Competent Authority

– **Jurisdiction** – Held – Petitioner removed from service on directions of Commissioner – Discretion vested into Project Officer was virtually usurped by superior authority/appellate authority, thus matter suffers from jurisdictional error because jurisdiction is not exercised independently: *Seema Jatav (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 1854*

## 9. Compulsory Retirement

– **Inferences** — Held – When a man is being punished with such serious consequences, it cannot be done on inferences, it has to be based on some material: *K.C. Rajwani Vs. State of M.P., I.L.R. 2022 M.P. 1553 (DB)*

– **Judicial Officer** – Ground of Granting Adjournments – Held – Only because an adjournment has been granted, the integrity of a Judge cannot be doubted – One really does not know as to what happens when an adjournment is sought for – Whether concerned Judge was justified in granting adjournments or not, cannot be ascertained by merely looking at order sheets and the number of times adjournment is granted – It cannot be said that it lacks devotion by the Officer: *K.C. Rajwani Vs. State of M.P., I.L.R. 2022 M.P. 1553 (DB)*

– **Judicial Officer** – Ground of Granting Bail – Held – If bail is granted in violation of a mandatory provision of any statute, it reflects judicial competency of

Judge in understanding the law or he has either misread the evidence or has applied it wrongly – It cannot lead to conclusion that he is either corrupt or bail was granted for extraneous consideration: *K.C. Rajwani Vs. State of M.P., I.L.R. 2022 M.P. 1553 (DB)*

– **Judicial Officer** – Grounds of Corruption – Held – Disagreement note of Disciplinary Authority against finding of Enquiry Officer indicates that it is only on inference that a conclusion of corruption is made out – Entire ACR and Vigilance report do not speak anything against integrity of petitioner, on the contrary, there was remark of his being a good officer – Reversal of findings of Enquiry Officer is for no valid reasons and is purely based on surmises and conjectures – Impugned orders set aside – Petition allowed: *K.C. Rajwani Vs. State of M.P., I.L.R. 2022 M.P. 1553 (DB)*

– **Judicial Officer** – Held – Service graph of petitioner clearly indicate that his service career does not appear to be satisfactory – It is not just a remote or stray entry or a single entry but there are series of entries made against the petitioner – There is application of mind and it cannot be said that decision was based on no material – Such decision cannot be said to be illegal unless it is proved to have been issued on account of malafide reasons – There are no allegation of malafides – Petition dismissed: *Purushottam Bhatt Vs. State of M.P., I.L.R. 2022 M.P. 1539 (DB)*

– **Principle of Natural Justice** – Held – Principles of natural justice are not applicable in cases of compulsory retirement – Uncommunicated adverse confidential report can also be taken into consideration while taking the decision regarding compulsory retirement – Power to retire compulsorily a government servant in terms of service rules is absolute, provided the authority concerned forms a bonafide opinion that it is in public interest: *Ashok Kumar Vs. District & Sessions Judge, Betul, I.L.R. 2022 M.P. \*79 (DB)*

– **Uncommunicated Adverse Remarks** – Held – Apex Court concluded that for considering compulsory retirement of government employee, even uncommunicated entries in his Confidential Report can also be taken into consideration – Such adverse entries do not lose significance, even if employee has subsequently been promoted: *Purushottam Bhatt Vs. State of M.P., I.L.R. 2022 M.P. 1539 (DB)*

## 10. Conditional Promotion Order & Reversion

– **Conditional Promotion Order & Reversion** – Held – Promotion order clearly indicates that candidate should obtain a certificate in Hindi Typing and one year diploma in computer within a period of 2 years from date of promotion – Petitioners having failed to do so, are not entitled to continue in promoted post – They have been

rightly reverted back to old position – Petition dismissed: *Premlal Basore (Shri) Vs. State of M.P., I.L.R. 2022 M.P. 1885 (DB)*

## 11. Contractual Appointment

– **Extension of Service** – Held – Contractual appointee is bound by terms of his/her appointment order, neither any regularization of services nor any extension can be claimed as a matter of right – No document to show that temporary appointment of appellant was ever extended by respondents – No mandamus can be issued to continue with such employment – Appeal dismissed: *Rajani Bharti Vs. Maulana Azad National Institute of Technology (MANIT), I.L.R. 2022 M.P. \*38 (DB)*

– **Principal Employer** – Held – Appointment of petitioners not made by State Government but by the Contractor – No appointment order issued by State Government or its agencies – Neither State Government is principal employer which pays salary to petitioner employees nor principal employer controls and supervise the working of employee – Salary is not paid through State exchequer but paid through contractor who entered into contract with State Government – There is no employer-employee relationship – Petition dismissed: *Abhishek Raghuvanshi Vs. State of M.P., I.L.R. 2022 M.P. 1370*

– **Transfer** – Held – Looking to the clauses of the circular, there is no absolute bar to the effect that a contractual employee appointed for a particular place cannot be shifted/transferred under any circumstances – The only requirement is that a fresh agreement is required to be executed at the changed place – Petitioner cannot be said to be holding a non-transferable post – Transfer is permissible – Petition disposed: *Shabana Begum Vs. State of M.P., I.L.R. 2021 M.P. \*7*

## 12. Criminal Antecedent Report

– **Criminal Antecedent Report** – Discretion of Employer – Held – Employer failed to exercise its discretion vested in it and has abdicated its all important functions by treating District Magistrate's report to be adverse without assigning reasons as to why and how and under what circumstances, the report is adverse: *Sachin Mehra Vs. Union of India, I.L.R. 2022 M.P. 1569 (DB)*

– **Criminal Antecedents Report** – Held – Tribunal rightly allowed O.A. of petitioner finding that employer jumped into a conclusion of criminal antecedents report to be adverse without discharging its duties of application of mind and considering relevant factors – Such lapse of employer renders its decision to be vitiated in law – Order passed by this Court which is under review is recalled – Petition restored to its original number to be heard on merits – Review Petition allowed: *Sachin Mehra Vs. Union of India, I.L.R. 2022 M.P. 1569 (DB)*

### 13. Deemed Termination

– **Deemed Termination** – Held – Factum of tendering resignation by appellant not established by respondents – Conclusion drawn by inquiring authority regarding petitioner's absence is not founded upon any relevant information obtained from controlling authority – Inquiry report is cryptic and contains contradictory findings about absence and could not have been a reason to invoke clause 22 of Contract, moreso when appellant was not informed about any allegations against him: *Sanjay Jain Vs. State of M.P., I.L.R. 2021 M.P. 1808 (DB)*

– **Principle of Natural Justice** – Held – Deemed termination without following principles of natural justice cannot be countenanced moreso in a case where consistent stand of appellant was that he made herculean efforts to join, but respondents deprived him to perform duties – Single Judge erred in dismissing the petition based on a reason which was not assigned in impugned order – Impugned order of discontinuance/deemed termination cannot sustain judicial scrutiny and hence set aside – Respondents directed to reinstate appellant – Appeal allowed: *Sanjay Jain Vs. State of M.P., I.L.R. 2021 M.P. 1808 (DB)*

### 14. Departmental Enquiry

– **Consideration of Defence** – Principle of Natural Justice – Held – Disciplinary Authority and Appellate Authority did not take note of the defence taken by petitioner during course of departmental proceeding, nor discharged their obligation assigning proper and specific reasons for discarding his defence especially when authorities are dealing with major penalty of dismissal – Authorities acted arbitrarily without applying their mind – Non considering the reply submitted by petitioner amounts to violation of principle of natural justice – Impugned orders of dismissal set aside – Petition allowed: *Jai Kumar Bajpai (Dead) Through LRs. Smt. Chandrakanta Bajpai Vs. Chairman-cum-Managing Director, I.L.R. 2022 M.P. 1393*

– **Delay & Prejudice** – Held – Every delay in conducting department enquiry does not ipso facto lead to the enquiry being vitiated – Prejudice must be demonstrated to have been cause and cannot be a matter of surmise – Apart from submitting that R-1 was unable to proceed on deputation or to seek promotion, there is no basis to conclude that his right to defend himself stands prejudicially affected by a delay of 2 years in concluding the enquiry: *State of M.P. Vs. Akhilesh Jha, I.L.R. 2021 M.P. 1803 (SC)*

– **Departmental Enquiry** – Petitioner (A.S.I.) allegedly made wrong entries in Roznamcha Sanha regarding departure and return of SHO – The SHO after verifying entries countersigned the same thus at later stage, he cannot take a

dramatically opposite view to absolve himself from any liability and shift the burden over some subordinate officer – This renders the authority, authenticity and integrity of SHO doubtful: *Kamta Prasad Sharma Vs. State of M.P.*, I.L.R. 2022 M.P. 1846

– **Enquiry Report & Disciplinary Authority** – Held – Apex Court concluded that findings of Enquiry Officer are not binding on disciplinary authority – Authority can disagree with findings of Enquiry Officer on basis of material available on record but it should prepare a note of disagreement on basis of evidence and furnish the same to employee to enable him to show cause against the same: *State of M.P. Vs. Vishnu Prasad Maran*, I.L.R. 2021 M.P. 614 (DB)

– **Forged Caste Certificate** – Departmental Proceedings – Scope – Held – A forged caste certificate which was never issued by any competent authority is not required to be verified by High Power Caste Scrutiny Committee – Caste certificate submitted by petitioner at the time of appointment was a forged document – Respondents well within their rights to proceed departmentally – Petition dismissed with cost: *Bharat Singh Batham Vs. Life Insurance Corp. of India*, I.L.R. 2021 M.P. 1096

– **Issuance of Chargesheet** – Requirement of Notice – Held – If charge sheet is issued, the same contains the proposal for taking action with imputation of misconduct – Chargesheet fulfills the requirements of notice: *Chandramani Mishra (Dr.) Vs. State of M.P.*, I.L.R. 2021 M.P. 1080

– **Opportunity of Hearing** – Principle of Natural Justice – Held – Merely because opportunity has been granted to petitioner and he was allowed to contest departmental enquiry but not considering his defence would amount to violation of principle of natural justice: *Jai Kumar Bajpai (Dead) Through LRs. Smt. Chandrakanta Bajpai Vs. Chairman-cum-Managing Director*, I.L.R. 2022 M.P. 1393

– **Preliminary Enquiry & Punishment** – Held – In preliminary enquiry, appellant was not put to notice and he was not made aware as to what were the allegations/charges against him – Fact finding inquiry report cannot become reason to punish the appellant: *Jagdish Chouhan (Baret) Vs. State of M.P.*, I.L.R. 2022 M.P. 44 (DB)

– **Preliminary Enquiry Officer** – Powers – Held – Preliminary enquiry officer is under no obligation to take a decision whether a regular enquiry is to be conducted or not – At the best he can recommend for conducting enquiry and submit it's preliminary enquiry report before competent authority: *M.P. Poorv Kshetra Vidyut Vitaran Co. Ltd. Vs. K.K. Mishra*, I.L.R. 2022 M.P. 1815 (DB)

– **Principle of Natural Justice** – Held – Without considering reply of petitioner, disciplinary authority proceeded ex-parte and issued the impugned order which was without any application of mind and suffers from violation of principle of natural justice – Impugned orders set aside – Petition allowed: *Chandramani Mishra (Dr.) Vs. State of M.P., I.L.R. 2021 M.P. 1080*

– **Punishment** – Held – Punishment in a disciplinary proceeding is based upon preponderance of probabilities – Apex Court concludes that a serious charge of corruption requires to be proved to the hilt as it has civil and criminal consequences upon employee – Charge should be proved beyond shadow of doubt and it cannot be proved on mere probabilities: *Jai Kumar Bajpai (Dead) Through LRs. Smt. Chandrakanta Bajpai Vs. Chairman-cum-Managing Director, I.L.R. 2022 M.P. 1393*

– **Punishment** – Principle of Natural Justice – Held – Show cause notice nowhere indicates that it “initiates” the disciplinary proceedings rather it directs appellant to file reply as to why disciplinary proceedings should not be initiated against him – Appellant filed reply on facts but without holding any inquiry, punishment order was passed – This violates principle of natural justice: *Jagdish Chouhan (Baret) Vs. State of M.P., I.L.R. 2022 M.P. 44 (DB)*

– **Punishment** – Procedure – Held – Appellant was not put to notice as to why he should not be punished, indeed notice was to the effect that as to why disciplinary proceedings should not be initiated against him – Factual charges rebutted by appellant by filing factual reply – No charge memorandum issued and on basis of such notice, punishment (minor) was imposed – Decision making process clearly vitiated and there exists a serious procedural impropriety – Impugned orders quashed – Appellant be paid all consequential benefits – Appeal allowed: *Jagdish Chouhan (Baret) Vs. State of M.P., I.L.R. 2022 M.P. 44 (DB)*

– **Purpose of Enquiry** – Motive & Foundation Policy – Held – If purpose of enquiry is not to find out truth of allegations of misconduct but to decide whether to retain employee against whom a cloud is raised on his conduct, such enquiry only serves as a motive for termination but where enquiry is held wherein on basis of evidence a definite finding is reached at the back of employee about his misconduct and forms a foundation for order of termination, such order is punitive – Therefore on touchstone of Motive & Foundation Policy also, petitioner lacks merit: *State of M.P. Vs. Yogesh Pathak, I.L.R. 2021 M.P. 2253 (DB)*

– **Quashment of Charge-Sheet** – Grounds – Held – Charge-sheet alongwith statement of imputations, contains a detailed elaboration of allegations against R-1 and does not create any doubt or ambiguity over the nature of case which he is

required to answer in departmental enquiry – Finding of Tribunal that charges are vague is palpably in error – Impugned Judgment & order set aside – Departmental enquiry can be proceeded and be decided expeditiously – Appeal allowed: *State of M.P. Vs. Akhilesh Jha, I.L.R. 2021 M.P. 1803 (SC)*

– **Show Cause Notice** – Held – Apex Court concluded that if a show cause notice is issued to charged official after forming opinion to inflict punishment then said show cause notice is bad in law: *Kamta Prasad Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1846*

– **Show Cause Notice** – Held – If disciplinary authority has already made up its mind before giving opportunity of hearing, then such a post decisional hearing is not contemplated in law – Although petitioner was absolved in preliminary enquiry, S.P. had already made up his mind to punish petitioner – Appellate authority also did not consider the facts and legal position in correct perspective – Authorities caused illegality and arbitrariness – Impugned orders set aside – Petition allowed: *Kamta Prasad Sharma Vs. State of M.P., I.L.R. 2022 M.P. 1846*

– **Standard of Proof** – Held – Departmental enquiries are decided on principle of preponderance of probabilities against strict proof beyond reasonable doubt in a criminal prosecution – Rule of Evidence Act does not strictly applies to departmental proceedings: *Kaptan Singh Vs. Union of India, I.L.R. 2022 M.P. 1873*

– **Stipulated Period for Reply** – Held – Stipulated period of 15 days for submitting reply to chargesheet starts from the date of service of chargesheet but not from date of issuance of chargesheet – Disciplinary Authority erred in not accepting the reply of petitioner: *Chandramani Mishra (Dr.) Vs. State of M.P., I.L.R. 2021 M.P. 1080*

## 15. Dismissal/Termination

– **Contractual Employee** – Principle of Natural Justice – Held – Neither charge sheet issued nor departmental enquiry conducted and order of termination attributes dereliction of duty amounting to misconduct and hence the same is clearly stigmatic order – When termination is founded on acts of commission or omission, which amounts to misconduct, such an order casts stigma on conduct, character and work of employee and hence principle of natural justice, opportunity of hearing and inquiry is the requirement of law – Impugned order set aside – Petition allowed: *Rajesh Kumar Rathore Vs. High Court of M.P., I.L.R. 2022 M.P. 121 (DB)*

– **Dismissal on Ground of Conviction** – Moral Turpitude – Held – Petitioner was convicted on allegation that he and co-accused wrongfully restrained and assaulted the complainant by fists and blows – Causing bodily injury would not involve moral

turpitude – Mere ground of conviction, not sufficient to dismiss him from service – Impugned order set aside – Reinstatement directed – Petition allowed: *Jagdish Singh Jatav Vs. State of M.P., I.L.R. 2021 M.P. 637*

– **Forged Caste Certificate** – Held – By obtaining appointment on basis of forged caste certificate, petitioner not only played fraud on department but also fraudulently taken away the right of another eligible candidate belonging to reserved category – Petitioner also filed another forged letter during enquiry for which opportunity was granted to explain the source of letter which was not availed by him – Punishment of removal is not disproportionate – Petition dismissed: *Kaptan Singh Vs. Union of India, I.L.R. 2022 M.P. 1873*

– **Principle of Natural Justice** – Opportunity of Hearing – Held – Dismissal from service is a major penalty, before passing such order, respondent should have issued show cause notice to petitioners to show cause as to why order of dismissal should not be passed against them – Principle of natural justice not followed – Respondent acted arbitrarily and capriciously – Termination order is also vitiated since it is disproportionate to gravity of misconduct alleged – Impugned order set aside – Petitions allowed: *Suresh Sharma Vs. State of M.P., I.L.R. 2022 M.P. 2006*

– **Procedure** – Held – Alongwith charge-sheet, petitioner was supplied with list of witnesses and list of documents – Thereafter, regular departmental inquiry was conducted, statement of witnesses were recorded and petitioner was given opportunity to cross-examine them – Thereafter, show-cause notice was issued alongwith charge-sheet proposing major penalty – Petitioner was given opportunity to file reply – Due procedure has been followed – No scope of interference – Petition dismissed: *Suraj Pal Singh Rathor Vs. M.P. High Court, I.L.R. 2021 M.P. 1881 (DB)*

– **Termination** – Held – Under service conditions, certain procedure is prescribed for terminating the services – No notice was issued to petitioner neither any one month's notice nor one month's salary in lieu of notice was provided – Impugned order is totally a non-speaking order and does not reflect any reason for termination – Impugned order quashed – Matter relegated to authorities for consideration of case in accordance with law: *Chandresh Shukla Vs. The Registrar, People's University, I.L.R. 2022 M.P. 497*

– **Termination** – Mentioning of Reasons – Held – It is settled proposition of law that the impugned order has to be judged by the reasons mentioned therein – Subsequent filing of affidavit or giving explanation will not be considered to be a plausible explanation for passing the impugned order: *Chandresh Shukla Vs. The Registrar, People's University, I.L.R. 2022 M.P. 497*



## 16. Disproportionate / Punishment

– “**Perversity**” – Findings – Held – Writ Court has not assigned any reasons on the basis of which the conclusion of “perversity” was drawn – If enquiry was found to be perverse, punishment order was required to be set aside and in that event, question of remanding the matter back to disciplinary authority did not arise – Impugned order to the extent where the findings of enquiry was held to be perverse is set aside: *Hindustan Petroleum Corp. Ltd. Vs. Kailash Chandra, I.L.R. 2021 M.P. 1055 (DB)*

– **Disproportionate Punishment** – Held – Charges levelled and proved against present respondents (ministerial employees) and other officers are arising out of same transactions and are similar in nature – Officer who is held to be “transaction originator” was dealt with leniently whereas respondents were inflicted with severe punishment of dismissal from service – Single Judge rightly held that imposition of punishment was shockingly disproportionate: *Hindustan Petroleum Corp. Ltd. Vs. Kailash Chandra, I.L.R. 2021 M.P. 1055 (DB)*

– **Disproportionate Punishment** – Undertrial prisoner, accused of offence u/S 302 IPC, absconded from custody of appellant – Penalty of compulsory retirement imposed in departmental enquiry – Held – Considering nature of allegations and the misconduct, even order of compulsory retirement is on lighter side – Appeal dismissed: *Mishrilal Vs. State of M.P., I.L.R. 2022 M.P. 1507 (DB)*

– **Imposition of Punishment** – Grounds – Held – Imposition of punishment depends upon nature and duties of each delinquent employee, role allegedly played by them, gravity of charges, loss caused, past record etc. – If there are similarity of allegations, duly established in enquiry, the punishment should be similar and commensurate to the misconduct: *Hindustan Petroleum Corp. Ltd. Vs. Kailash Chandra, I.L.R. 2021 M.P. 1055 (DB)*

## 17. Examination

– **Publication of Key Answers** – Object & Scope – Held – Publication of key answers alongwith result of test is desirable in interest of fairness – Correctness of key answers should be ascertained from the standard and prescribed text books and not merely on basis of inferences: *Ankit Tiwari Vs. High Court of M.P., I.L.R. 2021 M.P. 1687 (DB)*

## 18. Guest Teachers

– **Eligibility Test** – Held – If a teacher found unfit to teach, or who does not perform his duties properly, State has a right to remove those teachers – Such clause

in agreement cannot be interfered by this Court, but as initial appointment was made on eligibility criteria prescribed by AICTE and once the candidate is found fit for employment, it is not necessary for petitioners to go through the very same documentation every time a fresh appointment /extension has to be made – A one time test for eligibility can satisfy the interest of the State: *Pradeep Kumar Yadav Vs. State of M.P., I.L.R. 2022 M.P. \*37 (DB)*

## 19. Honourable Acquittal

– **Honourable Acquittal** – Held – If acquittal is directed by Court on consideration of facts and material evidence on record with findings of false implication or that the guilt is not proved, accepting explanation of accused as just, it be treated as “honourable acquittal” – If prosecution fails to examine crucial witnesses or witness turned hostile, such acquittal is in purview of giving benefit of doubt and accused cannot be treated as honourably acquitted by Court: *Union of India Vs. Methu Meda, I.L.R. 2021 M.P. 2221 (SC)*

– **Honourable Acquittal** – Post of Constable – Held – If person is acquitted by Court giving him benefit of doubt from the charge of offence involving moral turpitude or because of witnesses turning hostile, it would not automatically entitle him for employment, that too in disciplined force – Mere disclosure of offence alleged and result of trial is not sufficient – Employer having a right to consider his candidature in terms of circulars of Screening Committee, he cannot be compelled to give appointment – Impugned order set aside – Appeal allowed: *Union of India Vs. Methu Meda, I.L.R. 2021 M.P. 2221 (SC)*

– **Suitability of Candidate** – Right of Employer – Held – Employer is having right to consider the suitability of candidate as per government orders/instructions/rules while taking decision for employment – Acquittal on technical ground for offences of heinous/serious nature which is not a clean acquittal, employer has a right to consider all relevant facts available as to the antecedents and take appropriate decision: *Union of India Vs. Methu Meda, I.L.R. 2021 M.P. 2221 (SC)*

## 20. Legitimate Expectations

– **Applicability of Rules** – Held – Normal rule is that vacancies which arise prior to amended Rules would be governed by unamended Rules and in exceptional circumstances, Government can take a conscious decision not to fill vacancies under old Rules – In present case, no such exceptional circumstances placed on record – Petitioners legitimate expectations and right of consideration for appointment cannot be taken away: *Shailesh Kumar Sonwane Vs. State of M.P., I.L.R. 2021 M.P. 2092 (DB)*

## 21. Pension/ Retiral Dues

– **Cause of Action** – Held – Any deficiency in pension would result in recurring cause of action as in the case of petitioner – Since petition has been filed after 7 years of accrual of cause of action, petitioner would not be entitled for arrears for a period beyond 3 years – He will be entitled for arrears and interest for last 3 years only – Re-fixation of pension directed after adding increment – Petition disposed: *Surendra Kumar Jain Vs. State of M.P., I.L.R. 2021 M.P. 230*

– **Retiral Dues** – Delayed Payment – Interest – Held – Unnecessary, unexplained and unreasonable delay in conducting enquiry and imposition of punishment became reason for delayed payment of retiral dues – Delay is solely attributable to department and employee cannot be blamed for it – Employer is bound to pay interest: *State of M.P. Vs. Vishnu Prasad Maran, I.L.R. 2021 M.P. 614 (DB)*

– **Withholding Pension** – Held – In absence of any specific provision empowering the employer to withhold the pension of employee, the same cannot be withheld: *M.L. Mittal Vs. State of M.P., I.L.R. 2022 M.P. 830*

– **Withholding/Withdrawing Pension** – Right to Life – Opportunity of Hearing – Held – Any decision taken which causes civil consequences of adverse nature and which vitally affects the right to livelihood of pensioner which is directly related to right to life, ought to be preceded by affording reasonable opportunity of hearing or else such decision renders itself to be abhorrent to basic fundamentals of rule of law – This principle applies even where statute does not in express terms provide for affording reasonable opportunity of hearing: *Radha Krishna Sharma Vs. State of M.P., I.L.R. 2021 M.P. 1641 (DB)*

## 22. Principle of Natural Justice

– **Principle of Natural Justice** – Held – Apex Court concluded that any order which entails civil consequences should be passed only after following the principles of natural justice: *Sanjay Jain Vs. State of M.P., I.L.R. 2021 M.P. 1808 (DB)*

– **Principle of Natural Justice** – Opportunity of Hearing – Held – Surprise inspection carried out on 07.10.2015, instructions issued to SDO by Commissioner on same date, who further communicated the directions to Project Officer on same date where he removed petitioner on same date – It can be inferred that no opportunity of hearing was given to petitioner and undue haste shown in present case – Fundamental rights of petitioner violated and principles of natural justice also violated – Petitioner's reinstatement directed – Petition allowed: *Seema Jatav (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 1854*

### 23. Promotion

– **Promotion** – Cause of Action – Delay & Latches – Held – Passing of an order in favour of similarly situated employee would not give rise to any fresh cause of action for a person who was sleeping over his rights and suddenly woke up and claiming the same reliefs with retrospective effect – Delay defeats equity – In case of promotion, delay and latches assumes importance – Petition dismissed: *Munni Bai (Smt.) Vs. State of M.P., I.L.R. 2022 M.P. 636*

– **Promotion** – Held – No person has a vested right of promotion, at the most he can claim that he has a right for his consideration for promotion – A promotion may effect various persons and their promotion cannot be changed after a long time: *Sajjan Singh Kaurav Vs. State of M.P., I.L.R. 2021 M.P. \*3*

### 24. Recovery

– **Recovery of Excess Pay** – Class of Employee & Retired/ In-Service Employee – Held – Since without specifying the class of employees, Apex court in Jagdev Singh’s case held that recovery can be made even from retired employees then the necessary inference which can be drawn that the expression “retired employees” or “employees who are deemed to retire within one year” employed in Rafiq Masih’s case, includes within its sweep and ambit all categories of employees irrespective of the class: *Manoj Sharma (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 2015 (DB)*

– **Recovery of Excess Pay** – Wrong Fixation of Pay/ Increment – Petitioner, a class III employee and continue to be in service – Held – If there is an written undertaking given by petitioner, the excess payment given to her vide wrong fixation of pay/increment deserves to be recovered – A written undertaking by an employee binds him in the future – Order of recovery of principal excess amount is upheld: *Manoj Sharma (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 2015 (DB)*

– **Recovery of Interest on Excess Pay** – Held – Written undertaking given by petitioner does not contain any promise to return the interest amount which may have accrued, thus, the employer is now estopped to make any recovery of interest over the excess principal amount paid in past – Order of recovery of interest is set aside – Appeal allowed in above terms: *Manoj Sharma (Smt.) Vs. State of M.P., I.L.R. 2021 M.P. 2015 (DB)*

### 25. Regularisation / Cancellation

– **Administrative Order** – Petitioners regularised on 20.07.1998 under the Regulation of 1988 – Vide administrative order dated 29.07.1998, Regulation of 1988

was nullified w.e.f. 13.07.1998 – Held – On date of regularization, previous regulation and instructions were in force and new regulation of 1998 was not in existence – Subsequent administrative order cannot take away the vested right – Regularisation cannot be cancelled – Petitions allowed: *Arun Narayan Hiwase Vs. State of M.P.*, I.L.R. 2021 M.P. 246

– **Regulation of 1998** – Repeal & Saving Clause – Held – The Repeal and Saving Clause of Regulation of 1998 protects such regularization/action which was taken pursuant to erstwhile Regulation and instructions: *Arun Narayan Hiwase Vs. State of M.P.*, I.L.R. 2021 M.P. 246

## 26. Selection Process

– **Amendment of Rules** – Held – Selection process begins with issuance of advertisement by PSC on 14.11.2019 whereas amendment was issued on 17.02.2020 in the midst of selection process – Norm/Rule of game was changed to the detriment of petitioners by bringing such amendment – It is arbitrary, impermissible and irrational: *Kishor Choudhary Vs. State of M.P.*, I.L.R. 2022 M.P. 1671 (DB)

– **Challenge to** – Necessary Party – Held – Apex Court concluded that when constitutional validity of a policy decision is impeached, it is not necessary to implead affected parties – Petitions filed when selection process is not over – No candidate has been finally selected and no right accrued in their favour – It was not necessary to implead candidates who are going to be adversely affected by outcome of this petitions: *Kishor Choudhary Vs. State of M.P.*, I.L.R. 2022 M.P. 1671 (DB)

– **Judicial Services** – Requirement of Particulars of Candidate – Particulars of any relative of candidate who is in this profession, was sought – Held – While selecting a person for judicial service, it is not only essential but it is the duty of authority to know every single particular of candidate as possible – Appointment cannot be made in darkness without knowing background of candidate – Full and complete disclosure is warranted – It would not affect any legal right of petitioner: *Anand Kumar Lowanshi Vs. Hon'ble High Court of M.P.*, I.L.R. 2022 M.P. 1990 (DB)

– **Minimum Marks for Interview** – Held – Minimum marks for interview can be prescribed by authority provided the same is made known much before the start of the selection process and not during the selection process: *Anand Kumar Lowanshi Vs. Hon'ble High Court of M.P.*, I.L.R. 2022 M.P. 1990 (DB)

– **Minimum Marks for Interview** – Validity – Held – Apex Court concluded that prescription of minimum marks for interview is not illegal – In instant case, in

advertisement itself, the fixing of minimum marks for interview was published – Candidates were well aware of the existence of such a clause – There is no change of rule of game at a subsequent stage – Petition dismissed: *Anand Kumar Lowanshi Vs. Hon'ble High Court of M.P., I.L.R. 2022 M.P. 1990 (DB)*

## 27. Suspension

– **Element of Public Interest** – Held – Public interest is also an element on consideration of which employee can be placed under suspension – Merely because it is not alleged that department has suffered any loss, employee does not get any immunity from suspension: *State of M.P. Vs. Satya Narayan Dubey, I.L.R. 2022 M.P. 1975 (DB)*

– **Scope & Power of Authority** – Held – It is within the province of disciplinary authority to decide whether employee is required to be suspended or not because suspension is a step towards ultimate result of investigation/inquiry: *State of M.P. Vs. Satya Narayan Dubey, I.L.R. 2022 M.P. 1975 (DB)*

– **Stigma** – Held – Suspension order does not cast any stigma: *State of M.P. Vs. Satya Narayan Dubey, I.L.R. 2022 M.P. 1975 (DB)*

– **Fundamental Rules, Rules 24, 26 & 54-B(1)** – Withholding Increment during Suspension – Held – Petitioner during suspension is not on duty and increments are granted for period spent on duty – No prejudice caused to petitioner if decision regarding his allowance is to be taken after conclusion of criminal trial – Non grant of increment during suspension period does not amount to penalty – Action of respondents not violative of Rules 24 and 54-B(1) – Petition dismissed: *Suresh Kumar Kurve Vs. State of M.P., I.L.R. 2021 M.P. \*15*

## 28. Transfer

– **Administrative Exigency** – Grounds – Held – A sensitive/responsible post of CMO (Class A) cannot be manned by a Revenue Inspector (Class C) – He does not have any administrative experience or knowledge to function as a CMO, neither he was in the feeder cadre nor entitled to occupy post of CMO as per Rules – Such transfer order is an example of colourable exercise of power – Impugned order of transfer set aside – Appeal allowed: *Radheshyam Mandloi Vs. State of M.P., I.L.R. 2021 M.P. 1489 (DB)*

– **Administrative Exigency** – Held – Expression “administrative exigency” is not a magic expression or a “mantra” which can serve the purpose in every situation – Words “administrative exigency” are not carpet under which anything can be swept: *Radheshyam Mandloi Vs. State of M.P., I.L.R. 2021 M.P. 1489 (DB)*

– **Exemption** – Held – Petitioner is a nominated person – Clause 33 of transfer policy specifically mentions that only those office bearers who are elected would be entitled for exemption – There is a vast difference between “elected” and “nominated” – In entire clause the word “nominated” has not been mentioned, neither State Government has made any such amendment in the policy – Secretary, GAD on his own added the word “nominated” in letter dated 26.07.2021, and it does not create any right in favour of petitioner – Petition dismissed: *Balram Dhakar Vs. State of M.P., I.L.R. 2022 M.P. \*9*

– **Grounds** – Held – Transfer is a condition of service and normally Court should refrain from interfering into transfer orders until and unless it is an outcome of malafide or passed by incompetent authority or are changing the service conditions of employee or disturbing the seniority etc. – No such grounds available to petitioner – Petition dismissed: *Mahendra Singh Amb Vs. State of M.P., I.L.R. 2021 M.P. 235*

– **Recommendation by Political Person** – Held – If the work of a person is not found to be satisfactory then the recommendation can be made by political person for transferring the employee: *Mahendra Singh Amb Vs. State of M.P., I.L.R. 2021 M.P. 235*

– **Recommendation of Minister** – Held – Transfer of petitioner is not on any administrative ground or in public interest, but only due to insistence made by concerned Minister – Concerned administrative department declined to transfer the petitioner still Minister made recommendation contrary to opinion of department – Such interference is highly inappropriate – Transfer order unsustainable in law as the same is purely on ground of recommendation of Minister – Transfer order set aside – Appeal allowed: *Shyam Kumar Singh Vs. State of M.P., I.L.R. 2022 M.P. 1510 (DB)*

– **Transfer Policy** – Held – Division Bench of this Court has concluded that in case transfer is alleged to be contrary to policy, the appropriate remedy is to approach the authority themselves by filing a representation seeking cancellation/ modification of transfer orders: *Mahendra Singh Amb Vs. State of M.P., I.L.R. 2021 M.P. 235*

## 29. Unauthorized Absence

– **Appointment on Probation** – Held – The only explanation of unauthorized absence given by petitioner was that his father was sick – No medical prescriptions showing serious sickness of father of petitioner – Government employee cannot be permitted to remain on unauthorized absence without informing the department – Petitioner failed to make out a *prima facie* case to show that his father was seriously sick: *Sinnam Singh Vs. State of M.P., I.L.R. 2021 M.P. 1317*

### 30. Miscellaneous

– **“Elected” & “Nominated”** – Difference between “elected” and “nominated” discussed and explained: *Balram Dhakar Vs. State of M.P., I.L.R. 2022 M.P. \*9*

– **Limitation for Appeal** – Held – In guidelines dated 27.05.2006, no period of limitation was provided for filing an appeal – Appeal filed by respondent-5 should not have been dismissed as time barred: *Madhu Morya (Ku.) Vs. State of M.P., I.L.R. 2021 M.P. 627*

– **Post of Current Charge** – Held – No relief can be extended to petitioner who was holding the post of current charge and was transferred on a vacant and regular post – Petitioner has no right to claim for holding a post of current charge: *Mahendra Singh Amb Vs. State of M.P., I.L.R. 2021 M.P. 235*

– **Review Jurisdiction** – If there is illegality of employer for not considering relevant factors and for not assigning proper reasons in his order and such palpable error is visible on face of record, it can be rectified by exercising review jurisdiction – Review petition is maintainable: *Sachin Mehra Vs. Union of India, I.L.R. 2022 M.P. 1569 (DB)*

– **Validity of Order** – Held – Validity of an order must be examined on the grounds mentioned therein and it cannot be substituted and supported by assigning different reasons by filing counter affidavit in the Court: *Sanjay Jain Vs. State of M.P., I.L.R. 2021 M.P. 1808 (DB)*

– **See** – Constitution – Article 226: *Hindustan Petroleum Corp. Ltd. Vs. Kailash Chandra, I.L.R. 2021 M.P. 1055 (DB)*

### **SHASKIYA B.S.C. NURSING MAHAVIDYALAYON MAIN** **PRASHIKSHAN HETU CHAYAN KE NIYAM** **(SELECTION RULES)**

– **Rule 17** and M.P. Online Dwara Counselling Prakriya Ke Liye Niyamavali, Rule 10 – Applicability of Rules – Held – First set of Rules were prepared for purpose of selection whereas Niyamavali contains special provision for counselling – Impugned order relates to Counselling and therefore Niyamavali will hold the field – As per Rule 10 of Niyamavali, action of department in selecting petitioners in second counselling was in accordance with law: *Kamni Tripathi Vs. State of M.P., I.L.R. 2022 M.P. \*51 (DB)*



**SHRAM KALYAN NIDHI (SANSHODHAN) (MANDAL KARMCHARIYON KI BHARTI) VINIYAM, M.P., 2021**

– **Rule 4(2)(ka)** – Ultra Vires – Held – Earlier, all promotions were made through in-service candidates and vide impugned notification 25% post are reserved for direct recruitment – It does not anyway take away or abridge any of the fundamental rights of petitioners – They are still entitled to compete on 75% of seats – Notification is not arbitrary, unreasonable or irrational – Petition dismissed: *Dilip Behere Vs. State of M.P., I.L.R. 2022 M.P. 2031 (DB)*

**SINCHAI PRABANDHAN ME KRISHKON KI BHAGIDARI ADHINIYAM, M.P. (23 OF 1999)**

– **Section 4**, Sinchai Prabandhan Me Krishkon Ki Bhagidari (Sansodhan) Adhinyam, M.P. (23 of 2013), Section 4 and Sinchai Prabandhan Me Krishkon Ki Bhagidari (Second Amendment) Adhinyam, M.P., 2019 (5 of 2020), Sections 4(6), 4(8) & 41 – Amendment – Practice – Held – As per Section 4(6) & 4(8) of Second Amendment Act of 2019, tenure of elected President and Members of Committee could not have been abruptly reduced for period of less than 5 years without assigning/recording reasons whereas in present case, body has been dissolved before completing period of 3 years and that too without assigning any reasons – Impugned notification quashed – Petition allowed: *Kishan Patel Vs. State of M.P., I.L.R. 2021 M.P. 297 (DB)*

**SINCHAI PRABANDHAN ME KRISHKON KI BHAGIDARI (SANSODHAN) ADHINIYAM, M.P. (23 OF 2013)**

– **Section 4** – See – Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhinyam, M.P., 1999, Section 4: *Kishan Patel Vs. State of M.P., I.L.R. 2021 M.P. 297 (DB)*

**SINCHAI PRABANDHAN ME KRISHKON KI BHAGIDARI (SECOND AMENDMENT) ADHINIYAM, M.P., 2019 (5 OF 2020)**

– **Sections 4(6), 4(8) & 41** – See – Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhinyam, M.P., 1999, Section 4: *Kishan Patel Vs. State of M.P., I.L.R. 2021 M.P. 297 (DB)*

### **SPECIFIC RELIEF ACT (47 OF 1963)**

– **Section 34** – Declaration of Share – Held – Declaration of share could be made irrespective of Section 34 of 1963 Act, especially in case where the land is agricultural land – As per record, land in question is revenue paying land, therefore even if there is some construction over it, same would be considered as agricultural land: *Ramkali (Smt.) (Dead) By L.R. Vs. Smt. Muritkumari (Dead) By L.Rs., I.L.R. 2022 M.P. 2063*

### **STAMP ACT, INDIAN (2 OF 1899)**

– **See** – Registration Act, 1908, Section 17(1)(b) & 49: *Gangashankar Dubey Vs. Smt. Sindhu Bai, I.L.R. 2022 M.P. 675*

– **Section 26, proviso** and Mines and Minerals (Development and Regulation) Act (67 of 1957), Section 9A – Dead Rent – Determination – Held – There is a distinction between royalty and dead rent and proviso to Section 26 of 1899 Act is clearly attracted in case of mining lease – Dead rent is required to be calculated only on basis of ascertained royalty to be charged from leaseholder at the very initial stage – Petition dismissed: *Birla Corporation Ltd. (M/s.) Vs. State of M.P., I.L.R. 2022 M.P. 2015 (DB)*

– **Section 31 & 32** – Impounding not Endorsed in Instrument – Admissibility in Evidence – Held – Applicant deposited the deficit stamp duty and Collector (Stamps) issued a separate certificate for the same – Merely because Collector (Stamps) has not endorsed it on the instrument, it will not render the instrument/document inadmissible in evidence: *Rajeev Agnihotri Vs. Ashok Jain, I.L.R. 2021 M.P. 1941*

– **Sections 31, 32 & 56** – Review – Held – Collector becomes functus officio after an order is passed by him u/S 31 and the order attains finality unless he takes recourse to Section 56(2) of Act – In instant case, order of Collector (Stamps) u/S 31 and certificate issued u/S 32 cannot be subject matter of review before Chief Controlling Revenue Authority, i.e. Board of Revenue: *Rajeev Agnihotri Vs. Ashok Jain, I.L.R. 2021 M.P. 1941*

– **Sections 33, 35 & 38(2)** – Impounding of Document – Held – Once the document is brought to the notice of authority/Court and if found to be insufficiently stamped, authorities/Court are duty bound to impound the same – Without payment of proper stamp duty, original document cannot be returned back to concerned person despite the fact that he has chosen not to place reliance upon the said document and not to get the same exhibited before Court – Petition dismissed: *Mukesh Kumar Vs. Kulvinder Singh (dead) Through its Legal Heirs Jaspreet Kaur, I.L.R. 2021 M.P. 1131*

– **Section 35** – See – Registration Act, 1908, Section 17: *Dilip Kumar Vs. Laxminarayan, I.L.R. 2022 M.P. 1697*

– **Section 35** – See – Registration Act, 1908, Section 17 & 49: *Manish Singh Malukani Vs. Hari Prasad Gupta, I.L.R. 2022 M.P. \*67*

– **Section 75** – See – Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Section 26(1)(a): *M.P. Road Development Corporation Vs. Mohd. Shahbuddin, I.L.R. 2022 M.P. 1927 (DB)*

**STATE ADMINISTRATIVE SERVICES**  
**(CLASSIFICATION, RECRUITMENT AND**  
**CONDITIONS OF SERVICE) RULES, M.P., 1975**

– **See** – Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 3: *Arun Parmar Vs. State of M.P., I.L.R. 2021 M.P. 822 (FB)*

– **Rule 13 & 23** – See – Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 8 & 12: *Arun Parmar Vs. State of M.P., I.L.R. 2021 M.P. 822 (FB)*

– **Rule 13(1)** – See – Civil Services (General Conditions of Service) Rules, M.P., 1961, Rule 8(1): *Arun Parmar Vs. State of M.P., I.L.R. 2021 M.P. 822 (FB)*

– **Rule 13(1) & 13(7)** – See – Civil Services (General Conditions of Service) Rules, M.P., 1961, Rules 8(1), 8(7) & 12: *Arun Parmar Vs. State of M.P., I.L.R. 2021 M.P. 822 (FB)*

**STATE SERVICES EXAMINATION RULES,**  
**M.P., 2015 (AMENDED)**

– **Rule 4(3)(d)(III)** – Constitutional Validity – Held – In view of judgment of 9 Judges Bench of Apex Court in Indra Sawhney case, there was no occasion for State to introduce amendment in Examination Rules, which runs contrary to binding precedent – State could not assign any justifiable reasons or establish any rational object/purpose for bringing amendment – State could not establish any nexus between the object sought to be achieved and the impugned amendment – Rule 4(3)(d)(III) held to be ultra vires – Petitions partly allowed: *Kishor Choudhary Vs. State of M.P., I.L.R. 2022 M.P. 1671 (DB)*

– **Rule 4(3)(d)(III) and Constitution** – Article 14 & 16 – Effect & Validity – Held – There is no justifiable reason for depriving a meritorious reserved category candidate who competed with UR category candidate and secured same or more

marks than him, from being treated as UR candidate – Such artificial classification which is outcome of impugned Rule is arbitrary, discriminatory and violative of equality provided under Article 14: *Kishor Choudhary Vs. State of M.P., I.L.R. 2022 M.P. 1671 (DB)*

### **STATE SERVICES EXAMINATION RULES, M.P., 2015** **(UNAMENDED)**

– **Rule 4** – See – Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, M.P., 1994, Section 4(4): *Kishor Choudhary Vs. State of M.P., I.L.R. 2022 M.P. 1671 (DB)*

### **SUITS VALUATION ACT (7 OF 1887)**

– **Section 8** – See – Court Fees Act, 1870, Section 7(iv)(c) & Schedule 1, Article 1-A (amended): *Sant Ram Patel Vs. Jainul Aabdeen, I.L.R. 2022 M.P. 1190*

### **SYNDICATE BANK OFFICER EMPLOYEES’** **(CONDUCT) REGULATIONS, 1976**

– **Regulation 3(1) & 24** – See – Payment of Gratuity Act, 1972, Section 4(6) & 7(7): *The General Manager Canara Bank Vs. Shri Prakash N. Mandve, I.L.R. 2022 M.P. 999*

## **T**

### **TENDER**

– **Alterations of Conditions** – Competent Authority – Held – If NIT issued by R-3, its conditions can be altered by R-3 only – Consultancy Agency (R-2) was neither justified nor competent in revising tender clauses: *Krsnaa Diagnostics Pvt. Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 878 (DB)*

– **Blacklisting** – Period – Held – Order of blacklisting is per se illegal as it does not reflect the definite period of blacklisting and thus being unsustainable, it is quashed – Petitioner already suffered for 15 months – Looking to the fact that as soon as petitioner company came to know about some embezzlement of money by their employee, prompt action was taken and FIR was got registered by themselves, further the embezzled amount was also refunded to R-2, the period of blacklisting is reduced to that already undergone by company – Petition allowed: *Bombay Intelligence Security (India) Ltd. Vs. State of M.P., I.L.R. 2022 M.P. 112*

– **Debarment** – Disproportionate Action – Held – As per the clause, debarment upto a period of 5 years can be taken whereas in present case debarment has been done for 2 years – Order of debarment is not disproportionate: *K & J Projects Pvt. Ltd. (M/s.) Vs. M.P. Road Development Corp., I.L.R. 2021 M.P. 2059 (DB)*

– **Debarment** – Ground of Misrepresentation – Held – It is admitted that petitioner have submitted CV's which had variances – Action of debarment of petitioner is in conformity with clause 3.4(iv)(b) of Request for Proposal (RFP) which specifically provided that if any information is found incorrect at any stage, action including termination and debarment from future MPRDC projects upto 5 years will be taken – Bid was annulled owing to fact that petitioner submitted false and fabricated CV – No illegality in decision making process – Petitions dismissed: *K & J Projects Pvt. Ltd. (M/s.) Vs. M.P. Road Development Corp., I.L.R. 2021 M.P. 2059 (DB)*

– **Debarment** – Obligation of Bidder – Held – As per clause of RFP, CV was required to be certified by Consultant (Bidder) – Certificate was given by petitioner stating that CV has been checked and found to be correct – Obligation to submit a correct CV was on petitioner or its minor partner: *K & J Projects Pvt. Ltd. (M/s.) Vs. M.P. Road Development Corp., I.L.R. 2021 M.P. 2059 (DB)*

– **Debarment** – Principle of Natural Justice – Held – Respondents issued show cause notice in clear terms of clauses of RFP to petitioner whereby they submitted their reply and after considering the same, order of debarment has been passed – No violation of principle of natural justice: *K & J Projects Pvt. Ltd. (M/s.) Vs. M.P. Road Development Corp., I.L.R. 2021 M.P. 2059 (DB)*

– **Submission of Additional Material** – Cut off Date – Held – Clause 2.6.7 postulates that additional material, information or document could be provided when asked for from the bidder – Additional material produced by the bidder after the last date of 04.10.2021, only because they were asked to produce the same in terms of the clause 2.6.7 – No infirmity in action of respondents – Petition dismissed: *Community Action Through Motivation Program (CAMP) Vs. State of M.P., I.L.R. 2022 M.P. \*3 (DB)*

– **Term “Additional Material”** – Held – Additional material constitutes any material other than what has been filed – Additional material cannot be read to mean only crucial or essential material – Clause of tender do not mention the type of material that the bidder has to furnish: *Community Action Through Motivation Program (CAMP) Vs. State of M.P., I.L.R. 2022 M.P. \*3 (DB)*

**THE COMMERCIAL COURTS, COMMERCIAL  
DIVISION, COMMERCIAL APPELLATE DIVISION OF  
HIGH COURTS ACT, 2015 (4 OF 2016)**

– **Section 2(c)(xvii) & 3** – “Commercial Dispute” – Jurisdiction – Held – Disputes related to design are required to be instituted before a Commercial Court constituted u/S 3 of the Act of 2015: *S.D. Containers Indore Vs. M/s. Mold Tek Packaging Ltd.*, I.L.R. 2021 M.P. 163 (SC)

– **Section 2(1)(c), Clause (i) to (xxii)** – Commercial Disputes – Held – Though clause (i) to (xxii) are all intrinsically related to Section 2(1)(c), each is a distinctly separate instances of a commercial dispute – No requirement to interpret clause (xv) in conjunction with clause (i) of Section 2(1)(c) – Use of semi colon and full stop – Discussed and explained: *Neena V Patel (Dr.) (Mrs.) Vs. Shravan Kumar Patel*, I.L.R. 2022 M.P. 1900

– **Section 2(1)(c)(xv)** – “Dispute” & “Commercial Dispute” – Discussed and explained: *Neena V Patel (Dr.) (Mrs.) Vs. Shravan Kumar Patel*, I.L.R. 2022 M.P. 1900

– **Section 2(1)(c)(xv) & 15(2)** and Partnership Act, (9 of 1932), Section 4 & 5 – Dispute of “Partnership”/ “Partnership Agreement” – Jurisdiction of Court – Held – Section 4 of 1932 Act, disclose that an agreement inheres in the term “partnership”, without an agreement between partners, a partnership cannot exist – Thus, creating a dissection between a “partnership agreement” and “partnership” is an impossibility – Relation of partnership arises from a contract and not from status – There exist a commercial dispute arising from partnership agreement – Impugned order set aside – Trial Court directed to transfer the case to Commercial Court – Petition allowed: *Neena V Patel (Dr.) (Mrs.) Vs. Shravan Kumar Patel*, I.L.R. 2022 M.P. 1900

– **Sections 4, 7 & 21** – See – Designs Act, 2000, Section 19 & 22(4): *S.D. Containers Indore Vs. M/s. Mold Tek Packaging Ltd.*, I.L.R. 2021 M.P. 163 (SC)

– **Section 13(1A)** – Limitation – Condonation of Delay – Held – Section 13(1A) only provides for a limitation period of 60 days from date of judgment or order appealed against, without further going into whether delay beyond this period can or cannot be condoned: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.*, I.L.R. 2021 M.P. 557 (SC)

– **Section 13(1A)** – See – Arbitration and Conciliation Act, 1996, Section 34 & 37: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., I.L.R. 2021 M.P. 557 (SC)*

– **Section 14** – Limitation – Held – Though the object of expeditious disposal of appeals is laid down in Section 14 of the Act of 2015, the language of Section 14 makes it clear that the period of six months spoken of is directory and not mandatory: *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. M/s Borse Brothers Engineers & Contractors Pvt. Ltd., I.L.R. 2021 M.P. 557 (SC)*

### **TITLE**

– **Khasra Entries** – Held – State has not filed any written statement – No revenue record even not a single document produced to show that land belonged to M.P. Government or it was reserved for public purpose or was ever acquired by government for building any Community Health Centre or on what legal foundation, government hospital was built up in private land – No legal right or any ownership of appellant/State is established – Plaintiff proved his case by cogent and reliable evidence and public documents – State have no right to retain illegal possession as an encroachment on private land – No merits in appeal and is thus dismissed: *Principal Secretary, Govt. of M.P. Vs. Ravi Shankar Sharma, I.L.R. 2022 M.P. 1411*

### **TRANSFER OF PROPERTY ACT (4 OF 1882)**

– **Section 111(g)(2)** – See – Land Revenue Code, M.P., 1959, Section 165(7)(b): *Dharmendra Jatav Vs. State of M.P., I.L.R. 2021 M.P. 445*

### **TRANSPLANTATION OF HUMAN ORGANS AND TISSUES ACT (42 OF 1994)**

– **Section 9** – Consent/NOC – Application of Mother for donating her kidney to her son – Held – Petitioner (mother) found medically fit for donation – Rejection of request of petitioner on ground of non-issuance of NOC by husband is not sustainable and is hereby set aside – Respondents directed to immediately comply with all requirements and sent the matter to Authorization Committee – Petition disposed: *Meena Devi Vs. State of M.P., I.L.R. 2022 M.P. \*42*

## U

### **UCHCHANYAYALAYA (KHAND NYAYPEETH KO APPEAL) ADHINIYAM, M.P. 2005 (14 OF 2006)**

– **Section 2(1)** – See – Constitution – Article 226: *M.P. Bus Operator Association Vs. State of M.P., I.L.R. 2021 M.P. 2242 (DB)*

– **Section 2(1)** – See – Constitution – Article 226 & 227: *Caparo Engineering India Ltd. Vs. Ummed Singh Lodhi, I.L.R. 2022 M.P. 10 (SC)*

– **Section 2(2)** – Limitation – Condonation of Delay – Held – After issuance of notice to application for condonation of delay as well as admission, no reply filed by review petitioner nor any objection was taken at the time of hearing of writ appeal – Delay was deemed to be condoned – Further, in writ and writ appellate jurisdiction, provisions of limitations are not strictly construed as in the matter arising out of CPC: *Zigitza Health Care Ltd. (M/s.) Vs. Naresh Kumar Verma, I.L.R. 2022 M.P. 871 (DB)*

**100**– **Section 2(2)** and Minimum Wages Act ( 11 of 1948), Section 20 – Limitation – Delay – Held – Proceeding initiated by employee under benevolent/beneficiary legislation – Object of such benevolent legislation and relief so granted to employees cannot be frustrated on such technical pretext: *Zigitza Health Care Ltd. (M/s.) Vs. Naresh Kumar Verma, I.L.R. 2022 M.P. 871 (DB)*

### **URBAN LAND (CEILING AND REGULATION) ACT (33 OF 1976)**

– **Section 10(3)** – Term “otherwise” – Held – Section 10(3) specifically provides that after issuance of notice u/S 10(3) no one has right to sale, alienate, transfer or otherwise the land came into the ceiling, therefore under the head of “otherwise” even the transfer by way of judgment and decree passed on concern is also prohibited: *Maan Singh Vs. State of M.P., I.L.R. 2022 M.P. 1520*

– **Section 10(5)** and Urban Land (Ceiling and Regulation) Repeal Act (15 of 1999), Section 3 & 4 – Held – Apex Court concluded that provisions of Repeal Act could not be extended where possession has been taken without following the procedure and the land owner cannot retain the land – Once possession is taken, any grievance as to non-compliance of Section 10(5) ought to have been made within a reasonable time of such dispossession – By sheer lapse of time, possession would acquire legitimacy – Owner or the person in possession must be deemed to have



waived his right u/S 10(5) of the Act: *Maan Singh Vs. State of M.P., I.L.R. 2022 M.P. 1520*

– **Section 10(5) & 10(6)** and Urban Land (Ceiling and Regulation) Repeal Act (15 of 1999), Section 3 & 4 – Objections – Held – Neither petitioner nor actual owner had ever raised any objection challenging the proceedings u/S 10(6) held on 14.03.1993 and since then petitioner as well as owners remained silent for almost 3 decades – Petitioner cannot be permitted to assail the validity of panchnama etc. – Petition dismissed: *Maan Singh Vs. State of M.P., I.L.R. 2022 M.P. 1520*

### **URBAN LAND (CEILING AND REGULATION) REPEAL ACT (15 OF 1999)**

– **Section 3 & 4** – See – Urban Land (Ceiling and Regulation) Act, 1976, Section 10(5) & 10(6): *Maan Singh Vs. State of M.P., I.L.R. 2022 M.P. 1520*

## **V**

### **VAT ACT, M.P. (20 OF 2002)**

– **Section 21** – Validity of Form C Certificates – Burden of Proof – Held – On basis of Form C, appellant availed benefit thus burden is on him to produce evidence that the certificates are genuine – Certificates were verified by authorities and were found not genuine therefore there was no need for authorities to give findings on issue of collusion between appellant and purchasers – Having such knowledge, no action taken by appellant against dealers who gave those certificates to him – Appeal dismissed: *Amrit Refined Pvt. Ltd. (M/s) Vs. The Commissioner of Commercial Tax, I.L.R. 2022 M.P. 1950 (DB)*

### **VIKAS PRADHIKARANO KI SAMPATIYON KA PRABANDHAN TATHA VYAYAN NIYAM, M.P., 2018**

– **Rule 6** – See – Constitution – Article 226: *Vatash Sharma Vs. Indore Development Authority, I.L.R. 2022 M.P. 814 (DB)*

– **Rule 6(v) & 6(vi)** – Disposal of Public Property – Tender Procedure – Held – Rules of 2018 do not permit IDA to fix a rate 30% over and above the reserved price – Resolution and NIT issued with utter disregard to statutory provision of Rule 6, which amount to illegality, irrationality, procedural impropriety and hits Wednesbury Principles – Discriminatory treatment given to petitioner for irrelevant reasons – Resolution and NIT set aside – Respondents directed to consider bid of petitioner –

Petition allowed: *Vatash Sharma Vs. Indore Development Authority, I.L.R. 2022 M.P. 814 (DB)*

– **Rule 6(v) & 28** – 'Acceptance' & 'Approval' – Held – Rules makes it clear that only after satisfaction of competent authority, bid can be treated to be 'approved' – Letter of respondent and website remark showing that, bid is 'accepted' does not mean that bid was 'approved' by competent authority – Such communication will not result in 'approval' of the bid: *Vatash Sharma Vs. Indore Development Authority, I.L.R. 2022 M.P. 814 (DB)*

### **VISHESH SASHASTRA BALADHINIYAM, M.P.** **(29 OF 1968)**

– **Section 3-Chapter II & 9** – Transfer – Scope & Jurisdiction – Held – State government can divide the Special Armed Force into groups and further sub divide each group into battalions and each battalion into companies and each company into platoons – As per Section 9, State Government or Inspector General has powers to transfer member of Police Force to Special Armed Force and vice-versa: *Pradeep Kumar Vs. State of M.P., I.L.R. 2021 M.P. \*14*

– **Section 9** – Deputation & Transfer – Held – Clause 9 of the appointment order of petitioner specifically provides that prior consent is not necessary for transfer – No fault can be found in transferring petitioner to another battalion which also cannot be termed as “deputation” – Petition dismissed: *Pradeep Kumar Vs. State of M.P., I.L.R. 2021 M.P. \*14*

### **VISHWAVIDYALAYA ADHINIYAM, M.P. (22 OF 1973)**

– **Section 15(4)** – Affiliation Fees – Power of Vice-Chancellor – Held – Respondent/university not entitled to charge the affiliation fees beyond the affiliation fees approved by Coordination Committee in Statute 27 of University – Enhancement fee is not supported u/S 15(4) of the Act – Excess fees directed to be refunded – Petition allowed: *Brilliant Institute of Professional Studies Niwari Vs. State of M.P., I.L.R. 2022 M.P. 1171 (DB)*

## **W**

### **WAKF ACT (43 OF 1995)**

– **Section 67(4)** and Constitution – Article 226/227 – Alternate Remedy – Parallel Litigation – Maintainability – Held – When a party has alternate remedy and had approached statutory forum then he cannot be allowed to press his reliefs parallelly

at High Court – Regarding the relief in present petition, he has already approached the Wakf Tribunal – Petition not maintainable and is dismissed: *Mohammad Afjal Vs. State of M.P., I.L.R. 2022 M.P. 1514*

### WILL

– **Burden of Proof** – Held – Burden of proof is on the propounder of “Will” – Even if “Will” is not challenged by anybody, still the propounder of will has to discharge his burden – No decree can be passed even by Civil Court merely on ground that respondents have chosen not to appear before it or have failed to file their written statement: *Ranjit @ Bhaiyu Mohite Vs. Smt. Nandita Singh, I.L.R. 2021 M.P. 727*

### WITNESS PROTECTION SCHEME, 2018

– **Clause 2(c)** – Competent Authorities – Held – Competent Authorities is defined as Standing Committee in each District chaired by District & Session Judge with head of Police in District as Member and head of Prosecution in District as its Member Secretary: *Indal Singh Vs. State of M.P., I.L.R. 2021 M.P. 890*

– **Clause 2(i), 2(c) & 6** – Protection of Witness – Procedure – Held – Witness or his family members or duly engaged counsel or Investigating Officer or SHO or SDO (P) and S.P. may file application in prescribed format before competent authority and same shall be preferably be got forwarded through Prosecutor concerned – Petitioner granted liberty to prefer such application claiming protection: *Indal Singh Vs. State of M.P., I.L.R. 2021 M.P. 890*

### WORDS & PHRASES

– **“Blacklisting” & “Principle of Natural Justice”** – Discussed & explained: *UMC Technologies Pvt. Ltd. Vs. Food Corporation of India, I.L.R. 2021 M.P. 27 (SC)*

– **“Dispose” & “Dismiss”** – Held – In legal sense, word “dispose” means that final order has been passed in a case – Word “dispose” is different from word “dismiss” which means “to reject a case” – If a case is disposed off then it means it is either allowed/rejected/partly allowed but final order has been passed by which case is over and has come to end: *Sar Parivahan Pvt. Ltd. (M/s.) Vs. Hindustan Copper Ltd., I.L.R. 2022 M.P. 598*

– **“Ejusdem generis”** – Principle of – Discussed and explained: *Aom Tiwari Vs. State of M.P., I.L.R. 2021 M.P. 551*

– “**Possible & Probable**” – “Impossible & Improbable” – Discussed and explained: *Lalu Sindhi @ Dayaldas Vs. State of M.P., I.L.R. 2021 M.P. 1932 (DB)*

– “**Public Office**” – Discussed & explained: *Ravi Shanker Chouksey Vs. State of M.P., I.L.R. 2021 M.P. 1557*

– **Show Cause Notice** – Contents – Discussed & explained: *UMC Technologies Pvt. Ltd. Vs. Food Corporation of India, I.L.R. 2021 M.P. 27 (SC)*

### **WORKING JOURNALISTS AND OTHER NEWSPAPER EMPLOYEES (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT (45 OF 1955)**

– **Aims & Objects** – Held – Act of 1955 is a beneficent piece of legislation and it cannot be read in a hyper technical manner to strangulate a litigant – Liberal interpretation should be given to provisions in order to advance the cause of justice: *Rajasthan Patrika Pvt. Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 309 (DB)*

### **WORKING JOURNALISTS (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS RULES, 1957**

– **Rule 36** – Application – Prescribed Form – Held – If necessary details are otherwise available in application, although in a different manner and not in prescribed form, application cannot be thrown into winds – It is the “substance” and not the “form” which will decide the entertainability of application: *Rajasthan Patrika Pvt. Ltd. Vs. State of M.P., I.L.R. 2021 M.P. 309 (DB)*

### **WORKS OF DEFENCE ACT (7 OF 1903)**

– **Section 2(b) & 18** – See – Land Acquisition Act, 1894, Section 3(b) & 18: *Kewal Kumar Jaggi Vs. State of M.P., I.L.R. 2022 M.P. 657*

– **Section 18** – See – Land Acquisition Act, 1894, Sections 18, 25 & 50: *Kewal Kumar Jaggi Vs. State of M.P., I.L.R. 2022 M.P. 657*

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